

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4403 STRA SB 141 (FILE 3) - SB 175 288

The Supreme Court of Alaska, in State v. A.L.T.A., has held that the easements are valid. The decision is wrong and must be reversed through the enactment of a law that will relinquish these easements and require DOTPF to pay just compensation for lands taken by them.

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Falks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

MEMORANDUM

To: Committee members
From: Chairman Coghill
Date: February 19, 1985
Re: SB 141, Relinquishment of rights-of-way

As the attached background information will show, SB 141 is intended to release the State's claim to certain portions of highway rights-of-way which were not clearly identified in land patents. This has given rise to the problem faced by many landowners who live or hold land adjacent to highways the State now wishes to upgrade, straighten or expand and who have been or could be abruptly and without compensation deprived of land they assumed was theirs, and which their legal documents have not identified as belonging to the government.

These rights-of-way were withdrawn by the federal government through public land orders or as a result of various Acts of Congress during territorial days, and did not necessarily make their way either to the homesteaders' patents or the district recorders' offices. This has subsequently caused heavy liabilities for the state's title insurance companies, who traditionally insure property based upon what has been recorded at the recorder's office, not upon what has been published in the Federal Register.

As this problem has evolved, the State Supreme Court has ruled that the State's claims to the rights-of-way are valid, and therefore, title insurers are liable for any claims by the insured for takings for which the State has declined to compensate the property-owner. Of course, this presumes that the property-owner has title insurance. In the many instances where the property-owner does not, he or she is simply out of luck, and has no recourse to gain compensation.

The background material will more completely go into the history of the problem, however, a brief explanation of the enormous fiscal note may be in order. We are not sure how DOT/PF generated this much fiscal impact, but assume they have figured the repurchase price at top market value, and of the entire width of right-of-way (in other words, the entire 300 or 500 feet, not just the portion they will actually need to expand a road).

COMMITTEE STAFF SYNOPSIS



U.S. Department
of Transportation
**Federal Highway
Administration**

Alaska Division

P.O. Box 1648
Juneau, Alaska 99802

February 19, 1985

HRW-AK
013

R. J. Knapp, Commissioner
Alaska Department of Transportation
and Public Facilities
Juneau, Alaska

Dear Commissioner Knapp:

Senate Bill 141

We have reviewed Senate Bill #141 introduced in the State Senate February 8, 1985. This Bill is similar to previously introduced legislation and we still have the following concerns:

1. If the right-of-way remaining will only include the road shoulders and the ditching, several problems are envisioned. There may not be sufficient sight distance to provide for the safety of the traveling public, as you would be unable to clear vegetation on the inside of curves. You would be unable to clean ditches and maintain structures without encroaching on other properties. There would be no mechanism to prevent construction of facilities next to the traveled way.
2. It was the intent of the Federal Government in establishing Public Land Orders to provide land for highway construction at no additional expense to the states or the United States. If the State of Alaska should choose to abandon this right, and later find that this right-of-way is necessary for the construction or operation of the highway, there can be no Federal reimbursement for funds expended by the State of Alaska for reacquisition.

Sincerely yours,

Barry F. Morehead
Division Administrator

FHWA BILL ANALYSIS

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
 Bill/Resolution No.: SB 141
 Title: An Act releasing claims of State land within certain rights of
 Sponsor: Coghill way
 Requestor: _____
 Date of Request: February 15, 1985

FISCAL DETAIL
 Agency Affected: Transportation & Public Facilities
 Program Category Affected: Design and Construction
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		75	75	75	75	75
200 TRAVEL		15	15	15	15	15
300 CONTRACTUAL		1,750	1,750	1,750	1,750	1,750
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES		225,500	225,500	225,500	225,500	225,500
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		227,340	227,340	227,340	227,340	227,340

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		227,340	227,340	227,340	227,340	227,340
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See attached Analysis

Prepared By: Milton H. Lentz Phone: 465-2985
 Division: Standards & Technical Services HQ Date: February 14, 1985
 Approved by Commissioner: *[Signature]* Date: 2/15/85
 Agency: Department of Transportation & Public Facilities

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

DOT/PF FISCAL NOTE

7/1/84



Dept. of Transportation & Public Facilities

Position Paper

BILL NO: Senate Bill No. 141

TITLE: An Act releasing claims of the State
to land within certain rights of way

APPROVED: R. J. Knapp
Commissioner

DATE: 2-15-85

The Department of Transportation and Public Facilities opposes Senate Bill 141. This bill would have a major negative impact on the State of Alaska. It could restrict our ability to serve the public effectively and create a heavy financial burden for the State. In addition, there is a concern that, if this bill is enacted into law, it will jeopardize present or future federal-aid participation in highway rights of way.

The validity of these easements has been reviewed by the U.S. Supreme Court and the passage of this bill would reverse any legal grounds already established through the judicial system.

ANALYSIS OF FISCAL NOTE FOR SENATE BILL 141

This bill would relinquish highway easements created by the federal government under several laws and land orders. Most of the highway rights of way in the State would be affected. This bill would relinquish or vacate all those rights of way except those portions which are physically occupied on the effective date of the Act. Under this Act, the adjacent landowners would immediately become owners of the affected rights of way except those portions between slopes and ditches.

The enactment of this bill would put the Department in the position of having to purchase any rights of way needed for planned expansion, maintenance (brush cutting and snow storage), protection of utility permit areas, permitted encroachments, etc.

The cost of almost all future upgrading or widening of existing highways and the building of planned highways would be increased drastically because of the expense of acquiring additional right of way. This bill would also affect federal funding on federal-aid projects. It is the Federal Highway Administration's position that there can be no federal reimbursement for funds expended by the State of Alaska for the acquisition of right of way from lands subject to the reservation contained in the 1947 Act.

This fiscal note is based on the following assumptions:

1. Primary highways normally control 300-foot rights of way in general but physically occupy 100 feet for the actual roadway.
2. Secondary highways normally control 200-foot rights of way but physically occupy 60 feet for the actual roadway.
3. The State would have to reacquire approximately one half the relinquished rights of way for planned expansion, maintenance, clear zones, utility permits, etc. This would have to be done as expeditiously as possible to satisfy maintenance agreement obligations with the federal government on federal-aid highways.

197-376

110005

Form 4-1918
Sept. 1944

Anchorage 073311

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of June 1, 1938 (52 Stat., 609), as amended by the Act of July 14, 1945 (59 Stat., 467), the claim of Vernon Lerne Lofstedt has been established and that the requirements of law pertaining to the claim have been met, for the following-described land:

Seward Meridian, Alaska.

T. 12 N., R. 3 W.,

Sec. 33, Lot 191.

The area described contains 2.50 acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management: Dependent Resurvey officially filed April 14, 1952.

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to (1) any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat., 391, 43 U. S. C. sec. 915), and (3) the reservation of a right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under authority of the United States or by any State created out of the Territory of Alaska, in accordance with the act of July 21, 1917 (61 Stat., 418, 48 U. S. C. sec. 321d). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat., 305, 48 U. S. C. sec. 305) Excepting and reserving, also, to the United States, all oil, gas, and other mineral deposits, in the land so patented, together with the right to prospect for, mine, and remove the same according to the provisions of said act of June 1, 1938. This patent is subject to a right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located along the south and east boundaries of said land.

Reserving unto the United States, its permits or license, the right to enter upon, occupy and use, any part or all of said lands for the purposes provided in the act of June 10, 1930, (41 Stat. 1005) and subject to the conditions and limitations of Section 21, of said act, as amended by the Act of August 26, 1935 (49 Stat. 314).

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the FOURTH day of OCTOBER in the year of our Lord one thousand nine hundred and FIFTY-FIVE and of the Independence of the United States the one hundred and EIGHTIETH.

ANCHORAGE DISTRICT, ANCHORAGE, ALASKA

4/5 5 29
JAN 14 1956
FILED FOR RECORD
DISTRICT CLERK
Mr. [Signature]

For the Director, Bureau of Land Management.

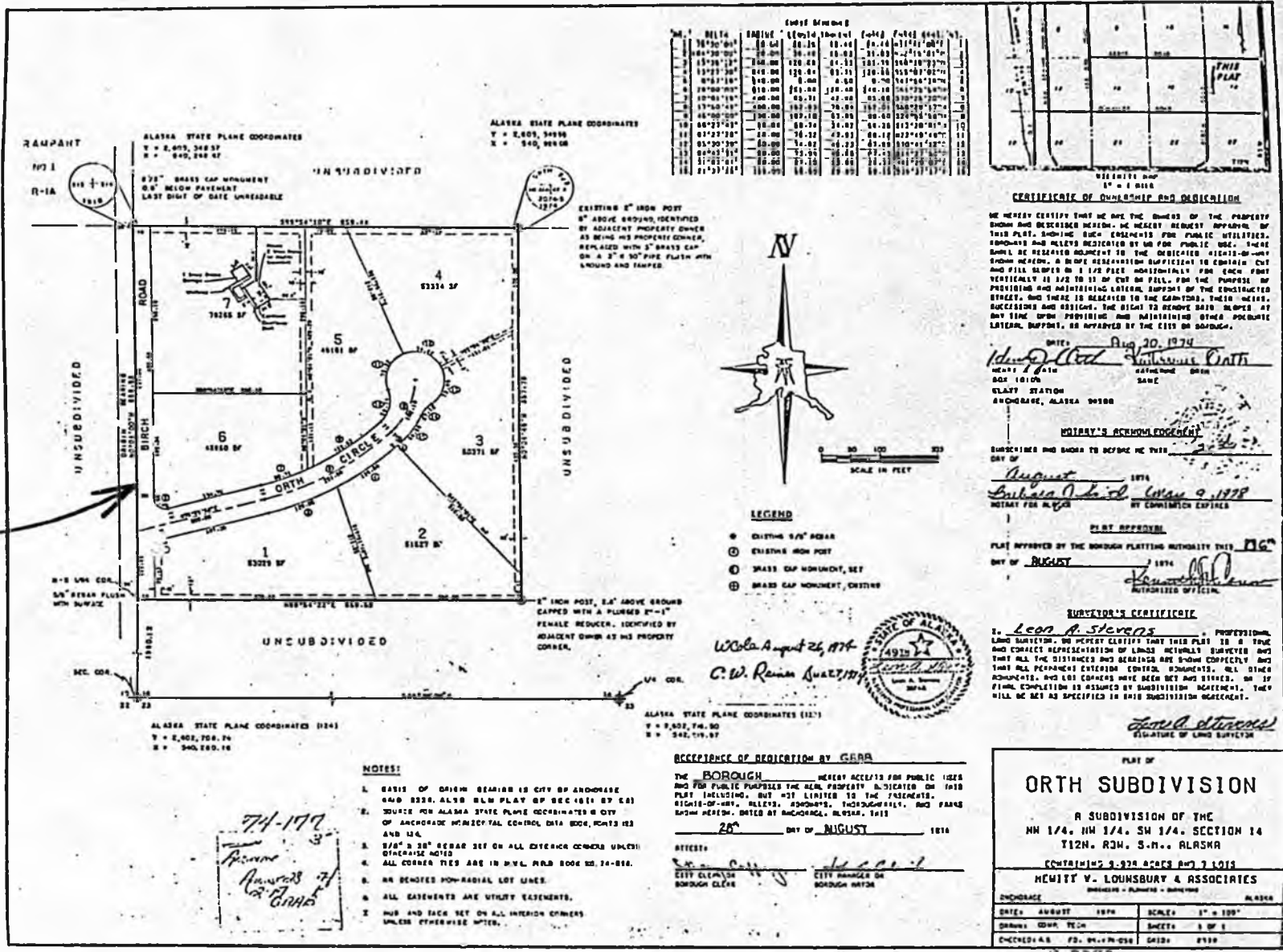
By Rose M. Beall
Acting Chief, Patent Section

Patent Number 1151722

U. S. GOVERNMENT PRINTING OFFICE: 1948-30-2822-2

1955 PATENT WITH 33' RIGHT-OF-WAY
AND R.O.W. FROM 1947 FEDERAL ACT

CHRIS WYATT HOME - LOT 6



EXISTING 2" IRON POST 8" ABOVE GROUND, IDENTIFIED BY ADJACENT PROPERTY OWNER AS BEING HIS PROPERTY CORNER, REPLACED WITH 3" BRASS CAP ON A 2" x 8" WOODEN PLATE WITH GROUND AND TAMPED.

LINE	BEARING	DISTANCE	AREA	PERCENT	BEARING	DISTANCE	AREA	PERCENT
1	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
2	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
3	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
4	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
5	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
6	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
7	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
8	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
9	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
10	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
11	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
12	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
13	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
14	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
15	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
16	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
17	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
18	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
19	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00
20	S 84° 30' 00" W	10.00	36.00	0.00	S 84° 30' 00" W	10.00	36.00	0.00



CERTIFICATE OF OWNERSHIP AND DEDICATION

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREIN. WE HEREBY REQUEST APPROVAL OF THIS PLAT, SHOWING SUCH EASEMENTS FOR PUBLIC UTILITIES, EASEMENTS AND RIGHTS DESIGNATED BY LAW FOR PUBLIC USE. THESE SHALL BE RESERVED SUBJECT TO THE DESIGNATED RIGHTS OF ANY OTHER OWNERS. A MORE DETAILED SURVEY TO DETERMINE CUT AND FILL REQUIRED ON 1 1/2 FOOT HORIZONTALS FOR EACH FOOT VERTICALLY IS 1/2 TO 1 1/2 IN CUT OR FILL, FOR THE PURPOSE OF PROVIDING AND MAINTAINING LATERAL SUPPORT OF THE CONSTRUCTED STREET, AND THERE IS RELIANCE TO THE EASEMENTS, THEIR WIDTH, SUCCESSION AND DESIGN, THE RIGHT TO REMOVE SAID EASEMENTS AT ANY TIME UPON PROVIDING AND MAINTAINING OTHER POSITIVE LATERAL SUPPORT, AS APPROVED BY THE CITY OR BOROUGH.

DATE: Aug 20, 1974
 I, Leon A. Stevens, Surveyor
 do hereby certify that I am a duly qualified Surveyor in the State of Alaska.
 My Commission Expires 1978
 My Office is located at ANCHORAGE, ALASKA 99508

OWNER'S ACKNOWLEDGMENT
 SUBSCRIBER AND SIGNER TO DEEDS HE THIS DAY OF August 1974
Leon A. Stevens
 BY COMMISSION EXPIRES 1978
 SURVEYOR FOR ALASKA

PLAT APPROVED
 PLAT APPROVED BY THE BOROUGH PLATTING AUTHORITY THIS 16th DAY OF AUGUST 1974
Richard L. ...
 AUTHORIZED OFFICER

SURVEYOR'S CERTIFICATE
 I, Leon A. Stevens, PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAT IS A TRUE AND CORRECT REPRESENTATION OF LAND ACTUALLY SURVEYED AND THAT ALL THE DISTANCES AND BEARINGS ARE SHOWN CORRECTLY AND THAT ALL NECESSARY EASEMENT CONTROL, MONUMENTS, AND OTHER REQUIREMENTS AND LEGAL CORRECTIONS HAVE BEEN MADE AND TYPED, OR IF FINAL COMPLETION IS ASSUMED BY SUBDIVISION AGREEMENT, THEY WILL BE SET AS SPECIFIED IN THIS SUBDIVISION AGREEMENT.

