HB

515

HB515 / SB339
-Sectional Analysis by DNR-

Date: March 1, 1994

Prepared By: Department of Natural Resources

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Senate Bill 339 and House Bill 515 relate to the management of state land and resources and to certain remote parcel and homestead entry land purchase contracts and patents. The bill amends or repeals provisions in AS 38 to simplify and clarify them, and to provide greater efficiency in the management of state land and resources.

Sections 1 through 7 of the bill would amend AS 38.04.020 to delete the land disposal bank for potential state land sales, recast the land bank as a land disposal program, revise planning and classification requirements, and make appropriation requests for land disposals discretionary by the commissioner of the Department of Natural Resources (DNR). Currently, existing AS 38.04.020 requires the land bank to have at least 500,000 acres classified and available for disposal into private ownership. That statute also requires an annual report on the status of the land bank and mandates that the commissioner annually submit an appropriation request to the legislature to administer surveys and disposals of land. The land bank system is outdated because regional land use plans have now classified over 2,000,000 acres of state land for disposal. Section 35 of the bill repeals existing AS 38.04.020(c),

(f), (j), and (k), the requirements of which have become unnecessary due to the amount of land now classified for disposal. Section 8 of the bill makes a conforming amendment to AS 38.04.021(b)(1).

Sections 9 and 10 of the bill amend existing AS 38.04.030 and AS 38.04.035 to simplify the methods that DNR can use to design state land disposals. Section 9 amends existing AS 38.04.030 by authorizing DNR to develop additional disposal programs by regulation. A program established by regulation would have to provide for competitive disposal at no less than fair market value, but would not necessarily have to conform to existing programs in AS 38.

Section 10 amends AS 38.04.035 by making a fair market value return to the state mandatory, rather than discretionary, when state land is conveyed to private parties, unless a conveyance for less than fair market value is specifically authorized by statute or regulation.

Section 11 of the bill amends existing AS 38.05.035(b)(9) to allow DNR to reconvey substitute land for state land that is subject to a pending Native allotment application. This amendment is designed to give DNR the ability to relocate Native allotment claims from state parks and recreation areas to less sensitive areas. Existing AS 38.05.035(b)(9) only allows the reconveyance of land wrongfully

conveyed by the federal government to the state, such as land subject to Native use and occupancy predating state selection. The amendment is intended to allow DNR to take advantage of a 1992 amendment to the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1617(c), which authorizes the relocation of pending Native allotment claims to substitute state land with the commissioner of DNR's concurrence.

Sections 13 and 14 of the bill delete from existing AS 38.05.055 and AS 38.05.057(a) the requirement that a purchaser appear in person at a lottery or auction for state land. In Chambers v. State, No. 3AN-88-4634 CI (1989), that requirement was held to violate the equal protection clause of the Constitution of Alaska because it discriminates between local and non-local residents. Section 12 of the bill amends existing AS 38.05.050 to remove the requirement that the lottery or auction be held in a community near the land to be disposed. Such a decision would, instead, be discretionary. Section 35 of the bill repeals existing AS 38.05.057(g) and AS 38.05.057(j), which are premised on the existing requirements in AS 38.05.050, AS 38.05.055, and AS 38.05.057(a) that are being deleted. Section 32 of the bill amends AS 38.09.010(g) to remove language related to personal appearance at a lottery and local site for a lottery.

In addition, sec. 14 of the bill deletes a provision of AS 38.05.057(a) that requires the commissioner of DNR to consult

with the municipal assessor before determining the purchase price for state land located in that municipality. Because the appraisal required by existing AS 38.05.840 gives the commissioner an accurate valuation, the consultation requirement is unnecessary.

Section 15 of the bill repeals and reenacts AS 38.05.069(e)(2). Existing AS 38.04.069(e)(2) defines "approximate vicinity," a term that is not used elsewhere in existing AS 38.05.069, the agricultural preference right statute. The bill would replace "approximate vicinity" with a definition of "adjacent," a term that is used elsewhere in that statute.

Changes made by secs. 16 through 18 and sec. 35 of the bill eliminate special procedures for leasing setnet and aquatic farming sites contained in existing AS 38.05.082, 38.05.083, and 38.05.856. Sections 29 and 35 revise the public notice requirements of existing AS 38.05.945 accordingly, by repealing AS 38.05.945(a)(5) and (6) and amending AS 38.05.945(d). Section 16 amends existing AS 38.05.082(b), which requires DNR to award set net leases between two or more competing applicants on the basis of a complex analysis of the "most qualified applicant." This procedure is highly dependent on DNR's ability to make factual determinations as to each applicant's tenure in the fishery, present ability to utilize the location to its maximum potential, and "other factors relevant to the equitable assignment of the disputed area." The amendment would replace this procedure with the options of either a public

auction under AS 38.05.075(a) or, if only one application is received and the value of the lease is $5,000 a year or less, a negotiated lease under AS 38.05.070(b). In secs. 3 and 5, ch. 27, SLA 1991, the legislature amended AS 38.05.082(b), effective January 1, 1997, regarding language that refers to DNR land use plans. Section 34 of the attached bill clarifies that the changes in the bill regarding new procedures for determining the qualifications of setnet lease applicants, contained in sec. 16 of the bill, do not affect the changes made to AS 38.05.082(b) by secs. 3 and 5, ch. 27, SLA 1991.

In sec. 18 of the bill, AS 38.05.083 is repealed and reenacted to set out aquatic farm and hatchery site leasing procedures. In the repeal and reenactment, many of the existing permit provisions in AS 38.05.856 are moved to AS 38.05.083 as leasing provisions. AS 38.05.856 is repealed by sec. 35 of the bill. Section 35 of the bill also repeals existing AS 38.05.855, which requires DNR to identify and propose sites for aquatic farms and hatcheries, and AS 38.05.946(b), which requires DNR to hold public hearings on those proposed sites. The purpose of these changes is to bring the leasing of setnet and aquatic farming sites into conformity with the procedures governing other state land uses. Section 36 of the bill makes clear that the changes made to existing AS 38.05.083 and 38.05.856 by secs. 18 and 34 of the bill do not impair the legal rights of a person who holds a permit under those statutes.

Section 19 of the bill repeals and reenacts AS 38.05.090 to make a lessee of state land responsible for returning a former leasehold to a marketable condition. The amendment would also provide for the automatic vesting of title in the state of any personal property, buildings, or fixtures that are not removed by the lessee within a specified time. Under the existing statute, a lessee who leaves buildings or personal property on state land when a lease expires is not subject to any penalty and is not responsible for the costs of restoring the property to a condition suitable for subsequent leasing. The changes made by sec. 19 would address this statutory deficiency.

Sections 20 and 21 of the bill give the commissioner of DNR new authority regarding the sale of state timber. A new statute, AS 38.05.117, would permit the commissioner of DNR, after making a best interests determination, to sell timber that will quickly lose substantial economic value or perpetuate insect or disease epidemics unless salvaged. Cases of damage due to insects, disease, or fire, or when the land is to be cleared of timber and converted to some nonforest use, often fall outside of the normal five-year sale schedule mandated by AS 38.05.113 and the limitations on sales set out in AS 38.05.115. This new section providing for salvage sales would exempt those sales from the limitations of AS 38.05.113 and, in certain circumstances, from the limitations of AS 38.05.115. The amendment made by sec. 21 of the bill would permit the commissioner of DNR to negotiate timber sales

in certain areas if the commissioner finds that the specified circumstances "will exist" within two years, and adds, as a circumstance: "that timber will lose substantial economic value due to insects, disease, fire, or land use conversion."

Section 22 of the bill amends existing AS 38.05.180(c) to remove restrictions on DNR's ability to delay an oil and gas lease sale for more than 90 days after the sale's scheduled date in the five-year oil and gas leasing schedule submitted annually to the legislature. Under the existing statute, an oil and gas lease sale may be delayed only for a maximum of 90 days after the last day of the calendar quarter for which the sale was scheduled. After that time, the sale must be delayed until the sale has again appeared in the annual five-year leasing schedules submitted to the legislature for two calendar years. Although the purpose of the 90-day restriction was to prevent arbitrary delays in lease sales, that has not been shown to be a problem. The Department of Natural Resources has concerns that administrative appeals and court challenges to lease sales might cause the 90-day limit to be exceeded. Also, DNR might wish to extend the comment period for a lease sale beyond 90 days to facilitate unique needs of residents in the area. For instance, the comment period might otherwise occur during peak subsistence hunting or fishing seasons. The amendment would delete the 90-day restriction to accommodate unavoidable delays, while still allowing for timely scheduling of lease sales. Timely scheduling of future sales is important in

encouraging development.

Section 23 of the bill amends existing AS 38.05.185(a) to eliminate overly broad provisions allowing land to be closed to mining. The existing statute allows DNR to determine which state land should be closed to mining or mineral entry. The commissioner of DNR must first find that mining would be incompatible with significant surface uses of the land. Although not defined in AS 38.05, the term "mining" generally refers to the activities and operations involved in extracting, processing, and marketing minerals. "Mining" presupposes the existence of valid mining rights under mining claims or leases. Existing AS 38.05.185(a) is overly broad because it allows land to be closed to mining without provision for valid existing mining rights. The existing statute could be viewed as effecting a "taking" of valid mining rights, since it authorizes a mineral closure without requiring an eminent domain action or providing for compensation; it may therefore run afoul of AS 37.05.170 and art. IX, sec. 13, of the Alaska Constitution. The amendment would provide that land may be closed to location under AS 38.05.185 - 38.05.275, which would prevent the acquisition of new mining rights, thus avoiding these potential pitfalls.

Section 24 amends existing AS 38.05.190(a) to clarify the qualifications for mining claim ownership by aliens and foreign corporations. Under the existing statute, an alien at least 18 years old from a country that grants "like privileges" to United

States citizens may acquire or hold exploration and mining rights. A corporation in which more than 50 percent of the stock is owned or controlled by aliens whose country does not grant reciprocal rights to United States citizens may not acquire or hold exploration and mining rights. However, determinations of which countries grant "like privileges" to United States citizens have never been made or enforced in any consistent manner due to the number and complexity of mining laws worldwide. The federal mining laws, upon which Alaska laws were initially based, allow an alien to form a domestic corporation that would be qualified to obtain mining rights, without inquiry into "like privileges." The Alaska laws governing the acquisition and holding of oil and gas rights also do not inquire into "like privileges." Amending AS 38.05.190(a) to delete these requirements would be consistent with modern business practices, similar federal laws, and state laws affecting other types of mineral rights.

The bill makes several changes regarding mining operations. Section 35 of the bill repeals AS 38.05.207 in its entirety. That statute requires a production license for every mining operation. This provision was added in 1982 in an effort to resolve issues arising under sec. 6(i) of the Alaska Statehood Act. In Trustees for Alaska v. State, 736 P.2d 324 Alaska 1987), AS 38.05.207 was held not to satisfy the Statehood Act provision and the existing rent and royalty measures in AS 38.05.211 and AS 38.05.212 subsequently were enacted. The production license requirement in

AS 38.05.207 is thus outmoded and serves no public purpose at this time.

Section 25 of the bill would repeal and reenact AS 38.05.211(d) to simplify the adjustments to be made in the annual rental amounts due on mining claims and leases. The existing statute requires the rental amounts to be adjusted every 10 years based on changes in the consumer price index for Anchorage. This statutory adjustment would most likely result in odd rental amounts that would make calculating, accounting, and collection more difficult. Additionally, adjusting rental amounts only at 10-year intervals could result in large changes at one time. The repeal and reenactment would allow rent adjustments to be made whenever the change in the consumer price index for all urban consumers in the Anchorage area equals or exceeds $5, and would restrict the change to multiples of $5. Both DNR and the mining claim or lease owners would appear to be better served if changes can be made more often, and in smaller increments than at cumulative 10-year intervals. The amendment also more clearly identifies the consumer price index on which changes are to be based.

