

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities
Statewide Aviation

TO: DISTRIBUTION

DATE: July 1, 1994

TELEPHONE NO: 266-1460

FROM: Jonathan A. Widdis
Director
Statewide Aviation

SUBJECT: DNR Cooperative Management Agreement

Attached is a copy of the fully executed Cooperative Management Agreement between DNR and DOT&PF which is now in effect.

The intent of this agreement is to provide more consistent practices between our agencies for management of state lands and to resolve some of the problems we have had regarding DOT&PF's right to manage airport lands held under ILMA's. DOT&PF and DNR have previously been at odds over the language of the ILMA document granting management rights of lands required for our projects to DOT&PF. The sample ILMA document and related stipulations attached to the agreement is meant to provide DOT&PF the control it requires and to satisfy some of DNR's concerns.

We are separately working with DNR on joint language for leasing of state lands to third parties.

I am anticipating a follow-up meeting with DNR to be held in November or December to discuss how the cooperative management agreement is working. Everyone is encouraged to do their best to make the agreement work. Please keep us informed of any issues that you are not able to resolve.

cc: John D. Horn, Regional Director, Central Region
Stephen C. Sisk, Regional Director, Northern Region
John Scribner, Regional Director, Southeast Region

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Northern Region DOT & PF

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MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities
Statewide Aviation

TO: Ron Swanson, Director
Department of Natural Resources
Division of Land

DATE: July 1, 1994

TELEPHONE NO: 266-1460

FROM: Jonathan A. Widdis *JAW*
Director
Statewide Aviation

SUBJECT: Cooperative Management
Agreement

Attached is a copy of the fully executed Cooperative Management Agreement between DNR and DOT&PF. The agreement has been distributed to each Region within DOT&PF. I anticipate a follow-up meeting with you in November or December after the agreement has been in effect for a few months to discuss how it is working.

Thank you for your efforts on our behalf. If this agreement can help streamline the right of way and management process with regard to state lands used by DOT&PF, it will be well worth the effort.

Attachment: Cooperative Management Agreement

**Cooperative Management Agreement
between
Department of Natural Resources
and
Department of Transportation and Public Facilities**

This Cooperative Management Agreement, entered into this 18th day of April, 1994, is established to improve the management of state lands and natural resources by providing for coordination between the Departments' respective management programs. This cooperative agreement between the Department of Natural Resources (DNR) and the Department of Transportation and Public Facilities (DOT&PF) outlines the responsibilities of each department and the procedures to be followed by DNR in issuing various land use authorizations for DOT&PF purposes, and DOT&PF's responsibilities in managing state lands assigned by DNR to DOT&PF's jurisdiction and management. Further, this agreement is intended to address generally consistent management of state land under jurisdiction and management of both agencies.

I. With the common purpose of implementing this cooperative agreement, the DNR and DOT&PF mutually agree:

1. Where possible, and while recognizing each agencies' different missions, the agencies agree to coordinate and establish compatible and consistent management and enforcement standards when leasing or permitting use of state land. These standards should encompass compatible contract (lease, permit, etc.) terms and conditions, including insurance and bonding requirements.

2. Except as provided in number 4 below, the DOT&PF has sole authority for management of highway rights of way. All applications or uses within any right of way shall be the responsibility for DOT&PF to process except for those rights of way that are located within Legislatively Designated Areas (AS 41.1, AS 41.21 and AS 41.23) and pipeline rights of way (AS 38.35) managed by DNR. In those cases, joint or concurrent authority will be used for those ancillary activities not directly related to maintenance of the road surface but within the right of way.

3. Except as provided in number 4 below, the DOT&PF has sole authority for management of airport lands for as long as the lands are needed for airport purposes. It shall be the sole determination of DOT&PF that the lands, or a portion of the lands, are no longer needed for airport purposes. DOT&PF shall provide to DNR whatever information is needed to comply with AS 38.04.060(b).

4. DOT&PF can use sand, gravel, rock, timber, and other materials required to build or maintain improvements needed for public facilities purposes located on land assigned to

DOT&PF by DNR. No sand, gravel, rock, timber or other materials may be sold to third parties except as provided above.

5. Jurisdiction and management control of all oil, gas, coal and mineral interests is retained by DNR. Subject to all relevant federal and state law, revenues generated or received from development of oil, gas, coal and mineral interests on airport lands under DOT&PF's jurisdiction, but not assigned to DOT&PF by DNR, shall be transferred to DOT&PF by DNR for use by DOT&PF in the development, maintenance and operation of DOT&PF operated airports.

6. To cooperatively participate in land use planning programs.

7. DNR and DOT&PF will work cooperatively to amend existing ILMT's and ILMA's to render them consistent with this cooperative agreement and attached ILMA (Attachment A) as they are processed or renewed.

8. Management Assignments from DNR to DOT&PF shall be issued in perpetuity, subject to review every 5 years pursuant to AS 38.04.060 and AS 38.05.030. Any change in use (ie. from airport to highway maintenance site) must be with the mutual consent of both agencies.

9. DNR and DOT&PF will jointly develop uniform environmental standards and enforcement requirements to employ for land that is leased or permitted for use by either DOT&PF or DNR.

II. Responsibilities

A. DOT&PF agrees to:

1. Provide DNR with title documents, legal descriptions, maps and other pertinent information on state land that DOT&PF requires for transportation and public facilities purposes.

2. Complete the appropriate DNR application for each site, facility or route for which DOT&PF desires land jurisdiction and management authority.

3. Provide DNR with technical data, planning, research and development plans necessary for DNR to make a state's best interest determination as required by AS 38.05.035 for all new land use authorizations.

4. Create third party interest in the form of leases, permits, and agreements in accordance with 17 AAC. Requests for non-aviation related purposes will be processed by DOT&PF after reviewing comments and recommendations received during the public notification process. DOT&PF will provide DNR with a copy of the public notice for each proposed non-aviation lease.

Leases, permits and agreements executed by DOT&PF shall not survive the expiration, relinquishment or termination of the ILMA granted by DNR to DOT&PF.

5. Amend 17 AAC to allow DOT&PF to lease airport land rent free to DNR only when the land is to be used by DNR for state firefighting or public safety related purposes, with the exception of lands at the Anchorage and Fairbanks airports. A copy of the proposed regulation change is attached (Attachment B).

6. Upon request, provide assistance to DNR in the performance of the five year review required by AS 38.04.060(b).

7. Return the land to DNR in an environmental and physical condition acceptable to the Director, Division of Land, which subject to available funding, may include rehabilitation of the site and/or removal of any improvements, equipment, and material when the land is no longer needed for the purpose for which the land use authorization was issued.

B. DNR agrees to:

1. Determine the state's best interest upon application by DOT&PF for a land use authorization. If the land use authorization is found to be in the state's best interest, the appropriate authorization will be executed by DNR.

2. Process all necessary classification actions, mineral closing or leasing orders after completing the state's best interest finding.


3. Facilitate the transfer or assignment of state land to DOT&PF to manage under its jurisdiction and management authority for purposes for which DOT&PF is statutorily authorized.

4. Conduct a review every five years as required by AS 38.04.060(b) and AS 38.05.030.

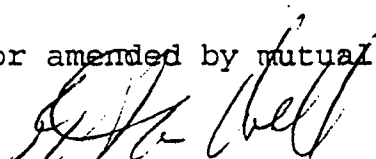
Nothing in this Cooperative Agreement shall obligate either agency in the expenditure of funds.

Each agency agrees that it will be responsible for its own acts and the results thereof.

This agreement may be terminated or amended by mutual agreement.



Harry A. Noah, Commissioner
Department of Natural Resources



Bruce Campbell, Commissioner
Department of Transportation &
Public Facilities

ATTACHMENT "A"

STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND

INTERAGENCY LAND MANAGEMENT ASSIGNMENT

ADL _____

The Division of Land, Department of Natural Resources of the State of Alaska, assigns to the Department of Transportation and Public Facilities, or its successors in function, hereinafter called Assignee, jurisdiction and management of the land described on the attached Exhibit "A" (legal description) and Exhibit "B" (airport property plan for airports, development plan for maintenance camps, etc.).

Jurisdiction and management of the land shall be consistent with AS 02 (airports), AS 19 (highways), AS 35 (public facilities) and 17 AAC.

The right of the Assignee or Assignee's contractor(s) to construct, maintain, or improve and remove buildings, roads, airports and works of other description, and to use or remove sand, gravel, timber or other materials (except oil, gas, coal and mineral interests) on or near the surface for development purposes within the legal jurisdiction of the Assignee is expressly granted subject to the stipulations attached and made a part of this document as Exhibit "C".

This Interagency Land Management Assignment remains in effect as long as the land is needed for (airport, maintenance, etc.) purposes.

Dated this __ day of _____, 19__.

Commissioner, Department of Natural Resources

UNITED STATES OF AMERICA)
State of Alaska)
_____ Judicial District)

THIS IS TO CERTIFY that on this __ day of _____, 19__ before me personally appeared _____ of the Department of Natural Resources of the State of Alaska, who executed the foregoing Interagency Land Management Assignment and acknowledged voluntarily signed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year shown above.

Notary Public in and for the State of Alaska
My commission expires: _____

The terms and conditions of the interest conveyed herein are hereby accepted by the State of Alaska, Department of Transportation and Public Facilities for public purposes this ____ day of _____, 19__.

Chief Right of Way Agent

EXHIBIT "C", ADL _____

1. Public Access Easements. This ILMA is subject to the following:

(To be determined during AS 38.05.035 "Best Interest Determination" process. The determination shall include a finding on which access easements, trails, right of ways may be restricted to public access. The same shall be true for waterbodies pursuant to AS 38.05.127). **Primary consideration will be placed on safety and security of the facility.**

2. Returned Land. Land returned to the Department of Natural Resources (DNR) for any reason shall be returned in an environmental and physical condition acceptable to the Director, Division of Land, within three (3) years, subject to DOT&PF funding restrictions, from the date the Assigned abandons or relinquishes the site. This may include rehabilitation of the site and/or removal of any improvements, equipment, and material.

3. Review of Assignment. Pursuant to AS 38.04.060(b), this assignment is subject to review every five years. DOT&PF or its assign(s) shall, upon request, provide assistance in the form of written verification the lands are still required for _____ purposes.

(For airports) This review will not conflict with DOT&PF responsibilities as the facility operator, or deprive DOT&PF of any assurance in the Federal Aviation Administration Grant Agreement for federal funds pursuant to AS 02.15.020(c), and Federal Airport Regulations, 14 C.F.R. Part 152.

(For other facilities) This review will consist of a review of the approved development plan and will not conflict with DOT&PF responsibilities as the facility operator.

4. Valid Existing Rights. This assignment is subject to all valid existing rights and easements, rights of way and reservations of record. Additional easements and rights of way may be dedicated or vacated through normal surveying and platting processes which involve both agencies. **Primary consideration will be placed on safety and security of the facility.**

5. Project Construction and Survey. The DOT&PF is responsible for compliance with AS 38.95.160 (i.e. project will be supervised by a registered professional per AS 08.48 and be documented by a recorded plat). In addition, the DOT&PF is responsible for compliance with the survey requirements of the platting authority as it relates to this project.

6. **Project Development.** The DOT&PF will coordinate with DNR in the removal of any trees or vegetation of commercial value. The DNR will layout and conduct a timber sale if it is determined that commercial values are present on the site. The diversion or other modification of any drainages, or the addition of a fuel or chemical storage area will be developed, at a minimum, in concurrence with EPA and DEC standards.
7. **Fire Liability.** The DOT&PF shall maintain the tract area in a fire safe manner and shall assume full liability for any damages to state land resulting from the negligent use of fire.
8. **Fuel and Hazardous Substances.** Secondary containment shall be provided for fuel or hazardous substances.
 - a. **Exception for the short-term storage of small volumes.** The requirement for secondary containment is waived for those fuels and hazardous substances in containers with a volume of 55 gallons or less which are in place for 7 days or less, provided that the total combined volume in place without containment of a pad or work area does not exceed 660 gallons for fuel, hydraulic fluid, or lubricants or 55 gallons for other hazardous substances.
 - b. **Container marking.** All independent fuel and hazardous substance containers shall be marked with the contents and the owner's name.
 - c. **Fuel or hazardous substance transfers.** Secondary containment or drip pans must be placed under all container or vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fuel or hazardous substance transfers. Appropriate spill response equipment must be on hand during any transfer or handling of fuel or hazardous substances to respond to a spill of up to five gallons.
 - d. **Storing containers near waterbodies.** Containers with a volume larger than 55 gallons which contain fuel or hazardous substances shall not be placed within 100 feet of a waterbody.
 - e. **Exceptions.** The Division of Land may under unique or special circumstances grant exceptions to this stipulation on a case by case basis.
 - f. **Definitions.**

"Containers" is defined as any item which is used to hold fuel or hazardous substances, This includes tanks, drums, fuel tanks on small equipment such as light plants and generators, flow test holding tanks,

slop oil tanks, bladders and bags. Manifold tanks must be considered as a single independent container. Vehicles are not intended to be included under this definition.

"Hazardous substance" is defined under AS 46.03.826(5) as (a) an element or compound which, when it enters the atmosphere, water, or land, presents an imminent and substantial danger to public health or welfare, including fish, animals or vegetation, (b) oil, or (c) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

"Secondary containment" is defined as an impermeable diked area or portable impermeable containment structure capable of containing 110 percent of the volume of the largest independent container. Double-walled tanks do not qualify as secondary containment unless an exception is granted for a particular tank.

9. **Notification of Unauthorized Discharge.** The DOT&PF shall immediately notify the DNR by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis.

The DNR 24-hour spill report number is (907) 451-2678; the fax number is 451-2751. The DNR shall be supplied with all follow-up incident reports.

10. **State and Federal Statutes and Regulations.** The DOT&PF and its assigns shall comply with applicable state and federal statutes and regulations.
11. **Indemnity.** In connection with the entry on or use of lands assigned to DOT&PF by DNR, the DOT&PF shall ensure that its contractors and subcontractors shall indemnify, save harmless, and defend the state, its agents and its employees from any and all claims or actions for injuries or damages sustained by any person or property arising directly or indirectly from the construction or the contractor's performance of the contract, except when the sole proximate cause of the injury or damage is the state's negligence.

ATTACHMENT "B"

17 AAC 40.340(a)(2) is to be ~~amended~~ to add the following subsection:

(D) a lease, license, or permit for airport land granted to an agency of the state for law enforcement or firefighting purposes; however, no waiver will be granted to the agency:

- (i) for a lease, license, or permit that is issued for an aviation function, as defined in 17 AAC 40.320(b)(1);
- (ii) for a lease, license, or permit for land at Anchorage or Fairbanks International Airports;
- (iii) for the use of space in a building managed by the department;
- (iv) if the commissioner determines that an activity performed on the premises by the state agency is a commercial service such as subleasing a portion of the premises or offering goods for sale to the public.

MEMORANDUM

RECEIVED
JUL 01 1994

State of Alaska

Department of Natural Resources

Division of Land

TO: Shirley Horne, DOTPF
John Jensen, DOTPF

JUL 01 1994

DATE:

June 27, 1994

JUL 06 1994
Northern Region DOT & PF

THRU:



STATEWIDE FILE NO:

ANCHORAGE FILE NO:

TELEPHONE NO.:

762-2692

FROM: Richard A. LeFebvre
Deputy Director

SUBJECT: Fees for DOTPF
Projects

This is to document our May 17 meeting on fees for DOTPF projects.

