

SB

196

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER:

\*\*FISCAL NOTE(S) ATTACHED \*\*  
IN ACCORDANCE WITH AS 24.08.035  
(see below)

3/18/87

DATE TURNED INTO OFFICE \_\_\_\_\_

Mr. President:

RESOURCES \_\_\_\_\_ Committee considered SB 196

management of state land.

and recommended:

[  ] replace with CS SB 196 [  ] same title  
[ ] attached amendment(s) and [ ] new title

[ ] do pass

[ ] do not pass

[ ] no recommendation

[  ] individual recommendations

[ ] further referral to \_\_\_\_\_

[ ] letter of intent adopted and attached

\*\* Committee [  ] attached or [ ] adopted fiscal note(s)  
[ ] zero [ ] fiscal impact

MEMBERS SIGNING DO PASS

*[Signature]*  
\_\_\_\_\_  
*[Signature]*  
\_\_\_\_\_

OTHER RECOMMENDATIONS

*[Signature]*  
\_\_\_\_\_  
*[Signature]*  
\_\_\_\_\_

*[Signature]*  
\_\_\_\_\_  
Chairman signature and recommendation

[ ] Committee Backup Attached

A M E N D M E N T

Offered in the SENATE

By Duncan

TO: CSSB 196 (Res)

Page 3, after line 14:

Insert a new bill section to read:

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

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

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

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

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

(4) has received an honorable discharge or a general discharge under honorable conditions."

Renumber remaining bill sections accordingly.

# Alaska State Legislature

## Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman  
Sen. Paul Fischer, Vice-Chairman  
Sen. Lloyd Jones  
Sen. Artiss Sturgulewski  
Sen. Jim Duncan  
Sen. Fred Zhatoff  
Sen. Dick Ellason

Box V  
Juneau, Alaska 99811  
(907) 465-4907

### MEMORANDUM

TO: Senate Resource Committee Members

FROM: Resource Committee Staff *BSG*

RE: SB 196; An act relating to the management of State land.  
Packet Contents

DATE: March 31, 1987

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#### List of packet contents:

- 1) Sponsors Memorandum
- 2) Dept. of Natural Resources Position Paper
- 3) Dept. of Natural Resources Fiscal Note
- 4) Dept. of Law Memorandum to Governor Cowper, Feb. 19, 1987
- 5) Chase III lands Supreme Court Opinion, August 29, 1987
- 6) State Land Classification and Land Disposal Bank  
1986 Report to the Legislature  
(7 pages only)
- 7) A Special Report on the Department of Natural Resources Land Use  
Plans, October 27, 1987
- 8) Original Department of Law draft.

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

February 19, 1987

### M E M O R A N D U M

TO: Honorable Steve Cowper  
Governor

FROM: *John H. Peterson*  
for Grace Berg Schaible  
Attorney General

RE: Attached bill on land use planning  
and classification  
Our file: 773-87-0104

Attached is a bill to amend the land use planning requirements of AS 38.04.065 for state land. It was recommended by the Department of Natural Resources (DNR) to allow land classifications for disposal or other resource management purposes to be made before comprehensive regional land use plans are completed. The request was approved by Mike Bradner January 12, 1987.

According to Tom Hawkins, director of DNR's division of land and water management, the department considers this bill essential to its land management responsibilities.

In connection with constituent inquiries, Senators Faiks and Coghill have asked for copies of this bill, which we are furnishing them today.

Before the Supreme Court's recent decision in Alaska Survival v. State, 723 P.2d 1281 (August 29, 1986), the Department of Natural Resources, in accordance with its regulations, routinely classified land on the basis of site-specific land use plans if the land was located in an area of the state which was not included in a comprehensive regional land use plan. The court held that this procedure violated AS 38.04.065 and that the legislature intended that comprehensive regional planning precede the classification of land for disposal or other purposes.

Because regional land use planning is a time-consuming and expensive process, comprehensive regional plans have not yet been completed for most state land. The department's ability to make land and resource management decisions in many areas of the state, including the Kenai Peninsula and the North Slope, is therefore severely restricted.

The attached bill amends AS 38.04.065 to allow the department to classify land on the basis of site-specific land use plans until the regional planning process is completed. The bill also validates classification orders and the management and disposal decisions based on them which were made between the 1978 enactment of the statute and the date of the court's decision.

A draft transmittal letter to the legislature, explaining the bill in more detail, is also attached.

GBS:MFN:amh

cc w/enc.: Hon. Judy Brady, Commissioner  
Dept. of Natural Resources

Hon. Jan Faiks  
Alaska State Senate

Hon. Jack Coghill  
Alaska State Senate

D R A F T

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to land use planning for and classification of state land. This bill amends AS 38.04.065 to allow the Department of Natural Resources (DNR) to classify state land for disposal or other resource management purposes on the basis of site-specific land use plans. The bill also would resolve certain questions concerning the validity of previous land classification and disposal decisions which may be raised as a result of the supreme court ruling in Alaska Survival v. State, 723 P.2d 1281 (August 29, 1986).

