

MEMORANDUM

DATE: February 19, 2024
TO: Sen. Kaufman, Chair, Senate Transportation Committee
FROM: Christy Colles, Director, Division of Mining, Land and Water
SUBJECT: SB 199 Senate Transportation Committee Meeting-02/13/2024 Additional Information

During the Senate Transportation Committee hearing, Senator Tobin asked several questions regarding the process of land selection, the DMLW provides our response below:

How do the Qualified Opportunity Zones (QOZ) intersect with the commercial lease-to-sale provisions?

SB 199, if passed, creates a new statute governing the leasing and sale of state lands deemed suitable for commercial development, either within QOZ or in other areas nominated and assessed by the state as appropriate for commercial development. The statute includes a process for requesting proposals from prospective lessees, accepting bids, and entering into a lease contract. This statute allows the lessee to apply to purchase the leased land during the lease term if DNR determines the lessee has used the land for commercial development consistent with their approved proposal. If land qualifies as suitable for commercial development DNR will proceed to the best interest finding process which requires public input and consideration.

Land must be appropriate for commercial development to be eligible for this program. The State-Owned Land must be one of the following:

- Identified or nominated as a qualified opportunity zone under 26 USC 1400Z-1 and 1400Z-2,¹
- Nominated by the public, acreage not to exceed 640 acres, or
- Any other lands deemed appropriate by the commissioner for commercial development.

While a parcel of state land's status within a QOZ may bolster DNR's decision to include it in a request for proposals or accept a nomination, it is not the only factor in the determination of the best interest finding. Land that is otherwise eligible under the program may still be deemed un-eligible for lease due to conflicting factors under other land encumbrances. Additionally, a prospective lessee must submit a proposal meeting the program's requirements before determining that a lease is in the state's best interest.

¹ The Internal Revenue Service defines a QOZ as: "an economically distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. Localities qualify as QOZs if they were nominated for that designation by a state, the District of Columbia, or a U.S. territory and that nomination was certified by the Secretary of the U.S. Treasury via his delegation of authority to the Internal Revenue Service (IRS)." More information on QOZs can be found at: <https://www.irs.gov/credits-deductions/opportunity-zones-frequently-asked-questions>. To verify if state land is within a QOZ, DNR utilizes the DCRA Data Portal, which can be found here: <https://dcra-cdo-dcced.opendata.arcgis.com/datasets/DCCED::alaska-qualified-opportunity-zones/explore?location=54.661599%2C41.409860%2C4.00>. DNR does not maintain the DCRA Data Portal, or the information contained with it.

Does DMLW know what State-Owned Land would qualify for the commercial lease-to-sale program?

The following List of types of state land and types of state land eligible for disposal under SB 199:

- State general domain lands (excludes University, Mental Health Trust, and Special Purpose Sites, and land owned or managed by other State Departments) are subject to planning and classification requirements contained in AS 38.04 and AS 38.05 and corresponding regulations at 11 AAC 55.
- DNR classifies lands into one of seventeen classifications currently identified in regulations at 11 AAC 55.²
- Specifically, SB 199 provides that the Commissioner of DNR may identify lands that are appropriate for commercial development.
- In order to convey lands out of state ownership for commercial development, the lands must be classified as Settlement Land.³
- Lands not currently classified as settlement, would need to be classified or reclassified as provided under existing statutes. That process includes public notice and an appealable decision document.

The land status maps enclosed depict the state general domain lands for three different regions. Land classified currently as Settlement Land is outlined in red with land status, including those lands that may be encumbered by a disposal both presently and previously. For example, the map representing the Yakutat area includes land that is classified as settlement although encumbered for municipal entitlement and Mental Health Trust.

What State-Owned Lands within Senator Tobin's district qualify for the commercial lease-to-sale program?

To determine what qualifying State-Owned Lands might be within District I, DMLW has provided a map of the QOZs within Anchorage. Further State land status information may be found at Alaska Mapper at <https://mapper.dnr.alaska.gov/> or by title report.

Senator Kiehl requested answers to several questions:

Why does DMLW use the term terminate rather than foreclosure?

The current Land Sales contract statutes include references to both terms. All active land sales contracts use the term termination, and the term is best suited for the administrative process of the long-term purchase agreement. We do not anticipate any hindrance by the change.

The increase in the land development income fund makes a lot of sense especially for residential subdivision use. It is subject to the sweep. I would be interested in knowing how DNR processes that money and handles its obligation at the end of the year to protect it from needing the three-quarter vote that we haven't delivered in 3 or 4 years. So, I'd be interested in seeing how that works on your annual schedule.

The LDIF is a sweep-able fund, however, raising the cap is the first step to ensuring viability for multi-year, higher development projects. Concerns over a minimal fund balance, resulting from fiscal sweeps, revenue-expenditure disparities, and escalating land development costs, underscore the necessity for this increase. DNR is closely monitoring the fund's status and adjusting general fund expenses, including core costs. Elevating the cap is an initial measure to sustain the fund's effectiveness in supporting multi-year, large-scale development projects. As a sub fund of the General Fund, it was determined to be sweep-able under Alaska Const. Art. 9, § 9.

