

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4304 SRES SJR 10 1184

Ms. Wunnicke expressed appreciation to Nancy Stromson of the Fish and Wildlife Service for a very fine professional job, above and beyond the call of duty.

3. Yukon Charley General Management Plan

This item was deleted from the agenda. It will be discussed at the next meeting. The State needs more time to finalize its work.

4. Southeast Alaska Visitors Center

MR. BARTON noted that the site for the Center has been recommended by a project group working on its location as at Ketchikan. The City and Borough of Sitka had expressed some concern about that location. A letter dated June 12, 1984 withdraws Sitka's objection. Mr. Barton read an excerpt from the letter: "The purpose of this letter is to withdraw any formal request for review of the group's recommendation, and request that you proceed with the Center in Ketchikan without further delay." Signed by Richard Anderson, Administrator.

The staff committee, the Land Use Advisors, and the Citizens' Advisory Commission on Federal Areas have all endorsed the project group's recommendation.

MR. BARTON MOVED THAT THE LAND USE COUNCIL ENDORSE THE PROJECT GROUP'S RECOMMENDATION FOR THE LOCATION AT KETCHIKAN FOR THE SOUTHEAST ALASKA VISITORS' CENTER THAT WILL REPRESENT ALL OF SOUTHEAST ALASKA. MS. WUNNICKE seconded the motion.

MR. WIGGINS asked if the recommendation is addressed to anyone in particular or just an expression of the Council's concurrence in the selection of Ketchikan as the site. He wanted to know who has responsibility for the action that will implement this.

MR. BARTON indicated that the Forest Service is the lead agency at Ketchikan, but the same process will be followed as was done at the other two centers. The recommendation is addressed to Mr. Barton as a representative of the Secretary of the Agriculture.

Mr. Grogan asked for any objections to the motion, and hearing none, announced that it carries.

5. Long Range Goals and Objectives

WALT SHERIDAN, chairman of the work group that was chartered to look into long range goals and objectives of the Alaska Land Use Council and make recommendations to the Council, reported that the work group has looked at a number of different alternatives that are outlined in the packet, and is recommending that one of the alternatives be adopted by the Council so that the work group can go ahead and proceed. Basically, the recommendation is that the Council Members, Staff Committee and Land Use Advisors be involved in the development of the long range goals and objectives, and that in addition a list of key Alaskans be put together and invited to participate in the process as well.

Mr. Sheridan discussed C.M. #019/84 which reads in part,

"The Staff Committee recommends that the Council authorize the work group to proceed with implementation of Alternative III. Such authorization from the Council will be limited to:

1. Preparation of a key contact list consisting of 20-40 persons representing a broad cross section of

interests and expertise in Alaska resource management.

2. Preparation of a set of questions designed to elicit the views of the key contacts, Council members, Staff Committee members and Land Use Advisors.
3. Preparation of a detailed time line and study plan for completing the project."

MR. WIGGINS expressed his disappointment that the group which was specifically asked for a product had returned instead with a process to get a product, and had taken almost a year developing the process. He asked for a time line in getting a set of written goals if at the November or December meeting the group comes back with recommendations.

MR. CONTOR expressed a preference for Alternative I.

MR. WIGGINS MOVED TO EXPRESS THE COUNCIL'S CONCURRENCE WITH THE RECOMMENDATION FROM THE STAFF COMMITTEE IN THE MEMORANDUM #019/84, i.e. THAT THE STAFF COMMITTEE HAS REVIEWED THE WORK GROUP'S

RECOMMENDED APPROACH WHICH IS ALTERNATIVE III AND CONCURS THEREIN. IF THE COUNCIL CONCURS WITH THIS MOTION, IT IS HIS INTENT THAT THE WORK GROUP BE DIRECTED TO PROCEED WITH DEVELOPING ITEMS 1, 2, AND 3 AS LISTED IN THE MEMORANDUM FOR REVIEW AND APPROVAL OF THE COUNCIL AT THE NOVEMBER/DECEMBER MEETING.

MR. WIGGINS further added to the motion a statement of intent that it is to be clearly understood that the group is expected to return in November/December with the outline, and that it is the expression of the Council that the process be completed and ready for the Council's consideration by the April/May meeting. Mr. Wiggins pointed out that implicit in the motion is the selection of Alternative III that the committee will be back at the November meeting with the items as indicated, and the process will be completed in time for the Council to consider it at the May meeting.

Mr. Barton seconded Mr. Wiggins' motion.

MR. PENFOLD raised a question on the motion. He felt that the Advisors Committee should be involved in this decision.

MR. WIGGINS indicated he feels at least one of the group of 20-40 persons ought to be a representative of the Citizen's Advisory Group.

MR. PENFOLD suggested the Citizens' Advisory Group could give some suggestions as to who should serve.

MR. WIGGINS stated that he did not wish the Council to become involved in a debate on who should serve on that committee because there are many hundreds of interests to be served and someone must deal with melding all those interests somehow. He agreed that the Citizens' Advisory group should be consulted consistently.

Ms. Wunnicke remarked that in the listing under Alternative III they do list the Land Use Advisors for review and comment at each stage of the effort. However, Mr. Wiggins indicated he understood Mr. Penfold had reference to the State Citizens' Advisory Commission. Ms. Wunnicke agreed that they should be involved. Ms. Wunnicke also asked for Mr. Contor to expand on his point with respect to Alternative 1.

MS. WUNNICKE pointed out that what Mr. Contor had to say with respect to Alternative 1 was a point

well taken and she wished to have him expand on it.

MR. CONTOR said that Mr. Wiggins had touched on the problem that the Council could argue forever as to which 30-40 people we ought to have, and he was not sure that the product would benefit enough to justify that amount of energy expenditure. The big question is who is going to pick the 30-40.

MR. WIGGINS said he was content to let the staff already assigned wrestle with that problem. If the composition is not adequately balanced and representative of a sufficiently broad spectrum of interests in Alaska he, for one, would vote to send the staff back to recompose the committee and do it over again. He also voiced another concern with Alternative 1. He said, "There is nothing more jaded than a bureaucrat's view of what a bureaucrat ought to be doing," and "I think the opinions of what we ought to be doing of 20 or 40 Alaskans would be very valuable. I think it might surprise some of us." He expressed his feeling that there is a lot of merit in Alternative III's approach. It is not significantly different from Alternative I except in that one area, but that of itself is a worthwhile difference.

MR. PENFOLD questioned that the 20-40 are not a committee, but rather people with whom discussions will be held. Mr. Wiggins agreed that was his understanding of the recommendation.

MS. WUNNICKE expressed an opinion that the point is well taken that the Council may need an outside view. However, she warned the viewers that the Council is still constrained by the purposes in the establishment of the Council as set out in ANILCA, and that the Council is not formed to advise the world on all matters coming before us. With that caveat, Ms. Wunnicke withdrew her objection.

MR. GROGAN called for objections to the motion. Hearing none, he announced it had carried.

6. Cabin Management Policy

MR. WIGGINS introduced C.M. #020/84. He pointed out that in the last line reference is made to the Council's December meeting and that in order for the Council to stay on schedule, it should take place in November.

MR. WIGGINS further stated that two things should happen: The Project Group should make a

presentation at the Alaska Land Use Council at the September 13, 1984 meeting. The person who was to do that is out of the State. Second, The Alaska Land Use Council is to write a letter to the Director of the National Park Service and the Secretary of the Interior requesting that no action on the Proposed Cabin Regulations be taken until the Council has had the opportunity to forward its comments and recommendations subsequent to the Council's November meeting.

Mr. Wiggins stated that his understanding of the reason behind the recommendations is a strong desire on the part of the Department of Agriculture, the Department of Interior agencies that are dealing in land management, concurred in by the State of Alaska, and he was not aware of an expression from the Alaska Federation of Natives on the subject, that there be an attempt made to have a set of uniform federal government policies, guidelines, and regulations applied to cabins on federal lands for national forests, wildlife refuges, national parks and BLM public lands. The effort is, secondly, guided by the hope that the policy could also have some consistency, to a maximum extent possible, and that is a word I perhaps ought not to use, compatibility, similarity, whatever with the State's developing

regulations and policies on cabins on public lands. From what I read, there seems to be some closeness developing. The staff committee and the work group has requested that we ask for this delay for two purposes:

- A. Some of you still want to submit comments; but more importantly,

- B. The request is to ask the Department of Interior to hold up finalization of its National Park Service proposed cabin regulations to permit the Land Use Council's group to develop an expression of intent and identify some common areas on Federal cabin policy so that those can be articulated and hopefully get Agriculture and Interior's three agencies on the same track in the area of cabin policy.

MR. WIGGINS MOVED THAT THE COUNCIL REQUEST THE CABIN POLICY WORK GROUP TO CONTINUE WORKING CLOSELY WITH THE NATIONAL PARK SERVICE; TO UTILIZE THE PUBLIC AND AGENCY COMMENTS RECEIVED BY N.P.S. ON THE DRAFT REGULATIONS; AND TO FURNISH THIS COUNCIL WITH A MEMORANDUM CONTAINING A RECOMMENDED UNIFORM CABIN POLICY STATEMENT FOR CONSIDERATION AT THE COUNCIL'S NOVEMBER MEETING.

MR. WIGGINS FURTHER MOVED THAT THE COUNCIL RESPECTFULLY REQUEST THAT THE SECRETARY OF THE INTERIOR AND THE DIRECTOR OF THE NATIONAL PARK SERVICE DELAY FINALIZING THE NATIONAL PARK SERVICE DRAFT CABIN REGULATIONS PENDING ACTION BY THE COUNCIL ON A RECOMMENDED UNIFORM CABIN POLICY FOR USE BY ALL AGENCIES IN ALASKA.

MR. BARTON seconded the motion.

MS. WUNNICKE questioned if the motion should include the wording "All Federal Agencies."

MR. WIGGINS said he did not object to Ms. Wunnicke's expression of the willingness by the Department of Natural Resources to join in that effort. He expressed the opinion that it would be a good effort, regardless whether it was successful. He pointed out that there may be such differences in the way the governments have to operate that it might not be possible, but it would be worth a try.

MR. CONTOR clarified what he understood the working group recommended. He felt the use of the word "regulation" in describing uniformity is really not possible. He said he felt it is possible to have a broad "policy" that would apply to the federal lands, and be very helpful to the

public in understanding, but the very nature and mandate of the agencies would prohibit the regulations from being identical. In reading ANILCA, cabins in national parks are treated very differently than cabins in non-park lands.

MR. WIGGINS said he agreed with Mr. Contor. He reread from the motion "We have requested the work group to furnish the council with a recommended uniform policy," and then "we are requesting the Secretary of the Interior and Director of National Park Service to delay finalizing the National Park Service draft cabin regulations pending action by the council on a recommended uniform cabin policy." So, while the distinctions may sound subtle, in fact they are not.

MR. PUTZ said he thinks it is important that the work group make that differentiation. The Fish and Wildlife Service would support the motion because at this point in time FWS does not have a good policy, per se, except for general national policy in its Code of Regulations.

MR. WIGGINS pointed out that FWS does have one policy--they don't burn cabins. Mr. Putz pointed out that FWS got that policy the hard way.

MR. PUTZ expressed a desire to participate in developing a generic policy.

MR. WIGGINS indicated that for the Council to engage in a discussion of regulations at this time, on an agency by agency basis would spell disaster.

MR. CONTOR offered an amendment to the motion to provide a time line. Currently the motion is open ended which means that delay could be infinite. Mr. Contor proposed to amend the motion by adding the words, "PROVIDED THAT THE RECOMMENDATIONS OF THE LAND USE COUNCIL ARE SENT FORWARD NO LATER THAN 30 DAYS FOLLOWING THE NEXT MEETING."

MR. PENFOLD seconded Mr. Contor's amendment.

