

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990
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Alaska Anthropological Association

P.O. Box 230032 Anchorage, Alaska 99523

Feb. 7, 1990

TO: Members of the House Natural Resources Committee
Reps. Davidson, Menard, Jacko, Davis, Foster, Furnace
Hudson, Navarre, Sharp

FR: Alaska Anthropological Association
Steve J. Langdon, President

RE: Continuance for HB 436

The Alaska Anthropological Association is dedicated to scientific investigation and understanding of Alaskan prehistory and Alaska Native cultures. Its membership includes professional archeologists, anthropologists, Alaska Natives and other citizens interested in these matters.

The Association's Board of Directors has reviewed HB 436, "An Act relating to historic, prehistoric, and archeological resources" (version 2/3/90) and would like to register these comments. The Association is deeply committed to the responsible treatment of all archeological resources including human skeletal remains. The proposed legislation, however, will likely adversely affect archeological research into Alaskan prehistory and may even preclude such research. Although we do not feel this was the intention of the bill's sponsors, serious ambiguities in the bill require further deliberation and clarification in order to preclude possible unforeseen negative impacts. The board therefore recommends that a continuance be granted allowing interested and affected parties time to consider the implications of the bill and to present their comments to the committee. The Board is convinced that through fuller discussion and deliberation, a broad-based consensus reflecting the concerns of the interested parties can be obtained. We stand ready to assist the committee in any way in order to help revise the legislation.

MEMORANDUM

State of Alaska

Larry Ostrovsky
TO: Special Assistant
Commissioner's Office

DATE: March 22, 1990

FILE NO: 3130-2 Legislation

Neil Johannsen *NJ*
Director DPOR

TELEPHONE NO: 762-2630

FROM: Robert D. Shaw *RS*
Office of History & Archaeology

SUBJECT: Comments on HB436,
version 3/16/90

Following are my comments on the latest version of HB436 dated 3/16/90:

Sec. 12.65.150(c): Line 27. Should delete "Native" and make law applicable to all human remains regardless of ethnic identity. Should also include words "historic or prehistoric" in reference to human remains so that DNR is not involved with modern remains.

Sec. 12.65.160: Line 2. Should insert "own, possess" after "may not." Line 3. Should insert "disinterred" after "barter." Line 4,5. Should exclude display for educational purposes in an educational institution as one of the exceptions to display prohibition. e.g. teaching osteology, anatomy. Insert ",educational" after "medical".

Sec. 41.35.040: Line 19. Delete "Native" so that provision applies to all human remains.

Sec. 41.35.230(4): Line 7. In defining "human remains" add ", but excluding body parts shed during life such as hair, nails, and isolated teeth." after "decomposition".

Sec 41.35.410(c): ADD "Human remains found during archaeological investigations permitted under Sec. 41.35.080 and subject to procedures and conditions defined according to that section can be disinterred if so provided in the permit."

This provision will make this section comply more clearly with permitting provisions under AS 41.35.080 and while providing consultation with appropriate tribal groups under the permitting process, would not un-necessarily delay permitted archaeological investigations.

Sec 41.35.410(c): ADD "Human remains unexpectedly encountered during construction or development activities and when there is no prudent or feasible alternative, may be disinterred according to conditions and procedures defined prior to ground disturbance in consultation with the Department and appropriate tribal groups."

This will clarify responsibilities when projects such as highway projects or airports unexpectedly encounter human remains during construction activities. That would help eliminate project delay and considerable expense due to work stoppage and contract penalties.

Sec 41.35.410(f): ADD "When the human remains have importance and worth beyond that assigned to identifiable tribes and are of legitimate, extreme, scientific importance, dispute as to disposition will be referred to a committee as defined by AS 41.35.420."

This provision will allow resolution of conflicts where tribal affiliation is ill defined and extreme importance of remains to society as a whole is demonstrated.

Sec. 41.35.420: Line 9. Editorial change only -- "colorable" to "credible".

Sec. 9(5): Line 1. Editorial change only -- "portable" to "probable".

The Chugach

The Official Publication of Chugach Alaska Cor

Vol. 16 No. 5



Chugach Man; symbolic of effect oil spill is having on the people

He had no cavities, not unusual for a person between 35 and 40 years old living in the area over 200 years ago. He stood five feet three inches. He had no contact with the Russians, British, Spanish or Americans who later came looking for riches - sea otter and seal pelts, salmon, herring and later gold. When he died, the people of his village honored him by placing his remains in a cave high above

the waters of Knight Island. He was a Chugach man and he rested in peace, undisturbed by the turbulences of the last two hundred years - until the oil spill.

As the oil from the Exxon Valdez spread throughout Prince William Sound, so did thousands of cleanup workers. The workers did more than attempt to clean the beaches. They went upland, often onto Chugach and village corporation lands. Historical sites long protected by the fact that their locations were unrecorded by federal or state agencies were now being "discovered."

By the middle of June scores of VECO, Norcon and Exxon workers were tres-

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Chugach Man

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passing on ancient burial sites, including the one on Knight Island.

The workers did much more than trespass. As a result of their invasion, this sacred burial cave and village was desecrated by



Ilene Totemoff attends the reburial service.

workers trampling over this fragile pre-historic environment. "We believe Exxon was negligent for not surveying, monitoring and protecting this paramount historical site. The remains of this man were torn away from its resting place - bagged and tagged for observation in Anchorage," said CAC Chairman Edgar Blatchford.

The Chugach man was not the only one buried in the cave. But he was the only one carted away.

Reports of findings of skeletal remains circulated among workers and at the request of Exxon's lead archaeologist, Alaska state troopers responded. They arrived on the scene on June 24 and removed the remains to the crime lab in

Anchorage. Ten days later, by accident, the Chugach oil spill response team learned of the "rediscovery."

No-one in Chugach or the village corporations of Tatitlek and Chenega were notified. They should have been. Exxon was aware of CAC's policy on human remains, which states that: "Upon discovery of any human remains CAC is to be notified immediately and the remains are not to be disturbed unless directed by CAC".

Chugach responded in anger. Chugach could not - would not wait any longer for the slow wheels of a blundering bureaucracy to give its blessing to return the remains and to grant permission for a re-burial back at the place of its origin.

Chugach demanded that the remains be turned over immediately to the corporation, and thus they were.

Two months after oil spill workers violated his resting place, the Chugach man was finally returned to the burial site.

On August 14 a delegation from around the region, including Henry Makarka, Richard Stevens, Charles Selanoff, Sr., Peter Selanoff, Mike Eleshansky, Ilene Totemoff, Chris Borodkin, Edgar Blatchford, Gilbert Ollestad, Derenty Tabios, John Johnson, The Very Reverend Archpriest Nicholas Harris, Father Mark Luke, Lora Johnson and Jim Talerrico, accompanied the remains and quietly honored the Chugach man

by burying him with the church's blessing. No outsiders were invited - not the media, not Exxon. However, since the burial was on national forest lands, a Forest Service observer was present.

Under federal law, historical sites are protected. But by the time the oil company learned the law, the Chugach man was disturbed - for the first time in two cen-



Charles Selanoff, Sr. on Knight Island.

turies. May he now, once again, rest in peace for ages and ages.


Father Harris gave this eulogy prior to reinterring the Chugach Man.

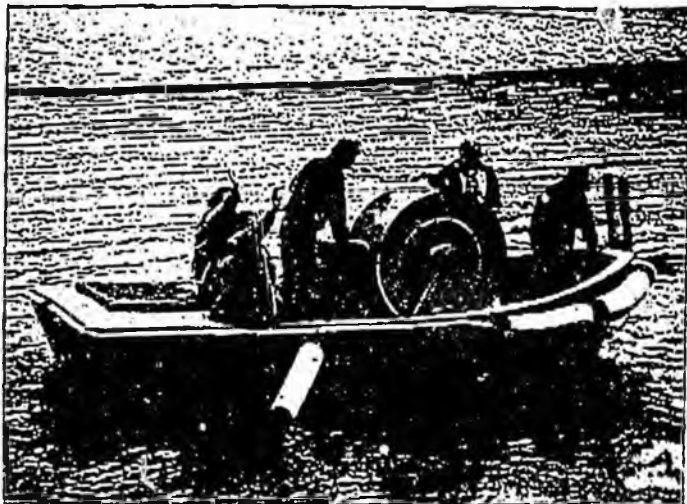
"Before we re-enter this man back into the earth and bless this coffin and place we must realize that God brought us to this place in the natural beauty of this island. In praying for him, we are asking God to bless all of those who have departed this life."

The people of this area were blessed by God to live the Orthodox life. Thus it is appropriate today to celebrate this service. When news came to us that this persons relics were disturbed we had to do something about it, CAC and its staff saw to it that an appropriate burial would be made.

This man we are to bury is a representative of all the people of this area, people who lived here for thousands of years. It was God's will that they live a most beautiful life then and it is His will that they live a most beautiful life now.

This wonderful place has been disturbed by that great oil spill that has affected all of our lives. We hope and pray that as time goes on that everything that has been disturbed will be restored and that this person who has been reinterred here will be a symbol of this. Although his grave has been disturbed now, he will now be placed back with DIGNITY, with HONOR and with RESPECT.

By honoring him, we honor everything which God has created. We must have respect for every living person, every living creature and every blade of grass that we walk on, because God reveals Himself in nature and in man. He is the God of the universe." 



A small craft takes shareholders to the burial site.

Oil Company Canceled Exhibit of Native Artifacts

by: Marilee Enge, Daily News reporter
Anchorage Daily News
Friday, August 18, 1989

An exhibit of aboriginal Native artifacts plucked from the oiled beaches of Prince William Sound and Kodiak Island was canceled by Exxon Corp. when Native leaders complained they were excluded from preparations for the show.

The quarrel came as Natives in the Sound were preparing to rebury ancestral remains removed by oil spill workers and points up conflicts between the massive cleanup of the nation's largest oil spill and the people who live on the oiled shores.

The exhibit of work by state and Exxon archaeologists during the cleanup of the March 24 oil spill was scheduled to go on display Monday at the Exxon headquarters in Valdez. It was canceled when Chugach Native Association leaders protested.

"Our concern is that we don't want those sites disturbed," said Edgar Blatchford, chairman of the organization.

"The only protection that Prince William Sound offered the ancestors of the Chugach people was that nobody knew about them. Now we have thousands of people out there. We have scientists, archaeologists, construction engineers and the media. We've opened a very private family vault and exposed everything to the world."

The display of about 30 stone tools and other objects from Kodiak and the Sound was organized quickly late last week. Exxon's chief archaeologist, Charles Mobley, said he began planning an educational exhibit on the company's cultural resources program last Thurs-

day. On Friday, someone suggested that the display be held Monday when a group of Exxon executives would be visiting.

"We tried to put it together in a short period of time," Mobley said. "It obviously wasn't enough time for the Native community to get behind it."

Officials with the Native association and village leaders from the Prince William Sound area learned about the display on Saturday. Village leaders from Eyak, Tatitlek and Chenega Bay were "very ir.ensed" that Exxon had proceeded without consulting them, according to Blatchford.

"We've really had problems with vandalism for the past 10 years," said John Johnson, cultural resources manager for the Native association. "People are constantly dragging these artifacts out and putting them on their mantels."

"We try to keep specific sites confidential. We're into public information but not a big blitz. They just sprung this on us."

Mobley said he had no intention of publicizing specific sites and exposing them to looting or vandalism. The Natives did not understand that his program has been scrupulous in keeping such information secret, he said.

Besides displaying 30 or so objects gathered so far from the Sound and Kodiak, the exhibit would have explained how archaeologists gather information and how they try to prevent beach crews from damaging sites.

Mobley is quick to point out that collecting artifacts is only incidental to the other work by archaeologists and done as a last resort to protect the items from damage.

But when the Natives heard about Exxon's exhibit, they were already smarting from an earlier incident in which bones from an ancient burial site on Knight Island were removed.

Cleanup workers came upon the

bones June 22 and reported that they'd found fairly recent human remains in a cave far above the high tide mark, according to Mobley. An Alaska State Trooper stationed in Cordova went to the scene and collected the bones.

Exxon's contractors have been instructed to leave archaeological finds in place and inform Mobley's office of any discoveries. But a similar incident happened two weeks later on Kodiak where ancient skeletal remains were also removed.

The Knight Island bones were flown to the state crime laboratory in Anchorage where a physical archaeologist quickly determined that they were aboriginal, said lab director George Taft. The Chugach Native Association later took possession of the remains. On Tuesday, the villages

of the Sound held a religious reburial ceremony.

"Nobody likes their family graves unearthed and that is how we see it," said Blatchford.

"I think it was obvious the bones had been there for a few hundred years and there was no need to remove them. If

there was no body, only a few bones... it wouldn't have hurt to leave them for a few more days."

The archaeological exhibit has been postponed indefinitely. Blatchford said Chugach leaders might approve it later but he would not support a showing without full consent of the village elders.

"We didn't particularly care if it was a public showing open to one person or to everyone in Valdez," he said. "Among the elders of the Chugach region, there is a strong connection with the historic sites."

This is a family secret. It's valuable. It's important to us as a people to leave it for ourselves and for our future generations."

Editor's note: This article refers to Chugach Native Association. It should be Chugach Alaska Corporation.

"We've really had problems with vandalism... People ... dragging these artifacts out and putting them on their mantels."



4th All Chugach Summit...

Facing a common enemy

It was reminiscent of land claims days. The Chugach People pulled together to face a common enemy – the desecraters of the Chugach region.

"We are family. This is our corporation. These are our people. That's why we have unity," Agnes Nichols told a hushed audience at a September meeting of the All-Chugach Summit Conference.

All of the village for-profit corporations were there. So were the village governments, The North Pacific Rim and Chugach Alaska.

The Chugach region was brought together by the *Exxon Valdez* oil spill, the biggest ever on the North American continent.

Nichols, the village chief of Eyak, was eloquent in her remarks. Though ailing, she moved gracefully on her two canes as she urged the delegates to work together

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Fishermen's Catch
Snapshots
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Legal Reports
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All-Chugach Summit

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and move forward together.

"I came because I felt I needed to be here. There's not many old timers left. We know everybody. We are family."

