

HB

209

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE. (907) 465-2400

OFFICE OF THE COMMISSIONER

April 27, 1987

The Honorable Sam Cotten  
Co-Chair, House Resources Committee

The Honorable Adelheid Herrmann  
Co-Chair, House Resources Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99801

Dear Representatives Cotten and Herrmann:

Subject: House Bill 289 which relates to the management of land.

Position: The Department of Natural Resources supports the amendments to Title 38 that address the unintended effects of the Supreme Court's Alaska Survival decision. Alaska can ill afford the chaos that could result from the retroactive application of the Survival decision. In its current economic condition the state should avoid a moratorium on all land actions pending comprehensive plan adoption. The department supports the Committee's attempt in this bill to limit the implications of the Supreme Court decision to future programmatic land disposals. The department supports the other amendments to Title 38 proposed in this bill (See section-by-section comments).

Recommendation: The department has provided some specific recommendations that we feel would clarify the bill.

The department is pleased to work with the committee to reach mutual agreement on language in this bill. We have also prepared a detailed position paper which we enclose for your information.

Sincerely,

*Lennie Boston Gorsuch*  
for Judith M. Brady  
Commissioner

Enclosure

cc: Committee members  
Rod Swope, Governor's Office  
George Sullivan, Governor's Office  
Norm Cohen, ADF&G  
Tom Hawkins, DLWM  
Meg Hayes, DLWM

The department supports HB 289 because it makes clear what we believe the Legislature intended when it enacted AS 38.04.065: important land management decisions must not be held in abeyance while the state continues to plan for the management of its land.

We believe the Legislature never intended to issue a moratorium on land management actions until regional plans were complete. However, a recent court case, Alaska Survival v. State of Alaska, casts doubt on the department's interpretation of the statute. The court said, "[W]e conclude that AS 38.04.065 requires regional planning to precede land classification, and that a regulation which permits classification based on a site-specific plan covering only 1,287 acres contravenes the language and intent of the statutes."

Alaska Survival v. State of Alaska addressed an agricultural land disposal at Chase. However, its implications go much further than programmatic land disposals. Since August 29, 1986, the department has stopped all new classification actions that are not based on comprehensive plans. In the past six months, the department has confronted the following problems:

1. On March 9, 1987, the Chinik Eskimo Community sued the State of Alaska, alleging that the department's "findings and decision to grant to Auric Offshore Mining

Company a lease of state lands violate AS 38.04.065, requiring the development of regional land use plans and the classification of state lands before disposal of any interest in state lands."

2. The Northwest Arctic Borough has appealed its municipal entitlement certification in part because the classification order did not reflect a comprehensive, broad scale planning process prior to classification. If this argument prevails, land now classified resource management may have to be reclassified for settlement.
3. State timber near Cooper Landing is infested with beetles. Despite a U.S. Forest Service plan to cut timber adjacent to state land, the state's Division of Forestry cannot sell our affected timber because the land is unclassified. There is no area plan for state lands on the Kenai, so the land cannot be classified.
4. Several residents of the Hope area hold U.S. Forest Service permits for land now owned by the state. The state cannot sell the permitted land to the occupants as required under preference rights statute because it is not appropriately classified. The land cannot be reclassified.

5. The City of Nome has not been able to acquire a tidelands lease to protect the rock loading jetty it built because there is no comprehensive plan on which to base a classification action required for lease issuance.

In short, while the subject of Alaska Survival v. State of Alaska was programmatic land disposals, the decision has stymied other land management actions such as leasing unclassified land, particularly tide and submerged lands; conducting timber sales over 10 MBF; selling land to U.S. Forest Service permittees; and resolving municipal claims.

Ironically, the procedural problems which invalidated the Chase land disposal can be corrected under current law. Unfortunately, the fallout of Alaska Survival v. State of Alaska affects more urgent land management decisions for which we have no other alternatives.

To correct the procedural violations in the Chase classification, the department would reconsider the application of its management objectives in the Susitna Area Plan. This process would begin with an assessment of resources in the South Parks Highway subregion, Management Unit 4 - Chase, and the conditions which may have changed in the Susitna basin since the plan was adopted in April 1985. We know that the Soil Conservation Service has changed its soil

rankings, for instance, and a recent survey indicates that over 60 percent of the residents in the railbelt believe the state should hold steady or increase the amount of land sold each year. The administration and assembly of the Mat-Su Borough have recently challenged many assumptions commonly held during the SAP. The local community has formed a council and has been reviewing some of its land use options. The state administration has also changed, and while less money is now available for survey and land disposal, there is increased interest in resource development and economic diversification.

The assessment and alternative land management proposals would be subject to interagency review and public hearings in Talkeetna, Wasilla, and Anchorage. Finally, any amendment would have to be approved by the commissioner. This process could be completed in under six months. This process would consider information in a manner consistent with the goals and objectives of the Susitna Area Plan. For example, it could propose retention in state ownership for multiple use management, or a new configuration of agricultural homesteads, or perhaps even a non-agricultural finding and sale of fee homesteads.

The department's support of HB 289 does not diminish its support for land management planning. The plans are practical documents which help us make better decisions.

Under HB 289, these plans would still be required for programmatic land disposals. The plans provide a thorough inventory of resources and open the decision-making process to the public. Adopted plans cover about 36 million acres (44%) of state-owned land. Plans are in progress for another 19 million acres. When the ongoing plans are complete, two-thirds of state-owned uplands will be covered by a land use plan. The status of area plans in the state is shown below. The attached map shows locations of area plans.

Adopted: Bristol Bay, Copper River, Haines-Skagway, SW Prince of Wales Island, Susitna Basin, Tanana Basin

Completed by 3/88: Kuskokwim Basin, Northwest, Prince of Wales Island, Prince William Sound

Not Scheduled: Aleutians (mostly tidelands), Brooks Range, Kenai & Cook Inlet & tidelands, Kodiak (mostly tidelands), Lower Yukon-Kuskokwim, North Slope, Pipeline Utility Corridor, Southeast (mostly tidelands), Upper Yukon, Yukon-Koyukuk

Each plan takes two to three years and two to three experienced staff to complete. The pace of the plans is limited by budget and the capacity of its participants to review, comment, attend meetings, etc. Even with the reduced

funding we anticipate in coming years, we remain committed to this process. In time, there will be area plans for all state uplands and tidelands. However, there are no practical reasons or ways to plan every acre of state land in the next three years to satisfy a court directive; neither can we tolerate defacto moratorium on state land management actions. We seek the ability to continue to manage land for private use while planning is underway.

Section-by-Section Analysis:

What follows is a section-by-section analysis of HB 289. The department would gladly work with the committee, coalitions and individuals to gain broad acceptance of this bill. The department's objective is to strike a reasonable balance between planning for future use of our major capital asset - our resources - while making some urgent decisions about their use today.

Sec. 1 AS 38.04.065(a), Line 12: Insert "and management" after "for the use".

Sec. 2 No comment.

Sec. 3 AS 38.04.065(c). We suggest deleting "the use of" in line 8 because it is redundant.

Sec. 4 AS 38.04.065(d). We propose the following addition after the term "powers" in line 23: "or a land management plan adopted by another government entity if the commissioner determines that that plan adequately recognizes and protects state interests."

Sec. 4 AS 38.04.065(d), Line 19: delete "regional" so that the first line reads "shall sign and date a land use plan."

Sec. 4 AS 38.04.065(d), Line 22: delete "regional" so that the text reads "the commissioner may adopt as a land use plan...." Leave "regional" in the next sentence because that refers back to Section C which appropriately addresses regional plans.

Municipal and federal plans are often at least as thorough and comprehensive as state plans. Consequently, we expect we would usually agree with the data and process used to reach the conclusions. However, there is a major distinction between the public process used in the department's area plans and those used in municipal and certain federal plans: state plans ensure the opportunity for statewide interest groups to participate. This is not necessarily the case for municipal or federal plans. It is therefore important for the general public to be notified of

the commissioner's intention to adopt a municipal or federal plan as the basis for classification. Of course, 38.05.945 presently requires notice before classification and would continue to do so.

We support the exception on lines 27 to 29 that requires programmatic land sales to be based on a regional land use plan.

Sec. 5. The revision could be construed as requiring planning and classification to precede any easement or rights-of-way. Since these actions often occur in areas outside plans, this would be a hinderance to access and use of state lands. We suggest adding at the beginning of line 4, after (f), the phrase "When feasible,".

Sec. 6 No comment.

Sec. 7 No comment.

Sec. 8 This provision will allow DNR to meet requests for state agencies such as the Troopers or ADF&G to sell housing that is surplus to the agencies needs to employees who live in this housing. The negotiated sale provision is intended only to apply to the current occupants; therefore, we

suggest adding "to its current occupant" after state land in line 17.

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Sec. 10 It could be difficult for DNR to keep track of which owner is responsible for meeting prove-up requirements if DNR does not know when the exchange occurs. We recommend adding "The exchange is effective on the affirmative approval of the commissioner after permit on line 9 similar to the assignment requirements in AS 38.05.920.

Sec. 11 No comment.

Sec. 12 No comment.

Sec. 13 No comment.

Sec. 14 In order to further clarify which decisions are affected by the bill, the department recommends adding the following language: "A minerals management or disposal decision made before the effective date of this act is valid, regardless whether the land was classified if other requirements of the law were met."

The department has testified in hearings on SB 196 (the Senate version of HB 289) that for the Chase III land disposal, DNR would abide by the Court's decision in Alaska Survival v. Alaska. To make this intention clear in this legislation, we suggest adding the following sentence to section 14: "This section does not require the Commissioner of Natural Resources to proceed with the 1984 Chase III Agricultural Homestead disposal decision."

THANK YOU.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version : HB 289  
Publish Date : \_\_\_\_\_

REQUEST: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: An act relating to management  
of state land

Agency Affected: Natural Resources  
BRU: Land and Water Management

Sponsor: Cotten  
Requestor: House Resources

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
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LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The Department of Natural Resources anticipates no additional expenditures with respect to this legislation.

Prepared by: Tom Hawkins Phone: 465-2400  
Division: Land and Water Management Date: \_\_\_\_\_

Approved by Commissioner: *Samuel Gorsuch* Date: 4-26-87  
Agency: Natural Resources

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)
  - Senate Secretary

# STATE OF ALASKA

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CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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OTHER						
TOTAL						

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PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The Department of Natural Resources anticipates no additional expenditures with respect to this legislation.

Prepared by: Tom Hawkins  
Division: Land and Water Management

Phone: 465-2400  
Date: \_\_\_\_\_

Approved by Commissioner: [Signature]  
Agency: Natural Resources

Date: 4-26-87

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

draft Res CS

Dick:

Here are the amendments to HB 289. They should go into a draft CS. We need to get it back by the end of the day, so call if you have any problems or questions.

There is one amendment on a separate sheet (which has been revised from your draft of 5/1/87, No. 5-0719a) in the packet that needs to be incorporated in the bill. There is also a draft title amendment that we do not wish to have included in the bill but wish to have drafted up.

All of the other amendments are shown in the bill. The renumbering and relettering I will leave entirely to you.

Thanks. Call anytime!

Ned

Ned S/S

This amendment should be placed into the draft CS:

AS 38.05.810 is amended by adding a new subsection:

(g) A conveyance under this section to a municipality that did not receive and is not eligible to receive a land entitlement under AS 29.65 shall not be subject to a reversionary interest on behalf of the state unless the municipality agrees to the reservation of the interest at the time that the land is transferred. A municipality that is eligible to receive land under AS 29.65 but has not received its full entitlement may also receive land under this subsection up to the limit of its entitlement, except that the commissioner may convey additional land under this subsection if the conveyance would be in the best interests of the state.

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2

HOUSE BILL NO. 289

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

*and providing for an effective date*

6

For an Act entitled: "An Act relating to management of state land."

7

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8

\* Section 1. AS 38.04.065(a) is amended to read:

9

*Except as provided in (d) and (h) of*  
(a) The commissioner shall, with local governmental and public

10

involvement under [IN ACCORDANCE WITH] AS 38.05.945, <sup>*adopt*</sup> [develop] main-

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tain, and, when appropriate, revise <sup>*regional*</sup> land use plans that [WHICH] pro-

12

vide [, BY REGIONS OR AREAS,] for the use <sup>*and management*</sup> of the state-owned land.

13

\* Sec. 2. AS 38.04.065(b) is amended to read:

14

(b) In the <sup>*adoption*</sup> [development] and revision of <sup>*regional and site-specific*</sup> land use plans, the

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commissioner shall

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(1) use and observe the principles of multiple use and

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sustained yield;

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(2) consider physical, economic, and social factors affect-

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ing the [REGION OR] area and involve other agencies and the public in

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achieving a systematic interdisciplinary approach;

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(3) give priority to planning and classification in areas

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of potential settlement and critical environmental concern;

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(4) rely, to the extent that it is available, on the inven-

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tory of the state land, its resources, and other values;

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(5) consider present and potential uses of state land;

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(6) consider the supply, resources, and present and poten-

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tial use of land under other ownership within the area [OR REGION] of

28

concern;

29

(7) plan for compatible surface and mineral land use

1 classifications; and

2 (8) provide for meaningful participation in the planning  
3 process by affected local governments, state and federal agencies,  
4 adjacent landowners, and the general public.

5 \* Sec. 3. AS 38.04.065(c) is amended to read:

6 (c) The [AS A BASIS FOR MORE DETAILED LAND USE PLANNING AND  
7 CLASSIFICATION, THE] commissioner shall ~~develop~~ <sup>adopt</sup> regional land use  
8 plans for ~~the use of~~ all state land. Each regional land use plan  
9 [THESE REGIONAL PLANS] shall identify and delineate

10 (1) areas of settlement and settlement impact, where land  
11 must be classified for various private uses and for public recreation,  
12 open space, and other public uses desirable in and around settlement;  
13 and

14 (2) areas that [WHICH] must be retained in state ownership  
15 and planned and classified for various uses and purposes under [IN  
16 ACCORDANCE WITH] AS 38.04.015.

17 \* Sec. 4. AS 38.04.065(d) is repealed and reenacted to read:

18 ~~(d) [The commissioner shall sign and date a regional land use~~  
19 ~~plan and each revision to it after participation by members of the~~  
20 ~~public and affected municipal governments.]~~ The commissioner may adopt  
21 as a [regional] land use plan a comprehensive plan adopted by a munic-  
22 ipality of the state or a land management plan adopted by another governmental entity.  
23 sioner determines that the [municipal] plan adequately recognizes and  
24 protects state interests. <sup>MS/KAT</sup> Before the commissioner adopts a regional  
25 land use plan, a land classification for disposal or for another  
26 purpose may be made on the basis of a site-specific land use plan,  
27 except for a land disposal under AS 38.05.057, AS 38.08, and AS 38.09; or  
28 a new commercial agriculture project.  
29 ~~[A land classification for purposes of a disposal under AS 38.05.057,~~  
~~AS 38.08, or AS 38.09 shall be based on a regional land use plan.]~~

new  
subsection  
starts at 25  
"Before..."  
can be placed  
at the end  
of 03-065 as  
new (h) 29

-2-  
insert after "interests": A decision to adopt another plan  
must be preceded by public hearings in affected and interested  
communities and by a draft decision, available for public  
review, that describes the state's interests and how the state will  
implement the plan.

1 After adoption of a regional land use plan, land classifications shall  
2 be made under the plan.

3 \* Sec. 5. AS 38.04.065(f) is amended to read:

4 (f) Each decision [DECISIONS] about the location of easements  
5 and rights-of-way, other than for minor access, shall be integrated  
6 with land use planning and classification [FOR THE APPROPRIATE AREA OR  
7 REGION].

8 \* Sec. 6. AS 38.04.065(g) is amended to read:

9 (g) Each land use plan [LAND USE PLANS] adopted by the commis-  
10 sioner under this section shall be consistent with municipal [LOCAL  
11 GOVERNMENTAL] land use plans to the maximum extent determined consis-  
12 tent with the state interests and the purposes of this chapter.

13 \* Sec. 7. AS 38.04.910(7) is amended to read:

14 (7) "short-term lease" means a lease for a term of 10  
15 [FIVE] years or less;

16 \* Sec. 8. AS 38.05.035(b) is amended by adding a new paragraph to read:

17 (10) negotiate the sale or lease of improved state land at  
18 fair market value to the holder of rights created by another state  
19 agency. ~~after the improvements to the land have been de-~~  
20 ~~clared surplus by another agency of the state to the needs of that~~  
21 ~~agency].~~

22 \* Sec. 9. AS 38.05.035(e) is amended to read:

23 (e) Upon a written finding that the interests of the state will  
24 be best served, the director may, with the consent of the commis-  
25 sioner, approve contracts for the sale, lease, or other disposal of avail-  
26 able land, resources, property or interests in them, and, in addition  
27 to the conditions and limitations imposed by law, may impose addition-  
28 al conditions or limitations in the contracts as the director deter-  
29 mines, with the consent of the commissioner, will best serve the  
interests of the state. A contract for the sale, lease, or other

HB0289A

-3-

HB 289

(i) Oil and gas lease sales are not subject to AS 38.04.065 as long as the commissioner conducts the complete five-year oil and gas lease sale process required by AS 38.05.180.

new (h) from p. 2/1.24.13 at "Before" 14  
new (i) at bottom of p. 3:

1 disposal of available land or an interest in land is not legally  
2 binding on the state until the commissioner approves the contract but  
3 if the appraised value is not greater than \$50,000 in the case of the  
4 sale of land or an interest in land, or \$5,000 in the case of the  
5 annual rental of land or interest in land, the director may execute  
6 the contract without the approval of the commissioner. Before a  
7 public hearing, if held, or in any case no less than 21 days before  
8 the sale, lease, or other disposal of available land, property, re-  
9 sources, or interests in them, the director shall make available to  
10 the public a written finding that sets out the facts and applicable  
11 law upon which the determination that the sale, lease, or other dis-  
12 posal will best serve the interests of the state was based. A written  
13 finding is not required before the approval of

14 (1) a contract for a negotiated sale authorized under  
15 AS 38.05.115;

16 (2) a lease of land for a shore fishery site under AS 38.-  
17 05.082;

18 (3) a permit or other authorization revocable by the com-  
19 missioner;

20 (4) a mineral claim located under AS 38.05.195;

21 (5) a mineral lease issued under AS 38.05.205; [OR]

22 (6) a production license issued under AS 38.05.207; or

23 (7) an exempt oil and gas sale under AS 38.05.180(d) for

24 which a written best interest finding has been issued for the area of

25 the sale ~~or for a contiguous or adjacent area~~ within the 36 months

26 before the date of the sale <sup>(unless the commissioner determines that new information</sup>  
<sup>has become available that justifies revision of the</sup>  
27 \* Sec. 10. AS 38.09.030(c) is amended to read: best interest finding.

28 (c) The homestead entry permit may not be assigned, conveyed, or  
29 in any manner transferred except

- 1 (1) by testate or intestate succession;  
2 (2) to a spouse during marriage;  
3 (3) by order of a court as part of a divorce settlement;  
4 (4) to either a member of the immediate family or a grantee  
5 of the applicant in the case of an extreme emergency or illness which  
6 disables the applicant; or

7 (5) by exchange by parties in the same homestead area, with  
8 a notice to the commissioner of the change in the ownership of the  
9 entry permit. *The exchange is effective after the approval of the*  
10 *commissioner.*

\* Sec. 11. AS 38.09.040(a) is amended to read:

11 (a) A homestead entry permit may be revoked by the commissioner  
12 for a [ANY] substantial breach of the permit conditions or the re-  
13 quirements of this chapter, including

14 (1) an assignment, conveyance, or transfer of the permit  
15 not authorized under AS 38.09.030(c);

16 (2) failure of the permit holder to submit a plat of survey  
17 to the commissioner within five [TWO] years after the issuance of the  
18 permit [OR UNDER (b) OF THIS SECTION];

19 (3) failure of the permit holder to erect a dwelling in the  
20 time required under AS 38.09.050(a), except that if the commissioner  
21 finds that the dwelling has been nearly completed and progress toward  
22 completion is being made at the expiration of the time required, the  
23 commissioner may extend the time required for completion for not more  
24 than one year;

25 (4) failure to brush the boundaries of the land not de-  
26 scribed by aliquot parts or as a lot of record within 90 days after  
27 issuance of the homestead entry permit;

28 (5) failure to clear and either put into production or  
29 prepare for cultivation 25 percent of the land classified for

1 agricultural use within five years after the issuance of the permit.

2 \* Sec. 12. AS 38.09.050(a) is amended to read:

3 (a) The commissioner shall issue a patent to homestead entry  
4 land if the permit holder

5 (1) resides and lives on the homestead entry land for not  
6 less than 25 months within five years after the issuance of the home-  
7 stead entry permit;

8 (2) completes an approved survey of the land within five  
9 [TWO] years after the issuance of the permit [OR UNDER AS 38.09.-  
10 040(b)];

11 (3) erects a habitable, permanent dwelling on the homestead  
12 within three years after the issuance of the homestead entry permit;

13 (4) brushes the boundaries of the land not described by  
14 aliquot parts or as a lot of record within 90 days after the issuance  
15 of the permit;

16 (5) clears and either puts into production or prepares for  
17 cultivation either 25 percent of the land classified for agricultural  
18 use or 50 percent of the land having class II or III soils, whichever  
19 is less, within five years after issuance of the permit.

20 \* Sec. 13. Land that was classified for disposal or other purposes ~~for~~  
21 ~~the basis of a site specific land use plan~~ before August 29, 1986, remains  
22 subject to the classification order in effect on that date until the land  
23 is reclassified under AS 38.04.065, as amended in secs. 1 - 6 of this Act,  
24 and AS 38.05.300.

25 \* Sec. 14. A land management and disposal decision, including a  
26 disposal under AS 38.05.057, AS 38.08, or AS 38.09, made before the  
27 effective date of this Act under a classification order under AS 38.05.300  
28 ~~that is based on a site specific land use plan~~ is valid, notwithstanding  
29 the adoption of the classification order before the adoption of the region-

1 al land use plan, if other requirements of law were met.

2 \* Sec. ~~15~~<sup>16</sup>. AS 38.09.040(b) is repealed.

A minerals management or disposal decision made before the effective date of this act is valid, regardless of whether the land was classified, ~~or~~ if other requirements of the law were met. ~~This act~~

Sec. 15. Nothing in this act affects the Chase III Agricultural Homestead disposal decision, which the ~~Supreme~~ Courts ~~to~~ have remanded to the Department of Natural Resources for reconsideration.

Sec. 17 This act is effective immediately.

House Resources amendments to HB 289

Please prepare the following title amendment and have it ready for us, but don't put it into the draft CS:

Amend title: An Act relating to regional and site-specific planning requirements for classification of state lands; amending the survey and brushing requirements for homesteads and allowing the exchange of homestead permits; changing the definition of "short-term lease"; providing for the sale of rights created by another state agency; permitting the use of prior best-interest findings for oil and gas lease sales; and providing for an effective date.

MAY - 4 1987

DT: APRIL 27, 1987

TO: MEMBERS OF THE STATE HOUSE RESOURCES COMMITTEE

FR: JIM SYKES, 309 GAYLENE CIRCLE, ANCHORAGE 99504

RE: HB289

"What kind of process can be created that will protect the public and give DNR the ability to classify lands without a regional plan?"

HB289 which requires programmatic land disposals for homesites, homestead, and lotteries to go thru the regional comprehensive planning process, is a significant step in the right direction. There are other types of land classifications and disposals that deserve the same kind of careful consideration. For example, agricultural lands are not required to go thru regional plans, and it is widely recognized that more than 100 Million State dollars was wasted on the Delta Barley project. Delta was not feasible from the beginning, and it was not subject to the kind of careful consideration required of a regional comprehensive plan. Looking back, maybe the Delta Barley mistake was made in part because we were awash in money and enthusiasm. Now that the big money is gone we can not afford such colossal mistakes. Careful planning must continue. It's regrettable many regional plans could have been done for the Delta 100 million dollars.

We recognize that DNR must deal with lands which are unlikely to be included in regional plans. Currently the rule of law requires regional planning. That law may need to be amended to exclude specific types of land classifications. HB289 is completely backwards because it makes the exceptions the law and the law the exceptions. In order to make a meaningful and enforceable law, the Department of

Natural Resources should draw up a list of exceptions to the CURRENT law that they feel they need, along with the generic activities that would be required to deal with such land classification decisions. A public process could then be developed to meet those needs, if the exceptions truly need to be made. Since there is no funding in FY '88 for disposals, this is an ideal time to work out these difficulties.

We agree with the goals DNR Commissioner Judy Brady has stated for land disposals: 1) A thorough public process, 2) inspection of the lands to be disposed, 3) consideration of unbiased scientific evidence, and in the case of lands for settlement, maximum local input in deciding which lands will go into <sup>private</sup> ~~public~~ hands. This sounds a lot like regional planning, which helps resolve these important questions. If DNR is to be exempted from regional planning in certain instances, the question must be asked, "What kind of process can be created that will protect the public and give DNR the ability to classify lands without a regional plan?"

That brings us back to HB289. While the current law protects Alaska's citizens, HB289 removes that protection by allowing DNR to determine their own regulations which MAY NOT necessarily be in the best interest of Alaska's citizens. DNR's past history of disregarding public input, making decisions without inspecting the site in question, and rejecting or ignoring scientific evidence, obligates the legislature to favor the citizen's interests rather than the agency's ease of bureaucratic action.

One of DNR's major concerns appears to be reclassification of tidelands. If the tidelands are covered by a regional plan, or about

to be within the next two years, the classification changes should be made in accordance with the regional plan. If the area is not going to be included in a regional plan, then there must be a thorough process which mandates widespread public input and public hearings, on-site inspection, and evaluation of unbiased scientific data. There may be a way that DNR can use the Coastal Zone Management process to insure that tidelands, (which belong to all Alaskans), are classified in a sensible manner.

If there are exceptions to be made to the current law, certain sections of the law should remain. AS 38.05.345 basically requires publications, public service announcements, posting, notification to possible interested parties, and notice to other governments and Native Corporations. In addition, there should be a mandatory public hearing, which is not now required, and the publication notice should be extended from 30 to 60 days. Provisions in AS 38.04.065 should also be kept in order that a more site specific plan will also be considered in larger terms, and provide for meaningful public participation. The more advance notice, the greater likelihood that increased public participation will reduce pressure for a bad decision. Industry and government hold all the cards until there is a significant amount of public awareness and understanding.

The goal of the existing law is to create the most sensible land disposal decisions, and we share that goal. There are a few problems with DNR accepting a site specific plan, as proposed in HB289. For example, we in Chase are sitting down with people who do not generally agree with us, to try and reach some sort of consensus about land use

in our area. Even if we find a solution, our deliberations will take place largely out of the wider public eye. At least we are working within the regional planning process so that wider implications can be considered. In places where there will be no regional plan, a decision could be made at a local level which might not be in the best interest of the wider general public. The public would have no opportunity for input before DNR could make an irrevocable decision. It could lead to the same type of serious problem in Chase that we felt compelled to take to court. We support maximum local input, but other citizen and state interests should not be excluded. The wider participation will insure a more comprehensive inventory and analysis of resources and competing uses.

People in Chase and Talkeetna are pleased about the sensible HB289 provisions requiring regional land planning for most lands which will be disposed for settlement. There are other similarly important land classification issues that deserve the same kind of careful consideration. Those equally important issues remain absent from HB289. Under HB289 Alaska citizens are not protected from an agency that has a history of violating the public trust. Until there is a thorough understanding of the specific areas of land classification that DNR wants to exempt from the current law, and until adequate public process provisions can be firmly entrenched in law, HB289 should NOT be passed out of committee.

*James L. Sykes -  
Boundary Sub-Committee  
Chase Community Council*

4  
HB289

1 A land classification for the purposes of a disposal under AS 38.05.-  
2 057, AS 38.08, or AS 38.09 shall be based on a regional land use plan.  
3 After adoption of a regional land use plan, land classifications shall  
4 be made under the plan.

5 \* Sec. 5. AS 38.04.065(f) is amended to read:

6 (f) Each decision [DECISIONS] about the location of easements  
7 and rights-of-way, other than for minor access, shall be integrated  
8 with land use planning and classification [FOR THE APPROPRIATE AREA OR  
9 REGION].

10 \* Sec. 6. AS 38.04.065(g) is amended to read:

11 (g) Each land use plan [LAND USE PLANS] adopted by the commis-  
12 sioner under this section shall be consistent with municipal [LOCAL  
13 GOVERNMENTAL] land use plans to the maximum extent determined consis-  
14 tent with the state interests and the purposes of this chapter.

15 \* Sec. 7. AS 38.05.035(b) is amended by adding a new paragraph to read:

16 (10) negotiate the sale or lease of state land at fair  
17 market value to the holder of rights, ~~created~~ under the authority of  
18 the Department of Transportation and Public Facilities.

19 \* Sec. 8. AS 38.05.940(b) is amended to read:

20 (b) To be eligible for a discount under this section, a veteran  
21 shall submit proof, as required by regulation, that the veteran

22 (1) is 18 years of age or older on the date of sale;

23 (2) has been a state resident for a period of not less than  
24 one year immediately preceding the date of sale;

25 (3) has served on active duty in the U.S. Armed Forces at  
26 least 90 days [TWO YEARS], unless tenure was shortened due to a ser-  
27 vice connected disability or due to receiving an early separation upon  
28 return from a tour of duty overseas; and

29 (4) has received an honorable discharge or a general

*better  
language*

*Saw  
This is  
what  
DNR  
really  
wants  
from sec.  
8 of HB 229*

1 discharge under honorable conditions.

2 \* Sec. 9. Land that was classified for disposal or other purposes on  
3 the basis of a site-specific land use plan before August 29, 1986, remains  
4 subject to the classification order in effect on that date until the land  
5 is reclassified under AS 38.04.065, as amended in secs. 1 - 6 of this Act,  
6 and AS 38.05.300.

7 \* Sec. 10. A land management and disposal decision made before the  
8 effective date of this Act under a classification order under AS 38.05.300  
9 that is based on a site-specific land use plan is valid, notwithstanding  
10 the adoption of the classification order before the adoption of the region-  
11 al land use plan, if other requirements of law were met.

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2 be made under the plan.

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14 (7) "short-term lease" means a lease for a term of 10  
15 [FIVE] years or less;

confirm  
to  
38.05.070

16 \* Sec. 8. AS 38.05.035(b) is amended by adding a new paragraph to read:

17 (10) negotiate the sale or lease of improved state land <sup>to its current occupant</sup> at  
18 fair market value after the improvements to the land have been de-  
19 clared surplus by another agency of the state to the needs of that  
20 agency. (See SB 196)

DNF-

DOTPF

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22 (e) Upon a written finding that the interests of the state will  
23 be best served, the director may, with the consent of the commis-  
24 sioner, approve contracts for the sale, lease, or other disposal of avail-  
25 able land, resources, property or interests in them, and, in addition  
26 to the conditions and limitations imposed by law, may impose addition-  
27 al conditions or limitations in the contracts as the director deter-  
28 mines, with the consent of the commissioner, will best serve the  
29 interests of the state. A contract for the sale, lease, or other

o/g

1 disposal of available land or an interest in land is not legally  
2 binding on the state until the commissioner approves the contract but  
3 if the appraised value is not greater than \$50,000 in the case of the  
4 sale of land or an interest in land, or \$5,000 in the case of the  
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6 the contract without the approval of the commissioner. Before a  
7 public hearing, if held, or in any case no less than 21 days before  
8 the sale, lease, or other disposal of available land, property, re-  
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11 law upon which the determination that the sale, lease, or other dis-  
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13 finding is not required before the approval of

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16 (2) a lease of land for a shore fishery site under AS 38.-  
17 05.082;

18 (3) a permit or other authorization revocable by the com-  
19 missioner;

20 (4) a mineral claim located under AS 38.05.195;

21 (5) a mineral lease issued under AS 38.05.205; [OR]

22 (6) a production license issued under AS 38.05.207; or

23 (7) an exempt oil and gas sale under AS 38.05.180(d) for

24 which a written best interest finding has been issued for the area of  
25 the sale ~~or for a contiguous or adjacent area~~ within the 36 months  
26 before the date of the sale.