Section 26 of the bill amends AS 38.05.255 to provide a more workable surface use authorization for mine millsites. The existing statute requires a millsite permit for millsites and tailings disposal. Millsites and tailings disposal sites involve large, long-term structures such as mills, dams, and tailing

impoundments, often constructed or installed at considerable expense. However, the term "permit" traditionally refers to an authorization to use land for a limited purpose, with the authorization revocable at the will of the grantor of the permit. A permit does not accommodate the realistic needs of a mining project, which requires long-term surface occupancy and some certainty of continuance if the authorization is maintained in good standing. A prudent operator would obviously be reluctant to invest the large amounts of capital and time necessary for a major mining project if the millsite authorization could be revoked without cause at any time. The amendment substitutes "lease" for "permit" in AS 38.05.255 and provides other conforming changes relating to that change of term. A lease provides for use of the land for a definite period of time if the leasehold is maintained in good standing. A lease generally requires good cause and notice for cancellation. The amendment also exempts millsite leases from the requirements of AS 38.05.070 - 38.05.105, which govern leases not for the extraction of natural resources. Those statutes require competitive bidding as the disposal method. A millsite lease, however, should not be competitively bid since there will almost always be only one party, the mine operator, applying for a particular tract for a millsite lease, and the characteristics of each mine probably will not generate more than one or two acceptable millsite tracts for disposal. Instead, the bill requires the commissioner of DNR to adopt regulations establishing appropriate procedures and annual rent amounts for millsite leases.

Section 27 of the bill amends existing AS 38.05.265 to eliminate the failure to file a lease application within a prescribed period of time as grounds for abandonment of a mining claim. In areas open to mining only under lease, a person who locates a mining claim first must record the certificate of location with DNR under AS 38.05.205(a). DNR then issues a public notice of the proposed mining lease and mails a lease application to the locator. The locator of the mining claim is required to return the lease application within 90 days after receipt of it. Under existing AS 38.05.265, if a lease applicant fails to file the application within 90 days after receipt, the mining claims included within the proposed lease area are abandoned. The 90-day deadline for return of the lease application appears to be for the purpose of issuing a lease timely after the required public notice, so that the notice is not "stale" when the lease is finally issued. However, if the application is not timely filed, the notice period could be repeated without the severe penalty of loss of the mining applicant's leasehold property rights. Under this bill, an applicant would still be prohibited from mining the claims, except for testing or sampling purposes, until a lease is issued and other filing requirements are met.

Section 28 of the bill amends AS 38.05.850(a) to clarify that the use of revokable permits is allowable to authorize certain uses of limited value.

Sections 30, 31, and 33 of the bill amend existing AS 38.08.030, 38.08.040, and AS 38.09.030, respectively, to increase fees for the use of homesites and homesteads before patent, to defray DNR's administrative costs. Existing AS 38.08.030(b) sets a maximum $10 application fee for the use of a homesite. Existing AS 38.09.030(a) limits the application fee for homesteads to $5 per acre. These minimal fees presently paid by permittees for the use of state land do not even cover DNR's administrative costs. This proposal would amend AS 38.08.030(b) by increasing the fee for new homesite applications to the maximum of $25 set out in AS 38.05.057(d), and would amend AS 38.08.040(a) to establish a $100 annual fee to receive and hold a homesite permit before patent. AS 38.09.030(a) would be amended to increase the application fee for homesteads to $20 per acre if the land is not classified as agricultural. The fee increases would apply only to new applications filed after the effective date of this bill. Section 36 of the bill makes clear that the new requirement in AS 38.08.040 for payment of an annual rental fee for a homesite entry permit does not apply to a person who was issued a permit under that statute's existing guarantee that the $10 "application fee is the sole rent chargeable on the permit for its duration."

In addition, secs. 30 and 31 make amendments to clarify that homesite entry permits are issued under lottery procedures in AS 38.05.057(e), (f), and (h). Under DNR regulations, lottery procedures apply to issuance of the permits, but AS 38.05.057 and

AS 38.08 are not clear regarding the applicable procedures.

Section 35 of the bill would repeal existing AS 38.09.050(d) and (e), which prohibit the sale of homesteads for five years after the issuance of patent and the subdivision of homesteads for either five or 10 years after patent, depending on whether the land was purchased under AS 38.09.090. Section 38 of the bill would prohibit DNR from including the conditions of former AS 38.05.078(d) (prohibiting sale or subdivision of the parcel for 10 years after purchase) in a remote parcel purchase contract issued after the effective date of this bill. This section also would require DNR to amend a remote parcel or homestead purchase contract or patent issued before the effective date of the bill if the holder of the contract or patent pays (1) the administrative costs of the amendment, and (2) the difference between the land's fair market value before and after the conditions on the land are removed. The latter requirement is proposed because the fair market value of remote parcel land and homestead entry land sold by the state under existing law has been reduced by 50 percent to account for the conditions in AS 38.05.078 and AS 38.09.050. Removal of the conditions under secs. 34 and 37 of the bill is designed to increase revenue from state land sales and to allow private landowners greater use of the land.

Section 37 of the bill, and its immediate effective date (sec. 39 of the bill), allow for timely adoption of regulations needed to

implement the changes made by the bill. Section 40 of the bill provides for an effective date of July 1, 1994 for the remainder of the bill.

In addition to the changes described above, numerous "housekeeping" amendments are contained in many sections of the bill.

DRAFT AMENDMENTS FOR HB 515

# DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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**MEMORANDUM** March 24, 1994

**SUBJECT:** Sale or Disposal of State Land to Homeowner's Associations (Work Order No. 8-GH2023\A.1)

**TO:** Representative Jeannette James
Attn: Walt

**FROM:** Jerry Luckhaupt
Legislative Counsel

The attached amendment gives DNR the authority to sell land at less than appraised value to nonprofit, tax-exempt homeowners' associations. I believe that DNR currently may have the authority to lease land to these homeowners' associations under AS 38.05.810(b) - (d), if the homeowners' association is operated exclusively for "charitable, religious, scientific, or educational purposes, or for the promotion of social welfare." AS 38.05.810(c).

Please be aware that the language added at the end of AS 38.05.810(a) applies to all disposals covered by that subsection, not just disposals to nonprofit tax-exempt homeowners' associations.

Finally, the title change is not entirely a result of this amendment. The bill already deals with lands disposals, and therefore it would be best if that were already noted in the title. However, since the amendment does address land disposals, we have included a title change.

GPL:mi
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Attachment

8-GH2023\A.1
Luckhaupt
3/24/94

# AMENDMENT

OFFERED IN THE HOUSE

TO: HB 515

Page 1, line 1, following "**management**":

Insert "**and disposal**"

Page 14, following line 12:

Insert a new bill section to read:

"* **Sec. 28.** AS 38.05.810(a) is amended to read:

(a) Except as otherwise provided in AS 38.05.183(h), the (1) lease, sale, or other disposal of state land or resources may be made to a state or federal agency or political subdivision, (2) [THE] lease, sale, or disposal of coal deposits suitable for mining may be made to a utility owned and operated by a government agency or nonprofit cooperative association organized to participate under the Federal Rural Electrification Act for the purpose of generating electric power and energy or the production of process steam, or both, (3) [OR THE] sale or other disposal of state land may be made to a tax-exempt, nonprofit corporation, association, club, or society organized and operated exclusively for the management of a cemetery or a solid waste facility, **or (4) sale or other disposal of state land may be made to a nonprofit, tax-exempt homeowners' association,** for less than the appraised value as determined by the director and approved by the commissioner to be fair and proper and in the best interests of the public, with due consideration given to the nature of the public services or function rendered by the agency, subdivision, tax-exempt, nonprofit corporation, association, club, or society, or utility making application, and of the terms of the grant under which the land was acquired by the state. **The commissioner shall ensure that disposals of land or resources under this subsection are for a public purpose and in the public interest by the establishment of appropriate restrictions or conditions through the adoption of**

**regulations to govern the disposals or applications for disposals or otherwise by covenant or agreement."**

Renumber the following bill sections accordingly.

Page 16, line 25:

Delete "sec. 40"

Insert "sec. 41"

Page 17, line 11:

Delete "Section 37"

Insert "Section 38"

Page 17, line 12:

Delete "1 - 36 and 38"

Insert "1 - 37 and 39"

STATUTES REPEALED OR REPEALED AND REENACTED
IN HB 515

Supplement

# Alaska Statutes

## Title 38. Public Land.

Chapter



### Chapter 04. Policy for Use and Classification of State Land Surface.

Article



#### Article 2. Land Availability for Private Use.

Section



**Sec. 38.04.020. Land disposal bank.** (a) The commissioner shall establish a land disposal bank containing state land classified for disposal into private ownership.

(b) The land disposal bank does not include

(1) land nominated for selection or selected by a municipality to satisfy a general grant land entitlement under AS 29.65 or former AS 29.18.201 — 29.18.213;

(2) land retained in state ownership for multiple-use management;

(3) land where less than a fee simple title has been conveyed;

(4) land retained in state ownership under an enactment of the legislature or by the governor or a state agency under authority of law.

(c) Land to be retained in state ownership may be classified by the commissioner into multiple-use management categories under AS

38.05.300. Land outside a municipality to be retained in state ownership consists of land classified for retention in state ownership by the commissioner by July 1, 1985. Land conveyed to the state by the federal government that is to be retained in state ownership consists of land classified by the commissioner within two years of receipt of tentative approval or patent, whichever occurs first. State land not classified for retention in state ownership or selected by a municipality under this section shall be classified and included in the land disposal bank. The commissioner shall ensure that the bank includes at least 500,000 acres.

(d) On January 15 of the first session of each legislature, the commissioner shall report to the legislature on the status of land in the land disposal bank under the following categories:

(1) land suitable for homestead disposal;

(2) land suitable for subdivision disposal;

(3) land suitable for agricultural, commercial, or industrial disposal; and

(4) land suitable for other purposes.

(e) The commissioner shall annually submit to the governor an appropriation request for funding estimated to be necessary for the next two years to allow

(1) survey and disposal of land proposed to be made available for homestead staking, with the general location of the land;

(2) survey and disposal of land to be offered as agricultural, commercial, industrial, or other uses under AS 38.05.055 or 38.05.057, with the general location of the land;

(3) the survey and disposal of land proposed to be offered as subdivisions, with the general location of the land;

(4) preliminary feasibility studies, engineering design work, right-of-way acquisition, and construction of access roads and capital improvements required by municipal subdivision ordinance or regulation of the platting authority;

(5) identification of land that will be proposed for disposal under this subsection in future fiscal years.

(f) The request of the commissioner under (e) of this section shall include an analysis and an assessment of the market demand for the land proposed for disposal.

(g) After July 1 of each year, the commissioner shall direct the expenditure of money appropriated for the disposal of land in response to requests made under (e) and (f) of this section for the following:

(1) Land designated as suitable for homestead disposal shall be classified and surveyed under this chapter and AS 38.05 and made available for staking and lease under AS 38.09.

(2) Land designated as suitable for subdivision and homesite disposal shall be surveyed, subdivided, classified, and disposed of under this chapter, AS 38.05, and AS 38.08.





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(3) Land designated agricultural, commercial, industrial, or suitable for other disposal shall be sold under AS 38.05.055 or 38.05.057.

(h) Individual parcels disposed of in subdivisions may not exceed five acres unless the commissioner determines that a larger size is necessary to comply with municipal ordinances, to permit the design of a viable subdivision because of topographical features, soil conditions, on-site sewage disposal requirements, or water drainage or supply considerations that are unique to the subdivision, to minimize adverse effect on wildlife, fishery, public recreation, timber, or other significant resources in the area, or to minimize adverse effect on other residential uses in the area.

(i) Nothing in this section prevents the disposal of other land by the commissioner in accordance with AS 38.05.055, 38.05.057, 38.05.070, the issuance of remote cabin permits under AS 38.05.079, AS 38.08, or other law.

(j) A person or an agency of the state may nominate land retained in state ownership for inclusion in the land disposal bank or may nominate land in the land disposal bank for retention in state ownership. The commissioner shall hold public hearings semiannually to take nominations under this subsection. A transfer of land from retention in state ownership to the land disposal bank or from the land disposal bank to retention in state ownership shall be accomplished through a classification order under AS 38.05.300 and with notice under AS 38.05.945. The commissioner shall make a written determination within six months after receipt of a nomination if the commissioner determines that the land nominated will not be classified or reclassified as requested.

