MEMORANDUM

State of Alaska
Department of Law

TO: Andrew W. Pekovich
Regional Manager, SERO
Department of Natural Resources

DATE: November 24, 1997

FILE NO.: 663-97-0269

TELEPHONE NO.: 465-3600

SUBJECT: Bell Island Easement

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QUESTIONS REGARDING BELL ISLAND EASEMENT

I. Brief Background

The State of Alaska, Department of Natural Resources (DNR) oversees a pedestrian right of way that crosses privately owned lands. The right of way is preserved for public use by a written easement.[1] The right of way starts at some floating platforms (finger floats), moves to a gangway, then follows a boardwalk across tidelands and over uplands, eventually ending at a trail head located in a publicly owned National Forest. The floats, gangway and boardwalk—which we shall call "walkways"—are owned by the private party who also owns the underlying land.

Due to normal wear and tear the walkways have become impassable. The owner has posted "No Trespassing" signs in the vicinity of the walkways although no signs are actually placed on the walkway. The United States Forest Service, anxious to ensure access to its trail head, has asked DNR to repair the walkways. You have presented several questions regarding the Bell Island pedestrian easement and DNR's rights and responsibilities relating to the easement.

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[1] An "easement" is a right of use over the property of another. Although the writings in this case refer to a "right of way" and do not use the term "easement," the terms are, for our purposes, synonymous. *See Wessells v. State, Dep't of Highways*, 562 P.2d 1042, 1046 n.5 (Alaska 1977).

II. Summary of Issues and Short Answers

Your questions and brief answers to those questions are outlined below.

1. Does the written easement include a right to moor boats at the finger floats during repair or during use?

Further inquiry is required before we can reach a conclusion on this question. Case law supports "reasonable use" in effectuating the purpose of an easement. Here, boat moorage would be considered reasonable.

2. May DNR keep the easement closed pending repair to the walkways?

Yes.

3. May DNR make necessary repairs to the walkways without the owner's consent?

Yes.

4. May DNR dismantle and remove or otherwise alter the walkways?

Minor alterations, including dismantlement and replacement, would be allowed.

5. May some other entity make improvements on behalf of DNR?

Yes.

6. Can the state's interest in the easement be assigned to another public agency?

Yes.

III. Pertinent Facts

On Bell Island there is a lodge located on U.S. Survey No. 704. That survey describes an "upland" parcel: land that lies above mean high-water. The parcel containing the lodge is connected to Behm Canal by tidelands identified as Alaska Tideland Survey No. 472.[2] The lodge and U.S. Survey No. 704 were acquired, many years ago, by Bell Island Hot Springs Inc. (BIHSI). Since 1984 the lodge has been privately owned, and has come to be called Northwest Discovery.[3]

During the 1950s governmental agencies constructed wooden walkways across both the tidelands and the uplands. A decade later the wooden walkways were sold to BIHSI. Then, on July 20, 1971, BIHSI executed an "Indenture of Right of Way and Grant of Access," which granted a pedestrian right of way across the walkways on Survey 704 and ATS 472 . One week later, on July 26, 1971, the state gave BIHSI a patent to ATS 472, but reserved for the general public access rights and a pedestrian right of way across ATS 472 and Survey 704. Thus, as of 1971, BIHSI owned all the land and improvements while the public maintained an easement for ingress and egress.

The indenture described the walkways as "presently designed for pedestrian traffic only." It acknowledged that public access to the National Forest had historically been over these improvements, even though they were owned by BIHSI. The indenture noted that BIHSI was seeking title to the tidelands of ATS 472 and recited that "a condition of the [land] grant . . . is the grant by [BIHSI] of a public pedestrian right of way through survey 704 with a grant of access over [the wooden walkways to the National Forest]." In light of those acknowledgments and prerequisites, the indenture memorialized a grant:

> [BIHSI] grants the State of Alaska, for and on behalf of the general public, a public pedestrian right of way over and across SURVEY 704 and a grant of access to, and over FINGER FLOATS, GANGWAY AND FLOAT, and BOARD WALK for the purposes of ingress to, and egress from the RECREATIONAL FACILITY, subject to the following conditions:

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[2] *See* Volume 1 of Plats, Packet No. 214, Instrument 71-1778, Ketchikan Recording District, First Judicial District, State of Alaska (July 1971).

