

S B

730

COMMITTEE REPORT
SENATE

2/9/82

FURTHER: None

Date: 2/10/82

Mr. President:

The Committee on WATER RESOURCES has had SS 730

authorizing the Alexander Archipelago State Game Refuge

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

LAND PLANNING REPORT
PROPOSED ALEKSANDR BARRANOV STATE GAME REFUGE,
SHUYAK ISLAND
September 23, 1981

Kodiak Island Borough
Kodiak, Alaska
RECEIVED

NOV - 3 1981

7: 8: 9: 10: 11: 12: 1: 2: 3: 4: 5: 6: P.M.

Existing Classification - Forestry - SC-80-037
Recommended Classification - Wildlife Habitat
Acreage - Approximately 10,400 acres of uplands

Proposed Classification/Justification

The proposed classification is wildlife habitat. This classification action will implement the Agreement of Settlement and Consent Decree between the State of Alaska and the Kodiak Island Borough.

Location

The subject parcel is located on the eastern portion of Shuyak Island and includes adjacent small islands and offshore rocks. Shuyak Island is the northernmost major island in the Kodiak archipelago. It is 50 miles north of Kodiak, Alaska and 85 miles southwest of Homer, Alaska.

Legal Description

(Unsurveyed land--All sections are protracted)

Beginning at the E 1/16th corner common to Sections 23 and 26, T18S, R19W, S.M.;

Thence south-southwesterly, approximately 8.86 miles to the section corner common to Sections 31 and 32, T19S, R19W, S.M., and Sections 5 and 6, T20S, R19W, S.M.;

Thence westerly along the township line between Townships 19 & 20 South, Ranges 19 and 20 West, S.M., approximately 2.5 miles to the $\frac{1}{2}$ corner common to Section 35, T19S, R20W, S.M. and Section 2, T20S, R20W, S.M.;

Thence southerly along the N-S centerline of Section 2, T20S, R20W, S.M. approximately 0.5 miles to the center $\frac{1}{4}$ corner of said Section 2;

Thence southeasterly approximately 2.5 miles to the section corner common to Sections 5, 6, 7 and 8, T20S, R19W, S.M.;

Thence northwesterly, approximately 7.5 miles to the section corner common to Sections 20, 21, 28 and 29, T19S, R18W, S.M.;

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September 23, 1981
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(Unsurveyed land--All sections are protracted) (continued)

Thence northerly approximately 11 miles to the section corner common to Sections 28, 29, 32 and 33, T17S, R18W, S.M.;

Thence westerly approximately 5 miles to the section corner common to Sections 27, 28, 33 and 34, T17S, R19W, S.M.;

Thence southerly approximately 5 miles to the section corner common to Sections 21, 22, 27 and 28, T18S, R19W, S.M.;

Thence easterly approximately 1.75 miles to the E 1/16th corner common to Sections 23 and 26, T18S, R19W, S.M., the point of beginning.

This description contains approximately 10,400 acres of uplands.

Background

The Kodiak Island Borough pursuant to AS 29.18.201-.213 is entitled to select 56,500 acres from State general grant land within its boundaries and has filed such selections in the manner provided. However, a considerable portion of the land selections filed by the Kodiak Island Borough were administratively rejected by the State. As a result the Kodiak Island Borough filed three separate judicial appeals of the administrative decisions in the Superior Court, Third Judicial District under case numbers 3AN-80-3070 (Woody Island), 3AN-80-6710 (Land Classification), and 3AN-81-1385 (Shuyak Island). Both parties desired to settle the question of which lands will be conveyed to the Kodiak Island Borough without extended litigation and entered into an agreement of settlement and consent decree which was approved and adopted by the court.

Section 6 of the Agreement of Settlement and Consent Decree provides both parties shall support legislation to create a State game refuge denominated the "Aleksandr Baranov State Game Refuge" on the subject parcel.

Section 8 of the Agreement of Settlement and Consent Decree provides that in the event the lands to be included in the proposed "Aleksandr Baranov State Game Refuge" are not finally included by legislation such lands shall be at all times classified and managed by the State in a manner maintaining and enhancing such lands for wildlife habitat and public recreation purposes.

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Physical Description

Shuyak Island is the northernmost and smallest of the major islands in the Kodiak Island Archipelago, which is formed by the Kodiak Mountains, a structural southwest continuation of the Kenai-Chugach Mountains. The area is characterized by an irregular coastline with many fiords and islands. Short, swift, clear streams, small lakes and numerous small ponds are widely scattered over the glacially sculptured topography. Unlike the larger islands of the group the topography of Shuyak Island is of rather low relief with elevations ranging from 0 to 660 feet above sea level with predominantly gently rolling slopes.

Shuyak Island is in a maritime climatic zone, however, climatic data for the area is sporadic. The only major recording station is on Kodiak Island, with supporting data from ship movement through the areas. The maritime climatic zone is strongly influenced by the marine environment and characterized by moderately heavy precipitation, cool temperatures, high cloud and fog frequency with little or no freezing weather. Temperature patterns are characterized by relatively cool summers and warm winters, as compared to interior land temperatures at similar latitudes. The mean high temperature for January is 32 to 36° F while the mean high temperature for July is only 56 to 62° F. Above freezing temperatures, which are common during all winter months, usually keep the snow depth from becoming excessive at low elevations. However, the warm temperatures at low elevations also result in wet heavy snow with high water content.

Severe storms with high winds are common in the area. Surface winds are more hazardous to human activities in the area than temperature or precipitation. Sustained extreme wind speeds during storms may range from 50 to 75 knots, with gusts as high as 100 knots. From June through September when the air contains the most moisture and is warmer than the water, fog is common and the principal cause of reduced visibility.

