

Fairbanks North Star Borough
Comprehensive Trail Plan
Background Information

REVIEW OF THE EXISTING RECREATIONAL TRAIL PROGRAM

July 1983

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I. Summary

Trail oriented recreation has evolved in interior Alaska as an activity which embodies the history and spirit of the "Alaskan Lifestyle" and which is well suited to the arctic environment. Paths which were originally cleared for mining access, logging roads, trap lines or gold rush transportation routes have become natural corridors for trail recreation. The Alaska Public Survey, a multi-agency comprehensive analysis of recreation, community attitudes and related issues conducted in 1979, showed that trail related activities are the favorite outdoor recreation activity of residents of interior Alaska. In fact, trail recreation was chosen by 23% of the respondents, nearly twice as often as tent camping, the second most frequent choice at 13%. Support for a recreational trail system within the Fairbanks North Star Borough was more recently demonstrated in the Borough's Parks and Recreation Comprehensive Plan Survey where 66% of the respondents favored the Borough continuing its recreational trail program and in the Comprehensive Land Use Plan public workshops held during fall 1982.

As the population of the Fairbanks area is increasing, trail recreation opportunities are losing to the competition of other land uses. Land formerly within the public domain has gone into private ownership causing recreation on the land to change from an appropriate activity to "trespass" status. As existing recreational trails have been closed to public use the demand for legal protection of trails has greatly increased. Because of this increasing public demand the Fairbanks North Star Borough initiated a recreational trail program in 1979. The intent of the program was to identify and protect portions of the existing trail system before costs became too great. The Borough Assembly identified its support for establishing a trail system by adopting a recreational trail policy and establishing the Trails Advisory Commission. Since that time the Borough has devoted substantial efforts to initiate this program designed to preserve an essential component of local recreation opportunities.

However, in the approximately four years since the trails program was initiated, its success has been very limited. The only trails opened to the

public under the recreational trail program have been bicycle paths. The three principle reasons why other trails have not been dedicated to public use are:

1. The most critical problem has been the lack of a Comprehensive Trail Plan to identify which trails are intended for permanent protection and what the specific intent and scope of the trail program is. The existing Five Year Trail Plan is outdated and does not contain sufficient information to guide the trail program.
2. The second critical problem is the lack of staffing to assist the Trails Advisory Commission and Division of Community Planning in duties pertaining to trails assigned to them by ordinances and resolutions of the Assembly.
3. The third major problem is the inconsistencies and lack of acquisition authority granted by the Assembly in their trail policy.

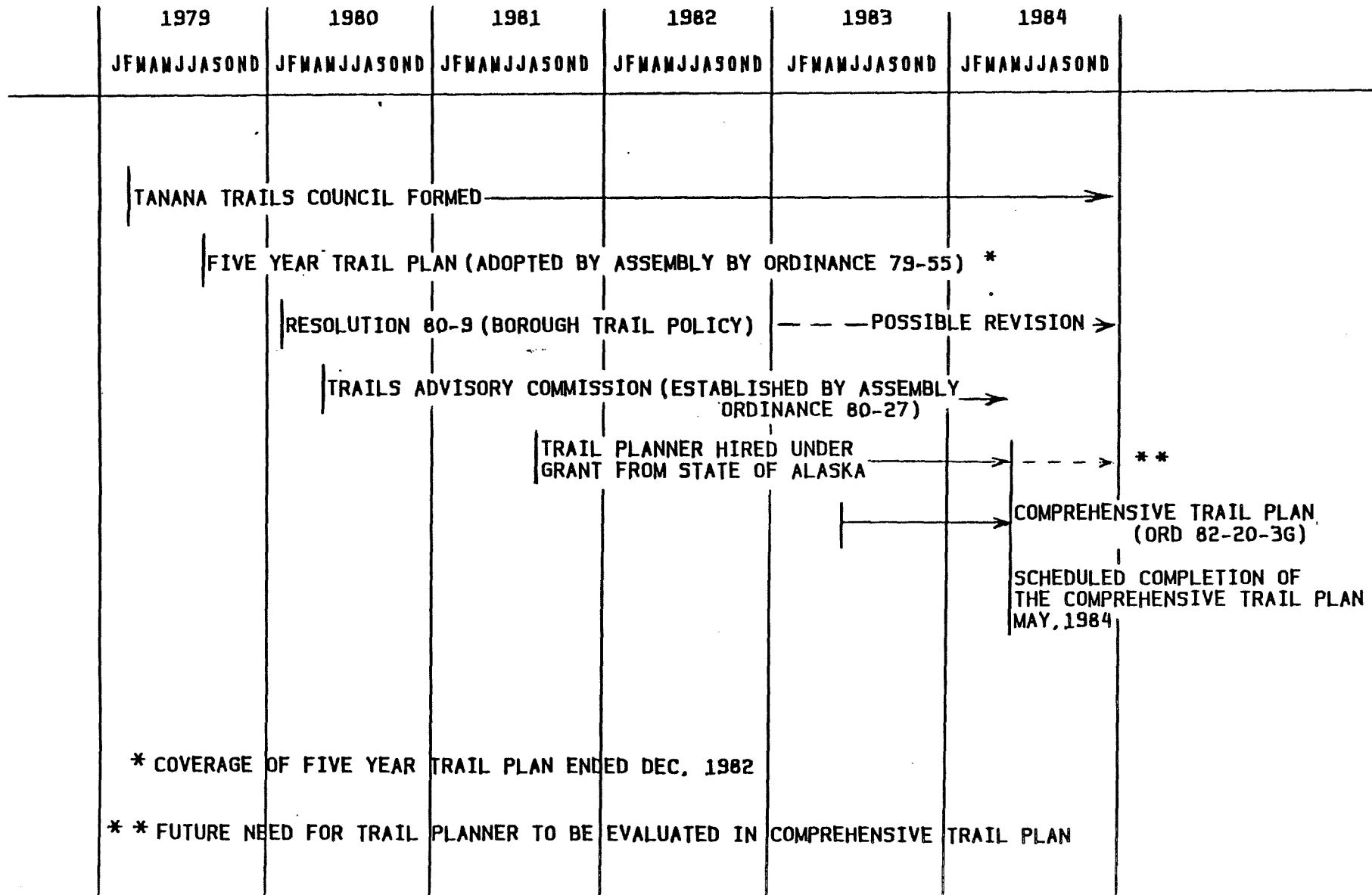
Fairbanks still has the opportunity to retain and develop one of the finest recreational trail systems in the entire country but the Borough must act quickly because existing trails are being lost under the current program and costs of acquiring rights-of-way and constructing trails are increasing.

In order for the recreational trail program to proceed in an organized manner it is absolutely essential that a Comprehensive Trail Plan be developed. This plan will serve as a guide in selecting trail acquisition priorities and will help to identify potential funding sources and clarify legal and maintenance questions involving trails. Once the Comprehensive Trail Plan is completed it will help provide guidelines to enable the Trails Advisory Commission to become more effective in making recommendations to guide the trail program.

The following paper describes the history and status of the trail program prior to initiation of the Comprehensive Trail Plan in much greater detail. It explains some of the past problems with the Borough trail program and indicates areas where changes may be needed.

FIGURE 1

FLOW CHART OF THE RECREATIONAL TRAIL PROGRAM



* COVERAGE OF FIVE YEAR TRAIL PLAN ENDED DEC, 1982

** FUTURE NEED FOR TRAIL PLANNER TO BE EVALUATED IN COMPREHENSIVE TRAIL PLAN

II. Initiation of the Trail Program

A. Benefits of Trails

Trail recreation is an important pastime the entire year around for residents of the Fairbanks North Star Borough. Trails can be used for a variety of activities and seasons ranging from cross country skiing and dog mushing in winter to hiking and horseback riding in the warmer months. Because trails can be extremely versatile in their use, and their construction and maintenance costs are relatively low, they can be very cost effective public recreation investments. This is especially true in Fairbanks, where pre-existing trails can almost entirely negate construction costs and major efforts can be focused on right-of-way acquisition.

Even in Alaska, where many wide open spaces still exist, trail recreation opportunities close to residential areas can greatly reduce the cost of recreation. As fuel prices continue to rise, the importance of recreating close to ones residence will increase proportionately. A well planned trail network reaching close to homes and businesses can also be used as an alternate transportation method. Open spaces retained as trail corridors provide psychological benefits valuable to trail users and adjacent land-owners alike. The benefits of an uncrowded atmosphere will become increasingly important as the City of Fairbanks continues to expand. This is especially critical in the Fairbanks area where there are currently no large open space reserves such as the Chugach National Forest or Chugach State Park which serve residents of Anchorage. Fairbanks has no geographic barriers to urban sprawl.

