

ALASKA COASTAL SHORELINE ACCESS



**A Review of the History, Current Status and
Potential for Public Shoreline Use.**

State of Alaska
Department of Natural Resources
Division of Parks
Division of Research and Development

September, 1980

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Alaska Department of Natural Resources

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prepared for the

STATE OF ALASKA

Department of Natural Resources

Division of Parks and

Division of Research and Development

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Introduction

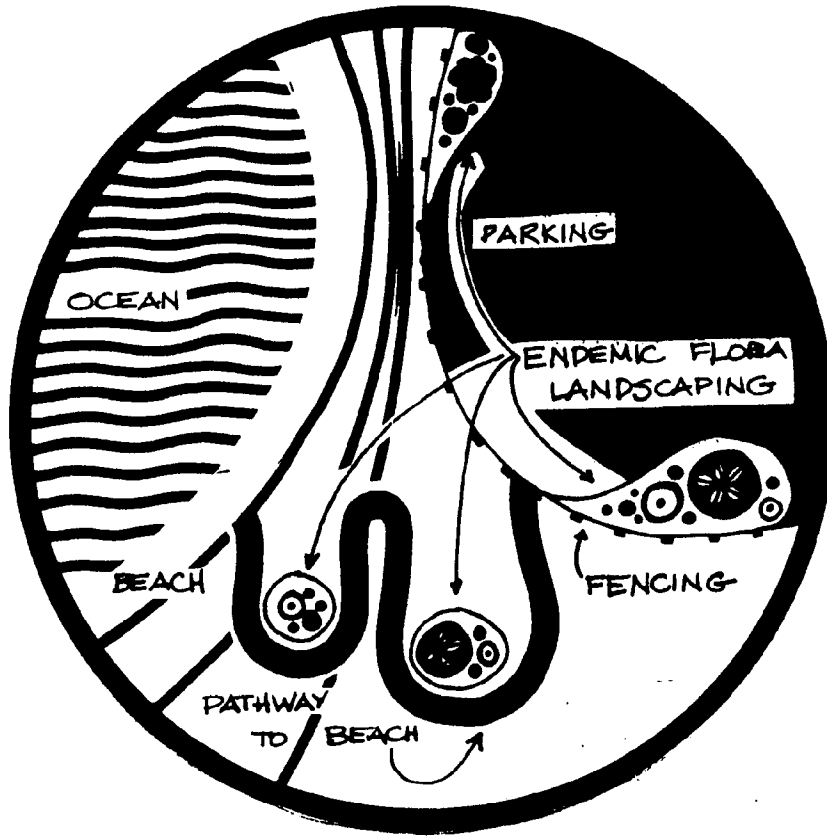
Few coastal states in the U.S. enjoy vast expanses of open space such as those found in Alaska. Simply speaking, Alaska residents in most areas possess an asset very few states can match--physical access to a resource of many leisure benefits.

The purpose of this report is to explore the current status of access management; factors that determine the extent to which coastal accessways are reserved; and impediments to assuring that future Alaskans will share the same opportunities as those today.

Specifically, the scope of study called for a review of state policies regarding land selection, management and disposal; the Kandik/Nation court decision; local coastal access policies; policy areas requiring more extensive exploration; and further review of historical factors bearing on access that were compiled in a previous Division of Parks access study.

This first step to develop a current overview of coastal access status led to a series of questions for which there are no simple answers without further exploration.

One conclusion is apparent, however. Alaska is in a unique position nationwide to employ varied authorities and techniques to avoid disenfranchising its residents from the coast.



COASTAL ACCESS

An Historical and Legislative Perspective

In the United States there
is more space where nobody
is than where anybody is.

--Gertrude Stein



The Federal Program:
An Emerging Mandate

The concept of reserving lands for public use of and access to the coastal shoreline can be traced to English common law which is the basis of our legal system. Dennis W. Ducsik, in his book Shoreline for the Public, analyzes the origins of tideland ownership and public rights to use the coastal shoreline in the United States.

"...Since the original source of most land titles in England was a grant from the Crown, it thus became possible for the title or other exclusive rights in any portion of the seashore to be conveyed by the King to individual subjects. By the time of the Magna Charta, private ownership under this doctrine had proliferated to the point of substantial interference with commercial activities in the nation's waterways. This initiated a gradual expansion of public rights in tidelands and navigable waters, which culminated in the application of the 'public trust' theory to these areas by English common law. Under the public trust, certain public rights -- a *jus publicum* -- were reserved or held in trust for the common use and benefit of the public, even if proprietary title had been granted to individual subjects."

Thus, a strong emphasis on concept of "public trust" was the state of the English law at the time of the American Revolution. With independence, the new nation's original states received both the

proprietary and trust interests held by the crown, and retained these interests upon formation of the Union. Further, Ducsik says:

"...each of the non-colonial states took on these attributes of sovereignty upon their admission to the union, as required under the 'equal footing' provision of the U.S. Constitution. In a long line of cases beginning in 1842, the U.S. Supreme Court confirmed state ownership of the tidelands and submerged lands beneath navigable waters, and ... established that these lands are to be held in trust for the people of the respective states ... In sum, then, early American law held that each state owned the title to tidelands and lands under navigable waters within their respective boundaries and controlled them -- together with the waters -- subject to a public trust ..."

Recent history of legislation concerning coastal zone management and shoreline access in Alaska can be traced to the early 1940's and 1950's, when submerged lands ownership was at issue. The U.S. Supreme Court ruled that the federal government held rights to submerged lands offshore of a state's coast seaward from the ordinary low water mark and outside inland waters. However, Congress in 1953 relented to pressures from the states and passed the Submerged Lands Act of 1953 (Public Law 83-31; 67 Stat. 29). This act allowed coastal states to extend their boundaries to three geographical miles from the coast, potentially up to three marine leagues (10.6 miles) from the coast in the Gulf of Mexico, and to the international boundaries in the Great Lakes. The federal government relinquished to the states all interest in the lands beneath such waters. The federal government retained only those rights necessary for the regulation of navigation, commerce, international affairs and national defense.

During the 1960's the U.S. experienced an increased awareness of the environment. At the same time, the nation recognized the value of the coastal zone resource. Certain states, such as Oregon, passed bills protecting their beaches from development. The Oregon Beach Bill of 1967 (Chapter 601, Oregon Laws 1967) expanded existing public rights to dry sand beaches. These existing rights were based on historic use of Natives and early settlers of the dry sand beaches as a transportation

corridor. The legislature expanded the traditional scope of historic use, saying that Oregon:

"...recognizes that over the years the public has made frequent and uninterrupted use of the ocean floor ... sufficient to **create** easements in the public rights through dedication, prescription, grant or other use ... the Legislative Assembly hereby declares all public rights ... are vested exclusively in the State of Oregon."

This increasing awareness of the importance of the coastal zone resource evolved into a national coastal management policy. Congress passed the Coastal Zone Management Act of 1972 (Public Law 92-583, 86, Stat. 1280) and the Coastal Zone Management Act Amendments of 1976 (Public Law 94-370, Stat. 586) to assure that environmental and economic concerns were balanced in the management of the coast. The spirit of balance is exemplified in the Congressional findings of these acts. In Section 302, Congress found that:

- There is a national interest in the effective management, beneficial use, protection and development of the coastal zone.

- The coastal zone is rich in a variety of natural, commercial, recreational, ecological, industrial, and esthetic resources of immediate and potential value to the present and future well being of the nation.

- Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well being of all citizens are being irretrievably damaged or lost.

- The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

With these and other findings as the basis of legislative intent, Congress, in Section 303 of the 1972 Act, laid down policies to govern coastal activity:

"The Congress finds and declares that it is national policy a) to preserve, protect, develop, and where possible, to restore and enhance the resources of the nations coastal zone for this and succeeding generations, b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development."

Congress alluded to the question of shoreline access referenced in Section 305(b) 3 of the 1972 Act:

"The management program for each coastal state shall include ... (3) An inventory and designation of areas of particular concern;"

and Section 306 (c) (9):

"c. Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: ... (9) The management program makes provisions for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, or esthetic values."

Through the passage of the Coastal Zone Management Act and its amendments, Congress clearly intended that coastal states take the responsibility for protection and management of coastal zone resources for the benefit of this and future generations.

Congress' intent on the question of public access to the coastal zone and shoreline is discussed by Ducsik in his analysis of the Act and its implementation by the Department of Commerce:

"The language (in the Act) clearly indicates that an important part of the intent of Congress in enacting this legislation was to enhance the opportunities for the general public to share in unique experiences at the land/sea interface. The intent is also reflected in the legislative history of the act where recreation (including beaches, parks, wildlife preserves, sport fishing, swimming and pleasure boating) and related open space uses (including educational and natural preserves, scenic beauty, and public access to the coastline and coastal and estuarine areas, both physical and visual) were suggested as

elements that should be included in state management programs. Finally, the administrative construction of the act by the federal agency charged with its implementation seems to indicate that the public access question will be one of the things that the federal government will look for in reviewing coastal zone management programs."

Ducsik's analysis in 1974 was confirmed when the Coastal Zone Management Act Amendments of 1976 added Section 305 b(7), which increased the states' coastal management program requirements to include:

"A definition of the term 'beach' and a planning process for the protection of and access to public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value."

The 1976 amendments to the Act went even further to emphasize access to the coastal zone resources -- by providing federal funding to purchase easements in Section 12 (Acquisition of Access to Public Beaches and Other Public Coastal Areas).

"The Secretary (of Commerce) may, in accordance with this section and in accordance with such rules and regulations as the Secretary shall promulgate, make grants to any coastal state for the purpose of: (1) acquiring, developing, or operating estuarine sanctuaries to serve as natural field laboratories in which to study and gather data on the natural and human processes occurring within the estuaries of the coastal zone; and (2) acquiring lands to provide access to public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value, and for the preservation of islands ..."

In summary, the need to provide public access to coastal resources grew from the recognition that recreation is among significant coastal uses that require protection in the national interest.



**Alaska's Program :
Coordination for the Future**

In the years immediately following passage of the federal coastal management act, Alaska explored the potential of assuming coastal authority through existing state law.

Initially, little public support existed for adopting statutes specific to coastal resource management.

Two significant problems arose from this approach, however. One was that local governments sought increased influence over land and water management within their areas. The other was the reluctance of the U.S. Department of Commerce to approve a state program formulated without a clear mandate from the state legislature.

The 1976 federal amendments gave Alaska a strong incentive to approve a coastal management act: eligibility for coastal energy impact funds. Grants to states to mitigate impacts were authorized under the Outer Continental Shelf (OCS) Lands Act of 1976, provided states were in the process (and succeeded) in developing coastal management programs. As one of the nation's prime OCS oil and gas lease areas, Alaska stood to gain not only the authority to manage its own coastal zone, but needed funds to plan for and accommodate OCS impacts.

Thus, the State of Alaska, working within the framework established by the federal Coastal Zone Management Act of 1972 and its 1976 amendments, enacted the Alaska Coastal Management Act in 1977. The Alaska State Legislature found that:

- "1. The coastal area of the state is a distinct and valuable natural resource of concern to all of the state;
2. the demands upon the resources of the coastal area are significant, and will increase in the future;
3. the protection of the natural and scenic resources and the fostering of wise development of the coastal area are of concern to present and future citizens of the state;
4. the capacity of the coastal area to withstand the demands upon it is limited;
5. the degree of planning and resource allocation which has occurred in the coastal area has often been motivated by short-term consideration, unrelated to sound planning principles; and
6. in order to promote the public health and welfare, there is a critical need to be engaged in comprehensive land and water use planning in coastal areas and to establish the means by which a planning process and management program involving the several governments and areas of the unorganized borough having an interest in the coastal area may be effectively implemented."

And further, the Alaska Legislature made a declaration of policy to:

- "1. preserve, protect, develop use, and where necessary, restore or enhance the coastal resources of the state for this and succeeding generations;
2. encourage coordinated planning and decision making in the coastal area among levels of government and citizens engaging in or affected by activities involving the coastal resources of the state;
3. develop a management program which sets out policies, objectives,

standards, and procedures to guide and resolve conflicts among public and private activities involving the use of resources which have a direct and significant impact upon the coastal land and water of the state;

4. assure the participation of the public, local government, and agencies of the state and federal governments in the development and implementation of a coastal management program;

5. utilize existing government structures and authorities, to the maximum extent feasible, to achieve the policies set out in this section; and

6. authorize and require state agencies to carry out their planning duties, powers actions authorized by law with respect to the policies set out in this sections and the guidelines and standards adopted by the Alaska Coastal Policy Council."

Guidelines and standards concerning coastal recreation and access were developed and codified for the Alaska Coastal Management Program in 6 AAC 80.060 in 1978:

"(a) Districts shall designate areas for recreational use. Criteria for designation of areas of recreational use are;

(1) the area receives significant use by persons engaging in recreational pursuits or is a major tourist destination; or

(2) the area has potential for high quality recreational use because of physical, biological, or cultural features.

(b) Districts and state agencies shall give high priority to maintaining and, where appropriate, increasing public access to coastal water."

Thus, recreation and public access to and along the coastal shore became a specific part of Alaska's Coastal Management Program with the codification of these statewide guidelines.



COASTAL ACCESS

Current Status in Alaska

If society is paralyzed today it is not for lack of means, but for lack of purpose.

--Lewis Mumford



**Alaska Land Policies:
An Array of Owners**

In Alaska, the opportunity for public access revolves around a range of federal and state activities, most of which were ongoing prior to enactment of either the federal or state coastal management acts. In any case, land ownership patterns and historical management policies within Alaska are probably unique in the nation, in that land ownership is vested in relatively few entities.

With Statehood, Alaska was to gain title to 104.5 million acres of land. The Alaska Native Claims Settlement Act of 1971 granted to aboriginal Native peoples a total of 44 million acres of land. The 220 million acres remaining were reserved to the federal government for management principally by four agencies: the National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, and U.S. Forest Service.

The authority to manage the second largest single landholding--that of the State of Alaska--is vested in the Alaska Department of Natural Resources. The 44 million acres of Native lands are to be managed as private lands by 12 profit-making Native regional and some 220 village corporations.

Local governments were not, in the past, significant landholders, but prior to 1965 many exercised their rights to obtain title to their tidelands.

Municipal land entitlement legislation enacted in 1964 and amended as the Municipal Land Act of 1978, however, will convey 860,000 upland acres to 11 organized boroughs and 10 per cent of unreserved state land within these borough boundaries to 19 cities.



**Federal Lands:
A Public Trust**

Access requirements and policies can vary markedly on various classifications of federal public lands. In most cases, public use access is virtually unlimited for the foot traveler.

Bureau of Land Management regulations provide generally for grants of right-of-way for communications, road transportation, reservoir, and other similar systems and provide that all roadways within these lands may be used for public access.

In national park areas, access may be provided for motorized vehicles, aircraft, and other modes of transportation at the discretion of the park manager.

For refuge areas, motorized and aircraft access is at the discretion of the refuge manager, provided such public access does not conflict with the purposes for which the refuge was established.

In the case of all federal lands, the Wilderness Act of 1964 provides that wilderness areas may be established, essentially limiting all access but foot traffic, unless historical uses can be shown for other access means.

In almost all cases, historical or traditional use (for example, an airstrip) can guarantee access in areas otherwise restricted to various access uses.

In December, 1978, the Department of Interior designated some 56 million acres in Alaska as National Monuments in 17 new and two existing areas.

Interim regulations were developed by the National Park Service (NPS) and the U.S. Fish and Wildlife Service (USFWS) to manage these new monuments specific to Alaska's unique situations. These proposed rules first appeared in the Federal Register, Volume 44 No. 126, on June 28, 1979, and will remain effective unless amended or overturned by Congress in d-2 or other legislation.

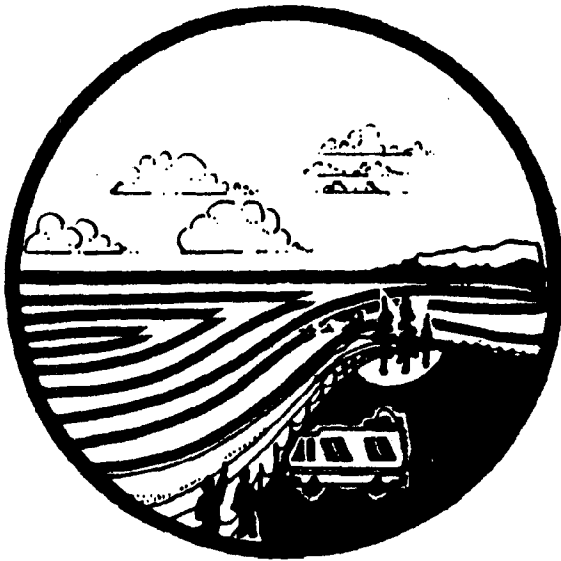
NPS manages 13 of the new monuments as well as the two expanded existing monuments--Katmai and Glacier Bay. USFWS manages two Wildlife Monuments. Management goals of the two agencies differ. NPS monuments are more public use oriented. USFWS monuments view public use and recreation as secondary or incidental use. Under interim regulations, public use, and thus access, on USFWS land is regulated by permit contingent on the compatibility of the proposed use with the management objectives of the individual monuments.