The vegetation on Shuyak Island is characterized by well developed extensive stands of large size, over-mature Sitka spruce, stands of pole size Sitka spruce, sedges and other water tolerant plants in the lowland areas, and alder and grasses in the non-timbered areas.

Resource Values

Timber

Extensive commercial stands of mature and over-mature timber are the primary resource value of Shuyak Island. It is estimated there are 23,518 acres of timber land and 10,250 acres of non-timber land on the island.

Resource Values (continued)

Wildlife/Fisheries

There is a thriving deer herd on the island. Brown bear and elk are also present but there is little information available as to numbers or concentration. There is a high density of both sea otter and harbor seals in the bays and fiords of Shuyak Island as well as sea lions along the northeasterly end of the island.

There are numerous seabird colonies along the coastline and particularly on the small islands and offshore rocks within the area.

Agriculture

The raising of field crops is not feasible due to the poor soils and cool summer temperatures. Grazing of livestock might be possible, however, there would be bear-livestock conflicts. In addition competition between livestock and deer for available food supplies would present problems.

Reasons for State Selections

Extensive commercial stands of mature timber and potential of subsurface mineral resources were prime considerations in state selections. In addition the numerous fiords and small islands along the coast provide excellent habitat for marine mammals and seabird colonies as well as an area of unsurpassed natural beauty with a nearly unlimited potential for outdoor recreation.

Socio/Economic Conditions

The economic mainstay of the Kodiak Island Archipelago is fishing and seafood processing. The major species taken include king, tanner, and dungeness crab, salmon, halibut and shrimp. Employment in the area tends to be seasonal because of the heavy dependence on the fishing and seafood processing industry. Other employment available includes Federal, State and local government positions, trade and service industries, tourism, finance, insurance, real estate, construction, transportation and communications.

There are no communities on Shuyak Island. The City of Kodiak, the only major community in the archipelago, is 50 miles south of Shuyak Island and has a population of approximately 6,000.

KODIAK ISLAND BOROUGH

Telephones 486-5736 - 486-5737 — Box 1246

KODIAK, ALASKA 99615

October 7, 1981

The Honorable Bob Mulcahy
The State Senate
State of Alaska
Box 246
Kodiak, Alaska 99615

Dear Senator Mulcahy:

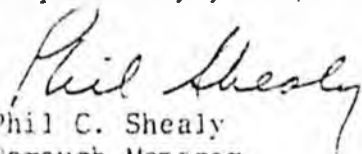
Enclosed find a certified copy of Kodiak Island Borough Resolution No. 81-71-R requesting state legislation to create the Aleksandr Baranov State Game Refuge as well as Resolution No. 81-72-R requesting state legislation to create the Shuyak Island State Park. Both resolutions were unanimously passed at the regular Borough Assembly meeting on October 1, 1981 and are accompanied by proposed language for the text of the act. We have also enclosed a copy of a letter from Dale P. Tubbs, Land Management Consultant for the Kodiak Island Borough, dated August 17, 1981 outlining the steps necessary to effect the Agreement of Settlement and Consent Decree between the Borough and the State of Alaska.

As you can see from the letter, the Kodiak Island Borough is to use its best efforts to have legislation introduced to create the state park and state game refuge on Shuyak Island for those portions not to be conveyed to the Kodiak Island Borough.

We hope that you would be able to assist in the adoption of the proposed legislation and would urge you to contact either myself or the mayor and Borough Assembly for further particulars on this matter.

Thanking you in advance for your assistance in this matter, I remain,

Respectfully yours,


Phil C. Shealy
Borough Manager

Enclosures

mdd

A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY REQUESTING STATE LEGISLATION TO CREATE THE ALEKSANDR BARANOV STATE GAME REFUGE.

WHEREAS, on August 14, 1981 the Superior Court ordered the Agreement of Consent Decree to effectively dismiss the appeals the Kodiak Island Borough brought against the Alaska Department of Natural Resources in regards to its lands selections, and

WHEREAS, a condition in the Agreement of Settlement and Consent Decree is that the Kodiak Island Borough is to use its best efforts to have legislation introduced to create a State Park and State Game Refuge on Shuyak Island for those portions not to be conveyed to the Kodiak Island Borough, and

WHEREAS, the Aleksandr Baranov State Game Refuge is established to protect fish and wildlife habitats and population of all fish and wildlife species, particularly deer and brown bear, feeding, wintering and migration areas as well as to provide public uses of fish and wildlife in their habitat for hunting, viewing, photography and general recreation in a high quality environment, and

WHEREAS, the Kodiak Island Borough has caused to be prepared a proposed bill entitled "An Act Creating the Aleksandr Baranov State Game Refuge".

NOW, THEREFORE, BE IT RESOLVED by the Kodiak Island Borough Assembly that legislation entitled "An Act Creating the Aleksandr Baranov State Game Refuge" be introduced and assigned a number providing for the creation of said state game refuge.

BE IT FURTHER RESOLVED by the Kodiak Island Borough Assembly that the Borough administration be directed to send this resolution to Senator Mulcahy and Representatives Sutcliffe and Zharoff and implore their assistance in the successful adoption of this legislation.

PASSED AND APPROVED this 1st day of October, 1981 by the Borough Assembly.