(k) The commissioner may withdraw from the land disposal bank state land that has been offered for disposal but not conveyed within five years after the inclusion in the land disposal bank. State land withdrawn from the land disposal bank under this section must be reclassified under AS 38.04.065. (§ 5 ch 181 SLA 1978; am § 11 ch 85 SLA 1979; am § 4 ch 113 SLA 1981; am § 2 ch 90 SLA 1983; am §§ 2 — 4 ch 103 SLA 1983; am §§ 5 — 8 ch 152 SLA 1984; am §§ 51, 52 ch 74 SLA 1985; am § 4 ch 134 SLA 1990)

**Effect of amendments.** — The 1990 amendment substituted "the first session of each legislature" for "each year" in the introductory paragraph of subsection (d).

## Sec. 38.04.050. Access to private use areas.

### NOTES TO DECISIONS

Cited in Fairbanks N. Star Borough v. State, 826 P.2d 760 (Alaska 1992).

paid for the land shall be its fair market value on the date that the person first entered the land, as determined by the director; a parcel of land disposed of under this paragraph shall be of a size consistent with the person's prior use, but may not exceed five acres;

(6) dispose of an interest in land limited to use for agricultural purposes by lottery;

(7) convey to an adjoining landowner for its fair market value a remnant of land that the director considers unmanageable or a parcel of land created by a highway right-of-way alignment or realignment, or a parcel created by the vacation of a state-owned right-of-way if

(A) the director determines that it is in the best interests of the state;

(B) the parcel does not exceed the minimum lot size under an applicable zoning code; and

(C) the director and the platting authority having land use planning jurisdiction agree that conveyance of the parcel to the adjoining landowner will result in boundaries that are convenient for the use of the land by the landowner and compatible with municipal land use plans;

(8) for good cause extend for up to 90 days the time for rental or installment payments by a lessee or purchaser of state land under this chapter if reasonable penalties and interest set by the director are paid;

(9) quitclaim land or an interest in land to the federal government on a determination that the land or the interest in land was wrongfully or erroneously conveyed by the federal government to the state;

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

(c) A parcel of land may be conveyed under (b) of this section without classification or reclassification under AS 38.05.300.

(d) A parcel of land described in (b)(7) of this section must be sold at its fair market value as determined by the director on the basis of an appraisal completed as provided in AS 38.05.840. Nothing in this subsection prevents the sale of land under AS 38.05.055 or 38.05.057 to a person not qualifying as an adjoining landowner if the adjoining landowner declines to purchase the land.

(e) Upon a written finding that the interests of the state will be best served, the director may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available land, resources, property or interests in them, and, in addition to the conditions and limitations imposed by law, may impose additional conditions or limitations in the contracts as the director determines, with the consent of the commissioner, will best serve the interests of the state. A contract for the sale, lease, or other disposal of available land

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

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

(2) a lease of land for a shore fishery site under AS 38.05.082;

(3) a permit or other authorization revocable by the commissioner;

(4) a mineral claim located under AS 38.05.195;

(5) a mineral lease issued under AS 38.05.205; or

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

(7) an exempt oil and gas sale under AS 38.05.180(d) for which a written best interest finding has been issued for the area of the sale within the 36 months before the date of the sale unless the commissioner determines that new information has become available that justifies a revision of the best interest finding.

(f) The director shall grant a preference right to the purchase or lease without competitive bid of up to five acres of state land to an individual who has erected a building on the land and used the land for bona fide business purposes for five or more years under a federal permit or without the need for a permit and, after selection by the state, under a state use permit or lease, if the business produced no less than 25 percent of the total income of the applicant for the five years preceding the application to purchase or lease the land. The director shall sell or lease the land at a price determined by the director to represent the current fair market value of the unimproved land but in no event less than the cost of administration including survey if required. If the director determines in a written finding that the purchase or lease of the land would interfere with public use by residents of the area, the director may condition the purchase or lease to mitigate the adverse effects on the public use or may reject the application for the preference right. A lease granted under this subsection may not be for a period in excess of 50 years. In this subsection, "business purposes" means a purpose permitted under the classification of the land at the time the land was entered. (§ 5 art II ch 169 SLA 1959; am § 1 ch 57 SLA 1960; am §§ 2 — 4 ch 61 SLA 1960; am § 1 ch 55 SLA 1962; am § 1 ch 56 SLA 1964; am § 1 ch 98 SLA 1964; am § 1 ch 5 SLA 1965; am § 1 ch 58 SLA 1965; am § 1 ch 194 SLA 1968; am § 1 ch 164 SLA 1972; am §§ 2, 3 ch 257 SLA 1976; am §§ 1, 2 ch 176 SLA

Supplement



## Article 2. Sale of Land.

Section
67. Veterans preference

### Sec. 38.05.057. Disposal of land by lottery.

NOTES TO DECISIONS

**Physical presence requirement violates equal protection clause.** — The provision of subsection (a) requiring the physical presence of an applicant unfairly discriminates between local and non-local residents at each land lottery held, and therefore is in violation of the equal protection clause of the Alaska Constitution. Chambers v. State, Superior Court, 3rd Jud. Dist., C.A. No. 88-4634 (1989).

**Sec. 38.05.067. Veterans preference.** (a) Except as provided in (e) of this section, before offering to the general public any unoccupied residential land, the director shall offer the land at a restricted sale at which only veterans may buy.

(b) The director may not sell the land under this section at less than the fair appraised market value. The director shall adopt regulations necessary to ensure that land sold under this section is for bona fide residential use and not for speculation.

(c) When not in conflict with this section, other provisions of AS 38.05.045 — 38.05.067 apply to sales under this section.

(d) This section does not apply to the sale of state land under AS 38.04.020(g)(2) and AS 38.09.

(e) In this section, "veteran" means a person with 90 days or more of active service in the armed forces of the United States who has been honorably discharged or a person with 90 days or more of service in the Alaska Territorial Guard. (§ 4 art IV ch 169 SLA 1959; added by ch 102 SLA 1962; am § 1 ch 28 SLA 1963; am § 1 ch 1 SLA 1968; am §§ 28, 29 ch 85 SLA 1979; am § 35 ch 94 SLA 1980; am §§ 19, 20 ch 113 SLA 1981; am § 6 ch 103 SLA 1983; am § 16 ch 93 SLA 1991)

**Effect of amendments.** — The 1991 amendment, effective September 30, 1991, added "or a person with 90 days or more of service in the Alaska Territorial Guard" at the end of subsection (e).

## Article 3. Leasing of Lands Other Than for the Extraction of Natural Resources.

Section
73. Recreational facilities development leasing
75. Leasing procedures
82. Leases for shore fisheries development
85. Term of lease
105. Periodic rent adjustments

tery. If the commissioner does not receive an application for a parcel of state land or if a purchaser fails to sign a lease agreement or contract of sale, the parcel shall be offered to the first eligible person to apply for the parcel. If the parcel was designated as a homesite and offered to the public under former AS 38.05.047(f), the parcel shall be disposed of under the terms required by AS 38.08.

(g) After receiving the deposit required under (a) of this section, the director shall immediately issue a receipt containing a description of the land or property to be conveyed, the price of the land, and the terms of disposal. The receipt shall be acknowledged in writing by the purchaser.

(h) An aggrieved lottery participant may appeal to the commissioner within five days after the lottery is conducted for a review of the lottery procedures.

(i) The director may include in contracts for sale of land under this section terms which

(1) require purchasers to use or occupy, or both, the land purchased for a reasonable period of time after a sale;

(2) prohibit the resale of land purchased by the initial purchaser until the requirements imposed under (1) of this subsection, if any, are satisfied.

(j) The commissioner may require a participant in a lottery under this section for the sale of land that is part of an agricultural development project under AS 44.33.475 to submit a single application for that land. Immediately following the drawing of an applicant's name in the lottery, the applicant shall be given an opportunity to select for purchase one parcel of the land that is offered in the lottery. The names of alternate applicants shall be drawn after all parcels have been selected. If the applicant who originally selected a parcel unequivocally rejects the offer to purchase the parcel or fails to sign the contract of sale within the period of time specified by the commissioner, the parcel shall be offered for sale to alternate applicants in the order in which their names were drawn. (§ 4 ch 176 SLA 1978; am §§ 15 — 22 ch 85 SLA 1979; am § 16 ch 113 SLA 1981; am § 2 ch 129 SLA 1982; am § 5 ch 103 SLA 1983; am §§ 96, 97 ch 6 SLA 1984; am § 53 ch 21 SLA 1985)

**Revisor's notes.** — In the first sentence of (b) of the section, the words "an applicant" were substituted in 1984 for "a potential purchaser" in order to attain uniformity in terminology.

**Cross references.** — For terms required in a contract of sale for land sold under this section, see AS 38.05.065(b).

**Effect of amendments.** — The 1985 amendment deleted ", or if the purchaser elects to use land discounts granted under AS 38.05.058, five percent of the purchase price after deduction of the discount" at the end of subsection (a).

**Editor's notes.** — AS 44.33.475, referred to in subsection (j), was repealed by § 4, ch. 75, SLA 1979.

Section 17, ch. 75, SLA 1987 provides that "[a] land management and disposal decision, including a disposal under AS 38.05.057, AS 38.08, or AS 38.09, or a commercial agricultural project under AS 38.05.020(b)(6), made before June 16, 1987, under a classification order under

AS 38.05.300 is valid, notwithstanding the adoption of the classification order before the adoption of the regional land use plan, if other requirements of law were met."

**Opinions of attorney general** — The state cannot use an application process for its disposal of land near the boundaries of a city that gives preference to that city's residents with respect to lottery disposals under this section and probably also cannot do so with respect to homesite disposals under AS 38.08. July 15, 1985, Op. Att'y Gen.

NOTES TO DECISIONS

Quoted in Gilman v. Martin, 662 P.2d 120 (Alaska 1983); LeResche v. Lustig, 663 P.2d 542 (Alaska 1983); State v. Weidner, 684 P.2d 103 (Alaska 1984).

*Sec. 38.05.058. Land discount program. [Repealed, § 19 ch 67 SLA 1983.]*

**Sec. 38.05.059. Limitation on purchases of agricultural land.** A person may purchase from the state a total of not more than one parcel of land that is part of an agricultural development project under AS 44.33.475 during any eight-year period. (§ 3 ch 129 SLA 1982)

**Editor's notes.** — AS 44.33.475, referred to in this section, was repealed by § 4, ch. 75, SLA 1979.

**Sec. 38.05.060. Rejection of bids.** Before the signing of the formal conveyance by the director, the commissioner may reject all bids when the best interests of the state justify this action. Land offered at public sale but not sold may be made available at private sale for not less than its appraised value. (§ 2 art IV ch 169 SLA 1959; am § 9 ch 61 SLA 1960; am § 2 ch 137 SLA 1962)

NOTES TO DECISIONS

Cited in State v. University of Alaska, 624 P.2d 807 (Alaska 1981).

*Sec. 38.05.063. Sales for pipeline purposes. [Repealed, § 31 ch 3 FSSLA 1973.]*

**Sec. 38.05.065. Terms of contract of sale.** (a) The contract of sale for land sold at public auction under AS 38.05.055 shall require the remainder of the purchase price to be paid in monthly, quarterly or annual installments over a period of 20 years, with interest at the prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska at the time the contract is signed. Installment payments plus interest shall be set on the level-payment basis.

(b) The contract of sale for land sold under AS 38.05.057 or under former AS 38.05.078 shall require the remainder of the purchase price

**Sec. 38.05.069. Preference to persons for agricultural purposes.** (a) On a determination that the highest and best use of unoccupied land is for agricultural purposes and that it is in the best interests of the state to sell or lease the land, the commissioner shall grant to an Alaskan resident owning and using or leasing and using land for agricultural purposes a first option at the auction to purchase or lease the unoccupied land situated adjacent to land presently held by the Alaskan resident for the amount of the high bid received at public auction. If more than one Alaskan resident qualifies for a first option under this section, eligibility for the first option shall be determined by lot and the option must be exercised on the conclusion of the public auction. A parcel of agricultural land sold under this section may not be less than 20 acres and a parcel of agricultural land that is acquired by exercise of the option granted in this subsection may not exceed 320 acres. Agricultural land that is acquired under this section must be used for agricultural purposes as required by law.

(b) *[Repealed, § 88 ch 152 SLA 1984.]*

(c) Under this section

(1) the director may transfer state land classified for agriculture only for agricultural purposes;

(2) the sale or lease shall be at public auction.

(d) When not in conflict with this section, the provisions of AS 38.05.045 — 38.05.105 apply to disposals under this section.

