

HB

80

HOUSE COMMITTEE REPORT

9)

Date Referred: February 22, 1995

FURTHER REFERRALS:

Date of Committee Action: 2/27/95

The RESOURCES Committee considered:

HB 80

HOUSE BILL NO. 80

DNR APPROVAL OF PLATS IN UNORG BOROUGHS

An Act relating to the approval, change, or vacation of subdivision plats in areas outside organized boroughs, the unorganized borough outside of cities, and in the third class boroughs; and relating to the definitions of 'tract' and 'subdivision'.

Commends it be replaced

with the following committee substitute CS HB 80 (CRA)

[] the same title

[x] a new title

Additional referral to _____ Committee attached amendment(s)

OPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS:

(Dept/Date)

fiscal note(s) _____

[x] fiscal note(s)

DNR & CRA 2/22

zero fiscal note(s) _____

[] zero fiscal note(s)

OPINIONS WITH RECOMMENDATIONS

	DP	DNP	NR	AM
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			

REPORTER'S SIGNATURE

[Signature]

REPRESENTATIVE
JEANNETTE JAMES

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House of Representatives

House District 34

HB 80 DNR APPROVAL OF PLATS

January 31, 1995

SPONSOR STATEMENT

Currently no legal authority reviews plats in the unorganized boroughs for compliance with State law. This means that there is no agency review of access to each lot, the outcome is that there are landlocked lots created.

Currently "paper plats" are allowed to be recorded without being surveyed, HB 80 corrects this oversight. This legislation requires the Department of Natural Resources to review plats for compliance with State law.

There are several definitions of Street and Subdivision in various Statutes, this legislation defines them as requested by the Department of Natural Resources.

Sec. 40.15.075

AUTHORITY IN THE UNORGANIZED BOROUGH AND THIRD CLASS BOROUGH.

The Department of Natural Resources is the platting authority in the area outside organized boroughs and outside cities in the unorganized borough and in the third class borough for only the purposes of hearing and acting on petitions for the change or vacation of plats and shall execute this function substantially in conformity with the provisions of AS 29.40.130 - 29.40.160. Costs of publication and mailing authorized in AS 29.40.130 shall be paid to the Department of Natural Resources by the petitioner. The Department of Natural Resources shall adopt reasonable regulations governing the exercise of the authority conferred by this section.

History -

(Sec. 1 ch 112 SLA 1971; am Sec. 7 ch 118 SLA 1972; am Sec. 64 ch 74 SLA 1985; am Sec. 37 ch 161 SLA 1988)

Amendment Notes -

The 1985 amendment substituted "AS 29.40.130 - 29.40.160" for "AS 29.33.210 - 29.33.240" at the end of the first sentence and in the second sentence deleted "as well as other costs" following "mailing" and substituted "AS 29.40.130" for "AS 29.33.210."

The 1988 amendment, effective January 1, 1989, substituted "Department of Natural Resources" for "Division of Lands" in the first sentence and for "division" in the second sentence, and deleted "upon the Division of Lands" at the end of the third sentence.

Repealed

Repealed sections 2 pages

Sec. 40.15.290

DEFINITIONS.

In this chapter

(1) "street" includes streets, avenues, boulevards, roads, lanes, alleys, and other ways;

(2) "subdivision"

(A) means the division of a tract or parcel of land into two or more lots, sites, or other divisions for the purpose, whether immediate or future, of sale or building development, and includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or areas subdivided;

(B) does not include cadastral plats, cadastral control plats, open-to-entry plats, or remote parcel plats created by or on behalf of the state regardless of whether these plats include easements or other public dedications.

History -

(Sec. 7 (ch II) ch 115 SLA 1953; am Sec. 3 ch 95 SLA 1955; am Sec. 41 ch 113 SLA 1981)

Revisors Notes -

Formerly AS 40.15.190. Renumbered in 1988.

Decisions -

Quoted in Kenai Peninsula Borough v. Kenai Peninsula Bd. of Realtors, Inc., 652 P.2d 471 (Alaska 1982); State v. Weidner, 684 P.2d 103 (Alaska 1984).

Repealed

HOUSE CS FOR CS FOR SENATE BILL NO. 81 (FINANCE) am H
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 1/21/92
 Offered: 5/18/91
 Referred: Rules

Sponsor(s): SENATORS FAHRENKAMP, Sturgulewski

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the Department of Natural Resources as the platting authority in
 2 certain areas of the state; relating to subdivisions and dedications; and providing for an
 3 effective date."

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

5 * Section 1. AS 29.03.030 is amended to read:

6 Sec. 29.03.030. PLATTING AUTHORITY. The [SUBJECT TO AS 40.15.075, THE]
 7 Department of Natural Resources is the platting authority for the state except within a
 8 municipality that has the power of land use regulation and that is exercising platting
 9 authority [IN THE UNORGANIZED BOROUGH IN THE AREA OUTSIDE ALL CITIES].

10 * Sec. 2. AS 40.15.010 is amended to read:

11 Sec. 40.15.010. APPROVAL, FILING, AND RECORDING OF SUBDIVISIONS. Before
 12 the lots or tracts of any subdivision or dedication may be sold or offered for sale, the subdivision
 13 or dedication shall be approved by [SUBMITTED FOR APPROVAL TO] the authority having
 14 jurisdiction, as prescribed in this chapter: and [. THE REGULAR APPROVAL OF THE

1 AUTHORITY SHALL BE SHOWN ON IT OR ATTACHED TO IT AND THE SUBDIVISION
2 OR DEDICATION) shall be filed and recorded in the office of the recorder. The recorder may
3 not accept a subdivision or dedication for filing and recording unless it shows this approval. [IF
4 NO PLATTING AUTHORITY EXISTS AS PROVIDED IN AS 40.15.070 AND 40.15.075,
5 LAND MAY BE SOLD WITHOUT APPROVAL.]

6 * Sec. 3. AS 40.15.070 is amended to read:

7 Sec. 40.15.070. PLATTING AUTHORITY. If land proposed to be subdivided or
8 dedicated is situated within a municipality that has the power of land use regulation and that
9 is exercising platting authority [FIRST OR SECOND CLASS BOROUGH], the proposed
10 subdivision or dedication shall be submitted to the municipal platting authority [BOROUGH
11 PLANNING COMMISSION] for approval. [IF THE LAND IS SITUATED WITHIN A CITY
12 IN THE UNORGANIZED BOROUGH OR THE THIRD CLASS BOROUGH, THE PROPOSED
13 SUBDIVISION OR DEDICATION SHALL BE SUBMITTED TO THE CITY PLANNING
14 COMMISSION FOR APPROVAL. THE BOROUGH PLANNING COMMISSION IS THE
15 PLATTING AUTHORITY FOR THE FIRST OR SECOND CLASS BOROUGH, THE CITY
16 PLANNING COMMISSION IS THE PLATTING AUTHORITY FOR THE CITY, AND THE
17 DEPARTMENT OF NATURAL RESOURCES IS THE PLATTING AUTHORITY IN THE
18 REMAINING AREAS OF THE STATE AND THIRD CLASS BOROUGH FOR THE CHANGE
19 OR VACATION OF EXISTING PLATS OR A PORTION OF SUCH PLATS, AS PROVIDED
20 IN AS 40.15.075. IF THE BOROUGH OR THE CITY DOES NOT HAVE A PLANNING
21 COMMISSION, THE BOROUGH ASSEMBLY OR THE CITY GOVERNING BODY,
22 RESPECTIVELY, IS THE PLATTING AUTHORITY AND THE PROPOSED SUBDIVISION
23 OR DEDICATION SHALL BE SUBMITTED TO IT.] A subdivision may not be filed and
24 recorded until it is approved by the platting authority.

25 * Sec. 4. AS 40.15.070 is amended by adding a new subsection to read:

26 (b) The Department of Natural Resources is the platting authority in the areas of the state
27 not described in (a) of this section.

28 * Sec. 5. AS 40.15.200 is amended to read:

29 Sec. 40.15.200. APPLICATION TO STATE AND POLITICAL SUBDIVISIONS. All
30 subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions
31 are subject to the provisions of AS 40.15.010 - 40.15.200 [THIS CHAPTER] and AS 29.40.070 -

1 29.40.160, or home rule ordinances or regulations governing subdivisions, and shall comply with
2 ordinances and other local regulations adopted under AS 40.15.010 - 40.15.200 [THIS
3 CHAPTER] and AS 29.40.070 - 29.40.160 or former AS 29.33.150 - 29.33.240, or under home
4 rule authority, in the same manner and to the same extent as subdivisions made by other
5 landowners.

6 * Sec. 6. AS 40.15 is amended by adding new sections to read:

7 ARTICLE 4. PLATTING IN AREAS OUTSIDE CERTAIN MUNICIPALITIES.

8 Sec. 40.15.300. EXAMINATION OF PLATS BEFORE RECORDING. (a) The
9 commissioner shall exercise the platting authority for the state except within a municipality that
10 has the power of land use regulation and that is exercising platting authority.