MR. DAVIDGE of the Assistant Secretary's Office for Fish And Wildlife pointed out that last year the Assistant Secretary of Fish and Wildlife and Parks and the Assistant Secretary of Agriculture met to discuss their mutual desire to have common uniform policies across the federal lands in Alaska on cabins as well as a number of other issues, and also look at the policy of more uniform regulations, particularly in the permitting process. There is a strong desire to do that and we are looking towards the

recommendations of the Council on a policy on cabins.

MR. GROGAN called for any objections to the motion. Hearing none, he announced it carried as amended.

AT this point a five-minute recess was taken to present Mr. John Sandor, former Regional Forester, U.S. Forest Service, who recently retired with a momento of appreciation, a little plaque that reads, "John Sandor, in appreciation for outstanding contributions and support to the Alaska Land Use Council, August '81 to July '84."

Mr. Sandor expressed his appreciation of the associations and friendships and the professionalism that really represents the Land Use Council. This is a bridge building group between the feds and the state and the private sector and we wish you every luck in your deliberations. Thank you.

7. Citizen's Advisory Commission on Federal Areas'
Request for Formation of Task Force Regarding R.S.
2477 Rights-of-Way

MR. WIGGINS identified Memorandum #021/84 in the packet prepared by the staff committee in response to the presentation by the Citizens' Advisory Commission on Federal Areas to the Staff Committee. Mr. Wiggins stated that his understanding is that the staff committee's recommendation of essentially no action occurred because the staff committee itself did not feel that it had had time to consider the matter and make a meaningful recommendation.

Mr. Frankel expressed the opinion that the reason was that the staff committee did not know whether the Council wanted them to pursue it.

MR. HOLDSWORTH appeared before the Council to present his Staff's comments on the matter. By way of explanation, he advised that he had been a very short time on the Commission and was railroaded into becoming chairman for this year. This issue was under consideration before he came aboard. A lot of research and background had been done on it beginning in 1977. The State Attorney General's office participated in reviews of what

was actually meant and how this applied to the original R.S. 2477 versus ANILCA.

MR. HOLDSWORTH indicated that most of the Council had seen the draft resolution to the Land Use Council members and that was marked clearly a DRAFT, and it was drafted with a lot of research by staff and without the knowledge or opportunity to become acquainted with the northern regional memorandum of understanding which has been in several draft stages. After the Staff Committee saw that and reviewed it with staff, a revised memorandum was drafted which the Council had before it at the meeting. Among the changes, knowing of the memorandum of understanding and realizing that the federal agency, BLM, and the two state agencies were attempting to put in a joint effort on this, the emphasis on using a little pressure to get action in this area should have been switched to both federal and state agencies.

MS. WUNNICKE noted that there has been increasing concern by both federal and state agencies as well as members of the public over the past several months with respect to the identification and management of the R.S. 2477's and because of this concern the Department of Natural Resources together with the Department of Transportation

and Public Facilities and the Bureau of Land Management are forming an R.S. 2477 coordinating committee which would be made up of those three members, and as necessary by any other appropriate people.

MS. WUNNICKE indicated she had a draft memorandum of understanding which she anticipates will be completed by the end of the month but which she would be happy to share with members of the Council. Ms. Wunnicke expressed the feeling that inasmuch as most of the concerns are centered in the interior of Alaska and lie within that area of the state, it seems more appropriate to have a small committee located there. She indicated they have representatives from DNR, as well as Mr. Haugen from DOT/PT and BLM representatives from interior Alaska forming this task force. Since the purpose of the committee is to coordinate the agency priorities for identifying, locating, and asserting the R.S. 2477's or vacating them, as appropriate, it is the belief of those in her office that this is not an appropriate item for the Land Use Council at this time, although Ms. Wunnicke certainly welcomes the oversight of the Council. Ms. Wunnicke proposed that "WE" continue with draft memorandum of understanding as now proposed, the working group now proposed, and if

it becomes necessary for it to become a Council item later, she would certainly welcome that.

MR. PENFOLD was asked to address his memo on the subject. Mr. Penfold said he agrees with Ms. Wunnicke on this matter that a process exists in a fledgling state with good commitment from both state agencies and the Bureau to get moving on this. Mr. Penfold said he agrees that the matter needs some emphasis, and added that he would prefer to keep the Council advised as to what is happening on this and whatever other appropriate oversight people might deem necessary while the Committee takes a shot at it on the ground with an opportunity to make something productive of it. He also expressed a need for provisions for other Department of Interior Agencies to be involved in those issues where they are on Fish and Wildlife and National Park lands, for example.

MR. WIGGINS stated that the R.S. 2477 issue is one that is not going to go away. He acknowledged that Mr. Holdsworth's memorandum accurately states that. No matter how much some might wish it to do so, it will not go away. It has a potential for considerable impact; in the minds of some people, all negative, and in the minds of others, all positive, and shades in between. Mr. Wiggins stated that the federal government and the state

government both have a responsibility in the area, but more importantly, they have a responsibility to address the problem and indicated that the memorandum accurately points out that at several times in the past that has not been done. Mr. Wiggins recalled that when the memorandum and the group's interest in the thing came to his attention, Mr. Wiggins began asking questions and late in that question and answering process learned of BLM and DNR's joint effort. Mr. Wiggins said it appears to him that that effort accomplishes, if not all, at least a vast majority of what the group is trying to do in getting both governments to acknowledge the issue and try to deal with it. Mr. Wiggins reiterated his stand that the Alaska Land Use Council should not get into things it does not have to get into, and things which the agencies can handle themselves. Mr. Wiggins said that with expressions from Mr. Penfold and Ms. Wunnicke he is content personally to allow the process to go forward and see where it goes, and if it does not go anywhere, he hopes someone will be back at a subsequent Council meeting. Mr. Wiggins said if that is not the Council's wishes, he has another proposal of how to deal with it, but at this time he will not bring it up.

MS. WUNNICKE requested Mr. Holdsworth's review of the proposed draft memorandum of understanding among the three agencies. .

MR. HOLDSWORTH said the Advisory Commission proposes to contact private organizations and people who have specific knowledge concerning the rights of way in order to identify them before the land management plans are finalized. It is costly and time consuming to have the federal and state agencies research the information. Identification of these rights of way must precede finalization of the plans, and they will ask the private sector for the information.

MR. GROGAN stated that hearing nothing else, he would assume that the Council wished to go with the existing process. Mr. Penfold agreed saying, "Uncommonly good wisdom of the Council."

MR. WIGGINS requested an information item on the next meeting's agenda to let the Council know what had been done. MS. WUNNICKE stated she would be happy to do so.

8. Citizen's Advisory Commission on Federal Areas'
Request To Report at Each Council Meeting.

MR. GROGAN said this letter was written to the Council with the understanding that a three-month notice was required to have an item up for consideration on the agenda.

The timing and procedure for placing items on the agenda was discussed. MS. LEASE raised the question as to whether placing this group permanently on the agenda would set a precedent for other groups. She also asked, if the present process allows any group who want to make a report before the Council can get on the agenda, is that sufficient.

MR. WIGGINS noted that when the Citizens' Advisory Commission or any other group holds a meeting on Monday generating a need to report at the Council meeting the following Thursday, if the request is received by the Council by the close of business on Monday the Commission is guaranteed a spot on the Council's agenda. Although the printed agenda sent out in advance will not list that group, it will be added at the time the adoption of the agenda takes place. With 15 days' notice, the request would also appear on the printed agenda. With this information available, the Citizen's Advisory Commission withdrew the request.

9. Alaska Land Bank

MS. WUNNICKE noted that Mr. Grogan and she need to draft a letter to the Secretary of the Interior.

MS. LEASE distributed the comments that the Alaska Federation of Natives submitted for the record.

Ms. Wunnicke noted that the State's comments had also been distributed for the record.

MR. WIGGINS asked Mr. McCoy and Mr. Frankel to draft the letter in a timely manner.

VI. DISCUSSION AND BRIEFING ITEMS

1. Trespass Policy and Enforcement.

MR. GROGAN noted a Status Report from the Staff Committee appeared in the packet and that some members wished to discuss this.

MS. Leask offered a brief oral report. The AFN committee met this week and identified some objectives which included:

To identify trespass problem areas and Native Corporation trespass concern;

To also identify areas where cooperation and joint action between the Federal, State, and the private landowners will be mutually beneficial to prevent and reduce trespass; and

To identify areas where State and/or Federal policies and statutes could be modified to aid reduction of trespass incidents and also to aid enforcement in trespass.

The Committee cited some possible action areas.

These were:

To increase education and public awareness of presence and location of private lands, easements, campsites, or access routes;

To have possible areas for cooperative enforcement, and development of simplified enforcement procedures.

Cooperative permit systems;

To take a look at reasonable posting requirements; and also

To take a look at the possible areas for changes in statutes and/or agency policies to consolidate

and to clarify some of the trespass statutes and procedures.

This was the committee's first meeting. They plan to meet again in late September or early October, and they will have a report for the Council at the November or December meeting.

MS. WUNNICKE brought up a point of information relating to the State of Alaska development of policy for the control of unauthorized use of the public lands of the state. That time frame would allow time for the completion of a Departmental order on policy with respect to trespass abatement on the Public Lands. In the meantime, handling one of the problems presented by those general policy concerns, the Department now has out for comment by the public Proposed Regulations with respect to unauthorized cabins on State lands. Some of those proposals are somewhat unique, but the State of Alaska finds itself in a different position than some Federal agencies because alternatives exist to unauthorized use of the public lands through land disposal and permitting systems. The regulations that address unauthorized cabins allow permits to be granted to use existing cabins for up to six years, and the applicants who wish to use a cabin will have to file a quit claim deed with the State when they

file their application for permit. There will be no commercial use of the cabins and no cabins would be considered undered this program if they are built after August 1, 1984. And it applies statewide, and not just to legislatively designated areas. It is a one-time window to apply if the regulations are adopted on schedule. That period will run December 17 to February 15. If the application is not made to use a cabin, then the department will take legal action to eliminate the unpermitted use of the land. These are renewable permits, but they are not transferable permits, and no new improvements are to be allowed. Ms. Wunnicke expressed her opinion that she feels it is a wise bridge between the old and new Alaska where there are alternatives and ways in which to obtain title to or permitted uses of the public lands, and over the long term should cure a problem that would have existed uncured without this type of action. Ms. Wunnicke requested comments from the Council on those regulations that are now out for public comment. She stated it is only one part of the larger issue which will be addressed through a Departmental Order in November. Ms. Wunnicke expects to be able to report at the next Council meeting on the Departmental Order with Respect to Unauthorized Use in General.

MR. WIGGINS noted that this is moving on three different fronts simultaneously and at different rates of speed. At the last Council meeting the effort was to solicit from each of the land management agencies an articulation of their policy with regard to trespass, and those papers appear in the packet. MS. WUNNICKE stated she had no objections to sharing with the working group the draft of the Department's policies with respect to unauthorized use, recognizing that they are still draft and would not be formal until adopted a Departmental Order. She noted they pretty much order the priority in which these unauthorized uses will be addressed.

MR. FRANKEL noted that he was not aware of an active study group of the Council at the present time.

2. Draft E.I.S. on the Mining Development Phase of Quartz Hill Project

MR. BARTON of the Forest Service noted that the Council had previously heard reports on the development of Quartz Hill in relationship to the U.S. Borax proposal and introduced Dave Morton from Ketchikan who is the USFS coordinator for that project. Mr. Morton addressed the Council

regarding the current status of the project and talked briefly on the issues identified as part of the mine development E.I.S.

MR. MORTON used a flip chart to give a brief overview of the status of the project. The product is the Draft E.I.S. A map was distributed which is a replica of a proposal by U.S. Boarax.

A plant is proposed on the Blossom River Side of Tunnel Creek with a tunnel from the mine location down to the plant site. The ore would be crushed at the open pit mine and then moved to the plant by tunnel. The access roads would be on the Blossom River side. Two additional roads would be constructed up Tunnel Creek about a mile or less and a short road across the Blossom River to the Proposed Wilson well field. Waste stock disposal would be in Beaver Creek, White Creek and Hill Creek. Water supply is proposed from Tunnel Creek by reservoir with a supplemental Wilson Well Field. Marine terminal facilities would be at the existing wharf site at road's end at salt water. U.S. Borax proposes the employees live at Ketchikan and commute to the mine weekly with housing for them at the mine site. A proposed power plant would be located at the mine site.

