

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11382 SENATE TRANSPORTATION

**Table 16**  
**Cost and Effectiveness Measures of Proposed Roadway Segments**  
**Alaska Peninsula Corridor**

Segment	Annual O&M Cost	Annualized Capital Cost @ 7% Interest	Annualized Capital Cost plus O&M Cost	Estimated Annual Freight Cost Savings	Net Annualized Cost	Alaska Peninsula Roadway System Only		Full System	
						Estimated Annual 2020 Person Trips	Net Annualized Cost per Person Trip	Estimated Annual 2020 Person Trips	Net Annualized Cost per Person Trip
South Naknek to Egegik	\$877,500	\$12,196,040	\$13,073,500	\$0	\$13,073,500	-	NA	149,500	\$87.45
Egegik to Pilot Point	\$739,800	\$7,060,780	\$7,800,600	\$367,300	\$7,433,300	21,300	\$348.98	120,100	\$61.89
Pilot Point to Ugashik	\$159,300	\$5,009,150	\$5,168,500	\$469,000	\$4,699,500	31,800	\$147.78	95,200	\$49.36
Ugashik to Port Heiden	\$1,185,300	\$11,312,710	\$12,498,000	\$35,700	\$12,462,300	32,400	\$384.64	93,300	\$133.57
Port Heiden to Chignik	\$837,000	\$7,908,470	\$8,825,500	\$639,500	\$8,186,000	42,700	\$191.71	71,100	\$115.13
Chignik Intervillage Road	\$305,100	\$2,911,930	\$3,217,000	\$1,094,800	\$2,122,200	109,600	\$19.36	110,800	\$19.15
Chignik to Perryville	\$541,350	\$5,301,720	\$5,843,100	\$445,800	\$5,397,300	26,800	\$201.39	27,500	\$196.27
Perryville to Ivanof Bay	\$135,000	\$1,280,160	\$1,423,500	\$73,000	\$1,350,500	12,500	\$108.04	12,000	\$105.51

*Handwritten:*  
 P 27 2  
 11/1/04

**State of Alaska**  
**Office of the Governor**

**TONY KNOWLES**  
 Governor  
 P.O. Box 110001  
 Juneau, Alaska 99811-0001  
**NEWS RELEASE**



**Bob King**  
 Press Secretary  
**Claire Richardson**  
 Deputy Press Secretary  
 907-465-3800  
 FAX: 907-465-3800

FOR IMMEDIATE RELEASE: June 6, 1985

05-139

**KNOWLES UNVEILS \$2 BILLION TRANSPORTATION INITIATIVE**

**4-Point Plan Includes Roads, Maintenance, Trails, Recreational Access**

**ANCHORAGE**—Gov. Tony Knowles today announced a \$2 billion, four-point plan to revamp the way Alaska builds and maintains its transportation system by involving the public and making new and existing roads more user friendly with the addition of trails, turnouts and public facilities.

The governor's plan calls for spending about \$220 million a year over the next 10 years to bring Alaska's major highways up to first-class standards, to begin a new partnership with communities to recognize their transportation needs and to build roads that are key to economic development. The governor also launched a new initiative - Trails and Recreational Access for Alaska (TRAAK) - designed to build the finest trail system in the world, improve recreational access and maintain Alaska's role as a world class tourist destination.

"Transportation is key to Alaska's economic health, it's one of the most fundamental responsibilities government has to its citizens and it's what allows Alaskans to get out and enjoy this wonderful country we love," Knowles said in a speech to the Downtown Rotary Club where he announced the package. "A well maintained transportation system is the ticket to opening up Alaska - for economic opportunities like mineral development and tourism, for recreational opportunities like fishing and snowmachining, and for access to the places Alaskans need to go every day."

The governor's transportation initiative includes these four points:

- Bring Alaska's federal statewide road system up to first-class standards. Knowles pledged to direct about \$120 million a year over the next decade to improve the 1,610 miles in Alaska which are part of the National Highway System. The work is essential now because Congress is changing the way it funds state highway projects, which could reduce Alaska's share.
- A new process to drive Alaska's transportation policy which relies on widespread public participation and a partnership with local governments to build and maintain essential local roads which feed into the national system.

-more-

*Attachment E  
8182*

**Transportation Initiative**

**-2-2-2-**

**June 8, 1995**

Knowles pledged to invest more in rural transportation that provides economic opportunities and health and safety needs for local communities while recognizing local conditions. For example, he said a 25-mile road built to national standards between Nondalton and Illamna in southwest Alaska would cost \$16 million. But the Knowles administration proposes to cut that cost in half by adapting to local conditions. The road would save money in education costs and open economic opportunities in connection with nearby Lake Clark National Park and Preserve.

- New construction of roads that lead directly to economic development, to which the governor is dedicating about \$50 million a year. The governor said such roads must be proven to lead to new jobs. For example, he said a 20-mile road between King Cove and Cold Bay would allow salmon caught in the King Cove area to be delivered quickly to Cold Bay's 10,000-foot jet runway, putting the fresh product on the international market. He also said the \$40 million Whittier road, which he endorsed, would lead to new tourism industries in that Prince William Sound community.
- The TRAAK initiative designed to make Alaska's roads more accessible to Alaskans and visitors alike. The governor pledged to dedicate \$15 million to \$20 million annually in federal funds to building separated trails along Alaska's major highway system, wayides, information displays and access for recreational opportunities.

Knowles said his first priority is rebuilding the 140-mile Glenn Highway between Palmer and Glenallen to include a bicycle/skiing trail and pullouts to enable users to picnic, view the spectacular scenery and enjoy Alaska's outdoors with their families.

"Imagine an upgraded Glenn Highway with scenic pullouts, a separated bike trail, access for snowmachining and cross-country skiing, trail heads with information displays and the always vital bathrooms for that carload of kids," Knowles said. "Right now, the Matanuska Glacier is too often a white streak across the windshield because there's no good place to park and get out and take in the view."

The TRAAK initiative also is designed to improve access to South Denali, to complete a bicycle trail between Anchorage and Girdwood and for other scenic roads, such as the Richardson Highway to Fairbanks and the Seward Highway between Seward and Anchorage.

The governor also chided legislators for flat-funding road maintenance this year, which effectively reduces Alaska's ability to maintain its roads and other transportation links. He called for a new commitment on both the state and federal level to recognizing the importance of a sound transportation system for Alaska's economic health.

AY-LINT E  
P 2 7 2

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA STATE COUNCIL OF )  
TROUT UNLIMITED, ROBERT B. )  
GILLAM, )

Plaintiffs, )

STATE OF ALASKA, ALASKA )  
DEPARTMENT OF TRANSPORTATION )  
AND PUBLIC FACILITIES, )

Defendants. )

Case No. 3AN-02-09363 CI

AFFIDAVIT OF JEFF OTTESEN

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

Jeff Ottesen, being first duly sworn, deposes and says:

1. An update to the Southwest Alaska Transportation Plan is being undertaken at the present time. The firm of Parsons Brinckerhoff has begun work on the project. The project manager for the firm is Mark Scheibe, the same project manager that prepared the original Southwest Alaska Transportation Plan completed in 2003.


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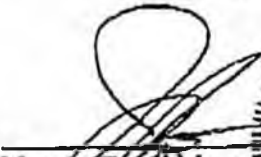
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*AAV about F  
P 192*

2. The schedule for this plan update provides for the plan to be complete by mid-July, 2004. Following adoption of the plan by the Commissioner of DOT&PF, the plan would be considered a valid modification of the Statewide Transportation Plan for the state.

  
\_\_\_\_\_  
Jeff Ottesen

SUBSCRIBED AND SWORN TO before me this 18<sup>th</sup> day of March,  
2004.

  
\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: June 26, 2004

*Att. Let. F  
p. 2 of 2*

SESSION ADDRESS:  
Alaska State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-4925  
Fax: (907) 465-3517  
Toll Free: 1-800-821-4925

*Senator Gary Stevens*  
*Alaska State Legislature*

INTERIM ADDRESS:  
112 Mill Bay Road  
Kodiak, Alaska 99615  
(907) 486-4925  
Fax: (907) 486-5264

**Sponsor Statement SB 371**

SB 371: "An Act relating to the powers and duties of the Department of Transportation and Public Facilities; relating to a long-range program for highway construction and maintenance; repealing a requirement that public facilities comply with energy standards adopted by the Department of Transportation and Public Facilities"

SB 371, companion legislation to HB 327, is being brought forward at the suggestion of the DOT and the Attorney General's office to clean up an obsolete statute.

In the late 70's the Governor wrote Executive Order No. 39 § 2 (1977) creating the "Alaska Transportation Council". The executive order directs the Department of Transportation and Public Facilities Commissioner to consult with this council on all annual transportation projects. Projects were not supposed to move forward without the recommendation of the council being considered. Regrettably, that governor and subsequent governors did not populate the council and it never actually came into existence. Because the State may have unwittingly overlooked the requirement to "consider the recommendation of the Council" and do a cost "benefit study" for each project in the state, it has found itself in litigation, delaying construction of a bridge in rural Alaska.

The problem is straightforward. The state is not complying with this old statute, thereby setting a basis for litigation. To preserve our current and future projects, SB 371 will amend this statute and take the further step of making it retroactive.

The other changes to the statute the bill proposes amount to house cleaning. The changes reflect "Powers and Duties" that have been handed to other agencies along with practices that cost more than the resulting savings. Also some changes include allowing the Commissioner of Department of Transportation and Public Facilities to study "alternative fuels" for use in state vehicles rather than just natural gas. And finally, the bill changes "annual" requirements to "periodic" which will allow the commissioner discretion in choosing times that are sensible. This will save the money spent on studies and let it be spent on road projects.

I urge your support of this important measure.

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(907) 486-4925  
Fax: (907) 486-5264

**Memorandum**

Date: March 29, 2004

To: Senator John Cowdery  
Chair, Senate Transportation Committee

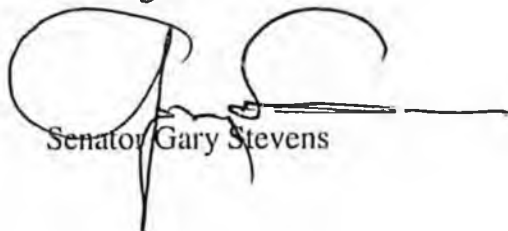
Fr: Senator Gary Stevens

Re: SB 371

I respectfully request a Transportation Committee hearing on SB 371, "An Act relating to the powers and duties of the Department of Transportation and Public Facilities; relating to a long-range program for highway construction and maintenance; repealing a requirement that public facilities comply with energy standards adopted by the Department of Transportation and Public Facilities; and providing for an effective date" at your earliest convenience.

Thank you.

Best regards,



Senator Gary Stevens

Discussion on Why a Mandatory 'Costs and Benefits'  
Analysis is Not Appropriate  
Alaska Department of Transportation and Public Facilities  
February 18, 2004

AS 44.42.050 (a) requires the department to: "...consider means and costs of improving existing modes and facilities, state and federal subsidies, and the costs and benefits of new transportation modes and facilities."

On the surface, this requirement seems both reasonable and innocuous. However, there are many times the department does not spend the time or money to conduct such formal costs and benefits analyses. The most common examples are in rural areas where long distances and a small population base would make such efforts nonsensical—basic transportation elements are routinely needed regardless of their costs.

A recent court decision on a request for a preliminary injunction found the department at fault for not using a benefit-cost analysis on a project linking two rural villages. It is typical of many other rural projects we have undertaken, in that it provides a basic transportation system, but would not benefit from a detailed benefit-cost analysis.

Rural Alaska abounds in transportation needs that are provided as a basic public service. Virtually none of these would rise to a positive benefit-cost ratio because the small population base. Examples include:

- Ferries and ferry terminals
- Airports that meet minimum standards for length, width, adequate approaches, lighting and aprons/taxiways.
- Village roads to basic community services (e.g., sewage lagoons, water sources, airports, sanitary landfills, barge landing sites).

Even in the more populated regions of Alaska many categories of transportation projects would not be expected to present a positive benefit-cost ratio. Examples of such projects include:

- Rail-highway grade separation projects
- Paving of residential roads
- Landscaping and beautification
- Trails and amenities
- Pollution and environmental mitigation features needed to meet legal and permit requirements
- Transit investments (buses, bus stops)

Finally, the department often undertakes projects because a member of the Congressional delegation earmarked them. Such projects do not receive the normal prior planning or

detailed evaluation. The state has very little choice but to accept the project funds for the stated purpose, or to not use the funding.

Benefit and cost (B-C) analysis is a tool that is most often used to evaluate among and between different alternatives. In such cases, the tool helps to compare and contrast different choices in solving a transportation requirement. For example, in the development of the Southeast Alaska Transportation Plan, a number of different B-C analyses were prepared to better understand vastly different types of system options. Even in rural Alaska, the tool is used to help identify the most "cost-effective" solution, even if the costs still outweigh the benefits.

B-C analysis is a good technique and is routinely used in some circumstances. However, under the current construction of the statute, and the court's recent interpretation, every project undertaken must receive this type of analyses. For the reasons stated it is not appropriate nor a prudent use of project funds to routinely require these B-C analyses.

THE LAW OFFICE OF  
GEOFFREY Y. PARKERPhone: (907) 222-6859  
Fax: (907) 258-7304

E-mail: gparker@gci.net

730 I Street, Suite 226  
Anchorage, Alaska 99501258-7304  
fax

April 5, 2004

Mr. Todd Larkin  
Staff, Representative James Holm  
State Capitol, Room 416  
Juneau, AK 99801-1182

Via Fax: 907-465-2937

Re: HB 327; Bob Gillam as named plaintiff; your testimony

Dear Mr. Larkin:

Section 1 of HB 327 and SB 371 does not cite the court case correctly. I understand from you that the bills were drafted by lawyers for the Legislature with assistance from the Department of Law. Because lawyers know to follow the Uniform Rules of Citation, I suspect that the fact that these bills do not do so reflects a decision by the drafters to prevent legislators from knowing that Mr. Gillam is a named plaintiff. I asked Mr. Gillam today if he wants me to let you know that he desires that legislators know that he is a plaintiff. I understood him to say he so desired.

The correct citation for the court case is: *Alaska State Council of Trout Unlimited, Robert B. Gillam v. State of Alaska, Alaska Department of Transportation and Public Facilities, Case No. 3 AN-02-09363 Civil.*

You also might correct the record of your testimony regarding HB 327 at the hearing of February 26, 2004 before the House Transportation Committee. The minutes of that hearing reflect that you as testified as follows:

Long ago, [an] executive order ... found it's way into statute through the lack of legislative action; when you fail to take action it goes into statute. ... *Essentially, it was outside the practices of the department and the state; the statute that's mentioned here.* ... A gentlemen who had some conflicts with one of the projects that DOT [Department of Transportation & Public Facilities (DOT&PF)] was doing, was very industrious and dug through the statutes and found out that we weren't complying with this statute and therefore stopped one of our state projects.

Italics added; ellipses original.

In your testimony, you were clearly referring to the provision in AS 44.42.050(a) which requires ADOT to consider the costs of improvements to existing facilities and the costs and benefits of new facilities.

Your testimony was erroneous or misleading. I suspect that ADOT has been less than accurate in describing the situation to you and Representative Holm.

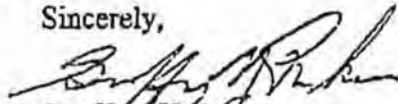
HB 327, Letter to Mr. Larkin  
April 5, 2004  
Page 2

Here are the facts, which you verify with Mr. Ottesen at ADOT.

- The introductory pages of the Southwest Regional Transportation Plan, the Southeast Regional Transportation Plan, and the Prince William Sound Regional Transportation Plan – all adopted since the late 1990's -- say that they are adopted under AS 44.42.050. (Obviously, the statute is not "*outside the practices of the department and the state*" – as you said – when the ADOT's plans say they are adopted under the statute.)
- Each of these plans contains or relies upon cost-benefit analysis or cost-effectiveness analysis for numerous projects. (ADOT and plaintiffs agreed on that point in court.)
- The court enjoined the Iliamna-Nondalton project because ADOT had failed to consider the costs and benefits of that particular project. The court did not enjoin the project because consideration of costs and benefits generally was "*outside the practices of the department and the state*" – as you said – or because ADOT was not complying in general – as you said. After all, the plans were all adopted in express recognition of the statute and the plans relied on cost-benefit or cost-effectiveness analysis for many other potential projects, just not Iliamna-Nondalton.

I am confident that Mr. Ottesen at ADOT will confirm these matters to you and set the record straight. Please make this letter part of the record.