11 (b) The commissioner shall review and approve each plat under AS 40.15.300 -
12 40.15.380 before the plat is recorded under AS 40.17. The approval by the commissioner shall
13 be affixed to the plat in the form of the following statement:

14 PLAT APPROVAL

15 This plat is approved by the commissioner of natural resources, or the
16 commissioner's designee, in accordance with AS 40.15.

17 _____
18 Commissioner

_____ Date

19 (c) The recorder may not accept for filing and recording a plat for which the
20 commissioner's approval is required under this section without the approval of the commissioner
21 endorsed on the plat.

22 (d) Within 45 days after a plat is filed, the commissioner shall approve the plat or return
23 it to the applicant for modification or correction. Unless the applicant for plat approval consents
24 to an extension of time, the plat is approved and a certificate of approval shall be issued by the
25 commissioner if the commissioner fails to act within that period. The commissioner shall state
26 in writing reasons for disapproval of a plat.

27 (e) A recorded plat may not be altered or replatted except on petition of the state, a
28 municipality, a public utility, or the owner of a majority of the land affected by the proposed
29 alteration or replat. The petition shall be filed with the commissioner and shall be accompanied
30 by a copy of the existing plat showing the proposed alteration or replat. The provisions of
31 AS 29.40.130 and 29.40.140(a) apply to an alteration or replat submitted under this subsection.

1 The provisions of (d) of this section do not apply to an alteration or replat petition, but the
2 commissioner shall state in writing reasons for disapproval of the petition.

3 (f) In the case of a vacation of a street, right-of-way, or other public area, the provisions
4 of AS 29.40.140(b) and 29.40.160(a) and (b) apply. When applying these provisions to land
5 outside a municipality, the word "municipality" should be read as "state" when the context
6 requires.

7 Sec. 40.15.310. REQUIREMENTS FOR PLAT APPROVAL. (a) Each plat must show
8 on its face a certificate of ownership, with the names and addresses of each owner listed. Each
9 owner of record shall sign the certificate and the signatures shall be acknowledged.

10 (b) The surveyor preparing the plat shall sign and affix the seal of the surveyor.

11 (c) The commissioner shall require that a plat submitted for approval bear the certificate
12 of approval of any other state agency having subdivision plat approval authority.

13 Sec. 40.15.320. MONUMENTS. (a) In a subdivision with five or fewer lots, the
14 existence of each monument at a controlling exterior corner of the subdivision shall be
15 established by the surveyor.

16 (b) In a subdivision of more than five lots, each lot corner shall be monumented.

17 (c) If a monument of record does not lie on the parcel or tract boundary, the plat shall
18 reflect a boundary survey and tie to a monument of record.

19 Sec. 40.15.330. PLAT STANDARDS. The commissioner shall establish plat standards
20 by regulation.

21 Sec. 40.15.340. ENGINEERING STANDARDS. Except for subdivisions of state land,
22 the commissioner may not establish engineering standards for subdivisions.

23 Sec. 40.15.350. CERTIFIED COPY OF PLAT AS EVIDENCE. A copy of a plat
24 certified by the recorder of the recording district in which it is filed or recorded as a true and
25 complete copy of the original filed or recorded in the recording office for the district is
26 admissible in evidence in all courts in the state with the same effect as the original.

27 Sec. 40.15.360. APPLICABILITY. The provisions of AS 40.15.300 - 40.15.380 do not
28 apply to maps, site plans, or other graphic representations prepared for

29 (1) the purpose of transferring a leasehold interest; the extraction of natural
30 resources; or solely for the issuance of licenses or permits; or

31 (2) disposing of land by aliquot part descriptions of 40 acres or more within

1 surveyed sections provided that the least aliquot part unit shall be not less than a 1/4 1/4 section.

2 Sec. 40.15.370. REGULATIONS. The commissioner may adopt regulations to
3 implement, clarify, or make specific the provisions of AS 40.15.300 - 40.15.380.

4 Sec. 40.15.380. APPLICABILITY TO GOVERNMENTAL BODIES; RIGHT-OF-WAY
5 ACQUISITION PLATS. (a) Except as provided in this section, AS 40.15.300 - 40.15.380 apply
6 to the state, its agencies, instrumentalities, and political subdivisions in the same manner and to
7 the same extent that they apply to other landowners.

8 (b) A plat for a subdivision created by the acquisition by the state, its agencies,
9 instrumentalities, or political subdivisions, of a right-of-way, airport parcel, or land for a similar
10 public purpose in an area outside a municipality that has the power of land use regulation and
11 that is exercising platting authority, is subject only to the approval provisions of this section and
12 any provision of AS 40.15.300 - 40.15.380 not in conflict with this section.

13 (c) A right-of-way acquisition plat must contain the

14 (1) location and name of the acquisition project;

15 (2) approximate timetable for the acquisition and construction;

16 (3) dimensions and area of the proposed tract, parcel, or parcels to be acquired
17 and the remainder of the parcel or parcels;

18 (4) name of the record owner or owners of the subject parcels;

19 (5) signature and seal of the surveyor preparing the plat.

20 (d) The commissioner shall review each right-of-way acquisition plat for compliance with
21 this section. If the plat does not meet the requirements of this section, it shall be returned to the
22 submitting agency with an explanation of the deficiencies. A plat for which the commissioner's
23 approval is required under AS 40.15.300 may not be recorded under AS 40.17 without the
24 commissioner's approval endorsed on the plat.

25 (e) After approval by the commissioner, the original plat shall be filed with the
26 appropriate district recorder within 30 days by the submitting agency.

27 (f) The minimum monumentation requirements for

28 (1) right-of-way acquisition subdivisions are a 5/8" x 24" reinforcement bar with
29 appropriate identification cap set on the margin of the right-of-way at all points marking the
30 beginning and end of each curve and on tangents so that the distance between monumented points
31 does not exceed 1,320 feet; an alternate method may be utilized that consists of placing primary

1 (B) does not include cadastral plats, cadastral control plats, open-to-entry
2 plats, or remote parcel plats created by or on behalf of the state regardless of whether
3 these plats include easements or other public dedications.

4 (6) "surveyor" means an individual licensed to practice land surveying in the state
5 under AS 08.48.

6 * Sec. 7. AS 40.15.075 and 40.15.290 are repealed.

7 * Sec. 8. AS 40.15.330 and 40.15.370, added in sec. 6 of this Act, take effect immediately under
8 AS 01.10.070(c).

FISCAL NOTE

Revision Date: February 21, 1995 Dept. Affected: Community & Regional Affairs
 Title: An Act establishing the DNR as the BRU: Local Government Assistance
plating authority in certain parts of... Component Municipal Lands Trustee
 Sponsor: Representative James
 Requestor: House C & RA Committee COMPONENT SERIAL NO. 681

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0

REVENUE FUND SOURCE:

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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current (FY94) Impact \$ none

ANALYSIS: (Attach a separate page if necessary)
 This bill establishes DNR as the plating authority in the unorganized borough. This committee substitute version of the bill exempts certain activities pertaining to the department's Municipal Lands Trustee program from the provisions of the bill. As such, the bill poses no fiscal impacts for the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Division of Administrative Services Date: 2/21/95
 Approved by Commissioner: *R. Henderson for M. Justice* Date: 2/21/95
 Agency: Community & Regional Affairs

FISCAL NOTE

STATE OF ALASKA

BILL NO. _____

HB 80

1995 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources
 Title: DNR Approval of Plats in Unorganized Boroughs BRU: Resource Development
 Component: Land Development
 Sponsor: Representative James
 Requestor: _____ Component Serial No. 431

(Thousands of Dollars)

Expenditures/Revenues	FY96	FY97	FY98	FY99	FY00	FY01
OPERATING EXPENDITURES						
PERSONAL SERVICES	64.5	64.5	64.5	64.5	64.5	64.5
TRAVEL						
CONTRACTUAL	11.5	1.5	1.5	1.5	1.5	1.5
SUPPLIES	5.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	81.0	67.0	67.0	67.0	67.0	67.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1005)	50.0	50.0	50.0	50.0	50.0	50.0

(Thousands of Dollars)

FUND SOURCE	FY96	FY97	FY98	FY99	FY00	FY01
1002 Federal Receipts						
1003 GF Match						
1004 GF	81.0	67.0	67.0	67.0	67.0	67.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	81.0	67.0	67.0	67.0	67.0	67.0

Estimate of any current year (FY95) cost: \$ None anticipated

POSITIONS

	FY96	FY97	FY98	FY99	FY00	FY01
FULL-TIME	1	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: Ron Swanson Phone: 762-2692
 Division: Land Date: 20-Jan-95
 Approved by Commissioner: [Signature] Date: 1/20/95
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

BACK UP FOR FISCAL NOTE HB80

Estimate of Expenditures for HB80:

Personal Services:

Anticipate 250 subdivision plats submitted for review per year.