KODIAK ISLAND BOROUGH

By R. D. [Signature]
Borough Mayor

ATTEST:

By [Signature]
Borough Clerk

I, Margaret D. Duros, do certify this to be a true and correct copy of Resolution No. 81-71-B passed and approved by the Kodiak Island Borough Assembly on October 1, 1981.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 730
 Title Establish A. Baranof State Game Refuge
 Requested by Senate Resources Date 2/26/82

II. FISCAL DETAIL

Agency Affected Fish and Game
 Program Category Affected NRMEC
 BRU, Program, Or Subprogram(s) Affected Habitat Division
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		6.3				
200 TRAVEL		.5				
300 CONTRACTUAL		1.5				
400 COMMODITIES		.3				
500 EQUIPMENT		.2				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		8.8				

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		8.8				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

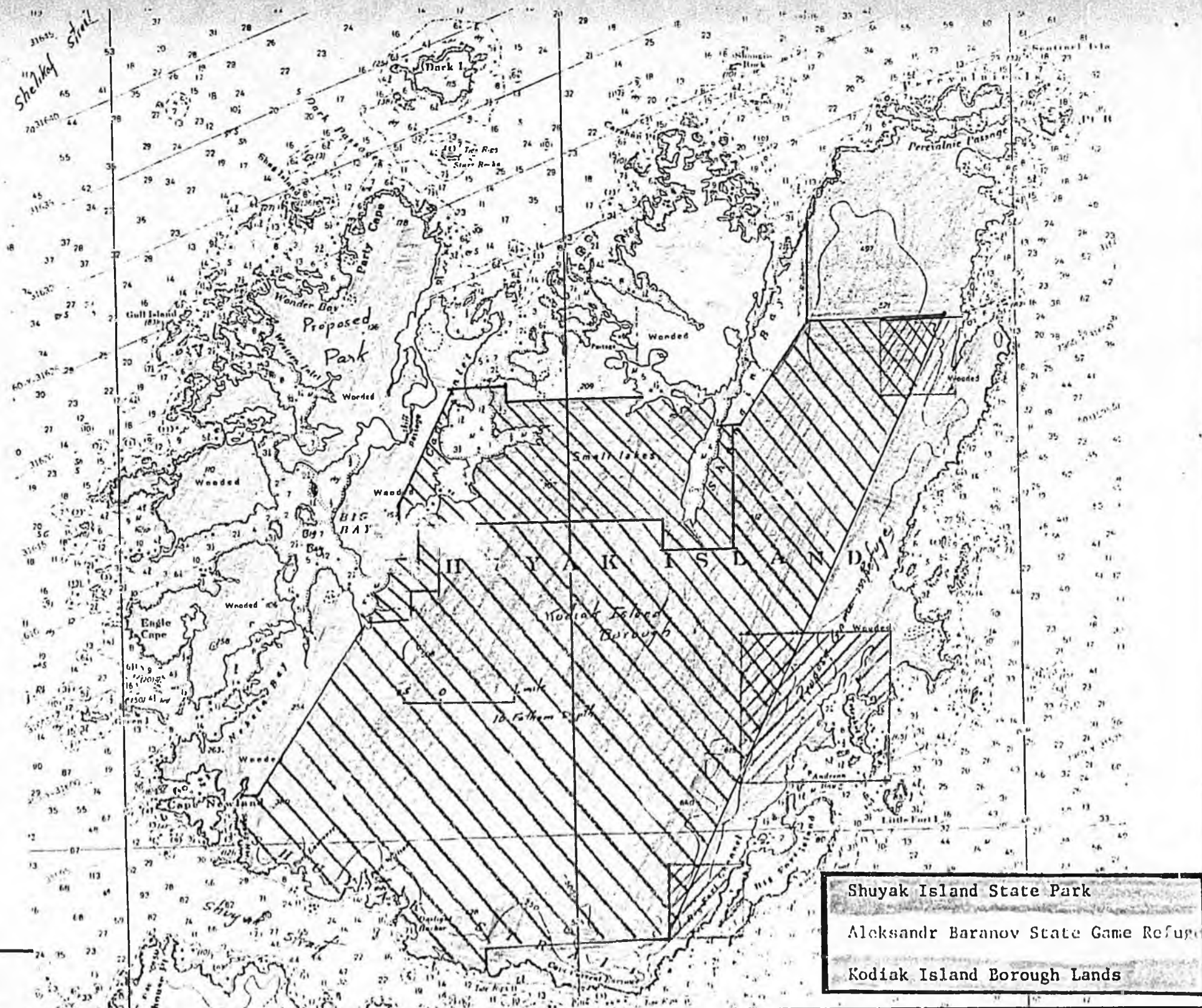
	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME		1				
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Provides for one Habitat Biologist IV for 1.5 months to prepare a management plan for the new Refuge.

IV. DATE 2/26 PREPARED BY Janet Green
 AGENCY _____
 PHONE _____

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)



Shuyak Strait

Shuyak Island State Park
Aleksandr Baranov State Game Refuge
Kodiak Island Borough Lands

Sectional analysis of SB 730

Section 1:

16.20.035 (a) This section creates the Aleksandr Baranov State Game Refuge. See provided map for area of the refuge. It is the yellow shaded area.

(b) This section establishes that the game refuge is created to provide for protection of habitat, continued opportunity for sport fishing and hunting, trapping and commercial fishing, and opportunity to view, study, and photograph the plants and wildlife.

(c) This section states that if the Kodiak Island Borough gives back to the state the land detailed in blue with purple cross-hatching on the map, it will become part of the refuge.

(d) This section requires that the Department of Natural Resources allow a 200 foot easement through the areas on the map with red cross-hatching to borough or private property. The specific locations of these easements will be mutually agreed to by the Department of Natural Resources, the Department of Fish & Game, and the Kodiak Island Borough.

