

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

10031 HOUSE TRANSPORTATION

4. Collaboration

The ARRC and the City of Whittier agree to collaborate with each other in pursuit of the General Understanding, as described above. During the term of this Memorandum of Understanding (MOU) each party agrees to work together in good faith with the goal of acquiring the U.S. Army properties being excessed by the U.S. Government in Whittier, Alaska, with ARRC to be the lead agency in pursuing this goal.

Nothing in this MOU shall be deemed to establish a joint venture, partnership or formal business entity of any kind. Neither of the parties shall have any liability or obligation to the other or to any other party except as expressly provided for in this MOU. There must be written agreement of both parties regarding any modification of the intent of this MOU.

This MOA shall terminate upon the earliest of the following: (1) signing of formal documents that transfer title of the U.S. Government properties to the respective parties, or the signing of other documents that conclusively mandate the same result once wholly ministerial actions or functions are complete; (2) both parties agree in writing to terminate this MOU.

5. Cost of Participation

Each party shall be solely responsible for its own costs and expenses in performing their respective obligations and/or performance under this MOU.

City of Whittier

By William Coumbe
William Coumbe, Mayor

Dated 7/26/99

By Carrie L. Williams
Carrie L. Williams, City Manager

Dated 7/26/99

Alaska Railroad Corporation

By Bill Sheffeld
Governor Bill Sheffeld
President & CEO

Dated 7/27/99

ATTACHMENT B

**Alaska Railroad Corporation and City of Whittier
Memorandum of Understanding for Interim Use of U.S. Government Property
Delong Dock and Tract "W"
Whittier, Alaska**

1) General Understanding

There is an immediate need to allow the public use of additional docking and tideland facilities in the summer of 1999 and thereafter.

This memorandum of understanding is to govern interim use of the Delong Dock and surrounding tide lands and uplands commonly known as Tract "W" and more particularly shown on attachment "A" hereto. The purpose of this memorandum of understanding is to allow the ARRC to be the lead agency for processing the interim use permit with the US Government, Department of the Army on behalf of the ARRC and the City of Whittier and to set forth the respective rights of use of each party pending conveyance of ownership of the federally owned property by the US Government, Department of the Army.

The parties agree that during interim use Tract "W" and the Delong Dock shall be informally subdivided into Parcel 1 and Parcel 2, along the longitudinal center line of the dock, as shown on attachment "A" hereto. Upon issuance of the use permit by the Department of the Army, ARRC shall have use of parcel 1 and the City of Whittier shall have the use of Parcel 2. Each party shall be entitled to use their parcel in any lawful manner.

2) Collaboration

The ARRC and the City of Whittier agree to collaborate with each other in pursuit of the purposes set forth above. During the term of this Memorandum of Understanding (MOU) each party agrees to work together in good faith toward the goal of the permitted properties for a public purpose.

Nothing in this MOU shall be deemed to establish a joint venture, partnership or formal business entity of any kind. Neither of the parties shall have any liability or obligation to the other or to any other party except as expressly provided for in this MOU. There must be written agreement of both parties regarding any modification of the intent of this MOU.

This MOU shall terminate upon the earliest of the following: (1) signing of a formal document that transfers title of the U.S. Government properties. (2) both parties agree in writing to terminate this MOU.

3) Cost of Participation

Each party shall be solely responsible for its own costs and expenses in performing their respective obligations and/or performance under this MOU.

City of Whittier

Alaska Railroad Corporation

By William Coumbe
William Coumbe, Mayor

By Bill Sheffield
Governor Bill Sheffield
President & CEO

Dated 6-8-99

Dated 6-8-99

By Carrie L. Williams
Carrie L. Williams, City Manager

Dated 6/8/99

ATTACHMENT A

Long Term Use, DeLong Dock - TRACT W

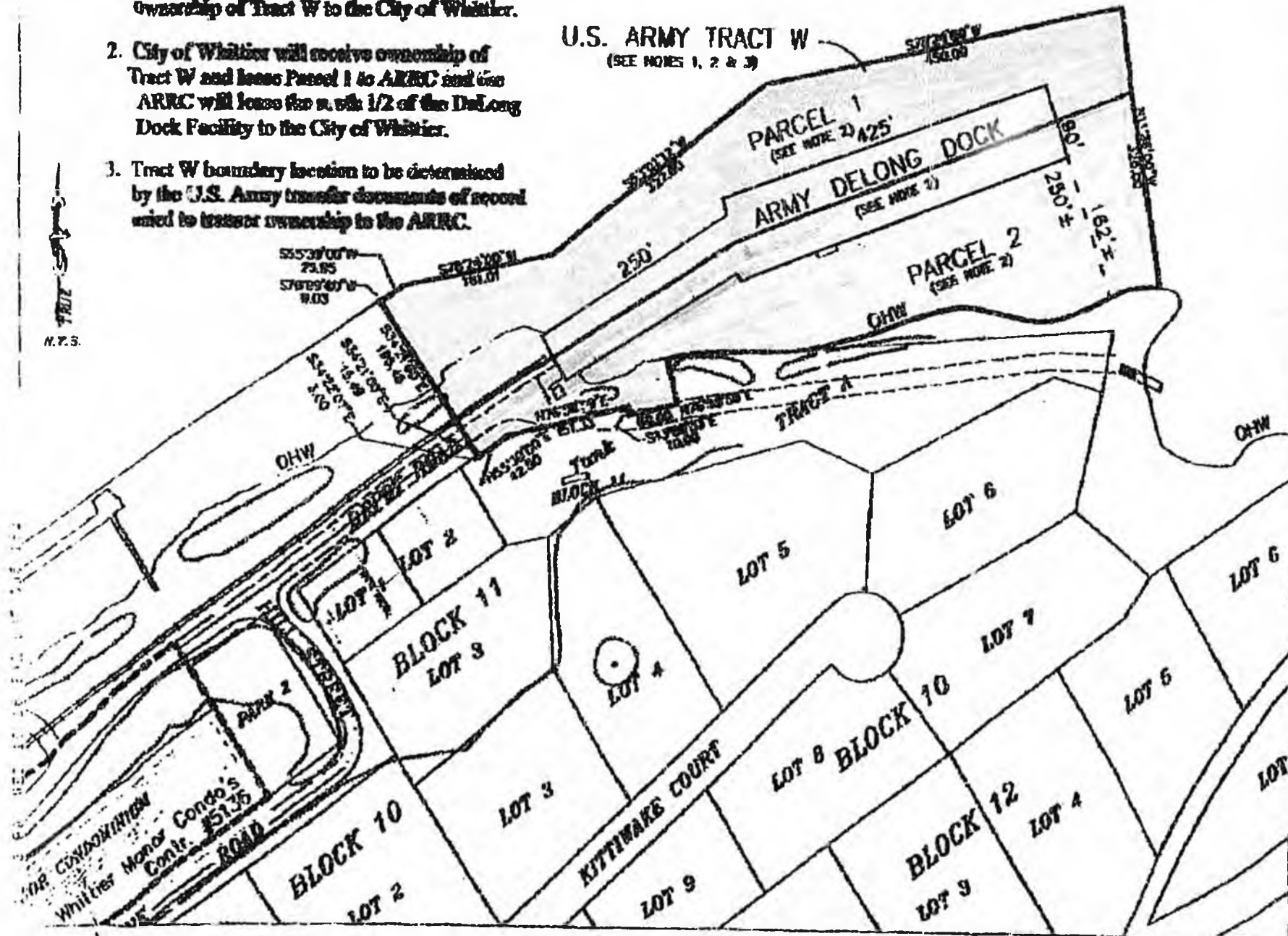
...revised based on... 6/18/99

NOTES

1. ARRC will retain ownership of the DeLong Dock Facility and transfer ownership of Tract W to the City of Whittier.
2. City of Whittier will receive ownership of Tract W and lease Parcel 1 to ARRC and the ARRC will lease for a term 1/2 of the DeLong Dock Facility to the City of Whittier.
3. Tract W boundary location to be determined by the U.S. Army transfer documents of record used to transfer ownership to the ARRC.

U.S. ARMY TRACT W

(SEE NOTES 1, 2 & 3)



N.T.S.
 1/8" = 100'

HB

362

1-LS1455VD
Utermohle
2/18/00

FEB 18 2000

CS FOR HOUSE BILL NO. 362()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE MURKOWSKI

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing the exchange of land between the Alaska Railroad
2 Corporation and Eklutna, Inc., between the Alaska Railroad Corporation and the
3 United States Department of the Army and the United States Department of the
4 Air Force, between the Alaska Railroad Corporation and Chugach Alaska
5 Corporation, and between the Alaska Railroad Corporation and the Municipality
6 of Anchorage; authorizing the transfer of land between Alaska Railroad mileposts
7 133 and 134 from the Alaska Railroad Corporation to certain named individuals;
8 and providing for an effective date."

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

10 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new
11 section to read:

12 APPROVAL OF THE TRANSFER OF REAL PROPERTY TO EKLUTNA, INC. (a)

1 The Alaska Railroad Corporation is authorized to convey the corporation's entire interest in
2 approximately 384 acres of rail land within Tract 39 of Dependent Resurvey of Rectangular
3 Survey of Township 15 North, Range 2 West, Seward Meridian, officially filed November 10,
4 1992, to Eklutna, Inc., in exchange for the conveyance to the corporation by Eklutna, Inc., of
5 approximately 65 acres of land adjacent to the railroad utility corridor at railroad mileposts
6 129, 130, 133, 140, 142, 146, and 151 and sufficient additional acreage east of Birchwood
7 Airport and adjacent to the railroad between miles 134.5 and 136.3 to equalize the value of
8 lands exchanged.

9 (b) The conveyances described in this section are made for the purpose of realignment
10 of railroad track to improve operating efficiency and enhance safety.

11 (c) The land conveyed by Eklutna, Inc. to the Alaska Railroad Corporation shall be
12 held and managed by the corporation in accordance with AS 42.40.

13 (d) This section constitutes legislative approval under AS 42.40.285(1) for the Alaska
14 Railroad Corporation to convey its entire interest in the land described in (a) of this section.

15 * Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section
16 to read:

17 APPROVAL OF THE TRANSFER OF REAL PROPERTY TO THE UNITED
18 STATES DEPARTMENT OF THE ARMY AND THE UNITED STATES DEPARTMENT
19 OF THE AIR FORCE. (a) The Alaska Railroad Corporation is authorized to convey the
20 corporation's entire interest in approximately 229 acres of railroad utility corridor between
21 railroad mileposts 118 and 127.5, within Township 13 North, Range 3 West, Seward Meridian,
22 Township 14 North, Range 3 West, Seward Meridian, and Township 14 North, Range 2 West,
23 Seward Meridian to the United States Department of the Army and the United States
24 Department of the Air Force in exchange for the conveyance of approximately 227 acres of
25 land in the same vicinity to the corporation by the United States.

26 (b) The conveyances described in this section are made for the purpose of realignment
27 of railroad track to improve operating efficiency and enhance safety.

28 (c) The land conveyed by the United States to the Alaska Railroad Corporation shall
29 be held and managed by the corporation in accordance with AS 42.40.

30 (d) This section constitutes legislative approval under AS 42.40.285(1) for the Alaska
31 Railroad Corporation to convey its entire interest in the land described in (a) of this section.

1 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section
2 to read:

3 APPROVAL OF THE TRANSFER OF REAL PROPERTY TO CHUGACH ALASKA
4 CORPORATION. (a) Contingent upon the conveyance to the Alaska Railroad Corporation
5 by the Chugach Alaska Corporation of an equivalent interest in real property onto which the
6 railroad utility corridor may be relocated, the Alaska Railroad Corporation is authorized to
7 convey the corporation's entire interest in approximately 6.4 acres of railroad utility corridor
8 between railroad mileposts 14 and 15, within Township 2 North, Range 1 East, Sections 6 and
9 7, Seward Meridian, to the Chugach Alaska Corporation.

10 (b) The conveyances described in this section are made for the purpose of realignment
11 of the railroad to allow relocation of the Seward Highway by the Department of
12 Transportation and Public Facilities to improve highway operations and enhance safety.

13 (c) Land conveyed by the Chugach Alaska Corporation to the Alaska Railroad
14 Corporation shall be held and managed by the Alaska Railroad Corporation in accordance with
15 AS 42.40.

16 (d) This section constitutes legislative approval under AS 42.40.285(1) for the Alaska
17 Railroad Corporation to convey its entire interest in the land described in (a) of this section.

18 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section
19 to read:

20 APPROVAL OF THE TRANSFER OF CERTAIN REAL PROPERTY WITHIN THE
21 MUNICIPALITY OF ANCHORAGE. (a) Contingent upon the approval of the conveyance
22 of affected municipal park land by the voters of the Municipality of Anchorage, the Alaska
23 Railroad Corporation is authorized to convey the corporation's entire interest in

24 (1) approximately 4.5 acres of railroad utility corridor between railroad
25 mileposts 133 and 134, within Township 15 North, Range 2 West, Sections 13 and 24, Seward
26 Meridian, to the Municipality of Anchorage in exchange for the conveyance of approximately
27 13.6 acres of land in the same vicinity to the corporation by the Municipality of Anchorage;

28 (2) approximately 5.1 acres of railroad utility corridor between railroad
29 mileposts 133 and 134, within Township 15 North, Range 2 West, Sections 13 and 24, Seward
30 Meridian, to Richard and Carol Drebert, Harry and Simone Thomson, and Richard Moore or
31 their personal representatives, successors, or assigns; each to receive that portion of the

1 railroad utility corridor immediately adjacent to their respective parcels of land.

2 (b) The conveyances described in this section are made for the purpose of realignment
3 of railroad track to improve operating efficiency and enhance safety.

4 (c) The land conveyed by the Municipality of Anchorage to the Alaska Railroad
5 Corporation shall be held and managed by the corporation in accordance with AS 42.40.

6 (d) This section constitutes legislative approval under AS 42.40.285(1) for the Alaska
7 Railroad Corporation to convey its entire interest in the land described in (a) of this section.

8 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 362

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Track Realignment BRU _____
 Component _____
 Sponsor Representative Lisa Murkowski _____
 Requester (H) Transportation Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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						
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 (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 362 will create no fiscal impact to the state's general fund or to the Alaska Railroad Corporation (ARRC). The ARRC will convey the Corporation's entire interest in certain lands in exchange for equivalent valued land with Elmendorf Air Force Base, Fort Richardson, Eklutna, Inc. and other entities. No funds will be exchanged between the parties in this land trade legislation.

Prepared by: Wendy Lindskoog Phone 265-2498
 Division Alaska Railroad Corporation Date/Time 2/29/00 10:28 AM
 Approved by Commissioner [Signature] Date 2/29/00
 Agency _____

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Memorandum

Date: February 22, 2000

To: Representative Andrew Halcro
Chairman, House Transportation Committee

From: Representative Lisa Murkowski 

Subject: Hearing Request, HB 362

Attached please find a sponsor statement and supporting documentation for HB 362. HB 362 authorizes the Alaska Railroad Corporation (AARC) to enter into several land exchange agreements needed for a track upgrade and realignment project to improve safety and efficiency of its operations.

Please schedule HB 362 in Transportation Committee at your earliest convenience. If you need additional information or have questions concerning the attached material please contact Amy Erickson of my staff. Thank you for your consideration.

ALASKA STATE LEGISLATURE

Chair:

MILITARY AND VETERANS AFFAIRS

Member:

JUDICIARY
COMMUNITY AND REGIONAL AFFAIRS
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Sponsor Statement HB 362

House Bill 362 authorizes the Alaska Railroad Corporation (ARRC) to enter into several land exchange agreements needed for a track upgrade and realignment project.

The ARRC wants to improve safety and efficiency of its operation by upgrading and realigning its track to reduce 70 sharp curves between Anchorage and Wasilla. To accomplish this project, ARRC needs legislative approval under AS 42.40.285 to convey the Corporation's entire interest in certain lands in exchange for equivalently valued land owned by Elmendorf Air Force Base, Fort Richardson Army Base, Eklutna, Inc., Chugach Alaska Corporation, the Municipality of Anchorage, and certain landowners between mileposts 133 and 134. The land exchanges are necessary for the ARRC's realignment project and the Department of Transportation and Public Facilities' highway relocation project near Seward.

