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SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERENCE

DATE: 3/6/91

FURTHER: Judiciary

Date of 5-Day Notice: 3/13/91  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 5/10/91

Resources Committee considered SB 178

Management and protection of state land and its resources, and establishing remedies to enforce laws against unauthorized use of state land and its resources.

and recommended:

and a majority of the committee recommends it be replaced with

- replace with CS Resources <sup>SB 178</sup>  same title
- attached amendment(s) ~~and do pass~~  new title
- \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

- <sup>zero</sup> fiscal note(s) DNR 3/19/91 Dept/Date  zero fiscal note(s) \_\_\_\_\_ Dept/Date
- \_\_\_\_\_
- \_\_\_\_\_

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature] NO REC

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]  
Chair: Signature and Recommendation

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400  
FACSIMILE: (907) 586-2754

March 21, 1991

The Honorable Lloyd Jones, Chair  
Senate Resources Committee  
P.O. Box V  
Juneau, AK 99811

Dear Senator Jones:

Subject: SB 178, which relates to the management and protection of state land and resources, and establishes remedies for the unauthorized use of state land and resources.

Position: The Department of Natural Resources supports this bill.

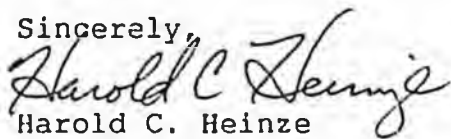
Background: Unauthorized use of state land and resources has become a very real problem in Alaska. Current law is simply inadequate to protect Alaska's resources and land. There are numerous examples where simple trespass problems have taken more than a year to resolve, where timber and gravel have been stolen or wasted, or where state resources have been damaged.

Alaska's general criminal trespass statute (AS 11.46.330) assumes property is fenced, enclosed, or posted at each access point -- an unrealistic assumption for the state's 105 million acres of land. As a result, the department must rely on common-law trespass provisions to respond to trespass complaints. The department must post a notice demanding that the unauthorized use cease, and hope the trespasser responds. If the unauthorized use does not stop, the state's attorneys must file suit. Because the state's case must be based on general statutory authorities, rather than express trespass laws related to state land, pursuing a case is time-consuming and expensive.

This bill would help resolve state land and resource trespass, theft and damage problems by expressly prohibiting unauthorized activities and establishing clear administrative (rather than judicial) enforcement procedures.

Please let me know if you would like additional information about the unauthorized use of state land.

Sincerely,



Harold C. Heinze  
Commissioner

enclosures

cc: Committee Members  
Senator Pearce  
Bruce Kendall, Legislative Liaison, Office of the Governor  
Charles Cole, Attorney General

## Sectional Analysis of SB 170

**Section 1** Establishes that DNR needs an administrative enforcement mechanism to take action against illegal occupancy of state land, resource waste, etc., and that bill is not intended to disrupt generally allowable public use of state land and resources.

**Section 2** Amends Title 38 by adding a new chapter AS 38.55:

AS 38.55.010 lists unauthorized uses of state land: residing or occupying land; entering where entry is restricted or entering by restricted means; placing improvements, personal property or refuse on land; removing a resource; or causing damage.

Also gives the Commissioner of Natural Resources the power to issue trespass and compliance notices, levy civil fines and penalties, assess damages, impound personal property as security for damages, use or dispose of property acquired by the state, and adopt regulations.

AS 38.55.030 Establishes administrative procedures for trespass notice, including the contents of and methods of service for the notice.

AS 38.05.040 Establishes administrative procedures for compliance orders issued by the Commissioner to stop the unauthorized use, remove the unauthorized structure or property, restore the site, or do anything else the Commissioner finds necessary. Requires service of notice by the same means as for trespass. Establishes that, if the violator does not comply with the compliance order, the Commissioner may proceed with removal of property and restoration of the area and the violator is liable for costs (including administrative costs).

AS 38.55.050 Establishes that, at the discretion of the Commissioner, unauthorized improvements on state land become state property. The Commissioner may use the property for department or public purposes, destroy it, or transfer to the Department of Administration for disposal.

AS 38.55.060 In addition to or in lieu of a civil/criminal penalty, makes knowingly using state land and resources in an unauthorized way or violating a compliance order subject to a civil fine of \$100 (or \$1000 if the use was for commercial economic gain). Each day counts as a separate violation. A citation for the fine may be issued by a peace officer or DNR staff, and the fine may be paid by mail.

AS 38.55.070 Along with a civil fine or criminal penalty, knowingly violating the unauthorized use law or a compliance order may bring a civil penalty of three times the loss or damage. The Commissioner may calculate the civil penalty as the greater of the estimated value of the resources taken, including rental and restoration costs plus administrative costs, or the violator's economic gain.

AS 38.55.100 Establishes procedures for appealing orders, fines,

etc.

AS 38.55.110 Allows judicial review under existing law (AS 44.62.560), after administrative remedies are exhausted.

AS 38.55.120 Allows the Commissioner to ask the court to issue a writ of assistance to help enforce a compliance order, or a writ of execution to collect a civil fine or penalty, after the judicial review period expires.

AS 38.55.200 Makes unauthorized use or violation of a compliance order a class B misdemeanor, but bars double jeopardy.

AS 38.55.210 Makes the violator liable to the state or to a person who suffers losses or damages caused by the violator.

AS 38.55.300 Relieves the state of liability for damages or losses from unauthorized use, from a generally allowable use, or from a decision to take action or not take action under this chapter.

AS 38.55.399 Defines a number of items including; land as state land or interests managed by the department (not Univ land, RR land, etc.); refuse broadly to include hazardous waste, litter, etc.; and structure to mean anything built or placed on state land.



Alaska Eskimo Whaling Commission  
P.O. Box 570  
Barrow, Alaska 99723  
Phone: (907) 852-2392

March 25, 1991

Senator Drue Pearce  
Rm. 510, Capitol  
P.O. Box V  
Juneau, Alaska 99811

SUBJECT: SENATE BILL NO. 178

Dear Senator Pearce:

The Legislature is considering Senate Bill No. 178 regarding the management and protection of state land and its resources which includes establishing remedies to enforce laws against unauthorized use of state land and its resources.

The Alaska Eskimo Whaling Commission which represents nine villages in three regions of the State spanning from Barter Island to St. Lawrence Island supports this bill with one change.

Under section 1. (b) Generally allowed uses should include "Subsistence camps, or some wording that will include Native traditional subsistence camps."

Currently, Nuiqsut subsistence whalers set up whaling camps on lands which are now owned by the State of Alaska. The Nuiqsut whalers have used these lands for thousands of years for their subsistence whaling activities. The State has been asking these whalers to submit user permits and pay a fee to use these lands.

The Nuiqsut whalers have been urging the AEWC and the North Slope Borough to ask the State of Alaska for a waiver to allow them to continue their subsistence hunting activities as they have done for thousands of years. I hope that you will consider this request. Thank you.

Sincerely,

*Beverly*  
Beverly Pakotak Grinage  
Executive Director

cc: Senator Al Adams  
Representative Eileen MacLean  
Representative Richard Foster

# Fact sheet:



Alaska Department of  
**NATURAL  
RESOURCES**

## **GENERALLY ALLOWED USES ON STATE LAND**

Division of Land and Water • March, 1991

### **DRAFT FACT SHEET--MARCH 1991**

The following uses and activities are allowed without a written permit on state public domain land managed by the Alaska Department of Natural Resources (but check the fine print below!). This list does not apply to land in state parks, because they have been withdrawn from the public domain by the Alaska Legislature. Nor does it apply to land owned or managed by other state agencies and departments such as the University of Alaska, Department of Transportation and Public Facilities, and the Alaska Railroad. The user is responsible for checking land status to be sure that this list is applicable.

### **TRAVEL ACROSS STATE LAND:**

**Hiking, backpacking, skiing, climbing, and bicycling; travel by horse or dogsled or with pack stock; snowmobiling.**

**Using a vehicle, including a four-wheel drive vehicle, pickup truck, snowmobile, or all-terrain vehicle (wheeled or tracked), on or off an established right-of-way, so long as off-road vehicle use does not break through the plant cover.**

**Landing an aircraft such as a light plane or helicopter, or using watercraft such as a boat, raft, or canoe, without disturbing the submerged land or shoreline.**

**A livestock drive of any number of reindeer or up to 100 horses, cattle, or other domesticated animals.**

### **ACCESS IMPROVEMENTS ON STATE LAND:**

**Brushing or cutting a trail less than five feet wide using only hand tools (such as a chainsaw), on the condition that there is no disturbance of the root system and that cutting the trail does not constitute, and is not intended to establish, a right-of-way.**

**Anchoring a mooring buoy in a lake, river, or marine waters for an upland owner's personal, noncommercial use, or placing a float or dock in a lake or in marine waters for an upland owner's personal, noncommercial use, so long as the use does not interfere with public access or other public use. A float or dock is an open structure without walls or roof, designed and used for access to and from the water rather than for storage, residential use, etc.**

### **REMOVING OR USING STATE RESOURCES:**

**Hunting, fishing, or trapping, including placement of a crab pot, shrimp pot, or herring pound, in accordance with regulations of the Board of Game or the Board of Fisheries.**

**Harvesting a small number of wild plants for personal use; using dead and down firewood for a cooking or warming fire, unless the area has been closed to all fires because of the danger of wildfire; harvesting mushrooms, berries, and other plant material for personal use.**

**Grazing as many as five domesticated animals.**

**Recreational gold panning; mineral prospecting or mining using light portable field equipment, such as a hand-operated pick, shovel, pan, earth auger, or a backpack power drill or auger; or suction dredging using a dredge with a nozzle intake of six inches or less, powered by an engine of 16 horsepower or less, and pumping no more than 30,000 gallons of water per day.**

### **OTHER STRUCTURES AND IMPROVEMENTS ON STATE LAND:**

**Establishing and using a camp for personal recreational use, commercial recreation use, or commercial non-recreational use (such as a support camp during mineral exploration), for no more than 14 days at one site, using a tent platform or other temporary structure that can readily be dismantled and removed, or a floathouse that can readily be moved. The camp must be moved at least two miles before the end of the 14-day period. No cabin or other permanent improvement is allowed, even if it is on skids or some other form of non-permanent foundation, and the camp must**

be removed immediately if the Division of Land and Water determines that it is interfering with public access or other public uses and interests.

**Brushing or cutting a survey line** less than five feet wide using only hand tools (such as a chainsaw), provided that there is no disturbance of the root system, or **setting a survey marker**. However, survey monuments cannot be set without written survey instructions issued by the Division of Land and Water.

