

ALASKA LEGISLATURE COMMITTEE FILES 1901-1902

1894 SRES TIMBER BRIEFING 1/30/81 - SB 7

	MMBF			MMBF
	Low	High		
Haines Mill	20	48	Haines	15.0
Seward Mill	20	40	Yakataga Cut	20.0
Tyonek		125	Shuyak	5.0
	<u>165</u>	<u>205</u>		<u>40.0</u>

The milling capacity figures and cut calculations are realistic values (although the cut figures must be refined through operational analysis and multiresource planning). The Chugach National Forest cannot be counted on to put up more than about 10 million board feet per year -- and even this low cut may be higher than actually produced. If the State is allowed to utilize intensive forest management techniques, it could conceivably produce enough to supply the equivalent volume to keep two of the three active mills in minimal operation. Any reduction in the State's commitment would preclude the sustaining of one of the two mills, unless the Natives see fit to support the local operations. We feel justified in recommending full commitment of the State's operable forest base at Haines, Cape Yakataga and Shuyak Island to intensive resource management with an emphasis on forest production with full consideration given to the wildlife and recreational potentials in the areas.

The Haines Timber Sale contract limits our ability to provide more than one million board feet of timber to other commercial enterprises annually while the production capacity of local small mills is 4.0 million feet annual. In addition, we are being asked to contribute about 500 cords of fuelwood to home heating requirements in this depressed area. The personal use demands by the year 2000 will probably grow to 2.0 million board feet and 2,000 cords per year with an accompanying small commercial demand of 5.0 million board feet (provided supplies are freed up). The fuelwood demand does not represent a supply problem, however, the sawlog volume can only realistically be met if the State goes into intensive second growth management on the cut over acres.

Southeast Alaska - Since the State was prevented by law from selecting National Forest Land for forest management purposes, any intensive management must occur incidental to other uses such as wildlife, recreational development or community development. Since the State selected lands are in close proximity to the population centers around Southeast we are under considerable pressure to provide personal use and small commercial forest products disposals.

In Juneau, we project 100 fuelwood permit requests this year for a total of 500 cords. By the year 2000, this will probably grow to 400 permits for 2,500 cords. This demand equates to the total growth on 1,875 acres of coastal forest and does not allow for any sawlog disposals. At Ketchikan, the current demand is for 15 personal use sawlog permits for 130,000 board feet and 60 fuelwood permits for 360 cords per year. This equates to the total production

of 525 acres at present. If fuelwood and personal use sawlog demands double over the next 20 years, the State would require 1,050 acres to keep up with non-commercial demands.

An analysis done by Southeast District Staff on March 21, 1980 utilized production figures provided by the Tongass National Forest forest inventory to show that if all 141,818 acres of State patented, TA'd and selected lands were available for management in Southeast, we could practice intensive management on roughly 71,600 acres. At a meeting with the Tongass, official representatives of the small business community requested an increase of over 59 million board feet in the Forest Service set aside program to meet their current needs. Were the State managing its Southeast lands for timber production we could produce a sustained cut of 57 million board feet. This represents almost enough to meet current small commercial demands without even trying to project to the year 2000. Also worthy of note is the fact that, regardless of the outcome of d-2 legislation and its associated guaranteed volume of forest product outputs, the U.S. Forest Service historically has been involved in a downward trend in annual allowable cuts due to continuous withdrawals of its product forest base for non-forest, single use allocations. This trend is not likely to reverse itself in the near future.

Summary: The vast majority of the forest products we utilize in Alaska are imported from the Pacific Northwest which all experts agree will be faced with a severe timber shortage by the year 2000 barring a lasting decline in forest product demands. The production figures we cited are realistic as are the personal requirements (based on the available data). The pending shortages in the Pacific Northwest should increase commercial demand above our projections. With the erosion of the State's forest base to date and the continuous erosion of that land base due to single use land allocations it appears that we could not now be self sufficient in forest products. The longer we wait to identify and reserve this land base the more severe the shortages in the future. With these points in mind, we recommend that 1) the Commissioner act as soon as possible to reserve identifiable forest areas in the regions identified and along transportation corridors; 2) study all state selected, TA'd and patented lands to insure that all lands with the potential to ease the upcoming forest product shortage are located and reserved. Besides being a critical source of forest products these lands will offer increased recreational access, improved wildlife habitat and an economic return to the State.

#### Raw Land Area and Productivity By Region (Generalized Figures)

Interior (Fairbanks, Yukon R., Kuskokwim R., Mat-Su Valley, Glennallen)

58,300 acres operable (175,000 acres of raw land) required to produce 1.0 MM Bd Ft. of Spruce and 5,400 cords of hardwoods on a sustained basis. (1/3 of area forested)

Kenai Peninsula

6,500 acres operable (13,000 acres of raw land) required to produce 1.0 MM Bd Ft. of Spruce and 1,500 cords of hardwoods on a sustained basis (½ of area forested)

Coastal

1,250 operable acres (1,875 raw land acres) required to produce 1.0 MM Bd Ft. of Spruce/Hemlock on a sustained basis (2/3 of area operable) or 2,500 cords of fuelwood.

Reference Used:

Alaska's Forest Products Industry Sawmill Directory, USDA Forest Service, Sept. 1987

Timber Resource Statistics for the-Fairbanks Block, Tanana Inventory Unit, Alaska 1970, Karl M. Hegg, USDA Forest Service Resource Bulletin PNW-59, 1975

Timber Supply and Use in the Haines-Skagway Area, Alaska, LaBau and Hutchinson, USDA Forest Service Resource Bulletin PNW-67, 1976

Haines-Skagway Area Land Use Plan, Alaska Dept. of Natural Resources, June 1979

Tongass National Forest Land Use Plan

Haines Timber Sale Contract

Forest Resource and Allowable Cut, Fairbanks Working Circle, Daniel Wieczorek, Alaska Dept. of Natural Resources, June 1980

and numerous individuals from the Staffs of Northcentral, Southcentral, and Southeast Districts and the Director's Office, Division of Forest, Land and Water Management, Alaska Dept. of Natural Resources

cc: NCD  
Bill Copeland  
Les Fortune

SCD

Larry Dutton  
Skip Harding

SED

District Manager  
Paul Maki

A PROPOSAL  
FOR A  
STUDY OF ACTIONS REQUIRED TO EXPAND  
THE CENTRAL ALASKA FOREST INDUSTRY

prepared for  
Alaska State Senate

submitted by  
ARKTOS ASSOCIATES

November 1980

## GENERAL PROPOSAL DESCRIPTION

Arktos Associates is pleased to present a proposal to the Alaska State Senate for a study to determine and set forth the actions required to expand Central Alaska's forest products industry. Specifically, the study will identify the factors inhibiting development of a local timber industry in Central Alaska, the actions needed to overcome these factors, and related implementation recommendations. The goal underlying this effort is the expansion of the local timber and lumber industries to serve a greater proportion of Alaska's needs.

This study will build on the findings of an assessment completed in 1979 by Lindh and Associates and Homan-McDowell Associates entitled An Assessment of the Domestic Market for Alaska Wood Products. The Lindh/McDowell study concluded that the Central Alaska Railbelt region had an adequate market and transportation system to support an expanded local forest products industry. It found that the local forest products industry only provides nine million board feet of the 72.8 million board feet consumed in the region or 12.4 percent of the total lumber market. As a consequence, the vast majority of the railbelt lumber is imported from Seattle or British Columbia. The study concluded that existing sawmills could probably enlarge their share of the local market substantially. Why, then, haven't they done so? The purpose of the proposed Arktos study is to identify those reasons, and to set forth the actions needed to enable the existing local forest products industry to substantially enlarge its share of the local market.

The study will be limited to the Central Alaska Railbelt (lower Kenai Peninsula to Fairbanks). Analysis will focus on the problems hindering expansion of the area's timber industry despite the presence of an adequate market, and the solutions to these problems. Suspected problems include timber availability, stumpage fees, lack of a developed grading system, and lack of adequate drying facilities, as well as other economic and production difficulties.

Since the state of Alaska owns a large part of the timber in Central Alaska and is responsible for industry guidelines, it is anticipated that many recommendations may focus on state legislation, policies, and potential programs. Areas which may be considered include legal and regulatory policies concerning stumpage fees, initiation of new management policies such as the setting aside of sustained yield forest areas to provide a guaranteed long-term timber supply, or adopting an overall strategy to aid the local lumber industry (supply, financing, grading services, etc.)

The study analysis will concentrate on: 1) documenting the present problems hindering development and the suggested solutions from the industry and resource owner point of view, 2) general assessment of the

available timber resources in the area from an ownership and development potential point of view, 3) analyzing possible solutions that could be employed to further development of the local timber industry, and 4) outlining actions which need to be taken to overcome the documented problems and stimulate the industry. The final report will include presentation of these four areas of analysis, an executive summary setting forth specific recommendations, and a map generally indicating the timbered areas and land ownership pattern in Central Alaska.

The following pages provide a brief description of the work to be performed during the study's four phases, the final product, the time frame, the personnel who will work on the study, the budget, and general information on Arktos Associates and the project team.

## DESCRIPTION OF PROJECT PHASES

The study will be divided into four general phases of work: 1) documentation of timber industry problems and suggested solutions; 2) general inventory of the timber resources in the railbelt area; 3) analysis of suggested solutions and actions available to alleviate the documented forest industry problems; and 4) specification of recommended actions.

### I. Problem Documentation

This section will attempt to identify and document the factors hindering the local forest products industry, as well as suggestions on how to overcome these factors. The analysis will consider the viewpoints of the timber operators, the lumber companies, state and local government and native corporations. Special efforts will be made to contact timber and sawmill operations throughout the region. Relevant existing studies will also be examined as part of this analysis. It is expected that the problems identified will include a lack of guaranteed timber supply, high stumpage fees and inadequate processing facilities. All interviews will be documented in writing and presented in an appendix to the report. A general summary of the problems identified and solutions suggested will be presented in the body of the report.

### II. General Assessment of the Timber Resource

Information provided by the state's computerized resource assessment system, and other government and private sources will be used to give a general overview of the timber resource in Central Alaska. Ownership of timbered areas will also be reviewed. Consideration will be given to what lands are owned by the state, boroughs, federal government and natives. The results will be presented on a 1:1,000,000 map of the railbelt region and in a written analysis. To the extent possible, the most valuable areas available for immediate development in the region will be identified and ownership noted on the railbelt region map. The identification of these areas will take into consideration basic timber types, growth rates and average yields. The purpose of this effort will be to document the amount of publically-owned timber resources which are available to support an expanded local timber industry on a sustained basis.

### III. Analysis of Problem Solutions and Alternative Actions

This phase of the study will identify and analyze methods which might be used to solve problems identified in Phase I and to stimulate the

local timber industry. Solutions suggested by forest industry representatives, as well as government officials, will be considered. Options might include increasing timber availability, revising stumpage fee policies, quality control needs, investment aid, establishment of sustained yield areas, etc. Most of the possible actions reviewed will be identified in Phase I interviews and reflect Phase II findings.

#### IV. Outline Specific Recommendations

This phase will discuss the actions which could be taken to help the local industry acquire a larger share of the local lumber market. Based on the analysis in Phase III, possible actions will be prioritized and implementation steps outlined. Actions might include legislative amendments, policy and regulation changes, administrative actions and funding programs. Areas which may be considered include legal and regulatory policies concerning stumpage fees; initiation of new management policies such as the setting aside of sustained yield forest areas to provide a guaranteed long-term timber supply; or adopting an overall strategy to aid the local lumber industry (supply, financing, grazing services, etc.).

#### DESCRIPTION OF FINAL PRODUCT

The final report will discuss the four areas of analysis and the relevant findings, present a concise executive summary, and include an appendix documenting the various interviews completed in Phase I. The report is expected to be around one hundred pages in length and will be camera-ready. Five xerox copies will accompany the original report. A special Series B 1:1,000,000 map depicting the forest resources and ownership pattern for the railbelt area of Central Alaska will accompany the report. The report will be presented in such a way that appropriate actions could clearly be based upon the study's recommendations and documentation.

#### PROJECT TIME FRAME

The study team brought together by Arktos Associates for this project could complete the project within ten weeks of the contract being signed. It is assumed that briefings of the legislature would take place after the study is completed.

## PROJECT PERSONNEL

Arktos Associates has assembled a team of qualified and experienced individuals for this project. All of the personnel have worked on and successfully completed a variety of resource and policy assessment studies for regions of Alaska. This team recently completed the Land Disposal Policy Study for the Division of Legislative Finance of the Alaska State Legislature. Previously, members of the team have worked on state forest studies, State of Alaska land selections, and general resource inventory and mapping work. The three project personnel are David Hanson, Vincent McClelland and Marlene Helminiak.

Mr. David Hanson will manage the project, complete much of the interview and analytical work, and write the final report. Mr. Hanson recently served in a similar capacity for the State Land Disposal Policy effort and native corporation land studies. Previously, Mr. Hanson has worked with forest and resource policy assessment efforts as Chief of the Planning and Research Section in the Department of Natural Resources.

Mr. Vincent McClelland of McClelland and Associates will work as part of the project team on the interviews, resource inventory and assessment work, analysis, and recommendations. Mr. McClelland, who has a formal background in forestry, has previously worked on forest industry problems in Southcentral Alaska. He was responsible for much of the resource assessment work in the State Land Disposal Policy study and has dealt with resource policy issues in his past position as Chief of the Special Projects Section with the Southcentral District Office of the Alaska Department of Natural Resources.

Ms. Marlene Helminiak will be working on the forest resource assessment and land ownership mapping work. Ms. Helminiak recently worked on the data gathering and production of the 1:1,000,000 statewide land status and classification map for the legislature. Ms. Helminiak has worked in the past on various mapping, land status research, resource assessment and computer information projects.

Information on Arktos Associates and resumes for project personnel are attached.

## PROJECT BUDGET

I.	Problem Documentation	
	Interviews	\$ 5,040
	Analysis and Documentation	<u>1,800</u>
	Subtotal	<u>6,840</u>
II.	General Inventory and Analysis (Mapping)	
	Technical Analysis	2,250
	Research and Drafting	1,500
	Computer Time and Materials	<u>750</u>
	Subtotal	<u>4,500</u>
III.	Solution Analysis	
	Research and Analysis	4,910
IV.	Analysis of Recommendations	
	Research and Analysis	3,790
V.	Report Preparation	
	Writing and Preparation	2,670
	Materials (copies, xerox, maps)	900
	Typing	<u>1,500</u>
	Subtotal	<u>5,070</u>
VI.	Travel (includes up to 12 person trips to Kenai, Homer, Mat-Su Valley, Talkeetna, Fairbanks, North of McKinley and Juneau) and per diem	3,854
VII.	Project Management	2,170
VIII.	Overhead (Office Expense)	<u>3,113</u>
	TOTAL	\$ 34,247

# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JH  
JAY S. HAMMOND, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2400

Paula P. Easley  
Executive Director  
Resource Development Council  
for Alaska, Inc.  
Box 516  
Anchorage, Alaska 99510

Dear Ms. Easley:

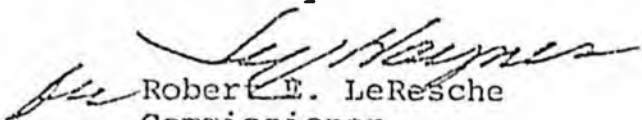
Your letter of November 19, in which you outline in detail your perceptions of deficiencies in the Department of Natural Resources, is very much appreciated.

Please find attached the Department's reply to your letter. My remarks are organized using the headings employed in your letter so that you can easily determine our response to each of your points.

I understand that we have agreed on Thursday morning, January 22, as the date for our joint meeting. I am looking forward to discussing the matters raised in your letter as well as anything else of interest involving DNR. The deputy commissioner and all nine division directors will be present along with myself. I hope that as many RDC members as possible can attend.

Thank you again for taking the time and effort to set forth your views in such detail.

Sincerely

  
Robert E. LeResche  
Commissioner

## OIL, GAS AND MINING ISSUES

### Non-Utilization of Technically Trained Personnel

There has been no harrassment of employees by the Commissioner's Office other than our continuing insistence that the projects assigned to the Department by the Legislature through the Budget be completed. During this fiscal year, we have been assigned close to 150 operating budget projects and are responsible for an approximately equivalent number of capital projects. Nearly all of these projects involve resource development, such as oil and gas lease sales and land disposals. Since the state's economy revolves around natural resources, we cannot fail to produce on these projects, and we are therefore extremely demanding of our employees in this respect. I can only conclude that those professionals that feel they are being harrassed are philosophically-oriented rather than performance-oriented and do not belong in the bureaucracy in the first place.

