

S B

35

Senator John B. (Jack) Coghill

Alaska State Legislature

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Juneau, Alaska 99811
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MEMORANDUM

To: Senator Bettye Fahrenkamp
Senate Resource Committee Chair

From: Senator Jack Coghill

Re: SB 35; An Act relating to multiple use of state land
and water.

Date: March 17, 1989

Please consider this memorandum my request for a committee hearing on the SB 35, at the earliest possible time, and my accompanying "backup".

Intent: The purpose of this legislation is to establish a return to the multiple use concept of public land management. This embodies the view that "multiple use" means all the achievable uses are considered in the planning process on an equal basis. In other words, two uses does not constitute "multiple use" if there are other uses that can coexist simultaneously. Multiple use means all the uses and it does not exclude compatible competing uses.

Background: This proposal was originally presented in 1987 in the first report to the Legislature and the Governor by the Alaska Minerals Commission. This recommendation has been repeated in each of their annual reports to date.

SB 35 does not however, address the issue of multiple statutory definitions of "multiple use". There is at least one other definition found at AS 41.17.950(8). The bill introduced on this subject in 1987 proposed to eliminate this slightly conflicting definition and substitute the one found in SB 35. The Senate acted to do this, but in the interest of compromise on the House side, this element was deleted.

The bill before you represents the House Committee Substitute which died in House Judiciary Committee in the closing hours of the 15th Legislature.

Attachments:

1. Alaska Minerals Commission Recommendation, 1989.
2. (1987) CS for SB 136 (Res); An act relating to multiple use of state land and water.

3. (1988) House CS For CS For SB 136 (Res); An act relating to multiple use of state land and water.
4. Department of Natural Resources Position Paper and Fiscal Note, dated March 16, 1989.
5. Department of Fish and Game, Division of Habitat, Position Paper and Fiscal Note, dated January 23, 1989.
6. Department of Natural Resources Position Paper and Fiscal Note for SB 136, dated April 9, 1987.
7. A Position of the Society of American Foresters, "Multiple Use of Forestlands", received 1987.
8. Commissioner Don W. Collinsworth, Department of Fish and Game, editorial from Alaska Fish & Game magazine, January - February edition, 1989.

Rational: In the land planning process, we have often seen secondary or tertiary uses simply excluded from areas rather than the planning process providing mitigative measures for these uses, that would protect the primary use of the area.

I think that Commissioner Collinsworth's editorial has immediate bearing on the perspective behind this bill. He says:

"The social and economic well-being of the people of the State of Alaska is dependent on the development and utilization of all our natural resources. It is the policy of the state to develop these other resources while at the same time preserving the productivity of our renewable fish and wildlife resources which also have tremendous economic, social, and cultural value. Some may see these as two mutually exclusive objectives. Fortunately, in most cases, it does not have to be that way. It is true there will be the rare occasion when the policymakers will have to choose to trade off totally fish and wildlife against some development project -- an all or nothing situation. We have found, however, that this is the exception rather than the rule. The other extreme also seldom exists. By that I mean we seldom find a development activity that has absolutely no impact on the habitat and fish and wildlife production. Most of the time we can plan a development project and stipulate how it can be undertaken to mitigate the impact on the habitat. Sometimes we can identify ways to engineer a development project or extract natural resources in ways that protect the habitat and do not increase the costs of the developer or increase the cost of production of the natural resource being extracted. Often mitigation measures or the stipulations appended to a development project do increase the cost to the developer or the producer of the natural resource. Yet within limits, of course, it can be argued that such increased costs are justified and legitimate in protecting the broad social

interests and the interests particularly of those who use fish and wildlife and are economically, socially, and culturally dependent on those uses." (Underline added)

I agree that the preferred management emphasis, where conflicting uses do occur, should be on mitigation and not exclusive use classifications. This legislation will move policy in this direction, and away from present practices of simply closing areas to uses that may generate controversy.

Recommendations:

1. First I recommend that the technical error identified in DNR's position paper be corrected.

Page 1, line 9, should read:

*Section 1. AS 38.04.910(4), not (5), etc.