Paul Stevens
 SIGNATURE OF LAND SURVEYOR

PLAT OF
ORTH SUBDIVISION
 A SUBDIVISION OF THE
 NW 1/4, NW 1/4, SW 1/4, SECTION 14
 T12N, R3W, S.4.. ALASKA
 CONTAINING 9.879 ACRES AND 7 LOTS
 HEWITT V. LOUNSBURY & ASSOCIATES
 ANCHORAGE - ALASKA - BOROUGH

DATE: AUGUST 1974	SCALE: 1" = 100'
DRAWN: GWA, TCM	SHEETS: 1 OF 1
CHECKED: AB, FD, SM, PM, GSB	GRID: 4130

S-3292



- LEGEND**
- ⊙ EXISTING 2" IRON POST
 - ⊙ EXISTING IRON POST
 - ⊙ BRASS CAP MONUMENT, SET
 - ⊙ BRASS CAP MONUMENT, EXISTING

Witness August 26, 1974
C.W. Raman Surveyor



ACCEPTANCE OF DEDICATION BY GERR

THE BOROUGH HEREBY ACCEPTS FOR PUBLIC USE AND FOR PUBLIC PURPOSES THE AEM PROPERTY DESCRIBED ON THIS PLAT INCLUDING, BUT NOT LIMITED TO THE PARCELS, RIGHTS-OF-WAY, EASEMENTS, ENCUMBRANCES, AND EASEMENTS SHOWN HEREON, DATED AT ANCHORAGE, ALASKA, THIS 26th DAY OF AUGUST 1974

ATTEST:
... City Clerk
... City Manager or Borough Mayor

- NOTES:**
1. BASIS OF ORIGIN BEARING IS CITY OF ANCHORAGE 440 8328. ALSO BLM PLAT OF SEC 10 (1) BY 241
 2. SOURCE FOR ALASKA STATE PLANE COORDINATES IS CITY OF ANCHORAGE MUNICIPAL CONTROL DATA BOOK, MONTHS 123 AND 124.
 3. 3/4" x 3/8" BEARING SET ON ALL EXTERIOR CORNERS UNLESS OTHERWISE NOTED
 4. ALL CORNER TIES ARE IN M.V.L. M.B. BOOK NO. 74-816.
 5. RR BEARINGS NON-RADIAL LOT LINES.
 6. ALL EASEMENTS ARE UTILITY EASEMENTS.
 7. HUB AND RACK SET ON ALL INTERIOR CORNERS UNLESS OTHERWISE NOTED.

74-177
 Received
 August 27
 1974
 C. W. Raman

ALASKA STATE PLANE COORDINATES (124)
 Y = 2,402,708.74
 X = 340,780.16

ALASKA STATE PLANE COORDINATES (121)
 Y = 2,402,746.80
 X = 342,719.87

ALASKA STATE PLANE COORDINATES
 Y = 2,402,348.57
 X = 340,248.47

ALASKA STATE PLANE COORDINATES
 Y = 2,402,348.56
 X = 340,248.46

HIGHWAY RIGHT-OF-WAY

- I. Alaska Highway
- II. Through Roads
 - a. Richardson Highway
 - b. Glenn Highway
 - c. Haines Highway
 - d. Seward-Anchorage Highway (exclusive of that part thereof within boundaries of the Chugach National Forest)
 - e. Anchorage-Lake Spenard Highway
 - f. Fairbanks-College Highway
- III. Feeder Roads

a. Abbert Road	k. North Park Boundary-Kantishna Road
b. Taylor Highway	l. Nome-Council Road
c. Palmer-Matanuska-Wasilla-Knik Road	m. Seward Peninsula-Tram Road
d. Glenn Highway Junction-Fishhook Junction-Wasilla-Knik Road	n. Northway Junction-Airport Road
e. Slana-Nebsana Road	o. Palmer-Finger Lake-Wasilla Road
f. University-Ester Road	p. Central-Circle Hot Springs-Portage Creek Road
g. Kenai Junction-Kenai Road	q. Sterling Landing-Ophir Road
h. Manley Hot Springs-Eureka Road	r. Dillingham-Wood River Road
i. Paxon-McKinley Park Road	s. Nome-Bessie Road
j. Iditarod-Flat Road	
- IV. Local Roads (unidentified by name; 50 feet either side of center line right-of-way)

LIST OF
THROUGH & FEEDER ROADS

FEDERAL ACT OF 1947

418

PUBLIC LAWS—CHS. 313-315—JULY 24, 1947

[01 STAT.]

[CHAPTER 313]

AN ACT

July 24, 1947
[H. R. 1554]

[Public Law 229]

To amend the Act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes", approved June 30, 1932.

Alaska.

48 U. S. C. §§ 321a-327.

Reservation of right-of-way for roads, etc.

Payment for value of crops, etc.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes", approved June 30, 1932 (47 Stat. 446), is hereby amended by adding at the end thereof the following new section:

"SEC. 5. In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska. When a right-of-way reserved under the provisions of this Act is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing them to another site, if less than their value."

Approved July 24, 1947.

FEDERAL AID HIGHWAY ACT - 1970

ALASKAN ASSISTANCE

Sec. 138. (a) Subsection (b) of section 7 of the Federal Aid Highway Act of 1966 is amended to read as follows:

"(b) There is hereby authorized to be appropriated for construction of Federal-aid highways of the State of Alaska, out of the Highway Trust Fund and in addition to funds otherwise made available to the State of Alaska under title 23, United States Code, \$20,-

43. 23 U.S.C.A. § 307(b).

44. 23 U.S.C.A. § 506.

2028

000,000 for each of the fiscal years ending June 30, 1972 and June 30, 1973."

(b) Any right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures reserved by section 321 (d) of title 48, United States Code (61 Stat. 418, 1947), not utilized by the United States or by the State or territory of Alaska prior to the date of enactment hereof, shall be and hereby is vacated and relinquished by the United States to the end and intent that such reservation shall merge with the fee and be forever extinguished.

FEDERAL ACTS OF 1947 & 1970

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 5, 1985

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Request for Opinion on SB 141
Our File: 366-380-85

Dear Mr. Call:

This letter is in response to your request for our analysis of SB 141 which has as its subject matter Public Land Orders 601, 757, 1613 and Department Order 2665.

Public Land Orders 601, 757, 1613 and Department Order 2665 are responsible for the creation of 80 percent of the public road rights-of-way in Alaska. Moreover, the legal validity of the rights-of-way and easements created by these land orders was upheld by the Alaska Supreme Court against numerous legal challenges raised by the Alaska Land Title Association in a case that went all the way up to the U.S. Supreme Court. See Alaska Land Title Association v. State of Alaska, 667 P.2d 714 (Alaska 1983), cert. denied, 104 S.Ct. 704 (1984).

The effect of SB 141 would be to require the state to vacate and relinquish to certain private landowners significant portions of public highway rights-of-way that were created by PLO 601, PLO 757, PLO 1613 and D.O. 2665. Specifically, those portions of the rights-of-way not physically occupied on the effective date of the bill would have to be relinquished by the state.

There are at least two major legal concerns raised by this bill. The first involves article IX, section 6, of the Alaska Constitution. This provision reads as follows:

Section 6. PUBLIC PURPOSE. No tax shall be levied, or appropriation of public money made, or

ATTORNEY GENERAL'S OPINION

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

465-3603

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Legislature
366-380-85

March 5, 1985
Page 2

public property transferred, nor shall the public credit be used, except for a public purpose.

The easement rights created by PLO 601, PLO 757, PLO 1613, and D.O. 2665 are held in common by the general public. These rights, therefore, are a form of public property. The clear effect of Senate Bill 141 is to transfer this public property to certain private individuals. This is so because the bill, while relinquishing public road easements held in common by the general public, bestows the right to the fair market value of these easements upon those private landowners whose property was previously subject to them. See sections 2 and 3 of SB 141. The bill, in effect, transfers public property to private individuals who would not pay anything to the state for the value of the rights transferred to them. Such a transfer, on its face, would appear to violate the public purpose provision of the state Constitution. This is underscored by the fact that the public, if it requires the vacated road easement area for future road improvement, must purchase it back from private ownership. Only these private individuals would benefit from this arrangement and the repurchase costs would probably be significant. Thus, it is difficult to understand how this bill would not violate the public purpose requirement of article IX, section 6, of the Alaska Constitution that must be met whenever public property is transferred. 1/

A second legal difficulty concerns article 1, section 1, of the Alaska Constitution. This provision provides that all persons are entitled to equal rights under the law and, conversely, prohibits unfair distinctions between classes of persons.

1/ Because this bill would eliminate significant portions of public road easements, it would most likely have a negative effect on public access to various areas of the state. As a result, SB 141 appears to be inconsistent with article VIII, sections 1 and 2 of the Alaska Constitution. Article VIII, Section 1 states that it is the policy of the state "to encourage the settlement of its lands and development of its resources by making them available for maximum use consistent with the public interest." Article VIII, section 2 requires the legislature to "provide for the utilization, development, and conservation of all natural resources belonging to the state . . . for the maximum benefit of its people."

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Legislature
366-380-85

March 5, 1985
Page 3

See Ale v. State, 484 P.2d 677 (Alaska 1971); Leege v. Martin, 379 P.2d 447 (Alaska 1963) .

The effect of this bill is to divest the general public of its right to utilize significant portions of the public road easements created by public land orders. Since the effect of this divestment would be to eliminate the public's right to claim these public road easements, only those private individuals owning land fronting on the public roads created by these land orders would benefit from this divestment. That is to say, after the effective date of this bill, the public, acting through the state, would have to purchase from this class of individuals the right to use the same public road easements that were previously owned by the public.

In sum, as matters stand now, the public road rights granted by these land orders are owned by all members of the public in common. Should this bill become law, it would mean that the cash value of these rights, rights which were formerly held by all, would be granted to a class of property owners, i.e., those individual property owners fortunate enough to own land fronting on the very roadways created by these public land orders. Thus the practical effect of this bill is to take away potentially valuable property rights owned by the general public as a whole and bestow the right to the fair market value of these rights upon a class of private individuals. Since article I, section 1 of the Alaska Constitution adopts the principle that "all persons are equal and entitled to equal rights, opportunities, and protection under the law," the granting of special privileges by this bill to a particular class at the expense of the public may very well violate this provision.

At present, only one class of persons exists relative to the public road easements created by these public land orders. This class is made up of members of the general public who own these public road easements in common. Should this bill become law, these easement rights would, in effect, be taken from the general public. 2/ The right to the cash value of these public road easement rights would then be bestowed, not on the general

2/ This "taking" from each member of the public by itself may violate article XIII, section 16 of the Alaska Constitution which provides that "no person shall be involuntarily divested of . . . his interests in lands . . ." unless the divestment is for a public purpose and he is paid just compensation.

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Legislature
366-380-85

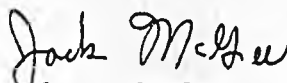
March 5, 1985
Page 4

public as a whole, but on a special class of property owners. This bill, in effect, would create two classes of persons: the class of all those members of the general public who do not own real property fronting on the roadways created by the public land orders and the class of those property owners who do own property fronting on the roadways created by these public land orders. This latter class would then be given the right to the fair market value of the easements previously owned by the entire public. It is likely that such discriminatory treatment is barred by article I, section 1, of the Alaska Constitution.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Jack B. McGee
Assistant Attorney General

JBM:ebc:prm

PERCENTAGE OF AREA SUBJECT TO PLO TAKINGS WITHOUT
COMPENSATION.

Due to the existing Alaska Supreme Court cases indicating that land homesteaded after August 10, 1949 may have the easements taken without compensation, the following are best guess estimates of land in the following areas that would be subject to taking without compensation:

Anchorage - 60%-75%

Kenai - 90%

Fairbanks - 5%-10%

Juneau - 5%-10%

As you can see in the Anchorage and Kenai areas, this means that the majority of the land bordering these roads may be taken without any compensation whatsoever.

OWNERS V. MORTGAGEE'S TITLE INSURANCE POLICY

A point was made at the Hearing 3-6-85 for Senate Bill 141 that banks required insurance policies on most of the urban transactions. However, there is a basic distinction between an owner's policy and a bank's policy known as a mortgagee's policy. The owner's policy insures title to be in the name of the fee owner of the property, e.g. John Smith. The mortgagee's policy does not insure title is held in any particular person, but only insures that the mortgage to the bank has a certain priority as to other recorded instruments. Many times an owner pays for a mortgagee's policy, but does not pay for an owner's policy whereby he is not insured and in fact if loss occurs to the lending institute, the title insurance company may sue the owner under the doctrine of subrogation to recover any losses. Often times, a mortgagee's policy is the only one acquired and that owner's go uninsured as to their property. This is especially true in more rural areas.



STATE OF ALASKA
OFFICE OF THE GOVERNOR

Nov 4

JULIAN BAE

November 19, 1984

Joe
ALTA / N. L. ...

RECEIVED
MAR 7 1985

The Honorable Frank Murkowski
United States Senate
317 Hart Building
Washington, DC 20510

GROH, EGGERS & PRICE

Dear Frank:

I have been informed that representatives of the Alaska Land Title Association (ALTA) may ask you to consider introducing legislation concerning highway easements created by public land orders and department orders issued by the Department of Interior from 1943 through 1958. I am writing to let you know of our strong opposition to such legislation, for the reasons detailed below.

The central issue is whether existing State and federal statutes limit the State's right to utilize public road easements granted by particular public land orders and department orders. The Alaska Supreme Court has clearly disagreed with ALTA's view that existing laws (the Alaska Right-of-Way Act of 1966 and AS 34.15.290) prohibit the State from utilizing the powers granted in Public Land Order 601 and Department Order 2665 to expand or widen public roads. In January 1984, the U.S. Supreme Court denied ALTA's request to review the Alaska Supreme Court decision.

With statehood, the road powers originally granted by a series of Department of Interior public land orders and department orders were transferred to the State. In 1966, the Alaska Legislature limited those powers. The Alaska Legislature has recently considered legislation further limiting those powers but has not acted on it to date. We believe that federal legislation in this area would be an unwarranted intrusion into matters best addressed, if necessary, at the State level.