(e) In this section,

(1) "agricultural purposes" includes farming, ranching, grazing, and storage or control of agricultural crops or livestock;

(2) "approximate vicinity" includes an area in which the land does not have a common boundary to presently held land or in which the land is physically separated from presently held land by any type of barrier.

(f) Nothing in (c) of this section affects the disposal of minerals under AS 38.05.135 — 38.05.183. (§ 1 ch 97 SLA 1965; am §§ 1, 2 ch 71 SLA 1976; am §§ 4 — 6 ch 257 SLA 1976; am § 30 ch 85 SLA 1979; am §§ 25, 26, 88 ch 152 SLA 1984)

Cross references. — For provision restricting the sale, lease or other disposal of agricultural land in a manner inconsistent with this section, see AS 38.05.321.

NOTES TO DECISIONS

Quoted in State v. Weidner, 684 P.2d 103 (Alaska 1984).

preference between conflicting applicants for the same lease site on the basis of qualifications, the director shall select between the applicants by lot. An aggrieved applicant may appeal to the commissioner within five days for a review of the director's determination.

(c) A lease for set net fishing may be issued for any period not exceeding 10 years. If the commissioner determines that the land is not being utilized for the purpose for which the lease is issued, the lease may be declared void. The director shall establish a reasonable rental for the lease, equal to the administrative costs involved in processing the leasehold applications.

(d) Subleasing and renewals of leases are governed by AS 38.05.095 and 38.05.102.

(e) The lease of submerged land conveys no interest in the water above the land or in the fish in the water. (§ 2 ch 93 SLA 1963; am § 99 ch 6 SLA 1984)

**Opinions of attorney general.** — This section, which authorizes shore fishery leases, does not create an exclusive right of fishery and therefore is not unconstitutional under § 15, art. VIII, of the state constitution. 1983 Op. Att'y Gen. No. 03.

This section can be amended to limit the issuance of state tidelands leases for fisheries development to residents of Alaska. 1983 Op. Att'y Gen. No. 03.

**Sec. 38.05.083. Aquatic farming and hatchery site leases.** (a) The commissioner may offer to the public for lease a site that has been developed for aquatic farming or related hatchery operations under a permit issued under AS 38.05.856. Before offering the site to the public, the commissioner shall offer the site to the permittee.

(b) A site shall be leased under this section for not less than the appraised fair market value of the lease. The value of the lease shall be reappraised every five years.

(c) A lease under this section may be assigned, but if the assignee changes the use of the site the lease reverts to the state.

(d) Before entering into a lease under this section, the commissioner shall require the lessee to post a performance bond or provide other security to cover the costs to the department of restoring the leased site in the event the lessee abandons the site. (§ 13 ch 145 SLA 1988)

**Cross references.** — For applicability to persons operating an aquatic farm or related hatchery on June 9, 1988, see § 18, ch. 145, SLA 1988 in the Temporary and Special Acts.

**Sec. 38.05.085. Term of lease.** (a) The lease shall provide that

(1) for the initial 25-year period of the lease, the lessee shall pay the state a fixed base annual rent to be agreed upon by the parties in compliance with the provisions of this chapter;

would bring in the open market with the same conditions of lease as offered by the state. (§ 3 art V ch 169 SLA 1959; § 11 ch 61 SLA 1960; § 4 ch 74 SLA 1961; am § 9 ch 138 SLA 1977; am §§ 8, 9 ch 182 SLA 1978)

**Revisor's notes.** — Subsection (g) of this section was reorganized in 1984 to place the defined terms in alphabetical order.

**Opinions of attorney general.** — The lease conversion provisions enacted by 1977 legislation (§§ 12, 13, ch. 138, SLA 1977, as amended by § 21, ch. 182, SLA 1978) applied only to those leases entered into under the substantive statutory provisions which were amended by the 1977 legislation. Hence, substantive amendments to AS 38.05 could not be applied to a lease which was not authorized by the leasing provisions of AS 38.05, but rather by the leasing provisions of AS 38.35, and the state was not estopped from challenging the validity of the terms of a wrongfully converted lease. December 10, 1985, Op. Att'y Gen.

NOTES TO DECISIONS

**Quoted** in Alyeska Ski Corp. v. Holdsworth, 426 P.2d 1006 (Alaska 1967).

**Sec. 38.05.087. Forest Service permittees' leasing preference.** (a) Before offering to the public any land for lease which is subject to a valid existing United States Forest Service permit in effect in a state-selected area on the day before the area was tentatively approved for patent to the state, the director shall offer the land for leasing to the permittee at not less than its fair appraised market value before offering it to the general public.

(b) When not in conflict with this section, the provisions of AS 38.05.070 — 38.05.105 apply to leases under this section. (§ 1 ch 26 SLA 1963; am § 3 ch 26 SLA 1979)

**Sec. 38.05.090. Removal or reversion of improvements upon termination of leases.** (a) Improvements owned by a lessee on state land shall, within 60 days after the termination of the lease, be removed by the lessee if removal will not cause injury or damage to the land. The director may extend the time for removing improvements in cases where hardship is proven. The retiring lessee or permittee may, with the consent of the director, sell improvements to the succeeding lessee or permittee.

(b) If improvements or chattels, or both, having an appraised value exceeding $10,000 as determined by the director are not removed within the time allowed, the improvements or chattels or both shall, upon notice to the lessee, be sold at public sale under the direction of the director. The proceeds of sale inure to the lessee who placed the improvements or chattels on the land after paying to the state all rents due and expenses incurred in making the sale. If there are no other bidders at the sale, the director may bid in the name of the state. The bid money shall be taken from the fund to which the land belongs

and the fund shall receive all money or other value subsequently derived from the sale or leasing of the improvements or chattels. The state acquires all the rights that any other purchaser could acquire by reason of the purchase.

(c) If improvements or chattels, or both, having an appraised value of $10,000 or less, as determined by the director, are not removed within the time allowed, they revert to the state and absolute title vests in the state. The preference right lessees of grazing or forest land may follow the provisions for removal of improvements upon termination of the lease as authorized in the cancelled federal lease or permit.

(d) Improvements of the lessee which have become fixtures of the land shall be purchased by the subsequent purchaser or lessee of the land if the improvements were authorized in the former lease or by permit from the director. Upon the termination of a lease, and at additional times which may be necessary, the value of the authorized fixtures remaining on the land shall be set by agreement between the former lessee and the director or, if agreement cannot be reached, by an independent appraisal made at cost to the former lessee.

(e) A notice or offer by the state to sell or lease formerly leased land shall state

(1) the value of the authorized fixtures remaining on the land;

(2) that the purchaser or lessee will be required, as a condition of the sale or lease, to purchase the fixtures from the former lessee for an amount equal to the value specified. (§ 4 art V ch 169 SLA 1959; § 12 ch 61 SLA 1960; § 5 ch 74 SLA 1961; am § 1 ch 140 SLA 1966)

NOTES TO DECISIONS

Cited in Swindel v. Kelly, 499 P.2d 291 (Alaska 1972).

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**Collateral references.** — 63A Am. Jur. 2d, Public Lands, § 35.
73A C.J.S., Public Lands, § 25.

**Sec. 38.05.095. Subleases.** (a) Except as provided in (b) of this section, a lessee may sublease or assign the leased land or a portion of it if, after application to the director, the director issues a permit. The director may issue a permit upon a finding that it is in the best interests of the state to do so.

(b) A nonprofit organization that is exempted from paying rent on state land under AS 38.05.810 may not sublease or assign the land or a portion of it on which it has a lease. (§ 5 art V ch 169 SLA 1959; am § 10 ch 182 SLA 1978; am § 29 ch 113 SLA 1981)

mining lease may not be exercised until the lease has been filed for record in the recording district where the land is located. (§ 4 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 2 ch 108 SLA 1981; am § 39 ch 152 SLA 1984; am §§ 1, 10 ch 101 SLA 1989)

**Revisor's notes.** — Minor word changes related to the recording of documents were made in this section in 1988 under § 42, ch. 161, SLA 1988.

**Effect of amendments.** — The 1989 amendment, effective August 31, 1989, repealed subsection (b) and, in subsection (c), rewrote the present first and second sentences and made a grammatical change.

**Editor's notes.** — Section 11, ch. 101, SLA 1989 provides that the 1989 amendments to (c) of this section "apply to mining claims, leasehold locations, and mining leases located before, on , or after August 31, 1989."

**Opinions of attorney general.** — Otherwise valid locations of prospecting sites or mining claims may be made on land subject to an unexercised right of repurchase, and any subsequent repurchaser would receive title encumbered by the rights which attach to such locations. January 12, 1984, Op. Att'y Gen.

NOTES TO DECISIONS

**Rents and royalties.** — Because they do not require rents or royalties, the state hardrock mineral leasing laws do not meet the leasing requirement of the Statehood Act, § 6(i). Trustees for Alaska v. State, Dep't of Natural Resources, 736 P.2d 324 (Alaska 1987), cert. denied, U.S. , 108 S. Ct. 2013, 99 L. Ed. 2d 699 (1988).

**Cited** in Moore v. State, 553 P.2d 8 (Alaska 1976).

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**Collateral references.** — 54 Am. Jur. 2d, Mines and Minerals, §§ 97 to 101, 120 to 147.

58 C.J.S., Mines and Minerals, § 164 et seq.

"Mine" as used in written instrument, 92 ALR2d 868.

**Sec. 38.05.207. Production license.** (a) An application for a production license shall be filed with the commissioner when a locator of a mining claim under AS 38.05.195 or a lessee of a mining location under AS 38.05.205 is prepared to produce minerals for sale in commercial quantities. The application shall state under oath the location of the land and ownership of the mineral deposits involved in the mining operation and the date production began or is expected to begin. Upon receipt of an application, the commissioner shall publish in a paper of general circulation in the area of the location notice of the application and notice that a production license will be issued. The notice may be combined with notices of other applications either in the same general area or statewide. Pending completion of this public notice requirement and issuance of the production license, the locator or lessee has the right to produce minerals from the property.

(b) If the commissioner determines under AS 38.05.185(b) that a locator or lessee has complied as nearly as possible under the circumstances of the case with the provisions of AS 38.05.185 — 38.05.275 and that no conflicting rights are asserted by any other person, the

commissioner shall issue a transferable production license for mineral extraction. If conflicting rights are asserted the commissioner may resolve the conflict. (§ 2 ch 87 SLA 1982)

**Cross references.** — For purpose and legislative finding, see § 1, ch. 87, SLA 1982, in the Temporary and Special Acts and Resolves.

**Opinions of attorney general.** — The production license requirement of this section apply to riverbeds that the state claims to own under § 6(m) of the Statehood Act as well as to lands tentatively approved to the state under § 6(a) and (b) of the Statehood Act. June 10, 1982, Op. Att'y Gen.

**Sec. 38.05.210. Annual labor.** (a) Labor shall be performed or improvements made annually on or for the benefit or development of each mining claim, leasehold location, and mining lease on state land except that where adjacent claims, leasehold locations, or mining leases are held in common, the expenditure may be made on any one claim, leasehold location, or mining lease. The commissioner shall establish the date of the commencement of the year during which the labor or improvements are to be performed. Labor shall be performed at the annual rate of $100 per claim or leasehold location, and $100 for each partial or whole 40 acres of each mining lease. If more work is performed than is required by this section to be performed in any one year, the excess value may be applied against labor required to be done during the subsequent year or years, for as many as four years. Instead of performing annual labor, the holder of a claim, leasehold location, or mining lease may make a cash payment to the state equal to the value of the labor required by this subsection.

(b) During the year in which annual labor is required or within 90 days after the close of that year, the owner of the mining claim, leasehold location, or mining lease, or some other person having knowledge of the facts shall record with the recorder of the district in which the claim, leasehold location, or mining lease is located a signed statement setting out the information, as may be required by the commissioner, concerning the annual labor of the preceding year, any labor in excess of that required for the preceding year, and any payment of cash instead of annual labor. The statement, properly recorded, is prima facie evidence of the performance of the labor. The failure of one of several co-owners to contribute the proportion of the expenditures required for annual labor from the co-owner shall be treated in accordance with AS 38.05.215 — 38.05.235.

(c) The statement of annual labor required in (b) of this section may be amended within two years of the date by which the annual labor statement was required to be recorded. An amended statement shall be recorded for record in the same manner as the original statement. Additional labor claimed in an amended statement may not be applied against labor required to be done during a subsequent year.

