

SB-138

"An Act relating to zoning in state parks."

# COMMITTEE REPORT

3/14/75

HOUSE

JUDICIARY

Mr. Speaker:

Date

5 21

The Committee on C&RA has had SB 138

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR \_\_\_\_\_ AND THAT

CS FOR \_\_\_\_\_ DO PASS

( ) "and" recommends it BE REFERRED TO THE \_\_\_\_\_

COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

<u>Sean R. Cattan</u>	<u>DO PASS</u>	_____
<u>Kathleen Costello</u>	" "	_____
<u>THUR HERSHBERGER</u>	" "	_____
_____		_____

Members NOT concurring in the Majority report:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

Sean R. Cattan Chairman

House Committee on  
COMMUNITY & REGIONAL AFFAIRS

Meeting Minutes  
May 21, 1975

Meeting was called to order at 9:15 to discuss SB 259am, SB 138, CSSB 90.

Rep. Cotten	Barbara Thomas, Staff
Rep. Ostrosky	Andrea Guernsey, Staff
Rep. Hershberger	Senator Orsini
Rep. Freeman	Rep. Smith
	Bob LeResche, Fish & Game

SB 259am  
Senator Orsini passed out a proposed Committee Substitute that would give the local government a year to act. The bill takes effect June 1, 1976. But he thinks the new Anchorage Borough Assembly will take action on it. Nobody had any objections to the substitute so it was adopted and the bill was reported out.

REPORT OUT

SB 138  
AMENDMENT  
Rep. Cotten suggests replacing section b with "before any such regulations are enforced they shall be submitted to and approved by the legislature "

PRIVATE LAND  
IN PARK  
Rep. Freeman still wants to know if private land surrounded by a state park is within that park? Rep. Smith said that according to this bill that land would be within the park and subject to zoning.

Senator Orsini offered some different language for section B, to the extent that if the legislature didn't act the regulations would take affect. Sam likes the first language better but agrees to change "are enforced" to "takes effect" for the sake of clarity.

REPORT OUT  
COM. SUB.  
Rep. Ostrosky moved to adopt the amendment and report the bill out. Without objection so moved.

CSSB 90  
Oral still wants to know whether the equipment is sold or given. The "shall transfer" was changed to "may transfer" in the committee substitute.  
REPORT OUT  
The bill was reported out.

Meeting was adjourned at 9:50.

House Committee on  
COMMUNITY & REGIONAL AFFAIRS

Meeting Minutes  
May 6, 1975

Meeting was called to order at 9:25 to discuss SB 138, SB 259am. Present:

Rep. Cotten	Senator Rodey, Sponsor, SB 138
Rep. Hershberger	Senator Croft
Rep. Ostrosky	Rep. Smith
Rep. Freeman	Frank Jones, Director, Game Division
Barbara Englert Thomas, Staff	Kathy Jacobsen, Natural Resources
Andrea Guernsey, Staff	

PRIVATE LANDS  
PART OF PARK?

Freeman wanted to know if the private land within the area were a part of the park or not? Croft said they were not. The language in the bills establishing Chugach and Kachemak excludes valid entries specifically. The A.G.'s office said that if SB 138 passes the courts will interpret this as an intention by the Legislature to provide zoning authority over lands, even though the language in the bill that established them excludes private lands from this.

ZONING?

Freeman's concern is the land inside municipal boundaries. Zoning should be regulated by the municipal government and not by the State. Rep. Smith disagrees. A park is an area where the State has a large interest with only isolated private parts. It is logical that it be managed by the State.

STATUS OF  
EMMINENT DOMAIN  
IN PARKS

Chairman cotten asked if there was a prohibition against eminent domain in Chugach? Ted Smith gave a run down of all the parks created by Legislative Action:

Nancy Lake REC. Area: no restriction against em. D. has been zoned by Mat-Su Borough;

Chena River REC. Area: prohibition against E.D. except for access. Dept. of Natural Resources can zone;

Captain Cook Rec. Area: no restriction against E.D. Kenai Penn. Borough hasn't exercised any zoning authority;

TAPE #13  
sidel  
415=1099

SB 259am  
5/6/75

FRANK JONES

Mr. Jones showed the Committee a map of the Potter Point refuge. Most of the land is below the bluffs in a marshy area which is used for ducks. It is possible that some development could be made on the privatelands that wuld not be compatible. They are presently attempting to buy the 700 acres of private land involved. The purpose of the bill is to exclude any further incompatibel developemnt.

Meeting was adjourned at 10:00.

PAUL C. LOWE  
BX102 E. LAKERIDGE  
EAGLE RIVER, AK  
99577



Samuel Adams

Patriot



U.S. Postage 8c

Rep. Sam Cotten  
Pouch V  
Juneau, AK, 99801

Dear Mr. Cotten,

3-16-75

I am writing you to urge your support for several bills before the House. In particular, I believe HB 21 and SB 138 are in your CRA committee. I hope you will report these out favorably as soon as possible, as I feel both are very desirable legislation. In addition, HB 106 & 163 are in Judiciary, & I hope you will get them to the floor ASAP, too.

