

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86 / 2 / 6

678 SCOM122: ALASKA LANDS FILE 1977-78

Throughout its existence the Commission has commented on regulations to implement the Act, recommended procedures for small withdrawal review and easement identification, provided informational handbooks on village compliance responsibilities under Section 14(e), and, in numberless instances, assisted in the implementation of the Act. Appendix 6 details many more Commission activities implementing the Act, particularly in the first years of Commission operation.

In March of 1973, the Commission recommended to the Secretary of the Interior that he appoint an administrative appeals board with headquarters in Alaska to adjudicate administrative appeals involving federal lands located in Alaska. The Commission premised its recommendation on: the stringent time limits set in the Settlement Act; the great number of public land entries in Alaska accompanied by a consequent number of appeals, the backlog which occurs in the processing of such appeals; the need of government land managers and the Native corporations to know land status with certainty as they made classification and selection decisions; the unique considerations of land use in arctic and subarctic regions, especially with respect to customary modes of use and occupancy by Native people; and the remoteness of Alaska from the site of normal adjudication in Washington, D.C. All these factors created a unique situation which warranted the establishment of a special appellate body. In response to recommendations received from the Commission, several Native corporations, and other parties, the Alaska Native Claims Appeal Board was formed January 4, 1974.

Public Dialogue--An important aspect of the Commission's conflict resolution and policy planning process has been to provide a public forum for discussion and debate of vital issues.

In September, 1973, in conjunction with the Alaska Humanities Forum and the Alaska Department of Community and Regional Affairs, the Commission sponsored a conference concerning a number of procedural and substantive matters arising out of the Native land selection process and various aspects of local and regional land use planning, including the role of local governments in enforcing land use controls.

In December, 1973, the Commission conducted a one-week seminar composed of miners, environmentalists, economists, land use planners, government land managers, lawyers, and others to focus on policies that should govern prospecting and mining activity, the deficiencies which exist in the present federal mining laws and possible solutions thereto. The conference sought means of implementing Commission recommendations of a lease permit system for mining on national interest lands where mining was an allowable use.

Two conferences were sponsored to consider the taking of fish and game and other renewable resources to meet subsistence needs. One was held in Anchorage in February, 1973, the other in Juneau in February, 1974. The goal of the participants, persons with experience, knowledge and/or responsibilities in the area, was to seek a classification system to determine priorities in the allocation of these resources among subsistence, commercial and sports users.

Another major conference was "Land and Government: Options in State Legislation" held in January, 1975. Over 400 concerned citizens came

together to discuss emerging issues involving the role of government in land use planning and control. The conference identified a spectrum of land planning needs as perceived by Alaskans, and alternative responses to those needs. In a series of workshops, each participant had a chance to become directly involved in debating and evaluating state land use issues.

The most recent workshop seminar sponsored by the Commission was in March, 1978 to obtain an objective view of the issues discussed in this report--methods for cooperative land classification and management. Five nationally known people were invited to attend and assist the staff and Commission members in this task: Dr. Alan Steiss, the coordinator of the workshop, is a planner, expert in management systems, and a professor at Virginia Polytechnic Institute; Dr. James Hackert, geologist, professor at VPI, and an expert in applied sciences and information systems; David Callies, one of the leading experts in the U.S. on the application of land use controls; Dr. Anthony Catanese from the University of Wisconsin who, among his other accomplishments, is an expert in coastal zone management; and Professor Irving Hand, who is a nationally known planner. As seen in the material presented in part II of this report, this team of experts, the staff, members of the Commission, and invited participants discussed all aspects and methods for cooperation among agencies and governments:

- (1) existing laws, (2) creation of a new agency, (3) concepts for establishment of a commission, and (4) the appointment of a land czar.

In making the evaluations and recommendations, the consultants stayed away from the details of pending d-2 legislation and dealt ⁱⁿ ~~on~~ objective, conceptual terms, as reflected in their reports presented in chapter III of this report.

Has the Commission lived up to the expectations of the Congress as envisioned when the ANCSA was passed? Should a commission be established to insure coordination among all agencies--federal, state, local--in dealing with Alaska's land resources and management?

How can we insure that federal, state and local officials and private sector representatives will have the opportunity to work together to develop regional plans?

It is important that the Commission--which has done a good job in providing data base and knowledge to assist in the congressional debate on the d-2 lands issue, has assisted in the native land selections process, has prepared excellent reports on many issues ranging from resources, transportation, economics to simple planning guides for use in rural training programs--now evaluate the full scope of its performance and participates in the debate dealing with the development of mechanisms for cooperation among agencies, streamlining of regulations, development of a system that will insure that all lands will be protected, not only the ones selected for special treatment. It also should assist in developing the mechanism that will insure that when changes of classification and ownership may occur in the future, either in the federal or state domain, a process of review is established between all interested parties--the federal government, the state, local governments and the people at large.

"This moment will be a critical one in Alaska's future history. Development must not be confused with exploitation at this time. The financial welfare of the future state and the well-being of its present and unborn citizens depend upon the wise administration and oversight of these developmental activities. Two very real dangers are present. The first, and most obvious, danger is that of exploitation under the

thin guise of development. The taking of Alaska's mineral resources without leaving some reasonable return for the support of Alaska governmental services and the use of all the people in Alaska will mean a betrayal in the administration of the people's wealth. The second danger is that outside interests, determined to stifle any development in Alaska which might compete with their activities elsewhere, will attempt to acquire great areas of Alaska's public lands in order NOT to develop them until such time as, in the omnipotence and the pursuance of their own interests, they see fit. If large areas of Alaska's patrimony are turned over to such corporations, the people of Alaska may be even more the losers than if the lands had been exploited."²³

²³U.S. Senator E. L. Bartlett, ALASKA CONSTITUTIONAL CONVENTION PROCEEDINGS, 1965. "Governmental Functions and Responsibilities--Natural Resources."

PART III

SUMMARY OF WORKSHOP ON INNOVATIVE CONCEPTS OF
COOPERATIVE LAND CLASSIFICATION & MANAGEMENT

This country is in the midst of a revolution in the way we regulate the use of our land. It is a peaceful revolution, conducted entirely within the law. It is a quiet revolution, and its supporters include both conservatives and liberals. It is a disorganized revolution, with no central cadre of leaders, but it is a revolution nonetheless.

The ancien regime being overthrown is the feudal system under which the entire pattern of land development has been controlled by thousands of individual local governments, each seeking to maximize its tax base and minimize its social problems, and caring less what happens to all the others.

The tools of the revolution are new laws taking a wide variety of forms but each sharing a common theme---the need to provide some degree of state or regional participation in the major decisions that affect the use of our increasingly limited supply of land. (THE QUIET REVOLUTION IN LAND USE CONTROL, 1971, Fred Bosselman and David Callies)

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BRIEFING/SUMMARY

The following summary is drawn from the transcripts of the briefings conducted by Dr. Alan Walter Steiss, Panel Chairman, in meetings with Senator Mike Gravel and Governor Jay Hammond. As such, it provides a concise overview of the intensive two-day Workshop on Innovative Concepts of Cooperative Classification and Management of the (d)(2) Lands of Alaska, held on March 29-30 in Anchorage.

We appreciate this opportunity to summarize the discussion that has taken place during the past two days in this Workshop on the major issues regarding the (d)(2) land classification/management process. The role of the Panel has been primarily to provide a catalyst to this discussion. The Workshop was organized according to the so-called "Brookings model" in order to develop an interactive dialogue among the participants and the Panel--to raise some questions, share ideas and perceptions, and lay a foundation for the further development of appropriate strategies for cooperative planning and management in Alaska. Although we have received excellent briefings by the members and staff of the Federal-State Land Use Planning Commission, obviously, the Panel members could not become "instant experts" in the short time that we have been exposed to the land use planning/management issues in Alaska. However, we have tried to step back and examine these issues from perhaps a somewhat different perspective--that of the collective experience of the Panel members in land use planning and management.

Issue Perceptions

We began the Workshop by asking the participants to identify some of the key issues they perceived with regard to the whole question of cooperative planning and management (these Issue Perceptions are summarized in the following section of this report). While we have been unable to answer all

of the questions that were raised, I think that one of the key issues brought out by this discussion was: "How do we ensure that there is public awareness/participation in the process, leading to acceptance of the strategies for implementation that may be adopted?" The success of any planning/management approach, in large measure, is going to be dependent upon the willingness of people to participate freely in the strategies that are suggested. Therefore, we examined this basic question in some detail, and while I am not sure we have resolved all of the issues associated with it, a number of key considerations have been raised.

We discussed the issue of scale. We continually have to remind ourselves of this aspect. It is easy to lose sight of the magnitude of the areas under consideration and to begin to think of these problems in terms of the "last park site" in a highly urbanized environment of the lower forty-eight states. Failure to place these vast land resources into proper perspective may lead to precipitous actions that, in the long run, may not be in the best interest of the State of Alaska or the nation as a whole.

These considerations led to an examination of the issue of timing, and the question as to whether or not there is, in fact, a need for an immediate "one-shot" solution. Is the traditional classification system the only--the best--mechanism to ensure an orderly achievement of objectives? Or, is there a more dynamic approach--an evolving classification/management process--that can better serve national and state interests? We used these questions as a baseline in discussing the various approaches to cooperative planning and management. We agreed that there needed to be a balanced approach in both the formulation and application of whatever format might be adopted.

The National Interest

While the discussion centered on the role of the State and the role of the Federal government in these processes, we do not perceive the question of cooperative management as a Federal-State issue. Rather, the focus should be on cooperative management in the national interest (or different perceptions thereof), in which the Federal government, State government, local governments, Native Corporations, and private interests all must play a vital role. Thus, we came up with a working, shorthand definition of cooperative management as: A mutual commitment to shared objectives, as well as a mutual recognition of divergent objectives which must be reconciled through some process of adjustment. On the one hand, national interest in this context may be defined in terms of wilderness areas, conservation values, endangered species, and so forth; while on the other hand, the national interest must involve raw materials to meet the energy needs of our country, the need for strategic minerals, the need for orderly economic development, and the needs of all citizens of the State of Alaska. Cooperative planning and management must provide a vehicle that is able to examine both the shared and the divergent objectives.

The national interest in these lands must be examined in terms of the total fabric--not as a patchwork quilt, but as a harmonious pattern. Accomplishment of the objectives of these "lands of national interest" must be sought in concert with the objectives associated with adjoining areas that may not be designated as Federal Lands, but may be held by the State or by a Native Corporation. Together, they form the vertical and horizontal threads--the warp and woof--of the total fabric. Various issues raised in proposed legislation before Congress and the State legislature--such as the conveyance

of lands and subsequent disposal; wilderness review and area designation; wildlife management and subsistence; mineral accessibility and transportation access; and the need for overall coordination--are all interwoven and must be treated in a comprehensive fashion if the resulting pattern is to be truly a meaningful one, i.e., in the national interest.

One of the questions brought up early in our discussion was: "What is the difference between cooperative management and coordinated management?" We see cooperative management as an interactive process; whereas coordinated management is more of a sequential process. Much of what may be labelled "cooperative management", in fact, is really just a form of coordinated management, wherein agency A has an opportunity to comment on something, passes it along to agency B for comments, which, in turn, passes it on to agency C, and so forth. Truly cooperative management is an opportunity for all parties to come together on an interactive basis and to dialogue over the particular issues rather than this sequential approach.

Functions and Responsibilities

In trying to get a further handle on what is cooperative management, we looked at the range of functions and responsibilities that might be assumed under this rubric: (1) a coordinative review function to provide a broader forum for the discussion of critical issues; (2) the responsibility of planning as an advisory function; (3) the responsibility of classification--the development of studies and analyses relating to the designation of land uses; and (4) the actual management process itself, where the agency, committee, commission, or whatever form the lead organization might take would have the authority to direct and to assign responsibility for the actual management of these lands. It was suggested that all of these

functions could be considered part of the broader approach to cooperative management. That, in fact, planning is a function of cooperative management, as is use classification. But, it may be necessary and appropriate to go beyond planning and classification, or even planning, classification, and management. This discussion (summarized in the presentation by Dr. James E. Hackett) represents different ways of "slicing" this issue of cooperative management.

