ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2858 SRES SB 375 2858

(Access continued)

Relatively little money has been available for grants to municipalities to conduct disposals with entitlement lands. Municipalities believed much more money be made available and that the five and seven times limitation be eliminated. Also they felt that more cooperative disposals could be developed between the state and Boroughs with costs and lands pooled.

Other comments focused on the eventual costs of other public services such as schools, utilities, fire control from settlement of disposal lands and the disproportionment of burden on local governments.

Best Interest Findings

AS 38.05.035(a)(14) authorizes the Director (of Lands) to sell or lease lands when he makes a written finding that it is in the best interest of the state. A written finding is not required for certain negotiated contracts, shore fishery site leases and revocable permits.

Comments:

All forms of disposals, including permits, should have best interest findings.

The definition of "best interest" and the written requirements of the provision need to be clarified.

Social and economic impacts and benefits of disposals needs to be included in best interest findings.

Surveying

AS 38.04.045(b) requires that before conveyance of surface rights to state land, an official cadastral survey must be accomplished. The state generally conducts complete surveys and rolls costs into the purchase price of subdivision parcels. These revenues are not returned to DNR, but to the general fund. For remote lands, the state generally places monuments every 2-4 miles to facilitate staking and ultimate lot surveys by stakers. Ideally, survey funds should be appropriated 2-3 years in advance of sales. This year the DNR survey appropriation was reduced to $1.8 million, necessitating a reduction in acreage disposed of in FY 85.

The state generally has not paid for a cadastral survey for entitlement lands conveyed to municipalities.

The homesite program requires a state cadastral survey in advance of staking and that parcels be no further than one mile from a monument.

(Surveying continued)

Comments:

The annual fluctuation and reduction of DNR survey funds makes planning and predictability in the disposal program difficult and delays conveyances to municipalities.

There is debate over the definition of "cadastral" and the number and location of monuments required. Some would like all sections and quarter sections surveyed by the state in advance of disposals or conveyances.

The survey requirements in the homestead bill appear to prevent full conversion of exisiting and programmed remote parcel areas to homesteading without additional monumentation when the remote parcel program expires 7/1/84.

Remote Cabin Permits

AS 38.05.079 limits the location of remote cabins to lands classified for that purpose. However, current regulations allow for remote cabins on most land classifications.

Comments:

In an effort to exercise control over the location of such cabins, commenters have urged that lands be identified specifically for remote cabins, and that the current permit system be replaced with a lease system. A lease system would ensure that a "best interest" evaluation be performed prior to siting a cabin, as permits are currently exempt from the best interest requirement.

A suggestion to replace the remote cabin system with a public use cabin system (cabins to be built by the state, and rented to the public) would allow for greater use of choice remote sites, while minimizing impact.

It was suggested that fuller use of both a remote cabin and public cabin program would reduce demand for land disposals.

Cost Effectiveness

Several current programs, including homesite, homesteads and agricultural disposals, require "prove-up", which requires policing and certifying activities by DNR.

AS 38.05.057(a) requires that land lotteries be held in the locality of the disposal. Current regulations require local public hearings prior to disposals. In FY 83, 66 public hearings were held.

(Cost Effectiveness, continued)

Comments:

Besides the legislature's failure to appropriate adequate funds to carry out mandated functions (such as surveying and preference rights), there are many secondary costs that make the program expensive. It has been suggested that costs of enforcement, lotteries, post-entry compliance determinations, and casefile work could be eliminated if the state were to merely sell land.

In addition, the disposal program's public input process is highly demanding of staff time and contributes to personnel and travel costs.

Initial expenditures are sometimes wasted, when a project is lost to political or environmental pressures, or superseded by projects such as the marine park bill, the Tanana Valley State Forest, and the University settlement.

Legislative amendments to the programs demand that funds be used for implementation of new procedures. In addition, legislative and administrative changes can contribute to public confusion over disposal programs and fear of continuity leading to artificially high demand for state land.

Land Disposal Methods

The statute provides for several methods of disposal, including lottery, staking and auction, which are generally tied to specific disposal programs.

AS 38.05.070 provides for 55-year leases for state land, except for the extraction of natural resources. Similar federal lease programs generally call for a 99 year lease.

A discount program based on residency (AS 38.05.058 repealed) was recently struck down by the courts and currently disposals are based on appraised values unless "sweat equity" provisions apply.

Although survey and dwelling contract requirements can be extended an additional year in the homestead and homesite programs, the residency requirements must be strictly met for the conveyance of patent.

AS 38.50 provides for a strict procedure for the notification and review of proposed state land trades. Unless trades are of equal appraised value, they must be submitted to the legislature for approval.

AS 38.05.065 ties the interest rate on state disposals to the prevailing rate for real estate mortgage loans made by the federal land bank, which currently is at an all-time high of 12.25%.

(Land Disposal Methods continued)

AS 38.04.020(h) requires subdivision parcels to be no greater than 5 acres except when specific conditions are present.

AS 38.05.057(a) provides that land lotteries must be held in the locality of the disposal area. In the past, administrative and legislative acreage quotas led to the closure and subsequent reopening of disposal areas to enhance acreage figures.

Comments:

Extend the 55-year lease to 99 years to be compatible with federal leases in order to facilitate financing of development.

It has been suggested that a program be developed to replace the residency discount program. Others have suggested that no discount apply so demand can be more accurately measured and state revenues can be maximized.

Commenters suggested that all land trades be brought before the legislature regardless of equal value. Others feel the appraised value criterion is too strict for many small diverse-value trades, and that trades of under 640 acres should be allowed to be done administratively.

There may be better ways to set the interest rate on state disposals so it is more compatible with current state interest rates on other programs.

Flexibility should be allowed in disposal methods for the various programs. For example, sealed bid or outcry auctions may be more appropriate than lottery for agricultural disposals; subdivision plots should not be limited to 5 acres.

It was also suggested that conversion of homesite and homestead entry permits to purchase contracts be allowed if all but the residency requirements have been met.

Unsold lots should be continuously available, rather than opening new areas for disposal.

Some favor local lotteries as granting a form of resident preference; others criticize local lotteries as expensive and unfair to residents from other areas of the state.

Mineral Leasing and Location

AS 38.05 describes a variety of mineral location and leasing systems and requirements on state lands.

(Mineral Leasing and Location continued)

Comments:

The Department of Minerals and Energy Management has suggested that some requirements in the current law seem to be no longer needed or require clarification.

In addition, there is interest in amending the coal prospecting permit statutes to extend the time period allowed for exploration under a permit from 4 to 5 years to allow adequate time for exploration and delineation of an area.

RECEIVE.2

from DNR

INFORMATION REQUESTED FOR LAND DISPOSAL REVIEW

I. By year, by particular disposal program, by geographic area, how many acres and how many parcels of state land have been offered for sale, staking or leasing?

Specific years: Prior to 1978, 1978, 1979, 1980, 1981, 1982, 1983 (FY or calendar)

Specific programs: O-T-E, subdivision, homesite, remote parcel, former homestead, project ag lands, small ag, commercial and industrial sales or leases, other sales and leases of state land, remote cabins.

Specific geographic areas: Fairbanks North Star Borough; Tanana Valley (including Steese Highway); north of the Yukon River; west of the Alaska Range and south of the Yukon River; Mat-Su Borough; Kenai Peninsula Borough; Copper River Basin; Prince William Sound; Kodiak; Southeast Alaska.

a. Are these "gross" acres or "net acres? If "net" acres, what is definition and what percentage is this of "gross" acres?

b. What is the average parcel size for each of the several programs?

c. How many separate parcel units for the several programs in each geographic area have been offered?

d. How many acres/parcels of those offered by geographic area have been "road accessible"?

e. How many acres and how many parcels, by program, have been initially offered by lottery, how many by auction, and how many over-the-counter?

f. How much land, by program, has been offered under the veterans preference provisions of 38.05.067?

II. Of the acres and parcels for the breakdowns listed above which have been offered, how many acres and how many parcels have ben "sold" (contracts signed), permitted or leased?

a. How many acres and parcels have been sold or leased by lottery, how many by auction, and how many over-the-counter?

b. By program, what have been the terms of purchase (e.g., interest rates, length of payments, monthly payments)?

c. What are some examples in the range of numbers of persons applying for lotteries by program and geographic area relative to the number of parcels offered?

d. By municipality or region, where do persons reside who are buying or leasing land in various geographic areas?

e. By disposal category and geographic area, what have been the average appraised values per acre and/or per parcel? What is the total value of the sales by year, program and geographic area?

f. Of the parcels sold, how many have been purchased utilizing the residency discount program and what has been the average percentage reduction in appraised purchase prices for those utilizing the discount program? What is the total monetary value of all discounts offered?

g. For the homesite program, how many or what percentage of "sales" have been "proven up" on? What requirements have been hardest to meet?

h. For remote parcels, how many or what percentage of those under permit have gone to patent?

i. How many contracts of what percentage of land sales have been canceled or revoked for non-payment or other contract violation?

III. For the various disposal categories, what have been the costs to the state for disposal? Total costs? Survey costs? Platting costs? Road costs? Planning costs? Hearing costs? Lottery/auction costs? Filing costs? Contract management costs? Other costs?

a. For those programs such as subdivision and homesites where survey costs are reimbursed by buyers, what has been the range and average survey costs charged buyers?

b. What have been the survey costs averaged per parcel or anticipated to average per parcel for remote parcel stakers and any others required to do their own surveying?

c. To maintain a 60,000 acre per year disposal program similar to FY83, what are the annual survey monies required by the Department?

IV. a. How much land is currently classified by the various state land categories?

b. How much land is currently classified for disposal in the land disposal bank by various disposal categories?

c. What is the timeframe for identifying and putting up lands for disposal for the various programs?

d. What are the provisions for local input into the selection of disposal land? How many public hearings are held?

e. How is demand for land by various categories and geographic location currently being assessed by the Department?

V. a. How much land has been conveyed to each of various eligible municipalities?

b. How much entitlement remains to be conveyed to eligible municipalities? Are there any outstanding problems in meeting this remaining entitlement?

c. How much money has been requested and how much money provided to what municipalities for roads pursuant to 38.94.021?

VI. a. How much land is currently available or could be made available for remote parcel staking for FY84?

b. How much of this land meets the requirements of the new homestead program (i.e., is within one mile of a survey monument)?

c. What are the approximate survey costs per acre or per parcel unit to add additional monuments to meet the requirements of the homestead program?

d. What are the potential problems involved in staking lands by aliquot parts and by meets-and-bounds further than one mile from a survey monument?

e. What is the difference in average survey costs for a purchaser of a homestead or remote parcel between a parcel described by aliquot parts or by meets-and-bounds?

f. What are the advantages to the Department or the public in describing staked lands by aliquot parts?

Bristol Bay Native Corporation
445 E. 5TH AVENUE / P.O. BOX 100220 / ANCHORAGE, ALASKA 99510 / (907) 278-3602

September 16, 1983

Honorable Bettye Fahrenkamp
Alaska State Senate
Chairman,
Senate Resources Committee
Pouch V
State Capitol
Juneau, Alaska 99811

Re: Amendment of Title 38 of Alaska Statutes

Dear Senator Fahrenkamp:

I was very pleased to hear that the Senate Resources Committee will be reviewing State land management and disposal practices and law as part of its review of Title 38. It is Bristol Bay Native Corporation's (BBNC) view that the State should place greater emphasis on the desires and views of local residents in State land disposal areas and that the State's present unwritten practice regarding consultation and coordination with nearby communities and local governments should be elevated to State law. (As you are aware, it is now the unwritten policy of the State Department of Natural Resources to coordinate with nearby communities regarding the timing, the size, and the layout of proposed land disposals and also to consult with local communities regarding the demand for such disposals in the local area.)

The Alaska Federation of Natives Resolution 82-12, a copy of which is enclosed, proposes that State legislation be enacted that would create citizen review boards in rural areas to advise the Department of Natural Resources on the need for land disposals and related potential land use conflicts in rural areas. Legislation implementing this Resolution would meet the concerns of BBNC regarding State land disposals. The draft Bristol Bay Cooperative Management Plan, if finally approved by the Governor and the Secretary of the Interior, would require such consultation and coordination with local Coastal Resource Service Area Boards before future land disposals in the Bristol Bay region. The inclusion of this provision in the Cooperative

Management Plan indicates that the Department of Natural Resources is able to meet BBNC's concerns about land disposals; it is appropriate that this requirement be included in Title 38 and given the greater dignity of State law.

BBNC looks forward to working on legislation governing State land disposals.

If you have any questions, please call me.

Sincerely,

H. Noble Dick
President

Attachment

ALASKA FEDERATION OF NATIVES, INC.

1982 ANNUAL CONVENTION

RESOLUTION NO. 82-12

TITLE: STATE LAND DISPOSAL

WHEREAS, LARGE ARBITRARY LAND DISPOSALS BY THE STATE OF ALASKA IN REMOTE RURLA AREAS HAVE SIGNIFICANT ADVERSE IMPACTS ON THE NATIVE ALASKAN LIFESTYLE, SUBSISTENCE RESOURCES AND WELFARE; AND

WHEREAS, SUCH PROGRAMS STIMULATE LAND SPECULATION AND ARTIFICALLY CREATE NEW CENTERS OF DEVELOPMENT WITHOUT ADEQUATE INFRASTRUCTURES; AND

WHEREAS, NO LEGITIMATE NEED FOR LARGE LAND DISPOSALS IN RURAL ALASKA IN THE NEAR FUTURE HAS BEEN DEMONSTRATED; AND

WHEREAS, LOCAL GOVERNMENTS AND EXISTING LANDOWNERS CAN PROVIDE FOR THE VERY LIMITED LEGITIMATE PRIVATE LAND NEEDS FOR THE FORESEEABLE FUTURE;

BE IT RESOLVED BY DELEGATES TO THE 1982 ANNUAL CONVENTION OF THE ALASKA FEDERATION OF NATIVES THAT: THE ALASKA FEDERATION OF NATIVES URGE THE STATE OF A ALASKA TO:

1. DRAMATICALLY REDUCE ITS EMPHASIS ON LAND DISPOSAL PROGRAMS FOR REMOTE RURAL AREAS;
2. GENERALLY LIMIT ITS DISPOSAL PROGRAMS TO LANDS NEAR THE EXISTING ROAD SYSTEMS, URBAN ALASKA AND DEVELOPING REGIONAL CENTERS;
3. PLACE A GREATER EMPHASIS ON LOCAL DESIRES REGARDING LAND DISPOSALS IN RURAL ALASKA; AND
4. BASE ALL LAND DISPOSAL PROGRAMS ON ACTUAL NEED, AND NOT ARTIFICIAL QUOTAS.

BE IT FURTHER RESOLVED THAT THE ALASKA FEDERATION OF NATIVES DRAFT AND SUBMIT TO THE ALASKA LEGISLATURE PROPOSED LEGISLATION WHICH WOULD ESTABLISH RURAL ALASKA CITIZENS REVIEW BOARDS TO ADVISE THE STATE DEPARTMENT OF NATURAL RESOURCES ON RURAL LANDS NEEDS AND POTENTIAL CONFLICTS BETWEEN TRADITIONAL LAND USES AND PROPOSED STATE LAND DISPOSAL PROGRAMS IN THE UNORGANIZED BOROUGH.

BE IT FURTHER RESOLVED THAT THE ALASKA FEDERATION OF NATIVES URGE THE ALASKA LEGISLATURE TO ANACT SUCH LEGISLATION CREATING RURAL ALASKA LAND DISPOSAL CITIZEN REVIEW BOARDS.

AFN ANNUAL CONVENTION
RESOLUTION NO. 82-12

CERTIFICATION OF RESOLUTION

I hereby certify that the foregoing is a full, true, and correct copy of the resolution adopted by the delegates to the 1982 Annual Convention of the Alaska Federation of Natives, Inc., October 20, 21, and 22, 1982, Anchorage, Alaska, at which a quorum was present and voting and that said resolution was spread upon the record of said convention and is now in full force and effect.

WITNESS my hand and seal this 26th day of October, 1982.

SIGNED:

Janie Leask
Executive Vice President
ALASKA FEDERATION OF NATIVES, INC.