No New Statewide RSA We agreed that after June 30, 1994, we will not need an annual statewide RSA from DOTPF to the Division of Land to carry out DOTPF projects. The FY93 and FY94 RSA's were an interim measure until a new revenue stream could begin to flow, namely gravel extraction under contracts that had a 50-cent-per-yard "royalty" (11 AAC 05.010(e)(16)). The intent was to have new contracts in place and extraction ready to begin by FY95. In July the division plans to ask LB&A for program-receipts authority to draw operating monies from these new royalties, which come primarily from federal sources. If successful, that will pay for staff to issue new gravel contracts for DOTPF projects, so the revenue stream will continue indefinitely. Other new funding will come from real estate charges for new road rights-of-way and ILMA's (11 AAC 05.010(e)(12) and (15)).

Base Price of 50 Cents per Yard Will Continue for FY95 For materials to be used in public projects, the base fee set by the annual base price schedule (11 AAC 71.090) will remain at 50 cents per cubic yard. See 11 AAC 05.010(e)(16) for the exemption for the first 5,000 cubic yards.

Closeout Accounting Needed for FY94 RSA The Division of Land will submit the FY94 closeout report as soon as possible. Any questions should be directed to David Allen at 762-2685.

ILMA Fees; Exception The majority of new DOTPF ILMA's are for new capital projects such as airports, maintenance facilities, ferry terminals, etc. (ILMA's are not issued for gravel pits, though material mined on the premises can be used for on-site development.) Such ILMA's require the one-time rental payment set by 11 AAC 05.010(e)(15), which can be funded out of the project's capital appropriation. However, DOTPF knows of five older airports (Robe Lake, Quartz Creek, Sheep Mountain, Hope, Laing) that currently have no land authorization. Their status needs to be formalized, but no capital improvements are planned for these airports and therefore DOTPF has no budget to pay the ILMA rental charge. These five airports--and there may be other

Shirley Horne and John Jensen
June 27, 1994
Page 2

cases in the Interior--fit under an exception built into the fee regulation, so the ILMA charge will not be assessed.

In addition, the Division of Land will try to work into its schedule the use of our GPS to locate the boundaries of these old airports, as DOTPF is not budgeted to survey them. DOTPF may need to cover some minor costs such as travel.

Royalty Credit for Administrative Costs Previously RSA'd We agreed that if a material site project funded by the FY93 or FY94 RSA's resulted in a contract with a 50-cent-per-yard royalty, DOTPF would be allowed to credit the amount previously RSA'd for that project against royalties that would otherwise be due. Our records show total billings of \$38,569.40 under the FY93 RSA, and \$42,079.33 for FY94 to date (expected to reach \$50,000 by fiscal year closeout). However, those totals include payments for many different projects, and most of the individual project amounts were small. For the small ones, DOTPF may not find it worthwhile to set up an accounting process so it can apply each project's credits against its royalties, but that is up to you. When you transfer royalty payments for a contract that is eligible for a credit, deduct the RSA'd amount (to the extent of any remaining credit) and state which fiscal year it came from.

I suggest that we meet in September to review the process from both DNR's and DOTPF's perspective to determine that everything is working out for both of us.

cc: DL Regional Managers
Dennis Daigger
Mary Kaye Hession
Dave Allen

*Sorry for taking so long to
get this to you!
Dink*

**Cooperative Management Agreement
between
Department of Natural Resources
and
Department of Transportation and Public Facilities**

This Cooperative Management Agreement, entered into this 18th day of April, 1994, is established to improve the management of state lands and natural resources by providing for coordination between the Departments' respective management programs. This cooperative agreement between the Department of Natural Resources (DNR) and the Department of Transportation and Public Facilities (DOT&PF) outlines the responsibilities of each department and the procedures to be followed by DNR in issuing various land use authorizations for DOT&PF purposes, and DOT&PF's responsibilities in managing state lands assigned by DNR to DOT&PF's jurisdiction and management. Further, this agreement is intended to address generally consistent management of state land under jurisdiction and management of both agencies.

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DOT&PF by DNR. No sand, gravel, rock, timber or other materials may be sold to third parties except as provided above.

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8. Management Assignments from DNR to DOT&PF shall be issued in perpetuity, subject to review every 5 years pursuant to AS 38.04.060 and AS 38.05.030. Any change in use (ie. from airport to highway maintenance site) must be with the mutual consent of both agencies.

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1. Provide DNR with title documents, legal descriptions, maps and other pertinent information on state land that DOT&PF requires for transportation and public facilities purposes.

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4. Create third party interest in the form of leases, permits, and agreements in accordance with 17 AAC. Requests for non-aviation related purposes will be processed by DOT&PF after reviewing comments and recommendations received during the public notification process. DOT&PF will provide DNR with a copy of the public notice for each proposed non-aviation lease.

Leases, permits and agreements executed by DOT&PF shall not survive the expiration, relinquishment or termination of the ILMA granted by DNR to DOT&PF.

5. Amend 17 AAC to allow DOT&PF to lease airport land rent free to DNR only when the land is to be used by DNR for state firefighting or public safety related purposes, with the exception of lands at the Anchorage and Fairbanks airports. A copy of the proposed regulation change is attached (Attachment B).

6. Upon request, provide assistance to DNR in the performance of the five year review required by AS 38.04.060(b).

7. Return the land to DNR in an environmental and physical condition acceptable to the Director, Division of Land, which subject to available funding, may include rehabilitation of the site and/or removal of any improvements, equipment, and material when the land is no longer needed for the purpose for which the land use authorization was issued.

B. DNR agrees to:

1. Determine the state's best interest upon application by DOT&PF for a land use authorization. If the land use authorization is found to be in the state's best interest, the appropriate authorization will be executed by DNR.

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3. Facilitate the transfer or assignment of state land to DOT&PF to manage under its jurisdiction and management authority for purposes for which DOT&PF is statutorily authorized.

4. Conduct a review every five years as required by AS 38.04.060(b) and AS 38.05.030.

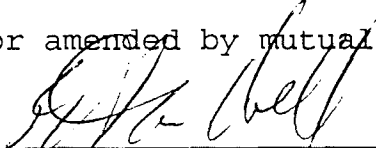
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This agreement may be terminated or amended by mutual agreement.



Harry A. Noah, Commissioner
Department of Natural Resources



Bruce Campbell, Commissioner
Department of Transportation &
Public Facilities

ATTACHMENT "A"

STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF ~~LAND~~

INTERAGENCY LAND MANAGEMENT ASSIGNMENT
ADL _____

The Division of Land, Department of Natural Resources of the State of Alaska, assigns to the Department of Transportation and Public Facilities, or its successors in function, hereinafter called Assignee, jurisdiction and management of the land described on the attached Exhibit "A" (legal description) and Exhibit "B" (airport property plan for airports, development plan for maintenance camps, etc.).

Jurisdiction and management of the land shall be consistent with AS 02 (airports), AS 19 (highways), AS 35 (public facilities) and 17 AAC.

The right of the Assignee or Assignee's contractor(s) to construct, maintain, or improve and remove buildings, roads, airports and works of other description, and to use or remove sand, gravel, timber or other materials (except oil, gas, coal and mineral interests) on or near the surface for development purposes within the legal jurisdiction of the Assignee is expressly granted subject to the stipulations attached and made a part of this document as Exhibit "C".

This Interagency Land Management Assignment remains in effect as long as the land is needed for (airport, maintenance, etc.) purposes.

Dated this ___ day of _____, 19__.

Commissioner, Department of Natural Resources

UNITED STATES OF AMERICA)
State of Alaska)
_____ Judicial District)

THIS IS TO CERTIFY that on this ___ day of _____, 19__ before me personally appeared _____ of the Department of Natural Resources of the State of Alaska, who executed the foregoing Interagency Land Management Assignment and acknowledged voluntarily signed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year shown above.

Notary Public in and for the State of Alaska
My commission expires: _____

EXAMPLE ONLY

The terms and conditions of the interest conveyed herein are hereby accepted by the State of Alaska, Department of Transportation and Public Facilities for public purposes this ____ day of _____, 19__.

Chief Right of Way Agent

EXHIBIT "C", ADL _____

1. Public Access Easements. This ILMA is subject to the following:

(To be determined during AS 38.05.035 "Best Interest Determination" process. The determination shall include a finding on which access easements, trails, right of ways may be restricted to public access. The same shall be true for waterbodies pursuant to AS 38.05.127). **Primary consideration will be placed on safety and security of the facility.**

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EXAMPLE ONLY

6. **Project Development.** The DOT&PF will coordinate with DNR in the removal of any trees or vegetation of commercial value. The DNR will layout and conduct a timber sale if it is determined that commercial values are present on the site. The diversion or other modification of any drainages, or the addition of a fuel or chemical storage area will be developed, at a minimum, in concurrence with EPA and DEC standards.
7. **Fire Liability.** The DOT&PF shall maintain the tract area in a fire safe manner and shall assume full liability for any damages to state land resulting from the negligent use of fire.
8. **Fuel and Hazardous Substances.** Secondary containment shall be provided for fuel or hazardous substances.
 - a. **Exception for the short-term storage of small volumes.** The requirement for secondary containment is waived for those fuels and hazardous substances in containers with a volume of 55 gallons or less which are in place for 7 days or less, provided that the total combined volume in place without containment of a pad or work area does not exceed 660 gallons for fuel, hydraulic fluid, or lubricants or 55 gallons for other hazardous substances.
 - b. **Container marking.** All independent fuel and hazardous substance containers shall be marked with the contents and the owner's name.
 - c. **Fuel or hazardous substance transfers.** Secondary containment or drip pans must be placed under all container or vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fuel or hazardous substance transfers. Appropriate spill response equipment must be on hand during any transfer or handling of fuel or hazardous substances to respond to a spill of up to five gallons.
 - d. **Storing containers near waterbodies.** Containers with a volume larger than 55 gallons which contain fuel or hazardous substances shall not be placed within 100 feet of a waterbody.
 - e. **Exceptions.** The Division of Land may under unique or special circumstances grant exceptions to this stipulation on a case by case basis.
 - f. **Definitions.**

"Containers" is defined as any item which is used to hold fuel or hazardous substances, This includes tanks, drums, fuel tanks on small equipment such as light plants and generators, flow test holding tanks,

EXAMPLE ONLY

slop oil tanks, bladders and bags. Manifold tanks must be considered as a single independent container. Vehicles are not intended to be included under this definition.

"Hazardous substance" is defined under AS 46.03.826(5) as (a) an element or compound which, when it enters the atmosphere, water, or land, presents an imminent and substantial danger to public health or welfare, including fish, animals or vegetation, (b) oil, or (c) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

"Secondary containment" is defined as an impermeable diked area or portable impermeable containment structure capable of containing 110 percent of the volume of the largest independent container. Double-walled tanks do not qualify as secondary containment unless an exception is granted for a particular tank.

9. **Notification of Unauthorized Discharge.** The DOT&PF shall immediately notify the DNR by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis.

The DNR 24-hour spill report number is (907) 451-2678; the fax number is 451-2751. The DNR shall be supplied with all follow-up incident reports.

10. **State and Federal Statutes and Regulations.** The DOT&PF and its assigns shall comply with applicable state and federal statutes and regulations.
11. **Indemnity.** In connection with the entry on or use of lands assigned to DOT&PF by DNR, the DOT&PF shall ensure that its contractors and subcontractors shall indemnify, save harmless, and defend the state, its agents and its employees from any and all claims or actions for injuries or damages sustained by any person or property arising directly or indirectly from the construction or the contractor's performance of the contract, except when the sole proximate cause of the injury or damage is the state's negligence.

ATTACHMENT "B"

17 AAC 40.340(a)(2) is to be amended to add the following subsection:

(D) a lease, license, or permit for airport land granted to an agency of the state for law enforcement or firefighting purposes; however, no waiver will be granted to the agency:

- (i) for a lease, license, or permit that is issued for an aviation function, as defined in 17 AAC 40.320(b)(1);
- (ii) for a lease, license, or permit for land at Anchorage or Fairbanks International Airports;
- (iii) for the use of space in a building managed by the department;
- (iv) if the commissioner determines that an activity performed on the premises by the state agency is a commercial service such as subleasing a portion of the premises or offering goods for sale to the public.

MEMORANDUM**State of Alaska**Department of Transportation & Public Facilities
Engineering and Operations Standards

TO: Sharon Barton, Assistant
Commissioner
Department of Natural
Resources

DATE: September 22, 1992

THRU: W. Keith Gerken
Deputy Commissioner

FILE NO:

TEXT PHONE: 465-3652

TELEPHONE NO: 465-2985

FAX NUMBER: 465-2460

FROM: Roger W. Allington, Chief
Engineer and Director
Engineering and Operations
Standards

SUBJECT: DNR Proposed Fee
regulations

We have reviewed the proposed regulations of the Department of Natural Resources on application fees, service charges, publications fees and user fees, and in principal are supportive of the purpose and intention of these regulations. In most instances we have no objection to the changes.

However, in the area of charging fair market value royalties for aggregate materials used in "constructing a public project" (11 AAC 05.010 (e) (18) this regulation will create a funding dilemma which we simply cannot afford without additional legislative appropriations. Accordingly, we urgently request that you postpone this aspect of your regulations so that the changes do not simply transfer the funding problems of state government from one agency to another.

Our request for delay is not simply a tactic to stop the imposition of royalties. While we have enjoyed the use of state-owned materials on a royalty free basis for many years, we can understand the need for your agency to become more fiscally self sufficient at this time. The basis for our concern hinges on large unfunded costs which we would bear if our budgets are not correspondingly adjusted.

The majority of our major materials-consuming projects are funded with federal-aid, specifically funds from the Federal Highway Administration (FHWA). They have reviewed the proposed regulations and indicated that they will authorize the use of federal funds to pay for royalty fees, provided these fees are charged to all other public users on a like basis.

Yet, as currently written, we would interpret the regulations to exempt maintenance uses of material. If this interpretation is correct, the FHWA would not participate in the payment of royalties and we would incur a \$2 to \$3 million unfunded liability.

Sharon Barton

-2-

September 22, 1992

Conversely, if you amended the regulations to apply the royalty to maintenance-type uses of materials, our maintenance budgets would face a \$0.5 to \$1.0 million increase at a time when budgets have already been severely reduced. Either approach on your part, without adequate time to obtain increases in our budgets, places us in an unworkable situation.

Given that the current budget process does not allow for increased costs to the GF for any agency the only solution is to postpone the implementation of the royalty, pending approval of the dedicated fund for transportation and associated fuel tax increases. We would also ask that the regulations be clarified to apply the royalty to all public uses of material, including construction and maintenance purposes. This latter change would assure that federal funds could be used for royalty charges.

cc: Regional Design & Construction Directors
Regional Maintenance & Operations Directors

MEMORANDUM

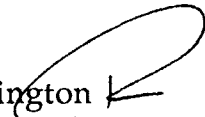
State of Alaska

Department of Transportation & Public Facilities
Engineering and Operations Standards

TO: Ron Swanson, Director
Division of Land/DNR

DATE: July 29, 1992

FILE NO:

FROM: Roger W. Allington 
Chief Engineer and Director

TELEPHONE NO: 465-2951

FAX NUMBER: 465-2460

SUBJECT: DOT&PF Applications for
R/W and Materials

Thank you for your memo of July 7, 1992, outlining the problems your agency has with respect to processing our applications for permits and materials. As you are aware, this department has also sustained major reductions in state funding. Although we do receive federal funding for our highway and airport capital projects, there are certain restrictions on the use of those funds. We have discussed this situation with the involved federal agencies and can assist you as follows.