38.05.211

| Number of Years Since First Located | Rental Amount Per Acre for Mining Leases | Rental Amount for Each Mining Claim or Leasehold Location |
|---|---|---|
| 11 — or more | $2.50 | 100 |

(b) A claim, leasehold location, or mining lease located on or before August 31, 1989 is considered to have been first located on August 31, 1989 for purposes of determining the amount of rental under this section.

(c) The rental for each year shall be credited against the production royalty under AS 38.05.212 as it accrues for that year.

(d) The rental established under this section shall be revised each 10 years by the commissioner based on the consumer price index for Anchorage and published in regulations by the commissioner. (§ 4 ch 101 SLA 1989)

Cross references. — For due date of first payment under this section and other transitional provisions, see § 11, ch. 101, SLA 1989 in the Temporary and Special Acts.

**Sec. 38.05.212. Production royalty.** (a) In exchange for and to preserve the right to extract and possess the minerals produced, the holder of a mining claim, leasehold location, or mining lease, including a mining lease under AS 38.05.250, shall pay a royalty on all minerals produced from land subject to the claim, leasehold location, or mining lease during each calendar year.

(b) The production royalty is three percent of net income as determined under AS 43.65.

(c) The commissioner shall adopt regulations to implement this section and to provide for combined reporting and paying of production royalties for mining operations that include more than one mining claim, leasehold location, or mining lease. (§ 4 ch 101 SLA 1989)

Cross references. — For due date of first payment under this section and other transitional provisions, see § 11, ch. 101, SLA 1989 in the Temporary and Special Acts.

**Sec. 38.05.215. Notice to co-owners to contribute to cost of annual labor or improvements and forfeiture for failure to contribute.** If one of several co-owners fails to contribute the proportion of the expenditures required for annual labor from the co-owner, the co-owners who have performed the labor or made the improvements may, at the expiration of the annual labor year, give the delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days. If at the expiration of 90 days after the service of the notice in

revocation of a permit or easement of land, the director shall give preference to that use of the land which will be of greatest economic benefit to the state and the development of its resources. However, first preference shall be granted to the upland owner for the use of a tract of tideland, or tideland and contiguous submerged land, which is seaward of the upland property of the upland owner and which is needed by the upland owner for any of the purposes for which the use may be granted.

(b) The fee charged for a right-of-way approved under (a) of this section shall be waived by the commissioner if the right-of-way is for a transmission or distribution line established by a nonprofit cooperative association organized under AS 10.25 for the purpose of supplying electric energy and power, or telephone service, to its members, and the waiver is considered by the commissioner to be in the best interests of the state. (§ 7 art III ch 169 SLA 1959; am § 7 ch 61 SLA 1960; am § 4 ch 72 SLA 1972; am § 28 ch 3 FSSLA 1973; am § 13 ch 257 SLA 1976; am §§ 1, 2 ch 25 SLA 1979)

**Revisor's notes.** — Formerly AS 38.05.330. Renumbered in 1984.

**Opinions of attorney general.** — A special land use permit may be revoked or terminated given a permittee's death and his earlier unauthorized attempt to transfer it. December 15, 1983, Op. Att'y Gen.

NOTES TO DECISIONS

**Quoted** in Swindel v. Kelly, 499 P.2d 291 (Alaska 1972).

**Cited** in Chevron U.S.A., Inc. v. LeResche, 663 P.2d 923 (Alaska 1983).

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**Collateral references.** — 63A Am. Jur. 2d, Public Lands, §§ 31 to 35.

**Sec. 38.05.855. Identification of sites for aquatic farms and hatcheries.** (a) The commissioner shall identify districts in the state within which sites may be selected for the establishment and operation of aquatic farms and related hatcheries required to have a permit under AS 16.40.100.

(b) The commissioner shall schedule at least one 60-day period each year during which a person may submit an application that identifies a site in a district for which the person wishes to be issued a permit under AS 38.05.856.

(c) Based on applications received under (b) of this section, and after consultation with the commissioner of fish and game and the commissioner of environmental conservation, the commissioner shall make a preliminary written finding under AS 38.05.035(e) that proposes sites in each district for which permits may be issued under AS 38.05.856.

(d) After notice is given under AS 38.05.945 and a hearing is held under AS 38.05.946(b), the commissioner shall issue a final written finding under AS 38.05.035(e) that identifies sites in each district for which permits shall be issued under AS 38.05.856 and that specifies conditions and limitations for the development of each site. (§ 14 ch 145 SLA 1988)

**Sec. 38.05.856. Tideland and land use permits for aquatic farming.** (a) The commissioner may issue a tideland or land use permit for the establishment and operation of an aquatic farm and related hatchery operations. A permit under this section is valid for three years after the date of issuance. The permit may not be transferred.

(b) Before renewing a permit under this section, the commissioner shall allow interested persons to submit written or oral testimony concerning the renewal to the commissioner within 30 days after the date of the notice. The commissioner may hold a hearing to take testimony.

(c) Before issuing or renewing a permit under this section, the commissioner shall consider all relevant testimony submitted under this section or AS 38.05.946(b). The commissioner may deny the application for issuance or renewal for good cause, but shall provide the applicant with written findings that explain the reason for the denial.

(d) Before issuing or renewing a permit under this section, the commissioner shall require the permittee to post a performance bond or provide other security to cover the costs to the department of restoring the permitted site in the event the permittee abandons the site.

(e) The commissioner shall adopt regulations establishing criteria for the approval or denial of permits under this section and for limiting the number of sites for which permits may be issued in an area in order to protect the environment and natural resources of the area. The regulations must provide for the consideration of upland management policies and whether the proposed use of a site is compatible with the traditional and existing uses of the area in which the site is located. (§ 14 ch 145 SLA 1988)

**Cross references.** — For applicability to persons operating an aquatic farm or related hatchery on June 9, 1988, see § 18, ch. 145, SLA 1988 in the Temporary and Special Acts.

**Opinions of attorney general.** — The Department of Natural Resources should adopt regulations under this section and AS 41.21 if appropriate, separately or in combination, before beginning the application process for siting and aquatic farming permits, and should treat those permits as disposal of land with the attendant statutory requirements. When compatible with the statutory purposes of a park, an aquatic farming permit for a park must be revocable at will, and no leases should be authorized there. September 13, 1988, Op. Att'y Gen.

The Department of Natural Resources has the discretion to reasonably interpret § 18, ch. 145, SLA 1988, and decide which categories of individuals had been "lawfully operating" an aquatic farm on the effective date of the legislation, which individuals are permitted to continue oper-

**Sec. 38.05.945. Notice.** (a) This section establishes the requirements for notice given by the department for the following actions:

(1) classification or reclassification of state land under AS 38.05.300 and the closing of land to mineral leasing or entry under AS 38.05.185;

(2) zoning of land under applicable law;

(3) a decision under AS 38.05.035(e) regarding the sale, lease, or disposal of an interest in state land or resources;

(4) a competitive disposal of an interest in state land or resources after final decision under AS 38.05.035(e);

(5) a public hearing under AS 38.05.856(b);

(6) a preliminary finding under AS 38.05.035(e) and 38.05.855(c) concerning sites for aquatic farms and related hatcheries.

(b) Notice of one or more actions described in (a) of this section shall be given at least 30 days before the action by publication in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action and one or more of the following methods:

(1) publication through public service announcements on the electronic media serving the area affected by the action;

(2) posting in a conspicuous location in the vicinity of the action;

(3) notification of parties known or likely to be affected by the action; or

(4) another method calculated to reach affected persons. A notice shall contain sufficient information in commonly understood terms to inform the public of the nature of the action and the opportunity of the public to comment on the action.

(c) Notice at least 30 days before action under (a) of this section shall also be given to the following:

(1) to a municipality if the land is within the boundaries of the municipality, to a coordinating body established by community councils in a municipality if the coordinating body or a community council within the area served by a coordinating body requests notice in writing: if there is no coordinating body within the municipality, notice shall be provided to each community council established by the charter or ordinance of the municipality if the land is located within the boundaries of the municipality and if the community council requests notice in writing;

(2) to a regional corporation if the boundaries of the corporation as established by sec. 7(a) of the Alaska Native Claims Settlement Act encompass the land and the land is outside a municipality;

(3) to a village corporation organized under sec. 8(a) of the Alaska Native Claims Settlement Act if the land is within 25 miles of the village for which the corporation was established and the land is located outside a municipality;

(4) to the postmaster of a permanent settlement of more than 25 persons located within 25 miles of the land if the land is located outside a municipality, with a request that the notice be posted in a conspicuous location;

(5) to a nonprofit community organization or a governing body that has requested notification in writing and provided a map of its boundaries, if the land is within the boundaries.

(d) Notice at least 30 days before action under (a)(5) or (6) of this section shall be given to appropriate

(1) regional fish and game councils established under AS 16.05.260; and

(2) coastal resource service areas organized under AS 46.40.110 — 46.40.210.

(e) Notice is not required under this section for a permit or other authorization revocable by the department.

(f) The provisions of this section do not apply to a lease issued under AS 38.05.205.

(g) The provisions of this section do not apply to a production license issued under AS 38.05.207.

(h) Failure to give notice under this section to a community council, a coordinating body established by community council, or an organization listed in (c)(5) of this section does not constitute a legal basis for invalidation or delay of the action. (§ 10 art III ch 169 SLA 1959; am § 8 ch 61 SLA 1960; am § 2 ch 74 SLA 1961; am § 3 ch 117 SLA 1976; am § 14 ch 257 SLA 1976; am §§ 39, 40 ch 85 SLA 1979; am § 4 ch 108 SLA 1981; am § 36 ch 113 SLA 1981; am § 3 ch 87 SLA 1982; am §§ 44 — 46 ch 152 SLA 1984; am §§ 6, 7 ch 100 SLA 1988; am §§ 15, 16 ch 145 SLA 1988; am § 5 ch 124 SLA 1990)

**Effect of amendments.** — The 1990 amendment deleted "Except for oil and gas leasing under AS 38.05.180 and geothermal leasing under AS 38.05.181" from the beginning of subsection (c).

NOTES TO DECISIONS

**Quoted in Trustees for Alaska v. State, Dep't of Natural Resources, 795 P.2d 805 (Alaska 1990).**

**Sec. 38.05.965. Definitions.** In this chapter, unless the context otherwise requires,

(1) "acquired land" means land belonging to the state including tide, submerged and shoreland which has been obtained by escheat, purchase, or any means other than by general land grant;

(2) "agricultural land" means land chiefly valuable for agricultural purposes;

(3) "commissioner" means the commissioner of natural resources;

(4) "department" means the Department of Natural Resources;

curs as a consequence of unitization since such extension is a measure to enhance the feasibility of unitized operation, not a disposal action. November 25, 1977, Op. Att'y Gen.

NOTES TO DECISIONS

**Chapter enacted pursuant to Alaska Const., art. VIII, § 10.** — Pursuant to Alaska Const., art. VIII, § 10, the legislature enacted the Alaska Land Act, the provisions of which are now found in AS 38.05.005 through 38.05.370 (now 38.05.990). Moore v. State, 553 P.2d 8 (Alaska 1976).

**The supreme court is unwilling to hold that notice is purely a matter of agency regulation** under this chapter, especially in light of the constitutional concern with notice expressed in Alaska Const., art. VIII, § 10. Moore v. State, 553 P.2d 8 (Alaska 1976).

**Insufficient notice.** — Where the last publication in a newspaper was less than a week prior to the sale, there was not sufficient notice pursuant to this section. Moore v. State, 553 P.2d 8 (Alaska 1976).

**When newspaper is one of general circulation.** — A newspaper which contains news of general interest to the community and reaches a diverse readership is one of general circulation. Moore v. State, 553 P.2d 8 (Alaska 1976).

**Sec. 38.05.946. Hearings.** (a) A municipality or a corporation entitled to receive notice under AS 38.05.945(c) may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the commissioner shall attend the hearing. The commissioner has discretion to hold a public hearing.