[3] Until recently, the lodge was owned and operated by Northwest Discovery Joint Venture. We understand that while this opinion was pending, ownership of the lodge was changed and that many of the problems with the easement may be addressed by the new owners. Nevertheless, we are proceeding to issue this advice because the basic principles remain the same.

1. The exercise of any rights by the general public hereunder shall be without claim or demand of any kind or nature against [BIHSI] for injury to person or property arising out of the use, occupation, possession, and exercise of the rights granted herein, except as such injury to person or property may arise out of the negligence or willful fault of [BIHSI];

2. This grant of right of way is limited in its use to going through SURVEY 704 over and upon the existing PLANK WALKWAY or its replacement; the grant of access to, over and upon FINGER FLOATS, GANGWAY AND FLOAT, and BOARD WALK or their equivalent replacements; for connecting with the RECREATIONAL FACILITY; without any limitation on the general nature of the right of BELL ISLAND HOT SPRINGS, INC., or its successors to exercise its ownership over the described lands and facilities in any manner consistent with the fair enjoyment by the general public of the rights reserved, [BIHSI] expressly reserving the right to relocate this connection at any time, so long as public access to the RECREATIONAL FACILITY is otherwise maintained as herein granted; and,

3. The term of this grant of right of way is perpetual.

The patent reserves from ATS 472, "in perpetuity to the General Public":

1. Access across and to those tide and submerged lands upon which are located the Gangway and Float and Finger Floats or their equivalent replacements, as shown on the official survey plat, ATS 472.

2. A Pedestrian Right of Way described as being over Finger Floats, Gangway and Float, and Board Walk or their equivalent replacements as shown on official survey plat ATS 472.

The patent also states that it:

> is issued in conjunction with a grant by the patentee to the State of Alaska of: a Public Pedestrian Right of Way through SURVEY 704 over and upon the existing PLANK WALKWAY or its replacement; a grant of access to, over, and upon the FINGER FLOATS, GANGWAY AND FLOAT, and BOARD WALK, or their equivalent replacements; for use as ingress and egress to adjacent Forest Service lands without any limitation on the general nature of the right of the patentee or its successors to exercise its ownership over the described lands and facilities in any manner consistent with the fair enjoyment by the general public of the rights reserved herein.

IV. Analysis

1. Does the easement include a right to moor boats at the finger floats during repair or during use?

For every easement there is both a "dominant" and "servient" tenement. *Seltenreich v. Town of Fairbanks*, 103 F. Supp. 319 (D. Alaska 1952), *aff'd*, 211 F.2d 83 (9th Cir. 1954), *cert. denied*, 348 U.S. 887 (1954). The land subject to the easement is the "servient tenement" and the land enjoying the easement is the "dominant tenement." *Freightways Terminal Co. v. Industrial & Commercial Constr., Inc.*, 381 P.2d 977, 982 (Alaska 1963). In this case the National Forest constitutes the "dominant estate."[4] ATS 472 and U.S. Survey No. 704 are the "servient estate."[5]

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[4] The terms "dominant estate" and "dominant tenement" are used interchangeably as well as "servient estate" and "servient tenement." *See Freightways Terminal Co. v. Industrial & Commercial Constr., Inc.*, 381 P.2d 977, 985 (Alaska 1963).