In the discussion of responsibilities, a question was raised about the process of adjudication: "Is it necessary (desirable) to have formal procedures for administrative review, judicial review, or some form of binding arbitration built into the cooperative management process?" A number of different mechanisms to ensure adequate avenues of appeal in cases of disputed authority were discussed, including the courts (which, it was suggested, provide a very poor forum for resolving such issues); equal partnership arrangements (as applied by various river basin commissions); peer agency review procedures; "consistency" requirements such as incorporated in the provisions of the National Coastal Zone Management Act; and binding arbitration by a higher authority. It was suggested that, while avenues exist for dealing with State-private and State-local disputes, an adequate State-Federal mechanism does not exist. It was agreed that these concerns should be brought back into the discussion as the final mechanisms that, in fact, might be appropriate for cooperative management were examined.

We discussed four different approaches to cooperative management according to levels of involvement/responsibility (detailed in the presentation by Dr. Anthony J. Catanese which follows). The first is an existing agency approach, which essentially builds on the capacity of current agencies, with

reliance on interagency and intergovernmental agreements. This is a "least change" approach from the current situation. There are a number of things, however, that can be done within the context of this approach which would lead towards a forum for greater cooperation and coordination.

The second level would be a new agency approach. There was a general consensus that there should be a very strong State role manifested in this or any other of these approaches. There needs to be some vehicle for coordinating on-going activities, such as the Coast Zone Management program --for bringing together existing regulations and other mechanisms that are available--in a very strong State presence through a comprehensive state-wide planning process.

The new agency approach also is represented in some of the legislation pending before Congress, in terms of various Federal field directors committees or interagency councils. Such a Federal level approach represents another possibility, albeit a contrasting approach to that of a strong State presence.

The third alternative examined was that of a commission approach. It was suggested that several different types of commissions might be organized, ranging from an appointed commission, similar in structure to that of the current Federal-State Land Use Planning Commission, to a commission with membership expanded to include elected officials (Federal and State), to a citizens commission or committee. The latter approach would provide the strong citizen input called for in the earlier discussion regarding public awareness/involvement. We came to the conclusion that a commission also could be strongly oriented to the State--a State land use commission or a

State-regional (State-borough) commission. And again, a commission approach might adopt many of the features of the previous approaches.

At the other end of the continuum is the land use commissioner or land czar approach. Under this approach, a single individual, appointed by the President and the Governor, would have final authority with regard to land use decisions that might be forthcoming from the various cooperating agencies.

Organizational and Legal Considerations

The pros and cons of these various approaches were examined from an organizational/implementation point of view and in terms of the legal mechanisms available to carry out assigned responsibilities (see the presentations by Irving Hand and David Callies for further details). It was suggested that the Existing Agencies approach would result in some measure of fragmentation--of responsibilities being mutually exclusive--with limited opportunity to bring parties of interest together to deal with specific problems. The New Agency and Commission approaches give fuller recognition to the "bundle of responsibilities" defined under cooperative planning and management and the need for a more clearly articulated organizational focus in the exercise of these responsibilities. The Land Use Commissioner approach would seem to be a viable option only after other options have been fully evaluated and found wanting in terms of the objectives envisioned under the national interest.

Various legal/implementation approaches were discussed in the Workshop, ranging from the "networking" of existing regulations under the exercise of the police power to the establishment of a special permit system applicable

to areas of particular concern. Such a permit system could be applied to areas in which land use conflicts were most critical, as opposed to the larger areas in which there already is agreement as to the "best" use. In this discussion, emphasis was placed on a positive attitude toward police power, as contrasted to the more negative context within which the exercise of the police power, like zoning, has been molded in the past.

A Multi-Level Approach

Finally, an effort was made to bring these thoughts together by looking at a tripartite or multi-level approach to cooperative management. On the one hand, there seems to be good reason to have some kind of committee composed of representatives of the land management, energy, and transportation agencies at the Federal and State levels. The primary responsibility of such a committee would be to coordinate management activities as they relate to the existing and newly designated Federal areas. This level of interaction, however, would be primarily between people of like responsibilities --the U. S. Forest Service representatives would talk to their counterparts at the State level; energy people at the Federal level would deal with energy people at the State level; and so forth. This would be an operating agency committee as opposed to, in the broader sense, a policy setting committee.

At the same time, the Panel felt that there was a need to strengthen the State presence through a comprehensive statewide planning effort, to include activities already underway in the Coastal Zone Management program. The CZM program will play a more important role in this statewide planning effort, particularly in areas of use conflict. Such a State approach should give very strong recognition of and ability to bring into play State-regional

(State-borough) planning committees. Through these committees, citizen input could be very strongly derived.

The Panel saw the need for some kind of Joint Commission which would have responsibility for coordination--particularly between the other two levels of effort--and for task force formation where it is appropriate, i.e., where there is a particular issue. This Joint Commission should have the responsibility and the authority to bring together Federal and State agencies to address particular issues on a task force basis. It also was felt by the Workshop participants that this Joint Commission should have an administrative review process built in to its responsibilities, such that it could provide a quasi-judicial avenue for various aggrieved parties to bring problems and issues forward for review and arbitration. While the Joint Commission might not serve as the final arbitrator, it should be in a position to make the decision that arbitration is necessary, and the responsibility for initiating that arbitration.

Putting all of these elements together (~~Diagram 1~~), the Workshop concluded there was need for a Federal-State agency approach, a State comprehensive planning approach, and between these two, an Interim Joint Commission.

Levels of Application

The Workshop also looked at a matrix ^{Figure 1} (Diagram 2) within which it might be possible to find the appropriate levels of application. We looked at the questions of: (1) What is needed in terms of coordination/cooperation for the newly designated Federal areas? (2) What is needed in areas where there is an intermixing of Federal, State, Native Corporation, and private interests? and (3) What kind of process is needed as related to critical

FIGURE 7
MATRIX ON COMPARATIVE NEEDS FOR MANAGEMENT

	Review	Plan	Classification	Management
Whole State	X	X		
New Designation	X	X	X	
Intermixed	X	X	X	X
Critical Areas	X	X	X	X

areas of particular concern? These critical areas might be defined in terms of environmental issues, or they might be delimited in terms of economic development issues. The more traditional definition of critical areas, of course, is related to fragile environmental resources. Very often, however, in the context of what we perceive as important for Alaska, critical areas may also be defined in terms of their development potential--development as it would relate to the welfare of the State as a whole.

The functions of Review, Plan, Classification, and Management--the four functions that the Workshop identified as part of the cooperative management process--form the other dimension of the matrix. While the Workshop participants did not reach total agreement, it was suggested that a Review process is needed across all levels. Planning is needed for newly designated, intermixed, and critical areas. Classification processes are particularly important in areas of intermixed ownership/control and in critical areas of particular concern. As the issues become more solidified, however, these functions may be forced outward, as represented by the second diagonal row of X's in diagram 2, representing other areas of application in which this agency or process--that is, cooperative management--might be appropriately applied.

In a very brief summary, that is what we have been talking about for the past two days. On behalf of my colleagues on the Panel, I would like to express our appreciation for this occasion to participate in the discussion of the challenges and opportunities that face the State of Alaska. The development of appropriate responses to these land planning and management issues will form a significant model for future national land use planning and management strategies.

ISSUE PERCEPTIONS

To provide an overall frame of reference to guide the Panel discussion during the Workshop sessions, the participants were asked to identify their perceptions of the key issues confronting the State of Alaska in the planning and management of (d)(2) lands. While these "issue perceptions" ranged from the broad question: "Who owns the land?" to specific issues relating to the exercise of the police powers such as zoning, four basic themes seemed evident.

Who Owns the Land?

While the issue of legal ownership in terms of who holds title to the land was not in question, having been resolved in the broader sense in the Alaska Native Claims Settlement Act, "ownership" in the sense of who has the power and authority to decide on the use of these lands seemed to be an issue of some concern. The interface between public and private lands (both Native Corporation lands and other lands held in fee simple title through earlier homesteading and settlement) and the relationship among land held by or controlled by the Federal, State, and local governments continue to be an area of concern. Such concerns, of course, lay at the foundation of the need for cooperative planning/management mechanisms and the resulting processes for determining the best use of these lands. Related questions/issues include:

- (1) Whose values are the most important in making such determinations?
- (2) Who has the power to make these determinations, and will a redistribution of power be necessary?
- (3) What processes for conflict resolution must be instituted to ensure that all parties have an opportunity to air their positions, and who decides how such conflicts are to be resolved?

- (4) How can an orderly interface between privately owned lands and Federal and State lands be ensured?
- (5) How can a recognition of "people needs" play a more central role in these deliberations?

Public Awareness/Involvement

The concern for a greater reflection of "people needs" in the decision regarding the classification and use of these land resources is closely tied to the second major issue area--the need for greater public awareness and involvement in the decision-making process. The point was made on several occasions throughout the Workshop discussion that legislative bodies in their deliberations and decision making must be presumed to reflect "the will of the people." Therefore, if the classification and management of these resources are to be responsive to "people needs," there is need for strengthened mechanisms for public awareness of the issues and participation in these deliberations. Such public involvement, it was observed, is a key to public acceptance of the implementation strategies necessary to ensure the orderly conservation and/or development/use of these resources. Therefore, the panel was asked to address the question, "how can we achieve greater public awareness/involvement?"

Relationship to Existing Systems of Planning and Management

The planning, classification, and management of (d)(2) lands must reflect the on-going activities of other planning and management systems at the Federal, State, and local levels. Existing mandates of various public programs/agencies, many of which are in different stages of development and implementation, must be coordinated. It is also necessary to recognize (and deal with) the fact that cooperating agencies may have conflicting goals. As one participant put it: "How can coordinated/cooperative management

occur with the bureaucratic inertia of BLM, the Fish and Wildlife Service, and so forth?" Related to this issue was the concern that the methods of carrying out the designated uses are in concert with the overall objectives and intent. Are the method and mechanisms for implementation adequate, or are new mechanisms required?

Continuity and Change

This discussion leads to the final major issue set--how is it possible to maintain continuity in light of a changing political environment? Whatever mechanisms are developed for the planning, classification, and management of these vast land resources, they must have built-in flexibility to meet changing conditions and to reflect changing needs, as well as changing political philosophies. This need for flexibility underlines the importance of a process for review and monitoring the decisions made in light of changing conditions. It also suggests the need for a concerted capacity building effort to bring local, regional, and state programs and processes into full partnership with the existing Federal programs.

These, then, were some of the issue perceptions of the Workshop participants raised at the onset of the discussion and to which the Panel attempted to direct its presentations.

NEED AND FUNCTIONS OF COOPERATIVE CLASSIFICATION AND MANAGEMENT

by Dr. James E. Reckett

There is little to be gained by attempting to develop here a long listing of specific needs for cooperative classification and management. The large body of reports, publications, and other documentary materials provided to us by the Federal-State Commission contains numerous references to these needs. We must assume that this information is well-known by those present at this workshop. Our concern is to consider some new perceptions and approaches to formal cooperative relationships that perhaps have not been adequately explored to date.

When the land transfers initiated by the Native Claims Settlement Act and previously by Alaska Statehood Act are completed, a complex pattern of land ownership will have been developed. However, with the expiration of the Joint Federal-State Land Use Planning Commission, there will be no continuing formal entity in which Federal and State governments are participants. Nevertheless, there will be a considerable period beyond the time of the transfer of lands under section 17(d)(2) of the Alaska Native Claims Settlement Act and the scheduled demise of the Joint Commission before the land ownership and management regimes are finally established. No provisions currently exist for guidance and coordination during this critical period.

Additionally, there are a number of issues and management concerns that will persist both in relation to the final disposition of lands along with their management regimes, and to the long-term development and use of all of the lands of Alaska. The continued interaction of Federal and State throughout

time requires that coordination and cooperation be established and maintained as a "way-of-life" in Alaska.

Institutionalizing Cooperative Management

There are those who are resolved that the bill, to meet the requirements of section 17(d)(2) of the Alaska Native Claims Settlement Act, will contain provisions to define and promote a continuing program of cooperative management between State, Federal and private ownership interests within the State. While the need for continued cooperative activity between Federal and State is recognized in most of the existing (d)(2) legislative proposals, the structure and functional authority of the cooperative body differs markedly among the proposals.

