491 HRES HB 211

Management of remaining federal lands are adequately provided for under the Bureau of Land Management and Federal Land Policy and Management Act of 1976.

My concept of the Commission reflects the need to insure that closely related federal, state, and private lands being considered within the d-2 context are managed compatibly with options for future land use decisions remaining open. Hearings on both sides of Capitol Hill have demonstrated the lack of information on many resources contained within these lands. The creation of a cooperative management program will provide future generations with the ability to determine appropriate uses of lands as such decisions become necessary.

The extent to which state lands should be dedicated to cooperative management is a decision that rests with the Legislature, and I do not wish to comment on any specific acreage or formulas which have been proposed by others. My legislation provides that the State of Alaska must commit a "substantial amount of state land" to a program of cooperative management prior to state participation on a classification commission. This provision was drafted in this manner to insure that the State Legislature makes the decision on state participation and is not presented with a "fait accompli" in which a cooperative management depends upon the State dedicating all of its lands without a meaningful debate on the matter.

Management of Lands Under the Commission's Jurisdiction

House Bill 211 provides that the Commission will manage lands under its jurisdiction. To the best of my knowledge, those advocating the creation of such a commission are unanimous that the commission's duties should involve classification of uses rather than daily management. Existing federal and state agencies are better equipped to continue management of lands under the direction of the commission through classification authority.

My legislation embodies this concept, as does the proposal of the Federal-State Land Use Planning Commission. Further thought to the concept of the commission as a management agency should be given. The commission's strengths can be best achieved if it provides direction to on-the-ground managers.

Commission Membership

The makeup of the commission is important and most parties agree that the commission should consist of an equal

number of state and federal appointees. To insure that the sovereignty of the State of Alaska and the United States is not compromised, it is advisable that the commission be co-chaired by a federal and state appointee. This system has worked well with the existing Federal-State Land Use Planning Commission and should be utilized in the establishment of a new classification commission.

The Committee should also address itself to specific issues regarding the qualifications of appointees, their length of term, and the method of replacement for filling vacancies on the commission. The Federal-State Land Use Planning Commission is presently compiling a list of options regarding these issues, and the Committee may wish to consult the LUPC on these matters.

Functions of the Commission

The specific duties of the Commission are of utmost importance. I envision the commission as a body with classification authority on those lands under its jurisdiction. This will be its most important function. It will draw up land use plans and coordinate and monitor the implementation of these plans.

Additionally, the commission can continue a number of functions now performed by the existing Federal-State Land Use Planning Commission. Among these are providing assistance to the federal and state agencies and private landowners in the area of land use planning and making recommendations as to necessary amendments to existing state and federal public land laws. A full list of the functions I think the commission should perform can be found on pages 71 and 72 of S. 1787.

It should be noted that the commission can play a role of particular importance in regards to transportation and access. Most parties agree that a process to insure reasonable and adequate access is provided across federal and state lands is needed. The commission can become part of that process as the major arbiter of method and means of access when such access becomes necessary. My legislation provides the commission with such authority.

Veto Over Commission Decisions

As stated previously, the protection of the sovereignty

of the State of Alaska and the United States is all-important if the commission concept is to be successful. To insure such sovereignty is not compromised, the Secretary of Interior and the Governor must be given a veto power over federal and state lands, respectively, which are part of a cooperative management program. The rationale for such a veto has been adequately examined and articulated by the existing Federal-State Land Use Planning Commission, in their testimony on the functions of a commission before the House and Senate of the United States Congress and before your Committee.

These comments summarize my thoughts on the concepts being considered in House Bill 211. I would be happy to provide you and other members of the Committee with further details if you are interested. House Bill 211 contains language contemplating complementary legislation to be enacted by the Congress. If I can be of any assistance to the Legislature to insure that federal and state legislation do complement one another, please let me know.

With best wishes,

Cordially,

TED STEVENS
United States Senator

Enclosure

DRAFT

PROPOSAL BY SENATOR MIKE GRAVEL FOR A FEDERAL-STATE LAND USE PLANNING COMMISSION

TITLE VI

----THE COMMISSION WOULD BE ESTABLISHED UPON THE PASSAGE OF STATE LAW DEDICATING STATE LAND FOR JURISDICTION UNDER THE COMMISSION.

----ALL FEDERAL LAND NOT INCLUDED IN CONSERVATION SYSTEMS OR MILITARY RESERVES WOULD BE PLACED UNDER THE COMMISSION

----THE STATE WOULD LEGISLATE A PROCESS BY WHICH PRIVATE NATIVE CORPORATION LANDS COULD BE VOLUNTARILY PLACED UNDER THE COMMISSION'S JURISDICTION AND RECEIVE CERTAIN ADVANTAGES SUCH AS PROPERTY TAX DEFERMENT.

----THE COMMISSION WOULD BE COMPOSED OF 9 MEMBERS: 1 CHAIRMEN JOINTLY APPOINTED BY PRESIDENT AND GOVERNOR, 4 FEDERAL MEMBERS BY PRESIDENT, AND 4 STATE MEMBERS BY GOVERNOR. 1 FEDERAL MEMBER AND ONE STATE MEMBER WOULD BE NATIVE IF 80% OR MORE OF CORPORATION LAND DEDICATED.

----MEMBERS WOULD BE FULL-TIME AND SERVE STAGGERED 4-YEAR TERMS

----FUNCTIONS AND AUTHORITIES OF THE COMMISSION WOULD INCLUDE:

----DEVELOPMENT OF LAND USE PLANS AND LAND CLASSIFICATIONS FOR VARIOUS LAND USES;

----INSURING THAT FEDERAL, STATE, AND LOCAL PLANNING AND LAND USES ARE HARMONIOUS

----COORDINATE IMPLEMENTATION OF AIR AND WATER POLLUTION LAWS, COASTAL ZONE MANAGEMENT LAW, AND OTHER ENVIRONMENTAL LAWS;

----DETERMINE LOCATION OF TRANSPORTATION AND UTILITY SYSTEM RIGHTS-OF-WAY ACROSS FED, STATE, AND PRIVATE LANDS;

-----VETO POWER WOULD BE RETAINED BY THE GOVERNOR AND THE SECRETARY OF INTERIOR OVER THEIR RESPECTIVE LANDS. EITHER THE STATE OR THE SECRETARY WOULD HAVE VETO OVER NATIVE CORPORATION LANDS.

----ON-THE-GROUND MANAGEMENT WOULD BE RETAINED BY THE NORMAL FEDERAL (BLM) AND STATE (DNR) AGENCIES.

----LANDS UNDER THE COMMISSION WOULD BE WITHDRAWN FROM ALL ENTRIES AND APPROPRIATIONS PENDING CLASSIFICATION BY COMM.

----THE COMMISSION WOULD TERMINATE AFTER 10 YEARS UNLESS RENEWED BY CONGRESS.

DRAFT

SENATOR MIKE GRAVEL

STATE LEGISLATIVE NEEDS TO COMPLEMENT FEDERAL LEGISLATION ESTABLISHING AN ALASKA FEDERAL-STATE LAND USE PLANNING COMMISSION

----DESIGNATION OF ALL STATE LANDS AS LANDS TO BE COOPERATIVELY MANAGED UNDER THE JURISDICTION OF A FEDERAL-STATE LAND USE PLANNING COMMISSION.

----IDENTIFICATION OF A SYSTEM BY WHICH NATIVE CORPORATION LANDS AND PERHAPS OTHER PRIVATELY OWNED LANDS COULD BE DEDICATED UNDER THE JURISDICTION OF THE COMMISSION. SUCH INCENTIVES AS TAX DEFERMENTS COULD BE INCLUDED. A TWO-YEAR STUDY OF A POSSIBLE STATE PROPERTY TAX SHOULD ALSO BE INCLUDED.

----IDENTIFICATION OF A SYSTEM BY WHICH STATE MEMBERS WOULD BE APPOINTED, CONDITIONS OF APPOINTMENT, PAY, ETC.

----AUTHORIZATION AND APPROPRIATION OF FUNDS NECESSARY TO COVER ONE-HALF THE COST OF THE COMMISSION.

----FORMALIZATION OF SYSTEM OF OBTAINING INFORMATION, SERVICES, AND INPUT FROM VARIOUS STATE AGENCIES TO THE COMMISSION.

----TO REQUIRE THE SUBMISSION OF ALL LOCAL GOVERNMENT PLANS TO THE COMMISSION FOR COMMENT AND APPROVAL.

----TO REQUIRE THE SUBMISSION OF ALL RULES, ACTIONS BY STATE AGENCIES REGARDING AIR AND WATER POLLUTION LAWS, COASTAL ZONE MANAGEMENT AND OTHER ENVIRONMENTAL LAWS TO THE COMMISSION. THE STATE AGENCIES SHOULD BE REQUIRED TO MODIFY POLICIES, ACTIONS, ETC., WITHIN LEGAL REQUIREMENTS, IN RESPONSE TO COMMISSION COMMENTS AND RECOMMENDATIONS. WHERE APPROPRIATE, AUTHORITIES ASSIGNED TO THE STATE UNDER VARIOUS ENVIRONMENTAL LAWS SHOULD BE ASSIGNED TO THE COMMISSION.

----IF NECESSARY, AUTHORIZE THE APPLICATION OF LEASE SYSTEMS FOR ALL LAND USES ON STATE LANDS.

----TEMPORARILY WITHDRAW ALL STATE LANDS FROM DISPOSAL OR ENTRY PENDING STUDY AND CLASSIFICATION BY THE COMMISSION.

----REQUIRE TERMINATION OF STATE PARTICIPATION IN COMMISSION 10 YEARS FOLLOWING CREATION UNLESS REAFFIRMED BY LEGISLATURE

SENATOR MIKE GRAVEL

DRAFT

TITLE VI -- ALASKA FEDERAL-STATE LAND USE PLANNING COMMISSION

Sec. 601. (a) Following designation under Alaska State law of all lands patented or tentatively approved for patent to the State to be cooperatively managed with designated Federal lands, there is hereby established the Alaska Federal-State Land Use Planning Commission (hereinafter referred to as the "Commission").

(b) In addition to the designated State lands, the Commission shall have jurisdiction over all public lands in the State of Alaska under the management of the Bureau of Land Management, including the National Petroleum Reserve in Alaska.

(c) With the approval of the Commission, lands for which patents or interim conveyances have been issued to Native corporations under the terms of the Alaska Native Claims Settlement Act may be placed under the jurisdiction of the Commission pursuant to the procedures and conditions which shall be enacted by the State of Alaska.

Sec. 602. (a) (1) The Commission shall, subject to the provisions of Section 101, be composed of nine members as follows:

(A) One member appointed, after consultation with and concurrence by the Governor of Alaska, by the President of the United States, with the advice and consent of the

Senate, who shall be Chairman of the Commission;

(B) Four members appointed by the President of the United States, with the advice and consent of the Senate;

(C) Four members appointed by the Governor of the State of Alaska with the advice and consent of the State Legislature.

(2) Upon the first vacancy of a position under subparagraph (B) and subparagraph (C) (whether created by expiration of a member's term or otherwise) occurring on or after the date on which 80 per centum or more of all lands for which patents or interim conveyances have been issued have been dedicated by Native corporations for jurisdiction under the Commission, the President and the Governor, in filling those vacancies, shall appoint a Native (as that term is defined in the Alaska Native Claims Settlement Act) to fill the respective vacancy, and thereafter, as long as such lands remain so dedicated, at least one of such members appointed pursuant to subparagraph (B) and subparagraph (C) of subsection (a)(1) shall be a Native.

(b) (1) The 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 5, United States Code.

(2) All other members of the Commission shall be compensated at a rate to be determined by the President,

after consultation with and concurrence by the Governor of Alaska, not to exceed the rate provided for GS-16 of such General Schedule.

(3) Upon vouchers approved by the Chairman, all members of the Commission shall be reimbursed for necessary expenses incurred by them in carrying out their duties under this Act.

(c) The Commission, with the approval of the Chairman, is authorized to obtain the services of experts and consultants in accordance with Section 3109 of Title 5, United States Code.