2. Secondly, I recommend you consider adding a new section to the bill after line 9 on page 2, to read:

*Sec. 3. AS 41.17.950(8) is amended to read:

(8) "multiple use" [MEANS] has the meaning given in AS 38.04.910;

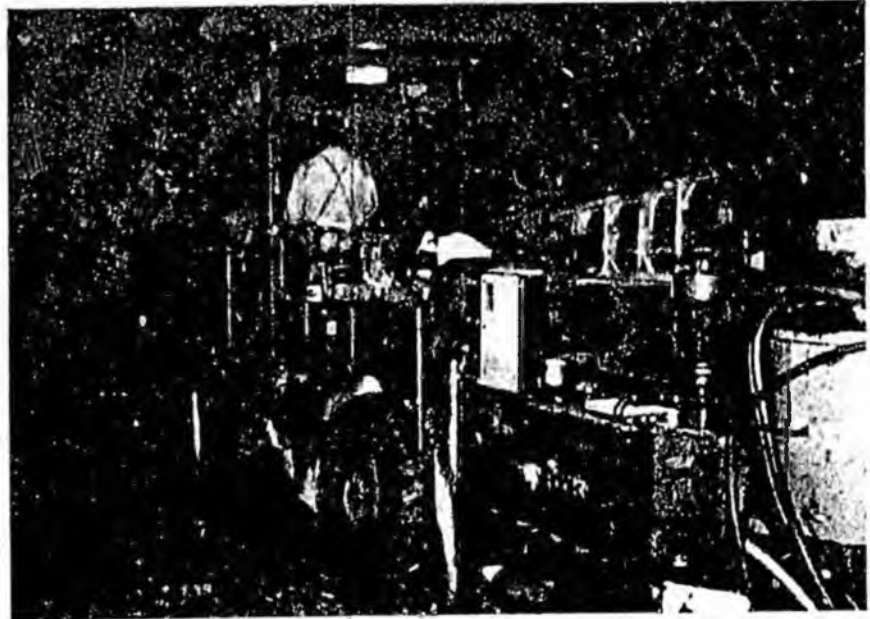
[(A) THE MANAGEMENT OF ALL THE VARIOUS RESOURCES OF FOREST LAND SO THAT THEY ARE USED IN THE COMBINATION THAT WILL BEST MEET THE NEEDS OF THE CITIZENS OF ALASKA, MAKING THE MOST JUDICIOUS USE OF THE LAND FOR SOME OR ALL OF THESE RESOURCES OR RELATED VALUES, BENEFITS, AND SERVICES OVER AREAS LARGE ENOUGH TO PROVIDE SUFFICIENT LATITUDE FOR PERIODIC ADJUSTMENTS IN USE TO CONFORM TO CHANGING NEEDS AND CONDITIONS;

(B) THAT SOME LAND WILL BE USED FOR LESS THAN ALL OF THE RESOURCES; AND

(C) HARMONIOUS AND COORDINATED MANAGEMENT OF THE VARIOUS RESOURCES, EACH WITH THE OTHER, WITHOUT SIGNIFICANT IMPAIRMENT OF THE PRODUCTIVITY OF THE LAND AND WATER, WITH CONSIDERATION BEING GIVEN TO THE RELATIVE VALUES OF THE VARIOUS RESOURCES, AND NOT NECESSARILY THE COMBINATION OF USES THAT WILL GIVE THE GREATEST DOLLAR RETURN OR THE GREATEST UNIT OUTPUT]

2. Finally and most importantly, I recommend that you give the land management agencies clear policy language, less ambiguous and subject to interpretive manipulations, on the concept of multiple use by passing SB 35 out of committee as soon as possible. (With or without the suggested amendment in recommendation 2 above, at your discretion.)

Report of the
Alaska Minerals Commission



January 1989

SEN. COGHILL: SB 35 (3/17/89)

ATTACHMENT 1

Allowance for Flexible Work Weeks

- The passage of legislation allowing work schedules to be set on the basis of project specific considerations will allow for more efficient use of labor and provide more desirable time-off patterns for employees. This will be particularly significant for mines in remote locations with employees who reside in communities distant from the work site.

Extension of Underground Work Hours

- Legislation is required to amend current statutes limiting shifts at the work face of underground mines from the current maximum of eight hours to a maximum of ten hours. The antiquated statute presently in effect does not recognize the implementation of modern safety programs and penalizes mine efficiency and employee time-off schedules on remote mining projects.