In the design of a cooperative management mechanism, it should be recognized that there are legitimate differences in the policies, management objectives, and management authority at different levels or spheres of government. Each has its own constituency that it must serve. Federal agencies respond to national goals; state agencies to state goals; and local entities to local goals. If each entity of government is left free to operate solely within its area of operational authority, the responsibility to serve its constituency will remain the dominant concern in land or resource management decisions--even when such decisions infringe upon or are in conflict with the legitimate needs or interests of another level. To work toward balance and mutual responsiveness in continued programs of use management, there is the need to establish a formal structure to ensure intergovernmental communication, interaction, and program coordination.

Functional Roles in Cooperative Management

The functional role of cooperative management has not been explicitly defined, and consequently, diverse conceptions of what it entails exist among both its advocates and opponents. There are three distinctive levels of functions that can be used to characterize the operational role or roles of a cooperative entity. These are:

- (1) The Planning Function: to conduct studies and analyses and to serve primarily in an advisory capacity to legislative and management units regarding policy and programs. Such is the functional level of the existing Joint Federal-State Commission.
- (2) The Classification Function: the cooperative body is given responsibility to conduct studies and analyses for land use distribution, to make assignment of land in various use categories, and to identify management programs to be instituted and agency responsibilities for management.
- (3) The Management Function: at this level, the cooperative body assumes the responsibility for study and analysis, the classification and assignment of land, and the authority to direct or assign management functions.

Whatever the level of cooperative activity or the organizational structure employed, it is implicit in the process that an appropriate body of knowledge and information must exist if the decision process is to be rational and balanced. If a diversity of operational activities among various spheres of government are to be coordinated, there is the need to establish and maintain a common and interchangeable data base--one that is constantly updated as new information develops and as new areas of information are brought into existing programs and processes.

Need for a Systemic Process

The constitution of a formal structure for cooperative management, along with the definition of its levels of responsibility to attain specified objectives

in use management, leads eventually to the development of a rational, systematic process for cooperative land use management. The institutionalization of an operational process serves to minimize the unwanted impacts of change--in the views and perspectives within the cooperative structure, as well as within the Federal, State, or local governmental leadership. It establishes a more objective analytical base for management decisions.

A systematic process for cooperative management should establish procedures and mechanisms to be applied in the inventory, analysis, and evaluation of all operational components, including specifically:

- (1) Definition and clarification of the specified goals and objectives of all participatory and associated interest groups within local, state, and national spheres.
- (2) Methods and procedures for the identification and resolution of conflict.
- (3) Rational and equitable procedures for comprehensive review, assessment, and evaluation of existing and proposed management programs and policies.
- (4) Mechanisms and procedures for periodic monitoring and review of on-going management programs and assessment of their effectiveness in terms of stated objectives.

In summary, the need for cooperation and coordination among the governmental entities and land ownerships involved in the use and management of Alaska lands is clear. What remains to be defined is the specific organizational structure of a new cooperative body and the functional level of its operations.

Discussion

The following comments and questions were raised in the Workshop discussion that followed Dr. Hackett's presentation:

- (1) Whatever the level of cooperation, it will be necessary to have a satisfactory body of knowledge if the decision-making process is to be rational; there is need for a common/shared data base.
- (2) Is there need for a separate, distinct body at this time, or are the existing mechanisms adequate?
- (3) Given a body with specific assignment to classify and identify management authority, how binding are the recommendations of this body on the actual agencies to carry out these responsibilities?
- (4) Should there be a time limit on the life of such an agency; are Sunset Laws applicable here?
- (5) There is need for joint machinery because of the three kinds of land owners (and an absence of traditional mechanisms).
- (6) What is the role of the Alaska Coastal Policy Council in these procedures?
- (7) Federal-State relations represent a marble cake and not a layer cake.

ORGANIZATIONAL ALTERNATIVES

by Dr. Anthony James Catanese

The actual organization for land use planning is not as important as the objectives to be attained. The objectives can set the organizational structure for a given context. It must be kept in mind that the organization is created solely to attain the objectives and can vary as objectives change.

This implies that there are alternative organizations that may be able to implement such objectives. These alternatives should be defined and evaluated before settling upon a choice. Henceforth, we shall endeavor to define the most plausible organizations to implement land use objectives for Alaska.

A Continuum of Alternatives

There is a continuum of alternatives, starting with a steady state or "no change" and ranging all the way to a czar-like decision-maker as a highly centralized organization.

Steady State
(Existing)

Highly Centralized
(Land Czar)

In between the ends of the continuum are a number of alternatives. For convenience, we choose to define four basic alternatives within this continuum.

I	II	III	IV
Existing Agencies	New Agency	Commission	Land Czar

As can be seen, each of the four alternatives from I to IV represents an increasing level of change and centralization. Furthermore, there are any number of permutations between these alternatives, and they are not mutually exclusive. Hence, it is possible to have more than one or a permutation of more than one in effect at the same time. It should also be pointed out that we do not choose to stratify the alternatives by level of government since that might imply an erroneous impression of independence.

It is possible to outline some basic characteristics for each alternative organization. In addition, we can discuss briefly some techniques that may accompany each alternative for purposes of cooperation, coordination and conflict-resolution among different levels of government and interested parties.

I. Existing Agencies

The existing agencies of State government, working closely with Federal agencies and coordinating local (boroughs and municipalities) governments, might be able to implement land use and development planning for Alaska. This would require increased cooperation and coordination, largely on a voluntary basis. In addition, a set of techniques should be employed to ensure that coordination and cooperation occurs and conflicts are resolved without resort to the judicial branch of governments.

Some techniques that this alternative would permit include the following:

- (1) Interagency Agreements. Formal written agreements describing how agencies and parties to decisions shall interact.
- (2) Legislation, Rules, and Regulations. Through congressional or State legislative action, the specifics of decision-making are prescribed. Furthermore, agencies are given the responsibility and authority to write rules and regulations to implement legislative objectives.
- (3) Executive Orders. Presidents, governors, and local chief executives may employ broad powers for implementation through the use of executive leadership formalized in orders.
- (4) Good Offices. Chief executives, as well as congressional leaders and State legislators, can use their persuasion, respect, and authority through their "good offices" to implement objectives.
- (5) Authority/Responsibility Mandate. The mandate of agencies can be reviewed to determine if adequate authority exists to meet their responsibilities. If not, executive or legislative changes or reorganization may be necessary.
- (6) Referenda. While somewhat unpredictable, Alaska has an initiative and referendum system that can be used to implement the public will.
- (7) Network and Consistency. Using the coastal zone program as a model, it may be possible to form a network of existing legislation, rules, and regulations to implement objectives. Using this network, it may be possible to insure consistent actions amongst governments.

II. New Agency

A new state-level agency of some appropriate organizational stature could be created. It would have a proper mandate as well as authority and responsibility for land use decisions. Since this means a more unified state decision-making role, this could require a strong sense of direction for functions presently found in the Departments of Environmental Conservation, Natural Resources, Community and Regional Affairs, and Policy Development and Planning. Such an overtaking of State interests in land use would probably require some reshuffling of agency components in order to create a more

streamlined structure and minimize diversification of responsibility. It could also enable stronger planning at the State level.

A federal counterpart might be possible. While unlikely that a major new agency would be formed just for Alaska, it may be possible to create a coordinating Federal group for land decisions in Alaska. This would be analogous to the Field Committee or Field Director Committee for Alaska. Obviously such a group would interact closely with state agencies or a new state agency.

Techniques for coordination, cooperation, and conflict-resolution would include all of those included under alternative I, as well as a few new techniques, as follows:

- (1) Arbiter. A conflict-resolver who has the authority to mediate, arbitrate, or negotiate problems.
- (2) Administrative Courts. An administrative review system which enables an appeal of land decisions prior to and sometimes as a surrogate for the judicial system.
- (3) Plan or Policy Framework. A statewide plan or policy direction which provides a framework for land use decisions; some administrative mechanism also would be necessary to determine if individual decisions are in conformance.

III. Commission

It is possible to form a commission with a fair degree of independence to deal with land use objectives. There are several proposals for such a commission.

- (1) Cooperative Planning Commission. A number of options have been prepared by FSLUPC, Senator Gravel, and Senator Stevens, for example, which include a joint federal-state membership and mandate. Other aspects not already evaluated for such a commission would include membership for Congressional delegates and State legislators, as well as interest groups. In addition, powers beyond advisement might include kinds of land classification and perhaps development controls.

There may be some variations to the cooperative planning model. For example, Commissioners might be citizen members not necessarily representing a governmental level but rather different interest groups. There may be regional and/or local representatives on such a commission. There may even be the possibility of a commission that is essentially a staff operation.

- (2) Other than Cooperative. An alternative to a cooperative commission would be a state commission with a new statewide mandate. For example, a State Land Use Commission could be created by the legislature. That commission could include interest groups, regional and local representatives, elected leaders, and citizens. Its authority could include land classifications, zoning, development controls, and review. It would also advise the President and Governor on needed programs for Alaska.

Techniques for coordination, cooperation, and conflict-resolution could include all those shown under I and II. It should be apparent, however, that the Commission approach involves much more participation than other alternatives.

IV. Land Czar

A highly centralized organization may be possible for Alaska, with a virtual land czar or some reasonable facsimile. This person and organization would have broad powers for land classification, development controls, such as zoning, and management authority. So broad could such powers be that it is fair to question whether the person serving in this capacity should be appointed or elected.

Assuming that such a person would be appointed based upon a set of minimum qualifications, not unlike judges, it could be a state, federal, or joint arrangement. If a state level office, this person could be a State Land Use Commissioner or Officer, along with a staff of his or her choosing. In this case, the Governor with consent of the Senate could make the appointment. Similarly, the President with the consent of the U. S. Senate could appoint a Federal Land Use Commissioner or Director for Alaska. A joint arrangement

ORGANIZATION/PLANNING FORMATS

by Professor Irving Hand

The Matrix developed at the conclusion of yesterday's discussion (Diagram 2) --in the processes and issues it seeks to relate--provides a useful device both in identifying the circumstances that may apply in this interrelationship as well as exploring the relative ability of each of the four alternative approaches to deal with the objectives of Cooperative Planning and Management in Alaska.

I. Existing Agencies

As a first step in exploring this alternative, it may be appropriate to select a number of existing agencies whose responsibilities and activities relate to the central concerns of cooperative planning and management and to develop a profile of these key agencies to portray, as factually as possible: (a) what does exist, (b) how it works, and (c) what the interactions are, and more particularly, what they are not. In this examination, insights may be gained concerning the major landowners and the mutual interests they might have, both of a general nature as well as in specific instances. It also might provide the hard documentation being sought in terms of the broad public interest that cooperative management is expected to satisfy and, in turn, be supported by. These understandings should be developed as fully as possible if, indeed, these parties of interest are to be brought into some system of cooperative planning and management.

As a result of this analysis, one might find that existing laws provide for structures and arrangements which may not have been fully developed which might be usefully brought into being. It might be discovered that responsibilities have been provided for, but have not been fully exercised, which, if they were, might be instrumental in both classifying and differentiating

might be a Federal-State Land Use Officer for Alaska appointed jointly by the President and Governor.

With a broad array of powers, the land czar would settle most conflicts and be responsible for all coordinations and cooperation. The offices of the President and Governor would add considerable strength to those powers. Beyond that, appeals or conflicts would have to be resolved in the courts.

THE FUNCTION-APPLICATION MATRIX

The matrix presented previously in the Briefing/Summary as Diagram 2 was developed by Dr. Steiss in an effort to summarize the first day's discussion in the Workshop. The horizontal axis of this matrix represents the various functional responsibilities outlined by Dr. Hackett in his presentation: Review, Planning, Classification, and Management. The vertical axis represents the levels of application possible under the concept of cooperative management: (1) the whole state, (2) newly designated federal areas, (3) areas of intermixed ownership/control, and (4) critical areas of particular concern. It was suggested that the discussion on the second day of the Workshop begin with an examination of the possible "fit" of the various organizational approaches with this matrix.

the relative importance of what needs to be done. In short, such analysis would assist in clarifying existing authorities.