With respect to advocacy by employees, any administrator is foolish if he or she does not hear all possible points of view before going public with a decision. As a result, I have always encouraged all of our employees to make their views known within the Department in advance of any decision, and I have altered my thinking more than once as a result of facts provided by the Department's professionals. However, any employee advancing a point of view must (1) present his views in a usable format within the time frame available for a decision, and (2) live with the final decision regardless of whether or not he agrees fully with it. I suspect the complaints you refer to are from employees who cannot live by those rules. These rules are common to any business, public or private.

We have never transferred responsibility away from any individual unless that individual has had difficulty producing the assignments made to him consonant with the rules of the organization. The only philosophy we demand of our employees is that they be open minded, willing to listen to and consider the views of the public that employs them, and capable of second guessing their own work.

I have difficulty with your distinction between "professionals" and "lay people". I hope, and I am sure you do as well, that all of our employees are professional. The credentials

required of an employee to perform a given task are simply a function of the division of labor within the organization. Surely you would not suggest that we employ a Petroleum Geophysicist to attend to the bureaucratic paperwork details of an oil and gas lease sale, such as writing legal notices; we can accomplish this type of work more efficiently with someone trained in such work at less expense to the public.

The oversight regarding withdrawal of a tract at the most recent oil and gas lease sale was a simple mistake, attributable at least partially to ambiguity in a law that is only two years old. Someone with twenty years experience in handling oil and gas lease sales would have been just as likely to make that mistake as someone with only two years experience. In any event, the party responsible for the omission was a fine, highly-trained professional oil and gas expert. If this is the only serious procedural flaw you have noticed in the last three oil and gas lease sales we have held, then I feel that our inexperienced personnel are doing a rather remarkable job.

One of the common misconceptions about DMEM is that most of its work is technical in nature rather than bureaucratic or managerial. In fact, the opposite is true. The largest amount of work precedent to any lease sale concerns compliance with various notice, finding, and documentation provisions of the law. Were we to employ only technical personnel at DMEM, the result would be excellent professional advice on proposed lease sales that would never happen, because no one would properly carry out all the ministerial duties required by law.

I would mention also that we have a continuing problem in attracting qualified personnel to State government. We are a natural resources agency, and we are competing for personnel with private businesses which comprise most of the economy of the State. Often, a private business can offer more attractive salary and working conditions to a qualified individual without the delays attendant with our personnel system. As a result, we often lose out in this competition, despite our continual efforts to increase the rewards we can offer professionals.

The Mineral Closing Order regarding the Alaska Gas Pipeline route which you refer to was issued originally to prevent bad faith claims which could be subsequently used to block construction of the gas pipeline without a large payment from the pipeline's sponsor out of proportion to the value of the claim. Since that time, the route of the pipeline has become much more certain, and the Mineral Closing Order was determined to be over broad in its scope. This was

originally brought to our attention by members of the public who were interested in that land for one purpose or another. We are in the process of reducing the area closed.

#### Concern About Attitudes

I cannot agree with your opinion that the Department has a "block everything" attitude. A review of our budget will demonstrate that we asked for, and received, funds for projects to develop resources in every resource field under our jurisdiction, including oil and gas, coal, minerals, geothermal energy, agriculture, lands, water resources, timber, plant materials, pipeline systems, grazing, and parks.

There are, I believe, two things that lead you to your perception. The first concerns the numerous and complex procedures set up by law which we must follow prior to any disposal of resources. Most of these procedures are in the form of alleged "safeguards" originally suggested by a member of the public or legislature to prevent a potential abuse by the department. However, when you add up the literally hundreds of "safeguards", which we are required by law to follow, the cumulative results are perceived as "roadblocks". A good example is the notice provisions contained in AS 38.05.305 and 345 which we must comply with prior to the disposition of any interest in State land. The complexity and length of these notice provisions means that we cannot legally dispose of any interest in land in less than four months. While this notice provision was formulated with the good intention of informing the public of what we are doing, we feel that it is excessively complex and obstructive, and will recommend its amendment during this legislative session as we did during the last session without success. Simplifying and reducing the length of time required for notice would make a tremendous difference in the speed which we can act on dispositions of interest in land. I might add, as we discussed at your meeting, that each new batch of procedures we are required to comply with inevitably requires additional personnel to achieve that compliance. That is one of the reasons the department continues to get larger.

The second source of your perception might be the fact that many of our decisions on dispositions of interests necessitate resolving conflicts between competing interests. For example, on page 8 of your letter, you complain that we have not classified enough land containing class II and class III soils as agriculture so that it can be devoted to agricultural

use. On page 6, you object that we have not put enough land containing commercial timber in a forestry classification. It should not surprise you that a substantial portion of the lands containing class II and III soils in the State also contain commercial timber, placing agricultural and timber squarely at odds with each other in many locations. The dispute over timber salvage at the Pt. McKenzie project (which will undoubtedly be repeated in future agricultural projects) is an example of this type of conflict.

#### Permit Review

We agree that the agency review process for permits is presently much too slow and cumbersome. Once again, the prime cause is an accumulation of too many "safeguards" in the statutes, each of which must be complied with before a permit is issued. We supported the amended version of SB 548 introduced in the last legislature relating to permit reform and establishing deadlines provisions for permits. Although that legislation did not pass, we have participated in the Governor's permit reform project which would implement the concept of SB 548 by regulation, establishing deadlines on permits and creating uniform standard procedures for their issuance. We are also reviewing all of our existing procedures, regulations, and statutes for the purpose of eliminating unnecessary obstacles to the issuance of permits or other authorizations relating to the use or disposition of land. Revisions to the regulations will be published shortly and legislation will be introduced this session to eliminate unwarranted obstacles presently contained in Title 38.

I am not aware of any instances where a permit application has been affected by an employee going on vacation, although we have complained about this to other agencies. Permit reform regulations will establish deadlines on all permits. When this is implemented, all permit applications going to the Department of Natural Resources will be date stamped with the applicable deadline. This should eliminate any instances of this problem.

You claim that permit approvals are delayed by lack of delegation of authority to personnel in the field. However, elsewhere in the letter, you have emphasized the necessity of close supervision of employees by the Commissioner's Office so that they could not undertake unintended activities. I think the answer is to place more employees in the field (rather than in central offices) but insure that they know explicitly the results they are to produce during the year.

It should interest you to know that as a result of our new result oriented budget, employees in most cases have numerical quotas of case files which they must process. Checking within the Department indicates that employees are very much aware of these quotas and are complying with them, with a result of substantial increase in the efficiency of production by the Department. Consequently, I absolutely disagree with your claim that there is a greater lack of accountability in the Department than before. One of the major benefits of the reorganization and the other parts of the management system we instituted is that there is no longer substantial question about the responsibilities of each Division or its employees. This was previously a serious problem and led to the necessity for the Commissioner to have to establish procedures and jurisdiction over every new project, with considerable delay, confusion and conflicts.

It is correct that some of the tri-agency placer mining permits applied for during the summer of 1980 remain unprocessed. The overall performance of State government regarding the tri-agency placer mining permit program during 1980 was less than satisfactory. We were aware of the extremely important nature of this program, and we will redouble our efforts to insure a success during the coming season.

If the Commissioner of Fish and Game utilized any permit program for purely punitive purposes, I would obviously attempt to resolve the matter with him and if that were unsuccessful, take it up with the Governor, if anyone informed me this was happening.

#### Protection of Confidentiality

This Department has the highest respect for confidential data in our possession. While it might have been better handled, I do not believe the recent disclosure of reserve data which generated a misunderstanding on Wall Street constituted a leak of confidential data. All the information contained in the reserves report was from public sources; DMEM simply put the data together under one cover, something which I would have expected competent Wall Street brokers to have done long ago.

Our employees are subject to both fines and imprisonment under current State statute protecting confidential information. In addition, procedures to preserve the confidentiality of all classified data in one of DMEM's highest priorities. That includes adoption of regulations, if necessary, and the further training of personnel in the handling of confidential data. We will be happy to discuss this in detail with you at our upcoming meeting.

The rationale for requiring geophysical data in conjunction with land use permits is one which we have discussed often in recent years. The State has an obligation and a responsibility to provide for the development and use of its natural resources for the maximum benefit of its people. Seismic information gained through the permit procedure will be one more tool used by the State to assign an appropriate value to its resources, a step necessary to prudent and common sense management.

### Staffing

I could not agree more that the Division of Minerals and Energy Management has been understaffed, particularly considering the vast increase of work load created by the oil and gas leasing program and a 400% increase in the number of mining claims filed within the last year. I devoutly hope that this will be rectified in our next Budget in which our request places DMEM as the highest priority for additional staffing.

Additional positions are also warranted in district offices as a result of numerous projects involving the disposition of resources; however, I would not characterize them as chronically understaffed. Part of the problem will be solved by moving central office employees into the field (including additional ones in the Fairbanks area), which will be completed during this fiscal year. The remainder of the staffing problem is a philosophical one. We can, of course, add numerous positions to insure faster compliance with the multitude of procedural requirements presently contained in regulations and statutes. However, our present emphasis is on reducing the total number of procedural requirements through amendments, regulation simplification and statute revision because, for the reasons cited above we believe that they are excessive. This will allow us to eliminate those requirements which do not yield a substantial public benefit, and be much more selective about adding new positions in district offices or elsewhere in the Department.

Increases in the Division of Technical Services are primarily related to the land disposal program (which requires administration of dozens of contracts with private surveys annually), the municipal entitlements program and the vast increase in the work load involving land records associated with the land disposals, oil and gas lease sales, municipal entitlements, mining claims, and every type of resource development activity. It should be noted also that the Division of Technical Services' increase in size is substantially attributable to the State Recorder's Office being moved from the Department of Commerce to this department on July 1, 1980.

Increases in the Division of Parks are attributable to two things. First, the number of capital projects with which the Division of Parks is charged has substantially increased in the last year. Most of these requests have come from individual legislators and were included in HB 60 last year. Second, there has been a need for additional personnel simply to operate and maintain the State Park system. The system has experienced a tremendous increase in the number of visitors in the past several years. This demonstrates that the State Park system, unlike federal recreational areas, emphasize use and access by the public in developed and undeveloped recreational activities consonant with its close ties with our tourism and recreation industries. However, a number of our park areas have no rangers at all assigned to them, and since 1975 there has been a 144% decrease in the ratio of Parks personnel to Park System visitors.

Finally, I would note that our Budget is unique in that it ties each position in the Department to a particular project. Consequently, every position we ask for is automatically related to very specific results which will be delivered by that position; it is, therefore, much easier to judge whether the position is justified. If a project is not funded by the legislature, then neither are the positions. One of the major purposes of the project budget system is to insure accountability with respect to each new position we ask for so that we obtain only those positions justifiable to perform approved results.

I would agree with you that the current budgetary and personnel systems lack responsiveness to deal with emergency conditions. However, these systems were all designed to curb perceived abuses and excessive discretion in the administration of funds by government agencies. Since we now operate with little or no margin of error, there is not much budgetary flexibility to handle a situation such as occurred last year when the price of gold increased with the corresponding 400% increase in mining claims. However, the alternative is a contingency fund, and these are viewed with great suspicion by the legislature, often with good reason. Revisions to the Temporary Hire Law of 1979 were again enacted to eliminate perceived abuses, and certainly do not help us administratively.

#### Jeopardy of Surface Use

I do not think your summation of the surface use problems is accurate. This issue arose at the instigation of the oil companies because of their concern with municipal entitlements granted to the North Slope Borough. They noted that activities

taking place on the surface pursuant to an oil and gas lease were not being serialized and placed on the status plats, because legally they were not a separate encumbrance on the land. In order to make the surface manager, as well as the public, aware of activities taking place, the decision was made to make some kind of notation on the status plats. Procedures decided upon last July were that the companies will submit their lease operations plans for surface activity over the lands covered by the leases. Assuming that said operations are directly related to and necessary for the exploration and development of sub-surface resource (the standard established by the lease itself) the plans will be approved and the facility so noted on State records. Your reference to a 40 year lease apparently originates from the fact that a separate surface lease for oil and gas development facility was one of the alternatives considered to resolve this problem before the final procedure was decided upon.

#### Freezes

New offshore prospecting permits have not been issued because current laws and regulations which govern their issuance need to be revised to insure diligence and discourage speculation. Currently, there are 300 applications pending; 215 of those applications are by one party for 547,840 (66.6%) of the total 822,298 acres under application. Conversion of permits to leases continue to be processed when all appropriate terms and conditions are met. In our opinion, it would be a mistake to make long-term commitments for the use of the valuable public resource without first instituting a contemporary system which carefully balances other public interests with the interests of the mining industry. We are now in the process of designing changes which will primarily: (1) require diligent prospecting efforts (2) require production to commence with a reasonable period of time following lease issuance (3) increase rentals and (4) limit the total number of acres which can be permitted or leased by a single operator. Legislation is being prepared for introduction this session. Following consideration by the legislature and adoption of any necessary changes in our regulations, we will proceed to review and process pending applications.

Similarly, the coal leasing program is on hold pending revision and/or clarification of current coal regulations. In November of 1979, the Department was prepared to proceed with unnecessary revisions, but agreed to delay action pending the outcome of legislative deliberations on HB 955. As you know, HB 955 was considered and died in the House Resources Committee. A new draft of regulations, based in large part of the final version of that bill, is being prepared by staff in the Division of Minerals and Energy Management.

It is not true that we are developing these regulations in collusion with Sierra Club representatives. As is normally

the case, first drafts are being prepared "in-house" by employees most familiar with the subject matter including, in this case, an individual with substantial background in the area. Following my review of staff recommendations, draft regulations will be widely circulated and public comment encouraged. No final decisions will be made until we have thoroughly evaluated those comments. We are particularly concerned that the industry and other interested members of the public have adequate opportunity to discuss the implications of any suggested changes to the royalty provisions.

I would like to underscore that proposed regulations will largely be based upon our discussions with industry last session during HB 955 hearings. We are not trying to put coal miners out of business. We are merely trying to develop rules which adequately reflect our responsibilities. Once those rules are in place, we have no intention of changing them. Before new development decisions are made (and we accept that some will be made in the near future) everybody will know where they stand.

#### Minerals Policy

First, your suggestion that there is not a professional person in DNR who is a proponent of mineral development is grossly wrong. I think that you will find that the entire staff of the Division of Geological and Geophysical Surveys are as interested in mineral development as you and I are. Mr. Pedro Denton is employed by the Division of Minerals and Energy Management to work on surface mining. Moreover, we are currently looking for a Deputy Director for Minerals for the Division of Minerals and Energy Management and we would welcome your suggestions on who might fill this position. We are looking for someone with a strong mining background who is also a first class government manager.

I would be the first to agree with you that the State in the past has given less than adequate attention to the mining industry. However, developments in the last two years demonstrate that this is changing rapidly.

You ask for the minerals policy of the Department: I will make a flat statement on this subject. First, there is a tremendous opportunity to capture a substantial portion of the Pacific Rim market for exports of steam coal from Alaska. Usibelli Coal Mine, Inc. is substantially ahead of its potential competitors in the lower 48 in negotiating export contracts with Pacific Rim purchasers, and we applaud the fact that it is doing so without significant government involvement in the true capitalist tradition. This Department strongly encourages coal development and will take every reasonable measure to assist it. Second, strategic and critical minerals are an extremely important part of the

State's future. I expect in the coming decades this industry will grow and become a part of our economy of the magnitude that oil and gas is now. We are trying to facilitate that growth now by expediting placer mining permits, designing our land permit regulations to except a number of typical mining exploration and development activities, classifying areas with minerals as the primary use (four such areas were reclassified this year), establishing a one stop mining claims filing system, protecting the prerogatives of the Alaska miner with respect to the Federal Surface Mining Reclamation Act, eliminating the backlog in mining claims, and inaugurating a large scale resource assessment program to assist the development of the minerals industry.

With respect to land exchanges, these must be accomplished and conformance with AS 38.50, the State's land exchange law. The law sets up procedural and substantive requirements which all land exchanges must meet. These include providing public notice and hearings considering alternatives to an exchange and making public written report of findings relating to the exchange proposal. The law also distinguishes between two types of exchanges based upon whether appraised fair market value of exchanged land can be clearly demonstrated to be equal. For equal value exchanges, the Commissioner's approval of the final decision is required. For unequal value exchanges, the legislature must also review the proposal before it can be effected.

The authority to negotiate for equal value exchanges is co-delegated to the directors of DMEM and Forest, Land and Water Management. Equal value exchanges usually involve only the surface estate of lands. The subsurface (minerals) estate is included only if the Division of Geological and Geophysical Surveys determine the mineral value to be negligible. Where mineral values are determined by DGGS to be important, mineralized areas will either be excluded from the exchange or pursued as an unequal value exchange requiring legislative review.