The Alaska Department of Transportation and Public Facilities estimates that the total monetary impact to the State's road program could ultimately reach several hundred million dollars if the ALTA proposal were enacted.

The Honorable Frank Murkowski

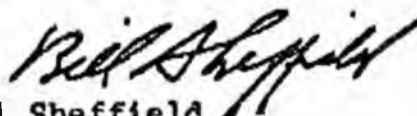
Page Two
November 19, 1984

Property owners purchase title insurance precisely to protect themselves from the problems presented by the present situation. To enact legislation absolving the title industry of its responsibilities for this issue would simply shift the costs that the private entity has agreed to bear by contract on to the public.

The Alaska Supreme Court's decision in this matter also determined that the publication of the Department of the Interior orders in the Federal Register provided proper notice and that the title industry should have been cognizant of the effect of the orders. It should be noted that title companies now exempt these rights-of-way from their insurance policies. Consequently, they have already taken steps to limit their contractual liability.

I appreciate your consideration of our views. Please let me know if you have any questions or comments.

Sincerely,



Bill Sheffield
Governor

cc: The Honorable Ted Stevens
United States Senator

The Honorable Don Young
United States Representative

The Honorable Norman Gorsuch
Attorney General

The Honorable Richard Knapp
Commissioner
Department of Transportation
and Public Facilities

Mr. John W. Katz
Director, Washington D.C. Office



U.S. Department
of Transportation
**Federal Highway
Administration**

Alaska Division

P.O. Box 1648
Juneau, Alaska 99802

March 8, 1985

HDA-AK
013

R. J. Knapp, Commissioner
Alaska Department of Transportation
and Public Facilities
Juneau, Alaska

Dear Commissioner Knapp:

Senate Bill 141

The enclosed is a paper Gary Wilson did for me explaining the differences in 1947 Act easements and Public Land Order (PLO) easements. Since the 1947 Act easements in essence no longer exist I think it would be helpful to all of us if discussions, including examples, only referred to PLO easements.

Our office would certainly be willing to work with you in resolving this issue. The resolution would seem to tie in with your plan to develop an immediate, intermediate, and long term program of proposed improvement projects. Once this is done you could determine which of the proposed improvements involve PLO easements. We could then agree to the number of lanes needed, and a typical section, including shoulders and ditches; plus any additional areas needed to maintain your roadway. Lands beyond what we agree are needed could then be unencumbered by PLO easements.

The mechanics of how this could be recorded needs to be explored. For instance, could the right-of-way lines be established from areial photography and mathematical calculations? Would something like this be recordable? If so, this could be done rather quickly. However, if a physical survey is needed I can see this resolution would be quite costly and time consuming.

If at some later date it was determined lands outside our agreed to right-of-way limits were needed for a roadway improvement, we would participate in the acquisition even though it may be lands previously included in Public Land Orders.

Sincerely yours,

Barry F. Morehead
Division Administrator

COPY

Enclosure



U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

Subject: Senate Bill 141

Date: March 7, 1985

From: Division Right-of Way Officer
Juneau, Alaska

Reply to
Attn. of: HRW-AK
013

To: Mr. Barry F. Morehead
Division Administrator
Federal Highway Administration
Alaska Division
Juneau, Alaska

The testimony and material presented at the Senate Committee hearing on March 6, 1985 confused Public Land Order (PLO) right-of-way with "47 Act" right-of-way. The pertinent differences that were not explained are:

- "47 Act":
1. Was established by an Act of Congress effective 7/24/47 and codified into 48 USC, Section 321.d. It reserved from subsequent lands patented, a right-of-way. The right-of-way was available to the United States or any state created out of the Territory of Alaska.
 2. It was repealed by Public Law 86-70, the Alaska Omnibus Act, effective July 1, 1959, however, the reservation contained in patents issued between 1947 and 1959 remained valid.
 3. It was specifically noted in patents issued between 1947 and 1959.
 4. Specific areas or locations were not identified in the patents.
 5. The State of Alaska relinquished their right to any unutilized reservations by the Alaska Right-of-Way Act of 1966.
 6. The Federal Government relinquished their right to any unutilized reservations by Section 138 of the Federal-aid Highway Act of 1970.

PLO: 1. Established a withdrawal from Public domain which was subsequently changed to an easement and established and/or revised corridor widths by:

Executive Order 9145 dated 4/23/42.
PLO 12 dated 7/20/42
PLO 84 dated 1/28/43
PLO 270 dated 4/5/45
PLO 386 dated 7/31/47
PLO 601 dated 8/10/49
PLO 757 dated 10/16/51
Secretarial Order 2665 dated 10/16/51
Amendment #1 to 2665 dated 7/17/52
Amendment #2 to 2665 dated 9/15/56
PLO 1613 dated 4/7/58

The above were issued by the Executive Branch rather than the Congress.

2. They established the original corridor for the Alaska and Glenn Highways. They withdrew from Public Domain a specific width corridor along existing highways. They changed the withdrawals to easements.
3. The withdrawals or easements were not identified in patents issued by the Federal Government nor were they recorded.
4. The withdrawals or easements were not affected by the Alaska Right-of-Way Act of 1966 or Section 138 of the Federal-Aid Highway Act of 1970. The hearings and introductory remarks pertaining to these pieces of legislation always referred to 48 USC, Section 321d or the "47 Act" with no mention of Public Lands Orders.

In summary, the "47 Act" reserved an area from the land patented but did not identify where it was. The PLO's created an easement over the land and located it by designating the highway name and corridor width.

The question of payments and reimbursement was raised but not sufficiently answered.

Prior to 1966:

the State of Alaska did not pay for land utilized under provisions of the "47 Act" or within the PLO corridors. Since there was no expense, there was no federal-aid reimbursement.

Mr. Morehead

-3-

March 7, 1985

From 1966 to 1970:

the State of Alaska paid fair market value for right-of-way covered by the "47 Act" but there was no federal-aid reimbursement for these expenses (see attached listing of parcels and amounts expended prior to 5/1/67).

The State of Alaska did not pay for land within the PLO corridors.

From 1970 to the present

the State of Alaska has paid fair market value for right-of-way covered by "47 Act" and federal-aid funds have participated in the expense.

The State of Alaska has not paid for land within the PLO corridors.



Gary E. Wilson

Attachment

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES	
S-0461(1) <i>Ninilchik</i>	10	X		\$ 2,300.00		
	16	X		625.00		
	4	X		65.00		
S-0490(2) <i>North Kenai Road</i>	30		X	176.40		
	12		X	205.83		
	15		X	206.25		
	17		X	165.00		
	20		X	206.25		
	32		X	139.65	\$1,800.00	
	24		X	173.25		
	72L	X		2,226.00	1,000.00	
	11			X	165.53	
	18			X	247.50	
	23			X	123.25	
	34			X	147.50	66.53
	4	X			772.87	
	9			X	209.10	
	10			X	208.00	
	13			X	165.00	
	14			X	206.25	
	16			X	247.50	
	19			X	206.25	
	21			X	173.25	
	22			X	173.25	
	25			X	173.25	
	26			X	151.80	
	27			X	151.80	
	28			X	173.25	
	29			X	174.30	
	31			X	139.65	
	33			X	200.40	
	70	X			1,898.20	
	70C	X			825.00	
	70D	X			127.60	
	72	X			7,384.50	
	62			X	2,225.00	
63	X			3,000.00		
63A	X			132.00		
63B	X			75.00		
66	X			2,350.00		
69	X			3,038.00	229.00	
70A	X			1,125.00		
70B	X			800.00		
72B	X			70.00		
72E	X			240.00		
72H	X			459.00	177.00	
72J	X			740.00	230.00	

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
S-0490 (2)	72M	X		\$1,042.50	\$ 500.00
	72G	X		330.00	
	72N	X		341.00	
	72K	X		330.00	
	72A	X		975.00	
	65	X		1,682.00	
	72F	X		354.00	
	72D	X		1,050.00	
	59	X		650.00	
	67	X		150.00	
S-0501 (1) <i>Girdwood - Alyeska</i>	30		X	1,250.00	
	7		X	137.84	
	15		X	193.42	
	17		X	195.05	
	26		X	368.47	
	14		X	194.23	
	21		X	255.80	
	6		X	289.70	
	16		X	195.86	
	23		X	239.89	
24		X	276.85		
S-0512 (2) <i>O'Malley Road</i>	1109		X	629.75	
	1067		X	755.70	
	1110		X	2,516.33	
	1111		X	755.70	
	1114		X	629.75	
	1402		X	629.75	
	1120		X	7,000.00	
S-0547 (6) <i>Lake Otis Road (Tudor to Dowling)</i>	16		X	1,222.84	4,980.96
	17		X	1,023.56	
	10		X	586.73	
	22		X	6,263.75	
	4	X		34.50	
	9		X	925.65	
	11		X	806.70	
	12		X	648.00	
	14		X	970.00	
	15		X	562.50	
19		X	1,056.00		
S-0520 (8) <i>Diamond Blvd (Jewel Lake West)</i>	5A	X		475.00	
	5B	X		790.00	
	20	X		1,700.00	
	5	X		1,500.00	
	5C	X		545.00	
	5D	X		1,625.00	
	8	X		1,100.00	
	10		X	1,450.00	
	4	X		875.00	
	7		X	650.00	

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
S-0549(1) <i>Abbot Road</i> <i>(4 Miles South</i> <i>of Anchorage)</i>	12		X	\$ 276.00	
	13		X	296.22	
	14		X	296.22	
	15		X	265.88	
	16		X	265.88	
	17		X	296.22	
	18		X	296.22	
	19		X	463.59	
S-0959(1) <i>North Douglas</i> <i>Highway</i>	12		X	33.43	
	15		X	40.80	
	16A		X	41.15	
	17A		X	29.48	
	20A		X	570.06	
	21		X	223.52	
	22		X	186.00	
	23		X	165.76	
	28		X	56.65	
	29		X	54.79	
	S-0970(2) <i>Fritz Cove</i> <i>Road (Tuneau)</i>	6		X	116.76
7			X	275.04	
9			X	1,342.00	
10			X	2,044.50	
15			X	16.63	
17			X	32.55	
18			X	26.39	
22			X	1,252.80	
23			X	1,037.70	
24			X	494.96	
24A			X	186.90	
28		X	1,276.92		
F-021-1(3)	096	X		1,623.65	
<i>Niailalik to Soldotna</i>					
F-021-1(14) <i>Homer Streets &</i> <i>Homer Spit</i>	6		X	1,323.00	
	7		X	652.40	
	8		X	652.40	
	9		X	1,401.00	
	22		X	320.00	
	23		X	3,431.00	
	25		X	5,813.00	
	27		X	3,440.98	
	28		X	1,197.70	
	20		X	2,070.00	
	21		X	241.00	
	20A		X	35.00	
	17		X	2,314.00	
	18A		X	384.00	
26 & 27A		X	1,128.57		

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
F-062-4(11)	29	X		\$966.85	
Shaw Creek to	31	X		765.50	
Eielson AFB	28		X	903.87	
(Fairbanks)	30		X	440.00	
	32		X	529.65	
	33		X	701.80	
F-095-8(5)	13	X		5,252.00	
Jensen Outer Drive					

1947 act land \$54,681.17

Small Tracts \$ 85,402.16

54,681.17

Total to May 1, 1967 \$140,083.33

April 10, 1985

MEMORANDUM

To: Senator Coghill
From; John Manly
Re: Conversation with Clif Groh

I spoke with Clif Groh this afternoon regarding SB 141, as you requested and with the following result: He said that they are apparently not going to get much out of the Congressional delegation, as they have "bigger fish to fry". Their next move is to prepare a proposed resolution for introduction by you that would ask two things of the federal government. First, that the federal government recognize the PLO easements as having been created as a result of the 1947 Act, and then that the Federal Highway Administration be directed to participate in compensating for the easements, as passed by the 1970 Act.

Clif said Mike Price and Mike Condon are working on the resolution and he would have the draft in the mail to us by Friday. I told him you would be out of town until Wednesday, but that I would get the draft in the works and out of Legal Services by the time you got back, so it could be introduced next week.

LAW OFFICES OF
GROH, EGGERS & PRICE
550 WEST SEVENTH AVENUE, SUITE 1250
ANCHORAGE, ALASKA 99501

CLIFFORD J. GROH
KENNETH P. EGGERS, P. C.
MICHAEL W. PRICE
LANCE E. GIDCUM
SALLY KUCKO

MICHAEL P. CONDON
SEMA E. LEDERMAN
ROBERT T. PRICE
ROBERT P. OWENS

TELEPHONES
(907) 272-6474
(907) 274-9547

March 21, 1985

MAR 21 1985

Senator Ted Stevens
United States Senate
522 Hart Building
Washington, D.C. 20510

Senator Frank H. Murkowski
United States Senate
Hart Building
Washington, D.C. 20510

Congressman Donald E. Young
2331 Rayburn House Office Bldg.
Washington, D.C. 20515

Re: PLO 601 and 1613

Gentlemen:

I am addressing this joint letter to you to update our attempts to pass State legislation solving the public land order highway easement issue which has been the subject of both previous correspondence and personal meetings. We have introduced State legislation and met on several occasions, with both the Governor and his Commissioner of Transportation, Richard Knapp, in an effort to solve this problem for the people of the State of Alaska. Unfortunately, I cannot report any significant progress between the State Administration and us to eliminate the unfairness of these undisclosed, federally-created easements.

As you are aware, Governor Sheffield has asked the Alaska Congressional Delegation to refrain from introducing federal legislation and contending that this is a State problem that is to be solved intrastate. However, the Administration's efforts so far have been limited to a preliminary agreement that the State might pay for improvements constructed within the rights-of-way if accompanied by federal agreements to allow federal matching to reimburse the State for those expenses.

Senator Jack Coghill introduced Senate Bill 141, a Committee Substitute of which is enclosed for your reference. This bill calls for the State of Alaska to not give up the easements, but

Senator Ted Stevens
Senator Frank Murkowski
Congressman Donald E. Young
March 21, 1985
Page 2

only pay compensation for that portion taken beyond the recorded and recognized easements in any given year for widening projects. We believe, with federal matching funds at approximately 95%, this would result in minimal fiscal impact to the State on an annualized basis. However, in an attempt to simply kill the bill, the Administration has furnished to the Legislation a \$227 million per year fiscal note which totals over one billion dollars over a five year period. I respectfully suggest that Governor Sheffield's letter stating that the matter should be handled in-state was an attempt to place the issue in a forum that he more readily controls and one where he could easily kill the substantive aspects of the bill.

