ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672
9672 SENATE RESOURCES

natural or artificial hazards which may or may not exist, or merchantability, suitability or profitability of the parcel for any use or purpose.

All properties in this offering will be sold "as is - where is." It is the responsibility of the Broker and applicant(s) to, among other things, investigate and determine the actual size of the parcel and parcel boundaries, regulations, restrictions and potential defects, including those created by prior use, which would affect the use of any parcel offered in this sale. The feasibility and costs to remedy defects, such as obtaining permits, variances, engineered septic systems, and in some cases replatting to combine adjacent parcel(s), should be determined prior to applying on a parcel. All such costs will be born by the applicant. No adjustments to a sale price or reimbursement to an applicant will be made by the MSB.

14. The requirements for construction and maintenance of roads, drainage systems, and other use of public easement areas shall be the responsibility of the buyer to determine. Buyers shall be required to comply with all federal, state and local regulations and requirements which, among others include, MSB Department of Public Works for development of access in a public easement; the State of Alaska, Department of Environmental Conservation regulations regarding water and sewer installation and, if applicable, the regulations of the U.S. Army Corp of Engineers regarding filling or draining any area within the parcel which may be designated as wetlands by the appropriate authority.

15. The brief parcel description on the parcel listing is provided for informational and identification purposes only. It should not be construed as a completed legal description. The MSB reserves the right to accurately describe the parcel by a complete legal description in the purchase agreement and subsequent documents.

16. Map and plat copies provided in the sale brochure are for informational reference only and should not be construed as a factual representation of matters such as access, parcel size, boundaries, and other matters contained thereon. The MSB makes no warranty, nor assumes any liability whatsoever, that monumentation indicated on surveys or plats is currently in place.

17. The acreage reflected for each parcel is the approximate acreage based on the best information the MSB has at this time. The approximate acreage is based on the legal description's gross area and may not be adjusted by easements, buffers, submerged or wetlands, which may affect a parcel's usability but are not excluded from the parcel's legal description. Since the MSB makes no warranties either expressed or implied regarding the actual size of the parcel it is the responsibility of the applicant(s) to confirm the actual acreage and parcel boundaries to their own satisfaction. The MSB <u>will not</u> adjust a sale by providing other MSB land of equal value in either the same location or another location. The MSB will make no parcel size adjustments to contracts unless the buyer(s) in writing notify the MSB within thirty (30) days of signing the purchase agreement that they dispute the MSB's approximate acreage figure of the legal description and believe the size adjustment will reduce the acreage by more than 15%. Upon written notification the MSB will review the information provided by the buyer(s)

to support the claim for adjustment. If necessary the MSB will provide the buyer(s) with 60 days in which to obtain a boundary survey with area calculations of the parcel by a registered land surveyor which meets the Alaska Statute requirements for filing a record survey. All costs for such survey will be borne by the buyer(s) regardless of the results. In the event the recalculated size of the legal description of the parcel is more than 15% smaller than the approximate acreage represented in the sale the MSB will accept an application for monetary adjustment on a pro-rata basis ($ per acre) which must be processed and approved by the MSB Assembly before closing can take place. In the event the actual size of the legal description of the parcel is more than 40% smaller than the approximate acreage represented in the sale the MSB may accept an application for monetary adjustment on a pro-rata basis ($ per acre) which must be processed and approved by the MSB Assembly before closing can take place or the MSB at its sole option and with approval by the MSB Assembly may elect to rescind the purchase agreement, refund all deposits to the buyer(s) and reimburse to the purchaser the expense of the boundary survey. The survey will then become MSB property and be filed as part of the public land record.

18. All buyers are responsible for properly placing improvements within the boundaries of the parcel purchased and complying with all federal, state and local requirements and regulations regarding development of the parcel. Prior to development and construction of improvements it is recommended that required setbacks and other land use and building regulations be determined by the owner. MSB Code Compliance Division (907-745-4801) can assist you in determining whether any borough regulations will apply to activity on the respective parcel. If the property is located within a city the buyer is also responsible for meeting city land use and building regulations and permit requirements, other federal, state and local agencies.

19. Disclosures required under Residential Real Property Transfer Act (AS 34.70.110) do not apply to properties offered in this sale by the MSB.

20. Access: Under the comments section of the specific parcels, a reference to this section will be made when appropriate. Please refer to the following letters for access information.

A) Parcel located on a platted, dedicated, granted, reserved or permitted right-of-way which is constructed and currently accepted for maintenance either by the state of Alaska, the MSB, or a city. The level of continued maintenance is subject to the future availability of funds and budgetary appropriation by either the state of Alaska, MSB, or city as the case may be.

B) Parcel is located on a platted, dedicated, granted, reserved or permitted right-of-way. Numerous roads within the MSB, although platted and named, may not be constructed; in addition, roads which are constructed may not be maintained or only maintained on a seasonal basis. It is the responsibility of the buyer to determine the status of the right-of-way with regard to construction and maintenance.

C) Parcel is located near an existing road system and the MSB owns all the land between the parcel and the road system. Public access easements to provide a legal access route from the existing road system are reserved, granted or dedicated across the MSB-owned lands as indicated. However, it is the responsibility of the buyer(s) to determine the feasibility of utilizing the route and if desired to construct, repair and maintain the access, which includes obtaining necessary permits and meeting required construction standards in a public right-of-way. In the event the legal access route does not meet feasibility standards, the buyer may make application for an alternate public access route which does meet the standards, provided the property along the route is still in MSB ownership and MSB code provides for such an application process.

D) Parcel is located near an existing road system but the MSB does not own all the land between the parcel and the road system. It is the responsibility of the buyer(s) to determine, acquire, locate, construct, maintain and defend the right to use any access route selected for use by the buyer(s).

E) Parcel is not located near the existing road system, access is fly-in or boat-in only. It is the responsibility of the buyer(s) to determine, acquire, locate, construct, maintain and defend the right to use any alternate access route selected for use by the buyer(s).

21. The following documents shall be used to complete the purchase transaction: purchase agreement, deed of trust, deed of trust note, and quitclaim deed. Sample copies are attached for review purposes only.

22. Any of the following shall automatically disqualify an offer if the:

    a. application is submitted for less than the Minimum Sale Price;
    b. application is received without the correct deposit amount or in unacceptable method of funds;
    c. application form and other required forms, as applicable, are not completed in full, submitted and manually signed;
    d. application is received prior to 10:00 a.m. September 30, 1996 or after 3:00 p.m. January 27, 1997.

23. The Matanuska-Susitna Borough reserves the right to withdraw any parcel(s) offered at any time, for any reason and to reject any or all application(s) for any reason.

24. In addition to other prohibited activities specified in this sale brochure, Brokers/agents shall not handle applications to purchase borough-owned properties in such a manner that will create any unfair advantage for any potential applicant, or will lessen the potential return to the Matanuska-Susitna Borough. All handling of applications to purchase shall be conducted in such a way as to preclude any questions of impropriety.

REAL ESTATE OVER-THE-COUNTER SALE
APPLICATION FORM
PROJECT #97-39

Please print or type legibly. Read all information contained in the sale brochure prior to completing this or other forms. This form must be filled out in its entirety when individuals or an organization wants to submit an application. The Sale Amount must be the Minimum Sale Price set for the parcel in the Sale Brochure. Reproduction is allowed for submittal of additional applications.

NAME(S) OF INDIVIDUAL APPLICANTS(S) OR ORGANIZATION'S NAME AND ITS AUTHORIZED REPRESENTATIVE:

_____ Phone: (day) _____

_____ Phone: (eve) _____

_____ Phone: (msg) _____

All individuals must be listed and sign below. If the application is in the name of an organization, proof of authority to represent and sign on behalf of the organization must be presented with this form.

MAILING ADDRESS:_____

_____

I hereby submit an application to purchase Parcel #_____. (Use parcel # indicated on parcel list).
The amount of my purchase is (write out the amount in words and numbers):

_____($_____)
PURCHASE AMOUNT

I shall purchase the parcel under _____ Option A (All Cash)
(Choose only one) _____ Option B (Financed)

NOTE: Option B is available only for applications exceeding $2,000. If Option B is selected complete the following statement.

I shall pay _____ percent of the above stated Purchase Amount as a down payment (must be at least 10%). The remaining _____ percent of the Purchase Amount shall be financed through a deed of trust note subject to the terms and conditions in the sale brochure.

I have deposited with _____(Broker) an amount equal to five percent (5%) of the Purchase Amount and I hereby agree that the Purchase Amount represents the purchase price I shall pay for the parcel if my application is accepted.

If my application is accepted, I hereby agree to execute the purchase agreement and to submit an additional five percent (5%) of the Purchase Amount and other documents and closing costs required as disclosed in the sale brochure. If my application is accepted and, for whatever reason, I decide not to enter into the purchase agreement, I agree and I authorize the Broker to remit to the Matanuska-Susitna Borough up to $300 of the deposit held in trust by the Broker.

_____ _____
Signature Date Signature Date

I hereby certify the applicant(s) of this offer has deposited to our Broker trust account the amount equal to the five percent (5%) of the Sale Amount in accordance with the terms and conditions of this sale.

_____ _____
Broker's Business Name Broker/Agent Signature Date

CHECK OFF BEFORE MAILING:
___ Application Form (A); ___ Applicant Qualification Statement (B); ___ Envelope labeled; ___ * Non-Collusion Affidavit(C);
___ **Business Licenses; ___ **Proof of Authority; ___ ***Qualifying Real Estate Broker documentation

* See Page 3 Note, for requirements

** See Page 2 Applicant Qualifications section to determine if this is required.

***See Page 3, Agents and Associate Brokers to determine if required.

FORM A

MSB #_____

COMPLETE THE FOLLOWING APPLICANT/BIDDER QUALIFICATION STATEMENT FOR EACH INDIVIDUAL APPLICANT OR ORGANIZATION. ATTACH ADDITIONAL STATEMENTS IF NEEDED.

MATANUSKA-SUSITNA BOROUGH
APPLICANT/BIDDER QUALIFICATION STATEMENT

I _____,
(Individual Name)

I _____; or
(Individual Name)

I _____ On Behalf of _____,
(Representative's Name) (Organization's Name)

_____,
(Address)

_____,
(City, State) (Zip)

do hereby swear and affirm for myself as applicant/bidder or as representative for the organization noted above that:

The applicant/bidder is a legally competent person under the laws of Alaska; and

has not failed to pay a deposit or payment due the Borough in relation to Borough-owned real property in the previous five (5) years; and

is not currently in breach or default on any contract or lease for real property transactions in which the Borough has an interest; and

has not failed to perform under contract or lease involving borough-owned real property in the previous five (5) years and the borough has not acted to terminate the contract or lease or to initiate legal action; and

has not failed to perform under or is not in default of a contract with the Borough and is not delinquent in any tax payment to the Borough.

Any bidder who is an employee, elected official, appointed officer, paid or unpaid member of boards, commissions, or committees of the Matanuska-Susitna Borough or an immediate family member of such an individual is also required to have on file with the Clerk's Office a Financial Disclosure and Conflict of Interest Statement.

I ___ DO ___DO NOT have a Financial Disclosure and Conflict of Interest Statement on file with the Clerk's Office.

I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS TRUE TO MY KNOWLEDGE.

_____ _____
Applicant Signature /Date Applicant Signature /Date

_____ _____
Print Name Print Name

FORM B

NON-COLLUSION AFFIDAVIT

UNITED STATES OF AMERICA)
)ss.
STATE OF ALASKA)

I, _____ of _____
(Firm Name)

being duly sworn, do depose and state:

That I, or the firm, association or corporation of which I am a member, an applicant, on the purchase agreement to be awarded, by the Manager, Matanuska-Susitna Borough, for the purchase of parcel# _____, 1996 Real Estate Broker Program located at Palmer, in the State of Alaska, have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract.

_____
(Signature)

Subscribed and sworn to this ____ day of _____, 19___.

_____
Notary Public
My Commission expires:_____

DO YOU NEED TO SUBMIT THIS FORM?
See Page 3, Note, for requirements.

FORM C

MATANUSKA-SUSITNA BOROUGH

REAL ESTATE BROKER/AGENT QUALIFICATION STATEMENT

I _____,
(Broker's Name)

on behalf of _____,
(Organization or Business Name)

_____,
(Address)

_____,
(City, State) (Zip) (Telephone #)

do hereby swear and affirm for myself as a licensed real estate broker/agent for the organization noted above that:

The broker/agent is a legally competent person under the laws of Alaska; and

has not failed to pay a deposit or payment due the Borough in relation to Borough-owned real property in the previous five (5) years; and

is not currently in breach or default on any contract or lease for real property transactions in which the Borough has an interest; and

has not failed to perform under contract or lease involving borough-owned real property in the previous five (5) years and the borough has not acted to terminate the contract or lease or to initiate legal action; and

has not failed to perform under or is not in default of a contract with the Borough and is not delinquent in any tax payment to the Borough.

Any broker/agent who is an employee, elected official, appointed officer, paid or unpaid member of boards, commissions, or committees of the Matanuska-Susitna Borough or an immediate family member of such an individual is also required to have on file with the Clerk's Office a Financial Disclosure and Conflict of Interest Statement.

I ___ DO ___DO NOT have a Financial Disclosure and Conflict of Interest Statement on file with the Clerk's Office.

I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS TRUE TO MY KNOWLEDGE.

_____
Applicant Signature /Date

_____
Print Name

FORM D

RESCISSION OF PURCHASE

This Agreement made this _____ day of _____, 199__, in accordance with the terms and provisions of that certain Purchase Agreement, entered into on _____, 199__, by and between the Matanuska-Susitna Borough as Seller and _____, Buyer of that real property located in the _____ Recording District, Third Judicial District, State of Alaska and more particularly described as follows:

_____

_____

_____

_____

WHEREAS, the Buyer has informed the Seller in writing of their desire to withdraw from the purchase agreement prior to closing; and

WHEREAS, the Purchase Agreement provides for $500.00 of the deposit made by the Buyer to be retained by the Seller in such an event;

NOW THEREFORE, in consideration of the terms and provisions of the Purchase Agreement, the Buyer agrees to forfeit $500.00 of the deposit and to bear any and all costs Buyer may have incurred in relation to the contemplated purchase and closing of said property and thereby releases the Seller from any further obligations to the Buyer under this Purchase Agreement; and the Seller agrees to retain the $500.00 as forfeiture , to return the remaining $_____ of the deposit to the Buyer and thereby releases the Buyer from any further obligation to the Seller under the Purchase Agreement.

