

Chenik

Inst.

Lease



Official Business

# Alaska State Legislature

## Senate

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March 11, 1999

Commissioner Frank Rue  
Alaska Department of Fish and Game  
P.O. Box 25526  
Juneau, Alaska 99802-5526

Commissioner John Shively  
Alaska Department of Natural Resources  
400 Willoughby Avenue  
Juneau, Alaska 99801-1724

Dear Commissioners,

This letter is in follow up to the Senate Resources Committee review of the proposed Bureau of Land Management (BLM) lease of state selected land within the McNeil State Game Refuge. After thorough examination of the history of the long-term unauthorized use of the land in question and complete review of the substantial documentation provided by both of your agencies, I find no reason or procedural allowance on which to base a best interest finding for the required 906k concurrence.

The following is a summary of the facts presented to the Resources Committee:

- Mr. McBride has been in trespass on the land since 1978.
- During that time there was no permission granted for the use of the land.
- Mr. McBride improved the facilities on the land over time, including the building of multiple permanent structures.
- Mr. McBride used the land for a commercial enterprise and derived substantial personal gain without compensating any state or federal agency for its use.
- The BLM classified Mr. McBride's use of the land as unauthorized.
- ADF&G staff repeatedly advised against the creation of a private in-holding within the refuge.
- DNR previously denied a 906k concurrence requested by the BLM.

- DNR departmental orders #134 and 137 advise against the acceptance of any land transfer with an outstanding unauthorized use.
- BLM has specific remedies to deal with unauthorized use as outlined in 43 CFR, Chapter 2.

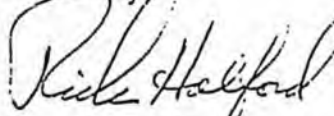
While I appreciate your departments' participation and candor in the hearings we conducted, I am greatly discomfoted that this issue was allowed to progress as far as it had. The circumstances surrounding this issue seem to warrant your examination of the motives and methods employed and how they can be justified within your departmental policy and procedures.

I have enclosed the minutes from the Senate Resources Committee hearings conducted on February 17 and March 3, 1999, for your review. It was apparent in the committee discussion that final issuance of the DNR, Division of Land Finding and Decision ADL 225906 would be in violation of the regulations governing the management of the refuge, the statutory obligations for competitive bid and the Constitutional obligation to equal access.

The facts point out only one fair and responsible remedy to this glaring unauthorized use of state selected land. I urge you to deny the requested 906k lease concurrence, formally request that BLM remove the facility in trespass and then accept transfer of the land to the state free of encumbrance.

As the McNeil State Game Refuge is a legislatively designated area, I am formally requesting that you keep me informed of any further action or decisions regarding this matter; including any consideration of a change in the management plan or of a finding pertaining to commercial facilities. Seeing the issue through to a fair and responsible conclusion remains a priority of the Senate Resources Committee.

Sincerely,



RICK HALFORD

RH:bwh

cc Senate Resource Committee members  
Pat Pourchot, Legislative Director  
Bruce Botelho, Attorney General

enclosures

## Fate of bear-viewing camp now rests with state agency

By JON LITTLE  
Daily News Peninsula Bureau

**M**ichael McBride runs a rustic lodge in a plum location — the heart of the world-famous McNeil River State Game Refuge, where visitors pay him thousands of dollars so they can watch brown bears and go sea kayaking.

But there's a hitch: McBride has no legal right to be there. He's squatting on public land. He's run the business without permission for about 20 years.

He first pitched a tent near Chenik Creek in 1978, and Chenik Brown Bear Photography Camp was born on the wind-swept tundra at the edge of

Kamishak Bay.

"It's really, really a magic place over there," said Dale Chorman, who managed the camp last summer. "It's not just the bears, it's the beauty."

The operation changed its name over the years, to Chenik Wilderness Camp, Chenik Camp and, now, the nonprofit Chenik Institute. It also grew. McBride has built a 24-by-36-foot central lodge along with cabins, a sauna, observation deck, barabara and a footbridge over a creek.

After a sputtering decadelong bid for an official land-use permit, McBride is

Please see Page A-9, BEAR VIEWING

Continued from Page A-1

trying one more time to go legit. He's closer than ever to succeeding. But he has run into objections from several sides.

Critics — among them hunters, biologists and commercial fishing organizations — cry trespass, saying squatters shouldn't be rewarded.

The state is "trying to dress it up in a manner that's acceptable, but it doesn't deal with the issue that the process has been violated almost from day one," said John Hilsinger, former commercial fisheries supervisor for Cook Inlet. "It's kind of a bad precedent in my mind."

But McBride and his backers, many of them conservationists, say he's run the camp in good faith, has tried to win permission and has proved over the years that he knows how to run a safe, clean lodge with no bear trouble.

McBride says he's a victim of bureaucracies that brushed him off for years while the state and Natives battled over who had rights to the land.

"That's one thing that people lose sight of," McBride said. "The whole way this thing got thrown into the trash can is somebody yelled 'trespass.'"

Just six miles from the world-renowned McNeil River bear-viewing site, Chenik boasts smaller-scale but just as breathtaking scenes of bears feeding on salmon along Chenik Creek. Clients pay \$2,250 a week for the privilege. It's also near a harbor seal haulout and seabird rookeries. It offers sea kayaking and is within easy walking of an immense variety of tundra wildflowers.

While many people know of McBride as the operator of Kachemak Bay Wilderness Lodge south of Homer, he says Chenik is a separate venture.

The word "institute" and its nonprofit status are recent changes to an operation that historically has catered to professional photographers. Walt Disney film crews and politicians. But McBride said the lodge exists primarily as an educational platform.

He sees Chenik Institute as a model, showing lodges how eco-tourism in Alaska can flourish without destroying the wilderness. It's a growth industry waiting to take off and somebody has to show how it can be done, he said.



Photo courtesy of the Chenik Institute

A Chenik Institute visitor photographs bears.

### COMPLICATED HISTORY

The past and future of McBride's lodge are intertwined with the state and federal governments and with the Seldovia Native Association. Seldovia fought for the property through the 1980s but lost. Now that the federal Bureau of Land Management is about to convey it to the state, the association is talking about becoming McBride's partner.

The association sees his camp as a key piece in its planned network of lower Cook Inlet eco-lodges. It has a long relationship with McBride and sees Chenik as a jewel.

"We would be the operator of the lodge; that's where Seldovia eventually wants to go," said Michael Beal, chief operating officer of the Native association. "It's very important for us to have a bear-viewing lodge in the mix."

The Native association's connection with Chenik lodge runs deeper, however. Chenik Head is the site of a former Native village with possible ties to the people of Seldovia, Beal said. The Native association fought in court for the Chenik land through the 1980s, creating confusion over who would eventually hold title.

Thick files at Fish and Game and the Department of Natural Resources make it clear that McBride tried to win permission to run his business. But he was bounced between federal and state agencies and the Seldovia Native Association while the land ownership was up in the air.

For a number of years, McBride kept in touch with the Seldovia Natives because BLM officials told him the Native association would probably gain title to the land. Then in the early 1990s, when the state won title, McBride began seeking state permission.

But while the land dispute was going on, McBride kept expanding his tent camp into something more substantial. Now state and federal land managers are left wondering what to do with McBride's enterprise. With Alaska poised to accept title to the federal land where the lodge sits, state land managers are teetering toward approving a proposed long-term lease.

Critics say that would set a bad precedent. And sport hunting guides fear the lodge could lead to wider hunting restrictions.

McBride's lodge operates much like the state-run McNeil River sanctuary, by habituating bears to people. Hunting guides like Rod Arno, president of the Alaska Outdoor Council, see habituation as a conflict to hunting. He said he can see a day when so many eco-tourism companies have popped up on the west side of Cook Inlet that much of the Alaska Peninsula will be closed to trophy hunters.

"Do we manage brown bears in the state of Alaska as habituated, or do we want to have a management plan that includes that human harvest?" Arno said. "It's as good a place as any to have the debate."

But most of McBride's opponents say they don't have a problem with a wilderness lodge. They object to what they describe as the backward way he has created it. It's not fair to move in first and seek permission later, they say.

Hilsinger, the retired biologist, said McBride's lodge does not fit within rules set out in the state's McNeil refuge management plan. The rules say commercial bear-viewing lodges are OK but only after the state follows a formal process and reaches a finding of fact. That kind of process hasn't even begun, Hilsinger said.

"In my mind, those other things -- arche-

ology, bird-watching, sportfishing and kayaking — those things are no justification for a commercial facility there," Hilsinger said. "I think if the department decided they needed some kind of research institution there, they would go through the process."

Cook Inlet Aquaculture Association had to meet strict environmental rules when it built its fish ladder at nearby Paint River, and it figures McBride should have to do the same.

"The standards set for us at Paint River down there are clearly more stringent than are being proposed for him," said Tom Walker, special projects manager for the aquaculture organization. "I have to wonder why that is."

State officials reviewing the situation agree that a permit for McBride should be accompanied by a set of operating conditions but say that's not the immediate question. They're just trying to figure out if the camp should be there at all.

"I think if he were to stay, we would need to write the commissioner's authorization that the (McNeil Refuge) plan calls for," said Rob Bosworth, deputy commissioner of Fish and Game.

## TOUGH DECISION

A key to the Chenik debate is McBride himself, a charismatic, complex man who describes himself as a simple wilderness guide and naturalist.

He has been outspoken on wildlife issues.

McBride ardently backed the McNeil refuge expansion in the early 1990s, which occurred despite strong objection from Alaska hunting guides like Arno. He also opposed the aquaculture association's Paint River fish ladder. After years of public land battles, McBride has made friends, and enemies, in high places.

"What I found is nobody has neutral opinions about Michael McBride," Bosworth said. "But the opinions are just about evenly distributed between those who think he's a saint and those who think he's a sinner."

Bosworth was saddled in 1996 with trying to sort through a stack of memos, reports and letters about McBride that piled up over the years. His job was to come up with Fish and Game's official position on the lodge.

Fish and Game's opinion carries a lot of weight. Chenik Institute sits within 23,000 acres about to be deeded from federal to state control, and it is the only hitch in the land transfer. The state won't accept title until federal land managers approve or reject a permit, and the feds won't even consider issuing a permit without the state's consent.

Bosworth wrote a memo saying Fish and Game gave grudging approval to the federal lease. The opinion runs counter to long-standing Fish and Game opposition, and he said it was a tough decision.

"I thought there were definitely some judgment errors on Michael's part, but I did not find in the record I had that he demon-

strated any intent to deceive or defraud or to trespass or all these other accusations," Bosworth said. "It's definitely a judgment call on my part too."

He later explained that McBride may have known he was trespassing but there were circumstances beyond his control.

"He knew he didn't have a lease, but he was also trying to get one, and nobody told him to leave," Bosworth said. "Was he in trespass? He probably was, but he was in a very ambiguous situation where some were telling him to stay there while others were telling him to talk to another agency."

Late last year, the state Department of Natural Resources drafted a proposed letter of consent and asked for public comment. After receiving about 40 responses, evenly split pro and con, state land managers now will spend about a month reviewing their position, said Mike Sullivan, a resource manager in the division of land.

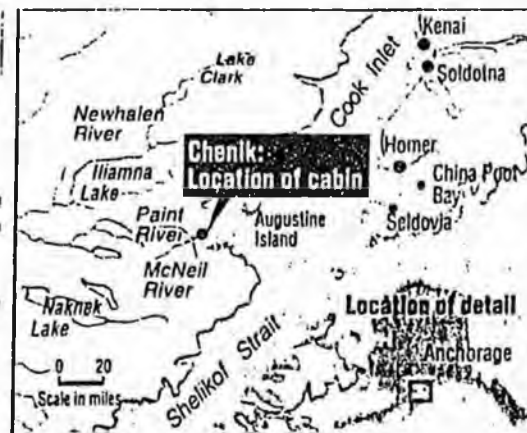
If the state sticks with its proposed approval, McBride and the Bureau of Land Management will be free to negotiate a lease. If not, he could be ordered to dismantle the lodge.

McBride has met with Gov. Tony Knowles to make his case, but the administration has not influenced Fish and Game's decision making, Bosworth said. While the governor's office did ask the department to review its earlier decision, it made no suggestion about the outcome, he said.

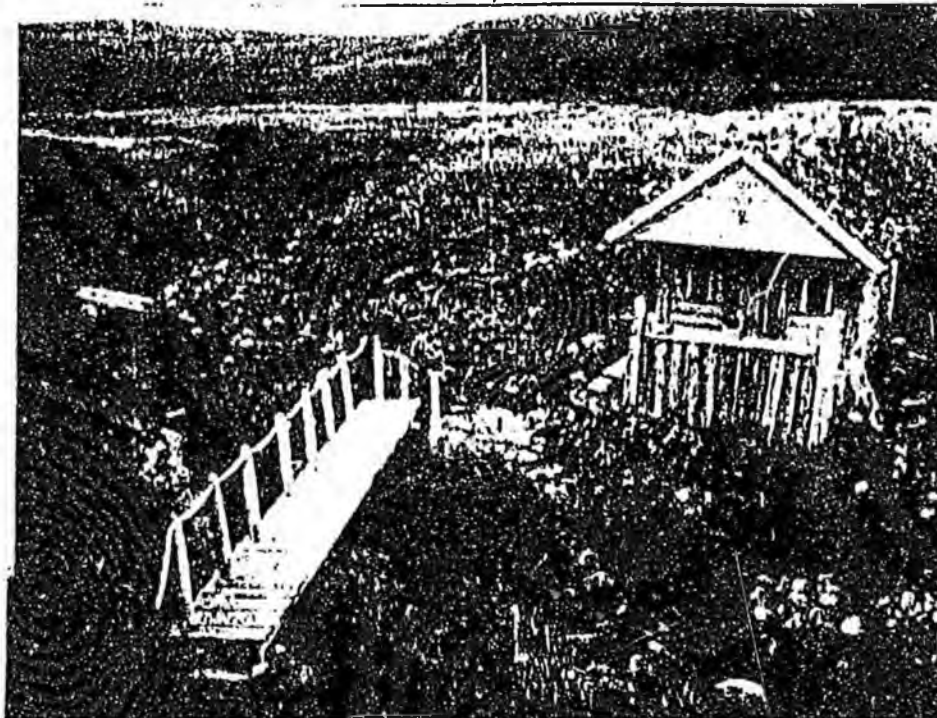
McBride and his supporters say more hangs in the balance than a little lodge in a remote, beautiful location. Camp manager Chorman said the lodge's closure would be a loss to wildlife conservation.

"One of the things I can do is introduce people with clout to all these incredible things. When it comes time to cast a vote, maybe I will have influenced them in the direction of preserving things," he said.