This All-Chugach Summit was the fourth conference since the March 24 grounding of the tanker on Bligh Reef. The summits were called by Edgar Blatchford, CAC chairman, in an effort to unite the region as the villages faced a multitude of state and federal agencies and the international media.

"We have to talk with each other and listen to the concerns and interests of our shareholders. Though we may have disagreements, that doesn't mean we can't have open communications. There are so many out there who want to divide us for their own selfish interests," the CAC chairman said.

At the fourth conference the delegates heard reports from the governor's office, the state oil spill coordinators office, and the state departments of Community and Regional Affairs, Fish and Game and Commerce and Economic Development. There were also speakers from the state historical preservation office and a consultant working on the Alyeska oil spill contingency plan.

It was a meeting to share information and reassure each other that the interests and concerns were mutually shared by the delegates.

"The Exxon/VECO efforts divided us. This is an opportune time to bring all of us together." Derenty Tabios, executive director of The North Pacific Rim said.

All of the communities of the region have been directly impacted by the oil spill. The subsistence lifestyle has been negatively affected as scores of villagers were unable to harvest herring roe, salmon, seal and other foods from the sea.

Hundreds of people were flying into the villages, putting pressure on community services from child care to hous-

ing, from police protection to sewage treatment.

"It's not over yet," said Blatchford. "There will be increased attention on Prince William Sound and the areas bordering Kenai Fjords National Park - Native corporations lands. Environmentalists will want to regulate or prevent Native business opportunities in fish, recreational development and timber harvesting. Every step of the way we will be watched. There's no turning back. The world has discovered the Chugach region."

On the first day of the spill CAC representatives were flying over the grounded tanker. Within days the regional corporation had opened an office in Valdez to work with Alyeska, Exxon, oil spill contractors, the state Department of Environmental Conservation, the U.S. Coast Guard, the federal Department of Transportation and numerous other agencies.

CAC was not geared up to handle an oil spill but as the oil spread from Bligh Reef, CAC moved to protect its interests.

Though primarily a fish, timber and development corporation, CAC had to immediately become an oil monitoring company forced to interface with hundreds of agency people.

Pressure from the village corporations and shareholders also necessitated Chugach Alaska taking a leadership role in protection of cultural resources and advocacy of shareholder-hire in the cleanup work. CAC also had to attempt to mitigate damages, so contract opportunities were seized such as camp catering and waste disposal.

All of this required open communications.

Exxon and VECO changed their plans almost daily, sometimes leaving Chugach in mid-stream such as the situation that developed over the proposed Chenega camp. VECO said put a camp in Chenega, then changed their minds.

In early May a call for a region-wide meeting went out. The first All-Chugach Summit was held in an attempt to keep everyone from being totally inundated with oil spill activities.


Chugach Alaska spent hundreds of thousands of dollars trying to protect Native interests. It wasn't until three months into the oil spill did Exxon approved the first reimbursements. The delay put severe financial strains on the corporation.

"We had a moral obligation to try to help as much as

we could.

But the only way we could succeed was if there was open communication. People just couldn't demand from Chugach, then go away without contributing anything to solving the problems. We had to work together. That's why these All-Chugach Summits were, and are, very important. If the affected parties don't participate, then you can't blame us for Native interests not succeeding," said Blatchford.

"We must never forget that the common enemy is not us. We're all shareholders. We should all want our corporation to succeed. Why would anyone want to cut off our nose to spite our face," Blatchford asked.

The September two-day conference ended on a high note with Dr. Nancy Yawes Davis, a noted anthropologist long familiar with the region, extolling the strengths of the Chugach People. She said there was "great strength" in the people who had overcome so many intrusions so many times before. "There's a wonderful resilience in the Chugach People." 

**"We are family.
This is our
corporation.
These are our
people. That's
why we have
unity,"**

*Agnes Nichols,
Eyak Village Chief
Sept. 11, 1989
All-Chugach Summit*

FAX TRANSMISSION

7 February 1990

Representative Curt Menard
House Resources Committee
FAX: 465-2299

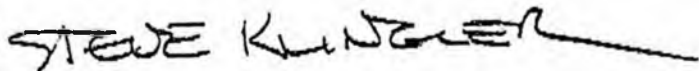
Dear Representative Menard,

As a practicing archaeologist, I would like to comment on House Bill 436, the bill dealing with disposition of Native human remains. As now written, I am opposed to passage of this bill and would like to request, at the very least, a continuance on committee hearings on the bill, to give adequate time for full and substantive comment on the bill.

I have no problem with addressing the reburial issue, in fact I am quite interested in seeing that it is dealt with. Archaeological ethics demand that human remains in general be respected and that the concerns of individual descendants and cultural groups be recognized and respected. I do, however, disagree with much of the bill as now written. Unfortunately, there has apparently been little input from those with somewhat diverging views. As now written, the bill ignores legitimate scientific interests in human remains, will adversely affect archaeological fieldwork in general, and may, from a management aspect, be unworkable. While on the surface scientific interests may appear to be in conflict with Native interests, I believe that this is more apparent than real. The Society of American Archaeology has a statement of policy that I would recommend be considered. Further, I recommend review of a bill now pending before the U.S. Senate (S. 1579, Sec. 19) for evidence that a broad-based consensus can be reached.

From my viewpoint, the best way for this issue to be addressed, rather than through the hearing process, may be the appointment of a commission, or other such body, with balanced representation of the various interests involved. A satisfactory consensus, allowing flexibility, respecting diverse cultural values, and allowing bona fide research, is desirable and is possible.

Sincerely,



Steven L. Klingler
5141 Seldon Circle
Anchorage, Alaska 99516
(907) 346-3542/762-2632



UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive
Anchorage, Alaska 99508

COLLEGE OF ARTS AND SCIENCES
Department of Anthropology

To: Members of the House Resources Committee
Representatives Davidson, Menard, Jacko, Davis, Foster,
Furnace, Hudson, Navarre, Sharp

Dear Sirs:

February 7th 1990

I have reviewed an early version of the proposed modification for the Alaska Historic Preservation Act. This item (HB 436) is scheduled for review by the House Resources Committee tomorrow (February 8th).

The effect of the proposed modifications, given the vagueness of the definition of the present "cultural origins/affinities" clauses, is to give current tribal and cultural groups the power to retroactively end the scientific study of the important information about life in prehistoric times contained in human skeletal remains and funerary objects. Furthermore, and perhaps more significantly, since most archeological sites in Alaska might contain human remains, the proposed modifications, if broadly interpreted, would give the same organizations and individuals the power to greatly impede or effectively terminate the archeological study of the prehistoric human past over much of Alaska by exercising their options to refuse to grant permission to excavate sites.

I do not suggest that such drastic outcomes are the intent of the sponsors of this legislation. These implications must be understood and addressed in preparation of the final wording of the proposed modifications however, and certain ambiguities in the present wording must be clarified. I therefore request that the hearing on this measure be continued, giving time for adequate comment from interested parties and clarification of the wording of the bill, before the measure is voted on by your committee.

If you have any further questions I can be reached at 786-1199 (office) or 563-6372 (home).

Yours sincerely,

A handwritten signature in cursive script that reads "William B. Workman".

William B. Workman
Professor of Anthropology

**UNIVERSITY OF ALASKA FAIRBANKS****Department of Anthropology**
Fairbanks, Alaska 99775

February 7, 1990

Representative Cliff Davidson
Alaska House of Representatives
Room 108 Capital
P.O. Box V
Juneau, Alaska 99811

Dear Representative Davidson,

I am writing you with reference to House Bill 436. This proposed Bill offers a fine opportunity to engage the citizens of this state in a dialogue about the protection, preservation, and understanding of the historical and archaeological resources of the state. As one who has committed 20 years of my own professional career to Native culture heritage issues, I welcome the opportunity this bill presents.

Nevertheless, the bill, as it is currently worded, seems to raise serious management issues and does not seem to be entirely in the best interest of the Native community, nor in the best interest of many institutions and individuals who are struggling to preserve, protect and understand the culture heritage of this state.

Without going into any details, I would like to relate briefly to you my experience on Kodiak which extends back nearly a decade and has resulted in a fine partnership with KANA, as well as with many Native people residing in Kodiak's villages. I began serious archaeological investigation of the Native history in 1983. From its inception this research project was conceived as a working partnership with Native residents of the island. To the best of my knowledge, this relationship has been very successful and been of benefit to all parties concerned.

With respect to human skeletal material, an agreement was reached early in the project's history with both KANA and people in the relevant villages. Although the goal of our research was never targeted toward the recovery of human skeletal material, we did stumble across human remains in the course of excavating village sites. The solution reached was simple. We were allowed to excavate human remains with care and respect; we were allowed to study the remains in a non-destructive fashion; and we reburied the remains according to the wishes of the local residents. I believe that this case history demonstrates that satisfactory middle ground can be easily reached for the benefit of all concerned parties.

I suggest that this bill needs some rewording. I believe that this can best be done by delaying the legislative hearings so that all concerned parties can provide thoughtful input. In addition, I suggest that a "blue ribbon" commission be established to provide the legislature with the wisest possible counsel.

Sincerely,

Richard H. Jordan
Chair and Professor of Anthropology

6 February 1990

To: Members of the Committee on Natural Resources
Alaska State House of Representatives
Juneau, AK

From: David R. Yesner, Ph.D. *D.R.Y.*
Alaska Representative to the Committee on Public Archaeology,
Society for American Archaeology

Re: Repatriation Bill

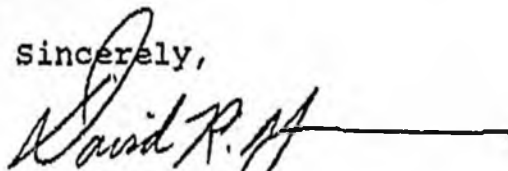
Hon. Members of the Committee on Natural Resources:

On Thursday, February 8th., the Alaska state legislature will take up a proposed bill on repatriation of human skeletal remains and funerary objects to native "tribes and cultural groups" within Alaska. The bill will apply to burials on state land and on private property that may be declared as a "state monument." It requires that all institutions must, within 30 days of passage of the act, prepare a detailed list of all human skeletal materials in their possession, and within 120 days must indicate the appropriate "tribe or cultural group" to which the remains refer, so that the appropriate group may dispose of the remains in the way they see fit. There is no definition of a "tribe or cultural group," so that it is not apparent whether simply declaring material to refer to "Eskimos" or to the Aglegmiut, Malemiut, Nunamiut, Tareumiut, etc. is required. No attempt is made to provide funding for such study. Furthermore, permits must be required from the relevant native "tribe or cultural group" before any excavations may be conducted on state land, or on private land declared as a state monument, if there is even any possibility that human skeletal materials might be encountered. This presents an almost total veto power over the conduct of professional archaeology in the state, and will greatly complicate the permitting process for conducting archaeology within the state in response to federal and state requirements for cultural resource assessment and mitigation in connection with federal and state projects. It will also place great burdens on the Office of History and Archaeology, DNR, and various institutions in analyzing and assessing extant materials. In large part, the problem depends on the period of time over which it can be judged that human remains can be attributed to a particular group; there is no language in the bill to address this question. No provision is made for any length of study of materials before disposal by native groups. Nowhere in the bill is there any acknowledgment of the importance of the scientific data from human skeletal remains in helping to understand the origins and affiliation of Alaska Native groups; their ancient lifestyles, populations, health, and nutrition; or their descent through time, which has been in some cases used to justify native land claims. Finally, no provision is even made for the disposition of the materials themselves by native groups; theoretically, they may even be sold!

As the COPA representative of the state of Alaska, I would like to call your attention to the official position of the Society for American Archaeology on reburial and repatriation, a copy of which is enclosed. Briefly, the official position of the SAA is that the reburial and repatriation of human remains and associated burial goods should take place on a case-by-case basis, with the mutual agreement of native groups and professional archaeologists, rather than through the use of blanket legislation. I have also informed the Office of Governmental Relations of the SAA for their interest. At present, I request that any hearings on this bill be delayed until all interested parties have an opportunity to present their viewpoints on revisions of any contemplated legislation.

Thanks very much for your interest.

Sincerely,



David R. Yesner
Dept. of Anthropology
University of Alaska
3211 Providence Drive
Anchorage, AK 99508

Bulletin

November 1989

Vol. 7, No. 6

OF THE SOCIETY FOR AMERICAN ARCHAEOLOGY

Reburial and Repatriation

Jeremy Sabloff, SAA president, has formed a Task Force on Reburial and Repatriation to review legislative initiatives and to advance the Society's position with the Congress and the media. Since its creation, the Task Force has worked closely with the SAA's Office of Government Relations, particularly on the historic preservation legislation, with reburial provisions, proposed by Senator Fowler and on the reburial and repatriation sections of the bill introduced by Representative Campbell. The Task Force is chaired by Keith Kintigh (Arizona St.) and includes Richard Ford (Michigan), Lynne Goldstein (Wisconsin-Milwaukee), William Lovis (Michigan St.), Vincas Steponaitis (North Carolina), and Phillip Walker (California-Santa Barbara).

The Society's position on reburial was adopted by the Executive Committee in May 1986, after a long period of study and careful consideration. This position maintains that both scientific and traditional interests in human remains are legitimate. It states that the disposition of human remains should be determined on a case-by-case basis, considering the beliefs and strength of the relationship of possible claimants to the remains and the scientific value of the remains. However, in cases where the remains are of a known individual, disposition should be determined by the closest descendants, regardless of scientific value. The statement encourages communication between scholars engaged in the study of human remains and the communities that have an affiliation with the remains.

Given the public debate concerning reburial, and because there appears to be some uncertainty within the profession about the Society's position, the SAA Statement Concerning the Treatment of Human Remains is reproduced below from the June 1986 Bulletin. Any questions or comments concerning this position should be directed to Keith Kintigh, Department of Anthropology, Arizona State University, Tempe, AZ 85287-2402.

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SAA Statement Concerning the Treatment of Human Remains

Archaeologists are committed to understanding and communicating the richness of the cultural heritage of humanity, and they acknowledge and respect the diversity of beliefs about, and interests in, the past and its material remains.

