STEVE COWPER, GOVERNOR

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF GOVERNMENTAL COORDINATION

STATE CSU COORDINATOR
2600 DENALI STREET, SUITE 700
ANCHORAGE, ALASKA 99503-2798
PHONE: (907) 274-3528

June 18, 1987

Mr. John Rumps
District Manager
Anchorage District Office
Bureau of Land Management
6881 Abbott Loop Road
Anchorage, AK 99507

Dear Mr. Rumps:

Your March 24, 1987 letter to Judith Bittner requesting state review of the draft memorandum of agreement (MOA) for the Iditarod Trail was forwarded to the Division of Governmental Coordination for follow-up. This Division subsequently conducted a coordinated interagency review of the draft MOA, and submits the following consolidated state comments on behalf of the reviewing agencies.

In general, the state recognizes the value of coordinated management of the Iditarod Trail, and an MOA may be a valuable mechanism for facilitating such coordination. It will be necessary, however, to make several modifications to the draft agreement before the state would be prepared to sign it. Where possible, this letter provides alternative or additional language which addresses the concerns raised by reviewing agencies.

First of all, the state believes that more than one signatory will be needed to represent the land managers listed in the draft agreement. In particular, the independent corporate status of the Alaska Railroad virtually requires that it be a separate signatory. It may be appropriate for each of the other land managing state agencies to sign on it's own behalf, pending the outcome of other issues raised in this letter.

Secondly, the state has considered the effects of this MOA on highway rights-of-way (ROW) managed by the Department of Transportation and Public Facilities (DOT/PF). It appears that the designation of any highway ROW as a National Historic Trail would place this ROW under the provisions of Section 4(f) of the Department of Transportation Act. Section 4(f) is implemented under Code of Federal Regulations (CFR) in 23 CFR, Chapter 1,

Section 771.135. A copy of this section of the CFR is enclosed for your information.

The effect of placing a highway ROW under the provisions of Section 4(f) may be to restrict future highway improvement on this ROW if federal funding is involved in the project. The extent of this effect depends on the interpretation of this action by the Federal Highway Administration (FHWA). DOT/PF has reviewed this question with the FHWA. To maintain opportunities for future highway improvements, it is suggested that the agreement explicitly recognize that the exact location of the Trail may be adjusted within the right-of-way.

The remainder of the state's comments follow the organization of the draft MOA.

A. Background

The state is concerned that the fifth paragraph may imply that the state must begin formally authorizing races and other uses of the trail. Due to budget constraints, the state suggests that the MOA be clarified to avoid this implication. We have suggested some additional language in the "Administration" section which addresses this concern.

B. Purpose

Subject to the comments elsewhere in this letter, state agencies are generally supportive of the overall purpose of the agreement.

C. Provisions

The second paragraph of this section should refer to the listed managers as being departments within "or instrumentalities of" state government. Subparagraph (1) should name the Alaska Railroad Corporation (ARRC) and identify the primary trail route as between Seward and Girdwood. ARRC also owns a portion of the connecting trail between Girdwood and Ship Creek via Indian Pass.

The Alaska Department of Fish and Game (DFG) should be added to the list of state agencies having management responsibilities along the Trail. DFG manages the Palmer Hay Flats State Game Refuge and the Susitna Flats State Game Refuge, both of which are crossed by the Trail.

The third paragraph in this section, beginning with "The state agrees to submit . . .," should be modified to reflect that each managing agency will be individually responsible for providing any Trail descriptions under its respective jurisdiction. To accomplish this, the paragraph could begin "Each of the land managing agencies agrees . . . .." The resulting addendum to the MOA, referenced in the last sentence of this paragraph, should also include the signature of the head of the participating agency(s).

Continuing in the third paragraph, the words "if any" should be added as follows: ". . . a description of which TRAIL segments and historical sites, if any, as to which the state formally requests designation . . .." This precludes any implication that certain segments of the Trail must be so designated.