27 \* Sec. 10. AS 38.09.030(c) is amended to read:

28 (c) The homestead entry permit may not be assigned, conveyed, or  
29 in any manner transferred except

*Handwritten notes:*  
findings  
15 words or less  
APP 16

*exempt / O+G lease sales /  
mm. eff. date.*

MASTER

1 IN THE HOUSE BY THE RESOURCES COMMITTEE  
2 HOUSE BILL NO. 289  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL

*TITLE  
in stone*

6 For an Act entitled: "An Act relating to management of state land."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS 38.04.065(a) is amended to read:

*Frances  
5/4  
DWR*

9 (a) *except as provided in (c)* The commissioner shall, with local governmental and public  
10 involvement under [IN ACCORDANCE WITH] AS 38.05.945, *adopt* ~~develop~~ main-  
11 tain, and, when appropriate, revise *regional* land use plans that [WHICH] pro-  
12 vide [BY REGIONS OR AREAS] *and management* for the use of the state-owned land. *planning*

13 \* Sec. 2. AS 38.04.065(b) is amended to read:

*Frances  
5/4*

14 (b) In the *adoption* ~~development~~ and revision of *regional and site specific* land use plans, the  
15 commissioner shall

- 16 (1) use and observe the principles of multiple use and
- 17 sustained yield;
- 18 (2) consider physical, economic, and social factors affect-
- 19 ing the [REGION OR] area and involve other agencies and the public in
- 20 achieving a systematic interdisciplinary approach;
- 21 (3) give *top* priority to planning and classification in areas
- 22 of potential settlement and critical environmental concern;
- 23 (4) rely, to the extent that it is available, on the inven-
- 24 tory of the state land, its resources, and other values;
- 25 (5) consider present and potential uses of state land;
- 26 (6) consider the supply, resources, and present and poten-
- 27 tial use of land under other ownership within the area [OR REGION] of
- 28 concern;
- 29 (7) plan for compatible surface and mineral land use

1 classifications; and

2 (8) provide for meaningful participation in the planning  
3 process by affected local governments, state and federal agencies,  
4 adjacent landowners, and the general public.

5 \* Sec. 3. AS 38.04.065(c) is amended to read:

6 (c) The [AS A BASIS FOR MORE DETAILED LAND USE PLANNING AND  
7 CLASSIFICATION, THE] commissioner shall <sup>adopt</sup> [develop] regional land use  
8 plans for ~~the use of~~ all state land. Each regional land use plan  
9 [THESE REGIONAL PLANS] shall identify and delineate

DNR

10 (1) areas of settlement and settlement impact, where land  
11 must be classified for various private uses and for public recreation,  
12 open space, and other public uses desirable in and around settlement;  
13 and

14 (2) areas that [WHICH] must be retained in state ownership  
15 and planned and classified for various uses and purposes under [IN  
16 ACCORDANCE WITH] AS 38.04.015.

17 \* Sec. 4. AS 38.04.065(d) is repealed and reenacted to read:

18 (d) [The commissioner shall sign and date a [regional] land use  
19 plan and each revision to it after participation by members of the  
20 public and affected municipal governments.] <sup>(2)</sup> The commissioner may adopt

~~18~~ DNR

21 as a [regional] land use plan a comprehensive plan adopted by a munic-  
22 ipality of the state or a land management plan adopted by another governmental entity having planning and zoning powers. If the commis-

~~21~~ DNR  
DNR

23 sioner determines that the ~~municipal~~ <sup>city's</sup> plan adequately recognizes and  
24 protects state interests. <sup>let</sup> Before the commissioner adopts a regional

New  
Comm. of  
Timber  
highways  
25

25 purpose may be made on the basis of a site-specific land use plan,  
26 except for a land disposal under AS 38.05.057, AS 38.08, and AS 38.09.

ask Francis  
27

28 ~~[A land classification for purposes of a disposal under AS 38.05.057,  
29 AS 38.08, or AS 38.09 shall be based on a regional land use plan.]~~

- 1 (1) by testate or intestate succession;
- 2 (2) to a spouse during marriage;
- 3 (3) by order of a court as part of a divorce settlement;
- 4 (4) to either a member of the immediate family or a grantee
- 5 of the applicant in the case of an extreme emergency or illness which
- 6 disables the applicant; or

7 (5) by exchange by parties in the same homestead area, with  
8 a notice to the commissioner of the change in the ownership of the  
9 entry permit. *^ The exchange is effective on the affirmative approval*  
*of the commissioner.* } *shulte*

*DNR*

10 \* Sec. 11. AS 38.09.040(a) is amended to read:

11 (a) A homestead entry permit may be revoked by the commissioner  
12 for a [ANY] substantial breach of the permit conditions or the re-  
13 quirements of this chapter, including

14 (1) an assignment, conveyance, or transfer of the permit  
15 not authorized under AS 38.09.030(c);

16 (2) failure of the permit holder to submit a plat of survey  
17 to the commissioner within five [TWO] years after the issuance of the  
18 permit [OR UNDER (b) OF THIS SECTION];

} *home*  
*stead*

19 (3) failure of the permit holder to erect a dwelling in the  
20 time required under AS 38.09.050(a), except that if the commissioner  
21 finds that the dwelling has been nearly completed and progress toward  
22 completion is being made at the expiration of the time required, the  
23 commissioner may extend the time required for completion for not more  
24 than one year;

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27 issuance of the homestead entry permit;

}

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29 prepare for cultivation 25 percent of the land classified for

1 agricultural use within five years after the issuance of the permit.

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3 (a) The commissioner shall issue a patent to homestead entry  
4 land if the permit holder

5 (1) resides and lives on the homestead entry land for not  
6 less than 25 months within five years after the issuance of the home-  
7 stead entry permit;

8 (2) completes an approved survey of the land within five  
9 [TWO] years after the issuance of the permit [OR UNDER AS 38.09.-  
10 040(b)];

11 (3) erects a habitable, permanent dwelling on the homestead  
12 within three years after the issuance of the homestead entry permit;

13 (4) brushes the boundaries of the land not described by  
14 aliquot parts or as a lot of record within 90 days after the issuance  
15 of the permit;

16 (5) clears and either puts into production or prepares for  
17 cultivation either 25 percent of the land classified for agricultural  
18 use or 50 percent of the land having class II or III soils, whichever  
19 is less, within five years after issuance of the permit.

20 \* Sec. 13. Land that was classified for disposal or other purposes ~~for~~  
21 ~~the basis of a site-specific land use plan~~ before August 29, 1986, remains  
22 subject to the classification order in effect on that date until the land  
23 is reclassified under AS 38.04.065, as amended in secs. 1 - 6 of this Act,  
24 and AS 38.05.300.

25 \* Sec. 14. A land management and disposal decision, including a  
26 disposal under AS 38.05.057, AS 38.08, or AS 38.09, made before the  
27 effective date of this Act under a classification order under AS 38.05.300  
28 ~~that is based on a site-specific land use plan~~ is valid, notwithstanding  
29 the adoption of the classification order before the adoption of the region-

*Francis 5/4*  
*does not affect choice 5/4*  
*Francis*

- 1 al land use plan, if other requirements of law were met.
- 2 \* Sec. 15. AS 38.09.040(b) is repealed.

DNR

A mineral management or disposal decision made before the effective date of this act is valid, regardless of whether that land was classified if other requirements of the law were met. This section does not require the Commissioner of Natural Resources to proceed with the 1984 Chase III Ag Homestead disposal decision.

This section does not affect the Chase III Ag Homestead disposal decision, which ~~was~~ the Supreme Court remanded to DNR for reconsideration.

shd validate classif no ex'g bef .065?

# MEMORANDUM

*Ned Fargher*  
State of Alaska

DEPARTMENT OF NATURAL RESOURCES

TO: Deputy Commissioners  
Division Directors  
Special Assistants

DATE: January 12, 1987

FILE NO:

TELEPHONE NO: 465-2400

FROM: Judith M. Brady *JMB*  
Commissioner

SUBJECT: Department Order 124:  
Land Use Planning  
and Classification

## ISSUE

Is it necessary for the department to complete a comprehensive regional plan before the classification or sale of certain state lands or resources?

## BACKGROUND

The Chase III homestead project was offered to the public in September 1984. Alaska Survival, claiming the department violated a number of statutory requirements, sued to block the land disposal. Although the state prevailed in Superior Court, the Supreme Court remanded the land offering back to the department. A petition for rehearing to clarify the Court's ruling was denied.

## DISCUSSION

The Supreme Court clearly interprets AS 38.04.065 as requiring that comprehensive land use planning precede classification. However, as described in the state's petition for rehearing, several other points in the Court's opinion are vague or contradicted by the facts in the Chase III land offering.

Although lacking clarification from the Court, the department recognizes its responsibility to make land and resources available for maximum use consistent with the public interest. The economic vitality of the state and reliance of third parties on the actions of the department require that the department take a pragmatic approach to interpreting the Chase III decision. The department will request amendment of AS 38.04.065 to clarify legislative intent.

## POLICY

After August 19, 1986 and pending legislative amendment of AS 38.04.065, site-specific land planning reports, as described in 11 AAC 55.030(e), will not be used as the basis for classification. The Court ruled that the land

planning report requirement does not "properly implement" and is inconsistent with AS 38.04.065. Classification must be based on a land use plan of a geographic unit large enough to support the comprehensive process mandated by the Supreme Court.

Classifications may be based on a comprehensive plan adopted by a local government having planning and zoning powers if the commissioner finds that such a plan adequately recognizes and protects state interests.

The Chase III decision does not invalidate classifications already in effect on August 19, 1986.

Nothing in the Chase III decision affects 11 AAC 55.040(i). Thus, the following actions continue to be exempted from the requirement of prior classification: mineral location, leasable mineral leasing, preference right conveyances under AS 38.05.035(b), land exchanges under AS 38.50, negotiated sales of up to 10 MBF of timber and any amount of materials, right-of-way leasing if no appraisal is necessary, conveyances to municipalities and other state agencies, and land disposals in conformance with a local comprehensive plan and local zoning ordinance.

Disposals of land or interests in land, as actions independent of classification, are not affected by the Chase III decision. That decision applies only to the land use planning and classification process.

Reclassification of land included in an approved area or management plan may proceed under the amendment process described in the relevant plan.

Ned Engler

# MEMORANDUM

# State of Alaska

DEPARTMENT OF NATURAL RESOURCES - Office of the Commissioner

TO: Deputy Commissioners  
Division Directors  
Special Assistants

DATE: October 1, 1986

FILE NO: 2300

TELEPHONE NO: 465-2400

SUBJECT: Department Order No. 114 - Interim Response to Alaska Survival v. State of Alaska

FROM: *Ernest C. Wunnicke*  
Ernest C. Wunnicke  
Commissioner

DEPARTMENT OF  
NATURAL RESOURCES  
OCT 20 1986

### Issue

On August 19, 1986 the Alaska Supreme Court rendered a decision in Alaska Survival v. State of Alaska. The decision reversed the department's decision to dispose of the Chase III Agricultural Homestead because the department violated statutory planning requirements when classifying state land for this project.

This decision requires the department to determine if it is necessary to postpone, cancel, or otherwise alter any proposed disposals of land or interest therein conducted outside adopted comprehensive land use plans (e.g. land sales, exchanges, material sales, timber sales, leases, private rights-of-way, oil and gas, lease sales, municipal conveyances)?

### Background

In September, 1984 the department conducted a 3,530 acre agricultural homestead offering (Chase III), consisting of 32 parcels near Talkeetna. Alaska Survival sued to block the offering, claiming the department violated a number of statutory requirements. The Superior Court upheld the department's land offering, prompting an appeal to the Alaska Supreme Court.

The Supreme Court overturned the Superior Court decision and found that AS 38.04.065 requires that comprehensive land use planning must precede land classification. Based upon this finding, the Supreme Court ruled that the department's classification of the Chase III land prior to adoption of the Susitna Area Plan was a serious procedural violation. The court remanded the disposal decision back to the department for further consideration and public comment.

On September 8, 1986 the Attorney General's Office petitioned the court for rehearing, maintaining the Supreme Court decision failed to address legislative intent in AS 38.05.300(b) and AS 38.04.020(c) and did not clarify whether the department could dispose of certain of the Chase III land which were classified in 1980 (under a statutory exception to AS 38.04.065).

Discussion

The Supreme Court decision is unclear with respect to a number of issues. Until the court rules upon the state's petition, the department will employ an interim action program.

It is important for the department to continue its charge of managing state land in the public interest, including the continued disposal of land and interests, consistent with existing classifications. Therefore, as outlined below the department will proceed cautiously in compliance with a reasoned interpretation of the decision, pending the court's response to our petition.

Decision

All classification actions outside adopted area plans are prohibited until further notice. The department may continue to dispose of state land and interests outside adopted comprehensive land use plans, provided such disposals do not require classification action.

In order to avoid exposing additional third-party interests to possible challenge while the court considers the state's petition, the Division of Land and Water Management shall postpone the scheduled October 2 Pilgrim Homestead lottery in Nome and the October 3 Odd-lot auction in Kotzebue. The postponements of these new disposals outside comprehensive land use plans (coupled with the earlier postponement of the September 9 Heiden View Subdivision lottery in Valdez) are evidence of the department's intent to abide by the Supreme Court's final decision.

However, the over-the-counter (OTC) land sales scheduled for October 20 and November 10 will proceed. Although these sales include parcels outside adopted comprehensive land use plans, they are continuations of prior actions which occurred prior to the Supreme Court decision.

The editorial that appeared in the Daily News on March 12, 1988 is yet another example of the News' failure to adequately research an issue before taking a stand. While your interest in state resource policy is laudable, you have a responsibility to your readers to interpret facts rather than hearsay.

The first erroneous assumption made by the Daily News is that the only actions affected by the Supreme Court decision in Alaska Survival are state land disposals. In fact, the court decision specifically relates to CLASSIFICATION of state land in advance of a comprehensive plan.

Classification is required by statute for a variety of different land actions. This includes leases of tidelands for ports and marinas, timber sales, leases for guiding camps, and sales of lands to USFS permittees to mention a few. The court's ruling brings actions like these to a standstill in most of Southeast, the Kenai Peninsula, the Aleutians, and Northern Alaska. The reason is that the Department has no planning process either in progress or proposed for those areas in the near future.

Because of the loss of state revenues, the operating budget in the Department of Natural Resources is also taking a substantial cut. In such circumstances, prudent managers must find creative, cost effective solutions to their problems. The department order referenced in the Daily News editorial allows the department to base classifications on comprehensive plans adopted by local municipalities having planning and zoning authority IF the commissioner of Natural Resources finds that such plans adequately protect state interests.

In most cases, local comprehensive plans include a review of opportunities and constraints, a statement of community goals and objectives, and opportunity for community review and comment. By statute, the department is REQUIRED to consult with local governments prior to disposing of any state interests. While the state and local interests may occasionally be in conflict, in the great majority of cases the interests are very similar. The department order recognizes this, and yet also provides an opportunity for checks and balances.

Finally, anyone reviewing the Department's 1988 budget proposal would note that the land disposal program has been virtually eliminated. The state constitution leaves no doubt as to Alaska's resource development policy: to make resources available for maximum use consistent with the public interest. The department order and the proposed changes to AS 38.04.065 are our suggestion on how to do that efficiently and responsibly.

# Anchorage Daily News



Winner, 1976 Pulitzer Prize Gold Medal for Public Service  
**Gerald E. Grilly**  
Publisher

**Howard Weaver**  
Managing Editor

**Suzan Nightingale**  
Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983  
Lawrence Fanning, Editor and Publisher 1967 to 1971

Founded In 1946 by Norman C. Brown

## Don't cut corners on state land sales

State agencies need plenty of creative ideas to cope with shrinking budgets. But when it comes to selling off the state's lands, the Department of Natural Resources' new approach would bring back the same old problems.

State law requires some common-sense preparation for a land disposal. Before it decides which lands to sell, the state needs to know what holdings are needed for other uses, such as timber, mining, recreation, or wildlife. That's why the law calls for a regional land plan before the state opens an area to private ownership. DNR has tried to skip this process before, in the 1984 Chase disposal, but the Alaska Supreme Court told the agency to go back and follow the law.

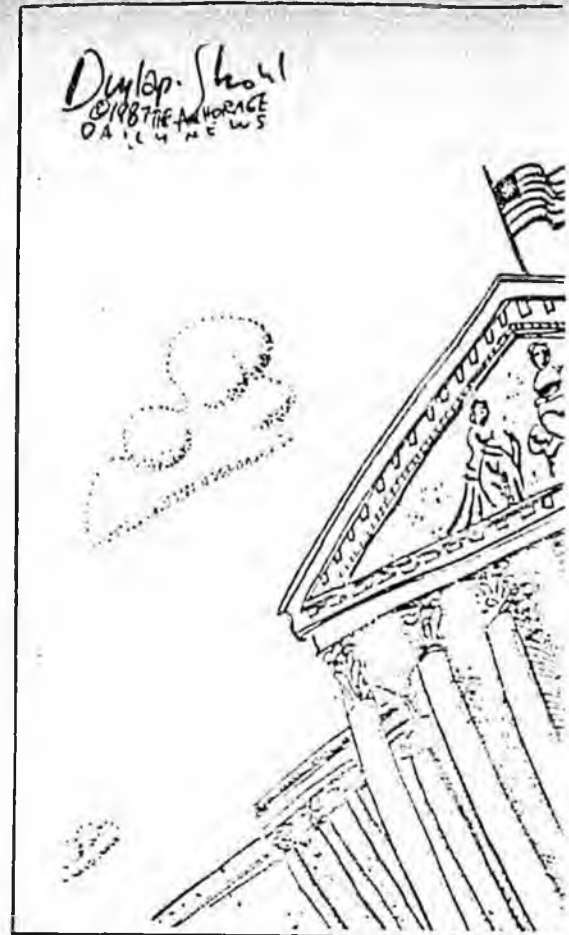
That ruling poses a dilemma, if the agency is going to keep up the pace of disposals. At the same time budget cutters slash its staff, the agency must do more work.

Commissioner Judy Brady's "creative" solution: Loosen the planning requirements, one way or another. Her recent administrative order would let the agency use land plans done by local governments or, in some cases, skip regional planning altogether. To make sure she has the power to do that — a dubious proposition, given current law — she wants the law changed.

Either way, her approach is as unnecessary as it is unwise. Planners have finished the work required for disposals in the Railbelt, where demand for state land should be the highest. In any case, demand for land has fallen off, and the private market offers plenty of selection for would-be buyers.

Unless the legislature changes the law, Commissioner Brady's approach will put her department right back in court. Sticking with current law may force the state to slow down its land offerings. But better to go a bit slow than too fast. If the state sells off lands it should have kept, fixing the mistakes will be difficult and expensive. It's worth taking the time and money to do job right.

## A treasury of songs



## Public paying a

Interior Secretary Donald Hodel was making a startling prediction the other morning over breakfast. He told reporters listening intently that he foresaw another oil crisis within four or five years; a revived OPEC would once again push the price of energy sky high, bringing about long lines at gas stations and all the grief that was with us only a short time ago. Mr. Hodel said this might even happen sooner if the situation in the Mideast were to heat up.

Whatever happened to the United States move toward energy independence?

Hodel said he has repeatedly asked the same question, in an effort to shore up the country's ability to stand up to OPEC (Organization of Petroleum Exporting Countries), but "no one was listening."

President Carter for a while made an all-out effort to free the U.S. from energy dependence on other countries.

Mr. Carter's drop in public

support by this effort. was whack polls over h hostage cris energy in gone by the

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# Trustees for ALASKA

October 2, 1986

James Eason, Director  
Division of Oil and Gas  
Department of Natural Resources  
P.O. Box 7034  
Anchorage, Alaska 99510-7034

RECEIVED

OCT 08 1986

re: Proposed Five-Year Oil and Gas Leasing Program

DIVISION OF OIL & GAS  
ANCHORAGE, ALASKA

Dear Mr. Eason:

Trustees for Alaska appreciates this opportunity to comment on the State's proposed 5-year oil and gas leasing program. Most of our comments relate to the general approach to the State's oil and gas leasing program, rather than comments on specific sales. We will submit more detailed specific comments on individual sales as appropriate.

We strongly support the State's suggestion to use increasingly limited resources to focus on fewer lease sales (Schedule B). Any attempt to continue the existing ambitious program in the face of personnel cutbacks would be counterproductive, and would result in less careful attention to each sale. As a result, we believe that environmental protection would receive relatively less focus, i.e. DOG would have less ability to limit or to prohibit leasing in particularly sensitive areas, and to develop conditions and stipulations necessary to protect important environmental resources.

The proposed cutback in the 5-year lease schedule also makes sense from an economic perspective. While the call for comments correctly notes that cutting back the 5-year program will result in less areas being explored and developed quickly, it is not DOG's role to maximize short-term development potential. Rather, as the manager of the State's oil and gas resources, DOG must consider ways to maximize the State's long-term return from its resources in a balanced fashion, while ensuring that development is conducted consistent with the protection of other resources, such as renewable fish and wildlife resources. Given the current oil market, it would appear to make sense to limit production at this time, in order to maximize long-term returns. By slowing down development, more attention can be paid to protecting environmental resources for leases that are issued, and additional areas can be added as oil prices increase. Moreover, future development in sensitive areas can proceed with the benefit of technological advances that may minimize overall environmental impacts. Therefore, we believe that the proposed reduction in the 5-year program is in the long-range interests of the State of Alaska.

Despite our agreement with the overall approach, we do object to the creation in the 5-year plan of a firm expectation that a prescribed minimum number of lease sales will be held each year. The call for comments does note that no final decisions have been made with respect to any given sale. Nevertheless, the general statements establishing minimum numbers of sales result in considerable institutional pressure to proceed with the identified sales, for fear of not meeting the identified "quota". State law requires the Department to make an independent, objective determination, based on all available information and public input at the time of the sale, of whether each individual sale is in the best interests of the State. Therefore, the 5-year plan should state simply that the Department plans to "consider" the listed lease sales within the deadlines set out in the schedule.

We also are interested in the Department's views on the effect of the State Supreme Court's recent ruling in Alaska Survival v. DNR on the oil and gas leasing system. The Court ruled that no classification or disposition of state land may occur prior to the development of comprehensive, regional land use plans. Presumably, this ruling extends to state land classifications and dispositions that involve less than fee simple land conveyance, particularly since the Chase land disposal involved only surface rights for agricultural use. Many of the Department's proposed lease sales, however, are in areas with no regional land use plans. While we have made no decision regarding how we believe the Court's decision applies to oil and gas lease sales, we believe that the issue deserves serious consideration. We would appreciate your views on this issue. It would also be useful if you could provide an explanation of how and when state land is "classified" for purposes of oil and gas lease sales, and how best interests findings for lease sales relate to the land use planning process.

Finally, we have only a few comments at this time regarding specific sales identified in the call for comments. We previously submitted comments on the Prudhoe Bay Uplands Sale, which has now been split into two separate lease sales. We simply wish to reiterate our concern that these sales consider carefully the effect of these sales on the adjacent Arctic National Wildlife Refuge, which is currently being considered for either inclusion in the National Wilderness Preservation System or for oil and gas development. Considerable wildlife migration occurs across the Canning River, and some Central Arctic Caribou Herd calving may occur in this area.

We are also concerned about the size of proposed lease sale 65, which stretches across the arctic coastline from the Canning delta to the region north of Teshekpuk Lake. While we have no general opposition to additional sales in the Prudhoe Bay region, assuming adequate environmental safeguards, we object to the proposed inclusion at this time of coastal areas adjacent to the ANWR and the Teshekpuk Lake Special Area. Our concerns about the arctic

coastline near the ANWR were specified in our comments on the proposed Camden Bay and Demarcation Point Sales. In addition, we question the wisdom of planning a sale along the coastline of the Teshekpuk Lake Special Area, before the Bureau of Land Management decides what the appropriate oil and gas development policy for this area should be. Oil development in the State's coastal region will entail the use of onshore facilities for support and transportation, including pipelines, in order for development to be economically feasible. In addition, the State is undoubtedly aware of the tremendous importance of the Teshekpuk Lake region for waterfowl and other important wildlife populations. Therefore, the State should withhold its plans for development of this area pending a decision by BLM.

Thank you again for this opportunity to comment on the State's proposed 5-year oil and gas leasing plan.

Very Truly yours,

*Bob Adler*

Bob Adler  
Executive Director



Official Business

# Alaska State Legislature

## House

P.O. BOX V  
State Capitol  
Juneau, Alaska 99811

TO: Resources Committee  
FROM: Ned Farquhar, staff *Ned*  
SUBJECT: HB 289 (state land management)  
DATE: May 9, 1987

The subcommittee on HB 289 presents an amended version that has been technically improved and that has addressed several major policy questions. Attached is a comparison of this bill with the Senate version (CSSB 196 (Res)). Following is a sectional analysis of the subcommittee's proposed substitute, compared to the original HB 289.

Section 1 now retains the area planning requirement but establishes two exceptions: the adoption of site-specific plans and the adoption of other governmental entities' plans. Both of these options require full public process and an interest finding, and are described in the bill in later sections.

Section 2 clarifies that the standars for planning pertain to all plans, including site-specific ones.

Section 3 requires regional planning for state land. The word "all" is removed at line 11 to prevent area planning for state lands not controlled by DNR or scraps of land that logically do not need area planning.

Section 4 has been split into several parts: what remains here is language allowing the commissioner to adopt plans developed by other governmental entities. These could include municipal land use plans, coastal plans, and BLM or Forest Service plans. The section has been revised to require hearings and interest findings, as requested by several who testified.

Section 5 has not been amended.

Section 6 has not been amended.

Section 7 is new, derived from parts of former sec.4. It allows the commissioner to adopt site-specific plans except for programmatic land disposals or new commercial

agriculture projects. Under (i), it allows oil and gas lease sales without area planning because there is thorough planning for oil and gas lease sales under AS 38.05.180. The subcommittee considered adding two other land actions that would require area planning (major timber sales and highway extensions into unroaded areas); both of these were not included in the draft.

Section 8 is the same as the former Sec. 7.

Section 9 is improved language (suggested by the Attorney General) for preference rights for holders of rights created by other agencies than DNR. (Former sec.8.)

Section 10 amends the requirements for best interest findings for exempt oil and gas lease sales under AS 38.05.180(d). The language allowing inclusion of "contiguous or adjacent" acreage under a former best-interest finding has been removed at the request of ADF&G and interest groups. This issue will be addressed in the context of SB 182, now in committee. (Former sec.9.)

Section 11 is an amendment requested by Rep. Springer to prevent DNR from putting a reverter clause into some public/charitable conveyances to some municipalities.

Section 12 allows the exchange of homestead permits with the commissioner's approval.

Sections 13 and 14, relating to homestead survey and brushing requirements, have not been changed. (Former secs.11 and 12.)

Section 15 has been amended to validate all past land classifications, not just those done by a site-specific plan. (Former sec.13.)

Section 16 has been amended to validate most land management and disposal decisions, not just those done by a site-specific plan. (Former sec.14.)

Section 17 is new, suggested by the Attorney General. It validates past minerals disposal decisions.

Section 18 is new and states that the bill does not affect the Chase III land disposal, which was the subject of the lawsuit (Alaska Survival) that is the reason for the bill.

Section 19 is the same as former sec.15.

Section 20 provides an immediate effective date, which is important for actions this summer.

CSSB 196(Res) vs. proposed CSHB 289(Res) (5/07/87)

SB/HB Sec. 1: The House bill requires area planning, and makes exceptions that allow the commissioner to adopt other land use plans, including site-specific plans and local, federal, or coastal plans ("other plans").

SB/HB Sec. 2: The House bill clarifies that the commissioner must consider certain factors in adopting a site-specific or other plans. This is a technical change, because the current language might be regarded as ambiguous. The Senate bill refers to "resource development."

SB/HB Sec. 3: The House bill allows the commissioner to adopt (rather than develop) regional plans. The House bill requires regional plans for state land (rather than "all" state land). The Senate bill includes references to mining and resource development.

SB/HB Sec. 4: The House bill removes the first sentence of the new subsection, which is redundant. The Senate bill allows the adoption of municipal plans for regional plans; the House bill allows the adoption of a broader range of plans and not just for regions. The House bill requires public hearings and an interest finding in the adoption of other plans. The House bill separates site-specific planning into another subsection (Sec. 7 of the House bill).

SB/HB Sec. 5: identical.

SB/HB Sec. 6: identical.

SB Sec. 7; HB Sec. 9: Both sections are intended to allow DNR to make land sales under a new preference right. The House language was suggested by the AG.

HB Sec. 7: The House bill separates the site-specific planning option into a separate subsection (h) in AS 38.04.065. Except that it requires area planning for new commercial agriculture projects, the House language has the same effect. The House bill also adds a new subsection (i) that exempts oil and gas lease sales from area planning.

SB Sec. 8: Veterans' discount language not included in the House bill.

HB Sec. 8: A technical amendment to the definition of "short-term lease" not included in the Senate bill.

SB Sec. 9; HB Sec. 15: The sections are the same except that the House version validates all land classifications, not just those based on a site-specific plan.

SB Sec. 10; HB Sec. 16: Same as above.

HB Sec. 10: The House bill includes language similar to that in SB 182 regarding best interest findings for exempt oil and gas lease sales. (Cotten)

HB Sec. 11: The House bill prevents DNR from putting reverter clauses on public/charitable use conveyances to some municipalities. (Springer)

HB Sec. 12: The House bill allows the exchange of homestead entry permits among entrants. (Shultz)

HB Secs. 13 and 14: The House bill allows five years for the submittal of homestead surveys and removes the requirement for brushing homestead boundaries if the homestead parcel was described by aliquot parts. (DNR/Cotten)

HB Sec. 15: See SB Sec. 9.

HB Sec. 16: See SB Sec. 10.

HB Sec. 17: The House bill validates past minerals management and disposal decisions by DNR.

HB Sec. 18: The House bill does not affect (validate) the Class III disposal decision.

HB Sec. 19: The House bill repeals the three-year extension for homestead surveys (all are now automatically extended three years).

HB Sec. 20: The House bill is effective immediately.

MAY - 4 1987

DT: APRIL 27, 1987

TO: MEMBERS OF THE STATE HOUSE RESOURCES COMMITTEE

FR: JIM SYKES, 309 GAYLENE CIRCLE, ANCHORAGE 99504

RE: HB289

"What kind of process can be created that will protect the public and give DNR the ability to classify lands without a regional plan?"

HB289 which requires programmatic land disposals for homesites, homestead, and lotteries to go thru the regional comprehensive planning process, is a significant step in the right direction. There are other types of land classifications and disposals that deserve the same kind of careful consideration. For example, agricultural lands are not required to go thru regional plans, and it is widely recognized that more than 100 Million State dollars was wasted on the Delta Barley project. Delta was not feasible from the beginning, and it was not subject to the kind of careful consideration required of a regional comprehensive plan. Looking back, maybe the Delta Barley mistake was made in part because we were awash in money and enthusiasm. Now that the big money is gone we can not afford such colossal mistakes. Careful planning must continue. It's regrettable many regional plans could have been done for the Delta 100 million dollars.

We recognize that DNR must deal with lands which are unlikely to be included in regional plans. Currently the rule of law requires regional planning. That law may need to be amended to exclude specific types of land classifications. HB289 is completely backwards because it makes the exceptions the law and the law the exceptions. In order to make a meaningful and enforcable law, the Department of

Natural Resources should draw up a list of exceptions to the CURRENT law that they feel they need, along with the generic activities that would be required to deal with such land classification decisions. A public process could then be developed to meet those needs, if the exceptions truly need to be made. Since there is no funding in FY '88 for disposals, this is an ideal time to work out these difficulties.

We agree with the goals DNR Commissioner Judy Brady has stated for land disposals: 1) A thorough public process, 2) inspection of the lands to be disposed, 3) consideration of unbiased scientific evidence, and in the case of lands for settlement, maximum local input in deciding which lands will go into <sup>private</sup> public hands. This sounds a lot like regional planning, which helps resolve these important questions. If DNR is to be exempted from regional planning in certain instances, the question must be asked, "What kind of process can be created that will protect the public and give DNR the ability to classify lands without a regional plan?"

That brings us back to HB289. While the current law protects Alaska's citizens, HB289 removes that protection by allowing DNR to determine their own regulations which MAY NOT necessarily be in the best interest of Alaska's citizens. DNR's past history of disregarding public input, making decisions without inspecting the site in question, and rejecting or ignoring scientific evidence, obligates the legislature to favor the citizen's interests rather than the agency's ease of bureaucratic action.

One of DNR's major concerns appears to be reclassification of tidelands. If the tidelands are covered by a regional plan, or about

to be within the next two years, the classification changes should be made in accordance with the regional plan. If the area is not going to be included in a regional plan, then there must be a thorough process which mandates widespread public input and public hearings, on-site inspection, and evaluation of unbiased scientific data. There may be a way that DNR can use the Coastal Zone Management process to insure that tidelands, (which belong to all Alaskans), are classified in a sensible manner.