WITNESSED:

Sylvia Carlsson
Special Assistant
ALASKA FEDERATION OF NATIVES, INC.

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 264-4431

TONY KNOWLES, MAYOR

OFFICE OF THE MAYOR

September 19, 1983

Senator Bettye Fahrenkamp
Senate Resources Committee
Legislative Information Office
1024 West 6th Avenue
Anchorage, Alaska 99501

Dear Senator ~~Fahrenkamp~~ Betty:

We are pleased to learn that your committee is researching the State's land disposal programs with the intention of proposing ways to improve these programs. The Municipality of Anchorage has a singular, overriding complaint: We have a 44,893-acre municipal entitlement under AS 29.18.201, but only half that amount of State land is available for our selection and eventual ownership. Our municipal land entitlement is unfulfilled and cannot be fulfilled through the selection of the State land within our boundaries.

In a state in which public land is generally plentiful, Anchorage is spending millions of dollars annually on land acquisitions and falling farther and farther behind in meeting local needs for school sites, neighborhood parks, and land for other public facilities. Our public land deficiency and the inability of the State to offset that deficiency through conveyance of our entire land entitlement should be primary considerations in reviewing the State's land disposal programs.

Recently Anchorage has acted to alleviate its shortage of necessary public land and land acquisition funds. Our Heritage Land Bank program commits receipts from the disposal of municipal real property to the acquisition of land for "public use and enjoyment" (see attached).

But, we need more money immediately. Under the formula in AS 29.18.208(b), Anchorage is owed $35 million. We acknowledge that this same paragraph limits our deficiency payment to an additional $5 million. However, in consideration of the demand for more public land and the essential inequity of our land grant relative to other municipalities, we believe that Anchorage's entitlement deficiency must be the first order of business in addressing substantive changes in the State's land disposal programs.

Thank you for the opportunity to bring this matter to your attention. If your staff wishes to discuss this matter further, please contact Peter Scholes (264-4806) in the Property Management Division.

Sincerely,

Tony

Tony Knowles
Mayor

cc: Senator Vic Fischer
Senator Arliss Sturgelewski

Betty,

This is an extremely high priority for us. Any help would be much appreciated

best,

Tony

AMENDED AND APPROVED
DATE 8-1-83

Submitted by: Chairman of the Assembly at the Request of the Mayor
Prepared by: Department of Property and Facility Management
For reading: June 7, 1983

ANCHORAGE, ALASKA
AO NO. 83- 86

AN ORDINANCE REPEALING AND REENACTING CHAPTER 25.40 OF THE ANCHORAGE MUNICIPAL CODE AND ESTABLISHING A HERITAGE LAND BANK

THE ANCHORAGE ASSEMBLY HEREBY ORDAINS:

Section 1. Anchorage Municipal Code, Chapter 25.40 is hereby repealed and reenacted as follows:

Chapter 25.40

HERITAGE LAND BANK

Sections:

25.40.010 Heritage Land Bank established--Purpose.

~~There is established a Heritage Land Bank. The purposes of the Land Bank are to provide an inventory of municipal land necessary to achieve the goals and objectives of the Comprehensive Plan and its approved subelements; to promote orderly community development; and to ensure acquisition and continued public ownership of municipal land required for public use and enjoyment.~~

** SEE Last Page for 25.40.010

25.40.020 Heritage Lands--Designation and withdrawal.

A. The Mayor with Assembly approval may designate any municipal land or interest in land for placement in the Heritage Land Bank; however, land placed in the Land Bank generally will be of commercial, residential or industrial value, and will not have been acquired for a specific public purpose nor be required for such a purpose by the Municipality.

B. The Mayor with Assembly approval may withdraw land from the Heritage Land Bank for any lawful public purpose, provided that the Heritage Land Bank Advisory Commission shall be notified of the proposed withdrawal not less than 30 days before its

C. The Mayor shall periodically review lands identified for public use and actively managed by municipal agencies, including the Anchorage School District, to determine if any lands are excess to municipal needs. After having conducted any such review and having made a written finding as to which lands are excess to municipal needs, if any, the Mayor with Assembly approval may designate excess lands for placement in the

effective date. No land may be withdrawn from the Land Bank and reserved for a nontax supported public purpose without equal value compensation to the Land Bank or one of its revenue accounts.

25.40.030 Heritage Land Bank revenue--Accounting and appropriation.

A. Revenue received by the Municipality through the sale, lease, other disposal or use of land or interest in land that has been placed in the Heritage Land Bank shall be accounted for separate of all other revenues; provided, however, that revenue from other sources also may be dedicated to Heritage Land Bank accounts. The accounting for Land Bank revenue shall be sufficiently detailed to provide an annual financial audit to the Assembly, pursuant to the annual reporting requirements of this Chapter.

B. Revenue accruing to the Heritage Land Bank accounts shall be available for appropriation for the acquisition of municipal land for public use and enjoyment.

C. Heritage Land Bank revenue not appropriated pursuant to paragraph B, above, shall be invested prudently consistent with public interest ~~at the highest feasible interest rate.~~ Interest derived from such investments shall be reinvested or appropriated for municipal land acquisitions pursuant to this Chapter.

25.40.040 Heritage Land Bank operating budget.

Notwithstanding Section 25.40.030 of this Code, revenue accruing to the Heritage Land Bank accounts shall be appropriated annually for the management of the Land Bank in fulfillment of the purposes of this Chapter, and for the administration of any disposal of municipal land or interest in land.

25.40.050 Heritage Land Bank annual report.

A. The operation of the Heritage Land Bank shall be reviewed and reported on annually, and appropriate findings and recommendations shall be made.

B. The annual report shall include, but not be limited to:

* 1. A financial audit of all Land Bank accounts, including all income, expenditures and investments.

* 2. An inventory of municipal land in the Heritage Land Bank, including a summary of each land transaction involving the Land Bank.

* 3. An inventory of municipal land acquired with Heritage Land Bank revenue during the preceding year.

4. Pertinent discussion of Land Bank operations.

*Assembly amend: Quarterly reports shall be furnished on items 1, 2, and 3.

C. The annual report, including any recommendations, shall be completed and submitted to the Assembly not later than the last regularly scheduled Assembly meeting in May of each year.

Section 2. Anchorage Municipal Code, Chapter 4.60 is hereby amended as follows:

4.60.200 Heritage Land Bank Advisory Commission.

There is established a Heritage Land Bank Advisory Comission consisting of seven members to advise the mayor and Assembly on matters pertaining to the acquisition, management and disposal of municipal land in the Heritage Land Bank and on the allocation of Land Bank revenue. In selecting members, consideration shall be given to establishing a commission with a broad range of professional skills in relevant fields, such as appraisal, planning, real estate brokerage and finance, as well as citizens interested in the acquisition and management of parks and other public lands.

The manager of the Property Management Division shall be the executive secretary and technical advisor to the commission.

The commission shall:

A. Advise and make recommendations on the designation of municipal land for placement in the Heritage Land Bank, and on the withdrawal of designated land from the Land Bank.

B. Advise and make recommendations on the scheduling and method of disposal of municipal land in the Heritage Land Bank.

C. Advise and make recommendations on the allocation of Heritage Land Bank revenue, particularly the apportionment of the revenue between savings and current land acquisition projects.

D. Review the annual budget for operation of the Heritage Land Bank.

E. Review the Heritage Land Bank annual report and provide comment for inclusion in the published report.

PASSED AND APPROVED by the Anchorage Municipal Assembly, this 1st day of August, 1983.

Chairman

ATTEST:

Municipal Clerk

25.40.010. There is established a Heritage Land Bank. The purposes of the Land Bank are to manage and dispose of land determined to be surplus to the Municipality of Anchorage's needs and to ensure that funds obtained therefrom, or funds obtained in lieu of land entitlement, are used for acquisition of future municipal land needs, thereby promoting orderly development and achievement of the goals of the Comprehensive Plan.

arctic slope regional corp.

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PHONE (907) 852-8633 OR 852-8633
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ANCHORAGE OFFICE
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ANCHORAGE, ALASKA 99501
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SEP 2 1983

September 19, 1983

Senator Bettye Fahrenkemp, Chairman
Senate Committee on Resources
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Bettye:

Thank you for your letter of September 2 concerning the Senate Resources Committee review on state land management provisions in Title 38 of the Alaska Statues. Unfortunately, I will not be able to attend the September 21 hearing, but there are several comments I would like to make. Also, I would appreciate notification of subsequent hearings which may be planned by your committee.

The main focus of Arctic Slope Regional Corporation's business efforts are in the North Slope of the State where most of our land holdings are located. The major non-oil and gas leasing activity for the State of Alaska in our area has been for sand and gravel. As an Alaskan Native Corporation, ASRC is seeking to maximize its own economic future and develop stable business enterprises, such as through the development of sand and gravel resources located on Arctic Slope lands. In this regard, there have been times when we have found state sand and gravel disposals frustrating our efforts to develop our lands. While we recogonize the need of the State to develop its natural resources and maximize the returns thereon, we also feel there is a need for the state to acknowledge the role and importance of private enterprise developing its own land in the State. Where there are available or potentially available private sources of materials such as sand and gravel, some balance should be struck between the States need to develop its resources and to support private enterprise. Putting aside for the moment environmental concerns which might affect either the private or the public sand and gravel enterprise, state disposal statues and policies should be designed to facilitate the success of the Native Land Claims Act and support private enterprise, not lead to its demise. Possibly, some threshold of the availablity of other sources of sand and gravel or similiar resources might be made before the state disposal is considered. Also in this regards, attempts to dispose of offshore sand and gravels should not be pursued while adequate onshore private materials are readily available.

The second area of state leasing activities that will be of upmost concern to Arctic Slope is in the area of coal. Though little activity has occured to date, tremendous coal resources on the Arctic Slope will undoubtedly be developed sometime in the future. Again, some accomodation of the interests of the private landowners and the interest of the state as a mineral landowner should be reached. None of us should be allowed to unreasonably infringe or destroy the economic value of the other. Rather, we would encourage and support development senariols that facilitate making needed resources available to consumers and others in a manner in which both the private and state resource owners will benefit. In the area of infrastructure development for example, the state can play a tremendous role in coordinating public improvement plans and development activities with those of the private land owners in the region. Leasing and location policies and statutory provisions should be designed with such sensitivity in mind. Leasing programs, for example, should be planned in manner consistent with those of other land owners in the area - this would include private as well as other governmental land owners. Sporadic and unsound exploration and/or development can prove costly resulting in less resources for the state rather than an improved resource and economic base.

In the area of general land disposal, classification and planning, Arctic Slope Regional Corporation's primary concern is to insure local desires and plans be accomodated. While we support the desirability of placing increased lands into the hands of private ownership, this should be done in manner consistent with the residents living in the area that have made a significant investment in time and effort to already settle there. Disposal decisions can not ignore the ultimate utilization of the land and its impact on local infrastructure and service demands. Ultimate use of the land should be anticipated and subdivision regulations and other land use requirements at the local jurisdiction be fully complied with in the state disposal decisions and actions. In our region, I do not feel that disposal of state lands into private hands is warranted at this time. Given the remoteness of the area, as well as the significant amount of land that has moved into private hands through native corporations, allotments and other disposal programs, patterns of land use should be allowed to develop somewhat before further disposals by the state. Also, given the uniqueness of the environment on the Slope and the singular importance of subsistence for the many residents that now make the Arctic Slope their home, further disposal of state lands into individual ownership through remote subdivisions or homesteading or other means should not be made at this time. This is a both a wise planning policy for the state to pursue as well as an accomodation of the desires of the local residents. In this regard, the adopted plans of the local government of the Arctic Slope area would discourage land disposals by the state on any large scale in this area at this time.

I hope these observations are of some assistance to your committee in its deliberations. Again, please keep me advised as the work of your committee progresses and further hearings that you may schedule.

Sincerely,

Jacob Adams
President

University of Alaska
Statewide Office of Land Management
3354 College Road
Fairbanks, Alaska 99701
474-7421

September 23, 1983

Senator Bettye Fahrenkamp, Chairman
Senate Committee on Resources
State Capital
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Thank you for providing us with the opportunity to identify problem areas in, and to suggest possible changes to, Title 38 of the Alaska Statutes. My staff and I have reviewed the chapters and articles identified in your letter of August 9, 1983, and identified those areas of the laws which we believe contain problems. Attached are our general comments concerning these particular areas.

Attached also is a list of specific statutes containing references to the University which have been rendered obsolete by the successful passage of the Settlement Agreement this session. For these particular statutes we have suggested actual wording changes, additions, and deletions. We have not yet had these revisions reviewed by our attorney so they should not be considered as an exhaustive list. We will send you a final copy of our specific comments when the review is complete.

We hope that you will find both our general and specific comments useful in your committee's work in revising Alaska's land laws. If you have any questions concerning our recommendations, please let us know. Thank you for the opportunity to comment.

Sincerely,

Merry Tuten
Director

MT/cr
Enclosures
cc: Patrick Pourchot w/ enclosure

GENERAL COMMENTS AND PROBLEM AREAS

Chapter 5 - Alaska Land Act

Article 1
Administration

AS 38.05.035(5) provides the director with the power to prescribe fees for any public service rendered. In many cases the fees required for land actions (land use permits, trapping, cabin permits, etc.) are not large enough to even cover the cost of issuing the permit or other document. At a minimum, the director should be required to charge a fee sufficient to cover the administrative costs involved in processing the public's request.

Article 3
Leasing of Lands

AS 38.05.085 (a) 1-3, which provides for lease payments based on less than fair market value, is in conflict with AS 38.05.105 (a) which requires that the State lease land at fair market value. AS 38.05.070 (c), requiring that unused grazing leases be cancelled by the State, is not being enforced.

Article 4
Timber and Materials

Existing statutes (38.05.115) appear to give the State the necessary authority to negotiate long-term timber sales. It is our understanding that the statutes were changed to allow negotiated timber sales to last longer than one year, rather than by simply amending the regulations of the Division of Land and Water Management. AS 38.005.115 could be repealed and the Division's regulations be amended to allow negotiated timber sales to last longer than one year.

Article 5
Reservations of Rights

The State needs to adopt regulations to enforce AS 38.05.127. The State should define "affected owner of land." The statutes allow such an owner to apply for a vacation of a right of way/easement but leave unclear exactly to whom such a definition applies.

Article 6
Leasing of Mineral Land

The acreage limitations for leases of coal, sodium, and phosphate are significantly different (AS 38.05.140). Are these

limitations realistic and based on actual differences in the resources or are they arbitrarily or politically determined. If the latter is true the acreage limitations should be changed to be equal or to reflect actual resource differences.

Why does the provision allowing for the reduction of royalties apply only to minerals (AS 38.05.140(d)) and not to other natural resources?

Article 7
Mining Rights

Mineral resources are not handled equitably with other natural resources owned by the State. For all other natural resources (oil and gas, timber, coal, gravel, land), the State requires payment through sale contracts and leases. On the majority of State lands, however, minerals may be taken without leases or contracts, and without payment to the public for these resources. On the remaining portion of State land which does require that minerals be leased, the lease terms, lease rates, labor offsets, labor requirements and royalty payments are not consistent with those required for other natural resources.

The statutes should be rewritten to require that minerals be leased on all State lands, and statutory lease terms and rates, labor offsets, labor requirements and royalty payments should be changed to be more equitable with other natural resources.

Article 11
Miscellaneous Provisions

The notice requirements, as currently written, require undue expense by the State, are required for land transactions of a minor nature, and often do not reach that portion of the public for which they are intended and who are most affected by an action. A more appropriate method of informing affected property owners of pending land transactions would be as follows:

1. For all land transactions (sales, leases, easements, exchanges, timber sales, material sales etc.) any and all adjacent property owners should be notified in writing.

2. For all land transactions, the property to be affected should, where practicable, be physically posted with a sign indicating the type and date of the proposed action.

3. For sales, leases and exchanges only, a notice of the intended action should be published in a newspaper of general circulation in the area of the transaction.

Article 12
General Provisions

AS 38.05.362 The 650,000 acre minimum classification has been nearly accomplished. It would seem appropriate to repeal this statute, as it has served its purpose.

Chapter 7 - Clearing and Draining of Agricultural Land

The definition of "agricultural land" appears in 38.05.365. This definition should be extended to apply to this chapter as well.