In the fifth paragraph of this section, the language "in a manner which recognizes the historic values" may suggest permit systems and/or limiting uses. The Department of Natural Resources (DNR) reports that they are presently not prepared to initiate a permit system or enforce new use restrictions because of budgetary and personnel constraints. They are also not aware of widespread management conflicts on DNR-managed lands between the various users that would justify these measures at this time. The additional language suggested in the "Administration" section addresses this issue.

Concern was also expressed about the phrase in the fifth paragraph "encourage and protect continued public use" of the trail. This could lead to a demand for management, maintenance, or improvement that would be difficult to satisfy. Agencies participating in implementation of this intent will need to tailor their efforts to fit their ability to respond to increased demands. Perhaps by deleting "encourage," the paragraph's intent is preserved while maintaining management flexibility.

In addition, the encouragement of public use of specific portions of the Trail underlying railroad rights-of-way presently owned and used by ARRC should not be expected; rather, recognition of the Trail's location by markers at publicly accessible crossings and on trains may be more appropriate. Additional language suggested in the "Administration" section makes it clear that the state's transportation systems may not be adversely affected by Trail designation.

Similarly it is suggested that "encourage and assist" in the sixth paragraph be revised to read "recognize" or "cooperate with," and that "working partner" be deleted or clarified. While the agencies are willing to cooperate with the Iditarod Trail Blazers on maintenance, for example, they wish to avoid an implication that the Trail Blazers might have some overriding jurisdictional role in agency decision-making.

In the seventh paragraph regarding consultation with the Iditarod National Historic Trail (INHT) Advisory Council, the state requests that "significant management issues that affect the IHTA" be further clarified for the same reasons noted above, i.e. maintaining agency management authorities. This could be clarified by listing or citing examples of significant issues, and specifying that the Advisory Council's recommendations are non-binding. The state also suggests that each managing agency which may ultimately sign this agreement be provided an opportunity to assign a representative to the Advisory Council.

E. Liability

The state recommends that the following provision be added to the Liability section.

* Each party agrees that it will be responsible for its own acts and the results thereof and each party shall not be responsible for acts of the other party(s). Each party also agrees that it will assume to itself risk and liability resulting in any manner under this agreement.

F. Administration

The state suggests that the first sentence in this section be modified to read: "This interagency agreement . . . shall continue in force until terminated by any party by providing notice in writing 120 days in advance of the intended date of termination."

The following additional provisions are recommended for inclusion in this section.

* Nothing in this agreement shall preclude the adoption or amendment of existing MOA's on specific management authorities.

* Nothing in this MOA shall obligate any party in the expenditure of funds, or for future payments of money, in excess of appropriations authorized by law.

* No member of Congress, Commissioner, federal or state official or representative shall be admitted to any share of part of the agreement or to any benefit that may arise therefrom.

* Nothing in this agreement shall limit the state's ability to operate, maintain or expand the state's existing improved transportation system (including rail).

* Nothing in this agreement affects the validity of state Revised Statute (RS) 2477 rights-of-way claims to all, or parts of, the Trail.

* This agreement recognizes that maintenance, operation, and improvement of affected community street systems and airports are consistent with Trail management objectives.

Conclusion

In view of the comments and suggestions noted above, it may be useful to convene a meeting of agency representatives to discuss the state's concerns. Please call this office when you are ready to proceed so we can work out the next step(s) toward developing a mutually acceptable agreement.

Finally, several agencies noted that the MOA appropriately does not explicitly address use restrictions of general application along the Trail. There may be segments of the Trail where certain use limitations (e.g. winter use only) may be appropriate. However, the state presumes that any such proposals should be handled on a site-specific basis by the managing agency(s). As a starting point to further address this issue, the state suggests that the INHT Advisory Council consider conducting a comprehensive review of the Iditarod Trail System to develop recommendations regarding which Trail segments, if any, would benefit by selected use restrictions. If such an effort is undertaken, it will be important to consult with user groups and managing agencies to minimize potential impacts on local uses and regional transportation patterns.

On behalf of state agencies, thank you for the opportunity to review this draft Memorandum of Agreement concerning the Iditarod Trail. Please call if you have any questions and/or to discuss the state's concerns. We look forward to continuing to work with BLM on this cooperative effort.