The Administration tentatively has agreed to support a compromise that would call for the State of Alaska to pay (with federal matching funds available as a condition) for "improvements." This would not compensate such people as Otto Schneider who purchased from the federal government a five acre tract north of Homer and subsequently had the Sterling Highway take 1.82 acres of it without compensation. Mr. Schneider's patent was silent as to any PLO easements.

As Commissioner Knapp explained to us, even if the federal government were to contribute 100 cents on the dollar for takings of these highway rights-of-way under the federal matching fund program, he would not support our Senate Bill 141 because his total contribution per year is limited to \$150 million and that every federal dollar he spends for highway right-of-way acquisition is one less dollar he can spend on highway construction. We feel this attitude is somewhat harsh in light of his testimony before the Alaska Senate Transportation Committee where he admitted that the easements were not shown in the patents, that homeowners are not aware of their existence, and in organized boroughs or municipalities, the owners have been paying taxes on the property as if no easement existed. This is not to mention the fact that the various people in the State paid for the property when they purchased the property as if no easement existed.

The only time we get any significant reaction from the Administration is when we mention the possibility that the Congressional Delegation will attempt to pass a bill to declare that taking of these easements are void as violative of the United States Constitution. The only other alternative which might succeed would be a combination of pressure from the Congressional Delegation on the Administration in combination

Senator Ted Stevens
Senator Frank Murkowski
Congressman Donald E. Young
March 21, 1985
Page 3

with a special appropriation to the State of Alaska of either 100 cents on the dollar for these particular highway acquisition costs or a one time appropriation to the State in recognition of the fact that the errors were originally created by the federal government. These bills could be combined in the same effort to solve the PLO 1613 repurchase program which I am sure all of your staffs are working on for disgruntled constituents.

Quite frankly, the bottom line is our client, and the people of the State of Alaska, need the Congressional Delegation's help either through introduction of the bill or pressure on the Administration to be more reasonable than they have so far demonstrated. The only other item which might be of some help would be if U.S. Department of Transportation were to give an opinion that PLO 601, 757, 1613 and Department Order 2665 were issued pursuant to the authority of and were to be interpreted as 1947 Act Reservations (48 USC 321(d)). With such an opinion we could attempt to convince either the Legislature, Alaska Department of Transportation and Public Facilities or the Courts of the State that the Right-of-Way Act of 1966 and Senator Steven's bill of 1970 have already taken care of the problem.

Unfortunately, we need to know what the Congressional Delegation can do, if anything, to help us. Because of the time constraints of the Alaska Legislature, we need to know that as soon as possible.

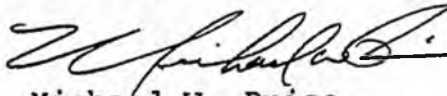
Gentlemen, would you please consider the potential solutions and advise us as soon as practicable. Of course, we will be more than willing to meet with you either in Anchorage or Washington, D.C. to discuss this complicated situation in more detail if you think that necessary.

Sincerely,

GROH, EGGERS & PRICE



Clifford J. Groh



Michael W. Price

:hf

cc: ALTA Steering Committee
Local ALTA
✓ Peter Miller
✓ Senator Coghill

IN THE SENATE

BY COGHILL

SPONSOR SUBSTITUTE FOR

SENATE BILL NO. 141

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act requiring just compensation for the utilization of certain rights-of-way and providing for an effective date."

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

* Section 1. LEGISLATIVE PURPOSE AND FINDING. The purpose of this Act is to provide just compensation to land owners in Alaska who are suffering economic hardship and physical and mental distress by virtue of the state utilizing certain rights-of-way created, withdrawn or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. sec. 321(d) (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 15 Fed. Reg. 10, 752 (1951).

* Sec. 2. TAKING OF PROPERTY WITHOUT COMPENSATION IS BARRED. After the effective date of this Act, no agency of the State may take, utilize, or occupy any right-of-way for a road, roadway, highway, tramway, trail, bridge, or appurtenant struc-

ture created, withdrawn or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(d) (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951) beyond that portion physically occupied by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure on the effective date of this Act, without payment of just compensation.

* Sec. 3. PHYSICAL OCCUPATION OF RIGHT-OF-WAY. (a) The provisions of this Act do not require the State to pay compensation for land physically occupied on the effective date of this act by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure constructed within the right-of-way created, withdrawn, or reserved under the Acts of Congress and the orders described in sec. 2 of this Act; nor do the provisions of this Act require the payment of compensation by the state for taking, utilizing or occupying an interest in an easement of specific width set out in the original patent from the state or federal government, whether or not physically occupied on the effective date of this Act.

(b) Expansion beyond an existing road, roadway, highway, tramway, trail, bridge, or appurtenant structure requires the payment of just compensation to the owner of the land only to the extent that the state actually takes, utilizes or occupies beyond

the physical occupation as of the effective date of this Act. The state has the burden of proof to show by clear and convincing evidence the extent of the physical occupation which occurred before the effective date of this act.

* Sec. 4. APPLICATION TO FEDERAL LAND. The provisions of this Act do not require that the state pay compensation for taking, utilizing or occupying a right-of-way that affects land in which fee title is, on the date of the taking, utilization or occupation, vested in the United States of America.

* Sec. 5. DEFINITION. As used in this Act, "physically occupied" means the construction of the actual roadway, including its shoulders and ditching, highway, tramway, trail, bridge, or appurtenant structures, before the effective date of this Act.

* Sec. 6. RETROACTIVE APPLICATION. This Act does not relieve, alter, or void a voluntary conveyance of an easement including an easement dedicated by plat.

* Sec. 7. EFFECTIVE DATE. This Act takes effect immediately in accordance with AS 01.10.070(c).

14-1108
Moen
4/18/85 ✓

NO

1
2 IN THE SENATE

BY COGHILL

3 SENATE JOINT RESOLUTION NO.

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 FOURTEENTH LEGISLATURE - FIRST SESSION

6 Relating to the payment of just compen-
7 sation to landowners for certain rights-
8 of-way across land in Alaska.

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

10 WHEREAS the Federal Government created certain rights-of-way for
11 highway purposes across land in the state under Public Land Order 601,
12 Public Land Order 757, Department Order 2665, and Public Land Order 1613;
13 and

14 WHEREAS the rights-of-way created by the Federal Government were not
15 identified in the patents issued to Alaska homesteaders nor were the
16 original homesteaders informed as to the location or true width of the
17 rights-of-way claimed for highway purposes by the Federal Government across
18 their land; and

19 WHEREAS the original homesteaders and their successors in interest
20 have had no knowledge of the claim of the Federal Government to the rights-
21 of-way along or across their properties and have often utilized and im-
22 proved the portion of the right-of-way claimed by the Federal Government;
23 and

24 WHEREAS the enforcement of the rights-of-way would be unfair to home-
25 steadereaders who entered their property between August 1949 and Alaska state-
26 hood in 1959; and

27 WHEREAS the rights-of-way created by the Federal Government were not
28 recorded in any territorial or state recording office for the purpose of
29 public notice; and

WHEREAS the right to utilize the rights-of-way for highway purposes

1 was conveyed to the state in 1959; and

2
3 WHEREAS the United States Department of Transportation has declined to
4 pay federal highway funds to the state to allow the state to pay just
5 compensation to the landowners whose properties are affected by the rights-
6 of-way; and

7 WHEREAS U.S. Senator Ted Stevens has attempted in the Federal Aid
8 Highway Act of 1970, sec. 138, to require the United States Department of
9 Transportation to compensate the State of Alaska for money paid as just
10 compensation for the taking and utilization of the rights-of-way;

11 BE IT RESOLVED by the Alaska State Legislature that the Alaska delega-
12 tion to U.S. Congress introduce and support legislation to require
13 reimbursement by the United States Department of Transportation of the
14 State of Alaska for money paid by the state as just compensation for the
15 use of any right-of-way created, established, or claimed under Public Land
16 Order 601, Public Land Order 757, Department Order 2665, and Public Land
17 Order 1613; and be it

18 FURTHER RESOLVED by the Alaska State Legislature that the Alaska
19 delegation requests that Congress enact legislation preventing the Federal
20 Government or any successor-in-interest from utilizing the rights-of-way
21 without paying just compensation to the landowner.

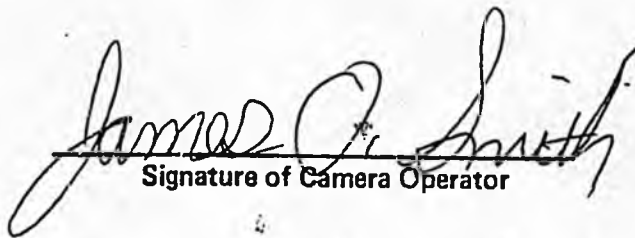
22 COPIES of this resolution shall be sent to the Honorable Ted Stevens
23 and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don
24 Young, U.S. Representative, members of the Alaska delegation in Congress.

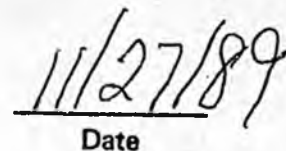


RECORDS CERTIFICATION



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


Signature of Camera Operator


Date

S B

1 7 5

sb 175 amend xx1

PROPOSED AMENDMENT

TO

SB 175

On page 1, line 11, delete "\$18,500,000" and
insert in its place "\$13,000,000"

On page 1, line 12, delete "\$925,000" and
insert in its place "\$650,000"

On page 1, line 14, following the period (.), insert:

"The monies are to be allocated to Alternative A."

PROPOSED AMENDMENT

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921



Senator Jan Falks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Senate Committee on Transportation

MEMORANDUM

To: Committee Members

From: Committee staff *jm*

Date: April 1, 1985

Re: SB 175

SB 175 proposes to appropriate \$18.5 million (of which less than \$1 million would be from the general fund) to design and construct the DeArmoun-Rabbit Creek Interchange in south Anchorage.

This project has had a substantial amount of work done on it in the past several years, including required public hearings, environmental impact statement and preliminary engineering. The State has chosen Alternative 'C' as its preferred alternative, has received FHWA approval for it, and is proceeding with that design. DOT/PF is also acquiring right-of-way necessary for the project.

SB 175 was introduced to fund Alternative 'C', although it was also included in the Governor's FY 86 budget request. However, Senator DeVries has indicated she would now prefer to fund Alternative 'A', and has proposed an amendment to do so. She has based this decision, she said, on input from effected landowners and on the alternative's lower cost.

DOT/PF has indicated that, in view of the work done on Alternative 'C' to date, to change to Alternative 'A' at this point would probably set the project back 2 to 3 years, and would likely effect federal funding.

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
CENTRAL REGION

JAY S. HAMMOND, GOVERNOR

4111 AVIATION AVENUE
POUCH 6900
ANCHORAGE, ALASKA 99502
(TELEX 28-188)

Alternative "A"

Date: 1-8-82
Prepared By: EQD

PRELIMINARY CONSTRUCTION COST ESTIMATE FOR:

Project: DeArmon & Rabbit Creek Interchange
From: _____ (MP) TO: _____ (MP)

Total Length: 1.5 Miles

Location and Description: Construction of a full diamond interchange at DeArmon Rd & New Seward Hwy intersection and eliminating Rabbit Cr Rd. Old Seward Hwy intersection with the construction of a two way Frontage Road to the east bet. DeArmon Rd & Rabbit Cr Rd. Upgrading New Seward Hwy into 4 lanes

Current ADT: _____ Design ADT: _____

Required Width: _____ Actual Width: _____

Assumed Structural Section H.A.P.: 4 in.

C.A.B.: 9 in.

Borrow: Varies in.

Estimated Costs (1981 Dollars) Based Upon Above Assumptions:

1. Construction Estimate:	\$	<u>7,907,294</u>
2. Construction Administration (<u>12%</u> of 1):	\$	<u>948,875</u>
3. Subtotal:	\$	<u>8,856,169</u>
4. Preliminary Engineering (<u>6%</u> of 1):	\$	<u>474,438</u>
5. Right of Way (\$ _____ /Acre):	\$	<u>1,204,060</u>
6. Utilities:	\$	<u>423,600</u>
7. Subtotal:	\$	<u>10,963,267</u>
8. Contingencies (<u>5%</u> of 7):	\$	<u>548,163</u>
TOTAL:	\$	<u>11,511,430</u>

Sheet 1 of _____

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
CENTRAL REGION

4111 AVIATION AVENUE
POUCH 6900
ANCHORAGE, ALASKA 99502
(TELEX 23-188)

Alternative C

Date: 1-8-82
Prepared By: EGD

PRELIMINARY CONSTRUCTION COST ESTIMATE FOR:

Project: SE Armodu & Rabbit Creek Interchanges
From: _____ (MP _____) TO: _____ (MP _____)

Total Length: _____

Location and Description: Upgrading New Semard Hwy into 4 lanes. A construction of a partial diamond interchange at SE Armodu Rd intersection and a full interchange at Rabbit Cr. Rd - Old Sem. Hwy intersection.

Current ADT: _____ Design ADT: _____

Required Width: _____ Actual Width: _____

Assumed Structural Section H.A.P.: 4" in.

C.A.B.: 9" in.

Borrow: Varies in.