² Classifications provided under 11 AAC 55.050 – 11 AAC 55.230 include: agricultural land, coal land, forest land, geothermal land, grazing land, heritage resources land, material land, mineral land, oil and gas land, public recreation land, reserved use land, resource management land, settlement land, transportation corridor land, waterfront development land, water resources land, and wildlife habitat land.

³ 11 AAC 55.020(d) states in pertinent part, "Land classified settlement, except tideland, submerged land, or shoreland, may be made available for sale, lease, or other disposal."

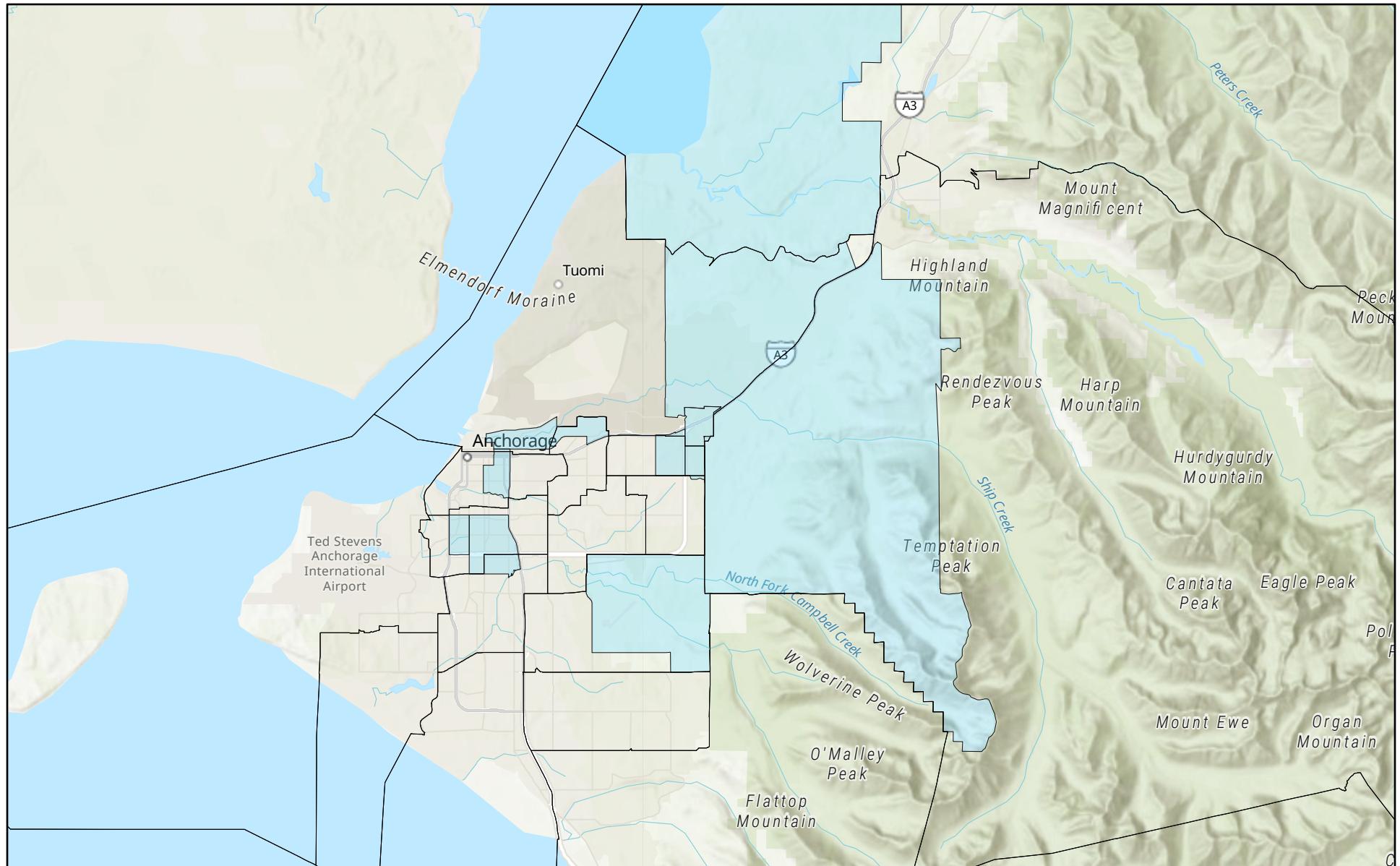
Regarding the agricultural land piece of the bill, a similar issue came up with mariculture leases, not allowing uses other than just mariculture. Did that get fixed so that you could bring someone out to your oyster farm and show them how they are grown? Do we have that fixed in a way similar to what is proposed for ag land?

Senator Kiehl was correct, AS 38.05.083(h-i) was passed recently and allows for allowing the use of the site, or passage across the site, for a tourism enterprise or educational purpose relating to aquatic farming or related hatchery operations.⁴ The proposed statute change is necessary to include incidental uses to the primary agriculture use, similar to the changes made for aquatic farm leases.

