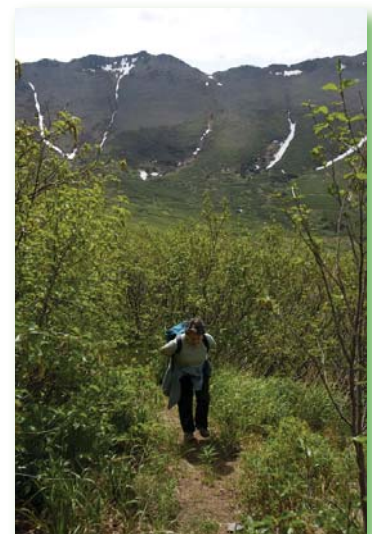
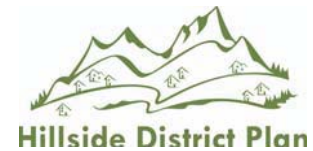


HILLSIDE DISTRICT PLAN – White Paper

HILLSIDE TRAILS AND CHUGACH CONNECTIVITY

September 27, 2007

DRAFT



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PARKS AND OPEN SPACE SYSTEM

Overview

Key to any discussion of trail dedications or construction within the Anchorage Hillside is the conflict between private property concerns versus public needs for connectivity. This is probably best illustrated by the need for public connections to Chugach State Park. This paper describes background information specific to Hillside residents' goal of trail connectivity within the community and to Chugach State Park (CSP) across private land. It first summarizes the current situation and existing legal parameters for maintaining public access, and then describes additional options for gaining access and managing trails, including a mention of Hawaii's legally formalized beach and ancient trail access program.

Existing Context and Regulatory Framework

In order to secure public trail access over private lands, there are a number of Legal Access Tools that can be used, listed in Figure 1 (page 4) in the right hand column. However, developing a trail that crosses private land raises legal, funding, and other issues that must be resolved on a parcel by parcel basis prior to trail development.

Issue: Access to Chugach State Park

The Chugach State Park is a regional destination for visitors and an open space and recreational amenity for residents living nearby. In the Hillside area, CSP boundaries are high in the foothills of the mountains, and except at Far North Bicentennial Park or within the CSP itself, there is no public land base to use as a gateway for accessing the park. Thus, despite CSP's prominence as an attraction adjacent to Alaska's largest city, public access along the Hillside will be required across private lands.

Currently there are only four dedicated improved CSP public access sites located along the ≈13 mile shared western park border within the Anchorage Bowl. Given the limited official access points, significant access occurs over undeveloped land by use of "traditional" foot trails¹. State law allows legal public access across unimproved and apparently unused land which is not fenced or otherwise enclosed or posted at all access points.² It also protects landowners from liability if users are injured³.

¹ Although Anchorage residents consider a number of trails "traditional" access points like the Stewart Homestead Trail, these uses are not protected by the state as a "valid existing right" under RS2477 law.

² AS 11.46.350(3)(b) sets forth conditions for legal public access to unimproved and apparently unused land, and definitions for trespassing.

³ Laws protecting liability of private landowners include AS 09.65.200 Tort immunity on unimproved land, and AS 34.17.055 Tort Immunity on Land Subject to a Conservation Easement.

However, these traditional trails are not protected public rights-of-way. Unless legal action is taken by using a Legal Access Tool (see Figure 1, page 4), owners legally can fence off, block public access, and/or post notices and prosecute traditional trail users as trespassers. Private land owners can also subdivide and develop these lands and change the character of access to CSP, although they may be required to replace existing trails with public trail access through the platting process.

As Anchorage grows and subdivisions are built, there will be higher demand for the CSP, and good access is an important community and neighborhood goal. The *Anchorage Bowl Park, Natural Resource, and Recreation Facility Plan* recommends “Requiring access points to Chugach State Park and other natural areas at one-mile intervals”. In order to meet this goal, and taking into account the existing context and regulatory framework, a number of options for securing public access across private land are explored in this white paper.