Sincerely,



Geoffrey V. Parker  
Counsel for Bob Gillam and Trout  
Unlimited

cc: Bob Gillam via email  
Jeffery Ottesen, ADOT, via email  
Senator Cowdery, Senate Transportation via fax  
Representative Holm

# Alaska State Legislature

Senator Gary Stevens, Chair  
Alaska State Capitol, Room 417  
Juneau, Alaska 99801-1182  
Phone 907-465-4925  
Fax 907-465-3517



Committee Members:  
Senator John Cowdery  
Senator Bert Stedman  
Senator Gretchen Guess  
Senator Lyman Hoffman

## Senate State Affairs Committee

### Sponsor Statement SB 371

(Updated April 5, 2004)

SB 371: "An Act relating to the powers and duties of the Department of Transportation and Public Facilities; relating to a long-range program for highway construction and maintenance; repealing a requirement that public facilities comply with energy standards adopted by the Department of Transportation and Public Facilities"

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The problem is straightforward. The state is not complying with this old statute, thereby setting a basis for litigation. To preserve our current and future projects, SB 371 will amend this statute and take the further step of making it retroactive.

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I urge your support of this important measure.

**Rebuttal to Statement of Geoffrey Parker (March 25, 2004)  
Re: SB 371**

**Prepared by:  
Alaska Department of Transportation and Public Facilities  
April 2, 2004**

Boldface text is taken from the key points made in Mr. Parker's letter:

**SB 371 Eliminates All Objective Criteria for Determining Which Projects to Fund**

1. The transportation-planning program within Alaska is inherently a federally funded program since nearly all funding is either federal funds, or state matching funds needed to receive federal funds. It is instructive to point out that the federal rules that govern transportation planning and project selection are detailed and rigorous. The total universe of federal laws governing transportation planning has grown substantially since the state law was passed and will likely continue to grow. In short, transportation planning is bogged down in mandated process and not the opposite. (See chart of federal laws governing transportation.)

**SB 371 Increases the Likelihood that the State Will Have to Refund More, Not Less, Money to the Federal Government**

2. The argument that this bill would increase the likelihood of time-traps turns common sense on its head. We believe that SB 371 is needed to prevent projects from being delayed excessively. Current federal requirements take 2-7 (or more) years to bring a project to a construction-ready stage. A few projects take much longer such as the Sterling Highway at Cooper Landing that is nearing 30 years!

The current list of time-traps in Alaska has resulted from a complex set of causes, and only a small percentage is due strictly to project development delays. The department would gladly provide a briefing to the Committee on the causes and solutions to time-traps, if requested.

Without belaboring this issue, since SB 371 would remove impractical requirements, and avoid tedious duplication between state and federal law, it will prevent project delays. It follows that this bill helps to prevent rather than lead to additional time traps.

**By Eliminating State Requirements for Transportation Planning, SB 371 Reduces the Role of the Legislature to a Rubber Stamp**

3. Again, common sense is turned upside down. As written today, any project added to the capital budget by a member of the Legislature may be found contrary to law since it has neither been reviewed under federal nor state planning requirements pointed out by Mr. Parker.

While federal law is outside our collective control, it is logical to address issues that may be changed at the state level. Reducing the inflexible requirements in state law, as SB 371 does, solves part of this problem.

It is ironic that at a time that other states are asking Congress to 'streamline' federal requirements so as to make transportation planning and project development less costly and time consuming Mr. Parker suggests there is no crisis, and indeed we should add more state law and requirements on top of those already in place!

As to his argument there are no objective criteria, we have enclosed a set of criteria used to select projects in Alaska. These criteria have been adopted under state regulation and govern project selection (CTP criteria for Urban and Rural projects enclosed).

#### **Eliminating the Requirement that Costs and Benefits be Considered Makes Good Projects Less Likely to Proceed Efficiently As Bad Projects Compete for Funds**

- \* 4. DOT&PF agrees that the consideration of both costs and benefits is useful and indeed appropriate for many but not all projects. What we consider inappropriate is it being mandatory on every new project regardless of type, size or urgency. Cost and benefit consideration is used routinely during project design even though no state law requires it. (The consideration of cost and benefits in AS 44.42.050 is required for project selection, but not during project design.) Key, is the point that it be used where it is meaningful, and not universally.

Inherently, funding for transportation is oversubscribed, with needs far outweighing financial resources. No one knows this more than this agency thus we will continue to rely on cost-benefit where it makes sense. Restructuring the cost-benefit language in the bill to make it applicable where meaningful is a reasonable improvement. But as currently structured, it has been used to delay one project and may be used to attempt to halt many other projects.

#### **Alaskans Deserving of Projects Lose Under SB 371; Alaskans Undeserving Win**

5. The project at Iliamna to Nondalton has been in several different state transportation plans prepared under several different governors since the mid-1970's. It has been partially funded by different legislatures, and partially constructed under different governors. The 1986 decision to not continue the project occurred during a time of reduced state revenue. Since then federal funds have increased, and federal guidance on how these are used has also changed.

Perhaps most importantly, since the 1986 decision, the federal government has adopted new policy (see Presidential EO 12898) to require that funds are made available to minority and disadvantaged populations. Using a low cost-benefit ratio to justify denying access of federal transportation funds to a minority community is simply no longer permissible. The following section of federal law

is noted with respect to Iliamna and Nondalton, two communities with large minority populations.

- Title VI of the Civil Rights Act of 1964

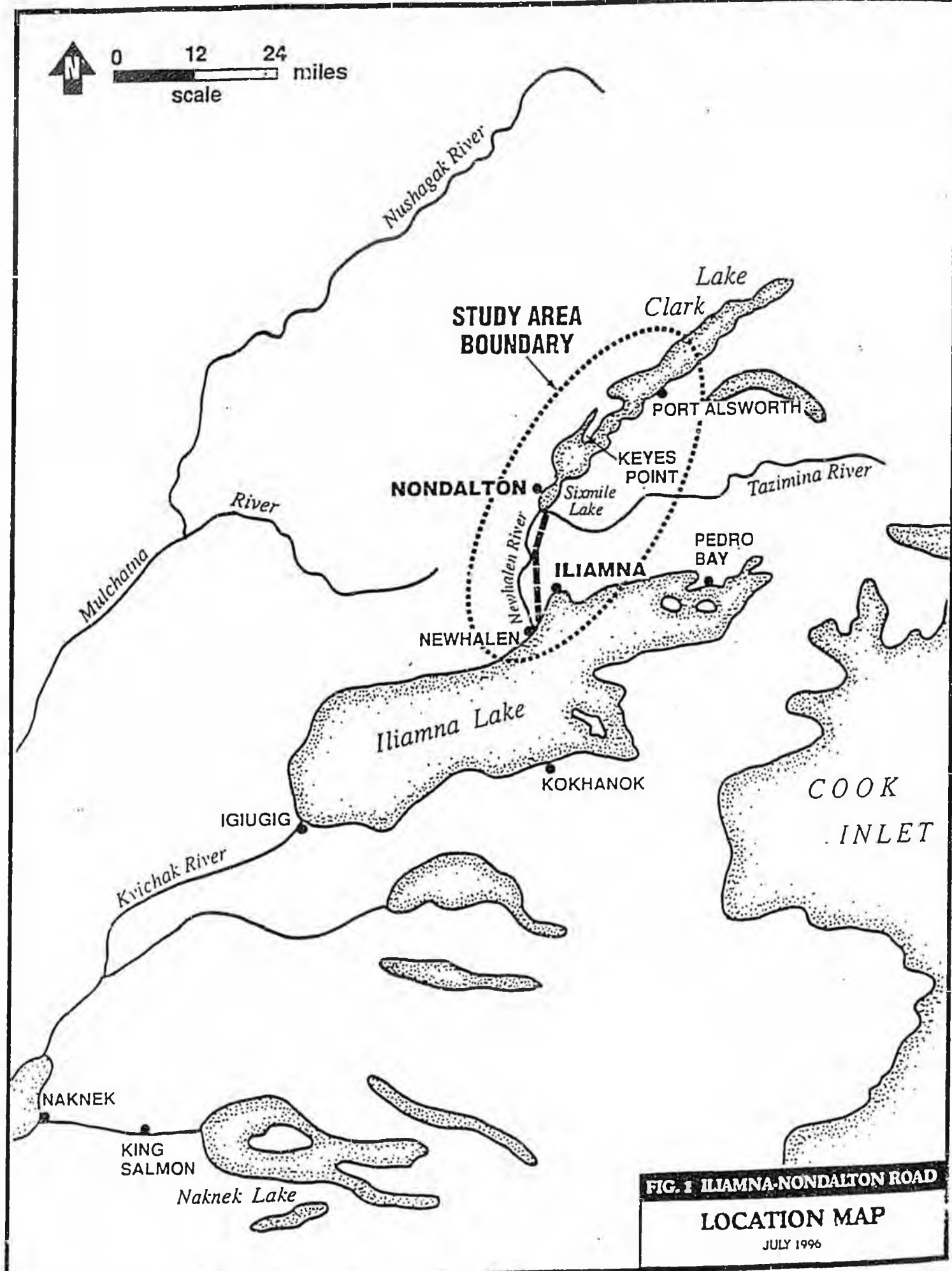
*"No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (Emphasis added.)*

More importantly, if Alaska were to rely extensively on C-B ratios for transportation development, as Mr. Parker suggests, many, many other projects would be left out. Our vast land area, difficult terrain and environment, and small population base simply overwhelm the practicality of relying on cost-benefit as a definitive criterion.

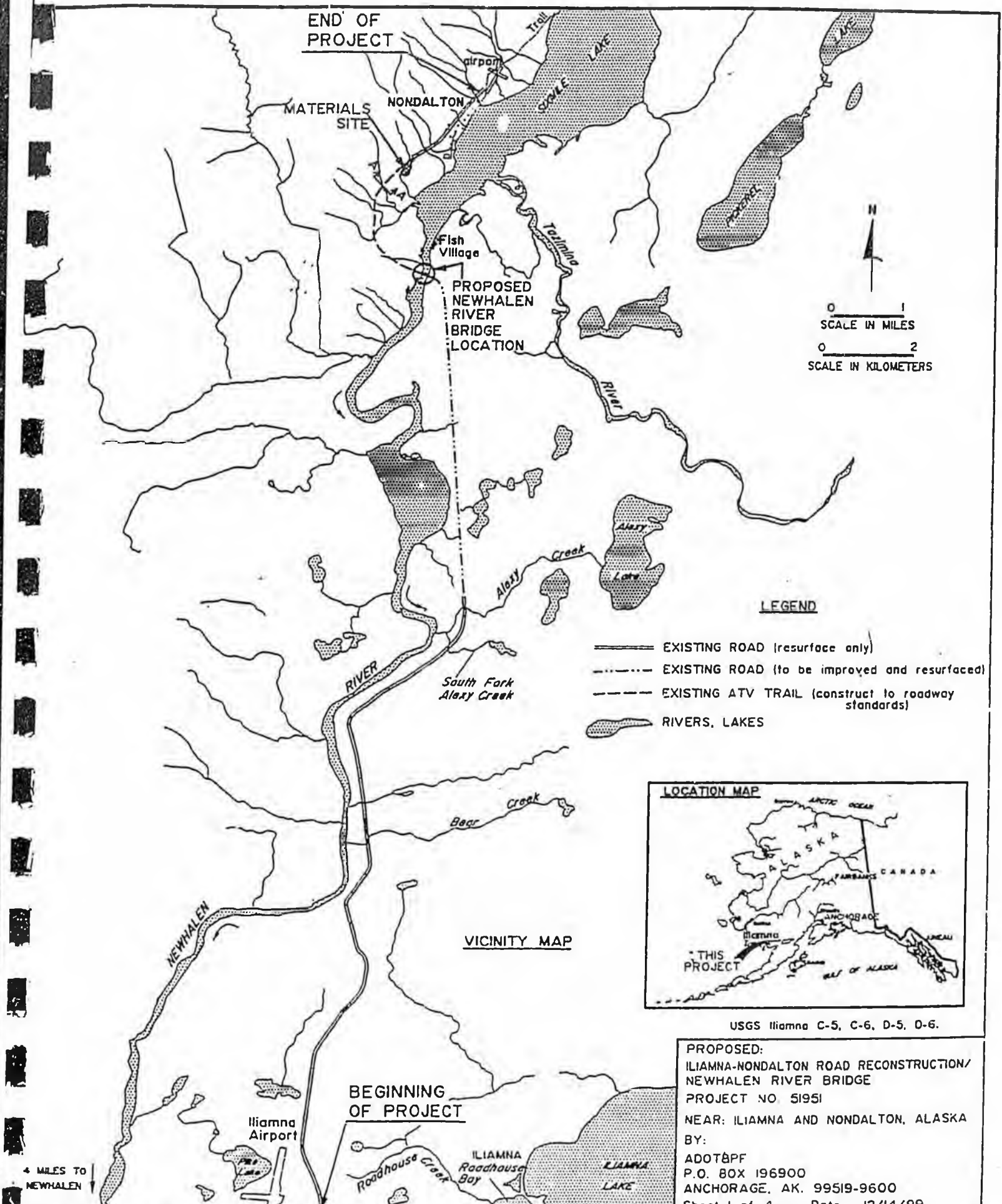
Extending Mr. Parker's arguments to their logical conclusion, very little transportation development would occur outside the largest urban areas of the state. Indeed, since Alaska gets more than \$5 back for every \$1 in federal taxes we contribute, even major projects in urban areas may not be justified on strict C-B consideration.

Alaska has long suffered the punditry of being a place with high costs but low benefits. At the time of the Alaska purchase in 1867, Secretary of State, William H. Seward overcame national ridicule (the tag of "Seward's Folly was applied) and strenuous objections to persuade Congress to proceed with the purchase of Alaska for \$7.2 million. Similarly, for nearly 40 years after the federal-aid highway program was started in the early 1900's, Congress denied Alaska access to this funding, because it felt the transportation needs in Alaska were so great the federal program could not be exposed to such costs. Now, as then, important transportation needs in Alaska often must be built as a public good, even where indicators such as cost-benefit analysis are used to oppose such projects. In 1867, those like Mr. Parker would speak of 'folly' as to the value of the Alaska purchase. For Alaskans today, the age old 'folly' argument seems to never really die!

# ATTACHMENT A



**FIG. 1 ILIAMNA-NONDALTON ROAD**  
**LOCATION MAP**  
JULY 1996



**LEGEND**

- EXISTING ROAD (resurface only)
- - - - - EXISTING ROAD (to be improved and resurfaced)
- ..... EXISTING ATV TRAIL (construct to roadway standards)
- RIVERS, LAKES



USGS Iliamna C-5, C-6, D-5, D-6.

PROPOSED:  
 ILIAMNA-NONDALTON ROAD RECONSTRUCTION/  
 NEWHALEN RIVER BRIDGE  
 PROJECT NO. 51951  
 NEAR: ILIAMNA AND NONDALTON, ALASKA  
 BY:  
 ADOT&PF  
 P.O. BOX 196900  
 ANCHORAGE, AK. 99519-9600  
 Sheet 1 of 4 Date: 12/14/99

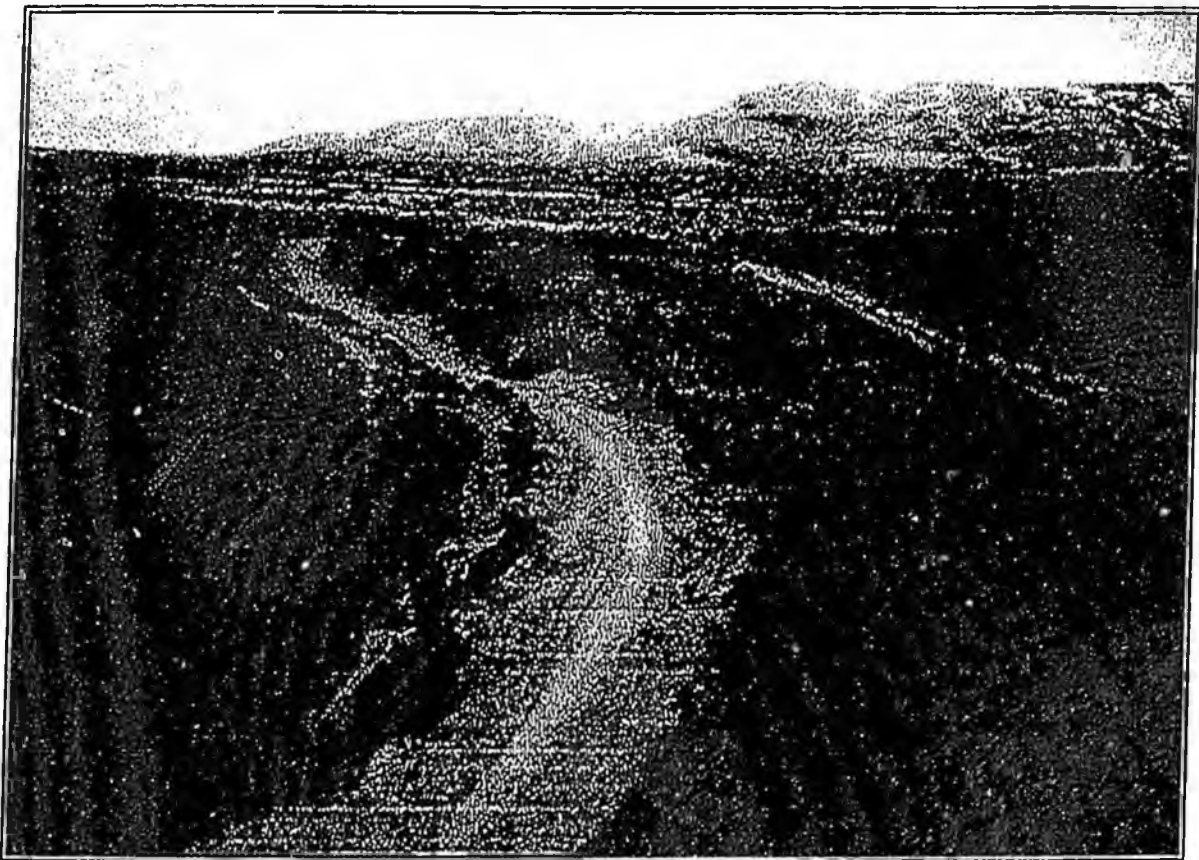
4 MILES TO  
 NEWHALEN

# ILIAMNA-NONDALTON ROAD IMPROVEMENTS

Project No. STP-0214(3)/51951

## ENVIRONMENTAL ASSESSMENT

January 2000



*Prepared by:*

*State of Alaska  
Department of Transportation  
and Public Facilities*

*For:*

*Federal Highway Administration*


## I. PURPOSE AND NEED STATEMENT

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The State of Alaska, the communities of Iliamna, Newhalen and Nondalton, and the Lake and Peninsula Borough have identified a strong need for improving year-round overland access between Iliamna/Newhalen and Nondalton. Concurrent with this general need are specific needs to improve public safety, improve health care/services, expand and diversify community economies, improve the supply of government services, enhance the delivery of educational services, and correct or alleviate some existing environmental drainage and erosion problems.

