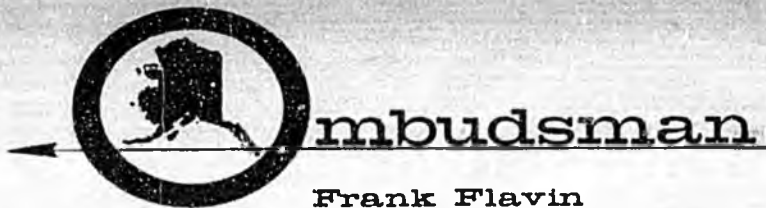


MISC.



Frank Flavin

October 11, 1979

Senator Don Bennett  
and members  
Administrative Regulation Review Committee  
Box 2801  
Fairbanks, Alaska 99707

Dear Senator Bennett:

The enclosed packet was prepared for the Executive Regulation Reform Effort. We thought you and the members of your committee might also be interested.

Sincerely,

Frank Flavin  
Ombudsman

FF/PM:rj  
Encl.

State of Alaska

Reply to:

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch W0  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001



MEMO

Date: September 28, 1979

To: Bill McConkey

From: Frank Flavin

Subject: REGULATION REFORM EFFORT

Last May, Diane LeResche asked that this office participate in your regulatory reform effort. We agreed to review our complaint files of the last four years in search of cases evidencing unnecessary, too restrictive, or duplicate regulations. This commitment has proven ambitious, and we admit that our review was not exhaustive.

We had anticipated finding many "problem" regulations. Instead, our complaints more frequently resulted from "problem" statutes, or at least their interpretation and administration. Likewise we have found misapplication of regulatory requirements.

And, probably the last thing you want to hear, our complaints have often resulted from the lack of regulations or written procedures where they are statutorily required or should be required.

Through Ombudsman recommendations we have been able to remedy some of these deficiencies and what we believe to be misapplication of requirements. The listing below includes regulations which continue to be a problem, for one reason or another, and areas which we think ought to be covered by APA regulations. We realize that this isn't exactly what you asked for, but perhaps our input can be used in conjunction with that provided by affected agencies.

11 AAC 16.030 requires people who want to use a geiger counter or metal detector on state park/historical site areas to get a permit. However, to be eligible for a permit, one must be a registered archeologist, according to the Division of Parks. (A79-0808)

3 AAC 33.060 and .100 require (indirectly) that firewood be sold only by the cord or percentage of a cord, as interpreted by Weights and Measures. (A79-0846)

5 AAC 81.055 (5) requires that persons applying for one sheep hunt cannot apply for another sheep hunt--even if that person did not get selected (by lottery, for example) to participate in the first hunt. (A79-0779)

12 AAC 60.030 allows for the granting of reciprocity to psychologists holding licenses in other states. This regulation is rarely used. It builds expectations for reciprocity that is seldom granted. (A79-0848)

12 AAC 80.010-060 requires that barbers be licensed through the Barber Board. The entire function of this Board could be eliminated with no disservice to the public. These sections allow too much subjective discretion to the Board. (A78-1427)

11 AAC 72.100 requires that persons using 5,000 gallons or more of water per day to get a water appropriation permit. The agency administering this regulation is backlogged by thousands of permit applications going back five years and is not currently enforcing the application requirement. (A79-0303)

17 AAC 40.220 requires that the commissioner of DOT approve all expansions and improvements of airports and landing fields. This regulation results in after the fact rubber stamp approval. (77-1818)

5 AAC 60.030 (a) (4) defines areas where fishing is permitted at the junction of two bodies of fresh water. This definition is based on intersection marks which are not easily determined by the fishing public. There is a different definition used to distinguish where fishing is permitted when salt water confluences are involved. (A79-0684) (see attachment #1)

8 AAC 77.005-905 provides for state inspection of elevators. The Municipality of Anchorage has the same authority and inspections have been duplicated. (A79-0678)

17 AAC 40.320 (b) defines classes of airport land use. (A78-1184) (see attachment #2)

11 AAC 20.010 allows for use of firearms in state parks but this conflicts (perhaps) with Fish and Game's regulation of hunting (A79-0950) and (A78-1000) (see attachment #3)

5 AAC 06.341 sets the maximum length of Bristol Bay fishing vessels. It is our finding that the regulation, as written, is ambiguous. (A78-1299) (A79-0647) (see attachment #4)

11 AAC 54.300 concerns procedures in land disposals. (A78-1420) (see attachment #5)

11 AAC 86.130 is a mining regulation which does not require the submission of recorded copies of documents. It does require submission of copies of recorded documents. We believe that the Division is requiring in practice more than the regulation requires. (A78-0899) (see attachment #6)

Bill McConkey  
September 28, 1979  
Page 3

8 AAC 85.200 (b) (4) is an unemployment regulation which apparently conflicts with federal CETA regulations. (A79-0113) (see attachment #7)

12 AAC 24 - these regulations do not contain provisions for manicurists, demonstrators or consultants, school owners, owner only shops, or owner-operators. (J79-0037)

13 AAC 08 - these motor vehicle regulations need to define methods by which one can show financial responsibility. (J79-0113)

7 AAC 48.100 and 7 AAC 40.180--in our complaint the fair hearing appeal process took 215 days. (J79-0126)

19 AAC 05 and 19 AAC 10 - these Local Boundary Commission regulations are vague and permissive. For example, what is a "valid public purpose" in 19 AAC 05.010? At 19 AAC 10.120 the department may recommend and at 140 the majority may decide. 19 AAC 10.150 seems to allow too much discretion to the Commission in waiving regulatory requirements. (J78-0369) (J79-0041) (J79-0042) (J79-0064)

19 AAC 35.120 (4) - this senior citizen property tax exemption regulation has been interpreted narrowly through guidelines rather than on an individual case basis. (A79-0788)

#### Additional Regulations Necessary

ASHA appeal procedures differ depending on source of funding for individual projects--federal, state, or combined. Often project managers cannot advise aggrieved tenants of which procedure to use. (J79-0194)

There are no state medicaid regulations although the agency is developing a policy manual to be used in conjunction with federal regulations.

Professional Services Contract regulations are part of the Administrative Manual and, as such, the Attorney General's office has found them to be guidelines only. (J78-0367 et al)

The Division of Pioneer Benefits has no APA regulations for the Pioneer Homes or Longevity Bonus programs. Longevity Bonus is specifically exempted from APA requirements by AS 47.45.160. It is our feeling that both of these programs directly affect the public so should be subject to APA. We would expect more reasonable policies were the regulated to communicate with the regulators.

Bill McConkey  
September 28, 1979  
Page 4

The Division of Retirement and Benefits, in this office's opinion, has frequently interpreted its statutory authority in a questionable manner. When queried, the Division has obtained a legal opinion upholding its application of the law based on consistent past administrative practice. The PERS and TRS Boards infrequently issue regulations, but these are not under APA procedures. We believe the Division of Retirement and Benefits ought to be subject to the Administrative Procedures Act.

Attachment #8 speaks to the need for regulations as a stop-gap solution concerning Occupational Licensing's release of bonds and cash or other acceptable negotiable security in lieu thereof. (A79-0181, A79-0165, A79-0688)

And lastly, attachment #9 concerns a complaint about Day Care Assistance. Our complainant asked that this information be sent to you. (77-1421)

rj  
Attachments



# Ombudsman

Frank Flavin

State of Alaska

Reply to:

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch WD  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

August 23, 1979

Re: Ombudsman Complaint A79-0684  
(Closed)

Please be advised the above-captioned complaint, alleging that the Department of Public Safety's Fish and Wildlife Protection Division improperly closed the Yetna River for King Salmon fishing on June 16, has been fully investigated.

As my assistant earlier explained to you, Fish and Wildlife Protection Officers John Knudson and Joe Campbell patrolled the confluence of the Yetna River and Lake Creek that day. Lake Creek was open for King Salmon fishing; Yetna River was not. The agency officers were operating under state regulation 5 AAC 60.030 (a) (4), which allowed fishermen to fish just that area of the Yetna that was a direct line across the Yetna from both banks of Lake Creek. The regulation (as correctly interpreted by Officers Campbell and Knudsen) restricted fishing on the Yetna to the area shown in figure A, on the attached diagram.

In explaining this to the 200 fishermen on the Yetna bank with you, both officers felt the regulation unfair. They informed all the fishermen of the same legal restrictions on where people could fish that day. Officers Campbell and Knudsen reported that almost all the other fishermen moved to locations where they could legally fish.

However, upon returning to Anchorage, the two informed their supervisor (Lt. Wayne Fleeks) of the problem encountered. The agency then requested the Board of Fish consider substituting the fresh water regulatory definition with the one determining where fresh water intersects with salt water. As the water color in fresh water/salt water confluences is easily marked, the definition of those confluences is different in state regulations. Those regulations (5 AAC 72.040 (8) provide for fishing in waters colored the same as the inflowing waterway as shown in figure B on the attached diagram.

Attachment #1

August 23, 1979

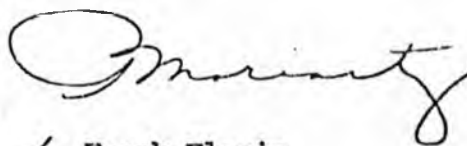
Page two

As the water coloring of Lake Creek is detectably different than Yetna River, even though both are fresh water, the agency felt it could ask the Board of Fish to substitute the latter definition. The Board of Fish expeditiously approved the change for Lake Creek and Yetna River, providing for fishing on the Yetna as outlined in figure C on the attached diagram.

Hence, when your acquaintance went back to the Yetna River shortly after June 16, he was given the new regulation interpretation of where he could legally fish on the Yetna.

We find the agency acted correctly when its officers told you fishing on the Yetna was prohibited. However, your basic complaint was partially justified, as even the agency saw the unfairness of restricting the fishing to just the bank-to-bank area. Since the agency remedied the basic unfairness, we believe no recommendation from us is warranted. Thanks to the agency actions, we further find the complaint partially rectified: the basic unfairness was corrected. Thank you for bringing this matter to our attention.

Sincerely,



*for* Frank Flavin  
Ombudsman

FF/CA/jm

Attaciment

FIGURE A

Black Areas: proper areas for fishing pursuant to 5 AAC 60.030 (a) (4)

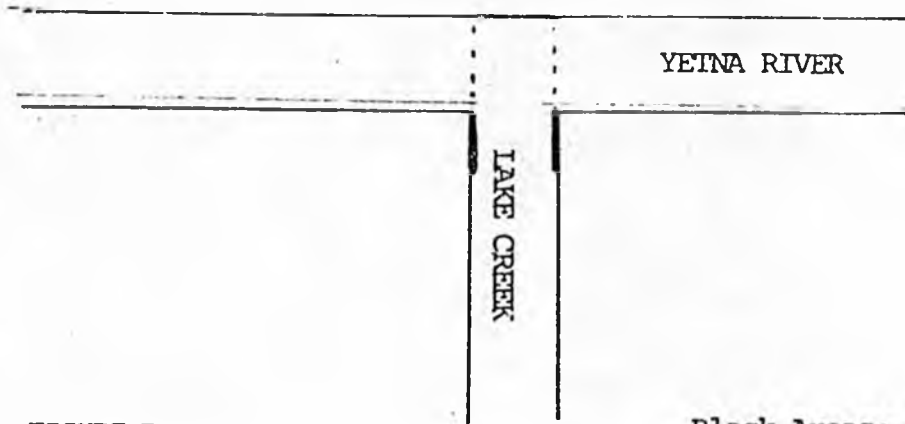


FIGURE B

Black Areas: proper areas for fishing pursuant to 5 AAC 72.040 (8)  
Dotted Areas: Color of water more similar to Lake Creek than Yetna.

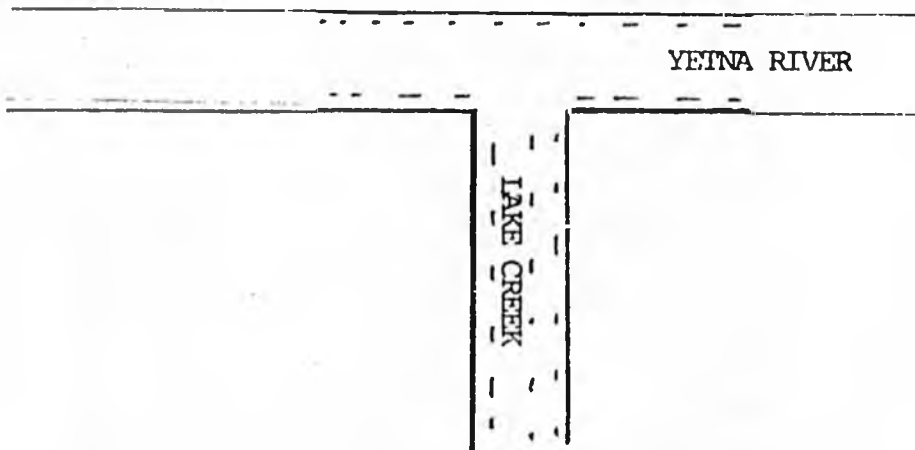
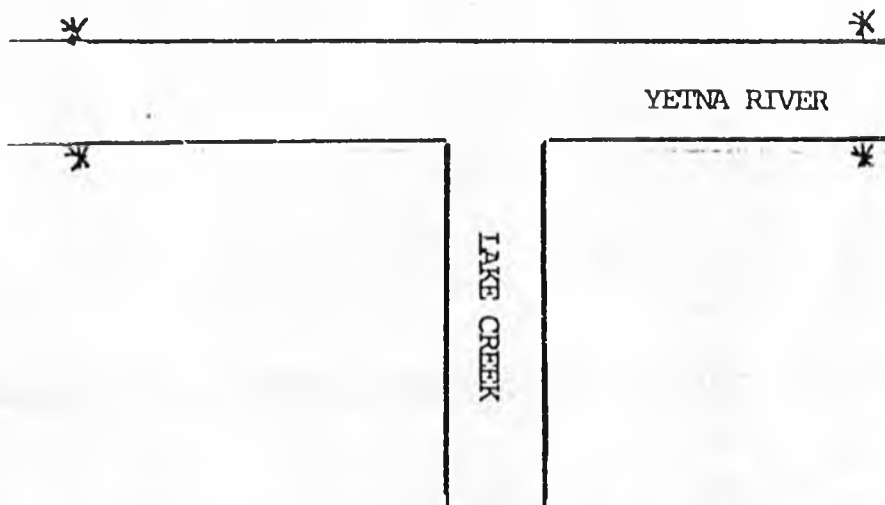


FIGURE C

\* F & W Protection Markers





# Ombudsman

Frank Flavin

State of Alaska

September 29, 1978

Dick Chitty, Director  
Division of Lands, Leasing, Right-of-Way  
and State Equipment  
Department of Transportation  
Pouch Z  
Juneau, Alaska 99811

Reply to:

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch WO  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

Re: Ombudsman Complaint A78-1184  
(Pending)

Dear Mr. Chitty:

Please be advised that the above-referenced complaint, alleging that the Department improperly leased land at the Anchorage International Airport to the Alaska National Bank of the North, has been investigated. We find the complaint to be justified.

DOT POSITION:

Your September 4 letter to Steve Pavish states, "The Planning Division was consulted regarding the resolution of the Anchorage International Airport Master Plan Advisory Committee. We are advised that the planned usage by the bank for this specific piece of property is not incompatible with the master plan being developed. 'The center is totally dependent on data arriving on scheduled aircraft as well as on the bank's leased aircraft' according to Alaska National Bank of the North. Please process the lease in the normal fashion."

The Department argues that this lease was for an auxiliary aviation purpose and, therefore, non-controversial according to sound land use planning. Mr. Head's memo to you of September 6 states:

"The general area in which this lease has been filed is recommended to have a land classification of 'aviation support' activities . . . 'Aviation support' . . . reserves the land for any enterprise with a requirement for interfacing with air carriers . . . The needs of the Alaska Bank of the North were sufficiently compelling for the Lands and Leasing division to classify them as 'auxiliary aviation' . . . Once this decision was reached, the proposed location became non-controversial from the standpoint of the planned land use classification . . . this was an exercise of judgement within the realm of management . . ."

ATTACHMENT #2

The Department correctly published and posted the legal notice of Bank of the North's application to lease State airport lands for 45 years at a rate of \$.08 per square foot, and allowed for public comment. The legal ad stated that a hearing would be held on the lease application if the Department received twenty written requests. Since less than this number of written objections were received, the lease was signed by the State on September 5.

OMBUDSMAN FINDINGS:

1. The Bank of the North lease for a data processing center was improperly justified as an "auxiliary" aviation use.
  
- 14 AAC 10.320(b) defines classes of land uses. (2) states: "auxiliary" such as taxicab service; rent-a-car agency; cocktail lounge; gift shop; barber shop; cafe; skytel; hotel-motel; newsstand; insurance sales; arcade; and generally any business or service not included in "aviation function" which is located and operated for the convenience of the air-transient public and employees necessary to the maintenance and operation of the airport;

Section (3) defines "non-aviation" uses. such as grocery store; cafe; liquor store; lumber yard; agriculture; golf course; automobile service station; shopping center; bowling alley; and generally any business or service not normally related to aviation or the air-transient public and which does not offer a product or service normally used by the air-transient public and which is located and operated to derive its income in major part from the general public;

By no stretch of the imagination can a data processing center for bank records be considered an "auxiliary" aviation use under the definitions in these regulations which are currently in effect. Mr. Head's reference to "aviation support" uses which have a requirement for interfacing with air carriers bears no resemblance to regulatory definitions of alternative land uses. It is not management's prerogative to designate types of use which conflict with legal regulations. Further, the legal notice on this lease stated it was for non-aviation purposes.

2. By improperly classifying this as an auxiliary aviation lease, the Department subverted its regulations which restrict issuance of non-aviation leases.
  
- 14 AAC 10.320(c) (3) reads in part:  
Leases for non-aviation use. Such non-aviation use of the airport lands as may be permitted by the division

may not interfere with the safe and normal operation of the airport; may not violate state or federal laws; and may be permitted only upon lands or facilities not immediately needed for aviation functions, auxiliary purposes, or for expansion or development purposes, and leases or permits which allow such non-aviation use may not extend beyond the time during which such lands or facilities can reasonably be expected to be unnecessary for expansion or development purposes.

By incorrectly justifying this as an auxiliary aviation lease, DOT staff contends that the requirements in this regulation need not be met. However, since the data processing center can only meet regulatory definitions of a non-aviation use, the requirements above do apply. According to Mr. Head's memo referenced above, the airport land involved in the Bank of the North lease "is recommended to have a land classification of 'aviation support' activities". Clearly, therefore, the Department has violated the restrictions in 14 AAC 10.320(c)(3).

3. By improperly classifying this as an auxiliary aviation lease and deeming it, therefore, non-controversial and by strictly interpreting legal notice provisions regarding requests for public hearing, the Department did not allow adequate public input on issuance of this lease and did not afford adequate weight to the input received.

Since this lease can be defined only as non-aviation, and since it was granted on lands generally classified as "aviation support" because "much of the surrounding land is irretrievably committed to leases of this nature", it must be considered controversial and, as such, should certainly have gone to public hearing.

The Department has argued that less than twenty written objections were received during the public comment period. The Department has failed to consider that each of the seven signers of Resolution 8/9-1 of the Anchorage International Airport Master Plan Advisory Committee represent a special interest relating to the airport. Each signed not as an individual, but as representative of a group of individuals who objected to the lease. The objection of seven organizations should be sufficient justification for a public hearing.

Further, since this lease application quite obviously had master plan land use implications, the written objection of the Master Plan Advisory Committee should have carried more weight. The Department argues that this group does not constitute a public forum and that "no source presently exists for ongoing public input on the airport." Nevertheless, this Advisory Committee is the only established external review mechanism on which the Department can call.

4. The lease to Bank of the North for a data processing center was issued at an unlawfully low rate.

A January 28, 1976 letter from Attorney General Cross to Commissioner Harris states ". . . it was brought to our attention that rentals at the airport are substantially below fair market value. Under the law, the property must be leased at market value. AS 2.15.090; 14 AAC 10.340. A lease at less than market value is unlawful, and arguably, the lessee owes the State the difference between his actual rental and the actual value."

On June 12, 1976, Commissioner Harris responded, "We are sure you can appreciate the fact that a complete state-wide conversion to a fair market value system of airport land leasing would be an extremely costly endeavor . . . We are, therefore, initiating a program where leases for non-aviation land uses on Anchorage and Fairbanks International Airports will be issued on a fair market value basis. The program will call for the respective lease applicants to hire, at their own expense, an appraiser approved by the Division of Aviation. The appraiser's report would then be used as the basis of the lease rental. We believe this program will permit us to begin a fair market value rental system at a minimum of expense to the state."

Again, in a response to me on September 30, 1976, Commissioner Harris stated "Your recommendation has been reviewed and tentative conclusions reached. Leases for non-aviation uses will be appraised and leased at the greater of either the lot's appraised fair market value or a certain specified minimum amount."

I don't believe we need to belabor this further.

5. The Bank of the North lease application received preferential treatment by the Department.

We note a written comment that the Lease Application Review Committee received instructions from you on June 19 (six days after the lease application was received) to issue the lease as soon as possible per Commissioner Harris, Pat Ryan, and Jim O'Sullivan.

We note also an August 7 letter from Stephen Pavish to Mr. Elton E. Engstrom, President of Engstrom Brothers Company, which states in pertinent part "The fish operation as proposed (in Engstrom's lease application) is incompatible with sound airport planning and development in that land on the airport is in critical short supply . . . We, therefore, must hold available land for operations which must have an airport location. In the case of your proposed fish operation,

the time for transportation between the plane and the processing plant appears to be such that the product leaving a plane by trucks can equally well move to a processing station located off the airport."

In our view, the Chief of Airport Leasing correctly rejected this application for a non-aviation use of airport lands. We cannot understand, however, how the time for transportation between the plane and the data processing center could be any more vital than the time required to transport fish. We can only conclude that, had there not apparently been a "management" decision to call the Bank of the North lease "auxiliary", and had there not apparently been instructions from top management in the Department from the outset to process this application as quickly as possible, the disposition of this lease application might well have been different.

In response to a Legislative Audit recommendation that DOT develop comprehensive revenue plan for Anchorage International Airport, the Department responded in June, 1977 ". . . if the 'Division of Aviation' should foster sound economic conditions in air commerce among the air carriers in the public interest and promote adequate economical and efficient service by air carriers and promote reasonable charges without unjust discrimination, undue preferences, or disadvantages and unfair or destructive competitive practices, then the 'Division of Aviation' has done a commendable job of preserving the integrity of the operation."

While the Department was referring here to philosophical questions regarding lease rates for aviation purposes, the subject complaint makes us wonder how commendable a job of preserving the integrity of the operation the Department is now doing.

#### RECOMMENDATIONS:

Despite the auxiliary/non-aviation improprieties listed as findings, we are not recommending cancellation of this lease. I have noted with interest just how fast the Bank of the North data processing center is being constructed.

Two recommendations have resulted from this complaint, however:

1. DOT should immediately contact the Bank of the North, and instruct the Bank to hire an appraiser who meets with the approval of the Department. A fair market value appraisal of the leased land should be conducted, and the lease rental recomputed based on the true land

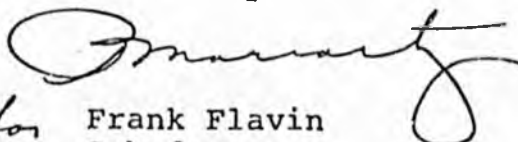
value. This recommendation conforms exactly to Commissioner Harris' promised policy changes and to recommendations of the Attorney General.

2. I am extremely concerned that the Department has no established mechanism by which to solicit representative public input on proposed airport land uses. It is recommended that such a body be constituted with powers and responsibilities specifically delineated.

I am also concerned about the duties and authority of the Master Plan Advisory Committee. I recommend that the role of this Committee be specified, and that its relationship to LARC be defined. The Department insists that this Committee's role is to advise on general policies only, and to have no input on the operational decisions which implement these policies. The Committee members are concerned that their advisory role is futile since their recommendations are rarely solicited and frequently ignored.

We thank the many DOT staff members who cooperated during the course of this investigation. I shall appreciate your written response to these recommendations within thirty days.

Sincerely,

  
for Frank Flavin  
Ombudsman

cc: Don Harris, Commissioner, DOT  
Dick Holden, Deputy Commissioner, DOT  
Martha Mills, Attorney General's Office, Anchorage

PM:FF/gpw

# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS

JAY S. HAMMOND, Governor

Division of Parks  
619 Warehouse Dr., Suite 210  
Anchorage, Alaska 99501

**R E C E I V E D**  
SEP 19 1978

ANCHORAGE  
OFFICE OF THE OMBUDSMAN

September 18, 1978

Re: Ombudsman Complaint A78-1000

Mr. Frank Flavin  
Ombudsman  
840 "K" Street, Room 203  
Anchorage, Alaska 99501

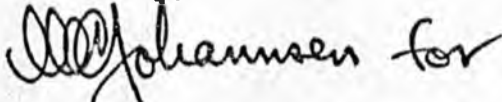
Dear Mr. Flavin:

Thank you for your letter of August 28, 1978 relative to Denali State Park.

There is one discrepancy which we wish to bring to your attention: control of hunting and fishing rests with the Department of Fish and Game. They continue to designate open areas and control these activities within State Parks. Use of firearms in state park areas is within the jurisdiction of the Division of Parks. Therefore hunting may be allowed in areas closed to firearms (by other methods). Denali is open to bow hunting and has generally been popularly received as such by hunters not wishing to compete with firearm hunters.

We are in the process of revising our Park rules and regulations and will include a specific provision relative to firearms in Denali State Park.

Sincerely,



Terry A. McWilliams  
Director

JC:pg

cc: Jeanne Comer, Chief of Maintenance and Operations

Attachment # 3

August 28, 1978

Re: Ombudsman Complaints A78-0947  
and A78-1000

Your complaint against Fish and Game for inadequate hunting regulations regarding Denali State Park has been discontinued and a similar complaint opened against Natural Resources, Division of Parks. Fish and Game claims no authority to promulgate hunting regulations in state parks -- Parks does (see AS 41.20.020 (6) enclosed).

I'm also enclosing the entire statute on the Denali State Park. You will note that there is no section "Incompatible uses prohibited" similar to AS 41.20.270 on Kachemak Bay State Park, and like sections in the statutes on other state parks. Neither is there a section on "Discharge of firearms" similar to AS 41.20.280. The sections on firearms in other state park legislation provide that firearms use may be permitted when authorized by regulation. It is the position of the Division of Parks that since they have not allowed use of firearms in Denali State Park by regulation, it is therefore prohibited. Parks cites AS 11.55.050 in the criminal code as authority for prohibiting discharge of firearms in Denali State Park.

I have found your complaint against the Division of Parks, alleging inadequate hunting regulations in Denali State Park, to be partially justified. Although hunting in the Park is prohibited, it is very difficult for a citizen to determine why -- it was very difficult for us to find the information. Parks assures us that a specific provision will be included when their regulations are revised this fall. I, therefore, consider your complaint to have been rectified.

I hope that this information is helpful and thank you for your patience.

Sincerely,

Frank Flavin  
Ombudsman

FF/PM:rj  
Enclosures

August 28, 1978

Terry McWilliams  
Director  
Division of Parks  
Department of Natural Resources  
619 Warehouse Avenue  
Anchorage, Alaska 99501

Re: Ombudsman Complaint A78-1000  
(Closed)

Dear Ms. McWilliams:

The above-referenced complaint, alleging inadequate regulations on the discharge of firearms in Denali State Park, has been investigated and is found to be partially justified.

Your staff has explained that since discharge of firearms is not specifically allowed by regulation, it is prohibited. AS 11.55.050 was cited as authority. I also understand that the Denali State Park statute does not contain the specific language on discharge of firearms found in other state park statutes.

Although the Division's position may be technically correct, I have found this complaint to be partially justified due to the difficulties encountered by our complainant and ourselves in determining authority for closing the area to hunting. We have suggested, and your staff has agreed, that your revised regulations should contain a specific provision regarding discharge of firearms in Denali State Park. I consider this agreement to have rectified our complaint, and have explained to our complainant your authority for prohibiting hunting.

The cooperation and assistance of your staff in resolving this matter has been very much appreciated.

Sincerely,

Frank Flavin  
Ombudsman

FF/PM:rj

STATE OF ALASKA  
DEPARTMENT OF FISH AND GAME  
Ronald O. Skoog, Commissioner  
Division of Commercial Fisheries  
Steven Penoyer, Acting Director

Contact: Michael Nelson  
Bristol Bay Area Biologist  
Box 199, Dillingham, AK  
Phone 842-5227

NEWS RELEASE - FOR IMMEDIATE RELEASE

June 28, 1979

BRISTOL BAY VESSEL LENGTH CLARIFIED

It has come to the attention of the Department of Fish and Game and the Division of Fish and Wildlife Protection, Department of Public Safety, that some fishermen are considering adding temporary bow or stern sections to their fishing boats. The Department's position is that such additions would be in violation of 5 AAC 06.341, the regulation that sets the maximum length of Bristol Bay fishing vessels, if the additions resulted in an overall length greater than 32 feet.

#####

**RECEIVED**  
JUL 20 1979  
ANCHORAGE  
OFFICE OF THE OMBUDSMAN

Attachment #4

July 2, 1979

x

Steven Pennoyer  
Director  
Division of Commercial Fisheries  
Department of Fish and Game  
Subport Building  
Juneau, Alaska 99801

Re: Ombudsman Complaints A78-1299  
and A79-0647 (Closed)

Dear Mr. Pennoyer:

I don't think there is any question that 5 AAC 06.341 is ambiguous. Prosecution will result in legal certainty but at considerable hardship to the citizen thrust into the "test case" role.

The news release clarification is a good idea. I would like to see a copy of what is released.

I trust this issue will be put to rest in December.

Sincerely,

Frank Flavin  
Ombudsman

FF:rj

cc: John Gissberg  
Greg Cook  
complainants

10/761  
STATE,  
ALASKA

# MEMORANDUM

TO: [ Mike Nelson, Area Biologist  
Commercial Fisheries  
Dillingham

DATE: June 25, 1979

FILE NO:

TELEPHONE NO:

FROM: <sup>BC</sup> Bob Clasby, Regulations Specialist  
Commercial Fisheries  
Juneau

SUBJECT: 5 AAC 06.341

Attached is correspondence between the division and the Ombudsman regarding temporary additions to the hulls of Bristol Bay boats and alleged vagueness. As you can see we are still of the opinion the regulation is not vague and that temporary additions to the hull that affect length will be considered in the overall length measurement of the hull proper.

Would you please put out the attached news release (or amend it if you feel it desirable) for the bay area, stating that the regulation does not allow temporary bows, sterns or fish boxes that, when attached to the vessel, would result in an overall length exceeding 32 feet.

We plan to submit a proposal for the December Board meeting that will deal with the subject of the above types of additions.

Please relay this information to and discuss our position with the local Fish & Wildlife Protection staff. Thanks.

cc: w/news release: Parker, Middleton, Frank Sharp

*Bob - your cc - I put yours in Ombudsman's file*

**RECEIVED**  
JUL 20 1979  
ANCHORAGE  
OFFICE OF THE OMBUDSMAN

# STATE OF ALASKA

JAY S. HAMMOND, Governor

## DEPARTMENT OF FISH & GAME

Subport Building, Juneau, Alaska 99801

June 22, 1979

RECEIVED  
JUN 25 1979

ANCHORAGE  
OFFICE OF THE OMBUDSMAN

Frank Flavin  
Ombudsman  
840 K Street, Room 203  
Anchorage, Alaska 99501

Re: Ombudsman Complaints A78-1299 and  
A79-0647 (Pending)

Dear Mr. Flavin:

We have discussed with the Department of Law the recommendation contained in your letter of June 15, 1979 that an emergency regulation be adopted clarifying 5 AAC 06.341. Mr. John Gissberg's opinion was that at this time we would be unable to make a finding that the current regulation was injurious to the immediate preservation of the public peace, health, safety, or general welfare as required in AS 44.62.250 for the adoption of emergency regulations. We could only speculate as to findings, for we are still of the opinion that the regulation is not unconstitutionally vague. We will be circulating a news release in Bristol Bay explaining our interpretation of "hull proper" as used in 5 AAC 06.341.

Mr. Gissberg's recommendation is to wait until a person is cited for a violation of 5 AAC 06.341 and then if the court decides that the regulation is vague we can make findings that an emergency exists based on the judge's decision. The adoption of an emergency regulation regarding vessel length, no matter how concise, without such legal direction could be struck down because the findings under which it was adopted were speculative as to the existence of an emergency.

We still plan to propose amendments to 5 AAC 06.341 at the December meeting of the Board of Fisheries. This is the best method for amending the regulation as it allows public input as required under the Administrative Procedures Act.

Sincerely,



Steven Pennoyer, Acting Director  
Division of Commercial Fisheries

cc: John Gissberg, Attorney General's Office, Anchorage  
Greg Cook, Board of Fisheries and Game, Juneau



# Ombudsman

Frank Flavin

State of Alaska

June 15, 1979

Reply to:

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch W0  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

Steven Pennoyer  
Director  
Division of Commercial Fisheries  
Department of Fish and Game  
Support Building  
Juneau, Alaska 99801

Re: Ombudsman Complaints A78-1299 *see*  
and A79-0647 (Pending)

Dear Mr. Pennoyer:

Subsequent to your letter of March 29, 1979, concerning the interpretation of 5 AAC 06.341, I contacted John Gissberg and Greg Cook. (Contrary to your letter, Fish and Wildlife Protection of the Department of Public Safety was contacted by us. Ms. Holden discussed this case with Captain Sharp on October 25, 1978.)

We still feel that the regulation is ambiguous in that "hull proper" is not defined. Your interpretation is that "hull proper" means any section added to the boat whether temporary or cosmetic. In reviewing this section a coast guard documentation officer felt that cosmetic and non-permanent additions would not be included in measuring the "hull proper." Again, the regulations are silent.

Ambiguity exists within the meaning of the principles of statutory construction when a statute (or regulation) is capable of being understood by reasonably well informed persons in two or more different senses. Procedural due process and fairness demand that regulations with a possible criminal sanction be definite.

Clearly the subject regulation is unfair. We recommend that an emergency regulation be adopted defining hull proper.

Thank you for your patience and consideration.

Sincerely,

Frank Flavin  
Ombudsman

FF:rj

cc: SE Ombudsman Office  
John Gissberg  
complainants

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUPPORT BUILDING  
JUNEAU, ALASKA 99801

March 29, 1979

Ombudsman Frank Flavin  
Pouch WO  
Juneau, Alaska 99811

Dear Mr. Flavin:

Upon reviewing my February 14, 1979 letter to you concerning Ombudsman Complaint A78-1299 and discussion with the Department of Law, I am submitting additional information to you concerning the matter.

A substantial amount of confusion concerning the legality of temporary fixtures being added to vessels employed in the Bristol Bay salmon net fishery would have been eliminated had the Departments of Law and Public Safety been consulted at the beginning of the investigation process. Both Departments have developed policies to handle this matter.

The Coast Guard register length definition does not apply to 5 AAC 06.341, thus Mr. Feero's statement that temporary sections can be added to a vessel without changing its registered length does not apply to the case at hand. The only State law that refers to Coast Guard registers length is AS 16.05.835 regarding the length of salmon seine vessels. The statute limits overall length to 58 feet and Coast Guard register length to 50 feet, thus indicating that the State recognizes a difference between the two types of measurement. While the Coast Guard may allow additions to a hull that affect the vessels overall length without affecting its registered length the State does not.

5 AAC 06.342 sets a limit on the maximum overall length of a vessel and relates that length to the hull proper. Bolt on bows, stern sections or tanks, no matter how temporary, become a part of the hull when attached and will be considered so for overall length measurement under sec. 342.

The Department will submit a proposal at the Board of Fisheries December 1979 meeting that will clarify the intent of the regulation.

Sincerely,

  
Steven Pennoyer, Acting Director  
Division of Commercial Fisheries

cc: Col. Fred M. Woldstad, Fish and Game Protection  
Dept. of Public Safety, P.O. Box 6188 Annex,  
Anchorage, Alaska 99502

Mr. John Gissberg, Asst. Attorney General,  
Dept. of Law, 420 L Street, Suite 100,  
Anchorage, Alaska 99501

RECEIVED  
APR 03 1979

JUNEAU  
OFFICE OF THE OMBUDSMAN

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF FISH AND GAME

February 14, 1979

OFFICE OF THE COMMISSIONER

SUPPORT BUILDING  
JUNEAU, ALASKA 99801

Ombudsman Frank Flavin  
Pouch WO  
Juneau, Alaska 99811

Dear Mr. Flavin:

Thank you for your letter of January 9, 1979 updating me on the status of Ombudsman Complaint A78-1299.

Your recommendation for regulatory action would alleviate the confusion associated with the Bristol Bay gill net vessel length limit. However, last fall the Board of Fisheries reviewed a public proposal to eliminate the Bristol Bay vessel length limit altogether. At that time it was the consensus of the Board that additional public input was required before a final decision could be reached. Accordingly, they deferred the matter until the next fall meeting scheduled for December 1979. Considering the status of this regulation, I believe it best to also defer your recommended regulatory changes until the fall meeting. At that time the Board can adopt any housekeeping regulations needed if they decide to retain the vessel length limit.

Sincerely,



Steven Pennoyer, Acting Director  
Division of Commercial Fisheries

RECEIVED  
FEB 21 1979

JUNEAU  
OFFICE OF THE OMBUDSMAN



ombudsman

Frank Flavin

State of Alaska

Reply to:

840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011

January 19, 1979

Pouch WO  
Juneau, Alaska 99811  
(907) 465-4970

Mr. Steve Pennoyer  
Acting Director  
Division of Commercial Fisheries  
Department of Fish and Game  
Subport Building  
Juneau, Alaska 99801

RECEIVED  
FEB 5 1979

P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

JUNEAU  
OFFICE OF THE OMBUDSMAN

RE: Ombudsman Complaint A78-1299 (Closed)

Dear Mr. Pennoyer:

This is to inform you that the Ombudsman's Office has completed its investigation into the above referenced case and determined it to be justified and rectified.

This matter pertains to an alleged ambiguous regulation, 5 AAC 06.341, "Vessel Specifications and Operation." Prior to contacting this office for assistance, the complainant was unable to obtain a clear explanation or definition of the referenced regulation. Following dialogue with many individuals from various relevant state and federal agencies, it was found that there was no consensus on that regulation's true definition, nor its intent. Based on the results of our inquiries, we agree with the complainant; the regulation is, in fact, ambiguous.

Enclosed is a copy of a letter (written at our request) from Mr. John E. Feero, Supervisory Documentation Officer with the U.S. Coast Guard's Marine Inspection section. He has attached a copy of 46 CFR 69.03-13(c), which defines the specifications used when a vessel is documented, and he explicitly states that a section (a pointed bow piece in this case) may be added to a vessel following documentation, providing it is bolted (or otherwise temporarily affixed) and not made a permanent (welded or fiberglassed) fixture to the hull. We understand that the intent of the Fish and Game regulation is to control the tonnage capacity, or earning capacity, of the fishing vessel. Therefore, if a section is added on, but not affixed in a permanent manner, and does not change the storage capacity of the hull, it is not in violation.

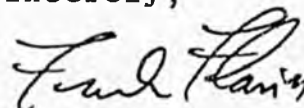
The complainant's problem was rectified through Mr. Feero's letter of explanation dated December 14, 1978. However, in

January 19, 1979

an effort to prevent a similar incident from occurring, and/or the possibility of an individual being erroneously charged with a regulation violation, we recommend that a clear definition of the term "hull proper" (such definition to include the intent of the regulation) be added to 5 AAC 06.341. In addition, we recommend that the Division of Commercial Fisheries provide a clarification of the information provided in Mr. Feero's letter; that clarification to appear in any manuals, brochures, and forms which supply information on vessel regulations and measurement data for fishermen and boat builders. We have also requested that the Fish and Wildlife Protection Division of the Department of Public Safety, and the U.S. Coast Guard's Marine Inspection Documentation Branch supply similar clarifications in their information documents.

Inasmuch as this is a formal recommendation, please respond as required in 21 AAC 05.070 and 080. The Ombudsman's Office appreciates cooperation and assistance received from the various individuals contacted during this investigation. If you have any questions regarding this investigation, please call me at the Anchorage number listed above, or contact Judith Holden, the Juneau investigator who handled the case, at 465-4970.

Sincerely,



Frank Flavin  
Ombudsman

FF/JAH/lm  
Enclosure

cc: Col. Fred M. Woldstad, Fish & Game Protection, Dept. of Public Safety, PO Box 6188 Annex, Anchorage 99502  
John E. Feero, Marine Inspection, Documentation Branch, U.S. Coast Guard  
Rear Admiral Robert A. Duin, PO Box 3-5000, Juneau, 99802  
SE Regional Ombudsman Office

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

DIVISION OF FOREST, LAND AND WATER MANAGEMENT

373 E. 4TH AVENUE  
ANCHORAGE, ALASKA 99501

June 26, 1979

Frank Flavin, Ombudsman  
840 K Street, Room 203  
Anchorage, Alaska 99501

RECEIVED  
JUN 29 1979  
ANCHORAGE  
OFFICE OF THE OMBUDSMAN

Re: ADL 200820 - Ombudsman Complaint A 78-1420 (Pending)

Dear Mr. Flavin:

This is in response to your June 1, 1979 letter concerning Ombudsman Complaint A 78-1420 regarding the payment schedule in the land sale contracts from the Wasilla West land sale.

The Department of Natural Resources is not required by statute or regulation to adopt the payment plan which Mr. [REDACTED] wants. Under the existing statutes and regulations, in effect at the time of the Wasilla West sale, we had discretion to adopt the payment plan which is included in the land sale contracts from the Wasilla West sale. In the Commissioner's May 18, 1979, letter to you as well as the meeting that we had in my office on May 3, we explained our reasons for adopting the payment schedule set forth in the Wasilla West land sale contracts. Without repeating or reiterating everything we have said before, I would like to respond to several specific statements contained in your most recent letter.

The contract presented to Mr. [REDACTED] provides for a retroactive effective date of August 19, 1978, the date of the auction. This was done for necessary administrative reasons as we have previously explained. Parties to a contract can provide for a retroactive effective date. It is fairly common practice. It is not illegal or even highly unusual as you imply. In fact, your own recommendation in this matter is that we now offer Mr. Breeding a contract with an effective date of November 19, 1978 which is a retroactive effective date.

Attachment #5

RECEIVED  
JUN 29 1979

ANCHORAGE  
OFFICE OF THE COMMISSIONER

You contend that the effective date of land sale contracts for sale by auction should be the date that the contract is signed. What date is that? The purchaser signs the contract on one date and the Commissioner on another date. It is impracticable and would be a great inconvenience to most purchasers to require the purchaser to come into our office in person for a simultaneous signing with the Commissioner. Our practice, based on administrative necessity and convenience to the purchaser, has been to send out the individual contracts by mail for the purchaser's review and signature. After the contract is returned signed by the purchaser, the Commissioner signs for the State. Unlike a real estate transaction in the private sector, there is no single closing date.

Until the land sale contract is executed, we treat the ten per cent deposit paid on the auction date as earnest money. After the contract is signed, we deem the amount paid on the auction date to include the first payment due under the contract in order to relieve the purchaser of having to make another payment so close in time to the ten per cent down payment required on the date of the auction. Our practice does not result in a payment and interest levy before the purchaser has agreed to borrow the money and is bound to the State's terms since the deposit is not treated as part payment until after the contract is signed. Until the contract is signed, the deposit is subject to forfeiture under 11 AAC 54.400 if the purchaser fails to perform as required by the contract.

The payment schedule for the Wasilla West sale, included in the contract presented to Mr. ██████████, does not require interest to be paid in advance, nor have we ever so stated. Under our payment plan, the interest is in arrears but the payment must be made in advance e.g., at the beginning of the applicable quarter. The first payment, which we consider as included in the ten per cent paid on the auction date, does not include interest. The second payment, due on November 19, 1978 at the beginning of the second quarter, includes interest from the date of the auction to the date of payment. You seem to be confused on this despite the fact that we went over our computer calculations in detail with you during our May 3 meeting.

You have recommended that we change our policy prior to the next auction sale. We consider our present policy, which was applied to the Wasilla West sale, to be fair, reasonable and within our discretion under existing law.

RECEIVED  
JUN 29 1979

ARRANGEMENTS  
OFFICE OF THE COMMISSIONER

As to your specific recommendation regarding Mr. ~~██████████~~ contract, the effective date will remain at August 19, 1978 with the first quarterly payment due on November 19, 1978.

Therefore we will require the submittal of the signed contract and payment for all arrearage by June 29, 1979 or Mr. ~~██████████~~ will be subject to forfeiture under 11AAC 54.190.

Sincerely,



THEODORE G. SMITH, Director  
Division of Forest, Land and Water Management



# Ombudsman

Frank Flavin

State of Alaska

Reply to:

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch WD  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

FOR RELEASE June 25, 1979

State land sale contract procedures have been criticized by the Ombudsman in two reports of findings on the same complaint. The allegations investigated resulted from last year's Wasilla West land auction, but also concern subsequent and future disposal programs.

Natural Resources is requiring a payment and interest before the borrower has agreed to borrow money and before the borrower is bound to the state's terms. These procedures result in larger quarterly payments and may result in a higher total purchase price for land.

The Ombudsman found that the Department is improperly:

- 1.) considering the deposit to be a downpayment, including a first payment;
- 2.) beginning the ten year payoff period from date of auction rather than from date of contract of sale;
- and 3.) backdating the contract to date of auction and charging interest from date of auction.

State Ombudsman, Frank Flavin said these procedures constitute a "time warp theory of contracting."

MORE

OMBUDSMAN release  
June 25, 1979  
page 2

According to the Ombudsman's report, "A 'deposit,' as used in the statute, means earnest money and cannot at the same time be a first payment. The state land auction is not an auction 'without reserve,' and the sale is not consummated until the contract is executed."

Flavin stated that there is no authority for backdating contracts of sale to the date of the land auction. Most of the contracts were not ready for signature until a month after the auction.

In his response to the Ombudsman's findings, Commissioner Robert LeResche argued that a 'date certain' for the sale was required due to other statutory requirements for pre-sale appraisal and public notice, and for determining residency discounts. The Ombudsman's report finds that the "sale" referred to in appraisal and notice sections speaks to the public event (auction), while "sale" for purposes of contracts and payment schedules means the actual transfer of title.

Right of possession does not transfer when the gavel is pounded at a state auction, according to Flavin. State law and regulations provide for an appeal period and Commissioner's review prior to offering a contract of sale to the high bidder for signature.