If there are exceptions to be made to the current law, certain sections of the law should remain. AS 38.05.345 basically requires publications, public service announcements, posting, notification to possible interested parties, and notice to other governments and Native Corporations. In addition, there should be a mandatory public hearing, which is not now required, and the publication notice should be extended from 30 to 60 days. Provisions in AS 38.04.065 should also be kept in order that a more site specific plan will also be considered in larger terms, and provide for meaningful public participation. The more advance notice, the greater likelihood that increased public participation will reduce pressure for a bad decision. Industry and government hold all the cards until there is a significant amount of public awareness and understanding.

The goal of the existing law is to create the most sensible land disposal decisions, and we share that goal. There are a few problems with DNR accepting a site specific plan, as proposed in HB289. For example, we in Chase are sitting down with people who do not generally agree with us, to try and reach some sort of consensus about land use

in our area. Even if we find a solution, our deliberations will take place largely out of the wider public eye. At least we are working within the regional planning process so that wider implications can be considered. In places where there will be no regional plan, a decision could be made at a local level which might not be in the best interest of the wider general public. The public would have no opportunity for input before DNR could make an irrevocable decision. It could lead to the same type of serious problem in Chase that we felt compelled to take to court. We support maximum local input, but other citizen and state interests should not be excluded. The wider participation will insure a more comprehensive inventory and analysis of resources and competing uses.

People in Chase and Talkeetna are pleased about the sensible HB289 provisions requiring regional land planning for most lands which will be disposed for settlement. There are other similarly important land classification issues that deserve the same kind of careful consideration. Those equally important issues remain absent from HB289. Under HB289 Alaska citizens are not protected from an agency that has a history of violating the public trust. Until there is a thorough understanding of the specific areas of land classification that DNR wants to exempt from the current law, and until adequate public process provisions can be firmly entrenched in law, HB289 should NOT be passed out of committee.

*James L. Sykes -  
Boundary Sub-Committee  
Chase Community Council*

NED

SB 196  
HB 289

REPRESENTATIVE  
SAM COTTEN  
DISTRICT 15



P.O. BOX 296, EAGLE RIVER AK 99577  
P.O. BOX V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES

M E M O R A N D U M

TO: Resources Committee members  
FROM: Rep. Sam Cotten, Co-Chair  
SUBJECT: Proposed Committee bill relating to state land management  
DATE: April 7, 1987

Yesterday I handed out a draft bill on state land planning and management; the bill needs your review for possible introduction as a Resources Committee bill. The planning issues raised in the bill are urgent, needing legislative attention this year if possible.

The Supreme Court has held that land classifications (and possibly ensuing disposals of interest in state land) must be preceded by land use planning under AS 38.04.065. This statute requires an area plan prior to classification. The Supreme Court decision and some related documents were included in the packet I distributed yesterday.

At this time, about 36 million acres of state land are covered under adopted area plans, and plans are underway for another 19 million acres. At least thirty million acres of state land (Kenai, Kodiak, Brooks Range, Aleutians, Lower Kuskokwim, North Slope, Upper Yukon, Yukon-Koyukuk, most Southeast tidelands) are not yet scheduled for area planning.

If disposal actions are postponed in these areas, pending area planning, there could be very broad ramifications for state land management, economic uses of land, and state revenues. Disposals that could be affected, depending on interpretation and application of the Supreme Court decision, include oil and gas lease sales, sand and gravel sales, leases for public and private purposes, rights-of-way, and mining leases.

The proposed bill will amend the planning statute to clarify that area planning is not required before all classifications; however, public notice and a site-specific planning report will be required. The bill differs from SB 196 (the Senate

measure introduced by Senator Coghill) in that it is neutral on the topics of mining and resource development.

The bill includes some other Title 38 housecleaning proposals advanced by the Department of Natural Resources. Rep. Shultz has proposed additional language (attached) which the Department and I have no objection to including.

The bill will have zero or positive fiscal impact.

#### Sectional analysis

Sections 1-6, 12, and 13 amend the state's planning statutes to require a site-specific plan (not an area plan) before land classification and validates classifications made under the former law.

Section 7 conforms the definition of a short-term lease to the new language in statute, amended in SB 375 in 1984 (AS 38.05.070(b)).

Section 8 allows the commissioner of DNR to sell land held by another agency if the land is surplus to the agency's needs. This would most likely be used by DNR for DOTFF lands.

Section 9 would allow the reoffering of oil and gas lease lands within three years of an existing best-interest finding without repeating the best-interest finding process. This will be valuable for oil and gas leases returned to the state by lessees who do not intend to develop their properties.

Sections 10-11 and 14 amend the homestead act to allow five years for completion of survey (rather than two, a change the committee has already included in its substitute for HB 111) and to dismiss the brushing requirement for parcels described by aliquot parts.

AS 38.09.030 (c) is amended by adding a new subsection:

(5) unless disapproved by the commissioner parties may exchange permits within the same homestead areas to facilitate better land use or ownership patterns.

REPRESENTATIVE  
SAM COTTEN  
DISTRICT 15



P.O. BOX 296, EAGLE RIVER, AK 99577  
P.O. BOX V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES

M E M O R A N D U M

TO: Resources Committee members  
FROM: Rep. Sam Cotten, Co-Chair  
SUBJECT: HB 289, on state land management  
DATE: April 27, 1987

The Committee will hear HB 289 (state land management) on April 28. The bill was introduced by the Resources Committee to address major land classification and disposal issues raised last summer when the Supreme Court found that the Department of Natural Resources acted 'llegally by issuing a land classification (which led to a land disposal) before completing an area plan for the affected area. (This court decision will be in your bill packets.)

As noted in my April 7 memo to you suggesting introduction of the bill, the Supreme Court decision may have important ramifications for economic uses of state land in areas of the state where area plans have not yet been completed. To allow the situation to continue without repair may jeopardize past and future land management decisions, including many that are important for local and statewide economic development (rights-of-way, leases, sand and gravel sales, other resource disposals).

It is not the intent or effect of this bill to subvert the planning process; instead, the bill is intended to allow sensible land management during the interim period while regionwide "area" plans are being prepared for all state lands by the Department of Natural Resources. The Department has given high priority to completion of these plans over the past four years and will continue to do so. However, at this time over thirty million acres of state land are not even on the area planning schedule.

The bill is not intended to address the specific court case (Alaska Survival vs. DNR) decided by the Supreme Court last year. The issue in this case has been remanded to DNR for

reconsideration by the Court; I have asked DNR to provide assurance that the bill will not affect the reconsideration.

I am attaching a sectional analysis of the bill, which includes other land management language requested by committee members or resource groups on state land management in general. However, the most important issue is resolution of the standing planning requirement which may set an unattainable standard, at least in the short term, for planning before state land classifications and disposals.

SECTIONAL ANALYSIS

HB 289

April 27, 1987

PLEASE NOTE: Those sections preceded by an asterisk relate to the state's land use planning process.

\* Section 1. This section amends existing law (the controlling statute on land use planning for state lands) to require plans, rather than regional/area plans for state lands.

\* Section 2. This section removes the word "region" in existing law, to remove any implied or inferred distinction between an "area" and a "regional" plan. This is a technical change.

\* Section 3. This section continues the existing requirement for regional plans, but removes the requirement that regional plans underlie land classification. Other plans, on a lesser scale, can serve the same planning purposes more quickly and less expensively.

\* Section 4. This section replaces existing AS 38.04.065(d) (attached). It removes another requirement that area plans precede land classifications. The new language provides for full public and governmental participation in regional planning, allows the commissioner to adopt local plans (including borough plans, city plans, and coastal management plans) where state plans have not been completed; allows land classification and disposal on the basis of site-specific plans, except for programmatic land disposals such as subdivisions and homesteads; and requires that land classifications after the adoption of an area plan must follow the adopted plan.

\* Section 5. This section amends existing law to allow siting of easements and rights-of-way without area plans.

\* Section 6. This section amends existing law to clarify that state land use plans must be consistent with municipal plans (rather than local plans) as they accord with state interests.

Section 8. This section amends the definition of a short-term lease to conform with the change adopted in AS 38.05.070(b) in 1984. This amendment is technical.

Section 9. This section amends the existing law on best interest findings, required prior to the disposal of state interests, to allow the commissioner to reoffer oil and gas lands within three years after a prior best interest finding. This could include lands contiguous or adjacent to previous

sales. Under existing law, when leases are rescinded or are not sold at a lease sale, the commissioner may be required to go through the best-interest-finding process a second time.

Some amendments have been suggested to this section. The first would clarify that the commissioner could not exercise this section if new information has become available that would militate in favor of a new best interest finding. The second would clarify or delete "contiguous or adjacent."

This bill is similar to SB 182, introduced by the Senate Special Committee on Oil and Gas and now in Senate Finance.

Section 10. This section will allow homestead permit holders to exchange permits within a homestead area. This will allow family members or friends to attempt to locate near each other within a homestead area.

Section 11. This section amends existing homestead requirements to allow five years for survey of the homestead parcel instead of two, and to delete the lot-line brushing requirement for parcels described by aliquot parts. The Committee adopted similar amendments when it passed out HB 111 on cadastral survey. The section is also amended to remove a reference to a statute repealed in Sec. 15 of the bill. (See below.)

Section 12. This section provides for the same conditions for the issuance of homestead patents as would be adopted in Sec. 11, above.

\* Section 13. This section validates land classifications made prior to the Supreme Court decision in Alaska Survival pending the completion of plans.

\* Section 14. This section validates land management and disposal decisions made by the commissioner on the basis of site-specific plans prior to the effective date of the bill, whether or not area plans underlay the classification orders leading to disposal.

Section 15. This section repeals the provision allowing the commissioner to extend the deadline for submittal of a homestead survey by three years. The amendments in Sections 11 and 12 will allow all homestead permit-holders five years to submit their surveys.

(b) In the development and revision of land use plans, the commissioner shall

(1) use and observe the principles of multiple use and sustained yield;

(2) consider physical, economic, and social factors affecting the region or area and involve other agencies and the public in achieving a systematic interdisciplinary approach;

(3) give priority to planning and classification in areas of potential settlement and critical environmental concern;

(4) rely, to the extent that it is available, on the inventory of the state land, its resources, and other values;

(5) consider present and potential uses of state land;

(6) consider the supply, resources, and present and potential use of land under other ownership within the area or region of concern;

(7) plan for compatible surface and mineral land use classifications; and

(8) provide for meaningful participation in the planning process by affected local governments, state and federal agencies, adjacent landowners, and the general public.

(c) As a basis for more detailed land use planning and classification, the commissioner shall develop regional land use plans for the use of all state land. These regional plans shall identify and delineate

(1) areas of settlement and settlement impact, where land must be classified for various private uses and for public recreation, open space, and other public uses desirable in and around settlement; and

(2) areas which must be retained in state ownership and planned and classified for various uses and purposes in accordance with AS 38.04.015

(d) Official regional or area plans and subsequent amendments adopted by the commissioner after public and local governmental participation shall be signed and dated by the commissioner. After adoption of an official regional or area plan, land classifications shall be made in accordance with these official plans

(e) Land shall be classified as provided in AS 38.05.300.

(f) Decision about the location of easements and rights-of-way, other than for minor access, shall be integrated with land use planning and classification for the appropriate area or region.

(g) Land use plans adopted by the commissioner under this section shall be consistent with local governmental land use plans to the maximum extent determined consistent with the state interests and the purposes of this chapter. (§ 5 ch 181 SLA 1978; am § 8 ch 113 SLA 1981; am § 93 ch 6 SLA 1984)

Effect of amendments. — The 1981 amendment substituted "after adoption of an official regional or area plan, land" for

"land" preceding "classifications" in the second sentence of subsection (d)

The 1984 amendment reference in subse-

Commissioner of classification of lot land use plan deve violate this section : exception in effect at t in former AS 38.05.047 commissioner to September 1, 1980, th

Sec. 38.04.070. uses and purpose: included in the fol

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HB 289  
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910. Definitions

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Section

- 85. Term of lease
- 87. Forest Service permittees' leasing preference
- 90. Removal or reversion of improvements upon termination of leases
- 95. Subleases
- 97. Exemption from rental payments on

Section

- land leased by nonprofit organizations
- 98. Senior citizens exemption
- 102. Lessee preference
- 103. Rights of holder of security interest
- 105. Periodic rent adjustments

Cross references. — For reservation to which contracts for sale, lease or grant of state land and deeds to state land,

properties or interest to state land are subject, see AS 38.05.125.

Sec. 38.05.070. Generally. (a) Land, including tide, submerged or shoreland, to which the state holds title or to which it may become entitled, may be leased, except for the extraction of natural resources, in the manner provided in AS 38.05.070 — 38.05.105.

HB289  
Sec  
8

(b) The director, with the approval of the commissioner, shall determine the land to be leased and the limitations, conditions and terms of the lease. The director shall preserve reasonable and traditional access to state land and water. If the appraised value of the transaction is \$5,000 a year or less the director may negotiate a lease for a period not to exceed 10 years, and on the limitations, conditions and terms that the director considers are in the best interests of the state. A lease negotiated under this subsection is not eligible for a preference under AS 38.05.102.

(c) A lease may be issued for a period up to 55 years, if the commissioner determines it to be in the best interests of the state. The commissioner shall consider the useful life of any improvements proposed and approved under AS 38.05.075 in determining the term of the lease. If the commissioner determines that the land or a part of it which is the subject of a grazing lease is not being used for the purpose issued, the lease may be declared void. (§ 1 art V ch 169 SLA 1959; am § 21 ch 113 SLA 1981; am §§ 27, 28 ch 152 SLA 1984)

Effect of amendments. — The 1981 amendment added the third sentence of subsection (b).

The 1984 amendment, in subsection (b), inserted the second sentence and, in the third sentence, substituted "\$5,000" for "\$250," "10" for "5," and "that the director" for "which he" and deleted "without advertisement" following "lease"; and, in subsection (c), substituted "the commissioner

determines it to be in the best interests of the state" for "it appears to be in the best interests of the state and if the commissioner approves" in the first sentence, inserted the second sentence, and deleted the former last sentence, which read "However, a nonrenewable lease for school lands may be issued for a period not to exceed 99 years."

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**Sec. 38.09.040. Revocation of entry permits.** (a) A homestead entry permit may be revoked by the commissioner for any substantial breach of the permit conditions or the requirements of this chapter, including

(1) an assignment, conveyance, or transfer of the permit not authorized under AS 38.09.030(c);

(2) failure of the permit holder to submit a plat of survey to the commissioner within two years after the issuance of the permit or under (b) of this section;

(3) failure of the permit holder to erect a dwelling in the time required under AS 38.09.050(a), except that if the commissioner finds that the dwelling has been nearly completed and progress toward completion is being made at the expiration of the time required, the commissioner may extend the time required for completion for not more than one year;

(4) failure to brush the boundaries of the land within 90 days after issuance of the homestead entry permit;

(5) failure to clear and either put into production or prepare for cultivation 25 percent of the land classified for agricultural use within five years after the issuance of the permit.

**(b) If the commissioner determines that a permit holder has made a good faith effort to obtain a plat of survey, the commissioner may extend the time required for completion of the plat of survey for not more than three years after the issuance of the permit.**

(c) If a homestead entry permit is revoked under (a) of this section, improvements or personal property upon the land shall be managed under AS 38.05.090 and the state land remains available for homestead entry under this chapter. (§ 1 ch 103 SLA 1983)

**Sec. 38.09.050. Issuance of patent.** (a) The commissioner shall issue a patent to homestead entry land if the permit holder

(1) resides and lives on the homestead entry land for not less than 25 months within five years after the issuance of the homestead entry permit;

(2) completes an approved survey of the land within five years after the issuance of the permit or under AS 38.09.040(b);

(3) erects a habitable, permanent dwelling on the homestead within three years after the issuance of the homestead entry permit;

(4) brushes the boundaries of the land within 90 days after the issuance of the permit;

(5) clear and either puts into production or prepares for cultivation either 25 percent of the land classified for agricultural use or 50 percent of the land having class II or III soils, whichever is less, within five years after issuance of the permit.

(b) Nothing in this chapter prohibits a homestead entry permit holder from residing in a temporary dwelling on the homestead before erection of the permanent dwelling.

HB 289  
Sec. 15  
*repeal*



**WILDLIFE  
FEDERATION  
OF ALASKA**

The Alaska Affiliate of the  
National Wildlife Federation

1

April 30, 1987

House Resources Committee  
Representatives Sam Cotton and Adeineid Herrmann, Co-Chairs  
Alaska House of Representatives  
PO Box V  
Juneau, AK 99811

RE: HB 239: Proposed Area Planning Requirement Repeal

Dear Representatives Cotton and Herrmann:

We would like to take this opportunity to address what is perhaps the most important piece of land use legislation before the legislature this session: the proposed repeal of the area planning requirement. The legislation is the result of the Department of Natural Resource's reaction to the Alaska Supreme Court's Case III decision. We believe that the possible adverse impacts of that decision have been substantially exaggerated and that the proposed solution goes far beyond what is necessary. We do not dispute the fact that the Case III decision has created some problems. We feel confident, however, that those problems can be fully resolved by establishing statutory exceptions where appropriate to the very sound general rule that area planning should precede the disposal of interests in state land.

1. The Value of Planning. No one seems to dispute the wisdom of completing comprehensive area plans before disposing of interests in state land wherever practical. Consequently, it is a bit surprising to see how ready the state seems to be to abandon this general rule. Area planning provides the following major benefits, among others:

- a. It provides an opportunity to gather the greatest possible amount of resource information about an area and to subject that information to as high a level of analysis as possible.
- b. It allows decisions to be reached far enough ahead of time to avoid the excessive political and economic pressures that can be applied when actual site specific proposals are being evaluated.
- c. It provides for the greatest possible amount of public participation. This results in better decisions, more stability, and less future conflict, including litigation.

Land Use Planning Reports, on the other hand, which would replace area plans, have generally been both brief and conclusory, and have often appeared to be largely justifications for decisions that have already been made.

2. The Present Planning Status. 83 million acres of state land have been Patented or Tentatively Approved. In less than a year area plans should be in place for approximately 66.5 million acres of state land. Most of the areas of the state where development pressures are greatest will be planned for. Two possible exceptions are most of the state's tidelands and the Kenai Peninsula.
3. Needed Plans. A number of the problems created by Chase III could be resolved if plans were in place for the state's tidelands and for the Kenai Peninsula. A comprehensive tidelands policy might be a reasonable interim substitute for a site specific plan for all of Alaska's tidelands. We strongly recommend that the legislature provide adequate funding for the Division of Land and Water Management to prepare a comprehensive tidelands policy as well as an area plan for the Kenai Peninsula.
4. Necessary Exceptions to Area Planning Requirement. In order for the interested public and the legislature to adequately evaluate the nature and extent of the problems created by the Chase decision, and to fashion the best possible solution, we need to see in some detail what specific activities, in what unplanned areas, are not able to go forward because of the decision. That list could start with the activities noted in Department Order 124, although it might be wise to see whether the Attorney General's office agrees that those activities are unaffected by the decision. After a full list has been developed, those activities that can not wait for the completion of an area plan, and that do not need to be subjected to the level of analysis provided by an area plan, could be excepted from the area planning requirement. Routine rights-of-way, most gravel sales, most auctions, and perhaps most timber sales undertaken for the purpose of disease control, are examples of activities that could be excepted.

Examples of activities that we believe require the level of analysis and public participation provided by an area plan are large agricultural sales, large timber sales, tidelands permits for mariculture, state roads, and of course programmatic land disposals such as homesteads, homesteads, and subdivisions. We appreciate, incidentally, the provision in HB 289 which would still require the latter disposals to be preceded by an area plan. This is a significant improvement over legislation that would repeal all area planning requirements.

5. Adoption of Local Government Plans. We are very concerned about the provision that would allow the commissioner, upon finding that it is in the best interest of the state, to adopt local government plans as regional plans, and we urge you to delete it. Local government plans do not provide for either continuous public participation from start to finish of the planning process by individuals and groups with statewide interests, or for review and comment by those interests. The Division of Land and Water Management's area plan public participation process is probably the best in the state, at any government level, and losing it would indeed be a serious loss regardless of whether we agree or disagree with the final decisions in the plan.

We believe that this issue is of a great deal more interest to Alaskans than most legislators realize at this time. Relatively few people are aware that the area planning requirement is being proposed for repeal, and to date there have been virtually no opportunities for the public to communicate directly with their legislators. We hope that the House Resources Committee will take the time necessary to review this matter very carefully, and will be willing to craft a more balanced piece of legislation than the present one. Doing so will both meet DNR's concerns and protect the general public's long-term interest in its most valuable asset, its public lands.

Sincerely,

*Ann Rothe by dgh*

Ann Rothe, President  
Wildlife Federation of Alaska

HB 289



# Alaska Center for the Environment

700 H Street, Suite 4 • Anchorage, Alaska 99501 • (907) 274-3621

May 1, 1987

Ned Farquhar, Staff  
House Resources Committee  
PO Box V  
Juneau, AK 99811

RE: HB 289

Dear Ned,

As a result of the work session I have drafted two sets of language that I hope can at least serve as starting points. The first assumes that a planning requirement is the exception rather than the rule. Please remember, however, that our clear preference still is for retaining the requirement as the general rule and listing exceptions to it.

The second set attempts to deal with notice and hearing needs in cases where a municipal plan is proposed for adoption as a regional plan.

A major concern for which we don't have a proposed solution is how to deal with substantial tidelands permitting, for example for mariculture. We'll continue to work on this.

Thanks again for letting Gail and I participate in your work session.

Sincerely,

*Cliff*

Cliff Eames  
Issues Director

HOUSE BILL 289  
DNR LAND CLASSIFICATION

STANDARD ALASKA PRODUCTION COMPANY SUPPORTS HOUSE BILL 289 AS A MEANS OF RESOLVING THE UNCERTAINTIES IN LAND STATUS CREATED BY THE ALASKA SURVIVAL DECISION. AS NOTED IN THE COMMENTS ON THE BILL FROM COMMISSIONER JUDITH M. BRADY TO CHAIRMAN OF THE SENATE RESOURCES COMMITTEE, THE HONORABLE JACK COGHILL, THE IMPLICATIONS OF THE ALASKA SURVIVAL DECISION HAVE CREATED UNINTENDED PROBLEMS AND CONFLICTS IN THE STATE'S MANAGEMENT OF ITS LANDS AND UNREALISTICALLY BLOCKED CERTAIN LAND MANAGEMENT ACTIONS UNTIL COMPLETION OF REGIONAL PLANNING BY THE DEPARTMENT OF NATURAL RESOURCES. WHILE WE DO NOT BELIEVE THE DECISION DIRECTLY AFFECTS OIL AND GAS LEASING, IT MAY AFFECT ANCILLARY LAND USES. THE UNCERTAINTY AND IMPEDIMENTS IT CREATES CLEARLY AFFECTS ALL CITIZENS OF THE STATE. THE PROPOSED LEGISLATION AND THE COMMENTS OF THE DEPARTMENT OF NATURAL RESOURCES PRESENT A RATIONAL METHOD OF RESOLVING THE PROBLEMS WHILE MAINTAINING PLANNING REQUIREMENTS FOR LAND MANAGEMENT.



# Alaska State Legislature

HOUSE OF REPRESENTATIVES  
COMMITTEE ON RESOURCES

POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3715

Representative Sam Cotten, co-Chair (465-3715)  
Representative Adelheid Herrmann, co-Chair (465-4942)

Saturday, May 9, 1987

1:30 - 4:00

## BILLS PREVIOUSLY BEFORE THE COMMITTEE:

- , SCR 15 - Preferential Use of Alaska Work Products
- HB 266 - Document Recording
- ← HB 289 - State Land Management
- SB 205 - Extend Railbelt Energy Council
- SB 94 - Alaska Mineral Policy
- SB 53 - Establishing Criteria for the Allocation of Fisheries Resources by the Board of Fish

4:00 - 5:00

## TELECONFERENCE

SJR 35 - Timber Industry in Southeast Alaska

HB 289

A M E N D M E N T

Offered in the HOUSE

By the Resources Committee

TO: HB 289

Page 4, after line 26:

Insert a new bill section to read:

"\* Sec. 10. AS 38.05.810 is amended by adding a new subsection to read:

(g) A conveyance under this section to a municipality that did not receive and is not eligible to receive its land entitlement under AS 29.65 is not subject to a reversionary interest ~~created by this section~~ <sup>S</sup> on behalf of the state unless the municipality agreed to the reservation of the interest at the time that the <sup>land is transferred</sup> ~~reversionary interest~~ <sup>was created</sup>."

Renumber remaining bill sections accordingly.

*New*

*(1) (2)*

1. Substitute for lines 27-29 at page 2 the following: except for a land disposal under AS 38.05.057, AS 38.08, or AS 38.09; a commercial agricultural disposal under AS 38.05.045-38.05.069 or AS 38.07; ~~(a competitive timber)~~ sale under AS 38.05.110-38.05.120; and the construction of a component of the state highway system under AS 19.10, a connecting highway under AS 19.20, or an access or local service road under AS 19.30. A land classification for purposes of a land disposal under AS 38.05.057, AS 38.08, or AS 38.09; a commercial agricultural disposal under AS 38.05.045-38.05.069 or AS 38.07; a competitive timber sale under AS 38.05.110-38.05.120; and the construction of a component of the state highway system under AS 19.10, a connecting highway under AS 19.20, or an access or local service road under AS 19.30; shall be based on a regional land use plan.

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 DOT/PF

2. Insert between "interests" and "Before" at line 24 of page 2 the following: The notice given and the hearing opportunities provided for the adoption of such a municipal plan as a regional land use plan shall be equal to that given and provided prior to the adoption of other regional land use plans.

OK  
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*Legislative* Morales  
Logie

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2

HOUSE BILL NO. 289

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to management of state land."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS 38.04.065(a) is amended to read:

9 (a) The commissioner shall, with local governmental and public  
10 involvement under [IN ACCORDANCE WITH] AS 38.05.945, [develop.] main-  
11 tain, and, when appropriate, revise <sup>regional</sup> land use plans that [WHICH] pro-  
12 vide [, BY REGIONS OR AREAS,] for the use <sup>mgmt</sup> of the state-owned land.

13 \* Sec. 2. AS 38.04.065(b) is amended to read:

14 (b) In the <sup>development</sup> [development] and revision of land use plans, the  
15 commissioner shall

16 (1) use and observe the principles of multiple use and  
17 sustained yield;

18 (2) consider physical, economic, and social factors affect-  
19 ing the [REGION OR] area and involve other agencies and the public in  
20 achieving a systematic interdisciplinary approach;

21 (3) give priority to planning and classification in areas  
22 of potential settlement and critical environmental concern;

23 (4) rely, to the extent that it is available, on the inven-  
24 tory of the state land, its resources, and other values;

25 (5) consider present and potential uses of state land;

26 (6) consider the supply, resources, and present and poten-  
27 tial use of land under other ownership within the area [OR REGION] of  
28 concern;

29 (7) plan for compatible surface and mineral land use

1 classifications; and

2 (8) provide for meaningful participation in the planning  
3 process by affected local governments, state and federal agencies,  
4 adjacent landowners, and the general public.

5 \* Sec. 3. AS 38.04.065(c) is amended to read:

6 (c) The [AS A BASIS FOR MORE DETAILED LAND USE PLANNING AND  
7 CLASSIFICATION, THE] commissioner shall develop regional land use  
8 plans for [the use of] all state land. Each regional land use plan  
9 [THESE REGIONAL PLANS] shall identify and delineate

10 (1) areas of settlement and settlement impact, where land  
11 must be classified for various private uses and for public recreation,  
12 open space, and other public uses desirable in and around settlement;  
13 and

14 (2) areas that [WHICH] must be retained in state ownership  
15 and planned and classified for various uses and purposes under [IN  
16 ACCORDANCE WITH] AS 38.04.015.

17 \* Sec. 4. AS 38.04.065(d) is repealed and reenacted to read:

18 (d) The commissioner shall sign and date a [regional] land use  
19 plan and each revision to it after participation by members of the  
20 pub' - and affected municipal governments. ~~The commissioner may adopt~~  
21 as a [regional] land use plan a comprehensive plan adopted by a munic-  
22 ipality of the state having planning and zoning powers <sup>OR a LMP adopted by with</sup> if the commis-  
23 sioner determines that the [municipal] plan adequately recognizes and  
24 protects state interests. ~~Before the commissioner adopts a regional~~  
25 land use plan, a land classification for disposal or for another  
26 purpose may be made on the basis of a site-specific land use plan,  
27 except for a land disposal under AS 38.05.057, AS 38.08, and AS 38.09.  
28 A land classification for purposes of a disposal under AS 38.05.057,  
29 AS 38.08, or AS 38.09 shall be based on a regional land use plan.

(c)

Handwritten notes and scribbles on the right margin, including a large scribble and the text "OR a LMP adopted by with" and "pub. art. 5".

~~utensifiable~~ DWK

1 After adoption of a regional land use plan, land classifications shall  
2 be made under the plan.

3 \* Sec. 5. AS 38.04.065(f) is amended to read:

4 (f) ~~Each decision~~ [DECISIONS] about the location of easements  
5 and rights-of-way, other than for minor access, shall be integrated  
6 with land use planning and classification [FOR THE APPROPRIATE AREA OR  
7 REGION].

8 \* Sec. 6. AS 38.04.065(g) is amended to read:

9 (g) ~~Each land use plan~~ [LAND USE PLANS] adopted by the commis-  
10 sioner under this section shall be consistent with municipal [LOCAL  
11 GOVERNMENTAL] land use plans to the maximum extent determined consis-  
12 tent with the state interests and the purposes of this chapter.

13

\* Sec. 7. AS 38.04.910(7) is amended to read:

14 (7) "short-term lease" means a lease for a term of 10  
15 [FIVE] years or less;

16 \* Sec. 8. AS 38.05.035(b) is amended by adding a new paragraph to read:

Director may

17 (10) negotiate the sale or lease of improved state land at  
18 fair market value after the improvements to the land have been de-  
19 clared surplus by another agency of the state to the needs of that  
20 agency.

(10) As current receipt

A

21 \* Sec. 9. AS 38.05.035(e) is amended to read:

22 (e) Upon a written finding that the interests of the state will  
23 be best served, the director may, with the consent of the commis-  
24 sioner, approve contracts for the sale, lease, or other disposal of avail-  
25 able land, resources, property or interests in them, and, in addition  
26 to the conditions and limitations imposed by law, may impose addition-  
27 al conditions or limitations in the contracts as the director deter-  
28 mines, with the consent of the commissioner, will best serve the  
29 interests of the state. A contract for the sale, lease, or other

↗

1 disposal of available land or an interest in land is not legally  
2 binding on the state until the commissioner approves the contract but  
3 if the appraised value is not greater than \$50,000 in the case of the  
4 sale of land or an interest in land, or \$5,000 in the case of the  
5 annual rental of land or interest in land, the director may execute  
6 the contract without the approval of the commissioner. Before a  
7 public hearing, if held, or in any case no less than 21 days before  
8 the sale, lease, or other disposal of available land, property, re-  
9 sources, or interests in them, the director shall make available to  
10 the public a written finding that sets out the facts and applicable  
11 law upon which the determination that the sale, lease, or other dis-  
12 posal will best serve the interests of the state was based. A written  
13 finding is not required before the approval of

14 (1) a contract for a negotiated sale authorized under  
15 AS 38.05.115;

16 (2) a lease of land for a shore fishery site under AS 38.-  
17 05.082;

18 (3) a permit or other authorization revocable by the com-  
19 missioner;

20 (4) a mineral claim located under AS 38.05.195;

21 (5) a mineral lease issued under AS 38.05.205; [OR]

22 (6) a production license issued under AS 38.05.207; or

23 (7) an exempt oil and gas sale under AS 38.05.180(d) for

24 which a written best interest finding has been issued for the area of  
25 the sale [or for a contiguous or adjacent area] within the 36 months  
26 before the date of the sale.