Establishing a permanent trail system around Fairbanks will provide many benefits for the community besides recreation. It will help promote economic development through increased tourism and by making the Fairbanks North Star Borough a more attractive place for business to locate. Neighborhood trails provide training grounds for local athletes which can sometimes result in national recognition for the Fairbanks community. A recent example is the publicity Fairbanks received as a

result of Mara Rabinowitz's performance at the Junior Olympics in Lake Placid, New York during the winter of 1981-82.

B. Historical Perspective

Trails within the Fairbanks North Star Borough originated from a wide variety of circumstances ranging from historical indian trade routes to paths cleared when gold dredges were moved from one creek to another. More recently, routes have been cut specifically for skiing, dog mushing or other trail recreation activities.

Because the majority of these trails were originally located on public lands no legal rights-of-way were required. As land has been transferred into private ownership by the federal, state and borough governments many of these trails have been closed to public recreation. As more trails within the Borough became closed to public recreation, a group of concerned trail users formed the Tanana Trails Council. The goal of the Council was to work with government agencies and the public to preserve some of the existing trail system. In response to the increasing public demand, in 1979 the Fairbanks North Star Borough Division of Community Planning prepared a Five Year Trail Plan which was adopted by ordinance by the Borough Assembly as part of the Borough's Comprehensive Development Plan. The Five Year Trail Plan was followed by the Assembly adopting a resolution establishing the Borough trail policy and an ordinance establishing the Trails Advisory Commission. Several members of the Tanana Trails Council were chosen to be on the Trails Advisory Commission. In September 1981 a Trails Planner was hired on a temporary basis under a grant from the State of Alaska. On May 2, 1983 the Borough Assembly adopted Ordinance 82-20-3G which appropriated funds to develop a Comprehensive Trail Plan. (See Figure 1.)

The two ordinances and the resolution adopted by the Assembly between 1979 and 1980 firmly established the Borough Assembly's intent to respond to a public need by establishing a recreational trail program. The appropriation of funds for the Comprehensive Trail Plan in May 1983 re-affirmed the Assembly's support for the trail program.

Although the Comprehensive Trail Plan Program has now been funded, the Assembly previously rejected two other trail program proposals. In the spring of 1982 when it became apparent that trails were continuing to be lost under the existing authority the Division of Community Planning and Trails Advisory Commission proposed an ordinance to require easements for priority trails in new subdivisions. After several public hearings and extensive revision the ordinance was recommended for approval by the Platting Board. The ordinance was then unanimously approved by the Planning Commission. When brought before the Assembly all parts of the ordinance pertaining to trails were deleted. At that time, the Assembly indicated there was a need to clarify which trails would be covered by the ordinance and what the public involvement process in determining priority trails would be. Shortly thereafter the Assembly deleted further funding for the Trail Planner position in the Division of Community Planning's FY 82/83 budget. These two actions of the Assembly demonstrated there was a lack of understanding among the Assembly of the problems of the trail program and the Division of Community Planning prepared a paper to better explain the existing situation. The paper, entitled "Requirements for Successful Implementation of the Fairbanks North Star Borough Recreational Trail Program", strongly recommended preparation of a Comprehensive Trail Plan to provide the trail program with goals, workable policies and direction. This paper in combination with a substantial show of public support for trails during the Parks and Recreation Comprehensive Plan process, the Comprehensive Land Use Plan public meetings and the Federal Shared Revenue Fund hearings resulted in passage of Ordinance 82-20-3G which is now funding the Comprehensive Trail Plan Program.

The recreational trail program was put in the jurisdiction of the Division of Community Planning because the initial Five Year Trail Plan was prepared in the Division of Community Planning a great deal of the work involves review of subdivisions through the platting process, and establishing guidelines and procedures for the trail program is an appropriate planning activity. However, having the trail program separated from the Division of Parks and Recreation has led to a neglect of the recreational trail system when funding is determined for the Borough's overall recreational needs.

The draft Parks and Recreation Comprehensive Plan has recommended that planning of trails be continued in the Division of Community Planning but the trail program should eventually be placed within the Division of Parks and Recreation.

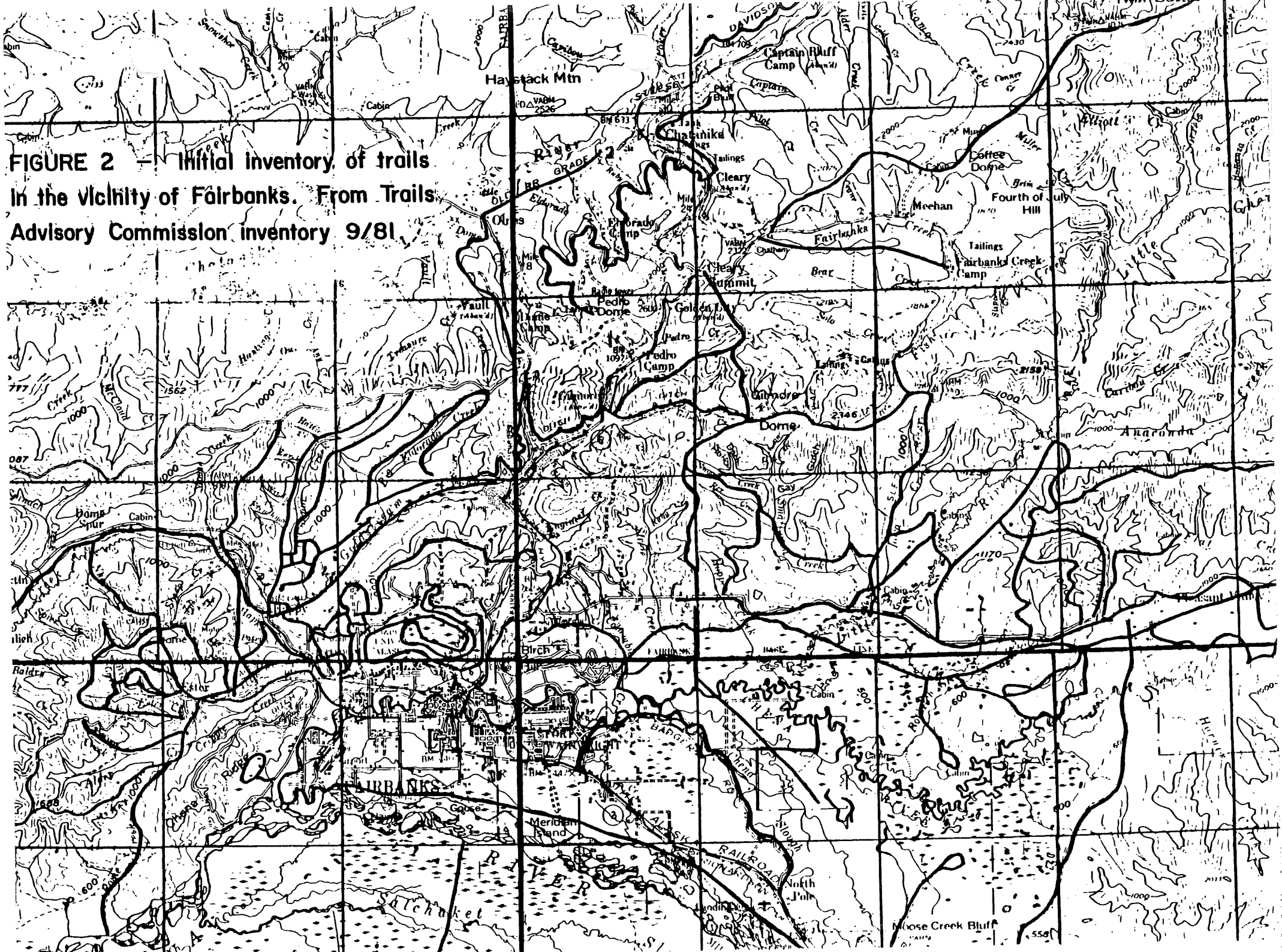
C. Existing Trail Facilities

One of the first priorities of the Borough Trails Advisory Commission was to obtain an inventory of routes within the Borough used for recreational purposes. The Commission established an inventory committee which prepared a list and set of maps of the initial trail inventory (see Figure 2). Although over 50 trails currently used for skiing, dog mushing, horseback riding, snowmobiling, motorbiking, bicycling, hiking and jogging were identified, none of the trails (with the exception of bike paths) have complete legal right-of-way.

These form the de-facto recreational trail system now present within the Borough and they are used by persons familiar with their locations and best uses. The emphasis of the trail program is to keep a portion of these trails open to a wide variety of trail recreation types. However, in certain cases trails must be designated for specific uses or closed to certain uses. Motorized trails are not considered appropriate in dense residential neighborhoods but it is still very important to provide for motorized trail recreation needs. Identifying and protecting the most outstanding trails in this de-facto trail network is the main purpose of the trail program. Without complete legal rights-of-way the Borough cannot dedicate these trails to public use.

