

3/8/10 &

3/15/10

REGS:

PERSONAL

USE

CABIN

PERMITS

ALASKA STATE LEGISLATURE

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600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone: 373-1842
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Session:

State Capitol Building
Juneau, Alaska 99801-1182
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ADMINISTRATIVE REGULATION REVIEW COMMITTEE

AMENDED COMMITTEE SCHEDULE

MONDAY MARCH 15, 2010 3-5:00 P.M. ROOM 17

+ **Joint Senate and House Committee Meeting**

+* Continued hearing from March 8, 2010 concerning:

(18 AAC 32) Proposed Regulations Relating to Cheese Production.
Testimony has closed, Committee Deliberations.

(11 AAC 65.010 – 11 AAC 65.900, particularly 11 AAC 65.010),
Regulations Relating to Personal Use Cabin Permits.
Public Testimony to be Taken:

Executive Session.

- + Teleconference
- * First Public Hearing
- = Previously Heard Bill

E-Mail: John_Davies@legis.state.ak.us

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ADMINISTRATIVE REGULATION REVIEW COMMITTEE

AGENDA

Monday, March 15, 2010, Capitol Room 17, 3-5:00 P.M.; Continued from the March 8, 2010 meeting.

- I. Call to Order by Chairman.
- II. Introduction of Members.
- III. Opening remarks by the Chairman.
- IV. (11 AAC 65.010 – 11 AAC 65.900, particularly 11 AAC 65.101) Regulations Relating to Personal Use Cabin Permits. Continued presentation by DNR Director Dick Mylius, Division of Mining, Land and Water, and thereafter; Public Testimony.
- V. Close Public Testimony.
- VI. (18 AAC 32) Proposed Regulations Relating to Cheese Production. Deliberation and discussion by Committee. Agency and public testimony previously closed.
- VII. Deliberation and discussion regarding the Personal Use Cabin issues.
- VIII. Executive Session, time permitting, in order to discuss non-public review memos from the Committee's attorney.
- IX. Reconvene the meeting, in the event of a special session, and adjournment.

*This hearing will be teleconferenced.

E-Mail: John_Davies@legis.state.ak.us

ARRC Meeting Checklist for 3/15/10 Meeting

1. **Reserve Meeting Room.** Room 17 is Rep. Wilson's Transportation Meeting Room, Call Becky at 465-3759 to Reserve the Room. *✓ ok for 3/15*
2. **ARRC Attorney.** The Committee has its Own Attorney, Her Name is Lisa Kirsch, She is at Legal Services 465-3867 in the Terry Miller Office Building, Coordinate with Her to Make Sure She can Attend the Meeting as She Only Works Half-Days. *Deborah Behr*
3. **Staff Contacts.** Rep. Keller's Contacts are Jim Pound at 465-6265, or John Davies at 465-4899, room 13 or 17a; Rep. Gatto is Bonnie Gruning at 465-3743, room 108; Rep. Guttenberg -- contact is Christopher Birdsall at 465-4457 room 418; Senator Kookesh -- contact is Kimberly Klark at 465-3473, room 11; Senator Meyer -- contact is Josh Applebee at 465-4945, room 101; Senator Olson -- contact is Christina Apathy at 465-3707, room 514. Notice Legislative Staff Members of Upcoming Committee Meetings and Actions (keep them in the loop always). *Deborah Behr 465 2422*
4. **Committee Schedule.** Deliver the Committee Schedule for the Next Upcoming Meeting to Both the Senate and House Clerks Because This is a Joint Committee. *Deborah Behr to Alaska - you*
5. **Distribute Committee Schedule.** Email and Hand-Deliver the Committee Schedule for the Next Meeting to Each of the Senators and Representatives Personally and to Each Staff Contact. Notice to ARRC attorney -- Lisa Moritz Kirsch 465-3867, third floor, Terry Miller Building. Notice to Department of Law Regulations attorney -- Deborah Behr 465-3600.
6. **LIO Teleconference/Gavel to Gavel/Records.** Make Sure That the LIO Teleconference Details as well as TV and Records are Noticed. Juneau LIO 465-4648. New Toll-Free Number for Off Net Calls is 877-763-5073. Do LIO Teleconference Order Form, found on the State Website Intranet on the cover page Clair Richardson 463-6471 is the Gavel to Gavel contact; House records, Crys, 465-2214, they bring sign up sheets.
7. **Agenda.** Make an Agenda for the Meeting, Make Sure Everyone On the Agenda Who Needs to be there is Notified and Coordinate with them.
8. **Interested Parties.** Give notice to interested parties and invite agency commissioners to attend regarding their new proposed regulations. If an agency has a legislative liaison then first talk with the liaison to have him/her set things up. Ask for back-up information to put in the committee member packets.
9. **Meeting Packets.** Make up information file folder packets for committee members with necessary materials to be discussed. Put the Packet information on Basis.
10. **Press Release.** Contact Dani Carlson of House Majority Press and do a press release.

11 ✓ **Script.** Prepare a script for the Chairman of how the meeting will proceed and language to act as a guide.

12. **Committee Meeting.** Contact the Sgt. At Arms, Macela ✓ 465-3869, to see that there is coffee and water in the committee room. See "Committee Aide Tips".

a) Make 3 copies of LIO sign up list one to Chair and to Records.

~~b) If a power point is going to be used get Help Desk to set it up.~~

c) Have sign up sheets on the desk out in the hall.

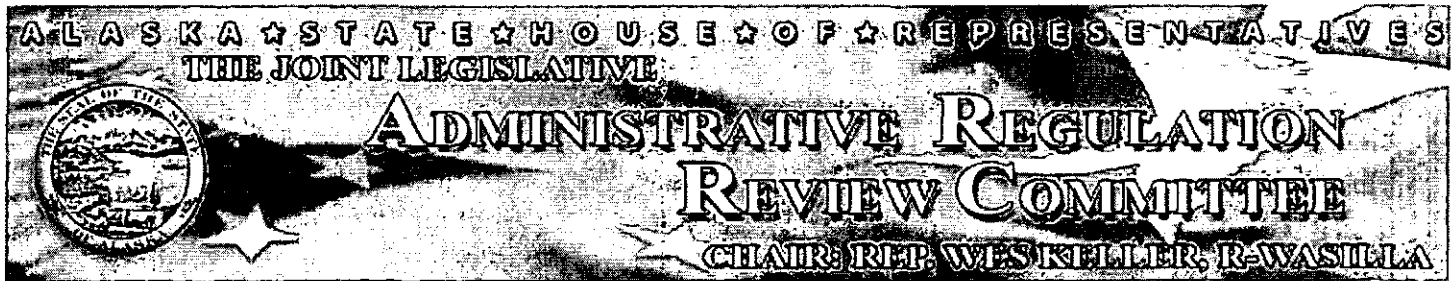
✓ d) Do Motion to hold Executive Session for Vice Chair. Come back into public session after Executive Session and then adjourn.

e) Before the meeting make sure that all members have paper, pen and supplies; Schedule is posted out on the bulletin board; agenda posted; hand outs copied and on the table for the public; coffee and water set out; and Chair has his script.

name plates set out

John Davies

From: Will Vandergriff
Sent: Saturday, March 06, 2010 4:06 PM
Subject: Media advisory - Admin. Reg. Review Comm. to meet Monday
Attachments: image001.jpg; ARR_Advisory_20100306.pdf



FOR IMMEDIATE RELEASE

MEDIA ADVISORY

ADMIN. REG. REVIEW COMMITTEE TO MEET MONDAY
Topics centering on cabins, dairy production

Saturday, March 6, 2010, Juneau, Alaska – The Joint Administrative Regulation Review Committee will hold its first March meeting on Monday, focusing on Alaska Dept. of Environmental Conservation and Dept. of Natural Resources regulations.

Committee Chair Representative Wes Keller, R-Wasilla, says he's agreed to hold the dual topic hearing after groups approached the committee about having separate hearings regarding dairy production and public use cabins. One part of the meeting will focus on examining regulations regarding cheese production by small dairies in the state, and possible exemptions in order to make manufacture and business easier. Another part of the meeting will focus on examining personal use cabin owners' requests to save their interests in their cabins that are on state land.

"The committee simply wants to perform its due diligence to look into these matters," Keller said.

Both departments, DEC and DNR, along with members of the public are expected to provide the committee with testimony.

WHO: Joint Administrative Regulation Review Committee
WHAT: Committee hearing – dairy production & public use cabins
WHEN: Monday, March 8, 2010, 5:00 p.m.
WHERE: Capitol Room 17

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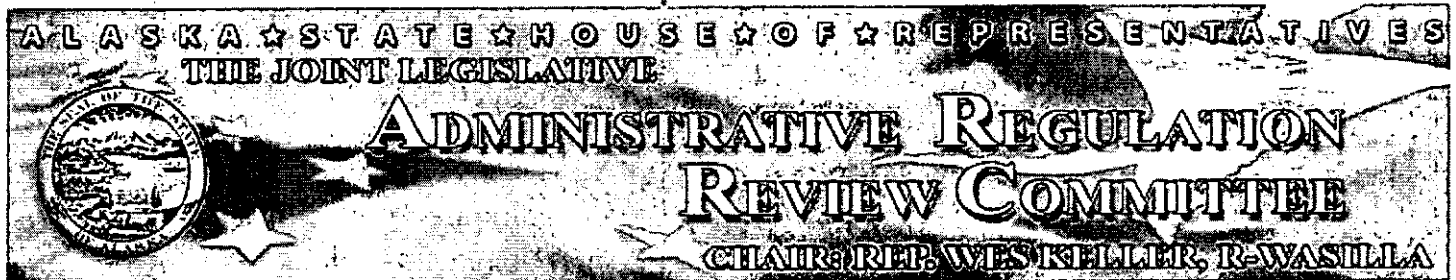
To contact Rep. Keller's office, please call 907-465-2186.

Will Vandergriff
House Majority Press Secretary

Office of the Speaker - Alaska State Legislature
907.269.0167 direct
907.317.9755 cell
will_vandergriff@legis.state.ak.us
housemajority.org
mobile.housemajority.org
twitter.com/houmaj

John Davies

From: Dani Carlson
Sent: Friday, March 12, 2010 5:12 PM
To: John Davies
Subject: draft for release
Attachments: image001.jpg



FOR IMMEDIATE RELEASE

MEDIA ADVISORY

ADMIN. REG. REVIEW COMMITTEE TO MEET MONDAY
Topics centering on cabins, dairy production

Saturday, March 13, 2010, Juneau, Alaska – The Joint Administrative Regulation Review Committee will hold a hearing on Monday, in order to allow for additional time to consider the Alaska Dept. of Environmental Conservation's proposal on cheese production regulations and an Alaska Dept. of Natural Resources presentation regarding personal use log cabins.

Committee Chair Representative Wes Keller, R-Wasilla, says that public testimony has been closed on the DEC request for an exemption for small dairies, while public testimony and Dept. of Natural Resources will still have an opportunity to weigh in on personal use cabins issues.

WHO: Joint Administrative Regulation Review Committee
WHAT: Continued committee hearing – dairy production & public use cabins
WHEN: Monday, March 15, 2010, 3:00 p.m. – 5:00 p.m.
WHERE: Capitol Room 17

###

To contact Rep. Keller's office, please call 907-465-2186.

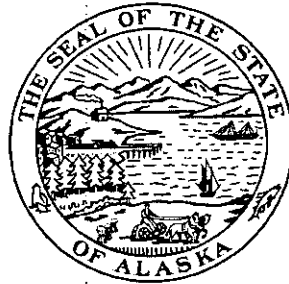
yours,
Dani Carlson

House Majority Press Office
Office of the Speaker - Alaska State Legislature
Room 116, Alaska State Capitol
907.465.6791 - Session
dani.carlson@legis.state.ak.us
<http://www.housemajority.org>
<http://mobile.housemajority.org>
<http://www.twitter.com/houmaj>

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ADMINISTRATIVE REGULATION REVIEW COMMITTEE

March 15th Meeting Script

- I. Call to Order by Chairman. (Rapping Gavel) Come to Order, Come to Order. I hereby call this meeting of the Joint ARRC to Order. For the record, today is Monday, March 15, 2010, and the time is 3:00 o'clock pm, and we are meeting in the Alaska State Capitol Room 17. I am the Committee Chairman, House Representative Wes Keller. I will now introduce my fellow committee members and perform the roll call.
- II. Introduction and Roll Call. To my right is Senator Donald Olson, the Vice Chairman; then Senator Albert Kookesh; and Senator Kevin Meyer. To my left are Representative David Guttenberg, and Representative Carl Gatto.
- III. Opening remarks by the Chairman. Before we get started with today's meeting, I would like to make a few brief comments for the benefit of our audience.

Today's meeting is a continuation of our meeting of last Monday, March 8, 2010. At that meeting we took up most of our time hearing testimony from the DEC and the public about the newly proposed Cheese Production Regulations. It was a lively discussion about whether small dairies ought to be

E-Mail: John_Davies@legis.state.ak.us

*State
hardly
land*

Vern

Commerce

*land
needs
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for guide*

*no statute
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same old*

exempt from the Cheese Production Regulations, and there was a lot of public comment. Consequently, we ran out of time and were not able to give the Personal Use Cabin participants enough time to get their testimony on the public record. So now we have this continued hearing to give those issues our attention. On behalf of the entire Committee, I would like to thank all those Cabin participants that sat through the last meeting and didn't get the chance to testify; and say also thank you for your interest and time in getting involved in this public discussion.

Our purpose today is to continue the review of regulations concerning personal use cabins, and to also deliberate on the exemption request put to us by the small dairies and cheese producers.

So let's get back to the presentation by Director Dick Mylius from DNR concerning the personal use cabin issues. Director Mylius, welcome; and thank you for coming back to testify again before the Committee.

As you know, the Committee is interested in hearing about DNR policy and procedures, particularly as they relate to the intent expressed in the regulations to phase out the unauthorized use of state land. (11AAC65.010) Please, you may proceed.

Director Mylius testifies:.....

*Reg books re
repeal statute*

Do any of the members of the Committee have any questions for Director Mylius?

(I have questions: 1) What is the statutory authority of DNR to express its intent to phase out the unauthorized use of state land? 2) Would it be possible to grant some kind of preference right to lease or buy personal use cabins to the present permittees? Would, in your judgment, that be good or bad public policy? Is there some way to lessen the hardship of forfeiture of the cabin by the present owner? Has the concept of

*no state
statute
to grant
preference
to buy or lease*

adopting a cabin, much like adopting a portion of highway, been thought about, so perhaps a non-profit group could care for the cabins after the permit runs out?

More Questions: Go to questions on separate sheet if necessary.

Public comment.....

4:00pm. It is 4:00pm, and I would like to close this portion of the meeting.

We have now completed the Agency and public testimony in the Personal Use Cabin issue as well as the Cheese Production regulations.

As regards the Cheese Production Regulations, we have a number of members of the public who would like to see an exemption in the regulations for small dairies. Let's discuss this exemption issue.

Exemption discussion.....if there is a consensus then propose the letter to Director Ryan and get it signed by a majority of the committee or at least get authority as the chairman to sign and send it.

Moving on then to the Personal Use Cabin Permits. Do any members of the Committee see a need to amend or change the existing regulation? Discussion.....

Consensus?....Action? Close topic.....

Executive Session:

Time Permitting: (Would need at least 30 minutes)

The Committee would like to now go into Executive Session. Motion/Vote. Do I have a motion...(Senator Olson makes the motion.) vote..... Thank You . We will now go into Executive Session and off the public record.

E-Mail:John_Davies@legis.state.ak.us

Clear the room for Executive Session.

After Executive Session the Committee reconvenes the public meeting.

Discussion if any.

Adjournment.

END OF SCRIPT....

Questions for DNR

- We've heard that DNR no longer offers long term (55 year) leases beyond 25 years.
 - **Q – Who decided this new policy? Commissioner or Governor?**
(Trying to find out if these policies are being created by mid-level breauocrats.)
- There are currently bills in both the House and the Senate (HB379 & SB293) granting a "preference right" to purchase or lease for persons who have developed the land and been conducting "business" on the land for the past 10 years.
 - **Q – The DNR could grant this preference right but has never done it. Could you explain why?**
- The State Constitution states that "It is the policy of the State to encourage the settlement of its land and the development of it's natural resources...ect...ect."
 - **Q – Wouldn't it make sense to allow the people who are doing the "settlement" and "development" to have some sort of preferential treatment when the state decides to dispose of the land?**
- In 2009 DNR changed it's long held policy of allowing a cabin permittee to renew their lease, even if they missed the filing deadline, by simply paying a \$25 administrative fee.
 - **Q – It's my understanding that DNR's current policy is to not allow anyone to apply for lease renewal AFTER the filing deadline. Is this correct?**
- Once these people are refused renewal they have 60 days to come with a plan to tear down their cabin and submit the plan to DNR. ANALOGY – It's like never allowing someone to drive their car again because they failed to renew their license on time.
 - **Q – To tear down a cabin because of a clerical error (missing filing deadline) seems like such a draconian step. Why such a harsh policy for a clerical error.**

John Davies

From: John Davies
Sent: Friday, March 12, 2010 1:29 PM
To: 'janet_logan@legis.state.ak.us'; Bonnie Gruening; Christopher Birdsall; Christina Apathy; Josh Applebee; Kimberly Clark
Cc: Rep. Wes Keller; Jim Pound
Subject: ARRC re: Cheese - Negotiated Rule Making

Dear Fellow Staffers:

You and your boss may want to know a little about negotiated rule making before Monday's meeting. I am attaching to this email a copy of a portion of the Statutes dealing with the matter. Hope this is helpful for you. JD

Sec. 44.62.710. Purpose and applicability of AS 44.62.710 - 44.62.800.

(a) The purpose of AS 44.62.710 - 44.62.800 is to establish a framework for the conduct of negotiated regulation making consistent with AS 44.62.010 - 44.62.320. Negotiated regulation making is not a substitute for the requirements of AS 44.62.010 - 44.62.320 but may be used as a supplemental procedure to permit the direct participation of affected interests in the development of new regulations or the amendment or repeal of existing regulations. A consensus agreement reached by a negotiated regulation making committee may be modified by an agency head as a result of the subsequent regulation making process. AS 44.62.710 - 44.62.800 may not be construed as an attempt to limit innovation and experimentation with the negotiated regulation making process or to limit other means to obtain public participation in the regulation making process.

(b) The provisions of AS 44.62.710 - 44.62.800 may be used by an agency even if other provisions of this chapter do not apply to that agency.
((1 ch 117 SLA 1998))

Negotiated Rule Making

Sec. 44.62.710. Purpose and applicability of AS 44.62.710 - 44.62.800.

(a) The purpose of AS 44.62.710 - 44.62.800 is to establish a framework for the conduct of negotiated regulation making consistent with AS 44.62.010 - 44.62.320. Negotiated regulation making is not a substitute for the requirements of AS 44.62.010 - 44.62.320 but may be used as a supplemental procedure to permit the direct participation of affected interests in the development of new regulations or the amendment or repeal of existing regulations. A consensus agreement reached by a negotiated regulation making committee may be modified by an agency head as a result of the subsequent regulation making process. AS 44.62.710 - 44.62.800 may not be construed as an attempt to limit innovation and experimentation with the negotiated regulation making process or to limit other means to obtain public participation in the regulation making process.

(b) The provisions of AS 44.62.710 - 44.62.800 may be used by an agency even if other provisions of this chapter do not apply to that agency.
((1 ch 117 SLA 1998))

Sec. 44.62.720. Determination of need for negotiated regulation making committee.

(a) In addition to the regulation adoption requirements under AS 44.62.010 - 44.62.320, an agency head may determine that the use of a negotiated regulation making committee to negotiate and develop a proposed regulation is in the public interest. In making that determination, the agency head is advised to consider whether

(1) there is a need for a regulation, including whether any legal action is pending that might resolve the need;

(2) there are a limited number of identifiable interests that are held by more than one person and that will be significantly affected by the regulation;

(3) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who

(A) can adequately represent the interests identified under (2) of this section; and

(B) are willing to negotiate in good faith to reach a consensus on the proposed regulation;

(4) there is a reasonable likelihood that a committee will reach a consensus on the proposed regulation within a fixed period of time;

(5) the negotiated regulation making procedure will not unreasonably delay the adoption of the final regulation;

(6) the agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee; and

(7) the agency head, to the maximum extent possible consistent with the legal or other obligations of the agency, will use the consensus of the committee as the basis for the regulation proposed by the agency under AS 44.62.010 - 44.62.320.

(b) Upon determining that a negotiated regulation making committee will be formed, an agency head shall notify the public so that interested persons can apply to be appointed to the committee.

((1 ch 117 SLA 1998))

Sec. 44.62.730. Use of convener.

(a) An agency head may use the services of an impartial person as a convener to assist in making the determination of need under AS 44.62.720 and to assist the agency to

- (1) identify the persons who will be significantly affected by a proposed regulation; and
- (2) conduct discussions with affected persons on the issues of concern and determine whether the establishment of a negotiated regulation making committee is feasible and appropriate for the particular proposed regulation.

(b) A person acting as a convener may also be named as a facilitator under AS 44.62.760. The convener shall report findings and make recommendations to the agency. The report and recommendations of the convener shall be made available to the public upon request. ((1 ch 117 SLA 1998))

Sec. 44.62.740. Establishment, time line, support, and termination of committee.

(a) The agency head may establish a negotiated regulation making committee to assist in the formulation of a proposed regulation. The agency head should strive to achieve and maintain throughout the negotiated regulation making process the balanced committee representation described under AS 44.62.720(a)(3). Members of the committee serve at the pleasure of the agency head. If a committee member is unable to attend a meeting, the agency head may select a designee to serve in that member's place for a meeting.

(b) Before notifying the public under AS 44.62.720(b), the agency head shall establish a time line for the work of the committee. The time line must include a completion date for the transmission to the agency of the report described in AS 44.62.750(d) or (e). The agency shall provide the time line to persons who apply for appointment to the committee. At its first meeting, the committee shall review the time line and recommend to the agency head any revisions to the time line. The agency head shall consider any recommendations and revise the time line if necessary to further the purposes of the negotiated regulation making process.

(c) The agency head may expand the membership of the negotiated regulation making committee if necessary to facilitate the workings of the committee.

(d) The agency shall make available administrative support to the negotiated regulation making committee, including technical support, that the agency head determines necessary.

(e) A negotiated regulation making committee terminates upon adoption under AS 44.62.010 - 44.62.320 of the final regulation under consideration unless the agency head specifies an earlier termination date. ((1 ch 117 SLA 1998))

Sec. 44.62.750. Committee duties, procedures, and report.

(a) A negotiated regulation making committee shall consider the matter proposed by the agency head for consideration and shall attempt to reach consensus concerning a proposed regulation and any other matter on which the agency head requests assistance and that is relevant to the proposed regulation.

(b) The person representing the agency on a negotiated regulation making committee shall participate in the deliberations of the committee with the same rights and responsibilities of other members of the committee and is authorized to fully represent the agency in the discussions and negotiations of the committee.

(c) An agency head may adopt procedures for the operation of the negotiated regulation making committee. The agency head shall appoint the chair of the committee.

(d) If a negotiated regulation making committee achieves consensus on a proposed regulation on or before the completion date established under AS 44.62.740(b), the committee shall transmit to the agency head that established the committee a report containing the proposed regulation.

(e) If a negotiated regulation making committee does not reach a consensus on the proposed regulation on or before the completion date established under AS 44.62.740(b), the committee shall transmit to the agency head a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report other information, recommendations, or materials that the committee considers appropriate. A member of the committee may include as an addendum to the report additional information, recommendations, or materials.

(f) AS 44.62.310 - 44.62.312 apply to meetings of a negotiated regulation making committee.

((1 ch 117 SLA 1998))

Sec. 44.62.760. Facilitator selection, duties, and authority.

(a) An agency head may appoint a person who is impartial to serve as a facilitator for the negotiations of a negotiated regulation making committee. A person designated to represent the agency on substantive issues may not serve as facilitator.

(b) A facilitator appointed or selected under (a) of this section shall

(1) preside at the meetings of the committee in an impartial manner, unless the agency head has designated another person as chair;

(2) impartially assist the members of the committee to conduct discussions and negotiations and to achieve consensus;

(3) coordinate with the agency head regarding the management of records of the committee; and

(4) perform other duties related to the negotiated regulation making committee that are assigned by the agency head.

(c) A facilitator does not have decision-making authority for the committee.

((1 ch 117 SLA 1998))

Sec. 44.62.770. Employees, contractors, and funding.

(a) An agency head may appoint an agency employee or obtain the services of another state employee or a private contractor to serve as a convener or facilitator for a negotiated regulation making committee.

(b) Before appointing or selecting a convener under AS 44.62.730 or a facilitator under AS 44.62.760, an agency head shall determine whether a person being considered has a financial or other interest that would prevent the person from serving in an impartial and independent manner. A person disqualified under this criterion may not be considered further.

(c) A member of a negotiated regulation making committee shall disclose to the agency and other members of the committee a grant, gift, or other financial benefit that exceeds \$150 and

that has been accepted by the disclosing member to finance the disclosing member's participation on the negotiated regulation making committee.
((1 ch 117 SLA 1998))

Sec. 44.62.780. Judicial review.

An agency action relating to establishing, assisting, or terminating a negotiated regulation making committee under AS 44.62.710 - 44.62.800 is not subject to judicial review. Nothing in this section bars judicial review if the judicial review is otherwise provided by law. A regulation that is the product of negotiated regulation making and is later subject to judicial review may not be given greater deference by a court for that reason than a regulation that is not the product of negotiated regulation making.
((1 ch 117 SLA 1998))

Sec. 44.62.790. Relationship to other requirements.

The negotiated regulation making authorized by AS 44.62.710 - 44.62.800 is in addition to the procedures required under AS 44.62.010 - 44.62.320 for adopting, amending, or repealing regulations, and, if an agency head decides to use negotiated regulation making, the negotiated regulation making shall, where possible, occur before the procedures under AS 44.62.010 - 44.62.320 begin.
((1 ch 117 SLA 1998))

Sec. 44.62.795. Confidentiality of certain records and documents.

Notwithstanding AS 40.25.100 - 40.25.220, records from private persons that are requested or used by a negotiated regulation making committee and working documents prepared by the committee that analyze or incorporate information from the records shall be kept confidential if the records or working documents contain proprietary information and the owner of the records or working documents requests that the records or working documents be kept confidential.
((1 ch 117 SLA 1998))

Revisor's notes. In 2000, "AS 40.25.100 - 40.25.220" was substituted for "AS 09.25.100 - 09.25.220" to reflect the 2000 renumbering of AS 09.25.100 - 09.25.220.

Sec. 44.62.800. Definitions.

In AS 44.62.710 - 44.62.800,

(1) "agency" means a department, an institution, or a division or other administrative unit of the executive branch of state government authorized or required by law to make regulations, except that "agency" does not include

(A) a board, a commission, a council, an authority, or a public corporation of the executive branch of state government authorized or required by law to make regulations; or

(B) the Department of Corrections;

(2) "agency head" means

(A) the commissioner or other head of an agency who has the authority to adopt regulations for the agency; or

(B) *[Repealed, 44 ch 24 SLA 2003.]*

(3) "consensus" means unanimous concurrence among the interests represented on a negotiated regulation making committee;

(4) "convener" means a person who is impartial and performs the services identified under AS 44.62.730 for an agency;

(5) "facilitator" means a person who is impartial and performs the services identified under AS 44.62.760(b) for a negotiated regulation making committee;

(6) "negotiated regulation making" means regulation making through the use of a negotiated regulation making committee;

(7) "negotiated regulation making committee" means an advisory committee to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed regulation;

(8) "person" has the meaning given in AS 01.10.060, and expressly includes a public organization of any character;

(9) "regulation" has the meaning given in AS 44.62.640 and includes the amendment or repeal of a regulation.

((1 ch 117 SLA 1998; am 4, 44 ch 24 SLA 2003; am E.O. No. 106, 7, 8 (2003)))

Effect of amendments. The first 2003 amendment, effective May 22, 2003, in subparagraph (1)(A) deleted reference to the Alaska Coastal Policy Council and made stylistic changes; and repealed subparagraph (2)(B).

The second 2003 amendment, effective April 15, 2003, updated section references in subparagraphs (1)(A) and (2)(B).

Chapter 65

Personal Use Cabin Permits

Section

- 10. Applicability.
- 20. Applications.
- 30. Application fee.
- 40. Renewals.
- 50. Permit decision.
- 60. Density within state game refuges and critical habitat areas.
- 70. Conflicting applications.
- 80. Ownership and removal.
- 90. Conditions of permit.
- 100. Appeals.
- 110. Public use cabins.
- 900. Definitions.

11 AAC 65.010. Applicability

This chapter applies to the issuance of personal use cabin permits for unauthorized cabins placed on state land before August 1, 1984. Cabins built on state land after August 1, 1984 will not be authorized. A permit under this chapter does not convey an interest in state land or establish a preference right for the lease or purchase of state land. It is the express intent of this chapter to phase out the use of unauthorized cabins on state land, and where appropriate, convert them to public use.

History: Eff. 12/16/84, Register 92

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.020. Applications

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John Davies

From: John Davies
Sent: Wednesday, February 24, 2010 2:28 PM
To: 'Tom.Irwin@alaska.gov'; 'Dick.Mylius@alaska.gov'
Cc: Rep. Wes Keller; Jim Pound
Subject: Invitation to ARRC meeting
Attachments: ARRC 3-8 Agenda.doc; ARRC 3-8 Agenda.doc

February 24, 2010

Dear Commissioner Irwin and Director Mylius:

Representative Keller has asked me to invite you to attend and participate in the Administrative Regulation Review Committee "ARRC" meeting scheduled for March 8th at 3:00pm in room 17 of the State Capitol Building, Juneau, Alaska.

If you are not able to attend in person, telephone participation would be fine as well.

The ARRC has received public comment concerning the regulations relating to personal use cabin permits, particularly 11 AAC 65.010. The review focus will generally be on the specific intent language "to phase out the use of unauthorized cabins on state land" and the destruction of such cabins, weighed against the private, public and survival uses of the cabin resources. The committee will be looking at the regulation's statutory authorization and whether it carries out legislative intent. Your input will be most helpful. A copy of the Schedule and Agenda are attached for your information.

If you have any questions please feel free to call me at 907 465-4899. Please note that any printed information you wish to present, I will need copies so I may post it on BASIS and distribute it to the committee members.

We look forward to hearing from you and having your participation at the meeting.

Very Truly Yours,

John Davies
ARRC acting Committee Aide

Cc: Keller, Wes (LAA); Pound, Jim (LAA)
Subject: RE: Invitation to ARRC meeting

Dear Director Mylius:

I have discussed your email request with Representative Keller, Chairman ARRC, and he has asked me to provide you with information that will foster a fruitful and productive meeting.

The following is a synopsis of contacts that may be useful for your meeting preparation and presentation:

- 1) In person complaint at the Capitol ARRC office by an individual whose cabin burned down. He is trying to rebuild the cabin, but reports that he is getting hassled by DNR and not getting cooperation.
- 2) In person complaint at the Capitol ARRC office by an agent on behalf of a client. He complains that as a long term leaseholder, his client is facing the complete loss of his lodge in a few years when the lease runs out. The land around the lodge was selected by a borough, and the leasee has no preference right to buy the land. Once the lease runs out, he loses everything, his lodge, retirement, equity, everything. His entire life's work gone.
- 3) In person complaint at the Capitol ARRC office about a personal use cabin permittee who is facing the forfeiture of his cabin because he filed his renewal late. The permittee did not know about the new rule that renewals must be filed 90 days before the end of the permit term, but was aware of the old rule that a \$25 late fee would be assessed. He filed before the end of the permit term but not before the new 90 day time frame. He faces the complete loss of his cabin and permit.
- 4) A member of the Legislative Body reports that he has a constituent whose husband has a cabin permit and when he dies the permit ceases leaving her and the family with nothing. The family has used this cabin and land since before statehood, and cannot get a preference right to buy the land or in any other way protect its long term use of the land. They face complete loss as well.
- 5) By way of prior Resource Committee hearings it has become public knowledge that DNR is burning and/or destroying cabins for what is described as "liability reasons".
- 6) The complainants report an attitude of hostility by DNR towards private use of public lands.