It is the ethical responsibility of archaeologists "to advocate and to aid in the conservation of archaeological data," as specified in the Bylaws of the Society for American Archaeology. Mortuary evidence is an integral part of the archaeological record of the past culture and behavior in that it informs directly upon social structure and organization and, less directly, upon aspects of religion and ideology. Human remains, as an integral part of the mortuary record, provide unique information about demography, diet, disease, and genetic relationships among human groups. Research in archaeology, bioarchaeology, biological anthropology, and medicine depends upon responsible scholars having collections of human remains available both for replicative research and research that addresses new questions or employs new analytical techniques.

There is great diversity in cultural and religious values concerning the treatment of human remains. Individuals and cultural groups have legitimate concerns derived from cultural and religious beliefs about the treatment and disposition of remains of their ancestors or members that may conflict with legitimate scientific interests in those remains. The concerns of different cultures, as presented by their designated representatives and leaders, must be recognized and respected.

The Society for American Archaeology recognizes both scientific and traditional interests in human remains. Human skeletal materials must at all times be treated with dignity and respect. Commercial exploitation of ancient human remains is abhorrent. Whatever their ultimate disposition, all human remains should receive appropriate scientific study, should be responsibly and carefully conserved, and should be accessible only for legitimate scientific or educational purposes.

The Society for American Archaeology opposes universal or indiscriminate reburial of human remains, either from ongoing

excavations or from extant collections. Conflicting claims concerning the proper treatment and disposition of particular human remains must be resolved on a case-by-case basis through consideration of the scientific importance of the material, the cultural and religious values of the interested individuals or groups, and the strength of their relationship to the remains in question.

The scientific importance of particular human remains should be determined by their potential to aid in present and future research, and thus depends on professional judgments concerning the degree of their physical and contextual integrity. The weight accorded any claim made by an individual or group concerning particular human remains should depend upon the strength of their demonstrated biological or cultural affinity with the remains in question. If remains can be identified as those of a known individual from whom specific biological descendants can be traced, the disposition of those remains, including possible reburial, should be determined by the closest living relatives.

The Society for American Archaeology encourages close and effective communication between scholars engaged in the study of human remains and the communities that may have biological or cultural affinities to those remains. Because vandalism and looting threaten the record of the human past, including human remains, the protection of this record necessitates cooperation between archaeologists and others who share that goal.

Because controversies involving the treatment of human remains cannot properly be resolved nation-wide in a uniform way, the Society opposes any federal legislation that seeks to impose a uniform standard for

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determining the disposition of all human remains.

Recognizing the diversity of potential legal interests in the material record of the human past, archaeologists have a professional responsibility to seek to ensure that laws governing that record are consistent with the objectives, principles, and formal statements of the Society for American Archaeology.

Executive Committee
The Society for American Archaeology
New Orleans, Louisiana
May 1986

(Reprinted from Bulletin 4(3):7-8, June 1986).

Foundation for American Archaeology

The fact that you are reading the SAA Bulletin tells us something about you. To begin with, you are vitally interested in archaeology and probably earn your living in the discipline in one capacity or another. Moreover, you very much want to keep up with the latest news about your Society.

You should be pleased, then, to learn that the Agnese N. Lindley Foundation in Tucson, AZ has offered the SAA a \$2,000 challenge grant for funds needed for legal fees to establish a Foundation for American Archaeology, search for a managing director and print brochures.

If you attended the National meetings held in Atlanta, you know that the SAA authorized the establishment of a Foundation for American Archaeology along the outlines presented in the March 1989 issue of the Bulletin.

The goal of the Foundation is to provide education to individuals, all levels of government that affect archaeology, and corporations concerned with archaeology. The Foundation will respond in various ways to the numerous opportunities that occur for education about issues of pothunting and concerns about reburial and the repatriation of artifacts.

There presently is no formal structure to address the many demands and opportunities to educate the public about the true nature of the discipline of archaeology. The public gets their information about archaeology from popular movies, and from sensational news accounts. The success of films and articles about archaeology indicates there is tremendous public interest in the subject, which forms a natural constituency for support of archaeological research. The Foundation would tap this interest for education about the true nature of archaeology. The establishment of this

Foundation is essential, for the discipline has never faced such grave challenges nor such a receptive audience.

In order to put these ambitious plans in motion, George Gumerman was asked to chair a task force composed of Dena Dincuze, Brian Fagan, Mark Leone, William Marquardt, Stuart Strucver, and Daniel Thiel.

We are pleased to report that their efforts are bearing fruit and the challenge grant is a giant step in the right direction. What is now needed is for the SAA membership to match the \$2,000 offered by the Agnese N. Lindley Foundation. Obviously \$4,000 is only a beginning, but it is a start.

This is a modest sum. A five or ten dollar donation or more from everyone who reads this will quickly match the requisite amount. Since you have already demonstrated your interest in archaeology by the simple exercise of reading this, you will surely want to help make the Foundation a reality by contributing toward the \$2,000 challenge. You are, after all, not only contributing to your profession but, in all probability, toward your own livelihood.

Checks of any amount should be made out to: The Foundation for American Archaeology, and sent to: Society for American Archaeology, 808 17th St, NW, Suite 200, Washington, D.C. 20006.

SAA Succeeds in Congress

by
Loretta Neumann and Kathleen Reinburg
SAA Office of Government Relations

Money and reburial have headed the list of issues Congress has been tackling over the last several months. The latter is discussed in detail by Keith Kintigh in this issue of the Bulletin (see page 1, "Reburial and Repatriation"). The following summarizes some of the issues for which the SAA has been lobbying.

SAA achieved several major successes in the fiscal 1990 appropriations for Interior and Related Agencies. In a year with tight fiscal constraints placed on legislators, the outcome for cultural resource protection programs in the federal agencies was surprisingly good. SAA sought and obtained \$18.2 million for the Forest Service cultural resource management programs. This is an increase of over \$2 million compared to last year. The Historic Preservation Fund was increased to \$32.75 million. Last year it received \$30.5 million. Special add-on funds were provided for several programs. The National Park

Service was given \$500,000 to pursue anti-looting efforts in the National Park Service and \$100,000 to begin preservation technology transfer. The Bureau of Land Management was provided \$200,000 for cultural resource law enforcement in the four corners area.

In addition, the Senate included language in the National Science Foundation appropriations report which encourages NSF to provide funds for archaeology research within the biological, behavioral and social science directorate. This is the first time that archaeology has been mentioned in the appropriations report and we hope to gain support for increases in funding of archaeology at NSF.

Senator Fowler (D-GA) introduced S. 1579, National Historic Preservation Policy Act on August 4. It would amend the National Historic Preservation Act, Historic Sites Act, Archaeological Resources Protection Act, and the Abandoned Shipwreck Act to strengthen the protection of historic heritage and resources, provide for treatment of human remains, develop training and education programs, strengthen state and tribal preservation programs, develop certification for archaeologists, and implement an artifact registration system. In addition, Senator Fowler introduced S. 1578, to create an independent historic preservation agency and national center for preservation technology. SAA worked on a number of provisions in these two bills to improve them with respect to archaeology.

The SAA testified in support of expanding the Chaco Protection System (S. 798) and establishing the Petroglyph National Monument in New Mexico (S. 286); designating the Amistad National Recreation Area in Texas (H.R. 967), reauthorizing the Bureau of Land Management programs (H.R. 828), and establishing the National Museum of the American Indian (H.R. 2668 and S. 978).

For information on these and other bills, call the Congressional Bill Status office, (202) 225-1772. To obtain copies of House bills call (202) 225-3456 or write to House Document Room, H-226 Capitol, Washington, DC 20515. For Senate bills, write to Senate Document Room, SH-B04 Hart, Washington D.C. 20510.

Dues Increase Crucial to Future

The Society for American Archaeology is financially sound. Now that we have finished the long range study of the Society, and have a new set of Bylaws strongly endorsed by the membership, we are in a position to build for the next decade and more. Much of the dues increase announced in the last Bulletin will go to help build

BY THE RESOURCES COMMITTEE
IN THE HOUSE

HOUSE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act making special appropriations to the Department of Revenue, the Department of Natural Resources and the Department of Fish and Game for settlement of litigation concerning conveyance of limited timber cutting rights to the University of Alaska; and providing for an effective date."

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

* Section 1. The sum of \$1,968,511 is appropriated from the general fund to the Department of Revenue for deposit in the University of Alaska Trust Fund as partial payment for acquisition of the university's timber cutting rights at Cape Suckling (tract A148).

* Section 2. The sum of \$134,000 is appropriated from the general fund to the Department of Natural Resources and the sum of \$93,000 is appropriated from the general fund to the Department of Fish and Game for fiscal year 1991 costs for preparation and adoption of an area plan for state lands in the Icy Bay to Cape Suckling area.

* Section 3. The sum of \$_____ is appropriated from the general fund to the Department of Natural Resources for costs of reappraisal of the University of Alaska's limited timber cutting rights at Cape Suckling.

* Section 4. The sum of \$_____ is appropriated from the general fund to the Department of Natural Resources for costs of surveying state lands at Reed Island and Upper George Inlet.

* Section 5. The unexpended balance of appropriations made in this Act lapse into the general fund on December 31, 1992..

* Section: 6. This Act takes effect on the day following approval by the Alaska Superior Court in consolidated Case No. 1JU-88-271 Civil of a legal settlement between the City of Yakutat, the Southeast Alaska Conservation Council (SEACC) et al, the Department of Natural Resources, and the University of Alaska Board of Regents which provides for sale of the university's Cape Suckling limited timber cutting rights to the State of Alaska, and which settles other legal issues concerning the university's timber cutting rights at Cape Yakataga and White River.

Letter of Intent for

"An Act making special appropriations to the Department of Revenue, the Department of Natural Resources and the Department of Fish and Game for settlement of litigation concerning conveyance of limited timber cutting rights to the University of Alaska; and providing for an effective date."

It is the intent of the legislature that the settlement of SEACC et al v. Gorsuch (Consolidated Case No. 1JU-88-271) provide for repurchase of the University of Alaska's limited timber cutting rights at Cape Suckling (tract A148), for time for completion of an area plan for the Icy Bay to Cape Suckling area prior to any timber harvest at Cape Yakataga (tract 20), and for the otherwise unhindered exercise of limited timber cutting rights at Cape Yakataga and White River (tract 52) consistent with the terms and conditions of Appendix I to ADL 223456 as modified by the finding and decision on remand.

The legislature intends to compensate the university for the Cape Suckling limited timber cutting rights based on a new appraisal which establishes the value of the affected timber as of the effective date of this Act from the following sources:

- 1) An appropriation of \$1,968,511 to the University of Alaska Trust Fund in the Department of Revenue;
- 2) If the appraisal exceeds \$1,968,511, transfer of all or a portion of Reed Island (tract 57, valued at \$1,762,500) and/or Upper George Inlet (tract 78, valued at \$206,000);
- 3) If the appraisal exceeds \$3,937,091, the legislature intends to appropriate additional amounts from the general fund, transfer state mortgage contracts, and/or transfer other state assets to the university until the full appraisal price is reached.

It is the intent of the legislature that an area plan for state lands in the Icy Bay to Cape Suckling area be completed under AS 38.05.065 and DNR regulations on or before December 31, 1992. DNR shall coordinate preparation and review of the area plan with ADF&G on fish & wildlife habitat protection issues, and consider management options for protection and enhancement of fish and wildlife habitat and populations, sport and subsistence hunting and fishing, recreation, tourism and scientific values, settlement, timber harvest, mining, material extraction, and other uses the department considers appropriate. DNR shall establish a temporary Citizens' Advisory Commission to assist in preparation and review of the area plan. If the area plan precludes exercise of all or a part of the university's limited timber cutting rights at Cape Yakataga, the legislature intends to compensate the university in cash at the then-current market value as determined by appraisal.

It is the intent of the legislature that the university and DNR develop a plan for harvest of White River trees in accordance with the Forest Practices Act as revised during the 1990 legislative session and in accordance with provisions of the 1988 settlement and the 1989 final finding by the commissioner.

SECTIONAL ANALYSIS

by Staff to Representative Davidson

SECTION 1: Adds a new section to the Coroner's Inquest, (AS 12.65) that deals with the discovery of human remains. There is currently no directive to the public as to what procedure to follow when human remains are discovered. This section mandates that the remains are not disturbed and their presence reported. If the remains are found to be unrelated to a prosecutable offense, the Department of Natural Resources is notified. A person who fails to follow this procedure is guilty of a Class A misdemeanor.

The bill makes it illegal to sell, buy or barter human remains. Also, human remains may not be displayed unless it is in connection with a funeral or burial or as required for medical or law enforcement activities. A violator of this section is guilty of a Class A misdemeanor.

SECTION 2-10: Amends or adds to the **Alaska Historical Preservation Act, AS 41.35.**

SECTION 2- 5: Brings the Alaska Historical Preservation Act in compliance with the new additions in Sections 9 and 10.

SECTION 6: Brings the DNR's historical resource permitting process in compliance with the new language dealing with human remains and funerary objects.

SECTION 7: Requires notice to be given to DNR by those who have an historical site or state monument on their property before any construction, alteration or improvement is undertaken. The **section is amended** to include contacting the identifiable tribe of origin when human remains are involved.

SECTION 8: Definitions.

SECTION 9: **NEW SECTION.** Adds to the Alaska Historical Preservation Act the procedure to follow when human remains and funerary objects are discovered.

AS 41.35.400 is a policy statement that no person can have title to human remains, only the right to disposition. The

right to disposition lies with the state unless the decedent's living relatives or tribe are reasonably identifiable.

AS 41.35.410 outlines the procedure to follow upon the discovery of human remains that are not related to law enforcement activities. If the human remains are not disinterred, the department shall leave them in place where they are interred. If the remains have been disinterred, the department shall contact the decedent's living descendants with the closest kinship or the tribe of origin. When the kinship is not known, the closest tribe in the proximity of the discovery shall be notified.

After contact and upon request, the remains or funerary objects shall be returned by DNR so the descendants or tribe may dispose of them. If there is no response within 120 days, DNR shall treat the human remains as they treat other unclaimed human remains or historic resources, as applicable.