This Agreement shall be executed only when signed by the Seller on the day and year first written above.

BUYER:

_____

_____

SELLER:

_____
Donald L. Moore
Borough Manager

FORM E

AUTHORIZATION TO RELEASE EMPLOYMENT INFORMATION

DATE: _____

I,_____, unequivocally authorize

_____

_____

_____
(name and address of employer)

to furnish the following information to the Matanuska-Susitna Borough regarding my employment.

_____
(employees signature)

_____
(employee's social security number)

_____
(other company ID number for employee)

THE FOLLOWING TO BE COMPLETED BY THE EMPLOYER

Please fill out the following information and return to the Matanuska-Susitna Borough, Land Management Division, 350 E. Dahlia Avenue, Palmer, AK 99645 in the enclosed envelope at your earliest convenience. If you have questions, please call 907-745-9864.

Date Hired:_____ Currently employed: yes no
(circle one)

If no, date terminated:_____

Current/or last position:_____

Current/or last salary:_____ hourly weekly monthly
(circle one)

Average hours worked per week by this employee: _____

Date:_____

_____
(employer or representative's signature)

_____
(employer's phone number)

FORM F

CONFIDENTIAL INCOME AND EXPENSE SUMMARY MSB # _____

In order for the credit committee to review your request for the Matanuska-Susitna Borough to finance your land purchase please complete the following information.

INCOME: Itemize the source and amount of income from wages, salaries, tips, interest, dividends, business or rental income (net annual), partnership distributions, and any other source which provides your financial support. Please indicate if the income figure shown is annual or monthly by "X" in the column.

INCOME SOURCE	AMOUNT	MONTHLY	ANNAL
1. _____	$ _____		
2. _____	$ _____		
3. _____	$ _____		
4. _____	$ _____		
5. _____	$ _____		
6. _____	$ _____		

EXPENSES: Itemize your personal expenses, on a monthly basis, which you are required to pay based on existing contracts. These should include loan or lease payments you make on your home or apartment, auto or personal loans and credit card balances. If you have indicated business or rental income, it is assumed that you have provided a "net" figure and a further listing of business or rental loans is not necessary. It is not necessary to list any utility payments or a loan or credit card balance which will be paid off within 4 months based on its regularly scheduled payments.

OWED TO/ACCOUNT #	AMOUNT MONTHLY	BALANCE DUE
1. _____	$ _____	$ _____
2. _____	$ _____	$ _____
3. _____	$ _____	$ _____
4. _____	$ _____	$ _____
5. _____	$ _____	$ _____
6. _____	$ _____	$ _____

ADD EXTRA PAGES FOR ADDITIONAL INCOME OR EXPENSES. THANK YOU

NAME/DATE COMPLETED: _____

FORM G

Credit Bureau of Alaska

3003 MINNESOTA DR. SUITE 300
ANCHORAGE, ALASKA 99503-3597

MORTGAGE LINE: 276-7880
MAIN LINE: 279-5689
FAX: 272-0503
OUTSIDE ANCHORAGE FAX: 800-478-2225

MORTGAGE REQUEST

SUBSCRIBER NAME:_____ SUBSCRIBER # _____ ORDERED BY:_____

RUSH	REPORT TYPE	SPECIAL INSTRUCTIONS
☐ 1 DAY TURNAROUND	☐ INDIVIDUAL ☐ JOINT ☐ BUSINESS	☐ PRESCREEN ☐ QUALITY CONTROL ☐ REPRINT ☐ UPDATE

NAME:_____ SS #_____ AGE or YOB_____
(Last First M.I. Generation)

SPOUSE NAME:_____ SS#_____ AGE or YOB_____

NOTE: COMPLETE SECTIONS BELOW

OTHER NAMES USED TO OBTAIN CREDIT: BORROWER _____ SPOUSE _____

CURRENT MAILING_____ # YRS:_____ ☐ RENT ☐ OWN
(City State Zip)

CURRENT STREET _____ # YRS:_____ ☐ RENT ☐ OWN
(City State Zip)

CURRENT TELEPHONE NUMBER: HOME _____ WORK _____

PREVIOUS ADDRESSES IF LESS THAN SEVEN YEARS AT PRESENT ADDRESS

PREVIOUS _____ # YRS:_____
(City State Zip)

PREVIOUS _____ # YRS:_____
(City State Zip)

PREVIOUS _____ # YRS:_____
(City State Zip)

PREVIOUS _____ # YRS:_____
(City State Zip)

PREVIOUS _____ # YRS:_____
(City State Zip)

PREVIOUS _____ # YRS:_____
(City State Zip)

PREVIOUS _____ # YRS:_____
(City State Zip)

PREVIOUS _____ # YRS:_____
(City State Zip)

CREDIT REFERENCES

CREDITOR	ACCOUNT NUMBER	ADDRESS	CITY	STATE	ZIP

CUSTOMER AUTHORIZATIONS

I am agreeable to having the personel of the Credit Bureau of Alaska contact me by telephone. I authorize the lender to release a copy of my application to the Credit Bureau of Alaska. I authorize the Credit Bureau of Alaska to furnish me with a copy of the completed report, and also authorize my creditors and employers to release to CBA any information they may require, including my current and previous credit history, employment and income.

_____ DATE

_____ SIGNATURE

FORM H

Non-Code Ordinance Introduced By: Manager

MATANUSKA-SUSITNA BOROUGH
ASSEMBLY ORDINANCE 94-035AM

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY APPROVING THE RECLASSIFICATION AND DISPOSAL OF BOROUGH-OWNED LAND DESCRIBED AS GLO LOTS 5 AND 6 SOUTH OF THE GLENN HIGHWAY, WITHIN SECTION 6, T18N, R3E, S.M.

WHEREAS, the borough has received an application to purchase borough-owned property consisting of approximately 30 acres by an adjacent property owner; and

WHEREAS, the land is currently classified as "forest management" lands; and

WHEREAS, it is desirable whenever possible to place borough-owned lands into private ownership and strengthen the borough's tax base; and

WHEREAS, as required by borough code, 13.25.060, the Matanuska-Susitna Borough Planning Commission by Resolution 94-21 found the proposed sale and potential use of this land consistent with the classification of "general purpose" lands.

BE IT ENACTED:

Section 1. Classification. This is a non-code ordinance.

Section 2. Classification of lands. The Matanuska-Susitna Borough Assembly does hereby reclassify GLO 5 and 6 south of the Glenn Highway, within Section 6, Township 18 North, Range 3 East, Seward Meridian as "general purpose" lands.

Section 3. Approval of sale. The Matanuska-Susitna Borough does hereby aprove the application for negotiated sale and authorizes the disposal of said lands with the buyer responsible for any surveying and platting costs associated with the sale.

In other words, we just tell the purchaser that if a parcel needs to be surveyed, he/she is responsible for paying the survey costs. The purchaser then hires their own surveyor.

State Land Disposals and Legal Defense Surveys

FY99 Request: $300,000
RefNum: 30232

Location: Statewide
Election District: Statewide
Estimated Project Dates: 7/1/98 - 6/30/00

Historical Category: Development
Project Type: Transitional

Brief Project Summary and Statement of Need:

There is a demand for the state to dispose of land for private ownership. This project will pay for the survey, appraisal, and public notice to sell 200 previously offered lots and offer 100 remote recreational lots for lease/purchase.

Funding Request:

	FY99	FY00	FY01	FY02	FY03	FY04	Total
Gen Fund	$300,000						$300,000
Total Funds:	$300,000	0	0	0	0	0	$300,000

☑ New ☐ Replacement | ☑ One-Time Project ☐ Phased Project ☐ On-Going Project

Operating & Maintenance Costs:

	Amount	Staff
Operating Impact in FY99:	0	0
One-Time Startup Costs:	0	
Additional Estimated Annual O&M:	0	0

Additional Information:

A component of this request is the survey work necessary to support the land disposals, as well as survey of at least two RS 2477 rights-of-way or other trails using GPS methods. These trails need to be located on the ground to support litigation.

DNR will offer approximately 200 lots for sale. The parcels will be sold from the current portfolio of subdivided and surveyed lots. The CIP would be used to appraise (under contract) and market these parcels, and to conduct the land sale itself. The land sale would be in late spring 1999. Parcels would be offered by sealed bid auction. Total cost for this portion of the CIP is $190,000, with projected receipts estimated at $?-4 million.

For the next few years, demand for land sales could be met by selling existing subdivided and surveyed parcels similar to the FY95 sale. The 1995 offering resulted in the sale of over 360 parcels, with projected receipts of about $5.5 million. Immediate returns for the 360 parcels exceeded $350.0, which is about equal to the estimated cost for a similar offering.

The steps in the process include identifying the parcels, preparing the best interest finding for the disposal, appraising and field inspecting them, preparing the sales brochure, conducting the filing period, and conducting the auction. After the auction, the contracts would be administered by Contract Administration, and eventually the Division of Land would prepare title documents.

DETAIL PROJECT DESCRIPTION AND JUSTIFICATION:
The disposal method will be by sealed-bid auction. As evidenced by our 1995 disposal, this is an extremely efficient and less expensive method of disposal than lotteries or public outcry auctions. After the auction, the remaining parcels would be sold over-the-counter. A new sale could be held every two years as appraisals are prepared.

DNR will also offer up to 100 remote recreational lots for lease or sale. This program would meet the demand for more isolated lots primarily for recreational purposes. Division of Land will first develop regulations to implement the Remote Recreational Cabin Sites program contained in the 1997 Title 38 changes. The division will offer subdivision lots already surveyed in remote locations under this program. The lots would be offered through a lottery. Applicants would lease the parcels, which could be purchased if the applicant has the parcel appraised. This will avoid the need to appraise these lots. This portion of the CIP is $60,000.

Another type of land offering that seems to generate much public interest is remote recreational property. The demand is for more isolated lots (not in a subdivision), in a more remote setting, primarily for recreational purposes. The program would enable the public to "stake their own" parcels, although the department would need to clearly identify setbacks from streams, trails, etc. Applicants would lease the parcels, and could be purchased if the applicant has the parcel surveyed and appraised (survey costs could be very high for isolated remote parcels). DNR could also pre-stake parcels in certain sensitive areas.

An additional component of this request is the survey work necessary to support the land disposals, as well as survey of at least two RS 2477 rights-of-way or other trails using GPS methods. These trails need to be located on the ground to support litigation. This portion of the CIP is $50,000.

In order to accomplish this project, two positions will be added to the Division of Land. One will manage the disposal program and the other will provide the technical support. If funded, the positions will be submitted as an amendment to the operating budget.

WHY IS THE PROJECT NEEDED?
One of the purposes of the statehood land grants was to provide land for the settlement of Alaska. Because the state owns nearly one-third of Alaska, the public desires that the state make some of this land available for private ownership. The state has a supply of already subdivided, surveyed lands that could be made available at relatively low cost to the state. State budget cuts in the past ten years have resulted in the elimination of the staff necessary to continue large scale state land offerings, thus necessitating this CIP request. It is anticipated that a comparable CIP is advisable in 2000 in order to sustain a supply of land for disposal.

PROJECT SUPPORT
Alaskans who desire to own state land.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND

3601 C STREET, SUITE 1122
ANCHORAGE, ALASKA 99503-5947
PHONE: (907) 269-8503
FAX: (907) 269-8904

Senator Robin Taylor
Alaska State Senate
Juneau, AK
Fax- 465-3922

March 4, 1998

Dear Senator Taylor,

At Mel's request, I am writing to describe some concepts I discussed with her about Senate Bill 108.

1. If an annual acreage figure for disposal is set by this legislation, the Division of land suggests that the disposal requirement be applicable to the existing programs of sale by auction (38.05.055, sale by lottery (38.05.057),and the remote recreational cabin site program (38.05.600).

2. Following up on your suggestion, the Division encourages consideration of including a process whereby a prospective buyer could nominate a parcel of previously offered land to buy, (out of the 5,000 parcels) agree to pay for the appraisal and then submit a bid on it. If the individual who paid for the appraisal was not the successful bidder, the successful bidder would be required to pay for the cost of the appraisal.

This would open the array of possible parcel to all we have on hand and therefore give the consumer the greatest possible choice of surveyed land to choose from.

3. In order to explore private sector interest in the development of state lands the bill could also authorize DNR to enter into contracts with private interests who may want to develop a portion of land by surveying it and possibly subdividing it, appraising the value of the parcels, marketing it and selling it to the public in exchange for a percentage of the land. In discussion, consideration of compensation at the rate of 20% of the land was discussed. The concept is that the state would allow private parties to develop and sell our land. Individuals could nominate parcels to be developed and DNR would accept nominations on a first come, first serve basis.

To achieve this concept SB 108 would need to authorize DNR to enter into such agreements and authorize the state to be compensated for the disposal of land in the form of the service, (developing and selling land), as opposed to cash.

I and my staff remain prepared to work with you and the committee on this bill.

Sincerely,

Jane Angvik

Jane Angvik, Director

REPORT TO THE LEGISLATURE

CALENDAR YEAR 1996
LAND DISPOSAL BANK
LAND DISPOSAL INCOME ACCOUNT

JANUARY 1997

Tony Knowles
Governor
State of Alaska

John Shively
Commissioner
Department of Natural Resources

Division of Land
3601 C Street, Anchorage, Alaska 99503-5947

1996 REPORT TO THE LEGISLATURE

Land Disposal Bank
Land Disposal Income Account

January 1997

Jane Angvik, Director
Division of Land
3601 C Street, Anchorage, AK 99503-5947

Tony Knowles, Governor
State of Alaska

John Shively, Commissioner
Department of Natural Resources

REPORT:

LAND DISPOSAL BANK
LAND DISPOSAL INCOME ACCOUNT

INTRODUCTION

This report fulfills two requirements:

1. A report to the legislature on the status of land in the **Land Disposal Bank**, due on January 15 of each year. [AS 38.04,020(d))

2. A report to the legislature reflecting all money deposited in the state **Land Disposal Income Account** during the prior fiscal year (AS 38.04.022(b)).