Issue: Ownership

Creating public trails on private land requires use of a Legal Access Tool which often requires negotiation with the property owner. Although research points to increased property values and sale prices when trail access and open space are included as amenities⁴, owners and developers often cite the following reasons when declining to support trail connectivity across their land:

- The loss of acreage for development
- Added cost of infrastructure improvements
- Difficulty of locating trails in their existing or original locations because of drainage, topography and other natural features
- Potential homeowner concerns over having foot traffic through their neighborhoods and potential trespassing, vandalism, maintenance and liability issues

Unless owners are required to provide public access (such as during the platting/subdivision) the issues described here can discourage an owner from considering a deal. Since most Legal Access Tools require owners to “sign the dotted line”, owner education about the benefits, and negotiation to satisfy owner concerns can be a critical first step.

Issue: Development & Funding

Developing a trail creates a number of new considerations. One issue is, who will pay for development? Informal trails along greenbelts may be left as “undeveloped” footpaths which trail users or trail organizations may maintain informally. Where formal trail design and construction is needed, such as through neighborhoods, or where significant public demand is expected along roadways or associated with CSP gateway areas, adequate funding must be identified in order for the development occur. Potential private sources include the subdividing landowner/developer; a homeowner’s association; non-profit organizations; or foundations. Public sources may include Road and/or Parks Bonds, state grants, Federal

⁴Trust for Public Land. *The Economic Benefits of Land Conservation*.

	PUBLIC LAND	PRIVATE LAND
Step 1. Identify	<p>Need for connectivity or trail is established during community planning or road project design:</p> <ul style="list-style-type: none"> - <i>Anchorage 2020 Plan</i> - <i>MOA Long Range Transportation Plan</i> - <i>MOA Non-Motorized Transportation Plan</i> (3 chapters): <i>Areawide Trails Plan</i> (Chugach access & recreation trails) <i>Pedestrian Plan</i> (roadside sidewalks and walkways, access between subdivisions) <i>Bike Plan</i> (development of a commuter bike system) - Hillside District Plan - Park Master Plans - Street Improvement Design Criteria (MOA, DOT) 	<p>Need for connectivity or trail is established by:</p> <ol style="list-style-type: none"> 1) Informal pedestrian use: <ul style="list-style-type: none"> - public may cross “unimproved and apparently unused land” under Alaska Statute¹ - owners are protected from liability by Alaska Statute² - owners may fence off or inhibit access - owners may post “no trespassing” signs and prosecute trespassers 2) Community desire to formalize traditional use trail 3) Trail route officially adopted in community plan (see list, left column)
Step 2. Develop	<p>Public funding is secured for the project:</p> <ul style="list-style-type: none"> - Anchorage Road Service Area - Parks and Recreation Service Area - Road and/or Parks Bonds - Special Funding: State grant, Federal road project funding, or private source <p>Trail is designed according to standards:</p> <p>AASHTO AMC Title 21 PM&E Design Criteria Manual</p> <p>Trail is constructed and inspected to ensure it meets public safety standards</p>	<p>Legal Public Trail Access May be Accomplished by:³</p> <ul style="list-style-type: none"> - Platting of a Public Trail (Trail Easement or Right-of-Way Dedication). This tool is unavailable until the time of subdivision, and is often used for trails on an approved plan. A developer dedicates a trail easement or public access right-of-way to meet subdivision platting requirements and serve public interest needs similar to utility and road requirements. The platting board will approve the subdivision or not based on how the developer meets criteria and standards set forth in MOA Title 21, including compliance with existing plans such as <i>Anchorage 2020</i>, <i>L RTP</i>, the <i>Areawide Trails Plan</i> and the <i>Hillside District Plan</i>. - Private Land Title Acquisition by fee simple purchase, donation, or exchange. - Private Land Trail Easement. This provides the ability to use land for a specified purpose without owning all the rights and interests. These may be obtained by gift, purchase, and other methods. Easement legal agreements should set forth the rights of parties, the specific public uses covered, cost, maintenance responsibilities, liability coverage and preservation of any other rights about or within the property. - Private Land Lease. A public agency or private non-profit is given the right to use a trail in return for a fee, usually over a multi-year period. Accepting compensation however removes landowner protection from liability under state law, so insurance and liability agreements are often required. - Private Land Deed Restrictions and Covenants. A property owner can protect a trail by conveying legal rights for use of the trail; this binds present and future owners. - Non-objection Agreement. This is a voluntary, non-binding agreement that the public may use a trail across a landowner’s parcel at their own risk, and will allow basic maintenance activities needed to keep the undeveloped trail usable.
Step 3. Manage & Maintain	<p>Management and maintenance responsibilities are defined and ongoing. Costs are generally covered by public tax base:</p> <p>MOA Street Maintenance (Anchorage Road and Drainage Service Area, typically in road rights-of-way)</p> <p>Parks and Recreation Department (Parks and Recreation Service Area, typically within municipal parks and greenbelts)</p>	<p>Development</p> <ul style="list-style-type: none"> - If a trail is undeveloped, access is at users’ risk and landowners are protected from liability by State Law. - If a trail is improved, the developer of the trail accepts liability for the trail meeting safe public standards and safety codes. <p>Maintenance & Management</p> <ul style="list-style-type: none"> - Developed trails must be maintained to a level of safe public standards into the future. After construction, maintenance and management responsibility is often transferred to the Anchorage Parks and Recreation Service Area (APRSA) in parks and greenbelts, and along roads to the Anchorage Roads and Drainage Service Area (ARDSA). The tax base within the area pays for the public service. - Outside the Municipal Service Boundaries (APRSA and ARDSA) some entity would need to take responsibility for ongoing maintenance and management. This could include a non-profit, homeowners’ association, or a new Parks and Recreation Service Area⁴ such as has been established in Eagle River.