A tribe may enter into a contract with a person for study of the human remains before disposal.

AS 41.35.420 creates a dispute committee appointed by the Governor to resolve disputes concerning the tribe of origin.

SECTION 10: NEW SECTION. This section defines the procedure to follow for those remains currently being held. It mandates those in possession of human remains to contact DNR within 120 days. The department shall then prepare an abstract containing indexed information related to the reports received. After compilation, the department shall send the abstract to the governing body of each tribe in the state. The tribes may file a claim with the department to request return of remains listed on the abstract.

The dispute resolution committee shall address any duplicated claim. If there is not a claim filed within 120 days after receipt of the abstract, the department shall take possession or enter into an agreement with persons or institutions for protective custody of the remains.

THE HRDLICKA LEGACY AND KONIAG SPIRITS

by

Gordon L. Pullar
Past President, 1983-1989
Kodiak Area Native Association

Presented at the

CIRCUM-PACIFIC PREHISTORY CONFERENCE
August 2-6, 1989
Seattle, Washington

THE HRDLICKA LEGACY AND KONIAG SPIRITS
BY
GORDON L. PULLAR

During the 1930's Ales Hrdlicka, the curator of the Division of Physical Anthropology of the U.S. Museum of Natural History at the Smithsonian Institution, removed some 812 skeletal remains of the Native people from Kodiak Island, Alaska. The majority of the skeletons were taken from the village of Larsen Bay and are currently unceremoniously stored in the Smithsonian's Museum of Natural History where they make up a portion of the 18,500 Native American skeletons the Smithsonian holds (Lowen, 1988, Preston, 1989, Spotted Elk, 1989). Intensified efforts are now underway by the Native people of Kodiak Island to have the remains of their ancestors returned to the island for reburial. The effort, led by the village of Larsen Bay and the island-wide Kodiak Area Native Association, has thus far been rebuffed by the Smithsonian that claims, just as it has in other requests, that the skeletons are needed for scientific study (Brookes, 1988).

Recent scientific evidence suggests that Native people have inhabited Kodiak Island, Alaska, for nearly 8,000 years (Jordan, 1987:4). The first contact with western Europeans came just over two hundred years ago with the sighting of Kodiak Island from a Russian ship in 1761 and the first Russian settlement there in 1783 (Hrdlicka, 1944). At the time of this first contact with the Russians, there were 65 villages on the island (Tikhmeniev,

1861, from Hrdlicka, 1944) occupied by the Koniagmiut or Koniags, the island's aboriginal people. Today, there are six Koniag villages in the Kodiak Island group. They are Akhiok, Karluk, Larsen Bay, Old Harbor, Ouzinkie and Port Lions. Additionally, the town of Kodiak contains a Native community (Davis, 1984: 199). The estimated population of Koniags on Kodiak Island today is 2,500.

The Koniag village of Larsen Bay is located on the small bay of the same name which branches off the much larger Uyak Bay on the west coast of Kodiak Island. The current population of the village is 217 (Kodiak Area Native Association, 1988 Annual Report). A large salmon cannery was built in Larsen Bay in 1888 (Roppel, 1986) and continues in operation today. The village is governed by a tribal government with an elected council. A second class municipal government was also formed under the laws of the State of Alaska. A village corporation, Nu-Nacht-Pit, Inc., was established under the Alaska Native Claims Settlement Act of 1971, but ceased to exist in 1980 when it merged with the regional corporation, Koniag, Inc.

In 1926, Ales Hrdlicka, under the auspices of the Smithsonian Institution, undertook an anthropological survey of Alaska (Hrdlicka, 1944:1). His efforts ended with the 1938 summer season. Beginning in 1931 and ending in 1937, he excavated in the village of Larsen Bay (Hrdlicka, 1944:1 & 140). His stated

purpose of these excavations "was to secure the skeletal materials which the site evidently contained." (Hrdlicka, 1944:140). The purpose of the entire Alaska survey was, in Hrdlicka's words, "to learn whatever might still be possible about the living remnants of the native populations, and to gather skeletal remains that would supplement the study of the living . . ." (Hrdlicka, 1944:1). It is quite apparent that he viewed Native people as being on the road to extinction. He would, undoubtedly be very surprised that Larsen Bay is still a thriving Native community.

While Hrdlicka's name has long been prominent in the field of physical anthropology, it appears that his formal education in anthropology was limited to four months in Paris in 1896 (Stewart, 1940:8). Hrdlicka, born in Bohemia in 1869, immigrated to New York with his father in 1882 (Stewart, 1940:4). He graduated from Eclectic Medical College in New York in 1892 and from the New York Homeopathic Medical College in 1894 (Stewart, 1940:6-7). His first actual fieldwork in anthropology came in 1899 when he was given charge of the physical and medical anthropological research on the Hyde Expedition to the American Southwest and Mexico for the American Museum (Stewart, 1940:11). In 1903, he was appointed to be in charge of the new Division of Physical Anthropology at the Smithsonian (Stewart, 1940:12, Hinsley, 1981:281).

It was while he was under the employ of the American Museum of Natural History in New York that the first stark signs appeared of what would become a lifelong relationship between Hrdlicka and the dead of Native peoples. The arctic explorer Robert Peary brought back six Eskimos to New York from Greenland and left them at the American Museum (Harper, 1986:34, Preston, 1989). Four of the six soon became ill and died and Hrdlicka, in collaboration with the famed anthropologist, Franz Boas, found the opportunity to study the same Native people both in life and in death (Preston, 1989, Harper, 1986). Hrdlicka had the four Eskimos, that he had measured and photographed in life, boiled so that their flesh could be removed from their skeletons (Preston, 1989). One of the deceased, Qisuk, was the father of Minik, who, at age eight, was one of the survivors. A fake funeral and burial was staged for the benefit of Minik and it was some years later that he made the shocking discovery of his father's skeleton on display at the museum (Harper, 1986:97). A final indignity for Qisuk was that Hrdlicka saved his brain and in 1901 published an article on it, complete with photographs, titled "An Eskimo Brain" (Harper, 1986:97). This article was just the first of several with ghoulish titles such as "New Examples of American Indian skulls with low forehead" (1908), "Catalogue of Human Crania in the U.S. National Museum", (1925), and forty years later, "Diseases of and artifacts on skulls and bones from Kodiak

Island" (1941a) and "Artifacts on human and seal skulls from Kodiak Island" (1941b).

While Hrdlicka's work of digging up Native burials may often be referred to as archaeology, it appears that even he set himself aside from that discipline saying, "And it is hoped also that our archaeological friends will no longer stand aloof, as so often in the past, but will collaborate with us to rescue not alone the evidence of man's activities, but the precious skeletal remains encountered in their excavations of ancient historic sites." (1919). Even though archaeology was a young and developing discipline at the time of Hrdlicka's digging on Kodiak Island, his techniques of excavation were inadequate even by the standards of the time (Jordan, 1987:8).

Hrdlicka seemed to feel that lack of organized objection from the Natives implied permission to remove the remains of their dead. He also claimed that he was taking only very old remains which he reasoned the Natives would not care about anyway. He said the collecting of the skeletons was ". . . carried on with the full knowledge of the natives and often in their view with their assistance. They were told that I wanted only the old "heathen" remains in which no living person had any interest; that the bones were needed for studies and for comparisons of the development, the type, and the diseases of the old with those of the present people; and that they would be treated with all

possible consideration" (1931:125).

Once again, Hrdlicka's concepts of "old" or prehistoric certainly differed from those of professional archaeology. While archaeologists speak in terms of hundreds or thousands of years, Hrdlicka's "old" was much more recent. In one incident that took place in a Yukon River Village, that he described in two different publications, he removed the skeleton of a man buried in a grave under a Russian Orthodox cross marker. He estimated the man to have been dead for thirty years (1930:139, 1943:235). In one of the descriptions of the incident, he said, "But just as the parts were all gathered, I saw below (the grave was on a slope) an old woman who appeared to be provoked at something and was talking to herself rather loudly. On sending the Indian who accompanied me down to see what the trouble was, I learned that the old woman claimed the bones to be those of her long departed husband" (1930:139). Hrdlicka then put the skeleton back and "covered as well as possible" (1943:235) which he said was "to the complete satisfaction of the old dame" (1930:139). Hrdlicka obviously did not always have the permission he claimed to have.

And indeed, Hrdlicka himself published accounts of secretly stealing and concealing skeletons from interior Alaska villages. (1930b:55). He also speaks of some remains he excavated and upon opening the coffins found them to be "too fresh yet" (1930:76)

and of other cases where he did take remains that still had "soft parts". (1930b:58).

So what was Ales Hrdlicka? . . . scientist? grave robber? . . . racist? There is evidence in his writings to suggest that he had a concern for preserving the purity of the white race. In 1919, he wrote, "The paramount scientific object of Physical Anthropology is the gradual completion, in collaboration with the anatomist, the physiologist, and the chemist, of the study of the normal white man living under ordinary conditions," (1919:22). He stated further, "Associated with racial studies, but of more direct and serious concern to many nations, particularly the American, are investigations into the physical, physiological, and intellectual effects of racial mixtures on progeny. Mixture of colored races with the white are largely controllable by law and general enlightenment, and if found detrimental could be reduced to a minimum. In the United States we are confronted on the one side with the grave problem of mixture of white and negro, and on the other with that of white and Indian" (1919:24).

Further, but more subtle, evidence of Hrdlicka's attitude is found in his book, The Anthropology of Kodiak Island (1944), where he capitalizes the word "White" in white man but does not capitalize the word "Native". (P. 127, 136, 153). Also in his writings on his Alaska experiences, he praises white people,

crediting them by name, for assistance given, but does not mention many Natives by name. There is rare mention of the Native residents of the village of Larsen Bay even though he spent six summers digging there.

Hrdlicka names the site of the Larsen Bay excavations Jones Point in honor of Laura Jones, the wife of the local cannery superintendent who helped in the excavations (1932:99). In a rare mention of the local Native residents, he expressed concern for leaving some equipment behind over the winter as it would be at the "mercy of nearby mixbreeds" (1944:318). Other writings such as an article for Good Health Magazine titled, "A danger to the American people from assimilation of the colored population" (March 9, 1928) seem to confirm his belief in white superiority.

The Smithsonian has agreed to return the remains of Native American individuals to tribes if they could be identified by name or if they were taken illicitly (Adams, 1987, Lowen, 1988, Robbins, 1988). As the customs of prehistoric Koniag differed from those of western societies, there are no gravestones or burial records identifying by name those who died so long ago. Just the same, the Koniag people of today know that these are the remains of their ancestors and do not need specific names attached to them to know they must be treated with respect. To the pre-contact Koniag, death did not represent an end of interpersonal relationships as the dead were kept close by in the sealed

off siderooms of their semi-subteranean houses, called barabaras (Clark, 1984, from Merck, 1980:108).

The Smithsonian maintains that Hrdlicka had permission to remove the skeletons from Larsen Bay and that local Natives actually assisted him in the excavations (letters from A. Kaepler, Smithsonian, to Larsen Bay Tribal Council, Sept. 25, 1987 and Feb. 16, 1988). The people of Larsen Bay vigorously dispute this (letters from Larsen Bay Tribal Council President, Frank Carlson, to A. Kaepler, October 27, 1987, and April 15, 1988). Dora Aga, the matriarch of Larsen Bay, remembers Hrdlicka well. In response to the Smithsonian's claim that local Natives assisted Hrdlicka, she exclaimed, "No way! He wouldn't let nobody get near that place!" (personal interview July 18, 1989). The Smithsonian also claims that no one objected to his work at Larsen Bay (Kaepler letter, Feb. 16, 1988). This claim also infuriates Dora Aga, who said several people, including herself, objected. "I called him every name in the book," she said, "Him and I were no friends at all" (personal interview July 18, 1989).

When considering whether or not permission was given to Hrdlicka to remove skeletons from Larsen Bay, it must be asked who in the village had authority to give such permission. According to Dora Aga, there was no one with such authority. Who could have the authority to give away the remains of his or her ancestors? It must also be realized that the intimidation factor

of a group of white men from Washington, D.C. coming into a remote 1930's Alaska Native village must have been tremendous. "We were green in them days," said Dora Aga, "we didn't know anything about laws" (personal interview July 18, 1989).

Due to the stance the Smithsonian has taken on the issue of repatriation of human remains to Native groups, there may be just two options available to the Natives of Larsen Bay and Kodiak Island. One is to hope for a legislative cure. Thus far such legislation has been unsuccessful. There is, however, legislation pending in Congress that would provide some remedy. These bills are H.R. 1646, the "Native American Grave and Burial Protection Act"; H.R. 1381, the "Native American Burial Preservation Act of 1989" and H.R. 1124, the "Indian Remains Reburial Act".

Another possibility is legal action, challenging the Smithsonian's legal right to hold the remains. Steps are currently being taken by Larsen Bay Tribal Council to pursue this legal avenue with the assistance of the Native American Rights Fund, a national Native American legal advocacy organization.

The struggle of Kodiak Island's Native people to have the remains of their ancestors returned for reburial is of even greater significance than the need to respect the dead. The Native population of Alaska is undergoing an epidemic of self-destruction, including alcohol and drug abuse, family violence and suicide (AFN, 1989) and Kodiak Island is no exception. One

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of the fundamental causes for this epidemic is the disintegration of traditional cultures and the resulting loss of self-esteem (G. Pullar, testimony, U.S. Senate Select Committee on Indian Affairs, March 3, 1989). If young Native individuals are led to believe that it is acceptable and proper for the government of the United States to "own" the bodies of their grandfathers, grandmothers and other ancestors, then how can they possibly believe that they are equal to all others in this country?

Frank Carlson, the president of the Larsen Bay Tribal Council, in his plea to the Smithsonian for the return of the ancestral remains, wrote, "These studies have been going on for over fifty years and we believe it is time to return the skeletal remains to Larsen Bay. We believe you would not invade non-Native grave sites in this manner. Are they not worth study? (letter to A. Kaeppler, Smithsonian, April 15, 1988).