Nine alternatives were proposed which can be mixed and matched. Two other plant sites might be at Beaver Creek and North Meadow Creek which are close to the open pit mine.

Tailings disposal would be on land in the Wilson Arm or in Boca De Quadra. A tunnel could be used to transport the tailings to Boca De Quadra, and a pipeline along the shoreline as years go by when the inner basin was filled. The middle basin is another option.

There were no options for waste rock, but one option to prevent an inordinate amount of water passing through the waste rock would be to divert a portion of the free-flowing water from Hill Creek instead of going down Keeta to divert it into the Blossom River Drainage.

Water supply alternatives are basically other reservoir sites higher up into the drainage, i.e., Raspberry Creek Reservoir and Upper Hill Creek.

Alternate marine terminal facilities would be in the Wilson Arm.

Additional employee housing options considered included four townsites in the area as well as a

phase-in option requested by the Ketchikan community.

The only other power option not rejected was a transmission line from Kitsault, British Columbia.

The preference differed from U.S. Borax's proposal in the following areas:

Tailings disposal to have a continuous tunnel approximately two miles longer than the one proposed by U.S. Borax from the plant site to the middle basin.

Preference was for off-site power, either a transmission line from British Columbia or from Southeast Alaska.

Also recommended was that the communities, the cities of Saxman, Ketchikan and the Borough join together in a good faith agreement to agree in moving forward to mitigate adverse impacts. That is being done at the present time.

An active bald eagle nest at the Marine Terminal presented a problem. That would have to be resolved for that option to be chosen, otherwise the up-fjord location would be necessary.

This document has been out since July. Public hearings concluded a week ago. U.S. Borax has had workshops to resolve the controversy on tailings disposal.

Three issues remain:

Tailings disposal costs vary on the three choices indicated on the map. The U.S. Borax proposed route would cost an estimated \$60,000,000. The E.I.S. identified preference would be about \$90,000,000 and the NPDES permit would be somewhat larger.

Also investigated was the possibility of disposing of tailings in Wilson Arm. An agreement between past Governor Hammond and the President of U.S. Borax that tailings would not be disposed of in Wilson Arm has since come to light.

The Wilson Well Field proposal has generated questions on the impact of fish during low flow periods in Tunnel Creek.

Socio-economic mitigation involves the community at present.

October 5 is the close of public comment. In early November the ID team is expected to meet to

review the coding of those particular concerns, the draft responses will be drawn. In December the coordinated team process should begin where agencies will communicate on preference. Mike Barton is the deciding officer as the lead agency is the Forest Service. Some time in early 1985 the final E.I.S. will be out and the records of decision from the Forest Service, the Corps of Engineers and EPA.

MS. WUNNICKE asked if the selection of Wilson Arm as marine terminal presupposes that Wilson Arm would not be used for tailings. Mr. Morton indicated there would be no conflict. Both could be done.

MR. PENFOLD confirmed that this completes the Forest Service's decision process, and asked how many other agencies have decisions that must be completed before the project becomes viable. Mr. Morton reviewed other permits which are required: Water rights, presently in process, and others which will come during actual construction, such as Title 16 permits from the Fish and Game Department. The Corps of Engineers and EPA are utilizing this E.I.S. process as their permitting decision process.

MR. BARTON noted that a number of people sitting on this Council have provided staff in getting the project to the present point and expressed appreciation to them.

4. Townsites

MR. PENFOLD introduced Mr. Jerry Johnson who presented an oversight presentation on a new policy the Bureau has developed in relationship to townsites.

In February, 1984 the townsite trustee was changed. One issue looked into was the use of townsite permits which authorized permanent construction of public purposes projects which includes such things as housing projects, public health service projects, sewer, water, community buildings, schools, fire halls, public safety buildings, warm storage buildings, etc. According to the requirements of Federal Regulations, permits are required for rights of ways only, which amounts to utilities, telephone lines, etc. A meeting with the regional solicitor for an opinion confirmed that rights of ways were the only Federal permits required. It was desired that construction not stop in the villages. However, it was not desired that the permittee

construe that he would have some type of right in the land. New policy was developed which is felt to be a short-term solution. The new policy is that in incorporated cities we will deed the requested land to the city once concurrence is obtained from the city and the Village Corporation. The reason for concurrence from the Village Corporation is the existence of pending lawsuits, one of which contends that as of 12/18/71 all unoccupied lands were to go to the Village Corporation. Therefore, permission was obtained from the city and the Village Corporation. In the unincorporated townships, the land will be deeded to the entity providing funding for the project. The cost of the land which is actually being sold, will be the cost of survey by either the BLM if on subdivided lots, or on unsubdivided tracts, the entity will have to come in and survey it. A private survey will be accepted, and the deed will be made out to that entity. The long range goal is to form a small team and look into other options available. Ultimately, the desire is to develop a plan where management takes place by the State as trustee for land within unincorporated cities. At the present time no mechanism exists for deeding the land in unincorporated cities to the governing entity in that township. That policy is to come from the

printer for distribution very shortly. A rough draft is out now.

MS. WUNNICKJ requested further explanation of the last comment. The state trustee is holding the municipal entitlements under the Claims Act for any future municipality that might be formed. Why is there no entity to convey to unincorporated municipalities?

MR. JOHNSON said no vehicle exists to do that. The State was reluctant to go along with this proposal when it was offered a year ago because of the litigation currently in progress. In incorporated cities, the vacant lots can be deeded to the city. In unincorporated cities, there is no one to whom to deed the vacant lots and unsubdivided portions of the townsite. It is desired that these be deeded to the State of Alaska.

5. Competitive Events Crossing Jurisdictional Boundaries

MR. PENFOLD brought up that in the Federal sector and possibly also in the State sector exist some differences in policies with respect to competitive events such as races. When events cross

jurisdictional boundaries there is potential for the public to be confused as well as difficulty in administration. Therefore, Mr. Penfold suggested that the Council should look at just what those policies are. Mr. Penfold suggested that the Council have a staff group prepare a brief analysis of the policies among the Forest Service, the Bureau of Land Management, the U.S. Park Service, the Fish and Wildlife Service, and State Agencies, and present to the Council a comparative analysis of those policies at the next Land Use Council Meeting. He did not propose any specific action other than that at this present time, but he did recommend it should be looked at.

There was no discussion on the suggestion. Inasmuch as the Council was not in the Action Items section of the Agenda, no action was taken and there was no discussion.

VII. INFORMATION ITEMS

MR. GROGAN noted that all but one of the Information Items listed have reports included in the packet. MS. WUNNICKE reported that she had prepared for Council members a memo from her to the Co-Chairmen giving the status of the Kenai River Special Management Area Study and a listing of those persons who have been appointed to the Kenai River Special Management Area Advisory

Board, and that Advisory Board does include representatives from U.S. Fish and Wildlife Service, U.S. Forest Service, the Alaska Department of Fish and Game, and Department of Environmental Conservation and the U.S. Corps of Engineers. That information has been distributed at this time.

DR. PUTZ announced that the Fish and Wildlife Service will be looking for Council action on the Kenai National Wildlife Refuge Comprehensive Conservation Plan at the next meeting.

MR. GROGAN announced that a reception for John Sandor in Vern Wiggins' Office for Council members immediately following the meeting, or about 11:30 a.m.

MS. WUNNICKE moved the meeting be adjourned. Mike Penfold seconded the motion and the meeting adjourned at 11:07 a.m.

Access is critical to development of nation

Access, or the opportunity to enter upon your property, is one of the most important ingredients for the development of a nation.

If a farmer is unable to reach his land, if a forester is unable to reach the timber, or if a miner is unable to reach minerals to mine, then the development of a nation is halted.

Recognizing the importance of adequate access, the Congress of the United States on July 26, 1866, adopted an act providing for it by stating "The right-of-way for the construction of highways over public uses is hereby granted." The act was later codified as U.S.C. 932, Revised Statute 2477, and came to be known as RS 2477. It was repealed in October 1976 by Public Law 94-579, Section 706. However, previously established rights-of-way are considered valid.

Under those grandfather rights, considerable debate has sprung up over location, validity, and rights of us-

ers of RS 2477 highways in Alaska. The Supreme Court of Alaska stated a general rule in a 1961 case (Namerly vs. Denton): "... before a highway may be created there must be some positive act on the part of appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be public use for such period of time and under such conditions as to prove that the grant has been accepted."

Since the 1866 passage of the measure, there have been major changes in land ownership in Alaska. The year following the enactment of RS 2477, Alaska became a territory of the United States. All unreserved public lands in use between 1867 and 1976 are eligible for RS 2477 highway status. The highway need not be well-developed. Alaska statutes and legal decisions permit trails, walks, and other facilities to qualify, even if in a state of disrepair.



Views expressed here do not necessarily represent those of the Daily News-Miner

Unfortunately, miners are being harassed by the National Park Service for using RS 2477 highways. The case of Joe Vogler, a miner in the Woodchopper Creek area northwest of Eagle, is an example. Mr. Vogler first used the Bielenburg Trail from the Circle Mining District to the Woodcopper-Coal Creek region in the early 1950s. Other known users of the trail include the Engstrom brothers in the late 1930s, Dr. Ernest Patty, Walter Roman and Heine Carstens.

In July 1984, armed park service agents intercepted Vogler in the process of transporting his mining equipment along the Bielenburg Trail. Vogler now has found himself in court. This important case will establish access ground rules for the citizens of Alaska. The court will state its opinion of the rights of users of RS 2477 highways.

In the meantime, state and federal agencies are planning to establish an RS 2477 coordination committee for Northern Alaska. The committee will recommend procedures for identifying, locating, establishing case files, making assertions, plotting claims on land status maps and coordinating requests for RS 2477 status. Participating agencies are the Bureau of Land Management, Alaska Department of Natural Resources, and Alaska Department of Transportation and Public Facilities. These agencies are to be

commended for their cooperation in helping resolve this very important issue.

It is critically important that the citizens of Alaska retain grandfather rights of access. RS 2477 highways have been used in Alaska for more than 100 years as access to mining claims and for trade routes. In fact, the Elliott, Steese and Taylor highways are just a few of the original RS 2477 highways. Today the RS 2477s are still used by miners as well as hunters, farmers, dogmushers, fishermen, horse riders, cross country skiers, snow machine enthusiasts, and other travelers.

If you know of a trail that should be designated as an RS 2477 access route, your request can be made to any of the agencies in the coordination committee.

Editor of "The Alaska Miner," Rose Rybachek, with her husband, Stanley, mines gold in the Livengood area.

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

NORTHCENTRAL DISTRICT
4420 AIRPORT WAY
FAIRBANKS, ALASKA 99701-3896
19071479-2243

MSJ
1/16

December 26, 1984

JAN 16 1985
LANDS
TRAILS

Carl Johnson, District Manager
Bureau of Land Management
P.O. Box 1150
Fairbanks, Alaska 99701

Reference: 1974 Department of Highway Assertion

Dear Carl:

In 1974, Commissioner Campbell of the Department of Highways sent BLM a trail inventory for the State of Alaska. This inventory was to reaffirm state ownership of these trails. Many of these trails had been dedicated to the state:

- 1) under the Ombudsman Act
- 2) RS 2477 grant under 43 U.S.C. 932

We assume that since the ownership of these right-of-ways was never questioned by BLM, that BLM recognizes their validity or existence.

In our talks leading to the September 1984 agreement, this previous inventory was discussed. BLM was concerned that this prior assertion was of such a scale as to be difficult to plat on your status plats. While in principle the state agrees the scale submitted to BLM may be difficult to plat, we feel it does represent a positive act on the part of the state to clearly accept the RS 2477 grant.

It was therefore our intention in our September 1984 agreement to further define these right-of-ways by submitting more detailed maps to assist you in platting them on your status plats. This process would also allow us to submit assertions left off the 1974 document.