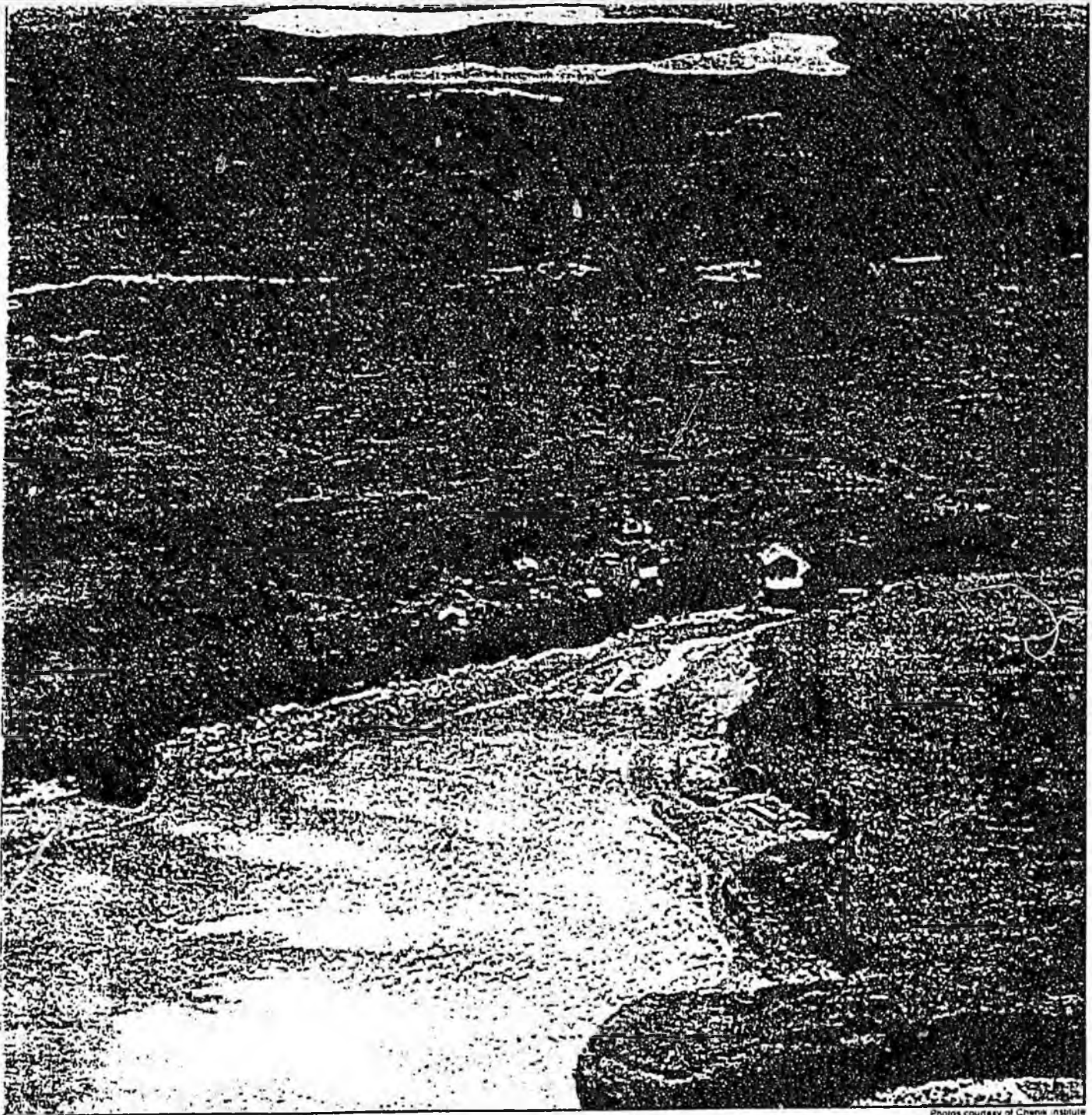
□ Reporter John Little can be reached at [jlittle@adn.com](mailto:jlittle@adn.com).



RON ENGSTROM / Anchorage Daily News



The sauna at Chenik Institute is left furnished and stocked with supplies for use as a vival cabin for anyone in distress in the area.



Photos courtesy of Chenik Institute

Chenik Institute is located at Chenik Head on Kamishak Bay.

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# Chenik Institute, Inc.

an Alaskan Nonprofit dedicated to Bears and their marine and coastal environments

*"Like the beginning of the world before the trees, living waters all around..." Vusamazulu Credo Mutwa*

## BOARD OF DIRECTORS

Michael McBride, President

Paul Merck, Vice-President

Charles Stock, Treasurer

Diane McBride, Secretary

## BOARD OF ADVISORS

Jack Lutfar

Derek Stonorov

Daniel Zatz

Chip Deacodin

Janet Klein, Chenik Archaeologist

Bezu Mills

Kira Heaton

## STAFF

Chenik Camp Manager

Merck & Associates

Development Director

Whitmore & Associates

## Chenik Institute Mission

Our mission is to encourage and actively participate in the protection and preservation of Alaska's coastal wilderness, especially brown bear habitat.

## Chenik Institute Goals

Our goal is to work cooperatively with others to provide permanent protection for brown bears and other coastal wilderness resources.

We provide opportunities for guests, scientists, policy and decision-makers, interns and students, to learn to appreciate and protect all coastal wilderness resources.

*We work with all national and international efforts to accomplish our mission.*

## History of the Organization

The Chenik Institute was incorporated in August 1996.

The organization is now completing its IRS nonprofit determination application.

Founders Michael & Diane McBride began offering world class experiences to guests at their remote wilderness lodge in the McNeil River area on the western shores of Cook Inlet, Alaska, in 1978.

Stories from Chenik guests about the remarkable and intimate opportunities to view brown bears quickly spread.

The Chenik Camp has empowered powerful advocates for stewardship, while providing education and research possibilities not previously available. It has supported Alaska Department of Fish and Game efforts to monitor brown bears and area fisheries.

## The Unique & Important Nature of This Opportunity

Michael and Diane McBride had the foresight to realize the importance of Chenik, and have founded and helped to create the Chenik Institute to protect and preserve what is there -- for the spiritual needs of humans, the resource-rich coastal and marine environments, and for the bears.

The Chenik Camp site is perched off headlands of Kamishak Bay, across Cook Inlet and one hundred miles southwest of Homer, in southcentral Alaska. The rugged shoreline lies between glacier-capped Cape Douglas to the south, and the 10,000 foot twin peaks of Iliamna and Redoubt to the north. Not more than 20 miles away the 4,000 foot Augustine volcano dominates the eastern sky.

As one of the only private inholdings surrounded by the McNeil River State Game Refuge,

**Chenik is a priceless gem.**

To make the Chenik dream a reality that survives, Chenik Institute is in pursuit of benefactors who understand the global significance of this opportunity. The Chenik Institute needs seed money, a long range endowment, and guidance.

The Institute is now identifying *which* potential long-term collaborations to pursue.

### Program Potential

As Chenik Institute is brand new, it is now charting its course into the future. Educational programs are centerfold -- for policy makers, youth, adults, and even business owners wanting to see first hand a successful model of compatible interaction between humans and nature. Ongoing scientific research will provide a sound baseline of information about bears and their marine and coastal environments. A Bureau of Land Management archaeologist will survey the area this summer.

The window of opportunity to visit this remote wilderness in a given year is brief. The inaccessibility of the area and the profound silence which surrounds it is a cornerstone of Chenik's magic. Recreational opportunities are abundant, like delightful hiking to Chenik Lake, or nearby Chenik Falls, with photographic, fishing, beachcombing and other opportunities readily available.

Projected 1997 - 1998	Program Budget Total	= \$69,000
	Operating Budget Total	= \$53,500
	Long Term Needs & Capital Budget Totals	= appraisal underway
<b>PROJECTED 1997 - 1998 TOTAL NEEDS</b>		<b>= \$122,500+</b>

### Flexible Terms are Encouraged

The Chenik Institute has a five year window to fund its obligations for the existing infrastructure and investment owed to Chenik Camp founders; who in the spirit of cooperation around the critical nature of this undertaking, wish to be flexible in setting terms with both the Institute and donors.

For further information please contact:

**Chenik Institute, Inc.**

P.O. Box 862, Homer, AK 99603  
Web site: <http://www.xyz.net/~chenik>

(907) 235-5488 phone  
Email: [chenik@xyz.net](mailto:chenik@xyz.net)

# Chenik Institute, Inc.

## 1997 - 1998 BUDGET SUMMARY

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### Program Budget *projected for 1998*

Archaeological Studies & Field Work	\$20,000.00
Program & Internship Design	5,000.00
Research Intern	6,000.00
Land & Aerial Surveys	4,000.00
Geological Survey	3,000.00
Archaeological Studies Subtotal	\$ 38,000.00
Brown Bear Monitoring & Field Work	\$ 7,500.00
Program & Internship Design	5,000.00
Research Intern	6,000.00
Sample Collection & DNA Analysis	5,000.00
Video Monitoring Equipment	\$ 7,500.00
Brown Bear Monitoring Subtotal	\$ 31,000.00

Program Budget Subtotal *projected for 1998* \$69,000.00

### Planning & Development *actual for 1997 and projected for 1998*

Development Director <i>projected 1998</i>	\$25,000.00
Development Consultant - 1997 Contract	\$ 5,000.00

#### Fundraising - Projects:

##### Coastal Alaska Committee (10/97): Explorer's Club NY & Chicago

Project Coordinator - Contract	\$13,950.00
Project Bonus	5,000.00
Project Assistant - Subcontract	3,500.00
Facility	1,700.00
Auctioneer - expenses only/inkind	-
Catering	4,600.00
Centerpieces	200.00
Printing	400.00
Postcard	4,900.00
Catalog	3,000.00
Postage	350.00
Office Supplies	1,200.00
Telephone/fax	8,000.00
Travel	200.00
Copying	

( Coastal Alaska Committee (Subtotal)\*

*projected \$47,000.00;*

\* Expenses are shared equally by Chenik Institute, Inc. and the Center for Alaskan Coastal Studies, Inc.

Fundraising - Projects (Chenik Institute) Subtotal	\$23,500.00
Planning & Development Subtotal	\$53,500.00

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1997 - 1998 PROJECTED PROGRAM & OPERATING BUDGET \$122,500.00

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# Welcome to Chenik Institute, Inc.

Our Home Page:

<http://www.xyz.net/~chenik>

We will be further developing this site in the near future. Please visit us again!

● [history.html](#)

● [board list.html](#)

● [mission.html](#)

Chenik Institute Inc. PO Box 862 Homer, Alaska 99603

Phone (907) 235-5488 or e-mail us at [\*\*chenik@xyz.net\*\*](mailto:chenik@xyz.net)

# Chenik Institute, Inc.

(907) 235-5488

## History of the Organization

Chenik Institute was incorporated in August 1996. The organization has completed its IRS nonprofit determination application and been awarded a 501 c(3) status.

Stories from Chenik guests have quickly spread around the world regarding the remarkable and intimate opportunities to view brown bears, immersed in one of America's great wilderness areas.

Founders Michael & Diane McBride began offering world class experiences to guests at their remote wilderness lodge in the McNeil River area on the western shores of Cook Inlet, Alaska, in 1978.

The Chenik Camp has empowered powerful advocates for stewardship, while providing education and research possibilities not previously available. It has supported Alaska Department of Fish and Game efforts to monitor brown bears and area fisheries. We will continue and expand our two decades of mutual respect and successful cooperation with the Seldovia Native Association in the greater Cook Inlet and Kachemak Bay area.

[home.html](#)

[mission.html](#)

[board list.html](#)

# Chenik Institute, Inc.

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As the only site of visitor accommodations surrounded by the McNeil River State Game Refuge, Chenik is a priceless gem.

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## Program Potential

Chenik Institute is new, and is charting its course into the future. Educational programs are a top priority -- for policy makers, youth, adults, and even business owners wanting to experience first hand a successful ecotourism model of compatible interaction between humans and nature. Ongoing scientific research will provide a sound baseline of information about bears and their marine and coastal environments. A Bureau of Land Management archaeologist surveyed the area in 1997.

The window of opportunity to visit this remote wilderness in a given year is brief. The inaccessibility of the area and the silence which surrounds it are cornerstones of Chenik's magic. Recreational opportunities include hiking to **Chenik Lake**, or nearby **Chenik Falls**, with **photography**, **fishing**, **beach-combing**, **kayaking** and other opportunities readily available.

**For further information please contact:**

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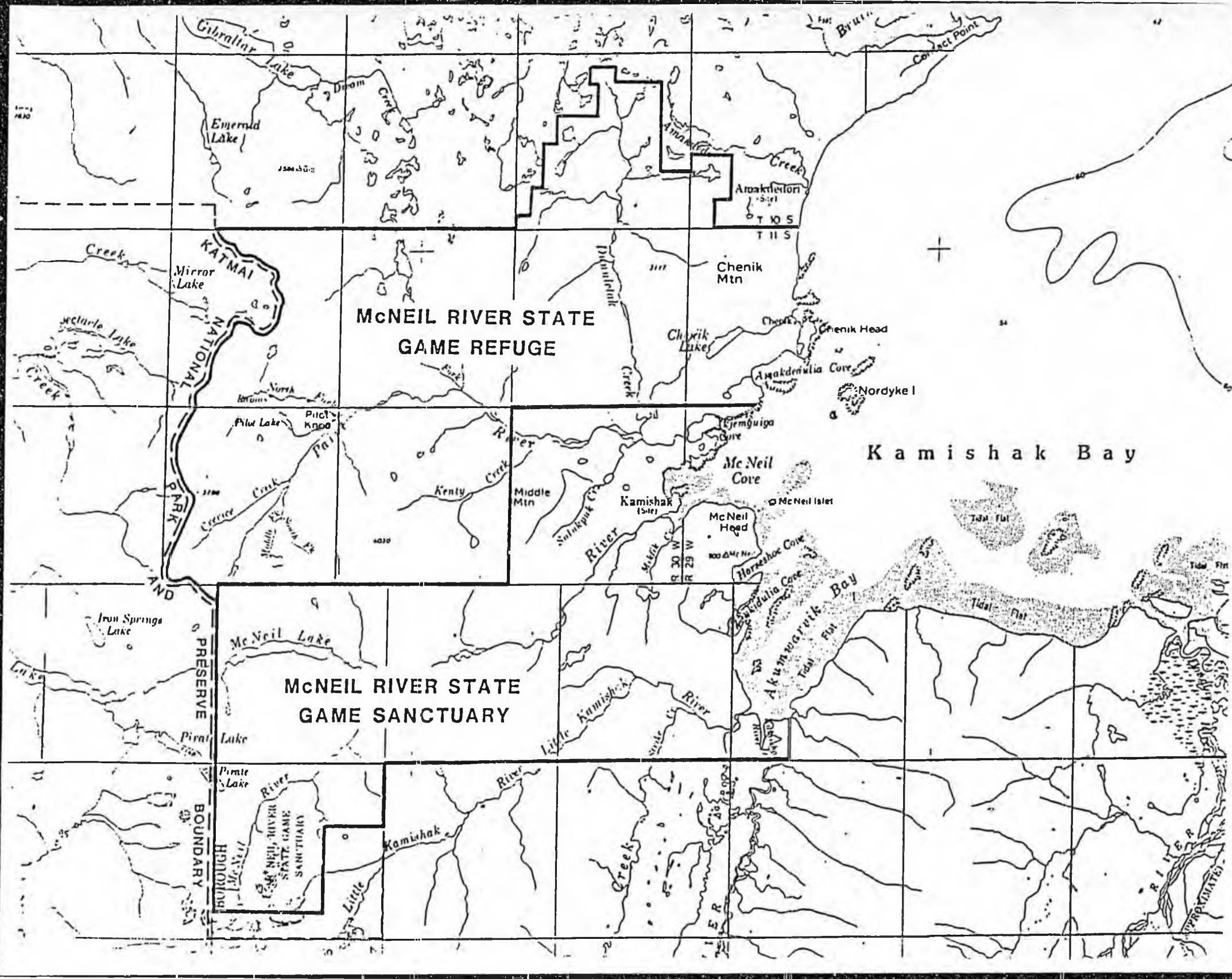
Email: [chenik@xyz.net](mailto:chenik@xyz.net)