(d) Members shall serve for a four-year term except that, of the initial members appointed pursuant to subparagraph (B) of subsection (a)(1), two members shall be appointed for two-year terms, and of the initial members appointed pursuant to subparagraph (C) of subsection (a)(1), two members shall be appointed for two-year terms. A vacancy in the membership shall not affect the Commission's powers but shall be filled in the manner provided in paragraph (2) of subsection (a). Any person appointed to fill a vacancy involving an unexpired term shall serve for the duration of that term. Except to the extent otherwise provided in subsection (a), members may be reappointed to serve additional terms.

(e) Six members of the Commission shall constitute a quorum, except that the Commission may establish a

lesser number for purposes of subsection (g).

(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 Chairman shall have the authority, in accordance with regulations prescribed by the Commission, to create and abolish employments and position, 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) The federal government shall pay only 50 per centum of the costs and other expenses incurred in each fiscal year by the Commission in carrying out its duties under this Act.

(k) The Commission is authorized to use the services, equipment, personnel and facilities of Federal departments and other agencies, with or without reimbursement. Each department and agency of the Federal government shall 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, on or before March 1 of each year, prepare and submit to the President, the Governor of Alaska and the Congress an annual report summarizing its activities during the preceding calendar year, together with its recommendations.

Sec. 603. (a) It shall be the function of the Commission:

(1) to review resource inventories prepared by the managing agencies and other affected or concerned Federal and State agencies on lands under the jurisdiction of the Commission; and to initiate and conduct other such inventories and resource studies as may be needed;

(2) to develop comprehensive land use plans with respect to lands under the jurisdiction of the Commission;

(3) to make land classifications pursuant

to such plans, and to approve and to supervise the regulation of uses in accordance with such plans and classifications;

(4) to assure that such classifications would specifically identify lands which are suitable and open for the following primary uses:

(A) oil and gas exploration and possible development;

(B) mineral exploration and possible development;

(C) human habitation, permanent and seasonal;

(D) agricultural and aquaculture development;

(E) timber harvesting;

(F) tourism/recreational development;

(G) primitive or wilderness use;

(H) fish and wildlife habitat; and

(I) other resource uses as may be appropriate.

(5) to assist in the development and review of land-use plans for lands selected by Native corporations under the terms of the Alaska Native Claims Settlement Act which may not be designated for jurisdiction by the Commission; ~~to assist in the development and review of land-use plans for State lands not designated for jurisdiction by the Commission;~~ and to assist in the development and review of land-use plans of municipal governments;

(6) to review existing withdrawals of Federal public lands and recommend to the President and Congress such additions to or modifications of such withdrawals as the Commission deems appropriate;

(7) to make recommendations to the President and the Governor regarding the programs and budgets of the Federal and State agencies responsible for the administration of the public lands of the United States and the State of Alaska;

(8) to make recommendations, from time to time, to the President, Congress and the Governor and the Legislature of the State of Alaska as to changes in laws, policies and programs relating to the public lands which the Commission deems necessary or desirable;

(9) to make recommendations to the appropriate officers of the governments of the United States and the State of Alaska to develop general plans which would insure that economic growth and development are orderly, planned and compatible with State and national economic, social and environmental objectives;

(10) to make recommendations to appropriate officers of the United States, the State of Alaska and municipal officials to improve coordination and consultation between the Federal, State and municipal governments in making resource allocations and land use decisions;

(11) to coordinate the implementation by Federal and State agencies the provisions of the following laws as they may affect lands under the jurisdiction of the Commission:

(i) Federal Water Pollution Control Act as amended;
(ii) Clean Air Act as amended;
(iii) Solid Waste Disposal Act;
(iv) National Environmental Policy Act of 1969;
(v) Coastal Zone Management Act of 1972 as amended;
(vi) Safe Drinking Water Act;

In order that Commission may review all pertinent actions in regard to the above mentioned laws, to insure that conflicts do not occur between the rules, regulations, or policies of the various federal and state agencies involved with the implementation of these laws, and to insure that uses being permitted under these laws are consistent with the overall land use plans and classifications developed by the Commission for particular lands under their jurisdiction, the federal agencies authorized with the administration of the various provisions of the above-described laws shall provide the Commission with copies of all orders, notices, or other material initiated by the agency concerning the implementation of the above-mentioned laws affecting any lands under the jurisdiction of the Commission.

Prior to the finalization of any rule, regulation, stipulation, policy or other action affecting uses of lands under the jurisdiction of the Commission, any federal agency authorized to implement terms or provisions of the above-mentioned laws shall solicit and receive comments on the proposed action from the Commission. The agency or Department shall take whatever actions or make modifications as are reasonable and in keeping with the provisions of the above-mentioned laws to obviate conflicts or problems which the Commission may identify in its comments.

(12) to determine the location of specific routes or corridors which would serve identified regional, statewide or national transportation or utility needs; approve rights-of-way across lands under its jurisdiction and make specific recommendations to the appropriate Federal or State officer or private landowner where such rights-of-way would cross lands not under the Commission's jurisdiction, and in

connection therewith the Commission shall evaluate alternative routes and modes and shall seek to recommend prudent and feasible routes and corridors which minimize environmental impacts.

(b) With respect to the uses under paragraph (4) of subsection (a), the Commission shall have the authority to pursue such uses on a lease basis under such terms as it may prescribe or under applicable provisions of the public land laws.

(c) 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 Alaska may veto a decision of the Commission. With respect to any lands owned by Native corporations subject to the jurisdiction of the Commission, either the Secretary or the Governor may veto a decision by the Commission.

(d) Federal, State and Native corporation lands under the jurisdiction of the Commission shall continue to be managed by the respective agencies established under Federal and State law, and in th case of corporation lands, by the respective corporation owner, provided that uses shall be regulated 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 management decisions made by an agency shall be in accordance with the laws

and regulations which generally govern the functions of such agency.

(e) Lands under the jurisdiction of the Commission shall be withdrawn from all forms of disposition or appropriation under Federal or State public land laws, including mining and mineral leasing laws, until a land use plan has been completed for the particular area by the Commission and classifications imposed in regard to permissable land uses.

(f) In performing the functions described in Section 103 (a) the Commission shall hold public hearings in the specific locale or region for which specific land use plans, classifications or actions are being proposed or considered.

Sec. 104. Notwithstanding any other provision of law, Federal participation in the Joint Federal-State Land Use Planning Commission for Alaska, established in Section 17(a) of the Alaska Native Claims Settlement Act, shall cease 180 days following the date of enactment of this Act or upon establishment of the Commission provided for in Section 101 of this Title, whichever first occurs. Immediately upon termination of Federal participation, all unexpended funds appropriate to the Joint Commission and all property shall be returned, as appropriate, to the United States and the State of Alaska, unless the Commission provided for in Section 101 of this Title has been established, in which case all Federal funds and property shall be transferred to the Commission.

Sec. 605. (a) On or before the ninety-day period immediately preceding the date of the expiration of the ten calendar year period following the date on which the Commission takes effect, the Secretary of the Interior shall report to the President and the Congress with respect to the Secretary's views and recommendations concerning the desirability or non-desirability of continued Federal participation in the Commission.

(b) Unless otherwise hereafter provided by law, Federal participation in the Commission shall terminate upon the expiration of the ten calendar year period following the date on which the Commission takes effect.

SENATOR GRAVEL'S DRAFT D-2 BILL--TITLE OUTLINE

TITLE I-IV---FOUR SYSTEMS DESIGNATIONS

------NO ACREAGES LISTED

------WILL DEVELOP MODERATE ACREAGE (50-80 MILLION)

------WILL SEEK TO DRAW BOUNDARIES WHICH INCLUDE ONLY THOSE TRULY NATIONALLY SIGNIFICANT AREAS AND WHICH MINIMIZE CONFLICTS WITH OTHER SIGNIFICANT RESOURCES SUCH AS MINERALIZED AREAS.

------AREAS WOULD NOT TAKE AWAY ANY VALID STATE OR NATIVE SELECTIONS.

------BECAUSE PROPOSED REFUGES INVOLVE SO MUCH POTENTIAL OIL AND GAS SEDIMENTARY BASINS AND BECAUSE SECRETARY OF INTERIOR HAS NOT USED HIS AUTHORITIES TO LEASE FOR THESE RESOURCES ON EXISTING REFUGES IN ALASKA, THE BILL REQUIRES SECRETARY TO ESTABLISH SPECIFIC OIL AND GAS LEASE PROGRAM ON DESIGNATED REFUGES IN ALASKA.

------THE BILL AUTHORIZES A TRADE OF SUBSURFACE RIGHTS ON APPROXIMATELY 3% OF THE EXISTING ARCTIC GAME RANGE FOR STATE LANDS ADJACENT PROPOSED PARK OR REFUGE AREAS. EXPLORATION AND POSSIBLE DEVELOPMENT WOULD BE UNDER SURFACE REGULATIONS OF THE SECRETARY OF THE INTERIOR.

SENATOR GRAVEL'S DRAFT D-2 BILL--TITLE OUTLINE

TITLE V-------WILDERNESS

----------NOT ENOUGH KNOWN ABOUT RESOURCES OR POSSIBLE MANAGEMENT PLANS ON PROPOSED FOUR SYSTEMS LANDS TO DESIGNATE "INSTANT" WILDERNESS AT THIS TIME. NATURAL RESOURCES WILL NOT BE ENDANGERED IF WE WAIT SEVERAL YEARS TO MAKE WILDERNESS DETERMINATIONS; THIS WAS THE ORIGINAL MORTON PROPOSAL.

----------ONE EXCEPTION TO THIS IS SOUTHEAST ALASKA WHERE FOREST SERVICE PLANNING PROCESS NEARING COMPLETION. AFTER THE INFORMATION ALL IN AND ANALYZED THIS SPRING AND AFTER GETTING COMMENTS FROM CONCERNED GROUPS AND INDIVIDUALS IN SOUTHEAST, I PROPOSE TO COME BACK AND ADD IN WILDERNESS OR WILDERNESS STUDY AREAS IN THE TONGASS FOREST IN MY D-2 BILL.

----------INCLUDED IN BILL ARE SPECIAL MANAGEMENT GUIDELINES FOR WILDERNESS TO ALLOW FOR ACCESS AND CABIN USES WHICH ARE PRESENTLY GOING ON,PLUS POTENTIAL AQUACULTURE DEVELOPMENTS.

----------IT IS VERY UNFORTUNATE THAT THE DEPT OF AGRICULTURE BOWED TO POLITICAL PRESSURES AND JUMPED THE GUN ON THEIR WILDERNESS RECOMMENDATIONS FOR SOUTHEAST. THEY CUT THE MARGIN ON AVAILABLE TIMBER YIELD SO CLOSE AS TO ENDANGER THE JOBS AND WHOLE ECONOMY OF SOUTHEAST.

PROPOSAL BY SENATOR MIKE GRAVEL FOR A FEDERAL-STATE LAND USE PLANNING COMMISSION

TITLE VI

----THE COMMISSION WOULD BE ESTABLISHED UPON THE PASSAGE OF STATE LAW DEDICATING STATE LAND FOR JURISDICTION UNDER E COMMISSION.

----ALL FEDERAL LAND NOT INCLUDED IN CONSERVATION SYSTEMS OF MILITARY RESERVES WOULD BE PLACED UNDER THE COMMISSION

----THE STATE WOULD LEGISLATE A PROCESS BY WHICH PRIVATE NATIVE CORPORATION LANDS COULD BE VOLUNTARILY PLACED UNDER THE COMMISSION'S JURISDICTION AND RECEIVE CERTAIN ADVANTAGES SUCH AS PROPERTY TAX DEFERMENT.

----THE COMMISSION WOULD BE COMPOSED OF 9 MEMBERS: 1 CHAIRMEN JOINTLY APPOINTED BY PRESIDENT AND GOVERNOR, 4 FEDERAL MEMBERS BY PRESIDENT, AND 4 STATE MEMBERS BY GOVERNOR. 1 FEDERAL MEMBER AND ONE STATE MEMBER WOULD BE NATIVE IF 80% OR MORE OF CORPORATION LAND DEDICATED.