LAND DISPOSAL BANK

The Land Disposal Bank contains state-owned land classified for disposal.[1] AS 38.04.020(d) requires by January 15th of the first session of each legislature, the commissioner report to the legislature the status of state land suitable for the following purposes with the land disposal bank. [2]

Total Land In Disposal Bank

The total amount of land in the disposal bank as of December 31, 1996 is estimated to be 581,460 acres. This represents a decrease of 10,010 acres over 1994 acres.[3]

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[1] AS 38.04.010(a). Land must be classified into a disposal category before they are actually included in the Land Bank (AS 38.04.020(o)).

[2] Portions of the land disposal records are manually maintained. Therefore, while actual figures have been used in this report when available, conservative estimates are used in cases where they are reasonably accurate and actual data collection time would substantially outweigh the marginal benefit which might be derived from more precise figures.

[3] This decrease results from the Division of Land's 1995 State Land Offering.

Subdivision Disposal

An estimated 5,300 (37,562 acres) parcels foreclosed upon, relinquished or previously offered and not yet sold, are classified and suitable for disposal as subdivision parcels. These subdivision parcels include surveyed homesite and subdivisions parcels available over-the-counter or in future lottery or auction sales.

Agricultural, Commercial and Industrial Disposal

A total of 338,943 acres are classified for agricultural purposes. Commercial and industrial land has been converted to the settlement classification. The bank contained about 1,640 acres of land designated for commercial and industrial use as of January 1, 1983.

Homestead Disposal

A total of 204,949 acres are identified for homestead disposal and considered suitable for staking in the homestead program. Homestead land is classified as Agricultural Land for agricultural homesteads and as Settlement Land for non-agricultural homesteading.

Other Purposes

Most land is made available through the categories mentioned above. Certain land, however, is sold by auction in odd lots or for other special purposes. There is currently no land identified for other purposes.

LAND DISPOSAL INCOME ACCOUNT

The revenue from the sale of state land is deposited in a special state Land Disposal Income Account within the state General Fund. The legislature may appropriate money for implementation of state land disposal programs from this account. Under AS 38.04.022(b), the Department of Natural Resources is required to submit a report reflecting all money deposited in the fund during the prior fiscal year 30 days after the legislature convenes. During fiscal year 1996, approximately 2.18 million dollars were deposited in this account.

CHRONOLOGY OF STATE LAND DISPOSAL PROGRAMS

1959 **Auction sales** were created by the original AS 38.05, and for years were DNR's primary method of disposal to individuals. Most auction sales were for standard subdivision lots, with a few "odd lot" sales. From 1959 through 1975, disposals of state land averaged about 6,300 acres per year. The auction law is still in use, with a recent change: only Alaska residents can bid for most types of land.

1964 **State auction sales of borough land** From 1964 through 1975, DNR also sold borough-selected land at a rate of about 2,800 acres per year. The state subdivided the land and held the auction; the affected borough received the contract payments.

1966 The **open-to-entry** law created the state's first "stake-it-yourself" program. Unless the land was already surveyed, parcel size was limited to five acres, and entry was on a first-come, first-served basis. The staker was eligible for a five-year lease, renewable once, and could buy the parcel (at its fair market value as of the date of entry) after having it surveyed. The program was highly popular, with about 3,000 acres of new sites leased each year until a 1974 scandal over questionable staking practices led to a shutdown. The law remained in effect until 1979.

1975-1976 The land disposal program was suspended, with only 100 acres sold. The reasons were valid: the Hammond administration wanted to complete pending land use plans and the Cook Inlet land exchange; revise disposal procedures to comply with the Supreme Court's 1976 decision on the Kachemak Bay lease sale; get legislation to resolve the municipal land entitlement controversy; get a new law allowing lottery sales for its proposed Delta agricultural project; and implement a new law requiring easements before any new disposals took place. However, the public did not understand the reasons for the suspension, leading to a massive backlash, the Bierne homestead initiative, and legislative disposal quotas.

1976 An **agricultural land** sale law was enacted to forbid sales in fee simple. Only the agricultural interest could be sold, with all other development rights remaining in state ownership.

1977 The **homesite** law created the state's first "free land" program. Permittees were required to build a dwelling and occupy a subdivision parcel for a set period before they could obtain title. The legislation changed almost yearly until 1984, when it settled into its current form: Alaska residents only; one per household; a dwelling must be built by year five, with a possible one-year extension; 35 months' occupancy by year seven, or buy the parcel at fair market value.

1978 The **lottery** program was enacted and became DNR's primary land disposal method for several years. Alaska residency was required for most parcels, with sale at the appraised fair market value. Lotteries were held near the disposal land, and applicants had to attend in person. Also, the first legislative disposal quota was imposed: 30,000 acres to be offered as homesites and open-to-entry parcels. The quotas rose to 100,000 acres in 1980 and 1981, until the problems they caused—lack of quality, no land use planning, resulting conflicts with other resource uses, exemptions from municipal platting requirements, no field survey in some cases—caused the legislature to drop the practice.

1979 The **remote parcel** program replaced the open-to-entry law. Except for its first year, the program was similar to "OTE's": DNR set out the staking rules; staking was usually first-come, first-served; stakers received a five-year lease, renewable once, and could buy the parcel at a backdated price after surveying it. However, the parcels could be larger than OTE's (40 acres maximum), and the legislature added some new twists: only Alaska residents were eligible; one parcel per customer per eight years; the parcels could not be resold or subdivided for ten years after the contract was signed. The **remote cabin permit** program was also passed, but was never used.

1984 The **homestead** program replaced the remote parcel program. The programs had similarities: only Alaska residents could apply, entry was by staking a parcel of up to 40 acres (160 acres for agricultural land), the homesteader was required to get the parcel surveyed, and there were post-conveyance restrictions on resale or subdivision. However, the homestead program had further complications: applicants also had to be US citizens; there was a clearing requirement for agricultural land; homesteaders who did not survey and buy the parcel by year two were required to build a dwelling by year three (with a possible one-year extension); by year five the homesteader either bought the parcel or "proved up" after occupying it for 25 months. In this same year, budget cuts began to constrict the land disposal program, and a downturn in Alaska's economy caused the land market to slide.

1988 The **homestead** law ceased to allow random-staked parcels. DNR was required to complete a survey grid before allowing entry on aliquot-part parcels, and no boundary survey would be done by the homesteader.

1989 The personal-attendance requirement of the **lottery** law was ruled unconstitutional. DNR promptly tried to get the requirement deleted, but any lottery disposal was risky in the interim. Homesteads were not affected by the ruling, but had high administrative costs, and further budget cuts had occurred. The result was additional shrinkage of the land disposal program.

1991 Legislation on the mental health trust land lawsuit required land to be reserved for a possible settlement. This put existing high-value parcels off-limits to

disposal, and made it impractical for DNR to invest in platting any new subdivisions. The land disposal program ground to a virtual halt except for some over-the-counter parcels (land foreclosed upon or left over from earlier sales). This set-aside remained in effect until December 1994. (In 1995, DNR held its first major land disposal since the mental health controversy began, offering 417 lots at auction and 53 homestead parcels.)

1997 The **lottery** law was finally changed to remove the personal attendance requirement. The **homestead** law dropped the dwelling requirement as well as restrictions on reconveyance. Minor changes were made in the **auction** and **homesite** programs. The **agricultural land sale** program was completely rewritten to allow sales in fee simple, subject to an agricultural covenant. The remote cabin permit law was repealed and replaced by the **remote recreational cabin site** program, with some familiar features: DNR can offer surveyed sites for direct sale, or allow leases on unsurveyed land for two five-year terms. The lessee buys the parcel at its fair market value, backdated to the date of entry, after completing a boundary survey.

SB

180

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 4/18/97

FURTHER: Finance

Date of 5-Day Notice: 1/29/98
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 2/24/98

Resources Committee considered

SENATE BILL NO. 180

"An Act relating to state rights-of-way."

and recommends:

[ ] be **replaced** with ____ CS 180 (RES)

[ ] adopt **previous** ____ CS ____ (____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by ____ Committee

[ ] further referral to the ____ Committee

Senate Bill:
[X] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR#____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
Drew Edmun	✓				
Lora M Shaw	✓				
Lyda Green	✓				
CHAIR: Rick Halford	✓	*CHAIR:*			

NEW FISCAL NOTE(S):

SB+CS ←
SB+CS

Department	Date	Zero	Fiscal
NR	2/24		141.1
DOT	2/5/98	✓	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 180

Revision Date
Title: An Act relating to state rights-of-way
Sponsor: Senator Halford
Requester: Senate Resources

Dept. Affected: DOT&PF
BRU: Office of the Commissioner
Component: Commissioner's Office
Component Serial No.: 530

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING						
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by: Dennis Poshard Legislative Liasion — Phone: 465-3904
Division: Office of the Commissioner — Date: 2/5/98
Approved by: Dennis L. Poshard, Commissioner — Date: 2/5/98
Agency: Department of Transportation and Public Facilities

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FISCAL NOTE

STATE OF ALASKA **BILL NO. CSSB180(RES)**

1998 LEGISLATIVE SESSION

Revision Date: 24-Feb-98 Dept Affected: Natural Resources

Title: An Act Relating to State Rights-of-Way BRU: Resource Development

Component: Land Development

Sponsor: Senators Halford, Green, Leman ...

Requestor: (S) FIN **Component Serial No.** 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES	48.6					
TRAVEL						
CONTRACTUAL	93.1					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	141.7	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	141.7					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	141.7	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: $ none

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	4	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

Personal Services:

Requires two Natural Resource Technician II's (Range 12) @ 800 hours each = $27.2
and two Administrative Clerk II's (Range 8) @ 800 hours each = $21.4

Contractual:

Copy costs for approx. 585 files = $8.8
Recording costs for approx. 585 files = $84.3

Prepared by: Jane Angvik, Director Phone : 907-269-8503

Division: Land Date : 24-Feb-98

Approved by Commissioner:

John Shively Date: 2-24-98

Agency: Natural Resources

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0-LS0817\B.1
Luckhaupt
2/6/98

AMENDMENT

OFFERED IN THE SENATE BY SENATOR HALFORD

TO: SB 180

Page 1, line 1, following "**relating to**":

Insert "**land and to**"

Page 1, following line 2:

Insert a new bill section to read:

"* **Section 1.** AS 09.65 is amended by adding a new section to read:

Sec. 09.65.207. Tort immunity for damages occurring on R.S. 2477 right-of-way. An owner of land that is subject to a right-of-way under former 43 U.S.C. 932 (R.S. 2477) or that abuts a right-of-way under former 43 U.S.C. 932 (R.S. 2477) is not liable in tort, except for an act or omission that constitutes gross negligence or reckless or intentional misconduct, for damages to a person who enters onto or remains on the land if

(1) the person had no responsibility to compensate the owner for the person's use of the right-of-way or the land; and

(2) the damages arise out of the person's use of the right-of-way."

Page 1, line 3:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill section accordingly.

Page 21, following line 15:

Insert a new bill section to read:

"* **Sec. 3.** AS 34.17 is amended by adding a new section to read:

Sec. 34.17.025. Immunity from civil damages. In addition to the immunity

provided by AS 09.65.200, an owner of land subject to a ~~conversation~~ CONSERVATION easement under this chapter that provides public access for recreational purposes on the land is not liable in tort, except for an act or omission that constitutes gross negligence or reckless or intentional misconduct, for damages to a person who uses the easement to enter onto or remain on the land if

(1) the person had no responsibility to compensate the owner for the person's use of the easement or the land; and

(2) the damages arise out of the person's use of the easement for recreational purposes on the land."

Renumber the following bill section accordingly.

Page 21, line 16:

Delete "1998"

Insert "1999"

Page 21, line 17:

Delete "sec. 1"

Insert "sec. 2"

0-LS0817\B.2
Luckhaupt
2/9/98

AMENDMENT

OFFERED IN THE SENATE BY SENATOR HALFORD

TO: SB 180

Page 21, line 14, following "vacation,":

Insert "a reasonable alternative means of access is available,"

Alaska State Legislature

Senate

Official Business

RICK
HALFORD
State Capitol
Juneau, Alaska
99801-1182
Phone (907) 465-4958
Fax (907) 465-4928

P.O. Box 670190
Chugiak, Alaska 99567
Phone (907) 694-4958
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600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone (907) 376-4958

Sponsor Statement

Senate Bill 180

" An Act Relating to State Rights-of-way."

Revised Statute 2477 (R.S. 2477) was a right granted to the states by the United States Congress with the passage of the Mining Act of 1866. The purpose of this law was to provide for, and guarantee, the public's right to establish access across federal lands. Subsequent congressional action, and more than 100 years of case law, has recognized the state's authority to determine and define R.S. 2477 rights-of-way.

Although Congress repealed R.S. 2477 in 1976 with the adoption of the Federal Land Policy and Management Act, they specifically acknowledged the legal existence of R.S. 2477 rights-of-way established prior to the repeal. Current Federal Regulation explicitly provides that any rights conferred by the R.S. 2477 grant shall not be diminished. (43 CFR § 2801.4)

Last year the legislature passed SJR 13 with broad support reiterating their position regarding R.S. 2477 and making clear the objection to the United States Department of the Interior's new policy. Information that came forward during the committee process on SJR 13 as well as during the Joint Senate and House Resources Committee's overview of the issue supports the subsequent action being taken with Senate Bill 180.

SB 180, an Act relating to state rights-of-way, codifies 582 documented R.S. 2477 rights-of-way, requires them to be recorded and provides a process for, and limitations on, their vacation.