Placing a lawful **sewer outfall** into marine waters from a residence or residences on contiguous privately owned upland, provided that the flow volume is less than 500 gallons per day, the outfall is located within the projected sidelines of the contiguous upland owner's lot, and the outfall line is buried to the extent possible (or, where it crosses bedrock, is secured and covered with rocks to prevent damage).

**MISCELLANEOUS USES:** Non-exclusive recreational or other use, for no more than 14 days at a site, that has no noticeable effect on vegetation, drainage, or soil stability; does not interfere with public access or other public purposes; and does not involve harassment or disturbance of wildlife other than lawful hunting, trapping, and fishing.

**But check the fine print first!**

There is some state-owned public domain land where this full list of generally allowed uses does not apply. Exceptions may be created by a state land use plan or management plan (for example, a management plan may limit the number of days that a personal-use recreational camp may be maintained at a specific site), or by a "special use land" designation (for instance, there is a special use land designation requiring a permit for off-road vehicle use on the North Slope).

Also, be aware that this list does not exempt users from the permit requirements of other state, federal, or local agencies. For example, a permit might be required by the Department of Fish and Game if the use will take place in a state game refuge.

Finally, this list does not authorize a use if another person has already acquired an exclusive property right for that use. For instance, it does not give people permission to graze livestock on someone else's state grazing lease, to build a trail on a private right-of-way that the department has granted to another person, or to pan for gold on somebody else's state mining location.

Division of Land and Water staff can help users determine the land status of state-owned land and whether it is subject to any special exceptions or to private property rights.

All activities on state land must be conducted in a responsible manner that will minimize or prevent disturbance to land and water resources, and must be in compliance with all applicable federal, state, and local laws and regulations. Also, the user must agree to protect the state against any claim, liability, or lawsuit arising out of the use.

**For additional information contact:**

Department of Natural Resources  
Division of Land and Water Management

Southcentral Regional Office  
3601 C Street, Suite 1080  
P.O. Box 107005  
Anchorage, AK 99510-7005  
(907) 762-2253

Southeast Regional Office  
400 Willoughby Avenue, 4th Floor  
Juneau, AK 99801  
(907) 465-3400

Northern Regional Office  
3700 Airport Way  
Fairbanks, AK 99709  
(907) 451-2757

CHAPTER 96. MISCELLANEOUS LAND USE.

Article

1. Provisions for General Land Use Activity (11 AAC 96.010--11 AAC 96.150)

ARTICLE 1. PROVISIONS FOR GENERAL LAND USE ACTIVITY.

Section

010. Uses [OPERATIONS] requiring permits  
020. Uses [EQUIPMENT USE] not requiring a permit  
030. Application  
040. Term and conditions  
---  
070. Completion statement; annual report [OF OPERATIONS]  
080. Confidentiality [CONFIDENTIAL STATUS OF INFORMATION]  
---  
100. Violation constitutes trespass [PENALTY]  
---  
130. Applicability  
140. General stipulations  
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11 AAC 96.010. USES [OPERATIONS] REQUIRING PERMITS. (a) A permit or other written authorization is required for the following activities on state public domain land, including shore, tide, and submerged land [LANDS]:

(1) activity involving [REQUIRING]

(A) the use of explosives and explosive devices, except firearms;

(B) any type of access, vehicle use, equipment use, occupancy, use or placement of a structure, construction of improvements, placement of fill, or removal of a state-owned resource, that is not exempted by [THE USE OF ANY EQUIPMENT NOT INCLUDED IN THE LIST SPECIFIED IN] 11 AAC 96.020;

(C) the use of hydraulic prospecting or mining equipment methods;

(D) drilling to a depth in excess of 300 feet, including exploratory drilling or stratigraphic test wells on state land not under oil or gas lease;

(E) geophysical exploration for minerals subject to lease under AS 38.05.135--AS 38.05.181;

(2) activity that the director determines may result in unnecessary harm to land that has [HAVING] special scenic, historic, archaeological, scientific, biological, recreational, or other special resource values and that is designated as special management land under (b) of this section; and

(3) activity on land under mineral prospecting permit, lease, or location [CLAIM] by a person other than the holder of the prospecting permit, lease, or location [CLAIM], or the

holder's [HIS] authorized representative, if the parties cannot agree on what constitutes unnecessary or unreasonable interference as provided in 11 AAC 96.140(11).

(b) The activities or uses for which a permit is required under (a) (2) of this section will be listed, and the land designated as special use land [LANDS], on the official records of the division after public notice of the designation is given under AS 38.05.945. The [, THE] records will be available in all division [STATE LAND] offices. Using designated special use land without obtaining a permit or other authorization required for that use [ACTIVITIES REQUIRING A PERMIT ON LAND DESIGNATED AS SPECIAL USE LAND] is not a violation of this chapter unless the user has received written notice of the designation, the land is posted as required by AS 11.46.350(b), or the designation has been effective for 90 days. (Eff. 1/1/70, Register 32; am 3/2/81, Register 77; am 5/8/83, Register 86; am / /91, Register )

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.180  
AS 38.05.850  
AS 41.20.020  
AS 38.05.910

11 AAC 96.020. USES [EQUIPMENT USE] NOT REQUIRING A PERMIT.

(a) Unless otherwise provided in (c) of this section, the following land uses and activities, alone or in combination, may take place on state-owned public domain land without any written authorization from or fee paid to the department. A current list of such generally allowed uses that do not [EQUIPMENT TYPES THE USE OF WHICH DOES NOT] require a permit [UNDER 11 AAC 96.010(a)(1)(B)] will be maintained in all [STATE LAND] division offices. A permit or other written authorization is required for uses [THE USE OF ALL EQUIPMENT TYPES] not appearing on the list [UNLESS OTHERWISE AUTHORIZED BY THE DIRECTOR].

(1) Travel.

(A) Hiking, backpacking, skiing, climbing, and bicycling; travel by horse or dogsled or with pack stock; snowmobiling.

(B) Landing an aircraft such as a light plane or helicopter; use of watercraft such as a boat, raft, or canoe without disturbing the submerged land or shoreline.

(C) Use of a vehicle such as a four-wheel drive vehicle, pickup truck, snowmobile, or all-terrain vehicle (wheeled or tracked) on or off an established right-of-way, provided that the vehicular use off a right-of-way does not break the vegetative mat.

(D) A livestock drive of any number of reindeer or up to 100 horses, cattle, or other domesticated animals.

(2) Access improvements.

(A) Brushing or cutting a trail less than five feet wide using only hand tools (such as a chainsaw), provided that there is no disturbance of the root system and

that cutting the trail does not constitute, and is not intended to establish, a right-of-way.

(B) Anchoring a mooring buoy in a lake, river, or marine waters for an upland owner's personal, noncommercial use, or placing a float or dock in a lake or in marine waters for an upland owner's personal, noncommercial use, provided that the use does not interfere with public access or other public use. A float or dock must be an open structure without walls or roof, designed and used for access to and from the water rather than for storage, residential use, etc.

(3) Removal or consumption of resources.

(A) Hunting, fishing, or trapping, or placement of a crab pot, shrimp pot, or herring pound, in accordance with regulations of the board of game or the board of fisheries.

(B) Harvesting a small number of wild plants for personal use; using dead and down firewood for a cooking or warming fire, unless the commissioner has closed the area to fires during the fire season; harvesting mushrooms, berries, and other plant material for personal use.

(C) Grazing no more than five domesticated animals.

(D) Recreational gold panning; hard-rock mineral prospecting or mining using light portable field equipment, such as a hand-operated pick, shovel, pan, earth auger, or a backpack power drill or auger; or suction dredging using a suction dredge with a nozzle intake of six inches or less, powered by an engine of 16 horsepower or less, and pumping no more than 30,000 gallons of water per day.

(4) Other structures and improvements.

(A) Establishing and using a camp for personal recreational use, commercial recreation use, or commercial non-recreational use (such as a support camp during mineral exploration), for no more than 14 days at one site, using a tent platform or other temporary structure that can readily be dismantled and removed, or a floathouse that can readily be moved; the camp must be moved at least two miles before the end of the 14-day period; no cabin or other permanent improvement is allowed, even if on skids or other non-permanent foundation, and the camp must not interfere with public access or other public uses and interests, as determined by the director.

(B) Brushing or cutting a survey line less than five feet wide using only hand tools (such as a chainsaw), provided that there is no disturbance of the root system, or setting a survey marker; however, a survey monument may not be set without written survey instructions issued under 11 AAC 53.

(C) Placing a lawful sewer outfall into marine waters from a residence or residences on contiguous privately owned upland, provided that the effluent volume is less than 500 gallons per day, the outfall is located within the projected sidelines of the contiguous upland owner's lot, and

the outfall line is buried to the extent possible (or, in bedrock, is secured and covered with rocks to prevent damage).

(5) Miscellaneous uses. Non-exclusive recreational or other use, for no more than 14 days at a site, that has no noticeable effect on vegetation, drainage, or soil stability; does not interfere with public access or other public purposes; and does not involve harassment or disturbance of wildlife other than lawful hunting, trapping, and fishing.

(b) By operating under the permission granted by this section, the user agrees to indemnify the state against any claim, liability, or lawsuit arising out of the use. [THIS LIST WILL INCLUDE BUT IS NOT LIMITED TO THE FOLLOWING:

(1) LIGHT PORTABLE FIELD EQUIPMENT; SUCH AS, HAND-OPERATED PICKS, SHOVELS, PANS, EARTH AUGERS AND BACKPACK POWER DRILLS AND AUGERS;

(2) VEHICLES SUCH AS SNOW MACHINES, JEEPS, PICKUPS AND WEASELS. AUGERS AND DRILLS MAY BE MOUNTED ON SUCH EQUIPMENT;

(3) AIRBORNE EQUIPMENT;

(4) MARINE EQUIPMENT, EXCEPT EQUIPMENT WHICH WILL DISTURB THE SUBMERGED LAND.]

