

HB

132

STATE  
of-ALASKA

# MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES  
OFFICE OF THE COMMISSIONER

TO:  Nels Anderson, Chairman  
House Resources Committee

DATE : January 29, 1976

FROM: Guy R. Martin,  
Commissioner

SUBJECT: Open to Entry Issues

The categories below regarding issues which I think should be addressed in any final open to entry legislation. To one extent or another, all of these have been addressed in one or more of the bills presently pending before the House Resources Committee. I think the major thrust of committee staff work should be to insure that all of these issues are presented for committee consideration so as to allow members of the committee to make policy choices.

1. Purpose of the program

Specific statement of the purpose of the program (or purposes) - widely scattered remote sites, second home sites, low-cost building sites in residential areas, etc.

2. Term of program

Should the program be for an indefinite duration or for some trial period having a termination date?

3. Method and rate of disposal

Should disposal take place on a rotating regional basis or according to whatever planning is done by the Division of Lands taking into account the other statutory responsibilities.

4. Should the rate of disposal be set by planning process or by statute?

5. Specify involvement of local units of government in addition to specifying involvement of local citizens?

This is particularly important in the planning process.

6. What state actions should precede selection and disposal procedures (mineral surveys, soil testing, alternative use consideration).

7. Should the statute or regulation set priorities for areas in which open to entry lands are considered and made available?

8. Should the decision to make lands available for open to entry be balanced against the many other land commitment decisions imposed by statute on the Department of Natural Resources and Division of Lands?

Should the statute make reference to this balance?

9. Should consideration be given either in a statute or regulation to grant only partial title to open to entry properties?

10. Should the statute address the issue of providing a mechanism to mitigate public pressures to enlarge or extend open to entry beyond its beneficial limits?

What limitations should be placed on the rights of OTE owners? (Type of building, requirement to build, access limitations, use limitations, alienation restrictions).

11. Should state or local government have protection against the accrual of service costs from the OTE program?
12. Is it desirable or possible to limit any access rights connected with the OTE ownership interest? (Should the bill make provision for possible demands for construction of a road to OTE sites?)
13. Should an option be included which does not include a requirement to build?
14. If the term "recreational" is a condition for the use, should it be defined?
15. What is the relationship between rights accompanying and OTE site and neighboring subsistence use?
- (Should the rights of OTE occupants be equal, superior, or inferior to adjacent occupants for water, timber, game)?
16. Do problems arise from the necessity of the state to upgrade access and maintain access after prescriptive easements are established? Should the obligations of the state or local governments to provide access roads, or services be waived, based on the concept that the purpose of the land conveyed is for recreational?

cc: Rep. Keith Specking, Minority Leader

# TELEGRAM

*File HB  
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MOA ALASKA COMMUNICATIONS, INC.

PHONE 440

JUNEAU, ALASKA 99801

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PMS REP. NEIL ANDERSON JR. CHAIRMAN HOUSE RESOURCE COMMITTEE

POUCH V

JUNEAU

AGREE WITH THE PRINCIPAL OF HB132 BUT BELIVE THERE MAYBE  
EXTENUATORY CIRCUMSTANCE .

WHERE DUE DO HEALTH, FINANCIAL CONDITION ETC THE LESSEE OR OWNE  
SHOULD BE ALLOWED TO TRANSFER TITLE TO OTHER THAN HEIR.

STAN THOMPSON, BOROUGH MAYOR

STATE  
of ALASKA

## MEMORANDUM

Department of Natural Resources  
OFFICE OF THE COMMISSIONERTO: Nels Anderson, Jr., Chairman  
House Resources Committee

DATE :

January 28, 1976

FROM:

Guy R. Martin  
Commissioner*Guy*

SUBJECT:

Status Report  
Beaufort Sea Lease Sale

As you know, the Governor announced last year, following the preparation of an impact statement and the holding of a series of hearings, that it was his decision that an oil and gas lease sale should be held this year in the State owned areas of the Beaufort Sea. The setting of a date for the sale, and the selection of the sale area were questions left open at that time, and which remain open at the present time.

Since the Governor's decision, several courses of action have been pursued to prepare for such a sale. First, it has been the intention of the Administration from the beginning to hold such a sale utilizing a procedure which is substantially more open and publicly responsive than in the past. The preparation of stipulations for the lease sale have been pursued with this as an objective. An interdepartmental committee of the Administration has worked diligently to prepare new environmental stipulations for such a sale and this process should be completed in the near future. At that time the stipulations will be subjected to public hearing in the area of the sale as well as in at least one other location in Alaska.

At the same time, the Department of Law and the Department of Natural Resources have been attempting to consummate an interim agreement with the Federal Government with regard to the small disputed tracts which appear in certain sale areas the State is considering. Such an agreement would permit the sale to proceed and place proceeds related to the disputed areas in an escrow account subject to later determination of Federal or State ownership. While this agreement is not yet completed, it is my view that satisfactory progress has been made, and that it will be possible to complete an agreement some time during the middle part of 1976.