[5] These terms describe an easement "appurtenant to land" as opposed to an easement "in gross." An easement is appurtenant to land if it is a useful adjunct to land and if nothing shows that the parties intended to convey a personal right. *Brabant v. McCarthy*, 1996 WL 488921 at 3 (Conn. Super. 1996) (No. CV. 960070352). Alternatively, an easement is "in gross" if it belongs to a person or persons separate and apart from any ownership or possession of specific property. *Id.* One might argue that this is an easement in gross, held by the entire public without the existence of any dominant estate, but such an argument would not change our analysis or conclusions.

By the terms of the indenture and patent, the general public "holds" the Bell Island easements; DNR simply oversees these easements. By nature, the holder's exercise of easement rights imposes a burden upon the owners of the servient estate. The question is whether the burden was reasonably anticipated—in which case it is allowed—or whether it materially differs from what the parties anticipated—in which case it is not allowed.

To ascertain what was anticipated, we look to: the words used in the indenture and the patent; actual patterns of use prior to drafting of the indenture and patent; and any course of conduct followed by the parties subsequent to drafting the documents. *See Kerr Land & Timber Co. v. Emmerson*, 43 Cal. Rptr. 333, 345 (1965)("It must be conceded that in determining the scope of the easement, the same rules are applicable as would apply to the construction of the terms of a contract"). Where an uncertainty gives rise to the necessity for extrinsic evidence, the court should consider the circumstances under which the agreement was made including custom and usage, and the practical construction placed on the contract by the acts and conduct of the parties, under the contract, before any controversy arose as to its meaning. *See id.* at 345-346, *citing Universal Sales Corp. v. California Press Mfg. Co.*, 128 P.2d 665 (Cal. 1942).

If subject to interpretation, the extent of the easement depends on the intention of the parties as gathered from the terms of the deed and the situation of the land. *Tatum v. Green*, 535 So.2d 87, 88 (Ala. 1988); *citing Cobb v. Allen*, 460 So.2d 1261 (Ala. 1984). Where it is unspecified in a grant, courts have held the scope of an easement to be "unlimited," so long as it is reasonable in relation to the object of the easement. *Wessells*, 562 P.2d at 1048-1049; *citing Missouri Public Service Co. v. Argenbright*, 457 S.W.2d 777, 783 (Mo.1970) ("easement granted or reserved in general terms, without any limitations as to its use, is one of unlimited reasonable use"); *see also Coleman v. Forister*, 514 S.W.2d 899, 903 (Tex. 1974).

Certain parameters of the pedestrian easement are described with specificity.[6] The easement over the floats and boardwalk is a "pedestrian" right of way, so the use of motorized equipment would not be authorized. The passage is "over" "finger floats, gangway and float, and board walk" on ATS 472 and "over" a "plank walkway" on Survey 704 and so is not unbounded. Further, the easement is intended "for use as ingress and egress to adjacent Forest Service lands." Thus, pedestrians must stay on a defined trail and may not wander about. *See Andersen v. Edwards*, 625 P.2d 282, 286 (Alaska 1981)("A grant or reservation of a right of way 'over' a particular area, strip, or parcel of ground is not ordinarily to be construed as providing for a way as broad as the ground referred to").

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[6] When the instruments are clear, they are controlling. *Andersen v. Edwards*, 625 P.2d 282, 286 (Alaska 1981).

More important, the ingress and egress provided is *to and from water* ("Access to, and over FINGER FLOATS"). The easement begins and ends on an island. Thus, the presence of boats and float planes must be assumed because one does not typically swim from island to island in Alaska.[7]

Despite the obvious involvement of boats, the parties failed to expressly provide for them in the easement. Given that the written instruments are not explicitly clear,[8] the scope of the easement as to boats should be ascertained from the intent of the parties. *Aszmus v. Nelson*, 743 P.2d 377, 379 (Alaska 1987). In the absence of any testimony from the parties who created this easement, we may discern their intent from obvious facts and circumstances, particularly those existing when the easement was created. *Seymour v. Harris Trust & Sav. Bank of Chicago*, 636 N.E.2d 985, 993 (Ill. App. Ct. 1994). The most obvious and glaring fact is that walking on the right of way cannot be accomplished unless the boat is left behind. Yet, extreme tides and sudden winds in Southeast Alaska make it impossible to leave a boat unattended unless it is secured. We can think of only three ways to secure a boat at this location: anchor it offshore; pull it onshore; or moor it to the float.