The Alaska Survival decision involved a challenge to the proposed Chase III agricultural homestead disposal near Talkeetna. Classification of a portion of the Chase III land and the decision to make Chase III land available for homesteading preceded the adoption of the Susitna Area Plan, a comprehensive regional land use plan adopted by DNR in April 1985. The court ruled in favor of local residents who challenged the homestead offering, stating:

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.

Alaska Survival v. State, 723 P.2d at 1289. The court invalidated a DNR regulation that allowed classifications to be made on the basis of site-specific land use plans.

The court's ruling has created uncertainty with respect to the ability of DNR to manage and develop the resources on a significant amount of state land. Only 36 million acres, or approximately 44 percent of the land patented or tentatively approved for patent to the state is now covered by regional land use plans. Regional planning, although necessary, is expensive and time consuming. DNR has informed me that each of the four regional plans now in progress will require between two and three years to complete and will cost between \$300,000 and \$400,000.

The Department of Law has advised me that there are unresolved questions concerning the scope of the supreme court's ruling. The decision can be construed narrowly as having only prospective effect and as prohibiting new classification actions, but not necessarily disposals, before regional plans are complete. There is a risk, however, that the decision will be interpreted by the courts to prohibit all disposals of land and resources before regional plans are adopted. Under such a broad interpretation, DNR might be precluded from granting rights of way, selling timber, or

issuing oil and gas or other leases. Questions might also be raised about the validity of classifications and disposals that occurred before the court's decision.

This bill would permit DNR to actively manage state land and resources until regional plans are adopted by authorizing DNR to classify land for disposal or other purposes. The bill would require that a site-specific land use plan be adopted as the basis for any classification made before the adoption of a regional plan.

In addition, the bill would clarify the status of those existing classification orders issued by DNR before the date of the supreme court's decision. Classifications based on site-specific land use plans would be effective until DNR acts to reclassify the land. Past land disposal decisions and other management decisions based on the classification orders would be validated.

This bill would ensure that DNR has the authority to manage all state land and develop its resources based on sound planning, but without the delay that completing the regional planning process would necessitate. The bill would also eliminate the likelihood of additional litigation to determine the scope of the Alaska Survival decision. I urge your

prompt and favorable action on this measure.

Sincerely,

Steve Cowper  
Governor

1 IN THE SENATE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 SENATE BILL NO.

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 land use planning and classifi-  
7 cation; and providing for an effective date."

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

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

10 Sec. 38.04.065. LAND USE PLANNING AND CLASSIFICATION. (a) The  
11 commissioner shall, with local governmental and public involvement in  
12 accordance with AS 38.05.945, develop, maintain, and, when appropri-  
13 ate, revise land use plans that [WHICH] provide[, BY REGIONS OR AR-  
14 EAS,] for the use of the state-owned land.

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

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

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

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

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

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

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

1 (7) plan for compatible surface and mineral land use clas-  
2 sifications; and

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

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. These regional plans must  
9 [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 in accordance  
16 with AS 38.04.015.

17 (d) The commissioner shall sign and date official [OFFICIAL]  
18 regional [OR AREA] plans and subsequent amendments adopted by the  
19 commissioner after public and local governmental participation [SHALL  
20 BE SIGNED AND DATED BY THE COMMISSIONER]. The commissioner may adopt  
21 as a regional plan a comprehensive plan adopted by a local government  
22 having planning and zoning powers, if the commissioner finds that the  
23 plan adequately recognizes and protects state interests. After adop-  
24 tion of an official regional [OR AREA] plan, land classifications must  
25 [SHALL] be made in accordance with it. Before adoption of an official  
26 regional plan, land classifications for disposal or for any other  
27 purposes may be made on the basis of site-specific land use plans  
28 [THESE OFFICIAL PLANS].

29 (e) Land must [SHALL] be classified as provided in AS 38.05.300.

1 (f) Decisions [DECISION] about the location of easements and  
2 rights-of-way, other than for minor access, must [SHALL] be integrated  
3 with land use planning and classification [FOR THE APPROPRIATE AREA OR  
4 REGION].

5 (g) Land use plans adopted by the commissioner under this sec-  
6 tion must [SHALL] be consistent with local governmental land use plans  
7 to the maximum extent determined consistent with the state interests  
8 and the purposes of this chapter.

9 \* Sec. 2. Land that was, before August 29, 1986, classified for dis-  
10 posal or other purposes on the basis of a site-specific land use plan  
11 remains subject to the classification order in effect on that date unless  
12 the land is reclassified in accordance with AS 38.04.065, as amended by  
13 sec. 1 of this Act, and AS 38.05.300.

14 \* Sec. 3. Land management and disposal decisions made before the effec-  
15 tive date of this Act under classification orders based on site-specific  
16 land use plans are declared valid, notwithstanding the fact that they  
17 preceded the adoption of regional land use plans, if other requirements of  
18 law were met.

19 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).  
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# Alaska State Legislature

## Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman  
Sen. Paul Fischer, Vice-Chairman  
Sen. Lloyd Jones  
Sen. Arliss Sturgulewski  
Sen. Jim Duncan  
Sen. Fred Zharoff  
Sen. Dick Eliason

SESSION COMMENTS  
MARCH 18, 1987

Box V  
Juneau, Alaska 99811  
(907) 465-4907

SB 196, AN ACT RELATING TO THE MANAGEMENT OF STATE LAND, IS A BILL TO AMEND THE LAND USE PLANNING REQUIREMENTS OF TITLE 38 FOR STATE LANDS. THIS MEASURE WAS ORIGINALLY DRAFTED BY THE DEPARTMENT OF LAW.