The least restrictive approach to allowing public use, while still ensuring the integrity of the resource, governs these agencies' recreation management policies on monument lands. For example, instead of a blanket closure of an area, the policy might be to disallow use during certain portions of the day (depending on the situation) as long as the integrity of the resource is maintained. Emergency access to these areas may occur without permission for the protection of life, limb, and property. Uses that may be determined compatible include, but are not limited to, sport hunting (USFWS monuments only) and fishing, cross country skiing, camping, boating, snow machines, use of fixed-wing aircraft, and other similar uses.

Neither NPS or USFWS regulations specifically mention access to navigable waters. However, in both cases, if specific uses are determined compatible, (ie. foot-travel, fix-winged aircraft, etc.), access would not be impeded to navigable or public waters unless expressly prohibited. Thus, the

regulations suggest that if a person could get to the waterway, access along and on the watercourse would be permitted, at the discretion of the area manager, as long as the integrity of the resource is insured.

Finally, the U.S. Forest Service (USFS) has management authority over the remaining two national monuments. Hunting, fishing, trapping, and recreational use may continue as in the past. USFS internal guidelines for forest management allow oil and gas leasing. No new timber sales or new mining will be allowed. The Forest Service chose to use existing regulations for monument management, rather than adopt additional rules.



**State Lands:
Alaska's Portfolio**

With Statehood in 1959, Alaska joined 48 other states in receiving title to tide and submerged lands extending to the three-mile limit as prescribed in the 1953 Submerged Lands Act.

The Alaska Statehood Act, (Public Law 85-508) provides:

"An Act to provide for the admission of the State of Alaska into the Union. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That, subject to the provisions of this Act, and upon issuance of the proclamation required by Section 8(c) of this Act, the State of Alaska is hereby declared admitted into the Union on an equal footing with the other states in all respects whatever."

Section 6(m) of the Alaska Statehood Act provides:

"The Submerged Lands Act of 1953, Public Law 31, 83rd Congress, first session, 67 stat. 29, shall be applicable to the State of Alaska and the said state shall have the same rights as do existing states thereunder."

Thus, Congress clearly intended that ownership and management of tidelands, submerged lands, and lands beneath navigable waters be vested in the State of Alaska.

Even before Statehood, however, Alaska set the framework for resource

management in the Alaska Constitution in 1956. Article VIII is clear in its expression of management policy pertinent to coastal resources and access:

"It is the policy of the State to encourage the settlement of its lands and the development of its resources by making them available for maximum use consistent with the public interest."

Section 1

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

Section 3

"Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or purposes."

Section 14

Prior to the enactment of either the federal or state coastal management programs, Alaska was involved in providing access to and along navigable and public waters. Three areas of concern have been key to the development of Alaska's access policies: land selection, land management, and land disposal activities.

Land Selection

The Statehood Act entitled Alaska to select 104.5 million acres of land from the federal government for the settlement of its people and to provide a base for Alaska's economy. One of the first tasks facing the new state government was deciding on what lands to select to fulfill Alaska's entitlement.

Alaska's goal in selecting lands prior to 1976 was to ensure the state's commercial future. These lands were selected for potential mineral, gas and oil development as well as settlement lands. These pre-1976 selections totaled nearly 72.5 million acres. To ensure that the remaining 30 million acres of entitlement met the mandates of Alaska's Constitution, a resource inventory and assessment system was developed and implemented in 1976.

This system was instigated to assure that the state would be able to carefully identify the lands suitable for various uses, i.e. homesites, agriculture, mineral development, recreation, gas and oil exploration and development, timber, and community settlement.

A selection team was created to implement the resource inventory and assessment process. Based on public input, as well as input from commerce and industry and other state agencies, this team developed a series of guidelines to use as a basis for fine-tuning the resource inventory system and selecting the remainder of Alaska's entitlement:

- Land should be selected to meet existing and future settlement and population needs.

- Resource lands should be selected to encourage general commerce and continued economic stability.

- Land should be selected to provide for Alaska's recreation demands, including hunting, fishing, trapping, intensive recreation development, and open space.

- Land should be selected to preserve fish and wildlife habitats critical to subsistence lifestyles, to the extent this lifestyle is not protected by other landowners.

- Lands should be selected where activities "fit" with the physical environment.

- Lands should be selected in wise management patterns in relation to natural boundaries, access corridors, private lands, federal lands, and other state lands so that the optimum multiple use of Alaska's lands is assured.

In essence, the resource assessment set a kind of rating priority system to choose lands. Ultimately, some 41 million acres were selected in 1978, and have been included in State of Alaska position(s) on various Alaska lands d-2 bills pending in Congress. Access across federal lands to state and private lands has continued to be at issue in federal d-2 legislation.

Land Management

The Department of Natural Resources (DNR) is charged with the management of Alaska lands and natural resources, excepting fish and wildlife. Included with the Department's responsibilities is the management of forests, lands, water, parks, minerals, oil and gas. These resources are to be managed in the maximum public interest. Over the last 20 years the DNR has grown from a small agency where policies and management techniques were informal to a large agency with nine divisions specializing in management of targeted resources.

Closely tied to the growth of DNR and the changes in management policies is the refinement of the policies surrounding access easements to public and navigable waters.

As with land management in general, access management evolved from somewhat casual policies of the early 1960's to the more refined regulations of today. With the growth and development in Alaska came the increased need to ensure public access.

A chronology of access/easement activities compiled by DNR has traced early and recent policies (Appendix B).

Early state policy (1964) reserved only narrow, streamside easements of 10 feet. In 1970, the Division of Lands decided to retain a small percentage of lands in public ownership. But it was not until 1975 that the concept of maximum access to public waters was accepted as a policy for any transfer of public lands to private ownership. By 1980, the state set a minimum 50-foot easements along the coast and inland waters.

Since Statehood, the refinement and codification of access regulations and policies had become increasingly important as access became more limited. In the near future, Native land selections, d - 2 land legislation, increased private land ownership, and Municipal land conveyances all will have significant implications for coastal access.

Land Disposal

Historically, land availability for private use has been a concern in Alaska, since the days of Statehood when only one per cent of Alaska's 367 million acres was in private ownership. One of the highest priorities of the new state was land, and framers of the Alaska Constitution clearly mandated in Article I that land be made available for settlement by residents of the state.

Under the Statehood Act, Alaska is to receive a total of 104.5 million acres. The state, however, has received only some 38 million acres of that entitlement, due in large degree to a series of federal land freezes since the mid-1960's. Nevertheless, the state over the years has used a variety of mechanisms to sell, or dispose, of lands for residential and other uses, such as commercial and agricultural development.

The most common land disposal mechanism since Statehood has been sale by public outcry auction. Auctions generate the most income to the state in land disposals, but exclude a significant portion of potential buyers by boosting the sale price beyond their means.

To broaden opportunities for ownership, the state, in 1968, initiated the open-to-entry (OTE) program, a version of the federal homesteading laws that conveyed land to residents relatively cheaply. Under the OTE program, residents were allowed to file for entry on five-acre parcels in designated areas. For a nominal fee, the entrant received a five-year lease, during which time he was required to survey the land as a condition for gaining title.

Once surveyed, the parcel was conveyed to the entrant after payment of the fair market price of the land, calculated from the time of entry. Because of administrative problems and abuses, the program was suspended in 1973, and terminated by the Legislature in 1979.

In its place, the Legislature in 1978 and 1979 enacted a series of land disposal programs. Seven programs, briefly summarized below, are currently operative. Table 1 further describes these programs.

Table 1



DNR Land Disposal Programs

DISPOSAL PROGRAM	PARCEL SIZE	PRICE TO PURCHASER	TERMS	FREQUENCY OF PARTICIPATION	METHOD OF DETERMINING WINNER	OVER THE COUNTER	APPLICANT QUALIFICATIONS AGE	ON SITE REQUIREMENTS FOR TITLE	
HOMESITE	MAXIMUM 5 ACRES	SURVEY AND PLATTING COSTS ONLY	PAYMENTS SPECIFIED BY CONTRACT	1 IN A LIFE-TIME PER HOUSEHOLD	LENGTH OF RESIDENCY OR BY LOTTERY	APPLIES TO REMAINING PARCELS	18	CONSTRUCT DWELLING; OCCUPY LAND 35 MONTHS IN 5 YEARS	ENTRY PERMIT NON-ASSIGNABLE
REMOTE PARCEL	MAXIMUM 40 ACRES MINIMUM 2 ACRES	APPRAISED FAIR MARKET VALUE AT DATE OF APPROVAL OF PLAT	\$150 FOR 2-3 ACRES PLUS \$50 FOR EACH ADDITIONAL ACRE FOR YEARLY LEASE RENTAL, THEN \$8 DEPOSIT WITH 20 YEAR PAYOFF	SEE LOTTERY	LOTTERY	APPLIES TO REMAINING PARCELS	18	CONSTRUCT DWELLING; CONSTRUCT OTHER IMPROVEMENTS FOR ADDITIONAL ACREAGE; SURVEY BOTH AREAS	<ul style="list-style-type: none"> LEASE CANNOT BE ASSIGNED, TRANSFERRED, CONVEYED OR OTHERWISE DEED, MORTGAGED OR SUBORDINATED FOR 10 YEARS FROM DATE OF SALE CONTRACT LAND DISCOUNT APPLICABLE
LOTTERY	ANY	APPRAISED FAIR MARKET VALUE	\$8 DEPOSIT, MAXIMUM 20 YEAR PAYOFF	1 PER 8 YEARS EXCEPT FOR SALE BY LOTTERY OF PLANNED AGRIC. PROJECTS	LOTTERY	APPLIES TO REMAINING PARCELS	18	USUALLY NONE EXCEPT HOMESITE AND REMOTE PARCEL	<ul style="list-style-type: none"> DEVELOPMENT OR USE MAY BE REQUIRED LAND DISCOUNT APPLICABLE (EXCEPT FOR COMMERCIAL OR INDUSTRIAL PARCELS)
AUCTION SALE	ANY	BID PRICE (MINIMUM BID: APPRAISED VALUE)	10% DEPOSIT, 10 YEAR PAYOFF	1 PARCEL PER AUCTION	HIGH BID AT PUBLIC AUCTION	MAY APPLY	18	NONE	LAND DISCOUNT APPLICABLE (EXCEPT FOR COMMERCIAL OR INDUSTRIAL PARCELS)
LEASE	ANY	% OF APPRAISED VALUE OR HIGH BID	PAYMENTS SPECIFIED BY CONTRACT	1 PARCEL PER AUCTION	HIGH BID AT PUBLIC AUCTION	MAY APPLY	18	NONE	DEVELOPMENT PLAN FOR COMMERCIAL/INDUSTRIAL USE REQUIRED
REMOTE CABIN PERMIT	MAXIMUM 5 ACRES	PREFERENCE RIGHT IF SOLD OR LEASED	\$100 PERMIT PER YEAR	1 PER PERSON	BY APPLICATION OR LOTTERY IF MORE THAN ONE APPLICATION	APPLIES	18	NO TITLE	<ul style="list-style-type: none"> ASSIGNABLE ONLY BY ORIGINAL PERMITTEE SEPT. 1, 1980 MAY ISSUE PERMITS INSIDE MUNICIPALITIES SEPT. 1, 1981 MAY ISSUE PERMITS OUTSIDE MUNICIPALITIES
AGRICULTURAL INTEREST	20 ACRES MINIMUM	MIN. \$100/ACRE APPRAISED VALUE OR HIGH BID	SEE LOTTERY OR AUCTION TERMS		BY LOTTERY OR HIGH BID AT PUBLIC AUCTION	APPLIES TO LOTTERY; MAY APPLY TO AUCTION	18		<ul style="list-style-type: none"> MAY REQUIRE PRE QUALIFICATION RECEIVES AGR. INTEREST ONLY LAND DISCOUNT APPLICABLE

MARCH, 1980

The Homesite Program allows residents to obtain up to five acres, at survey and platting costs, for construction of a dwelling within five years.

The Remote Parcel Program allows disposal of two to 40 acres by lottery, for the fair market value of the land.

The Lottery Program is used for a variety of specific land disposal designations, allows purchase of land at fair market value and may be subject to development or use requirements set by the state.

The Auction Sale Program allows residents to obtain land for the high bid over the minimum set by the state, and applies to acreages of all sizes, as set by the state.

The Lease Program grants use of land by high bids at public auction, but title is not conveyed.

The Remote Cabin Permit Program does not grant title to the land, but does allow the permit holder a preference right if the state determines to sell or lease the land. The remote cabin sites are limited to a maximum of up to five acres and payment of a \$100 annual permit fee is required.

The Agricultural Interest Program allows the state to convey only the agricultural interest to lands of 20 acres or more, either by lottery or auction.

In all land disposals, the state is required by 11 AAC 53 to preserve access to and along navigable and public waters by reserving a 50 foot easement in land conveyances. In addition, the Department commonly specifies that access is to be guaranteed, as in the following example from a June 1980 lottery public information disposal brochure.

"Access to all state lands may be gained along all section lines with very few exceptions. Access across unreserved state lands may be gained by foot, pickup, snowmachine or by similar means without permit, provided no improvements are undertaken. The State has no obligation to construct roads to any parcel.

An easement is retained for public access to and along all navigable and public waters.

Construction of access improvements requires a permit from the Department of Natural Resources."

Specific access/easement provisions for each parcel, as applicable, are included on the plat that successful applicants receive.

Lands conveyed to boroughs and municipalities also are subject to requirements for reserving access.

As Legislative and public demand for land disposals have increased, the mechanics of the programs have grown increasingly complex. To clarify and interpret the intent of statutes, the Division of Forest, Land and Water Management has developed a series of Director's Policy Memorandums. In Appendix C, memoranda pertinent to easements/access are reproduced.



**Native Lands:
Traditional Rights Asserted.**

Following the passage of the Native Claims Settlement Act, one of the most controversial issues surrounding the transfer of public lands to Native corporations was the extent to which the Bureau of Land Management was authorized to reserve public easements.

Guidelines for reviewing these easements through Native selected lands were promulgated in 1976 by Secretarial Order 2982, including a continuous shoreline easement of 25 feet above the mean high water mark. The order, however, was successfully contested in U.S. District Court by several Native corporations in *Calista, et al, vs. Andrus, et el* (45 F. Supp. 664. D. AK. 1977).

As a result of this decision, the Bureau of Land Management in November, 1978 adopted regulations to govern reservation of easements for public access.

Under the regulations, BLM may reserve road and trail easements on Native lands for public access to publicly owned lands; major waterways and the marine coastline; communities; airports or docks; groups of private holdings, or government installations. These transportation easements may range from 25 to 100 feet in width, depending upon their intended

use. In all cases, the road and trail easements must meet a series of tests, including, in part, findings that there is no reasonable alternative route; that the easement is nonduplicative; that the easement is specific as to location, size and use; that the easement falls in a topographically suitable location; and that the easement is a primary route of travel between coastal communities, publicly owned uplands or communities and publicly owned uplands along the marine coastline.

Site easements may also be reserved by BLM at a trailhead, along an access route or waterway, or for aircraft landing, boat or vehicle parking, temporary camping, or loading and unloading.

The regulations, however, forbid the reservation of easements across Native lands in a number of cases, including: for hunting, fishing or unlimited camping on Native lands; for scenic or recreational purposes; on the beds of major waterways (except where related to road or trail purposes, portaging or changing the mode of travel); and on the beds of nonmajor waterways, except when related to road and trail purposes.

Another issue surrounding the claims act also has implications for coastal access as it is enhanced or increased by navigable fresh-water streams. The Kandik/Nation decision by a Department of Interior administrative law judge broadened the definition of navigability.