Straighter track is inherently safer due to reduced track and equipment wear, consistency in train handling, increased sight distance, and reduced maintenance requirements—all leading to reduced frequency of train derailments and lower operating costs. Realignment of the track to reduce curvature will decrease the running time between Anchorage and Wasilla from 95 minutes to 53 minutes by increasing the average train speed from 35 mph to approximately 50 mph, making future commuter service more viable.

The track upgrade and realignment will also reduce train gridlock, create more jobs for Alaskans through additional freight and passenger service, and build a better infrastructure to support future economic development in Alaska. But more important to the communities neighboring the Alaska Railroad, this project includes upgrades to vehicle crossings and additional public access amenities including a highway overpass at milepost 14 of the Seward Highway that will enhance safety and access across the tracks. It will also improve service to the northern end of the railbelt.

The proposed track improvements are supported by the Alaska Visitors Association, Matanuska-Susitna Convention and Visitor's Bureau, Anchorage Economic Development Corporation, Anchorage Convention and Visitors Bureau, Palmer Chamber of Commerce, Wasilla Chamber of Commerce, and the City of Wasilla.

Prepared by Amy Erickson, Office of Representative Murkowski.
Last Updated February 22, 2000.

MEMORANDUM OF UNDERSTANDING

ALASKA RAILROAD CORPORATION

AND

EKLUTNA, INCORPORATED

WHEREAS, the Alaska Railroad Corporation (referred to hereafter as "ARRC") and Eklutna, Incorporated (referred to hereafter as "Eklutna") entered into the "Agreement of the Alaska Railroad Corporation and Eklutna, Inc. Settling Claims of Valid Existing Rights to Rail Properties of the Alaska Railroad and Providing for Conveyances Pursuant to the Alaska Native Claims Settlement Act and the Alaska Railroad Transfer Act of 1982" on January 8, 1987, and as subsequently amended (referred to hereafter as "the 1987 Agreement"); and

WHEREAS, ARRC and Eklutna affirm and acknowledge that the 1987 Agreement remains in full force and effect, except as may be supplemented or modified as set forth herein; and

WHEREAS, ARRC has decided to realign its route to improve service and efficiency and is no longer in need of the property formerly identified as Parcel C of the Powder Reserve in the 1987 Agreement, currently identified as Tract 39, Township 15 North, Range 2 West, Seward Meridian; and

WHEREAS, Eklutna has initiated development of the area known in the 1987 Agreement as Parcel A of the Powder Reserve, and desires to develop the rest of the Powder Reserve in an efficient and orderly manner; and

WHEREAS, ARRC wishes to preserve its option to locate a switching yard in the area near the Birchwood Airport and has found that all or portions of Tract 38, Township 15 North, Range 1 West, Seward Meridian, owned by Eklutna, meet its needs; and

WHEREAS, Eklutna considers the possible location of a switching yard to the property described above and currently owned by Eklutna as compatible with its corporate goals for other land it owns near Birchwood Airport; and

WHEREAS, ARRC wishes to realign trackage through Eklutna lands in Anchorage and the Matanuska Susitna Borough; and

WHEREAS, ARRC and Eklutna have met periodically for several months, have considered numerous alternatives, and have each appraised their respective interests;

THEREFORE, be it resolved, that ARRC and Eklutna do hereby enter into this Memorandum of Understanding, and state their intentions as follows:

1. Land Exchange. ARRC agrees to exchange title to Tract 39, Township 15 North, Range 2 West, Seward Meridian, to which ARRC currently has an exclusive license (BLM File AA 55129), for a portion of Tract 38, Township 15 North, Range 1 West, Seward Meridian, to which Eklutna has title via United States Patent 50-93-601, excepting approximately 17.99 acres located at the north end of ARRC's parcel which are being reserved for ARRC operational needs.

a. For the purposes of this exchange, the parties agree that the value of Tract 39, Township 15 North, Range 2 West, Seward Meridian is \$2,500 per acre or \$0.06 per square foot and the value of Tract 38, Township 15 North, Range 1 West, Seward Meridian is \$9,333 per acre or \$0.21 per square foot.

b. The parties agree that the exchange shall be for equal value, and that the amount of Tract 38, Township 15 North, Range 1 West, Seward Meridian to be conveyed from Eklutna to ARRC will be adjusted to equal values. The general configuration of the land to be conveyed to ARRC is shown on Exhibit 1, attached hereto and incorporated by reference herein. The proposed north-south line between the land to be exchanged with the ARRC and to be retained by the Eklutna shall be moved east or west to equalize values.

c. The parties agree that costs will be shared as follows: ARRC will bear all its costs in acquiring title from the United States and securing the approval of the Alaska Legislature, if required. Each party shall convey title to its interest by warranty deed and shall bear the cost of preparing its own conveying documents and title reports and insurance. The parties will equally divide the cost of surveying and replatting both Tract 38, Township 15 North, Range 1 West, Seward Meridian and the northern portion of Tract 39, Township 15 North, Range 2 West, Seward Meridian. Each shall bear the cost of recording the conveyances they receive.

d. Because it does not yet have patent from the United States to Tract 39, Township 15 North, Range 2 West, Seward Meridian, ARRC agrees to: (1) immediately identify this tract as its highest conveyance priority to the Bureau of Land Management and to do everything in its power to ensure its prompt conveyance; (2) consult with Eklutna regarding the creation of any third party interests in said Tract 39; (3) issue a no-fee permit to Eklutna or its agents to enter on the land for planning, managing, and surveying in advance of conveyance; and, (4) forebear from withholding approvals as requested by Eklutna as may be required by the Municipality of Anchorage, the Bureau of Land Management, and other public or private institutions and agencies for activities involving that tract.

e. Eklutna agrees that it will: (1) consult with ARRC regarding the creation of any third party interests in Tract 38, Township 15 North, Range 1 West, Seward Meridian in advance of conveyance; (2) issue a no-fee permit to ARRC or its agents to enter on its portion of the tract as shown in Exhibit 1 for planning, managing, and surveying in advance of conveyance; and, (3) forebear from withholding approvals as requested by ARRC as maybe required by the Municipality of Anchorage, the Bureau of Land Management, and other public or private institutions and agencies for activities involving that tract.

f. The parties agree and acknowledge that this specific land exchange is occurring totally outside the provisions of the 1987 Agreement, and further outside the provisions of ANCSA and/or ANILCA, is not made in partial satisfaction of any outstanding selection rights or any claims to entitlement that Eklutna may yet have under those acts. Any interest in properties acquired by Eklutna pursuant to this exchange shall be acquired subject to the land exchange provisions of those acts. The provisions of P.L.105-333 regarding land bank protections are intended to apply to this exchange.

g. Eklutna acknowledges and understands that ARRC cannot transfer its entire interest in land without prior legislative approval under AS 42.40.285, and that final consummation of the land exchanges contemplated by this agreement cannot occur until ARRC receives such approval. ARRC shall exercise its best efforts to obtain the necessary approval at the earliest possible opportunity and continue such efforts until the legislative authorization is obtained. Eklutna will in good faith support ARRC's request before the legislature.

2. Realignment of ARRC Track.

a. The parties agree to facilitate the realignment of ARRC track as reflected on the plans shown on **Exhibit 2**, attached hereto and incorporated by reference herein. The proposed realignment at the curve at Mile 129, Drawing 1 dated Feb. 1999 in Exhibit 2, satisfies the realignment envisioned in Paragraph 12 of the 1987 Agreement. Eklutna agrees to convey the lands needed by ARRC in exchange for other consideration as set forth below. ARRC will pay for any surveys and replatting needed to effect the realignment. The cost of appraisal will be split equally. ARRC will propose three appraisers and Eklutna will select one from that proposed group. ARRC will also be responsible for obtaining an archaeological study at the site of the proposed Eklutna Village area realignment. ARRC will be responsible for negotiating directly with Cook Inlet Region, Inc., any necessary or desired permits for the work planned by ARRC and will negotiate a non-development covenant directly with CIRI in the area of the curve at Mile 146, Drawing 13A dated Feb. 1999 in Exhibit 2, if necessary.

b. ARRC will convene and Eklutna will join and participate in a diagnostic team review conducted under the "Alaska Railroad/Highway Crossing Policy" (a jointly adopted ARRC/Department of Transportation and Public Facilities policy) regarding all existing and proposed or potential crossings in the area between Anchorage and Wasilla. The parties recognize that other entities beside themselves, such as adjacent municipalities and the State of Alaska, may have legitimate concerns regarding such crossings and will be participants in the diagnostic team review pursuant to the Policy. The exact location and configuration of each crossing in **Exhibit 3** shall be decided and/or negotiated on a case-by-case basis, and it is recognized that other parties, such as the developer, the Municipality of Anchorage, the Department of Transportation and Public Facilities, etc., may be required participants in the funding plan.

c. Notwithstanding the above paragraph, the parties agree that, upon notice by Eklutna, ARRC will provide and build a minimum of one (1) grade-separated roadway crossing in the Powder Reserve in accordance with the requirements of Paragraph 8 of the 1987 Agreement and

will allow other roadway crossings between Anchorage and Wasilla as generally shown in Exhibit 3. Construction of the grade-separated crossing in the Powder Reserve will be completed within 5 years of notice by Eklutna. The exact locations and configurations of all crossings will be identified as required to provide adequate access to Eklutna lands.

3. Further Actions.

ARRC and Eklutna shall work diligently to fulfill the requirements of the above paragraphs, which complement some aspects of, and the intentions underlying, the 1987 Agreement. The parties further commit to review, consider, and identify the parties' remaining outstanding obligations under the 1987 Agreement such that they may be implemented in a more expeditious manner.

4. Miscellaneous.

a. The parties understand that each must secure the approval of their respective Boards of Directors and that this agreement is not binding upon the parties until both Boards have approved this agreement.

b. The parties agree that time is of the essence, and that both parties will bring this agreement to their Boards at the earliest opportunity, but in no case more than 60 days from the date of last signature.

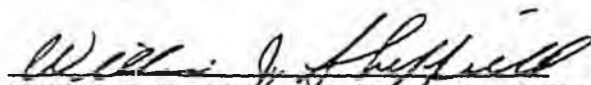
c. If ARRC fails to obtain patent to Tract 39, Township 15 North, Range 2 West, Seward Meridian within two years of the date of the last signature, this agreement is null and void. No transfers will occur until patent to tract 39 has been received by the ARRC.

d. Neither party has an obligation to replat or survey until ARRC has acquired patent to Tract 39, Township 15 North, Range 2 West, Seward Meridian.

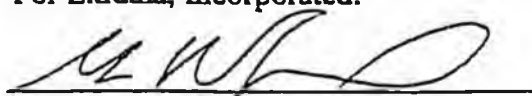
e. This agreement expires automatically and without further action of any kind upon the fifth anniversary of the date it was last signed if the exchanges anticipated herein have not been completed.

Agreed this 4 day of August, 1999.

For the Alaska Railroad Corporation:


William J. Sheffield, Chief Executive Officer

For Eklutna, Incorporated:


George W. Easley, Chief Executive Officer



16515 CENTERFIELD DRIVE, SUITE 201
EAGLE RIVER, ALASKA 99577
(907) 896-2028 FAX: (907) 696-2045

INC.

Resolution 99-17

WHEREAS, Eklutna, Incorporated owns Parcels A and B of the Powder Reserve (S.M. T15N, R2W, Tracts 37, 38 and 40) under Patent Number 50-93-0601; and


WHEREAS, Eklutna, Incorporated wished to acquire Parcel C of the Powder Reserve (S.M. T15N, R2W, Tract 39) to consolidate its holdings, facilitate development, and reach efficiencies of scale; and

WHEREAS, the Alaska Railroad Corporation wants to acquire land needed for realignments and for other industrial purposes in the Birchwood area; and

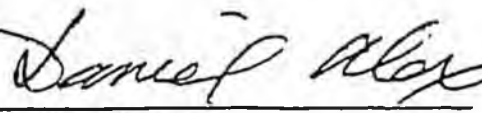
WHEREAS, the Board of Directors has reviewed the Memorandum of Understanding dated August 4, 1999 and signed by the Chief Executive Officers of both the Alaska Railroad Corporation and Eklutna, Incorporated;

NOW THEREFORE BE IT RESOLVED by the Board of Directors of Eklutna, Incorporated that they find that the land exchange outlined in the Memorandum of Understanding is in the best interest of the Corporation and the Chief Executive Officer, George W. Easley, is authorized to negotiate details of the exchange, to require such conditions as he finds in the best interest of the Corporation, to sign required plats, and to execute conveyances.

Brought to a meeting at which a quorum was present and passed by a majority vote of 4 yeas and 0 nays and 0 abstention votes on September 10, 1999.



Kim L. Zello, President



Daniel Alex, Secretary



Submitted by: Chairman of the Assembly
at the Request of the Mayor
Prepared by: Alaska Railroad Counsel
For reading: Feb. 15, 2000

ANCHORAGE, ALASKA
AO NO. 2000-42(S)

1 AN ORDINANCE APPROVING THE CONVEYANCE OF LANDS IN THE MUNICIPALITY'S
2 BEACH LAKE PARK TO THE ALASKA RAILROAD CORPORATION IN EXCHANGE FOR
3 EXISTING ALASKA RAILROAD RIGHT-OF-WAY LANDS IN BEACH LAKE PARK TO
4 ACCOMMODATE STRAIGHTENING OF RAILROAD TRACK CURVES AND SUBMITTING
5 TO THE QUALIFIED VOTERS OF THE MUNICIPALITY AT THE REGULAR MUNICIPAL
6 ELECTION APRIL 4, 2000 A BALLOT PROPOSITION TO APPROVE SAID CONVEYANCES.
7

8
9 WHEREAS, the Alaska Railroad Corporation seeks to improve the safety and efficiency of the
10 Alaska Railroad by realigning and straightening tracks between Anchorage and Wasilla; and
11

12 WHEREAS, certain track curves to be straightened are at Alaska Railroad mile posts 132 and 133
13 and within the Municipality's Beach Lake Park generally near Beach Lake Road off of South Birchwood
14 Loop Road as shown on the diagram attached hereto as Appendix A which is incorporated herein by
15 reference; and
16

17 WHEREAS, the right-of-way required from the Municipality to straighten the curve at milepost 132
18 is approximately 2.29 acres as shown in detail on Page 1 of Appendix B and legally described on Page 2 of
19 Appendix B which is incorporated herein by reference; and
20

21 WHEREAS, the right-of-way required from the Municipality to straighten the curve at milepost 133
22 is approximately 11.23 acres as shown in detail on Page 1 of Appendix C and legally described on Page 2
23 of Appendix C which is incorporated herein by reference; and
24

25 WHEREAS, a portion of the 11.23 acres may in the future be used to construct access to nearby
26 lands of the Eklutna Native Corporation; and
27

28 WHEREAS, by letter dated February 4, 2000 to the Municipal Assembly Eklutna Native
29 Corporation has committed to abide by all municipal regulations and pursue all municipal processes for the
30 development of those lands and further to convey additional land to be incorporated into Beach Lake Park;
31 and
32

33 WHEREAS, the Alaska Railroad right-of-way which will become surplus at mile post 133 and
34 which will be conveyed to the Municipality for incorporation into Beach Lake Park is 4.54 acres as shown
35 on Page 1 of Appendix C which is incorporated herein by reference; and
36

1 WHEREAS, the Alaska Railroad Corporation is obligated pursuant to 45 U.S.C. § 1209(c) to
2 transfer abandoned right-of-way to the United States which is required to reconvey the land to owners of
3 the adjacent private land; and
4

5 WHEREAS, the Alaska Railroad intends to construct valuable public improvements, namely, a new
6 grade-separated crossing at Beach Lake Road and a new pedestrian underpass to connect the Beach Lake
7 trail system on either side of the Railroad all as additional consideration for the conveyance of the municipal
8 park lands to it; and
9

10 WHEREAS, pursuant to Anchorage Ordinance No. 84-199, the Municipality's Beach Lake Park is
11 dedicated to park and recreational uses, the conveyance of which must be approved by the voters of the
12 Municipality pursuant to Anchorage Municipal Charter §10.02(8); now therefore,
13