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**McNEIL RIVER STATE  
GAME REFUGE**

**Kamishak Bay**

**McNEIL RIVER STATE  
GAME SANCTUARY**





## MEMORANDUM

State of Alaska

DEPARTMENT OF FISH &amp; GAME

TO: Janet Kowalski  
 Director  
 Habitat and Restoration Division  
 Department of Fish and Game

DATE: December 19, 1995

FAX NO.: 267-2464

TELEPHONE NO.: 267-2285

THRU: Lance L. Trasky

SUBJECT: The McBride Chenik  
Lodge Trespass Case

FROM: Debra Clausen  
 Special Areas Coordinator  
 Habitat and Restoration Division  
 Department of Fish and Game

- The Chenik Lodge ("Wilderness Camp") is located on a parcel of state-selected Bureau of Land Management (BLM)-managed land in the northeast corner of the McNeil River State Game Refuge. The BLM parcel, consisting of approximately 11 square miles around Chenik Lake and Chenik Head, has been jointly selected by the state and by Seldovia Native Association (SNA). In 1987, the Interior Board of Land Appeals (IBLA) determined that SNA has no valid claim to the land based on an agreement between BLM, Cook Inlet Region Incorporated (CIRI), and the state. This agreement, entitled "terms and conditions for land consolidation and management in Cook Inlet area," was subsequently ratified by Congress. As a result, the parcel is supposed to be conveyed to the state. SNA, claiming they were not consulted regarding the terms of the agreement, has sued the three parties to the agreement. BLM can not dispose of the land until the suit is settled, which may take years. If the land is ultimately acquired by the state, it automatically becomes part of the refuge. If SNA wins the suit and includes it in their final selections (they are over-selected now), it will be an inholding in the refuge.
- The written case history of this trespass situation is difficult to reconstruct because so little is in writing and possible early records have been destroyed. Mr. McBride claims that many of the agreements and advice he received from BLM and SNA were oral. BLM has no record that Mr. McBride was ever issued a special recreation permit for Chenik Wilderness Camp.

According to Mr. McBride, he obtained a special recreation permit (temporary use not to exceed one year) from BLM in 1978 and established a temporary camp primarily for photographers on Chenik

Head. When he asked BLM for a subsequent annual permit in 1979, he was told the SNA had selected the land and he needed to talk to them. He then asked permission from SNA and was told they did not mind. Between 1979 and 1983, he is not sure exactly when, McBride built, apparently in violation of BLM temporary use guidelines, a large permanent cabin (24 x 28 feet) with a large deck on the site to serve as a kitchen, dining room, and bunkhouse for staff and clients. Concerned about protecting his investment, he claims he contacted SNA every year and, beginning in the 1980's, he contacted BLM and the state on numerous occasions. During this period (1980-1989), he built two smaller cabins (12 x 16 feet and 12 x 14 feet) for clients, two tent platforms (10 x 12 feet), a sauna, two outhouses, a barabara for storage under a large observation deck (30 x 30 feet), a bridge across the creek, and buried a barrel in a nearby seep and connected it with pipe to the kitchen. Overflights this past summer revealed two new additional structures.

- Mr. McBride has been unable to provide us with any documentation that he has ever obtained federal permission to build and operate his camp. He has maintained for several years that he was issued a BLM special recreation permit in 1978. However, BLM has no record of a special recreation permit ever being issued to Mr. McBride for Chenik Wilderness Camp. When Mr. McBride finally produced his copy of the "permit" it was the original application form, signed in ink by Mr. McBride, with no signatures by BLM personnel authorizing the activity. Even if he had a valid special recreation permit in 1978, the standard conditions of these permits would have only authorized temporary tent platforms and would have required removal of the temporary camp at the end of the 1978 field season.

By his own admission, Mr. McBride has never obtained a subsequent permit, not even for a temporary camp, and he has never obtained permission from BLM to build permanent structures on the land. His major argument appears to be that the BLM misinformed him in 1979 when he was told to ask SNA for permission because land transfer was imminent. However, when Mr. McBride was asked if he had ever made any payments to SNA for the right to use "their" land, he admitted that Fred Elvsaas, the president of SNA, told him they could not charge him because it was not their land yet. Given that he has known all along that this is still public land, he should have received prior authorization from BLM to build improvements and occupy the land.

- Mr. McBride is now requesting a lease from BLM for use of this land. Department of Natural Resources' last formal communication with BLM on the subject (dated February 25, 1994), requested that BLM not issue the lease because under state law (Art. VIII, Sec. 17), it is unconstitutional to transfer a parcel of public property into private ownership without allowing other interested parties equal access to that or similar parcels. By approving the BLM lease or remaining silent, the state would be rewarding trespassers and penalizing citizens who have not built unauthorized structures on public land.
- The state (DNR) has informally offered to agree to BLM issuing a one-time only ten-year non-transferable lease as Mr. McBride discussed with Commissioner Rosier in the fall of 1994; however, Mr. McBride has declined that offer, as he wants to be able to transfer/sell the lease.
- The draft McNeil River State Game Refuge and State Game Sanctuary Management Plan, now out for public review, would allow for a commercial operation such as Chenik Lodge, but of course does not guarantee that Mr. McBride would be the operator. The policy on Commercial Facilities/Structures in that plan reads as follows:

*To protect fish and wildlife habitat, conserve fish and wildlife populations, and maintain public use opportunities in a high quality environment, permanent commercial facilities will not be allowed in either the refuge or the sanctuary except that the Commissioner may, in his or her discretion, allow a permanent commercial facility in the refuge specifically for the purpose of facilitating the brown bear viewing program under appropriate terms and conditions and in a manner compatible with the purpose for which the area is established, only after a finding of fact indicates that refuge and sanctuary management goals are better served with a commercial facility than without. Temporary structures (not exceeding one season's use) including tent platforms, may be allowed by individual Special Area Permit only if they meet a public need for which there is no feasible alternative and are compatible with maintaining the brown bear viewing opportunities in the sanctuary. Use of temporary structures does not convey any future or exclusive rights. To allow for monitoring of levels and periods of use, permits for commercial operations will include a requirement to report frequency, location, and timing of aircraft landings in the refuge and sanctuary and numbers of visitors transported.*

Based on the above background information, the basic question that needs to be determined is land ownership. Because of the court suit, this may take years.


The department should not agree to any transfer of lands that would be in violation of the constitution and/or state law. Mr. McBride does not appear to have any ability to transfer the site or structures to a third party because he has no legal status regarding ownership of the site, and indeed appears to be in trespass.

cc: John Westlund  
Wayne Dolezal  
Gary Liepitz

# MEMORANDUM

State of Alaska  
DEPARTMENT OF FISH AND GAME

TO: Harry A. Noah  
Commissioner  
Department of Natural Resources

FROM:   
Carl L. Rosier  
Commissioner  
Department of Fish and Game

DATE: November 22, 1994

FILE NO:

TELEPHONE NO.: 465-4100

SUBJECT: McBride Lease at  
Chenik Camp

Regarding the Michael McBride lease proposal, the following conditions should be stipulated in the lease.

- The lease is issued for a maximum of 10 years and is non-renewable and nontransferrable.
- The lease should be limited in size to the footprint of existing improvements and expansion is prohibited.
- Removal of structures and restoration of the area is required upon lease termination.
- A comprehensive review of activities on both the lease and on adjacent public lands should be required in a Development/Operations Plan.
- An environmental audit should be required before the lease is issued and again upon lease termination.
- The lessee assumes liability for damage to the site, and a compliance bond should be required.

Thank you for the opportunity to comment.

cc: F. Rue  
L. Trasky

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF FISH AND GAME

*Habitat and Restoration Division*

333 Raspberry Road  
Anchorage, AK 99518-1599  
PHONE: (907) 344-0541  
FAX: (907) 267-2464

### MEMORANDUM

TO: Rob Bosworth  
Deputy Commissioner

FROM: Lance L. Trasky ✕  
Regional Supervisor  
Region II  
Habitat and Restoration Division

DATE: September 9, 1996

SUBJECT: BLM Lease for Unauthorized Use (i.e., McBride at Chenik Head)

---

We have received at least two different answers from two different perspectives regarding your question about the appropriateness of asking Bureau of Land Management (BLM) to issue a lease to the owner of an unauthorized structure on state selected lands. In attachments 1 and 2, you will find copies of BLM memoranda requesting advice on the legality of authorizing "an unauthorized use by issuing a FLPMA lease to Michael McBride". The federal solicitor had to give his approval since the case was and continues to be in litigation. BLM is required to resolve trespass cases on federal land prior to transferring title to the state. The October 5, 1993 memo is noteworthy because the BLM District Manager clearly refers to this as an unauthorized use, and proposes to resolve it by issuing a lease to the owner, probably because of an inquiry during the Hickel Administration about a lease for McBride. The issuance of a BLM lease for a unauthorized structure on BLM land which would ultimately go to the state or a corporation would require a state request to resolve the unauthorized use by giving the owner an interest in the property. The more commonly used alternative would be to tell BLM to remove the unauthorized structure. As you recall, the state objected to issuance of a lease in February 1994 (see attachment 3). That position was modified in November 1994 (see attachment 4), however, Mr. McBride does not like the terms that were recommended. A good summary of the situation up to the time of the Commissioner's July 8, 1996 letter is found in attachment 5.

The attorney who is handling the Kamishak Bay litigation, said that the court had not barred any of the litigants from selling or leasing whatever interest they might have in the land in question. However, she had a lot of questions about why the state would be in a rush to do this and why the state would want to resolve a trespass situation in this manner.

Attachments:

1. October 5, 1993 - BLM memo to Regional Solicitor
2. October 12, 1993 - Regional Solicitor to BLM
3. February 25, 1994 - DNR letter to BLM (with January 27, 1994 ADF&G letter as attachment)
4. November 22, 1994 - ADF&G memo to DNR
5. December 19, 1995 - Clausen memo to Kowalski

cc: Don McKay  
Wayne Dolezal

05 OCT 1993

AA-74592 (2920)  
041

Memorandum

To: Regional Solicitor, Alaska

Through: State Director (932)

From: District Manager

Subject: Issuance of a Lease on Lands in the Kamishak Bay Area.

We are seeking approval as required by BLM Manual 1810.5 and 1870.06 concerning issuance of a lease pursuant to 43 CFR 2920 and Section 302 of FLPMA on lands that are in litigation, Seldovia Native Ass'n v. U.S.A., Case No. A91-076.

We propose to resolve an unauthorized use by issuing a FLPMA lease to Michael McBride. He has utilized this land since the 1970's to base his operation from and has built several cabins to house clients. This camp is in Kamishak Bay, Sec. 22, T. 11 S., R. 29 W., Seward Meridian.

We are currently in the process of obtaining an ANILCA 906 (k) concurrence from the state for this lease proposal, in addition to Native comments.

We are, at this time, requesting approval to proceed with this proposed lease.

If you have any questions, please call Carol Heath at 267-1264.

As: SANDRA CUNN

for Richard J. Vernimen



## United States Department of the Interior

OFFICE OF THE SOLICITOR  
ALASKA REGION

4230 University Drive  
Suite 300  
Anchorage, Alaska 99508-4626



BLM.AK.1354

October 12, 1993

### Memorandum

To: District Manager  
Anchorage District Office  
Bureau of Land Management

Through: Division of Resources (932)  
Alaska State Office  
Bureau of Land Management

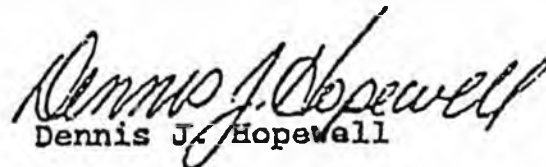
From: Deputy Regional Solicitor  
Alaska Region

Subject: Issuance of a Lease on Lands in Litigation in the  
Kamishnak Bay Area

By a memorandum dated October 5, 1993, you requested approval to process and issue a lease on land involved in the pending lawsuit, Seldovia Native Ass'n v. U.S.A., Case No. A91-076 (D. Alaska). The land was selected by the State of Alaska and Seldovia Native Association and the litigation involves their conflicting claims to the land. Since the land is in litigation, legal review and authorization to act is required by BLM Manual 1810.5 and 1870.06.

Processing and issuance of a lease is customary and appropriate on lands selected under the Alaska Statehood Act and the Alaska Native Claims Settlement Act. Nothing in the pending litigation has changed this practice and issuance of a lease would not prevent a court from rendering full relief.

Accordingly, BLM may proceed with processing and issuance of the lease under its normal rules.

  
Dennis J. Hopewell

STATE OF ALASKA  
 DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND  
 SOUTHCENTRAL REGION

3601 C STREET  
 P.O. BOX 107005  
 ANCHORAGE, ALASKA 99510-7005

February 25, 1994

Sandra Dunn  
 Division of Land  
 Bureau of Land Management  
 6881 Abbott Loop Road  
 Anchorage, Alaska 99507-2599

ALASKA DEPT. OF  
 FISH & GAME

MAR 08 1994

REGION II  
 HABITAT AND RESTORATION  
 DIVISION

RE: ADL 225906 - 906k Request for Concurrence  
 Michael McBride Lease Application  
 Kamishak Bay Wilderness Lodge

Dear Ms. Dunn:

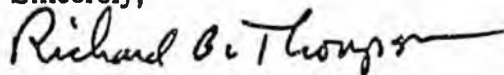
We have reviewed your proposal to issue a long-term commercial recreational lease to Michael McBride for a parcel of State-selected land located at Chenik Head in the Kamishak Bay area within the NE¼ of Section 22, Township 11 South, Range 29 West, Seward Meridian. The site contains approximately 5 acres of land and is intended for use in support of Mr. McBride's Kamishak Bay Wilderness Lodge, a wildlife viewing and photographic touring business which consists of a lodge and several outlying structures as well as a couple of hiking trails.