Multiple Use of State Lands

- The Commission would like to reemphasize four recommendations made in the Commission's 1987 report regarding the management of state lands.

1. Alaska Statute 38.05.300 should be amended as follows:

Classification of lands. (a) The commissioner shall, where considered necessary and proper, classify land for surface use. This section does not prevent reclassification of land, where the public interest warrants reclassification, nor does it preclude multiple use of land whenever different uses are compatible. State land, water, or land and water area may not, except by act of the state legislature, be closed to multiple use or to mineral entry if the area involved contains more than 640 acres.

2. The Legislature should redefine, to conform with constitutional intent, the various definitions of "multiple use" in the Alaska Statutes to require the management of state lands for the use of all resources rather than allocating or selectively denying resource use.
3. The Legislature should only make closures of land to mineral entry where documented and demonstrated incompatible use is proven and only when preceded by a mineral assessment.
4. The Legislature and Governor should periodically review lands closed to mineral entry to assess the need for continued closure and, if there is no longer a compelling need for closure, return the land to multiple-use designation.

Amending the Reporting Requirements of the Minerals Policy Act.

- Sec. 44.99.110(2) should be amended to require each department, board, commission, or agency, including the University of Alaska, to fulfill its reporting requirements as set out in this section on an annual basis through 1994 rather than once only in 1989.

Industrial Minerals Inventory

- The Legislature should reintroduce and enact legislation similar to SB 71 (or companion legislation HB 69), Senate Concurrent Resolution 4 and House Concurrent Resolution 5 as introduced during the Second Session of the 15th Legislature. These bills and resolutions address the need for systematic identification, inventory and reserve of sand and gravel resources to meet the present and future needs of transportation systems, populated areas and large-scale developments within the state and Pacific Rim.

Original sponsors: Coghill, Faiks,
Bennett, et al.

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 CS FOR SENATE BILL NO. 136 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to multiple use of state land and
7 water."

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

9 * Section 1. AS 38.04.910(4) is amended to read:

10 (4) "multiple use"

11 (A) means the management of state land and its various
12 resource values so that it is used in the combination that will
13 best meet the present and future needs of the people of Alaska,
14 making the most judicious use of the land for [SOME OR] all of
15 the [THESE] resources or related services over areas large enough
16 to provide sufficient latitude for periodic adjustments in use to
17 conform to changing needs and conditions; [IT]

18 (B) includes

19 (i) [(A)] the use of the [SOME] land for less
20 than all of the resources but does not exclude compatible
21 competing uses; [,] and

22 (ii) [(B)] a combination of balanced and diverse
23 resource uses that takes into account the short-term and
24 long-term needs of present and future generations for renew-
25 able and nonrenewable resources, including, but not limited
26 to, recreation, range, timber, minerals, watershed, wildlife
27 and fish, and natural scenic, scientific, and historic
28 values;

29 * Sec. 2. AS 38.05.300(a) is amended to read:

1 (a) The commissioner shall, where considered necessary and
2 proper, classify land for surface use [CLASSIFY FOR SURFACE USE LAND
3 IN AREAS CONSIDERED NECESSARY AND PROPER]. This section does not
4 prevent reclassification of land where the public interest warrants
5 reclassification, nor does it preclude multiple [PURPOSE] use of land
6 whenever different uses are compatible. An area of state [STATE]
7 land, water, or land and water [AREA] may not, except by act of the
8 state legislature, be closed to multiple [PURPOSE] use if the area
9 involved contains more than 640 acres.

10 * Sec. 3. AS 41.17.950(8) is amended to read:

11 (8) "multiple use" has the meaning given in AS 38.04.910

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13 (A) THE MANAGEMENT OF ALL THE VARIOUS RESOURCES OF
14 FOREST LAND SO THAT THEY ARE USED IN THE COMBINATION THAT WILL
15 BEST MEET THE NEEDS OF THE CITIZENS OF ALASKA, MAKING THE MOST
16 JUDICIOUS USE OF THE LAND FOR SOME OR ALL OF THESE RESOURCES OR
17 RELATED VALUES, BENEFITS, AND SERVICES OVER AREAS LARGE ENOUGH TO
18 PROVIDE SUFFICIENT LATITUDE FOR PERIODIC ADJUSTMENTS IN USE TO
19 CONFORM TO CHANGING NEEDS AND CONDITIONS;