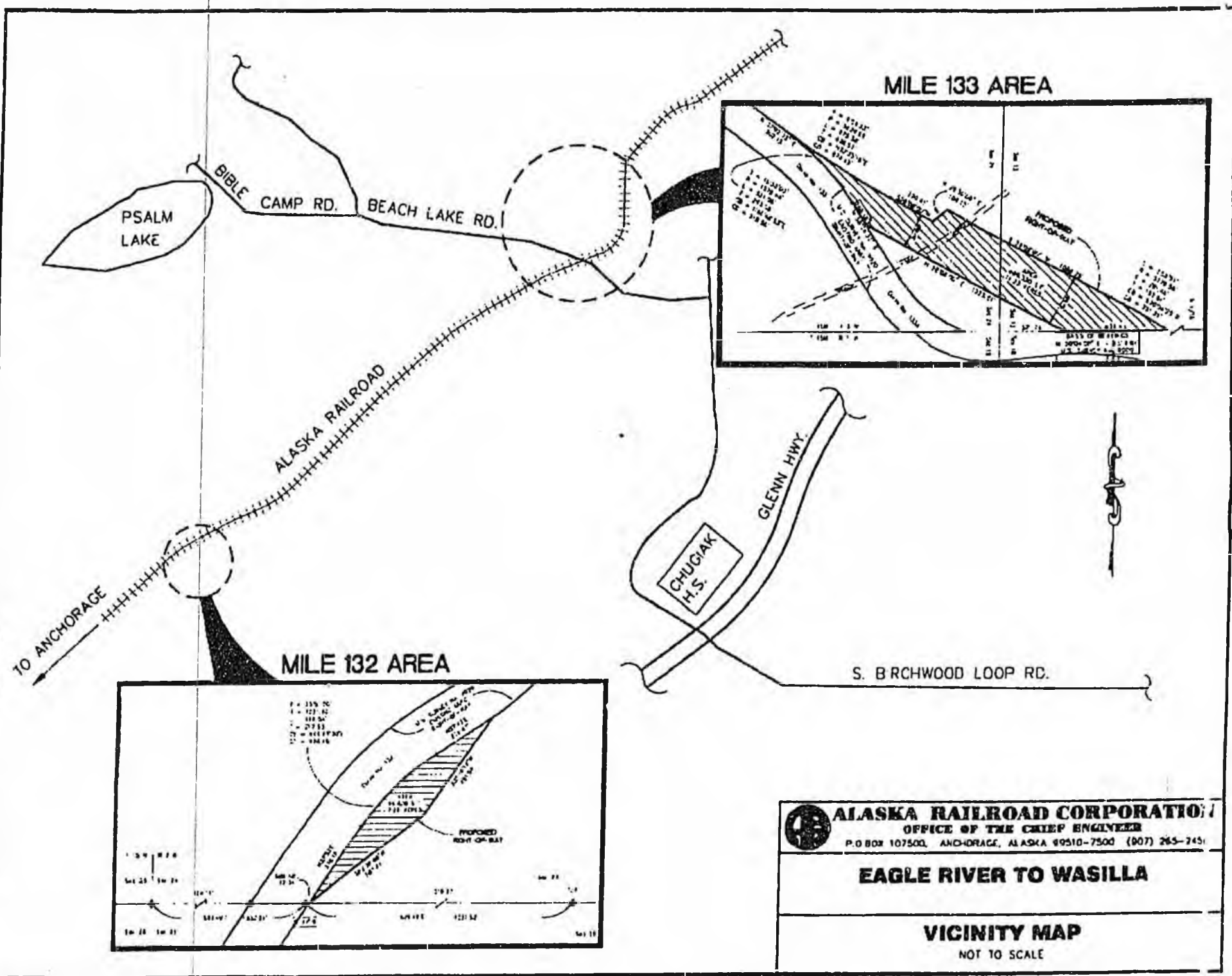
14 **THE ANCHORAGE ASSEMBLY ORDAINS:**
15

16 **Section 1:** Subject to fulfillment of the conditions in Section 2. of this ordinance and Charter §10.02(8),
17 the Municipality shall convey the fee title to the lands of the Beach Lake Park shown and legally described
18 in Appendices B and C hereto to the Alaska Railroad Corporation in exchange for the conveyance of the fee
19 simple title to the right-of-way which is to be abandoned also as shown and legally described in Appendix
20 C hereto and the construction at the Alaska Railroad Corporation's expense of the following public
21 improvements:
22

- 23 a. A new grade-separated crossing at Beach Lake Road to American Association of
24 State Highway and Transportation Officials standards which will be an underpass
25 with at least a 14.6 foot high clearance; and
26 b. Movement of the Beach Lake Road crossing approximately 380 feet north of the
27 existing Beach Lake Road crossing and elimination of the steep approach to the
28 existing crossing; and
29 c. A pedestrian underpass to connect the Beach Lake Trail system on either side of the
30 railroad and which will accommodate dog mushers and their teams, skiers and other
31 users of the trail system; and
32 d. Contouring of the railroad lands conveyed to the Municipality to accommodate safe
33 pedestrian and/or vehicular traffic connections and multi-use access.
34

35 **Section 2:** The Municipality's obligation described in Section 1 of this ordinance is subject to the
36 following conditions subsequent which shall occur on or before March 21, 2000:
37

- 38 a. The lands to be exchanged pursuant hereto shall be appraised by competent appraiser
39 to be selected and retained by the Municipality, the cost of which shall be reimbursed
40 to the Municipality by the Alaska Railroad Corporation.
41
42 b. The Alaska Railroad Corporation shall provide the Municipality its written engineers'
43 estimates of cost and value of the improvements described in Section 1 above.
44



Appendix A
Page 1 of 1

ALASKA RAILROAD CORPORATION
 OFFICE OF THE CHIEF ENGINEER
 P.O. BOX 107500, ANCHORAGE, ALASKA 99510-7500 (907) 265-7451

EAGLE RIVER TO WASILLA

VICINITY MAP
 NOT TO SCALE



$\Delta = 23^{\circ}51'00''$
 $R = 1031.90'$
 $L = 429.54'$
 $T = 217.93'$
 $CB = N45^{\circ}47'30''E$
 $CD = 426.45'$

U.S. SURVEY No. 9020
EXISTING ARRC
RIGHT-OF-WAY

Curve No. 132

AREA
99,620 S.F.
2.29 ACRES.

PROPOSED
RIGHT-OF-WAY

T 15 N R 2 W

Sec 23 Sec 24

Sec 26 Sec 25

Sec 24

Sec 25

1104.11'

S89°49'E

1332.21'

S89°48'E
12.34'

W 1/16

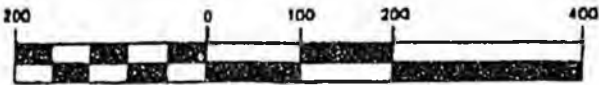
1319.27'

S89°48'E

1331.62'

1/4

SCALE



(IN FEET)

1 INCH = 200 FT.



ALASKA RAILROAD CORPORATION
OFFICE OF THE CHIEF ENGINEER
P.O. BOX 107500, ANCHORAGE, ALASKA 99510-7500 (907) 285-2456

EAGLE RIVER TO WASILLA

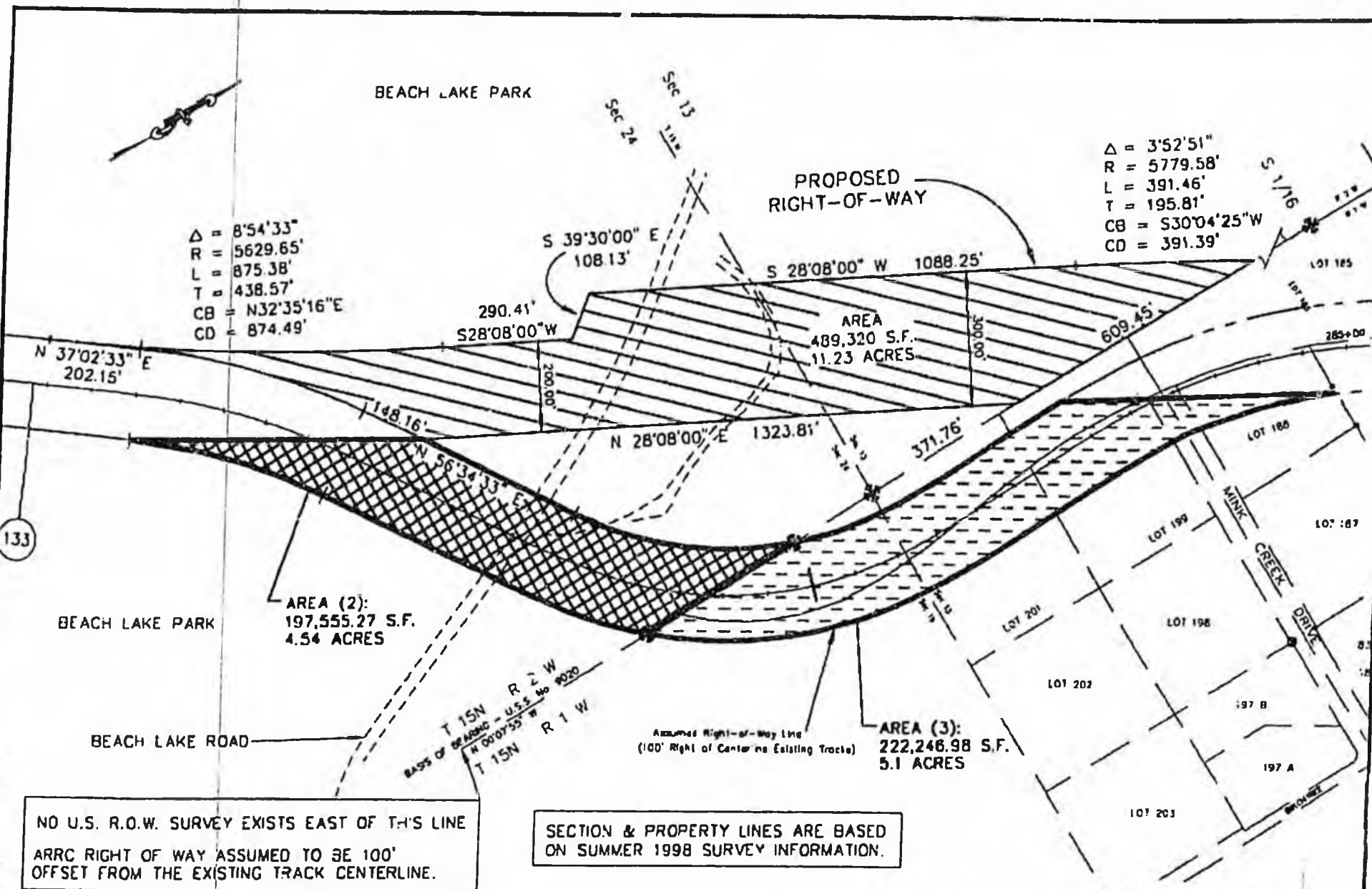
PROPOSED REALIGNMENTS TO
CURVE 132

Appendix B
Page 1 of 2

LEGAL DESCRIPTION
CURVE No. 132
PROPOSED RIGHT-OF-WAY

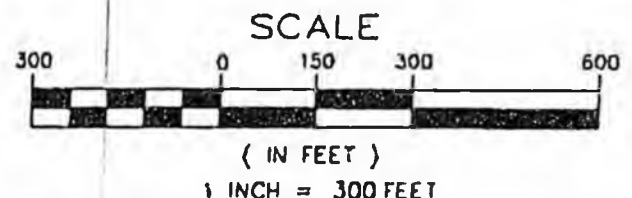
A portion of the SW 1/4, Section 24, Township 15 North, Range 2 West, Seward Meridian, Anchorage Recording District, Alaska and more particularly described as follows:

Commencing at the one-quarter (1/4) corner common to Section 24 and Section 25, Township 15 North, Range 2 West, Seward Meridian, Alaska; Thence N 89°48' W along the line between Section 24 and Section 25 a distance of 1319.27 feet to a point on the easterly boundary of the Alaska Railroad Corporation Right-of-Way shown as Lot 1 on the United States Department of the Interior, Bureau of Land Management plat titled "U.S. Survey No. 9020, Alaska" and dated October 29, 1992, the TRUE POINT OF BEGINNING; Thence N 33°52' E along said easterly Right-of Way a distance of 378.18 feet; Thence continuing along said Right-of-Way a distance of 429.54 feet on the arc of a curve to the right, with a radius of 1031.90 feet, through a central angle of 23°51'00" and whose chord bears N 45°47'30" E a distance of 426.45 feet; Thence continuing along said Right-of-Way N 57°43' E a distance of 276.47 feet; Thence S 35°10'12" W a distance of 491.94 feet; Thence S 52°36'00" W a distance of 587.61 feet to the TRUE POINT OF BEGINNING. Containing 99,620 square feet (2.29 acres) more or less.



NO U.S. R.O.W. SURVEY EXISTS EAST OF THIS LINE
ARRC RIGHT OF WAY ASSUMED TO BE 100'
OFFSET FROM THE EXISTING TRACK CENTERLINE.

SECTION & PROPERTY LINES ARE BASED
ON SUMMER 1998 SURVEY INFORMATION.



ALASKA RAILROAD CORPORATION
OFFICE OF THE CHIEF ENGINEER
P.O. BOX 107500, ANCHORAGE, ALASKA 99510-7500 (907) 265-2454

EAGLE RIVER TO WASILLA

PROPOSED REALIGNMENTS TO CURVE 133

LEGAL DESCRIPTION
CURVE No. 133
PROPOSED RIGHT-OF-WAY

A portion of the SE 1/4, Section 13, and the NE 1/4, Section 24, Township 15 North, Range 2 West, Seward Meridian, Anchorage Recording District, Alaska and more particularly described as follows:

Commencing at the Section Corner common to Sections 13 and 24, Township 15 North, Range 2 West, and Sections 18 and 19, Township 15 North, Range 1 West, Seward Meridian, Alaska, marked by an Aluminum BLM Monument dated 1984; Thence N 0°04'00" E along the line between Section 13, T15N, R2W, SM and Section 18, T15N, R1W, SM a distance of 371.76 feet to the TRUE POINT OF BEGINNING; Thence continuing along said section line N 0°04'00" E a distance of 609.45 feet; Thence a distance of 391.46 feet on the arc of a curve to the left, with a radius of 5779.58 feet, through a central angle of 3°52'51", and whose chord bears S 30°04'25" W a distance of 391.39 feet; Thence S28°08'00" W a distance of 1088.25 feet; Thence S 39°30'00" E a distance of 108.13 feet; Thence S28°08'00" W a distance of 290.41 feet; Thence a distance of 875.38 feet on the arc of a curve to the right, with a radius of 5629.65 feet, through a central angle of 8°54'33", and whose chord bears S 32°35'16" W a distance of 874.49 feet to a point on, and tangent to, the northwesterly boundary of the Alaska Railroad Corporation Right-of-Way shown as Lot 1 on the United States Department of the Interior, Bureau of Land Management plat titled "U.S. Survey No. 9020, Alaska" and dated October 29, 1992; Thence N 37°02'33" E along said Right-of-Way a distance of 202.15 feet; Thence continuing along said Right-of-Way a distance of 521.08 feet on the arc of a curve to the right, with a radius of 1528.44 feet, through a central angle of 19°32'00", and whose chord bears N 46°48'33" E a distance of 518.56 feet; Thence continuing along said Right-of-Way N 56°34'33" E a distance of 148.16 feet; Thence N 28°08'00" E a distance of 1323.81 feet to the TRUE POINT OF BEGINNING. Containing 489,320 square feet (11.23 acres) more or less.



HEADQUARTERS
ALASKAN COMMAND (ALCOM)
ELMENDORF AIR FORCE BASE, ALASKA 99506

JAN 20 2000

COMALCOM
9480 Pease Avenue, Suite 101
Elmendorf AFB AK 99506-2100

The Honorable Lisa Murkowski
Alaska State Legislature
Room 406
State Capitol
Juneau AK 99801-1182

Dear Representative Murkowski

In 1998, this command and the Alaska Railroad Corporation entered into a cooperative relationship to study the railroad's concept for track upgrade and realignment between Wasilla and the Anchorage rail yard. It is my understanding that because aspects of this project are dependent on Alaska legislative approval and you have requested assurance from this command that we will continue cooperation on the project.

I believe this concept may mutually benefit both the railroad and the defense installations in the greater Anchorage area. In addition to improving railroad efficiency and safety, the potential exists for the project to increase rail traffic safety on Fort Richardson and Elmendorf AFB and to enhance future infrastructure development by the services.