Reviews will be performed by a Land Surveyor I (R19).

Estimated review time is 7.5 hours per plat. Based on 250 plats per year, this will require one new full-time position.

TOTAL PERSONAL SERVICES	\$64,500.00
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Contractual:

The state must purchase existing land records, survey plats and field survey notes from BLM and make copies of plats held by the recording offices to carry out the functions required by this bill. The one time purchase cost for microfiche copies of survey plats and field notes to cover the state is \$10,000. Document copying costs from the recording office will be covered through the supply budget. An additional \$1,500 in contractual costs will be incurred annually, for items such as phone/fax bills, space rent and other miscellaneous contractual costs.

TOTAL CONTRACTUAL (FY96)	\$11,500.00
TOTAL CONTRACTUAL (FY97-FY01)	\$1,500.00

Supply:

The supply budget will cover the one time cost of copying survey plats held in the Recorder's Office. An additional \$1,000 in supplies costs will be incurred annually, for items such as office supplies and document copying costs.

TOTAL SUPPLY (FY96)	\$5,000.00
TOTAL SUPPLY (FY97-FY01)	\$1,000.00

Estimate of increased revenue for HB80:

Anticipated revenue from plat review fees will be 250 plat reviews x \$200.00/review = \$50,000.00

Comments:

In the last three years, the Division of Land has seen a reduction of six professional land surveyors due to budget reductions. We cannot absorb the additional workload associated with this legislation without an additional full-time professional land surveyor.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HJR 4

Revision Date: _____ Dept. Affected: Department of Law
 Title: ...authorizing the use of the initiative to amend BRU: Legal Services
the Constitution... Component: Operations
 Sponsor: Representative Martin
 Requester: House State Affairs COMPONENT SERIAL NO. 0093

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

House Joint Resolution No. 4 proposes an amendment to the state's constitution that would permit the people to propose and enact constitutional amendments through the initiative process. Currently, an amendment to the constitution must be proposed by two-thirds of each house of the legislature before it can be considered by the voters at a general election. The proposed amendment would permit use of an application with one hundred qualified voters as sponsors to initiate a constitutional amendment proposal. And, after certification by the lieutenant governor, a petition signed by qualified voters, equal in number to ten percent of those who voted in the preceding general election and resided in at least two-thirds of the state's election districts, would be required to place the proposition on the statewide ballot. This method is identical to the process required for proposing and adopting or rejecting a law by initiative.

Adoption of HJR 4, which would place this proposal on the ballot at the next general election, will not have a fiscal impact on the Department of Law.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/14/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/15/95
 Agency: Department of Law

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Juneau, Alaska 99801-2105

MEMORANDUM

February 13, 1995

SUBJECT: Comparison of HB 80 and CSSB 81(FIN)(18th Legislature)
(Work Order No. 9-LS0200\A)

TO: Representative Jeannette James
Attn: Walt Wilcox

FROM: Gerald P. Luckhaupt 
Legislative Counsel

You have asked for a comparison of HB 80 and CSSB 81(FIN)(18th Legislature). Several other later versions of SB 81 exist. I have enclosed those for your review.

CSSB 81(FIN)

Section 1. Provides that DNR is the platting authority in all areas of the state except within a municipality that has the power of land use planning and has adopted ordinances implementing AS 29.40. This section would conceivably encourage municipalities with the power of land use planning to exercise those powers and implement AS 29.40 so as to avoid having DNR as the platting authority. **HB 80** only provides in bill secs. 3 and 4 that DNR is the platting authority in the unorganized borough outside cities (regardless of whether those cities have implemented AS 29.40) and in the third class borough. Second class cities outside boroughs are not required under state law to provide for planning, platting, and land use regulation as are other cities and boroughs. See AS 29.35.180 and 29.35.260.

Section 2. Amends AS 40.15.010 presumably to clarify the approval requirement contained therein. There is no comparable provision in **HB 80**.

Section 3. Amends AS 40.15.070 to specify that municipalities are the platting authorities for their own areas if they have adopted ordinances implementing AS 29.40. **HB 80** also amends this section but only by eliminating language that limits DNR's current authority as the platting authority in the unorganized borough and the third class borough.

Section 4. Amends AS 40.15.070 by adding a new subsection that provides that DNR is the platting authority in all other areas of the state. The current language of AS 40.15.070 that provides similar (but not identical) authority to DNR is retained in sec. 3 of **HB 80**.

Representative Jeannette James

February 13, 1995

Page 2

Section 5. Amends AS 40.15.200 to provide that all subdivisions of land made by the state, and its subdivisions, are subject to AS 40.15.010 - 40.15.200 but not the rest of AS 40.15. **HB 80** doesn't change current AS 40.15.200.

Section 6. Adds new sections with platting requirements for the areas of the state where DNR is the platting authority. New definitions are also provided. For the most part there are no comparable provisions to these additions in **HB 80**. In sec. 4 of **HB 80**, DNR may only disapprove a plat as provided in other applicable state law and for failure to specify access DNR may charge fees for the approval of plats. In **CSSB 81(FIN)** DNR is not provided authority to charge fees. **HB 80** only provides definitions of street and subdivision. The definitions of street are consistent with **CSSB 81(FIN)** -- the definitions of subdivision are not.

The changes to the definitions of subdivision in other parts of Alaska Statutes that are contained in bill secs. 1 - 2, and 6 of **HB 80** are not contained in **CSSB 81(FIN)**.

JBC:lmb
95-120.lmb

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND

3601 C STREET SUITE 300
P.O. BOX 107005
ANCHORAGE, ALASKA 99510-7005
PHONE (907) 762-3692

February 21, 1995

The Honorable Jeannette James
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Re: HB 80

Dear Representative James:

Thank you for sending me the draft of the Committee Substitute for House Bill 80 to review. This bill addresses the concerns that I raised with you in my February 1, 1995 letter.

I have a couple of minor technical changes that I would recommend. Starting on page 4, line 21, change to read:

Sec 40.15.320 MONUMENTS. (a) In a subdivision with five or fewer lots, the existence of [EACH] primary type monuments at [A] controlling exterior corners of the subdivision shall be established by the surveyor.

(b) In a subdivision of more than five lots, each interior corner shall be monumented with a 5/8" x 24" rebar and cap.

(c) If a monument of record does not lie on the parcel or tract boundary, the plat shall reflect a boundary survey and tie to a monument of record.

The second change deals with the definition of "subdivision" on page 7 line 15. This can be dealt with one of two ways. The first way is to delete the phrase "or creating or adjusting right-of-way boundaries".

The second option is to add the following phrase:

interest at state-owned airports or creating or adjusting right-of-way boundaries, providing the right-of-way boundaries have not been previously dedicated to the public.

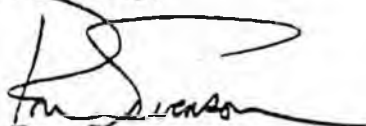
Representative James
HB 30
February 21, 1995
Page 2

One of these two changes are needed to eliminate a conflict with Section 40.15.380 which does with the applicability to governmental bodies; right-of-way acquisition plats. I believe the original intent of DOT/PF was to avoid having to go through the plat dedication process of interior lots and right-of-ways within the boundaries of an airport. I agree with that.

Other roads and highways that are dedicated for public purposes do create a subdivision and should not be excepted from the plat review and dedication process.

Please feel free to contact me if I can be of any further help or answer any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Swanson", written over a horizontal line.

Ron Swanson
Director

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND

3601 C STREET, SUITE 1122
ANCHORAGE, ALASKA 99503-5947
PHONE: (907) 762-2692

February 1, 1995

The Honorable Jeannette James
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Re: HB 80

Dear Representative James:

The testimony on January 31 before the House, Community and Regional Affairs Committee was interesting. I will be glad to help you in any way I can to help you get a bill that is agreeable to all parties.

Pat Kalan's testimony on former SB 81, 17 Legislature, was well taken. That bill was a true compromise as he stated, which was agreed to by all the state agencies, the surveying community and the Alaska Federation of Natives. The only reason it did not pass was that all parties could not agree at the last minute on the definition of "street" and "subdivision." Your bill, with a couple of minor changes, accomplishes the definition objective.

I am concerned, however, that if HB 80 travels through the legislative process that more and more exceptions to the definitions will be added. This would essentially defeat the entire purpose of your legislation and may leave us in the same predicament that we are in today.

One option is to use the old SB 81 but insert the definitions from your bill along with the changes suggested below. With the "guidelines" spelled out in SB 81 most of the concerns expressed by DOT/PF, DCRA and DEC will go away.