The question may be: Is the intent language in the regulations, 11 AAC 65.010, "to phase out the use of unauthorized cabins on state land", fostering a hostile attitude by DNR towards these private persons, or is the Committee simply being made aware of anecdotal situations that don't reflect the true nature of what is going on? The Chairman is hopeful that your presentation to the Committee and the public will help with this question.

In addition to the above question, the Chairman would like for you, or another DNR representative, to be prepared to tell the Committee about: where does DNR derive its statutory authority for its intent to phase out the use of unauthorized cabins on state land; as well as explain its policy and procedures for granting and extending personal use cabin permits; what happens to a cabin that goes back to the State; why are cabins destroyed or burned down; what is the cost of such destruction; and lastly as an overview of the numbers and significance of the personal use cabin program?

The Chairman wanted me to be sure to let you know that the Committee does not, and in this meeting is not, advocating for any particular individual or constituent in its inquiry. The Committee is reviewing these regulations to see if they stand the three part test of Constitutionality, statutory authority, and/or legislative intent. If the Committee finds grounds it may present the Legislature with a bill to annul or veto a regulation.

We look forward to your participation in the upcoming meeting. If you have any questions please feel free to give me a call at 465-4899.

Very Truly Yours,

John Davies
ARRC Acting Committee Aide

John Davies

From: Mylius, Richard H (DNR) [dick.mylius@alaska.gov]
Sent: Friday, February 26, 2010 1:32 PM
To: John Davies
Cc: Rep. Wes Keller; Jim Pound; Menefee, Wyn (DNR); Parsons, Martin W (DNR); Irwin, Tom E (DNR); Mylius, Richard H (DNR); Baker, John T (LAW)
Subject: RE: Invitation to ARRC meeting

John – these six complaints deal with four very different issues. I'd be happy to address all those issues at the meeting, but only three (items 1, 3, and 4) deal with the regulations that are the topic for the meeting (11AAC 65.010 – 11 AAC 65.900). Unless I hear otherwise, I'll plan to address all four issues at the March 8 meeting.

Here is a bit of information about the three issues not related to the regulation:

Item #2, the gentleman with the lease for a lodge that was conveyed to the Aleutians East Borough is Mel Gillis, and that issue is currently in litigation involving the state, the Borough and Mr. Gillis. Mr. Gillis appealed an unfavorable Superior Court decision to the Supreme Court. The issue is a statutory interpretation (AS 38.05.035(f)) and its application to Borough owned lands, we have no regulations for the statutes at issue in this situation. Someone from the Department of Law will be available by phone for the March 8 meeting and can help address that issue.

Item #5 is an issue regarding federal lands being transferred into state ownership under the statehood act land grants. The state has had a policy for many years that when land is transferred into state ownership, the federal government needs to transfer land that is free of unauthorized uses and any environmental contamination. To implement this policy, the federal Bureau of Land Management either authorizes existing uses or cleans up the unauthorized use - whether that is trash or waste left behind at mining claims, trespass cabins, or whatever. DNR has not burned or torn down any cabins.

Item #6, I believe, reflects that legislators primarily hear from the few individuals who have issue with the a specific decision by the department or division. We have literally thousands of Alaskans who purchase state land, hold mining claims, have permits for access, have permits for private cabins, etc., that do not have complaints, so these complaints need to considered in that context. If the committee desires, I can provide information about the numbers of users on state land. In addition, we strive to apply statutes and regulations so they are fair to all Alaskans. Where individuals disagree with our decisions, we provide an administrative appeal process to address their concerns.

Dick Mylius

*Dick Mylius, Director
Alaska Department of Natural Resources
Division of Mining, Land & Water
907-269-8600 Fax 907-269-8904*

3/8/10 APR 3/8 Meeting

Cabins

Dick Mylius - presentations -

get land into private use by lease sales & leasing
1984 - trespass cabin rules -

241 permits still active

- continue - hearing til next Monday

- Sen. Olson - very passionate about keeping
cabins

* no program to continue cabin use
need legislation to maintain cabins

continued til next Monday

Personal Use Cabin Permits Overview for the Administrative Regulation Review Joint Committee
Division of Mining, Land and Water
March 8, 2010

- The Personal Use Cabin Permit (PUCP) program was established in 1984.
- The program provided a narrow window of opportunity for individuals that had trespass cabins built before August 1st 1984 to apply for permits to allow authorized use of the structures.
- The regulations created a very narrow scope of allowable use and tight rules of how these cabins could remain authorized.
- The regulations express the intention is to phase out the use of unauthorized cabins on state land, and where appropriate, convert them to public use.
- The regulations do not allow for additions or enlargements.
- The regulations require pre authorization for rebuilding a destroyed or damaged structure.
- Permit duration is 6 years.
- The regulations require a renewal application in writing to be submitted between 90-180 days before the expiration of the permit.
- Permits are only valid during the lifetime of the original holder of the permit.

355 permits were initially granted

241 permits are still active

22 permits were closed over time (last one 9/2/08)

84 permits were suspended/inactive (Just have not closed the file but essentially the same as closed)

1 permit was transferred

7 permits are under appeal

In 2009 DMLW changed its policy of allowing late applicants to pay a late fee in order to correctly follow the existing regulations. When the 12 late applicants were denied permits through an April 22, 2009 decision, they all appealed the decision. The Commissioner overturned the decision based on inadequate notice provided to the applicants of the change of practice of denying late applications. Those 12 permits were reinstated and notice of the change of policy was then provided for all of the other permit holders when we provided their application package. All permit holders now have adequate public notice of the change.

After that time, some other permits with later expiration dates were denied because of either late application or for overbuilding. 6 appeals were received from those that overbuilt and one appeal received from someone who submitted a late application.

Further information was provided that there was a contradictory deadline provided in the packet. The application form said that the application could be postmarked by the due date. Therefore the division is now reviewing three applications that were postmarked by the due date to determine if we can reinstate those permits that were originally deemed as a late application.

AS 38.04.035* Criteria For Program Selection.

** AS3804.035(4) had language inserted "or where disposal of land would cause potential conflicts with other resources and uses, or where long-range interest in public ownership and use exist" in paragraph (4) in 1984. The entire paragraph (4) was eliminated in 1997.*

In determining which land availability program is appropriate for state land in different locations, the director shall be guided by the following criteria:

(4) For enabling isolated cabin development in remote locations where survey and conveyance is impractical, or where disposal of land would cause potential conflicts with other resources and uses, or where long-range interest in public ownership and use exist, a system for cabin permits on public land may be used.

11 AAC 65.010. Applicability

This chapter applies to the issuance of personal use cabin permits for unauthorized cabins placed on state land before August 1, 1984. Cabins built on state land after August 1, 1984 will not be authorized. A permit under this chapter does not convey an interest in state land or establish a preference right for the lease or purchase of state land. It is the express intent of this chapter to phase out the use of unauthorized cabins on state land, and where appropriate, convert them to public use.

11 AAC 65.040. Renewals

(a) Application for renewal of a permit must be made in writing at least 90 days, but not more than 180 days, before the expiration of the permit. The application must be accompanied by the fee prescribed by 11 AAC 05.010.

(b) A permit will be renewed if the continued use complies with 11 AAC 65.050 - 11 AAC 65.900.

(c) A permit issued and renewed under this chapter is valid only during the lifetime of the original holder of that permit.

11 AAC 65.050. Permit decision

(a) The department will issue and renew an applicant's cabin permit if the director finds in writing that the application is for a cabin that complies with AS 38.04.035 (4) and does not conflict with the public interest criteria as described in (b) of this section.

(b) No permit will be issued for a cabin on state land

(1) where a subdivision or agricultural sale has occurred or is anticipated or scheduled during the term of the permit;

(2) where homesteads are proposed for future disposal, unless the disposal is not anticipated within the term of the permit;

(3) if the land has been selected under the authority of the Municipal Entitlement Act, AS 29.18;

- (4) in state park units, land managed under an interagency land management agreement, land classified as reserved use, or where the issuance of a permit would interfere with significant public recreational use;
- (5) that is shoreland, submerged land, or tideland;
- (6) that serves an important ecological function, or is especially sensitive to human disturbance, as determined by the department;
- (7) located close to a center of population;
- (8) where material extraction, timber sales, mining, or intensive recreational facility development is scheduled or anticipated during the term of the permit;
- (9) overlying a mining location or mineral lease if the department determines that a cabin may interfere with development of the mining location or mineral lease during the term of the permit;
- (10) under application or proposed for a public facility or highway right-of-way unless it is clear that the intended use will not occur during the term of the permit;
- (11) for which a Native allotment application is on record with the Bureau of Land Management, or on land validly selected under the Alaska Native Claims Settlement Act;
- (12) accessible by road within legislatively designated state game refuge or critical habitat area;
- (13) in a legislatively designated state game sanctuary;
- (14) where the cabin is used as a permanent residence; or
- (15) if the department determines that the proposed use may more appropriately be allowed under another chapter of this title.

11 AAC 65.080. Ownership and removal

- (a) Except as otherwise provided in (b) or (c) of this section, a cabin subject to this chapter is the personal property of the permittee, and remains so for the term of the permit.
- (b) A cabin not applied for under this chapter becomes the property of the state if not removed within 60 days after notice by the department.
- (c) Upon revocation or expiration of a permit, including renewals of it, or if an application was made but no permit issued, the cabin becomes the property of the state if not removed within 60 days after notice by the department.

11 AAC 65.090. Conditions of permit

A permit issued under this chapter

- (1) is valid for a period of up to six years;
- (2) may include site-specific conditions of use, such as seasonal use restrictions determined appropriate by the department and, on game refuges and critical habitat areas, by the Department of Fish and Game;
- (3) is not valid unless signed by an authorized individual within the Department of Fish and Game if the permit is for a cabin located within a state game refuge or critical habitat area;
- (4) is not valid unless the annual rental fee prescribed by 11 AAC 05.010 is timely received by the department;
- (5) is not valid unless the permit is signed by the applicant or applicant's authorized agent; and
- (6) will contain the following general stipulations and conditions:
 - (A) the permit does not convey an interest in state land or grant any preference right for the lease or purchase of state land;

- (B) the permit is revocable immediately upon violation of any of its terms, conditions, or stipulations, upon nonpayment of fees, or upon failure to comply with any other applicable statutes and regulations;
- (C) the permit is not transferable or assignable;
- (D) the permit must be displayed in general view on the cabin at all times;
- (E) no additions to or enlargements of the cabin are allowed, except for routine maintenance and upkeep;
- (F) all garbage and foreign debris brought into, or placed on, the cabin site must be removed by the permittee unless otherwise authorized by the director;
- (G) the state must be held harmless from all claims, demands, suits, loss, liability, and expense for injury to, or death of, a person arising out of or connected with the uses covered by the permit;
- (H) if the cabin is destroyed or damaged beyond repair, rebuilding the structure is not authorized without prior written approval of the director; this approval may not be unreasonably withheld;
- (I) the cabin may not be used for a commercial activity or as a permanent residence;
- (J) no new road or trail across state land is authorized under the permit, and access must be consistent with the provisions of 11 AAC 96;
- (K) no restriction or interference with public access to or across state land is allowed;
- (L) the permit does not relieve the permittee of the responsibility of securing other necessary state, federal, or local permits or authorizations; and
- (M) the department reserves the right to require measures to mitigate disruptions to public use of the area, and to fish and wildlife populations and their habitats, which may be created by the permittee, or occur as a direct result of the permittee's failure to comply with the terms of the permit or any applicable law.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING, LAND & WATER SOUTHCENTRAL REGION LAND OFFICE

SEAN PARNELL, GOVERNOR

550 WEST 7TH AVENUE, SUITE 900C
ANCHORAGE, ALASKA 99501-3577

PHONE: (907) 269-8503

FAX: (907) 269-8913

August 7, 2009

RE: Permit Expiring December 31, 2009

Dear Personal Use Cabin Permit Holder:

The Commissioner of the Department of Natural Resources (DNR) recently issued a decision that affects the renewal process for personal use cabin permits. This decision was the result of several appeals that were submitted to the Commissioner due to a decision made by the Division of Mining, Land and Water's (DMLW) Southcentral Regional Office (SCRO) for cabin permits expiring June 30, 2009.

The Commissioner's decision will implement a change in how SCRO handles permit renewal applications from now on. The renewal process for personal use cabin permits is governed by the regulation 11 AAC 65.040(a) which states that an "application for renewal of a permit must be made in writing at least 90 days, but not more than 180 days, before expiration of a permit." It has been SCRO's policy to accept and process renewal applications that were received after this 90 day period. **This policy is now changed due to the Commissioner's decision. From this point forward SCRO will no longer accept permit renewal applications that are received after the 90 day deadline, and these applications will be denied and the permit will terminate as of the expiration date of the permit.**

Attached is a copy of the Commissioner's decision. The Discussion section explains the reasons for the Commissioner's decision and the new policy to be implemented is addressed in the Decision section.

Please note that this Decision directly affects all permits expiring December 31, 2009. According to regulation the 90-day deadline to submit applications for permits expiring December 31, 2009 is **October 2, 2009. It is therefore imperative that your application be submitted and received by the Southcentral Regional Office no later than October 2, 2009. NO LATE APPLICATIONS WILL BE ACCEPTED.**

Application packets were sent to the Agent of Record for your cabin. If you are not the Agent of Record it is recommended that you make immediate contact with your Agent of Record to assure a timely submittal of the renewal application **no later than October 2, 2009.** If you do not know your Agent of Record or your Agent of Record is deceased please contact this office immediately at the numbers listed below.

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

If you have any questions about this Decision or the renewal of your personal use cabin permit, you may contact Paul Vail at (907) 269-8562 or Adele Lee at 269-8479 or by e-mail at paul.vail@alaska.gov or adele.lee@alaska.gov .

Sincerely;

Robin Swinford
Natural Resource Manager I

Attachment: Commissioner's Decision on MLW/SCRO's
April 22, 2009 Decision re: Personal Use Cabin Permits



Memorandum

Department of Natural Resources
Division of Mining, Land and Water

State of Alaska

Southcentral Region Office

DATE: April 22, 2009

TO: Rick Thompson – SCRO Regional Manager

FROM: Robin Swinford – SCRO Manger Leasing Unit

RE: Personal Use Cabin Permit (PUCP) Applications

The SCRO is currently administering 216 PUCP's of which 116 will expire June 30, 2009 and the remaining 100 will expire on December 31, 2009. According to regulation 11 AAC 65.040 all applications for renewal must be submitted 90 days prior to expiration.

Applications for permit renewal were mailed certified, with green return receipts requested cards attached, to the agent of record on February 12, 2009 for those permits expiring June 30, 2009; a full six weeks prior to the 90 day deadline of March 30, 2009. By March 20th all but 10 green cards were received confirming notification of 106 Permittee's. Phone contact was made with the agent or at least one member of the 10 Permits (approximately 20-25 phone contacts beyond just the agent of record) whose green card was not received and verbally informed of the impending deadline. Between February 12th and March 31st more than 65 contacts were made over the phone or in person in regards to the renewal process in general by both agents and permittee's of record. It was emphasized that all applications must either be received or post marked no later than March 30, 2009. To date more than 165 contacts have been recorded.

Soon after it was discovered that March 30th was a State holiday; to address the possibility that some Permittee's would attempt to hand deliver their applications on March 30th, the official deadline of record, it was decided that a staff member would be present in the office that day. Arrangements were made with building management and the security guards to allow Permittee's access to the 9th floor to deliver their applications. A total of 6 applications were hand delivered that day along with several phones calls who were advised that the application had to be post marked that day.

The morning of March 31st we discussed the holiday issue and determined that as the 30th was a State holiday any application received or post marked March 31, 2009 would be accepted. Any application received or postmarked after that date would be rejected and denied a renewal.

As of today we have a total of 22 applicants who missed the March 31st deadline for the 116 permits expiring June 30, 2009. The breakdown is as follows:

- 3 Permits - none of the original applicants are living

- 9 applications were received after March 31st
(excuses range from; the mail, being out of town the entire application period, mail wasn't forwarded, asked someone else to mail and it didn't get done, to a lost packet)
- 10 applications remain outstanding with no contact with SCRO.

To continue with the adjudication of the 116 permits expiring June 30th and setting the management standard by which the remaining 100 cabins expiring December 31st will be addressed, the following management options were considered.

Please indicate the management direction we should be following:

- Accept all applications submitted after the deadline of March 31, 2009 but prior to the expiration of the Permit on June 30, 2009 with an additional \$25 late fee. This was the procedure utilized during the prior renewal period in 2003.

Advantage: This decision would allow SCRO to continue to manage the land use through a contractual agreement with the Permittee's for use of the cabins. The administration of the program would continue with all cabins permitted except those where all original Permittee's have passed away. This option has the least administrative responsibilities as staff would not be dealing with trespass issues or all the follow up as a result of the appeal process.

Disadvantage: This decision simply does not comply with the procedure and deadline established by regulation, and there is no provision within the regulation to allow for those who do not comply. In addition, the renewal requirements and application timeframe was specifically stated in the 2003 Permit cover letter which was presumably read by each permittee.

- Reject and deny all applications submitted after the March 31st deadline as required by 11 AAC 65.040(a).

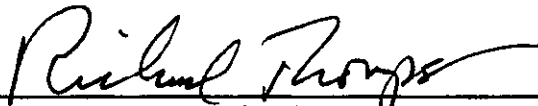
Beo

Advantage: This decision complies with applicable regulations governing administration of this program. SCRO staff went the extra mile to contact permit holders (a courtesy notification) well in advance of this deadline to remind them of this obligation. Contact was made in writing, and in some cases by telephone. The missed deadline was determined by regulation, and there is no option for considering excuses for non-compliance. This decision corrects past discrepancies in applying this regulation and sets a no nonsense course for future actions.

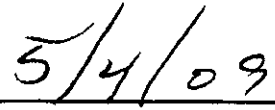
Disadvantage: This decision will result in additional administrative responsibilities with respect to disposition of cabins and reclamation of cabin sites. This result is unavoidable, but work will be prioritized along with other tasks. Staff will

coordinate activities with the Department of Fish & Game's Susitna Flats, Trading Bay and Palmer Hay Flats State Game Refuge staff for those cabins located within refuge boundaries. Permit holders of record are expected to stand by their obligations to remove the improvements and return the site to its original condition and will be required to submit a reclamation plan sufficient enough to detail the work to be done, and a date by which the site reclamation will be completed. Applicants who fail to comply with site reclamation requirements within the specified timeframe will be liable for all costs incurred by the state in removing the improvements and reclaiming the site.

Direction is given to proceed with the selected Management Decision alternative above.



Richard B. Thompson, Regional Manager
Southcentral Region Land Office



Date



STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR

- P.O. BOX 111000
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August 6, 2009

See Distribution List

**SUBJECT: COMMISSIONER'S DECISION on MLW/SCRO's June 22, 2009 Decision
re: Personal Use Cabin Permits**

Dear Appellants and Other PUCP Permit Holders:

In a letter dated June 22, 2009, the Division of Mining, Land and Water's (MLW) Southcentral Regional Office (SCRO) notified twelve permit holders that their application to renew their personal use cabin permit was denied because it was not filed within the 90-day deadline set forth in regulation 11 AAC 65.040(a). The recipients of this "denied letter" were notified of their right to appeal in accordance with DNR's appeal regulations in 11 AAC 02. In a separate letter, also dated June 22, 2009, SCRO notified seven other permit holders that since no application for renewal had been received, they were required to begin the process of removing all structures from their permit site. Since the deadline for permit renewal had passed and the permits would automatically expire on June 30, 2009 by operation of the terms of the permit, there was no appeal provision in the "removal letter."

The commissioner's office received twelve appeals of SCRO's June 22, 2009 letters: ten from those who received the "denied letter" and two from those who received the "removal letter." Four of these appeals were received after the 20 day appeal deadline to submit an appeal. Since DNR's appeal regulations do not allow me to waive this 20 day deadline, these untimely appeals must be rejected. Because my decision on the timely submitted appeals also affects permit holders whose appeals were untimely and those who did not submit an appeal, this decision is being sent to all 19 permit holders who received SCRO's June 22, 2009 letters. The reasons for doing so will become clear in my decision, as explained below.

This letter is my decision on the appeals of SCRO's June 22, 2009 decision to deny the late-filed applications for renewal. The case files, applicable statutes and regulations, and policies of DNR and MLW make up the administrative record upon which I based my decision.

After careful consideration, I have decided to GRANT the appeals and reverse SCRO's June 22, 2009 decision. Because my decision is to grant the appeals and reverse SCRO's decision, all the permit holders who received SCRO's June 22, 2009 letters are being similarly treated, regardless of whether their appeal was timely or whether they submitted an appeal. This decision applies to all recipients of SCRO's June 22, 2009 letters, that is, to all who received the "denied letter" and to all who received the "removal letter."

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans"

BACKGROUND: Numerous small cabins were built on state land without authorization from the State for the placement of these cabins on state-owned land. The Personal Use Cabin Program (PUCP) was established in 1984 when the Legislature amended AS 38.04.035(4) by adding language that would allow the permitting of cabins on public land "where a long-range interest in public ownership and use exist."¹ In 1984, DNR adopted regulations to implement a process by which permits could be issued for those cabins that were placed on state land before August 1, 1984 in order to authorize and control the use and existence of these cabins on state land. Since that time the PUCP has been managed and maintained according to 11 AAC 65.010 - .900. This program was limited to existing unauthorized cabins that were placed on state land before August 1, 1984. In 1985, the State of Alaska provided public notice of the PUCP and provided for a one time only application period that commenced at different dates throughout the State. Permits were issued for a term of six years. Permits could be renewed under a process established by 11 AAC 65.040. The first renewal period occurred in 1991 and there have been several renewal periods since then.

The personal use cabin permits that were issued in 1985 were subject to their first renewal in 1991. On June 20, 1991, MLW's SCRO made an Administrative Decision to administratively renew all permits whose renewal applications were timely filed and to administratively reject all applications for renewal that were not timely filed. Several appeals of this administrative decision were received.

On August 14, 1991, MLW's (then the Division of Land and Water Management) Acting Director issued his decision on the appeals of SCRO's June 20, 1991 decision and concluded that the language in 11 AAC 65.040 "allows for administrative discretion as to the penalty for missing the filing period [and] to exercise that discretion in favor of the appellants." The decision also stated that while the director "empathized with personal hardships [that may have caused the late filing], the regulation makes no allowance for missing the filing deadline." The Acting Director's decision was to accept the late-filed renewal applications, provided they met certain conditions stated in the decision. On April 17, 1992, the division Director issued this same decision; that is, to accept the late-filed renewal applications that had been rejected by SCRO on December 10, 1991. In a decision signed on April 23, 2003 by SCRO's Regional Manager, it was recommended that late-filed renewal applications be processed and cited the division Director's 1991 decision as the reason for doing so.

According to the record, SCRO is currently administering 216 PUCP permits, 116 with an expiration date of June 30, 2009 and 100 will expire on December 31, 2009. On February 12, 2009, SCRO sent letters by certified mail, return receipt requested to the 116 permit holders in the Southcentral Region whose personal use cabin permits were set to expire on June 30, 2009. This letter was not required by either statute or regulation but sent by SCRO as a courtesy to inform permit holders of the upcoming deadline to renew their permits. The letter explained that under 11 AAC 65.040, their completed renewal application "**must be submitted to this Division 90 days prior to the permit's expiration**" and if they failed to submit their renewal application by the 90-day deadline, their "**permit will be subject to termination.**" This language was in bold and underlined in SCRO's February 12, 2009 letter.

¹ This statute was amended in 1997 and this paragraph (4) was deleted.

Of the 116 permits that were set to expire on June 30, 2009, 19 failed to submit renewal applications by the 90-day deadline. On June 22, 2009, SCRO sent letters to twelve persons whose renewal applications were received after the 90-day deadline and notified them that their application for renewal was denied for failure to timely file by the deadline established by 11 AAC 65.040(a) and of their right to appeal this decision to the DNR Commissioner. Several appeals were subsequently received. Also on June 22, 2009, SCRO sent letters to seven persons who did not submit a renewal application and informed them that they must remove all structures from their permit site and requested them to submit a written plan within 60 days of expiration for removal and restoration of the site. Two persons who received the June 22, 2009 "removal letter" submitted an appeal.

DISCUSSION: Because I have decided to grant these appeals on other grounds, it is not necessary to address the issues raised in the appeals.

It appears from the record that the division Director's 1991 appeal decision has been MLW's policy; that is, to accept renewal applications that are received after the 90-day filing deadline set in 11 AAC 65.040. SCRO departed from this long-standing division policy in its June 22, 2009 letters when it denied the late-filed permit renewal applications and initiated the removal process for those who did not submit a permit renewal application. While I agree that SCRO correctly interpreted 11 AAC 65.040 and made the correct decisions in its two June 22, 2009 letters, I disagree that SCRO should have departed from the established division policy without first adopting a new policy and providing prior notice of that policy change to all PUCP permit holders. Although SCRO's February 12, 2009 letter explained that late-filed renewal applications could subject the permit to termination, the permit holders had no reasonable expectation that this would actually occur since MLW's policy since 1991 has been to accept all late-filed renewal applications.

Let me further explain. I agree with SCRO's June 22, 2009 decisions and I disagree with the former division Director's decision in 1991 that established a division policy of accepting PUCP renewal applications received after the 90-day regulatory deadline. I disagree with the former division Director's decision that 11 AAC 65.040 allows for any discretionary application of the 90-day deadline set forth in 11 AAC 65.04(a), which states:

Application for renewal of a permit must be made in writing at least 90 days, but not more than 180 days, before the expiration of the permit. The application must be accompanied by the fee prescribed by 11 AAC 65.010. (The second sentence was added to the regulation in 1993.)

That receipt of the renewal application within this regulatory deadline is mandatory and not discretionary is supported by the clear language of the regulation. According to *Black's Law Dictionary* (1979, 5th edition), "must" is "like the word 'shall' and is primarily of mandatory effect." That application of the 90-day deadline is mandatory is also supported by the purpose of the Personal Use Cabin Permit Program, as stated in 11 AAC 65.010, Applicability: "It is the express intent of this chapter to phase out the use of unauthorized cabins on state land, and where appropriate, convert them to public use."

The division's Acting Director was aware of this purpose and mentioned it in his 1991 decision. The Director found this purpose was being accomplished by other aspects of the PUCP which he

explained in his decision: those who didn't apply during the one-time only application period in 1985 were never eligible for a permit; cabins built after August 1, 1984 could never be authorized under the PUCP; and all cabins would eventually be phased out because the permit is renewable only during the lifetime of the original holder of the permit. However, this does not support the division Director's decision to waive the renewal deadline in 11 AAC 65.040. First, those who didn't apply didn't get a permit and so would never be part of the renewal process. Second, the PUCP doesn't apply to cabins built after August 1, 1984. The PUCP defines "applicant" as "an individual or group of individuals at least 18 years old who have resided in Alaska not less than one year immediately preceding the date of application and does not include an organization, association, or corporation." (11 AAC 65.900(1)) During the one-time application period in 1985, there could be only one application but that application could list one or more applicants. While there was only one original applicant or original group of applicants in 1985, the permit may be renewed as long as there is at least one original applicant still living. For those permits that are held by a group of individuals, the permit could be renewed throughout several lifetimes.

The deadline in the renewal regulation implements the purpose of the PUCP which is to phase-out these cabins on state land. This purpose can only be achieved if the regulatory deadline is enforced. Of course, revocation of the permit can also achieve this purpose but revocation is not the subject of this appeal. The regulations do not provide the director of MLW, or even the commissioner of DNR, the authority to waive the provisions of the renewal regulation.

DECISION: Because of the above-described division precedent, I have decided that the renewal process for the PUCP permits set to expire on June 30, 2009 should be the same as it has been since 1991. I believe that SCRO's June 22, 2009 decision and its application of 11 AAC 65.040 is supported by the clear language of 11 AAC 65.040. However, I believe it would be unfair to reject the late-filed renewal applications since there was no notice of a change in the division's long-standing policy of accepting late-filed renewal applications. **Accordingly, I am granting the appeals and reversing SCRO's June 22, 2009 decision that denied the twelve late-filed renewal applications for permits set to expire on June 30, 2009. I am also vacating SCRO's June 22, 2009 letter to the seven persons who did not submit a renewal application and were told to begin removing the structures from their permit site and whose permits were set to expire on June 30, 2009.** I believe it is only fair and equitable that these seven persons be treated the same as those whose late-filed renewal applications were denied, as was done in 1991.

This decision constitutes a repeal of the MLW's Director's 1991 appeal decision and resulting division policy and establishes a new policy for all future PUCP renewals to strictly enforce the language and intent of 11 AAC 65.040, the department's regulation regarding renewal of personal use cabin permits on state land. The effect of this decision is that all future renewal applications must be received within the regulatory 90-day deadline and if not, the late-filed applications shall be denied and the permits will automatically expire by operation of the permit's terms.

In accordance with my decision, the late-filed renewal applications for the permits set to expire on June 30, 2009 will be accepted and adjudicated by SCRO to ensure their compliance with all applicable requirements, and these late-filed renewal applicants shall be given an opportunity to cure any defects in their application by a date certain to be determined by SCRO. The seven persons

Personal Use Cabin Permits

August 6, 2009

Page 5 of 5

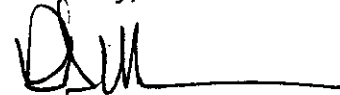
who did not file a renewal application for the permits set to expire on June 30, 2009 shall be given an opportunity to submit a renewal application and if they choose to submit a permit renewal application, then it must be received on a date certain to be determined by SCRO. This decision shall be sent to all persons who received SCRO's June 22, 2009 letters (which includes the appellants), as well as to all other personal use cabin permit holders. When SCRO sends out courtesy letters to those whose permits will expire on December 31, 2009, a copy of this decision will be included with that courtesy letter.

I am also sending this decision to the managers of MLW's Northern and Southeast Regional Offices and directing these managers to mail a copy of this decision to all PUCP permit holders within their areas. This will provide notice of the department's interpretation and new policy regarding the application of 11 AAC 65.040. Since there may be permit holders in the Northern and Southeast regions whose 90-day renewal period has already elapsed, the regional managers shall notify those permit holders that their renewal application must be received in their respective offices within 90 days of the date of this decision.

I am also recommending that MLW assess whether the regulations in 11 AAC 65 may require any changes or revisions in light of my decision and this new policy. I would especially direct MLW's attention to 11 AAC 65.040, the renewal regulation, and consider adding language that failure to comply with the deadline in 11 AAC 65.040(a) shall result in termination of the personal use cabin permit as of its expiration date. By amending 11 AAC 65.040 to include termination language, all permit holders will have notice that failure to comply with the regulatory deadline shall result in the automatic termination of their personal use cabin permit by operation of law.

APPEAL: This decision is a final administrative order and decision of the department for the purpose of an appeal to Superior Court. An appellant affected by this final order and decision may appeal to Superior Court within 30 days in accordance with the Alaska Rules of Court and to the extent permitted by applicable law.