Beginning with the legislative appropriations in 1992 and 1993, which funded the research and compilation of historical information regarding R.S. 2477, the legislature has taken the lead in moving this issue forward. In undertaking those legislatively designated projects, the Department of Natural Resources (DNR) reviewed some 1,700 potential R.S. 2477 routes. This DNR review resulted in the identification of 582 rights-of-way that appear to qualify and can be supported with appropriate documentation. These 582 routes are published in the Historical Trails catalogue and incorporated into the state land administration system (LAS).

While the R.S. 2477 rights-of-way codified in this bill have already been accepted by public users and deemed supportable by the state, it is likely the federal government will dispute the state's ownership on some or all of these routes. Although the current federal administration is attempting to limit the state's rights regarding R.S. 2477 rights-of-way, over 100 years of case law on point recognizes state law as controlling on the issue. Codifying these routes in statute will strengthen the state's position for possible subsequent court action, and provide the affected land owners and general public clear notification that these R.S. 2477 rights-of-way are available for use.

R.S. 2477 rights-of-way are crucial to the future of our young and still largely undeveloped state. They are essential to provide surface travel to Alaska's many untapped mineral deposits and other natural resources, recreational areas and tourism opportunities, and access to and between Alaska's rural areas.

R.S. 2477 rights-of-way are an existing state right that we cannot allow to be "regulated away" by the federal bureaucracy. I urge your support of this legislation.

RS 2477 APPROPRIATIONS

AGENCY / APPROPRIATION	TITLE	AMOUNT GF	Federal	Other	TOTAL
Natural Resources					
Ch. 79 SLA 1993, p. 18 l. 9	RS 2477 Assertion (CIP)	720.0			720.0
Ch. 4 FSSLA 1994, p. 11 l. 10	RS 2477 Assertions and mapping (CIP)	300.0			300.0
Ch. 123 SLA 1996, p. 36, l. 27	RS 2477 Assertions/litigation support	50.0			50.0
Ch. 98, SLA 1997, P. 43, l. 30	RS 2477 Assertions and litigation support	40.0			40.0
Law					
* Ch. 5 FSSLA 1992, p. 32, l. 15	Federal lawsuits (CIP)	1,200.0			1,200.0
* Ch. 4 FSSLA 1994, p. 6, l. 23	Federal litigation continuation (CIP)	750.0			750.0
* Ch. 103 SLA 1995, p. 34, l. 30	Federal litigation/endangered species act, etc. (CIP)	900.0			900.0
* Ch. 117 SLA 1996, p. 38, l. 11	Statehood defense	900.0			900.0
Ch. 123 SLA 1996, p. 36, l. 12	RS 2477 assertions and litigation	200.0			200.0
* Ch. 98, SLA 1997, p. 41, l. 8	Statehood defense	990.6			990.6
Fish & Game					
* Ch. 79 SLA 1993, p. 19, l. 10	Assert/protect state's rights to manage Alaska's resources (CIP)	300.0			300.0
* Ch. 4 FSSLA 1994, p. 12, l. 7	Assert/protect state's rights (CIP)	200.0		200.0	400.0
* Ch. 103 SLA 1995, p. 40, l. 4	Assert and protect state's rights (CIP)	100.0		200.0	300.0
* Ch. 123 SLA 1996, p. 33, l. 23	Protection of access to public waters (CIP)		64.1	85.9	150.0
* Ch. 123 SLA 1996, p. 33, l. 29	ANILCA implementation/protection of state's rights related to navigable waters (CIP)			200.0	200.0
(1) Ch. 117, SLA 1996, P. 27, l. 18	Wildlife Conservation			200.0	200.0
* Ch. 98, SLA 1997, p.29, l. 11	Assert/protect state's rights			200.0	200.0
DOT/PF					
Ch. 208 SLA 1990, p. 63, l. 21	Annual planning work program (2) (CIP)				195.0
Ch. 96 SLA 1991, p. 42, l. 11	Statewide annual planning work program (2) (CIP)				125.0
TOTALS:		6,650.6	64.1	1,085.9	8,120.6

* Indicates possible funding for RS 2477 related activity

(1) Beginning in FY97 Wildlife Conservation allocates $200,000 F&G Funds for ANILCA and state's rights related issues in the operating budget. Prior to FY97 these activities were funded from the above referenced state's rights CIP appropriations.

(2) DOT/PF spent the amounts referenced in the totals column from the appropriations noted. The source of funding for the RS2477 expenditures (i.e., federal or GF) was not provided by the agency.

SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189 Session: State Capitol, Juneau, AK 99801 (907) 465-2095

MEMORANDUM

TO: Senator Lyda Green

FROM: Senator Loren Leman

RE: S. 1425 hearing in Washington, D.C.

DATE: March 19, 1996

I testified before the Senate Energy & Natural Resources Committee in Washington, D.C. on March 14 on behalf of the Senate and House majorities.

S. 1425, a bill by Senators Murkowski and Stevens, clarifies and protects Alaska's rights in RS 2477 rights-of-way. The Department of Interior has proposed regulations that will deprive Alaska of some of these rights.

My verbal testimony, as well as that by Elizabeth Barry, Assistant Attorney General, are attached. Please let me know if you want a copy of the written testimony that I submitted (43 pages).

TESTIMONY OF
ELIZABETH J. BARRY,
ASSISTANT ATTORNEY GENERAL OF
THE STATE OF ALASKA

BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
REGARDING S. 1425
MARCH 14, 1996

Mr. Chairman, members of the Committee, I am Elizabeth J. Barry, an Assistant Attorney General of the State of Alaska. I speak today on behalf of the State of Alaska on the general principles which, in our opinion, should govern RS 2477 decision-making. I thank the Committee for this opportunity to express our views.

The State would first like to place its testimony within a context of five principles which provide part of the basis for its policy regarding RS 2477 grants. These are:

1. Federal law does not preempt state law regarding how RS 2477 rights-of-way are asserted, accepted, and managed;
2. There must be an orderly process with a finite end point for claiming RS 2477 rights-of-way;
3. Assertion and management of RS 2477 rights-of-way are to be considered within a larger transportation plan for the State of Alaska of which public review is an integral part;
4. If access across Native-owned and other private lands is determined to be necessary through a process involving public review, right-of-way authority other than the application of RS 2477 rights-of-way will be utilized if available; and
5. The State will be sensitive to the needs and purposes of federal conservation system units in its management of RS 2477 rights-of-way which cross such lands.

Department, however, in the course taken by the proposed rulemaking it has put forward. Alaska believes that the proposed regulations would impinge on rights that have already been transferred.

In recognition of the need to research potential RS 2477 routes, the State undertook an extensive identification and documentation project. We examined more than 1000 possible routes, and identified a number of them for further study.

The State is presently developing policies regarding how rights-of-way asserted under RS 2477 will be managed. In Alaska, with vast lands that are roadless, it is important to maintain a rational approach to transportation planning. RS 2477 routes must be a part of a sound transportation plan which includes a well-maintained national highway system, roads that serve community needs including economic development and pedestrian safety, and trails for Alaskans and visitors. This planning process will determine what is appropriate access, recognizing the legitimate concerns of land owners and managers. Integrated into the planning will be a straight-forward public process which allows for citizens to be actively involved and will avoid policies of the past that allowed for roads to nowhere.

This planning process is being guided by three principles: 1)sound science that guides, but does not dictate policy; 2) prudent management that ensures sustainability and conservation; and 3) a public process that strives to make decisions through consensus.

The State of Alaska recognizes the concerns expressed by the Native community and by conservationists. The State is aware that inappropriate right-of-way use could have detrimental economic and subsistence impacts on Native landholders and rural communities. In conservation system units, there is concern about the potential for unmanaged access and resource conflicts. For example, various parties have raised questions about impacts on wilderness areas, parks and additional important conservation units that are magnets for tourism and other outdoor activities.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

TESTIMONY OF
ELIZABETH J. BARRY,
ASSISTANT ATTORNEY GENERAL OF
THE STATE OF ALASKA

BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
REGARDING S. 1425
MARCH 14, 1996

Mr. Chairman, members of the Committee, I am Elizabeth J. Barry, an Assistant Attorney General of the State of Alaska. I speak today on behalf of the State of Alaska on the general principles which, in our opinion, should govern RS 2477 decision-making. I thank the Committee for this opportunity to express our views.

The State would first like to place its testimony within a context of five principles which provide part of the basis for its policy regarding RS 2477 grants. These are:

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4. If access across Native-owned and other private lands is determined to be necessary through a process involving public review, right-of-way authority other than the application of RS 2477 rights-of-way will be utilized if available; and
5. The State will be sensitive to the needs and purposes of federal conservation system units in its management of RS 2477 rights-of-way which cross such lands.

As I am sure you are already aware, few issues raise the concern of Alaskans like those associated with how we get from one location to another across large distances. Alaska is a young state, and we have only recently completed the process of selecting the lands we were granted at Statehood.

With more than sixty percent of the State owned by the Federal Government, it is easy to understand that some routes traverse properties managed by federal property managers. In these situations, access sometimes depends upon RS 2477 grants.

It is the State's position that RS-2477 rights-of-way were a self -executing grant that transferred a property right to the State, under State law standards. This property right was created when acts constituting the acceptance of the grant took place. Because Congress ended the grant process in 1976, these acts occurred anywhere from two to twelve decades ago. The State's position is founded in and supported by over one hundred years of case law.

Because no formal act of federal acceptance was required, and because of the vastness and remoteness of Alaska, we understand that the location of some of these routes may not be clearly delineated on federal land plats. The lands across which rights were first granted may have since become national conservation units or may have been transferred into State, local or private hands. We recognize that, today, rights-of-way are created by new and different statutory authorities. However, these considerations should not cause us to overlook the important role RS 2477 routes have and continue to play.

Other federal right-of-way regimes, such as Title XI of ANILCA, were written to augment existing means of access. Experience has demonstrated that Title XI is an inadequate substitute, in many cases, for rights-of-way previously created under RS 2477. However, the State recognizes that in managing RS 2477's, it should take cognizance of current concerns and thinking which have led to enactment of federal right-of-way statutes since 1976.

The State recognizes the extent to which the Department of the Interior has studied the question of what constitutes a RS-2477 grant. We differ with the

Department, however, in the course taken by the proposed rulemaking it has put forward. Alaska believes that the proposed regulations would impinge on rights that have already been transferred.

In recognition of the need to research potential RS 2477 routes, the State undertook an extensive identification and documentation project. We examined more than 1000 possible routes, and identified a number of them for further study.

The State is presently developing policies regarding how rights-of-way asserted under RS 2477 will be managed. In Alaska, with vast lands that are roadless, it is important to maintain a rational approach to transportation planning. RS 2477 routes must be a part of a sound transportation plan which includes a well-maintained national highway system, roads that serve community needs including economic development and pedestrian safety, and trails for Alaskans and visitors. This planning process will determine what is appropriate access, recognizing the legitimate concerns of land owners and managers. Integrated into the planning will be a straight-forward public process which allows for citizens to be actively involved and will avoid policies of the past that allowed for roads to nowhere.

This planning process is being guided by three principles: 1)sound science that guides, but does not dictate policy; 2) prudent management that ensures sustainability and conservation; and 3) a public process that strives to make decisions through consensus.

The State of Alaska recognizes the concerns expressed by the Native community and by conservationists. The State is aware that inappropriate right-of-way use could have detrimental economic and subsistence impacts on Native landholders and rural communities. In conservation system units, there is concern about the potential for unmanaged access and resource conflicts. For example, various parties have raised questions about impacts on wilderness areas, parks and additional important conservation units that are magnets for tourism and other outdoor activities.

With these thoughts in mind, the State seeks to work cooperatively with Congress, the federal administration, Native landholders, developers, conservationists, and others to develop an approach which provides an orderly process for resolving conflicts while confirming and managing RS 2477 rights-of-way under State law. This approach will serve to prevent RS 2477 issues from ending up in court. Alaska Attorney General Bruce Botelho, Commissioner John Shively of the Alaska Department of Natural Resources, and John Katz, Director of State-Federal Relations, are the key players for the State of Alaska on this issue.

Thank you, once again, for the opportunity to testify.

TESTIMONY OF
ALASKA STATE SENATOR LOREN LEMAN
on behalf of
THE ALASKA STATE LEGISLATURE
before the
UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
regarding
S. 1425

Mr. Chairman, members of the committee, thank you for the opportunity to testify today on this important legislation. I am Alaska State Senator Loren Leman. I chair the Senate Resources Committee. I am testifying today on behalf of Senate President Drue Pearce, Speaker of the House Gail Phillips, and the majority members of the Alaska Legislature.

Mr. Chairman, I will be brief in my remarks, but ask that my full statement, along with an extended evaluation we have prepared, be made a part of the record of this hearing.

As this Committee by now knows so well, there is a unique character to getting from one point to another in Alaska. Our R.S. 2477 routes embody that character, and most are very unlike the well-developed road systems that serve travelers across much of the rest of this country. Alaskan routes are often just a well trodden footpath or long traveled dogsled trail leading from one village to another or from a village to historic hunting, fishing, and gathering grounds. Most Committee members are not likely to have heard of many of these routes. Some were used one hundred years ago by my great-grandfather and grandfather, both miners, as they provided for my family in Alaska. Others are better known because they are parts of the route being used right now by those competing in the Iditarod dogsled race. These routes, footpath or road, well known or not, offer Alaskans fragile lines of access across unforgiving geography.

They are often the only land route available, and are often irreplaceable because of subsequent changes in the status or ownership of surrounding property. Their importance to Alaskans is why I am here today.

The Legislature supports S. 1425 because it protects long-standing vested property rights. The bill does not create new rights-of-way, nor should it. We only desire a reasonable process for resolution of disputes concerning property rights granted under law between 20 and 130 years ago.

The need for this legislation, as you know, was created by legal revisionism embodied in the R.S. 2477 regulations proposed by the Department of the Interior. This legislation rebukes the Department's attempt to invalidate rights by restrictively, and retroactively re-defining key statutory terms. The result of the regulations would be that rights-of-way grants supported by Congressional intent and long-standing judicial interpretation would be rescinded by unauthorized agency action.