(c) This list of generally allowed uses

(1) does not apply to land withdrawn from the public domain and no longer managed under AS 38, such as a state park or land owned by the University of Alaska;

(2) does not authorize a use that is prohibited or restricted by an adopted land use plan or management plan; for example, a management plan may limit the number of days that a personal-use recreational camp may be maintained at a specific site;

(3) does not authorize a use that is prohibited or restricted by a special use land designation [THIS SECTION DOES NOT APPLY TO AREAS DESIGNATED] under 11 AAC 96.010(b) [96.010(a)(2)];

(4) does not exempt a user from other agencies' permit requirements; for example, a listed activity may require a permit from the Department of Fish and Game if the activity will take place in a state game refuge; and

(5) does not authorize a use if another person has already acquired an exclusive property right to undertake that use; for example, this section does not authorize a person to graze livestock on another person's state grazing lease, or to develop a trail on a private right-of-way granted to another person. (Eff. 1/1/70, Register 32; am / /91, Register )

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.850

MAR 13 1987



# MEDIA RELEASE

## ALASKA DEPARTMENT OF NATURAL RESOURCES

Harold C. Heinze, Commissioner  
400 Willoughby Ave., 5th Floor  
Juneau, Alaska 99801  
(907)465-2400

Public Affairs Office  
P.O. Box 107005  
Anchorage, Alaska 99510  
(907)762-2451

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Contact: Dave Perez or Mike Sullivan 762-2692

### TRESPASS CABINS IN CARIBOU HILLS ON KENAI PENINSULA WILL BE POSTED. SHUT DOWN

The state's Department of Natural Resources will begin in mid-March to post all unauthorized cabins on state land in the Caribou Hills, east of Ninilchik, on the Kenai Peninsula.

Nearly 60 cabins have been built on state land in the Caribou Hills without authorization since Personal Use Cabin Permits were issued in the area in 1985. Under state regulation, cabins built after August 1, 1984 are not eligible for a Personal Use Cabin Permit and owners must remove them.

"All Alaskans have an equal right to lawfully use and enjoy public land, and benefit from its revenue. Building unpermitted cabins on public land diminishes that right," said Dick LeFebvre, Deputy Director of DNR's Division of Land and Water. "The increase of unauthorized cabins on public land in the Caribou Hills area requires a special effort to protect the rights of Alaskans who follow the rules" he added.

Fifty-seven cabins in the Caribou Hills area were issued permits in 1985 under the state's Personal Use Cabin Permit Program. Under that program, which is no longer open, owners of unauthorized cabins could apply for a renewable six-year permit. All cabins, including permitted cabins, will be inventoried as part of the effort to identify and remove the unauthorized cabins.

All cabins authorized by permit are required to have their permits clearly displayed on the outside of their cabins. It is recommended that permittees also paint the ADL permit number on their cabins. Cabins not displaying a permit by mid-March may be mistaken for trespass cabins.

Those who have questions about cabins and land use in the Caribou Hills area of the Kenai Peninsula may call Dave Perez of the Division of Land and Water's Southcentral Office at 762-2270.



## MEDIA RELEASE

### Alaska Department of Natural Resources

Harold C. Heinze, Commissioner  
400 Willoughby Ave., 5th Floor  
Juneau, Alaska 99801  
(907) 465-2400

Public Affairs Office  
P.O. Box 107005  
Anchorage, Alaska 99510  
(907) 762-2451

DIVISION OF: Land and Water

CONTACT: Mike Mitchell

RELEASE DATE: March 12, 1991

PHONE: 762-2680

SUBJECT:

#### STATE ANNOUNCES SPRING LAND LOTTERY

The filing period for the State of Alaska's spring land disposal opened March 4 and will close May 2. Lottery drawings for the land parcels will be held between June 6 and June 25 in Thorne Bay, Ketchikan, Nenana, Delta Junction, Fairbanks, Anchorage, Glenallen and Palmer. Applicants must be state residents, but need not be present to win.

The state lottery offering consists of 125 lots in 15 subdivisions, 52 homesites within 11 subdivisions, and eight homesteads in three areas. The lots are offered for sale, while the homesites and homesteads are usually obtained through "sweat equity". Lots and homesites range in size from one to five acres; homesteads range from 20 to 40 acres.

Newly revised brochures "Land for Alaskans" and "Land Programs

- MORE -

Information" describe the spring offerings in more detail. Both are available at Department of Natural Resources' Regional Offices, libraries and Legislative Information Offices around the state. The brochures can be mailed for a \$3.00 handling fee.

For more information, or to file an application, contact the Department of Natural Resources Office nearest you:

LIST REGIONAL OFFICES W/ ADDRESSES AND TELEPHONE

Southeastern Regional Office  
400 Willoughby Avenue, Suite 400  
Juneau, Alaska 99801  
Phone (907) 465-3400

Southcentral Regional Office  
3601 C Street, Suite 1034  
P.O. Box 107005  
Anchorage, Alaska 99510-7005  
Phone (907) 762-2492

Kenai-Kodiak Forestry Office  
Mile 92 Sterling Highway  
HC1 Box 107  
Soldotna, Alaska 99669  
Phone (907) 262-4124

Matanuska-Susitna/Copper Basin  
Area Office  
Cottonwood Creek Center  
1830 East Parks Hwy., A-116  
Wasilla, Alaska 99687-9006  
Phone (907) 376-4595

Northern Regional Office  
3700 Airport Way  
Fairbanks, Alaska 99709  
Phone (907) 451-2705

- END -

Department of Natural Resources  
Division of Land & Water Mgmt  
Land & Resources Section  
P. O. Box 107005  
Anchorage, AK 99510-7005



029

The Honorable Lloyd Jones  
Alaska State Senator  
P.O. Box V  
Juneau, AK 99811

# NORTH SLOPE BOROUGH

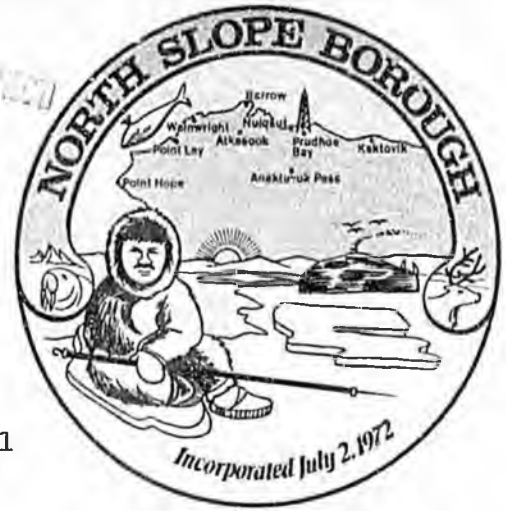
## OFFICE OF THE MAYOR

P.O. Box 69  
Barrow, Alaska 99723

Phone: 907-852-2611

Jeslie Kaleak, Sr., Mayor

March 28, 1991



Senator Lloyd Jones  
Chairman, Senate Resources Committee  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

RE: SB 178

Dear Senator Jones:

Senator Drue Pearce forwarded my office a copy of the proposed legislation captioned above. We have reviewed this legislation, paying particular attention to its potential impacts on the general welfare of residents of the North Slope Borough and the subsistence activities upon which we depend.

We are supportive of actions to limit trespass and enforce laws against unauthorized use of state lands. However, we are concerned that the proposed legislation does not recognize or adequately address the importance of subsistence activities. We recommend the following language be included in SB 178. Our recommendations are illustrated below in bold type.

### Section 1. (b). FINDINGS AND INTENT

Add the following language to generally permitted activities on page 2:

**"...recreational mining; campsites for personal use; AND TEMPORARY OR PERMANENT CAMPS USED IN SUPPORT OF TRADITIONAL SUBSISTENCE ACTIVITIES."**

### Section 2., 38.55.399, DEFINITIONS

Add the following language to the end of definition number (3) on page 7:

**"...EXCLUDING THOSE IMPROVEMENTS USED IN PERMANENT OR SEASONAL CAMPS USED IN SUPPORT OF TRADITIONAL SUBSISTENCE ACTIVITIES."**

Senator Lloyd Jones  
March 28, 1991  
Page 2

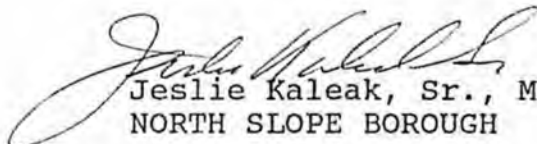
Section 2., 38.55.399, DEFINITIONS

Add the following language to the end of definition number (6)  
on page 7:

"...EXCLUDING THOSE STRUCTURES USED IN PERMANENT OR SEASONAL  
CAMPS USED IN SUPPORT OF TRADITIONAL SUBSISTENCE ACTIVITIES."

The North Slope Borough would be supportive of SB 178 if the  
language suggested above is incorporated. I appreciate the  
opportunity to provide you with comments on this legislation.

Sincerely yours,

  
Jeslie Kaleak, Sr., Mayor  
NORTH SLOPE BOROUGH

cc: Senator Drue Pearce  
Senator Al Adams  
Representative Eileen MacLean  
Thomas Leavitt, NSB Planning Director  
Benjamin Nageak, NSB Director of Wildlife Management

## Sectional Analysis of SB 178

**Section 1** Establishes that DNR needs an administrative enforcement mechanism to take action against illegal occupancy of state land, resource waste, etc., and that bill is not intended to disrupt generally allowable public use of state land and resources.

**Section 2** Amends Title 38 by adding a new chapter AS 38.55:

AS 38.55.010 lists unauthorized uses of state land: residing or occupying land; entering where entry is restricted or entering by restricted means; placing improvements, personal property or refuse on land; removing a resource; or causing damage.

Also gives the Commissioner of Natural Resources the power to issue trespass and compliance notices, levy civil fines and penalties, assess damages, impound personal property as security for damages, use or dispose of property acquired by the state, and adopt regulations.

AS 38.55.030 Establishes administrative procedures for trespass notice, including the contents of and methods of service for the notice.

AS 38.05.040 Establishes administrative procedures for compliance orders issued by the Commissioner to stop the unauthorized use, remove the unauthorized structure or property, restore the site, or do anything else the Commissioner finds necessary. Requires service of notice by the same means as for trespass. Establishes that, if the violator does not comply with the compliance order, the Commissioner may proceed with removal of property and restoration of the area and the violator is liable for costs (including administrative costs).

AS 38.55.050 Establishes that, at the discretion of the Commissioner, unauthorized improvements on state land become state property. The Commissioner may use the property for department or public purposes, destroy it, or transfer to the Department of Administration for disposal.

AS 38.55.060 In addition to or in lieu of a civil/criminal penalty, makes knowingly using state land and resources in an unauthorized way or violating a compliance order subject to a civil fine of \$100 (or \$1000 if the use was for commercial economic gain). Each day counts as a separate violation. A citation for the fine may be issued by a peace officer or DNR staff, and the fine may be paid by mail.

AS 38.55.070 Along with a civil fine or criminal penalty, knowingly violating the unauthorized use law or a compliance order may bring a civil penalty of three times the loss or damage. The Commissioner may calculate the civil penalty as the greater of the estimated value of the resources taken, including rental and restoration costs plus administrative costs, or the violator's economic gain.

AS 38.55.100 Establishes procedures for appealing orders, fines,

etc.

AS 38.55.110 Allows judicial review under existing law (AS 44.62.560), after administrative remedies are exhausted.