(e) This section requires the commissioner of natural resources to adopt regulations governing permits for seasonal cabins or shelters on the refuge. The Department of Natural Resources must consult with the Department of Fish and Game before adopting these regulations. In no case will a permit be for a time period over 5 years.

(f) This section states that the Boards of Fisheries and Game will manage the fish and wildlife within the refuge.

Sectional analysis of SB 731

Section one:

Sec. 41.20.506 establishes that the purpose of the Shuyak Island State Park is to protect the recreational and scenic resources, the fish and wildlife habitat, and to preserve the use of the area for hunting, fishing, trapping, and compatible recreational activities.

Sec. 41.20.507 (a) states that the state owned uplands and freshwater bodies in the following areas are designated as the Shuyak Island State Park. This is the area in green on the map.

(b) states that if the Kodiak Island Borough gives any of the land in the following sections back to the state, it may be added to the park by proclamation of the Governor. This is the area in blue with black cross-hatching.

Sec. 41.20.510 (a) designates the Department of Natural Resources as the agency with responsibility for management of the uplands and freshwater bodies in the park.

(b) designates the Department of Fish and Game as the agency with the responsibility for management of the fish and game resources in the park.

(c) requires the Department of Natural Resources to consult with the Department of Fish and Game before adopting regulations affecting the park.

(d) requires the Department of Fish and Game to consult with the Department of Natural Resources before adopting regulations affecting fish and game in the park.

Sec. 41.20.511 (a) states that DNR will designate incompatible uses in the park.

(b) states that shooting in the park is allowed, except in areas that are closed because of public safety.

(c) allows ADF&G to engage in stream rehabilitation and enhancement.

(d) states that regulations governing public uses in the park will provide reasonable access for hunting, fishing, and trapping.

(e) requires that reasonable access be allowed to the Depart-

Sectional analysis of SB 731 continued

ment of Public Safety and the Department of Fish and Game for the purposes of management and enforcement of fish and wildlife.

Sec. 41.20.515 allows the state to purchase property in the park. The state may not acquire land by eminent domain.

Section two adds an immediate effective date.



Alaska State Legislature
Senate

JUNEAU, ALASKA

TO: Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee

FROM: Senator Bob Mulcahy *Bob Mulcahy*

SUBJ: SB 730 and 731

DATE: March 3rd, 1982

During the March 1st hearing on SB 730 and 731, two questions were raised: the first question was in regards to private lands on Shuyak Island, and the second question was in regards to surveying costs being mentioned in the court settlement.

The only patented private lands on Shuyak Island lie outside of the proposed park and the proposed game refuge. These lands will not be affected by either of these bills. There are several small areas claimed under the Native Land Claims that are scattered around the island; these are at present being adjudicated.

There is nothing in the court settlement about surveying costs at all. I am informed by the Kodiak Island Borough that there is no concern about the question of survey costs at this time.

cc: Senator Gilman

LEGISLATION SUMMARY

SB 730: "An Act establishing the Aleksandr Baranov State Game Refuge."

GENERAL: This bill would create the Aleksandr Baranov State Game Refuge, occupying roughly the eastern and northeastern coastal areas of Shuyak Island, and islands within 1 mile of the designated area on Shuyak Island proper.

Sec. 1: Establishes the Aleksandr Baranov State Game Refuge. Describes the area to be included in the Refuge by township, range and section, including all islands within 1 mile of the easterly shore of the areas designated. The Refuge shall consist of all state-owned uplands and uplands that may be acquired by the state in the future lying within the designated area, and any Kodiak Island Borough land selections within certain designated parcels if relinquished back to the State.

Provides for the following uses in the Refuge: habitat protection and enhancement; recreational uses, including fishing, hunting, continued trapping and commercial fishing; opportunity to observe plants and wildlife.

Provides for access to private and borough property within or adjacent to the Refuge through the reservation of easements by the Department of Natural Resources.

Provides for the adoption of regulations governing the issuance of 5-year (or less) renewable seasonal use permits for cabins or shelters within the refuge, with special consideration for owners of existing cabins or shelters. The regulations shall be adopted by the Department of Natural Resources with the approval of the Department of Fish and Game.

The Boards of Fisheries and Game shall adopt regulations governing the taking of fish and game within the Refuge.

PRIME SPONSOR: Mulcahy

CO-SPONSOR(S): None

SENATE RESOURCES COMMITTEE
LEGISLATION CHECKLIST

SB 730

BILL NUMBER

IDENTIFICATION:

BILL NAME: establishing the Aleksandr Baranov State Game Refuge

SPONSOR(S): Mulcahy

RELATED BILLS PENDING: SB 731

DATE INTRODUCED: 2/9/82

REFERRALS Resources

INITIAL RESEARCH:

INITIAL BILL SUMMARY COMPLETED ✓ *2/9/82*

SUMMARY BY LEGAL DIVISION:
DEPT. OF LAW SUMMARY:

SPONSOR CONTACTED FOR BACKUP
MATERIALS: *Final Sale. Basis Resolution in favor*
- hand plan. report
- state/basis agreement

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR
REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPARATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET: *3/1/3/5*

STAFF MEMO TO COMMITTEE:

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/CS DRAFTED:

✓ *DOR - Helton - Wolfe 2400*
✓ *F & G - Greg Voa 4100*
✓ *Env.*



Official Business

Alaska State Legislature

Senate Resources Committee

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senate Resources Committee
FROM: Senate Resources Committee Staff
RE: Committee Meeting, Friday, March 5, 1982
DATE: March 4, 1982

Please find attached background information for this Friday's meeting on the following bills:

- SB 730 An Act establishing the Aleksandr Baranov State Game Refuge
- SB 731 An Act establishing the Shuyak Island State Park
- SB 769 An Act removing the requirement that power projects constructed under the energy program for Alaska be owned by the state.