The State's subsidization of agricultural land clearing favors larger farm operations. Large subsidies to individual operators could mean large losses to the State. Smaller farms should be encouraged by permitting farmsteads on agricultural lands on something less than a half section.

Chapter 8 - Homesites

Current law requires that the distribution of homesites be on the basis of population. This appears to skew the distribution of homesites such that the vast majority are now in the Mat-Su Valley. It would serve the broader interests of the State if homesites and State subdivisions were located near all the urbanized regions of the State on a more equal basis.

AS 38.08.040 (a) and (b) should be repealed, if not already done so, in light of recent supreme court rulings regarding residency preferences.

AS 38.08.070-.080 should be re-enacted, as it is most appropriate for the State to be required to coordinate its land disposal activities within municipalities with the planning departments of those municipalities, particularly where planning and zoning is concerned.

AS 38.08.090- At a minimum, the State should be required to construct access into subdivisions proposed for disposal within municipal jurisdictions, with the pro-rata cost of road construction passed on to the eventual purchaser of the property. This will lead to better subdivisions and wiser land use.

Chapter 9 - Homesteads

The requirement that land for this program be located within one mile of a cadastral survey will severely limit the

availability of land for this program. The commissioner should be free to classify all State land appropriate for this purpose, regardless of its proximity to a survey monument.

Chapter 10- Transfer of Tide and Submerged Lands

The limitation of the provisions of this program to municipalities with less than 5000 people seems arbitrary. If the program has merit, which we believe it does, it should be available to all municipalities regardless of population.

Chapter 20 - The Alaska Coordinate System

Updates which the U.S. Geodetic Survey has proposed should be incorporated into this statute.

Chapter 50 - Land Exchanges

The six month useful life of an appraisal is somewhat arbitrary. The director/commissioner should be able to use reasonable judgment to determine if land values have been significantly affected since the appraisal was prepared.

The notice requirements outlined in 38.50.110 are grossly out of proportion with the notice requirements for disposals of State land through other programs. If this extensive notice requirement must remain, it would be appropriate to develop a streamlined process for land exchanges involving only minimal acreage/value while preserving the existing notice requirements for only very large or politically sensitive land exchanges.

Chapter 95 - Miscellaneous Provisions

AS 38.95.050 appears to be designed to permit Native corporations to contract with the State for management of their lands. This statute is superfluous since AS 38.05.027(a) provides the commissioner with the power to enter into management agreements with individuals (which includes corporations under AS 01.10.060(7)). The statute should be deleted.

AS 38.95.080 deals with trapping cabin permits. Permit fees should be sufficient to cover the cost to the State for processing these permits.

Article 3
Steering Council for Alaska Lands

Is this necessary any longer, now that ANILCA has passed and the Alaska Land Use Council has been created?

DRAFT
9/26/83

PROPOSED CHANGES TO STATUTES CONCERNING UNIVERSITY LANDS

What follows is a partial list of the statutes which should be amended to reflect recent legislation (CSSB 41) removing University land from public domain land. In each case, actual wording changes, additions and deletions have been suggested for the relevant statute.

Note: words to be deleted are capitalized and enclosed in parentheses. Words to be added are underlined.

1. AS 29.18.206(a) (b) (d) and (e) is amended as follows:

School, university and mental health land, (a) If an entitlement determined as AS 29.18.201 or 29.18.202 results in a per capita entitlement for the municipality of less than one and one-half acre, the municipality may select vacant school (,UNIVERSITY,) or mental health land within the municipality in partial fulfillment of its land entitlement under this chapter. School (,UNIVERSITY,) or mental health land may be selected notwithstanding the fact that these lands are not unappropriated and unreserved within the meaning of this chapter and AS 29.18.190 and 29.18.200, repealed by this act, but each selection of school (,UNIVERSITY,) or mental health land by a municipality must be vacant, unappropriated, or unreserved land as defined in this chapter, except that it need not be general grant land.

(b) The acreage of school (,UNIVERSITY,) or mental health land, if any, within a municipality may not be included in the determination of entitlement under AS 29.18.201 or 29.18.202.

(d) Within six months after approval of a municipal selection of school (,UNIVERSITY,) or mental health land, the director shall identify state general grant land of approximately equal value to the land requested by the municipality, and shall propose the replacement land for the concurrence of the appropriate board. If a proposal by the director is rejected by the board, the director shall meet with the board as often as necessary to determine the type and amount of equal value replacement land that would be required to obtain the board's concurrence, and shall propose the replacement land for consideration by the board. The replacement land shall thereafter be managed for the purposes for which the land selected by the municipality was acquired by the Territory and the State of Alaska.

(e) The notice and review provisions of AS 38.05.305 and 38.05.345 are applicable to the designation of other general grant land as school (,UNIVERSITY,) or mental health land in replacement of land selected under this section. The provisions of AS 38.50 and 38.05.032 do not apply to such designations under this section. The provisions of AS 38.05.030(a), 38.05.030(e), and 38.05.035(a) (13) which require the approval of the respective trust board before disposal of lands by the director do not apply to selections of school (,UNIVERSITY,) or mental health land by a municipality under this section.

2. AS 29.18.213(4) is amended as follows:

"General Grant Lands" means land patented or tentatively approved to the state from the United States under 6(a) or (b) of the Alaska Statehood Act <u>except university lands and replacement lands</u>.

3. AS 38.04.040 is repealed.

4. AS 38.04.020(g) is amended by adding a new paragraph to read:

(5) <u>University trust land or replacement land</u>.

5. AS 38.05.030(a) is repealed.

6. AS 38.05.030(c) is amended as follows:

(c) In addition to the requirements specified in AS 38.50.090, the agencies referred to in ((A) AND) (b) of this section and other state agencies with authority to acquire or dispose of land shall give written notification of the fact of acquisition, lease or exchange to the Division of Lands within three months after the date that they make the acquisition, lease or exchange.

7. AS 38.05.030(d) is amended as follows:

(d) Real property acquired by, and under the management of, the agencies referred to in ((A) AND) (b) of this section, which is no longer needed for its intended use, shall be returned to the jurisdiction of the Division of Lands, except that the Department of Highways may dispose of real property acquired by it under AS 19.05.040(2) and AS 19.05.080 - 19.05.120.

8. AS 38.05.030 is amended by adding a new paragraph to read:

(f) University trust lands and replacement lands are not considered public lands and are not subject to the provisions of this chapter.

9. AS 38.05.035(a) (7) is amended to read:

Have jurisdiction over state lands, except university trust lands and replacement lands, lands acquired by the Alaska World War II Veterans Board and the Agriculture Loan Board or the departments or agencies succeeding to their respective functions through foreclosure or default; to this end the director possesses the powers and, with the approval of the commissioner, shall perform the duties necessary to protect the state's rights and interest in state lands, including the taking of all necessary action to protect and enforce the state's contractual or other property rights;

10. AS 38.05.125 is amended by adding a new paragraph to read:

(a) Conveyance of title to university trust lands and replacement lands to the University Board of Regents is not subject to the reservations of this section.

11. AS 38.05.315(d) is amended as follows:

(d) The director may lease the land to an eligible applicant at a reasonable annual rental, taking into consideration the purposes for which the land is to be used and the financial resources of the applicant. The rental may not be less than one percent of the fair market value on lands acquired primarily for development, or less than five percent of the fair market value on (UNIVERSITY OR) acquired lands.

12. AS 38.05.365(16) is amended as follows:

(16) "state lands" or "lands" means all lands, including shore, tide and submerged lands, or resources belonging to or acquired by the state (.), except university lands.

13. AS 38.05.365(20) is amended as follows:

(20) "university lands" means all sections 33 reserved to the University under 38 Stat. 1214, as amended (48 U.S.C. 353), all lands reserved for or granted to the Territory and State of Alaska for the benefit of the University by the Act of 1929 (45 Stat. 1091), as amended, and section 6(k) of the Alaska Statehood Act (72 Stat. 339), as amended, which retain such designation, and all other lands owned in fee by the university, including state lands which have been transferred in fee to the university through its Board of Regents, as trustee, to replace former university lands which have been otherwise managed or disposed of. (AND ALL LANDS GRANTED TO OR RESERVED FOR THE BENEFIT OF THE UNIVERSITY);

14. AS 38.50.040 is amended as follows:

Except as otherwise provided in AS 38.50.010 - 38.50.170 the director is authorized to convey for purposes of exchange any state land or interest in land regardless of the authority under which the land or interest was obtained by the state. (THE CONVEYANCE OF UNIVERSITY LAND SHALL BE APPPROVED IN THE MANNER PRESCRIBED IN AS 38.05.030 (1 CH 240 SLA 1976; AM 13 CH 181 SLA 1978; AM 17 CH 182 SLA 1978))

(17)

Tanana Chiefs Conference, Inc.

Doyon Building
201 First Avenue
Fairbanks, Alaska 99701
Phone (907) 452-8251

November 16, 1983

Ms. Bettye Fahrenkamp
Alaska State Senator
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

We have received the compilation of comments concerning Title 38 and enclose our responses. In some case we have chosen not to comment at this time.

We feel very strongly about the administrative and budgetary considerations and recommendation #6 on page 13 and #18 on page 14. Specifically, the following information should be available to the general public:

By sensibly sized areas,

- How much land has been offered in an area, updated annually.
- How much land was actually purchased and for what sum of money.
- How much remains unsold.
- Where these lands are and an approximation of how much land is already privately owned in the area.

Your consideration of our concerns is much appreciated.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

William C. "Spud" Williams
President

Enclosure

112J12

(17)

Alaska State Legislature

SENATE RESOURCES COMMITTEE

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

October 31, 1983

COMMENTS AND SUGGESTED CHANGES--TITLE 38

Chapter 04--Policy for Use and Classification of State Land Surface

38.04.005 More specific goals and policies need to be spelled out for managing and disposing of state land which take into better account the whole range of resource values and uses.

agree

.04.010 This section articulates the policy of making year-round residential use near existing services and seasonal, recreational use disposals where future services will not be needed. Many emphasized the need for either applying this goal more strictly in the disposal program or strengthening the statutes to include such language in the specific disposal authorizations. See also 38.04.020 and 38.09.

agree

.04.020(e) Despite the statute requirement that a budget for disposals be submitted to the Legislature, it was argued that insufficient monies are appropriated to ensure a stable, continuous program over several years. Also, some costs such as possible local services incurred by disposals are not accounted for nor the costs of enforcement of sale provisions. See also 38.08 and 38.09. Although the statute requires estimating costs of complying with local platting and subdivision ordinances, AS 29.33 exempts the state from having to provide capital improvements, such as roads, as part of its compliance with local platting requirements in the disposal of state land. See also 29.33.

.04.020(e)(4) allows DNR to submit a schedule for obtaining cost estimates of municipal regulation conformance in disposals if not available. This "loophole" should be deleted and estimates annually required.

.04.020(f) The statute requires an annual assessment of the demand for state land taking into account supplies of private and local lands. Some felt this is either not being done administratively or that the statute should be strengthened to require accurate market demand/supply/need for disposal

agree

.04.020(g)(2) requires certain percentages of subdivision land be made available for homesites by particular disposal methods. One of these methods, by length of residency has been ruled unconstitutional. The arbitrary percentages to be disposed as homesites should be repealed as well as disposal methods to better reflect specific market demand and public policy.

agree

.04.020(h) limits subdivision parcels to five acres unless local zoning ordinances, topography, sewer and water requirements dictate larger parcel. Remove limitation to enable larger parcels to reflect public desires, other resources in specific areas.

.04.020 Include new provision precluding subdivision disposals in "remote" areas or make such disposals take into account carrying capacities of local resources.

agree

.04.020 The DNR administrative procedure currently calls for public hearings prior to land disposals. Public hearings should be required in the statutes.

agree

disagree .04.020 Although some disposal programs generally refer to making land available throughout the state, specific quotas or percentages of land by region should be required to ensure land disposal in all areas without disposing of a preponderance of land in a few regions as is the case currently.

New quotas in areas where few or no disposals have taken place would likely prove as disastrous as the old 100,000 acre quota

.04.021 provides for grants to municipalities for the disposal of municipal entitlement lands. Much more money should be appropriated for this program and the statutory restrictions on the ratio of money from the state vis a vis municipal disposal money should be repealed (5 to 1 or 7 to 1). Grants should not be limited for entitlement land disposals, but any local lands. Some statutory provision should be made to encourage the joint participation of state and locals in the disposal of both state and municipal lands.

agree

.04.025 requires DNR to assess the supply and demand for land in making lands available for private use. This section is redundant to a large degree to the assessment required in .04.020(f) and should be repealed or integrated and made more specific.

agree

disagree .04.035(4) prescribes a lease system for cabins in remote areas where survey and conveyance is impractical. Cabin lease system should be more broadly used instead of disposals when dealing with "trespass" cabins, recreational uses, resource conflicts and other factors. See also .05.079.

This system has the same impact on resources as disposals and should be planned for as such.

.04.040 authorizes the sale of University lands. With the passage of SB 41 last session removing University lands from "state" or public lands, this and other references to University lands should be repealed.

.04.045(a) permits the disposition of land in parcelsizes reflecting individual use needs or market supplies. This conflicts in part to the subdivision 5-acre limitation in .020(h) and should be either consolidated or made consistent with this section.

agree

.04.045(b) requires surveying and platting prior to land disposal. Specifies land not to be conveyed unless within two miles of control monument. Requires state disposal plats to comply with local ordinances similar to private lands. This should be adhered to administratively and the exception for the state in complying with capital improvement requirements by locals in Title 29 should be repealed. See 29.33. See also .09, homestead survey requirements.

There is debate on the definition of "cadastral survey". Some want definition to include survey monumentation every section and quarter section, others prefer broader definit on to expedite disposals in remote areas.

.04.050 provides for the reservation of easements and rights-of-way when lands are surveyed for disposal for access to each parcel of land. Surface access is to be developed where "necessary and appropriate" with costs to be borne by land recipients. Statutory changes recommended specifying that legal and feasible access be provided to and within subdivisions (not necessarily section-line easements, for example) and that access meeting local ordinances for subdivisions be required of the state. See also 29.33.

.04.055 mandates the reservation of public use easements and rights-of-way in the disposition of private lands. This provision is very similar to the provisions of 38.05.127. More public easements and rights-of-way should be reserved administratively under this authority and state land reservations in fee simple should also be made to ensure access to public lands and waters. See also .05.127

agree

.04.065 requires the development of regional or area plans to guide land classifications. Although land classifications must follow such plans, until they are completed (only a few are currently completed) localized "land planning reports" are the only plans currently required prior to disposals under current administrative regulations. Area or regional plans should be completed and required prior to land disposals to ensure that all resources are considered in a particular area or region.

agree

This section also requires local government and public involvement in the planning process. The statutes should specifically mandate the holding of public hearings as part of the plan development and prior to any classification or disposal. See also .04.020 and .05.301 and .05.345.

.04.070 sets out several classifications for retaining land in public ownership. One or more of these such as "public reserve lands" should be further defined statutorially and lands included to more permanently retain them for a variety of public uses in contrast to more specific management systems such as state parks or state forests.

agree

.04.910 is the definition section for .04. The definitions for "official cadastral survey" and "official control survey" should be reviewed in light of federal and state policies and most current applications. See also 04.045(b).

CHAPTER 05--ALASKA LAND ACT

.05.030(c) provides for the notification to DNR by other state agencies of any land acquisition, lease or exchange. Notification should include disposals also.

agree

.05.035(a) requires DNR to make a "best interest" finding prior to sales, leases, or other land disposals, except for revocable permits, shore fishery sites leases, and certain negotiated contracts. All disposals, including permits and leases, should require "best interest" written findings. Such a finding should be further clarified in the statutes and include social and economic impacts and benefits of disposals.

agree

.05.035(b) authorizes the granting of preference rights to land and property to persons adversely affected by state or federal errors or omissions. Limit rights to preferences to three years from date of error or state action in order to avoid long-standing claims with difficult record reconstruction.