# Ombudsman

Frank Flavin

State of Alaska

June 1, 1979

Robert E. LeResche  
Commissioner  
Department of Natural Resources  
Pouch M  
Juneau, Alaska 99811

Reply to:

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch W0  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

RE: Ombudsman Complaint A78-1420 (pending)

Dear Commissioner LeResche:

Neither our May 3 meeting with Ted Smith, nor your May 18 letter, has convinced us that your "interpretation of the statute is reasonable, is fair to the purchaser and does not violate any reasonable expectations of a participant in a land sale by public auction."

### The Positions

Natural Resources	Ombudsman
8/19/79 Downpayment (including first pay- ment)	Deposit (earnest money)
Contract (backdated)	
10 years starts	
interest starts	
5 day appeal period	5 day appeal period
Commissioner's decision within 45 days	Commissioner's decision within 45 days
Notice period - 30 days	Notice period - 30 days
Contract (real contract date)	Contract (deposit becomes downpayment)
	10 years starts
	interest starts

Natural Resources

Ombudsman

---

one quarter from contract:  
first payment  
(39 more)

interest in arrears  
(this payment includes  
interest from contract  
date to date of payment)  
\$64,046.40 total  
\$1601.16/quarter

----- OR -----

contract date: first  
payment  
(39 more)  
interest in advance  
(this payment includes  
interest from date of  
contract to second  
payment)  
\$63,100.00 total  
\$1577.50/quarter

---

11/19/78: second pay-  
ment  
(38 more)  
interest in arrears  
(this payment includes  
interest 8/19 - 11/19)  
\$63,617.58 total  
\$1631.22/quarter

The Errors of Your Ways:1. That the deposit is a down payment and a first payment.

"Deposit"\* is not defined in AS 38.05.065(a); caselaw and real estate practice establish deposit as "earnest money," "guarantee" or "pledge." As used in AS 38.05.055 and AS 38.05.065(a), the deposit is clearly intended to guarantee the high bidder at the auction will sign the "contract of sale" at a later date. Indeed "deposits" at auctions are generally considered earnest money. (See 7 Am. Jur. 2d, 258 Auctions and Auctioneers § 45.)

Treating deposit as first payment as of the date of auction results in a payment and interest levy before the borrower has agreed to borrow the money and is bound to the state's terms. Under the departmental analysis, if a person pays the full purchase price on executing the contract, do you still charge interest from date of auction?

The departmental analysis results in a rather strange down payment of 9.2% which is not provided for in statute or regulation and is, frankly, absurd. The rest of the 10% deposit is, according to your position, the first payment.

AS 38.05.055, the bid deposit receipt, and the contract all refer to a "deposit." Only after there is a contract in 11 AAC 54.300 is there a "down payment."

Never before this complaint was raised did you refer to the deposit as a down payment and first payment.

11 AAC 54.190 provides for possible forfeiture of the deposit only. 11 AAC 54.400 allows forfeiture of payments only after there is a contract. If the deposit is a down payment and first payment, how could it be forfeited under .190?

2. That the 10 years starts from date of auction.

AS 38.05.065 provides that the remainder be paid over 10 years, as does 11 AAC 54.300. The "remainder" is unknown until there is a contract. Were the "remainder" known at the date of auction perhaps the contract could be signed then with a provision for cancellation should the commissioner sustain an appeal or otherwise disapprove the sale.

---

\*Deposit: "A 'deposit' is anything given as a pledge or security, as earnest money, or a forfeit, and as used in the clause of a contract for the sale of real estate providing for liquidation of damages in case of default by purchasers included judgement note executed and delivered at time of signing of agreement as well as cash payment." (12 Words and Phrases at p. 247)

A "Deposit" in brokers' parlance means the money paid down to bind the bargain, that is, earnest money. (12 Words and Phrases at p. 225)

3. That the interest runs from date of auction.

11 AAC 54.310 states that interest shall be charged on all contracts of purchase. There is no contract of purchase on the date of the auction.

4. That the contract can be backdated.

There is no authority for the Department to backdate the contract of sale to date of auction. Until contract execution neither party is bound beyond the earnest money or pledge amount. How the borrower is projected through a time warp back to the date of auction to bind him or her at that time defies us.

5. That the date of auction is the date of sale. That date of sale and date of contract of sale are one in the same.

AS 38.05.055 and 38.05.065 are distinguishable from AS 38.05.050, 058, 305, 310 and 345. The latter sections deal with the public event -- auction, lottery, etc., while sections 055 and 065 deal with the actual transfer of title from the state to the individual.

Again, "sale" is loosely used and undefined by the statute. "Black letter law" dictates that there is no sale until title and possession of the property pass from seller to buyer. In the state disposal, the bid deposit document clearly states that no title passes upon receipt of the deposit at the auction (nor can it until the commissioner reviews, appeal periods run, possible agricultural preferences are asserted, etc.).

---

**\*\*Sale:** The general definition of "sale" clearly indicates that title and possession must pass before a sale is consummate (in the case at hand, sale is consummated at time of contract of sale -- not at auction.)

Black defines sale as "a contract between two parties, called respectively the "seller" (or vendor) and the "buyer" (or purchaser) by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and the possession of property. (Black's Law Dictionary, Fourth Edition at page 1503)

Ballentine's defines "sale" as "an actual transfer of title to the land from grantor to grantee by an appropriate instrument of conveyance executed for a consideration in money or equivalent of money." (Ballentine's Law Dictionary, Third Edition at page 1134)

In Noto v. Blasco, 198 So. 429 (La., 1940) the court held that where a purchaser deposited \$50 on purchase price of lots, and the vendor and purchaser contemplated completion of the sale in the future by execution of deed transferring ownership, contract was a mere "promise of sale" and was not a completed sale. The court also treated the "deposit as earnest money. The court's rationale was followed in Southern Pacific Transp. Co. v. Port-o-call, Inc. 314 So.2d,758 (La. App, 1975) and is the same situation as the state land sale.

Your citation that the sale is consummated when the auctioneer pounds the gavel is inapplicable here because at a "normal" auction title and right of possession (generally actual possession) transfer when the gavel is pounded. In state auctions no such transfer occurs.

The Department relies strongly on 7 Am. Jur. 2d, 237, 38 Auctions, and Auctioneers § 19, which states that the common practice and the general rule of law applicable to sales by auction is that the sale is consummated when the auctioneer accepts a high bid by pounding the gavel. If the entire Am. Jur. section had been analyzed it would have been noted on page 238 that at an auction "where the seller reserves the right to refuse to accept any bid made, a binding sale is not consummated between the seller and bidder until the seller accepts the bid." (The Department cannot accept the bid or consummate the sale until the commissioner's review, appeal periods run, agricultural preferences are asserted, etc.)

In Wilcher v. McGuire 537 S.W.2d 844 (Mo. App. 1976) the court found that an auction sale subject to confirmation by the landowner was not consummated and the landowner could refuse to sell or sell to another. Obviously the sale was not over when the gavel came down. Likewise, at the state land auction the auction is subject to confirmation and the sale is not complete until the contract is executed.

6. That it's not reasonable to assume that there's no "deal" until the contract is signed.

The bid deposit receipt clearly states that no real property interest is being conveyed by execution of the receipt. How could there be a "deal" at the auction if this is the case. What would be the purpose of your regulatory provisions allowing appeal and commissioner disapproval of the transaction if there already was a "deal"?

7. State land sales by public auction are not analogous to the typical private sale of real estate whereby the sale occurs when the contract is signed by all parties on the closing date after escrow."

On the contrary, the transactions are analogous. At the state sale the deposit should bind the buyer while commissioner review, preference rights, appeal rights, discount, etc. (in lieu of title search) are determined. Indeed, financing terms are a primary reason for the escrow period in both situations.

June 1, 1979

The departmental position dictates a first payment before a financing agreement is reached. By treating the deposit as a first payment, instead of earnest money, the Department has accepted part performance by the buyer and created an equitable interest. Further, the Department, under its theory, has no right to compel forfeit of the deposit as it is not treated as earnest money, but part payment. The backdating amounts to a "Nunc Pro Tunc" entry which is only allowed to supply omission in record of action really had but omitted through inadvertence or mistake. (See Black's Law Dictionary, Fourth Edition at page 1218 and 28A, Words and Phrases at page 110, emphasis added.) There is no mistake or inadvertence to justify backdating the contract of sale to the auction date, nor was a sale really had on the auction date due to appeal periods, commissioner's approval, etc.

8. That you're charging, per  contract as written, interest in advance.

Your second payment, due in November, includes interest from date of auction to date of payment. You have calculated that Mr.  owes \$1631.22 per quarter for 39 quarters. This is interest in arrears for a total purchase price, after down payment and deduction of discount, of \$63,617.58. Are you now saying that the deposit is down payment and first payment plus interest?

Were  to make 40 quarterly payments with interest in advance (first payment when contract is signed) he would pay \$1577.50 per quarter for a total of \$63,100.00

Forty payments with interest in arrears (first payment one quarter from date of contract) would be \$1601.16 per quarter with a total of \$64,046.40. You are correct that the last payment in this instance would have to be timely to meet the ten year statutory requirement.

#### Conclusion

A "deposit," as used in the statute, means earnest money and cannot at the same time be a first payment. The state land auction is not an auction "without reserve," and the sale is not consummated until the contract is executed. There is no authority for backdating the contract of sale to the date of auction.

Further, the remainder due is to be paid off in equal payments over a ten year period. There is no remainder until the contract is executed. If you wish to charge interest in advance, the first payment is due upon signing of the contract and there are 39 more quarterly installments. If you wish to charge interest in arrears, the first payment is due one quarter

Robert LeResche

-7-

June 1, 1979

from signing of the contract and there are 39 more. The last of these quarterly installments must be timely to satisfy the ten year payoff.

Last summer, when we investigated the Wasilla West complaints, we thought that time and place had passed. Now, through the Department's time warp theory of contracting, we're all projected back to those thrilling days of yesteryear to relive yet another misadventure in the twilight zone of State land policy.

Our original recommendation stands. We would appreciate your response by June 15.

Sincerely,

Frank Flavin  
Ombudsman

FF:rj

cc: Ted Smith  
Shelly Higgins  
~~\_\_\_\_\_~~

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

FOUCH M - JUNEAU 99811

May 18, 1979

RECEIVED  
MAY 23 1979

ANCHORAGE  
OFFICE OF THE OMBUDSMAN

Frank Flavin,  
Ombudsman  
840 K Street,  
Room 203  
Anchorage, Alaska 99501

Dear Mr. Flavin:

This is in response to your March 23, 1979, letter concerning Ombudsman Complaint A 78-1420 (Pending) dealing with the payment schedule under ADL 200820 for payments due the State for land purchased by ~~XXXXXXXXXX~~ on August 19, 1978, at the Wasilla West Land Sale.

Your letter mentions several reasons in support of your recommendation that the Commissioner change the contract provision for payments in accordance with Mr. ~~XXXXXXXXXX~~ objections. I would like to respond to each of the reasons that you have cited and to attempt to explain clearly why we adopted the payment schedule as provided in the land sale contracts from the Wasilla West sale.

First, your recommendation is based on the incorrect premise that the payment schedule set forth in the sale contract causes Mr. ~~XXXXXXXXXX~~ unfair expense over the 10-year repayment period. In fact, when the payments which would be due under a 40-installment schedule are properly calculated, based on a balance of \$47,900 with interest beginning on the date of sale, Mr. ~~XXXXXXXXXX~~ would pay \$407.00 more in interest over the 10-year repayment period than he is required to pay under the 39-installment schedule provided in the contract.

May 18, 1979

Mr. [REDACTED] calculations which result in 40 payments of \$1,577.50 are erroneous. His calculations are apparently based on interest beginning November 19, 1978, which is the date that the first installment is due, instead of August 19, 1978, which is the date of sale and the contract date. The correct figure for 40 equal installments would be \$1,601.16 as compared to 39 payments of \$1,631.76 as required by the contract.

Your letter fails to address the critical issue and point of difference between the State and Mr. [REDACTED]. The question is whether the date of the sale by auction, August 19, 1978, should be used for the purpose of calculating the interest due on the remainder of the purchase price after the bid deposit or down payment is subtracted, and for the beginning of the 10-year period for the payment of the balance due plus interest. Mr. [REDACTED] contends that November 19, 1978, or the date on which he finally gets around to signing the contract should be used for calculating the interest and the 10-year repayment period.

AS 38.05.065 provides in pertinent part:

Terms of Contract of Sale. (a) The contract of sale for land sold at public auction shall require the remainder of the purchase price to be paid in monthly, quarterly, or annual installments over a period of 10 years, with interest at the rate of not less than five per cent a year. Installment payments plus interest shall be set on the level-payment basis.

We believe that we have reasonably construed this statute to require payment of the full contract price plus interest within 10 years of the date of sale by auction, not the date on which the formal land sale contract is executed.

This statute is somewhat ambiguous, and, read alone, can arguably be interpreted to provide that the full purchase price plus interest must be paid in installments within a 10-year period from the date that the formal land sale contract is signed by all parties. However, when read in conjunction with the other statutes applicable to land sales by public auction, the only reasonable interpretation of AS 38.05.065 is that the land sale contract must provide for payment in full plus interest within 10 years from the date of sale.

In order to meet all the statutory requirements applicable to sale by public auction, including pre-sale appraisal and public notice, and to apply the land discount program, we

must have a date certain for the sale. (See, AS 38.05.050; AS 38.05.058; AS 38.05.305; AS 38.05.310; AS 38.05.345). Of necessity, we use the date of auction as the date of sale for the purpose of appraisal, notice, and determining eligibility for land discounts when the sale is by public auction.

It would be illogical to use a different date as the effective date of the contract for the purpose of computing interest and determining a schedule for paying the remainder of the purchase price. Accordingly, all of the sale contracts relating to the Wasilla West Land Sale, including the one offered to Mr. [REDACTED], provide for an effective date of August 19, 1978, which is the date of the auction, although most of the contracts were not actually ready for signature until approximately a month after the auction because it takes that long to determine eligibility for land discounts. This is a reasonable way, and apparently the only way, to conduct a sale by auction in order to meet all of the applicable statutory requirements and to administer the land sale contracts in a consistent manner. Moreover, given the fact that a purchaser at public auction may delay signing the contract for various reasons, as Mr. [REDACTED] has in fact done in this instance, it would not make good sense or good policy to do what Mr. [REDACTED] suggests, which is to calculate interest charges and the 10-year repayment period from the date that the contract is signed.

It has been the long-standing policy of the State, as well as standard commercial practice, to require payment in advance i.e. payment at the beginning of a payment period. We could set up a payment schedule whereby the remainder due plus interest is paid in advance in 40 equal installments within 10 years of the date of sale (as required by AS 38.05.065) however, such a system would require the purchaser to make his first quarterly payment at the same time as the initial deposit of 10% of the purchase price. We decided to construe the down payment as including the first payment in order to avoid requiring the purchaser to pay additional up-front money. The only alternative, in order to allow the purchaser to pay in 40 installments while keeping the total length of the payment within the 10 years required by statute, is to allow payments in arrears i.e. payments due at the end of the determined payment period. This would deviate from long-standing practice as well as standard commercial practice. Moreover, if the purchaser were late in making his last payment, he would violate the statutory requirement that the total purchase price plus interest be paid within 10 years. Based on the foregoing, we think it is more equitable to treat the bid deposit, or down payment, whichever you want to call it, as including the first payment. It needs to be emphasized that under this payment schedule, the purchaser has slightly higher installment payments but the purchaser also saves interest and therefore pays less over the 10-year period.

In support of your recommendation you state that commercial practice would treat the bid deposit as a down payment, not a first payment. Of course the State is not obligated to follow commercial practice. State law obviously imposes some requirements that differ from commercial practice. Furthermore, no purchaser can reasonably expect that the State will follow commercial practice in all respects. In fact, the credit terms extended by the State on sales by public auction are considerably more favorable to the purchaser than the terms available from commercial lending institutions. For example, the interest figure of 6 percent applicable to the Wasilla West Sale is considerably lower than prevailing commercial rates.

Moreover, I believe that any individual familiar with sales by auction in the private sector would assume that the sale occurs on the day of auction and that the interest and payments would be computed from that date. Common practice and the general rule of law applicable to sales by auction is that the sale is consummated when the auctioneer accepts a high bid by pounding the gavel. 7 Am. Jur. 2d, 23738, Auctions and Auctioneers § 19. State land sales by public auction are not analogous to the typical private sale of real estate whereby the sale occurs when the contract is signed by all parties on the closing date after an escrow period during which title is searched and financing arranged. For this reason, it does not seem reasonable for the successful bidder at public auction to assume that there is no deal until the formal conveyance document is executed.

As an additional reason for your recommendation, you state that nowhere in the statutes, regulations, bid deposit receipt, or contract of sale is it clearly stated that the deposit shall be considered a first payment. This is true. The regulations in effect at the time of the Wasilla West Sale and the sale documents could have more clearly spelled out the fact that the 10 year payment schedule and interest would run from the date of sale. However, there was no statement which would mislead a potential purchaser into thinking that he would have 40 installments over ten years from the date the formal contract is executed in which to make full payment. Moreover, our new regulations do specify that interest is to be computed from the auction date. (11 AAC 67.877(b).)


Finally, you contend that treating the bid deposit as including the first payment is inconsistent with 11 AAC 54.300 and with the language in the bid deposit receipt and contract of sale. There is no clear inconsistency. You cite language to the effect that the remainder of the purchase price is to

May 18, 1979

be paid in installments. The payment plan which we have adopted requires payments of the remainder of the purchase price, after the down payment is deducted, in quarterly installments. This conforms with the express language you have cited. There is no provision in the rules, the bid deposit receipt or the contract of sale which would prohibit construing the down payment as including the first payment or which would require that the purchaser have 40 installments and ten years from the date the formal contract is signed in which to pay the remainder of the purchase price plus interest.

Hopefully, the foregoing explanation of why we adopted the payment schedule provided in the sale contract presented to Mr.  is clear and will serve to persuade you that our interpretation of the statute is reasonable, is fair to the purchaser and does not violate any reasonable expectations of a participant in a land sale by public auction. As I stated in a previous letter to Mr.  regarding his complaint, his interpretation of AS 38.05.065 may arguably be reasonable but we cannot administer land sales according to each individual's interpretation of an ambiguous statute since to do so would greatly complicate administration. I reaffirm my earlier decision in this matter.

Sincerely,



Robert E. LeResche  
Commissioner



# Ombudsman

Frank Flavin

State of Alaska

March 23, 1979

Commissioner Robert E. LeResche  
Department of Natural Resources  
Pouch M  
Juneau, Alaska 99811

Reply to:

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch WD  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

Re: Ombudsman Complaint A78-1420 (Pending)

Dear Commissioner LeResche:

After much consideration and calculation, the above-captioned complaint has been thoroughly reviewed by this office and we are requesting reconsideration of opinions voiced by you in a letter to [REDACTED] dated November 29, 1978. This complaint concerns some of the same points presented to you at that time by our complainant, [REDACTED].

[REDACTED] complained that the figures determined by the Division of Forests, Lands and Water Management were improperly calculated, causing him unfair expense during the ten year repayment schedule for ADL 200820. Mr. [REDACTED] bid for the proposed property at the Wasilla West land auction on August 19, 1978 and was the apparent high bidder with the total bid of \$81,000 for which he paid a \$8,100 deposit. Upon determination that [REDACTED] was eligible for a \$25,000 discount on the land through the newly-enacted residency discount program, his purchase price was then \$56,000.

In reviewing similar sales in the private sector, we can understand why Mr. [REDACTED] believed the remainder of purchase price that he owed the State for the land was \$56,000 minus the deposit paid for the land at the time of the auction (\$8,100) or \$47,900.

In your letter to Mr. [REDACTED] dated November 29, 1978, you stated:

"I note your interpretation of the payments would result in a down payment, plus 40 equal quarterly payments thereafter, but no statute requires this. Our practice has been to count the down payment as the first payment and require 39 equal payments thereafter. I think this is not an unreasonable interpretation of our obligation

March 23, 1979

Page 2

under the statute, and therefore see no reason to change department policy even though there is no reason to quarrel that your interpretation is also a correct interpretation of the statute. We cannot of course administer contracts according to each individual's reasonable interpretation of the statute, where more than one reasonable interpretation is conceivable, since to do so would result in greatly complicating the administrator's burden. For that reason I affirm Director Smith's contract to you, with the exception noted above."

We believe you should reverse your position for the following reasons:

1) Commercial practice would treat the deposit as a downpayment. Even if the deposit is considered earnest money, commercial practice is to treat it as a downpayment and not a first payment.

2) Nowhere in the statutes, regulations, bid deposit, bid deposit receipt, or contract of sale is it clearly stated that the deposit shall be considered a first payment.

3) The statute AS 38.05.055 is ambiguous as to the treatment of the deposit. However, Departmental regulations clearly treat the ten percent deposit as a downpayment.

11 AAC 54.300 states:

"Persons purchasing state land under contract of sale shall be required to pay the principal sum remaining after the 10 percent downpayment in annual installments . . ." (emphasis added)

We seriously question an administrative practice (treating the ten percent as a first payment) that is clearly inconsistent with an APA adopted regulation.

4) Treating the deposit as a first payment rather than a downpayment is inconsistent with the language in the bid deposit receipt and contract of sale.

The bid deposit receipt correction states:

"The contract of sale for land sold at public auction requires the remainder of the purchase price to be paid in quarterly installments on the dates specified in the contract over a period of ten years, with interest at the rate of six percent per year. Installment payments, including interest, are set on the level-payment basis." (emphasis added)

If the ten percent deposit is not to be treated as a downpayment, the word "remainder" is meaningless and should not be included. You only have a remainder if you subtract the downpayment and it is the remainder which is to be paid in quarterly installments.

The contract of sale states:  
"the amount of \$8,100.00 which is ten percent (10%) of the total price, has been paid by the Purchaser of the unexecuted contract. The balance of said total price shall be paid in equal quarterly installments . . ."  
(emphasis added)

Again, you only have a balance if you treat the deposit as a downpayment and it is the balance that is paid in equal quarterly installments.

To explain, the 39 payment plan devised by the Department rounds out to quarterly payments of \$1,631.22, as payments "in arrears" (payments due at the end of the determined payment period). In considering that the payment plan the State devised more closely resembles the traditional "payment in advance" (payment at the beginning of a payment period), Mr. [REDACTED] was correct in determining that his payments, when figured over 40 equal payments, come out to \$1,577.50. The difference (predominately in the interest accruing over the span of the contract life) figures out to \$517.58 over the next ten years. This \$53.72 per quarter is money the complainant alleges he will not be able to use--and it is money he thinks he should not have to pay. We agree. We do not feel the State should adopt harsher terms than banks.

RECOMMENDATIONS:

We recommend the Department treat the ten percent deposit as a downpayment and recompute Mr. [REDACTED] quarterly payments to 40 equal payments beginning with the November payment due last fall. We also recommend that this policy change be accomplished prior to the next land sale.

Thank you for your time and consideration in this matter. Your expedient consideration would be appreciated in light of the fact that Mr. [REDACTED] has been issued an ultimatum to pay the two back quarterly payments due at this time. He is willing to do so as soon as the amount to be paid is resolved.

Sincerely,

/s/

Frank Flavin  
Ombudsman



ombudsman

Frank Flavin

State of Alaska

August 14, 1979

Robert LeResche, Commissioner  
Department of Natural Resources

Tom Cook, Director  
Division of Minerals and Energy Management

Reply to:

840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011

Pouch W0  
Juneau, Alaska 99811  
(907) 465-4970

P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

Re: Ombudsman Complaint A78-0899  
(Pending)

Dear Mr. LeResche and Mr. Cook:

Copies of our April 16, 1979 letter to Ethel H. Nelson, Leasing Manager, were sent to each of you. The information we presently possess indicates that the Division of Minerals and Energy Management will continue to require recorded copies of documents under penalty of loss of lease. This continues despite our recommendation and despite the lack of a new regulation authorizing the practice.

As stated in our letter of April 16, and in previous correspondence in this case and in case A79-0202, 11 AAC 86.130 does not explicitly require copies of recorded documents, but only copies of the documents which were recorded. Given the potential loss of a mining claim for failure to provide recorded copies, notice of such potential penalty should be provided in the appropriate manner to the affected population.

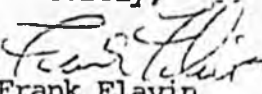
The sole appropriate method would be the promulgation or amendment of a regulation stating that the documents to be provided under 11 AAC 86.130 must be copies of the documents filed with the recorder's office and stamped received with date and time by that office. Neither an internal policy nor an item in an informational brochure can satisfy the due process requirements that underlie promulgation of regulations in the Alaska Administrative Code.

We ask for your response to our recommendations of

- 1) Cessation of penalties for non-recorded copies and
- 2) Promulgation of new regulations requiring recorded copies.

Your responses would be appreciated within 30 days of receipt of this letter.

Sincerely,

  
Frank Flavin  
Ombudsman

FF/NSB/jm

SEE ATTACHMENT #6

# STATE OF ALASKA

JAY S HAMMOND, GOVERNOR

## DEPARTMENT OF LABOR

DIVISION OF EMPLOYMENT SECURITY

Affiliated with U.S. Employment Service

P. O. BOX 3-7000  
JUNEAU, ALASKA 99811

RECEIVED  
MAY 11 1979

May 8, 1979

ANCHORAGE  
OFFICE OF THE OMBUDSMAN

Re: AK (PRI 10-3 A)

Ms. Paddy Moriarty  
Deputy Ombudsman  
840 K Street, Room 204  
Anchorage, AK 99501

Dear Ms. Moriarty:

Subject: Receipt of UI Benefits While In CETA Training (Ombudsman Complaint A79-0113)

Our regulations regarding the payment of unemployment insurance benefits to claimants attending vocational training have been in effect for many years. These regulations, however, have been interpreted and re-interpreted several times over the past couple of years. Mr. B. W. Finley's memo, to which you refer, dated June 20, 1978, states the intent of then newly received CETA regulations. Our policy pertaining to this subject was clarified in UICL 7-92 dated July 19, 1978, stating, basically, that CETA claimants would be treated no differently than other UI claimants receiving vocational training.

This policy was restated in a rewrite of UICL 7-92 on August 24, 1978, denying benefits to any UI claimant receiving a training allowance. On September 15, 1978, an amendment to UICL 7-92 was issued clarifying that only the waiver of availability provided in 8 AAC 85.200(b)(4) would not be granted. On April 25, 1979, a restatement of the above policy was made. Basically, according to our regulations, CETA classroom trainees receiving a training allowance cannot be granted a waiver of availability and suitable work refusal. They must, therefore, meet the same conditions of availability as any other claimant.

For your information I have attached copies of all of the above referenced UICL's as well as a copy of 8 AAC 85.200 of our regulations.

If we can be of any further assistance in this matter, please feel free to contact us.

Sincerely,

*A. G. Zillig*

A. G. Zillig  
Director, ESD

(E) a doctor's certificate may be required periodically by the director or his representative for extended illness or disability.

(d) Pregnancy is not an "illness or disability" as referred to in AS 23.20.380(1) and treated above. (Eff. 10/25/68, Reg. 27; am 8/20/70, Reg. 35; am 8/1/74, Reg. 51)

Authority: AS 23.20.045  
AS 23.20.380

8 AAC 85.200. PAYMENT OF UNEMPLOYMENT INSURANCE BENEFITS WHILE ATTENDING A VOCATIONAL TRAINING OR RETRAINING COURSE. (a) An unemployed individual who has filed a claim for benefits may make written application to the director for approval of payment of unemployment insurance benefits during attendance at a vocational training or retraining course. The applicant shall provide the following information:

(1) his most recent employer, his occupation with his employer, and the reason he is no longer working for him;

(2) the nature of the training or retraining course he is attending or plans to attend;

(3) the reason or need for taking this training;

(4) the name and address of the training facility providing the training or retraining; and

(5) the beginning date of the training or retraining course, its duration and the number of hours per day and week the course is conducted.

(b) Approval of payment of benefits to a claimant attending a vocational training or retraining course of less than six months' duration may be granted by the director or the assistant director of unemployment insurance or his authorized representative if the director, the assistant director or his representative finds that

(1) reasonable employment opportunities for which the claimant is already fitted by training and experience are minimal and are not likely to improve in the foreseeable future, or that the claimant is not using his full skill potential and

the training or retraining relates to an occupation which would more fully use his potential capabilities; and

(2) the training or retraining course relates to an occupation for which there are, or are expected to be, reasonable work opportunities; and

(3) the training or retraining course is offered by a reliable vocational school or educational institution; and

(4) the claimant is not receiving a training or retraining allowance under any public or private training or retraining program; for the purpose of this paragraph, "training allowance" does not include subsistence and transportation allowances or veterans' education allowances.

(c) Approval of payments to a claimant attending a vocational training or retraining course of six or more months' duration may be granted by the director when, in addition to the requirements of (b) of this section

(1) the claimant is disabled to a point at which he can no longer pursue his usual occupation; or

(2) certification for entry into the occupation for which the training or retraining is being taken is contingent upon completion of a specific number of hours or months; or

ALASKA DEPARTMENT OF LABOR  
Employment Security Division  
P.O.Box 3-9000 Juneau, Alaska 99811

UICL: 7-92

July 19, 1978

SUBJECT: Receipt of UI Benefits While in CETA Training

PURPOSE: To give guidelines in processing UI claims for claimants who are in CETA training.

The department issued a memo on June 20, 1978, outlining it's policy regarding UI benefits while in CETA training.

To further clarify our position on this matter, UI claimants attending CETA training must meet the same criteria as other UI claimants attending regular training. Each case must be determined on it's own merits.

Local offices will send these claims to the Central Office for adjudication in the normal manner.

If you have any questions regarding this UICL, please contact the Supervisor of Technical Support.

*David L. Gale*

David L. Gale  
Director

ATTACHMENTS: Memo dated June 20, 1978

DISTRIBUTION: Per UICL Distribution List

RESCISSIONS: None

*Received*

ATE  
ALASKA

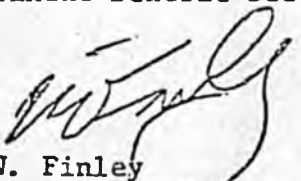
**MEMORANDUM**  
DEPARTMENT OF LABOR  
Employment Security Division

D:  All Employment Centers &  
Pertinent Benefit Sections

DATE: June 20, 1978

FILE NO: AKE (EMS 12-26)

TELEPHONE NO:

FROM:   
B. W. Finley  
Acting Deputy Director

SUBJECT: Receipt of UI Benefits While  
In CETA Training.

This memo will replace the Director's memo of February 25, 1975, on the above subject. The CETA regulations, Title I Section 95.34 (d), and Title III Section 97.134 (c), both dealing with training allowances, state that CETA participants should be encouraged to apply for and claim unemployment insurance benefits if they are not already receiving such benefits.

It is clearly the intent of the regulations that CETA participants in training programs be encouraged to apply for unemployment benefits. CETA trainees will be allowed to receive benefits which will be augmented by CETA training allowances to bring the total amount received up to the maximum CETA training allowance amount. However, if a CETA trainee applies for unemployment insurance after training has already been started, no UI will be payable for back weeks. The new claim date will remain the date the trainee first contacts our office. Having already started training will not be a reason for backdating a claim.

For administrative purposes, this policy will be effective July 3, 1978.

ALASKA DEPARTMENT OF LABOR  
Employment Security Division  
P.O. Box 3-9000 Juneau, Alaska

UICL 7-92

August 24, 1978

SUBJECT: Receipt of UI Benefits While in CETA Training

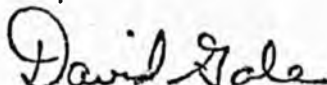
PURPOSE: To rescind the agency policy for the payment of UI Benefits to CETA trainees as outlined in UICL 7-92, July 19, 1978:

After researching the payment of UI benefits to trainees receiving training allowance it has been determined that the agency cannot pay benefits to anyone receiving a training allowance.

The Alaska Administrative Code 8AAC 85.200(7) states, "the claimant is not receiving a training or retaining allowance under any public or private training or retraining program, except that for the purposes of this section, training allowances shall not include subsistence and transportation allowances, nor veterans educational allowances."

In a meeting with Community and Regional Affairs, it was determined that CETA allowances are training allowances and therefore no UI benefits can be paid.

If you have any questions regarding this UICL please contact the Supervisor of the Technical Support Unit.



David L. Gale  
Director

ATTACHMENTS: None

DISTRIBUTION: Per UICL Distribution List

RESCISSIONS: UICL 7-92, dated July 19, 1978

ALASKA DEPARTMENT OF LABOR  
Employment Security Division  
Box 3-9000 Juneau, Alaska 99811

UICL 7-92 (Amendment 1)

September 15, 1978

SUBJECT: Receipt of UI Benefits While in CETA Training

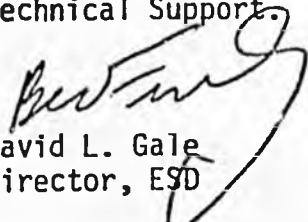
PURPOSE: To clarify the application of the Law and Statutes as they pertain to the receipt of training allowances and how the UI benefits are affected.

UICL 7-92 outlines the agency's policy regarding the receipt of UI benefits to claimants who are receiving CETA training allowances. This policy also pertains to all training allowances. Under Section 23.30.382 and 8AAC 85.200, the receipt of training allowances only affects the granting of the waiver of availability while attending a training or retraining course. If a claimant is attending a training or retraining course and is determined to be available under Section 23.20.380(1), the receipt of training allowances does not apply and benefits will be allowed.

Under the present circumstances, 8AAC 85.200(b)(4) only applies to the waiver of availability while attending school. There is nothing in any other section of the Law or the Statutes which allows us to disqualify a claimant from receiving benefits if a training allowance is being received. The example under A&A 40 of the Precedent Manual dealing with training allowances specifically states that the claimant was unavailable and therefore does not apply in this instance.

We realize that this does not reflect the intent of the agency, however, until such time as the Law and/or the Statutes are amended we will abide by the above procedures.

If you have any questions regarding this UICL, please contact the Supervisor of Technical Support.

  
David L. Gale  
Director, ESD

ATTACHMENTS: None

DISTRIBUTION: Per UICL Distribution List

RESCISSIONS: None

ALASKA DEPARTMENT OF LABOR  
Employment Security Division  
P.O. Box 3-7000 Juneau, Alaska 99811

UICL 7-92

April 25, 1979

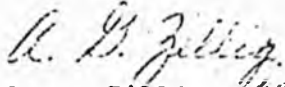
SUBJECT: Receipt of UI Benefits While Receiving a Training Allowance

UI claimants who are receiving a training allowance are not automatically denied benefits under 8 AAC 85.200(b)4 but, simply, cannot be granted a waiver of availability and suitable work refusal. This means that, since the waiver does not apply, they must meet the same conditions of availability as other claimants.

Attendance at a training course during the hours normally worked in a claimants occupation raises a serious question as to his availability for work and such cases are adjudicated on that basis.

In some cases, CETA classroom trainees may apply for UI benefits. Since the waiver cannot be granted, the question of availability must be pursued. CETA participants, in committing to an employability plan, virtually remove themselves from the labor market during their training and must be adjudicated with this in mind.

If you have any questions regarding this UICL, please contact the UI Technical Support Unit.

  
A. G. Zillig  
Director, ESD

ATTACHMENTS: None

DISTRIBUTION: Per UICL Distribution List

RESCISSIONS: UICL 7-92 dated 8/24/78; UICL 7-92 (Amendment 1) dated 9/15/78

June 27, 1979

x

Don Hostack, Director  
Division of Occupational Licensing  
Department of Commerce  
Pouch D  
Juneau, Alaska 99811

Re: Ombudsman Complaints A79-0181,  
A79-0165 and A79-0688 (Pending)

Dear Mr. Hostack:

The first complaint referenced above was filed in February by [REDACTED], who alleged that Occupational Licensing was unfairly withholding refund of his contractor bond despite the fact that he had not activated his registration. Mr. [REDACTED] had submitted a request for refund with an affidavit that he had never done business as a contractor. Despite earlier intentions, he had never obtained a business license.

The second complaint was filed by [REDACTED], alleging that Wage and Hour had delayed unduly long in satisfying her wage claim. A79-0688 is a complaint we have opened against Occupational Licensing on the same subject.

I know that you are familiar with both cases. Our complainants have now been paid. Each time the Attorney General's office was called in to issue an opinion as to the propriety of refund or release of bond under your statute. Each complainant experienced a prolonged delay while a legal interpretation or resolution was obtained. We feel that both complaints are at least partially justified despite statutory ambiguity. Although they have now been rectified, the ambiguity remains.

It is our understanding that regulations are being proposed to clarify these issues. We would appreciate a copy of these drafts, as well as notices for public comment so that we may advise our complainants.

While it is hoped that AG opinions formalized into regulations will provide an interim solution for these problems, we are still concerned with the whole question of the adequacy of contractor bonds, and the inequity of protection afforded by cash or TCD in lieu of bond. We hope that the Division

ATTACHMENT # 8

Don Hostack  
June 27, 1979  
Page 2

will have clarifying legislation introduced and advocate for its passage. We understand that Wage and Hour is at least conceptually behind amendments to AS 8.18.071 as it relates to their ability to satisfy wage claims.

This office would prefer, however, that legislation introduced at the request of Occupational Licensing propose a method for payment of claims against contractors which offers an alternative to the bond or cash in lieu thereof. It's our feeling that current law is perhaps ambiguous, but certainly inadequate and unequal in degree of protection. We realize that there must be a balance between the contractor's ability to obtain a bond and the degree of public protection afforded. It would seem that this question could be bypassed through creation of a new method of payment. We believe that the Legislature ought to face this question square on rather than attempt to patch a policy of questionable benefit to anyone.

We would appreciate being kept informed of discussions leading to proposed statutory changes, and will hold these complaint files open pending resolution of the problems they raised.

If we can be of assistance, please ask. Although I don't recall past complaints on point, we have received numerous bond complaints which could add to justification for a statutory revision. Thank you for continued cooperation. Let us know when you go back to wearing one hat.

Sincerely,

Frank Flavin  
Ombudsman

FF/PM:rj

cc: Dale Cheek

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
Division of Occupational Licensing  
Pouch D, Juneau, AK 99811

DROUCE BOTELEHO  
AAG

2/16/79

465-2536

Richard H. Long  
Chief Investigator

Custom Carpentry

~~XXXXXXXXXXXXXXXXXXXX~~  
Specialty Contractor Nbr 6214

Attached is a copy of the contractor's registration file for the above subject. The applicant, Mr. ~~XXXXXXXXXX~~, has and continues to press for release of his cash deposit which he submitted in lieu of a bond.

If this gentleman has not in fact activated the use of his registration then it is doubtful that the chance of suit against his deposit could arise. Even so, we are bound to follow the rules, which in this case appear not clear.

Please review and advise whether not the deposit may be released based on current documentation. If not, what do you advise?

Possibly one additional piece of documentation would suffice. That is, Mr. ~~XXXXXXXXXX~~ submit a sworn affidavit that he has not activated his registration and cannot have any possible suits pending against him which would apply against his deposit. This could be done before my staff in Anchorage.

Lacking clarity under AS 08.18.115 regarding such instances as this, I feel I need your input before I can make a recommendation to the director.

Your assistance is appreciated.

Attachment

RHL

*cc. Jane English.*

RECEIVED  
FEB 21 1979

JUNEAU  
OFFICE OF THE OMBUDSMAN

# MEMORANDUM

TO: [Richard H. Long *RHL*  
Chief Investigator  
Division of Occupational Licensing  
Department of Commerce and Economic  
Development

DATE: February 26, 1979

FROM: AVRUM M. GROSS  
ATTORNEY GENERAL

SUBJECT: Custom Carpentry  
~~XXXXXXXXXXXXXXXXXXXX~~

MAR 2 1 05 PM '79  
OCCUPATIONAL  
LICENSING

By: *BMB*  
Bruce M. Botelho  
Assistant Attorney General

This memo is in response to your communication of February 16, 1979 regarding the above specialty contractor.

Please be advised that in my opinion an affidavit submitted by Mr. ~~XXXXXXXXXX~~ indicating that he has not activated his registration would suffice as justification to release his cash deposit submitted in lieu of a bond.

Should you have any further questions, please do not hesitate to contact me.

BMB:vr

*TO: Jane English  
Contractor Desk*

*3/2/79*

*FM: Richard N. Long  
Chief Investigator*

*subs: As above*


*Proceed as noted in A & memo above. This should be retained in the permanent file as back-up for the release, file subject as above.*

*This should close this matter and enable you to release the T.O.*

*BMB*

Eric Olson  
Assistant Attorney General  
Attorney General's Office  
Anchorage

March 5, 1979

  
Don Hostak, Director  
Division of Occupational Licensing  
Department of Commerce and  
Economic Development

State of Alaska v. Paramount  
Paint and Decorators, Inc.

Upon recommendation of our attorney, the division is prepared to pay the amount of the judgment in the above captioned subject matter from the proceeds of the cash deposit, provided that an affidavit is submitted to this division by Harold Mosher, President of Paramount Paint and Decorators, Inc., indicating that the company is no longer engaged in business of any sort and that the company has not been so engaged since prior to the time Mr. Mosher signed a confession of judgment on behalf of the corporation.

As a second condition precedent to paying from the cash on deposit, I would request that you submit an affidavit of publication that makes clear the intent of the State to pay from the proceeds of the deposit unless any person having a claim to that deposit files a lawsuit prior to the specified date of the payment which should be fixed at a time at least two weeks subsequent to the publishing date of the notice. TED

Should you have any further questions, please do not hesitate to contact me.

DH/kkk1/3

Title 7  
Boroughs

Title 8  
Business and Professions

Sec. 08.18.031. Certificate of registration — issuance, duration, renewal. A certificate of registration expires on June 30 of each year following the date of issuance or renewal and shall be renewed under the same requirements as for an original registration. The commissioner shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter. (§ 2 ch 100 SLA 1968; am § 1 ch 49 SLA 1972)

Sec. 08.18.041. Registration and renewal fees. The applicant shall pay to the commissioner a registration or renewal fee as follows:

- (1) general contractor . . . . . \$100
  - (2) speciality contractor . . . . . 50
- (§ 2 ch 100 SLA 1968)

Sec. 08.18.051. Registered name. Except as provided otherwise by state law, no person who has registered under one name as required by this chapter may act in the capacity of a contractor under any other name unless that name also is registered. All advertising, contracts, correspondence, cards, signs, posters, papers and documents prepared by a contractor which show his name and address shall show his name and address as registered under this chapter. Individual contractors and partners, associates, agents, salesmen, solicitors, officers and employees of contractors shall use their true names and addresses at all times while acting in the capacity of a contractor or performing related activities. (§ 2 ch 100 SLA 1968)

Sec. 08.18.061. Requirements of political subdivision. A contractor who is licensed by the state under this chapter may not be required to give bond in applying for or holding a license issued by a political subdivision. (§ 2 ch 100 SLA 1968).

Article 2. Bond and Insurance.

Section	Section
71. Bond required	101. Insurance required
81. Claims against contractor	111. Advertising bond and insurance
91. Cancellation of bond	115. Return of cash deposit

Sec. 08.18.071. Bond required. (a) Each applicant shall, at the time of applying for a certificate of registration, file with the commissioner a surety bond running to the State of Alaska conditioned upon the applicant's promise to pay

- (1) all taxes and contributions due the state and political subdivisions,
- (2) all persons furnishing labor or material or renting or supplying equipment to the applicant, and
- (3) all amounts that may be adjudged against him by reason of negligent or improper work or breach of contract in the conduct of the contracting business or by reason of damage to public facilities occurring in the course of a construction project.

Title 9  
Banks and Financial Institutions

(b) If the applicant is a general contractor the amount of the bond shall be \$5,000; if he is a specialty contractor the amount of the bond shall be \$2,000. In lieu of the surety bond the applicant may file with the commissioner a cash deposit or other negotiable security acceptable to the commissioner of commerce, in the amount specified for bonds.

TCD

(c) The bond required by this section remains in effect until cancelled by action of the surety, the principal, or the commissioner. No action may be commenced upon the bond later than three years after its cancellation. (§ 2 ch 100 SLA 1968; am § 1 ch 15 SLA 1977)

Effect of amendment. — The 1977 amendment added subsection (c).

Sec. 08.18.081. Claims against contractor. (a) A person having a claim against a contractor for any of the items referred to in § 71 of this chapter may bring suit upon the bond in the superior court of the judicial district in which the work is done or of any judicial district in which jurisdiction of the contractor may be obtained. A copy of the complaint shall be served by registered or certified mail upon the commissioner at the time suit is filed and the commissioner shall maintain a record, available for public inspection, of all suits commenced. Two additional copies shall be served upon the director of the division of insurance with the payment of \$5 to the director taxable as costs in the action. This service upon the director shall constitute service on the surety and the director shall transmit the complaint or a copy of it to the surety within 72 hours after it has been received. The surety upon the bond is not liable in an aggregate amount in excess of that named in the bond, but in case claims pending at any one time exceed the amount of the bond, the claims shall be satisfied from the bond in the following order:

- (1) labor, including employee benefits;
- (2) taxes and contributions due the state, city and borough, in that order;
- (3) material and equipment;
- (4) claims for breach of contract;
- (5) repair of public facilities.

(b) If a judgment is entered against the cash deposit, the commissioner, upon receipt of a certified copy of a final judgment, shall pay the judgment from the amount of the deposit, in accordance with the priorities set out in (a) of this section. (§ 2 ch 100 SLA 1968; am § 9 ch 127 SLA 1974)

Effect of amendment. — The 1974 amendment, in subsection (a), inserted the present third sentence and inserted "upon the director" and substituted "director

shall transmit" for "commissioner shall transmit" in the present fourth sentence. As the rest of the section was not affected by the amendment, it is not set out.

Title 9  
Code of Civil Procedure

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Sec. 08.18.091. Cancellation of bond. Nothing in this chapter impairs the right of a bonding company to cancel its bond of a contractor for lawful reasons. (§ 2 ch 100 SLA 1968)

Sec. 08.18.101. Insurance required. Each applicant, at the time of applying for registration, shall file with the commissioner satisfactory evidence that the applicant has in effect public liability and property damage insurance covering his contracting operations in the sum of not less than \$20,000 for damage to property, \$50,000 for injury, including death, to any one person and \$100,000 for injury, including death, to more than one person. (§ 2 ch 100 SLA 1968)

Sec. 08.18.111. Advertising bond and insurance. — No contractor may advertise that he is bonded and insured simply because he has complied with the bond and insurance requirements of this chapter. (§ 2 ch 100 SLA 1968)

Sec. 08.18.115. Return of cash deposit. (a) A contractor who has filed a cash deposit and who ceases doing business as a contractor may request the return of (as much of his cash deposit as is held by the commissioner by

(1) filing a notarized statement with the commissioner that he has ceased doing business as a contractor; and

(2) filing a notarized statement with the commissioner at least three years after filing the statement in (1) of this subsection which

(A) requests return of the cash deposit;

(B) certifies that the former contractor has not been engaged in business as a contractor for at least three years; and

(C) certifies that to the best of his knowledge no action has been commenced upon the cash deposit which has not been dismissed or reduced to a final judgment which has been satisfied.