Sincerely,



✓ Thomas E. Irwin
Commissioner

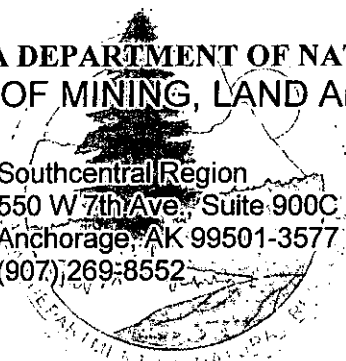
cc: Dick Mylius, Director, Division of Mining, Land and Water, DNR
Richard B. Thompson, Regional Manager, Southcentral Region, MLW, DNR
Chris C. Milles, Regional Manager, Northern Region, MLW, DNR
David L. Kelley, Regional Manager, Southeast Region, MLW, DNR

**STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER**

Northern Region
3700 Airport Way
Fairbanks, AK 99709
(907) 451-2740

Southcentral Region
550 W 7th Ave, Suite 900C
Anchorage, AK 99501-3577
(907) 269-8552

Southeast Region
400 Willoughby
P.O. Box 111020
Juneau, AK 99811-1020
(907) 465-3400



**PERSONAL USE CABIN PERMIT RENEWAL APPLICATION
11 AAC 65.040**

Non-refundable filing fee: \$100

_____ ADL#

Permittee's or Authorized Agent's Name: _____
Mailing Address: _____
City/State/ZIP: _____
Phone: _____ Message Phone: _____
E-mail address: _____

The Authorized Agent acts as a representative for all cabin members and accepts full responsibility to act on their behalf. It is the responsibility of the Authorized Agent to ensure compliance with all the terms and conditions of the permit. The Authorized Agent also accepts full responsibility for being the main point of contact for DNR. It is the responsibility of the Authorized Agent to keep DNR informed of any change of addresses and phone numbers of all remaining original members and their status.

Request for renewal of a Personal Use Cabin Permit **MUST** be submitted in writing no earlier than 180 days, but no less than 90 days prior to Permit expiration. It is the responsibility of the Authorized Agent to request and submit a renewal application within this time frame. Should the Authorized Agent fail to inform or respond to DNR within the allotted timeframes required for renewal the DNR will make no attempt to contact members beyond the Authorized Agent of record.

**This Application MUST be received or post marked NO LESS than 90 calendar days prior to permit expiration.
NO LATE APPLICATIONS WILL BE ACCEPTED.**

1. Is this a change of the Authorized Agent of record? Yes No
2. List the current names, addresses, phone #'s and e-mail addresses of the remaining original permittee's:
NOTE: No new members may be added.

Name: _____
Address: _____
City/State/Zip _____
Phone: _____
E-mail address: _____

Name: _____
Address: _____
City/State/Zip _____
Phone: _____
E-mail address: _____

Name: _____
Address: _____
City/State/Zip _____
Phone: _____
E-mail address: _____

Name: _____
Address: _____
City/State/Zip _____
Phone: _____
E-mail address: _____

Name: _____
Address: _____
City/State/Zip _____
Phone: _____
E-mail address: _____

Name: _____
Address: _____
City/State/Zip _____
Phone: _____
E-mail address: _____

Name: _____
Address: _____
City/State/Zip _____
Phone: _____
E-mail address: _____

Name: _____
Address: _____
City/State/Zip _____
Phone: _____
E-mail address: _____

3. Please list any of the original permittee's who are now deceased:

Name: _____ Date _____
Name: _____ Date _____
Name: _____ Date _____

4. Please list any of the original permittee's who no longer desire an interest in the cabin: Please provide, in writing, a notarized statement from each member relinquishing their interest.

Name: _____ Relinquishment letter attached: Yes No
Name: _____ Relinquishment letter attached: Yes No
Name: _____ Relinquishment letter attached: Yes No

5. Where is the cabin located? _____

- a) List GPS coordinates: _____
- b) Provide the legal description:
Seward Meridian: Township _____, Range _____, Section _____
- c) USGS Quad map: _____
- d) Topographic Map (1:63) attached with "X" marking the spot: Yes No

6. Describe the characteristics of the cabin which might help to identify it during a field inspection:

- a) Dimensions: _____
- b) Total Square footage: _____
- c) Color: _____
- d) Other identifying characteristics: _____

7. Attach a recent date stamped Photograph of the cabin taken within the last 6 years.
 Photo attached: Yes No If no please explain: _____

8. Have any improvements been made to the cabin since the permit was originally issued? If so, please explain:

9. Primary purpose of the cabin? _____

10. Seasons of use? _____

11. Are you applying for an ADFG Special Area Permit or renewal at this time? Yes No

 Authorized Agent's Signature

 Date

STATE OF ALASKA)
) ss.
 _____Judicial District)

THIS IS TO CERTIFY THAT ON THIS _____ day of _____, _____, before me personally appeared _____, known to me to be the person named and who signed the foregoing lease and acknowledged voluntarily signing the same.

 Notary Public in and for the State of Alaska
 My commission expires: _____

ATTACH PHOTO(s) HERE:

Phone (907) 269-8503
Fax (907) 269-8913

March 5, 2010

RETURN RECEIPT REQUESTED

Re: ADL No. _____, Personal use Cabin Permit **Expiring December 31, 2009**
Renewal Application **Deadline October 2, 2009**

Dear Permit Holder,

Your Personal Use Cabin Permit (PUCP) issued by the Department of Natural Resources (DNR), Division of Mining, Land & Water (DMLW), Southcentral Regional Office (SCRO), will expire on December 31, 2009. According to 11 AAC 65.040, **in order to renew your permit a completed renewal application packet must be submitted and received by this office no less than 90 days prior to the permit expiration. Therefore the deadline to submit the permit renewal application to this office is October 02, 2009.**

To renew your permit please complete and submit the following documentation no later that **October 2, 2009**.

- A completed Renewal Application, signed and notarized (*form enclosed*);
- A completed Environmental Risk Questionnaire (*form enclosed*);
- A recent, dated photograph of the cabin; (*photos should not be more than 6 years old.*)
- A \$100.00 filing fee

Return the completed forms and requested documentation **no later than October 02, 2009** to:

Division of Mining Land and Water,
Southcentral Regional Office
550 W. 7th Avenue, Suite 900C
Anchorage, AK 99501-3577

If you fail to submit an application for renewal by October 2, 2009 your permit will naturally expire and will not be renewed. Once your permit has expired you will be given 60

days after permit expiration to remove all improvements and personal property according to 11 AAC 65.080.

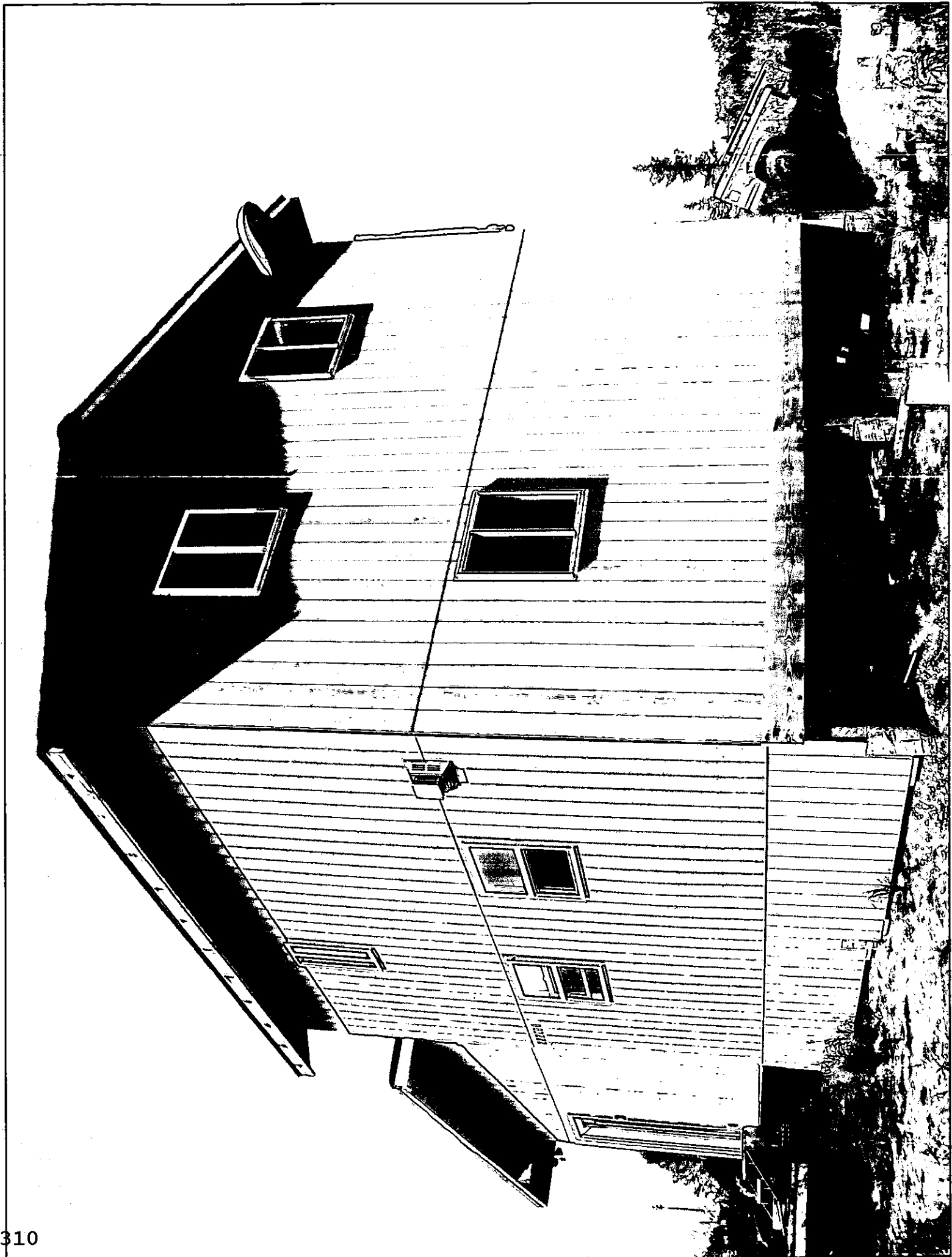
If you have any questions or concerns regarding your permit renewal, feel free to contact me at 269-8562 or Adele Lee at 269-8479.

Sincerely,

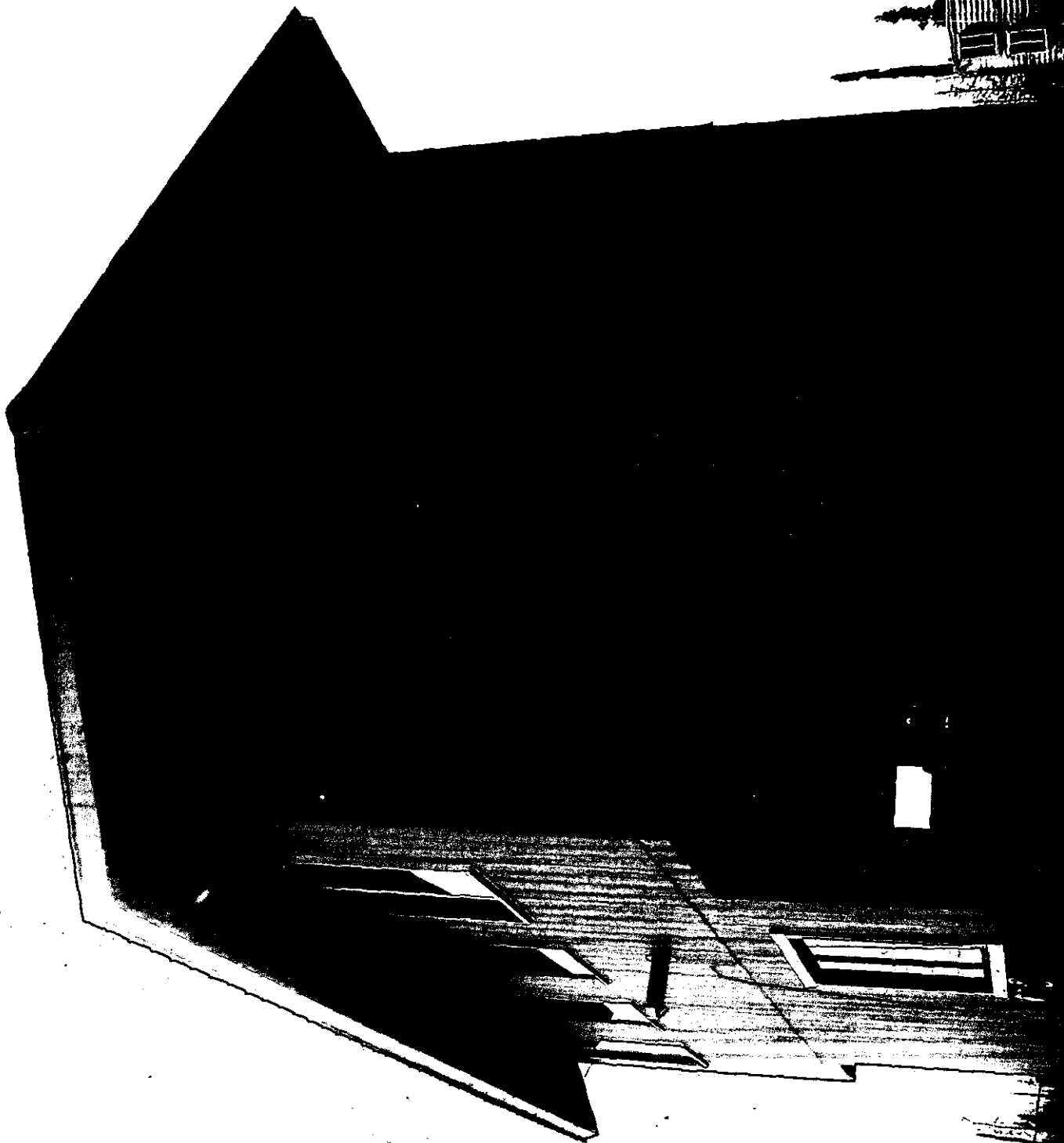
Paul Vail
Natural Resource Specialist

*Enclosures: Personal Use Cabin Renewal Application
 Environmental Risk Questionnaire*









SOUTHCENTRAL 2009 DENIED PERSONAL USE CABINS

	ADL #	NAME	ADDRESS	CABIN LOCATION	CURRENT STATUS OF PERMIT	REASON FOR DENIAL	PERMIT HOLDER DATE
Permits that were to expire June 30, 2009. Reinstated because 8/6/09 Commissioner Decision	220994	Patrick E. Carty	P.O. Box 2913 Kenai, AK 99611	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220732	Joel K Blatchford	370 W. Redoubt Avenue #4, Soldotna, AK 99669	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220756	Corey D Doil	3131 Bettles Bay Loop, Anchorage, AK 99515	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220789	Keith K Appel	4705 Malibu Drive, Anchorage, AK 99517	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220824	Allan L Sawyer	PO Box 2646, Kenai, AK 99611	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220911	Kent Kohlhase	2142 Forest Park Drive, Anchorage, AK 99517	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220923	Charles M Sage	5108 Strawberry Road, Anchorage, AK 99502	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220925	Jodi Grendahl	7720 Lodge Pole Court, Anchorage, AK 99516	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220926	Marvin J Grendahl	7720 Lodge Pole Court, Anchorage, AK 99516	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220941	Donald J Hicel	6916 Whitehall, Anchorage, AK 99502	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220958	Ward Hulbert	5226 Strawberry Road, Anchorage, AK 99502	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220995	Ronald T Stanek	3623 Lynn Drive, Anchorage, AK 99508	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	Permits that were to expire December 31, 2009. Denials that were not changed by 8/6/2009 Commissioner Decision	221834	C Grant Henderson	3302 W. 81st Avenue, Anchorage, AK 99502-4425	Cook Inlet	Denied/Expired - letter pending	Late Application
221926		Michael B Brooks	511 W. 54th Ave, Anchorage, AK 99518-1136	Kenai Peninsula	Denied/Expired	Late Application	Since 1986
221993		Ed Clark	PO Box 834, Kenai, AK 99611	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
222214		Fred F Braun	502 Lake Street #2, Kenai, AK 99611	Cook Inlet	Denied/Expired - Appealed	Late Application	Since 1986
222000		Louis L Clark	2840 Porcupine Trail, Anchorage, AK 99516	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
222003		Rick A Bailey	PO Box 581, Soldotna, AK 99669-0581	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
222086		Nancy K Myers	3840 Wildrose Avenue, Kenai, AK 99611	Kenai Peninsula	Denied/Expired	The cabin is not on S	Since 1986
222096		Scott Davis	PO Box 3852, Soldotna, AK 99669	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
222098		Leslie Near	Drawer 448, Soldotna, AK 99669	Cook Inlet	Denied/Expired - letter pending	Late Application	Since 1985
222112		Rollin Braden	36625 Ansel Drive, Soldotna, AK 99669	Kenai Peninsula	Denied/Expired - postmark	Late Application	Since 1986
222116		Rollin Braden	36625 Ansel Drive, Soldotna, AK 99669	Kenai Peninsula	Denied/Expired - postmark	Late Application	Since 1986
222191		Scott Jackson	PO Box 2091, Soldotna, AK 99669	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
222222		James A Scritchfield	PO Box 866, Soldotna, AK 99669	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
222223		David Blossom	PO Box 313, Kasilof, AK 99610	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
222313		T J Hinkle	46745 Kenai Spur Highway, Kenai, AK 99677	Cook Inlet	Denied/Expired - postmark	Late Application	Since 1986

Explanation of the information in the 2009 DENIED PERSONAL USE CABINS spreadsheet.

There are 211 Personal Use Cabin Program (PUCP) permits in the South Central Region land office (SCRO) of the Division of Mining, Land & Water. Most of these are not shown in this spreadsheet. Only those that were denied at some point during 2009 are shown. These are permits that had expiration dates of June 30, 2009 or December 31, 2009. Of the 211 permits, 173 cabin permits have been renewed this year (2009-10). This includes the top group of permits shown in the table that were previously denied but reinstated after the August 6, 2009 Commissioner Decision that overturned the denials.

Of the remaining 38 cabins, 7 were denied for a late application (terms of renewal in regulation, but 3 are potentially going to be reinstated for meeting the postmark date), 7 were denied for having overbuilt the authorized structure footprint and size (violating conditions of the permit and the regulations), and one was denied because it is not on state land. This is the bottom group of permits shown in the spreadsheet. The remaining 24 permits not shown in the table were closed because the permittee has failed to turn in an application or all of the permittees associated with the permit have passed away.

The Personal Use Cabin Program is based on the foundation that the division is not to perpetuate the existence of these previous trespass cabins. It was a one time offer from the legislature to authorize these cabins under a set of strict regulations that prevent expansion and set conditions for denying permits.

SCRO has divided its 211 PUCP permits into two separate groups. One group is composed of permits that expire on June 30 and the other is composed of permits that expire on December 31. SCRO made a decision on April 22, 2009 to deny all applications that were received past the application deadline for the June 30 expiration group. Several affected permit holders of that group appealed to the DNR Commissioner and the Commissioner reversed SCRO's decision on August 6, 2009, and provided a one time 90 day grace period for those that already had missed the renewal application deadline or had pending application deadlines. This group was notified to allow them 90 days to reapply to renew their permit. The permit holders in the top group in the spreadsheet were reinstated because SCRO had their late application in hand. The Commissioner's decision also was very clear that all future late renewal applications would be denied. In addition, permit holders that held permits that would expire on December 31, 2009 were notified SCRO would deny permits for late applications or for violation of other permit terms.

Of the lower group of denials in the spreadsheet (the only ones that are currently denied in southcentral), only one permittee that filed late has appealed the SCRO decision to deny. In addition, all of the overbuilt permittees have appealed the SCRO decision to deny.

No other denials have been issued in 2009 for the other regions of the state.

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To Whom It May Concern

January 21, 2010

I am appealing your decision to deny my application for renewal of my Personal Use Cabin Permit ADL 221934.

On August 9th the Post Man rang the door bell moments after one of my kids yelled Grandpa's gone! (Grandpa is 90 with mid stage Alzheimer's) I quickly signed for an envelope and pulled the paper work out of the far enough to see that it was the renewal for Moose Camp and that it expired on December 31st I tossed it in with the rest to the mail and went looking for Grandpa. He was found next door, after a frantic search. The mail however was packed in a box as we were preparing to move that day and not found for 3 months.

On December 2nd my wife found the renewal application and I was able to look at the contents of the renewal packet for the first time.

I had no idea and no reason to suspect that there was a surprise in the back of that packet changing the established policy and did not expect that being late would constitute denial of a renewal application.

The notice of the change of policy could have been sent in a separate envelope ahead of the renewal application would have made all the difference in my case. Even a red stamp noting "Notice...New policy inside, open immediately" would have helped.


I believe that SCRO should not have departed form the established division policy without first communicating a change to that policy in an adequate way in the form of a separate mailing to all PUCP permit holders. (See Commissioner's Decision on MLW/SCRO's June 22, 2009 Decision re: Personal Use Cabin Permits.) Page 3 paragraph 3 and Page 4 paragraph 3.)

I believe that I am in the exact same position that the late filing applicants were in in June. Accordingly I ask for you to renew my Personal Use Cabin Permit on the same basis that you allowed the late filing applicants in June.

I hope that you don't see me as just ADL permit number 221834, but that you see me as a Dad that faces letting down everyone that shared the privilege of using the cabin with me as well as losing the opportunity to share with my own children the experiences that my Uncle Sam shared with me at Moose Camp.

Sincerely

C. Grant Henderson



There seems to be quite a lot of confusion from the public as to what DNR's policies are regarding the use of state lands. Whether for lease or for purchase. This confusion seems to be a result of the lack of clear and consistent policies by the department. For instance....

On this DNR form for "Purchase or Lease of State Land,"

There's a line asking if you're applying for a "lease" or for a "sale"? Can you actually use this form to purchase state land?

There is also a line asking "If a lease, how many years are you applying for? (55 years max).

Is it possible to lease land for a 55 year term?

Is this an actual policy that was adopted by the Commissioner of DNR? Or is this an general understanding of mid-level beaurocrats?

I've been told that in the Fairbanks DNR office a person was told that they could only lease land for a 5 year term?

It would appear that once again DNR lacks a clear and consistent statewide policy on this issue.

Rick Thompson

STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER

Resource Assessment and Development Section
850 W 7th Ave., Suite 1050
Anchorage, AK 98501-3579
(907) 269-8534

Northern Region
3700 Airport Way
Fairbanks, AK 99709
(907) 451-2740

Southcentral Region
850 W 7th Ave., Suite 900C
Anchorage, AK 98501-3677
(907) 269-8552

Southeast Region
221 W. 1st Ave., Suite 100
Juneau, AK 99801
(907) 586-2100

APPLICATION FOR PURCHASE OR LEASE OF STATE LAND

Date _____

Applicant's Name _____ Doing business as _____

Mailing Address _____

City/State/Zip _____ E-Mail _____

Message Phone () _____ Work Phone () _____ Soc. Sec. # and/or Tax ID# _____

Is applicant a corporation qualified to do business in Alaska? yes no. Is the corporation in good standing with the State of Alaska, Dept. of Commerce and Economic Development? yes no.

Is applicant 18 years or older? yes no. Are you applying for a lease or sale? What kind of lease or sale are you applying for? Tideland; Public/Charitable Use; Grazing; Millsite; Negotiated; Competitive

If a lease, how many years are you applying for? _____ years. (55 years Max.) *who set the property*

Legal Description: Lot(s) _____ Block/Tract # _____ Survey/Subdivision _____

Other _____

Meridian _____ Township _____ Range _____ Section(s) _____

Municipality _____ LORAM Reading (optional) _____

Geographic Location _____

What is the proposed use of and activity on the state land? _____

Are there any improvements on the land now? yes no. If yes, who owns the improvements and what is their estimated value? _____

If yes, describe any existing improvements on the land. _____

Are there any improvements or construction planned? yes no. If yes, describe them and their estimated value. _____

State the proposed construction date _____ estimated completion date* _____

Name and address of adjacent land owners and, if you are applying for tidelands, the name and address of the adjacent upland owners _____

Are you currently in default on, or in violation of, any purchase contract, lease, permit or other authorization issued by the department under 11 AAC? yes no. Within the past three years, has the department issued or renewed any purchase contract, lease, permit or other authorization issued to you? yes no.

Non-refundable filing fee: \$100
(Fee may be waived under 11 AAC 06.010(c))

182-103 (Rev. 02/05)

John Davies

From: MaryBea Byrne
Sent: Thursday, March 11, 2010 2:57 PM
To: John Davies
Subject: written testimony for cabin regulations
Attachments: Testimony of Rick Baldwin.pdf; Testimony of Mike Schilling.pdf

Mr. Davies,

We have received the attached written testimony for submittal to the JARR Committee from two of the individuals who attended the last hearing on March 8 regarding personal use cabin regulations. They are unable to attend the meeting on March 15, but requested that the attached be given to the committee members in lieu of oral testimony.

Thank you for your assistance in this matter,

Mary Bea

Kenai LIO

283-20303

Testimony of Mike Schilling

420 N. Willow Street, Kenai, AK

I am a life-long Alaskan. I own and manage GLM Machine Shop, an industrial turbine repair and overhaul facility in Kenai. I would like to address the State's policy regarding personal use permitted cabins as stated in 11 AAC 65.010. I will discuss how application of the policy has affected me and my family personally, in the recent refusal of DNR to process the renewal application for the personal use cabin permit submitted by Fred Braun for a duck cabin located across Cook Inlet from Kenai.

Fred Braun will present testimony to the Committee on the circumstances under which the DNR has refused to process the cabin permit. I ask the Committee to not view the situation as merely Fred Braun losing a permit, but to consider the implications on the people involved. The DNR's present course of action, if upheld, will result in my family and me losing an important part of our history.

My father Louis Schilling, Fred Braun and Larry Rappe built the cabin almost 40 years ago. I remember as a child participating in my first duck hunt from the cabin at the age of five. From that time, and almost every year since, the annual duck hunt with my father, brother and friends was the highlight of my year. My father allowed my brother and me to miss school for the opening week of duck season, and many times later in the fall also.

Initially, transportation to the flats was either by chartered aircraft or by boat from Kenai. When I became an adult, having the ability to fly to the duck cabin was the main impetus for me to get a pilot's license. After receiving a license, my use of the cabin increased even more.

Duck hunting was my father's passion. After Dad retired in 2000, he finally had the time to spend at the cabin, as he had always wanted. He spent several weeks at the cabin each fall. In 2003 he went over to the cabin with his young grandson Sam and renovated the cabin. He put on a new roof, replaced the rotted deck, beefed up the foundation supports, and painted the structure. In 2006 Dad was diagnosed with mesothelioma, a form of lung cancer resulting from asbestos exposure. Although he went outside for treatment, he returned to the state for

duck season. That year he spent almost six weeks at the duck cabin in the company of his sons, grandson and old friends.

In the fall of 2007 Dad went to the cabin with my brother for what would be his last hunt. He passed away October 6, 2007.

I don't understand how it would be in the interest of the state to require us to move the cabin. It is not noticeable from the air and takes up very little space. No one is excluded from hunting by its presence. In fact, I would guess that over 200 individuals have sheltered in the cabin at various times since its construction and to my knowledge no one asking to use the cabin has ever been turned away. Due to the transportation difficulties involved I am aware of very few hunters who attempt to hunt the flats without being able to shelter in a cabin.

In conclusion, it is impossible to adequately describe the sense of loss I felt when I heard that the DNR had refused to process the cabin permit. So much family history is tied up in the cabin, so many good memories. I have always planned that I would hunt there with my son. What possible public policy is advanced by depriving people of the kinds of experiences so many of us have enjoyed as a result of being able to use the cabin? I would hope that the legislature would seriously consider whether the public would be better off by having the cabin removed, and conclude that there still is a place in the Alaska wilderness for cabins built in a time when the rules for such things were less rigid, by self-sufficient people whose legacy continues to today.

Testimony of Charles R. (Rick) Baldwin
125 N. Willow, Kenai

My testimony consists of two parts. The first part addresses the overall public policy implications of the current policy with respect to wilderness cabins on state land. The second part of my testimony is personal, describing the value to me as an Alaskan of a state policy encouraging the maintenance of existing cabins. I do not have a cabin permit, nor do I have an ownership interest in any cabin on state land.

A. The policy of the state should be to encourage the maintenance of existing wilderness cabins on state land, rather than orchestrating their destruction or removal.

1. The current written policy for state lands is to “phase out the use of unauthorized cabins on state land.” According to the interpretation of DNR an “unauthorized cabin” is one that is on land owned by the state, even though it may be permitted under 11 AAC 65.010. See August 6, 2009 *Commissioner’s Decision on MSW/SCRO’s June 22, Decision re: Personal Use Cabin Permits* (the “2009 Commissioner’s Decision”).
2. 11 AAC 65.010 is not consistent with what should be the policy of the legislature - to preserve wilderness cabins, both as historical objects and as places of sanctuary.
 - a. Historical value. Each cabin has a story. A cabin in the wilderness doesn’t last long without being occupied and cared for. As each wilderness cabin falls into disrepair and disappears into the tundra, marsh or trees, a little bit of Alaska history is lost.
 - b. Sanctuary value. There can be no doubt that wilderness cabins have been literal lifesavers to people lost or stranded in the wilderness. While a dilapidated cabin may offer better shelter than no cabin at all, a tight, dry, provisioned cabin may be the difference between life and death. State policy should encourage, not discourage the continued maintenance of existing wilderness cabins.
 - c. Financial value. Unless and until the DNR has a budget to maintain and renovate cabins for which personal use permits have been granted, the policy of

the state should be to leave them in the care of those who have a stake in maintaining them. It would be foolish to expect that the state would be better off if it had in its inventory a bunch of cabins in remote wilderness locations. There would be little incentive to use public funds to maintain cabins in out-of-the-way locations when the State's budget for just maintaining the current public use facilities is inadequate. If the state owned the cabins they would rapidly fall into disrepair.

3. 11 AAC 65.010 is being applied in a manner which is inconsistent with the policy of fairness generally favored by the legislature. According to the August 6, 2009 *Commissioner's Decision on MSW/SCRO's June 22, Decision re: Personal Use Cabin Permits* (the "2009 Commissioner's Decision"), the prior Commissioner's decision to accept late-filed permit renewal applications was inconsistent with the policy of removing wilderness cabins on state land. For that reason the current Commissioner has instituted the practice of rejecting late-filed permit renewal applications with no provision for reinstatement, no matter the reason for the late filing. (*2009 Commissioner's Decision*, p. 4). This practice has resulted in several permittees faced with losing their permits. One such permittee is Fred Braun. Mr. Braun will provide testimony that he received no prior notice of the change in policy, so when he received his permit application, following his usual practice, he put it with other documents requiring action before year end. Only when he opened and read the enclosed notice did he become aware that DNR would refuse to process the permit if not submitted by the October deadline.

A policy which results in an Alaska citizen being deprived of his cabin merely because of a clerical error is an unduly harsh policy and should not be countenanced by the legislature. In other avenues people making clerical mistakes are generally not penalized by a loss of the subject matter of the error. For example, people late on their mortgage payments enjoy the protection of a statute allowing them to cure the default, rather than losing their house; attorneys filing pleadings late usually are sanctioned, but their clients don't lose the lawsuit because of the error; and people leasing state property have the opportunity to cure late rental payments.

A principle almost universally enforced in state government is that when the state adopts ground rules applicable to a particular class of individuals, the rules should be disseminated in such a way that they are understood, before they are enforced. In the case of the class of permittees to which Mr. Braun belongs, the notice of the change of the ground rules was sent out with the application itself, so that if the envelope was opened late, there would be no ability to comply with the rule.

If the overriding state policy is that wilderness cabins on state land are to be removed or destroyed by any legal means, then perhaps resort to the harsh measures detailed above can be justified. It is a question for this legislature as to whether such a policy should instead stand as an expression of legislative intent.