27 \* Sec. 10. AS 38.09.030(c) is amended to read:

28 (c) The homestead entry permit may not be assigned, conveyed, or  
29 in any manner transferred except

- 1 (1) by testate or intestate succession;  
2 (2) to a spouse during marriage;  
3 (3) by order of a court as part of a divorce settlement;  
4 (4) to either a member of the immediate family or a grantee  
5 of the applicant in the case of an extreme emergency or illness which  
6 disables the applicant; or  
7 (5) by exchange by parties in the same homestead area, with  
8 a notice to the commissioner of the change in the ownership of the  
9 entry permit. *DDDDDDDD*

10 \* Sec. 11. AS 38.09.040(a) is amended to read:

11 (a) A homestead entry permit may be revoked by the commissioner  
12 for a [ANY] substantial breach of the permit conditions or the re-  
13 quirements of this chapter, including

14 (1) an assignment, conveyance, or transfer of the permit  
15 not authorized under AS 38.09.030(c);

16 (2) failure of the permit holder to submit a plat of survey  
17 to the commissioner within five [TWO] years after the issuance of the  
18 permit [OR UNDER (b) OF THIS SECTION];

19 (3) failure of the permit holder to erect a dwelling in the  
20 time required under AS 38.09.050(a), except that if the commissioner  
21 finds that the dwelling has been nearly completed and progress toward  
22 completion is being made at the expiration of the time required, the  
23 commissioner may extend the time required for completion for not more  
24 than one year;

25 (4) failure to brush the boundaries of the land not de-  
26 scribed by aliquot parts or as a lot of record within 90 days after  
27 issuance of the homestead entry permit;

28 (5) failure to clear and either put into production or  
29 prepare for cultivation 25 percent of the land classified for

1 agricultural use within five years after the issuance of the permit.

2 \* Sec. 12. AS 38.09.050(a) is amended to read:

3 (a) The commissioner shall issue a patent to homestead entry  
4 land if the permit holder

5 (1) resides and lives on the homestead entry land for not  
6 less than 25 months within five years after the issuance of the home-  
7 stead entry permit;

8 (2) completes an approved survey of the land within five  
9 [TWO] years after the issuance of the permit [OR UNDER AS 38.09.-  
10 040(b)];

11 (3) erects a habitable, permanent dwelling on the homestead  
12 within three years after the issuance of the homestead entry permit;

13 (4) brushes the boundaries of the land not described by  
14 aliquot parts or as a lot of record within 90 days after the issuance  
15 of the permit;

16 (5) clears and either puts into production or prepares for  
17 cultivation either 25 percent of the land classified for agricultural  
18 use or 50 percent of the land having class II or III soils, whichever  
19 is less, within five years after issuance of the permit.

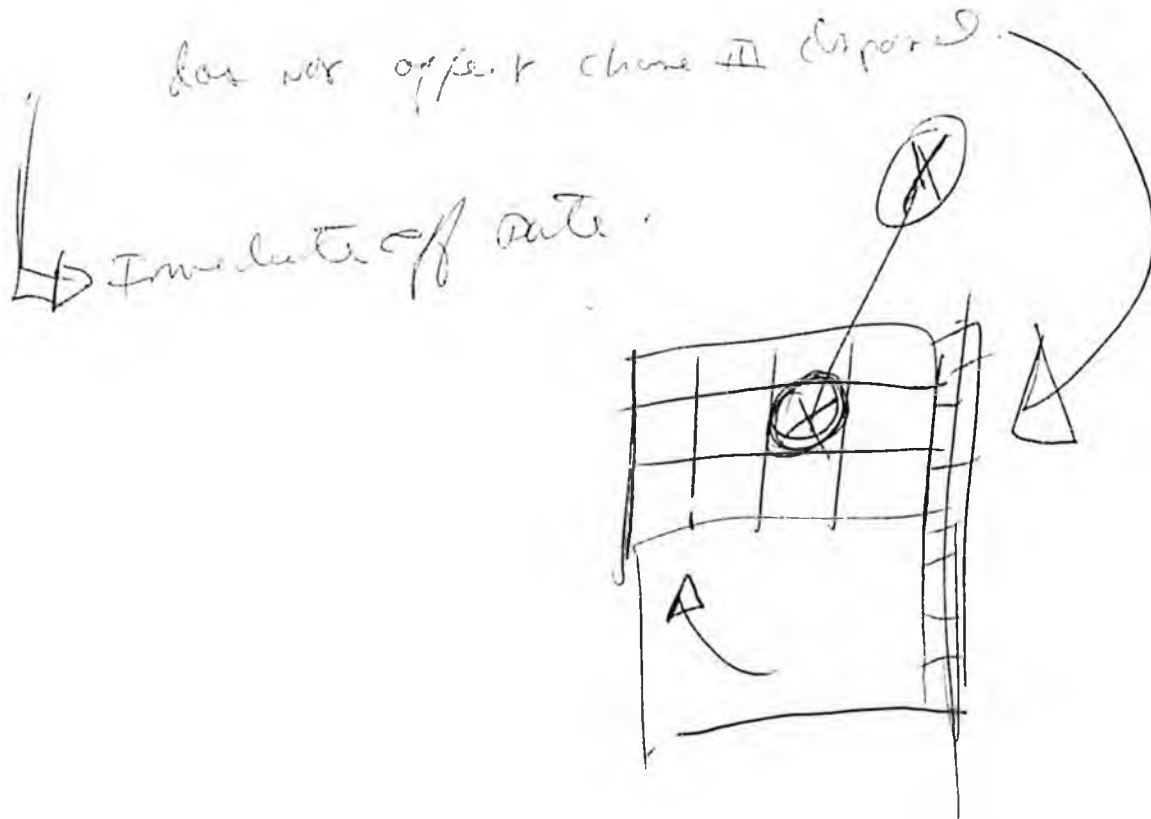
20 \* Sec. 13. Land that was classified for disposal or other purposes on  
21 the basis of a site-specific land use plan before August 29, 1986, remains  
22 subject to the classification order in effect on that date until the land  
23 is reclassified under AS 38.04.065, as amended in secs. 1 - 6 of this Act,  
24 and AS 38.05.300.

*Class  
out  
?*

25 \* Sec. 14. A land management and disposal decision, including a  
26 disposal under AS 38.05.057, AS 38 08, or AS 38.09, made before the  
27 effective date of this Act under a classification order under AS 38.05.300  
28 that is based on a site-specific land use plan is valid, notwithstanding  
29 the adoption of the classification order before the adoption of the region-

1 al land use plan, if other requirements of law were met.

2 \* Sec. 15. AS 38.09.040(b) is repealed.



HB 289

A M E N D M E N T

Offered in the HOUSE

By the Resources Committee

TO: HB 289

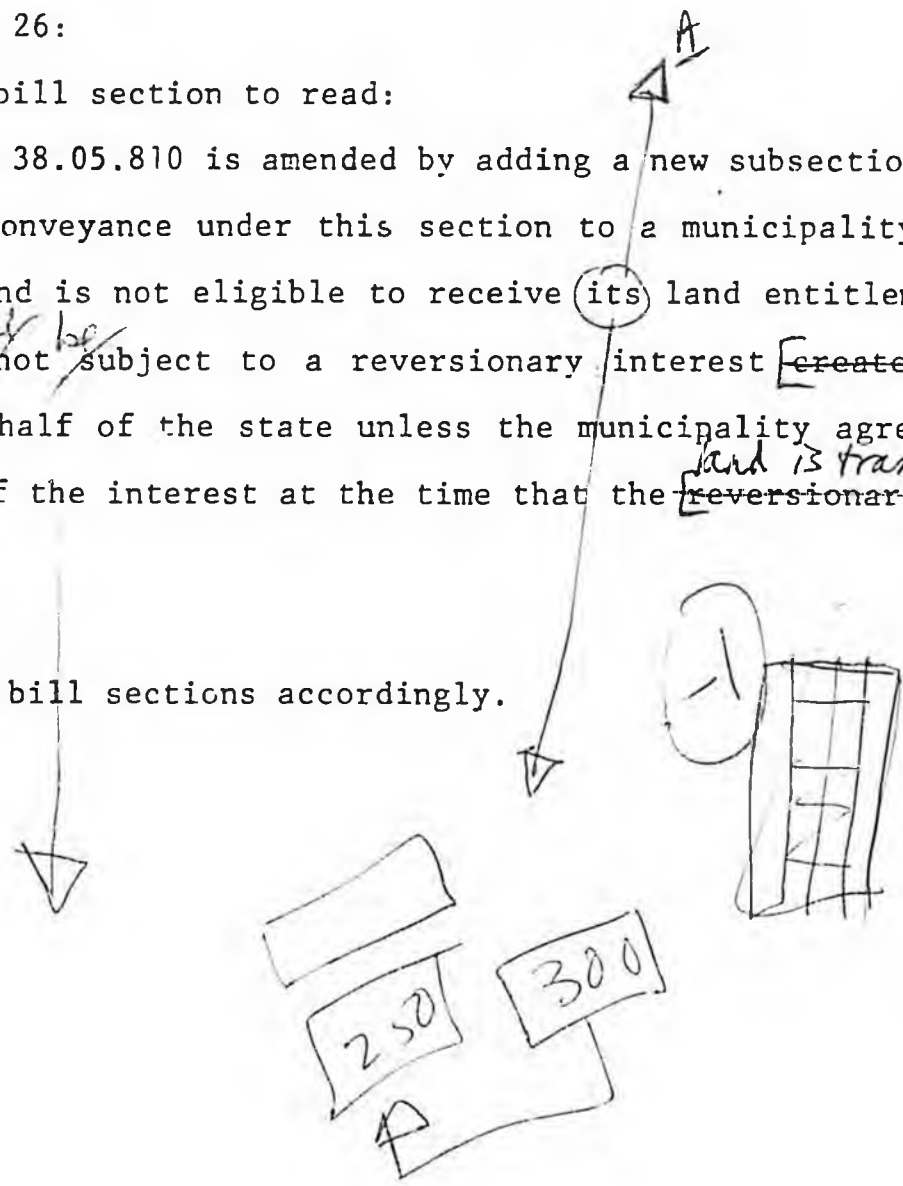
Page 4, after line 26:

Insert a new bill section to read:

"\* Sec. 10. AS 38.05.810 is amended by adding a new subsection to read:

(g) A conveyance under this section to a municipality that did not receive and is not eligible to receive (its) land entitlement under AS 29.65 <sup>shall be</sup> ~~is~~ not subject to a reversionary interest ~~[created by this section]~~ on behalf of the state unless the municipality <sup>S/</sup> agreed to the reservation of the interest at the time that the <sup>land is transferred</sup> ~~reversionary interest~~ ~~was created~~."

Renumber remaining bill sections accordingly.





STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Habitat	BILL NUMBER HB 289	SPONSOR (H) Resources
DEPARTMENT POSITION Support with amendment			
PREPARED BY Habitat Division	DATE 4/27/87	COMMISSIONER'S SIGNATURE <i>Omni Williams</i>	DATE 4-30-87

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Natural Resources	CONSTITUENT GROUP(S) AFFECTED BY BILL All Users of State Land
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Sections 1 through 7 amend AS 38.04.065 to allow the Department of Natural Resources to classify land for disposal or other purposes on the basis of site-specific land-use plans, excepting land disposals under the lottery, homesite, and homestead programs. Sections 10, 11, and 12 amend procedural aspects of the Homestead Act, AS 38.09. Section 9 provides certain exemptions for state exempt oil/gas lease sales from the best interest finding requirement of AS 38.05.035(e).

ANALYSIS OF BILL/PROGRAM EFFECTS

Sections 13 and 14 of this measure will validate all previous land classifications, including public recreation and wildlife habitat designations, that might be subject to legal challenge as a result of the Alaska Supreme Court ruling in Alaska Survival v. State, 723 P.2d. 1281 (August 29, 1986). Sections 1 through 7 will restore limited flexibility to the Department of Natural Resources to classify land based on a site-specific land-use plan, rather than a regional plan. Major land disposals under the lottery, homesite and homestead programs will continue to be based on a regional land use plan, as required by the Alaska Survival v. State decision.

Section 9 of this measure will exempt AS 38.05.180(d) oil and gas lease sales from an AS 38.05.035(e) best interest finding if an .035(e) finding has been completed for the area or an adjacent or contiguous area within the last three years. The Department of Fish and Game does not support this exemption. In our opinion, it is inappropriate to make potentially  
(continued)

AMENDMENTS PROPOSED

Section 9 - Reword AS 38.05.035(e) (7) as follows:  
"(7) an exempt oil and gas sale under AS 38.05.180(d) for which a written best interest finding has been issued for the area of sale [OR FOR A CONTIGUOUS OR ADJACENT AREA] within the 36 months before the date of the sale." It is not in the public interest to extend an AS 38.05.035(e) best interest finding to adjacent and contiguous areas that may be very different economically, socially, and environmentally from the area of the original .035 best interest finding.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

#### ANALYSIS OF BILL/PROGRAM EFFECTS (Continued)

major, long term (e.g., 10 to 20 year) commitments of public resources without first providing the public an opportunity to review and comment on the proposed action. Written best interest findings are the only public review documents that evaluate the cumulative and the potential socioeconomic and environmental consequences of proposed state exempt oil/gas lease sales. Written findings further constitute the formal decision document describing how and why a proposed sale is or is not in the public interest. Written findings describe what information was considered in evaluating the cost/benefits of a proposed lease sale, the key issues associated with the sale, and provides a summary of public and agency comments and concerns regarding a proposed sale. The Department of Fish and Game believes that it is essential to maintain such an administrative record in a single document, so that the state's justification for holding, postponing, or cancelling a lease sale is readily available.

If Section 9 is enacted, many future sales on the North Slope and in the Cook Inlet/Bristol Bay Region could potentially be exempted from any formal leasing process, public hearing, or best interest finding requirement.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_ Bill Version : HB 289  
 \_\_\_\_\_ Publish Date : 4/27/87

Revision Date: \_\_\_\_\_ Agency Affected: \_\_\_\_\_  
 Title: An Act relating to management  
of state land BRU: \_\_\_\_\_

Sponsor: Resource Committee Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

*Bruce H. Baker*

Prepared by: Bruce H. Baker Phone: 465-4105  
 Division: Habitat Date: 4/27/87

Approved by Commissioner: Omne Greenworth Date: 4-30-87  
 Agency: Department of Fish and Game

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

5-0719B  
Bradley  
5/7/87

Original sponsor: Resources Committee

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 289 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to management of state land; and  
7 providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 38.04.065(a) is amended to read:

10 (a) Except as provided in (d) and (h) of this section, the [THE]  
11 commissioner shall, with local governmental and public involvement  
12 under [IN ACCORDANCE WITH] AS 38.05.945, adopt [DEVELOP], maintain,  
13 and, when appropriate, revise regional land use plans that [WHICH]  
14 provide [, BY REGIONS OR AREAS,] for the use and management of [THE]  
15 state-owned land.

16 \* Sec. 2. AS 38.04.065(b) is amended to read:

17 (b) In the adoption [DEVELOPMENT] and revision of regional and  
18 site-specific land use plans, the commissioner shall

19 (1) use and observe the principles of multiple use and  
20 sustained yield;

21 (2) consider physical, economic, and social factors affect-  
22 ing the [REGION OR] area and involve other agencies and the public in  
23 achieving a systematic interdisciplinary approach;

24 (3) give priority to planning and classification in areas  
25 of potential settlement and critical environmental concern;

26 (4) rely, to the extent that it is available, on the inven-  
27 tory of the state land, its resources, and other values;

28 (5) consider present and potential uses of state land;

29 (6) consider the supply, resources, and present and

1 potential use of land under other ownership within the area [OR  
2 REGION] of concern;

3 (7) plan for compatible surface and mineral land use clas-  
4 sifications; and

5 (8) provide for meaningful participation in the planning  
6 process by affected local governments, state and federal agencies,  
7 adjacent landowners, and the general public.

8 \* Sec. 3. AS 38.04.065(c) is amended to read:

9 (c) The [AS A BASIS FOR MORE DETAILED LAND USE PLANNING AND  
10 CLASSIFICATION, THE] commissioner shall adopt [DEVELOP] regional land  
11 use plans for [THE USE OF ALL] state land. Each regional land use  
12 plan [THESE REGIONAL PLANS] shall identify and delineate

13 (1) areas of settlement and settlement impact, where land  
14 must be classified for various private uses and for public recreation,  
15 open space, and other public uses desirable in and around settlement;  
16 and

17 (2) areas that [WHICH] must be retained in state ownership  
18 and planned and classified for various uses and purposes under [IN  
19 ACCORDANCE WITH] AS 38.04.015.

20 \* Sec. 4. AS 38.04.065(d) is repealed and reenacted to read:

21 (d) The commissioner may adopt as a land use plan a comprehen-  
22 sive plan adopted by a municipality of the state having planning and  
23 zoning powers or a land management plan adopted by another govern-  
24 mental entity if the commissioner determines that the plan adequately  
25 recognizes and protects state interests. A decision to adopt the plan  
26 must be preceded by public hearings in affected and interested commu-  
27 nities and by a draft decision, available for public review, that  
28 describes the state's interests and how the state will implement the  
29 plan.

1 \* Sec. 5. AS 38.04.065(f) is amended to read:

2 (f) Each decision [DECISIONS] about the location of easements  
3 and rights-of-way, other than for minor access, shall be integrated  
4 with land use planning and classification [FOR THE APPROPRIATE AREA OR  
5 REGION].

6 \* Sec. 6. AS 38.04.065(g) is amended to read:

7 (g) Each land use plan [LAND USE PLANS] adopted by the commis-  
8 sioner under this section shall be consistent with municipal [LOCAL  
9 GOVERNMENTAL] land use plans to the maximum extent determined consis-  
10 tent with the state interests and the purposes of this chapter.

11 \* Sec. 7. AS 38.04.065 is amended by adding new subsections to read:

12 (h) Before the commissioner adopts a regional land use plan, a  
13 land classification may be made on the basis of a site-specific land  
14 use plan, except a classification for a land disposal under AS 38.-  
15 05.057, AS 38.08, AS 38.09, or a new commercial agriculture project  
16 under AS 38.05.020(b)(6). After adoption of a regional land use plan,  
17 land classifications shall be made under the plan.

18 (i) An oil and gas lease sale is not subject to this section.  
19 Oil and gas lease sales are subject to the planning process estab-  
20 lished under AS 38.05.180.

21 \* Sec. 8. AS 38.04.910(7) is amended to read:

22 (7) "short-term lease" means a lease for a term of 10  
23 [FIVE] years or less;

24 \* Sec. 9. AS 38.05.035(b) is amended by adding a new paragraph to read:

25 (10) negotiate the sale or lease of state land at fair  
26 market value to a person who acquired by contract, purchase, or lease  
27 rights to improvements on the land from another state agency or who  
28 leased the land from another state agency.

29 \* Sec. 10. AS 38.05.035(e) is amended to read:

1 (e) Upon a written finding that the interests of the state will  
2 be best served, the director may, with the consent of the commission-  
3 er, approve contracts for the sale, lease, or other disposal of avail-  
4 able land, resources, property or interests in them, and, in addition  
5 to the conditions and limitations imposed by law, may impose addition-  
6 al conditions or limitations in the contracts as the director deter-  
7 mines, with the consent of the commissioner, will best serve the  
8 interests of the state. A contract for the sale, lease, or other  
9 disposal of available land or an interest in land is not legally  
10 binding on the state until the commissioner approves the contract but  
11 if the appraised value is not greater than \$50,000 in the case of the  
12 sale of land or an interest in land, or \$5,000 in the case of the  
13 annual rental of land or interest in land, the director may execute  
14 the contract without the approval of the commissioner. Before a  
15 public hearing, if held, or in any case no less than 21 days before  
16 the sale, lease, or other disposal of available land, property, re-  
17 sources, or interests in them, the director shall make available to  
18 the public a written finding that sets out the facts and applicable  
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22 (1) a contract for a negotiated sale authorized under  
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24 (2) a lease of land for a shore fishery site under AS 38.-  
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26 (3) a permit or other authorization revocable by the com-  
27 missioner;

28 (4) a mineral claim located under AS 38.05.195;

29 (5) a mineral lease issued under AS 38.05.205; [OR]

1 (6) a production license issued under AS 38.05.207; or  
2 (7) an exempt oil and gas sale under AS 38.05.180(d) for  
3 which a written best interest finding has been issued for the area of  
4 the sale within the 36 months before the date of the sale unless the  
5 commissioner determines that new information has become available that  
6 justifies a revision of the best interest finding.

7 \* Sec. 11. AS 38.05.810 is amended by adding a new subsection to read:

8 (g) A conveyance under this section to a municipality that did  
9 not receive and is not eligible to receive a land entitlement under  
10 AS 29.65 is not subject to a reversionary interest created by this  
11 section on behalf of the state unless the municipality agreed to the  
12 reservation of the interest at the time that the reversionary interest  
13 was created. A municipality that is eligible to receive land under  
14 AS 29.65 but that has not received the full entitlement may also  
15 receive land under this subsection up to the limit of the entitlement,  
16 except that the commissioner may convey additional land under this  
17 subsection if the conveyance would be in the best interests of the  
18 state.

19 \* Sec. 12. AS 38.09.030(c) is amended to read:

20 (c) The homestead entry permit may not be assigned, conveyed, or  
21 in any manner transferred except

22 (1) by testate or intestate succession;  
23 (2) to a spouse during marriage;  
24 (3) by order of a court as part of a divorce settlement;  
25 (4) to either a member of the immediate family or a grantee  
26 of the applicant in the case of an extreme emergency or illness which  
27 disables the applicant; or

28 (5) after the approval of the commissioner, by an exchange  
29 between parties in the same homestead area.

1 \* Sec. 13. AS 38.09.040(a) is amended to read:

2 (a) A homestead entry permit may be revoked by the commissioner  
3 for a [ANY] substantial breach of the permit conditions or the re-  
4 quirements of this chapter, including

5 (1) an assignment, conveyance, or transfer of the permit  
6 not authorized under AS 38.09.030(c);

7 (2) failure of the permit holder to submit a plat of survey  
8 to the commissioner within five [TWO] years after the issuance of the  
9 permit [OR UNDER (b) OF THIS SECTION];

10 (3) failure of the permit holder to erect a dwelling in the  
11 time required under AS 38.09.050(a), except that if the commissioner  
12 finds that the dwelling has been nearly completed and progress toward  
13 completion is being made at the expiration of the time required, the  
14 commissioner may extend the time required for completion for not more  
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22 \* Sec. 14. AS 38.09.050(a) is amended to read:

23 (a) The commissioner shall issue a patent to homestead entry  
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25 (1) resides and lives on the homestead entry land for not  
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28 (2) completes an approved survey of the land within five  
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1 AS 38.09.040(b)];

2 (3) erects a habitable, permanent dwelling on the homestead  
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7 (5) clears and either puts into production or prepares for  
8 cultivation either 25 percent of the land classified for agricultural  
9 use or 50 percent of the land having class II or III soils, whichever  
10 is less, within five years after issuance of the permit.

11 \* Sec. 15. Land that was classified for disposal or other purposes  
12 before August 29, 1986, remains subject to the classification order in  
13 effect on that date until the land is reclassified under AS 38.04.065, as  
14 amended in secs. 1 - 7 of this Act, and AS 38.05.300.

15 \* Sec. 16. A land management and disposal decision, including a dis-  
16 posal under AS 38.05.057, AS 38.08, or AS 38.09, or a commercial agricul-  
17 ture project under AS 38.05.020(b)(6), made before the effective date of  
18 this Act under a classification order under AS 38.05.300 is valid, notwith-  
19 standing the adoption of the classification order before the adoption of  
20 the regional land use plan, if other requirements of law were met.

21 \* Sec. 17. A minerals management or disposal decision made before the  
22 effective date of this Act is valid, whether or not the land was classified  
23 if other requirements of law were met.

24 \* Sec. 18. Nothing in this Act affects the Chase III Agricultural  
25 Homestead disposal decision of the Department of Natural Resources, remand-  
26 ed by the courts for reconsideration by the department.

27 \* Sec. 19. AS 38.09.040(b) is repealed.

28 \* Sec. 20. This Act takes effect immediately under AS 01.10.070(c).

HOUSE BILL 289  
DNR LAND CLASSIFICATION

STANDARD ALASKA PRODUCTION COMPANY SUPPORTS HOUSE BILL 289 AS A MEANS OF RESOLVING THE UNCERTAINTIES IN LAND STATUS CREATED BY THE ALASKA SURVIVAL DECISION. AS NOTED IN THE COMMENTS ON THE BILL FROM COMMISSIONER JUDITH M. BRADY TO CHAIRMAN OF THE SENATE RESOURCES COMMITTEE, THE HONORABLE JACK COGHILL, THE IMPLICATIONS OF THE ALASKA SURVIVAL DECISION HAVE CREATED UNINTENDED PROBLEMS AND CONFLICTS IN THE STATE'S MANAGEMENT OF ITS LANDS AND UNREALISTICALLY BLOCKED CERTAIN LAND MANAGEMENT ACTIONS UNTIL COMPLETION OF REGIONAL PLANNING BY THE DEPARTMENT OF NATURAL RESOURCES. WHILE WE DO NOT BELIEVE THE DECISION DIRECTLY AFFECTS OIL AND GAS LEASING, IT MAY AFFECT ANCILLARY LAND USES. THE UNCERTAINTY AND IMPEDIMENTS IT CREATES CLEARLY AFFECTS ALL CITIZENS OF THE STATE. THE PROPOSED LEGISLATION AND THE COMMENTS OF THE DEPARTMENT OF NATURAL RESOURCES PRESENT A RATIONAL METHOD OF RESOLVING THE PROBLEMS WHILE MAINTAINING PLANNING REQUIREMENTS FOR LAND MANAGEMENT.

HB 289

A M E N D M E N T

Offered in the HOUSE

By the Resources Committee

TO: HB 289

Page 4, after line 26:

Insert a new bill section to read:

"\* Sec. 10. AS 38.05.810 is amended by adding a new subsection to read:

(g) A conveyance under this section to a municipality that did not receive and is not eligible to receive its land entitlement under AS 29.65 is not subject to a reversionary interest ~~created by this section~~ on behalf of the state unless the municipality agreed <sup>S</sup> to the reservation of the interest at the time that the ~~reversionary interest was created~~ <sup>land is transferred</sup>."

Renumber remaining bill sections accordingly.

HB 289



# Alaska Center for the Environment

700 H Street, Suite 4 • Anchorage, Alaska 99501 • (907) 274-3621

May 1, 1987

Ned Farquhar, Staff  
House Resources Committee  
PO Box V  
Juneau, AK 99811

RE: HB 289

Dear Ned,

As a result of the work session I have drafted two sets of language that I hope can at least serve as starting points. The first assumes that a planning requirement is the exception rather than the rule. Please remember, however, that our clear preference still is for retaining the requirement as the general rule and listing exceptions to it.

The second set attempts to deal with notice and hearing needs in cases where a municipal plan is proposed for adoption as a regional plan.

A major concern for which we don't have a proposed solution is how to deal with substantial tidelands permitting, for example for mariculture. We'll continue to work on this.

Thanks again for letting Gail and I participate in your work session.

Sincerely,

A handwritten signature in cursive script that reads "Cliff".

Cliff Eames  
Issues Director

1. Substitute for lines 27-29 at page 2 the following: except for a land disposal under AS 38.05.057, AS 38.08, or AS 38.09; a commercial agricultural disposal under AS 38.05.045-38.05.069 or AS 38.07; a competitive timber sale under AS 38.05.110-38.05.120; and the construction of a component of the state highway system under AS 19.10, a connecting highway under AS 19.20, or an access or local service road under AS 19.30. A land classification for purposes of a land disposal under AS 38.05.057, AS 38.08, or AS 38.09; a commercial agricultural disposal under AS 38.05.045-38.05.069 or AS 38.07; a competitive timber sale under AS 38.05.110-38.05.120; and the construction of a component of the state highway system under AS 19.10, a connecting highway under AS 19.20, or an access or local service road under AS 19.30; shall be based on a regional land use plan.

✓ OK  
 ✓ OK  
 DOF  
 Kodiak? EIS/CC  
 X Kani? DOT/PF  
 ✓ OK  
 DOF  
 DOT/PF

2. Insert between "interests" and "Before" at line 24 of page 2 the following: The notice given and the hearing opportunities provided for the adoption of such a municipal plan as a regional land use plan shall be equal to that given and provided prior to the adoption of other regional land use plans.

OK.  
 shouldn't have  
 to do 3 needs.

HB 289



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Sincerely,

*Cliff*

Cliff Eames  
Issues Director

1. Substitute for lines 27-29 at page 2 the following: except for a land disposal under AS 38.05.057, AS 38.08, or AS 38.09; a commercial agricultural disposal under AS 38.05.045-38.05.069 or AS 38.07; a competitive timber sale under AS 38.05.110-38.05.120; and the construction of a component of the state highway system under AS 19.10, a connecting highway under AS 19.20, or an access or local service road under AS 19.30. A land-classification-for purposes of a land disposal under AS 38.05.057, AS 38.08, or AS 38.09; a commercial agricultural disposal under AS 38.05.045-38.05.069 or AS 38.07; a competitive timber sale under AS 38.05.110-38.05.120; and the construction of a component of the state highway system under AS 19.10, a connecting highway under AS 19.20, or an access or local service road under AS 19.30; shall be based on a regional land use plan.

VOK  
 VOK  
 DOF  
 Kriak? EIS/ce  
 Kriak? DOT/PE  
 VOK  
 DOF  
 DOT/PE

2. Insert between "interests" and "Before" at line 24 of page 2 the following: The notice given and the hearing opportunities provided for the adoption of such a municipal plan as a regional land use plan shall be equal to that given and provided prior to the adoption of other regional land use plans.

OK.  
 should have  
 to do 3 needs.

HOUSE BILL 289  
DNR LAND CLASSIFICATION

STANDARD ALASKA PRODUCTION COMPANY SUPPORTS HOUSE BILL 289 AS A MEANS OF RESOLVING THE UNCERTAINTIES IN LAND STATUS CREATED BY THE ALASKA SURVIVAL DECISION. AS NOTED IN THE COMMENTS ON THE BILL FROM COMMISSIONER JUDITH M. BRADY TO CHAIRMAN OF THE SENATE RESOURCES COMMITTEE, THE HONORABLE JACK COGHILL, THE IMPLICATIONS OF THE ALASKA SURVIVAL DECISION HAVE CREATED UNINTENDED PROBLEMS AND CONFLICTS IN THE STATE'S MANAGEMENT OF ITS LANDS AND UNREALISTICALLY BLOCKED CERTAIN LAND MANAGEMENT ACTIONS UNTIL COMPLETION OF REGIONAL PLANNING BY THE DEPARTMENT OF NATURAL RESOURCES. WHILE WE DO NOT BELIEVE THE DECISION DIRECTLY AFFECTS OIL AND GAS LEASING, IT MAY AFFECT ANCILLARY LAND USES. THE UNCERTAINTY AND IMPEDIMENTS IT CREATES CLEARLY AFFECTS ALL CITIZENS OF THE STATE. THE PROPOSED LEGISLATION AND THE COMMENTS OF THE DEPARTMENT OF NATURAL RESOURCES PRESENT A RATIONAL METHOD OF RESOLVING THE PROBLEMS WHILE MAINTAINING PLANNING REQUIREMENTS FOR LAND MANAGEMENT.

HB 289

A M E N D M E N T

Offered in the HOUSE

By the Resources Committee

TO: HB 289

Page 4, after line 26:

Insert a new bill section to read:

"\* Sec. 10. AS 38.05.810 is amended by adding a new subsection to read:

(g) A conveyance under this section to a municipality that did not receive and is not eligible to receive its land entitlement under AS 29.65 is not subject to a reversionary interest ~~created by this section~~ on behalf of the state unless the municipality agreed to the reservation of the interest at the time that the ~~reversionary interest was created~~ <sup>and is transferred</sup>." <sup>S</sup>

Renumber remaining bill sections accordingly.

\*\*\*\*\*  
\*  
\* DELIVER TO: LIOCSSC \*  
\*  
\* ORIGINAL \*  
\* SENT: 05/04/87 TIME: 08:10 \*  
\* FROM: LIOCANC \*  
\* SUBJECT: HRES TELE ON HB 289 \*  
\* PRINT DATE: 05/04/87 TIME: 08:12 \*  
\*  
\*\*\*\*\*

\*\*\*\*\* ANCHORAGE PARTICIPANT LIST \*\*\*\*\*

THE FOLLOWING PEOPLE ARE STANDING BY TO PARTICIPATE IN TODAYS  
HOUSE RESOURCES PUBLIC HEARING ON HB 289: MANAGEMENT OF ST LAND  
TELECONFERENCE:

TO TESTIFY:

- 1.) CLIFF EAMES, AK CENTER FOR THE ENVIRONMENT
- 2.) JIM SYKES, CHASE COMM, AK SURVIVAL
- 3.)
- 4.)

TO OBSERVE:

- 1.)
- 2.)
- 3.)