----MEMBERS WOULD BE FULL-TIME AND SERVE STAGGERED 4-YEAR TERMS

----FUNCTIONS AND AUTHORITIES OF THE COMMISSION WOULD INCLUDE:

- ----DEVELOPMENT OF LAND USE PLANS AND LAND CLASSIFICATIONS FOR VARIOUS LAND USES;
- ----INSURING THAT FEDERAL, STATE, AND LOCAL PLANNING AND LAND USES ARE HARMONIOUS
- ----COORDINATE IMPLEMENTATION OF AIR AND WATER POLLUTION LAWS, COASTAL ZONE MANAGEMENT LAW, AND OTHER ENVIRONMENTAL LAWS;
- ----DETERMINE LOCATION OF TRANSPORTATION AND UTILITY SYSTEM RIGHTS-OF-WAY ACROSS FED, STATE, AND PRIVATE LANDS;

-----VETO POWER WOULD BE RETAINED BY THE GOVERNOR AND THE SECRETARY OF INTERIOR OVER THEIR RESPECTIVE LANDS. EITHER THE STATE OR THE SECRETARY WOULD HAVE VETO OVER NATIVE CORPORATION LANDS.

----ON-THE-GROUND MANAGEMENT WOULD BE RETAINED BY THE NORMAL FEDERAL (BLM) AND STATE (DNR) AGENCIES.

----LANDS UNDER THE COMMISSION WOULD BE WITHDRAWN FROM ALL ENTRIES AND APPROPRIATIONS PENDING CLASSIFICATION BY COMM.

----THE COMMISSION WOULD TERMINATE AFTER 10 YEARS UNLESS RENEWED BY CONGRESS.

SENATOR GRAVEL'S DRAFT D-2 BILL--TITLE OUTLINE

TITLE VII--SUBSISTENCE

-------PROVISIONS VERY SIMILAR TO THE COMPROMISE PUT TOGETHER IN THE HOUSE SUBCOMMITTEE WHICH RECEIVED WIDE AGREEMENT OR ACCEPTANCE BY THE MANY SIDES OF THE ISSUE.

-------THE STATE WOULD RETAIN PRIME RESPONSIBILITY FOR FISH GAME MANAGEMENT.

-------WHEN FISH AND WILDLIFE RESOURCES WERE SCARCE, SUBSISTENCE USERS WOULD BE GIVEN PREFERENCE IN USING THOSE RESOURCES

-------SUBSISTENCE USERS WOULD BE DEFINED ON THE BASIS OF RESIDENCE AND DEPENDENCE ON THE RESOURCES, NOT RACE OR ETHNIC BACKGROUND.

-------ALL LANDS, INCLUDING NATIONAL PARK LANDS, WOULD BE OPEN FOR SUBSISTENCE USES. ACCESS BY CUSTOMARY MEANS, INCLUDING MOTORIZED VEHICLES, WOULD BE PERMITTED ON ALL LANDS.

-------THE STATE WOULD CREATE A SYSTEM A REGIONAL BOARDS AND LOCAL ADVISORS. REGIONAL BOARDS WOULD HAVE PRIMARY RESPONSIBILITY, SUBJECT TO STATE OVERVIEW, FOR DEVELOPMENT OF FISH AND WILDLIFE POLICIES AND REGULATIONS.

-------THE SECRETARY WOULD MONITOR STATE SUBSISTENCE PROGRAM AND COULD SUSPEND PROGRAM IF SUBSISTENCE PROVISIONS NOT BEING FOLLOWED. STATE WOULD HAVE AMPLE HEARING OPPORTUNITIES AND TIME TO CORRECT PROGRAM.

-------FEDERAL FUNDS WOULD BE AUTHORIZED AND GRANTED TO THE STATE TO OFF-SET THE EXTRAORDINARY COSTS TO SET UP AND RUN THIS SPECIAL SUBSISTENCE PROGRAM

SENATOR GRAVEL'S DRAFT D-2 BILL--TITLE OUTLINE

TITLE VIII--STATE AND NATIVE LAND CONVEYANCE

---------ADOPTS LANGUAGE DEVELOPED BY NATIVE COMMUNITY FOR MORE OR LESS INSTANT CONVEYANCE OF ALL VALIDLY SELECTED NATIVE LANDS TO WHICH THEY ARE ENTITLED UNDER THE PROVISIONS OF ANCSA.

---------ADOPTS LANGUAGE DEVELOPED BY THE STATE FOR SPEEDY CONVEYANCE OF STATE LANDS, INCLUDING ALL THOSE SELECTED TO DATE AND THOSE REMAINING TO BE SELECTED IN THE FUTURE.

---------WOULD ALSO AMEND STATEHOOD ACT TO ALLOW LONGER TIME FOR STATE SELECTIONS (IN REALITY WOULD ONLY BE A SMALL AMOUNT WHICH COULD BE USED TO TIDY UP MISC. OWNERSHIP PATTERNS IN YEARS TO COME), AND ALSO CLEAR UP OTHER SELECTION PROBLEMS.

SENATOR GRAVEL'S DRAFT D-2 BILL--TITLE OUTLINE

TITLE IX--TRANSPORTATION AND UTILITY CORRIDORS

-----DUE TO THE VERY LARGE AREAS PROPOSED FOR FOUR SYSTEMS,
DUE TO THE JUXTAPOSITION OF THESE AREAS TO STATE AND NATIVE LANDS, AND
DUE TO THE PRESENT UNCERTAINTIES AND UNKNOWNS INVOLVED IN POSSIBLE FUTURE RESOURCE DEVELOPMENTS IN ALASKA,
IT IS NECESSARY TO ESTABLISH A MECHANISM BY WHICH TO ESTABLISH TRANSPORTATION AND UTILITY CORRIDORS ACROSS FOUR SYSTEM LANDS WHICH MAY BE NEEDED IN THE FUTURE.

-----EXISTING FEDERAL POLICIES AND REGULATIONS SIMPLY CAN NOT BE RELIED ON OR ARE NOT ADEQUATE TO DEAL WITH THESE KINDS OF FUTURE NEEDS, THUS THE LAND USE PLANNING COMMISSION ESTABLISHED IN TITLE VI WOULD TAKE THE LEAD IN THIS CASE.

-----THE COMMISSION WOULD CONDUCT STUDIES OF ALL PROPOSED TRANSPORTATION OR UTILITY SYSTEMS WHICH MAY BE PROPOSED. BASED ON WHAT THEY DETERMINED TO BE THE MOST PRUDENT AND FEASIBLE ALTERNATIVE THEY WOULD GRANT RIGHTS-OF-WAY ACROSS LANDS UNDER THEIR JURISDICTION. WHERE THE ROUTE WOULD CROSS FOUR SYSTEMS LANDS , THEY WOULD MAKE SPECIFIC RE-COMMENDATIONS TO THE SECRETARY INVOLVED. UNLESS THE SECRETARY ISSUED SPECIFIC FINDINGS SHOWING THAT THE ROUTE WOULD RESULT IN SIGNIFICANT ADVERSE HARM TO THE PARTICULAR NATURAL RESOURCES INVOLVED AND THAT THERE EXISTED ANOTHER PRUDENT AND FEASIBLE ALTERNATIVE WHICH AVOIDED THESE IM-PACTS, THE SECRETARY WOULD GRANT THE RECOMMENDED RIGHT-OF-WAY.

SENATOR GRAVEL'S DRAFT D-2 BILL--TITLE OUTLINE

TITLE X--ADMINISTRATIVE PROVISIONS

--------ADOPTS MUCH OF THE LANGUAGE OF THE HOUSE SUBCOMMITTEE WHICH WAS WIDELY AGREED TO.

--------AUTHORIZES LAND AQUISITION BY DONATION, TRADE, PURCHASE. INHOLDINGS CAN NOT BE CONDEMNED.

--------PROVISION OF ACCESS TO AND IN UNITS OF FOUR SYSTEMS

--------ESTALBISHED ALCAN HIGHWAY VISITOR CENTER

--------PROVIDES FOR LOCAL HIRE IN MANAGEMENT OF FOUR SYSTEMS

--------CALLS FOR DEVELOPMENT OF MANAGEMENT PLANS FOR UNITS

--------AUTHORIZES PURCHASE OF ISOLATED ARCHEOLOGICAL SITES

SENATOR GRAVEL'S DRAFT D-2 BILL--TITLE OUTLINE

TITLE XI--MISCELLANEOUS

--------CALLS FOR SPECIAL STUDY OF DEVELOPMENT OF VISITOR ACCESS AND FACILITIES ON SOUTH SIDE OF PROPOSED DENALI (MT. MCKINLEY) NATIONAL PARK.

--------WITHIN TWO YEARS OF ACT, SECRETARY WOULD REPORT ON ECONOMIC, ENVIRONMENTAL, AND ENGINEERING COSTS, PLANS AND FEASIBILITY OF RANGE OF DEVELOPMENTS

--------$2 MILLION IS AUTHORIZED FOR STUDY

--------$500 MILLION IS AUTHORIZED FOR CONSTRUCTION OF MASS TRANSIT SYSTEM FROM ANCHORAGE, VISITOR CENTER, AND TRAMWAY.

-------USING MY BILL, S. 929, A NEW CATEGORY OF NATIONAL TRAILS WOULD BE ESTABLISHED, NATIONAL HISTORIC TRAILS, AND THE IDITAROD WOULD BE DESIGNATED AS A NATIONAL HISTORIC TRAIL

-------THE SECRETARY OF INTERIOR WOULD BE AUTHORIZED TO CONVEY UP TO 5 ACRES TO INDIVIDUALS WHO OCCUPIED LAND AS A PRIMARY PLACE OF RESIDENCE PRIOR TO ANCSA PASSAGE AND UP TO PRESENT WHICH MAY BE INCLUDED IN FOUR SYSTEMS LAND

-------WOULD ALLOW STATE OR OTHER LANDS TO BE DONATED OR ACQUIRED FOR KLONDIKE GOLD RUSH NATIONAL HISTORICAL PARK

------CALLS FOR A SCENIC HIGHWAY STUDY ALONG DENALI HIGHWAY BETWEEN PARKS HIGHWAY AND GLENNALLEN AREA.

SENATOR GRAVEL'S DRAFT D-2 BILL--TITLE OUTLINE

MINERALS

------DID NOT INCLUDE A SPECIAL TITLE IN BILL FOR MINERAL PROVISIONS.

------SPECIAL PROVISIONS DEVELOPED THUS FAR BY HOUSE, AND ADMINISTRATION HAVE BEEN A NIGHTMARE OF COMPLEXITIES AND HAVE NOT BEEN WORKABLE.

------MUCH OF THE PROBLEM CAN BE SOLVED BY NOT PLACING VALUABLE MINERALIZED AREAS IN FOUR SYSTEMS LANDS.

------SOME MINERALIZED AREAS WILL UNDOUBTEDLY BE "LOST" WITHIN FOUR SYSTEM DESIGNATIONS AND WE SHOULD NOT KID OURSELVES INTO THINKING THAT SOME SEVEN-STEP PROCESS ENDING IN CONGRESS WILL ENABLE THE MINERALS TO BE DEVELOPED WITHIN A NATIONAL PARK--CONGRESS HAS ALREADY SPOKEN TO THAT TYPE ISSUE IN THE MINING IN THE PARKS ACT, WHICH DESPITE OUR EFFORTS TO EXCLUDE THE NICKEL DEPOSITS IN GLACIER BAY, SHUT THE DOOR ON US.

------HOWEVER, THE LEGISLATION SHOULD CALL FOR CONTINUED EXPLOR ATION IN ALL AREAS TO GIVE US A CLUE AS TO WHAT WE HAVE; OBVIOUSLY HOWEVER, PRIVATE INDUSTRY WILL BE VERY RELUCTANT TO EXPLORE IN AREAS WHICH ARE CLOSED TO CLAIM STAKING AND WE SHOULD RECOGNIZE THIS. THUS, USGS AND CONTRACT WORK WILL PROBABLY HAVE TO BE RELIED ON.

------IN THE CASE OF OIL AND GAS, MY BILL DIRECTS THE SECRETARY TO INITIATE A LEASE PROGRAM ON WILDLIFE REFUGE LANDS WHERE HE CURRENTLY HAS UNUSED AUTHORITIES.