(b)(5) authorizes direct negotiation with users or improvers of state land prior to statehood to convey title when in "best interest" of state. Provision of dubious legality and should be repealed.

disagree .05.045 authorizes the sale of all state land except tide, submerged, shorelands, timber and grazing lands. Timber lands should be allowed to be sold to enhance timber harvesting and reduce administrative costs.

The multiple use of that land is often best.

.05.050 mandates that land disposals, including homesites under .04.020(g)(2)(C),

be held in the "municipality" closest to the land and in which regular sessions of a state court are held. Some feel that this requirement is unfair to residents from other areas of the state while others favor retention of the requirement as a form of resident preference. One suggestion is to permit teleconference participation at auctions or lotteries.

We would like to see the requirement retained.

The reference to .04.020(g) should be deleted as part of the suggested repeal of that section.

Change "municipality" to "community" to take into account unincorporated locations.

agree

.05.057 requires the consultation by DNR with the local assessor in the determination of purchase prices prior to disposal. This requirement should be eliminated as unnecessary.

.05.058 established a discount program for the purchase of land based on the number of years of residency. Discounts up to 50% of the purchase price were available. This provision was ruled unconstitutional and was repealed in the last legislative session. Some felt the resulting policy of disposing of land at fair market value will result in a more accurate picture of demand for state land, will enhance private land developments, and effect a better return for state resources. Others have recommended a replacement discount program not based on residency to continue to provide lower cost alternatives to state land acquisition. One suggestion is to give a "rebate" or a discount off a fair market value purchase price if certain specified improvements are completed. The value of the improvements up to a certain percentage of the purchase price could be permitted. Another suggestion is to establish a forgiveness system towards the purchase price in which payments are removed from the end of the payment schedule for each year of payments paid on a year-to-year basis. This concept is included in SB 280 currently pending before the Legislature.

.05.065(a) sets the interest rate to be paid on land disposal contracts to real estate mortgage loans made by the federal land bank for the farm credit district for Alaska. These rates have currently been more than 12%. A more appropriate guideline should be established which would more closely reflect rates for prevailing state programs such as housing, ag and fishery loans.

.05.065(c) provides a general action for contract violations. An appeal process should be enacted followed by the prerogative of the commissioner to foreclose and sell interest to a third party as if it were a deed of trust.

.05.067 provides for special sales of land for veterans. This provision is currently not being utilized by the DNR, nor has it been used to any extent in the past. It should be repealed.

.05.069(a)and (b) provide for a 60-day first option to adjacent landowners for ag land sales or leases and a method based on a "greatest need" or veterans preference to determine which of several adjacent landowners should be granted an option. To facilitate efficient administration and simplify the selection procedure ag land options for adjacent landowners should be exercised at the time of disposal and a single recipient selected by simple drawing of lots.

disagree .05.070(b) authorizes the DNR to negotiate a land lease without advertisement if it involves less than $250/year. This limitation should be raised to $5000/year to expedite processing leases.

disagree .05.070(c) authorizes DNR to grant land leases for up to 55 years if in best interest of the state. Limit should be raised to 99 years to be compatible with federal leases and to facilitate financing of development.
Some such leases are already exempt from best interest findings.

.05.077-.078 establishes the remote parcel leasing and conveyance program. The legislature repealed this program effective July 1, 1984 and substituted many of the provisions with the homestead program (see 38.09). The remote parcel program should be reenacted or extended another year or so to permit smoother transition to homestead program, ensure maximum land availability for remote recreational use and to permit stakers a 5 to 10 year lease prior to purchase of land.

disagree

.05.079 authorizes a remote cabin permit program. Although cabin permits are to be issued only for lands classified for this purpose, current classifications are too permissive in where remote cabins may be located. Others have felt that this program is underutilized and more remote cabins should be offered and encouraged in lieu of land disposals in many remote areas. The permit system should be replaced with a lease system to ensure that a "best interest" finding was required (see .05.035(a)). Also a public use cabin should either replace or supplement the remote cabin permit program to further reduce the need for land disposals.

Remote cabin permits must be treated like disposals and carrying capacity + so forth considered.

.05.110 provides for the assessment of timber on state lands and recommendations for the sale of timber and other materials. This assessment and recommendations should take into account the availability and current markets for nearby private timber supplies.

Agree

.05.125 mandates the reservation of the mineral estate (subsurface) from all lands conveyed by the state. In the references to various disposal programs covered by this provision should be added 38.09 establishing the homestead program.

.05.127 requires the determination of "public waters" or "navigable waters" prior to the disposal of state land and the reservation of easements or rights-of-way to ensure public access to and along such waters. Regulations implementing this section have not been issued. Current applications of easement reservations for entitlement lands conveyed to municipalities have been too broad resulting in many unnecessary and burdensome easements in land titles. Statutes need further clarification on what "public waters" are and perhaps special provisions for municipal lands when it can be demonstrated that reasonable public access will be ensured. (The statute does provide for vacating of easements on municipal application "if consistent with the public interest".)

agree

Oil and gas and mineral leases should be excepted from the application of the provision. As such leases only permit limited surface uses and do not bar public access, commonly are held for years without ever going to development or production stage, and involve time-consuming administrative work to identify public waters and easements, it is recommended that such easements and rights-of-way not be identified until a development or production plan is submitted for approval.

In addition to easements and rights-of-way, fee simple state land should be reserved in cases (see .04.055).

.05.140-.181 Authorizes leasing for coal, phosphates, oil shale, sodium, sulphur and other minerals on state lands. The terms for such leases vary somewhat including acreages and length of leases. These terms should be reviewed and made consistent if appropriate.

.05.150(c) authorizes a two-year coal prospecting permit with one two-year extension if diligence is demonstrated. Because of the lengthy prospecting time necessary for coal exploration, permits should be granted for longer terms (e.g. 3-5 years with one or more extensions).

.05.150 In the determination by the DNR to lease coal lands, nearby coal reserves on private lands should be taken into account.

agree

.05.185-.275 governs the procedures for locating and administering mining claims on state land. Procedures are also contained in Title 27. Rather than a location, or claim-staking, system of establishing rights to mineral and possibly surface estates, all minerals should be leased under programs similar to those for oil and gas. Rather than the current Mining License Tax levied on net profits on a sliding scale up to 7% , a royalty system similar to oil and gas should be enacted (10-12% of gross profits). Such a system would discourage marginally economic operations , protect other resource values , and generate a fairer return on state-owned resources. (The current tax took in $158,000 in 1982--90% of the money from coal, sand and gravel and other non-locatable mineral production.)

.05.185 authorizes the leasing of minerals when DNR finds that potential use conflicts on state land would exist or that the land was mineral in character at the time of state selection. Such lease determininations must be consistent with the land classification procedures. Regulations for implementing a location leasehold system for conflict or mineralized state land areas are currently proposed. Lands available only for location leasehold mineral acquisition should be expanded to include most, if not all, state lands. This could be accomplished either through a broad administrative determination of "use conflicts" or through additional statutory language directing additional considerations in the classification of leasehold lands.

.05.190(a)(1) grants exploratory and mining rights to those at least 19 years of age. The current age of majority for most activities in Alaska is 18 years old, and this statute should be correspondingly changed.

.05.195 requires that mining claims be staked in the four cardinal directions (north south, east, west). Amend provision to not apply to fractional claims or when the commissioner determines that such staking is impractical.

.05.200 or .210 Amend the requirements for amending claim locations or filing annual assessment work to allow affidavits of annual labor to be corrected by amendment thus providing a legal mechanism for correcting errors.

.05.205 directs the DNR to publish a notice of a mineral lease no later than two week before sending lease application. This publishing requirement should be deleted so that mining leases are treated like other noncompetitive mineral leases whereby the notice is published only when the finding mandated by 38.05.035(a)(14) is ready and no subsequent notice is required. See also .05. 345(e).

.05.240 provides for basic mineral survey finds for annual labor to be filed and kept confidential by DNR. Delete the provision as it can result in the "leaking" of proprietary information, the information is often of mixed quality, the date submitted serves no particular public benefit, and the requirement poses an administrative burden for claimants and DNR.

.05.0245(a) requires the filing of a certificate of mining location in both the recording district and also the DNR. Delete the requirement to file the certificate of location with the DNR as the District Recorders' Office is currently within the DNR.

.05.245(c) limits the number of prospecting sites that a person may locate in one calendar year in one recording district to six. It also prohibits the relocating of an expired prospecting site within two years. Change the number of prospecting site locations from six sites "located" in one year in one district to eight sites "held" at any one time in each township. This increase in the number of sites permitted will encourage the use of prospecting sites where a discovery has not been made yet and address a current loophole whereby employees of large companies locate sites and quitclaim deed them to company. Also change the waiting period for restaking sites from two years to one.

.05.250(a) provides for the issuance of prospecting permits for tide and submerged lands. Amend to clarify that the rental year for an offshore prospecting permit ends on the anniversary date of the permit, not at the end of the calendar year. This change would allow the rental year for permits and offshore leases to be computed in the same way.

.05.250(b) Provides for the obtaining of a noncompetitive lease to holders of prospecting permits. Amend to delete the first sentence of the provision which states that the "right to possess and extract the mineral may be acquired by noncompetitive lease." This sentence is redundant of the next sentence in the provision and may mislead people to believe that they can get a noncompetitive lease without first obtaining a prospecting permit.

.05.265 prescribes the basis for "abandonment" of a mining claim, location, or permit. Amend to define the "essential facts" that must be included in annual labor affidavits. Amend so the former owner of an abandoned mining location cannot acquire any direct or indirect beneficial interest in the location site during the one-year waiting period. Change the waiting period for prospecting site locations from two to one year consistent with .05.245(c). Amend to provide that abandonment of a mining lease or location constitutes abandonment of the interest in tailings mined and left on state land, unless the lessee or locator has purchased the materials in the tailings ahd has received authorization to store tailings on state land.

.05.275 Amend to eliminate the requirement of filing a certificate of location with the DNR as in 38.05.245(a). The district recorders office is in DNR.

.05 300 provides for the classification of state lands and bars the closure of state lands, except by the state legislature, to multiple purpose use if the area involved contains more than 640 acres. This prohibition should be strengthened to prohibit the DNR to administratively close more than 640 total acres by multiple 640-acre closures. See also .04.065. The authority to close lands to mineral entry should be broadened to enable the closure of lands conveyed to municipalities under the entitlement grants

.05.301 requires an assessment of impacts of any land sale, lease or disposal on population and traditional land uses in the unorganized borough and necessary mitigation plans. Citizen review boards or perhaps the Coastal Resource Service Area Boards should be utilized in the review of all proposed land disposals in rural areas (or any areas). In addition to required input the Boards might be given veto authority over proposed land sales or disposals. See also .04.020.

agree

.05.310 requires an appraisal within 120 days of the sale or lease of state lands. Because of the delays often encountered in leasing and selling lands, costly reappraisals are often required by law. The 120-day limitation should be extended to one year.

.05.345 establishes the notice requirements for classification, sale, lease and disposal of state lands. (b) requires at least one of several different kinds of notice be given (e.g. newspaper publication, electronic media, posting, notification of affected parties). More than one such method of notification should be required.

agree

(e) provides an exception for mineral leases issued under 38.05.205. This should be deleted to conform with change recommended for .05.205.

Amend to include provision for public hearing upon request subsequent to notification. See also .04.020 and .04.065.

agree

.05.350 is a policy statement for the state to encourage settlement and develop resources consistent with public interest. This policy is incorporated in the policies contained in .04.005-.015 , is statutorially out of place and should be repealed.

.05.362 mandates the classification of at least 650,000 acres of agricultural land or no less than 50% of the lands having Class II or III soils by September 22, 1979. This requirement was met and the provision should be repealed.

.05.365 is the definitions section for chapter .05. Number 23, "public waters" should be reviewed for clarity particularly as it applies to the reservation of easements and rights-of-way for municipal grant lands under .05.127.

.07.030 provides for the clearing of ag lands owned or leased by private parties. A revolving loan fund should be established for clearing projects wherein monies could be continuously available to clear both state and privately owned or leased ag lands.

.08. Establishes the homesite disposal program under which title is obtained through "sweat equity" requirements of residency, dwelling construction and survey. One suggestion is to eliminate the permit system during the proving up period, provide an assumable and assignable contract at fair market value and a schedule of rebates or discounts based on improvements or actions taken on the land. This "carrot" approach would result in better ability to finance improvements and reduce administrative compliance actions.

Another recommendation is to make the requirements conform to the "sweat equity" features of the recently-passed homestead bill--residency from 35 months in 7 years to 25 months in 5 years; dwelling construction from five to three years.

agree

disagree This contradicts the intention of the homestead program in the first place. If all requirements except the ones for residency have been met at the end of the permit term, amend the statute to permit the purchase of the parcel at fair market value. This would provide an expedient and equitable way of dealing with forfeiture of parcels with property improvements on them. See also .04.020(g)(2).

.09.010(b) requires that lands available for homestead entry may not be located more than one mile from a survey control monument. .04.045(b) prohibits the disposal of state land further than two miles from a monument. This provision should either be eliminated in .09.010 or be made subject to an administrative determination that staking could be permitted up to two miles of a monument when geographic conditions warrant and excessive survey costs to stakers will not be incurred. This change would permit a full conversion of lands identified for remote parcel disposal (where monuments are generally located every four miles) to homestead disposal. (The remote parcel program is repealed effective July 1, 1984). This would eliminate the need for additional costly surveying in these areas.

.09.010(e) prescribes the procedures for staking of homestead entries. Staking procedures in remote areas should include a requirement that sufficient spacing between parcels occur to minimize the demand for future services and reduce conflicts with other resources and occupants. See .04.010.

agree

disagree .09.020 prescribes the obtaining of entry permits under which "prove-up" activities are to occur. Eliminate the permit system, provide an assumable and assignable contract at fair market value and a schedule of rebates or discounts based on the value of improvements or actions taken on the land. This approach would result in easier financing for improvements and less administrative compliance expense. See. also .08, homesite program.

.09.050(d) and (e) Prohibits the subdivision of lands obtained through sweat equity for five years and through purchase for ten years and the sale or lease of lands for five years regardless of method of acquisition. These prohibitions should be extended for longer time periods to prevent speculation and to ensure that the goals of the program are being met.

agree

.09.080(b) subjects homestead disposals to local platting, recording and subdivision requirements under 29.33 and 40.15. 29.33 exempts state compliance from having to provide any capital improvements on land disposals. Disposals should be made subject to all local platting and subdivision ordinances, or be forced to negotiate with municipalities on the provision of access and other improvements. See also .104.020(e) and .04.045(b) and 29.33.

agree

.09.090 authorizes the purchase of a homestead entry within two years subject only to the brushing and survey requirements. Purchase at fair market value should also be permitted at the end of the permit term if all but the residency requirements have been met. See .08.

disagree

.35.050(a) governs the application process for the construction of an oil and gas pipeline and/or transporation system across state lands. A minimum application fee (perhaps $1000) should be provided in statute to cover the administrative costs of processing a right-of-way application.

.35.140(b) provides that the lessee of a pipeline right-of-way shall reimburse the state for costs in monitoring the construction of the pipeline. Amend to provide for reimbursement for processing application, and for monitoring operation and maintenance of the pipeline.

.50.020(a) provides for the exchange of state land for other lands to be based on equal appraised values, or if not, to be submitted to the legislature for review and possible veto. One recommendation was to require that all proposed exchanges involving state lands be submitted for legislative review. Other recommendations were that the equal-appraised-value requirement is too strict and burdensome and discourages trades, especially small-tract exchanges even when public benefits are clear. The statute should be amended to permit the exchange of land smaller than a certain size (perhaps 640 acres or smaller) administratively regardless of equal appraised values.

agree

.50.020(b) assumes an appraisal to be valid for six months and after such time a new appraisal for a proposed land exchange is required. Amend the statute to lengthen the "validity" of an appraisal to one year to permit the execution of trades which involve considerable administrative work and public review without incurring the costs of additional appraisal

agree

.50.110-.130 dictates substantial requirements for the notice and data needed for a proposed land exchange. Amend the statute to streamline the notice and information requirements for land tracts under a certain size (perhaps 640 acres) to facilitate beneficial exchanges without large administrative costs. Make the notice requirements conform to those for land sales and leases in 38.05.345.