An important point that this bill reaffirms is the role of state law in the acceptance of an R.S. 2477 grant. Cases from the U.S. Court of Appeals, various state supreme courts, and even past regulations of the Department of the Interior all provide that state law defines the existence and scope of an R.S. 2477 grant. In other words, as Congress intended and case law upholds, state law defines what acts constitute acceptance of the R.S. 2477 offer. The DOI itself, from 1938 to the repeal of the statute, interpreted an R.S. 2477 grant as becoming "effective upon the construction or establishing of highways, in accordance with the State laws, over public lands not reserved for public uses." In 1986 this view was reaffirmed when the Department agreed in Federal District Court that R.S. 2477 "is applied by reference to state law to determine when the offer of grant has been accepted by the 'construction of highways.'"

There has been discussion of Alaskan section line easements and R.S. 2477. Under a decision of the Alaska Supreme Court, the state statute creating section line easements was held to be an acceptance of the R.S. 2477 grant. For dramatic effect the

DOI profoundly exaggerates the utility of such routes, even if they do exist. First, there is a real question whether an unsurveyed section line can be an R.S. 2477 route since it is not yet fixed to an exact location on the ground. Further, reasonable people know that, because of foreboding terrain and very low population density, only a small percentage of these section lines in Alaska could be useful or effectively developed as roads. Also, keep in mind that most development is prohibitively expensive anyway, and any development would be subject to extensive contemporary environmental standards. In addition, the State of Alaska retains the power to restrict and regulate the use of R.S. 2477 rights-of-way. The State has the authority to prohibit all use of the section line easements that may exist or to agree with the federal government on what section lines should and should not be used.

In terms of the time period for filing the notice, I suggest that this should be lengthened from the existing 5 years to 10 years. The State knows, through its own extensive process of evaluating claimed routes, that a great deal of time and expense is necessary to prove up what was never before required to be documented. Commencing in 1992 the Legislature funded a $1.2 million project to research nearly 1900 potential routes. We have determined that 560 routes appear to qualify, 260 require more research, and 322 have not yet been studied. The remaining 750 either do not meet legal criteria or duplicate other routes. These results are the product of an extensive process including public notice and input, a process that should not be shortchanged for the sake of expedience. I assure you that the process clearly rejects unsubstantiated claims. The routes that received the State's certification are bona fide claims. From our experience we know that to do this in a reasonable, responsible and fiscally realistic manner will require more than 5 years.

Especially for the sake of private land owners in Alaska, I emphasize that the process in this bill applies only to rights on lands now owned by the federal government. Appropriately, this bill does not affect whatsoever laws applicable to the adjudication of underlying rights on what is now private and other non-federal property.

In summary, Mr. Chairman, the Alaska Legislature supports this legislation. Its crucial elements are the affirmation of the role of state law in the acceptance of a grant, a reasonable time period for filing the notice, which we suggest should be 10 years, and the acknowledgement that this process applies only to routes existing on lands now owned by the federal government.

Again, I appreciate the time and attention of this committee, and am happy to respond to any questions you may have.

SETTLED PRECEDENT ON R.S. 2477

Revised Statutes 2477 (R.S. 2477) states, in its entirety:

> "Sec. 8. *And be it further enacted*, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." § 8 of the Act of July 26, 1866, 14 Stat. 253, later codified at 43 U.S.C. § 932.

This statute has been interpreted innumerable times over the 128 years since its passage by state and federal courts and by the Department of Interior and these interpretations have consistently outlined fundamental core principles which have guided its application over the years. In particular, the statute has been applied universally by reference to state law. Furthermore, the definitions under state law of terms such as "highway" and "construction" have always been honored. The new regulations proposed by the Department of Interior do not provide a fair treatment of this legal history and the definitions which were relied upon for the 110 years that the offer under R.S. 2477 was open. The following outline provides just a few quotations from the vast body of administrative and court-made law which the new regulations attempt to ignore and thereby reverse.

I. THE ROLE OF STATE LAW:

Early federal regulations stated:

> *This grant [R.S. 2477] becomes effective upon the construction or establishing of highways, in accordance with the State laws, over public lands not reserved for public uses. No application should be filed under this act, as no action on the part of the Federal Government is necessary. 56 I.D. 533 (May 28, 1938).*

These regulations were retained, virtually unchanged, for 110 years:

> *No application should be filed under R.S. 2477, as no action on the part of the Government is necessary. . . . Grants of rights-of-way referred to in the preceding section become effective upon the construction or*

establishment of highways, in accordance with the State laws, over public lands, not reserved for public uses. 43 C.F.R. §§ 2822.1-1, 2822.2-1 (October 1, 1974)(See also, 43 C.F.R. 244.54 (1938); 43 C.F.R. 244.58 (1963).

In 1986, the Department recognized its duty to honor prior, valid existing rights:

A right-of-way issued on or before October 21, 1976, pursuant to then existing statutory authority is covered by the provisions of this part unless administration under this part diminishes or reduces any rights conferred by the grant or the statute under which it was issued, in which event the provisions of the grant or the then existing statute shall apply. 43 U.S.C. § 2801.4 (February 25, 1986).

Supplementary information supplied by the Department stated:

It was not the intent of the proposed rulemaking, nor is it the intent of this final rulemaking, to diminish or reduce the rights conferred by a right-of-way granted prior to October 21, 1976. . . . In addition, if questions should arise regarding the rights of a right-of-way holder under a grant or statute, the earlier editions of the Code of Federal Regulations on rights-of-way will remain available to assist in interpretation of the rights conferred by the grant or earlier statute. . . . In carrying out the Department's management responsibilities, the authorized officer will be careful to avoid any action that will diminish or reduce the rights conferred under a right-of-way grant issued prior to October 21, 1976. 51 Fed.Reg. 6542 (February 25, 1976).

The Department also recognized the role of state law when making representations to the courts:

The parties are in agreement that the right of way statute is applied by reference to state law to determine when the

offer of grant has been accepted by the "construction of highways. Wilkenson v. Dept. of Interior of United States, 634 F.Supp. 1265, 1272 (D. Colo. 1986) (citation omitted).

The Department's own appellate bodies also recognized the propriety of the application of state law:

The question of whether a road is a public highway is a matter of state law. The Sierra Club et al., 104 IBLA 17, 19 (1988).

State courts have also been consistent in their treatment of R.S. 2477 rights-of-way:

Under this act [R.S. 2477] highways could be established over public lands not reserved for public uses while they remained in the ownership of the government. Congress did not specify or limit the methods to be followed in the establishment of such highways. It was necessary, therefore, in order that a road should become a public highway, that it be established in accordance with the laws of the state in which it was located. Ball v. Stephens, 158 P.2d 207, 209 (Cal. Ct. App. 1945).

It has been held by numerous courts that the grant [under R.S. 2477] may be accepted by public use without formal action by public authorities, and that continued use of the road by the public for such length of time and under such circumstances as to clearly indicate an intention on the part of the public to accept the grant is sufficient. Lindsay Land & Livestock v. Churnos, 285 P. 646, 648 (Utah, 1930).

By this act [R.S. 2477] the government consented that any of its lands not reserved for a public purpose might be taken and used for public roads. The statute was a standing offer of a free rights of way over the public domain, and as soon as it was accepted in an appropriate manner by the agents of the public, or the

public itself, a highway was established. Streeter v. Stalnaker, *61 Neb. 205, 85 N.W. 47, 48 (1901).*

Federal courts have concurred:

The salient issue is whether the scope of R.S. 2477 rights-of-way is a question of state or federal law. . . . Especially when an agency has followed a notorious, consistent, and long-standing interpretation, it may be presumed that Congress' silence denotes acquiescence: "[G]overnment is a practical affair, intended for practical men. Both officers, lawmakers, and citizens naturally adjust themselves to any long-continued action of the Executive Department, on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle, but the basis of a wise and quieting rule that, in determining the meaning of a statute or the existence of a power, weight shall be given to the usage itself,--even when the validity of the practice is the subject of investigation." United States v. Midwest Oil Co., 236 U.S. 459, 472-73, 35 S.Ct. 309, 312- 13, 59 L.Ed. 673 (1915).. . . The perfection of an R.S. 2477 right-of-way admittedly is a different issue [from] its scope. However, all of the above-cited cases concern the conflict between an alleged R.S. 2477 right-of-way and a competing claim of right to the land. The cases subsume the question of scope into the question of perfection; and indeed a critical part of many of the state law definitions of perfection included the precise path of the purported roadway. Having considered the arguments of all parties, we conclude that the weight of federal regulations, state court precedent, and tacit congressional acquiescence compels the use of state law to define the scope of an R.S. 2477 right-of-way. Sierra Club v. Hodel *848 F.2d at 1080, 1083. (Citations omitted.)*

***

> *Ordinarily, this expression of intent [by the state legislature] would constitute valid acceptance of the right-of-way granted in Section 932. That section acts as a present grant which takes effect as soon as it is accepted by the State. . . . All that is needed for acceptance is some "positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept . . . ." Wilderness Society v. Morton, 479 F.2d 842, 882 (D.C. Cir. 1973), (quoting Hamerly v. Denton, Alaska, 359 P.2d 121, 123 (1961); citing also Kirk v. Schultz, 63 Idaho 278, 282, 119 P.2d 266, 268 (1941); Koloen v. Pilot Mound Township, 33 N.D. 529, 539, 157 N.W. 672, 675 (1916); Streeter v. Stalnaker, 61 Neb. 205, 206, 85 N.W. 47, 48 (1901)).*

"Under R.S. 2477, a right-of-way could be established by public use under terms provided by state law." Sierra Club v. Hodel, 675 F.Supp. at 604. *"Whether the roads have been established under the provisions of R.S. 2477 is a question of New Mexico law."* U.S. v. Jenks, 804 F.Supp. 232, 235 (D.N.M. 1992). *"Whether a right of way has been established is a question of state law."* Shultz v. Department of Army, U.S., 10 F.3d at 655.

II. STATEMENTS OF THE 10TH CIRCUIT COURT OF APPEALS ON THE IMPORTANCE OF STATE LAW

The United States Circuit Court of Appeals for the 10th Circuit, commenting on "more than four decades of agency precedent, subsequent BLM policy as expressed in the BLM Manual, and over a century of state court jurisprudence" on this issue:

> ***The adoption of a federal definition of R.S. 2477 roads would have very little practical value to BLM. State law has defined R.S. 2477 grants since the statute's inception. A new federal standard would necessitate the remeasurement and redemarcation of thousands of R.S. 2477 rights-of-way across the country, an administrative duststorm that would choke BLM's ability to manage the public lands . . . . That a change to a federal standard would adversely affect existing property relationships squarely refutes Sierra Club's allegation that the use of a state law standard unfairly prejudices the federal***

government. R.S. 2477 rightholders, on the one hand, and private landowners and BLM as custodian of the public lands, on the other, have developed property relationships around each particular state's definition of the scope of an R.S. 2477 road. The replacement of existing standards with an "actual construction" federal definition would disturb the expectations of all parties to these property relationships. Sierra Club v. Hodel, *848 F.2d at 1082-1083.*

***

FLPMA admittedly embodies a congressional intent to centralize and systematize the management of public lands, a goal which might be advanced by establishing uniform sources and rules of law for rights-of-way in public lands. The policies supporting FLPMA, however, simply are not relevant to R.S. 2477's construction. It is incongruous to determine the source of interpretative law for one statute based on the goals and policies of a separate statute conceived 110 years later. Rather, the need for uniformity should be assessed in terms of Congress' intent at the time of R.S. 2477's passage. Id.

III. CONGRESSIONAL INTENT IN PASSING FLPMA

Debate leading up to the enactment of FLPMA, on a predecessor bill, addressed R.S. 2477 specifically. This bill contained the same terms which were later incorporated into FLPMA, providing that "All actions by the Secretary under this Act shall be subject to valid existing rights" and providing for the repeal of R.S. 2477.

Senator Stevens, of Alaska, expressed concern that rights to *"de facto public roads"* established across public lands and roads *"that through tradition, through usage, through the passage of time, in fact, have become public access roads or highways"* would be jeopardized by the repeal of R.S. 2477. 120 Cong. Rec. 22283-22284 (1974). Senator Haskell, of Colorado, speaking in favor of the legislation (S-424), stated: *"if a strip of land is being used for a highway over public land in accordance with State law at the time of enactment of this bill, then that grant of right-of-way is preserved by reason of section 502 of the bill."* Id. at 22284.

There can be no question that Congress intended, when it passed FLPMA, that R.S. 2477 rights-of-way be interpreted in accordance with state law. In an attempt to *"make sufficient legislative history,"* Senator Haskell referred specifically to state case law, stating:

I am referring now, if the Senator would like, the citation is Koloen versus Pilot Mound Township, I believe it is, 33 North Dakota 529, it says:

> *To constitute acceptance of congressional grant of right-of-way for highways across public lands there must be either user sufficient to establish a highway under the laws of the State, or some positive act proper authorities manifesting intent to accept.*

In other words, a use or some positive act of proper authorities manifesting intent to use. This is the way I would apply this one-sentence statute [R.S. 2477] enacted in 1866: either there is a an actual existing public use, or there is a manifest intent which could be put into action by an application to the Department of the Interior, and they would say "yes." In other words, it is a two-way proposition. Id.

It is also clear that it was an essential condition of the BLM "organic act" that the full rights under R.S. 2477, as well as other rights, were to be preserved. Senator Haskell, in support of the predecessor bill, said *"I would like to take this opportunity to reassure the various users of the natural resources lands -- and these people include those who graze cattle, it includes people who mine, it includes people who use public lands for recreation -- that none of their rights or privileges are being adversely affected."* Id. at 22280.