This examination of key selected agencies also would provide an informed basis on which to proceed in the exploration of other options in the four alternative approaches outlined by Dr. Catanese, and in judging their relative efficacy. Such an analysis would provide an important benchmark against which to evaluate these other alternatives. Thus, before major efforts are launched to "invent" new solutions, it would seem desirable to see if existing organizations/responsibilities could be "orchestrated" to achieve the objectives of cooperative planning and management.

II. Create a New Agency

There is a tendency, when confronted with a new set of problems (or with a set of problems for which "old" solutions do not seem appropriate), to create a new agency to deal with these problems. It is as if the "freshness" of this new agency will somehow guarantee new solutions. It may be possible, however, to reconstitute an existing agency, in terms of its activities--their range and substance--and its support, and by so doing, achieve the same end results without having to experience the "growing pains" of a totally new agency. It may be necessary, in selecting this latter approach, to undertake a rather complete reworking of this agency's authorizing legislation to ensure that its mandate conforms with the new expectations and objectives.

Of particular concern in this option is an understanding of the role of the State in such an endeavor (within the context of the four approaches, it reflects a special focus in this instance). An understanding of the State's role should address: what it is, what it can be, what you would like it to be, and what you think might be achievable!

In this connection, I would make particular reference to the State Planning Office in the Office of the Governor. From a quick reading, it would appear that the responsibilities provided this agency by statute are very broad and include the responsibility for comprehensive statewide land use planning. Indeed, the actions taken to date in conjunction with the Coastal Zone Management program, and the mounting interest and activities associated with this program would suggest that this agency might appropriately serve as the State's focus for cooperative planning and management processes. Quite clearly, the Office of State Planning could deal both with the geography of the responsibilities we have been discussing and the particular land use issues that are involved, as well as the elements in the process, as identified across the top of the Matrix. I would note that the management element, relative to the discussion of this Workshop, would have ingredients similar to those which would face a successor agency to the Federal-State Land Use Planning Commission.

In addition, the considerations involved in bringing together a selection of people to deal with the interests that have been touched upon in our discussions to date might very well apply in trying to develop the appropriate interfaces as the State Planning Office deals with a land use planning responsibility. As has been suggested, a statewide planning effort could serve as the vehicle for greater citizen input through the related development of State-regional (State-borough) planning commissions. I would urge that this option be examined very closely as Statehood in Alaska matures and as State government increasingly exercises powers and duties set out in law. Such legislative directives, I would imagine, were deemed highly important in the establishment of the State and its expected functioning and should receive a thorough review in the context

Whether this Commission is a State Commission, a State-Regional Commission, or a Federal-State Commission, as noted in the Four Alternative Approaches, its membership composition should reflect citizen leadership (as wide ranging of public interests and views as may be strategically useful), the elected official (Federal, State and local), the key agencies involved (Federal and State), the regional concern and the private sector.

IV. The Land Czar

The fourth option perhaps becomes a viable consideration only after the chronology of other options has been evaluated and found to be wanting. There consideration, and ensuing judgment, might very well suggest how you might move with this fourth alternative, should that become real. The cautions offered concerning this alternative, must be fully examined, however.

Assessment of Alternatives

In suggesting that one go through this kind of review of the four approaches in relation to the elements of the Matrix, in my mind's eye, I have attempted to do this within the period of our brief visit and acquaintance.

I have the impression that the Existing Agency approach would portray some measure of fragmentation, of responsibilities being both overlapping and mutually exclusive, with only limited (although perhaps growing) opportunities to bring parties of interest together in selected ways to deal with specific situations.

Whether one goes with options II or III, the review and coordination, planning and classification functions, as indicated in the Matrix, appear to be a

of the objectives of cooperative planning and management.

III. Commission

The third alternative represents a variant of the "new agency" approach and grows out of an evaluation of the relative adequacy of State government to deal with these responsibilities at this time. It does not and should not foreclose the opportunity for that judgment to change if indeed State government is to be recognized as a full partner, if not the central focus of the institutional arrangement we call the Federal system of government. In short, if State government were to be used to its fullest potential, many of the "interim" organizational arrangements that have been proposed over the past several decades to achieve the objectives of comprehensive land use planning may prove to be unnecessary.

If this option becomes a reality, as certainly appears to be the case in light of the several bills currently receiving attention, I would emphasize as a highly important consideration that the parties of interest be brought to the table as members of this Commission in a fuller fashion that appears to have been suggested in the pending legislation. That is to say, the membership of such a Commission should be expanded to include representation from all interested parties. Such participation, however sensitive, can be instrumental in gaining conflict identification and resolution in an atmosphere amenable to more positive shaping and direction of public policy. This regularized opportunity to communicate, learn, and hopefully, begin to understand the range of views that may apply in a given situation can help to gain the cooperative planning and management so earnestly desired for Alaska.

bundle of responsibilities for a planning agency, in relation to which a management agency (and there could and are likely to be several) would exercise its responsibilities.

Pending the adequacy of the planning process (the information and analyses upon which it is based), the rigorousness of the classification system (the level of relative broadness or detail presented), as well as the accountability for its application (consistency between plan and classification and implementing management), some consideration might well be given to the requirement of a management plan, its review and comment by the planning agency, and the monitoring and periodic assessment of its application. Pertinent to this consideration could be the planning agency's review of the budget of the management agency and the activities it represents. Such a review should be a useful support to the management agency in its efforts, as well as a means for furthering the effective implementation of the planning and classification system.

As you might conclude, these latter observations accept the role of a planning agency as advisory, but suggest that such a role as a reflection of its quality can be persuasive and significant. No small measure of this recognition may be assisted by a council or commission with the membership composition I have indicated. In addition, administrative requirements that already have been suggested--such as requiring a statement of justification for the public record when a management plan is not consistent with a recommended plan or classification system--may be appropriately employed.

Within the limits of our discussion, it would seem appropriate to suggest that the planning agency could deal with the array of considerations indicated by the Matrix designations: whole state, newly designated areas, intermixed, and critical areas. These would appear to be a bundle of concerns that relate to the responsibilities of a planning agency should seek to fulfill in achieving the cooperative planning and management system emerging from these deliberations.

Discussion

The following comments and questions were among those raised in the Workshop discussion that followed Professor Hand's presentation:

- (1) In response to a question as to how such an organization/planning system might interact with the Federal system, it was suggested that this interaction could be accomplished through representatives of the Secretaries and members of the Congressional delegation on the Commission.
- (2) It was suggested that such an approach (the inclusion of elected officials on a Commission) would arm the Commission with "the ammunition for political negotiations".
- (3) The second and third approaches, it was observed, would provide for a greater integration of the various planning functions into a more comprehensive approach. State, local, and private interests could be coordinated through a State Plan which could then be interfaced with the Federal system.
- (4) The Commission might be relatively larged, staffed by the State Planning Office, with a designated "life expectancy".
- (5) Provision should be made in any organization/planning format for "evolution during the transition period".
- (6) The Federal Field Committee "model" governed much of the perceptions in the early days of the Federal-State Land Use Planning Commission. This "model" seems to be reflected in the Administration amendments to H.R. 39.
- (7) It was suggested that while such a "model" may relate well to the existing and newly designated Federal areas, the other concerns are primarily those of the State and local governments which cannot be adequately reflected in such an approach.

(8) There was general consensus as to the need for an Interium Joint Commission to carry out the responsibilities of coordination and arbitration. Such a Commission should:

- (a) have the responsibility to call together subcommittees and "task forces" to deal with specific issues;
- (b) have the authority to call for binding arbitration (although it may not be the arbitrator); and
- (c) have the power of administrative review.

IMPLEMENTATION TECHNIQUES

by David L. Callies

The management of land use in Alaska by means of "lower 48" techniques is complicated by the pattern and scope of land tenure which is unique among the 50 states. Several hundred million acres are held in fee by Federal and state governmental agencies. Even after the withdrawal of Native claim lands (under the Alaska Native Claims Settlement Act,¹ or ANCSA) which will remove approximately 40 million acres from the public domain, State and Federal agencies will own between them approximately 150 million acres each.

The effect of this massive public ownership both facilitates and complicates the public management of land. Facilitates because the ownership of land carries with it vastly more potential for management and control than the more traditional control over the use of land by a governmental entity through police power regulation. Complicates because generally a hierarchically superior level of government is not subject to the regulation and control (at least while exercising governmental--as opposed to proprietary--functions) of an inferior one. Thus it is difficult to devise a system, which, for example, subjects federally owned lands to the jurisdiction of State and local agencies without the express permission of the Federal government. (Parenthetically, the same is generally true with respect to local government control over State government land). Hence, the need for some cooperative effort if the management of land in Alaska is to be coordinated around resource conservation and development patterns, rather than around chance public ownership patterns.

Implicit in the above is the basic assumption that there are but three applicable categories of techniques for government to manage land resources. These are:

1. The exercise of the police power. Certain rules and regulations may be promulgated by general purpose local governments and their respective agencies for the health safety and welfare of the population. State and local (through State delegation or home rule) governments have such power with respect to the use of land. The Federal government generally does not. Thus, State and local (boroughs, cities) governments in Alaska need not depend upon their powers and duties as owners in order to regulate land within their respective jurisdictions. Other things being equal, the State has the general power to regulate all land within its jurisdiction, whether or not it owns such land, subject only to the usual limits imposed by constitutional standards of equal protection and due process. However, all things are not equal in Alaska because vast areas are held in fee by a superior governmental authority--the Federal government --which is not subject to the land use regulatory power of the State of Alaska or any of its local government units unless it chooses to submit to that authority.

The land use control techniques which might be used, provided Federal consent is secured, range from fairly rigid classification systems, reminiscent of local zoning, to fairly loose permitting and identification of major development for review.² The following

is a brief review of several such techniques:

- a. Statewide classification of all lands. All land in the State could be divided into zones in accordance with a land classification system. Regulations and restrictions would set out in detail the uses permitted in each zone. Local land use control authority could be preempted or not. Given the size of most boroughs, State-Federal authority would presumably take precedence over inconsistent borough zoning. On the other hand, from a d-2 lands perspective, the classification decisions of smaller units of local government--first and second class cities--would be largely irrelevant and could be exempted from such preemption. Such a system have been adopted by the State of Hawaii.
- b. The "zoning" of selected areas. Certain areas of the State could be selected for special attention in order to protect critical values. Control over both private and public lands within the boundaries of such an area--park-like in nature--could rest with an agency or commission which would again "classify" such lands with restrictions pertaining to each classification.

The Tahoe Regional Planning Agency, a bi-state agency more or less governing the use of land in the Lake Tahoe region in California and Nevada, is roughly analogous, though it tends rather toward the permitting procedures noted below. A better

example is the Adirondack Park Agency in New York which is authorized by state statute to classify and manage both state (approximately 3 million acres) and private (approximately 3 million acres) lands within the 6-million-acre park boundary, and whose classification and regulation supercede those of the many local governments whose jurisdictions are otherwise within these boundaries. The agency's land use authority has been upheld in several New York cases.

- c. The plan as a statutory instrument. City and borough land use controls could be tied to local and regional plans which must be both internally consistent and consistent with a statewide plan. Conceivably, Federal plans and activities could be made (voluntarily) to be consistent as well. This is a system much favored in Europe (Germany, Netherlands, United Kingdom) and increasingly popular in the Pacific Northwest. Oregon, for example, has adopted such a tripartite planning system whereby local land use plans and controls must be consistent with a statewide plan consisting of land use policies, goals, and objectives. The matter of such consistency is being extensively litigated in the Portland region where a local environmental group, 1000 Friends of Oregon, is contesting the amount of developable land contained in the regional (CRAG) plan for consistency with statewide goals.

- d. Developments of Regional Impact (DRI) and Areas of Critical State Concern (ACSC). The State or a commission could identify areas of critical state concern which should be free of any development without a special regional or statewide review and permitting process in order to guarantee that areas of importance to the State or Native Corporations are not lost, damaged, etc. Certain large or unusually intrusive development (DRI's) could also be reviewed on the ground that wherever located, they so affect the region or state that their siting should be subject to regional or statewide review for permission to locate anywhere.