.50.120 requires that at least one public hearing be held on a proposed land exchang Amend to include a minimum tract size before a public hearing is required to minimize administrative costs for small exchanges.

.95.080 mandates the granting of a trapping cabin permit to qualified applicants. Amend language to grant DNR discretion to not issue a permit in consideration of existing land uses and resource values in the specific location.

agree →

Amend to apply the provisions to cabins and camps used for hunting, fishing or other guiding activities.

disagree

ADDENDUM

.20 This chapter describes the Alaska Coordinate System to be used in land surveying and descriptions. Changes in the federal datum used as a base for this system should be reflected in the state statutes.

.05.275 provides for mineral locations on submerged and tidelands. Amend to limit the staking system of locations to state uplands and to tidelands (between mean high and mean low tides) if part of the claim is on uplands. Staking on submerged lands (below mean low tide) would be disallowed and submerged lands would be available to mineral exploration and production by the state's offshore mineral leasing system.

TITLE 38--GENERAL COMMENTS

---Section 907 of the Alaska National Interest Lands Conservation Act (ANILCA) establishes a land bank program under which Native and other private lands can receive tax and other protections in exchange for non-alienation and non-development of the private lands and management in conformity with adjacent federal and state lands. The State is authorized to participate in the program if it adopts laws of general applicability to section 907. To promote cooperative land management among major landowners in the state, it was recommended to adopt enabling provisions for a land bank program.

agree

---DNR regulations currently limit participation by most Division of Land and Water Management employees in land staking and over-the-counter programs. Such possible conflict-of-interest situations in land disposals should be identified and restricted by statute.

---Presently only the homestead program and the project ag leasing program have restrictions on the sale or subdivision of land after the conveyance of title. To further prevent speculation on state land several provisions were recommended: Increase anti-sale, anti-subdivide restrictions on homesteads and apply similar restrictions to all state land disposals; Strictly retain fair market value sales and/or require substantial residency and improvements of land; Broaden the coverage of the one homesite or homestead per lifetime proviso to all state land disposals.

agree

---SB 41 which settled the University of Alaska/State land lawsuit by awarding the University exclusive ownership and management over certain state lands passed the Legislature last session. The removal of University lands from "public lands" necessitates that the references and treatment of University lands be changed in the statutes throughout Title 38.

COMMENTS ON RELATED SUBJECTS IN OTHER TITLES

Title 29--Municipal Code

29.18.201-.208 Under the municipal land grant entitlements the Municipality of Anchorage received 44,893 acres of state land, but to date has only received patent or tentatively approved title to 21,000 acres with virtually no additional state land for selection available. The statute contains a formula based on population and lands conveyed to compensate in cash municipalities who are unable to fulfill their entitlement. Under this formula Anchorage would be entitled to $35 million except that another provision limits the total any municipality can receive to $9 million. Anchorage has received $4 million to date of this compensation. Recommendations included: 1) payment of the balance of the $9 million; 2) removal of the cap and payment of the otherwise entitlement compensation under the formula; 3) Development of an alternative manner of conveying in-lieu lands to Anchorage from outside the municipal limits or proceeds from the sale or use of such lands.

Muncipal lands conveyed under this section have often remained open to mineral entry and created third-party interests prior to being studied, classified and utilized by the municipalities. Such lands should be closed upon conveyance to municipalities. See 38.05.300.

Conveyance of municipal grant lands has sometimes proceeded slowly and

patent to all municipal lands has not yet been conveyed due to the necessity to survey the lands prior to patent. If the municipality approves the conveyance of lands without a survey or with only partial survey, it should be permitted. Also, the municipalities have had to pay for surveys to expedite conveyance and more state assistance is required. See also 38.04.045(b)

29.33.150 requires the state to submit land disposal plats to local governments having appropriate authorities for approval, but "the platting board may not disapprove the subdivision plat on the basis of regulations which require capital improvements (e.g. roads) on or to state land included in the subdivision plat. Regulations adopted after the platting board is notified by the commissioner of natural resources of a proposed sale of subdivided state land under 38.05.005-38.05.370 or 38.08.010-.120 do not apply to the state land in the proposed sale." Repeal the exception for capital improvement requirements to enable local governments to minimize the future demand for access and services to state subdivisions and to ensure future residents satisfactory access and services. Removal of the exception would also put the state on the same footing with private land developers and ensure local control on community growth and lifestyle.

agree

In an effort to reduce costs to the state of such a change in the statute and to ensure that disposals are not blocked by overly burdensome ordinances, capital improvement requirements could be limited to disposals on or near existing highways and roads; could be limited to some accepted standards, such as primitive road or local road, etc.; or funding could be through revolving fund incoporating receipts from land sales and possibly tied into the municipal grant program for local disposals. See 38.04.020(e), 38.04.021, 38.04.045(b), 38.04.050.

TITLE 27--MINING

---Title 27 also deals with many of the same mining procedures and rights (picked up from federal law) as are contained in Title 38. These apply to mining rights on fed la

---The reclamation statute dealing with coal mining formerly contained in Title 41 is now contained in Title 27. The reclamation requirements pertaining to coal should be applied in law to all mining operations.

agree

---27.05.020 prohibits certain conflicts-of-interest. Recent interpretive problems point out the need for revision to clarify meaning and intent.

---27.05.080-.090 require four public assay offices with assayists in each office statewide. DGGS actually only maintains one assay lab on the UAF campus. The statute should be changed to reflect the realities of the situation. It might be preferable to enact an assay system based on private assaying with rebates to miners for private assaying.

---27.05.180-.210 authorizes the purchase of specific mineral prospecting equipment to be loaned out to private persons for exploration work. DNR no longer, if ever, conducted such an equipment lending program. The 1955 statute should be repealed.

---27.10 embraces the 1872 mining law as it governs mining on federal lands. Changes made in the 1976 Federal Land Policy and Management Act (FLPMA) are not incorporated in these statutes and should be.

---27.15.010 is the only provision in Title 27 dealing specifically with mining on state-owned lands. It requires "grubstaking" contracts be in writing. Should be repea

ADMINISTRATIVE AND BUDGETARY CONSIDERATIONS AND RECOMMENDATIONS

DNR statewide quota for FY 86 is 51,600 which is still too high.

1) Concern was expressed over the amount of land which is currently being disposed. While most recommended that less land be disposed of, some felt more land should be sold or made available for private use. There is currently no statutory level of acreage disposal and annual offerings have ranged from almost nothing in 1976 to 100,000 acres in 1980 to approximately 60,000 acres for 1983.

Land disposals in new areas must be done with much regard to carrying capacity.

2) Concern was expressed that land should be made available throughout the state, not just primarily in the Mat-Su Borough or the Tanana Basin. Also it was recommended that high-quality, accessible land be offered to a great extent.

3) While the need for remote recreational and residential lands was recognized, many expressed concern that spacing requirements be enforced to minimize population densities and corresponding impacts on the resources of the areas and to head off future demands for governmental services such as schools, roads and utilities.

Agree

4) It was recommended that much more planning preceed disposals. In most cases area or regional plans should be completed prior to land classifications and disposals to ensure protection of other resource values in the larger area.

Agree

Up to a certain degree. Some areas should be reviewed periodically.

5) If parcels are not sold or staked in a particular offering they should be retained in over-the-counter offerings.

6) There was considerable concern over the quality and application of market studies in the determination of the amount and locations of land to be disposed of. Although the statutes require a market analysis based on the demands for state land relative to the supplies of other public and private lands, such studies have been criticized as being inadequate, superficial or based on limited information. It is recommended that the DNR conduct a more accurate market study prior to disposals, especially in light of removal of the residency discount program.

Agree

See comment on cover letter.

Agree in part. New roads into remote areas should not be routinely considered.

7) Many felt that the state should fully comply with local platting and subdivision regulations, even if improvements such as roads were required. State subdivisions in the past were felt to create undue burdens on local governments and hardships on land "winners". Also, such subdivisions were blamed for undue competition with private land subdividers who must meet local ordinances.

Agree

8) It was felt that the state needs a well-planned, long-range program with consistent land disposal programs. Program changes and frequent amendments by the Legislature contribute to public confusion, false short-term demand, and high administrative costs.

9) Some felt that the DNR classifies too much land as available only to mineral lease-hold location system while others felt most, if not all, land should be so classifie Current law permits classification for leaseholds when resource conflicts are presen or the land was mineral in character at the time of state selection (38.05.185).

Agree

10) It was recommended that DNR consider supplies of timber, coal and sand and gravel on nearby private lands prior to sale of these materials and resources on state lands so as to not directly compete with private developments.

This program should be considered as a disposal program

11) It was recommended that the remote cabin program authorized in 38.05.079 be utilized to a greater extent, possibly subject to certain classified areas, in lieu of disposal programs.

12) It was felt that the DNR should charge greater fees for the processing of permits and leases to help defray administrative costs.

13) It was recommended that the current work plans for ag lands not be required but that developments could be better effected through some program of monetary incentives. Others felt that improvement requirements reduced the speculative aspects.

14) It was recommended that DNR utilize its authority in 38.05.070(c) to cancel unused grazing leases.

agree

15) The DNR and perhaps the Legislature should develop a trespass policy and procedure for state lands emphasizing priorities for administrative action due to time and manpower constraints.

16) Lands conveyed to municipalities under the entitlement program should be closed to mineral entry.

agree

17) Additional monies are needed for the municipal land disposal fund program to assist the local governments in disposal of entitlement lands and remove pressures for similar state land disposals.

agree

18) Money is needed for a state computerized system for handling land records and land disposal information. A full accounting of costs and revenues from sale and lease programs needs to be undertaken and retrievable information made available.

agree

See comment in Cover letter.

19) A more abundant and predictable source of money for land surveys is needed if a long-range, consistent program of land disposal is to be obtained. Surveys are needed several years in advance of disposals and also serve additional land planning and use needs.

20) More money is needed for completion of area or regional plans required in Title 38. The current schedule subject to annual appropriation levels will not allow completion of plans for most of the state before the end of the decade.

agree

21) More money is needed for on-the-ground management of state lands, particularly in the area of enforcement and compliance.

agree

22) Title 38 should be published in a larger format booklet for the public similar to the Title 29 publication produced by the Department of Community and Regional Affairs.

agree

Bristol Bay Native Corporation

445 E. 5TH AVENUE / P.O. BOX 100220 / ANCHORAGE, ALASKA 99510 / (907) 278-3602

February 14, 1984

Adelheid Herrmann
District 26
Pouch V
Juneau, Alaska 99811

Re: PROPOSED POLICIES TO GUIDE STATE LAND OFFERINGS AND DISPOSALS

Dear Adelheid:

Thank you for requesting our comments on the above referenced subject. There are a few areas of the policies that we must comment on as we believe that the present draft have certain deficiencies that must be changed.

1. The basic premise that the State should identify specific land-use needs and determine the effects on the land markets are two areas that State land disposal policies should not be involved.

2. The land disposal policies should focus on a land disposal program that will effectively place State lands in private ownership at a minimal cost to the State and let the buyer bear the costs of survey, access and development. The buyer should be required to pay fair market value and agree to stipulations that would prevent subdivision of acquired lands for a certain period of time and to a minimum lot size of future subdivision.

3. Since tourism is one of the fastest growing industries of our State, land disposals should not be allowed in areas that are wild in character, support fish populations that are needed for subsistence and sport hunting. Presently, many of these areas have sufficient private lands to provide facilities to accomodate the tourism industry.

4. Where State land disposal programs are limited to a certain acreage figure, such as in the BBCMP, local advisory panels should be involved in developing a State land disposal program for that certain area.

5. The subdivision land disposal should be scrapped unless the State is willing to fund the costs of providing access roads and utilities as other land developers are required to do by State or local subdivision regulations. We strongly urge that this program be discontinued because of the high cost of maintaining this program.

Because of the projected decline in State revenues, a high cost land disposal program is not in the best interest of the State.

Sincerely,

Donald F. Nielsen
Vice President

Resource Development Council for Alaska, Inc.

444 West 7th Avenue, Anchorage, Alaska 99501-3512
Box 100516, Anchorage, Alaska 99510-0516 – 907/278-9615

April 5, 1984

Senator Bettye Fahrenkamp
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Here are the comments and recommendations of the Resource Development Council on CSSB 375 (RES), an act relating to land disposal and management. Please make special note of our response to Section 81 AS 38.05.350.

Section 1 AS 38.04.005 (b) The added wording places more restraint on classifying land for private use. There are no limits as to what is meant by "shall seek to minimize the effect of private settlement on wildlife, fishery, mineral, timber and other significant measures and scenic quality of the land." This wording should be deleted. As a policy statement, it totally excludes private settlement and negates subpart (d) of this section. See comments for Section 81.

Section 2 AS 38.04.005 (e) What is meant by "a proximately located municipality," and when is it "appropriate" to hold public hearings? The original wording is more satisfying and it is already implemented by AS 38.05.345.

Section 3 AS 38.04.005 (f) It is not appropriate to make this a part of the policy statement. It is more appropriate to make it a section in AS 38.95 and have it apply to all of Title 38, not just Chapter 04. Another alternate is to make this clear in AS 14.40.

Section 4 AS 38.04.010 (b) The added wording does little to enhance the law. This seems to presume that state settlement cannot take place where there are no trees for building or firewood. It even rules out living in Bethel. The amendment is not needed.

Section 6 AS 38.04.020 (f) This is a good simplification of the existing section. A shortcoming of the amendment centers around determining demand if the program offered is less than satisfactory.

APR 9 1984

Section 7 AS 38.04.020 (g)(2) The deleted portion fostered a poor disposal program. We are in agreement to see it go. The surviving portion could be further shortened by deleting the words subdivision and homesite and subdivided. Subdividing is surveying.

Section 8 AS 38.04.020 (h) Delete the added words at end of the paragraph. This is a planning process to be reckoned with at the time of picking the land disposal site. It could be said this added wording will be used to eliminate all disposals. The wording does not allow for people.

simply allows flexibility in parcel size

Section 9 AS 38.04.022 The creation of a separate land disposal fund opens a can of worms. State land as defined in AS 38.05.365 (16) would then include the revenue from oil and gas to be used only for land disposal programs. This section seems to be saying that the land disposal program is costing the state money and that if it cannot support itself, there should not be any land disposals. It also fits in with the proposed repeal of the land policy fund in AS 38.05.350. The whole tone of this section and many others is to retain state land in public ownership.

Section 10 AS 38.04.035 (4) The wording would be more meaningful if the cabin development would be allowable within parks and game refuges designated by the legislature. It seems that all of the state public domain is a potential conflict with other resources.

Section 11 AS 38.04.045 (b) Recommend the amendment if the distance is not made less by administrative decision.

Section 12 AS 38.04.050 Legal access is not necessarily adequate access. A section line easement is legal but does not provide adequate access if it goes through a lake.

"adequate" → "flexible"

Section 13 AS 38.04.055 The amendment is nothing but surplus wording.

Section 14 AS 38.04.058 This may be public appropriation for a private gain, but it does have merit.

Section 21 AS 38.05.055 The 85 percent of FMV will take a lot of regulation to be implemented. This sounds good but probably won't happen. The law presently allows for reduced appraisals. It was used twice in Kodiak land sales. The auction bidding took the sale price up past the FMV in each instance.

Section 22 AS 38.05.065 This whole procedure would be simplified if the state used a deed of trust secured by a promissory note. It would give the purchaser working title and simplify foreclosure if it was necessary.

Section 25 AS 38.05.070 (b) The change of the $5,000 a year value is very favorable. This would allow for land parcels worth $50,000 to be negotiated.

Section 26 AS 38.05.070 (c) Amendment is recommended

Section 27 AS 38.05.075 Amendment is recommended

Sealaska

Section 28 AS 38.05.075- New subsections. Amendments are recommended.

Section 29 AS 38.05.110 The requirement to "assess the supply of and current markets..." is an undue burden if it is used to allow the state's timber resource to go to waste. Timber and materials should be separated.

38.04.005
38.04.010

Section 81 AS 38.05.350 The repeal of the land policy providing for the state to encourage the settlement of its land and development of its resources by making them available for maximum use consistent with the public interest removes one of the basic building blocks of this great state. The substitute land policies found in AS 38.04.005 may interpret AS 38.05.350 but do not provide a clear mandate as to why the state got into the land business to begin with. The record is clear that resource development and land settlement have been frustrated and stymied since AS 38.04.005 has been adopted.