Estimated Costs (1981 Dollars) Based Upon Above Assumptions:

1. Construction Estimate:	\$ <u>12,380,264</u>
2. Construction Administration (<u>12%</u> of 1):	\$ <u>1,725,632</u>
3. Subtotal:	\$ <u>16,105,896</u>
4. Preliminary Engineering (<u>6%</u> of 1):	\$ <u>862,816</u>
5. Right of Way (\$ _____ /Acre):	\$ <u>5,365,600</u>
6. Utilities:	\$ <u>762,750</u>
7. Subtotal:	\$ <u>23,103,062</u>
8. Contingencies (<u>5%</u> of 7):	\$ <u>1,155,153</u>
TOTAL:	\$ <u>24,258,215</u>

Sheet 1 of _____

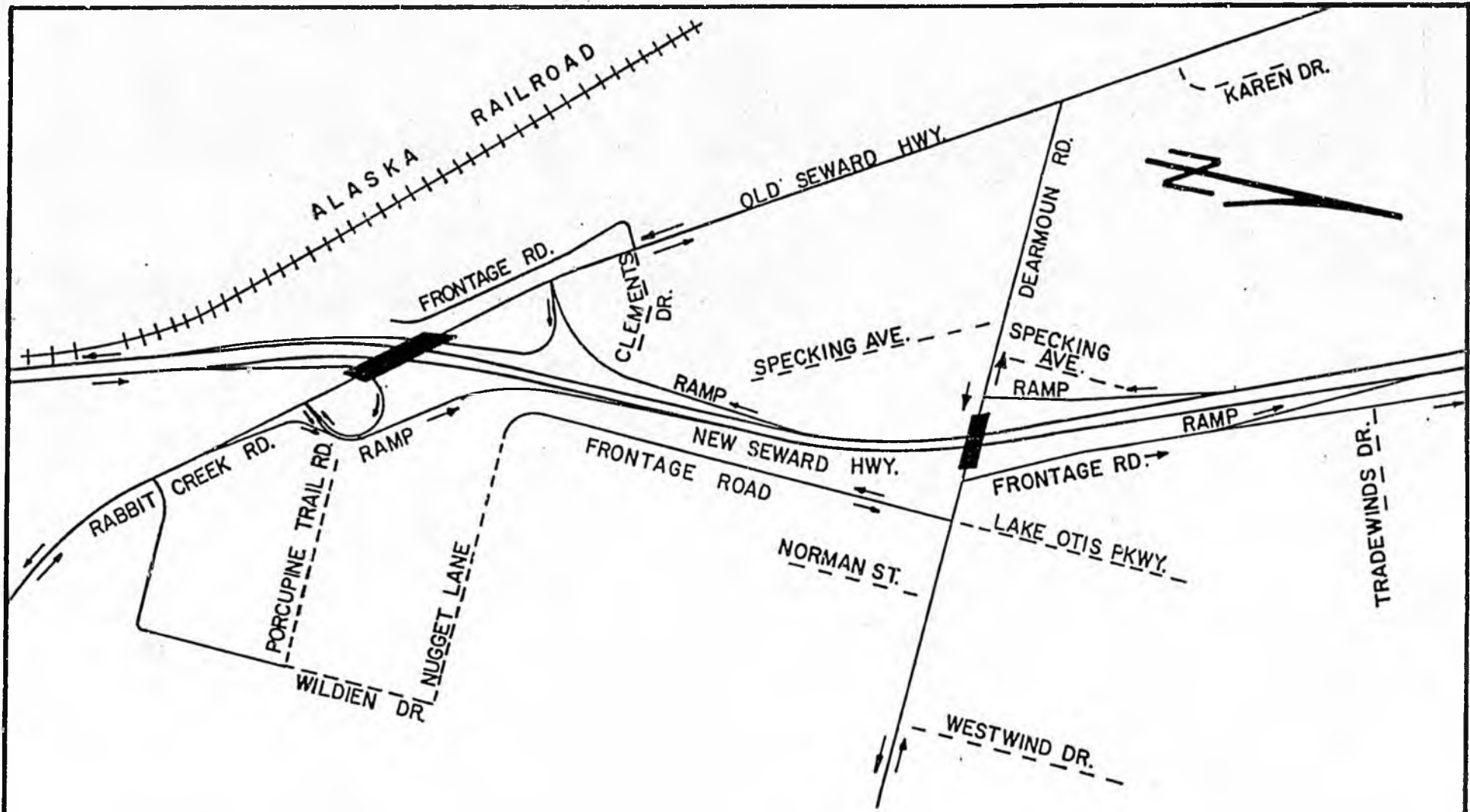
of the existing development.

The five alternatives under consideration present a number of interchange configurations. Traffic projections for each of these configurations have been included in Appendix A.

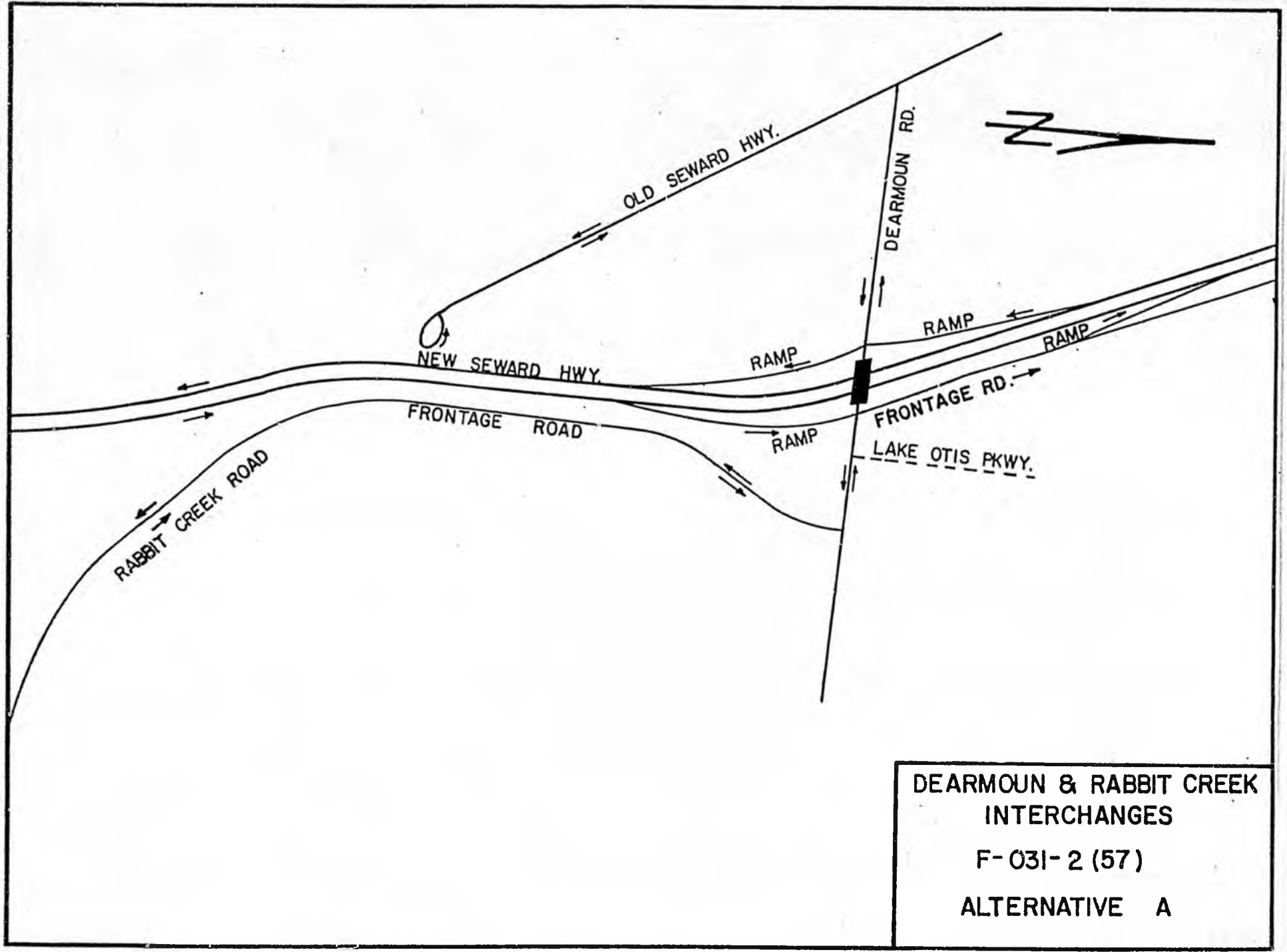
All of the alternatives would construct an at-grade intersection serving the driveway of the Rabbit Creek Rifle Range and the road which provides access to the property east of the highway. A median opening and left-turn storage lanes would be provided at this location. There is a possibility that an increase in traffic volumes will make it desirable to close this median opening at some time in the future.

ALTERNATIVE A

This proposal calls for the construction of a full diamond interchange at the DeArmoun Road Intersection and the elimination of the Old Seward Highway Intersection. The Old Seward Highway west of the New Seward Highway would be dead-ended and provided with a cul-de-sac. Rabbit Creek road will be connected with the two-way frontage road east of the New Seward Highway. This frontage road will be realigned so that its proposed intersection with DeArmoun Road will be farther east than its existing intersection. This was done in order to provide better spacing between this intersection and the ramp intersection. This alternative would make it necessary for area residents wishing to travel from the Old Seward Highway to Rabbit Creek Road to do so by way of DeArmoun Road.



DEARMOUN & RABBIT CREEK
INTERCHANGES
F- 031-2 (57)
ALTERNATIVE C



DEARMOUN & RABBIT CREEK
INTERCHANGES
F-031-2 (57)
ALTERNATIVE A

Valdez Chamber of Commerce

P.O. Box 512 • Valdez, Alaska 99686 • Phone 835-2330

October 26, 1984

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

Dear Governor Sheffield;

This letter is to express the Valdez Chamber of Commerce's support for the City of Valdez REQUEST FOR FUNDING of the following CAPITAL PROJECTS:

1. Commercial Boat Harbor
2. Prince William Sound Community College
3. Museum Addition
4. Ice Skating Rink
5. National Guard Armory
6. New Jail Addition
7. Upgrading Richardson Highway
8. Small Boat Harbor Slips
9. Valdez Industrial Park
10. Small Boat Harbor Grid
11. Handicap Curbs
12. Dayville Road Boat Ramp

Thank you for your positive considerations to these projects.

Respectfully,



William J. Simpson
President

CHAMBER OF COMMERCE PRIORITIES

Small Boat Harbor Expansion

This project is the development of the final phase of the existing Valdez Small Boat Harbor. At the time of the original Corps of Engineers Valdez boat harbor construction, the general area to the east of the original boat harbor was left undeveloped for future harbor expansion. The area of the proposed expansion site is presently at elevation to a depth of -13 feet (MLLW) which will be consistent with the bottom of the existing small boat harbor area. The excavation consists of the removal of approximately 298,000 cubic yards of soil in the harbor area.

Material removed from the harbor expansion area would be located on the Port of Valdez side of the existing spit that now separates the boat harbor from the port. This area was used as a site for disposing of the dredge material from the original boat harbor.

The widening of the spit area, at a City owned location, would facilitate the creation of a waterfront area for uses compatible with the City's Coastal Zone Management plan. These intended uses include the storage and dry docking of recreational and commercial boats; the storage of commercial fishing gear; and a parking and staging area. The limited amount of land available near the small boat harbor doesn't assure a place for parking boat trailers or pulling boats out of the water for minor repairs. This site is also designated as a potential long range planning site for expanded fin fish and shellfish processing facilities.

The intended use for the expanded boat harbor area would be to provide additional moorage capacity for private and small commercial boats. The facility would be owned and operated by the City of Valdez as it is the final phase of the small boat harbor project. A conceptual drawing of the expanded small boat harbor is shown in 'Figure 1'

The Valdez Small Boat Harbor expansion project is a positive development activity for the continued planned growth of the City of Valdez. The additional facilities support the commercial and recreational fishing populace and are expected to be beneficial to the local economy.

The existing small boat harbor currently has the following number of berths available:

<u>Length (ft)</u>	<u>Number</u>
50	33
42	34
32	84
24	108
20	98

On these berths, the occupancy rate on a year round basis is relatively high particularly in the larger boat lengths:

<u>Length (ft)</u>	<u>Occupancy Percentage</u>
50	100
42	90
32	65
24	40
20	30

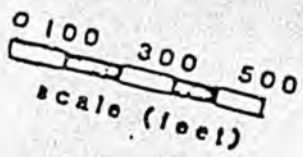
In addition, there is over 350 feet of transient dock, however, no individual transient berths exist. Six berths are being utilized for either permanent or scenic-permanent residence. At least seven vessels, making Valdez their home port, are 50 feet or more in length:

<u>Name</u>	<u>Length</u>	<u>Type</u>
Capt. Sonny	80'	Fishing
El Centrol	76'	Fishing
Bering	65'	Pilot
Margaret M.	60'	Tug
Vince Pee Dee	56'	Charter
Libra	55'	Fishing
Lady Fair	50'	Pleasure

During peak fishing periods, it is estimated that over 100 additional boats utilize the harbor. Valdez currently has two growing fish processors and a third processor expressing interest in locating in Valdez. This could lead to a substantial increase in necessary berths.

The secondary benefit to the City of Valdez with the expanded harbor will be increased use of local lodging, food services, marine repairs and fuel sales.

Figure 1



City of Valdez
property

Univ. of Alaska
property

NORTH HARBOR DRIVE

Coast
Guard
Dock

Existing
Docks

Harbor Channel Exist. Harbor bottom
-12.0'

Existing Road

Existing Split Area
OWNER:
City of Valdez

DREDGE AREA
Approx. .85 Acre
250,000 c.y.

Existing Tanks

Road Easement

MHHW 12.03'

Exist. Breakwater

224' 80'

MLLW 0.00'

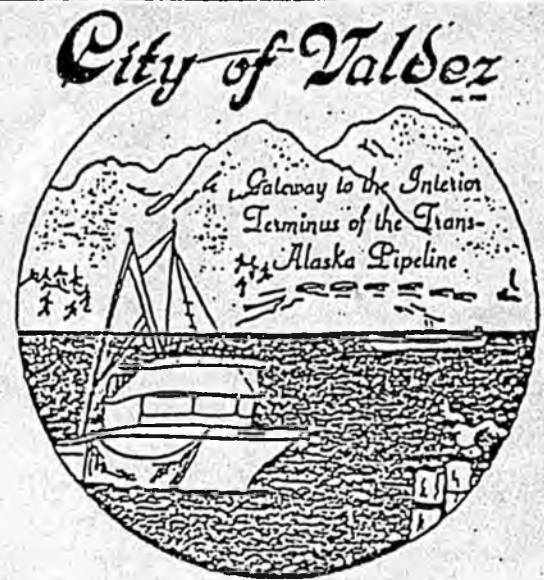
FILL AREA
Approx. 250,000 c.y.

EBB

FLOOD

PORT VALDEZ

FUNDING REQUEST FOR VALDEZ COMMERCIAL BOAT HARBOR IMPROVEMENTS



Commercial fishing and fish processing are developing into significant renewable industries in the City of Valdez. Advances in aquaculture, fisheries management, bottom fishing and fish processing offer even greater potential for the future.

According to a recent study commissioned by the City, commercial fishing can and should develop at a steady rate consistent with the resource and the ability of fishermen, processors and the market to efficiently utilize resources.

Economics of fish processing, marketing and fisheries related business are sensitive to initial capitalization such as good harbors, adequate uplands, handling facilities and docks. Jointly used facilities which lower annual costs of capitalization are an attraction to business and with availability there is more chance of business growth and success.

The City of Valdez has established general annual capital improvement priorities specifically directed toward improving commercial fishing and other harbor use activities. The City is also reviewing long range harbor expansion goals, which will be consistent and mesh with development as it happens.

The program for 1985 - 1986 is limited to the priority items discussed on the following pages.