The only exception to this may be the desire of DOT/PF to exclude right-of-ways. I agree that common carrier right-of-ways should be excepted because they do not necessarily create a "subdivision." I must agree with the testimony of Malcom Menzies that roads create a "subdivision" and DOT/PF should not be the sole exception to the rule. I do agree that the exclusion of airport leases and leases issued by DCRA under the Municipal Land Trust program are justified and do not harm the integrity of your legislation.

Representative Jeannette James
House Bill 80
February 1, 1995
Page 2

The concerns expressed by Sealaska last year can also be protected with the changes below without jeopardizing the needed plat review when Native owned land is later subdivided after title has been conveyed by the federal government. Like DOT/PF, I do not believe that land conveyed to Native corporations should be treated any differently than any other land conveyed by the federal government into private ownership.

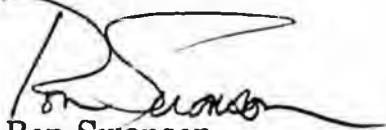
The definition for "subdivision" I recommend that addresses these concerns is:

(A) means the division of a tract or parcel of land into two or more lots by the landowner or by the creation of public, excluding common carrier, access;

(B) does not include cadastral plats, cadastral control plats, open-to-entry plats, remote parcel plats created by or on behalf of the state regardless of whether these plats include easements or other public dedications, or plats prepared by the Department of Transportation and Public Facilities, for the purpose of transferring leasehold interest at state-owned airports, or plats prepared by the Department of Community and Regional Affairs for the leasing of municipal trust land under Sec. 44.47.150.

Please feel free to contact me if I can be of further help or to answer any questions.

Sincerely,



Ron Swanson
Director

cc: Pat Kalan
DCRA
DOTPF
Nico Bus

KALEN & ASSOCIATES, Inc.:

Engineers & Surveyors

Land Surveys • Mineral Surveys • Subdivisions
Civil Engineering • Forensic Expertise • CADD

FAX TRANSMITTAL

DATE: 2/21/95

TIME: 12:25 AM

NO. OF PAGES, INCLUDING THIS ONE: 5

JOB NO.: NA

FROM: PATRICIA KALBN

TO:
REP JOANNETTE JAMES
ATTN: WALT WILCOX

COMPANY: HOUSE OF REPRESENTATIVES

FAX NO.: 465-2381

MESSAGE: HERE IT IS

1) COVER LETTER, 2P.

2) COPY OF SB 211 OF 18TH
LEGISLATURE. IT HAS THE RIGHT
LANGUAGE.





Alaska Section
AMERICAN CONGRESS ON SURVEYING AND MAPPING

Patrick M. Kalen, PLS
1041 Chena Ridge Rd.
Fairbanks, AK 99709

February 21, 1995

Ref: HB NO. 80, Proposed Committee Substitute

Rep Jeanette James
State Capitol
Juneau, Alaska

Attn: Walt Wilcox

Dear Rep James:

We are delighted by the new draft of HB 80. As we have noted in previous correspondence and testimony, many of the ideas, objections and specific concerns that have come up in the course of discussions of your bill were addressed in the language of SB 81 of the 17th legislature. Much of that language was arrived at after long discussions with representatives of the affected parties in the room as the State Survey and Mapping Advisory Board met and drafted the rules in 1990 and 1991. We see slightly changed language in the first two pages from that which the original State Survey Authority bill contained. It is written more concisely, while retaining the meaning and purpose of the original language by directly stating that the legislation refers to platting authority. (The original bill used cross references to title 29 instead of the words platting authority). We like the improved wording in the beginning of the bill.

The primary problem to resolve remains the area of the definition of the word "subdivision" on page 7, lines 6 through 17. We object to the exception in part A and to the exclusions for state agencies in part B of the definition.

Two things come to mind: First, one should consider what rules the state must work under in the majority of jurisdictions covering most of the land transactions in the state. That is, does the state enjoy such exemptions in organized platting authority areas? We think not. Second is the difference between temporary transfer of limited interests such as leases. The original bill, and, of course, your proposed committee substitute, limit applicability of the survey authority in Section 40.15.360, APPLICABILITY (page 5, line 4). Transfer of leasehold interests, extraction of natural resources, issuance of permits and disposal of aliquot part descriptions over 40 acres are not subject to platting authority.

The question is, how do we resolve the problem of the definition of the word "subdivision"? Find attached a copy of Senate Bill NO. 211, a Committee bill by the Senate Resources Committee of the eighteenth legislature. Here you will find the definition, and the application that we want. This definition is concise and clear. We intended to make the definition uniform throughout statute wherever the context was division of land. As you can see, we have simplified language that would read: "subdivision means the division of a tract or parcel of land into two or more lots or by the creation of public access."

See the attached copy of SB 211 of the 18th Legislature for the remaining wording, such as the portion of statute to be repealed.

Again, we have been pleased to work with you on this subject. We remain hopeful that the problem of the definition of the word subdivision can be resolved in this legislation.

Sincerely,



Patrick Kalen, Chairman of Legislative Affairs for ACSM

Copy:

Mike Horne, Chairman of Legislative Affairs for ASPLS

ORIGINAL

SENATE BILL NO. 211
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced: 5/5/93
Referred: TRA, CRA

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the definitions of subdivision and street."

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

3 * Section 1. AS 29.71.800(22) is amended to read:

4 (22) "street" has the meaning given in AS 40.15.290 [INCLUDES
5 STREETS, AVENUES, BOULEVARDS, ROADS, LANES, ALLEYS, AND OTHER
6 WAYS];

7 * Sec. 2. AS 29.71.800(23) is amended to read:

8 (23) "subdivision" has the meaning given in AS 40.15.290
9 [(A) MEANS THE DIVISION OF A PARCEL OF LAND
10 INTO TWO OR MORE LOTS OR OTHER DIVISIONS FOR THE PURPOSE
11 OF SALE OR BUILDING DEVELOPMENT, INCLUDES RESUBDIVISION,
12 AND RELATES TO THE PROCESS OF SUBDIVIDING OR TO THE LAND
13 SUBDIVIDED;

14 (B) DOES NOT INCLUDE CADASTRAL PLATS,

1 CADASTRAL CONTROL PLATS, OPEN-TO-ENTRY PLATS, OR REMOTE
2 PARCEL PLATS CREATED BY OR ON BEHALF OF THE STATE
3 REGARDLESS OF WHETHER THESE PLATS INCLUDE EASEMENTS OR
4 OTHER PUBLIC DEDICATIONS);

5 * Sec. 3. AS 40.15.290 is amended to read:

6 * Sec. 40.15.290. DEFINITIONS. In this chapter

7 (1) "street" means an access way in common use including all of the
8 land lying within a dedicated right-of-way as delineated on a plat showing streets,
9 whether improved or unimproved [INCLUDES STREETS, AVENUES,
10 BOULEVARDS, ROADS, LANES, ALLEYS, AND OTHER WAYS];

11 (2) "subdivision"

12 (A) means the division of a tract or parcel of land into two or
13 more lots or by the creation of public access [, SITES, OR OTHER
14 DIVISIONS FOR THE PURPOSE, WHETHER IMMEDIATE OR FUTURE,
15 OF SALE OR BUILDING DEVELOPMENT, AND INCLUDES
16 RESUBDIVISION AND, WHEN APPROPRIATE TO THE CONTEXT,
17 RELATES TO THE PROCESS OF SUBDIVIDING OR TO THE LAND OR
18 AREAS SUBDIVIDED];

19 (B) does not include cadastral plats, cadastral control plats,
20 open-to-entry plats, or remote parcel plats created by or on behalf of the state
21 regardless of whether these plats include easements or other public dedications.

22 * Sec. 4. AS 34.65.100 is amended by adding a new paragraph to read:

23 (6) "subdivision" has the meaning given in AS 40.15.290.

24 * Sec. 5. AS 38.04.910 is amended by adding a new paragraph to read:

25 (13) "subdivision" has the meaning given in AS 40.15.290.

26 * Sec. 6. AS 46.03.900 is amended by adding a new paragraph to read:

27 (36) "subdivision" has the meaning given in AS 40.15.290.

KALEN & ASSOCIATES, Inc.:

Engineers & Surveyors

Land Surveys • Mineral Surveys • Subdivisions
Civil Engineering • Forensic Expertise • CADD

FAX TRANSMITTAL

DATE: 1/31/95

TIME: _____

NO. OF PAGES, INCLUDING THIS ONE: 1

JOB NO.: NA

FROM: PAT KALEN

TO:

JEANEFFE JAMAS -

ATTN: WALT WILCOX

COMPANY: ALASKA LEGISLATURE - HOUSE OF REPRESENTATIVES

FAX NO.: 465-2381

MESSAGE: (1) REFERENCE OUR LETTER OF JAN 20, 1994 REGARDING HB 352 OF 18TH LEGISLATURE, AND MATERIAL SUPPLIER THEN: WE BELIEVE THAT MOST LANGUAGE FROM SB 81 OF 17TH LEGISLATURE SHOULD BE INCLUDED IN CURRENT HB 80.