AS 38.55.120 Allows the Commissioner to ask the court to issue a writ of assistance to help enforce a compliance order, or a writ of execution to collect a civil fine or penalty, after the judicial review period expires.

AS 38.55.200 Makes unauthorized use or violation of a compliance order a class B misdemeanor, but bars double jeopardy.

AS 38.55.210 Makes the violator liable to the state or to a person who suffers losses or damages caused by the violator.

AS 38.55.300 Relieves the state of liability for damages or losses from unauthorized use, from a generally allowable use, or from a decision to take action or not take action under this chapter.

AS 38.55.399 Defines a number of items including; land as state land or interests managed by the department (not Univ land, RR land, etc.); refuse broadly to include hazardous waste, litter, etc.; and structure to mean anything built or placed on state land.

# Alaska State Legislature

3111 C Street, Suite 150  
Anchorage, Alaska 99503  
(907) 561-2038

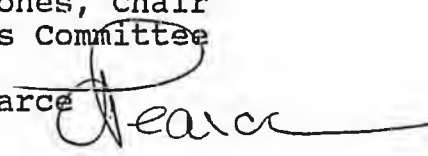


During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4993

**Senator Drue Pearce**  
District G

## MEMORANDUM

TO: Senator Lloyd Jones, Chair  
Senate Resources Committee

FROM: Senator Drue Pearce 

DATE: March 22, 1991

RE: SB 178, Management and protection of state land and its  
resources, and unauthorized use.

SB 178 would give the Department of Natural Resources the authority to protect our state land and resources against theft, damage, and unauthorized occupation.

The Department of Natural Resources faces a number of inadequacies in the current law when they attempt to evict those guilty of unauthorized use of state land and resources. If a violator ignores a DNR trespass notice, the department's only recourse is to ask the state's attorney general to file a lawsuit. Because the Department of Law's caseload is so heavy, using litigation as the principal enforcement tool is both expensive and incredibly time-consuming. Plus, the attorney general doesn't always act.

SB 178 would resolve this problem by prohibiting unauthorized use of state land and would give DNR clear administrative authority to enforce the law and protect state land and resources.

Thank you.

DP:tej

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB 178

Revision Date: 19-Mar-91 Department Affected: Natural Resources  
 Title: Protection of State Land BRU: Land & Water  
 Components: Land & Water  
 Sponsor: Senator Pearce  
 Requestor: Senate Resources COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Gery Gustafson Phone: 762-2672  
 Division: Land & Water Date: 19-Mar-91

Approved by Commissioner: Harold Heinze *HG* Date: 19-Mar-91  
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,  
& Impacted Agency(ies).

Senate Bill 178

Examples of Recent Unauthorized Use of State Land  
Division of Land and Water

The Division of Land and Water approved the assignment of the former Peninsula Greenhouses Inc. leases to Duane Anderson on October 27, 1989. In December of 1989 the DEC informed us of possible hazardous waste contamination on the two leases. When DEC received their test results indicating that two leases were contaminated and unsafe for human habitation, the commissioner sent the Anderson's a letter (September 17, 1990) terminating their lease and giving the Anderson's 30 days to vacate the leases or appeal the termination. The Anderson's did neither. The Attorney General's Office sent the Anderson's a Notice to Quit on November 5, 1990 giving the Anderson's 10 days to quit the premises. The Anderson's did not vacate the premises and were issued a summons to appear before the court on February 12, 1991 to determine if they should be evicted from the premises. Mrs. Anderson appeared on court on February 12, 1991 and requested additional time and a jury trial. On March 13, 1991 the state's attorney and Mrs. Anderson presented their arguments. Since the Anderson's had not appealed the termination of the leases within the 30 day appeal period, the judge issued a Final Judgement of Eviction giving the Anderson's 7 days to vacate the premises. This case is still pending.

A miner, Lu Sackett, was using his mining claim on the Little Susitna River in Hatcher Pass as an excuse to settle and establish residence. We determined that his use of the surface was not consistent with the level of mining activity on the placer claim. That is, the trailer and several outbuildings he had on site were not necessary to support his mining activity. The mining division agreed, and supplied legal documentation to that effect. We posted the property, and asked the miner to remove the buildings and equipment. It took approximately five years to wind through the appeal process and legal challenges. In the end, the department prevailed. But, even under court order, the miner failed to comply completely. We moved for a contempt of court citation, the judge agreed, and not until the judge threatened to levy a fine of \$100 per day did the miner vacate the premises.

Mr. Newton built a cabin on Tokotna on state land without authorization. We posted the cabin and demanded removal in 1986. We received a high level of public outcry against this particular cabin. The cabin was removed from the site only one week ago. That's right, the cabin was removed in March, 1991. The appeal/negotiation process dragged out forever on this one. This is a case where the lack of the ability to level a fine accounted for the unauthorized users ability to stall the ultimate action and continue to use the cabin.

Caribou Hills is notorious for unauthorized cabins. Many years ago people started building cabins in the area to support winter and summer recreation activities. Law abiding citizens complained

bitterly over the inequity as the state continued a policy of not issuing recreation cabin permits statewide. This policy was based on the premise that the statewide remote land disposal program was being implemented to fulfill that need. This policy was amended in 1984 when the DNR allowed anyone having cabin on state land in the Caribou Hills area (and statewide as well) to apply for a one-time only Personal Use Cabin Permit. As a result over 60 permits were issued for cabins in this area. Since that time we believe over 100 additional cabins have been built in the area. We are currently in the process of posting all the cabins we can reasonably find, and proceeding with plans to remove the structures. We must follow civil procedures which are expected to take months, if not years, to complete.

Responding to significant public pressure we recently served notice on a family of drifters who decided to set up residence on the shores of the Knik River near the Butte community. Four family members, 82 dogs, a converted school bus, a storage makeshift trailer, two old cars, and a late model car were involved. We made two attempts to move them off without serving papers. Both attempts failed. We then served notice, and demand to vacate under the threat of criminal action. They still resisted and failed to move. We sought and received the aid of the Alaska State Troopers who then accompanied us to the site. At that point they agreed to leave within 24 hours. DNR had no clout until the trooper showed up and threatened them with jail and money penalties, using authorities other than those related to state land.

In 1987, Northern Regional personnel received initial reports of unauthorized activities on state land in the Eagle area. When we travelled to Eagle to confirm one unauthorized use we ended up finding five. Some cases were solved by voluntary withdrawal by the individuals involved. One site was abandoned, leaving refuse, structures and vehicles (we have no funding for site restoration.) The most notorious case was Wiggins. The initial report for this case was received June 10, 1987. The unauthorized was confirmed by field inspection on July 28 and a notice hand-delivered on August 10. After considerable correspondence and several field trips and unfortunate confrontations, Mr. Wiggins vacated the premises but refused to remove the cabin and restore the site. After protracted court action, the cabin was sold (removal was a condition of sale) at a public auction in Eagle. The case was finally closed in November of 1989, some two and a half years from start to finish.

The Childs' Pad on the North Slope has a long history of several unauthorized uses. In 1980 the Division of Land and Water issued a lease for Tract 54 of the Deadhorse Lease Tracts to Childs' Equipment Services, Inc. In March of 1989 the lease to the Childs was terminated for failure to pay annual rent, unauthorized subleases, failure to provide an updated development plan, and failure to maintain tract in neat condition.

In June, 1987 a large accumulation of solid and hazardous waste was discovered on the Childs' Pad. Apparently the tract had been used as a dumping grounds by unauthorized tenants and by "midnight dumpers". Waste on site included at least 547 drums, and a large amount of miscellaneous debris. Because many of the drums were leaking, the pad is now contaminated.

While the Childs held the lease for Tract 54, they sublet portions of the pad to several companies without approval by the Division of Land and Water. Two of these "tenants" remained on the tract after the lease was terminated. These were the Prudhoe Bay General Store, operated by Bruce Reed, president of Newlin, Inc. and Bill's Welding, operated by Bill McGough. These operations were issued Notices of Unauthorized Use in March, 1990. They were later granted temporary authorization by way of Land Use Permits. In these permits the "tenants" agreed to be off of the site by August 1, 1990. The site was visited on that day by Division personnel to make sure that everyone had moved off the site and to lock the buildings on the site. Those present refused to vacate the premises. We then attempted to obtain assistance from the District Attorney's office, who stated that they could not help because it was a civil matter. The store eventually moved off of the tract in November, 1990. As a result of an action for civil trespass processed by the Attorney General's office, a court order was issued on January 18, 1991 which required Bill's Welding to vacate the site within 30 days. This site was inspected on March 13, 1991. Mr. McGough is still on site. This is now being processed by the Attorney General's office.

Service City is located 15 miles west of Deadhorse along the Kuparuk River and consists of 4 lease tracts comprising of 100 acres of gravel pads and a large airstrip. The area was used in the 1970's and early 1980's as an important North Slope staging area to support drilling and production activities on North Slope oil leases.

When the Deadhorse Airport lease tract complex became more developed in the 1980's, Service City's role diminished. By 1985, Service City was essentially abandoned. What remained included deteriorated items such as numerous metal buildings, a 500-man ATCO camp, miscellaneous equipment, numerous fuel tanks, large amounts of scrap metal and debris, and an unknown quantity of hazardous materials and contaminated gravel.

Because the owners of Service City failed to clean up the site, we canceled the Service City leases in 1989. The Division of Land and Water participated in the cleanup of the area with the oil companies and the Prudhoe Bay Environmental Alliance.

In the summer of 1990, in a cooperative effect with the State of Alaska, Departments of Natural Resources and Environmental Conservation, BP, ARCO, Exxon, the Alaska Support Industry Alliance and the Prudhoe Bay Environmental Alliance, 1.2 million dollars was spent in a successful cleanup that resulted in the removal of hazardous materials, recyclable scrap metal, and other debris from 4 abandoned North Slope Lease tracts commonly referred to as Service City.

The unauthorized taking of gravel is increasing in the interior. Last year a number of cases in Kotzebue consumed many hours of staff time. These were reported to the Army Corps of Engineers who brought federal action against the individuals since the state has little to no enforcement powers.

The McKinley area is notorious for the theft of materials. We have had barricades installed only to have them breached in a short time span. An iron pipe fence was torch-cut and several hundred cubic yards were removed.

The Nordale Road site, outside of Fairbanks, had berms of gravel placed at the entrances. The berms were stolen. This site is also popular for unauthorized use. It is remote and screened from the highway system.

On November 4, 1987, American President Lines submitted a application for material the firm intended to remove from state tidelands in Unalaska. When they were sent a sale contract charging \$21,364 for the 21,800 cubic yards of material dredged in 1987 the firm replied that it had no obligation to pay because they had received no compensation from the eventual recipient of the material. This case is still pending.