Improving overland access between Iliamna/Newhalen and Nondalton is the highest priority transportation improvement project of the Lake and Peninsula Borough, as well as the communities of Iliamna/Newhalen and Nondalton. A well traveled, unfinished gravel road suitable for cars, trucks, and heavy equipment exists from Iliamna/Newhalen to the proposed bridge-crossing site at the Newhalen River. A less traveled road/trail exists from the crossing site to Nondalton. Some portions of that road/trail cross Alaskan Native Corporation property because the road right-of-way clearing has overgrown and users utilize the areas where the vegetation is shortest.

There is a need to improve local public safety. A transportation system is needed that will provide less reliance on air transportation between Iliamna and Nondalton. Alaska occupational fatality rate for commercial pilots (271 per 100,000) is approximately twice as high as for professional motorized drivers (130 per 1000,000) with plane crashes being the leading cause of occupational fatalities in Alaska, according to the National Safety Council and the National Transportation Safety Board. Therefore, the likelihood of potentially serious injuries and accidental deaths resulting from air travel between Iliamna and Nondalton needs to be reduced. Currently, overland winter travel between Iliamna and Nondalton is possible, but travelers have to cross the frozen Newhalen River and Sixmile Lake by snowmachine, vehicle or on foot. During the winter of 1988 two snowmachine riders drowned after falling through the ice near Nondalton. With reliable access across the Newhalen River, safer overland transportation, especially during periods of inclement weather, reduced visibility, and unstable river ice conditions, would become the preferred method of travel.



Improvements in health care/services are needed. The difficulty and expense of getting critically ill or injured people out of Nondalton in an emergency needs to be lessened. This need is most urgent in the event of a major disaster such as a fire. A transportation system is needed that would enable the sharing of facilities, expertise, and equipment. As an example, there is a need for a small hospital in Iliamna and an elders home in Nondalton. Improved overland access would permit such facilities to provide services to all the residents of Iliamna/Newhalen and Nondalton.

The economies of Iliamna/Newhalen and Nondalton need to be expanded and diversified. The cost of goods in these communities needs to be lowered. Currently, Nondalton is the largest community in the Lake and Peninsula Borough, but it is relatively isolated and offers very few job opportunities. This economic problem has been exacerbated in recent years due to the commercial fishing crisis in the Bristol Bay area. Currently, approximately 50 percent of the Nondalton potential workforce are unemployed. With an overland transportation link between Iliamna/Newhalen and Nondalton, the customer base for local businesses would effectively be doubled. This would give Nondalton residents the ability to take advantage of a greatly expanded range of employment opportunities. Improved overland access would also permit reduction in costs to passengers and freight carriers between Iliamna/Newhalen and Nondalton. Currently, 25-33 percent of material costs in Nondalton is estimated to be directly attributable to flight costs.

Providing government services to the residents of these communities needs to become more efficient and convenient. Government facilities at all levels could be consolidated in one place on the transportation system, rather than being spread out among several communities. At present, the Tazimina Hydroelectric Project provides power for the villages of Iliamna, Newhalen, and Nondalton. From the power plant to Nondalton, a transmission line parallels a portion of the existing road to the Newhalen River, where it then crosses under the river, and continues on to Nondalton. There is a need for reduced transportation costs in order to maintain this portion of line. Further, the underwater portion of this utility connection is plagued by many power outages. A bridge across the river could benefit the power company by allowing the

## Iliamna Nondalton Road Improvements Statement of Purpose and Need

The State of Alaska, the communities of Iliamna, Newhalen and Nondalton, and the Lake and Peninsula Borough have identified the need for improving overland access between Iliamna/Newhalen and Nondalton. It is the highest priority transportation improvement project of the Lake and Peninsula Borough, as well as the communities of Iliamna/Newhalen and Nondalton. A well-traveled, but substandard gravel road suitable for cars, trucks, and heavy equipment exists from Iliamna/Newhalen to the bridge crossing site at the Newhalen River. A lesser pioneer road/ATV trail exists from the crossing site to Nondalton. Some portions of the road/trail cross Native corporation property because the road clearing has overgrown. The improvement and completion of this road offers many important economic and social benefits for the reasons outlined below:

Public safety will be improved. There will be less reliance on air transportation between Iliamna/Newhalen and Nondalton. Small aircraft transportation has a much higher death and injury rate per passenger than surface transportation. Therefore, the opportunities and likelihood of serious injuries and accidental deaths resulting from air travel between Iliamna/Newhalen and Nondalton will be lessened. Currently, overland winter travel between Iliamna and Nondalton is possible, but hazardous, across the frozen Newhalen River and Sixmile Lake. During the winter of 1995, two snowmachine riders drowned after falling through the ice near Nondalton. With a bridge, safer overland transportation, especially during periods of inclement weather, reduced visibility, and unstable river ice conditions, will become the preferred method of travel.

Health care/services will be improved. It will be easier to share facilities, expertise, equipment and evacuate the critically ill or injured. The difficulty and expense of getting very ill or injured people out of Nondalton in an emergency will be lessened. This benefit will be especially valuable in the event of a major disaster such as a fire.

The economies of Iliamna/Newhalen and Nondalton will expand and diversify as a result of this project, largely due to the resulting lower costs of goods in these communities. Currently, Nondalton is the largest community in the Lake and Peninsula Borough, but it is relatively isolated and offers very few job opportunities. If Nondalton is connected to Iliamna/Newhalen by road, the customer base for local businesses will effectively be doubled. This will give Nondalton residents the ability to take advantage of a greatly expanded range of employment opportunities. A further important benefit of this project will be the reduction in costs to passengers and carriers of freight between Iliamna/Newhalen and Nondalton. These cumulative economic factors are likely to increase trade and commerce between Iliamna/Newhalen and Nondalton.

Supply of government services to the residents of these communities should become more efficient and convenient as a result of increased and less expensive access. Government facilities at all levels could be consolidated at one place on the road system rather than being spread out among several communities.

There will result a long-term enhancement on the delivery of educational services, with benefits increasing over time. Completion of the Iliamna-Nondalton Road will benefit the school district through an improved ability to transport supplies, materials, students and personnel between Iliamna/Newhalen and Nondalton. The improvements will not only reduce costs but will also increase the safety of students and staff who travel regularly between these communities. The road reconstruction will also provide the school district options in providing enhanced secondary programs to students in Newhalen and Nondalton where student populations are not large enough to warrant the diversity of curriculum that could be made available if certain classes were consolidated. Improved transportation services will also provide students from both schools enhanced competition opportunities in sports activities.

The project will have a positive effect on the growth of "middle of the market" tourism in Iliamna/Newhalen and Nondalton. Alaska Department of Fish and Game reports the current growth in angler days at between seven and 11 percent per year in this general area. Air taxi operators report similar growth rates for their operations during the summer and fall. Many other signs and statistics point to an increase in the utilization of the area. The project will provide some of the infrastructure necessary to accommodate growth of the mid-market tourism. Iliamna is a favorite destination for recreational fishing on the Newhalen River and Nondalton is the largest community adjacent to Lake Clark National Park.

The project will have positive environmental effects by correcting, or alleviating, some serious environmental problems which presently exist:

First, because no bridge exists, it is now necessary to drive vehicles and heavy equipment across the Newhalen River (a world class salmon and rainbow trout resource) to access the other side. As an example, the Alaska Department of Fish and Game (ADF&G) has issued the City of Nondalton permits to drive its heavy equipment across the river so it can maintain the remainder of the road to Iliamna. With a bridge, it would not be necessary to disturb fish habitat by driving vehicles across the river bed.

Second, the existing road has some engineering and design problems and is not as well maintained as it would be if the link between Nondalton and Iliamna were complete. This situation results in unnecessary environmental damage along the road corridor. For example, there is serious erosion taking place at bridge sites and elsewhere along the road. The road also has drainage problems in certain areas. This frequently results in large sections of the road becoming impassable due to mud. During these periods, vehicles attempt to drive around the poorly drained areas which causes the "footprint" of the road to become wider and wider and results in unnecessary damage to the adjacent tundra. The proposed road improvements will alleviate these problems.

Third, the current method of getting fuel to the community of Nondalton, in addition to being a hardship for its residents, represents a serious threat to the environment. The Nondalton airstrip is too short for cargo planes to legally land. Further, fuel cannot be transported overland to the Iliamna airport or dock because there is no bridge across the Newhalen River. As a result, Nondalton residents must get their fuel in Iliamna, transport it by road to a place along the river several miles below the proposed bridge site known as the "landing," and then transport the fuel by skiff in 55 gallon drums up the river and across Six Mile Lake to Nondalton. The environmental risks associated with this complex mode of transporting fuel are significant. The proposed road improvements will alleviate these problems.

In conclusion, the long history of study and number of endorsements for improving the overland access between Iliamna/Newhalen and Nondalton demonstrates the need for this project. The purpose of this project is to meet those needs to the greatest extent that is practical.

Revised 10-6-97

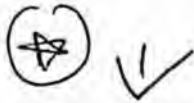
This project is compatible with area joint land development projects. The road to the Tazimina River Hydroelectric facility begins at approximately Mile 9.3 of the Iliamna-Nondalton Road. During INNEC hydroelectric facility construction, the Iliamna-Nondalton Road was upgraded in some places to accommodate construction trucks and equipment bound for the power plant.

The No-Build Alternative would result in no change to land use or development patterns.

**B. Farmland**

There are no prime or unique agricultural lands, as defined in the Farmlands Protection Policy Act of 1981: 7 U.S.C. 4201-4209 (P.L. 97-98), currently designated in the State of Alaska. The Farmland Protection Act is not applicable to this project and no formal consultation with the Natural Resource Conservation Service is required.

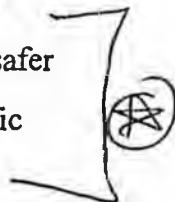
**C. Social**



Executive Order 12898 dated 2/11/94, the Department of Transportation Order on Environmental Justice (DOT Order 5610.2) dated 4/15/97, and FHWA Order 6640.23 dated 12/2/98 require Federal actions avoid causing disproportionately high and adverse impacts on minority and low income populations with respect to human health and the environment. This project would in fact benefit the neighboring communities by providing better access to friends and family, reduced shipping costs, provide more employment opportunities, and reduce commuting time for those residents that live in one village but work on the other side of the river. Numerous Iliamna and Nondalton residents have stated that they would visit their friends and family more frequently if a more economic means were available to get across the Newhalen River.

Property values in Nondalton may increase slightly due to better accessibility. Community cohesion would be enhanced, since the improved road would allow greater social interaction between the three communities. There would be increased recreational opportunities as residents of all three communities would be better able to participate in events and activities in communities other than their own. The school district would benefit from decreased costs of transporting students between schools for activities. Students would be able to participate with

other area schools and share various teaching and extra curricular resources. Currently some activities can not be offered in Iliamna or Nondalton due to the low numbers, but the school district has indicated that if the two communities were connected by a bridge they would try and share resources and offer more classes and events. The linking of the communities would enhance opportunities for joint regional development measures such as a regional hospital, a home for elders, and a regional landfill. Public safety would be greatly improved, allowing safer and expedited emergency response times, improved safety officer response times, better traffic safety, and a fire escape route in the event of a fire in Nondalton.



The majority of local residents use ATVs for motorized transportation, with a few residents using cars and trucks. This trend of using ATV's would be expected to continue, as the cost of transporting, maintaining, and operating full size vehicles in this area is costly.

The utilization of the Newhalen River fisheries and recreation use of the river exhibits a pattern of increasing use and ADF&G personnel have noted increased usage of the more remote areas by those desiring a true wilderness experience. This project should not change this pattern.

The No-Build Alternative would result in little or no changes in current social conditions or trends.

#### **D. Relocation**

Construction of Build Alternative No. 1 would not require the relocation of any residential or commercial properties. The ADOT&PF has the right-of-way necessary for this alternative.

The No-Build Alternative would not involve any changes to the existing roadway right-of-way corridor.

#### **E. Economic**

The project would provide improved economic development and opportunity for area residents. Retail sales would benefit from ease of access and create more local demand for goods and services. The transport and exchange of goods and services would be enhanced with a reliable,

enlarged in 1982. Teacher's living quarters (a duplex, small house, and trailer) are adjacent to the school. The school offers various athletic programs, including Native Olympics, gymnastics, and classes for gifted children. All the shared circuit riding staff also serve the Newhalen/Iliamna school.

#### L. Transportation Facilities

The existing transportation systems are multi-modal. Some freight coming into Nondalton is flown to Iliamna, trucked to the landing site on the Newhalen River and barged to Nondalton. Material that cannot be shipped by plane is usually barged to the area by one of two routes. The first route is through the Aleutians to Bristol Bay and up the Kvichak River to Iliamna Lake. Another route in Cook Inlet uses a primitive road from Williams Port at the head of Iliamna Bay in Cook Inlet to Pile Bay on the southeast shore of Iliamna Lake. Freight is then barged to Iliamna. The switching from one mode to another and back again contributes to the cost of goods and construction in the region.

Travel to or from the study area is by plane or boat. Overland travel between Iliamna and Nondalton is not possible because of the lack of a bridge over the Newhalen River. Overland winter travel between these two communities is possible on the frozen Newhalen River and across Sixmile Lake. Hard to detect thin spots in the ice on the Newhalen River vary from day to day during the winter making ice travel very hazardous. Two snowmachine riders drowned during the winter of 1995 after going through the ice near the mouth of the river near Nondalton. Travel across frozen Lake Clark or Iliamna Lake is also possible but not very common due to the high risk involved. Snowmachine and four-wheeler travel is common year-round, especially in Nondalton where larger vehicles are few. The existing winter roadway to the proposed bridge site is used by residents traveling between the two communities. The steep hill on the east side of the river at the road end prevents the hauling of heavy freight or supplies. Most heavy or bulky items are transported by car or truck to the landing site on the old road, transferred to a boat or small barge, taken upstream to Nondalton and off-loaded to another vehicle and driven to the final destination.

#### Iliamna

Iliamna has regularly scheduled air service provided by ERA Aviation (Anchorage International) and Birchwood Air (Merrill Field). The locally based air taxi is Iliamna Air. The airport at Iliamna is quite large and a relic of federal emergency development during World War II. The main runway is 4,000 feet long and 150 feet wide. The crosswind runway is 3,000 feet long and 100 feet wide. Both runways are gravel. Pike Lake within the airport boundary, serves as a float or skiplane base. The airport is the only one in the region with an instrument approach system. Iliamna airport is a certificated airport and the major hub for the region. The airport receives mail, freight and regularly scheduled passenger flights. Iliamna airport is a commercial aviation service level airport (between 2,500 and 10,000 enplanements). For calendar year 1993 through the end of fiscal year 1995 the Iliamna airport is listed as having 6,230 enplanements.

**ILIAMNA/NONDALTON ROAD IMPROVEMENTS  
PROJECT NO. 51951  
PUBLIC SCOPING MEETING/OPEN HOUSE FORMAT  
NONDALTON MEETING  
LOCATION: NONDALTON COMMUNITY BUILDING  
10/28/97 - 2-5 PM  
MEETING NOTES**

**NOTE:** This meeting was originally scheduled for and advertised to be held from 2 PM - 6 PM. However, in Iliamna, it was learned that because the Nondalton Airport lights were inoperable (and had been for some time), the return flight would have to be completed prior to nightfall. Thus, DOT had to close the meeting at 5 PM.