In 1975 the Bureau of Land Management (BLM) issued an interim (Native claim land) conveyance to Doyon, Ltd. (Doyon), with a finding that no navigable waters were within the conveyance. Doyon appealed the navigability issue to the Alaska Native Claims Board, which joined the state of Alaska in 1976 to appeal BLM's non-navigability decision. The State held that the non-navigability determination would be adverse to the state's claim of title to lands under the Kandik and Nation Rivers.

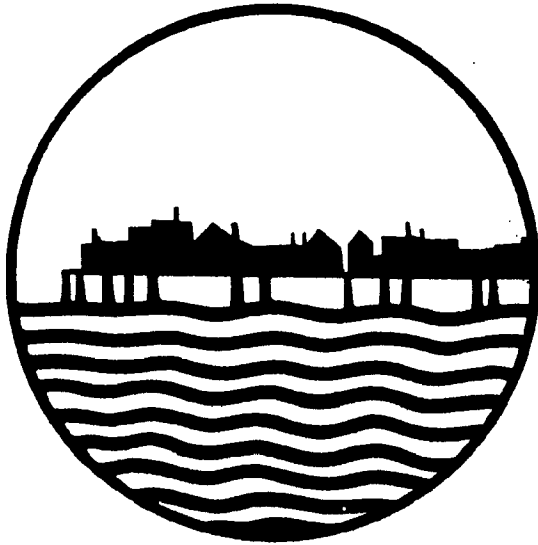
At issue was whether the Kandik and Nation Rivers were navigable in whole or part. Earlier, courts had held that the question of navigability was a federal question as applied in the United States v. Holt State Bank, 270 U.S. 89 1926, which held that determination of navigability is based

on the usefulness of the waterway as a highway for travel or trade in the local area. Further, Utah v. The United States, 403 U.S. 1971, emphasized that sporadic, short-termed use of waterways for travel and transportation by local residents for their own purposes and not for hire meets the need that a waterway be useful as a highway for commerce. The decision stressed that navigability is determined by the extent that the commerce relates to local needs as opposed to the volume of commerce.

Based on historical data, accounts of witnesses, and testimony by expert witnesses showing proof or susceptibility of use for commerce, the administrative law judge found that both the Kandik and Nation Rivers were navigable all the way from the Yukon to the Canadian border.

This recommended decision was reviewed by the Alaska Native Claims Appeal Board, which affirmed the judge's decision. BLM was instructed to take necessary action to comply.

This decision provides a broader definition of navigability; rivers once considered non-navigable may be redefined "navigable". Consequently, Alaska should receive additional title to submerged lands throughout the state. Important here is the category of ownership of lands upland of the mean highwater mark. If these lands are Native or federal, state ownership will be limited to the streambed inclusive of the mean highwater mark. Access would be limited to the area between the two mean highwater marks. In some instances, this could severely limit pedestrian access during the summer due to high water, hazards, and natural barriers. Boat access could be limited by natural hazards or barriers unless the Federal government reserves portage easements. These rivers would not actually increase access to the coastal shoreline unless access is provided to them. Access to navigable rivers is not necessarily guaranteed through Native or Federal lands. However, if these rivers are connected to state lands or public access corridors either directly or by means of a navigable or public tributary stream, access to the coastline would theoretically increase.



**Local Access Management:
Three Case Studies**

Even though local governments have not been large landowners, they hold the major authority--through planning, zoning, subdivision, platting and other authorities--for land use decisions in their areas. And, where local governments do or will own land in the near future, these lands are generally near population centers, where access needs are the greatest.

The cities' and boroughs' aggressive pursuit to gain increased influence over coastal resource management decisions prompted the Legislature to adopt strong provisions in the Alaska Coastal Zone Management Act for local district control.

With more than 200 local governments in Alaska, each with their own community goals and management philosophies, no single, general statement can be made that describes the local experience in access management.

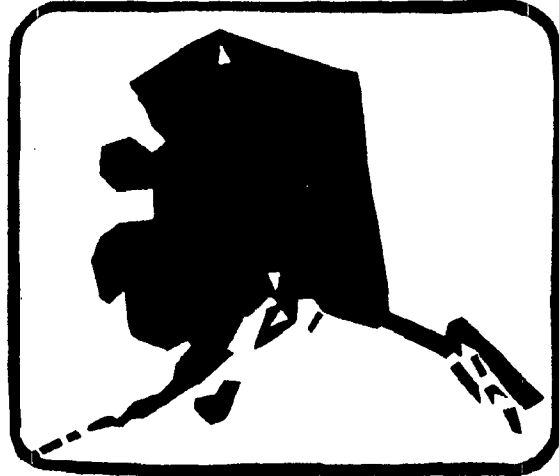
Three general case studies, however, illuminate some of the access issues that may arise in Alaska and how these issues are approached at the local level.

The three areas used for discussion were chosen because of the diversity they represent.

North Slope Borough residents live in one of Alaska's remotest areas. The Municipality of Anchorage is Alaska's largest and most urbanized community. The Kenai Peninsula Borough is a developing population center and one of the state's most popular recreation areas, drawing thousands of resident and nonresident visitors to a variety of leisure opportunities.

North Slope Borough

The North Slope Borough encompasses most of Alaska north of the Brooks Range. Its people depend on a subsistence lifestyle, and yet are faced with petroleum development that brings conflict and change to a close-knit social structure that has endured for centuries.



As it has developed its coastal zone management program, the North Slope Borough (NSB) has taken the position that access to and along the coast poses minimal problems for residents, except for cases in which longshore access is disrupted by industrial development. Such is the case for the Prudhoe Bay oilfield, where the oil industry has discouraged and limited activities other than those associated with petroleum exploration and development.

Officials within the borough have consistently taken the position that nonresident access to the Beaufort sea coast is a minor issue within the borough, since most recreational activities, in their view, would be inappropriate. Even so, the use of the Douglas Arctic Wildlife Range has grown from 70 visitors in 1977 to an estimated 300 in 1980, based on registrations with a charter pilot in Kaktovik.

Subsistence use of fish and wildlife within the borough is among the prime priorities the borough has identified within its coastal management program.

The program proposes to disallow all hunting and fishing activity within five miles of a road. Camping and other activities would be limited because of fragile and sensitive tundra characteristics. The borough also intends to discourage such other recreational activities as river-running and marine mammal tours, but proposes to allow such nonintensive recreational activity as birdwatching. Tours would be discouraged for all areas but that along the north-south haul road.

In short, the borough has taken the position that the North Slope is so remote that it is unlikely the pressures for settlement (such as in more accessible areas) will occur. Further, the borough holds that the tundra cannot support intensive use because of its fragile ecosystem. Finally, the borough believes that the traditional lifestyle of people on the North Slope will make it unlikely that access to coastal waters will ever be jeopardized.

The Kenai Peninsula

Unlike the North Slope, the Kenai area is one of the major destinations for a large segment of the population in the most settled area of Alaska.

An array of state and federal ranges, parks, waysides and campgrounds draw Anchorage and borough residents to land and sea in the borough from Hope and Seward to Clam Gulch, Ninilchik and Homer. Hunting, boating, fishing, camping, clamming, beachcombing, snowmachining and cross-country skiing are a way of life on the Kenai.

And because of these pressures from borough, non-borough, and non-Alaskan residents, access problems on the peninsula are likely to grow in coming years. Industrial access, as well, will add to the pressures for prime coastal lands, since the borough lies in the center of a prime oil and gas industry area.

Most coastal lands currently are held in private ownership on the west side of the Kenai mountains. And in at least two cases, obtaining additional public access has been costly. The State Division of Parks was required to

pay some \$5,000 per acre for a road and right-of-way to increase access to the popular Deep Creek shore. In the Funny River area, a 14-acre lot for wayside access cost some \$110,000. And the Division of Parks estimates that some 50 per cent of sportfishing along the Sterling Highway from Soldotna to Homer involves trespassing on private property.

In the past, the borough has been met with resistance in attempts to have portions of subdivisions dedicated for the purpose of useable public access. And because the borough does not possess areawide recreation powers, any land obtained for recreation access must be purchased at fair market value through negotiation, rather than by eminent domain procedures. Land that cities accept from developers must be maintained, in most cases, by city budget funds.

The borough may have the potential for providing increased coastal public access, however, in future land sales, when lots and/or easements may be reserved for sales of lands conveyed to the borough through the Municipal Land Act. In addition, current state regulations call for reserving to the state a 50-foot easement along all public waters and limited upland access to these waters in these land transfers.

Because federal and state requirements for access planning are only general in nature, the Kenai borough and other municipalities have not dealt comprehensively with the issue in current early phases of coastal planning. The borough's draft coastal development program contains no specific discussion of public access, but does identify areas which merit special attention for industrial site access.

The Anchorage Area

The Municipality of Anchorage is the largest community in Alaska, with some 200,000 persons residing in an area from Portage on the south to the Matanuska-Susitna Borough on the north.

Land use and ownership patterns along the coast vary within the Municipality. Along the shoreline from Potter Station to the downtown area are a wildlife

refuge, public shooting range, residential developments, Alaska Railroad right-of-way, international airport and military lands, and the Port of Anchorage.

The Municipality of Anchorage is among several local governments in Alaska with a coastal zone management plan approved by the Alaska Coastal Policy Council and the Legislature. The approved plan did not address specific access areas that will have to be addressed in coming years, but did contain an access planning process under which the municipal program would be implemented.

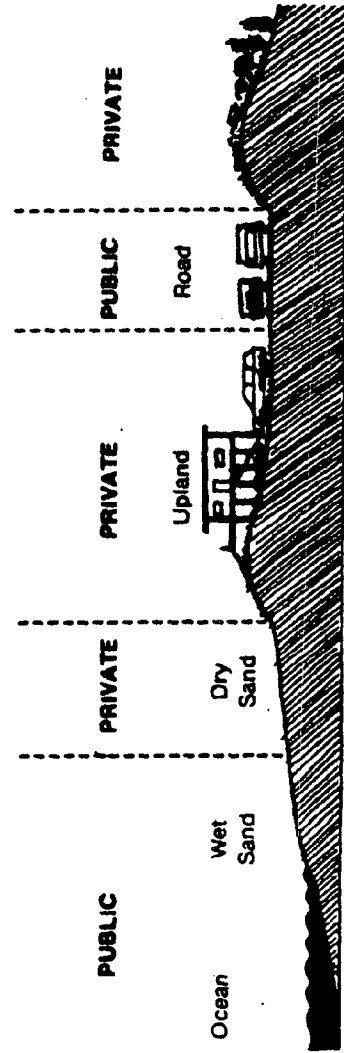
The process called for an inventory of current access sites, development of site plans for areas that access should be provided, and analyses of alternative techniques the municipality may employ to guarantee or acquire needed access sites.

As the municipality undertook the first phase of its access planning process in 1980, one of the first problems it encountered was identifying specific areas where public access could be guaranteed. It found that a majority of lands along the 20-mile corridor from Potter Marsh to Ship Creek are held either by the federal government through the military and the Alaska Railroad or by private owners. Thus, although Anchorage residents traditionally have enjoyed relatively free access to this area, in most cases, the municipality found, public use of these areas is technically trespass.

And although the municipality considers the corridor a high priority area for public access, the public's use of these areas may be jeopardized because access sites have not been uniformly formalized or are clouded by legal questions because of land ownership. (See Figure 1).

Initial indications within the municipality are that a range of techniques may be required to assure that future access is provided. For example, the municipality is exploring the potential use of memorandums of understanding between federal landowners for public use areas; the potential of working with other agencies to provide for easement dedication; the potential of including access considerations in the Comprehensive Port Plan; and legislative funding for site access.

Figure 1



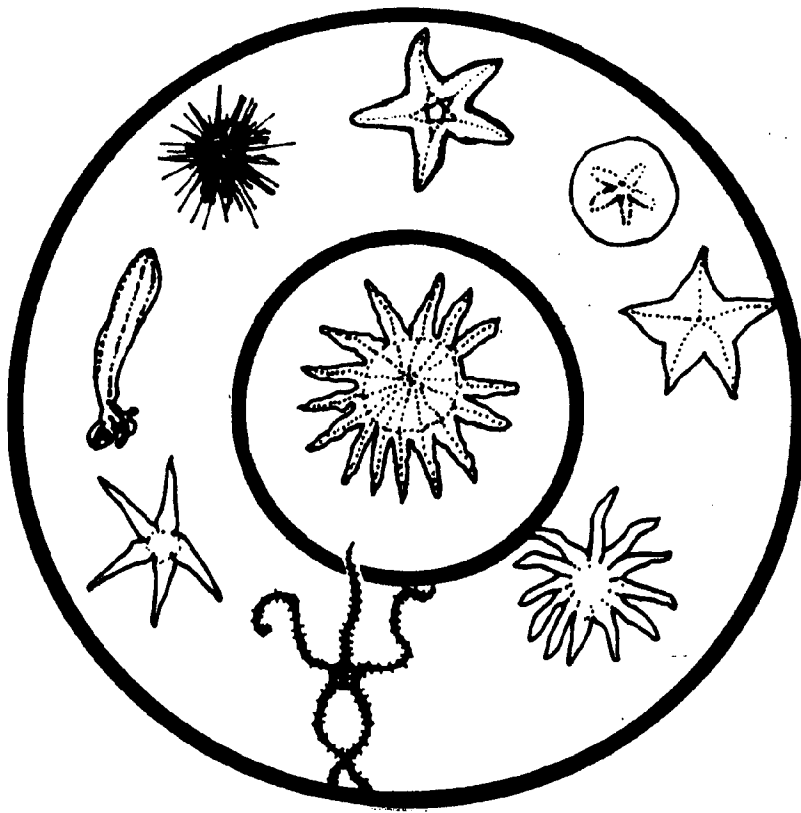
A TYPICAL PATTERN OF BEACH OWNERSHIP indicates that accessways to public coastal areas often are blocked by private lands.

Source: "Access to the Nation's Beaches: Legal and Planning Perspectives," David Brower

Also under consideration are limitations on developing a number of earthquake hazard areas along the coastline, including a site proposed for construction of a state corrections facility.

And although implementation studies and analyses for providing access are not completed, the municipality has recommended a series of projects that will assure future access along the coast. One is a scenic/recreation corridor along the Turnagain Arm, which would be established with cooperation of the Alaska Department of Transportation as part of the Seward Highway road widening project. Another is the creation of a bicycle and hiking trail along Cook Inlet from Potter Marsh to the Ship Creek area. A Ship Creek Greenbelt is also being considered, although the military has opposed the idea.

Planning officials within the municipality have indicated that the major problem in obtaining and providing access along the coast will lie in acquiring necessary sites and corridors. To date, federal landowners have been little inclined to declare coastal lands surplus for municipal public use. And because most of the land along the shoreline is owned by the federal government or private landowners, the municipality has little opportunity to obtain additional coastal lands through state Municipal Land Act selections.



COASTAL ACCESS

Recommendations for the Future

**Make no little plans;
they have no magic to
stir men's blood...**

--Daniel Burnham



**Public Access in Alaska:
Options for the Future**

Man, throughout history, has been drawn to shoreline areas. His earliest trade depended on the commerce routes, the shoreline and what its water afforded. Early food-gathering efforts were intimately linked to freshwater and marine shorelines. In time, the world's great civilizations evolved from the coastal areas and waters that linked them to other civilizations for trade and commerce.

And in time, the shoreline came to mean more than merely a trade link. With the advent of commerce and agriculture, man settled. And as his technology increased, so, too did his leisure and discretionary time increase.

By all accounts, the demand for public lands on shorelines and coasts--and access to these lands--continues to grow.

Just 10 years ago, the leisure industry in the United States was estimated to reach \$290 billion, a 58 per cent increase over 1958. Tourism is one of Alaska's largest industries, second only to gas and oil.

In 1973, the then - U.S. Bureau of Outdoor Recreation reported that

swimming was the nation's number one outdoor recreational activity. And although swimming is a relatively insignificant use in Alaska, a similar survey also found that outdoor recreation enthusiasts want water to sit by, stroll along, fish in, ski across, dive under and pilot their boats over. A 1978 Alaska Division of Parks survey showed that 48 per cent of the most popular leisure activities--and 60 per cent of activities in some areas--are water-related. A statewide poll conducted by the Rowan Group for the Steering Council for Alaska Lands in 1978 indicated that more than 70 per cent of Alaskans have taken vacation trips within their own state; 51 per cent have taken a trip down an Alaska river and 77 per cent identified access to parks as important. Although the Rowan poll did not specifically address coastal access, its findings have implications for the issue. (An excerpt from the final report on the poll may be found in Appendix E).