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[7] In the case of *Metcalf v. Houk*, 644 N.E.2d 597 (Ind. App. 1994), the court was faced with the same question now confronting DNR: "The issue presented is whether the conveyance of an easement appurtenant that expressly grants 'ingress and egress' over the grantor's property 'to the water's edge' contemplates the right of the easement holders to . . . maintain and use a pier at the lake end of the easement." The court answered that the easement holders could moor their boats at the pier so long as such use did not interfere with the rights of other easement holders. The court found such use a reasonable part of the easement because "access to a body of water is sought for particular purposes beyond merely reaching the water."

[8] The right of way under review leaves some parameters open for interpretation. General principles dictate that:

> [A] man who owns land subject to an easement, has the right to use his land in any way not inconsistent with the easement . . . . [T]he extent of the easement claimed must be determined by the true construction of the grant or reservation by which it is created, aided by any circumstances surrounding the estate and the parties, which have any legitimate tendency to show the intention of the parties. *Herman v. Roberts*, 23 N.E. 442, 443 (N.Y. 1890) *quoting Burnham v. Nevins*, 10 N.E. 494 (Mass. 1887). In construing the circumstances here presented, we look to the history of the right of way as reflected in the parties' deeds coupled with plaintiff's admission that he seeks only to enforce the original purpose of this easement which is, and has always been, ingress and egress to his property. *Serbalik v. Gray*, 659 N.Y.S.2d. 522, 524 (N.Y. App. Div. 1997).

Anchoring only minimizes the problem. Once anchored, the party on the boat cannot access the float except by swimming or using a dingy to get there. Under law, the holder of an easement acquires all rights which are incident or necessary to the reasonable and proper enjoyment of the easement. *Madonna v. Gollick*, 376 N.E.2d 1111, 1113 (Ill. App. Ct. 1978). It is not reasonable to expect that a boat owner will want to swim in frigid waters before hiking off into the National Forest. It is reasonable to expect that all boarding and disembarking will be directly from boat to float. So, even if a large boat is anchored in Behm Canal, the easement holder will still need to land or moor a small boat.

With respect to landing a boat on the shoreline, we think the patent is clear. The patent reserves "access across and to those tide and submerged lands upon which are located the GANGWAY AND FLOAT and FINGER FLOATS . . . ." This indubitably allows use of the shore. Moreover, such use is not limited to the shore immediately underlying the gangway and floats. When "the width, length and location of an easement for ingress and egress are not fixed by the terms of the grant or reservation the dominant estate is ordinarily entitled to a way of such width, length and location as is sufficient to afford necessary or reasonable ingress and egress." *Andersen*, 625 P.2d at 286, *quoting Aladdin Petroleum Corp. v. Gold Crown Properties, Inc*., 561 P.2d 818, 822 (Kan. 1977); *See also Wessells v. State, Dep't of Highways*, 562 P.2d 1042, 1050 (Alaska 1977) (discussing "doctrine of unlimited reasonable use"). Here, the location is "tidelands and submerged lands upon which are located the [floats]." Yet, the width of servient tidelands and submerged lands is not specified.