The meeting will be held at 1:30 p.m. in the Beltz Room.

SHUYAK ISLAND PARK AND REFUGE LEGISLATION: SB 730 AND SB 731

THE SETTLEMENT AGREEMENT TO FINALIZE THE KODIAK ISLAND BOROUGH LAND ENTITLEMENT RESULTED IN MANY ADJUSTMENTS TO THE ORIGINAL KODIAK ISLAND BOROUGH SELECTIONS. IN THE CASE OF SHUYAK ISLAND THE MOST DESIRABLE AREAS (THE WEST AND EAST COASTAL AREAS) WERE GIVEN UP AND LESS DESIRABLE LANDS WERE TAKEN IN THE CENTER OF THE ISLAND. THE STATE, THROUGH THE DEPARTMENT OF NATURAL RESOURCES, STRESSED THE WEST SIDE OF THE ISLAND WAS OF GREATER INTEREST TO THE STATE FOR STATE PARK LAND AND THE DEPARTMENT OF FISH AND GAME STRESSED THE EAST SIDE OF THE ISLAND SHOULD BE PRESERVED AS GAME HABITAT.

IN FINALIZING THE SHUYAK ISLAND SELECTIONS THE BOROUGH INCLUDED A CLAUSE IN THE SETTLEMENT AGREEMENT TO LOCK THE STATE INTO KEEPING THE RELINQUISHED BOROUGH SELECTIONS ON THE ISLAND AS PARK AND REFUGE LAND. THE CLAUSE STATES THAT IF THE STATE EVER CHANGES THE INTENDED PARK AND REFUGE USE THE BOROUGH HAS THE FIRST RIGHT TO OBTAIN THE RELINQUISHED LANDS. BOTH THE PARK AND GAME PEOPLE STATED THAT THEIR ABILITY TO HOLD TO THIS AGREEMENT WOULD BE STRENGTHENED IF LEGISLATION WAS PASSED TO DEDICATE THE LANDS. THE BOROUGH AGREED TO INTRODUCE SUCH LEGISLATION AS AT THE TIME OF NEGOTIATIONS IT WAS TOO LATE FOR THE STATE TO INTRODUCE IT.

ALSO IN THE NEGOTIATIONS OF THE OUT OF COURT SETTLEMENT, THE STATE REPRESENTATIVES DIVIDED UP THE REMAINDER OF THE ISLAND TO ABSORB ANY LANDS RELINQUISHED BY THE BOROUGH. (AS 41.20.507 (b) OF SB 731 AND AS 16.20.035 (c) OF SB 730). ALONG WITH THIS THEY INCLUDED ALL THE TIDE AND SUBMERGED LANDS OUT TO APPROXIMATELY THE THREE MILE LIMIT. AT THIS POINT THE NEGOTIATIONS WERE WEARING THIN. RATHER THAN NEGOTIATE THE ISSUE ANY FURTHER, THE BOROUGH STATED IT WOULD MAKE A REASONABLE EFFORT TO INTRODUCE THE PARK AND REFUGE LEGISLATION BUT WOULD NOT SUPPORT THE INCLUSION OF THE TIDE AND SUBMERGED LANDS.

AT THIS POINT THE INTRODUCED LEGISLATION DOES NOT INCLUDE ANY TIDE AND SUBMERGED LANDS. THE KODIAK ISLAND BOROUGH ASSEMBLY VOTED TO HOLD THIS POSITION EVEN THOUGH SUBSEQUENT PROPOSALS WERE MADE TO INCLUDE THE TIDE AND SUBMERGED LANDS OUT TO THE 10 FATHOM DEPTH (60 FEET) WHICH EXTENDS UP TO ONE MILE OFFSHORE AND INCLUDES THE EXTENSIVE BAY AREAS. BOTH PARKS AND GAME WANT THE WATER INCLUDED. ONE OF THE BIGGEST CONCERNS OF THE KODIAK ISLAND BOROUGH IS THAT PRESENTLY OPEN FISHING WATERS MAY BE CLOSED OR VESSEL USE IN THESE WATERS COULD BE CLOSED BY A DIRECTORS ORDER.

IF ANY TIDE AND SUBMERGED LANDS ARE INCLUDED IN THE LEGISLATION IT WILL BE NECESSARY TO INCLUDE A COMPATABLE USE CLAUSE. WITHOUT IT THE PARKLAND REFUGE DESIGNATIONS COULD PRECLUDE THE PLACING OF WARFS, DOCKS, PILING, ETC. IN TIDE AND SUBMERGED LANDS TO UTILIZE THE ADJACENT UPLANDS. ANOTHER CLAUSE SHOULD BE ADDED TO ALLOW FISHING, (BOTH COMMERCIAL AND SPORT) WITHIN THE PARK AND REFUGE WATERS. THESE CLAUSES WERE INCLUDED IN THE FEBRUARY 6, 1982 DRAFT OF THE BILLS.

A BOTTOM LINE ISSUE THE KODIAK ISLAND BOROUGH'S INTERESTS ARE PROTECTED BY THE AGREEMENT OF SETTLEMENT AND CONSENT DECREE APPROVED BY THE COURT. THE EFFORTS OF THE STATE AGENCIES TO EXPAND THE PROPOSED LEGISLATION TO INCLUDE TIDE AND SUBMERGED LANDS GOES BEYOND THE ORIGINAL ISSUE OF THE BOROUGH SELECTION ENTITLEMENT AND ERRODES THE KODIAK ISLAND BOROUGH'S OPPORTUNITIES TO ENHANCE ITS GENERAL WELFARE AND USE OF ITS LAND ENTITLEMENT.