The Southcentral Region of the Division of Land has determined that this activity is *not* in the best interest of the State of Alaska and therefore does not concur with issuance of a lease on the grounds that the proposed activity is in conflict with the use planned for the area and has unresolved third party interests.

The site is located entirely within a larger parcel of land that has been legislatively designated to become part of the McNeil River State Game Refuge at the time of conveyance. Management of the area will be the responsibility of the Alaska Department of Fish & Game and their objections to the project are a factor in this decision (See attached memo dated January 27, 1994). In addition, efforts to locate any duly executed documents from the Bureau of Land Management authorizing Mr. McBride's use of the site have been unsuccessful and technically his occupancy of the site is unauthorized. It is Department policy not to accept conveyance of land that has any unresolved third party interests. Mr. McBride's encumbrance of this area requires resolution prior to conveyance.

If you have any questions please contact Irene Garcia-Sandoval of my staff at 762-2270.

Sincerely,



Richard B. Thompson  
 Regional Manager

cc: Ron Swanson, Director  
 Allan T. Samet, ADNR/Land  
 Don McKay, ADF&G/Habitat  
 Michael McBride

Enclosure: DF&G memo dated

A:\906K\225906.LT.RJT

# MEMORANDUM

# State of Alaska

DEPARTMENT OF FISH & GAME

TO: Al Samet  
Natural Resource Manager  
Division of Land  
Department of Natural Resources

DATE: January 27, 1994

FILE NO.:

TELEPHONE NO.: 267-2284

*DMC*  
FROM: Don McKay  
Habitat Biologist  
Region II  
Habitat and Restoration Division  
Department of Fish and Game

SUBJECT: Michael McBride  
ADL 225906  
906(k) Request for  
Concurrence

The Alaska Department of Fish and Game (ADF&G) has reviewed the Bureau of Land Management (BLM) proposal to issue a 20 year lease for a 5 acre parcel of land to Mr. Michael McBride dba Kachemak Bay Wilderness Lodge. The purpose of the proposed lease is to support a commercial recreation base camp for wildlife viewing and photographic touring. The land and improvements are located at Chenik Head adjacent to Kamishak Bay within the NE 1/4 Section 22, T. 11 S., R. 29 W., S.M. The parcel proposed to be leased to Mr. McBride is within a larger acreage selected by the State. BLM issued a decision and draft Tentative Approval to convey the land to the State in 1987. On January 1, 1993, the McNeil River State Game Refuge, which encompasses this land, was established. Once the land is conveyed to the State it will become part of the McNeil River State Game Refuge and subject to management by the ADF&G. The Seldovia Native Association (SNA) has initiated a legal challenge to BLM's decision to convey the property to the State.

From the original materials received for review, meetings, and telephone conversations with the applicant, and from supplemental information provided by the Alaska Department of Natural Resources (DNR) on January 3, 1994, we understand that Mr. McBride has operated a commercial recreation facility at the Chenik Head site since 1978. Official authorization for such use prior to State selection in form of a signed Recreation Use Permit from federal authorities has not been documented. Over time, the temporary tent camp has become a hardened facility consisting of a 24 foot by 28 foot cabin with large deck, two smaller cabins (one 12 feet by 16 feet and the other 12 feet by 14 feet), two 10 foot by 12 foot tent platforms, a sauna, two outhouses, and a barabara for storage beneath a 30 foot by 30 foot observation deck.

Although the files are full of confusing and at times seemingly conflicting information, it is clear that the BLM was

responsible for management of the land at Chenik Head. The file contains several documents from the SNA indicating that they expect to be granted title to the land. However, they also clearly state that they are not yet the owner and can not legally authorize any land use activities on the site. Likewise, the State provided the same type of information to Mr. McBride. Information in the file confirms that Mr. McBride contacted SNA, DNR, and the BLM regarding authorization for his land use and improvements. Mr. McBride apparently had concurrence from SNA for use of the land. However, once the BLM decided to convey the area to the State in 1987, Mr. McBride applied to the DNR to purchase the land under a preference right. Authorization of the land use was not given by SNA or DNR because the BLM still owned and was responsible for management of the land. We are uncertain why BLM failed to act on the situation. However, in the absence of any formal approvals, Mr. McBride continued his use and maintained or expanded his facilities.

The BLM has continuously been responsible for managing public use of the area throughout the 15 years that Mr. McBride has operated at the site without formal authorization. For whatever reasons, it appears that Mr. McBride's operations have been conducted while in trespass on federally administered public lands. While we understand Mr. McBride's desire to gain interest in the land, we question the prudence of constructing improvements and conducting a business on land to which he had neither title nor formal permission to use.

The ADF&G objects to the conveyance of the land to the State with an unresolved trespass situation. Furthermore, we are not interested in managing McNeil River State Game Refuge with private inholdings. Private use of the area could lead to habituation of bears to human presence and the association of human presence with food. We are concerned that this would jeopardize human safety and result in an adverse impact to the department's bear viewing and interpretive program within the adjacent McNeil River State Game Sanctuary.

ADF&G staff have considered short term, non-transferable use of the land at Chenik Head by Mr. McBride and transfer, after expiration of the use period, of the unauthorized facilities to the State for use by the ADF&G as administrative, scientific, and educational facilities. These alternatives are not preferred by the ADF&G. Consequently, the ADF&G recommends that no lease of any type be issued to the Kachemak Bay Wilderness Lodge or any associated parties for the property in question. We strongly recommend that the State's position be to request that the BLM fulfill its duties and responsibilities as federal land steward under 43 CFR 2920, declare a trespass situation

January 27, 1994

pursuant to 43 CFR 2920.1-2, and require removal of all improvements from the site pursuant to 43 CFR 2920.1-2(a)(3). To do otherwise is to condone and reward an individual who knowingly and willfully conducted unauthorized activities on public lands.

We appreciate the opportunity to comment on this action. We are available to discuss these comments and recommendations with you. Please advise us of your decision and proposed recommendation to BLM. Thank you for the opportunity to comment.

cc: C. Rosier, ADF&G  
F. Rue, ADF&G  
K. Pitcher, ADF&G  
L. Trasky, ADF&G  
J. Brady, ADF&G  
J. Westlund, ADF&G  
D. Clausen, ADF&G  
M. McBride

## MEMORANDUM

### ALASKA DEPARTMENT OF FISH AND GAME

Date: November 22, 1996

To: Frank Rue, Commissioner

File: McBride3

From: Robert Bosworth   
Deputy Commissioner

Subject: McBride Lease

As you requested, I have reviewed in considerable detail the background information on Michael McBride's request for a lease at Chenik Point, west Cook Inlet, where he has operated a guide and photography camp and lodge on about two acres of land since 1978. I have spoken with Mr. McBride on two occasions and consulted with many of the department staff who are familiar with the issue. Based on this review and consultation I have prepared a summary of events surrounding the lease application from 1978 to the present, which is attached. This memorandum summarizes my assessment and provides my recommendation.

Over the years this case has been represented in two very different ways. One view is that the facts describe an individual, Michael McBride, attempting to subvert state and federal land use law and process for personal gain. An opposing view is that Mr. McBride has worked in good faith with federal and state agencies and the Seldovia Native Corporation (SNC) to gain permits to use land upon which he has been a responsible steward.

Numerous individuals from the BLM, ADF&G, and DNR have tried in vain to reconcile these opposing views and there are a handful of key points in the past 18 year chronology that illustrate this. For example, 1978 is the year Mr. McBride first applied for a one-year recreational use permit from the BLM. The question of whether or not a permit was issued is a decisive consideration in a subsequent determination by ADF&G that Mr. McBride has been trespassing since 1978. Mr. McBride says he received a permit but does not know what happened to it, and points to the fact that it had no apparent value to him after it expired. BLM can neither confirm nor deny the existence of a permit. In 1990, DNR acknowledged a permit was issued, but found that subsequent improvements to the site were unauthorized. The absence of the initial permit has led some to conclude that Mr. McBride's actions after 1978 were illegal and reprehensible, but other documents appear to support his assertion that he obtained a permit and since then has acted responsibly and in accordance with BLM direction.

There seems to be no one doubting that Mr. McBride sought permit renewal in 1979 and that he was told at that time, by BLM, that SNA would soon acquire the parcel and he should go to SNA for a use permit. Thus began several years of occupancy and use of the Chenik site, during which time Mr. McBride regularly corresponded with SNC about his activities at the site and

improvements he made to buildings. SNC wrote on several occasions that they expected to gain title soon. Mr. McBride was apparently content with this arrangement and did not pursue other means to gain leaseholder status until BLM informed him in 1987 that the state, not SNC, would be getting title to the land in the area. Following this new, and erroneous, advice from BLM, Mr. McBride then applied to DNR for a purchase preference. This was denied by DNR in 1990 on the basis that the land had not been approved for transfer to the state, and in any event the improvements he had made to the site had not been authorized by BLM.

In 1993 the McNeil River area, encompassing the Chenik site, became a state wildlife refuge. ADF&G solidified its opposition to the lease at this time, citing lack of evidence of a BLM use permit and concerns about the compatibility of an inholding at Chenik with the purposes of the refuge. No specific concerns about Mr. McBride's past activities are noted, however, and language later included in the Refuge Management Plan does provide for operation of a commercial facility like the Chenik camp (not necessarily operated by Mr. McBride).

In 1994 ADF&G's opposition resulted in DNR opposing and BLM denying Mr. McBride a standard lease for the site. Later that same year, presumably after an appeal by Mr. McBride, Commissioners Rosier and Noah reversed that decision and offered a 10-year non-transferable, non-renewable lease. Mr. McBride declined that offer. Soon after, he suggested since he did not intend to profit personally from future sale, a lease might instead be provided to a non-profit organization with goals compatible with the refuge. Presumably Mr. McBride would hope to continue managing the photography camp/learning center under this scenario.

Given the lack of agency progress and variety of opinions that have been expressed on this issue over several years, I have been prepared to find some evidence that Mr. McBride has willfully trespassed at Chenik, been negligent in following necessary procedures, or dishonest in his representation of the facts. I did not find that evidence. I think Mr. McBride may be guilty of poor judgement in continuing for several years to follow BLM's initial direction to seek SNA's permission to use the land, even when he knew SNA did not hold title. However, under the circumstances, and considering his history of responsible use and stewardship of the site, I do not consider this to be adequate grounds for denying the lease request.

I recommend that a memorandum be sent to DNR and the BLM under your signature, that withdraws our 1994 opposition to issuance of a standard lease to Mr. McBride, with certain conditions. I have attached recommendations for lease conditions and a sample memorandum.

Recommended conditions to be stipulated in a lease to Mr. Michael McBride for use and occupancy of the Chenik Camp site.

1. Operating guidelines shall be developed by ADF&G in consultation with Mr. McBride assuring that operations of the Chenik Camp will not impact the operations of the refuge/sanctuary including the bear viewing program. These operating guidelines should be incorporated into the Lessee's Development/Operations Plan described below.
2. Any lease renewal or transfer shall be subject to review and approval by ADF&G and the Authorizing Officer.
3. The lease shall not expire upon conveyance of the underlying land to the state. Conveyance of Title will be "subject to" this lease.
4. The area to be leased shall reasonably conform to the "footprint" now occupied by the existing improvements. The state will not require a survey, but the site shall be located and mapped prior to issuance of the lease.
5. The Lessee shall submit a Development/Operations Plan for approval by the Authorized Officer prior to execution of the lease. The Development Plan will describe the existing improvements in the form of a detailed, drawn to scale, schematic and narrative representation. Operations plans shall address all client related activities both on and off the lease site. Once approved the Development/Operations Plan is incorporated into and becomes a condition of the lease.
6. The number of persons occupying the site on any given day shall not exceed the maximum occupancy level authorized by the approved Development/Operations Plan. Any exception will be made only with the express written permission of the Authorizing Officer, following application by the Lessor that includes information demonstrating that accommodating additional persons at the site for a specified period of time will not adversely effect the operations of the refuge/sanctuary including the bear viewing program
7. The issuance of the lease does not preclude the lessee's need to acquire any necessary state, federal, or local authorizations as may be required and to be in compliance with these authorizations
8. This Lease is for the development and operation of a commercial recreation facility and attendant activity as described herein and in an approved Development/Operations Plan. The Lessee may use the leasehold only to provide services and facilities that are described in the approved Development Plan.
9. The Lessee shall not sell, assign, rent, sublet, or enter into an agreement for the whole or any portion of the lease area.
10. Airstrip, roads, or the establishment of trails in support of activities arising from use of this leasehold are prohibited. Public use of existing natural landing areas or existing overland access trails used to access public lands or public water shall not be prohibited by the Lessee.
11. The Lessee may use dead and down timber but shall not cut standing timber on the leasehold or in the area unless specifically authorized by the Division of Forestry, Department of Natural Resources. Issuance of this lease does not obligate the Department of Natural Resources to assume any responsibility for the protection of temporary structures or personal property in cases of brush, grass or woodland fire.
12. On-site disposal of solid or hazardous waste is prohibited. All solid waste, hazardous waste and foreign debris will be eliminated by removal to a Department of Environmental Conservation approved site. The leasehold will be kept clean. Food, refuse and fish will be stored in bear-proof containers. Open fire pits are not

permitted and refuse will not be burned.