¹AS 11.46.350(3)(b)

²Laws protecting liability of private landowners include AS 09.65.200 - Tort immunity on unimproved land and AS 34.17.055 - Tort Immunity on Land Subject to a Conservation Easement;

³“Establishing Legal Public Access to Alaska’s Recreation Trails, National Park Service Rivers, Trails and Conservation Assistance Program, May 2000;

⁴“Service Area Assessment Districts are established under the Municipality of Anchorage Charter, Section IX, and are individually established by the Anchorage Assembly under Anchorage Municipal Code (AMC) Title 27.

road project funding, or special tax assessments. Funding from a mix of sources may be required, and lack of adequate funding can be a major limiting factor in trail development.

Once capital funds for public trail improvements are secured, typically two Municipal entities play an important role in providing ongoing public services:

- **The Anchorage Roads and Drainage Service Area (ARDSA, Figure 2).**
ARDSA provides road and roadside trail improvements and maintenance for much of the Anchorage Bowl.
- **The Anchorage Parks and Recreation Service Area (APRSA, Figure 3).**
APRSA provides improvements and maintenance in parks and greenbelts, and for some public trail easements crossing private lands.

The Hillside, however, has “limited” public services both in terms of roads and to a small degree, parks and recreation (see boundaries in Figures 2 and 3, right). This affects the Municipality’s ability to provide and maintain trails, as follows.

The Anchorage Roads and Drainage Service Area (ARDSA) cannot provide improvements to Hillside roads or trails outside of the service area, and not on private land. Instead of ARDSA, the Hillside has a patchwork of Limited Road Service Area (LRSA) arrangements adopted by the Anchorage Assembly that use elected boards and private contractors to provide services based on voter’s willingness to fund maintenance and improvements. This creates an ad-hoc or decentralised approach to services

Figure 2. Anchorage Roads and Drainage Service Area (ARDSA)