SIGNED BY DALE P. TUBBS,

LAND CONSULTANT FOR THE
KODIAK ISLAND BOROUGH

CONSENT DECREE

The parties to this agreement are the State of Alaska, Department of Natural Resources, through its Division of Forest, Land and Water Management ("the State") and the Kodiak Island Borough ("KIB").

Whereas, pursuant to AS 29.18.201-.213 KIB is entitled to select 56,500 acres from state general grant land within its boundaries, and has filed such selection; in the manner provided by statute; and

Whereas, a considerable portion of the land selections filed by KIB were rejected by the State on the grounds that the lands selected had been previously classified by the State for a use or purpose which disqualified those lands for conveyance to KIB pursuant to AS 29.18.201 et seq., or had been designated as state interest lands pursuant to AS 38.05.047; and

Whereas, by reason of said selections by KIB and rejections by the State, the parties are currently involved in three separate judicial appeals from administrative decisions which are now pending in the Superior Court, Third Judicial District under case numbers 3AN-80-3070 (Woody Island), 3AN-80-6710 (Land Classification); and 3AN-81-1385 (Shuyak Island); and

Whereas, both parties desire to settle finally the question of those lands which will be conveyed to KIB in satisfaction of its statutory land entitlement, and further desire to resolve this question in the near future without extended litigation, and to resolve pending litigation.

Now, therefore, the parties agree as follows:

1. a. The State agrees to convey to KIB, as soon as practicable, the lands now owned by the State or hereafter acquired pursuant to Section 6 of the Alaska Statehood Act and which are described in Exhibit A (Shuyak Island) and Exhibit B (other lands). Open to Entry parcels under lease within lands described in Exhibit B which expire shall be conveyed to KIB upon expiration. All conveyances shall be completed not later than nine (9) months after execution of this agreement, except that, with respect to lands as to which the state has not yet received tentative approval, within nine (9) months after tentative approval.

b. KIB agrees that it will invoke its land regulatory powers, including zoning powers, to disallow in the west one-half of Section 10, T. 19 S., R. 20. W., S.M. fronting on Big Bay on Shuyak Island heavy industrial uses incompatible with use and enjoyment of adjacent park or public recreation lands. The Borough agrees to guarantee reasonable public access through the above described parcel for the purpose of utilizing adjacent park or public recreation lands. The State may reserve in the patent to these lands the right to re-enter and take possession upon the determination, by a court of competent jurisdiction, that KIB has breached this paragraph.

2. KIB agrees to execute a quitclaim deed to the State for the property described in Exhibit C (Pillar Creek Watershed and Woody Island).

3. In the event that at any time in the future the state-selected or state-tentatively approved lands described in Exhibit D are finally determined not to be subject to conveyance under the Alaska Native Claims Settlement Act (P.L. 92-203, 43 U.S.C. Sec. 1601 et. seq.,) as amended for any reason, the State agrees that it will convey those lands to KIB upon receipt

of written notice from KIB of its election to receive such lands.

4. In the event that all or part of the lands described in Exhibit D are conveyed to KIB, KIB agrees to reconvey to the State, (in sequence from an easterly to a westerly direction), an equal number of acres from lands on Shuyak Island previously conveyed by the State to KIB pursuant to Paragraph 1.a. of this Agreement. Such reconveyance by KIB to the State shall be made first from Area I, and then from Area II which are described below:

Area I. The area within protracted Sections 29, 30, 31, and 32, T. 19. S., R. 19 W., S.M. lying west of the agreed-upon proposed Aleksandr Baranov Game Refuge described in Paragraph 6 below.

Area II. Those lands lying within T. 18 S., R. 19 W. and T. 18 S., R. 20 W., S.M. which are east of Carry Inlet and west of Shangin Bay.

5. If lands described in Exhibit D and which are conveyed by the State to KIB pursuant to paragraph 3 of this Agreement exceed in acreage the lands designated as Area I and Area II in Paragraph 4 above, KIB agrees to reconvey to the State additional sections of land on Shuyak Island until such reconveyances within Area I and Area II are equal in total acreage to the acreage of the lands described in Exhibit D which have been conveyed to KIB. Such additional conveyances shall be designated by KIB from any lands on Shuyak Island then owned by KIB, or designated for transfer to KIB pursuant to this Agreement, provided that such lands are compact and contiguous with other lands on Shuyak Island which are then in state ownership.

6. KIB agrees to attempt to obtain introduction and passage of legislation in the Alaska State Legislature which

would create a state game refuge denominated the "Aleksandr Baranov State Game Refuge" consisting of the lands described in Exhibit E. KIB agrees to support introduction of such legislation beginning with the 1981 legislative session, and to support early passage of such legislation, provided that KIB is not obligated to support inclusion of tide or submerged lands except upon mutual agreement with the state with respect to the regulatory implications of such inclusion. The State agrees to support such legislation in good faith, by such oral and written testimony as may be appropriate.

7. KIB agrees to attempt to obtain introduction and passage of legislation in the Alaska State Legislature creating state park denominated the "Shuyak Island State Park" and consisting of all lands described in Exhibit F. KIB agrees to support introduction of such legislation beginning with the 1981 legislative session, and to support early passage of such legislation, provided that KIB is not obligated to support inclusion of tide or submerged lands except upon mutual agreement with the state with respect to the regulatory implications of such inclusion. The State agrees to support such legislation in good faith, by such oral and written testimony as may be appropriate.