We have been participating in a working group along with the railroad and the Bureau of Land Management to facilitate the effort and address issues of concern raised by the railroad and the Department of Defense. We will continue to work toward the mutual benefit of all parties.

Sincerely

A handwritten signature in cursive script that reads "Thomas R. Case".

THOMAS R. CASE
Lieutenant General, USAF
Commander

cc:
Sen. Loren Leman
Gov. William Sheffield
MG Dean Cash, Cdr, USARAK
Brig Gen Scott Gration, 3WG/CC



16515 CENTERFIELD DRIVE, SUITE 201
EAGLE RIVER, ALASKA 99577
(907) 696-2828 FAX: (907) 696-2846

William J. Sheffield
Chief Executive Officer
Alaska Railroad Corporation
P.O. Box 107500
Anchorage
AK 99510

November 22, 1999

Re: Memorandum of Understanding
-- August 4, 1999

Dear Governor Sheffield:

I understand that there are concerns that the anticipated land exchange will accelerate the development of Clunie Lake as a float plane base or will encourage development in conflict with the military mission on Fort Richardson. I wish to clarify the situation for the record.

Eklutna, Inc. has owned the portion of the Powder Reserve adjacent to Fort Richardson since 1993. The Alaska Railroad (ARRC) assured access across the tracks via a grade-separated crossing and agreed to pay for it in the 1987 Settlement Agreement. Nothing in the land exchange anticipated in the 1999 Memorandum of Understanding between the ARRC and Eklutna, Inc. changes either of these two facts.

A float plane base at Lake Clunie was selected by the Department of Transportation and Public Facilities under the provisions of the North Anchorage Land Agreement should that part of Fort Richardson be surplused. Eklutna already owns the southwest shoreline of Lake Clunie. However, the size, configuration, and wetlands of its holdings make it impractical to develop such a facility on Eklutna lands. We have no plans to develop a float plane base there.

Eklutna, Inc. reserves the right to develop its lands in accord with appropriate regulations. We also want to make it clear that we support the continuation of the Fort Richardson Army Base. In the event, however, that military land is surplused, Eklutna, Inc. intends to ensure that it receives the full benefit of the promises made in the North Anchorage Land Agreement.

Very Truly Yours,

George W. Easley
Chief Executive Officer
Eklutna, Inc.



HEADQUARTERS
ALASKAN COMMAND (ALCOM)
ELMENDORF AIR FORCE BASE, ALASKA 99508

July 10, 1998

The Honorable Frank Murkowski
United States Senate
SH-322, Hart Senate Office Building
Washington DC 20510-0202

Dear Senator Murkowski,


Alaska Railroad Corporation and the Alaskan Command have entered into a cooperative relationship to study the Railroad's concept for improving service between Wasilla and the Anchorage rail yard.

We believe this concept may mutually benefit both the Railroad and the Defense installations in the greater Anchorage area. Improving track alignment will allow for the desired decrease in transit times between Wasilla and Anchorage. In addition to improving railroad efficiency, any project will have as a primary goal to increase rail traffic safety measures on Fort Richardson and Elmendorf AFB.

We have established a working group to facilitate the feasibility study effort and address issues of concern raised by the Railroad and the Department of Defense. We look forward to working toward the mutual benefit of all parties.

Sincerely,


Governor Bill Sheffield
President and Chief Executive Officer
Alaska Railroad Corporation


David J. McCloud
Lieutenant General, USAF
Commander, Alaskan Command

Post-IT [®] Fax Note	7871	Date	# of pages
To	AMJ	From	WEM
Co./Dept.		Co.	
Phone #		Phone #	265-2498
Fax #	269-0177	Fax #	



ALASKA VISITORS ASSOCIATION

2525 C Street, Suite 400 • Anchorage, Alaska 99503

Phone: (907) 561-5733 • Fax: (907) 561-5727

E-mail: avanet.org • www.visitalaska.org

1999-2000

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Alyeska Resort

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Alaska Airlines

Tina Lindgren

Executive Director

99-6

A RESOLUTION SUPPORTING THE ALASKA RAILROAD'S TRACK UPGRADE AND REALIGNMENT PROJECT

WHEREAS, a straighter track promotes safety due to reduced track and equipment wear, consistency in train handling, increased sight distance, and reduced maintenance requirement – all leading to a reduced frequency of train derailments and lower operating costs; and

WHEREAS, this project includes upgrades to vehicle crossings and additional public access amenities that will enhance safety and access across the Alaska Railroad's track; and

WHEREAS, this project will result in reduced train running time between Anchorage and Wasilla from 95 minutes to 50 minutes making future commuter service viable; and

WHEREAS, reduced transit time between Anchorage and Wasilla means more efficient and cost effective service to the interior of Alaska; and

WHEREAS, reduced transit time between Anchorage and Wasilla means a potential reduction in the number of automobiles on the highway; and

WHEREAS, more efficient rail operations reduces train gridlock, creates more jobs for Alaskans through additional freight and passenger service, and builds a better infrastructure to support future economic development in Alaska; and

WHEREAS, this project enhances the value of ARRC's asset which is owned by the State; and

WHEREAS, to accomplish this project, ARRC will need legislative approval to convey the Corporation's entire interest in certain lands in exchange for equivalent valued land with Elmendorf Air Force Base, Fort Richardson Army Base, Eklutna, Inc. and other entities; and

WHEREAS, no funds will be exchanged between the parties in this land trade agreement.

NOW, THEREFORE BE IT RESOLVED that the Alaska Visitors Association supports the ARRC's efforts to upgrade and realign its track between Anchorage and Wasilla to improve safety and efficiency of the Alaska Railroad Corporation's train operations, to enhance the state-owned transportation asset, and to make future commuter service viable; and

BE IT FURTHER RESOLVED that the Alaska Visitors Association seeks to assist ARRC in obtaining legislative approval to exchange equivalent valued land with neighboring entities in order to accomplish the track realignment project.

*Adopted by the Alaska Visitors Association Board of Directors
December 10, 1999*

MATANUSKA-SUSITNA

CONVENTION & VISITORS BUREAU

A Resolution Supporting the Alaska Railroad's Track Upgrade and Realignment Project

MSCVB Resolution FY2000-04

- WHEREAS,** a straighter track promotes safety due to reduced track and equipment wear, consistency in train handling, increased sight distance, and reduced maintenance requirement – all leading to a reduced frequency of train derailments and lower operating costs; and
- WHEREAS,** this project includes upgrades to vehicle crossings and additional public access amenities that will enhance safety and access across the Alaska Railroad's track; and
- WHEREAS,** this project will result in reduced train running time between Anchorage and Wasilla from 95 minutes to 50 minutes making future commuter service viable; and
- WHEREAS,** reduced transit time between Anchorage and Wasilla means more efficient and cost effective service to the interior of Alaska; and
- WHEREAS,** reduced transit time between Anchorage and Wasilla means a potential reduction in the number of automobiles on the highway; and
- WHEREAS,** more efficient rail operations reduces train gridlock, creates more jobs for Alaskans through additional freight and passenger service, and builds a better infrastructure to support future economic development in Alaska; and
- WHEREAS,** this project improves the ARRC's asset which enhances the state's ownership of the railroad; and
- WHEREAS,** to accomplish this project, ARRC will need legislative approval to convey the Corporation's entire interest in certain lands in exchange for equivalent valued land with Elmendorf Air Force Base, Fort Richardson Army Base, Eklutna, Inc. and other entities; and
- WHEREAS,** no funds will be exchanged between the parties in this land trade agreement.

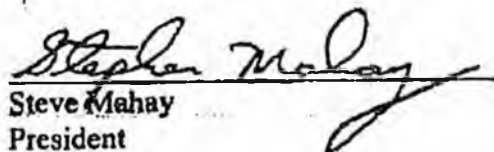
NOW, THEREFORE BE IT RESOLVED that the Mat-Su Convention & Visitors Bureau supports the ARRC's efforts to upgrade and realign its track between Anchorage and Wasilla to improve safety and efficiency of the Alaska Railroad Corporation's train operations, to enhance the state-owned transportation asset, and to make future commuter service viable; and

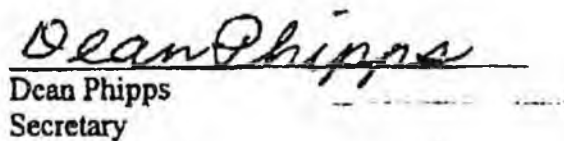
MSCVB Resolution FY2000-04
Supporting the Alaska Railroad's Track Upgrade and Realignment Project

BE IT FURTHER RESOLVED that the Mat-Su Convention & Visitors Bureau seeks to assist ARRC in obtaining legislative approval to exchange equivalent valued land with neighboring entities in order to accomplish the track realignment project.

Passed and approved by a majority of those voting at the regular board meeting on January 8, 2000.

Approved:


Steve Mahay
President


Dean Phipps
Secretary

FEB. 9. 2000 4:47PM

NO. 0339 P. 2



Anchorage Economic Development Corporation

The Center of Opportunity

AEDC Executive Committee Resolution Supporting the Alaska Railroad's track upgrade and realignment project

Whereas, a straighter track promotes safety due to reduced track and equipment wear, consistency in train handling, increased sight distance, and reduced maintenance requirement - all leading to a reduced frequency of train derailments and lower operating costs; and

Whereas, this project includes upgrades to vehicle crossings and additional public access amenities that will enhance safety and access across the Alaska Railroad's track; and

Whereas, this project will result in reduced train running time between Anchorage and Wasilla from 95 minutes to 50 minutes making future commuter service more viable; and

Whereas, reduced transit time between Anchorage and Wasilla means more efficient and cost effective service to the interior of Alaska; and

Whereas, reduced transit time between Anchorage and Wasilla means a potential reduction in the number of automobiles on the highway; and

Whereas, more efficient rail operations reduces train gridlock, creates more ARRC jobs for Alaskans through additional freight and passenger service, and builds a better infrastructure to support future economic development in Alaska; and

Whereas, this project enhances the value of of the state owned railroad; and

Whereas, to accomplish this project, ARRC will need legislative approval to convey the Corporation's entire interest in certain lands in exchange for equivalent valued land with Elmendorf Air Force Base, Fort Richardson Army Base, Eklutna, Inc. and other entities; and

Whereas, no funds will be exchanged between the parties in this land trade agreement.

Now, Therefore Be It Resolved that the Anchorage Economic Development Corporation supports the ARRC's efforts to upgrade and realign its track between Anchorage and Wasilla to improve safety and efficiency of the Alaska Railroad Corporation's train operations, to enhance the state-owned transportation asset, and to make future commuter service viable; and

Be It Further Resolved that the Anchorage Economic Development Corporation seeks to assist ARRC in obtaining legislative approval to exchange equivalent valued land with neighboring entities in order to accomplish the track realignment project.

Passed and approved this 20th day of December, 1999.

Mel Nichols, Chairman

RESOLUTION 99-3
A Resolution Supporting the Alaska Railroad's Track Upgrade
and Realignment Project

ANCHORAGE CONVENTION & VISITORS BUREAU
BOARD OF DIRECTORS

WHEREAS, a straighter track promotes safety due to reduced track and equipment wear, consistency in train handling, increased sight distance, and reduced maintenance requirement – all leading to a reduced frequency of train derailments and lower operating costs; and

WHEREAS, this project includes upgrades to vehicle crossings and additional public access amenities that will enhance safety and access across the Alaska Railroad's track; and

WHEREAS, this project will result in reduced train running time between Anchorage and Wasilla from 95 minutes to 50 minutes making future commuter service viable; and

WHEREAS, reduced transit time between Anchorage and Wasilla means more efficient and cost effective service to the Interior of Alaska; and

WHEREAS, reduced transit time between Anchorage and Wasilla means a potential reduction in the number of automobiles on the highway; and

WHEREAS, more efficient rail operations reduces train gridlock, creates more jobs for Alaskans through additional freight and passenger service, and builds a better infrastructure to support future economic development in Alaska; and

WHEREAS, this project improves the ARRC's asset which enhances the State's ownership of the railroad; and

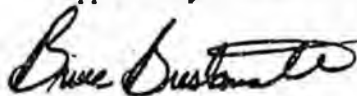
WHEREAS, to accomplish this project, ARRC will need legislative approval to convey the Corporation's entire interest in certain lands in exchange for equivalent valued land with Elmendorf Air Force Base, Fort Richardson Army Base, Eklutna, Inc., and other entities; and

WHEREAS, no funds will be exchanged between the parties in this land trade agreement.

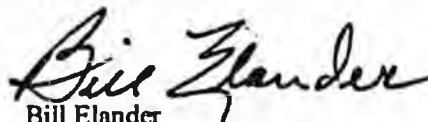
NOW, THEREFORE BE IT RESOLVED that the Anchorage Convention & Visitors Bureau supports the ARRC's efforts to upgrade and realign its track between Anchorage and Wasilla to improve safety and efficiency of the Alaska Railroad Corporation's train operations, to enhance the State-owned transportation asset, and to make future commuter service viable; and

BE IT FURTHER RESOLVED, that the Anchorage Convention & Visitors Bureau supports ARRC as it seeks to obtain legislative approval to exchange equivalent valued land with neighboring entities in order to accomplish the track realignment project.

Approved by the Board of Directors, this 21st day of December, 1999.



Bruce Bustamante
Chairman



Bill Elander
President & CEO



ANCHORAGE
Convention &
Visitors Bureau

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Secretary/Treasurer
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Grizzly's Inc.

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ACVB President & CEO
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Phillips Cruises & Tours

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Tour Arctic

Virginia Samson, CMP
Alaska Conference & Events Services

Bill Sheffield
Alaska Railroad Corporation

Bob Southall, CHA
Hilton Anchorage Hotel

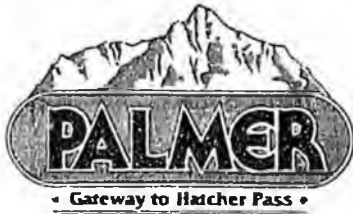
John "Chris" Swalling CPA
Swalling & Associates PC

Tom Tierney
Municipality of Anchorage

Chris von Imhol
Alyeska Resort

524 W. Fourth Avenue
Anchorage, Alaska
99501-2212

907-276-4118
Fax 907-278-5559
E-mail:acvb@alaska.net



GREATER PALMER CHAMBER OF COMMERCE

A resolution supporting the Alaska Railroad's track upgrade and realignment project

Resolution 99-06

Whereas, a straighter track promotes safety due to reduced track and equipment wear, consistency in train handling, increased sight distance, and reduced maintenance requirement - all leading to a reduced frequency of train derailments and lower operating costs; and

Whereas, this project includes upgrades to vehicle crossings and additional public access amenities that will enhance safety and access across the Alaska Railroad's track; and

Whereas, this project will result in reduced train running time between Anchorage and Wasilla from 95 minutes to 50 minutes making future commuter service viable; and

Whereas, reduced transit time between Anchorage and Wasilla means more efficient and cost effective service to the interior of Alaska; and

Whereas, reduced transit time between Anchorage and Wasilla means a potential reduction in the number of automobiles on the highway; and

Whereas, more efficient rail operations reduces train gridlock, creates more jobs for Alaskans through additional freight and passenger service, and builds a better infrastructure to support future economic development in Alaska; and

Whereas, this project improves the ARRC's asset which enhances the state's ownership of the railroad; and

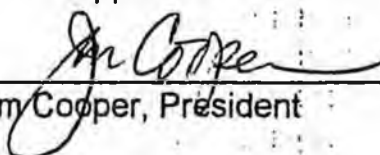
Whereas, to accomplish this project, ARRC will need legislative approval to convey the Corporation's entire interest in certain lands in exchange for equivalent valued land with Elmendorf Air Force Base, Fort Richardson Army Base, Eklutna, Inc. and other entities; and

Whereas, no funds will be exchanged between the parties in this land trade agreement.

Now, Therefore Be It Resolved that the Greater Palmer Chamber of Commerce supports the ARRC's efforts to upgrade and realign its track between Anchorage and Wasilla to improve safety and efficiency of the Alaska Railroad Corporation's train operations, to enhance the state-owned transportation asset, and to make future commuter service viable; and

Be It Further Resolved that the Greater Palmer Chamber of Commerce seeks to assist ARRC in obtaining legislative approval to exchange equivalent valued land with neighboring entities in order to accomplish the track realignment project.

Approved this 17th day of December, 1999.