In Southeast we are presently dealing with over 30 floathouses at Sitka, Elfin Cove, Port Alexander, Juneau, and Ketchikan. All the floathouses are being used as residences with the state receiving no compensation for the use of the tidelands.

*[Faint, illegible text]*

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

March 21, 1991

The Honorable Drue Pearce  
 Room 510, Capitol  
 P. O. Box V  
 Juneau, Alaska 99811

Re: Legislation Governing  
 Trespass on State Land.  
 Our file no. 661-90-0375

Dear Senator Pearce:

You have requested information regarding the views of the Department of Law on the need for Senate Bill 178, governing trespass on state land.

The Department of Law, Office of the Attorney General, becomes involved in state land trespasses when administrative efforts to prevent an unauthorized use of state land have failed and, for extraordinary reasons generally extending beyond the mere fact of the trespass, the uncorrected problem can no longer be tolerated or ignored. The lack of express statutory authority to issue and enforce trespass orders, combined with the extraordinary time and expense involved in judicial enforcement mechanisms, has resulted in a situation where the vast majority of trespass situations in the state continue to exist despite significant abatement efforts by the Department of Natural Resources, often extending over a period of several years. In short, the current enforcement mechanisms are woefully inadequate to handle the vast majority of trespasses on state land.

Attached to this letter is a February 13, 1990 memorandum I prepared on the need for ameliorative legislation to handle the trespass problem on state land and a March 1, 1990 memorandum prepared by the Fairbanks Office of the Attorney General in support of my request. The February 13th memorandum describes in general terms the nature and extent of the trespass problem, the inadequacies in the current statutory provisions governing trespass, and includes a series of recommendations for legislation to address the problem. Senate Bill 178 closely follows those recommendations.

My experiences with trespass enforcement efforts in the last year reaffirm the need for legislative attention to the problem. Indeed, I have spent a considerable amount of the last

WALTER J. HICKEL, GOVERNOR

REPLY TO:

1031 W 4th AVENUE SUITE 200  
 ANCHORAGE, ALASKA 99501-1994  
 PHONE: (907) 276-3550  
 FAX: (907) 276-9697 269-5100

KEY BANK BUILDING  
 100 CUSHMAN ST. SUITE 400  
 FAIRBANKS, ALASKA 99701-4679  
 PHONE: (907) 452-1568  
 FAX: (907) 456-1317

P.O. BOX K - STATE CAPITOL  
 JUNEAU, ALASKA 99811-0300  
 PHONE: (907) 465-3600  
 FAX: (907) 463-5295

The Hon. Drue Pearce  
Trespass Legislation

March 21, 1991  
Page 2

month attempting to remove a holdover tenant from contaminated state land in Soldatna and seeking to devise ways to force unauthorized squatters to leave state land along the Knik River. With clear statutory authority to issue and enforce trespass notices, these matters probably would have been concluded months ago without any attorney involvement.

If you have any further questions, please let me know. Also, if you need a more detailed analysis of the Department of Law's views on a specific provision of SB 178, I will be happy to provide that information upon request.

Sincerely,

CHARLES E. COLE  
ATTORNEY GENERAL

By:



Kenneth C. Powers  
Assistant Attorney General

## MEMORANDUM

State of Alaska

Department of Law

TO: Douglas B. Baily  
Attorney General

DATE: February 13, 1990

FILE NO.: 661-90-0375

TEL NO: 276-3550

SUBJECT: Legislation Governing  
Trespass On State Land

FROM: Kenneth C. Powers  
Assistant Attorney General

This memorandum provides a brief discussion of the nature and extent of the trespass problem on state land.

1. The Trespass Problem. Trespass problems are encountered by every state resource management agency and encompass a very broad range of factual settings. A small sampling of some specific trespass issues faced by the Department of Natural Resources (DNR) is attached.

Perhaps the most easily recognized form of trespass is the unauthorized placement, construction or use of cabins, sheds, mobile homes, travel trailers or other structures on state land for permanent, seasonal or sporadic occupancy. On public domain land managed by DNR's Division of Land and Water Management, unauthorized occupancy often occurs without any claim of legitimacy. Other common trespass situations involving public domain lands include occupancy by holdover tenants upon expiration of state leases, by applicants for state or federal land disposals who remain on the land after their applications have been rejected and by persons erroneously claiming rights of occupancy under inapplicable federal, state or local laws.

One of the most common forms of unauthorized occupancy occurs on state mining claims managed by DNR's Division of Mining, not by legitimate miners but by squatters who stake mining claims in order to use the land for other purposes. A good example is the former Turning Point Boys Ranch in Willow, which built a large, multiple-building remote summer camp on state mining claims. The squatters on state mining claims at Hatcher Pass is another example. Under the Alaska Constitution, statutes and regulations, state authorization to occupy a mining claim as a residence, either year round or seasonally, is granted by the Division of Mining when occupancy is necessary to a good faith effort to prospect for and extract the mineral resources. Without a connection to bona fide mining efforts and prior authorization from DNR, however, permanent or periodic residential use of a mining claim constitutes trespass.

Trespasses also occur within state parks and recreation areas managed by the Division of Parks and Outdoor Recreation,

and on state wildlife and game refuges managed by the Department of Fish and Game.

The unauthorized construction of roads and the unauthorized use of state resources such as gravel or timber are other examples of trespass problems regularly faced by state resource agencies and which often require immediate management attention.

2. **Current Legal Provisions Governing Trespass.** There is no provision of state law specifically governing trespass on state land. The former AS 38.05.360, providing civil damages and a fine for waste, trespass or other injury to state land, was repealed in 1978. The state criminal trespass statute, AS 11.46.330, does not specifically refer to the unauthorized use of state land. An interpretation of its terms which would permit its application to unfenced and unimproved state land where most trespass situations occur has never been judicially tested.

Relying upon common law trespass rights and the general grant of authority to "manage, control and inspect state land" contained in AS 38.05.035, the DNR has undertaken to control trespass by posting trespass notices on the land. Lacking clear statutory authority to use self-help procedures to enforce these notices, however, DNR's efforts to stop unauthorized trespasses have often ended there.

In situations where the state has used or been forced to use litigation, the state has had to rely upon a hodgepodge of more general statutory authorities without express reference to state land trespasses. The use of litigation as the state's principal enforcement mechanism is also expensive and time consuming.

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<sup>1</sup>The state's enforcement efforts regarding the mining claim trespasses at Hatcher Pass provides an excellent example of how cumbersome the (non-)existing procedures can be. In one case, an administrative trespass notice was issued in August 1985. Appeal proceedings within the agency following that notice, including hearings and repeated opportunities for written comments, lasted until December 1986. The final decision was appealed to the superior court in January 1987.

Proceedings in the superior court lasted another year before the agency decision was upheld. The superior court judgment was then appealed to the Alaska Supreme Court. In the meantime, the defendant sought a stay of enforcement and the state cross-moved for an enforcement order. The state's motion was granted in December 1987. When the defendant nevertheless refused to comply with that order, the state sought and received a writ of assistance directing the State Troopers to assist DNR. The defendant and the offending facilities were forcibly removed from the site in January 1988.

In May 1988, while the Supreme Court appeal was pending, the

Several enforcement mechanisms have been used. Armed with a final, non-appealable administrative DNR "order" declaring an occupancy to be in trespass, an order which in some cases may take several years to obtain, the state has obtained judicial enforcement through use of the forcible entry and detainer statute, AS 09.45.070 - 09.45.160. That statute was designed for use against nonpaying residential tenants in apartments and other types of buildings, however, and does not provide an adequate enforcement mechanism in cases of remote state land trespasses. In other situations, following a successful defense of a DNR "order" on appeal through the courts, the state has obtained enforcement orders under Appellate Rule 609, which gives the court power to issue orders "necessary to its appellate jurisdiction." Regardless of which approach is used, however, court orders are generally not self executing. A writ of assistance to the state troopers to assist DNR in removing the individuals or structures is also required.

An additional difficult issue in trespass enforcement is ownership and disposition of the cabins, sheds, trailers or other buildings that may be on the site. Under the common law, structures built in trespass belong to the owner of the real estate. The situation in Alaska is often complicated by the fact that the structures may have been authorized at one time, or may be authorized for uses other than occupancy. Since repeated trespass is a common problem in remote areas as long as the facility exists, dismantling or destruction of the offending facility is often the only permanent solution.

Items of personal property (such as cars, trailers, equipment, furniture and clothing), often broken down or useless, left on the site after an enforcement effort is another concern. In several court actions and in our advice to DNR, this office has relied upon the provisions of AS 34.03.260, which relates to the disposition of abandoned property upon expiration of a tenancy. As with the forcible entry and detainer law, however, this statute was designed to apply to the landlord-tenant situation and is a very rough fit when applied to state land trespasses.

---

defendant moved back onto the claim. Lacking another enforcement tool, the state filed civil contempt proceedings in the superior court. Following briefing and a show cause hearing in June 1988, the defendant peaceably vacated the premises under threat of imprisonment and a \$100/day fine.

In December 1988, more than three years after the trespass notice was first issued, the Alaska Supreme Court affirmed the state's enforcement actions in all respects. That decision, a memorandum opinion and judgment issued under Appellate Rule 214, is without precedential effect and may not be cited in other enforcement actions.

3. Ameliorative Legislation. Legislation delegating to the Department of Natural Resources clearer authority to issue and enforce orders against trespass on state lands would be a great help. Since there are so many divisions within DNR with distinct management authority over state land, it might be best to delegate authority over trespass enforcement to the commissioner of DNR, with authority to further delegate that function to the different divisions within DNR.

Among other options, we suggest that the legislation include a grant of some administrative enforcement tools. For example, in order to increase the likelihood of voluntary compliance, DNR might be granted authority to levy daily fines for failure to comply with a trespass notice. Criminal sanctions are particularly effective enforcement tools and might also be included. As a means of minimizing litigation costs and the attendant delays, DNR could be given express administrative authority to dispose of trespass facilities and personal property without prior court order, with the costs of enforcement borne by the trespasser. Where peaceable compliance with a trespass order is in doubt, this could be supplemented with a provision making make court-ordered writs of assistance available to DNR.

We also suggest that the legislation set forth relatively short time limits for seeking judicial review of administrative trespass notices. To discourage meritless appeals, strict standards governing the issuance of stays of enforcement pending appeal could also be included.

If you have any questions about this memorandum or its recommendations, please do not hesitate to contact our office. Upon request, we would be happy to work with the Department of Natural Resources and other state resource agencies in preparing draft legislation along the lines discussed above.