Unequal value exchanges also rely upon the expertise of DGGS and DMEM for mineral evaluations and appraisals and on other divisions, agencies and contractors to provide evaluations and appraisals. All major decisions during the negotiating phase are discussed with Division Directors and approved by the Commissioner.

Exchanges that involve important mineral lands are by their nature almost always treated as unequal value exchanges (reviewed by the legislature) largely because it is not possible to make an explicit fair market value determination of a mineralized area. The Department's best estimate of

mineral values is factored into the Department's recommendations. Moreover, our assessments and considerations of mineral values are made available to the public prior to public hearing.

### Unitization Philosophy

I do not understand your reference to operators being unable to get units approved and there being no response back from the Department. Specific examples would help me solve this problem if it exists.

The Department has circulated for informal comment the first draft of proposed unitization regulations. The second draft was issued on the 2nd of January, 1981. The public hearing is scheduled for February 4, 1981. This forum should serve as an opportunity to make your beliefs known regarding unitization and unitization philosophy. The proposed regulatory changes clarify and revise the unitization procedures, requiring public notice of unitization applications, establishing a preliminary and final approval process, prescribing a standard unit form, and specifying requirements for unit Plans of Operation, Plans of Exploration and Plans of Development.

Our general approach to unitization is stated in the criteria outlined in the regulations for unitization approval: protection of the public interest through consideration of such factors as conservation of all natural resources; prevention of economic and physical waste; environmental costs and benefits; economic costs and benefits; geologic and engineering characteristics of the potential hydrocarbon accumulation or reservoir proposed for unitization; and the protection of all parties of interest, including the State

### Input From Other Agencies

It is the Governor's policy that important resource development decisions be referred to other agencies for their views and I certainly concur. It is our policy, however, that their views be substantiated by facts and limited to subjects within their primary area of expertise. If comments do not meet these standards, they are disregarded. Plainly, it makes no sense to issue an oil and gas lease that includes stipulations which make it uneconomic to develop the leases. Consequently, we try to include only those stipulations which are reasonable and for which the public benefits outweigh the costs. However, "reasonable" development is certainly a subjective term.

The "backdoor commenting" problem by State agencies will be solved by the Governor's permit reform program. The regulations contained as part of that program allow DNR to make Coastal Zone consistency determinations on land dispositions (including

oil and gas lease sales and plans of operations) that will bind other agencies to our determination. This will prevent other State agencies from officially making contradictory comments to Federal agencies and having those comments reflected in the Federal agencies peritting action.

## FORESTRY ISSUES

### Forest Resources and Practices Act

Your complaints regarding administration of the Forest Practices Act are difficult to react to because they are not specific. However, remember first that most of the "practices" adopted under the Forest Practices Act are in the form of "best management practices", which are not mandatory. Only the forest practice standards are contained in the regulations themselves as binding provisions. This approach was used at the suggestion of industry to maximize innovation and the flexibility of the operator, rather than simply impose arbitrary practices which might suit one situation and not another.

Second, the regulations were reviewed in extreme detail by the Board of Forestry, which is made up in anybody's estimation predominantly of industry representatives. Furthermore, as a result of industry comments submitted after the Board had advised the Department on a final set of regulations, further changes were made in the regulations that are even more favorable to industry than what the Board recommended.

It is plainly our policy, therefore, to use the Forest Practices Act in an eminently reasonable manner rather than as a tool to obstruct industry. This does not mean, however, that any operator can do what he pleases. Timber and the other resources on forest land in Alaska are a capital asset, a capital asset that should not be lost or wasted unnecessarily. At its most recent meeting, the Board of Forestry reviewed a number of operations currently underway in Alaska. While the vast majority were favorably viewed by the Board, there were two of which the Board were extremely critical because the practices did not meet industry standards.

To say that there have been no new timber sales on State land in the past six years is plainly wrong. In addition to the dozens of small timber sales that have been held, the Haines Timber Sale was concluded last year amounting to 12 million board feet per year over a fifteen year period. In

addition, at the request of industry, we designed and advertised the Icy Bay #2 Timber Sale in a little more than a year, a period of time substantially less than the average time to prepare a timber sale. The reason was to respond to a shortage of logs in the Southcentral Alaska area. Regarding areas classified forestry, we have recently gone through all our resource inventory data and identified approximately 14 million acres of State land which at the present time warrants a forestry emphasis. Data is not sufficiently specific on all these lands to justify any kind of legislative designation at this point. However, the entire purpose of this project was to identify forest and other lands in the State with reasonable certainty so that industry could make their plans in reliance on that land being made available for timber. We will be pleased to make a more detailed presentation at your meeting if you so wish. The absence of new sawmills and manufacturing facilities for timber products can be attributed primarily to the abysmal market situation and to the lack of timber available on federal lands as a result of D-2 and Rare II deliberations. I can only say that the Haines Timber Sale and the Icy Bay #2 Sale were made available largely because of the absence of adequate timber sales on federal land. To blame the State for this is simply wrong.

#### Timber Sales

To say that the Icy Bay #2 Timber Sale is a sham is grossly unfair. In response to an emergency request by the industry we immediately began preparations for the sale, obtained a supplemental appropriation, finished all of the preliminary work, advertised and established a sale date for the sale in slightly more than a year. The fact that a lawsuit was filed over the primary manufacturing requirement by Southcentral Timber Co. was completely beyond our control. Kenai Lumber Co., which asked for the sale, was aware that Southcentral would likely file such a lawsuit at the time they made the original request, since Southcentral had made no secret of their intent. I presume that you would not suggest we take no action on a potential disposal any time there is a threat of litigation, since this would result in virtually no project ever going ahead.

Our information is that two or three companies were planning to bid on the Icy Bay #2 Sale since the price would be reappraised every year. The bid premium (that which is bid above the appraised value) would have been added to the appraised price. The appraisal system we use is the same that is used by the Forest Service, and it is well established in the industry. Contrary to your information, we have received no complaints on this contract specification.

Regulation requires that a bid deposit of 10% of the appraised value be deposited with the State by interested bidders. This requirement is not unreasonable for a sale of this value and volume. Our inventory of the sale area showed that it contained some of the highest volumes of standing timber anywhere in Alaska, which necessarily results in a relatively high appraised value. Moreover, contract specifications allowed the successful bidder to reduce the bid deposit upon signing the contract.

To say that the Department did not support timber development in Haines is unbelievable.

Of the 84 thousand acres of commercial forest land, only 12,815 acres have been closed to timber harvesting, which is a mere 15 1/2% of commercial quality lands. You may recall that one of the most strongly voiced complaints by preservationist groups regarding the Haines Land Use Plan was that our retention factors were substantially lower than those used by the Forest Service. Moreover, in responding to the lawsuit filed by preservationist groups on the Haines Timber Sale, Department employees up to and including the Deputy Commissioner spent many hours preparing for this suit and testifying in court (the trial lasted nearly 3 weeks) in order that the sale might go ahead. I take considerable satisfaction from the fact that the Superior Court Judge dismissed all of the nearly 90 counts in the complaint filed against the sale.

There is no question of the importance of consolidation of the timber base in the Fairbanks area. That is the purpose of the regional and area inventory and planning projects now underway, which will be the subject of a more detailed presentation at our next meeting. The principal problem in the Fairbanks area is to accommodate the many demands for land and resource disposals (especially subdivision, agriculture projects and commercial forest land) in an area where these inevitably conflict.

#### Staff Activities

You are correct that some of our foresters have been critical that our timber sales program is not sufficiently aggressive. I might add that these are the same people who complained bitterly when we told them they had to complete the Icy Bay Timber Sale in one year instead of their customary three because of the emergency nature of the sale.

I would be interested in knowing what areas you recommend for future timber sales. The budget is designed in a way

that any legislator can include a project for a new timber sale. If it is funded, we will do it.

The percentage of time spent by foresters on timber sales is strictly a function of the amount of the budget that is allocated by the Legislature for a particular timber sale; we have included in our budget request every major timber sale that has been requested. Remember also that the amount of commercial forest land is somewhat illusory in terms of immediately available timber; a large portion of that timber is presently inaccessible. Until access is developed on an economic basis the timber will not be marketable.

#### DNR's Role

Your comments are difficult to respond to because they are general. I would only say that we will not hustle the Legislature for additional government personnel and funds unless there is a specific purpose for those funds. As I have mentioned, we have included in our budget a project for each major timber sale that has so far been requested. The laws and regulations are not being selectively and narrowly interpreted unless you feel that the Board of Forestry has adopted this position. If that is so I would encourage you to attend the next meeting and tell them just that. Finally, I have no argument with the definition of Forestry adopted by the Society of American Foresters; it is coincident with ours.

#### AGRICULTURE

First, the Department vigorously resisted the transfer of inspection functions to another agency. However, we lost that argument, as both the Executive Branch and Legislative Branch felt that consolidation of health inspection functions in one agency was justified. We were especially concerned because persons performing inspection functions also performed extension services and marketing assistance for farmers and persons in the agricultural industry. We did not want to lose these latter functions, and negotiated as part of the transfer deal several replacement positions devoted to agricultural development and promotion to insure that the Division of Agriculture suffered no loss of this capability. We were successful in obtaining these positions.

#### Planning and Land Classification

It is correct that a 1976 law required that we classify 650,000 acres of lands containing Class II and III soils for agriculture, and that we were unable to locate more than

around 500,000 acres of agriculture land which met these specifications out of our existing inventory of TA'd and patented lands. Remember, however, that the State fell at the tail end of the selection priority list resulting in other entities obtaining some of the best agriculture land. In addition, subsequent to the 1976 law, other laws were passed also establishing mandates for classification and/or disposition of lands including municipal entitlements (867,000 acres) and the land disposal program (100,000 acres per annum). Obviously, some of the best land for both these purposes is agricultural land, and these mandates necessarily created conflicts. As a result, although we were only able to classify about 500,000 acres for agriculture, we identified an additional 300,000 acres on State selected lands as a safeguard to insure that the 650,000 acre total would be met once we received those lands from the federal government. Furthermore, our regional resource inventory and planning program has identified more than 3 million acres of land potentially suitable for agricultural development. As far as soil surveys, they are an integral part of the 5-year, \$50 million resource assessment capital budget which we have submitted to the Governor, and which the Governor has approved the first two years of.

The Department's agricultural planning effort includes a long range statewide program to determine the area, type, and process for individual disposals. We have completed a statewide plan which defines the overall goals and objectives for agriculture which we will present to you at our next meeting. All of the Department's agricultural land disposals conform to the principles of that plan. The plan defines the acreages in agricultural land necessary to achieve production goals and incorporates the needs of such diverse interests and subsistence, grazing (including range requirements), part-time farmers and large scale enterprises.

The policy of the Department is that Agricultural land sales will be in economic sized units, and that all Class II and III lands will be classed as agricultural unless there is an overwhelming counter-consideration. The substantial role played by the Division of Agriculture in determining the use and disposal of all State land insures that the values of Class II and III lands are quantified and presented whenever a decision on disposal is sought.

When the Delta project was designed, the principle of basing parcel sizes according to large farm economics was at no time in jeopardy. The small parcel homesite (subdivision), areas located within the Delta project (as well as other Ag sale areas) were the result of the desire of the Department to meet the demand for these types of parcels. Those disposals

are all located on unfarmable soil, and were supported by the agricultural industry and the community and have developed into an asset for farmers by providing nearby homesites for farm labor.

The Department views the grazing industry as a substantial component of the overall Ag development program. We have developed a Department policy concerning classification and use of State grazing lands, and are now incorporating that policy into regulation. The poor record of the Department in classification of grazing lands has been caused by the lack of sound scientific information about vegetation and soils, and subsequent inability to quantify carrying capacities. To rectify that situation, our budget request for FY'82 includes matching funds to increase our soil and vegetation inventory through cooperation with the USDA Soil Conservation Service.

Although the Department does have authority over domestic buffalo, the responsibility for the wild herd such as that of at Delta still rests with the Department of Fish and Game. Naturally, we will cooperate in any way in devising a management plan. We certainly agree managers of wildlife must also concern themselves with carrying capacity.

### Land Issues

First, I would like to clear up one misconception about the classification process. The classification law (AS 38.05.300) is for the benefit of the industry and the general public, not the Department. We could, of course, have a classification and land designation system known only to the Department's Land Managers and never subjected to public scrutiny. AS 38.05.300 and the regulations promulgated thereunder require that we go through a formal classification process so that designation of lands is subject to public scrutiny. This enables you and all other citizens of the State to understand for what purposes we intend to use particular lands and to influence our decision on determining that purpose.

Second, designations we place on lands through classifications really are for the purpose of stating the objective which we intend to promote for those lands rather than for the purpose of implementing restrictions. To some extent, the existing classification regulations unfortunately create the latter impression and we will be rewriting them shortly to eliminate that feature. I would like to go into this much more fully at our meeting. Another thing to remember about classification is that it is not a means of eliminating multiple use (except

where the land is being disposed of). Rather it is a means of designating preferences amongst beneficial (multiple) uses so that the resource constituencies in the State have some certainty as to what particular lands will be used for and can make their plans accordingly.

Earlier in your letter, you mention the importance of classifying lands for agriculture and classifying land for forestry in order to consolidate the land basis for those industries as a means of stimulating development; it is for precisely this reason that designating a primary use among multiple uses (i.e. classification) is advantageous to each industry. For that reason I would not want to limit State retained (multiple use) lands in one classification category. This would present no opportunity for resource industries to plan their own future.

I certainly agree that laws governing the Department of Natural Resources are now exceedingly complicated and that constant changes (requiring continuing changes in regulations) presents an unstable environment in which to develop resources and conduct business. . . In fact, I'll bet you don't know the half of it. The permit reform program (plus the other matters we are doing to streamline and stabilize procedures), together with changes we will be proposing regarding the land disposal law and elimination of obstructionist provisions in Title 38 should provide a substantially improved, though not ideal, atmosphere in this respect. I certainly hope that you will support these changes.

I disagree very strongly with your suggestion that we delete the requirement for homeowners associations in conjunction with land disposal. I strongly believe property owners associations have had an excellent record in many areas of the United States as a substitute for government regulations. I have seen this system work just as well among recreational property owners as it has where all of the owners are fulltime permanent residents. The alternative is to include additional regulations or restrictions on land sales contracts which will have to be enforced by "absentee" government bureaucrats.

I do not agree that the State has been involved in any program to lock up lands. All of the State park areas that you mentioned were created by the Legislature through specific State laws, including the provisions relating to mineral resources. I think when I show you at our meeting what our expectations are for various other resources (including Agriculture, Forestry and Subsurface Development) you will withdraw this comment.

It is not true that lands selected by the State for mineral values have necessarily been classified under non-mineral

use categories. We recently classified three high value mineral areas in the Fairbanks area and one in the Mat-Su Valley as minerals lands with that as the primary use. Moreover, the vast majority of State and patented lands are currently open for mineral entry; only where there is a very specific and compelling justification for closing an area to mineral entry is a mineral closing order issued. In fact, mineral exploration and staking are booming on State lands. We received over 13,500 mining claims last year alone.

Obviously, it is sometimes difficult to estimate the mineral value contained in the subsurface where a surface use (such as a disposal) is being considered. The information available to us is never as complete as we would like it to be, and one does not know the content of the subsurface until it has been fully produced. All of the disposal nominations and other surface dispositions involve an analysis of mineral resources prior to a final decision; we have dropped a number of disposal areas in both our Northcentral and Southcentral Districts as a result of estimated potential of mineral resources. It is flatly wrong that specific requests of administrative mining personnel to participate in these decisions has been denied; one employee who was responsible for reviewing proposed disposals for conflicts with subsurface values did have difficulties completing these assignments on time; however, that employee is no longer with us, and I hope his successors provide a much more effective advocacy and competent performance

## Summary of Forestry Workshop

The following information was compiled by DNR staff following the Forestry Workshop of May, 1980. This material, as it pertains to goals, objectives, and policies, reflects the product of the workshop but not the final wording that was ultimately included in the Forestry Element of the Regional Resources Plan.

### General Goals:

\*Manage Alaska's forests in a manner which maximizes long and short-term economic and social benefits to Alaskans while minimizing public costs.

During the discussion of the goals the participants generally agreed that there was a basic need to identify the forest land base required to achieve the goals and objectives that are developed.

Some participants felt that if an export industry was to be developed, large acreages of forest land must be kept in public ownership. This was the only way to ensure that management objectives were not fragmented. Others felt that public ownership in itself does not always lead to clear management directions. It was also pointed out that state ownership of forest lands could make it hard for private owners, such as the Chugach Native Corporation, to amass sufficient acreage to support timber export. All participants agreed that the state should establish and follow clearly defined policies in order to attract investors to the state.