FUNDING REQUEST

FOR CAPITAL PROJECTS AND GRANTS

FY 86

<u>CITY PRIORITY</u>	<u>PROPOSED PROJECT</u>	<u>DISTRICT 6 APPROPRIATION</u>	<u>PROJECTS SUPPORTED BY THE CITY OF VALDEZ AND AGENCY REQUESTING FUNDS</u>
1	Commercial Boat Harbor - Phase II/Small Boat Harbor Improvements	4,500,000	--
2	Prince William Sound Community College Classroom/Office Building	2,000,000*	9,834,000 University of Alaska
3	Valdez Heritage Center Expansion	2,500,000	--
4	Ice Skating Arena	2,500,000	--
5	National Guard Armory	--	1,300,000 Department of Military Affairs
6	New Jail Addition	--	675,000 Department of Corrections
7	Richardson Highway Improvements	--	23,100,000 Department of Transportation
8	Subdivision of the Valdez Industrial Park	288,000	--
9	Small Boat Harbor Grid	--	750,000 Department of Transportation
10	Handicap Curbs	-40,000	--
11	Dayville Road Boat Ramp	<u>150,000</u>	
	Total project funding requested by the City of Valdez	\$ 9,978,000	
	Total project funding supported by the City of Valdez		\$ 35,659,000

* Note: First priority is that funding come from University funding. However, if not appropriated from University, then City requests \$2,000,000 as a direct appropriation to funding Phase I of Prince William Sound Community College.

REQUEST FOR FUNDING FOR CAPITAL PROJECTS/GRANTS

FISCAL YEAR 1986

Location Valdez Election District 6

Project Title Commercial Boat Harbor Improvements

Community Priority Number 1 of 11

Agency Responsible _____

State or Local (Responsibility) Local

<u>COST ESTIMATES</u>		<u>REQUESTED FUNDING</u>	
Site Acquisition	\$ <u>-0-</u>	General Fund	\$ <u>4,500.000</u>
Planning and Design	\$ <u>750,000</u>	Federal (source)	\$ _____
Construction and Equip	\$ <u>3,750,000</u>	Other (source; local, etc...)	\$ _____
Other	\$ _____	Total	\$ <u>4,500.000</u>

Previous Appropriations and Years \$3,000,000 FY 85/rip rap, slope revision, dock

Maintenance/Operating Cost (First Year) \$ 50,000

(Annual) \$ 50,000

PROJECT DESCRIPTION AND JUSTIFICATION Estimated Starting Date June 1985

Completion Jan. 1986 (Explain physical product and operational activities, if this project is one phase or multi-phase. Briefly describe the entire project, attach any backup materials, maps, surveys, etc.)

Commercial fishing and fish processing are developing into significant renewable industries in the City of Valdez. According to a recent study commissioned by the City, commercial fishing can and should develop at a steady rate consistent with the resource and the ability of fishermen, processors and the market to efficiently utilize resources.

Economics of fish processing, marketing and fisheries related business are sensitive to initial capitalization such as good harbors, adequate uplands, handling facilities and docks. Jointly used facilities which lower annual costs of capitalization are an attraction to business and with availability there is more chance of business growth and success.

In order to meet the immediate demands of the growing commercial fishing industry in the City of Valdez, we have had to utilize a portion of our small boat harbor which is referred to as Valdez Commercial Boat Harbor, Phase I and approved by the state in 1984.

As a part of the Commercial Boat Harbor, Phase I, it is necessary to provide small vessel slips as identified on the attached drawing and labelled Number 6.

The program for 1985 - 1986 is limited to the priority items discussed on the following pages.

1985 - 1986 PROJECT BUDGET

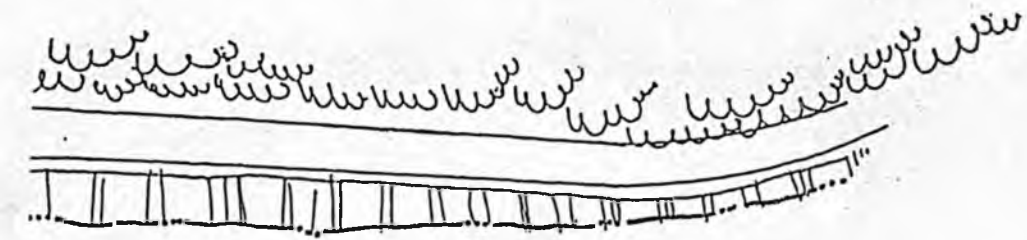
Harbor Dredging and Land Fill	\$ 1,500,000
Float Modifications	300,000
Drain System	200,000
Bilge and Waste Oil Disposal Systems	100,000
Slip Improvements	<u>2,400,000</u>
Total Project Budget	\$ 4,500,000

PROJECT SCHEDULE

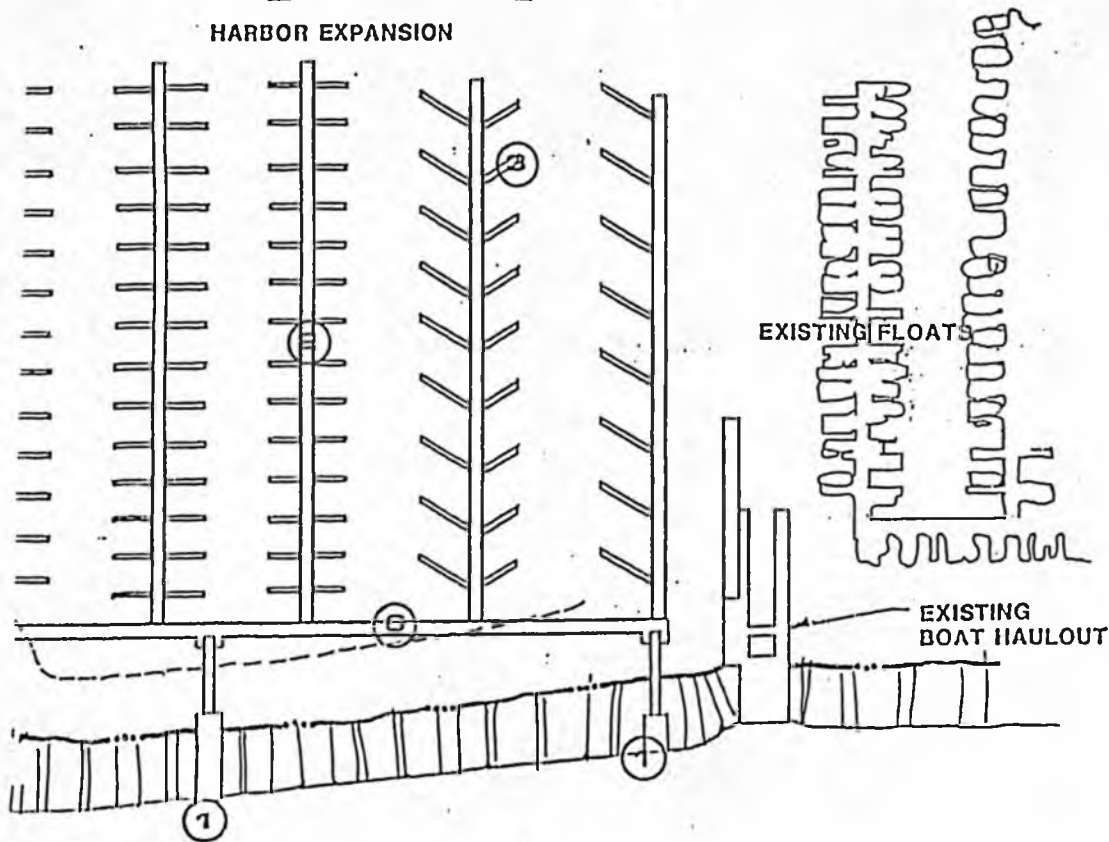
<u>February 1985</u>	<u>September 1985</u>	<u>September 1986</u>
Design	Contract Award	Construction Completion

CONTACT:

Jim Watson
City Manager
P. O. Box 307
Valdez, Alaska 99686
(907) 835-4313



HARBOR EXPANSION



PRIMARY COMPONENTS OF THE PROPOSED DEVELOPMENT INC

- ① Two approach structures and access gangways
- ② Five main harbor floats with access float
- ③ Finger floats varying in length to 50 feet
- ④ Boat ramp access float
- ⑤ Boat ramp and various infrastructure including wash down and boat apron
- ⑥ Flout utilities

BUDGET

<u>Description</u>	<u>Estimated Qty.</u>	<u>Unit Price</u>	<u>Amount</u>
Excavation	298,000 Cu.Yd.	400/cu.yd.	\$1,195,200.00
Containment Dike	Lump Sum	225,000	225,000.00
Filter Fabric, Dike	1,335 Sq.Yd	2.00/sq.yd.	2,670.00
Coarse Gravel	25,000 tons	12.00/ton	300,000.00
Armor Rock	2,000 tons	80.00/ton	160,000.00
12" CMP (14 gauge)	430 L.F.	50.00/L.F.	21,000.00
Storm Drain Pipe			
Storm Drain Manhole	1	4,000	4,000.00
Mobilization and Demobilization	Lump Sum	<u>150,000</u>	<u>150,000.00</u>
TOTAL GRANT REQUEST:			\$2,083,450.00

SUMMARY

Proposed Project: Expansion of the Valdez Small Boat Harbor

Need: Increasing requirements for recreational and commercial boat space.

Permits: Alaska D.E.C. Permit: Granted.
Federal C.O.E. Permit: Granted.

Environmental Impact Statement: Completed.

Budget Total: \$ 2,083,450.00

Total Grant Request: \$ 2,083,450.00

VALDEZ COMMERCIAL BOAT HARBOR

The City of Valdez desires to construct and operate a Commercial Boat Harbor (CBH) primarily to serve a commercial fishing fleet with vessel lengths of 65 to 150 feet. The proposed site is south of the Mineral Creek Islands and eastward of the proposed Small Boat Harbor (SBH) expansion area (see Figure 1, 2, and 3). The site is bounded on the north by Dock Point and on the west by Harbor Point and the site of the proposed SBH expansion (Kennicott Avenue). The project would involve dredging the site to a depth of -25 feet mean low low water (MLLW). The general layout of the proposed CBH is shown on Figure 3.

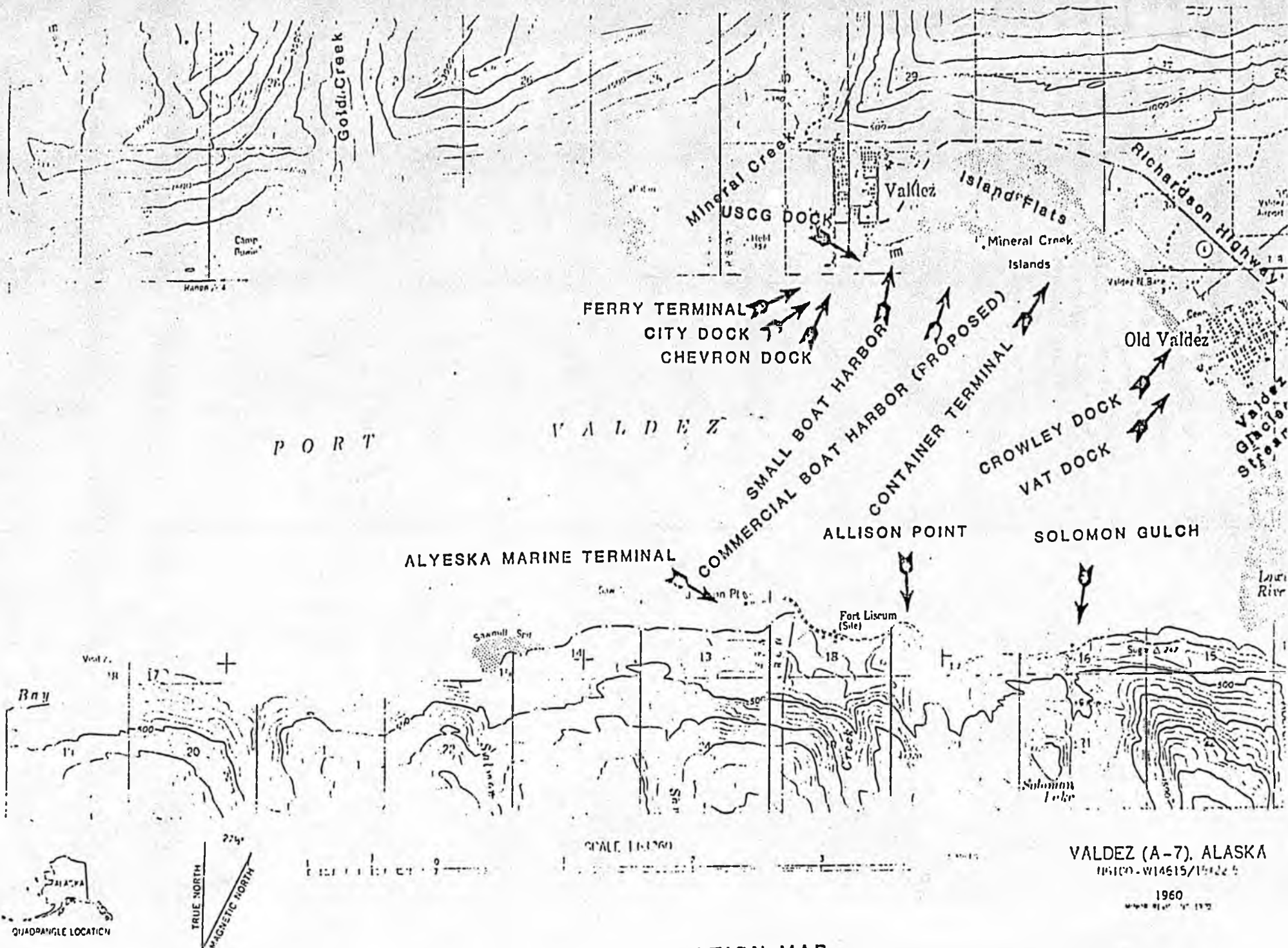
The City wishes to develop the CBH in phases. Phase I would consist of the initial geotechnical investigation, engineering design and dredging of the harbor. Future work would include completion of sheet piling, breakwaters, mooring facilities, roads, etc.

The area under consideration for construction of the CBH was studied to some extent from 1977 to 1979 as a part of the on-going geotechnical and environmental evaluation for the City's port expansion study. Some of the area was also included in work related to the preparation of the Alpetco DEIS and FEIS. Additional biological reconnaissance of the area was made in the spring of 1981 as an adjunct to some limited biological investigations related to the proposed SBH expansion. The Port of Valdez itself has been the subject of numerous other investigations in the past decade relative to construction and operation of the Alyeska marine terminal and the environmental and permitting phase of the Alpetco project. Climatic and tidal conditions are well known as is the general nature of the circulation and sedimentation patterns. The wildlife resources of the area of interest have been described, in part, by an 'Environmental Assessment' previously prepared for the City in conjunction with the permitting of the City's container dock and marshalling yard which was recently completed. This ecological overview draws heavily on the previous work performed for the 1979 assessment, as well as work performed by the University of Alaska and others during the planning, design and construction of the Alyeska marine terminal.