Mike Boleski lives at fish camp. He talked about "suicide hill", the Iliamna bank at the bridge site, and how slippery and dangerous it is.

Residents recounted several accidents and near drownings and a few drownings on the lake ice, while people were trying to cross the Newhalen River near Nondalton. Mental Health Aide was also rescued from cold river.

Tom Green says they apply to maintain x miles of roads, including the local Nondalton roads; there is no restriction on which miles they maintain. So they choose to use most of the money to maintain the Iliamna-Nondalton Road. There is not enough money from that one funding source to maintain the roads just within the City of Nondalton anyway.

Nondalton landfill project: Tom Green described "thermal oxidizer" (not exactly an incinerator) and how 5 cells are proposed; one to be used at a time to thermally process garbage, etc. Also plan to dispose of haz mat and haz waste at this site. Bob Blundell (DEC) has been working with them on this.

Susan reminded Tom that PHS and FHWA funds can be used to build access roads to disposal sites. Many projects are already in progress for PHS landfills and FHWA roads. Nondalton has chosen 3 sites for the Thermal Oxidizer; one near the river, one by the gravel pit, and one further away. They prefer the one nearest the river. Current landfill is close to the Nondalton runway.

Gladys expressed concern that the road/bridge would increase the problems with alcohol/drugs getting into Nondalton. The problems are bad already; she sees them only getting worse. The VPSO does not control the situation and the Village Council doesn't do much either. Tom Green says that the road would help the two VPSOs (one from Iliamna, one from Nondalton) to work together to solve crimes. Often the criminals get away because the VPSO has to stop at the river; he can't follow criminals all the way home. Also, if legal, Tom would like to start up a 4-wheeler registration system to track all licenses/owners so VPSOs know who is driving away from the scene of the crime. The Nondalton VPSO is a full-time employee. He performs alcohol responses nearly every night. He mainly works a night shift because of the predominance of alcohol problems. He occasionally does loose dog reports.

Many residents told of near misses with drownings in river; usually alcohol related, but not always. Health Aid (male) nearly drowned recently.

The cost of transportation related to school activities is very high. It cost \$2,000 for a plane charter recently, to transport a volleyball team from Nondalton to Iliamna. Residents can think of much better ways to spend their school dollars than charters between the villages.

# WRITTEN PUBLIC COMMENTS

Your input is an important element in the continued design of this project. To ensure that your views are considered, we have provided this sheet for your convenience. Comments should be returned to ADOT&PF by November 7, 1997.

## ILIAMNA - NONDALTON ROAD IMPROVEMENTS

Project No. 51951

### PUBLIC SCOPING MEETINGS:

- Monday, October 27, 1997 in Iliamna
- Tuesday, October 28, 1997 in Nondalton
- Tuesday, November 4, 1997 in Anchorage


(Please Print)

NAME: Melvin LeVeque

MAILING ADDRESS: PO BOX 14@

CITY, STATE, ZIP: Nondalton, Alaska 99640

### COMMENTS

\*  I have lived in Nondalton since 1986. My first winter there I broke through the ice on two occasions while traveling to Iliamna. On both occasions I was traveling with local residents and we were on the marked trail across the lake, so it was not attributable solely to my relative inexperience. The first time through the ice, if I had been by myself, I would never have been able to pull myself out of the water before freezing.

I am currently the manager for the Alaska Commercial Company, and speaking from an economic standpoint for the area, completion of a road connection between Nondalton, and the airport hub in Iliamna would greatly benefit the residents of both communities through lower cost of living; an important factor in these days of welfare reform. The prices charged in our locality are much higher than they would be if there was not the added transportation cost of re-shipping goods once they have been landed in Iliamna. Cost for items in any business reflect transportation costs, and we are currently subjected to double paying transportation. With the needed completion of a road connection between our villages, the price of merchandise would go down, because it would cost us less to drive them to Nondalton ourselves than it costs to have them flown from Iliamna.

In summary, I have experienced both physical danger, and economic penalty attributable to no road connection, as has most of our residents, and I strongly support the Road And Bridge project between Iliamna & Nondalton.

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# WRITTEN PUBLIC COMMENTS

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## ILIAMNA - NONDALTON ROAD IMPROVEMENTS

Project No. 51951

### PUBLIC SCOPING MEETINGS:

- Monday, October 27, 1997 in Iliamna
- Tuesday, October 28, 1997 in Nondalton
- Tuesday, November 4, 1997 in Anchorage

(Please Print)

NAME: Eva LeVeque

MAILING ADDRESS: P.O. Box 062

CITY, STATE, ZIP: Nondalton, Alaska 99640

### COMMENTS

Some of the reasons I have for wanting the road and bridge to go through between Nondalton and Iliamna are very good and a necessity for this community. Along the same lines it would be a detriment and very dangerous, as have been proven in the past, to allow the cancellation of this project.

On a personal level, I have gone through the ice while crossing the lake in 1995. My husband went through while crossing in 1986. My son went through the ice in 1996 while crossing. Those kinds of statistics alone should be enough to warrant a bridge in my opinion.

I've known everyone in Iliamna and Newhalen all my life and am not able to visit them unless the weather permitted depending on the time of the year. During freeze-up there isn't access to those villages except by air, the same happens during break-up. If I don't have the money to take an airplane which is usually the case, I am not able to see my relatives and friends. If the road and bridge went through, I would be able to go and visit at a whim which would make for a healthier social life. There are stores, restaurants and social activities that would be accessible to me provided the road and bridge went through. Right now, if our students wanted to go to Iliamna for a game they would have to fly because the lake is in the middle of freezing. To charter an airplane is costly therefore the children are not able to go as often as they would if the road and bridge were in place. Not to mention <sup>our high school's</sup> ~~they~~ <sup>school</sup> students would be able to attend social events between the two communities as scheduled without having to wait on the weather, or just not attend because of the season.

*Costly freight school programs for students between the schools kinder us to Nondalton*

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I work as a substance abuse counselor and  
service Iliamna, Pedro Bay and Nondalton.  
I am able to service Iliamna one time a  
month because of costs, I have to fly  
back & forth. If the road and bridge  
goes through I would be able to service  
Iliamna twice a week which would  
make a tremendous difference to the  
people. After all our people are  
~~our~~ our most important asset.  
To stop the road and bridge project  
would hinder our services available.  
I am employed with Bristol Bay Area  
Health Corporation. Last and very important,  
if there were an emergency in Iliamna  
I would be able to respond night or  
day no matter what the weather conditions.

# WRITTEN PUBLIC COMMENTS

Your input is an important element in the continued design of this project. To ensure that your views are considered, we have provided this sheet for your convenience. Comments should be returned to ADOT&PF by November 7, 1997.

## ILIAMNA - NONDALTON ROAD IMPROVEMENTS

Project No. 51951

### PUBLIC SCOPING MEETINGS:

- Monday, October 27, 1997 in Iliamna
- Tuesday, October 28, 1997 in Nondalton
- Tuesday, November 4, 1997 in Anchorage

(Please Print)

NAME: George Alexie  
MAILING ADDRESS: Box 108  
CITY, STATE, ZIP: Nondalton, A.K. 99640

### COMMENTS

I have lived in Nondalton all my life and public safety is my concern. The river at the mouth never freezes and going across the lake to the other side is dangerous several drownings have occurred and several near drownings have also occurred. getting freight from northern air cargo in Iliamna could be easier to get if the road and bridge were in. In Nondalton the wind comes from the East and West. The airport is north/south air travel to

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Iliamna is risky <sup>[ESC]</sup> especially for school related events if the road was in the students can go down his house

**Remote Roads and Trails  
Evaluation Process Standards and Scoring Criteria**

Standards	Scoring Criteria				
	(5)	(3)	(0)	(-3)	(-5)
1. Economic benefits following construction.  Weighting: 3	Supports economic benefits; endorsed as an economic development project by governmental agency or representative group.	Supports capacity or new access specifically built to support regional or local industrial, commercial or resource development	Supports minimal, speculative or temporary economic opportunities or benefits or provides non-crucial benefit to existing economic activity.		
2. Health and Quality of Life (Air and water quality, neighborhood continuity, access to basic necessities) Weighting: 4	This project provides a significant contribution to improved health or quality of life through reduction or removal of existing negative factor.	This project provides a moderate contribution to improved health or quality of life through reduction or removal of existing negative factor.	Project will have no affect either positive or negative on quality of life issues.	This project provides a moderate degradation to health or quality of life.	This project provides a significant degradation to health or quality of life.
Examples: Access to basic sanitation = 5; dust control =4; access to medical facility=3.					
3. Safety.  Weighting: 5	Addresses demonstrated safety problem of significance.	Addresses demonstrated safety problem of moderate nature or there is a record of public concern.	Project's primary objective is not safety.		
4. Improves intermodal transportation or lessens redundant facilities.  Weighting: 2	Greatly improves the connectivity between modes and coordination and integration of passenger and freight systems and services and/or would clearly reduce the need for significant capital investment in another mode.	Moderately improves the connectivity between modes and enhances coordination and integration of passenger and freight systems and/or would clearly reduce the need for moderate capital investment in another mode.	Minimal or no affect on transportation system connectivity, or coordination and integration of passenger and freight systems and services and does not change the requirement for investment in other modes.	Moderately decreases the connectivity between modes or decreases coordination and integration of passenger and freight systems and/or would clearly require the need for moderate capital investment in another mode.	Greatly decreases the connectivity between modes or decreases coordination and integration of passenger and freight systems and/or would clearly require the need for significant capital investment in another mode.
5. Local, other agency or user contribution to fund project development. Weighting: 4	Contribution provides state match, design, right-of-way, and materials.	Contribution provides any two: state match, design, right-of-way, or materials.	Contribution covers no capital costs; contributes nothing.		

**ATTACHMENT C**

**Remote Roads and Trails  
Evaluation Process Standards and Scoring Criteria**

Standards	Scoring Criteria				
	(5)	(3)	(0)	(-3)	(-5)
6. (Use for non-DOT&PF facilities or facilities DOT&PF is unsuited to long-term ownership). Local, other agency or user contribution to fund operations and maintenance (O&M) costs. Weighting: 5	Contributions = 100% and assumption of ownership. (Assumption of like facility OK.)	Contributions cover ___% of O&M costs. One point for each 25%.	Contributions cover < 25% to >10% of O&M costs.	Contributions cover <10% to > 1% of O&M cost.	Contributions cover <1% of O&M cost.
or 6 A. (Use for facilities which only DOT&PF is logical owner). Departmental M&O priority Weighting: 5	Very high M&O priority.	Moderate M&O priority.	Not an M&O priority.	Not an M&O priority; would increase M&O costs moderately.	Not and M&O priority; would increase M&O costs significantly.
7. Public Support for the Project? Weighting: 3	Preponderance of public record including a resolution from the local elected body shows support for project and fully supported in official state/local plans.	Majority of public record shows support for project; and nominally supported in official state/local plans.	Public record is divided or undocumented toward project	Majority of public record shows opposition to project; and not supported in official state/local plans.	Preponderance of public record shows opposition to project including a resolution from the local elected body and contravenes official state/local plans.
8. Environmental Considerations Weighting: 1	Environmental approval likely with Categorical Exclusion or already complete.	Environmental approval likely with Environmental Assessment or draft document circulated.	Environmental approval likely with Environmental Impact Statement.	Environmental approval extremely difficult 50/50 chance.	Environmental approval unlikely.

**Remote Roads and Trails  
Evaluation Process Standards and Scoring Criteria**

Standards	Scoring Criteria				
	(5)	(3)	(0)	(-3)	(-5)
<p>9. Will project provide new access to the noted uses: water sources, landfills, sewage lagoons/honey bucket sites, health care, airports, or subsistence sites?</p> <p>Weighting: 5</p>	Three or more uses = 5.	Two uses = 3. One use = 1.	None of uses listed.		
<p>10. System Preservation.</p> <p>Weighting: 3</p>	Major purpose of project is to extend the life of existing facility by 10 or more years.	Secondary purpose of project is to extend life of existing facility by 10 or more years.	Preservation is not significant purpose of the project.		
<p>11. Is this a joint project with ADEC, BIA or PHS?</p> <p>Weighting: 4</p>		Yes.	No.		
<p>12. Other factors not specified.</p> <p>Weighting: 2</p>	Project exhibits significant innovation, creativity or unique benefits not otherwise rated.	Project exhibits moderate innovation, creativity or unique benefits not otherwise rated.	Project exhibits no innovation, creativity or unique benefits not otherwise rated.		

COMMUNITY TRANSPORTATION PROGRAM NEEDS AND PRIORITIES

Score	Priority	Highway	Borough	Location	Name	Description	Cost Estimate
123.7	1		City & Borough of Juneau	Juneau	Capital Transit Buses	Replace four 35-foot transit coaches.	1,040,000
119.0	1		City & Borough of Juneau	Juneau	Thane Road	Reconstruction from ferry terminal to Rock Dump (Mount Roberts Road).	3,900,000
117.2	1		City & Borough of Juneau	Juneau	Glacier Highway	Reconstruct or relocate roadway from Indian Point to Point Louisa.	5,000,000
115.3	1	Denali Highway	Matanuska - Susitna		MP 80-104 Resurfacing	Rehabilitation including grading, drainage and surfacing improvements from the Susitna River (MP 80) to Brushkana Creek (MP104). After addition of new surface aggregate the surface will either be paved or calcium chloride will be applied to bind the surface.	4,000,000
111.5	1		Unorganized	Prince of Wales	Big Salt Lake Road	Realignment and reconstruction of 14.5 miles of road, with base and pavement. Replace bridges on three streams.	3,000,000
110.7	1		Kenai Peninsula	Homer	East End Road: MP 0.0-3.6	Provide for rehabilitation and safety improvements on Homer East End Road from the Pioneer Street/Lake Street intersection (MP 0.0) to the intersection with Kachemak Drive (MP 3.6). The project will widen the paved surface and may include realignments, slope flattening and other safety improvements as required. The project also includes drainage improvements and a sidewalk/path.	9,400,000
110.5	1		Lake & Peninsula	Iliamna	Iliamna to Nondalton Road	Complete a new road 22.3 miles in length from Iliamna to Nondalton including a bridge across the Newhalen River. The project was initiated in the early 1980's. The roadbed has already been partially completed.	9,750,000
109.5	1		City & Borough of Juneau	Juneau	Juneau Access Improvements EIS	Evaluation of improvements to access Juneau.	500,000
109.5	1		Unorganized	Whittier	Access Improvements	Construct improved access from Portage Valley to Whittier. The scope of the project will be determined during preparation of the project's environmental impact statement.	49,800,000

## HICKEY & ASSOCIATES

Planning \* Management \* Lobbying

Telephone (907) 586-2263

Fax (907) 586-1097

211 Fourth Street, Suite 108, Juneau, Alaska 99801

E-Mail "mhickey@eagle.ptialaska.net"

(SENT VIA FAX)

November 6, 1997

Ms. Susan N. Wick  
Environmental Team Leader  
Central Region, Division of Design & Construction  
Department of Transportation & Public Facilities  
P.O. Box 196900  
Anchorage, Alaska 99519-6900

Re: Iliamna Road Improvements Project No. STP-0214(3)/51951

<sup>SUSAN</sup>  
Dear ~~Ms.~~ Wick:

It was nice seeing you again at the scoping meeting on November 4. I wanted to provide some written comments to supplement that discussion.

I have been working in support of completing this project for the last three years as a transportation consultant and lobbyist on behalf of the Lake and Peninsula Borough. I also have a history with the project dating back to my tenure as commissioner between 1987 and 1991. Finally, I bring over twenty years of experience working as a transportation professional in Alaska, with an extensive history of looking at similar projects in rural areas throughout the state.

I fail to understand how anyone can propose a logical argument that this project is something other than the completion of transportation improvement project started twenty years ago. I think the record is quite clear that the intent from the beginning has been to develop a road link between the communities of Nondalton, Iliamna and Newhalen.

It was suggested during the meeting that the Alaska Department of Transportation and Public Facilities (DOT/PF) has previously made decisions to not support the project, including around the 1986 time frame. While I cannot speak to the specific record during 1986, I can tell you with complete certainty that the department strongly supported completion of this project during my tenure as commissioner, which started in March 1987 and ended in January 1991. There is a record that can clearly support this statement, including several attempts to gain a general fund appropriation to construct the bridge and finish the road into Nondalton. The department also transferred a surplus bridge out to the area for use on the project, an action which was taken I believe during the mid 1980's.