## MEMORANDUM

State of Alaska  
Department of LawTO: Douglas B. Baily  
Attorney General

DATE: March 1, 1990

FILE NO.

TEL. NO: 452-1568

SUBJECT: Need for trespass  
legislation -- Powers'  
memo of 2/13/90

FROM:

Cameron M. Leonard *CML*  
Assistant Attorney General  
Fairbanks

I'd like to voice my agreement with Ken Powers' recent memo to you about the need for trespass legislation. I've been assisting DNR's Northern Region Office with some of their trespass problems, and like Ken, I have found the current criminal trespass statute (AS 11.46.330--350) to be an awkward enforcement tool. The case of Al Wiggins, a long-time trespasser in Eagle, illustrates the problem. After Mr. Wiggins ignored DNR's trespass notice, I brought a civil action, in which I asserted the state's common law right as landowner to evict him. Mr. Wiggins represented himself, showing somewhat more enthusiasm than judgment in the process. After approximately 18 months and 3 Superior Court hearings, we ultimately took the troopers to Eagle to remove the Wiggins family and auction off their cabin (on skids), which had by then been forfeited to the state. All in all, it was a needlessly time-consuming and vexatious procedure for removing an obstinate squatter. We are fortunate that Mr. Wiggins did not appeal.

Given my experience in the Wiggins case, I heartily concur in Mr. Powers' proposal that the legislature clarify DNR's authority to evict trespassers. Thank you for your attention to this matter.

CML/jas

cc: K. Powers, Anchorage AGO

MAR 20 1991



# Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-463-3366

Senator Pearce  
P.O. Box V  
Juneau, AK 99811

March 20, 1991

Dear Senator Pearce,

The Alaska Environmental Lobby has long been concerned about the ability of state resource agencies to realistically enforce state statutes. We recognize that illegal uses of state land are a problem for the Department of Natural Resources and the only way currently to enforce these laws are to go through a costly court process.

This is why we were so pleased to see you introduce SB 178, an act relating to the management and protection of state land and its resources and establishing remedies to enforce laws against unauthorized use of state land and its resources. We strongly support this bill and believe that civil penalties and compliance orders are necessary measure to ensure that public resources are cared for in a manner best for the people of this state.

Thank you for introducing SB 178.

Sincerely,

Marna Schwartz, Executive Director  
Alaska Environmental Lobby

BRISTOL BAY COASTAL RESOURCE SERVICE AREA  
P.O. Box 849, Dillingham, Alaska 99576

RESOLUTION NO. 91-02

A RESOLUTION SUPPORTING ENFORCEMENT AUTHORITY  
FOR THE DEPARTMENT OF NATURAL RESOURCES

WHEREAS, the Department of Natural Resources is responsible for managing state land and resources (except fish and game) but lacks specific statutory authority to deal with trespass problems on state land and unauthorized uses of state resources; and

WHEREAS, there has been no satisfactory law dealing with unauthorized use of state land since 1978, when the criminal code revision repealed AS 38.05.360; and

WHEREAS, the general criminal trespass statute (AS 11.46.330) is not an adequate substitute for a law specifically prohibiting unauthorized use of state land as it assumes that the property in question is fenced, enclosed, or posted at each access point; and

WHEREAS, enforcing civil trespass is ineffective because it requires prior posting of notice and litigation, which is time-consuming and costly to the state; and

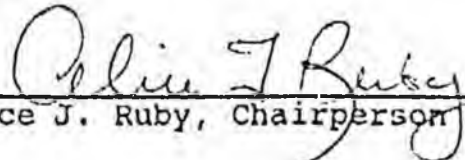
WHEREAS, various state land use plans, including the Nushagak and Mulchatna Rivers Recreation Management Plan and draft Togiak NWR Public Use Management Plan, recommend that the Department of Natural Resources seek legislation to provide the authority to take enforcement action against state land trespasses; and

WHEREAS, the Department of Natural Resources has developed draft legislation that would specifically prohibit unauthorized use of state land and give the department clear administrative authority to enforce the law; and

WHEREAS, the draft bill lists actions that would be prohibited on state land unless properly authorized, such as placing structures or refuse on state land or removing resources such as gravel or timber, and provides the Department of Natural Resources the authority to issue trespass notices, impose fines, and dispose of unauthorized structures;

NOW THEREFORE BE IT RESOLVED that the Bristol Bay Coastal Resource Service Area Board urges the Alaska State Legislature to enact the draft legislation developed by the Department of Natural Resources, or comparable legislation, to provide the Department of Natural Resources with adequate enforcement authority.

SIGNED:

  
\_\_\_\_\_  
Alice J. Ruby, Chairperson

CERTIFICATION:

I, the undersigned Secretary of the Bristol Bay Coastal Resource Service Area Board, do hereby certify that the full Board composed of seven (7) members, of whom seven (7) were present on February 2, 1991, adopt the above resolution by an affirmative vote of seven (7) members.

SIGNED: *Gusty Chythook*  
Gusty Chythook, Secretary



# Southwest Alaska Municipal Conference

*Putting Resources to Work For People*

1007 West 3rd Avenue, Suite 201 • Anchorage, Alaska 99501 • (907) 274-7555

## RESOLUTION 91-2

### SOUTHWEST ALASKA MUNICIPAL CONFERENCE

#### A RESOLUTION SUPPORTING ENFORCEMENT AUTHORITY FOR THE DEPARTMENT OF NATURAL RESOURCES

WHEREAS, the Department of Natural Resources is responsible for managing state land and resources (except fish and game) but lacks specific statutory authority to deal with trespass problems on state land and unauthorized uses of state resources; and

WHEREAS, there has been no satisfactory law dealing with unauthorized use of state land since 1978, when the criminal code revision repealed AS 38.05.360; and

WHEREAS, the general criminal trespass statute (AS 11.46.330) is not an adequate substitute for a law specifically prohibiting unauthorized use of state land as it assumes that the property in question is fenced, enclosed, or posted at each access point; and

WHEREAS, enforcing civil trespass is ineffective because it requires prior posting of notice and litigation, which is time-consuming and costly to the state; and

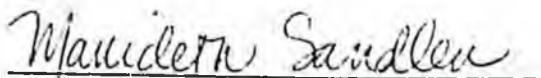
WHEREAS, various state land use plans, including the Nushagak and Mulchatna Rivers Recreation Management Plan and draft Togiak NWR Public Use Management Plan, recommend that the Department of Natural Resources seek legislation to provide the authority to take enforcement action against state land trespasses; and


WHEREAS, the Department of Natural Resources has developed draft legislation that would specifically prohibit unauthorized use of state land and give the department clear administrative authority to enforce the law; and

WHEREAS, the draft bill lists actions that would be prohibited on state land unless properly authorized, such as placing structures or refuse on state land or removing resources such as gravel or timber, and provides the Department of Natural Resources the authority to issue trespass notices, impose fines, and dispose of unauthorized structures;

NOW THEREFORE BE IT RESOLVED that the Southwest Alaska Municipal Conference urges the Alaska State Legislature to enact the draft legislation or comparable legislation, to provide the Department of Natural Resources with adequate enforcement authority.

PASSED AND APPROVED THIS 13TH DAY OF JANUARY, 1991.

  
Maideeth Sandler, Executive Director

  
Chow Taylor, President

ALASKA LEGISLATIVE AFFAIRS WATCH

P.O. Box 10904  
Fairbanks, Ak 99710

(907) 488-6453

March 14, 1991

Representative Drue Pearce  
Alaska State Senate  
P.O. Box V  
Juneau, Ak 99811  
463-5352 (fax)

Dear Representative Pearce:

As requested, the Oversight Committee of the Alaska Legislative Affairs Watch (Ak LAW) has met and discussed your SB 178. We have some concerns with the bill.

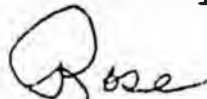
First of all, what is your definition of "owner-state?" A recent definition that we have been hearing from some state employees is that the State owns the land. We were always under the impression that the people own the land, and the state is acting as our trustee. We believe that the definition should be spelled out in any legislation that discusses "owner-state."

We also have grave concerns about putting as much power in the hands of the Commissioner of Natural Resources as this bill does. While we currently have no problem with the people in that position, in the hands of a corrupt administration, the power vested by this legislation could completely stop the use of the land by the people. While we realize you have built in some safeguards, such as spelling out the activities that are allowed, we still are very concerned.

We understand the problems that you are attempting to address. However, we believe that the problems are being handled under the current laws adequately. We believe that some of the perceived problems are being blown up out of all proportion to their actual harm to the land.

We appreciate your request that we review the legislation. We would hope that SB 178 be amended to alleviate what we perceive to be problems created by it.

Sincerely yours,



Rose Rybachek, Secretary

*Draft From DNR*

CHAPTER 96. MISCELLANEOUS LAND USE.

Article

1. Provisions for General Land Use Activity (11 AAC 96.010--11 AAC 96.150)

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ARTICLE 1. PROVISIONS FOR GENERAL LAND USE ACTIVITY.

Section

010. Uses [OPERATIONS] requiring permits  
020. Uses [EQUIPMENT USE] not requiring a permit  
030. Application  
040. Term and conditions

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070. Completion statement; annual report [OF OPERATIONS]  
080. Confidentiality [CONFIDENTIAL STATUS OF INFORMATION]

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100. Violation constitutes trespass [PENALTY]

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130. Applicability  
140. General stipulations

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11 AAC 96.010. USES [OPERATIONS] REQUIRING PERMITS. (a) A permit or other written authorization is required for the following activities on state public domain land, including shore, tide, and submerged land [LANDS]:

(1) activity involving [REQUIRING]

(A) the use of explosives and explosive devices, except firearms;

(B) any type of access, vehicle use, equipment use, occupancy, use or placement of a structure, construction of improvements, placement of fill, or removal of a state-owned resource, that is not exempted by [THE USE OF ANY EQUIPMENT NOT INCLUDED IN THE LIST SPECIFIED IN] 11 AAC 96.020;

(C) the use of hydraulic prospecting or mining equipment methods;

(D) drilling to a depth in excess of 300 feet, including exploratory drilling or stratigraphic test wells on state land not under oil or gas lease;

(E) geophysical exploration for minerals subject to lease under AS 38.05.135--AS 38.05.181;

(2) activity that the director determines may result in unnecessary harm to land that has [HAVING] special scenic, historic, archaeological, scientific, biological, recreational, or other special resource values and that is designated as special management land under (b) of this section; and

(3) activity on land under mineral prospecting permit, lease, or location [CLAIM] by a person other than the holder of the prospecting permit, lease, or location [CLAIM], or the

holder's [HIS] authorized representative, if the parties cannot agree on what constitutes unnecessary or unreasonable interference as provided in 11 AAC 96.140(11).