EOM

\*\*\*\*\*  
 \* DELIVER TO: LI00SSC \*  
 \* ORIGINAL \*  
 \* SENT: 05/04/87 TIME: 08:09 \*  
 \* FROM: LTCCFBX \*  
 \* SUBJECT: 5/5/87 HRES. HD289 \*  
 \* PRINT DATE: 05/04/87 TIME: 08:12 \*  
 \*\*\*\*\*

DATE: MAY 4, 1987  
 SITE: FAIRBANKS  
 SPONSOR: HOUSE HESS  
 SUBJECT: HB289 MANAGEMENT OF STATE LAND  
 MODERATOR: ANNIE

\*\*\*\*\*

TESTIFY:

NAME\REPRESENTING	ADDRESS	PHONE #
1.) CELIA M. HUNTER	1819 MUSKOX TRAIL, FBKS. 99709	479-2754
2.)		
3.)		
4.)		
5.)		
6.)		
7.)		
8.)		
9.)		
10.)		

\*\*\*\*\*

OBSERVE:

NAME\REPRESENTING	ADDRESS	PHONE #
1.)		
2.)		
3.)		

\*\*\*\*\*

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: HB 289 (SB196)  
Publish Date: \_\_\_\_\_

REQUEST: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: An act relating to management of state land

Agency Affected: Natural Resources  
BRU: Land and Water Management

Sponsor: Cotten  
Requestor: House Resources

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The Department of Natural Resources anticipates no additional expenditures with respect to this legislation.

Prepared by: Tom Hawkins *Tom Hawkins* Phone: 465-2400  
Division: Land and Water Management Date: \_\_\_\_\_

Approved by Commissioner: James G. Smith Date: 4-26-87  
Agency: Natural Resources

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

Cliff Eames

Pro Regional Planning - public participation

Some disposals should be allowed

NO program land disposals

want offer 65+ million

planning be the rule w/ exceptions

3 add'l exceptions

+ tidelands leases for mariculture

abandon of local Plans in lieu  
of regional Plan.

Celia Hunter -

Agrees w/ Cliff Eames  
+ Review w/ FSLUPC

Trail access

Jim Dykes - AKS survival

Beaumont case vs. Public interest

.345 publication - when are hearings mandatory?

record does it reflect public testimony?

333-5209

333-3513

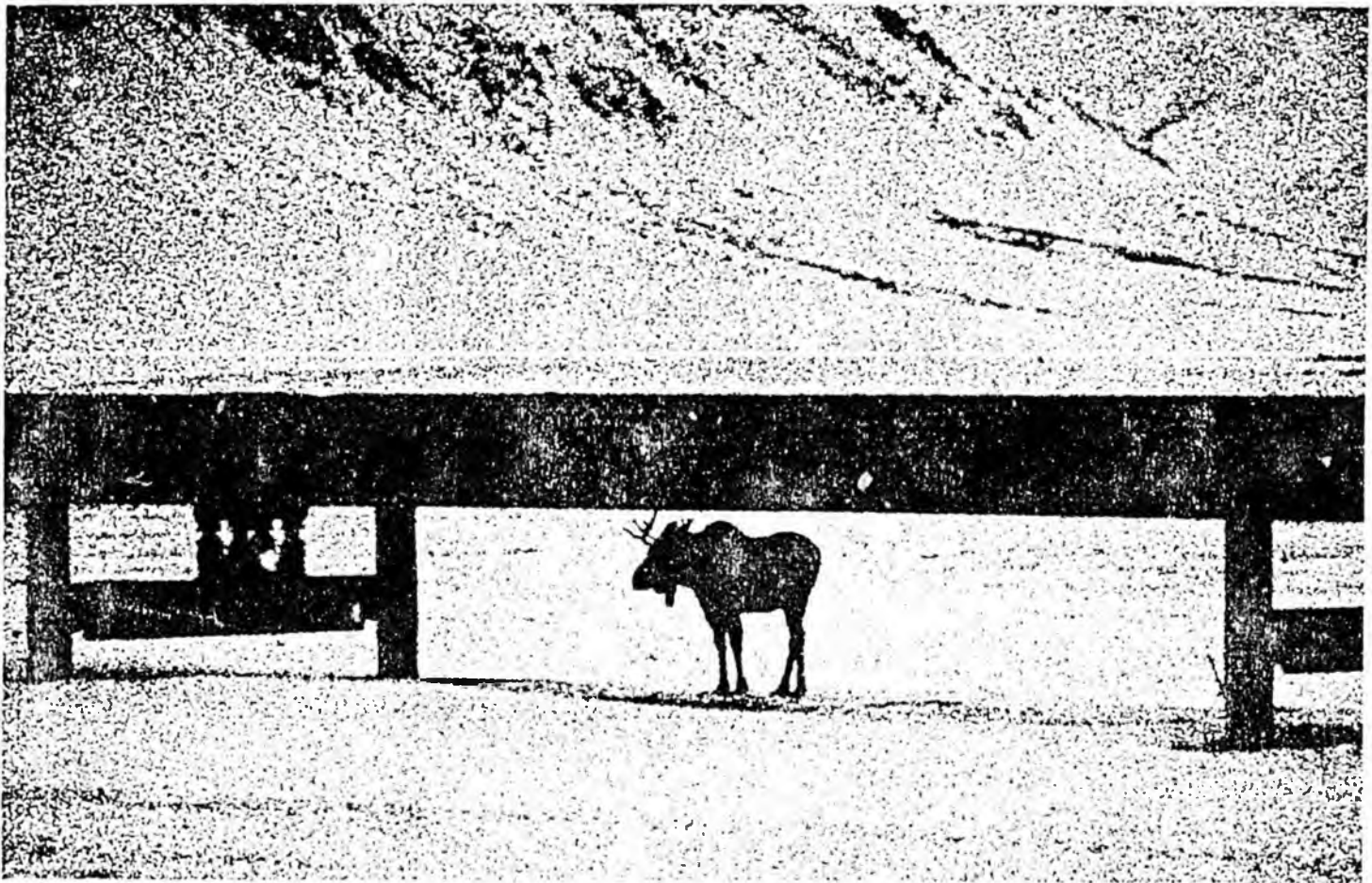
~~260~~ ~~89~~

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# STATE LAND CLASSIFICATION AND LAND DISPOSAL BANK

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## 1986 REPORT TO THE LEGISLATURE



**JANUARY, 1987**

Steve Cowper  
Governor  
State of Alaska

Judith M. Brady  
Commissioner  
Department of Natural Resources



Alaska Department of  
**NATURAL  
RESOURCES**

---

DIVISION OF LAND AND WATER MANAGEMENT

P.O. BOX 7005, ANCHORAGE, ALASKA 99510

# STATE LAND CLASSIFICATION AND LAND DISPOSAL BANK

1986 REPORT TO THE LEGISLATURE

JANUARY, 1987

Steve Cowper  
Governor  
State of Alaska

Judith M. Brady  
Commissioner  
Department of Natural Resources

Prepared by Gary Johnson  
Resource Allocation Section  
Veronica Clark, Section Chief  
Division of Land and Water Management  
Tom Hawkins, Director

Cover photograph courtesy of Alyeska Pipeline Service Company



# STATE OF ALASKA

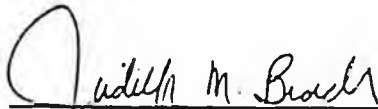
## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

PO. BOX 7005  
ANCHORAGE, ALASKA 99510-7005  
PHONE: (907) 561-2020

In fulfillment of AS 38.05.300(b) and AS 38.04.020(d), I submit the 1986 State Land Classification and Land Disposal Bank Report. The report presents useful information on land classification activity, mineral orders and state land set aside for disposal.



Judith M. Brady, Commissioner  
DEPARTMENT OF NATURAL RESOURCES

1-2-86  
Date

## ACKNOWLEDGMENTS

The authors would like to acknowledge our debt to the long laboring crew who typed this report - Amy Garrett and Crystal Wood who remained remarkably cheerful through innumerable rounds of "one-more-time please." Also deserving thanks are Patty Kerschner and Elaine Thomas for the good looking maps and graphics. Finally, thanks to the regional office land disposal and classification staffs in Juneau, Anchorage and Fairbanks who contributed to the classification and land bank figures on short notice.

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# STATE LAND CLASSIFICATION AND LAND DISPOSAL BANK

## 1986 Report to the Legislature

This report fulfills two requirements:

1. A report to the legislature which describes and shows the location of all classifications of state land during the preceding year due on February 1 of each year. [AS 38.05.300(b)]
2. A report to the legislature on the status of land in the disposal bank, due on January 15 of each year. [AS 38.04.020(d)]

### Summary

1. Land classification identifies the purposes for which state land has been allocated.
2. All land classification actions are based on a land use plan prepared by the Department of Natural Resources.
3. Adopted plans cover about 36 million acres (44%) of state-owned land. Plans are in progress for another 19 million acres. When the ongoing plans are complete, two-thirds of state-owned land will be covered by a land use plan.
4. All classification categories are for multiple use, although a particular use may be considered primary. Land may be given up to three classifications in combination.
5. In 1986, the department classified 2,275,275 acres of state land, bringing the total amount of classified land to 64,008,155 acres. Most of the 1986 classifications resulted from the Susitna Area Plan, the Tanana Basin Area Plan, the Hatcher Pass Management Plan, and the Matanuska Valley Moose Range Management Plan.
6. The land disposal bank contains land classified for disposal. The total amount of land in the disposal bank as of December 31, 1986, is 504,943 acres: 121,192 acres for homesteads; 23,728 acres for subdivisions; 378,662 acres for agricultural disposal; 1,640 acres for commercial and industrial disposal; and 655 acres for other purposes. (20,934 acres of agricultural lands are included in both homesteads and agricultural disposal and are therefore subtracted to avoid double counting.)

# PLANNING, CLASSIFICATION, AND MANAGEMENT

## Land and Resource Planning

All land classification actions are based on a land use plan prepared by the Department of Natural Resources. Land use plans provide guidance for the use and development of state land and resources. State law requires that these plans be consistent with local governmental land use plans to the maximum extent determined to be consistent with state interests. The department prepares two kinds of land use plans: area plans and management plans.

Area plans, such as the 11-million acre Bristol Bay Area Plan, cover relatively large regions of the state. With participation by agencies and the public, resources are identified and land use values are determined. Area plans allocate state land for primary and secondary uses. To ensure multiple use and avoid conflict, the allocations are accompanied by management intent statements which give direction to land managers and guidelines for applying specific land classification. About 36 million acres of state land are now covered by adopted area plans in the most populated regions of the state.

Management plans, such as the 115,000-acre Matanuska Valley Moose Range Management Plan, are more detailed than area plans and usually cover much smaller areas. The process for preparing a management plan is similar to that of an area plan.

Figure 1. LAND USE PLANNING ALASKA DEPARTMENT OF NATURAL RESOURCES



\*classification will be done by DLWM subsequent to the area plan

\*\* 1:63,360 scale and larger

## Status of Area Plans

Plans are listed below with the acreage of patented and tentatively approved state land within their planning areas. Patent and tentative approval apply to uplands only. The Submerged Lands Act gave states ownership of tidelands and submerged lands. Some plans, such as the Southwest Prince of Wales Island Area Plan, address primarily tidelands and submerged lands and, therefore, have a relatively small acreage of patented and tentatively approved land.

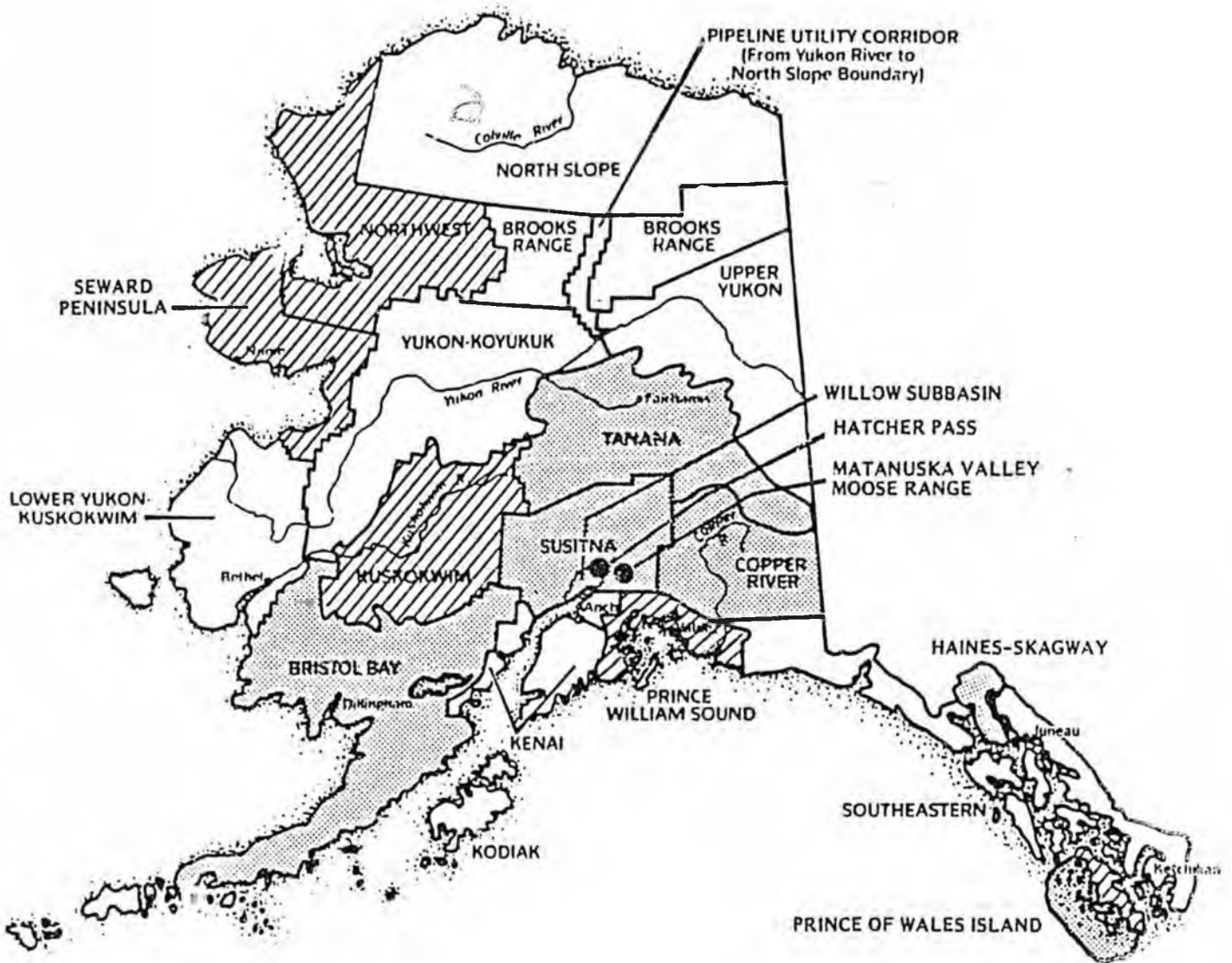
**Table 1.**  
**Status of Area Plans and Management Plans**

ADOPTED AREA PLANS	ACRES
Bristol Bay	11,000,000 acres
Copper River Basin	2,500,000 acres
Delta-Salcha	1,300,000 acres
Haines-Skagway	400,000 acres
Nenana-Totchaket	1,000,000 acres
Southwest Prince of Wales Island	3,400 acres
Susitna	9,500,000 acres
Tanana Basin	9,600,000 acres
Willow Subbasin	<u>460,000 acres*</u>
SUBTOTAL	35,763,400 acres
AREA PLANS IN PROGRESS	
Kuskokwim	14,300,000 acres
Northwest	4,200,000 acres
Prince of Wales Island	30,000 acres
Prince William Sound	<u>800,000 acres</u>
SUBTOTAL	19,330,000 acres
GRAND TOTAL	55,093,400 acres

\*The Willow Subbasin includes Hatcher Pass and the Matanuska Valley Moose Range, for which management plans were completed in 1986. Acreage of patented and tentatively approved land reclassified as a result of these management plans are:

Hatcher Pass	211,000 acres
Matanuska Valley Moose Range	115,000 acres

Figure 2. PLANNING REGIONS ALASKA



**AREA PLANNING STATUS**

- Completed area plans
- ▨ Area plans in progress
- Not scheduled for area planning

## Classification

Land classification is an integral step in the process of making Alaska's land available for public and private use. It serves to identify the purposes for which the land has been allocated.

All classification categories are for multiple use, although a particular use may be considered primary. In some cases, land may be given up to three classifications in combination. Uses are presumed to be compatible until proven otherwise. All of the categories also allow surface leasing, mining claims, sale of materials and oil and gas leasing unless restricted through a land use plan. The settlement classification category provides for the sale of land and the agricultural classification provides for the sale of rights in the land for agricultural purposes. Public notice must be given prior to classifying or reclassifying land (AS 38.05.945).

State land and water may not be administratively closed to multiple use if the area involved contains more than 640 acres. Larger, single-purpose areas such as parks and critical habitat areas must be established by the legislature.

On September 7, 1983, new land classification regulations became effective (11 AAC 55). These amendments simplified the previous regulations, modified the classification requirement for mineral location, and placed a greater reliance on land use plans and land planning reports to provide land management guidance. Seven of the old classifications were eliminated and seven categories were added. Disposal classifications such as private recreation, residential, commercial, industrial and utility were combined under the single classification category called settlement land. New classifications include coal, geothermal, oil and gas, transportation corridor, water resources, and heritage resources land. The classification regulations continue to provide for up to three classifications where more than one primary resource value exist.

Land classified since September 1983 remains open to locatable mineral entry unless specifically closed by a mineral order. Land classified under certain categories before September 1983 was automatically closed to mineral entry or required the use of leasehold location. Lands so classified retain their mineral entry restrictions or closure until they are reclassified.

## Alaska Survival v. State of Alaska

On August 19, 1986, the Alaska Supreme Court rendered a decision in Alaska Survival v. State of Alaska. The decision reversed the department's decision to dispose of the Chase III Agricultural Homesteads because the department classified state land for this project before the Susitna Area Plan was adopted and thereby violated the statutory requirement that classification of land be based on a regional or area plan. The department's petition for rehearing was recently denied without any further clarification of the ruling. To comply with the court ruling, the department no longer classifies land outside adopted area plans.

The court ruling in Alaska Survival v. State of Alaska does not affect the validity of classifications in effect before August 19, 1986. To comply with the court ruling, the department no longer classifies land outside adopted area plans. However, since the court's interpretation of state law in Alaska Survival v. State of Alaska amounts to a moratorium on the use of much of the state's land, the department intends to ask the legislature to clarify its intent by amending AS 38.04.065.

## Land and Water Management

Land use plans and the classifications that result from them are fundamental tools in achieving the department's basic goals of sound land and resource stewardship, responsible decision-making, and greater economic vitality and quality of life for Alaskans. The decisions made through planning and reflected in classification attempt to help achieve these goals by ensuring that suitable land is acquired by the state, managed for the overall welfare and satisfaction of present and future generations, and made available for private development of resources where doing so benefits the state.

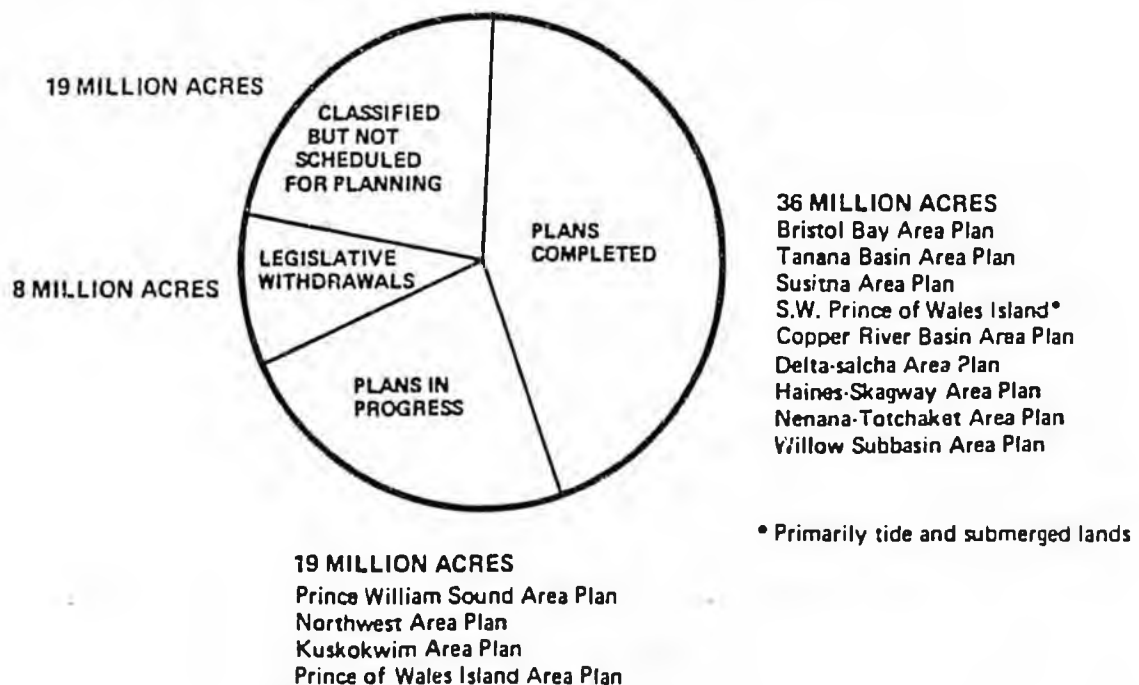
Plans recommend lands to select to fill the remainder of our 105 million acre land entitlement and lands to be relinquished. The state's land base of 82 million acres is increasing annually. As it approaches our entitlement the remaining selections become particularly important.

As Alaska's land base and population grow and stabilize, and as development in the state expands, demand for public and private use of state land increases tremendously. Planning is a primary mechanism used by the department to resolve competing demands, decide the best use, and minimize conflicts between coexisting multiple uses.

A basic decision the department must make is which lands will remain in state ownership and which should be offered for sale. Disposal projects are often controversial. Area and management plans ensure that a sufficient amount of good quality land is offered for sale, and for deciding which land to offer. Classification for settlement follows the plan and is the initial step in the formal process of land disposal.

**Figure 3. Area Plan Status**

TOTAL = 82 Million Acres Patented and Tentatively Approved State Land

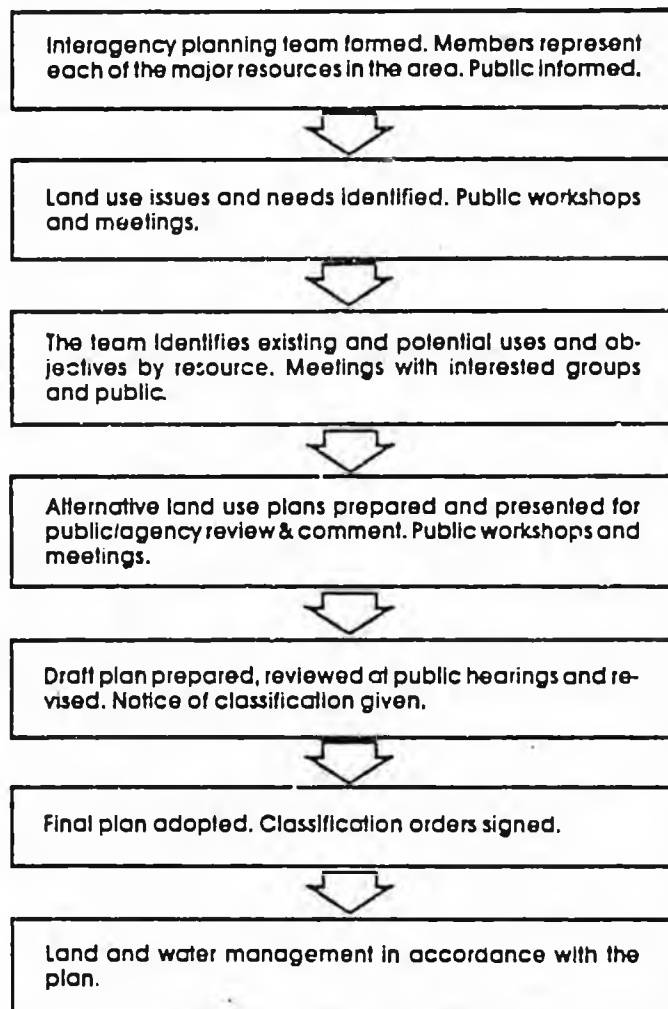


Most land retained by the state is managed for public use. The department's plans give land managers guidance on such actions as granting permits, leases, material sales (i.e., sand and gravel) and rights-of-way. Statements of management intent for each area determine whether a proposed action should take place and guidelines specify how actions will be managed to protect other resources and minimize conflicts. Classification for retained land reflects the primary uses designated in area plans. Classification by itself does not give guidance for how areas should be managed. Plans must be referred to for this guidance.

Water management by the state is similarly tied to the department's land use plans and their resulting classifications. Land allocations consider water quality and quantity; its value for human consumption, recreation, fish and wildlife habitat, land transportation; and its use in various kinds of resource development, such as mining or agriculture.

Water management decisions such as the allocation of water rights must be consistent with the plan's land management intent and guidelines. Plans also may give some guidance directly to water management, for example, by setting priorities for studying rivers in a region for possible instream flow reservations to protect important resource areas.

Figure 4. Planning Process



# SUMMARY OF 1986 LAND CLASSIFICATION ACTIONS

## Hatcher Pass

The Hatcher Pass Management Plan was adopted by the Department of Natural Resources on September 30, 1986. The management plan specifies how 211,000 acres of state land will be classified and managed. The classification became effective on October 16, 1986.

Table 2. Hatcher Pass Classification Acreage

CLASSIFICATION	ACRES
Forest/Grazing/Public Recreation and	618
Grazing/Public Recreation/Wildlife Habitat Land	5,318
Mineral/Public Recreation Land	8,360
Mineral/Public Recreation/Wildlife Habitat Land	9,240
Public Recreation Land	6,745
Public Recreation/Water Resource Land	9,890
Public Recreation/Water Resource/Grazing Land	260
Public Recreation/Water Resource/Wildlife Habitat Land	33,300
Public Recreation/Wildlife Habitat Land	137,301
TOTAL	211,032

## Matanuska Valley Moose Range

The Matanuska Valley Moose Range Management Plan was adopted by the Department of Natural Resources on August 27, 1986. Because the plan contains guidelines which are to be implemented by the Department of Fish and Game, the plan was also signed by the commissioner of that department on October 2, 1986. The management plan specifies how 115,000 acres of state land will be classified and managed. The classification became effective on October 15, 1986.

Table 3.  
Matanuska Valley Moose Range Classification Acreage

CLASSIFICATION	ACRES
Wildlife Habitat/Coal/Forest Land	89,573
Wildlife Habitat/Public Recreation	25,336
TOTAL	114,909

## Susitna

The Susitna Area Plan was adopted by the Department of Natural Resources on April 24, 1985. Major portions of the planning area have been classified but in some areas the classification work is still in progress. The acreage figures for some of the land classified in 1986 were not available for this report. Net acreage will be reported for these in next year's report to the legislature.

Table 4. Susitna Classification Acreage

CLASSIFICATION	ACRES
Coal/Oil and Gas/Wildlife Habitat	52,010
Forest/Oil and Gas/Wildlife Habitat	37,330
Forest/Public Recreation/Water Resources	98,132
Forest/Public Recreation/Wildlife Habitat	29,970
Mineral/Public Recreation/Wildlife Habitat	88,313
Mineral/Wildlife Habitat	75,435
Oil and Gas/Settlement	1,520
Public Recreation	4,065
Public Recreation/Settlement/Wildlife Habitat	15,480
Public Recreation/Water Resources/Wildlife Habitat	76,814
Public Recreation/Wildlife Habitat	175,856
Reserved Use	11,640
Settlement	108,426
Water Resources/Wildlife Habitat	118,040
Wildlife Habitat	131,760
TOTAL	1,024,791

## Tanana Basin

The Tanana Basin Area Plan was adopted in April 1985 and the land was classified in June 1985. During the past year, the 1985 classification orders were researched for their accuracy in reflecting the intent of the plan and land status. As a result of this effort, some of the initial classification orders were amended. The department expects to complete this project in 1987.

Table 5. Tanana Basin Classification Acreage

CLASSIFICATION	ACRES
Agricultural Land	2,290
Forest/Wildlife Habitat Land	177,192
Public Recreation/Wildlife Habitat Land	565,130
Settlement Land	56,669
Wildlife Habitat Land	21,447
TOTAL	822,728

## Classification for the Land Disposal Program

In 1986, the department classified about 186,000 acres to allow the offering of state land through subdivision, lottery, homesite offering, homestead entry and agricultural programs. All classifications for disposal were based upon area plans, except the Crazy Mountain Homestead area near Central (16,990 acres), the cape Fanshaw subdivision area near Petersburg in Southeast Alaska (1,135 acres), and land near Homer (240 acres). These three classifications became effective before the Alaska Supreme Court ruled in Alaska Survival v. State of Alaska. The identification of land for sale is now accomplished through the area planning process.

The annual classification acreage figures will not match the annual disposal acreage. Reasons for this are: (1) some acreage is lost to right-of-way and common area during the subdivision process; (2) some of the land classified this past year will not be offered until some future year; (3) some of the land being offered for sale has been classified in previous years; and (4) some of the land classified and offered for homestead staking is never staked.

Table 6. Land Disposal Program Classification Acreage

REGION	CLASSIFICATION	ACRES
Northern Region	Settlement	73,659 acres
	Agriculture	2,290 acres
Southcentral Region	Settlement	108,680 acres
Southeast Region	Settlement	1,135 acres
TOTAL		185,764 acres

## Classification of Tide and Submerged Lands

The state may classify tide and submerged land into any appropriate state land classification. Preference is granted to the upland owner for the use of a tract of tideland, or tideland and contiguous submerged land, which is seaward of the upland property (AS 38.05.850).

In the Southeast Region, 175 acres were classified settlement to allow the lease of a log transfer site on tidelands near Point Macartney. Approximately 75,000 acres of submerged lands (lakes and rivers) will be classified public recreation/water resources/wildlife habitat on the basis of the Copper River Basin Area Plan.

## Classification by Region

The division maintains three land and water management regional offices. The Northern Region is located north of the Alaska Range and an east-west line from Norton Sound to the Alaska Range. The Southcentral Region is located south of this line and west of Yakutat Bay. East and south of Yakutat Bay is the Southeast Region. The following is a summary of land classification actions by each region.

**Southcentral Region.** The majority of classification activity which took place in the Southcentral Region resulted from the Susitna Area Plan (1,024,791 acres) and the management plans for Hatcher Pass (211,032 acres) and the Matanuska Valley Moose Range (114,909 acres). About 17,000 acres were reclassified from reserved use to public recreation/wildlife habitat land to facilitate the issuance of personal use cabin permits. Another reclassification of 265 acres to grazing land was related to a grazing lease. Other classifications totaling less than 50 acres facilitated several preference right disposals and the transfer of land to the Kenai Peninsula Borough.

**Northern Region.** All the classification activity in the Northern Region was related to the Tanana Basin Area Plan (822,728 acres) and the Crazy Mountain disposal area (16,990 acres).

**Southeast Region.** In the Southeast region, 175 acres of tidelands were classified near Point Macartney and 1,135 acres of uplands at Cape Fanshaw.