The federal government will not participate in the funding of a position in the Division of Lands, as you have requested. The approach they suggest is that the Division of Lands charge permitting fees which are then part of a DOT&PF project cost and are consequently reimbursable by the federal agency; provided that these same fees are charged to all other customers of the Division of Lands. The FHWA has specifically stated that they will **not** participate if the permit fees are only charged against DOT&PF.

This same caveat applies with respect to royalties on materials. The federal agencies will reimburse the state for royalty costs on materials provided every other user of DNR materials is also charged on the same basis as DOT&PF. If the proviso is not complied with, the federal agency will not participate in the royalty costs and those costs cannot be used as state matching funds.

We suggest that the Division of Land establish appropriate fee schedules and begin charging application fees as soon as possible. These program receipts should provide the funding necessary to support the positions you identify as being needed to process our DOT&PF applications.

Recognizing that establishment of a fee schedule may take some time, and that permit processing needs to keep on schedule, we suggest an interim, temporary method of compensating DNR for this processing activity. Through a reimbursable services agreement (RSA), DOT&PF can provide a means for DNR to charge DOT&PF when DNR staff is working on DOT&PF permit applications and other

related activities. The FHWA indicates that they will accept this procedure as an interim method of funding permit processing, provided other agencies are also charged appropriate fees. We understand that DNR is now charging municipalities for permit processing and is considering charging the USFS for this same processing. Consequently, the interim measure should be acceptable to the FHWA and FAA.

While the FHWA has indicated a willingness to reimburse us for these charges, that willingness is contingent upon DNR charging **EVERYBODY** on the same basis; i.e., municipalities, USFS, etc. Consequently, in order to get participation we must have from DNR either a statement that charges are being imposed on all others or that they intend to charge such fees within a definite, short time frame. I cannot impress upon you too strongly the absolute importance of this criteria. If DNR assurances are not forthcoming, we may not be able to execute any RSA's. Please let me know if this is a problem. I'm sure we can work out details acceptable to all during this process.

Quite candidly, we need these applications processed in order to keep our capital program on schedule. It is in neither agency's best interest to have the state's highway and airport programs stopped due to lack of application processing. Consequently, we are prepared to pay permit application fees or, as an interim measure, allow DNR employees to charge against DOT&PF projects, as outlined above to help you help us with a state program beneficial to the traveling public, both automotive and air.

As the agency requesting services, I am asking each of our Regional Directors of Design and Construction to initiate an RSA with DNR to implement a procedure wherein DNR can bill DOT&PF for time spent processing DOT&PF permit applications pending initiation of a permit fee schedule by DNR. If I can be of assistance, please feel free to call me at 465-2951.

xc: Keith Gerken, Deputy Commissioner, DOT&PF
Glenn A. Olds, Commissioner, DNR
Sharon Barton, Assistant Commissioner, DNR
Larry Galloway, Assistant Commissioner, DNR
Andy Pekovich, DNR-SE
Rick Thompson, DNR-Southcentral
Rick Smith, DNR-Northern
Ron Lind, DOT&PF, PP&B
Jonathan Scribner, Regional Director, DOT&PF-Southeast
John Horn, Regional Director, DOT&PF-Northern
Lowell Humphrey, Regional Director, DOT&PF Central
Regional D&C Directors, DOT&PF

**MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES**

**STATE OF ALASKA
Division of Land**

TO: Ron Lind, Director
Plans, Programs & Budget

Roger Allington, Director
Engineering & Operations
Department of Transportation & Public Facilities

FROM: Ron Swanson, Director *RSwanson*

DATE: July 7, 1992

SUBJECT: Applications

R O U T E	C O P Y	D & C DIRECTOR NORTHERN REGION	
		DIRECTOR	58
		DESIGN 7/13	C
		CONST	
		ROW 7/13	C
		PROJ CONT	
		REG DIR 7/13	C
		PLANNING	
		ADMIN	
		M & O	
RETURN			

This division has always processed applications and provided state land and resources to your agency at no charge. This has included personnel costs and market value for the material or land you receive. Unfortunately, with our recent budget cuts of 10% we can no longer afford to provide that service. I am faced with this situation, and have few alternatives. They all affect the level of service I will be able to offer.

The budget cuts that I am forced to deal with relate directly to laying off existing staff. With a reduction in staff I must also reduce the services we provide. The reductions that I am going to make will be to reduce or eliminate services state and federal agencies - not to the public at large.

I realize that your agency also experienced budget cuts. I am not trying to compound that problem. The services that we provide you, however, are directly tied to projects where you receive significant federal funding. I feel that as a part of this funding you always should have been including our costs of providing a service or funds to purchase the material or land that we provided for free.

Presently we have a total of 158 applications pending from your agency. This is further broken down as follows:

	Material Sales Management Assignments	Rights-of-Way
Southeast	17	18
Central	60	14
Northern	23	26
TOTAL	100	58

	NORTHERN REGION
✓	Regional Director
✓	D&C Director
	Planning & Research Chief
	Adm. Serv. Officer
	M&O Director
	Leasing Officer
	Southcentral Dir. Visitor
	System Dir. Home
	RETURN

DOT/PF

Name/Section J. Bennett

TELEPHONE/CONFERENCE DATA

PEOPLE INVOLVED

REPRESENTING

Date: 5/7/92

Time: _____

Project No./Name _____

DNR Appl.

Dan Beardsley

Central Reg.

TOPICS: Discussed RSA of "Equal Rights" certification by DNR. He says Ron Swanson will not have a problem issuing a certification on behalf of DNR. Issues: 1. Should processing be centralized - DNR positions in Anch. for all DOT/PF apps. - circumvent regional differences. 2. Prioritization of outstanding work. a. This years CIP proj & alts b. Operational needs (M&D) c. Project closeouts - final permits d. misc. Questions: Is RSA a one time deal for the outstanding apps - would we then move into a flat fee per app. How will RSA be allocated per project, performance guarantees in RSA?

Dan will meet w/ Swanson to discuss issues and relay Northern Region's frustration w/ DNR Northern operations.

Central Reg. Project Control Mgr. is working w/ HQ to get details on RSA & Project Allocation.

ACTION ITEMS: None - wait for meeting results

Copies To: _____

Signature: _____



DOT/PF

Name/Section _____

TELEPHONE/CONFERENCE DATA

PEOPLE INVOLVED

REPRESENTING

Date:

8/27/92

Time:

AM.

Project No./Name _____

MARY KAY ALESSIO

RON SWANSON

Q DNR. 762-2680

TOPICS:

STATEWIDE R.S.A. / PROPOSED FEE SCHEDULE

1. PAY FOR MTS. BY C.Y. ? - YES. @ BASE VALUE BUT YES TO BE DETERMINED. FOR "PUBLIC PROJECTS"

2. WHEN ? - SEVERAL TO LOTS OF MONTHS.

3. APPLY TO EXISTING PENDING AP'S. ? - MAYBE, YES TO BE DETERMINED.

4. DO WE REALLY NEED RSA ? - ONLY FOR INTERIM.

5. IF SO, D. B. CONNA DO FOR - YES STATEWIDE ?

6. THIS HELP TURNAROUND ? - ASKED STATE EXPRESS OUR CONCERNS TO SWANSON

7. CHGS. TO RSA FOR SPECIFIC - NO, ONCE FEE SCHED. APPLNS. PER FEE SCHEDULE ? ESTAB. - NO RSA NEEDED.

ACTION ITEMS: _____

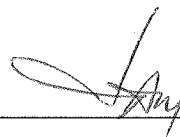
Copies To:

SMARI Bry-K. Boy ...

MELISSA mj

JENN B.

Signature:



MAY BE DIFFERENT BY C.Y. FOR EACH REGION

DOT/PF

Name/Section J. Bennett

TELEPHONE/CONFERENCE DATA

PEOPLE INVOLVED
Don Beardsley

REPRESENTING

Date: 8/14/92

Time: _____

Project No./Name _____

- TOPICS: DNR - RSA. Don updated me on his meetings w/ Ron Swanson.
1. DNR still is having problem resolving how fees are to be charged. Either than a per/file fee they have been suggesting a per acre fee or a process by which all fees are funded from royalty sales of materials to DOT/PF. This does not solve the "equal rights" problem or accounting.
 2. Ron wants the end result to be the funding of 2 positions dedicated to processing our applications. The allocation of the positions would be based on which region has the most outstanding applications.
 3. They discussed the necessity of performance guarantees in the RSA. Ron now understands that there is a specific problem with NR DNR and acknowledges that it is his problem to solve. He requests that He, JAM & Rick Smith meet before the end of August to get the problem of priority & production settled.

JAM!! ↘

ACTION ITEMS: Call Beardsley about meeting w/ Ron Swanson & Rick Smith.

Copies To: _____

Signature: _____

J.B.

MEMORANDUM

State of Alaska

Department of Law

TO: Shirley Horn
Right-Of-Way Agent,
Northern Region, DOT&PF

DATE: May 27, 1992

FILE NO: 665-92-0331

Rick Smith, Manager
Northern Region Office
DNR

TEL. NO.: 451-2811

FROM: Paul R. Lyle, AAG
Assistant Attorney General

SUBJECT: Interagency Land
Management Agreement
Stipulations

Douglas L. Blankenship
Assistant Attorney General

CONFIDENTIAL: ATTORNEY-CLIENT COMMUNICATION

DOT&PF requested this office to review the attached proposed Interagency Land Management Agreement ("ILMA") stipulations to determine if the stipulations are consistent with federal and state law and regulations governing airport operations. The draft stipulations were prepared at DNR's northern regional office by staff. The purpose of the draft was to provide a beginning point for discussions between the agencies about provisions to be included in the airport related ILMA's. Our legal analysis is set out below.

1. Necessity for ILMA's. ILMA's are not be required for all airports. Whether an ILMA is required depends upon how title to the lands on which the airport was established was first acquired. ILMA's are authorized under AS 38.05.027(a). AS 38.05.030(b) exempts DOT&PF from the provisions of the Alaska Lands Act, AS 38.05, for,

any power, duty or authority now or in the future granted to [DOT&PF] in the name of the state, to acquire, use, lease, dispose of, or exchange real property, or any interest in real property. Lands assigned by the Division of Lands to [DOT&PF] shall be returned to the management of the division when it is no longer needed for the purposes assigned.

AS 38.05.027(a) provides the DNR Commissioner may enter into cooperative resource management agreements with state agencies that are in the best interest of the public. Under this section DNR also has the authority to establish specific guidelines in the ILMA "to protect the state and the public interest."

CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION

Shirley Horn/Rick Smith
Re: ILMA Stipulations

May 27, 1992
Page 2 of 6

With one exception, we interpret the applicable statutes as granting DOT&PF the authority to manage all airport property without an ILMA. The one exception is where airports are established on existing state land without use of a condemnation action. In that circumstance we believe the statutes require the two departments to execute an ILMA.

2. Section 1a.

This section limits the ILMA to a period of 25 years. As stated above, ILMA's are authorized by AS 38.05.027(a). Section 4 recites that DOT&PF will issue leases under 17 AAC 40.300 -- 17 AAC 40.330. Under 17 AAC 40.330(a) the term of an airport lease may be for any period allowed by law. However, section 4 of the ILMA states that leases and permits do not survive the expiration or cancellation of the ILMA. This will require DOT&PF to limit lease terms to 25 years or the time remaining under the ILMA at the time the lease is entered, whichever is less.¹ Nothing in AS 38.05.027 limits ILMA's to any particular period. All the law requires is that land managed under ILMA's be included in DNR's inventory and reviewed "at regular intervals to analyze current and proposed uses" AS 38.04.060(b). We suggest that the 25 year term be eliminated and suggest that an appropriate term for the ILMA is "as long as the property is used for airport purposes." Such a lease term is consistent with the second sentence of AS 38.05.027(a) which requires that management of the lands assigned shall be returned to the Division of Lands when it is no longer needed for the purposes assigned.

3. Section 2a.

The reference in the second sentence to federal airport regulations should read "14 C.F.R. Part 152."

The last sentence of Section 2a provides that the assignment is subject to cancellation by DNR on 60 days written notice. This provision conflicts with 14 C.F.R. §§ 152.3 &

¹ Under AS 02.15.090(a) DOT&PF has authority to enter into airport leases of state for a term of up to 55 years.

CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION

Shirley Horn/Rick Smith
Re: ILMA Stipulations

May 27, 1992
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152.103(a)(4)(ii). In order to be eligible for a federal airport grant DOT&PF, the project sponsor,² must have:

Satisfactory property interests in the lands to be developed or used as part of, or in connection with, the airport as it will be after the project is completed.

14 C.F.R. 152.103(a)(4)(ii). A "satisfactory property interest" is defined, in part, as follows:

(1) Title free and clear of any reversionary interest, lien, easement, lease, or other encumbrance that, in the opinion of the Administrator would --

(i) Create an undue risk that it might deprive the sponsor of **possession or control**;

. . .

(2) Unless a shorter term is authorized by the Administrator, a lease of not less than 20 years from another public agency granted to the sponsor by another public agency . . . on terms the Administrator considers satisfactory;

(Emphasis Added). If DNR unilaterally cancels an ILMA then DOT&PF, as the project sponsor, will lose possession and control over the property and the term is potentially less than 20 years. This office could not certify the state's title to FAA under the ILMA as presently drafted.

Section 2a is vague and potentially internally inconsistent. The second sentence of Section 2a states that the review:

will not conflict with DOT/PF responsibilities as the facility operator, or deprive DOT/PF of any assurance in the . . . Federal Airport Regulations

² DOT&PF is the state agency appointed as sponsor for all federal-aid airport projects. AS 02.15.020(b) Municipalities wishing to sponsor federal-aid airport projects must obtain permission from DOT&PF prior to applying for federal funds. AS 02.15.150.

CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION

Shirley Horn/Rick Smith
Re: ILMA Stipulations

May 27, 1992
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As stated above, the cancellation provision prevents DOT&PF from obtaining a satisfactory property interest and eliminates DOT&PF's eligibility for federal funding of airport construction projects.

Section 2a also violates 17 AAC 40.210. This regulation authorizes the commissioner of DOT&PF to abandon an airport after notice and public hearing. DNR has no authority to make airport abandonment determinations under this regulation. As long as the property is an "airport" under AS 02.15.260(5) DOT&PF is the agency that will decide when and if the property should be abandoned. If there is a dispute between the agencies on the issue of an abandonment of all or a portion of an "airport", the agencies should initially attempt to resolve the issue between themselves with the appropriate input from the Department of Law.

In the event of an abandonment dispute, a factor that must be taken into consideration is what lands the FAA considers to be the "airport." Generally, FAA considers the "airport" to be the boundaries shown on the airport property plan which accompanies the state's title opinion in support of FAA grant applications. DOT&PF is required to have "possession and control" of all lands within the airport boundaries as shown on the property plan. DOT&PF's title cannot be encumbered by any condition that, in FAA's opinion, "creates an undue risk" that DOT&PF might be deprived of title.

4. Section 4.

This section impinges on DOT&PF's operational authority over state airports. DOT&PF has broad authority over state-owned airports. AS 02.15.060 provides:

The department may plan, establish, construct, enlarge, improve, maintain, equip, **operate, regulate, protect, and police** airports and air navigation facilities within the state.