ACCORDING TO A MEMO FROM THE ATTORNEY GENERAL TO THE GOVERNOR DATED FEBRUARY 19, 1987, THIS BILL IS ESSENTIAL TO THE DEPARTMENT OF NATURAL RESOURCES LAND MANAGEMENT RESPONSIBILITIES. THE BILL AFFECTS THE DEPARTMENT'S REQUIREMENT TO DEVELOP COMPREHENSIVE REGIONAL LAND PLANS FOR STATE LAND DISPOSALS. IT DOES NOT REMOVE PLANNING REQUIREMENTS, BUT ALLOWS THE DEPARTMENT TO DO SITE-SPECIFIC PLANS FOR DISPOSALS WHERE REGIONAL PLANS EITHER DON'T EXIST OR ARE NOT COMPLETED. RIGHT NOW DNR IS HOLDING CONVEYANCES ON ALL DISPOSALS AND LEASES ON LANDS WITH OUT REGIONAL PLANS.

PRESENTLY WE HAVE REGIONAL PLANS ON ONLY 36 MILLION ACRES OF THE TOTAL 82 MILLION ACRES THE STATE HAS RECEIVED PATENT OR TENTATIVE APPROVAL TO. THE STATE IS RECEIVING TENTATIVE APPROVAL ON APPROXIMATELY 1 $\frac{1}{2}$  MILLION ACRES A YEAR, AND THE REGIONAL PLANS COST THE DEPARTMENT 300 TO 400 THOUSAND DOLLARS AND REQUIRE 3 TO 4 YEARS TO COMPLETE.

THE REASON THIS BILL IS ESSENTIAL, IS BECAUSE A RECENT STATE SUPREME COURT DECISION REQUIRES THE DEPARTMENT TO DO REGIONAL LAND PLANS BEFORE DISPOSALS OF STATE LAND OR RESOURCES CAN TAKE PLACE.

SO WITH OUT THIS BILL, WE WILL HAVE TO GREATLY INCREASE DNR'S BUDGET FOR PLANNING. OTHERWISE THE STATE WILL NOT BE ABLE TO GRANT RIGHT OF WAYS, SELL TIMBER OR ISSUE MINING OR OIL AND GAS LEASES. REVENUE GENERATION FROM NEWLY ACQUIRED AND OTHER STATE LANDS NOT COVERED BY REGIONAL PLANS WILL NOT BE AN OPTION.

THE BILL ENSURES THAT DNR HAS THE AUTHORITY TO MANAGE ALL STATE LAND AND DEVELOP IT'S RESOURCES, BASED ON SOUND PLANNING, WITHOUT THE DELAY OF COMPLETING REGIONAL LAND PLANS. IT WILL ALSO ELIMINATE THE LIKELIHOOD OF ADDITIONAL LITIGATION TO DETERMINE THE SCOPE OF THE SUPREME COURTS DECISION.

# Alaska State Legislature

## Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman  
Sen. Paul Fischer, Vice-Chairman  
Sen. Lloyd Jones  
Sen. Arliss Sturqulewski  
Sen. Jim Duncan  
Sen. Fred Zharoff  
Sen. Dick Eliason

Box V  
Juneau, Alaska 99801  
(907) 465-4907

### MEMORANDUM

TO: Senate Resource Committee Members  
FROM: Senator Coghill, Sponsor  
RE: SB 196  
DATE: March 31, 1987

A handwritten signature in black ink, appearing to be "JBC", written over a long horizontal line.

---

SB 196, An Act Relating to the Management of State Land, is a bill to amend the land use planning requirements of Title 38 for state lands. This measure was originally drafted by the Department of Law.

According to a memo from the Attorney General to the Governor dated February 19, 1987, this bill is essential to the department of natural resources land management responsibilities. The bill affects the department's requirement to develop comprehensive regional land plans for state land disposals. It does not remove planning requirements, but allows the department to do site-specific plans for disposals where regional plans either don't exist or are not completed. Right now DNR is holding conveyances on all disposals and leases on lands with out regional plans.

Presently we have regional plans on only 36 million acres of the total 82 million acres the state has received patent or tentative approval to. The state is now receiving tentative approval to land selections or patent, on approximately one million acres a year. The regional plans cost the state in the range of 200 to 400 thousand dollars and require an average of 3 years to complete.

The reason this bill is essential, is because a recent state Supreme Court decision requires the department to do regional land plans before disposals of state land or resources can take place.

So with out this bill, we will have to greatly increase DNR's budget for planning. Otherwise the state will not be able to grant right of ways, sell timber or issue mining or oil and gas leases. Revenue generation from newly acquired and other state lands not covered by regional plans will not be an option.

The bill ensures that DNR has the authority to manage all state land and develop it's resources, based on sound planning, without the delay of completing regional land plans. It will also eliminate the likelihood of additional litigation to determine the scope of the Supreme Courts decision.