It is also clear that Congress understood that R.S. 2477 rights-of-way would not be limited to "significant" roads:

> *MR. STEVENS. Would the Senator from Colorado agree that if a State has accepted an obligation to maintain a road or trail, if it has partially constructed or reconstructed it, or has indicated an exercise of its police authority by virtue of posting signs as to the speed limits, for example, which demonstrate it is a public highway - if the State has taken actions that would normally be taken by a State in furtherance or its normal highway program, and those roads were on such a right-of-way public lands, would the Senator agree that we have no intent of wiping those out, but those would be valid, existing rights under the one-sentence statute the Senator mentioned previously?*
>
> *MR. HASKELL. I agree with the Senator 100 percent.* Id. at 22284.

Furthermore, in response to a concern about "*existing roads and trails from village to village*" and about "*dogsled trails,*" Senator Haskell stated:

> *I am not familiar with dogsled trails, but let me say I agree with the Senator that so long as the intent was for public use, then the right-of-way was established at that time under that 1866 act.* Id.

A review of that debate can leave no doubt that Congress intended R.S. 2477 rights to be exercised fully in accordance with state law after the passage of the BLM "organic act."

IV. FLPMA EXPLICITLY PROTECTS PRIOR VALID EXISTING RIGHTS

> Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this act. FLPMA § 701(a), 43 U.S.C. § 1701 note (a).
>
> All actions by the Secretary concerned under this Act shall be subject to valid existing rights. FLPMA § 701(h), 43 U.S.C. § 1701 note (h).
>
> Nothing in this title [43 U.S.C. §§ 1761 et seq.] shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted or permitted. FLPMA § 509(a), 43 U.S.C. § 1769(a).

V. DEFINITIONS OF "HIGHWAY" AND "CONSTRUCTION"

In Colorado, the term 'highways' includes footpaths. *Simon v. Pettit*, 651 P.2d 418, 419 (Colo.Ct.App. 1982), *aff'd*, 687 P.2d 1299 (Colo.1984). "Highways" under 43 U.S.C. § 932 can also be roads "formed by the passage of wagons, etc., over the natural soil." *Central Pacific Railway Co. v. Alameda County*, 284 U.S. 463, 467, 52 S.Ct. 225, 226, 76 L.Ed. 402 (1932). The trails and wagon roads over the lands which became part of the Colorado National Monument were sufficient to be "highways" under 43 U.S.C. § 932

[R.S. 2477]. Wilkenson v. Dept. of Interior of United States, 634 F.Supp. at 1272.

"The term highway is the generic name for all kinds of public ways, whether they be carriage-ways, bridle-ways, footways, bridges, turnpike roads, railroads, canals, ferries, or navigable rivers." Bouv. Law Dict., Rowle's Third Rev. p. 1438, Tit. Highway; Elliott, Roads and Streets, p. 1; 25 Am.Jur, 340. Parsons v. Wright, 27 S.E.2d 534 (N.C. 1943)

A highway is commonly defined as a passage, road, or street which every citizen has a right to use. . . . A highway includes every public thoroughfare, "whether it be by carriage way, a horse way, a foot way, or a navigable river." Summerhill v. Shannon, 361 S.W.2d 271 (Ark. 1962).

"Roads" and "highways" are generic terms, embracing all kinds of public ways, such as county and township roads, streets, alleys, township and plank roads, turnpike or gravel roads, tramways, ferries, canals, navigable rivers . . . . Strange v. Board of Com'rs of Grant County, 91 N.E. 42 (Ind. 1910).

Highways, as they were originally developed, were for the convenience and easy passage of persons on foot, on horseback, in vehicles drawn by horses or oxen, and also for the transportation of commodities by the same means. They were open to unrestricted use by all persons. City of Rochester v. Falk, 9 N.Y.S.2d 343 (1939)

The word "highway" as ordinarily used means a way over land open to the use of the general public without unreasonable distinction or discrimination, established in a mode provided by the laws of the state where located. Lovelace v. Hightower, 50 N.M. 50, 168 P.2d 864 (1946).

Travel and transportation of goods by wheeled vehicles is not the only use to which a highway may be put. One walking or riding horseback, or transporting goods by pack horse, over a way which the public is constantly using , is a use of such a way as a highway. Hamp v. Pend Oreille County, 172 P. 869, 870 (Wash. 1918).

"User is the requisite element, and it may be by any who have occasion to travel over public lands, and if the use be by only one, still it suffices." Wilkenson v. Dept. of Interior, 634 F.Supp. 1265, 1272 (D. Colo. 1986).

"Highways" under 43 U.S.C. §932 can also be roads "formed by the passage of wagons, etc., over the natural soil." *Central Pacific Railway Co. v. Alameda County*, 284 U.S. 463, 467, 52 S.Ct. 225, 226, 76 L.Ed. 402 (1932). Id.

WHAT IS R.S. 2477?

- Revised Statutes 2477 (R.S. 2477) was a grant by Congress to the American public to establish access rights across the federal public lands. R.S. 2477, enacted in 1866, states that "the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."
- R.S. 2477 rights-of-way were created by the public or by state and local governments to provide public access across federal lands. All valid existing R.S. 2477 rights-of-way have been in existence since at least 1976, when the grant of R.S. 2477 was repealed. Many of these access routes have been used for over a century. Many are state highways. All are integral parts of the travel infrastructure that allows business people and other workers, search and rescue crews, law enforcement, hunters, campers, hikers, and all Americans to travel across the vast expanses of federal lands which dominate the West.
- R.S. 2477, like all easements, are property rights and are entitled to the same legal protection as any other property right.
- According to every court and administrative action which has directly addressed R.S. 2477 prior to now, state law provides the basis for determination of the existence and scope of R.S. 2477 rights-of-way.
- The scope of any R.S. 2477 right-of-way is defined by state law. Where state law has not established a specific scope, the common law of easements, also applied to these rights, defines the scope as that which is reasonable and necessary to provide safe travel for legitimate uses. Safety can only be provided by continued application of these state law standards.
- R.S. 2477 rights-of-way have been protected by every Congressional action taken for management of the public lands, including specifically the Federal Land Policy Management Act of 1976 (FLPMA), which repealed R.S. 2477.
- Federal regulatory authority over R.S. 2477 is limited by the obligation to honor the vested property right. Any action by Federal agencies to limit or divest these rights is contrary to established legal principles.
- The Department of Interior has published draft regulations purporting to provide a basis for administrative treatment of R.S. 2477 rights-of-way. These regulations would result in a substantial administrative reversal of long-established administrative policies, and would contravene established jurisprudence, moving a giant step toward elimination of historical rights of access to and across federal public lands.
- Settled methods of dealing with R.S. 2477 rights-of-way should not be changed. These rights-of-way were established by the public over a period of 110 years in reliance on the law and on administrative interpretations of the grant. Any change in these approaches would cause chaos in the many legal relationships which have been created on the basis of existing law. The regulations as proposed would also constitute an unfunded federal mandate by imposing new duties on state and local governments to protect their existing rights-of-way, while also imposing a new administrative burden on the federal agencies at taxpayer expense.

THE TRUE STORY ABOUT THE PROPOSED R.S. 2477 REGULATIONS

On August 1, 1994, the Department of the Interior released draft regulations which would unilaterally reverse long-standing court-made law, prior regulations, and state-federal relationships governing public access rights across federally owned lands.

Because federally owned lands constitute as much as 90% or more of some rural counties, the loss of access rights could have substantial impacts on the day-to-day activities of citizens and visitors.

Although the Department touts the new regulations as an effort to settle confusion, in fact the proposed regulations are designed to create confusion and controversy. They would force local governments, who have traditionally owned and maintained thousands of these rights-of-way, to undertake costly procedures, potentially including extensive litigation, to protect public access rights.

These burdensome new procedures will be required in spite of the fact that many of these same rights-of-way have been explicitly recognized by the Department in the past. No prior action of a state or local government or of the Department itself would be honored by the new regulations. In fact, even court rulings where the Department was a party will not be honored unless the holder first undertakes the new process which the Department now proposes.

The regulations do not promote an orderly process, as claimed. They would establish an excessively bureaucratic process clearly designed to burden the holders to the point where they are overwhelmed and give up. This intent is clear from the Department's statement that "[s]ome claimants may find the existing procedures under the Title V of FLPMA [the Federal Land Policy Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701 et seq.], or other statutory authorities, to be a more familiar and speedy process for resolving their right-of-way claims." This statement is misleading, since FLPMA addresses new applications which create new rights-of-way, while R.S. 2477 addressed rights-of-way which were perfected prior to October 21, 1976. FLPMA rights-of-way require an application which can be denied; R.S. 2477 rights-of-way are already perfected and cannot be denied, *unless the Department succeeds in finalizing these regulations.*

The proposed regulations far exceed any authority of the Department of Interior. In fact, they are explicitly forbidden by Congress, which said:

> (Nothing in this title [FLPMA] shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title. (43 U.S.C. § 1769(a).)

The Department's hostility to these rights-of-way is made apparent by the fact that it wants to redefine the rights to eliminate many that were perfected under the terms by which the grant was offered, in addition to imposing a substantial burden on state and local governments in the form of documentation requirements and regulatory oversight. The Department would eliminate the

application of state laws which have been accepted for 128 years. After redefining the rights, the Department plans on taking over the role of the courts by determining which rights are valid and which are not, once again eliminating many rights-of-way in the process. In this way, the Department claims it can do a better job than the courts.

Under the new proposal, which mirrors the policies environmentalists have fought for, and lost on, in the courts, a whole new bureaucracy would have to be created just to handle the complex procedures these regulations would impose. And those actions would be conducted primarily by federal employees who have no prior experience with this issue and no knowledge of local history. This arrangement would be logical if the goal is to ignore the institutional knowledge which would support recognition of these rights. Under the new rules, it would be difficult, if not impossible to efficiently document these rights-of-way.

These prior existing R.S. 2477 rights-of-way are no more burdensome to the Department of Interior than any other property right which was granted by Congress. Most of the private property in the west was originally acquired from the federal domain. The Department must undertake its management duties with respect for property rights which were not retained by the federal government.

The State and local governments which manage these rights-of-way do not argue with their obligations to respect adjacent federal lands. Federal resources are protected by statutes governing endangered species, archeology, wetlands and related matters and local governments must honor those protections. Appropriate environmental review processes will also apply to R.S. 2477 improvement projects under the National Environmental Policy Act. The existence of R.S. 2477 rights-of-way does not defeat legitimate federal interests.

An honest presentation by the Department would disclose that continuation of past practices would be inconvenient to the Department of Interior, which desires to close off access whenever and wherever it chooses, regardless of the importance of that access to local economies and cultures. When all of the public relations hyperbole has settled, and the regulations are in place, Americans throughout the West, whether living there or visiting, will find their favorite fishing holes, canyons, hunting camps and hiking and jeep trails closed off.

It would be possible to create a process for determining which claims are valid that, unlike the proposed rules, would be based on a fair treatment of valid existing property rights, honoring long-standing precedent. But the proposed regulations fail to come close to a fair treatment of these rights-of-way and should be withdrawn. Otherwise, given the clear agenda of the Department of the Interior as presented in these draft regulations, the courts are the only forum where a fair treatment of these property rights might be obtained.

THE SECRETARY OF THE INTERIOR
WASHINGTON

RECEIVED
JAN 27 1997
Ans'd.....

JAN 22 1997

Memorandum

To: Assistant Secretary, Fish and Wildlife and Parks
Assistant Secretary, Land and Minerals Management
Assistant Secretary, Indian Affairs
Assistant Secretary, Water and Science

From: Secretary

Subject: Interim Departmental Policy on Revised Statute 2477 Grant of Right-of-Way for Public Highways; Revocation of December 7, 1988 Policy

Revised Statute 2477, which provided that "[t]he right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted," was repealed on October 21, 1976, by the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 et seq. FLPMA did not terminate valid rights-of-way established under R.S. 2477 prior to its repeal. The existence and extent of valid rights-of-way previously established pursuant to R.S. 2477 remains an issue in some places.

States or local governments asserting that R.S. 2477 rights-of-way exist on federal lands can in appropriate situations file a lawsuit in federal court seeking to establish the validity of that assertion. In the alternative or in advance of filing such a lawsuit, the Department of the Interior may also be asked to give its views on such assertions.

On December 7, 1988, Secretary Hodel signed a memorandum that discussed his policy for making determinations whether the Department would recognize claims for rights-of-way under R.S. 2477. That policy was not promulgated according to rulemaking procedures and is not a rule. In fact, because the Department has not been making such determinations in recent years, that policy has not been carried out for several years. The purpose of this memo is to revoke the 1988 policy and establish a revised policy for carrying out any determinations the Department might be called upon to make regarding R.S. 2477.

Background

At the request of Congress, the Department submitted a Report to Congress on R.S. 2477 in June 1993. In accordance with that Report's recommendations, the Department determined that regulations should be written for R.S. 2477, and a Notice of Proposed Rulemaking was published in 1994. 59 Fed. Reg. 39,216 (August 1, 1994). Thereafter, Congress attached a provision to the Department's appropriation for fiscal year 1996 that prohibited using funds appropriated by that statute for "developing, promulgating, and thereafter implementing a

determines that construction did not occur, the agency will recommend the Secretary deny the claim.

4. Highway. The agency shall evaluate whether the alleged right-of-way constitutes a highway. A highway is a thoroughfare used prior to October 21, 1976, by the public for the passage of vehicles carrying people or goods from place to place. If the agency determines that the alleged right-of-way does not constitute a highway, the agency will recommend the Secretary deny the claim.

5. Role of State Law. In making its recommendations, the agency shall apply state law in effect on October 21, 1976, to the extent that it is consistent with federal law. The agency will in no case recommend approval of claims that do not comply with the requirements of applicable state law.

6. Secretary's Determination. The agency will make recommendations on the above-described issues to the Secretary. The Secretary will approve or disapprove those recommendations.

The December 7, 1988 policy, including attachment 1, is hereby revoked.