Since the Fairbanks North Star Borough initiated the recreational trail program, the only trails opened to the public have been bicycle paths. The principle reasons for this are that bike paths and their planning can be funded as highway projects, and a bike path can be located within a highway right-of-way.

FIGURE 2 — Initial Inventory of trails
in the vicinity of Fairbanks. From Trails
Advisory Commission inventory 9/81.



Department of Transportation has major involvement in construction and maintenance of bicycle paths. The role of these other agencies in providing trail recreation opportunities will be dealt with in much greater detail in the Trail Inventory and Jurisdictional papers.

Several trail projects within the recreational trail program are in progress at this time. The Skarland Ski Trail and Jeff Studdert Dog Mushers Trail have had extensive survey work completed and some rights-of-way obtained. The right-of-way for the Skarland Ski Trail is not almost complete with only two parcels remaining which do not have legal access. An application for a right-of-way for the Circle-Fairbanks Trail has been filed with the Alaska Division of Lands. Other trail projects which were included in the original Five Year Trail Plan or have been authorized, in effect, by the Assembly approving the acceptance of grants or expenditure of funds may be completed at some time in the future. However, under the existing trail program there is no assurance that any of the trails will ever be dedicated to the public.

The Borough has opened a system of ski trails to the public at Birch Hill and recently dedicated land at Two Rivers and Salcha principally for trail recreation. These areas function as ski parks rather than an interconnected system of trails as proposed in the recreational trail program. These ski parks require a major financial commitment from the Borough to dedicate land and sometimes to construct the trails. This type of park is designed to serve a large region where people drive to get to the park to recreate rather than use the trail to commute and recreate within their own neighborhood. These trails principally serve the cross country skiing component of the trail recreating public. Other trail users such as snow machiner's and horseback riders still lack public trail facilities.

Other State and Federal agencies which operate within the Borough also provide some trail recreation opportunities. The Bureau of Land Management manages the Pinnell Mountain Trail and the White Mountain Summer and Winter Trails which all have trailheads just outside the Borough boundaries. The Alaska Division of Parks has several miles of hiking trails in the Chena River State Recreation Area. The Alaska Department of Fish and Game and the Borough School District manage short nature trails. The Alaska Division of Lands has a major role in determining needs for trail and greenbelt corridors in State land disposals as well as delineating trail rights-of-way on State lands. The Alaska

III. Analysis of the Present Trail Program

A. Five Year Recreational Trail Plan

The Five Year Recreational Trail Plan, adopted by the Borough Assembly by Ordinance No. 79-55 (see appendix B) as part of the Borough Comprehensive Development Plan was an estimated work schedule for several specific trail projects. The trail plan outlined trail priorities by the fiscal year and its coverage ended during the 1981-82 year (See appendix A). The primary purpose of the plan was to provide the Borough with the necessary requirements to obtain funding from the State under the Alaska Trails and Footpaths Grant Program.

Two trail projects in the Five Year Trail Plan, the Skarland Ski Trail and Jeff Studdert Dog Mushers Trail, were funded under the Alaska Trails and Footpaths Grant Program, and have had a substantial amount of work completed. The North Pole Bike Trail Project which was included in the Five Year Plan was completed with the use of Local Service Roads and Trails funds. The remaining four projects listed in the plan have never been actively pursued, largely because of a lack of funding. While the trails are still logical candidates to consider for public dedication, the Five Year Trail Plan does not include accurate descriptions or maps of their locations. One of the trails, the old Tanana Valley Railroad bed, is easily traced on a map. Another is listed in the plan as "Ester Community Trails". There are many trails around Ester and it is unclear exactly which trails are included in the plan.

The Five Year Recreational Trail Plan was useful in helping to initiate the trail program and obtain funding but it was not designed or intended to be used as a comprehensive trail plan. A great deal of confusion exists among the public, both land developers and trail users, over which trails within the Borough are intended for public dedication and how they will be managed once dedicated.

An updated and truly "comprehensive" trail plan will greatly help to clear up some of the misconceptions on trail issues.

B. Recreational Trail Policy

The Borough Assembly adopted a policy to guide the establishment and management of a recreational trail system with Resolution No. 80-9 on February 28, 1980 (see Appendix B). The resolution identified several reasons why the Borough should work to establish a trail system. The reasons are:

1. It is in the best public interest to establish and manage a system of recreation trails.
2. Changing land ownership is reducing opportunities for establishing and maintaining a recreation trail system at reasonable costs.
3. Portions of the existing trail network are being lost for lack of a clear policy and an aggressive acquisition program.
4. The Fairbanks North Star Borough Assembly has adopted a Five Year Trail Plan as an element of the Comprehensive Plan.

While the resolution includes adoption of the Five Year Trail Plan as part of the Comprehensive Plan as a reason for establishing a trail system, at the same time, the resolution fails to recognize that the Five Year Trail Plan is not a comprehensive trail plan, and there is a lack of organized planning to guide the trail program. The resolution goes on to state that, "a Comprehensive Trail Plan shall be actively implemented within the limits of available funds and manpower." The passage of Ordinance 82-20-3G in May, 1983 was the first action taken by the Assembly toward development of a Comprehensive Trail Plan. A detailed plan has been lacking for several years and the trail program has suffered as a result.

While the resolution incorporates such language as "lack of a clear policy and aggressive acquisition program" and "a Comprehensive Trail Plan shall be actively implemented" (emphasis added), the policy itself is very passive and contains provisions which make public dedication of trails extremely difficult. Some of the problems and contradictions of a literal interpretation of the existing trail policy are described in the following narrative. Please refer to the Borough Trail Policy in Appendix B (Resolution 80-9).

Section 1a of the recreational trail policy states, "The Borough shall acquire right-of-way easements only and not develop or maintain recreational trails. Section 2d which deals with easement policy states that when easements are acquired, "trail alignment shall be adjusted...in order to maintain property use and development rights". While alignment adjustment is a desirable mechanism in order to retain the trail and assure minimal disturbance of subdivision plans, it essentially requires developing new sections of trail. This contradicts Section 1a. which prohibits development of new trails. Trail reconstruction can also require substantial effort and equipment.

Section 1b of the policy states that "easement acquisition funds shall be limited to sources other than property tax and sales tax revenues, unless a services area has been established for this specific purpose." Because Service Areas have not been established for trails, the effect of the policy is to require outside sources of funds such as state or federal grants, to purchase trail easements for Borough residents, with no local financial support provided.

Section 1c of the policy states that "the Borough shall do nothing to incur liability associated with trails by developing and maintaining rights-of-way". This implies that liability will be incurred whenever a trail is developed or maintained. If a trail is properly constructed to safe standards, the Borough is no more likely to incur liability than with the construction of other recreational facilities or the dedication and construction of a public street as required during subdivision.

Section 1d of the trails policy states that Eminent Domain powers shall not be utilized for the acquisition of recreational trail easements. This policy is agreed upon by trail users and land developers alike. It should be noted that Eminent Domain is a distinctly different concept and action than that which would require trail easements on land being subdivided. Eminent Domain is a forced taking of land for a price for a public good while a requirement of trail easements in subdivisions is designed to help provide a reserve of open space for future owners of the lots. The subdivider of the land is required to establish trail easements in exchange for privilege of dividing a parcel of land to derive a profit in the same manner he is required to dedicate access and provide utility easements. When a person subdivides land into smaller lots there is increased pressure on the resources of the community and the subdivider helps to alleviate the pressure by reserving some recreational space.

Section 2 lays a sound foundation for an easement acquisition policy by allowing flexibility in location, time of year, and type of use of trail easements. The guidelines for selecting easement acquisition priorities are well designed in Section 2e and may also be useable as a part of the criteria for evaluating a trail for inclusion in the Comprehensive Trail Plan.

Section 3a of the trail policy describes the three parts which "shall comprise the Comprehensive Trail Plan". These requirements have no relation to the Five Year Trail Plan previously adopted by the Assembly. Even though the Five Year Trail Plan does not meet the Assembly's requirements for a Comprehensive Trail Plan (as set forth in the policy) it has been considered the Borough's Comprehensive Trail Plan since it was written.

Section 3a also states that "the Borough can guarantee legal public access only to those trails in Part III of the Comprehensive Trail Plan".

With no Comprehensive Trail Plan ever written which included such a "Part III" opening trails for public use has been an impossibility within the

parameters of the trail policy. The criteria for Part III trails listed in the policy includes trails having legal public access reserved by means of an easement, on site survey and recorded plat. Completing this entire process for a trail can be extremely expensive and may not always be necessary. Trails can often be adequately documented by means such as aerial survey, legal descriptions and signed agreements.