The only opposition I know of on this bill is from the plaintiffs in the Chase lands decision (the Supreme Court decision). The Department of Natural Resources has indicated to me that it is their intent to abide by the Supreme Courts ruling in that matter.

I encourage fast positive action on this legislation.

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 485-2400

April 1, 1987

The Honorable Jack Coghill  
Chairman, Senate Resources Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

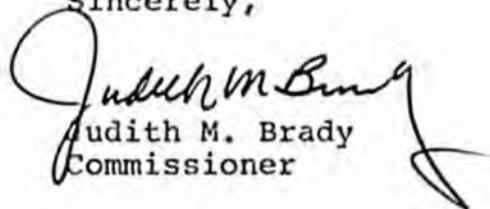
Dear Senator Coghill:

Subject: Senate Bill 196 which relates to the classification of land.

Position: The Department of Natural Resources supports this effort to 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 seek to avoid a moratorium on all land actions pending comprehensive plan adoption. Finally all Alaskans will benefit from the efficiencies available to the department as it uses plans prepared by other governmental entities as a basis for classification actions.

Recommendation: Since the bill was introduced a number of groups and interests have expressed the desire to participate in detailed work sessions. 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,

  
Judith M. Brady  
Commissioner

Enclosure

cc: Committee Members  
Senator Faiks (sponsor)  
Rod Swape, Governor's Office  
George Sullivan, Governor's Office  
Norm Cohen, ADF&G  
Tom Hawkins, DLWM  
Meg Hayes, DLWM

The department supports SB 196 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 funding and sale of fee homesteads.

The department's support of SB 196 does not diminish its support for land management planning. The plans are practical documents which help us make better decisions.

They 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 attached map shows the status of area plans in the state.

| <u>Adopted</u>               | <u>Completed by 3/88</u> | <u>Not Scheduled</u>   |
|------------------------------|--------------------------|--|
| Bristol Bay                  | Kuskokwim Basin          | Aleutians<br>(mostly tidelands)  |
| Copper River                 | Northwest                | Brooks Range   |
| Haines-Skagway               | Prince of Wales Island   | Kenai & Cook Inlet<br>& tidelands  |
| SW Prince of<br>Wales Island | Prince William Sound     | Kodiak (mostly<br>tidelands)   |
| Susitna Basin                |                          | Lower Yukon-Kuskokwim  |
| Tanana Basin                 |                          | North Slope<br>Pipeline Utility<br>Corridor<br>Southeast (mostly<br>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.

What follows is a section-by-section analysis of SB 196. 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)(1): No comment.

AS 38.04.065(c)(2). We propose the following addition to the end of this subsection: "except that is not required prior to mineral location and leasing." The department has been operating under the assumption that mineral location and leasing are independent of land classification. However, cross-referencing AS 38.04.065(c) and AS 38.04.015 leaves room for doubt. If the legislature intends to exempt mineral location and leasing from classification, we recommend the exemption be explicit.

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.

Sec. 6 No comment.

Sec. 7 No comment.

Sec. 8 No comment.

Sec. 9     The department recommends the addition of a new section to complement the proposed addition to Sec. 3 dealing with mineral location and leasing:  
"A mineral management and mineral leasing decision made before the effective date of the act is valid, regardless of whether the land was classified, if other requirements of law were met."

Thank you.

*file*  
*0.101*

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

ALASKA SURVIVAL, PAUL BRATTON, )  
JUDY PRICE, G. M. CHARTRAND, )  
and MILLIE GRAY, )

File No. S-996

Appellants, )

v. )

O P I N I O N

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 Manage- )  
ment, State of Alaska, Depart- )  
ment of Natural Resources, )

[No. 3101 - August 29, 1986]

Appellees. )

NOTICE TO RECVSELF: This opinion will be released to the press and public at 12:30 p.m. Alaska time on the date indicated. This copy is provided to counsel of record in advance. Please to the release time. Please do not retransmit this copy unless in this case to the extent.

Agency Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Karen L. Hunt, Judge.

Appearances: Robert W. Adler; Eric Smith, Stephan H. Williams, Trustees for Alaska, Anchorage, for Appellants. M. Francis Neville, Assistant Attorney General, Anchorage, and Harold M. Brown, Attorney General, Juneau, for Appellees.

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton and Moore, Justices.

MOORE, Justice.

|  |   |
|--|---|
| DELIVER TO: <u>Bob Arnold</u>                  | LOCATION: <u>SERO</u>                   |
| FROM: <u>Land &amp; Water Mgmt</u>             | LOCATION: <u>ANCH</u>                   |
| TELEPHONE/TELECOPIER # <u>581 2754</u>         | TOTAL NUMBER OF PAGES <u>29</u>         |
| TRANSMITTING ON/SPEED <u>Standard</u>          | DATE <u>8/29/86</u> TIME <u>11:30am</u> |
| PHONE FOR PROBLEMS-NAME/NUMBER <u>302 6823</u> |   |
| COMMENTS <u>called</u>                         |   |

This appeal challenges a state land disposal 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 September 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 superior 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 HISTORY

The land disposal at issue, referred to as "Chase III," is located approximately five miles north of Talkeetna, near the community of Chase. The state first proposed to offer land in this area for agricultural development 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 life-style, 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

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

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 88.7 percent of the acreage ultimately included in the homestead disposal contained class II or III soils.<sup>2</sup> In March 1984 DNR

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2. The SCS classification system takes into account soils and climatic conditions. Class I through IV soils are generally suitable for cultivation, although the

(Footnote Continued)

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

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(Footnote Continued)

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.