20 (B) THAT SOME LAND WILL BE USED FOR LESS THAN ALL OF
21 THE RESOURCES; AND

22 (C) HARMONIOUS AND COORDINATED MANAGEMENT OF THE
23 VARIOUS RESOURCES, EACH WITH THE OTHER, WITHOUT SIGNIFICANT
24 IMPAIRMENT OF THE PRODUCTIVITY OF THE LAND AND WATER, WITH CON-
25 sideration being given to the relative values of the various
26 resources, and not necessarily the combination of uses that will
27 GIVE THE GREATEST DOLLAR RETURN OR THE GREATEST UNIT OUTPUT];

Original sponsors: Coghill, Faiks,
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1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 136 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to multiple use of state land and
7 water."

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

9 * Section 1. AS 38.04.910(4) is amended to read:

10 (4) "multiple use"

11 (A) means the management of state land and its various
12 resource values so that it is used in the combination that will
13 best meet the present and future needs of the people of Alaska,
14 making the most judicious use of the land for [SOME OR] all of
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6 whenever different uses are compatible. An area of state [STATE]
7 land, water, or land and water [AREA] may not, except by act of the
8 state legislature, be closed to multiple [PURPOSE] use if the area
9 involved contains more than 640 acres.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1790
PHONE: (907) 465-2400

OFFICE OF THE COMMISSIONER

March 16, 1989

The Honorable Bettye Fahrenkamp
Chair, Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

Subject: SB 35, an act relating to multiple use of state land and water.

Background: SB 35 amends the current definition of multiple use contained in AS 38.05.910(4), to include management of state land, making the most judicious use of the land for all of the resources, but allowing for use of the land for less than all of the resources if there is incompatibility of uses.

Position: The Department of Natural Resources is not opposed to the changes as currently set out in SB 35. The bill accurately reflects the department's current land planning and classification process. This process supports the multiple use concept through a rigorous resource value advocacy program, which by nature receives and considers all competing and non-competing resource uses and users.

This legislation, in the opinion of the department, still allows for classification of land into primary and secondary values, with the use of secondary values permitted when their use does not conflict with those uses designated primary. Uses which are not compatible with the primary management intent will still be excluded.

SEN. COGHILL: SB 35 (3/17/89)

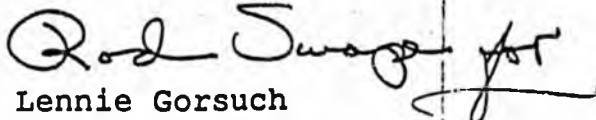
ATTACHMENT 4.

March 16, 1989

Technical Changes: The statutory reference in Section 1 should be AS 38.05.910(4), not (5).

As always, my staff and I stand available to assist the committee or provide additional information.

Sincerely,



Lennie Gorsuch
Commissioner

cc: Senator Jack Coghill

Commissioner Collinsworth
Department of Fish and Game

Commissioner Kelso
Department of Environmental Conservation

Bob Grogan, Director
Division of Governmental Coordination
Office of the Governor

Denby Lloyd, Special Staff Assistant
Office of the Governor

Bob Evans, Legislative Liaison
Office of the Governor

Gary Gustafson, Director
Division of Land and Water Management
Department of Natural Resources

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB35
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 10-Mar-89 Agency Affected: Natural Resources
 Title: An Act relating to the multiple use of state land and water. BRU: Land & Water Management
 Sponsor: Senator Coghill Components: Land & Water Mgmt
 Requestor: Senator Coghill

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&S/RUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissisoner's Office Date: 10-Mar-89

Approved by Commissioner: Lennie Gorsuch Date: 10-Mar-89
 Agency: Department of Natural Resources

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

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

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

March 16, 1989

The Honorable Bettye Fahrenkamp
Chair, Senate Resources Committee
P.O. Box V
Juneau, AK 99811

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Position: The Department of Natural Resources is not opposed to the changes as currently set out in SB 35. The bill accurately reflects the department's current land planning and classification process. This process supports the multiple use concept through a rigorous resource value advocacy program, which by nature receives and considers all competing and non-competing resource uses and users.