Jim Cooper, President



415 E. Railroad Avenue * Wasilla, AK 99654
Email: chamber@wasilla.net

Telephone (907) 376-1299 * Fax (907) 373-2560
Home Page: www.chamber.wasilla.net

- Voted "Alaska's Outstanding Local Chamber of Commerce ~ 1998"

RESOLUTION 99-07

A RESOLUTION OF THE GREATER WASILLA CHAMBER OF COMMERCE IN SUPPORT OF THE ALASKA RAILROAD'S TRACK ENHANCEMENTS PROJECT.

Whereas, a straighter track promotes safety due to reduced track and equipment wear, consistency in train handling, increased sight distance, and reduced maintenance requirement all leading to a reduced frequency of train derailments and lower operating costs; and

Whereas, this project includes upgrades to vehicle crossings and additional public access amenities that will enhance safety and access across the Alaska Railroad's track; and

Whereas, this project will result in reduced train running time between Anchorage and Wasilla from 95 minutes to 50 minutes making future commuter service viable; and

Whereas, reduced transit time between Anchorage and Wasilla means more efficient and cost effective service to the interior of Alaska; and

Whereas, reduced transit time between Anchorage and Wasilla means a potential reduction in the number of automobiles on the highway; and

Whereas, more efficient rail operations reduces train gridlock, creates more jobs for Alaskans through additional freight and passenger service, and builds a better infrastructure to support future economic development in Alaska; and

Whereas, this project improves the ARRC's asset which enhances the state's ownership of the railroad; and

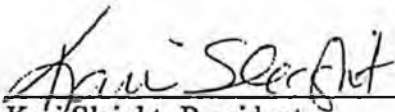
Whereas, to accomplish this project, ARRC will need legislative approval to convey the Corporation's entire interest in certain lands in exchange for equivalent valued land with Elmendorf Air Force Base, Fort Richardson Army Base, Eklutna, Inc. and other entities; and

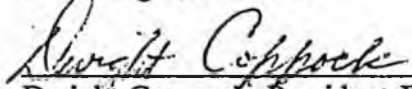
Whereas, no funds will be exchanged between the parties in this land trade agreement.

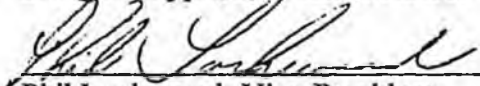
Now, Therefore Be it Resolved that the Greater Wasilla Chamber of Commerce supports the ARRC's efforts to upgrade and realign its tracks between Anchorage and Wasilla to improve safety and efficiency of the Alaska Railroad Corporation's train operations, to enhance the state-owned transportation asset, and to make future commuter service viable; and

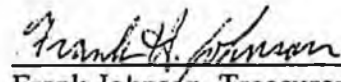
Be it Further Resolved that the Greater Wasilla Chamber of Commerce seeks to assist ARRC in obtaining legislative approval to exchange equivalent valued land with neighboring entities in order to accomplish the track realignment project.

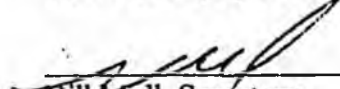
Hereby, adopted by the Greater Wasilla Chamber of Commerce this 15th day of December, 1999.

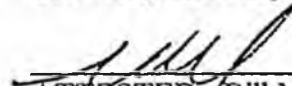

Kari Sleight, President


Dwight Coppock, President-Elect


Phil Lockwood, Vice-President


Frank Johnson, Treasurer


Bill Moll, Secretary


ATTESTED: Bill Moll, Secretary

Requested and Prepared by: Administration
Meeting date: January 10, 2000
Adopted: January 10, 2000
Vote: Unanimous

**CITY OF WASILLA
RESOLUTION SERIAL NO. 00-03**

A RESOLUTION OF THE CITY OF WASILLA, ALASKA SUPPORTING THE ALASKA RAILROAD'S TRACK UPGRADE AND REALIGNMENT PROJECT.

WHEREAS, a straighter track promotes safety due to reduced track and equipment wear, consistency in train handling, increased sight distance, and reduced maintenance requirement – all leading to a reduced frequency of train derailments and lower operating costs; and

WHEREAS, this project includes upgrades to vehicle crossings and additional public access amenities that will enhance safety and access across the Alaska Railroads track; and

WHEREAS, this project will result in reduced train running time between Anchorage and Wasilla from 95 minutes to 50 minutes making future commuter service viable; and

WHEREAS, reduced transit time between Anchorage and Wasilla means more efficient and cost effective service to the interior of Alaska; and

WHEREAS, reduced transit time between Anchorage and Wasilla means a potential reduction in the number of automobiles on the highway; and

WHEREAS, more efficient rail operations reduces train gridlock, creates more jobs for Alaskans through additional freight and passenger service, and builds a better infrastructure to support future economic development in Alaska; and

WHEREAS, this project improves the ARRC's asset which enhances the state's ownership of the railroad; and

WHEREAS, to accomplish this project, ARRC will need legislative approval to convey the Corporation's entire interest in certain lands in exchange for equivalent valued land with Elmendorf Air Force Base, Fort Richardson Army Base, Eklutna, Inc. and other entities; and

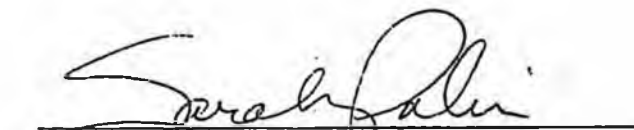
WHEREAS, no funds will be exchanged between the parties in this land trade agreement.

NOW THEREFORE BE IT RESOLVED, that the City of Wasilla supports the ARRC's efforts to upgrade and realign its track between Anchorage and Wasilla to improve safety and efficiency of the Alaska Railroad Corporation's train operations, to enhance the state-owned transportation asset, and to make future commuter service viable; and

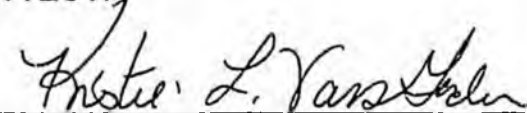
BE IT FURTHER RESOLVED, that the City of Wasilla seeks to assist ARRC in obtaining legislative approval to exchange equivalent valued land with neighboring entities in order to accomplish the track realignment project.

ADOPTED by the Wasilla City Council on January 10, 2000.

I certify that a resolution in substantially the above form was passed by a majority of those voting at a duly called and conducted meeting of the governing body of the City of Wasilla this 10th day of January 2000.


SARAH PALIN, Mayor

ATTEST:


KRISTIE L. VANGORDER, CMC/AE
City Clerk

[SEAL]

HB

371



Representative Beth Kerttula

Alaska State Legislature, District 3
State Capitol • Juneau, Alaska 99801-1182 • (907) 465-4766 • Fax (907) 465-4748
E-mail: Representative_Beth_Kerttula@legis.state.ak.us • <http://www.kerttula.net>

Memorandum

Date: March 7, 2000

To: Representative *Andrew* Halcro, Chairman
House Transportation Committee

From: Beth *Beth* Kerttula, Representative, District 3

Re: **House Bill 371: Registering and Reporting by Large Marine Passenger Vessels**

I respectfully request that you considering waiving HB 371 from House Transportation Committee or, alternatively, schedule it for a hearing.

I would like to briefly discuss this bill with you at your earliest convenience.

NWCA comments on Alaska House Bill 371

The member cruise lines of the North West CruiseShip Association are engaged in an environmental initiative under the leadership of Alaska Department of Environmental Conservation, and involving the Coast Guard and SE Alaska Communities. The purpose is to gain understanding of the waste management practices on board cruise ships visiting Alaska, to determine additional data requirements and address any environmental problem that are identified.

We support this process as a sound base for problem solving and policy-making founded on facts and analysis. We see the process as the correct means to address public questions and concerns about environmental stewardship by the cruise lines.

The process underway is designed to be cooperative between the industry and government agencies, with common objectives of continuing to implement technological and operational improvements to reduce environmental impact.

The cruise lines are committed to high quality environmental practices, with application of operating practices and technology to minimize the environmental impact of the ships and the visitors that we bring to Alaska. In most cases this means that current environmental management practices exceed the US regulatory requirements. The cruise lines, through the International Council of Cruise Lines (ICCL) have agreed to a set of environmental practices, which were published in December 1999. In addition the Lines have agreed to additional practices which are specific to operations while in Alaska waters.

The cruise lines understand the need to reassure the public that they are exercising responsible environmental management, that regulations already exist and that the enforcement agencies have the powers to ensure enforcement under present law.

Conclusions

The Bill is out of step with the process underway in that it does not pause to determine whether there are substantive problems, and what they are. It simply goes directly to regulations as the solution.

The Bill does not recognize the degree of regulation already in existence and the enforcement procedures in place.

Bill 371 with its emphasis on regulations, reporting and enforcement is inconsistent with the cooperative process underway, in seeking workable solutions.

The Bill, with its sole focus on cruise ships, misses the context of other – and possibly far more serious – sources of waste discharge in Alaska's Inside Passage.

CSHB 371
Registration and Reporting by Large Marine Passenger Vessels

Sectional Analysis

Section 1 adds new sections to AS 46.03, the Environmental Conservation statutes.

Sec. 46.03.460 requires owner/operator who conducts business in Alaska to register annually each vessel with DEC. The in-state contact information becomes paramount when working with foreign flag vessels with international crews and officers as on many of the cruise ships. The CS clarifies that an owner/operator can undertake its annual registration just prior to actually bringing a vessel into state waters, rather than at the beginning of each year.

Sec. 46.03.465 requires owner/operators to monitor cruise ship pollutants in order to fulfill the reporting requirements under AS 46.03.475. Monthly sampling of visible emissions from vessels while in an Alaskan port is required. DEC may adopt regulations, as necessary, and is directed to maximize reporting efficiencies through coordination with other vessel reporting.

The CS clarifies 46.03.465(a) so that the monitoring is only required for that portion of a month when a vessel is actually operating in Alaska waters. Further, the CS amends 46.03.465(c) to narrow the focus of the rulemaking to the quantity and quality of waterborne pollutants and not include reference to monitoring devices and methods. CSHB 371's focus on record keeping and reporting side steps potential preemption issues considered in the recent case *United State v. Locke et. al.* where the U.S. Supreme Court declared several Washington State regulations on oil tankers preempted by federal laws.

Sec. 46.03.470 requires that records be maintained for three years.

Sec. 46.03.475 establishes the monthly reporting that must occur for several categories of pollutants. The CS clarifies that the focus is primarily on pollutants that each vessel either releases into the air or waters within the state, or offloads in an Alaskan port. The specific location and amount of each disposal are required. Significantly, HB 371 does not require that the cruise line companies get a new permit from the state of Alaska nor set any new performance standards on waste discharges. Reporting data in a vessel-specific format is essential to perform site-specific assessments of potential and cumulative environmental impacts. In keeping with DEC's other environmental oversight practices, each report must be certified by a responsible vessel official.

Sec. 46.03.480 establishes civil penalties for failing to register or report, or for falsifying a registration or report. The penalties are based on those imposed on

other businesses operating in Alaska or imposed on violations under other DEC statutes.

Sec. 46.03.485 gives DEC rule-making authority to implement this legislation.

Sec. 46.03.490 defines several terms drawing on existing state and federal environmental pollution definitions.

"large passenger vessel" is revised in the CS to include the 300 gross registered tonnage factor that is a regulatory threshold commonly used by the U.S. Coast Guard and other maritime organizations. The definition focuses on large cruise ships because these are the vessels that generate substantial amounts of wastes on a daily or weekly basis while carrying as many as 2,000 – 4,000 passengers and crew members through Alaskan waters.

"pollutant" is defined to cover the full array of wastes generated during the duration of a typical cruise through Alaskan waters, including air contaminants, gray water, sewage, solid waste, incinerator ash, and hazardous chemicals.

"sewage" is revised in the CS to simplify the definition to that provided under the federal Clean Water Act.

Section 2 amends AS 46.03.760(c) to reflect the penalties incorporated into 46.03.480(c)

1-LS1327H
Lauterbach
3/17/00

CS FOR HOUSE BILL NO. 371()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE KERTTULA

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain passenger vessels transacting business in the state or
2 operating in the marine waters of the state."

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

4 * Section 1. AS 46.03 is amended by adding new sections to read:

5 Article 6A. Large Passenger Vessels.

6 Sec. 46.03.460. Registration requirements. (a) Each calendar year in which
7 the owner or operator of a large passenger vessel intends to operate, or cause or suffer
8 to be operated, the vessel in the marine waters of the state, the owner or operator of
9 the vessel shall register with the department. The registration shall be completed
10 before any large passenger vessel of the owner or operator enters the marine waters
11 of the state. The registration must include the following information:

12 (1) the vessel owner's business name and, if different, the vessel
13 operator's business name for each large passenger vessel of the owner that is scheduled
14 to be in the marine waters of the state during the calendar year;

1 (2) the postal address, electronic mail address, telephone number, and
2 facsimile number for the principal place of each business identified under (1) of this
3 subsection;

4 (3) the name and address of an agent for service of process for each
5 business identified under (1) of this subsection; the owner and operator shall
6 continuously maintain a designated agent for service of process whenever a large
7 passenger vessel of the owner or operator is in the marine waters of the state, and the
8 agent must be an individual resident of this state, a domestic corporation, or a foreign
9 corporation having a place of business in and authorized to do business in this state;

10 (4) the name or call sign of and Port of Registry for each of the
11 owner's or operator's vessels that is scheduled either to call upon a port in this state
12 or otherwise to be in the marine waters of the state during the calendar year occurring
13 after the date of registration; and

14 (5) other information required by the department by regulation.

15 (b) Registration under (a) of this section must be signed under oath by the
16 owner or operator.

17 **Sec. 46.03.465. Information-gathering requirements.** (a) Owners and
18 operators of large passenger vessels shall, for the time during any calendar month in
19 which they operate, or cause or suffer to be operated, a large passenger vessel in the
20 marine waters of the state, record or cause to be recorded all information necessary to
21 completely report as required by AS 46.03.475.

22 (b) At least once during each calendar month in which a large passenger vessel
23 is present in the marine waters of the state, and more often if required by the
24 department under regulations, the owner and operator of the vessel shall measure
25 visible emissions, excluding condensed water vapor, of the vessel while the vessel is
26 at berth or at anchor in a port of this state. If regulations have been adopted to
27 implement this subsection, the measuring technique used to satisfy the requirement of
28 this subsection must have been approved by the department before the measurement
29 was taken.

30 (c) The department may adopt regulations directing owners and operators of
31 large passenger vessels to quantify and qualify the releases of waterborne pollutants

1 from their vessels into the marine waters of the state.

2 (d) In order to reduce inefficiency and minimize unnecessary duplication, the
3 department shall implement the reporting requirements of this section in a manner
4 designed to coordinate the reporting requirements with other reporting requirements
5 that may be applicable to the same vessels.

6 **Sec. 46.03.470. Record keeping requirements.** An owner or operator subject
7 to AS 46.03.465 shall record the information gathered under that section and shall
8 maintain the records for three years after the date the information was gathered.

9 **Sec. 46.03.475. Reporting requirements.** (a) An owner or operator of a
10 large passenger vessel shall, within 10 days after the end of a calendar month in which
11 the owner or operator has operated, or caused or suffered to be operated, a large
12 passenger vessel in the marine waters of the state, submit to the department a report
13 itemizing, among other matters, the offloading or release of pollutants from that vessel
14 that occurred during the time in the previous calendar month that the vessel was
15 located in the marine waters of the state. The report must

16 (1) include the information required by this section; and

17 (2) contain or include copies of the reports concerning pollutants that
18 are required by the department in the department's enforcement of other provisions of
19 this title.

20 (b) For each release of a pollutant for which reporting is required by
21 regulations adopted under AS 46.03.465(c), except for a release by an emission to
22 ambient air from a stack, the report must describe the

23 (1) location of the release, including latitude and longitude;

24 (2) volume and source of the pollutant released;

25 (3) circumstances surrounding and cause of the release, including a
26 statement as to whether the release was intentional or accidental;

27 (4) environmental damage caused by the release, to the extent the
28 damage can be reasonably identified; and

29 (5) remedial efforts taken to prevent accidental recurrence of the
30 release.