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 (hereafter 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 proceed 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

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

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.

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

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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, 88, SLA 1984.

policy considerations." State v. Weidner, 684 P.2d 103, 108 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. LeResche, 561 P.2d 1112, 1115 (Alaska 1978) (footnote omitted).

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.

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. 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>6</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

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6. AS 38.09.050(a)(5) requires a homesteader to clear and either put into production or prepare for cultivation "2: percent of the land classified for agricultural use or 50 percent of the land having Class II or III soils, whichever is less." (Emphasis added.)

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 aellant'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 suitable only for grazing and, in some cases, growing hay.

This new information obviously was significant: a special meeting of division directors 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, particularly 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.

There is no explicit statutory requirement for an amended finding and/or additional public comment upon the discovery 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 agency has "taken a 'hard look' at the salient problems" and has "genuinely engaged in reasoned decision making." Id. at 549 (quoting Leventhal, Environmental Decision Making and the Role of the Courts, 122 U. Pa. L. Rev. 509, 511) (emphasis in original). We have recognized that complete 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 decision 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 information, but that a supplemental environmental impact statement (EIS) is not always required when new information becomes available. Warm Springs Dam Task Force v. Gribble, 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, 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 without supplementation after concluding that the Department of Interior had "carefully considered" and made public the new data. Id. at 1268.

Here, DNR division directors met to evaluate the new soils information and consider whether to proceed with the disposal. The director of the Division of Lands prepared a Decision Memorandum which analyzed 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 agricultural uses." The memorandum recommended 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 assistant to the Commissioner concurred. Following the lottery, DNR informed the winners of the new soils data.

Given these facts, we are not prepared 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 considered the new soils information, then decided 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 758-59. 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

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 8, 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 Susitna 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 38.05.945, develop, maintain and, when appropriate, revise land use plans which provide, by regions or areas, for the use of the state-owned land.

. . . .

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7. Former AS 38.05.047(a)(5)(C) was enacted by ch. 85, § 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, 684 P.2d 103, 107 (Alaska 1984).

8. The state asserts that the 1984 classification order affected only 280 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.

(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.

We discussed this statute in State v. Weidner, 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 Weidner was covered by a specific statutory exception, repealed in 1981, permitting classification prior to planning. Id. As explained below, however, the interpretation stated in Weidner 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.

In our view, both the organization of the statutory scheme and the particular language of AS 38.05.065(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; and 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 adopted a site-specific "land planning report" covering the 1,287 Chase acres included in the 1984 classification order.

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, subsection .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 15.8 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 1977 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

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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. 181, § 5, SLA 1978. That section, in former AS 38.04.020, has since been repealed.

10. See supra note 7.

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.

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 . . . and the outcome of the litigation is known . . . ."<sup>11</sup>

We also note that the SAP's designation of the 3,530-acre Chase III area for agricultural homesteading appears inconsistent 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 ratified DNR's earlier decision to dispose of Chase lands as agricultural homesteads.

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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 ag [agricultural] homestead area, the project is halted entirely."

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 cultivable 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 land 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.

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)(8); 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>

C. Attorney's Fees

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. Anchorage v. McCabe, 568 P.2d 986, 991, 993-94 (Alaska 1977).

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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 35,000 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. 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 Ballard v. Stich, 628 P.2d 918, 920 (Alaska 1981).

13. Although the trial court apparently did not

(Footnote Continued)

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 a more

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(Footnote Continued)

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.

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, 568 P.2d at 989-91, 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.

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

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14. See, e.g., Kenai Lumber Co. v. LaResche, 646 P.2d 215, 223 (Alaska 1982) (competing lumber company seeking commercially valuable timber denied public interest status); Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92, 104 (Alaska 1974) (denial of public interest status proper where large sums at stake).

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 recognize appellants' public interest status and award attorney's fees accordingly.

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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**

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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