(b) The activities or uses for which a permit is required under (a)(2) of this section will be listed, and the land designated as special use land [LANDS], on the official records of the division after public notice of the designation is given under AS 38.05.945. The [ , THE] records will be available in all division [STATE LAND] offices. Using designated special use land without obtaining a permit or other authorization required for that use [ACTIVITIES REQUIRING A PERMIT ON LAND DESIGNATED AS SPECIAL USE LAND] is not a violation of this chapter unless the user has received written notice of the designation, the land is posted as required by AS 11.46.350(b), or the designation has been effective for 90 days. (Eff. 1/1/70, Register 32; am 3/2/81, Register 77; am 5/8/83, Register 86; am / /91, Register )

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.180  
AS 38.05.850  
AS 41.20.020  
AS 38.05.910

11 AAC 96.020. USES [EQUIPMENT USE] NOT REQUIRING A PERMIT.

(a) Unless otherwise provided in (c) of this section, the following land uses and activities, alone or in combination, may take place on state-owned public domain land without any written authorization from or fee paid to the department. A current list of such generally allowed uses that do not [EQUIPMENT TYPES THE USE OF WHICH DOES NOT] require a permit [UNDER 11 AAC 96.010(a)(1)(B)] will be maintained in all [STATE LAND] division offices. A permit or other written authorization is required for uses [THE USE OF ALL EQUIPMENT TYPES] not appearing on the list [UNLESS OTHERWISE AUTHORIZED BY THE DIRECTOR].

(1) Travel.

(A) Hiking, backpacking, skiing, climbing, and bicycling; travel by horse or dogsled or with pack stock; snowmobiling.

(B) Landing an aircraft such as a light plane or helicopter; use of watercraft such as a boat, raft, or canoe without disturbing the submerged land or shoreline.

(C) Use of a vehicle such as a four-wheel drive vehicle, pickup truck, snowmobile, or all-terrain vehicle (wheeled or tracked) on or off an established right-of-way, provided that the vehicular use off a right-of-way does not break the vegetative mat.

(D) A livestock drive of any number of reindeer or up to 100 horses, cattle, or other domesticated animals.

(2) Access improvements.

(A) Brushing or cutting a trail less than five feet wide using only hand tools (such as a chainsaw), provided that there is no disturbance of the root system and

that cutting the trail does not constitute, and is not intended to establish, a right-of-way.

(B) Anchoring a mooring buoy in a lake, river, or marine waters for an upland owner's personal, noncommercial use, or placing a float or dock in a lake or in marine waters for an upland owner's personal, noncommercial use, provided that the use does not interfere with public access or other public use. A float or dock must be an open structure without walls or roof, designed and used for access to and from the water rather than for storage, residential use, etc.

(3) Removal or consumption of resources.

(A) Hunting, fishing, or trapping, or placement of a crab pot, shrimp pot, or herring pound, in accordance with regulations of the board of game or the board of fisheries.

(B) Harvesting a small number of wild plants for personal use; using dead and down firewood for a cooking or warming fire, unless the commissioner has closed the area to fires during the fire season; harvesting mushrooms, berries, and other plant material for personal use.

(C) Grazing no more than five domesticated animals.

(D) Recreational gold panning; hard-rock mineral prospecting or mining using light portable field equipment, such as a hand-operated pick, shovel, pan, earth auger, or a backpack power drill or auger; or suction dredging using a suction dredge with a nozzle intake of six inches or less, powered by an engine of 16 horsepower or less, and pumping no more than 30,000 gallons of water per day.

(4) Other structures and improvements.

(A) Establishing and using a camp for personal recreational use, commercial recreation use, or commercial non-recreational use (such as a support camp during mineral exploration), for no more than 14 days at one site, using a tent platform or other temporary structure that can readily be dismantled and removed, or a floathouse that can readily be moved; the camp must be moved at least two miles before the end of the 14-day period; no cabin or other permanent improvement is allowed, even if on skids or other non-permanent foundation, and the camp must not interfere with public access or other public uses and interests, as determined by the director.

(B) Brushing or cutting a survey line less than five feet wide using only hand tools (such as a chainsaw), provided that there is no disturbance of the root system, or setting a survey marker; however, a survey monument may not be set without written survey instructions issued under 11 AAC 53.

(C) Placing a lawful sewer outfall into marine waters from a residence or residences on contiguous privately owned upland, provided that the effluent volume is less than 500 gallons per day, the outfall is located within the projected sidelines of the contiguous upland owner's lot, and

the outfall line is buried to the extent possible (or, in bedrock, is secured and covered with rocks to prevent damage).

(5) Miscellaneous uses. Non-exclusive recreational or other use, for no more than 14 days at a site, that has no noticeable effect on vegetation, drainage, or soil stability; does not interfere with public access or other public purposes; and does not involve harassment or disturbance of wildlife other than lawful hunting, trapping, and fishing.

(b) By operating under the permission granted by this section, the user agrees to indemnify the state against any claim, liability, or lawsuit arising out of the use. [THIS LIST WILL INCLUDE BUT IS NOT LIMITED TO THE FOLLOWING:

(1) LIGHT PORTABLE FIELD EQUIPMENT; SUCH AS, HAND-OPERATED PICKS, SHOVELS, PANS, EARTH AUGERS AND BACKPACK POWER DRILLS AND AUGERS;

(2) VEHICLES SUCH AS SNOW MACHINES, JEEPS, PICKUPS AND WEASELS. AUGERS AND DRILLS MAY BE MOUNTED ON SUCH EQUIPMENT;

(3) AIRBORNE EQUIPMENT;

(4) MARINE EQUIPMENT, EXCEPT EQUIPMENT WHICH WILL DISTURB THE SUBMERGED LAND.]

(c) This list of generally allowed uses

(1) does not apply to land withdrawn from the public domain and no longer managed under AS 38, such as a state park or land owned by the University of Alaska;

(2) does not authorize a use that is prohibited or restricted by an adopted land use plan or management plan; for example, a management plan may limit the number of days that a personal-use recreational camp may be maintained at a specific site;

(3) does not authorize a use that is prohibited or restricted by a special use land designation [THIS SECTION DOES NOT APPLY TO AREAS DESIGNATED] under 11 AAC 96.010(b) [96.010(a)(2)];

(4) does not exempt a user from other agencies' permit requirements; for example, a listed activity may require a permit from the Department of Fish and Game if the activity will take place in a state game refuge; and

(5) does not authorize a use if another person has already acquired an exclusive property right to undertake that use; for example, this section does not authorize a person to graze livestock on another person's state grazing lease, or to develop a trail on a private right-of-way granted to another person. (Eff. 1/1/70, Register 32; am / /91, Register )

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.850

# Fact sheet:



Alaska Department of  
**NATURAL  
RESOURCES**

## **GENERALLY ALLOWED USES ON STATE LAND**

Division of Land and Water • March, 1991

### **DRAFT FACT SHEET--MARCH 1991**

The following uses and activities are allowed without a written permit on state public domain land managed by the Alaska Department of Natural Resources (but check the fine print below!). This list does not apply to land in state parks, because they have been withdrawn from the public domain by the Alaska Legislature. Nor does it apply to land owned or managed by other state agencies and departments such as the University of Alaska, Department of Transportation and Public Facilities, and the Alaska Railroad. The user is responsible for checking land status to be sure that this list is applicable.

### **TRAVEL ACROSS STATE LAND:**

**Hiking, backpacking, skiing, climbing, and bicycling; travel by horse or dogsled or with pack stock; snowmobiling.**

**Using a vehicle, including a four-wheel drive vehicle, pickup truck, snowmobile, or all-terrain vehicle (wheeled or tracked), on or off an established right-of-way, so long as off-road vehicle use does not break through the plant cover.**

**Landing an aircraft such as a light plane or helicopter, or using watercraft such as a boat, raft, or canoe, without disturbing the submerged land or shoreline.**

**A livestock drive of any number of reindeer or up to 100 horses, cattle, or other domesticated animals.**

### **ACCESS IMPROVEMENTS ON STATE LAND:**

**Brushing or cutting a trail less than five feet wide using only hand tools (such as a chainsaw), on the condition that there is no disturbance of the root system and that cutting the trail does not constitute, and is not intended to establish, a right-of-way.**

**Anchoring a mooring buoy in a lake, river, or marine waters for an upland owner's personal, noncommercial use, or placing a float or dock in a lake or in marine waters for an upland owner's personal, noncommercial use, so long as the use does not interfere with public access or other public use. A float or dock is an open structure without walls or roof, designed and used for access to and from the water rather than for storage, residential use, etc.**

### **REMOVING OR USING STATE RESOURCES:**

**Hunting, fishing, or trapping, including placement of a crab pot, shrimp pot, or herring pound, in accordance with regulations of the Board of Game or the Board of Fisheries.**

**Harvesting a small number of wild plants for personal use; using dead and down firewood for a cooking or warming fire, unless the area has been closed to all fires because of the danger of wildfire; harvesting mushrooms, berries, and other plant material for personal use.**

**Grazing as many as five domesticated animals.**

**Recreational gold panning; mineral prospecting or mining using light portable field equipment, such as a hand-operated pick, shovel, pan, earth auger, or a backpack power drill or auger; or suction dredging using a dredge with a nozzle intake of six inches or less, powered by an engine of 16 horsepower or less, and pumping no more than 30,000 gallons of water per day.**

### **OTHER STRUCTURES AND IMPROVEMENTS ON STATE LAND:**

**Establishing and using a camp for personal recreational use, commercial recreation use, or commercial non-recreational use (such as a support camp during mineral exploration), for no more than 14 days at one site, using a tent platform or other temporary structure that can readily be dismantled and removed, or a floathouse that can readily be moved. The camp must be moved at least two miles before the end of the 14-day period. No cabin or other permanent improvement is allowed, even if it is on skids or some other form of non-permanent foundation, and the camp must**

be removed immediately if the Division of Land and Water determines that it is interfering with public access or other public uses and interests.

Brushing or cutting a survey line less than five feet wide using only hand tools (such as a chainsaw), provided that there is no disturbance of the root system, or setting a survey marker. However, survey monuments cannot be set without written survey instructions issued by the Division of Land and Water.

Placing a lawful sewer outfall into marine waters from a residence or residences on contiguous privately owned upland, provided that the flow volume is less than 500 gallons per day, the outfall is located within the projected sidelines of the contiguous upland owner's lot, and the outfall line is buried to the extent possible (or, where it crosses bedrock, is secured and covered with rocks to prevent damage).