⁴ (h) Nothing in this section prohibits a lessee under this section using a site for aquatic farming and related hatchery operations from also using that site for a tourism enterprise or educational purpose relating to aquatic farming or related hatchery operations.

(i) Notwithstanding AS 38.05.035 and 38.05.850, if a site leased under this section is actively used for aquatic farming or related hatchery operations, the commissioner may not charge a lessee, sublessee, or other person assigned all or a part of the lease a fee for using or allowing the use of the site, or passage across the site, for a tourism enterprise or educational purpose relating to aquatic farming or related hatchery operations.

QOZ and Anchorage Districts



2/14/2024

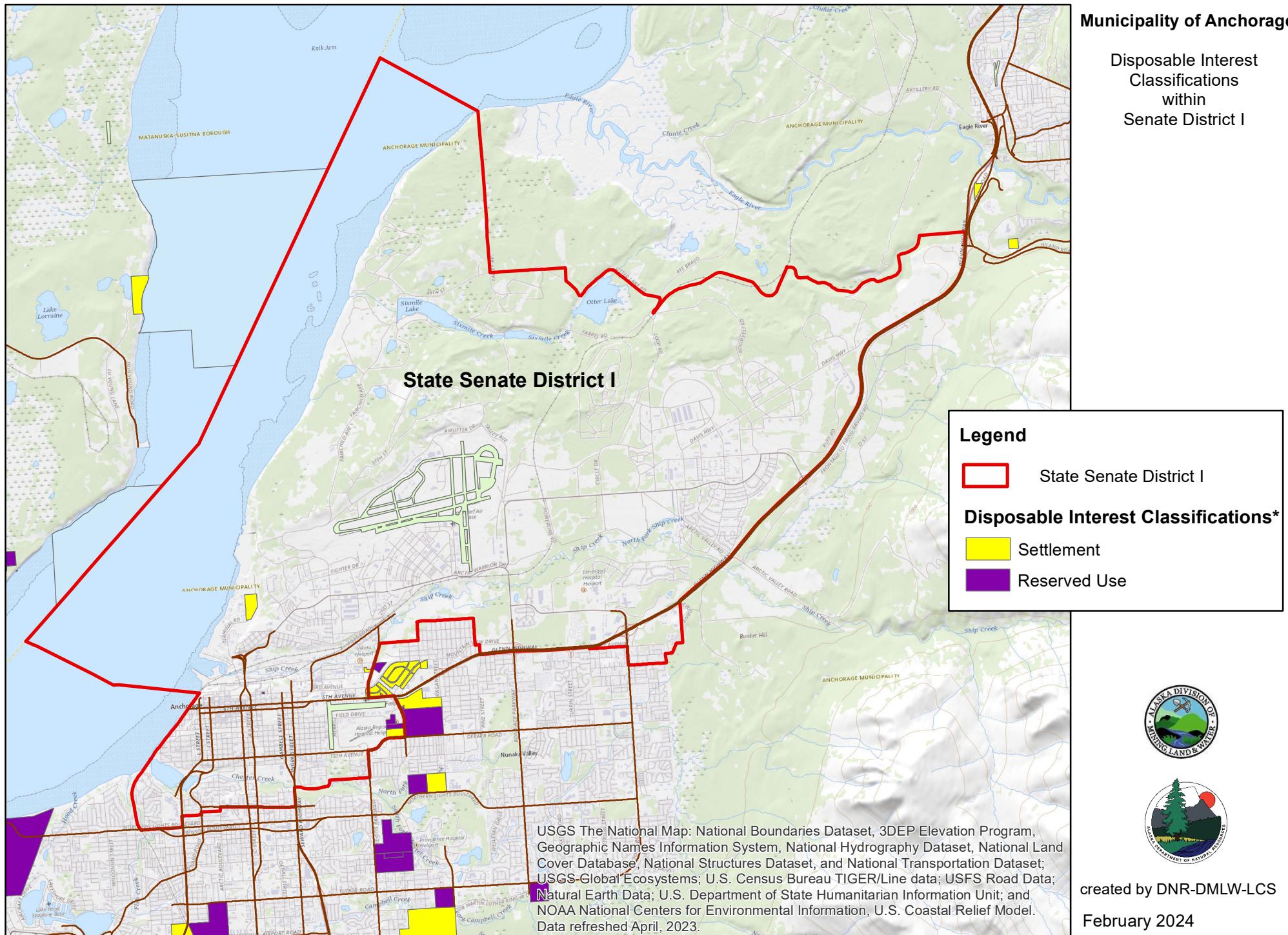
State Legislature by District - Alaska Legislatures per Districts

Alaska Qualified Opportunity Zones

World Hillshade

1:463,738
0 1.75 3.5 7 mi
0 3 6 12 km

Kenai Peninsula Borough, Matanuska-Susitna Borough GIS, Municipality of Anchorage, State of Alaska, Esri, TomTom, Garmin, SafeGraph, FAO, METI/



*Map does not depict current land status. Lands classified for settlement or a reserved use could have been transferred outside of state ownership.