4. The state has an active, workable policy for dealing with problem cabins found in 11 AAC 65.090. Every six years the permit is subject to renewal and as a part of the renewal process a public interest determination is made. The regulation provides for DNR to decline to renew cabin permit for public policy reasons.
- B. Losing a permit is one thing. However, when a permit is not renewed it is not the permit that is lost. What is lost is the work that has gone into building and maintaining the cabin, the plans for its use, the family history spawned by the shared experiences made possible by the cabin and the opportunity for other Alaskans to enjoy the benefits of the cabin.
- C. Personal reflections.

I am one of the many people who have hunted ducks out of some of the various duck cabins/shacks on the flats across Cook Inlet from Kenai. Without having a cabin to shelter in, I would not have had the experience. I tried only once to hunt out of a tent with my young son. The ground is too wet, the flats too exposed and the lack of a place to store gear made it impractical. Constructing a tent plat-form is just as illegal as constructing a cabin under current DNR regulations.

Many of the cabins have fallen into such disrepair that they are uninhabitable. The dampness of the flats and the exposure to the elements ensure that any cabin not

regularly maintained will soon become uninhabitable. Given that most of the permittees are now into at least their sixties, there is little reason to incur significant renovation costs for most of the cabins.

I have hunted the flats for almost 20 years. I've taken my son, son-in-law and many friends. I had hoped to be able to take my grandson. I have never been turned down in my request for permission to use a duck cabin.

For most of us who hunt the flats, it's just a refreshing experience to go over there and spend a night or two away from civilization, and to spend the day in the quiet of the flats – quiet, because few people hunt there, and as existing cabins fall into disrepair, fewer people each year.

Most of us aren't very prosy, so it's difficult for us to explain why we enjoy a hard bed, no running water, and breakfast consisting of a granola bar eaten while walking to the duck blind in the early morning darkness. A young Alaskan now finishing up medical school recently took a shot at describing the experience and I've attached what he wrote on his "blog" about his visit to the Braun/Schilling cabin this past fall. Certainly he speaks for me, as well as the countless others who have sheltered in the few remaining duck cabins on the flats.

Conclusion

In determining state policy regarding the public use cabins it is suggested that the following questions be addressed:

- What legitimate public interest is served by the removal of well-maintained, convenient structures that are not harming anyone, and in fact, benefitting many?
- What possible legitimate state policy is served by depriving Alaskans of the kind of experience described in the attached excerpt?

- Regarding the treatment of renewal applications by cabin permittees, what legitimate public interest is served by a departure from the principle of fairness and equity generally followed by the state?

Thank you for creating the forum in which these important issues can be addressed and resolved.

Friday, September 11, 2009

Duck hunting

Just to catch up a bit, since May, I've finished 3rd year of med school, done two surgery rotations at the VA Hospital in Seattle, took a few weeks off and am now back in Seattle for my ER rotation.

My break started by going back home. My dad, 2 dogs and I flew across Cook Inlet in his plane for opening day of duck season. We started duck hunting over there together when I was in 5th or 6th grade so it was a pretty nostalgic trip. We stayed in a luxury duck shack complete with a stove, table, porch and separate room for bunk beds. Opening day found us swatting swarms of mosquitoes in the twilight hunkered down behind a pile of driftwood fashioned into a duck blind. There had been some ducks on the pond in front of us prior to shooting time that acted as live decoys to give those we'd put out a hint of authenticity.

It's hard to describe the following hours in a way to paint the taking of birds in a majestic light but there were picturesque moments, freeze frames where every contributing factor summed to etch an indelible snapshot in my mind. After a morning of birds flaring into our decoys, birds from the far side of the pond responding in curiosity to our calls and dogs finally realizing their inborn drive fulfilled, my dad and I decided to take a walk and jump shoot before heading back to the shack for breakfast.

We had already put down 14 out of a 16 bird limit and were both wanting to prolong the day, but still felt compelled to seek out those final 2. We walked through the grass and marsh without seeing much for a while, the dogs trotting along tired from a long morning. I spotted two heads peeking up among the tall grass and signaled to my dad their location. We crouched, crept forward quietly until in a burst of sound and motion, they rose into the air. A pause. Eyes tracking, guns rising, a moment of calculation. Simultaneous shots forming one loud BOOM and both birds fell synchronized from the sky. The dogs, Chipper and Darby, alerted to the action bolted to find the fallen ducks in the grass.

It was the perfect ending to a morning unparalleled in all the duck hunts I have been on. It wasn't so much the hunting as it was the plane parked in the blowing grass with the mountains stretched skyward in the background. It was the plate of chips and onions and cheese and chili the night before. It was walking through the tall grass in silence with my dad and the dogs and the occasional hawk riding the air currents. It was the moment of anticipation, of hearing the wings overhead and briefly tensing before reacting quickly.

It's hard to describe without having been there, but it was one of the ways I felt a reawakening during my time off. It was a chance to sit quietly and experience the fullness of the life that God has given me and be thankful.

Posted by Ross at [9:21 PM](#)

Sansone, Jerri E (DNR)

From: Brenda_Becker@blm.gov
Sent: Thursday, February 18, 2010 11:59 AM
To: Sansone, Jerri E (DNR)
Subject: Re: trespass cabin
Attachments: PICT0018 1.jpg; front of cabin.JPG; R0010320_tag.jpg

Jerri,

For the most part what was removed from selected lands were not able to be used for any type of shelter, but there were some that were "nice" or even better than that. The photos attached here are some that were not usable.

I will send you a couple of pictures on a second email of some that definitely are usable.

Let me know if these photos help you.

Brenda Becker
Realty Specialist
Bureau of Land Management
Glennallen Field Office
P.O. Box 147
Glennallen, Alaska 99588
Phone: 907-822-7321
Fax: 907-822-7335

(See attached file: PICT0018 1.jpg) (See attached file: front of cabin.JPG) (See attached file: R0010320_tag.jpg)

"Sansone, Jerri E
(DNR)"
<jerri.sansone@alaska.gov>

Brenda_Becker@ak.blm.gov

To

cc

02/18/2010 08:15 AM

Subject

trespass cabin

Brenda - do you have some photos (one each) of a selection of trespass 'cabins' that BLM has been able to dismantle / remove that you could send to me? Correct me if I'm wrong, but aren't the majority of these 'cabin's' basically decrepit structures and are not useable or safe i.e., for a shelter against inclement weather etc.?

Jerri Sansone

Chief, Realty Services Section

State of Alaska, DNR

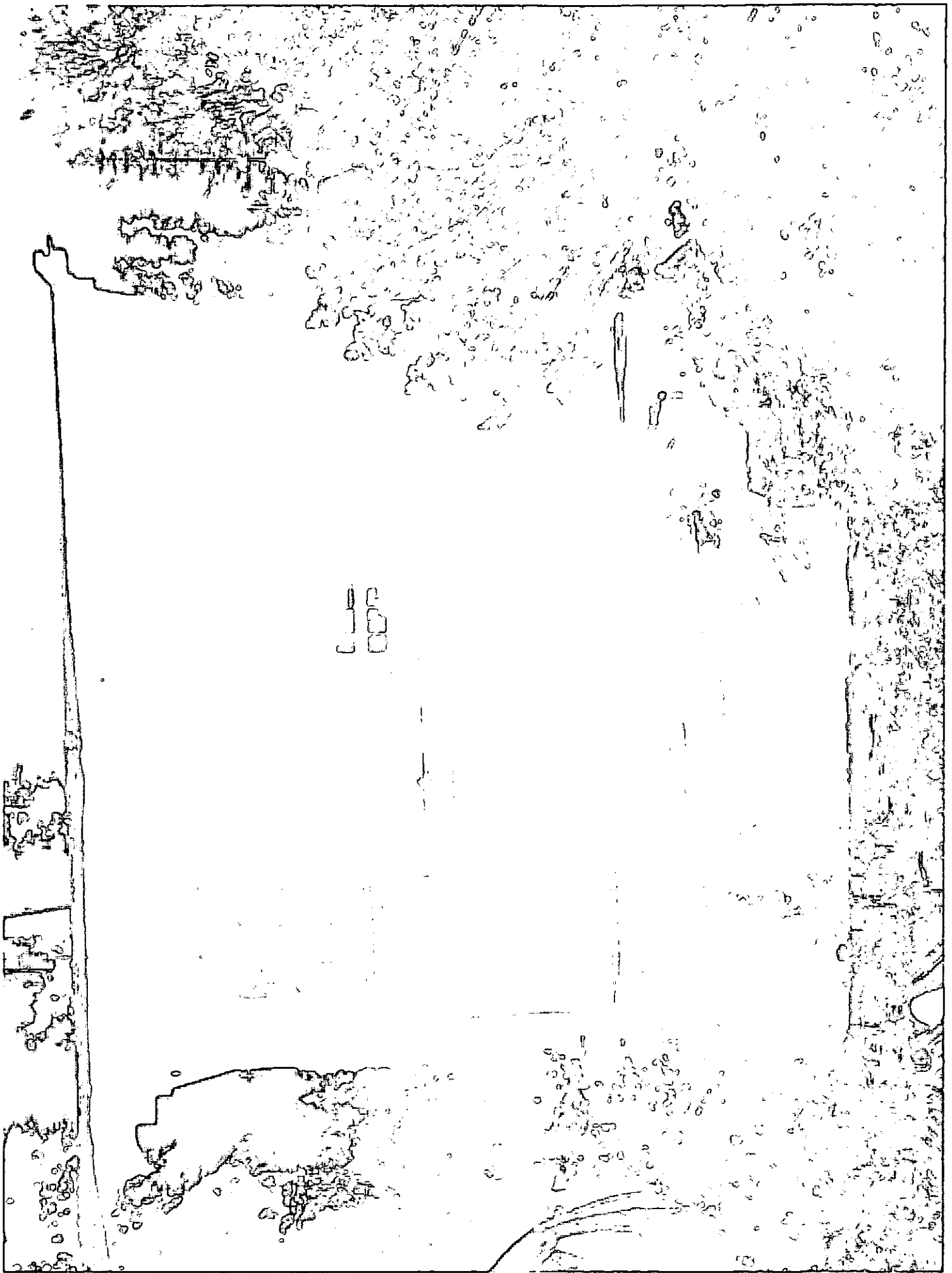
550 W. 7th Ave., Suite 1050A

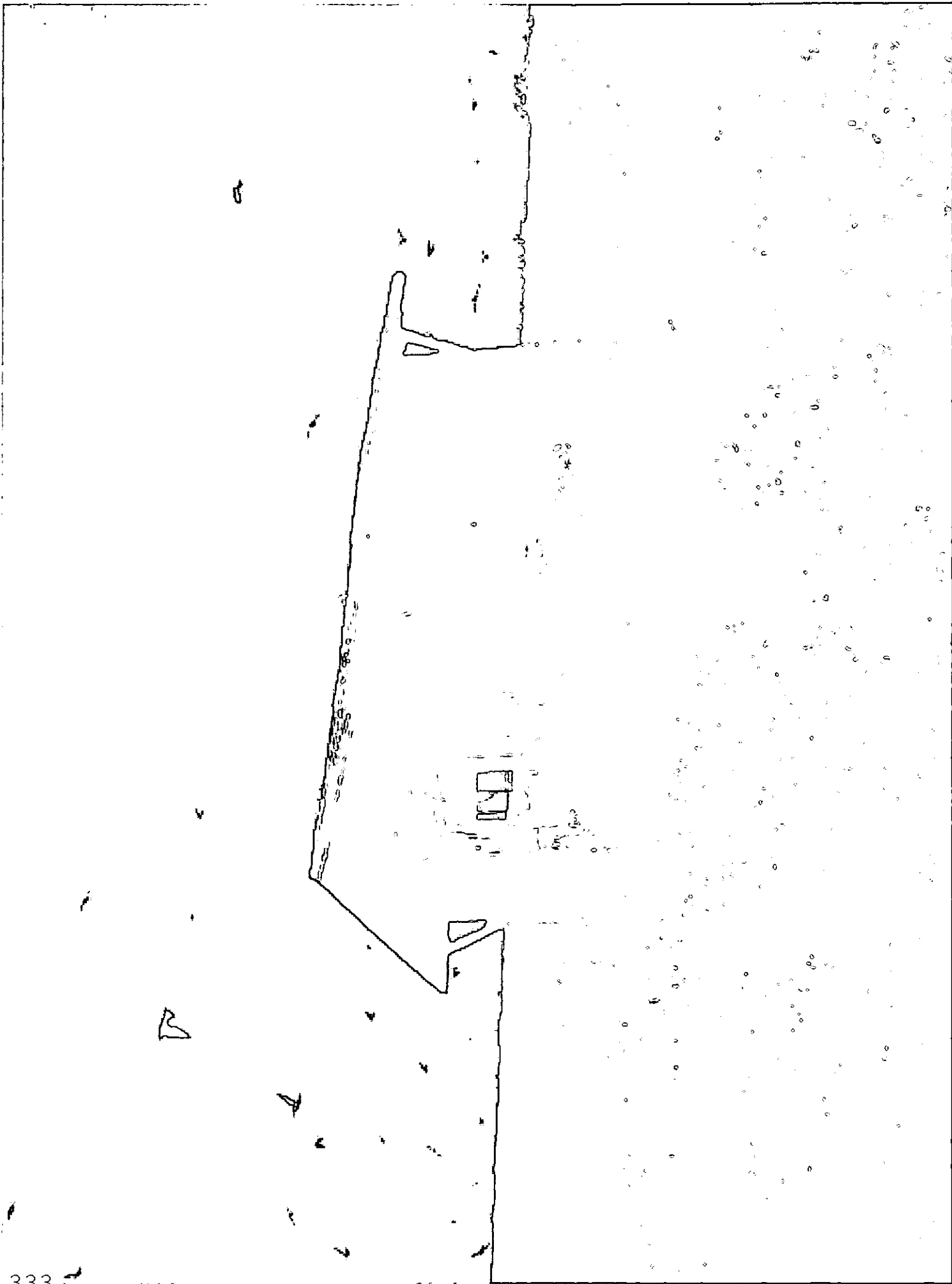
Anchorage, AK 99501

(907) 334-2552

(907) 269-8935 fax









Sansone, Jerri E (DNR)

From: Brenda_Becker@blm.gov
Sent: Thursday, February 18, 2010 1:21 PM
To: Sansone, Jerri E (DNR)
Subject: Cabin on Deep Lake
Attachments: DSC00465.JPG

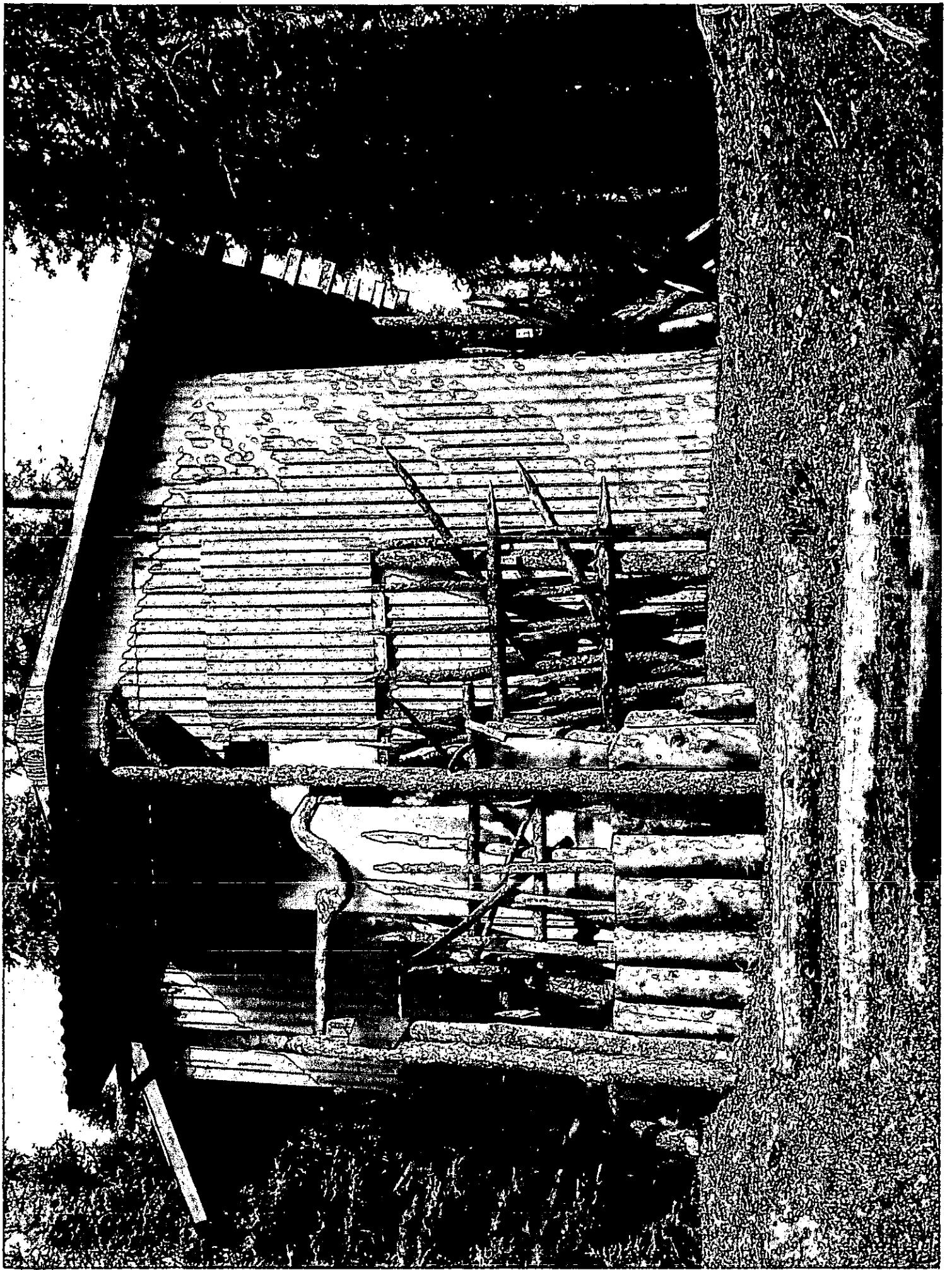
Jerri,

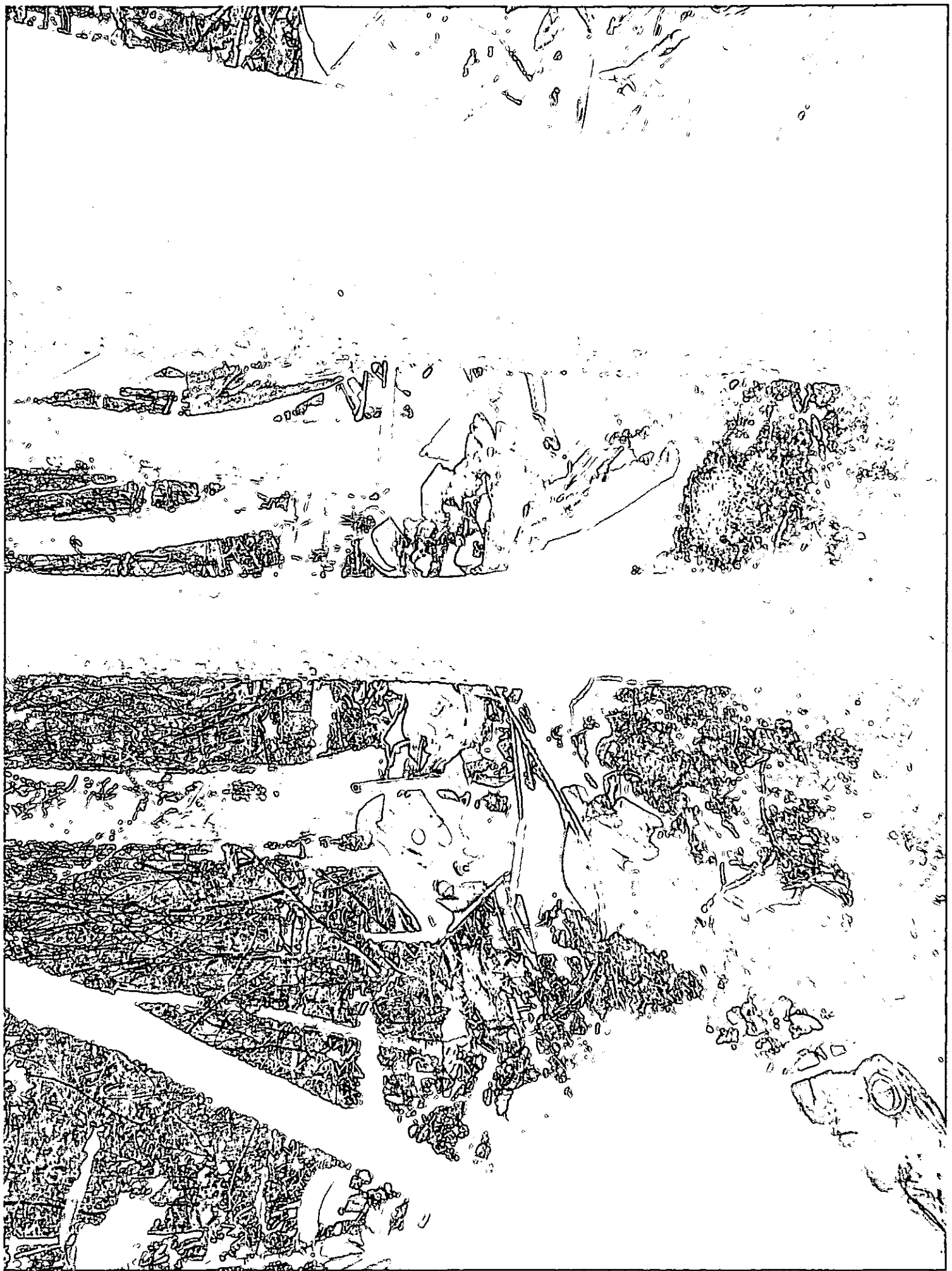
This cabin is located on Deep Lake, in sec. 7, T. 8 N., R. 4 W., Copper River Meridian. This has a trapping cabin application pending with DNR.

This is really only 1 story, but looks like it is bigger than that.

(See attached file: DSC00465.JPG)

Brenda Becker
Realty Specialist
Bureau of Land Management
Glennallen Field Office
P.O. Box 147
Glennallen, Alaska 99588
Phone: 907-822-7321
Fax: 907-822-7335





Sansone, Jerri E (DNR)

From: Brenda_Becker@blm.gov
Sent: Thursday, February 18, 2010 12:39 PM
To: Sansone, Jerri E (DNR)
Subject: Re: trespass cabin
Attachments: P1010034.JPG; P8210987.JPG

Jerri,

Here are some photos of cabins that were taken out this past summer that were definitely usable. These are some that I had requested that the State accept so that they could be used for shelter cabins.

If you have any questions on these, please give me a call.

Brenda Becker
Realty Specialist
Bureau of Land Management
Glennallen Field Office
P.O. Box 147
Glennallen, Alaska 99588
Phone: 907-822-7321
Fax: 907-822-7335

(See attached file: P1010034.JPG) (See attached file: P8210987.JPG)



2
1.5



Sansone, Jerri E (DNR)

From: Brenda_Becker@blm.gov
Sent: Thursday, February 18, 2010 1:26 PM
To: Sansone, Jerri E (DNR)
Subject: cabin on Swimming Bear Lake
Attachments: DSC00393.JPG

Jerri,

This cabin is on Swimming Bear Lake, Sec 4, T. 32 N., R. 3 E., Seward Meridian. This guy has been in touch with DNR on this one. I am not sure where it stands tho.

(See attached file: DSC00393.JPG)

Brenda Becker
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Fax: 907-822-7335



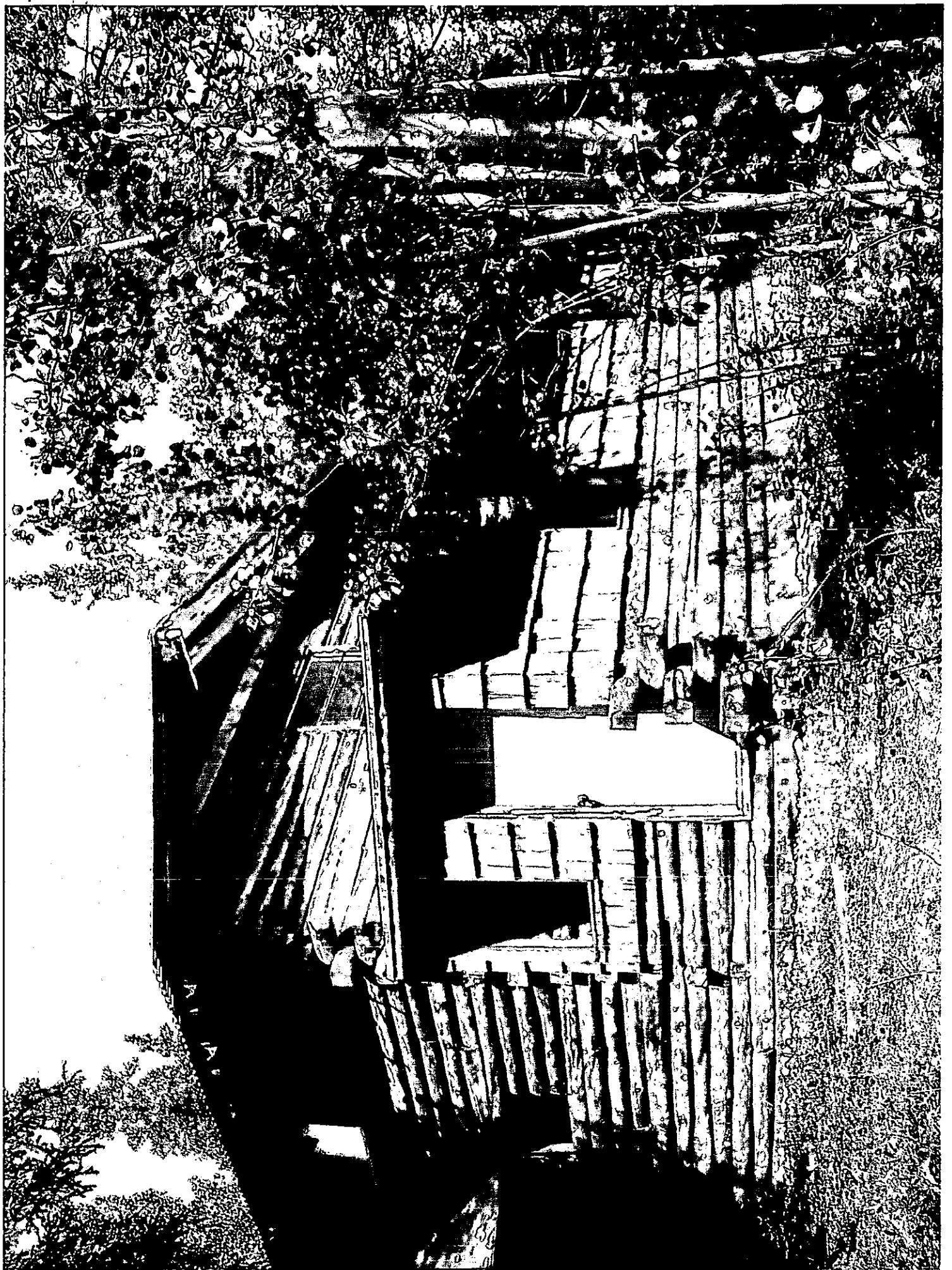
Sansone, Jerri E (DNR)

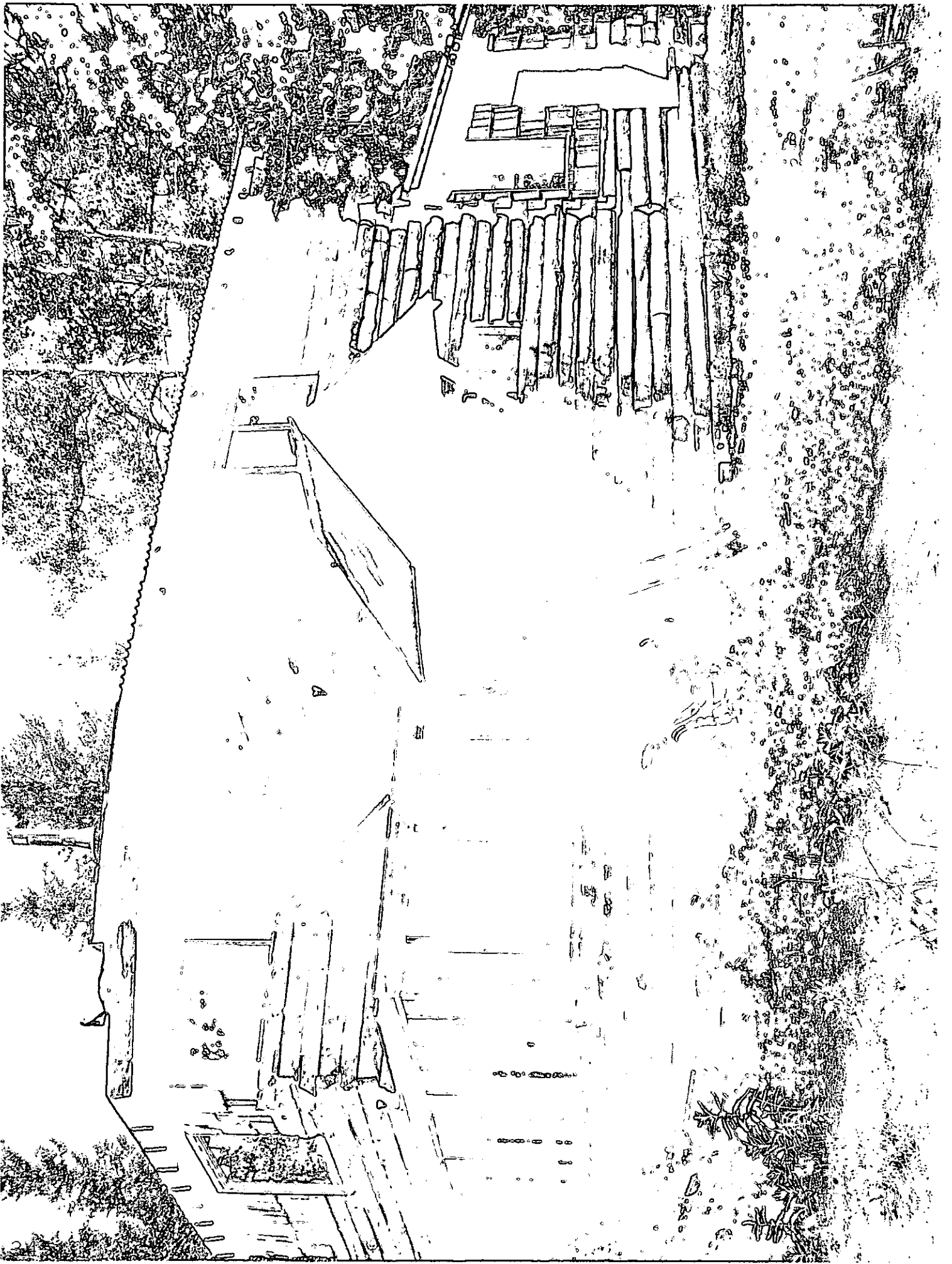
From: Brenda_Becker@blm.gov
Sent: Thursday, February 18, 2010 1:16 PM
To: Sansone, Jerri E (DNR)
Subject: Tonsina Cabin (House)
Attachments: P7020300.JPG; P7020299.JPG

Jerri,

This cabin/house is located in Sec. 9, T. 2 S., R. 2 E., Copper River Meridian. This is also viewable on Google Earth.

(See attached file: P7020300.JPG)(See attached file: P7020299.JPG) Brenda Becker Realty
Specialist Bureau of Land Management Glennallen Field Office P.O. Box 147 Glennallen, Alaska
99588
Phone: 907-822-7321
Fax: 907-822-7335







Patrick D. Carter

Phone: 907-252-9191
E-mail: CarterCoAK@gmail.com

P.O. Box 90973
Anchorage, AK 99509

Chapter 65 Personal Use Cabin Permits

Section

- 10. Applicability.
- 20. Applications.
- 30. Application fee.
- 40. Renewals.
- 50. Permit decision.
- 60. Density within state game refuges and critical habitat areas.
- 70. Conflicting applications.
- 80. Ownership and removal.
- 90. Conditions of permit.
- 100. Appeals.
- 110. Public use cabins.
- 900. Definitions.