**Table 7. 1986 Land Classification by Region**

REGION AND CLASSIFICATION	ACRES ADDED	ACRES REMOVED	NET ACREAGE
<b>NORTHERN</b>			
Agricultural Land	2,290	-0-	2,290
Forest/Wildlife Habitat	177,192	-0-	177,192
Resource Management	-0-	(16,990)	(16,990)
Settlement Land	73,659	(2,290)	71,369
Wildlife Habitat Land	21,447	-0-	21,447
Wildlife Habitat/Public Recreation	565,130	-0-	565,130
<b>SUBTOTAL</b>	<b>839,718</b>	<b>(19,280)</b>	<b>820,438</b>

## 1986 Land Classification by Region

(Table 7 continued)

REGION AND CLASSIFICATION	ACRES ADDED	ACRES REMOVED	NET ACREAGE
<b>SOUTHCENTRAL</b>			
Agricultural Land	-0-	(12,950)	(12,950)
Coal/Oil and Gas/Wildlife Habitat	52,010	-0-	52,010
Forest Land	-0-	(38,905)	(38,905)
Forest/Grazing/Public Recreation	618	-0-	618
Forest/Oil and Gas/Wildlife Habitat	37,330	-0-	37,330
Forest/Public Recreation/ Water Resources	110,036	-0-	110,036
Forest/Public Recreation/Wildlife Habitat	65,940	-0-	65,940
Grazing Land	265	-0-	265
Grazing/Public Recreation/Wildlife Habitat	5,318	-0-	5,318
Mineral Land	-0-	(3,160)	(3,160)
Mineral/Public Recreation	8,360	-0-	8,360
Mineral/Wildlife Habitat	75,435	-0-	75,435
Mineral/Wildlife Habitat/Public Recreation	96,963	-0-	96,963
Oil and Gas/Settlement	1,520	-0-	1,520
Public Recreation Land	8,440	(78,281)	(69,841)
Public Recreation/Settlement/ Wildlife Habitat	15,480	-0-	15,480
Public Recreation/Water Resources	9,890	-0-	9,890
Public Recreation/Water Resources/ Grazing	16,830	-0-	16,830
Public Recreation/Water Resources/ Wildlife Habitat	91,043	-0-	91,043
Public Recreation/Wildlife Habitat	357,900	(500)	357,400
Public Recreation/Wildlife Habitat/ Water Resources	139,360	-0-	139,360
Reserved Use Land	11,671	(19,102)	(7,431)
Resource Management Land	-0-	(491,556)	(491,556)
Settlement Land	108,680	(16,301)	92,379
Wildlife Habitat Land	131,760	(66,420)	65,340
Wildlife Habitat/Coal/Forest Land	89,573	-0-	89,573
<b>SUBTOTAL</b>	<b>1,434,422</b>	<b>(727,175)</b>	<b>707,247</b>
<b>SOUTHEASTERN</b>			
Resource Management Land	-0-	(1,135)	(1,135)
Settlement Land	1,135	-0-	1,135
<b>SUBTOTAL</b>	<b>1,135</b>	<b>-0-</b>	<b>-0-</b>
<b>STATEWIDE TOTAL</b>	<b>2,275,275</b>	<b>(747,590)</b>	<b>1,527,685</b>

Table 8. 1986 Land Classification Statewide Total <sup>1</sup>

CLASSIFICATION	ACRES ADDED	ACRES REMOVED	NET ACREAGE	TOTAL ACRES 12/31/85	TOTAL ACRES 12/31/86
Agricultural Land	2,290	(12,950)	(10,660)	628,925	618,265
Agricultural/ Settlement Land	-0-	-0-	-0-	14,872	14,872
Coal Land	-0-	-0-	-0-	2,560	2,560
Coal/Oil and Gas/ Wildlife Habitat Land	52,010	-0-	52,010	-0-	52,010
Forest Land	-0-	(38,905)	(38,905)	3,234,090	3,195,185
Forest/Grazing/ Public Recreation Land	618	-0-	618	-0-	618
Forest/Oil and Gas/ Wildlife Habitat Land	37,330	-0-	37,330	-0-	37,330
Forest/Public Recreation/Water Resource Land	110,036	-0-	110,036	-0-	110,036
Forest/Public Rec- reation/Wildlife Habitat Land	65,940	-0-	65,940	-0-	65,940
Forest/Wildlife Habitat Land	177,192	-0-	177,192	283,420	460,612
Geothermal Land	-0-	-0-	-0-	-0-	-0-
Grazing Land	265	-0-	265	152,775	153,040
Grazing/Public Recreation/Wildlife Habitat Land	5,318	-0-	5,318	-0-	5,318
Heritage Resources	-0-	-0-	-0-	-0-	-0-
Material Land	-0-	-0-	-0-	5,088	5,088
Mineral Land	-0-	(3,160)	(3,160)	83,742	80,582
Mineral/Public Rec- reation Water					
Mineral/Wildlife Habitat Land	75,435	-0-	75,435	352,034	427,469
Mineral/Wildlife Habitat/Public Recreation Land	96,963	-0-	96,963	2,073,993	2,170,956

<sup>1</sup> Because of an extraordinary volume of planning and classification activity it was not possible to report all net acreage figures for the Tanana Basin Area Plan and Susitna Area Plan this year. Please refer to the 1985 Classification Report to the Legislature for a full listing of total acreage.

## 1986 Land Classification Statewide Total

(Table 8 continued)

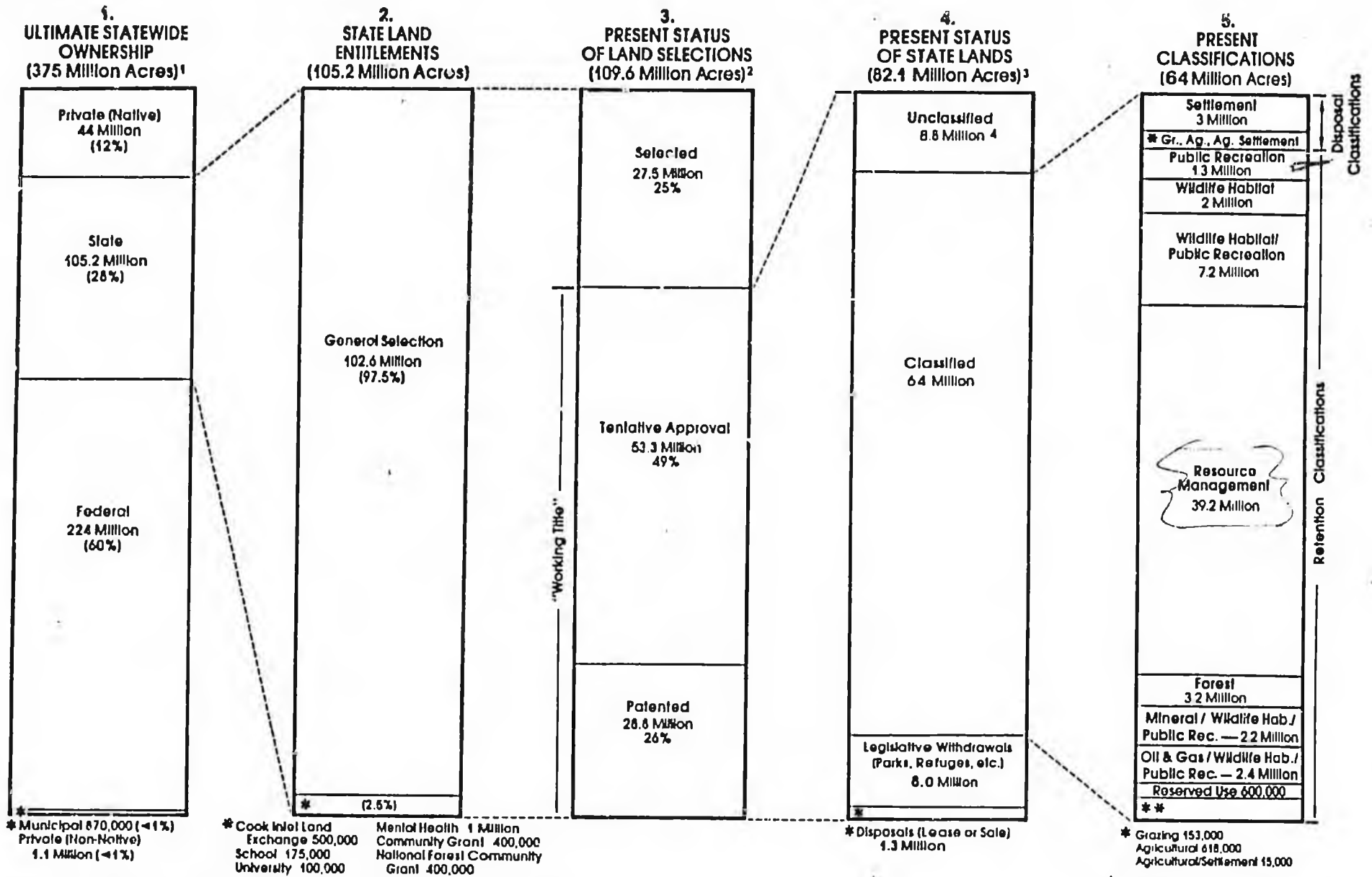
CLASSIFICATION	ACRES ADDED	ACRES REMOVED	NET ACREAGE	TOTAL ACRES 12/31/85	TOTAL ACRES 12/31/86
Oil and Gas Land	-0-	-0-	-0-	-0-	-0-
Oil and Gas/Settle- ment Land	1,520	-0-	1,520	-0-	1,520
Oil & Gas/Wildlife Habitat Land	-0-	-0-	-0-	226,192	226,192
Oil & Gas/Wildlife Habitat/Public Recreation Land	-0-	-0-	-0-	2,396,537	2,396,537
Public Recreation Land	8,440	(78,281)	(69,841)	1,353,340	1,283,499
Public Recreation/ Settlement/Wildlife Habitat Land	15,480	-0-	15,480	-0-	15,480
Public Recreation Water Resources/ Grazing Land	16,830	-0-	16,830	-0-	16,830
Public Recreation/ Water Resources Land	9,890	-0-	9,890	-0-	9,890
Public Recreation/ Water Resources/ Wildlife Habitat	91,043	-0-	91,043	-0-	91,043
Reserved Use Land	11,671	(19,102)	(7,431)	596,949	589,168
Resources Land	8,360	-0-	8,360	-0-	8,360
Resource Assessment Land <sup>2</sup>	-0-	-0-	-0-	150,000	150,000
Resource Management Land	-0-	(509,681)	(509,681)	39,751,196	39,241,515
Settlement Land	183,474	(18,591)	164,883	2,850,634	3,015,517
Transportation Corridor Land	-0-	-0-	-0-	-0-	-0-
Water Resources Land	-0-	-0-	-0-	127,535	127,535
Wildlife Habitat Land	153,207	(66,420)	86,787	1,913,947	2,000,734
Wildlife Habitat/ Public Recreation Land	923,030	(500)	922,530	6,227,945	7,150,475
Wildlife Habitat/ Water Resources Land	139,360	-0-	139,360	55,046	194,406
Wildlife Habitat/ Coal/Forest Land	89,573	-0-	89,573	-0-	89,573
<b>Total</b>	<b>2,275,275</b>	<b>(747,590)</b>	<b>1,527,685</b>	<b>62,480,470</b>	<b>64,008,155</b>

<sup>2</sup> This classification category will be eliminated when these lands are reclassified under the new classification regulations.

Figure 5.

# ALASKA LAND STATUS (In Acres)

December, 1986



<sup>1</sup> Represents ultimate ownership if land entitlements and private land ownership had remained static at the time of passage of the Alaska Native Claims Settlement Act. In reality, proportions have and will continue to change as a result of public land sales, Native land sales and land exchanges.

<sup>2</sup> Includes 4.4 million acres of over selection

<sup>3</sup> Does not reflect submerged, tide or shoreland ownership

<sup>4</sup> Does not reflect uncounted but arranged of approximately 6 million acres classified in the Kenai Basin

## MAJOR CLASSIFICATION ACTIONS PROPOSED FOR 1987

In 1987 the department expects to classify land as a result of the Copper River Basin Area Plan and the Prince William Sound Area Plan.

### Copper River Basin

The Copper River Basin Area Plan was adopted by the Department of Natural Resources on November 26, 1986. The Commissioner of the Department of Fish and Game signed the plan on December 5, 1986. The Copper River Basin Area Plan covers about 3.5 million acres of state owned and selected land. The final notice proposes classification and closure of certain lands to mineral entry on February 6, 1987. The net classification acreage will be reported in the January 1987 classification report to the legislature.

Table 9. Copper River Classification Acreage

CLASSIFICATION	ACRES
Agricultural land	8,097
Agricultural/Settlement Land	4,120
Forest/Public Recreation/Wildlife Habitat Land	361,649
Forest/Settlement Land	11,011
Forest/Transportation Corridor/Settlement Land	46,296
Forest/Wildlife Habitat Land	201,883
Geothermal/Public Recreation/Wildlife Habitat Land	350
Heritage Resources/Public Recreation/Wildlife Habitat Land	5,165
Mineral/Wildlife Habitat Land	41,635
Public Recreation Land	154,310
Public Recreation/Transportation Corridor/Wildlife Habitat Land	17,096
Public Recreation/Wildlife Habitat Land	151,147
Resource Management Land	449,007
Settlement Land	52,947
Transportation/Wildlife Habitat Land	62,432
Wildlife Habitat Land	1,893,734
TOTAL	3,460,879

### Prince William Sound Area

The Prince William Sound Area Plan will cover about 800,000 acres of state land widely interspersed throughout the Chugach National Forest. The plan is in its final stages and classification is expected in late 1987.

# LAND DISPOSAL BANK REPORT

Land disposal bank contains land classified for disposal.<sup>3</sup> AS 38.04.020(d) requires that on January 15th of each year, the commissioner report to the legislature the status of certain categories of state land:

1. land suitable for homestead disposal
2. land suitable for subdivision disposal
3. land suitable for agriculture, commercial or industrial disposal
4. land suitable for other purposes

Acreages within the land disposal bank are as follows:<sup>4</sup>

## Homestead Disposal

A total of 121,192 acres are identified for homestead disposal and considered suitable for staking in the homestead program. Homestead land is classified agricultural land for agricultural homesteads and settlement for non-agricultural homesteading.<sup>5</sup>

## Subdivision Disposal

An estimated 23,728 acres, including parcels previously offered and not yet sold, are classified and suitable for disposal as subdivision parcels.<sup>6</sup>

## Agricultural, Commercial and Industrial Disposal

A total of 378,662 acres are classified for agricultural purposes.<sup>7</sup> Commercial and industrial land has been converted to the settlement classification. The bank contained about 1,640 acres of land designated for commercial and industrial use as of January 1, 1983.

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<sup>3</sup> AS 38.04.020(a). Lands must be classified into a disposal category before they are actually included in the Land Bank [AS 38.04.020(c)].

<sup>4</sup> Portions of the land disposal records are manually maintained. Therefore, while actual figures have been used in this report when available, conservative estimates are used in cases where they are reasonably accurate and actual data collection time would substantially outweigh the marginal benefit which might be derived from more precise figures.

<sup>5</sup> Land considered suitable for homestead disposal includes land which has been identified for sale in FY87 and FY88 and has been classified in a settlement or agricultural disposal classification. The "Annual Report on State Land Offerings" identifies a substantial amount of additional land for sale after 1988. Not all that land, however, is classified.

<sup>6</sup> This acreage excludes all parcels sold in 1983.

<sup>7</sup> The acres classified for agricultural purposes and considered to be in the land disposal bank are land which have not been sold. About 2,778 acres were sold in 1984 which are not included in this total.

### **Other Purposes**

Most land is made available through the categories mentioned above. Certain land, however, is sold by auction in odd lots or for other special purposes. About 555 acres in odd lots are currently identified for sale.

### **Total Land in Disposal Bank**

The total amount of land in the disposal bank as of December 31, 1986, is estimated to be 504,943 acres.<sup>8</sup>

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<sup>8</sup>The total reflects the subtraction of 20,934 acres of agriculturally classified land which are also identified under 1 and 3 above.

# APPENDIX

## Description of Classification Categories 11 AAC 55

**Agricultural Land.** Land classified agricultural is, by reason of climate, physical features, and location, suitable for present or future agricultural cultivation or development and is intended for present or future agricultural use. When agricultural land is disposed of, only an agricultural interest may be conveyed.

**Coal Land.** Land classified coal is where known coal resources exist and development is occurring or is reasonably likely to occur, or where the coal potential has been determined to be high or moderate under 11 AAC 58.010.

**Forest Land.** Land classified forest is, or has been, forested and is suited for forest management because of its physical, climatic, and vegetative conditions.

**Geothermal Land.** Land classified geothermal is where known geothermal resources exist and where development is occurring or is reasonably likely to occur, or where there is reason to believe commercial quantities of geothermal resources exist.

**Grazing Land.** Land classified grazing is suitable in the cultivated or uncultivated state, for supporting domestic livestock or reindeer.

**Heritage Resources Land.** Land classified heritage resources is where there is active preservation of, or research for, significant historical, prehistorical, paleontological, or other cultural values or where there is reason to believe that these values exist.

**Material Land.** Land classified material is land suitable for the extraction of common varieties of sand, gravel, stone, peat, clay, and similar materials.

**Mineral Land.** Land classified mineral is where known mineral resources exist and where development is occurring, or is reasonably likely to occur, or where there is reason to believe that commercial quantities of minerals exist.

**Oil and Gas Land.** Land classified oil and gas is where known oil and gas resources exist and where development is occurring, or is reasonably likely to occur, or where there is reason to believe that commercial quantities of oil and gas exist.

**Public Recreation Land.** Land classified public recreation is suitable for recreation uses, waysides, parks, campsites, scenic overlooks, hunting, fishing or boating access sites, trail corridors, or greenbelts along bodies of water or roadways.

**Reserved Use Land.**

(a) Land classified reserved use is:

- (1) reserved for transfer to another governmental or nongovernmental agency that is performing a public service;
- (2) reserved for transfer through land exchange; or
- (3) designated for a public facility.

(b) Nothing in this section requires classification of land identified for a future land exchange under AS 38.50.

**Resource Management Land.** Land classified resource management is presently ~~unaccessible and remote and~~ may have a number of resources but where there is the lack of adequate resource, economic, or other relevant information combined with the unlikelihood of resource development within the next 10 years makes a specific resource allocation decision unnecessary.

**Settlement Land.** Land classified settlement is, by reason of its physical qualities and location, suitable for year-round or seasonal residential or private recreational use or for commercial or industrial development.

**Transportation Corridor Land.** Land classified transportation corridor is identified for the location of easements and rights-of-way under AS 38.04.065(f), including transportation, pipeline, or utility corridor purposes, or is under consideration for a right-of-way lease.

**Water Resources Land.** Land classified water resources encompasses watersheds or portions of watersheds and is suitable for such uses as water supply, watershed protection, or hydropower sites.

**Wildlife Habitat Land.** Land classified wildlife habitat is primarily valuable for:

- (1) fish and wildlife resource production, whether existing or through habitat manipulation, to supply sufficient numbers or a diversity of species to support commercial, recreational, or traditional uses on an optimum sustained yield basis; or
- (2) a unique or rare assemblage of a single or multiple species of regional, state, or national significance.

ALASKA SURVIVAL v. STATE. DEPT. OF NAT. RES. Alaska 1281

Cite as 723 P.2d 1281 (Alaska 1986)

ing from a conduct disorder, "undersocialized and aggressive," that he is resentful of authority, has superficial emotional ties to others, has difficulty in forming relationships, lacks conscience, is without internal controls, Saathoff will only do well if closely supervised which is borne out by his behavior, when his father is at home.

The chance that Saathoff will be rehabilitated by age 20 is not good. He is undersocialized, aggressive, distractible, hyperactive, has no capacity to delay gratification and when confronted, acts aggressively. The onset of his antisocial behavior was very early, age nine or ten. There is no evidence that he wants to change.

Despite the dismal outlook for Saathoff's treatment by age 20, I must look at the alternatives. If the juvenile is treated as an adult, he will be sentenced to a possible thirty years to serve, the same as his accomplice is subject to pursuant to a plea bargain. I know of no treatment he will receive in the adult system which would give him any opportunity to internalize a value system that would give any degree of assurance that he would act responsibly in an unstructured setting. After serving whatever portion of thirty years that he might have to serve, I believe Saathoff would constitute as great a danger to society as he does today.

Society's best opportunity to be protected from the actions of which Saathoff has demonstrated his capacity is for him to be dealt with in the juvenile justice system where he may be classified to the closed treatment unit at McLaughlin Youth Center if deemed appropriate by the Commissioner of Health and Social Services, the court having no authority in that decision. In the closed treatment unit an effort would be made to instill a value system which would control Saathoff even after he is released from custody.

Therefore, based upon the assumption that Saathoff has consented to be treated through age 20, I find that he is amenable to treatment as a child.

An additional reason for retaining Saathoff in the juvenile system is that he is only 14 years old, has not begun to mature,

and has the appearance of an 11-year old. Confining an immature boy among adults is inappropriate and would necessitate solitary confinement by the Department of Corrections. Also, no information was presented about programs available in the adult system for youthful offenders and from my prior experience I know of nothing like the closed treatment unit program at McLaughlin Youth Center which offers an opportunity for rehabilitation of juvenile delinquents.

Therefore, because of the paucity of programs available in the adult system and the only viable program being available for juvenile delinquents, I have weighted my decision on amenability toward the juvenile system. I am not optimistic of success in this case but find a denial of waiver to be in both Saathoff and society's best interest.

DATED at Anchorage, Alaska, this 19th day of November, 1984.

/s/ Victor D. Carlson  
Victor D. Carlson  
Superior Court Judge



ALASKA SURVIVAL, Paul Bratton,  
Judy Price, G.M. Chartrand, and  
Millie Gray, Appellants.

v.

STATE of Alaska, DEPARTMENT of  
NATURAL RESOURCES; Esther C.  
Wunnicke, Commissioner, State of  
Alaska, Department of Natural Resources; and Thomas Hawkins, Director, Division of Forest, Land and Water Management, State of Alaska, Department of Natural Resources, Appellees.

No. S-996.

Supreme Court of Alaska.

Aug. 29, 1986.

Rehearing Denied Oct. 29, 1986.

Local residents filed suit to block state land disposal of 32 agricultural home-

steads. The Superior Court, Third Judicial District, Anchorage, Karen L. Hunt, J., upheld decision of Department of Natural Resources to dispose of the land in a lottery, and residents appealed. The Supreme Court, Moore, J., held that: (1) finding by Department that disposal was in state's best interests was reasonable; (2) decision of Department to proceed with lottery after considering revised soils data was not arbitrary; but (3) failure of Department to develop regional land use plan before classifying and disposing of the land rendered the disposal invalid and was not cured by Department's adoption of regional plan seven months after the lottery; and (4) residents, who were economically dependent on use of land in disposal area to gather firewood and house-building logs and to hunt and fish for food, were "public interest plaintiffs" entitled to their full reasonable attorney fees.

Reversed and remanded.

#### 1. Administrative Law and Procedure ⤵763

Review by Supreme Court of decision committed to agency discretion is confined to determining whether decision was arbitrary, unreasonable, or abuse of discretion.

#### 2. Public Lands ⤵142½

Department of Natural Resources, in deciding to dispose of 32 agricultural homesteads, did not act arbitrarily in determining water quality would be adequately protected, where Department specifically considered water quality, when designing site plan and reducing parcel sizes, and consulted Department of Environmental Conservation study concerning effects of agricultural development on water quality and input from local residents offered during numerous public hearings. AS 38.05.010 et seq.

#### 3. Public Lands ⤵142½

Fact that state land disposal of 32 agricultural homesteads with little or no soils generally suitable for cultivation would result in minimal clearing requirements did not render disposal a waste of public re-

sources, in that homesteaders would have to mark boundaries, survey land, and build permanent dwellings, and legislature recognized that agricultural homesteads might be located in marginal areas. AS 38.09.050(a)(5).

#### 4. Administrative Law and Procedure ⤵763

Failure of administrative agency to consider important factor will render its decision arbitrary.

#### 5. Administrative Law and Procedure ⤵751

Role of Supreme Court, when reviewing decision of administrative agency, is to ensure that agency has taken "hard look" at salient problems before it and has genuinely engaged in reasoned decision making.

#### 6. Public Lands ⤵142½

Decision of Department of Natural Resources to proceed with lottery for state land disposal of 32 agricultural homesteads after soils data used to plan the disposal had been revised was not arbitrary, where Department considered new soils information and decided to proceed because project still contained enough land suitable for agricultural homesteads. AS 38.05.010 et seq.

#### 7. Administrative Law and Procedure ⤵759

##### Public Lands ⤵142½

Issue as to whether public land is suitable for agricultural homesteads and whether public interest is best served by state land disposal for such homesteads falls directly within area of expertise of Department of Natural Resources, for which Supreme Court will not substitute its judgment. AS 38.05.010 et seq.

#### 8. Statutes ⤵219(1)

Where interpretation of statutes does not require special expertise of administrative agency, court exercises its independent judgment to determine whether agency complied with statutory requirements.

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9. Public Lands  $\approx 142\frac{1}{4}$

Regional land use planning must pre-  
cede land classifications and disposals. AS  
35.04.065(c, d).

10. Public Lands  $\approx 142\frac{1}{4}$

Regulation adopted by Department of  
Natural Resources, permitting classifica-  
tion of land based on site-specific plan cov-  
ering only 1,257 acres, contravened land  
use planning and classification statute. AS  
35.04.065.

11. Public Lands  $\approx 142\frac{1}{4}$

Land use planning and classification  
statute mandates comprehensive, broad-  
scale planning process prior to site-specific  
planning and classification. AS 35.04.065.

12. Public Lands  $\approx 142\frac{1}{4}$

Failure of Department of Natural Re-  
sources to have adopted regional land use  
plan before classifying and disposing of  
public land as agricultural homesteads ren-  
dered the state land disposal invalid and  
was not cured by Department's adoption of  
regional plan seven months after lottery  
was conducted for the disposal, where re-  
gional plan simply ratified, without compre-  
hensive analysis. Department's earlier deci-  
sion to dispose of the land as agricultural  
homesteads, and disclosure and public dis-  
cussion of certain information in regional  
plan would have prompted closer considera-  
tion of alternative disposal areas. AS 35.-  
04.065.

13. Costs  $\approx 172$

Prevailing public interest litigant is  
generally entitled to full reasonable attor-  
ney fees, rather than partial fees.

14. Costs  $\approx 172$

Local residents, who were economical-  
ly dependent on use of land in state land  
disposal area to gather firewood and house-  
building logs and to hunt and fish for food,  
did not have substantial economic interest  
sufficient to bar them from qualifying as  
"public interest plaintiffs" entitled to their  
full reasonable attorney fees, rather than  
partial fees, in their action challenging dis-  
posal of 32 agricultural homesteads, in that  
residents, in challenging the disposal, em-

phasized their concerns about contamina-  
tion of water supplies, impact on area wild-  
life, and general effect that increased set-  
tlement would have on quality of their sub-  
sistence life-styles, and relied on resources  
in area for personal, rather than commer-  
cial, purposes.

See publication Words and Phrases  
for other judicial constructions and  
definitions.

Robert W. Adler, Eric Smith, Stephan H.  
Williams, Trustees for Alaska, Anchorage,  
for appellants.

M. Francis Neville, Asst. Atty. Gen., An-  
chorage, and Harold M. Brown, Atty. Gen.,  
Juneau, for appellees.

Before RABINOWITZ, C.J., and  
BURKE, MATTHEWS, COMPTON and  
MOORE, JJ.

OPINION

MOORE, Justice.

This appeal challenges a state land dis-  
posal of thirty-two agricultural homesteads  
near Talkeetna. A group of local residents  
sued to block the 3,530-acre offering. The  
superior court upheld the decision of the  
State Department of Natural Resources  
(DNR) to dispose of the land in a Septem-  
ber 1984 lottery. We conclude that the  
disposal was invalid because DNR failed to  
comply with the land use planning process  
mandated by statute. We reverse the su-  
perior court judgment and remand DNR's  
disposal decision for reconsideration by the  
agency. We also conclude that the court  
erred in denying the plaintiffs status as  
public interest litigants for purposes of  
awarding attorney's fees.

I. FACTS AND PROCEDURAL HIS-  
TORY

The land disposal at issue, referred to as  
"Chase III," is located approximately five  
miles north of Talkeetna, near the commu-  
nity of Chase. The state first proposed to  
offer land in this area for agricultural de-  
velopment in 1979. Between 1979 and 1983

DNR held several public hearings in Talkeetna to discuss what it initially proposed to be a commercial agriculture project involving disposal of parcels ranging in size to 560 acres.

Local residents repeatedly objected that increased settlement would threaten their subsistence-type lifestyle and overtax area resources. Many Chase-area residents rely on the use of surrounding state land to gather firewood, set traplines, hunt and fish. Besides threatening their lifestyle, local residents argued that the area is not suited for commercial farms due to steep slopes, drainage problems and poor soils.

In response, DNR made several changes in its disposal plan, including a reduction in the amount of land to be offered from 7,000 acres to approximately 4,500 acres. In February 1983 DNR issued a written finding, pursuant to former AS 38.05.035(a)(14),<sup>1</sup> that the Chase III commercial agriculture disposal was in the state's best interests. However, the Commissioner of DNR subsequently "postponed" the scheduled April land sale in response to local opposition.

The commercial disposal was never implemented. Instead, in late 1983 DNR revised the disposal to meet the objectives of a newly enacted homestead program. Alaska Statute 38.09, enacted in 1983, authorizes the disposal of smaller, noncommercial agricultural homesteads to applicants who agree to meet certain requirements. DNR's new plan called for disposal of about 6,000 acres in parcels ranging from 40 to 160 acres each. The plan focused on subsistence-type farming rather than commercial agriculture development.

DNR published a legal notice stating that a written best interests finding had been made regarding the agricultural homestead disposal, and a public meeting was scheduled for January 27, 1984. In a January 13 letter to DNR, Judy Price, one of the appellants here, requested a copy of the finding. She did not receive a copy by

mail nor was the finding made available to her or other people when they attended the meeting.

During the meeting local residents questioned why DNR was proceeding with the Chase disposal prior to completion of the Susitna Area Plan, a statutorily mandated land use plan for the region. They also reiterated concerns raised regarding the commercial disposal, including their view that the area is not suitable for farm development. Following the meeting DNR officials took a brief field trip to the Chase area and subsequently made several changes to the site plan. The final version called for a smaller disposal of 3,530 acres and a reduction in the number of parcels to thirty-two, with four more scheduled for a later offering.

In April 1984 the director of DNR's Division of Forest, Land and Water Management signed an amendment to the previous best interests finding for the commercial disposal. The amendment concluded that the revised agricultural homestead disposal was in the state's best interests. DNR issued an order classifying 1,286 acres of Chase-area land for agricultural use. Other Chase lands had been classified in 1980. A September 14 lottery was scheduled.

Several individuals and an organization of local residents known as Alaska Survival appealed the director's best interests determination to the Commissioner of DNR. DNR held a hearing at the appellants' request and the Commissioner subsequently affirmed the director's decision to proceed with the agricultural homestead disposal.

In mid-August, less than a month before the scheduled lottery, DNR received new information that the soils in the Chase area were of poorer quality than initial surveys indicated. Throughout its planning process DNR had relied on soils information provided by the United States Soil Conservation Service (SCS), based on a preliminary 1980 SCS soils survey. This survey showed that

1. The language in former AS 38.05.035(a)(14) now appears in AS 38.05.035(e). See *infra* note 5.

8.7 percent of the acreage ultimately included in the homestead disposal contained class II or III soils.<sup>2</sup> In March 1984 DNR requested SCS to update its survey. The revised data showed that none of the thirty-two parcels contained class I or II soils and that twelve of the parcels contained little or no class III soils. Overall, the disposal area contains predominantly class IV or worse soils.<sup>3</sup>

Some DNR officials were concerned that the new data represented a major deviation from the soils information upon which the Chase disposal was premised. When the director of DNR's Division of Agriculture received preliminary word of the new data he wrote the SCS requesting a report as soon as possible. His letter stated: "We have been informed . . . that some of the parcels in the Chase III agricultural homestead area may not have any class II or III soils. The political and public policy problems associated with offering [such] land for agricultural homesteading . . . are obvious."

After receiving the SCS report, DNR officials met to consider the new information and decided to proceed with the disposal without any changes. The lottery was held and DNR notified the winners that the soils information in the State Land Disposal Brochure had been revised.

A week before the lottery, Alaska Survival and four individuals (hereinafter referred to collectively as Alaska Survival) filed a complaint in superior court appealing from the Commissioner's decision and seeking injunctive relief to halt the lottery.<sup>4</sup> The trial court denied a temporary restraining order and allowed the lottery to pro-

ceed after the state agreed to delay staking of the land pending a decision on the merits of the suit. The trial court subsequently affirmed DNR's decision to offer Chase land for agricultural homesteading, and awarded the state \$10,420 in attorney's fees. The court issued a stay closing the area to entry by the lottery winners pending this appeal.

## II. DISCUSSION

Alaska Survival appeals the decision upholding the Chase III disposal and the award of attorney's fees. Appellant challenges the disposal on both substantive and procedural grounds, arguing 1) that the disposal is not in the state's best interests, and 2) that DNR did not follow the land use planning and decision-making process mandated by statute.

### A. *The Best Interests Determination*

Alaska's Constitution and the Alaska Land Act, AS 38.05, express a policy of encouraging settlement of the state's lands "by making them available for maximum use consistent with the public interest." Alaska Const. art. VIII, § 1; AS 38.05.910. Alaska Statute 38.05.035(e) authorizes the director of DNR's Division of Lands, acting with the consent of the Commissioner, to dispose of state land upon making a "written finding that the interests of the state will be best served."<sup>5</sup> Alaska Survival contends the Chase agricultural homestead disposal is unlawful because it is not in the state's best interests.