(b) The commissioner shall hold a public hearing in each district identified under AS 38.05.855 within 30 days after giving notice of a preliminary finding under AS 38.05.035(e) and 38.05.855(c) concerning sites for aquatic farms and related hatcheries. (§ 36 ch 113 SLA 1981; am § 17 ch 145 SLA 1988)

**Revisor's notes.** — Enacted as AS 38.05.345(d) and renumbered as AS 38.05.346 in 1981. Renumbered again in 1984.

**Effect of amendments.** — The 1988 amendment, effective June 9, 1988, added subsection (b).

**Sec. 38.05.950. Interference with bidding prohibited; penalties.** A person who bargains, contracts, or agrees, or attempts to bargain, contract, or agree with another that the other may not bid freely upon or purchase any parcel of land of the state offered at public sale; or by intimidation, combination, or unfair management, hinders, prevents, or attempts to hinder or prevent, a person from bidding upon or purchasing a tract of land offered for sale is punishable by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both. (§ 3 (e) art XIII ch 169 SLA 1959; added by § 22 ch 61 SLA 1960)

**Revisor's notes.** — Formerly AS 38.05.355. Renumbered in 1984.

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

(c) The commissioner may reserve or exclude from a patent easements or rights-of-way for roads, trails, trap lines, public access ways, utility corridors, and transportation facilities.

(d) A patent to homestead entry land not purchased under AS 38.09.090 shall provide that the land may not be subdivided before five years after the issuance of patent.

38.09.050

(e) A patent to homestead entry land purchased under AS 38.09.090 shall contain the following conditions:

(1) the land may not be sold, leased, or otherwise conveyed until at least five years after the date that the patent is issued except under the provisions of AS 38.09.030(c); and

(2) the land may not be subdivided before ten years after the issuance of patent. (§ 1 ch 103 SLA 1983; am § 53 ch 152 SLA 1984; am § 15 ch 75 SLA 1987; am § 6 ch 123 SLA 1988)

**Effect of amendments.** — The 1987 amendment in subsection (a) in paragraph (2) substituted "five" for "two" and deleted "or under AS 38.09.040(b)" at the end of the paragraph, inserted "not described by aliquot parts or as a lot of record" in paragraph (4) and substituted "cropland" for "land having class II or III" in paragraph (5).

The 1988 amendment, effective June 9, 1988, rewrote paragraph (a)(2), which read "completes an approved survey of the land within five years after the issuance of the permit."

NOTES TO DECISIONS

**Applied** in Alaska Survival v. State, Dep't of Natural Resources, 723 P.2d 1281 (Alaska 1986).

**Sec. 38.09.060. Marking boundaries.** If it is impractical to brush the boundaries of a homestead entry, an applicant shall flag the boundaries. (§ 1 ch 103 SLA 1983)

**Sec. 38.09.070. Priority of applications.** The commissioner shall issue a homestead entry permit to the first applicant for land to comply with AS 38.09.020(b). (§ 1 ch 103 SLA 1983)

**Sec. 38.09.080. Land within municipalities.** (a) If a municipality has filed a selection of state land under AS 29.65 or former AS 29.18.201 — 29.18.213 with the commissioner, the state land selected may not be designated for homestead entry; if the commissioner determines that land selected by a municipality is not available for patent to the municipality under AS 29.65 or former AS 29.18.201 — 29.18.213, the state land is available for designation by the commissioner for homestead entry under AS 38.09.010.

Chapter 27

the applicant to utilize the location to its maximum potential, and other factors relevant to the equitable assignment of the disputed area. If the director cannot determine a preference between conflicting applicants for the same lease site on the basis of qualifications, the director shall select between the applicants by lot. An aggrieved applicant may appeal to the commissioner within 30 [FIVE] days for a review of the director's determination.

38.05.082(b)

* Sec. 3. AS 38.05.082(b) is amended to read:

(b) The director may classify land as subject to leases for fisheries development, and [IN AN AREA OR REGION OF THE STATE FOR WHICH A LAND USE PLAN HAS NOT BEEN ADOPTED UNDER AS 38.04.065, THE DIRECTOR MAY CLASSIFY LAND FOR LEASE UNDER THIS SECTION AFTER NOTICE UNDER AS 38.05.945. THE DIRECTOR SHALL] publicly invite applications for lease of the selected areas. Each application shall be accompanied by an affidavit to the effect that the applicant presently intends to personally utilize the leased area for fishing purposes the following season. If two or more applications are received for the same shore area, the director shall award the lease to the most qualified applicant. In determining the qualifications of applicants, the director shall consider the length of time during which the applicant has been engaged in set netting, the proximity of the past fishing sites of the applicant to the land to be leased, the present ability of the applicant to utilize the location to its maximum potential, and other factors relevant to the equitable assignment of the disputed area. If the director cannot determine a preference between conflicting applicants for the same lease site on the basis of qualifications, the director shall select between the applicants by lot. An aggrieved applicant may appeal to the commissioner within 30 days for a review of the director's determination.

* Sec. 4. COMPLETION OF LAND USE PLANS. The commissioner of natural resources is directed to adopt a land use plan under AS 38.04.065 by January 1, 1997, for an area or region of the state containing tideland having shore fisheries development activities for which a land use plan has not already been adopted.

* Sec. 5. Section 3 of this Act takes effect January 1, 1997.

Eff. § 3 takes effect 1/1/97; remainder of Act takes effect 6/12/91

* Sec. 6. Except for sec. 3 of this Act, this Act takes effect immediately under AS 01.10.070(c).

§ 38.05.077

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From 1982 Cammulative Supplement



(3) certify that he has not previously leased a remote parcel from the state within eight years immediately preceding the date of staking a remote parcel. (§ 1 ch 157 SLA 1968; am § 1 ch 18 SLA 1973; am § 31 ch 85 SLA 1979; AS 38.05.078(g), (h); am §§ 22 — 25, 28, 45 ch 113 SLA 1981)

**Revisor's notes.** — Subsection (i) of this section, as enacted, was designated as subsection (g) and was redesignated by the revisor of statutes under AS 01.05.031.

In the first sentence of subsection (c), the words "under (i)" were substituted for "under (g)" by the revisor of statutes pursuant to AS 01.05.031.

**Effect of amendments.** — The 1979 amendment rewrote this section.

The 1981 amendment so changed this section as to make a detailed comparison impracticable. Among other changes, the amendment rewrote subsection (a), repealed subsection (b)(2) which read "the maximum amount of land in a remote parcel that may be used for residential purposes," and added subsection (d)(4) and subsections (g), (h) and (i).

**Editor's notes.** — As to designation of land for disposal under the open-to-entry program and assessment of supply and demand under such program, sec §§ 1 and 2, ch. 181, SLA 1978, in the 1978 Temporary and Special Acts and Resolves.

Subsections (g) and (h) of this section were originally enacted as AS 38.05.078 (g) and (h) and were transferred by the revisor of statutes pursuant to AS 01.05.031.

Section 46, ch. 113, SLA 1981 provides: "A person who selected a remote parcel or acquired a right to select a remote parcel before July 1, 1981, is entitled to convert his remote parcel lease agreement to a new lease agreement that contains terms and conditions consistent with AS 38.05.077(a) and (d), 38.05.078(a) and (c) and the repeal of AS 38.05.078(b) enacted in secs. 22, 24, 26, 27, and 45 of this Act. The director of the division of lands, Department of Natural Resources, shall prepare and distribute new lease forms to persons described in this section. The director shall apply rent paid in excess of the rental established in AS 38.05.077(d)(3) enacted in sec. 24 of this Act to rental payments coming due after July 1, 1981, or to the purchase of a remote parcel after July 1, 1981."

Section 49, ch. 113, SLA 1981, provides: "The commissioner of natural resources may disallow a municipal selection of mental health lands allowed under sec. 1(b), ch. 181, SLA 1978 if the commissioner determines that the municipality is not complying with land disposal requirements in chapter 181, SLA 1978."

1982 Cammulative Supplement

**Sec. 38.05.078. Purchase of land in a remote parcel.** (a) A lessee of a remote parcel may purchase the land if, before expiration of the lease or a renewal of the lease, he surveys the land.

(b) Repealed by § 45 ch 113 SLA 1981.

(c) Upon payment to the commissioner of an amount equal to five percent of the fair market value, a lessee of a remote parcel may purchase land in a remote parcel area under the terms specified in AS 38.05.065. The purchase price shall be the fair market value of the remote parcel as determined by the commissioner at the time of lease.

(d) In addition to the terms specified in AS 38.05.065(b), a contract of sale for land in a remote parcel shall contain the following conditions:

(1) the land may not be sold, leased, or otherwise conveyed before 10 years after the date that the contract of sale is signed by the purchaser, but title to the land may devolve by testate or intestate succession; and

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(2) the land may not be subdivided before 10 years after the date that the contract of sale is signed.

(e) If a purchaser of land described in (a) and (b) of this section fails to comply with the conditions in the contract of sale required by (d) of this section, the contract of sale is void and the purchaser forfeits all rights in and title to the land. The commissioner shall request the attorney general to bring an action to eject the purchaser from the land and to declare the right of reentry of the state.

(f) In this section, "habitable dwelling" means a single-family dwelling, together with fixtures and facilities, including sanitary facilities required or customary in the vicinity of the land, and does not include a mobile home unless it is placed on a permanent foundation. (§ 32 ch 85 SLA 1979; am §§ 26, 27, 45 ch 113 SLA 1981)

**Effect of amendments.** — The 1981 amendment rewrote subsections (a) and (c). The amendment also repealed subsection (b) which provided for purchase of land in remote parcels by lessees and for the adoption of regulations by the commissioner.

**Editor's notes.** — Section 46, ch. 113, SLA 1981 provides: "A person who selected a remote parcel or acquired a right to select a remote parcel before July 1, 1981, is entitled to convert his remote parcel lease agreement to a new lease agreement that contains terms and conditions consistent with AS 38.05.077(a) and (d), 38.05.078(a) and (c) and the repeal of AS 38.05.078(b) enacted in secs. 22, 24, 26, 27, and 45 of this Act. The director of the division of land, Department of Natural Resources, shall prepare and distribute new lease forms to persons described in this section. The director shall apply rent paid in access of the rental established in AS 38.05.077(d)(3) enacted in sec. 24 of this Act to rental payments coming due after July 1, 1981, or to the purchase of a remote parcel after July 1, 1981."

**Sec. 38.05.079. Remote cabin permit.** (a) After September 1, 1980, the commissioner may issue a permit for the use of remote state land in a municipality for a cabin site if the land is classified for that purpose under AS 38.05.047(a)(5)(B). After September 1, 1981, the commissioner may issue a permit for the use of remote state land outside a municipality for a cabin site if the land is classified for that purpose under the procedures required by AS 38.05.300 and 38.05.305.

(b) The fee for a remote cabin permit is $100 a year. The commissioner shall establish regulations which specify the application procedures for and the terms and conditions of a remote cabin permit. A permit must be for a term of not less than 25 years, and may be assigned by the original permittee during the term of the permit.

(c) A remote cabin permit may be terminated by the commissioner before the expiration of the term of the permit if a permittee fails to use the land under permit in the manner required by the terms of the permit. After termination of a remote cabin permit, improvements or personal property on the land subject to the permit shall be managed in the same manner as required by AS 38.05.090.

(d) If land subject to a remote cabin permit is offered for sale or long-term lease, the commissioner shall first offer to sell or lease the land to the permittee or his assigns. The land shall be sold for its fair market value. (§ 32 ch 85 SLA 1979)



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*** These provisions would give DNR extraordinary latitude in determining and even predicting forest health, employment levels and timber values** while removing from the decision-making process, the wisdom of local residents and the concerns of the public which owns and uses these resources.

*** Salvages sales would create a loophole allowing large scale, negotiated timber sales of up to 25 years** to occur in areas such as the Kenai Peninsula -- all exempt from the planning process required in other timber sales.

***Under current Title 38 regulations, DNR can complete the timber sale process in less than 2 years.** Salvage sales should be unnecessary if DNR efficiently and competently plannned sales under existing law.

W. Dunne
3/19/94

Alaska Environmental Lobby, Inc.
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Phone: 907-463-3366
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# HB 515 / SB 339: Changes to Title 38, Management of State Land and Resources

HB 515 and SB 339 amend or repeal a broad spectrum of Title 38, the body of statute which determines how Alaska's natural resources are managed. These bills are very complex, proposing changes in the state's management of lands, waters, forests, mineral deposits, gas and oil. While many of the revisions proposed are simple "housekeeping" measures attempting to increase efficiency and eliminate redundancy, other revisions may substantially reduce public involvement and cause adverse impacts to our natural resources as well as to recreational and subsistence activities on state lands and waters. The Administration has stated that this bill will potentially impact every resident of Alaska.