31 (c) For hazardous waste,

- 1 (1) the report must include a copy of each manifest prepared in
2 accordance with 42 U.S.C. 6921 - 6939a (Subtitle C of the Solid Waste Disposal Act);
3 and
- 4 (2) if hazardous waste was offloaded from the vessel without a manifest
5 while the vessel was in the marine waters of the state, the report must describe the
- 6 (A) volume and source of the waste;
 - 7 (B) location of offloading;
 - 8 (C) destination of offloaded waste; and
 - 9 (D) reasons why the waste was offloaded without a manifest.
- 10 (d) For solid waste and industrial waste, the report must describe
- 11 (1) for waste offloaded in the marine waters of the state, the weight and
12 composition of the offloaded waste, the location of the offloading, and the destination
13 of the offloaded waste; and
 - 14 (2) the solid waste processing facility or treatment works located on the
15 vessel, the quantity of waste processed by the facility or works during the time in that
16 calendar month that the vessel was in the marine waters of the state, and an
17 explanation of whether any processed waste was released or offloaded while the vessel
18 was in the marine waters of the state.
- 19 (e) For emissions to ambient air from a stack, the report must include the
20 measurements of visible emissions collected under AS 46.03.465(b) and, if a stack on
21 the vessel is equipped with continuous emission monitors, the recordings printed by
22 the monitors for the time during that month that the vessel was in the marine waters
23 of the state.
- 24 (f) For sewage, the report must describe treatment works located on the vessel,
25 the quantity of waste processed by the works during the time in that calendar month
26 that the vessel was in the marine waters of the state, and an explanation of whether
27 any treated waste was released or offloaded while the vessel was in the marine waters
28 of the state.
- 29 (g) For graywater and other wastewater other than sewage, the report must
30 describe the location of offloading if the offloading occurred in the marine waters of
31 the state.

1 (h) For medical waste, the report must generally describe any onboard
2 treatment and the manner or method of ultimate disposal if the treatment or disposal
3 occurred while the vessel was in the marine waters of the state.

4 (i) The department may by regulation require an owner or operator to submit
5 supplemental or additional reports concerning the releases or offloading of pollutants
6 by large passenger vessels while they are in the marine waters of the state.

7 (j) A record or report submitted under this section shall be signed under
8 penalty of unsworn falsification by the owner, operator, or a responsible official of the
9 reporting vessel and must include the following statement: "Based on information and
10 belief formed after reasonable inquiry, I certify that the statements and information in
11 and attached to this document are true, accurate, and complete."

12 **Sec. 46.03.480. Penalties.** (a) An owner or operator who fails to comply with
13 AS 46.03.460 may not bring a claim or counterclaim in a court of this state for a cause
14 of action that arose during the time that the owner or operator was out of compliance
15 with AS 46.03.460.

16 (b) An owner or operator who fails to comply with AS 46.03.460 or a
17 reporting requirement of AS 46.03.475 is subject to an administrative penalty of not
18 more than \$50 a day for each day of noncompliance with each requirement as
19 determined by the commissioner subject to right of appeal to the superior court.

20 (c) In addition to other applicable penalties, a person who fails to comply with
21 AS 46.03.460 or 46.03.475 or who falsifies a registration or report required by
22 AS 46.03.460 or 46.03.475 is liable for damages under AS 46.03.760(e).

23 **Sec. 46.03.485. Regulations.** The department may adopt regulations that are
24 necessary for the implementation of AS 46.03.460 - 46.03.490.

25 **Sec. 46.03.490. Definitions.** In AS 46.03.460 - 46.03.490,

26 (1) "agent for service of process" means an agent upon whom process,
27 notice, or demand required or permitted by law to be served upon the owner or
28 operator may be served,

29 (2) "air contaminant" means a substance within the meaning given to
30 "air contaminant" in either AS 46.03.900 or AS 46.14.990;

31 (3) "ambient air" has the meaning given in AS 46.14.990;

1 (4) "ballast water" means water and suspended matter taken on board
2 a vessel to control or maintain trim, draught, stability, or stresses of the vessel,
3 regardless of how the water and suspended matter are carried;

4 (5) "emission" means a release of one or more pollutants into the
5 atmosphere;

6 (6) "graywater" means galley, bath, and shower water;

7 (7) "hazardous waste" has the meaning given in AS 46.03.900 and
8 includes wastes that meet that definition and have been collected from staterooms,
9 crew quarters, and other passenger or crew accommodations;

10 (8) "large passenger vessel" means a vessel of 300 gross registered tons
11 or greater that is engaged in the carrying of passengers for hire, excluding

12 (A) vessels without berths or overnight accommodations for
13 passengers; and

14 (B) noncommercial vessels, warships, vessels operated by
15 nonprofit entities as determined by the United States Internal Revenue Service,
16 and vessels operated by the state, the United States, or a foreign government;

17 (9) "marine waters of the state" has the meaning given to "waters" in
18 AS 46.03.900 except that it includes only marine waters;

19 (10) "medical waste" includes each of the types of solid waste listed
20 in 42 U.S.C. 6992a (Demonstration Medical Waste Tracking Program, sec. 11002 of
21 the Solid Waste Disposal Act);

22 (11) "offloading" means the removal of pollutants from a large
23 passenger vessel onto or into a controlled storage, processing, or disposal facility or
24 treatment works;

25 (12) "oil" has the meaning given in AS 46.04.900;

26 (13) "pollutant" means air contaminant, ballast water, biological
27 materials, chemical wastes, graywater, hazardous waste, industrial waste, incinerator
28 residue, medical waste, munitions, oil, radioactive materials, sewage, sewage sludge,
29 solid waste, wrecked or discarded equipment, or any other substance that may alter or
30 tend to alter the chemical, physical, biological, or radiological integrity of the marine
31 waters of the state or the air above or submerged land below the marine waters of the

1 state;

2 (14) "release" means spilling, leaking, pumping, pouring, emitting,
3 emptying, discharging, injecting, escaping, leaching, dumping, placing, or disposing
4 of pollutants into the environment, including the abandonment or discarding of bags,
5 containers, and other receptacles containing a pollutant, and without regard to whether
6 the pollutants left the vessel through a discrete conveyance or a nonpoint source;

7 (15) "responsible official" means

8 (A) for a corporation, a president, secretary, treasurer, or vice-
9 president of the corporation in charge of a principal business function, or any
10 other person who performs similar policy or decision-making functions for the
11 corporation, or a duly authorized representative of that person if the delegation
12 of authority to the representative is approved in advance by the department;

13 (B) for a partnership, sole proprietorship, or limited liability
14 company, a general partner, the proprietor, or the manager or managing
15 member, respectively;

16 (16) "sewage" has the meaning given in 33 U.S.C. 1322 (sec. 312,
17 Water Pollution Control Act);

18 (17) "stack" means a chimney or conduit through which air or air
19 contaminants are emitted into the atmosphere;

20 (18) "vessel" means any form or manner of watercraft, other than a
21 seaplane on the water, whether or not capable of self-propulsion.

22 * Sec. 2. AS 46.03.760(e) is amended to read:

23 (e) A person who falsifies a registration or report required by AS 46.03.460
24 or 46.03.475 or who violates or causes or permits to be violated a provision of
25 AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, AS 46.14, or a regulation, a lawful
26 order of the department, or a permit, approval, or acceptance, or term or condition of
27 a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314, 46.03.460 -
28 46.03.490, or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed
29 by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor
30 more than \$10,000 for each day after that on which the violation continues, and that
31 shall reflect, when applicable,

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(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or damage to their property;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged; and

(4) the need for an enhanced civil penalty to deter future noncompliance.

TABLE 1

HB 371: MONITORING AND REPORTING POLLUTANT RELEASE AND OFFLOADING IN ALASKA

Pollutant Category	[----- Reporting the Release of a Pollutant -----]						
	Date/Time	Location Lat/Long	Volume	Source	Intentional or Accidental	Identifiable EnvDamage	Efforts to Prevent Accidents
Hazardous Waste	x	x	x	x	x	x	x
Solid & Industrial Waste	x	x	x	x	x	x	x
Stack Emissions	Monthly	In Port					
Sewage	x	x	x	x	x	x	x
Graywater & other Wastewater	x	x	x	x	x	x	x
Medical Waste	x	x	x	x	x	x	x

[----- Additional Reporting Requirements -----]	
Hazardous Waste	Copy of manifest prepared under 42 USC 6921-6939 If offloaded w/out manifest: volume, source, location, destination of waste, reasons
Solid & Industrial Waste	If offloaded: weight, composition, location & destination Quantity processed onboard & explanation if processed waste released or offloaded
Stack Emissions	At least monthly measurements of visible emissions in port, or if equipped with continuous emission monitor the recordings while in AK waters
Sewage	Description of onboard treatment works, quantity processed onboard & explanation if treated waste released or offloaded
Graywater & other Wastewater	Location of offloading
Medical Waste	Description of any onboard treatment & manner/method of disposal if treatment or disposal in Alaska

NOTE: HB 371 requires monitoring of the various wastes in order to meet the above reporting obligations.
(Rep.Kerttula's Office; 3/21/00)

DRAFT

**TABLE 2
FEDERAL/INTERNATIONAL REQUIREMENTS FOR MONITORING, RECORDING AND REPORTING OF POLLUTANTS
BY LARGE MARINE PASSENGER VESSELS**

Pollutant Category Monitoring		Record Keeping	Reporting
Hazardous Waste	Neither USCG nor EPA monitor.	Most haz waste exempt from EPA manifest requirement.	If offloading, MARPOL requirement to call Port & estimate volume. If manifested haz waste, copy sent to EPA & DEC.
Solid & Industrial Waste (including garbage/plastics)	MARPOL Annex V; USCG inspection of incinerator ash.	At sea dumping: 2-yr records & make available to USCG: Lat/Long, distance from shore, type of waste. Port offloading: record location & volume.	At sea dumping: no report required. Port offloading: report to USCG.
Sewage "Blackwater"	Neither USCG nor EPA monitor discharge; USCG operational inspectn of Mar.Sanitatin Devices; EPA discharge reqs. do not exempt addl state requirements	No record keeping required.	No reporting required.
Stack Emissions	Not required; occ. monitoring by NPS (GlacierBay), EPA, or DEC; self-monitoring by companies.	Keep records of any company self-monitoring; no systematic record keeping.	Cos. required to report any smoke level in excess of state standards. No systematic reporting required.
Graywater & other Wastewater	No federal monitoring authority or discharge restrictn. on graywater.	CWA requires record of any accidental oil/haz substance spill.	CWA requires accidental spill report. No systematic reporting required.

NOTE: HB 371 does not cover oil waste or bilge water because these are more highly regulated by USCG.

MARPOL = International Convention for the Prevention of Pollution from Ships, administered by the International Maritime Organization.
CWA = Federal Water Pollution Control Act, or "Clean Water Act".

(Rep.Kerttula's Office; 3-21-00)

HB371 Testimony

My name is Gershon Cohen, and I have lived in S.E. Alaska for nearly 20 years. I have a Masters Degree in Molecular Biology, and a Ph.D. in Environmental Policy. I'm a National Project Director on water quality issues for the Earth Island Institute.

Cruise ships are floating cities transporting more than 5,000 passengers and crew. A typical ship generates, on every *one-week* voyage, approximately:

- 210,000 gallons of raw and treated sewage;
- 1,000,000 gallons of graywater containing solvents, detergents, and pesticides;
- 25,000 gallons of oily bilge water;
- 110 gallons of photo chemicals;
- 5 gallons of dry-cleaning waste (containing PERC);
- 10 gallons of used paints; and
- 5 gallons of expired chemicals.

Despite the industry's abysmal environmental record, which at this point is common knowledge, no one will be monitoring discharges from the ships this summer. HB371 is an effort to close the information gap. The bill will accomplish three desperately needed objectives:

- 1) Establish a "responsible party" for each ship at the beginning of every calendar year;
- 2) Require that once a month ships voluntarily determine and report the quantity, composition, and discharge location for their wastestreams and record visible air emissions while in port, and
- 3) Require an accounting of all hazardous and solid wastes offloaded for transport to a licensed treatment facility.

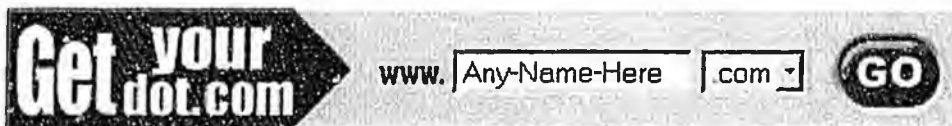
Two fundamental issues must be recognized. First:

- 1) The public has a right and a need to know what is being released from the ships. We have no idea if the legal wastes being released are a problem or not - or whether some ships perform better than others; and
- 2) The bill would simply level the playing field with every other discharging industry. The oil, timber, mining, and seafood processing industries all submit monthly monitoring reports.

This bill will not chase the cruise ships away. It simply recognizes that both the industry and the public have needs. The industry needs Alaska as a destination, and Alaskans need clean air and clean water as well as an active economy. Fortunately, these needs are not incompatible. However, the people of this state need, and have a right, to know what is in the multi-million gallon wastestreams being released within short distances of our towns and fishing grounds.

Many Alaskans hope you will vote in favor of this legislation.

Thank you for this opportunity to comment.



Anchorage Daily News

Thursday, March 2, 2000

Cruise ships

Clean up or face the consequences

The Environmental Protection Agency's report that all six of the major cruise lines operating in Alaska violated state and federal air pollution laws last summer doesn't do much for the industry's credibility.

Since December the state Department of Environmental Conservation, EPA and industry representatives have met to figure out how the industry can leave the least pollution in Alaska's air and water.

The industry has pledged to go beyond what the laws require. It has described pollution-reducing technologies either at hand or in the works.

That's good. DEC Commissioner Michele Brown has said the state's goal is to work out a voluntary compliance agreement with the industry, and if the industry has the means and the will to cruise at an environmental standard higher than the legal minimum, so much the better.

But good faith takes a hit with smokestack results like last summer's. That's because the cruise industry stressed last fall that Alaska's problem was not pollution but lack of information. John Hansen, president of the NorthWest CruiseShip Association, said then that he believed DEC would feel more confidence in the industry with more information.

The EPA citations suggest that it's not just the lack of information that worries Alaskans. It's pollution. Paper won't cover that problem.

Alaska's position is simple. There's no question cruise lines bring business and livelihoods to the state. Trade-offs include crowds and a higher demand on services in ports of call. But air and water pollution? No deal.

The cruise industry still has the chance to run clean on a voluntary basis, to keep its word and exceed the demands of law. That would be the best solution for everyone, avoiding the burden of more regulation for industry and the cost of more regulation for Alaska.

Clean air and water, not regulation, are the state's goals. But Alaska should make clear that if clean air and water require tougher regulation and enforcement, then the industry can count on it.

Any more citations like the EPA's of this week may cost the cruise lines more than the \$27,000 in fines they face. Already the industry has had a small taste of Alaska backlash with the \$5 head tax in Juneau and the increasing coolness of that city's welcome. Other ports have been more forthcoming but won't be for long if cruise ships foul the scenery they sell.

And if doubts about environmental safeguards go beyond Alaska's borders,

cruise lines could pay in lost bookings.

The industry can do well by doing good if it protects Alaska's environment. Whether by mutual agreement or the force of law, Alaska should make sure of that protection.

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 371

Revision Date/Time (Note if correction) _____ Dept. Affected Environmental Conservation
 Title Reports from Marine Passenger Vessels BRU Air & Water Quality
 Component Air Quality
 Sponsor Representative Kerttula
 Requester House Transportation Component No. 2061

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	60.4	35.2	35.2	35.2	35.2	35.2
Travel	5.0	2.5	2.5	2.5	2.5	2.5
Contractual	28.7	5.9	5.9	5.9	5.9	5.9
Supplies	2.0	2.0	2.0	2.0	2.0	2.0
Equipment	4.5	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	100.6	45.6	45.6	45.6	45.6	45.6

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	100.6	45.6	45.6	45.6	45.6	45.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	100.6	45.6	45.6	45.6	45.6	45.6

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	1.0	0.0	0.0	0.0	0.0	0.0
Part-time	0	1.0	1.0	1.0	1.0	1.0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Tom Chapple Phone 269-7686
 Division Air & Water Quality Date/Time 3/20/00 8:42 AM
 Approved by Commissioner *Ken Fiedler* Date 3-20-00
 Agency Department of Environmental Conservation

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ATTACHMENT TO HB 371 FISCAL NOTE:

Fiscal Impact: In year one, one (1) full time position will be required to draft and administer regulations for the management of pollutant emissions into the Alaskan environment. One Environmental Specialist III will be located in Juneau to initially develop regulations and subsequently conduct emissions oversight, quality assurance reviews, and data analysis. These work tasks will require opacity training and certification as well as travel throughout Southeast Alaska. The "inspector" role will include oversight of air, water, and hazardous and solid waste emissions throughout the coastal waters of the state. Once regulations have been developed, this position will be reduced to half time and will be focusing on the evaluation of summertime pollutant emissions.