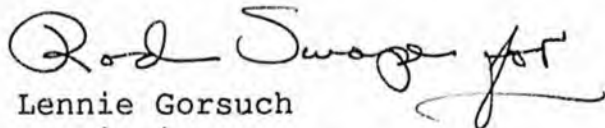
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March 16, 1989

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As always, my staff and I stand available to assist the committee or provide additional information.

Sincerely,



Lennie Gorsuch
Commissioner

cc: Senator Jack Coghill

Commissioner Collinsworth
Department of Fish and Game

Commissioner Kelso
Department of Environmental Conservation

Bob Grogan, Director
Division of Governmental Coordination
Office of the Governor

Denby Lloyd, Special Staff Assistant
Office of the Governor

Bob Evans, Legislative Liaison
Office of the Governor

Gary Gustafson, Director
Division of Land and Water Management
Department of Natural Resources

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB35

PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 10-Mar-89 Agency Affected: Natural Resources
 Title: An Act relating to the multiple use BRU: Land & Water Management
of state land and water.
 Sponsor: Senator Coghill Components: Land & Water Mgmt
 Requestor: Senator Coghill

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 10-Mar-89

Approved by Commissioner: Lennie Gorsuch Date: 10-Mar-89
 Agency: Department of Natural Resources

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



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Habitat	BILL NUMBER SB 35	SPONSOR Cogbill, et al.
SHORT TITLE OF BILL An Act relating to multiple use of state land and water			
DEPARTMENT POSITION Oppose			
PREPARED BY Frank <i>[Signature]</i>	DATE 1/23/89	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Natural Resources	CONSTITUENT GROUP(S) AFFECTED BY BILL All Users of State Land
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown
FISCAL IMPACT: <input type="checkbox"/> NONE <input checked="" type="checkbox"/> FISCAL NOTE ATTACHED	

BACKGROUND/LEGISLATIVE INTENT

Section 1 amends the definition of multiple use as it is defined in AS 38.04 (Alaska Lands Act) to require that multiple use lands be managed for all of their resources; thereby negating current statutory discretion to manage lands for a predominant use or for less than all competing uses.

ANALYSIS OF BILL/PROGRAM EFFECTS

Section 1 will remove the Department of Natural Resources' authority to classify or manage state lands for a predominant use or for less than all compatible competing uses. This section may also limit or condition the Department of Fish and Game's management and permitting authorities within State Game Refuges, State Game Sanctuaries, and Critical Habitat Areas established under AS 16.20. These areas have been legislatively protected in recognition of their outstanding natural habitat and associated fish and wildlife resource values. Absent a legislative definition for "compatible," this measure will essentially require that all state land and its various resource values be managed as open public domain on the assumption that all competing uses are compatible, unless clear and convincing evidence to the contrary is available. (cont.)

AMENDMENTS PROPOSED

None

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

SB 35--Multiple Use of State Land and Water

ANALYSIS OF BILL/PROGRAM EFFECTS (Cont.)

The existing definition of multiple use is consistent with the state's constitutional provision that "Fish, forest, wildlife, grasslands, and all other replenishable resources belonging to the state should be utilized, developed, and maintained on a sustained yield principle, subject to preferences among beneficial uses." The existing language accommodates the commonly recognized fact that all potential natural resource uses may not be compatible on every acre. The current definition also allows for the objective and reasonable identification of appropriate primary, secondary, and incompatible uses on an area-specific basis.

Although SB 35's reduced emphasis on "the use of the land for less than all of the resources" is accompanied by the added qualification that multiple use "does not exclude compatible competing uses," the latter requires that individual determinations be made as to whether competition between uses is sufficiently great to result in incompatibility. There is concern that such compatibility tests may 1) unduly tax already strained agency staffs and budgets, 2) create delays in land use decisions that would be burdensome to private industry and the general public, and 3) reduce, rather than increase, state land management flexibility to respond to ever changing economic and social demands on the state land base.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to multiple use of state land and water
Sponsor: Coghill, et al.
Requestor: Resources Committee

Agency Affected: Dept. of Fish and Game
BRU: Habitat
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Frank Rye, Director
Division: Habitat

Phone: 465-4105
Date: 1/23/89

Approved by Commissioner: [Signature]
Agency: Department of Fish and Game

Date: 1/27/89

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