13. Disposal of gray and/or black water waste to the ground surface or water sources from any operation associated with this lease is specifically prohibited unless approved by the Alaska Department of Environmental Conservation (ADEC). If pit privies are utilized, they must be located at least 200 feet from any surface waterbodies. The bottom of the pit must be four feet above high ground water level. Upon expiration of the permit, lime shall be applied to the wastes in the pit prior to back-filling. Other ADEC restrictions may apply.
14. A bond, cash deposit, certificate of deposit, or other form of surety acceptable to the Authorized Officer, unless otherwise specified, will remain in effect for the entire term of the lease. The Lessor specifically reserves the right to make periodic adjustments to bond amounts. The Lessee must submit bonds or other form of surety acceptable to the Lessor as follows:
  - a Performance Bond in the amount of \$10,000 to ensure faithful performance of the terms and conditions of the lease is due at the time of lease execution and will remain in effect for the entire term of the lease.
  - The Lessee is responsible for site reclamation within the leasehold. One year prior to lease termination the Lessee must file a Reclamation Plan for the site that must be approved in writing by the Authorized Officer. A reclamation performance bond in the amount of the total estimated cost of implementing the reclamation Plan must be posted with the lessor when the Lessee received written approval of the Reclamation Plan or as directed by the Authorized Officer.
15. The Lessee, its officers, agents, employees, contractors, subcontractors, and personnel shall indemnify and hold harmless the State of Alaska, its officers, agents, and employees from all demands, claims, losses, legal actions, and liabilities including cost and expense of any nature arising directly or indirectly from or in any way connected with their actions under the provisions of this authorization.
16. The Lessee shall exercise diligence in protecting from damage the land and property of the Lessor covered by and used in connection with this Lease. The Lessee shall in a timely and reasonable manner:
  - Repair damage and restore the site to its previous condition or to the satisfaction of the Authorized Officer.
  - Pay the Lessor the full cost of any resource damage, including materials and administrative costs, resulting from negligence or activities occurring under the terms of this Lease or under any law or regulation applicable to state land generally, whether caused by the Lessee or by agents or employees of the Lessee; or
  - Accomplish other remedies reasonably prescribed by the Authorized Officer.
17. If, in connection with activities authorized under this Lease, the Lessee, his agents or employees, encounter any paleontological, archeological, or historical sites or artifacts, the Lessee shall suspend all field activities on the affected portion of the parcel, and shall immediately notify the State Historic Preservation Officer.

Michael McBride/ Chenik Camp chronology — 1978 to 1996

3/28/78 Michael McBride (MM) applies to BLM for a Recreation Use Permit for the Chenik site. MM states he did receive the 1-year temporary use permit, but he did not retain it after its term had expired. A receipt for the permit is on file. BLM acknowledges the application, was accepted and "serialized" with Permit # AK-016-8064. BLM has been unable to locate the necessary files and cannot verify whether a permit was issued or not.

3/28/79 MM states he went to BLM to renew the permit and was told to speak to Seldovia Native Association (SNA) about a permit or lease since they would soon be the landowners. First meeting with SNA results in SNA acknowledgment of the Chenik Camp, and a statement that SNA would negotiate a lease when they receive title; no objection to the presence of the camp.

1979-1987 During these years MM was aware that the land had not transferred to SNA. He reports having had several interactions with BLM but did not formally seek another BLM permit. Correspondence from 1970 to at least 1990 documents MM's continued interaction with SNA, requesting yearly approval to use the site, appraising them when minor improvements are made, requesting permission to replace tents with buildings in 1983. On more than one occasion SNA reports to MM that land transfer is imminent.

1987 BLM prepares to TA Chenik area land conveyance to state; SNA appeals decision. BLM tells MM that the state would be getting the land, and MM should request lease or purchase from state.

1988 MM sends documentation of use to DNR along with application fee for land purchase under preference right. MM receives reply from DNR that the land is state-selected but tied up in litigation with SNA, so they cannot accept the application.

1989 MM receives update from DNR: land status still in litigation, so BLM cannot convey to state. Later in the year, BLM writes to MM that the land has now been TA'd to the state. An application fee for a BLM lease is therefore returned to MM and he is told the casefile is closed.

1990 MM resubmits purchase application to DNR, based on information that land had been TA'd to the state. DNR replies that no, the land had not been TA'd, is still in BLM ownership and refers MM back to BLM. MM was also told by DNR that although he apparently did receive a BLM permit in 1978, it was for tents only, and the state will not accept title to any land with unauthorized improvements.

1991 SNA files lawsuit against CIRI and BLM. MM resubmits application for lease to BLM. BLM Solicitor issues opinion stating that processing and issuing permit on land under litigation is possible, even "customary."

1992 BLM requests "state 906k concurrence" with their decision to issue lease to MM. DOL requests comments from DEC, Kenai Peninsula Borough, ADF&G. ADF&G requests information about stipulations, notes that the site is slated for a refuge.

1993 ADF&G indicates refuge is now a reality and the McBride camp is not an appropriate use. BLM proposes to issue a lease to MM and drafts possible lease stipulations. State agencies meet to discuss MM lease and BLM's request for comment. DEC approves issuance, with lease stipulations regarding water quality.

1994 ADF&G position is transmitted to DNR; requests DNR ask BLM to deny the lease. An alternative position developed by ADF&G, if DNR or BLM don't agree to no lease, is to support issuance of a 10 year, not transferable, non-renewable lease. DNR then writes to BLM that it does not concur with lease issuance. Following appeal to Commissioners by MM, lease stipulations are drafted for a 10 year lease, non-transferable, non-renewable.

1995 MM declines to accept lease stipulations. Initiates discussion with The Nature Conservancy regarding their collaboration on use of the Chenik site. ADF&G begins internal discussion of this option. Land status remains an issue, as does MM's lack of a 1978 BLM permit. Draft McNeil River State Game Refuge/Sanctuary Management Plan language would allow for a commercial operation such as the Chenik Lodge.

1996 Letter from ADF&G (Commissioner Rue) to MM states that because facts are in dispute and will not become more clear ADF&G is willing to discuss a lease arrangement with The Nature Conservancy as a third party. MM responds by proposing that if ADF&G withdraw its objection to the standard lease, MM will operate the site consistent with the Refuge Management plan and appropriate statutes, and assign the lease to The Nature Conservancy or other appropriate conservation organization.. MM proposes operation of the site as both a commercial facility and as a non-profit "learning center." TNC cannot commit to taking on the Chenik project at this time. MM and ADF&G discuss options.

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF FISH AND GAME  
OFFICE OF THE COMMISSIONER

P.O. BOX 25526  
JUNEAU, AK 99802-3526  
PHONE: (907) 465-4100  
FAX: (907) 465-2332

MEMORANDUM

TO: John Shively  
Commissioner  
Department of Natural Resources

FROM: Frank Rue *Frank*  
Commissioner

DATE: November 22, 1996

SUBJECT: McBride Lease  
ADL 225906-906k Request

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We have recently conducted a thorough review of the Michael McBride, d.b.a. T'achemak Bay Wilderness Lodge, lease application and 906k Request for Concurrence. Mr. McBride has unsuccessfully sought a lease from the Bureau of Land Management, with concurrence by the state, for a site at Chenik Point on the west side of Cook Inlet, that he has used seasonally since 1978. The 2.5 acre site is located within the boundaries of the McNeil River State Game Refuge.

We have reconsidered our previous opposition to BLM issuing a standard lease to Mr. McBride. We have determined that the circumstances surrounding Mr. McBride's technically unauthorized use of the site are unusual and do not provide a basis for continued opposition to a lease. We conclude it is in the state's interest that Mr. McBride be provided with the legal right to continue using the site at Chenik, with strict conditions to assure use remains consistent with the purposes of the McNeil State Game Refuge and Sanctuary. I have attached a preliminary list of conditions we will recommend be attached as stipulations to any lease.

cc: Janet Kowalski  
Wayne Regelin  
Michael McBride

ADF&G preliminary list of conditions to be stipulated in a lease to Mr. Michael McBride for use and occupancy of the Chenik Camp site.

11/31/96

1. Operating guidelines shall be developed by ADF&G in consultation with Mr. McBride assuring that operations of the Chenik Camp will not impact the operations of the refuge/sanctuary including the bear viewing program. These operating guidelines should be incorporated into the Lessee's Development/Operations Plan described below.
2. Any lease renewal or transfer shall be subject to review and approval by ADF&G and the Authorizing Officer.
3. The lease shall not expire upon conveyance of the underlying land to the state. Conveyance of Title will be "subject to" this lease.
4. The area to be leased shall reasonably conform to the "footprint" now occupied by the existing improvements. The state will not require a survey, but the site shall be located and mapped prior to issuance of the lease.
5. The Lessee shall submit a Development/Operations Plan for approval by the Authorized Officer prior to execution of the lease. The Development Plan will describe the existing improvements in the form of a detailed, drawn to scale, schematic and narrative representation. Operations plans shall address all client related activities both on and off the lease site. Once approved the Development/Operations Plan is incorporated into and becomes a condition of the lease.
6. The number of persons occupying the site on any given day shall not exceed the maximum occupancy level authorized by the approved Development/Operations Plan. Any exception will be made only with the express written permission of the Authorizing Officer, following application by the Lessor that includes information demonstrating that accommodating additional persons at the site for a specified period of time will not adversely effect the operations of the refuge/sanctuary including the bear viewing program.
7. The issuance of the lease does not preclude the lessee's need to acquire any necessary state, federal, or local authorizations as may be required and to be in compliance with these authorizations.
8. This Lease is for the development and operation of a commercial recreation facility and attendant activity as described herein and in an approved Development/Operations Plan. The Lessee may use the leasehold only to provide services and facilities that are described in the approved Development Plan.
9. The Lessee shall not sell, assign, rent, sublet, or enter into an agreement for the whole or any portion of the lease area.

10. Airstrips, roads, or the establishment of trails in support of activities arising from use of this leasehold are prohibited. Public use of existing natural landing areas or existing overland access trails used to access public lands or public water shall not be prohibited by the Lessee.
11. The Lessee may use dead and down timber but shall not cut standing timber on the leasehold or in the area unless specifically authorized by the Division of Forestry, Department of Natural Resources. Issuance of this lease does not obligate the Department of Natural Resources to assume any responsibility for the protection of temporary structures or personal property in cases of brush, grass or woodland fire.
12. On-site disposal of solid or hazardous waste is prohibited. All solid waste, hazardous waste and foreign debris will be eliminated by removal to a Department of Environmental Conservation approved site. The leasehold will be kept clean. Food, refuse, and fish will be stored in bear-proof containers. Open fire pits are not permitted and refuse will not be burned.
13. Disposal of gray and/or black water waste to the ground surface or water sources from any operation associated with this lease is specifically prohibited unless approved by the Alaska Department of Environmental Conservation (ADEC). If pit privies are utilized, they must be located at least 200 feet from any surface waterbodies. The bottom of the pit must be four feet above high ground water level. Upon expiration of the permit, lime shall be applied to the wastes in the pit prior to back-filling. Other ADEC restrictions may apply.
14. A bond, cash deposit, certificate of deposit, or other form of surety acceptable to the Authorized Officer, unless otherwise specified, will remain in effect for the entire term of the lease. The Lessor specifically reserves the right to make periodic adjustments to bond amounts. The Lessee must submit bonds or other form of surety acceptable to the Lessor as follows:
  - A Performance Bond in the amount of \$10,000 to ensure faithful performance of the terms and conditions of the lease is due at the time of lease execution and will remain in effect for the entire term of the lease.
  - The Lessee is responsible for site reclamation within the leasehold. One year prior to lease termination the Lessee must file a Reclamation Plan for the site that must be approved in writing by the Authorized Officer. A reclamation performance bond in the amount of the total estimated cost of implementing the reclamation Plan must be posted with the lessor when the Lessee received written approval of the Reclamation Plan or as directed by the Authorized Officer.
15. The Lessee, its officers, agents, employees, contractors, subcontractors, and personnel shall indemnify and hold harmless the State of Alaska, its officers, agents, and employees from all demands, claims, losses, legal actions, and liabilities including cost and expense of any nature arising directly or indirectly from or in any way connected with their actions under the provisions of this authorization.

16. The Lessee shall exercise diligence in protecting from damage the land and property of the Lessor covered by and used in connection with this Lease. The Lessee shall in a timely and reasonable manner:

- Repair damage and restore the site to its previous condition or to the satisfaction of the Authorized Officer.
- Pay the Lessor the full cost of any resource damage, including materials and administrative costs, resulting from negligence or activities occurring under the terms of this Lease or under any law or regulation applicable to state land generally, whether caused by the Lessee or by agents or employees of the Lessee; or
- Accomplish other remedies reasonably prescribed by the Authorized Officer.

17. If, in connection with activities authorized under this Lease, the Lessee, his agents or employees, encounter any paleontological, archeological, or historical sites or artifacts, the Lessee shall suspend all field activities on the affected portion of the parcel, and shall immediately notify the State Historic Preservation Officer.

MEMORANDUM

STATE OF ALASKA  
Office of the Governor

TO: Commissioner Frank Ruc  
Department of Fish and Game

DATE: January 23, 1996

FROM: Marilyn Heiman  
*Marilyn*

TELEPHONE: 465-3938  
FAX: 465-3532

SUBJECT: Mike McBride

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In December the Governor met with Mr. Mike McBride, of Homer. Mr. McBride and his wife Diane own the Kachemak Bay Wilderness Lodge.

Mr. McBride expressed his concern over the Department of Fish and Game's long time opposition to the Bureau of Land Management's desire to give the McBride's a standard twenty year, five acre lease at Chinik, near the McNeil River Refuge. According to Mr. McBride, the state, under ANILCA, must concur with the BLM's proposed lease, although these five acres are not on state land. Mr. McBride has proposed transferring his lease to the Nature Conservancy.

The Governor asked me to look into a resolution of this issue, and by way of this memo, I request the Department of Fish and Game reexamine this matter and advise us on a resolution.

Thank you for your prompt attention to this matter, and please call me if I can be of assistance.

cc: Lance Trasky, Division of Habitat and Restoration  
Department of Fish and Game

*Mary McDowell*

RECEIVED

JAN 25 1996

DEPT. OF FISH & GAME  
COMMISSIONER'S OFFICE

LOG ITEM C1322  
DRAFTED BY DEBBY CLAUSEN <sup>DC</sup>  
APPROVED BY LANCE TRASKY <sup>X</sup>  
SENT TO JANET KOWALSKI  
SENT VIA E-MAIL 1/30/96

# MEMORANDUM

## State of Alaska

DEPARTMENT OF FISH & GAME

TO: Marilyn Heiman  
Special Staff Assistant  
Office of the Governor

DATE: DRAFT/January 30, 1996

FILE NO.:

TELEPHONE NO.: 465-4100

SUBJECT: The McBride  
Chenik Lodge  
Trespass Case

FROM: Frank Rue  
Commissioner  
Department of Fish and Game

The Chenik Lodge to which you refer in your memo of January 23 is located on a parcel of state-selected Bureau of Land Management (BLM)-managed land in the northeast corner of the McNeil River State Game Refuge. The land status is further complicated by a dual selection by Seldovia Native Association (SNA). Although BLM has ruled in the state's favor on the dual selection, SNA intends to continue to appeal. It is BLM's policy to consult with the state prior to leasing of state-selected land, however, and that is what they have done regarding the Chenik trespass. Mr. McBride has used the Chenik Lodge site without authorization since 1978. He has been repeatedly asked but is unable to produce any permits authorizing his use of the property. BLM is also unable to locate any authorization. He is now requesting a lease from BLM for use of

the land. Alaska Department of Natural Resource's (DNR) last formal communication with BLM on the subject (dated February 23, 1994), requested, on the advice of the Alaska Department of Fish and Game (ADF&G), that BLM not issue the lease. Under state law (Article VIII, Section 17), it is unconstitutional to transfer a parcel of public property into private ownership without allowing other interested parties equal access to that or similar parcels. By approving the BLM lease or remaining silent, the state would establish a policy of rewarding trespassers and penalizing citizens who have not built unauthorized structures on public land, resulting in far reaching implications for hundreds of other trespass structures around the state.