Another telling indication of the importance of coastal access was found in the 1970 U.S. Census, which indicated that more than 50 per cent of the nation's population lives within 50 miles from the beach. Some 75 per cent of the nation's residents reside in states bordering the oceans and Great Lakes.

But as late as 1978, some 19,934 of 21,724 miles of prime public recreation shoreline along the 28 contiguous U.S. states was privately held. And why not? The amenities provided by the coast are in large part the reason why the demand for such land often places it financially out of the hands of those who would seek to dedicate it to public access or use.

In 1935, for example, the Department of Interior estimated it could acquire scattered beach areas along the Atlantic Seaboard for an average cost of \$9,000 per mile. By 1955, the price for that same beach acreage rose to \$110,000 per mile and by 1975, the cost had risen to \$1.5 million per mile.

The fact that public access to coastal (or shoreline) areas provides amenities and an improved quality of life has not, however, been lost on many of the nation's greatest cities. These cities may not possess within their boundaries large pockets of land suitable for public recreation, but

they have, over the years, made giant strides in providing their residents with the aesthetically pleasing areas to undertake leisure activities--from swimming and fishing to shoreline strolls.

Notwithstanding that the pattern of growth for most cities has spread from the shoreline inward (See Figure 2), a number of cities nationwide had the foresight to plan for the future use of the coastline by the general public.

City planners and architects, such as Frederick Law Olmstead, saw in the mid-1800's that open spaces were as integral to the city's well being as commerce and industry. He designed the Columbian Exposition in Chicago, making use of the lakefront for exposition centers, docks and greenswards that are still in use today. The architect for Central Park and the Boston Commons, he conceived of aesthetic amenities for these areas that today are landmarks.

For entirely different (and more self-serving) reasons at the turn of the century, Montgomery Ward filed a lawsuit in Chicago to restrain the city from allowing any buildings to block his view of Lake Michigan. The legacy of that suit, filed solely to provide visual access for one individual some 100 years ago, is Chicago's lakefront park, an open greenspace that boasts public beaches, parks, bike paths, marinas, a lakefront theater, riding stables and a zoo.

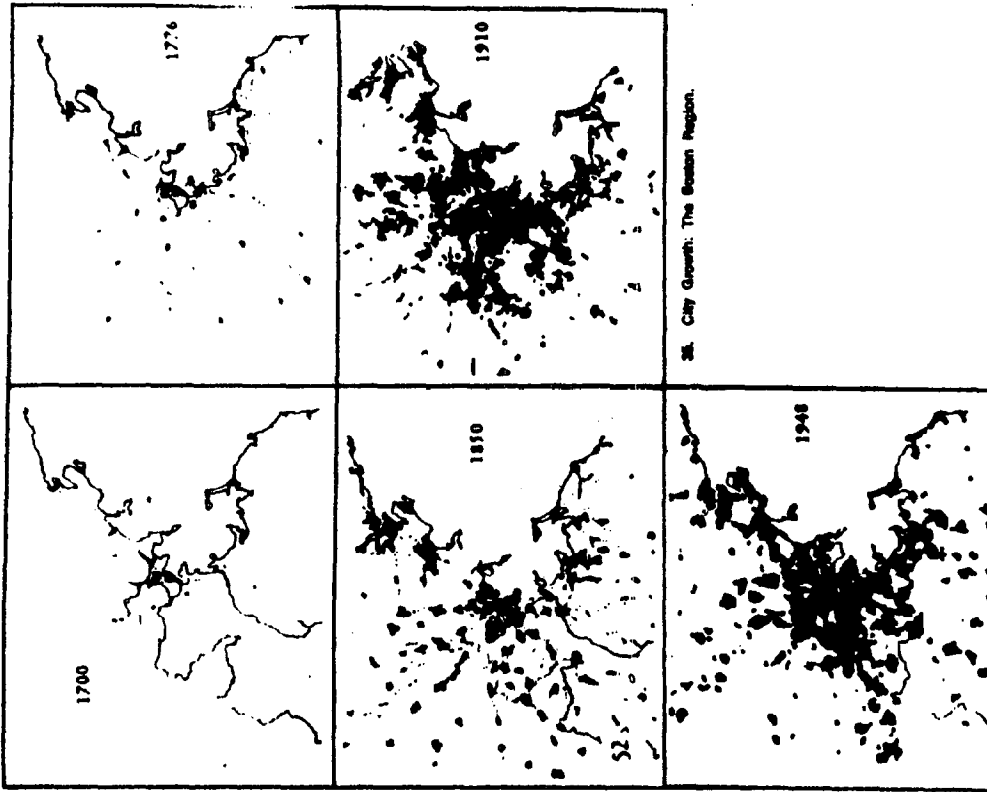
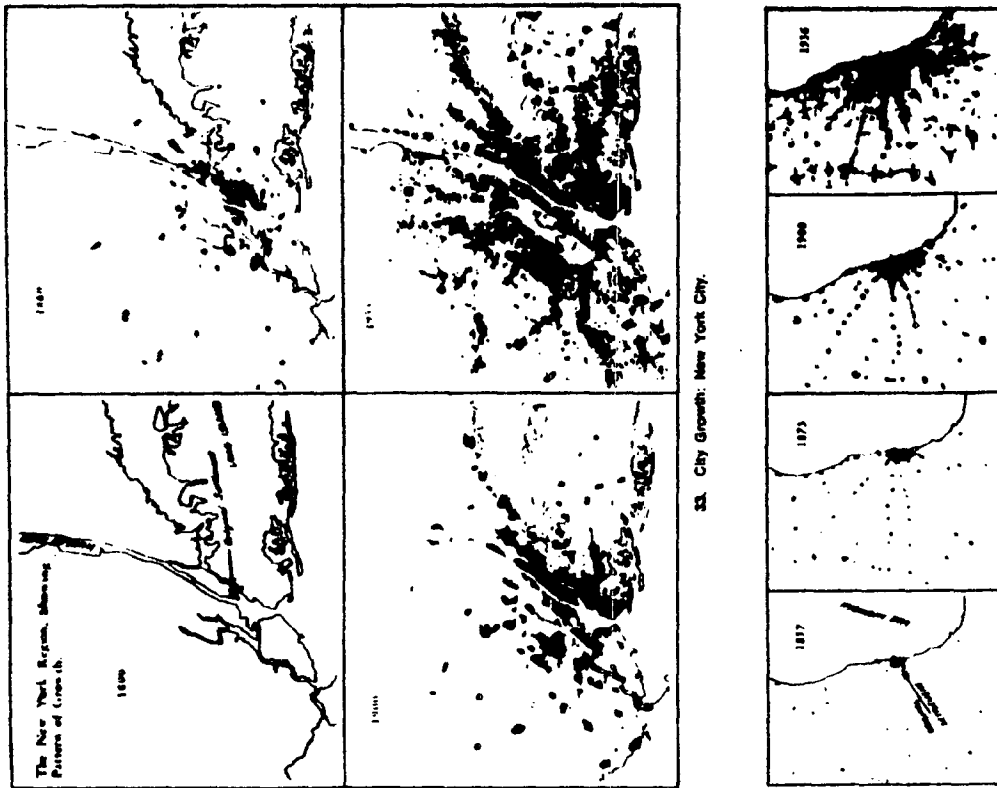
Seattle and New Orleans have converted waterfront ports, undersized for today's larger vessels, into public shops, parks, walkways, open air markets, with leisure attractions such as aquariums and world fairgrounds as part of the whole.

San Francisco's Fishermen's Wharf is a prime U.S. tourist attraction, as is Atlantic City's boardwalk and public beach.

And what of Alaska?

Few would agree that Alaska's open land and access problems are anywhere

Figure 2



PATTERNS OF CITY GROWTH indicate that shorelines are subject to growth first, and inland areas later.

Source: "Frederick Law Olmstead and the American Environmental Tradition,"
Albert Fein

near in proportion to the problems faced by the continental U.S. Alaska's coastline is too vast, her population too sparse. Less than 5 per cent of Alaska's coastal area is developed. A significant majority of its remaining coastal lands lie within the public domain, managed by the National Park Service, the U.S. Fish and Wildlife Service, the Bureau of Land Management (BLM) and the State of Alaska.

Unlimited access to Native lands previously held by the federal government will become a thing of the past in Alaska. But the BLM, as noted previously, is required to reserve access and other easements to some degree across Native lands in conveyance procedures.

The potential for Alaska's residents to be disenfranchised from access to the coast, however, is present for the more than half of Alaskans who live in developed and urban coastal communities.

The challenge Alaska faces, especially in her developed or developing areas, is to balance economic goals and aspirations with the needs of residents who, through attainment of these aspirations, will achieve the kind of lifestyle that enables increased leisure and discretionary time.

Equally challenging is to craft the kinds of policies and management tools that will fit the needs of all public interests in coastal access.

Alaska's social, environmental and economic diversity makes it unlikely that any one tool or strategy will answer each area's needs. More likely, access strategies will have to be devised that afford maximum flexibility and compatibility with a community's goals, legal authorities and public preferences.

In many cases, Alaska need make no apologies for its planning for coastal recreation and leisure use.

The west side of Homer Spit has long been suited to recreation use, for camping, fishing and beachcombing, although pressures to use the spit for commercial use have increased.

In Kodiak, Cordova and Seward, residents and nonresidents have access to recreational docks, in complete compatibility with commercial fishing activity. Public access is available by foot or road from the city to Shotgun Cove, in Whittier. Fort Abercrombie State Park is hiking distance from downtown Kodiak, and the city's annual King Crab Festival draws thousands to the waterfront.

Juneau residents have access to most of the coastal area, and the City and Borough of Juneau recently completed three-phase development of a marine park, public dock and tourist facility in the downtown area. The American Landscape Architects Association awarded the Marine Park its award of design excellence in July, 1980. The \$5 million project was funded cooperatively by state, local and federal agencies, and some \$3.5 million was required to purchase private lands for the park and its associated companion projects. It is among the most well-received programs ever undertaken by the city and borough--principally, according to one assemblyman, because of its proximity to where people gather daily for their employment.

Nome's beaches have long been known for their public access--access that allows beachcombing and hunting for gold.

In Anchorage, a large portion of the coastline is undeveloped military and railroad lands; and residents heavily use a number of waterfront parks (Resolution, Elderberry, Nulbay and Earthquake Parks). Current proposals for Port of Anchorage land development call for dedicating and developing a portion of an industrial site as parkland.

If only these cases were considered, it would look, on the surface, like Alaska has few problems with providing access to the coastline for its residents.

However, if historical and traditional coastal growth patterns emerge in Alaska as they have for other parts of the nation, future problems could easily emerge with them. For many areas in the continental U.S., the time has long past for solving access problems--especially in developed areas--

inexpensively and with foresight. Alaska is unique in that it has the opportunity to assure that enjoyment of the coastal zone will not be disrupted by the kind of policies that reserve a coastal resource owned by all to a select few.

The recommendations presented in this report are intended to encourage free public access, assuming that this goal does not preclude balanced and thoughtful economic development.

The recommendations also are based on clearly stated policies of federal and Alaska coastal management legislation and national historical experience.

Thus, three major assumptions were used in framing recommendations:

- (1). That, based on historical coastal development patterns, pressures to restrict public access and use will increase and, therefore, broad public use opportunities will decrease.
- (2). That once public use opportunities deteriorate to a certain level (often unquantifiable), government historically has been called upon and urged to reverse this trend and recoup lost opportunities--often at great public expense.
- (3). That all levels of the government and their constituents have become aware of the critical role meaningful access plays for all coastal endeavors.

The recommendations also were based on the following findings:

- (1). Federal and state coastal zone management legislation places a high priority on public access to coastal areas.
- (2). The coastal zone, nationally and in Alaska, is a prime resource for preferred public leisure activities.
- (3). A lack of coastal access is not perceived as a critical statewide issue in Alaska.

(4). The potential for diminishing access in developed and developing areas is the most serious coastal access issue at this time.

(5). There appears to be no uniform local policy for reservation of access lands.

(6). There appears to be no apparent uniform state policy for reservation of access on public lands.

(7). There appears to be little cooperation among federal, state and local governments and with the private sector in planning for and providing public access.

(8). Regulatory and management authorities at all levels of government appear ample to maintain and increase access to coastal areas.

(9). Techniques and strategies for obtaining accessways vary and have potential application for various land management jurisdictional agencies.

(10). There are no minimum statewide requirements for access planning and management.

RECOMMENDATIONS



1. The Alaska Coastal Policy Council should expand requirements for identification and management of coastal access areas.

DISCUSSION: Section 6 AAC 80.060 of the Guidelines and Standards of the Alaska Coastal Management Program requires coastal resource districts and state agencies to give high priority to public access; and to designate areas for recreational use. Based on the evolution of coastal management and access programs nationwide and in Alaska, a direct relationship between recreation and access should be established in terms of designation and management. The standards do not clearly require either the designation of access sites, or the management of public access areas. Further, the standards do not require state or local agencies to identify and plan for future access demands. A series of activities should be undertaken to assure that the public, now and in the future, is provided access to a coastal resource shared by all.

Determining current location and status of access areas is important, to assure that legal instruments, such as plats, status maps, titles, and land recordings reflect the presumed dedicated access use.

Identifying areas of future access potential will enable the state and local districts to consider use of these lands for access, plan for this use and assure that future land actions do not preclude this use.

Determining future access demand is a critical step in assuring that plan development will pinpoint those areas that will best satisfy public needs.

Developing management plans and/or programs for access will provide a uniform policy and approach for providing public access in identified need areas.

If these elements are included in state and local planning activities, potential conflicts can be more readily resolved, and site specific uses more readily prioritized. Finally, a clear understanding of future needs will,

in the long run, save significant tax monies where demand for coastal access is expected to grow beyond opportunities that are presently available. If early settlers in Juneau had anticipated the future and planned for coastal leisure, the City and Borough of Juneau may not have been required to pay \$3.5 million for 1.5 acres of marine parkland.



2. Coastal resource district contracts for program development and implementation funding should include requirements for identification of access areas; determining access demand; and development of an access management program.

DISCUSSION: Although different communities will identify varying access planning and dedication needs, all communities should be treated equally in uniform, minimum statewide requirements for providing public access. Communities, however, should be permitted to develop programs pertinent to their special needs in assuring public access within these minimum requirements.



3. The Office of Coastal Management should provide funding for an analysis of state land disposal procedures and their relationship to providing public access as required in 6 AAC 80.060.

DISCUSSION: In some cases, Department of Natural Resources procedures for providing public access in land disposals are not uniform, depending upon the type of disposal being used, and the statutes and regulations governing the disposal. In addition, there appears to be no uniform policy for site-specific procedures in cases where a particular problem or issue is not addressed by statute or regulation.



4. The Alaska Coastal Policy Council and Office of Coastal Management should work with communities to provide maximum assistance to local governments for access planning and acquisition.

DISCUSSION: The current and immediate demands on local government to

accommodate a complex array of coastal management planning requirements make it unlikely that local resources can be further strained to consider more detailed planning for coastal access. Communities should be granted increased funding and technical assistance, in three principal areas: assistance in on-site evaluation; assistance in land status research; and assistance in legal analysis of access acquisition techniques.

Funding will be required for access planning, and state/federal grant funds may be the only means by which communities can acquire additional prime access areas. Appendix D is a brief summary of funding sources available to state and local governments for access and access-related projects.

Technical Assistance can assist communities in planning for and resolving coastal access issues. Assistance in two principal areas would be of special benefit to communities at this time: assistance in inventorying current and future access possibilities; and assistance in identifying both proven and innovative means for acquiring access lands. Any number of tools may have promising application for Alaska. Several are summarized below:

Fee simple title

Purchase in the open market is one of the most-employed means of acquiring access and other lands for public use. It is also the most costly and its success depends upon finding a willing seller.

Highly developed areas in Florida, near Boca Raton, have successfully used public bond issues to acquire beach and uplands, and Alaska is using similar techniques along the Kenai Peninsula coastline. The acquisition program has been well received on the grounds that if the highly used shore areas were not acquired, they would be the site of private development, with few access areas left remaining.

Easement purchase

With this method, only partial interest in land is obtained, with resulting lower cost. Private owners of coastal property may be persuaded to sell easements if their property is revalued for property tax purposes. Care, in most cases, can be taken to assure that impacts from public use would not impose on adjacent property owners. Other states have used this tool for areas where parking and adequate roads are present.