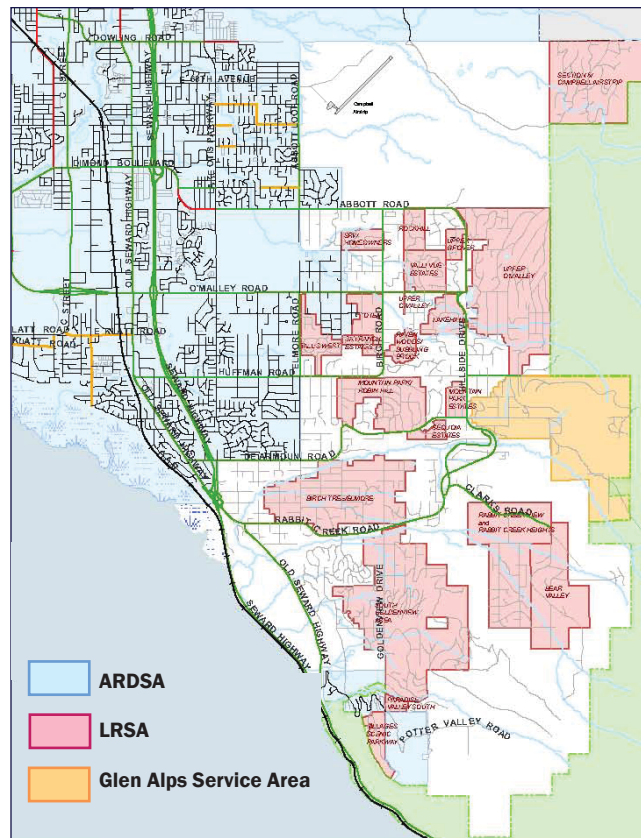
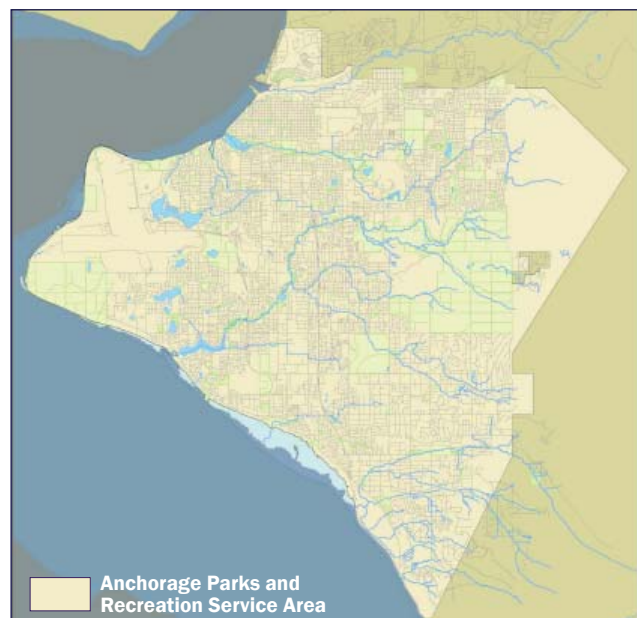


Figure 3. Anchorage Parks and Recreation Service Area



and taxation areawide. LRSA's on the Hillside could potentially use assessments to fund trail improvements and maintenance but this would require amendment of their charter via Assembly action.

The Anchorage Parks and Recreation Service Area (APRSA) operates only within its boundaries which, while covering much of the Hillside area, does not extend all the way up to the Chugach State Park boundary in southern areas. The APRSA also cannot provide services on private land unless a public easement is present. Finally, as the Anchorage Parks and Recreation Department often has limited funding and human resources, this further limits their ability to develop and provide services for Hillside trails.

Issue: Liability

On private property, public use is assured where easements or rights-of-way are provided for trails. There are State laws protecting private landowners from liability where a public improvement is constructed in the easement on their property that include AS 09.65.200 (Tort immunity on unimproved land) and AS 34.17.055 (Tort Immunity on Land Subject to a Conservation Easement).

However, an easement or right-of-way, once procured, suggests some level of liability from the agency that requested the easement. However, should a homeowner construct within the easement or right-of-way, the homeowner assumes liability for any improvements that are constructed. Once developed, liability is assumed by the "trail developer" for the "facility." The trail developer is liable for meeting public safety standards and codes. The Municipality usually is the developer of trails and accepts this responsibility. However, since a small portion of the Hillside is outside of the Parks and Recreation Service Areas, there is no mechanism for their constructing and then maintaining trails in that area. In these portions Homeowner associations or other entities such as Limited Road Service Areas, may need to assume responsibility.

Issue: Maintenance & Management

Once a trail is developed it must be maintained and managed in order to protect public safety. As with development ability, the Service Area boundary limitations impact the Municipality's ability to take responsibility for both construction and maintenance and management. Other entities like a non-profit, homeowners association or new public service area may be required to fill this role.