During the first year, \$10.0 for professional services contracts is included to develop a database to manage and store emissions data received from the cruise ship industry. In addition, \$10.0 is included in the first year to cover advertising, printing, meeting, and mailing costs for two public notice periods on the regulations. Other contractual funds cover position support costs and technical assistance in the management of the database.

Personal Services New Position Detail

DRAFT

Department of Environmental Conservation
HB 371 Fiscal Note - FY2001 Projected

Scenario: FY2001 Legislative Fiscal Note Info - 2
Component: Air Quality (2061)
BRU Name: Air and Water Quality

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#031	Environmental Spec III	FT	A	GG	Juneau	1A	18 B	12.0		45,456	0	0	14,931	60,387

Justification:

Implementation of HB 371

Funding Detail:

1004	General Fund Receipts	100.00%	60,387
Total FundIn		100.00%	60,387

Component Summary:

Total New Positions: 1

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	60,387
Total Funding:-	100.00%	60,387

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

Personal Services New Position Detail

DRAFT

Department of Environmental Conservation
HB 371 Fiscal Note - FY2002 and subsequent years projected

Scenario: FY2001 Legislative Fiscal Note Info - 2
Component: Air Quality (2061)
BRU Name: Air and Water Quality

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#031	Environmental Spec III	FT	A	GG	Juneau	1A	18B	7.0		26,516	0	0	8,710	35,226

Justification:

Implementation of HB 371

Funding Detail:

1004	General Fund Receipts	100.00%	35,226
Total Funding:		100.00%	35,226

Component Summary:

Total New Positions: 1

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	35,226
Total Funding:	100.00%	35,226

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

03/17/00 09:50 FAX 269 3098 Director of AWQ

TABLE 1

HB 371: MONITORING AND REPORTING POLLUTANT RELEASE AND OFFLOADING IN ALASKA

Pollutant Category	[----- Reporting the Release of a Pollutant -----]						
	Date/Time	Location Lat/Long	Volume	Source	Intentional or Accidental	Identifiable EnvDamage	Efforts to Prevent Accidents
Hazardous Waste	x	x	x	x	x	x	x
Solid & Industrial Waste	x	x	x	x	x	x	x
Stack Emissions	Monthly	In Port					
Sewage	x	x	x	x	x	x	x
Graywater & other Wastewater	x	x	x	x	x	x	x
Medical Waste	x	x	x	x	x	x	x

[----- Additional Reporting Requirements -----]

Hazardous Waste	Copy of manifest prepared under 42 USC 6921-6939 If offloaded w/out manifest: volume, source, location, destination of waste, reasons
Solid & Industrial Waste	If offloaded: weight, composition, location & destination Quantity processed onboard & explanation if processed waste released or offloaded
Stack Emissions	At least monthly measurements of visible emissions in port, or if equipped with continuous emission monitor the recordings while in AK waters
Sewage	Description of onboard treatment works, quantity processed onboard & explanation if treated waste released or offloaded
Graywater & other Wastewater	Location of offloading
Medical Waste	Description of any onboard treatment & manner/method of disposal if treatment or disposal in Alaska

NOTE: HB 371 requires monitoring of the various wastes in order to meet the above reporting obligations.
(Rep.Kerttula's Office; 3/21/00)

DRAFT

**TABLE 2
FEDERAL/INTERNATIONAL REQUIREMENTS FOR MONITORING, RECORDING AND REPORTING OF POLLUTANTS
BY LARGE MARINE PASSENGER VESSELS**

Pollutant Category Monitoring		Record Keeping	Reporting
Hazardous Waste	Neither USCG nor EPA monitor.	Most haz waste exempt from EPA manifest requirement.	If offloading, MARPOL requirement to call Port & estimate volume. If manifested haz waste, copy sent to EPA & DEC.
Solid & Industrial Waste (including garbage/plastics)	MARPOL Annex V; USCG inspection of incinerator ash.	At sea dumping: 2-yr records & make available to USCG: Lat/Long, distance from shore, type of waste. Port offloading: record location & volume.	At sea dumping: no report required. Port offloading: report to USCG.
Sewage "Blackwater"	Neither USCG nor EPA monitor discharge; USCG operational inspectn of Mar.Sanitatin Devices; EPA discharge reqs. do not exempt addl state requirements	No record keeping required.	No reporting required.
Stack Emissions	Not required; occ. monitoring by NPS (GlacierBay), EPA, or DEC; self-monitoring by companies.	Keep records of any company self-monitoring; no systematic record keeping.	Cos. required to report any smoke level in excess of state standards. No systematic reporting required.
Graywater & other Wastewater	No federal monitoring authority or discharge restrictn. on graywater.	CWA requires record of any accidental oil/haz substance spill.	CWA requires accidental spill report. No systematic reporting required.

NOTE: HB 371 does not cover oil waste or bilge water because these are more highly regulated by USCG.

MARPOL = International Convention for the Prevention of Pollution from Ships, administered by the International Maritime Organization.
CWA = Federal Water Pollution Control Act, or "Clean Water Act".

(Rep Kerttula's Office; 3-21-00)

HB 371 - People to Testify
@ 3/21/00 Hearing in House Transportation Comm.

(1) Ron Kreizenbeck
Director, Office of Enforcement + Compliance
EPA / Region 10
(206) 553-1265 Q & A

(2) Gershon Cohen
415-788-3666
(@ Earth Island Institute; have Mr. Cohen paged)
Haines resident + project director at
Earth Island Institute

- DAVID ROGERS - D.E.C. TESTIMONY? PROBABLY NOT

- HANS ANTONSEN - AK BOARD OF PILOTS # 723-7447

- CAPT. TED KELLOGG - KETCHIKAN
907-225-9696



Representative Beth Kerttula

Sponsor Statement

House Bill 371

Registration and Reporting by Large Marine Passenger Vessels

House Bill 371 is a "right to know" bill. The bill will give Alaskans information about what wastes cruise ships generate and release while operating in Alaska. This information will let the state assess and maintain the long-term health of the human and natural environment of coastal Alaska at a time when the cruise ship sector of the tourism industry is growing rapidly.

In the aftermath of the Holland America and Royal Caribbean pollution violations in Southeast Alaska, it is clear that state and federal agencies are not getting the information they need to know what, how much, and where these large passenger vessels are releasing wastes off Alaska's coast. The 1999 cruise ship air emission violations recently cited by the Environmental Protection Agency against six cruise line companies operating in Juneau, Glacier Bay, and Seward further underscore public and agency concerns about the need for routine and comprehensive reporting of all wastes generated by cruise ships operating in Alaska.

The current lack of comprehensive data creates an environment of speculative science, misinformation, uncertainty, and public distrust of government and the cruise line industry in Alaska's coastal communities. Notwithstanding cruise line industry assurances of careful shipboard practices and its current efforts to work cooperatively with regulatory agencies, it is imperative that Alaska independently assess the waste volumes and discharge location in order to perpetuate our most valuable tourist asset - our exceptional natural environment.

HB 371 provides a mechanism to let Alaskans find out what the cruise line companies are doing with the substantial volumes of wastes generated onboard while in our state waters. Thank you for your consideration of House Bill 371.

CSHB 371
Registration and Reporting by Large Marine Passenger Vessels

Sectional Analysis

Section 1 adds new sections to AS 46.03, the Environmental Conservation statutes.

Sec. 46.03.460 requires owner/operator who conducts business in Alaska to register annually each vessel with DEC. The in-state contact information becomes paramount when working with foreign flag vessels with international crews and officers as on many of the cruise ships. The CS clarifies that an owner/operator can undertake its annual registration just prior to actually bringing a vessel into state waters, rather than at the beginning of each year.

Sec. 46.03.465 requires owner/operators to monitor cruise ship pollutants in order to fulfill the reporting requirements under AS 46.03.475. Monthly sampling of visible emissions from vessels while in an Alaskan port is required. DEC may adopt regulations, as necessary, and is directed to maximize reporting efficiencies through coordination with other vessel reporting.

The CS clarifies 46.03.465(a) so that the monitoring is only required for that portion of a month when a vessel is actually operating in Alaska waters. Further, the CS amends 46.03.465(c) to narrow the focus of the rulemaking to the quantity and quality of waterborne pollutants and not include reference to monitoring devices and methods. CSHB 371's focus on record keeping and reporting side steps potential preemption issues considered in the recent case *United State v. Locke et. al.* where the U.S. Supreme Court declared several Washington State regulations on oil tankers preempted by federal laws.

Sec. 46.03.470 requires that records be maintained for three years.

Sec. 46.03.475 establishes the monthly reporting that must occur for several categories of pollutants. The CS clarifies that the focus is primarily on pollutants that each vessel either releases into the air or waters within the state, or offloads in an Alaskan port. The specific location and amount of each disposal are required. Significantly, HB 371 does not require that the cruise line companies get a new permit from the state of Alaska nor set any new performance standards on waste discharges. Reporting data in a vessel-specific format is essential to perform site-specific assessments of potential and cumulative environmental impacts. In keeping with DEC's other environmental oversight practices, each report must be certified by a responsible vessel official.

Sec. 46.03.480 establishes civil penalties for failing to register or report, or for falsifying a registration or report. The penalties are based on those imposed on

other businesses operating in Alaska or imposed on violations under other DEC statutes.

Sec. 46.03.485 gives DEC rule-making authority to implement this legislation.

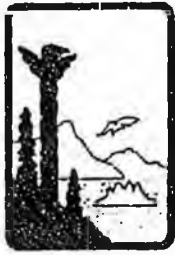
Sec. 46.03.490 defines several terms drawing on existing state and federal environmental pollution definitions.

“large passenger vessel” is revised in the CS to include the 300 gross registered tonnage factor that is a regulatory threshold commonly used by the U.S. Coast Guard and other maritime organizations. The definition focuses on large cruise ships because these are the vessels that generate substantial amounts of wastes on a daily or weekly basis while carrying as many as 2,000 – 4,000 passengers and crew members through Alaskan waters.

“pollutant” is defined to cover the full array of wastes generated during the duration of a typical cruise through Alaskan waters, including air contaminants, gray water, sewage, solid waste, incinerator ash, and hazardous chemicals.

“sewage” is revised in the CS to simplify the definition to that provided under the federal Clean Water Act.

Section 2 amends AS 46.03.760(e) to reflect the penalties incorporated into 46.03.480(c)



Marine Discharge Glossary*

Alaska Department of Environmental Conservation

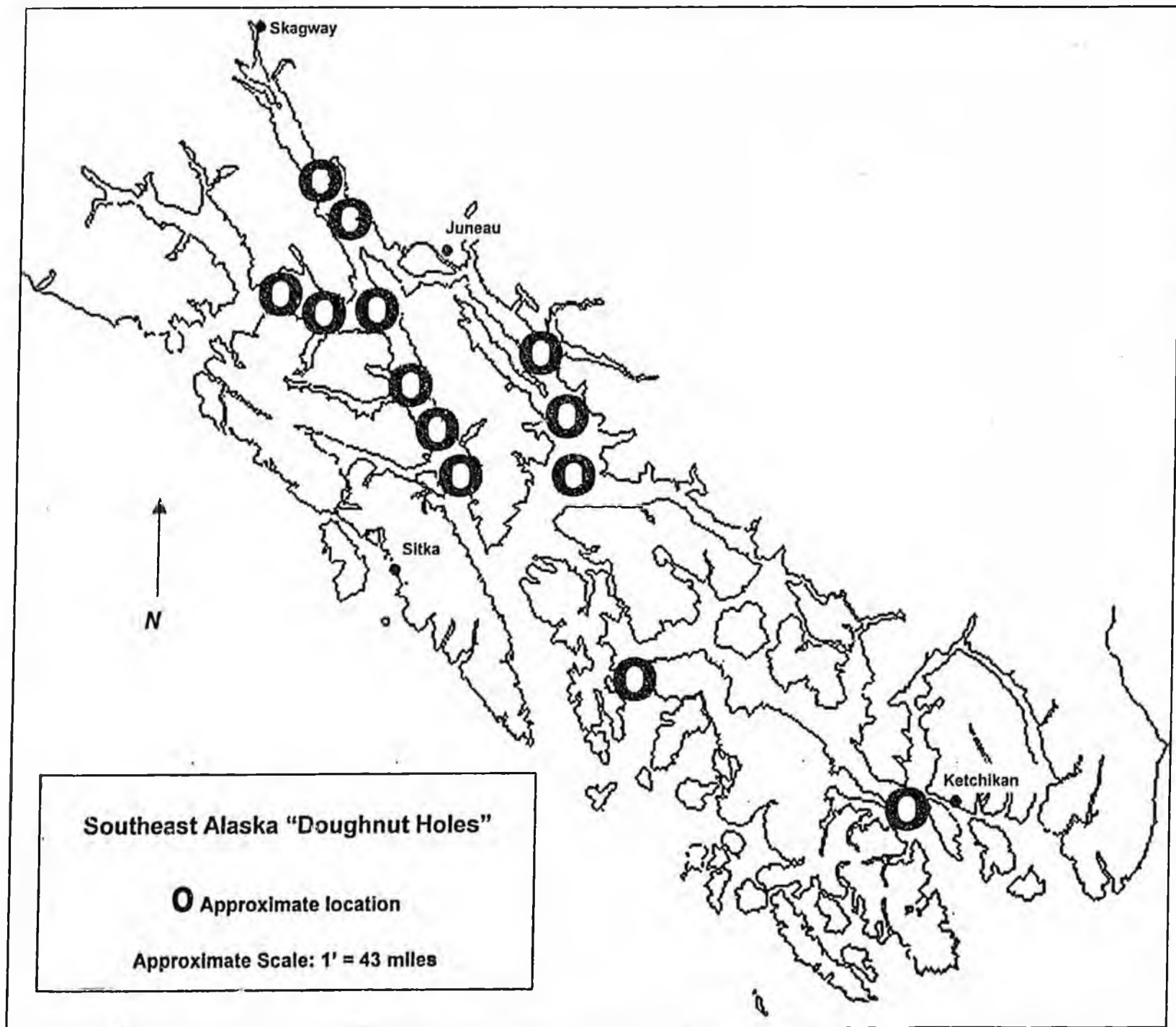
410 Willoughby Ave. Juneau, Alaska 99801-1795

Phone: (907) 465-5060 Fax: 465-5097

www.state.ak.us/dec/

- Bilge Water** Water that collects in the lowest inner part of a ship's hull. Bilge water is frequently contaminated with oil and other lubricants from the engine room. Under various national and international standards, discharged bilge water must not exceed a certain maximum oil concentration (for example, 15 parts per million).
- Black Water** Water contaminated with human waste, collected from shipboard toilets. Under various national and international standards, black water must be treated before being discharged from a vessel.
- Discharge** In this context, any solid or liquid material that emanates from a vessel to a body of water, including anything spilled, leaked, poured, pumped, emitted or dumped from the vessel.
- "Doughnut Holes"** A name given to several small areas of ocean within the Inside Passage that are more than three miles from the mainland and any islands. Current National Oceanic and Atmospheric Administration charts show these areas as outside of State waters. The State, however, asserts that all marine waters within the Alexander Archipelago are waters of the State of Alaska and subject to State law.
- Gray Water** Used water from showers, sinks or basins, including used kitchen water. Treatment of gray water is not required prior to discharge from a vessel.
- MARPOL** Name given to the standards and requirements adopted by the International Convention for the Prevention of Pollution from Ships governing the discharge of oil and other hazardous substances, sewage and garbage.
- Sewage** General term used to describe all liquid and solid waste material that is carried off in sewers or drains, including waste from toilets, sinks, showers, etc. Sewage may include both *black water* and *gray water* (see definitions).

* These are general definitions and are not intended to conform to any specific State, federal, or international requirement. They are provided as a general background to the issues being discussed by the work group.