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UNIVERSITY OF ALASKA FAIRBANKS

Department of Anthropology
Fairbanks, Alaska 99775

Representative Curt Menrad,
Alaska State Legislature,
Pouch V, Mail Stop 3100,
Juneau, AK 99811

February 8 1990

Dear Mr. Menard:

As Co-Chair of the Resources Committee, I want you to understand the strong professional and personal concerns I have regarding the proposed legislation, Bill No. 436, "An Act relating to the protection of Alaska Native unmarked burials". I would be happy to be highly specific for you at a later time, but in general my concerns relate to infringements on professional activities, group-specific protectionist policies that place the rights of certain individuals over others, restrictions on the rights to personal property, overtones of racism, control of information, and outright mistakes in language and intent, all of which I read quite clearly in this bill.

As a professional anthropologist and archaeologist who has worked in this state since 1981, I feel my concerns are well-founded and justified. It is particularly surprising to me and my colleagues that we became aware of this bill in an "after the fact" manner. There is a professional association in this state called the Alaska Anthropological Association which would have been pleased to have input on this bill before this point. As it is the Association will be holding its annual meeting in Fairbanks, March 8 to 10, 1990, and I, along with Dr. John Cook of the Bureau of Land Management, and Susan Morton of the National Park Service will be organizing a detailed discussion of this proposed legislation. The context will be the Interagency Archaeological Group meeting, to be held Thursday, March 8, 1990 at 2:00 pm in the BLM Conference Room in their Fairbanks offices on University Avenue. Our list of invitees will include you, and your committee members, representatives of Native organizations, and interested professionals. I'm sure you will want to attend this meeting.

At the moment, I think it is important for you and your Committee members to set this bill aside for the time being, until some reasonable appropriate text can be written that will address the needs of all affected individuals. While I think it is laudable that similar legislation be considered, and I believe such ammendments to the current law are needed, this is not the one that you should be considering for submission to the legislature. I will be anxiuos to hear your reply.

Very truly yours,



M.E. Colleen Lazenby,
Anthropologist/Archaeologist,
Conference Coordinator,
Department of Anthropology.

MECL/cl

cc: C. Davidson
M. Davis
B. Sharp
J. Cook



UNIVERSITY OF ALASKA FAIRBANKS

Department of Anthropology
Fairbanks, Alaska 99775

Thursday, February 8, 1990

Representative Cliff Davidson
Natural Resources Committee
Alaska State Legislature
Pouch V, Mail Stop 3100
Juneau, AK 99811

Dear Mr. Davidson:

I am writing you in regard to the proposed legislation, Bill No. 436, "An Act relating to the protection of Alaska Native unmarked burials." The proposed legislation cuts to the heart of many complex matters but will only exacerbate the threat to the burials it aims to protect. As a practicing archaeologist, working in Alaska for the last 10 years, I have encountered many sites and without excavation it is impossible to assign cultural origins--if it is possible at all. The proposed legislation assumes that it is possible and allows a certain class of citizen full and complete access to disturb them, if so willed. This is clearly unconstitutional. Another equally disturbing part of the proposed legislation involves the establishment of the Alaska State Troopers as a permitting agency for the undertaking of archaeological work in the state. Obviously, the Troopers have no expertise in the matter and may once again exacerbate the situation, as occurred last summer in Prince William Sound.

As you may know, the State of Alaska does already possess a permitting procedure (Parks and Recreation...) and an organization of professional anthropologists and archaeologists. What the state requires is motivation and funding to initiate a comprehensive policy to protect and survey archaeological resources. Many other states provide considerably more funding toward these ends. Why doesn't your office undertake some truly important action, rather than pandering to public opinion. I am appalled by the lack of foresight and intelligence contained in the proposed legislation!

Sincerely yours,

O. Mason

Owen K. Mason

cc: C. Menard



UNIVERSITY OF ALASKA FAIRBANKS

**Department of Anthropology
Fairbanks, Alaska 99775**

February 8, 1990

Resources Committee
Alaska House of Representatives
Room 108, Capitol
PO Box V
Juneau, AK 99811

Dear Committee Members:

I have just recently learned of House Bill 436. I am very concerned that your committee is moving ahead with this proposed legislation without consulting with a large number of Alaska residents who are interested and informed about these issues--the community of professional archaeologists and anthropologists.

As an archaeologist who has worked in the state for 12 years in cooperation with Native groups, I believe that the appropriate state agency to be authorized to address these issues is the State Office of History and Archaeology. The treatment of human skeletal remains and associated funerary items is an important issue that deserves a great deal of attention. I believe that the Office of History and Archaeology should be the lead agency charged with developing a coherent policy for treatment of human remains in consultation with local Native groups. The Office of History and Archaeology should also be allocated additional resources to fulfill these new responsibilities. The Office of History and Archaeology staff is already overworked and, in my experience, has had insufficient funds to survey, test and monitor construction projects on state lands. Furthermore, they have had insufficient resources to properly analyze archaeological material that have already been salvaged from sites damaged by state-sponsored construction projects. In addition, they have had inadequate resources for monitoring state construction projects or monitoring for vandalism and theft already occurring on state lands. They deserve to have more authority, a larger staff, and more financial resources to fulfill their many responsibilities.

The Department of Public Safety might be involved in support of the Office of History and Archaeology. In particular, they could devote attention to apprehending those individuals who continue to excavate and vandalize archaeological sites illegally.

I know that I have not commented on the specifics of the proposed bill. I feel it is so ill-conceived that it may be necessary to start from scratch. I support your efforts at addressing these important issues, but urge you to seek involvement from a wide range of concerned citizens, including professional anthropologists.

Sincerely,

Madonna L. Moss, Ph.D.

Assistant Professor of Anthropology



UNIVERSITY OF ALASKA FAIRBANKS

Department of Anthropology
Fairbanks, Alaska 99775

7 February 1990

Representative Cliff Davidson
Alaska House of Representatives
Room 108 Capital
P.O. Box V
Juneau, AK 99811

Dear Representative Davidson:

As an anthropologist, I am altogether in favor of laws aimed at preserving the state's historic, prehistoric, and archaeological resources. However, these laws should be carefully thought out and deliberated upon by all relevant parties prior to enactment. In reference to House Bill No. 436, it is not clear who wrote this document, but little input is evident from those individuals most directly involved in uncovering, preserving, interpreting, and displaying the state's rich cultural heritage, i.e. anthropologists, archaeologists, museum curators, etc.

My specific area of expertise is physical anthropology and it is this branch of the discipline that treats, among many other things, human skeletal remains. On the one hand, I am intimately familiar with the diverse types of scientific information that can be obtained through the analysis of skeletal material. On the other hand, I am sensitive to the native community's views on the disinterment of human burials. It is my position, for example, that recent human skeletal material (100-150 years old) does not fall within the province of what I do and should be left well enough alone. In fact, I have excavated small native "cemeteries" in Kotzebue, Nome, and Barrow, at the request of local governments and/or regional corporations [sites were to be impacted by construction projects], that dated to around the turn of the 20th century. After exhuming the remains, they were all placed in newly constructed coffins and reburied under the direction of the appropriate local officials.

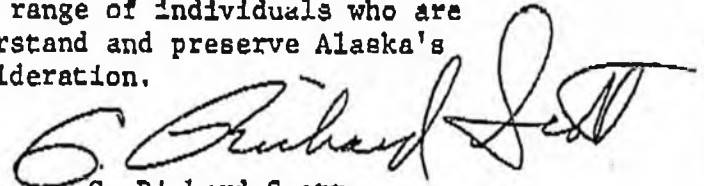
Although I feel that recent human skeletal remains should be reburied according to a local community's wishes, the issue becomes far more complex when dealing with ancient human remains. The further back one goes in prehistory, the more complicated issues of ancestry become. If there is one thing that is certain in human history it is this: people move around. Although many Anglo-Americans now live in Fairbanks, no one would assume that Anglo-Americans had always lived in Fairbanks. However, the same people who would NOT ASSUME that, do assume that the distribution of Alaskan natives at the time of contact does reflect their distribution deep into prehistory. This assumption grossly underestimates the ability of earlier Alaskan native groups to disperse across the landscape (and there is much evidence for such dispersals).

UNIVERSITY OF ALASKA FAIRBANKS

Representative Cliff Davidson
page 2

In the proposed house bill no. 436, the following phrase is used several times: "whenever the tribal or cultural origins of the remains or objects are reasonably identifiable." "Reasonably identifiable" is defined subsequently in terms of "preponderance of evidence." What is the nature of this evidence and who makes the determinations? There is only one scientific discipline in this country which specializes in the analysis and interpretation of earlier human cultural and physical remains: anthropology. Within the discipline, archaeologists assess prehistoric and protohistoric cultural remains while physical anthropologists are trained to analyze human skeletal remains. In fact, the Department of Public Safety has utilized my expertise in dozens of cases (at no cost I might add) when unidentified skeletal material came to their attention.

This is simply not the time or place to address the many issues and implications of house bill no. 436. I would, however, suggest that you and your colleagues seek input from a wider range of individuals who are directly involved in efforts to better understand and preserve Alaska's cultural heritage. Thank you for your consideration.



G. Richard Scott
Professor of Anthropology
Department of Anthropology
University of Alaska Fairbanks
Fairbanks, AK 99775
(907) 474-6755



UNIVERSITY OF ALASKA FAIRBANKS

INSTITUTE OF ARCTIC BIOLOGY
Fairbanks, Alaska 99775-0190 U.S.A.

Phone: (907) 474-7640
FAX: (907) 474 6067

FAX TRANSMISSION

TO: Representative George Jacko FAX #: 463-5661
Name
Alaska House of Representatives
Affiliation

Date: 2/8/90

FROM: Wendy H. Arundale
Name
Institute of Arctic Biology/ UAF
Affiliation

Time: _____

Number of pages including cover: 5

COMMENTS:

Please bring to Representative Jacko's attention
before 3pm Resources Committee Meeting.
Contains information related to HB 43b.



UNIVERSITY OF ALASKA FAIRBANKS

INSTITUTE OF ARCTIC BIOLOGY
Fairbanks, Alaska 99775-0180 U.S.A.

(907) 474-7040

FAX: (907) 474-0867

February 7, 1990

Representative George Jacko
Alaska House of Representatives

Dear Representative Jacko:

I understand that you are cosponsoring ~~HB 433~~ a bill to amend the Alaska state historic preservation act. I am very glad to see you and other legislators working to improve historic preservation legislation in our state. I am also glad to see you taking up the issue of Native rights in relation to human remains and grave objects. These are important issues, deserving careful consideration.

As an archaeologist/anthropologist who has worked extensively on historic Native sites, including major projects for the North Slope Borough and Doyon, Ltd. I am keenly aware of and sympathetic with the concerns Native people have for cultural resources that are rightfully theirs. In the past archaeologists and physical anthropologists often have not respected Native concerns in these matters. I am painfully aware, for example, of the anguish and anger aroused by the activities of Ales Hrdlicka and some of his contemporaries. A few of my colleagues still display outmoded attitudes on these issues, but many people working in the field of cultural resources today appreciate Native people's concerns and would like to see enacted workable legislation that respects Native views.

After reading HB 433, however, I have some real concerns about whether this bill can achieve the goals its authors have in mind. I also believe there are some additional goals of potential benefit to Native people--as well as others with buried ancestors in Alaska--that are omitted. Let me indicate just a few of the problems I see with the bill and suggest a course that I feel would have broad benefits for all Alaskans.

For example, to be really workable, ~~HB 433~~ ~~must~~ ~~include~~ ~~some~~ ~~provisions~~. How are tribes or cultural groups who will have a number of rights under the bill to be designated? The definition of "reasonably identifiable" is very weak, the preponderance of evidence is often not the best or most scientifically sound way to make an identification. Sometimes wrong or inaccurate identifications get perpetuated in the scientific literature, making up a "preponderance of the evidence" but then later are

Representative George Jacko
February 7, 1990

shown to be wrong. What will happen when items can be identified with a tribe or cultural group that have no living descendants? Would a site containing graves from such a group be ineligible for designation as a state monument or historic site because there is no one to give written consent?

A more serious issue is language in section AB 41.25.010 (d) and (h). For some time the principle of curvay and mitigation in advance of construction projects has been a standard mode of operation. This section fails to make this standard practice part of the law, thus potentially taking historic preservation efforts back 15 or more years, and possibly creating serious economic hardships for construction projects. Further, section (h) fails to specify any clear mechanism for returning human remains or funerary objects to the group of origin. There are other problematic sections that I could cite as well, but my point is not to be overly critical. My point is simply to say that the bill needs much more careful thought and rewriting if its tasks are to be carried out successfully.

The bill also fails to make provisions, where appropriate, for studies of disinterred human remains and funerary objects, Native or otherwise, where the studies can be carried out in a respectful way, and where they might well benefit descendants of the dead. I think the way the Utkiagvik Project handled the "frozen family" research in Barrow could serve as a good model on which to build. In this case the archaeologists worked closely with Public Safety, local leaders, and the elders to develop an acceptable plan for excavation, study, and reburial. The result was not only respectful treatment of the human remains, but also important information on the history and heritage of the Barrow area, as well as valuable medical and health-related data, all beneficial to Barrow-area people.

I feel strongly that HB 436 would benefit greatly from a much broader range of input from all interested parties--Native people, archaeologists, the Office of History and Archaeology in DNR, Public Safety people and so on. Such an effort could also benefit from consulting documents such as the Advisory Council on Historic Preservation's "Policy Statement Regarding Treatment of Human Remains and Grave Goods" (a copy is attached) and some of the laws already enacted by other states on this matter. By working with the various interested groups to build a consensus, you are much more likely to get legislation that will really work to protect the human remains and funerary objects, and to their respectful treatment, and where appropriate, return to their rightful place, while preventing onerous over-regulation, costly litigation, or worse yet, loss of the remains altogether.

Representative George Jacko
February 7, 1990

I strongly urge you and the other co-sponsors of HB 436 to take the time to create such a consensus and draft a more workable bill. I appreciate your consideration of my views.

If I can answer any questions or provide any additional input, please do not hesitate to contact me. I can be reached at the following phone numbers: 474-7039 (office), 479-8406 (home), 474-6967 (FAX).