Cost estimated for this first phase effort. \$ 4,500,000.00

COMMERCIAL BOAT HARBOR

FIGURE 1



PORT VALDEZ - LOCATION MAP

Figure 1

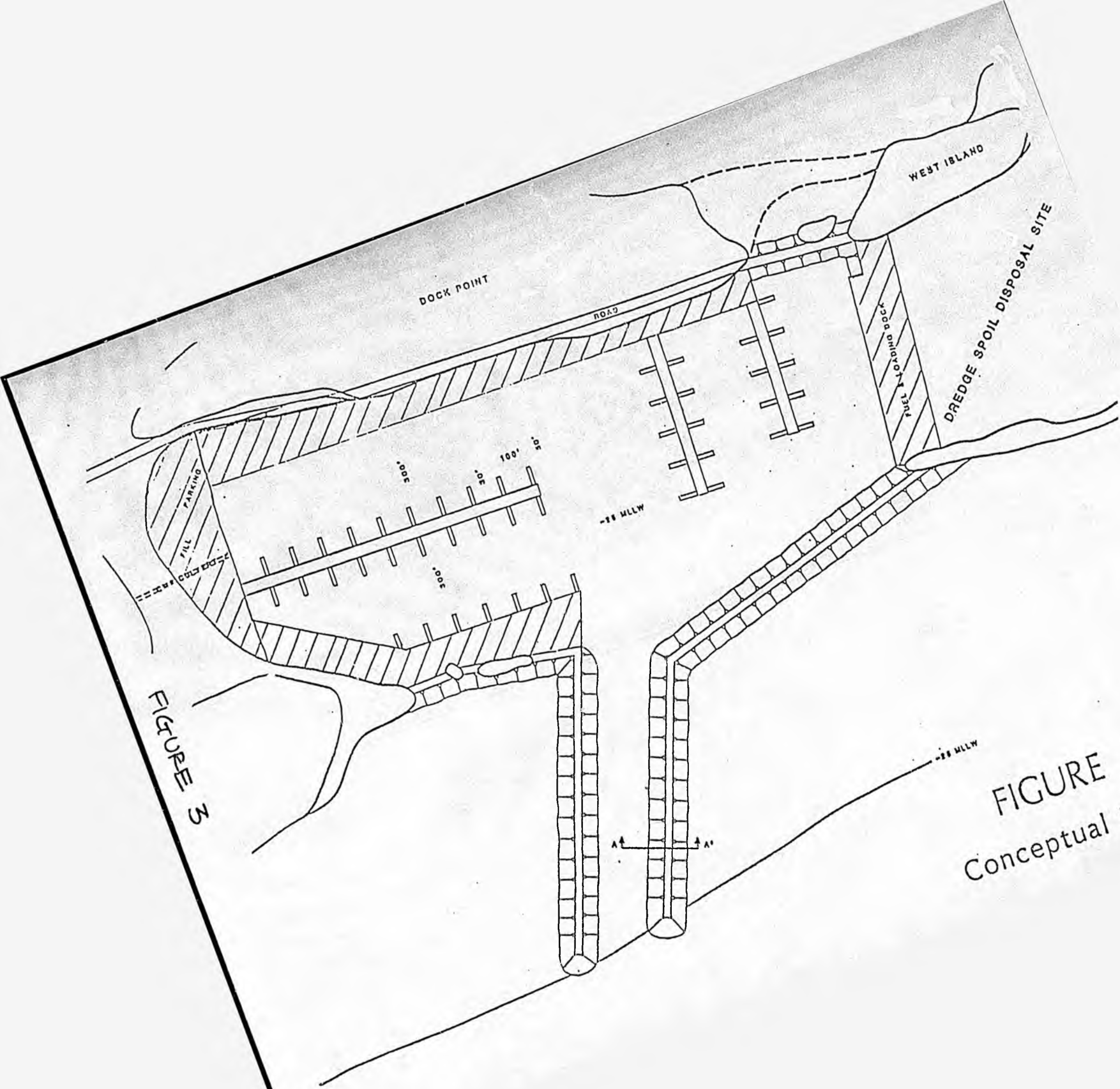


FIGURE 3

FIGURE 3
Conceptual Layout

Valdez Chamber of Commerce

P.O. Box 512 • Valdez, Alaska 99686 • Phone 835-2330

1983 LEGISLATIVE PROGRAM

TRANSPORTATION:

A. Highways;

with the advent of Alaska becoming a member of the interstate program, accelerate existing 5 year capital improvement plan to within 2 years, and accelerate the 5 to 10 year planning phase to within 5 years with emphasis on reconstruction of the following:

Richardson - Mile 129-265
(Gakona Jct. to Delta Jct.)

Tok - Mile 30-75
(Gakona Jct. to Tok)

Alaska - Mile 1314-1221

Copper River - Million Dollar Bridge to
Richardson Highway

Glenn - Mile 50 to 135

B. Marine Highways;

support increase in scheduling to Prince William Sound terminals, and urge the acquisition of a larger vessel to serve Valdez-Cordova-Whittier, and urge the appropriation of the necessary money required for improvements to the state ferry terminal in Valdez.

C. All-Alaska Gas-Line;

urge the state support for construction of an all-Alaskan gas pipeline from the North Slope to tidewater, when deemed feasible

D. Seward Coal Terminal;

support the necessary actions to convert the Seward grain terminal to a coal mineral terminal

E. Valdez Air Terminal;

urge state acquisition and maintenance of the existing terminal building

VALDEZ CHAMBER OF COMMERCE

COMMERCIAL BOAT HARBOR:

urge the appropriation of \$21 million for the construction of a commercial boat harbor in Valdez, and urge the funding associated with the Valdez Fisheries Development Association



ENERGY:

- A. Silver Lake Hydroelectric;
urge the appropriation of necessary monies required to construct the Silver Lake hydroelectric plant and transmission inter-ties to Cordova and to the Solomon Gulch hydroelectric plant
- B. Susitna Hydroelectric;
support the Phase I construction of the Susitna hydroelectric and inter-tie project

NATURAL RESOURCES:

support the acceleration of the development of Alaska's natural resources

AGRICULTURE:

support the increase of programing and appropriations for the Delta agriculture program, specifically marketing and planting

ADMINISTRATIVE:

- A. State Boroughs;
support the freedom of choice by the local residents as to the formation of local government
- B. Tax Reform;
favors application of an investment tax credit at 10% of qualified investment in Alaska each year, not limited to 18% of federal tax credits; favors revision of the state corporate income tax rate to 1% of the first \$250,000 and a reduction of the maximum rate of 9.4%
- C. Regulation Reform;
Ref. 1982 SB 84, relaxation of stipulations
- D. Insurance Reform;
support mandatory bodily injury and property damage liability insurance, and support M.A.D.D.
- E. Land Disposal Program;
urge the requirement of access power and communication construction to and within the State Land Disposal Subdivisions, both now in existence and future disposals

JUDICIAL:

- A. support the assignment of a District Attorney and a Superior Court judge, in that order, to the Valdez, Glennallen, Cordova area of the Third Judicial District
- B. urge the appointment and necessary appropriations of and for a Judicial Probation Officer in the Valdez, Glennallen, Cordova area of the Third Judicial District

RECREATION:

- A. support the Prince William Sound Development Legislation, and specifically the necessary funding for land acquisition and development of a harbor camper park in Valdez
- B. support the trails and campsite development legislation

COMMUNICATION:

support the passage of Alaska Public Broadcasting Commission's FY'84 budget, which includes a Terminal Radio, Inc. (Valdez) funding request

EDUCATION:

- A. Prince William Sound Community College;
support the continued programming and urge the necessary appropriations for the upgrading of the existing plant facility

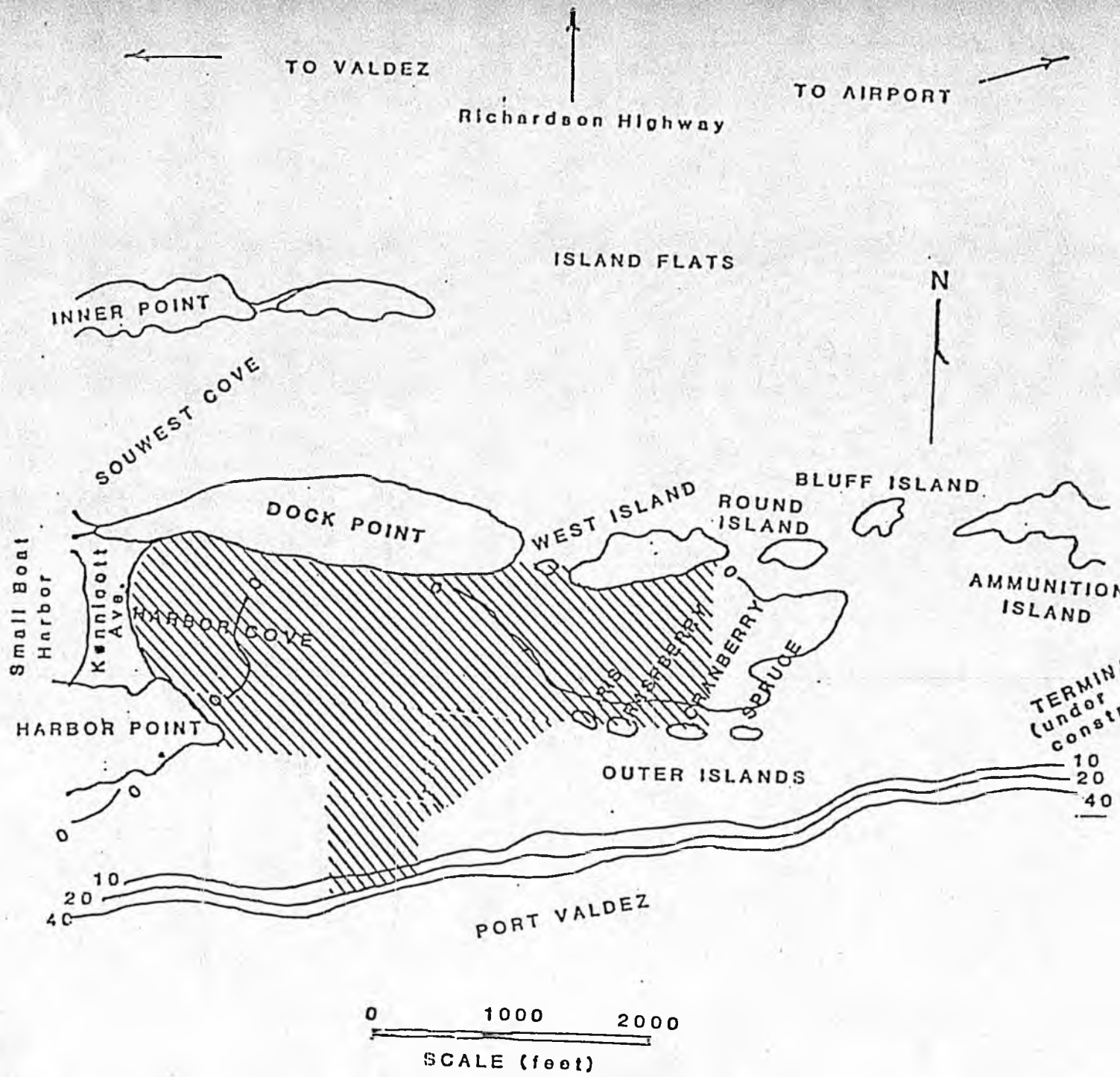


FIGURE 2

Location Map and General Project Area

FIGURE 2

Introduced: 2/21/85
Referred: Transportation
and Finance

Funding Information
General Fund \$4,500,000
Other Funds -0-
\$4,500,000

1 IN THE SENATE

BY DEVRIES

2

SENATE BILL NO. 180

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act making a special appropriation for payment as
7 a grant to the City of Valdez for phase II con-
8 struction of the commercial boat harbor and for
9 improvements to the small boat harbor; and providing
10 for an effective date."

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

12 * Section 1. The sum of \$4,500,000 is appropriated from the general
13 fund for payment as a grant to the City of Valdez for phase II construction
14 of the commercial boat harbor and for improvements to the small boat har-
15 bor.

16 * Sec. 2. The appropriation made by this Act shall be disbursed in
17 accordance with AS 37.05.315.

18 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
19 10.070(c).

Valdez Chamber of Commerce

P.O. Box 512 • Valdez, Alaska 99686 • Phone 835-2330

October 26, 1984

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

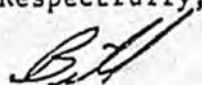
Dear Governor Sheffield;

This letter is to express the Valdez Chamber of Commerce's support for the City of Valdez REQUEST FOR FUNDING of the following CAPITAL PROJECTS:

1. Commercial Boat Harbor
2. Prince William Sound Community College
3. Museum Addition
4. Ice Skating Rink
5. National Guard Armory
6. New Jail Addition
7. Upgrading Richardson Highway
8. Small Boat Harbor Slips
9. Valdez Industrial Park
10. Small Boat Harbor Grid
11. Handicap Curbs
12. Dayville Road Boat Ramp

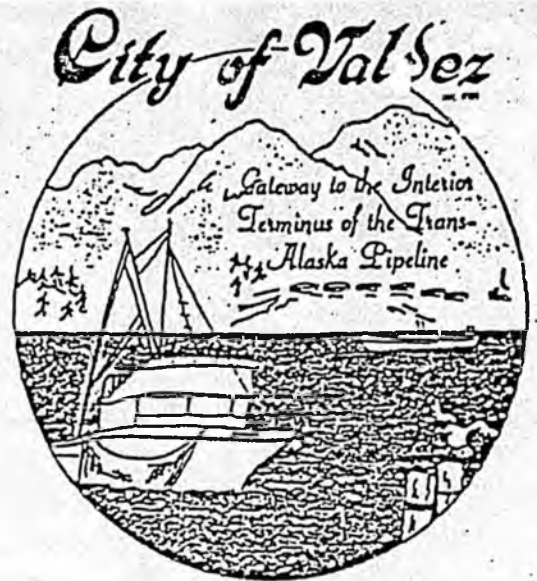
Thank you for your positive considerations to these projects.

Respectfully,



William J. Simpson
President

FUNDING REQUEST FOR VALDEZ COMMERCIAL BOAT HARBOR IMPROVEMENTS



Commercial fishing and fish processing are developing into significant renewable industries in the City of Valdez. Advances in aquaculture, fisheries management, bottom fishing and fish processing offer even greater potential for the future.

According to a recent study commissioned by the City, commercial fishing can and should develop at a steady rate consistent with the resource and the ability of fishermen, processors and the market to efficiently utilize resources.