The result of the above policy requirements is that the Borough cannot open recreational trails to the public. Portions of trails may become legally platted in a manner qualifying them under the criteria of Part III but establishing entire trails becomes extremely difficult. In most instances unless all of a trail exists none of the trail is of value.

Section 3b of the policy states that "the Planning Department shall maintain the official trail records..." The Division of Community Planning has never been provided with staff or funding to accomplish this task until the passage of Ordinance 82-20-3G.

Section 4b of the trail policy states that "All federal, state, borough and private subdivisions and waivers of subdivisions presented to the Planning Commission for review and approval shall be assessed for trail system needs." There is no mention of who will accomplish this task, however, if trails were well documented it could become a Platting review function. Section 4b. goes on to say that "voluntary easements will be encouraged for the public good, but failure to grant such easements shall not prejudice the developers' right for approval." Recent experience indicates that this procedure will not result in dedicated trails with complete rights-of-way. Developers are not necessarily in business to further the "public good." Some developers are interested only in maximizing profits. They contend, whether validly or not, that trail easements may scare off potential customers or at least that the easement should be paid for.

If the Recreational Trail Policy is to be implemented on a practical basis, the policy must be revised to eliminate contradictions and there must be some continued Division of Community Planning support to accomplish duties assigned

by the policy. The amount of staff required is minimal in comparison to the benefits derived by the community.

Beyond these two issues the policy itself must provide some kind of realistic authority or incentives to acquire easements or dedications for trails included in the Comprehensive Trail Plan.

The policy must allow rerouting sections of trails (i.e. rerouting trails within subdivisions to minimize disturbance of lot design) and incorporate wording which does not automatically assume liability will be incurred if portions of trails are constructed.

C. Trails Advisory Commission

From its inception the Trails Advisory Commission has had a difficult time operating with no Division of Community Planning staff support. Members of the Commission are dedicated, hardworking volunteers, but there are limitations on the amount and type of work they can accomplish. The Commission cannot review every subdivision, waiver of subdivision, and vacation of easement brought before the Platting Board. The Commissioners cannot always act immediately if the need dictates and it can be hard for them to deal with state and federal agencies in a consistent manner. They have difficulties analyzing detailed legal situations dealing with rights-of-way.

The Commission has reacted to trail crisis situations as they occur, rather than planning ahead in an organized manner. The tendency has been toward protecting a trail when it is threatened rather than identifying priority trails and actively seeking to protect them. This has contributed to an uncertainty among the public about which trails the Borough is seeking to protect. In addition, when the Commission seeks immediate solutions to a problem situation, it is difficult to insure these solutions will be consistent with the Borough Trail Policy.

A second problem the Trails Advisory Commission has experienced is the lack of an established procedure by which the Commission can communicate its findings and recommendations to the Borough Assembly. When resolutions are adopted and sent to the Assembly, the Trails Commission never receives a response, nor any indication that the material has been read. The Assembly makes no effort to support the Trails Advisory Commission's Resolutions. An example of the Assembly ignoring a resolution of the Trails Advisory Commission is the Commission's Resolution 80-3. This resolution recognized the critical need for a Division of Community Planning staff member to serve as a liason with the Commission and other agencies. This position was not funded by the Assembly. A second example is Resolution 82-2 which endorsed the trail and utility easement ordinance. The trail easement portion was deleted from the ordinance by the Assembly after approval was recommended by the Platting Board and Planning Commission.

The result of the Assembly's lack of response on trail issues is that the public is deceived by thinking that some action will follow if they bring their concerns before the Trails Advisory Commission. The Assembly has also developed a false sense of the trail system's well being, because the public is not appearing before them but in front of the Trails Advisory Commission. More recently, as a result of the Parks and Recreation Comprehensive Plan and the Comprehensive Land Use Plan, the Assembly has gained a greater awareness of the communities' concern for trails. This better understanding has, in turn, been reflected by approval of funding for the Comprehensive Trail Plan Program.

Once funding is received it is difficult for the Trails Advisory Commission to monitor the projects to insure they are completed in an efficient manner which is compatible with the trail use. In the past, with no Division of Community Planning staff to guide the projects and administer the funds, many trail projects have been turned over to the Borough Division of Engineering or the State

Department of Transportation and Public Facilities. This makes it difficult for the Division of Community Planning to maintain the official trail records as required under the Borough Trail Policy. While these other divisions or agencies administer the projects as efficiently as possible they are not geared or budgeted for trail projects, thus they become low priorities. At times this can result in a poor utilization of what limited funds are available for trail projects.

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Department of Transportation and Public Facilities. This makes it difficult for the Division of Community Planning to maintain the official trail records as required under the Borough Trail Policy. While these other divisions or agencies administer the projects as efficiently as possible they are not geared or budgeted for trail projects, thus they become low priorities. At times this can result in a poor utilization of what limited funds are available for trail projects.

In order to be more effective the Trails Advisory Commission needs to be provided some staff assistance in the Division of Community Planning. This is important for public contact, communication with other agencies, monitoring trail projects and coordination of the Trails Advisory Commission. This staff assistance has been temporarily funded by approval of the Comprehensive Trail Plan Program. It is also essential that a procedure for more effective communication between the Trails Advisory Commission, Planning Board, Planning Commission and Assembly be established.

D. TRAIL FUNDING

From the beginning, the Borough's Trail Program has been funded by grants from the State of Alaska or Federal funding programs. The Five Year Recreational Trail Plan was written as a requirement for funding under the Alaska Trails and Footpaths Grant Program. Other State funding sources have included the Local Service Roads and Trails Program and direct appropriations from the State Legislature. The current Comprehensive Trail Plan Program is funded through Federal Shared Revenue Funds. The only financial support the Borough has provided has been through very limited Division of Community Planning staff time, which has never been officially budgeted for the trail program.

Ordinance 79-55 (see Appendix B) which adopts the Five Year Trail Plan as part of the Comprehensive Plan states that "the State of Alaska has funding available, on a continuing basis, for the acquisition, development and maintenance of recreational trails within local jurisdictions." This statement is no longer accurate. Funding has been discontinued under the

Alaska Trails and Footpaths Grant Program, and Local Service Roads and Trails funding is very limited. Trail projects are low priorities both within the Borough's Programs for Progress requests and direct legislative funding.

A bill (S.B. 795) was brought before the State Legislature during the 1981-1982 session which was designed to provide a funding source for outdoor recreation projects within local government jurisdictions. The bill was introduced again during the 1982-83 legislative session but failed to pass. If the bill is passed in the future with the same measures it now contains, it will provide funding on a 75:25 matching funds basis. With this program the Borough would have to make a financial commitment (25%) in order to receive State funds.

Federal grants are possible under a variety of programs in addition to Federal Shared Revenue Funds. Availability of Federal grant funds is contingent on the presence of staff to apply for and administer the grants.

Another possibility for financial assistance is through donations from private foundations and corporations. There are relatively few of these philanthropic entities in Alaska but many in the Pacific Northwest operate on a regional basis which includes Alaska. This type of donation is generally oriented towards specific projects, and requires a demonstration of support by the local government applying.

Almost all potential funding sources for the trail program require matching funds or some type of definite support from the local government administration. The Borough Assembly must be willing to provide some support and funding for the recreational trail program.

E. TRAIL PLANNER POSITION

Prior to the passage of Ordinance 82-20-3G the Trail Program and Trails Advisory Commission have never been supported with funds designated for Division of Community Planning staff time to work on trail matters. The Borough

trail policy states that "the Planning Department shall maintain the official trail records...", that "all Federal, State, Borough and private subdivisions and waivers of subdivisions ...shall be assessed for trail system needs" and that "a Comprehensive Trail Plan shall be actively implemented", yet, until recently, no provisions were made to accomplish these tasks.

In the past various employees in the Division of Community Planning have been assigned to spend a portion of their time working with the trail program. The results of having no Comprehensive Trail Plan or permanent position assigned to the trails program has been poor record keeping, a lack of response to public requests, no support for the Trails Advisory Commission, and a drift away from established policies.

In September 1981, a Planner I was added to the Division of Community Planning staff to work on trails under an Historic Trails Grant from the State of Alaska. Under the terms of the grant the main priority of the Trail Planner was to re-establish the historic Circle-Fairbanks Gold Rush Trail. In addition to the Circle-Fairbanks Trail project, the Trails Planner has served to coordinate the Trails Advisory Commission and the Division of Community Planning. The Planner has acted as a liason between the Trails Advisory Commission, different divisions within the Borough and various State and Federal agencies. The Planner provides a reliable, contact source for the public on trail issues.

The Trail Planner has worked closely with the Trails Advisory Commission to develop agendas for meetings and insure that actions of the Commission are within the guidelines of the Borough trail policy. The Planner monitors all subdivisions and waivers of subdivision requests for trail system needs. The Borough Trails Advisory Commission had formerly been monitoring all state and borough land disposals but could not make the time commitment necessary to check each item brought before the Platting Board. The lack of a Comprehensive Trail Plan has made it extremely difficult to determine the importance of a trail when the land which it crosses is being subdivided.