AEL has little or no objection to the majority of proposed changes to Title 38. We agree with the administration that certain provisions in Title 38 are outmoded and that some updating is required in order to comply with court decisions and constitutional issues. **However, we feel that other provisions will cause great harm to our environment and need to be addressed separately.**

Section 20 of HB 515/SB 339 would allow DNR to offer "salvage sales" of timber that it has determined will lose economic value due to insects, disease or fire within two years.

Section 21 would give DNR the power to negotiate timber sales in areas where certain conditions exist or will exist within two years. These conditions include high levels of unemployment or timber which will lose its economic value due to insects, disease or fire.

AEL opposes Sections 20 and 21 of HB 515/SB 339:

* **Salvage timber sales as proposed would be exempt from existing size limits, public involvement, and reforestation provisions of state law.** Consideration would only be given to the economic value of timber while other economic values such as subsistence, recreation, fish and wildlife and other forest products would be ignored.

* **Many biologists and forest ecologists believe that forest insect epidemics are often self-regulating and can actually improve wildlife habitat.** Records indicate that bark beetle outbreaks in Alaska have occurred regularly over the past 70 years, without undue effects to overall forest health. However, forest health problems are often associated with poor logging practices, road building and seismic line activities. As DNR acknowledges, cutting down the forest does not solve forest health problems.

**OVER**

Alaska Forest Association, Inc.

111 STEDMAN SUITE 200
KETCHIKAN, ALASKA 99901-6699
Phone 907-225-3114
FAX 907-225-5920

POSITION OF ALASKA FOREST ASSOCIATION
IN SUPPORT OF THOSE SECTIONS RELATING
TO FOREST MANAGEMENT IN HB 515 & SB 339

MARCH 15, 1994

AFA is in support of Sections 20 and 21 relating to HB 515. We believe these provisions will be beneficial in the long term sustainable management of our forests.

Periodically, forest health situations dramatically impact our forests. This is currently being exhibited on the Kenai Peninsula and the spruce bark beetle infestation. This situation will eventually destroy the health of the forest if it goes unchecked.

Section 20 of HB 515 and SB 339 would provide the Division of Forestry with the tools to quickly respond to forest health problems. This provision would allow, in times of emergency, for the Department of Forestry to move expediently to check insect or disease outbreaks. The current situation where only sales below 500 mmbf can be negotiated and where a timber sale must appear two years in a row as part of the five year sale program before auction makes responsive forest health management very difficult.

Timber is a valuable commodity. The current situation in the Pacific Northwest and the vast timber resources of Alaska will only make this more true.

Many of the communities of Southeast Alaska lie in the heart of Alaska's sustainable but undeveloped timber resources. Unfortunately, almost every one of these communities have high levels of unemployment. Section 21 of this Bill would help rectify this situation.

This section would especially help in responding to forest health issues such as the beetle outbreak on the Kenai Peninsula. Being able to quickly respond to such challenges is essential in protecting wildlife, fisheries and economic values.

AFA fully supports those Sections of HB 515 and SB 339 relating to forest management.

Alaskan Shellfish Growers Association

**Rep. Bill Williams, chair**
**House Resources Committee**
**P.O. Box V**
**Juneau, AK 99811**

**Dear Rep. Williams:**

The purpose of this letter is to express concern over the provisions of House Bill 515 relating to aquatic farming and hatchery site leases.

While the Alaskan Shellfish Growers Association (ASGA) hasn't yet taken a position on this bill, the measure is nearly identical to legislation the organization has opposed in the past. I have scheduled an ASGA board of directors conference call to discuss the measure on April 4, 1994, and I fully anticipate a similar outcome.

Our rationale for opposing the proposed changes could be expressed by the axiom "if it ain't broke, don't fix it." ASGA has worked very closely the agencies involved with the aquatic farm permitting process, and over the course of the past five years we've been able to make a difficult process work.

Discussions with the Alaska Department of Natural Resources have failed to reveal any real gain for the industry from the proposed changes. In fact, we believe the elimination of the present permitting program will significantly slow down the issuance of new permits and will severely hamper the continued development of our embryonic industry.

DNR argues that the legislation will reduce program costs by eliminating unnecessary mandatory public notice and hearings, but the reality is that decreased public involvement is far more likely to result in far more costly appeals and outright opposition to any new aquatic farm. We also have consistently pointed out to DNR that administrative remedies are available for eliminating public hearings in every village where a farm is proposed.

Perhaps, DNR believes the proposal will lower administrative costs by decreasing the number of applications submitted. While this logic may be sound, we thought Governor Hickel and the Alaska Legislature was committed to economic development in rural Alaska.

**Sincerely,**

Rodger Painter

**Rodger Painter, president**

c.c. Gov. Walter J. Hickel

WRITTEN TESTIMONY ON HB 515

# SALVAGE LOGGING: HEALTH OR HOAX?

*Dr. Robert Hrubes, a PFF advisor, walks out a healthy green pine salvaged on the Sequoia National Forest. PFF Photo*

*The author, Roy Keene, is a forestry consultant and tireless monitor of public forest practices. He directs the Eugene-based Public Forestry Foundation, an advocacy group which seeks to renew public forest management.*

Yes, there really is a forest health problem in the inland pine and mixed conifer forest of the western Pacific states. There is also indication that we will soon be facing similar forest health problems in parts of the drier westside forests. Degradation of once healthy forests has been caused essentially by poor stewardship. The most evident aspects of human mismanagement are:

•the market driven high-grading of the largest overstory trees such as pine and larch;

•the suppression of natural fire, a vital "reset-button" for most inland forest ecosystems;

•the destruction of long-term soil productivity by heavy-handed site preparation and soil compaction from overly frequent tractor logging;

•the reduction of forest stand density to below-minimum basal area standards; and

•the loss of riparian forest cover on the watershed level.

The real debate is not whether there is a forest health problem. The debate is over *how* to respond to it and what activities are proposed to relieve it. The focus (and funded part) of our management agencies' current efforts to restore forest health is now concentrated on one activity: salvage logging. Historically, too much logging has helped cause the forest health problem. Can more logging cure the sick forest?

## The Meaning of Salvage

The word salvage is derived from an old French word, *solver*, meaning to rescue, save or to heal as in the word "salve." The Organic Act of 1897, passed six years after the establishment of our National Forest system, echoed this concept when it permitted mortality-risk logging, "For the purpose of preserving the living and growing timber and promoting the younger growth." Gifford Pinchot's early forestry manual added shape to the Organic Act by calling for "conservative lumbering to maintain and increase the productivity and the capital value of forest land; harvest the yield more completely although less rapidly; encourage and preserve the young growth; and tend to keep out fires, drawing from the forest the best return while protecting it." Had we followed the spirit of this advice over the course of the years, we might not have an inland forest health problem today.

Borrowing from the definition of salvage, the words and intent of the Organic Act, and the tenets of one of forest conservation's fathers, I would suggest that today's salvage activities meet, as a minimum, some of these well-proven historical standards:

•Forest health salvage logging should rescue, save, or heal the site, not impact it further.

•Salvage activities should focus on preserving living and growing timber and promote younger growth, particularly in shade-intolerant species.

•Salvage activities should maintain or increase productivity as well as the capital value of the stand.

•Salvage harvesting should be efficient, yet not too rushed.

•Salvage activities should help reduce fuel levels and fire hazards.

•Salvage activities should not draw further from the forest without first protecting it.

## Salvage Gets Corrupted

Although salvage activities in our public forests were fostered by doctrines of prudent forest management, salvage forestry has been bastardized and subsidized to serve special interests. Since the 1960s, management agencies and the timber industry have focused salvage activities on logging to produce budget and profit windfalls. To facilitate continuing windfalls, salvage logging has been protected from normal public forestry reviews and controls. It has often become an excuse to "draw from the forest" without normal levels of social, economic, or biological protection.

The National Forest Management Act of 1976 (NFMA) paid homage to this sacred right to salvage. NFMA says, "Harvest size limits shall not apply to the size of acres harvested as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm." NFMA also says, "Tree stands generally must reach their culmination of mean annual increment prior to harvest. This requirement shall not preclude salvage or sanitation harvesting of stands which are substantially damaged by fire, wind throw, or imminent danger from insect and disease attack."

What do our forest managers interpret as "catastrophic conditions," "substantial damage," or "imminent danger?" They may consent to the science that fire, insects, disease, and wind are all vital components of a healthy forest ecosystem, but they still react as though natural disturbances are the enemy of healthy forests. The bureaucratic overreaction to natural disturbance is enforced by budgets, tree farm mentalities, and the politically influential timber industry.

Modern timber companies, particularly the multi-state corporations, have long used multi-regional strategies to keep public logs rolling into their yards. There was little interest in eastside forest health during the spruce budworm epidemics of the early 1970s, when higher value westside old-growth was plentiful. But when the cut in westside Region 6 was temporarily stymied by the spotted owl injunctions, industry took a sudden interest in inland forest health and the Sierran forest fire hazard. They quickly convinced Congress and the Bush Administration to expedite salvage logging as a cure-all. This led to further enhancement of salvage logging as a sacred cow with Executive Orders, administrative intimidation, and further NEPA loopholes to expedite logging.

***Continued on page 4***

**Association of Forest Service Employees for Environmental Ethics**
**PO Box 11615**
**Eugene OR 97440**

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***The forest salvage issue is complex. There are opportunities to utilize prudent salvage to restore forest health, but they will not necessarily produce market-desirable timber.Behind the smoke screen of timber production-biased salvage logging, there are some sincere restorative activities.***

Current salvage logging has produced a replacement supply of undervalued logs, often from the far corners of inland western regions. This undervaluing allows mills in Oregon's Willamette Valley to profitably truck or "tail" timber in from far away salvage sales in Washington, California, Idaho, and Utah, as well as the relatively near eastside of Oregon. I call this the "waterbed allowable cut" (WAC): When the cut is pushed down in one place, it pops up in another. This time the cut has resurfaced in the form of salvage logging, candy-coated for the Congressional conscience with ecological phrases like "fire prevention" or "forest health."

## Data-Free Analysis?

In some rural forests dominated by local mills, there is little pretense in salvage timber sales of addressing real forest health or fuel loading problems. This lack of concern for our forests in favor of the "cut" is supported by scant research, thin environmental assessments, and a general lack of publicly available information on forest stands marked for salvage logging.

When Public Forestry Foundation's staff foresters reviewed a great number of salvage EAs and EISs, including the acclaimed Blue Mountain Forest Health Report, they found little information on actual tree mortality broken down by previous activity history, site quality, tree species, age classes, or stem diameters. This lack of data allows forest stands to be conveniently lumped together and the remnant market-desirable trees like pine, larch, and Douglas-fir (usually the least affected by a "catastrophe") to be removed with or instead of smaller, white-wood stems.

It is these stands of smaller, younger true fir and spruce that generally have the highest observable mortality (usually due to budworm and pathogens) and, conversely, the lowest market value. These shade-tolerant, understory stands were regularly thinned or removed by frequent historic fires as well as by insect defoliation and pathogens. Today, in many areas, defoliators like spruce budworm are functioning as a natural backup system to reduce crowded, shade-tolerant understories in the absence of fire.

## Cautions

The forest salvage issue is complex. There are opportunities to utilize prudent salvage to restore forest health, but they will not necessarily produce market-desirable timber. Behind the smoke screen of timber production-biased salvage logging, there are some sincere restorative activities. Consequently, citizens attempting to block salvage logging need to be careful not to throw the baby out with the bath water. Judgment calls made from desktops, highways, or airplanes will not be as productive as site-level visits in providing intelligent, site-specific monitoring and reporting. These visits will help separate the bad from the good, allowing us to expound models and build standards from them. Identifying good models and standards will help expose and correct misguided salvage activities and will also allow us to renew and redefine the original mission and concept of forest salvage.

In the next couple of years, we will see many inland districts produce a much larger portion of their timber quotas from salvage sales. This could be beneficial if we can capture mortality without degrading the site and can count salvage toward green tree allowable sale quantities. Current regulatory exemptions for salvage sales will be stretched far and wide. Lawsuits may create opportunities for change, but will not foster change in themselves. The power to change salvage logging from a scam to produce substitute timber supplies at the expense of forests and taxpayers into a sincere effort to restore dysfunctional forest ecosystems is vested in an intelligently concerned public.