Sincerely,

Wendy H. Arundale

Wendy H. Arundale, Ph.D.
Research Associate, IAB
Adjunct Faculty, Department of Anthropology

Attachment

Advisory Council On Historic Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #808
Washington, DC 20004

POLICY STATEMENT REGARDING TREATMENT OF HUMAN REMAINS AND GRAVE GOODS

Adopted by the Advisory Council on Historic Preservation

September 27, 1988

Gallup, New Mexico

When human remains or grave goods are likely to be exhumed in connection with an undertaking subject to review under Section 106 of the National Historic Preservation Act, the consulting parties under the Council's regulations should agree upon arrangements for their disposition that, to the extent allowed by law, adhere to the following principles:

o Human remains and grave goods should not be disinterred unless required in advance of some kind of disturbance, such as construction;

o Disinterment when necessary should be done carefully, respectfully, and completely, in accordance with proper archeological methods;

o In general, human remains and grave goods should be reburied, in consultation with the descendants of the dead.

o Prior to reburial, scientific studies should be performed as necessary to address justified research topics;

o Scientific studies and reburial should occur according to a definite, agreed-upon schedule; and

o Where scientific study is offensive to the descendants of the dead, and the need for such study does not outweigh the need to respect the concerns of such descendants, reburial should occur without prior study. Conversely, where the scientific research value of human remains or grave goods outweighs any objections that descendants may have to their study, they should not be reburied, but should be retained in perpetuity for study.

INFORMATIONAL BRIEFING
HIGHWAY S-310
UNALASKA, ALASKA

FEBRUARY 1990

SUBMITTED BY: ROE STURGULEWSKI
DIRECTOR OF PUBLIC WORKS
CITY OF UNALASKA

State Highway S-310, which connects the airport with the City of Unalaska, is in urgent need of upgrade to accommodate the increased traffic generated by the on-shore movement of the bottom fish industry. Since the beginning of 1989, the City has spent over \$500,00 of its General Fund monies to maintain and upgrade this State-owned highway. The highway has a need for about \$300,000 in State funding to provide improvements to bring the road to a standard which will accommodate the increased traffic loads given a reasonable amount of maintenance.

S-310 was originally designated a federal aid highway in 1979 prior to construction of the South Channel Bridge. This construction provided a drivable link between the city of Unalaska and the port of Dutch Harbor. In 1981/82, the State funded construction of a small section of the highway. No further State involvement occurred until the 1989 Legislature passed a resolution acknowledging the highway was part of the federal aid system. Additionally, funding was allocated and the highway placed in the DOT/federal highways paving program. The DOT performed preliminary surveying and engineering in the fall of 1989. DOT estimates paving

construction will occur between 1993 and 1995 and will cost five to six million dollars for this three-plus mile project.

Unalaska, which has become one of the top three volume ports in the nation, is hard pressed to meet the expanding infrastructure needs. The 200-plus million dollar expenditure by private industry in the past two years has fueled a tremendous increase in car and truck traffic. DOT traffic studies indicate up to 7,000 vehicle trips occur per day with a very high percentage being road-damaging construction trucks and seafood product semi-trailers. The heavy traffic, coupled with Unalaska's inclement weather, on a road system that cannot handle a quarter of the existing traffic, has created a requirement for constant maintenance (about \$150,000 to \$200,000 per year).

In order to accommodate the commerce, reduce the high accident rate and decrease the excessive annual maintenance costs, the Public Works Department has allocated a significant portion of its roadway budget to upgrade S-310. Recent improvements include a major rerouting at Agnes Beach Hill, which had up to ten accidents per week in the winter months, erosion control in areas subject to the forces of the Bering Sea, and the addition of a large amount of sub-base and surfacing material to create a smoother driving surface.

Although the upgrades helped, more are required to handle the traffic until the roads are paved in 1992 or 1993. S-310 is an important highway. It is the main road between the airport and the community. It is also on the route between all major processors and where they transport their product. The Roads Department, however, has an additional 35 miles of road under its control and cannot continue allocating such a high percentage of its budget to this major State highway. The Department estimates approximately \$300,000 in improvements are needed to bring the road to a level which will require a reasonable amount of maintenance. The improvements include about 15,000 cubic yards of surfacing, sub-base and erosion control material; 4,000 cubic yards of rock and sliderock excavation and installation of about 1,000 feet of culverting material.

The City of Unalaska has carried the burden of maintaining State Highway S-310 for a number of years. State assistance, in the amount of \$300,000, will allow equitable upgrades to be performed prior to paving being accomplished in the early part of the decade.

HB

448

HOUSE COMMITTEE REPORT

(9)
Date Referred: January 26, 1990

FURTHER REFERRALS:

JUDICIARY
FINANCE

Date of Committee Action: 3/28/90

The RESOURCES Committee considered:

HB 448

HOUSE BILL NO. 448

GUIDE-OUTFITTER USE AREAS

"An Act relating to guide-outfitter use area permits, the Big Game Commercial Services Board, and guide-outfitters, transporters, and providers of other big game commercial services."

RECOMMENDATIONS:

- be replaced with CS HB 448 (Resources) the same title a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: (Date/Dept).

- (2) fiscal impact ADFG - CED
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

Scott Munnich

Clyd Davidsen

Archie

Nike Favone

Gregory

SIGNING:
(Check appropr column)

	Do Not Pass	No Rec	Amend
<i>Bill Hudson</i>		✓	
<i>Bert May</i>		✓	
<i>W. unack</i>		✓	

Scott Munnich
 Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
 Title: An Act relating to guide-outfitter BRU: Occupational Licensing
use area permits; . . .
 Sponsor: House Rules by Request Components: _____
 Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	85.3	85.3	85.3	85.3	85.3	85.3
TRAVEL	26.4	26.4	26.4	26.4	26.4	26.4
CONTRACTUAL	8.0	8.0	8.0	8.0	8.0	8.0
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	17.6	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	139.3	121.7	121.7	121.7	121.7	121.7

CAPITAL	0	0	0	0	0	0
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REVENUE	32.2	32.2	32.2	32.2	32.2	32.2
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FUNDING: (Thousands of Dollars)

GENERAL FUND	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
FEDERAL FUNDS						
OTHER (GF/PR)	139.3	121.7	121.7	121.7	121.7	121.7
TOTAL	139.3	121.7	121.7	121.7	121.7	121.7

POSITIONS:

POSITION TYPE	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
FULL-TIME	2	2	2	2	2	2
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

The bill requires the Big Game Commercial Services Board to establish guide-outfitter use areas throughout the state, to adopt procedures for evaluating qualifications of use area applicants, and to annually offer available use areas to qualified guide outfitters. (CONTINUED ON ATTACHED)

Prepared by: Jennifer Strickler, Administrative Officer P#: 465-2144
 Division: Occupational Licensing Date: 2/9/90
 Approved by Commissioner: Larry Merculieff Date: 2/9/90
 Agency: Department of Commerce & Economic Development

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

**CONTINUATION OF FISCAL NOTE
FOR HB 448**

In addition, the bill authorizes the board to issue use area permits; monitor and limit the number of clients that may be guide-outfitted in a use area each year; suspend or revoke a use area permit; and publish a comprehensive list of all unawarded guide-outfitter areas. The staff work involved in processing the highly complex operational plans will be submitted for competing use area applications and in adequately preparing for board meetings where use areas will be awarded will require an additional Licensing Examiner position. In addition, keeping track of use areas awarded or unawarded will consume extensive staff time. Finally, coordination with ADF&G staff will also require additional time.

The Investigator position is required to beef up enforcement. If we are to properly manage the commercial industry's use of our big game resource, then the state must adequately enforce the licensing requirements contained in HB 448. To assist the board with the responsibilities mandated in the bill, the fiscal note provides for:

1	Occupational Licensing Examiner I, 12 months, GGU, Range 12A	\$ 35.0
1	Investigator III, 12 months, GGU, Range 18A	<u>50.3</u>
	Sub-Total:	\$ 85.3

Travel:

Funding provides two additional meetings annually for the Big Game Commercial Services Board and staff to conduct its business, including review of qualified applicants for issuance of use area permits.

\$ 16.4

This funding will also provide travel for the Investigator III to assist the board in enforcing the use area permit requirements and to conduct rural area education regarding the new big game commercial services statutes and to encourage rural resident participation in the big game commercial services industry.

10.0

Sub-Total: \$ 26.4

Contractual Services:

This funding will cover the expense of public noticing regulations, publishing comprehensive lists of unawarded use areas, postage, and other communications.

\$ 8.0

Supplies:

Provides for daily operating desk top supplies for the two positions. \$ 2.0

Equipment: (One time expense)

2 - Strata III telephone units and lines	\$1.2	
2 - Wang DP/WP Workstations	4.4	
2 - Desks, double pedestal	1.6	
2 - Chairs, swivel with arms	.8	
2 - Chairs, side without arms	.5	
2 - Typewriters	1.4	
2 - File Cabinets, 5-drawer, legal with lock	1.2	
2 - Workstations (modular furniture)	<u>6.5</u>	
	Sub-Total:	\$ 17.6
	GRAND TOTAL	<u>\$139.3</u>

Revenues

The revenue identified is based on 1,286 guide-outfitters and transporters paying the \$25 Wildlife Conservation Fee required in Section 6 of the bill at least once annually.

Presently, we are unable to more accurately predict the amount of revenues generated each year by this bill. However, revenues collected are anticipated to be more than the amount shown in this fiscal note as a result of the use area permit application fee (yet to be established by the Big Game Commercial Services Board) and the \$25 and \$5 Wildlife Conservation Fees for each big game animal taken annually.



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Wildlife Conservation	BILL NUMBER HB 448	SPONSOR Rules Committee
SHORT TITLE OF BILL An act relating to guide outfitter use area permits...			
DEPARTMENT POSITION The department supports the provisions of this bill as endorsed in the report of the Legislative Task Force on Guiding and Game dated January 1990.			
PREPARED BY	DATE	COMMISSIONER'S SIGNATURE <i>Thomas D. Nelson</i>	DATE 2/10/90

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Dept. of Commerce and Economic Dev. Div. of Occupational Licensing Dept. of Public Safety Div. of Fish and Wildlife Protection	CONSTITUENT GROUPS AFFECTED BY BILL Licensed big game guide/outfitters Transporters Providers of other big game commercial services
ORGANIZATIONAL SUPPORT FOR BILL Alaska Professional Hunters Association USF&WS, USFS, and USNPS U.S. Bureau of Land Management	ORGANIZATIONAL OPPOSITION TO BILL Some guide/outfitters and transporters

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT
The Legislative Task Force on Guiding and Game developed this bill proposing that the state establish a new wildlife resource-based system of allocating access to big game hunting opportunities among guide/outfitters. The proposed permit-based system differs from the previous system in that it: a) is founded on wildlife conservation and management concerns; b) provides specific selection criteria to ensure broad access and equal opportunity among applicants;
Continued on Page 2

ANALYSIS OF BILL/PROGRAM EFFECTS
The Department of Fish and Game (ADF&G) would propose guide/outfitter use areas for the state. These recommendations would be forwarded to the Big Game Commercial Services Board for adoption, and subsequent permitting. ADF&G would base the proposed use areas primarily on wildlife management and enforcement concerns, with additional consideration of public comment, land ownership, administrative boundaries, recognizable field boundary features, access, land uses, and existing facilities. The initial mapping project would be completed during FY 92, with continuing but reduced levels of support to maintain the area boundary maps and to provide statewide wildlife information on a regular basis to the Big Game Commercial Services Board.

The department will need to continue normal biological surveys and analyses of big game as well as harvest data management in order to assess and manage ongoing effects of commercial use on wildlife. The proposed wildlife conservation fee would potentially be available for legislative allocation to ADF&G, Division of Wildlife Conservation to help offset costs of managing big game populations for all uses.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

Legislative Intent Continued:

c) provides annual compensation in the form of wildlife conservation fees to the people of the state, based upon actual use of the wildlife resource; d) limits terms of the authorizations (permits); e) requires contractual terms (operations plans) for commercial use of the state's wildlife resource; f) is based on joint use rather than exclusive use; and g) precludes any "property value" accruing to the permittee for the use of a public resource held in common use.

FISCAL NOTE

REQUEST: _____

Revision Date: _____
 Title: An Act Relating to Guide
 Outfitters Use Area Permits...
 Sponsor: Rules Committee
 Requestor: _____

Agency Affected: Fish and Game
 BRU: Wildlife Conservation
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	67.5	71.7	43.5	43.5	43.5	43.5
TRAVEL	3.0	3.0	1.0	1.0	1.0	1.0
CONTRACTUAL	.5	7.5	1.0	1.0	1.0	1.0
SUPPLIES	1.0	1.5	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	72.0	83.7	46.5	46.5	46.5	46.5
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary) No FY 90 impact.
 The FY 91 and FY 92 expenditures reflect the development of a computerized area-based management system for use in administering the guide/outfitting industry. Expenditures for FY 93 and beyond would maintain this system and provide necessary big game information to the Big Game Commercial Services Board.

Prepared by: W. Lewis Pamplin, Jr., Director Phone: 465-4190
 Division: Wildlife Conservation Date: 2/9/90

Approved by Commissioner: *W. Lewis Pamplin, Jr.* Date: 2/10/90
 Agency: Fish and Game

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

Fiscal Note for House Bill 448
Page 2 of 2

		FY 91 Mos. Cost	FY 92 Mos. Cost	FY 93 Mos. Cost	FY 94 Mos. Cost
LINE 100 *					
WB III @ \$4.5/mo	11	49.5			
@ \$4.7/mo			12	56.4	6
AP II @ \$3.3/mo	3	9.9	3	9.9	1
DPC II @ \$2.7/mo	3	8.1	2	5.4	2
<u>SUB TOTAL</u>		<u>67.5</u>	<u>71.7</u>	<u>43.5</u>	<u>43.5</u>
LINE 200 TRAVEL		3.0	3.0	1.0	1.0
LINE 300 CONTRACTUAL SERVICES		.5	7.5	1.0	1.0
LINE 400 SUPPLIES		1.0	1.5	1.0	1.0
LINE 500 EQUIPMENT		0	0	0	0
<u>TOTAL</u>		<u>72.0</u>	<u>83.7</u>	<u>46.5</u>	<u>46.5</u>

Note: The total for FY 92 is greater than previously projected, and subsequent years totals are lower. This is due to additional mapping work necessitated under the proposed legislation, with less work anticipated after FY 92.