(b) The commissioner, after paying any judgments against the cash deposit under sec. 81(b) of this chapter, shall return the remainder of a former contractor's cash deposit to him if

(1) the former contractor has complied with (a) of this section; and

(2) no action has been commenced upon the cash deposit which has not been dismissed or reduced to a final judgment which has been satisfied. (§ 2 ch 15 SLA 1977)

Article 3. Enforcement.

Section		Section
121. Suspension and revocation of registration	of	141. Misdemeanor
131. Injunction		151. Legal actions by contractor

Title 7  
Boroughs

Title 8  
Business and Professions

Title 6  
Banks and Financial Institutions

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Ombudsman

Frank Flavin

State of Alaska  
360 "K" Street, Room 246  
Anchorage, Alaska 99501

(907) 276-4011

October 20, 1977

Eric Lee, Director  
Division of Community and Rural Development  
Department of Community and Regional Affairs  
Bayview Commercial Building Suite 230  
619 Warehouse Avenue  
Anchorage, Alaska 99501

Re: Ombudsman Complaint 77-1421  
(Findings)

Dear Mr. Lee:

Please be advised that the above-noted complaint has been investigated and has been found to be a partially-justified complaint. However, based on conversations with my assistant, I believe we can come to a mutual agreement regarding future action in this case.

The complaint, filed by Dr. Frank Gold of Fairbanks, alleged that your office improperly and unfairly prevented him from obtaining a contract to administer the Day Care Assistance Program within the area of the Fairbanks North Star Borough. Letters from your office to the Borough Assembly and the Borough Mayor became the basis upon which that governmental body determined not to award a second year's day care contract to Dr. Gold.

Dr. Gold has charged that action, based on erroneous grounds outlined in the letters, was an abusive overextension of the State's authority in administering monies for the program.

We have reviewed the files, both in Anchorage and Fairbanks, interviewed several administrators of the day care program, Community and Regional Affairs personnel, Fairbanks officials, day care assistance recipients, and of course, Dr. Gold.

As the entire complaint and resulting situation is to be considered by the Borough assembly again soon, we find it appropriate, and hopefully helpful to all parties, to detail the history of this day care assistance administration in Fairbanks; our findings regarding the Division of Community and Rural Development; and our recommendations, based on those findings. Our intent, by means of the recommendations, is

ATTACHMENT # 9

Eric Lee  
October 20, 1977  
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to afford an impartial look at the record, set that past record straight, and hopefully, to suggest improvements for this needed program.

#### SUMMARY OF BACKGROUND RECORD

After the Fairbanks Borough determined there was need for day care assistance, as provided for in AS 44.47.250, the Borough began implementing its own program through funds provided by the Department of Community and Regional Affairs.

The program was administered directly by the Borough through the end of 1976. Due to a transfer of the Central Child Care Coordinator's office from Juneau to Anchorage in the summer of 1976, a timely approval of the FY 1977 Day Care Assistance grant to the Fairbanks North Star Borough was not possible until September, 1976. In a letter dated August 26, 1976, F. Harvey Pitts, the Child Care Coordinator, stated he had received the application for the next year's program funds. At that time, he said the proposal "appears in order and has my approval", but said until the final authorization came through, he would extend the FY 1977 contract to the end of September, 1976. It is important to note here that a copy of that letter was sent to Dr. Frank Gold, who had previously signed a contract with the Borough to begin administering the Day Care Assistance Program on July 1, 1976. Although the FY 1977 contract from the Department to the Borough was not finally approved until September 24, 1976, it was backdated to become effective July 1, 1976.

The Borough, State and Dr. Gold's files all are in agreement that Dr. Gold began administering the Day Care Assistance program in July of 1976. He had not solicited the contract, but rather, he had been approached and asked by borough officials if he would be interested in a contract. He was interested and soon took over full administration of the program.

Regarding legislative intent concerning the statute requiring the Department's permission prior to subcontracting, the record and your recollection of this provision indicate the inclusion was aimed at rural areas. Fairbanks is not a rural area, but the law does not distinguish a difference, between urban and rural areas, thus letting the Fairbanks Borough Assembly opt for subcontracting.

In FY 1977, (contract signed in September, 1976) there was no discussion of the merits of in-house versus subcontracting the program, nor was there any request or demand for permission to subcontract. The reading of the law at the time and the

interpretation up until this past May was that "permission to subcontract" meant the State could allow a municipal government to move the Day Care Assistance Program administration out of its own offices and subcontract. The involvement the State had in the actual subcontractor choice was negligible, at least according to the Borough's interpretation and the 1976 experience.

After a month and a half of program administration, Dr. Gold found he had more applicants than he had anticipated money for the rest of his contract term. Part of this reason was the expressed desire of the State that the program be advertised widely in the North Star Borough area. And, examination of the contract, the regulation manual and the statute are in conflict regarding what the responsibility of the administrator actually is in meeting the demands of all those applicants that qualify for the assistance.

The statutes potentially (from AS 44.47.250 through AS 44.47.3.0) allow for the Department to establish guidelines for parent eligibility, provides for subcontracting the assistance program administration, and sets out the parent responsibility in finding a licensed day care facility for his or her child. It does not directly address how eligible families are to be cut from the program.

The Day Care Assistance Manual (page 2) states: "It is not the purpose of this program to provide free day care to all qualifying for assistance. Current funding does not permit the State to subsidize all eligible families; therefore, lower income families will be given priority."

The contract between the State and the North Star Borough as well as the subcontract between the North Star Borough and Dr. Gold, however, both contain the following section (5) as part of Appendix A, which is to be considered a part of both contractual agreements:

"(5) The contractor agrees to serve all families with reasonable access to licensed day care facilities within the Fairbanks North Star Borough."

Observing that he had reserve money to fund AFDC and WIN recipients, and in light of the aforementioned conflict in interpretation limiting subsidies amongst eligibles, Dr. Gold chose to exercise the flexibility called for in the Day Care Assistance Manual's stated purposes and goals of the program. These purposes, directly quoted, are:

"The act gave responsibility for administration of the program to the Department of Community and Regional Affairs in the hope of encouraging local government participation in the delivery of day care services.\* The Department will contract with local communities for direct program administration in order to allow as much local responsibility as possible while assuring the requirements of the law are met."

Where the law gave the department responsibility for allocating its appropriated funds, it also allowed -- and actually encouraged where applicable -- the local governments to subcontract to a local administering agency. The law (AS 44.47.250 (b) (2)) requires C&RA's permission to subcontract; the manual and subsequent contracts call for that permission to be in writing.

Less than one month after the State and Borough had firmed up their mutual contract for FY 1977 funds (on September 24, 1976), Dr. Gold determined that the contractual amount would be far short of the Fairbanks North Star Borough's demand. On October 18, 1976, he wrote to Pitts requesting an additional \$75,000 to \$100,000 to meet the needs projected for the entire fiscal year. Pitts responded in an October 20, 1976 letter that an additional \$22,125 was allocated to the Fairbanks program. He stated, "The problem is, of course, insufficient funding to accommodate all persons eligible for Day Care Assistance." He further suggested that a maximum monthly mean subsidy be established as a monthly ceiling. This would allow for continued funding of AFDC families for the entire year. Pitts stated that after the additional October allocation, there would be "no more additional funds which can be made available" to the Borough during fiscal '77. He suggested that to stay within the monthly ceiling allocations, Dr. Gold curtail assistance beginning with those recipients in the higher income groups.

On October 26, 1976 (or two days after receiving Pitts' letter), Dr. Gold computed a monthly average and sent out a letter to some of the recipients that their assistance would be dropped November 1, 1976. Copies of this letter were sent to both Pitts and Helen Blevens, the Borough's Treasurer.

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\* This is consistent with the statutory powers and duties of C&RA "to advise and assist local governments" (AS 44.47.050 (1); and to supervise, monitor, and otherwise help make local governments eligible for State, federal and other grants.

That letter, which became the form for future notification of other applicants who would have to be dropped to allow Dr. Gold to stay within his monthly mean averages, included the following paragraph:

"Due to the inadequate amount of funds provided to the Fairbanks North Star Borough Day Care Assistance Program, it is impossible to continue funding all day care payments for the entire year."

Pitts' Anchorage file shows this copy with no corresponding letter even mentioning--much less criticizing--the explanation Dr. Gold was using.

More low income applicants continued to apply for new Day Care Assistance, thus mandating Dr. Gold to rework his allowable "eligibles" list to stay within his monthly mean. In order to continue giving priority to applicants with lower incomes, even if they were newer applicants than some other higher income eligibles still getting subsidies, Dr. Gold had to revert to cutting off new groups of eligibles within the higher income brackets. This is his understandable explanation of the necessity of staggered elimination of higher income group recipients as the fiscal year progressed.

Admittedly, the above was not his only reason for delaying notification of those who eventually were cut from the program with only a few days' notice. Dr. Gold operated under apparently acceptable interpretations of the contractual terms of serving all eligible families in the Fairbanks Borough area and under the expressed C&RA desire for local flexibility. Dr. Gold considered this short notice (which caused some admitted hardships) as serving the client community until he was forced to cut them from the program. His explanation is that at least four Fairbanks legislators were openly working to expedite a speedy supplemental allocation to the Statewide program, with special attention to the Fairbanks plight.

More money from within C&RA was forthcoming on February 10, 1977, when Pitts and Dr. Gold discussed the new availability of \$18,054 which came from unspent day care assistance money not used by another community. With the initial \$106,495 contract monies, the October \$22,125 monies and this new February allocation of \$18,054, the Fairbanks North Star Borough allocation was a total of \$146,674. This figure was still some \$55,000 short of Dr. Gold's first forecast of the Fairbanks day care needs of \$200,000 in early fall--and about half his January, 1977 forecast to legislators based on increased demands for the assistance from Fairbanksans.

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The administration of the program by Dr. Gold was of no serious concern to the Department's Chief Day Care Coordinator, as is evident in the letter Pitts sent Gold confirming the above additional allocation. Pitts, in a letter dated February 18, 1977, stated, "As in the past, Frank, keep up the good work. I still plan to stop by and visit with you as soon as I can find the time to get out of the office."

File records show that Dr. Gold had incurred no major criticism by the Department, at least through Pitts' previously mentioned letter. The first signs of unrest due to Dr. Gold's management can be evidenced in your trip report dated February 9, 1977 (which was prior to Pitts' above comments of good work.) In that report where you detail discussions with Dr. Gold, you stated, "It is difficult to get the idea across that this is not a "welfare" type program where everyone who meets the guidelines is entitled to service . . . We must address this as a political issue. I would strongly recommend against any supplemental appropriations to Fairbanks or other communities. In my opinion, a supplemental would be rewarding poor planning and mismanagement and penalizing those communities who have conducted a responsible program. They wanted flexibility and authority but are quick to shirk responsibility for problems created . . . We need to work more closely with the grantee communities in preparation of the FY '78 program to avoid a repeat of this years problems."

Ironically, it is about this time when Dr. Gold and other day care administrators Statewide began to address this funding supply as a political issue also. They began intense lobbying with their respective legislators for more funds to last the FY '77 year. And since Pitts' letter followed your report to Commissioner McAnerney (with no subsequent comment to Dr. Gold), we cannot assume he was placed on any notice for rectifying any major or minor concerns you expressed.

Shortly after this public testimony before the legislature, apparent conflicts arose between the day care administrator (Dr. Gold) and the Department. After one visit by the Department's field officer (Jan Brewer) on March 30th, several errors (according to Brewer's March 31st field report) were noted in the administrator's operations. Since Dr. Gold had just hired a new program administrator, Brewer recommended that a subsequent visit to the Fairbanks office take place within a month to better review all the files

after the new program person was more familiar with the job and files.

Brewer returned to the Fairbanks office on April 11, 12 and 13, at which time relations between the local administrator and the agency deteriorated significantly. Dr. Gold, who admits he was made aware of the impending visit by Brewer, was reluctant to allow her access to any files, except the terminated ones, until his program assistant returned to work. He had said his assistant was out sick and Brewer reviewed only the closed files. The next day, (April 12) the assistant was still out sick and Brewer was denied access to the files. She had reminded Dr. Gold of Article VII in his contract with the Borough that mandated the files be open to the Department during regular business hours. Whether Dr. Gold opened his files to her on the following day (April 13) due to the fact his assistant had returned to work or because Borough Treasurer Helen Blevins had called him (at Brewer's request) to mandate Dr. Gold open the files (or a combination of both) is a matter of interpretation. In any event, the files revealed some audit exceptions.

Of the \$3,068 in auditable exceptions which Brewer reported on return from her April visit, \$822 were cancelled by the Department when adequate back-up paperwork was provided. Of the remaining exceptions, it is unclear where the responsibility falls in regards to the errors as the Borough paid at least portions of those exceptions. According to Borough Administrator Ron Garzini and Dr. Gold, several of the exceptions were based on miscalculations made while the Borough still administered the program in-house. Dr. Gold has stated he has not paid any of those audit exceptions in question.

Shortly after the April staff visit, Dr. Gold received a copy of a letter written by Pitts to Blevins in which he outlined the disallowed audit exceptions and detailed the problem regarding access to the files. The letter did not outline actions which Pitts thought were mandatory to insure continuation of the program with Dr. Gold nor did Pitts notify Dr. Gold of the severity of the actions in regard to denying access to the files. We refer here to the Department's Day Care Assistance Application Manual; Page 19, Article 5 of the Department's responsibilities in this program:

"5. When the Director finds that the local agency is not in compliance with the work program and contract, he shall notify the agency of the problem and the requirement for compliance. If after a reasonable period satisfactory

Eric Lee  
October 20, 1977  
Page 8

adjustments are not made, he shall notify the agency that further payments will be withheld until the deficiencies are corrected."

Pitts' April 19 letter to Blevins, however, prompted Dr. Gold to fire off a rather inflammatory letter to Commissioner McAnerny asking that Pitts apologize for the letter, and for Pitts' failure to talk with Dr. Gold before concluding Dr. Gold was in the wrong. Dr. Gold recalls hand-delivering the letter to the Commissioner on April 26.

Dr. Gold received no response from the Commissioner, nor did he receive any letter from Pitts. However, the Anchorage file shows an interesting (however irrelevant) memo from Pitts which carries a date of April 27. It concerns a proposal by Dr. Gold for a drug abuse grant he applied for in another department--the Drug Abuse Office. The memo was initially written by Pitts on non-ordinary stationery and the copy in the Anchorage file we copied, shows a stamp as having been received by the Drug Abuse Office on May 16, 1977. The memo was written to McAnerney, but the only paragraph to mention Pitts' involvement with Dr. Gold in the day care contract experience vaguely questions Dr. Gold's management of the day care program and Dr. Gold's refusal to allow Brewer access to the files. The last paragraph recommends the following:

"I recommend that the A-95 Grant Request referenced above be denied and that a search be undertaken for a more suitable Drug Abuse Program Administrator."

During the same time Dr. Gold was testifying against C&RA day care proposals in front of legislative committees, the Department began collecting a variety of paperwork regarding Dr. Gold's other involvements.

For example, in the Anchorage day care assistance file on the Fairbanks program, there are some 61 different documents (at least as recorded in September by my assistant, Cathy Allen). Of those 61, 31 documents deal with subjects other than the day care program. A large portion detail problems and criticisms other people had with Dr. Gold's proposed mental health clinic. Eight other pieces of paper dealt with Borough zoning problems--some dating back two years.

Barbara Morse, a Departmental employee directly under your supervision, was also receiving day care assistance through Dr. Gold's administration. She had recorded problems with Dr. Gold's administration of the program as he had required more back-up paperwork in order to adjust the level

of her income to what she thought was appropriate. The problems with her individual subsidies were not major ones, but it does cloud any involvement she might have had in discrediting Dr. Gold's administration of the program. Borough officials have reported she inquired about several different problem areas, including whether or not proper advertisement had preceded the request for new bidders. In the meantime, John Swan had also been interested as a potential administrator and Morse had been working to interest Swan in the day care program administration. He had been running a day care facility where Morse had taken her child. When you traveled to Fairbanks for your May 19 meeting with Blevins, Morse was in attendance.

That same trip report includes the following statement: "it was the borough's responsibility to monitor the activities of their subcontractor." You also stated, "that we would be very reluctant to approve a subcontract with Dr. Gold for next year, and recommended that they heartily consider operating the program in-house next year."

Regarding Brewer's field report from the next departmental trip on May 31, she reflected a much brighter picture of Dr. Gold's operation of the program. Although she details one case where a family had to have its payments terminated and the notice was somewhat short and indirect (the day care center was informed), the incident prompted her recommendation that a form and standard termination notice be worked out.

This Brewer report appears to contain other unfavorable impressions concerning Dr. Gold, but no examples were provided; they were requested for the future. Brewer's report states of Dr. Gold's administration of the program that applications were now complete; the back-up data was in place and no other close monitoring would be required before the "contracts are ready for renewal."

In the "Effectiveness of Program In Meeting Goals," Brewer wrote, "The program's effectiveness apparently has improved since the last visit. Applicants are now more carefully screened and clients are not being assisted at correct percentages for their income group."

To maintain a proper perspective, we should point out that the April field trip report with the same evaluation forms, detailed several problem areas: audit exceptions, refusal to allow access to all the files, files were incomplete, etc. To adequately insure we don't overlook that report, we have also included a copy of it as an attachment. The point is that

with the prior report or without it, Dr. Gold's administration of the program as is reflected by Brewer, certainly improved.

There are two final letters (one June 24 and a second dated July 25) which culminated in the Borough's action of not awarding a contract renewal to Dr. Gold.

On June 24, you responded to a June 22 letter from Fairbanks Mayor John Carlson which indicated the Borough's intent to apply for day care funds for fiscal 1978. This letter includes the following paragraph:

"Alaska State Law (AS 44.47.250) allows the borough to subcontract its obligations only with the consent of the Department of Community and Regional Affairs. The Department in examining and evaluating the appropriateness of the grant application, must weigh the commitment, the plan and capabilities of the Borough in administering the program."

It also states:

"Unless the borough can present evidence to indicate and guarantee a significant change in the program management by Dr. Gold that will assure a proper level of performance, the Department will not grant approval to the Borough to subcontract.

Prior to this letter's arrival on Mayor Carlson's desk, the borough had informed Dr. Gold that he was the only agency that responded to the Borough's request for bidders. He was told that he would receive the contract though no official paperwork had been signed. The mayor then informed Dr. Gold of the Department's letter.

Dr. Gold took great exception to your letter in public testimony. The Borough opted to operate the program in-house until it could gather more information about the entire matter and seek proposals from others who might also wish to administer the program. Garzini, in public testimony said had there been no letter from C&RA threatening a discontinuation of the day care assistance funding with Dr. Gold, he would have had little objection to the Borough's renewal of the contract with Dr. Gold.

In a July 25 letter from your office, you further outline other problems with Dr. Gold's past administration of the program and offer the following:

"Subsequent to our initial rejection, the Department has become aware of many other circumstances related to Dr. Gold and his other business activities, contracts and zoning

Eric Lee  
October 20, 1977  
Page 11

problems which would preclude Dr. Gold from being acceptable as the administrator of this program under any conditions."

Since that second letter, the borough has requested and accepted applications from six sources. These applicants all presented proposals for the day care program's administration based on new proposal guidelines that we feel your agency properly assisted in developing. Certainly, with this relatively new program, guidelines for those who might administer the program would be hard to develop based on no prior experience. Also, since your office has noted problem areas--not only in Fairbanks but Statewide--it is appropriate you should assist the local governments in proposal guidelines.

Dr. Gold has since charged the nature of these guidelines was such that it sought to exclude him. Since some valid concerns with his administration of the program prompted such proposal guidelines, we do not find your involvement here to be faulty.

Presently, the Borough is operating the day care assistance program in-house, awaiting the settlement of this Ombudsman complaint, as well as other factors (such as the local election) before opting to award a contract to any of the six proposal applicants (which includes Dr. Gold).

According to Phil Younker, the Borough will take action--one way or another--on this matter in the near future.

#### FINDINGS:

Pursuant to AS 24.55.150, we have found Departmental actions: 1) to be arbitrary regarding the enforcement of rules set out in the Day Care Assistance Manual; 2) to be based, in part, on improper grounds; 3) to be unfair, procedurally; and 4) unreasonable in the scope of information and materials collected in regard to Dr. Gold.

#### A. Actions Found to be Arbitrary

In many areas, you have held Dr. Gold accountable for following rules and procedures outlined in the Day Care Assistance Applications' Manual (which was made part of the contract to the Borough and also the subcontract to Dr. Gold). His refusal to allow Brewer access to files; exact compliance with the subsidy scale; required back up information for each applicant; his determination of who should continue to receive subsidies and who should be cut off; and the Borough's failure

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to secure written permission from your division are all covered in the contract and/or manual.

Yet, page 19, article 5 of the manual calls for the Director (identified as you by manual definitions), to notify the agency (identified as Dr. Gold by means of the same manual definitions) of those problems inconsistent with either the work program or contract. If "after a reasonable period satisfactory adjustments are not made" the Director is then to notify the agency that payments will be withheld until the deficiencies are corrected."

Notification of the audit problems went to the Borough Treasurer almost immediately upon Brewer's filing of her trip report. The money was to be immediately withheld and Blevins was warned of the seriousness of Dr. Gold's refusal to allow the C&RA field worker access to all the files. No notice for compliance was given Dr. Gold.

B. Actions Found to be Based Upon Improper Grounds

The July 25 letter to Assembly Chairman Dave Brennan specifically outlined six major criticisms you defined as problems with the day care program administration by Dr. Gold. We find fault with four of those items discussed.

Item #2 and Item #4

We would like to couple Item #2 and Item #4 together as they are similar in our comparison of the facts regarding both. These criticisms deal with the original grant ceiling for the program being \$106,495; that Dr. Gold should have apportioned an equal amount each month for the program's subsidies so that the money would last the year; that there was no mandate to serve all "eligibles" (as you allege is clearly stated in the contract); and that his expressed shortcomings due to improper training is invalid due to four trips made by your staff for auditing and training purposes.

First, we find that although the original grant amount was \$106,495, Dr. Gold had been told from the start of his administering the program that there would be more money available. Pitts had told him that pending reports from other communities regarding whether these other areas would be able to use their allocated day care funds, more money would become available. Extra money was already accumulated from communities which could not get a program established for fiscal 1977 by the time Dr. Gold took charge of the Fairbanks program.

Dr. Gold chose not to apportion money on a month-to-month average, which was reasonably his prerogative based on the manual, law and contract (plus subcontract). The contract does not state, as you say, "that not every eligible person in the Fairbanks area must or should be served". The contract (in Appendix A) states that the contractor "agrees to serve" all families with reasonable access to licensed day care facilities in the Fairbanks area. The contract states just the opposite, according to our reading, of what you list as its clear statement regarding who should be served.

Whether or not Dr. Gold chose to apportion his total amount on a month-by-month average seems to fall in the category of local flexibility. How else would you interpret Pitts' suggestion that a monthly average be determined and adhered to as was stated in his October 22 letter to Dr. Gold? As long as Dr. Gold held enough money aside for the total subsidizing of WIN and AFDC recipients, then he was not in violation of the contract, according to our review. And, as new applicants qualified as eligibles and had lower incomes than those still receiving subsidies, we believe Dr. Gold was following the priority expressed by the law, guideline manual, contract and subcontract to favor lower income eligibles.

Finally, the lack of training or auditing Dr. Gold alludes to as reason for his shortcomings in administration of the day care program is difficult to determine as valid or invalid. You indicate that he cannot blame base line data projections as his basis for not terminating higher income eligibles. From the first moment he realized he would run short on funding for the year at the maximum subsidizing of all those eligibles, you indicate he should have averaged out his funds based on a month-to-month average. Since the funds did increase (and he had confidence there would be more coming) and there were more new applicants with lower incomes applying for subsidies, we believe Dr. Gold showed a management plan that was not prohibited by his contract--nor even criticised by your agency until after he had terminated many of those on the program under his plan of servicing as many as he could as long as he could. Regarding training and auditing help, the field trip report for October only states that Dr. Gold wasn't able to make a meeting. Your February report does not mention any training or auditing other than your attempt to bring home the point the program was not "a free lunch". (And, Dr. Gold's records show the meeting as more of a strategy one for the legislative effort for supplemental

and fiscal 1978 funding of the program). Brewer's March report allows that new staff were on board and that she would await that staff's familiarization with the back files before auditing. The April field report was covered above and the May report also indicates the Department's action in training Dr. Gold's staff and auditing the Fairbanks files. Proper training and auditing prior to the acknowledged problems in April are hard to detail in light of the field reports on file.

Item #5

The letter to Brennan questions Dr. Gold's method of cutting eligibles from the program; the short time frame in notifying eligibles that they are being cut; the explanation used in the form letter; and the lack of proper monitoring and analysis. The latter, you theorized, might have resulted in fewer cutbacks sooner and addition of new eligibles with lower incomes through natural attrition. Dr. Gold, however, cut eligibles, upon your October suggestion of terminating those from Group V, the Group IV, the Group III, etc. The time frame was short as he expected more funding and exercised his local management flexibility to keep eligibles in the program until the last moment. Regarding the misleading explanation you fault, Dr. Gold had sent the same letter terminating eligibles three different times (with copies to Pitts each time) using the same standard form letter he initiated in October for the first cut-off. No criticism was voiced until your July letter. Had Pitts voiced his concern over the explanation Dr. Gold used, it is likely (according to Dr. Gold) that the form letter would have been changed. Additionally, in the October 20, 1976 letter from Pitts which preceded Dr. Gold's first form letter, Pitts declared the problem "is, of course, insufficient funding to accommodate all persons eligible for Day Care Assistance." Dr. Gold's terminology to recipients of day care subsidies was, "Due to the inadequate amount of funds provided to the Fairbanks North Star Borough Day Care Assistance Program, it is impossible to continue funding all day care payments for the entire year." We don't find the two explanations significantly different.

Since it was (by contract and manual guidelines) the responsibility of both the Borough and the State to "monitor" the local program, we find it inconsistent to solely fault Dr. Gold with failure to properly monitor the program with regard to analyzing the list of eligibles in time to cut higher income eligibles to accommodate new applicants with lower incomes. In fact, the Borough received notice of its

monitoring problems, but the actual local administering agency (Dr. Gold) received none. Also, Dr. Gold's records show no natural attrition where he could have added those new eligibles in question with lower incomes.

Item #6

Here, you report that there were several audit exceptions "for which the borough is financially responsible." You further stated these exceptions "were due primarily to inadequate and inaccurate applicant screening on the part of Dr. Gold's staff". This is not true, according to your files and those of Dr. Gold, as well as information from Garzini. Your contract with the Borough and the subsequent subcontract with Dr. Gold holds the administrator responsible for problems in subsidy eligibility. The Borough paid all the audit exceptions that weren't adjusted after back-up information was obtained from the eligible applicants. Although Garzini states that Dr. Gold paid "a negligible amount" of the exceptions, his files show he paid none. Garzini clarified that most of the exceptions could be traced back to screening work done by the Borough when it first began the program--before Dr. Gold was contracted for the program's administration.

Information regarding the timely filing of monthly reports is difficult to detail except that the departmental files show the reports were late. Exactly how the reports should be filed, and what route each report should take through what local, Borough and State offices is unclear, but it is our finding that these reports were received in your offices late in at least three cases.

C. Action Found Unfair

Even if all the above criticisms and problems with Dr. Gold's administration of the Fairbanks program were accurate, we find it unfair to notify Dr. Gold (and at that, notify him indirectly through a letter to Mayor Carlson) of his total unacceptability for a contract renewal after the Borough has asked him to submit a letter requesting a contract renewal.

We have considered your argument that it was easier not to inform Dr. Gold of each problem as it arose in the hopes he would become a more conscientious administrator as time went by, but it, nevertheless, came as a surprise to him that you would not accept him as a subcontractor. Dr. Gold, and several other agency and local officials, certainly admit there were conflicts of philosophy between him and the Division. All admit there were deep personality conflicts (evident in Dr. Gold's letter to the Commissioner of April 26 and

Pitts' letter to the Commissioner of April 27). The Borough obviously did not think the problems so severe that they would not have rejected the contract renewal with Dr. Gold. Dr. Gold, after Brewer's May 31 trip, did not think his administration so faulty that a contract renewal would be jeopardized or, he felt, he would have received some feedback, as the Department certainly had been vocal about the program in the past few months.

In addition, Brewer's last field report shows Dr. Gold as improving, though each piece of correspondence from the State to the Borough gets progressively worse in its assessment of Dr. Gold's operation of the day care program in Fairbanks.

In the interest of making the Fairbanks program viable, it is understandable your field worker would attempt (and is evident by her continued patience) to try and correct problem areas as opposed to confronting Dr. Gold and his assistants with each error or criticism. But this same patience also lent to the lack of due process we feel Dr. Gold should have been afforded according to the manual procedures which call for the Director's calling attention to contract and work program problems.

Brewer's last comments in the May field report that additional monitoring in person was not necessary until the "contracts are ready for renewal", raises an inference that the subcontract to Dr. Gold would be acceptable.

The paragraph precluding Dr. Gold from "being acceptable as the administrator of this program under any conditions" based on "other circumstances related to Dr. Gold and his other business activities, contracts and zoning problems," is an unreasonable statement concerning Dr. Gold. The paperwork in his Anchorage file regarding establishment of a new mental health association for possible State grant funding does not show any positive letters about the fledgling group (which is now in the final stages of being approved for funding). The Borough zoning problems you allude to are being pursued through the court system. The "other business activities" reflected in paperwork in the file could include the proposal by Dr. Gold for continued grant allocations for drug treatment programs. Although Pitts' letter pointed out problems with his proposal, Dr. Gold received another year's funding approval just recently. And last, references made by Pitts to my assistant about other "alcoholism" grants awarded Dr. Gold that might interfere with day care recipients using Dr. Gold's same premises,

simply do not exist. He does not now have (nor has he had recently) any alcoholism programs which he is running or administering.

It is in addition to the voluminous paperwork in our files that are not directly germane to the day care program's administration; the somewhat unprecedented letter by Pitts regarding Dr. Gold's drug abuse proposal; the harshness about Dr. Gold's running the program, as is reflected in your letters at the same time his field report evaluations by Brewer were showing improvement the questionable involvement of staff in Fairbanks; and the cloud of doubt by the non-specific paragraph cited above that prompt us to find your agency's actions unreasonable. These unreasonable statements figured heavily in Dr. Gold's not being awarded a second year's subcontract for the Fairbanks North Star Borough Day Care Assistance Program.

AGENCY ACTION JUSTIFIED

A. Statewide perspective needed and obtained through C&RA monitoring

Since the entire amount of day care assistance monies comes from the State with no federal matching monies, the State is in the best position to judge Statewide need and it can best ascertain how the money should best be allocated to the different programs. Through surveillance and monitoring, it is in a better position to determine how any one program measures up to another. In this regard, it was indeed proper that C&RA did outline all problem areas; we only would ask that more time be afforded in reviewing the cited grounds presented to the Borough Assembly as background for the action against Dr. Gold. Careful review of the Department's file would have cleared up the most serious and certainly the majority of problem areas cited.

B. Program problems properly outlined by the agency

The untimely filing of monthly reports, the refusal to allow field workers to review day care assistance recipient files at any time during the work day, as well as smaller, case-by-case details that required clarification or more attention are best brought out by the State agency. In some cases, the local government might not watch nor wish to closely monitor a program. The State, which has the background and knowledge of program administration throughout the State, is in a better position to pick up administrative

details that could tighten any single rural or urban program's administration. It would appear that at least some minor paperwork sloppiness as well as the lack of free access were proper criticisms for whatever reasons.

- C. Suggestions for future program proposal advertising and proposal guidelines proper and helpful.

The mere questioning of how the contract was advertised in May was appropriate and suggestions for future advertisement were proper. It is possible that the Borough did not think any other local agency would be interested in the day care program's administration as the local government had initially approached Dr. Gold and asked him to administer the program in July of 1976. If the State were made aware of other potential candidates for the administration, it is their duty to inform the local government of such concern. Also, the guidelines for future subcontractors as recommended and mutually-worked out by the Borough and the agency were appropriate. The role of the State in carrying out its statutory authority in this program is primarily to assist the local governments--which it did in both questioning the form and extent of the advertising and working with the Borough on guidelines for future subcontractors.

- D. However heavy-handed the C&RA action to discredit, the Borough chose not to challenge the State's authority and chose to accept its critical comments as basis for not renewing the day care contract with Dr. Gold.

If no fair comment had been afforded the subcontractor, we might have pointed out how unfair it was for a State agency--with all its implied power as a government authority--to barrel over a subcontractor. Obviously, given the advocacy talents of our complainant and the time he has been afforded before the Assembly to counter the C&RA comments, he was not precluded by the State from giving his side of the story.

The Borough may have based its action to nullify plans for renewing Dr. Gold's 1977 contract on the State's expressed authority mandating written approval of the exact subcontract. Or, the Borough may have based its action to readvertise the contract based on new guidelines worked out with the agency staff. Most likely, the Borough chose to accept the total accumulation of critical data from your agency along with your assertion that a subcontract with Dr. Gold would not be approved by them. The July 25 letter with the critical comments about advertising and the offer to work out better guideline proposals for subcontractors became the basis for

Dr. Gold's not getting a second year contract based on the old subcontract provisions.

In the same light, we feel it was the Borough's determination not to renew the contract, but that action was heavily based on your letter. Whether the Borough chooses to accept your authority is a matter of Borough or court jurisdiction. Whether the Assembly chooses to accept our analysis of the entire situation as a basis for reexamining their past action or future action is up to them. It is because we do not want to become overly involved in a related matter of municipal and State concern that we have offered these comments regarding action we think the State took that was justified and appropriate.

D. RECOMMENDATIONS

We hope that the review, as we have painstakingly presented it, will provide you with a careful enough review of the facts surrounding this complaint to weigh the following recommendations. It is my understanding that each recommendation has already been broached with you by my assistant. We hope these suggestions will provide you with meaningful alternatives that will tighten up the program's Statewide administration.

1. To straighten any confusion that might have been evidenced in this Fairbanks day care assistance program administration, we would suggest you begin the tedious but needed process of promulgating regulations, at least in the following areas:

A. What is the State's intent and interpretation of "permission to subcontract"? With that permission, is it then the responsibility of the Borough to determine the exact subcontractor? Other State agency examples provide for mixed interpretations as do court rulings on the authority of the State in subcontracting matters. Some rulings and agency examples reflect the contract law's strict interpretation of a due process of authority from the State to the contractor and the subsequent authority from the contractor to the subcontractor, with only minor connections from the State to the subcontractor.

B. In the application manual, it outlines how a day care assistance grant is made to a local government. However, the procedure of how one should obtain permission for subcontracting is not clear. For example, it calls for "written permission from the Department" for a

municipality to be able to subcontract. Yet, when should the permission, if so desired, be obtained? The application manual does not say, but alludes to subcontractor Articles of Incorporation as being necessary for the local government's complete grant application and possible approval. The manual also calls for subcontractor forms to be filled out after the grant is approved. Yet, with this complaint, the Borough was chastised for not seeking and/or obtaining prior written approval before it sent in the grant application for this upcoming year. One way or another, the procedure should be clarified.

C. Since the initial intent of the subcontractor option was to assist the particularly small communities, what kind of consideration should in-house vs. outside municipal subcontract administration be given? Should a municipal government have to substantiate why it prefers to operate the program through subcontracts as you once intended? This clarification might be opportune now with other clarifications sought and, perhaps with the promulgation of regulations.

D. What does the Department infer by the local administering agency's responsibility to serve eligibles in the designated grant area? The confusion that exists through not addressing this point in the statute but addressing it rather contradictorily in the manual and the contract appendix should be clarified. It might make more overall management and planning sense to prioritize eligibles from the start of the fiscal year and apportion monthly subsidies to a determined ceiling, as now appears to be left up to the local government's or local agency's mandate to determine. If you believe the program better run (Statewide) by stricter management guidelines, then those should be clarified and made part of regulations.

E. Other specific areas brought to light by this inquiry stemming from the 1977 Fairbanks program experience should also be clarified in this review process. These areas include exact breakdown of State, contractor (or local government) and subcontractor (or local administering agency) responsibility. Appropriate termination procedures for recipients whose money begins to dwindle faster than anticipated; methods of accurately informing recipients in a properly-designated time frame to insure adequate time for easier adjustment; guidelines important for subcontractors' proposals Statewide, as well as advertising for new proposals; and a spelled-out monitoring effort regarding how problem areas are to be discussed, corrected, challenged and made a basis for disciplinary action should be readied.

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Under litigation and court rulings regarding the applicability of the Administrative Procedures Act to agencies which have the permission to promulgate regulations (which you have in C&RA Day Care Assistance Program statutory authority--AS 44.47.250(b)(1), the courts have held that when you may promulgate regulations, you must.

Regulations for this program have already been discussed. Where we recognize a responsibility of your agency to establish some regulations to clarify the above-cited confusions, we would only suggest you begin work on these matters. However, if the line of agencies now awaiting regulations is too long to accommodate clarifications this year, we would suggest that the applications' manual include the needed clarifications. These additions and changes, as well as specific delineation of responsibilities might also--or might instead--be made a part of the applicable contracts and subcontracts. We are striving for equal enforcement of rules and regulations--no matter what form they should take.

An argument you have presented for not including all those points and matters within the policy manual as perspective regulations is the entire program's "armslength" attitude in its dealing with the general public. (Actually, we would like to see all manual procedures covered by regulation as the actual subsidy scale provides for the real flexibility you seem to desire in the program's administration.) Since a recipient's appeal is to Pitts' office, and since there have been recipients who have been penalized because the subsidy scale was not mandatorily followed by the administrator locally, we believe you have more of a direct link with the general public than your initial establishment of the program first indicated.

We would suggest, if you are considering these recommendations to tighten up on the mutual accountability of all agencies involved, that you expand your direct involvement with the public at large. More carefully outlining procedures and manual interpretations brings you into closer scrutiny by the public. We would suggest you further this involvement (not necessarily dramatically) and include selective recipient interviews in the field trips by your staffers. It is in this monitoring effort that you will get a more direct evaluation of a contractor or subcontractor's work effort.

As another step to involve the public, we would suggest public hearings or some public response mechanism where you might get the general response from State residents on the

matters outlined above. The public may have its own ideas about local versus State control and the guidelines for a contractor's involvement.

2. To clarify the record, which we hope we have detailed adequately to show problems with the grounds you cited for not wanting Dr. Gold involved in a subcontract for the day care program, we would recommend a clarifying letter be sent to Fairbanks Borough Mayor John Carlson and Fairbanks Borough Assembly Chairman Phil Younkers. We would hope the letter might explain the improper grounds we believe might have unfairly weighted Borough opinion against Dr. Gold. The same letter, we would suggest, also include a clarification of your apprehension of Dr. Gold as a future administrator. In talks with my assistant, you have indicated you would not protest Dr. Gold's acquiring of the contract (through criticisms or assertion of C&RA authority) if he were to abide by the guidelines worked out by you and the Borough staff. This explanation would be helpful in the recommended letter to the Borough Assembly and Mayor. Where we would appreciate a clarification of what we think are improper grounds, we would also offer that other proper grounds about Dr. Gold's administration of the program would appropriately be forwarded in this same letter. Assistance in the form of comments about other proposed administrators would also be pertinent and proper here, we feel. Suggested monitoring efforts that might correct future problems while still insuring the Borough and local administering agency the right to due process could be included in this same proposed letter.

3. We would suggest a letter to Dr. Gold, although a copy of the above letter to the Fairbanks Borough would be appreciated as an alternative. Acceptable guidelines that would allow him to obtain the contract without any State controversy should the Borough opt to contract with him again, should be specified in this second letter. A forward, clear assessment of his past performance as an administrator; day care program spokesman before the legislature; and outspoken public critic of the Department would appropriately be outlined in this letter. And, by means of this complaint resolution, perhaps a future meeting between you, Pitts, Dr. Gold, the Commissioner and appropriate Borough contracts could take place to iron out personality conflicts that might remain.

SPECIAL FINDINGS

In the perusal of the file, we took special note of the letter Pitts forwarded to Commissioner McAnerny regarding Dr. Gold's early spring proposal for drug abuse funding. Through the A-95 grant approval process (those being specific funds administered through the State), grant proposals are routinely circulated throughout sister agencies in the hopes that others having dealt with proposed contractors will comment about the contractor in question. The process, although still somewhat rudimentary and selective in the circulation of proposals, is a good one.

The State should have a central information system which would allow cross-referencing and more complete examination of contractors. In this case, comments forwarded by Pitts, however, lead us to examine this process more closely. We find no problem with the concept of cross review of contractors' past performances within the evaluating agency. But, Pitts' assessment of Dr. Gold's proposal is inappropriate. The two-page evaluation (for reasons we have not been able to justify) recommends that another contractor/administrator be found for the Fairbanks drug treatment program. In the six lengthy paragraphs critical of Dr. Gold's drug program proposal, only one paragraph deals with Pitts' direct dealing with Dr. Gold through the day care program he actually oversees. The memo to C&RA Commissioner McAnerny was written on April 27 by Pitts--a day after the Commissioner was hand-delivered an inflammatory letter by Dr. Gold about Pitts' actions in regard to Brewer's controversial field trip to Fairbanks in April.

As there are no regulations, laws, procedures, or even standard practices exercised in the review of A-95 grant application proposals, we cannot find direct fault in Pitts' action except to say it was inappropriate.

Since the comments apparently did not get to the Drug Abuse Review Board in time for their full consideration and since they chose to award the contract to Dr. Gold for this upcoming year, we suggest no future action in this matter. We do feel that the process of cross referencing evaluations be reviewed toward insuring objectivity, accountability and due process so that a valuable tool does not become a "blacklist".

We would recommend that future evaluation by C&RA staff of A-95 proposals be restricted to specific past

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involvement with the contractor and that it be as precise as possible. Hopefully, through central agency, the Division of Policy Development and Planning personnel, there will be adequate response mechanisms afforded the contractor in question so that a fair evaluation is afforded by the State.

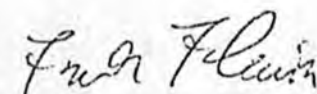
In summary, we hope this exhaustive look at the record has been helpful in your own review of the inquiry to our office by Dr. Gold. We have given much thought to the recommendations and options presented for your consideration in the hopes of bettering the program while setting the past record straight. In constantly weighing the findings and recommendations, we have attempted to set reasonable goals, which we believe are not arbitrary, given your initial discussions with our office last month. Please let us know if you have any questions or comments. We would like some response, even if it is an oral response within a week.

We are forwarding the exact copy of these findings, except for the section which details the staff situation and the details of any specific day care recipients as those names are confidential, to Dr. Gold, the complainant.

As everything but the names and files of day care assistance subsidy recipients are already part of the public record, in light of our prior consultation with you in regard to this matter, and the Borough's involvement as the prime contractor, we will make this report available to the Borough pursuant to their request as is outlined in the letter attached from Mayor Carlson. We will do this unless you have a reasonable objection to this procedure. If so, please give me a call this weekend (October 22 or 23; we plan to be in the office for a good part of the weekend) or call us on Monday or Tuesday, October 24 or 25.

We appreciate your cooperativeness in this matter and thank you for your consideration.

Sincerely,

  
Frank Flavin  
Ombudsman

CA:FF:

cc: Jan Brewer, C&RA Anchorage staff  
Harvey Pitts, Day Care Coordinator, C&RA Anchorage staff  
Commissioner Lee McAnerny, C&RA  
Dr. Frank Gold, former Fairbanks Day Care Assistance  
Program Administrator



# Ombudsman

Frank Flavin

State of Alaska  
360 "K" Street, Room 246  
Anchorage, Alaska 99501

(907) 276-4011

Oct. 21, 1977

Dr. Frank Gold  
1221 Coppet Street  
Fairbanks, Alaska 99701

Ombudsman Inquiry 77-1421  
(Findings)

Dear Dr. Gold,

Thank you for your continued patience in awaiting our conclusion regarding Ombudsman Inquiry 77-1421. Enclosed you will find a copy of our review of the file; findings regarding agency action we believe to be faulty; findings where we feel the agency acted properly (areas that you have questioned as possibly inappropriate or in error by the Department of Community and Regional Affairs); recommendations on how the problem areas might be rectified or improved for the future handling of the program; and special findings which detail a matter we found to be appropriate for additional Ombudsman review and comment.

The whited out portion of the opinion deals with day care assistance recipients whose names and files, by state statute, are to be kept confidential. We have informed the department of this omission from your copy. In addition, we have opted to send members of the Borough Assembly copies of the report/opinion, unless we receive reasonable objections from Division Director Eric Lee by Tuesday.

In the meantime, we hope that you will refrain from public dissemination of the report and findings until he has been afforded time to read the entire letter.

To summarize the letter, we investigated your charge that the state had improperly and unfairly prevented you from obtaining a second year subcontract from the Fairbanks North Star Borough, which had applied for a second year's contract grant for the administration of the Day Care Assistance Program from the department. We have found the allegation and complaint to be partially justified. Although we have found that the state was arbitrary in the enforcement of rules made part of the contract within the applications manual; that its letters which heavily influenced the borough's decision not to renew your contract, were based in part on improper grounds; that the agency acted unfairly with regards to proper procedural notice; and that C & RA was unreasonable in the scope of information collected in regards to you--that all the above did not prevent you from getting the contract.

The above was certainly influential in the borough's decision, but the actual move to obtain new proposals from others (based upon new guidelines recommended by C & RA) as well as the action to not renew or accept your proposal for another subcontract was the action of the Borough Assembly. The fact the assembly chose to accept the state's authority in what involvement the state reserved in the actual choice of a subcontractor makes the decision not to subcontract to you one out of our jurisdiction. However, since it is a matter of

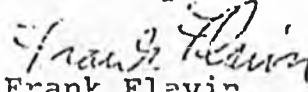
public record that the borough relied heavily upon the C & PA letters from Mr. Lee in June and July to place the entire matter in a holding pattern, it is an appropriate matter that we investigate your charges about the propriety of their statements, procedures and file information. In light of our findings, we feel the state, borough and individual agencies proposing to administer the program this fiscal year will be afforded a better background upon which to base future action.

Unless you hear from us by the beginning of the week, you may assume that we will forward identical copies of our letter to Mr. Lee to the assembly as has been requested of us by Assemblyman Phil Younkens (verbally, by phone in early September) and recently, in writing by Mayor John Carlson on Oct. 20, 1977.

Please understand that we are not in a position to determine whether or not you should have or should now receive the subcontract for the Fairbanks North Star Borough's administration of the Day Care Assistance Program this next year. We believe that position is not one that our office can, should or would want to take in light of our own statutory jurisdiction and responsibilities.

Thank you again for your patience in awaiting a determination of your complaint and this subsequent letter complete with our detailed letter to Mr. Lee. Please feel free to respond to this letter and the accompanying report/finding to the department.