\*Establish a state reserve system.

Most of the discussion on this goal centered on the need to identify a land base for the reserve that would allow for multiple use management of resources. All participants were adamant that forest management included much more than just timber production. To this end, they argued that forest reserves could and should contain lands that would be managed primarily for some other resource, such as recreation. They also supported the idea that other resource values should be considered and accommodated on those lands which were primarily to be managed for timber production.

### Specific Goals

\*Ensure a viable supply of timber and encourage Alaskan domestic self-sufficiency in timber production.

The issue of self-sufficiency was discussed several times but its relative value and true meaning were never fully clarified. It was agreed that there could be two levels of self-sufficiency, regional and statewide. It was pointed out that if the forest land base was relatively small, then self-sufficiency and the desire to develop an export industry could be mutually exclusive. The larger the land base, the greater the opportunity for both self-sufficiency, at least on a regional basis, and a timber export industry

\*By 1990, an inventory of state forest lands should be completed to determine the supply of various timber products.

\*Determine what timber volume can be supplied from the inventoried land on a sustained yield basis.

\*Provide annual market analysis for in-state and out-of-state timber products.

These goals all relate to the need to develop information necessary to prepare management plans, plan timber sales, and attract the capital required to establish a timber products industry. The self sufficiency goal and the desire to establish an export industry are both dependent on availability of this information.

\*Develop a timber management plan consistent with other resources that would identify those areas most suitable for timber production.

This goal arose from the discussion of establishment of a state reserve system. Since it was agreed that state reserves could include large areas where timber production was not the primary management objective, the purpose of this specific goal is to emphasize that those areas which are to be managed for timber production need to be identified.

\*Within a state forest reserve maintain and enhance essential fish and wildlife habitat which provides for the propagation of species with commercial, subsistence and recreational values.

\*Within a state forest reserve ensure a supply of recreational opportunities. (The same goal to be repeated for fish & wildlife, watershed, historic/ archeological, oil and gas and any number of other resources.)

The goal relates to the whole question of multiple use management which has been discussed earlier. It reflects the strong feelings of the group that the protection, maintenance and enhancement of other resource values is an integral part of any forest management activity.

\*Develop, in concert with other resources, a forest products infrastructure capable of transporting and marketing forest products.

It was pointed out that although DNR is not responsible for planning or constructing these types of facilities, it should give direction to agencies with those responsibilities. The DNR planning process should provide the guidelines to these agencies. Jurisdictional boundaries should not deter this activity.

## Objectives

\*Identify, establish and maintain a forest land base which provides and protects present and future economic and social benefits.

\*Maintain environmental quality in the management of forest lands.

\*Maintain in state ownership a system of state forest lands adequate to support multiple use management of timber and other uses including watershed protection, recreation and fish and wildlife production.

\*Develop a comprehensive forest management plan.

All of the objectives were considered necessary in order to meet the goals. The reasoning behind this set of objectives is contained on the previous pages. Multiple use management is a consistent theme throughout.

### Policies

\*The state shall encourage the joint management of forest lands in order to provide a sound operating base.

\*The state should consider land exchange with other owners to consolidate the timber resources.

\*The state should assist private owners in the conduct of sound forest practices.

The purpose of the above policies is to encourage the consolidation of forest lands between various owners and to encourage joint management of lands where consolidation does not take place. An essential part of this activity is the encouragement of sound forest practices by all owners of this resource. All of these factors were deemed important in meeting the self sufficiency goal and in developing an export industry.

\*The state should consider the sale or lease of state forest lands for forest development.

It was generally agreed that the above policy should be pursued only in those cases where timber was the primary resource and where other public resource values on the land were low. It was suggested that lease arrangements may be better than sales since it keeps the state involved and ensures a better flow of timber to the market.

\*The state should provide a level of protection commensurate with the value of the resource.

The above policy relates to the level of fire and disease protection that should be given to any given area of forest land. All participants agreed that this should vary depending on the value of the forest resource.

\*The state should assemble an interdisciplinary, interagency team to identify and develop management plans for potential forest reserves.

\*DNR should coordinate with the U of A and other agencies to ensure the distribution of information concerning sound forest management.

Participants felt that too little is known about the management of forests in Alaska. The first of the two above policies would help ensure that all available knowledge is applied when developing management plan. The second would ensure that information being developed would be distributed in a timely manner to those people involved in managing the resource.

## Other Topics Discussed

It was suggested that whenever agricultural land has been identified as a top priority that the same land should be carefully examined for its forest potential even if the ultimate use of the forest resource is not for sustained yield.

There was a considerable amount of discussion regarding the need to study the forest lands of interior Alaska to determine if sustained yield management is possible. An important consideration of this study is an examination of the regeneration capabilities of interior forests. This study should be part of a forestry research program. State participation in the International Committee on Forests North of 60 was also recommended.

It was suggested that a study of marketing needs and opportunities be conducted on the highest priority forest lands. The idea of publishing a weekly marketing index covering the prices paid on forest products was also discussed but no consensus was reached on the issue. Such an index could be made available to all public and private agencies involved in forestry.

SOCIETY OF AMERICAN FORESTERS  
YUKON RIVER CHAPTER

S.R. Box 20249, Fairbanks, AK 99701

July 28, 1980

Honorable Jay S. Hammond  
Governor, State of Alaska  
Pouch A  
Juneau, AK 99811

Dear Governor Hammond:

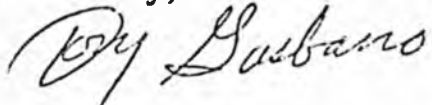
The land disposals proposed by the State for FY 1981 and 1982 will remove thousands of acres from the forest land resource base in the Fairbanks area. These are the same kinds that were previously classified as forest management and resource management lands with widespread public support. Disposing of highly productive forest lands so close to a large population center such as Fairbanks is a disservice to the public and completely contrary to the statewide forestry goals recently developed by the Division of Research and Development of the Department of Natural Resources (copy attached).

There are approximately 242,000 acres of commercial forest land within a 60-mile radius of Fairbanks. The Division of Forest, Land and Water Management (North Central District) estimates that these lands can support an annual sustained yield of 4.5 million boardfeet of saw timber and 31,000 cords. The Fairbanks area wood products industry currently has the potential for utilizing the annual sustained yield today and shortly will have to seek raw materials in areas over 100 miles from Fairbanks. Fuelwood use from State lands in 1979 approached 20,000 cords and if current trends continue, the 31,000 cords annual limit will be reached in 2 or 3 years. These statistics show that we cannot afford to reduce the forest land resource base in the immediate vicinity of Fairbanks. The 27,000 acres proposed for the disposal will reduce the commercial forest land base in the Fairbanks area by nearly 11 percent!

The Regional Resources Action Program of the Division of Natural Resources with the help of foresters from many parts of Alaska developed forestry goals and objectives which go a long way in providing direction for the management of state forest lands. These goals and objectives need to be considered when developing a land disposal program, particularly those which encourage domestic self-sufficiency in wood products development and the establishment of a state forest reserve system, not only for timber but also for amenity resources.

The members of the Yukon River Chapter of the Society of American Foresters urge you to halt the disposal of commercial forest lands in the Fairbanks area and to consider declaring the commercial forest land base in the Fairbanks area a state forest reserve for multiple use management.

Cordially,

A handwritten signature in cursive script that reads "Tony Gasbarro".

Tony Gasbarro  
Chairman, Yukon River Chapter  
Society of American Foresters

cc: Fairbanks Delegation  
Mayor William Wood

# Northland Wood Products, Inc.

4000 CUSHMAN - FAIRBANKS. ALASKA 99701

TELEPHONE 907-452-4000

AUGUST 7, 1980

SENATOR BETTE FAHRENKAMP  
4016 EVERGREEN  
FAIRBANKS, AK 99701

DEAR SENATOR FAHRENKAMP:

THE STATE LAND DISPOSAL PROGRAM WORKING ON PUTTING UP 100,000 ACRES FOR SALE PER YEAR, ANNOUNCED RECENTLY ITS INTENT TO REMOVE 27,000 ACRES FROM FOREST CLASSIFICATION IN THE FAIRBANKS AREA AND CONVERTED IT INTO SUBDIVISIONS. THIS 27,000 ACRES IS LOCATED BETWEEN FAIRBANKS AND NENANA. IT WAS RECLASSIFIED AS FOREST LANDS JUST LAST YEAR FOLLOWING PUBLIC HEARINGS.

NEW PUBLIC HEARINGS WILL PROBABLY BE HELD, BUT WE UNDERSTAND THAT THE STATE IS COMMITTING FUNDS TO GO AHEAD WITH THE LAND SURVEYS IMMEDIATELY.

THE COMMERCIAL FOREST AREA AROUND FAIRBANKS HAS BEEN ERODED AWAY IN THE PAST YEARS. THE CHENA RIDGE RECREATION AREA REDUCED THE ALLOWABLE CUT IN THE FAIRBANKS AREA BY ONE THIRD. TIMBER PRODUCING LANDS HAVE ALSO BEEN REDUCED BY THE CHENA FLOOD CONTROL PROJECT, BY AGRICULTURE SALES, AND BY BOROUGH LAND SELECTIONS.

THE FOLLOWING FACTS FROM THE MOST RECENT FOREST LANDS SURVEY, (FOREST RESOURCE AND ALLOWABLE CUT, FAIRBANKS WORKING CIRCLE, BY DANIAL WIECZOREK) WILL BEST SHOW THE PRECARIOUSNESS OF OUR FOREST INDUSTRY'S RESOURCE IN THIS AREA:

1. THERE ARE JUST OVER 7,000,000 ACRES IN THE "WORKING CIRCLE" BEING CONSIDERED IN THIS SURVEY WHICH IS A CIRCLE AROUND FAIRBANKS WITH A RADIUS OF 60 MILES.
2. OF THIS 7,000,000 ACRES ABOUT 10%, OR 700,000 ACRES ARE CLASSIFIED AS "FOREST MANAGEMENT OR RESOURCE" LANDS.
3. OF THIS 700,000 ACRES BEING MANAGED BY THE STATE DIVISION OF LANDS ONLY 49,000 ACRES ARE FORESTED WITH WHITE SPRUCE OF SAWLOG QUALITY.

YOUR LOCAL LUMBER INDUSTRY

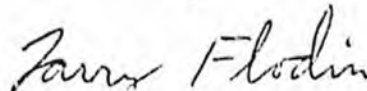
THIS 49,000 ACRES IS NOT ONLY A VERY SMALL AMOUNT OF LAND FOR OUR INDUSTRY TO DEPEND ON, IT IS ALSO A VERY SMALL PERCENTAGE OF THE TOTAL AREA AVAILABLE. IT IS ONLY .7% (SEVEN TENTHS OF ONE PERCENT) OF THE AREA BEING CONSIDERED IN THE ABOVE MENTIONED RESOUCE SURVEY.

WITH THE ABOVE FIGURES IN MIND IT SEEMS GROSSLY UNNECESSARY AND UNWISE TO FURTHER REDUCE THIS VALUABLE RESOURCE BY SELLING IT OFF AS SUBDIVISIONS. ESPECIALLY WHEN IT IS SUCH A SMALL PERCENTAGE OF THE AVAILABLE LAND.

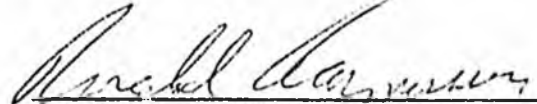
ANOTHER FACT THAT CLEARLY INDICATES A CARELESS LACK OF PLANNING WITHIN THIS LAND SALE PROGRAM IS THAT ONE OF THE LAND LOTTERY PARCELS CURRENTLY EXPECTED TO BE SOLD NEXT YEAR IS LOCATED IN AN EXISTING TIMBER SALE THAT WE HAVE UNDER CONTRACT WITH THE STATE DIVISION OF LANDS. THIS CONTRACT DOES NOT EXPIRE UNTIL 1984.

WE WOULD APPRECIATE ANY HELP YOU COULD GIVE US ON THIS MATTER. WE FEEL VERY STRONGLY THAT THE LANDS CURRENTLY CLASSIFIED AS FOREST SHOULD STAY THAT WAY. THE SURVIVAL OF OUR LOCAL INDUSTRY IS AT STAKE.

SINCERELY,



LARRY FLODIN, PRESIDENT



RONDALD RASMUSSEN, SECRETARY

JAN 12 1981

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF FOREST, LAND AND WATER MANAGEMENT

JAY S. HAMMOND, GOVERNOR

323 E. 4TH AVENUE  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 279-5577

December 23, 1980

Senator Bettye Fahrenkamp  
4016 Evergreen  
Fairbanks, AK 99701

Dear Senator Fahrenkamp:

As you realize from the August 2, 1980 letter from Larry Flodin, President, Northland Wood Products, Inc. the Division of Forest, Land and Water Management has been involved in identifying land into classifications for retention -- forest, resource management, and wildlife habitat lands. It's been our plan to identify, select and classify lands for retention which would best serve the people of the State within that local area. At the same time the legislature has directed the Division to make available 100,000 acres of land for sale into private ownership. The two programs do little to compliment each other. In fact, they are in direct competition for the 49,000 acres mentioned as important to forest industry in the Fairbanks area.

Land selected to be made available for private ownership by the Division's lands people exhibits the characteristics that make it our best growing sites for trees. (1) Good drainage with fertile soil, (2) Topography that is flat to sloping moderately, (3) Sites at elevations which exhibit temperatures that are less extreme than surrounding terrain and, (4) Accessible to the existing transportation systems which control the cost of developing the property. You will note that these same attributes are what the Alaska Agricultural Action Council looks for in lands to set aside for the Agricultural Program. They are characteristics that rate high on the lists of important concerns when the Division of Parks requests classification of land to be retained and managed by the State for recreational use. Usually agricultural and public recreation land classification, depending on the land use plan and management guidelines, don't make these acres available for harvesting timber and other forest products.

Land classified agriculture should be harvested for its forest products which would help to fill some immediate needs, but does little for future timber production on a sustained yield basis. Presently, we are not taking full advantage of this timber resource and there exists a lack of interest shown by the Agricultural Action Council in requiring that commercial timber be salvaged either by the State or the successful purchaser.

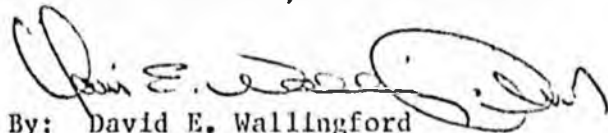
I believe it's correct to say that presently the priority of land use is being directed towards private ownership for subdivision and agriculture. Forest land will continue to provide the best land for these uses unless the priority is changed.

The Division of Forest, Land and Water Management has been a cooperater with the Committee on North America Forest Lands at Latitudes North of 60°, since September of 1977. This year our Nursery Manager, Joe Stehlik attended the conference in Umea, Sweden presenting a slide program about Alaska reforestation efforts to date, including the development of the State Forest Nursery at Eagle River. We're also involved in developing the planting chapter for a 1981 publication about white spruce regeneration techniques for Alaska and the Yukon Territory. A copy of the trip report is enclosed for your review.

Our reforestation efforts have been directed towards seed collection, seed bank, growing approximately 350,000 seedlings per year, approval of a commercial forest nursery facility at Eagle River in the '81 budget, requesting the legislature for the establishment of a reforestation fund from timber sale receipts and the planting of past harvested acres under the approved backlog reforestation project '81. The backlog reforestation project is very modest and should be expanded if seedlings are available from the nursery. The proposed reforestation fund submitted for the second time hopefully will be considered by the State Legislature this year.

Sincerely,

THEODORE G. SMITH, State Forester



By: David E. Wallingford  
Assistant State Forester

*Dave Wallingford 2762653*

# MEMORANDUM

# State of Alaska

TO: ROD KETCHUM  
Chief Forester  
THRU: DAVE WALLINGFORD  
Timber Management

DATE: October 12, 1980

FILE NO: 4310

TELEPHONE NO: 745-2316

FROM: JOSEPH L. STEHLIK  
Alaska State Forest Nursery

SUBJECT: Second International  
Workshop on Forest  
Regeneration

*Fred Smith  
279-5577*

The 1980 International Workshop on Forest Regeneration on North Latitude Forest Lands was held August 25-29 at the Swedish University of Agricultural Sciences, Umea, Sweden by the Universities Faculty of Forestry and the Swedish Forest Service. This was the second of three conferences proposed in November, 1979 at Fairbanks during the first conference to encourage the exchange of information on forest management, especially forest regeneration, between countries of similar high latitudes.