(2) EXEMPTION FOR PRIVATE CORPORATIONS IS VERY BROAD. FEDERAL SUBDIVISION IS NOT SUBJECT TO STATE LAW (SEE LINE 17 AND 25, PAGE 3).

(3) NOT EXEMPTION (LINES 27-29) LEAVE OUT NUMEROUS TRANSACTIONS - WE WOULD LIKE POTENTIAL COVERED AS IT WAS IN SB 81 OF 17TH LBC. *PK*



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: HB 352

APPROVED: 

TITLE: Subdivision Plat Approval:
Unorganized Boroughs

DATE: February 9, 1994

In principal, we support the need for a platting authority in the unorganized borough, but we believe this bill will be detrimental to certain activities we perform as a public agency. Specifically, the application of subdivision procedures to (1) plats solely used to establish right-of-way boundaries, and (2) to lots used to convey leasehold interests on airports is unnecessary and cumbersome.

Platting Procedures and Right-of-Way Acquisitions

The general process of subdivision rules simply does not work well in the context of right-of-way plats. For example, a typical subdivision is done to create lots, voluntarily with the landowner's consent. In contrast, right-of-way acquisitions are often accomplished under condemnation procedures, making such routinely required tasks as surveying, platting, boundary monumentation, signature approvals and recording, prior to conveyance, exceedingly difficult or impossible.

In recent years the various platting authorities in the organized borough (under the authorities of AS 09.55.275, 35.30.020, and 40.15.070) have required that their platting ordinances fully apply to our right-of-way acquisitions. Fortunately, most of these jurisdictions have discovered how atypical right-of-way plats really are, and in response have amended their ordinances to specifically address right-of-way platting. In general, the amended ordinances validated the long-standing procedures we had been following prior to local enforcement. One borough in particular, has not taken this relaxed approach, to the detriment of project advancement in their jurisdiction.

In many other states, state law specifically exempts right-of-way plats from the oversight of local platting authorities, in favor of a general mandate, to conduct such platting with regard to recording plat documents, and appropriate boundary monumentation. Such an exemption would be the best solution to our circumstances.

Moreover, the new definition of "subdivision" contained in Section 3 further ensnares our activities. In a recent Fairbanks project, a land owner objecting to a condemnation action challenged the state, in part, due to a claim that the state failed to comply with AS 40.15.200. The judge specifically ruled that our subdivision plat was exempt based on the existing definition of "a tract or parcel of land into two or more lots". By adding the new

For Further Information contact J.K. Ginger Johnson at 465-3904.

BILL NO: HB 352

TITLE: Subdivision Plat Approval: Unorganized Boroughs

DATE: February 9, 1994

clause "or by creation of public access" to the definition, we could lose future legal challenges. It is important to again point out the impracticality of requiring that we subdivide a piece of property, prior to conveyance, that is being purchased involuntarily.

Another feature of typical subdivision procedures is the time involved to provide public notice, hold hearings and proceed through multiple-step approvals. Yet our transportation projects are already subject to other public hearing and public notice requirements, making the subdivision public reviews tedious, expensive and a cause of delay.

We would urge that the legislation be amended to generally exempt right-of-way plats in favor of existing practices used by the department.

Leasehold Interest Lots on State Airports

Historically, when leasing lots on state-owned airports we have retained unallocated land until a leasing demand arises. Then, based upon the requirements of the lessee, the department establishes the lot size, access ways, and other requirements. In earlier versions of this bill (such as SB 81 in the previous Legislature) we successfully convinced the sponsor to insert language which declared that subdivision procedures do not apply to maps prepared for the purpose of transferring a leasehold interest.

We believe that a similar provision is beneficial to the important business development functions that airport leases play, and that the requirements of subdivision reviews, surveying, monumentation and recording, do not serve the public interest in these circumstances.

ALASKA SOCIETY OF PROFESSIONAL LAND SURVEYORS

February 4, 1994

Senator Loren Leman
State Capitol
Juneau, Alaska 99801-1182

Ref: State Survey Authority Bill, Subdivisions

Dear Senator Leman:

Representative Jeannette James has introduced a bill (HB352) that goes into the same area of statute and the same subject area as SB 211. However it goes much farther, granting survey authority to the DNR.

We discussed a situation with Representative James indicating that there is cause for concern. In the absence of any rules, anyone may create a subdivision. A land surveyor need not be involved. Typically a lawyer is, but even this is not a requirement for filing a deed. The DEC regulation definition of subdivision is so broad that any agreement of any kind that gives a person an interest in real property can be construed to be a subdivision. And access does not need to be provide to each lot, the situation that Rep James says led her to introduce HB 352.

We remain concerned that we resolve what we mean by the word "subuivision" and who does them before we go too far down that road granting DNR authority to review them. The Senate Resources Committee bill, SB 211, concisely accomplishes what is required to avoid future confusion in lines 22 to 27. We are willing to discuss all other issues, up to and including taking another look at our original proposal, SB 81 of the 17th Legislature. But we hope for assurance that you can help us to hold the "bottom line" on uniformity in statute for the term "subdivision".

I have included all of the same enclosures in this letter that I supplied to Representative James with my letter of February 4, 1994 to her on the subject.

Sincerely,


Patrick Kalen, PLS, ASPLS Legislative Affairs Committee Chairman

copy: Senator Mike Miller, Chairman, Senate Resources Committee
Senator Steve Frank
Craig Savage, President, ASPLS
Ron Swanson, Director, Division of Land Management, DNR
Alex Viteri, DEC
Sharon Macklin

enclosures: as noted

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FAX: (907) 465-3886

January 28, 1994

The Honorable Jeannette James
Alaska State House of Representatives
State Capitol
Juneau, AK 99801-1182

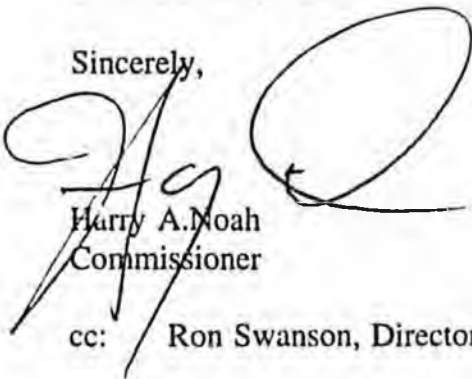
Dear Representative James:

The Department of Natural Resources supports the Sponsor Substitute for House Bill 352, which includes the addition of the definitions of "streets" and "subdivisions." We also understand that the Alaska Society of Professional Surveyors also supports HB 352. They specifically requested that the bill include the definitions of "streets" and "subdivisions" as in the Sponsor Substitute. These two definitions are needed to establish a common definition of streets and subdivisions for use by all state agencies that are involved in permitting and approval of subdivisions. The lack of a common definition has made it difficult for surveyors to meet the requirements of all state agencies.

This bill will greatly benefit anyone purchasing or having property in the unorganized borough or third class boroughs. There is more and more subdivision activity in our outlying areas. The passage of this bill will ensure that land offered for sale in these areas meets the applicable laws, reduces the chances of clouded title, ensures proper location of sale parcels, and ensures that all subdivided parcels have legal access.

Thank you for sponsoring this bill. If the Department can be of assistance, please contact Ron Swanson at 762-2692.

Sincerely,



Harry A. Moah
Commissioner

cc: Ron Swanson, Director, Division of Land 762-2692

ALASKA SOCIETY OF PROFESSIONAL LAND SURVEYORS

January 30, 1994

Representative Jeannette James
State Capitol
Juneau, Alaska 99801-1182

Ref: State Survey Authority, Subdivisions

Dear Representative James:

We appreciate your interest in this subject. Please find enclosed some letters that track our work on the subject. As you can see, it is the definition of the word "subdivision" that is the final issue to be resolved. We include for your file on HB 352 the following material:

- 1) Letter to ASPLS and ACSM from Ron Swanson dated 5/16/92.
- 2) DNR briefing paper faxed to Pat Kalen from DNR on 2/9/93.
- 3) ASPLS letter to Ron Swanson 2/24/93 by Craig Savage.
- 4) DEC memo 3/10/93, Svend Brandt-Erichsen to Commissioner.
- 5) ASPLS letter of 3/15/93, P. Kalen to Senator Loren Leman.
- 6) ASPLS letter of 3/15/93, P. Kalen to Senator Steve Frank.
- 7) Page 94 of 18 AAC 72.290, with "subdivision" defined.
- 8) SB 81 from Seventeenth Legislature.
- 9) Memo of 2/17/92 from Sen. Craft's office to AG's office.
- 10) Response from Division of Legal Services dated 2/26/92.