The Trails Planner can provide expertise in outdoor recreation planning which includes the ability to work with the public, federal and state agencies and departments of the Borough in an organized, consistent basis, and to analyze situations such as trail right-of-way conflicts.

As the public and state agencies have become aware of the Trail Planner position, calls on trail issues have been directed to the Trail Planner rather than bounced between different agencies and departments while the person looks for someone who will respond to their needs.

The Trail Planner position originally funded under the Historic Trails Grant, is now funded by the Comprehensive Trail Plan Program. The Comprehensive Trail Plan Project will now have priority over all other issues in order to complete the project in the one year funding time frame. The Planner will work on other issues as time allows but, if necessary, the public will be directed to members of the Trails Advisory Commission or other sources to get a response to their needs.

It is envisioned that clarifying the trail program by adoption of a Comprehensive Plan will reduce future need for staff and increase effectiveness of the Trails Advisory Commission. Some staff support will still very likely be needed following completion of the plan, in order to administer grants and monitor projects to ensure funds are used efficiently.

F. Principal Property Owner Concerns

The two major property owner concerns on trail issues identified in past public hearings deal with the possibility of landowner liability and policing trails against unauthorized uses. Both of these issues or conflicts are difficult to entirely prevent, however, there are existing state laws which help to minimize these problems.

Many people are concerned that a property owner will be held liable if a trail user is injured while using a trail which crosses an individuals property. To the Division of Community Planning and Borough Attorney's Office's knowledge, there has never been a liability case by a trail user against a landowner in the Borough or the State. The Borough Attorney's Office has cited Section 19 McQuillian Municipal Corporations, to explain that liability of an abutting landowner results from the fact that he creates or maintains the thing from which the injury results (see Appendix C). Thus, a landowner can be held liable only if he creates a dangerous situation.

Alaska statutes Section 09.45.795 states that a landowner is not liable for injury or death of a person who enters into the land if the injury results from a natural condition of the property and the person has no responsibility to compensate the owner for use of the property (see Appendix C).

These two legal citations lay a solid foundation to limit landowner liability. Each liability case will still be determined based on facts of the particular situation, but if a landowner does not collect a fee or create a hazardous situation it is extremely unlikely he would be found liable.

People are also concerned with how unauthorized uses of trail corridors will be controlled. The principle issue is how motorized vehicles will be kept off trails which are designated for non-motorized use only. Much of this fear is based upon peoples experiences with non-designated trail routes such as utility corridors. These corridors are often used for motorized recreation because they are in convenient locations and there are no commonly recognized rules governing them. When a trail is designated and marked for a particular use the problem is much less severe. People within a neighborhood will recognize the trail's use and control themselves and their children accordingly. There will still be violations of these rules at times, but once a trail is dedicated the problems should be much less severe. There have been no motorized vehicle violations reported to the Borough on the Skarland Ski Trail easements. In conversations with landowners along the trail some individuals report occassional use of the trails by motorized vehicles but that the problem has never been severe.

If inappropriate use of trail easements did become a severe problem violators could be prosecuted for criminal trespass in the second degree (see Appendix C). While it can be difficult for a landowner to identify and report violators, legal recourse does exist.

The Borough must be willing to accept some responsibilities for ensuring trails are used for their intended purposes. While the Borough cannot be expected to continually police trails there should be a policy of assisting property owners to enforce designated uses of trails if the need arises. If the Borough accepts some responsibility for ensuring proper use of easements it will make it much easier to negotiate easements with property owners. Concerns and potential conflicts with private property owners can be minimized if trails are retained in public ownership whenever possible.

IV. Conclusions

An extensive network of non-designated trails provides a major component of the recreation resources of the Fairbanks North Star Borough. In 1979 the Borough Assembly initiated action to reserve some of these trails for public use by adopting the Five Year Trail Plan as a component of the Comprehensive Development Plan. In the four years since the trail program was initiated it has become apparent that the existing policies and authorities are not adequate and important trails are continuing to be lost. Because of the deficiencies in the existing trail program, the Division of Community Planning recommended that funding and effort be directed to developing a Comprehensive Trail Plan. The plan will identify trail priorities and goals and policies which will eventually result in publicly dedicated trails.

Ordinance 82-20-3G which was introduced by Borough Mayor B. B. Allen and adopted by the Borough Assembly, established the funding and authority for preparation of a Comprehensive Trail Plan. Introduction and passage of this ordinance signified a renewed commitment by both the Mayor and Assembly to retain portions of the existing trail network for permanent public use.

APPENDIX A
FIVE YEAR
RECREATIONAL TRAIL PLAN

FAIRBANKS NORTH STAR BOROUGH PARKS AND RECREATION
COMPREHENSIVE FIVE-YEAR TRAIL PLAN

PRIORITY LIST

1977-1978

1. Skarland Ski Trail (Phase I) - mapping.

1978-1979

1. Skarland Ski Trail (Phases II & III) surveying - acquisition.
2. North Pole Bike Trail - construction.

1979-1980

1. Jeff Studdert Dog Mushing Trails (Phases I & II) - acquisition.
2. Ester Community Trail System (Phases I & II) - acquisition.
3. Tanana Valley Railroad Trail (Phases I & II) - acquisition.

1980-1981

1. Tanana Valley Railroad (Phase III) - construction.
2. Ester Community Trail System (Phase III) - acquisition.

1981-1982

1. Equinox Marathon Trail - acquisition.
2. O'Connor Creek Trail - acquisition.

PROJECT DESCRIPTION

1977-1978

1. Skarland Ski Trail (Phase I) - The Skarland System was created over twenty years ago by Ivar Skarland and is currently the course for the skiathon and for part of the Equinox Marathon. This 10.5 mile trail system begins, ends and is located mostly on the University of Alaska, Fairbanks Campus lands. It is composed of dirt-surfaced paths with an approximate tread width of five feet. The trail is used primarily by cross-country skiers in the winter and hikers, joggers and horseback riders in the summer. This trail has been the top priority of the Nordic Ski Club of Fairbanks for several years and has received national recognition when listed in the 1971 edition of John Caldwell's The New Cross-Country Ski Book. Skarland Ski Trail was also mentioned in the Alaska Recreation Trail Plan, as a community-class trail consisting of one mile of 50 foot recreational trail easement across private property in moderate terrain. Since that time, College Hills Estates and College

Hills-First Addition have added 1,800 feet of 20 and 30 foot wide recreational trail easement to the Skarland system. Phase I of the Skarland Trail project consisted of mapping and researching land ownership of the trail. This Phase will be accomplished with the financial assistance of an Alaska Trails and Footpaths grant. (Complete.)

1978-1979

1. Skarland Ski Trail (Phase II) - Negotiate with landowners for twenty-foot easements across private property (3.75 miles). Complete surveys and appraisals as necessary. During this phase if it becomes apparent that the existing trail placement is detrimental to proposed use of any parcel, negotiations will continue for a trail easement in a more appropriate location (i.e., along lot lines or within utility easements). If this contingency is required, an additional phase (Phase IV) will be added to the five-year plan to accommodate the required trail reconstruction. Should reconstruction be required, it could be accomplished using one or more of the following resources: volunteer organizations; local service roads and trails funding; Bureau of Land Management's Young Adult Conservation Corps; or additional Alaska Trails and Footpaths grants.

Skarland Ski Trail (Phase III) - Negotiate with the University of Alaska for easements, licenses or other use agreements for 6.5 miles of recreational trail. This phase has been broken out from easement acquisition of private lands for the purposes of the Alaska Trails and Footpaths Grant. Although much of the negotiations will occur contemporaneously, those on public lands should not require the expenditure of funds for easement acquisition.

2. North Pole Bike Trail - Construction of 1 mile of bicycle/multi-purpose trail. Eighth Avenue in North Pole to the New Richardson Highway, within Santa Claus Lane right-of-way. Local Service Roads and Trails funded.

1979-1980

1. Jeff Studdert Dog Mushing Trails (Phase I) - Portions of this trail system have been used since 1953 by the Alaska Dog Mushers Association as training and racing trails. This specific network of routes has been used during the North American Championship Races since 1969. This trail system begins and ends on Alaska Dog Mushers Association property on Farmer's Loop Road. The trail system is composed of dirt-surfaced paths with an approximate tread width of five feet. This phase is for negotiation with landowners for twenty-foot easements across private property (7.7 miles). Complete surveys and appraisals is necessary. During this phase if it becomes apparent that the existing trail placement is detrimental to proposed use of any parcel, negotiations will continue for a trail easement in a more appropriate location (i.e., along lot lines or within utility easements). If this contingency is required, an additional phase (Phase III) will be added to the five-year plan to accommodate the required trail reconstruction. Should reconstruction be required, it could be accomplished using one or more of the following resources: Volunteer organizations; local service roads and trails funding; Bureau of Land Management's Young Adult Conservation Corps; or additional Alaska Trail and Footpaths grants.