Economics of fish processing, marketing and fisheries related business are sensitive to initial capitalization such as good harbors, adequate uplands, handling facilities and docks. Jointly used facilities which lower annual costs of capitalization are an attraction to business and with availability there is more chance of business growth and success.

The City of Valdez has established general annual capital improvement priorities specifically directed toward improving commercial fishing and other harbor use activities. The City is also reviewing long range harbor expansion goals, which will be consistent and mesh with development as it happens.

The program for 1985 - 1986 is limited to the priority items discussed on the following pages.

REQUEST FOR FUNDING FOR CAPITAL PROJECTS/GRANTS

FISCAL YEAR 1986

Location Valdez Election District 6
 Project Title Commercial Boat Harbor Improvements
 Community Priority Number 1 of 11
 Agency Responsible _____
 State or Local (Responsibility) Local

<u>COST ESTIMATES</u>		<u>REQUESTED FUNDING</u>	
Site Aquisition	\$ <u>-0-</u>	General Fund	\$ <u>4,500,000</u>
Planning and Design	\$ <u>750,000</u>	Federal (source)	\$ _____
Construction and Equip	\$ <u>3,750,000</u>	Other (source; local, etc...)	\$ _____
Other	\$ _____	Total	\$ <u>4,500,000</u>

Previous Appropriations and Years \$3,000,000 FY 85/riprap, slope revision, dock
 Maintenance/Operating Cost (First Year) \$ 50,000
 (Annual) \$ 50,000

PROJECT DESCRIPTION AND JUSTIFICATION Estimated Starting Date June 1985

Completion Jan. 1986 (Explain physical product and operational activities, if this project is one phase or multi-phase. Briefly describe the entire project, attach any backup materials, maps, surveys, etc.)

Commercial fishing and fish processing are developing into significant renewable industries in the City of Valdez. According to a recent study commissioned by the City, commercial fishing can and should develop at a steady rate consistent with the resource and the ability of fishermen, processors and the market to efficiently utilize resources.

Economics of fish processing, marketing and fisheries related business are sensitive to initial capitalization such as good harbors, adequate uplands, handling facilities and docks. Jointly used facilities which lower annual costs of capitalization are an attraction to business and with availability there is more chance of business growth and success.

In order to meet the immediate demands of the growing commercial fishing industry in the City of Valdez, we have had to utilize a portion of our small boat harbor which is referred to as Valdez Commercial Boat Harbor, Phase I and approved by the state in 1984.

As a part of the Commercial Boat Harbor, Phase I, it is necessary to provide small vessel slips as identified on the attached drawing and labelled Number 6.

The program for 1985 - 1986 is limited to the priority items discussed on the following pages.

1985 - 1986 PROJECT BUDGET

Harbor Dredging and Land Fill	\$ 1,500,000
Float Modifications	300,000
Drain System	200,000
Bilge and Waste Oil Disposal Systems	100,000
Slip Improvements	<u>2,400,000</u>
Total Project Budget	\$ 4,500,000

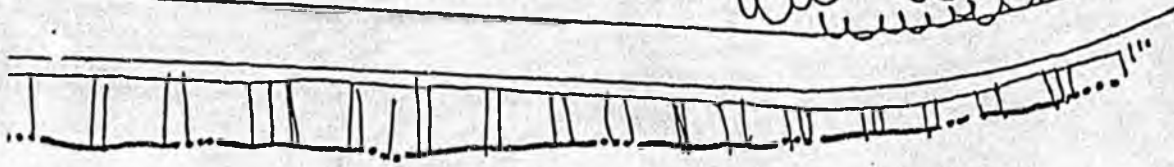
PROJECT SCHEDULE

<u>February 1985</u>	<u>September 1985</u>	<u>September 1986</u>
Design	Contract Award	Construction Completion

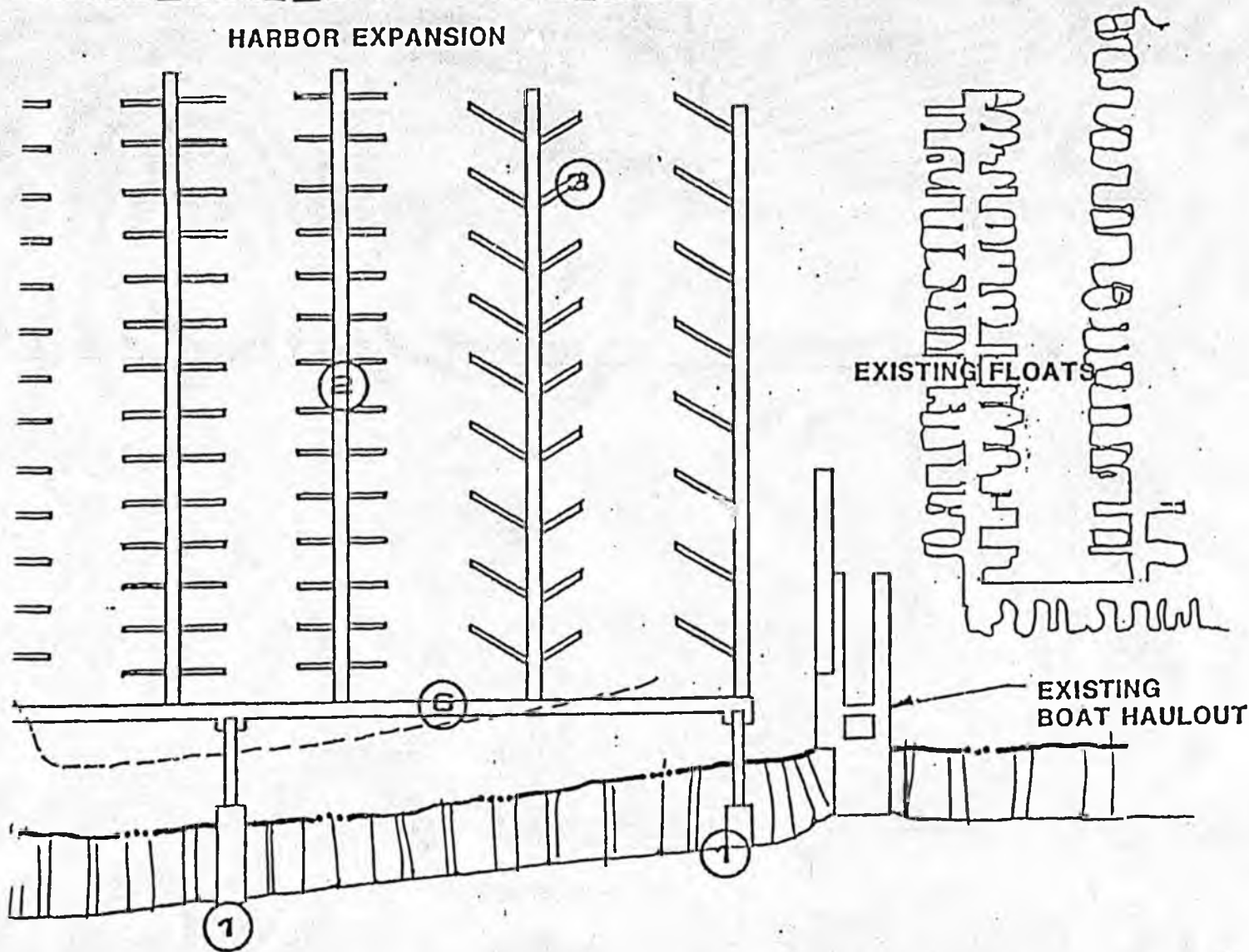
CONTACT:

Jim Watson
City Manager
P. O. Box 307
Valdez, Alaska 99686
(907) 835-4313

Handwritten notes in Arabic script at the top of the page, likely providing context or specific details for the project.



HARBOR EXPANSION



PRIMARY COMPONENTS OF THE PROPOSED DEVELOPMENT INCLUDING

- ① Two approach structures and access gangways
- ② Five main harbor floats with access float
- ③ Finger floats varying in length to 50 feet
- ④ Boat ramp access float
- ⑤ Boat ramp and various improvements including wash down and boat apron
- ⑥ Float utilities

Small Boat Harbor Expansion

This project is the development of the final phase of the existing Valdez Small Boat Harbor. At the time of the original Corps of Engineers Valdez boat harbor construction, the general area to the east of the original boat harbor was left undeveloped for future harbor expansion. The area of the proposed expansion site is presently at elevation to a depth of -13 feet (MLLW) which will be consistent with the bottom of the existing small boat harbor area. The excavation consists of the removal of approximately 298,000 cubic yards of soil in the harbor area.

Material removed from the harbor expansion area would be located on the Port of Valdez side of the existing spit that now separates the boat harbor from the port. This area was used as a site for disposing of the dredge material from the original boat harbor.

The widening of the spit area, at a City owned location, would facilitate the creation of a waterfront area for uses compatible with the City's Coastal Zone Management plan. These intended uses include the storage and dry docking of recreational and commercial boats; the storage of commercial fishing gear; and a parking and staging area. The limited amount of land available near the small boat harbor doesn't assure a place for parking boat trailers or pulling boats out of the water for minor repairs. This site is also designated as a potential long range planning site for expanded fin fish and shellfish processing facilities.

The intended use for the expanded boat harbor area would be to provide additional moorage capacity for private and small commercial boats. The facility would be owned and operated by the City of Valdez as it is the final phase of the small boat harbor project. A conceptual drawing of the expanded small boat harbor is shown in 'Figure 1'.

The Valdez Small Boat Harbor expansion project is a positive development activity for the continued planned growth of the City of Valdez. The additional facilities support the commercial and recreational fishing populace and are expected to be beneficial to the local economy.

The existing small boat harbor currently has the following number of berths available:

<u>Length (ft)</u>	<u>Number</u>
50	33
42	34
32	84
24	108
20	98

On these berths, the occupancy rate on a year round basis is relatively high particularly in the larger boat lengths:

<u>Length (ft)</u>	<u>Occupancy Percentage</u>
50	100
42	90
32	65
24	40
20	30

In addition, there is over 350 feet of transient dock, however, no individual transient berths exist. Six berths are being utilized for either permanent or scenic-permanent residence. At least seven vessels, making Valdez their home port, are 50 feet or more in length:

<u>Name</u>	<u>Length</u>	<u>Type</u>
Capt. Sonny	80'	Fishing
El Centrol	76'	Fishing
Bering	65'	Pilot
Margaret M.	60'	Tug
Vince Pee Dee	56'	Charter
Libra	55'	Fishing
Lady Fair	50'	Pleasure

During peak fishing periods, it is estimated that over 100 additional boats utilize the harbor. Valdez currently has two growing fish processors and a third processor expressing interest in locating in Valdez. This could lead to a substantial increase in necessary berths.

The secondary benefit to the City of Valdez with the expanded harbor will be increased use of local lodging, food services, marine repairs and fuel sales.

BUDGET

<u>Description</u>	<u>Estimated Qty.</u>	<u>Unit Price</u>	<u>Amount</u>
Excavation	298,000 Cu.Yd.	400/cu.yd.	\$1,195,200.00
Containment Dike	Lump Sum	225,000	225,000.00
Filter Fabric, Like	1,335 Sq.Yd	2.00/sq.yd.	2,670.00
Coarse Gravel	25,000 tons	12.00/ton	300,000.00
Armor Rock	2,000 tons	80.00/ton	160,000.00
12" CMP (14 gauge)	430 L.F.	50.00/L.F.	21,000.00
Storm Drain Pipe			
Storm Drain Manhole	1	4,000	4,000.00
Mobilization and Demobilization	Lump Sum	<u>150,000</u>	<u>150,000.00</u>
TOTAL GRANT REQUEST:			\$2,083,450.00

SUMMARY

Proposed Project: Expansion of the Valdez Small Boat Harbor

Need: Increasing requirements for recreational and commercial boat space.

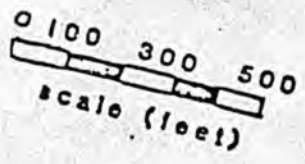
Permits: Alaska D.E.C. Permit: Granted.
Federal C.O.E. Permit: Granted.

Environmental Impact Statement: Completed.

Budget Total: \$ 2,083,450.00

Total Grant Request: \$ 2,083,450.00

Figure 1



City of Valdez property

Univ. of Alaska property

NORTH HARBOR DRIVE

Coast Guard Dock

Existing Docks

Harbor Channel Exist. Harbor bottom -12.0'

Existing Road

Existing Spilt Area
OWNER:
City of Valdez

DREDGE AREA
Approx. 8.5 Acres
250,000 c.y.

Road Easement

Existing Tanks

MHHW 12.03'

EXIST. Breakwater

ATS 620
ATS 621

MLLW 0.00'

FILL AREA
Approx. 250,000 c.y.

EBB

FLOOD

PORT VALDEZ

VALDEZ COMMERCIAL BOAT HARBOR

The City of Valdez desires to construct and operate a Commercial Boat Harbor (CBH) primarily to serve a commercial fishing fleet with vessel lengths of 65 to 150 feet. The proposed site is south of the Mineral Creek Islands and eastward of the proposed Small Boat Harbor (SBH) expansion area (see Figure 1, 2, and 3). The site is bounded on the north by Dock Point and on the west by Harbor Point and the site of the proposed SBH expansion (Kennicott Avenue). The project would involve dredging the site to a depth of -25 feet mean low low water (MLLW). The general layout of the proposed CBH is shown on Figure 3.

The City wishes to develop the CBH in phases. Phase I would consist of the initial geotechnical investigation, engineering design and dredging of the harbor. Future work would include completion of sheet piling, breakwaters, mooring facilities, roads, etc.

The area under consideration for construction of the CBH was studied to some extent from 1977 to 1979 as a part of the on-going geotechnical and environmental evaluation for the City's port expansion study. Some of the area was also included in work related to the preparation of the Alpetco DEIS and FEIS. Additional biological reconnaissance of the area was made in the spring of 1981 as an adjunct to some limited biological investigations related to the proposed SBH expansion. The Port of Valdez itself has been the subject of numerous other investigations in the past decade relative to construction and operation of the Alyeska marine terminal and the environmental and permitting phase of the Alpetco project. Climatic and tidal conditions are well known as is the general nature of the circulation and sedimentation patterns. The wildlife resources of the area of interest have been described, in part, by an 'Environmental Assessment' previously prepared for the City in conjunction with the permitting of the City's container dock and marshalling yard which was recently completed. This ecological overview draws heavily on the previous work performed for the 1979 assessment, as well as work performed by the University of Alaska and others during the planning, design and construction of the Alyeska marine terminal.

Cost estimated for this first phase effort. \$ 4,500,000.00

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Cost estimated for this first phase effort. \$ 4,500,000.00

COMMERCIAL BOAT HARBOR