Sincerely,

  
Frank Flavin  
Ombudsman

cma/FF

cc: Eric Lee, Division Director, C&RA

OCT 21 1977

FAIRBANKS NORTH STAR BOROUGH

Box 1267, Fairbanks, Alaska 99707

October 20, 1977

Cathy Allen  
Ombudsman  
360 K Street  
Room 246  
Anchorage, Alaska 99501

RE: Dr. Frank Gold/State of Alaska/Day Care

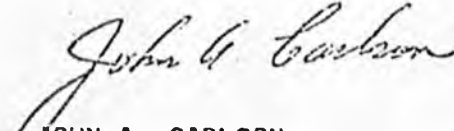
Dear Ms. Allen:

The Fairbanks North Star Borough Finance Committee requested that I contact you in reference to the afore mentioned subject to ascertain when we could expect a response on the question of Dr. Frank Gold's case.

The Assembly is desirous of contracting out the Day Care program, but have withheld action on this until a response has been received to the questions raised by Dr. Frank Gold.

A response would be appreciated.

Very truly yours,

  
JOHN A. CARLSON  
Borough Mayor

JAC:a11

File

# RoEn Design Associates, Inc.

engineers - land surveyors

565 University Avenue

Fairbanks, Alaska 99701

479-2226

March 19, 1979

Senator Don Bennett  
Alaska State Legislature  
Pouch V  
State Capitol  
Juneau, Alaska 99811

Dear Senator Bennett:

Doris Loennig provided me with a copy of the land planning and classification regulations on which there was a public hearing on March 17th. After reading the regulations I found it difficult to argue specifics, but I am generally not in favor of zoning and classification by the department. A.D.L. appears to be using the classifications created last November to classify land parcels so that no subdivision or eventual private use can occur. We have more than our share of wilderness area now - we need to get some of the good State land into private ownership.

As a professional land surveyor, I am more concerned with the regulations heard in Fairbanks, Anchorage and Juneau in January (a copy of which are enclosed). By spreading word of the hearing, the most significant oral contribution in the State was made by Fairbanks residents. This was recognized by Mr. Claud Hoffman in his review of the public hearing comments (in a memo to Commissioner Smith, copy enclosed).

Primarily as a result of the Fairbanks surveyors' comments, the technical aspects of proposed regulations are being cleaned up. It is my understanding that the revised regulations will go directly to the A/G's office for acceptance in early April with no further public review.

The proposed regulations add to the law, new procedures for subdivision, vacation and replatting in the unorganized Borough. Although this is more red tape, the procedures are in the best interests of the public. "Paper Plats" and the associated problems of land ownership will be eliminated by procedures presently practised in organized Boroughs.

Senator Don Bennett  
March 19, 1979  
Page 2

However, the State is adopting other guidelines which no one spoke well of. These include:

1. 300 foot greenbelts along highways - measured from the present right-of-way. In some cases along the Alaska Highway, the new regulations would create a 600 foot width of "nothing" between the highway and any subdivided land.
2. A 50 foot public greenbelt (or 100 foot if the river floods) along the bank of waterfront property. This totally precludes the reason for locating cabins along a water front.

An example:

Our firm had a contract with A.D.L. last fall to survey land 2 to 7 miles from Chena Hot Springs, along the Highway, with the initial intent being to create a maximum number of desirable 5 acre O.T.E. sites. Our presentation to A.D.L. was shelved because of inter-agency bickering due to "insufficient planning".

If the proposed regulations go into effect, the greenbelts cited will practically eliminate all desirable tracts in the valley, for the valley is not that wide to start with. A 5 acre piece of isolated muskeg is not near as desirable as one which is accessed by existing roads or rivers.

3. Other areas of the proposed regulations concerning easements and rights-of-way are equally ridiculous.

The revised regulations of which I speak of were heard in the 3 major cities which are in organized Boroughs, while the effect of the regulations will be largely felt in the unorganized Borough of the State. The Public will have no further chance to review the contents until they become law.

A greenbelt classification, which automatically preserves land along existing roads and waterways, is a totally ignorant use of that land.

Sincerely yours,

RoEn DESIGN ASSOCIATES, INC.

  
Tom Rosadluk, R.L.S.

Enclosures

cc: Representative Charles Parr  
Representative Bob Bettisworth

**RoEn Design Associates, INC.**

**FAIRBANKS SOCIETY OF  
PROFESSIONAL LAND SURVEYORS**

P. O. Box 2592  
Fairbanks, Alaska 99701

January 11, 1979

Mr. Claud M. Hoffman  
Chief Cadastral Engineer  
State of Alaska  
Division of Lands  
703 W. Northern Lights Blvd.  
Anchorage, Alaska 99503

Re: Proposed Regulations, 11AAC 53

Dear Mr. Hoffman:

A luncheon meeting of FSPLS was held on January 9, 1979 to briefly discuss proposed regulations. Less than half of those present had knowledge of the public hearing to be held at 7:30, on the same day, and had not examined the contents of the draft regulations. Copies were distributed during the meeting.

It was generally felt that inadequate notice and insufficient time was given to the proposed regulations which would have a long and far reaching effect on all future surveys in the State. Since the most affected areas of the State would be the unorganized Borough, especially existing privately owned land, the State should make an effort to advise remote communities of the proposed action, and should receive input from areas other than Juneau, Anchorage and Fairbanks.

While the concept of standardization and centralization of survey and platting requirements is good, and also to provide some much needed definitions especially in the area of navigable water, public water, etc., the proposed regulations will impose an extreme hardship on present and future private land owners in the unorganized Borough. It is also recognized that access to many remote lands is inadequate under the present structure, but easement provisions proposed are far too excessive.

Time does not permit committee response to the regulations by item, and therefore individuals were requested to submit written comments to the Secretary for submission to the Division of Lands. Enclosed are comments by Paul Stutzmann and Tom Rosadiuk.

Sincerely yours,

FAIRBANKS SOCIETY OF PROFESSIONAL  
LAND SURVEYORS

Tom Rosadiuk, Secretary

TR/bm

# RoEn Design Associates, Inc.

engineers - land surveyors

3505 Airport Way  
Fairbanks, Alaska 99701  
479-2226

January 10, 1979

Comments on Proposed Regulations, Draft Copy dated  
December 12, 1978

These are comments by Tom Rosadiuk, R.L.S.

## Article II

- Page 3 11 AAC53.100 The survey and platting standards are to apply to all State Land but which regulation predicate within the bounds of a platting authority. I would like to see this more clearly spelled out. If the regulations of the present Boroughs in the State are adequate, then say that the Borough Ordinances will control. If there is some fear that Borough standards are not as stringent as those proposed, say that the more stringent standards shall apply, by item.
- Page 8 11 AAC 53.150.b Why the change from the conventional "government lot" to "tract" designation. Prefer to see the former, most accustomed term used rather than to introduce a new one.
- Page 11 11 AAC 53.170 Surveying of a section perimeter and the center quarter in order to get one 40 acre homestead entry within that section is too excessive a survey requirement. Many of these surveys would cost more than \$1500 per mile, which is quite an imposition on an Homestead Entryman map.

Paragraph 2 attempts to cover access "to navigable and public water" from each parcel of land. There are not only easements along each tract boundary, there are also easements along public water. This section may have been intended to insure that items did not get land locked; perhaps we should address that concern. Par. 2 is addressed to navigable and public water of which there may be none in many sections.

I do not have a copy of AS38.05.440 which pertains to the time allowed for surveying. I am concerned that the regulation may be tied to the end of a calendar year as it has been with O.T.E.'s. The person applying for an extention to the survey period will undoubtedly be the surveyor, and as par. 3 is written,

only an act of God would be sufficient reason for an extension. This puts too much on a burden on the surveyor. I would like to see at least 18 months (a period of two seasons) or two years be available to perform these remote surveys.

- Page 12 11 AAC 53.190 Item I should have an allowance for triangular tracts which are sometimes encountered in which the fourth monument is redundant. The same item should make an allowance for ferrous metal pipes. The requirement for exterior primary monumentation in par. 5 is too stringent. There are many instances where an exterior boundary would require primary monumentation on 200 foot intervals due to curvature. I believe this item could be dropped entirely.
- Page 13 11 AAC 53.200 Under par. 1, bearing tree tags apparently shall be marked with distance to the monument. Although this may be convenient at some time in the future, it's also adding a requirement which has not been impose either by the State or by B.L.M. Let's continue looking in the notes to find these distances. In Item B, the need for a six foot long minimum 2x4 post set two feet in the ground is adding a great deal of work to the monumentation. In the case of frozen ground it means doubling the cost by doubling the time requirement at each corner. Perhaps this could be simplified.
- Page 15 11 AAC 53.210 Item 12, The need to round bearings to the nearest 15 seconds in Item 12 appears to be a little bit outdated. With state of art equipment, the 1 in 2000 survey requirement is far exceeded. I would be inclined to raise the survey standards to 1 in 5000 as the minimum requirement, and I would furthermore delete the rounding of bearings.
- Page 20 11 AAC 53.240 Paragraph A appears to retain a provision to allow adjacent land owners to appeal to a completed survey. Lack of an appeal indicates plat acceptance. What happens if an appeal is made? I don't understand the reason for a written technical appeal by adjacent land owners.

11 AAC 53.300 How does an easement become a right-of-way after survey and dedication? Under easements, a 20 foot utility easement is seldom wide enough to permit construction within it's bounds. A 30 foot easement is recommended. Pedestrian easements of 20 foot width appear to be excessive and could be reduced to 10 feet. Residential road right-of-ways of 60 feet in width are excessive and could be reduced to 40 or 50 feet in width. An allowance should be made to increase right-of-way width where traverse slope dictates a wider right-of-way.

Page 22 11 AAC 53.310 It appears that the State will determine which waters are navigable and public waters. Approximately one year ago, a study was authorized by some Federal Agency, I believe the study is being performed by some branch of the University of Alaska, to compile a historical record of water used for navigation, and to possibly set some standards or definitions for the determination of navigable water. It would be advantageous to have similar definitions.

Page 23 11 AAC 53.330 Under a, Where access along the easement is difficult, the alternate up-land access route should perhaps contain a maximum width rather than be a random alternate route. Under Item b, along in-land waters, the need for a 50 foot shore line easement appears to be excessive. The proposed easement contradicts to the initial privacy that one would expect when he obtains ownership to a tract along such water. Leave the continuous easement at 25 feet in width.

Page 28 Article 4 General, This article appears to be so all inclusive that a separation would be helpful indicating the requirements on private land versus the requirements for State Land. It appears that the proposed subdivision development standard would apply to all land not within the boundaries of an established platting authority.

11 AAC53.410 The minimum 40 acre aliquot part subdivision is far too large as a minimum requirement. The minimum should be 2.5 acres or 5 acres.

AAC 53.420 Having observed the time requirements to process replats in our Fairbanks North Star Borough, both on the part of the surveyor and the platting authority, I would prefer a simplification of the replat process. These standards will affect primarily those areas in the unorganized Borough, such as townsites in various remote communities. Since many of these townsites presently have small lots and have for sometime use the metes and bounds description to alter lot boundaries for financial or for whatever reasons, the new replat procedure will mostly affect such remote communities.

Perhaps the extent of change to an existing boundary can dictate the requirement for a public hearing process. If a lot boundary is changed, for instance, two lots are combined into one, or the easterly 15 feet of this lot is sold to accommodate a building on the adjacent lot, or where the vacation of an easement or road right-of-way is not involved, there seems little need for a public hearing. I am in agreement that a new plat should be filed, but perhaps an order could be filed in the appropriate recording district to make allowance for recordation of a plat and to eliminate the public hearing process.

Normally, the need for replats in most cases is caused by financial institutions at the time that a loan is requested for new construction. With the time requirements set forth by the public hearing process, the recording process, appeals and other factors, one could easily use up an entire construction season simply getting a replat performed. A great deal of simplification is suggested to this process.

AAC 53.430 While recognizing the need for legal surface access to the subdivision, the ability of the director at his discretion to require construction of roads, airfields and water way facilities, is wrong.

We have recently been involved in the Borough Ordinances for road construction within subdivisions and note a number of problems in paragraph 1 and 2. For access roads, make

allowance for use of material other than gravel, or the definition of gravel should be so inclusive as to permit the use of tailings, certain types of bedrock, etc. perhaps with a fracture limitation. The overlay of 3 feet of gravel should be a maximum requirement, not a minimum requirement. In Item 2, 18 feet wide roads inside most subdivision are inadequate, because they do not permit two lanes of traffic to operate under all weather conditions. The width should be at least 20 feet from shoulder to shoulder. Again the definition of gravel should permit the use of local materials and in an overlay situation 2 feet of gravel should be a maximum requirement.

Page 32 11

AAC 53.470 The requirements for greenbelts and reserved areas are totally unacceptable. While these proposed regulations would not affect land within the bounds of existing platting authorities, except for possibly State Land, the requirement along existing highways will be totally negative to the area growth. Many communities within the unorganized Borough have lots through which a highway has passed and the imposition of a greenbelt would make a large number of these lots totally unuseable. In many cases, along existing primary routes, development is strip development.

The need for waterfront greenbelts is also questioned. Let the public access the street or the water at certain points, but do not let the public access land which should be, or is, in private ownership.

*STUTZMANN ENGINEERING ASSOC., INC.*

P. O. BOX 1429

FAIRBANKS, ALASKA 99707

907 452-4094

January 9, 1979

Comments on ADL Draft Regulations

By: Paul E. Stutzmann, R.L.S.

- Page 4 (4) Class IV Surveys 1:2000 Why not have a better standard in this day and age. Say 1:5000. Upon further work in section, surveyor must refine accuracy before proceeding.
- Page 6 (4) Celestial observations for position?  
No good at all. Better to use map position.
- 11 AAC 53.130 Types of surveys. Add "State Surveys"?
- 11 AAC 53.150 Why not Class III standards 1:5000?
- Page 8 (1) 3rd line the "East" section corners
- Page 11 11 AAC 53.170 "Homestead Entry Surveys" forces entryman on 40 acres or so to survey and monument entire section. Totally wrong. Use paper location until time and conditions warrant official supplemental cadastral survey, then exact position can be set. Meantime, entryman can locate himself as best he can, approximate stadia survey, etc. or whatever a surveyor can do for him. Corners set by private surveyor prior to cadastral survey must yield to official survey location.
- Page 11 (2) 50' easement on all sides of a small parcel is very excessive. Some easements are needed, of course. These easements, once created, are extremely troublesome to eliminate later when they are not needed and interfere with other development.

- Page 12 (1) Why "non ferrous" pipe. What's wrong with iron pipe?
- (5) This requires continuous intervisibility between monuments; not needed or done anywhere else. (Throw this out entirely.)
- Add. Monument caps should be marked with surveyor's registration number.

- Page 14 (6) Extra sheet for index is a waste of time and storage space. Usually this info can be incorporated onto vicinity map and shown on each sheet.

- Page 28 Article 4 in general speaks of "State" subdivisions and "private lands" "replats"

The definition of "replat" can be construed to mean any subdivision of whatever size according to definition on Page 36. Any parcel under 40 acres aliquot part requires plat. All plats require departmental approval. It presently takes about 3 to 6 months to get any action through ADL, such as a section line vacation. Does the State really want to tie up all surveying and land transactions between its citizens to this extent? If not, just what are intentions and extent of applicability of various parts of these regulations?

Basically, I think two separate sections would be better. One section to deal with "subdivision of State owned land" and another to deal with whatever platting authority action it really intends to exercise on privately owned lands.

- Page 29 (2) Petitioner doesn't have this information available. Only ADL's own land records have this. They should dig it out for themselves -- IF it's really needed at all.

- Page 32 11 AAC 53.470 "Greenbelts." Good God! What gives the State the right to confiscate 150 feet of private lands adjacent to all "primary and secondary highways" in the State? Why do we need them anyway? We already have about 100 million acres of parklands. Let's let the private citizen use the little bit of land he has for his own. As far as State subdivision is concerned, they have lots of land. If they want to give their 300 feet and build extra roadway to get past the greenbelt to land that can be used, I have no objection other than as a taxpayer whose tax money is being wasted.

As a matter of example, on a highway like the Parks Highway, which already has a 300 foot right-of-way (excessively wide), setting out a 300 foot "greenbelt" on each side, should the State develop land along each side, makes a total of 600 foot width of excluded land for that highway.

Another example!

Any State highway, primary or secondary, passing through any narrow valley, with its greenbelts, uses up the entire valley floor and leaves no space at all for anything.

- Page 33 (b) After all the dedications for "greenbelts", "easements", "accesses to water", etc. how much more of a developers land will the "Director require" to be set into "open space", "parks", "trails", or "recreation areas"? Also, what does this apply to, State land subdivision or subdivision of private lands?
- Page 33 (c) (2) Same objection as above. Excessive reservation and confiscation of land if it applies to privately owned property.
- Page 36 (29) Replat -- A very nebulous definition. As used throughout the text of these regulations, it seems to include all subdivision plats for subdivisions or even any small survey which creates any parcel smaller than a 40 acre, aliquot part. Just what is a "replat" anyway, and where does the term come from. Blacks Law Dictionary doesn't list it nor does Websters Dictionary, Second College Addition, Copyright 1976. It seems to be a term used to confuse people into thinking these regulations pertain to something other than ordinary subdivisiion of land which is, in fact, exactly what is being regulated here.
- Page 37 (38) Tract -- This definition seems to be identical with BLM's use of "lot" designation. Why not be consistant with them. Also, in general usage this term has a much broader definition.

I have compiled the above list of comments in a single afternoon. I am sure that if I had more time I could spend on this, I could have written much more. I suggest that the amount of regulation concerned with in this draft is much too large an undertaking to be proposed at one time, and the impact of the regulations as proposed is much too large to be handled on an administrative regulation basis. In fact, some sections, such as the applica-

tion of ll AAC 53.470 to privately owned land are probably unconstitutional. I do not want to see these regulations passed in anything like the present form.

*Paul E. Stutzmann*

Paul E. Stutzmann, P.E. and R.L.S.

# MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES, DIVISION OF LANDS

DATE: January 19, 1979

Michael C. T. Smith  
Asst. Commissioner

FILE NO: 10210

TELEPHONE NO.

CMS  
Claude M. Hoffman  
Chief Cadastral Engineer

SUBJECT: Survey, Platting, Land Records  
& Municipal Land Regulations

Attached hereto is information and material indexed for 'manner of ease' to assist the reader to review the material and contents for the referenced subject.

### Overview of Advertisement and Policy.

A dozen major papers of general circulation crisscrossing Alaska was notified and requested to publish the information on hearings of the subject regulations. This cost is averaging \$80 to \$120 per newspaper. We have already received and recommended payment for three, and feel confident that they were actually published in all the papers as requested.

In addition to the news media publication, all Departmental Commissioners, Lieutenant Governor's Office and numerous other people received ADL mail out copies of the regulations and publication. In addition thereto, 130 copies were sent to surveyors that have been involved in Division of Lands survey activities, crisscrossing Alaska. Further, numerous phone calls, individual contacts and division mail out did exist.

### Overview of Public Hearings.

The public hearing in Fairbanks was well attended and 17 people presented oral testimony. The majority of the testimony was in opposition to the regulations in general. The basic concept was taking away someone's rights that they now have and that adequate publicity was not given the regulations. The public hearings in Anchorage and Juneau were not well attended. Written testimony was also received at the Anchorage and Fairbanks hearings.

The following 15 items appear to overshadow and be the general trend for the nonacceptability of the regulations by the public and especially the Fairbanks congeries.

1. Inadequate notice. The regulations are not changes as advertised but new regulations and were not adequately advertised and no hearings were held in bush areas where they most apply. Timing of public review was during holidays and therefore, did not allow proper review.

2. The intent of the regulations is to nullify the "Bierne Initiative", being too excessive, restrictive and costly. (Should remove 11 AAC 53.170 from regulations due to Moody's order.)

3. Land status records should be kept in District Offices. The District Land Office should be kept open a minimum of 6 hours daily and hopefully, 7½ hours. Land Status updates are not displayed in a timely manner. Records should have specific time for updates and additions such as, 24 hours, 48 hours, 72 hours, 3 days, etc. for creditability. Changes invalid until shown on status documents and case files and status documents should only be considered as valid when shown in the A.D.L. District Offices.

4. Local government subdivision ordinances should control within their areas, but not in adjacent areas.

5. Class III Surveys are too stringent for homesteads and homesites. Registered Land Surveyors licenses are adequate to control the regulating of the type of survey. Costs are too high for surveys due to the A.D.L. regulations. (Regulations are too restrictive, therefore, too costly. 1:2000 is too great -- 1:2000 is too low. (Mixed comments.)

6. Disagree with conveyance of a minimum of 40 acres aliquot part, without a plat. (Should be 2½ acres by aliquot part or less and should allow any aliquot part description by fragments to total a 40 acre parcel, such as, S½S½NW¼ or NE¼NE¼NW¼ and NW¼NW¼NE¼.

7. ROW width for roads, pedestrian easements and waterway easements are excessive and utility easements too narrow. Objection to the use of the word 'approximately' in describing ROW and other minimums. Object to parcels being construed reference AS 38.05.480 and easements under 11 AAC 53.170. Road ROW's are already too excessive and then to add another 150' to 300' is completely out of line on state land and on private land completely unacceptable. Who will pay the taxes on green strip reserves on private land?

8. A one year extension to complete surveys (Bierne Initiative) too short; should be 18 months or 2 years and more than one extension should be allowed.

9. Four survey monuments are not needed. The setting of section and center section corner monuments for a 40 acre aliquot part for the Bierne Bill is excessive. Monuments every 1320', references and bearing tree requirements excessive.

Why iron pipes? Monumenting angle point on meander lines excessive. Much too expensive to survey a single 40 acre parcel out of an unsurveyed section. Why even survey? Use a paper plat and description.

10. Plat format requirements excessive. i.e., do not need standard title blocks, index sheets, map scale control and all surveyor's statements and miscellaneous certificates on plats. If required, state should provide base sheets and, why not convert to metric now?

11. Too much control by the director. Regulations are bureaucratic and socialistic, trespass on democracy, travesty on people's rights and are totally contrary to people's wishes.

12. Disagreement with 500' notification requirement for land ownership in the replatting and easement vacationing process and acquiring names of adjoining property owners in petition to vacate and replat. Opposite testimony being not enough people notified!

13. Road construction standards too stringent. Different circumstances require different standards. Desire to establish who will maintain road, sewer and water facilities after construction by the state, and who builds?

14. Disagreement with tract designation on west tier of sections within a township.

15. Confusion as to requirements and statutory authority of the state under AS 40.15.075, Article 4, with particular reference to the following on private land.

a. When and the amount of easements and ROW's that are to be dedicated.

b. When and amount of greenbelts, parks and open spaces that are to be dedicated.

c. The general subdivision of land by private parties when a replat or vacation is not applicable. (Inside a 40 acre grant.)

d. The general feeling the state is exceeding it's authority of 'a', 'b' and 'c', on private lands. Too much greenstrips and R.O.W's.

#### Summary and Recommendations.

In summary, I feel some of the better data of survey technical substance came about from the direct contact approach to the surveyors. There was a surveyor participating in such in the state that I am aware of.

January 19, 1979

Page 4

that presented oral testimony, per se, at the public hearings, but the input from the surveyors is most enlightening.

I feel that adequate and legal advertisement did exist and that emotions were running high in Fairbanks, due to our regulations being immediately after such other 'hot' issues as the "D2" and "Antiquities Act". Further, I feel if we were to go back and readvertise after we 'clean up some technical recommendations' dealing with survey and platting, we would still be confronted with the same problems with the general trend of controlling private land development with our regulations.

The real problem appears to be the public's feeling that the state is going to be exercising more authority than we should in areas where the state does not own the land. (Lands that are now in private ownership.) Individual desires to subdivide and sell their lands without all the restrictions we are trying to apply.

I herewith recommend that we clean up our technical survey language in our regulations and take a serious look at the authority we actually have in our replatting process for creating greenstrips and additional rights-of-way on private lands that individuals desire to subdivide and proceed on line and adopt the regulations, excluding therefrom the survey portion directly associated within the one page that deals solely with the Bierne Bill Initiative.

We should incorporate language in our regulations whereby we will be able to handle a comparable homestead survey program with regulation control.

At this time, I am proceeding ahead in cleaning up technicalities which I feel necessary in the surveying, records and platting portion of the regulations. I will have a corrected/amended version, hopefully, within the next couple of weeks that will have my recommended changes incorporated therein.

All in all, good response and good comments.

cc: Theodore G. Smith, Director  
Division Forest, Land & Water  
May Kaye Hession  
Regulations Specialist  
ADL District Managers  
DNR Planning Section

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

JAY S. HAMMOND, GOVERNOR

DIVISION OF LANDS

323 E. 4TH AVENUE — ANCHORAGE 99501

### NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF NATURAL RESOURCES

Notice is hereby given that the Department of Natural Resources, under authority vested by AS 29.18.212, AS 38.04.900, and AS 38.05.020, proposes to adopt regulations in Title 11 of the Alaska Administrative Code to implement AS 29.18.201-29.18.212, AS 38.04.045-38.04.055, and AS 40.15.075, as follows:

- (1) 11 AAC 57 is adopted to set out the procedures for land selections by municipalities entitled to state land under AS 29.18.201-29.18.213. 11 AAC 57.020 explains how the entitlement is computed. 11 AAC 57.030 covers the nomination by the municipality of a selection pool larger than its entitlement, from which it may later make its selections; explains which categories of land the municipality may nominate; and restricts the circumstances under which the Division of Lands may remove land from the pool without the municipality's consent. 11 AAC 57.040 spells out the joint state-municipal planning process that must take place before a selection is made. 11 AAC 57.050 deals with the selection process, sets time limits for selection, and provides for public notice at the municipality's expense if the Division of Lands tentatively approves the selection. 11 AAC 57.060 sets out survey requirements for an approved selection.
- (2) 11 AAC 53 is adopted to regulate land records, surveying and platting. Article 1 covers the Division of Lands' records system and specifies the hours during which land status documents are available to the public for inspection and copying.

Article 2 specifies procedures to be used in surveying, monumenting and platting state land, including procedures for open-to-entry surveys and homestead entry surveys. The forms that must be shown on a plat are listed. An appeal process is set up to resolve disputes over surveyed boundaries.

Article 3 covers easements and rights-of-way that must be reserved, including public access easements, utility easements, pedestrian easements, and road rights-of-way. The requirements for easements to and along navigable and public water are amended from regulations already in effect as 11 AAC 70.

Article 4 formulates subdivision development standards that apply to state land subdivided by the Division of Lands and to replats or vacations of private land in third class boroughs and the unorganized borough, where a quarter-quarter section or its equivalent is the smallest aliquot part subdivision that may be created without a plat. The procedure for obtaining the Division's approval of a replat or vacation is amended from regulations already in effect as 11 AAC 68. Standards for road construction and rights-of-way, sewer systems, water systems, utility easements, greenbelts along primary and secondary roads, recreation areas within residential subdivision, and easements or greenbelts to provide access to public waters are set forth.

Article 5 defines terms used in the chapter.

- (3) 11 AAC 62.260-11 AAC 62.300, 11 AAC 62.640, 11 AAC 64.500-11 AAC 64.560, 11 AAC 68, and 11 AAC 70 are repealed.
- (4) 11 AAC 99 is adopted to define terms used repeatedly in 11 AAC 55-11 AAC 99.

Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at a hearing to be held in the Multipurpose Room, Romig Jr. High School, 3600 Minnesota Drive, Anchorage, at 7:30 p.m., January 8, 1979; in the Multipurpose Room, Ryan Jr. High School, 951 Airport Road, Fairbanks, at 7:30 p.m., January 9, 1979; and in a room to be announced, Marie Drake Jr. High School, 1208 Glacier Ave., Juneau, at 7:30 p.m., January 11, 1979.

Copies of the proposed regulations may be obtained by writing to the Department of Natural Resources, Division of Lands, Regulations Coordinator, 323 E. 4th Avenue, Anchorage, Alaska 99501.

The Department of Natural Resources, upon its own motion or at the instance of any interested person, may after the hearing adopt the proposals substantially as described above without further notice or may decide to take no action on them.

DATE

12.12.78

Michael C. T. Smith  
Assistant Commissioner

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

JAY S. HAMMOND, GOVERNOR

DIVISION OF LANDS

323 E. 4TH AVENUE - ANCHORAGE 99501

December 12, 1978

Dear Alaskan:

Attached are three chapters of proposed regulations on which the Division of Lands will hold public hearings in early January in Anchorage, Juneau, and Fairbanks. (See the "Notice of Proposed Changes in the Regulations of the Department of Natural Resources" for hearing details.) The Division of Lands is interested in your suggestions concerning these proposed regulations. You are invited to present a statement, oral or written, at one of the hearings, or to send it directly to the Division of Lands. If your statement is mailed, please send it no later than Jan. 12, 1979.

The first chapter of regulations is 11 AAC 53, "Records, Surveys, and Platting." In June the Legislature passed a new law, ch. 181, SLA 1978, that among other matters requires surveying before the State disposes of land, and obliges the Division of Lands to reserve access easements necessary to reach public land or water in the area, along with access and utility easements needed to serve each parcel. (These provisions will appear in the Alaska Statutes as AS 38.04.045-38.04.055.) The new chapter of regulations puts these legal requirements into effect.

Article 1 of 11 AAC 53 covers the division's land records system, emphasizes that land status plats are not official documents for title purposes, and sets the hours that land records are available for inspection and copying in the district offices of the division (3327 Fairbanks St., Anchorage; 4420 Airport Way, Fairbanks; and 11th Floor State Office Building, Juneau).

Article 2 deals with all types of surveys, including surveys for open-to-entry sites and homestead entry parcels, sets the limits of error for each type, and prescribes procedures for surveying, monumentation and platting. (Other matters necessary for the implementation of the homestead entry initiative will be covered in proposed regulations for which hearings will be scheduled soon.) Much of this material is adapted from regulations already in effect in 11 AAC 62 and 64 on tidelands and set-net site leasing. Most of the other procedures have been required by the Division of Lands for many years, but in the past have been stipulated as part of each set of survey instructions issued before a survey is begun. However, the volume of land disposal actions is now so high that it is necessary to standardize procedures as much as possible in the form of regulations and cut to a minimum what must be detailed in individual survey instructions.

Article 3 sets the standards for the road, utility, and public access easements and rights-of-way that must be reserved, surveyed and platted before the division can dispose of land. The bulk of this article is amended from regulations

already in effect as 11 AAC 70 that set the widths of easements for access to and along public and navigable waters, as required by AS 38.05.127. The Division of Lands is proposing to raise the minimum width of such easements from 25 to 50 feet.

Article 4 sets the development standards for the division's own subdivisions and, in third class boroughs and the unorganized borough, for subdivisions of private land that are subject to the division's authority to approve replats.

Several sections in 11 AAC 62 and 11 AAC 64, and the whole of 11 AAC 68 and 11 AAC 70, are repealed, since they are being incorporated into 11 AAC 53.

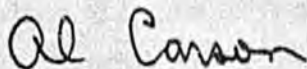
Another chapter proposed to be adopted is 11 AAC 57, "Municipal Land Selections." Legislation allowing boroughs to select a percentage of state land within their boundaries was originally passed in 1964, and later was amended to include cities as well. However, the law left many implementation questions unanswered. During the past session, the Legislature amended the law to a substantial degree (see ch. 180, SLA 1978), clarifying how the selection process was to occur. The new law requires that joint planning take place between each municipality and the Division of Lands to determine which potential selections can best serve the municipality, while still protecting the state interest as a whole. This law is linked to ch. 181, SLA 1978, by a provision in the latter requiring the Division of Lands to mark 25 percent of former mental health trust lands for disposal, and allowing a municipality to select such designated lands to meet its entitlement under ch. 180, SLA 1978, if it certifies that it will undertake disposal programs to "meet the needs of persons residing in the municipality."

(Regulations formerly in AAC 53 and 57 concerning zoning and agricultural land sales have been renumbered without amendment as 11 AAC 91 and 67 respectively.)

The third set of proposed regulations, 11 AAC 99, incorporates definitions that in the past have been repeated in each chapter of the Division of Lands' regulations.

Your testimony on these three chapters of proposed regulations will be most useful to us if it makes reference to particular sections by number (for instance, 11 AAC 53.420(b)(4) rather than a page number) and if it offers specific suggestions or other modifications you feel would result in improvement. If you would like a copy of the new laws on which these regulations are based, contact the Legislative Information Office in Anchorage (278-3668), Fairbanks (452-4449), Juneau (465-3800), or Ketchikan (225-9675).

Sincerely yours,



for Michael C. T. Smith  
Director

CHAPTER 53. RECORDS, SURVEYS, AND PLATTING.

Article

1. Land Records System (11 AAC 53.010 - 11 AAC 53.050)
2. Surveys and Platting (11 AAC 53.100 - 11 AAC 53.270)
3. Easements and Rights-of-Way (11 AAC 53.300 - 11 AAC 53.370)
4. Subdivision Development Standards (11 AAC 53.400 - 11 AAC 53.470)
5. General Provisions (11 AAC 53.500)

ARTICLE 1. LAND RECORDS SYSTEM.

Section

- 010. Purpose
- 020. Land records
- 030. Record entries
- 040. Availability
- 050. Confidentiality

11 AAC 53.010. PURPOSE. The purpose of secs. 10-50 of this chapter is to set forth the procedures of the land records system, which is responsible for recording and filing all actions affecting the status of state land.

Authority: AS 09.25.120  
AS 38.04.045  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035  
AS 40.21.070

11 AAC 53.020. LAND RECORDS. Land records trace the history of all land status from acquisition to disposal and consist of the following:

(1) land status plats, which graphically portray all actions affecting state land and land in other ownership as required. These plats are for illustrative purposes only; the actual written documents remain the official record. There are two types of land status plats:

(A) land estate plats, which portray land actions and transactions on the surface of each township; and

(B) mineral estate plats, which portray subsurface actions and transactions within a given township. These plats may also show state tideland data;

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(2) the historical index, which is a narrative summary of and an index to state land actions and transactions that affect the title to, disposition of, or use status of state land or state tentatively approved land within an individual township; and

(3) the serial register, which is a numerical index of land actions assigned division of lands serial numbers.

Authority: AS 09.25.110  
AS 09.25.120  
AS 38.04.045  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035  
AS 40.21.070

11 AAC 53.030. RECORD ENTRIES. (a) When an instrument is filed for incorporation into the land records system, it will be noted in the proper serial register, or in a new serial register, and will be made available for public inspection at the beginning of the next regular day of business after it has been noted.

(b) Action requiring a change on the land status plat and historical index will be noted in a timely manner.

Authority: AS 09.25.120  
AS 38.05.020  
AS 38.04.045  
AS 38.04.900  
AS 38.05.035  
AS 40.21.070

11 AAC 53.040. AVAILABILITY. (a) Except as provided in sec. 50 of this chapter, any document produced and maintained in the division's land records system is available to the public for inspection and copying from 9:30 A.M. to 3:00 P.M. during regular business days in accordance with AS 09.25.110.

(b) On request, the division will supply a certified true copy of any available document maintained in its land records system. A fee is charged for all copies in accordance with a fee schedule posted at each of the district offices of the division.

Authority: AS 09.25.110  
AS 09.25.120  
AS 38.04.045  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035

11 AAC 53.050. CONFIDENTIALITY. Documents requested to be kept confidential under AS 38.05.035(a)(9) or required to be kept confidential under AS 09.25.120 are not available for inspection or copying.

Authority: AS 09.25.120  
AS 38.04.045  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035

ARTICLE 2. SURVEY AND PLATTING STANDARDS.

Section

- 100. Application
- 110. General survey standards
- 120. Technical survey standards
- 130. Types of surveys
- 140. Rectangular surveys
- 150. Supplemental cadastral rectangular surveys
- 160. Metes and bounds surveys
- 170. Homestead entry surveys
- 180. Deposit for survey costs
- 190. Monuments
- 200. Monument accessories
- 210. General plat standards
- 220. Preliminary plat standards
- 230. Final plat standards
- 240. Technical appeals

11 AAC 53.100. APPLICATION. Secs. 100-240 of this chapter apply to all state land, except that if the land is within the jurisdiction of a platting authority, and if the ordinances of that platting authority governing subdivisions are at least as stringent as the standards of this chapter, and if the platting authority possesses sufficient resources and enforcement capability to insure uniform compliance with its regulations, then that authority's ordinances govern instead of this chapter.

Authority: AS 38.04.045  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035  
AS 38.05.045

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11 AAC 53.110. GENERAL SURVEY STANDARDS (MINIMUM). All survey work must be accomplished with commonly accepted equipment and procedures to insure at least the degree of accuracy prescribed in this section for the class of survey required.

(1) Class I surveys. This class of survey is for control surveys where accuracy greater than 1:10,000 is required. It is required by the division for, but is not limited to:

(A) extension of the geodetic control from existing networks into areas where cadastral surveys are to be established in accordance with the official protraction diagrams; and

(B) establishing control survey networks to National Geodetic Survey accuracy.

(2) Class II surveys. This class of survey is for urban areas where a municipal platting authority requires survey accuracy greater than 1:5,000, but less than that for class I surveys.

(3) Class III surveys. This class of survey is for rural areas where survey accuracy of 1:5,000 is required. It is required by the division for, but is not limited to, such surveys as:

(A) subdivision surveys;

(B) open-to-entry surveys;

(C) shore fishery development surveys;

(D) tideland surveys; and

(E) metes and bounds surveys.

(4) Class IV surveys. This class of survey is for remote areas when a survey accuracy of 1:2,000 is required. It is required by the division for, but is not limited to, such surveys as cadastral rectangular surveys.

(5) Class V surveys. This class of survey is for general location surveys where accuracy of less than 1:2,000 is required. This class of survey is required by the division for, but is not limited to, such surveys as:

(A) cabin site locations; and

(B) mineral claim locations.

Authority: AS 38.04.045  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035

11 AAC 53.120. TECHNICAL SURVEY STANDARDS. The technical standards in this section control specific survey procedures.

(1) Mean high tide:

(A) in the case of unoccupied and unimproved tide and submerged lands not seaward of an incorporated municipality, the line of mean high tide must be determined in accordance with (B)-(D) of this subsection and used as the landward boundary. In the case of occupied and improved tide and submerged lands, either the original meander line established prior to statehood or the line of mean high tide, whichever is the higher, must be reestablished or determined and used as the landward boundary line;

(B) for tideland surveys abutting any U.S. survey made after the date of statehood or in any location where no upland survey exists, the line of mean high tide must be determined by using National Geodetic Survey bench marks (or any other bench marks that have been established from that source), and the tide table datum. The upland boundary need not follow this line in its entire exactness, but may follow in a "meander" or "average" line of mean high tide. Each end of the boundary must be established on the elevation of mean high tide;

(C) in case no National Geodetic Survey bench mark exists within one mile of the property being surveyed, the surveyor may, by using the tide tables for the immediate body of water and applying tidal readings he has taken, determine the line of mean high tide; and

(D) in some cases, such as salt or mud flat areas where the average grade of the beach is 10% or less, and where determining the elevation of the line of mean high tide could create a lengthy horizontal distance, the director may nevertheless require that the true line of mean high tide be established using the procedures of (B) of this subsection, regardless of the distance from a known bench mark.

(2) Ordinary high water mark. This is to be determined by observing and marking the place on the bank or shore up to which the presence and action of water are so prolonged as to impress on bank or shore a character distinct from that of the bank or shore with respect to vegetation and the nature of the soil.

(3) Vertical control. Vertical control must be established by utilizing National Geodetic Survey bench marks or tidal readings, in accordance with survey instructions issued by the division.

(4) Horizontal control. The latitude and longitude positions, as established by the National Geodetic Survey, must be used to coordinate the survey to all other surveys in the area and to the rectangular cadastral survey in accordance with the class of accuracy assigned under sec. 110 of this chapter to the type of survey. If no such official recognized horizontal control exists within two miles of a survey, the latitude and longitude may be derived from a set (or sets) of celestial observations. These observations must be done as set forth in the manual of survey instructions prepared by the United States Department of the Interior, Bureau of Land Management, which is current at the time of survey. If this is done, a true copy of the field notes and calculations of the observations must be submitted to the division of lands, together with the plat of survey.

Authority: AS 38.04.045  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035

11 AAC 53.130. TYPES OF SURVEYS. There are four general types of surveys: rectangular surveys, supplemental cadastral rectangular surveys, metes and bounds surveys, and homestead entry surveys.

Authority: AS 38.04.045  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035  
AS 38.05.045

11 AAC 53.140. RECTANGULAR SURVEYS. Rectangular surveys, including homesite surveys and public and private recreation site surveys, must adhere to class III survey standards, unless the division authorizes the use of class IV standards, and must follow the survey and platting requirements of this chapter. Any survey or platting criteria unique to a particular type of survey will be set forth in special survey instructions issued by the division.

Authority: AS 38.04.045  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035  
AS 38.05.045

11 AAC 53.150. SUPPLEMENTAL CADASTRAL RECTANGULAR SURVEYS. (a) Supplemental cadastral rectangular surveys are divided into four categories, each of which is surveyed to class IV standards.

(1) Category I applies when no rectangular cadastral survey corners have been set to define the rectangular survey township perimeter. The township is, therefore, legally described only by reference to the official protraction diagrams. The section corner positions along the perimeter and within the interior of the township must be established at the official protracted geodetic positions as shown on the official protraction diagram.

(2) Category II applies when monumentation exists on the perimeter of a township that is officially platted. All subsequent section, one-quarter section, and other corner positions must be located along the perimeter on line and at prorated distances between the monumentation of record. All interior section corner positions must be established at the official geodetic positions as shown on the official protraction diagrams. The interior section lines along the exterior one mile of the township must then be established as a line connecting the established geodetic positions of the interior section corners and the section corner positions as established on the exterior of the township. Whenever interior correction lines have to be established, because the configuration of the township exterior is not established at the official protraction positions, then special instructions from the division are necessary for the official positioning of the correction line and corner monument positions.

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(3) Category III applies when the perimeter of the township has been established and monumented, based on the official protraction diagrams, and interior monumentation defining a particular section of land also exists, based on the official protraction diagrams. When this situation exists, a section of land may be located within the interior portion of the township by continuation of the rectangular survey system in accordance with the approved protraction diagrams, using either the monumented interior section corners or the exterior perimeter section corner monuments, whichever is more appropriate. The rectangular system is then projected to within one mile of the other prior established section corner monument. Then the line connecting the existing corner and the newly established section corners is made and the one-quarter corner is set at midpoint and on line. However, if the connecting line does not close within the survey class accuracy assigned, a correction line is required and survey instructions must be issued by the division to govern the location of the correction line.

(4) Category IV applies when the perimeter boundary of a township has been established and monumented, based on either an official protraction diagram or on an older perimeter boundary survey done before the official protraction diagrams were approved. It also applies when the interior section corners have been established and monumented, based on either an official protraction diagram or an older

survey done before the official protraction diagrams were approved. There are two survey datums to contend with, one that controls the exterior boundary of the township and one that controls the interior section corners. Both may be physically monumented on the ground. When two such datums exist, the director shall issue special survey instructions establishing a correction line to control the basis for projection of the rectangular survey system throughout the township. These special instructions will govern the interior subdivision of the township.

(b) The following survey and platting standards apply to supplemental cadastral rectangular surveys.

(1) For the west tier of sections in a township, the north-south center section line must be established at 2,640 feet west of the section corners, and the remaining distance to the west section corners must be as established by field measurements. The east half of the section is platted as aliquot parts, with the west portion being divided into two tracts. These tracts will be designated as Tract A and Tract B, with Tract A being to the north. However, when smaller units than the two tracts A and B, mentioned above, are to be surveyed and platted, then the one-sixteenth section corner positions must be set at 1,320 feet west of the one-quarter section corner position. The east half of the west half is platted as aliquot parts, with the westerly remainder of the section then divided into four tracts, using the same alphabetical designation mentioned above, with Tract A being to the north and Tract D to the south. Thus, the one-quarter corner must be at 2,640 feet from the east corner, and the one-sixteenth corner must be at 1,320 feet from the one-quarter corner. The only exception is if there is a platted distance call on an exterior township boundary plat. Then proration applies, based on the platted distance of an official survey and the existing field distance.

(2) For the north tier of sections in a township, the one-quarter corner positions must be established at half the distance and on line between the section corner positions. The one-sixteenth corner positions must be established thereafter at their respective midpoint positions. The entire section is then defined by aliquot parts.

(3) The only time the east, north and south tiers of sections are not platted into aliquot parts is when the east, north or south section line has been established as a correction line. The tract designation, as in (b)(1) of this section, of a section is then applicable. Specific instructions for the correction line will be issued by the director.

Authority: AS 38.04.045  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035  
AS 38.05.045

11 AAC 53.160. METES AND BOUNDS SURVEYS. (a) Metes and bounds surveys will be surveyed to class III standards. Class IV standards may be authorized in certain instances. Any survey or platting criteria unique to a particular type of survey will be set forth in special survey instructions issued by the division. For all metes and bounds surveys, both a preliminary plat and a final plat must be prepared in accordance with secs. 220 and 230 of this chapter. A "metes and bounds" legal description must be shown on the plat. The description must begin at a monumented corner position and have an origin of bearing and distance call to an officially recognized monument that has a known relationship to the rectangular survey system. Both of these monuments must have a latitude and longitude established to an accuracy in keeping with the class of survey, with the latitude and longitude of one of them being called out in the legal description. Metes and bounds surveys are used for tidelands surveys, shore fishery development surveys, open-to-entry surveys, homesite surveys, and public and private recreation site surveys.

(b) The following are additional requirements for metes and bounds surveys of tidelands, shore fishery development sites, and open-to-entry sites.

(1) For a tideland survey, the line of mean high tide must be determined as in sec. 120(1) of this chapter, and the final plat must show the course of the shoreline for an additional 400 feet from each side of the survey.

(2) The applicant for a shore fishery development lease need not have an actual field survey. He may have his choice of submitting either a paper plat or a plat that represents an actual field survey. A preliminary plat must be submitted with his application. In the case of a conflict between a lease tract located by a paper plat and a lease tract located by an actual field survey, the field survey governs. If the applicant chooses an actual field survey, then the line of mean high tide must be located as in (1) of this subsection. In addition, the final plat must show the lease number assigned by the division.