11 AAC 65.010. Applicability

This chapter applies to the issuance of personal use cabin permits for unauthorized cabins placed on state land before August 1, 1984. Cabins built on state land after August 1, 1984 will not be authorized. A permit under this chapter does not convey an interest in state land or establish a preference right for the lease or purchase of state land. It is the express intent of this chapter to phase out the use of unauthorized cabins on state land, and where appropriate, convert them to public use.

History: Eff. 12/16/84, Register 92

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.020. Applications

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(a) An application for a permit to use an existing cabin on state land must

(1) be received by the department during a 60-day application period established by the department and announced by public notice; the application period will be open for one time only by geographic location;

(2) be made on a form provided by the department;

(3) be complete and correct to the best of the applicant's knowledge;

(4) contain a description of the cabin and site;

(5) contain a description of the proposed use of the cabin and site;

(6) be signed and dated by the applicant or, in the case of a group of applicants, by the applicant's authorized agent.

(b) An application made under this section must include the following:

(1) a \$25 application fee;

(2) identification of the cabin site on a United States Geological Survey map at 1:63,360 scale (1" to 1 mile) or its equivalent;

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- (3) a photograph (print) of the cabin taken within the past year;
- (4) documentation demonstrating historic use and occupancy;
- (5) documentation of any prior investments in the cabin; and
- (6) any other information required by the director.

History: Eff. 12/16/84, Register 92

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.030. Application fee

The application fee required by 11 AAC 65.020 is not refundable. However, if the department determines that an application made under this chapter should have been made under a different chapter, the application fee may be applied to an application made under another chapter.

History: Eff. 12/16/84, Register 62

Authority: AS 38.04.035

AS 38.04.900

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AS 38.05.020

AS 41.21.020

11 AAC 65.040. Renewals

(a) Application for renewal of a permit must be made in writing at least 90 days, but not more than 180 days, before the expiration of the permit. The application must be accompanied by the fee prescribed by 11 AAC 05.010.

(b) A permit will be renewed if the continued use complies with 11 AAC 65.050 - 11 AAC 65.900.

(c) A permit issued and renewed under this chapter is valid only during the lifetime of the original holder of that permit.

History: Eff. 12/16/84, Register 92; am 5/5/93, Register 126

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.050. Permit decision

(a) The department will issue and renew an applicant's cabin permit if the director finds in writing that the application is for a cabin that complies with AS 38.04.035(4) and does not conflict with the public interest criteria as described in (b) of this section.

(b) No permit will be issued for a cabin on state land

(1) where a subdivision or agricultural sale has occurred or is anticipated or scheduled during the term of the permit;

(2) where homesteads are proposed for future disposal, unless the disposal is not anticipated within the term of the permit;

(3) if the land has been selected under the authority of the Municipal Entitlement Act, AS 29.18;

(4) in state park units, land managed under an interagency land management agreement, land classified as reserved use, or where the issuance of a permit would interfere with significant public recreational use;

(5) that is shoreland, submerged land, or tideland;

(6) that serves an important ecological function, or is especially sensitive to human disturbance, as determined by the department;

(7) located close to a center of population;

(8) where material extraction, timber sales, mining, or intensive recreational facility development is scheduled or anticipated during the term of the permit;

(9) overlying a mining location or mineral lease if the department determines that a cabin may interfere with development of the mining location or mineral lease during the term of the permit;

(10) under application or proposed for a public facility or highway right-of-way unless it is clear that the intended use will not occur during the term of the permit;

(11) for which a Native allotment application is on record with the Bureau of Land Management, or on land validly selected under the Alaska Native Claims Settlement Act;

(12) accessible by road within legislatively designated state game refuge or critical habitat area;

(13) in a legislatively designated state game sanctuary;

(14) where the cabin is used as a permanent residence; or

(15) if the department determines that the proposed use may more appropriately be allowed under another chapter of this title.

History: Eff. 12/16/84, Register 92

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

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11 AAC 65.060. Density within state game refuges and critical habitat areas

Densities and configurations of public cabins within state game refuges and critical habitat areas will be determined based upon habitat type, wildlife seasonal use patterns, wildlife sensitivity to disturbance, and the applicant's proposed type and season of use. Permits will be issued if the density and configuration of cabins and associated uses are not found in conflict with (1) the public interest during the term of the permit, (2) the maintenance or enhancement of fish and wildlife populations and their habitats, or (3) general public use.

History: Eff. 12/16/84, Register 92

Authority: AS 16.20.050

AS 16.20.250

AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.070. Conflicting applications

If the director determines that two or more applications for the same cabin are equally valid, the department will choose the permittee by lottery from the valid applications received.

History: Eff. 12/16/84, Register 92

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.080. Ownership and removal

(a) Except as otherwise provided in (b) or (c) of this section, a cabin subject to this chapter is the personal property of the permittee, and remains so for the term of the permit.

(b) A cabin not applied for under this chapter becomes the property of the state if not removed within 60 days after notice by the department.

(c) Upon revocation or expiration of a permit, including renewals of it, or if an application was made but no permit issued, the cabin becomes the property of the state if not removed within 60 days after notice by the department.

History: Eff. 12/16/84, Register 92

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.090. Conditions of permit

A permit issued under this chapter

(1) is valid for a period of up to six years;

(2) may include site-specific conditions of use, such as seasonal use restrictions determined appropriate by the department and, on game refuges and critical habitat areas, by the Department

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of Fish and Game;

(3) is not valid unless signed by an authorized individual within the Department of Fish and Game if the permit is for a cabin located within a state game refuge or critical habitat area;

(4) is not valid unless the annual rental fee prescribed by 11 AAC 05.010 is timely received by the department;

(5) is not valid unless the permit is signed by the applicant or applicant's authorized agent; and

(6) will contain the following general stipulations and conditions:

(A) the permit does not convey an interest in state land or grant any preference right for the lease or purchase of state land;

(B) the permit is revocable immediately upon violation of any of its terms, conditions, or stipulations, upon nonpayment of fees, or upon failure to comply with any other applicable statutes and regulations;

(C) the permit is not transferable or assignable;

(D) the permit must be displayed in general view on the cabin at all times;

(E) no additions to or enlargements of the cabin are allowed, except for routine maintenance and upkeep;

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(F) all garbage and foreign debris brought into, or placed on, the cabin site must be removed by the permittee unless otherwise authorized by the director;

(G) the state must be held harmless from all claims, demands, suits, loss, liability, and expense for injury to, or death of, a person arising out of or connected with the uses covered by the permit;

(H) if the cabin is destroyed or damaged beyond repair, rebuilding the structure is not authorized without prior written approval of the director; this approval may not be unreasonably withheld;

(I) the cabin may not be used for a commercial activity or as a permanent residence;

(J) no new road or trail across state land is authorized under the permit, and access must be consistent with the provisions of 11 AAC 96;

(K) no restriction or interference with public access to or across state land is allowed;

(L) the permit does not relieve the permittee of the responsibility of securing other necessary state, federal, or local permits or authorizations; and

(M) the department reserves the right to require measures to mitigate disruptions to public use of the area, and to fish and wildlife populations and their habitats, which may be created by the permittee, or occur as a direct result of the permittee's failure to comply with the terms of the permit or any applicable law.

History: Eff. 12/16/84, Register 92; am 5/5/93, Register 126

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.100. Appeals

(a) The department will publish notice of its intent to issue a permit under this chapter in a newspaper of general circulation in the vicinity of the area covered by the permit.

(b) An eligible person who is affected by a permit decision by the director may appeal that decision to the commissioner in accordance with 11 AAC 02. A person who is affected by a permit decision by the Department of Fish and Game in the case of a cabin on a state game refuge or critical habitat area may appeal to the commissioner of the Department of Fish and Game in accordance with 5 AAC 95.

History: Eff. 12/16/84, Register 92; am 11/7/90, Register 116; am 9/19/2001, Register 159

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

AS 44.37.011

11 AAC 65.110. Public use cabins

As of December 17, 1984, the department will consider making available for public use, any

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cabin for which a permit is not issued under this chapter.

History: Eff. 12/16/84, Register 92

Authority: AS 38.04.035

AS 38.05.020

11 AAC 65.900. Definitions

As used in this chapter,

(1) "applicant" means an individual or group of individuals at least 18 years old who have resided in Alaska not less than one year immediately preceding the date of application and does not include an organization, association, or corporation;

(2) "authorized agent" means an individual who is the designated agent for a group of individuals who are applicants, and is one of the applicants;

(3) "cabin" means a permanent structure in existence as of August 1, 1984, consisting of at least four walls and a roof, and used for eating and sleeping; the word includes a separate sanitary device or outhouse, and storage area or cache;

(4) "commercial" means an action or operation that generates income from the buying, selling, renting, bartering, or trading of goods or services relating to use of a cabin;

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

(6) "director" means the director of the division of land and water management of the Department of Natural Resources;

(7) "shoreland" means land belonging to the state, which is covered by nontidal water that is navigable under the laws of the United States, and extends up to the ordinary high water mark as modified by accretion, erosion, or reliction;

(8) "state" means the State of Alaska;

(9) "submerged land" means land covered by tidal water between the line of mean low water and seaward to a distance of three geographical miles or further as may be properly claimed by the state; and

(10) "tideland" means land which is periodically covered by tidal water between the elevations of mean high and mean low tides.

History: Eff. 12/16/84, Register 92

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

Sec. 38.04.035. Criteria for program selection.

In determining which land availability program is appropriate for state land in different locations, the director shall be guided by the following criteria:

(1) to cover public costs associated with private land use and to provide the public with a fair return for publicly owned property, conveyance of state land to private parties shall be at fair market value except where otherwise authorized by statute, or by an administrative regulation the adoption of which is specifically permitted by statute;

(2) sale or lease programs should be used where land is readily accessible to a major community center or where, because of a prime location on waterfront or a transportation route or some other location characteristic, land has relatively high real estate value;

(3) sale programs are preferred but lease programs may be used

(A) where special land use controls are required and there is a high public interest in having certain types of land used for particular purposes;

(B) when the intended use is a temporary one;

(C) in commercial or industrial situations when a leasehold can provide cash flow advantages to the lessee;

(D) when a unique location with special public values is involved, as in a deep water port, hydroelectric site, or aquaculture facility;

(E) where current demand for private use is high, but projections suggest that, in the future, the land may be more valuable for public use, as in accessible waterfront recreation areas;

(4) limited or conditional title may be granted when the state's best interest so dictates; among other things, title limitations may include grants of agricultural interest only, retention of development rights, and retention of scenic or other easements; a conditional title may be tied to a development schedule or other standards of performance.

((§ 5 ch 181 SLA 1978; am § 10 ch 152 SLA 1984; am § 6 ch 91 SLA 1997))

Administrative Code. - For personal use cabin permits, see 11 AAC 65.

For homesteads, see 11 AAC 67, art. 6A.

Effect of amendments. The 1997 amendment, effective July 1, 1997, substituted "shall" for "should" in paragraph (1) and "may" for "should" in the introductory language of paragraph (3), deleted former paragraph (4), which read: "for enabling isolated cabin development in remote locations where

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survey and conveyance is impractical, or where disposal of land would cause potential conflicts with other resources and uses, or where a long-range interest in public ownership and use exist, a system for cabin permits on public land may be used," and redesignated former paragraph (5) as paragraph (4).

NOTES TO DECISIONS

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

Sec. 38.04.900. Regulations.

(a) The commissioner shall adopt under the Administrative Procedure Act (AS 44.62) regulations believed necessary to carry out the purposes of this chapter.

(b) A municipality has standing to petition the commissioner for the adoption of a regulation, or for the amendment or repeal of an existing regulation, or to appeal a decision of the commissioner with respect to classification, management, or disposal of land made under authority of a regulation adopted under (a) of this section with respect to state land outside the corporate boundaries of the municipality to protect any interest which the municipality is authorized to regulate outside its boundaries under AS 29.35.020.

(c) If the regulations adopted by the commissioner under (a) of this section fail to provide for a process by which decisions of the commission may be appealed, an interested person may petition for reconsideration of a decision. The petition shall contain the information required to be submitted by AS 44.62.220 and shall be acted upon by the commissioner in the manner provided in AS 44.62.230. For purposes of this subsection, a municipality is an interested person with respect to its interests in land defined in (b) of this section.

((§ 5 ch 181 SLA 1978; am § 94 ch 6 SLA 1984; am § 56 ch 74 SLA 1985; am § 10 ch 22 SLA 2001))

Administrative Code. - For appeals, see 11 AAC 2.

For fees for department services, see 11 AAC 5.

For applicability of chapter, see 11 AAC 51, art. 1.

For identification, reservation, and modification of public easements, see 11 AAC 51, art. 2.

For land records system, see 11 AAC 53, art. 1.

For survey and platting standards, see 11 AAC 53, art. 2.

For subdivision development standards, see 11 AAC 53, art. 4.

For platting authority in the unorganized borough, see 11 AAC 53, art. 5.

For land planning and classification, see 11 AAC 55.

For personal use cabin permits, see 11 AAC 65.

For administrative provisions, see 11 AAC 67, art. 1.

For sale or lease at auction, see 11 AAC 67, art. 2.

For preference right sales, see 11 AAC 67, art. 3.

For sale or grant by lottery, see 11 AAC 67, art. 4.

For homesites, see 11 AAC 67, art. 5.

For disposal of agricultural interest, see 11 AAC 67, art. 7.

For land discounts, see 11 AAC 67, art. 11.

For definitions, see 11 AAC 67, art. 12.

Effect of amendments. The 2001 amendment, effective May 10, 2001, substituted "this subsection" for "this section" in the last sentence in subsection (c).

Sec. 38.05.020. Authority and duties of the commissioner.

(a) The commissioner shall supervise the administration of the division of lands.

(b) The commissioner may

(1) establish reasonable procedures and adopt reasonable regulations necessary to carry out this chapter and, whenever necessary, issue directives or orders to the director to carry out specific functions and duties; regulations adopted by the commissioner shall be adopted under AS 44.62 (Administrative Procedure Act); orders by the commissioner classifying land, issued after January 3, 1959, are not required to be adopted under AS 44.62 (Administrative Procedure Act);

(2) enter into agreements considered necessary to carry out the purposes of this chapter, including agreements with federal and state agencies;

(3) review any order or action of the director;

(4) exercise the powers and do the acts necessary to carry out the provisions and objectives of this chapter;

(5) notwithstanding the provisions of any other section of this chapter, grant an extension of the time within which payments due on any exploration license, lease, or sale of state land, minerals, or materials may be made, including payment of rental and royalties, on a finding that compliance with the requirements is or was prevented by reason of war, riots, or acts of God;

(6) classify tracts for agricultural uses;

(7) after consulting with the Board of Agriculture and Conservation (AS 03.09.010), waive, postpone, or otherwise modify the development requirements of a contract for the sale of agricultural land if

(A) the land is inaccessible by road; or

(B) transportation, marketing, and development costs render the required development uneconomic;

(8) reconvey or relinquish land or an interest in land to the federal government if

(A) the land is described in an amended application for an allotment under 43 U.S.C. 1617; and

(B) the reconveyance or relinquishment is

(i) for the purposes provided in 43 U.S.C. 1617; and

(ii) in the best interests of the state;

(9) lead and coordinate all matters relating to the state's review and authorization of resource development projects;

(10) exercise the powers and do the acts necessary to carry out the provisions and objectives of AS 43.90 that relate to this chapter.

((§ 4 art II ch 169 SLA 1959; am § 1 ch 31 SLA 1964; am § 1 ch 76 SLA 1964; am § 3 ch 72 SLA 1972; am §§ 25 - 27 ch 3 FSSLA 1973; am § 1 ch 129 SLA 1982; am § 15 ch 152 SLA 1984; am § 1 ch 35 SLA 1994; am § 1 ch 68 SLA 1994; am § 4 ch 1 FSSLA 1996; am § 4 ch 20 SLA 1997; am § 20 ch 81 SLA 2000; am § 1 ch 23 SLA 2003; am § 3 ch 22 SLA 2007))

Revisor's notes. In 1984, former (c) of this section was renumbered as AS 38.35.015.

Cross references. For a list of regulations annulled by ch. 20, SLA 1997, see § 15, ch. 20, SLA 1997 in the 1997 Temporary and Special Acts.

Administrative Code. - For appeals, see 11 AAC 2.

For disposition of royalty oil, gas, or gas liquids, see 11 AAC 3.

For payment of oil and gas royalties, rents, and bonuses, see 11 AAC 4.

For fees for department services, see 11 AAC 5.

For document recording and filing, see 11 AAC 6.

For special provisions, see 11 AAC 20, art. 18.

For applicability of chapter, see 11 AAC 51, art. 1.

For identification, reservation, and modification of public easements, see 11 AAC 51, art. 2.

For land records system, see 11 AAC 53, art. 1.

For survey and platting standards, see 11 AAC 53, art. 2.

For subdivision development standards, see 11 AAC 53, art. 4.

For platting authority in the unorganized borough, see 11 AAC 53, art. 5.

For purchase by contract, see 11 AAC 54, art. 2.

For land planning and classification, see 11 AAC 55.

For use limitation by classification, see 11 AAC 58, art. 1.

For permits, see 11 AAC 58, art. 2.

For short title and definitions, see 11 AAC 58, art. 4.

For grazing leases, see 11 AAC 60.

For tide and submerged lands, see 11 AAC 62.

For aquatic farmsite permits and leases, see 11 AAC 63.

For shore fisheries leasing, see 11 AAC 64.

For personal use cabin permits, see 11 AAC 65.

For administrative provisions, see 11 AAC 66, art. 1.

For administrative provisions, see 11 AAC 67, art. 1.

For sale or lease at auction, see 11 AAC 67, art. 2.

For preference right sales, see 11 AAC 67, art. 3.

For sale or grant by lottery, see 11 AAC 67, art. 4.

For homesites, see 11 AAC 67, art. 5.

For homesteads, see 11 AAC 67, art. 6A.

For disposal of agricultural interest, see 11 AAC 67, art. 7.

For remote recreational cabin sites, see 11 AAC 67, art. 8B.

For installment contracts, see 11 AAC 67, art. 9.

For veterans' land discounts, see 11 AAC 67, art. 10A.

For land discounts, see 11 AAC 67, art. 11.

For disposal by quitclaim to federal government, see 11 AAC 67, art. 11A.

For definitions, see 11 AAC 67, art. 12.

For escheated real property, see 11 AAC 69.

For timber and material sale procedures, see 11 AAC 71, art. 1.

For timber and material sale contracts and operations, see 11 AAC 71, art. 2.

For timber and logging requirements, see 11 AAC 71, art. 3.

For unbranded or abandoned timber property sales, see 11 AAC 71, art. 4.

For log brands, see 11 AAC 71, art. 5.

For pipeline right-of-way leasing, see 11 AAC 80.

For availability of land, see 11 AAC 82, art. 1.

For qualifications, see 11 AAC 82, art. 2.

For acreage limitations, see 11 AAC 82, art. 3.

For competitive bidding, see 11 AAC 82, art. 4.

For noncompetitive procedures, see 11 AAC 82, art. 5.

For royalty products, see 11 AAC 82, art. 7.

For records and reports, see 11 AAC 82, art. 8.

For exploration licensing, see 11 AAC 82, art. 9.

For net profit share leasing, see 11 AAC 83, art. 2.

For unitization, see 11 AAC 83, art. 3.

For communitization and drilling and development contracts, see 11 AAC 83, art. 4.

For underground storage, see 11 AAC 83, art. 5.

For federal leases and preference rights on Alaska lands, see 11 AAC 83, art. 6.

For work commitment, see 11 AAC 83, art. 7.

For exploration incentive credit, see 11 AAC 83, art. 8.

For exempt lease sales, see 11 AAC 83, art. 9.

For Cook Inlet discovery royalty, see 11 AAC 83, art. 10.

For phosphates, see 11 AAC 84, art. 2.

For oil shale, see 11 AAC 84, art. 3.

For sodium, see 11 AAC 84, art. 4.

For sulphur, see 11 AAC 84, art. 5.

For potassium, see 11 AAC 84, art. 6.

For geothermal leasing, see 11 AAC 84, art. 7.

For geothermal unitization, see 11 AAC 84, art. 8.

For competitive leasing, see 11 AAC 85, art. 1.

For noncompetitive leasing, see 11 AAC 85, art. 2.

For staking, recording and maintaining claims and leasehold locations, see 11 AAC 86, art. 2.

For converted MTRSC locations, see 11 AAC 86, art. 3.

For upland mining leases, see 11 AAC 86, art. 4.

For prospecting sites, see 11 AAC 86, art. 5.

For offshore permits and leases, see 11 AAC 86, art. 6.

For millsites, see 11 AAC 86, art. 7.

For applicability, see 11 AAC 87, art. 1.

For exploratory operations, see 11 AAC 87, art. 2.

For drilling of geothermal wells, see 11 AAC 87, art. 3.

For practice and procedure, see 11 AAC 88.

For zoning district regulations, see 11 AAC 91, art. 2.

For designation of districts, see 11 AAC 91, art. 3.

For definitions, see 11 AAC 91, art. 4.

For appropriation and use of water, see 11 AAC 93, art. 2.

For additional provisions for seismic exploration and stratigraphic tests, see 11 AAC 96, art. 2.

For cooperative management agreements, see 11 AAC 97, art. 7.

For management of Alaska mental health trust land, see 11 AAC 99.

Effect of amendments. The 1996 amendment, effective September 4, 1996, in subsection (b), deleted "and require the prequalification, including the submission of conservation plans, development plans, or other plans, schedules, or programs, of persons who apply to participate in an agricultural development project under AS 44.33.475" from the end of paragraph (6) and substituted "or" for "and" at the end of subparagraph (7)(A).

The 1997 amendment, effective August 5, 1997, in paragraph (b)(6), deleted "and require the prequalification, including the submission of conservation plans, development plans, or other plans, schedules, or programs, of persons who apply to participate in an agricultural development project under AS 44.33.475" from the end and made a minor stylistic change.

The 2000 amendment, effective July 1, 2000, added "after consulting with the Board of Agriculture and Conservation (AS 03.09.010)," at the beginning of paragraph (b)(7).

The 2003 amendment, effective May 22, 2003, added paragraph (b)(9) and made a related stylistic change.

The 2007 amendment, effective June 8, 2007, added paragraph (b)(10) and made related changes.

Editor's notes. Section 17, ch. 75, SLA 1987 provides that "[a] land management and disposal decision, including a disposal under AS 38.05.057, AS 38.08, or AS 38.09, or a commercial agricultural project under AS 38.05.020(b)(6), made before June 16, 1987, under a classification order under AS 38.05.300 is valid, notwithstanding the adoption of the classification order before the adoption of the regional land use plan, if other requirements of law were met."

On June 7, 1996, the enactment of CSSB 162(FIN) (Nineteenth Legislature, Second Session),

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designated as ch. 1, FSSLA 1996, became the subject of a lawsuit relating to the legislative override of the governor's veto of that bill. On April 16, 1997, the superior court issued a Final Declaratory Judgment stating that the governor's veto of CSSB 162(FIN) "was not timely overridden by the Alaska Legislature" and that "CSSB 162(FIN) was not enacted into law." *Honorable Tony Knowles v. Legislative Council*, No. 1JU 96-1276 CI (Sup. Ct. Apr. 16, 1997). On appeal, the Alaska Supreme Court vacated the judgment and directed the superior court to dismiss the action, concluding that the matter was an action brought in the name of the state against the legislature in violation of article III, sec. 16 of the Alaska Constitution. *Legislative Council v. Knowles*, 988 P.2d 604 (Alaska 1999).

The provisions of Section 4, ch. 20, SLA 1997, are given effect. These 1997 provisions are identical to the 1996 provisions of Section 4 of CSSB 162(FIN).

Legislative history reports. For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

For governor's transmittal letter for ch. 23, SLA 2003 (SB 142), see 2003 Senate Journal 472 - 473.

Opinions of attorney general. Commissioner may amend leases. If the commissioner has the authority to lease Alaska lands, as defined in AS 38.05.190, it should go without saying that he has the authority to amend said lease so long as such amendment is not in contravention of the statutes and regulations. 1967 Op. Att'y Gen., No. 6.

For suggested form of directional drilling clause to be used in Alaska competitive and noncompetitive lease forms, see 1967 Op. Att'y Gen., No. 6.

NOTES TO DECISIONS

ANALYSIS

- I. General Consideration
- II. Administrative Regulations

I. GENERAL CONSIDERATION.

The leasing of state lands is governed by regulations promulgated by the commissioner of the Department of Natural Resources, pursuant to subsection (b)(1), and executed by the director of the Division of Lands, pursuant to AS 38.05.035(a)(3). *Swindel v. Kelly*, 499 P.2d 291 (Alaska 1972).

Negotiating proposed changes in lease. - The commissioner had the authority, subject to legislative approval, to negotiate proposed changes in a lease relating to the terms covering net profit shares. *Baxley v. State*, 958 P.2d 422 (Alaska 1998).

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

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Quoted in *Alyeska Ski Corp. v. Holdsworth*, 426 P.2d 1006 (Alaska 1967); *Pan Am. Petroleum Corp. v. Shell Oil Co.* 455 P.2d 12 (Alaska 1969).

Cited in *City of Juneau v. Cropley*, 429 P.2d 21 (Alaska 1967).

II. ADMINISTRATIVE REGULATIONS.

Regulations are subject to rule-making provisions of Administrative Procedure Act. - Regulations adopted by the commissioner of natural resources are subject to the rule-making provisions of Alaska's Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971).

The rule-making function of an administrative agency frequently resembles the legislative process of passing a statute. Each entity determines the need for a particular enactment in light of chosen policies; each has procedures for the expression of views upon the merits of the proposal; and each, after consideration of the relevant policies and arguments, decides whether to adopt the proposed amendment. When administrative rule-making is based upon clear authority from the legislature to formulate policy in the adoption of regulations, the rule-making activity takes on a quasi-legislative aspect. Under proper standards, such delegations of legislative power to administrative agencies are constitutional. *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971).

Judicial review of administrative regulation. - Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act (AS 44.62), and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the supreme court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971).

Scope of review. - When a regulation has been adopted under a delegation of authority from the legislature to the administrative agency to formulate policies and to act in the place of the legislature, the supreme court should not examine the content of the regulation to judge its wisdom, but should exercise a scope of review not unlike that exercised with respect to a statute. *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971).

Standard of review generally. - AS 44.62.020 and 44.62.030 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971).

"Reasonable basis" standard of review. - See *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971).

The reasonable basis approach should be used for the most part in cases concerning administrative expertise as to either complex subject matter or fundamental policy formulations. *Kelly v. Zamarello*, 486

P.2d 906 (Alaska 1971).

Application of the reasonable basis test is extremely useful where the administrative action under review resembles executive as opposed to legislative or judicial activity. *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971).

Review of decision of director of division of lands not precluded by AS 44.62.540(a). - AS 44.62.540(a) does not preclude the kind of intra-departmental review presented where the commissioner of the Department of Natural Resources reviews the decision of the director, division of lands, denying an application for discovery well certification, particularly where such review is authorized by statute. *Union Oil Co. v. State, Dep't of Natural Resources*, 526 P.2d 1357 (Alaska 1974).

AS 44.62.540(a) applies only to reconsideration by the specific "agency" that actually made the decision, not the more comprehensive agency. *Union Oil Co. v. State, Dep't of Natural Resources*, 526 P.2d 1357 (Alaska 1974).

Even though administrative code refers to such action as "reconsideration". - Even though the administrative code provisions refer to the commissioner's action on petition for reconsideration, where the director, division of lands, has denied an application for discovery well certification, as "reconsideration," the actual process is that of the "review" authorized by paragraph (b)(3). *Union Oil Co. v. State, Dep't of Natural Resources*, 526 P.2d 1357 (Alaska 1974).

"Review" and "reconsideration" compared. - Both "review" and "reconsideration" in a broad sense refer to a reexamination of acts or a course of proceedings. But as normally used in the context of administrative adjudication, "review" implies a consideration of a case by one other than the entity which initially decides it, while "reconsideration" implies a reexamination, and possibly a different decision, of a case by the entity which initially decides it. *Union Oil Co. v. State, Dep't of Natural Resources*, 526 P.2d 1357 (Alaska 1974).

Alternatives available as to review. - *Pan Am. Petroleum Corp. v. Shell Oil Co.*, 455 P.2d 12 (Alaska 1969), establishes the propriety of seeking judicial review of a division of lands decision without exhausting further remedies within the Department of Natural Resources. But it does not prohibit the pursuit of further remedies within the department, where those remedies exist pursuant to statutory authority and promulgated regulations, such as this section and former 11 AAC 516.32. *Union Oil Co. v. State, Dep't of Natural Resources*, 526 P.2d 1357 (Alaska 1974).

These are situations in which one may possess the alternatives of either seeking judicial review directly from a decision of the division of lands or seeking review by the commissioner and then invoking judicial review. *Union Oil Co. v. State, Dep't of Natural Resources*, 526 P.2d 1357 (Alaska 1974).

Regulations adjusting royalty rates. - When considered together, this section and AS 38.05.145, and AS 38.05.150 impliedly authorize the Department of Natural Resources to promulgate coal royalty rates and adjustments to those rates; thus, regulations setting a standard royalty rate on noncompetitive coal leases was valid. *Usibelli Coal Mine, Inc. v. State, Dep't of Natural Resources*, 921 P.2d 1134 (Alaska 1996).

Sufficient standards and procedural safeguards existed to ensure the valid exercise the authority of the Department of Natural Resources in adopting regulations. *Usibelli Coal Mine, Inc. v. State, Dep't of Natural Resources*, 921 P.2d 1134 (Alaska 1996).

Decision not a "regulation." - A decision of the Department of Natural Resources that a mining company owed back royalties because it erroneously calculated its "adjusted gross value" was not a

"regulation" within the meaning of the Administrative Procedures Act. *Usibelli Coal Mine, Inc. v. State, Dept of Natural Resources*, 921 P.2d 1134 (Alaska 1996).

Sec. 41.21.020. Duties and powers of Department of Natural Resources; limitations.