[1] In reviewing DNR's substantive decision to dispose of Chase-area land, we apply the "reasonable basis" standard of

2. The SCS classification system takes into account soils and climatic conditions. Class I through IV soils are generally suitable for cultivation, although the recommended use in Alaska of class IV soils with steep slopes is hay cultivation and grazing; classes V through VII are suitable only for grazing.

3. The new data was due in part to a 1983 revision of SCS guidelines for Alaska and also to inaccurate mapping that underestimated slope steepness, erosion potential and wetness conditions.

4. The suit named as defendants the Department of Natural Resources, DNR Commissioner Estner C. Wunnicker, and Thomas Hawkins, director of DNR's Division of Forest, Land and Water Management.

5. The best interests finding requirement formerly appeared in AS 38.05.035(a)(14). That section was repealed in 1984 and substantially the same language placed in AS 38.05.035(e). See ch. 152, §§ 20, 38, SLA 1984.

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review. This limited review is appropriate when a court considers "an administrative agency's decision where questions of fact and law involve agency expertise and/or broad policy considerations." *State v. Weidner*, 684 P.2d 103, 103 n. 4 (Alaska 1984) (citations omitted). Here, the decision to dispose of agricultural homesteads involves both policy considerations and agency expertise on a matter committed to DNR's discretion. We thus confine our review to determining "whether the decision was arbitrary, unreasonable or an abuse of discretion." *North Slope Borough v. LeRocche*, 551 P.2d 1112, 1115 (Alaska 1975) (footnote omitted).

(2) Alaska Survival first argues that DNR's disposal decision was arbitrary because the agency failed to adequately consider the potential effects on area water quality. However, the record shows that DNR officials specifically considered water quality when they designed the site plan and when they later decided to reduce parcel sizes. DNR also considered a Department of Environmental Conservation study concerning the effects of agricultural development on water quality as well as input from local residents offered during the numerous public hearings held to discuss plans for a Chase disposal. DNR concluded that water quality could be protected by retaining "buffer zones" of state land along streams and by requiring farmers to file and secure DNR approval of homestead conservation plans showing the location of proposed clearing and ground-breaking. See 11 AAC 67.155.

Based on this record we conclude that DNR did not act arbitrarily in determining water quality would be adequately protected.

(3) We next address appellant's contention that the disposal violates the intent of the Homestead Act, AS 38.09, and contravenes the constitutional mandate that state land be developed "consistent with the public interest." Alaska Const. art. VIII, § 1.

AS 38.09.050(a)(5) requires a homesteader to clear and either put into production or prepare for cultivation 25 percent of the land classified

Alaska Survival asserts that because the disposal involves land with "severely limited agricultural uses," the resulting homesteads will not be economically feasible and clearing requirements will be minimal. In appellant's view, the transfer of such land for "free" constitutes an illegal waste of state resources.

Alaska Survival is correct that the disposal of parcels with little or no class II or III soils will result in minimal clearing requirements. See AS 38.09.050(a)(5).<sup>9</sup> However, this does not violate any statutory requirement and DNR could reasonably conclude that such a disposal also does not constitute a waste of state resources. First, even where clearing requirements are minimal, a homesteader still must mark the boundaries and survey the land, build a permanent dwelling and reside there. AS 38.09.050(a). Second, there is no statutory requirement for actual cultivation or harvesting, regardless of the soil quality. The legislature apparently recognized that agricultural homesteads might be located in marginal areas. In fact, the legislature in 1984 amended AS 38.09.050(a)(5) to reduce the clearing requirement on parcels with poor-quality soil. Ch. 152, § 53, SLA 1984. We therefore reject appellant's claim that the Chase disposal will result in a waste of public resources.

We turn now to Alaska Survival's argument that it was unreasonable and arbitrary for DNR to proceed with the lottery after learning that the soils data used to plan the disposal was seriously inaccurate. DNR had based both the original commercial agriculture proposal and the revised homestead proposal on the premise that the land contained predominantly class II and III soils, and therefore was suitable for farming. These soil classifications were specifically noted in the best interests finding. The new information received shortly before the scheduled lottery showed that the disposal area contained predominantly class IV or worse soils, which are generally

for agricultural use of 50 percent of the land having class II or III soils, whichever is less. (Emphasis added.)

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This new information obviously was sig-  
nificant: a special meeting of division di-  
rectors was called to discuss the soils data  
and decide whether to alter the planned  
disposal. Alaska Survival asserts that the  
decision by DNR officials to proceed with  
the disposal was improper and that DNR  
should have postponed the lottery, sought  
additional public comment and seriously  
evaluated the new soils information, partic-  
ularly the effect grazing might have on  
water quality and area wildlife. If the  
agency then decided to proceed, Alaska  
Survival contends DNR should have issued  
an amended best interests finding.

[1.5] There is no explicit statutory re-  
quirement for an amended finding and/or  
additional public comment upon the dis-  
covery of new information. However, an  
agency's failure to consider an important  
factor will render its decision arbitrary.  
*Southeast Alaska Conservation Council, Inc. v. State*, 665 P.2d 544, 548-49 (Alaska  
1983). Our role is to ensure that the agen-  
cy has "taken a 'hard look' at the salient  
problems" and has "genuinely engaged in  
reasoned decision making." *Id.* at 549  
(quoting Leventhal, *Environmental Deci-  
sion Making and the Role of the Courts*,  
122 U.Pa.L.Rev. 509, 511) (emphasis in  
original). We have recognized that com-  
plete and accurate information is not a  
prerequisite for all disposal decisions. For  
example, in *Hammond v. North Slope  
Borough*, 645 P.2d 750 (Alaska 1982), we  
upheld the Commissioner of DNR's deci-  
sion that the sale of oil and gas leases in  
the Beaufort Sea was in the state's best  
interests, despite some uncertainty about  
the impact on the subsistence lifestyle of  
the Inupiat Eskimos. *Id.* at 759-61.

Similarly, the federal courts, in construing  
the National Environmental Policy Act,  
have held that an agency has a continuing  
duty to gather and evaluate new informa-  
tion, but that a supplemental environmen-  
tal impact statement (EIS) is not always  
required when new information becomes  
available. *Warm Springs Dam Task*

*Force v. Griddle*, 621 F.2d 1017, 1023-24  
(9th Cir.1980). The test is whether the  
agency evaluated the information and  
made a "reasoned determination" not to  
re-open the review process. *Id.* at 1024.

A question similar to the one before us  
was raised in *State of California v. Watt*,  
683 F.2d 1253 (9th Cir.1982), *rev'd on other  
grounds sub nom. Secretary of Interior v.  
California*, 464 U.S. 312, 104 S.Ct. 656, 78  
L.Ed.2d 496 (1984). There, plaintiffs  
sought to enjoin a federal off-shore lease  
sale on the grounds that revised estimates  
of oil and gas reserves in the lease area  
required supplementation of the EIS. The  
new data showed twice the reserves as  
originally estimated. *Id.* at 1267. The  
court upheld the decision to proceed with-  
out supplementation after concluding that  
the Department of Interior had "carefully  
considered" and made public the new data.  
*Id.* at 1268.

[6] Here, DNR division directors met to  
evaluate the new soils information and con-  
sider whether to proceed with the disposal.  
The director of the Division of Lands pre-  
pared a Decision Memorandum which ana-  
lyzed the soils data and its effect on the  
Chase project. He concluded that while  
some of the disposal area was not suitable  
for traditional cultivation as originally  
planned, the land still was suitable for  
grazing and other "less intensive agri-  
cultural uses." The memorandum recom-  
mended that no changes be made in the  
disposal plan. The directors unanimously  
decided to go ahead with the lottery—then  
scheduled for two weeks away—and both  
deputy commissioners and a special assis-  
tant to the Commissioner concurred. Fol-  
lowing the lottery, DNR informed the win-  
ners of the new soils data.

[7] Given these facts, we are not pre-  
pared to say that DNR acted arbitrarily or  
unreasonably, although we consider it a  
very close question whether DNR gave the  
new soils information the kind of scrutiny  
necessary. Agency officials clearly con-  
sidered the new soils information, then de-  
cided to proceed because, in their view, the

project still contained enough land suitable for agricultural homesteads. The question whether land is suitable for such a purpose and whether the public interest is best served by such a disposal falls directly within the agency's area of expertise. We will not substitute our judgment. *Hammond v. North Slope Borough*, 645 P.2d at 753-59. We note, however, that it would have been preferable for DNR to have made public the new soils information prior to the lottery, and to have more extensively analyzed the information and its impact on the planned disposal.

In summary, we hold that there was a reasonable basis for DNR's finding that the Chase agricultural homestead disposal would be in the state's best interests, and that DNR's subsequent decision to proceed with the lottery after considering the revised soils data was not arbitrary.

### B. Procedural Violations

[3] We next address whether DNR's disposal decision was invalid due to procedural violations. To resolve this issue we must interpret certain statutes that govern the state's land planning and disposal process. Because interpretation of these statutes does not require the special expertise of the agency, we exercise our independent judgment to determine whether DNR complied with the statutory requirements in deciding to dispose of Chase III land. *Moore v. State*, 553 P.2d 3, 26, 33 (Alaska 1976); *State v. Aleut Corp.*, 541 P.2d 730, 736 (Alaska 1975).

Alaska Survival asserts that DNR violated AS 38.04.065 by classifying Chase land for agricultural use before developing a regional land use plan. DNR adopted the Sitka Area Plan, a comprehensive regional plan that includes the Chase area, in

April 1985, seven months after the lottery. Land included in the lottery was classified in two orders signed in 1980 and 1984. The first order is not challenged since it occurred while a statutory exception was in effect allowing land classification prior to regional planning.<sup>7</sup> However, Alaska Survival contends that the 1984 order, which classified 1,287 acres in the Chase area including 907 acres in the Chase III project,<sup>8</sup> violated AS 38.04.065. The statute provides in relevant part:

Land use planning and classification. (a) The commissioner shall, with local governmental and public involvement in accordance with AS 38.05.045, develop, maintain and, when appropriate, revise land use plans which provide, by regions or areas, for the use of the state-owned land.

(c) As a basis for more detailed land use planning and classification, the commissioner shall develop regional land use plans for the use of all state land. These regional plans shall identify and delineate

(1) areas of settlement and settlement impact, where land must be classified for various private uses and for public recreation, open space, and other public uses desirable in and around settlement; and

(2) areas which must be retained in state ownership and planned and classified for various uses and purposes in accordance with AS 38.04.015.

(d) Official regional or area plans and subsequent amendments adopted by the commissioner after public and local governmental participation shall be signed and dated by the commissioner. After adoption of an official regional or area plan, land classifications shall be made in accordance with these official plans.

7. Former AS 38.05.047(a)(5)(C) was enacted by ch. 35, § 13, SLA 1979, and repealed by ch. 113, § 45, SLA 1981. It directed the commissioner of DNR, "[n]otwithstanding the provisions of AS 38.04" to classify, before September 1, 1980, all state lands in municipalities determined to be best suited for disposal for agricultural use. See *State v. Weidner*, 554 P.2d 103, 107 (Alaska 1976).

8. The state asserts that the 1984 classification order affected only 250 acres in the Chase III disposal. However, our reading of the record indicates that 907 acres in the Chase project were covered by the 1984 classification, including 347 acres in the lottery disposal and 560 acres scheduled for a second phase offering.

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Cite as 723 P.2d 1261 (Alaska 1986)

We discussed this statute in *State v. Widner*, 684 P.2d 103 (Alaska 1984), and concluded that AS 38.04.065(d) "generally requires the development of [land] use plans before classification" of state lands. *Id.* at 107. We did not elaborate on this requirement because the land involved in *Widner* was covered by a specific statutory exception, repealed in 1981, permitting classification prior to planning. *Id.* As explained below, however, the interpretation stated in *Widner* is consistent with constitutional mandates and the legislature's overall approach to the management of state lands.

The framers of the Alaska Constitution placed a high value on the state's land resources. *Moore v. State*, 553 P.2d at 30. Article VIII, section 10 of the constitution provides: "No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law."

In accordance with this provision, the first Alaska legislature enacted the Alaska Land Act, AS 38.05, to establish procedural safeguards for the management and disposal of state lands and the natural resources they contain. The legislature later added AS 38.04, setting forth state policy for the use and classification of state lands. Alaska Statute 38.04.005(a) provides:

In order to provide for maximum use of state land consistent with the public interest, it is the policy of the State of Alaska to plan and manage state-owned land to establish a balanced combination of land available for both public and private purposes. *The choice of land best suited for public and private use shall be determined through the inventory, planning, and classification processes set out in AS 38.04.060-38.04.070.*

(Emphasis added.) These referenced statutes require 1) an inventory of all state lands, 2) the preparation of regional land use plans based on consideration of a wide range of factors, and 3) the classification of state lands.

[9] In our view, both the organization of the statutory scheme and the particular language of AS 38.04.065(c) and (d) express an unambiguous intent that regional planning precede land classifications and disposals. Subsection 065(c) specifically directs DNR to develop regional land use plans "[a]s a basis for more detailed land use planning and classification." Subsection 065(d) provides, in part: "After adoption of an official regional or area plan, land classifications shall be made in accordance with these official plans." To interpret these provisions to allow classification and disposal before regional planning defies logic. It makes little sense to require comprehensive regional planning after the relevant land use decisions already have been made, especially irrevocable disposal decisions.

DNR, however, suggests a different interpretation of AS 38.04.065(d). DNR contends the planning requirement may be met by a site-specific "land planning report" prepared in advance of a comprehensive regional land use plan. This interpretation is reflected in a regulation adopted by the department. See 11 AAC 55.030 (eff. Nov. 12, 1978; am Sept. 7, 1983). It permits classification of land based on a "brief, site-specific planning document prepared in the absence of an area or management plan" as long as the document considers certain factors identified in the statutory provision. 11 AAC 55.030(e). Relying on this regulation, DNR sought a site-specific "land planning report" covering the 1,257 Chase acres included in the 1984 classification order.

[10, 11] We cannot accept the argument that this regulation properly implements AS 38.04.065. DNR is correct that the statute does not define "regions or areas" when it directs DNR to "develop . . . land use plans which provide, by regions or areas, for the use of the state-owned land." AS 38.04.065(a). When read in its entirety, however, the statute's meaning is plain: it mandates a comprehensive, broad-scale planning process prior to site-specific planning and classification. For example, sub-

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section .065(c) specifies that regional land use plans be developed "[a]s a basis for more detailed land use planning and classification." DNR may be correct that the statute does not require plans on the scale of the Susitna Area Plan, which covers 15.3 million acres. However, it would be difficult to use a planning report covering only 1,287 acres as the basis for more detailed land use planning. We conclude that a regulation which permits land classification based on a planning document covering only 1,287 acres is inconsistent with the statutory scheme.

DNR argues that this interpretation is incorrect because the legislature did not intend, by enacting AS 38.04.065, to halt all state land disposals pending completion of regional plans. We agree that when the statute was enacted in 1978 as part of a land planning and disposal bill the legislature expressed its intent to accelerate the disposal of state lands.<sup>9</sup> However, the legislature recognized that in order to assure some immediate disposals it would need to temporarily relax the statutory planning requirements. Thus, the legislature enacted former AS 38.05.047(a)(5)(C)<sup>10</sup> to permit, for a limited time period, the classification of agricultural land without meeting the planning requirements of AS 38.04.065. If the legislature did not intend AS 38.04.065 to bar classifications in the absence of regional land use plans, this temporary statutory exception would have been unnecessary. The repeal of the exception in 1981 further indicates that the legislature intended future classifications to be based on regional plans.

For these reasons, we conclude that AS 38.04.065 requires regional planning to precede land classification, and that a regulation which permits classification based on a

site-specific plan covering only 1,287 acres contravenes the language and intent of the statute. DNR's 1984 classification of Chase lands was therefore improper.

[12] The next question is whether DNR's failure to engage in proper planning requires invalidation of the Chase disposal. DNR argues that since the regional plan is now complete and designates the Chase III area for agricultural homesteading, any planning violation is moot. In deciding this question we must consider whether DNR would have made the same decision concerning the Chase disposal if the agency had first developed a regional plan as required by AS 38.04.065. In other words, did the procedural violation have any real impact on DNR's substantive decision to proceed with the homestead disposal? For the reasons discussed below, we conclude that it did. We therefore reject DNR's mootness argument.

First, the record supports Alaska Survival's contention that the Susitna Area Plan (SAP) simply ratified, without comprehensive analysis, DNR's earlier decision to dispose of Chase agricultural land, and that the planners failed to address certain issues because of this litigation. In a document containing public comments on the draft plan and responses by DNR, several persons criticized the SAP's handling of the Chase area and claimed that the plan contained some factual errors. DNR responded: "The Chase III agricultural homestead disposal is presently the subject of a lawsuit by Alaska Survival. The issues raised above cannot be resolved until the outcome of the litigation is known...."<sup>11</sup>

We also note that the SAP's designation of the 3,300-acre Chase III area for agricultural homesteading appears inconsistent

9. For example, one section of the bill required DNR to make available for disposal a minimum of 50,000 acres in 1979 and to propose similar disposals in subsequent years. Ch. 131, § 5, SLA 1978. That section, in former AS 38.04.020, has since been repealed.

10. See *supra* note 7.

11. The response document also contained a citizen's suggestion that the Chase management

unit receive a detailed management plan. DNR responded: "The plan will recommend a management plan be done ... if it is determined that lots of important land use decisions remain to be made. This would be the case if, as a result of litigation on the Chase III or [agricultural] homestead area, the project is halted entirely."

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Cite as 723 P.2d 1291 (Alaska 1986)

with the plan's statement of overall management guidelines for agricultural lands. The guidelines state that blocks of 2,000 acres or more of agricultural lands "should be used primarily to support commercial farming under the state's standard agricultural land disposal *rather than under the homestead program...*" (Emphasis added.) The guidelines further state that "[s]cattered, smaller parcels" should be considered for the agricultural homestead program. This inconsistency is a further indication that the plan simply modified DNR's earlier decision to dispose of Chase lands as agricultural homesteads.

DNR's mootness argument also is invalid for a second reason. We are persuaded that the disclosure and public discussion of certain information in the SAP would have prompted closer consideration of alternative disposal areas. According to the SAP, the planning area includes approximately 400,000 acres of publicly owned prime soils in contiguous blocks large enough to support farming. Of these lands, the SAP identifies 26,120 acres in the planning region which are currently scheduled for state disposals. The Chase III lands thus represents less than one-seventh of the state land in the region identified for agricultural disposal. If this information had been available prior to the Chase III classification and disposal, local residents (or even DNR planners) could have suggested alternative disposals with potentially less impact on area resources. Also, had the plan been completed and made public when the error regarding the quality of Chase soils was discovered, it may have spurred reconsideration to determine if one of the other areas identified for disposals would be better suited for agricultural homesteads.

12. Alaska Survival also contends that DNR violated statutory procedural requirements. See AS 38.04.020(j), in handling a nomination made by one of the individual appellants, Judy Price, to remove 33,600 acres of Chase-area land from the state's land disposal bank. This issue is not properly before us. DNR notified Price in January 1984 of the Commissioner's decision not to reclassify the nominated land as requested. Un-

In short, we believe that DNR's failure to develop a regional plan before classifying and disposing of the Chase III land was a serious procedural violation that may well have affected the agency's disposal decision. We also note that the state's mootness argument ignores one of the purposes of a regional planning process—to allow for "meaningful participation" by local governments, state and federal agencies, adjacent landowners and the general public. AS 38.04.065(b)(3); see also AS 38.04.065(a) and (b)(2). Meaningful participation is thwarted where citizens lack key factual information, such as information in this case regarding other areas within the planning region specifically identified for agricultural disposals.

For these reasons, we conclude that DNR's adoption of a regional plan seven months after the Chase lottery did not cure the agency's prior violation of statutory planning requirements. We therefore hold that the Chase III disposal is invalid. We remand DNR's disposal decision to the agency for further consideration and public comment in view of the regional plan and any revisions deemed necessary to the plan.

Because we hold the disposal invalid due to the planning violation, we need not decide Alaska Survival's claim that a written finding that the homestead disposal was in the state's best interests was not timely made or provided to appellants upon request, as required by AS 38.05.035(e). On remand, when DNR reconsiders its decision in view of the SAP, the agency will have to make a new best interests finding if it decides to proceed with a disposal. If that occurs, DNR will be required to publicize the finding and provide an opportunity for meaningful public comment.<sup>12</sup>

Under Alaska Appellate Rule 602(a)(2) Price had 30 days to appeal the Commissioner's decision to the superior court. No filing occurred until September 1984, when appellants sued to challenge DNR's disposal decision and included the land bank nomination among several claims of error. We therefore decline to consider this issue. See *Julliard v. Stuch*, 623 P.2d 918, 920 (Alaska 1981).

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### C. Attorney's Fees

[13] Alaska Survival and the individual appellants contend the trial court erred when it denied their status as public interest plaintiffs and ordered them to pay \$10,420 in attorney's fees.<sup>13</sup> Because of our holding on the merits of this appeal, the state no longer is entitled to fees as the prevailing party. However, Alaska Survival's claimed status must still be examined since a prevailing public interest litigant is generally entitled to full reasonable attorney's fees rather than partial fees. *Huntaker v. Thompson*, 717 P.2d 858, 859 (Alaska 1986).

In *Oceanview Homeowners Association, Inc. v. Quadrant Construction and Engineering*, we reiterated the four criteria for identifying public interest suits:

(1) whether the case is designed to effectuate strong public policies; (2) whether, if the plaintiff succeeds, numerous people will benefit from the lawsuit; (3) whether only a private party could be expected to bring the suit; and (4) whether the litigant claiming public interest status would lack sufficient economic incentive to bring the lawsuit if it did not involve issues of general importance.

680 P.2d 793, 799 (Alaska 1984) (citing *Kenai Lumber Co. v. LeResche*, 646 P.2d 215, 222-23 (Alaska 1982)).

The state does not dispute that this litigation satisfies the first three criteria. The state contends, however, that the appellants do not qualify as public interest litigants because they had a strong economic incentive to bring this lawsuit whether or not it involved issues of public importance. The state notes that appellants argued to DNR and the trial court that they are economically dependent on use of the land in the disposal area to gather firewood and house-building logs, and to hunt and fish for food. We conclude, however, that

13. Although the trial court apparently did not make a specific finding on the issue, implicit in the court's award of fees against Alaska Survival is the finding that this is not public interest litigation.

a more substantial financial interest is required before a litigant will be deemed to have an independent economic incentive to bring suit.<sup>14</sup>

In two analogous cases we recognized the public interest status of residents who challenged zoning decisions affecting their neighborhoods. The first case, *Anchorage v. McCabe*, 563 P.2d at 289-91, involved two homeowners who challenged the constitutionality of an ordinance and a city council decision permitting construction of two high-rises in their neighborhood. The second case, *Oceanview Homeowners Association*, 680 P.2d at 795, involved a group of homeowners who sued unsuccessfully to overturn a zoning board decision allowing continued use of a private airstrip near their homes. In concluding that the *Oceanview* plaintiffs were public interest litigants, we noted they had consistently emphasized health and safety rather than economic concerns. *Id.* at 799.

[14] Here, no argument was made that the Chase disposal would result in economic injury by causing property values to decline. Instead, appellants emphasized concerns about contamination of water supplies, impact on area wildlife and the general effect that increased settlement would have on the quality of their subsistence lifestyle. While appellants stressed their dependency upon the use of state land in the disposal area for hunting, fishing, and wood gathering, they relied on these resources for personal rather than commercial purposes. This is not the type of substantial economic interest sufficient to bar a litigant from qualifying as a public interest plaintiff.

The superior court judgment is REVERSED and DNR's disposal decision is REMANDED to the agency for further consideration. The court is directed to rec-

14. See, e.g., *Kenai Lumber Co. v. LeResche*, 646 P.2d 215, 223 (Alaska 1982) (commercial lumber company seeking commercially valuable timber denied public interest status); *Moore Oil Corp. v. Local Boundary Comm'n*, 513 P.2d 92, 104 (Alaska 1974) (denial of public interest status proper where large sums at stake).

SKW/ESKIMOS v. SENTRY AUTO. SPRINKLER Alaska 1293

Cite as 723 P.2d 1293 (Alaska 1986)

recognize appellants' public interest status and award attorney's fees accordingly.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS, COMPTON and MOORE, JJ.

RABINOWITZ, Chief Justice.

OPINION

This appeal arises out of an action which was brought by a sub-subcontractor to recover on a prime contractor's surety bond for materials it used in performing its sub-subcontract. At issue is whether the sub-subcontractor can recover for materials when the bonded contract bound the prime contractor to furnish labor only.

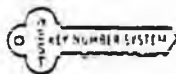
FACTS.

In June 1979, the North Slope Borough ("NSB") entered into a contract with SKW/Eskimos, Inc. ("SKW"). SKW agreed to provide the administration, superintendence, and labor to build the Barrow High School Complex.

SKW's duties under the contract were set forth in Article 3. Specifically, SKW was required to:

- 3.1.1 Furnish all labor, insurance, taxes, tools, subsistence, equipment, transportation, communications, and miscellaneous expendable items required for the construction of the project.
- 3.1.2 Cooperate and work with the Architect and the material supplier for efficient, economical construction of the project.
- 3.1.3 Prepare a cost estimate for the project after receiving construction drawings, technical specifications and a material package cost from H.W. Blackstock.
- 3.1.4 Provide site supervision for construction, material receiving, material control, and the general efficient control of the work.
- 3.1.5 Obtain subcontractors for specialty work.

The contract specifically stated that the contractor would not be responsible for the materials incorporated in the work.



SKW/ESKIMOS, INC. and General Insurance Company of America, Appellants.

v.

SENTRY AUTOMATIC SPRINKLER COMPANY, a foreign corporation, Appellee.

No. S-1109.

Supreme Court of Alaska.

Sept. 5, 1986.

Sub-subcontractor brought action against prime contractor and its surety to recover for labor and materials. The Superior Court, Third Judicial District, Anchorage, Joan M. Katz, J., held for sub-subcontractor and prime contractor appealed. The Supreme Court, Rabinowitz, C.J., held that sub-subcontractor could not recover for materials where bonded contract bound prime contractor to furnish labor only.

Reversed.

Principal and Surety §56(2)

Prime contractor's surety was not liable on labor and material bond for cost of materials supplied by sub-subcontractor where prime contractor was responsible only for labor under its contract with owner; surety cannot be held liable beyond scope of principal's duty.

Paul W. Waggoner, Anchorage, for appellants.

Thatcher R. Beebe, Anchorage, for appellee.

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a recognized residents who factoring their Anchorage Al. involved ted the con- and a city struction of hood. The owners dis- involved a unsuccessful- ra decision ate airstrip or that the ic interest onistically rather than

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Ned Foyler

# MEMORANDUM

# State of Alaska

DEPARTMENT OF NATURAL RESOURCES - Office of the Commissioner

TO: Deputy Commissioners  
Division Directors  
Special Assistants

DATE: October 1, 1986

FILE NO: 2300

TELEPHONE NO: 465-2400

SUBJECT: Department Order No. 114 - Interim Response to Alaska Survival v. State of Alaska

FROM: *Escher C. Wunnicke*  
Escher C. Wunnicke  
Commissioner

DEPARTMENT OF NATURAL RESOURCES  
OCT 20 1986

### Issue

On August 19, 1986 the Alaska Supreme Court rendered a decision in Alaska Survival v. State of Alaska. The decision reversed the department's decision to dispose of the Chase III Agricultural Homestead because the department violated statutory planning requirements when classifying state land for this project.

This decision requires the department to determine if it is necessary to postpone, cancel, or otherwise alter any proposed disposals of land or interest therein conducted outside adopted comprehensive land use plans (e.g. land sales, exchanges, material sales, timber sales, leases, private rights-of-way, oil and gas, lease sales, municipal conveyances)?

### Background

In September, 1984 the department conducted a 3,530 acre agricultural homestead offering (Chase III), consisting of 32 parcels near Talkeetna. Alaska Survival sued to block the offering, claiming the department violated a number of statutory requirements. The Superior Court upheld the department's land offering, prompting an appeal to the Alaska Supreme Court.

The Supreme Court overturned the Superior Court decision and found that AS 38.04.065 requires that comprehensive land use planning must precede land classification. Based upon this finding, the Supreme Court ruled that the department's classification of the Chase III land prior to adoption of the Susitna Area Plan was a serious procedural violation. The court remanded the disposal decision back to the department for further consideration and public comment.

On September 8, 1986 the Attorney General's Office petitioned the court for rehearing, maintaining the Supreme Court decision failed to address legislative intent in AS 38.05.300(b) and AS 38.04.020(c) and did not clarify whether the department could dispose of certain of the Chase III land which were classified in 1980 (under a statutory exception to AS 38.04.065).

### Discussion

The Supreme Court decision is unclear with respect to a number of issues. Until the court rules upon the state's petition, the department will employ an interim action program.

It is important for the department to continue its charge of managing state land in the public interest, including the continued disposal of land and interests, consistent with existing classifications. Therefore, as outlined below the department will proceed cautiously in compliance with a reasoned interpretation of the decision, pending the court's response to our petition.

### Decision

All classification actions outside adopted area plans are prohibited until further notice. The department may continue to dispose of state land and interests outside adopted comprehensive land use plans, provided such disposals do not require classification action.

In order to avoid exposing additional third-party interests to possible challenge while the court considers the state's petition, the Division of Land and Water Management shall postpone the scheduled October 2 Pilgrim Homestead lottery in Nome and the October 3 Odd-lot auction in Kotzebue. The postponements of these new disposals outside comprehensive land use plans (coupled with the earlier postponement of the September 9 Heiden View Subdivision lottery in Valdez) are evidence of the department's intent to abide by the Supreme Court's final decision.

However, the over-the-counter (OTC) land sales scheduled for October 20 and November 10 will proceed. Although these sales include parcels outside adopted comprehensive land use plans, they are continuations of prior actions which occurred prior to the Supreme Court decision.

# MEMORANDUM

*Ned Faragher*  
State of Alaska

DEPARTMENT OF NATURAL RESOURCES

TO: Deputy Commissioners  
Division Directors  
Special Assistants

DATE: January 12, 1987

FILE NO:

TELEPHONE NO: 465-2400

FROM: Judith M. Brady *JMB*  
Commissioner

SUBJECT: Department Order 124:  
Land Use Planning  
and Classification

## ISSUE

Is it necessary for the department to complete a comprehensive regional plan before the classification or sale of certain state lands or resources?

## BACKGROUND

The Chase III homestead project was offered to the public in September 1984. Alaska Survival, claiming the department violated a number of statutory requirements, sued to block the land disposal. Although the state prevailed in Superior Court, the Supreme Court remanded the land offering back to the department. A petition for rehearing to clarify the Court's ruling was denied.

## DISCUSSION

The Supreme Court clearly interprets AS 38.04.065 as requiring that comprehensive land use planning precede classification. However, as described in the state's petition for rehearing, several other points in the Court's opinion are vague or contradicted by the facts in the Chase III land offering.

Although lacking clarification from the Court, the department recognizes its responsibility to make land and resources available for maximum use consistent with the public interest. The economic vitality of the state and reliance of third parties on the actions of the department require that the department take a pragmatic approach to interpreting the Chase III decision. The department will request amendment of AS 38.04.065 to clarify legislative intent.

## POLICY

After August 19, 1986 and pending legislative amendment of AS 38.04.065, site-specific land planning reports, as described in 11 AAC 55.030(e), will not be used as the basis for classification. The Court ruled that the land

planning report requirement does not "properly implement" and is inconsistent with AS 38.04.065. Classification must be based on a land use plan of a geographic unit large enough to support the comprehensive process mandated by the Supreme Court.

Classifications may be based on a comprehensive plan adopted by a local government having planning and zoning powers if the commissioner finds that such a plan adequately recognizes and protects state interests.

The Chase III decision does not invalidate classifications already in effect on August 19, 1986.

Nothing in the Chase III decision affects 11 AAC 55.040(i). Thus, the following actions continue to be exempted from the requirement of prior classification: mineral location, leasable mineral leasing, preference right conveyances under AS 38.05.035(b), land exchanges under AS 38.50, negotiated sales of up to 10 MBF of timber and any amount of materials, right-of-way leasing if no appraisal is necessary, conveyances to municipalities and other state agencies, and land disposals in conformance with a local comprehensive plan and local zoning ordinance.

Disposals of land or interests in land, as actions independent of classification, are not affected by the Chase III decision. That decision applies only to the land use planning and classification process.