Objectives set at last year's conference include:

- 1) an exchange of information about forest regeneration practices and techniques between areas within or above the 60° latitude;
- 2) an evaluation of applied forest management systems for regeneration through a three-year cooperative program;
- 3) the publication of a regeneration bulletin for practicing forest managers in Alaska and the Yukon Territory based on this evaluation. Outlines were to be prepared for the 1980 meeting in Sweden and papers presented in 1981 for bulletin publication.

These three proposed conferences have resulted in part from the recognition by the 1977 Symposium on North American Forest Lands North of 60 Degrees Latitude that the management of boreal forests was unique and that the exchange of information between countries with similar problems and practices would be beneficial, especially to Alaska.

Attending this year's conference at Umea were both researchers and practicing foresters from Alaska, Canada, Finland, Norway and Sweden.

I presented a short slide program about Alaska reforestation efforts to date, including the Alaska State Forest Nursery and introduced a prepared outline by Cal Kerr for the planting chapter of the planned 1981 bulletin about white spruce regeneration techniques for Alaska and the Yukon Territory.

# MEMORANDUM

State of Alaska

TO: ROD KETCHUM

DATE: October 12, 1980  
Page Two

FILE NO:

TELEPHONE NO:

FROM: .

SUBJECT:

The trip included visits to:

1) Institute for Forest Improvement, Northern Research Station at Savar, Sweden--a tree breeding center now responsible for maintaining Scotch pine and orchards and clonal archives. The center is also responsible for plant production of field trials with different plant containers and for birch seed production.

2) Piparhole Nursery--a modern commercial forest seedling nursery producing 3-4 million paperpot seedlings a year. The nursery, located near Hallnas in Vasterbotten County, grows primarily Scotch pine and Norway spruce under direction of local County Forestry Board.

3) Svartberget Experimental Forest field excursion near Vindeln with stops to observe climatological aspects of forest regeneration.

4) Svenska Cellulosa AB Nursery--a large commercial operation at Sundsvall in southern Sweden producing 65,000,000 paperpot seedlings annually. Seedling production is totally automated at a cost of 7-8¢ per seedling. Scotch pine and Norway spruce were largest volumes grown. This is the largest container nursery in the country.

5) Paperpot Nursery near Sukyla, Finland--a smaller commercial nursery using both paperpots from Lannen-Tehtaast Company and the Finnish Enso multipot system. They also produce 2-3 year-old birch seedlings in styrobloc-like containers in the field.

6) Foundation for Forest Tree Breeding Center at Haapastensyrja, Finland near Hyrinka. Center's main activity is the improvement of quality and growth of pine, spruce and birch in Finland. Surrounding the center are several hundred hectares of progeny tests, seed orchards, living tree archives and breeding stands.

Objectives met at the 1980 Umea conference include:

1) A continued exchange of information as set forth by the 1979 conference on forest regeneration, in this case Scandinavian forest management.

# MEMORANDUM

State of Alaska

TO: ROD KETCHUM

DATE: October 12, 1980  
Page Three

FILE NO:

TELEPHONE NO:

FROM:

SUBJECT:

2) The planning of a third conference at Prince George in 1981 during the last week in August. Its purpose, to be the evaluation of Canadian forest management techniques and the finalization of the "Regeneration Guide for Alaska and Yukon White Spruce" bulletin. Bulletin to be published in 1981.

3) The finalizing of chapter outlines for the bulletin. The bulletin to include an introduction and chapters on ecology and silvics, natural regeneration, artificial regeneration, evaluation, and future research need. I was requested to prepare sections on seed handling and nursery productions in the artificial regeneration chapter. Rough drafts are due for review April 1. Reviews to be complete by June 1 and chapters complete by August 23, 1981.

## DISCUSSION:

### Forest Regeneration in Northern Sweden

Northern Sweden occupies roughly the northern one-third of the country and contains about two-thirds of Sweden's forest lands. Management is exclusively based on clean-cut felling and regenerated artificially with container seedlings. Management goals are to reintroduce high-quality forests by this method in forest areas devastated by repeated exploitation felling in the past. Large clean-cut areas have been common since the 1950's. Artificial regeneration today for the entire country is about 170,000 hectares (approximately 420,000 acres) annually. In Finland, total annual reforestation artificially is 15,000 hectares.

Factors that have influenced the increase of regeneration activities in northern Sweden include:

- 1) Regeneration areas increase considerably every year as a result of final felling of low-yield creamed forests.
- 2) Urbanization has reduced labor supplies for forestry operations which are geographically dispersed.
- 3) Labor market trend is toward year-round employment and permanent jobs, making seasonal work less attractive.
- 4) Increased labor costs.

# MEMORANDUM

State of Alaska

TO ROD KETCHUM

DATE: October 12, 1980  
Page Four

FILE NO:

TELEPHONE NO:

FROM:

SUBJECT:

5) Logging operations have been rationalized. Those who work in logging are tied down to the machinery used, making it difficult even temporarily to move workers to regeneration projects.

## Seed

To meet the large volumes of seed required for seedling and direct seeding programs, intensive seed collections are carried out during years of good cone generations and seed ripening. However, seed supplies are still not enough in northern Sweden, particularly at high latitudes. Large numbers of seed orchards have been established since the mid-1950's because of this. Orchards are now producing enough seed to meet seed requirements for pine production except in high altitude northern areas. Seed orchards, however, cannot cover the need for seeds used in direct seeding after soil scarification. Orchard production of Norway spruce seed is not sufficient either.

Handling of seed is similar to our methods. One advantage Sweden has over Alaska is their established road system which allows inexpensive seed delivery to a central extractory by truck. Fracturing or seed sizing is a common practice and considered a useful production tool as long as seedlings from the various sized lots are recombined before field planting.

## Seedling Production

Small forest nurseries have been replaced by large centralized nurseries that are more efficiently managed. Such nurseries are operated by commercial forest companies, the national Forest Service and the county forestry boards which operate the Piparbole Nursery in Vasterbotten.

Since the beginning of the 70's, nurseries have gradually changed from bare-root to container production of seedlings and almost entirely to the use of plastic film greenhouses. This change from bare-root to container production according to the Swedes has reduced labor requirements because of mechanization and has evened out seasonal fluctuations. During the last 20 years, nurseries have also been equipped with refrigeration systems, allowing them to extend the planting season. About 70% of the seedlings set out in northern Sweden today are paperpot seedlings.

# MEMORANDUM

State of Alaska

TO: ROD KETCHUM

DATE: October 12, 1980  
Page Five

FILE NO:

TELEPHONE NO:

FROM:

SUBJECT:

Production costs were often vague or unknown in State-subsidized forest service and county forestry board nurseries. Seedlings are free to the public for reforestation programs in Sweden. Production costs, however, at the SCA container nursery at Sundsvall, a commercial forest company nursery in southern Sweden had very accurate accounts of production costs of 7-8¢ per seedling. Figures provided by the Lannen-Tehtaat Company at Sakyla show both Swedish and Finnish costs are similar for paperpot production. Based on an annual production of 10 million paperpot seedlings in Sweden using a 10% interest rate, 5-6 inch seedlings are costing 7-8¢ apiece. See attached cost figures. Alaskan nursery costs for 1979 place our seedling costs at 20¢.

## Soil Scarification

When the forest regeneration boom started in the 50's, there was no suitable machinery in Sweden for scarification. At this time only manual scarification or controlled burning was used but both required large labor supplies and burning needed good burning conditions. So development of mechanized scarification techniques began. During the first half of the 60's machines gradually took over scarification. Now less than 1,000 hectares are control-burned. Soil scarification is considered practical for many northern areas because of Sweden's relatively even topography and well-developed forest road system for off-road hauling. Public criticism of slash burning was another reason why scarification has developed.

Although disc harrows and scarifier plows are still very much in use, the latest attention has been given to patch scarification and now active topsoil agitators that reduce the total soil surface disturbed. Units for mounding of mineral soil are also gaining popularity. Planting in mounded soils according to Swedish researchers produces the faster growth rates in the colder northern soils. Swedish researchers recommend trying scarification equipment in Alaska, especially at Tyonek. The Bracke patch scarifier should be evaluated at Tyonek.

## Planting

The most important forest regeneration in Sweden is planting. Seeding is used only to a modest extent. Planting is entirely in the spring and early summer in northern Sweden at rates of 1,500 to 3,000 plants/hectare (600 to 2200/acre) into mechanically scarified soils. Scarification disturbs about half of a clear-cut area surface. When stands reach a height of 2-3 meters, they are

# MEMORANDUM

State of Alaska

TO: ROD KETCHUM

DATE: October 12, 1980

Page Six

FILE NO:

TELEPHONE NO:

FROM:

SUBJECT:

thinned out. Subsequent thinnings yield merchantable timber. The number of thinnings vary from one to four and the amounts of timber removed each time varies between 30 to 80 M<sup>3</sup> sk./ha (total trunk volume/hectare). (1 ha. = 2.47 acres)

In northern Sweden Scotch pine and Norway spruce are only species planted except for a few lodgepole pine. Lodgepole is planted in the more harsh sites. Machinery is being developed now for planting to lower planting costs. Total reforestation costs including both scarification and planting is about \$400-500/acre. Development of planting machines so far has been slow because of technical difficulties in trying to coordinate both scarification and planting phases in bouldery terrain and because of the limited sales market for such a machine. Such scarification/planting machinery, I believe, would have limited use in Alaskan forest lands. Tyonek, again, may be the exception.

## Seeding

In the past few years, interest has increased in direct seeding due in part to "protected seeding" using small plastic cones. The cones protect the planted seed in the active humus layer like a "miniature greenhouse." This method eliminates any need for scarifying the soil and reduces cost of planting. Soil moisture is critical to the success of this method, however, limiting the range in planting sites. In spite of this, I believe this method shows merit and should be tested in Alaska. The tool for placing the cone and placing the seed is still being developed at Umea University by Mats Agner.

Another reason for an increase in direct seeding has been an expectation of a seeding drill which is carried behind a continuously operating soil scarifier.

## Regeneration Considerations in Northern Sweden

1) Clear-cut burning, deep cultivation, and use of chemicals give rise to concern about their effects on the environment at high altitudes and under heavy wind exposure.

2) The change of local climate brought about by final clear-cut felling.

3) Weak, degenerated soils created by repeated forest fires in the past.

# MEMORANDUM

State of Alaska

TO: ROD KETCHUM

DATE: October 12, 1980  
Page Seven

FILE NO:

TELEPHONE NO:

FROM:

SUBJECT:

## Research Needs in Northern Sweden

- 1) Improve the understanding of the change in local climate brought about when a stand is turned into a clear-felled area.
- 2) Improve the understanding of the opportunities to use scarification techniques for encouragement of seed germination and seedling rooting and growth. Assess long-term production effects of various scarification methods.
- 3) Develop seeding techniques. Mechanized seeding can be economically and biologically successful and should be a cheap regeneration method in areas where the problems of seed supply can be solved.
- 4) Develop biologically adequate seedlings that can be used during an extended growing season and can be adapted to various planting systems. Seedling systems must be more efficiently adapted for mechanized planting.
- 5) Work on mechanized planting must be kept up. Mechanized planting is the most important opportunity to reduce costs in forest regeneration.
- 6) Solve the problem of seed supply. This concerns pine seeds for climatically difficult habitats. Efforts on seed supply must be combined with breeding to improve the hardiness of domestic species and possible use of imported species.
- 7) Research efforts for better methods to fight deciduous trees, both biologically and chemically, since the costs for manual cleaning are becoming prohibitive. Birch and aspen present the greatest problems in all regeneration work in northern Sweden due to their fast growing stump and root shoots. At present, use of chemicals is not allowed against deciduous thickets.

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

## Senate

### Committee on Resources

January 30, 1981  
1:30 p.m.

Butro Room  
207 Capitol

---

#### MEMBERS PRESENT

SENATOR FAHRENKAMP  
SENATOR FISCHER  
SENATOR GILMAN  
SENATOR MULCAHY  
SENATOR ELIASON  
SENATOR STURGULEWSKI

---

The Committee was briefed on timber by Ron Rasmusson, Northland Wood Products, Albert Pegh, Four Star Lumber, Steve Laroe, The Firewood Company, Fred Bethune, Acting Fairbanks Forester, Ted Smith, Director Division of Forest, Land and Water Management, and James Clark, Alaska Loggers Association.

Ron Rasmusson indicated that his company could produce and sell more of its sawmill production if there was more timber resource available. He predicted that within a few years there will not be any forest lands within a 60 mile radius of Fairbanks because 60% of the State's land disposal lands are coming from the Fairbanks area. He suggested that State Forest be created which could be managed on a sustained yield basis.

Albert Pegh said his company is operating at 25% of its capacity due to a lack of available resource. He said he was supportive of a State Forest which could increase the allowable cut and reduce the 120 year rotation cycle to 60-80 years (through proper timber management).

Steve Laroe estimated that over one-half of the households in Fairbanks use wood for primary or supplemental heating. Areas are not being made available by the State for personal or commercial fuel wood cutting. He said only three commercial sales, totaling 240 cords were held in 1980 and those sales

took nine months to prepare. Another sale was to be held in December 1980. However, that sale has not been advertised. He requested that the State: 1. establish a State Forest in the Interior with an associated requirement that a management plan be presented within no more than 24 months. The plan would show the methods to be used to provide for sustained yield of the forest resources; 2. postpone future agriculture land disposals including Nenana and Delta II for 18-24 months or until methods are developed that will allow for the responsible use of the forest resource.

Mr. Laroe said that by the State utilizing the method of chaining and burning to clear land the following resources are being wasted: Nenana, 46,000 acres of timber, the equivalent of 28,260,000 gallons of #2 fuel oil; Delta II, 50,000 acres of timber enough wood to build 7,500 homes. He further stated that the State has four major renewable resources (fisheries, tourism, agriculture and forestry) and requested that the State invest the same effort in forestry as it has in other renewable resources.

Fred Bethune indicated that the demand in the Fairbanks area for wood is rapidly reaching the supply level. There are 43 individuals in the area whose livelihoods depend upon cutting wood.

Ted Smith indicated that it is not easy to solve the problem of the shrinking land base. He said they are in the process of identifying land for forest use but this same land is also good for agriculture and settlement. He said that if there was a solid forest land base identified they could establish a five year plan.

In response to the question, who is responsible for developing the timber resource? Jeff Haynes, Deputy Commissioner of Natural Resources, responded that the Division of Forest, Land and Water Management is responsible.

James Clark testified that in order to create a forestry land base the following needs to be done: 1. establish a strong program of identifying forestry lands; 2. once identified the resource should be placed in a State forest; 3. create suitable hybrids so marginal areas can be forested; and, 4. fund a re-forestation program for existing and potential forests. He suggested the Committee review the regulation reform program. He saw some problems of consistency with the coastal zone program and duplicative paperwork.

In response to the question, why has there been no action in creating State forests? Jeff Haynes said they are in the process of identifying potential State forest lands. When this is completed the lands will be classified.

M E M O R A N D U M

TO: Jim Ryneerson  
FROM: Jim Clark  
DATE: January 13, 1981  
RE: South Central Timber Case

In this case, the Federal District Court struck down the state's primary manufacture requirement as a violation of the Federal Commerce Clause. The Court stated that except where states are granted an express exemption by Congress, the court will presume that the Federal Commerce Clause bars state actions such as primary manufacture.

The state argued that there was an exception to this Commerce Clause prohibition when a state acted as a proprietor of its natural resources (as opposed to a regulator). The state cited a Supreme Court case in which it upheld in-state processing against a Commerce Clause attack where the State was selling resources as opposed to regulating the resources.

The Court, however, distinguished the stumpage sale at Icy Bay from the situation in the Supreme Court case which the state cited with this key language which appears at page 5 of the opinion:

"Here the state is restricting the flow of a state-owned natural resource rather than a state-owned man-made commodity. Timber is not a commodity which, when needed, is capable of being readily produced by any state at any time. Conversely, a state may enter the cement business, with little problem, in order to supply its region with needed cement. The uniqueness of a natural resource, the happenstance of its location and the resulting national need for its unrestricted flow, prevent the state from economically discriminating in favor of its residents simply because a resource lies on state-owned land." (emphasis added).

The above quotation is important because it sets up one possible solution to this problem while Congress either grants an exemption to the Commerce Clause to allow primary manufacture by the states, or the state app als the decision (as it plans to do), or both. If the state were to hire a logger to harvest the timber and then sell the logs to companies involved in primary manufacture, it would be selling "a state-owned man-made commodity" rather than a state-owned man-made natural resource." The downside of this approach is that employees of the logger would be receiving Little Davis/Bacon wages for their activity. The second downside is that the state, with no thought of cost, could exercise so much environmental control over its logger that we would end up with more stringent standards than we presently have as the state tried to apply that approach to normal sales.