Bruce Babbitt

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ALASKA STATE OFFICE
222 W. 7th Avenue, #13
ANCHORAGE, ALASKA 99513-7599

1400 (910)

Dick Bishop
Alaska Outdoor Council
P.O. Box 73902
Fairbanks, AK 99707-3902

MAR 21 1997

Dear Mr. Bishop:

Thank you for inviting me to have lunch with you last week and discuss some of the Bureau of Land Management's (BLM) activities. The questions and discussion regarding R.S. 2477 underscore the interests of Alaskans in this issue.

An unanswered question was, "What is BLM doing with the R.S. 2477 assertions that were filed in Fairbanks and sent to the Anchorage office?" The answer is that we will serialize them just as we did in the Fairbanks office.

We then intend to sort them, statewide, by federal land ownership and send a copy to each of the other agencies if they are the federal land managing agency for the case, or share a land management responsibility for the case. For example, if the travel route is wholly on the Fish and Wildlife Service we will send a copy of the assertion to them. If the travel route touches on the BLM and/or the Fish and Wildlife Service and/or the Park Service, each will receive a copy of the assertion. The Council will be notified of the results of this process.

This process will notify the federal agencies of the Outdoor Council's assertion in the travel route. There remain several unanswered questions that need to be pursued over time. They include:

- Whether we must process, favorably or unfavorably in the context of the Secretary of Interior's guidance (copy enclosed), any of the assertions;
- Whether we ask the Outdoor Council for reasons why it is compelling to address a specific assertion(s) (ref. Secretary's guidance);
- Whether the State or the Council is prepared to assume the responsibility and liabilities associated with a travel route.

There are other questions as well; however, BLM is willing to work with the Council, the State, and other landowners to address access needs whether it be under R.S. 2477 or other authority. Once again, thanks for the invitation to visit with you and, I look forward to seeing you again.

Feel free to contact me or Dee Ritchie in our Fairbanks office if you have any questions.

Sincerely,

State Director

Division of Land Analysis - May 8,1997
SB 180: An Act relating to state rights-of-way.

The Division of Land has been working on the RS2477 issue for many years supports the direction of the bill and seeks to work with the sponsor on its development.

Principle elements of the bill:

* identifies DNR as regulatory authority for managing the RS2477 routes, unless transferred to DOTPF.
* acknowledges that the research and identification process is incomplete
* requires recordation of the 585 routes that potentially qualify as RS2477 routes
* outlines procedures and restrictions for vacating RS2477 rights-of-way.

Section 1, paragraph (b) states that DNR "shall conduct the necessary research to identify rights-of-way." The RS2477 project was funded by the Legislature beginning in FY93 to identify, research and document potential RS2477 rights-of-way throughout the state. As of spring 1997, the DNR has identified approximately 585 routes that *potentially* qualify as RS2477 routes. This research is the first step in the process of certifying that a route meets the requirement of the federal grant. Finding additional information to qualify more routes and certify the 585 which have been judged to qualify will require more work, including travel to mining districts and communities, interviewing Alaskan pioneers, and investigating federal records. This will be a costly, but beneficial endeavor.

Section 1, paragraph (c) outlines acceptance of the RS2477 grant from the federal government. The State has a regulatory process in place to recognize the grant (11AAC51). This process is called "certification" and includes the following elements:

* Nomination of a route by DNR
* Title search to identify servient interests, such as mining claims or other private property interests,
* 45-day public notice period to municipalities, federal and state agencies, coastal districts, land owners that might have a servient estate, village councils, etc. (by certified mail)
* A decision by DNR, including findings of fact and conclusions of law, that the RS2477 ROW grant has been accepted. The decision also includes a determination of the location and width of the ROW in accordance with applicable law. This decision **"constitutes recognition . . . of an RS2477 right-of-way grant"** (11AAC51.060(e).

Of the 585 routes that appear to qualify, only 11 have gone through this regulatory certification process and have been noticed to the federal government under the Federal Quiet Title Act. (180 day notice requirement) In addition, quiet title action against the Department of the Interior, Bureau of Land Management and 15 federal unpatented

mining claim owners has been filed on the Harrison Creek-Portage Creek Trail near Central, Alaska.

Because the state has not given public notice on the remaining 574 routes, this bill should advocate certification of these routes, including title searches, public notice, and written determinations instead of outright acceptance of the grant. This will meet the regulatory requirement for receipt of the RS2477 grant and is a valid process that will be recognized by a court of law.

Section 1 paragraph (d) lists the RS2477 rights-of-way that this bill intends to codify. As mentioned previously, some of these routes have minimal documentation. For example, more than 100 routes have only a single piece of evidence. This level of documentation has yet to be tested in court. Therefore, the certification process is even more important to verify that these trails indeed meet with the minimal standards of the federal grant.

Additionally, this paragraph limits the ability of the DNR to vacate rights-of-way. This affects the possibility of negotiating reasonable and constructable alternative routes among land owners and users as necessary. For example an RS2477 route may traverse terrain that is less buildable than a parallel route which could be traded for the vacation of the RS2477 route.

Section 2 mandates the recording of each right-of-way identified in this bill but eliminates the *Formal requisites for recording* under AS 40.17.030. Without an in-depth title search, departmental certification, and surveying, recording routes with insufficient information could result in the clouding of title for hundreds of Alaskans who may not be directly affected by the RS2477 right-of-way. Should a lawsuit be filed that challenges the State on the validity of an RS2477, the court could easily find against the State for not following the established regulatory (certification) and statutory (recordation) processes.

A **possible amendment** to these proposed statutes may be to provide a wide range of criteria to establish and manage routes with a contemporary interpretation of historic uses. Alaska Statutes could be modeled after the State of Utah's RS2477 statutes. Utah takes an aggressive position related to RS2477 and is similar to the direction advocated by this proposed legislation. An amendment could provide a policy and methodology based upon previous court cases in the 9th and 10th Circuits. While Alaska is not in the 10th circuit, we can choose to adopt the decisions found in *Sierra v. Hodel* (848 F.2d 1068, 10th Cir. 1988) and similar cases.

In Utah the state has also engaged in active management of the RS2477 routes and has forced the Federal government to try to stop them in court. If Alaska were to engage in such practices, some options for action could include:

* survey and flagging routes to avoid trespass on adjacent property
* developing a management strategy addressing allowed uses of the routes

* publishing brochures, atlases, or other information fact sheets that encourage deliberate use of the routes.
* signage on routes advising the public of their right to use the routes.

Each route should be evaluated to determine the highest and best use of the right-of-way according to its contemporary purpose. The State should retain the flexibility to manage routes for uses ranging from foot passage to paved highway systems. A long-term plan could certify, survey, and manage these trails within budgetary constraints. A management plan would allow the state to pace itself with certifications that should be accomplished on an annual basis.

In conclusion, DNR is available to work with the sponsor and other members on SB 180. We would prefer not to record all 585 routes at this time because we need to "certify" the routes prior to recordation. To date there are 11 which have been certified. Additionally, we recommend that the other 574 not be recorded, because it could unnecessarily cloud the title of third parties, who may ultimately be unaffected by the route once its location is established by survey. In the meantime they would not be able to sell or encumber their land because of this cloud.

The Division staff are available to work on this very important issue.

Jane Angvik
Director, Division of Land

Resource Development Council for Alaska, Inc.

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503-2035
(907) 276-0700 Fax: (907) 276-3887 e-mail: rdc@aonline.com

January 21, 1998

Senator Rick Halford, Chairman
Senate Resources Committee
State Capitol
Juneau, AK 99801

Dear Senator Halford:

RE: Support for SB 180, relating to RS 2477 rights-of-way.

The Resource Development Council supports SB 180 and urges its passage. RDC has long supported actions to designate and settle historic RS 2477 rights-of-way across public lands in Alaska while respecting private property rights. RS 2477 remains one of the most useful access tools for Alaskans to cross federal lands, as historically done.

Throughout Alaska, people depend on RS 2477 routes for access to public and private land, and to the resources of that land. Over 560 potential rights-of-way have been documented around the state.

Alaska needs to protect its RS 2477 rights and RDC believes SB 180 will help accomplish that goal. SB 180 is needed to move the process along and ensure Alaska's historic rights of access are maintained.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

Ken Freeman
Executive Director

cc: Senator Mike Miller
Representative Bill Hudson
Representative Scott Ogan
Speaker Gail Phillips
Representative Pete Kott

SUPPORT

MAY 05 1997

ALASKA OUTDOOR COUNCIL

211 4th St. #302A
Juneau, Ak. 99801
(907) 463-3830
FAX 586-6020

Senator Rick Halford
Alaska State Senate
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

5 May, 1997

Dear Senator Halford:

The Alaska Outdoor Council has reviewed Senate Bill 180, "An act relating to state rights-of-way" and very strongly supports it.

SB 180 takes a giant step forward in addressing the Outdoor Council's concerns about the loss of public access on public and potentially private lands through government antipathy and/or inaction. Assertion of RS 2477 rights-of-way is necessary because other provisions of law, particularly federal law, are too weak to reliably protect public access.

Sec.19.30.400 (c) is an essential part of the bill. It makes clear that the rights-of-way identified in the bill are not the end of the story. As you know, there are over a thousand additional trails that may qualify as RS 2477 rights-of-way and demand review.

The Council also recognizes the importance of Sec.19.30.410. The state's responsibility for providing public access under RS 2477 provisions must be institutionalized to preclude politically motivated backsliding.

The protection of legal public access on and across federal lands is the "compelling need" which the Department of Interior claims is essential for its consideration of RS 2477's. These rights-of-way enable Alaskans to go about their daily lives. In most cases this simply means the use of trails, rather than modern highways, but the latter should not be arbitrarily excluded.

The protection of an RS 2477 should not be denied on the excuse that it is not part of a formal state transportation system plan. The law provides that public use of a route verifies it's RS 2477 eligibility. Public use is the practical evidence of logical access needs, even though use may be intermittent over time, or may change in nature.

The Council is also concerned about state access policy in general. It is not clear that providing for public access is given enough weight when considering other legal avenues, such as section line easements or identification and retention of 17(b) easements under ANSCA. The current uproar over public access to the Situk River near Yakutat dramatizes the need for the state to act in anticipation of obstacles to legitimate public access. But all of that is not directly related to SB 180.

The Alaska Outdoor Council sincerely appreciates your efforts to introduce SB 180, and unequivocally supports the bill.

Sincerely,

Richard H. Bishop
Executive Director
Alaska Outdoor Council

cc: Senator Miller
President of the Senate
Representative Phillips
Speaker of the House

Territorial Sportsmen INC.

P.O. Box 20761, Juneau, Alaska 99802

Phone/FAX (907) 789-2399

April 21, 1997

Senator Rick Halford
State Capitol
Juneau, AK 99801-1182

Dear Senator Halford:

The Territorial Sportsmen would like to go on record as strongly supporting SB 180, "An Act Relating to State Rights-of-Way."

Territorial Sportsmen, Inc. is a Juneau based sportsmen/conservation organization. Our organizations has been in existence for over 50 years and is dedicated to good resource management and sound conservation principles. Our membership numbers over 1,500. The Territorial Sportsmen are committed to the protection of public access to public lands and supports the recognition and protection of RS 2477 rights-of-way.

We are fully aware of the legislature's long standing recognition of the importance of RS 2477 rights-of-way to the future of our state. Quite frankly, we are convinced that without the strong support, including funding, by the legislature, the volumes of material accumulated supporting the hundreds of legitimate RS 2477 rights-of-ways would not have been completed.

We are also aware of the potential litigation that may ensue from this type of proactive position by the state. Regardless, we consider legal confrontations with the federal government essential to producing long term access options for the state and, thus, we encourage the Legislature to proceed with this effort. We agree that codifying these routes will strengthen the state's position and provide reasonable notice to the general public.

In closing, we recognize that this list of routes covers the best documented rights-of-ways. We are hopeful that the legislature and the administration will continue to pursue documentation of the remaining routes for later assertion by the state.

Sincerely,

Ron Somerville

Ron Somerville
President

JAN 26 1998

ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

January 17, 1998

Honorable Rick Halford
Chairman, Senate Resources Committee
Capitol Building
Juneau, AK 99801

RE: Senate Bill 180, Relating to State Rights-of-Way

Dear Senator Halford,

Thank you for the opportunity to comment on your Senate Bill 180 which relates to Revised Statute 2477 rights-of-way. The Alaska Miners Association supports this bill and very much appreciates that you have addressed this important matter.

The Alaska Miners Association, its members and predecessors have been intimately involved in the issue of RS-2477 rights-of-way since before the days of the Klondike Gold Rush and up through the present time. By virtue of the U.S. Congress's grant known as RS-2477, the roads and trails established by the miners are now rights-of-way owned by the State of Alaska. SB-180 will help ensure that these rights are protected and that the necessary legal/technical steps are completed in a timely manner. Over the past several years the State and the public have worked hard to document usage of these roads and trails but there has remained uncertainty over precisely how they must be "accepted" or "asserted" to ensure that they remain State property. SB-180 should remove this uncertainty.

There is one area where you may wish to consider changes to SB-180. This involves "vacation of rights-of-way". It would be of value to give the Department of Natural Resources authority to (but not require) write regulations establishing the procedural steps required to vacate rights-of-way. This will be especially important where Native-owned or other private lands are invoked.

Thank you for the opportunity to comment on this important bill. Please contact me if you have any questions or if there is anything we can do to assist this legislation in become law.

Sincerely,

Steven C. Borell, P.E.
Executive Director

APR 28 1997

Alaska Forest Association, Inc.

111 STEDMAN SUITE 200
KETCHIKAN, ALASKA 99901-6599
Phone 907-225-6114
FAX 907-225-5920

April 25, 1997

Honorable Rick Halford
Alaska State Senate
State Capitol
Juneau, AK 99801

Dear Senator ~~Halford~~ Rick:

Thank you for sharing with me SB 180, "An Act relating to rights-of-way." I agree with you that securing RS 2477 rights-of-way is critical to the future development of Alaska, and therefore must be pursued with vigor by Alaska's elected leadership. SB 180, as drafted, is an excellent move in that direction.

