

EASEMENTS: LUPC HEARINGS

Mountain Climbers, Fishermen Ask Access Across Native Lands

By DONN LISTON

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ANCHORAGE — Fishermen, fliers and mountain climbers all asked the Federal-State Land Use Planning Commission to provide access across Native lands for their activities here Wednesday, and the Alaska Federation of Natives urged the Commission to follow its responsibilities as outlined in the Alaska Native Claims Settlement Act.

The action occurred during public hearings to provide input into a Local Easement Study drafted by the commission. Roger Lang, president of AFN, presented the corporation's position, followed by a similar position presentation by Sen. John Sackett, president of Doyon Ltd.

"The history of the Alaska Native has been one of compromise, bargaining and negotiating."

Lang criticized the manner in which the commission was doing its job, by looking at causes and considering whether easements should be granted, and urged it to follow its mandate under the settlement act.

The Settlement Act calls for the commission to identify public easements across lands selected by Village Corporations and the Regional Corporations and at periodic points along the courses of major waterways which are

reasonably necessary to guarantee international treaty obligations, a full right of public use and access for recreation, hunting, transportation, utilities, docks, and such other public uses as the Planning Commission determines to be important."

"AFN submits that the key question which the land use planning commission now must consider is how and by what criteria the determination should be made as to whether a public easement is reasonably necessary," Lang said.

"In the materials so far circulated by the commission staff, this key question has been passed over and the bulk of the discussion has been addressed to such secondary issues as the size of easements and the terms under which they are to be reserved."

The first presentation given

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at the hearings came from Jack Hession, representing the Alaska Sierra Club. He expressed general concern over several aspects of the draft.

When contacted after his presentation by the Tundra Times, Hession said he had not been prepared for the presentation and that the Sierra Club did have certain concerns.

"Our position is essentially that we think there should be minimum easements for public access," Hession explained. "We recognize the Native interest in keeping a lot of people from intruding on their property but we're also aware of a history of attempting to forbid access to private land."

Hession said he hoped a balance could be struck between Native and public interest. He also said his group was in favor of linear easements along waterways rather than only site easements.

Tom Meacham, an attorney for Ely, Guess and Rudd and spokesman for the Mountaineering Club of Alaska, expressed concern that most easements presented in the draft were related to water and water-access. He said his group was particularly interested in activities which were not necessarily water related and expressed an interest in the commission maintaining easements to be used by such clubs as his.

"We are particularly interested in the Eklutna Lake area where our club has documented records of activities going back ten or fifteen years," he said.

Meacham also expressed concern that 10-foot trails may not be adequate for all recreation activities, citing the need for more room for passing horses or snowmachines being ridden by recreation enthusiasts.

Representing the Alaska Airman's Association, Dr. Robert Southerland, said that many of the members of his organization pioneered many bush landing strips in Alaska and asked that the hearings be continued for more public input.

He said of Native lands granted under the act: "No one person or special interest group should be able to lock up any part of Alaska."

Joe Josephson, who co-chairs the commission, explained to him that Native land would be privately owned and as such would be susceptible to use according to how the private land owners wanted to use it, just as any other privately owned land was open for non-use by other parties.

In addition to reiterating its

responsibilities under the act and defining certain terms which he believes the commission may have not responded directly to, or which it had re-defined, Lang outlined criteria which AFN feels govern the LUPC's identification of public easements. That criteria included the following considerations:

- The easement must be reserved in the name of the United States, and not for the benefit of the State of Alaska.

- The easement must serve a legitimate public purpose, and may not merely reflect an effort to re-establish on Native lands a public use which ANCSA otherwise has terminated.

- Easements must be for purposes set forth in the previously quoted section of the Act, and not for purposes which are the subject of other federal and state statutes.

- Except in connection with major waterways, the easement may cover only the crossing of Native lands to fulfill interna-

tional treaty obligations or for transportation, utility rights-of-way and access to adjoining state and federal lands "for recreation, hunting . . . and such other public uses as the planning commission determines to be important."

- Except as provided in number four above, the easement may not cover any point along the course of a non-navigable body of water or a non-major navigable body of water.

- Easements must be necessary and, accordingly, where an international treaty, transportation, utility or access easement across Native lands is under consideration, such easement may not be identified if comparable results can be achieved through an easement across federal lands.

- Easements may be reserved only along the courses of major waterways but such easements must not be continuous.

- The easement must be for "an anticipated public use or a planned or existing governmen-

tal function," and may not be for a speculative public purpose.

- The easement may not be a scenic easement, may not deprive the Native corporate landowner of reasonable access to bodies of water of highways and may not be more extensive in size than is reasonably required for the purpose for which its reserved.

- The agency requesting an easement must have proved its legality, reasonableness and necessity.

Sackett reinforced Lang's stand on the issue, assuring the commission that any deviation from the laws established under the Land Claims Act would insure a court battle with Doyon.

The Bureau of Land Management Thursday proposed a Multimodal Transportation Corridor System which would override everything. When it asked the planning commission to consider holding public hearings to decide or determine where the corridors should be placed, Josephson refused.