However, subsequent to the official response, the state (DNR) also, informally, offered to agree to BLM issuing a one-time only ten-year non-transferable lease as Mr. McBride discussed with Commissioner Rosier in the fall of 1994. Mr. McBride has declined that offer, as he wants to be able to transfer/sell the lease.

It continues to be the department's position that the state should not agree to any transfer or disposal of lands that would be in violation of the constitution and/or state law. Over the past several years, Mr. McBride has met with BLM officials and state officials from DNR, ADF&G, and the Division of

Governmental Coordination on this matter and the paper trail is extensive. He has now gone to the governor to secure what has eluded him through proper channels and due process.

If the governor wishes to pursue the issue, we would recommend that he request an Attorney General's opinion regarding the question of equal access under Article VIII Section 17 of the State Constitution as it pertains to awarding a transferable lease to a trespasser generally and to Mr. McBride specifically. There are many unauthorized structures on state-managed and state-selected lands in Alaska and while the details of each case vary, the precedent and the principle apply to all.

cc: John Shively, Department of Natural Resources Commissioner  
Bruce Botelho, Attorney General



ANNE RAUP / Anchorage Daily News

Marilyn Heiman, special assistant on natural resource issues to Gov. Tony Knowles, meets

with Knowles and Kachemak Bay constituent Michael McBride on McNeil River.

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME


*Habitat and Restoration Division*

TONY KNOWLES, GOVERNOR

333 Raspberry Road  
Anchorage, AK 99518-1599  
PHONE: (907) 267-2285  
FAX: (907) 267-2464

### MEMORANDUM

TO: Janet Kowalski  
Director  
Habitat and Restoration Division

FROM: Lance L. Trasky   
Regional Supervisor  
Region II

DATE: January 19, 1999

SUBJECT: DNR Public Notice ADL 225906  
Proposed 906k Concurrence for Chenik Institute, Inc. Proposed Land Lease

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Per Deputy Commissioner Bosworth's E-Mail of January 11, 1999, staff have reviewed the paperwork you hand carried from him concerning the Chenik Institute's proposal to lease several acres of state selected land at Chenik Head. We have also thoroughly reviewed the historic case file on this proposal, sought additional background data from BLM, and interviewed several persons knowledgeable of the state's Cook Inlet land selections. As a result, we respectfully request that Commissioner Rue reevaluate his November 22, 1996, decision which reversed the department's long standing opposition to a long-term validation of a trespass facility on state selected lands.

We make this recommendation for several reasons. In reviewing Deputy Commissioner Bosworth's November 22, 1996, summary chronology of the lease application file we note that several items appear to be taken out of context or misinterpreted. The entry for 3/28/78 states in part, "...A receipt for the permit is on file. BLM acknowledges the application was accepted and 'serialized' with AK-016-8064. BLM has been unable to locate the necessary files and cannot verify whether a permit was issued or not." However, the summary does not clarify that the receipt is for a \$10.00 application and contains an advisory note stating, "This notice is a receipt for monies paid the United States. If these monies are for required fees in conjunction with your application to lease, purchase, enter, or otherwise acquire an interest in public lands or resources, this receipt is not an authorization to utilize the land applied for and does not

convey any right, title, or interest in the land for which application is made (emphasis added)."

The November 1996 summary chronology does not mention a June 20, 1979, letter that Mr. McBride sent to BLM. This letter says in part, "I would like to request a Recreational Use Permit for the same area I applied last year. Perhaps you'll remember my coming into your office in about May to discuss this matter with Mr. John Marik and Dave Mobratten. At that time I did file a permit but was told it would probably not be acted upon (emphasis added) . . . Since this land was deficiency selection land for the Seldovia Village, I sought and was given permission by the Native Corporation president Fred Elvsas to maintain a temporary tent camp on Chenik head . . ."

The November 1996 summary chronology for the period 1979-1987 misses several key statements made by Mr. McBride which go to his knowledge and intent of required permits for the Chenik Camp. They include a letter to the Seldovia Native Association (SNA) of June 11, 1985, in which he states, "The original BLM permit was for temporary structures. As the years have passed our original tents have worn out and with your permission we have replaced them with first a tin roofed and plywood building in which to serve clients hot meals and where they can have shelter from the frequent violent storms in the area. Our smaller guest tents have nearly worn out. Last year we replaced one tent with a small, simple plywood and tin cabin." He continues, "Each of these more permanent steps was done with great trepidation on our part because while we had your permission, we had no legal claim to the land (emphasis added). You explained that if SNA did acquire the land through conveyance from the state, then you would give us first option to lease it."

Further, in an October 21, 1993 letter to SNA, Mr. McBride provides a history of his use of the Chenik Site. Pertinent entries of the history state the following:

"1979 Clients at Chenik, continued improvements to facility but laboring under constraint of 'temporary improvement' as specified by BLM, still concerned about the outcome of the land status (emphasis added) . . . I assume in light of this ongoing research that SNA will soon be my landlord."

1981 . . . now in our 4<sup>th</sup> season with clients in tents. I was still laboring under the concern for the BLM restriction so I was conservative in the financial investment and in the 'permanence' of the facility in spite of the fact that tents are ill suited to the savage weather of Kamishak Bay . . .

1982 similar to above, tents now in 5<sup>th</sup> year of severe weather and land status still uncertain (emphasis added), during communication with Elvsas in his Seldovia office, request permission to transition from tents to buildings observing that the standard Alaskan Wall Tents in 12x24 are about \$2,000 and the amount will buy plywood, 2x4's and metal roofing for similar structure (emphasis added). He concurs with this

plan. Further, it appears from above communication that SNA will soon receive title to land and we will receive lease (emphasis added), we proceed.

1983 the first building is replaced using minimal materials and investment since I am still worried about status (emphasis added) . . .

1986 another tent is replaced with a minimalist cabin, barely big enough to be called a cabin, still afraid to proceed with any good improvements as my future in Chenik is uncertain unless SNA does indeed gets the land (emphasis added) . . . "

The November 1996 summary chronology for 1995 states that the, "Draft McNeil River State Game Refuge/Sanctuary Management Plan language would allow for a commercial operation such as the Chenik Lodge." The inclusion of this statement in the chronology is confusing and inaccurate. Because the chronology is a portion of a November 1996 piece of correspondence it should have referenced the final version of the plan which went into effect August, 23, 1996, when the June 1996 final plan was also adopted as regulation under 5AAC 95.540. The final management plan does not say that a commercial operation such as Chenik Lodge is allowable. The plan states, "To protect fish and wildlife habitat, conserve fish and wildlife populations, and maintain public use opportunities in a high quality environment, permanent commercial facilities will not be allowed in either the refuge or the sanctuary except that the commissioner will, in the commissioner's discretion, allow a permanent commercial facility in the refuge specifically for the purpose of facilitating the brown bear viewing program under appropriate terms and conditions and in a manner compatible with the purpose for which the area is established, only after a finding of fact indicates that refuge and sanctuary management goals are better served with a commercial facility than without (emphasis added)."

If such a finding were made, it should include a detailed description of the services to be provided and the conditions under which they would be conducted. The services would then be advertised for bid and a contract awarded or some other type of agreement reached with the successful bidder to provide the services. To our knowledge, such a finding of fact has not been made. If this were the case, a recommendation to support leasing the property at this time would appear to be in violation of state regulations.

From the above synopsis it is clear that Mr. McBride was well aware of the fact that he needed permits from BLM to legally establish and maintain a facility at Chenik and that BLM told him in 1979 that the application probably would not be acted upon. Authorization from the State through concurrence of any BLM lease of the site was also required pursuant to Section 906(k) of ANILCA because the State of Alaska had selected this land in the early 1970's. Circa 1975/76 the State entered into the Cook Inlet Land Agreement with CIRI and the state's land selections including the Chenik Head area were confirmed by the agreement. Seldovia Native Association litigation of the agreement postponed transfer of the land to the state but judicial proceedings have reconfirmed the state's selections. It appears that in 1982 Mr. McBride made an economic,

business decision to begin replacing wall tents with hard structures. Throughout the entire time he also gambled that SNA would receive the land. They did not.

While we sympathize with the applicant, the basic issue remains legal authorization for the facility. While his actions may be interpreted as well intentioned concerning fish and wildlife, the preponderance of evidence shows his actions were speculative business decisions and the land use was irresponsible and unauthorized. Over the past several years, Mr. McBride has met with BLM officials and state officials from DNR, ADF&G, and OMB/DGC on this matter. The issue of the Chenik Institute taking over operation of the facility is not relevant to whether or not this is an authorized use that should be continued. In fact, from the literature provided by Deputy Commissioner Bosworth, it would appear that the institute has been founded in part to "fund its obligations for the existing infrastructure and investment owed to Chenik Camp founders . . .". We note that the Chenik Camp founders also happen to be the President and the Secretary of the Chenik Institute.

Under state law (Article VIII, Section 17), it is unconstitutional to transfer a parcel of public land property into private ownership, without allowing other interested parties equal access to that or similar parcels. By approving or concurring with the BLM lease or remaining silent, the state would establish a policy of rewarding trespassers and penalizing citizens who have not built unauthorized structures on public land. Such an action could have far reaching implications for hundreds of other trespass structures around the state.

Given that the State Legislature saw fit to create the McNeil River State Game Refuge, it is incumbent upon the department to be fair and impartial when dealing with land use proposals within the refuge. Decisions must be made based on the guidance contained in the refuge management plan, state regulations, and in the public forum. When the state takes possession of the Chenik Head area from the federal government the land must be free of any encumbrances. If the trespass facilities are grandfathered on the land through a BLM lease the public process will have been circumvented and our ability to effectively regulate activities within the refuge hindered.

Therefore the department should continue to oppose any long-term BLM authorization of this trespass facility, regardless of who the applicant might be. Awarding a transferable lease to a trespass facility should not be condoned. There are many unauthorized structures on state-managed lands in Alaska and while the details of each case vary, the precedent and the principle apply to all.

We have briefly reviewed the 16 conditions and the operations plan associated with DNR's public notice of ADL 225906. Both appear to be inadequate in term of overall content and specificity. It would take a considerable amount of time to prepare an adequate set of stipulations for a commercial brown bear viewing operation in the McNeil River State Game Refuge, none-the-least being selection of an appropriate site for such a facility. Please advise whether you wish us to continue in that regard.

Janet Kowalski

-5-

January 19, 1999

cc: J. Hughes, ADF&G/WC  
J. Westlund, ADF&G/WC  
J. Brady, ADF&G/CF  
W. Bucher, ADF&G/CF  
D. McBride, ADF&G/SF

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

February 15, 1999

**SUBJECT:** Lease of state land within McNeil River State Game Sanctuary or State Game Refuge for a lodge (Work Order No. 21-LS0479)

**TO:** Senator Rick Halford  
Attn: Brett Huber

**FROM:** George Uternohle *GU*  
Legislative Counsel

You have asked what procedures must be followed for a lease of state land within the McNeil River State Game Sanctuary or State Game Refuge for a recreational facility such as a lodge.

The procedures for the lease of state land are set out at AS 38.05.070 - .105. The procedures for the lease of state land for development of a recreational facility, such as a resort or lodge, are set out at AS 38.05.073. The additional procedures that are applicable to the lease of land within the McNeil River State Game Sanctuary or State Game Refuge are set out in AS 16.20.162 and AS 16.20.041 - .060, respectively.

The first step in leasing state land for a recreational facility is for the commissioner of natural resources to identify those state lands where the development of such a facility is appropriate. AS 38.05.073(a). Lands suitable for development of a recreational facility are identified through a regional land use plan or site-specific plan adopted under the land use and planning procedure established by AS 38.04.065.

If the planning process identifies land suitable for development as a recreational facility, the commissioner may request proposals from potential lessees who are interested in developing the specific type of facility identified in the plan. AS 38.05.073(a). Thirty days before soliciting proposals from potential lessees, the commissioner shall provide public notice of the location and specific type of recreational facility being considered by the commissioner. AS 38.05.073(c). The public notice must be provided to certain municipalities, Native regional corporations, and Native village corporations in the vicinity of the proposed development. *Id.* Other persons who are affected by the proposed development or who have requested to be notified are also entitled to notice of the potential development. *Id.* Notice shall also be published in newspapers. *Id.*

If the commissioner decides to proceed to the solicitation of proposals to develop the recreational facility, the commissioner shall prepare a written solicitation describing the

Senator Rick Halford

February 15, 1999

Page 2

essential elements of the request. AS 38.05.073(d). The request for proposals must be sent to interested persons and be published in certain newspapers. AS 38.05.073(e). Those persons who respond to the solicitation for proposals must specifically describe their ability to develop the land and to abide by the terms set out in the solicitation of proposals. Id.

If only one potential lessee is acceptable to the commissioner, the commissioner may begin to negotiate with that person regarding the terms and conditions of the lease. AS 38.05.073(f). If there is more than one potential lessee who is acceptable to the commissioner, the commissioner may select the person who submits the highest bid that exceeds the minimum bid established by the commissioner. AS 38.05.073(g). Once the commissioner has determined the successful bidder, the commissioner may negotiate the terms and conditions of the lease with the successful bidder. Id.

After the lease terms and conditions have been agreed to with the potential lessee, the commissioner may issue a preliminary decision that the lease is in the best interest of the state. AS 38.05.073(h). During the process of preparing the preliminary best interest finding, the commissioner must consult with other agencies regarding those matters that are within the jurisdiction and expertise of the respective agencies. Id. The commissioner shall give public notice of the preliminary best interest determination and shall request comments from the public and state agencies. The commissioner shall hold a public hearing in the area of the proposed lease if there is sufficient interest. Id.

After reviewing the comments received on the preliminary best interest finding, the commissioner shall make a final determination of whether the lease is in the best interest of the state. AS 38.05.073(i). If the commissioner makes the determination that the lease is in the best interest of the state, the commissioner shall offer the lease to the potential lessee, subject to such terms, conditions and study requirements that the commissioner determines appropriate. If a study or plan is required, then the potential lessee may be required to provide and pay for the plan or study. Under the appropriate circumstances, a financial feasibility plan and/or fish and game study may be required. Id. Development of a recreational facility within a state game sanctuary or state game refuge would be an appropriate circumstance in which to require a fish or game study.