You heard some excellent testimony from local residents during our meeting describing the numerous benefits that would result if the bridge and hard link is built. I'm quite comfortable that any objective, independent analysis will find significant justification to proceed. At a minimum, this project will provide the following benefits:

1. Local transportation will be safer and more reliable. Residents will no longer have to risk their lives trying to cross the ice during the winter, or risk a flight during marginal conditions in an emergency. The ability to gain access to the Iliamna Airport will be greatly improved, which is important for medivac use and general travel.
2. Transportation costs will be reduced significantly. Current estimates show that an average of 25% or more of the cost to transport goods and people in and out of Nondalton is related to the leg between Iliamna and Nondalton.
3. The communities in the region will experience reduced costs to provide essential services. For example, infrastructure development and related operating costs can be reduced for basic services such as medical, education, and fire/police by sharing facilities, equipment and human resources. Another example is the opportunity to develop a regional landfill if this project is completed.
4. Environmental benefits will be gained. A considerable amount of the fuel used by Nondalton currently moves on or across the river, often in small, unstable skiffs. Switching these movements to truck deliveries will greatly reduce the potential for fuel spills into the river. Fuel storage for the area can also be consolidated, which will bring attendant environmental and cost savings.
5. Residents of all three communities will see an improved quality of life and more economic opportunity. In addition to the value of the previous benefits, there will be an increased ability to enjoy more social interaction and to pursue economic opportunities in the general area because of more safe, affordable and reliable transportation.

By all accounts, this project enjoys tremendous support from all parts of the immediate region. I recall hearing extensive and universal support two years ago during an informal meeting in Nondalton which Commissioner Perkins attended, which included numerous individuals from Iliamna and Newhalen who made the extra effort to make it into Nondalton to participate in the hour and a half session. In my experience, it is certainly rare to see this level of almost universal support.

It is clear that the principal objection to this project comes from a single Anchorage resident who owns property nearby, and who enjoys considerable financial wherewithal to, in the written words of his attorney, "oppose this project by any and all means, including to litigate to block the project." The basis for this objection apparently is a concern about the aesthetic or visual impact from the bridge, and a concern that the project will result in increased demand on the sport fish resource.

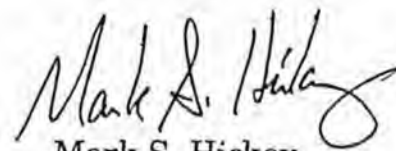
As far as the aesthetic issue, I fail to understand how the safety and basic quality of life of so many Alaskans can be sacrificed for that reason. However, I need to disclose that I happen to be someone who finds bridges aesthetically pleasing, at least more pleasing than grotesquely large, ostentatious vacation homes in the middle of a National Park and Preserve, such as the one being built by the party objecting to the project.

On the issue of resource impact, I believe all concerned agree the full range of benefits and impacts should be analyzed. However, it needs to be pointed out that the existing road stretches the length of the Newhalen River today, with numerous landings available to gain access to the river and connected water bodies. Given these facts (which has been the case for nearly twenty years), I fail to see why completing the bridge and road into Nondalton alone will bring numerous, additional sport fish users into the area. I would suggest continued improvements of the Iliamna Airport such as the new crosswind runway, will likely create more pressure on the resource than this project ever could.

This project is one of the of strongest rural, surface transportation projects I've seen during my entire career as transportation professional. As a former commissioner, I must observe that it would be a public policy tragedy of the worst kind for the department to deny the 300 to 500 long time residents of this area this valuable transportation improvement on the basis of the objections raised to date.

Thank you for the opportunity to submit these comments.

Sincerely,

  
Mark S. Hickey  
Principal

cc. The Honorable Joe Perkins, DOT/PF Commissioner  
Walt Wrede, Manager, Lake and Peninsula Borough

## RICHARD A. JAMESON &amp; ASSOCIATES

ATTORNEYS AT LAW  
 500 L STREET, SUITE 502  
 ANCHORAGE, ALASKA 99501  
 TELEPHONE  
 (907) 272-9377  
 FAX  
 (907) 272-9319

**ATTACHMENT E**

128 LOCUST STREET  
 HARRISBURG, PENNSYLVANIA 17101

TEL: (717) 236-7969  
 FAX: (717) 232-5606

OF COUNSEL  
 LEVIN, FISHER, SEDMAN & BERMAN  
 330 WALNUT STREET, SUITE 600  
 PHILADELPHIA, PA 19106  
 (215) 592-1500  
 FAX (215) 592-1661

January 3, 1996

Mr. James Bryson  
 Federal Highway Administration  
 P.O. Box 21648  
 Juneau, Alaska 99802-1648

VIA FAX  
 907-586-7420

Dear Mr. Bryson:

This confirms our phone conversation of an hour ago.

I represent a client who opposes the proposed bridge and road from Iliamna to Nondalton. My client has authorized me, and is in the course of seeking and authorizing other attorneys, to oppose the project by any and all means, including to litigate to block the project.

On behalf of that client -- and I appreciate at your suggestion to do so -- I request that you reconsider your recent decision granting a categorical exclusion under NEPA and that the scoping process be re-opened for the following reasons -- which I do not view as an exclusive list of the issues I will raise.

I have requested from Susan Wick, at Alaska DOT, the DOT files on this project but have not yet received them. I am concerned that the scoping process may have been cursory. It may have identified narrow issues related to the bridge itself and fish habitat and probably did not take NEPA's "hard look" at the potential, cumulative effects of the bridge. Those effects may well be in terms of:

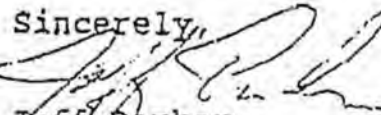
- (1) increased access to and use of the river itself;
- (2) increased crowding along the river as well as increased use of areas of the river that are less used at present;
- (3) increased trespass on private property;
- (4) what are probably demonstrable, negative effects on the economic value of the Newhalen River as well as other fisheries west of that river; two studies of Alaskan sport fisheries and sport fishing industry in that region and in Southcentral Alaska (John Isaacs & Assoc., 1985; Jones & Stokes, (ca. 1987) indicate that economic values

decline as crowding increases;

- (5) increased access to lands west of the river, with possible negative effects on subsistence users, and an increase in tensions between subsistence and sport users, of moose and caribou west of the river;
- (6) effects on brown bear and bear-human interactions along the Newhalen River, arising from increased access, particularly now in light of last year's killing of five brown bear on Newhalen and in light of recent Anchorage Daily News headline articles that attribute closing of brown bear hunting seasons on the Kenai Peninsula to increases in road access,
- (7) effects on users of Lake Clark National Park or users of areas west of the Park, where those effects may result from increased access west of the river,
- (8) effects that increased access may have on world class rainbow trout management in the area, including effects on the ability of the State to maintain age cohort distribution, populations, and fishery quality under the present regulatory regime, which allows a very limited harvest, and
- (9) visual concerns.

As you know, such cumulative effects fall well within the scope and purposes of the NEPA process. Addressing such effects is at the heart of the NEPA. As I recall, agencies have an obligation to raise and review such potential effects, even if the public does not raise them, for that is why resource agencies have the missions they do.

Here, I suspect that some of the agencies may have focused predominately on narrow effects resulting from the bridge itself. I hope that those agencies, too, may want to reconsider.

Sincerely,  
  
Jeff Parker

cc: Susan Wick, ADOT

# HICKEY & ASSOCIATES

Planning • Management • Lobbying

211 Fourth Street, Suite 108, Juneau, Alaska 99801  
Telephone 907-586-2263, Fax 907-586-1097

April 5, 2004

The Honorable John Cowdery  
The Honorable Thomas Wagoner  
Co-Chairs, Senate Transportation Committee  
Alaska State Legislature  
Juneau, Alaska 99801-1182

Re: Senate Bill No. 371/Iliamna-Nondalton Road Improvements

Dear Co-Chairs Cowdery and Wagoner:

Several questions were raised during last week's hearing on SB 371 related to the Iliamna-Nondalton Road Improvements Project. On behalf of my client, the Lake and Peninsula Borough, I would like to provide your committee with additional project information. Attachment A is a set of maps to provide a better sense of the project scope.

**Public Safety:** Attachment B contains some materials from the *DOT/PF Environmental Assessment* (dated January 2000) for the Iliamna-Nondalton Road Improvements Project. **This information describes two fatalities each from 1988 and 1995 involving snowmachine riders drowning after going through the ice near Nondalton.** I've also included additional material from this document describing several near drownings, including first-hand reports from individuals.

**The need for transportation improvements to address a public safety problem should not depend on how many fatalities have occurred. Evidence from the public record demonstrates there is a real public safety concern with the current method of surface access, mostly related to winter crossings of the river or lake. DOT/PF's analysis also concludes that "the opportunities and likelihood of serious injuries and accidental deaths resulting from air travel between Nondalton and Iliamna/Newhalen will be lessened" by the project.**

**DOT/PF Planning Requirements:** You heard discussion about the current statutory requirement for DOT/PF to consider the costs and benefits of a planned transportation improvement. In my opinion, the statute in question (AS 44.42.050(a)) does not require a strict economic evaluation, nor does it require a positive cost/benefit result to proceed with a particular project.

I worked for the department for nearly fourteen years between 1976 and 1991, including four years as commissioner during the Cowper administration. Starting at least in the 1980's and continuing to the present, the department has used a comprehensive project evaluation system to develop the Statewide Transportation Improvement Program (STIP). This process typically looks at a wide range of direct and indirect costs and benefits, including project costs, annual state maintenance costs, long-term economic benefits, environmental issues, public safety benefits, and health and quality of life impacts. Many of these consideration can be quantified, while other elements are less tangible but should be (and have been) part of the department's project evaluation process.

Attachment C is a copy of DOT/PF's 1995 "Remote Roads and Trails Evaluation Process Standards and Scoring Criteria." These criteria governed the evaluation process for the Iliamna-Nondalton Road Improvements Project at the time of its initial evaluation and inclusion in the federal STIP. A key fact to note is that most rural projects did not qualify for the federal-aid program prior to a change in law in the early 1990's. The project scored a total of 110.5 points, making it the seventh highest scored project in its category during that planning cycle.

**Project Benefits:** Attachment D is a letter I prepared in 1997 providing comments on the project during the environmental scoping process. It includes a detailed list of the following benefits:

- Local transportation will be safer and more reliable.
- Transportation costs will be reduced significantly.
- The communities in the region will experience reduced costs to provide essential services.
- Environmental benefits will be gained.
- Residents of all three communities will see an improved quality of life and more economic opportunity.

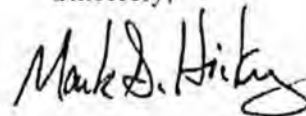
**Litigation History:** Attachment E is a 1996 letter to the Federal Highway Administration from the attorney representing the principal party pursuing the lawsuit on this project. Please note the statement in the first paragraph.

"My client has authorized me, and is in the course of seeking and authorizing other attorneys, to oppose the project by any and all means, including to litigate to block the project." (Emphasis added)

While I'll refrain from speculation about the real motivation behind these actions, I am not convinced that the litigation is based on a desire to ensure that proper public policy govern the expenditure of the State's federal transportation dollars.

Please let me know if you have questions or want additional information. I urge prompt action and your support for SB 371.

Sincerely,



Mark S. Hickey  
President

Attachments

- cc. The Honorable Gary Stevens, Alaska State Senate  
The Honorable Dan Ogg, Alaska State House of Representatives  
Jeff Currier, Borough Manager, Lake & Peninsula Borough

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB371-DOT-CO-3-30-04  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
 Title Powers/Duties DOT&PF RDU Administration & Support  
 Component Commissioner's Office  
 Sponsor Senate State Affairs  
 Requistor Senate Transportation Component No. 530

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: Nona Wilson Phone 465-6973  
 Division: Legislative Liaison Date/Time 4/7/04 11:00 AM  
 Approved by: John MacKinnon Date 4/7/2004  
 Agency: Deputy Commissioner

SB

382

**Suggestion on Language to resolve the replat conflict on condemnation proceedings**

**March 23, 2003**

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

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

**PURPOSE AND INTENT.** (a) The purpose of the amendments to AS 09.55.275, and AS 44.42, is to confirm the municipal role in eminent domain proceedings, while at the same time clarifying that such role is not intended to require an identity of substantive review or procedure between private landowner subdivision or zoning review processes, and proceedings for review of replats for the acquisition of property by government agencies or municipalities. ~~proceedings for review of replats for the acquisition of property by government agencies.~~ The Department of Transportation and Public Facilities is directed by AS 44.42.085 to adopt regulations that will be the primary and governing authority over replat approval proceedings.

(b) It is the intent of the legislature in amending AS 09.55.275 and AS 44.42 to confirm ~~confirm~~ the authority of an agency of the state or municipality to conduct ~~of an agency of the state or municipality to conduct~~ condemnation proceedings so long as the agency of the state or municipality obtained preliminary replat approval, notwithstanding challenges to particular municipal replat ordinances, review standards, procedures or applications.

(c) This guidance on legislative intent may be applied to past or present interpretation of AS 09.55.275, and to existing litigation such as the State of Alaska v. Hartman, 3AN-03-13875 CI or the State of Alaska v. Hinkle, 3AN-04-4768 CI.

\* **Sec. 2.** AS 09.55.275 is amended to read:

Sec. 09.55.275. Replat approval. An agency of the state or municipality [MAY NOT ACQUIRE] acquiring property in fee that results in a boundary change located within a municipality exercising the powers conferred by AS 29.35.180 or 29.35.260(c) [THAT RESULTS IN A BOUNDARY CHANGE] shall conform to this section and AS 44.42.085 by obtaining [UNLESS THE AGENCY OR MUNICIPALITY FIRST OBTAINS FROM THE MUNICIPAL PLATTING AUTHORITY] preliminary approval of a replat showing clearly the location of the proposed acquisition of private property. The platting authority may establish applicable review processes and standards for replats made for the purpose of right-of-way acquisition or condemnation consistent with AS 44.42.085, and regulations adopted under AS 44.42.085. If no municipal standards and process are in effect, then the provisions of AS 44.42.085, and regulations adopted under AS 44.42.085, shall be followed. Final approval of replat shall be ~~similarly~~ [BE SIMILARLY] also be obtained. However, if a state agency clearly demonstrates an overriding state interest, a waiver to the approval requirements of this section may be granted by the governor. It is not the intent of this section to confer rights to individual landowners. As applied to acquisitions of property identified herein, the platting authority is subject solely to the requirements of this section and AS 44.42.085. [THE PLATTING AUTHORITY SHALL TREAT APPLICATIONS FOR REPLAT MADE BY

STATE OR LOCAL GOVERNMENTAL AGENCIES IN THE SAME MANNER AS REPLAT PETITIONS ORIGINATED BY PRIVATE LANDOWNERS.]

**\*Sec. 3. AS 44.42 is amended by adding a new section to read:**

**Sec. 44.42.085 Platting of right-of-way acquired through eminent domain proceedings.**

When exercising eminent domain powers, in municipalities exercising the powers of AS 29.35.180 or 29.35.260(c), the department shall comply with AS 09.55.275. The department is exempt from municipal platting requirements that are in conflict with regulations adopted under this section, with other state eminent domain requirements, with AS 34.60, or with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*). The department shall set, by regulation, uniform standards for preparing replats with or without replat approval from municipal platting authorities -exercising the powers conferred by AS 29.35.180 or 29.35.260(c) consistent with this section. The regulations must contain provision for municipal platting authority review, including the municipal platting authority's elective right to provide preliminary, and final, replat approval. As to acquisitions identified herein, the state is subject solely to the standards of this section, regulations adopted under this section, and AS 09.55.275. Neither the adequacy of municipal replat processes or standards, if any, nor the failure of a municipality to follow its own replat processes and standards, shall provide a basis to deprive the state of eminent domain authority.

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

**RETROSPECTIVITY.** This Act is retrospective to July 1, ~~2001~~1999.

6971.

Jeff Otteson.

**Suggestion on Language to resolve the replat conflict on condemnation proceedings**

**March 23, 2003**

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

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

**PURPOSE AND INTENT.** (a) The purpose of the amendments to AS 09.55.275, and AS 44.42, is to confirm the municipal role in eminent domain proceedings, w

hile at the same time clarifying that such role is not intended to require an identity of procedure between private landowner subdivision or zoning review processes, and replat approval proceedings. The Department of Transportation and Public Facilities is directed by AS 44.42.085 to adopt regulations that will be the primary and governing authority over replat approval proceedings.

(b) It is the intent of the legislature in amending AS 09.55.275 and AS 44.42 to confirm authority in condemnation proceedings so long as an agency of the state obtained preliminary replat approval, notwithstanding challenges to particular municipal replat review standards or procedures or applications.

(c) This guidance on legislative intent may be applied to past or present interpretation of AS 09.55.275, and to existing litigation in the case of State of Alaska v. Hartman, 3AN-03-13875 CI.

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GOVERNMENTAL AGENCIES IN THE SAME MANNER AS REPLAT PETITIONS  
ORIGINATED BY PRIVATE LANDOWNERS.]

**\*Sec. 3. AS 44.42 is amended by adding a new section to read:**

**Sec. 44.42.085 Platting of right-of-way acquired through eminent domain proceedings.**

When exercising eminent domain powers, in home rule municipalities, the department shall comply with AS 09.55.275. The department is exempt from municipal platting requirements that are in conflict with regulations adopted under this section, with other state eminent domain requirements, or with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*). The department shall set, by regulation, uniform standards for preparing replats with or without replat approval from municipal platting authorities exercising the powers conferred by AS 29.35.180 or 29.35.260(c) consistent with this section. The regulations must contain provision for municipal platting authority review, including the municipal platting authority's elective right to provide preliminary, and final, replat approval. As to acquisitions identified herein, the state is subject solely to the standards of this section, regulations adopted under this section, and AS 09.55.275. Neither the adequacy of municipal replat processes or standards, if any, nor the failure of a municipality to follow its own replat processes and standards, shall provide a basis to deprive the state of eminent domain authority.