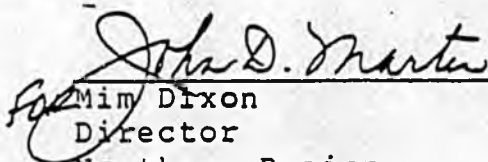
We were also under the impression that since BLM was the record keeper for all federal lands that BLM would plat these right-of-ways on all federal lands.

It is our sincere hope that this letter further defines our intention to protect state right-of-ways in our 1974 transmittal to BLM.

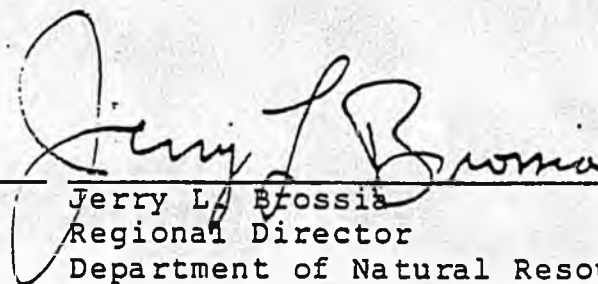
Carl Johnson
December 26, 1984
Page Two

We appreciate your support and effort to protect and preserve access right-of-ways and look forward to working with you in the future to resolve the many facets revolving around the RS 2477 issue.

Sincerely,


John D. Martin

Mim Dixon
Director
Northern Region
Division of Planning
Department of Transportation &
Public Facilities


Jerry L. Brossia

Jerry L. Brossia
Regional Director
Department of Natural Resources

cc:

H. Glenzer, Jr., Deputy Commissioner, Northern Region, Department
of Transportation and Public Facilities
Esther Wunnicke, Commissioner, Department of Natural Resources
John McDonagh, Assistant Attorney General, Fairbanks

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

NORTHERN REGION
4420 AIRPORT WAY
FAIRBANKS, ALASKA 99701-3896
(907) 479-2243

December 26, 1984

Carl Johnson, District Manager
Bureau of Land Management
P.O. Box 1150
Fairbanks, Alaska 99701

Reference: State RS 2477 Assertion of Bielenberg Trail

Dear Carl:

We have received your November 14, 1984 letter stating that BLM cannot plat the Bielenberg RS 2477 on your status plats at this time. The reason you imply is that it may have some legal bearing in the "Vogler case".

The state objects to your decision and feels that you have violated our agreement. We have previously agreed that our assertions could be decided in court. You agreed that if we followed the steps in the September 28, 1984 agreement you would plat our assertions.

At this time, we are not aware that 2477 is a part of Mr. Vogler's case. It was our impression that Mr. Vogler's case has to do with ingress/egress to mining claims. The RS 2477 matter should therefore remain a separate issue.

We hope that you will be able to plat the Bielenberg RS 2477 per our September 28, 1984 agreement. Thank you for your consideration.

Sincerely,

John D. Martin

for Mim Dixon
Director
Northern Region
Division of Planning
Department of Transportation &
Public Facilities

Jerry L. Brossia
Jerry L. Brossia
Regional Director
Department of Natural Resources

cc:

Esther Wunnicke, Commissioner, Department of Natural Resources
H. Glenzer, Deputy Commissioner, Department of Transportation and
Public Facilities



United States Department of the Interior

IN REPLY REFER TO

2800 (932)

BUREAU OF LAND MANAGEMENT

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

September 7, 1984

Memorandum

To: Member of ALUC

From: State Director, Alaska

Subject: R.S. 2477 Issue Paper

Transmitted herewith is an issue paper which sets forth BLM's policy on R.S. 2477 rights-of-way. The policy has been altered enough in recent years to allow us to note these claims on our records provided the State takes the initiative and files an application for notation which meets the criteria set out in the issue paper.

In the absence of the State formally asserting its rights under the Statute, BLM has no choice but to consider the lands involved to be vacant public lands without established public access. BLM has had numerous discussions with the State concerning R.S. 2477 and the State is well aware of our policy and procedures.

Enclosed is a draft MOU between our Fairbanks District Office and the State of Alaska which is intended to facilitate the policy set out in the issue paper. Also enclosed is a copy of our BLM Manual section on R.S. 2477 and a copy of a Regional Solicitor's Office memorandum to the Bureau of Indian Affairs dated May 21, 1980.

The Fairbanks District Office and the State of Alaska, Department of Transportation and Public Facilities, Northern Region have been working on this Draft MOU for sometime now and have established a good working document which fits well within the constraints of our regulations.

Our first preference would be to have the cooperative State Federal work on R.S. 2477 started in Fairbanks proceed. However, we would not object to the Council taking this matter under its wing if this is what the State wishes. Under any circumstance, the State must clearly take the leadership role.

Michael J. Penfold
State Director

Enclosure (1) w/Exhibits I, II, and III

Issue Paper - R.S. 2477 Roads and Trails

Under DOI existing authority and policy, it is the responsibility of the State of Alaska to officially assert its claimed rights by filing applications for notation of such rights-of-way on our records. Such applications in addition to providing the information required to show the highway meets the four criteria set out below must provide a plottable description of the facility so that BLM's records can be properly noted.

The Act of July 26, 1866, R.S. 2477 (43 U.S.C. 932) provided:

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

This statute, which was repealed by the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, 90 stat. 2743, has been interpreted as granting a right-of-way for public use over public land without limiting the method of establishment of that right-of-way. The grant becomes fixed when a public highway is definitely established in one of the ways authorized by the laws of the State where the land is located.

The Act (R.S. 2477) did not specify the extent of the grant, the width of the right-of-way, or the nature of the right conveyed. Since the Department does not grant such rights-of-way, it has consistently held that it has no authority to adjudicate claims made under this Act. Therefore, acknowledgements of such claims have not been inserted in Federal Land Patents. The courts have held that reservation of an R.S. 2477 right in our patents is not necessary to validate or protect rights-of-way created under the statute.

In order to facilitate proper management of the public land, the Department has to have sound transportation plans. It is, therefore, necessary to identify all public roads in a given area. To facilitate such identification the Bureau of Land Management has recently been given authority to note claimed R.S. 2477 highways (roads, trails, etc.) on its official status plats, provided that requests for notation meet the following criteria:

1. In order for a valid right-of-way to exist, there must have been actual construction of a highway. Mere use, planning, or survey is not considered construction. However, construction of the highway need not have occurred all at once. Road maintenance often equals improvement and even construction. When the history of a road is questionable, its existence in a condition adequate for public use may constitute evidence that construction has taken place.
2. The highway is free and open to the public at large.
3. The construction of the highway on unreserved public land must have occurred prior to repeal of R.S. 2477 on October 21, 1976.
4. The State must have a procedure to confirm the R.S. 2477 public highway right-of-way grant.

Once the State application is received, BLM has the responsibility to assure that the lands covered by the claimed right-of-way were, on the date of establishment of the highway, unreserved public lands. If the information submitted by the State meets the four criteria above, BLM assumes (it does not adjudicate the claim) that the road is a bona fide R.S. 2477 highway. The BLM then acknowledges the State's claim and plots the right-of-way on its records.

Any uses other than for highway purposes within the boundaries of an R.S. 2477 right-of-way must be permitted by BLM by a separate right-of-way grant. It should also be noted that the R.S. 2477 grant extends only to the right-of-way itself, it does not include ancillary facilities such as material sources and stockpile areas.

The Fairbanks District of BLM is currently working on a Memorandum of Understanding with the State of Alaska, Department of Transportation and Public Facilities. This MOU is intended to facilitate notation of the State's claimed R.S. 2477 rights on BLM's official records.

BLM has no objection to elevating this MOU to State level if the Council so desires. However, even if the MOU is elevated to State level, BLM cannot by law or regulation note the State's R.S. 2477 claims to its records until the State DOT/PF files a formal request for notation accompanied by a plottable description and a date of appropriation. The initiative to begin the record notation process rests with the State.

Further, until the State officially identifies its claimed R.S. 2477 rights, so they can be noted on the records, Federal agencies have no recourse but to treat the lands involved as if they were free and clear of encumbrances. As an example, numerous contacts were made with the State of Alaska during the planning process on the Steeze NCA and the White Mountains NRA. At no time has the State of Alaska identified any R.S. 2477 claims within these planning areas.

MEMORANDUM OF UNDERSTANDING

among

ALASKA DEPARTMENT OF NATURAL RESOURCES
NORTHCENTRAL DISTRICT,ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
NORTHERN REGION,

and the

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT
FAIRBANKS DISTRICT OFFICE**DRAFT**

This Memorandum of Understanding is entered into on the _____ day of _____, 1984, by and among the District Manager, Fairbanks District Office, Bureau of Land Management, hereinafter referred to as BLM; the District Manager, Northcentral District, Alaska Department of Natural Resources, hereinafter referred to as ADNR; and the Deputy Commissioner, Northern Region, Alaska Department of Transportation and Public Facilities, hereinafter referred to as ADOT&PF. The purpose of this Memorandum is to further the cooperation of BLM, ADNR, and ADOT&PF for the common goal of coordinating each agency's Revised Statute (RS) 2477 policies and procedures and for providing a local administrative review forum for disagreements relating to specific RS 2477 rights-of-way.

SECTION I

WHEREAS, Congress by the Act of July 25, 1866 granted the right-of-way for construction of highways over unreserved public lands, now codified as 43 U.S.C. 932, Revised Statute 2477. This Act states:

"The right-of-way for the construction of highways over public lands not reserved for public uses is hereby granted;" and

WHEREAS, the Supreme Court of Alaska, in Hamerly vs. Denton, 359 P. 2d 121, 123 (Alaska 1961), stated the general rule regarding acceptance of this federal grant as follows:

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

WHEREAS, the Attorney General of the State of Alaska stated, (A66-404-81, September 14, 1931):

"Our territorial legislature accepted the federal grant by designating public highways of a specified width on all section lines within the Territory. [See Ch. 19, SLA 1923; Ch. 123, SLA 1951; Ch. 35, SLA 1953; 1969 Opinion of the Attorney General No. 7]."

Further the Attorney General stated:

"In addition to section line highways created by legislative designation there are numerous highways, not necessarily conforming to section lines, which have been created by public use alone throughout the State of Alaska.

DRAFT

Our Supreme Court, along with a majority of courts which have considered the issue, has stated that roads created pursuant to R.S. 2477, whether by public authority, such as section line rights-of-way, or by public user alone, are public highways. (Hamerly, supra at p. 123);" and

WHEREAS, the Superior Court of Alaska, Third Judicial District, in State of Alaska vs. David Carpentier, et. al, (69-2914 D; Anchorage, Alaska, February 17, 1970) stated:

"The mere fact of acceptance [of public rights-of-way] by the public does not of itself impose upon the public authority the duty to maintain."

Further the Court said:

"Taking judicial notice of the climate conditions in the area of the Burma Road (the road between Willow and Big Lake), the mere fact of disrepair does not necessarily imply abandonment.....;" and

WHEREAS, the Bureau of Land Management regulations as 43 CFR 2802.5(b) states:

".....any person or state or local government which has constructed public highways under the authority of R.S. 2477 (43 U.S.C. 932, repealed October 21, 1976) may file a map showing the location of such public highways with the [Bureau of Land Management];" and

WHEREAS, the United States Department of the Interior, Office of the Solicitor stated (July 7, 1983):

".....[the Department of the] Interior has long recognized that State law controls what constitutes a highway within each state;" and

WHEREAS, Alaska Statute 19.45.001(8) states:

"Highway 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

WHEREAS, the public needs to know the location of public highways to avoid trespassing on private lands and the various Federal, State and local governmental agencies need to know their locations for proper land and resource management and conveyance actions; and

WHEREAS, it is recognized that it is in the public's and agencies' interests to identify RS 2477 rights-of-way claimed by the State of Alaska and these be depicted on BLM's and ADHR's land status plats; and

WHEREAS, it is recognized that there are policy differences among the agencies; and

WHEREAS, it is recognized that an understanding and coordination of processing procedures of each of the agencies would be beneficial to all agencies resulting in time and dollar savings and better service to the public; therefore, the undersigned parties representing their respective agencies enter into this agreement.