TESTIMONY
BEFORE
HOUSE RESOURCES COMMITTEE
HOUSE BILL 211
AN ACT ESTABLISHING THE ALASKA LAND COMMISSION
AND PROVIDING FOR AN EFFECTIVE DATE
PRESENTED BY
WALTER B. PARKER
STATE CO-CHAIRMAN
JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION
Friday, February 17, 1978

Mr. Chairman, it is a pleasure to appear before you and testify again on House Bill 211. When I testified last spring, the Land Use Planning Commission position on a future forum of a cooperative planning and management system for Alaska lands had not been finalized. That position was finalized at a meeting in September, 1977, and I would now submit the position paper for the record. Its title is "A Report of the Joint Federal-State Land Use Planning Commission For Alaska on Cooperative Planning, Management, and Organization."

At its September meeting, the Commission had before it the structure represented in H.B. 211 and also the cooperative management structure proposed by Secretary of the Interior Andrus in his amendments submitted to H.R. 39. We also had the cooperative management system proposed in Senator Stevens' Bill, S. 1787. The Commission considered these and other structures in reaching its decisions.

The Land Use Planning Commission has, for a long time, considered that the adjustment of the decisions on land and resources necessitated by the Alaska Statehood Act and the Alaska Claims Settlement Act will probably extend well into

the next decade if not beyond that time. There will be a continuing range of adjustments which must be dealt with and there is no substitute for a continuing strong coordinating mechanism between the Federal and State governments. Thus far, the Commission has defined some areas of concentration in land use planning which are especially acute. These are fish and game management, transportation planning, research coordination, and data collection coordination. We also have underway efforts at achieving some level of joint classification standards for land managers.

It is also important to recognize that Alaska Native corporations are the propritors of some of the State's prime wildlife habitat and resource production areas. Thus, any system of cooperative management must offer incentives to the Native corporations to participate if it is going to be completely successful.

It would be a grave error to assume that the Federal-State relationship always consists of the State seeking to impact Federal planning and programs. There is just as acute a need for the Federal government to coordinate with the State on programs where the State, through its regulatory regime and ownership of State lands and submerged lands, can have a major impact on the success of those Federal programs. Thus, we are very much talking about a partnership on equal footing except in those areas such as defense, foreign policy, endangered species, and others where either the Constitution or the Congress has preempted state rights.

It is equally important to recognize that the equal footing doctrine of the Constitution requires that Alaska be treated substantially as other states in the union in its relationships to the Federal government.

A very carefully structured Federal-State planning process seems to us to offer the best solution to the above problems. Such a process must respect the sovereign rights of each government and act as a coordinator and facilitator of communications between the affected agencies of those governments and between the Congress and the Legislature. It should ensure that each government is well aware of the impact that its actions will have upon the other and make recommendations to each on means by which conflicts can be resolved. Everything else that is subsumed under the phrase "cooperative management," such as joint classification of lands, common criteria for resource development stipulations, common data systems, and other mechansims are simply a means for furthering as much cooperation as can be achieved between two governments. They are not the essence of the cooperation. The essence of the cooperation comes from the structure of a Federal-State body and the commitment to its success. Above and beyond this, we have the requirement for both governments to relate to the boroughs and municipalities. Much of this has already been stated by the Legislature in coastal zone legislation and it is important that any form of Federal-State cooperative management have strong formal linkages with the coastal zone management program, the North Pacific

Fisheries program, and other forms of coordination that exist between the three levels of government now.

I would now like to deal with the specifics of H.B. 211. The Land Use Planning Commission has recommended a membership of ten members with a Federal co-chairman and a State co-chairman rather than the seven members recommended in H.B. 211. House Bill 211 establishes an executive director elected by the commission. We believe that Presidential appointment on the Federal side and Governor's designation on the State side should be continued to provide strong leadership.

The distinction between a single chairman or co-chairmen, such as is utilized by the present Commission, is an important one. With the co-chairmen principle, the commission operates as a body where a certain level of Federal-State conflict is constantly worked out between the two chairmen prior to placing issues before the full commission. With a single chairman, such conflicts would be worked out between the Governor and the Secretaries of concern in the Federal structure before requiring resolution by the full commission. Thus, a single chairman would undoubtedly have more individual power than either of the two co-chairmen. The Commission has, as I have said before, elected to retain the co-chairmen principle as reflecting the most cooperative arrangement.

The Commission agrees with H.B. 211 in that Commission members should not be ex officio or institutional, that is,

State commissioners or Federal department or agency heads. The Commission has also recommended that appointments not be representatives of special interest groups. The Commission subcommittees that worked on this problem felt that special interest representation tends to institutionalize conflict rather than contribute to problem solution.

We feel that the commissioners should continue to be part-time, except for the co-chairmen. The general feeling was that full-time commissioners would tend to institutionalize their own perspective, while part-time commissioners are subject to other pressures and open to other viewpoints from various sectors which they are able to bring to commission decisions. In essence, part-time is felt to be more open to public input than full-time.

The present Commission also felt that commissioners should continue to serve at the pleasure of the appointing official rather than for terms. In this, its position differs from H.B. 211.

Regarding the duties of the commission, our recommendations differ only in degrees contained in H.B. 211. We have recommended that rather than manage "common management areas," the future commission should have classification powers over such lands, but that they should be managed by the existing line agencies. Classifications powers, of course, would imply a planning process which would lead to ultimate classification. The Commission also recommended that the future commission serve a special role in transportation planning across common management areas.

The present Commission has felt that equal access to the Legislature, the Congress, the Governor, and the President and his Secretaries has been the most powerful feature of the Commission. We have not felt that having only advisory powers in this area has been a weakness. Rather, because we have no land interests or program interests to protect and enhance, we have felt that this advisory role gives us entree into many necessary areas where a more narrowly circumscribed role with stronger program responsibilities would make our advice suspect.

With regard to the power of a future commission, it is the opinion of the present Commission that such powers should continue to be largely advisory but that the classification powers over common management land is an important new power that should be considered. Classification would have two aspects; the first would be those lands which the commission itself would classify, and the second being joint classification areas where the commission would aid the State and Federal governments in establishing joint classification standards with the Federal or State land managers then doing the actual land classification.

We have already begun a substantial dialogue with the Bureau of Land Management and the Division of Lands, and a draft copy of the four proposed joint classification areas which are under consideration is also submitted for the record at this time. The four joint classifications that have been proposed thus far are: (1) Settlement and settlement impact which are lands designated for settlement together

with adjoining rural lands within the sphere of community influence. This category also includes lands adjoining existing or proposed highways or other points of access which may be designated into this category if development of other off-road land uses is in the public interest in the particular area under consideration. (2) Resource management. This category is intended to apply to areas where various forms of resource development would be permited an encouraged. (3) Public preserves. This would apply to areas where the prime purpose of management is to protect the natural environment but where other activities would be permitted if they could be conducted in accordance with the primary objective, and (4) Wildlands, which is intended to apply to areas where the purpose of management would be to maintain lands in a natural state. I wish to emphasize that these four classification areas are still under review and development.

The major powers of the commission should continue, however, to be of a coordinating and facilitating nature. This is adequately represented in H.B. 211.

The Commission considered several other elements regarding a future commission which are not incorporated into H.B. 211.

Any future commission should be created for a period of ten years. This time frame will permit the general land ownership pattern to be set or certainly become less fluid and will provide the time for a number of important decisions to be made. While it is unlikely that the need for cooperative planning and management will decrease during this time, a

Congressional and Legislative review should be provided for by statute to occur during the period of the eighth year of the commission's work. This review would cover the first seven years of experience, would redirect the commission's work if necessary, and would recommend whatever actions were deemed appropriate upon expiration of the commission's mandate two years later. Thus, there would be a built in "sunset" provision.

It is most important to maintain sovereignty by providing for the veto power on the State and Federal sides. The major difference between the present Commission and other State-Federal organizations is that the State has the veto power and is therefore, at the commission level at least, the equal of the Federal government. We examined all other Federal-State organizations that we knew of and could find none other where this situation obtained. We think that it is important to retain this concept in a new commission.

There should be executive coordination committees established by both the State and Federal governments. It is especially important that there be a Federal executive coordinative committee in Washington at the Secretarial level. This committee would meet periodically in order to coordinate those programs and functions of their respective agencies which could affect administration of the lands, water, and resources in Alaska. The problem has been often that things are well coordinated at the State or regional level and then must be coordinated all over again with each

individual agency in Washington. Sometimes this can take several years. Therefore, we felt that it was very important to have this coordination occur on a regular basis so that the Federal government could react to the commission's proposals on a continuing basis.

Because the commission will be working more closely with the State agencies, the need for a State executive coordination committee is not as great as the need for the Federal committee. However, I think it would be effective for those Cabinet members with special concerns in land, water, and resources to meet on a regular basis to review commission proposals.

The commission should have a technical advisory committee consisting of the heads of Federal agencies with land-related responsibilites in Alaska and their State counterparts. Other advisory committees or task forces should be appointed as needed either on an area, issue, or functional basis. We have formed some embryo organizations in these areas and work has been generally effective so far. This technical advisory committee would be similar in composition to the commission proposed by Secretary Andrus. The Commission disagreed with the proposals submitted by the Secretary because it felt that a commission made up of various agency heads could not bring the independent perspective to the commission which was desired. Their perspective is available in the present structure of government and should be coordinated in any case. We strongly feel that the commission should be an independent neutral voice and that the members of such a commission should be picked with this in mind.

The policy of joint and equal funding should be continued. This has been an effective control upon the present Commission, in keeping it within the bounds of its mission, and it also serves to insure that Federal and State interests are balanced and that one government does not out budget the other to secure control of the commission.

I have tried to keep this testimony brief. There are several other areas I would be willing to expand upon at the Committee's discretion. Thank you for the opportunity to appear here today.

REPORT OF THE

JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA

COOPERATIVE PLANNING, MANAGEMENT, AND ORGANIZATION

With some five years of first hand experience, the Joint Federal-State Land Use Planning Commission for Alaska remains concerned about Federal-State, intra and interagency cooperative planning and management that occurs in Alaska. After staff work, investigation by a subcommittee, and intensive outside review, the Commission, at its meeting of September 15 and 16, adopted the following recommendations.

The discussion of the recommendation is divided into four parts. First, the basic reasons for cooperative planning and management; second, the reasons for a joint Federal-State commission; third, the powers; and fourth, the organization that such a commission would have. An appendix has been added to the report which translates the Commission recommendation into legislative language. A bibliography is also attached.

I. Reasons for Cooperative Management

Basic reasons for cooperative planning and management in Alaska include:

1. There is a continuing State-Federal re .ionship. This did not begin and will not end with the disposition of the d-2 lands.

2. The land ownership pattern in Alaska is growing evermore complex as a consequence of the implementation of the Alaska Statehood Act and the Alaska Native Claims Settlement Act. Lands owned by the Federal government, the State, Native corporations, and other parties lie adjacent to each other in tracts of varying size which do not necessarily follow rational boundary lines. This intermixture of land ownership can easily jeopardize prudent management. A systematic approach to resources which are similar but owned by different parties must be initated to insure consistent and complementary management.

3. Private and State lands may be the essential buffer zone for certain of the more sensitive areas in Federal control. In other cases, the Federal government will own and regulate the mountain tops while the valleys are in State control, or the Federal government will have the wild and primitive areas while State lands will contain the people. Cooperative management is essential to protect the commonality of interest and to protect the national interest.

4. Resources have been divided by mixed ownership across the surface of the land, and between the surface and subsurface. The State, for example, owns the bed of navigable waterways and tidelands, while the water column within the Federal withdrawals will be controlled by various State and Federal regulations and may be subject to claim under the Federal Reserve Water Rights Doctrine. Ownership of the land surface and the underlying minerals may also be split between private owners and Federal agencies.

5. Migratory wildlife, e.g., caribou, waterfowl, etc., require extensive habitat that will occur on all land ownerships. Habitat must be maintained, and movement must remain free if these species are to survive.

6. Even if parks or refuges are contained ecosystems to the extent possible, there will be elements of the ecosystem that cannot be contained in area boundaries. Protection of entire ecosystems, and the full use of new knowledge about those systems will require extensive cooperation.