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

**RETROSPECTIVITY.** This Act is retrospective to July 1, 2001.

THE  
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# STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION  
AND PUBLIC FACILITIES  
OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

3132 CHANNEL DRIVE  
JUNEAU, ALASKA 99801-7898

TEXT: (907) 465-3652  
FAX: (907) 586-8365  
PHONE: (907) 465-3900

March 24, 2004

The Honorable John Cowdery  
Alaska State Senate  
State Capitol, Room 101  
Juneau AK 99811-1182

The Honorable Jim Holm  
Alaska House of Representatives  
State Capitol, Room 416  
Juneau AK 99811-1182

Dear Senator Cowdery and Representative Holm:

Thank you for taking the time to meet with my staff person, Jeff Oltesen, on proposed legislation to address the replats resulting from land acquired under eminent domain or condemnation proceedings. As Jeff indicated, this issue just came to our attention due to a lawsuit filed on the C-Street extension. Based on discussion between the Department of Law and staff in this department whom specialize in right-of-way issues, my concern quickly grew. Just this week a second lawsuit was filed on the Kenai River bridge project at Soldotna, based on the same legal argument.

The novel legal theory being advanced in the C-Street and Kenai River cases is based on a state law that dates back to 1975. What is new is the interpretation that the state cannot fulfill the typical replat provisions required of local government (mandated by AS 09.55.275) while also fulfilling the legal processes associated with condemnation. While the state will vigorously defend against these lawsuits, I must say that we are fearful of the consequence of an adverse decision. Several major projects across the state are at risk. Most critical is the Soldotna project that is slated for construction this summer.

We have provided your office with a draft of suggested legislation (copy enclosed) to address this matter. While knowing it is late in the session, I view the passage of this legislation this year as critical to the public expectation of project delivery of several important projects. We stand ready to offer testimony on the details of this legislation and the importance it plays to our department's delivery of vital transportation.

I'm sure it goes without saying that an adverse decision on either of these cases before the court would create a legal precedent that could be applied to all other projects in the state that require condemnation.

Senator Cowdery &amp; Rep. Holm

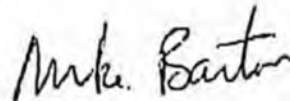
Page 2

March 24, 2004

The draft we provided was prepared in close alliance with the Department of Law. We anticipate they will also assist with any legal questions that may rise during testimony in committee hearings.

Thank you again for your support. Please call upon my staff or I for any assistance you may need.

Sincerely,



Mike Barton  
Commissioner

Enclosure

cc: Mike Tibbles, Legislative Liaison, Office of the Governor  
Gregg D. Renkes, Attorney General, Department of Law  
James Cantor, Chief Asst. Attorney General, Transportation Section, Dept. of Law  
John MacKinnon, Deputy Commissioner of Highways & Public Facilities, DOT&PF  
Gary Hogins, Chief Engineer, Division of Design & Engineering Services, DOT&PF  
Jeff Ottosen, Director, Division of Program Development, DOT&PF  
Gary L. Paxton, Southeast Regional Director, DOT&PF  
Andrew Niemiec, Northern Regional Director, DOT&PF  
William Robertson, Central Regional Director, DOT&PF  
Nona Wilson, Legislative Liaison, Office of the Commissioner, DOT&PF

**Suggestion on Language to resolve the replat conflict on condemnation proceedings**

March 23, 2003

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

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

**PURPOSE AND INTENT.** (a) The purpose of the amendments to AS 09.55.275, and AS 44.42, is to confirm the municipal role in eminent domain proceedings, while at the same time clarifying that such role is not intended to require an identity of substantive review or procedure between private landowner subdivision or zoning review processes, and proceedings for review of replats for the acquisition of property by government agencies or municipalities. The Department of Transportation and Public Facilities is directed by AS 44.42.085 to adopt regulations that will be the primary and governing authority over replat approval proceedings.

(b) It is the intent of the legislature in amending AS 09.55.275 and AS 44.42 to confirm the authority of an agency of the state or municipality to conduct condemnation proceedings so long as the agency of the state or municipality obtained preliminary replat approval, notwithstanding challenges to particular municipal replat ordinances, review standards, procedures or applications.

(c) This guidance on legislative intent may be applied to past or present interpretation of AS 09.55.275, and to existing litigation such as the State of Alaska v. Hartman, 3AN-03-13875 CI or the State of Alaska v. Uinkle, 3AN-04-4768 CI.

\* **Sec. 2.** AS 09.55.275 is amended to read:

**Sec. 09.55.275. Replat approval.** An agency of the state or municipality [MAY NOT ACQUIRE] acquiring property in fee that results in a boundary change located within a municipality exercising the powers conferred by AS 29.35.180 or 29.35.260(c) [THAT RESULTS IN A BOUNDARY CHANGE] shall conform to this section and AS 44.42.085 by obtaining [UNLESS THE AGENCY OR MUNICIPALITY FIRST OBTAINS FROM THE MUNICIPAL PLATTING AUTHORITY] preliminary approval of a replat showing clearly the location of the proposed acquisition of private property. The platting authority may establish applicable review processes and standards for replats made for the purpose of right-of-way acquisition or condemnation consistent with AS 44.42.085, and regulations adopted under AS 44.42.085. If no municipal standards and process are in effect, then the provisions of AS 44.42.085, and regulations adopted under AS 44.42.085, shall be followed. Final approval of replat shall [BE SIMILARLY] also be obtained. However, if a state agency clearly demonstrates an overriding state interest, a waiver to the approval requirements of this section may be granted by the governor. [THE PLATTING AUTHORITY SHALL TREAT APPLICATIONS FOR REPLAT MADE BY STATE OR LOCAL GOVERNMENTAL AGENCIES IN THE SAME MANNER AS REPLAT PETITIONS ORIGINATED BY PRIVATE LANDOWNERS.]

**\*Sec. 3. AS 44.42 is amended by adding a new section to read:**

**Sec. 44.42.085 Platting of right-of-way acquired through eminent domain proceedings.**

When exercising eminent domain powers, in municipalities exercising the powers of AS 29.35.180 or 29.35.260(c), the department shall comply with AS 09.55.275. The department is exempt from municipal platting requirements that are in conflict with regulations adopted under this section, with other state eminent domain requirements, with AS 34.60, or with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*). The department shall set, by regulation, uniform standards for preparing replats with or without replat approval from municipal platting authorities exercising the powers conferred by AS 29.35.180 or 29.35.260(c) consistent with this section. The regulations must contain provision for municipal platting authority review, including the municipal platting authority's elective right to provide preliminary, and final, replat approval. As to acquisitions identified herein, the state is subject solely to the standards of this section, regulations adopted under this section, and AS 09.55.275. Neither the adequacy of municipal replat processes or standards, if any, nor the failure of a municipality to follow its own replat processes and standards, shall provide a basis to deprive the state of eminent domain authority.

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

**RETROSPECTIVITY.** This Act is retrospective to July 1, 1999.

Interim:  
716 West 4<sup>th</sup> Ave.  
Anchorage, AK 99501

Phone: 907-269-0222  
Fax: 907-269-0223



Senator  
John J. Cowdery

Session:  
State Capitol Bldg.  
Juneau, AK 99801

Phone: 907-465-3879  
Fax: 907-465-2069  
Toll Free: 1-888-269-3879

# FAX COVER

DATE: 28 March 2004 TIME: 10:28

TO: Peter Putzier

FAX: 675 35 PHONE: 3600

FROM: Richard Schmitz

FAX: 2069 PHONE: 4921

NUMBER OF PAGES: (INCLUDING COVER) 6

NOTES: FYI

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# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
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STATE OF ALASKA

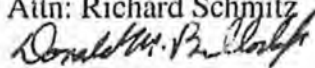
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Mail Stop 3101

State Capitol  
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Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 29, 2004

**SUBJECT:** Retrospective application of statutes relating to replats and eminent domain proceedings (Work Order No. 23-LS1879\A)

**TO:** Senator John Cowdery  
Attn: Richard Schmitz  


**FROM:** Donald M. Bullock Jr.  
Legislative Counsel

Enclosed with this memorandum is a preliminary draft of a bill relating to eminent domain and the replat of boundary procedures.

Due to present workload, I do not have sufficient time to thoroughly research the issues the bill is attempting to resolve. This draft is based on the language you provided to me that I believe is from people at the Department of Transportation and Public Facilities. I made some stylistic changes and reorganized some of the language, but I think the meaning is the same as what you provided. I suggest you pass this draft by the people in DOTPF who are advising you on this bill regarding the technicalities of the replat process.

I made some revisions to the legislative findings and intent in sec. 1 of the bill draft. Findings and intent are not substantive law, but may help a court to interpret the substance of an Act. The language I removed from the findings and intent were repetitions of the substantive provisions in the body of the bill.

I point out to you an issue relating to the retroactive application of this bill. As you know, litigation is proceeding in at least two cases (the Hartman and Hinkle cases mentioned in sec. 1) in which the failure to perform a replat under AS 09.55.275 is alleged as an affirmative defense to the state's eminent domain action. The affirmative defense in each case states that the taking by the state will require a boundary change that requires a replat. In both cases, the defendant property-owners believe the failure to obtain a replat as required under AS 09.55.275 is a basis for preventing the state's taking of their property.

Our state Supreme Court, in *Municipality of Anchorage v. Suzuki*<sup>1</sup> concluded that the municipality was required to obtain a replat before acquiring an easement in two pieces

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<sup>1</sup> 41 P.3d 147 (Alaska 2002).

Senator John Cowdery

March 29, 2004

Page 2

of property. In reaching its decision, the court noted that the power of eminent domain is to be strictly construed against the condemning party and in favor of the property owner. The court quoted the superior court's finding that the purpose of the replat "is to ensure that land acquisitions by condemning agencies . . . comply with all local planning and zoning ordinances and local regulations in the same manner and to the same extent as other landowners."<sup>2</sup>

A court could find that a requirement to obtain a replat before the acquisition of an owner's property is part of the due process an owner is entitled to before property is taken. If this is so, the retroactive application of the Act could be found to be unconstitutional. On the other hand, a court could conclude that the purpose of AS 09.55.275 is merely to allow a municipality the opportunity to review whether the taking by eminent domain is compatible with its planning and zoning laws. Under this latter interpretation, a replat would not part of the due process required to take land from its owner.

If I may be of further assistance, please advise.

DMB:med  
04-333.med

Enclosure

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<sup>2</sup> 41 P.3d at 149.

23-LS1879A  
Bullock  
3/29/04

**SENATE BILL NO.**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

**BY THE SENATE TRANSPORTATION COMMITTEE**

**Introduced:**  
**Referred:**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to replat approval; relating to the platting of right-of-way acquired**  
2 **through eminent domain proceedings; and providing for an effective date."**

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

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

6 **PURPOSE AND INTENT.** (a) The purpose of this Act is to confirm the municipal  
7 role in eminent domain proceedings while at the same time clarifying that that role is not  
8 intended to require the same substantive review or procedures for review of replats for the  
9 acquisition of property by the state or a municipality as required in replats for private  
10 landowner subdivisions or zoning reviews. Regulations adopted by the Department of  
11 Transportation and Public Facilities shall be the primary and governing authority for replat  
12 approval proceedings.

13 (b) It is the intent of the legislature to

14 (1) confirm the authority of an agency of the state or a municipality to conduct

1 condemnation proceedings so long as the agency of the state or municipality obtains  
2 preliminary replat approval as provided for in this Act, notwithstanding challenges to  
3 particular municipal replat ordinances, review standards, procedures, or applications; and

4 (2) apply this Act retrospectively to July 1, 1999, and to existing litigation  
5 such as State of Alaska v. Hartman, 3AN-03-13875 CI and State of Alaska v. Hinkel, 3AN-  
6 04-4768 CI.

7 \* **Sec. 2.** AS 09.55.275 is repealed and reenacted to read:

8 **Sec. 09.55.275. Replat approval.** An agency of the state or municipality  
9 acquiring property in fee that results in a boundary change located within a  
10 municipality exercising the powers conferred by AS 29.35.180 or 29.35.260(c) shall  
11 conform to this section and AS 44.42.085 by obtaining preliminary approval of a  
12 replat showing clearly the location of the proposed public street, easement, right-of-  
13 way, and other taking of private property. The platting authority may establish  
14 applicable review procedures and standards for a replat made for the purpose of a  
15 right-of-way acquisition or condemnation consistent with AS 44.42.085 and  
16 regulations adopted under that section. If no municipal standards and procedures are  
17 in effect, then the provision of AS 44.42.085 and the regulations adopted under that  
18 section shall apply. Final approval of replat shall also be obtained. However, if a state  
19 agency clearly demonstrates an overriding state interest, a waiver of the municipal  
20 approval requirements in this section may be granted by the governor.

21 \* **Sec. 3.** AS 44.42 is amended by adding a new section to read:

22 **Sec. 44.42.085. Platting of right of way acquired through eminent domain**  
23 **proceedings.** (a) Except as provided in (c) of this section, the department shall  
24 comply with AS 09.55.275 when exercising eminent domain powers in municipalities  
25 that exercise the powers conferred by AS 29.35.180 or 29.35.260(c).

26 (b) The department shall adopt regulations providing for uniform standards for  
27 preparing replats that are consistent with AS 09.55.240 - 09.55.460, AS 34.60.010 -  
28 34.60.150, and 42 U.S.C. 4601 - 4655 (Uniform Relocation Assistance and Real  
29 Property Acquisition Policies Act of 1970), as amended. The regulations must  
30 provide for a review by the platting authority of the municipality in which the property  
31 subject to the eminent domain proceeding is located and may allow the municipal

1 authority to elect to provide preliminary and final replat approval.

2 (c) The department is exempt from municipal platting requirements that are in  
3 conflict with this section and the regulations adopted by the department under (b) of  
4 this section.

5 (d) Neither the adequacy of the municipal replat process or standards, if any,  
6 nor the failure of a municipality to follow its own replat process and standards, shall  
7 provide a basis to deprive the state of the interest in land that is the subject of its  
8 eminent domain action.

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

11 **RETROACTIVITY.** Sections 1 and 2 of the Act are retroactive to July 1, 1999.

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

23-LS1879\D  
Bullock  
3/31/04

**CS FOR SENATE BILL NO. 382(TRA)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY THE SENATE TRANSPORTATION COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): SENATE TRANSPORTATION COMMITTEE**

**A B I L L**

**FOR AN ACT ENTITLED**

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2 **through eminent domain proceedings; and providing for an effective date."**

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4 **\* Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
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8 intended to require the same substantive review or procedures for review of replats for the  
9 acquisition of property by the state or a municipality as required in replats for private  
10 landowner subdivisions or zoning reviews. Regulations adopted by the Department of  
11 Transportation and Public Facilities shall be the primary and governing authority for these  
12 replat approval proceedings.

13 (b) It is the intent of the legislature to

14 (1) confirm the authority of an agency of the state or a municipality to conduct

1 condemnation proceedings so long as the agency of the state or municipality obtains  
2 preliminary replat approval as provided for in this Act, notwithstanding challenges to  
3 particular municipal replat ordinances, review standards, procedures, or applications; and

4 (2) apply secs. 1 and 2 of this Act retrospectively to July 1, 1999, and to  
5 existing litigation such as State of Alaska v. Hartman, 3AN-03-13875 CI and State of Alaska  
6 v. Hinkel, 3AN-04-4768 CI.

7 \* **Sec. 2.** AS 09.55.275 is repealed and reenacted to read:

8 **Sec. 09.55.275. Replat approval.** An agency of the state or municipality  
9 acquiring property in fee that results in a boundary change located within a  
10 municipality exercising the powers conferred by AS 29.35.180 or 29.35.260(c) shall  
11 conform to this section and AS 44.42.085 by obtaining preliminary approval of a  
12 replat showing clearly the location of the proposed public street or other acquisition of  
13 property. The platting authority may establish applicable review procedures and  
14 standards, consistent with AS 44.42.085 and regulations adopted under that section,  
15 for a replat made for the purpose of a right-of-way acquisition or condemnation. If no  
16 municipal standards and procedures are in effect, then the provision of AS 44.42.085  
17 and the regulations adopted under that section shall apply. Final approval of replat  
18 shall also be obtained. However, if a state agency clearly demonstrates an overriding  
19 state interest, a waiver of the municipal approval requirements in this section may be  
20 granted by the governor.

21 \* **Sec. 3.** AS 44.42 is amended by adding a new section to read:

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23 **proceedings.** (a) Except as provided in (c) of this section, the department shall  
24 comply with AS 09.55.275 when exercising eminent domain powers in municipalities  
25 that exercise the powers conferred by AS 29.35.180 or 29.35.260(c).