Sincerely,

Robert L. Grogan
Director

by Sally Gibert
State CSU Coordinator

Enclosures

cc: Mr. Mike Penfold, State Director, Bureau of Land Management
Commissioner Brady, Department of Natural Resources
Commissioner Collinsworth, Department of Fish and Game
Commissioner Hickey, Department of Transportation and Public Facilities
Commissioner Kelso, Department of Environmental Conservation
Mr. Rod Swope, Office of the Governor
Ms. Phyllis C. Johnson, Alaska Railroad Corporation

sg/29

all applicable environmental laws, Executive Orders, and other related requirements. If full compliance is not possible by the time the FEIS or FONSI is prepared, the FEIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. Approval of the environmental document by the Administration constitutes approval of any required findings and determinations that are contained therein.

(b)(1) Sections 3(d) and 5(i) of the UMT Act require applicants for sections 3 and 5 grants to make several certifications regarding the local decisionmaking process. The report requirement of section 5(i) will be satisfied by a FONSI, FEIS, or an identification of the project as meeting the criteria for categorical exclusions.

(2) Section 5(h)(2) of the UMT Act requires the Secretary of Transportation to consider the environmental effects of any proposed section 5 project and make decisions based on the public interest. The provisions of this regulation satisfy the statutory provisions of section 5(h)(2).

[45 FR 71977, Oct. 30, 1980; 45 FR 85449, Dec. 29, 1980]

§ 771.135 Section 4(f) of the Department of Transportation Act.

(a)(1) No Administration action will use land from a significant publicly owned park, recreation area, or wildlife and waterfowl refuge or any significant historic site unless a determination is made that:

(i) There is no feasible and prudent alternative to the use of land from the property; and

(ii) The proposed action includes all possible planning to minimize harm to the property resulting from such use.

(2) Supporting information must demonstrate that there are unique problems or unusual factors involved in the use of alternatives and that the cost, environmental impacts, or community disruption resulting from such alternatives reaches extraordinary magnitudes.

(b) The Administration will determine the application of section 4(f). Any use of lands from a section 4(f) property shall be evaluated early in the development of the action when alternatives to the proposed action are under study.

(c) Consideration under section 4(f) is not required when the Federal, State, or local official having jurisdiction over a park, recreation area, or refuge determines that it is not significant. The Administration will review the official's determination, to assure its reasonableness. In the absence of a satisfactory determination, the section 4(f) land will be considered to be significant.

(d) In determining the application of section 4(f) to historic sites, the Administration in cooperation with the applicant will consult with the State Historic Preservation Officer and local officials and will identify properties on or eligible for the National Register of Historic Places. For purposes of section 4(f), a historic site is significant only if it is on or eligible for the National Register, unless the Administration determines that the application of section 4(f) is otherwise appropriate.

(e) Where Federal lands or other large public land holdings (e.g. State forests) are administered under statutes permitting management for multiple uses, and in fact are managed for multiple uses, section 4(f) applies only to portions of such lands which are in fact being used for or are designated in the plans of the administering agency as being for park, recreation, wildlife or waterfowl refuge, or historic purposes. The determination of significance shall be made by the official having jurisdiction over the lands. The Administration will review the agency's land use determination to assure its reasonableness.

(f)(1) Section 4(f) applies to all archeological sites on or eligible for inclusion on the National Register, including those discovered during construction, unless the Administration, after consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation, determines that the archeological resource is important chiefly for the information it contains and has minimal value for preservation in place. Such archeological resources which do not warrant preservation in

place may be recovered in accordance with a resource recovery plan developed in compliance with 36 CFR Part 800.

(2) For sites discovered during construction, where preservation of the resource in place is warranted, the section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take account of the level of investment already made and the review process, including the consultation with other agencies, will be shortened as appropriate.

(g) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made and determinations of significance changed late in the development of a proposed action. With the exception of the treatment of archeological resources in paragraph (f) of this section, an action may proceed without consideration under section 4(f) if the property interest in the section 4(f) type lands was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by section 4(f) prior to project approval.