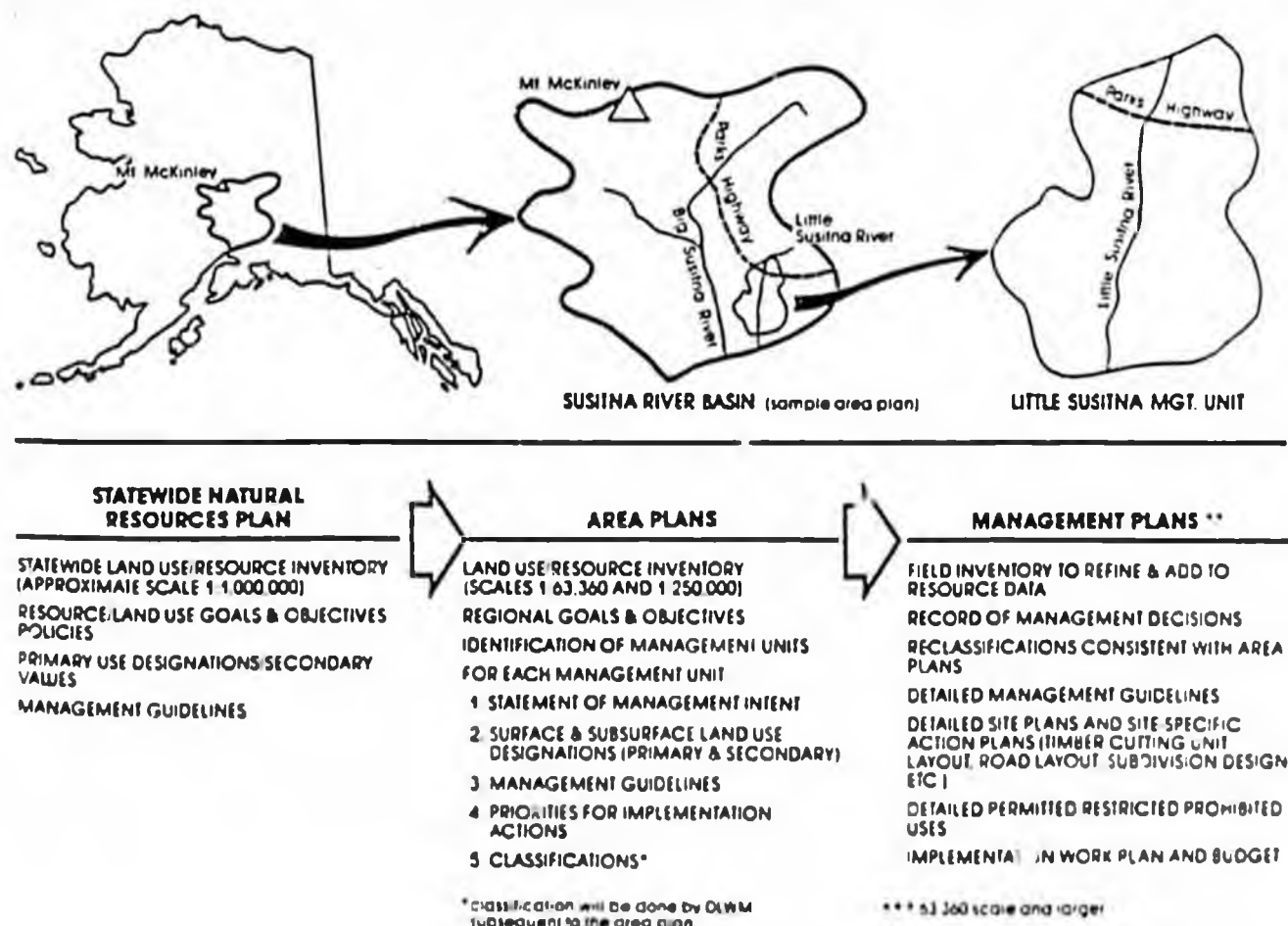
## Land and Resource Planning

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



## 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.

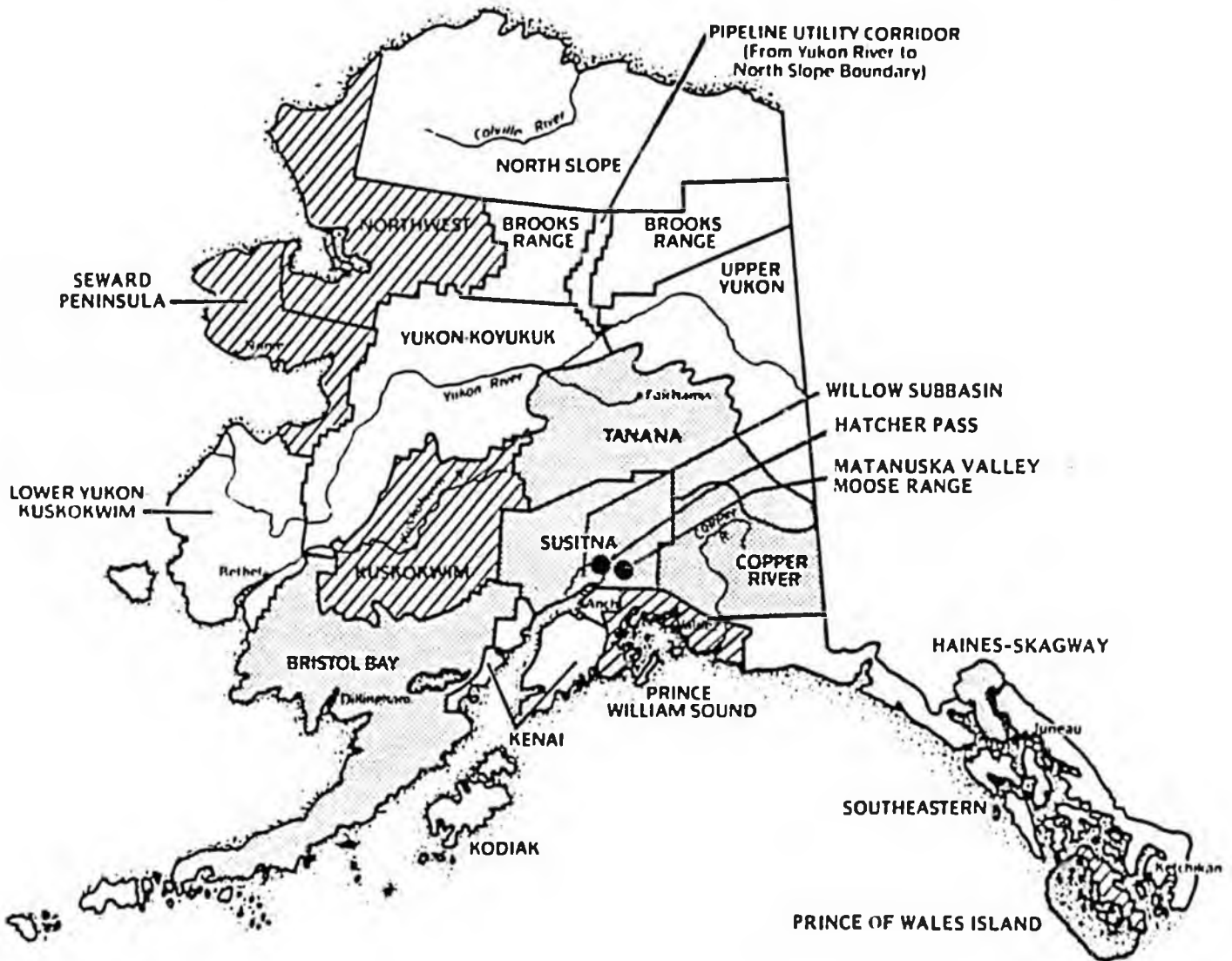
**Table 1.**  
**Status of Area Plans and Management Plans**