Prescriptive easement

Prescription is a means of obtaining use, but not title, of another person's land by a person or group in some specified manner. Two issues are important in proving prescriptive use rights:

Length of time the use has occurred; and the type and manner of use that occurs.

Alaska law discusses prescription in AS 09.10.030 and .050:

"No person may bring action for the recovery of real property, or for the recovery of the possession of it unless commenced within 10 years. No action may be maintained for the recovery unless it appears that the plaintiff, his ancestor, predecessor, or grantor was seized, or possessed of the premises in question within 10 years before the commencement of the action."

Case law further defines prescriptive rights in footnoted discussions:

"To establish a prescriptive right to an easement, the use must have been open, continuous, and adverse under claim of title or right, and with the knowledge and acquiescence of the owner of the servient estate. (Roberts v. Jaeger, 5 Alaska 190 (1914).)"

And:

"Possession must be open, visible and notorious--Unless the true owner has actual knowledge of the hostile claim, it is essential to the acquisition of the title by prescription or adverse possession that the possession be open, visible, public and notorious. (Ringstad v. Grannis, 11 Alaska 393 (1947), rev'd on other grounds in 12 Alaska 190 171 F. 2d 170 (9th. Cir. 1948).)"

This discussion also separates prescription from adverse possession. The difference is subtle, but the two should not be confused. Brower and Dreyfoos discuss this difference in Public Access to Ocean Beaches:

"Prescription is closely tied to, but is not adverse, possession; title to the property is not in question. In a beach-access context, the concern is not with the title, but with the right of access. Accordingly, the local government will seek to establish that the public has continuously used the accessway in question for the requisite number of years. If areas

traditionally used by the public exist in a community, it should be possible to acquire an access easement by prescription. The local government would not have to pay for such right of access. However, litigation is generally required to establish the existence of an easement by prescription, and the costs of litigation should be calculated in determining the cost of using this tool to acquire access."

The prescriptive tool has disadvantages politically, especially in cases where the landowner and agency seeking to acquire the easement are adversary parties.

Eminent domain

Condemnation differs significantly from other purchase options in that it solves the problem of finding a willing seller. Government entities holding eminent domain authority are empowered to use it as long as the condemnation is for public purposes. Compensation must be made to the property owner, based on fair market value, which often is difficult to determine.

Historically, the most popular use of eminent domain has been to acquire road and utility corridors. The latter can be effectively used for public recreation with cooperation of the owner or utility. The popular powerline ski trails in Chugach State Park are prime examples. The power of eminent domain, however, is not commonly used for acquisition of park or recreation lands, but may be appropriate for access routes. Alaska Attorney General's opinions have held that the state, through the Division of Parks, does not possess eminent domain powers for recreation. In addition, where eminent domain has been used, the price has been high. Florida and California in the early 1970's purchased beach acreage by eminent domain for costs ranging from \$1 million to \$6 million per mile.

Dedication

Rights of way or roads from upland developments to the ocean may be dedicated to an appropriate agency by the owner or developer. Through platting or outright dedication, accepted by the government agency, residents outside the project area are guaranteed access. The dedication tool may have significant application when coupled

with land status inventories. Courts have construed a platted roadway, alleyway or street to be an offer to dedicate for public use by the owner. Perfecting that dedication through local government acceptance potentially could be an inexpensive means of obtaining additional access, without the adversary implications attached to the prescription method.

Conservation easement

Under this technique, a present landowner imposes future limitations on the land's use by encumbering land for easement purposes in subsequent title conveyances. Tax benefits in the form of reduced property taxes for the encumbered land can accrue to the landowner, as an added incentive for assisting local government in providing access. In essence, conservation easements involve the donation of property interest rights to a future public.

The most prevalent use of the conservation easement strategy has been in Maine, where it is allowed for any entity having the power to acquire interest in land.

Leaseholds

Another less-than-fee-simple technique, a leasehold grants the interested party the right to use another's land for a specific manner over a specified period of time. All remaining property rights are reserved to the owner. Leases are legal instruments that can be applied to any number of other uses, including oil and gas development, farming, fishing, hunting and access rights. A renewal clause is common in a lease, as well as a lessee's option to purchase for fee-simple at a later date.

Leasing may provide only a temporary or short-term answer to coastal access needs, but the tool could be valuable in areas where no other option is available or where other options are too costly.

Gifts

The gift of land for public use has become increasingly common but remains relatively unusual compared to other, conventional ways in which governments receive private land for public purposes. The major incentive to the donor is the potentially significant tax benefit.

To qualify, however, the gift must be given to and accepted by a government agency or nonprofit organization that will use the lands for public benefit.

In the past decade, government entities have found increasing success in obtaining charitable gifts of land. A number of conservation organizations (such as the Nature Conservancy) aggressively assist government entities in finding potential donors. At least part of the reason for the increasing popularity of land gifts is found in the way the Internal Revenue Service treats such gifts. An income tax deduction is allowed. And for individuals in higher tax brackets who intend to dispose of the land in question in any event, a donation can free the individual from high capital gains taxes. In many cases, the tax savings associated with the donation can exceed the original cost of the land severalfold.

In New York, more than 30 per cent of federal, state and county parkland has been acquired through donations. Iowa's conservation district program has attracted many gifts of rough, otherwise unuseable lands. St. Louis, Mo., has encouraged small donations as "living memorials" in greenbelt programs. In Illinois, the Morton Arboretum was established through gifts of land by family owners. Wisconsin received the tip of Door County Peninsula as a gift; a Chicago doctor donated his Michigan summer home as a nature study center; and Indiana obtained the last undeveloped remnant of the Valparaiso Moraine as a gift for a nature preserve.

Bargain sales

Bargain sales occur when an owner can no longer retain his land, cannot afford to make an outright gift, and will have difficulty finding a buyer who will pay fair market value. In these cases, a owner can make a "bargain sale" to a public or private landholding agency. He sells it for the price he originally paid for it; recovers his initial cost tax-free under Internal Revenue Service rules; and is credited with a deduction amounting to the appreciated value of the land from the time he bought it. The deduction may save him more than what would remain had he sold the land at fair market value and paid a capital gains tax.

Trades

Land trading between and among agencies and private landowners is a tool little explored to its full extent in Alaska. If this authority were used in the context of planning for access and other open space, private real estate developers and subdividers could be persuaded to trade public use lands in exchange for lands of equal value in other areas where access is not critical.

Post disaster acquisition

The National Flood Insurance Program allows the federal government to purchase properties damaged substantially by flooding, rather than compensate the insured to rebuild. This technique apparently has not been tried in the context of coastal zone management or access planning, but statutes and regulations for the program appear to allow it. The tool may have application to other types of disasters common to the Alaska coast, such as tsunamis, volcanic eruptions, and earthquakes. This course of action would have a twofold benefit: accessways would be provided and public safety would be protected through discouraging rebuilding in hazardous areas.

Land use controls

The authority of government to exercise planning, zoning and subdivision controls can contribute measurably as tools for acquiring or preserving the public's access to resources such as the coastal zone. These controls can require access easements and right-of-way dedication, as well as set maximum density. Some communities also are empowered to zone in the floodplain, which can include beaches and uplands. These land use controls are especially important for areas in which a significant portion of open land is in private ownership.

In summary, there is no uniformity of land management authority among all levels of Alaska government. Specific acquisition or land use control techniques among those discussed above, therefore, probably will not have application in all cases. A more comprehensive analysis of these tools, how they may be used, and their legal constraints in Alaska would open up increased possibilities for meeting public access needs.



5. The Alaska Coastal Policy Council should reassess and reevaluate present policies that give overwhelming priority to coastal sites for activities that are water-dependent, and give high priority to development that increases public enjoyment of the coast.

DISCUSSION: If one of the goals of access planning is to provide for and encourage public use and enjoyment of the coastal area, it follows that activities that will draw people to the waterfront should be encouraged. In cities and developed areas, economic development and leisure opportunities could go hand in hand if "public-dependent" development were given high priority in determining allowed uses of coastal lands. By "public-dependent" we mean the kind of development that draws people to a given coastal facility, whether or not the facility depends on a coastal location to operate. Such facilities can include:

- Museums
- Aquariums
- Exposition centers
- Theaters
- Open air restaurants
- Public markets
- Public fishing piers
- Theme and marine parks

These kinds of facilities often are capable of being designed, sited and landscaped to blend with existing landforms and to take full advantage of views, vistas and scenic benefits. They encourage creative economic development and provide increased amenities for not only local residents, but tourists, as well.



6. Geophysical hazard areas should be reserved for public, open-space use.

DISCUSSION: Developing in areas with known geophysical hazards can result in loss of life or property, with significant implications for liability. Design and engineering techniques can often reduce or mitigate this danger, but equally as often these design standards can be extremely costly. By reserving these marginal lands for public use, more prime, cost-effective

development areas can be utilized for industrial, commercial, high density, or residential projects.



7. Where public coastal lands have not been conveyed to other ownership, a liberal policy should be maintained for reserving longshore and upland access to the coast, as well as sufficient public use areas to meet current and future demands of coastal communities.

DISCUSSION: State regulations already apply a minimum 50-foot longshore access in conveyance of state lands; but there is no clear, uniform access policy on lands for which the state retains ownership. Local governments are not required to reserve access in land conveyances. And like state lands, there is no uniformity in policy for providing access on lands retained in local government ownership. The State and Local governments should adopt similar easement requirements for tide and other lands within their management control. Reservation of easements and access routes to the maximum degree while land is in public ownership will preclude future necessities to repurchase the lands at exhorbitant cost.

REFERENCES

- Alaska Administrative Code. Title 6 Governor's Office; Chapter 80
Standards of the Alaska Coastal Management Program.
- Alaska Administrative Code. Article 2 Uses and Activities; Section 060
Recreation.
- Alaska Administrative Code. Article 3 Resources and Habitats; Section 150
Historic, Prehistoric, and Archaeological Resources.
- Alaska Administrative Code. Article 4 Areas Which Merit Special Attention;
Section 160 Areas Which Merit Special Attention.
- Alaska Administrative Code. Title 11 Natural Resources; Chapter 53.330
Easements to and Along Navigable and Public Waters.
- Alaska Administrative Code. Title 11 Natural Resources; Chapter 70
Easements and Rights-Of-Ways; Article 1 Easements to and Along
Navigable and Public Water.
- Alaska Administrative Code. Section 010 Determination of Navigable and
Public Water.
- Alaska Administrative Code. Section 020 Written Decision Concerning Easements.
- Alaska Administrative Code. Section 030 Easements to and Along Navigable
and Public Water.
- Alaska Administrative Code. Article 4 General Provisions and Definitions;
Section 910 Definitions.
- Alaska Coastal Management Act. 1977. Section 1 Legislative Findings.
- Alaska Coastal Management Act. 1977. Section 2 Legislative Policy.
- Alaska Division of Forest, Land and Water Management. 1978. Land for
Alaska.
- Alaska Division of Forest, Land and Water Management. June, 1980.
Disposal Brochure.

Alaska Division of Land and Water Management. Tideland Lease Agreement Form.

Alaska Division of Parks. 1978. Alaska State Park Visitor: Who They Are and Their Views on the Development and Management of the Alaska State Park System. Anchorage, Alaska.

Alaska Division of Parks. 1976. Coastal Recreation Resources: West Kenai Peninsula, Alaska. Anchorage, Alaska.

Alaska Native Claims Settlement Act of 1972. Public Law 92-203. Section 12(a). Native Land Selections.

Alaska Native Claims Settlement Act of 1972. Section 17(b). Public Use and Access.

Alaska Native Claims Settlement Act of 1972. Section 17(d)(2). Withdrawal of National Interest Lands.

Alaska Office of Coastal Management. 1979. Alaska Coastal Land and Water Use Guide. Volume 1.

Alaska Statehood Act 1958. Public Law 85-508; Section 6(m), Alaska's Ownership of Tidelands.

Alaska Statutes. Title 9 Civil Proceedings; Chapter 09.10.030 Actions to Recover Real Property in 10 Years.

Alaska Statutes. Title 38 Public Lands; Chapter 05 Alaska Land Act; Article 1 Administration; Section 020 Authority and Duties of the Commissioner.

Alaska Statutes. Title 9 Civil Proceedings; Chapter 09.25.050 Conclusive Evidence of Adverse Possession.

Alaska Statutes. Article 3 Leasing of Lands Other Than for the Extraction of Natural Resources; Section 070 Generally.

Alaska Statutes. Article 5 Reservation of Rights to Alaska; Section .127 Access to Navigable or Public Waters.

Alaska Statutes. Article 6 Leasing of Mineral Lands; Section .135 Generally.

Alaska Statutes. Article 12 General Provisions; Section .365 Definitions.

Alaska Statutes. Title 41 Public Resources; Chapter 20 Parks and Recreational Facilities; Article 1 Acquisition, Development and Maintenance of State Parks and Recreational Areas Generally; Section .020 Duties of Department of Natural Resources.

Alaska Statutes. Section .040 Establishment of the State Division of Parks.

Alaska Statutes. Title 46 Water, Air and Environmental Conservation; Chapter 40 The Alaska Coastal Management Program; Section 040 Duties of the Alaska Coastal Policy Council.

- Alaska Statutes. Section 210 Definitions.
- American Institute of Geology. 1974. Dictionary of Geological Terms. Anchor Books. Garden City, New York.
- Bascom, Willard. 1964. Waves and Beaches: The Dynamics of the Ocean's Surface. Anchor Books. Garden City, New York.
- Black, Henry Campbell. 1968. Black's Law Dictionary, Revised Fourth Edition. West Publishing Company, St. Paul, Minnesota.
- Brower, David J. and William Dreyfoos. 1979. Public Access to Ocean Beaches: If You Find Parking Space, How Do You Get To The Beach? Coastal Zone Management Journal. Volume 5, Number 1/2 Russak & Co. Crane, New York.
- Brower, David. 1978. Access to the Nation's Beaches: Legal and Planning Perspectives. Sea Grant Publication UNC-SG-77-18.
- Bureau of Land Management. 1978. Personal Discussion With Agency Personnel on ANCSA and Public Access Easements.
- Clark, John. 1974. Coastal Ecosystems: Ecological Considerations for Management of the Coastal Zone. The Conservation Foundation. Washington, D.C.
- Coastal Zone Management Act of 1972. Public Law 92-513 and its 1976 Amendments Public Law 94-370. Section 302 Congressional Findings.
- Coastal Zone Management Act of 1972. Section 303 Declaration of Policy.
- Coastal Zone Management Act of 1972. Section 305(b)(3) Inventory and Designation of Areas of Particular Concern.
- Coastal Zone Management Act of 1972. Section 305(b)(7) Inventory and Reservation of Shoreline Access.
- Coastal Zone Management Act of 1972. Section 306(c)(9) The State Management Program Establishes Procedures for Preserving or Restoring Areas for Their Conservation, Recreational, Ecological, or Esthetic Values.
- Coastal Zone Management Act of 1972. Section 310 Research and Technical Assistance for Coastal Zone Management.
- Coastal Zone Management Act of 1972. Section 315 Acquisition of Access to Public Beaches and Other Public Coastal Areas.
- Constitution of the State of Alaska. Article VIII Natural Resources. Section 1. Statement of Policy.
- Constitution of the State of Alaska. Article VIII, Natural Resources Section 3, Common Use.
- Constitution of the State of Alaska. Section 14, Access to Navigable Waters.
- Department of Natural Resources. Alaska State Land Selection Program: Its History and Guidelines. 1978.