Finally, these bills are, I think, in Resources, & anything you could do to get them out & passed by the House at large would be appreciated:

HJR 13; HB 3, 29, 57, 232, 278.

Thanks.

Paul Lowe  
Chugiak

Rainbow Valley  
Indian, Alaska 99540  
May 1, 1975

Rep. Sam Cotten  
House of Representatives  
Community and Regional Affairs Committee  
Pouch V  
Juneau, Alaska 99811

Dear Rep. Cotten:

I understand House Bill 106 concerning zoning in state parks is currently before your committee. I understand the intent of this bill is to control growth so that it is compatible with the environment in the state park. I wholeheartedly support this bill if it does in fact limit growth.

However, the wording of the bill does not eliminate the possibility that the Dept. of Natural Resources could zone in favor of higher density populations. The wording gives the Dept. of Natural Resources leeway in either direction. Would it be possible to tighten the wording of this bill in some way?

We live in an area completely surrounded by Chugach State Park. It is a wonderful experience, and hopefully this bill would give more people the opportunity to experience this also.

Sincerely,

*Elizabeth Holloway*  
Elizabeth Holloway

HB 106  
SB 138

March 8, 1975

Representative Samuel R. Cotten  
House Judiciary Committee  
Pouch V  
Juneau, Alaska 99801

Dear Representative Cotten:

We are writing in regard to HB 106 which is before your committee along with the companion bill SB 138. The intent of the legislation is very good and we support the concept. There are however several questions as to the language. The statute creating the Chugach State Park, AS 41.20.210 has the unusual language "excluding valid entries" which may exclude these private lands from coverage under the bill which states "private property in state parks". Also, the working of the bill would not include coverage of state recreation areas, waysides, historic sites, etc. Would not it read better to say "within the exterior boundaries of an area in the state park system".?

Also, are we not headed for conflict with the boroughs if their authority to zone is not amended? Two agencies with the same authority may cause conflict which should be avoided by proper wording now.

Sincerely,

*R. K. Alman*  
Richard K. Alman

*Edith L. Alman*  
Edith L. Alman  
1514 Marten Street  
Anchorage, Alaska 99504

## Zoning in State Parks.

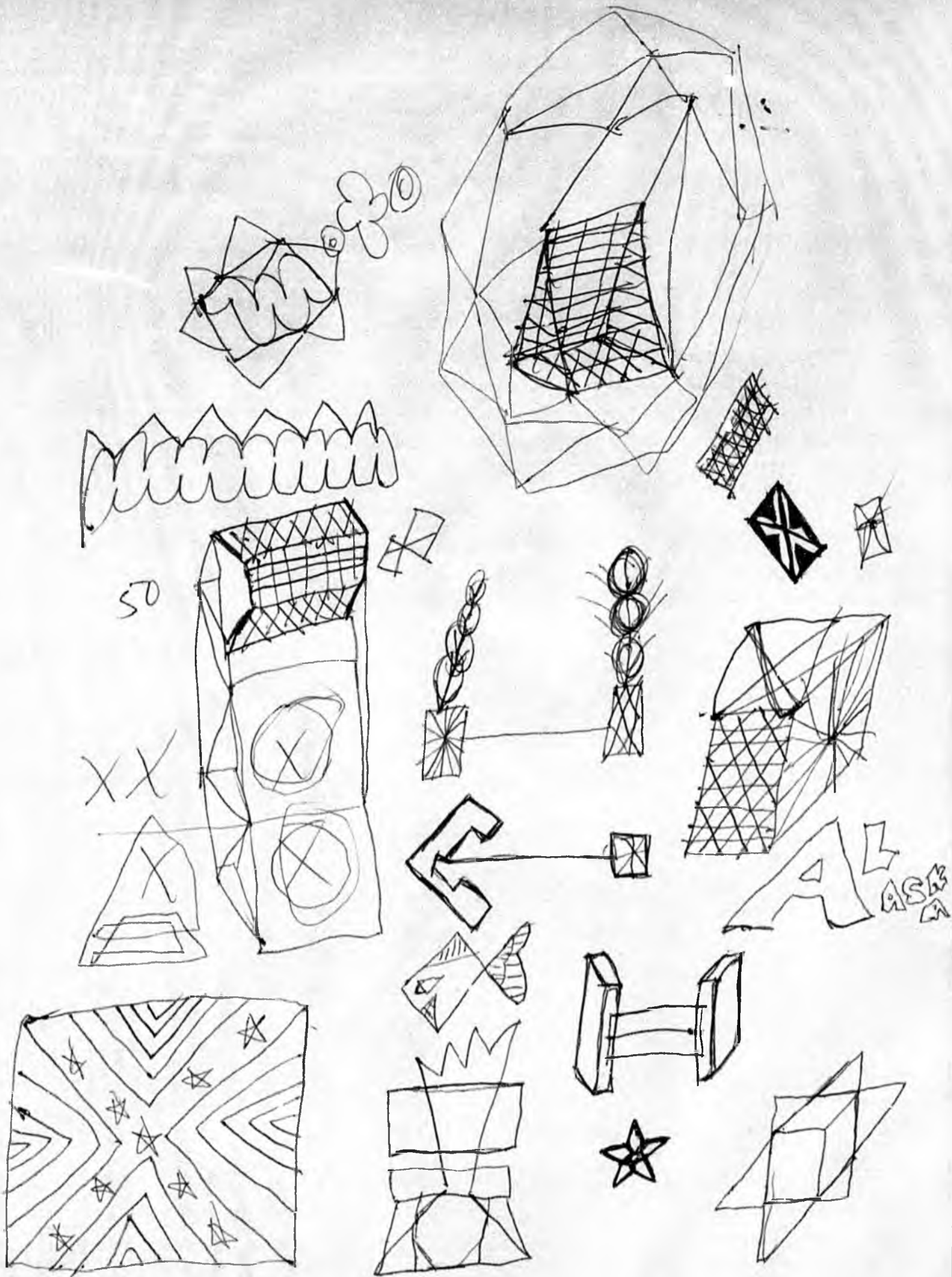
An act to authorize zoning in state parks.