Jeff Stoddard Dog Mushing Trails (Phase II) - Negotiate with the State of Alaska and Bureau of Land Management for easements, licenses or other use agreements for 18.8 miles of recreational trail. This phase has been broken out from the easement acquisition of private lands for the purposes of the Alaska Trails and Footpaths grant. Although much of the negotiations will occur contemporaneously, those on public lands should not require the expenditure of funds for easements acquisition.

2. Ester Community Trail System (Phase I) - Much of this recreational trail system originated during the early 1900 mining years when most "trails" were major thoroughfares. Added to these historical trails have been newer trails, many of which were put in by hand by Ester volunteers in the past ten years. Those portions of the trail that were old mining roads have a gravel surface with an approximate tread width of fifteen feet. Those newer portions of the trail have a dirt surface and an approximate tread width of five feet. This phase is for negotiation with landowners for a 20 foot easement across private property (3.8 miles). Complete surveys and appraisals as necessary. During this phase if it becomes apparent that the existing trail placement is detrimental to proposed use of any parcel, negotiations will continue for a trail easement in a more appropriate location (i.e., along lot lines or within utility easements). If this contingency is required, an additional phase (Phase III) will be added to the five-year plan to accommodate the required trail reconstruction. Should reconstruction be required, it could be accomplished using one or more of the following resources: Volunteer organizations; local service roads and trails funding; Bureau of Land Management's Young Adult Conservation Corps; or additional Alaska Trail and Footpaths grants.

Ester Community Trail System (Phase II) - Negotiate with the State of Alaska and Bureau of Land Management for easements, licenses or other use agreements for 26.2 miles of recreational trail. This phase has been broken out from the easement acquisition of private lands for the purposes of the Alaska Trails and Footpaths grant. Although much of the negotiations will occur contemporaneously, those on public lands should not require the expenditure of funds for easements acquisition.

3. Tanana Valley Railroad Trail (Phase I) - This trail follows the historic site of the narrow-gauge Tanana Vally Railroad which once ran from the towns of Chena and Fairbanks to Terminal City or Chatanika, as it is called today. This route follows Goldstream Creek and terminates on Sheep Creek and Goldstream Roads. The trail is as yet unconstructed. This phase is for negotiation with land owners for twenty-foot easements across private property (3 miles). Surveys and appraisals will be completed as necessary.

Tanana Valley Railroad Trail (Phase II) - Negotiate with the State of Alaska and Bureau of Land Management for easements, licenses or other use agreements for 2.3 miles of recreational trail. This phase has been broken out from the easement acquisition of private lands for the purposes of the Alaska Trails and Footpaths grant. Although much of the negotiations will occur contemporaneously, those on public lands should not require the expenditure of funds for easements acquisition.

1980-1981

1. Tanana Valley Railroad Trail (Phase III) - Construction will be accomplished using one or more of the following resources: volunteer organizations, local service roads and trails funding; Bureau of Land Management's Young Adult Conservation Corps; or additional Alaska Trails and Footpaths Grants, as available. This trail will have a constructed tread width of approximately 5 feet. The surface will be dirt.
2. Ester Community Trail System (Phase III) - Expansion of Ester Community Trail System to include Rosie Creek and Ester Creek Trails. Negotiations with private land owners for an as yet undetermined amount of recreational easement.

1981-1982

1. Equinox Marathon Trail - This trail has been used once a year for the very popular foot race known as the Equinox Marathon. This trail is approximately 26.5 miles in length and begins and ends on the University of Alaska campus. This proposal is for easement acquisition across private and public properties. We have letters dating from 1968 stating non-objection to right-of-entry from the State of Alaska, Division of Lands, the Bureau of Land Management as well as many private land owners.
2. O'Connor Creek Trail - This is a five mile cross-country ski trail following O'Connor Creek from Goldstream Road to Monte Cristo Creek. This proposal is for easement acquisition across private and public properties.

APPENDIX B

BOROUGH ORDINANCES AND RESOLUTIONS

1. Ordinance No. 79-55 -- An Ordinance adopting the Five Year Recreational Trail Plan as part of the Comprehensive Plan.
2. Resolution No. 80-9 -- A Resolution establishing policy for creation and Management of a Recreational Trail System in the Fairbanks North Star Borough.
3. Ordinance No. 80-27 -- An Ordinance establishing a Trails Advisory Commission.

By: John A. Carlson
Introduced: 4-12-79
ADVANCED APR 12 1979

ORDINANCE NO. 79-55

AN ORDINANCE ADOPTING THE FIVE-YEAR RECREATIONAL TRAIL PLAN
AS PART OF THE COMPREHENSIVE PLAN.

WHEREAS, the Fairbanks North Star Borough Assembly is responsible for the Comprehensive Development Plan; and .

WHEREAS, the Parks and Recreation Commission has identified the need for publically dedicated recreation trails available to Borough residents; and

WHEREAS, the Five-Year Recreational Trail Plan represents input from various representative groups and individuals interested in ensuring the future existence of recreational trails within the Borough; and

WHEREAS, the Planning Commission after public hearings, recommends that the Five-Year Recreational Trail Plan be adopted; and

WHEREAS, the State of Alaska has funding available, on a continuing basis, for the acquisition, development and maintenance of recreational trails within local jurisdictions.

NOW, THEREFORE, BE IT ORDAINED by the Assembly of the Fairbanks North Star Borough:

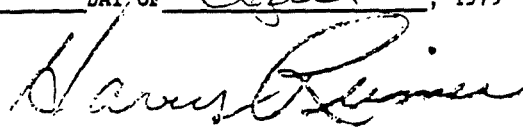
Section 1. Classification. This Ordinance is of a general and permanent nature and shall become a part of the Code of the Fairbanks North Star Borough.

Section 2. Amendment of Section. Fairbanks North Star Borough 18.02, Comprehensive Plan is amended by adding the words which are underlined:

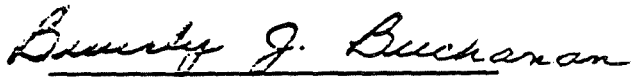
Section 18.02.030. Five-Year Recreational Trail Plan. That certain document prepared by the Planning Department, dated March, 1979, referred to as the Five-Year Recreational Trail Plan, consisting of project priorities and descriptions, is hereby adopted as a part of the Fairbanks North Star Borough Comprehensive Plan.

Section 3. Effective Date. This Ordinance shall become effective the day following its adoption.

PASSED AND APPROVED THIS 26TH DAY OF April, 1979


Presiding Officer

ATTEST:


Clerk of the Assembly

By: John A. Carlson
Introduced: 1/21/80
Postponed: 1/24/80
Substituted: 2/23/80
Amended: 2/23/80
Adopted: 2/23/80

RESOLUTION NO. 80-9

A RESOLUTION ESTABLISHING POLICY FOR CREATION AND
MANAGEMENT OF A RECREATION TRAIL SYSTEM
IN FAIRBANKS NORTH STAR BOROUGH

WHEREAS, it is in the best public interest to establish and manage
a system of recreation trails within the Fairbanks North Star Borough; and

WHEREAS, changing land ownership is reducing opportunities for
establishing and maintaining a recreation trail system at reasonable costs; and

WHEREAS, portions of the existing trail network are being lost for
lack of a clear policy and an aggressive acquisition program; and

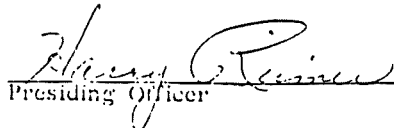
WHEREAS, the Fairbanks North Star Borough Assembly has adopted
a 5 year trail plan as an element of the Comprehensive Plan:

NOW, THEREFORE, BE IT RESOLVED by the Assembly of the
Fairbanks North Star Borough that a Comprehensive Trail Plan shall be actively
implemented within the limits of available funds and man power; and

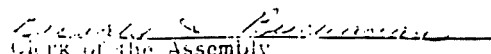
BE IT FURTHER RESOLVED that a Trail Commission be established
by ordinance to replace the duties of the Parks & Recreation Commission in
the matters of trails;

BE IT FURTHER RESOLVED that the attached policy statement is
adopted as the official policy of the Fairbanks North Star Borough to guide
the establishment and management of the recreation trail system.

PASSED AND APPROVED THIS 28th DAY OF FEBRUARY, 1980.