- Department of Natural Resources. 1979. The History of Title Navigability in America and its Application to the State of Alaska.
- Ducsik, Dennis. 1974. Shoreline for the Public: A Handbook of Social, Economic, and Legal Considerations Regarding Public Use of the Nation's Coastal Shoreline. M.I.T. Press. Cambridge, Massachusetts.
- Federal Register, Volume 41, Number 28, 1976. Title 36 - Parks, Forests, and Public Property; Chapter VIII - Advisory Council on Historic Preservation; Part 800, Section 9, Criteria of Adverse Effect.
- Federal Register, Volume 48, Number 41, 1978. Title 15 - Commerce and Foreign Trade, Chapter IX - National Oceanic, Atmospheric Administration; Part 923 Section 25 Shorefront Access and Protection Planning.
- Field Research Corporation. 1976. Management Digest An Overview of the Significant Findings From Prospect, Visitor and Travel Agent Surveys and Their Implication for Developing a Program for Tourism in Alaska. For the Alaska Visitor Industry.
- Fein, Albert. 1972. Frederick Law Almstead and the American Environmental Tradition. George Braziller, Inc., New York, N.Y.
- Gifis, Steven H. 1975. Law Dictionary. Barrons Educational Series, Inc. Woodbury, New York.
- Hession, Mary Kaye, Publications Specialist. April, 1977. Department of Natural Resources; Memorandum. Local Easements.
- McHarg, Ian L. 1969. Design With Nature. Doubleday Press, Garden City, New York.
- Koppel, Jacques. 1980. Guide to Federal Resources for Economic Development. Northeast-Midwest Institute, Washington, D.C. 20515.
- Northrim Associates Information and Communication Services. 1977. "Results of the Coastal Management Survey." Prepared for the Alaska Coastal Management Program. Anchorage, Alaska.
- O'Brien, Michael Murphy. 1978. Coastal Shoreline Access in Alaska, (draft) Alaska Department of Natural Resources, Anchorage, Alaska.
- Oregon State of, Parks and Recreation Branch. 1977. Oregon's Beaches A Birthright Preserved. Salem, Oregon.
- Platt, Rutherford B. 1971. Open Land in Urban Illinois. Northern Illinois University, De Kalb, Ill.
- Secretary of the Interior. 1976. Order 2982: Reservation of Local Easements Pursuant to Section 17(b) of the Alaska Native Claims Settlement Act. Repealed.
- Simonds, John Ormsbee. 1961. Landscape Architecture. McGraw-Hill Book Co., Inc., New York, N.Y.

The Submerged Lands Act of 1953. Public Law 31-83. State Ownership of Tidelands and Submerged Lands.

U.S. Code of Federal Regulations. 1979. 36 CFR Part 13.

U.S. Code of Federal Regulations. 1979. 50 CFR Ch. 1.

U.S. Code of Federal Regulations. 1980. 43 CFR Part 2800.

U.S. Code of Federal Regulations. 1978. 43 CFR Part 2650.

United States Department of Interior. Feb., 1980. Memorandum To: State Director BLM, From: Regional Solicitor, Alaska Subject: Kandik, Nation Decision on Navigability.

United States Department of the Interior. Alaska Native Claims Appeal Board, Dec., 1979. Decision and Order of Remand: In reference: Appeal of Doyon Limited from Decision of BLM F-19155-26; ANCAB RLS 76-21.

Webster's New World Dictionary. 1974. The World Publishing Company, Inc. Cleveland, Ohio: New York, New York.

APPENDICES

Appendix A

APPENDIX A
Definitions

Access. A way or means of approach.

Adverse Possession. A method of acquisition by title by possession for a statutory period under certain conditions.

Beach or shoreline is the zone or area lying between the mean lower low water mark up to the shoreward limit of non salt-tolerant vegetation; or, where unvegetated bluffs occur, the elevation reached by extreme high water or storm surge conditions.

Custom, Customary Use. Usage or practice of the people which, by common adoption and acquiescence, and by long and unvarying habit, has become compulsory, and has acquired the force of law with respect to the place or subject-matter to which it relates.

Dedication. A conveyance of land by a private owner in the nature of a gift or grant and an acceptance of that land by or on behalf of the public.

Easement. A right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with a general property in the owner.

Easement of Access. Right of ingress and egress to and from the premises of a lot owner to a street appurtenant to the land of the lot owner.

Longshore Access. The means of approach that exists along the shoreline.

Prescription. A means of acquiring an easement in or on the land of another by continued regular use over a statutory period.

Right of Way. The right of passage or of way is a servitude imposed by law or by convention, and by virtue of which one has a right to pass on foot, or horseback, or in a vehicle, to drive beasts of burden or carts,

through the estate of another. When this servitude results from the law, the exercise of it is confined to the wants of the person who has it. When it is the result of a contract, its extent and the mode of using it is regulated by the contract.

Upland Access. The means of approach that exists from the lands above the shoreline down to the shoreline.

Vacation. The act of making void.

Navigable Waters. Any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and take-off of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes.

Public Waters. Navigable waters and all other waters whether inland or coastal, fresh or salt, that is reasonably suited for public use and utility, habitat for fish and wildlife in which there is public interest, or migration and spawning of fish in which there is a public interest.

Submerged Lands. Lands covered by tidal waters between the line of mean low water and seaward to a distance of three geographical miles or further as may hereafter by properly claimed by the state.

Tidelands. Those lands which are periodically covered by tidal waters between the elevation of mean high and mean low tides.

Sources: Alaska Statutes; Black's Law Dictionary.

Appendix B

APPENDIX B
Easement/Access Chronology
in
Alaska

May 8, 1964: Division of Lands issued policy statement on reserving 10' linear streamside easements for public use. Easements were to "float" with changes in the stream channel.

Feb. 9, 1970: Division of Lands issued policy statement on retaining lakeside lands in state ownership, with the amount to be based on the size of the lake.

Nov. 15, 1974: Federal-State Land Use Planning Commission completed its Local Easement Study recommending easement size and use standards for lands to be transferred into Native ownership under ANCSA.

Feb. 6, 1975: Gov. Hammond, in a letter to Interior Secretary Morton, endorsed LUPC's study and advised the Secretary:

"The Constitution of the State of Alaska specifically provides that wherever occurring in their natural state the waters are reserved to the people for common use. The same Article (VIII) further states that free access to the public waters of the State shall not be denied any citizen or resident of the State. This concept has been upheld by the Alaska Supreme Court which recently ruled that the provisions in Article VIII were intended to permit the broadest possible access to and use of State waters by the general public...It is therefore of the greatest importance to the State that appropriate safe-guards to guarantee reasonable access to public waters are recognized during any alienation of State or Federal public lands into private ownership."

April 4, 1975: In a second letter to Secretary Morton, Gov. Hammond stated, "...I have directed that the local easement guidelines adopted by the Planning Commission be implemented, as a minimum, on all State lands."

April 15, 1975: The Director (of the Division of Lands) set up an easement task force to implement the LUPC guidelines.

June 28 and 30, 1975: Early drafts of the task force's easement guidelines received informal distribution to state agencies and the staff of LUPC for comments.

July 25, 1975 and Sept. 10, 1975: The easement task force submitted proposed policy to the Director, urging that it be put into effect.

Feb. 5, 1976: Secretarial Order #2982 was issued by the Interior Department. It ordered the reservation of local easements on Native lands.

Spring, 1976: The state legislature passed a bill defining navigable and public waters in very broad terms and requiring easements to and along such waters to provide reasonable access. State land disposals were halted pending regulations to implement this law.

July 30, 1976: Task force's easement guidelines, now marked "preliminary," were again informally distributed for comment. Throughout the review process that had begun in June of 1975, response had generally been favorable, although more generous standards were suggested repeatedly. Decision was made to begin immediately on easement regulations based on these guidelines. There was no further revision of the policy statements.

Nov. 24, 1976: Division of Lands completed a comprehensive set of proposed easement regulations. In an effort to give planners maximum freedom, no size and use standards were established.

Feb. 2, 1977: So that disposal of state lands would not be further delayed during a potentially lengthy review of the comprehensive regulations, the Director directed that work on the other easement regulations be stopped and that emergency regulations covering easements for navigable waters be prepared. It was subsequently decided that these would be permanent, not emergency regulations.

Dec. 29, 1977: 11 ACC 70.10 - 11 ACC 70.910 establishes guidelines for reserving easements and right-of-ways. Article I deals with easements

to and along navigable and public waters. A 25 foot easement above and below the mean high tide mark is established and reserved as state lands are conveyed. If access is not reasonably provided, the Director (Division of Lands) shall provide an easement to coastal or inland navigable or public water. This easement must be a minimum of 25 feet wide.

March 27, 1980: Regulations as codified by 11 AAC 53.310 - 370 supplant 11 AAC 70. This chapter increases the width of longshore easements along coastal waters from 25 feet to 50 feet above and below the mean high water mark. Easements along inland waters now extend 50 feet above the ordinary high water mark. Finally, easements to navigable coastal or inland waters must now be at least 50 feet wide.

Appendix C

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF FOREST, LAND & WATER MANAGEMENT

TO Commissioner
All Directors

DATE December 13, 1979

FILE NO

TELEPHONE NO

FROM Theodore G. Smith *TGS*
Director

SUBJECT Policy Statements

In the day to day activities of the Division of Forest, Land and Water Management, individual problems arise in the management of State Lands. To expedite the solution of these problems we have adapted a method of "Memorandums to the Director's Policy File" to present policy guidelines to the problem.

For your information copies of those memorandums are attached.

Your office has been placed on the circulation list to receive copies of future memorandums.

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF FOREST, LAND & WATER MANAGEMENT

TO DIRECTOR'S POLICY FILE
80-4

DATE October 9, 1979

FILE NO 1130, X-File 2370

TELEPHONE NO.

FROM THEODORE G. SMITH *TGS*
Director

SUBJECT Section Line Easements
and Use Thereof

Situation: Section line easements (50 feet each side of the section line) have been dedicated for use in construction of public roads on all lands transferred to the State under the Statehood entitlement.

Because of this dedication, does the public have the right to construct public roads on these section line easements without permit?

Does a public utility have the right to construct improvements on this easement without permit?

Policy: It is the policy of the Division of Forest, Land and Water Management that anyone does have the right to construct roads on these section line easements without permit and regardless of ownership without sanction of the permitting authority. However, the constructed road becomes a public land and may not be used as a controlled access by the builder or owner of the road.

It has been determined by the Division that enough legal precedence exists to support this policy.

In any case, we should urge the public to check with the Department of Transportation and Public Facilities on planned future uses of the easement.

In the matter of the easements use by public utilities, the following outlines the policy:

A public utility must gain sanction by the landowner, whether it be state, federal or privately owned, in order to construct an improvement on the easement. Furthermore, a letter of nonobjection must be obtained from the Department of Transportation and Public Facilities.

In a case where the State has sold land involved in a section line or is the owner of such lands, the Division of Forest, Land and Water Management reserves the rights of the landowner in the issuance of permit sanctioning the utility's use of the easement.

Note that this interim policy is subject to revision upon adoption of regulations exercising the State's police authority to require certain standards of construction.

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF FOREST, LAND & WATER MANAGEMENT

TO DIRECTOR'S POLICY FILE
80-8

DATE October 9, 1979

FILE NO 1130, X-File 2350

TELEPHONE NO

FROM THEODORE G. SMITH *TGS*
Director

SUBJECT: Homesite Location in
Surveyed Subdivisions

Situation: In surveyed subdivisions in which parcels are being used for both homesites and lottery and/or sale lots, should homesites be located in a specific location within the subdivision?

Policy: It is the policy of the Division of Forest, Land and Water Management to place homesite parcels in a subdivision closest to the available subdivision access. As homesites require successful applicants to live on the land and perform improvements, while other disposals do not, homesites should have the higher degree of accessibility for access to the property and transportation of building materials.

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF FOREST, LAND & WATER MANAGEMENT

TO: DIRECTOR'S POLICY FILE
80-9

DATE: October 9, 1979

FILE NO: 1130, X-File 2310

TELEPHONE NO:

FROM: THEODORE G. SMITH *TGS*
Director

SUBJECT: Subdivision Surveys
Fiscal Year 80 Fall
Disposals

Situation: It is the policy of the Division of Forest, Land and Water Management not to retain ownership of right-of-ways in surveyed subdivisions or surveyed parcels to be disposed of. In some cases in the fiscal year 80 fall disposal a misunderstanding occurred regarding this policy in that property lines were terminated at the edge of right-of-ways instead of the centerline of the right-of-way.

Policy: In the above stated cases the following will be the policy:

1. Recorded plats will not be changed, however, it is the Division's intent to amend these plats at a later date.
2. Unrecorded paper plats of aliquot parts that show rights-of-way will be amended immediately.
3. Right-of-ways in surveyed subdivisions for this disposal will be assigned to a homeowner's association.

This policy statement also reaffirms the decision's policy not to retain ownership of such rights-of-way in future disposals.

of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF FOREST, LAND & WATER MANAGEMENT

DIRECTOR'S POLICY FILE
80-14

DATE October 24, 1979

FILE NO 1130 X-File 2375

TELEPHONE NO

COM

THEODORE G. SMITH *TGS*
Director

SUBJECT Easement Reservations on
Lands Offered for Disposal

Situation: During the fiscal year 79 land disposal program, road, utility, and access easements/rights-of-way were surveyed and platted out of the parcels, rather than subjecting the parcels to easements. The results were that acreage was reduced significantly and the State was left as owner of the land within the easements/rights-of-way.

Does the State wish to retain ownerships within newly platted subdivisions of the easements/rights-of-way?

Policy: In all future state land disposals, parcel property lines shall run to the center line of the easement and not to the facing edge of the easement. The Division has established this policy, as it no longer wishes to have the continuing management responsibility of the property within the easement. However, all such lands will be sold subject to the easement reservation.

In addition, as time permits title underlying easements will be transferred to abutting property owners.

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES-DIVISION OF FOREST, LAND & WATER

TO: Director's Policy File
80-12

DATE: December 27, 1979

FILE NO: 1130, X-File 239] Division of Parks

TELEPHONE NO:

FROM: Theodore G. Smith *TGS*
Director

SUBJECT: Municipal Selection
Graphic Depiction

JAN 04 1980

Situation: During the process of granting title for municipal selections it has been necessary to prepare a plat for the entitlement that shows navigable and public waters and, therefore, shows the reductions of acreage transferred to the boroughs. In handling this as a plat, it becomes necessary to record this work because it is a change from the existing survey plat and (for those selections approved prior to July 1, 1978) changes the acreage of the approval by showing non-transferred water bodies. This causes an additional time lag in issuing title to the boroughs.

Policy: In the future this "plat" will be prepared as a graphic depiction or "map" of navigable and public waters. This map will be the formal depiction of the easement location and this must be referenced to the patent for all conveyances to the boroughs after July 1, 1978.

This map will include:

1. Depiction of navigable and public waters,
2. Easements along navigable and public waters, and
3. State retained interests (i.e., state owned rights-of-way, park sites, etc.).

This map will not include state or federally conveyed third party interests.

As this will be a "graphic depiction" of those non-vacatable easements reserved to the State, it will be desirable for the borough to record it. In order to save time in the conveyance of municipal selections, the final decision will recite specific reservations, plus a definition of waters to and along which easements will be reserved. The maps will be prepared after the final decision and attached to the patent when issued.

THIS POLICY STATEMENT REPLACES DPF 80-12. PLEASE CANCEL, BUT KEEP THAT MEMORANDUM. (October 9, 1979)

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES-DIVISION OF FOREST, LAND AND WATER

TO: Director's Policy File
80-14

DATE: January 2, 1980

FILE NO: 1130, X-File 2375; 2310

TELEPHONE NO:

FROM: Theodore G. Smith *TGS*
Director

SUBJECT: Easement Reservations on
Lands Offered for Disposal

Situation:

Director's Policy File #80-9 stated that it is the Division of Forest, Land and Water Management's policy not to retain ownership of Rights-of-Way or easements in surveyed subdivisions or surveyed parcels at disposal.

Director's Policy File #80-14 (October 24, 1979) set forth the procedure as to how easements were to be considered in the design and survey of State subdivisions. That policy file statement also stressed that the Division did not wish to retain ownership of Rights-of-Way or easements within these subdivisions.

Since the writing of DPF #80-14 (October 24, 1979) many questions have arisen on the mechanics of that policy statement. Is there a more definitive policy on the on easement reservations of State subdivided lands offered for disposal?

Policy:

The policy not to retain ownerships of specified lands within State subdivisions still stands. The mechanism for transferring title to these lands are as follows:

1. Paper Platted Subdivisions; Easements in paper platted subdivisions will be treated as outlined in the original DPF 80-14 (October 24, 1979). Parcel property lines will run to the centerline of the easement. Parcel owners will own the property to the centerline of the easement. However, all such lands will be sold subject to that easement reservation.
2. Surveyed Subdivisions Outside Municipalities or Boroughs; The subdivision will be designed and surveyed with lot lines ending at the boundary of the easement or Right-of-Way. The underlying title to the easement or Right-of-Way will be transferred to the Homeowner's Association as outlined in DPF 80-30.
3. Surveyed Subdivisions Inside of Municipalities (Including Boroughs);
 - a. The subdivision will be designed and Surveyed with lot lines ending at the boundary of the easement or Right-of-Way. The specified Right-of-Way and title will be transferred to the Municipality.

- b. If the municipality or Borough refuses title to the dedicated Right-of-Way, the Division will pass title to the Homeowner's Association as outlined in DPF 80-30.