I see no better alternative to the approach you have taken in this bill, *viz.*, to specifically identify each accepted right-of-way within the state and require in statute the vigorous pursuit of the state's claim to these corridors. It is extremely important to prevent an arbitrary or politically motivated agency action from surrendering Alaskans' perpetual right to have access to the various parts of our state.

Finally, I think that your proposed AS 19.30.410 is a very important part of this bill. It is comparable to AS 38.05.300 which, you will recall, we rewrote in 1993 to assert the prerogative of the legislature to make the final call on major land use actions with respect to mining.

I thank you for introducing this legislation, and for the opportunity to comment on it. I hope this letter will do some small part toward helping SB 180 become law.

Sincerely,

Jack E. Phelps
Executive Director

afa\letters\2quartr\hlfd9704_ltr, April 25, 1997

CHAPTER 051

NOMINATION, IDENTIFICATION, AND MANAGEMENT OF RS 2477 RIGHTS-OF-WAY

11 AAC 51.010

PURPOSE AND APPLICABILITY.
The purpose of this chapter is to set forth the procedures to nominate, identify, and certify public rights-of-way established under 43 U.S.C. 932 (RS 2477). This chapter is applicable only to rights-of-way that may exist as a result of RS 2477.

History -
Eff. 5/14/92, Register 122
Authority -
AS 38.04.058
AS 38.04.900
AS 38.05.020
AS 38.05.035

11 AAC 51.020

NOMINATION APPLICATION.
(a) A person, government agency, or entity may nominate an RS 2477 right-of-way for certification by the department.
(b) Any nomination made under (a) of this section must be made by application to the department and must
(1) be submitted to the department on a form provided by the department;
(2) contain complete and correct information to the best of the applicant's knowledge;
(3) if known, contain the name of the nominated right-of-way;
(4) provide the general geographic description of the area where the nominated right-of-way is located;
(5) identify as precisely as possible the complete location and length of the nominated right-of-way, including the location of its route from beginning to end;
(6) identify as precisely as possible the date or the time frame that the nominated right-of-way was initially used by the public;
(7) include the application fee required by 11 AAC 05.010.
(c) To the extent practicable an application nominating a right-of-way must
(1) contain reliable historical accounts that make reference to the nominated right-of-way;
(2) contain a list of known persons, who can supply knowledge of the historical use of the nominated right-of-way; the list should include each person's last known address

and telephone number, if possible;

(3) identify the location of the entire length of the nominated right-of-way on a United States Geological Survey map at 1:63,360 scale (1 inch = 1 mile) or its equivalent;

(4) identify the purpose of the access, including mining, residential, or recreation; type of access, including foot, dogsled, all-terrain vehicle, heavy equipment, or automobile; and season of use, including summer, winter, or year-round.

(d) No more than one contiguous right-of-way or one non-contiguous right-of-way consisting of one continuous route may be nominated for certification in a single application.

(e) A government agency, including a state agency, may nominate for certification under this section any RS 2477 right-of-way that was submitted to the federal government for federal recognition before 5/14/92.

History -
Eff. 5/14/92, Register 122
Authority -
AS 38.04.058
AS 38.04.900
AS 38.05.020
AS 38.05.035

11 AAC 51.030

IDENTIFICATION AND NOTIFICATION.

(a) Upon the receipt of a completed application, the department will establish a case file and assign the case file a right-of-way management identification number. The case file will contain materials received by the department concerning a nominated right-of-way, including materials received during the comment period under (e) and (f) of this section and appeals to the commissioner.

(b) After receiving a completed application, the department will transmit the notice and copy of the application by certified mail to the following entities, if applicable:

(1) the municipality within whose boundaries the nominated right-of-way is located;

(2) the federal agency or state agency that has management responsibility for the land underlying the route of the nominated right-of-way;

(3) the coastal management district or coastal management service area in which the nominated right-of-way is located;

(4) the land owners whom the department reasonably considers might have a servient estate in relation to the nominated right-of-way; and

(5) the appropriate village council or community association.

(c) If the notice and copy of the completed application is returned as undeliverable, the department will consider that notice and application as delivered for purposes of this chapter.

(d) When the department gives notice under (b) of this section, the department will publish a summary of the nomination application in one newspaper with general circulation in the area of the route of the nominated right-of-way.

(e) A person, a government agency, an organization, or another interested party receiving

notice under this section, has 45 days from the date of mailing of the notice under (b) of this section or from the date of publication under (d) of this section, whichever is later, to provide the department with written comments relating to the acceptance, location, or historical use of the nominated right-of-way. The comments must be received by the department by the deadline set in this subsection in order to be considered by the department.

(f, A notice of the RS 2477 nomination and a vicinity map showing the general location of the nominated route will be mailed by the department to other interested persons or organizations that the department reasonably considers have an interest in or may be affected by the nominated right-of-way. In that notice, the department will provide an opportunity for comment on the nominated right-of-way to those persons specified in this subsection.

History -
Eff. 5/14/92, Register 122; am 11/10/93, Register 128
Authority -
AS 38.04.058
AS 38.04.900
AS 38.05.020
AS 38.05.035

11 AAC 51.040

EVALUATION PROCEDURE.

(a) Within 90 days after the close of the comment period for a completed application, the department will take one of the following actions:

(1) render a written decision under 11 AAC 51.060(d) on the application;

(2) request additional information from the applicant or other interested individuals or organizations;

(3) repealed 11/10/93.

(b) If the department requests additional information under (a)(2) of this section, the department shall render a written decision under 11 AAC 51.060(d) after receiving the requested information.

(c) Repealed 11/10/93.

History -
Eff. 5/14/92, Register 122; am 11/10/93, Register 128
Authority -
AS 38.04.058
AS 38.04.900
AS 38.05.020
AS 38.05.035

11 AAC 51.050

INFORMAL ADJUDICATORY PROCEEDING

Repealed or Renumbered
Repealed.

History -
Eff. 5/14/92, Register 122; repealed 11/10/93, Register 128

11 AAC 51.060

EVALUATION CRITERIA FOR DEPARTMENTAL DECISION.

(a) The department will certify the RS 2477 right-of-way nominated in the application if the department finds that the requirements of this chapter and other applicable law have been met for the valid acceptance of an RS 2477 right-of-way grant.

(b) In determining if the requirements of this chapter and other applicable law have been met for the valid acceptance of an RS 2477 grant of a public right-of-way, the department will consider

(1) if sufficient evidence has been presented to allow the nominated RS 2477 right-of-way to be located on a United States Geological Survey topographical map;

(2) if sufficient evidence has been presented to show that the nominated RS 2477 right-of-way crossed public land that was not reserved for public use at the time the RS 2477 right-of-way grant is alleged to have been accepted; and

(3) if sufficient evidence has been presented

(A) to show that the public use or construction of the nominated RS 2477 right-of-way constitutes acceptance of the RS 2477 right-of-way grant in accordance with other applicable law, or

(B) when relevant, to show the existence of a positive act on the part of a public authority that constitutes acceptance of the RS 2477 right-of-way grant in accordance with applicable law.

(c) When the department finds under (a) of this section that the requirements of this chapter and other applicable laws have been met for the valid acceptance of an RS 2477 right-of-way grant, the department will determine the location and width of the right-of-way in accordance with applicable law.

(d) The department will prepare a written decision, including findings of fact and conclusions of law, concerning an application nominating an RS 2477 right-of-way. The department will send a copy of its decision to the applicant and the individuals or organizations noticed under 11 AAC 51.030(b), including a notification of the right to appeal the decision.

(e) A decision under (d) of this section certifying all or part of an RS 2477 right-of-way nominated in an application constitutes recognition by the state of the valid acceptance of an RS 2477 right-of-way grant.

History -
Eff. 5/14/92, Register 122; am 11/10/93, Register 128
Authority -
AS 38.04.058
AS 38.04.900
AS 38.05.020

AS 38.05.035

11 AAC 51.070

APPEAL.
A person, a government agency, or another entity that disagrees with a decision of the department made under 11 AAC 51.060 may appeal to the commissioner under 11 AAC 02.

History -
Eff. 5/14/92, Register 122
Authority -
AS 38.04.058
AS 38.04.900
AS 38.05.020
AS 38.05.035

11 AAC 51.080

FINAL DECISION AND JUDICIAL APPEAL.
A final agency decision by the commissioner under 11 AAC 02 may be appealed to the superior court in accordance with the Alaska Rules of Appellate Procedure.

History -
Eff. 5/14/92, Register 122
Authority -
AS 38.04.058
AS 38.04.900
AS 38.05.020
AS 38.05.035

11 AAC 51.090

CLASSIFICATION.
The department will refer an RS 2477 right-of-way that is certified under this chapter and that is not on the Alaska highway system, to the Alaska Department of Transportation and Public Facilities for classification under 17 AAC 05.

History -
Eff. 5/14/92, Register 122
Authority -
AS 38.04.058
AS 38.04.900
AS 38.05.020

AS 38.05.035

11 AAC 51.100

MANAGEMENT OF RS 2477 RIGHTS-OF-WAY.

(a) The commissioner has management authority over the use of any RS 2477 right-of-way that is not on the Alaska highway system. Certain land use actions on RS 2477 rights-of-way, including road construction, may require a permit under 11 AAC 96.010, or other authorization by the department. Based on a written determination by the commissioner, the commissioner will, in the commissioner's discretion, close or restrict the use of an RS 2477 right-of-way over which the commissioner has management authority in order to

(1) protect public safety;

(2) protect the right-of-way and the servient estate against damage that may be caused by use during storms, floods, thawing conditions, or construction and maintenance operations; or

(3) protect or manage other resources in or near the right-of-way.

(b) If the commissioner closes or restricts the use of an RS 2477 right-of-way under (a) of this section, the department will

(1) post notice in a conspicuous place near the right-of-way of the closure or restricted use of the right-of-way and, at the department's discretion, place a barrier or obstruction on the right-of-way;

(2) post signs in a conspicuous place near the right-of-way indicating the location of any alternative routes.

(c) Any decision made under (a) to close or restrict the use of an RS 2477 right-of-way may be appealed under 11 AAC 02.

(d) The commissioner and the commissioner of the Alaska Department of Transportation and Public Facilities, by agreement, will determine if an RS 2477 right-of-way managed under this section will be transferred to the Alaska Department of Transportation and Public Facilities or to a local government for management purposes.

History -
Eff. 5/14/92, Register 122; am 11/10/93, Register 128
Authority -
AS 38.04.058
AS 38.04.900
AS 38.05.020
AS 38.05.027
AS 38.05.035

11 AAC 51.900

DEFINITIONS.
As used in this chapter,

(1) "Alaska highway system" means those roads compiled on the list described in

17 AAC 05.010;

(2) "application" means an RS 2477 right-of-way nomination application;

(3) "commissioner" means the commissioner of the Department of Natural Resources;

(4) "completed application" means an RS 2477 right-of-way nomination application furnished by the Department of Natural Resources that is completed by an applicant in accordance with the instructions on the application;

(5) "department" means the Department of Natural Resources;

(6) "resources" means timber, minerals, watershed, wildlife and fish, and any natural or man-made feature that has scenic, scientific, or historical value;

(7) "servient estate" means land that is subject to an RS 2477 right-of-way.

History -
Eff. 5/14/92, Register 122
Authority -
AS 38.04.058
AS 38.04.900
AS 38.05.020
AS 38.05.027
AS 38.05.035

SB

184

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 18, 1997

The Honorable Mike Miller
Senate President
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Miller:

As part of my Marketing Alaska initiative, the seafood industry pointed out that current state confidentiality laws surrounding fisheries tax records are actually a burden because they prohibit the sharing of information between state agencies which need the same records. Rather than reporting these numbers once, the industry must report two or three times on different forms. This bill addresses this wasteful effort by allowing appropriate state agencies to share tax reporting information while ensuring confidentiality is not breached.

Seafood processors, certain fishermen and others currently must report to the Department of Revenue the value of the fisheries resources processed, taken, purchased, or otherwise acquired during the license year. This information is confidential. The Department of Fish and Game independently collects product value figures as part of its reporting requirements for seafood processors. In addition, seafood processors have asked the Department of Environmental Conservation to base its sliding scale of permit fees on product value. The current confidentiality requirement prevents exchanges of this information between the Department of Revenue and the other two departments. The result is inconsistent data, inefficient operations, and complicated and duplicative reporting requirements for industry.

The Marketing Alaska Seafood Sector Group recommended agency databases be consolidated in order to streamline reporting requirements. This would allow access by the Department of Environmental Conservation and the Department of Fish and Game to

a common Department of Revenue database. Any personnel granted access to this tax information would be subject to the same confidentiality requirements as the Department of Revenue. At the same time, the bill promotes a reciprocal exchange of information with the Department of Fish and Game, whose confidential information is already accessible by the Department of Revenue.

This bill represents a logical solution to a current burden for the seafood industry. I urge your prompt and favorable action on this measure.

Sincerely,

Tony Knowles
Governor

STATE OF ALASKA
1997 LEGISLATIVE SESSION

FISCAL NOTE

No. 1
Bill Version: SB 184
(S) Publish Date: 4/22/97

Revision Date:
Dept. Affected: Revenue
Title: Confidential Fish Tax Records
BRU: Revenue Operations
Component: Income and Excise Audit
Sponsor: (H) RLS
Requestor: Gov
COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY97) cost $ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on the Department of Revenue.

Prepared by: Robert Bartholomew
Phone: 465-4773
Division: Income and Excise Audit
Date: March 10, 1997
Approved by Commissioner: Wilson L. Condon
Date: March 10, 1997
Agency: Revenue

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97-0101.XLS

FISCAL NOTE

No. 2
Bill Version: SB184
(S) Publish Date: 4/22/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date:
Title: Confidential Fish Tax Records
Sponsor: Rules Committee
Requester: Governor

Dept. Affected: Fish and Game
BRU: CFMD
Component: Fisheries Management
COMPONENT SERIAL NO. 1941

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: $ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Geron Bruce GB
Division: Commissioner's Office
Phone: 465-5143
Date: 3/6/97

Approved by Commissioner: Frank Rue
Agency: Department of Fish and Game
Date: 3/6/97

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