If RDC can be of further assistance to you concerning these comments, please call on us any time.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

Paula Easley

Paula P. Easley
Executive Director

alaska survival

OCT 12 1983

Oct. 3, 1983

Box 343 Talkeetna, AK 99676

Senate Resources Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Senate Resources Committee:

I am pleased to learn that the State has intentions of reforming its land disposal program. The present program has proved both ineffective in providing land to meet the needs of the people seeking land and disruptive to those who reside in land disposal areas. As a resident of Chase, I feel that I have become an expert on bad planning. I regret that much of my imput here will include listing the ways in which the state should not handle land disposals, and examples of past offenses, but hopefully, assuming man can learn from past mistakes, these will serve as a guide of actions to avoid in the future.

We offer the following suggestions:
(1) Develop a more reasonable method of assessing overall need for privately-owned land in the state. I understand that the present policy of determining need is made by looking at the numbers of people who entered past lotteries, and by asking the land office workers approximately how many people inquired about land. Neither of these methods reveal the true need for private lands and both can and do lead to erroneous conclusions upon which the entire land disposal program is based. The lottery is too much a gambler's paradise to be indicative of land meeds. This method is equivalent to determining how many people are in need of TV's by counting the number of entrants in a $2 lottery to win a TV set. The second method is even less reasonable. I find this method particularly disturbing because I have several times enquired about land disposals in the areas where I live in an attempt to find out the state's future plans for the area, only to find that my enquiry may have counted as a vote to open more land disposals in this area which was exactly what I did not want.

Certainly a better method of determing land need must be established. Unfortunately I do not have the one perfect solution to this problem. The state has created, or contributed to the creation, of a land madness in Alaska; to seperate that from true need will certainly be difficult.

One possible method may be to assess the available land in an area and what proportion of that is occupied. In most, if not all, areas where land disposals have taken place, at least 90% of the privately-owned parcels now set empty. In areas where this is the case, it seems only sensible to cease to dispose of further land there. If the state got out of the real estate business for the next decade or even two, it seems likely that few, if any, people of Alaska would go homeless for that reason. Only the land speculators may suffer, which leads me to wonder who the state is trying to satisfy with all these land sales.

(2) If a real need for additional land has been determined, the second task will be to evaluate the existing situation in each local area to decide if land disposals would be reasonable and acceptable there. This would involve a detailed assessment of the A) available natural resources, finite and renewable, B) the population and character of the human community that exists in the area, including what degree of dependency it has on the native resources and how that balances with the available resources, C) the possible human population if all the privately-owned land were to become occupied and how that population would balance with the resources of the area, D) access. This assessment should allow the planner then to make an evaluation of the effects that a land disposal would have on the existing community and the resources, and how it would affect the balance between the two. A similar evaluation should be made using the possible future human populations and expected availability of resources as a base.

The constitution of the State of Alaska states "Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses." Because so many of Alaska's residents depend upon the resources of the land for their survival, this section of the constitution should be foremost in the land planner's mind when determining land disposals. As long as the sustained yield principle is adhered to, there exists a balance of man and nature, both surviving indefinitely without the necessity of intervention—such as costly projects—by the state. But when planners choose to overpopulate an area with people beyond the sustainable yield of resources, the state suddenly becomes responsible for the disruption and destruction of the way of life and the means of survival of the residents. And therefore, it is responsible for meeting the needs of those who once provided their own sustenance from the land.

(3) The state must identify the true cost of land disposals prior to sale, publicly acknowledge the liabilities, and offer just compensation to those adversely affected. For example, if planners cause the human population in an inaccessible area to exceed that which can be sustained by the moose for meat and firewood for fuel, the state then becomes under pressure and obligated to build a road or provide other means of access to the area, as well as to make available fuel and food from some other area, provide the residents with suitable employment so that they may make enough money to buy that food and fuel to make up for that which was destroyed by bad planning, or the state must provide some form of welfare to provide these necessities for the people who cannot afford them.

At the time of the land disposal, the state should provide funds for those needs, such as roads, schools, that it made inevitable by its actions. To unload a host of problems on a community and then to step back and pretend innocence is not the function of government.

The state of Alaska must begin to take responsibility for its actions. Right now, before another single parcel of land is sold by the state, the government should assess the damages created by past disposals and try to mitigate these. I am convinced that if the real effects of each land disposal were acknowledged and brought to light—with the knowledge that the State was strictly liable for all costs and compensation—a majority of planners' errors would be eliminated.

(4) One vital step in identifying the true costs and effects of land disposals would be to allow and encourage more realistic public involvement in the actual decisionmaking process. This should begin with a survey of the attitudes of people concerning a land disposal in their local area. If the consensus is against land disposals there, that area should be dropped from the disposal bank. It is well known that this generally is the procedure that already exists for determining disposals west of the Alaska range and in other non-organized borough lands. We who live in the more remote areas of the railbelt, and who have been suffering the brunt of the state's land giveaway, ask to be given equal voice in determining the future of our homes.

Major reform is definitely needed in the area of public involvement. For too long the state of Alaska has treated the residents of a proposed disposal area as nothing more than obstacles in the path of "progress." They have simply been pushed aside. Those who wish to obtain land have been considered to be the "clients" of the state agencies—this was precisely the term used by a state representative at one land meeting in Talkeetna. And thosewho live in the area of the planned disposal are considered the "niggers"—this is the term used by a resident of Chase. Obviously no improvement can be expected until this attitude changes.

At present the gap between the actual lives of the people in rural Alaska and the understanding of planners living in Anchorage is so abysmal that there seems no possible reasonable method of planning for the disposal of land except to let the residents of each recognizably distinct area and/or community draw up the land plan for their area. Multiple-choice ballots written by the planners to be checked or Xed by attendants of public meetings does not meet the need of public involvement. It often seems only to occupy the time of both the residents and the planners so that the true situation can not be revealed.

I will give an example here of the misunderstanding or lack of understanding that exists between planners and the residents of an area. Once again, it involves the Chase area—scene of every experimental land disposal program imagined by the State.

In the 1970's, the State representatives came to Talkeetna for a meeting to discuss the Chase II subdivisions and future land disposals. This, at the onset, was a mistake. To determine Chase land planning in Talkeetna is equivalent to determing Anchorage city planning in Talkeetna. For many residents of Chase, it is a four-hour or longer walk to Talkeetna, less than the time it takes to drive from Anchorage to Talkeetna. At this meeting of multiple-choice ballots, the residents of Chase marked a preference for larger parcels in future disposals, because this was the listing that seemed to be the least offensive. It was not their preferred plan for Chase—to give out large acreage—but it was preferable to the other alternatives such as the state's proposed disposal plan at that time which was to give out 400 or 500 subdivision lots. The residents knew that such an influx of people would completely destroy their ability to survive in this area by wiping out the moose population upon which they depend for meat, and by threatening the wood supply upon which they depend for fuel, and generally by tearing apart a small subsistence-oriented community of people. They knew that any major disposals would have this effect.

The Chase residents tried to explain this to the State people but apparently there was no understanding of the true situation, of the way that the people do and must live to survive here. All the planners saw was an overwhelming preference for large parcels on their ballot sheets.

In 1982, when the state introduced the Chase III Agriculture disposal, the residents were shocked and outraged at the proposed disposal of 500 acre hobby farms in the middle of a subsistence-oriented community of people, many of whom would be left with no place to hunt, cut firewood, or even any access to their homes if the disposal went through. The state people , as they said, were confused at the residents' reaction. The planners said they thought they had done what the people wanted.

This review, I do hope, reveals the inadequacy of present public involvement methods and the degree of the lack of understanding between planners and residents. Again, I will state that the only alternative is to allow the residents of an area, such as Chase, to develop their own land plan with ample guidance from the state.

(5) Aim for stability. The constant disruption and upheavel of communities and families in Alaska is tearing the state apart. It is destroying the hope, homes, and lives of the people of Alaska. Past landdisposals have been some of the greatest offenders. A land disposal should be compatible with the existing community and resources of an area. Again I will use Chase as an example.

First the state gave out land for recreation, hunting, fishing. People settled into the area for those uses. Then the state decided Chase was an urban area (I assume); it gave out hundreds of subdivision lots. Then it decided this was a farming area; it tried to dispose of "hobby farms" (this was the term used by Sharon Barton, Special Asst. to Wunnicke). People who have lived here for ten or fifteen years, built a home, had children, made their lives here, now find themselves uncertain from day to day if the state is going to allow them to continue living here in a way that is traditional in Alaska and still compatible with the area,(also the desired way of life of them.)

Many residents of Chase find themselves going to the land office in Anchorage and asking about disposals in other areas, preferably some place like what Chase could be if the state would leave it alone. Some have already moved away. By past land disposals, the state has created an unnecessary fluctuation of the population; it has made homeless dispirited refugees of many of its people for no reason but to satisfy the madness to "dispose" of land.

Here again is an example of the state not acknowledging cause and effect. When a land disposal disrupts the present population in an area, the people begin to demand land in other areas, which creates a need for disposals in other areas, which in turn, disrupts the people there, causing those people to demand land in some other area, ad infinitum.

Replacing one community of people with another is not a solution to the land needs of Alaskans.

In Chase, there remains a vestige of the community of people who settled here in harmony with the land, the resources, the traditional way of life in Alaska, and the state's original land disposal program in the area. Some continue to grow a garden in the summer, kill a moose in the fall, trap in the winter, cut wood, teach their children to read, and live a simple, reasonable, and pleasant life. But some are already too fraught with uncertainty for the future to live easily; they remain in debt to a lawyer hired to deal with the madness of the Chase II disposal, they spend too much of their time writing letters to the state begging them not to destroy their lives, crying over the telephone to Anchorage planners, yelling at their kids, getting drunk in Talkeetna because they don't know from day to day how they will manage to live next year if the Agricultural, Chase III, disposal goes through and wipes out their hunting grounds or if the subdivision should become inhabited and the population pressure should drive them out.

And on a warm Saturday in June, you can see, a whole family disembark the train at the gravel pit and look around, look for the grocery store, the post office, the road, the town of Chase that they expected to find here. They own a subdivision lot in Chase II. On the following day, you can watch them get back on the train at the gravel pit, tired, unhappy, mosquito-bitten. They never found their lot; they never found the subdivision. It doesn't matter anyway. This is not what they wanted, not what the ad for Chase II led them to believe they would find.

The people in these scenes are real. If Chase III goes through, there will be more such victims and I will be one of them. I will be in the land office in Anchorage asking for land on the Yukon or the Kuskokwim. I will have no choice but to find another home. The trail to my cabin will be blocked by a farm, my moose hunting place will be in a farm, my trapline will be cut off by several farms, my drinking water will be tainted with agricultural chemicals.

I hope this does not happen.

Judy Price

Alaska Society of Professional Land Surveyors

AFFILIATE OF AMERICAN CONGRESS OF SURVEYING AND MAPPING
MEMBER OF WESTERN FEDERATION OF PROFESSIONAL LAND SURVEYORS

P.O. BOX 2106
ANCHORAGE, ALASKA 99510

S.R. 10113
Fairbanks, AK 99701

February 22, 1984

Sen. Bettye Fahrenkamp
Chair, Senate Resources Committee
Pouch V
Juneau, AK 99811

Ref: SB 375

Dear Bettye:

We in the Fairbanks Chapter of A.S.P.L.S. have carefully reviewed the proposed language changes in Title 30 to the Alaska State Plane Coordinate System, required to legally establish the 1983 North American Datum in Alaska.

Professor William Mendenhall agrees that, to the best of his knowledge, no typographical errors have been made in the portions dealing with the 1927 NAD and the 1983 NAD.

We commend the Legislative staff on its careful work and we hope that the Legislature as a whole acts this year on SB 375.

Sincerely yours,

Patrick H. Kalen, RLS
Legislative Chair, ASPLS
President, Fairbanks Chapter

PHK/skk

FEB 24 1984

TESTIMONY OF
ROBERT W. LOESCHER
VICE PRESIDENT, RESOURCE MANAGEMENT
SEALASKA CORPORATION
ON
SENATE BILL 375,
AN ACT RELATING TO LAND DISPOSAL AND MANAGEMENT

FEBRUARY 20, 1984

MY NAME IS ROBERT W. LOESCHER, VICE PRESIDENT OF RESOURCE MANAGEMENT FOR SEALASKA CORPORATION. I AM HERE TODAY TO TESTIFY ON SENATE BILL 375, AN ACT RELATING TO STATE LAND DISPOSAL AND MANAGEMENT.

SEALASKA CORPORATION IS THE SOUTHEAST ALASKA REGIONAL NATIVE CORPORATION WHICH REPRESENTS OVER 15,000 SHAREHOLDERS. SEALASKA WILL ULTIMATELY OWN APPROXIMATELY 330,000 ACRES OF SURFACE ESTATE AND 600,000 PLUS ACRES OF SUBSURFACE ESTATE IN SOUTHEAST ALASKA. SEALASKA LANDS BORDER IN EXCESS OF 1,000 MILES OF STATE OWNED AND MANAGEMENT TIDELANDS. THE MANAGEMENT AND DEVELOPMENT OF OUR UPLAND RESOURCES IS VIRTUALLY DEPENDENT UPON ACCESS TO AND USE OF STATE OWNED AND MANAGED TIDELANDS.

ON JANUARY 20, 1984, SEALASKA SUBMITTED FOR CONSIDERATION, A SERIES OF PROPOSED AMENDMENTS TO SENATE BILL 375. SINCE THAT TIME, WE HAVE DISCUSSED OUR PROPOSED AMENDMENTS WITH VARIOUS INTERESTED PARTIES. AS A RESULT OF THESE DISCUSSIONS, WE SUBMITTED A SECOND LETTER DATED FEBRUARY 15, 1984 MAKING TWO CHANGES TO THE JANUARY 20, 1984 AMENDMENTS.

WE HAVE BEEN ADVISED THAT THE RESOURCES COMMITTEE IS USING THIS HEARING TO BECOME FAMILIARIZED WITH VARIOUS AMENDMENTS BEING PROPOSED TO SB 375 AND WILL NOT ENTERTAIN MOTIONS TO AMEND SB 375 UNTIL THE HEARING SCHEDULED FOR FRIDAY, FEBRUARY 24, 1984.

DURING THIS PERIOD, SEALASKA CORPORATION WILL BE WORKING WITH THE ADMINISTRATION, ALASKA DEPARTMENT OF NATURAL RESOURCES AND OTHERS WHO HAVE EXPRESSED AN INTEREST IN OUR PROPOSED AMENDMENTS TO DEVELOP COMPROMISE LANGUAGE TO OUR AMENDMENTS WHICH WILL BE SUBMITTED TO THE COMMITTEE AT THE FEBRUARY 24, 1984 HEARING.

AT THIS TIME, I WISH TO BRIEFLY EXPLAIN THE INTENT AND EFFECT OF THE SEALASKA PROPOSED AMENDMENTS:

SECTION 1, AS 38.04 IS AMENDED BY ADDING A NEW SECTION .058 RESTRICTIONS ON EASEMENT OR RIGHT-OF-WAY USE. UNDER EXISTING LAW, ALASKA DEPARTMENT OF NATURAL RESOURCES IS AUTHORIZED TO RESERVE EASEMENTS ACROSS STATE LANDS (INCLUDING TIDELANDS) AS PART OF A LAND DISPOSAL OR TIDELAND LEASE. EXISTING LAW DOES NOT PROVIDE AUTHORITY FOR THE DEPARTMENT TO CONDITION A RESERVED EASEMENT TO RESTRICT PUBLIC ACCESS IN ORDER TO PROTECT PROPERTY OR PUBLIC SAFETY. THIS AMENDMENT WILL ALLOW THE PRIVATE OWNER OR LESSEE TO COOPERATE WITH THE DEPARTMENT IN SETTING TERMS AND CONDITIONS FOR PUBLIC USE OF RESERVED EASEMENTS TO PROTECT PROPERTY OR PUBLIC SAFETY.