DRAFTSECTION IIRS 2477 COORDINATION COMMITTEE FOR NORTHERN ALASKA

ESTABLISH the RS 2477 Coordination Committee for Northern Alaska:

1. The purposes for which this committee is established are:
 - a. coordination of agency priorities for asserting RS 2477 trails,
 - b. coordination of RS 2477 processing procedures for identifying, locating, establishing case files, making assertions, and plotting claims on both BLM's and ADNR's land status plats, and
 - c. coordination of requests made to and by the agencies.
2. The membership of this committee is to be limited to one representative from each agency, BLM, ADNR and ADOT&PF.
3. This committee will be chaired by the BLM representative.

SECTION IIIPROCEDURE FOR ASSERTING RS 2477 CLAIMS

WHEREAS, the Bureau of Land Management Manual at 2801 (B)(1)(d) states:

"A State has to have a procedure to confirm the R.S. 2477 highway right-of-way grant;" and

WHEREAS, an RS 2477 highway must have existed prior to October 21, 1976, or the date the land was reserved for public uses, or the date of entry by third-parties which aggregated the land from the public domain; and

WHEREAS, it is recognized that BLM does not adjudicate RS 2477 claims;

NOW THEREFORE, the parties to this MOU agree to establish procedures for asserting RS 2477 claims.

1. The procedure shall include:
 - a. a cover letter signed by DNR and DOT&PF asserting a claim or accepting an RS 2477 grant shall be submitted along with documentation supporting

DRAFT

the date claimed. The date should preferably be based on expenditure of funds (public or private) or on the earliest known date of public use, as evidenced by affidavits, photographs, historical documents and other evidence,

- b. a map at a scale no smaller than 1:63,360 depicting the route as accurately as possible shall be submitted with the cover letter and supporting documentation,
- c. the trail number and quad map number from the existing Trail Inventory File should be noted (if applicable) for clarification and cross-reference,
- d. each claim will be reviewed by BLM to be sure the land was "unreserved public land" as of the date claimed.
- e. BLM will issue a serial number and establish a case file for each claim, as will ADNR and ADOT&PF. All correspondence shall reference all agencies' file numbers,
- f. BLM will plot each trail claimed on their Master Title Plats, and
- g. ADNR will plot each trail claimed on their land status plats;
- h. all files, including maps, evidence of use, etc. established by one agency shall be duplicated and forwarded to the other agencies.

SECTION IV

GENERAL CONDITIONS

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.

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.

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

Nothing herein is intended to conflict with Federal, State or local laws or regulations. If there are conflicts, this agreement will be amended at the first opportunity to bring it into conformance with conflicting laws or regulations.

The effective date of this agreement shall be from the date of final signature.

_____ Date _____, 19__

Jerry Brossia, District Manager,
Northcentral District, Alaska Department of Natural Resources

_____ Date _____, 19__

Carl Johnson, District Manager,
Fairbanks District Office, Bureau of Land Management

_____ Date _____, 19__

H. Glenzer, Deputy Commissioner,
Northern Region, Alaska Department of Transportation and Public Facilities

DRAFT

2801 - MANAGEMENT

B. Revised Statute 2477. The Act of July 26, 1866, R.S. 2477 (43 U.S.C. 932) provided:

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

This statute, which was repealed by FLPMA, has been interpreted as a right-of-way grant for highways over the public land without any limitation as to the manner of the establishment. The grant becomes fixed when a public highway is definitely established in one of the ways authorized by the laws of the State where the land is located. The Act did not specify the extent of the grant, the width of the right-of-way, or the nature of the rights conveyed. To facilitate proper management of the public land, the Bureau has to have a sound transportation plan. Therefore, it is necessary to identify all public roads.

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. 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 grant.

2801 - MANAGEMENT

2. The regulations (43 CFR 2802.5) have set a goal of identifying all the R.S. 2477 highways. The Bureau should work with each State, county, and municipality to identify all of the existing public highways. The equivalent of an application for this type of public highway is any map that clearly shows the location of the highway on public land. Additional information such as right-of-way width would also be desirable. Compare the map with criteria .24B1a through c. If the roads identified on the map submitted by State agree with the criteria assume that the roads are bona fide R.S. 2477 highways. If differences are found between the map and criteria, further research with the local government may be necessary. A letter of acknowledgement with a map or listing to the appropriate local government that identifies the public highways is sufficient. There is no grant form.

a. Assign a serial number and set up a case file. Minimize the number of serial numbers and files by consolidating roads under each governing body. However, if the State Office already has an existing serialization system with individual numbers, it may be continued.

b. Note the Master Title Plat. Authority to be cited on the serial register page is R.S. 2477 (43 U.S.C. 932).

3. Roads existing on public land, other than public highways are generally Bureau-administered roads. State, local governments, and others may file an application for a right-of-way grant for roads that do not meet the criteria listed in .24B1. R.S. 2477 did not specify the terms and conditions of the rights conveyed. In some instances, it is necessary to know the terms and conditions in order to manage the adjoining public land. As a general rule, terms and conditions can be determined by examining the State laws or practices for similar public highways.

a. Terms - perpetual.

b. Right-of-way width - As specified by State law or commonly used on similar public highways.

c. Extent - public use as a roadway. This would not include material sites, stockpile sites, or other ancillary facilities.

4. Other rights-of-way use within a R.S. 2477 right-of-way after December 9, 1974, must be authorized by a separate right-of-way grant. Separate right-of-way requirements prior to December 9, 1974, were waived by the Bureau. However, when these pre-1974 rights-of-way require a new location or ownership change, they should be updated with a new right-of-way grant.

DEPARTMENTAL MANUAL

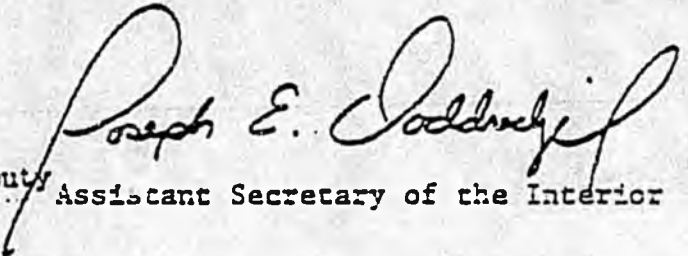


TRANSMITTAL SHEET

PART 601 DM 4	SUBJECT FEDERAL AREAS WITHIN STATES	RELEASE NUMBER 2586
FOR FURTHER INFORMATION, CONTACT Bureau of Land Management	Administration of ANCSA 17(b) Easements	DATE SEP 11 1984

EXPLANATION OF MATERIAL TRANSMITTED:

This manual release, 601 DM 4, provides Departmental policy and guidance regarding the administration of easements reserved pursuant to Section 17(b) of the Alaska Native Claims Settlement Act of 1971, P.L. 92-203.


Deputy Assistant Secretary of the Interior

FILING INSTRUCTIONS:

Remove:

None

Insert:

601 DM 4
(2 sheets)

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL

Public Lands

Part 601 Federal Areas Within States

Chapter 4 Administration of ANCSA 17(b) Easements

601 DM 4.1

4.1 Purpose. This chapter sets out procedures for the administration of easements under the Department of the Interior jurisdiction that have been reserved pursuant to Section 17(b) of the Alaska Native Claims Settlement Act, (43 U.S.C. 1616(b)). Easements serving lands under other Federal agency administration shall be the responsibility of that agency.

4.2 Policy. An easement reserved pursuant to Section 17(b) of the Alaska Native Claims Settlement Act shall be administered by the Interior bureau whose land is accessed by the easement. Site easements which are a necessary and integral part of the access easement shall also be administered by the bureau whose land is accessed by the linear easement. Where that easement accesses or is a part of the access to a conservation system unit, that easement shall become part of that unit and be administered accordingly. When an easement accesses non-Federal lands, the easement shall be administered by the Bureau of Land Management. If an easement connects two conservation system units managed by two different bureaus, the bureau with the larger conservation system unit shall administer the access easement. If the easement connects a conservation system unit with other public lands then the bureau managing the conservation system unit shall administer the easement. Any segment of an easement crossing lands within the exterior boundary of a conservation system unit shall be administered by the bureau managing the conservation system unit in consultation with any other bureau or agency managing the remainder of the easement outside of the conservation system unit. Each bureau is authorized to negotiate with other Federal agencies, the State of Alaska, an Alaska borough or municipal government to transfer the administration of a specific easement, if authorized by law.

4.3 Administration Procedures.

A. The Alaska State Director, Bureau of Land Management, shall notify the appropriate bureau or Federal agency when an easement accessing a conservation system unit or Federal property has been reserved in a conveyance document to a Native corporation. Where that easement is external to the boundary of a conservation system unit, that easement shall be made part of that unit by authority in Section 102(b) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3103). The notice shall include the easement identification number, Federal unit accessed, the servient landowner's name and mailing address, the size, length and acreage of the easement, authorized uses and a map depicting the easement.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL

Public Lands

Part 601 Federal Areas Within States

Chapter 4 Administration of ANCSA 17(b) Easements

601 DM 4.3B

B. Each Alaska Regional Director or State Director shall maintain necessary maps or other appropriate reference materials which display the location of, and authorized uses for each easement under its administration. This information shall be available in the bureau's office which has direct administration of the lands which are accessed by the easement. The Alaska State Office, Bureau of Land Management, shall also maintain records of all easements. Each bureau is responsible for making necessary supplemental use information available to the Bureau of Land Management.

C. Each bureau has the right to remove and use vegetal materials and common varieties of soil, sand, gravel, and stone within the easement, at no cost, to the extent necessary for the development or management of the particular easement, except as limited by specific negotiated agreements with the servient owner(s). Vegetal materials and common varieties of soil, sand, gravel, and stone not necessary for the development or management of the particular easement remain the property of the servient owner. However, nothing in this manual gives or shall be considered to give an easement user the right to appropriate vegetal or mineral materials.

D. Any use authorization granted for an activity on publicly owned land may include the necessary authorization for the appropriate use of the accessing public easements. The authorization shall not allow uses which are not provided for in the easement reservation. If authorization is required to construct and use a reserved easement, the administering bureau may grant such authority.

E. When funds are available, the bureaus may contract with private entities, including, but not limited to, Native corporations to perform functions which may be needed as part of the administration of the easement, including, but not limited to, the installation of signs, construction and maintenance of trails and sites and litter control.

F. Prior to on-the-ground activities such as locating, marking or developing an easement by an administering bureau, the servient owner(s) should be consulted.

G. The physical location of an easement may be adjusted to rectify a usability problem, or to accommodate the servient owner's development of the lands and shall be made only after the bureau and the servient owner agree to the adjustment. Such adjustments shall be reduced to writing and recorded.

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL

Public Lands

Part 601 Federal Areas Within States

Chapter 4 Administration of ANCSA 17(b) Easements

601 DM 4.3H

H. An easement is a property interest which may be exchanged. An easement may be exchanged if an acceptable alternate easement or benefit is offered by the servient landowner(s).

4.4 Transfer of Administration. Administration of an easement may be transferred to the State of Alaska, an Alaska Borough or municipal government if the Secretary determines that it is in the best interest of the United States or public and is otherwise authorized by law.

A. Each bureau may, under appropriate authority, negotiate the transfer of its administration of any easement to any appropriate unit of Federal or State government. Upon successful transfer, the bureau transferring administration shall notify the BLM State Director of the action and provide BLM with a signed copy of the agreement. The transferring bureau shall continue to maintain a record of the easement and make the information available to the public.

B. Prior to transferring administration of an easement to the State of Alaska, a borough or municipal government, the bureau shall make the transfer document available to the servient owner(s) for inspection and comment for a period of not less than 30 days prior to execution of the transfer. All comments submitted by the servient owner(s) should be considered prior to the final transfer.