26 (b) The department shall adopt regulations providing for uniform procedures  
27 and standards for replatting required by (a) of this section. The regulations

28 (1) must be consistent with AS 09.55.240 - 09.55.460, AS 34.60.010 -  
29 34.60.150, and 42 U.S.C. 4601 - 4655 (Uniform Relocation Assistance and Real  
30 Property Acquisition Policies Act of 1970), as amended;

31 (2) must provide for a review by the platting authority of the

1 municipality in which the property subject to the eminent domain proceeding is  
2 located; and

3 (3) may allow the municipal authority to elect to provide preliminary  
4 and final replat approval.

5 (c) The department is exempt from municipal platting requirements that are in  
6 conflict with this section and the regulations adopted by the department under (b) of  
7 this section.

8 (d) Neither the adequacy of the municipal replat process or standards, if any,  
9 nor the failure of a municipality to follow its own replat process and standards, shall  
10 deprive the state of the authority to exercise its power of eminent domain.

11 \* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to  
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13 **RETROACTIVITY.** Sections 1 and 2 of the Act are retroactive to July 1, 1999.

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

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

P.O. BOX 110300  
DIAMOND COURT HOUSE, 6<sup>TH</sup> FLOOR  
JUNEAU, ALASKA 99811-0300  
PHONE: (907)465-3600  
FAX: (907)465-6735

### SECTIONAL ANALYSIS—SB 382

Section 1 of this bill sets forth a general explanation. The overall goals of the bill are (1) to confirm the municipal role in review of property acquisitions by eminent domain for public infrastructure projects, while maintaining flexibility in how the municipal review is conducted; (2) to standardize the replat process through implementation of regulations defining how the replat approval process is to be conducted, and (3) to confirm DOT&PF's authority to condemn property in cases where it has already applied for, and received, replat approval pursuant to existing municipal law from a municipality, such as in State of Alaska v. Hartman (C Street Extension in Anchorage), and State of Alaska v. Hinkel (Kenai River Bridge in Soldotna).

Section 2 of this bill repeals and reenacts AS 09.55.275. This section references AS 44.42.085, which will require that DOT&PF adopt regulations setting replat procedures, and standards, under AS 09.55.275. The other primary change is to delete the last sentence of present AS 09.55.275:

*The platting authority shall treat applications for replat made by state or local governmental agencies in the same manner as replat petitions originated by private landowners.*

The foregoing sentence has been used in two existing court cases to challenge DOT&PF's authority to condemn property. The challengers contend that existing municipal ordinances do not comply with the foregoing sentence, and thus DOT&PF lacks authority to condemn property. The deletion of the sentence above, together with other changes to this section, make clear that the legislature is not trying to mandate a particular and specific municipal replat review process but, instead, to grant some municipal discretion in how to conduct the review.

Section 3 of this bill requires DOT&PF to implement regulations standardizing the broad replat approval process under AS 09.55.275. In addition, while DOT&PF remains subject to local review, the adequacy of the process or standards chosen by the local government cannot be used as a basis to deprive DOT&PF of condemnation authority.

Section 4 of this bill provides for a retroactive effective date to 1999, a time preceding existing litigation in State of Alaska v. Hartman, 3AN-03-13875 CI and State of Alaska v. Hinkel, 3AN-04-4768 CI. The retroactive effective date will enable DOT&PF to use the legislation as evidence of statutory intent.

Section 5 of this bill provides for an immediate effective date.

**General:** The broad purpose of this bill is to harmonize two important public goals:

- (1) That state and municipal transportation projects may reasonably proceed with right-of-way acquisition that is done in accord with federal and state laws.
- (2) Ensuring the responsible review and approval of right-of-way acquisition under the replatting process administered by local government.

The goal is to preserve a balance between the need for public transportation projects, on the one hand, with reasonable local review on the other.

Two lawsuits have been filed challenging DOT&PF's authority to condemn needed right-of-way for public projects (C Street Extension project/Kenai River Bridge project). The argument being made to the courts is that the last sentence of AS 09.55.275 is evidence that the legislature intended to define a specific local review process. The argument continues that any deviation from the alleged, defined legislative procedure is therefore a violation of AS 09.55.275, and deprives DOT&PF of the authority to condemn property. DOT&PF believes there was never a legislative intent to define a specific procedure.

Both the Municipality of Anchorage, and the Kenai Peninsula Borough, for example, have specific replat review procedures in place for right-of-way acquisitions. Not surprisingly, those procedures differ in some respects from other replat review proceedings, such as might be found for a typical subdivision replat. The lawsuits argue that the court must deny DOT&PF the authority to condemn, since the ordinances for right-of-way acquisition replat review differ from review procedures which might apply to a typical subdivision. Notably, DOT&PF properly applied for, and received, replat approval from both the Municipality of Anchorage, and the Kenai Peninsula Borough, yet may still be found to have no authority to proceed with condemnation.

If the Anchorage or Kenai Superior Courts uphold this novel legal theory, DOT&PF will be held to have no authority to proceed with condemnation. The potential for significant delay of many important projects is great. Many of these projects were approved by the voters as bond projects, and untimely project completion could cause the project costs to increase. In addition, litigation concerning DOT&PF's authority to condemn property obviously jeopardizes the scheduling of current, and future, public construction projects. For example, the construction seasons might be lost both for the C Street extension project in Anchorage, as well as for the Kenai River Bridge project in Soldotna.

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- (1) That state and municipal transportation projects may reasonably proceed with right-of-way acquisition that is done in accord with federal and state laws.
- (2) Ensuring the responsible review and approval of right-of-way acquisition under the replatting process administered by local government.

The goal is to preserve a balance between the need for public transportation projects, on the one hand, with reasonable local review on the other.

Two lawsuits have been filed challenging DOT&PF's authority to condemn needed right-of-way for public projects (C Street Extension project/Kenai River Bridge project). The argument being made to the courts is that the last sentence of AS 09.55.275 is evidence that the legislature intended to define a specific local review process. The argument continues that any deviation from the alleged, defined legislative procedure is therefore a violation of AS 09.55.275, and deprives DOT&PF of the authority to condemn property. DOT&PF believes there was never a legislative intent to define a specific procedure.

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**KENAI PENINSULA BOROUGH  
LEGAL DEPARTMENT**

144 N. Binkley Street  
Soldotna, Alaska 99669

Tel. (907) 714-2120  
Fax (907) 262-8686

April 14, 2004

Sent via electronic mail

Peter Putzier  
Assistant Attorney General  
Office of the Attorney General  
P.O. Box 110300  
Juneau, AK 99811-0300

Dear Mr. Putzier:

Thank you very much for requesting comments from the Kenai Peninsula Borough regarding CSSB 382 as proposed April 15, 2004. The Kenai Peninsula Borough administration has reviewed the proposed changes and generally has no objection to them. We wish to confirm that pursuant to the stated purpose and intent the Kenai Peninsula Borough will retain the right to regulate remnant parcels including the ability to require that a note be placed on the plat as provided in KPB 20.04.080(E) which states:

- E. Remainder parcels. No remainder parcel resulting from the right-of-way plat shall be allowed which does not conform to applicable city and borough codes unless:
1. A note is placed on the plat indicating that damages have been paid to the owner of the remainder and that the nonconforming remainder cannot be developed without first being replatted so as to conform to applicable city and borough codes; or
  2. The remainder meets the requirement for exception under KPB 20.20.190 C, or KPB 20.24.010.

Also, the proposed wording of AS 09.55.275 authorizes municipalities to establish authority to review procedures that are consistent with AS 44.42.085 and the regulations adopted under that section. Please confirm that this would not prevent the borough from adopting stricter rules than in AS 44.42.085 and the regulations, provided they are consistent with those laws.

Additionally, we respectfully request that either the statutes or the regulations require notice of the replat be provided by the state at least to the owners of properties subject to the

Peter Putzier  
Re: CSSB 382 comments  
April 16, 2004  
Page 2 of 2

eminent domain proceedings. If this bill is enacted we would appreciate the opportunity to review and comment upon the regulations when they are drafted.

Please note that this letter does not represent the view of the borough assembly which has not had the opportunity to review the latest amendments.

Thank you again for the opportunity to comment.

Yours Very Truly,

/s/

Colette G. Thompson  
Borough Attorney

cc: Dale Bagley, Mayor  
Max Best, Planning Director  
Pete Sprague, Assembly President  
Ron Long, Assembly Member

**KETCHIKAN GATEWAY BOROUGH****Office of the Borough Attorney • 344 Front Street • Ketchikan, Alaska 99901****Scott A. Brandt-Erichsen****Borough Attorney****(907) 228-6635****Fax: (907) 247-6625****E-Mail: borosatty@borough.ketchikan.ak.us**

April 16, 2004

Faxed and Mailed

Senator John Cowdery  
Chair, Senate Rules Committee  
State Capitol  
Juneau, AK 99801-1182

Re: CSSB 382 CRA

Dear Senator Cowdery,

I am writing in reference to CSSB 382 CRA regarding eminent domain and right of way platting. This bill is currently in the rules committee. DOT has requested the bill in order to address a problem created by a 2002 Alaska Supreme Court decision in Suzuki v. Municipality of Anchorage. That decision held that the current language in AS 9.55.275 precluded a modified plat process for right of way plats involving condemnation, and requires substantially similar procedures for such plats and any other subdivision plat.

One reason that this is a concern is that right of way plats are different than most subdivision plats as they do not require extension of roads and utilities to the lots in the subdivision. Additionally, where most subdivision plats require the signature of the property owner on the plat, right of way plats often affect property with numerous property owners who own property affected by the project, some of whom are adverse to the project having been on the opposite side of a condemnation proceeding. As a result, several jurisdictions, Ketchikan included, have adopted right of way plat procedures which do not require such signatures. Ketchikan worked with the DOT in developing the ordinance, but also retained some requirements which are important to local planning objectives.

The Suzuki decision brings these procedures into question as they are different from the rules for other subdivisions, an apparent violation of the last sentence of the current AS 9.55.275. The Ketchikan Gateway Borough agrees that this is a problem which should be addressed.

The method proposed by CSSB 382 CRA, as currently drafted, causes concern due to the broad preemption of local platting regulations embodied in the proposed AS 44.42.085 (c). This section provides that the department (DOT) is exempt from municipal platting requirements that are in conflict with either the proposed AS 44.42.085 or regulations which the DOT will adopt, but which have not yet been prepared. In the most recent amendments language was added to the purpose statement which confirms the right of municipalities to regulate remnant parcels. This is merely palliative language as it is not substantive. The statutory language would preempt municipal regulations where there is a conflict. It cannot be determined where such conflicts will arise. Normally where there is a conflict the municipal provision will prevail if there is not

an expressed preemption and the issue is primarily a local concern. If the only local requirement identified by DOT which is causing problems is the requirement for signatures from all property owners affected by the plat, then express preemption of such a requirement would be more direct and more appropriate. A blanket preemption to be defined later in a subject area which is primarily a local concern is undesirable.

The Ketchikan Gateway Borough wants to assist in addressing the problem identified by DOT. We agree that right of way plats are fundamentally different from other subdivisions, and may appropriately be addressed under different, more streamlined, procedures. To this end we have consulted with the Attorney General's office and endorse a modification prepared by that office which alleviates our concerns. Specifically, the proposed change would amend the bill by adding the following text to the end of the proposed AS 44.42.085 (c):

"Unless a regulation adopted by the department under this section expressly preempts local platting provisions which conflict with such regulation, a municipality may apply additional platting requirements beyond those identified in (b)(1) above so long as such platting requirements are consistent with those applied to other landowners."

Thank you for your attention to this issue.

Sincerely,



Scott A. Brandt-Erichsen  
Borough Attorney  
Ketchikan Gateway Borough

Enclosure

cc: Senator Burt Stedman  
Representative Bill Williams  
Kevin Ritche, Alaska Municipal League  
Peter Putzier, Assistant Attorney General

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB382-DOT-CO-3-31-04  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
 Title Replating provisions of Eminent RDU Administration & Support  
Domain Right of Way Component Commissioner's Office  
 Sponsor Senate Transportation  
 Requester Senate Transportation Component No. 530

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: Nona Wilson Phone 465-6973  
 Division: Legislative Liaison Date/Time 3/31/04 12:29 PM  
 Approved by: John MacKinnon Date 3/31/2004  
 Agency: Deputy Commissioner

2029 DOW.

SB 382

**Subject: Conceptual Amendments--SB 382**

**Date:** Tue, 13 Apr 2004 17:00:08 -0800

**From:** "Peter Putzier" <Peter\_Putzier@law.state.ak.us>

**To:** <Richard\_Schmitz@Legis.state.ak.us>

**CC:** <Sam\_Kito@ci.juneau.ak.us>

Richard:

DOT&PF has opened a dialogue with various municipalities. Those discussions have resulted in a few suggestions for changes to the existing legislation.

Section 1: Amend the PURPOSE AND INTENT to read: "(a) The purpose of this Act is to confirm the municipal role in eminent domain proceedings, including the right of municipalities to regulate remnant parcels, while at the same time . . . "

Section 3: Add a new AS 44.42.085(b)(1), and renumber the following subsections:

"(b)(1) must be narrowly tailored to establish minimum baseline procedures or standards particular to replat issues arising in eminent domain proceedings, and may not unnecessarily, or without good cause, infringe on general municipal zoning powers or authority."

Section 3: Change subpart (c) as follows: "shall allow the municipal authority to elect to provide preliminary and final replat approval." [replaces "may" with "shall"]

The foregoing reflects the changes that have been discussed so far. The CBJ may be asking for additional language of some sort which would require DOT&PF to get review and comment from relevant platting authorities prior to adopting regulations. In the absence of specific language changes, DOT&PF is amenable to committing on the record that it will include the impacted platting authorities in the regulation drafting process.

I will contact you sometime before noon tomorrow with an update. Please feel free to give me a call, if you would like any additional information or clarification.

Thank you.

Peter Putzier  
Assistant Attorney General  
Transportation Section  
(907) 465-6712 (direct line)  
(907) 465-6735 (fax)  
Email: [peter\\_putzier@law.state.ak.us](mailto:peter_putzier@law.state.ak.us)

This is a privileged and confidential communication. If you are not the intended recipient, you must: (1) Notify the sender of the error; (2) Destroy this communication entirely, including deletion of all associated attachment files from all individual and network storage devices; and (3) Refrain from copying or disseminating this communication by any means.

Peter Putzier

Assistant Attorney General  
Transportation Section  
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# ALASKA STATE LEGISLATURE

## SESSION

State Capitol, Rm 30  
Juneau, Alaska 99801-1182  
(907) 465-3873 Phone  
(907) 465-3922 Fax  
(877) 463-3873 Toll Free  
Senator\_Bert\_Stedman@legis.state.ak.us



## INTERIM

50 Front Street  
Ketchikan, AK 99901-6442  
Phone (907) 225-8088  
Fax (907) 225-0713

**SENATOR BERT K. STEDMAN**

---

## MEMORANDUM

**DATE:** April 15, 2004

**TO:** Peter Putzier, Asst Attorney General, Transportation, Dept of Law  
Jeff Ottesen, Director, Program Development, DOT

**CC:** ✓ Senator John Cowdery  
Senator Tom Wagoner  
Co-Chairs, Senate Transportation Committee

**FROM:** Senator Bert K. Stedman *BK Stedman*

**SUBJECT:** Proposed Amendment to CSSB 382 (CRA)

---

Yesterday the Senate Community & Regional Affairs Committee heard SB 382, an act dealing with eminent domain and replat of boundary changes. The committee heard testimony from representatives of the Department of Law and the Department of Transportation and passed out a new committee substitute – CSSB 382(CRA).

During yesterday's testimony, DOT indicated that they had opened a dialogue with the affected municipalities and solicited their suggestions regarding this legislation. However, due to the speed with which this bill has progressed, they stated that they had yet to get responses from a few of the larger municipalities. I was unaware at that time that the Ketchikan Gateway Borough was one of those that had yet to comment.

This morning, I met with the Ketchikan Gateway Borough's attorney. Ketchikan's concern is that even though it is DOT's stated intent to get comments from the relevant platting authorities prior to adopting department regulations governing eminent domain replat procedures and standards; there is no specific requirement for them to do so in this bill. Further, since Sec 44.42.085 (c) exempts DOT from municipal platting requirements that may conflict with the State's as yet unwritten regulations, SB 382 may have the unintended consequence of trumping local procedures. I think they have a valid concern.

DISTRICT A

Ketchikan • Sitka • Petersburg • Wrangell

Pelican • Elfin Cove • Port Alexander • Saxman • Meyers Chuck • Thorne Bay • Coffman Cove • Hollis

MEMORANDUM

RE: Amendment to CSSB 382 (CRA)

April 15, 2004

Page 2 of 2

---

I realize this bill is in the Rules Committee and will be heading to the Senate Floor, but I'm hoping there is some way we can address their concern as this legislation continues to the House. I would like to suggest an amendment to CSSB 382(CRA) that I believe would alleviate Ketchikan's concern.