* * *

SECTION 2, AS 38.04.065(a). THE DEPARTMENT OF NATURAL RESOURCES IS REQUIRED TO PREPARE REGIONAL AND AREA LAND USE PLANS. THESE PLANS INCLUDE RULES OF GENERAL APPLICABILITY FOR THE USE, MANAGEMENT AND PROTECTION OF STATE LAND WITHIN THE PLANNING AREA. THESE RULES OF GENERAL APPLICABILITY, IN ACCORDANCE WITH A RECENT COURT DECISION KENAI PENINSULA FISHERMAN'S COOP ASSOCIATION V. STATE, MUST BE ADOPTED UNDER THE ADMINISTRATIVE PROCEDURES ACT. IN LIGHT OF THIS RECENT COURT DECISION IT IS NECESSARY TO ENSURE THAT ADOPTION OF REGIONAL AND AREA LAND USE PLANS OCCURS IN ACCORDANCE WITH THE APA.

* * *

SECTION 3, AS 38.05.070(c). SEALASKA PROPOSES TO AMEND AS 38.05.070 TO ENSURE THAT THE LENGTH OF THE LEASE IS NOT LESS THAN THE PROJECTED USEFUL LIFE OF ANY IMPROVEMENT APPROVED UNDER THE LEASE. THIS AMENDMENT IS NECESSARY BECAUSE THE DEPARTMENT OF NATURAL RESOURCES PERIODICALLY ISSUES LEASES FOR A LENGTH OF TIME SHORTER THAN THE ANTICIPATED USEFUL LIFE OF THE FACILITY. FOR EXAMPLE, SEALASKA CORPORATION CONSTRUCTED A MAJOR DOCK FACILITY ON KLAWOCK ISLAND WITH A USEFUL LIFE OF 55 YEARS, HOWEVER, THE DEPARTMENT ISSUED A TIDELAND LEASE FOR ONLY 30 YEARS.

* * *

Sounds pretty important.

SECTION 4, AS 38.05.075. THIS AMENDMENT MAKES SEVERAL CHANGES TO SURFACE LEASING PROCEDURES.

THE FIRST CHANGE ESTABLISHES A PROCEDURE FOR PRE-QUALIFICATION OF BIDDERS FOR TIDELAND LEASES. UNDER PRESENT PERMITTING PROCEDURES, AN APPLICATION TO CONSTRUCT FACILITIES ON STATE TIDELANDS WILL HAVE ALL NECESSARY APPROVALS (EXCEPT A TIDELAND LEASE) TO START CONSTRUCTION ON THE PROJECT WITHIN 60 DAYS OF APPLICATION. THESE PERMITS ARE OF LITTLE VALUE TO THE APPLICANT IF A NECESSARY TIDELANDS LEASE HAS NOT BEEN OBTAINED. CURRENTLY, IT TAKES ALMOST ONE YEAR TO OBTAIN A TIDELANDS LEASE EVEN THOUGH ALL OF THE SUBTANTIVE DECISIONS REGARDING THE ISSUANCE OF THE LEASE ARE CURRENTLY MADE WITHIN 50-60 DAYS. THE REMAINING TIME IS SPENT IN SURVEY, APPRAISAL AND PUBLIC AUCTION.

UNDER EXISTING PROCEDURES THE DEPARTMENT ALLOWS AN APPLICANT TO ENTER THE PROPERTY, UNDER LEASE APPLICATION, ONCE ALL PERMITS ARE RECEIVED AND A DEPARTMENTAL DECISION TO LEASE HAS BEEN MADE. HOWEVER, THE APPLICANT HAS NO ASSURANCE THAT HE WILL ULTIMATELY RECEIVE THE LEASE FOR ALMOST ONE YEAR FROM DATE OF APPLICATION OF THE LEASE. THUS, AN APPLICANT IS RELUCTANT TO MAKE ANY IMPROVEMENTS ON THE LEASED PROPERTY FOR FEAR THAT AT THE TIME OF AUCTION HE MAY BE OUTBID FROM A PREVIOUSLY UNIDENTIFIED PARTY. THIS IS BECAUSE EXISTING LAW DOES NOT REQUIRE POTENTIAL

COMPETITIVE BIDDERS TO IDENTIFY THEMSELVES BEFORE THE DATE OF THE AUCTION. THUS, ALTHOUGH THE INITIAL APPLICANT HAS ENDURED THE TIME AND EXPENSE OF INTERAGENCY AND PUBLIC REVIEW, AND HAS SUFFERED PERHAPS A YEAR'S DELAY, HE MAY LOSE HIS PROJECT TO A VIRTUAL LAST MINUTE BIDDER.

THE PURPOSE OF THIS AMENDMENT TO CURE THIS PROBLEM BY REQUIRING ANY PERSON WISHING TO COMPETE FOR THE LAND TO BE LEASED WOULD BE TO SUBMIT HIS OWN APPLICATION WITHIN THE PUBLIC NOTICE PERIOD PROVIDED.

UNDER THIS PROCEDURE AT THE END OF FIFTY DAYS, THE APPLICANT WILL KNOW WHETHER HE HAS QUALIFIED FOR THE LEASE AND WILL ALSO KNOW WHETHER THERE ARE OTHER COMPETITIVE BIDDERS. IF THERE ARE NO OTHER "PREQUALIFIED" BIDDERS, THIS AMENDMENT WOULD DIRECT THE DEPARTMENT TO ALLOW THE INITIAL APPLICANT TO ENTER ONTO THE LANDS. ALL THAT WOULD REMAIN PRIOR TO FINAL CONVEYANCE OF THE LEASE WOULD BE A SURVEY TO ESTABLISH PRECISE BOUNDARIES, AND AN APPRAISAL WHICH WOULD SET THE LEASE FEE.

ANOTHER IMPORTANT PROVISION OF SEALASKA'S AMENDMENTS TO AS 38.05.075 IS THE CREATION OF AN UPLAND OWNER'S PREFERENCE--UNDER CERTAIN SPECIFIC CONDITIONS--FOR LEASE OF ADJACENT TIDE OR SUBMERGED LANDS. TRADITIONALLY, THE GOVERNMENT'S OWNERSHIP OF TIDE AND SUBMERGED LANDS HAS BEEN VIEWED AS A TYPE OF TRUST FOR CERTAIN SPECIAL PURPOSES. THE MOST WELL ESTABLISHED OF THOSE PURPOSES IS FACILITATING TRANSPORTATION AND COMMERCE FROM ADJACENT UPLANDS, WHICH IS VITAL TO UPLAND ECONOMIC DEVELOPMENT. THE PROPOSED AMENDMENTS CONFINE THE PREFERENCE TO ONLY THESE TYPES OF USES, AND IS THUS NOT ONLY CONSISTENT WITH, BUT FURTHERS THOSE TRUST RESPONSIBILITIES. UNDER THE AMENDMENTS, NO PREFERENCE IS AVAILABLE IF THE INTENDED USE IS INCONSISTENT WITH THE CLASSIFICATION OF THE LAND OR ANY APPLICABLE LAND USE PLANS.

THIS AMENDMENT FURTHER ENVISIONS THAT IF AN UPLAND OWNER IS ENTITLED TO A PREFERENCE, HE WILL NORMALLY BE ABLE TO OBTAIN A

LEASE AT FAIR APPRAISED MARKET VALUE WITHOUT COMPETITIVE BIDDING.

THE FINAL AMENDMENT TO THIS SECTION WOULD ALLOW A CREDIT FOR SURVEYING COSTS INCURRED BY THE LESSEE, WHEN FILING FOR A TIDELAND LEASE. SEALASKA BELIEVES THAT THIS SURVEY PROVIDES OBVIOUS LONG TERM BENEFITS TO THE STATE AS THE LANDOWNER AND IF THE APPLICANT UNDERTAKES THESE ADMINISTRATIVE MATTERS ON BEHALF OF THE STATE THEN THESE COSTS SHOULD BE REIMBURSED THROUGH TIDELAND LEASE FEE CREDITS, EQUAL TO THE DOCUMENTED COST OF THE SURVEY.

* * *

SECTION 5 IS SIMPLY CONFORMING LANGUAGE TO MAKE THE EXISTING STATUTE CONFORM WITH THE PROPOSED AMENDMENTS IN SECTION 4.

* * *

SECTION 6 THROUGH 10 OF SEALASKA'S PROPOSED AMENDMENTS DEAL WITH THE STATE'S LAND EXCHANGE (TITLE 38) AND CONDEMNATION AUTHORITIES (TITLE 9). CONGRESS AND THE STATE RECOGNIZED THAT BOUNDARY CHANGES DUE TO STATE AND NATIVE CONVEYANCES MAY BE NECESSARY TO PROMOTE SOUND LAND USE MANAGEMENT. BOTH ALSO RECOGNIZED THAT A EXCHANGE WAS THE MOST EFFECTIVE AND FAIR VEHICLE TO ACCOMPLISH THAT RESULT.

HOWEVER, THE STATE'S CURRENT LAND EXCHANGE AUTHORITY, AS 38.50, CONTAINS SEVERAL PROVISIONS WHICH DISCOURAGE PRIVATE LANDOWNERS FROM ENTERING INTO EXCHANGE NEGOTIATIONS WITH THE STATE. THE SECOND THEME OF SEALASKA'S AMENDMENTS IS TO CURE THOSE DEFICIENCIES, AND PROVIDE A MORE FLEXIBLE AND FAIR PROCEDURE FOR EXCHANGING LAND.

* * *

SECTION 6 PROPOSES A NEW SUBSECTION (c) TO AS 38.50.020. THIS

SUBECTION PROVIDES THE FOLLOWING CHANGES.

IN THE EXISTING LAND EXCHANGE AUTHORITIES THERE IS A LACK OF GUIDELINES FOR VALUATION OF PROPERTY BEING CONSIDERED FOR EXCHANGE BETWEEN THE STATE AND OTHER LANDOWNERS. QUITE OFTEN, THE STATE WILL BE ACQUIRING RAW LAND LOCATED IN THE UNORGANIZED BOROUGH OR OUTSIDE ORGANIZED MUNICIPAL GOVERNMENTS WHERE USE OR SUITABILITY OF LAND IS NOT WELL ESTABLISHED THROUGH LOCAL PLANNING AND ZONING ORDINANCES. IN THESE AREAS THE STATE'S TENDENCY HAS BEEN TO EVALUATE THE PROPERTY TO BE ACQUIRED SOLELY AT ITS PRESENT, UNIMPROVED VALUE. AS WITH ANY VALUATION, THE STATE SHOULD BE REQUIRED TO APPRAISE THE FAIR MARKET VALUE OF THE PROPERTY TO BE RECEIVED AT ITS HIGHEST AND BEST USE. THE PROPOSED CHANGES TO AS 38.50.020 WOULD ACHIEVE THIS RESULT.

UNDER EXISTING LAW, THE STATE DOES NOT ASSESS A DISTINCT VALUE FOR SEPARATELY OWNED SURFACE AND SUBSURFACE ESTATES. FOR ANCSA LANDS, THESE ESTATES ARE SEPARATED BETWEEN VILLAGE (SURFACE) AND REGIONAL (SUBSURFACE) CORPORATIONS. IN ORDER TO ASSURE JUST COMPENSATION IN ANY EXCHANGE TO BOTH INTEREST HOLDERS, IT IS IMPORTANT THAT THESE ESTATES BE SEPARATELY VALUATED AT THE OUTSET FOR ACQUISITION FOR EXCHANGES PURPOSES, AS WELL AS FOR CONDEMNATION PURPOSES.

THE PROPOSED CHANGES TO AS 38.50.020 WOULD ALSO RECOGNIZE THAT THE STATE RECEIVES A SUBSTANTIAL PUBLIC BENEFIT FROM ANY EXCHANGE, AND THEREFORE ANY COST REASONABLY INCURRED BY THE PRIVATE LANDOWNER IN HELPING TO CONSUMMATE THAT EXCHANGE SHOULD BE CONSIDERED AS PART OF THE VALUE RECEIVED BY THE STATE.

* * *

SECTION 7 PROPOSES TO ADD A NEW SUBSECTION (c) TO AS 38.50.030. THE RESULT OF THIS AMENDMENT PROVIDES FOR THE GOVERNOR'S RESOLUTION OF INTERAGENCY CONFLICTS INVOLVING LAND EXCHANGES. IT HAS BEEN OUR EXPERIENCE WITH CERTAIN LAND EXCHANGES, FOR EXAMPLE,

THAT THE DEPARTMENT OF TREANSPORTATION AND PUBLIC FACILITIES WILL DESIRE TO OBTAIN LAND THROUGH AN EXCHANGE FOR ITS USE. INVARIABLY, THE LAND OFFERED IN EXCHANGE WILL BE ADMINISTERED BY THE DEPARTMENT OF NATURAL RESOURCES. THE RESULT IS INTERAGENCY DISAGREEMENT OVER WHICH THE PRIVATE LANDOWNER HAS LITTLE CONTROL. IN ORDER TO ENSURE THAT THE POSSIBILITY OF A MUTUALLY VALUABLE EXCHANGE IS NOT LOST AS A RESULT OF INTERAGENCY DISAGREEMENTS, IT IS VITAL THAT ONE ACCOUNTABLE OFFICIAL BE DESIGNATED TO ARBITRATE THOSE PROBLEMS, AND MOVE THE PROCESS ALONG. SEALASKA BELIEVES THAT THE OFFICE OF THE GOVERNOR IS THE PROPER PLACE FOR THAT AUTHORITY TO RESIDE.

OMB
DNR
DOT

* * *

SECTION 8 THROUGH 10 ARE AMENDMENTS TO TITLE 9'S CONDEMNATION PROCEEDINGS WHICH NEED TO BE MADE IN ORDER TO MAINTAIN CONTINUITY IN POLICY WITH SEALASKA'S PROPOSED LAND EXCHANGE AUTHORITY AMENDMENT IN TITLE 38 (SEE SECTION 6 SEALASKA AMENDMENTS).

OCCASIONALLY, NATIVE LANDS MAY BE NECESSARY FOR VITAL PUBLIC SERVICES. THESE LANDS MAY BE ACQUIRED THROUGH EXCHANGE OR CONDEMNATION PROCEEDINGS. THERE IS A TENDENCY BY STATE AGENCIES TO INITIATE CONDEMNATION PROCEEDINGS OF ANCSA INTEREST LANDS INSTEAD OF WORKING OUT A MUTUALLY AGREEABLE ACQUISITION OR LAND EXCHANGE. IT IS IMPORTANT TO UNDERSTAND THAT THE LAND BASE CONVEYED THROUGH ANCSA IS FAR MORE THAN A MERE CAPITAL ASSET. WHILE THE LAND IS HELD IN FEE, RATHER THAN TRUST, ANCSA LANDS HOLD A SOCIAL, CULTURAL AND EMOTIONAL VALUE WHICH CANNOT, IN ALL CIRCUMSTANCES, BE COMPENSATED FOR WITH CASH. AN EXAMPLE OF THIS ANTICIPATED PROBLEM IN FEDERAL LAW IS FOUND IN SECTION 1302(B) OF ANILCA, WHICH PROHIBITS THE USE OF EMINENT DOMAIN TO ACQUIRE ANCSA-CONVEYED LANDS FOR ADDITIONS TO THE CONSERVATION SYSTEM.

SEALASKA IS NOT RECOMMENDING A SIMILAR PROHIBITION IN STATE LAW. HOWEVER, IN ORDER TO PRESERVE THE INTENT OF THE ANCSA LAND CONVEYANCES, WE ARE PROPOSING IN AN AMENDMENT TO AS 09.55.270,

THAT THE STATE BE REQUIRED TO FIRST MAKE A BONA FIDE, ARMS-LENGTH OFFER TO EXCHANGE BEFORE CONDEMNATION IS INITIATED.