* These positions are existing PCNs.

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4100

March 23, 1990

The Honorable Bettye Fahrenkamp
Chair
Senate Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

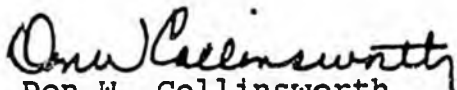
We appreciate your efforts toward accommodating concerns regarding Senate Bill 422 to enable its passage out of the Senate Resources Committee. Toward that end, we would like to clarify our intent regarding the reporting requirement for air taxi operators who commercially transport big game hunters, their equipment, or harvested big game animals to, from, or in the field (CS for Senate Bill 422, Section 16, work draft of March 21, 1990).

We support the intent of language in Section 16 that all air carriers subject to AS 42.30.200 shall annually submit an activity report regarding the commercial transport of big game hunters, related gear, and harvested animals. This would include licensed transporters as required under AS 08.54.400, as well as those air taxi operators who transport hunters but are not required to obtain a transporter license.

The department needs the information that would be provided in the activity reports to help assess the effort and resulting harvest of big game animals associated with commercial transportation services, versus other modes of access. The information we desire are such items as the number of big game hunters, their destination by game management unit or subunit, and the species and number of harvested big game animals that were transported.

We appreciate the opportunity to comment, and commend the committee for its thorough analysis and consideration of SB 422. Please do not hesitate to contact Molly McCammon of my office if we can be of further assistance.

Sincerely,


Don W. Collinsworth
Commissioner

cc: Lew Pamplin, Director, Division of Wildlife Conservation

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

STEVE COWPER, GOVERNOR

P.O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2534

March 26, 1990

Honorable Bettye Fahrenkamp
Chairman
Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

I have met with the Alaska Air Carriers Association regarding the future implementation of the reporting requirements contained in Section 15 of the proposed committee substitute for SB 422, which the commercial air carriers have agreed to support for the purposes of assisting the Department of Fish and Game in obtaining information which may be helpful in future harvest decisions and the Commercial Services Board in the regulation of the commercial big game hunting industry.

The report required of this section will be a one-page form which will ask for the number of hunters flown to, from, or in the "field," as defined in current law; the type of transportation provided; the big game harvested; and the area in which the hunt was conducted. It will be designed to be as simple as possible, to avoid putting undue administrative burden on air carrier employees and their customers (i.e., big game hunters). Data will not be requested from carriers for hunters flown between federal, state, and municipal airports or air strips. The report will be filed once a year (by January 31) for the previous year's activity.

Transporters are being defined in Section 16 of the bill as those air carriers which advertise to attract big game hunters and those which charge more than customary charter rates to hunters. The amendment in Section 16 of SB 422 removes the controversial "incidental" standard in present law. The new standard will be easier to enforce than the existing vague language.

The term "advertise" will require definition through regulation. Advertising in newspapers and brochures, on television and radio, and through participation at hunting shows and expositions exemplifies the kind of advertising on which the Commercial Services Board will focus.

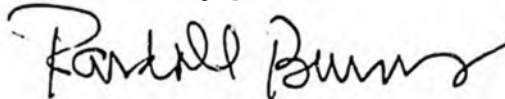
Honorable Bettye Fahrenkamp

-2-

March 26, 1990

I am pleased that we have been able to reach agreement on this matter with the air carriers. I also want to take the opportunity to thank you, the members of the Senate Resources Committee, and your staff assistant, Nancy Peterson, for the time and work the committee has put in again this year on big game commercial services legislation.

Sincerely yours,



Randall P. Burns
Director

RPB/v.fd
LGJOBS
32690a

cc: All Members, Big Game Commercial Services Board



Alaska State Legislature

HOUSE RESOURCES COMMITTEE

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3715

To: House Resources Committee members

From: Johanna Munson
Staff, House Resources Committee

Re: List with Section changes from the original version HB
448 to CS HB 448 (Res) dated 3/26/90 6-2021J

Date: March 28, 1990

<u>CS HB 448 (Res)</u>	<u>HB 448</u>
Sec. 1 Findings and Purpose	Sec. 1
Sec. 2 Guide-Outfitter Use Areas	Sec. 2
Sec. 3 AS 08.54.310	Sec. 3
Sec. 4 AS 08.54.350 (a)	
Sec. 5 GMU Certification	Sec. 4
Sec. 6 (Ai) AS 08.54.360 (a) Guide Outfitter C.U.P. initial fee	
Sec. 7 (Ai) AS 08.54.370 (a) Guide Outfitter C.U.P. renewal fee	
Sec. 8 (Ai) AS 08.54.400 (a) Transporter C.U.P. initial fee	
Sec. 9 (Ai) AS 08.54.400 (c) Transporter C.U.P. renewal fee	
Sec. 10 (Ai) AS 08.54.450 (a) Other C.U. providers, C.U.P. fee	
Sec. 11 (Ai) AS 08.54.470 (a) Annual C.U. P.	
Sec. 12 (Ai) AS 08.54.470 (b) Progressive fee for transporters Progressive fee for guide-outfitters	
Sec. 13 (Ai) AS 08.54.470 (c) Collection of C.U.P. fee	
Sec. 14 (Ag) AS 08.54.470 Exemption provision for retired or inactive Guide-Outfitters	

Page 2

<u>CS HB 448 (Res)</u>	<u>HB 448</u>
	was:
Sec. 15 (Ja) AS 08.54.560 Transporter Reports	
Sec. 16 Definition of transportation services	Sec. 7
Sec. 17 Identification of Proposed Guide-Outfitter Use Areas	Sec. 8
Sec. 18 Preliminary Determination of Eligibility for Guide-Outfitters	Sec. 9
Sec. 19 Offering of Areas	Sec. 10
Sec. 20 (Ac) AS 08.54.440 effective date	
Sec. 21 (Ai) Transition; C.U.P. fee	
Sec. 22 Severability	Sec. 11
Sec. 23 Sec. 20 retro date	Sec. 13
Sec. 24 Repealer	Sec. 12
Sec. 25 Sec. 20 & 23, efd.	Sec. 15



Alaska State Legislature

HOUSE RESOURCES COMMITTEE

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3715

MEMORANDUM

TO: HOUSE RESOURCES COMMITTEE MEMBERS
FROM: CO-CHAIR CURT MENARD
CO-CHAIR CLIFF DAVIDSON
DATE: MARCH 15, 1990
RE: PROPOSED AMENDMENTS TO HB 448

The amendments attached are lettered and segmented into two stapled documents. They begin with 6-2021Ac and continue through 6-2021Ai. They are all a result of the combined efforts and recommendations of the Administration, our offices, Senator Fahrenkamp's office and other legislators and interest groups, including the Alaska Professional Hunters Association.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 448

Page 1, line ¹⁰~~9~~, after "services":

Insert "; and providing for an effective date"

Page ²⁰~~16~~, ~~following~~ line ~~2~~:

Insert a new bill section to read:

"* Sec. ²⁰~~11~~. The operation of AS 08.54.440 is suspended until January 1, 1991."

Renumber the following bill section accordingly.

Page ²¹~~16~~, ~~following~~ line ¹⁹~~6~~:

Insert a new bill section to read:

"* Sec. ²³~~13~~. Section ²⁰~~11~~ of this Act is retroactive to May 12, 1989."

Renumber the following bill section accordingly.

Page ²¹~~16~~, ~~following~~ line ²¹⁻²²~~7~~:

Insert a new bill section to read:

"* Sec. ²~~7~~5. Sections ²⁰~~11~~ and ²~~7~~3 of this Act take effect immediately under AS 01.10.070(c)."

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 448

Page 3, following lines ⁷⁻²⁰ 17:

Insert a new subsection to read:

"(c) AS 08.54.620 - 08.54.690 do not apply within an area or to the activities of a guide-outfitter within an area of the state that is not included within the boundary of a guide-outfitter use area adopted by the board."

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 448

Page 4, line 8:

Delete "or"

Insert ", "

Page 4, lines ^{14,15} 9:

After "permittee":

Insert ", automatically revoked under AS 08.54.660,"

After "offered":

Insert "by the board"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 448

Page 9, following lines ^{21,22} ~~following~~ lines [✓]:

Insert a new subsection to read:

"(a) Except as provided in this section, a use area may not be sold, leased, or otherwise assigned."

Reletter the following subsections accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 448

Page ¹⁷/~~2~~, following line 3⁻⁹:

Insert a new bill section to read:

"* Sec. ¹⁴/~~8~~. AS 08.54.470 is amended by adding a new subsection to read:

(e) Notwithstanding (a) of this section and AS 08.54.370, a person who is licensed under this chapter as a guide-outfitter but who is retired from or does not engage in guide-outfitting activities is exempt from requirements to obtain a commercial use permit and to pay the commercial use permit fee. The department shall adopt regulations to implement this subsection."

Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 448

Page 11, following line 7:

Insert a new bill section to read:

** Sec. 4. AS 08.54.350(a) is amended to read:

(a) A natural person is entitled to a guide-outfitter license if the person

(1) is 21 years of age or older;

(2) has practical field experience in the handling of firearms, hunting, judging trophies, field preparation of meat and trophies, first aid, photography, and related guide-outfitting activities;

(3) is familiar with the terrain and transportation problems in the game management unit for which the license is requested;

(4) has passed the qualification examinations prepared and administered by the board;

(5) has demonstrated to the board sufficient standards of competence and ethical conduct and has not been convicted of a state or federal hunting or guide-outfitting statute or regulation within the last five years for which the person was fined more than \$500 or imprisoned for more than five days;

(6) has legally hunted in the state for part of each of any five years in a manner directly contributing to the person's

experience and competency as a guide-outfitter;

(7) has been licensed as and performed the services of a class-A assistant guide-outfitter or assistant guide-outfitter in the state for a part of each of three years, or has guide-outfitted in the state for a part of each of three years under a marine mammal guide-outfitter license issued under AS 08.54.360;

(8) has demonstrated a current knowledge of fishing, hunting, and guide-outfitting regulations;

(9) is capable of performing the essential duties associated with guide-outfitting;

(10) has been favorably recommended in writing by six big game hunters, two for each year of the person's most recent three years as a class-A assistant guide-outfitter or assistant guide-outfitter, when the person has guide-outfitted or assisted in guide-outfitting as a class-A assistant guide-outfitter or assistant guide-outfitter, whose recommendations have been solicited by the board from a list provided by the applicant;

(11) possesses a business license to provide guide-outfitting services; and

(12) has paid the license fee and has applied for a commercial use permit [FEE]."

Renumber the following bill section accordingly.

Page 11, line 20, through page 12, line 3:

Delete all material and insert:

"* Sec. 6. AS 08.54.360(a) is amended to read:

(a) The board may issue a marine mammal guide-outfitter license to a natural person who applies to guide-outfit a hunt for a specific species of marine mammal in a specifically designated area if the person

(1) is 21 years of age or older;

(2) has, for at least 10 years, resided and hunted in the area of the state in which the applicant is to guide-outfit;

(3) is able to perform the duties of a marine mammal guide-outfitter;

(4) has demonstrated knowledge of the following areas to an extent and degree satisfactory to the board:

(A) current fish and game laws and regulations;

(B) relevant characteristics of the specific species to be hunted;

(C) field preparation of trophies;

(D) care of game meat;

(E) use of guide-outfitting gear;

(F) firearm safety;

(G) practical first aid; and

(H) booking and contracting hunts;

(I) has not been convicted of violating a state or federal game or guide-outfitting statute or regulation during the previous five years for which the person was fined more than \$500 or imprisoned for more than five days;

(6) possesses a business license to provide

guide-outfitting services; and

(7) has paid the license fee and has applied for a commercial use permit [FEE].

* Sec. 7. AS 08.54.370(a) is amended to read:

(a) An applicant for renewal of a guide-outfitter license or a marine mammal guide-outfitter license shall submit with the application for renewal

(1) the hunt record required under AS 08.54.550 for the period covered by the current license;

(2) the license fee for the next licensing period; [AND]

(3) the commercial use permit fee for the [NEXT LICENSING] period covered by the current permit; and

(4) an amended guide-outfitter use area operations plan, if appropriate.

* Sec. 8. AS 08.54.400(a) is amended to read:

(a) A person is entitled to a transporter license if the person

(1) applies on a form provided by the department;

(2) pays the license fee;

(3) applies for a [PAYS THE] commercial use permit [FEE];

(4) provides proof of

(A) an air taxi/commercial operator certificate issued by the Federal Aviation Administration under 14 C.F.R. Part 135, if the person provides air transportation services to big game hunters;

(B) licensure by the Coast Guard to carry passengers for hire, if the person provides water transportation services to

big game hunters and if licensure is required by the Coast Guard;
and

(5) has a business license to transport big game hunters.

* Sec. 9. AS 08.54.400(c) is amended to read:

(c) An applicant for renewal of a transporter license shall submit with the application for renewal

(1) an activity report on a form provided by the department for the period covered by the current license; an activity report shall contain information required by the board by regulation;

(2) the license fee for the next licensing period;

(3) the commercial use permit fee for the [NEXT LICENSING] period covered by the current permit; and

(4) proof of

(A) an air taxi/commercial operator certificate issued by the Federal Aviation Administration under 14 C.F.R. Part 135, if the applicant provides air transportation services to big game hunters;

(B) licensure by the Coast Guard to carry passengers for hire, if the applicant provides water transportation services to big game hunters and if licensure is required by the Coast Guard.

* Sec. 10. AS 08.54.460(a) is amended to read:

(a) A person, other than a guide-outfitter, marine mammal guide-outfitter, or a transporter, who provides other big game commercial services for compensation shall register with the board on a form provided by the board and shall obtain a commercial use permit and pay

the annual commercial use permit fee set by the department in consultation with the board [UNDER AS 08.54.470]. In this section, "other big game commercial services" includes provision of accommodations in the field at a permanent lodge, house, or cabin owned by the commercial use permit holder, hunt broker services, gear rental services, photographic or videographic services, and services as defined by the board by regulation.