Platting as a Tool for Protecting Public Access

Because on the upper Hillside subdivisions do not yet exist on 2,500 acres of undeveloped private land⁵, the platting process is clearly a very important tool already in place for securing public access within and between neighborhoods and to CSP. The *Anchorage*

⁵ *The Chugach State Park Access Inventory* (DNR, 2002) maps many of these undeveloped Hillside private lands as "parcels of concern" given their strategic location in terms of access to the park.

2020 Plan's Policy 55 is to "Provide pedestrian and trail connections within and between residential subdivisions in new plats, including replats." Because this is such a key tool, following is a more complete description of the platting process and possible outcomes and issues.

The Municipality of Anchorage's jurisdiction over land use and subdivision platting can trigger protection of public trails that are identified in existing planning documents. This is achieved under the existing Title 21 subdivision standards in code 21.80.060 wherein:

"The platting authority shall require the dedication of an easement for a trail designated on adopted municipal plans when it finds that the trail cannot be located in an existing dedicated easement or right-of-way".

Under the new revised Title 21 which will be applicable after the entire chapter is adopted, this language is more explicit with respect to Chugach State Park under 21.08.040:

"The platting authority shall require the dedication of a public pedestrian easement for a trail designated on adopted municipal plans, for connectivity with a trail or access point to a large Community Use Area or Natural Resource Use Area (as defined in the Anchorage Bowl Park, Natural Resource, and Recreation Facility Plan), and for connectivity with a trail or access point identified in the most current Chugach State Park Access Inventory."

Prior to Platting Board decisions regarding subdivisions, the MOA Traffic Department (Non-Motorized Transportation Coordinator), MOA Parks and Recreation Department, and Chugach State Park, along with other departments and agencies, reviews platting proposals and requests trail easements for trails found on approved plans including the *Areawide Trails Plan*, *Anchorage 2020*, and the *Anchorage Bowl Park, Natural Resource, and Recreation Facility Plan*, the *Chugach State Park Access Inventory*⁶ and other approved plans as appropriate. This is per MOA Title 21. An additional resource includes the MOA Trails Mapper (GPS inventory of traditional trails) which offers information on existing or documented future trail needs, but is not an approved plan subject to platting board approval per Title 21. Neighbors to the development and the broader community are given public notice and an opportunity to provide written comment and testify at the hearing which can influence the decision of the Platting Board in dedication of a trail easement on a plat.

During the Platting Board approval, consistency with the Anchorage 2020 plan and other adopted plans are considered, but often modifications are made to trail alignments, width, and scope of trail easements "as necessary to integrate trail and subdivision designs".

⁶The 2006 Anchorage Assembly adopted *Anchorage Bowl Park, Natural Resource, and Recreation Facility Plan* states that: "The 2002 Chugach State Park Access Inventory is the most current guide for preserving new state park access and should be used to determine appropriate access points. Work with the Alaska Division of Parks and Chugach State Park to preserve and protect public access points through Title 21 dedication and the platting process." (page 49)

Realistically, significant changes in the routes of public access will change the character and ease of public connectivity. This is recognized in a Hillside Sub-area Transportation Plan recommendation for accommodating trails in upper Hillside subdivisions:

“Trails should be made complementary to development and not located along roads. Locating trails in open spaces between subdivisions to allow connectivity in a natural setting is preferable and safer since trail users will not need to contend with snow clearing/storage operations and proximity to vehicles. In addition, the character of these off-road trails is more consistent to the Hillside and with the Anchorage 2020 plan.”

In practice, the terrain, subdivision physical layout considerations, and developers’ approach often determine the form and location of public access. The MOA can legally compel a private developer to provide reasonable access under the rationale that the orderly movement of goods and people and utilities through a subdivision serves the public good. Thus, trail easements are not considered takings but rather a minimum requirement for platting a subdivision of land in the public interest.