Where (a) a municipality has not exercised its zoning powers as to private land w/i the exterior boundaries of a state park or

(b) the commissioner or his delegate has determined that municipal zoning as to lands designated in (a) is incompatible w/ the purposes for which the park has been established, or is inconsistent w/ the objective of park preservation, or is otherwise inadequate to protect the natural and environmental values of the park,

the commissioner or his delegate shall either  
(i) issue regulations to promote the policies for which the park was established or

(ii) require that any development be preceded by a permit, which shall be issued if such development is for a compatible use.



# MEMORANDUM

# State of Alaska

TO: Honorable William C. Fackler  
Acting Commissioner  
Dept. of Natural Resources

DATE: February 18, 1975

FILE NO:

*Em. Dom*

TELEPHONE NO:

FROM: Avram M. Gross  
Attorney General  
Dept. of Law

SUBJECT: Regulation of Private Land  
in State Parks and Recreation  
Areas

By: Rodger W. Pegues  
Assistant Attorney General

The Director of the Division of Parks has requested an opinion on this subject. Rather than issuing a formal opinion, we are responding by this memorandum.

The authority of the Director to designate "incompatible uses" and establish rules and regulations governing them arises from AS 41.20.020(6) and AS 41.20.040. It is also contained, generally, in the legislation establishing or authorizing parks and recreation areas. E.g., AS 41.20.140; AS 41.20.180; AS 41.20.230; AS 41.20.310. While it may be argued that this authority is broad enough to regulate use of private lands within the boundaries of a state park or recreation area (i.e., so-called inholdings), our view is that it does not.

Each of the several statutes authorizing or establishing state parks and recreation areas refers expressly to "state-owned lands" or "state-owned land and water" and each also includes land acquired by the state in the future. See, e.g., AS 41.20.130-140. The purpose of each is set forth as "to restrict state-owned lands and waters" for use as a park or recreation area. [Cf, AS 41.20.130] While, as in the act establishing Chugach State Park, the legislature expressly reserved "the lands and waters . . . from all uses incompatible with their primary function as a state park . . ." AS 41.20.210, those lands and waters are "state-owned", AS 41.20.200, 210, and "valid entries" within the park's boundaries are expressly excluded. AS 41.20.210. So too, in establishing Kachemak Bay State Park, the legislature expressly excluded valid entries and leaseholds (both existing and applied for) from the park. AS 41.20.260(c).

Additionally, each of the several enabling statutes and the general park and recreation act, AS 41.20.010-047, provide for the acquisition of private land. And the act establishing Chugach State Park provides for modifying its boundaries where conflicts of land ownership are "unmanageable other than at unreasonable cost and expense to the state . . ." AS 41.20.220. While these provisions are not dispositive of the issue, coupled with the express exclusions of valid entries and the reservation

Honorable William C. Fackler  
Acting Commissioner

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February 18, 1975

only and expressly of state-owned land and waters, they create a strong inference that the language prohibiting incompatible uses or authorizing their regulation refers to state-owned land and not to inholdings.

Accordingly, the statutory scheme is to reserve and protect state-owned land and water within state parks from incompatible use but to exclude from the parks both private lands and lands owned by the state but subject to a valid entry. The regulatory power extends only to the state-owned lands and not to inholdings. Indeed, the exclusion of those lands from the parks suggests that they are not, in fact, within the park boundaries, e.g., AS 41.20.260(c), and that they are not properly to be denominated as inholdings.

We can appreciate your concern and regret our negative answer. You may wish to seek amelioratory legislation.

AMG:RWP:pg  
Att.

5/6/75

SB 138

Natural Resources (Kathy Jacobson) (24:6)

or Div. of Parks  
(ask if Div. of Lands, wants to testify)

C & RA (esp. Kevin Waring)

Sen. Pat Rodey

Sen. Cheney Ernst

Notified

Present

Testified

X

X

X

~~X~~

X

X

X

X

X

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