(h) The evaluations of alternatives to avoid the use of section 4(f) land and of possible measures to minimize harm to such lands shall be presented in the DEIS or EA or, for those projects classified as categorical exclusions, in a separate document. The document containing the section 4(f) evaluation shall be provided for coordination and comment to the official having jurisdiction over the section 4(f) property and to the Department of the Interior and, as appropriate, to the Department of Agriculture and the Department of Housing and Urban Development. A time limit of 45 days shall be established by the Administration for receipt of comments.

(i) The discussion in the FEIS, FONSI, or separate section 4(f) evaluation shall specifically address:

(1) The reasons why alternatives to avoid a section 4(f) property are not feasible and purdent; and

(2) All measures which will be taken to minimize harm to the section 4(f) property.

(j) The final section 4(f) evaluation will be reviewed for legal sufficiency by the Administration Chief Counsel or designee.

(k) The Administration will document and make the section 4(f) approval either in its approval of the FEIS or in the ROD for actions processed with EIS's. In those cases where the section 4(f) approval is documented in the FEIS, the Administration will summarize the basis for its section 4(f) approval in the ROD. Actions requiring the use of section 4(f) property and proposed to be processed with a FONSI or classified as a categorical exclusion shall not proceed until notified by the Administration of section 4(f) approval. For those actions processed with a FONSI or classified as a categorical exclusion, any required section 4(f) approval will be documented separately.

(l) Circulation of a separate section 4(f) evaluation will be required when:

(1) A modification of the alignment or design requires the use of section 4(f) property after the categorical exclusion, FONSI, or FEIS has been processed;

(2) A modification of the alignment or design which significantly increases the use of section 4(f) land is found to be necessary after the original section 4(f) approval; or

(3) Another agency is the lead agency for the NEPA process, unless another DOT element is preparing the section 4(f) statement.

(m) An analysis required by section 4(f) may involve different levels of detail where the section 4(f) involvement is addressed in a tiered EIS.

(1) When the first tier broad-scale EIS is prepared, the detailed information necessary to complete the section 4(f) evaluation may not be available at that stage in the development of the action. In such cases, an evaluation may be made on the potential impacts that a proposed action will have on section 4(f) land and whether those impacts could have a bearing on the decision to be made. A preliminary determination may be made at this time as to whether there are feasible and

prudent locations or alternatives for the action to avoid the use of section 4(f) land. This preliminary determination shall consider all possible planning to minimize harm to the extent that the level of detail available at the first tier EIS stage allows. It is recognized that such planning at this stage will normally be limited to ensuring that opportunities to minimize harm at subsequent stages in the development process have not been precluded by decisions made at the first tier EIS stage. This preliminary determination is then incorporated into the first tier EIS.

(2) A section 4(f) approval made when additional design details are available shall include a determination that:

(i) The preliminary section 4(f) determination made pursuant to paragraph (m)(1) of this section is still valid,

(ii) There are no feasible and prudent design alternatives to the use of such section 4(f) land,

(iii) The proposed action includes all possible planning to minimize harm.

§ 771.137 International actions.

(a) The requirements of this regulation apply to:

(1) Administration actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans and Antarctica).

(2) Administration actions significantly affecting the environment of a foreign nation not participating in the action or not otherwise involved in the action.

(3) Administration actions which significantly affect the environment of a foreign nation and which provide a product or action producing a toxic emission or effluent that is prohibited or strictly regulated in the United States by Federal law.

(4) Administration actions outside the U.S., its territories, and possessions which significantly affect natural resources of global importance designated for protection by the President or by international agreement.

(b) If communication with a foreign government concerning environmental studies or documentation is anticipated, the Administration shall coordinate such communication with the Department of State through the Office of the Secretary of Transportation.

PART 772—PROCEDURES FOR ABATEMENT OF HIGHWAY TRAFFIC NOISE AND CONSTRUCTION NOISE

Sec.