Senate Bill 81 was widely supported and nearly became law near the end of 1992. Two things came to light that caused concern to ASPLS. First, our definition was lost, one that had been worked on very hard for many hours by a volunteer advisory board. Then we were informed that the words in AS 40 (and AS 29) defining "subdivision" did not have the effect of law anyway, having been superseded by regulations. The explanation is that in passing enabling legislation for DEC (AS 46) the legislature gave DEC the power to write regulations as they felt they needed, regardless of contradictions of statute language.

DNR did not interpret the statute/regulation conflict this way until 1992, and control surveys, open to entry surveys, cadastral surveys and remote parcel surveys were not treated as subdivisions. Then DNR and DEC reached an agreement to review the remaining Remote Parcels (a program that had been going on since 1981) as "subdivisions". The rules that were drawn were poorly conceived (i.e using monument holes for "test holes"). The surveying

community was not contacted or consulted about these changes, just given copies of directives to leaseholders concerning the new rules. Difficulties arose on selected Remote Parcel surveys.

It did not seem advisable to pass a law placing subdivision review in DNR's hands when we were at odds over what they are. So we asked for our bill, SB 81 to be held.

Your bill, HB 352, contains the same simple fix to Title 40 that would resolve the issue of "illegal" subdivisions and give authority to the DNR. You may also wish to address the larger issue of proposed rules for right-of-way plats that we outlined in SB 81 of the 17th Legislature. There is much other detail in the SB 81 proposal that has merit. The Senate Resources Committee introduced SB 211 last spring prior to adjoining the first session of the Eighteenth Legislature. SB 211 addresses this issue directly, by placing the word in statute and making it apply to all state agencies that deal with the subject.

Most important to us is the portions of SB 211 that will make the word "subdivision" uniform in state statute when referring to plats prepared by land surveyors. Lines 22 to 27 of SB 211 are the essence of what we are requesting. Making the definition uniform in statute is actually a higher priority than the definitions themselves. We also believe (and understand that DEC agrees) that large cadastral surveys do not invoke water quality issues.

As you can infer from the material enclosed, DEC is willing and able to make revisions to the definition of "subdivision" found in 18 AAC 72.990(80), which conflicts with the AS 40.15.290 definition. Regulations would be needed to cover the land transaction situations that do not lead to a plat prepared by a land surveyor, such as "sales, contracts, leases or any other means". We expect to support DEC regulations revisions in this regard.

We hope that you can address our concern regarding this issue. We have also written to Senator Loren Lemam (copy enclosed) on the subject - he has paid close attention to surveying and engineering issues since he has been in the legislature - and we have copied him on the other subject documents referred to above as well.

Sincerely,



Patrick Malen, PLS, ASPLS Legislative Affairs Committee Chairman

copy: Senator Mike Miller, Chairman, Senate Resources Committee
Senator Loren Lemam
Senator Steve Frank
Craig Savage, President, ASPLS
Ron Swanson, Director of Division of Lands, DNR
Alex Viteri, DEC
Sharon Macklin

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER

WALTER J. HICKEL, GOVERNOR

3801 C STREET
P.O. Box 107005
ANCHORAGE, ALASKA 99510-7005
PHONE: (907) 762-2692

May 16, 1992

Craig Savage, President
Alaska Society of Professional
Land Surveyors
623 W 6th Ave
Anchorage, AK 99501

Re: Platting in the Unorganized Borough

Dear Mr Savage:

Currently subdivision plats outside Boroughs and Cities need not be surveyed, and arguably need not even be recorded. This leaves the door open for paper plat subdivisions to be created by virtually anyone wishing to subdivide. There is no way to know how many or what kind of survey problems are in the making, although from time to time we do stumble across some oddities, as I'm sure your membership does as well.

There has been legislation proposed in the last 2 sessions, most recently Senate Bill 81, to remedy this problem in surveying and platting requirements. These bills were authored by the Surveying and Mapping Advisory Board and supported by DNR. In the proposed legislation DNR was to be the agency designated to review plats for compliance.

There appears to be little or no opposition to the concept of a law addressing the above stated issue. What has stood in the way of passage has been some technical objections by the industry and professional surveying societies. I would like to reopen the dialogue between the state agencies and the surveying community to resolve these problems and to gain support for legislation to resolve surveying and platting problems in the unorganized borough. I would like to meet with you, or your designee, to arrive at acceptable legislation to all of us. I propose that we use SB 81 as a starting point.

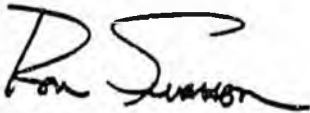
Please contact me, at 762-2692, or Norm Johnson, at 762-2425, at your convenience to arrange this meeting.

I am sending a similar letter to ACSM as well as notifying the

Craig Savage
May 16, 1992
Page 2

Departments of Environmental Conservation and Transportation and
Public Facilities.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ron Swanson".

Ron Swanson
Director

attachment - SB 81

cc: Janice Adair, DEC
Clyde Stoltzfus, DOT/PF
Carol Wilson, DNR
Marty Welbourn, DNR - LRS
Carol Shobe, DNR - TCS
Norm Johnson, DNR - LRS
Jerome Pape, DNR - LRS

BRIEFING: AS 40.15, SUBDIVISION AND DEDICATION

ISSUE: Currently subdivision plats outside Boroughs and Cities need not be surveyed, and arguably need not even be recorded. This leaves the door open for paper plat subdivisions to be created by virtually anyone wishing to subdivide. To be adequate to convey a locatable and uniquely described parcel, a plat needs to be tied to acceptable horizontal control of record. Paper plats (those done without field survey) almost assuredly produce gaps, overlaps and clouded boundaries. There is no way to know how many or what kind of survey and title problems are in the making since there are no laws governing surveying and platting in the unorganized borough. We do stumble across oddities from time to time that would be impossible to locate or abstract for title. Some review for compliance is necessary to assure that minimum survey and platting standards are met and that plats are put into the public record

A BILL, SB 81

BACKGROUND: There have been Bills in the last 2 legislatures to remedy this holiday in surveying and platting requirements to convey subdivision parcels. Neither were successful in becoming law. These bills were authored by the now defunct Surveying and Mapping Advisory Board and supported by DNR. In the proposed legislation DNR was to be the agency designated to review plats for compliance.

THIS BILL WAS

There is little or no opposition to passage of a bill addressing the above stated issue. What has stood in the way of passage has been the issue of DEC having the power to approve or disapprove all subdivisions of any interest in any land. The surveying community represented by the Alaska Society of Professional Land Surveyors opposes this blanket DEC authority. ASPLS sees a narrower role for DEC in plats of survey. If title 46 utilized a definition of subdivision similar to title 29 and 40, DEC would be restricted from review of rectangular system surveys and remote parcels. Also, DEC approval on a plat is not seen as appropriate because DEC regulations are subject to change and a plat is designed to live forever. For those residential subdivisions that should be of concern to DEC let their certificates accompany rather than appear on the plat. The surveyors opposing the bill would like to see these issues combined and resolved in one bill.

PROPOSED ACTION: DNR is still interested in pursuing a bill that takes care of platting in the unorganized borough and enough of the DEC issue to make it palatable to the surveying community. To this end we have invited the surveying societies and DEC to iron out their differences and begin drafting legislation acceptable to both.

Post-It™ brand fax transmittal memo 7671 # of pages 1

To <u>Dzt. Kelen</u>	From <u>Norm Johnson</u>
Co.	Co.
Dept.	Phone #
Fax #	Ext #

ALASKA SOCIETY OF PROFESSIONAL LAND SURVEYORS

AFFILIATE OF AMERICAN CONGRESS ON SURVEYING AND MAPPING
AFFILIATE OF NATIONAL SOCIETY OF PROFESSIONAL SURVEYORS
MEMBER, WESTERN FEDERATION OF PROFESSIONAL LAND SURVEYORS

P.O. BOX 101465
ANCHORAGE, ALASKA 99510

24 February, 1993

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

Attn: Ron Swanson, Director

Dear Mr. Swanson:

As you are aware, ASPLS has been in pursuit of administrative code and/or legislation which will define the word "subdivision" as it applies to land use in a consistent manner throughout Alaska. Last year our organization was instrumental in blocking otherwise excellent and long overdue legislation to establish a State platting authority in the unorganized borough because the Department of Environmental Conservation insisted that their administratively established definition of the word apply to their regulatory requirements within this legislation while the statutory definition be applied to the Department of Natural Resources.

This year, as we looked at the possibility of re-submitting the proposed legislation to Juneau, it became apparent that little headway was being made in changing the definition. The definition so painstakingly worked out by the parties represented by the now defunct Surveying and Mapping Advisory Board two years ago appears to have been forgotten and the authority for final plat approval continues to be handed over to the DEC with their tests for acceptability in the proposed legislation.