7. Issues may have a local significance but are actually regional, statewide or national, and they must be approached from that perspective. These include: (a) Outer Continental Shelf programs; (b) Coastal Zone Management; (c) international fisheries management; (d) marine mammals; (e) energy development; (f) fish and game management; (g) transportation; (h) wilderness study; (i) research; and (j) information systems.

8. The social, economic, and land use interweave is more fundamental in Alaska than in states with a more developed infrastructure. Any change can have an effect across the State.

9. National parks will become destination points for tourists. The State will be called upon to provide access and other infrastructure outside the parks. Close coordination and planning will be necessary to permit the State to provide these services without harmful impacts.

10. Ownership of land in Alaska is concentrated in government and corporate hands. Thus, there is no "grass roots" force to develop means of cooperation.

11. There are extensive federally owned areas in Alaska which remain largely in their natural state, and have natural values that are clearly of national importance. Nonrenewable and renewable resources found on these lands are largely unevaluated, and their possible importance in meeting future national and international needs for energy, minerals, wood

fiber, and food cannot be accurately estimated at this time. The existing Commission has recommended this area be placed in a new classification called Alaska National Lands. Decisions regarding these lands must be made cooperatively, within a national context over time.

12. Land exchanges between Federal and State governments or between governments and Native corporations may offer a viable solution to certain problems. Cooperative planning is needed to provide the broader perspective to undertake such exchanges.

II. Reasons for a Federal-State Commission for Alaska

The trend in Federal programs over the last 15 or so years has been toward greater State-Federal cooperation. Many programs or statutes permit or require cooperation, including Coastal Zone Management, Sikes Act, BLM Organic Act, etc. These and earlier programs such as the river basin commissions have had degrees of success or failure for various reasons. The new joint Federal-State commission in Alaska is designed to enhance the national interest and is particularly important for the following reasons.

1. Alaska is unique in being a one-state region as well as a state in which few land use patterns are set. Alaska offers an opportunity to attempt a vital, close, and unique effort in State-Federal cooperation. Thus, State-Federal cooperative planning and management may be evaluated in isolation from problems which emerge from multistate jurisdictions.

2. A joint Federal-State activity will provide a mechanism to which both the Federal (President, Secretary of Interior, Congress, etc.) and the State government (Governor, Fish and Game Commission, Legislature, etc.) may relate and which will institutionalize communications between the many interests.

3. Many of the decisions to be made in Alaska are too important, too big to be made within the mission of a single agency or even department. A joint commission will provide an umbrella agency allowing a nondepartmental, cross-functional area review, and a joint planning and coordination that must occur.

4. The existing record of many agencies in cooperative management is simply not very good. There are tools in existing laws which may be used in cooperative planning and management, but each lacks a third party, a motivating force to insure that dialogue takes place, and, as appropriate, is acted upon. A joint Federal-State commission provides both the vehicle for stimulating Federal-State, interagency, and interdepartmental cooperation in and across functional areas such as transportation and fish and game, and energy and parks, and a means of unifying diverse elements into a coherent whole.

5. One of the major functions of any commission is to provide a public forum for the direct expression of ideas so issues and problems may not be hidden or ignored by line agencies.

6. State participation on the commission will also insure a meaningful State role in the governmental interface with Alaska citizens. In the absence of such participation, the Federal government would interact alone with private citizens, ar[illegible] many State responsibilities and regulatory approaches c[illegible]d be overlooked in the process. As a consequence, a t[illegible]tional adjunct of American federalism might be jeopardized.

Should the State of Alaska decide not to join in a Federal-State effort, the Land Use Planning Commission recommends that a Federal commission be established which would coordinate Federal activities with particular emphasis on Alaska National Lands and such functional areas as transportation, fish and game management, research, information systems, and wilderness studies.

III. Powers

In order to carry out its intergovernmental, interagency, cooperative planning and management role, the Commission will need a certain limited range of powers.

"Donation" or "Matching" of Lands

Before proceeding with the discussion of "Powers," it is important to note that neither Federal nor State government is giving up, contributing, or donating land. Each is delegating only a portion of its regulatory authority and that subject to a veto by designated officials of the respective governments.

Joint Classification Areas

When land transfers are completed, there will be intermingled Federal, State, and local governmental and private ownership of numerous areas with key natural resources. Whether the public interest is best served by protection of natural values, by the development of needed resources or an appropriate blending, cooperative planning will be essential. With coordination, Federal, State, and private interests can all be served more compatibly; without it, conflicts may be aggravated and all interests frustrated. In those key areas, called Joint Classification Areas or JCAs, where the various interests are similar or complementary, land classification should be conducted jointly by the proposed Federal-State commission. General authority could be granted by Congress and the Alaska Legislature to the commission as part of its comprehensive planning function to identify JCAs and to classify the land.

JCAs would not encompass lands within or recommended as additions to the existing Federal land management systems. The State may also have sound reasons for reserving exclusive control over certain lands, and these would not be incorporated in JCAs. The prerogatives of the different governments should be further preserved by giving each government veto power within its sphere of ownership over joint commission classifications.

Private Lands

Cooperation of private landowners with the State and Federal government will be important in many areas. The commission should have the authority to include private lands in JCAs with the consent of the landholder.

Alaska National Lands

The existing Commission has recommended that Congress establish a new classification system to be called Alaska National Lands. Units of these lands are to be under the day-to-day management of one of the existing Federal agencies, but the Commission would be empowered within guidelines established by Congress to classify these lands. Even if Congress does not create Alaska National Lands, the other powers in this section will be needed if meaningful State-Federal cooperative planning and management is to become a reality.

Should Congress not establish the Alaska National Lands classification, there will remain a demanding need for a joint classification authority to work with JCAs.

Advisory Duties

The new commission should be empowered to continue the advisory functions of the present Commission. Specifically, the commission should be authorized to make recommendations to appropriate officials of both governments with respect to:

--ways to improve coordination and consultation in wildlife management, transportation planning, wilderness review, informative systems, research and other activities requiring regional or statewide coordination.

--programs and budgets of Federal and State agencies responsible for administration of public lands in Alaska.

Should an agency elect not to follow a commission recommendation, that agency shall, within 30 calendar days from the date of receipt of the recommendation, provide the commission a detailed, written report stating in full the reasons for rejecting the recommendation.

Operating Procedures

To avoid the complications of two sets of regulations, State and Federal, which differ, the commission should be authorized to establish its own personnel property, procedural, etc., rules and regulations.

IV. Organization

Commission Structure

After discussion of several alternatives, the Land Use Planning Commission recommends the following structure for a future commission.

1. The commission should be created for a period of 10 years. This time frame will permit the general land ownership pattern to be set or certainly to become less fluid, and will provide the time for a number of important decisions to be made. While it is unlikely that the need for cooperative planning and management will decrease during this time, a congressional review should be provided for by statute to occur during the eighth year of the commission's work. This review would cover the first seven years of experience, would redirect the commission's work if necessary, and would recommend whatever actions are deemed appropriate upon expiration of the commission's mandate two years later. Thus, the commission would have a built-in "sunset" provision.

2. As indicated under Powers, there is to be a Federal veto over actions affecting Federal lands, and a similar veto provision for State lands. As actions move from the purely advisory mandate of the existing Commission to the classification authority of a new commission, the veto power should reside with the President and Governor. In the event of a veto, the appropriate official shall provide concurrent with the veto a written report stating in detail the reasons for such action.

3. The commission would consist of ten members, all of which would serve at the pleasure of the appointing official. The President would appoint a full-time Federal co-chairman, and four part-time commissioners.

   An equal number of commissioners, including a full-time co-chairman, would be appointed by the Governor.

   Qualifications for Federal members should be established, if possible, which will insure a national perspective. State member qualification should be established by State statute. With respect to both Federal and State members, the subcommittee recommended that appointments not be ex officio or institutional, i.e., State commissioners or Federal department

or agency heads. It was also recommended that appointments not be representatives of special interest groups. The subcommittee felt that special interest representation tends to institutionalize conflict rather than contribute to problem solution.

4. In all matters, the commission should be authorized to advise and work directly with the President, Governor, Presidential and Gubernatorial appointees, Congress, and the Legislature.

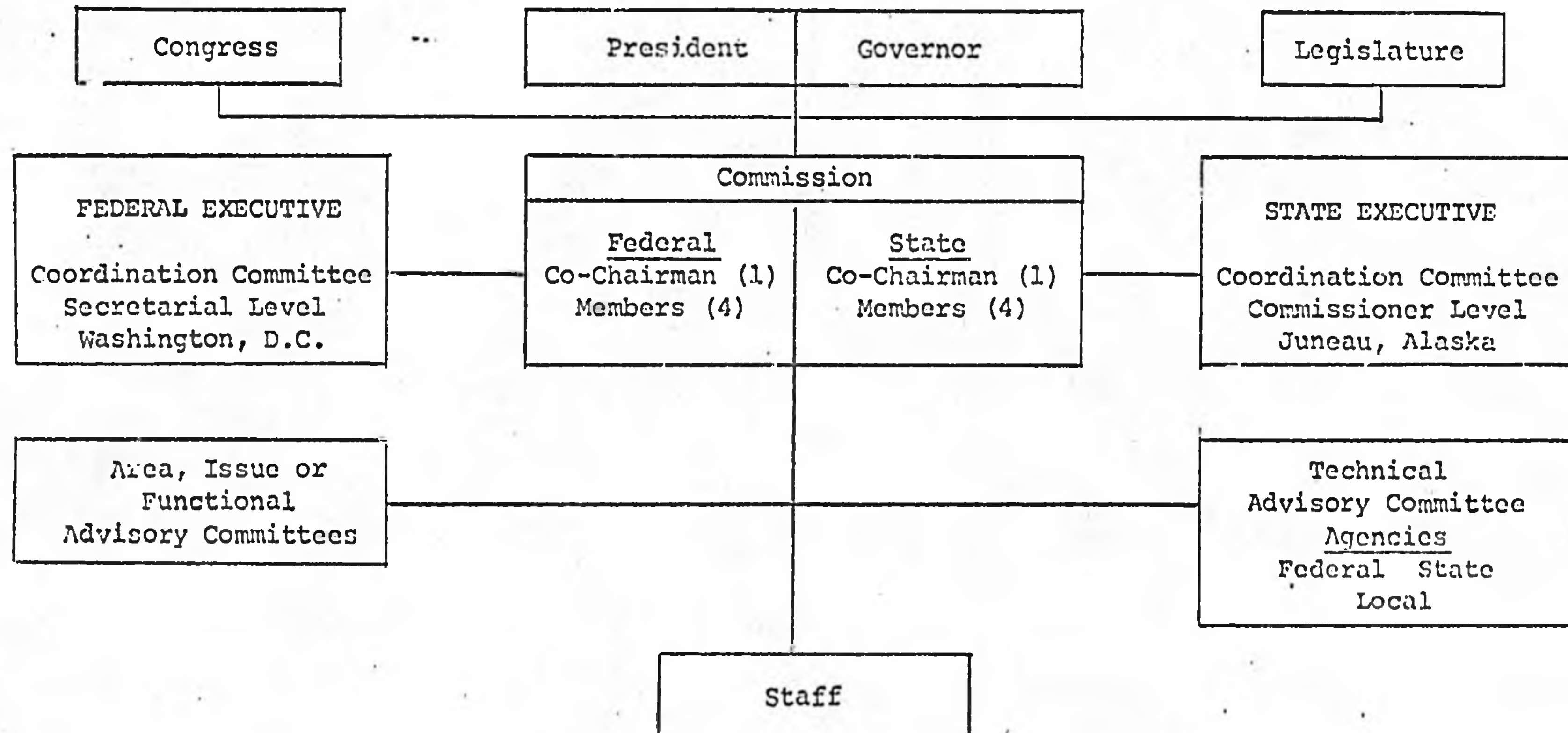
5. The commission should have a standing Technical Advisory committee consisting of the heads of Federal agencies with land related responsibilities in Alaska and their State counterparts. Other advisory committees or task forces should be appointed as needed on either an area, issue, or functional basis.

6. In order to assure a mutual understanding of joint problems, to develop common policy, and to insure that plans are implemented in the field, a Federal Executive Coordination Committee should be established in Washington at the Secretarial level. This committee would meet periodically in order to coordinate those programs and functions of their respective agencies which could affect administration of the lands and waters in Alaska.