The American Law Institute has drafted a code which, in its Article 7, sets out the structure and rationale behind such a system (see: A Model Land Development Code, A.L.I., 1977). This section of the model code has been adopted almost intact by the State of Florida in its Environmental Land and Water Management Act of 1973. ACSC's, such as the Big Cypress Swamp, have been identified. The Florida list of DRI's includes marinas, highway interchanges, power plants, new communities, residential developments over a given magnitude, shopping centers, and university campuses.

- e. Infrastructure controls. State and local control over the building and permitting of infrastructure improvements (roads, sewer and water lines, etc.) can do much to channel development in directions which are desirable. The State, Native corporations, and the Federal government can, by using the funds at

their disposal, encourage and entice development in certain areas and through certain corridors by providing such improvements "free" or at modest cost, thereby making development there more attractive. This approach can correspondingly (within limits) refuse both to permit or provide such improvements in areas determined desirable to be development free.

Both municipalities (Ramapo, N.Y. and Petaluma Calif.) and regions (Twin Cities area in Minnesota) have devised such systems which have withstood legal challenges.³

A final note: There is a small but not insignificant body of law which not only supports but mandates a limited degree of Federal control over nonfederal land adjacent to Federal holdings.⁴ There is even some support for Federal interference with local government land use regulations in the event that State and Local governments are remiss in protecting national health. Thus, one Federal court has held that federally proposed Clean Air Act transportation plan requirements do not "conflict with the proper functions of the system of Federalism embodied in our constitution."⁵

2. Eminent Domain and Public Ownership. The usual context for a discussion of land use management via eminent domain and public ownership revolves around issues of land acquisition (by condemnation, bargain, or sale), public use and public purpose. However, in Alaska the issue is quite the reverse. The extent to which withdrawal from or changes in public ownership may affect the use of land in

Alaska. While the vast majority of property rights in the State are presently in Federal lands, this will soon change as both the private withdrawals from Federal ownership by the Native corporations and the public withdrawals by the State are "patented." The pattern of such permanent withdrawals from the Federal land bank will, in all likelihood, help determine the practical use of Federal, State, and private land in Alaska. Selected withdrawals can effectively surround or fragment key Federally owned parcels and so help determine what may be feasible thereon--unless the Federal government should choose to "condemn" them back, which it could do only if: (a) it had the funds; and (b) it can articulate a public purpose for the acquisitions. Both the Native corporations and the State could theoretically withdraw lands for such a purpose.

3. Grant Conditions. The Federal government is conspicuously notorious for exerting control over the use of land--which it otherwise lacks--which it does not own by means of conditions attached to grants for such as planning, urban renewal, highway construction, and waste water treatment facility construction.⁶ While recently, the U.S. Supreme Court has cut back the untrammelled power to attach conditions unrelated to the general purpose of the grant,⁷ nonetheless, this category of techniques has the potential for affecting the pattern of land use in Alaska. Presumably, most States and the Federal government can and will attach significant conditions to whatever rights in land--leasehold, easements, licenses, or whatever--they convey to the private sector for development purposes. The Native

Corporations, of course, can do the same. The fact that the "grant" in these instances consists of rights in land rather than money should have little significance. Moreover, the plethora of Federal grant programs involving lands could, and probably will, contain the usual run of conditions regarding the environment, design, etc. Finally, it may be worth investigating whether either the Native or the State withdrawals must be altogether unconditional. Certain Federal lands may be impressed with notions of public trust that could well restrict the development potential thereof, regardless of the level of governmental ownership.

The above suggests the need for some form of cooperative management of Alaskan lands which by and large employs a mix of all three categories of techniques. The police power techniques especially could be generally inapplicable to any governmentally owned lands by a lower level of government without the superior level's express authority.

The Commission as a Mechanism for Coordination. It is conceivable that a Federal-State land use commission is the best way to coordinate such diverse land use management and control techniques, given the patterns of land tenure in Alaska, as noted above. As mentioned elsewhere in this report, such a Commission should have a measure of land use management authority.

Such a commission also could provide a potential developer with a "single stop" in obtaining the plethora of permits and permissions usually required in many "lower 48" jurisdictions to undertake even the most modest of projects. While a good measure of regulations and management is probably warranted

in Alaska, the choking off of development is not, given national energy and mineral needs, and State employment and development goals. Fragmenting the process of obtaining permits to undertake such development is neither useful nor desirable, and the trend toward "one-stop" permitting is increasingly discernable even in such notoriously environmentally conscious states as California and Hawaii.⁸

Notes

¹ PL 92-203

² See, for example: Bosselman and Callies, The Quiet Revolution in Land Use Controls (Washington, D.C. Council on Environmental Quality, Government Printing Office, 1972); Healy, Land Use and the States (Baltimore: Johns Hopkins Press, 1976).

³ See: Golden v. Town of Ramapo, 334 N.Y.S. 2d 138, 285 N.E. 2d 181 (1972); Construct. Indus. Assoc. v Petaluma, 375 F. Supp. 574 (N.D. Calif., 1974), Rev'd, 522 F. 2d 867 (6th Cir., 1975).

⁴ See: Sierra Club v. Department of the Interior, F. Supp., N.D. Calif., 1975, which specifically required the Secretary of the Interior to protect a national park from potential damage caused by the private use of adjacent land.

⁵ Commonwealth of Pennsylvania v Environmental Protection Agency, 500 F 2d 246 (1974), at 262. Three other Circuit Courts, however, disagree: Maryland v. Environmental Protection Agency, F.2d (6th Cir, 1975) Brown v. Environmental Protection Agency, 521 F 2d 827 (9th Cir., 1975), and District of Columbia v. Train, 521 F. 2d 071 (D.C. Cir., 1975).

⁶ See: Magman, Urban Planning and Land Development Control Law (1975 Supplement), Ch. 20.

⁷ National League of Cities v. Usury (1977)

⁸ See: Bosselman, Feurer, and Siemin, The Permit Explosion, Washington, DC.: Urban Land Institute, 1977).

ORGANIZATION/PLANNING FORMATS

by Professor Irving Hadd

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III. Commission

The third alternative represents a variant of the "new agency" approach and grows out of an evaluation of the relative adequacy of State government to deal with these responsibilities at this time. It does not and should not foreclose the opportunity for that judgment to change if indeed State government is to be recognized as a full partner, if not the central focus of the institutional arrangement we call the Federal system of government. In short, if State government were to be used to its fullest potential, many of the "interim" organizational arrangements that have been proposed over the past several decades to achieve the objectives of comprehensive land use planning may prove to be unnecessary.

If this option becomes a reality, as certainly appears to be the case in light of the several bills currently receiving attention, I would emphasize as a highly important consideration that the parties of interest be brought to the table as members of this Commission in a fuller fashion that appears to have been suggested in the pending legislation. That is to say, the membership of such a Commission should be expanded to include representation from all interested parties. Such participation, however sensitive, can be instrumental in gaining conflict identification and resolution in an atmosphere amenable to more positive shaping and direction of public policy.

This regularized opportunity to communicate, learn, and hopefully, begin to understand the range of views that may apply in a given situation can help to gain the cooperative planning and management so earnestly desired for Alaska.

Whether this Commission is a State Commission, a State-Regional Commission, or a Federal-State Commission, as noted in the Four Alternative Approaches, its membership composition should reflect citizen leadership (as wide ranging of public interests and views as may be strategically useful), the elected official (Federal, State and local), the key agencies involved (Federal and State), the regional concern and the private sector.

IV. The Land Czar

The fourth option perhaps becomes a viable consideration only after the chronology of other options has been evaluated and found to be wanting. This consideration, and ensuing judgment, might very well suggest how you might move with this fourth alternative, should that become real. The cautions offered concerning this alternative, must be fully examined, however.

Assessment of Alternatives

In suggesting that one go through this kind of review of the four approaches in relation to the elements of the Matrix, in my mind's eye, I have attempted to do this within the period of our brief visit and acquaintance.

I have the impression that the Existing Agency approach would portray some measure of fragmentation, of responsibilities being both overlapping and mutually exclusive, with only limited (although perhaps growing) opportunities

to bring parties of interest together in selected ways to deal with specific situations.

Whether one goes with options II or III, the review and coordination, planning, and classification functions, as indicated in the Matrix, appear to be a bundle of responsibilities for a planning agency, in relation to which a management agency (and there could and are likely to be several) would exercise its responsibilities.

Pending the adequacy of the planning process (the information and analyses upon which it is based), the rigorousness of the classification system (the level of relative broadness or detail presented), as well as the accountability for its application (consistency between plan and classification and implementing management), some consideration might well be given to the requirement of a management plan, its review and comment by the planning agency, and the monitoring and periodic assessment of its application.

Pertinent to this consideration could be the planning agency's review of the budget of the management agency and the activities it represents. Such a review should be a useful support to the management agency in its efforts, as well as a means for furthering the effective implementation of the planning and classification system.

As you might conclude, these latter observations accept the role of a planning agency as advisory, but suggest that such a role as a reflection of its quality can be persuasive and significant. No small measure of this recognition may be assisted by a council or commission with the membership composition I have indicated. In addition, administrative requirements that already have been suggested--such as requiring a statement of justification for the public

record when a management plan is not consistent with a recommended plan or classification system--may be appropriately employed.

Within the limits of our discussion, it would seem appropriate to suggest that the planning agency could deal with the array of considerations indicated by the Matrix designations: whole state, newly designated areas, intermixed, and critical areas. These would appear to be a bundle of concerns that relate to the responsibilities of a planning agency should seek to fulfill in achieving the cooperative planning and management system emerging from these deliberations.

Discussion

The following comments and questions were among those raised in the Workshop discussion that followed Professor Hand's presentation:

- (1) In response to a question as to how such an organization/planning system might interact with the Federal system, it was suggested that this interaction could be accomplished through representatives of the Secretaries and members of the Congressional delegation on the Commission.
- (2) It was suggested that such an approach (the inclusion of elected officials on a Commission) would arm the Commission with "the ammunition for political negotiations".
- (3) The second and third approaches, it was observed, would provide for a greater integration of the various planning functions into a more comprehensive approach. State, local, and private interests could be coordinated through a State Plan which could then be interfaced with the Federal system.
- (4) The Commission might be relatively larger, staffed by the State Planning Office, with a designated "life expectancy".
- (5) Provision should be made in any organization/planning format for "evolution during the transition period".
- (6) The Federal Field Committee "model" governed much of the perceptions in the early days of the Federal-State Land Use Planning Commission. This "model" seem to be reflected in the Administration amendments to H.R. 39.

- (7) It was suggested that while such a "model" may relate well to the existing and newly designated Federal areas, the other concerns are primarily those of the State and local governments which cannot be adequately reflected in such an approach.
- (8) There was general consensus as to the need for an Interim Joint Commission to carry out the responsibilities of coordination and arbitration. Such a Commission should:
 - (a) have the responsibility to call together subcommittees and "task forces" to deal with specific issues;
 - (b) have the authority to call for binding arbitration (although it may not be the arbitrator); and
 - (c) have the power of administrative review.

IMPLEMENTATION TECHNIQUES

by David L. Callies

The management of land use in Alaska by means of "lower 48" techniques is complicated by the pattern and scope of land tenure which is unique among the 50 states. Several hundred million acres are held in fee by Federal and state governmental agencies. Even after the withdrawal of Native claim lands (under the Alaska Native Claims Settlement Act,¹ or ANCSA) which will remove approximately 40 million acres from the public domain, State and Federal agencies will own between them approximately 150 million acres each.

The effect of this massive public ownership both facilitates and complicates the public management of land. Facilitates because the ownership of land carries with it vastly more potential for management and control than the more traditional control over the use of land by a governmental entity through police power regulation. Complicates because generally a hierarchically superior level of government is not subject to the regulation and control (at least while exercising governmental--as opposed to proprietary--functions) of an inferior one. Thus it is difficult to devise a system, which, for example, subjects federally owned lands to the jurisdiction of State and local agencies without the express permission of the Federal government. (Parenthetically, the same is generally true with respect to local government control over State government land). Hence, the need for some cooperative effort if the management of land in Alaska is to be coordinated around resource conservation and development patterns, rather than around chance public ownership patterns.