(3) For an open-to-entry parcel that was not surveyed before entry, a final survey plat and a surveyor's affidavit, attesting that all field work has been completed in accordance with this chapter, must be filed with the director before the expiration of the lease. The director shall approve or disapprove the survey within 30 days after receiving the final survey plat and affidavit. If the survey is disapproved, a field inspection of the survey will be made within 90 days after disapproval. If the field inspection verifies that all field

work has been completed in accordance with division of lands survey criteria, as shown on the final plat and as attested to on the surveyor's affidavit, the director may approve the survey. After approval, the final survey plat and the surveyor's affidavit must be filed for acceptance by the division. The survey and platting criteria established by the division of lands prior to May 4, 1978, are the criteria for surveying land entered upon before that date, and the following surveyor's affidavit must be shown on the open-to-entry plat:

I, \_\_\_\_\_ (surveyor's name) \_\_\_\_\_, being first duly sworn, hereby depose and say that the following matters are true and correct to the best of my knowledge and belief:

- 1. I am properly registered and licensed to practice land surveying in the State of Alaska. The surveyor's field notes which are attached hereto and made a part hereof represent Alaska State Land Survey No. \_\_\_\_\_, which was made by me or under my direct supervision.
- 2. All field work has been accomplished in accordance with AS 38.05.077 and with Division of Lands survey and plat criteria, as authorized by AS 33.05.077.
- 3. The monuments as shown on the field notes and as displayed on the plat of survey actually exist, and dimensions and other details are correct.

\_\_\_\_\_  
(date)  
Date

\_\_\_\_\_  
(signature)  
Registered Land Surveyor

Reg. No. \_\_\_\_\_  
(number)

NOTARY'S ACKNOWLEDGEMENT

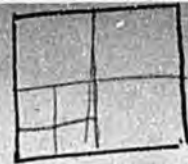
Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, 19 \_\_.

\_\_\_\_\_  
(signature)  
Notary for Alaska

\_\_\_\_\_  
(date)  
My commission expires:

Authority: AS 38.04.045  
AS 38.04.900  
AS 38.05.020  
AS 38.05.077

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11 AAC 53.170. HOMESTEAD ENTRY SURVEYS. Before the surveying and platting of a homestead entry parcel under AS 38.05.410 - 38.05.540, the four corners of the section and center one-quarter section corner must be established and monumented with primary monuments in accordance with secs. 190 - 200 of this chapter. Section location must be controlled to class III survey standards. The parcel may not extend beyond a single quarter-quarter section. For a parcel in southeast Alaska that is entirely east of the 141st meridian, entry must be on either the north, east, south, or west half of a quarter-quarter section.

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(1) A preliminary and a final plat must be prepared and submitted to the division in accordance with secs. 220 - 230 of this chapter. In addition, if the parcel lies within a city or a first-class or second-class borough, the plat must be submitted to the platting authority for its approval.

(2) A public access easement having a total width of 100 feet, centered on the boundary line, must be surveyed and platted along all sides of the parcel to provide access to navigable and public water. As used in AS 38.05.480, the term "each section of land acquired from the state" means "each parcel of land acquired from the state." Other easements to provide access along navigable and public water must be surveyed and platted in accordance with sec. 330(a) and (b) of this chapter. All public and navigable water must be surveyed and have the water area segregated from the uplands at the time of survey.

(3) The director may grant up to a one-year extension of the time allowed in AS 38.05.440 for survey. A person applying for an extension must be able to show that he exercised due diligence in attempting to complete the survey within the time allowed, and that failure to complete it was due to an act of God or other circumstance beyond the applicant's control.

Burden on surveyor

(4) Any later subdivision of the parcel, or any other action that requires a change or vacation of the original plat, is subject to review by the platting authority having jurisdiction.

Authority: AS 38.04.045  
 AS 38.04.900  
 AS 38.05.020  
 AS 38.05.127  
 AS 38.05.440  
 AS 38.05.480  
 AS 40.15.075

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11 AAC 53.180. DEPOSIT FOR SURVEY COSTS. At the discretion of the director, for a parcel that is unsurveyed at the time of entry, the applicant may be allowed to deposit with the division an amount of money that the division estimates is sufficient to cover the cost of surveying and platting the parcel. The division will then be responsible for surveying the parcel and preparing the plat before the expiration of any time limits set by statute. If the amount of money deposited is not sufficient to cover the actual survey and platting costs, the applicant shall pay the remainder before passage of title. The division will refund any unspent funds.

Authority: AS 38.04.045  
AS 38.04.900  
AS 38.05.020

11 AAC 53.190. MONUMENTS. (a) Primary monuments must be established for surveys as set forth in this subsection.

(1) Every metes and bounds survey and homestead entry survey must have a minimum of four primary monuments established. The monument must consist of a two-inch nonferrous metal pipe at least 30 inches long with a four-inch flange at the bottom. A two and one-half inch diameter nonferrous metal cap must be permanently attached at the top.

(2) No portion of a survey or subdivision may be more than 1,320 feet from a primary monument.

(3) All angle points along an exterior survey boundary must have a primary monument.

(4) Primary monuments along an exterior boundary may not be situated more than 1,320 feet apart.

(5) If adjacent exterior boundary monuments are not inter-visible then an intermediate primary monument that is inter-visible must be set.

(6) If an exterior boundary line is less than 2,640 feet but more than 1,320 feet long, then the intermediate primary monument must be set as close to the midpoint as practical.

(7) Should the point for a primary monument be in a place that would be impractical to monument because of natural restrictions such as water bodies, a witness corner must be set. The witness distance must be shown upon the plat of survey, from the existing monument, as set, to the true corner position. Witness corners must always be set on a survey property line and at a distance considered reasonable and practical from the true corner point. Witness corners must comply with the standards for primary monuments.



(8) If it is impractical to set the primary monument, one of the following may be substituted, with monument accessories as required in sec. 200 of this chapter:

(A) a cross marked in a firm stone;

(B) a cap grouted into a firm stone; or

(C) a tablet containing a minimum of 1,000 cubic inches of concrete and a cap marking the actual corner point.

(b) Secondary monuments must be used for property line curvature control, at interior angle points, and on interior lines that exceed 1,320 feet in length and are not monumented with primary monuments. Secondary monuments must consist of a five-eighths inch metal rod, three feet long, with a one and one-half inch cap attached at the top.

(c) All other corners within the interior of a subdivision must be marked with reinforcing rods or iron pipes, or in a manner prescribed by the platting authority having jurisdiction.

Authority: AS 38.04.045  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035

11 AAC 53.200. MONUMENT ACCESSORIES. (a) All primary monuments must be referenced to at least three bearing trees or objects surveyed to a class IV survey standard, or two reference monuments surveyed to a class III survey standard.

(1) If bearing trees or objects are used, they must be located as nearly as possible at equal angles and no further away than 100 feet from the monument. The distance to trees or objects must be measured at waist height, and in the case of trees, measured to the center of the tree, with distances reduced to a horizontal equivalent. Bearing trees must also be marked with nonferrous metal tags of at least nine square inches in size, which must be placed facing the monument. These tags must be clearly and permanently marked as to the corner nomenclature and distance.

(2) If reference monuments are being used, two must be used, and they must meet the secondary monument standards of sec. 190(b) of this chapter. These monuments must be placed on a property line or at right angles to the monument being referenced and can be no further than 100 feet from the monument being referenced. In addition, they must be marked with the nomenclature and distance to the monument being referenced.

(b) In addition to the accessories required in (a) of this section, witness posts, a minimum size of a nominal two-by-four, 6' long, with 4' protruding above ground, are required for all primary monuments. They must be set at right angles to the line and no farther than one foot from the monument.

(c) Secondary monuments do not require monument accessories.

Authority: AS 38.04.045  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035

11 AAC 53.210. GENERAL PLAT STANDARDS. All plats that are submitted to or prepared by the division of lands, with the exception of those types of surveys requiring specific data, as defined within the individual category, must conform to these basic standards unless prior approval for change has been granted by the director or it is necessary to comply with another plating authority.

(1) The base sheets must be of good quality linen or mylar at least three mils thick, and be one of three standard sizes: 18" x 24", 22" x 36", 31-1/2" x 34".

(2) The sheets must have the official division of lands title block and border configuration.

(3) All line work must be in the appropriate black drafting ink.

(4) All lettering on the plat must be in the appropriate black ink and be accomplished with "mechanical" lettering equipment.

(5) All line work and lettering must be of good quality and all line widths and lettering sizes must be of such size that all information can be clearly shown without overlap or confusion.

(6) When more than one sheet is required, an index sheet must be added showing the entire parcel, with the sheets in numerical order, and each sheet showing the sheet number and total number. When more than one sheet is submitted, only the last need have the approval certificates, but all sheets must be the same size.

(7) The scale must be one inch representing 100 feet or a multiple of 100 feet. A request for the use of another scale may be made to the director.

(8) Details, as necessary, must be shown at an appropriate scale.

(9) The plat must have a vicinity map, with a scale of one inch representing one mile in the upper right-hand corner, showing sections, townships and ranges, and other boundaries such as national forests, borough, city, etc., and other physical or natural features such as roads, lakes, rivers, etc. The source of the base map used must also be indicated.

(10) Nomenclature of the survey need appear in the title block only, unless the division specifically states otherwise.

(11) The basis of bearings and the origin of geographic coordinates must be shown. Bearings shown must be true bearings, and distances to be shown must be in the foot unit reduced to the true horizontal equivalent, or, at the director's discretion in the metric unit reduced to the true horizontal equivalent.

(12) Bearings and distances must be shown within the accuracy commensurate with the class of survey being represented. However, plats of class IV surveys must indicate bearings rounded to the nearest 15 seconds of arc and distances rounded to a tenth of a foot or to a decimeter, as appropriate.

(13) The plat must have a bar scale showing four units at the same scale as the plat is drawn, and also the relationship to meters and the conversion factor from feet to meters.

(14) An official division of lands legend showing monuments recovered and set for the survey, as well as other monuments used, must be shown.

(15) The date of plat preparation and standard north arrow must be shown.

(16) The following certificates must be shown:

CERTIFICATE OF CLAIMANT (as applicable)

I (we) hereby certify that I am (we are) the legal claimant(s) of the property shown hereon and that I (we) hereby approve this plat of survey.

\_\_\_\_\_, 19\_\_.  
Date

Witnessed by:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Owner

DRAFT

Register \_\_\_\_, \_\_\_\_ 1979

NATURAL RESOURCES

(signature in black ink)  
Witness

(signature in black ink)  
Owner

NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

(signature in black ink)  
Notary for Alaska

(date)  
My commission expires:

OWNERSHIP CERTIFICATE (all plats)

I, the undersigned, hereby certify that I am the director, Alaska Division of Lands, and that the State of Alaska is owner of (name of parcel), as shown hereon. I hereby approve this survey and plat for the State of Alaska.

(date)  
Date

(signature in black ink)  
Director  
Alaska Division of Lands

NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

(signature in black ink)  
Notary for Alaska

(date)  
My commission expires:

SURVEYOR'S CERTIFICATE (all plats)

I hereby certify that I am properly registered and licensed to practice land surveying in the State of Alaska, and that this plat represents a survey made by me or under my direct supervision, and the monuments shown thereon actually exist as described, and that all dimensions and other details are correct.

Date (date)

Registration Number (number)

(signature in black ink)  
Registered Land Surveyor/Engineer

(SEAL)

DRAFT

DEDICATION OF EASEMENTS, PUBLIC UTILITIES AND ROADWAYS (as applicable)

I hereby dedicate for public or private use, as noted, all easements, public utility areas, and roadways as shown and described hereon.

Date \_\_\_\_\_ (date) \_\_\_\_\_ (signature in black ink)  
Director  
Division of Lands  
Department of Natural Resources

SECTION LINE EASEMENT VACATION CERTIFICATE (As Applicable)

Approval Recommendation

State of Alaska Department of Transportation and Public Facilities

The vacation statement, as shown hereon, has been reviewed by the \_\_\_\_\_ District Office and is hereby recommended for approval by the Commissioner.

Recommended by: \_\_\_\_\_ (signature in black ink) Date \_\_\_\_\_ (date)  
Title: \_\_\_\_\_ (title)

State of Alaska Division of Lands

The vacation statement, as shown hereon, has been reviewed by the Division of Lands and is hereby recommended for approval by the Commissioner.

Recommended by: \_\_\_\_\_ (signature in black ink) Date \_\_\_\_\_ (date)  
Title: \_\_\_\_\_ (title)

The State of Alaska, acting by and through the Commissioner of the Department of Natural Resources and the Commissioner of the Department of Transportation and Public Facilities, does hereby state and declare that the State of Alaska vacates and releases all rights and title to any and all portions of section line easements for public highways reserved to it under AS 19.10.010. (specific area delineated).

Approved:

Date: \_\_\_\_\_ (date) \_\_\_\_\_ (signature in black ink)  
Commissioner  
Department of Transportation and Public Facilities

Approved:

Date: \_\_\_\_\_ (date) \_\_\_\_\_ (signature in black ink)  
Commissioner  
Department of Natural Resources

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## LESSEE CERTIFICATE(S) (as applicable)

I (we), the undersigned, hereby certify that I am (we are) the lessee(s) as shown hereon. I (we) hereby approve this survey and plat.

ADL No.           (number)                                          (signature in black ink)                                Date           (date)            
 Tract           (number)                                          (name--same as signature)          

ADL No.           (number)                                          (signature in black ink)                                Date           (date)            
 Tract           (number)                                          (name--same as signature)          

## NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

          (signature in black ink)            
 Notary for Alaska

          (date)            
 My commission expires:

Authority:        AS 38.04.045  
                   AS 38.04.900  
                   AS 38.05.020

11 AAC 53.220. PRELIMINARY PLAT STANDARDS. In specific instances for various survey types and classes, the director may require a preliminary plat. The purpose of the preliminary plat is to afford an opportunity of receiving preliminary review of an intended survey and prevent unnecessary expenditure of money and time that would occur if major changes were required after final platting. Conditional approval of the preliminary plat does not constitute approval of the final plat. Rather, it is an expression of approval as a guide to preparation of the final plat. The following are minimum standards for the preliminary plat.

(1) The format of the preliminary plat must comply with the general plat standards as set forth in sec. 210 of this chapter.

(2) A legal description of the location, including latitude and longitude commensurate with the class of survey, must be shown at one monumented corner of the survey; the total acres of the area to be surveyed must be shown.

(3) The name and address of occupant or applicant must be shown.

(4) If the preliminary plat is prepared by a land surveyor, the surveyor's seal must be properly affixed and signed.

(5) As applicable, the locations of fill material, existing permanent buildings or other structures within the parcel, existing utility lines, mean high and mean low tide lines, and other permanent features, such as section lines, political subdivision or corporation lines, and school district boundaries within the parcel, must be shown on the plat. All roads inside or within 200 feet of the parcel also must be shown. The director may require that the approximate grades of roads, general topography, preliminary lot configuration, and the proposed location of common areas be shown.

(6) The names of adjacent owners or claimants, or an indication that the land is not owned or claimed, and adjacent U.S. Surveys and Alaska State Land Surveys must be shown.

(7) The original or a good quality reproducible of the preliminary plat must be submitted to the division of lands for review, with five blackline or blue line prints.

(8) Applicable certification as required by sec. 210(16) of this chapter must be shown but should not be signed or notarized.

Authority: AS 08.48.221  
AS 38.04.045  
AS 38.04.900  
AS 38.05.020  
AS 40.15.010

11 AAC 53.230. FINAL PLAT STANDARDS. (a) All final plats must conform to the general plat standards stated in sec. 210 of this chapter, and in addition thereto, must:

(1) have the notary's seal and surveyor's seal properly affixed;

(2) be presented to the division of lands with the original or a good quality reproducible mylar with five blackline prints;

(3) have the original or reproducible and all prints with all original signatures in all of the required places and in black ink only; and

(4) after final approval by the division of lands, be submitted to the district magistrate's office for the recording district within which the land surveyed lies, for official filing. If the land surveyed lies in more than one recording district, the plat must be submitted to each for filing.

(b) After filing, the official filing data must be affixed to the original plat and becomes a part of it.

Authority: AS 08.48.221  
AS 38.04.045  
AS 38.04.900  
AS 38.05.020  
AS 40.15.010

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 11 AAC 53.240. TECHNICAL APPEALS. (a) Before giving technical approval to a plat of survey prepared for the division, the director will attempt to give written notice to all persons owning land bordering on the survey, stating that he proposes to accept the survey and plat and that the adjacent landowner may review the plat and file a written technical appeal within 30 days after the notice is mailed. If no technical appeal is filed, the director will accept the plat.

(b) If a technical appeal is filed in writing with the division, the director may, at his discretion, hold a technical hearing with the appellant. After the hearing is held, the director may allow the appellant 15 days to hire an independent professional surveyor, at the appellant's expense, to review the plat and survey data and submit written technical reasons why the division should not approve the survey. The director may thereafter, at his discretion, accept or reject the survey.

Authority: AS 38.04.035  
 AS 38.04.045  
 AS 38.04.900

### ARTICLE 3. EASEMENTS AND RIGHTS-OF-WAY

#### Section

- 300. Easements and rights-of-way
- 310. Determination of navigable and public water
- 320. Written decision concerning easements
- 330. Easements to and along navigable and public water
- 340. Directory of easements
- 350. Surveying and field marking of easements
- 360. Liability for injury or accident
- 370. Liability for damages

11 AAC 53.300. EASEMENTS AND RIGHTS-OF-WAY. All easements and rights-of-way reserved under secs. 300 and 330 of this chapter must be surveyed and platted to the accuracy of the adjacent survey, or to class III survey standards, if there is no adjacent survey. In the case of easements along public or navigable water, monuments need to be set only as required by sec. 350 of this chapter. Easements may become rights-of-way after survey and dedication or alienation by the division of lands. Except as otherwise provided by law, easements reserved under this chapter are vested in the state. Easements and rights-of-way of at least the following widths must be surveyed and shown on the plat. When in the public interest, the director may require the survey and platting of additional easements or rights-of-way at the time that survey instructions are issued.

(1) Public access easements:

(A) the section line easement is 50 feet wide on the state side. If the state is the owner on both sides, then it is a total of 100 feet wide;

(B) the easement for an existing road or trail that does not already have a reserved easement or right-of-way is 30 feet on each side of the centerline of the road or trail.

(2) Public access easements to and along navigable and public water are as required by sec. 330 of this chapter.

(3) Utility easements are <sup>too narrow</sup> 20 feet wide unless a need is demonstrated for a wider easement at time of survey and platting.

(4) Pedestrian easements are 20 feet wide, unless a need is demonstrated for an easement of a different width at the time of survey and platting.

(5) Other easements, as necessary, will be determined at the time of survey.

(6) Rights-of-way:

(A) arterials must be approximately 100 feet wide;

(B) residential roads must be approximately 60 feet wide; and

(C) other right-of-way widths, as necessary, will be determined at the time of survey. (Eff. 12/29/77, Reg. 64; am. / / 79, Reg. )

Authority: AS 38.04.045  
AS 38.04.050  
AS 38.04.055  
AS 38.04.900  
AS 38.05.020  
AS 38.05.127  
AS 38.05.365

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\* 11 AAC 53.310. DETERMINATION OF NAVIGABLE AND PUBLIC WATER. (a)  
As part of the preliminary written decision required under AS 38.05.035(a)  
(14) before the sale, lease, grant, or other disposal of any interest  
in state land, or in a written determination issued with or as part of  
survey instructions for a homestead entry parcel granted under AS 38.05.410  
38.05.540 for which a written decision under AS 38.05.035(a)(14) is not  
required, the director shall determine whether water adjacent to or  
contained within the land intended for disposal is navigable water,  
public water, or neither.

(b) In making this determination, the director shall solicit  
comment from the Department of Fish and Game and the division of parks,  
and, if appropriate, from other state and municipal agencies. In  
addition, the director may use:

(1) a record of historical use, as documented in a book,  
newspaper, diary, or other published or unpublished source;

(2) published or unpublished records of a public admin-  
istrative agency;

(3) written or oral information from any other source.  
(Eff. 12/29/77, Reg 64; am. / /79, Reg. ).

Authority: AS 38.04.005  
AS 38.04.050  
AS 38.04.055  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035  
AS 38.05.127  
AS 38.05.440  
AS 38.05.480

\*Renumbered from a regulation already in effect in 11 AAC 70. Words  
proposed to be added are underlined; words proposed to be deleted are  
bracketed and capitalized.

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\* 11 AAC 53.320. WRITTEN DECISION CONCERNING EASEMENTS. If the water is determined to be navigable or public water, the director shall, in the preliminary written decision or the written determination referred to in sec. 310 of this chapter, either:

(1) list the easements or rights-of-way that are to be reserved for public access to or along the water under sec. 330 of this chapter; or

(2) state why reserving such easements or rights-of-way is not reasonably necessary to insure public access or why retention of public access is not in the public interest. (Eff. 12/29/77, Reg. 64; am. / /79, Reg. )

Authority: AS 38.04.005  
AS 38.04.050  
AS 38.04.055  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035  
AS 38.05.127  
AS 38.05.440  
AS 38.05.480

\* 11 AAC 53.330. EASEMENT TO AND ALONG NAVIGABLE AND PUBLIC WATER.

(a) The director shall reserve a continuous easement for public access along any water affected by tidal action when land adjacent to that water is conveyed unless the director determines that such an easement is contrary to the public interest. The easement must extend at least 50 [25] feet upland and 50 [25] feet seaward of the mean high water line. Where access along the easement is difficult because of topography or obstructions, an alternate upland access route may also be reserved.

(b) To provide for public access along inland navigable or public water, the director shall reserve a continuous easement on its bed and shores in the conveyance of land adjacent to or containing that water unless the director determines that such an easement is contrary to the public interest. The easement must extend at least 50 [25] feet upland of the ordinary high water mark. Where access along the shoreline is difficult because of topography or obstructions, an alternate upland route may also be reserved.

\*Renumbered from a regulation already in effect in 11 AAC 70. Words proposed to be added are underlined; words proposed to be deleted are bracketed and capitalized.

\* (c) If reasonable access is not otherwise available, the director shall reserve an easement or right-of-way to provide access to coastal or inland navigable or public water in the conveyance of land adjacent to or containing that water unless the director determines that such an easement is contrary to the public interest. The easement must be at least 50 [25] feet wide.

(1) If an existing trail, road, or other overland route provides access to the water, an easement shall be reserved for it, as required by sec. 300(1)(B) of this chapter [EXCEPT THAT IF TWO OR MORE TRAILS OR ROADS AFFORD ACCESS TO A ONE-MILE STRETCH OF SHORELINE, ONLY ONE ACCESS EASEMENT NEED BE RESERVED].

(2) If there is no existing trail, road, or other overland access route to the water, but if a public road, railroad, or trail approaches within two miles of the navigable or public water and if overland access from it to the shoreline is feasible, the director shall reserve an easement for this purpose. If the public road, railroad or trail lies parallel to the navigable or public water, the director shall reserve easements for access from it to the shore at intervals of no more than five miles.

(A) A section line right-of-way may substitute for an access easement if the right-of-way provides a practical route to the shore. The right-of-way must be marked as required under sec. 350 of this chapter.

(B) An easement along a tributary stream may substitute for a separate access easement to the main waterway or body of water if the tributary provides a practical and reasonably direct route from the road, railroad or trail or to the shore of the main waterway or body of water.

(3) Additional easements may be reserved to provide increased access where heavy recreational or nonrecreational use exists or is anticipated, to protect portage routes, or to secure access between aircraft landing sites and nearby navigable or public water.

(4) If it is determined, at the time an easement is reserved, that the need for increased public access to navigable or public water may justify construction of a road, the easement reserved must be at least 60 feet wide.

\*Renumbered from a regulation already in effect in 11 AAC 70. Words proposed to be added are underlined; words proposed to be deleted are bracketed and capitalized.

\*\* (d) In determining the easements to be reserved to and along navigable and public water, the director shall solicit comment from the Department of Fish and Game and the division of parks and, if appropriate, from other state and municipal agencies.

\*\* (e) Easements for public access to and along navigable and public water need not be reserved on land to be traded to the federal government if the federal government agrees to reserve such easements before conveying the land into private ownership.

\* (f) At the director's discretion, easements for public access to and along navigable and public water need not be reserved on land to be granted or otherwise transferred to a municipality under AS 39.18.201 - 29.18.213 or AS 38.05.315 if the municipality guarantees to reserve easements substantially in compliance with this section before it conveys the land into private ownership.

\*\* (g) The director may limit the time or manner of using an easement or right-of-way or may close it to all use in order to protect public health, safety, wildlife values, or the environment. The director shall post notice on the land in such a manner as to identify prohibited uses. Any assignment of land management authority to another agency must include the authority to limit use of a public easement or right-of-way. (Eff. 12/29/77, Reg. 64; am. / /79, Reg. ).

Authority: AS 38.04.005  
AS 38.04.050  
AS 38.04.055  
AS 38.04.440  
AS 38.04.480  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035  
AS 38.05.127

\*Renumbered from a regulation already in effect in 11 AAC 70. Words proposed to be added are underlined. Words proposed to be deleted are bracketed and capitalized.

\*\*Renumbered from a regulation already in effect in 11 AAC 70. The Department of Natural Resources does not propose to amend this regulation. It is presented here as a convenience to readers.

\*\* 11 AAC 53.340. DIRECTORY OF EASEMENTS. (a) The director may publish a directory of navigable and public water and of the easements that provide access to and along it.

(b) If a directory is published, it must be available at the offices of the division of lands.

(c) The director may set a fee for the directory. (Eff. 12/29/77, Reg. 64; am. / /79, Reg. )

Authority: AS 38.04.005  
AS 38.04.050  
AS 38.04.055  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035  
AS 38.05.127  
AS 38.05.440  
AS 38.05.480

\*\* 11 AAC 53.350. SURVEYING AND FIELD MARKING OF EASEMENTS. (a) The director may require as a condition of any sale, lease, grant, or other disposal of state land that the purchaser, lessee or grantee survey, mark, or survey and mark public easements reserved under sec. 330 of this chapter.

(1) Marking of easements across uplands must include clearly visible monuments or signs at the following places:

(A) at the intersection of the easement and any public road, railroad, trail, or aircraft landing site;

(B) at the intersection of the easement and any navigable or public water;

(C) along the easement, at intervals reasonably sufficient to allow the route to be followed; however, if the easement's route is shown by a clearly visible trail or road, signs along its course are not required.

(2) Marking of an easement along a waterway or body of water must include a clearly visible monument or sign where the easement intersects any public road.

\*\*Renumbered from a regulation already in effect in 11 AAC 70. The Department of Natural Resources does not propose to amend this regulation. It is presented here as a convenience to readers.

(b) The purchaser, lessee or grantee shall perpetuate and maintain the marking.

(c) No person may obstruct or destroy a marking on an easement or right-of-way. (Eff. 12/29/77, Reg. 64)

Authority: AS 38.04.005  
AS 38.04.050  
AS 38.04.055  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035  
AS 38.05.127  
AS 38.05.440  
AS 38.05.480

\*\* 11 AAC 53.360. LIABILITY FOR INJURY OR ACCIDENT. The state does not assume and its lessees and grantees will not be required to assume any liability for injury or accident that occurs to any person using an easement reserved under sec. 330 of this chapter. Nothing in this chapter in any way creates or affects any liability for any injury or accident. (Eff. 12/29/77, Reg. 64).

Authority: AS 38.04.005  
AS 38.04.050  
AS 38.04.055  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035  
AS 38.05.127  
AS 38.05.440  
AS 38.05.480

\*\* 11 AAC 53.370. LIABILITY FOR DAMAGES. (a) Nothing in this chapter in any way diminishes the liability of a person using an easement reserved under sec. 330 of this chapter, for any injury or damage to persons, or to real or personal property, caused by that person.

(b) The owner or lessee of the land across which the easement is reserved may not hold the state liable for any injury or damage occurring to the owner's or lessee's interest as a result of the easement. (Eff. 12/29/77, Reg. 64)

Authority: AS 38.04.005  
AS 38.04.050  
AS 38.04.055  
AS 38.04.900  
AS 38.05.020  
AS 38.05.035  
AS 38.05.127  
AS 38.05.440  
AS 38.05.480

\*\*Renumbered from a regulation already in effect in 11 AAC 70. The Department of Natural Resources does not propose to amend this regulation. It is presented here as a convenience to readers.

*not in 1st n.d.  
Class Borough*

ARTICLE 4. SUBDIVISION DEVELOPMENT STANDARDS

Section

- 400. Subdivision development standards
- 410. Aliquot part subdivision
- 420. Replats and vacations
- 430. Surface access
- 440. Sewer and water systems
- 450. Utility easements
- 460. Rights-of-way and easements
- 470. Greenbelts, reserved areas and public easements

11 AAC 53.400. SUBDIVISION DEVELOPMENT STANDARDS. Secs. 400-470 of this chapter cover minimum subdivision development standards that apply to:

(1) state land subdivided by the division; however, if the ordinances of the local platting authority governing subdivisions are at least as stringent as the requirements of this chapter and the platting authority possesses sufficient resources and enforcement capability to insure uniform compliance with its subdivision ordinances, then that authority's ordinances will govern in lieu of secs. 400-470 of this chapter; and

(2) replats or vacations of private land done in accordance with AS 40.15.075, including the subdivision replat of a cadastral plat originally done by the state or federal government.

Authority: AS 38.04.045  
AS 38.04.050  
AS 38.04.900  
AS 40.15.075

11 AAC 53.410. ALIQUOT PART SUBDIVISION. Within third-class boroughs and the unorganized borough, a quarter-quarter section, or other aliquot part division containing approximately 40 acres, is the smallest subdivision that may be created by aliquot parts without the preparation of a plat.

Authority: AS 38.04.045  
AS 38.04.900  
AS 38.05.020  
AS 40.15.075

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11 AAC 53.420. REPLATS AND VACATIONS. (a) No plat of land located within a third-class borough or outside a city in the unorganized borough may be replatted, vacated, or otherwise changed without the approval of the director. Approval for change or vacation of a plat is initiated by filing the original and one copy of a petition with the division of lands in Anchorage. However, if the area to be replatted lies adjacent to the jurisdiction of another platting authority, the director may, if the other platting authority agrees, delegate to it the authority to receive, review, and approve the petition in accordance with its own procedures.

(b) A petition for a replat or vacation filed with the division must contain:

(1) a copy of the original survey plat showing the area for change or vacation;

(2) the name, address and land ownership of each petitioner and all other landowners within the petition area and within 500 feet beyond the petition area;

(3) the action sought by the petitioner and a statement of reasons for the requested change or vacation; and

(4) the name and address of the petitioner or the attorney for the petitioner designated to receive service by mail.

(c) The petition must be accompanied by a filing fee and a fee to cover advertising, recording and other costs in accordance with a fee schedule posted at the district offices of the division.

(d) A public hearing must be held on each petition at a place designated by the director no more than 60 days after the petition has been filed and the fees received. The director shall cause a notice of hearing that meets the requirements of AS 29.33.210 to be published once a week for two consecutive weeks in a newspaper of general circulation published within each judicial district in which the land is located. If no such newspaper exists, the notice must be posted in the local post office or other place of general visitation. A copy of the notice must be mailed by registered mail to each person not joining the petition who has an interest in land located within the petition area or within 500 feet of the petition area, and to each affected public agency and utility.

(e) If the petition is approved, the director shall execute a state platting resolution and notify the petitioner by certified mail. A copy of the resolution will be sent with the notice. The notice will

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new plat*  

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*file order*

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require the petitioner to submit to the director the original and three copies, each with an original signature, of the replat. The replat must be prepared at the petitioner's expense. If the replat is not completed within 18 months after the date of the state platting resolution, the platting resolution expires. The director may require a preliminary plat before final platting. If the replat is proper and complies with the standards of secs. 400-470 of this chapter, the director shall approve it. Each agency and utility notified of the petition must be notified of the approval. The director shall record the plat and the state platting resolution in each recording district where there is a portion of the changed or vacated area, and the change or vacation is not valid until the recording has taken place. The division will send to the petitioner a copy of the recorded plat and of the platting resolution showing the recording data. The original copies of the replat and the platting resolution will be maintained by the division.

(f) A replat showing a change and submitted to the division must contain the following standard certificates:

- (1) surveyor's certificate;
- (2) certificate of approval by the state;
- (3) certificate of ownership; and
- (4) section line easement vacation certificate, if applicable.  
(Eff. 6/16/72, Reg. 42; am. / / 79, Reg. )

Authority: AS 38.04.045  
AS 38.04.900  
AS 38.15.075

11 AAC 53.430. SURFACE ACCESS. Legal access must be provided to the subdivision. At the director's discretion, physical access may be required to be constructed, including roads meeting the standards of this section, as well as airfields and waterway facilities. For land subdivided by the division, the direct costs of such construction must be borne or repaid by the recipient of the land.

(1) All-weather access roads are roads built from existing roads, airfields and waterway facilities to the subdivision. The travel surface width must be at least 24 feet, and adequate drainage must be provided by crowning, ditching, and installing culverts. The road surface must consist of at least 12 inches of gravel laid down after clearing and grubbing the bed, or an overlay of at least three feet of gravel.

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(2) Interior all-weather roads are roads within the subdivision that provide access to individual lots. The travel surface width must be at least 18 feet, and adequate drainage must be provided by crowning, ditching, and installing culverts. The road surface must consist of a minimum of six inches of gravel laid down after clearing and grubbing the bed, or an overlay of at least two feet of gravel.

(3) For land subdivided by the division, where appropriate, the director may contract for the construction of other access roads that do not necessarily meet the standards of (1) and (2) of this subsection, with payment to be made in land credit certificates issued by the division.

(A) Certificates will be issued in denominations of \$1,000, \$500, \$100 and \$10.

(B) Certificates are assignable. The assignment becomes effective immediately upon acknowledgement by the division.

(C) Certificates may be utilized for application fees of all types, including applications for uplands, timber, coal, oil and gas, and mining. They may be used for the payment of rentals, principal payments on purchase contracts, accrued interest, bonuses, royalties, material contracts, bonds required under material sales contracts, stumpage charges, and to offset the cost of plats prepared by the division. Land credit certificates will not be accepted for oil and gas bonds, mining lease bonds, or timber contract bonds, nor may they be utilized to cover the cost of or deposits for survey or advertising.

Authority: AS 19.30.100  
AS 38.04.045  
AS 38.04.050  
AS 38.04.055  
AS 38.04.900  
AS 38.05.020  
AS 40.15.075

11 AAC 53.440. SEWER AND WATER SYSTEMS. (a) The subdivision's sewer and water systems, whether on-site, community, or public, must comply with the requirements of the Department of Environmental Conservation in 18 AAC 70 and 72.

(b) If the Department of Environmental Conservation or the local platting authority prohibits on-site sewer or water systems on land subdivided by the division, the director may contract to construct a community sewer or water system meeting the requirements of the Department of Environmental Conservation or the local platting authority, or to tie into a public sewer or water system. Costs will be prorated among the disposal parcels in the subdivision on the basis of acreage in each parcel.

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Authority: AS 38.04.045  
AS 38.04.900  
AS 38.05.020  
AS 40.15.075

11 AAC 53.450. UTILITY EASEMENTS. (a) The subdivider will consult with the utility companies in whose service area the subdivision lies to insure that the utility easements reserved are of adequate width.

(b) If no utility company presently provides service to the area, a utility easement 20 feet wide must be reserved to allow future service to each parcel.

Authority: AS 38.04.050  
AS 38.04.900  
AS 38.05.020  
AS 40.15.075

11 AAC 53.460. RIGHTS-OF-WAY. (a) A right-of-way for an all-weather access road under sec. 430(1) of this chapter must be approximately 100 feet in width.

(b) A right-of-way for an interior all-weather road or for other roads under sec. 430(2) and (3) of this chapter must be approximately 60 feet in width.

(c) Existing legal access of a width narrower than is required by (a) and (b) of this section may be acceptable if it presents no threat to the public health, safety and welfare.

(d) For all roads, slope easements must be reserved where embankments are likely to extend beyond the right-of-way.

Authority: AS 38.04.045  
AS 38.04.050  
AS 38.04.055  
AS 38.04.900  
AS 38.05.020  
AS 40.15.075

11 AAC 53.470. GREENBELTS, RESERVED AREAS, AND PUBLIC EASEMENTS.

(a) When land adjacent to a highway that is part of the state's primary or secondary road system is subdivided, a strip of land having a common boundary with the highway right-of-way must be reserved and dedicated for public ownership as a greenbelt. The width of the greenbelt will be approximately 300 feet if the land being subdivided is state land, and 150 feet if it is private land subject to the division's replat authority, but the director may require that a wider or narrower greenbelt be reserved, depending on vegetative cover, the view from the roadway, topography, or other relevant factors. However, no greenbelt need be reserved if:

(1) the parcel being disposed of is an isolated one already surrounded by private land on which there is no greenbelt, so that no reasonably continuous greenbelt is feasible; or

(2) existing land use on adjacent parcels, or existing land use policy as set forth in a local comprehensive plan or a land use plan prepared by the division, clearly indicates that reserving a greenbelt is unnecessary or undesirable.

*comma*

(b) The director may require that the plat of residential subdivision provide for the dedication of open space, parks, trails, or recreation areas within its boundaries, and will base the amount of land to be dedicated on the proposed population density of the subdivision. Land dedicated under this subsection must be reasonably adaptable to active park and recreation use and must be in a location convenient to the subdivision's residents. Factors the director will use in evaluating the adequacy of the proposed open space, park, trail, or recreation area include size, shape, topography, geology, tree cover, access and location.

(c) When land that contains or borders on public water is subdivided, at the director's option, either:

(1) public access easements to and along the water must be reserved as required under sec. 330 of this chapter, with the widths listed in sec. 330 to be considered only as minimums; or

(2) easements to the water must be reserved as required under sec. 330(c) of this chapter, and a waterfront greenbelt, at least 50 feet wide, must be retained in public ownership along the water in lieu of reserving the easements required under sec. 330 (a) and (b). A wider greenbelt must be reserved if appropriate because of flood plain width, 100-year flood heights, bank characteristics, size of the water body, extent of public use, and other relevant factors. The waterfront greenbelt must be of sufficient width to allow for public access as well as to screen the subdivision with an undisturbed strip of vegetation, where possible.

- Authority:
- AS 38.04.005
  - AS 38.04.015
  - AS 38.04.045
  - AS 38.04.055
  - AS 38.04.900
  - AS 38.05.020
  - AS 38.05.127
  - AS 38.14.075

DRAFT

## ARTICLE 5. GENERAL PROVISIONS.

## Section

## 500. Definitions

11 AAC 53.500. DEFINITIONS. Unless the context clearly indicates otherwise, in this chapter:

- (1) "adjacent" means near but not necessarily touching;
- (2) "aliquot parts" means land description within a rectangular survey system, as established by the United States Department of Interior, Bureau of Land Management, using the section method of describing parcels of land by half sections, quarter sections, or any further division into equal halves or quarters with no remainder;
- (3) "arterial road" means a road that is used primarily for fast or dense traffic flow;
- (4) "bearing object" means any object, other than trees and monuments, that may be used by the state as primary monument accessories;
- (5) "cadastral rectangular survey" means a survey that defines the rectangular system of surveys as accomplished by the United States Department of the Interior, Bureau of Land Management, and the division of lands. The survey may or may not be identical with the protracted system of rectangular surveys, as administratively approved on official protraction diagrams;
- (6) "coastline" means the line of ordinary low water along that portion of the coast that is in direct contact with the open sea, and the line marking the seaward limits of inland water;
- (7) "coastal water" means water along the coast of Alaska influenced by the tides;
- (8) "course" means bearing and distances expressed to the accuracy used in the class of survey being conducted;
- (9) "geodetic coordinates" means the quantities of latitude and longitude that define the position of a point on the surface of the earth, with respect to the reference spheroid; also called "geographic coordinates" (based on Clark's spheroid of 1866, which was corrected for Alaska in 1927); *CL 27 p 1980*
- (10) "geodetic survey" means a survey in which account is taken of the shape and size of the earth. Geodetic surveys are usually prescribed where the area or distances involved are so great that results of desired accuracy and precision can be obtained only by the process of geodetic surveying;

(11) "horizontal control" means control with horizontal positions only. The positions may be referred to the geographic meridians or to other lines of reference, such as plane coordinate axes;

(12) "land survey" means the process of determining boundaries and areas of land parcels;

(13) "limits of error" means the maximum permissible error, as expressed in a linear ratio establishing the precision of distances and angles assigned to control the accuracy standards of a survey;

(14) "mean high water" means the tidal datum plane of the average of all the high tides, as would be established by the National Geodetic Survey, at any place subject to tidal influence;

(15) "mean high water line" means the intersection of the datum plane of mean high water with the shore;

(16) "mean low water" means the tidal datum plane of the average of the low tides, as would be established by the National Geodetic Survey, at any place subject to tidal influence;

(17) "mean lower low water" means the tidal datum plane of the average of the lower of the two low waters of each day, as would be established by the National Geodetic Survey, at any place subject to tidal influence;

(18) "to meander" a water body means to establish courses along the ordinary high water mark between land and water boundaries for segregation of uplands and shorelands underlying state navigable or public water;

(19) "metes and bounds survey" means a survey that is accomplished from precomputed information, such as a preliminary or final plat;

(20) "monument" means the permanent, physical item placed or existing at a corner position to define and mark the boundaries of a parcel of land;

(21) "navigable water" means as defined by AS 38.05.365(22);

(22) "offshore" means submerged land lying seaward from the line of mean low tide;

(23) "ordinary high water mark" means the mark along the bank or shore up to which the presence and action of the nontidal water are so common and usual, and so long continued in all ordinary years, as to leave a natural line impressed on the bank or shore and indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation or other distinctive physical characteristics;

(24) "paper plat" means essentially the same as an actual plat of survey, except that the pertinent data is derived from a compilation of official survey data and no actual field survey was accomplished;

(25) "public access easement" means an easement retained by the state at the time of disposal of state land, to insure the continued access to state land and public waters.

(26) "public water" means as defined by AS 38.05.365(23);

(27) "quarter-quarter section" means one-sixteenth of a normal section, formed by dividing a quarter section into four parts by lines connecting the midpoints of opposite sides, and containing 40 acres, more or less;

(28) "rectangular survey system" means a system of surveys in which an area is divided by a base line intersected at right angles by a principal meridian with the intersection termed the initial point from which the partitions are subdivided into equal size townships, each containing 36 sections of land;

(29) "replat" means the redelineation of an existing lot, block, tract, or parcel of a previously recorded subdivision or other survey, involving the change of property lines, or in the case of a vacation, the altering of dedicated streets, easements or public areas.

(30) "residential road" means a road that is primarily used within a residential subdivision;

(31) "state plane coordinates" means the plane rectangular coordinate system established by the United States Coast and Geodetic Survey (now National Geodetic Survey) for use in defining positions of geodetic stations in terms of plane rectangular (X and Y) coordinates;

(32) "subdivision" means as defined in AS 40.15.190(2);

(33) "submerged lands" means as defined in AS 38.05.365(17);

(34) "supplemental cadastral survey" means the establishment of additional cadastral survey boundaries within an existing cadastral survey;

(35) "survey plat" means a diagram drawn to scale, showing all essential data pertaining to the boundaries and subdivision of a tract of land, as determined by survey or protraction;

(36) "surveyor," "registered surveyor," or "professional land surveyor" means a person who has been registered by the State of Alaska Board of Registration for Architects, Engineers and Land Surveyors to practice land surveying in Alaska;

(37) "tidelands" means as defined by AS 38.05.365(18);

(38) "tract" means a lot or parcel of land, especially an odd sized parcel on the west side of the west tier of sections in a township;

(39) "true bearing" means the direction of a line measured by horizontal angle from true north, which is derived from the celestial meridian.

(40) "vertical control" means the measurements taken by surveying methods for the determination of elevation only with respect to an imaginary level surface, usually mean sea level.

Authority: AS 38.04.045  
AS 38.05.020  
AS 38.05.035

11 AAC 62.640;

REPEALER: 11 AAC 62.260-300; / 11 AAC 64.500-560; 11 AAC 68; and 11 AAC 70 are repealed.

11 AAC 62.260. PRELIMINARY PLAT. Repealed.  
11 AAC 62.270. PRELIMINARY PLAT REQUIREMENTS. Repealed.  
11 AAC 62.280. SURVEY PROCEDURE. Repealed.  
11 AAC 62.290. PROCEDURE ON FINAL PLAT. Repealed.  
11 AAC 62.300. FINAL PLAT REQUIREMENTS. Repealed.  
11 AAC 62.640. FINAL PLAT OF SURVEY. Repealed.  
11 AAC 64.500. GENERAL PLAT REQUIREMENTS. Repealed.  
11 AAC 64.510. PAPER PLAT PROCEDURE AND REQUIREMENTS. Repealed.  
11 AAC 64.520. SURVEY REQUIREMENTS. Repealed.  
11 AAC 64.530. PRELIMINARY PLAT REQUIREMENTS. Repealed.  
11 AAC 64.540. SURVEY PROCEDURE. Repealed.  
11 AAC 64.550. PROCEDURE ON FINAL PLAT. Repealed.  
11 AAC 64.560. FINAL PLAT REQUIREMENTS. Repealed.  
11 AAC 68.010. APPROVAL REQUIREMENTS. Repealed.  
11 AAC 68.020. PETITION. Repealed.  
11 AAC 68.030. TIME, PLACE AND NOTICE OF HEARING. Repealed.  
11 AAC 68.040. RESOLUTION AND REPLATTING. Repealed.  
11 AAC 68.050. CERTIFICATION AND APPROVAL FORMS. Repealed.

- 11 AAC 68.060. DISAPPROVAL OF PETITION. Repealed.
- 11 AAC 68.100. TITLE TO VACATED AREAS. Repealed.
- 11 AAC 68.110. DEFINITIONS. Repealed.
- 11 AAC 70.010. DETERMINATION OF NAVIGABLE AND PUBLIC WATER. Repealed.
- 11 AAC 70.020. WRITTEN DECISION CONCERNING EASEMENTS. Repealed.
- 11 AAC 70.030. EASEMENTS TO AND ALONG NAVIGABLE AND PUBLIC WATER.  
Repealed.
- 11 AAC 70.040. DIRECTORY OF EASEMENTS. Repealed.
- 11 AAC 70.100. SURVEYING AND FIELD MARKING OF EASEMENTS. Repealed.
- 11 AAC 70.200. LIABILITY FOR INJURY OR ACCIDENT. Repealed.
- 11 AAC 70.210. LIABILITY FOR DAMAGES. Repealed.
- 11 AAC 70.900. ADMINISTRATION. Repealed.
- 11 AAC 70.910. DEFINITIONS. Repealed.

DRAFT



# Alaska State Legislature

## ADMINISTRATIVE REGULATION REVIEW COMMITTEE

### SENATE

Don Bennett, Chairman  
M. "Ed" Dankworth  
George Hohman

### HOUSE OF REPRESENTATIVES

Oral E. Freeman, Vice-Chairman  
M.F. "Mike" Beirne  
Charlie Parr

Pouch V  
State Capitol  
Juneau, Alaska 99811

PLEASE NOTE ENCLOSED MATERIAL REGARDING LOT SEWAGE  
DISPOSAL FOR TOMORROW EVENING'S ARRC MEETING, 7:00,  
SENATE FINANCE ROOM.