7. A State Executive Coordination Committee should be established at the commissioner level by the Governor as the State's counterpart to the Federal Committee. This Committee would also meet periodically to coordinate those programs and functions wherever necessary to insure successful cooperative planning and management, and which interface with Federal lands and interest.

8. The commission's budget should be funded one-half by each government.

JOINT FEDERAL-STATE
COOPERATIVE PLANNING AND MANAGEMENT



SELECTED BIBLIOGRAPHY

Barton, Weldon V. Interstate Compacts in the Political Process. Chapel Hill: University of North Carolina, 1965.

Council of State Governments. The Directory of Interstate Agencies. Lexington, Kentucky, 1976. (See attachment.)

Derthick, Martha. Between State and Nation. Washington, D.C.: Brookings, 1974. Chapter 8.

Hanks, Eva Hanna. "Peace West of the 98th Meridian--A Solution to Federal-State Conflicts Over Western Water," Rocky Mountain Mineral Law Review, Vol. 7 (Fall 1969), 105-135.

McKinsey, Lauren S. and Louis D. Hayes. "Regional Energy Development in Comparative Federal Systems: The Case for the Future of Montana and Alberta," Missoula: University of Montana, April 1974, p.6.

Martin, Roscoe C. et al. River Basin Administration and the Delaware. Syracuse: University Press, 1960.

U.S. Advisory Commission on Intergovernmental Relations. Multistate Regionalism. Washington, D.C., 1972. (This book useful for description of joint commissions. The principles could apply to a single state joint commission as well as to multistate agencies.)

Warren, Robert and Geoffrey Wandesforde-Smith. A Comparative Analysis of American and Canadian Governmental Arrangements for the Development of Regional Water Policy in the Columbia River Basin. Seattle: University of Washington, Department of Political Science, 1970.

DRAFT FOR COMMENTS

DEVELOPING COMPATIBLE
FEDERAL AND STATE
LAND PLANNING SYSTEMS

A Staff Report

Joint Federal-State Land Use
Planning Commission for Alaska

October, 1977

CONTENTS

Page

Introduction. 1

Federal and State Systems 7

Administrative Discretion and Public Accountability 11

Common Purposes 16

Kinds of Categories 22

Proposed Planning Categories. 27

Footnotes 36

Introduction

Throughout the Nation, but particularly in the Western states where Federal ownership accounts for a major share of the land area, state governments are asking for a stronger voice in the planning and management of Federal lands. This assertiveness reflects the growing public awareness of land use and environmental matters. No longer are Federal lands viewed as islands, separate, and apart from other lands. People are realizing that Federal land management decisions in their state can have a powerful influence on surrounding land uses, and on the states' economic and social well-being.

During the September, 1977 Western Governors' Conference, emphasis was placed on the fact that Section 202(c)(9) of the Federal Land Policy and Management Act of 1976 requires that land use plans for Bureau of Land Management lands "shall be consistent with State and local plans to the maximum extent he (the Secretary of the Interior) finds consistent with Federal law and the purposes of this Act." The first resolution adopted by the sixteen governors asked for State and Federal coordination and cooperation in drafting the rules and regulations for the Federal Land Policy and Management Act.[1] Another resolution found that the Bureau of Land Management and the U.S. Forest Service planning systems did not provide adequate accountability, and asked that the rules and regulations for the new Act reduce administrative discretion and add accountability.[2] A number of ways of achieving this objective were set forth, including the establishment of State coordinators within Federal agencies; the exchange of timetables and schedules; and guidelines for combining State and Federal public meetings, review periods, and regulatory requirements.

In Alaska, the mutual interests of State and Federal landowners are especially strong. Alaska's Statehood land grant differs from those of other states not only in terms of the exceptionally large quantity of land involved, but, also, because Alaska was allowed to choose most of its grant "at large" from the unreserved and unappropriated public domain. The State has used its at-large selections to acquire lowlands, river valleys, resource rich regions, and the mountain passes which make natural transportation corridors. Further, the State holds title to the tidelands along the 47,300 miles of Alaska's coast and to the subsurface of all navigable waters. State ownership in Alaska generally encompasses more verdant and productive areas, and areas more suitable for human activity, than lands under Federal ownership. Much of the migratory waterfowl and wildlife of national significance in Alaska depend heavily on State-owned lowlands and tidelands. Thus, State ownership, though it will amount to only 28 percent of the total area of Alaska, as opposed to the Federal government's 60 percent, is of at least equal significance in terms of regional land use planning. In Alaska, development of cooperative Federal-State planning systems offer clear national as well as State benefits.

The recent debate over the Alaskan (d)(2) lands has highlighted the need for coordination between State and Federal landowners. By now it is clear that the land ownership patterns which are being established by Native selections and Federal withdrawals under the Alaska Native Claims Settlement Act and by State selections under the Alaska Statehood Act often divide naturally interrelated areas that should be planned and managed as a single unit. It is paradoxical that states and, by delegation, local governments should have the ability to regulate separate

private landowners to establish rational overall land use patterns, yet there is no comparable mechanism to lend unity to the land use decisions of separate public landowners.

In the future, land exchanges may be used to correct some of the worst problem areas. However, it appears that the only comprehensive means of lending an overall rationale to the planning and management of regions under divided ownership is for the separate landowners and managers to coordinate their planning processes. Doing so should place the primary focus on the total area and enable the development of a unified overall plan rather than separate plans focused on portions of the whole.

Coordinative planning should also serve to clarify and simplify communication between public agencies and the members of the public who use the land. If both levels of government are able to address the planning of a single interrelated area at the same time, using similar terminology for similar regulatory measures, then public land management should be a far more understandable process to the affected public.

Coordinating Federal and State planning processes is a matter of both timing and content. Research, public hearings, and policy decisions should be conducted by the State and Federal governments at the same time for the same region so that there can be a mutual exchange of information and mutual adjustment of planning policies to best fit the requirements of the total area and the interests of the public. Synchronized timing should help prevent situations where one level of government must act as a supplicant or lobbyist to the government with a preestablished plan. Instead, through a synchronized effort, the

focus should be on the total area. Boundaries of ownership should become less important than the nature of the land and the social and economic factors to be considered in developing a sound overall plan.

The second major component of coordinated Federal and State planning has to do with the language and method used in the planning process. This is more than a matter of descriptive terminology. There must be some agreement about the basic system of planning and land use regulation if planning terms and categories are to be compatible. This paper deals with this second component of coordinated land use planning, the use of a common language and method for land use planning. Mutual purposes are described and areas of possible conceptual agreement are suggested. Based on these concepts, a proposed system of planning categories for State and Federal use is outlined.

The Joint Federal-State Land Use Planning Commission for Alaska chose to analyze this subject at this particular time because both the Federal government and the State of Alaska are currently revising their land planning systems. The Department of the Interior is drafting rules and regulations for the 1976 Federal Land Policy and Management Act. Presumably these will spell out a new planning process which will modify the Bureau of Land Management's traditional "management framework planning" process. The ground rules for planning contained in the Federal Land Policy and Management Act are different from those for previous Bureau of Land Management planning programs. For the first time, coordination with State and local governments, with other Federal land managers and with "Indian tribes" is mandatory. Under different ground rules, the planning processes should be different.

Within Alaska, the Bureau of Land Management has recently responded to the planning mandate of the 1976 Act by establishing a regional planning program within each district office. In April, 1977, the State Director of Bureau of Land Management issued a Statement of Policy setting forth strategies and direction for Bureau planning through 1982. A core planning team will be formed within each district office and man weeks of time to be spent on planning were allocated. Within each district, areas were selected for priority attention, generally on the assumption that the most settled and populated areas should be planned first. Presumably, this planning program will eventually be restructured to accord with the rules and regulations which are promulgated in accordance with the Federal Land Policy and Management Act.

On the State side, the Alaska Department of Natural Resources has also adopted a new planning program in recent years. For the first time, the Department of Natural Resources has an active and well-staffed planning organization, equipped to provide the foundation of land planning policy which could lend cohesiveness to diverse land and resource management programs within the various divisions of the Department. Administratively, there has been a shift in emphasis from disposal to classification, and organizational changes have been made to reestablish the role of land planning and classification as the determining factor in any disposal action. As part of this effort, the Department is revising the existing State land classification regulations and plans to complete a proposed draft of new regulations during the coming winter. Thus, at the present time, both the Federal Department of the Interior and State Department of Natural Resources have an opportunity to incorporate changes in their

planning and classification systems which would facilitate intergovernmental coordination.

This report will proceed with a brief review of prior and existing planning and classification systems, a discussion of common purposes and objectives in land categorization, and, finally, recommendations about land planning categories and processes that would accommodate the purposes of both governments.

This analysis of Federal planning systems focuses primarily on planning of lands under the Bureau of Land Management rather than on lands within the national conservation systems. This choice was made because the Bureau of Land Management lands are essentially uncommitted, except to the ongoing principle of management on the basis of multiple use and sustained yield. Further, in Alaska, the Bureau of Land Management often manages those lands most closely interrelated with State or private lands, in regions where cooperative planning is particularly necessary.

Federal and State Systems

The Bureau of Land Management has recently prepared plans for several areas of Alaska using what is called "management framework planning." This system, as it is spelled out in Departmental Manuals, places great emphasis on the process of inventory and analysis preceding the planning decision, but includes very little written policy to guide the decision makers' choice in determining land uses to be included in the plan. Unlike traditional urban land use planning and zoning, the Bureau of Land Management system does not include preestablished land use categories or classifications setting forth groups of compatible uses and policies that might govern such groupings. Thus, instead of assigning areas to various preestablished management categories or classifications, the Bureau of Land Management planner makes his decision on a case-by-case basis, tailoring each decision to fit circumstances as he sees them. Admittedly, his actions are guided by the body of public law governing different uses of the public domain. The Sikes Act, Taylor Grazing Act, Endangered Species Act, 1872 Mining Law, Mineral Leasing Act, Coal Leasing Act, Off-road Vehicle Executive Order 11644, American Antiquities Act, and Wild Horse Act each provide authority and establish guidelines for the management of particular uses; but in deciding which uses can co-exist and, if so, under what circumstances, the management framework planning process leaves the Bureau of Land Management decision maker considerable leeway and discretion.

The Wilderness and Wild and Scenic Rivers Acts differ from the other authorities. Essentially, these Acts establish classification categories governing permitted and prohibited uses within areas so classified.

These two pieces of legislation will be discussed later in this chapter as examples of how the use of planning categories might affect the Bureau of Land Management planning process.

The Bureau's one experience with a formal classification system in Alaska was between 1964 and 1969 during the period when the Classification and Multiple Use Act was in effect. This legislation authorized and directed the Secretary of the Interior to divide and classify areas into lands suitable for disposal and lands suitable for public retention and multiple use management. Thus, as an example, the classification of Alaska's White Mountains planning unit identified eight areas along the Steese highway, totalling approximately 11,000 acres, for entry by private parties under the Federal Homesite and Headquarters Site Legislation. The remaining 6,105,442 million acres were segregated from various forms of appropriation and reserved as public lands under multiple use management.

Though this division into two categories is a very simple and basic form of land use planning, the Classification and Multiple Use Act of 1964 represented a major gain in Bureau of Land Management land use planning authority at that time. No longer was the Federal public domain to be totally open to random entry by private parties under a multitude of Federal laws. Instead, the Act made it possible for the Bureau of Land Management to give an overall direction to the location and pattern of private land acquisition and settlement of the Federal public domain. The 1976 Federal Land Policy and Management Act provides similar planning authority, but with a far greater opportunity to develop a sophisticated and publicly accountable planning system.

In writing, at least, the State's classification regulations are more complex than the Federal Classification and Multiple Use Act. The Alaska Administrative Code outlines 16 different classification categories for a variety of purposes, ranging from very limited uses, such as residential, to general multi-purpose categories such as resource management. However, in actual practice, the most important distinction has been between the group of categories allowing land to be sold to private parties and categories dictating the retention of land in State ownership. Within the 7 categories permitting land sale, the use distinctions have only nominal significance, since State classifications have no power to regulate land use once title is conveyed to a private owner. The retention categories also merge when actual effects are considered. Most of the retention categories allow multiple use, provided the use is consistent with the primary purpose of the classification. The only other real distinctions are that some categories restrict mineral entry to a lease and permit system, whereas others allow mining claims and borough selection is permitted only in the reserved use classification.