(a) The department shall

(1) develop a continuing plan for the conservation and maximum use in the public interest of the scenic, historic, archaeological, scientific, biological, and recreational resources of the state;

(2) plan for and develop a system of state parks and recreational facilities, to be established as the legislature authorizes and directs;

(3) acquire by gift, purchase, or transfer from state or federal agencies, or from individuals, corporations, partnerships, or associations, land necessary, suitable, and proper for roadside, picnic, recreational, or park purposes;

(4) develop, manage, and maintain state parks and recreational areas;

(5) provide for the acquisition, care, management, supervision, improvement, development, extension, and maintenance of public recreational land, and make necessary arrangements, contracts, or commitments for the improvement and development of land acquired under AS 41.21.010 - 41.21.040; contracting for improvement and development under this paragraph is governed by AS 36.30 (State Procurement Code);

(6) adopt, in accordance with this section and AS 44.62 (Administrative Procedure Act), regulations governing the use and designating incompatible uses within the boundaries of state park and recreational areas to protect the property and to preserve the peace;

(7) cooperate with the United States and its agencies and local subdivisions of the state to secure the effective supervision, improvement, development, extension, and maintenance of state parks, state monuments, state historical areas, and state recreational areas and secure agreements or contracts for the purpose of AS 41.21.010 - 41.21.040;

(8) encourage the organization of state public park and recreational activities in the local political subdivisions of the state;

(9) provide for consulting service designed to develop local park and recreation facilities and programs;

(10) provide clearinghouse services for other state agencies concerned with park and recreation matters;

(11) perform other duties as are prescribed by executive order or by law;

(12) maintain memorials to Alaska veterans located in state parks;

(13) adopt, in accordance with AS 44.62 (Administrative Procedure Act), regulations governing the use of the Chena River State Recreation Area and designating incompatible uses within the boundaries of the Chena River State Recreation Area in accordance with AS 41.21.490; and

(14) annually, by the first day of each regular session of the legislature, submit a report to the legislature on each designation of an incompatible use under this chapter, or other action, that prohibits or restricts a traditional means of access in or to a park, area, or preserve established under this chapter for a traditional recreational activity on or within the park, area, or preserve; for each prohibition or restriction, the report must state reasons for the designation of incompatibility or prohibition or restriction of a traditional means of access, the specific area of the prohibition or restriction, and the time period during which the incompatibility or prohibition or restriction is expected to exist; in this paragraph,

(A) "traditional means of access" means those types of transportation on, to, or in the state land, water, or land and water, for which a popular pattern of use has developed; the term includes general or commercial aviation, ballooning, motorized and nonmotorized boating, snowmachining, operation of all-terrain vehicles, mushing, use of pack animals, skiing, snowshoeing, and walking;

(B) "traditional recreational activity" means those personal or commercial types of activities that people may use for sport, exercise, subsistence, or personal enjoyment, including hunting, fishing, trapping, or gathering, and that have historically been conducted as part of an individual, family, or community life pattern on or in the state land, water, or land and water.

(b) In adopting regulations under (a)(6) of this section, the department shall consider whether the use of dogs, horses, and other animals for packing gear, pulling sleds, or for other recreational use is a compatible use within a state park or recreational area.

(c) The department may accept cash and other donations from public or private sources to assist and support the department in carrying out the purposes of this chapter.

(d) Notwithstanding (a)(3) of this section, the department may not manage as part of a park, area, or preserve established under AS 41.21.110 - 41.21.630, land, water, or land and water that is not within the boundaries, as designated by the legislature, of the park, area, or preserve.

(e) Except for reasons which create an immediate threat to public safety or as otherwise provided in AS 41.21.110 - 41.21.630, the department may not close or restrict traditional access to land, water, or land and water, managed under this chapter unless the closure or restriction (1) is limited to a period of not more than 90 days in a calendar year, or (2) is submitted to the

legislature for approval at the next regular session of the legislature. A closure or restriction under (1) of this subsection may not be repeated in the subsequent calendar year unless the closure or restriction is approved by the legislature under (2) of this subsection. If the legislature fails to approve a closure or restriction under (2) of this subsection by the last day of that regular session, the closure or restriction ends and cannot be enforced after the last day of that regular session.

((§ 2 ch 158 SLA 1959; am § 1 ch 233 SLA 1970; am § 3 ch 30 SLA 1981; am §§ 1, 2 ch 78 SLA 1981; am § 1 ch 16 SLA 1984; am § 40 ch 106 SLA 1986; am § 19 ch 2 FSSLA 1992; am § 74 ch 63 SLA 1993; am §§ 1, 2 ch 27 SLA 1997))

Revisor's notes. Formerly AS 41.20.020. Renumbered in 1983. Paragraph (a)(13) was enacted as (a)(12) and renumbered in 1981. The present second sentence of AS 41.21.490 was enacted as a part of (a)(13) and transferred in 1981, with minor word changes in (a)(13) of this section. In 1984, "a compatible use" was substituted for "compatible" in subsection (b) to correct a manifest error in ch. 16, SLA 1984.

Cross references. For power of the department of military affairs to construct memorials to veterans, see AS 44.35.030.

Administrative Code. - For appeals, see 11 AAC 2.

For fees for department services, see 11 AAC 5.

For uniform state waterway marking system, see 11 AAC 7, art. 1.

For state park land and water restrictions, see 11 AAC 12, art. 1.

For jurisdiction and procedure, see 11 AAC 15, art. 1.

For park uses, see 11 AAC 18, art. 1.

For Chugach state park, see 11 AAC 20, art. 1.

For Kachemak Bay state park, see 11 AAC 20, art. 2.

For Kachemak Bay state wilderness park, see 11 AAC 20, art. 3.

For Willow Creek state recreation area, see 11 AAC 20, art. 4.

For Wood-Tikchik state park, see 11 AAC 20, art. 5.

For Denali state park, see 11 AAC 20, art. 6.

For Caines Head state recreation area, see 11 AAC 20, art. 7.

For Chena River state recreation area, see 11 AAC 20, art. 8.

For Quartz Lake state recreation area, see 11 AAC 20, art. 9.

For Nancy Lake state recreation area, see 11 AAC 20, art. 10.

For Captain Cook state recreation area, see 11 AAC 20, art. 11.

For Chilkat state park and Point Bridget state park, see 11 AAC 20, art. 12.

For Afognak Island state park, see 11 AAC 20, art. 13.

For Alaska marine parks, see 11 AAC 20, art. 14.

For Shuyak Island state park, see 11 AAC 20, art. 16.

For Kenai River special management Area, see 11 AAC 20, art. 17.

For special provisions, see 11 AAC 20, art. 18.

For Eagle preserve land and water restrictions, see 11 AAC 21, art. 1.

For preserve activities; management, see 11 AAC 21, art. 2.

For personal use cabin permits, see 11 AAC 65.

Editor's notes. Section 87, ch. 63, SLA 1993 provides "[i]f any section of this bill is found to violate the single subject rule it is severed from the rest of the bill."

NOTES TO DECISIONS

Kenai River Area. - The legislature intended the Kenai River Area to be a state park and intended normal state park regulations to govern the area unless those regulations were inconsistent with a regulation promulgated specifically for the area under AS 41.21.506(b). *State v. Lawrence*, 858 P.2d 635 (Alaska Ct. App. 1993).

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF APPEAL

ADL 222214

TO THE COMMISSIONER:

Fred F. Braun hereby gives notice of appeal from the decision dated January 5, 2010, by the Department of Natural Resources ("DNR"), Division of Mining, Land and Water ("DMLW"), Southcentral Region Land Office denying his application for renewal of his Personal Use Cabin Permit, ADL 222214 ("Permit"), received by DMLW on or about December 11, 2009. The Permit expiration date was December 31, 2009. Departing from its prior established procedures, the DMLW refused to process the Permit renewal application on the grounds that it was not received within 90 days prior to the expiration of the Permit. The DMLW has advised Mr. Braun that the Permit has now expired and directed him to remove his improvements within 60 days.

This appeal is based upon the following grounds.

1. Adequate prior notice of the revised policy was not given. From the inception of the permit program, the Permittee and others similarly situated have understood that an obligation of the Permit is to remit the required \$100 annual fee on or before December 31 of each year. Bills for the annual fee generally arrive in November and are paid in December. Every six years the department has sent out a permit renewal packet, requiring an application for renewal, and more extensive information. Pursuant to 11 AAC 65.040, the Permit renewal

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125 N. Willow Street
Kenai, AK 99611
Phone (907) 283-7167
Fax (907) 283-8438

application is due "at least 90 days, but not more than 180 days, before the expiration of the permit." Prior to the *Commissioner's Decision on MLW/SCRO's June 22, 2009 Decision re: Personal Use Cabins*, (the "Commissioner's 2009 Decision"), the official position of DMLW was that when a Permittee failed to file a permit application within the window prescribed by Section 40, DMLW would process the application, but impose an administrative fee of \$25. The DMLW communicated the Director's decision implementing this policy to Mr. Braun, a copy of which is attached as "Exhibit A." The DMLW further communicated this policy to Mr. Braun by letter dated September 5, 2003 (attached as "Exhibit B"), in connection with his 2003 permit renewal. The letter states

Under 11 AAC 65.040, your completed renewal application packet must be submitted to this Division 90 days prior to the permit expiration, October 1st, 2003. *Once the deadline is past, a late fee of \$25.00 is applicable if a permittee chooses to request an extension.* (emphasis added).

Thus, at the time Mr. Braun received the renewal application packet in August of 2009, he had (1) a reasonable basis for believing that the matter could be dealt with at any time prior to the December 31, permit expiration deadline, and (2) absolutely *no* basis for expecting that a failure to deal with the matter prior to the permit expiration deadline would result in DMLW's refusal to process the application, effectively resulting in a forfeiture of the Permit for the cabin.

When he received the envelope from DLMW in 2009, Mr. Braun expected the envelope to contain permit renewal application documents, which it did. He set the sealed envelope aside, together with other important papers requiring attention before year-end. He did not open and examine the contents of the envelope to discover the policy change until December, when he began to complete the form. The envelope itself bore no markings that would indicate that it

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contained a critical notice. No advance or subsequent communication from the Division provided notice of the significant policy change. Based on his past experience with the Division and the earlier clear, unequivocal communications from the Division concerning the division's policy as to permit renewal filing requirements, Mr. Braun was justified in assuming the envelope contained a routine permit renewal application and could be dealt with prior to year-end.

The Commissioner's 2009 Decision, applying fundamental notions of due process, recognized that, at a minimum, a fundamental change in division policy would require prior notice to all permit holders of the revised policy. The Commissioner held that

I disagree that SCRO should have departed from the established division policy without first adopting a new policy and providing prior notice of that policy change to all PUCP permit holders.

As a state permittee, Mr. Braun is entitled to the protection of due process of law under Article I Section 7 of the Alaska Constitution.¹ The right to adequate notice and opportunity for hearing is an elementary and fundamental requirement of due process.² The action of DMLW deprived Mr. Braun of these basic rights.

The DLMW did not provide Mr. Braun with prior notice of the policy change. It would have been a simple matter to have sent, in a separate mailing to all permit holders, a notice of the revised policy. Instead, whether for reasons of expediency or economy, the DLMW sent out the "notice" with the renewal forms, committing the identical transgression for which they were

¹ *Herscher v. State Department of Commerce*, 568 P.2d 996 (Alaska 1977)

² *Aguchak v. Montgomery Ward Co.*, 520 P.2d 1352 (Alaska 1974)

criticized in the Commissioner's 2009 Decision – failing to provide adequate *prior* notice of the departure from established policy to all PUCP permit holders. Under the Commissioner's 2009 Decision this notice is *per se* inadequate. Had adequate prior notice been given, this appeal would not have been necessary.

2. The decision lacks a reasonable basis. In order for the decision of an administrative agency to be upheld, it must demonstrate a reasonable basis for the decision.³ The Commissioner's 2009 Decision recognized, regarding the permittees whose permits were set to expire in June 30, 2009 (the "June Permittees"), that even though they received notice of the change in established division policy, they had "no reasonable expectation that this would actually occur" given the long-standing MLW policy to the contrary. Only one practical distinction differentiates between the treatment given the June Permittees⁴, and those whose permits were set to expire December 31, 2009 (the "December Permittees"): the Commissioner's decision was included in the renewal packet of the latter group. Each group was sent a notice from the Division, advising that the penalty for failing to submit a timely renewal was forfeiture of the permit and the notices were sent approximately four and one-half months prior to the expiration date of the permit.

Given the perceived harshness of the proposal to forfeit the permits of the June Permittees, the Commissioner exercised his inherent authority to apply the 1991 decision to the 2009 permit renewal process of the June Permittees. Similar equitable considerations should be

³ *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971)

⁴ This assumes the notice to the June Permittees was sent in the same mailing as the renewal application, as was the notice to the December Permittees.

given to the December Permittees. Although not articulated at length in the decision, the Commissioner's 2009 Decision was based on a basic policy of "fairness" as regards the way the state ought to deal with its citizens. If the state creates an expectation as to how it deals, it shouldn't change the way it deals without ensuring that the citizens are given fair, advance notice. As to the present appeal, like the June Permittees, Mr. Braun was sent a letter stating the Division intended to reject his application for renewal if it was not received by the stated deadline. As with the June Permittees the letter was included with the permit application form, which, under established division policy would have been accepted for processing by the division at any time without challenge.

There were no markings on the envelope calculated to inform Mr. Braun that the envelope contained anything other than the routine permit application, so he didn't open it until he was ready to file the forms. Mr. Braun had been provided no other communication to inform him that the rules for the 2009 submittal were any different than for prior submittals. Therefore, Mr. Braun was identically situated with the June Permittees, in that he had a reasonable expectation that his Permit would be renewed if he submitted the renewal application prior to the expiration of the Permit. No reasonable basis exists for the Division to now decide to refuse to process the renewal application and allow the Permit to lapse due to administrative inaction.

3. The filing requirement as applied by DMLW violates the Permittee's due process rights. Basic principles of due process of law require that criteria established for granting or denying a privilege not be vague and ambiguous, and that as established, they be applied objectively.⁵ 11 AAC 65.040(a) sets forth the requirement that an application for renewal of a

⁵ *Kiester v. Humana Hospital Alaska, Inc.* 843 P.2d 121 (Alaska 1992)

permit must be made in writing at least 90 days prior to expiration. The section is silent as to remedies. As noted above, the DMLW historically has assessed an administrative fee for late applications. There was no prior indication the DMLW would refuse to process a late application, effectively terminating the permit without affording the permittee the opportunity to object. If the DMLW intends that the penalty for applying late is to be forfeiture of the permit, the regulation should clearly express that as a remedy, which it does not. As such it is ambiguous.

Forfeiture is a remedy that is disfavored by the Alaska courts.⁶ Where the harm or transgression is slight, the Courts of Alaska are reluctant to invoke a draconian remedy if alternatives exist. This principle would be especially applicable in a case such as this, where the failure to file within the prescribed period was unintentional and in reliance on an established procedure of the State agency; where the procedure was changed with no advance notice to the holder of the permit; and where the regulation is ambiguous as to the penalties for filing late.

Contrary to the reasoning set forth in the Commissioner's 2009 Decision, the 1991 decision did not operate to "waive" the filing requirement of Section 40. The 1991 decision recognized the filing requirement and imposed a penalty for failure to comply. The penalty imposed was a monetary penalty, intended to recover the administrative costs incurred by the division in dealing with late-filed applications for renewal. Such a penalty is a far more appropriate sanction for inadvertently missing a filing deadline than is forfeiture of the permit.

The regulation is not being applied objectively by the department. As noted above, the June Permittees have been beneficiaries of the Commissioner's decision excusing them from

⁶ *Dillingham Commercial Company, Inc. v. Spears*, 641 P.2d 1 (Alaska 1982); see also, Opinion (informal) of Alaska Attorney General A66-333-82 (1982).

filing their applications late, while the December Permittees, who received essentially the same inadequate notice, are finding their permits forfeited.

Given its historical interpretation of the regulation, the DMLW violates the due process rights of the Permittee when it arbitrarily reverses itself and re-interprets the provision to give itself the authority to refuse to process late applications. Such a draconian penalty cannot be imposed for inadvertently filing a renewal application late, without first being implemented in the regulations through the regulatory review process of the Alaska Administrative Procedure Act (AS 44.62), providing some basic level of due process.

4. The regulations mandate renewal of the Permit. Not only do the regulations fail to provide for forfeiture of the permit as a remedy, they mandate the renewal of a permit, with no consideration given as to the timeliness of the filing. 11 AAC 65.050 provides that

“The department will issue and renew an applicant’s cabin permit if the director finds in writing that the application is for a cabin that complies with AS 38.04.035(4)⁷ and does not conflict with the public interest criteria described in (b) of this section.”

Since the regulation cited is mandatory, the department must process and grant a permit for renewal and must apply only the criteria listed in the regulation. The regulations do not give the department the discretion to refuse to process an application for renewal that was filed after the 90 day date.

The use is consistent with the public interest criteria as described in 11 AAC 65.050(b). In order to eligible for renewal, a cabin must comply with the public interest criteria of the regulation. Given that the permit has been issued and renewed three times previously, there can

⁷ The referenced code provision was evidently repealed in 1997.


be no doubt that the cabin is consistent with the criteria of Section 50 (b). Upon making a finding to that effect, the department is obligated to renew the permit.

Requested Remedy

The Commissioner is respectfully requested to reverse the decision of DMLW which denied the Permittee's renewal application for ADL 222214, determined the Permit to have expired, and ordered the removal of his improvements, and instead to order the DMLW to accept the Permit for processing, to process the Permit and renew the same pursuant to 11 AAC 65, and to rescind the order directing removal of his improvements.

Dated at Kenai, Alaska, this 28th day of January, 2010.

BALDWIN & BUTLER, LLC
Attorneys for Fred F. Braum

By: 
C. R. BALDWIN
Alaska Bar # 7406032

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STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

ADL 222214

REQUEST FOR HEARING

Permittee, Fred F. Braun hereby requests a hearing in the matter of his appeal from the decision dated January 5, 2010, by the Department of Natural Resources ("DNR"), Division of Mining, Land and Water ("DMLW"), Southcentral Region Land Office denying his request for renewal of his Personal Use Cabin Permit ("Permit"), received by DMLW on or about December 11, 2009.

This request is made pursuant to 11 AAC 02.050.

Dated at Kenai, Alaska, this 28th day of January, 2010.

BALDWIN & BUTLER, LLC
Attorneys for Fred F. Braun


By: 

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Alaska Bar # 7406032

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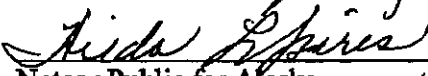
I have always operated with the understanding that both the annual fee and the permit renewal forms were due on or before December 31 of each year. Until this year I have never been advised by the department or any other person that making either filing was required at an earlier time. I have never been advised that by filing the renewal form later than 90 days from the permit expiration date, I would be jeopardizing the permit. Had I been so advised I would have filed the form as instructed.

Regarding the 2009 renewal form, I acknowledge that it was mailed to my business address and received in August, 2009. The envelope was a plain brown envelope bearing the return address of the Division of Mining Land and Water. There were no marks on the envelope indicating it to be of an urgent nature or suggesting that it be opened immediately. Having filed the cabin permit renewal applications on three separate previous occasions, I knew that the envelope contained a permit renewal application. I set it on a shelf near my desk in a stack of other documents having year-end deadlines. Only when I opened the envelope and read the cover letter did I know of the change in policy. Prior to that time I had no knowledge or warning of the new policy. It was not my intent to disregard a regulation. Based on my prior dealings with the department I had every reason to believe, and did believe, that my actions were fully consistent with the requirements of the department for handling a permit renewal application.


Fred F. Braun

SUBSCRIBED AND SWORN TO before me this 27th day of January, 2010.

HILDA L. SPIRES
Notary Public
State of Alaska
My Commission Expires
January 25, 2011


Notary Public for Alaska
My commission expires: 1/25/2011

AFFIDAVIT OF FRED F. BRAUN
Page 2 of 2

AFFIDAVIT OF FRED F. BRAUN

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

FRED F. BRAUN, being first duly sworn, deposes and says:

I have personal knowledge of the facts herein.

I am the permit holder of ADL 222214 (the "permit").

I applied for and received the permit to maintain a personal use cabin in 1985. I have submitted renewal applications in the years 1991, 1997, 2003 and 2009. I have paid, on a timely basis, the annual fee payable under the permit for each year since 1985.

I have used the cabin in each of the above years and have allowed others to use and enjoy the cabin, primarily during the fall, in every year since 1985. The cabin has been well-kept and the surrounding area has been cared for. Over the last five years, significant labor and expense have gone into maintenance of the cabin. The exterior deck has been replaced with cedar planks, the pilings replaced and reinforced, the walls reinsulated, the structure painted, a new roof installed, and a new propane oven installed, all with the intention and expectation that the cabin would be enjoyed by my children, friends, acquaintances and families. Over the years I have made the cabin available to the Alaska Department of Fish and Game as a base of operations for projects in the area. I have been a good steward of the cabin and have cherished the opportunity to use and share it.

A change of agent form is enclosed if you wish to change the primary agent. This form must be signed by all other active permittees then returned to this office with your renewal packet. A copy of your original permit is enclosed to reduce confusion concerning who are original permittees. Only those permittees on the original application have an interest in the permit.

If you have any questions concerning your permit renewal, do not hesitate to contact me at (907) 269-5047.

Sincerely,



Kara Moore
Natural Resource Technician

Enclosures: **Personal Use Cabin Permit Renewal Request**
 Environmental Risk Questionnaire
 Change of Agent form
 Copy of Original Permit Application
 Copy of Decision to Renew Cabin Permits 2003

STATE OF ALASKA

FRANK H. MURKOWSKI
GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
SOUTHCENTRAL REGION LAND OFFICE

550 W. 7TH AVE., SUITE 900C
ANCHORAGE, ALASKA 99501-3577

September 5, 2003

CERTIFIED MAIL RECEIPT REQUESTED
7002 2410 0006 2047 4803

Fred F. Braun
502 Lake St. #2
Kenai, AK 99611

Subject: Personal Use Cabin Permit Renewal ADL 222214

Dear Mr. Braun:

Your personal use cabin permit issued by the Division of Mining, Land & Water will expire on December 31, 2003. Under 11 AAC 65.040, your completed renewal application packet must be submitted to this Division 90 days prior to the permit expiration, October 1st, 2003. Once the deadline is past, a late fee of \$25.00 is applicable if a permittee chooses to request an extension.

The following renewal information must be received for the Division to consider a renewal of your Personal Use Cabin Permit:

- 1) A completed, signed and notarized Renewal Application (*including updated contact information and birth dates for all active original permittees. For those permittees no longer active submit either a signed relinquishment or a copy of a death certificate or obituary for permittees now deceased*).
- 2) A completed Environmental Risk Questionnaire (*including information on small amounts of fuel, kerosene, or propane*).
- 3) A recent, dated photograph of the cabin; (*photos should not be more than 2 years old*).
- 4) A \$100.00 filing and application fee. **This fee is separate from the \$100 annual rental due at the time of permit renewal.**

Please complete the enclosed forms and return the packet to: Division of Mining Land and Water at 550 W. 7th Avenue, Suite 900C, Anchorage, AK 99501-3577. If you fail to submit your written request for renewal by October 1st, 2003 your permit will be subject to termination. In the case of termination, a permittee is allowed 60 days after permit expiration or revocation to remove any improvements (11 AAC 65.080). If the cabin is not removed, it will be relinquished to the state that may determine to dispose of the cabin at the permittees expense.

"Develop, Conserve and Enhance Natural Resources for Present and Future Alaskans"

EXHIBIT B
Page 1 of 2

Filing the application within a specified time period is one of the regulatory requirements for renewal. Under 11 AAC 65.050(b), a permit is revocable immediately upon failure to comply with any applicable statute or regulation. The regulations also state that the intent of the program is to phase out the use of unauthorized cabins. Thus, it is reasonable to conclude that an untimely application can properly result in the closure of the file.

It is also reasonable to conclude that some other form of penalty would be proper.

First, when the permits were issued six years ago, the cabins did not conflict with the public interest criteria described in 11 AAC 65.050(b), and there is no reason to believe they would do so now.

Second, while it is true that this program was implemented to phase out the use of unauthorized cabins, other aspects of the program have already accomplished that intent to some degree. Cabin owners who missed the initial, one-time filing period will never be eligible for a permit. Also, cabins constructed after August 1, 1984 can never be authorized under this program. All cabins will eventually be phased out because the permit is renewable only during the lifetime of the original holder of the permit.

Third, I believe the language of 11 AAC 65.040 allows for administrative discretion as to the penalty for missing the filing period. I am inclined to exercise that discretion in favor of the appellants. That is because I see little difference between these late applications and the timely ones, other than the extra administrative burden. (It is more efficient to process all the applications for an area at the same time.)

DECISION:

Some of the appeal letters claim good cause for late filing, and other appellants state no reason. While I sympathize with personal hardships, the regulation makes no allowance for missing the filing deadline.

It is my decision to accept late applications for the above case files, provided each appellant meets the following conditions within 30 days of receipt of this decision. These conditions are:

1. File a renewal application, if one has not already been filed.
2. All rents and fees must be current.

GENERAL CONCURRENCE GC-21

PERSONAL USE CABINS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 30.020 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and Federal individual agencies.

DESCRIPTION OF THE ACTIVITY

Personal use cabins. Limited use of existing cabins on State land.

Authority: 11 AAC 65.050

Permit: Personal Use Cabin Permit (DNR)

Region: Statewide

PROCEDURE

Permittees shall consult the Alaska Heritage Resources Survey (907) 762-2622 so that known historic, archaeological and paleontological sites may be avoided.

STANDARD CONDITIONS


1. No additions to or enlargements of the cabin are allowed, except for routine maintenance.
2. All garbage and foreign debris brought in or placed on the cabin site must be removed by the permittee unless otherwise authorized by DNR.
3. The cabin may not be used for a commercial activity or as a permanent residence.
4. No new road or trail across State land is authorized under this general concurrence.
5. No restriction or interference with public access to or across State land is allowed.
6. The Alaska Historic Preservation Act (AS 41.31.200) prohibits the appropriation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the commissioner. Should any site be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation (907) 263-8022 and the appropriate coastal district shall be notified immediately. 264-8-121

1. Pay a \$25 late payment service charge.

The legal authority for establishing this penalty is AS 18.05.020(a)(4), AS 18.05.020(a)(5), and 11 AAC 05.010(a)(16)(A). Should the applicant fail to meet the above conditions, the decision to close the case file will remain in effect.

A person adversely affected by this decision may appeal this decision, in accordance with 11 AAC 02 to Harold Raines, Commissioner, Department of Natural Resources, 400 Willoughby Avenue, Juneau, Alaska 99801. Any appeal must be received at the above address within 30 calendar days after the date of "delivery" of the decision, as defined in 11 AAC 02.040. A copy of 11 AAC 02 may be obtained from any Department of Natural Resources office. If no appeal is filed within the time specified, this decision becomes final.


Bob Swanson
Acting Director


Date: Aug 14, 1991

State of Alaska
Department of Natural Resources
Division of Mining Land and Water
Southeastern Region

DECISION
Personal Use Cabin Permit Renewals
Expiring in 2003

REQUESTED ACTION:

The Southeastern Region has received personal use cabin permit renewal requests for those permits expiring June 30, September 30, and December 31, of 2003. Regulation 11 AAC 65.050(a) allows for the renewal of a cabin permit if the Director finds in writing that the application is for a cabin that complies with AS 38.04.035(4) and does not conflict with the public interest criteria as described in 11 AAC 65.050(b).

BACKGROUND:

The Personal Use Cabin Program was established to permit use of unimproved cabins that had been constructed on state land from the time of statehood through August 1, 1984. The program was available for only a short period to allow unknown cabin owners a one-time opportunity to obtain a permit for their unimproved use. The intent was to allow the original applicants to continue to use the cabins during their lifetime, but cabins would eventually be phased out or become public use cabins. Permits were issued in 1983 for a 6-year term. This is the third renewal period for the permits. Over the years some permittees have passed away or relinquished interest in the permits but a large percentage remain active. A majority of cabins are located on state game refuges or critical habitat areas and also receive supervision from the Department of Fish and Game in the form of a Special Access Permit.

DISCUSSION:

Renewal applications and individual cabin permit records have been reviewed. Applicants continue to use the cabin sites also authorized in 1983. For those sites within State Game Refuges and Critical Habitat Areas, a Special Access Permit will also be approved by the Department of Fish and Game consistent with the DNR permit term.

Regulation 11 AAC 65.040(b) allows for permit renewal if the continued use complies with 11 AAC 65.050 - .500 and meets the criteria of AS 38.04.035(4). The personal use cabin program was intended to be a temporary authorization for use of state land for the lifetime of the applicant. Generally, cabin permits were approved in remote locations where the disposal of land was undesirable or might cause potential conflict with other resources and uses. Renewal of these permits will not conflict with the public interest criteria in 11 AAC 65.050(b). The permit program meets the criteria in AS 38.04.035(4) which allows for limited or conditional title when in the state's best interest.

For those cabin sites located within a coastal zone management boundary, the activity is consistent with the Alaska Coastal Management Program when conducted according to standard conditions listed in Coastal Concerns GC-21 (rev 5/93). GC-21 includes a stipulation for the protection of state-owned historic, prehistoric, and archaeological sites. Stipulations from the

general concernment will be included in the permit renewal. Standard stipulations for personal use cabins are listed in Regulation 11 AAC 65.050. Additional permit stipulations for the cabin permit authorizations will include: Wastewater disposal from kitchen gray water, toilets, or showers, must meet Department of Environmental Conservation (DEC) requirements; Petroleum products must be used and stored in a manner that prevents spillage or leakage, to ensure that discharges of petroleum products into adjacent waters does not occur; Permittees shall take all reasonable precautions to prevent, and all reasonable actions to suppress, forest, brush and grass fires.

Some permit renewal applications have listed additional individuals under this renewal and/or persons who were not original applicants. These applications along with other individuals must be considered that 11 AAC 65.040(c) states a permit is valid only during the lifetime of the original holder of that permit. A permit condition states the permit is not transferable or assignable. Thus new individuals may not be added to a personal use cabin permit.

A small number of renewal applications were submitted after the 90-day filing deadline for those permits expiring June 30, 2003. For 11 AAC 65.040 a renewal application must be made in writing at least 90 days before a permit expires. This issue was previously addressed in a 1991 Director's Decision on an appeal of several permit elements for failing to meet the 90-day deadline, granted the appeal and removed the late filings from that year. A copy of that decision is attached. It is recommended the late applications be processed along with the other renewals but that a \$25 late fee be charged consistent with the 1991 appeal decision.

Applications are reviewed for completeness and may not conflict with the public interest criteria described in 11 AAC 65.050(b). The permit program meets the requirements of AS 38.04.035(4) under Criteria for Program Selection. Fees must be paid current and permit stipulations must be met.

RECOMMENDATION:

Issuance of permits to those applicants requesting a renewal does not establish a preference right for the lease or purchase of state land and the cabin use will eventually be phased out. The Department of Fish and Game has continued to issue Special Access Permits for those cabins located in state game refuges or critical habitat areas. The cabins do not conflict with the public interest criteria under 11 AAC 65.030(b) and permittees must meet permit stipulations. Issuance of renewals for these cabin permits is in the state's best interest.

Carol A. Campbell
Carol A. Campbell
Natural Resource Specialist

May 5, 2003
Dns

Richard B. Thompson
Richard B. Thompson
Southeastern Regional Manager

May 5, 2003
Dns

Attached: 1991 Director's Decision on untimely filings

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND AND WATER MANAGEMENT
DIRECTOR'S DECISION



REQUESTED ACTION:

The Southeastern Region has rejected renewal applications for personal use cabin permits because the applications were untimely filed. That decision has been appealed. The names of the appellants and the case file numbers are listed below:

Appellant	APP. No.
Emberg, R. C., et. al.	220740
Bessera, Richard	220733
Mosey, Carroll R.	220976
Bass, Cheryl	220939
Ricks, Donald J.	220942
Larkley, Robert L.	220843*
Harris, Rodger	220821*

*The application was also rejected because a preliminary court injunction prohibits transfer of any interest in mental health trust lands.

LEGAL AUTHORITY:

The applicable statutes and regulations used to adjudicate these appeals are:

- AS 38.04.035(4) Criteria for Program Selection
- AS 38.05.035(A)(4) and AS 38.05.035(A)(5) Powers and Duties of the Director
- 11 AAC 65.010 Applicability
- 11 AAC 65.040 Renewals
- 11 AAC 65.050 Permit Decision
- 11 AAC 65.050 Conditions of Permit
- 11 AAC 65.010(a)(16)(A) Fees

Delegation of Authority to Richard B. Thompson dated May 2, 1991

ADMINISTRATIVE RECORD:

The decision under appeal was signed on June 20, 1991 by Richard B. Thompson, Chief of the Retained Lands Section for the Southeastern Region. The decision was sent to each permit holder by individual letters dated June 24 or June 26, 1991. This decision is based on the appeal letters, a copy of the decision signed on June 20, 1991, and copies of the individual transmittal letters.