Still another interdepartmental working group is dealing with certain technical and legal aspects in preparation for sale. These aspects include necessary changes in the lease, the evaluation of bidding methods, and preparation for sale area and tract selection. Again, this work is progressing satisfactorily, and should permit a sale in the middle to late part of 1976.

January 28, 1976

No definition of sale area has yet been undertaken, and the entire area from the eastward boundary of Pet 4 to the Canadian border is under general study. It has been the general intention of the Administration to sell only a portion of this area, and the ultimate choice will depend upon a wide range of factors including jurisdictional difficulties exploration activity, the tract selection process overall, and all of the other factors which should be expected to influence such a choice.

Because there has been no specific definition of the sale area at this time, it is virtually impossible to supply revenue estimates for any sale. Generally speaking, the area in question is one of high interest on the part of industry, and the expectation for such a sale is optimistic. Intervening events may well be the most important determinate for the success of a sale in this area or for the determination to hold a sale on an early schedule. Such events include Federal oil pricing policy, State taxing policy, and the interrelationship of the State program with the Federal Outer Continental Shelf Program. Other factors will also have an effect on the success and viability of the sale.

cc: Commissioner Gallagher, Revenue  
Attorney General Gross, Law

Bristol  
Bay  
Native  
Corporation

P.O. BOX 237 / DILLINGHAM / ALASKA 99576 / PH. (907) 842-3070.

January 23, 1976

Mr. Nels A. Anderson, Jr.  
Chairman, House Resource Committee  
District #16 Representative  
Pouch V  
Juneau, Alaska 99811

Dear Mr. Anderson:

We have reviewed the proposed Woodriver-Tikchik State Park and also attended the hearings held in Bristol Bay and Anchorage. We have several comments that we hope are considered by your committee. The Bristol Bay Native Corporation is strongly opposed to the creation of a Park in this area at this point in time, despite the fact that several changes have been made to the original bill, for the following reasons:

1. The most important resource of the Bristol Bay Region to its residents is the salmon. The salmon spawning grounds in the proposed park area provide upwards of \$6,000,000.00 worth of salmon to the processor per year, over a twelve year period, according to public statistics. However, the high subsistence values of the salmon must also be considered. The depletion of the harvestable return is the foremost concern of the resident population of the Bay area. Thus, there is a need to increase this harvestable return by whatever means - such as hatcheries and/or predator control measures. If this park becomes a reality, it is unknown how the increased traffic, number of people utilizing the lakes, and development projects will affect the important salmon spawning grounds.
2. The second most important resource of the Bristol Bay Region is the subsistence values of hunting, fishing, berry gathering, and trapping. Although the State indicates that the continuation of the subsistence activities will be allowed within the proposed park, the people feel that the continuation of the subsistence way of life is not assured or guaranteed. The people are afraid that once the park bill is passed, the State will turn around and find some sort of justification for closing the area to subsistence activities. The Native people are very concerned about retaining this traditional right. We feel that the overall impact upon the local residents will be adverse, especially the village people of Aleknagik, Koliganek and other villages surrounding the pro-

posed park boundaries.

4. We are not in favor of this area being closed to mineral entry as preferred by the Alaska Division of Parks. We feel that the geological reconnaissance is incomplete and the mineral potential is still unknown.
5. The very short tourist season of this area does not justify the creation of a 1.4 million acre playground for the rich nor the expenditure for its maintenance.

In conclusion, we would like to see this area be put to its best possible use without making any significant adverse impacts upon the salmon spawning grounds and on the life style of the people. We are not sure and the people are not sure that a park is the best use of this land. Therefore, we suggest that further in-depth studies be made of this area, before the legislature takes any further action, so that all the possible adverse impacts can be determined in detail. During this study period, the land should not be designated for any other uses such as open to entry.

We further suggest that the S.S. 1357 be tabled indefinitely until the previous questions are answered.

Sincerely,

BRISTOL BAY NATIVE CORPORATION



Harold H. Samuelson  
President

HHS/es

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LANDS / 323 E. 4TH AVENUE - ANCHORAGE 99501

February 13, 1976

The Honorable Nels Anderson, Jr.  
Chairman, House Resources Committee  
Pouch V  
Juneau, Alaska 99811

Dear Nels:

Guy VanDoren of your House Resources Committee has asked me to list the abuses and problems of the Open-to-Entry (OTE) Program. These tend to fall into two general categories, abuse of the intent of the program and administrative problems.

The intent of the program was to provide the individual with a wilderness site for his recreation use; it was assumed that individuals would be looking for isolated tracts. Abuses of the intent principally involved either the use of the program for speculative real estate ventures or the fostering of a wasteful pattern of land subdivision contrary to responsible land management concepts.

There were a number of different abuses that resulted from the use of the program for speculative real estate ventures:

- \* People hired agents to stake their site and assist with paperwork in violation of the requirement that applicants personally stake their property. The Division of Lands required an applicant to sign an affidavit that he had personally staked his land, but it was a requirement which was impossible to check and enforce.

A variation of this was the situation where individual A staked 5 acres of state land, then transported individual B to the site, had him walk around it, then go back to obtain a lease. B paid A for locating the land, then B assigned (sold) the lease to individual C, making a substantial profit.