The property subject to the lease must be surveyed before the lease is issued. AS 38.05.073(o). The commissioner shall require the lessee to post a performance bond, as the commissioner determines necessary, to cover the completion of the development, maintaining the development under the lease, and/or restoring the lease site if the lease is abandoned. AS 38.05.073(p).

The term of a recreational development lease may not exceed 55 years though there is a possibility that the lessee may receive another lease at the expiration of the original lease. AS 38.05.073(q). The annual compensation paid for the lease shall be reevaluated and adjusted every five years. AS 38.05.073(n). A violation of AS 38.05.073 or a provision of the lease may result in termination of the lease. AS 38.05.073(r).

Senator Rick Halford  
February 15, 1999  
Page 3

In addition to the requirements established under AS 38.05, the lease of land within the boundaries of the McNeil River State Game Sanctuary is also subject to AS 16.20.160 and 16.20.162. Land within the sanctuary is potentially available for lease if the commissioner of fish and game finds that the activity conducted under the lease would be compatible with the purposes for which the sanctuary was established. AS 16.20.162(c)(2). The Board of Game and Board of Fisheries may adopt regulations governing access, development, construction, and entry within the sanctuary that affect the natural habitat, fish and wildlife, and public use of the sanctuary. AS 16.20.162(e).

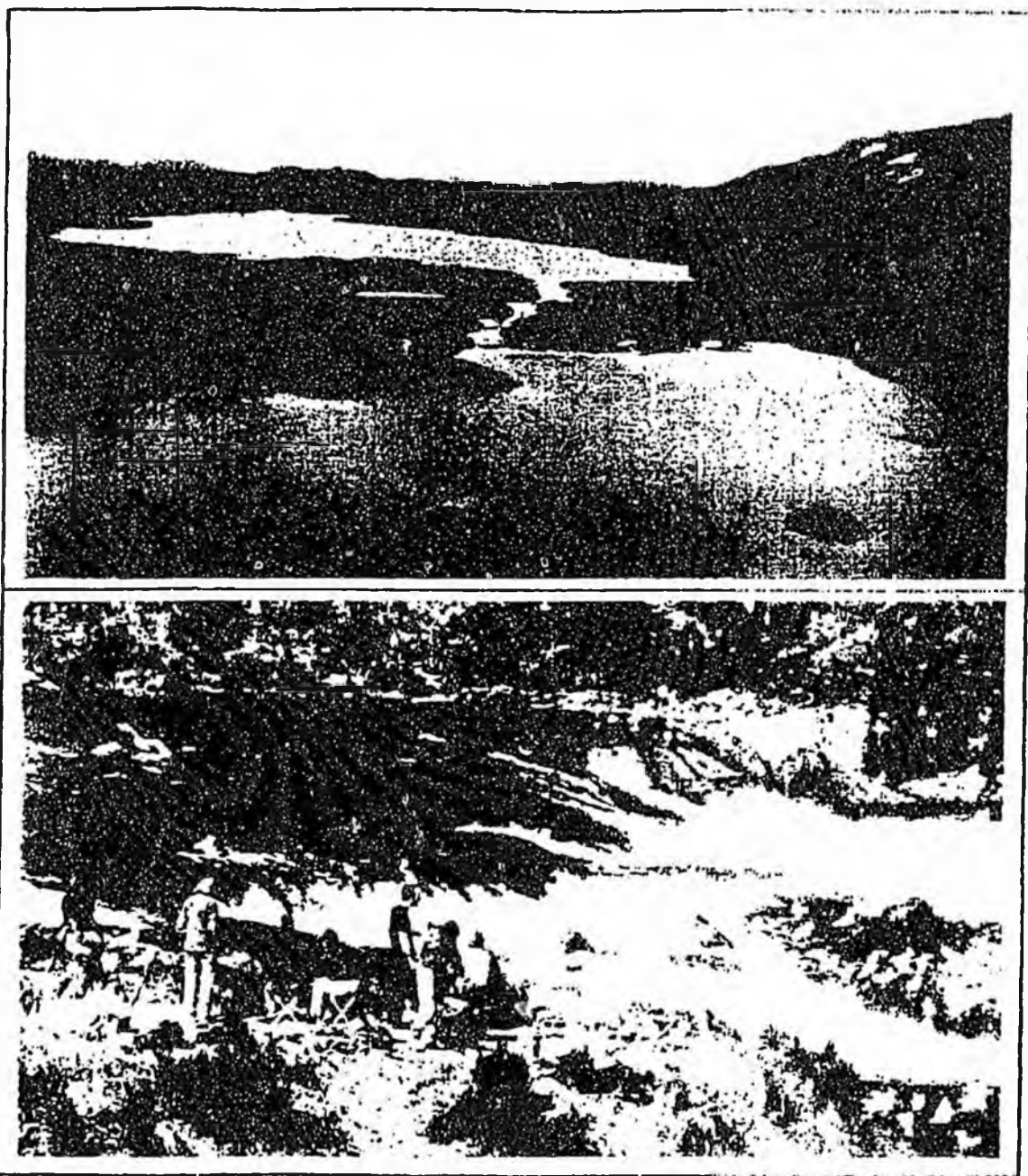
In addition to the requirements established under AS 38.05, the lease of land within the boundaries of the McNeil River State Game Refuge is also subject to AS 16.20.041. Land within the refuge is potentially available for lease if the commissioner of fish and game finds that the activity conducted under the lease would be compatible with the purposes for which the refuge was established. AS 16.20.041(e)(2). Before land within the refuge is leased by any state agency, that agency must notify the commissioner of fish and game. AS 16.20.050. The commissioner shall require the person or government agency to submit full plans for the anticipated use, full plans and specifications of proposed construction work, complete plans and specifications for the proper protection of fish and game, and the approximate date when the construction or work is to commence, and shall require that written approval be obtained from the commissioner of fish and game as to the sufficiency of the plans or specifications before construction is commenced. AS 16.20.060. A special area permit is required under 5 AAC 95.540 for development and construction activities within the sanctuary or refuge.

CONCLUSION. In order to obtain a lease of state lands for the development of a lodge, a potential lessee must comply with the requirements established for the lease of state land for recreational facilities development under AS 38.05.073. The leasing of land for a lodge on state land within the McNeil River State Game Sanctuary and the adjacent State Game Refuge are further subject to approval of the commissioner of fish and game and to further conditions for the development of the facility that may be established by the commissioner or the boards of fisheries and game under relevant provisions of AS 16.20.

If I may be of further assistance, please advise.

GU:pl  
99-013.plm

MCNEIL RIVER STATE GAME REFUGE  
AND STATE GAME SANCTUARY  
MANAGEMENT PLAN



Prepared by  
Alaska Department of Fish and Game  
June 1996

If measurable impacts to brown bear viewing in the sanctuary is attributed to camping activities in the refuge, specific campsites should be established and camping activity limited.

**Sanctuary Policy:** To protect fish and wildlife habitat, conserve fish and wildlife populations, and maintain unique brown bear viewing opportunities in the sanctuary, camping in the sanctuary may be allowed through the wildlife conservation access permit process (5 AAC 92.065), in designated locations. In addition, establishment of a camp in excess of 14 consecutive days or relocating a camp within a 14-day period within a 2-mile radius of a previous camp requires authorization through a special area permit.

### **COMMERCIAL FACILITIES/STRUCTURES**

**Refuge/Sanctuary Policy:** To protect fish and wildlife habitat, conserve fish and wildlife populations, and maintain public use opportunities in a high quality environment, permanent commercial facilities will not be allowed in either the refuge or the sanctuary except that the commissioner will, in the commissioner's discretion, allow a permanent commercial facility in the refuge specifically for the purpose of facilitating the brown bear viewing program under appropriate terms and conditions and in a manner compatible with the purpose for which the area is established, only after a finding of fact indicates that refuge and sanctuary management goals are better served with a commercial facility than without. Temporary structures (not exceeding one season's use) including tent platforms may be allowed by individual special area permit only if they meet a public need for which there is no feasible alternative and are compatible with maintaining the brown bear viewing opportunities in the sanctuary. Use of temporary structures does not convey any future or exclusive rights. To allow for monitoring of levels and periods of use, permits for commercial operations will include a requirement to report frequency, location, and timing of aircraft landings in the refuge and sanctuary and numbers of visitors transported.

### **OIL AND GAS**

**Refuge/Sanctuary Policy:** To avoid damage to fish and wildlife habitats, disturbance to fish and wildlife populations (especially impacts to brown bears), and displacement of public use in a high quality environment, surface entry for oil and gas development and transportation, including supplies and equipment storage for off shore exploration or development, will not be allowed in the refuge or sanctuary. Exploration may be allowed under terms and conditions compatible with statutory goals, including appropriate restrictions.



# State of Alaska

## Department of Natural Resources

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**Department Order: 134**

**Title: Trespass on State Selected Land**

**Original Date Signed: September 26, 1989**

**Original Author: Lennie Gorsuch**

**Status: Reconfirmed**

**Date: December 2, 1994**

**By: Harry A. Noah**

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The following is the Department procedure for dealing with known trespass situations on state-selected land.

Although land selected by the state is under Bureau of Land Management (BLM) jurisdiction, the BLM often does not take appropriate action to clear state-selected land of unauthorized use situations before title is issued to the state. The net result of this inadequate BLM effort is to transfer these unauthorized situations along with the land to the state. This often results in preference right, land use permit and lease applications received from persons who have not had their claims adjudicated by BLM. It also puts the state in a liability situation when "improvements" are involved.

The purpose of this order is to set up a simple and straightforward procedure whereby such unauthorized use situations will be identified, noted to the appropriate land selection file, and notification sent to BLM informing them that the state will not accept title without first resolving the unauthorized use situation. The procedure is as follows:

1. DNR line agencies (Division of Agriculture, Division of Forestry, Division of Land & Water Management, Division of Mining, Division of Oil & Gas, Division of Parks & Outdoor Recreation) will identify during their normal operations instances where unauthorized use may exist on state selected land. This information will be documented and forwarded to the affected regional office of the Division of Land & Water Management, with a copy sent to the Title Administration Section. The regional office will maintain files which will be reviewed at the time BLM sends a draft

conveyance.

2. The regional office will verify whether an Alaska National Interest Lands Conservation Act, Section 906(k) concurrence has been requested or issued and will notify BLM of all unauthorized use situations and inform them that the state will not accept title until the use is abated or authorized. Title Administration will be sent a copy of the region's notification to BLM which will be placed in the state selection file.
3. When BLM issues a decision to transfer the affected land to the state, Title Administration will notify the appropriate regional office to determine if the unauthorized use situation has been resolved. If the use has not been resolved satisfactorily, title will not be accepted and the draft conveyance document will be returned to BLM as unacceptable.
4. If necessary the Attorney General's Office will be asked to appeal any final BLM decision and take any necessary legal action to see that the trespass situation is resolved or decision modified so as to exclude the area where the trespass is located.

For purposes of this department order, trespass or unauthorized use situations are meant to include invalid or unauthorized entries made on land selected by the state. It is not the intent of this order to focus on entries on state-selected land that are authorized or condoned by the Department, such as mining entries filed under state law.

Department Order 81-014, which formerly addressed this subject, is hereby rescinded.



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**Sec. 16.20.041. McNeil River State Game Refuge.** (a) The following state-owned land and water, including the tideland but exclusive of marine water and submerged land, lying within the parcels described in this subsection is established as the McNeil River State Game Refuge:

Township 10 South, Range 29 West, Seward Meridian

Section 19: S $\frac{1}{2}$

Section 20: SW $\frac{1}{4}$

Section 29: W $\frac{1}{2}$

Sections 30 — 31

Township 10 South, Range 30 West, Seward Meridian

Section 3: SW $\frac{1}{4}$

Section 4: SE $\frac{1}{4}$

Sections 10 — 11

Sections 14 — 16

Section 17: E $\frac{1}{2}$

Sections 20 — 23

Sections 25 — 29

Section 30: SE $\frac{1}{4}$

Section 31: NE $\frac{1}{4}$ , S $\frac{1}{2}$

Sections 32 — 36

Township 11 South, Range 29 West, Seward Meridian

Sections 1 — 35

Section 36, except Nordyke Island and its tideland  
Township 11 South, Range 30 West, Seward Meridian

Sections 1 — 36

Township 11 South, Range 31 West, Seward Meridian

Sections 1 — 36

Township 11 South, Range 32 West, Seward Meridian

Sections 1 — 36, except land within Katmai National Park and Preserve

Township 12 South, Range 31 West, Seward Meridian

Sections 1 — 36

Township 12 South, Range 32 West, Seward Meridian

Sections 1 — 36, except land within Katmai National Park and Preserve

Township 13 South, Range 33 West, Seward Meridian

Section 1, except land within Katmai National Park and Preserve.

(b) The McNeil River State Game Refuge is established to

(1) provide permanent protection for brown bear and other fish and wildlife populations and their habitats, so that these resources may be preserved for scientific, aesthetic, and educational purposes;

(2) manage human use and activities in a way that is compatible with (1) of this subsection and to maintain and enhance the unique bear viewing opportunities in the McNeil River State Game Sanctuary established under AS 16.20.160;

(3) provide opportunities that are compatible with (1) of this subsection for wildlife viewing, fisheries enhancement, fishing, hunting, and trapping, for temporary safe anchorage, and for other activities.

(c) The Board of Game shall determine whether hunting of brown bears within the McNeil River State Game Refuge should be prohibited.

(d) The use and enjoyment of valid rights and interests in mineral claims, including the right of access, within the McNeil River State Game Refuge is protected. This subsection does not affect the power of the commissioner of natural resources to open or close land within the McNeil River State Game Refuge to new mineral entry under AS 38.05.185 — 38.05.275.

(e) The department and the Department of Natural Resources

(1) may not enter into sales of land within the McNeil River State Game Refuge;

(2) may enter into leases within the McNeil River State Game Refuge if the commissioner finds that activity conducted under the lease is compatible with the purposes for which the refuge is established.

(f) The commissioner shall prepare a report and notify the legislature of its availability by January 30 of each year on

(1) the status of the brown bears and other fish and wildlife resources within the McNeil River State Game Refuge; and

(2) the effect of hunting, fishing, and trapping, fishery enhancement activity, and mineral resource development on these resources. (§ 2 ch 56 SLA 1991; am § 21 ch 21 SLA 1995)

**Delayed repeal.** — Under §§ 7 and 9, ch. 56, SLA 1991, this section is repealed upon entry of a final order permanently enjoining the operation of the Paint River fish ladder and the expiration of any time for appeal of the order. The commissioner of fish and game shall certify to the revisor of statutes the date determined under § 9, ch. 56, SLA 1991.