There is hope (but no guarantee) that developers for upper Hillside recognize and appreciate the economic benefits of integrating wonderful open spaces and trails into subdivisions, or use tools for maximizing trail and open space assets such as Conservation Subdivisions and Cluster Development.⁷

Beyond trail easements, Trailhead and parking access needs that are identified by the *Areawide Trails Plan* may also be addressed during platting. For example with the Grandview subdivision in Bear Valley, negotiations between MOA Traffic, platting, Chugach State Park, Heritage Land Bank, and the neighborhood resulted in the development of a five car parking area.⁸ Although this platted access is a desired outcome, it is important to note that the dedication of the easement and the parking area are public, but the roads are often maintained by the homeowners’ group. When a parking area attracts traffic in excess of capacity, the result can be parking all over the road, which limits access for residents and emergency vehicles, especially during the winter when snow berms are present.

For example, the Grandview lot was working well until the ADN publicized its location and now 20 cars at a time are parking on the roads. As a solution, the Traffic Department will very likely need to place “no parking” signs to discourage this activity, and the police department will need to monitor and ticket the street. As future small access points within subdivisions are developed, the issue of capacity and regulating use will be an ongoing concern.

⁷ Hillside District Plan White Paper: Cluster Development & Conservation Subdivisions; Open Space Protection available by email: outreach@agnewbeck.com.

⁸ Lori Schanche, MOA Non-Motorized Transportation Coordinator, white paper review comments September 21, 2007.

When a trail or public parking area has not been identified in the Areawide Trails Plan, but it is decided that significant public facilities are warranted (e.g., large trailhead parking lot), public funds are likely to be required to build improvements, and potentially to purchase land or an easement. During the subdivision process “Reserve Tracts” can be identified for public purposes by the Municipality, but this requires compensation to the landowner within 24 months.

Ways to Move Forward – Future Options

Developing and preserving access for trails in neighborhoods and to CSP is an important community goal. Although local government involvement is needed in this effort, the city often has limited public resources for land and right-of-way acquisitions, and as described previously, portions of the Hillside are outside ARDSA and APRSA boundaries. In these areas the Municipality by charter is limited and cannot dedicate resources to developing, managing and/or maintaining trails.

There are, however other important ways that Municipality of Anchorage (MOA) and other relevant state agencies can help preserve future options for public access. One of the most critical ways is by identifying, mapping, and including on city maps and in adopted plans the Hillside trails that are a priority for protection during platting.

For example the Hillside District Plan, the anticipated update of the MOA Areawide Trails Plan, and the Chugach Access Inventory Plan update altogether provide an important opportunity to define a long term CSP access plan that can serve well into the future. For this effort to be truly successful, it must be developed with the cooperation of a number of agencies, likely to include:

- MOA Planning Department
- MOA Parks and Recreation Department
- MOA Traffic Department, Non-Motorized Transportation Coordinator
- MOA Traffic Department Assistant Traffic Engineer
- DOT & MOA Project Management & Engineering (related to road projects and auto access to trailheads)
- State Department of Natural Resources, Division of Parks and Outdoor Recreation

Beyond this effort, and especially because of Municipal service area limitations, there are a number of options that need to be explored for addressing development costs, liability coverage, and management/ maintenance support for trails that are platted during subdivision process or dedicated through other means. There may be additional approaches, and potentially several need to be employed at once. The pros and cons of each are discussed.

- **Anchorage Parks and Recreation Service Area** - As described earlier, a portion of the upper Hillside lies outside of the Anchorage Parks and Recreation Service Area, precluding this as an option for that area. Within the service area boundaries, however, the Municipality can develop trails if they are able to find funding for the project. Following construction, maintenance and management is typically taken over by the Municipality, though it is possible for the Parks Department to enter into agreements for non-profit organizations to take over maintenance and management.

Pros:

- The Parks Department has a long history and experience in providing these services
- The Department has the institutional expertise to address both macro issues (citywide connectivity) and micro issues (neighborhood connectivity)
- It is possible that through the Assembly and with the support of local voters that the service area boundary could be extended to cover the whole area

Cons:

- Service area boundaries exclude an area along the border with Chugach State Park
- Limited funding and staffing
- In balancing citywide demands for projects and services, the Department may not be a strong, pro-active advocate on behalf of the Hillside Trails

- **Homeowners Associations** - Homeowners associations can take on construction and maintenance responsibilities. This approach may be appropriate for short trail lengths within individual neighborhoods. It may be possible for homeowners associations to work together for interconnections. However, few homeowners associations have funds that would generally cover development and maintenance. It may be possible for homeowners associations to work with the Municipality and enter agreements by which the Municipality would construct trails and the homeowners associations would take over maintenance and management.