In order to establish a consistent and reasonable approach to the problem, our Legislative Committee Chair, Pat Kalen, approached DNR Commissioner Olds and DEC Commissioner Sandor, and met with both gentlemen in Juneau on February 12 in an attempt to establish some common ground. Mr. Kalen reported to the Board of Directors of ASPLS that both Commissioners agreed that a single definition of terms is the only reasonable solution, and both agreed that it would be best to establish definitions before continuing to press for the previous legislation. The consensus was that the best approach would be to establish a definition legislatively to apply to all titles of State Statutes, provided that we can agree on what is, and what is not, a subdivision. We are currently in

contact with the Senate Resources Committee concerning introduction of legislation. ASPLS still maintains that the definition worked out by the SMAB is the most acceptable to all parties involved, (then and now) and should be the definition included in proposed legislation. We want to emphasize that we do not object to the DEC regulating development, sales and leases for water quality or other environmental concerns within their areas of responsibility. We simply want to reserve the word "subdivision" for what Land Surveyors do when they create new boundaries: division of tracts or parcels of land into two or more lots or creation of public access.

In a different but very much related area, ASPLS approached DNR Commissioner Olds last year about the possibility of reactivating the SMAB, for the purpose of addressing standards for terminology, practice, and data handling among the private sector and the various State, Federal and local agencies involved with administration of land in Alaska. You probably remember that Commissioner Olds replied to us that he favored including industry representation on an existing committee such as the Surveying and Mapping Advisory Committee (SMAC) in the interest of furthering the goal of the current administration to limit the number of boards. Our Board of Directors has discussed this idea and agreed that it is an avenue worth exploring. We need answers to some questions regarding the purposes, methods and make-up of the SMAC. These questions are itemized along with others at the end of this letter. Two other items need to be addressed first.

Recently the Chief Cadastral Surveyor communicated the intent of the Division of Land to establish revisions to 11 AAC 53 and requested feedback on the proposed revisions so that as much as possible our input could be assimilated and applied to the new code. Public hearings were envisioned for scheduling in the next few months and we were beginning to look forward to including the revised code in the upcoming edition of the ASPLS' Standards of Practice Manual due for publication this fall. Progress on the revisions appeared to be slowing for no apparent reason in the past few weeks, however, and no explanation was forthcoming.

Then last week we were informed by an employee of the Department of Transportation and Public Facilities that during a visit to your DNR offices they saw a note to the effect that no information was to be shared with anyone on the re-write of Alaska Statutes, Title 38, Public Lands. A subsequent call to an acquaintance at DNR confirmed that a re-write of Title 38 is underway and that a memo on interdepartmental E-mail admonishes that the process not be discussed. The list of questions to which this situation gives rise is somewhat lengthy:

1. What portions of Title 38 are being addressed?
2. What changes are being proposed?
3. Why are these changes being proposed?
4. Why is the process being conducted "under wraps"?
5. Are the revisions to 11 AAC 53 being made with an eye to the Title 38 revisions?

Many more questions came up as our Board's discussion progressed, but most of them require answers to these first five. In addition to answers to our questions above, we would also appreciate information on the SMAC:

1. Does the Committee have a stated purpose or mission?
2. Does it have a formal structure?
3. Does it have specific authority or is it strictly an advisory group?
4. What agencies are represented and by whom?
5. Is it involved in the re-write of Title 38?
6. Would you consider representation from the private sector as suggested by Commissioner Olds?

Thank you in advance for your prompt response to our many questions. This information will enable us to make recommendations and decisions at our upcoming annual meeting, and to take any action necessary in a timely manner.

Sincerely,
ASPLS



Craig L. Savage, P.L.S.
President

copy: Commissioner Glenn Olds
Pat Kalen

MEMORANDUM

STATE OF ALASKA

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

South Central Regional Office

3601 C Street, Suite 1334

Anchorage, Alaska 99503

TO: Commissioner Sandor

DATE: March 10, 1993

THRU: Janice Adair
Assistant Commissioner

FILE #:

PHONE #: (907) 563-6529

FROM: Svend Brandt-Erichsen 

SUBJECT: Subdivisions and DNR

This memo is a follow up to our meeting with Commissioner Olds and Patrick Kalen, land surveyor. I have outlined the issues discussed for your review, and identified recommended actions which should respond to DNR's concerns.

A substantial portion of the meeting was spent on the definition of subdivision. Also discussed was a bill backed by DNR to establish platting authority for the unorganized borough. The two issues are related because DNR's bill died last year in part due to differences between surveyors, represented by Kalen, and DEC over the definition of subdivision, and DEC's authority to review subdivisions.

SUMMARY OF ISSUE:

DNR and DEC have two different definitions of subdivision because they use the term for different purposes.

DNR's definition is contained in the statutory chapter that governs recording of subdivisions. Recording occurs to provide formal notice of title and title restrictions. Under this chapter, a subdivision can not be recorded, and lots from it can not be sold, until the subdivision plat has been approved by the platting authority.

The express exceptions to DNR's definition of subdivision are for specific types of plats involving either large tracts of land or certain State land disposal programs. The primary benefit of the exception is to remove the requirement of platting authority approval prior to recording.

DEC's definition appears in regulation, and is intended to cover all divisions of a parcel of land which might result in development - whether those divisions are for purposes of sale, or simply for development. The requirement for DEC approval prior to recording has been upheld by the State Supreme Court in State v. Anderson (1988).

DEC's definition differs from DNR's in two ways:

- a) it does not exempt those plats expressly excluded from DNR's definition; and
- b) it includes unrecorded actions that divide interest in property, such as leases.

DEC is interested in a broader circle of transactions than DNR because DEC is reviewing potential wastewater generation and treatment and protection of drinking water, whereas DNR is tracking land ownership.

DIRECTION FROM COMMISSIONERS:

DEC and DNR should use the same definition of subdivision, if at all possible.

Reason: reduce potential confusion.

RECOMMENDATION:

1. For plats expressly exempted from DNR's statutory definition:

a) cadastral plats and cadastral control plats -- DEC concurs that these plats, due to the size of the parcels, do not trigger wastewater disposal concerns. As a result, DEC will take whatever action is necessary [i.e. field directive, or, if necessary, regulation change] to exempt them from review.

b) open to entry and remote parcel plats -- The agreement between DNR and DEC appears to be working well, and absent specific problems that need to be addressed, it should be left in place for these parcels. [Since DNR program has ended, this is a diminishing set of transactions.]

2. For transactions covered by DEC definition, but which do not have to be recorded:

EITHER --

a) Leave DEC definition as is, since there is no overlap with DNR authority, and there have been no objections from those directly affected [surveyors are not involved in these transactions]

OR --

b) Amend DEC's definition to restrict 'subdivision' to plats or other recorded instruments [corresponding to DNR's definition], and add a new definition for leases or other unrecorded divisions of property. This second category would still be reviewed in the same way as recorded subdivisions.

Based on our meeting and a subsequent discussion I had with DNR's Lands Division Director, our commitment to pursue option (b) would help them get their platting bill through. It would address the potential for confusion over different definitions of subdivision. It also would not change the types of transactions we review, only what we call some of them. As a result, there should not be a negative effect on our ability to protect public health.

ALASKA SOCIETY OF PROFESSIONAL LAND SURVEYORS

March 15, 1993

Senator Loren Leman
State Capitol
Juneau, Alaska 99801-1182

Ref: State Survey Authority Bill, subdivisions

Dear Senator Leman:

I am sorry I missed you when I was in Juneau in February. I am writing on behalf of the Alaska Society of Professional Land Surveyors, who have come to regard you as a friend in the Legislature due to your attention to our concerns in the Sixteenth and especially in the Seventeenth Legislature.

I spoke with Senator Steve Frank concerning the subject of the State Survey Authority, proposed in the Seventeenth Legislature as SB 81. It failed to become law when the land surveyors realized that the definition of the word subdivision as written in statute, AS 40.15.290 (2), was not operative. A conflicting state regulation, 18 AAC 90.900 (80) superseded it whenever the two definitions were in conflict. (See the enclosed memo from Jerry Luckhaupt to Senator Shirley Craft dated February 26, 1992.) Senator Frank is aware of key events concerning this proposed legislation. I met with him in February to discuss where we should go from here. Since the definitions are where the problems with SB 81 were encountered, we agreed that getting that problem resolved is a logical beginning. Extending authority over all plats in the unorganized borough is something that we can look at later. Currently, DNR has its authority limited to only replats and vacations. SB 81 would have extended that authority over all types of transactions.

On behalf of the ASPLS I met in Juneau with DNR and DEC and arrived at a tentative understanding that we would like to have a single definition of the word "subdivision". The Commissioners of each agency support the concept of ending this confusion.

I recently received the enclosed internal memo from DEC confirming our understanding. We hope that you can help generate a Committee bill from the Senate Resources Committee that defines the word subdivision. I spoke with this at some length with Senator Steve Frank, who was instrumental in helping the surveyors at the eleventh hour of the Seventeenth Legislature on this subject last year, and he informed me that he would speak with you on the subject.