DOT&PF's operational authority to enter into leases and permits on state airports is not derived from DNR's title to the land. AS 02.15.090(a) provides, in part:

In operating an airport or air navigation facility owned or controlled **by the state**, [DOT&PF] may enter into contracts, leases, and other arrangements . . .

CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION

Shirley Horn/Rick Smith
Re: ILMA Stipulations

May 27, 1992
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(Emphasis Added). Thus, AS 02.15.090 grants operational authority to DOT&PF over **all** state airports regardless of how the airport lands were acquired and regardless of which agency technically holds title to airport lands. In fact, AS 02.15.090(b) authorizes DOT&PF to enter into agreements with third parties to act as its agent in operating airports. DOT&PF's operational authority over airports is granted directly to DOT&PF in AS 02.15.090 and is exercised pursuant to regulations administered and enforced by DOT&PF and its commissioner. See e.g., AS 02.15.090(a); AS 02.15.102; 17 AAC 40.300, 40.320(3), 40.390(3), 40.390(4), and 17 AAC 15.012.

The responsibility for planning, designing and constructing state airports lies solely with DOT&PF. AS 02.15.060. DNR has no statutory authority to oversee or approve airport construction plans, surveys or to approve airport development plans after the airport is initially constructed.

In our opinion, DNR has no statutory authority over operational aspects of state airports. That authority resides solely within DOT&PF. However, DNR does have specific statutory authority to include specific guidelines in the ILMA to protect the state and public interest.

In discussing the stipulations with our respective clients it has become apparent that DNR and DOT&PF disagree on the breadth of DOT&PF's operational authority. DNR takes the position that DOT&PF has no authority to lease to non-aviation function enterprises on state airports. DOT&PF takes the position that its authority is established under AS 02.15.090, that its regulations permitting non-aviation function leases are valid, and that loss of control over non-aviation function leases on state airports would threaten FAA funding.

Before an opinion can be rendered on this issue a formal request for advice should be forwarded to the Attorney General. This issue is one of state-wide significance and will have an impact on the agencies' authority and relationship for some time to come. We would prefer that the two agencies attempt to resolve this issue as a matter of policy at the commissioner or other appropriate level.

5. Section 14.

This indemnity clause is overly broad and again seeks to control the terms under which operational and construction

CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION

Shirley Horn/Rick Smith
Re: ILMA Stipulations

May 27, 1992
Page 6 of 6

activities on state airports are undertaken. DOT&PF already includes an indemnity provision in all construction contracts, leases and permits. It is DOT&PF's responsibility to insure that the state is properly indemnified since it is charged with the responsibility of constructing and operating the airport. This provision should be deleted.

6. Conclusion.

DNR holds title in the name of the state to all state land. Responsibility for planning, design, construction, operation, and regulatory control of state-owned airports is granted to DOT&PF under AS 02.15. To the extent that the ILMA seeks to establish oversight for these activities in DNR, it impermissibly impinges on the authority granted by statute to DOT&PF. However, it is proper for DNR to include specific guidelines in the ILMA that reasonably address protection of the state's and the public's interest in the state lands DNR will receive when management authority is transferred back to DNR from DOT&PF.

Issues concerning the breadth of DOT&PF's operational authority should be resolved at the commissioner's level as a matter of policy. If the agencies need a legal opinion to resolve the issue, one should be requested from the Attorney General.

PRL:DLB/arp

3/10/92

1a. Term of Assignment and Condition of Returned Land. This assignment is granted for 25 years subject to AS 38.05.030(b) and AS 38.04.060(b). This assignment will expire at midnight on _____ . Land returned to the Department of Natural Resources (DNR) during the term of this assignment for any reason(s) shall be returned in a condition acceptable to the Director, which may include rehabilitation of the site and/or removal of any improvements, equipment and material. (FOR DOT/PF ASSIGNMENTS ONLY)

DOT

1b. Term of Assignment and Condition of Returned Land. This assignment is granted for 25 years subject to AS 38.04.060(b). This assignment will expire at midnight on _____ . Land returned to the Department of Natural Resources (DNR) during the term of this assignment for any reason(s) shall be returned in a condition acceptable to the Director, which may include rehabilitation of the site and/or removal of any improvements, equipment and material. (FOR ALL OTHER ILMAS)

S

2a. Review of Assignment and Cancellation of Assignment. Pursuant to AS 38.04.060(b), this assignment is subject to review every five years by the Division of Land. This review will recognize the facility layout plan (development plan) and will not conflict with DOT/PF responsibilities as the facility operator, or deprive DOT/PF of any assurance in the Federal Aviation Administration Grant Agreement for federal funds pursuant to AS 02.15.020(c), and Federal Airport Regulations, Part 152.29(1); and conformance with the general development plan. The DOT/PF shall provide assistance in the performance of the review. This assignment is subject to cancellation in whole or any part within sixty (60) days upon written notice to the assignee for non-use or abandonment. (DOT/PF ONLY)

DOT

2b. Review of Assignment and Cancellation of Assignment. Pursuant to AS 38.04.060(b), this assignment is subject to review every five years by the Division of Land. The _____ shall provide assistance in the performance of the review. This assignment is subject to cancellation in whole or any part within sixty (60) days upon written notice to the assignee for non-use or abandonment.

S

3. _____ This assignment is subject to all valid existing rights and easements, rights-of-way and reservations of record. (Add specific rights-of-ways, if required).

S

4. Assignments and Third-Party Interests. The DOT/PF shall serve as manager of the facility and is granted the authority, consistent with State Law, to create third party interests in the form of leases, permits and agreements in accordance with 17 AAC 40.300 through 17 AAC 40.390 for airport related purposes consistent with this assignment except as provided under these stipulations. Any lease, permit or agreement must

DOT

Post-It™ brand fax transmittal memo 7671		# of pages ▶	
To Paul Lyle	From Rose		
Co. A60	Co. DOT/PF-ROW		
Dept.	Phone # 2415		
Fax #	Fax # 2446		

be consistent with the most recent development plan unless otherwise authorized by DNR. Requests for non-aviation related purposes will be submitted to DNR for review and appropriateness with the land management objectives/plans for the area. Said leases, permits, and agreements shall not survive the expiration, relinquishment, or termination of the ILMA herein granted.

- 5a. Project Construction and Survey. The _____ is responsible for compliance with AS 38.95.160 (i.e. project will be supervised by a registered professional per AS 08.48 and be documented by a recorded plat). In addition, _____ is responsible for compliance with the survey requirements of the local platting authority as it relates to this project. If the local platting authority or Division of Land require additional survey work in conjunction with this ILMA, _____ will be responsible for such survey work. (Specific for improvements over \$100,000, within municipality).
- 5b. Project Construction and Survey. The _____ is responsible for compliance with AS 38.95.160 (i.e. project will be supervised by a registered professional per AS 08.48 and be documented by a recorded plat). In addition, _____ is responsible for compliance with the survey requirements of the platting authority as it relates to this project. If the Division of Land requires additional survey work in conjunction with this ILMA, _____ will be responsible for such survey work. (Specific for improvements over \$100,000, outside municipality).
6. Project Development Plan. The _____ agrees that the sketch (Exhibit B) of the parcel submitted with the long-term use request will serve as the development plan for the site. Any additions or corrections to this plan must be submitted to the Division of Land prior to construction of the new facilities, clearing of trees and other vegetation, the diversion or other modification of any drainages, or the addition of a fuel or chemical storage area. The request must include a scaled drawing of the proposed facilities. The approved plan shall be attached hereto and made a part of this assignment.
7. State and Federal Statutes and Regulations. _____ shall comply with all applicable State and Federal statutes and regulations, including the State Department of Environmental Conservation regulations, including, but not limited to, solid waste disposal and fuel storage.
8. Public Access. Public access to any trails or waterways shall not be blocked or restricted in any way on state land.

- S 9. Material. Pursuant to 11 AAC 71.015, the assignment shall not sell, transfer, or donate material including gravel, sand, rock or peat, to a third party except as necessary to construct and maintain the facility when materials are used within the confines of this assignment.
- S 10. Timber Clearing. If clearing timber on the site is required, clearing will be conducted only in accordance with the development plan and any useable timber shall be made available to the public. Coordination with the Division of Forestry, DNR, must be made prior to any clearing of timber.
- CC 11. As-Built Survey. The purpose of this assignment is to authorize construction of a public facility and appurtenant improvements described by the project plan, Attachment "B". Upon completion of construction, but not later than 90 days after completion, an acceptable as-built survey will be completed by the assignee and submitted to the Division of Land. The assignment may be amended to include those lands actually utilized by the project and needed for permanent maintenance.
- CC 12. State Selected Lands. This assignment is issued in anticipation of eventual tentative approval of the subject lands and merger of title for all permits and grants authorized or issued by the federal government. Upon receipt of tentative approval or title conveyance, this assignment will continue to be effective between the division and the assignee until expiration.
- CC 13. Availability of Funds. If funds are not available for the proposed improvements within 10 years, this authorization will automatically terminate.
- S 14. Indemnity. The assignee shall ensure that its contractors, subcontractors and their employees shall defend, indemnify and hold the State of Alaska harmless from and against any and all claims, damages, suits, losses, liabilities, and expenses for injury to or death of persons and damage to or loss of property arising out of or in connection with the entry on and use of state lands authorized under this assignment.
- CC 10. Fuel and Chemical Storage. Fuel or chemicals needed to operate the facility must be stored within an impermeable revetment of sufficient size to store 150% of the stored product(s) in the event of a leakage or spillage. If it is necessary to dispose of incidental water or leaked or spilled materials from the revetment area, such disposal shall be performed in a manner approved by the Alaska Department of Environmental Conservation.
- S 11. Erosion. shall stabilize all exposed or disturbed areas on the tract, as necessary, to prevent erosion, by applying the type of seed and utilizing the

application and maintenance schedule as determined by the Department of Natural Resources, Division of Agriculture, Plant Materials Center.

- 12. Fire Liability. _____ shall maintain the tract area in a fire safe manner and shall assume full liability for any damages to state land resulting from the negligent use of fire.
- 13. Removal of Vegetative Mat. The vegetative mat shall not be removed from the subject site exposing the soils to thermal degradation or hydraulic erosion. (OK for DOT/PF clear zone ILMAs but not for other DOT cases).
- 14. Third Party Interests. _____ is not granted the authority to create third-party interests in the form of permits and agreements without the written concurrence of the Division of Land.

9
XDOT

Post-It™ brand fax transmittal memo 7671		# of pages	4
To	Shan/Rose	From	Joe Galen
Co.	DOT/PF	Co.	DWR/DOL
Dept.	474-4 2446	Phone #	
Fax #		Fax #	

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 2
To John Mikel	From BRANDSLEY	
Co.	Co.	
Dept.	Phone # 266-1621	
Fax # 474-2411	Fax #	

Goal:

Fund positions to process DOTPF applications

Implementation:

Processing Fee (Nominal)
Royalty for Materials

Interim:

RSA for Personal Services

Final:

Third Party Billing

DOTPF Needs:

- Timely Processing of Applications
- Minimal Impacts on GF budget
 - Maintenance and Operations
 - Property Management
 - GF Projects
- Objective Standard for fee structure applicable to all applicants to assure Federal participation

DNR Needs:

Funding for staff positions (??)

Problem Areas:

Both Agencies

- Structuring of interim RSA to meet both agencies' needs

DNR

- Sufficient cash flow to meet budget requirements during FY
 - Royalty payments fluctuate widely depending upon project
 - Timing and amount of payments uncertain
 - Interim RSA terminates at effective date of Regulations - cash flow/budgeting problem
 - Lapse of funds not used during FY
- Expense
 - Cost to bill nominal processing fee
 - Annual Renewals for material sites
- Regional Billing on RSA
 - Conflict between DNR - DOTPF boundaries

DOTPF

- RSA
 - Numerous AJs of billings to individual federal projects
 - Expense of administering
- Royalty
 - Not related to permit processing workload
 - Tie between DOTPF Royalty payments and permit processing in future years
 - Priority will be given to material site applications to generate revenues, other requests will be given less priority
- Responsiveness to Regional Needs
- Increase in project cost - net reduction in construction dollars available

Possible Solutions

- Cash flow
 - Advance royalty
- Increase Permit Processing Fees/Reduce reliance on royalty payments

MEMORANDUM

State of Alaska

Department of Natural Resources

Division of Land

TO: Director's Policy File
DPF 93-06

DATE: January 5, 1993

FILE NO:

THRU:

TELEPHONE NO.: 762-2692

FROM: Ron Swanson
Director

SUBJECT: Interim Fee
Schedule;
Miscellaneous Fees

AS 38.05.850 requires that a "reasonable rate or fee schedule" be charged for permits, rights-of-way, and easements granted by the Division of Land. Commissioner Olds adopted this fee schedule in November, 1992, as part of a department-wide revision to DNR's fee regulations. However, there could be a long delay before the regulation amendments go into effect. Therefore, in accordance with authorities delegated to me under AS 38.05.850, I am hereby approving the fee schedule for interim use.

This is the first comprehensive updating of the Division of Land's fee schedule in several years. It increases fees for some types of permits, particularly for upland uses, bringing them much closer to the rates charged by other landowners. The revision will help the state obtain a reasonable return for the use of its land, without requiring costly and time-consuming appraisals. It will also be more equitable, giving private landowners a reasonable chance to compete against the state in offering sites for new projects. Better land use decisions on siting and routing should result.

Fee Schedule Procedures

A fee based on acreage applies to each acre or fractional acre. If a revocable-at-will authorization is revoked without cause (rather than being revoked for breach), the unused portion of the authorization's annual use fee is refundable, prorated on a monthly basis. A fee different from the rate set out in the fee schedule may be charged under the following circumstances:

- The regional manager may require a higher fee if he determines that the location or nature of the use makes a higher fee appropriate to ensure a reasonable return to the state. In that case, the fee will be set by the regional manager or, at the applicant's option and expense, will be based on an appraisal of fair market value.
- A land use fee may be waived or reduced for a federal, state, or municipal agency, but only if the federal, state,

¹The process includes two approvals by the Department of Law, filing by the Lieutenant Governor, and a 30-day waiting period.

(C) for a commercial recreational use such as a floating lodge or a guide's or outfitter's camp and at the director's discretion, either a variable fee of 2.5 percent of the gross receipts attributable to the use of the permit site, or a flat fee of \$350 if the facility is removed after a period of less than six months, \$650 if the facility is removed after a period of less than eight and a half months, or \$1000 if the facility remains in place for up to a year.

(D) an annual fee set by the director if the occupied site is five or more acres.

(4) Land use permit, noncommercial use of an unoccupied facility. Land use permit under AS 38.05.850 for noncommercial use of a structure or facility not subject to (1) or (2) of this fee schedule, such as a private mooring buoy, private float or dock, weir, boat ramp, a loading ramp for snowmachines or horses, or an archery target range operated on a nonprofit basis: an annual fee of \$100.

(5) Land use permit, commercial use of an unoccupied facility. Land use permit under AS 38.05.850 for commercial use of a structure or facility not subject to (3) of this fee schedule, such as a commercial mooring buoy, fish holding pen, log storage, A-frame logging, or equipment staging area for a construction project: an annual fee of \$250 for the first acre, plus \$100 for each additional acre.

(6) Land use permit, "early entry" pending issuance of a lease. Land use permit under AS 38.05.850 authorizing early entry onto a prospective surface leasehold

(A) for site development, an annual fee equalling the director's estimate of the prospective rental, or

(B) for site analysis that involves alteration to the land (including brushing, clearing, or excavating for percolation tests), an annual fee of \$100 for each acre.