Let me emphasize that this decision, in no way, affects primary manufacture on federal land. The decision came about as a result of the fact that the Federal Commerce Clause supercedes state action such as the primary manufacture requirement. The Federal Commerce Clause does not restrict similar federal action. Therefore, this case could not be used as a precedent to overturn the federal primary manufacture requirement.

As a practical matter, this decision will play havoc in any situation where the state is regulating a natural resource for the benefit of local residents. Even limited entry may be a program in serious trouble as a result of this decision. I would urge that we make it known that we continue to support the primary manufacture requirement as soon as possible.

JFC:sd

Enclosure

cc: Mr. Don Wright (c/o ALP w/copy of Decision)

RECEIVED

Department of Law

JAN 6 1981

Office of the Attorney General  
Anchorage Branch  
Anchorage, Alaska

FILED

JAN 5 1981

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

By \_\_\_\_\_ Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

SOUTH-CENTRAL TIMBER DEVELOPMENT, INC., )  
Plaintiff, )

v. )

ROBERT LeRESCHÉ, Commissioner of )  
Department of Natural Resources of the )  
State of Alaska; GEOFFREY HAYNES, )  
Director, Division of Natural Resources, )  
and Deputy Commissioner of Department of )  
Natural Resources of the State of Alaska; )  
and THEODORE G. SMITH, Director of )  
Division of Forest, Land and Water Man- )  
agement, of Department of Natural )  
Resources of the State of Alaska, )

Defendants, )

KENAI LUMBER COMPANY, )

Intervenor. )

No. A80-311 Civil

MEMORANDUM AND ORDER

THIS CAUSE comes before the court on cross motions by plaintiff and defendant for summary judgment, and defendant-intervenor's motion to dismiss. The parties agree that the sole issue to be decided is whether the State's requirement of primary manufacture violates the Commerce Clause of the United States Constitution.<sup>1</sup> As the matter in controversy exceeds the sum of \$10,000, this court has jurisdiction pursuant to 28 U.S.C. §1331(a).

## I. FACTS

In September, 1980, the State of Alaska gave notice that it would sell approximately 49,185,000 board feet of timber in the area of Icy Cape, Alaska, on October 23, 1980. The notice of the sale provided, pursuant to 11A.A.C. §76.130,<sup>2</sup> that "primary manufacture within the State of Alaska will be required as a special provision of the contract." The inclusion of the primary manufacture requirement in the timber sales contract requires a successful bidder to pre-cut the sale timber in Alaska prior to export.

Plaintiff South-Central Timber Development, Inc. (South Central) is an Alaskan corporation engaged in the business of purchasing Alaska standing timber, logging such timber, and shipping the resulting logs into foreign commerce. Although South-Central desires to bid on the Icy Cape No. 2 timber sale, it is hampered by its lack of a working mill in Alaska. South-Central must take into account the added costs of having primary manufacture performed in-state. This added cost effectively precludes South Central from bidding on the timber.

## II. THE COMMERCE CLAUSE AND PRIMARY MANUFACTURE

The State and intervenor contend that the primary manufacture requirement is permissible under the commerce clause for two reasons: 1) Alaska's policy of requiring primary manufacture as a term of a state timber contract is consistent with federal policy as expressed by Congress; and, 2) by including primary manufacture as a term in the state timber contract, the state is not regulating interstate commerce; rather it is acting in a proprietary capacity as a market participant and is therefore exempt from commerce clause requirements.

### A. FEDERAL POLICY OF PRIMARY MANUFACTURE

It is clear that if Congress had consented to the State's primary manufacture requirement, any commerce clause restrictions would be waived. E.g. Southern Pacific Co. v. Arizona, 325 U.S. 761, 769 (1945). To determine whether

Congress has consented to the requirement, the court must examine the relevant Congressional provisions in this area.

The State points out that the federal government historically has placed restrictions on the export of unprocessed logs from federal lands in the western states, including federal lands in Alaska. Since 1926, the United States Forest Service has restricted the export of unprocessed timber from national forest timber sales in Alaska under the general authority granted by Congress. 16 U.S.C. §471 et seq. (1976) (National Forests).

Section 475 provides in part that one of the purposes for establishing a national forest is "to furnish a continuous supply of timber for use and necessities of the citizens of the United States...." Section 551 allows the Secretary of Agriculture, under the provisions of §471, to make necessary "rules and regulations and establish such service... to regulate... and to preserve the forests... ." Regulations currently in effect restrict the export, in unprocessed form, of timber harvested from sales in national forest land in Alaska. 36 C.F.R. §223.10(1).<sup>3</sup>

An examination of the relevant statutory provisions shows that Congress has not consented to any primary manufacture requirements imposed by the states. When Congress has exempted state laws from commerce clause restrictions, it has used language specifically directing that certain interstate commerce may be regulated as though it were purely local. See the Wilson Act, 27 U.S.C. §121(1976); see also the McCarran-Ferguson Act, 15 U.S.C. §1101 et seq. (1976) ("silence... of Congress shall not be construed to impose any barrier to... regulation... by the several states.").

Although Congress has authorized the Secretary of Agriculture to make necessary rules to regulate the national

forests, and has imposed export quotas on unprocessed timber from federal lands, it has in no way expressly exempted state timber laws from commerce clause restrictions. Given Congress' silence, a negative is presumed to bar state action inimical to the national commerce, and in such cases the Supreme Court is "the final arbiter of the competing demands of state and national interests." South Pacific Co. v. Arizona, 325 U.S. at 769.

B. THE STATE AS A PROPRIETOR

The State maintains that it is acting in a proprietary capacity (as the timber subject to the primary manufacture requirement is state owned) and is therefore unrestricted by the commerce clause. Reeves v. Stake, \_\_\_\_\_ U. S. \_\_\_\_\_, 100 S. Ct. 2271 (1980); Hughes v. Alexandria Scrap, 426 U.S. 794 (1976). The Supreme Court has made clear, however, that "[a]ll objects of interstate trade merit Commerce Clause protection; none is excluded by definition at the outset." Philadelphia v. New Jersey, 437 U.S. 617, 622 (1978). The court must determine whether Alexandria Scrap and Reeves allow the State to require primary manufacture of state-owned timber within Alaska as a condition of sale.

1. ALEXANDRIA SCRAP AND REEVES

In Alexandria Scrap, the Court upheld a Maryland statute which promoted the disposal of abandoned automobiles through cash payments to scrap processors. Even though the payments favored in-state processors, the Court found no commerce clause problems. Relying on the fact that Maryland was acting in a proprietary capacity, the Court held that "[n]othing in the purposes animating the Commerce Clause prohibits a State, in the absence of congressional action, from participating in the market and exercising the right to favor its own citizens over others." 426 U.S. at 810.

In Reeves, the Court ruled that the commerce clause did not prohibit South Dakota from refusing to sell cement from a state owned and operated cement plant to out-of-state customers, pursuant to its policy of supplying South Dakota customers first. The Court noted that "[t]he basic distinction drawn in Alexandria Scrap between States as market participants and States as market regulators makes good sense and sound law." \_\_\_\_\_ U.S. at \_\_\_\_\_, 100 S. Ct. at 2277.

The Reeves Court termed the holding in Alexandria Scrap the "general rule" as to states acting in a proprietary manner. \_\_\_\_\_ U.S. at \_\_\_\_\_, 100 S. Ct. at 2279. The Court went on to concede the possibility of an exception, but reasoned: "in this case [there is] no sufficient reason to depart from the general rule." Id. Later, the Court addressed the possible limits to the Alexandria Scrap exemption when it considered the argument that if a state were allowed to hoard its resources "Pennsylvania might keep its coal, the northwest its timber, [and] the mining States their minerals." West v. Kansas Nat. Gas Co., 221 U.S. 229, 255 (1911). The Court distinguished cement from natural resources such as coal, timber, wild game, and minerals, and noted that "South Dakota has not sought to limit access to the State's limestone or other materials used to make cement." \_\_\_\_\_ U.S. at \_\_\_\_\_, 100 S. Ct. at 2281.

Here the State is restricting the flow of a state-owned natural resource rather than a state-owned man-made commodity. Timber is not a commodity which, when needed, is capable of being readily produced by any state at any time. Conversely, a state may enter the cement business, with little problem, in order to supply its region with needed cement.

The uniqueness of a natural resource, the happenstance of its location, and the resulting national need for its unrestricted flow, prevent a state from economically discriminating in favor of its residents simply because a resource lies on state-owned land.

The court finds that the State's primary manufacture requirement goes beyond the Alexandria Scrap exemption, as a natural resource is involved. The Alexandria Scrap general rule is not a magic talisman which allows a state to place unconstitutional restrictions on a resource if it is state-owned. While the fact that a state owns a natural resource may allow it to favor its residents in the distribution of the resource in certain ways, a state may not "attach conditions to the use or disposition of the resource that might independently burden interstate commerce... ." Hellerstein, Hughes v. Oklahoma: The Court, the Commerce Clause, and State Control of Natural Resources, 1979 Sup. Ct. Rev. 51, 71 (1980).

Since the court has determined that the primary manufacture requirement goes beyond the Alexandria Scrap exemption, it must determine whether this requirement unconstitutionally burdens commerce.

## 2. THE PIKE TEST

The Supreme Court has set forth the criteria for determining the validity of state actions affecting interstate commerce. The rule that emerges is that:

Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive

in relation to the putative local benefits....

If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970)(citation: omitted).

Under this test, the primary manufacture requirement is unconstitutional. The requirement does not regulate evenhandedly, as it does not fall evenly on companies with in-state timber mills and companies with out-of-state timber mills; the requirement precludes South-Central from competing on equal footing with companies that possess in-state mills capable of performing primary manufacture.

Additionally, the public interest served goes beyond the Court's sanction of permissible commerce clause burdens. See e.g. Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 524 (1959)(state regulation furthering public safety, but burdening commerce held permissible). Here the purpose served is economic--"to protect existing industries, provide for the establishment of new industries, [and] derive revenue from all timber resources... ." Governor's Office News Release (June 30, 1961)(Governor Egan's policy statement on primary manufacture).

Through the years, the Supreme Court has been alert to the evils of economic protectionism. The Court frequently has indicated that the purpose of the commerce clause was to

avoid "the tendencies toward economic Balkanization that had plagued relations among the colonies and later among the States under the Articles of Confederation." Hughes v. Oklahoma, 441 U.S. 332, 325 (1979). "Thus, where simple economic protectionism is effected by state legislation, a virtually per se rule of invalidity has been erected." Philadelphia v. New Jersey, 437 U.S. 62, 74.

Turning to the "burden" side of the Pike test, the primary manufacture requirement places a substantial rather than an incidental burden on commerce. The application of the primary manufacture requirement would, at the least, require companies without mills in Alaska to lease mill facilities within the state capable of performing the requirement. Indeed, the "Court has viewed with particular suspicion state statutes requiring business operations to be performed in the home State that could more efficiently be performed elsewhere. Even where the State is pursuing a clearly legitimate local interest, this particular burden on commerce has been declared to be virtually per se illegal." Pike, 397 U.S. at 145.

Finally, the court finds that less burdensome means are available to the State to achieve the same end. For example, the state may implement a statutory scheme which encourages in-state processing rather than action which bars out-of-state processing. This is, however, a legislative question; the court simply notes other schemes are available.

Accordingly, IT IS ORDERED:

1) THAT plaintiff's motion for summary judgment is granted.

FOOTNOTES

1. U. S. Const., art. I §8 provides in relevant part: "The Congress shall have Power... To regulate Commerce with foreign nations, and among the several states... ."

2. 11 A.A.C. §76.130(1974) provides:

PRIMARY MANUFACTURE

(a) The director may require that primary manufacture of logs, cordwood, bolts or other similar products be accomplished within the State of Alaska.

(b) The term primary manufacture means manufacture which is first in order of time or development. When used in relation to sawmilling, it means

(1) the breakdown process wherein logs have been reduced in size by a headsaw or gang saw to the extent that the residual cants, slabs or planks can be processed by resaw equipment of the type customarily used in log processing plants; or

(2) manufacture of a product for use without further processing, such as structural timbers (subject to a firm showing of an order or orders for this form or product).

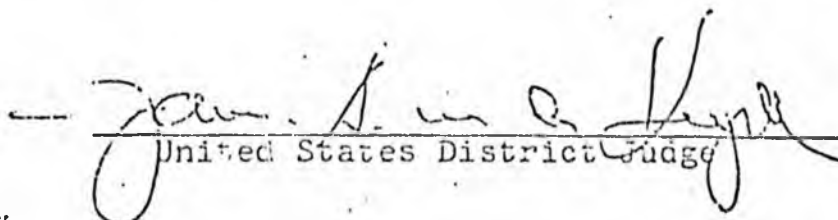
(c) Primary manufacture, when used in reference to pulp ventures, means the breakdown process to a point where the wood fibers have been separated. Chips made from timber processing wastes shall be considered to have received primary manufacture. With respect to veneer or plywood production, it means the production of green veneer. Poles and piling, whether treated or untreated, when manufactured to American National Institute Standards specifications are considered to have received primary manufacture.

Authority: AS 38.05.020  
AS 38.05.110  
AS 38.05.115  
AS 38.05.120

2) THAT defendant's motion for summary judgment is denied and intervenor's motion to dismiss is denied.

3) THAT the clerk may prepare a final judgment form stating that the named defendants or any official of the State of Alaska are permanently enjoined from requiring primary manufacture of state-owned timber pursuant to 11 A.A.C. §76.130, as the requirement of primary manufacture violates art. I, §8 of the United States Constitution.

DATED at Anchorage, Alaska, this 5th day of January, 1981.

  
United States District Judge

cc: Leroy E. DeVeaux

Mark L. Figura

Shelley Higgins, Assistant Attorney General

3. 36 C.F.R. §223.10(1)(1977) provides:

Subject to the other provisions of this section, timber cut from the National Forests in the State of Alaska may not be exported from Alaska in the form of logs, cordwood, bolts, or other similar products necessitating primary manufacture elsewhere without prior consent of the Regional Forester. This requirement is determined to be necessary in order to assure the development and continued existence of adequate wood processing capacity in that State essential to the sustained utilization of timber from the National Forests located therein which is geographically isolated from other processing capacity. In determining whether consent will be given to the export of such timber, consideration will be given, among other things, to whether such export will (1) permit a more complete utilization of material on areas being logged primarily for products for local manufacture, (2) prevent loss or serious deterioration of logs unsalable locally because of an unforeseen loss of market, (3) permit the salvage of timber, damaged by wind, insects, or fire, (4) bring into use a minor species of little importance to local industrial development, or (5) provide material required to meet urgent and unusual needs of the Nation.

STATE OF ALASKA

BOARD OF FORESTRY

Guy Poland,  
CHAIRMAN

Leslie M. Anderson

Walter J. Begalka

Robert J. Ellis

David Hearvale

Malcolm E. Keith

James La Belle

Marvin C. Meier

Everett Tyler

Robert Y. Urata

Bruce Wallace

Warren R. Weathers

Thomas D. Williams

Theodore G. Smith,  
STATE FORESTER

RESOLUTION

WHEREAS, productive commercial state-owned forest land in Alaska is limited, and

WHEREAS, retention of productive forest land, as forest land, is desirable to provide for the timber, firewood, water, recreation and habitat needs of Alaskans, and

WHEREAS, non-commercial forest land can supply the need for residential land but cannot produce certain forest products upon which Alaskans depend such as timber, firewood, water, recreation, and habitat, and

WHEREAS, Borough governments own the optimum residential lands but are not selling those lands, and

WHEREAS, the legislative mandate for annual 100,000 acre land disposals is forcing the State to sell productive forests as inferior subdivision land.

NOW THEREFORE be it hereby resolved by the Alaska Board of Forestry that the Alaska Legislature be urged to:

1. reduce the acreage required in the state land disposal mandate;
2. establish a program to encourage and assist the Boroughs to dispose of prime Borough residential land based on prior market analysis, which justifies the sale, said program to include substantial state financial assistance to Boroughs to offset the costs of capital improvements required by residential land development;
3. establish multiple-use State Forests to assure the continued supply of timber, water, habitat, firewood, and forest recreation opportunities to the various communities of the state.

WIN-ROCK  
BRIEFING

5-8-81

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99911  
(907) 465-3034  
(907) 465-3835

## Senate

### Committee on Resources

May 8, 1981  
1:30 p.m.