- \* For certain cases, an individual staked a number of parcels and then arranged for their purchase by separate individuals (the law limited patent to one per person, but did not limit the number of parcels on which one person could file for lease).
- \* Individuals submitted a property sketch and lease application without ever having visited and staked the land as was required.

- \* An individual staked a number of plots, but only certified the best of them, thus denying others the option to stake.
- \* Individuals sold or advertised for sale OTE sites on which they had paid only a \$10.00 filing fee and a few years rental at \$40.00 per year. Some known OTE land transactions included the following which occurred in 1973 or earlier: remote fly-in sites in the Matanuska-Susitna Valley, approximately five acres with 400 feet water frontage, \$3,000-\$3,500; similar sites surveyed, \$4,500-\$5,500. Similar sites in superior Matanuska Valley locations, \$12,000. Unsurveyed sites west of Healy in mountainous country adjoining McKinley National Park, \$7,500-\$8,000. Unsurveyed sites on Kachemak Bay \$9,000-\$12,000. Frequently these sites had no improvements.
- \* The ability of the OTE lessee to assign his lease resulted in the individual selling a paper entry. For example, the entryman might sell his property based upon 400 feet of water frontage and five acres at \$10,000 to \$20,000, south Kachemak Bay. When the new owner has his property surveyed he may find that the actual staked area includes only 250 feet of frontage and 2.67 acres of land. He has no recourse as the surveyor is not permitted to go outside of lands actually appropriated (staked) by the original entryman.
- \* The legislature closed the OTE program to non-residents on June 12, 1973. They took this action because of the high percentage of non-residents filing for open-to-entry sites, often for speculative purposes. An indication of the problem is given by the activity on the last day the OTE program was open to non-residents, June 11, 1973. Eighty-five applications were filed that day. One was by a young man who flew up from southern California on the morning of June 11, chartered a plane, flew to the open-to-entry area, staked the property, returned and filed the application before the 4:30 p.m. deadline. After the legislature changed the law to limit open-to-entry program to one year residents of Alaska, non-residents continued to file and this requirement was abused. This provision was very difficult to enforce even though cooperation from the District Attorney's office was received in investigations regarding residency.

The second category of abuses relates to practices that occurred as a result of the OTE program which were contrary to responsible land management concepts. The program assumed that individuals were looking for isolated tracts. Contrary to this, people tended to cluster their filings in desirable areas. There was no overall plan and individuals staked wherever they pleased. Because of this, individual entries sometimes overlapped or left odd pieces of unusable land between filings. Public access was not provided.

Other related problems:

- \* The Fish and Game Department and other departments did not have an opportunity to identify and therefore recommend withholding from entry critical habitat areas and similar public interest lands.

- \* The use of agents to stake sites resulted in creating, in effect, subdivisions of five acre sites without proper planning or consideration of physical site problems. In some areas evidence existed that whole sections were so subdivided.
- \* Such clustered filings created demand for services such as roads and schools in remote areas that were expensive to service; such unplanned service demands resulted in opposition of most borough governments to the program, as the tax base contribution of the program was not sufficient to pay for the demanded services.

Administrative problems with the Open-to-Entry program were considerable. A listing follows:

- \* The requirement limiting entry to 400 feet of any type of water frontage proved a problem since water frontage has not been defined by state statute.
- \* The statutes are unclear, but an opinion by the Attorney General's office states that surveys of OTE sites are not under the jurisdiction or authority of local organized boroughs. This may become a problem. A borough attorney has indicated that a cloud on the title is a distinct possibility due to by-passing local borough requirements.
- \* Numerous problems were related to the staking procedures. Often stakes of others were either removed or moved with the result that claims overlapped one another. Many stakings were deficient in that the corner stakes were not properly or completely staked. This becomes apparent during the final surveying of the entry which may be as many as 10 years after the initial lease issuance. Because many things could have happened during this time span, it is difficult to prove whether the initial staking was valid.
- \* A number of problems relating to surveying open-to-entry sites developed because of the use of metes and bounds descriptions, and the remoteness of many sites. Since annual restaking is not required, surveyors are sometimes unable to find the entryman's location. A lack of communication between surveyors, their clients, and the state resulted in a heavy work load for the Division. Long delays existed between issuance of survey instructions by the Division and submittal of a plat, sketch, field notes, or anything in writing by the applicant.
- \* There are problems resulting from the statutory requirement that lands be appraised before negotiated sale to the lessee, and the large number and location of the OTE lands.
- \* The legally established annual rent of \$40.00 does not adequately cover administrative expenses.

While the administrative problems were considerable, the primary reason for closing the program was its misuse for speculative purposes. In announcing

the closure in August, 1973, when Director of Division of Lands, F.J. Keenan said:

"The idea of the open-to-entry program was designed to provide the individual with a wilderness site for his recreation use and not as a tool to create a speculative real estate venture".

I hope this summary of the problems encountered by the Division in administering the open-to-entry program is useful to you and your committee. Please do not hesitate to call on me if I can be of any further assistance.

Very truly yours,

*Mike*

Michael C.T. Smith  
Director