(7) Land use permit for grazing livestock. Land use permit under AS 38.05.850 for grazing livestock, a fee per animal unit month that is 70 percent of the animal-unit-month fee most recently published by the U.S. Forest Service for the western states, with a minimum charge of \$100 per year for each permit.

(8) Land use permit, misc., if use will not hinder public use. Other land use permit under AS 38.05.850 for a use that does not hinder other public use, such as moving heavy equipment across state land, no fee.

(9) Land use permit, misc., if use may hinder public use. Other land use permit under AS 38.05.850 for a use that may interfere

(B) for each cubic yard of materials beyond 5,000 cubic yards, the base fee listed in the annual base price schedule under 11 AAC 71.090.

Miscellaneous Fees

Collateral/security assignments. The fee for approval of a collateral assignment (for a purchase contract) or a security assignment (for a lease) is the same as for any other type of assignment. Refer to the existing 11 AAC 05.010 for the current fee.

Inspection fees. A fee of either \$100 or actual expenses, at the director's discretion, may be charged for inspection of land subject to a Division of Land authorization if inspection is

(A) required by the authorization;

(B) necessary to determine whether previous noncompliance with the authorization has been corrected; or

(C) done to investigate alleged noncompliance and confirms noncompliance.

Subject: Meeting w/ DNR

Date: Wed, 29 Nov 2000 15:39:33 -0900

From: "John F. Bennett" <johnf_bennett@dot.state.ak.us>

Organization: Alaska DOT&PF

To: "MCCALED, DAVID" <DAVE_MCCALED@DOT.STATE.AK.US>

CC: "TILTON, KAREN" <KAREN_TILTON@DOT.STATE.AK.US>

Dave, I mentioned to you that Karen Tilton and I met with representatives of DNR on 11/15/00 to discuss highway ROW permits. I've had this subject on my desk for over a year and it was one of my pet peeves. Generally, we get three types of interests from DNR for our projects. ILMA's, Material Sites and Highway ROW permits. ILMA's (Interagency Land Management Assignments) are typically obtained on airports. The ILMA gives us stronger management authority than a Highway ROW permit and allows us to meet FAA Grant Assurances regarding secure title. Our relationship with DNR regarding ILMA's is governed under a Cooperative Management Agreement signed by DNR and DOT in April of 1994. Under DNR's 11AAC05.010 Fees regulation, we pay \$3000 for each ILMA as well as other document handling fees. As an easement or permit from a state agency is sufficient interest for a FHWA project, we have traditionally applied for public ROW permits. The intent of this meeting was to focus on these permits and not to get into ILMA's or material sales. The problem I wanted to resolve was the lack of consistency in how public ROW permits were processed by DNR's regions. This is more of a problem for Northern Region as so much of our region is split between DNR's Northern and South Central Regions. The DNR representation included Nancy Welch, former manager of Northern Region and now DNR Lands Deputy Director in Anchorage, Rick Thompson - the South Central Regional Lands manager, and Chris Milles, the Acting Northern Region Lands Manager. The two main issues I intended to discuss included:

1. DNR NR has never required an application or issuance fee and DNR SCR had required a per acre permit fee and a document handling (recording) fee on recent ROW permits.
2. DNR NR had considered DOT's public involvement process sufficient to satisfy public notice requirements. They did however, submit the permit action for agency review. DNR SCR is requiring public notice (advertising) for each permit action.

I was willing to accept the fees particularly on federal projects. The funds could be AJ'd by Pre-audit electronically and shouldn't take much effort. I was concerned about permits we processed for M&O actions given their lack of funds and hoped an arrangement similar to the materials sales agreements could be worked out. M&O is considered in that instance in that the first 5,000 cy are free and the per cubic yard payment only starts after that point. Typically, M&O would pay nothing for materials.

I was less willing to accept an additional level of public notice because of the potential for significant delays and the fact that the project had typically been noticed to death already. Also, while we had a good working relationship with the Northern Region offices in recent years, DNR has had a long reputation for taking inordinate amounts of time to process DOT applications. I had expected to get DNR SCR to conform more to DNR NR procedures as Nancy Welch had moved into a higher position. I was sadly mistaken.

DNR had taken this opportunity to release the floodgates of pent up frustration and jealousy over DOT's organization and funding. I heard endless anecdotes of how we mistreated them on issues relating to airport lease sites and charged them excessively for vehicle rental and

maintenance. I heard complaints of how we paid our employees at much higher rates than their equivalent staff and therefore, they were losing people to us on a constant basis. I heard how they have their budget cut at every turn and that DOT has more money than we know what to do with. And the bottom line is they want access to it.

They stated that not only should we be paying the fees outlined in their regs, but that we need to establish an RSA to fund several positions at DNR if we want to ensure timely processing of our permit applications. I noted that our regs as well as theirs provide for a waiver of fees if there is a reciprocal agreement. They acknowledged that fact but stated that we really didn't have anything they wanted therefore a reciprocal agreement would be one sided.

With regard to funding their activities, they focused on setting up an RSA. This is not a new proposal and one had have been in effect in past years. In reviewing my files I find a July 7, 1992 memo from DNR to DOT stating that with budget reductions, they will reduce or eliminate services to state and federal agencies but not the public at large. To continue processing applications they would require at least 2 range 16 position be funded by DOT. On July 29, 1992 DOT responded that that FHWA would participate in such an RSA if DNR could certify that DNR charged everyone on the same basis. This was apparently to be an interim measure until DNR established a fee structure to replace the RSA. On June 27, 1994 a memo from DNR to DOT noted an agreement that after June 30, 1994 the annual RSA would not be continued as the new gravel royalty payments and fees would cover those costs. What I heard at my Nov 15 meeting was that they would like to reinstate an RSA in addition to the materials royalties and fees. One comment that was of interest was that DOT SE region had continued to fund an RSA with DNR to process their applications. I commented that several years ago we had quite a backlog of ROW permit applications pending but in recent years we only had a few processed. Therefore, it would make more sense to pay as we go rather than fund positions. They commented that I was only considering ROW permits and not the mass of material sales agreements they were processing. Shari Howard noted that DNR is a victim of their own process as the majority of the mass of applications they are processing are renewals which under their regs must be redone every 5 years. Therefore, in the life of a material source, many hours of DOT and DNR staff time will be spent renewing applications.

Beyond the funding issue I heard that they were concerned that having DNR involved late in the project development when we applied for ROW permits, that there was a perception that the granting of the permit was a forgone conclusion. In many respects their perception is true. When we had projects ready to certify and had not received a right of entry from DNR due to lack of staff or other priorities, we pretty much concluded that we would certify without them. FHWA was notified of this intention on at least one occasion and indicated little concern. To them, the state was the state, and therefore we had the interest necessary to construct. DNR's managers now argue that their mission is different than ours and if public comment to a request for a ROW permit suggested that it would not be in the public's interest by their guidelines, they might not issue a permit. They argue that this separate review process has been made necessary by the controversy over the GVEA Intertie project. Our permits have always been revocable and do not constitute a real property interest. During the intertie project the Supreme Ct. suggested that when a facility of the magnitude of an intertie was constructed on within a revocable permit area, that for all intents and purposes, it was no longer revocable, but was in fact a conveyance. I argued that this can't apply to DOT as the land still remains state land, all we are doing is assigning management authority. This in my mind falls into the same category of bureaucratic absurdities as the DNR permit clause that requires that we indemnify the state with

régard to any bad things that might occur. I don't think they really consider other state agencies to be a part of state government. To avoid being denied a permit at the last minute, they suggested that one duty of the RSA funded DNR positions would be to become closely involved in the project development process early in the environmental stage. I could go on but I think you are getting the point. I told them that this was all interesting but way beyond my authority to consider. I got the impression that we might see this coming back at the Commissioner level in the future.

At the close of the meeting, our agreement was limited to paying the fee cited in their regulations for a ROW permit and paying for advertising their public notices. Upon reflection, this is one sleeping dog I should have let lie. JohnB

John F. Bennett <johnf_bennett@dot.state.ak.us>
Chief, Right of Way
Alaska Dept. of Transportation
Northern Region Right of Way

DNR AS-BUILT STATUS

Applications Pending ROE

Shain
Richardson Highway 6 Mile/Badger Road Interchange, NH-IR-OA2-4(9), LC 30082822:
Kathy Maitlen, Environmental Section, x-5295; Tiff Vincent, Design, x-5123;

JFB has file
Tok Cutoff MP 30 East Reconstruction, MGS-IM-IR-OA1-3(9)/65416:
LC30701832; Realignment with new bridge. Project Manager: Joe Keeney x-2283;
Environmental: Terry Richards, x-2243; Sam Means, Anchorage DNR (907) 269-8548. Sent application to **Sam Means**, DNR, May 14, 1999. ADL No. 227643

JFB have file
Richardson Highway Erosion Control MP 7.3: Rebuild and riprap existing dike. Project Manager: Joe Keeney x-2283. Environmental: Crissy Storey x-5294. Application sent to **Sam Means**, Anchorage DNR (907) 269-8548. Application sent to Sam in Anchorage on Wednesday, May 12, 1999 by mail. **Karlee Gaskill, Anchorage, DNR, (907) 269-8553, 269-8913 fax.** June 3, 1999, Karlee asked when this right of way was needed because of her work load. Gail Gardner in Design said it was needed by August 1, 1999 and absolutely no later than August 15. June 8, 1999, Karlee called for permit location on the state mtp. ADL 227644, Richardson Highway Erosion Control MP 7.3, STP -071-1(63)/60380, LC 30082822. **Received Early Entry Permit**

Sent Karlee signed EEA with Financial Transaction Register showing payment of \$675 on August 27, 1999.

done
Elliott Highway Replat - Gave Dave Pott full size copies of the replat along with field notes and pacsoft lot summaries on Monday, October 20, 1997. Gave Dave mylar of replat Tuesday, January 06, 1998. **Recorded 1998. ADL 415920**

"Elliott Highway: Eureka to Baker Creek"- **April 7, 2000**, sent Stutzmans asbuilt drawing to Nancy Rabener, X-2737 DNR Fairbanks.

done
Copper River Highway: Bridge 342 Pier Repair - December 9, 1997. Received letter from office of the governor stating that a permit was not needed for this project.

DOT survey 2001
Dalton Highway MP 407 Sag River Erosion Control, STP-065-7(1)/60392, LC 30083022: Don Carlson (Geology) at x-2233, Patty Wightman (Environmental) x-5106, John Rezek (Project Manager) x-2281. Received request for Right of Way on Monday, May 3, 1999; Susan Malen, DNR, 451-2729. **ADL No. 416333. Received Early Entry Authorization August 16, 1999.** Sent a copy to John Rezek and Sue Malen by fax. - *Food email extension*

read
ADL 226600 -Project /65892 Shepard Point Road - Submitted to Anchorage, no action.

OB have permits holding
ADL 227149-Sheridan Glacier River Bridge, Copper River Highway ER-Perm Repairs (Dike Project). Sent preliminary drawings and applications to DNR Anchorage 1/27/97. Word from DNR Anchorage is that they currently do not have anyone working on ROW permit applications.

Not just for DOT, but anyone else. Received EEA for execution 6 October, 2000-and passed on to JAM. This one needs an as-built survey. Received Early Entry Permit on July 11, 1997. **As-built drawing sent to Linda-Lou Holzman, November 23, 1998.**

✓ **ADL 403686** Project F-046-2(5) SR-1, Mile 20 to Mile 26 SW of Tok Junction, on the Tok Cut-Off, Dike construction on the Tok River. This is an old BLM Grant to the wrong Township and was claimed by Tetlin. This was signed by John Bennett, November 6, 1997, and sent back to Joy for recording.

ADL 415295 Steese Highway MP 35; Sent application for Right of Way to DNR. June 1996. Sent Joy Zuke additional information showing the approximate location of the Fish and Game Parcel at the north end of the project. September 10, 1996. **Permit was extended to December 31, 2000.**

ADL 415795 Steese Highway MP 35; (Chatanika River Erosion Control) Sent application for Right of Way to Joy Zuke, DNR. June, 1996. Received Regional Managers Decision March 29, 1997. Received **Land Use Permit** on July 18, 1997. Robert Layne sent back copies of signed permit and will send recorded original when it comes back(6 October, 2000).

ADL 415845 Steese Highway MP 43.8; (Boston Creek Stilling Basin) Sent application for Right of Way to Nancy Welch, DNR. August 5, 1996. Received Regional Managers Decision March 29, 1997. Received **Land Use Permit** on July 18, 1997. Robert Layne sent back copies of signed permit and will send recorded original when it comes back(6 October, 2000). **Recorded Bk1015Pg564-Pg570 on July 25, 1997.**

Did we get fund **ADL 415941** Dalton Highway, MP 50.5, Water Access. Roselind Smith at DNR called Thursday, May 28, 1998, and asked if she should continue with the permit process. Returned the signed Right of Way Permit, Wednesday, June 10, 1998.

ROE Pending As-builts

Yes pending **Richardson Highway MP 185, One Mile Creek:** BR-071-4(15)/60401, LC30083522/57226. Joe Keeney, Design Manager, x-2283, Patty Whightman, Environmental, x-5106. Cathie Jensen, BLM, Glennallen, 822-3217, PO Box 147, Glennallen, Alaska 99588. Leo Woster, Right of Way. Sent application to **Cathie Jensen**, Glennallen BLM on Wednesday, May 12, 1999.

Talked with Cathie Jensen on June 21, 1999: She said she would work on the applications in the next month or so.

April 7, 2000: Received Special Stipulations for BLM Permit AA-81866 from Cathie Jensen and gave Peggy Raybeck a copy for Construction.

May 22, 2000: ROW Grant issued by BLM (AA-81866). Requires as-built survey.

? **F-92706** This permit for Slate Creek at Cold Foot was received from BLM on April 23, 1999. The as-built survey is required at completion of construction. The file is in the M&O drawer #30.

ok **ADL 413970** -Project RS-M-0625(4)/63219, Peger Road Widening, Parcels 13, 17, 28, 29 & 36. Parcels 13 & 17 are partially the subject of ASLS 87-17 which is being performed by DOT&PF for the southwest 1/4 of section 16. It is currently under review by Dave Pott. I suspect that the ASLS plat will provide adequate reference for these

two parcel when it is completed. The submittal for the other parcels will be under the DOT&PF format. ASLS plat should be filed by Jan. 1996. 1-24-96 sent Ms Zuke As-built construction plans for Peger Road Widening, Right of Way Plans, Parcel Vicinity Maps, Parcel Plats for 13,17,28,29, and 36. As of October 15, 1996 this project had not been reviewed by DNR. Robert Lane at DNR said that an ASLS was filed for this and the project is considered closed.

*1 parcel done.
2 phase project.*

ADL 415304 -Project IR-OA2-2(2)/65410, Alaska Highway MP 1386 North, construction should be done in 1999. Two Parcels. Survey by FPE/Roen. As-builts to be prepared by ROW staff. This project is being constructed in two phases. The second phase has not yet been advertised. We can probably submit the first parcel and amend the remainder later. Sent the first as-built parcel to Joy Zuke 12/22/95. Change "As-built" to "Right of Way Permit" June 10, 1996. JFB signed the Permits and returned to DNR for recording on December 10, 1996.

?