**Amendment 1 CSSB 382 (CRA)**

Amend section 44.42.085 (c) by deleting the bracketed text:

“The department is exempt from municipal platting requirements that are in conflict with this section.~~[AND THE REGULATIONS ADOPTED BY THE DEPARTMENT UNDER (B) OF THIS SECTION.]~~”

Thank you for your attention to this request. Please let me know if I can be of further assistance.

Move and ask unanimous consent that we return to second for the purpose of an amendment.

### SB 382 – ROW - Amendment

- Section 3 of this bill speaks to new standards the department would like to implement – and this is the section with which municipalities are having concerns.
- The part of Section 3 that is important for the projects and the lawsuits is subsection (d).
- So, this amendment deletes Section 3, except for subsection (d) and makes housekeeping changes to the rest of the legislation as a result of the deletion.
- Subsection (d) is inserted in Section 2 – which is reflected on lines 14-16 of this amendment.

AMENDMENT

OFFERED IN THE SENATE  
TO: CSSB 382(CRA)

BY SENATOR WAGONER

1 Page 1, lines 11 - 12:

2 Delete "Regulations adopted by the Department of Transportation and Public Facilities  
3 shall be the primary and governing authority for these replat approval proceedings."  
4

5 Page 2, line 11:

6 Delete "and AS 44.42.085"  
7

8 Page 2, line 14:

9 Delete ", consistent with AS 44.42.085 and regulations adopted under that section,"  
10

11 Page 2, lines 15 - 17:

12 Delete "If no municipal standards and procedures are in effect, then the provision of  
13 AS 44.42.085 and the regulations adopted under that section shall apply."  
14

15 Insert "Neither the adequacy of the municipal replat process or standards, if any, nor  
16 the failure of a municipality to follow its own replat process and standards shall deprive the  
17 state of the authority to exercise its power of eminent domain."  
18

19 Page 2, line 21, through page 3, line 14:

20 Delete all material.  
21

22 Renumber the following bill sections accordingly.

AMENDMENT ON 4/21/04

23-LS1879\I

CS FOR SENATE BILL NO. 382(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 4/15/04

Referred: Rules

Sponsor(s): SENATE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to replat approval; relating to the platting of right-of-way acquired  
2 through eminent domain proceedings; and providing for an effective date."

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

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

6 PURPOSE AND INTENT. (a) The purpose of this Act is to confirm the municipal  
7 role in eminent domain proceedings, including the right of municipalities to regulate remnant  
8 parcels, while at the same time clarifying that that role is not intended to require the same  
9 substantive review or procedures for review of replats for the acquisition of property by the  
10 state or a municipality as required in replats for private landowner subdivisions or zoning  
11 reviews. ~~Regulations adopted by the Department of Transportation and Public Facilities shall~~  
12 ~~be the primary and governing authority for these replat approval proceedings~~

13 (b) It is the intent of the legislature to

14 (1) confirm the authority of an agency of the state or a municipality to conduct

1 condemnation proceedings so long as the agency of the state or municipality obtains  
2 preliminary replat approval as provided for in this Act, notwithstanding challenges to  
3 particular municipal replat ordinances, review standards, procedures, or applications; and

4 (2) apply secs. 1 and 2 of this Act retrospectively to July 1, 1999, and to  
5 existing litigation such as State of Alaska v. Hartman, 3AN-03-13875 CI and State of Alaska  
6 v. Hinkel, 3AN-04-4768 CI.

7 \* Sec. 2. AS 09.55.275 is repealed and reenacted to read:

8 **Sec. 09.55.275. Replat approval.** An agency of the state or municipality  
9 acquiring property in fee that results in a boundary change located within a  
10 municipality exercising the powers conferred by AS 29.35.180 or 29.35.260(c) shall  
11 conform to this section ~~and AS 44.42.085~~ by obtaining preliminary approval of a  
12 replat showing clearly the location of the proposed public street or other acquisition of  
13 property. The platting authority may establish applicable review procedures and  
14 standards, ~~consistent with AS 44.42.085 and regulations adopted under that section,~~  
15 for a replat made for the purpose of a right-of-way acquisition or condemnation. ~~If no~~  
16 ~~municipal standards and procedures are in effect, then the provision of AS 44.42.085~~  
17 ~~and the regulations adopted under that section shall apply.~~ Final approval of replat  
18 shall also be obtained. However, if a state agency clearly demonstrates an overriding  
19 state interest, a waiver of the municipal approval requirements in this section may be  
20 granted by the governor.

21 \* Sec. 3. AS 44.42 is amended by adding a new section to read:

22 **Sec. 44.42.085. Platting of right-of-way acquired through eminent domain**  
23 **proceedings.** (a) Except as provided in (c) of this section, the department shall  
24 comply with AS 09.55.275 when exercising eminent domain powers in municipalities  
25 that exercise the powers conferred by AS 29.35.180 or 29.35.260(c).

26 (b) The department shall ~~adopt~~ regulations providing for uniform procedures  
27 and standards for replatting required by (a) of this section. The regulations

28 (1) must be written narrowly to establish minimum baseline  
29 procedures or standards particular to replat issues arising in eminent domain  
30 proceedings and may not unnecessarily or without good cause infringe on general  
31 municipal zoning powers or authority;

Delete

Delete

Delete

Delete

\* insert

\* Old Sec. 3 (d).

1  
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*delete*

~~(2) must be consistent with AS 09.55.240 - 09.55.460, AS 34.60.010 - 34.60.150, and 42 U.S.C. 4601 - 4655 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970), as amended;~~

~~(3) must provide for a review by the platting authority of the municipality in which the property subject to the eminent domain proceeding is located; and~~

~~(4) shall allow the municipal authority to elect to provide preliminary and final replat approval.~~

~~(c) The department is exempt from municipal platting requirements that are in conflict with this section and the regulations adopted by the department under (b)-of this section.~~

~~(d) Neither the adequacy of the municipal replat process or standards, if any, nor the failure of a municipality to follow its own replat process and standards shall deprive the state of the authority to exercise its power of eminent domain.~~

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

RETROACTIVITY. Sections 1 and 2 of the Act are retroactive to July 1, 1999.

\* Sec. 5. This Act takes effect immediately under AS 01.10.070(c). *???* IF need this.

*INSERT*

*insert on page 2, line 15.*

States delegated his statutory authority of the Interior authorizing lands in Alaska for specified Alaska Land Title Ass'n, 667 cert. denied, 464 U.S. 1040, 2d 168 (1984).

shall not be construed to deny any right-of-way or other interest acquired under the Act, 61 Stat. 418. (§ 3 ch

not apply to patents issued under the Act of 1938, 43 U.S.C. & amended. State v. Alaska Land Title Ass'n, 667 P.2d 168 (Alaska 1983), cert. denied, 704, 79 L. Ed. 2d 168 (1984). The Act of 1966 does not apply to a public land order issued under which the States delegated his statutory authority of the Interior authorizing lands in Alaska for specified Alaska Land Title Ass'n, 667 cert. denied, 464 U.S. 1040, 2d 168 (1984).

, it shall appear that law;

which it is to be applied is

in proceedings in condemnation of taking and those under a condemnation and an order for line Co. v. 3.60 Acres, More or a 1975).

only show authority and — The right of eminent domain in behalf of a public use in the taking of property use the complaint or petition it show plainly and affirmatively statutory authority for the taking of the property for such a Lyng, 138 F. 544 (9th Cir.

sufficient in eminent domain to be a clear, positive statement to be condemned is necessary and supported by a

statement of facts from which the court can see that the property is intended to be used for that purpose. *Miocene Ditch Co. v. Lyng*, 138 F. 544 (9th Cir. 1905).

**Authority and necessity must be found by court before condemnation.** — This section has been construed as requiring the court to find the use is authorized by law and the taking is necessary "before condemnation." *Bridges v. Alaska Hous. Auth.*, 349 P.2d 149 (Alaska 1960).

**Necessity of findings.** — It is upon findings made in accordance with this section that there is established a basis for further proceedings. The findings constitute the decision of the court upon the vital question of whether or not the property sought to be taken can be condemned at all. *Van Dyke v. Midnight Sun Mining & Ditch Co.*, 177 F. 85 (9th Cir. 1910).

**Questions to be considered by court.** — Ordinarily the only questions to be considered by the courts in condemnation proceedings are: First, whether the petitioner has the power to exercise the right of eminent domain; second, whether the property itself is of a nature subject to condemnation; third, whether the property is being taken for a public or a private use; and fourth, whether the power is being used for taking an excessive amount of property. *Town of Seward v. Margules*, 9 Alaska 354 (1938).

**Absolute necessity not required.** — Although the condemnor may have the burden of making a prima facie showing of necessity, the language of this section ought to be construed to require no more than that the particular taking be shown to be "reasonably requisite and proper for the accomplishment of the purpose for which it is sought." *City of Fairbanks v. Metro Co.*, 540 P.2d 1056 (Alaska 1975).

**Particular questions left to discretion of condemning authority.** — In general condemnation proceedings under this article, once the condemnor has presented sufficient evidence to support a finding that a particular taking is "reasonably requisite" for the effectuation of the authorized public purpose for which it is sought, particular questions as to the route, location or amount of property to be taken are to be left to the sound discretion of the condemning

authority absent a showing by clear and convincing evidence that such determinations are the product of fraud, caprice or arbitrariness. *City of Fairbanks v. Metro Co.*, 540 P.2d 1056 (Alaska 1975).

**Burden of proof.** — One seeking to show that a particular taking is excessive or arbitrary has a heavy burden of proof in the attempt to persuade the court to substitute its judgment for that of the condemnor. *City of Fairbanks v. Metro Co.*, 540 P.2d 1056 (Alaska 1975).

**Relative private injury.** — That certain property owners suffer relatively greater injury than others, or are less directly benefited by the project, does not establish that the taking of their property is unnecessarily injurious or unwarranted. *City of Fairbanks v. Metro Co.*, 540 P.2d 1056 (Alaska 1975).

While it is true that the inability of a particular condemnee to obtain immediate beneficial use from the project may be considered as a factor in weighing the project's impact in terms of the degree of private injury involved in a proposed route or location, the interest in minimizing private injury is not absolute and must always be weighed in relation to the goals and efficacy of the project in its entirety at the time such determinations are made. *City of Fairbanks v. Metro Co.*, 540 P.2d 1056 (Alaska 1975).

**City clearly met its initial burden of demonstrating that its taking certain parcels of land for purposes of the construction of a sewer line was reasonably necessary under the circumstances.** *City of Fairbanks v. Metro Co.*, 540 P.2d 1056 (Alaska 1975).

**Complaint held sufficient.** — Where a complaint used the words "imperatively required" for a public use and alleged facts supporting the same, this was sufficient to show necessity under this section. *Town of Seward v. Margules*, 9 Alaska 354 (1938).

**Appeal from interlocutory order finding use authorized and taking necessary.** — See *Van Dyke v. Midnight Sun Mining & Ditch Co.*, 177 F. 85 (9th Cir. 1910); *Northern Mining & Trading Co. v. Alaska Gold Recovery Co.*, 20 F.2d 5 (9th Cir. 1927).

**Collateral references.** — Sufficiency of condemnor's negotiations required as preliminary to taking in eminent domain, 21 ALR4th 765.

**Sec. 09.55.275. Replat approval.** An agency of the state or municipality may not acquire property located within a municipality exercising the powers conferred by AS 29.35.180 or 29.35.260(c) that results in a boundary change unless the agency or municipality first obtains from the municipal platting authority preliminary approval of a replat showing clearly the location of the proposed public streets, easements, rights-of-way, and other taking of private property. Final approval of replat shall be similarly obtained. However, if a state agency clearly demonstrates an overriding state interest, a waiver to the approval requirements of this section may be granted by the governor. The platting authority shall treat applications for replat made by state or local governmental agencies in the same manner as replat petitions originated by private landowners. (§ 2 ch 96 SLA 1975; am § 23 ch 74 SLA 1985)

**Revisor's notes.** — In 1994, in the first sentence of this section, "An agency of the state or municipality may not" was substituted for "No agency of the state

or municipality may" to conform the section to the current style of the Alaska statutes.

**Sponsor Statement**  
**Prepared by Alaska Department of Transportation and Public Facilities**  
**April 1, 2004**  
**In Support of SB 382**

In late March, Commissioner Barton wrote to both Senate and House Transportation, requesting legislation be prepared to address an urgent problem regarding the method used to perform property line changes associated with right-of-way for new transportation projects. His concern was based on a recent lawsuit filed on the C Street extension project in Anchorage. Based on discussion between the Department of Law and right-of-way staff within the department, there was a concern the argument used in the lawsuit could be extended to several other projects across the state. Indeed, that same week, a second lawsuit was filed on the Kenai River bridge project at Soldotna, based on the same legal argument.

The novel legal theory being advanced in the C-Street and Kenai River cases is based on a state law that dates back to 1975. What's new is the interpretation that the state cannot fulfill the typical replat provisions required by local governments (mandated by AS 09.55.275) while also fulfilling the legal processes associated with property acquisition under eminent domain powers.

While the state will vigorously defend against these lawsuits, we are quite fearful of the consequence of an adverse decision as well as the time delay associated with such litigation. Several major projects across the state are at risk. Most critical is the Soldotna project that is slated for construction this summer and several others slated for construction in 2005. If either case is decided in favor of the landowner, the state's ability to use eminent domain powers will be virtually extinguished.

Our principal concern with the current language in AS 09.55.275 is that it requires:

*"The platting authority shall treat applications for replat made by state or local governmental agencies in the same manner as replat petitions originated by private landowners.*

Inherently, a replat associated with property acquired under eminent domain proceedings, is different than a replat a property owner pursues voluntarily. Accordingly, boroughs with platting authority have created different procedures for such replats involving right-of-way. The argument being advanced in court is that having two separate procedures violates the 1975 legislative intent. The state strongly disagrees with this position, but it is possible that an Alaska Superior Court judge could find that the separate procedures are not treated in the "same manner," and could therefore also find that the state has no authority to acquire needed property.

To prevent further project delay, the legislation before you is offered. It ensures that a state or municipal entity can still reasonably proceed with property acquisition under eminent domain while retaining the local government's locally structured replat procedure.

23-LS1879\H  
Bullock  
4/14/04

**CS FOR SENATE BILL NO. 382( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): SENATE TRANSPORTATION COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to replat approval; relating to the platting of right-of-way acquired**  
2 **through eminent domain proceedings; and providing for an effective date."**

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

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

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7 role in eminent domain proceedings, including the right of municipalities to regulate remnant  
8 parcels, while at the same time clarifying that that role is not intended to require the same  
9 substantive review or procedures for review of replats for the acquisition of property by the  
10 state or a municipality as required in replats for private landowner subdivisions or zoning  
11 reviews. Regulations adopted by the Department of Transportation and Public Facilities shall  
12 be the primary and governing authority for these replat approval proceedings.

13 (b) It is the intent of the legislature to

14 (1) confirm the authority of an agency of the state or a municipality to conduct

1 condemnation proceedings so long as the agency of the state or municipality obtains  
2 preliminary replat approval as provided for in this Act, notwithstanding challenges to  
3 particular municipal replat ordinances, review standards, procedures, or applications; and

4 (2) apply secs. 1 and 2 of this Act retrospectively to July 1, 1999, and to  
5 existing litigation such as State of Alaska v. Hartman, 3AN-03-13875 CI and State of Alaska  
6 v. Hinkel, 3AN-04-4768 CI.

7 \* **Sec. 2.** AS 09.55.275 is repealed and reenacted to read:

8 **Sec. 09.55.275. Replat approval.** An agency of the state or municipality  
9 acquiring property in fee that results in a boundary change located within a  
10 municipality exercising the powers conferred by AS 29.35.180 or 29.35.260(c) shall  
11 conform to this section and AS 44.42.085 by obtaining preliminary approval of a  
12 replat showing clearly the location of the proposed public street or other acquisition of  
13 property. The platting authority may establish applicable review procedures and  
14 standards, consistent with AS 44.42.085 and regulations adopted under that section,  
15 for a replat made for the purpose of a right-of-way acquisition or condemnation. If no  
16 municipal standards and procedures are in effect, then the provision of AS 44.42.085  
17 and the regulations adopted under that section shall apply. Final approval of replat  
18 shall also be obtained. However, if a state agency clearly demonstrates an overriding  
19 state interest, a waiver of the municipal approval requirements in this section may be  
20 granted by the governor.

21 \* **Sec. 3.** AS 44.42 is amended by adding a new section to read:

22 **Sec. 44.42.085. Platting of right-of-way acquired through eminent domain**  
23 **proceedings.** (a) Except as provided in (c) of this section, the department shall  
24 comply with AS 09.55.275 when exercising eminent domain powers in municipalities  
25 that exercise the powers conferred by AS 29.35.180 or 29.35.260(c).

26 (b) The department shall adopt regulations providing for uniform procedures  
27 and standards for replatting required by (a) of this section. The regulations

28 (1) must be written narrowly to establish minimum baseline  
29 procedures or standards particular to replat issues arising in eminent domain  
30 proceedings and may not unnecessarily or without good cause infringe on general  
31 municipal zoning powers or authority;