Implicit in the above is the basic assumption that there are but three applicable categories of techniques for government to manage land resources. These are:

1. The exercise of the police power

Certain rules and regulations may be promulgated by general purpose local governments and their respective agencies for the health safety and welfare of the population. State and local (through State delegation or home rule) governments have such power with respect to the use of land. The Federal government generally does not. Thus, State and local (boroughs, cities) governments in Alaska need not depend upon their powers and duties as owners in order to regulate land within their respective jurisdictions. Other things being equal, the State has the general power to regulate all land within its jurisdiction, whether or not it owns such land, subject only to the usual limits imposed by constitutional standards of equal protection and due process. However, all things are not equal in Alaska because vast areas are held in fee by a superior governmental authority--the Federal government--which is not subject to the land use regulatory power of the State of Alaska or any of its local government units unless it chooses to submit to that authority.

The land use control techniques which might be used, provided Federal consent is secured, range from fairly rigid classification systems, reminiscent of local zoning, to fairly loose permitting and identification of major development for review.² The following is a brief review of several such techniques:

- (a) Statewide classification of all lands. All land in the State could be divided into zones in accordance with a land classification system. Regulations and restrictions would set out

in detail the uses permitted in each zone. Local land use control authority could be preempted or not. Given the size of most boroughs, State-Federal authority would presumably take precedence over inconsistent borough zoning. On the other hand, from a (d)(2) lands perspective, the classification decisions of smaller units of local government--first and second class cities--would be largely irrelevant and could be exempted from such preemption. Such a system has been adopted by the State of Hawaii.

- (b) The "zoning" of selected areas. Certain areas of the State could be selected for special attention in order to protect critical values. Control over both private and public lands within the boundaries of such an area--park-like in nature--could rest with an agency or commission which would again "classify" such lands with restrictions pertaining to each classification.

The Tahoe Regional Planning Agency, a bi-state agency more or less governing the use of land in the Lake Tahoe region in California and Nevada, is roughly analogous, though it tends rather toward the permitting procedures noted below. A better example is the Adirondack Park Agency in New York which is authorized by state statute to classify and manage both state (approximately 3 million acres) and private (approximately 3 million acres) lands within the 6-million-acre park boundary, and whose classification and regulation supersede those of the many local governments whose jurisdictions are otherwise within those boundaries. The agency's land use authority has been upheld in several New York cases.

- (c) The plan as a statutory instrument. City and borough land use controls could be tied to local and regional plans which must be both internally consistent and consistent with a statewide plan. Conceivably, Federal plans and activities could be made (voluntarily) to be consistent as well. This is a system much favored in Europe (Germany, Netherlands, United Kingdom) and increasingly popular in the Pacific Northwest. Oregon, for example, has adopted such a tripartite planning system whereby local land use plans and controls must be consistent with a statewide plan consisting of land use policies, goals, and objectives. The matter of such consistency is being extensively litigated in the Portland region where a local environmental group, 1000 Friends of Oregon, is contesting the amount of developable land contained in the regional (CRAG) plan for consistency with statewide goals.
- (d) Developments of Regional Impact (DRI) and Areas of Critical State Concern (ACSC). The State or a commission could identify areas of critical state concern which should be free of any development without a special regional or statewide review and permitting process in order to guarantee that areas of importance to the State or Native Corporations are not lost, damaged, etc. Certain large or unusually intrusive development (DRI's) could also be reviewed on the ground that wherever located, they so affect the region or state that their siting should be subject to regional or statewide review for permission to locate anywhere.

The American Law Institute has drafted a code which, in its Article 7, sets out the structure and rationale behind such a system (see: A Model Land Development Code, A.L.I., 1977).

This section of the model code has been adopted almost intact by the State of Florida in its Environmental Land and Water Management Act of 1973. ACSC's, such as the Big Cypress Swamp, have been identified. The Florida list of DRI's includes marinas, highway interchanges, power plants, new communities, residential developments over a given magnitude, shopping centers, and university campuses.

- (e) Infrastructure controls. State and local control over the building and permitting of infrastructure improvements (roads, sewer and water lines, etc.) can do much to channel development in directions which are desirable. The State, Native corporations, and the Federal government can, by using the funds at their disposal, encourage and entice development in certain areas and through certain corridors by providing such improvements "free" or at modest cost, thereby making development there more attractive. This approach can correspondingly (within limits) refuse both to permit or provide such improvements in areas determined desirable to be development free. Both municipalities (Ramapo, N. W., and Petaluma, California) and regions (Twin Cities area in Minnesota) have devised such systems which have withstood legal challenges.³

A final note: There is a small but not insignificant body of law which not only supports but mandates a limited degree of Federal

control over nonfederal land adjacent to Federal holdings.⁴ There is even some support for Federal interference with local government land use regulations in the event that State and Local governments are remiss in protecting national health. Thus, one Federal court has held that federally proposed Clean Air Act transportation plan requirements do not "conflict with the proper functions of the system of Federalism embodied in our constitution."⁵

II. Eminent Domain and Public Ownership

The usual context for a discussion of land use management via eminent domain and public ownership revolves around issues of land acquisition (by condemnation, bargain, or sale), public use and public purpose. However, in Alaska the issue is quite the reverse --the extent to which withdrawal from or changes in public ownership may affect the use of land in Alaska. While the vast majority of property rights in the State are presently in Federal lands, this will soon change as both the private withdrawals from Federal ownership by the Native corporations and the public withdrawals by the State are "patented." The pattern of such permanent withdrawals from the Federal land bank will, in all likelihood, help determine the practical use of Federal, State, and private land in Alaska. Selected withdrawals can effectively surround or fragment key Federally owned parcels and so help determine what may be feasible thereon--unless the Federal government should choose to "condemn" them back, which it could do only if: (a) it had the funds; and (b) it can articulate a public purpose for the acquisitions. Both the Native corporations and the State could theoretically withdraw lands for such a purpose.

III. Grant Conditions

The Federal government is conspicuously notorious for exerting control over the use of land--which it otherwise lacks--which it does not own by means of conditions attached to grants for such as planning, urban renewal, highway construction, and waste water treatment facility construction.⁶ While recently, the U. S. Supreme Court has cut back the untrammelled power to attach conditions unrelated to the general purpose of the grant,⁷ nonetheless, this category of techniques has the potential for affecting the pattern of land use in Alaska. Presumably, most States and the Federal government can and will attach significant conditions to whatever rights in land--leasehold, easements, licenses, or whatever--they convey to the private sector for development purposes. The Native Corporations, of course, can do the same. The fact that the "grant" in these instances consists of rights in land rather than money should have little significance. Moreover, the plethora of Federal grant programs involving lands could, and probably will, contain the usual run of conditions regarding the environment, design, etc. Finally, it may be worth investigating whether either the Native or the State withdrawals must be altogether unconditional. Certain Federal lands may be impressed with notions of public trust that could well restrict the development potential thereof, regardless of the level of governmental ownership.

The above suggests the need for some form of cooperative management of Alaskan lands which by and large employs a mix of all three categories of techniques. The police power techniques especially could be generally inapplicable to any governmentally owned lands by a lower level of government without the superior level's express authority.

The Commission as a Mechanism for Coordination

It is conceivable that a Federal-State land use commission is the best way to coordinate such diverse land use management and control techniques, given the patterns of land tenure in Alaska, as noted above. As mentioned elsewhere in this report, such a Commission should have a measure of land use management authority.

Such a commission also could provide a potential developer with a "single stop" in obtaining the plethora of permits and permissions usually required in many "lower 48" jurisdictions to undertake even the most modest of projects. While a good measure of regulations and management is probably warranted in Alaska, the choking off of development is not, given national energy and mineral needs, and State employment and development goals.

Fragmenting the process of obtaining permits to undertake such development is neither useful nor desirable, and the trend toward "one-stop" permitting is increasingly discernable even in such notoriously environmentally conscious states as California and Hawaii.⁸

Notes

¹PL 92-203

²See, for example: Bosselman and Callies, The Quiet Revolution in Land Use Controls, (Washington, D.C. Council on Environmental Quality, Government Printing Office, 1972); Healy, Land Use and the States, (Baltimore: Johns Hopkins Press, 1976).

³See: Golden v. Town of Ramapo, 334 N.Y.S. 2d 138, 285 N.E. 2d 181 (1972); Construct. Indus. Assoc. v Petaluma, 375 F. Supp. 574 (N.D. Calif., 1974), Rev'd, 522 F. 2d 867 (6th Cir., 1975).

⁴See: Sierra Club v. Department of the Interior, F. Supp., R.D. Calif., 1975, which specifically required the Secretary of the Interior to protect a national park from potential damage caused by the private use of adjacent land.

⁵Commonwealth of Pennsylvania v. Environmental Protection Agency, 500 F.2d 246 (1974), at 262. Three other Circuit Courts, however, disagree: Maryland v. Environmental Protection Agency, F.2d (6th Cir., 1975) Brown v. Environmental Protection Agency, 521 F.2d 827 (9th Cir., 1975), and District of Columbia v. Train, 521 F.2d 071 (D.C. Cir., 1975).

⁶See: Hagman, Urban Planning and Land Development Control Law (1975 Supplement), Ch. 20.

⁷National League of Cities v. Usury (1977)

⁸See: Bosselman, Feurer, and Siemin, The Permit Explosion, Washington, D. C.: Urban Land Institute, 1977).

RECOMMENDATIONS

The Workshop Panel developed the following recommendations as a summary of the consensus reached in the two days of presentations and discussion. While these recommendations by no means are fully definitive or encompassing of all the issues discussed, they should provide an agenda for further consideration and deliberation by the Federal-State Land Use Planning Commission and its constituents.

- (1) A tri-level approach to cooperative management should be initiated to fully reflect the range of issues and concerns involved in the planning and management of the vast land resources of Alaska.
 - a. A Joint Commission should be established to serve as the principal coordinative focus for land use planning and management in Alaska.
 - b. A Committee of Operating Agencies, composed of agency representatives from such functional areas as energy, transportation, and land management at the Federal and State levels, should be organized (perhaps using the Federal Field Directors "model") to serve as the technical advisory arm of the Joint Commission.
 - c. State-Borough Regional Planning Committees should be formed to ensure broad citizen input into the deliberations of the Joint Commission. Appropriate representation from these committees should be included on the Joint Commission.
- (2) The Joint Commission should be organizationally independent of the Federal and State government with its own rule-making authority and other keymarks of autonomy, such as separate payrolls, staff offices, and accountability.
- (3) The Joint Commission should be charged with the responsibility of developing a systematic process for cooperative planning and management that would include the four basic functions of Review, Planning, Classification, and Management, as discussed in this Workshop, plus evaluation responsibilities respective to the initiation of proposed management plans and programs of the various operating agencies.
- (4) The Joint Commission should have the authority to develop and, as appropriate, enforce land use control mechanisms, including a permit system, for critical areas of particular concern as defined in the Workshop proceedings.

- (5) The Joint Commission should have the authority to organize task forces and special subcommittees, drawing upon the technical expertise of the committee of operating agencies, to deal with special issues and areas of concern.
- (6) The Joint Commission should be responsible for the monitoring and periodic assessment of the management plan(s) of the operating agencies, including a review of the budgets of these agencies and the activities that such budget allocations represent.
- (7) An advisory committee(s) of interest groups and other methods to ensure public awareness and involvement should be required of the Joint Commission.
- (8) All of the coordination, cooperation, and conflict-resolution techniques discussed in the Workshop proceedings should be evaluated and applied, as necessary, by the Joint Commission.
- (9) A greater State presence should be asserted through planning and policy development both within and outside the activities of the recommended Joint Commission. Of particular importance is the full integration of activities related to the Coastal Zone Management Program into a comprehensive statewide planning process.
- (10) Cooperative management should involve a dynamic, evolving process of classification/management and should not be seen as a "one-shot" solution to the critical land use issues in Alaska. As such, appropriate mechanism for periodic review of the activities of the Joint Commission, possibly including Sunset provisions, should be incorporated into the mandate of the Joint Commission.