ADL 415388 - Parks Highway MP 262. Could be construction during the summer of 1996. **Received permit from D.N.R. June 27, 1997.**

done

ADL 415920 Elliott Hwy - Eureka to Baker Creek - ROE issued 2/28/97. Good for 5 years. Requires as-built and amendment to Kentucky Creek cadastral survey plat where our realignment affects boundaries. **Nancy Rabener** called August 24, 1999 and asked about the DNR as-built survey for the Elliott Highway, Eureka to Baker Creek. I called John Pfeffer, Project Engineer, and he is looking in to it.

March 31, 2000: Received drawing from John Pfeffer (X-5476) and forwarded as-built drawings to Nancy Rabener (X-2737), DNR.

ROW Permit Issued - File Closed

Alaska Hwy MP 1386 North Rehabilitation, NH-IR-OA2-2(2)/65410, LC 30701522
February 18, 1998 Sent Robert Layne forms for a temporary easement for brush cutting on the Gerstle River adjacent to the campground. **Received Temp. Permit, April 27, 1998, Permit #LAS 21781. The work for this permit has been completed. I sent Robert Lane an e-mail letting him know that the permit is no longer needed on November 4, 1999.**

ADL 224380 -Project G-20006 - Minchumina Trails - The letter of entry authorization for this application was issued on June 28, 1988 by the DNR South-central region when it was apparently under their jurisdiction. Our regional surveyor recalls performing an as-built survey and submitting it to South-central. We are in the process of researching the file in order to resolve this issue. As-built drawn by Lee Saylor. Sent to Jerry L. Sherbahn, DNR, Anchorage, for review April 6, 1995. Sent Dave Pott and reviewed. Requested revisions received 10/19/95. Sent to Lee Saylor for info requested by Dave Pott 10/20/95. Resubmitted to Dave Pott 10/25/95. Received letter on 10/27/95 from Dave Pott which said the as built was reviewed and OK and will be recorded. Sent Joy Zuke CC-mail asking for copy of recorded

document, April 2, 1996. Joy said it has to be reviewed by the Mental Health Trust (4/22/96). This came back from Joy Zuke in August, 1996 for signatures, ect. and sent back to Joy for recording. As of October 15, 1996 it is at the recorders office waiting for recording. Joy says it was recorded Sept. 5, 1996 but we haven't received a copy yet (December 3, 1996). Received a copy of the recorded Right of Way Permit (December 5, 1996). I couldn't find the project file so this copy is in with open DNR files.

ADL 225695 -Project FIR-OA1-3(4)/60209, Tok Highway MP 52.1-62. Under construction summer 1995 Jim Weed, Grp. Chief, Bruce Herning, Project Engineer, Tim Koth, Assistant Project Engineer. Slana Surveys to submit as-builts. Sent letter and corrections to Kevin Smith November 6, 1996. Received fax from Ken Dreyer, August 27, 1997, that he will send latest revisions to Gerald Jennings, DNR. Received and returned ROW permit for signing Wednesday, October 29, 1997. **Recorded in book 50, page 290-297, Chitina recording district on December 29, 1997.**

ADL 413596 -Project X-21950, Quartz Lake Road - Road construction was completed in 1970 with no as-builts or survey performed at that time. There is perennial discussion between our maintenance group and the Div. of Parks about completing the as-builts, but to date no funding has been secured to carry out that task. A large portion of the right of way may be surveyed in the near future as a part of a native allotment reconveyance (ADL 413962). The remainder will have to wait until a funding source is found.
DNR Surveyed road by GPS, Issued Permit on 2/28/97. File in project records.

ADL 413720 -Project F-M-0668(2)/63093, Geist/Johansen Expwy, Aurora to Lemeta. The construction as-built/ROW plan package was submitted on 12/24/92 for review and issuance of the final DNR ROW permit. (DOT&PF format). Talked to Joy Zuke (6/26/95). She said she would issue the Right of Way Permit, no additional information is necessary. **Received permit for execution 12/20/95.** Recorded Bk 936 Pg 877

ADL 413807 -Project F-M-0668(3)/63099, Geist/Johansen Expwy., University to Peger, Parcel 17 - This project has been completed. As-builts, a parcel plat, legal descriptions were sent to Joy Zuke on July 6, 1995. **Received permit for execution 12/20/95 (No exhibits were attached.)** Attached exhibits and returned. Recorded Jan. 19, 1996; Bk 936 Pg 876.

ADL 414361 -Project RS-0130(27)/60398 - Nome-Council MP 32 to 42 - These as-builts will be submitted in the DOT&PF format. The project is complete and the as-builts will be ready in the late fall or early winter. Sent construction as-builts and right of way plans 6/27/95 to Joy Zuke. This should be all that is needed for the ROW Permit. Larry Illman was the assistant project engineer, 443-3417, Nome. **Received permit for execution 12/20/95.** Recorded Jan. 29, 1996; Bk 342 Pg 159.

ADL 414541 Am -

Project F-062-1(16) Alaska Highway MP 1235-1236 - This Application was originally for telephone line relocation that strayed outside of the right of way.

While this process was taking place the lands were being conveyed to DNR requiring several amendments to the ADL. The final request for an amendment was submitted to Joy Zuke on 11/15/95. Received the final amended permit on 3/28/96. Signed and returned for recording. **Received and filed recorded copies May 23, 1996.**

ADL 414584 -Project F-065-1(6)/60208, Elliott/Snowshoe North - The early entry authorization was issued on this application on 10/8/92. The purpose is to construct a connecting access road between the new and old Elliott Highways. The construction will to be performed by our maintenance group in late August of 1993. The as-built survey will be performed in 1995. Lee Saylor will reset Right of Way corners. Sent to Joy Zuke August 31, 1995. Reviewed by Dave Pott and discussed by phone conversation 10/18/95. Resubmit with revisions as discussed 10/23/95. Received letter on 10/27/95 from Dave Pott which said the as-built was reviewed and OK and will be recorded. **Received permit for execution on 12/20/95.** Recorded Jan. 19, 1996; Bk 936 Pg 907.

ADL 414716 -Project RS-0785(8)/63287, Taylor MP 0-23, Parcel 4 - This project is under construction summer 1995. As-builts will be submitted in the DNR format. Surveyor: Bush Surveys Sent information to Gerry Kurtz in Girdwood. It looks like he will do the as-built survey drawings for Bush Surveys(December 7, 1996). Received as-builts 1/6/97 and **gave them to Dave Pott 1/10/97.** Dave finished his review January 17, 1997, and returned as-builts to the contractor for changes. **Recorded May 5, 1997: BK0998 PG025-PG047.**

ADL 414728 -Project RS-0130(28)/60399, Nome-Council MP 53-62, Parcel 2. As-builts will be submitted in the DNR format. Surveyor: Alaska RIM Engineering. Zuke called 1-2-95 about the as-built survey as the Early Entry Permit expired December 31, 1994. This project under construction during the summer of 1995 will continue construction through the summer of 1996. The contractor will submit a new as-built(January 18, 1997). Submitted signed permit and ROW survey (DOWL) to Dave Pott on 6/5/97. **Recorded Book 347, Page 635-676, Serial No. 97-1775, in the Nome Recording District, October 15, 1997. Proof of Construction Document not needed.**

***ADL 415241** - ILMA, Radio Hill (Ross Dome), survey complete - ROW staff to prepare as-built. Sent as-built drawing to Zuke January 4, 1996. Zuke called, she is not sure if this is going ASLS or not.(3\14\96). Received ILMA, November 12, 1996. **Recorded original arrived December 26, 1996.**

ADL 415292 -Road Easement for Radio Hill - see ADL 415241 (Ross Dome), Sent Zuke as-built drawings January 4, 1996. Received Right of Way Permit to be executed(5-16-96). This has been recorded in the Rampart Recording District. Book 7, Page 92.

ADL 415381 -IM-OA2-3(11)/66357 - Richardson Highway Erosion Control MP 330 (Boondox) R.E. - Jim Payne. Surveyor - Bill Blizzard, Bill said he should have a submittal by 12/22/95. DNR Land Use Permit (In lieu of a Right of Entry) was received on 4/20/95. Bill Blizzard picked up right of way maps May 1996 and is still working on this as-built survey. Dave Pott accepted the asbuilt November, 1997 and then sent it to Robert Lane. Sent signed copy back to Robert Lane February 4, 1998.

RECORDED February 18, 1998, FAIRBANKS RECORDING DISTRICT, Bk 1050, Pg 641-648.

- ADL 415696** Dalton Highway MP 211-South. There was no as-built survey for this project at bridge no. 4 on the Koyukuk River. DOT withdrew the application for ROW and the file was closed October 29, 1997 by DNR.
- ADL415856** Fielding Lake Road; Survey performed by DNR. Permit executed on 2/28/97. Filed in Project G-57006, Drawer 45.
- ADL 416193 Airport Way Signal, HHE-0610(2)\60276, :** Received the as-built drawing from Eugene Mound, Stutzmann Engineering. It was reviewed and sent to Leigh Carlson, DNR, on Friday, August 06, 1999. Recorded October 20, 1999, Bk 1167, Pg 317-322.

Miscellaneous Files - No Permit Issued

- ADL 209850** -Project X-40113, Emmonak Erosion Control Project, - These project files came from Anchorage without as-built data. Memo dated 6/20/95 to DNR stating that there is no as-built info. See John Bennett memo 6/20/95(to Linda-Lou Holzman) which states that there is no as-built info for this project. Linda-Lou Holzman's letter dated July 5, 1995 states that this file will be converted to a trespass file.
- ADL 407976** - Project RS-0130(26) Nome Council MP 4-15, Parcel 5. Our title report on this parcel noted that the Dept. of Revenue had issued a deed to DNR due to foreclosure because of non-payment of taxes. Because of the potential redemption by the original property owner, the AGO condemned the parcel for title purposes, naming among others, DNR. Due to the time required to clear title, an Early Entry Authorization was requested. The Superior Court issued a final judgement on March 22, 1984 which vested fee simple title to the parcel in State of Alaska DOT&PF. Therefore, the ROW permit application is moot and is no longer required. The file can be closed. Received case file closure dated April 23, 1996.
- ADL 402805** -Alaska Railroad Extension. In 1995 we were requested to prepare an updated estimate to acquire the ROW for the project given that much of the land had been conveyed to ANCSA corporations in the past 10 years. However, I have no realistic expectation that we will be doing any ROW acquisition or construction in the next 10 years. If I remember correctly, our Early Entry Authorization was for the sole purpose of performing Location surveys. No right of way plans were ever developed for the majority of the line. I believe it is appropriate to close this file. If and when it ever comes back to life, we will pretty much be starting from scratch anyway. Received case file closure dated April 23, 1996.
- ADL 412309** - Project F-062-1(16) Alaska Hwy MP 1256-1235. Material Site access road. Our notes indicate that we did not intend to maintain a permanent interest in this access road. The access was obliterated and revegetated. Therefore, we

concur that this ADL file should be closed with no ROW permit issued. Received case file closure dated April 23, 1996.

- ADL 413806** -Project RS-0670(25)/63243, Steese Highway MP 81 North, Parcel 1 - The as-builts for this project will be submitted under the DNR format. Under Construction summer 1995. Surveyor: Art Saarloos, PO Box 197, Delta Junction, AK, 99737, 895-4280. See specs section 642. See ADL 414912, this was cancelled at the direction of the Resident Engineer. It was not necessary for construction. Wrote to Zuke 12/18/95 requesting withdrawal of permit. **Received case closure notice 12/20/95.** Received case file closure dated April 23, 1996.
- ADL 414602** -Project RS-0620(6)/60379, Badger Road, Parcel 79 - As-builts will be submitted in the DNR format after completion of construction. Under construction summer 1995. As-builts to be submitted by Stutzmann Engineering. This parcel was deleted during construction. A memo was written to Joy Zuke, September 3, 1996, stating that the **parcel was not needed**. A Right of Way Permit Survey by Stutzmann Engineering was sent to Joy at the same time.
- ADL 414744** -M&O Project - Dalton MP 367.6 - Water Access - This access point is scheduled to be constructed by Maintenance and Operations by August of 1993. Gave Lee Saylor survey info 6/23/95. Survey complete. 12/18/95 request, written to DNR, to withdraw permit application. Received, from Joy Zuke 2/20/96, a memo stating that this case file is now closed.
- ADL 414745** -M&O Project - Dalton MP 406 - Water Access - Same as above ADL 414744. 12/18/95 request, written to DNR, to withdraw permit application. Received, from Joy Zuke 2/20/96, a memo stating that this case file is now closed.
- ADL 414912**- Project RS-0670(25)/63243, Steese Highway MP 81-North, Montana Creek-Mammoth Creek. Ted Niemiecs memo, 12/8/95, stated that the new ROW was not needed for the project. The 12/11/95 memo from ROW to DNR asked to withdraw the permit. **Received case closure notice from DNR 12/20/95.**
-

ADL 225706 -IR-OA1-4(2)/63359, Glenn Highway MP 127-136. This is the second phase of the Glenn 188 North project. There were DNR parcels in both the MP 118-127 section which is complete and in the 127 to 136 which will be completed in 1996. The surveyor for the 127-136 segment is Lantech. Check to see if the first as-built was accepted.

BLM ROW Grant Applications

- F-21145** Dalton Hwy: 211 North, FEMA Repairs - Dike Locations, MP 220, MP 221, MP 224.3, MP 230, MP 249.5 Dalton Highway. As-built survey completed fall of 1995. Sent to BLM for review April 1, 1996. 6/26/96 Joy Zuke called and said the review for the Koyukuk River Bridge permit was almost finished.
- F-43687** BLM Title V ROW Grant for Wiseman Access Road. Project 91-25-2-44/11029. Grant was accepted on 4/3/91 by DOT&PF subject to the filing of an as-built survey. 5/9/97 - BLM accepts as-builts and grant amendment.

AA-79974
0070(10)]

BLM Title V ROW Grant for Richardson Highway MP 48 Erosion control. [ER-

Received 50 year grant for signature on 5/28/97. Received final grant 7/7/97.

Forest Service Temporary Use Permit - Copper River Hwy Erosion Repairs job
near Bridge 342. Signed documents and returned to Forest Service on 5/26/97.

DNR ROW Permits

Authorized under AS 38.05850 Permits - The Director may issue permits, rights of way and easements.

See also 11 AAC 05.010 Fees for new fee structure -

section (a)(5)^d "revocable and temporary surface use authorizations" includes (D) "public right of way or easement application, \$100 *< Application Fee only.*

section (a)(14) suggests that everyone including agencies must pay recorder's fees both for recording and for copying of records.

section (c) states that a fee prescribed by this section is waived for a federal, state, or municipal agency with exceptions (as long as we don't charge them for a similar application).

section (e) provides a schedule for certain surface land use authorizations and for material sales for public projects under AS 38.

section (e)(12) "public right of way or easement under AS 38.05.850 for a road, trail or airstrip, a one time fee of \$50 per acre unless provided in a reciprocal right of way agreement."

section (e)(15) "interagency land management assignment to a state agency" - (e)(15)(B) a one time fee of \$3000

section (e)(16) sale of materials to a federal, state, or municipal agency for use in constructing, reconstructing, or maintaining a public project. (no charge for first 5,000 cy per year. >5,000 cy is based on annual price schedule established under 11 AAC 71.090.)

The ROW permits are typically notarized and recorded. Most in the past are clearly titled "Permit" while some of the latest ones are titled "Right of Way/Easement" Permits have been generally construed as being revokable at will. Some, but not all of them state in the stipulations that the permit conveys no property interest and that they are revokable by the grantor at will.