"Where the scope of an easement is unspecified in a grant, it has been held to be 'unlimited' so long as reasonable in relation to the object of the easement." *Wessells*, 562 P.2d at 1048-49, *citing Missouri Public Service Co. v. Argenbright*, 457 SW.2d 777 (Mo. 1970). However, an easement typically does not include all of the servient lands. *See Andersen*, 625 P.2d at 286. It is not reasonable to assume that visitors may pull their boats or planes onto any portion of ATS 472 without regard to the effects that may have on the use of ATS 472. On the other hand, it would not be reasonable to expect people to pull their boats up immediately under or adjacent to the floats. Beaching vessels under or immediately adjacent to floats is often impracticable; further this might interfere with the use of the floats. Consequently, we believe that the easement grants visitors the right to pull boats and planes onto the shoreline in reasonable locations that do not unduly interfere with the use of ATS 472.

On the record before us, it is not possible to determine whether visitors may also moor boats and planes at the floats. Nothing in the patent or indenture reveals the parties intent on this matter, and the pertinent circumstances are not obvious. In order to facilitate further analysis the following questions should be addressed:

1. Is this island so far from population centers that it typically would not be accessed except by a craft too large to beach or is it so

proximate to a community that the typical visitor arrives by skiff that is easily landed on shore?

2. Is the shoreline conducive to landings or is it so rocky, steep, or otherwise inhospitable to make shoreline landings out of the question?

3. Most important, what was the practice during the period 1963 (when BIHSI acquired title to the floats) through July 1971 (when the indenture was created)?

4. The indenture expressly acknowledges public use of the area during that time ("Public access to the trail, lake and surrounding area has been over the FINGER FLOAT"). Did that use include mooring to the floats or not?

Case law implies that where a contract is silent as to some element, deference should be given to the status quo. *See Rego v. Decker,* 482 P.2d 834 (Alaska 1971)(courts should not impose on party to contract any performance to which he did not and probably would not have agreed); *see also Hendricks v. Knik Supply, Inc.*, 522 P.2d 543 (Alaska 1974)(where terms of a contract are uncertain, intent may be ascertained from conduct of the parties, objects sought to be accomplished, and surrounding circumstances at the time contract was negotiated). Thus, if historical review indicates that between 1963 and 1971 visitors typically moored to the privately owned floats while using the boardwalks, we think mooring would have been contemplated by the parties when they drafted the indenture and patent. If visitors typically did not use the floats, or if BIHSI had prohibited public moorings during the period 1963-1971, it would seem unlikely that the parties intended to change that practice without saying so. Of course, it is possible that before July 1971 BIHSI banned any public use of the floats—including pedestrian right of way—and the parties assumed that the change in status accomplished by the indenture and patent included establishment of a right to moor. In the complete absence of any historical context, we simply cannot draw a conclusion.

The actions of visitors and the land owners subsequent to 1971 will also indicate whether mooring is permitted. Where an easement is general in its terms but is implemented in a particular manner, with the acquiescence and consent of the servient estate, that course of conduct fixes the rights and limits of the easement. *Leffingwell Ranch, Inc. v. Cieri*, 916 P.2d 751, 757-758 (Mont. 1996). We urge you to make some inquiries from which you might ascertain the facts and then induce the conclusion.

If this remains a close question after all pertinent facts are unearthed, we would conclude the law implies a right to moor. Where an easement is silent as to its scope, it permits

the dominant estate to use as much of the servient estate as is reasonably necessary to effectuate the purpose of the easement. This is called the "unlimited reasonable use doctrine" and it has been recognized in Alaska as one factor to be considered when determining the scope of an easement. *Wessells v. State, Dep't of Highways*, 562 P.2d 1042, 1048-1050 (Alaska 1977). Furthermore, easements are defined by their use. *Seymour v. Harris Trust & Sav. Bank of Chicago*, 636 N.E.2d 985, 996 (Ill. App. Ct. 1994). Here, the use reasonably necessitates moorage. *See Metcalf v. Houk,*, 644 N.E.2d 597, 601 (Ind. App. 1994); see also, *Madona v. Golick*, 376 N.E.2d 1111, 1113 (Ill. App. 1978) ("The grant of an easement carries all rights which are incident or necessary to the reasonable and proper enjoyment of the easement," including parking in a driveway).