Director's Decision
August 9, 1991
Page 2

BACKGROUND:

In June, 1985, approximately 130 personal use cabin permits were issued in the Seward Flats State Game Refuge, Trading Bay Game Refuge, and Palmer Bay Flats State Game Refuge. The permits were scheduled to expire on or about June 30, 1991. A personal use cabin permit is not transferable or assignable but is renewable during the lifetime of the original holder of the permit.

One of the requirements for renewal is set forth in 11 AAC 65.040(a) which states:

"Application for renewal of a permit must be made in writing at least 90 days, but not more than 180 days before expiration of the permit."

There were four parts to the decision under appeal:

1. If a renewal application was timely filed, the permit would be renewed.
2. If a renewal application was not timely filed, the renewal would be denied.
3. If appropriate, initiate trespass proceedings when former permittees refused to dismantle their cabins and rehabilitate the site.
4. Reject all renewal applications located on mental health trust lands.

The transmittal letters stated that the cabins would become the property of the state if former permittees did not remove them within 60 days from receipt of the letter.

Staff shortages made it impractical to adjudicate the applications, the structures, or the sites for compliance with all applicable permit terms and regulations. Therefore, the decision emphasized that renewals would be conditional and subject to further adjudication at any time.

The issue of renewal applications on mental health trust lands has no bearing on this decision. The mental health trust lands issue will be dealt with under a separate decision.

DISCUSSION, PERTINENT ISSUES, AND FINDINGS:

Is it proper to reject a renewal application and close the file because the renewal application was untimely filed?

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.530

Article 7
Permit Procedures

Section

700. Application procedures.

710. Permit decision.

720. Permit conditions and assignment.

730. Permit term.

740. Amendments to the permit.

750. Retention of permit; inspection of permit sites.

760. Renewal of permit.

770. General permits.

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 of a completed application satisfies any related notification required by AS 16 and this chapter. An application form is available from the department's habitat division 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.

History: Eff. 6/5/86, Register 98; am 8/15/2008, Register 187

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

AS 16.20.050

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.520

AS 16.20.530

Editor's note: Habitat division office addresses are:

Regional offices:

Juneau: P.O. Box 20, Douglas, AK 99824-0020; telephone 465-4290

Anchorage: 333 Raspberry Road, Anchorage, AK 99518-1599; telephone: 267-2346

Fairbanks: 565 University Avenue, Fairbanks, AK 99701; telephone 479-3104

Area offices:

Ketchikan: 415 Main Street, Ketchikan, AK 99901; telephone 225-2027

Petersburg: P.O. Box 667, Petersburg, AK 99833; telephone: 772-3801

Sitka: P.O. Box 510, Sitka, AK 99835; telephone: 747-5828

(a) The commissioner will issue a permit if the commissioner 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

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 may 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 ensure 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 may 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.

(d) A person who obtains a permit issued under this chapter must comply with all conditions set out in the permit.

History: Eff. 6/5/86, Register 98; am 8/15/2008, Register 187

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

(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 may reconsider a denial of an application if the applicant submits 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.

History: Eff. 6/5/86, Register 98; am 8/15/2008, Register 187

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

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- 
- (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 ensure 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 may 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.
- (d) A person who obtains a permit issued under this chapter must comply with all conditions set out in the permit.

History: Eff. 6/5/86, Register 98; am 8/15/2008, Register 187

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.530

5 AAC 95.730. Permit term

(a) Except as provided in (b) and (c) of this section, the commissioner may issue a permit for a fixed term not to exceed two years, subject to the provisions of this chapter.

(b) The commissioner may issue a permit for a personal use cabin, concurrent with a permit issued by the Department of Natural Resources under ~~11 AAC 65~~, for up to six years.

(c) The commissioner may issue a permit 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.

History: Eff. 6/5/86, Register 98; am 8/15/2008, Register 187

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.530

5 AAC 95.740. Amendments to the permit

(a) The commissioner may 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.

History: Eff. 6/5/86, Register 98; am 8/15/2008, Register 187

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.530

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 site of the permitted activity until completion of the activity, 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.

History: Eff. 6/5/86, Register 98; am 8/15/2008, Register 187

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.530

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.

History: Eff. 6/5/86, Register 98

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.530

5 AAC 95.770. General permits

Notwithstanding the provisions of 5 AAC 95.700 and 5 AAC 95.750 - 5 AAC 95.760, the commissioner may issue a permit to the public at large for a specific activity in a specific area.

History: Eff. 6/5/86, Register 98; am 8/15/2008, Register 187

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

AS 16.20.050

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.520

AS 16.20.530

John Davies

From: John Davies
Sent: Friday, February 26, 2010 12:37 PM
To: 'Lesh, Melanie (DNR sponsored)'
Cc: Rep. Wes Keller; Jim Pound
Subject: RE: ARRC Meeting

Dear Melanie Lesh,

Thank you for your email. I think in person presentations are always best, but realizing the difficulty in getting to Juneau and the cost, the telephone testimony option is a good one. I will leave who presents and how and where to your judgment and that of your DNR representatives. I will do my best to accommodate you and make sure your presentation is as good as it can be.

I do not have any excused absences for that day, March 8th, so I am expecting all the members to be here. But as we all know here at the Capitol, Juneau weather may have its way and trump our best efforts. I am going forward with preparations believing that the meeting will happen as planned.

I just hit the send button before responding to this email and sent a background email to Director Mylius. Do I work with you or Director Mylius in meeting preparations?

Thanks for your help and input on this meeting.

I look forward to working with you.

I met you last evening at the reception. I believe that you were the positive lady with the award winning restaurant in Gustavus? Greetings.

Regards,
John Davies
ARRC Acting Committee Aide

From: Lesh, Melanie (DNR sponsored) [mailto:melanie.lesh@alaska.gov]
Sent: Thursday, February 25, 2010 3:40 PM
To: John Davies
Subject: ARRC Meeting

Hi John,

I'll help coordinate the ARRC meeting on March 8th on behalf of DNR. Would you like Mr. Mylius to be here in Juneau in lieu of Commissioner Irwin (who at this time may be available, but I can't commit him quite yet).

Will you have a quorum on March 8th? I understand many legislators are still traveling back from Energy Council on that date.

Melanie Lesh
Special Assistant/Legislative Liaison
Department of Natural Resources
400 W. Willoughby Ave.
Juneau, Alaska 99801
907.465.4730
907.723.7364

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Friday, February 26, 2010 12:17 PM
To: Mylius, Richard H (DNR)
Cc: Keller, Wes (LAA); Pound, Jim (LAA)
Subject: RE: Invitation to ARRC meeting

Dear Director Mylius:

I have discussed your email request with Representative Keller, Chairman ARRC, and he has asked me to provide you with information that will foster a fruitful and productive meeting.

The following is a synopsis of contacts that may be useful for your meeting preparation and presentation:

- 1) In person complaint at the Capitol ARRC office by an individual whose cabin burned down. He is trying to rebuild the cabin, but reports that he is getting hassled by DNR and not getting cooperation.
- 2) In person complaint at the Capitol ARRC office by an agent on behalf of a client. He complains that as a long term leaseholder, his client is facing the complete loss of his lodge in a few years when the lease runs out. The land around the lodge was selected by a borough, and the leasee has no preference right to buy the land. Once the lease runs out, he loses everything, his lodge, retirement, equity, everything. His entire life's work gone.
- 3) In person complaint at the Capitol ARRC office about a personal use cabin permittee who is facing the forfeiture of his cabin because he filed his renewal late. The permittee did not know about the new rule that renewals must be filed 90 days before the end of the permit term, but was aware of the old rule that a \$25 late fee would be assessed. He filed before the end of the permit term but not before the new 90 day time frame. He faces the complete loss of his cabin and permit.
- 4) A member of the Legislative Body reports that he has a constituent whose husband has a cabin permit and when he dies the permit ceases leaving her and the family with nothing. The family has used this cabin and land since before statehood, and cannot get a preference right to buy the land or in any other way protect its long term use of the land. They face complete loss as well.
- 5) By way of prior Resource Committee hearings it has become public knowledge that DNR is burning and/or destroying cabins for what is described as "liability reasons".
- 6) The complainants report an attitude of hostility by DNR towards private use of public lands.

The question may be: Is the intent language in the regulations, 11 AAC 65.010, "to phase out the use of unauthorized cabins on state land", fostering a hostile attitude by DNR towards these private persons, or is the Committee simply being made aware of anecdotal situations that don't reflect the true nature of what is going on? The Chairman is hopeful that your presentation to the Committee and the public will help with this question.

In addition to the above question, the Chairman would like for you, or another DNR representative, to be prepared to tell the Committee about: where does DNR derive its statutory authority for its intent to phase out the use of unauthorized cabins on state land; as well as explain its policy and procedures for granting and extending personal use cabin permits; what happens to a cabin that goes back to the State; why are cabins destroyed or burned down; what is the cost of such destruction; and lastly as an overview of the numbers and significance of the personal use cabin program?

The Chairman wanted me to be sure to let you know that the Committee does not, and in this meeting is not, advocating for any particular individual or constituent in its inquiry. The Committee is reviewing these regulations to see if they stand the three part test of Constitutionality, statutory authority, and/or legislative intent. If the Committee finds grounds it may present the Legislature with a bill to annul or veto a regulation.

We look forward to your participation in the upcoming meeting. If you have any questions please feel free to give me a call at 465-4899.

Very Truly Yours,

John Davies
ARRC Acting Committee Aide

From: Mylius, Richard H (DNR) [mailto:dick.mylius@alaska.gov]
Sent: Wednesday, February 24, 2010 4:51 PM
To: John Davies
Cc: Rep. Wes Keller; Jim Pound; Irwin, Tom E (DNR)
Subject: RE: Invitation to ARRC meeting

John – we'll participate – not sure if I'll be on the phone or in person. Commissioner Irwin will be in Toronto for mining related meetings but hopes to call in. We'll prepare some information to get to the Committee ahead of time.

Did you receive written comments concerning the regulations – if so can I get a copy? We are aware of several issues/complaints regarding this topic, but it would be helpful to see what the Committee has received as well. Dick

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Wednesday, February 24, 2010 2:28 PM
To: Irwin, Tom E (DNR); Mylius, Richard H (DNR)
Cc: Keller, Wes (LAA); Pound, Jim (LAA)
Subject: Invitation to ARRC meeting

February 24, 2010

Dear Commissioner Irwin and Director Mylius:

Representative Keller has asked me to invite you to attend and participate in the Administrative Regulation Review Committee "ARRC" meeting scheduled for March 8th at 3:00pm in room 17 of the State Capitol Building, Juneau, Alaska.

If you are not able to attend in person, telephone participation would be fine as well.

The ARRC has received public comment concerning the regulations relating to personal use cabin permits, particularly 11 AAC 65.010. The review focus will generally be on the specific intent language "to phase out the use of unauthorized cabins on state land" and the destruction of such cabins, weighed against the private, public and survival uses of the cabin resources. The committee will be looking at the regulation's statutory authorization and whether it carries out legislative intent. Your input will be most helpful. A copy of the Schedule and Agenda are attached for your information.

If you have any questions please feel free to call me at 907 465-4899. Please note that any printed information you wish to present, I will need copies so I may post it on BASIS and distribute it to the committee members.

We look forward to hearing from you and having your participation at the meeting.

Very Truly Yours,

John Davies
ARRC acting Committee Aide

From: Mylius, Richard H (DNR) [dick.mylius@alaska.gov]

Sent: Friday, February 26, 2010 1:32 PM

To: John Davies

Cc: Rep. Wes Keller; Jim Pound; Menefee, Wyn (DNR); Parsons, Martin W (DNR); Irwin, Tom E (DNR); Mylius, Richard H (DNR); Baker, John T (LAW)

Subject: RE: Invitation to ARRC meeting

John – these six complaints deal with four very different issues. I'd be happy to address all those issues at the meeting, but only three (items 1, 3, and 4) deal with the regulations that are the topic for the meeting (11AAC 65.010 – 11 AAC 65.900). Unless I hear otherwise, I'll plan to address all four issues at the March 8 meeting.

Here is a bit of information about the three issues not related to the regulation:

Item #2, the gentleman with the lease for a lodge that was conveyed to the Aleutians East Borough is Mel Gillis, and that issue is currently in litigation involving the state, the Borough and Mr. Gillis. Mr. Gillis appealed an unfavorable Superior Court decision to the Supreme Court. The issue is a statutory interpretation (AS 38.05.035(f)) and its application to Borough owned lands, we have no regulations for the statutes at issue in this situation. Someone from the Department of Law will be available by phone for the March 8 meeting and can help address that issue.

Item #5 is an issue regarding federal lands being transferred into state ownership under the statehood act land grants. The state has had a policy for many years that when land is transferred into state ownership, the federal government needs to transfer land that is free of unauthorized uses and any environmental contamination. To implement this policy, the federal Bureau of Land Management either authorizes existing uses or cleans up the unauthorized use - whether that is trash or waste left behind at mining claims, trespass cabins, or whatever. DNR has not burned or torn down any cabins.

Item #6, I believe, reflects that legislators primarily hear from the few individuals who have issue with the a specific decision by the department or division. We have literally thousands of Alaskans who purchase state land, hold mining claims, have permits for access, have permits for private cabins, etc., that do not have complaints, so these complaints need to considered in that context. If the committee desires, I can provide information about the numbers of users on state land. In addition, we strive to apply statutes and regulations so they are fair to all Alaskans. Where individuals disagree with our decisions, we provide an administrative appeal process to address their concerns.

Dick Mylius

*Dick Mylius, Director
Alaska Department of Natural Resources
Division of Mining, Land & Water
907-269-8600 Fax 907-269-8904*

From: John Davies [mailto:John_Davies@legis.state.ak.us]

Sent: Friday, February 26, 2010 12:17 PM

To: Mylius, Richard H (DNR)

John Davies

From: Rep. Wes Keller
Sent: Saturday, February 27, 2010 10:30 AM
To: Mylius, Richard H (DNR)
Cc: tom.irwin@alaska.gov; John Davies
Subject: RE: Invitation to ARRC meeting

Director Mylius, Thanks for your helpful response.

As is demonstrated by the information you provided, complaints and advocacies (in general) that come to the legislature often look much different when all the information is on the table. Passions (sometimes very bitter ones) are often the result --- at least partially --- of misunderstandings and miscommunications that are fixable. [FWIW--- 'cabin passion' will never hold a candle to 'family/children's issue passion'. I was in the Office of Children's Services building yesterday and it was a reality check to see the receptionists sitting behind 1" thick safety glass --- and other very obvious security measures.]

The intent of the proposed ARRC meeting is to get comprehensive information on the record (including any legislative recommendations that you might have) that will serve both to mitigate passions and to allow legislators to determine if policy changes should be considered. In keeping with this intent we will make you aware of any substantive complaints that we become aware of before-hand. I will begin the meeting by giving you the 'first bite of the apple' to make a presentation that describes the various types of access issues and to give you a chance to present the history and challenges DNR faces. I am thinking of no more than ~ 30 minutes for this presentation, but that is negotiable if you need/want more. After your presentation I will give opportunity for the committee to ask clarification questions--- and then go to public testimony with you (or a DNR rep) there to respond to questions/errors. It is always an option to have future hearings or to provide clarifications/answers back to the committee after the hearing if something comes up that cannot be addressed on the spot.

In my mind, the best results of the meeting would be a record of policy that can be used as a reference both to resolve cabin access issues in terms of the misunderstandings that are out there, but also to reveal the underlying statutory authority so the legislature can respond if need be. I will do my best to limit 'grandstanding' on political hot-buttons--- but, as you know, this is not completely possible in a public hearing (by definition).

I hope this helps--- I respectfully request transparency and candid interaction. Personally, I am looking forward to the learning about this perennial issue, and I believe it will be a productive time. I know you are very busy with pipeline-related land-use issues, so if you need a few weeks to fit this in, I am open to postponing the proposed meeting to a time specific. I appreciate your participation and respect your understanding of the complex land-use issues.

I also want to assure you that John Davies, my ARRC staff, is very reliable and qualified. Please do not hesitate to interact with him with confidence that he and I are in communication and working together to these ends.

Thanks,

Rep. Wes Keller

John Davies

From: John Davies
Sent: Tuesday, March 02, 2010 1:09 PM
To: 'Lesh, Melanie (DNR sponsored)'
Cc: Rep. Wes Keller; 'Mylius, Richard H (DNR)'
Subject: RE: ARRC Meeting

Dear Melanie Lesh,

It looks like Director Mylius and the Chairman, Representative Keller, have emailed each other directly and worked out the Director's presentation in general form. I am of the belief that we are now ready to have the hearing. If there is anything that you would like me to distribute to the members of the committee please submit it to me this week for delivery. Thanks. I look forward to seeing you at the meeting. In the event that the Chairman gives me additional direction that may involve a change in what we now expect, I will let you know as once.

Regards,
John Davies
ARRC Acting Committee Aide

From: Lesh, Melanie (DNR sponsored) [mailto:melanie.lesh@alaska.gov]
Sent: Friday, February 26, 2010 1:09 PM
To: John Davies
Subject: RE: ARRC Meeting

Thanks John,
It was nice meeting you last night.
If you work with me directly I will coordinate with Mr. Mylius – in preparing for the meeting. I believe Mr. Mylius will be able to be here in Juneau for the hearing.

Melanie Lesh
Special Assistant/Legislative Liaison
Department of Natural Resources
400 W. Willoughby Ave.
Juneau, Alaska 99801
907.465.4730
907.723.7364

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Friday, February 26, 2010 12:37 PM
To: Lesh, Melanie (DNR sponsored)
Cc: Keller, Wes (LAA); Pound, Jim (LAA)
Subject: RE: ARRC Meeting

Dear Melanie Lesh,

Thank you for your email. I think in person presentations are always best, but realizing the difficulty in getting to Juneau and the cost, the telephone testimony option is a good one. I will leave who presents and how and where to your judgment and that of your DNR representatives. I will do my best to accommodate you and make sure your presentation is as good as it can be.

I do not have any excused absences for that day, March 8th, so I am expecting all the members to be here. But as we all know here at the Capitol, Juneau weather may have its way and trump our best efforts. I am going forward with preparations believing that the meeting will happen as planned.

I just hit the send button before responding to this email and sent a background email to Director Mylius. Do I work with you or Director Mylius in meeting preparations?

Thanks for your help and input on this meeting.

I look forward to working with you.

I met you last evening at the reception. I believe that you were the positive lady with the award winning restaurant in Gustavus? Greetings.

Regards,
John Davies
ARRC Acting Committee Aide

From: Lesh, Melanie (DNR sponsored) [mailto:melanie.lesh@alaska.gov]
Sent: Thursday, February 25, 2010 3:40 PM
To: John Davies
Subject: ARRC Meeting

Hi John,
I'll help coordinate the ARRC meeting on March 8th on behalf of DNR. Would you like Mr. Mylius to be here in Juneau in lieu of Commissioner Irwin (who at this time may be available, but I can't commit him quite yet).
Will you have a quorum on March 8th? I understand many legislators are still traveling back from Energy Council on that date.

Melanie Lesh
Special Assistant/Legislative Liaison
Department of Natural Resources
400 W. Willoughby Ave.
Juneau, Alaska 99801
907.465.4730
907.723.7364

Re: February 24, 2010

Dear Commissioner Irwin and Director Mylius:

Representative Keller has asked me to invite you to attend and participate in the Administrative Regulation Review Committee "ARRC" meeting scheduled for March 8th at 3:00pm in room 17 of the State Capitol Building, Juneau, Alaska.

If you are not able to attend in person, telephone participation would be fine as well.

The ARRC has received public comment concerning the regulations relating to personal use cabin permits, particularly 11 AAC 65.010. The review focus will generally be on the specific intent language "to phase out the use of unauthorized cabins on state land" and the destruction of such cabins, weighed against the private, public and survival uses of the cabin resources. The committee will be looking at the regulation's statutory authorization and whether it carries out legislative intent. Your input will be most helpful. A copy of the Schedule and Agenda are attached for your information.

If you have any questions please feel free to call me at 907 465-4899. Please note that any printed information you wish to present, I will need copies so I may post it on BASIS and distribute it to the committee members.

We look forward to hearing from you and having your participation at the meeting.

Very Truly Yours,

John Davies
ARRC acting Committee Aide

John Davies

From: Rep. Wes Keller
Sent: Sunday, February 28, 2010 10:58 AM
To: John Davies
Subject: RE: Synopsis of DNR Personal Use Cabin complaints

Thanks for the valuable recap John,

I am sure you got a copy of the reply I sent to Dick Mylius and am wondering if we should make this information available to DNR??? The problem DNR has, of course, is that it cannot endorse trespass cabins for the land they manage any more than we would endorse trespass cabins on any private land... The best sites would be snapped up and then we would fight for years about access - etc. If someone builds a cabin and makes improvement on land that he has not ensured clear title to--- that HAS to be his problem. I think in AK there is/was a law that if you can maintain contested presence on a piece of land for 10 years it is yours! That is why DNR actively removes squatters cabins unless special permits are acquired --- and when the terms of the permits are expired, that is it! Seems reasonable to me (even if it is painful for the foolish person who built with no title or fails to meet legitimate terms of permits.

All that being said, it is healthy to get this clearly on the record so legislators who think the policy/ terms of leases/ etc are inappropriate can know what the situation is so they can pursue legislation if they are able.

--- so:

Q 1--- should we send a version of this memo to Mylius?

Q 2--- should we ask DNR to expand their presentation to include a briefing on ACCESS to any legitimate cabin (publically owned, premitted trespass, isolated, lease...)? I think this would be another ~~~30 minute presentation by Scott Ogan--- he recently gave a similar presentation about "navivable water" to CACFA-- It was very enlightening.

Because ARRC is unlikely to take any action on these regs, I think we should do what we can to make sure the hearings are as informative as possible.

Wes

From: John Davies
Sent: Friday, February 26, 2010 12:23 PM
To: Rep. Wes Keller
Cc: Jim Pound
Subject: Synopsis of DNR Personal Use Cabin complaints

Attached is a memo of the situations that are the basis of ARRC inquiry at the March meeting. JD

John Davies

From: Rep. Wes Keller
Sent: Sunday, February 28, 2010 10:59 AM
To: John Davies
Subject: FW: Invitation to ARRC meeting

:-) :-)

You are way ahead of me... Great job. I didn't realise until now that this was the memo that Dick Mylius responded to.

Q 2 on recent email still stands.

WEs

From: John Davies
Sent: Friday, February 26, 2010 12:16 PM
To: Mylius, Richard H (DNR)
Cc: Rep. Wes Keller; Jim Pound
Subject: RE: Invitation to ARRC meeting

Dear Director Mylius:

I have discussed your email request with Representative Keller, Chairman ARRC, and he has asked me to provide you with information that will foster a fruitful and productive meeting.

The following is a synopsis of contacts that may be useful for your meeting preparation and presentation:

- 1) In person complaint at the Capitol ARRC office by an individual whose cabin burned down. He is trying to rebuild the cabin, but reports that he is getting hassled by DNR and not getting cooperation.
- 2) In person complaint at the Capitol ARRC office by an agent on behalf of a client. He complains that as a long term leaseholder, his client is facing the complete loss of his lodge in a few years when the lease runs out. The land around the lodge was selected by a borough, and the leasee has no preference right to buy the land. Once the lease runs out, he loses everything, his lodge, retirement, equity, everything. His entire life's work gone.
- 3) In person complaint at the Capitol ARRC office about a personal use cabin permittee who is facing the forfeiture of his cabin because he filed his renewal late. The permittee did not know about the new rule that renewals must be filed 90 days before the end of the permit term, but was aware of the old rule that a \$25 late fee would be assessed. He filed before the end of the permit term but not before the new 90 day time frame. He faces the complete loss of his cabin and permit.
- 4) A member of the Legislative Body reports that he has a constituent whose husband has a cabin permit and when he dies the permit ceases leaving her and the family with nothing. The family has used this cabin and land since before statehood, and cannot get a preference right to buy the land or in any other way protect its long term use of the land. They face complete loss as well.
- 5) By way of prior Resource Committee hearings it has become public knowledge that DNR is burning and/or destroying cabins for what is described as "liability reasons".
- 6) The complainants report an attitude of hostility by DNR towards private use of public lands.

The question may be: Is the intent language in the regulations, 11 AAC 65.010, "to phase out the use of unauthorized cabins on state land", fostering a hostile attitude by DNR towards these private persons, or is the Committee simply being made aware of anecdotal situations that don't reflect the true nature of what is going on? The Chairman is hopeful that your presentation to the Committee and the public will help with this question.

In addition to the above question, the Chairman would like for you, or another DNR representative, to be prepared to tell the Committee about: where does DNR derive its statutory authority for its intent to phase out the use of unauthorized cabins on state land; as well as explain its policy and procedures for granting and extending personal use cabin permits; what happens to a cabin that goes back to the State; why are cabins destroyed or burned down; what is the cost of such destruction; and lastly as an overview of the numbers and significance of the personal use cabin program?

The Chairman wanted me to be sure to let you know that the Committee does not, and in this meeting is not, advocating for any particular individual or constituent in its inquiry. The Committee is reviewing these regulations to see if they stand the three part test of Constitutionality, statutory authority, and/or legislative intent. If the Committee finds grounds it may present the Legislature with a bill to annul or veto a regulation.

We look forward to your participation in the upcoming meeting. If you have any questions please feel free to give me a call at 465-4899.

Very Truly Yours,

John Davies
ARRC Acting Committee Aide

From: Mylius, Richard H (DNR) [mailto:dick.mylius@alaska.gov]
Sent: Wednesday, February 24, 2010 4:51 PM
To: John Davies
Cc: Rep. Wes Keller; Jim Pound; Irwin, Tom E (DNR)
Subject: RE: Invitation to ARRC meeting

John – we'll participate – not sure if I'll be on the phone or in person. Commissioner Irwin will be in Toronto for mining related meetings but hopes to call in. We'll prepare some information to get to the Committee ahead of time.

Did you receive written comments concerning the regulations – if so can I get a copy? We are aware of several issues/complaints regarding this topic, but it would be helpful to see what the Committee has received as well. Dick

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Wednesday, February 24, 2010 2:28 PM
To: Irwin, Tom E (DNR); Mylius, Richard H (DNR)
Cc: Keller, Wes (LAA); Pound, Jim (LAA)
Subject: Invitation to ARRC meeting

February 24, 2010

Dear Commissioner Irwin and Director Mylius:

Representative Keller has asked me to invite you to attend and participate in the Administrative Regulation Review Committee "ARRC" meeting scheduled for March 8th at 3:00pm in room 17 of the State Capitol Building, Juneau, Alaska.

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legislative intent. Your input will be most helpful. A copy of the Schedule and Agenda are attached for your information.

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We look forward to hearing from you and having your participation at the meeting.

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John Davies
ARRC acting Committee Aide

John Davies

From: Mylius, Richard H (DNR) [dick.mylius@alaska.gov]
Sent: Sunday, February 28, 2010 7:29 PM
To: Rep. Wes Keller
Cc: Irwin, Tom E (DNR); John Davies
Subject: RE: Invitation to ARRC meeting

Rep. Keller – Thank you for the response. A half hour should be more than enough time for me to address these topics. I'll address the Mel Gillis one first, as that is a pretty specific issue, then talk about the Personal Use Cabins and the issue with the cabins on BLM land being transferred to the state. Dick Mylius

From: Rep. Wes Keller [mailto:Representative_Wes_Keller@legis.state.ak.us]
Sent: Saturday, February 27, 2010 10:30 AM
To: Mylius, Richard H (DNR)
Cc: Irwin, Tom E (DNR); Davies, John G (LAA)
Subject: RE: Invitation to ARRC meeting

Director Mylius, Thanks for your helpful response.

As is demonstrated by the information you provided, complaints and advocacies (in general) that come to the legislature often look much different when all the information is on the table. Passions (sometimes very bitter ones) are often the result --- at least partially --- of misunderstandings and miscommunications that are fixable. [FWIW--- 'cabin passion' will never hold a candle to 'family/children's issue passion'. I was in the Office of Children's Services building yesterday and it was a reality check to see the receptionists sitting behind 1" thick safety glass --- and other very obvious security measures.]

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I hope this helps--- I respectfully request transparency and candid interaction. Personally, I am looking forward to the learning about this perennial issue, and I believe it will be a productive time. I know you are very busy with pipeline-related land-use issues, so if you need a few weeks to fit this in, I am open to postponing the proposed meeting to a time specific. I appreciate your participation and respect your understanding of the complex land-use issues.

I also want to assure you that John Davies, my ARRC staff, is very reliable and qualified. Please do not hesitate to interact with him with confidence that he and I are in communication and working together to these ends.

Thanks,

Rep. Wes Keller

John Davies

From: Ryckman, Mary Kay (DNR) [marykay.ryckman@alaska.gov]
Sent: Thursday, February 25, 2010 11:48 AM
To: John Davies
Subject: RE: Call in number for March 8 ARRC meeting

MANY thanks John! I will try to let you know if for some reason flying causes him to miss the meeting.

Mary Kay Ryckman
Executive Secretary III
Office of the Commissioner
Department of Natural Resources
550 W. 7th #1400
Anchorage, AK 99501
269-8426 office
269-8918 fax

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Thursday, February 25, 2010 11:48 AM
To: Ryckman, Mary Kay (DNR)
Cc: Keller, Wes (LAA)
Subject: RE: Call in number for March 8 ARRC meeting

Dear Mary Kay Ryckman,

Thank you for your email. The call in number is 877-763-5073. If the commissioner has any problems with this number please have him call Rep. Keller's office directly at 907 465-2186. The office is right across the hall from the meeting room, and if there are technical problems with the 877 number we will know and have a chance to fix them. If you have any questions feel free to call me at 465-4899. Have a great day.

Regards,
John Davies
ARRC Acting Committee Aide

From: Ryckman, Mary Kay (DNR) [mailto:marykay.ryckman@alaska.gov]
Sent: Thursday, February 25, 2010 8:53 AM
To: John Davies
Subject: Call in number for March 8 ARRC meeting

Good morning John,

May I please request a call in number for the ARRC Meeting on March 8th? Commissioner Irwin will be out of state, but he'd like to try to call in for the meeting.

Thanks so much!

Mary Kay Ryckman
Executive Secretary III
Office of the Commissioner
Department of Natural Resources
550 W. 7th #1400
Anchorage, AK 99501
269-8426 office

From: Irwin, Tom E (DNR)
Sent: Thursday, February 25, 2010 8:47 AM
To: Ryckman, Mary Kay (DNR)
Subject: Fwd: Invitation to ARRC meeting

FYI

Sent from my iPhone

Begin forwarded message:

From: "Mylius, Richard H (DNR)" <dick.mylius@alaska.gov>
Date: February 24, 2010 4:50:42 PM AKST
To: "Davies, John G (LAA)" <john_davies@legis.state.ak.us>
Cc: "Keller, Wes (LAA)" <representative_wes_keller@legis.state.ak.us>, "Pound, Jim (LAA)" <jim_pound@legis.state.ak.us>, "Irwin, Tom E (DNR)" <tom.irwin@alaska.gov>
Subject: RE: Invitation to ARRC meeting

John – we'll participate – not sure if I'll be on the phone or in person. Commissioner Irwin will be in Toronto for mining related meetings but hopes to call in. We'll prepare some information to get to the Committee ahead of time.

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Sent: Wednesday, February 24, 2010 2:28 PM
To: Irwin, Tom E (DNR); Mylius, Richard H (DNR)
Cc: Keller, Wes (LAA); Pound, Jim (LAA)
Subject: Invitation to ARRC meeting

February 24, 2010

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We look forward to hearing from you and having your participation at the meeting.