United States v. Locke
Nos. 98-1701, 98-1706

Full text:

<http://supct.law.cornell.edu/supct/html/98-1701.ZS.html>

The United States Supreme Court held 9-0 (opinion by Kennedy) that Washington's regulations of navigation watch procedures, crew English skills, and maritime casualty reporting are pre-empted by the federal regulatory scheme that regulates oil tankers. As for the other State regulations, the Court remanded the case so their validity can be discussed in light of the considerable federal interest at stake and in conformity with the principles set forth in this decision.

After the Exxon Valdez ran aground in Alaska, both Congress and Washington enacted laws to protect from any future oil spills. The Court found that Washington's laws could not interfere with the federal interest in an area which has been manifest since the beginning of the Republic. Congress has enacted a series of statutes pertaining to maritime tanker transports and ratified international treaties on the subject. Due to the size of the industry and the number of states and nations involved, the Court found uniformity a very important factor, which can best be achieved through national legislation.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 98-1701 and 98-1706

98-1701 UNITED STATES, PETITIONER
v.
GARY LOCKE, GOVERNOR OF
WASHINGTON, ET AL.

98-1706 INTERNATIONAL ASSOCIATION OF INDEPENDENT
TANKER OWNERS (INTERTANKO),
PETITIONER
v.
GARY LOCKE, GOVERNOR OF
WASHINGTON, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[March 6, 2000]

JUSTICE KENNEDY delivered the opinion of the Court.

The maritime oil transport industry presents ever-present, all too real dangers of oil spills from tanker ships, spills which could be catastrophes for the marine environment. After the supertanker *Torrey Canyon* spilled its cargo of 120,000 tons of crude oil off the coast of Cornwall, England, in 1967, both Congress and the State of Washington enacted more stringent regulations for these tankers and provided for more comprehensive remedies in the event of an oil spill. The ensuing question of federal pre-emption of the States' laws was addressed by the Court in *Ray v. Atlantic Richfield Co.*, 435 U. S. 151 (1978).

In 1989, the supertanker *Exxon Valdez* ran aground in

Opinion of the Court

Prince William Sound, Alaska, and its cargo of more than 53 million gallons of crude oil caused the largest oil spill in United States history. Again, both Congress and the State of Washington responded. Congress enacted new statutory provisions, and Washington adopted regulations governing tanker operations and design. Today we must determine whether these more recent state laws can stand despite the comprehensive federal regulatory scheme governing oil tankers. Relying on the same federal statute that controlled the analysis in *Ray*, we hold that some of the State's regulations are pre-empted; as to the balance of the regulations, we remand the case so their validity may be assessed in light of the considerable federal interest at stake and in conformity with the principles we now discuss.

I

The State of Washington embraces some of the Nation's most significant waters and coastal regions. Its Pacific Ocean seacoast consists, in large part, of wave-exposed rocky headlands separated by stretches of beach. Washington borders as well on the Columbia River estuary, dividing Washington from Oregon. Two other large estuaries, Grays Harbor and Willapa Bay, are also within Washington's waters. Of special significance in this case is the inland sea of Puget Sound, a 2,500 square mile body of water consisting of inlets, bays, and channels. More than 200 islands are located within the sound, and it sustains fisheries and plant and animal life of immense value to the Nation and to the world.

Passage from the Pacific Ocean to the quieter Puget Sound is through the Strait of Juan de Fuca, a channel 12 miles wide and 65 miles long which divides Washington from the Canadian Province of British Columbia. The international boundary is located midchannel. Access to Vancouver, Canada's largest port, is through the strait.

Opinion of the Court

Traffic inbound from the Pacific Ocean, whether destined to ports in the United States or Canada, is routed through Washington's waters; outbound traffic, whether from a port in Washington or Vancouver, is directed through Canadian waters. The pattern had its formal adoption in a 1979 agreement entered by the United States and Canada. Agreement for a Cooperative Vessel Traffic Management System for the Juan de Fuca Region, 32 U. S. T. 377, T. I. A. S. No. 9706.

In addition to holding some of our vital waters, Washington is the site of major installations for the Nation's oil industry and the destination or shipping point for huge volumes of oil and its end products. Refineries and product terminals are located adjacent to Puget Sound in ports including Cherry Point, Ferndale, Tacoma, and Anacortes. Canadian refineries are found near Vancouver on Burrard Inlet and the lower Fraser River. Crude oil is transported by sea to Puget Sound. Most is extracted from Alaska's North Slope reserve and is shipped to Washington on United States flag vessels. Foreign-flag vessels arriving from nations such as Venezuela and Indonesia also call at Washington's oil installations.

The bulk of oil transported on water is found in tankers, vessels which consist of a group of tanks contained in a ship-shaped hull, propelled by an isolated machinery plant at the stern. The Court described the increase in size and numbers of these ships close to three decades ago in *Ashe v. American Waterways Operators, Inc.*, 411 U. S. 325, 335 (1973), noting that the average vessel size increased from 16,000 tons during World War II to 76,000 tons in 1966. (The term "tons" refers to "deadweight tons," a way of measuring the cargo-carrying capacity of the vessels.) Between 1955 and 1968, the world tanker fleet grew from 2,500 vessels to 4,300. *Ibid.* By December 1973, 366 tankers in the world tanker fleet were in excess of 175,000 tons, see 1 M. Tusiani, *The Petroleum Shipping Industry*

Opinion of the Court

79 (1996), and by 1998 the number of vessels considered "tankers" in the merchant fleets of the world numbered 6,739, see U. S. Dept. of Transp., Maritime Administration, Merchant Fleets of the World 1 (Oct. 1998).

The size of these vessels, the frequency of tanker operations, and the vast amount of oil transported by vessels with but one or two layers of metal between the cargo and the water present serious risks. Washington's waters have been subjected to oil spills and further threatened by near misses. In December 1984, for example, the tanker ARCO Anchorage grounded in Port Angeles Harbor and spilled 239,000 gallons of Alaskan crude oil. The most notorious oil spill in recent times was in Prince William Sound, Alaska, where the grounding of the *Exxon Valdez* released more than 11 million gallons of crude oil and, like the *Torrey Canyon* spill before it, caused public officials intense concern over the threat of a spill.

Washington responded by enacting the state regulations now in issue. The legislature created the Office of Marine Safety, which it directed to establish standards for spill prevention plans to provide "the best achievable protection [BAP] from damages caused by the discharge of oil." Wash. Rev. Code §88.46.040(3) (1994). The Office of Marine Safety then promulgated the tanker design, equipment, reporting, and operating requirements now subject to attack by petitioners. Wash. Admin. Code (WAC) §317-21-130 *et seq.* (1999). A summary of the relevant regulations, as described by the Court of Appeals, is set out in the Appendix, *infra*.

If a vessel fails to comply with the Washington rules, possible sanctions include statutory penalties, restrictions of the vessel's operations in state waters, and a denial of entry into state waters. Wash. Rev. Code. §§88.46.070, 88.46.080, 88.46.090 (1994).

Petitioner International Association of Independent Tanker Owners ("Intertanko") is a trade association whose

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305 members own or operate more than 2,000 tankers of both United States and foreign registry. The organization represents approximately 80% of the world's independently owned tanker fleet; and an estimated 60% of the oil imported into the United States is carried on Intertanko vessels. The association brought this suit seeking declaratory and injunctive relief against state and local officials responsible for enforcing the BAP regulations. Groups interested in environmental preservation intervened in defense of the laws. Intertanko argued that Washington's BAP standards invaded areas long occupied by the Federal Government and imposed unique requirements in an area where national uniformity was mandated. Intertanko further contended that if local political subdivisions of every maritime nation were to impose differing regulatory regimes on tanker operations, the goal of national governments to develop effective international environmental and safety standards would be defeated.

Although the United States declined to intervene when the case was in the District Court, the governments of 13 ocean-going nations expressed concerns through a diplomatic note directed to the United States. Intertanko lodged a copy of the note with the District Court. The concerned governments represented that "legislation by the State of Washington on tanker personnel, equipment and operations would cause inconsistency between the regulatory regime of the US Government and that of an individual State of the US. Differing regimes in different parts of the US would create uncertainty and confusion. This would also set an unwelcome precedent for other Federally administered countries." Note Verbale from the Royal Danish Embassy to the U. S. Department of State 1 (June 14, 1996).

The District Court rejected all of Intertanko's arguments and upheld the state regulations. *International Assn. of Independent Tanker Owners (Intertanko) v.*

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Lowry, 947 F. Supp. 1484 (WD Wash. 1996). The appeal followed, and at that stage the United States intervened on Intertank's behalf, contending that the District Court's ruling failed to give sufficient weight to the substantial foreign affairs interests of the Federal Government. The United States Court of Appeals for the Ninth Circuit held that the State could enforce its laws, save the one requiring the vessels to install certain navigation and towing equipment. 148 F. 3d 1220 (1998) (The Court of Appeals reasoned that this requirement, found in WAC §317-21-265, was "virtually identical to" requirements declared pre-empted in *Rcy v. Atlantic Richfield Co.*, 435 U. S. 151 (1978). 148 F. 3d, at 1066. Over Judge Graber's dissent, the Court of Appeals denied petitions for rehearing en banc. 159 F. 3d 1220 (1998). Judge Graber, although unwilling, without further analysis, to conclude that the panel reached the wrong result, argued that the opinion was "incorrect in two exceptionally important respects: (1) The opinion places too much weight on two clauses in Title I of OPA 90 [The Oil Pollution Act of 1990] that limit OPA 90's preemptive effect. (2) Portions of the opinion that discuss the Coast Guard regulations are inconsistent with Ninth Circuit and Supreme Court precedent." *Id.*, at 1221. We granted certiorari and now reverse. 527 U. S. 1063 (1999).

II

The State of Washington has enacted legislation in an area where the federal interest has been manifest since the beginning of our Republic and is now well established. The authority of Congress to regulate interstate navigation, without embarrassment from intervention of the separate States and resulting difficulties with foreign nations, was cited in the Federalist Papers as one of the reasons for adopting the Constitution. *E.g.*, The Federalist Nos. 44, 12, 64. In 1789, the First Congress enacted a

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law by which vessels with a federal certificate were entitled to 'the benefits granted by any law of the United States.' Act of Sept. 1, 1789, ch. 11, §1, 1 Stat. 55. The importance of maritime trade and the emergence of maritime transport by steamship resulted in further federal licensing requirements enacted to promote trade and to enhance the safety of crew members and passengers. See Act of July 7, 1838, ch. 191, 5 Stat. 304; Act of Mar. 3, 1843, ch. 94, 5 Stat. 626. In 1871, Congress enacted a comprehensive scheme of regulation for steam powered vessels, including provisions for licensing captains, chief mates, engineers, and pilots. Act of Feb. 28, 1871, ch. 100, 16 Stat. 440.

The Court in *Cooley v. Board of Wardens of Port of Philadelphia ex rel. Soc. for Relief of Distressed Pilots*, 12 How. 299 (1852), stated that there would be instances in which state regulation of maritime commerce is inappropriate even absent the exercise of federal authority, although in the case before it the Court found the challenged state regulations were permitted in light of local needs and conditions. Where Congress had acted, however, the Court had little difficulty in finding state vessel requirements were pre-empted by federal laws which governed the certification of vessels and standards of operation. *Gibbons v. Ogden*, 9 Wheat. 1 (1824), invalidated a New York law that attempted to grant a monopoly to operate steamboats on the ground it was inconsistent with the coasting license held by the vessel owner challenging the exclusive franchise. And in *Sinnot v. Davenport*, 22 How. 227 (1859), the Court decided that the federal license held by the vessel contained 'the only guards and restraints, which Congress has seen fit to annex to the privileges of ships and vessels engaged in the coasting trade.' *Id.*, at 241. The Court went on to explain that in such a circumstance, state laws on the subject must yield: 'In every such case, the act of Congress or treaty is supreme; and

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the law of the State, though enacted in the exercise of powers not controverted, must yield to it." *Id.*, at 243.

Against this background, Congress has enacted a series of statutes pertaining to maritime tanker transports and has ratified international agreements on the subject. We begin by referring to the principal statutes and international instruments discussed by the parties.

1. *The Tank Vessel Act.*

The Tank Vessel Act of 1936, 49 Stat. 1889, enacted specific requirements for operation of covered vessels. The Act provided that "[i]n order to secure effective provisions against the hazards of life and property," additional federal rules could be adopted with respect to the "design and construction, alteration, or repair of such vessels," "the operation of such vessels," and "the requirements of the manning of such vessels and the duties and qualifications of the officers and crews thereof." The purpose of the Act was to establish "a reasonable and uniform set of rules and regulations concerning . . . vessels carrying the type of cargo deemed dangerous." H. R. Rep. No. 2962, 74th Cong., 2d Sess., 2 (1936). The Tank Vessel Act was the primary source for regulating tank vessels for the next 30 years, until the *Torrey Canyon* grounding led Congress to take new action.

2. *The Ports and Waterways Safety Act of 1972.*

Responding to the *Torrey Canyon* spill, Congress enacted the Ports and Waterways Safety Act of 1972 (PWSA). The Act, as amended by the Port and Tanker Safety Act of 1978, 92 Stat. 1471, contains two somewhat overlapping titles, both of which may, as the *Ray* Court explained, preclude enforcement of state laws, though not by the same pre-emption analysis. Title I concerns vessel traffic "in any port or place under the jurisdiction of the United States." 110 Stat. 3934, 33 U. S. C. §1223(a)(1)

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(1997 ed. Supp. III). Under Title I, the Coast Guard may enact measures for controlling vessel traffic or for protecting navigation and the marine environment, but it is not required to do so. *Ibid.*

Title II does require the Coast Guard to issue regulations, regulations addressing the "design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels . . . that may be necessary for increased protection against hazards to life and property, for navigation and vessel safety, and for enhanced protection of the marine environment." 46 U. S. C. §3703(a).

The critical provisions of the PWSA described above remain operative, but the Act has been amended, most significantly by the Oil Pollution Act of 1990 (OPA), 104 Stat. 484. OPA, enacted in response to the *Exxon Valdez* spill, requires separate discussion.

3. *The Oil Pollution Act of 1990.*

The OPA contains nine titles, two having the most significance for these cases. Title I is captioned "Oil Pollution Liability, and Compensation" and adds extensive new provisions to the United States Code. See 104 Stat. 2375, 33 U. S. C. §2701 *et seq.* (1994 ed. and Supp. III). Title I imposes liability (for both removal costs and damages) on parties responsible for an oil spill. §2702. Other provisions provide defenses to, and limitations on, this liability. 33 U. S. C. §§2703, 2704. Of considerable importance to these cases are OPA's saving clauses, found in Title I of the Act, §2718, and to be discussed below.

Title IV of OPA is entitled "Prevention and Removal." For the most part, it amends existing statutory provisions or instructs the Secretary of Transportation (whose departments include the Coast Guard) to take action under previous grants of rulemaking authority. For example, Title IV instructs the Coast Guard to require reporting of

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marine casualties resulting in a "significant harm to the environment." 46 U. S. C. §6101(a)(5) (1994 ed. and Supp. V). Title IV further requires the Secretary to issue regulations to define those areas, including Puget Sound, on which single hulled tankers shall be escorted by other vessels. 104 Stat. 523. By incremental dates specified in the Act, all covered tanker vessels must have a double hull. 46 U. S. C. §3703a.

4. Treaties and International Agreements.

The scheme of regulation includes a significant and intricate complex of international treaties and maritime agreements bearing upon the licensing and operation of vessels. We are advised by the United States that the international regime depends upon the principle of reciprocity. That is to say, the certification of a vessel by the government of its own flag nation warrants that the ship has complied with international standards, and vessels with those certificates may enter ports of the signatory nations. Brief for United States 3.

Illustrative of treaties and agreements to which the United States is a party are the International Convention for the Safety of Life at Sea, 1974, 32 U. S. T. 47, T. I. A. S. No. 9700, the International Convention for Prevention of Pollution from Ships, 1973, 17 I. L. M. 546, and the International Convention of Standards of Training, Certification and Watchkeeping for Seafarers, With Annex, 1978 (STCW), S. Treaty Doc. No. 96-1, C. T. I. A. No. 7624.

The United States argues that these treaties, as the supreme law of the land, have pre-emptive force over the state regulations in question here. We need not reach that issue at this stage of the case because the state regulations we address in detail below are pre-empted by federal statute and regulations. The existence of the treaties and agreements on standards of shipping is of relevance, of course, for these agreements give force to the longstanding