It is unclear whether the ROW permits we are receiving at this point are revokable and therefore have the fee waived or whether they are a irrevokable public ROW or easement subject to the \$50/acre fee.

P. 8

11AAC 05.010 (a)(5)(D) \$ 100 Appl. Fee.
"Revocable or temporary use —"

Subject: [Fwd: Highway ROW permits]

Date: Mon, 13 Nov 2000 11:58:28 -0900

From: "John F. Bennett" <johnf_bennett@dot.state.ak.us>

Organization: Alaska DOT&PF

To: Rick Thompson <rick_thompson@dnr.state.ak.us>

Rick, here is an e-mail I sent to Nancy a while back that describes some of the issues.

With regard to reviewing the DNR fee regs, I am focusing on:

Chapter 005 - Fees for Department Services

11 AAC 05.010

(a) non-reundable fees to apply for authorizations...

(5) revocable and temporary surface use authorizations

(D) public right of way or easement application...

&

11 AAC 05.010

(c) A fee prescribed by this section is waived for a federal, state, or muni....

(3) the fee is not waived if the federal, state.....

(12) public right of way or easement under AS 38.05.850 for a road, trail or airstrip,....

thanks, JohnB

Subject: Highway ROW permits

Date: Thu, 19 Oct 2000 09:17:30 -0800

From: "John F. Bennett" <johnf_bennett@dot.state.ak.us>

Organization: Alaska DOT&PF

To: "Welch, Nancy" <nancywe@dnr.state.ak.us>

CC: "TILTON, KAREN" <KAREN_TILTON@DOT.STATE.AK.US>

Nancy, below is the copy of the text of an e-mail I sent last May to my ROW Engineer, Karen Tilton and Central Region's ROW Engineer Jim Sharp. This goes back to my discussion with you about the consistency of how DNR Northern and SouthCentral regions issue their highway ROW permits. I know you have been focused on the intertie for the past several months and fortunately, our pending permit applications are at an all time low. I do however, have a couple of outstanding issues with SouthCentral that I had set aside untill we could work them out. Although we will miss working with you in the Northern Region, perhaps it will be easier to work out this problem in your new position.

Some of the more recent examples:

ADL 227644 - the extension of an existing erosion control dike at MP 7 Richardson Hwy. As directed by SouthCentral, we paid to post a notice in the Anchorage and Valdez news papers, a \$600 permit fee and a \$75 document handling fee. Due to our time constraints, we did not debate any of the issues at that time.

ADL 227149 - extend existing dike on Copper River Highway. The permit forms were sent to us in July of 1998 along with a request for a permit fee of \$50 and a recording fee of \$75. No advertising was required.

ADL??? - Tok Cutoff MP 30 to 38 - Chistochina River. This was submitted

to SouthCentral in May of 1999. No action has been taken, but as the project was on hold due to other problems, we have not pursued it. We now need to move ahead with this permit application.

We had discussed the differences in the Northern and SouthCentral approach a while back. You were able to rationalize under the DNR permits that no fee was required for Public highway rights of way. If you found to the contrary on that issue, I would not have a significant problem as most of our permits are federally funded. Occasionally, we need a permit for a maintenance issue where funding is more of a problem. You were also able to rationalize that public notice should not be necessary for a ROW permit action. This is due to the extensive public involvement and environmental process that is a typical part of our highway projects. This is more of a time issue than funding and therefore, is more of a problem for us. Finally, the recording fees. Although there may come a time where all state agencies must pay to record state business, DOT can still retrieve recorded documents and record documents for state business at no cost. Therefore, it seems inappropriate to transmit a recording fee to SouthCentral when we can get it recorded ourselves.

I know you will be busy in your new job, but I would appreciate it if you could talk with Rick Thompson and work out a consistent approach for all regions. Thanks, JohnB

I met with Nancy Welch (DNR Lands NR Manager) and spoke with Rick Thompson (DNR Lands SouthCentral Manager) today regarding an old pet peeve of mine - DNR ROW permits for highways and the lack of consistency

between DNR regions in how they are handled. Jim, I don't think you have any involvement in DNR's Northern Region but about half the work we do is in DNR's SouthCentral region. The issues are permit fees, type of permit, public notice, recording fees and accounting (transmission of fees). The difference is this: DNR Northern Region traditionally issues us a ROW Permit for highways with no permit fees, recording fees or public notice. There are no accounting issues as there is no fee. Our most recent DNR SouthCentral ROW for highways was issued as a "ROW/Easement", and was subject to permit fees, recording fees, and 3 weeks of public notice.

There is clearly a difference in interpretation regarding how DOT is to be treated. I was arguing less against fees that I was for consistency. And in particular I find it difficult to believe that given the level of public notice that goes on in our project development that it is necessary for DNR to also do it. Apparently Nancy believes there is more sensitivity on public notice with the problems of the new GVEA intertie and the court decision that it should be an conveyance rather than a permit as it would be unreasonable for DNR to revoke the intertie permit and have the facility removed. On the other hand we are both state agencies and a ROW permit constitutes little more than a land management classification.

I have asked that they get together and discuss their interpretations of their regulations so we could resolve the inconsistencies. Nancy says the Regional Managers try to meet in quarterly and that the next meeting

should be in Fairbanks, possibly in June. She said she could make that an agenda item for their meeting and that Karen and I could meet with them. JohnB

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John F. Bennett <johnf_bennett@dot.state.ak.us>
Chief, Right of Way
Alaska Dept. of Transportation
Northern Region Right of Way

Chena Rec Area - Merga of Title.



9/18/92

ALASKA STATE PARKS
Northern Regional Office

Steve Lisk: Re: Chena
DOTPF/D+C Rec Area ROW.

Here's a packet developed from our files. As I read these documents, all lands within the Rec area belong to parks for management purposes. To our knowledge the ^(mining) management plan has never been crafted except in stipulations we've put into correspondence with your dept. I like the idea about establishing a plan with the 37 mile bridge repair. We should also stockpile pit run at that time for emergencies.

DEPARTMENT OF NATURAL RESOURCES
 Dan Robinson
 Deputy Director, Parks

Chip Dennerlein
 Director

R	C	D & C DIRECTOR
O	O	NORTHERN REGION
U	P	DIRECTOR
T		DESIGN
E		CONST
	X	ROW 9-27 (J. Bennett)
		PROJ CONT
		REG DIR
		PLANNING
		ADMIN
		M & O
		RETURN

DIVISION OF PARKS
 December 8, 1981

6620-2

BLM Decision Extinguishing
 23 USC Section 317 ROW
 within Chena River Rec. Area

Attached please find copies of two documents pertaining to the final decision of the Interior Board of Land Appeals concerning the right of DOT/PF to retain free use of certain formally designated material sites within the boundaries of the Chena River Recreation Area following patent of the land to the State of Alaska. The Board's decision regarding the specific material site which was challenged states clearly, "When Patent Number 50-73-0018 was issued to the State of Alaska, the right-of-way interest merged with the fee title and was thereby extinguished." When combined with the statute establishing Chena River State Recreation Area which states that, "All land within the following described boundaries, including all lands as may be acquired by the State in the future are hereby designated as Chena River State Recreation Area", the decision leaves no room for interpretation. Clearly, the lands upon which the material site right-of-way was formally located are state park lands reserved as special purpose sites pursuant to Article VIII Section 7 of the Alaska State Constitution. The decision of the Interior Board of Land Appeals in this case shall apply to all other material site rights-of-way within the boundaries of the Chena River Recreation Area.

While the decision may correctly be viewed as totally supportive of the position of the Division of Parks, I would draw your attention to some of the comments made in Larry Wood's memo to me of December 3, 1981 (copy attached). I do consider it somewhat of a travesty that this case every got as far as it did. While I will choose to lay most of the burden for this sorry episode on the shoulders of DOT/PF (my respect for that agency following this and the Fort Abercrombie gate stealing episode has been virtually nil), I do think that it is incumbent upon this division to carry out the decision of the Interior Board of Land Appeals in a positive manner which benefits not only park resources, but satisfactorily meets the real public safety needs of Alaskans in the maintenance of the Chena Hotsprings Road. To this end, I urge you to work with Interior District Superintendent Dave Snarski to formulate a management plan for the use of gravel from within the Chena River Recreation Area by the Department of Transportation. Such a plan should keep in mind the need to protect the natural and recreational values of the recreation area and to minimize any impacts on the area's values. However, the plan should also take cognizance of the need of DOT/PF to perform maintenance on the Chena Hotsprings Road and should recommend sites which that department can utilize, including the conditions under which such utilization may take place. Once you and the superintendent have formulated such a plan, I will then review and approve it as operational policy for the Interior District. By way of a copy of this memo, I am directly informing Superintendent Snarski of this assignment so that he can begin to formulate his recommendations to you on this subject.



OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

Division of Parks

NOV 17 1981

STATE OF ALASKA
JUDICIAL DISTRICT
FAIRBANKS

STATE OF ALASKA

IBLA 80-564

Decided September 24, 1981

- Appeal from decision of the Fairbanks District Office, Bureau of Land Management (BLM), declaring right-of-way grant F-026085, extinguished.

Appeal dismissed.

1. Appeals--Rules of Practice: Appeals:
Generally--Rules of Practice: Appeals:
Standing to Appeal

RECEIVED
DEC 21 1981
DIVISION OF PARKS - FAIRBANKS

Neither the State of Alaska nor an instrumentality thereof has standing to appeal a decision which recognizes that full title to a parcel of land is in the State, absent a showing of injury in fact from such a decision.

APPEARANCES: Larry D. Wood, Esq., Assistant Attorney General, for the State of Alaska.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

The State of Alaska appeals from a decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated March 6, 1980, declaring right-of-way grant F-026085 extinguished.

On September 22, 1961, the State of Alaska, Department of Highways, was granted a right-of-way for the above-identified material site. This right-of-way was within lands subsequently patented to the State of Alaska on July 28, 1972. See Patent 50-73-0018. By decision of March 6, 1980, BLM held that when the patent was issued to the State of Alaska the right-of-way interest merged with the fee title and was thereby extinguished.

On appeal the State contends that the doctrine of merger is inapplicable because two separate and discrete State instrumentalities are involved: The Department of Highways (now the Department of Transportation and Public Facilities) which was granted the right-of-way, and the Department of Natural Resources, Division of Lands, which acquired the fee title. The State contends that each Department has been granted separate authority to acquire and dispose of lands, and, since each is a separate entry, the doctrine of merger should not apply, citing Wassels v. State Dept. of Highways, 552 P.2d 1042 (Alaska 1977).

We would note, however, that the standing of the State of Alaska to appeal to this Board on this question is the first issue which must be examined. In Arizona State Highway Dept., A-29325 (Oct. 21, 1963), an appeal to the Secretary from a denial of an application for a material site was dismissed on the ground that since the decision below was based on a holding that the State had acquired title to the surface minerals sought, the decision could not be adverse to the State, even though there was a mineral reservation in the patent. The decision noted:

The patents to the three parcels in question were issued to the State of Arizona and not to any particular agency of the State. The Bureau's decision held that these patents conveyed to the State the sand and gravel deposits sought by the Highway Department and that they were not excepted by virtue of the mineral reservations. This ruling was favorable to the State. I am unable to see then that any agency of the State has any standing to challenge the ruling by an appeal to the Secretary. Certainly if the State in its own name and not acting through any of its agencies had applied for the permits, thinking that perhaps the sand and gravel were reserved to the United States, and the Bureau had rejected the applications for the reason that the State owned the sand and gravel, the State could not appeal from such a ruling. It follows, a fortiori, that an agency of the State stands in no better position.

This holding was expressly approved in United States v. Isbell Construction Co., 4 IBLA 205, 219-22, 78 I.D. 385, 392 (1971).

So too, in the instant case we note that the patent actually issued not to the Department of Natural Resources, but to the State, itself. While in this case we recognize that the material site right-of-way predated the patent, we do not feel that this is a distinction of much import. Inasmuch as the State Office's decision recognized full title in the State, we fail to see how an instrumentality of that State can claim injury from such a decision.

We are aware of the fact that pursuant to section 9(c) of the Act of December 18, 1971, 85 Stat. 694, 43 U.S.C. § 1608(c) (1976), the patent which issued in 1972 contained a reservation, for the benefit of the Natives and for payment in the Native Trust Fund, of a royalty of 2 percentum of the gross value of the minerals thereafter produced from

the lands patented. Thus, it is conceivable that the State might contend that by merging the two estates the State would be liable for the royalty, whereas it would not be so liable if the separate estates were maintained.

However, we note that the State has not so argued. Moreover, inasmuch as section 9(g), 43 U.S.C. § 1608(g) (1976), provides that such reservations as are mandated shall continue only until a sum of \$500,000,000 has been paid into the Alaska Native Fund, the moneys derived from this source would merely be a replacement for moneys derived from other sources. Thus, we fail to see how the possibility that the State would now be liable for royalty payments could serve as a predicate for a showing of the requisite standing.

As we have often noted, any party adversely affected by a decision may appeal therefrom. See United States v. United States Pumice Co., 37 IBLA 153 (1978). The State, however, has neither shown nor alleged injury. Thus, its appeal is not properly before us and must be dismissed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

James L. Burski

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing

Edward W. Stuebing
Administrative Judge

TO: James Sandberg, ROW Agent
DOT/PF - Anchorage

DATE December 3, 1981

Division of Parks

DEC 07 1981

William H. "Chip" Dennerlein, Dir.
Division of Parks - Anchorage

FILE NO.

TELEPHONE NO.

FROM: Larry D. Wood *LDW*
Assistant Attorney General
604 Barnette, Room 228
Fairbanks, AK 99701

SUBJECT: BLM Decision Extinguishing 23 U.S.C.
§317 ROW Within Chena Park

Recently, both of you have asked me questions concerning the State's appeal of a BLM decision extinguishing a right-of-way granted for a materials source within what is now the Chena Park. That right-of-way, F-026085, was granted to the State of Alaska, Department of Public Works, Division of Highway, in September 1961. The federal statute authorizing the grant has been recodified as 23 U.S.C. §317. The basis for Interior's March 6, 1980, decision was succinctly stated: "When patent No. 50-73-0018 was issued to the State of Alaska, the right-of-way interest merged with the fee title and was thereby extinguished."

Working then as an attorney within the Transportation Section of this office, I was approached after the decision by Right-Of-Way Agent Paul Wild and requested to appeal. DOT/PF was very concerned that DNR would not allow uninhibited access to the 317 materials sites because it had recently either been denied or recently lost other material sources within Chena Park. The department felt the Interior Board of Land Appeals should recognize its prior right in land now encompassed by the park.

In an April 8, 1980, memorandum to Paul Wild, I initially refused his request that our office prepare and file the appeal with the Administrative Hearing Board. I explained in the memorandum that I basically agreed with BLM's analysis and felt that the problem concerning material sources within Chena Park should and could be worked out within the State government without resort to some federal agency for a declaration of rights. I had already been in contact with the Division of Parks and was assured of that division's willingness to work with DOT/PF in resolving the problem.

Nonetheless, on May 7, 1980, I reluctantly filed an appeal, explaining that Wessells v. State, Department of Highways, 552 P.2d 1042, 1047 (Alaska 1977), recognized DNR's and DOT/PF's ability to separately and distinctly acquire and hold land on behalf of the State of Alaska. Thus, as I stated in the appeal, "...the departments hold separate interests in the subject property which were acquired at different times for different purposes. The doctrine of merger does not apply." I did not intend to pursue the matter beyond a decision by the IBLA, for, again, I felt the matter was basically a dispute between the departments crying out for resolution by our own people.