Beltz Room  
Room 211 - Capitol

#### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Fischer  
Senator Sturgulewski  
Senator Mulcahy  
Senator Eliason  
Senator Gilman  
Senator Bradley

---

#### HEARING:

SSSB 189 An Act relating to outdoor recreational facilities; providing for state historical, recreational, and wilderness trails, waterways, and campsice system.

SJR 37 Relating to the construction of the Bradley Lake hydroelectric project.

Governor's appointments: King Crab Marketing and Quality Control Board; Guide Licensing and Control Board, and Board of Veterinary Examiners.

Special briefing by Hudson Glimp, James Conner, and Tom Wamon of the Win-Rock International Foundation.

---

Hudson Glimp, stated that the purpose of their trip to Alaska was to obtain an overview of Alaska agriculture. Since Alaska is 95% dependent upon imported food goods, it needs to become self-sufficient. Alaska can become self-sufficient through research and building the necessary infrastructure. He indicated that there are deficiencies in the state's agriculture research programs.

Tom Wamon, stated Win-Rock can assist Alaska in areas such as developing seed varieties for this climate.

Jim Conner, stated that in order to support a feed gain industry

a market and a port are needed. He indicated that the seed being used at the Delta project is a 40 year old Canadian variety. Through the research of Win-Rock, Universities and Corporations, a better variety should be able to be developed.

Senator Gilman, stated that research is needed, but today the Senate Finance Committee deleted from the budget the funds for the Homer Research Center. He suggested that the Resources Committee send a letter to the Finance Committee asking them to reconsider their action.

The Chairman directed staff to draft such a letter for the Committee members signature. (attached)

Senator Fischer stated the the original bill, SB 189, related only to trails, but after hearings by the Subcommittee on Parks and Trails, the Sponsor Substitute was introduced. SSSB 189 addressed a grants program for the development of local recreation facilities. Senator Fischer recommended that the Committee adopt CSSSSB 189, which deletes the grants program.

Senator Fischer put forth the motion to move CSSSSB 189, with individual recommendations.

Senator Gilman discussed CSSJR 37. He stated that the Bradley Lake hydroelectric project was the only hydroelectric project that the Corp of Engineers had completed significant work on. To expedite the project, the proposal has been made to have the state take over funding the Corp of Engineers work on the project. The Corps has completed the necessary work which the Federal Energy Regulatory Commission requires for permitting. Senator Stevens discovered that specific legislation would probably be needed to set up this permitting system.

Senator Gilman stated that the Bradley Lake project was a high priority for Alaska's Congressional delegation. Senator Stevens suggested most of the language.

Senator Gilman put forth the motion to move SCSJR 37, with a "do pass" recommendation.

Senator Fahrenkamp put forth the motion to move the following appointments, with individual recommendations: Ms. Valerie J. Shepard, Board of Veterinary Examiners; Royal J. DeVaney, King Crab Marketing and Quality Control Board; Marcus Jensen, Guide Licensing and Control Board.

The Committee adjourned at 3:04 p.m.

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3634  
(907) 465-3035

## Senate

### Committee on Resources

May 8, 1981

Senate Finance Committee  
Juneau, Alaska 99811

Dear Senators:

The Senate Resource Committee would like to request your reconsideration of the budget for the University of Alaska for inclusion of the operating funds for the Homer Research Center at Homer, Alaska.


The University of Alaska is considering closing the Center December 1981 due to a lack of operating funds. This would result in the loss of vital agricultural research and data necessary for the maintenance and expansion of agricultural projects in the state.

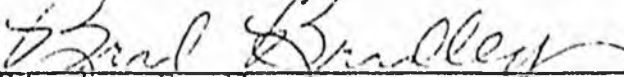
The operating budget is broken down into:

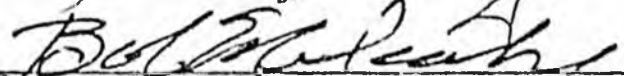
Salaries-----	\$155,011.58
Travel-----	3,368.39
Contractual services-----	29,404.20
Supplies-----	30,274.00
Total operating budget-----	\$218,058.17


Your reconsideration on this matter is greatly appreciated.

  
Senator Fahrenkamp, Chairman

  
Senator Fischer, Vice Chairman

  
Senator Bradley

  
Senator Mulcahy

  
Senator Gilman

S

B

7

# STATE OF ALASKA

FEB 18 1981

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

February 12, 1981

The Honorable Bettye Fahrenkamp  
Chairman, Senate Resources Committee  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Re: SB 7, "Act relating to  
accretion, reliction, and  
erosion; and providing for  
an effective date"

Dear Senator Fahrenkamp:

This letter is in response to your inquiry of January 27, 1981, in which you requested our comments on SB 7, "An Act relating to accretion, reliction, and erosion; and providing for an effective date." The apparent intent underlying the proposed legislation is to codify the common law rules relating to accretion, reliction and erosion. At the present time, the vast majority of states have not codified the common law rules in this regard, primarily (we assume) because a significant body of case law has developed in the area and there is at least some possibility that an attempt at codification might work a change in the law, as expressed in those cases, even though the intent was merely to codify it.

In addition to the attempt to codify the common law, SB 7 addresses one geophysical process which is not currently addressed in common law, that of isostatic rebound (identified as "glacio-isostasy" in the bill), which is the gradual rising of the surface of the earth as glaciers recede. As is probably to be expected, this geophysical phenomenon has not been addressed to any great extent in judicial decisions since it occurs in relatively few locations in the world.

However, the effect of this phenomenon on land title where privately-owned lands abut water bodies currently is the subject of litigation here in Alaska in the case of Honsinger v. State, Civ. Action 1JU-73-210 (First Judicial District at Juneau). The case involves title to approximately 95 acres of wetlands abutting Castineau Channel just south of the Juneau airport. In that case, the Honorable

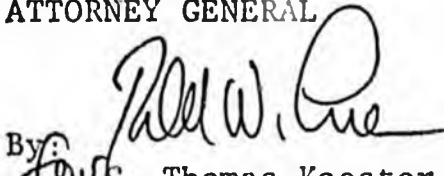
Thomas B. Stewart, presiding superior court judge, already has ruled that isostatic rebound does not have the same legal effect as accretion where the common law rule is that the property owner gains title to lands appearing as a result of accretion. However, Judge Stewart has ruled that the adjacent private property owner does not obtain title to new lands appearing as a result of isostatic rebound, and title to those lands which previously were below the line of mean high water (and therefore owned by the state) remains in the state. Under Judge Stewart's ruling, the state holds title to lands appearing as a result of isostatic rebound, not the private property owner.

The property owner in the Honsinger case has petitioned the Alaska Supreme Court to review Judge Stewart's decision. The court has not yet determined whether it will review the decision at this time rather than wait until the superior court action is completed (as is normally the case). However, as it stands at the present time, the law in the State of Alaska with respect to isostatic rebound (i.e., "glacio-isostasy") is that the land appearing as a result of that geophysical phenomenon is state-owned and does not inure to the private property owner. SB 7, as currently drafted, would have precisely the opposite result and therefore represents a change in the law as found by Judge Stewart. Accordingly, at this time, it would be inaccurate to view the proposed legislation as merely codifying existing law in the area since it clearly would be changing the law as announced by Judge Stewart in the Honsinger case.

We will let you know as soon as the Supreme Court makes a decision on Mr. Honsinger's petition for review. In the meantime, if we can be of further assistance, please contact us at your convenience.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By:   
THOMAS KOESTER  
Assistant Attorney General

GTK:dlm

cc: Keith Specking  
Office of the Governor

Arthur Peterson  
Assistant Attorney General

Tom Meacham  
Assistant Attorney General

Loni Levy  
Assistant Attorney General

SB7

a, Pa, for  
ORDER

Acme), has  
ward in fa-  
Union of  
rs, Local 6  
iolated the  
ing agree-  
his matter  
the Meat  
hiladelphia  
rs), which  
on by this  
s v. Retail  
577 (E.D.  
for Lewis  
ckout had  
Stores, Inc.  
lantic and  
the three  
ood Store  
Council).  
a strike by  
companies.  
This Court  
hat for an  
ust be of-  
, not just

sure com-  
closing of  
Because  
s not nec-  
ary ma-  
it was  
art. Hence  
favor of  
re con-  
ion of the  
he de-  
at about  
r. In the  
held that  
wind fa-  
to the  
was not

DeBOER v. UNITED STATES

Cite as 470 F.Supp. 1137 (1979)

offensive conduct, even if it was strategic conduct. In the instant case, the closure was not strategic, but was based solely on economic conditions. Accordingly, we conclude that Acme did not violate its agreement with the Union and plaintiff's motion for summary judgment will be granted.



Charles W. DeBOER, Plaintiff,

v.

UNITED STATES of America,  
Defendant.

No. J76-9 Civ.

United States District Court,  
D. Alaska.

May 17, 1979.

Plaintiff sued United States to quiet title to accretions which had gradually been added to plaintiff's federal homestead. The District Court, von der Heydt, J., held that for purposes of rule that meander line will be treated as boundary of grant if, between time of survey and time of entry, "substantial" amount of land was formed by accretion, 105.22 acres added to 165.05-acre plot between 1920 and 1959 through accretions was "substantial," and title to 105.22 acres, as well as acreage added since that time, had to be quieted in favor of the United States.

Ordered accordingly.

L. Federal Courts - 430

Question of title to accretions gradually deposited by ocean on adjoining upland property patented under federal homestead laws is governed by federal law.

2. Navigable Waters - 44(3)

Generally, grantee of land bounded by body of navigable water acquires right to any natural and gradual accretion formed along the shore.

3. Navigable Waters - 37(4)

Meander line will be treated as boundary of grant of federal land if, between time of survey and time of entry, substantial amount of land was formed by accretion between survey line and the shoreline.

4. Public Lands - 42

When grants to federal land are at issue, any doubts are resolved for the government, not against it.

5. Navigable Waters - 37(4)

For purposes of rule that meander line will be treated as boundary of federal land grant if, between time of survey and time of entry, "substantial" amount of land was formed by accretion, 105.22 acres added to 165.05-acre plot between 1920 and 1959 through accretions was "substantial," and title to 105.22 acres, as well as acreage added since that time, had to be quieted in favor of the United States.

See publication Words and Phrases for other judicial constructions and definitions.

Jim Reeves, Faulkner, Banfield, Doogan & Holmes, Anchorage, Alaska, for plaintiff.

Cynthia Pickering, Asst. U. S. Atty., Anchorage, Alaska, for defendant.

Jonathan K. Tillinghast, Asst. Atty. Gen. of Alaska, Juneau, Alaska, for applicant for intervention State of Alaska.

MEMORANDUM AND ORDER

VON DER HEYDT, District Judge.

THIS CAUSE comes before the court on cross-motions for summary judgment.

In this case the plaintiff DeBoer has sued the United States under 28 U.S.C. § 2409a to quiet title to accretions which have been gradually added to Mr. DeBoer's federal homestead near Gustavus, Alaska, on the north shore of Icy Strait. The State of

Alaska is also a party to this case because it has made land selection applications, under the Alaska Statehood Act for the disputed accretions. These applications were filed after the plaintiff received patent to his homestead and none of them have been adjudicated by U. S. Bureau of Land Management. The claim of the State of Alaska depends upon whether the United States holds title to the accretions so that the property was available for selection.

In July, 1920, a U. S. Surveyor executed a survey of fractional T. 40 S., R. 69 E., Copper River Meridian, located on the north shore of Icy Strait. In December, 1961, Lot 2, Section 17, and Lots 8, 9, and NE ¼ SE ¼, section 18, was patented to the plaintiff Charles W. DeBoer as a homestead. The lots as surveyed in 1920 contained 165.05 acres bounded by meander lines on two sides. In June, 1959, when plaintiff made a homestead entry on the property described above, these lots contained 270.27 acres, the additional 105.22 acres having been added to the parcel along its seaward boundary by gradual accretion. By 1977 it was estimated that about 107 acres more had been added to the property in question so that the entire parcel including the lots at the time of survey, the accretions added between survey and homestead entry, and the accretions added since homestead entry totaled approximately 377 acres. The question before the court focuses on the title to the 105.22 acres added by accretion between survey and homestead entry because title to those accretions determines the title to the accretions since homestead entry.

[1] The question of title to accretions gradually deposited by the ocean on adjoining upland property patented under the federal homestead laws is governed by federal law. *Hughes v. Washington*, 389 U.S. 290, 291, 88 S.Ct. 438, 19 L.Ed.2d 530 (1967).

[2] The general federal rule is that the grantee of land bounded by a body of navigable water acquires a right to any natural and gradual accretion formed along the shore. *Hughes v. Washington*, 389 U.S. at 293-94, 88 S.Ct. 438. *Jefferis v. East Omaha Land Co.*, 134 U.S. 178, 189, 10 S.Ct. 518,

33 L.Ed. 572 (1890). The reasons for this rule have been stated variously. "[T]hese owners being often losers by the breaking in of the sea, or at charges to keep it out, this possible gain is therefore a reciprocal consideration for such possible charge or loss." *Jefferis v. East Omaha Land Co.*, 134 U.S. at 192, 10 S.Ct. at 522 (quoting Blackstone's Commentaries). In *Hughes v. Washington*, the U. S. Supreme Court stated that, "Any other rule would leave riparian owners continually in danger of losing the access to water which is often the most valuable feature of their property, and continually vulnerable to harassing litigation challenging the location of the original water lines." 389 U.S. at 293-94, 88 S.Ct. at 441.

But despite the sound reasons for this rule, some courts, including the Ninth Circuit Court of Appeals, have discovered an exception to it. The exception is that the meander line will be treated as the boundary of the grant if, between the time of survey and the time of entry, a substantial amount of land was formed by accretion between the survey line and the shoreline. *Wittmayer v. United States*, 118 F.2d 808, 810 (9th Cir. 1941); *Smith v. United States*, 593 F.2d 982 (10th Cir. 1979). This exception has come to be known as the *Basart* doctrine because of its adoption by the Under Secretary of Interior in *Madison v. Basart*, 59 I.D. 415, 422 (1947). The *Basart* opinion cited the Ninth Circuit opinion in *Wittmayer* in support of the Department's adoption of this exception to the general rule.

This exception, and the *Wittmayer* opinion in particular, have been persuasively criticized in a well reasoned opinion of the District of North Dakota. *United States v. 11,993.32 Acres of Land*, 116 F.Supp. 671 (D.N.D.1953). In that opinion District Judge Vogel fully examined the case law on the subject and found a lack of support either in equity or in precedent for the conclusory statement of the *Basart* doctrine found in *United States v. Wittmayer*. The primary objection to the *Basart* doctrine is that the determination of what is a "sub-

Cite as 470 F.Supp. 1137 (1979)

stantial" amount of accretion between survey and patent subjects land titles to a vague and uncertain standard.

The rule of the second exception as contended for here by the Government suggests its own unfitness. Certainty of titles is a fundamental consideration in the broad area of law concerned with conveyancing. A rule based upon a determination of whether the accretion between the time of survey and the time of entry is substantial or not necessarily makes the scope of a patent of land bounded by a meander line uncertain or makes the meander line presumptively the boundary line, which it confessedly is not. Such a rule as suggested by the Government would be that generally the patentee acquires the accretions but that if he stands to get too much according to an uncertain standard, he then doesn't get any. Such an exception would soon displace the generally accepted rule that a patentee, on lands bounded by water, owns the accretions thereto in the absence of fraud or mistake.

United States v. 11,993.32 Acres of Land, 116 F.Supp. at 679.

This court further notes that this exception to the general rule appears inequitable. There is no evidence in the record that the plaintiff knew of the difference between the survey and the land as it appeared on his entry. The existence of this exception to the rule causes this homesteader, and others like him, to lose what is probably one of the most valuable aspects of his property, its access to the water. While the homesteader would receive a "windfall" from application of the general rule, this enrichment is not "unjust" because he took the risk of losing the "windfall" from the same natural forces that added the acreage to his homestead.

[3] Having noted this court's disagreement with the Basart doctrine, no way exists to escape the binding effect of the Court of Appeals decision in United States v. Wittmayer, 115 F.2d 805 (9th Cir. 1941), one of the cases upon which the doctrine is based. While the Supreme Court decisions

discuss the general rule, they do not decide whether the Basart exception has the disapproval of the court. In view of this state of the law, this court has no choice but to hold that the meander line will be treated as the boundary of the grant if, between the time of survey and the time of entry, a substantial amount of land was formed by accretion between the survey line and the shoreline.

The only question left to be decided is whether the 105.22 acres added to the 165.05 acre lot between 1920 and 1959 is "substantial." As noted above there is little to guide the courts in deciding what is "substantial." The United States Manual of Surveying Instructions (1973) at 172 states that:

In determining what constitutes a "substantial" accretion, to which the rule in Madison v. Basart is applicable, the area of accretion should be compared quantitatively with the riparian lots to which it attached. Some consideration should also be given to the total area accreted. Accretion to a small lot might be large in proportion but negligible in absolute size. From the standpoint of size and relative size, the area in question can be weighed as in the case of omitted lands.