SCOMM

#22:12

Federal-State
Land Use Planning Commission
For Alaska

April 20, 1977

Honorable Mike Gravel
United States Senate
3121 Dirksen Senate Office Building
Washington, D.C. 20510

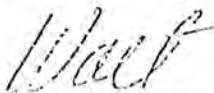
Dear Senator Gravel:

For your information and review, we are enclosing draft legislative language which concerns issues raised by Section 17(d)(2) of the Alaska Native Claims Settlement Act.

The draft was prepared by two members of the Commission staff. While the language is based on recommendations which have been considered by the Commission, we have not had the opportunity to review the draft language in any detail. In addition, the draft includes certain matters which have not been considered in depth by the Commission. These matters include the structure and composition of the proposed commission (Sec. 701), the property tax exemption (Sec. 806), the proposed executive coordination committee (Sec. 809), and the process for making Federal lands available for possible State selection (Sec. 814).

The purpose of the draft language is to assist the Commission in determining its policy and geographic recommendations respecting the (d)(2) lands. When this deliberative process has been completed, we will send you the final version of the report containing our recommendations.

Sincerely,



Walter B. Parker
State Co-Chairman

Enclosure (1)

1. Draft of legislative language respecting (d)(2) lands

S _____

DRAFT

To designate certain lands in the State of Alaska as units of the National Park, National Wildlife Refuge, National Forest, National Wild and Scenic Rivers, and Alaska National Lands Systems, and for other purposes.

TABLE OF CONTENTS

TITLE I - SHORT TITLE, DECLARATION OF POLICY, AND DEFINITIONS

- Sec. 101. Short Title.
- Sec. 102. Declaration of Policy.
- Sec. 103. Definitions.

TITLE II - NATIONAL PARK SYSTEM

- Sec. 201. New Units and Additions to Existing Units.
- Sec. 202. Administration.

TITLE III - NATIONAL WILDLIFE REFUGE SYSTEM

- Sec. 301. New Units and Additions to Existing Units.
- Sec. 302. Administration.

TITLE IV - NATIONAL FOREST SYSTEM

- Sec. 401. Additions to Existing Units.
- Sec. 402. Administration.

TITLE V - NATIONAL WILD AND SCENIC RIVERS SYSTEM

- Sec. 501. New Components.
- Sec. 502. Administration.
- Sec. 503. Study of Rivers.

TITLE VI - ALASKA NATIONAL LANDS SYSTEM

- Sec. 601. New Units.
- Sec. 602. Administration.

TITLE VII - FEDERAL-STATE LAND COMMISSION

- Sec. 701. Establishment and Authority.

TITLE VIII - MANAGEMENT AND ADMINISTRATION

- Sec. 801. Regulation of Hunting and Fishing.
- Sec. 802. Access for Transportation and Utility Purposes.
- Sec. 803. Mineral Development.

- Sec. 804. Agriculture and Grazing.
- Sec. 805. Wilderness Review.
- Sec. 806. Joint Classification Areas.
- Sec. 807. Cooperative Agreements.
- Sec. 808. Intradepartmental Assistance.
- Sec. 809. Executive Coordination Committee.
- Sec. 810. Property Acquisition.
- Sec. 811. Administrative Sites.
- Sec. 812. Description of Units.
- Sec. 813. Adjustment of Boundaries.
- Sec. 814. Effect on State Selections.
- Sec. 815. Effect on Native Selections.

TITLE IX - MISCELLANEOUS

- Sec. 901. Regulations.
- Sec. 902. Annual Report.
- Sec. 903. Savings Clause.
- Sec. 904. Separability.
- Sec. 905. Appropriations.

TITLE I - SHORT TITLE, DECLARATION OF POLICY, AND DEFINITIONS

SHORT TITLE

Sec. 101. This Act may be cited as the "Alaska National Interest Lands Act of 1977".

DECLARATION OF POLICY

Sec. 102. It is the purpose of this Act to -

- (a) provide a high level of enduring protection for areas which possess scenic, wildlife, wilderness, and other natural or historic values of national significance;
- (b) increase significantly the national opportunities for wilderness oriented recreational and other experiences; and
- (c) establish land use planning and management institutions which provide full protection of nationally significant natural values, enable a flexible response to national energy and other commodity needs as they arise, and minimize conflicts among landowners and between competing land uses.

DEFINITIONS

Sec. 103. As used in this Act, the term -

- (a) "Commission" means the Federal-State Land Commission established in Title VII of this Act.
- (b) "Classification" means a determination that land is to be used for a specified purpose or purposes.

(c) "Land use plan" means a plan which has been developed through:
(1) use of a systematic interdisciplinary approach involving an examination of physical, biological, ecological, economic, social, and other information;
(2) consideration of present and potential uses of the land; (3) consideration of the relative scarcity of the values involved and the availability of alternative sources; (4) the weighing of short and long-term benefits and costs to the public; and (5) consultation and coordination of government agencies and private landowners which have proprietary and/or regulatory responsibility for affected areas.

(d) "Resource inventory" means the quantitative and qualitative study and compilation of lands and their resources and other values.

(e) "Secretary" means, unless specifically designated otherwise, the Secretary of the Interior.

(f) "Settlement Act" means the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.), as amended.

TITLE II - NATIONAL PARK SYSTEM

NEW UNITS AND ADDITIONS TO EXISTING UNITS

Sec. 201. Subject to valid existing rights, the following areas are hereby established as units of the National Park System or as additions to existing units of such system, and are withdrawn from entry, location, and patent under the public land laws of the United States, including from all forms of appropriation under the mining and mineral leasing laws, and from selection by the State of Alaska pursuant to the Alaska Statehood Act (72 Stat. 339), as amended.

NEW UNITS

(a) Aniakchak Calder National Monument of approximately 0.18 million acres;

(b) Cape Krusenstern National Monument of approximately 0.19 million acres;

(c) Gates of the Arctic National Park of approximately 5.22 million acres;

(d) Kobuk Sand Dunes National Monument of approximately 0.10 million acres;

(e) Wrangell-St. Elias National Park of approximately 9.72 million acres;

(f) Yukon National River of approximately 0.54 million acres;

ADDITIONS TO EXISTING UNITS

(g) Glacier Bay National Monument by the addition of approximately 0.03 million acres;

(h) Katmai National Monument by the addition of approximately 1.08 million acres; furthermore, the Monument is hereby redesignated as "Katmai National Park;" and

(i) Mount McKinley National Park by the addition of approximately 2.69 million acres.

ADMINISTRATION

Sec. 202. The Secretary shall administer the lands, waters, and interests therein referred to in Section 201 as units of the National Park System in accordance with the provisions of the Act of August 25, 1916 (30 Stat. 535 et seq.), as amended and supplemented (16 U.S.C. 1 et seq.), and under the provisions of this Act: Provided, however, That hunting shall be permitted within the units referred to in Section 801(a) of this Act.

TITLE III - NATIONAL WILDLIFE REFUGE SYSTEM

NEW UNITS AND ADDITIONS TO EXISTING UNITS

Sec. 301. Subject to valid existing rights, the following areas are hereby established as new units of the National Wildlife Refuge System or as additions to existing units of such system, and are withdrawn from entry, location, and patent under the public land laws of the United States, except those laws referred to in Section 803(a) of this Act, and from selection by the State of Alaska pursuant to the Alaska Statehood Act:

NEW UNITS

(a) Copper River Delta National Wildlife Refuge of approximately 0.35 million acres;

(b) Innoko National Wildlife Range of approximately 1.99 million acres;

(c) Kaiyuh National Wildlife Refuge of approximately 0.19 million acres;

(d) Kanuti National Wildlife Refuge of approximately 0.43 million acres;

(e) Koyukuk National Wildlife Range of approximately 2.53 million acres;

(f) Selawik National Wildlife Range of approximately 1.48 million acres;

(g) Shishmaref National Wildlife Range of approximately 1.50 million acres;

(h) Yukon Flats National Wildlife Range of approximately 2.33 million acres;

(i) Chukchi National Wildlife Refuge of approximately 74,000 acres;

(j) Shumagin Islands National Wildlife Refuge of approximately 71,907 acres;

(k) Barren Islands National Wildlife Refuge of approximately 10,020 acres;

(l) Aialik National Wildlife Refuge of approximately 19,630 acres;

ADDITIONS TO EXISTING UNITS

(m) Arctic National Wildlife Range by the addition of approximately 1.89 million acres;

(n) Clarence Rhode National Wildlife Range by the addition of approximately 5.67 million acres; furthermore, the range is redesignated the "Yukon Delta National Wildlife Range" and the Hazen Bay National Wildlife Refuge is hereby redesignated a part of the Range;

(o) Cape Newenham National Wildlife Refuge by the addition of approximately 0.24 million acres;

(p) Kenai National Moose Range by the addition of approximately 0.04 million acres;

(q) Kodiak National Wildlife Refuge by the addition of approximately 440 acres; and

(r) Bering Sea National Wildlife Refuge by the addition of approximately 1,700 acres.

ADMINISTRATION

Sec. 302. The Secretary shall administer the lands, waters, and interests therein referred to in Section 301 as units of the National Wildlife Refuge System in accordance with the laws which generally apply to the units of such system and under the provisions of this Act.

TITLE IV - NATIONAL FOREST SYSTEM

ADDITIONS TO EXISTING UNITS

Sec. 401. Subject to valid existing rights, the following areas are hereby established as additions to existing units of the National Forest System, and are withdrawn from entry, location, and patent under the public land laws of the United States, except those laws referred to in Section 803(a) of this Act, and from selection by the State of Alaska pursuant to the Alaska Statehood Act:

(a) Chugach National Forest

(1) College Fiord addition of approximately 0.72 million acres;

(2) Copper River addition of approximately 1.25 million acres;

(3) Kenai Fiords-Harding Icefield addition of approximately 0.52 million acres; and

(4) Nellie Juan addition of approximately 0.28 million acres.

(b) Tongass National Forest

(1) Alsek River addition of approximately 1.03 million acres;

(2) Juneau Icefield addition of approximately 0.48 million acres; and

(3) Kates Needle addition of approximately 0.47 million acres.

ADMINISTRATION

Sec. 402. The Secretary of Agriculture shall administer the lands, waters, and interests therein referred to in Section 401 in accordance with the laws which generally apply to the units of such system and under the provisions of this Act.

TITLE V - NATIONAL WILD AND SCENIC RIVERS SYSTEM

NEW COMPONENTS

Sec. 501. (a) Subject to valid existing rights, the following areas are hereby established as components of the National Wild and Scenic Rivers System, and are withdrawn from entry, location, and patent under the public land laws of the United States, except those laws referred to in Section 803(a) of this Act, as modified by Section 1280(a)(iii) of the Wild and Scenic Rivers Act (82 Stat. 906), as amended (16 U.S.C. 1221 et seq.), and from selection by the State of Alaska pursuant to the Alaska Statehood Act:

(1) The rivers listed immediately below are hereby classified and designated and shall be administered as wild river areas:

(A) Alatna (upper): 75-mile main stream on Federal lands;

(B) North Fork Koyukuk-Tinayguk: Entire main streams;

(C) Unalakleet River: About 60 miles of the main stream from 159°21'06.156" west longitude downstream to 160°19'15.031" west longitude;

(D) Kanektok: Main stream from Kagati Lake to west side of T 4 N, R 71 W, S.M.;

(E) Aniakchak River: The entire river and its major tributaries from Surprise Lake to Aniakchak Bay;

(F) Alagnak: Main stream from Kukaklek Lake and the Nonvianuk River tributary from Nonvianuk Lake to the west side of T 13 S, R 43 W, S.M.; and

(G) Fortymile River System: 161 miles of main stream and forks--

- (i) Champion Creek, entire;
- (ii) Joseph Creek, entire;
- (iii) Middlefork, downstream from Joseph;
- (iv) Mosquito Fork, from the vicinity of Kechemstuk to Ingel Creek; and
- (v) North Fork, entire.

(2) The rivers listed immediately below are hereby classified and designated and shall be administered as scenic river areas:

(A) Fortymile River System: 205 miles of main streams and forks--

- (i) Dennison Fork, downstream from West Fork
Dennison Fork;
- (ii) Fortymile River, in Alaska;
- (iii) Franklin Creek, entire;
- (iv) Hutchison Creek, entire;
- (v) Logging Cabin Creek, entire;
- (vi) Mosquito Creek, downstream from Ingle
Creek;
- (vii) Napoleon Creek, entire;
- (viii) O'Brien Creek, entire;
- (ix) South Fork, entire;
- (x) Uhler Creek, entire;
- (xi) Walker Fork, downstream from Liberty
Creek; and
- (xii) West Fork of Dennison Fork, downstream
from Logging Cabin Creek.