Looking back into history and considering today's growing human populations and shrinking forests, it is obvious that where there are forests and people, there will be forestry. Stopping forestry, including fire suppression on public lands, is not socially or politically realistic. Concerned citizens and benevolent public forest managers must continue to work together to create the definitions, dialogues, and models that will redirect public forestry toward restoring our national forest heritage rather than exploiting it.

March 24, 1994

Representative Bill Williams, Chair
Members of the House Resources Committee
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Williams and Committee Members:

I would like to voice my opposition to HB 515 and SB 339- Management of State Land and Resources.

I was informed this bill has been proposed for housekeeping purposes, but later learned the bill has further implications. I am adamantly opposed to reducing public input on timber sales as I feel timber on state lands is a natural resource owned by the citizens of Alaska. We citizens should be a integral part of all timber sales, including those termed salvage.

Although the timber industry may deem insect infested trees as salvage, other values of the forest must be considered in determining the economic worth of the trees. Managers given the responsibility of timber sales must be advised the forests serve multiple uses, not just one industry.

I request the resource committee not pass this bill out of committee. Thank you for considering my viewpoint.

Sincerely,

Michelle Bugni

Michelle Bugni
3718 El Camino
Juneau, AK 99801

HS Res

March 28, 1994 SB 339, HB 515 Re: Salvage Sales of Timber

Legislative Resources Committees, Division of Forestry, Forest Resources Working Group, distribution
From: Larry Smith, Kachemak Resource Institute

Not only is the proposal to enact As 38.05117 lacking historical perspective in suggesting that salvage sales can in any way retard the advance of the spruce bark beetle, or other forest pathogens, but, more importantly, does not provide for the sustained yield of the multiple forest resources on which the mixed rural economies depend. No negative effects, whatsoever, have been recorded in the known scientific literature of beetle epidemics, on wildlife and fish populations. In contrast there are many studies detailing harm to fish and wildlife from logging activities, including salvage.

I believe it to be important to design timber sales to advance our knowledge of the beetle and of how to avoid encouraging infestations. The tools for doing this were included in the amendments to the Forest Resources and Practices Act which were enacted in 1990, and belatedly interpreted by the much delayed regulation package of midsummer in 1993. The new clearing standards have often not been enforced. No Zone of Infestation has yet been declared. The regulations improperly exclude Region I (The Southern half of the Kenai Peninsula and south of that.) from the full effect of the beetle fighting revisions of 1990.

Sec. 38.05.117. Salvage Sales: If there is a fast moving project dependent on clearing more acreage than is presently exempt from the planning process, the variation procedure at 41.17.087 should be used. However, I do not remember any project of that magnitude, that did not take substantially more time to plan and finance than the minimal period required for public notice and comment. The present requirement is for a sale of state timber to appear two consecutive years on the five year schedule. Not two full years, but only a year and a day plus 30 to 60 days of notice: fewer than 430 days altogether.

Those familiar with the geological (After The Ice Age, E.C.Pielou, Cornell University Press) and historical record (Such as USFS: Spruce Beetle Activity in Alaska 1920-1989: R10-90-18) of infestation know that neither the periodicity or duration of large-scale outbreaks are susceptible to some method of rapid response. Indeed, all the sky is falling rhetoric about the fearsome bark beetles does not change the fact that there have been no successes in attempts to stop epidemics: therefore no one qualifies as a

doctor able to prescribe for forest health. Maybe that's why our forest health appropriations were given to a bright salesman from the Department of Commerce to spend. And why the Forest Health Initiative has been renamed the Timber Sale Initiative by the Division of Forestry.

There are botanist/biologist combinations I would like to see do a diagnosis. These scientists often refer to beetles, like fire as 'wide-scale disturbances' necessary for habitat health. Fire, after all, is rare in much of Alaska, and has not been successfully suppressed for long enough, in any part of the State, to be the concern it is in the very different situations in the lower 48.

What I don't like is the pretense that 'experiments' are empirically based "treatments" or the pious and oily assertions of a few subsidy-seeking promoters that what puts money in their pocket is forest health. The honest logger is sincerely interested in solving problems, including sustainable employment. The solutions of the last 30 years have not retarded the beetle, predicted its increases and declines, or had other beneficial effects. In fact, the last great over-reponse cost the state upwards of $2 million dollars more than was received, severely mangled habitat, failed to employ locals and left the state on the losing end of a damage suit.

Review the sale of 223,000 acres of timber rights to Mitsui Corporation, in 1973, near Tyonek on the West side of Cook Inlet for $1 per 1,000 board feet. By 1982 the sale had fallen apart and receipts were about 10% of expenses. Reforestation costs were estimated by the state forester to be $200 an acre. Having already bathed in losses the state has so far not chosen to find another million bucks to go reforest the part of the mess in which natural regeneration did not occur. It's just lucky the chip market collapsed when only about one quarter of the area had been blitzed. Otherwise our dollar losses could have been $12 million. Of course we learned from this experience and only guaranteed $2 million dollars of the loan to build the chip facility on the Homer Spit which loads the ships of, guess who? Mitsui, of course.

If we have to have the SB 339 timber sales amendments lets get it right and call them what they have turned out to be: SAVAGE sales not salvage. We got badly savaged and didn't salvage a thing the last time around. It would be of great use to have legislative research look into the abysmal history of our state timber sales.

Reforestation requirements have been contested by large landowners these past couple years. Landowner to Forestry: " ...of which 19,789 acres are considered to be of commercial quality. As has been mentioned to you on numerous occasions, reforestation is a significant consideration in a sale of this nature, specifically because of the expense that could be involved in meeting the requirements .... These expenses, when compared to the value of the resource, have a major impact on the economic viability of this sale." Thereafter the landowner raises issues to support variation from reforestation including: "In addition to the above, consideration of .....'s variation request should include the following: 4. Tracts 1 and 2 and a large portion of Tract 5 are currently heavily impacted by the spruce bark beetle. 11 AAC 95.375(b)(2) contemplates an exception to the proposed reforestation requirements when stands proposed to be harvested 'are significantly composed of insect and disease-killed, fire-killed, windthrown or fatally damaged trees.'"

Reforestation is a primary method to avoid harm to the values intended to be protected by the act. Unless there is a bona fide conversion the forest must be maintained to protect the wildlife and fish held in trust, by the State, for its people. This is a very old provision of the common law since memorialized in the federal and state constitutions and interpreted by our statutes. The rights of private property owners are recognized: sustained yield logging is allowed; the rights of society are enunciated: no significant impairment of forest habitat is permitted except by sanctioned conversions (Even then fish and wildlife must be protected.).

I would not like the side-effect of a state panic sale program to be a weakening of the state's position that reforestation is more important on private lands than salvaging one value at the expense of others. There are many other values than trees, but every tree can be logged without harming the forest if its done sensibly: gradually, neatly and with reforestation.

The present requirements for logging the state lands are the product of a hard-won consensus of all users and government. Government should not repudiate this agreement.

Sacrifice of so many considerations in the name of 'salvage' seems imprudent when previ s poorly conceived sales inspired by the spruce bark beetle have spread infestations, damaged habitat and cost us a lot of money.

Bruce Baker
P.O. Box 211384
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March 23, 1994

Senator Jim Duncan
Representative Fran Ulmer
Representative Bill Hudson
Members of Senate Resources Committee
Members of House Resources Committee
c/o State Capitol
Juneau, Alaska 99801

Dear Senator Duncan, Representatives Hudson and Ulmer, and Senate and House Resources Committee Members:

With the Legislative session picking up momentum in the second half, there are several natural resource management bills and resolutions that, as a forest resource consultant, I would like to comment on. Although it's difficult to address all of these on one page, I'll try to be brief.

HB 515/SB 339

These bills would make numerous changes to Title 38, one of which is to allow so-called "salvage" timber sales to be awarded outside the normal required public review process when DNR's Forestry Division determines that insects or disease will cause the timber to lose economic value. That change would invite reduced consideration of fish, wildlife, and other forest values.

An exemption from the normal public review process is not as urgently needed as some might think. It is true that in Alaska's boreal forest, the wood of white spruce can deteriorate in quality within 2 or 3 years after it has been killed by the spruce beetle, a forest insect indigenous to our state. It would, however, be perfectly adequate for DNR to expedite its timber sale planning process in a way that does not disenfranchise other state agencies and the public from exercising their responsibilities or rights in reviewing a proposed project. Both timber interests and those using the state's fish and wildlife resources would benefit from a more surgical approach than that contained in these bills.

*I urge you to oppose the salvage sale and negotiated sale provisions of HB 515 and SB 339 and to maintain the public process by opposing language that limits public involvement in managing our forest resources.*

SB 310

This bill instructs DNR to annually solicit forest management agreements (FMAs) with private timber companies and to sign long-term contracts for up to 20 years, with an option to renew for another 20 years. It also appears to amend existing law to give timber a priority over other forest products such as fish and wildlife, subsistence harvest, and both sport and commercial recreation.

There are certainly situations in which economies can be achieved through privatization, but turning the management of public forest lands over to timber management companies is not one of them. The concept of FMAs flies in the face of several decades of progress toward more balanced forest management in which public land managers have become more aware of their obligation to manage forest lands for a diversity of forest values.

It makes no more sense to turn the management of public forest lands over to the timber industry than it does to turn them over to the commercial fishing industry, subsistence users, the commercial outdoor recreation industry, or mining interests.

We've seen on the Tongass National Forest the cost to society of long-term timber sales. Although the 50-year Tongass timber sale contracts to the region's two pulp mills made sense to folks at the time and they have unquestionably created jobs, they are now a source of lost public revenue because of unbelievably low stumpage rates. They also constrain public managers in their application of today's research findings regarding the habitat needs of fish and wildlife populations that people depend upon.

We need a viable and sustainable timber industry on public lands in Alaska but not at the expense of fishing, tourism, and commercial recreation - industries that have steadily gained in their market shares of the state's economy.

*I recommend that you maintain DNR's land management responsibility and that you oppose SB 310, thereby avoiding the pitfalls of unwarranted privatization and contracts that are longer than necessary to secure a viable timber industry.*

HJR 55 and HJR 56

These resolutions foster benefits to the Tongass timber industry but at the expense of fishing, subsistence, tourism, and commercial outdoor recreation. They call for *maximizing* rather than *optimizing* Tongass timber harvest levels and a permanent exemption of a new federal fisheries habitat protection initiative, PACFISH.

These measures tilt the playing field and jeopardize the existing

land management planning process in which all forest resource values are to be considered on an equal footing and all forest users have a say in what the ultimate balance in resource uses should be.

There is also a need for PACFISH to be the subject of public debate within Alaska. Alaskans need the opportunity to hear all sides of the issue in order to determine whether or not the concept or some aspect of it can be adapted to advantage on the Tongass or Chugach National Forests. The opportunity for such debate as so far been stifled.

*Although HJR 55 and HJR 56 have already passed the house, I encourage Senator Duncan and the Senate Resource Committee to oppose these resolutions.*

SB 308/HB 474

These bills appear to significantly dilute the process for determining the state's "best interest" in resource and land disposals and leases. They allow DNR to limit public and agency review of projects to only "direct and significant" effects of discrete project phases. As a veteran of the Exxon-Valdez debacle, I cannot, for example, imagine a petroleum leasing decision being based only on the direct and significant effects of activities occurring on the North Slope, with no consideration of the risk probabilities and potential consequences of oil transport in the Gulf of Alaska. There are many other examples of the need to consider ramifications of a project beyond one of its discrete phases.

*I urge your opposition to SB 308 and HB 474.*

SB 217

As I understand it, SB 217 would allow the University of Alaska to assume ownership of one million acres of state land. The need to balance the management of state lands is challenging enough for DNR, for the other state resource agencies that comment on DNR's proposed actions, for the general public, and for the Legislature. And that is with a body of laws, regulations, and administrative procedures in place to help achieve balanced management. We don't also need the University running a resource management program, especially one that lacks the checks and balances that are on the books for DNR's program.

*I urge you to let state government manage our state's natural resource heritage and let the University do what it was intended to do and what it does best - teach people and conduct research. I suggest that you oppose SB 217.*

Thank you for this opportunity to comment on pending state legislation and resolutions, and good luck with the rest of the session!

Sincerely,

Bruce Baker