To say the least, and following the appeal, I was contacted repeatedly by DNR personnel who questioned the need for such an appeal at all.

I assume that you both have had the opportunity now to read the IBLA

decision, 80-564, and recorded on September 24, 1981. The hearing board dismissed the appeal for lack of standing:

So too, in the instant case we note that the patent actually issued not to the Department of Natural Resources, but to the state, itself. While in this case we recognize that the material site right-of-way predated the patent, we do not feel that this is a distinction of much import. Inasmuch as the state office's decision recognized full title in the state, we fail to see how an instrumentality of that state can claim injury from such a decision. 15 IBLA 119.

I agree.

In a September 30, 1981, memorandum, John Athens, who now serves in the position I once held, sent a copy of the decision to DOT/PF. We never have from the beginning nor presently intend to further pursue the matter.

As I have discussed with Chip and in a phone call on November 30, 1981, with Jim Sandberg, it is now up to DNR and DOT/PF to work out use of material sites within the park. I tend to agree with DOT/PF that areas earlier affected by the 317 grant should probably retain their material source designation. On the other hand, if DNR has reasonable alternatives in mind, a compromise, it seems to me, could be easily worked out. It may happen that in the interests of preserving the aesthetic value of certain park locations the State may have to pay more to a contractor for transportation costs from a less desirable material source location. Merger of the two estates has given us greater flexibility: the State can effect a tradeoff between preserving the park and preserving the road. Again, I urge both of your departments to work with firm commitment toward resolving what disputes may arise in the best interests of the State of Alaska as a unified entity.

Jim mentioned in passing his feeling that perhaps a 317 grant was a transfer in fee simple by the federal government. Thus, the federal government by patent could not convey what it had already deeded in a 1961 conveyance. I would reiterate that 317 grants are not viewed by this office as a transfer in fee simple. The regulations promulgated under authority by the statute provide:

No interest granted by the regulations in this part shall give the holder thereof any estate of any kind in fee in the lands. The interest granted shall consist of an easement, license, or permit in accordance with the terms of the applicable statute***. 43 C.F.R. §2801.1-1.

At best, an easement, and at worst, a license or permit, F-026085 conveyed to the Department of Public Works only a small portion of the total "bundle of sticks". The rest, as explained in the IBLA decision, were transferred at the time of patent.

In dicta, that is, language not instrumental to the court's ruling, the administrative law judge wrote: "It is conceivable that the state might contend that by merging the two estates the state would be liable for the royalty [for payment into the Native trust fund as established by ANCSA] whereas it would not be so liable if the separate estates were maintained." However, as the board noted, we had not presented that argument in light of the fact that no such demand could be reasonably anticipated. Moreover, any argument that the State would not owe royalties for land affected by an earlier 317 grant could be raised at any time such demand was presented. To my knowledge it hasn't happened and it won't: in checking with an attorney for Doyon, Ltd., I've learned that the Native trust fund has entirely been paid its 500 million dollar entitlement. The issue is moot.

As I explained to Jim, I still fail to see how the State stands injured in light of the BLM decision. The State has even more flexibility in determining how, where, and when material will be extracted from its lands. That DNR would intentionally inhibit or greatly increase the expense of road development and maintenance in Alaska without good and sufficient reason would be obviously unacceptable. That DOT/PF would insist upon using a material site which would significantly depreciate the aesthetic or financial value of State lands or parks is equally inconceivable. In a sense, we have been chided by this federal hearing board for publicly bickering about such an important asset as State land. Let's get to the conference table and resolve the dispute either at the district, regional, or commissioner level.

Finally, it may be a thought worth pursuing to delete 317 affected lands from State selections. We would thus increase our entitlement. On the other hand, this could be somewhat dangerous because the federal government in such cases as State of Alaska, 46 IBLA 12 (February 20, 1980) is taking the position that 317 grants are not only less than fee simple but are essentially licenses revocable at the discretion of any authorized officer.

It is intended that this memorandum outline the development of this case, how it proceeded, and how it ended. If there are any further questions, please don't hesitate to contact me.

LDW:bsb

cc: Thomas Meacham
AAG - Anchorage

Ross Kopperud
AAG - Anchorage

E. John Athens, Jr.
AAG - Fairbanks

Paul Wild
ROW Agent, DOT/PF
Fairbanks

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS

JAY S. HAMMOND, GOVERNOR

Jack W.

619 WAREHOUSE DR., SUITE 210
ANCHORAGE, ALASKA 99501

PHONE: 274-4676

April 16, 1982

Re:

James E. Sandberg
Chief Right-of-Way Agent
Dept. of Transportation &
Public Facilities
Central Region
4111 Aviation Avenue
Pouch 6900
Anchorage, Alaska 99502

Dear Mr. Sandberg:

For several years prior to this past fall, the Department of Transportation and Public Facilities and the Alaska Division of Parks had been at odds over the land status of certain former federal material ROW grants within the Chena River State Recreation Area near Fairbanks.

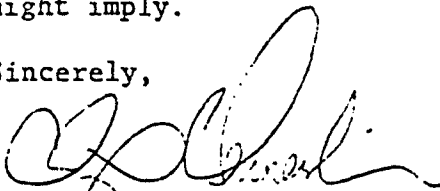
The controversy culminated in a somewhat strange series of events in which an arm of the state (DOT/PF) appealed to the federal government (through the Interior Board of Land Appeals) challenging the nature of the land title which the BLM was passing to the State of Alaska as a whole. Notwithstanding the somewhat embarrassing policy issues involved (these were well documented in Assistant Attorney General Larry D. Wood's memo to you and I, dated December 3, 1981), the IBLA ruled in September, 1981, that the estates in land had merged and that the land in question was conveyed to "the State of Alaska". The statute establishing Chena River State Recreation Area states in part that, "All lands and waters within the following described boundaries, including such lands and waters as may be acquired by the state in the future" are to be designated as Chena River State Recreation Area. The merged estates are now, in fact, part of the park. It is the policy of the Alaska Division of Parks to work cooperatively with DOT/PF to ensure adequate material sources for maintenance of the Chena Hot Springs Road, and to provide for both the safety of the traveling public and to proper management of state parklands.

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DIV. OF PARKS - FAIRBANKS

James E. Sandberg
April 16, 1982
Page 2 -

Recently, however, in a letter to Mr. Wood dated December 9, 1981, you stated, "There is no doubt in my mind that the federal grant of right-of-way for material sources is in effect - and will remain in effect - until the grant has been properly released from its appropriation by this department." While you may have your own personal conception of the nature of a Section 317 right-of-way, I sincerely hope that you and others in your department will nonetheless act in accordance with the good public policy and legal advice of the Office of the Attorney General. The Division of Parks is always ready to work cooperatively with the Department of Transportation to meet real public needs. I trust that your department will embrace the same spirit, and not ignore and/or attempt to break the law as the tone of your December 9th letter might imply.

Sincerely,



Chip Dennerlein
Director

cc: Dan Robinson, Deputy Director, Parks
Jack Wiles, Chief of Planning
Dave Snarski, Interior District Superintendent
Larry Wood, AGO, Fairbanks

CD:clk

MEMORANDUM

State of Alaska Department of Transportation & Public Facilities

TO: Stephen Sisk
Director
Design and Construction

DATE: September 10, 1992

FILE NO:

TELEPHONE NO: 2413

FROM: John F. Bennett 
Acting Chief Right of Way Agent
Right of Way

SUBJECT: Chena Hot Springs Road
State Recreation Area

Right of Way Status of Chena Hot Springs Road

Alaska Road Commission references to the Chena Hot Springs Trail began as early as 1913. References to work performed on Chena Hot Springs Road commence in 1925 ARC Annual Report and continue thereafter. The first right of way for Chena Hot Springs Road established under the ARC other than possible claims as an RS-2477 trail began with Public Land Order No. 601 dated 8/10/49. This land order stated that for any roads not named as Through or Feeder roads that were constructed or maintained by the ARC across unreserved public lands would be subject to a Local road reservation of 50 feet on each side of centerline. This right of way was conveyed to the State of Alaska by virtue of the 1959 Omnibus Act Quitclaim Deed which noted Chena Hot Springs Road as Federal Aid Secondary "A" Route 650.

The section of road in question is depicted upon our right of way plans for project S-0650(6) Mile 21 to Chena Hot Springs dated January 7, 1963. The acquisitions for this project were primarily BLM ROW Grants. There were also several homestead entries from which we received easements or deeds for the interest that they would eventually acquire by patent. We also received a ROW permit from DNR for lands that had been patented or TA'd to the State. In 1984 and 1985, certain lands which were subject to the BLM right of way grants issued for this project were conveyed to the State. These patents were issued without reserving or making them subject to the right of way grants due to Merger of Title. Merger of Title takes effect when the lesser interest granted to the State (ROW Grant) merges with the State's full title interest, therefore the ROW grant is no longer in the jurisdiction of BLM. The merger of title problem may be important in this situation if DNR through the Division of Parks holds that the majority of the road through the recreation area is without benefit of a valid easement.

The issue of merger of title was discussed in the 7/17/90 Land Policy Task Force Recommendations to the DOT&PF Management Policy Committee. Under the heading of DNR/DOT&PF Land Management Responsibilities Merger of Title was stated as one of many outstanding management problems. The alternatives reviewed included turning over all of DOT&PF's land management responsibilities to DNR or maintain the status quo. The recommendation was to develop a DNR/DOT&PF MOU which would clarify and coordinate the land management responsibilities of each agency. The ultimate goal of this MOU would be to provide a basis for legislation which would carry the resolutions established in the MOU beyond the current administration. To my knowledge, no work was done with regard to the development of a MOU.

I suspect that the majority of road rights of way created by PLO or BLM grant which cross State lands may be subject to this Merger of Title issue. There have been cases in the past where DNR administratively protected a ROW by creating an easement file for a particular segment of road after

being notified by BLM that title had merged. I once asked Ron Swanson, now Director of the Div. of Lands, how DNR viewed the merger of title issue. He said that as a matter of practicality, DNR recognized the rights of way as continuing to exist regardless of merger of title. To do otherwise would create a continuing management conflict. To my knowledge, there has only been one instance where this system has failed. In 1986, DNR conveyed land for a subdivision on the Old Nenana Highway and misinterpreted the PLO as allowing for a 200 foot wide ROW when in fact it created a 300 foot wide ROW. This error created a cloud on the title of the lots adjoining the road and eventually DOT&PF vacated the outer 50' to solve the problem.

In conclusion, we should continue to claim a ROW or management corridor for Chena Hot Springs Road through the recreation area regardless of the merger of title issue. If the Div. of Parks elects to use merger of title as an issue to bolster their management authority, then we should consider bringing in DNR upper management to resolve the problem.

Utilities

On 9/4/92, Right of Way was notified by Homer Doty, DOT&PF Utilities, that a contractor operating under a DOT&PF issued permit to install cable within the Chena Hot Springs ROW near Angel Creek had been shut down by a Div. of Parks Ranger. The contractor, Summit Telephone Co., Inc., obtained a permit on 9/27/91. Phase II of the hydro-axe clearing was to be performed by Brice, Inc. between May of 1992 and September 29, 1992 and was to consist of the clearing of a path sufficient to provide passage for a Ditchwitch R60 with a 7 foot blade from about 53 mile to 49.75 mile on Chena Hot Springs Road. The clearing was to take place between 93 to 100 feet left of centerline of a ROW which is 100 feet on each side of centerline. The permittee requested permission from DNR Div. of Parks to install the cable through the park within the road ROW. Parks responded on 9/9/91 authorizing the installation subject to stipulations including clearing requirements. Specifically, Parks required that clearing be kept to a minimum, that it should ideally weave around most of the standing vegetation and that no trees larger than 4" be felled. This DNR concurrence was not required as a part of the DOT&PF permit. The DOT&PF permit only purports to allow activities where DOT&PF has an interest, leaving verification of that interest up to the permittee. Therefore, if DNR has any management authority within the road ROW, the permittee may have accepted a higher standard for clearing by requesting DNR permission.

Conclusion: Once again, if we continue to claim a ROW or management corridor for Chena Hot Springs Road, we should be claiming authority to issue and manage utility permits in a manner consistent with permitting of utilities in all other DOT&PF road rights of way other than those where the federal government has an underlying interest. However, we may wish to acknowledge that DNR should be contacted for comments in areas such as Parks where poor clearing practices could have an adverse effect on the aesthetic quality of the area.

Material Sources

Material sources were permitted by DNR in 1970. The permits were issued for an indefinite term, a determined quantity and contain a clause which empowers the Director of the Division of Lands to revoke the permits at his discretion. In 1973, DOT&PF was informed that all right of way and material source permits were being transferred to the Division of Parks because they were within the Chena River Recreation Area. In 1979, Parks made management decisions on permits held by

DOT&PF in the CRRA. Five material sources were determined valid indefinitely: MS 650-103, 062, 094, 095, 096-2. Six permits were not extended or approved, but could be used if an emergency construction/repair need could be demonstrated. At this time, additional stipulations were added to the existing permits (and any subsequent addenda), with quantity increases within the existing boundaries permitted. The complement of stipulations do not require contact with Parks prior to each use; however, in the past 12 years, we have done so as a courtesy. Until the recent Parks administration, there has been little confrontation.

In June, general issues were discussed with Mike Lee and John Zimmerli. Shari Howard and Hal Livingston attended. The topics of discussion were similar to the concerns enumerated in John Zimmerli's recent memo.

- 1) Parks did not have the opportunity to review the 1990-1 guardrail project and would have liked to give input on both the 39.3 Mile curve and the guardrail at the 39.4 Mile bridge (Nos 1 & 2 in the Zimmerli memo).
- 2) Signage along the road was discussed (Nos. 4 & 5 in the Zimmerli memo). They were told it could be done under a major project, but none were scheduled in the most recent Six Year Plan.
- 3) Mike and John didn't have any brush clearing concerns at the beginning of the summer. (No. 8 in the Zimmerli memo).
- 4) The control Parks has been exhibiting over material sources was discussed. They were plainly told that DOT&PF needed access to sources with limited supervision. We discussed developing mining plans which would be amenable to both agencies. It was mentioned that the road could be turned over to them and their immediate response was a desire to establish a working relationship.
- 5) Mike wanted to know how he could get everyone to meet and discuss the situation. He was told the most direct way to accomplish that was to write to John Horn with his concerns. This recent communication seems to be the culmination of Parks's concerns and their wish list.

Considering the nature of the permits we have and the direction Parks is taking, mining plans should be negotiated for the benefit of both departments.

Legal Issues

We were unable to obtain any verbal advice from the AG's office regarding this issue on such short notice. However, we do question the citation of A.S. 41.21.470 - .490 in Mike Lee's 8/31/92 memo as the authority which gives the Division of Parks a primary authority in the recreation area including DOT&PF highway rights of way. These statutes reserve from all uses incompatible with their primary function as public recreation land the presently state-owned land and water, vacant and unappropriated...lying within the boundary of the Chena River Recreation area. We dispute that the road rights of way as depicted on our right of way plans and constructed and maintained by DOT&PF constitute vacant and unappropriated lands. Although we believe that the primary management authority for the rights of way lies with DOT&PF, we acknowledge that there should be greater communication with the Division of Parks concerning our activities within the recreation area.