Presiding Officer

ATTEST:


Clerk of the Assembly

FAIRBANKS NORTH STAR BOROUGH POLICY ON RECREATION TRAILS

It is the intent of the Fairbanks North Star Borough Assembly to establish a recreation trail system within the Fairbanks North Star Borough which shall be managed for perpetual public use. This trail system shall be acquired and managed within the following policy guidelines:

1. Limitations

- a. The borough shall acquire right-of-way easements only and not develop or maintain recreational trails.
- b. Easement acquisition funds shall be limited to sources other than property tax and sales tax revenues, unless a service area has been established for this specific purpose.
- c. The borough shall do nothing to incur liability associated with trails by developing and maintaining rights-of-way or engaging in any other activity likely to incur liability to the borough.
- d. Eminent Domain powers shall not be utilized for acquisition of recreational trail easements. The exception to this rule shall be those cases of "friendly" condemnation necessary to clear title or establish value on a willing grant of easement.

2. Easement Policy

- a. Perpetual easement rights shall be acquired in the name of the public through dedication, easements by purchase or donation, right-of-way permits, or by cooperative agreements.
- b. Trail easements will normally be 20 feet in width unless adequate justification is given for a different width.
- c. Easements granting public use only during certain portions of the year and for particular uses are acceptable for particular trail requirements.
- d. At the time of initial acquisition, trail alignment shall be adjusted, if necessary, and in so far as possible to coincide with property boundaries and utility easements in order to maintain property use and development rights with the provision that the trail's utility is maintained.

- e. Priorities for acquisition of trail easement shall be set by the Fairbanks North Star Borough Assembly in December of each year after public hearing and Planning Commission recommendations. Priorities shall be guided by, but not limited to, the following considerations: intensity of public use on the trail, multiplicity of use on the trail, utility of the trail for point to point access, and land tenure.

3. Comprehensive Trail Plan

- a. The Comprehensive Trail Plan shall consist of three parts. 1) Part I shall include all nominations for eventual addition to the trail system which have been approved by the Trails Commission, concurred upon by the Planning Commission and adopted by the Assembly. 2) Part II shall include all trails for which an easement has been acquired. 3) Part III shall include all parts of the trail system having legal public access reserved by means of easement, on-site survey and recorded plat. The borough can guarantee legal public access only to those trails in part III of the Comprehensive Trail Plan.
- b. The Planning Department shall maintain the official trail records which shall consist of, but not be limited to: 1) a map of all trails proposed for inclusion in the trail plan. 2) easement documents which have been obtained for trail right-of-ways. 3) survey records, plats and legal descriptions for those rights-of-way reserved by those means.
- c. All perpetual rights acquired shall be recorded. For trails in Part II of the Comprehensive Trail Plan, the recorded material may consist of written documents describing easements. For trails in Part III of the Comprehensive Trail Plan, the recorded material shall consist of the conveying document and a plat based on an on-site survey. Trails located along property boundaries, section lines and utility easements, shall be deemed surveyed so long as a plat can be prepared and the easement can be retraced on the ground.

4. Trail Nominations

- a. The Borough Trail Commission, acting in conjunction with interested public groups, as identified by the Borough Assembly, shall be recognized as a clearing house for trail nominations to the Comprehensive Trail Plan.
- b. All federal, state, borough, and private, subdivisions and waivers of subdivisions presented to the Planning Commission for review and approval shall be assessed for trail system needs. Voluntary easements will be encouraged for the public good, but failure to grant such easements shall not prejudice the developers' right for approval.

By: Phil Younker
Introduced: 4/21/
Advanced: 4/24/
Amended: 5/05/
Adopted: 5/05/

ORDINANCE NO. 80-27

AN ORDINANCE ESTABLISHING
A TRAILS ADVISORY COMMISSION

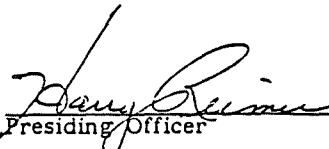
BE IT ORDAINED by the assembly of the Fairbanks North Star Borough,
Alaska:

Section 1. Classification. This ordinance is of a general and permanent
nature and shall become a part of the code of the Fairbanks North Star Borough.

Section 2. Adoption of Sections: The following annexed sections:
Section 2.62.010 through 2.62.090, all inclusive in Title 2 of the Fairbanks
North Star Borough Code of Ordinances, are hereby adopted as a part of
this ordinance.

Section 3. Effective date. This ordinance shall be effective the day
following adoption.

PASSED AND APPROVED THIS 8th DAY OF MAY, 1980.


Presiding Officer

ATTEST:


Clerk of the Assembly

TRAILS ADVISORY COMMISSION

Sections:

- 2.62.010 Established
- 2.62.020 Terms of Office
- 2.62.030 Vacancy Filling
- 2.62.040 Removal for Cause
- 2.62.050 Organization
- 2.62.060 Meeting - Quorum
- 2.62.070 Records
- 2.62.080 Member Designation
- 2.62.090 Responsibilities and Duties

2.62.010 Commission - Established. There shall be a commission known as the "trails advisory commission", which shall consist of fifteen voting members, to be appointed by the borough mayor and confirmed by the borough assembly.

2.62.020 Terms of Office. The members of the first trails advisory commission shall be appointed for the terms as follows:

1. Five commissioners for one year
2. Five commissioners for two years
3. Five commissioners for three years

The commissioners shall serve without compensation. As the terms of the voting members of the first trails advisory commission expire, their successors shall be appointed for terms of three years. The borough planning and zoning director, parks and recreation director, may attend all meetings and may participate in all deliberations of the commission but shall have no vote.

2.62.030 Commission Vacancy Filling. In the event of a vacancy on the commission for any reason other than normal expiration of term of office, the borough mayor shall appoint a commissioner, subject to confirmation by the borough assembly, to fill the vacancy. The new appointee shall be appointed for the unexpired term of the commissioner whom he is replacing.

2.62.040 Removal for Cause. For good cause shown, the borough assembly may remove a voting member of the commission by a two-thirds vote at a public meeting. Nonattendance at three successive meetings or hearings of the commissioner may constitute good cause for the purposes of this section.

2.62.050. Commission Organization. Internal organization of the commission shall be at the pleasure of that body. Meetings will be held at least four times a year at the mutual convenience of its members and will be adequately advertised.

2.62.060 Meetings - Quorums. The commission shall establish rules of procedure, provided there shall be a regular quarterly meeting of the commission which shall be open to the public and advertised at least fourteen days in advance. The chairman is authorized to call special meetings, or a majority of the members may require a special meeting to be called. A majority of the commission shall constitute a quorum for the transaction of business, and eight affirmative votes shall be necessary to carry a question.

2.62.070 Commission Records. Permanent records or minutes shall be kept by the secretary and the vote on each question shall be recorded. Every decision or finding shall be promptly filed in the office of the borough clerk and shall be open to public inspection at reasonable times.

Section 2.62.080 Member Designation. The commission members shall be borough residents and shall include the following:

1. Membership shall be representative of the following geographic areas:
 - a. Two Rivers/Chena Hot Springs Road area
 - b. Salcha area
 - c. Goldstream Valley area
 - d. Ester area
 - e. North Pole area
 - f. Badger Road area
 - g. Farmers Loop/University of Alaska area
 - h. Fox area
 - i. City of Fairbanks
 - j. Pleasant Valley
 - k. Balance at large
2. The commission shall be representative of the following groups and members, selected based on his or her activities, having demonstrate an interest in the trail systems.
 - a. dog musher
 - b. logger
 - c. snow mobile
 - d. trapper
 - e. horse riders
 - f. cross country skiers
 - g. motor cyclists
 - h. four-wheel driver (off road)
 - i. hikers
 - j. joggers
 - k. farmer's association (2 members)
 - l. land developers (2 members)
 - m. bicyclist

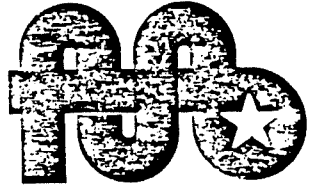
Section 2.62.090 Responsibilities and Duties. The responsibilities and duties of the trails advisory commission will be as follows:

1. Inventory and review the current trails within the borough and make recommendations to the borough assembly and the borough planning commission concerning present and future needs;
2. Review all state and borough land disposals and advise the borough assembly and planning commission in regards to trail needs and trail routing;
3. To provide a forum for citizen input into the trails assessments and needs for the borough and to advise the borough assembly and borough planning commission of these findings;
4. To review and annually make recommendations to the borough assembly and borough planning commission, of adjustments needed in the five year comprehensive trail plan;
5. To encourage public and private subdividers to incorporate a trail system where needed on a voluntary basis. Such trails will be laid out following property boundaries, section lines, and public rights-of-way.
6. The trails commission shall replace the duties of the parks and recreation commission in regards to trails and the borough trail system.
7. The trails advisory commission shall work within the parameters of the Fairbanks North Star Borough Policy on Recreation Trails, and shall from time to time review that policy and recommend any changes to the Fairbanks North Star Borough Assembly.