* Sec. 11. AS 08.54.470(a) is amended to read:

(a) A person who is licensed under this chapter as a guide-outfitter, marine mammal guide-outfitter, or transporter shall obtain an annual commercial use permit. The [AND PAY AN] annual commercial use permit fee shall be paid as set out in this section.

* Sec. 12. AS 08.54.470(b) is repealed and reenacted to read:

(b) The commercial use permit fee shall be

(1) set by the department, in consultation with the board, for transporters on the basis of a progressive fee in proportion to the number of big game hunters transported by the transporter during the period for which the permit was issued;

(2) for guide-outfitters and marine mammal guide-outfitters, equal to the following amounts based on the number of clients guide-outfitted by the guide-outfitter or marine mammal guide-outfitter during the period for which the permit was issued:

0 - 5 clients	\$ 250
6 - 10 clients	500
11 - 15 clients	750
16 - 20 clients	1,000

21 - 25 clients	1,500
26 - 30 clients	2,000
31 or more clients	2,500.

* Sec. 13. AS 08.54.470(c) is amended to read:

(c) A guide-outfitter, marine mammal guide-outfitter, and transporter shall pay the commercial use permit fee at the time of application for [ISSUANCE OR] renewal of a guide-outfitter license, marine mammal guide-outfitter license, or transporter license. If the guide-outfitter, marine mammal guide-outfitter, or transporter does not apply for renewal of the guide-outfitter license, marine mammal guide-outfitter license, or transporter license, the commercial use permit fee shall be paid within 30 days after the end of the annual period for which the commercial use permit was issued."

Renumber the following bill sections accordingly.

Page 15, line 19:

Delete "sec. 4"

Insert "sec. 5"

Page 16, following line 2:

Insert a new bill section to read:

"* Sec. 19. TRANSITION; COMMERCIAL USE PERMIT FEE FOR 1991 AND SUBSEQUENT YEARS. AS 08.54.350(a), as amended by sec. 4 of this Act, AS 08.54.-360(a), as amended by sec. 6 of this Act, AS 08.54.370(a), as amended by sec. 7 of this Act, AS 08.54.400(a), as amended by sec. 8 of this Act,

AS 08.54.400(c), as amended by sec. 9 of this Act, AS 08.54.470(a), as amended by sec. 11 of this Act, AS 08.54.470(b), as amended by sec. 12 of this Act, and AS 08.54.470(c), as amended by sec. 13 of this Act apply to initial applications for and renewals of guide-outfitter licenses, marine mammal guide-outfitter licenses, and transporter licenses for 1991 and subsequent years and to payment of commercial use permit fees for 1991 and subsequent years. Applicants for guide-outfitter licenses, marine mammal guide-outfitter licenses, and transporter licenses for 1990 or for renewal of these licenses for 1990 shall pay the commercial use permit fee in accordance with AS 08.54 as it existed on the day before the effective date of this section."

Renumber the following bill sections accordingly.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 27, 1990

SUBJECT: Proposed amendment relating to assignments
of use area permits (6-2021Jc to
CSHB 448(Resources))

TO: Representative Curt Menard
Co-Chair, House Resources Committee

FROM: George Utermohle *GU*
Legislative Counsel

Amendment 6-2021Jc to CSHB 448(Resources) deletes subsection (b) from AS 08.54.670 as contained in HB 448, as introduced.

The material deleted would prevent a guide-outfitter from selling lodges, cabins, boats, aircraft, and other equipment to another guide-outfitter who is the assignee of a use area permit formerly held by the seller of the property and equipment at a price that exceeded the replacement value of the property.

One of the objections that the Alaska Supreme Court had to the former exclusive guiding area system in the Owsichek decision was that the guides could treat an exclusive guiding area as personal property and sell it to other guides. The ability of a guide to sell an exclusive guiding area was one of those attributes of an exclusive franchise to use game that the court found to violate the common use clause of the Alaska Constitution. The Task Force on Guiding and Game addressed this issue in its proposal for guide-outfitter use areas by allowing guide-outfitters to assign their use areas to other guide-outfitters but prohibited them from selling the permit or otherwise receiving anything of value in exchange for the assignment of the permit. In order to prevent a guide-outfitter from receiving a payment for the assignment of the permit under the guise of selling other property to the assignee, the Task Force prohibited the guide-outfitter from receiving more than the replacement value for the property. The assumption was that if the assignee of the permit paid more than the replacement value of

Representative Curt Menard
Page 2
March 27, 1990

the property then the excess was really a payment for the assignment of the permit. The assignment of the permit was void if the amount paid for the property exceeded the replacement value of the property.

During further consideration of this issue, the Task Force decided to further restrict the procedure for the assignment of use area permits by taking away the power of guide-outfitters to determine who would succeed them as assignees of the use area. Use area permits may be assigned only by the Big Game Commercial Services Board. Guide-outfitters would no longer have an opportunity to determine who their successors would be. This approach eliminated the possibility of collusion between the assignor and assignee of use area permit.

This approach also eliminated the need for the Board to monitor the transfer of property between a former permit holder and the new assignee of the permit. Since the former permit holders do not determine who will succeed them, there is no opportunity for the former permittees to receive payment for assigning the permit to particular persons.

Thus AS 08.54.670(b), in the original version of the bill, can be deleted without affecting the integrity of the use area permit system proposed by the bill. Deletion of this provision would also ease the burden on the Board by eliminating the responsibility of the Board to monitor the sales of property between former permit holders and assignees of use area permits.

GU:lmb
L10/031

Enclosure

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 448 (Resources) (dated 3/26/90)

Page 10, after line 2:

Sec. 08.54.670(b), relating to restrictions on the sale of property between a former use area permittee and the assignee of the use area permit, as contained in HB 448 as introduced, has been deleted.

The following subsections were relettered accordingly.

LAW OFFICES

BIRCH, HORTON, BITTNER, CHEROT AND ANDERSON

A PROFESSIONAL CORPORATION

1127 WEST SEVENTH AVENUE • ANCHORAGE, ALASKA 99501 • TELEPHONE (907) 276-1550 • TELECOPIER (907) 276-2822 • TELEX 25-356

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JOSEPH M. CHOMSKI**
PATRICK B. COLE
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TO: All Members, Legislative Task Force on Guiding and Big Game

From: William P. Horn and Steven Pradell, Retained Counsel
File No. 100,700.1

Re: Options to the Owsichek decision.

I. INTRODUCTION

To assist the Task Force in developing recommendations regarding a new area management system for allocating guide access to big game, this memorandum sets forth criteria stated by the Court in Owsichek under which leases and exclusive concessions on State lands can be granted. Additionally, an analysis is made of existing State and Federal statutes and regulations concerning leases and exclusive concessions.

II. THE OWSICHEK DECISION: CRITERIA WHICH COULD BE USED TO CREATE A PROGRAM OF LEASES OR EXCLUSIVE CONCESSIONS.

In Owsichек v. State, 763 P.2d 488 (Alaska 1988), the Alaska Supreme Court held that AS 08.54.040 (a)(7), and AS.08.54.195, which gave exclusive guide areas and use areas to hunting guides, was unconstitutional under the common use clause of the Alaska Constitution. The common use clause provides:

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Alaska Const., art. VIII, §3.

The Court found that the common use clause contained trust principals which guaranteed access to Alaska's fish, wildlife, and water resources, and prohibited against monopolistic grants or special privileges. The Court held that statutes authorizing exclusive guide areas and joint use areas fell within the category of grants prohibited by the common use clause.

However, the Court clearly recognized the constitutionality of leases and exclusive concessions on state lands. The Owsichек opinion outlines the following criteria which could be used to create a program of leases or exclusive concessions which would survive constitutional attack:

1. A lease or concession should not be granted primarily on the basis of seniority. A competitive process should be created to prohibit the favoring of established guides.
2. The grants must be of finite duration.
3. The grant must not be freely transferable without some

form of consent from the State. Grants should not be administered in such a way that guides may transfer them for a profit.

4. A grant of exclusivity must have a nexus to a bonafide wildlife objective. The regulation should make it clear that this is a primary consideration.
5. The State must be paid valuable consideration for providing such a grant.
6. The court recognized the validity of leases and exclusive concessions on State lands.

In light of these criteria, an examination of existing statutes and regulations granting leases and exclusive concessions has been provided to serve as a model for a task force recommendation.

III. SUMMARY OF EXISTING OPTIONS

The Owsichek Court cited specific statutes and regulations authorizing leases and exclusive concessions on State lands. The Court may uphold a statutory scheme which more closely resembles those procedures.¹

The Court recognized statutes and regulations of the Department of Natural Resources which authorize leases and exclusive concessions on state lands of limited duration, subject to competitive bidding procedures and valuable consideration. For example, under AS.38.05.070, land may be leased for a period of up to 55 years if the commissioner determines that is in the best

¹In a letter of February 14, 1989, to Senator Fahrenkamp, Assistant Attorney General Stephen M. White concluded that any statutory land based system that remotely resembles the EGA scheme would be declared unconstitutional without the adoption of a constitutional amendment. While a constitutional amendment would most easily solve the problem, the Owsichek decision does not require that alternative.

interest of the State. The commissioner may void a lease if he determines that the land is not being used for the purpose issued. AS.38.05.075 provides for public auctions of leases to the highest qualified bidder. The commissioner may prequalify bidders and aggrieved persons may appeal to the superior court. The commissioner may grant a lessee an exclusive right to use and access tide and submerged land. See AS.38.05.075(d).

The Court also recognized AS.41.21.027, which authorizes concession contracts in State parks. Before a concession contract may be issued, the commissioner must make numerous findings. For example, he must identify community concerns, assess existing visitor uses, and assess the effect of the contract on park wildlife, water, scenic values or other uses. For certain concession contracts, a commissioner must find that the proposed contract is based on public need, will implement the purpose of the park unit, will enhance public use and enjoyment of the park, and will not create an unacceptable adverse environmental effect. The State must receive a fair portion of the contractor's receipts and public review and comment is required before concession contracts may be granted, renewed or extended.

Fees for competitive and exclusive commercial use permits are authorized by AS.41.21.026. Before setting fees, the Department of Natural Resources must consider at public hearings the State's operating costs, the normal fees charged for similar

facilities, administration costs and the public interest.²

The Owsichek decision also recognized the constitutionality of Alaska's Shore Fisheries Leasing Program. Successful applicants are entitled to lease fishing sites and up to three tracks of tide land for a renewal period not exceeding ten years. Lessees pay an annual rental to the State based upon the costs of administering the program, and all leases are subject to cancellation upon the lessee's failure to regularly fish the leased tract.³

Federal statutes regulate the granting of leases and concession contracts in National Parks. Although these regulations probably would not survive a constitutional challenge under Alaska's common use clause, the task force may incorporate some of these provisions in its recommendations. The National Park Service may grant privileges, leases and permits for the use of land under 16 USC §3. See also 16 USC §20 et seq. Grants are based on resource concerns, which include the appropriate number of grants to meet visitors' needs. Competitive bidding is not required, and assignments or transfers of grants require written approval of the Secretary of the Interior. Permits are granted to hunting guides

²The Owsichek decision also referred to the provisions of 11 A.A.C Chapter 14, which establishes procedures for awarding concession contracts. Chapter 14, Repealed July 1, 1989, has been superseded by AS.41.21.026, AS.41.21.127, and AS.36.

³See 11 A.A.C. 64.080-.391, C.W.C. Fisheries, Inc. v. Bunker, 755 P.2d 1115, 1120 (Alaska 1988). See also letter of Assistant Attorney General, supra, fn 1 at p.4 [Opinion that concession based on Shore Fisheries Lease Program would be found unconstitutional].

under two circumstances. First, if there are a limited number of guide positions available, a competitive offering is made based upon the qualifications of the applicants. Concessionaires may be granted a preferential right to provide new or additional accommodations under 16 USC §20c. To promote continuity in operation of facilities and services, preference may be given to concessionaires who have satisfactorily performed to renew contracts or permits. 16 USC §20d. Although concessions may be granted for periods up to 30 years under 16 USC §3, generally concessions are granted for periods of up to 10 years.

Concessionaires have a possessory interest in their structures, which does not end at the expiration of their term. That interest may be assigned and transferred under 16 USC §20e. Franchise fees are determined upon consideration of the probable value to the concessioner of the privileges granted. Protecting the park and providing adequate visitor services at reasonable rates are the primary concerns of the franchise fee agreement, over and above the consideration of revenue to the United States. Concessions exist in approximately 45 states.

In compliance with the National Park Service's Concessions Act, limited entry programs have been established which regulate the number of commercial guides at Mt. McKinley, the number of cruise ships at Glacier Bay, and the number of jetboats at American Creek. In 1986, the American Creek Sportsfishing Guide Service and Jetboat Permit System was adopted in response to excessive numbers of jetboats on the river. Seven permits are

issued for two year periods and give owners the right to store jetboats on the creek. Guides must attend a park service course. The National Park Service, in compliance with ANILCA, must consider the existence of historical operators and allow them to continue. Information regarding concessions in Alaska's National Parks may be found in publication NPS 48. After Owsichek, special permits have been granted to guides hunting in national parks in Alaska. Under an Interim Emergency Act, these permits expire after two years and are not renewable or transferable. The Park Service would like to interface with Alaska law and create a cooperative agreement for regulating guides, but will issue its own permits if a suitable game management plan is not adopted by the state.

The second method of providing permits to hunting guides is through a commercial use license.⁴ Licenses are generally granted if the Secretary of the Interior does not wish to limit the number of guides in a certain area, and are issued to guides who use the park only as a resource.

IV. CONCLUSION

The Owsichek opinion suggests that a resource-based management system for allocating access to big game hunting opportunities among guide outfitters may be developed through the use of leases and exclusive concessions. By incorporating criteria outlined in Owsichek and applicable provisions found in existing statues and regulations, the task force may propose a system which

⁴See 16 USC §3.