The State's Administrative Regulations require that land be classified prior to disposal.[1] Unclassified areas are unavailable for sale or lease of surface rights, though mining claims and mineral leases are allowed.[2] In practice, this restriction has had an effect that is probably quite different from the intention of those who wrote the law. Classification, as it is set forth in the statutes and regulations, apparently was meant to provide the link between land planning and land management. Through planning the overall use pattern best serving the public interest would be determined; lands would be classified on the basis of an areawide plan; under certain classifications lands would be

made available for private ownership. Instead, pressures for disposal have motivated classification actions. Rather than guiding and directing areas of private acquisition and development, classification has generally served as a preliminary to disposal. Rather than blanketing whole regions to provide an overall framework for parcel by parcel decisions, classifications are spotted in areas of activity and large areas are unclassified and open to random entry through mining claims. Recently, however, the Department of Natural Resources and Division of Lands have made extensive administrative changes designed to realign planning, classification, and disposal to accord with the intent of the statutes and regulations.

Administrative Discretion and Public Accountability

Both State and Federal systems allow considerable administration discretion in determining uses of public lands, and both the State land classification system and the Federal management framework planning system have been criticized for failing to incorporate meaningful public participation.

The ease with which land plans and classifications can be changed depends in part on the legal requirements for public participation in the classification and reclassification process. A land use plan or land classification pattern which has been carefully wrought through a process of give and take with the public, other agencies, and adjoining landowners will be less vulnerable to administrative change than a plan developed wholly within the bureaucratic structure, particularly if a similar process of public involvement is required to amend the plan or classification pattern.

The State statutes require that affected local governments be consulted about proposed land use prior to sale or lease of State property.[1] Beyond this there is no requirement for public involvement and classifications have been established without public hearing and, until recent years, without requesting comment from other State departments and adjoining landowners. The Director of the Division of Lands has the power to establish classifications, but his determinations have had little durability. Classifications can be and have been readily changed to fit one purpose or another.[2]

The Bureau of Land Management's management framework planning system also grants a high degree of discretion to the administrative decision maker. Though the manual on management framework planning provides extensive detail about the process of collecting and evaluating information for the plan, there are few guidelines for the district manager who serves as decision maker. He is "presented with recommendations, alternatives, and analyses...," and must "weigh these recommendations and analyses and decide which ones to accept, reject, or modify."[3] Thus, the final planning decision is basically a matter of well informed judgment by the individual manager. In the absence of a system of land use categories, the district manager must decide on a case-by-case basis without the aid of preestablished policy governing typical combinations of uses.

The land use plans which have been developed in Alaska under the management framework planning system are in the form of maps with descriptive notations about plan decisions. In some cases, lines indicate approximate areas to which various decisions apply. For example, areas of the map are noted "manage for raptors" or "prohibit off-road vehicles." Occasionally, in other states, the Department of the Interior has formally withdrawn areas of Bureau of Land Management National Resource Lands for specific purposes such as historic conservation, recreation use, or preservation of primitive or natural characteristics. But even these more formal actions were specially designed for each case. Rather than choosing an appropriate category from a preestablished set of categories of policies and regulations, each withdrawal order was drafted specially for each area.

There are advantages to giving the decision maker the flexibility to tailor his plan to fit the individual situation. However, there are also significant drawbacks to this *ad hoc* approach, particularly when used by public agencies with an obligation to further the larger public interest, even where this may conflict with individual wishes. Without some reference to an established set of categories, there is no assurance that similar lands and situations will be treated similarly. Instead, it is likely that the policies of different district managers will vary considerably, depending on different points of view and the different pressures, both public and bureaucratic, to which the decision maker is subjected. With a variety of different approaches in similar areas, there is the danger that Federal policy will appear unnecessarily complex and inconsistent to the affected public. Since language and terminology are written separately for each situation, wording that means one thing in one area may have a different meaning in another area. Without a clear and specific written definition of the proposed policies under consideration for an area, State and local governments and private parties are handicapped when they attempt to participate in the planning process.

Further, a plan which is essentially a collection of descriptive statements about administrative policy decisions in various areas lacks durability and reliability. What can be decided by administrative fiat at one time can be readily changed or altered at another. Without a certain degree of continuity to planning decisions, affected parties have little assurance that their input is relevant to a significant and lasting decision or, for that matter, little way of knowing when their comments will be considered in the planning process.

As an example of an alternative approach to Federal land planning, it is useful to look at recent experience under the Federal Wilderness and Wild and Scenic Rivers legislation. Essentially, these two Federal laws establish land use categories, each with a set of management policies which can be applied wherever Federal lands are so designated.

On a full set of land use categories, ranging from urban development to minimal land use, wilderness and wild and scenic rivers would fall at one extreme of the spectrum. Nonetheless, the two Federal Acts serve to demonstrate how the possibilities for participatory planning are improved through the use of preestablished categories. In the process of considering a wilderness or wild and scenic river designation, affected parties have a clear statement about the nature of the regulatory measures under consideration. Because the nature and implications of the proposed classification are well defined, communication from the public and from other governmental agencies can be informed and constructive. Since the same set of policies have been used in other areas, there is a basis of previous experience with which to judge the effects of a new proposal.

The Wilderness and Wild and Scenic Rivers Acts set forth policies applicable to areas where the intent is to minimize human use of the land. There is no reason, however, why Federal planning categories could not be devised for use in areas where more extensive land and resource use is desirable. A balanced range of land use categories offers planners and members of the affected public a view of the full spectrum of alternatives before arriving at a decision. Value judgments and political considerations should be reflected in decisions about where and how

extensively various categories are applied; the set of available categories should be as balanced and unbiased as possible.

A full set of categories should probably allow more room for change and amendment than is possible under the Wilderness and Wild and Scenic Rivers Acts. There is need to find a reasonable balance between durability and flexibility in planning decisions. Perhaps such categories should be formulated through Federal regulation rather than by act of Congress. However, as under the Wilderness and Wild and Scenic Rivers Acts, the policies to be considered should be clearly and formally articulated, and the planning decision, once reached should have sufficient durability to warrant the effort required for participation by the affected public and other governmental levels.

Common Purposes

Both the Bureau of Land Management and the Division of Lands are directed by law to plan and manage lands in a way that will accommodate a variety of public purposes and private interests. The 1976 Federal Land Policy and Management Act tracks the original Bureau of Land Management mandate by directing that management be "on the basis of multiple use and sustained yield, unless otherwise specified by law."[1] The State's basic land policy, embodied in the Alaska Constitution, is "to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."[2]

Both levels of government have seen this legal direction as a strong mandate to allow many uses of the public domain. The State has concentrated its land selections in areas with several overlapping potential uses or natural values. State Statutes prohibit classification which would close over 640 acres "to multiple purpose use" except by act of the State Legislature.[3] A comparable provision in the Federal Land Policy and Management Act provides that Congress must be given an opportunity to review and disapprove of any management decision or action that "excludes one or more of the principal uses or major uses for two or more years" from a tract of 100,000 or more acres.[4] Clearly the orientation of both the Federal Bureau of Land Management and the State Division of Lands is towards management which will permit a wide range of land uses.

Some may argue that the development and use of planning categories is contrary to multiple use objectives. Land use categories, by definition,

allow some uses, and limit or prohibit other uses. However, with or without categories, sorting and regulation of allowable uses is essential to multiple use management. Some uses must be prohibited in certain areas or they will preempt other uses. In fact, sorting and categorizing land uses to separate the location of incompatible activities is a means of increasing the multiple use of the land. Without separation, certain uses preempt the land for other purposes, just as the climax tree growth in a forest eventually overwhelms other species. The definition of multiple use in the Federal Land Policy and Management Act recognizes this concept by stating that multiple use can mean "the use of some land for less than all uses; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources..., and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output."[5]

Multiple and varied land use is a commonly held goal, but what are the more specific Federal and State purposes to be served by a system of planning categories? Discussion with land planners in Alaska at both Federal and State levels, in combination with a review of written material, suggests five commonly held specific objectives:

(1) A need for comprehensive "first cut" planning of whole regions to provide basis and framework for more specific land use planning and management in certain areas. At both Federal and State levels, practicing planners see value in assessing land uses and values on a comprehensive regional basis. The Director of the Alaska Office of the Bureau of Land Management, in a

memorandum expressing the conclusion of a series of meetings with his staff, described the current management framework planning program as a "first cut" to make "broad land use allocations, ...address major statewide land issues, ...and develop land use policies and management direction for Bureau of Land Management on a regional basis."[6] The State Division of Lands has also recently queried staff involved in planning and classification decisions. The immediate intent was to identify problems associated with the existing State classification system, but comments often touched on needed land planning systems as well.[7] Here again, a recurring concern was for a process of preliminary regional planning which would be followed by more detailed planning in specific areas. A number of Division staff also thought there was a need for regional classifications that would establish basic management policies, such as control over mineral entry and extraction.

(2) <u>A need to identify areas within the region as the focus for specific and detailed planning and management. Conversely, a need to identify other areas of the region where a simple holding program and basic maintenance management would be appropriate.</u> At both governmental levels, the choice of areas where staff work should be concentrated is perceived as an important function of the regional planning process. The regional context should help to assure that priorities for detailed planning and management are not simply a response to immediate pressures, but instead, are chosen on the basis of a full assessment of options. Also, regional overview enables

an assessment of the interrelationship between different forms and intensities of land use and activity within the region. Transportation routes, areas for private land acquisition and settlement, watersheds, recreation areas, and other uses could be viewed and evaluated as a total pattern to determine changes of future directions that might reduce conflicts and improve interrelationships.

(3) A need to communicate clearly with private parties and other agencies and governments and to encourage and enable informed and constructive comment. Both the Bureau of Land Management and the Division of Lands are obligated to adopt a planning process which enables constructive participation by others. Under the new Federal Land Planning and Management Act, the Bureau's legal mandate to "provide for meaningful public involvement" is clearer than that of the State. State law only requires that affected communities be consulted about land use before any disposal of nearby State lands. But both entities have an equally strong professional obligation to obtain and consider the advice of affected parties, particularly the users of the public lands and the owners of adjoining lands. Not to do so undermines the reasons for planning. Planning that aims at maximizing public benefit from the land and improving interrelationships between land uses must be attuned to public wishes and aware of the plans of adjoining landowners.

Effective communication requires a clear definition of the public policies which may be applied to the area under consideration. Without such a definition there is no basis for public comment. This principle implies the use of some form of predefined planning or classification categories listing groups of permitted uses and defining alternative land management policies.

(4) A need to achieve a reasonable balance between durability and flexibility in land planning and management. Recent conventional wisdom has held that planning "is a process." Rather than "plans cast in concrete", there should be a flexible planning process that evolves to reflect changing circumstances. This concept is easily carried to an extreme that undermines the reasons for planning in the first place and, in effect, grants unlimited discretion to the planner. In turn, a land planning process that allows extensive administrative discretion is vulnerable to pressures from special interests.

Obviously, an excessively rigid plan is also undesirable. Conditions affecting land use vary over time, and a sound decision under one set of circumstances may lose its basis as circumstances change. Without a means for periodic adjustment, planning can become counter-productive. Thus, at any level of government, land plans should be sufficiently durable so that decisions arrived at in a public contest are reliable and are protected from the whims of special interest and administrative change. Yet the planning system should also have the ability

to make changes or adjustments when there is a sound public reason.

(5) A need to accommodate different and often conflicting public values about the use of the land. Within the basic constraint of the capacity of the land, both Federal Bureau of Land Management and State land managers must seek to accommodate the legitimate, but often conflicting interests of miners, conservationists, hunters, photographers, skiers, snowmobilers, agricultural developers, settlers, etc. Generally, the most workable solution is physical separation, creating a pattern of areas set aside for various management policies accommodating different sets of public values. If different sectors of the public can see that their interests are represented in the pattern, the plan has more durability.