C. When a bureau determines that an easement is no longer necessary for the purpose for which it is reserved, the Regional Director of that bureau shall request that the BLM State Director either assume administration of the easement or initiate proceedings to relinquish the easement to the servient land owner. The request shall be supported with documentation that:

1. An alternate easement has been offered by the landowner; or
2. Termination is required by law.



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 both the Department of Natural Resources (DNR) and the Department of Transportation and Public Facilities (DOT/PF). On Federal and private lands, DOT/PF has primary authority as 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

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 these 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 (CSUs) created by that act. Unfortunately, both the Federal and State agencies have for the most part not adequately considered these public highways in the planning efforts now underway. Failure to confront 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 requiring miners and other traditional users of the lands in question to contend with considerable amounts of paperwork to receive 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 2477s are involved. Formal recognition of valid RS 2477 rights of way by the various Federal agencies would simplify the problem of access and allow the use of a transportation system that has been in existence for over eighty years. The use of valid rights of way belonging to the State of Alaska should not be 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."

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 the issue of access by RS 2477 and will be settled in a court of law. One thing is clear however, according to personnel in both the Alaska Department of Transportation and the Department of Natural Resources, the trail used in this instance is a valid, documented RS 2477.

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 CSUs, as well as adequate personnel 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 CSUs is not being adequately addressed despite the guarantees of ANILCA Section 1110. In the absence of a clear initiative on the part of the State, there is little the land management agencies of the Federal government are able or willing to do on the issue of RS 2477 while plans for the CSUs are being prepared. Timely action by the appropriate State agencies is necessary to ensure federal and private recognition of RS 2477 rights of way.

The Citizens' Advisory Commission on Federal Areas believes the ALUC is the proper channel through which this problem may be addressed. Formation of an intergovernmental task force will clear up some of the unanswered questions faced by private and public land managers.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF




POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate Committee on Resources

M E M O R A N D U M

February 28, 1985

TO: All Members
Senate Resources Committee

FROM: Senator Arliss Sturgulewski 
Chairman, Senate Resources Committee

RE: SJR 10 Requesting that the Department of Natural Resources and the Department of Transportation and Public Utilities expedite the identification and establishment of rights-of-way for roads and trails on federal Bureau of Land Management plats which qualify under RS 2477.

Attached is a proposed committee substitute for SJR 10. It was developed in response to comments and suggestions during last Friday's hearing on this resolution. The resolution's sponsor, committee members who made specific wording suggestions at the hearing, and representatives of involved public groups were consulted in the development of this CS.

I would like to pass this resolution out at our meeting tomorrow. If you have specific objections, would you please contact me or committee staff as soon as possible. Thank you.

DRAFT 1

SJR10 DOCUMENT= 1 OF 1 PAGE = 1 OF 4

BILL = SJR10
ROOT = SJR0010

BILL ROOT:
SJR0010

BILL NUMBER:
SJR10

INTRODUCED:
1/30/85

REFERRED: Resources and
Transportation

ORIG SPONSOR:
BY COGHILL, ABOOD, BENNETT, DEVRIES,
FAHRENKAMP, FAIKS, P.FISCHER, V.FISCHER,
HALFORD, KELLY, KERTTULA & STURCULEWSKI

BILL HEADING:
IN THE SENATE

No CHANGES 1st PAGE

COMMITTEE SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 10 (RESOURCES)

IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE - FIRST SESSION

TITLE: Requesting that the Department of Natural Resources and the Department of Transportation and Public Facilities expedite the identification and establishment of rights-of-way for roads and trails on federal Bureau of Land Management plats which qualify under RS 2477.

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

WHEREAS the Alaska National Interest Lands Conservation Act of 1980 placed 124 million acres of land in Alaska into 71 federal conservation units, and outlined specific use requirements and restrictions for those units; and

WHEREAS there was no provision for establishing or protecting a transportation system in the development of comprehensive management plans for each conservation unit by the responsible federal management agency; and

WHEREAS several of the comprehensive management plans have been completed without recognition of existing roads and trails, preventing public access through these units to state and private lands and to state waters; and

WHEREAS comprehensive management plans for a minimum of nine national park and preserve units and five fish and wildlife refuge units are to be completed during calendar year 1985; and

WHEREAS the federal statutory authority for the establishment of recognized rights-of-way for roads and trails is contained in RS 2477 (43 U.S.C. sec. 932); and

WHEREAS the Department of Natural Resources and the Department of Transportation and Public Facilities on September 28, 1984, signed a Memorandum of Understanding with the federal Bureau of Land Management involving the northern region of Alaska only, establishing the procedure under which the rights-of-way could be recognized on Bureau of Land Management plats and in comprehensive plans for conservation units;

BE IT RESOLVED by the Alaska State Legislature that the Department of Natural Resources and the Department of Transportation and Public Facilities immediately propose a Memorandum of Understanding with the Bureau of Land Management, to be developed in consultation with other affected land owners and managers, relative to the remainder of the state; and be it

FURTHER RESOLVED that the state agencies involved affirmatively solicit information from miners, engineers, land surveyors, environmentalists, outdoor groups, landholders or any persons or organization that may have knowledge of the historic use of trails, to assist the departments in the identification of those roads and trails that could qualify under the provisions of RS 2477 (43 U.S.C. sec. 932) for addition to the state transportation system, and that may be useful to the federal agencies developing comprehensive management plans for the various Alaska National Interest Lands Conservation units; and be it

CHANGES
AS MARKED

FURTHER RESOLVED that the involved state agencies develop draft policies regarding management, maintenance, liability, vacation, categories, widths, and other relevant concerns related to RS 2477 roads and trails, and that the agencies review these draft policies with affected land owners and managers, and then present these draft policies to the legislature during the second session of the Fourteenth Legislature.

COPIES of this resolution shall be sent to the Honorable Bill Sheffield, Governor of the State of Alaska, to the Honorable Esther Wunnicke, Commissioner of Natural Resources, to the Honorable Richard J. Knapp, Commissioner of Transportation and Public Facilities, and to Michael J. Penfold, State Director of the Bureau of Land Management.

AMENDMENT

OFFERED IN THE SENATE:

By: Stearns

To: _____ SENATE BILL No. _____

HOUSE BILL No. _____

PAGE: 2

LINE: _____

Line 9 after "that" add ~~the~~
the ~~provisions~~ ~~of~~ ~~the~~ ~~act~~
insert
Line 14 " "
Line 23 " "

RESOLUTION ADDRESSING PROPOSED PLOTTING OF R.S. 2477 RIGHTS-OF-WAY TO PUBLIC LAND RECORDS

WHEREAS, the State of Alaska and the Bureau of Land Management have entered into a memorandum of understanding to identify and plot RS 2477 rights-of-way to the public land records; and

WHEREAS, the Alaska Native Claims Settlement Act corporations are major land holders which may be severely impacted by this action without an opportunity to participate in the decisions; and

WHEREAS, the notation of the public land records may provide the State of Alaska with added weight, in the case of litigation of an RS 2477 right-of-way, without a factual basis; and

WHEREAS, neither the State nor the Bureau of Land Management propose to adjudicate RS 2477 rights-of-way under the terms of the memorandum of understanding; and

NOW, THEREFORE, BE IT RESOLVED by the Alaska Native Land Managers Association that the Alaska Native Land Managers Association opposes the plotting of RS 2477 rights-of-way to the public land records.

WE FURTHER REQUEST that the following actions be taken:

1. Alaska Native Claims Settlement Act corporations are actively involved in the identification process, and
2. The Bureau of Land Management and the State of Alaska establish clear standards of construction and use against which all RS 2477 rights-of-way are to be considered, and
3. The issue of abandonment is clearly defined and addressed, and
4. Each RS 2477 right-of-way is adjudicated by the Bureau of Land Management, and
5. An accurate centerline description is provided to the Bureau of Land Management prior to plotting, and
6. A case file is established which sets out the history of each RS 2477 right-of-way together with complete documentation of the timing, duration type and amount of use and location.

BE IT FURTHER RESOLVED that this resolution be forwarded to the Alaska Federation of Natives, the Bureau of Land Management, the State Department of Natural Resources, the State Department of Transportation and Public Facilities, Alaska's Congressional Delegation, and to all State legislators.

Duly adopted this 30th day of January, 1985, in Anchorage, Alaska.

Frances E. Zimmerman

Frances E. Zimmerman, Secretary/Treasurer

P.O. Box 80674
College, Ak. 99708
13 February 1985

Dear Senator Coghill:

Thank you very much for attending the breakfast last Saturday and allowing several of us to share our concerns with you on water issues and access issues facing the resource development community in Alaska.

At breakfast I spoke to some of our concerns relating to preserving the access rights of all Alaskans on R.S. 2477 rights-of-way. We feel that if the State does not actively assert these rights NOW, before land use management plans are implemented, land managers will be able to administratively effect curtailment of the access by imposing restrictive regulations. The problems experienced with the U.S. Park Service by the inholders in Chisana provides a classic example. Miners operating near Van Curlers Bar experienced conflict with the Alaska Department of Natural Resources when they attempted to use a trail. The Alaska Department of Transportation chose to get a permit from ADNR on an R.S. 2477 trail that had not been platted in order to gain timely access to a pit on one of the Alaska Highway projects.

More general is the problem of using R.S. 2477 trails to comply with the public easements under 17(b) of the Alaska Native Claims Settlement Act. The right-of-way is established by the taking under R.S. 2477 and can be abandoned only under procedures established by State law. BLM is listing the allowable uses on 17(b) easements which are also R.S. 2477 rights-of-way. This effectively curtails the access to the average citizen because of the high cost of a lawsuit. The potential problems are underscored in the enclosed memorandum, Instruction Memorandum No. AK-85-72.

It is important that the State legislature take appropriate action to preserve existing access rights for all of the citizens of Alaska. Such action might include, but not be limited to:

1. Initiate a program of identifying all overland access to all private property rights in the State.
2. Provide for compensation to any citizen who has to go to court to maintain his right of access.
3. Require that all State land use management plans reflect a policy of unrestricted multiple use on R.S. 2477 trails and recognize ADOT/PF as the only agency authorized to generate user regulations.

The problems currently being experienced by water users in the State underscore the futility of trusting the federal and state regulatory agencies. These agencies have continually asserted that errors, omissions, or abuses can be corrected through the administrative process. Wrong - as the regulations become more complex the corrective procedures have been eliminated. Further, these agencies have administrative courts. Few individuals have the resources to sustain a long fight in the administrative court and follow through with the federal civil court.

The public interest would best be served if the State of Alaska would assert, in court if necessary, claims to all R.S. 2477 rights-of-way. To the best of my knowledge State law does not provide for the abandonment of a public right -of-way through the process of land classification or land use management planning.

For your information I have provided my copy of the U.S.B.L.M. Section 17(b) Easement Desk Manual published April 24, 1984.

If I can provide any specific input to you or your committee, please contact me by mail or call me at home. My telephone number is 488-6058.

Sincerely,

A handwritten signature in cursive script that reads "Helen Warner". The signature is written in dark ink and is positioned below the typed name.

Helen Warner



United States Department of the Interior

IN REPLY REFER TO

2800 (932)

BUREAU OF LAND MANAGEMENT

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

November 23, 1984

RECEIVED

DEC 23 1984

Instruction Memorandum No. AK-85-72
Expires 9/30/85

To: DM's and DSD's
From: State Director, Alaska

Subject: Notation of R.S. 2477 Right-of-Way Assertions on the Public Land Records

This memorandum is intended to supplement manual guidance on notation of R.S. 2477 right-of-way assertions. The BLM manual policy on notation of claimed R.S. 2477 is intended to facilitate BLM management of those lands it administers. BLM needs a sound transportation plan in order to effectively manage those public lands it administers; therefore, it is necessary to identify existing access routes on the Bureau's official records.