Carla

Feb 16

Daily Copy this and send copy to Senator Bennett

# Sewage regs may haunt state land sale program

By SUSAN FISHER  
News-Miner Bureau

JUNEAU—A tiff in Ketchikan set it off, but other areas may face similar showdowns over sewage disposal standards under the state's land sale program.

The News-Miner learned Friday that of 50 state land parcels offered for sale to the public, only 30 were approved for on-site sewage disposal and water use.

The remaining 20 probably will carry "conditional approval," including some restrictions on the platting regarding waste disposal and water use.

Conditional approval is spelled out on the land plat, and varies depending on the intended land use. What it can mean for those wanting to build homes on conditionally approved sites is difficulty in getting bank financing if they don't abide by Department of Environmental Conservation regulations.

A land sale in Ketchikan caught the state's attention after the Legislature did not approve supplemental funding for DEC.

Earlier this week Commissioner Ernie Mueller announced he will lay off 125 DEC workers March 1 if the Legislature does not appropriate the money.

Rep. Oral Freeman, D-Ketchikan, who has been battling DEC over the sewage regulations, sees the confrontation as another administrative attempt to thwart the intent of the land sale program.

Legislators last year passed House Bill 66, ordering the state to offer the public 100,000 acres of land each year.

Doug Lowery, DEC regional en-

vironmental supervisor in Fairbanks, said a number of the state lands offered for sale in the Interior are among the conditionally approved parcels, either because of permafrost or high water tables.

The land offered for sale in Ketchikan has a muskeg soil, with a clay layer and bedrock beneath it. DEC has refused to allow on-site waste disposal, based on a soil consultant's report.

Lowery said soil studies are made after the Department of Natural Resource's Division of Lands selects the parcels to be offered for sale. The consulting work is done by hired, private firms.

DEC Deputy Commissioner D. Ming Cowles said improper sewage disposal can not only contaminate water supplies, but lead to several diseases, such as hepatitis and dysentery.

Consultants found an already high human waste count in Ketchikan water, Cowles said.

The public health and the ability of soils to absorb waste are among factors DEC looks at in deciding if on-site sewage disposal will be permitted, Cowles indicated.

DEC also has said no to using compost toilets on the Ketchikan lots that will be offered for sale.

What the department is pushing for is installation of a closed sewage disposal system, such as a vault privy system or a collector system with small individual package plants.

But Freeman, who supports an approach more like the old homesteading program, doesn't buy the department's arguments.

With 130 inches of rainfall each year, Ketchikan residents for years have been collecting their water off roofs, Freeman says.

And the \$2 million or more road and sewage installation the state wants to impose on the land for sale would mean an individual assessment upward of \$13,000 on each half-acre lot, Freeman said.

But he is finding himself at odds with some Ketchikan municipal officials, who are willing to go along with the improvements.

Cowles says that if the Ketchikan borough declares the land a service district, it may become eligible for state sewer and road improvement money.

The state plans to subdivide the Ketchikan land into half-acre lots, Freeman, believing larger lot sizes might make a difference, got the Division of Lands to agree that it could be offered in three- and five-acre lots.

But lot size made no difference regarding the DEC regulations.

Cowles said the plat restrictions could make it difficult for individuals to get financing, but "banks don't like to finance lots with no improvements" anyway.

The Ketchikan matter is resolvable, Cowles said, and DNR, Division of Lands, and DEC officials have been conferring with legislators this past week.

"We're talking about coming up with a couple of different types of systems," Cowles said.

## Resolution backs airport switch

Municipal government leaders from Anchorage and Fairbanks agreed Friday to press the state to work on greater local control of airports in the two cities.

The plan came in a resolution passed in the joint meeting of the Anchorage municipal assembly and the Fairbanks City Council and Borough Assembly in Anchorage.

The resolution asks for joint efforts of the local governments and the state Department of Transportation to "begin to develop local management options . . . for the acquisition, management and/or ownership of the international airports."

Anchorage leaders have announced they want to take over the Anchorage International Airport but

for both airports to ensure a taxation burden will not be levied on the citizens of either community."

The resolution urged the transfers be made by July 1, 1981, and that transfer of airport management or ownership take place only upon the joint agreement of all local governments.

Another resolution adopted in the meeting supported a bill in the Legislature, SB 385, for building an electric power line between Fairbanks and Anchorage. The group also went on record in support of SB 294 and SB 295, which provide for construction of the Susitna River hydroelectric project by the Alaska Power Authority.

Two resolutions . . .

February 7, 1980

QUESTION: How many acres and how many lots in proposed "Mud Bay" land disposal proposed in Ketchikan?

Ron Schonenbath, Div. of Land (465-2433)

117 Lots

265.7 acres to dispose of but 197.4 acres are right-of-ways and greenbelt areas. Actual acres 68.3

$$\begin{array}{r} 117 \overline{) 68.3} \\ \underline{55.5} \\ 12.8 \\ \underline{11.7} \\ 1.1 \end{array}$$

$\frac{1}{2}$  acre per lot

$$3 \text{ acres per lot} \times 75 = 225 \text{ acres}$$

JAN 14 1980

JAY S. HAMMOND, Governor

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF FOREST, LAND AND WATER MANAGEMENT

POUCH M  
JUNEAU, ALASKA 99811

January 11, 1980

The Honorable Carroll G. Fader  
Borough Mayor  
Ketchikan Gateway Borough  
344 Front Street  
Ketchikan, Alaska 99901

Dear Mayor Fader,

This acknowledges receipt of your letter of January 8 in regards to the proposed classification and disposals of 265.7 acres of land within U.S.S. 3769 six miles northwest of Ketchikan, emphasis on the proposed homesite parcels.

I will not undertake to respond to the main thrust of your letter at this time since further discussions are indicated.

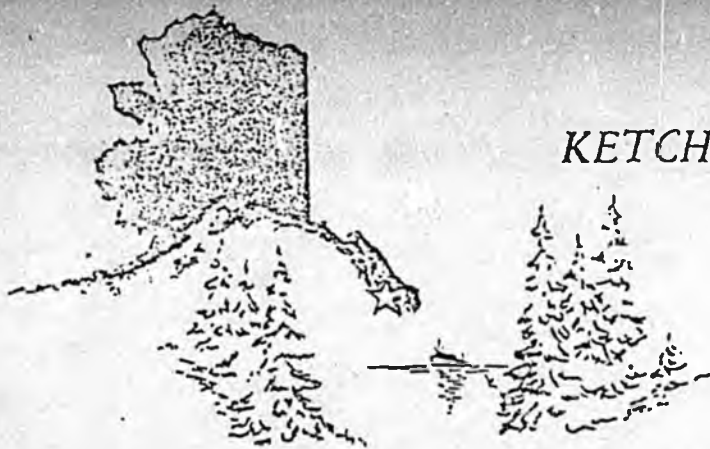
Thank you for the generous offer of assistance and that of the planning department. I am hopeful and confident a way can be found to satisfy both our statutory burden and Borough needs.

Sincerely yours,

THEODORE G. SMITH, Director

By:

Henry Lee Hall  
District Manager  
Southeastern Lands District



## KETCHIKAN GATEWAY BOROUGH

344 FRONT STREET  
KETCHIKAN, ALASKA 99901

ALASKA DIV. OF LANDS

January 8, 1980

JAN 10 1980

RECEIVED

Henry Lee Hall, Manager  
Southeastern Lands District  
Division of Forest, Land and Water Management  
Alaska Department of Natural Resources  
Pouch M  
Juneau, Alaska 99811

Attention: Ron Shonenbach, Land Management Officer

Dear Mr. Hall:

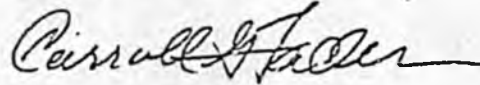
This acknowledges receipt of your letter of December 3, 1979 notifying Ketchikan Gateway Borough of the Division's intent to classify and dispose of 265.7 acres of land within USS 3769, 6 miles northwest of Ketchikan. I understand that the Division has filed a preliminary subdivision plat for Platting Board review, but has not petitioned the Borough for a rezone of the Mud Bay area. USS 3769 is currently zoned Future Development (FD) and must be rezoned to a residential category prior to development.

As discussed in previous correspondence and conversations between Borough and Division staff, we are concerned about the consequences of selling 134 parcels in the upper Mud Bay area without road and sewer improvements. The Mud Bay subdivision is not accessed by an existing road and, due to poor soil cover, is not approved by Alaska Department of Environmental Conservation for on-lot sewage disposal. Yet, as your letter states, 20 percent of the parcels are to be released under the homesite program. Hence, 27 candidates for parcels in the Mud Bay subdivision must construct dwellings in just over two years and occupy them for 35 months within the first five years to receive marketable title to their lots. Securing financing to construct a house without marketable title to the land is likely to be problematic for the homesite participant; organizing other land recipients, most of whom will not be bound by homesite deadlines, to construct and maintain costly roads and sewers may prove impossible. Due to these concerns, the Borough Assembly is recommending to the Planning and Zoning Commission (Platting Board) that the Mud Bay subdivision plat not be approved.



The plat review and rezone hearings will provide a forum for the community to discuss the proposed disposal in greater depth. Please do not hesitate to call on me or the planning department if we may assist you in preparing and submitting your rezone application.

Sincerely,



Carroll G. Fader  
Borough Mayor

KC:wr

cc: Planning and Zoning Commission  
Russell W. Walker, Municipal Attorney



## KETCHIKAN GATEWAY BOROUGH

344 FRONT STREET  
KETCHIKAN, ALASKA 99901

February 6, 1980

The Honorable Oral Freeman  
State of Alaska  
Pouch V  
Juneau, Alaska 99811

Dear Representative Freeman:

The large lot vs. small lot issue revolving around the Mud Bight disposal is becoming increasingly confused. I'll start from the beginning to explain why this department is recommending to the Borough Planning Commission that the subdivision layout design of 116 lots ranging in size from one-half acre to 30,000 square feet (attachment 1) be approved.

In fall of 1978 the state was pursuing development of three large subdivisions in the Ketchikan area - Mud Bight, South Saxman and Mountain Point. The consulting engineers, Charles Pool and Associates and Tryck, Nyman and Hayes, informed the Borough Land Committee and planning department staff that the soils comprising the Mud Bight and South Saxman subdivisions were not capable of absorbing sewage disposed on-site using conventional, affordable treatment systems. Because of the Land Committee's concern that this problem would hinder not only state land disposals but also future borough disposals, planning staff urged DEC to begin working with the engineers, DNR and the Land Committee to find a means of addressing sewage disposal in areas around Ketchikan that do not have on-site absorption capabilities.

Attachment 2 includes reports prepared for and summarizing the workshop that followed which the Land Committee, the Planning Commission, the two engineering firms, DEC, DNR and the planning department attended. The engineers presented their findings and, as the memo from the Division of Lands states, they concluded that "the soils in all three areas have very limited capability to handle on site disposal of waste water." At that time it appeared that a central sewage collection and disposal system would be required to meet DEC and EPA standards. After many discussions between DEC and Borough representatives, DEC has approved use of a central collection system connecting individual treatment plants (attachment 3).

Representative Freeman

February 6, 1980

Page 2

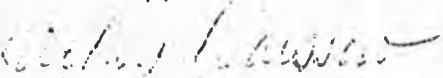
The Southeast District Lands Office notified the Borough Manager August of 1979 (attachment 4) that, of the three proposed subdivisions, the Division was preparing Mud Bight for disposal in FY 80. As the letter states, even with lot sizes ranging from 3 to 5 acres, the plat would be filed with a notification "to the effect that the subdivision is not approved by DEC for on-site disposal unless a closed system is used."

When Pool and Associates presented three alternative subdivision layouts for Mud Bight the planning department was given a day to comment before the Division selected the layout. Staff, working with a member of the Planning Commission, sent a letter endorsing the clustered lot concept (attachment 5). The commission members have since reviewed and concurred with the department's recommendation. This design will minimize the short and long term costs of constructing and maintaining both roads and a common sewage collection system by: (1) maximizing the number of property owners to be served per road and sewer line, (2) minimizing the land area to be covered by improvements, and (3) taking advantage of the terrain to minimize costs of installing roads and a gravity flow sewage collector line. The cluster design allows for sparsely populated settlement by concentrating lots on lands suited for residential use while leaving steep, wet and muskeg soils as open space.

Based on the information we received, larger 3 to 5 acre lots would not result in DEC approval. However, a large lot subdivision would increase the costs to be borne by land owners for road and sewer line construction and maintenance. As you can see from the attached subdivision layout, if land area were a solution to the waste disposal problem, the large area of open land surrounding the half acre to 30,000 square foot lots would fulfill this requirement in the same manner as large lots - but larger lots will result in higher improvement costs.

I hope this and the attached materials explain to your satisfaction why the planning department is recommending that the Planning Commission endorse the present Mud Bight subdivision layout. If not, or if I can provide further information, please do not hesitate to call.

Sincerely,



Kathryn L. Carssow  
Planning Director

KC:wr

Attachments

cc: Mayor and Borough Assembly

Planning Commission

Theodore G. Smith, Director, Division of Forest, Land and Water Management

Henry Lee Hall, Manager, Southeast Land District

Randolf Bayless, Regional Environmental Supervisor

Job No. 7601

September 7, 1978

Mr. Claud M. Hoffman  
Chief, Cadastral Engineer  
Division of Lands  
Department of Natural Resources  
323 East 4th Avenue  
Anchorage, Alaska 99501

FILE

Re: A.D.L. Subdivision, Mud Bay, Alaska

Dear Claud:

This letter is to inform you that we are holding back from doing any work on a preliminary layout for Mud Bay subdivision, per your verbal request on Thursday, August 31.

Currently we are finishing the paper work from the field data collected in Phase I: topo map; plots for penetration tests, test pits, and percolation tests. Upon completion of our office work we will bring a stop to all work other than correspondence.

\* Last Friday I had a meeting with Mark Bergar of the Department of Environmental Conservation. His opinion at that time was that we do not have adequate ground cover above bedrock for on-site sewage treatment. This will eliminate a subdivision designed for year-round living, although he did say that it could possibly be satisfactory for recreational use; summer homes using a Forest Service type outhouse. The Department of Environmental Conservation should be giving us a formal reply this week.

Enclosed is a map of our penetration test, test pits and percolation tests along with logs of the test pits and results of the perc tests. We are waiting for further instruction from your office.

Sincerely,

TRYCK, NYMAN & HAYES  
Southeast Alaska Branch

By *Tom M. Kirchner*

Tom M. Kirchner

TMK:lb

Enclosure

September 7, 1978

Job 7601.0

SITE REPORT  
A.D.L. SUBDIVISION  
MUD BAY, ALASKA  
U.S.S. 3769

U.S. Survey 3769 has three general regions. The east one-third is comprised of a large hill covered with tall spruce, hemlock and cedar. The soil generally consists of one to two feet of organic and silty organic soils.

A second area that includes the north one-fourth and west one-third has a dense growth of tall spruce, hemlock and cedar. The ground is arrayed with many small gullies and streams. Through the center and west one-third of the U.S. Survey, there are several deep stream valleys, with one sinking to forty-five or fifty feet deep. Soils consist of one to two feet of organic and silty organic soil. Towards the center of the U.S. Survey there is considerable water that flows through the organic soil layers.

The center area of the U.S.S. is mostly comprised of muskeg with scattered shore pine. There are some small knolls throughout. Surface water drains either towards the collection of streams that drain into Mud Bay or toward the southeast. There are very few streams on the southeast side. Soil, for the most part, is comprised of organic and silty-organic soils that average two to five feet deep.

Bedrock for the site consists of shale with a layer of silty-sand and broken shale fragments over its surface.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM  
LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.

OF SURVEY

NAME OF SURVEYOR

CHARLES PLATT & ASSOC., INC

PRELIMINARY PLAN

STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF TECHNICAL SERVICES  
ANCHORAGE, ALASKA

LEGEND

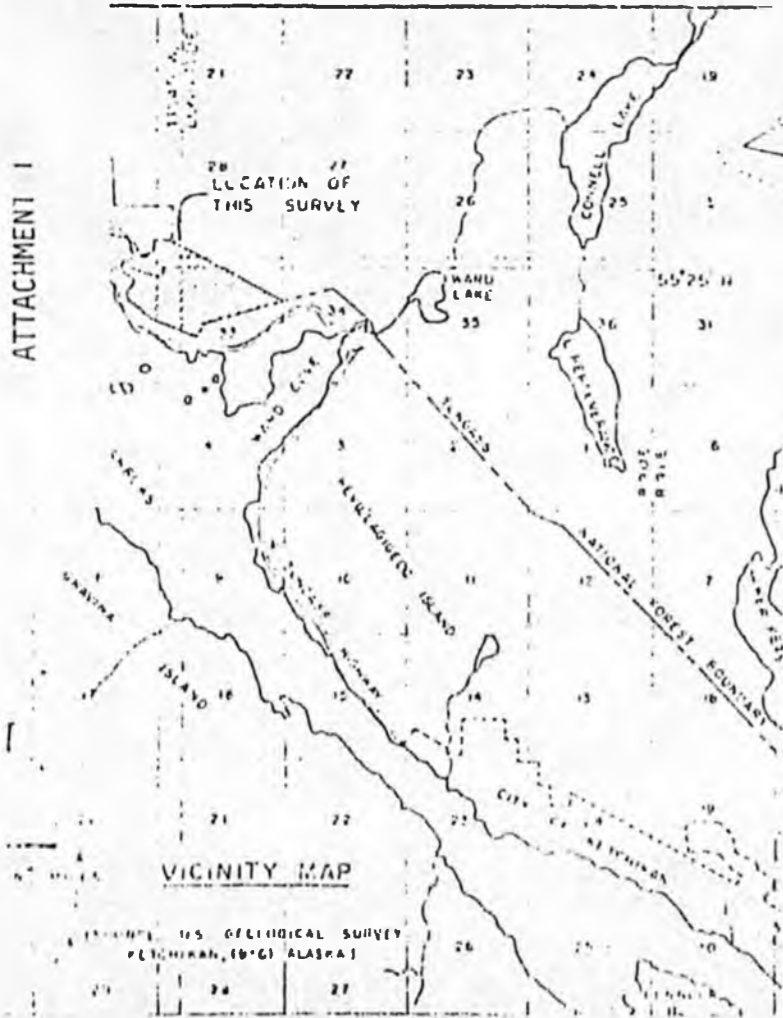
- GLASS AND IRON MONUMENTS SET
- DTIS OFFICIAL OR PRIMARY BRASS MONUMENT SET
- COPPERWELD OR ELECTROFUSED STEEL WIRE MONUMENTS SET
- 3/4 INCH IRON PIPE SET
- USC & GS, USGS, USLE, AND BLM ET ALIENS  
(DEFINED BY AGENCY AS APPLICABLE)
- ( ) BEARINGS AND DISTANCES IN PARENTHOSES ARE  
RECORD U.S. SURVEY 3769

ALASKA STATE LAND SURVEY NO. 79-243

DIVISION OF LOT 2, U.S. SURVEY 3769

MUD BIGHT

ATTACHMENT I



THE PRECEDING DOCUMENT(S) MAY NOT FILM  
LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.

## MEMORANDUM

DIVISION OF FOREST, LAND &amp; WATER MANAGEMENT

TO:  Andrew W. Pekovich  
District Lands Officer

DATE October 26, 1978

FILE NO 1430, 2300

TELEPHONE NO


FROM: Vic Lorn   
Land Disposal Officer

SUBJECT Land Disposals - Ketchikan

On October 10, 1978, a meeting was held in Ketchikan, at the request of the Alaska Department of Environmental Conservation, to discuss site characteristics and limitations on three subdivisions proposed by the Division of Forest, Land and Water Management. These subdivisions are at Mud Bay, Saxman and Mountain Point and have had preliminary survey and soils work done under engineering service contracts.

The meeting was well attended by our engineering consultants, representatives from the Ketchikan Gateway Borough, and Alaska Department of Environmental Conservation. A complete list is attached. Ron Thiel, project engineer; Ed Yarnak, soils; George Marks, surveyor; and I represented the Division of Forest, Land & Water Management.

Ron Thiel gave a general overview of the three projects and their present status. Bruce Hoffman and Ron Flinn spoke on DEC standards and procedures. The DEC must approve any subdivision of five or more lots. Their primary concern, in this instance, is with waste water disposal.

 The discussions by Mr. Frank Nyman, of Trych Nyman and Hayes, on the Mud Bay project and Mr. Dave Benson, of Charles Pool and Associates, on Saxman and Mountain Point indicated soils on all three areas have very limited capability to handle on site disposal of waste water. The project areas are characterized by organic soils overlaying bedrock. The information available at this time indicates that in order to produce a quality subdivision and meet DEC standards it will be necessary to provide for central sewer collection and disposal. This requirement plus the cost of providing adequate road access will require a very sizeable capital investment prior to offering these subdivisions to the public.

We stated that our intent on any subdivision offering was to provide a quality product that met all Borough and DEC standards. Ron Thiel advised that we would continue evaluation thru our consultants and present a budget request, with back up data, for the necessary capital investment funding to enable development of all three projects.

The Borough advised that they would be taking an additional look at the projects and would keep us advised of their concerns and recommendations.

On the whole, the meeting was on a positive note and served to let the Borough and DEC know where we are with these proposals and what follow up will be necessary.

cc: Ron Thiel  
Bruce Hoffman  
Mtn Pt File

Kathy Carrow  
Saxman File  
Mud Bay File

Claud Hoffman  
Dick LaFebvre

## STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

SOUTHEAST REGIONAL OFFICE

JAY S. HAMMOND, GOVERNOR

POUCH 0 - JUREAU 15311

January 23, 1980

Kathy Carssow  
 Planning Director  
 Ketchikan Gateway Borough  
 344 Front Street -  
 Ketchikan, Alaska 99901

Dear Ms. Carssow:

Re: Mud Bight Subdivision

After our September 27th discussion in your office, we followed up your suggestion that a central collector sewer could be the solution to an otherwise sticky problem. Both D.N.R. and our municipal grants people agree that this is feasible, and your proposed lot layout is well designed for this type of service.

Soil conditions in the proposed subdivision are so bad that on-lot sewage disposal would simply not work and there's no way that we could legally approve on-lot sewage disposal. The alternative of central collection sewer receiving treated sewage from individual or clusters of dwellings served by their own small treatment plants has several advantages--

- lower initial sewer costs with pay-as-you-develop treatment costs, eliminating an over-sized and costly central community treatment plant receiving less than "design flow" for who knows how long
- infiltration of ground water into sewers causes no pumping expense or treatment difficulties associated with dilute sewage
- treatment costs are borne directly by the individual treater(s)

The only hitch is that an entity capable of receiving municipal grant funds and responsible for operation must administer the construction and maintenance of that central collector sewer.

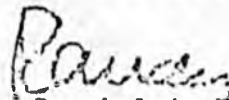
The Department presently has grant funding available to incorporated municipalities to fund 50% of the non-federal cost of water and sewerage system construction. Communities accepting funding must agree to assume responsibility for on-going operation and maintenance of the facilities constructed. Projects funded under this program include water treatment and distribution, and sewage collection. Sufficient funds presently exist to fund projects on an as requested basis.

The Department also administers grant funds allocated by EPA to the State for construction of sewage treatment facilities. These funds can cover 75% of eligible project costs (85% if the project employs innovative or alternative technology). State funds can also be used to supply half the non-federal share for such projects. Thus 87.5% of the project costs are funded by State/Federal Grants, as is the case with the facilities currently being constructed by the City of Ketchikan.

Further grant information and application procedures can be obtained by calling Bob Martin of the Department's Facility Construction and Operations office at 465-2611.

In order to relieve the apparent demand for building sites in Ketchikan, this alternative seems to be the best solution for this particular development proposal. I hope that we will be able to assist you in the development of services to the potential home owners in the area.

Sincerely,



Randolph Bayliss  
Regional Environmental Supervisor

cc: Henry Lee Hall  
Ron Shonenbach  
Bob Martin  
C. Deming Cowles

## DIVISION OF FOREST, LAND AND WATER MANAGEMENT

July 5, 1979

Re: 2300 Land Disposal

Ms. Judi Slajer  
Borough Manager  
Ketchikan Gateway Borough  
344 Front Street  
Ketchikan, Alaska 99901

Dear Ms. Slajer:

This is to advise you that the Division of Forest, Land, and Water Management is planning to make a State land disposal within the Ketchikan Gateway Borough during fiscal year 1980.

Last year, as you know, we did preliminary work on three possible subdivisions within the Borough. These were at Mud Bay, Saxman and Mountain Point. At this time we plan to follow through with a plat for Mud Bay. Since Mountain Point and Saxman are still pending T. A. we do not plan to offer them during fiscal year 1980.

Lot sizes for Mud Bay will be in the 3-5 acre range. We anticipate filing the plat with a notation to the effect that the subdivision is not approved by DEC for on site sewage disposal unless a closed system is used.

The Mud Bay project would be approximately 265 acres in lot 2, USS 3769. Please advise the Southeast District if you have any comments regarding this project.

Sincerely,

Henry Lee Hall, Manager  
Southeastern Land District

by: *Andy Pekovich*  
Andy Pekovich  
District Lands Officer

cc: Kathy Carsow





## KETCHIKAN GATEWAY BOROUGH

344 FRONT STREET  
KETCHIKAN, ALASKA 99901*Engineers' report attached,  
please note last page.*

October 22, 1979

Claud M. Hoffman, Director  
Division of Technical Services  
Alaska Department of Natural Resources  
703 W. Northern Lights Blvd.  
Anchorage, Alaska 99503

Dear Mr. Hoffman:

I regret that Ketchikan Gateway Borough will not be represented at the upcoming meeting of the Disposal Review Committee scheduled for this Thursday, October 26. Today we received copies of the three alternative conceptual plans developed by Charles Pool and Associates, Inc. for the state subdivision at Mud Bay. I wish to commend Pool and Associates on the quality of the conceptual design presentation and to express my appreciation to their staff for keeping us informed on their progress.

The Planning Department endorses the conceptual subdivision design labeled Alternative 2 showing clustered lots which vary in size from one-half acre to 30,000 square feet. Alternative 2 incorporates three important subdivision and land disposal objectives. First, this design concept minimizes the cost of road, sewer, and water service to be borne by the land recipient. This is achieved by: (1) maximizing the number of property owners to be served per facility extension; (2) minimizing the land area to be covered by improvements; and (3) taking advantage of the natural terrain in locating roads and gravity flow sewage collectors. Second, the cluster design allows for a rural, sparsely populated settlement pattern by concentrating development on lands most suited for residential use while leaving unsuitable steep, wet, and muskeg soils as well as streamways as open space. And lastly, Alternative 2 allows for a controlled level of resubdivision to occur in the future in an orderly and cost effective manner.

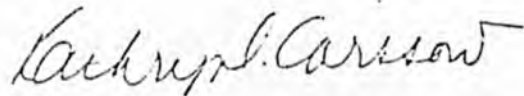
In contrast, Alternatives 1 and 3 compound development costs for the land recipient and encourage extensive, haphazard resubdivision. Use of either of these two designs is likely to result in the need for numerous short, deadend roads, sewer, and water extensions to accommodate resubdivided lots. These not only will be costly to construct but also to operate and maintain.

Although we realize that Alternative 2 requires further refinement, the concepts underlying this preliminary design are sound. Prior to work beginning on the final subdivision design, we would like to confer with either your staff or Pool and Associates on specific concerns we have relating to lot layout and road access along with recommendations the Planning and Zoning Commission may have.

Due to time constraints, the Commission did not have an opportunity to review this material. We will include consideration of the three subdivision design alternatives on the agenda for the Commission's next meeting scheduled for October 30. I would appreciate your advising me of any further developments occurring between now and then.

Thank you for affording us this opportunity to comment on the conceptual design alternatives for the Mud Bay subdivision. Please feel free to include me in a conference call this Thursday if you or members of the committee wish further explanation of the department's comments. We look forward to a continued cooperative working relationship with your staff and Pool and Associates in finalizing plans for the Mud Bay subdivision.

Respectfully,



Kathryn L. Carssow  
Planning Director

cc: Planning & Zoning Commission  
Charles Pool & Associates, Inc.

KLC:lw

CHARLES POOL & ASSOCIATES, INC.  
CONSULTING ENGINEERS & SURVEYORS  
1225 Tongass Avenue  
Ketchikan, Alaska 99901



October 22, 1979

(907) 225-6526

Mr. Claude Hoffman  
Acting Director  
Division of Technical Services  
Department of Natural Resources  
State of Alaska  
703 West Northern Lights Blvd.  
Anchorage, Alaska 99503

RE: Mud Bay GSC 189

Dear Mr. Hoffman:

Enclosed are six (6) copies of each of the three (3) Master Plan Alternatives. These alternatives are purely conceptual, and are intended only to give a general overview of the relationship between the various elements of the proposed subdivision.


The road system, as depicted on these alternatives, is based on field investigation by our road location engineer. This was necessary due to apparent discrepancies between the property boundaries and contour lines, and the lack of drainage information on the aerial survey plat compiled by Tryck, Nyman and Hayes.

Alternative I assumes a low density large lot approach, with the 38 created lots being between 2 1/2 and 5 acres. This approach places the maximum acreage in private ownership, and has the least extensive road system requiring only about 2 1/2 miles. However, it makes little provision for green belts, and is subject to multiple resubdivisions. Due to the topography and drainage patterns, it was necessary to form some odd shaped lots.

Alternative 2 is a high density approach creating 134 lots. The lots in this alternative range between 1/2 and 2/3 of an acre, and require a 3-mile road system to connect them. The intent in this approach is to cluster the development thereby maximizing the green belts and general public use areas. This configuration is more conducive to the future development of centralized sewer and water systems.

Mr. Claude Hoffman  
Oct. 22, 1979  
Page 2

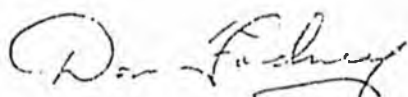
Alternative 3 is a blend of 1 and 2 establishing 81 lots in the 1 to 3 acre range, and requiring a 3.1 mile long road system. Although some of these lots encompass areas which are not ideally suited for development, an attempt was made to place the majority of these areas into green belts.

 During our field investigation, no major slide areas were noted. We did, however, find most of the soils to be poorly drained and the water table to be high throughout the majority of the area. About two-thirds of the developable area drains into the Mud Bight Basin, and the remaining one-third drains into the Refuge Cove and South Sunset Drive area. D.E.C. has stated that this area is unsuitable for on-site disposal of sewage and waste water. The development of this area will, therefore, require the formulation of a Local Improvement District (L.I.D.). The only economically feasible way of accomplishing this task is to increase the density thereby bringing the cost of these improvements within reach. Alternative 2 is designed to facilitate this end, as it clusters the development, and the road system is laid out to maximize the use of gravity sewers where possible. We feel strong consideration should be given to this alternative.

If you have any questions or need additional information, please contact our office.

Very truly yours,

CHARLES POOL & ASSOCIATES, INC.

  
By: Donald P. Fordney

DPF:fr  
Enc.  
cc Ketchikan Gateway Borough



# Alaska State Legislature

## ADMINISTRATIVE REGULATION REVIEW COMMITTEE

### SENATE

Don Bennett, Chairman  
M. "Ed" Dankworth  
George Hohman

### HOUSE OF REPRESENTATIVES

Oral E. Freeman, Vice-Chairman  
M.F. "Mike" Beirne  
Charlie Parr

Pouch V  
State Capitol  
Juneau, Alaska 99811

TO: ALL MEMBERS OF ARRC *[Signature]* DATE: February 12, 1980  
FROM: Don Bennett, Chairman *[Signature]* SUBJECT: Agenda for ARRC meeting

These subjects will be discussed at the Administrative Regulation Review Committee meeting scheduled for tomorrow, February 13, 11:30 in the Beltz Room:

- 1) new proposed mining regulations
- 2) new proposed fire regulations
- 3) handtrolling regulations
- 4) timber sales

See Attachments

January 31, 1980

Mr. Donald J. May  
4545 Wood River Drive  
Fairbanks, Alaska 99701

Dear Mr. May:

Thank you for your letter and attached information of January 16, regarding the newly proposed mining regulations.

After reviewing your testimony which you presented at the Natural Resources Public hearing, I can certainly understand your concerns. As a person who has been involved in mining in the past, I share your dismay over the restrictions that these regulations would impose on the mining industry. Rest assured, that I will look into the regulations which you cited and see if something can be done to modify them.

Mr. May, I thank you for bringing this matter to my attention, and will do whatever I can to assist you. Please contact me if I can be of further assistance to you.

Sincerely,

Don Bennett

Polar Construction and Mining

4545 WOOD RIVER DRIVE  
FAIRBANKS, ALASKA 99701

1/16/80  
HON. STATE SENATOR DON BENNETT:  
JUNEAU, ALASKA

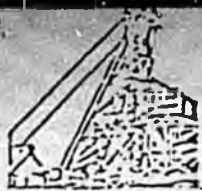
DEAR SIR:

PLEASE TAKE A MINUTE,  
CONSIDER THIS TESTIMONY GIVEN  
TO MR. TED SMITH AT THE PUBUC  
HEARING IN FAIRBANKS LAST NIGHT.

MIGHT YOUR TIME SERVING  
US IN JUNEAU BE PROSPEROUS  
AND PROGRESSIVE THIS YEAR.

THANK YOU VERY MUCH.  
RESPECTIVELY YOURS.

Donald May



# ALASKA MINERS ASSOCIATION, INC.

FAIRBANKS BRANCH

January 15, 1980

PRESIDENT

Dr. Richard Swainbank

Box 81315

Fairbanks, Alaska 99701

VICE PRESIDENT

Donald J. May

4545 Woodriver Dr.

Fairbanks, Alaska 99701

State of Alaska  
Department of Natural Resources

Public Hearing

Fairbanks, Alaska

c/o Mr. Ted Smith, Director

SECRETARY

Fred Heflinger

409 Clara St

Fairbanks, Alaska 99701

Dear Mr. Smith:

As Vice Chairman of the Alaska Miners'

Association, I have been asked to be a spokesman

pertaining to the new proposed regulations

which confront us tonight.

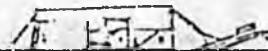
TREASURER

Donald R. Stein

105 Dunbar Av.

Fairbanks, Alaska

First: It's strange indeed that you choose to push regulations upon us with such short notice, in the middle of the winter, with less than a month's notice to defend our life's work and investments which can and could be wiped out with such broad and sweeping powers, that you now as our civil servants possess. Are you fearful to appear directly to the Miners' Association to reason why such changes are necessary? Not one of us on the executive board was informed of such changes pertaining to the mining industry which confront us tonight. These hearings were listed and broadcast this past week locally, for this one night here in Fairbanks under "Forest Resources and Practices" when actually by accident we found out that they were covering proposed mining and mineral resource recovery and development regulations. They deal directly with land use permits which are so restrictive that they even monitor the placement of mechanical equipment, as well as the use of explosives which are under your jurisdiction and authority. Are we



not free to choose what we should and need to use as we see fit without stopping the operation and coming to town?

In many cases this would involve traveling many hundreds of miles to obtain a restrictive permit. This is neither prudent nor progressive, but rather it could be labeled authoritarianism, socialism, or the opposite of free enterprise.

Without getting too involved in all these proposed draft regulations, I would like to consider page 2, Section 11 AAC 65.030. I ask you in all honesty, how can a miner not "cause disturbance or harm to the land or related natural resources"? Who is to say? What one director says can be ignored by a successor, or made more harsh by another. Mining must disturb the land to be effective. This is only common sense. Now if we had the time, we could go further and elaborate on "occupying a cabin, moving or operating equipment, bonding, reporting requirements," or Section 11 AAC 65,210 regarding "Duration," which is so broad and elusive that a director could interpret it to mean a miner or mining company has only 10 years to work a claim. In actuality, most large mining companies require at least 10 years from discovery to full production. Who is going to fool with such a requirement that limits permit life? Industry just goes elsewhere, and so do the jobs that might be generated. Without the development of our resources, this town

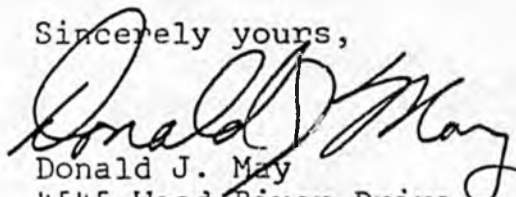
would pass through severe economic reverses. I hope you are aware of the number of foreclosures that are and will continue in the near future in Fairbanks. During the past 12 months there are 5 to 6 thousand fewer people living in the Fairbanks North Star Borough, and that doesn't sound like "sensible, sustained growth" to me as the campaign slogans stated, and it's been over 2 years since the pipeline was completed.

Please allow me to pass on my own forecast for this area, based on 30 years' residency (if that adds any authority to what I say). Fairbanks and Interior Alaska will continue to decline over the next few years, due to the lack of a stable economic base. The bureaucrats will increase from a fat state treasury until the day comes that they have eaten themselves out of these fat jobs. In other words, Prudhoe Bay is forecasted to decline to a third of what it is producing today, and so will state oil revenues by 1985.

If we look to the future with a desire to help this area with a stable economic base, we must rejuvenate mining, the deep hard rock mining holds great potential throughout the interior. These proposed draft regulations will only stall or further hinder this basic industry. The Alaska Miners' Association goes on record as completely being in disagreement and in opposition to these oppressive rules which are only the desire of a small percentage of the populace, and if enacted will curtail the small miner businessman now, and stall the large potential mines later.

I hope you gentlemen who have the present, yet temporary position of mandating regulations realize that when the pendulum swings back to a more informed and knowledgeable electorate than appears to be the case here tonight because of some unknown haste, I dare say this electorate will register complete contempt at the polls for such stifling treatment as the proposed regulations.

Sincerely yours,

  
Donald J. May  
4545 Wood River Drive  
Fairbanks, Alaska 99701

xc: Honorable Governor Jay Hammond  
Honorable Lt. Governor Terry Miller  
State Senators and State Representatives  
Fairbanks Daily News-Miner  
All Alaska Weekly

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

DIVISION OF FOREST, LAND AND WATER MANAGEMENT

323 E. 4TH AVENUE  
ANCHORAGE, ALASKA 99501

December 12, 1979

Dear Alaskan:

Attached are draft regulations on which the Department of Natural Resources will hold public hearings in January in Ketchikan, Juneau, Anchorage, and Fairbanks. (See the enclosed "Notice of Proposed Changes in the Regulations of the Department of Natural Resources" for hearing details.) The department is interested in your suggestions concerning these proposed regulations. You are invited to present a statement, oral or written, at one of the hearings, or to send it directly to the Division of Forest, Land and Water Management. If your statement is mailed, it should reach us no later than January 25, 1980 in order to be considered.

The first set of regulations deals with a new, general-purpose permit for the use of state land. The Division of Forest, Land and Water Management has, over the years, developed many specialized permits: tideland permits, special land use permits, miscellaneous land use permits, right-of-way permits, trapping cabin permits, personal use permits, etc. And recently two more special-purpose permits were suggested. First, a new law was passed that authorizes livestock grazing "under a permit system," rather than requiring a lease as has been the case in the past. Second, the Department of Fish and Game requested that this department issue five-year permits to the owners of duck shacks built within state game refuges. But instead of creating additional specialized permits to add to an already lengthy list, it was decided to repeal all the other land use permits and replace them with a single, general-utility permit that could be issued with conditions and stipulations tailored to the particular situation.

The new permit system promises to be more efficient both to administer and to obtain. The number of necessary forms will be reduced to a minimum. Furthermore, it will be possible to authorize most projects under a single permit, rather than requiring several different kinds. Thus a trapper who needs two trapping cabins as well as summer pasture for his packhorse, or a seismic surveying team that will be working on both tidelands and uplands and also needs a place to store heavy equipment, will be spared the chore of getting two or three extra permits before they can use state land.

The second chapter of draft regulations covers the sale of state-owned timber and materials (sand, gravel, stone, peat, etc.) and is planned to replace the existing 11 AAC 76, most of which had not been amended since 1962. The new chapter reflects current sale practices and the statutory changes that have taken place in the last 17 years.

One of its most innovative features is 11 AAC 71.020, which implements the authority in AS 38.05.115(a) to make small negotiated sales of timber or materials "without advertisement." The division plans to choose areas from which small sales of gravel or timber (firewood or cabin logs, for example) could be made, notify local governments and the general public of the total amount to be made available for sale from the area over a six- or twelve-month period, and then proceed to sell the logs or gravel "over the counter" without giving additional

notice of each individual sale. This advance notice procedure should serve two purposes. First, local governments entitled to notice of the disposal under Alaska land law will be better able to gauge its cumulative impact, rather than having to assess it on a piecemeal basis as a series of minor sales. Second, a person wanting to buy firewood or enough gravel for a driveway will not have to wait while separate notice of his proposed purchase is given (by law, such notice involves multiple newspaper and radio advertisements over a 45-day period, and often costs far more than the individual timber or material sale is worth).

A section that should be of particular interest is 11 AAC 71.210, concerning "primary manufacture" (initial processing) of logs in Alaska before they are exported. In the past primary manufacture was required in most state timber sale contracts in an attempt to increase Alaska employment. Sometimes, however, the requirement resulted in the opposite effect: it made the sale uneconomic, no bids were received, and jobs that would have been created in logging and shipping the timber were lost. Thus current policy calls for a decision to be made on a case-by-case basis whether to require primary manufacture in a particular sale. The regulation lists the criteria that must be considered when this important decision is made.

Relatively few changes are proposed for Article 4 of 11 AAC 71 because this article, which deals with licenses to salvage abandoned or unbranded logs stranded on state tidelands, was adopted quite recently. These licenses will now be granted either on a first-come, first-served basis or by lottery. The limit on the amount of timber to be included in each license area is being repealed to conform to a recent amendment in the law governing negotiated sales. The law was changed because the purpose behind salvage sales is to clear Alaska's beaches of abandoned logs that become a critical hazard to navigation after every storm. Thus the salvage effort should remove as many logs as possible, regardless of whether the amount recovered exceeds the limit applicable to other negotiated timber sales.

The last chapter of draft regulations is 11 AAC 95, Forest Resources and Practices. Unlike the other two chapters, this one applies not only to state-owned land but to forests owned by cities, boroughs, and private citizens. The first article implements the Forest Resources and Practices Act (AS 41.17), which went into effect Jan. 1, 1979. The law was designed to control logging-caused water pollution, fire and flood hazards, and the spread of forest diseases and insect pests. In addition, it encourages prompt reforestation of harvested areas. The draft regulations establish basic standards to carry out the intent of the legislation, although they leave the logger free to decide how to meet those standards. He can use methods set out in "best management practices" manuals developed jointly by this department and the Department of Environmental Conservation, but may also design new methods that could be more effective in his particular sale area.

Much of the second article is simply re-numbered without amendment from 11 AAC 92, burning permit regulations that have been in effect since 1972. But the remainder of that article is new. It requires that machinery operated on forest land (for logging, agricultural clearing, road-building, etc.) be equipped to reduce fire hazard and that work crews have firefighting tools readily available. Such requirements have not been necessary in the past, when forest operations generally involved logging in southeast Alaska, where fire danger is low. But with the increase in agricultural land clearing, especially in areas of the state where summer weather is hot, dry, and windy, equipment-caused fires have suddenly become a problem. (For example, the Delta fire in the summer of 1979, which cost \$4 million and burned 38,000 acres, was caused by sparks from land-clearing machinery.)

The third article deals with the procedure for registering a log brand. Under state law, any log rafted or towed in Alaska waters must be branded, so that its ownership can be established if the raft breaks up.

Your oral or written testimony on these draft regulations will be most useful to the department if it refers to particular sections by number (for instance, 11 AAC 71.305(a), rather than a page number), and if it suggests specific wording changes or other modifications you feel would result in improvement.

Sincerely,

A handwritten signature in cursive script, appearing to read "Theodore G. Smith".

THEODORE G. SMITH  
Director

# STATE OF ALASKA

LAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

DIVISION OF FOREST, LAND AND WATER MANAGEMENT

323 E. 4TH AVENUE  
ANCHORAGE, ALASKA 99501

### NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF NATURAL RESOURCES

Notice is hereby given that the Department of Natural Resources, under authority vested by AS 38.05.020, AS 41.17.020, and AS 41.17.080, proposes to adopt, amend, and repeal regulations in Title 11 of the Alaska Administrative Code to implement AS 16.20.038, AS 38.05.115, AS 38.05.330, AS 38.95.080, AS 41.15, AS 41.17, and AS 45.15.315, as follows:

A new chapter, 11 AAC 65, Land Use Permits, is adopted to set the application procedure and terms of a general non-preference-right permit to use the surface of state-owned land for transportation, temporary buildings, storage, trapping cabins, existing shelters in state game refuges, grazing livestock, and similar uses. This permit replaces several other limited-purpose permits the department has used in the past, and the regulations on those limited-purpose permits are repealed: 11 AAC 58.200-.210, 11 AAC 62.720-.790, 11 AAC 62.820-.830, 11 AAC 76.540, 11 AAC 86.600, 11 AAC 94, and 11 AAC 96.

11 AAC 76, Timber and Material Sales, is repealed, and a new chapter, 11 AAC 71, is adopted to replace it. It covers the procedures and contract stipulations for the negotiated or competitive sale of state-owned materials (gravel, stone, etc.) and timber, including abandoned or unbranded logs found in state waters or tidelands. It specifies bid deposits, contract provisions, appraisal and reappraisal, performance bonding, and operating requirements, and sets out criteria for the decision whether to require primary processing of logs in Alaska before they are exported.

A new chapter, 11 AAC 95, Forest Resources and Practices, is adopted. It applies to all forested land, including land owned by municipalities and private citizens. Article 1, Forest Practices, implements AS 41.17. It sets standards loggers must meet to protect water quality, reduce fire and flood danger, control insect infestations and tree diseases, and help ensure reforestation. Except on state land, operators must notify the department before beginning logging, and all operations are subject to inspection.

Article 2, Forest Fire Protection, incorporates regulations on burning permits and fire season closures currently in effect as 11 AAC 92. It also requires that all operators in or near forest land equip their machinery to lessen fire danger, post a watchman, and have fire-fighting tools available for their crews.

Article 3, Log Brands, sets the procedure for registering a log brand, which is required before rafting or towing logs in state waters.

Article 4 covers definitions for the chapter.

Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at hearings to be held at Room 207, State Office Building, Ketchikan, at 7:30 p.m., January 7, 1980; the Juneau-Douglas High School Cafeteria,



Official Business

# Alaska State Legislature

Senate

Committee on Finance

Pouch V  
State Capitol  
Juneau, Alaska 99811

February 6, 1980

The Honorable Robert LeResche  
Commissioner  
Department of Natural Resources  
Pouch M  
Juneau, Alaska 99811

Dear Commissioner LeResche:

Enclosed is a copy of a letter from Senator Don Bennett, Chairman of the Regulation Review Committee, regarding proposed fire season regulations. I agree with the position Senator Bennett has taken in his letter. It would appear that the Department is being over zealous in drafting these regulations.