Very Truly Yours,

John Davies

ARRC acting Committee Aide

2/25/10

Center - Complaint for Court - Mel

long term lease holder -

presume right to lease holder to purchase

may not shall -

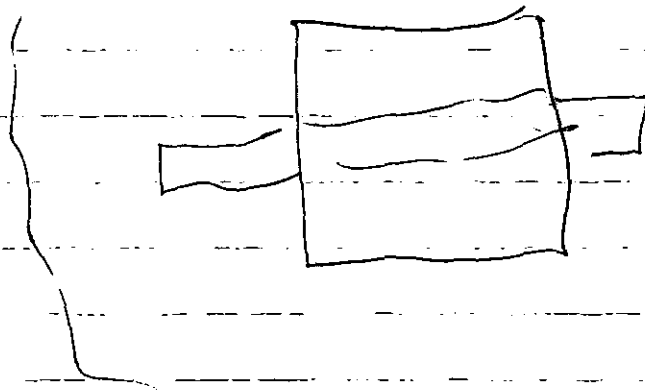
hostile attitude toward public

what is present of land disposed

Mel - lease 2014

Alutian Borough / Tak v Penn

chpts 58



lease
expired
Mel
loose
everything

DNR Regs on Land Leasing & Disposal.pdf

Google docs

1 / 29

Download (2430K) Print (29 pages) Plain HTML

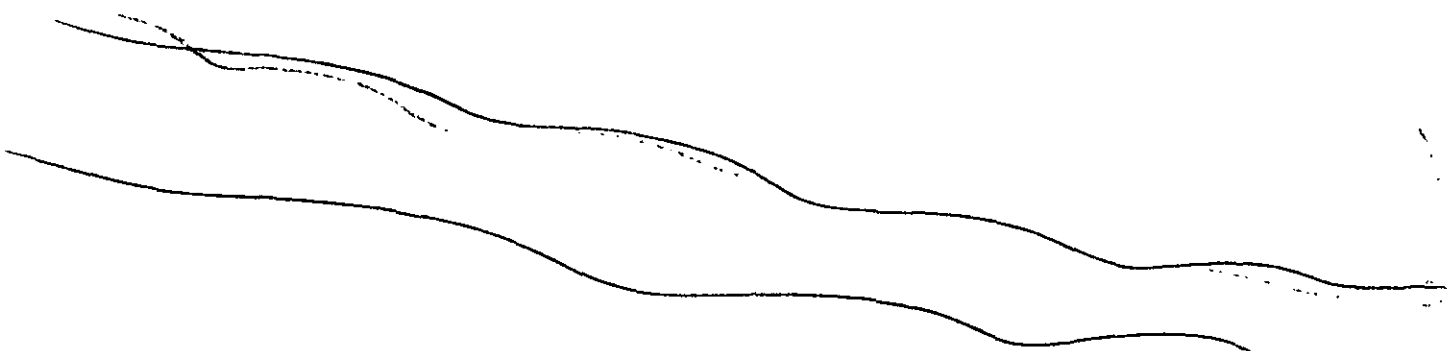
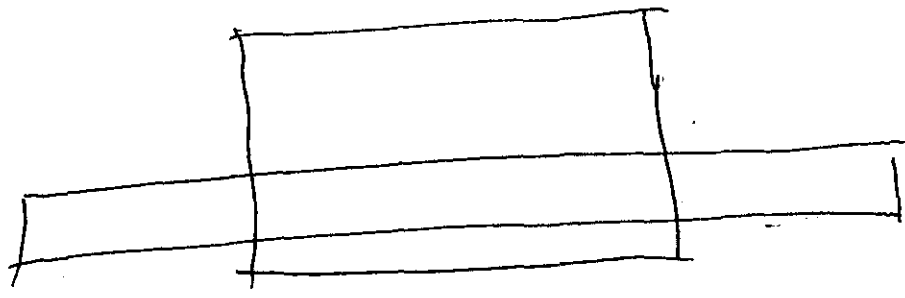
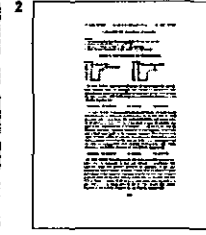
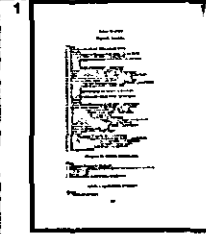
Search the document

NATURAL RESOURCES

Part 6. Lands.

Chapter

- 51. Public Easements (11 AAC 51.010 — 11 AAC 51.990)
- 52. (Repealed)
- 53. Records, Surveys, and Platting (11 AAC 53.010 — 11 AAC 53.900)
- 54. Disposal of Lands (11 AAC 54.010 — 11 AAC 54.510)
- 55. Land Planning and Classification (11 AAC 55.010 — 11 AAC 55.290)
- 56. (Repealed)
- 57. (Repealed)
- 58. Leasing of Lands (11 AAC 58.010 — 11 AAC 58.910)
- 59. Grazing Leases (11 AAC 60.010 — 11 AAC 60.180)
- 60. Tide and Submerged Lands (11 AAC 62.010 — 11 AAC 62.840)
- 61. Aquatic Permits Permits and Leases (11 AAC 63.010 — 11 AAC 63.900)
- 62. Shore Fisheries Leasing (11 AAC 64.010 — 11 AAC 64.570)
- 63. Personal Use Cabin Permits (11 AAC 65.010 — 11 AAC 65.900)
- 64. Municipal Grant Land Entitlement Program (11 AAC 66.010 — 11 AAC 66.990)
- 65. Disposal of Land (11 AAC 67.002 — 11 AAC 67.990)
- 66. (Repealed)
- 67. Escheated Real Property (11 AAC 69.010 — 11 AAC 69.900)
- 68. (Repealed)
- 69. Timber and Material Sales (11 AAC 71.005 — 11 AAC 71.910)
- 70. (Repealed)
- 71. (Repealed)
- 72. (Repealed)
- 73. Pipeline Right-of-Way Leasing (11 AAC 80.006 — 11 AAC 80.065)
- 74. Mineral Leasing Procedure (11 AAC 82.100 — 11 AAC 82.990)



Forest Service
Federal Cabin

3/1/10

Jim King: Administrator for Sustainable Cabin

Recreational cabins - Oregon - 22 Forest Service
cabin units
college program

would like to see cabins sustained

Chuyak - Tongue -

Forest Service cabins have position of impact

"Sustainable Recreation Workshop" {excellent
conference

Tongue Chuyak

building cabin not the problem

sustaining them is the problem

Cabin

143

Tongue

Best Forest Service has 5 yr plan
to sustain cabins

42

Chuyak

looking for a solution to maintaining cabins

evil to Forest Code - fed - under staffed - get
inventory done

misinformation on cabin closure -

Joint resolution? Forests going recreational?

John Davies

From: Rep. Wes Keller
Sent: Tuesday, March 02, 2010 8:59 PM
To: John Davies
Subject: RE: Synopsis of DNR Personal Use Cabin complaints

We really did get a 1 foot wave from Chile???? Amazing!

I am more than satisfied --- I am delighted with your good work and prep for meeting. I was impressed with Dick Mylius' presentation today on ANILCA--- Did you know that there is only one gov't entity that manages more real estate than Alaska DNR?--- the Federal Gov't :-).

thanks
wes

From: John Davies
Sent: Tuesday, March 02, 2010 12:57 PM
To: Rep. Wes Keller
Subject: RE: Synopsis of DNR Personal Use Cabin complaints

Dear RWK,

After doing the synopsis of the complaints, I paraphrased the complaints and listed them out for Director Mylius. I sent you a copy of that email to him. So he knows about the complaints. I told him that the Committee is not advocating for any of the complainants but merely using the complaints as a basis of general inquiry.

Are you satisfied with the general outline of his presentation that he proposes in his email to you? If so I can simply put a few questions in your "script" to ask him in the event that he doesn't cover them in the presentation. The big question in my mind, is "Director Mylius, can you tell us the statutory basis for DNR's intent to phase out the unauthorized use of state land, ie, the cabins, as expressed in 11AAC65.010?" Do we want that to be Legislative policy and intent?

Hope your physical went well. See you soon. The marine shop is installing the depth finder today. Didn't use the boat last weekend because of the tsunami warning! Can you believe that, as tsunami. Turned out to be about a foot high. But, hey, why test the first tsunami warning in my marine history? JD

From: Rep. Wes Keller
Sent: Sunday, February 28, 2010 10:58 AM
To: John Davies
Subject: RE: Synopsis of DNR Personal Use Cabin complaints

Thanks for the valuable recap John,

I am sure you got a copy of the reply I sent to Dick Mylius and am wondering if we should make this information available to DNR??? The problem DNR has, of course, is that it cannot endorse trespass cabins for the land they manage any more than we would endorse trespass cabins on any private land... The best sites would be snapped up and then we would fight for years about access - etc. If someone builds a cabin and makes improvement on land that he has not ensured clear title to--- that HAS to be his problem. I think in AK there is/was a law that if you can maintain contested presense on a piece of land for 10 years it is yours! That is why DNR actively removes squattors cabins unless special permits are acquired --- and when the terms of the permits are expired, that is it! Seems reasonable to me (even if it is painful for the foolish person who built with no title or fails to meets legitimate terms of permits.

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Q 1--- should we send a version of this memo to Mylius?

Q 2--- should we ask DNR to expand their presentation to include a briefing on ACCESS to any legitimate cabin (publically owned, premitted trespass, isolated, lease...)? I think this would be another ~~~30 minute presentation by Scott Ogan--- he recently gave a similar presentation about "navivable water" to CACFA-- It was very enlightening.

Because ARRC is unlikely to take any action on these regs, I think we should do what we can to make sure the hearings are as informative as possible.

Wes

From: John Davies
Sent: Friday, February 26, 2010 12:23 PM
To: Rep. Wes Keller
Cc: Jim Pound
Subject: Synopsis of DNR Personal Use Cabin complaints

Attached is a memo of the situations that are the basis of ARRC inquiry at the March meeting. JD

ALASKA STATE LEGISLATURE

Interim:

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone: 373-1842
Fax: (907) 373-4729



Session:

State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-4899
Fax: (907) 465-3818

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

MEMO

To: Rep. Wes Keller, Chairman

Fm: John Davies, Acting Committee Aide

Cc: File

Date: February 26, 2010, 11:10 AM

Re: Synopsis of situations re: DNR Personal Use Cabin regs and long term lease regs.

Recently the committee has become aware of the following situations concerning DNR regs:

- 1) Paul Shadura of Kenai 283-5098, stopped by the office to complain that his trespass cabin burned down and he was trying to rebuild it, but being hassled by DNR and not getting cooperation.
- 2) Patrick Carter, stopped by the office to complain on behalf of his client, Mel ?, that as a long term leaseholder his client was facing the complete loss of his lodge in a few years when the lease runs out. The land around the lodge was selected by a borough, the Aleutian Borough I believe, and Mel has no priority right to buy the property. Once the lease runs out, he loses everything; his lodge, retirement, equity, everything. His entire life's work gone.
- 3) Patrick Carter, stopped by the office a second time to complain on behalf of Fred Braun. Mr. Braun is a permit holder of a personal use cabin permit. He filed his renewal application before the expiration of the present permit, but not 90 days before the expiration date. In the past late filings had been assessed a \$25 late filing fee and then processed. But this year the DNR changed the way it treated late filings and declared a forfeiture of Mr. Braun's cabin. His renewal was refused and he was told to remove his cabin. Mr. Braun has had to hire a lawyer and is in the process of appealing the decision. The notice that DNR was changing its procedures was in the same envelope as the

E-Mail: John_Davies@legis.state.ak.us

renewal application and Mr. Braun didn't see it until too late and didn't otherwise know about the change in procedures.

- 4) Rep. Guttenberg has a constituent, Myra Neff, who's husband has a long term lease with DNR on state land. The family has lived on the property since before statehood, but when the husband dies the lease terminates and the property goes back to the state. The family loses everything.
 - 5) Rep. Doogan's staff reports that DNR is destroying cabins that come into state possession for what the state calls "liability reasons". This issue has been brought up in prior resource committee meetings.
 - 6) The parties uniformly report a hostile attitude by DNR towards private parties use of public lands.
 - 7) The question may be: Is the intent language in the regulations, 11AAC 65.010, to phase out the use of unauthorized cabins on state land, fostering this hostile attitude by DNR or are we simply being made aware of anecdotal situations that don't reflect the true nature of what is going on?
-

The information contained in this memo is CONFIDENTIAL and/or privileged. This memo is intended to be reviewed initially by only the individual named above. If the reader of this page is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of this memo or the information contained herein is prohibited. If you have received this memo in error, please immediately notify the sender by telephone and return this memo to the sender at the above address.

Thank you

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND

NORTHERN REGION
3700 AIRPORT WAY
FAIRBANKS, ALASKA 99709-4699
PHONE: (907) 451-2700

March 24, 1998

Richard W. Neff
PO Box 60470
Fairbanks, AK 99706

Re: ADL 412042
Personal Use Cabin Renewal (Goodpaster River)

Dear Mr. Neff,

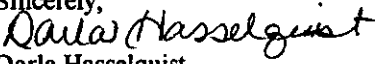
I am responding to your letter of March 1st, 1998 regarding preference rights and adding to the original list of permittees.

Your request is being forwarded to the Anchorage office which handles preference rights. The contact person is Dick Mylius at (907) 269-8532.

I realize that you would like to add your wife and children to your original list of permittees, however, the law states that the permittees are the ones that are on the original application and permits may not be transferred. Pursuant to state regulation 11 AAC 65.090 (6) (C), the permit is not transferable or assignable. Your original application lists yourself and your father, Wendell R. Neff as the applicants having an interest in the cabin, therefore, these are the only two names which can be listed on the application.

Please review the enclosed documents. If you have any questions I can be reached at the Division of Land at (907) 451-2733.

Thank you,

Sincerely,

Darla Hasselquist
Natural Resource Technician

Letter from Mrs. Neff

Governor Sean Parnell
Alaska State Capital Building
PO Box 110001
Juneau, AK 99811

Senator Gene Therriault
1292 Sadler Way, Suite 308
Fairbanks, AK 99701

Lt. Governor Craig Campbell
550 W. 7th Ave., Suite 1700
Anchorage, AK 99501

Representative David Guttenberg
1292 Sadler Way, Suite 308
Fairbanks, AK 99701

Commissioner Tom Irwin
Department of Natural Resources
400 Willoughby Avenue, 5th Floor
Juneau, AK 99801

Representative Scott Kawasaki
1291 Sadler Way, Suite 308
Fairbanks, AK 99701

Representative John B. Coghill, Jr.
3340 Badger Rd., Suite 290
North Pole, AK 99705

September 30, 2009

RE: ADL414042

As a life-long Alaskan resident, born in Palmer before statehood, I respectfully request your assistance in obtaining a parcel of state land, located at: 2 Section, 008S Township, 012E Range, Fairbanks Meridian. This land was "squatted on" by my father-in-law, the late Wendell R. Neff, during the early 1950's. For the ensuing 20 years, he used this piece of land as a hunting /recreational site, and constructed a small shelter shed for his family. During the 1970's this land was offered under a homestead or homesite program by the State of Alaska. Unfortunately, by this time my father-in-law had established another family in another location, and did not pursue this option. Wendell's son, Richard (my husband) was a young man at the time; he was regrettably ill-equipped both in maturity and resources to pursue the terms and conditions required for this opportunity, and consequently did not take advantage of the survey and appraisal options to obtain this land. However, by leasing the land from DNR, Richard continued utilizing the location for family recreation and hunting opportunities.

In 1983, the State of Alaska denied Wendell Neff (and his son, Richard) their Preference Right Application for the right to purchase this site, in spite of the documented proof and affidavits of its historical use by the family since territorial days. The cabin site is located within the Tanana Basin Area Plan's Goodpaster River management unit, where state land disposals are banned and thus there has been no interest in the review of this situation by the state government.

As the law presently stands, upon my husband's death this cabin and land will be reverted back to the state and opened for public use. Frankly, it is a painful insult that our state, immensely rich in land, will snatch away the hard work and cherished recollections of a second-generation Alaskan family. My husband's recent health issues has made it more imperative for me to pursue avenues that will permit us to obtain legal title to this land; I wish to own this land for the personal significance this site has for me, for the great amount of time and effort our family has invested to develop and enjoy it, and for the heritage of my children and grandchildren. We and our children's lives are enmeshed with memories of this cabin site. It is an important, historic link to the generation before, and with the state's consideration, for the generations to follow.

Currently, less than 1% of the total land mass in Alaska is in private ownership, excluding land set aside by the Alaska Native Claims Settlement Act. Our state government is appointed to 'unlock our potential' by offering remote, recreational state lands for sale. Article VIII of the Alaska Constitution states, "It is the policy of the State to encourage the settlement of its land and development of its resources by making them available for maximum use consistent with the public interest." The Constitution, State laws, and the Alaska Legislature all direct DNR to sell state land for settlement and private ownership. What better risk than those who have a vested interest? As a bona fide Alaskan family, we have invested in this particular parcel of land for 50+ years, we've worked arduously to improve this land, and we have faithfully made annual payments on this land to the State under the lease agreement. Beyond a doubt, we have proven our commitment and dedication by carving out a section of Alaskan wilderness for use and enjoyment by our family. I respectfully ask the State to consider a stipulation that will allow us to purchase this land.

Upon review of this situation by former Lt. Governor Loren Leman, his office suggested pursuing the introduction of a bill which would allow the opportunity to buy the state leased land, with certain stipulations. For instance, offering land for sale at appraised value to those individuals who have continuously paid for state leased land for over 25 years, and 'grandfathering' exceptions for those within state land where disposal is prohibited. This would apply to only private, individual citizens, not to conglomerates or agencies such as the University of Alaska or Alyeska Pipeline, etc. I don't know how much land would qualify, but it would be in the state's honor to allow Alaskan residents to purchase the land into which they have faithfully devoted, invested, and improved.

Governor Parnel and Lt. Governor Campbell, I trust you to be unswerving in discovering innovative ways for public lands to pass into the hands of private citizens. Commissioner Irwin, I depend on your support to investigate ways that residents who have consistently paid for cabin lease sites will have the chance to purchase that land at fair and equitable rates. Senator Therriault, I believe you will seek avenues that allow more private ownership of land. Representative Guttenberg, Representative Kawasaki, and Representative Coghill, I count on you to encourage legislative endeavors and/or seek legal ways permitting Alaskans to purchase the land they lease from the State.

In the interest of more state lands being transferred to Alaskans, I implore your help in introducing a law that would allow us to purchase this site. I look forward to hearing from all entities herewith addressed. Thank you.

Sincerely,

Myra S. Neff
2101 Broadmoor Ave.
Fairbanks, AK 99709

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR

□ 550 WEST 7TH AVENUE, SUITE 1400
ANCHORAGE, ALASKA 99501-3650
PHONE: (907) 269-8431
FAX: (907) 269-8918

November 25, 2009

Ms Myra S. Neff
2101 Broadmoor Avenue
Fairbanks, AK 99709

Re: ADL 414042

Dear Ms Neff:

I am responding to your letter of September 30, 2009 concerning acquisition of title to state land previously the subject of a preference right application, currently under a Personal Use Cabin permit (ADL 414042). Originally this Personal Use Cabin Permit was issued by the state to your husband, Richard Neff. This parcel was also the subject of a Preference Right application (ADL 403149). Our files indicate your husband's cabin permit is for a parcel of state land located in Section 2, Township 8 South, Range 13 East, Fairbanks Meridian. I assume you meant Range 13 East in your letter and will proceed on that basis.

You are correct in stating in your letter that the preference right application (ADL 403149) submitted by your father-in-law, Wendell R. Neff, was denied by the state. This denial was based on the determination that the sale was not in the state's best interests. The parcel of state land for which your father-in-law applied is located in an area determined to be valuable for public recreation under the Tanana Basin Area plan. In accordance with this plan, state land in this area was to be retained in state ownership and not made available for disposal. The state's determination was appealed to the State Superior Court, which upheld the state's decision to deny the preference right application.

By statute, state land is sold competitively by public auction, lottery or over-the-counter; sale by preference right is the exception and is constrained by very specific statutory requirements. In this instance, sale of the parcel of state land you refer to was determined to not qualify for a preference right sale. If the land where the cabin is located were to be sold, it would be through a competitive sale open to all Alaskans. However, the Tanana Basin Area plan identifies this area for retention in public ownership.

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans"

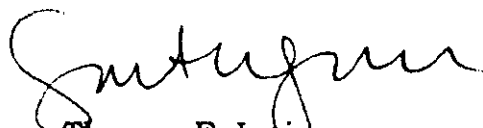
November 25, 2009

Page 2 of 2

The Department does take seriously the Constitutional mandate to encourage the settlement of Alaska's land. To that extent, we have a land sale program to get land into private ownership. I suggest you contact the Fairbanks DNR Public Information Center at (907) 451-2705 or the Division of Mining Land & Water's website for information regarding state land that is available for sale in the Fairbanks area.

Thank you for your inquiry.

Sincerely,



for Thomas E. Irwin
Commissioner

Cc: Governor Sean Parnell
Lt. Governor Craig Campbell
Senator John B. Coghill, Jr.
Representative Davie Guttenberg
Representative Scott Kawasaki

John Davies

From: John Davies
Sent: Monday, March 29, 2010 2:31 PM
To: Jim Colver
Cc: Rep. Wes Keller; Jim Pound
Subject: RE: Agenda

Dear Jim,

As you may know, because the two major issues for review have been informally handled, Chairman Keller has cancelled the 4/5/10 ARRC meeting. In discussing the Mel Gillis cabin burning issues, he felt that the ARRC would be better served by initially handling this item off the record by way of letter to DNR. Would you please furnish me with the name(s) of the DNR staff member(s) who authorized or directed Mr. Gillis to burn the cabins? The Chairman will then send a letter to the DNR Commissioner asking for a response and open a dialog about the matter. Once the ARRC has a response, a decision can then be made how best to proceed.

If you have any questions, feel free to give me a call. Meanwhile, once I have the name(s), I will prepare the letter for the Chairman's signature.

Regards,

John Davies
ARRC Acting Committee Aide

From: Jim Colver
Sent: Friday, March 26, 2010 11:45 AM
To: 'John_Davies@legis.state.ak.us'
Subject: Agenda

John,

Senator Olson asked me to request that Mel Gillis be invited to testify on the cabin permit regulations. Mel's phone number is 344-8589.

Jim Colver
Staff To Sen. Olson
465-3877

John Davies

Burning Cabins

From: John Davies
Sent: Wednesday, April 14, 2010 10:39 AM
To: 'Dick.Mylius@alaska.gov'
Cc: Rep. Wes Keller; Christina Apathy; Jim Pound
Subject: Distruction of Cabins Allegations

Dear Director Mylius:

This email is an inquiry for follow up information. As you will recall, during the ARRC meeting last March, Mr. Mel Gillis testified that he had burned down two cabins in the bush at the direction of DNR. Senator Olson asked Mr. Gillis to furnish his office with the name(s) of the DNR representative that instructed him to burn the cabins.

Mr. Gillis furnished the following information to Senator Olson's staff: Mr. Gillis reported that he was told by Dave Kelly of DNR that DNR would pay him to burn down Warren Johnson's cabin at Port Moller at the Sandy River Air Strip. Mr. Gillis did in fact burn the cabin down at the direction of DNR and gave pictures to Adam Smith.

He said that he also burned down the Illnik cabin at Port Moller at the direction of DNR.

The Committee would appreciate your looking into these allegations and reporting back on your findings. As you know, based upon Member comments during the meetings, the Committee would prefer not to burn or destroy cabins in the bush that could otherwise serve the public interest as shelter and survival assets.

We look forward to hearing from you.

Very Truly Yours,

Representative Wes Keller
By
John Davies
ARRC Acting Committee Aide

"we'll Pay You to burn 3/19
cabins" Dave Kelly

(DNR) Now SE Regional
MNR

6 yrs ago

Air Field /

ARC strip
Sandy River
Fed #1 - ~~Abaker~~

owner Carby
Warren Johnson

MEL Burned ~~it~~
for DNR - he had
to dig them

to gave picture of
AD Ann Smith

that it had

Burned Down -

State Land

West
North
East
South

VIA-
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Also Burned
Down

~~70~~

Illnik-
Cabin

port Moller /

pt #

\$ 2,000 Bond

\$ 1,000 yr 1

John Davies

From: Josh Applebee
Sent: Monday, April 05, 2010 1:04 PM
To: John Davies
Subject: RE: ARRC recommendation letter to Commissioner Irwin re: Personal Use Cabins

Just make sure you get everyone's "yea" vote before sending it out. Or just delete the word "entire".
I am sure you should get most of them, but I would visit the offices and get an answer because it's every effective as currently worded.
Don't wait for them to get back with you.

Josh

From: John Davies
Sent: Monday, April 05, 2010 1:03 PM
To: Josh Applebee
Subject: RE: ARRC recommendation letter to Commissioner Irwin re: Personal Use Cabins

Good point Josh. What do you recommend? John

From: Josh Applebee
Sent: Monday, April 05, 2010 1:01 PM
To: John Davies
Subject: RE: ARRC recommendation letter to Commissioner Irwin re: Personal Use Cabins

John,
Do you think it wise to use the term "on behalf of the entire Committee" before you have unanimous consent?

From: John Davies
Sent: Monday, April 05, 2010 12:53 PM
To: Janet Ogan; Bonnie Gruening; Christina Apathy; Kimberly Clark; Christopher Birdsall; Josh Applebee
Cc: Rep. Wes Keller; Jim Pound
Subject: ARRC recommendation letter to Commissioner Irwin re: Personal Use Cabins

Dear Fellow Staffers:

Since ARRC canceled its meeting for today, I am sending around this copy of the letter that Chairman Keller would like to send to Commissioner Irwin concerning the Committee's recommendations for Personal Use Cabin Permit renewals.

Please print out a copy for your boss and let me or Rep. Keller know if there are any objections to the letter. If your boss would like to co-sign the letter let me know, as the letter is scheduled to go out tomorrow unless there are significant objections.

Thanks for your assistance.

Regards,

John Davies
ARRC Acting Committee Aide

John Davies

From: John Davies
Sent: Monday, April 05, 2010 12:53 PM
To: 'janet_ogan@legis.state.ak.us'; Bonnie Gruening; Christina Apathy; Kimberly Clark; Christopher Birdsall; Josh Applebee
Cc: Rep. Wes Keller; Jim Pound
Subject: ARRC recommendation letter to Commissioner Irwin re: Personal Use Cabins
Attachments: ARRC - Commissioner Irwin Personal Use Cabin Permits .docx

Dear Fellow Staffers:

Since ARRC canceled its meeting for today, I am sending around this copy of the letter that Chairman Keller would like to send to Commissioner Irwin concerning the Committee's recommendations for Personal Use Cabin Permit renewals.

Please print out a copy for your boss and let me or Rep. Keller know if there are any objections to the letter. If your boss would like to co-sign the letter let me know, as the letter is scheduled to go out tomorrow unless there are significant objections.

Thanks for your assistance.

Regards,

John Davies
ARRC Acting Committee Aide

John Davies

From: John Davies
Sent: Tuesday, April 06, 2010 9:39 AM
To: Josh Applebee
Subject: RE: ARRC amended letter to Commissioner Irwin

Dear Josh,

Thanks for your email. Chairman Keller appreciates Senator Meyer's support, but he thinks that his signature and the Vice Chair will be sufficient. Have a great day.

John D

From: Josh Applebee
Sent: Tuesday, April 06, 2010 7:48 AM
To: John Davies
Subject: RE: ARRC amended letter to Commissioner Irwin

John,
Sen. Meyer supports the chairman on this issue and would be happy to sign on if that is the Chair's intent.

josh

From: John Davies
Sent: Monday, April 05, 2010 1:15 PM
To: Janet Ogan; Bonnie Gruening; Christina Apathy; Kimberly Clark; Christopher Birdsall; Josh Applebee
Cc: Rep. Wes Keller; Jim Pound
Subject: ARRC amended letter to Commissioner Irwin

Dear Fellow Staffers:

Please disregard the prior letter to Commissioner Irwin and use this amended letter in its place. The word entire has been deleted from the first paragraph in the event that unanimous consent is not achieved. This is the only change that is made which causes a minor rewording in the first and second sentences. Replace the first letter.

Thanks.

John Davies

Meyer Y
Olson Y
Krook X
Keller Y

Buttenberg
Guth

ALASKA STATE LEGISLATURE

Interim:

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone: 373-1842
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Session:

State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-4899
Fax: (907) 465-3818

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

April 5, 2010

Tom Irwin, Commissioner DNR
550 West 7th Ave. Ste 1400
Anchorage, AK 99501-3554

Re: ARRC Recommendations concerning Personal Use Cabin Permits (11 AAC 65.010 et seq.)

Dear Commissioner Irwin:

Greetings from the Alaska Legislature's Joint Administrative Regulation Review Committee "ARRC". As the Committee Chairman, I write to you today on behalf of the ~~entire~~ Committee and convey to you our recommendations for carrying out Legislative intent concerning Personal Use Cabin Permits.

As you may know, the ARRC was established by Alaska Statute, AS 24.20.040, and charged with the responsibility of overseeing agency regulations. One of the jobs of the ARRC is to review existing regulations to determine if they carry out legislative intent. If the Committee finds that a regulation does not implement the intent of the Legislature, it may introduce a bill to over ride or veto the regulation. Such legislative action is a strong and sometimes arduous measure and reserved for situations where other more diplomatic solutions have failed. The Committee would hope that in this case, a socially just resolution could be developed which balances the public interest and personal use permittees' interests wisely.

In particular, sufficient public complaint about DNR's handling of Personal Use Cabin situations had come to the Committee's attention that ARRC hearings were held on March 8 and 15, 2010, in which considerable agency and public testimony was heard. After the close of testimony it was evident that there is a conflict between the Legislature's intent that Personal Use Cabin Permits expire upon the death of the permittee, and the agency's intent to "phase out the unauthorized use of state land" as expressed in 11 AAC 65.010. The frustrated, and at times angry, testimony of the public, as well as the Director's report, conveyed a clear message that permits were being terminated and cabins forfeited before the death of the permit holder for mere late filing of permit paperwork. Members of the public testified to being told contradictory information by agency staff, and that no appeal process was available for recourse. There

appeared to be a change of agency handling of permit renewals from historic precedent and two differing methods used in one calendar year resulting in confusion among the permit holders.

The Committee finds that the intent of the underlying statute that gave rise to the Personal Use Cabin Permit regulations was that persons be granted a permit to use the cabins until the death of the permit holder. At that point the permit would expire and the cabin, if not removed, would become the property of the state. It was not the intent of the Legislature that a permit would expire because some necessary paperwork was filed late. We therefore recommend that the Agency redo its renewal application phase for the last half of 2009 and allow all prior permit holders to re-file their renewal paperwork. If the agency needs to put new regulations into effect to clarify matters in the future, we recommend that it do so. After the renewals solution, if the agency feels that it needs additional statutory authorization, you are invited to make a proposal through the ARRC for possible introduction to the Legislature. Please know that the Committee understands the large task it is for the agency to manage millions of acres of Alaska land, and we stand ready to work with you for the best interests of all Alaskans.

As you contemplate the need, if any, for new regulations to carry out your duties, the Committee also recommends that some thought be given to the future, and what will be done with the personal use cabins once a permit expires. From the testimony, it does not appear that the agency has a program to deal with the transition of a cabin from private use into the public domain. As a suggestion, perhaps an "Adopt a Cabin" plan much like the road system has for a group to adopt a portion of highway to keep it clean would be a workable idea. Or, competitive sales/lease with the permit holder given some sort of preference as is done with the veterans' preference presently in the lands program. Whatever you decide, it was clear from the testimony that some thought needs to be given to how to handle the cabins in the future, as destroying them seems to be a very unpopular and unwise option.

The Committee trusts that this letter will provide your agency with some valuable guidance in working out balanced and just solutions to the above cited situations. Please feel free to call me if you have any questions.

Very Truly Yours,

Representative Wes Keller
Chairman
ARRC

CC: Governor Parnell
Director Dick Mylius