Reclassification of land included in an approved area or management plan may proceed under the amendment process described in the relevant plan.

# Trustees for ALASKA

October 2, 1986

50

James Eason, Director  
Division of Oil and Gas  
Department of Natural Resources  
P.O. Box 7034  
Anchorage, Alaska 99510-7034

RECEIVED

OCT 08 1986

re: Proposed Five-Year Oil and Gas Leasing Program

DIVISION OF OIL & GAS  
ANCHORAGE, ALASKA

Dear Mr. Eason:

Trustees for Alaska appreciates this opportunity to comment on the State's proposed 5-year oil and gas leasing program. Most of our comments relate to the general approach to the State's oil and gas leasing program, rather than comments on specific sales. We will submit more detailed specific comments on individual sales as appropriate.

We strongly support the State's suggestion to use increasingly limited resources to focus on fewer lease sales (Schedule B). Any attempt to continue the existing ambitious program in the face of personnel cutbacks would be counterproductive, and would result in less careful attention to each sale. As a result, we believe that environmental protection would receive relatively less focus, i.e. DOG would have less ability to limit or to prohibit leasing in particularly sensitive areas, and to develop conditions and stipulations necessary to protect important environmental resources.

The proposed cutback in the 5-year lease schedule also makes sense from an economic perspective. While the call for comments correctly notes that cutting back the 5-year program will result in less areas being explored and developed quickly, it is not DOG's role to maximize short-term development potential. Rather, as the manager of the State's oil and gas resources, DOG must consider ways to maximize the State's long-term return from its resources in a balanced fashion, while ensuring that development is conducted consistent with the protection of other resources, such as renewable fish and wildlife resources. Given the current oil market, it would appear to make sense to limit production at this time, in order to maximize long-term returns. By slowing down development, more attention can be paid to protecting environmental resources for leases that are issued, and additional areas can be added as oil prices increase. Moreover, future development in sensitive areas can proceed with the benefit of technological advances that may minimize overall environmental impacts. Therefore, we believe that the proposed reduction in the 5-year program is in the long-range interests of the State of Alaska.

Despite our agreement with the overall approach, we do object to the creation in the 5-year plan of a firm expectation that a prescribed minimum number of lease sales will be held each year. The call for comments does note that no final decisions have been made with respect to any given sale. Nevertheless, the general statements establishing minimum numbers of sales result in considerable institutional pressure to proceed with the identified sales, for fear of not meeting the identified "quota". State law requires the Department to make an independent, objective determination, based on all available information and public input at the time of the sale, of whether each individual sale is in the best interests of the State. Therefore, the 5-year plan should state simply that the Department plans to "consider" the listed lease sales within the deadlines set out in the schedule.

We also are interested in the Department's views on the effect of the State Supreme Court's recent ruling in Alaska Survival v. DNR on the oil and gas leasing system. The Court ruled that no classification or disposition of state land may occur prior to the development of comprehensive, regional land use plans. Presumably, this ruling extends to state land classifications and dispositions that involve less than fee simple land conveyance, particularly since the Chase land disposal involved only surface rights for agricultural use. Many of the Department's proposed lease sales, however, are in areas with no regional land use plans. While we have made no decision regarding how we believe the Court's decision applies to oil and gas lease sales, we believe that the issue deserves serious consideration. We would appreciate your views on this issue. It would also be useful if you could provide an explanation of how and when state land is "classified" for purposes of oil and gas lease sales, and how best interests findings for lease sales relate to the land use planning process.

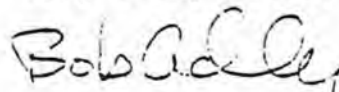
Finally, we have only a few comments at this time regarding specific sales identified in the call for comments. We previously submitted comments on the Prudhoe Bay Uplands Sale, which has now been split into two separate lease sales. We simply wish to reiterate our concern that these sales consider carefully the effect of these sales on the adjacent Arctic National Wildlife Refuge, which is currently being considered for either inclusion in the National Wilderness Preservation System or for oil and gas development. Considerable wildlife migration occurs across the Canning River, and some Central Arctic Caribou Herd calving may occur in this area.

We are also concerned about the size of proposed lease sale 65, which stretches across the arctic coastline from the Canning delta to the region north of Teshekpuk Lake. While we have no general opposition to additional sales in the Prudhoe Bay region, assuming adequate environmental safeguards, we object to the proposed inclusion at this time of coastal areas adjacent to the ANWR and the Teshekpuk Lake Special Area. Our concerns about the arctic

coastline near the ANWR were specified in our comments on the proposed Camden Bay and Demarcation Point Sales. In addition, we question the wisdom of planning a sale along the coastline of the Teshekpuk Lake Special Area, before the Bureau of Land Management decides what the appropriate oil and gas development policy for this area should be. Oil development in the State's coastal region will entail the use of onshore facilities for support and transportation, including pipelines, in order for development to be economically feasible. In addition, the State is undoubtedly aware of the tremendous importance of the Teshekpuk Lake region for waterfowl and other important wildlife populations. Therefore, the State should withhold its plans for development of this area pending a decision by BLM.

Thank you again for this opportunity to comment on the State's proposed 5-year oil and gas leasing plan.

Very Truly yours,



Bob Adler  
Executive Director

# STATE OF ALASKA

AUDIT DIVISION  
POUCH W  
JUNEAU, ALASKA 99811-3300

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

### M E M O R A N D U M

*NEED*

DATE: March 4, 1987

TO: Chairmen of the Standing  
Committees

FROM: Gerald L. Wilkerson *GLW*  
Legislative Auditor  
Division of Legislative Audit

SUBJECT: Release of Audits

On March 3, 1987 the Legislative Budget and Audit Committee approved for release to the public the enclosed audit report(s) which may be of interest to your Committee.

If you have any questions on this report(s), please contact our office (465-3830).

Enclosure(s)

A SPECIAL REPORT ON THE  
DEPARTMENT OF NATURAL RESOURCES  
LAND USE PLANS

October 27, 1986

Audit Control Number

10-4263-87-S

Commissioner, Department of  
Natural Resources

Judith M. Brady

Deputy Commissioners, Department  
of Natural Resources

Robert Arnold  
James K. Barnett

# STATE OF ALASKA

AUDIT DIVISION  
POUCH W  
JUNEAU, ALASKA 99811-3300

**THE LEGISLATURE**  
BUDGET AND AUDIT COMMITTEE

October 27, 1986

Members of the Legislative Budget  
and Audit Committee:

In accordance with a Legislative Budget and Audit Committee special request and the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A SPECIAL REPORT ON THE  
DEPARTMENT OF NATURAL RESOURCES  
LAND USE PLANS

October 27, 1986

Audit Control Number

10-4263-87-S



Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

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B. Schedule of Estimated Costs For Area Plans Underway . . . . .	10
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## PURPOSE OF THE REPORT

In accordance with a Legislative Budget and Audit Committee request and the provisions of Title 24 of the Alaska Statutes, this special report was prepared to document our review of land use plans prepared by the Department of Natural Resources. Our review was conducted to determine the following:

1. The number of land use plans completed or underway.
2. The start and completion date for each plan.
3. The costs per plan.
4. The proposed plans including estimated start and completion dates, budgeted costs, and positions.

## ORGANIZATION AND FUNCTION

Land use planning activities are carried out mainly by the Department of Natural Resources (DNR), Division of Land and Water Management (DLWM), under the authority of AS 38.04. The Division of Forestry and the Division of Parks and Outdoor Recreation also prepare land management plans as directed by specific authorizing legislation. Although the Department of Fish and Game does not prepare land use plans itself, its Habitat Division is always a participant in the planning process under the authority of AS 16.05.020 and AS 16.20.

There are three types of land use plans set out in 11 AAC 55.030:

### Statewide

The Statewide plan involves preparation of a land use resource inventory, development of resource and land use policies, and determination of primary use designations. The plan sets forth overall Statewide management guidelines.

### Area

Area plans involve development of land use management goals and objectives for specific regions within the State with reference to the overall Statewide plan. Area plans set forth unit management intent, designations, guidelines, priorities, and classifications.

### Management

Management plans involve plan implementation. This includes preparation of detailed site-specific plans within areas and includes field inventories and reclassification recommendations, as well as determination of restrictions, prohibitions, and permitting requirements.

The planning process is comprised of the following six steps:

1. An interagency planning team is formed with representatives from each major interest group in addition to the lead agency staff. This may include other divisions within DNR, other State agencies, the Federal government, local government, and local organizations or other interested parties.
2. The team identifies land use issues and needs through a series of public workshops and meetings.

3. An inventory of existing and potential uses and objectives is developed based on resource type.
4. Alternative land use plans are developed and presented to the agencies and the public for review and comment.
5. A draft plan is developed, reviewed at public hearings, revised as necessary, and notice of classification is given.
6. The final plan is adopted by the Commissioner.

AUDITOR'S COMMENTS

The Department of Natural Resources has undertaken 28 land use plans since AS 38.04 was enacted in 1978. The Statewide plan was completed in 1983; however, because additional information is continually made available, the plan is being updated on an ongoing basis. In addition, 12 area plans and 15 management plans have been undertaken. All plans are listed in Appendix A along with their start and completion date (if underway, estimated completion date).

The following table shows a breakdown of the plans by type and status:

<u>Plans</u>	<u>Complete</u>	<u>Underway</u>	<u>Total</u>
Statewide	ongoing	1	1
Area	7	5	2
Management	<u>12</u>	<u>3</u>	
<u>Total</u>	<u>19</u>	<u>9</u>	<u>28</u>

Cost information for individual plans is available only for area plans which are underway. Project accounting records for completed plans are not adequate to provide requested cost information by plan. Appendix B shows the cost breakdown by project for area plans underway.

Management plan costs were not accounted for on a project basis; however, the following estimates were made available by DNR/DLWM to provide some perspective:

<u>Estimated Costs</u>	<u>18 Months</u>	<u>24 Months</u>
Personal Services	\$125,000	\$165,000
Travel	2,000	2,000
Contractual	31,000	31,000
Other	<u>1,000</u>	<u>1,000</u>
<u>Total</u>	<u>\$159,000</u>	<u>\$199,000</u>

Costs incurred by the Department of Fish and Game were not accounted for by individual plan. However, the Department could provide estimates of their actual and estimated costs to complete their work on the area plan. These costs are included in Appendix B.

The Department of Natural Resources has not budgeted for any additional plans and does not intend to undertake any plans other than those currently underway unless the Legislature provides specific funding for the project.

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APPENDIXES

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APPENDIX A

DEPARTMENT OF NATURAL RESOURCES  
SCHEDULE OF LAND USE PLANS  
October 27, 1986

<u>Plans</u>	<u>Begin Date</u>	<u>Complete Date</u>
<u>Statewide Plan</u>	07/78	ongoing
<u>Area Plans</u>		
Haines-Skagway	07/78	06/79
Willow Sub-basin	09/77	09/82
Delta-Salcha	01/80	11/83
Susitna	01/82	04/85
Tanana	02/82	04/85
Bristol Bay	07/81	09/84
SW Prince of Wales	07/81	06/85
Northwest	04/85	02/88
Kuskokwim	05/85	02/88
Copper River Basin	08/84	12/86
Prince of Wales Is.	07/85	03/88
Prince William Sound	10/85	09/87
<u>Management Plans</u>		
<u>Division of Land and Water Management</u>		
Deep Creek	07/80	06/81
Delta II West	02/81	12/81
Delta II East	02/81	01/82
Nenana-Totchaket	03/82	08/82
Salcha River	01/83	06/83
Little Chena River	03/83	12/83
Delta Creek	07/83	08/83
Fish Creek	07/83	08/84
Fairbanks Boro Trails	09/84	suspended
Matsu Valley Moose	07/85	07/86
Hatcher Pass	07/85	10/86
Remote Cabin Permit	03/86	05/86
<u>Division of Parks and Outdoor Recreation</u>		
Kenai River	07/84	07/86
<u>Division of Forestry</u>		
Haines-Chilkat	07/82	06/86
Tanana Valley	01/84	05/87

APPENDIX B

DEPARTMENT OF NATURAL RESOURCES AND  
DEPARTMENT OF FISH AND GAME  
SCHEDULE OF ESTIMATED COSTS  
FOR AREA PLANS UNDERWAY  
For Fiscal Years 1985 through 1988  
(Note 1)

	<u>Copper River Basin</u>	<u>Kuskokwim</u>	<u>Northwest</u>	<u>Prince of Wales Island</u>	<u>Prince William Sound</u>	<u>Total</u>
<u>FY 85 &amp; FY 86 Actual</u>						
<u>Department of Natural Resources (DNR)</u>						
Personal Services	\$229,300	\$106,000	\$139,300	\$119,900	\$ 95,900	\$ 690,400
Travel	7,700	17,000	24,000	9,000	5,300	63,500
Contractual	13,800	6,300	11,100	11,400	15,700	58,300
Other	5,400	6,700	5,200	1,000	5,300	23,600
<u>Total DNR</u>	<u>256,200</u>	<u>136,500</u>	<u>179,600</u>	<u>141,300</u>	<u>122,700</u>	<u>836,300</u>
(Man-Months)	(60)	(29)	(38)	(30)	(25)	(182)
<u>Department of Fish and Game (DFG)</u>						
Personal Services	78,600	8,300	13,500	12,500	-0-	112,900
Travel	5,000	400	800	-0-	-0-	6,200
<u>Total DFG</u>	<u>83,600</u>	<u>8,700</u>	<u>14,300</u>	<u>12,500</u>	<u>-0-</u>	<u>119,100</u>
(Man-Months)	(18)	(2)	(4)	(4)	(0)	(28)
<u>Total FY 85 &amp; FY 86 Actual</u>						
Personal Services	307,900	114,300	152,800	132,400	95,900	803,300
Travel	12,700	17,400	24,800	9,000	5,800	69,700
Contractual	13,800	6,800	11,100	11,400	15,700	58,300
Other	5,400	6,700	5,200	1,000	5,300	23,600
<u>Total Actual</u>	<u>339,800</u>	<u>145,200</u>	<u>193,900</u>	<u>153,300</u>	<u>122,700</u>	<u>955,400</u>
	(78)	(31)	(42)	(34)	(25)	(210)

APPENDIX B

DEPARTMENT OF NATURAL RESOURCES AND  
DEPARTMENT OF FISH AND GAME  
SCHEDULE OF ESTIMATED COSTS  
FOR AREA PLANS UNDERWAY  
For Fiscal Years 1985 through 1988  
(Note 1)

	<u>Copper River Basin</u>	<u>Kuskokwim</u>	<u>Northwest</u>	<u>Prince of Wales Island</u>	<u>Prince William Sound</u>	<u>Total</u>
<u>FY 87 &amp; FY 88 Estimate</u>						
<u>Department of Natural Resources (DNR)</u>						
Personal Services	\$ 47,100	\$175,200	\$219,900	\$211,800	\$162,800	\$ 816,800
Travel	2,500	14,500	66,500	21,700	6,000	111,200
Contractual	20,000	27,500	40,100	33,000	26,500	147,100
Other	1,000	2,500	9,300	3,000	2,000	17,800
<u>Total DNR (Man-Months)</u>	<u>70,600 (12)</u>	<u>219,700 (49)</u>	<u>335,800 (59)</u>	<u>269,500 (53)</u>	<u>197,300 (42)</u>	<u>1,092,900 (215)</u>
<u>Department of Fish and Game (DFG)</u>						
Personal Services	11,200	14,100	21,000	10,900	40,300	97,500
Travel	300	1,000	-0-	-0-	2,000	3,300
<u>Total DFG (Man-Months)</u>	<u>11,500 (2)</u>	<u>15,100 (4)</u>	<u>21,000 (7)</u>	<u>10,900 (3)</u>	<u>42,300 (9)</u>	<u>100,800 (25)</u>
<u>Total FY 87 &amp; FY 88 Estimate</u>						
Personal Services	58,300	189,300	240,900	222,700	203,100	914,300
Travel	2,800	15,500	66,500	21,700	6,000	112,500
Contractual	20,000	27,500	40,100	33,000	26,500	147,100
Other	1,000	2,500	9,300	3,000	2,000	17,800
<u>Total Estimate (Man-Months)</u>	<u>82,100 (14)</u>	<u>234,800 (53)</u>	<u>356,800 (66)</u>	<u>280,400 (57)</u>	<u>239,600 (51)</u>	<u>1,193,700 (240)</u>
<u>Total Actual and Estimated Costs (Man-Months)</u>	<u>\$421,900 (92)</u>	<u>\$380,000 (84)</u>	<u>\$550,700 (108)</u>	<u>\$434,200 (91)</u>	<u>\$362,300 (76)</u>	<u>\$2,149,100 (450)</u>

Note 1: The estimated and actual costs included in this schedule were obtained for personnel within the Division of Land and Water Management, and reflect the direct costs of the Resource Allocation Section. We did not audit the amounts provided, and accordingly, we do not express an opinion on this schedule.

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# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400

February 19, 1987

Mr. Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit  
P.O. Box W  
Juneau, Alaska 99811

FEB 23 1987

Dear Mr. Wilkerson:

Re: Preliminary audit reports on:

"A Special Report on the Department of Natural Resources, Land Use Plans, October 27, 1986"

"A Letter Report on the Alaska Historical Commission, December 16, 1986."

This letter provides the Department's response to the referenced preliminary reports and is intended to identify the Department's agreement or disagreement with the financial representations and the audit conclusions in these reports.

- (A) A Special Report on the Department of Natural Resources, Land Use Plans, October 27, 1986.

The Department generally concurs with the financial information and auditor's conclusions represented in the report, and the schedules displayed in the appendices accurately reflect information provided by my staff. However, the following clarifications are appropriate:

- 1) The actual costs for area plans underway will probably be lower than indicated in the "Schedule of Estimated Costs for Area Plans Underway" (pp. 11). The cost savings result from the use of a two-person rather than a three-person development team in the Northwest Area Plan. Furthermore, cost savings will result from lower printing costs.

- 2) The Auditor's comment (pp.5) states in part, "The Department of Natural Resources has not budgeted for any additional plans and does not intend to undertake any plans other than those currently underway unless the Legislature provides specific funding for the project."

It should be noted that the Governor's FY 88 budget proposal would allow the Department to begin 3 or 4 new area and/or management plans in the last half of FY 88.

- (B) A Letter Report on the Alaska Historical Commission, December 16, 1986.

We agree with the report's conclusion that the remaining functions of the Alaska Historical Commission could be absorbed by the Department of Natural Resources. To decrease administrative costs, the Department's FY 88 budget request does not include funding for the position of Executive Director of the Alaska Historical Commission.

Proposed statutory amendments to the Alaska Historic Preservation Act (AS 41.35) have been drafted. If accepted by the Legislature, the amendments will assure that the Department has the necessary statutory authority to continue the basic historic preservation goals of the Alaska Historical Commission. These amendments also merge the Alaska Historical Commission and the State Historic Sites Advisory Committee.

- (C) Conclusion

The Department appreciates the thoroughness and professionalism that has been consistently demonstrated by your staff in the performance of the audit examinations. The conclusions reached and the financial information represented provides a good assessment of the programs under review.

Sincerely,

*Judith M. Brady*

J  
Judith M. Brady  
Commissioner

cc: Deputy Commissioners  
Director of the Division of Land and Water  
Director of the Division of Parks and Outdoor Recreation

JMB/TS/rlc  
IBMIRD:audit response

# STATE OF ALASKA

AUDIT DIVISION  
POUCH W  
JUNEAU, ALASKA 99811-3300

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

December 16, 1986

Members of the Legislative Budget  
and Audit Committee:

RE: Alaska Historical Commission (AHC)

This letter constitutes our report on the status and operation of the Alaska Historical Commission.

AHC was created in 1972 within the Office of the Governor. In 1980, the Commission was transferred to the Department of Education by Executive Order No. 43. The Commission consists of the Lieutenant Governor who serves as chairman, four members appointed by the Governor, and the Executive Director who serves as a non-voting member of the Commission.

The duties of AHC are to:

1. Survey, evaluate, and catalog Alaska prehistory and history materials now in print.
2. Ascertain and register what Alaska prehistory and history work is now in progress.
3. Identify the existing gaps in the coverage of Alaska's past in presently available published works and establish priorities for bridging them.
4. Prepare a thematic study of Alaska's history for historic preservation.
5. Identify the sources of Alaska's history.
6. Coordinate the production and publication of works that will adequately present all aspects of Alaska's past.
7. Cooperate with Federal government programs relating to history and archaeology.

Prior to FY 87, AHC operated on a budget averaging approximately \$550,000 which included grant funds of approximately \$300,000. Faced with declining State revenues the Legislature appropriated \$100,000 to operate AHC during FY 87. This amount was further reduced to \$85,000 as a result of Governor Sheffield's FY 87 budget reduction measures.

In June of 1986, the Lieutenant Governor and the Commissioners of Education and Natural Resources recommended that the Governor issue an executive order transferring AHC to the Department of Natural Resources (DNR). Once transferred to DNR's Division of Parks and Outdoor Recreation, AHC would be consolidated with the Alaska Archaeological Survey and the Office of History and Archaeology.

On July 2, 1986 a Reimbursable Services Agreement was executed effecting the transfer. The consolidation should ". . . produce a single more effective and economically sound effort to promote the preservation and understanding of Alaska's history and prehistory." A draft executive order has been prepared and will be submitted to both houses of the Legislature. Unless disapproved by the Legislature, the order becomes effective after 60 days.

Since the consolidation in July the major efforts of AHC have been in two directions, the integration of the three agencies being consolidated, and the finalizing of the twelve active grant projects in existence at that time. No new objectives have been set for AHC as they have met only once since the consolidation and have delayed new program development until they are aware of what budget restrictions they will be operating under with the new administration.

#### Conclusion

While the integration of the three agencies is not yet complete; in our opinion, it appears that the remaining functions of AHC could be absorbed by DNR. Therefore, we recommend that the Legislature consider the repeal of the AHC statutes and the elimination of the executive director position. The newly consolidated history and archaeology section should ensure that it has the necessary statutory authority to continue the basic historic preservation goals of AHC.

As an alternative to the elimination of AHC, the Legislature may want to consider merging the Commission with the Historic Sites Advisory Committee which also works with the history and archaeology section under the Alaska Historic Preservation Act (AS 41.35). The newly constituted panel should further enhance the Department's efforts to integrate its history and archaeology functions, while also reducing the administrative costs associated with two separate public panels advising the same agency.



Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

STATE OF ALASKA

STEVE COWPER, GOVERNOR

**DEPARTMENT OF EDUCATION**

OFFICE OF THE COMMISSIONER

GOLDBELT PLACE  
801 WEST 10th STREET  
POUCH F  
JUNEAU, ALASKA 99811

January 28, 1987

FEB - 2 1987

Gerald L. Wilkerson  
Legislative Auditor  
Division of Legislative Audit  
Budget and Audit Committee  
PO Box W  
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We have reviewed your preliminary report on the status and operation of the Alaska Historical Commission. Because the Commission is appointed by the Governor and independent of the Department of Education, we have no comment on your report.

Sincerely,

  
Marshall L. Lind  
Commissioner

cc: William Hanable, Executive Director  
Alaska Historical Commission

Judy Brady, Commissioner  
Department of Natural Resources

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1798  
PHONE: (907) 465-2400

February 19, 1987

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Division of Legislative Audit  
P.O. Box W  
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FEB 23 1987

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Sincerely,

*Bob Adams*

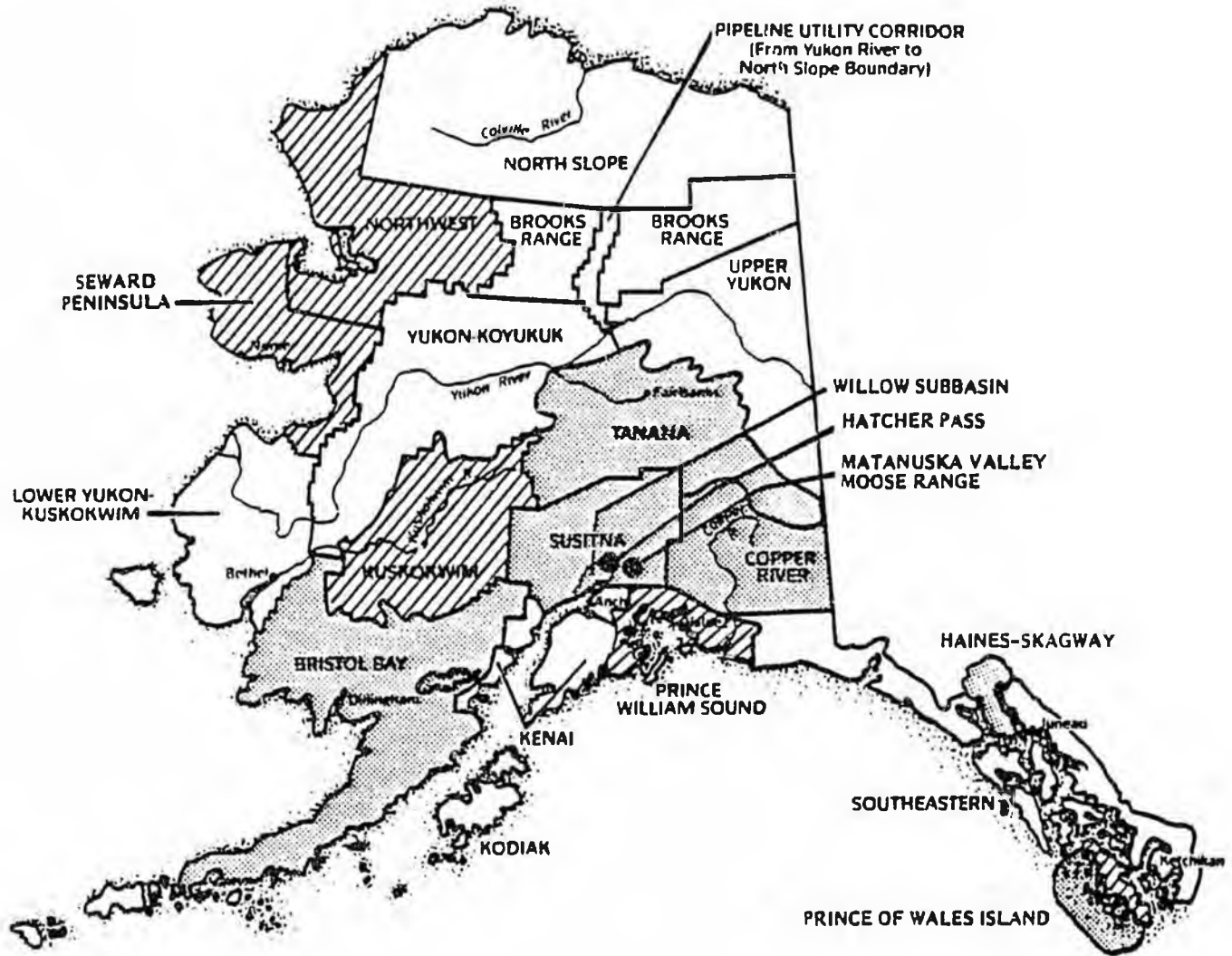
*f* Judith M. Brady  
Commissioner

cc: Deputy Commissioners  
Director of the Division of Land and Water  
Director of the Division of Parks and Outdoor Recreation




JMB/TS/rlc  
IBMIRD:audit response

# Alaska Department of Natural Resources

## AREA PLANS



### AREA PLANNING STATUS

-  Completed area plans
-  Area plans in progress
-  Not scheduled for area planning

FEBRUARY 1987



Alaska Department of  
**NATURAL  
RESOURCES**

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## Why Do Area Plans?

The planning process is a way of settling differences, it is a way of deciding how to manage and use state lands. There are many different ideas on how state lands should be used, and sometimes these proposed uses have the potential to conflict with each other. However, with advance planning, many potentially conflicting uses can occur in the same area. Through the planning process, the people of the state can help choose the ways the land should be managed. The plans also make it clear to the public what choices have been made and the reasons for those choices.

## The Planning Process

**Public Identifies Issues** - Public meetings are held to learn of local problems, interests, and concerns about state lands.

**Gather Information** - Information about natural resources (oil and gas, minerals, fish, forests, soils, etc.), existing land uses and ownership, and economic and social characteristics is gathered, mapped, and analyzed.

**Prepare Plan Alternatives** - Different land use plans are developed using public comments, resource information, and state policy.

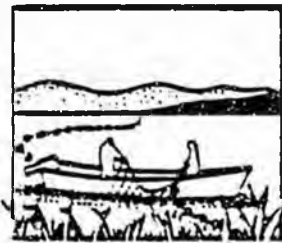
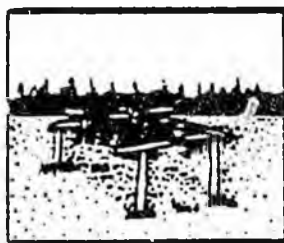
**Public Reviews Alternatives** - Public meetings are held to review alternatives.

**Prepare Draft Plan for State Lands** - Public comments are reviewed, conflicts are resolved, a preferred alternative is selected, and a draft plan is written.

**Public Reviews Draft Plan** - Public hearings are held on the draft plan.

**Prepare Final Plan** - Changes to the draft plan are made based on public comments. Final plan recommendations are developed.

**Adopt and Implement the Plan** - The Commissioner of the Department of Natural Resources adopts the final plan. The plan guides the state's land management decisions.



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## **Status of Area Plans**

**Bristol Bay.** Adopted in September, 1984. Covers 13 million acres of state-owned and state-selected land. Copies are available at DNR Information Offices and have been sent to state depository libraries.

**Copper River Basin.** Adopted in November, 1986. Covers 3.3 million acres of state-owned and state-selected land. Copies are available at DNR Information Offices and have been sent to state depository libraries.

**Haines/Skagway.** Adopted in June, 1979. Covers 400,000 acres of state-owned or state-selected land. Superseded by the Alaska Chilkat Bald Eagle Preserve Management Plan (September, 1985) and the Haines State Forest Management Plan (February, 1986). Copies of all three plans are available at DNR Information Offices and have been sent to state depository libraries.

**Kuskokwim Basin.** This plan is for 16.6 million acres of state-owned or state-selected land. Alternatives have been developed and will be discussed at public meetings in late March and early April, 1987. A plan will be drafted during the spring and summer, reviewed at public meetings in the fall of 1987, and adopted by February, 1988. The plan will address such issues as land offerings, oil and gas development, mining, coal development, fish and wildlife habitat, and recreation. Special emphasis will be placed on preserving access to state lands.

**Northwest.** This plan is for 10 million acres of state-owned or state-selected lands in the Bering Straits region, the Northwest Arctic Borough, and the far western segment of the North Slope Borough. Alternative land use patterns have been developed and will be discussed at public meetings in late March and early April, 1987. The plan will be drafted during the spring and summer, reviewed at public meetings in the fall of 1987, and adopted in February, 1988. Subsistence is an important use of resources in the Northwest. Other issues of importance are access to state land, reindeer grazing, land offerings, trapping cabins, oil and gas development, and mining.

**Prince of Wales Island.** An area plan covering the southwestern part of the island was adopted in June, 1985. The remainder of the island is the subject of an ongoing plan. This plan is for 30,000 acres of state-owned or state-selected uplands and about one million acres of adjacent tidelands and submerged lands. Alternative management schemes will be discussed at public meetings in the spring of 1987. A draft plan will be distributed in the fall of 1987, with adoption of the final plan anticipated in March, 1988. The plan will address such issues as land offerings, log transfer and storage facilities, floating camps, floathomes, sea-farming, and state selections from the Tongass National Forest.

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Prince William Sound. This plan is for 850,000 acres of state-owned or state-selected uplands and most of the tidelands and submerged lands in Prince William Sound. A plan will be drafted by June, 1987, discussed at public meetings in the fall, and adopted by December, 1987. The plan will address such issues as land offerings, the location of commercial and public recreation facilities, floathomes, aquaculture, sea-farming, state selections from the Chugach National Forest, mooring areas, and access to the beach, lakes, streams, and important hunting and fishing areas.

Susitna. Adopted in April, 1985. Covers 9.5 million acres of state-owned and state-selected land. Copies are available at DNR Information Offices and have been sent to state depository libraries.

Tanana Basin. Adopted in April, 1985. Covers 12.5 million acres of state-owned and state-selected land. Copies are available at DNR Information Offices and have been sent to state depository libraries.

For more information on area plans, contact:

**Dept. of Natural Resources  
Land and Water Mgt.  
Resource Allocation Section  
P.O. Box 7-005  
Anchorage, Alaska 99510  
(907) 561-2020**

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