APPENDIX C
LEGAL CITATIONS

fairbanks north star borough

p.o. box 1267 520 fifth ave. fairbanks, alaska 99707 907-452-4761



MEMORANDUM

TO: Richard Van Orman
FROM: Terrence H. Thorgaard *[Signature]*
SUBJECT: Liability on Borough Trails
DATE: February 26, 1982

You want to know about specific cases concerning injuries occurring on public trails. Because of the unique status of Boroughs in Alaska pertinent cases are difficult to identify particularly when no specific fact pattern is identified.

Keep in mind that if, as a matter of policy, the Borough doesn't install or maintain trails, under Alaska law it isn't liable in their construction or negligence in their upkeep.

The question also concerns the liability of abutting landowner. As is stated in 19 McQuillian Municipal Corporations, §54.42b, ". . .an abutter is not liable for injuries caused by defects not the result of his own act or fault. . .". §54.42c of McQuillian states that "although an abutter may have no duty to remedy a hazardous condition in the public way, once he makes the attempt he has the duty to see that the altered condition does not constitute a new hazard, or one more dangerous than before." Section 54.42d states that "an abutter is not liable merely because of ownership. His liability results from the fact that he creates or maintains the thing from which injury results. . .".

THT:mlo

Alaska Statutes

§ 09.45.790

CODE OF CIVIL PROCEDURE

§ 09.50.010

Ct. Op. No. 1182 File No. 2193, 539 P.2d 1161 (1975).

Basis for damages. — The damages that are to be trebled under this section represent not merely the value of the timber cut but damages to the freehold as well. *Anderson v. Edwards*, Sup. Ct. Op. No. 2274 File No. 4586, 625 P.2d 282 (1981).

The damages awarded reflect in part the value of the timber taken and in part the

cost of restoring the land to a condition of usefulness. *Anderson v. Edwards*, Sup. Ct. Op. No. 2274 File No. 4586, 625 P.2d 282 (1981).

Prejudgment interest should be awarded only on the compensatory portion of the treble damage award, not the punitive portion. *Anderson v. Edwards*, Sup. Ct. Op. No. 2274 File No. 4586, 625 P.2d 282 (1981).

Article 9. Miscellaneous Provisions.

Section

795. Civil liability for personal injuries or death occurring on unimproved land

Sec. 09.45.790. Lis pendens.

NOTES TO DECISIONS

Filing of notices not accorded status of liens. — Filing of actions against bankrupt parties and the filing of notices of lis pendens are not to be accorded the status of liens since this section states only that a notice of lis pendens gives constructive notice to subsequent purchasers and encumbrancers that their interests may be affected by a pending action. *Brooks v. R & M Consultants, Inc.*, Sup. Ct. Op. No. 2107 (File No. 4922), 613 P.2d 268 (1980).

Publication of a lis pendens cannot be made the basis for a claim for dam-

ages due to disparagement of title. *Zamarello v. Yale*, Sup. Ct. Op. No. 941 (File No. 1731), 514 P.2d 228 (1973).

It would be anomalous to hold that a litigant is privileged to make a publication necessary to bring an action but that he can be sued for defamation if he lets anyone know that he has brought it, particularly when he is expressly authorized by statute to let all the world know that he has brought it. *Zamarello v. Yale*, Sup. Ct. Op. No. 941 (File No. 1731), 514 P.2d 228 (1973).

Sec. 09.45.795. Civil liability for personal injuries or death occurring on unimproved land. An owner of unimproved land is not liable in tort for damages for the injury to or death of a person who enters onto or remains on the unimproved portion of land if

(1) the injury or death resulted from a natural condition of the unimproved portion of the property; and

(2) the person had no responsibility to compensate the owner for his use or occupancy of the property. (§ 1 ch 138 SLA 1980)

Chapter 50. Actions Where State a Party.

Article 1. Contempt.

Sec. 09.50.010. Acts or omissions constituting contempt.

NOTES TO DECISIONS

Statutory limitations on contempt powers of superior and supreme

courts not binding. — In Alaska, unlike the federal system applicable to United

(Effective January 1, 1980)

Vacancy or nonoccupancy of building as affecting its character as a "Dwelling" as regards burglary, 85 ALR 428.

May participant in burglary be convicted of receiving or concealing the stolen property, 136 ALR 1087.

Out-buildings or the like as part of "dwelling house," 43 ALR2d 831.
12 C.J.S. Burglary §§ 1 to 68.

Sec. 11.46.310. Burglary in the second degree. (a) A person commits the crime of burglary in the second degree if he enters or remains unlawfully in a building with intent to commit a crime in the building.

(b) Burglary in the second degree is a class C felony. (§ 4 ch 166 SLA 1978)

For cases construing former law, see note to AS 11.46.300.

Sec. 11.46.320. Criminal trespass in the first degree. (a) A person commits the crime of criminal trespass in the first degree if he enters or remains unlawfully

(1) on real property with intent to commit a crime on that real property; or

(2) in a dwelling.

(b) Criminal trespass in the first degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

Cross reference. — As to trespass on or injury to state land, see AS 38.05.360.

Am. Jur., ALR and C.J.S. references. — 22 Am. Jur., Forcible Entry and Detainer, §§ 53 to 56; 34 Am. Jur., Malicious Mischief, § 1 et seq.; 52 Am. Jur., Trespass, §§ 84 to 86.

Right to use force to obtain possession of real property to which one is entitled, 141 ALR 273.

36 C.J.S. Forcible Entry and Detainer § 1 et seq.; 54 C.J.S. Malicious Mischief § 1 et seq.; 87 C.J.S. Trespass §§ 140 to 165.

Sec. 11.46.330. Criminal trespass in the second degree. (a) A person commits the crime of criminal trespass in the second degree if he enters or remains unlawfully

(1) in or upon premises; or

(2) in a propelled vehicle.

(b) Criminal trespass in the second degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

Cross reference. — As to trespass on or injury to state land, see AS 38.05.360.

Sec. 11.46.340. Defense: emergency use of premises. In a prosecution under § 300, 310, 320, or 330(a)(1) of this chapter, it is an affirmative defense that

(1) the entry, use, or occupancy of premises or use of personal property on the premises is for an emergency in the case of immediate and dire need; and

§ 11.46.340

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§ 831.
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§ 11.46.350

CRIMINAL LAW

§ 11.46.400

(Effective January 1, 1980)

(2) as soon as reasonably practical after the entry, use, or occupancy, the person contacts the owner of the premises, the owner's agent or, if the owner is unknown, the nearest state or local police agency, and makes a report of the time of the entry, use, or occupancy and any damage to the premises or personal property, unless notice waiving necessity of the report is posted on the premises by the owner or the owner's agent. (§ 4 ch 166 SLA 1978)

Sec. 11.46.350. Definition. (a) As used in §§ 300 — 350 of this chapter, unless the context requires otherwise, "enter or remain unlawfully" means to

(1) enter or remain in or upon premises or in a propelled vehicle when the premises or propelled vehicle, at the time of the entry or remaining, is not open to the public and when the defendant is not otherwise privileged to do so; or

(2) fail to leave premises or a propelled vehicle that is open to the public after being lawfully directed to do so personally by the person in charge.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

(1) notice against trespass is personally communicated to him by the owner of the land or some other authorized person; or

(2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances. (§ 4 ch 166 SLA 1978)

Article 3. Arson, Criminal Mischief, and Related Offenses.

Section

- 400. Arson in the first degree
- 410. Arson in the second degree
- 430. Criminally negligent burning
- 450. Failure to control or report a dangerous fire
- 480. Criminal mischief in the first degree

Section

- 482. Criminal mischief in the second degree
- 484. Criminal mischief in the third degree
- 486. Criminal mischief in the fourth degree
- 488. Littering
- 490. Definitions

Sec. 11.46.400. Arson in the first degree. (a) A person commits the crime of arson in the first degree if he intentionally damages any property by starting a fire or causing an explosion and by that act recklessly places another person in danger of serious physical injury.

(b) Arson in the first degree is a class A felony. (§ 4 ch 166 SLA 1978)

For cases construing former first degree arson statute, see *Salinas v. United States*, 277 F.2d 914 (9th Cir. 1960); *Rank v. State*, Sup. Ct. Op. No. 92 (File No. 167), 373 P.2d 734 (1962), overruled on another point in *Shafer v. State*, Sup. Ct. Op. No. 563 (File No. 1034), 456 P.2d 466 (1969).

For case construing former second degree arson statute, see *Tarney v. State*, Sup. Ct. Op. No. 911 (File No. 1486), 512 P.2d 923 (1973).

Am. Jur., ALR and C.J.S. references. — 4 Am. Jur., Arson, § 1 et seq.