| <u>ADOPTED AREA PLANS</u>        | <u>ACRES</u>          |
|----------------------------------|-----------------------|
| 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      |
| <br>                             |                       |
| <u>AREA PLANS IN PROGRESS</u>    |                       |
| 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      |
| <br>                             |                       |
| 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.

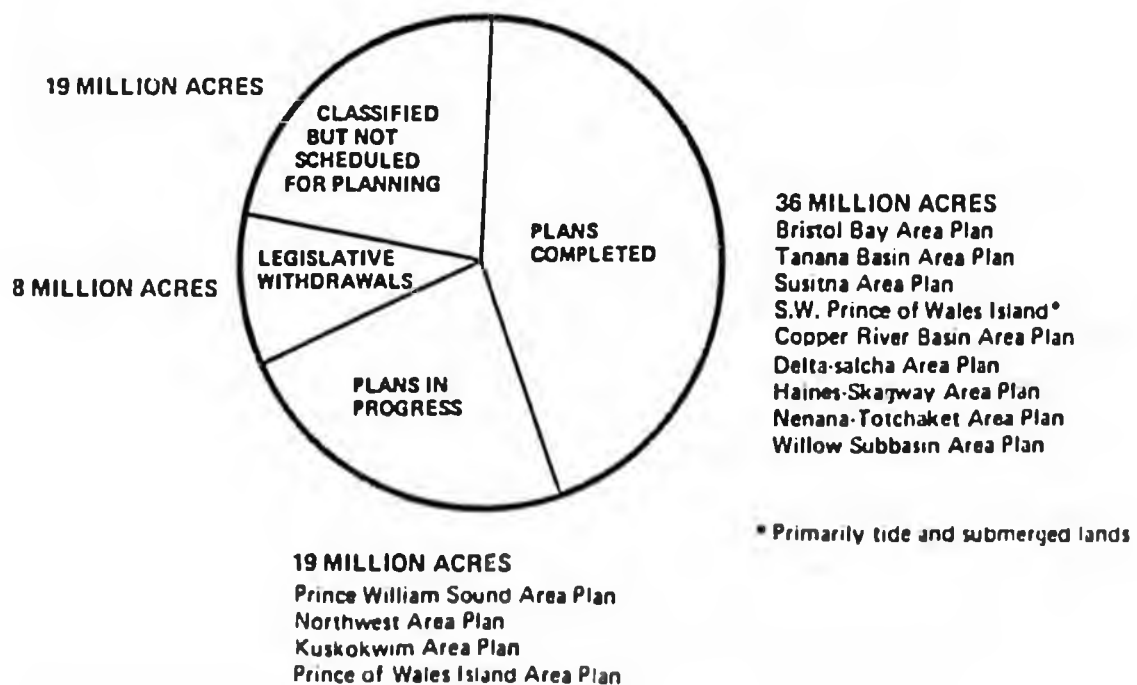
Plans recommend lands to select to fill the remainder of our 105 million acre land entitlement and lands to be relinquished. The state's land base of 82 million acres is increasing annually. As it approaches our entitlement the remaining selections become particularly important.