Pros:

- Provides neighborhood scale oversight with the potential for strong stewardship
- Creates a private-public partnership that helps stretch city resources further

Cons:

- Limited experience in trail, construction, management and maintenance
- Potentially inconsistent maintenance and/or oversight which could affect safety and create liability issues for the association

- **Limited Road Service Areas** - RSAs and/or LRSAs could take over management and maintenance of trails that are part of the transportation infrastructure. Though LRSAs are limited in their ability to construct such facilities, they could enter agreements by which the Municipality's Department of Parks and Recreation could construct trails

and the LRSAs could maintain and manage the trails. Typically however, trails within the Municipality are constructed through ARDSA, thus the Department of Parks and Recreation would have to determine if they would/could develop non-parkland trail facilities (inside the APRSA boundary only) which is typically not done.

Pros:

- Enables residents to pay for desired development and services
- Residents who are highly familiar with the area are able to work with private contractors to quickly address maintenance needs

Cons:

- LRSAs were not designed to address trails, and the Title 27 enabling legislation would probably need to be amended by the Anchorage Assembly
- There could be great variability in service from none where there are no LRSAs, and within the 20 LRSAs, based on what voters want to pay for
- Limited ability to deal with area-wide and Macro issues (city-wide connectivity)

- **Hillside Parks and Trails Service Area** - The Hillside area could elect to establish its own “Park Service Area” similar to Eagle River’s Parks and Recreation Service Area. Hillside residents could elect to tax themselves to construct, maintain, and manage trails. The provision of a new service area would require re-definition of the existing Anchorage Park and Recreation Service Area and the boundaries of the new Hillside Service Area.

Pros:

- Provides area-wide oversight with the potential for strong advocacy specific to Hillside Trails
- Enables residents to “get” what they want to pay for in terms of development and services

Cons:

- Administration would likely need to be done by paid staff unless highly dedicated volunteers or a strong board were able to provide oversight

- **Private Non-Profit** - A non-profit organization could be formed with a mission of providing trails throughout the HDP area. The duly organized 501(c)3 organization would have the ability to seek grant funding and could construct, maintain, and manage a trail system. Alternately, an existing non-profit with related goals could take on this effort.

Pros:

- Provides area-wide oversight with the potential for strong advocacy specific to Hillside Trails
- Does not involve taxation
- Could bring new sources of funding (grant, federal, private donation) and also leverage volunteer labor on behalf of the system

Cons:

- Funding might be difficult to obtain
- Administration would likely need to be done by paid staff unless highly dedicated volunteers or a strong board were able to provide oversight
- Non-profits sometimes have difficulty obtaining liability coverages

Other Models

Beyond these ideas presented, there are also stronger public-private models for protecting, developing, and managing trails which could be explored. One of the best examples is the State of Hawaii's approach to preserving beach access. Hawaii's approach is made up of two systems:

- "Public Access on Beaches and Shorelines" - Legally-based program that requires beachfront private property to provide public access to beaches at reasonable intervals, and lateral access along the beach
- "Ancient Trail System" - Upland traditional trails that are dedicated to the public and managed as a system

Statewide these two programs protect public access using a combination of State, local and private resources according to the following roles:

State of Hawaii role:

- Legal protections for "preserving and protecting the resource"
- Legislature funding for acquiring public rights of way (50% match)
- Ownership, management and maintenance of "ancient" trails

Local government role:

- Adopt ordinances that require a subdivision or developer to dedicate land for public access by a right-of-way from a public street or highway at "reasonable intervals"
- Local funding for acquiring public rights-of-way (50% match)
- Inventory public rights-of-way and provide public information on points of public access
- Enforce, oversee and maintain public access easements

Private land owners / developers role:

- Include public access rights-of-way on private property (typically 6 feet wide) at reasonable intervals to access the beach and where there are existing mountain trails
- Upon dedication, the local government assumes the cost of improvements and maintenance