AUTHORITY: 23 U.S.C. 109(h), 109(i); 42 U.S.C. 4331, 4332; 49 CFR 1.48(b).

SOURCE: 47 FR 29654, July 8, 1982; 47 FR 33956, Aug. 5, 1982, unless otherwise noted.

§ 772.1 Purpose.

To provide procedures for noise studies and noise abatement measures to help protect the public health and welfare, to supply noise abatement criteria, and to establish requirements for information to be given to local officials for use in the planning and design of highways approved pursuant to Title 23, United States Code (U.S.C.).

§ 772.3 Noise standards.

The highway traffic noise prediction requirements, noise analyses, noise abatement criteria, and requirements for informing local officials in this regulation constitute the noise standards mandated by 23 U.S.C. 109(i). All highway projects which are developed in conformance with this regulation shall be deemed to be in conformance with the Federal Highway Administration (FHWA) noise standards.

§ 772.5 Definitions.

(a) *Design year.* The future year used to estimate the probable traffic volume for which a highway is designed. A time, 10 to 20 years, from the start of construction is usually used.

(b) *Existing noise levels.* The noise, resulting from the natural and mechanical sources and human activity, considered to be usually present in a particular area.

(c) L_{10}. The sound level that is exceeded 10 percent of the time (the 90th percentile) for the period under consideration.

(d) L_{10}(h). The hourly value of L_{10}.

(e) *Leq*—the equivalent steady-state sound level which in a stated period of time contains the same acoustic energy as the time-varying sound level during the same time period.

(f) *Leq*(h). The hourly value of Leq.

(g) *Traffic noise impacts.* Impacts which occur when the predicted traffic noise levels approach or exceed the noise abatement criteria (Table 1), or when the predicted traffic noise levels substantially exceed the existing noise levels.

(h) *Type I projects.* A proposed Federal or Federal-aid highway project for the construction of a highway on new location or the physical alteration of an existing highway which significantly changes either the horizonal or vertical alignment or increases the number of through-traffic lanes.

(i) *Type II projects.* A proposed Federal or Federal-aid highway project for noise abatement on an existing highway.

§ 772.7 Applicability.

(a) *Type I projects.* This regulation applies to all Type I projects unless it is specifically indicated that a section applies only to Type II projects.

(b) *Type II projects.* The development and implementation of Type II projects are not mandatory requirements of 23 U.S.C. 109(i) and are, therefore, not required by this regulation. When Type II projects are proposed for Federal-aid highway participation at the option of the highway agency, the provisions of §§ 772.9(c), 772.13, and 772.19 of this regulation shall apply.

§ 772.9 Analysis of traffic noise impacts and abatement measures.

(a) The highway agency shall determine and analyze expected traffic noise impacts and alternative noise abatement measures to mitigate these impacts, giving weight to the benefits and cost of abatement, and to the overall social, economic and environmental effects.

(b) The traffic noise analysis shall include the following for each alternative under detailed study:

(1) Identification of existing activities, developed lands, and undeveloped lands for which development is planned, designed and programmed, which may be affected by noise from the highway;

(2) Prediction of traffic noise levels;

(3) Determination of existing noise levels;

(4) Determination of traffic noise impacts; and

(5) Examination and evaluation of alternative noise abatement measures for reducing or eliminating the noise impacts.

(c) Highway agencies proposing to use Federal-aid highway funds for Type II projects shall perform a noise analysis of sufficient scope to provide information needed to make the determination required by § 772.13(a) of this chapter.

§ 772.11 Noise abatement.

(a) In determining and abating traffic noise impacts, primary consideration is to be given to exterior areas. Abatement will usually be necessary only where frequent human use occurs and a lowered noise level would be of benefit.

(b) In those situations where there are no exterior activities to be affected by the traffic noise, or where the exterior activities are far from or physically shielded from the roadway in a manner that prevents an impact on exterior activities, the interior criterion shall be used as the basis of determining noise impacts.

(c) If a noise impact is identified, the abatement measures listed in § 772.13(c) of this chapter must be considered.