(3) The rivers listed immediately below are hereby classified and designated and shall be administered as recreational river areas:

(A) Fortymile River System: 9 miles of main stream--

(i) Wade Creek, entire.

(b) Notwithstanding any provisions to the contrary of the Wild and Scenic Rivers Act, the boundaries of the rivers referred to in subsection (a) of this section may include an area extending up to two miles from the ordinary high water mark on either side of any such river. Notwithstanding the provisions of Section 3(b) of the Wild and Scenic Rivers Act, the Secretary shall establish detailed boundaries for the rivers referred to in subsection (a) of this section within three years from the date of enactment of this Act.

ADMINISTRATION

Sec. 502. The Secretary shall administer the lands, waters, and interests therein referred to in Section 501 as components of the National Wild and Scenic Rivers System in accordance with the laws which generally apply to the components of such system and under the provisions of this Act: Provided, however, That the provisions of Section 6 of the Wild and Scenic Rivers Act shall not apply to the rivers referred to in subsection 501(a) of this section.

STUDY OF RIVERS

Sec. 503. (a) Section 5(a) of the Wild and Scenic Rivers Act is further amended by adding the following new rivers to the list which appears therein:

(1) Canning-Marsh Fork: Main streams from headwaters to Arctic Ocean within Federal lands;

(2) Ivishak: Headwaters and main stream to Sagavanirktok River confluence;

(3) Wind: Headwaters and main stream to East Fork Chandalar River confluence;

(4) Sheenjek: Headwaters and main stream to Porcupine River confluence (including State selected segment);

(5) Porcupine: Main stream from Yukon-Alaska border to south boundary of T 23 N, R 13 E, F.M.;

(6) Yukon (Rampart section): Segment of main stream in and between T 21 N, R 10 W, and T 5 N, R 19 W, F.M.; to include bordering lands not selected by Alaska Native corporations;

(7) Beaver Creek: Segment of the main stream from the vicinity of the confluence of Bear and Champion Creeks downstream 135 miles to north boundary of T 12 N, R 7 E, F.M.;

(8) Birch Creek: Segment of the main stream from the vicinity of the confluence of North Fork downstream 135 miles to the vicinity of Jumpoff Creek;

- (9) Charley: Entire river including major tributaries;
- (10) Ikpikpuk: Main stream from confluence of Kigalik River and Maybe Creek to Arctic Ocean (National Petroleum Reserve-Alaska);
- (11) Utukok: Main stream and main stream of Caribou Creek (National Petroleum Reserve-Alaska);
- (12) Anaktuvuk: Main stream from headwaters to Colville River (excluding scattered large tracts of Native corporation selected lands);
- (13) Killik: Main stream and main stream of Easter Creek to Colville River (involves large block of Native corporation selected land);
- (14) Noatak: Main stream from headwaters to Kelly River confluence;
- (15) Wulik: Main stream and major tributaries from headwaters to west boundary of T 28 N, R 23 W, K.R.M.;
- (16) Salmon: the entire main stream;
- (17) Kobuk (upper): Main stream from Walker Lake and Walker Lake branch to the Selby River confluence;
- (18) John: Main stream from Anaktuvuk Pass to Allen River confluence (Federal portion);
- (19) Koyuk: Main stream from headwaters to Dime Landing;
- (20) Nowitna: Main stream from southwest corner of T 17 S, R 22 E, K.R.M. to Yukon River;
- (21) Andreafsky: Main stream of Andreafsky to south side of T 26 S, R 74 W, S.M.; main stream of East Fork to south side of T 25 N, R 73 W, S.M.;
- (22) Kuskokwim (middle): Segment of main stream within and between T 28 N, R 35 W, and T 23 N, R 38 W, S.M.;
- (23) Copper: Main stream from upper Copper Lake to Iliamna Lake (intermittent Native lands);
- (24) Togiak: Main stream from Togiak Lake to south side of T 10 S, R 65 W, S.M.;
- (25) Mulchatna-Chilikadrotna: Main stream segments from Turquoise and Twin Lakes downstream to the west side of R 28 W, S.M. on Federal lands;
- (26) Nuyakuk: Main stream from Tikchik Lake to the Nushagak River (State lands involved);
- (27) Tlikakila: Main stream from Summit Lake to Lake Clark;

(28) Karluk: Main stream from Karluk Lake to mouth (Native lands involved);

(29) Nabesna: Main stream from Jacksina Creek to north side T 13 N, R 18 E, C.R.M.;

(30) Delta: From Round Tangle Lake to confluence with Phelan Creek;

(31) Gulkana: Main stream of main fork and West Fork to Sourdough Campground;

(32) Chitina: Main stream from Chitina Glacier to the Copper River;

(33) Copper: Main stream from Chitina River confluence to the mouth (scattered Native lands involved);

(34) Kenai-Russian: Main streams from Upper Russian Lake and Kenai Lake to Skilak Lake (Chugach National Forest and Kenai National Moose Range);

(35) Nellie Juan: Main stream from Nellie Juan Lake to mouth;

(36) Alsek: Main stream from Canada border to Pacific Ocean (lower part in Tongass National Forest);

(37) Situk: Main stream from Situk Lake to Pacific Ocean (Tongass National Forest);

(38) Hasselborg Creek: Main stream from Hasselborg Lake to Mitchell Bay (Tongass National Forest); and

(39) Stikine: Main stream from Canada border to mouth (Tongass National Forest).

(b) The Secretary or the Secretary of Agriculture, as appropriate, shall complete the study of rivers listed in subsection (a) of this section within five years of the date of enactment of this Act. With respect to rivers which they recommend for inclusion in the National Wild and Scenic Rivers System, said Secretaries shall make recommendations concerning the need to acquire lands or interests therein owned by the State of Alaska or private parties.

TITLE VI - ALASKA NATIONAL LANDS SYSTEM

NEW UNITS

Sec. 601. Subject to valid existing rights, the following areas are hereby established as units of the Alaska National Lands System, and are withdrawn from entry, location, and patent under the public land laws of the United States, except those laws referred to in Section 803(a) of this Act, and from selection by the State of Alaska pursuant to the Alaska Statehood Act:

<u>Unit</u>	<u>Manager</u>
(a) Andreafsky National Lands of approximately 3.54 million acres;	Fish and Wildlife Service
(b) Becharof National Lands of approximately 0.88 million acres;	Fish and Wildlife Service
(c) Cathedral Spires National Lands of approximately 0.40 million acres;	National Park Service
(d) Chandalar National Lands of approximately 5.56 million acres;	Fish and Wildlife Service
(e) Chitina National Lands of approximately 1.05 million acres;	National Park Service
(f) Lake Clark National Lands of approximately 3.49 million acres;	National Park Service
(g) Nabesna National Lands of approximately 2.87 million acres;	National Park Service
(h) Noatak National Lands of approximately 11.87 million acres;	Fish and Wildlife Service
(i) Nowitna National Lands of approximately 3.52 million acres;	Forest Service
(j) Nunamiut National Lands of approximately 1.98 million acres;	National Park Service
(k) Porcupine National Lands of approximately 5.49 million acres; and	Forest Service
(l) Yukon Mountains National Lands of approximately 6.05 million acres.	Bureau of Land Management

ADMINISTRATION

Sec. 602. (a) The Commission shall classify the lands, waters, and interests therein referred to in Section 601 in accordance with the requirements specified in this subsection and in Section 701 of this Act. Prior to classification for a particular use, that use shall be prohibited: Provided, however, That hunting, fishing, other wildland recreational activities, trapping, information gathering activities conducted or sponsored by Federal agencies or the State Department of Fish and Game, and snow machine use shall be permitted unless specifically prohibited by the Commission or by then existing regulations of the appropriate managing agency: Provided further, That nothing herein shall be construed to abrogate or otherwise adversely affect valid existing rights of access. In making planning and classification decisions, the Commission shall provide the high level of environmental protection necessary to maintain the natural values and characteristics of affected lands. The

Commission shall permit such uses as it finds to be in the national interest or to be consistent with the level of environmental protection specified in the preceding sentence.

(b) The agencies listed in Section 601 shall manage the units placed under their jurisdiction, and shall regulate uses within such units, in accordance with classifications made by the Commission. Except to the extent that they would be inconsistent with a Commission classification or the provisions of this Act, land use and management decisions made by an agency referred to in Section 601 shall be in accordance with the laws and regulations which generally govern the functions of such agency.

TITLE VII - THE FEDERAL-STATE LAND COMMISSION

ESTABLISHMENT AND AUTHORITY

Sec. 701. (a) There is hereby established the Federal-State Land Commission (hereinafter referred to as the "Commission"), which shall be composed of six members as follows:

(1) Three members appointed by the President with the advice and consent of the Senate, of whom one will be designated by the President, at the time of appointment, as Federal Co-Chairman; and

(2) three members appointed by the Governor of the State of Alaska, of whom one shall be designated by the Governor, at the time of appointment, as State Co-Chairman, and one of whom shall be a Native as that term is defined in Section 3(b) of the Settlement Act.

(b) (1) The Federal Co-Chairman shall be compensated at a rate to be determined by the President not to exceed the rate provided for GS-18 of the General Schedule under Section 5332 of Title V, United States Code.

(2) The other Federal members of the Commission shall be compensated at a rate to be determined by the President not to exceed the rate provided for GS-16 of the General Schedule under Section 5332 of Title V, United States Code.

(3) The State Co-Chairman and the State members of the Commission shall be compensated in accordance with applicable State law.

(c) Members shall serve at the pleasure of the appointing authority. A vacancy in the membership of the Commission shall not affect its powers but shall be filled in the same manner as the original appointment was made.

(d) Four members of the Commission shall constitute a quorum.

(e) With respect to all Federal lands subject to the jurisdiction of the Commission, the Secretary may veto a decision of the Commission. With respect to all State lands subject to the jurisdiction of the Commission, the Governor of the State of Alaska may veto a decision of the Commission.

(f) All Commission meetings shall be public and shall be duly noticed at least fifteen days prior to the date when the meeting is to take place.

(g) The Commission, or on its authorization, any subcommittee or member thereof, may hold such hearings, take such testimony, receive such evidence, and print such reports as are deemed necessary to carry out the functions specified in this title.

(h) The Co-Chairmen, acting jointly, shall have the authority, in accordance with regulations prescribed by the Commission, to create and abolish employments and positions, including temporary and intermittent employments; to fix and provide for the qualification, appointment, removal, compensation, pension, and retirement rights of Commission employees; and to procure needed office space, supplies, and equipment.

(i) The principal office of the Commission shall be located in the State of Alaska.

(j) Within any one fiscal year, the Federal government shall pay only 50 percent of the costs and other expenses incurred by the Commission in carrying out its duties under this Act.

(k) The Commission is authorized to use, with their consent, the services, equipment, personnel, and facilities of Federal and other agencies with or without reimbursement. Each department and agency of the Federal government is authorized to cooperate fully in making its services, equipment, personnel, and facilities available to the Commission.

(l) The Commission is authorized to accept donations, gifts, and other contributions and to utilize such donations, gifts, and contributions in carrying out its functions under this Act.

(m) The Commission shall keep and maintain complete accounts and records of its activities and transactions, and such accounts and records shall be available for public inspection.

(n) The Commission shall prepare an annual report in accordance with Section 902 of this Act.

(o) It shall be the function of the Commission -

(1) to review resource inventories prepared by the managing agencies of lands referred to in Sections 601 and 806 and by the U.S. Geological Survey and the Bureau of Mines, as provided in Section 803(c) of this Act; to develop comprehensive land use plans with respect to such lands; and to make land classifications based on the plans;

(2) to carry out the duties required by Sections 802(b), 803(c), 805(b) and (c), 806, 807(a), and 810(c) and (d) of this Act;

(3) to make recommendations to appropriate officials of the governments of the United States and the State of Alaska with respect to ways to improve coordination and consultation between