2. May DNR keep the easement closed pending repair to the walkways?

DNR may allow the property owners to continue to use "NO TRESPASSING" signs, and the easement may remain closed as an exercise of the state's police power. Police power is an inherent power of the sovereign and is essential to protect members of the community from injury. *Suber v. Alaska State Bond Committee*, 414 P.2d 546, 551-552 (Alaska 1966). It rests upon the fundamental principle that all property is owned subject to the limitation that its use may be regulated for the safety, health, morals, and general welfare of the community in which it is located. *Hudson v. City of Shawnee*, 790 P.2d 933, 941 (Kan. 1990). In this regard, the scope of the easement is irrelevant. *See State Highway Comm'n v. Sheridan-Johnson Rural Elec. Ass'n*, 784 P.2d 588, 591 (Wyo. 1989)("Police powers are an essential attribute of the state as sovereign and cannot be bargained or contracted away"). The walkways presently pose a danger to public health and safety and, as a result, they may be closed by the state notwithstanding the public's right, as easement holders, to otherwise access those walkways.

3. May DNR make necessary repairs to the walkways without the owner's consent?

DNR may repair the wooden walkways with or without the consent of the property owners. The general rule regarding repairs is this:

> In the absence of an agreement to the contrary, the owner of the easement has not only the right but the duty to keep the easement in repair while the owner of the servient tenement has no duty to either put or keep the easement in repair.
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> [T]he right and duty to maintain the easement rests with the owner of the dominant tenement, who must be allowed to keep the easement in repair so as to make it reasonably usable. When the two parties have irreconcilable interests, the owner of the dominant

> estate may repair or maintain the easement as necessary to preserve his use . . . .

Seymour, 636 N.E.2d at 994. Here, the easement contemplates repair or replacement because it speaks of the improvements existing in 1971 "or their equivalent replacements," but neither the indenture nor the patent say who will perform the repair or replacement. Thus, the general legal rule should apply.

While we urge you to confer with the property owners and secure their approval for your work, such approval is not a prerequisite to actual repair. As noted in *Madonna*, "[r]equiring agreement between servient and dominant tenants as to modification of existing improvements to the easement grants either tenant the unqualified right to unilaterally block those modifications. We believe that neither the dominant nor the servient tenant is entitled to such an absolute right." *Madonna*, 376 N.E.2d at 1114. Thus, the landowner's permission is not required.[9]

To address a collateral issue, the servient landowner has no duty to undertake or pay for repair or maintenance even if he uses the improvements. The property owners generally have no obligation to maintain the easement or pay for maintenance of the easement even if they use it. *Sellers v. Powell*, 815 P.2d 448, 449 (Idaho 1991). However, if the property owner's use of the easements appreciably increases the costs of maintenance or repair, a duty to maintain the easement or pay for maintenance will arise. *Id.*

4. May DNR dismantle and remove or otherwise alter the walkways?

DNR may dismantle and reconstruct the pathway (using wood or some other substance) and realign the pathway to avoid hazards that have surfaced since 1971.

The right and duty to make repairs does not include a right to make alterations. Alterations that materially change the character of an easement or materially increase the burden upon a servient estate are prohibited. *Seymour*, 636 N.E.2d at 994; *Leffingwell Ranch*, 916 P.2d at 756-758. However, in this case, the easement applies to the wooden walkways "or their

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[9] It makes no difference that the property owner owns the walkways as well as the realty. As a matter of law, easements may only be created by the party who owns the property and may only be held by a party that does not own the property. Otherwise the easement is merged into title and disappears. *Seymour*, 636 N.E.2d at 995. If the property owners had not owned the walkways, they could not have given DNR an easement to those walkways. The ownership regime in this case follows the typical paradigm and, therefore, this case is controlled by the typical rules.

equivalent replacements." This indicates that complete and total dismantling and replacement was contemplated by the parties and would, therefore, be allowed.