8. In the event that lands to be included in the proposed "Aleksandr Baranov State Game Refuge" or the proposed "Shuyak Island State Park", referred to in Paragraph 6 and 7 respectively, are not finally included by legislation in the proposed game refuge or park, such lands shall be at all times classified and managed by the State in a manner maintaining and enhancing such lands for wildlife habitat and public recreation purposes. Otherwise KIB shall be entitled to select those lands not so classified and managed, and the State shall thereupon promptly transfer the selected lands to KIB. Upon transfer of such lands to KIB, KIB shall reconvey equivalent acreage to the State from Shuyak Island in the manner provided in Paragraph 4, and thereafter in the manner provided in Paragraph 5.

9. The State will designate, on lands owned by it, public easements for the benefit of KIB and the public, each of which shall be 200 feet in width, to provide public access from the line of mean high tide westerly to lands on Shuyak Island which have been conveyed to KIB pursuant to Paragraph 1 of this agreement. The easements will be in the following areas, as more specifically indicated on the attached map entitled Exhibit H, and further subject to exact location in the field:

- A. Traversing Section 26, T. 10 S., R. 19 W., S.M.;
- B. Traversing Sections 15 and 16, 21 and 22, of T. 19 S., R. 19 W., S.M.;
- C. Traversing Section 32, T. 19 S., R. 19 W., S.M..

In the event that lands are conveyed to the State pursuant to paragraphs 4 and 5 above, those easements designated in subparagraphs A, B, and C of this paragraph shall be reserved so as to continue through such lands.

10. The State shall reserve the easements described in Exhibit G. With respect to easements reserved pursuant to AS 38.05.127 or other applicable provision of law, on all other lands conveyed to KIB, their location shall be determined by the borough, subject to approval by the Department of Natural Resources, prior to conveyance by the borough to a private third party.

11. The State and KIB agree that this Agreement is intended by the parties to resolve all outstanding legal and factual differences between them concerning the application of the Municipal Land Selection Act (AS 29.18.201-.213), including particularly, pending Superior Court lawsuits numbered 3AN-80-3070, 3AN-80-6710, and 3AN-81-1385. To achieve this result, the parties agree to accomplish the following actions promptly upon execution of this Agreement:

- a. KIB agrees to relinquish its nominations, selections, and selection approvals not designated for transfer to KIB in this Agreement and further

agrees not to litigate or otherwise challenge the retention by the State of such lands.

- b. KIB agrees not to litigate or otherwise challenge retention by the State of those public easements depicted in Exhibit G.
- c. The State agrees to accept from KIB the relinquishment of those nominations, selections, and approved selections required by this Agreement, and to accept future selections and reconveyances by KIB pursuant to Paragraphs 4, 5, and 8.
- d. All previous transfers of land from the State to KIB are hereby affirmed. Nothing herein affects KIB's right to apply for land under AS 38.05.315 or other applicable law, excluding AS 29.18.201-213.
- e. The State and KIB agree that the terms of this Agreement shall constitute a consent decree and judgment to be presented to the Superior Court for entry in final settlement and dismissal of all pending litigation between the parties with respect to KIB land selections under AS 29.18.201-213, such pending litigation consisting of the following pending judicial appeals from administrative decisions:
 - 3AN-80-3070 (Woody Island)
 - 3AN-80-6710 (Land Classification)
 - 3AN-81-1385 (Shuyak Island)
- f. All such litigation shall be dismissed upon execution and court approval of this Agreement and Consent Decree, with each party to bear its own costs and attorney's fees.

12. The State and KIB agree that this Agreement, together with its Exhibits A through H, embodies all of the terms and conditions of the Agreement for settlement of pending litigation and for conveyance of all lands due to KIB pursuant to AS 29.18.201-.213, and that no additional enforceable agreements or commitments exist between them with regard to this subject which are not contained in the text of this Agreement and its Exhibits. The parties reserve the right, by mutual consultation and agreement, to correct if necessary any technical errors or omissions in the specific land descriptions comprising Exhibits A through H herein, so as to more nearly conform to the mutual intentions of the parties with regard to implementation of this Agreement

DATED this 19th day of June, 1981.

DEPARTMENT OF NATURAL RESOURCES

KODIAK ISLAND BOROUGH

[Signature]
Commissioner

[Signature]
Borough Mayor

STATE OF ALASKA

Attest: [Signature]
Borough Clerk

[Signature]
Director, Division of Forest,
Land & Water Management

Attest: [Signature]
Municipal Land
Selections Officer

APPROVED AS TO FORM:

[Signature]
Thomas E. Graham
Assistant Attorney General
State of Alaska

[Signature]
Richard W. Garnett III
Attorney, Kodiak Island
Borough

ORDER

IT IS ORDERED, that the foregoing Agreement of Settlement and Consent Decree is hereby adopted and approved and

shall be enforceable as a judgment of the court.

DATED this 12 day of August, 1981 at
Anchorage, Alaska.

S/ Daniel A. Moore Jr.
Judge of the Superior Court

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

March 1, 1982
1:30 p.m.

Beltz Room
Capitol - Room 211

MEMBERS PRESENT

Senator Fahrenkamp
Senator Fischer
Senator Gilman
Senator Mulcahy
Senator Sturgulewski

Hearing:

SB 730 An Act establishing the Aleksandr Baranov State Game Refuge.
SB 731 An Act establishing the Shuyak Island State Park.
SJR 59 Relating to support for legislation establishing a National Garden Week.