This has occurred with the National Park, Wildlife Refuge and Forest Systems. Over time, each system has developed a constituency of loyal supporters from those pe[illegible] whose interests the system furthers and protects. In tu[illegible] a basis of public support gives each system stability and durability. Multiple use systems, without the use of planning categories, run the risk of being seen as all things to all people, offering little security for any one particular interest. Use of a clearly defined system of planning categories, each accommodating a different part of the spectrum of public interest, should counter this tendency and, in turn, add stability to planning decisions.

Kinds of Categories

Systems of land use planning categories typically combine categories applying to activities which use small quantities of land intensively with categories applying to uses which extend over large areas. This distinction between intensive and extensive land uses is important in developing a system of categories for regional planning. Intensive land uses include commercial, industrial, private recreation, and residential uses as well as material and mineral extraction; extensive uses include watershed, wildlife refuge, forests, and natural parklands. Agricultural uses can be either extensive or intensive, depending on the type of cultivation. There is a vast difference between a barley farm and a tomatoe greenhouse.

On a comparative scale, intensive uses require very little land; extensive uses cover large areas. Intensive land uses often have very exacting and specific locational requirements. An industrial or commercial site must have good access to transportation; for many people water frontage is essential to a desirable recreational site; mineral or material development must be located at a deposit where extraction is economically feasible. Another common characteristic of intensive uses is their impact on surrounding land uses, and their tendency to generate significant public costs for services and infrastructure. Industrial or commercial uses may draw heavy traffic and make adjoining residential or recreational lands less desirable. Residential land use requires a relatively high investment of public funds for schools and services such as fire and policy protection. In some locations, a mineral and material site can severly damage the surrounding environment. Land use conflicts typically

occur between intensive uses or when an intensive use is superimposed on an extensive use. In contrast, extensive uses normally extend over large areas, do not involve construction except as an accessory activity and generally have minimal impact on adjoining uses.

The State's existing land classification system is a mixture of categories for these different forms of land use. There are six intensive use categories, "commercial," "industrial," "private recreation," "residential," "material," and "mineral"; and five extensive use categories, "grazing," "timber," "resource management," "watershed," and "unclassified." Four of the State's categories, "agriculture," "utility," "reserve use," and "open-to-entry" fall in the middle ground between the intensive and extensive use. The "utility" classification is an all-purpose disposal category that has been used by the State to provide large tracts for speculative subdividers. The "reserve use" category was originally designed as an intensive use category to apply to specific sites needed for government agency purposes, but it is the classification designating areas for a municipal selection, which can amount to 10% of the State lands under municipal jurisdiction. The open-to-entry category was designed to designate extensive areas within which individuals could select their private recreation sites. It is an extensive classification within which intensive uses could be located. Categories allowing mining claims also operate on this principle.

Though the Federal Classification and Multiple Use Act of 1964 set forth only two formal classification categories, one for disposal and the other for retention for multiple use management, the accompanying regulations included a listing of land classifications which were to be

used to qualify lands for either disposal or retention. Like the categories in the State classification system, these classifications covered uses ranging from intensive, site-specific activities such as residential, commercial, and industrial and mineral extraction to categories for very extensive uses such as watershed protection, wilderness, and fish and wildlife.

The use of classification categories similar to the State and Federal examples described above is common practice in urban zoning. At the scale of an urban community, where most uses are intensive, such systems are workable. But application of a similar system at a regional scale can cause serious distortions. The basic difficulty is simple. Viewed in a regional context, intensive land uses require very little acreage. On maps at a regional scale a realistic portrayal of the land area required for most intensive types of land use is barely visible. Development in the Anchorage bowl occupies less than half a township. The area required for expansion of permanent settlement is also relatively small. As William H. Whyte has noted:

> "A metropolitan area can take care of a great many more people by only a very slight expansion of its radius. Once it is a certain size--say fifty miles across--a slight enlargement of the periphery will vastly increase the acreage, with each additional mile outward adding almost a fifth again as much area."[1]

At a regional scale it is impossible to depict the specific interrelationships that are important in dealing with intensive land uses. Further, used at a regional scale, intensive land use categories tend to be

handled as extensive categories, and areas far beyond realistic requirements designated for intensive use purposes.

In the past, this happened under the State Division of Lands where extensive areas along highways were classified "commercial," "industrial," or more commonly, "utility." The effect can be the equivalent of no planning at all. In areas where designation enabling disposal for commercial or industrial use far exceeds the realistic market demand for that type of land, development continues to occur at random and commercial structures intermingle with residential development. The net effect is that the area is blighted for both residential and commercial purposes. The sprinkling of commercial structures makes the land undesirable as a place to live, and, in turn, commercial development fails to gain the advantage of the added customer drawing power created by adjacency to other businesses.

The problems created by mixing intensive and extensive land use categories in planning on a regional scale could be avoided by writing regional land use categories that cover groups of uses that typically locate together in the same part of the region. For example, instead of commercial, residential, and industrial use categories, perhaps there should be a "settlement impact" category applicable to the whole range of settlement related uses, including the public recreational lands that should be interspersed with settlement. Such a category would be roughly parallel in dimension and level of generality to other extensive use categories applicable at a regional scale.

However, if this approach is used to show broad patterns of land use at a regional scale, it will be important to devise an effective system for planning at a more detailed scale in certain areas where intensive uses cluster and for isolated sites in more remote regions, for example, a mining site or an isolated coastal development. The following section details a proposal for broad regional planning categories combined with subsets of categories for "settlement impact areas" and for areas of intensive resource development, as well as a "conditional use permit" system for isolated intensive uses in remote regions.

Proposed Planning Categories

From the definition of purposes which both Federal and State governments seek to accomplish through their land planning systems, and from the examination of existing systems and categories that have been used previously, it is possible to propose elements of a system that would have utility at both Federal and State levels. In summary, these elements are as follows:

(1) For regional planning, use of broad categories covering extensive areas and including groups of uses. Rather than referring to a single use, or resource such as "residential" or "timber," the proposed regional categories would apply to extensive areas and include groups of land uses that either are compatible or could coexist compatibly, given appropriate regulatory measures. Categories would be differentiated by the degree or intensity of land uses permitted. Each category should be written with a well defined statement of intent and purpose. For clarity, this definition should list those uses which are unequivocally prohibited or permitted under the intent of the category. However, as is explained below, many uses would be permitted on the condition that they conform to a more detailed land use plan, or, for isolated intensive uses, on the condition that they meet certain criteria designed to accord with the intent of the regional category.

(2) Within regional planning categories, reference to subsets of more specific categories or criteria, applicable to spots or

groupings of intensive land uses. For many uses the regional category would simply state that permission or prohibition is on the basis of specific criteria or detailed land use planning developed at a more localized level. This two-tiered approach would make a clear distinction between the regional planning of extensive land uses or groups of land uses, and the area-specific, large scale consideration that should be applied to intensive land uses which may locate within the broader designations.

The two-tiered approach also offers a useful parallel with existing institutional structures. For Federal Bureau of Land Management planning, broad regional categories could be established nationally through the rules and regulations which are soon to be promulgated for the 1976 Federal Land Policy and Management Act. Development of categories and criteria for the more specific planning subsumed under the regional categories could be assigned to Bureau of Land Management State offices or, in a state such as Alaska where there are vast differences between regions, the job might be further delegated to the district office level. At a State level perhaps both the general and the specific categories and criteria should be developed in the central office, but, here again, it may be appropriate to reflect regional differences, and draw on district office experience in the drafting of the subsets of specific categories and criteria.

Since the State statutes, unlike the Federal Land Policy and Management Act, refer to classifications, the State's categories should be for classification. Regional classifications would establish broad management policy. The more specific criteria and classification categories for intensive uses should include adequate detail to guide day-to-day management decisions, for example, to serve as a basis for drafting lease specifications. This would correct a difficulty with the existing State land regulations which require that uses of leased lands be limited to the purpose of the classification, but fail to clearly specify prohibited and permitted uses under most classifications.

(3) Use of "conditional use permit" criteria to regulate intensive land uses which locate on isolated sites in remote areas. For uses such as mineral development or remote coastal development, feasible sites generally cannot be predetermined without the kind of investment that is practical only for the industry itself. Thus, if a public agency designates areas for isolated development prior to the industry's decision, the area is liable to be excessive, or the feasible and desirable site may be missed entirely.

A preferable approach to regulating isolated site development of public lands is by establishing criteria governing the choice of site and the nature of development. Under this system, permits for each use would be issued or denied on the basis of preestablished criteria and conditions. Criteria

would be set in accordance with the purposes and policy of the regional category encompassing the site under consideration.

Through case-by-case evaluation, development can be permitted, permitted with stipulations, or prohibited depending on how the individual site and project align with the criteria. For example, locations identified by State and Federal governments as "areas of environmental concern" could be specially protected by the terms of the criteria and conditions, and in areas of high scenic value mineral development might be restricted to locations that are not visible from roads and hiking trails.

Conditions and criteria should be clearly defined and the process of evaluating development applications against the conditions and criteria should be formally structured and conducted with public notice and hearing. These procedures should help protect the basic principle of equity in land use regulation, that similar situations be treated similarly. Further, by giving industry a clear definition and advance knowledge of the standards that will govern the choice of site and the nature of development, compliance is facilitated.

(4) Establishment of broad regional categories to cover the full spectrum of regulatory options, extending from minimal land use to intensive community development. Decisions about where to apply various categories should be developed with public participation and reflect the values and goals of the public. To this end, categories should be available to represent

various different public interests and values relating to land use. At least four types of regional planning categories should be offered. These are:

<u>Wilderness</u>, a category for areas where man would not alter the natural world. At a Federal level, this category is already formally embodied in the Wilderness Act of 1964. The Federal Land Policy and Management Act of 1976 made the provisions of the Wilderness Act applicable to Bureau of Land Management lands. State regional classification categories should also include wilderness. Though the State will probably be less likely to designate areas as wilderness, the category should be available to provide a balanced range of choice and to facilitate coordinated planning with Federal land managers.

<u>Habitat/Watershed</u>, a category applicable to areas where the primary purpose of management is to protect the natural environment, but where other activities could be permitted if they can be conducted in accordance with this primary objective. In such areas, human activity beyond hunting, fishing, recreation, research and inventory would be permitted or prohibited on a case-by-case basis under specific conditional use permit criteria.

<u>Resource Management</u>, a category applicable to areas where various forms of resource development would be permitted, subject to subarea plans for sustained yield management

of renewable resources and conditional use permitting for intensive uses. Under more detailed planning or classification categories, land uses could be separated into districts for public recreation and fisheries protection, timber cutting and agricultural development. Again, mineral development would be most appropriately managed through a conditional use permitting process. However, under the resource management category, the criteria for a permit would be more liberal than under the habitat/ watershed category.

Settlement Impact, a category designed to encompass areas soon to be settled, together with adjoining rural lands within the sphere of community influence. Selected areas adjoining existing or proposed highways and other points of access may be designated under this category, if development or other off-road land uses are appropriate in the particular location. The settlement impact category assumes a subset of land use categories which could be applied at a larger scale. These subcategories should include the traditional community land uses such as industrial, commercial, and residential, as well as categories for the public open space and watershed lands that should surround and intersperse settled areas.

The "settlement impact" category should encourage a balanced combination of areas for private acquisition and development with public lands located so that population

from throughout the community can have ready and convenient access to natural lands. The initial regional designation of settlement impact areas, with the intent of planning the total pattern of public and private lands in a community, should counter previous tendencies by State and Federal governments to identify large areas for disposal without corresponding designation of public recreation lands in and around disposal sites. By including areas which will be impacted by community growth, such as lands to be subjected to intensive recreation use and areas where speculative land sale and subdivision are occurring, the settlement impact category will serve to flag such regions for more detailed planning and management.

At the State level, the settlement impact category could serve to designate areas appropriate for municipal selection. In this case the detailed planning for public lands and for various forms of private development within settlement impact areas should be the responsibility of the municipality.

Some may argue that the Federal and State governments cannot use the same categories for regional planning because the two governments hold differing goals and objectives for their public lands. It is true that there are considerable differences in policy and attitude, despite the fact that the State Division of Lands and the Federal Bureau of Land Management have a similar legal mandate to make wide and varied use of the public lands. As a more local form of government, State land manage-