Along with easements or Rights-of-Way, material sites identified by the district offices in the subdivision layout will be transferred according to the same criteria outlined above.

WHEN POLICY STATEMENT REPLACES 80-14 (OCTOBER 24, 1979). PLEASE CANCEL.
BUT KEEP THAT MEMORANDUM.

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF FOREST, LAND & WATER MANAGEMENT

TO DIRECTOR'S POLICY FILE
No. 80-25

DATE November 28, 1979

FILE NO

TELEPHONE NO

FROM THEODORE G. SMITH
Director

SUBJECT Public and Private
Rights-of-Way and
Survey Requirements

Situation: The Division has been faced many times with the problem of how to handle private right-of-way requests versus public right-of-way requests. The question of whether or not surveys are required on both types of requests has also been raised.

What is the Division's policy regarding issuance and survey requirements on public and private rights-of-way?

Policy: It is the policy of the Division that as-built surveys are not required for public rights-of-way. However, a sketch plat must be prepared by the applicant showing approximate locations of corner ties as the right-of-way crosses surveyed section lines.

The public right-of-way issued easement will remain in the name of the State against future disposals.

As-built surveys are still required on private rights-of-way requested from the State. Private rights-of-way will be issued in the name of the applicant.

Requests for rights-of-way by utility companies will be treated as a request for a private right-of-way. Utility companies will be required to provide an as-built survey and must monument section line crossings and angle points.

A request for private right-of-way by a utility company in a public easement, such as a section line easement, will still require an as-built survey with the appropriate information displayed.

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF FOREST, LAND & WATER MANAGEMENT

TO: DIRECTOR'S POLICY FILE
80-26

DATE: December 3, 1979

TO: [REDACTED]

FROM: [REDACTED]

FROM: THEODORE G. SMITH *TGS*
Director

SUBJECT: Land Planning Reports
on Municipal Selections
and Public Interest
Classifications

Situation:

Under state law the Division is required to prepare a land planning report for classifications of state land.

In the case of municipal selections and public interest lands a decision is prepared at the district level which outlines and identifies the lands to be classified for both categories. The additional time spent preparing the land planning report, especially in the case of municipal selections, adds major time delays to the actual classification.

Would it not be possible to provide a briefer land planning report, since much of the information is contained in the districts final decisions, in order to provide for faster classifications?

Policy:

It is the policy of the Division that in the case of classifications for municipal selections, land planning reports per se are not necessary. The method used to prepare the district's final decision on municipal selections answers the same questions necessary in preparing the land planning report. Since the final decision expresses the result of joint consideration under the same criteria used in outlining and identifying these lands, the final decision will simply be used as the land planning report.

In the case of classifications for public interest lands, once again the basic questions of the land planning report have been answered in the decision-making process. Therefore, the preparation of the land planning report would be redundant and unnecessarily time consuming. The final decision outlining and identifying public interest lands will be used as the land planning report.

In both cases a cover memorandum should accompany the decision papers identifying them as the land planning report.

It is our opinion that since the necessary criteria has been evaluated during the decision process, the Division has complied with state law and department regulations.

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF FOREST, LAND & WATER MANAGEMENT

TO	DIRECTOR'S POLICY FILE 80-30	DATE	December 12, 1979
		FILE NO.	1130
		TELEPHONE NO.	
FROM	THEODORE G. SMITH <i>TGS</i> Director	SUBJECT	Land Disposals Home Owners Association

Situation:

It is the policy of the Division of Forest, Land and Water Management to set up home owners associations in surveyed subdivisions that are being offered for disposal, unless a municipality establishes a service area pursuant to AS 29.63.090(f). One of the purposes of setting up this association is to provide an entity to hold title to public lands within this subdivision. This is in line with Director's Policy File Number 80-9 which states that the Division does not wish to retain ownership of rights-of-way within subdivisions.

The establishment of a home owners association would allow the Division to pass title to such areas as rights-of-way, greenbelts, wood lots, etc., along with the management authority of easements within the subdivision.

What are the actual mechanics of setting up such an association?

Policy:

The mechanics of the setting up of such an association are actually fairly simple.

First, the appropriate district office shall request the municipality to establish a service area. If for any reason the municipality fails to do so, the lands unit in the central office will prepare and submit paperwork to the appropriate authorities, including the internal revenue service for non-profit status, to provide for an incorporated entity under the corporate laws of the State of Alaska.

Certain division employees within the district of the subdivision offering will be appointed by the Director as temporary officers of the corporation.

After the drawing on the parcels has been accomplished, all successful applicants for parcels in that subdivision will be notified of their success and asked if they are interested in serving as an officer of the corporation. The Division will then appoint, from those interested purchasers, new officers of the corporation to succeed the Division personnel temporarily filling those positions. This appointment will take place before the first meeting of the home owners association.

After all points of applicable corporate law have been satisfied the Division will pass title or management authority on all applicable lands in the subdivision to the home owners association.

In any cases where the Division still owns lots in the subdivision, the Division will be treated by the association as a property owner with the same voting power and rights as any other property owner.

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF FOREST, LAND & WATER MANAGEMENT

TO DIRECTOR'S POLICY FILE
No. 80-32

DATE December 26, 1979

FILE NO 1130, X-FILE 2370, 2375

TELEPHONE NO

FROM THEODORE G. SMITH
Director

SUBJECT Vacation of Section Line
Easements in State Subdivisions

Situation:

In the design of some state subdivisions prepared for disposal, some lots within the subdivision contain portions of existing section line easements. These section line easements are not designed as subdivision access and are dedicated as a right-of-way within the subdivision.

Since subdivision access is provided within the design, would it be in the State's best interest to vacate these section line easements?

Policy:

In this case, as in all cases of section line easement vacation, the Division's policy should be one of a conservative approach. If there is an alternative access provided for the subdivision without the use of these section line easements, they may be vacated only within the lot lines of the disposal parcels, or where alternative access to adjoining lands is provided by the subdivision design.

The exception to this is where the retention of isolated segments of the easement is necessary for associated uses of that easement, for example, where power line or utility corridor uses ~~are~~ as access to state-owned, land-locked parcels behind the platted subdivision. A great deal of thought about future uses should be considered before such a section line easement is vacated.

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF FOREST, LAND AND WATER MANAGEMENT

TO DIRECTOR'S POLICY FILE
80-33

DATE December 26, 1979

FILE NO 1130; X-File 2340, 2370

TELEPHONE NO

FROM THEODORE G. SMITH *TGS*
Director

SUBJECT Applicability of Documents
of Lease, Permit, and
Easement

Situation: Confusion has surrounded the applicability of the documents for lease, permit, and easement. Clarification follows.

Policy: Lease -- if an individual requests exclusive, long-term (over a year) use of a parcel of ground for a particular purpose, the individual will be issued a lease. A lease may be for a specific area such as a right-of-way or subdivision lot, or for exclusive but partial use such as agriculture or grazing. The lease grants a large measure of sovereignty over the land.

Permit -- if an individual requests a nonexclusive use, permanent or temporary, of a parcel of ground for a particular purpose, the individual will be issued a permit. The State does not yield sovereignty when it issues a permit. The State can terminate a permit without cause after giving thirty days notice, or immediately with cause. The policy on mooring buoy permits (#80-31) is an exception to this rule because the exclusive occupancy is of an insignificant amount of area occupied by the anchor.

Easement -- if an individual requests nonexclusive use of a parcel of ground for a particular purpose, the individual may be granted an easement. The State will yield sovereignty when it issues an easement. Easements may be term or indefinite and are vacatable. Examples are right-of-way, scenic, and pedestrian easements. Construction on an easement may be undertaken pursuant to an easement construction permit.

Easements and leases are grants of interest in land and are therefore subject to AS 38.05.035(a)(14) and AS 38.05.305. A permit is not a grant of interest in land and is therefore not subject to the above.

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES-DIVISION OF FOREST, LAND AND WATER

TO Director's Policy File
80-37

DATE: December 31, 1979

FILE NO: 1130, X-File 2343

TELEPHONE NO:

FROM Theodore G. Smith
Director

SUBJECT: Subletting of Tide-
Land Leases

Situation: The policy on allowing the subletting of the tideland leases has been cloudy for some time.

Are there any circumstances under which the Division will allow the subletting of tideland leases?

Policy: It is the policy of the Division that improved tidelands may be subleased if the improvements are completed in accordance with the accepted development plan or are substantially complete within the time frame of the development plan.

Under no circumstances will unimproved tidelands or lands not in compliance with the timeframe of the development plan be considered for subleasing.

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES-DIVISION OF FOREST, LAND AND WATER

TO: Director's Policy File
80-40

DATE: December 31, 1979

FILE NO: 1130, X-File 2320;2343

TELEPHONE NO:

FROM: Theodore G. Smith *TGS*
Director

SUBJECT: Appraisals for Tide &
Submerged Lands

Situation:

How shall tide and submerged lands be appraised for the purpose of offering for lease at public auction if the particular lands have trespass improvements on them.

This involves two questions:

1. Should the trespass improvements be considered when determining the rental value?
2. What should be done if it is determined that the tide and submerged land will not be offered for lease?

Policy:

Generally, improvements will not be considered in determining the rental when being appraised for lease. However, market value of the trespass improvements will be estimated by the owner and confirmed by the State appraiser prior to auction.

The tide and submerged lands shall be appraised without consideration given to the trespass improvements, and the lease entered into shall be for the parcel only. The successful lessee of the tide and submerged lands offered if other than the trespasser may purchase the improvements from the trespasser, or the trespasser will have 120 days within which to remove the improvements. The 120 days commences at date of auction. Other than lessee owned improvements, those remaining 120 days after auction become the property of the State, and the State may dispose of them as they see fit.

If the tide and submerged lands have improvements placed on them in trespass, the trespasser shall be notified that he is in trespass and notice given that their improvements are to be removed within 120 days. If notice is not complied with, the case is then turned over to the Attorney General's Office for action.

Appendix D

APPENDIX D

Potential Assistance for Access Planning and Acquisition

A number of federal agencies provide funding to state and local governments for access-related projects and programs. Agencies and their programs are briefly summarized below.

U.S. DEPARTMENT OF INTERIOR

Heritage Conservation and Recreation Service

(1). Land and Water Conservation Fund

The fund provides monies to acquire federal wildlife refuges and recreation areas; and matching project grants for state recreation planning, and state and local land acquisition and development. Funds are derived from the sale of federal surplus property, federal motor boat fuels tax and Outer Continental Shelf mineral receipts.

(2). Outdoor Recreation Technical Assistance

The technical Assistance Program provides advisory services and counseling to all sectors to increase the number and quality of recreation areas. Program assists state and local governments in applying for federal surplus property to the General Services Administration, but does not provide acquisition funds. Program also works with government and private interests to help obtain private contributions of land or money for recreational purposes.

(3). Water Resources Planning Program

The water program has two major purposes: to protect outdoor recreational resources from development and determine recreational potential of water resource development. Program also reviews all applications before the Federal Energy Regulatory Commission to identify recreational potential in hydroelectric and nuclear energy projects.

(4). Historic Preservation Assistance

The Historical preservation program authorizes the Service to acquire and restore structures (and resources) of historical significance.

Properties must be listed on National Register of Historic Places through state's historic preservation office.

(5). **Urban Parks and Recreation Recovery**

The recreation recovery program provides funds to local government to rehabilitate recreation areas and facilities and to develop improved recreation programs. Three forms of funding are available: Program grants, innovation and rehabilitation grants; and discretionary grants.

Bureau of Land Management

(1). **Public Land for Recreation, Public Purposes and Historic Monuments.**

Under this program, federal, state and local government agencies and nonprofit associations or corporations may lease or purchase available BLM lands for recreation, historic monuments and public purposes.

National Park Service

(1). **Technical Assistance**

The park service administers more than 300 units in 47 states, including national parks, historic sites, monuments, recreation areas, lakeshores, seashores, preserves, battlefields and military parks. It is charged with the dual mission of preserving natural, cultural and scenic resources, while at the same time providing for public enjoyment through recreational use of these resources. The park service provides technical assistance to state and local agencies in planning, developing and managing park and recreation areas. The assistance program has no acquisition authority, and no funds are provided to other agencies under the program.

Fish and Wildlife Service

(1). **Surplus Property for Wildlife Conservation**

The Secretary of Interior, through the service, may transfer to states any lands surplus to the need of the federal government, for wildlife conservation purposes, at no cost to states. Local governments are not eligible to receive such transferred lands, but may work with states in planning for the land's acquisition.

DEPARTMENT OF AGRICULTURE**Farmers Home Administration and Soil Conservation Service****(1). Watershed Protection and Flood Prevention Loans**

Agriculture's programs may relate to access provisions and enhancement in two major areas: cooperation in establishing improvements to reduce erosion, flood water and sediment damage (including development of recreational facilities); and loans to help finance the local share of the cost of implementing watershed and flood prevention works of improvement. The agency may give either technical or financial assistance. It also will provide a share of the cost in installing improvement for agricultural water management, fish and wildlife conservation, and recreational development, including the cost of access to recreational areas. The agency does not have a direct acquisition program for access lands, however. Local organizations must acquire land, water and other rights, but the agency will pay up to half of these costs.

(2). Business and Industrial Development

The Farmers Home Administration will assist organizations in rural areas to improve, develop, or finance business, industry and employment; and to improve the economic and environmental climate in rural communities. Funds are provided through guaranteed loan authorities and project grants on a state-by-state allocation process. Eligible applicants are private firms or individuals in nonurban areas with populations of less than 50,000.

(3). Community Facilities Loans

These FHMA loans are granted to construct, extend or improve community facilities that provide essential services to rural residents. Insured loans are available for up to a 40-year term at five per cent interest. Public bodies and nonprofit corporations in rural areas with populations under 10,000 are eligible.

DEPARTMENT OF HOUSING & URBAN DEVELOPMENT**(1). Community Development Block Grants**

The Department administers these grants both for large and small

cities, the latter falling within the agency's discretion for providing funds. The broad, overall objective of the program is to alleviate physical and economic distress through the stimulation of private investment and community revitalization. Formula grants, determined by population, poverty levels and other demographic characteristics are provided to cities of 50,000 or more in population. The use of the funds is at the discretion of the city, but ineligible projects include public facilities, rehabilitation of government facilities, and rehabilitation of libraries, sports arenas and cultural and convention centers. In small cities, funds are provided through comprehensive grants, single-purpose grants and through "settlement" (completion of programs begun under Model Cities and Urban Renewal programs).

(2). Comprehensive Planning Assistance

The so-called Section 701 program is designed to encourage and financially support state and local governments and regional planning agencies in upgrading their comprehensive planning capabilities. Funding is through project grants that pay up to two-thirds of the cost of the project. The development and implementation of plans for housing and land use, transportation, recovery from disaster, and energy conservation are among eligible activities for the program.

(3). Federal Flood Insurance Program

The pertinent aspect of the flood insurance program is its applicability to compensation once loss has occurred. The program allows the federal government to purchase damaged properties, rather than pay the insured to reconstruct buildings on the property before damage occurred. Once purchased, these lands may be transferred (by sale, lease or donation) to state or local governments for uses "consistent with sound land management and use". The major drawback to the program is that it has never been implemented by funding.

DEPARTMENT OF COMMERCE

Economic Development Administration

(1). Technical Assistance, Research and Planning (Title III)

Grants are provided to develop the capability of state and local

governments to undertake comprehensive economic planning which is coordinated with other state planning activities. The grants provide up to 80 per cent federal funding. Technical assistance may be granted for studies that combine human and natural resources to determine the impact of proposed or existing employers or projects within an area.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

(1). Highway Research, Planning and Construction

The federal-aid highway program is a large one, and provides states with funding for a number of items, including roadside beautification, recreation (including access roads to recreation areas), bikeways, pedestrian walkways, fringe and corridor parking areas, and rest areas. Projects are funded through grants. Formal grants may be given states to assist in planning, constructing and rehabilitation projects. Eligible activities also include right-of-ways, surveying, and engineering. Urban areas also qualify for the grants, if projects are approved by the state.

Federal Aviation Administration

(1). The FAA provides technical and financial assistance to public agencies for planning and developing airports under the Airport Development Aid and Planning Grant Programs. Airport planning is coordinated with the Department of Housing and Urban Development and local planning authority so that consideration is given to the use of lands surrounding airports for recreation. The FAA encourages using these lands for recreation because such a use is among the few considered compatible to airport operations.