SB 730 and SB 731

Greg Vos, Alaska Department of Fish and Game, was present to answer questions.

Senator Mulcahy provided background. The bills are the result of negotiations between the Kodiak Island Borough and the Department of Natural Resources, as part of the municipal entitlement settlement. The proposed refuge is on the east side of Shuyak Island to protect the winter deer habitat. The proposed park is on the west side of the island, with the Kodiak Borough maintaining the core portion of the island and being provided with an easement.

Joyce Munson, representing the Kodiak Borough, spoke in support of SB 730 and 731, stating the Borough would oppose any amendments that would include tidal or submerged lands.

Senate Resources Committee
March 1, 1982
Page 2

Hilton Wolfe, Division of Parks, Department of Natural Resources,
expressed support for SB 731

After discussion by the Committee concerning payment for
survey work, Senator Fahrenkamp stated that Senate Bills 730
and 731 would be held until this question was answered,

SJR 59

Carol Burnside, Aide to Senator Colletta, was present to answer
questions.

Senator Mulcahy moved the bill with individual recommendations.

The meeting was adjourned at 1:50 p.m.

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
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Senate

Committee on Resources

March 5, 1982
1:35 p.m.

Beltz Room
Room 211 - Capitol

MEMBERS PRESENT

Senator Fahrenkamp
Senator Gilman
Senator Sturgulewski
Senator Kertulla, President

Hearing:

SB 730 An Act establishing the Aleksandr Baranov State Game Refuge.
SB 731 An Act establishing the Shuyak Island State Park.
SB 769 An Act removing the requirement that power projects constructed under the energy program for Alaska be owned by the state.

SB 730

Senator Sturgulewski moved the bill with individual recommendations.

SB 731

Chip Dennerlein, Director, Division of Parks, Department of Natural Resources, spoke in support of the bill, but suggested two amendments: page 1, line 18 and page 5, line 17 replace "compatible" with "other", to avoid creating classes of users by implication. The Division of Parks would like to participate in writing the Committee Report or a letter of intent concerning tidelands inclusion, to assure them authority to build a boat ramp or dock in the future. The fiscal note on this bill is zero, as easements will be platted on paper only, and not constructed.

Bob Hinman, Deputy Director, Game Division, Alaska Department of Fish and Game, spoke in opposition to the suggested amendments, stating that "compatible" may have been deliberate wording so as not to exclude commercial hunting or trapping.

Senator Sturgulewski moved that the bill be held until Monday, so this concern could be resolved.

SB 769

Senator Gilman explained the reason for this bill. Bradley Lake is a Corps of Engineers hydro project. Feasibility studies and design work have been completed, but there are no federal funds for construction. SB 769 would allow the State to put money into the project without owning it. However, the Legal Division has informed Gilman that the proposed Committee Substitute may be unconstitutional because it is "special legislation." In addition, there have been several different cost estimates for the project. Gilman suggested the bill be held until he meets with the Alaska Power Authority, the Corps of Engineers, and the Office of Budget and Management to discuss the project.

Senator Fahrenkamp appointed Senator Gilman to chair a committee to resolve this issue, at which time the Resources Committee will expedite their action on SB 769.

The meeting was adjourned at 2:15 p.m.

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
OCN GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI



Senate

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
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Committee on Resources

March 8, 1982
1:35 p.m.

Beltz Room
Room 211 - Capitol

MEMBERS PRESENT

Senator Fahrenkamp
Senator Fischer
Senator Eliason
Senator Gilman
Senator Mulcahy
Senator Sturgulewski

Hearing:

SB 730 An Act establishing the Aleksandr Baranof State Game Refuge.
SB 745 An Act extending the lapse date for the FY 82 appropriation for land disposal surveys.
SB 759 An Act relating to the size of trapping cabins.
SB 832 An Act extending the lapse date for the FY 82 appropriation for the Citizen Advisory Commission.

SB 745

Jeff Haynes, Deputy Commissioner, Department of Natural Resources, explained that this capital appropriation is necessary to continue survey work (\$11 million) and municipal grants (\$2 million).

Senator Fischer asked that SB 832 be heard before any action was taken on SB 745.

SB 832

Senator Fischer stated he would like SB 745 and SB 832 combined since they both amend the same line of the same statute.

Senator Fahrenkamp expressed opposition in consideration of the sponsors.

Senator Mulcahy moved SB 745 and SB 832 with individual recommendations.

Senate Resources Committee

March 8, 1982

Page 2

SB 759

Jeff Haynes stated that the existing statute limits the size of trapping cabins to 192 square feet. DNR feels the increase to 768 square feet that SB 759 would provide is too great. A smaller size would discourage the establishment of a permanent residence on a \$10/year trapping permit.

Senator Fahrenkamp said a Committee Substitute had been prepared that limits the size to 400 square feet.

Senator Eliason disagreed with the size limit, stating that criteria for obtaining a permit limit the cabin's use to trapping.

Senator Gilman moved the adoption of the Committee Substitute for SB 759. He then moved CSSB 759 with individual recommendations.

SB 730

Senator Sturgulewski moved to rescind the Committee's action on SB 730.

Senator Fahrenkamp explained that after action was taken last Friday, the land manager in Kodiak called about a technical error in the bill.

Senator Mulcahy stated that on page 1 line 29, and page 2 line 1, "21" should read "23". He moved the adoption of the Committee Substitute for SB 730. He then moved CSSB 730 with individual recommendations.

The meeting was adjourned at 2:00 p.m.