



Clarifications re: HB 120: State Land Sales and Leases; Rivers

I. HB 120 creates a new section, AS 38.05.086, providing competitive process for the commercial development of certain state lands.

AS 38.05.086 provides the following land disposal process:

1. The commissioner shall identify state lands for commercial development by considering:
 - a. State lands that are within qualified opportunity zones;
 - b. State lands – up to 640 acres – that are nominated by the public; and
 - c. Any other state lands the department deems are appropriate for commercial development.
2. All nominated lands must be classified for commercial development before being leased or sold under this statute.
 - a. The reclassification process is a public process under AS 38.04.065 and AS 38.05.300 and requires public notice under AS 38.05.945.
3. After lands have been properly identified and classified for commercial development under this statute, the commissioner then has the discretion to “open certain areas” for lease via a request for proposals process (RFP).
 - a. DNR will adopt regulations outlining the RFP process. *See* AS 38.05.086(n) (page 10, lines 16-28).
4. In responding to the commissioner’s request for proposals, all applicants will be required to address:
 - a. The specific type of commercial development proposed; and
 - b. The specific location, description and size of the parcel requested.
 - i. The size of the requested parcel cannot exceed 20 acres.
5. The commissioner evaluates the proposals received and may reject proposals that do not satisfy the RFP.
 - a. If the commissioner receives two or more suitable proposals for the same land or overlapping land, the commissioner undertakes a competitive bidding process.
 - b. If the commissioner receives only one adequate proposal, the state may enter a lease with that one applicant, assuming it is in the best interests of the state.
6. A lease will have certain restrictions and will require commercial development.

The statute has several checks and balances to ensure these state lands are used for commercial development:

1. Lands must be classified for commercial development to be leased and sold for the intended statutory purpose. This land classification will not inhibit adjacent landowner land development.
2. The commissioner selects the applicant at the conclusion of the request for proposals process.
3. The lease term will require the successful applicant to commercially develop the lands.

II. AS 38.04.055 requires the commissioner to reserve easements on state lands being disposed to ensure adequate access to private lands.

There have been concerns about state land being sold and lack of access to private lands adjacent to these land sales. However, AS 38.04.055 states:

The commissioner shall reserve easements and rights-of-way on and across land that is made available for private use as necessary to reach or use public water and public and private land. An easement or right-of-way reserved under this section shall include trails that have an established history of use for commerce, recreation, transportation, or providing access to a traditional outdoor activity. In this section, “traditional outdoor activity” has the meaning given in AS 38.04.200.

“Traditional outdoor activity” is defined as:

. . . those types of activities that people may use for sport, exercise, subsistence, including the harvest of foodstuffs, or personal enjoyment, including hunting, fishing, trapping, gathering, or recreational mining, and that have historically been conducted as part of an individual, family, or community life pattern on or in the state land, water, or land and water.

AS 38.04.055 requires the commissioner to reserve easements to ensure access to public and private lands. Those private lands include Alaska Native corporation lands. AS 38.04.055 also requires the state to preserve easements prior to a disposal of state lands that includes other, historical outdoor activity access such as hunting trails.

III. Under AS 38.05.945, adjacent landowners receive notice of land reclassifications and land disposals.

The state, under AS 38.05.945, must give notice of its preliminary decision to dispose of state lands to “parties known or likely to be affected by the action.” Under AS 38.05.945, the state must also provide notice to “parties known or likely to be affected by the action” when state lands are being reclassified, such as here for potential commercial development. Under AS 38.05.086, consistent with AS 38.05.945, the state provides adjacent landowners notice of the potential disposal of state lands for commercial development.

Addendum re: HB 120: State Land Sales and Leases

IV. AS 38.05.086 includes a robust public process, where the public can be engaged prior to land being leased or sold for commercial development.

7. All nominated lands must be classified for commercial development before being leased or sold under this statute.

- a. The reclassification process is a public process under AS 38.04.065 and AS 38.05.300.
 - b. For the reclassification process, public notice under AS 38.05.945 is provided to affected parties, including adjacent landowners.
 - c. Reclassification decisions are appealable under AS 44.37.011.
 - d. *See also* 11 AAC 55.040 (Classification), and 11 AAC 55.240 (Reclassification) regarding the reclassification process.
8. After lands have been properly identified and classified for commercial development, the commissioner then has the discretion to “open certain areas” for lease (and ultimately sale).
9. The commissioner will issue a best interest finding prior to opening those areas for lease and sale.
 - a. The director, with the consent of the commissioner, undertakes the following best interest finding process under AS 38.05.035(e):
 - i. The best interest finding process starts with the director issuing a preliminary decision.
 - ii. Public notice under AS 38.05.945 is provided to affected parties, including adjacent landowners of the preliminary best interest finding to allow them to address issues with the disposal of the state lands.
 - iii. The preliminary decision provides the opportunity for public comments and public engagement.
 - iv. The final best interest finding is issued after this public process.
 - v. The final best interest finding is appealable under AS 44.37.011.
10. After the best interest findings are completed, DNR will then seek proposals to commercially develop these identified state lands.
 - a. DNR will provide 30 day public notice that it is seeking proposals to commercially develop certain state lands.
 - b. Under AS 38.05.086(n), DNR will adopt regulations outlining the request for proposals (RFP) process.