**Cross references.** — For legislative findings in connection with the enactment of this section, see § 1, ch. 56, SLA 1991 in the Temporary and Special Acts.

**Effect of amendments.** — The 1995 amendment, effective August 8, 1995, substituted the present in-

troductory language of subsection (f) for "The commissioner shall report to the legislature by January 30 of each year."

**Editor's notes.** — Under §§ 2 and 8, ch. 56, SLA 1991, this section was to take effect on the date the Paint River fish ladder begins operation. Under § 8, ch. 56, SLA 1991 the commissioner of fish and game was to certify to the revisor of statutes the date the fish ladder began operation. That certification was given on December 29, 1992, and this section took effect on January 1, 1993.

Under § 8, ch. 56, SLA 1991, the enactment of this

area, or private land in a critical habitat area, the responsible state department or agency or private landowner shall notify the commissioner.

(b) No person or governmental agency may undertake an activity listed in 5 AAC 95.420(a) within a special area unless the commissioner has been notified and a permit for the activity has been issued by the commissioner under 5 AAC 95.700 — 5 AAC 95.760. (Eff. 6/5/86, Register 98)

<b>Authority:</b> AS 16.05.020	AS 16.05.255	AS 16.20.130
AS 16.05.050	AS 16.20.050	AS 16.20.170
AS 16.05.251	AS 16.20.120	AS 16.20.250

**5 AAC 95.420. ACTIVITIES REQUIRING A SPECIAL AREA PERMIT.** (a) No person or governmental agency may engage in the following uses or activities within a special area without first obtaining a special area permit following the procedures of 5 AAC 95.700 — 5 AAC 95.760:

- (1) construction, placement, or continuing use of any improvement, structure, or real property within a special area;
- (2) destruction of vegetation;
- (3) detonation of an explosive other than a firearm;
- (4) excavation, surface or shoreline altering activity, dredging, filling, draining, or flooding;
- (5) natural resource or energy exploration, development, production, or associated activities;
- (6) water diversion or withdrawal;
- (7) off-road use of wheeled or tracked equipment unless the commissioner has issued a general permit under 5 AAC 95.770;
- (8) waste disposal, placement, or use of a toxic substance;
- (9) grazing or animal husbandry; and
- (10) any other activity that is likely to have a significant effect on vegetation, drainage, water quality, soil stability, fish, wildlife, or their habitat, or which disturbs fish or wildlife other than lawful hunting, trapping, fishing, viewing, and photography.

(b) The commissioner makes the final determination as to whether a specific activity is subject to the provisions of this chapter. (Eff. 6/5/86, Register 98)

<b>Authority:</b> AS 16.05.020	AS 16.05.255	AS 16.20.130
AS 16.05.050	AS 16.20.060	AS 16.20.170
AS 16.05.251	AS 16.20.120	AS 16.20.260

**5 AAC 95.430. CONDITIONING, APPROVAL, OR DENIAL OF SPECIAL AREA PERMITS.** If the procedural requirements of 5 AAC 95.700 — 5 AAC 95.760 are met, the commissioner will permit a use or activity listed in 5 AAC 95.420 that meets or can be conditioned to meet the following standards:

and restoration division, 333 Raspberry Road, Anchorage, AK 99518-1599.

**5 AAC 95.540. MCNEIL RIVER STATE GAME REFUGE AND STATE GAME SANCTUARY MANAGEMENT PLAN.** The McNeil River State Game Refuge and State Game Sanctuary goals and policies stated in the McNeil River State Game Refuge and State Game Sanctuary Management Plan dated June 1996 are adopted by reference. The plan presents management goals and policies for the refuge and sanctuary and their resources that the department will use in determining whether proposed activities in the refuge and sanctuary are compatible with the protection of fish wildlife, their habitats, and public use of the refuge and sanctuary. Under 5 AAC 95.420, a special area permit is required for certain activities occurring in a designated state game refuge or state game sanctuary. The department will review each special area permit application for consistency with the goals and policies of the management plan adopted by reference in this section. A special area permit for an activity in the McNeil River State Game Refuge or the McNeil River State Game Sanctuary will be approved, conditioned, or denied based on the criteria set out in the goals and policies stated in the McNeil River State Game Refuge and State Game Sanctuary Management Plan and on the standards contained elsewhere in this chapter. (Eff. 8/23/96, Register 139)

<b>Authority:</b> AS 16.05.020	AS 16.20.041	AS 16.20.160
AS 16.05.050	AS 16.20.050	AS 16.20.162
AS 16.20.020	AS 16.20.060	

**Editor's note:** A copy of the McNeil River State Game Refuge and State Game Sanctuary Management Plan dated June 1996 is available at the Alaska Depart-

ment of Fish and Game, habitat and restoration division, 333 Raspberry Road, Anchorage, Alaska 99518-1599.

## ARTICLE 6. STATE CRITICAL HABITAT AREAS.

Section	Section
600. Anchor River and Fritz Creek Critical Habitat Area Management Plan	615. Redoubt Bay Critical Habitat Area goals and policies
610. Kachemak Bay and Fox River Flats Critical Habitat Areas Management Plan	620. Tugidak Island Critical Habitat Area Management Plan

**5 AAC 95.600. ANCHOR RIVER AND FRITZ CREEK CRITICAL HABITAT AREA MANAGEMENT PLAN.** The goals and policies of the Anchor River and Fritz Creek Critical Habitat Area Management Plan dated June 1989 are adopted by reference. The plan presents management goals and policies for the critical habitat area and its resources which the department will use in determining whether proposed activities in the critical habitat area are compatible with the protection of fish and wildlife, their habitats, and public use of

**ARTICLE 7. PERMIT PROCEDURES.**

<b>Section</b>	<b>Section</b>
700. Application procedures	750. Retention of permit; inspection of permit sites
710. Permit decision	760. Renewal of permit
720. Permit conditions and assignment	770. General permits
730. Permit term	
740. Amendments to the permit	

**5 AAC 95.700. APPLICATION PROCEDURES.** (a) An applicant for a permit shall submit a completed application on a form or in a manner approved by the commissioner. The application must be correct and complete to the best of the applicant's knowledge and be signed and dated by the applicant or the applicant's designee. The submission completed application satisfies any related notification required by AS 16 and this chapter. An application form is available from the department's offices.

(b) The completed application must include the anticipated commencement date, duration, and area of proposed activity including a scaled map, identification of waterbodies at the site, description of type of activity, description of any proposed facility, the description of proposed access route and means and time of travel, and other information necessary for the commissioner to determine whether the activity will comply with the applicable provisions of this chapter.

(c) A completed application must be submitted to the department's habitat division office representing the region or area in which the proposed activity will occur. (Eff. 6/5/86, Register 98)

<b>Authority:</b>	AS 16.05.020	AS 16.20.050	AS 16.20.170
	AS 16.05.050	AS 16.20.060	AS 16.20.250
	AS 16.05.251	AS 16.20.120	AS 16.20.260
	AS 16.05.255	AS 16.20.130	

**Editor's note:** Habitat division office addresses are:

**Regional offices:**

**Juneau:** P.O. Box 20, Douglas, Alaska 99824-0020; phone: 465-4290

**Anchorage:** 333 Raspberry Road, Anchorage, Alaska 99518-1599; phone: 267-2346

**Fairbanks:** 565 University Avenue, Fairbanks, Alaska 99701; phone: 479-3104

**Area offices:**

**Ketchikan:** 415 Main Street, Ketchikan, Alaska 99901; phone: 225-2027

**Petersburg:** P.O. Box 667, Petersburg, Alaska 99833; phone: 772-3801

**Sitka:** P.O. Box 510, Sitka, Alaska 99835; phone: 747-5828

**5 AAC 95.710. PERMIT DECISION.** (a) The commissioner will issue a permit if he or she determines that the requirements of this chapter are met.

(b) The commissioner will notify an applicant in writing of any denial. The notice will include

- (1) the reason for the denial; and

(2) a statement that the applicant may appeal under 5 AAC 95.920 or submit new or additional information and ask for reconsideration under (c) of this section.

(c) The commissioner will, in his or her discretion, reconsider a denial of an application if the applicant submits, to the appropriate habitat division office, factual information which is new or additional to that supplied with the original application. An applicant may submit the new or additional information as an amendment to the original application, or the applicant may submit a new application. The procedures of 5 AAC 95.700 — 5 AAC 95.760 apply to reconsideration. (Eff. 6/5/86, Register 98)

Authority:	AS 16.05.020	AS 16.20.050	AS 16.20.170
	AS 16.05.050	AS 16.20.060	AS 16.20.250
	AS 16.05.251	AS 16.20.120	AS 16.20.260
	AS 16.05.255	AS 16.20.130	

#### 5 AAC 95.720. PERMIT CONDITIONS AND ASSIGNMENT.

(a) To provide for the proper protection and management of fish and wildlife, and their habitats, the commissioner will consider and will, in his or her discretion, include as conditions of the permit

(1) the duration of the proposed activity, including any provision for changing the time period during which the permit is valid and any provision for changing the effective time period of the permit;

(2) any other seasonal use restrictions on a specific activity;

(3) limitation of the a real extent of the activity;

(4) any provision for the mitigation of damage to fish or wildlife, or their habitats;

(5) any provision to facilitate periodic monitoring of the proposed land or water use or activity by an authorized representative of the state, including inspection and sampling;

(6) reporting requirements;

(7) any provision for the posting of a performance bond or other surety as authorized in 5 AAC 95.950, necessary to insure compliance with the provisions of this chapter or conditions of the permit; and

(8) any other necessary condition.

(b) A permit may not be transferred but may be assigned upon written consent by the commissioner.

(c) The commissioner will, in his or her discretion, require a permit applicant to sign and date the permit before its validation as acknowledgement of the permittee's agreement to, and full understanding of, all conditions of the permit. (Eff. 6/5/86, Register 98)

Authority:	AS 16.05.020	AS 16.05.255	AS 16.20.130
	AS 16.05.050	AS 16.20.060	AS 16.20.170
	AS 16.05.251	AS 16.20.120	AS 16.20.260

**5 AAC 95.730. PERMIT TERM.** (a) Except as provided in (b) and (c) of this section a permit will in the commissioner's discretion be issued for a fixed term not to exceed two years, subject to the provisions of this chapter.

(b) A permit for a personal use cabin issued concurrent with 11 AAC 65 will, in the commissioner's discretion, be issued for up to six years.

(c) A permit will, in the commissioner's discretion, be issued for a fixed term exceeding two years if the commissioner determines that the activity meets the purposes and requirements of this chapter and the activity is permanent in nature. (Eff. 6/5/86, Register 98)

<b>Authority:</b> AS 16.05.020	AS 16.05.255	AS 16.20.130
AS 16.05.050	AS 16.20.060	AS 16.20.170
AS 16.05.251	AS 16.20.120	AS 16.20.260

**5 AAC 95.740. AMENDMENTS TO THE PERMIT.** (a) The commissioner will, in his or her discretion, initiate action to amend a permit to correct any condition or change any method authorized by the permit which was reasonably unforeseeable at the time of permit approval and which threatens to cause a substantially adverse effect upon

(1) fish or wildlife, or their habitat; or

(2) if the permit is a special area permit, the purpose for which the special area was established.

(b) Any action a permittee desires to take which increases the overall scope of the project or which negates, alters, or minimizes the intent or effectiveness of any condition contained in a permit, is a deviation from the approved plan and requires an amendment before initiation of the action.

(c) A permittee may request amendment of a permit by submitting, to the department's habitat division office where the permit was issued, a written statement explaining why the amendment is necessary, including the amended plan, the location, commencement time, duration, and type of activity requiring amendment.

(d) The commissioner will issue an amendment to the permit if he or she determines that the requirements of this chapter will be met. Review of a request for amendment after receipt of the written statement in the appropriate habitat division office will not exceed 30 days. The procedures of 5 AAC 95.700 — 5 AAC 95.760 apply to a request for amendment.

(e) An amendment approved by the commissioner becomes effective upon receipt by the permittee, or at a later date specified by the amendment. An amendment is valid for the duration of the permit or for a shorter specified period. (Eff. 6/5/86, Register 98)

<b>Authority:</b> AS 16.05.020	AS 16.05.255	AS 16.20.130
AS 16.05.050	AS 16.20.060	AS 16.20.170
AS 16.05.251	AS 16.20.120	AS 16.20.260

**5 AAC 95.750. RETENTION OF PERMIT; INSPECTION OF PERMIT SITES.** (a) A permittee shall keep a copy of the permit, including any amendments, at the work site until completion of the project, and shall make it available for inspection upon request by an authorized representative of the state.

(b) For the purpose of inspecting or monitoring compliance with any condition of the permit or the requirements of this chapter, a permittee shall give an authorized representative of the state free and unobstructed access, at safe and reasonable times, to the permit site. A permittee shall furnish whatever assistance and information as the authorized representative reasonably requires for monitoring and inspection purposes. (Eff. 6/5/86, Register 98)

Authority:	AS 16.05.020	AS 16.05.255	AS 16.20.130
	AS 16.05.050	AS 16.20.060	AS 16.20.170
	AS 16.05.251	AS 16.20.120	AS 16.20.260

**5 AAC 95.760. RENEWAL OF PERMIT.** (a) A permittee may request renewal of an existing permit before the expiration of the current term of the permit. Procedures in this chapter apply to renewal, except that the filing of a new application under 5 AAC 95.700 is not required.

(b) If an existing permit expires or is revoked, a permittee may obtain a new permit only by filing a new completed application in accordance with 5 AAC 95.700. (Eff. 6/5/86, Register 98)

Authority:	AS 16.05.020	AS 16.05.255	AS 16.20.130
	AS 16.05.050	AS 16.20.060	AS 16.20.170
	AS 16.05.251	AS 16.20.120	AS 16.20.260

**5 AAC 95.770. GENERAL PERMITS.** Notwithstanding 5 AAC 95.700 and 5 AAC 95.750 — 5 AAC 95.760, the commissioner will, in his or her discretion, issue a permit to the public at large for a specific activity in a specific area. (Eff. 6/5/86, Register 98)

Authority:	AS 16.05.020	AS 16.05.255	AS 16.20.130
	AS 16.05.050	AS 16.20.060	AS 16.20.170
	AS 16.05.251	AS 16.20.120	AS 16.20.260

## ARTICLE 8. GENERAL PROVISIONS.

Section	Section
900. Mitigation of damages	940. Exemption for emergency and police power activities
910. Failure to adhere to standards	950. Bonding or security
920. Appeals	990. Definitions
930. Exclusion periods	

**5 AAC 95.900. MITIGATION OF DAMAGES.** (a) Each permittee shall mitigate any adverse effect upon fish or wildlife, or their habitat, which the commissioner determines may be expected to result from, or