I understand that public hearings on this issue may have been minimal and I believe from reading my mail that the public has much to say on this subject.

I would urge you to postpone adoption of these regulations until you have reviewed adequate input from the public and until the Regulation Review Committee has an opportunity to take a position on them.

Sincerely,

John C. Sackett  
Chairman  
Senate Finance Committee

cc: ✓ Senator Don Bennett

G

Following is a summary of the new fire season regulations. The equipment listed is required on the operation site for use in fire fighting during the fire season.

- \* A tank truck with a power water pump or trailer with a water tank
- \* Engines equipped with spark arresters on or within 1/8 mi. of forested land
  - (1) exempt are full turbocharged internal combustion engines in good cond.
  - (2) gasoline and diesel engines operating on public roads
- \* For stationary engines:
  - (a) self propelled tanker or portable trailer
  - (b) pond, stream, tank or sump with water storage water pump, hose, water supply
- \* For each individual on the operation site, tool boxes, axes, shovels and pulaskis
- \* Internal combustion engines equipped with 1 chemical fire extinguisher
- \* Each truck driven thru forested land except state highway, equ:p. with shovel, ax, chemical fire extinguisher.
- \* On cable logging operation:
  - (1) clear flammable debris with 10-ft. radius of site
  - (2) provide and maintain serviceable 5-gallon pump
  - (3) have shovel
- \* Watchman required - 1 to handle fire equip. and on duty 3 hours after operation shutdown, have communication and transportation facilities.
- \* Portable power saws must be equipped with spark arresting device
- \* For saws have fire extinguisher and shovel

The Commissioner may in writing modify requirements if it so warrants.

Equipment must pass set standards.

The regulations are still in draft and there will be a hearing in Juneau, Feb. 6th.

January 28, 1980

The Honorable Robert LeResche  
Commissioner  
Department of Natural Resources  
Pouch M  
Juneau, Alaska 99811

Dear Commissioner LeResche:

This is in regards to recent numerous complaints and apprehensions which I have received from many of my constituents regarding the new fire season regulations now being promulgated by the Department.

Much of the input I have received from the Interior Region of the State concerns the enactment of these regulations without adequate public hearing for those individuals who will directly be affected by these new restrictions. An additional concern lies with the feeling that the Administration is not adequately considering the Alaskan lifestyle by the adoption of these regulations.

My own feeling is that the new fire season regulations are perhaps an overzealous "knee-jerk" reaction to last summer's Delta fire situation. Hopefully your Department and the Governor are not inadvertently rejecting the long-standing traditions and practices of the Alaskan lifestyle by placing these somewhat overbearing restrictions on many Alaskan residents. Further, it would seem that the old regulations are adequate to control fire hazards related to factors outside natural causes. For speaking from my area of the State, in that many summer fires in the Interior are sparked by lightning, I can see no regulation of any kind that can prevent fires of this nature from occurring.

Please know that I feel there is a need for some regulation to control fire hazards, but to burden Alaskan residents with additional restrictions within their daily lives seems contrary to the lifestyle we have attempted to promote.

In closing, I would appreciate receiving your comments and justifications regarding the new fire season regulations. Thank you for your assistance.

Sincerely,

Senator Don Bennett

cc: The Honorable Jay S. Hammond  
Ted Smith, Director  
Division of Forest, Land & Water  
Management

## CHAPTER 95. FOREST RESOURCES AND PRACTICES.

## Article

1. Forest Practices (11 AAC 95.010-11 AAC 95.160)
2. Forest Fire Protection (11 AAC 95.400-11 AAC 95.530)
3. Log Brands (11 AAC 95.700-11 AAC 95.790)
4. Definitions (11 AAC 95.900)

## ARTICLE 1. FOREST PRACTICES.

## Section

10. Purpose
20. Applicability
30. Notification
40. Inspections
50. Best management practices
60. Waivers
70. Designation of regions
80. Road construction and maintenance
90. Harvesting
100. Cleanup and stabilization
110. Wildlife considerations
120. Aesthetics
130. Log transfer and storage facilities
140. Slash
150. Reforestation
160. Insect and disease prevention and control

11 AAC 95.010. PURPOSE. The purpose of this chapter is to establish minimum standards for forest practices that will provide the maximum practical protection to maintain forest productivity, water quality, and fish and wildlife habitat. (Eff. / /80, Register )

Authority: AS 41.17.020  
AS 41.17.080

11 AAC 95.020. APPLICABILITY. (a) Non-commercial operations and commercial operations 10 acres in size or less, on municipal and private forest land, are not subject to the notification procedure of AS 41.17.090 or to sec. 30 of this chapter.

(b) Commercial operations greater than 10 acres in size on municipal and private forest land are subject to AS 41.17.090 and to all the requirements of this chapter.

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(c) All non-commercial and commercial operations on state forest land are subject to all the requirements of this chapter except sec. 30 and AS 41.17.090. (Eff. / /80, Register )

Authority: AS 41.17.020  
AS 41.17.050  
AS 41.17.080

11 AAC 95.030. NOTIFICATION. (a) At least 30 days before commencing an operation on forest land, the operator shall give notice to the state forester, on forms 10-1033 and 10-1034 supplied by the state, of his intent to operate.

(b) Notifications may be mailed or delivered in person to any of the district or area offices of the division. They will be accepted only for those portions of the operation which the applicant states will be completed by December 31 of the year following the year in which the notification is made. If the operation continues, notification must be renewed to reflect changes and/or additions to the operation. (Eff. / /80, Register )

Authority: AS 41.17.020  
AS 41.17.080  
AS 41.17.090  
AS 41.17.120

11 AAC 95.040. INSPECTIONS. (a) State personnel shall notify the operator or his representative of a pending inspection, and shall encourage and give him the opportunity to accompany the state personnel during the inspection.

(b) A written forest operation inspection report will be prepared by the forest practices forester after each inspection and will be distributed to the operator, landowner and timber owner.

(c) If the inspection reveals that damage has occurred or is occurring, such damage is prima facie evidence of a violation of this chapter or of AS 41.17. (Eff. / /80, Register ).

Authority: AS 41.17.020  
AS 41.17.020  
AS 41.17.120

11 AAC 95.050. BEST MANAGEMENT PRACTICES. (a) To meet the standards of secs. 80-100 and 130 of this chapter, an operator may use either the practices set out in the manual of best management practices, or alternatives of his own choosing. Approval of the forest practices forester is recommended but is not required before using alternative practices.

(b) Conformance with the practices set out in the manual of best management practices, or with alternatives that have been approved by the forest practices forester in writing is a positive defense against prosecution under AS 46.03.790. Approval of the forest practices forester must be based, after consultation with the Department of Environmental Conservation and the Department of Fish and Game, on a finding that the alternative practice is at least as likely to meet the standards as the practice set out in the manual.

(c) The manual of best management practices is available at any of the district or area offices of the division. (Eff. / /80, Register )

Authority: AS 41.17.020  
AS 41.17.080

11 AAC 95.060. WAIVERS. (a) The state forester may grant a written waiver of the requirements of this chapter subsequent to a finding that in a specific circumstance or situation:

(1) no substantial benefit in the protection of water quality, aquatic or terrestrial habitat, or other purposes of AS 41.17 will be achieved; or

(2) strict compliance would not be feasible or prudent.

(b) The state forester will act within 30 days in processing a request for a waiver.

(c) Nothing in this section may be construed to give the state forester authority to supersede or grant variances from the provision of laws or regulations administered by other state agencies, unless such authority has been delegated to him by the agency.

(d) The state forester shall consult with the Department of Environmental Conservation, the Department of Fish and Game, and the operator regarding areas of their concern before approving requests for waivers. He may attach such special requirements, conditions, and stipulations as he deems necessary to protect water quality and aquatic and terrestrial habitat, or to carry out the purposes of this chapter. (Eff. / /80, Register )

Authority: AS 41.17.020  
AS 41.17.080

11 AAC 95.070. DESIGNATION OF REGIONS. For the purposes of this chapter, the state is divided into regions as follows:

(1) Region I (Coastal Sitka spruce/hemlock region). Forest land from the southern boundary to Cook Inlet and Kodiak Island con-

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taining the following tree species: Sitka spruce, western hemlock, mountain hemlock, Alaska cedar, red alder, black cottonwood, western redcedar, and lodgepole pine.

(2) Region II (Interior spruce/hardwood region). Forest land extending from the Kenai Peninsula to the south slopes of the Erocks Range and westward nearly to the Bering Sea containing the following tree species: white spruce, paper birch, balsam poplar, quaking aspen, black spruce, tamarack, and black cottonwood. The portion of Region II lying north of the Alaska Range is designated IIa; the portion lying south of the Alaska Range is designated IIb. (Eff. / /80, Register )

Authority: AS 41.17.020  
AS 41.17.080

11 AAC 95.080. ROAD CONSTRUCTION AND MAINTENANCE. (a) For all operations on state land, a detailed transportation plan must be developed, recognizing the long-range transportation needs of the area with regard to forest management and associated uses, before commencing road building operations. This plan must be revised and updated at five-year intervals unless circumstances indicate more frequent revisions.

(b) To the extent feasible for operations on all land, roads must be located to:

- (1) minimize the risk of material entering surface waters;
- (2) minimize the number of stream crossings;
- (3) minimize alteration of natural features including topography and drainage;
- (4) avoid unstable areas; and
- (5) maintain the filtering effect of natural vegetative cover between road and water.

(c) No change may be made in natural stream courses or channels except with the written approval of the Department of Fish and Game under AS 16.05.870 or, for waters not identified under AS 16.05.870 by the state forester.

(d) Road design standards and specifications must be adapted to the terrain and soil materials in order to minimize surface disturbance and to minimize impact on water quality to the extent feasible and prudent.

(e) Water crossing structures must provide for free passage and movement of fish, as required by the Department of Fish and Game, and minimum impact on water quality; structures for permanent roads must also accommodate anticipated streamflow and passage of upstream debris.

(f) Water crossing structures must be installed in a manner to minimize disturbance of streambed or streambank, erosion, or other adverse impacts on water quality; and at a time of year that minimizes interference with spawning or migration of anadromous fish, as required by the Department of Fish and Game.

(g) Construction equipment and machinery may not be operated in or through surface water except as approved by the Department of Fish and Game under AS 16.05.870 or by the state forester for waters not under AS 16.05.870.

(h) All areas of exposed soil must be stabilized to the extent feasible at the normal angle of repose or less, to minimize soil erosion and subsequent siltation of surface waters.

(i) Vegetative debris must be removed from surface waters within 48 hours of its deposition to avoid toxic leaching or obstruction of streamflow.

(j) Rock, overburden, and other materials associated with road construction must be placed to minimize the possibility of their entry into surface waters.

(k) No solid waste or petroleum product may be allowed to enter surface waters.

(l) All drainage features and structures such as ditches, cross drains, crowning, outsloping, culverts and bridges must be maintained to prevent blockage and erosion during periods that the road is in use, or removed and stabilized once the road has been abandoned or its use otherwise terminated.

(m) No quarry or borrow site may be located in active stream beds or within the twenty-five year floodplain except as may be approved by the Department of Fish and Game under AS 16.05.870, by the Department of Natural Resources under AS 38.05.330, or by the state forester for land and water not subject to AS 16.05.870 or AS 38.05.330.

(n) Upon abandonment of the quarry or borrow site as a source of material, the banks, headwall, and other exposed surfaces of the site must be stabilized to the extent necessary to prevent soil erosion or mass soil movement and must be self-drained. (Eff. / /80,  
Register )

Authority: AS 41.17.020  
AS 41.17.080

11 AAC 95.090. HARVESTING. (a) For all operations on state land, a detailed harvesting plan must be developed, recognizing the other forest resources and the extent to which these other resources will be impacted by the harvesting activities.

(b) On all land, felling, bucking, and yarding must be conducted so as to:

(1) avoid the deposition of vegetative material in surface waters to the extent feasible and prudent;

(2) maintain the integrity of the streambank and its vegetative cover; and

(3) minimize soil erosion from the cutover area.

(c) Landings, skid trails and fire trails must be located, constructed, and maintained so as to minimize siltation of surface waters. (Eff. 7/1/80, Register )

Authority: AS 41.17.020  
AS 41.17.060

11 AAC 95.100. CLEANUP AND STABILIZATION. (a) Waste materials resulting from road construction and harvesting activities such as, but not limited to, crankcase oil, fuel, grease, filters, hydraulic fluid, and their containers, must be disposed of in accordance with the provisions of 18 AAC 60:

(b) Machine parts, wire rope, and similar scrap wastes must be disposed of in a stable location where there is no realistic potential for their entering surface waters.

(c) Drainage systems must be provided and maintained to control the dispersal of runoff water from exposed soils on landings, skid trails, fire trails and other unstable or erodible areas to minimize soil erosion and subsequent siltation of surface waters.

(d) Unstable or erodible exposed soils must be stabilized by seeding, mulching, or other suitable means to prevent siltation of surface waters. (Eff. 7/1/80, Register )

Authority: AS 41.17.020  
AS 41.17.080

11 AAC 95.110. FISH AND WILDLIFE CONSIDERATIONS. On state and municipal land:

(1) harvesting plans must identify and operations must protect species and their habitats identified as being threatened or endangered; and

(2) a buffer 330 feet in radius must be retained around each active bald eagle nesting tree. (Eff. 7/1/80, Register)

Authority: AS 41.17.020  
AS 41.17.0

11 AAC 95.120. AESTHETICS. Where major scenic attractions, highways, recreation areas, or other high use areas are located on state or municipal forest land, special consideration must be given to scenic values by the layout and design of cutting units to minimize visual impact and by prompt cleanup and regeneration after harvesting. (Eff. / /80, Register )

Authority: AS 41.17.020  
AS 41.17.080

11 AAC 95.130. LOG TRANSFER AND STORAGE FACILITIES. (a) Sites for in-water dumping and storage of logs must be selected so as to reduce to acceptable limits the area adversely affected.

(b) Sites within 300 feet of the mouths of anadromous waters or in areas known to be important for fish spawning or rearing must be avoided where practical alternatives exist. (Eff / /80, Register )

Authority: AS 41.17.020  
AS 41.17.080

11 AAC 95.140. SLASH. (a) In those areas where slash treatment is necessary to prevent or reduce the spread of fire, accumulations of slash must be reduced by scattering, piling or windrowing, mechanized chipping, compacting, burying, or controlled burning.

(b) When slash is to be disposed of by burning, vegetative buffers must be protected from fire, and the burning must be accomplished under conditions of weather that will minimize air quality degradation.

(c) Unstable slash accumulations around landings must be disposed of or dispersed to prevent their entry into streams and other waterbodies.

(d) Within Region II accumulations of slash must be treated by burning, burying, or some other method to destroy developing insects and prevent bark beetle buildup in white spruce. (Eff. / /80, Register )

Authority: AS 41.17.020  
AS 41.17.080

11 AAC 95.150. REFORESTATION. (a) On state and municipal land, trees that are to be left for future harvest must be adequately protected from damage resulting from harvest operations to assure their survival and growth.

(b) On all land, management strategies must be designed to assure adequate natural or artificial reforestation of acceptable species on all harvested land that is economically suited for the growing and harvesting of commercial timber within:

- (1) five years in Region I;
- (2) ten years in Region IIa; and
- (3) seven years in Region IIb.

(c) On all land where artificial reforestation has been selected as the management option and suitable seedlings or seeds from appropriate seed source zones are unavailable, or if weather conditions or other circumstances beyond the landowner's control require delay in planting or seeding, a reasonable extension of time will be allowed.

(d) On all land, planted seedlings must survive two winters on the site before they can be considered adequate for reforestation.  
(Eff. 1/1/60, Register )

Authority: AS 41.17.020  
AS 41.17.050

11 AAC 95.160. INSECT AND DISEASE PREVENTION AND CONTROL. (a) When the commissioner finds forest land or timber that is infested by forest insect pests, infected by forest tree diseases, or threatened by insect pests or forest tree diseases, he will determine whether measures of control are necessary and available and to which areas the control measures should be applied. Thereafter, the commissioner may designate a disease or insect control area with definite boundaries. The area may include threatened forest land or timber as well as forest land or timber already affected.

(b) The commissioner will immediately notify in writing all owners of forest land or timber within the designated control areas. The notice may be served by delivery of a copy of the notice to the owner, or by mail addressed to his last known place of address. In addition, the commissioner will publish a legal description of the designated control area at least once a week for two consecutive weeks in one or more newspapers of general circulation in or near the designated control area.

(c) The commissioner will assist the owners of forest land or timber within the designated control area with the control and salvage measures necessary, to the extent that there is available funding for undertaking such measures.

(d) When the commissioner determines that forest insect pest or forest tree disease control work within the designated control area is no longer necessary or feasible, the commissioner may terminate the designation.

(e) Every owner of forest land or timber shall conduct operations so as to minimize forest insect pest and forest tree disease depredations to the extent feasible and prudent.

(f) Silvicultural systems employed on state and municipal land must be designed to prevent and/or control insect infestations and disease infection.

(g) Mortality caused by insects and diseases on state and municipal land must be salvaged as rapidly as is practicable, dependent upon access and marketability, to prevent undue loss of the resource.  
Eff. / /80, Register )

Authority: AS 41.17.020  
AS 41.17.080

\*ARTICLE 2. FOREST FIRE PROTECTION.

- 72 (400. Permit  
410. Content of permit  
420. Refusal, suspension or revocation of permit  
430. Place of burning  
440. Emergency closure  
450. Public notice  
460. Environmental control  
470. Additional equipment for logging operations  
480. Spark arresters  
490. Water supply and equipment for stationary engines  
500. Fire tools and fire extinguishers  
510. Watchman service  
520. Portable power saws  
72 (530. Other governmental laws

11 AAC 95.400. PERMIT. (a) A burning permit is required during the fire season for the burning of any material in the areas designated by the commissioner. A burning permit is not required when the burning is contained within an approved device or for cooking, warming or signaling fires.

(b) A burning permit may be obtained by applying to a person authorized by the commissioner to issue the permit. The applicant shall provide the authorized person with information as to the type, location, and person in charge of the burning; the area and material to be burned; and the number of persons controlling the burn.

(c) A person issued a burning permit may not burn any material covered by the permit unless he has the permit in his possession. The permit shall be displayed to any authorized person upon request.

\* Secs. 400-460 and 530 of this article are renumbered from 11 AAC 92, which went into effect July 2, 1972. They are not proposed to be amended.

(d) Prior to issuing a permit, the authorized person may require that he inspect the area and material to be burned. (Eff. 7/2/72, Register 42)

Authority: AS 41.15.020  
AS 41.15.020

11 AAC 95.410. CONTENT OF PERMIT. (a) Each permit shall be on a form provided by the Department of Natural Resources and shall contain:

- (1) name and address of permittee;
- (2) name of the authorized person issuing the permit;
- (3) the forest protection area where the burning will be conducted;
- (4) the date of issuance and expiration of the permit;
- (5) a detailed description of the area where the burning will be conducted, designated by borough, subdivision, section, township, range, meridian, and local landmarks; and
- (6) the amount of acres or area to be burned.

(b) Each permit may provide:

- (1) a specific time and date for the burn;
- (2) the minimum number of persons and equipment employed to control or extinguish the burn; and
- (3) limitation as to the size of the burn and the number of burns. (Eff. 7/2/72, Register 42)

Authority: AS 41.15.020  
AS 41.15.050

11 AAC 95.420. REFUSAL, SUSPENSION, OR REVOCATION OF PERMIT.

(a) A burning permit may be refused if the authorized person is not permitted to inspect the area and material to be burned. A permit may be refused, suspended or revoked to protect life and property.

(b) A permit is suspended by an emergency closure to burning in the permit area. If the emergency closure remains in effect past the expiration date of a permit, the permit is revoked and a new permit

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11 AAC 95.430

11 AAC 95.470

shall be obtained before conducting further burning. (Eff. 7/2/72, Register 42)

Authority: AS 41.15.020  
AS 41.15.050  
AS 41.15.060  
AS 41.15.090

11 AAC 95.430. PLACE OF BURNING. A permitted burn shall be confined to an area surrounded by mineral soil, gravel or rock or shall be surrounded by a natural or constructed firebreak. (Eff. 2/7/72, Register 42)

Authority: AS 41.15.020  
AS 41.15.050  
AS 41.15.060  
AS 41.15.090

11 AAC 95.440. EMERGENCY CLOSURE. The commissioner may, during the fire season, close an area to setting of fires, burning, smoking, entry or other use of land, when, in his judgment, the activities would unduly increase the fire danger. (Eff. 7/2/72, Register 42)

Authority: AS 41.15.020  
AS 41.15.020

11 AAC 95.450. PUBLIC NOTICE. An emergency closure is effective upon the publication in a newspaper of general circulation in the area closed of a public notice issued by the commissioner specifying the area closed and the effective date of closure. (Eff. 7/2/72, Register 42)

Authority: AS 41.15.020  
AS 41.15.050  
AS 41.15.060

11 AAC 95.460. ENVIRONMENTAL CONTROL. Any burning authorized by a permit obtained under this chapter shall be conducted in a manner as required by 18 AAC 50, Air Quality Control Regulations, and 18 AAC 60, Solid Waste Regulations. (Eff. 7/2/72, Register 42)

Authority: AS 41.15.020  
AS 41.15.050  
AS 41.15.060

11 AAC 95.470. ADDITIONAL EQUIPMENT FOR OPERATIONS. (a) On forested land during the fire season, a tank truck or portable trailer with water tank capacity of not less than 300 gallons is required on the operation area. It must be in good mechanical condition and readily available for use in fighting fire.

(b) The tank truck must be properly equipped with a power water pump of sufficient size and capacity to provide a discharge of not less than 20 gallons per minute when pumping through 50 feet of hose equipped with a nozzle one-quarter inch in diameter at pump level.

(c) The pump must be equipped with not less than 500 feet of hose of three-quarter inch inside diameter or larger and a nozzle not less than one-quarter inch in diameter; not less than 250 feet of the hose, and the nozzle, must be maintained as a connected, operating unit ready for immediate use at any time.

(d) The commissioner may, in writing, modify any requirement of this section if he finds that the conditions of the operation so warrant. (Eff. 1/1/80, Register ...)

Authority: AS 41.15.020

11 AAC 95.480. SPARK ARRESTERS. (a) On or within one-eighth of a mile of forested land during the fire season, engines must be equipped with a spark arrester that meets the standards set forth in the publication of the United States Department of Agriculture, Forest Service, entitled "Standard S100-1a for Spark Arresters for Internal Combustion Engines," issued March, 1976, except that non-turbocharged railroad locomotives must be equipped with a spark arrester that meets the standards set forth in the publication of the Association of American Railroads Manual of Standards and Recommended Practices, "Standard for Spark Arresters for Non-turbo Charged Diesel Engines Used in Railroad Locomotives," issued March, 1971.

(b) The following are exempt from the requirements of this section:

(1) full turbocharged internal combustion engines maintained in good condition;

(2) gasoline and diesel engines in vehicles operating on public roads.

(c) The commissioner may, in writing, modify or waive any requirement of this section if he finds that conditions so warrant. (Eff. 1/1/80, Register ...)

Authority: AS 41.15.020

11 AAC 95.490. WATER SUPPLY AND EQUIPMENT FOR STATIONARY ENGINES.

(a) On forested land during the fire season, the minimum standards for water supply and equipment for stationary engines are:

(1) water supply:

(A) a self-propelled tanker or portable trailer in operable condition of not less than 300 gallons; or

(B) a pond, stream, tank, or sump with storage of not less than 500 gallons.

(2) Water pump: size and capacity must be such that the pump will provide a discharge of not less than 20 gallons per minute when pumping through 50 feet of hose equipped with a one-quarter inch inside diameter nozzle at pump level.

(3) Hose and nozzle: at least 500 feet of serviceable hose of not less than three-quarter inch inside diameter, and a nozzle with an inside diameter of one-quarter inch.

(b) Water supply, pump, and not less than 250 feet of the hose, and the nozzle, as required by this section, must be maintained as a connected, operating unit ready for immediate use at any time.

(c) The commissioner may, in writing, modify or waive any requirement of this section if he finds that conditions so warrant. (Eff. / /80, Register )

Authority: AS 41.15.020

11 AAC 95.500. FIRE TOOLS AND FIRE EXTINGUISHERS. (a) This section applies on forested land during the fire season.

(b) Every person conducting an operation shall provide at the operation site, or at a location designated by the commissioner, the number of tools and tool boxes required by the following table:

TOOL TABLE

No. of Persons in Operation	1-4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Tool Box	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Axes	1	1	1	1	1	1	2	2	2	2	2	2	2	2	3	3	
Shovels	2	2	2	3	3	3	3	4	4	5	5	6	7	7	7	7	
Pulaskis	1	2	3	3	4	5	5	5	6	6	7	7	7	8	8	9	10

An operation with more than 20 men must use multiples of any of the above columns to arrive at a tool distribution equal to or in excess of the number of men in the operation. The number of tools of each type required by the above table may be varied by notice in writing from the commissioner, when, in his opinion, the nature of the fire hazard requires such adjustment; provided, however, that in no event may the total number of tools required exceed the total number of tools required by the table.

(c) The commissioner may, as an alternative to the requirements of (b) of this section, authorize in writing other tools of a use and purpose equivalent to those designated and required by the tool table to equip the personnel for firefighting at an operation site.

(d) The tool boxes designated in (b) of this section must be kept in good repair and clearly identified as containing firefighting tools. The tools required by (b) and (c) of this section must be serviceable and kept in good repair. Such tools must be kept in the tool box or boxes to be used for firefighting purposes only, and will be sealed by the state.

(e) Each internal combustion engine must be equipped with one chemical fire extinguisher rated by Underwriters' Laboratories as not less than 4-B.C.

(f) Each truck driven on or through forested land except on state highways must be equipped with one round-pointed No. 0 shovel or larger, one pulaski or axe with twenty-six inch handle or larger, and one chemical fire extinguisher rated by Underwriters' Laboratories as not less than 4-B.C.

(g) The fire extinguisher required by (e) and (f) of this section must be placed on each engine or truck, or both, so as to be visible to the operator and ready for instant use. The extinguisher must be equipped with a reliable and easily read pressure gauge.

(h) The operator of a cable logging operation at each block on the yarding road shall comply with the following:

(1) clear all flammable debris from the area within a 10-foot radius of the block. The area must be kept clear of such debris so long as the block is in use;

(2) provide and maintain a serviceable five-gallon pump can filled with water; and

(3) provide and maintain a round-pointed No. 0 shovel or larger.

(i) The commissioner may, in writing, modify or waive any requirements of this section if he finds that conditions so warrant.  
(Eff. 1/1/80, Register )

Authority: AS 41.15.020

11 AAC 95.510. WATCHMAN SERVICE. (a) During the fire season every operator conducting an operation on forested land must provide a watchman service of not less than one person physically capable of and experienced in operating the firefighting equipment required for the operation area.

(b) The watchman shall:

(1) be constantly on duty for three hours after the power-driven equipment used by the operator has been shut down for the day;

(2) visually observe all conditions of the operation area on which industrial activity has been in progress; and

(3) have adequate facilities for transportation and communications in order to be able to summon assistance if needed.

(c) After a measurable amount of rain on the operation area, the commissioner may suspend, in writing, the requirement of this section until such time as conditions warrant reinstatement.

(d) The commissioner may, in writing, modify or waive any requirement of this section if he finds that conditions so warrant.  
(Eff. / /80, Register )

Authority: AS 41.15.020

11 AAC 95.520. PORTABLE POWER SAWS. (a) During the fire season portable saws powered by internal combustion engines and used by any person on forested land must be constructed and equipped for the prevention of fire as follows.

(1) All saws must be equipped with a spark-arresting device constructed to retain or destroy 90 percent or more of the carbon particles having a major diameter greater than 0.023 inches (0.584 mm). A spark-arresting device equipped with a woven screen with a maximum opening size of 0.023 inches (0.584 mm), constructed of heat- and corrosion-resistant wire at least 0.013 inches (0.330 mm) in diameter, will be considered in compliance with the requirement, provided the total screen opening area is not less than 125 percent of the engine exhaust port area. The unit must be constructed to permit easy removal of the screen for field inspection, replacement, and cleaning.

(2) Portable power saws will be deemed to be in compliance with (1) of this subsection if they are certified by the United States Department of Agriculture, Forest Service, San Dimas Equipment Development Center, to meet the performance specified in the Automotive Engineers publication, "Multiposition Small Engine Exhaust System Fire Ignition Suppression SAE Recommended Practice J335(b)." (See Exhibit "A".)

(b) Any person using a portable saw powered by an internal combustion engine on forested land shall have the following immediately available for the prevention and suppression of fire:

(1) a fire extinguisher of at least eight-ounce capacity as approved by the commissioner; and

(2) a size 0 or larger shovel.

(c) If a power saw is fueled on forested land, the power saw must be moved at least 20 feet from the place of fueling before starting.

(d) The commissioner may, in writing, modify or waive the requirements of this section if he finds that, under conditions of low fire danger, less restrictive requirements are warranted. (Eff. / /80, Register )

Authority: AS 41.15.020

11 AAC 95.550. OTHER GOVERNMENTAL LAWS. A permit issued under sections 400-530 of this chapter is subject to local laws, rules, and regulations which are more restrictive. (Eff. 7/2/72, Reg. 42)

Authority: AS 41.15.050  
AS 41.15.060

#### ARTICLE 3. LOG BRANDS.

##### Section

- 700. Log Brand
- 710. Barred logs
- 720. Brand design
- 730. Acceptance or rejection of application
- 740. Cancellation of registration
- 750. Fees for registration or transfer of registration
- 760. Reservation of brands
- 770. Registration upon transfer
- 780. Use of unregistered brand
- 790. Notice or Demand

11 AAC 95.700. LOG BRAND. In this chapter and in AS 50.210-325, the term "brand" means:

(1) a mark or other designation that has been registered with the department; or

(2) an impression stamped on timber property with a branding hammer. (Eff. / /80, Register )

Authority: AS 38.05.020  
AS 45.50.315  
AS 45.50.325

11 AAC 95.710. BARGED LOGS. Timber property transported by a self-dumping barge will be presumed, upon being loaded on the barge, to be intended to be put in a waterway of the state within the meaning of AS 45.50.230(a). (Eff. / /80, Register )

Authority: AS 38.05.020  
AS 45.50.230(a)  
AS 45.50.315

11 AAC 95.720. BRAND DESIGN. (a) A diagram or design on paper, within the meaning of AS 45.50.210(b), will be considered acceptable if it is a sketch or drawing with exact dimensions shown, or a paint or ink impression of the brand. The department may request the owner of a brand to furnish a paint or ink impression on paper of the brand at any time in order to confirm that owner's branding hammer conforms to the design of the brand as registered.

(b) The actual size of the brand must be at least two inches in diameter or dimensions. (Eff. / /80, Register )

Authority: AS 38.05.020  
AS 45.50.210  
AS 45.50.315

11 AAC 95.730. ACCEPTANCE OR REJECTION OF APPLICATION. No application will be accepted unless accompanied by the registration fee and, if requested by the department, an impression of the brand and additional descriptive information. (Eff. / /80, Register )

Authority: AS 45.50.210(b)  
AS 45.50.220  
AS 45.260  
AS 45.50.315

11 AAC 95.740. CANCELLATION OF REGISTRATION. (a) A brand registration may be cancelled by the department, following notice and an opportunity to be heard,

(1) if the owner fails to furnish an impression of the brand or information about the brand or use of the brand when requested by the department;

(2) upon conviction under AS 45.50.320; or

(3) if the applicant or owner fails to reply to a certified or registered letter from the department requesting information concerning the log brand within a specified period of time. The time period may be no less than 15 days from the date the letter is postmarked.

(b) A brand registration may be cancelled by request of its owner. The cancellation will be effective upon receipt by the department of a written notice from the owner requesting the cancellation. (Eff. / /80, Register )

Authority: AS 38.05.020  
AS 45.50.210  
AS 45.50.315  
AS 45.50.320

11 AAC 95.750. FEES FOR REGISTRATION OR TRANSFER OF REGISTRATION.

(a) The fee for registration or transfer of a registration is set out in a fee schedule posted in the district offices of the division.

(b) The fee may be forfeited if an application is rejected.

(c) The fee is forfeited if a brand registration is cancelled before to the expiration of the period of registration. (Eff. / /80, Register )

Authority: AS 38.05.020  
AS 45.50.210  
AS 45.50.220  
AS 45.50.260  
AS 45.50.260  
AS 45.50.315

11 AAC 95.760. RESERVATION OF BRANDS. When an acceptable application has been received for registration or renewal of registration, the brand will be reserved to the applicant. (Eff. / /80, Register )

Authority: AS 38.05.020  
AS 45.50.315

11 AAC 95.770. REGISTRATION UPON TRANSFER. No registered brand may be transferred to or used by or on behalf of a third party except after prior written notice to the department, accompanied by a true copy of the instrument of transfer as required by AS 45.50.260, together with the registration fee. Upon receipt and filing for record of a copy of the transfer instrument and the fee, the department will transfer the brand and issue a certificate to the new owner. (Eff. / /80, Register )

Authority: AS 38.05.020  
AS 45.50.260  
AS 45.50.260  
AS 45.50.315

11 AAC 95.780. USE OF UNREGISTERED BRAND. Logs branded with an unregistered brand, or with a registered brand used by a person not authorized to use it, will be considered for all purposes to be unbranded. (Eff. / /80, Register )

Authority: AS 38.05.020  
AS 38.50.315  
AS 38.50.320

11 AAC 95.790. NOTICE OR DEMAND. Any notice or demand under this chapter or under AS 43.50.225 - AS 43.50.325 must be in writing and must be sent by certified or registered mail to the other party at the address of record. Either party may designate in writing a new or other address to which the notice or demand is to be mailed. A written notice or demand is considered delivered when deposited in a U.S. general or branch post office. (Eff. / /80, Register )

Authority: AS 38.05.020  
AS 38.50.315  
AS 38.50.320

#### ARTICLE 4. DEFINITIONS

##### Section

##### 900. Definitions

11 AAC 95.900. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "anadromous fish" means those fish spending a portion of their lives in both fresh and salt water;

(2) "anadromous waters" means all rivers, lakes, and streams, or parts of them, that are used for the spawning, rearing, or migration of anadromous fish;

(3) "approved device" includes conventional and portable stoves, fireplaces, and incinerators with adequate safeguards to prevent escapement of fire;

(4) "aquatic and terrestrial habitat" means habitat utilized by fish or wildlife to sustain life;

(5) "borrow site" means an excavation site outside the limits of construction to provide materials necessary to that construction, such as fill material;

(6) "burning" includes setting of fires, and excludes smoking;

(7) "commissioner" means the commissioner of natural resources or his authorized designee;

(8) "cooking, warming, or signaling fire" means a small fire contained within a natural or artificial barrier to prevent its escape, used for cooking, signaling, or warming, and attended at all times;

(9) "crossdrain" means a cross ditch used to move water from one side of a road to the other to prevent accumulation of runoff without the need of a culvert or bridge;

(10) "crowning" means to shape the running surface of a road higher in the center in order to direct runoff to roadside ditches rather than channel it down the centerline;

(11) "display" or "displayed" means readily discernible or situated or placed in a manner on timber property;

(12) "department" means the Department of Natural Resources;

(13) "feasible and prudent" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, technical, and safety factors;

(14) "forest land" in secs. 10-160 of this chapter is as defined by AS 41.17.950(a);

(15) "forested land" in secs. 400-530 of this chapter is as defined by AS 41.15.170(3);

(16) "material" includes any organic or inorganic flammable substance such as trees, brush, weeds, grass, wood, lumber, trash, papers, clothes, tires, and chemicals;

(17) "mineral soil" means a soil containing insufficient organic material to sustain fire;

(18) "normal angle of repose" means the angle at which cut slopes will stand naturally, and varies by type of material;

(19) "operation" in secs. 10-160 of this chapter is as defined by AS 41.17.950(a); in secs. 400-530 of this chapter, "operation" means any industrial activity or any development or improvement of forest land, or within one-eighth of a mile from forest land, including but not limited to the clearing of land or rights-of-way, logging or sawmilling, thinning and pruning;

(20) "outsloping" means to shape the running surface of a road in a manner to carry runoff to the downslope side of the road, and is used for roads without roadside ditches;

(21) "permanent road" means a road constructed to be of use through several cutting entries;

(22) "permit" means burning permit;

(23) "salvage" means the recovery of timber property that is no longer in possession or control of its owner or rightful transporter;

(24) "stabilize" means to make resistant to shifting or erosion by mechanical or other means;

(25) "state forester" means the state forester or his authorized representative;

(26) "surface waters" means streams, creeks, rivers, and ponds and lakes greater than 10 acres in size;

(27) "temporary road" means a road constructed for use for generally not more than two consecutive operating seasons;

(28) "upstream debris" means slash or debris located 50 feet or less upstream from a culvert or bridge that may reasonably be expected to plug the inlet or damage the structure; and

(29) "vegetative buffer" means a strip of varying width containing undisturbed grass, brush or trees, or other natural vegetation acting as a filter for runoff. (Eff. 7/2/72, Register 42; am / /80, Register )

Authority: AS 41.15.050  
AS 41.15.060  
AS 41.15.090  
AS 41.17.020  
AS 41.17.080

CHAPTER 92. FOREST PROTECTION. Repealed. ( / /80, Register )

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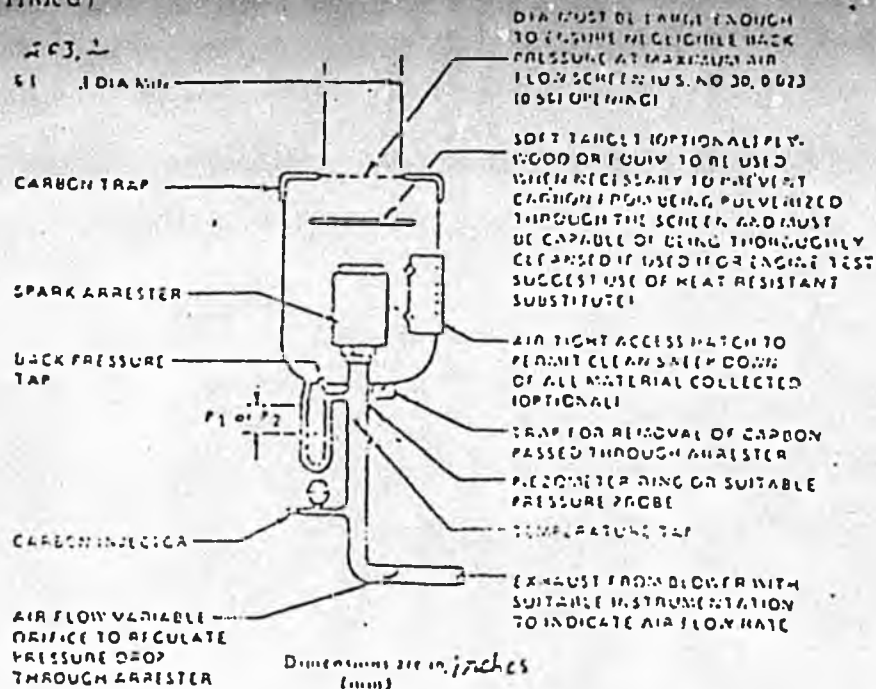


Fig. 1. Test apparatus for measuring spark arrester efficiency.

### 3.5 Back Pressure and Flow.

3.5.1 Provision shall be made for measuring flow rate through the arrester and differential pressure from intake to discharge of the arrester.

3.5.2 Unless 3.5.3. applies, the spark arrester shall be tested for two conditions: (1) at a constant flow rate at which the initial back pressure (prior to test carbon injection) from intake to discharge is 2 in Hg (6.8 kPa), (2) at a constant flow rate at which the initial back pressure (prior to test carbon injection) from intake to discharge is 1 in Hg (3.4 kPa).

3.5.3 With arresters using a small mesh screen, clogging of the screen may occur before the entire 5 g sample of carbon is injected into the arrester. In these instances, use the following test procedure:

Condition 1 - Initially establish an airflow to cause a pressure differential drop of 2 in Hg (6.8 kPa). Then allow the back pressure differential to build up to 2-1/2 in Hg (8.5 kPa). Once the 2-1/2 in Hg (8.5 kPa) is reached, maintain this pressure for the balance of the test.

Condition 2 - Initially establish an airflow to cause a pressure differential drop of 1 in Hg (3.4 kPa). Then allow the back pressure differential to build up to 1-1/2 in Hg (5.1 kPa). Once the 1-1/2 in Hg (5.1 kPa) is reached, maintain this pressure for the balance of the test.

3.5.4 Establishment of Maximum Flow Capacity. To establish maximum flow capacity, measure the flow rate which occurs when a new arrester is subjected to a pressure differential from intake to discharge of 2 in Hg (6.8 kPa). No test carbon shall be injected for this part of the test. The assigned flow rate shall be one-half the flow rate obtained for the conditions described above.

## EXHIBIT A (continued)

3.5.5 The flowmeter shall be an accepted design, such as a calibrated orifice. The indicated flow shall be within 5% of actual at the specified flow rate at 2 in hg (6.8 kPa).

3.6 Injecting Mechanism. The test carbon shall be injected by a feeder mechanism that shall not crush or grind the material nor shall it unduly affect the normal flow of air through the apparatus. It shall be located approximately as shown in Fig. 1. Test carbon shall be injected into the air stream at uniform rate over a period of  $15 \pm 5$  min.

3.7 Carbon Particle Collection. All carbon inside the testing apparatus which has escaped through the spark arrester during each run is to be carefully brushed into the trap and then hand sieved lightly on a U.S. Standard No. 30 (0.023 in (0.584 mm) opening) screen. Weigh the carbon particles retained for determining the arrester's particle retention efficiency.

3.7.1 Determination of Arresting Efficiency. Use the following formula for determining arresting efficiency for either SAE fine or SAE coarse carbon:

$$\% \text{ efficiency} = \frac{\text{Grams of carbon retained}}{\text{Grams used} - \text{on No. 30 U.S. screen (see 3.7)}} \times 100$$

3.7.2 For combined average effectiveness of SAE fine and SAE coarse particles:

$$\% \text{ efficiency} = \frac{\% \text{ efficiency of SAE fine} + \% \text{ efficiency of SAE coarse}}{2}$$

3.8 Test Position of Spark Arrester. The spark arrester shall be tested in the position where it is judged to be the least efficient. This may be determined by preliminary checks of arresting efficiency in various operating positions.

## 4. Exposed Surfaces Temperature Test

4.1 Exposed Surfaces Test Defined. Exhaust system temperatures will be measured at the points where the engine exhaust system can contact plane surfaces established by the extremities of the power unit or power head. In the case of a chain saw, the plane surfaces will be established by the extremities of the saw with bar removed and a line passing through the lowest points in the spaces between the bumper spikes (dogs). See Fig. 2. To determine points of measurement, place the power unit in a sufficient number of positions on a flat surface to determine where the exhaust system components can contact the surface.

4.2 Apparatus. Use a calibrated loading device as shown in Fig. 3 with temperature sensitive coatings for exhaust system surfaces (such as Detectotemp or Tempilog paints, or Tempilstik or Thermochron crayons, or equivalent) or unshielded thermocouples welded or embedded on the exhaust system.

EXHIBIT A (continued)

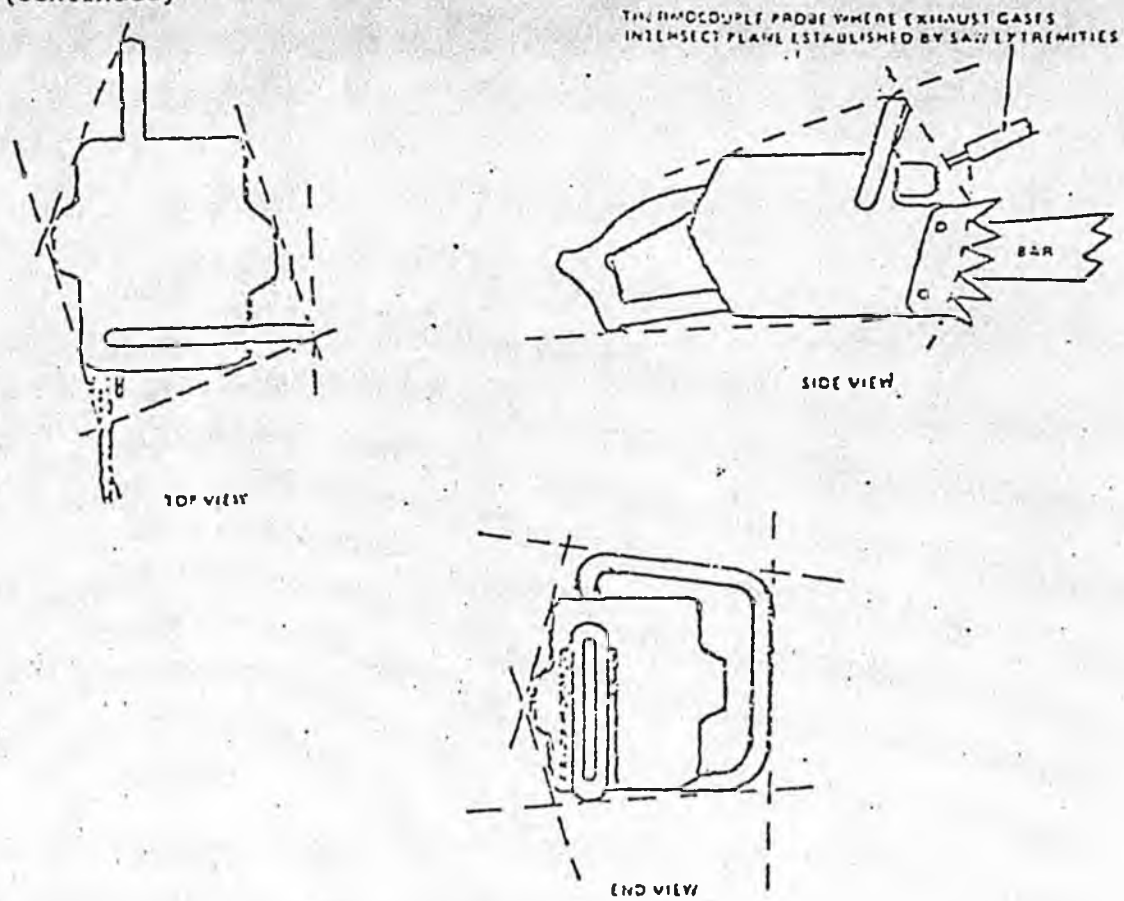


Fig. 2. Determination of locations for measuring exhaust system surface and exhaust gas discharge temperatures.