Notation of any particular R.S. 2477 assertion of right to these records is discretionary. The manual merely provides BLM a procedure of noting R.S. 2477 claims on its records, if BLM agrees that the assertions have at least potential validity. The manual procedure is not intended to force BLM to note assertions it believes to be questionable or invalid.

It should, however, be remembered that an R.S. 2477 grant is created by taking. The rights acquired thereunder attached immediately when the facility was first appropriated or constructed under the statute. Once a right-of-way is established under R.S. 2477, it may be abandoned only under procedures established by State law.

The BLM should work with the State of Alaska to identify those existing access roads and trails which may be potentially valid R.S. 2477 assertions. When BLM agrees that a right may exist (i.e. the assertion may be valid) under the statute, it should note the assertion on its official land status records. If BLM does not agree that the right may exist, the assertion should not be noted to the records. BLM's notation of a potential right does not validate an invalid assertion and its failure to note a valid assertion does not void such assertion. The actual validity or nullity of an R.S. 2477 assertion can only be determined by a court of competent jurisdiction.

If an R.S. 2477 is asserted on a road or trail historically used only as a winter trail and use begins to occur during the other seasons which causes environmental damage, BLM's recourse is to try to get the State to maintain the trail or for BLM to sue for damages on Federal lands. Seasonality of use should

be defined by the type of use which existed at the time the trail or road was established or appropriated. The background and history of the trail may need to be checked to determine if use has been seasonal.

BLM will note potentially valid R.S. 2477 assertions only across lands which it administers. Notations will not be made on lands withdrawn for other agency use, unless BLM has an MOU regarding notation with that agency having jurisdiction over the land. Assertions of rights will not be noted on land which have been Interim Conveyed or Patented to a Native Corporation or Tentatively Approved or patented to the State of Alaska.

The BLM does not need comment or concurrence from Native Corporations to note assertions on lands that it manages (including lands that are merely selected by such corporations.) BLM is only acknowledging a claim of a valid existing right to such lands. Such an acknowledgment does not change the validity or invalidity of the right. The existence of such a potential right will not be cited in any conveyance document as an encumbrance. A Native Corporation is free to challenge the assertion, in court, after it acquires title.

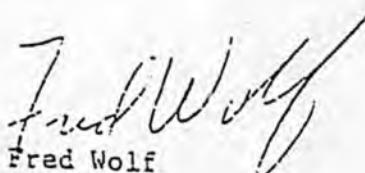
BLM will not specifically reference an R.S. 2477 claim, assertion or notation in the deeds or patents it issues for any claim or entry made under the public land laws, unless the inclusion of a reference to such claim has been agreed to, in writing by all affected parties.

There may be situations where the State of Alaska may find it advantageous to acquire a right-of-way under Title V of the Federal Land Policy and Management Act in lieu of an R.S. 2477 notation. Patents for entries made after granting of a Title V right-of-way are made subject to the right-of-way.

It should also be noted that the BLM cannot impose restrictions or stipulations restricting the use of an R.S. 2477 road or trail for those purposes authorized by statute. Only the State can impose restrictions on such uses. However, R.S. 2477 did not authorize the construction of non-access facilities such as powerlines, pipelines, etc. Such facilities, if not covered by a granted right-of-way constitute unauthorized use.

In deciding whether to note an assertion on the BLM records, BLM may perform a field examination and/or prepare a report to substantiate its decision as to disposition of the assertion. However, such action is not required.

Distribution:
D-DSC (D-558A)


Fred Wolf
State Director
Acting

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SJR 10

Title: RS 2477 Identification

Sponsor: Corbill; et al

Requestor: _____

Date of Request: _____

FISCAL DETAIL

Agency Affected: DNR, DOT/PF

Program Category Affected: Management of Land & Water Resource

BRU, Program or Subprogram(s) Affected: _____

; Land & Water Public Use

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		92.0	92.0	92.0	92.0	92.0
200 TRAVEL		4.0	4.0	4.0	4.0	4.0
300 CONTRACTUAL		34.0	34.0	34.0	34.0	34.0
400 SUPPLIES		1.0	1.0	1.0	1.0	1.0
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		131.0	131.0	131.0	131.0	131.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		131.0	131.0	131.0	131.0	131.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		2.0				
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Provides for two full-time positions (Natural Resource Officer II) to identify and compile information necessary to assert in court those roads and trails which qualify as RS 2477's. Includes funding for agency and public input, printing of maps and road/trail atlas, copying, public notice and advertisements. Also travel in support of research and to conduct public/agency meeting.

Prepared By: Gary Gustafson
Division: Land & Water Management

Phone: 265-4347

Date: _____

Approved by Commissioner: William D. Sumrell, Deputy Date: 2/21/85

Agency: _____

Distribution (by Agency preparing fiscal note):

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

7/1/84

Senator John B. (Jack) Coghill
Alaska State Legislature

Douglas V.
Juneau, Alaska 99811
(907) 465-4745

Box 458
Nenana, Alaska 99760
(907) 832-5471



STATEMENT ON

SJR 10 (RS 2477 Rights of Way)

By Senator John B. Coghill

Senate Resources Committee - February 22, 1985

Thank you, Madam Chair, for the opportunity to present a few brief comments on an issue of vital importance not only to my district, but to all of Alaska - the salvaging of rights-of-way established under the federal RS 2477 provision. I appreciate your committee's willingness to examine this issue and to, I hope, take prompt action on it.

Prompt action is our mandate in this issue, because as we see with each passing day, the access potential created by our pioneering forebears when they struck out over those roads and trails into the heartland of Alaska - that access so essential to continued progress in Alaska - is quickly being bureaucratically removed from our grasp by those who would lock up Alaska. Over the next two years we will see the formation of dozens of state and federal land use plans, all of which must acknowledge the validity of the RS 2477 rights-of-way within the areas they cover or those rights-of-way will likely be gone forever.

Alaskans need those rights-of way. I think Congress knew what it was doing - back then - when it made provision for us to have access across federal lands. It is regrettable that we must now take this kind of virtually desperate action - to insist that the state and federal government enter into a cooperative agreement - to protect what is already ours and keep these rights-of-way on the books.

Thank you again, Madam Chair, for this committee's time spent on this issue. I hope the members will act favorably on SJR 10.



Citizens' Advisory Commission on Federal Areas

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

February 26, 1985

Honorable Bill Sheffield
Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Re: RS 2477 Rights-of-Way

Dear Governor Sheffield:

You will recall that the Citizens' Advisory Commission on Federal Areas in September proposed formation of a task force sanctioned by the Alaska Land Use Council (ALUC) which would establish a procedure for confirming the State of Alaska's claims to RS 2477 rights-of-way. Our specific proposal was withdrawn when Bureau of Land Management (BLM) State Director Mike Penfold revealed that the Department of Natural Resources (DNR), the Department of Transportation and Public Facilities (DOTPF) and the BLM were negotiating a Memorandum of Understanding (MOU) for the implementation of a procedure similar to the one we were proposing. The MOU was signed September 28, 1984.

Our proposal advised that a necessary element in the success of such an undertaking would be the cooperation of the member agencies of the ALUC in the implementation of any procedure developed. Such cooperation would include adequate funding and manpower for the research needed. At this time we must advise you that it is necessary that adequate funds be allocated to permit the State agencies involved, DNR and DOTPF, to meet their objective of identifying and confirming RS 2477 rights-of-way.

Management authority for RS 2477 rights-of-way which cross non-State lands is vested with the Alaska DOTPF. We recognize that there are legitimate management concerns espoused by Federal land managers, Native and other private landowners and environmental groups. Adequate opportunities for interested parties to plan for State management of these rights-of-way exist and can be expanded if necessary, but only if the State retains its present authority to do so.

You are no doubt aware of the rigorous permitting process that Title XI of ANILCA requires prior to construction of a Transportation and Utilities System (TUS) on or across a Conservation System Unit (CSU). Most knowledgeable people in and out of the State government regard this process as extremely difficult, if not completely unworkable. Because of the difficulties inherent

Governor Sheffield

RS 2477

Page 2

in the Title XI process, it is critical that the management authority over, and State ownership of, RS 2477 rights-of-way be adequately recognized in the CSU planning efforts of federal agencies. Language recently adopted by the National Park Service (NPS) for inclusion in the General Management Plans that agency is preparing illustrates this:

"The Park Service is aware the State might assert certain claims of rights-of-way under R.S. 2477. The Service intends to cooperate with the State (and any other claimant) in identifying these claims, the nature, extent and validity of which may vary depending on the circumstances under which they were acquired or asserted. Notwithstanding that certain R.S. 2477 rights-of-way may exist, it will still be necessary for users of any right-of-way to comply with applicable Park Service requirements." (emphasis added)

This is so despite the assurances of ANILCA Section 1109 which states:

"Nothing in this title shall be construed to adversely affect any valid existing right of access."

We are painfully aware of the decline in State revenues and the necessity to minimize unessential expenditures. We are also aware that the economy of the State of Alaska is overly dependent upon the oil industry. The need to develop our resources in a rational manner to diversify our economy is more evident every day. The timber, mineral and tourist industries of the State must have access in order to expand. The rights-of-way granted the State through RS 2477 can play a vital role in this effort both as an alternative to Title XI and as leverage in securing more favorable decisions in Title XI and other resource management issues on federal lands.

We believe that it is of the utmost importance that the State of Alaska's ownership and management of these public rights-of-way be forcefully defended. By doing so, we can go a long way towards ensuring that debate over proposals to cross a CSU with a transportation system is managed here in Alaska rather than in Washington, D.C. As governor of our State, your support is necessary for the success of this endeavor.

Senate Joint Resolution #10 (SJR #10), sponsored by a bipartisan group of legislators, requests that DOTPF and DNR expedite the identification and establishment of rights-of-way for roads and trails on federal BLM plats which qualify under RS 2477. The Resolution also calls for the expansion of the current MOU, which presently applies only to the Interior region, into a statewide process. We endorse this resolution and urgently request that you give it your strongest support as well.

Governor Sheffield

RS 2477

Page 3

We also ask that you use the power of your office to insure that DOTPF and DNR receive adequate funding to implement an effective course of action pursuant to the objectives of SJR #10.

We reiterate our earlier acknowledgement that legitimate concerns by federal land managers, Native land owners and environmental groups exist. But these concerns over the management of RS 2477 rights-of-way are separate from the issue of ownership, and are more properly accommodated in the State transportation planning process. To allow management concerns to interfere with confirming ownership of the rights-of-way is to put the cart before the horse; it is analogous to requiring an "acceptable" land use plan to be in place before the State or the Native corporations can be issued a land conveyance.

We hope you will consider these points and see the interests of the State require positive action to preserve the full range of State prerogatives.

Sincerely,



Phil R. Holdsworth
Chairman

cc: E. Wunnicke
R. Knapp



Citizens' Advisory Commission on Federal Areas

MAR 4 1985
515 Seventh Avenue
Suite 310
Fairbanks, Alaska 99701
(907) 456-2012

SJR 10

March 1, 1985

Senator Arliss Sturgulewski
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

The Citizens' Advisory Commission on Federal Areas is concerned about the lack of recognition of Revised Statute (RS) 2477 rights-of-way in the Conservation System Unit (CSU) planning efforts of federal agencies. Development of land management plans which recognize valid existing rights-of-way under RS 2477 or other applicable laws benefits not only the State but the federal agencies and private inholders within CSU's as well. Recognition would facilitate the evaluation of access and transportation needs for a variety of activities.

On February 16th, the Commission approved several recommendations on RS 2477 including one endorsing adoption of Senate Joint Resolution (SJR) #10. Proposed by a bipartisan group of legislators, SJR #10 urges the Department of Transportation and Public Facilities and the Department of Natural Resources to expedite identification of RS 2477 rights-of-way pursuant to a Memorandum of Understanding developed by those agencies and the Bureau of Land Management.