**MISCELLANEOUS USES:** Non-exclusive recreational or other use, for no more than 14 days at a site, that has no noticeable effect on vegetation, drainage, or soil stability; does not interfere with public access or other public purposes; and does not involve harassment or disturbance of wildlife other than lawful hunting, trapping, and fishing.

**But check the fine print first!**

There is some state-owned public domain land where this full list of generally allowed uses does not apply. Exceptions may be created by a state land use plan or management plan (for example, a management plan may limit the number of days that a personal-use recreational camp may be maintained at a specific site), or by a "special use land" designation (for instance, there is a special use land designation requiring a permit for off-road vehicle use on the North Slope).

Also, be aware that this list does not exempt users from the permit requirements of other state, federal, or local agencies. For example, a permit might be required by the Department of Fish and Game if the use will take place in a state game refuge.

Finally, this list does not authorize a use if another person has already acquired an exclusive property right for that use. For instance, it does not give people permission to graze livestock on someone else's state grazing lease, to build a trail on a private right-of-way that the department has granted to another person, or to pan for gold on somebody else's state mining location.

Division of Land and Water staff can help users determine the land status of state-owned land and whether it is subject to any special exceptions or to private property rights.

All activities on state land must be conducted in a responsible manner that will minimize or prevent disturbance to land and water resources, and must be in compliance with all applicable federal, state, and local laws and regulations. Also, the user must agree to protect the state against any claim, liability, or lawsuit arising out of the use.

**For additional information contact:**

Department of Natural Resources  
Division of Land and Water Management

Southcentral Regional Office  
3601 C Street, Suite 1080  
P.O. Box 107005  
Anchorage, AK 99510-7005  
(907) 762-2253

Southeast Regional Office  
400 Willoughby Avenue, 4th Floor  
Juneau, AK 99801  
(907) 465-3400

Northern Regional Office  
3700 Airport Way  
Fairbanks, AK 99709  
(907) 451-2757



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

March 22, 1991

Honorable Drue Pearce  
P.O. Box V  
Juneau, AK 99811

Re: SB 178 Management and Protection of State Land

Dear Senator Pearce:

Thank you for the opportunity to comment on this legislation. We are aware of some of the problems that have occurred in the past and agree that there is a need for DNR to have the administrative tools to deal with abuses that may occur.

We have three general observations. First, is a question. Are we certain that new legislation is required or can new regulations be written from the existing statutes? The theft of State property, i.e. timber, gravel, etc. can surely be addressed through existing statutes. Regarding mineral exploration and mining, occupancy and the subset of occupancy known as residency, are clearly covered in Title 38. That should not be at issue here. Other non-mineral related occupancy and/or residency appears to be the real focus of this legislation.

If new legislation is required, consideration should be given to changing the title in AS 38.05.020 from "Authority and Duties of the Commissioner" to read "Authority, Duties and Powers of the Commissioner". Some minor changes could be made here followed by regulations rather than specifying everything in the detail of SB 178. If the statute becomes too specific, serious unforeseen conflicts would be impossible to correct without legislative action.

The second general observation is that this bill is very punitive and reads more as a police powers bill than a land management bill. As now written it gives far too much power, discretion, and latitude to DNR. Under past administrations we have seen some Departments use all form of deceit and trickery in the name of "protecting" state resources or the environment. It is our observation that individuals and companies have been targeted for harassment. It is therefore easy to see that with the wrong administration the same type of abuses could result within DNR.

The third general observation is that this bill begins to change the DNR focus and orientation from one of being a land manager to that of being a field cop. It is true that even now a portion of the DNR job is that of enforcement, but this bill as written seems to place much more focus on that aspect. If Alaskans begin to see DNR as a "land cop" the future working relationship between DNR and everyone will suffer.



## ALASKA MINERS ASSOCIATION, INC.

Now for some specific comments on this bill, if indeed a statute change is required. It is crucial that this bill not be in conflict with other statutes and regulations. The first example of this situation was discussed in the "findings and intent" section of the bill. In that section it was noted that "generally allowed uses" would not be affected by this bill. A second area of statutory conflict would be with the Title 38 statutes regarding mineral exploration and mining. As now written this bill could be construed to mean that collecting field samples, claim staking, clearing claim lines, and equipment storage on claims would not be allowed. These items are specifically allowed and for some items required by the exploration and mining statutes.

A way to correct the above conflicts would be to change Sec. 38.55.010 to read:

"Sec 38.55.010 UNAUTHORIZED USE OF STATE LAND. Unless authorized by other statutes and associated regulations or unless authorized in advance in writing by the Department..."

This change should cover both actions involving mineral exploration and mining and the generally allowed uses and any other activity that is allowed by other statutes or regulations.

The other way to address these conflicts and it is possibly an even better way, is to add a new subsection at the end of 38.55.010 that states specifically that mineral exploration and mining conducted in accordance with Title 38 and the generally allowed uses do not fall under the jurisdiction of this section.

Although it is not a major concern, under the Sec. 38.55.030(b) items (1) and (2) should be followed by an or, (3) should be followed by an and, and (4) should be followed by and if (1), (2) and (3) are not possible,.... The effect is always to have the violation posted at the site and if a copy cannot be given to the alleged violator, then it would also be published in a newspaper.

Sec 38.55.040(a)(4) is, however, a major concern! This is much too broad and is very inappropriate. For the DNR to be able to "take any other action the commissioner determines to be necessary or appropriate" is very scary. No department or agency other than the State Troopers with permission from a judge can be allowed to have this kind of authority. This subsection should be removed. As an aside, it is even a concern that DNR would think that they should have such a wide authority.



ALASKA MINERS ASSOCIATION, INC.

Also in the same subsection, 38.55.040(c) must be changed to remove the final phrase "including reasonable administrative costs". If a judge decides this is appropriate and requires this, okay, but do not include the requirement in statute. Such administration is the responsibility of DNR and part of the purpose for the Department. Requiring payment of administrative costs becomes merely another punitive charge -- in addition to the civil fine and civil penalty. Also, there is concern as to what is "reasonable". Reasonable is very hard to define. Travel to remote sites is a prime example -- one person vs several, commercial aircraft and then via boat vs helicopter, number of visits to the site required, etc.

Sec. 38.55.050 proposes that the State take title to any structure or items of personal property if it is concluded to be "unauthorized". Is this the same procedure used by the State Troopers or is it required that confiscated private property be sold at auction? There is also the "takings" issue that must be considered, but we have no specific recommendations at this time.

Sec. 38.55.060(c) talks of a civil fine and that each day that the violation continues is an additional violation. What will it take to correct the violation? If it means the alleged violator must be off the land, what if it is not possible due to weather, highway load limits, season of the year, need to cross an anadromous fish stream, etc.? This area could also be abused, but we are not sure how it could be changed short of removal.

Sec. 38.55.07(b) is confusing in that it says that the calculations "may be" but then requires that "the greater of" (1) or (2) be charged. Again the punitive flavor of the bill comes through. Part (1) implies a gross value where as (2) implies a net profit and therefore (1) will always be much greater.

In conclusion we are hopeful that unauthorized use of state land and resources can be addressed without creating problems for legitimate users and particularly, legitimate miners. We also encourage this being accomplished without excessive new statutes.

Thank you for the opportunity to comment and we look forward to commenting again on future drafts.

Sincerely,

Steven C. Borell, P.E.  
Executive Director

From: DNR

## SEQUENCE OF EVENTS UNDER SB 178 TO HALT UNAUTHORIZED USE OF STATE LAND

SB 178 would allow use of each of the steps below, but they are not mandatory. In many cases, only the first action will be needed to get the problem resolved. But if the violation is flagrant and involves high economic stakes, all of the steps might be necessary to halt the use and recover the damages to state land.

During a routine field visit or in response to a complaint, DNR finds an unauthorized use occurring on state-owned land, such as a cabin or lodge being constructed on a site that has not been leased for that purpose, or theft of timber or gravel.

Step 1. DNR issues a "notice of trespass."

- The notice states where the unauthorized use is taking place, what the use is, and what action must be taken to stop the violation.
- DNR serves the trespass notice by mail, personal delivery, delivery to the violator's residence, posting at the site, or publishing four times in a local newspaper.
- Violator has the right to appeal to commissioner within 30 days.

Step 2. If the violator does not respond, DNR can issue a "compliance order" requiring the violator to stop the use; remove any unauthorized structures, property, or debris; restore the land; and take other necessary action.

- DNR serves the compliance order in the same way as a notice of trespass.
- Violator has the right to appeal to commissioner within 30 days.
- DNR may ask the court for a writ of assistance if necessary.

Step 3. If the violator fails to comply with a compliance order, DNR can act to remove the structure and repair the damage.

- The violator is liable for DNR's removal costs, including reasonable administrative costs.
- At DNR's discretion, the unauthorized structure or property can pass into state ownership. DNR will either retain it for administrative or public use, destroy it, or transfer it to the Department of Administration for disposal under existing law.

## POTENTIAL FINES AND PENALTIES ALLOWED BY SB 178

If a person "knowingly" violates the unauthorized-use law or a compliance order, SB 178 allows DNR to take any or all of the following actions:

### 1) Impose a civil fine.

- A peace officer can issue a citation for the fine. The fine can be paid by mail.
- For noncommercial use, the fine can't exceed \$100 per violation per day.
- Fine can be up to \$1,000 per violation per day if use was for economic gain in a commercial operation, such as building an unauthorized hunting lodge or warehouse on state land.
- Violator has the right to appeal to commissioner within 30 days.
- If violator refuses to pay, DNR may ask the court for a writ of execution to collect the fine.

### 2) Impose a civil penalty for loss or damage.

- Civil penalty is three times the loss or damage resulting from the violation.
- The basis can be
  - the full value of the resources taken, including rental value, restoration costs, administrative costs, etc., or
  - the economic gain realized by the violator.
- Violator has the right to appeal to commissioner within 30 days.
- If violator refuses to pay, DNR may ask the court for a writ of execution to collect the penalty.

### 3) Seek criminal charges for the violation (class B misdemeanor).



ADOPTED AUGUST 1972

July 11, 1984

# CITY of WRANGELL, ALASKA

INCORPORATED JUNE 15, 1903

BOX 531, 99929 (907) 874-2381

JUL 12 1984

S. E. DISTRICT OFFICE

Ron Schoenbach  
Department of Natural Resources  
230 South Franklin, Room 407  
Juneau, AK 99801

Dear Ron:

Joyce Rasler has asked me to contact you for assistance in the removal from State tidelands, a float house belonging to Jill Larson of Wrangell.

Could you please contact me with information regarding what steps I can take or what assistance I can give you to clear up this matter as soon as possible.

Sincerely,

M. L. Mundlin  
Director of Planning & Zoning

MLM/lmc