DEPARTMENT OF DEFENSE

Department of the Army

(1). Small Beach Erosion Projects

The Corps of Engineers, under the River and Harbors Act, is empowered to aid state and local agencies in controlling beach and shore erosion in public areas. The Corps designs and constructs the projects, and the nonfederal sponsoring agency must agree to

"provide and maintain" necessary access roads, parking areas, and other public use facilities. The federal share may be 70 per cent of the project cost or \$1 million, whichever is lower.



Appendix E

Steering Council Study

This is a report on the methodology used in the statewide survey of Alaska residents 18 or older, conducted by Rowan Group Inc. for the d(2) Steering Council for Alaska Lands.

Questionnaire

The questionnaire was developed to probe Alaskan use and interest in the land, general attitudes toward the classifications being considered in the Congress, and specific experience in the use and enjoyment of the state's land and environment. The exact wording of the questions is presented in the Survey Data section of this report. We

believe the questions are — on the face of it — basically statistical in nature. While the Steering Council suggested the issues to be raised in the study, Rowan Group Inc. designed and applied the questionnaire with complete independence, and respectful professional distance.

The Sample

The sample plan produced a total of 465 completed interviews. Of these 441 were conducted by professional interviewers, face to face with the respondent, in the home of the respondent; in 24 cases, all in distant rural areas such as Wales or Point Hope, the questionnaire was self-administered.

The sample was distributed proportionately into four major areas of the state, based upon the population in each area. The firm's previous surveys indicate that this sample number is more than adequate to represent the adult population in Alaska.

Respondent Selection

Each area was assigned its population-proportional number of interviews. Then, households or cluster points (such as an apartment building, the side of one street block) were selected based upon population-proportion of neighborhoods and random selection within the neighborhood. Only Alaska residents found at home were interviewed.

Rowan Group Interviewers are experienced people who ask the questions in a uniform way and collect the respondent's information or opinions with careful attention to the exact words used by the respondent. Open-ended questions are reported in the Data-Narrative with the verbatim responses that were forthcoming.

Electronic Data Processing

The survey was coded and data-processed by Rowan Group staff and in conjunction with Alaska Data Systems; using a Fortran package permits multi-variable crosstabulation presentation.

Summary

An analysis of the sample's demography shows that the sample closely replicates the actual Alaskan population. The factors considered are age distribution, sex distribution, location of the respondent, racial composition, income of the family, and employment status of the respondent. Statistical certitude can be corroborated in several areas where these factors are known to government or other information sources. As a result of these indices, the sample distribution method, the reports of the interviewers who conducted these interviews, and the history of previous surveys based upon the identical sample plan, we feel certain that the responses coming from this sample are within $\pm 2.7\%$ of the percentages one would achieve if all residents of Alaska 18 or older were interviewed using the same questionnaire during the same period. In sum, the data can be used by the Steering Council as evidence of the experience and opinion of the Alaskan adult population toward the issues and questions raised in the questionnaire.



— Rowan Group Inc.
525 W. 3rd Ave., Anchorage, Alaska

The Survey Data

1. Are you a resident of Alaska?
99.8% Yes
0.2 No
2. How long have you lived in Alaska?
17.6% Lifetime (born in Alaska)
11.6 25 years or more
26.8 10 - 25 years
35.0 2 - 10 years
9.0 Less than 2 years
3. (If "Not Born in Alaska") Why did you come to Alaska?
17.8% Not applicable
35.6 Job/work opportunities (transferred; in service; husband's job)
17.6 Moved with family (came up with parents, relatives)
8.4 Lure of Alaska lifestyle (wilderness; adventure; the outdoors; scenery; hunting and fishing; the last frontier, etc.)
4.7 To get away from Lower 48 (away from rat race, steel and concrete, big cities, pollution; better quality of life here, etc.)
3.4 Visited Alaska — decided to move
4.7 Always wanted to/just wanted to
6.0 Other
1.7 No opinion
Other comments in numbers; not percents: Health reasons; Own property; It was first point North on the money I had; Just like it here (2); To investigate the country; Immigrated from Denmark; Immigrated from Europe; To go to school; Because of religious beliefs (2); Born here, decided to come back; Was getting a divorce; Good schools.
4. What do you like about Alaska — in other words — why do you live here rather than someplace else?
11.0% Natural surroundings (scenery; wilderness; beauty; the land; geography; ruggedness; openness)
9.7 Outdoor life (hunting; fishing; camping; opportunity to enjoy the land)
4.1 Climate
5.4 Work/job
6.0 More opportunities (business; economic; job)
4.9 Good wages/money
8.8 Less crowded (Not so many people)
9.5 Quality of life (casual; slower; no pressure; not as developed; less congested; quieter; lack of social problems; allure of the last frontier)
5.2 The freedom
7.7 The people
11.6 It's home (have roots here; born/raised here; been nowhere else)
5.2 Everything; just like it
1.9 Family reasons (husband/wife likes it; married someone from here, etc.)
6.0 Other
3.0 No opinion
Other comments in numbers; not percents: The Lord wants us here; Don't like it — we're moving out of state (2); God has put me here. It is the geographical will of God that I stay here; No snakes or insects; I like anywhere the Lord sends me; Don't got money enough to get out of here; Have some input in the government; Still going to school; Health reasons (2).
5. In Alaska there are about 20 communities of a few thousand people or more. Of these major places, how many have you visited?
15.5% All or almost all
14.8 Three-fourths
20.8 About half
20.2 About one-fourth
28.1 Only a few
0.6 No opinion
6. In Alaska there are also about 300 communities of a few hundred people each, or less. Of these places, how many have you visited?
1.5% All or almost all
2.6 Three-fourths
9.7 About half
17.6 About one-fourth
44.2 Only a few
23.8 Virtually none
0.6 No opinion
7. Do Alaska's 300 small communities desire to be part of the state's surface transportation system?
32.4% Yes
35.4 No
28.5 No opinion/don't know
3.6 Some do, some don't
8. Do you feel that existing access to Alaska's 300 small communities is adequate to meet their community needs?
39.3% Yes
28.2 No
20.8 No opinion/don't know
1.7 In some cases
9. Do Alaska's 300 small communities desire visits by large numbers of recreationists and sightseers?
14.6% Yes
61.6 No
18.0 No opinion/don't know
5.8 Some do, some don't
10. In all, there are 365 million acres of land in Alaska, most of it accessible only by plane, boat, or off-road vehicle, and some by road. Of it all, what would you estimate as the amount you have been able to experience?
1.1% All or almost all
6.0 Three-fourths
8.6 About half
17.4 About one-fourth
13.7 Less than one-fourth
50.4 A few percent or less
2.8 No opinion
11. Have you ever taken a one week trip inside Alaska for recreation purposes?
71.7% Yes
28.3 No
12. (If "yes") The last time you did that, how far did you go? (Estimate in miles).
27.8% Not applicable
20.7 250 miles or less
15.3 251 - 500 miles
7.1 501 - 750 miles

- 12.3 751 - 1000 miles
- 3.0 1001 - 1250 miles
- 4.3 1251 - 1500 miles
- 0.9 1501 - 1750 miles
- 3.9 1751 - 2000 miles
- 0.2 2001 - 2250 miles
- 0.6 2251 - 2500 miles
- 0.2 2501 - 2750 miles
- 1.1 2751 - 3000 miles
- 1.5 Over 3000 miles
- 1.1 No answer

13 (For those who answered Question 12) ...And how did you travel?

- 97% Air
- 6.0 Water
- 35.6 Surface/road/railroad
- 27.7 Combinations in numbers; not percents: Air-surface (17); Air-water (13); Surface-water (51); All (13); Not applicable

14 Do you feel satisfied with how much of Alaska you have so far actually seen and experienced, or are you interested in experiencing much more of it?

- 12.2% Feels satisfied
- 65.5 Satisfied, but wants to experience more
- 22.3 Wants to experience more, is unsatisfied

15 What would be your favored means of traveling to remote areas of Alaska in the future?

- 28.4% Air
- 6.9 Water
- 21.9 Surface/road/railroad
- 42.8 Combinations in numbers; not percents: Air-surface (36); Air-water (52); Surface-water (36); All (66).

16 Do you feel certain public lands in Alaska deserve receiving permanent protection as national parks or wildlife refuges even though you may not be able to visit all of them?

- 61.0% Yes, deserve permanent protection
- 20.8 No
- 7.7 No opinion/unsure
- 10.5 Yes, though not in amounts reported

Here are a number of National Park lands either existing or proposed in Alaska, and this map shows where they are. Tell me in each case if you have already been to each park, and if so, if you intend to go back sometime, and if not, if you ever intend to go.

	Intend to return	Won't return	Intend to go	Won't go	No opinion
17 Denali National Park (Mt. McKinley)	59.3%	4.9%	28.3%	4.3%	3.2%
18 Glacier Bay National Park	22.3%	3.2%	49.7%	18.8%	6.0%
19 Kobuk Valley National Park	5.4%	1.7%	53.7%	29.1%	10.1%
20 Lake Clark National Park	12.2%	0.9%	53.1%	21.6%	12.2%
21 Gates of the Arctic National Park	7.1%	1.7%	54.0%	28.3%	9.0%

	Intend to return	Won't return	Intend to go	Won't go	No opinion
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22 Katmai National Park 12.4% 1.7% 63.0% 14.6% 8.4%

23 Wrangell St. Elias National Park 17.1% 3.4% 54.0% 16.3% 9.2%

24 Do you believe roads, railroads or some other form of surface transportation should be built to these parks to provide easy access to large numbers of people?

- 30.5% Yes, to all parks
- 47.9 Yes, to some parks
- 20.6 No parks
- 1.1 Depends (on which parks, etc.)

25 Tell me the name of any national wildlife refuge you visited for recreational purposes since you have lived in Alaska?

- 41.5% None
 - 25.8 Mt. McKinley (Denali National Park)
 - 14.8 Kenai Moose Range (or named Kenai, Kenai area, etc.)
 - 1.9 Potter Marsh/Flats
 - 3.7 Glacier Bay
 - 1.9 Chugach area
 - 0.9 Katmai
 - 1.3 Mendenhall Peninsula/Flats
 - 8.2 Other
- Other comments in numbers; not percents: 66 Mile Steese (2); St. Lazarus Bird Refuge (3); Kodiak (3); Admiralty Island (2); Wrangells; Afognak (3); Katchemak Bay; Fonreslerr Island; Portage; Prince William Sound; Aleutians; Arctic Wildlife Refuge (2); Eklutna; Copper River Water Fowl Refuge (2); St. Paul's; Susitna Flats; Chukchi (2); Tongass (2); Sheep Mountain (2); Kuaninie Wildlife Refuge; By Tustumena Lake; Tanana Flats; Kobuk area; Minto Flats.

26 (If a wildlife refuge is named) What was your main reason for visiting the refuge?

- 42.8% Not applicable
 - 16.1 Recreation/vacation (to get away; fun; something to do; an outing)
 - 15.7 Sightseeing (scenery, taking visitors, to visit; see what was there; to check it out)
 - 6.9 Fishing and/or hunting
 - 4.5 Camping
 - 6.9 To see wildlife (animals; birds; flora and fauna; nature)
 - 2.6 Passing through area
 - 1.7 Other specific sport (backpacking, hiking, canoeing, etc.)
 - 1.7 Other
 - 1.1 No response
- Other comments in numbers, not percents: Closest and most convenient (2); On the job information (3).

27 How far from this home do you have to go to be in a real wilderness experience?

- 61.3% 25 miles or less
- 13.3 26 - 50 miles
- 3.4 51 - 75 miles
- 8.2 76 - 100 miles
- 0.2 101 - 125 miles
- 1.5 126 - 150 miles
- 2.6 151 - 200 miles
- 2.6 Over 200 miles
- 6.9 Don't know

28. Have you visited any of Alaska's national forests since living in Alaska? (And if yes) Which one?
 41.1% Yes, have visited Chugach National Forest
 11.1 Yes, have visited Tongass National Forest
 24.2 Yes, have visited both
 23.6 No

29. Have you ever flown into the Alaskan wilderness?
 62.3% Yes
 37.7 No

30. Have you ever taken a trip down an Alaskan river?
 51.4% Yes
 48.6 No

31. (If "no" to either Q. 29 or Q. 31) Have you ever wanted to do such a thing?
 36.0% Yes
 14.8 No
 2.4 Unsure
 46.9 Not applicable

32. (If "yes" to Q. 31) Why haven't you?
 63.8% Not applicable
 21.4 Not enough time and/or money
 3.4 Never had opportunity
 3.0 Small children
 1.9 No equipment
 1.3 Inaccessibility
 1.5 Just haven't
 2.6 Other
 0.9 No response
 Other comments in numbers; not percents: Usually go outside for vacations (2); Other priorities; Didn't think of it until now; Not enough knowledge (2); Haven't been here long enough (2); Plans didn't work out right; Never got it together; Too cold; Too chicken to go alone; Husband doesn't want to.

33. Are there parks, refuges or other scenic areas of Alaska you would like to visit, but which are generally inaccessible to you because of the cost of getting there?
 61.9% Yes
 32.8 No
 5.4 Unsure

34. How important is the scenic beauty and frontier ruggedness of Alaska to you, in terms of living here as opposed to another state?
 80.3% Very important
 16.3 Somewhat important
 2.6 Unimportant
 0.9 No opinion

35. Here are two statements about Alaska's role. Tell me which one comes closest to your view, or if you feel these statements can be combined without contradiction.
 15.6% Alaska is America's energy breadbasket, and its major purpose is to supply the nation with oil, gas, minerals, timber and other resources, without despoiling its natural environment.
 26.3% Alaska is America's last wilderness, and its major purpose is as a habitat for undisturbed nature, the protection of migratory wildlife, recreation, and scenic values, and without despoiling its economy.

46.5% Feels statements can be combined without contradiction
 8.4% Other comments
 3.2% No opinion/unsure

Other comments in numbers; not percents: We don't have that much oil here and we need to preserve the wildlife more. We need industry for the people already here. Wilderness is more important than minerals. Leave it the way it used to be before pipeline. We should preserve as much as possible-slow down progress. It is America's last frontier-don't wreck it; Alaska should exist as wilderness area-renewable should be developed; I feel if properly done, energy resources can be used while leaving nature to renew itself. It doesn't need to spoil the environment. There can be a compromise of wilderness interests and commercial interests with major interest in wildlife preservation and limited exploration. There will have to be a trade-off between the two standards; Our purpose is not to supply the nation's oil and you can't leave the whole state as wilderness. You have to have a happy medium; Alaska is a "state of mind", not a "breadbasket" for the gluttonous American economy, nor a "park" for the affluent society. We need to approach our own lives with frugality and emphasize the rewards of spirit rather than things; Statements could be combined, but I don't think they will. Disagree with first statement — should not exist for the Lower 48; Keep as close to nature as possible and get what is needed; Alaska is America's largest renewable and non-renewable resource state. The development of all the resources would have a small environmental impact on the state, but it is inevitable that the resources will be drawn from the state and the best that can be hoped for is that the amount of destruction to the property is controlled. Also the wilderness should be left for hunting, fishing and use of renewable resources and recreation; Why do they think we have to have a role in this game? Why can't we be free to develop our resources without any burden of bureaucracy; Alaska is my home and whosoever desires anything should contact us too, along with the state; If Alaskans were allowed to, they could develop their own resources better than the federal government; Feds should leave Alaska alone — some development, some preservation; Some areas of Alaska should remain undisturbed. Also feel the resources should be used; I feel Alaska has already shared its resources without benefit. Any in the future should be determined by Alaskans. Feel we should make judicious use of renewable resources and wise use of our non-renewable resources; If we can't use the resources of Alaska we should give it back to Russia. Neither statement — Alaska need not be raped to supply the rest of America and need not be locked up for birdwatchers; What was the agreement between Russia and U.S. when Alaska was purchased by U.S. Isn't one going a little far off at times? Don't agree with either — you have to have roads to build any sort of state; Statements must be combined — and there is contradiction. Moderation is advised; They are beating a dead horse by getting progress up here. Save it for later. We should be able to drive to all places in Alaska. We need more roads. We also need the oil. I'm against more parks. Oil rigs and exploration might ramrod into wilds, without proper planning. — d(2) bill is not a danger — U.S. will use resources if necessary; States do not have purposes. People here are obligated to supply energy. Do it without screwing up our state. Should be available for use by people. Both a bunch of malarkey. Some place in the middle — both statements are too extreme (2). It is not possible to have either one without contradiction (3).