As you can see from the enclosed memo from DEC, we will not have any problem over a definition that has the effect of exempting control plats and cadastral plats from the definition of the word, but remote parcels may be a problem. All three are

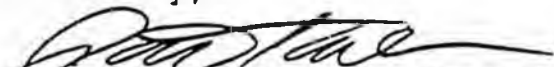
currently not subdivisions according to AS 40.15.290 as it exists on the books today. 18 AAC 72.990 (80) conflicts with the statute definition, expanding it to include many types of transactions. We (ASPLS) agree that in general, DEC should have review authority over the other transactions, but they should call them something else. Concerning the Remote Parcel program, the intent of the legislature in declaring that these plats are not subdivisions should be examined.

The wording that ASPLS hopes to see applies to both the word "street" and the word "subdivision" as they appeared in CSSB 81(RES) as it passed the Senate in 1991 (copy included). However, this time, the words "street" and "subdivision" would apply to all state agencies and municipalities, rather than just to the DNR in the unorganized borough. DEC is expected to change their regulations to address the other types of transactions found in the 18AAC definition.

Concerning Svend Brandt-Erichsen's memo to Commissioner Sandor dated March 10, 1993, we are basically in agreement, except perhaps for interpreting what the legislative intent was when the word "subdivision" was defined in statute, and certain exemptions were listed. As Mr. Brandt-Erichsen notes, the Remote Parcel program has ended, so the number of these transactions will diminish to zero in time.

We do not anticipate having difficulty working with DEC on revised regulations for the other types of transactions. But we do want to look at them before we give expanded platting authority to the DNR in the unorganized borough.

Sincerely,



Patrick Kalen, PLS, ASPLS Legislative Affairs Committee Chairman

copy: Senator Steve Frank
Senator Loren Leman
Craig Savage, President, ASPLS
DEC Commissioner John Sandor
DNR Commissioner Glenn Olds

enclosures: as noted

ALASKA SOCIETY OF PROFESSIONAL LAND SURVEYORS

March 15, 1993

Senator Steve Frank
State Capitol
Juneau, Alaska 99801-1182

Ref: State Survey Authority Bill, subdivisions

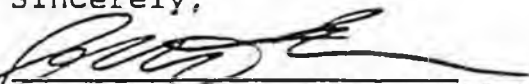
Dear Senator Frank:

I appreciate your finding time to meet with me in February while I was in Juneau, especially considering the time that the budget takes. I worked on the behalf of the Alaska Society of Professional Land Surveyors on the State Surveying and Mapping Board from 1989 to 1991. Part of our work culminated in the State Survey Authority bill, SB 81 of the 17th Legislature. As you are aware, problems over the handling of a special type of survey (remote parcels) by the Alaska Department of Natural Resources greatly eroded support for the concept of a state survey authority from the private sector. We discovered that the word "subdivision" would not have applied to the plats we were going to cover under the new law.

On behalf of ASPLS I met with Commissioners John Sandor and Glenn Olds, and believe that we reached a consensus that the definition itself should be clarified in statute. The surveyors do not object to the DEC regulating land use. We are bothered by the expansion of the definition to encompass things over which we lack influence or control. In 18 AAC, DEC has expanded the word to include a number of transactions in which surveyors may have little or no involvement. We are hoping that confusion could be avoided by reservation of the word "subdivision" for what surveyors do.

Today, I received the enclosed memo from DEC confirming our understanding. We hope that a Committee bill can be generated from the Senate Resources Committee that defines the word subdivision. We do not anticipate having any difficulty working with DEC on the other transactions, except, perhaps, the remote parcel program, which is not working well. I have sent a copy of the material concerning the bill to Senator Loren Leman. As you noted, Senator Leman has been a friend to the design professions.

Sincerely,



Patrick Kalen, PLS, ASPLS Legislative Affairs Committee Chairman

copy: Loren Leman
Craig Savage, President, ASPLS
DNR Commissioner Glenn Olds
DEC Commissioner John Sandor

? /

(80) "subdivision," "subdivide," and "subdividing" mean to divide land or combine lots or parcels by recording, sale, contract, lease, or any other means into two or more lots, sites, or other division for the purpose, whether immediate or future, of conveyance or development, including mobile home parks; the terms include resubdivision and, when appropriate to the context, the process of subdividing or the areas subdivided; the date of a subdivision is the date five days after the submission of a proposed subdivision plat to a platting authority or, where no plat is filed, the date 60 days before a subdivision parcel is offered for sale or conveyance;

(81) "temporary camp" means a place used to provide shelter, basic life services, or offices for nonpermanent activities such as logging, construction, feasibility studies, baseline monitoring, and surveys; the camp's intended use must occur only during the life of the activity it supports or accommodates;

(82) "trench system" means a soil absorption system using excavations one to three feet in width, and one to five feet or more in depth, and containing perforated distribution piping and appropriately graded rock; the sidewall area beneath the distribution piping is the infiltrative area;

(83) "vacuum sewer" means a collection system using a vacuum and high scour velocities to convey wastewater;

(84) "vault privy" means a holding tank with a seat or seats, or other appurtenances attached, to provide for excretion of human wastes directly into the tank;

(85) "wastewater" means domestic or nondomestic wastewater;

and

(86) "water table" means the upper surface of a zone of saturated soil, including normal seasonal fluctuations, but excluding fluctuations caused by heavy rainfall or rapid snowmelt; the water table may be determined by the level at which water stands in a well open along its length and penetrating the surficial deposits just deeply enough to encounter standing water in the bottom. (Eff. 6/30/90, Register 114)

Authority: AS 16.10.010
 AS 44.46.020
 AS 46.03.010
 AS 46.03.020
 AS 46.03.050
 AS 46.03.070
 AS 46.03.080
 AS 46.03.090
 AS 46.03.100
 AS 46.03.110
 AS 46.03.111
 AS 46.03.120
 AS 46.03.900(33)

Editor's Note: Statutory definitions that apply to this chapter are found at AS 46.03.900.

ALASKA STATE LEGISLATURE

119 North Cushman, #201
Fairbanks, Alaska 99701
(907) 452-4882
Fax: 452-3254



Room 125, State Capitol
Juneau, Alaska 99801-1182
(907) 465-3834
Fax: 586-6246

Shirley Craft
Alaska State Senator

MEMORANDUM

To: The Honorable Charles E. Cole,
Attorney General

From: Barbara Bitney, ^{BB}
Legislative Aide to Senator Shirley Craft

Date: February 17, 1992

Re: The definition of the word "subdivision".

The Senator would like a legal opinion on the definition of the word "subdivision" under AS 40.15.290, and a comparison to the definition is written under AAC 18.72.990 (80), applying to the Department of Environmental Conservation.

The information she's been given states that, "the Department of Environmental Conservation has rewritten the definition of the word "subdivision" to include remote parcels in 18 AAC 72.990 (80), directly in conflict with AS 40.15.190 (2) (B). Land surveyors within the Department of Natural Resources objected. The response of the director was to order compliance with the DEC regulation."

Have the Department's of Natural Resources (DNR) and Environmental Conservation (DEC) overstepped their statutory boundaries by adopting a policy (see attached memorandum) that requires remote parcels to be subject to DEC subdivision plan review, instead of going through the normal legislative process?

Has the definition of "subdivision" under 18 AAC 72.990 (80), been expanded to the point of giving DEC jurisdiction over every land transaction, saying that it must be approved by DEC before the DNR (or any other platting jurisdiction) will grant final plat approval?

I have attached copies of AS 40.15.290 and 18 AAC 72.990 for your convenience. If you have any questions, please call me at 465-3834.

DIVISION OF LEGAL SERVICES ..
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

February 26, 1992

SUBJECT: DEC regulation of sewage waste disposal on public or private subdivisions or developments (Work Order No. 17-LS2117)

TO: Senator Shirley Craft

FROM: Jerry Luckhaupt *JEL*
Legislative Counsel

Question Presented: How is the term "subdivision" in AS 46.03.090 to be defined? Must DEC use the definition of subdivision provided in AS 40.15.290 or may DEC develop their own definition of subdivision by regulation?

Answer: Since the legislature has not defined "subdivision" in AS 46.03, DEC may define the term by regulation. In defining the term by regulation, DEC is not required to accept or utilize the definition of subdivision supplied by the legislature in 40.15.290(2), as that definition only applies to AS 40.15. The definition developed by DEC should reasonably be encompassed within the ordinary meaning of the term "subdivision". The definition developed by DEC at 18 AAC 72.990(80) appears to reasonably engender the dictionary meanings of the terms "subdivision" and "subdivide". The fact that this definition may be broader than that provided by the legislature at AS 40.15.290 is of no consequence as the legislature did not limit "subdivisions" in AS 46.03 to those as defined in AS 40.15.

If you have further questions, please contact me at your convenience.

GPL:pl
92-135.plm