(emphasis in original).

[4, 5] It has long been established that when grants to federal land are at issue any doubts are resolved for the Government, not against it. Andrus v. Charleston Stone Products Co., 436 U.S. 604, 617, 98 S.Ct. 2002, 56 L.Ed.2d 570 (1978). United States v. Union Pacific R. Co., 353 U.S. 112, 116, 77 S.Ct. 685, 1 L.Ed.2d 693 (1957). In view of this canon of construction this court finds the 105.22 acres to be substantial" both in size and relative size and therefore this case fits within the exception to the general rule.

In view of the above, the court holds that title to the disputed 105.22 acres of accretion added between survey and patent and the acreage added since that time must be quieted in favor of the United States.

Accordingly IT IS ORDERED:

for this  
[T]hese  
breaking  
p it out,  
reciprocal  
large or  
and Co.,  
(quoting  
Hughes v.  
Burt state  
we ripari-  
of losing  
the most  
and con-  
litigation  
original  
88 S.Ct.  
  
for this  
Ninth Cir-  
covered an  
that the  
he bound-  
e time of  
substantial  
accretion  
shoreline.  
F.2d 571.  
ted States.  
his excep-  
the Basart  
by the Un-  
ison v. 54  
the Basart  
opinion in  
part of the  
ne general  
  
ayer of  
erations  
tion of  
d States  
Supp. 671  
n District  
case law on  
of support  
nt: for the  
ed. The  
dever  
is a

1. THAT the plaintiff's motion for summary judgment is denied.
2. THAT the United States' motion for summary judgment is granted.
3. THAT the Clerk may prepare a final judgment form stating that title to the disputed accretions is quieted in favor of the United States.

protected by First Amendment; (4) administrative procedure established by ordinance for judicial review of license denials or revocations was not constitutionally defective, and (5) plaintiff did not substantially prevail in litigation so as to be entitled to award of attorney fees.

Order accordingly.

BAYSIDE ENTERPRISES, INC., et al.

v.

Dale CARSON, etc.

Charles Grady KELLER and Daytona International, Inc., a Florida Corporation

v.

CONSOLIDATED CITY OF JACKSONVILLE, etc., et al.

Nos. 78-889-Civ-J-M, 78-898-Civ-J-M.

United States District Court  
M. D. Florida  
Jacksonville Division

May 11, 1979.

Action was brought seeking declaration that municipal ordinance governing adult entertainment and services was unconstitutional and seeking a permanent injunction against enforcement of ordinance. The District Court, Melton, J. held that: (1) ordinance was incompatible with First Amendment insofar as it authorized denial, suspension, or revocation of adult entertainment license based upon commission or conviction of specified criminal act; (2) ordinance's disclosure requirements governing adult entertainment license application procedure were not constitutionally offensive; (3) system of license fees under ordinance did not impermissibly infringe upon rights

#### 1. Constitutional Law — 40.1(5)

First Amendment will allow injunctive remedies against dissemination of particular items that have undergone judicial review, accompanied by special procedural safeguards that attend cases in that area, and found to be obscene. First Amendment will not allow blanket injunctions directed at materials that have not been judicially found obscene, regardless of probability, based on distributor's track record on prior occasions, that materials will actually be obscene. U.S.C.A. Const. Amend. 1.

#### 2. Constitutional Law — 90.1(4)

Licensing provisions of municipal ordinance governing adult entertainment were incompatible with First Amendment insofar as they authorized denial, suspension, or revocation of adult entertainment license based upon commission or conviction of specified criminal act. U.S.C.A. Const. Amend. 1.

#### 3. Theaters and Shows — 3

Provisions of licensing procedure of municipal ordinance governing adult entertainment, which required disclosure of names of applicants, whether applicant had previously had his or its license revoked and whether applicant had been convicted of specified criminal acts within five years preceding date of application, were not constitutionally offensive. U.S.C.A. Const. Amend. 1.

#### 4. Constitutional Law — 40.1(1)

Governmental entity cannot tax exercise of First Amendment rights; when it imposes a tax that might implicate those rights, it has burden of demonstrating that tax is designed to finance system of administration unrelated to suppression of speech.

SB7

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT JUNEAU  
FRED S. HONSINGER, et al., )  
Plaintiffs, )  
vs. )  
STATE OF ALASKA, et al., )  
Defendants. )

SEP 20 1993  
Barbara A. Hunt, Clerk  
By: *Reed*  
No. 1JU-73-210 Civil

MEMORANDUM OF DECISION

Plaintiffs in this case are upland owners of substantial acreage in an area within the City and Borough of Juneau commonly referred to as the "Mendenhall wetlands." It is an area of acknowledged economic and ecological value about which there are strong local public views relating to conflicting conservation and development interests. The issues in the case concern ownership of approximately 95 acres of land adjacent to that owned by plaintiffs which have emerged from tidelands' status to upland in the years between the time of the original federal homestead patent surveys of plaintiffs' land and the present. Those initial surveys were bounded on the seaward side by an established meander line delineating the reach of mean high tides. At present the meander line of mean high tide is markedly seaward of where it was in the original surveys, and the contest involves the "new" land between.

Whether this land belongs to plaintiffs or the defendant State of Alaska involves both factual and legal questions. The factual questions relate principally to what processes in fact physically caused the land to emerge from its previous tideland condition. The parties agree at least that the emergence could substantially involve a phenomenon labelled "isostatic rebound," or "glacio-isostatic uplift."

1 The crucial legal issue is whether, assuming the new land  
2 was formed by that geophysical process rather than by more  
3 ordinary alluvial depositions or by reliction (receding of  
4 the waters), such land should be held to belong to the  
5 upland owner or to the state.

6 As may be noted from the chronologically-coded file  
7 number of this action, it has been pending resolution for  
8 many years. In large part the delay has been caused by  
9 genuine and extensive efforts by the parties to reach a  
10 negotiated settlement of the matter. In 1979 it became  
11 apparent that these efforts would not succeed, and defendants  
12 then moved to "establish the law of the case," based on a  
13 stipulation of counsel filed May 11, 1979. Counsel have  
14 prepared excellent and extensive memoranda of law, with  
15 supporting citations and reference materials, and the matter  
16 is before the court for decision on defendants' motion.

17 The issue is essentially one of first impression, with  
18 potential in its resolution for relatively wide-ranging  
19 economic and social impact in a glaciated, tidal region such  
20 as this northern portion of southeastern Alaska. The legal  
21 issue may be more succinctly stated as "whether the common  
22 law rule that accreted land inures to the littoral owner is  
23 applicable to acreage created by glacio-isostatic uplift."  
24 At least two cases previously before this court have raised  
25 the issues, and reference to them is appropriate in appreciating  
26 at least the incidence of concern with the legal effect of  
27 this geological phenomenon. The cases are Schnafer v. Schnabel,  
28 494 P.2d 802 (Alaska 1972), and DeBoer v. State, No. 1JU-74-  
29 29 Civil. The latter case, because of jurisdictional questions,  
30 was subsequently litigated in the U. S. District Court for  
31 Alaska, as DeBoer v. United States and State of Alaska,  
32 470 Fed.Supp. 605 (1979). However, both cases were determined

1137 Alaska Court System

State of Alaska

1 on other issues, so that the question now pending was not  
2 resolved. The careful research of counsel has revealed no  
3 other reported decision in which the issue was raised or  
4 met.

5 It is not my intention in this statement of decision to  
6 analyze extensively the legal litany of the common law  
7 doctrines relating to rights of accretion and reliction.  
8 That has been done quite sufficiently in the memoranda  
9 submitted on the motion. The critical matter is simply to  
10 state a choice between the traditional law of accretion and  
11 the exception to it urged on defendants' behalf, and to  
12 state the reasons for reaching that choice. Though the  
13 issue is indeed close, and susceptible to resolution either  
14 way on substantial grounds, my determination is in favor of  
15 the State's position.

16 That choice is fundamentally made upon weighing of the  
17 policy considerations supporting the ancient common rule as  
18 against those in favor of an exception. In my view the  
19 balance favors a rule retaining public ownership of recently  
20 exposed tidelands. I am convinced the decision should be  
21 founded on equitable principles balancing between the competing  
22 interests, rather than upon equitably blind adherence to  
23 common law, however venerable simply from its age. This  
24 approach has recently been applied by the supreme court of  
25 Hawaii, in determining against the former littoral owner  
26 where access to the ocean was cut off by a lava flow forming  
27 new land. State by Kobavashi v. Zimring, 566 P.2d 725, 734  
28 (Ha. 1977). As also noted in that decision, other courts  
29 have found that though littoral access should be preserved  
30 where possible, that policy is not so sacred as to be inviolate  
31 and may have to be deferred in favor of other considerations.  
32 (See cases cited in Zimring, at p. 734.)

1           There are basically three policy reasons indicated as  
2 justifying the rule that lands formed gradually and imperceptibly  
3 should inure to the littoral owner. The first and most  
4 prominent of these is that the riparian character of the  
5 land may be its most valuable feature, and the owner should  
6 be allowed to retain that right to access to the adjacent  
7 waters that inured in the nature of the land as originally  
8 acquired. It is particularly with relation to this policy  
9 reason that it appears the public interest outweighs that of  
10 the private landowner. A policy giving large benefits from  
11 this widespread natural phenomenon, in effect gratuitously,  
12 to only a few does not appear equitable as against a policy  
13 spreading those benefits in equal measure to all of the  
14 people of the State. This is more especially true where  
15 there is such increasing public demand for recreational and  
16 public use, as well as for protection against destruction of  
17 the natural character of lands just such as these are.  
18 Under its duties as a trustee of the lands, the State will  
19 be obligated to protect the property and regulate its use.  
20 It may be presumed that this duty would be implemented by  
21 devoting the land to actual public uses, such as for recreation.  
22 And likewise presumably there could be no sale of the land  
23 unless it promoted a valid public purpose. The upland  
24 owners under this policy would share in the public access to  
25 the land and adjacent waters, losing only the private nature  
26 of the access held when their lands were originally acquired.  
27 Their right of access, held with the public, would be lost  
28 only if access is outweighed by some conflicting public  
29 interest use or if the land is sold in the public interest.  
30 (See generally Zimring, at p. 735.)

31           Plaintiffs have argued that such a public interest  
32 policy should be adopted by the legislature rather than by

1 the courts of this state, and have noted that legislation of  
2 this sort has been enacted in some states. E.g., Oregon  
3 Revised Statutes § 274.440. While certainly the legislature  
4 could and perhaps should properly act to regulate the interests  
5 here involved, that does not preclude the court from acting  
6 in the absence of a legislatively-determined policy. This  
7 follows logically from the fact that the traditional doctrine  
8 of accretion is no more than a court-determined policy  
9 itself based on equitable grounds.

10 The second policy reason for the traditional rule  
11 relates to the notion of "natural justice" that the upland  
12 owner bears the risk of loss to his property from natural  
13 causes and therefore should enjoy the benefit of gain deriving  
14 from such processes. There may be some validity to the  
15 State's argument, which plaintiffs challenge, that the  
16 doctrine does not apply to glacio-isostatic uplift because  
17 that phenomenon in recorded human history has not had a  
18 reverse character. In other words, there is no countervailing  
19 risk of loss from this particular process. In my view, it  
20 is a more persuasive argument that even though this "natural  
21 justice" notion may have some merit, it is outweighed by the  
22 public interest concerns already expressed.

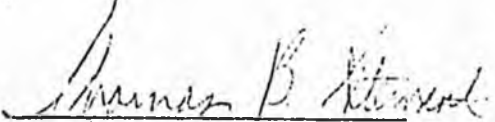
23 The third policy reason is that the traditional rule  
24 gives greater certainty and stability to land titles. It is  
25 argued that a rule which would give the State title to  
26 narrow strips of new coastal land formed by very gradual  
27 processes would engender litigation about the location of  
28 the line of mean high water. However, it appears highly  
29 unlikely that any such litigation would develop unless there  
30 were indeed valuable lands that had been identified and at  
31 least arguably created by the geologic process involved in  
32 this action. As for difficulties of proof relating to the

1 actual processes by which the new land was formed, these do  
2 not appear to be so complex or formidable as to outweigh the  
3 public policy interests that have been noted as basically  
4 determinative.

5 For the reasons indicated the defendant State's motion  
6 to establish the law of the case will be granted, and a form  
7 of order to that effect has been filed and entered.

8 DATED: September 29, 1980.

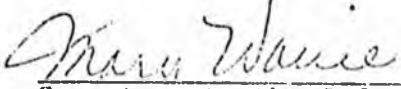
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

  
Thomas B. Stewart  
Presiding Judge

CERTIFICATION

This is to certify that on the above date I mailed a copy  
of this Memorandum of Decision to:

Jonathan K. Tillinghast, Esquire  
Michael M. Holmes, Esquire

  
Secretary to the Judge

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 485-3834  
(907) 485 1835

## Senate

### Committee on Resources

March 2, 1981  
1:30 p.m.

Beltz Room  
211 - Capitol

#### MEMBERS PRESENT

SENATOR FAHRENKAMP  
SENATOR FISCHER  
SENATOR STURGULEWSKI  
SENATOR MULCAHY  
SENATOR ELIASON  
SENATOR GILMAN  
SENATOR BRADLEY

HEARING: SB 7 An Act relating to accretion, reliction  
and erosion.

SB 83 An act restricting the authority of  
the department of natural resources  
to regulate certain activities in state  
recreation areas.

Senator Ray, stated the reason he introduced SB 7 was because there is no law in Alaska to cover changes in ground build-up due to glacier action. Under this bill if the land increased where there was no land before, it would go to the private land owner.

Tom Koester, Attorney General's office, stated that Judge Stewart had ruled that land being added by glacier activity does not belong to the private land owner because it is a specific kind of process. The case is before the supreme court and they have not decided whether they will hear the case.

Mike Holmes, Attorney for Smith and Honsinger, stated that throughout the United States land build-up belongs to the upland owner to the meander line. The case has not come up previously on the activity of glaciers and therefore, in the absence of a law, Judge Stewart came up with a judicial rule. He stated that he thought that Judge Stewart had erred in his ruling that the new property becomes the property of the state.

SENATE RESOURCES COMMITTEE

March 2, 1981

Page: 2

Senator Eliason moved that SB 7 be moved to the Judiciary Committee with the stipulation that the bill return to the Resources Committee.

Senator Bennett stated that SB 83 is intended to make sure that state recreation areas can continue to be used by the citizens. The Chena Recreation Area turned out to be a lock up. It consists of  $\frac{1}{2}$  million acres outside Fairbanks with chains and burms to prevent access by people. Miners are being cited, harrassed and prevented from getting to their holdings. He stated the original intent for the recreation area was a playground for people not a wildlife preserve. He stated that he would like to see an amendment to SB 83 allowing the taking of

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

## Senate

### Committee on Resources

MR. PRESIDENT:

THE SENATE RESOURCES COMMITTEE HELD HEARINGS YESTERDAY ON SB 7, "AN ACT RELATING TO ACCRETION, RELICTION, AND EROSION."

AFTER HEARING TESTIMONY ON THIS MEASURE, THE RESOURCES COMMITTEE FEELS THAT IT SHOULD WAIVE SB 7'S REFERRAL WITH THE UNDERSTANDING THAT AFTER THE JUDICIARY COMMITTEE COMPLETES ITS CONSIDERATION OF THIS LEGISLATION, IT BE RETURNED TO THE RESOURCES COMMITTEE FOR ITS FURTHER CONSIDERATION.

THE COMMITTEE FELT THAT THE BILL SHOULD BE LOOKED AT BY THE JUDICIARY COMMITTEE FIRST IN ORDER THAT THEY CAN ESTABLISH THE BILL'S POSSIBLE EFFECT ON ALASKA'S LAWS EFFECTING LAND OWNERSHIP. THE RESOURCES COMMITTEE WOULD LIKE TO TAKE A LOOK AT THIS BILL AFTER THIS DETERMINATION IS MADE TO STUDY THE STATE POLICY THIS BILL CREATES. ALSO AT THAT POINT, THE COMMITTEE WOULD LIKE TO HEAR TESTIMONY FROM THE DEPARTMENT OF NATURAL RESOURCES ON ITS POSITION.

MR. PRESIDENT, I ASK UNANIMOUS CONSENT THAT THE RESOURCE COMMITTEE WAIVE CONSIDERATION OF SB 7 WITH THIS UNDERSTANDING.