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

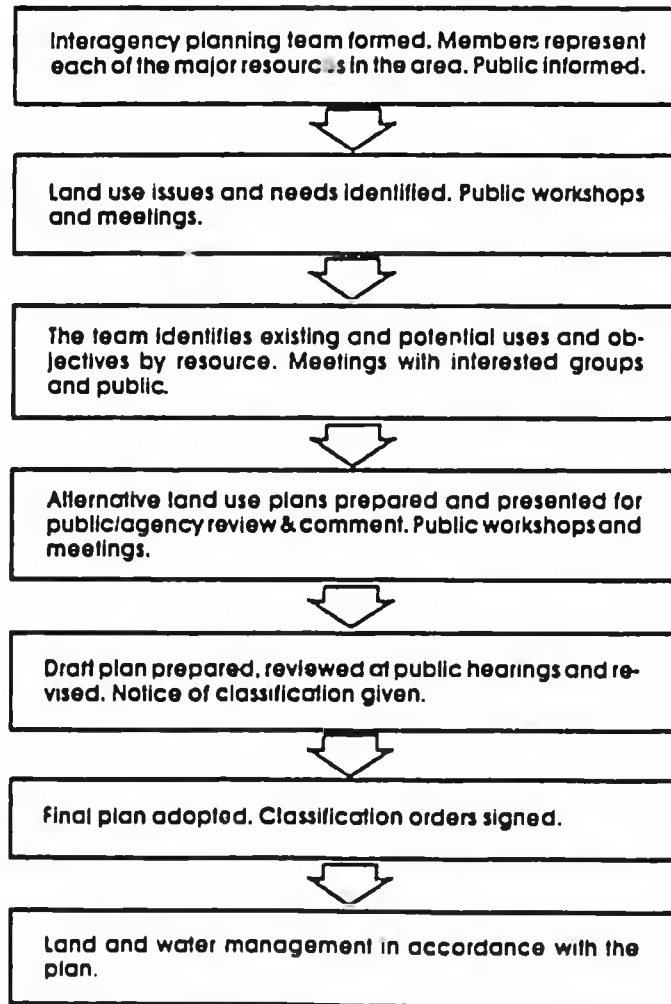


Most land retained by the state is managed for public use. The department's plans give land managers guidance on such actions as granting permits, leases, material sales (i.e., sand and gravel) and rights-of-way. Statements of management intent for each area determine whether a proposed action should 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



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

Deputy Commissioners, Department  
of Natural Resources

Judith M. Brady

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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## 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.

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## 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               | 12           |
| Management   | <u>12</u>       | <u>3</u>        | <u>15</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<br/>Date</u> | <u>Complete<br/>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<br/>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<br/>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<br/>River<br/>Basin</u> | <u>Kuskokwim</u> | <u>Northwest</u> | <u>Prince<br/>of Wales<br/>Island</u> | <u>Prince<br/>William<br/>Sound</u> | <u>Total</u>   |
|--|-----------------------------------|------------------|------------------|---------------------------------------|-------------------------------------|----------------|
| <u>FY 85 &amp; FY 86 Actual</u>                  |                                   |                  |                  |                                       |                                     |                |
| <u>Department of Natural<br/>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                                 | 5,800                               | 63,500         |
| Contractual                                      | 13,800                            | 6,800            | 11,100           | 11,400                                | 15,700                              | 58,800         |
| 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<br/>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<br/>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                              | 58,800         |
| 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>153,800</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<br/>River<br/>Basin</u> | <u>Kuskokwim</u> | <u>Northwest</u> | <u>Prince<br/>of Wales<br/>Island</u> | <u>Prince<br/>William<br/>Sound</u> | <u>Total</u>       |
|--|-----------------------------------|------------------|------------------|---------------------------------------|-------------------------------------|--------------------|
| <u>FY 87 &amp; FY 88 Estimate</u>                |                                   |                  |                  |                                       |                                     |                    |
| <u>Department of Natural<br/>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</u>                                 | <u>70,600</u>                     | <u>219,700</u>   | <u>335,800</u>   | <u>269,500</u>                        | <u>197,300</u>                      | <u>1,092,900</u>   |
| (Man-Months)                                     | (12)                              | (49)             | (59)             | (53)                                  | (42)                                | (215)              |
| <u>Department of Fish<br/>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</u>                                 | <u>11,500</u>                     | <u>15,100</u>    | <u>21,000</u>    | <u>10,900</u>                         | <u>42,300</u>                       | <u>100,800</u>     |
| (Man-Months)                                     | (2)                               | (4)              | (7)              | (3)                                   | (9)                                 | (25)               |
| <u>Total FY 87 &amp; FY 88<br/>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</u>                            | <u>82,100</u>                     | <u>234,800</u>   | <u>356,800</u>   | <u>280,400</u>                        | <u>239,600</u>                      | <u>1,193,700</u>   |
|  | (14)                              | (53)             | (66)             | (57)                                  | (51)                                | (240)              |
| <u>Total Actual and<br/>Estimated Costs</u>      | <u>\$421,900</u>                  | <u>\$380,000</u> | <u>\$550,700</u> | <u>\$434,200</u>                      | <u>\$362,300</u>                    | <u>\$2,149,100</u> |
| (Man-Months)                                     | (92)                              | (84)             | (108)            | (91)                                  | (76)                                | (450)              |

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

STEVE COWPER, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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,

*JMB*

*JMB*  
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