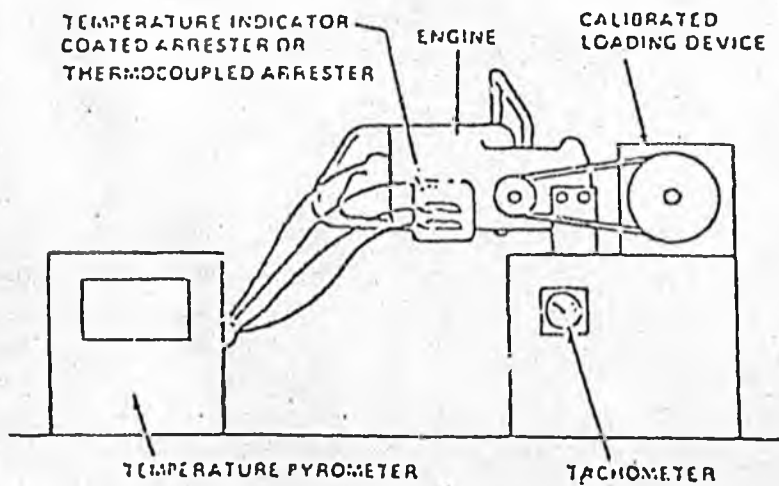


Fig. 3. Test apparatus for exhaust system surface temperature and exhaust gas discharge temperature measurement.

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EXHIBIT A (continued)

4.3 Test Method

4.3.1 Install the power unit on the loading device as shown in Fig. 3. The engine shall be in the "as new" condition.

4.3.2 Weld or embed thermocouples, or other temperature indicators in locations as determined by 4.1. Where a large contact area exists a touch pyrometer must be used to locate the hottest surfaces for exact positioning of the thermocouples.

4.3.3 Operate the engine at wide open throttle full load. The ambient temperature during test runs shall be  $68 \pm 5$  F ( $20 \pm 3$  C). Adjust the load and set the carburetor, if adjustable, for maximum power output at rated speed. Test runs shall be made at rated speed and at two additional speeds 1000 rpm above and below rated speed. For a chain saw rated at 7000 rpm, adjust for maximum power at this speed and make additional runs at 6000 and 8000 rpm. Allow all runs to become heat stabilized before recording temperatures. The engine must be tuned to factory specifications prior to test. Use the manufacturer's recommended fuel mixtures.

5. Exhaust Gas Temperature Test

5.1 Exhaust Gas Test Defined. Exhaust gas temperature will be measured at the point where the hottest gases intersect a plane surface established by the exhaust pipes of the power unit. In the case of a chain saw, the plane surfaces will be established as outlined in 4.1 and Fig. 2.

5.2 Apparatus. Use a loading device as shown in Fig. 3 and a shielded thermocouple to measure exhaust gas temperature.

5.3 Test Method. Load the engine as described in 4.3.3. During each run move the shielded thermocouple along the plane surface or surfaces defined by 5.1. When the maximum temperature is reached, record the measurement.

## Appendix

The following recommended exhaust system performance levels are based on the ignition characteristics of heavy vegetable fuels common to the Pacific Northwest region. Maximum allowable surface and exhaust gas temperatures were determined from time vs ignition temperature studies by the U. S. Forest Service.<sup>1</sup> Exhaust system design and durability criteria are based on field experience with chain saws.

### Recommended Performance Levels

1. Carbon Particle Retention or Destruction. The spark arrester used with the engine exhaust system shall be designed to retain or destroy 90% or more of the carbon particles having a major diameter greater than 0.023 in (0.584 mm), as determined when tested in accordance with 3.
2. Exposed Surface Temperature. The exhaust system shall be designed so that the exposed surface temperature shall not exceed 550 F (288 C) as determined when tested in accordance with 4.
3. Exhaust Gas Temperature. The exhaust system shall be designed so that the exhaust gas temperature shall not exceed 475 F (246 C) as determined when tested in accordance with 5.
4. Debris Accumulation. The exhaust system shall be designed in such a manner that there are no pockets or corners where flammable material might accumulate. Pockets are permissible only if it can be substantiated by suitable test that material can be prevented from accumulating in the pockets.
5. Durability. The exhaust system must be constructed of durable material and so designed that it will, with normal use and maintenance, provide a reasonable service life. Parts designed for easy replacement as a part of routine maintenance shall have a service life of not less than 50 h. Cleaning of parts shall not be required more frequently than once for each 8 h. of operation.
6. Serviceability. The spark arrester shall be so designed that it may be readily inspected and cleaned.

1 D. S. Stocksted, Research Note INT 194, "Spontaneous and Piloted Ignition Of Pine Needles", USDA Forest Service, Northern Forest Fire Laboratory, 1975.

D. S. Stocksted, Prepublication Research Note, "Spontaneous and Piloted Ignition Of Cheatgrass", USDA Forest Service, Northern Forest Fire Laboratory, 1976.

G. C. Kaminski, "Ignition Time Vs. Temperature For Selected Forest Fuels", Project Record, USDA Forest Service, San Dimas Equipment Development Center, 1974.

*From the Desk of*  
**SENATOR DON BENNETT**

Lucille Conners

486-3905

Hand trolling

30 yrs.

See

Oral

put her on list for  
notification of hearing

*From the Desk of*

**SENATOR DON BENNETT**

Contact Freeman  
with copy of this  
letter + find out  
if he would like  
to hold hearing  
re: hand trolling reqs.

should give Mr. Herd  
30 days notice

Paul C. Herd  
Point Baker Hand Trollers Assn.  
Point Baker, Ak.  
99927

December 16, 1979

Sen. Don Bennett  
Chairman, Adm. Reg. Rev. Comm.  
Pouch V  
Juneau, Ak.  
99811

Dear Sir:

I would like to request the right to appear before the committee on hand trolling regulations.

Please give as much advance notice as possible, as our mail is slow at best and travel arrangements must be made well in advance.

Sincerely,



Paul C. Herd

cc Rob Kocsis

*Call Oral  
when meeting. T. M. Herd  
30 days notice*

MILLER FALLS  
ERASE

Shirley Reynolds  
Bcx 961  
Seward, Alaska 99664

December 11, 1979

Senator Don Bennett, Chairman  
Administrative Regulation Review Committee  
Pouch V  
Juneau, Alaska 99811

Dear Senator Bennett:

I was under the impression that we had a "primary manufacture" law to protect the saw mills in Alaska. Evidently I was wrong.

At one time there was a very ineffective AAC (copy attached) which addressed this, but even that has been repealed.

I realize the "State" receives a higher price on the timber sales when they allow the logs to be exported in the round, but I don't feel it is in the best interest of the "people of the State" to permit this.

Our local mill is in financial trouble due to the Icy Bay logs being exported in the round. They will soon have no logs to process at the Seward mill and therefore our unemployment rate will again go up. What's to prevent this from happening all over Alaska?

I have taken the liberty of re-writing the old AAC which was once in the books, as an example of what I feel we actually need. In the usual bureaucratic manner, the old one rambled on--- and on--and on, until it was weakened to the point that it said, "The Director may do as he pleases."

By simply deleting most of the paragraphs and writing "shall", rather than "may", it would be a law with meaning.

I feel immediate steps must be taken to rectify this abuse of Alaskan resources. Please take appropriate measures in the next session to enact a meaningful "primary manufacture" law. Thank you.

Sincerely,

Shirley Reynolds

cc: Senators  
Freeman, Parr, Bierne, Dankworth & Holman

11 AAC 71.210. PRIMARY MANUFACTURE. (a) The director <sup>shall</sup> ~~may~~ require that primary manufacture of logs, bolts, or similar forest products take place within the state. ~~If a public hearing is held on the sale under AS 38.05.305 or other statutes, the hearing agenda will include whether to require primary manufacture within the state. The director will decide on a case-by-case basis whether to impose or waive the primary manufacture requirement, based on the following guidelines.~~

(1) Sales of 50 MBM or less will not be subject to a primary manufacturing requirement. These sales are intended to serve a local need and are not designed to support commercial operations.

~~(2) Primary manufacture will be required when necessary to assure a continuing supply of timber for an existing industry or for the establishment of a new industry.~~

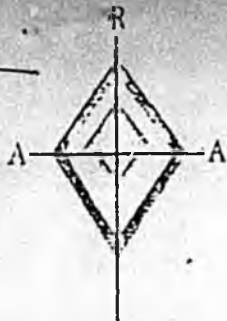
~~(3) In other cases, the director's decision must include a consideration of whether imposing or waiving the primary manufacture requirement would:~~

~~(A) permit a more complete utilization of wood fiber;~~

~~(B) prevent loss or deterioration, because of damage by fire, wind, or insects, of logs that are not marketable locally;~~

~~(C) provide forest products necessary to meet urgent and unusual needs of state residents;~~

~~(D) increase employment within the state; and~~



## RESOURCE ASSOCIATES OF ALASKA, INC.

3230 AIRPORT WAY, FAIRBANKS, ALASKA 99701  
TELEPHONE (907) 479-6231 / 6097  
TELEX: 090 35402

Mr. Ted Smith, Director  
Department of Natural Resources  
State of Alaska  
323 E. 4th Avenue  
Anchorage, Alaska 99501

January 22, 1980

Dear Mr. Smith:

I have just obtained a copy of your Department's "Notice of Proposed Changes in the Regulations of the Department of Natural Resources." I have not had time to sit down and evaluate each change, nor have I had at my disposal the State Statutes or Administrative Code. However, since written comments have to be in your office by the 25th of January, I would like to state for the record that I am opposed to any such changes at this time.

You say that these changes promise to be more efficient both to administer and to obtain. That statement is pretty hard to swallow, as I have yet to see any changes by the state or federal government to regulations that made things simpler or easier to administer.

I also note in a quick overview of the proposed changes, that when a use permit is issued, the director may revoke it at any time he "deems" necessary for no reason at all. With authorities like that, no one will ever know where they stand with the state. In a recent article of Alaska Construction & Oil, Governor Hammond stated quote, "The challenge for Alaska is to create an economic climate that will attract resource development." Now, with powers such as these proposed changes are suggesting, no company in its right mind would want to spend millions of dollars in exploration never knowing when the use permit would be jerked away from them. If these proposed regulations are adopted I would suggest that revoking a use permit could only be done for cause, not because the director or his subordinate doesn't like the company or individual that has ruffled a few feathers in the Department; with regulations as suggested, this could very well happen. These proposed changes will not assist in what the Governor's wishes are for resource development, but instead create a much harder working environment for industry.

Mr. Smith, if you will think back a couple of years, you will remember the State had real problems with commercial lease land regulations. The Governor saw fit at that time to form a commission, (which both you and I served on, along with many others), to look into those leasing problems. It took that commission months of meetings, and many of those meetings with the public, before it made its recommendation on regulation changes to the Governor. In that particular case we were dealing with a few effected sectors of the public. The proposed changes you are now requesting, effect all of the people, businesses, and industries in and out of the state. I feel this warrants a similar

Commission to that which was formed for the state leasing problem. I'm sure it will not set things back too much with your department if such a commission was formed to make recommendations on your proposed changes. It may take many more meetings, and much more input by a wide sector of the public, but the land, and the Department of Natural Resources will still be around when such recommendations are made, in other words, I see no real rush on these changes, because of the importance of them.

I request you stop the proceedings on this issue. The way these proposed changes are now being handled, gives me the feeling that they're being rammed down our throats. Remember you promise to make these changes more efficient both to administer and to obtain. Well, let's all work together to get that done so that we all understand and agree to them.

The way things are going on the D-2 issue in Congress, the public is very wary of any more changes that may effect their rights to public lands.

Sincerely,



Carl H. Marrs

CHM: ssh

cc: Governor Jay Hammond  
Commissioner Robert Leresche



# Alaska State Legislature

## ADMINISTRATIVE REGULATION REVIEW COMMITTEE

### SENATE

Don Bennett, Chairman  
M. "Ed" Dankworth  
George Hohman

### HOUSE OF REPRESENTATIVES

Oral E. Freeman, Vice-Chairman  
M.F. "Mike" Beirne  
Charlie Parr

Pouch V  
State Capitol  
Juneau, Alaska 99811

PLEASE NOTE ENCLOSED MATERIAL REGARDING LOT SEWAGE  
DISPOSAL FOR TOMORROW EVENING'S ARRC MEETING, 7:00,  
SENATE FINANCE ROOM.

Carla

Feb 16

*Sandy Copy this and send Copy to Senator Bennett*

# Sewage regs may haunt state land sale program

By SUSAN FISHER  
News-Miner Bureau

JUNEAU—A tiff in Ketchikan set it off, but other areas may face similar showdowns over sewage disposal standards under the state's land sale program.

The News-Miner learned Friday that of 50 state land parcels offered for sale to the public, only 30 were approved for on-site sewage disposal and water use.

The remaining 20 probably will carry "conditional approval," including some restrictions on the platting regarding waste disposal and water use.

Conditional approval is spelled out on the land plat, and varies depending on the intended land use. What it can mean for those wanting to build homes on conditionally approved sites is difficulty in getting bank financing if they don't abide by Department of Environmental Conservation regulations.

A land sale in Ketchikan caught the state's attention after the Legislature did not approve supplemental funding for DEC.

Earlier this week Commissioner Ernie Mueller announced he will lay off 125 DEC workers March 1 if the Legislature does not appropriate the money.

Rep. Oral Freeman, D-Ketchikan, who has been battling DEC over the sewage regulations, sees the confrontation as another administrative attempt to thwart the intent of the land sale program.

Legislators last year passed House Bill 66, ordering the state to offer the public 100,000 acres of land each year.

Doug Lowery, DEC regional en-

vironmental supervisor in Fairbanks, said a number of the state lands offered for sale in the Interior are among the conditionally approved parcels, either because of permafrost or high water tables.

The land offered for sale in Ketchikan has a muskeg soil, with a clay layer and bedrock beneath it. DEC has refused to allow on-site waste disposal, based on a soil consultant's report.

Lowery said soil studies are made after the Department of Natural Resource's Division of Lands selects the parcels to be offered for sale. The consulting work is done by hired, private firms.

DEC Deputy Commissioner Deming Cowles said improper sewage disposal can not only contaminate water supplies, but lead to several diseases, such as hepatitis and dysentery.

Consultants found an already high human waste count in Ketchikan water, Cowles said.

The public health and the ability of soils to absorb waste are among factors DEC looks at in deciding if on-site sewage disposal will be permitted, Cowles indicated.

DEC also has said no to using compost toilets on the Ketchikan lots that will be offered for sale.

What the department is pushing for is installation of a closed sewage disposal system, such as a vault privy system or a collector system with small individual package plants.

But Freeman, who supports an approach more like the old homesteading program, doesn't buy the department's arguments.

With 130 inches of rainfall each year, Ketchikan residents for years have been collecting their water off roofs, Freemansays.

And the \$2 million or more road and sewage installation the state wants to impose on the land for sale would mean an individual assessment upward of \$13,000 on each half-acre lot, Freeman said.

But he is finding himself at odds with some Ketchikan municipal officials, who are willing to go along with the improvements.

Cowles says that if the Ketchikan borough declares the land a service district, it may become eligible for state sewer and road improvement money.

The state plans to subdivide the Ketchikan land into half-acre lots, Freeman, believing larger lot sizes might make a difference, got the Division of Lands to agree that it could be offered in three- and five-acre lots.

But lot size made no difference regarding the DEC regulations.

Cowles said the plat restrictions could make it difficult for individuals to get financing, but "banks don't like to finance lots with no improvements" anyway.

The Ketchikan matter is resolvable, Cowles said, and DNR, Division of Lands, and DEC officials have been conferring with legislators this past week.

"We're talking about coming up with a couple of different types of systems," Cowles said.

## Resolution backs airport switch

Municipal government leaders from Anchorage and Fairbanks agreed Friday to press the state to work on greater local control of airports in the two cities.

The plan came in a resolution passed in the joint meeting of the Anchorage municipal assembly and the Fairbanks City Council and Borough Assembly in Anchorage.

The resolution asks for joint efforts of the local governments and the state Department of Transportation to "begin to develop local management options . . . for the acquisition, management and/or ownership of the international airports."

Anchorage leaders have announced they want to take over the Anchorage International Airport, but

for both airports to ensure a taxation burden will not be levied on the citizens of either community."

The resolution urged the transfers be made by July 1, 1981, and that transfer of airport management or ownership take place only upon the joint agreement of all local governments.

Another resolution adopted in the meeting supported a bill in the Legislature, SB 385, for building an electric power line between Fairbanks and Anchorage. The group also went on record in support of SB 294 and SB 295, which provide for construction of the Susitna River hydroelectric project by the Alaska Power Authority.

Two resolutions

February 7, 1980

QUESTION: How many acres and how many lots in proposed "Mud Bay" land disposal proposed in Ketchikan?

Ron Schonenbath, Div. of Land (465-2433)

117 Lots

265.7 acres to dispose of but 197.4 acres are right-of-ways and greenbelt areas. Actual acres 68.3

$$\begin{array}{r} 117 \overline{) 683} \\ \underline{555} \\ 98 \end{array}$$

$\frac{1}{2}$  acre per lot

$$3 \text{ acres per lot} \times 75 = 225 \text{ acres}$$

JAN 14 1980

JAY S. HAMMOND, Governor

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF FOREST, LAND AND WATER MANAGEMENT

POUCH M  
JUNEAU, ALASKA 99811

January 11, 1980

The Honorable Carroll G. Fader  
Borough Mayor  
Ketchikan Gateway Borough  
344 Front Street  
Ketchikan, Alaska 99901

Dear Mayor Fader,

This acknowledges receipt of your letter of January 8 in regards to the proposed classification and disposals of 265.7 acres of land within U.S.S. 3769 six miles northwest of Ketchikan, emphasis on the proposed homesite parcels.

I will not undertake to respond to the main thrust of your letter at this time since further discussions are indicated.

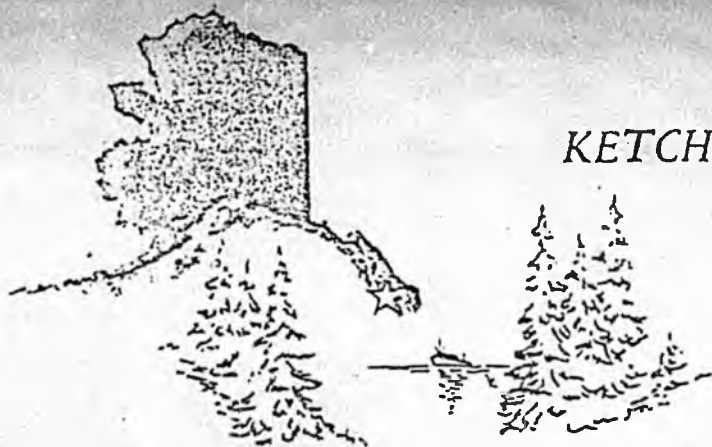
Thank you for the generous offer of assistance and that of the planning department. I am hopeful and confident a way can be found to satisfy both our statutory burden and Borough needs.

Sincerely yours,

THEODORE G. SMITH, Director

By:

Henry Lee Hall  
District Manager  
Southeastern Lands District



## KETCHIKAN GATEWAY BOROUGH

344 FRONT STREET  
KETCHIKAN, ALASKA 99901

ALASKA DIV. OF LANDS

January 8, 1980

JAN 10 1980

RECEIVED

Henry Lee Hall, Manager  
Southeastern Lands District  
Division of Forest, Land and Water Management  
Alaska Department of Natural Resources  
Pouch M  
Juneau, Alaska 99811

Attention: Ron Shonenbach, Land Management Officer

Dear Mr. Hall:

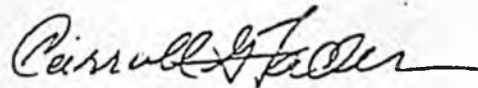
This acknowledges receipt of your letter of December 3, 1979 notifying Ketchikan Gateway Borough of the Division's intent to classify and dispose of 265.7 acres of land within USS 3769, 6 miles northwest of Ketchikan. I understand that the Division has filed a preliminary subdivision plat for Platting Board review, but has not petitioned the Borough for a rezone of the Mud Bay area. USS 3769 is currently zoned Future Development (FD) and must be rezoned to a residential category prior to development.

As discussed in previous correspondence and conversations between Borough and Division staff, we are concerned about the consequences of selling 134 parcels in the upper Mud Bay area without road and sewer improvements. The Mud Bay subdivision is not accessed by an existing road and, due to poor soil cover, is not approved by Alaska Department of Environmental Conservation for on-lot sewage disposal. Yet, as your letter states, 20 percent of the parcels are to be released under the homesite program. Hence, 27 candidates for parcels in the Mud Bay subdivision must construct dwellings in just over two years and occupy them for 35 months within the first five years to receive marketable title to their lots. Securing financing to construct a house without marketable title to the land is likely to be problematic for the homesite participant; organizing other land recipients, most of whom will not be bound by homesite deadlines, to construct and maintain costly roads and sewers may prove impossible. Due to these concerns, the Borough Assembly is recommending to the Planning and Zoning Commission (Platting Board) that the Mud Bay subdivision plat not be approved.



The plat review and rezone hearings will provide a forum for the community to discuss the proposed disposal in greater depth. Please do not hesitate to call on me or the planning department if we may assist you in preparing and submitting your rezone application.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carroll G. Fader".

Carroll G. Fader  
Borough Mayor

KC:wr

cc: Planning and Zoning Commission  
Russell W. Walker, Municipal Attorney



## KETCHIKAN GATEWAY BOROUGH

344 FRONT STREET  
KETCHIKAN, ALASKA 99901

February 6, 1980

The Honorable Oral Freeman  
State of Alaska  
Pouch V  
Juneau, Alaska 99811

Dear Representative Freeman:

The large lot vs. small lot issue revolving around the Mud Bight disposal is becoming increasingly confused. I'll start from the beginning to explain why this department is recommending to the Borough Planning Commission that the subdivision layout design of 116 lots ranging in size from one-half acre to 30,000 square feet (attachment 1) be approved.

In fall of 1978 the state was pursuing development of three large subdivisions in the Ketchikan area - Mud Bight, South Saxman and Mountain Point. The consulting engineers, Charles Pool and Associates and Tryck, Nyman and Hayes, informed the Borough Land Committee and planning department staff that the soils comprising the Mud Bight and South Saxman subdivisions were not capable of absorbing sewage disposed on-site using conventional, affordable treatment systems. Because of the Land Committee's concern that this problem would hinder not only state land disposals but also future borough disposals, planning staff urged DEC to begin working with the engineers, DNR and the Land Committee to find a means of addressing sewage disposal in areas around Ketchikan that do not have on-site absorption capabilities.

Attachment 2 includes reports prepared for and summarizing the workshop that followed which the Land Committee, the Planning Commission, the two engineering firms, DEC, DNR and the planning department attended. The engineers presented their findings and, as the memo from the Division of Lands states, they concluded that "the soils in all three areas have very limited capability to handle on site disposal of waste water." At that time it appeared that a central sewage collection and disposal system would be required to meet DEC and EPA standards. After many discussions between DEC and Borough representatives, DEC has approved use of a central collection system connecting individual treatment plants (attachment 3).

Representative Freeman

February 6, 1980

Page 2

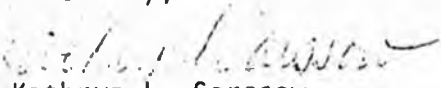
The Southeast District Lands Office notified the Borough Manager in August of 1979 (attachment 4) that, of the three proposed subdivisions, the Division was preparing Mud Bight for disposal in FY 80. As the letter states, even with lot sizes ranging from 3 to 5 acres, the plat would be filed with a notification "to the effect that the subdivision is not approved by DEC for on-site disposal unless a closed system is used."

When Pool and Associates presented three alternative subdivision layouts for Mud Bight the planning department was given a day to comment before the Division selected the layout. Staff, working with a member of the Planning Commission, sent a letter endorsing the clustered lot concept (attachment 5). The commission members have since reviewed and concurred with the department's recommendation. This design will minimize the short and long term costs of constructing and maintaining both roads and a common sewage collection system by: (1) maximizing the number of property owners to be served per road and sewer line, (2) minimizing the land area to be covered by improvements, and (3) taking advantage of the terrain to minimize costs of installing roads and a gravity flow sewage collector line. The cluster design allows for sparsely populated settlement by concentrating lots on lands suited for residential use while leaving steep, wet and muskeg soils as open space.

Based on the information we received, larger 3 to 5 acre lots would not result in DEC approval. However, a large lot subdivision would increase the costs to be borne by land owners for road and sewer line construction and maintenance. As you can see from the attached subdivision layout, if land area were a solution to the waste disposal problem, the large area of open land surrounding the half acre to 30,000 square foot lots would fulfill this requirement in the same manner as large lots - but larger lots will result in higher improvement costs.

I hope this and the attached materials explain to your satisfaction why the planning department is recommending that the Planning Commission endorse the present Mud Bight subdivision layout. If not, or if I can provide further information, please do not hesitate to call.

Sincerely,

  
Kathryn L. Carssow  
Planning Director

KC:wr  
Attachments

cc: Mayor and Borough Assembly  
Planning Commission  
Theodore G. Smith, Director, Division of Forest, Land and Water Management  
Henry Lee Hall, Manager, Southeast Land District  
Randolf Bayless, Regional Environmental Supervisor

**NYMAN  
& HAYES**

ENGINEERS / PLANNERS / SURVEYORS

Job No. 7601

September 7, 1978

Mr. Claud M. Hoffman  
Chief, Cadastral Engineer  
Division of Lands  
Department of Natural Resources  
323 East 4th Avenue  
Anchorage, Alaska 99501

**FILE**

Re: A.D.L. Subdivision, Mud Bay, Alaska

Dear Claud:

This letter is to inform you that we are holding back from doing any work on a preliminary layout for Mud Bay subdivision, per your verbal request on Thursday, August 31.

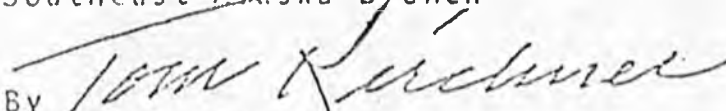
Currently we are finishing the paper work from the field data collected in Phase I: topo map; plots for penetration tests, test pits, and percolation tests. Upon completion of our office work we will bring a stop to all work other than correspondence.

Last Friday I had a meeting with Mark Bergar of the Department of Environmental Conservation. His opinion at that time was that we do not have adequate ground cover above bedrock for on-site sewage treatment. This will eliminate a subdivision designed for year-round living, although he did say that it could possibly be satisfactory for recreational use; summer homes using a Forest Service type outhouse. The Department of Environmental Conservation should be giving us a formal reply this week.

Enclosed is a map of our penetration test, test pits and percolation tests along with logs of the test pits and results of the perc tests. We are waiting for further instruction from your office.

Sincerely,

TRYCK, NYMAN & HAYES  
Southeast Alaska Branch

By   
Tom M. Kirchner

TMK:lb

Enclosure

September 7, 1978

Job 7601.0

SITE REPORT  
A.D.L. SUBDIVISION  
MUD BAY, ALASKA  
U.S.S. 3769

U.S. Survey 3769 has three general regions. The east one-third is comprised of a large hill covered with tall spruce, hemlock and cedar. The soil generally consists of one to two feet of organic and silty organic soils.

A second area that includes the north one-fourth and west one-third has a dense growth of tall spruce, hemlock and cedar. The ground is arrayed with many small gullies and streams. Through the center and west one-third of the U.S. Survey, there are several deep stream valleys, with one sinking to forty-five or fifty feet deep. Soils consist of one to two feet of organic and silty organic soil. Towards the center of the U.S. Survey there is considerable water that flows through the organic soil layers.

The center area of the U.S.S. is mostly comprised of muskeg with scattered shore pine. There are some small knolls throughout. Surface water drains either towards the collection of streams that drain into Mud Bay or toward the southeast. There are very few streams on the southeast side. Soil, for the most part, is comprised of organic and silty-organic soils that average two to five feet deep.

Bedrock for the site consists of shale with a layer of silty-sand and broken shale fragments over its surface.

OF SURVEY

NAME OF SURVEYOR

CHARLES P. PLANN & ASSOC., INC

LEGEND

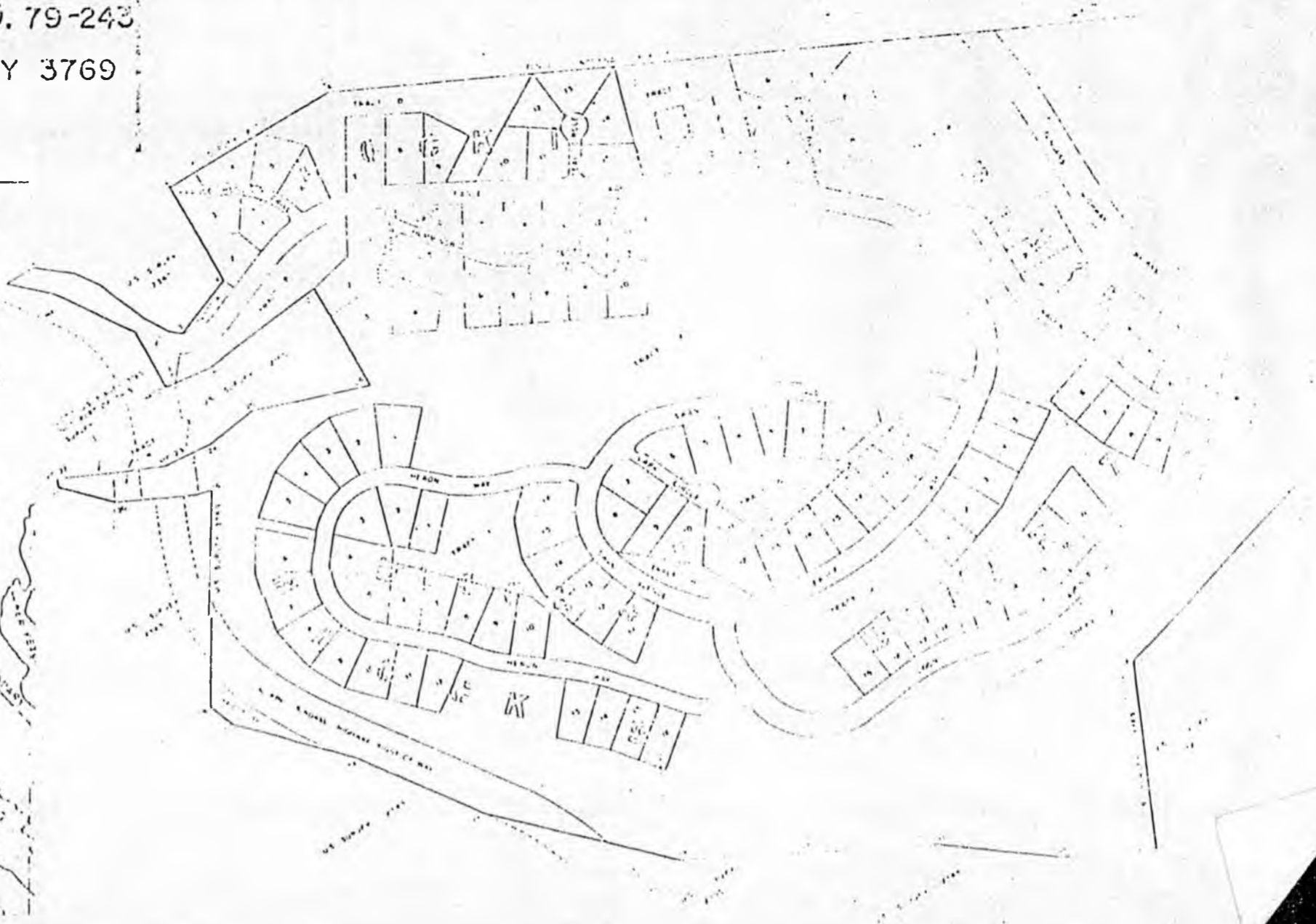
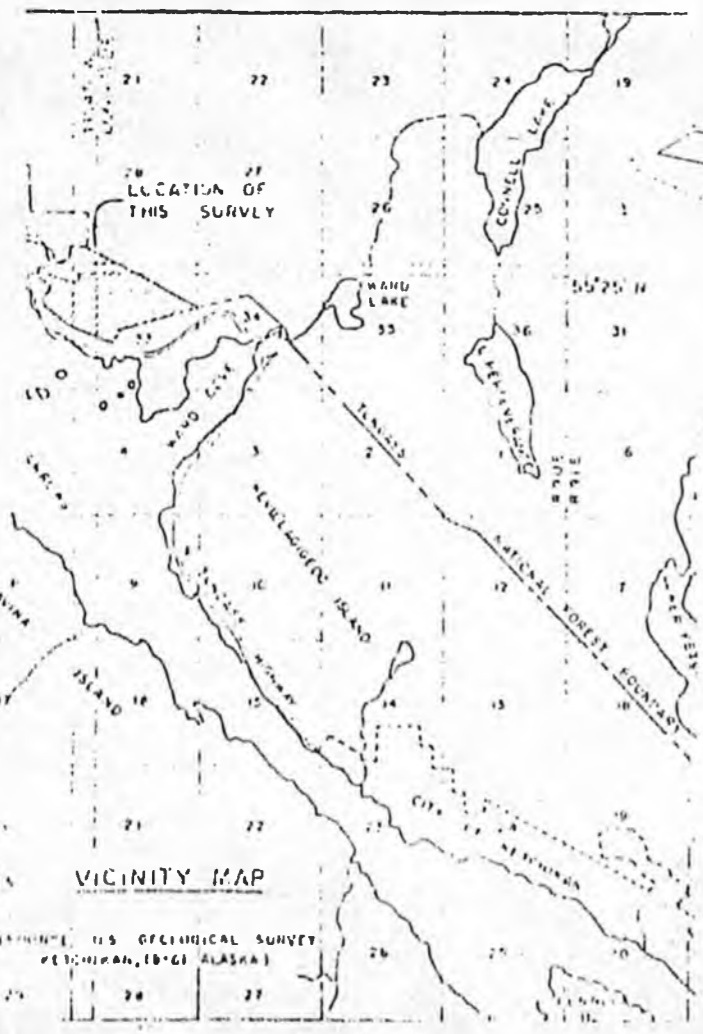
PRELIMINARY PLAN

- II GEODESIC IRON NAIL POINTS IN PLACE
- DIS. OFFICIAL OR PRIMARY BRASS CAP POINTS SET
- COPPERWELD OR ELECTROLYTIC SEAL AND POINTS SET
- 3/4 INCH IRON PIPE SET
- USC & GS, USGS, USCE, AND BLM ET AL. POINTS (DEFINED BY AGENCY AS APPLICABLE)
- ( ) BEARINGS AND DISTANCES IN PARENTHOSES ARE RECORD U.S. SURVEY 3769

STATE OF ALASKA  
 DEPARTMENT OF NATURAL RESOURCES  
 DIVISION OF TECHNICAL SERVICES  
 ANCHORAGE, ALASKA

ALASKA STATE LAND SURVEY NO. 79-243  
 SUBDIVISION OF LOT 2, U.S. SURVEY 3769  
 MUD BIGHT

ATTACHMENT I



## MEMORANDUM


DIVISION OF FOREST, LAND &amp; WATER MANAGEMENT

TO:  Andrew W. Pekovich  
District Lands Officer

DATE October 26, 1978

FILE NO 1430, 2300

TELEPHONE NO

FROM: Vic Lorn   
Land Disposal Officer

SUBJECT Land Disposals - Ketchikan

On October 10, 1978, a meeting was held in Ketchikan, at the request of the Alaska Department of Environmental Conservation, to discuss site characteristics and limitations on three subdivisions proposed by the Division of Forest, Land and Water Management. These subdivisions are at Mud Bay, Sarman and Mountain Point and have had preliminary survey and soils work done under engineering service contracts.

The meeting was well attended by our engineering consultants, representatives from the Ketchikan Gateway Borough, and Alaska Department of Environmental Conservation. A complete list is attached. Ron Thiel, project engineer; Ed Yarmak, soils; George Marks, surveyor, and I represented the Division of Forest, Land & Water Management.

Ron Thiel gave a general overview of the three projects and their present status. Bruce Hoffman and Ron Flinn spoke on DEC standards and procedures. The DEC must approve any subdivision of five or more lots. Their primary concern, in this instance, is with waste water disposal.

\* The discussions by Mr. Frank Nyman, of Trych Nyman and Hayes, on the Mud Bay project and Mr. Dave Benson, of Charles Pool and Associates, on Sarman and Mountain Point indicated soils on all three areas have very limited capability to handle on site disposal of waste water. The project areas are characterized by organic soils overlaying bedrock. The information available at this time indicates that in order to produce a quality subdivision and meet DEC standards it will be necessary to provide for central sewer collection and disposal. This requirement plus the cost of providing adequate road access will require a very sizeable capital investment prior to offering these subdivisions to the public.

We stated that our intent on any subdivision offering was to provide a quality product that met all Borough and DEC standards. Ron Thiel advised that we would continue evaluation thru our consultants and present a budget request, with back up data, for the necessary capital investment funding to enable development of all three projects.

The Borough advised that they would be taking an additional look at the projects and would keep us advised of their concerns and recommendations.

On the whole, the meeting was on a positive note and served to let the Borough and DEC know where we are with these proposals and what follow up will be necessary.

cc: Ron Thiel  
Bruce Hoffman  
Mud Pt File

Kathy Carsow  
Sarman File  
Mud Bay File

Claud Hoffman  
Dick LaFolore

## STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

SOUTHEAST REGIONAL OFFICE

JAY S. HAMMOND, GOVERNOR

POUCH 0 - JUNEAU 5511

January 23, 1980

Kathy Carssow  
 Planning Director  
 Ketchikan Gateway Borough  
 344 Front Street  
 Ketchikan, Alaska 99901

Dear Ms. Carssow:

Re: Mud Bight Subdivision

After our September 27th discussion in your office, we followed up your suggestion that a central collector sewer could be the solution to an otherwise sticky problem. Both D.N.R. and our municipal grants people agree that this is feasible, and your proposed lot layout is well designed for this type of service.

Soil conditions in the proposed subdivision are so bad that on-lot sewage disposal would simply not work and there's no way that we could legally approve on-lot sewage disposal. The alternative of central collection sewer receiving treated sewage from individual or clusters of dwellings served by their own small treatment plants has several advantages--

- lower initial sewer costs with pay-as-you-develop treatment costs, eliminating an over-sized and costly central community treatment plant receiving less than "design flow" for who knows how long
- infiltration of ground water into sewers causes no pumping expense or treatment difficulties associated with dilute sewage
- treatment costs are borne directly by the individual treater(s)

The only hitch is that an entity capable of receiving municipal grant funds and responsible for operation must administer the construction and maintenance of that central collector sewer.

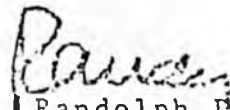
The Department presently has grant funding available to incorporated municipalities to fund 50% of the non-federal cost of water and sewerage system construction. Communities accepting funding must agree to assume responsibility for on-going operation and maintenance of the facilities constructed. Projects funded under this program include water treatment and distribution, and sewage collection. Sufficient funds presently exist to fund projects on an as requested basis.

The Department also administers grant funds allocated by EPA to the State for construction of sewage treatment facilities. These funds can cover 75% of eligible project costs (85% if the project employs innovative or alternative technology). State funds can also be used to supply half the non-federal share for such projects. Thus 87.5% of the project costs are funded by State/Federal Grants, as is the case with the facilities currently being constructed by the City of Ketchikan.

Further grant information and application procedures can be obtained by calling Bob Martin of the Department's Facility Construction and Operations office at 465-2611.

In order to relieve the apparent demand for building sites in Ketchikan, this alternative seems to be the best solution for this particular development proposal. I hope that we will be able to assist you in the development of services to the potential home owners in the area.

Sincerely,



Randolph Payliss  
Regional Environmental Supervisor

cc: Henry Lee Hall  
Ron Shonenbach  
Bob Martin  
C. Deming Cowles

## DIVISION OF FOREST, LAND AND WATER MANAGEMENT

July 5, 1979

Re: 2300 Land Disposal

Ms. Judi Slajer  
Borough Manager  
Ketchikan Gateway Borough  
344 Front Street  
Ketchikan, Alaska 99901

Dear Ms. Slajer:

This is to advise you that the Division of Forest, Land, and Water Management is planning to make a State land disposal within the Ketchikan Gateway Borough during fiscal year 1980.

Last year, as you know, we did preliminary work on three possible subdivisions within the Borough. These were at Mud Bay, Saxman and Mountain Point. At this time we plan to follow through with a plat for Mud Bay. Since Mountain Point and Saxman are still pending T. A. we do not plan to offer them during fiscal year 1980.

Lot sizes for Mud Bay will be in the 3-5 acre range. We anticipate filing the plat with a notation to the effect that the subdivision is not approved by DEC for on site sewage disposal unless a closed system is used.

The Mud Bay project would be approximately 265 acres in lot 2, USS 3769. Please advise the Southeast District if you have any comments regarding this project.

Sincerely,

Henry Lee Hall, Manager  
Southeastern Land District

by: *Andy Pekovich*  
Andy Pekovich  
District Lands Officer

cc: Kathy Carssow





## KETCHIKAN GATEWAY BOROUGH

344 FRONT STREET  
KETCHIKAN, ALASKA 99901*Engineers' report attached  
please note last page.*

October 22, 1979

Claud M. Hoffman, Director  
Division of Technical Services  
Alaska Department of Natural Resources  
703 W. Northern Lights Blvd.  
Anchorage, Alaska 99503

Dear Mr. Hoffman:

I regret that Ketchikan Gateway Borough will not be represented at the upcoming meeting of the Disposal Review Committee scheduled for this Thursday, October 26. Today we received copies of the three alternative conceptual plans developed by Charles Pool and Associates, Inc. for the state subdivision at Mud Bay. I wish to commend Pool and Associates on the quality of the conceptual design presentation and to express my appreciation to their staff for keeping us informed on their progress.

The Planning Department endorses the conceptual subdivision design labeled Alternative 2 showing clustered lots which vary in size from one-half acre to 30,000 square feet. Alternative 2 incorporates three important subdivision and land disposal objectives. First, this design concept minimizes the cost of road, sewer, and water service to be borne by the land recipient. This is achieved by: (1) maximizing the number of property owners to be served per facility extension; (2) minimizing the land area to be covered by improvements; and (3) taking advantage of the natural terrain in locating roads and gravity flow sewage collectors. Second, the cluster design allows for a rural, sparsely populated settlement pattern by concentrating development on lands most suited for residential use while leaving unsuitable steep, wet, and muskeg soils as well as streamways as open space. And lastly, Alternative 2 allows for a controlled level of resubdivision to occur in the future in an orderly and cost effective manner.

In contrast, Alternatives 1 and 3 compound development costs for the land recipient and encourage extensive, haphazard resubdivision. Use of either of these two designs is likely to result in the need for numerous short, deadend roads, sewer, and water extensions to accommodate resubdivided lots. These not only will be costly to construct but also to operate and maintain.

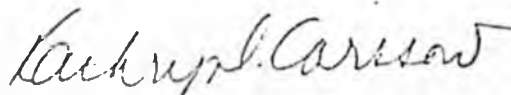
Claud M. Hoffman  
October 23, 1979  
Page two

Although we realize that Alternative 2 requires further refinement, the concepts underlying this preliminary design are sound. Prior to work beginning on the final subdivision design, we would like to confer with either your staff or Pool and Associates on specific concerns we have relating to lot layout and road access along with recommendations the Planning and Zoning Commission may have.

Due to time constraints, the Commission did not have an opportunity to review this material. We will include consideration of the three subdivision design alternatives on the agenda for the Commission's next meeting scheduled for October 30. I would appreciate your advising me of any further developments occurring between now and then.

Thank you for affording us this opportunity to comment on the conceptual design alternatives for the Mud Bay subdivision. Please feel free to include me in a conference call this Thursday if you or members of the committee wish further explanation of the department's comments. We look forward to a continued cooperative working relationship with your staff and Pool and Associates in finalizing plans for the Mud Bay subdivision.

Respectfully,



Kathryn L. Carssow  
Planning Director

cc: Planning & Zoning Commission  
Charles Pool & Associates, Inc.

KLC:lw

CHARLES POGG & ASSOCIATES, INC.  
CONSULTING ENGINEERS & SURVEYORS  
1225 Tongass Avenue  
Ketchikan, Alaska 99901



October 22, 1979

(907) 225-6626

Mr. Claude Hoffman  
Acting Director  
Division of Technical Services  
Department of Natural Resources  
State of Alaska  
703 West Northern Lights Blvd.  
Anchorage, Alaska 99503

RE: Mud Bay GSC 189

Dear Mr. Hoffman:

Enclosed are six (6) copies of each of the three (3) Master Plan Alternatives. These alternatives are purely conceptual, and are intended only to give a general overview of the relationship between the various elements of the proposed subdivision.


The road system, as depicted on these alternatives, is based on field investigation by our road location engineer. This was necessary due to apparent discrepancies between the property boundaries and contour lines, and the lack of drainage information on the aerial survey plat compiled by Tryck, Nyman and Hayes.

Alternative 1 assumes a low density large lot approach, with the 38 created lots being between 2 1/2 and 5 acres. This approach places the maximum acreage in private ownership, and has the least extensive road system requiring only about 2 1/2 miles. However, it makes little provision for green belts, and is subject to multiple resubdivisions. Due to the topography and drainage patterns, it was necessary to form some odd shaped lots.

Alternative 2 is a high density approach creating 134 lots. The lots in this alternative range between 1/2 and 2/3 of an acre, and require a 3-mile road system to connect them. The intent in this approach is to cluster the development thereby maximizing the green belts and general public use areas. This configuration is more conducive to the future development of centralized sewer and water systems.

Mr. Claude Hoffman  
Oct. 22, 1979  
Page 2

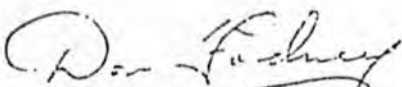
Alternative 3 is a blend of 1 and 2 establishing 81 lots in the 1 to 3 acre range, and requiring a 2.1 mile long road system. Although some of these lots encompass areas which are not ideally suited for development, an attempt was made to place the majority of these areas into green belts.

 During our field investigation, no major slide areas were noted. We did, however, find most of the soils to be poorly drained and the water table to be high throughout the majority of the area. About two-thirds of the developable area drains into the Mud Bight Basin, and the remaining one-third drains into the Refuge Cove and South Sunset Drive area. D.E.C. has stated that this area is unsuitable for on-site disposal of sewage and waste water. The development of this area will, therefore, require the formulation of a Local Improvement District (L.I.D.). The only economically feasible way of accomplishing this task is to increase the density thereby bringing the cost of these improvements within reach. Alternative 2 is designed to facilitate this end, as it clusters the development, and the road system is laid out to maximize the use of gravity sewers where possible. We feel strong consideration should be given to this alternative.

If you have any questions or need additional information, please contact our office.

Very truly yours,

CHARLES POOL & ASSOCIATES, INC.

  
By: Donald P. Fordney

DPF:fr

Enc.

cc Ketchikan Gateway Borough