We think new walkways could be realigned to avoid any hazardous conditions which may have arisen since 1971, because the easement is for the entire parcel as tempered by the rule of limited reasonable use. *See Andersen*, 625 P.2d at 286. Although reasonable use must be determined on a case-by-case basis, we think it patently reasonable to avoid engineering hazards or safety hazards when reconstructing a pedestrian pathway. Moreover, any new walkway will be an "equivalent replacement" only if it provides passage that is equally as safe and facile as was available in 1971.

5. May some other entity make the improvements on behalf of DNR?

If the state elects to have repair work accomplished by a contractor, it may do so. This is a matter not addressed by the case law. Myriad cases involve an easement holder's use of a contractor to perform work on the easement but the holder's right to do so is never questioned. *See, e.g., Center Drive-In Theatre, Inc. v. City of Derby*, 352 A.2d 304, 306 (Conn. 1974); *Fedder v. Component Structures Corp*., 329 A.2d 56, 57 (Md. App. 1974); *Sun Pipe Line Co. v. Kirkpatrick*, 514 S.W.2d 789 (Tx. App. 1974).[10] We think the courts do not address this issue because it is well established that every easement carries with it the right to do whatever is reasonably necessary for the full enjoyment of the easement. *See Seymour v. Harris Trust & Sav. Bank of Chicago*, 636 N.E.2d 985, 993 (Ill. App. Ct. 1994); *see also Schnuck Markets, Inc. v. Soffer*, 572 N.E.2d 1169, 1181-1182 (Ill. App. Ct. 1991). If reasonable necessity dictates use of a contractor, use of a contractor is implicitly permitted. Unless DNR has journeymen carpenters or other trail crews on staff who are available to repair or replace the walkways, it is reasonably necessary for DNR to hire a contractor to perform that work.

6. Can the state's interest in the easement be assigned to another public agency?

There is a historic rule in real property law: a reservation in a deed or patent cannot create rights in third parties. *Aszmus v. Nelson*, 743 P.2d 377, 379-380 (Alaska 1987). If that rule was strictly applied, it might pose an impediment to a transfer of the state's interest since any other public agency might be considered a third party. However, our courts have noted that the rule is "an inapposite feudal shackle." They have rejected it, attempting, instead, to implement the intent of the parties without resort to fixed, inflexible rules. *Id*.

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[10] The only issue involving contractors is whether they are independent of the easement holder, thereby relieving the holder of liability for the contractor's negligence. *See, e.g., Sun Pipe Line*, 514 S.W.2d 789.

Moreover, this particular easement was granted to the public, not the state. The indenture created an easement "for and on behalf of the general public." The patent reserved a right "to the general public." Where the owner of land transfers a privilege of use to a governmental body for the benefit of the public, the owner has created more than a private easement. He has created "a common law dedication." *Swift v. Kniffen*, 706 P.2d 296, 300 (Alaska 1985); *Olson v. McRae*, 389 P.2d 576 (Alaska 1964). Here, there appears to be no intent to "dedicate" the wooden walkways to public use. The owners obviously also intended to use them. Nonetheless, the public nature of the grant cannot be disputed.

The state is not the holder of this easement. The public at large holds the entitlement granted by this easement. DNR is merely the overseer and administrator. Such a purpose can be effectuated by any governmental agency. Where, as here, the National Forest Service has inspected the walkways, communicated with the owner regarding the condition of the walkways and otherwise demonstrated a strong interest in, and commitment to, carrying out the intent of the parties, oversight by that body may prove significantly more effective than oversight by DNR. Whether the transferee is the Forest Service or some other public agency, oversight of the easement may be transferred to another public agency.

V. Conclusion

We hope that the information presented in this memorandum will prove helpful in resolving matters of concern relating to the Bell Island easements. Please do not hesitate to contact our office if we can be of further assistance.

SAD:lmt