We are convinced that this issue is critical to the future well being of the State. While recognizing that there are legitimate concerns espoused by private landowners, environmental groups and federal agencies regarding the management of RS 2477's, we nonetheless view management and ownership as separate issues. Opportunities exist for interested groups to participate in the planning for management of rights-of-way and can be expanded if necessary to accommodate their concerns. Ownership of an RS 2477 is not dependent upon a particular management strategy, to insist that it should be is analogous to requiring a declaration of management intent on the part of the State or a Native corporation prior to conveyance of its land entitlement.

We urge you to support SJR #10 and to assist DNR and DOTPF through the budgetary process in their effort to identify and document the existence of RS 2477 rights-of-way.

Sincerely,

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

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

NORTHERN REGION, Deputy Commissioner

MAR 13 1985
BILL SHEFFIELD, GOVERNOR

2301 Peger Road
Fairbanks, Alaska 99701
(907) 452-1911

March 6, 1985

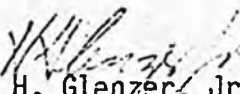
RE: Alaska Road Commission Report,
#85-70

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

Dear Senator Fahrenkamp:

At the February 22, 1985, Senate Resources Committee hearing on Senate Joint Resolutions 5 and 10, you requested information from the Department regarding Alaska Road Commission records. Enclosed is a copy of the Alaska Road Commission Historical Narrative which I hope you will find useful.

Sincerely,


H. Glenzer, Jr.
Deputy Commissioner

GR:bci

Enclosure

cc: Mim Dixon, Director, Division of Planning, Northern Region
Susan Fleischhauer, Legislative Liaison, Headquarters
Ray Gillespie, Legislative Assistant, Office of the Governor, Juneau
Richard J. Knapp, Commissioner
Paula Ramsey, Chief, Budget Coordination and Liaison Section, Headquarters
Senator Arliss Sturgulewski, Chairman, Senate Resources Committee
Janice Wagner, Legislative Coordinator, Planning, Northern Region

LEGISLATIVE REQUESTS

LEGISLATIVE REQUEST FORM INSTRUCTIONS:

- 1) When you receive a request by telephone, fill out the information above dotted line.
- 2) If you request follow-up by another person, send form to Janice Wagner by Rapicon.
- 3) If you plan to respond to request, write your name as "Person Assigned to Follow-up" and send xerox of form to Janice Wagner immediately. Then send completed form to Janice Wagner when response is completed.

LOG # 85-70

DATE REQUESTED 2-22-85

DATE DUE _____

RESPONSE DATE 3-6-85

LEGISLATOR: Bettye Tarrenkamp

REQUESTED BY: _____ PHONE NUMBER: _____

SUBJECT: Alaska Road Commission records

SUMMARY OF REQUEST: Needs Road Commission Records.

REQUEST RECEIVED BY: G. Rasm

PERSON ASSIGNED TO FOLLOW-UP: J. Wagner

FURTHER CONTACTS:

NAME	DATE OF CONTACT	MODE OF CONTACT	DATE OF RESPONSE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

RESPONSE BY LETTER (ATTACHED); BY TELEPHONE

SUMMARY

OTHER _____

APR 25 1985



ALASKA STATE CHAMBER OF COMMERCE

310 Second Street
Juneau, Alaska 99801
(907) 586-2323

April 24, 1985

Senator Arliss Sturgulewski
Pouch V
Juneau, Alaska 99811

Dear Arliss:

Enclosed is a resolution adopted by the State Chamber's Board of Directors regarding Establishment of RS 2477 Rights-of-Way.

Your support of this critical issue is greatly appreciated.

Cordially,

A handwritten signature in black ink, appearing to read 'George Kresz', is written over the typed name.

George Kresz
President

GK/rb

Enclosure

ALASKA STATE CHAMBER OF COMMERCE

RESOLUTION PERTAINING TO ESTABLISHMENT OF RS 2477 RIGHTS-OF-WAY.

WHEREAS, the development and production of natural resources in Alaska is a significant element in the economic base of the State of Alaska and the welfare of its inhabitants; and

WHEREAS, expansion of resource production is dependent on adequate access to areas in which resources are located; and

WHEREAS, access to a number of resource areas in Alaska may become possible by the use of routes established in the past and which are included in the inventory of trails owned by the State of Alaska as asserted by Memorandum 00-2528, April 8, 1984, to the U.S. Bureau of Land Management; and

WHEREAS, the procedures for the assertion of RS 2477 Rights-of-Way by the State of Alaska has been established in a Memorandum of Understanding between the Alaska Department of Natural Resources (DNR), and the Alaska Department of Transportation and Public Facilities (DOT/PF), and Bureau of Land Management (BLM), September 28, 1984, promulgated by the interior regional offices of these three agencies; and

WHEREAS, a coordinating committee comprising a representative of each agency (John Martin, DOT/PF; Joseph Sullivan, DNR; Dwight Hoepel, BLM) has been established; and

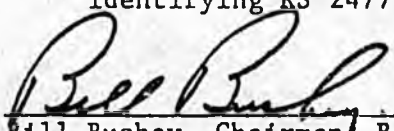
WHEREAS, the historical research, documentation and mapping required for the routes already inventoried and identification of trails not previously inventoried will require a significant effort and John Martin, DOT/PF, and Joseph Sullivan, DNR, are investigating the manpower and funding requirements to accomplish this effort.

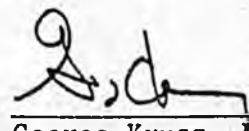
NOW THEREFORE, be it resolved by the Alaska State Chamber of Commerce that the implementation of RS 2477 Memorandum of Understanding dated September 28, 1984, AK-023-MU5-002, be strongly supported; and

BE IT FURTHER RESOLVED, that the State Legislature encourage this project by supporting adequate budget and/or priority assignment of personnel in DOT/PF and DNR and similar support by given by the Federal Government to BLM; and

BE IT FURTHER RESOLVED, to encourage all organizations and individuals to develop and submit to DOT/PF and DNR a list of priority routes known to them in Alaska which will be of maximum benefit for mineral, agricultural, commercial and recreation and that routes which can support more than one of the above be given particular emphasis; and

BE IT FURTHER RESOLVED; that full consideration be given to the corridor concept, alternate established routes and to existing land rights of others, including private owners and the national interest lands, in identifying RS 2477 Rights-of-Ways.


Bill Bushey, Chairman, Board of Directors
Alaska State Chamber of Commerce
March 1, 1985


George Krusz, President
Alaska State Chamber of Commerce

SJR 10

SENATOR
ARLISS STURGULEWSKI

2957 SHELDON JACKSON
ANCHORAGE, ALASKA 99508
SENATE DISTRICT F, SEAT A

Alaska State Legislature



While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3818

Senate

February 9, 1985


Joe Vogler
Ketchum Mines
P. O. Box 40
Fairbanks, Alaska 99707

Dear Joe:

You are certainly correct that the RS2477 issue is a major one. We need to pursue the clarification of status of rights-of-way vigorously!

As chairman of the Senate Resources Committee I plan to follow the progress of the negotiations between the Department of Transportation and Bureau of Land Management. On Friday, February 10th, the Senate Resources Committee is holding hearings on SJR 10.

Sincerely yours,


Senator Arliss Sturgulewski
Senate District F

maf:cp

DRAFT

See Melissa's note

Yes. I will pursue

February 7, 1985

Joe Vogler
Ketchum Mines
P. O. Box 40
Fairbanks, Alaska 99707

Dear Mr. Vogler:

You are certainly correct that the RS2477 issue is a major one and we need to pursue the clarification of status of rights-of-way vigorously.

As chairman of the Senate Resources Committee I plan to follow the progress of the negotiations between the Department of Transportation and Bureau of Land Management. ^u Good luck with your case.

Sincerely yours,

and will no doubt be holding hearings on SJR 10.

Senator Arliss Sturgulewski
Senate District F

maf:cp

also send Coghill's resolution which I cosponsored
he was writing because of Coghill's deso - changing her for her support
note copy
refer to this part a
NOT necessary

Dear Mr. Vogler:

You are certainly correct that
the RS2477 issue is a major one
and we need to pursue the clarification
of ^{the status of} rights of way vigorously.

As chairman of the Resources Committee

I plan to follow the progress of the
negotiations between DOI and BLM. Good
luck with your case

(A - do you plan to have any
hearings on this?)

Jul
78

WAF

Ketchem Mines

"Established 1951"

2-3-85

FEB 7 1985

Senator Arlis Sturgulewski
Juneau Alaska

Dear Senator .

Thank you for your support of Senate Joint Resolution 1110. It is most urgent that this be funded with at least 5 million - to do the research and interviewing of old-timers who live in Alaska and outside. Those who live outside will be very expensive to interview but it will be very cheap - compared to condemnation & the battle in Congress to get rights of way thru wilderness & Park areas.

We have been asking for 26 years - with but one exception - the Bellefleur trail - and I am most thankful for the legislative action on this for without it, I would be in trouble.

The B & I refuse to put it on their map at the direction of the volunter - but that will be corrected - hopefully short of the United States Supreme Court.

I am wondering why the

State of Alaska can intervene in the
Granite Rocks case in Cal. - & not
enter my suit vs the damn
feds. Something is wrong.

Thank you for your help -
Alaskan Patriot
Joe Doyle

Resend

TELECOPY COVER SHEET
FAIRBANKS INFORMATION OFFICE

TO: TIUU FOR: ~~Sen Sturgulinski~~ PHONE: _____

FROM: Paul Costello PHONE: _____

ADDITIONAL INSTRUCTIONS: Testimony for 2/22
Senate Resource 5125 & 10
Teleconference

DATE/TIME SENT: 2/22 SENT BY: PL

PLEASE ACK. RECEIPT: HOLD FOR PICK-UP:

NUMBER OF PAGES 9 (NOT COUNTING COVER SHEET)

Good Afternoon, I am Paul Costello, representing both Doyon Ltd. and Interior Village Association. I would like to offer the following comments on proposed Senate Joint Resolution #10.

Assuming for discussion sake that RS 2477 rights of way are valid in light of their implicit repeal by Section 17b of the Alaska Native Claims Settlement Act, we see the following problems being created by the MOU and this proposed resolution:

1. The current effort underway to identify RS 2477 rights of way is in reality a biased data search by the State of Alaska to legitimize assertions of title to rights of way across private and public land at the expense of the landowner and taxpayers. The obvious intent is to "prove up" asserted rights of way rather than evaluate the facts surrounding each case, weigh them against established case law, and come to a tentative decision on their potential validity.

2. The MOU was drafted without the involvement of Doyon Ltd., and the village corporations in the interior, who happen to represent the largest group of private landowners in the State of Alaska. The reason is obvious: the MOU creates problems for us and other members of the native community, so the State and BLM chose to not involve the landowners concerned, because they knew they would object.

3. The MOU un-necessarily clouds native and other private land title, it creates serious land management problems for private land owners, it may create a significant burden on the States treasury, and, in the end pit citizen against citizen.

In order to understand our perspective, we have to go back into RS 2477 and understand how it is supposed to operate. Normally, there are two means to verify that an asserted RS 2477 right of way is legitimate. The first occurs when the state and the landowner either formally or informally come to some sort of an agreement that the State has a right of way, the road is maintained by the state and used by the public. The second occurs when the landowner disagrees with the State and blocks access, someone sues, and the final decision rests with the courts to determine on a factual basis, whether the state has a valid interest in the land. It is well established in law that the only entity with authority to adjudicate the States interest is the court system.

The MOU circumvents this process by creating a quasi-official adjudication of the states interest and noting the assertion to the public records. Despite any disclaimers on the records, the public is left with the impression that they have a right of access across private land, although there is no understanding what this right of access is, the limitations upon it, and the private landowner is faced with trespass by the person who has acted on the information created by the State.

During the MOU drafting process, a briefing paper was presented by DOTPF which clearly undermines our relation with DOTPF. I have included a copy of it with this testimony. There are two areas that are very troublesome. The first is the assertion that by noting these rights of way to the public record the State will automatically gain a leg up on the private landowner when it comes to challenging the validity of the assertion. It implies that should a given right of way be challenged in court and the judge were to look at the evidence produced by the state, and part of that evidence was the noted