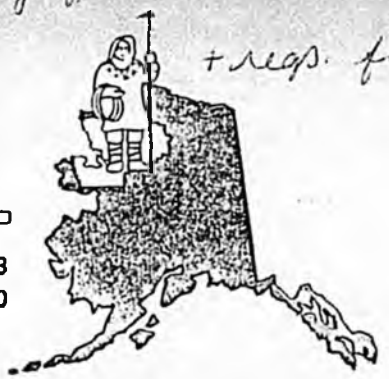
THIS AMENDMENT NOT ONLY ADDS CREDIBILITY TO THE EXCHANGE PROCESS; IT ALSO FURTHERS THE CONGRESSIONAL POLICY OF ANCSA. THE PRIMARY PURPOSE OF ANCSA WAS TO GRANT TO ALASKA NATIVES AN ADEQUATE LAND BASE--A BASE WHICH CONGRESS RECOGNIZED COULD NOT BE REPLACED WITH CASH. THE PURPOSES OF ANCSA ARE ILL-SERVED IF THAT BASE IS ERODED OVER THE YEARS THROUGH THE EXERCISE OF EMINENT DOMAIN AUTHORITY BY THE STATE OF ALASKA.

WE URGE THE COMMITTEE'S CONSIDERATION OF THESE PROPOSED AMENDMENTS. WE STAND READY TO MEET WITH YOU OR YOUR TECHNICAL STAFF TO UNDERTAKE FURTHER WORK ON THESE AMENDMENTS, IF DEEMED NECESSARY.

copy for [illegible] (5.2)
+ regs. file

NANA REGIONAL CORPORATION, INC.

4706 HARDING DRIVE/ANCHORAGE, ALASKA 99503
TELEPHONE (907) 248-3030



February 3, 1984

Mr. James Barnett, Deputy Commissioner
Department of Natural Resources
Office of the Commissioner - Regulations
Pouch 7-005
Anchorage, Alaska 99510

Dear Mr. Barnett:

Thank you for the opportunity to review the proposed regulatory changes governing the exchange of state lands (11 AAC 67.200-290).

The proposed regulations appear to track AS 38.50 requirements closely, and in general, appear adequate and appropriate. However, one section, 11 AAC 67 220(a) is constructed too narrowly to achieve the overall beneficial purposes of land exchanges. This section proposes to limit state lands eligible for exchange to either those unclassified or those classified as commercial, industrial, private recreation, reserved use, residential (or settlement) or utility. These classifications represent only a minority of the acreage of state classified lands. Other classifications including wildlife habitat, resource management, forest and public recreation include millions of acres of state lands.

Land exchanges represent an important and necessary tool to consolidate land ownership, improve resource management, advance both developmental and environmental protection goals to attain both private and public benefits not otherwise achievable. These objectives should not be unduly curtailed by restricting possible trades to only certain state lands. It is simply premature and unsubstantiated to conclude that the possible trade of state lands classified as forest, for example, would not result in attainment of <u>greater</u> public resource values.

[FEB 1 0 ...

The purpose of the appraisals and administrative consideration of proposed lands to be traded is to weigh the various values associated with the lands involved, regardless of their classification. It is readily conceivable that private parties to a trade might place high value on state timber or resource management lands and be willing to exchange key wildife habitat or recreation lands having very high public values, for example. Thus, all state lands should be eligible for consideration for trade. The final authority, of course, for exchange approval rests with the Administration and/or the Legislature.

Although a discussion of the public values to be derived from a potential land trade is required under AS 38.50.130 and in the preliminary exchange agreement under 11 AAC 67.230., the emphasis on appraisals in the proposed regulations might lead one to believe that trades must be for equal appraised values. Some clarification or expansion should be included in the regulations expressly permitting the exchange of land involving unequal appraised values. It is the more common situation to have resource values, such as wildlife habitat, which are difficult, if not impossible, to appraise. Unequal appraised values often result although net public benefits are determined to be high.

In addition, if appraisal costs were to incur by an applicant as specified in 11 AAC 67.240(b), these costs should be allowed to be included as part of the appraised value of the lands to be offered by the applicant. This seems only fair in light of the net benefits to the state and the public which would result from such trades.

In our review of the Title 38 provisions governing trades, it also became apparent that the provisions for trades could be quite time consuming and costly and could easily discourage beneficial exchanges of small parcels. We support and would urge the Administration to support changes to Title 38 which would exempt exchanges of small parcels (such as 640 acres) from some of these requirements such as public hearings, mandated legislative review, and extensive report and notification procedures.

√ incl in SB 375

all in SB 375

If we can provide more information or clarify these points, please let us know.

Sincerely,

Patrick Pourchot
Resources Manager

PP/mc

bcc Senator Bettye Fahrenkamp
Bob Loescher

Alaska Center for the Environment
1069 W. 6th Avenue
Anchorage, Alaska 99501 274-3621

10am Friday
* officially respond to cit. adv. Board's recommendations

February 1, 1984

Senator Bettye Fahrenkamp
Senate Committee on Resources
Pouch V
State Capital
Juneau, AK 99811

* public use cabin
* notice

Dear Senator Fahrenkamp:

Thank you for keeping us advised of and allowing us to participate in your several month process leading to the introduction of Senate Bill No. 375 relating to land disposal and management. We have reviewed SB 375 and would like to offer the enclosed comments, which are confined to the land classification, planning and disposal portions of the bill. Most of our comments are keyed to the numbered sections of the bill; others refer to your December 27, 1983 document entitled "Proposed Actions on Comments and Suggested Changes--Title 38." Sections of the bill that we do not refer to we either have no opinion on or support, or we believe that our earlier comments make our position clear.

As you will see, we are pleased with most of your proposed changes and believe that if enacted they will result in an improved land disposal program. We are concerned, however, as our comments show, that despite these improvements the administration will most likely continue to dispose of excessive amounts of land, with unacceptable adverse impacts on fish and wildlife, public recreation, scenic values, water, and other public resources and uses. Consequently, we have suggested additional changes that we think might help solve some of these problems. In some cases we have suggested changes that we realize you have considered and at least for the time being rejected. We hope you will reconsider.

Thank you again for your interest in and your work on this program.

Sincerely,
Cliff Eames
Cliff Eames

FEB 6 1984

opposite view – State should own known land. Residents have a right to the land. all should be open to homestead.

Comments
on
Senate Bill No. 375
(land disposal and management)

Current policy – getting land out of agency return to State. We haven't altered that policy.

1. Section 1 - AS 38.04.005(b).

We very much support the addition of policy language requiring the department to consider and seek to minimize the effect of private use and settlement on natural resources and conditions.

We would in addition, however, require the department to consider the effect of private use and settlement on other uses of the land as well as on resources. We suggest adding to the listed resources the scenic resource and the public recreation use.

already doing all this. Value: Public vs. private recreation.

Although public recreation is mentioned later in the section, it is mentioned only in regard to the more easily accessible areas. In less accessible areas that nevertheless receive or will receive significant public use, such as the Nowitna River or Whitefish Lake areas slated for disposal in FY86, public recreation is also very important.

We recognize that it is not possible to list in the statute all possible resources and uses that might be impacted by private use and settlement. On the other hand, scenic values and public recreation are too often neglected, in spite of their importance to the many thousands of Alaskans who recreate, and in spite of the economic benefits of the recreation and tourist industries, benefits which would seem to be at least as great as those generated by the mining and timber industries.

(We would add that we are losing, through the excessive disposals concentrated in the Mat-Su and Fairbanks areas, large amounts of the accessible open space that the section mandates retaining.)

Recommendation: In line 13, insert after "fishery," the words "public recreation, scenic,"; in line 14, strike "on" and in its place insert "and uses of".

2. Section 2 - AS 38.04.005(e).

We certainly agree with the addition of language requiring public hearings, when appropriate, in the communities affected by proposed disposals.

We think it makes sense, however, to retain the existing, broader language which emphasizes the importance of municipal and local resident involvement at all stages of the decision-making process, not just the formal public hearing stage.

added +

Recommendation: Retain the existing language; add to that the new language.

3. Section 3 - AS 38.04.010(b).

Requiring the department to take carrying capacity into account in designing disposals for seasonal recreation use and low density settlement is an excellent idea. The amendment suggests, however, that the impact of only proposed, not existing, residences need be weighed. We suggest that both be considered. We also recommend that fish and wildlife, a very important resource to many low density settlers, be specifically mentioned.

Additionally, unless it is clear that high density settlements will rely on commercial firewood, timber, water, etc., there will be situations where carrying capacity needs to be taken into account in the disposal of high density

settlements as well.

Recommendation:

a. In line 8, insert after "between" the words "proposed and existing".

b. In line 10, insert after "firewood," the words "fish and wildlife,".

c. If carrying capacity could be a problem in some high density settlements, shift the new language in lines 10 and 11 to a new subsection (c) which would read: "The department shall ensure for all disposals that, where appropriate, resources such as timber, forewood, fish and wildlife, and water in the area are sufficient to accomodate the intended private uses."

4. Section 4 - AS 38.04.020(e).

a. We support removing the loophole in the requirement that the department submit an estimate of the cost of municipal subdivision ordinance or regulation compliance. Similarly, we agree that such ordinances and regulations should be complied with by the state. If compliance is required, however, the state will then have to take care not to dispose of lands in areas where compliance would create problems(such as the construction of roads in an area more appropriately kept roadless).

b. It appears that funds for the demand assessment have not always been adequate.

Recommendation: Add a new subsection (6) which would read -"for preparation of the written assessment required under (f) of this section;".

c. As entrants in increasing numbers begin to seek patents, a greater burden will be placed on the department to see that sales requirements such as occupancy and the construction of a habitable dwelling have been complied with. A specific appropriation request for this purpose, which is frequently overlooked, should be submitted.

Recommendation: Add a new subsection (7) which would read - "for determining whether persons seeking patents have complied with the requirements of sale."

5. Section 5 - AS 38.04.020(f).

a. We agree that the demand assessment should identify the demand for public services and capital improvements, including roads, associated with the market for state land. We would note that fire protection is a necessary service that can result in considerable expense.

b. It appears that with the repeal of the residency discount, a very desirable action, state land will at least for now be disposed of at fair market value. It is important that the department , now and in the future, assess the demand not for somehow discounted or subsidized state land, but for state land priced at fair market value. This will ensure, as much as possible, that not a false or inflated demand but real demand is assessed.

Recommendation: Rewrite the end of the sentence in line 11 so that it reads - "the market in the different regions of the state for state land priced at fair market value."

c. The language requiring the assessment to take into account the availability of municipal land would appear to be too restrictive and therefore result in an underassessment of the municipal land market. Even if municipal land is not immediately available, it is likely to be far more accessible and therefore desirable land than the state's, and there is no reason to dispose of state land which might better be retained in public onwership if municipal land will soon be available.

Recommendation: In line 16, delete the words "for which a disposal plan has been completed" and substitute "intended for early disposal".

d. Probably the greatest problem with the present land disposal program is the excessive rate at which the department continues to dispose of state lands, in spite of the repeal of the 100,000 acre quota. Although perhaps the department anticipates dropping many of the proposed FY86 disposals - we certainly hope so - at this time, for southcentral alone, 52,000 net acres of land(192,000 gross acres) are slated for disposal. This is in spite of increasing concern on the part of both the public and the agencies who represent Alaska's many hunters, fishermen, and recreationists.

The demand assessment is an attempt to arrive at the proper amount of acreage to be disposed of each year. Assessing demand is difficult, however, and some people feel that the assessments to date have been flawed in one way or another. Consequently, the department does not determine the amount of acreage to be disposed of on the basis of the assessment alone. How the department does arrive at this figure, though, is a mystery to many people. If the acreage amount were to be justified in writing, the department's thinking would be clarified, and the public, legislators, and others would have a basis for requesting a perhaps more rational disposal figure.

Recommendation: Add to (f) - "If the amount of land to be disposed of in any present or future year differs from the amount of the demand determined by the assessment, the commissioner shall provide the governor and the legislature with a detailed written justification for the amount of land proposed for disposal."

e. A critical result of state land disposals, especially in excessive amounts, is the adverse effect on such public resources and uses as fish and wildlife, public recreation, scenic values, and water. To date there has been virtually no assessment of the cumulative impacts of state land disposals on these values, in spite of an alarming concentration of disposals in the Mat-Su and Fairbanks areas. For example, George Gee's June 15, 1982 impact assessment specifically omitted assessing "the sacrifice of highly valued public use and resource lands, e.g., public recreation areas, fish and wildlife habitat, and timber and mining areas."

Recommendation: The department should be required to submit to the governor and the legislature when it makes its budget appropriation request, once a year only, an assessment of the immediate and cumulative impacts of proposed state land disposals. The assessment could be modeled after the SEEA's(Social, Economic and Environmental Assessment) already prepared for oil and gas lease sales, lease sales which in some instances will have fewer long-lasting effects than the developing pattern of land disposals. For areas where plans have been completed, the analysis could be somewhat abbreviated and references made to the plan.

6. Section 6 - AS 38.04.020(g).

We support the repeal of the requirement that a certain percentage of subdivision lands be made available for homesites by particular disposal methods.

7. Section 7 - AS 38.04.020(h).

We support removing the five acre subdivision lot limitation where appropriate to minimize adverse effects on resources or on other residential uses in the area.

We would caution, however, that it is necessary to consider the possible adverse effects of dispersal. With regard to all land disposals, the advantages and disadvantages of both clustering and dispersing must be weighed in each individual case.

Recommendation: The department should develop policy guidelines for determining whether in any particular area clustering or dispersing disposals would be preferable.

8. Comment 9.

We agree that public hearings are costly and that for reasons of poor attendance or otherwise are not always as effective as they might be. On the other hand, we believe that providing an opportunity for needed public hearings is sufficiently important that at least one public hearing on land disposals in the affected locale, if requested, should be guaranteed by statute.

Recommendation: Establish by statute a minimum requirement that the department hold at least one public hearing on proposed land disposals in the locale to be affected if requested by some minimum number of persons.

9. Comment 10.

We share your distrust of inflexible mandatory quotas. Nevertheless, we are very concerned over the concentration of disposals in the Mat-Su and Fairbanks areas. The program would be much more unpopular if all areas of the state had to share the burden of the land disposal program. A possible reform would be to require that in any year disposals in any region of the state could not exceed a specified maximum percentage(25%?) of the total disposals for that year, unless the legislature during the budget process waives the quota requirement in any year for any region. If nothing else this would highlight a serious and growing problem.

On the other hand, we are not eager to impact with land disposals an unnecessary number of presently pristine areas which will become increasingly popular public use areas. The real answer is a more reasonable rate of disposal. Although we have not advocated that all disposals be halted at this time(although we should be thinking ahead to the time when enough land is on the market that we no longer need the program), one sportsmen's group is calling for just such a solution.

10. Section 8 - AS 38.04.022.

We concur with your recommendation to provide additional monies for municipal grants, and support the establishment of a special state land disposal income account, especially if a substantial amount of the funds in the account are appropriated for municipal grants. Municipal disposals generally provide more desirable land for the citizens of the state and reduce disposals of and impacts on state public use lands.

11. Section 9 - AS 38.04.035(4).

We fully support your amendment providing additional justifications for the use of remote cabin permits, an alternative to fee simple disposals that we have been advocating for some time. We are concerned, however, that the time and expense involved in building a cabin will make people reluctant to take advantage of a program that does not result in ownership.

Recommendation: Consequently, we recommend that the legislature in addition provide specific authorization for the construction by the department of public use cabins modeled after the Forest Service system, a proven and very successful program. Public use cabins, while they undoubtedly have an impact, have far fewer adverse effects than do a large number of disposals in the same area. Furthermore, they are likely to generate many more user days than a much larger number of private cabins, yet the land still remains in public ownership should other uses seem more appropriate in the future. The expense of constructing such cabins can easily be justified due to the public benefits which accrue and the savings that would result from not having to prepare disposals in the

area of the cabins.

12. Section 10 - AS 38.04.045(b). current statute ambiguous — am. to reflect reality of situation

We are concerned that greater and more expensive monumentation requirements will result in higher density disposals, with possible adverse impacts, and in disposals planned not for areas that are most suitable, but for areas where monumentation already exists.

Recommendation: Return to remote parcel monumentation requirements.

13. Section 12 - AS 38.04.055.

We very much support authorizing not only easements and rights-of-way but the retention of land in state ownership to ensure adequate public use and access.

14. Comment 20.

We support your recommendation that monies be made available to complete area plans and that the department put forth an increased effort to finish them. We also recoginize that it is probably impractical to delay all disposals in areas where plans have not been completed.

Recommendation: We do believe, however, that the following language is feasible and will result in the maximum benefit from the planning process - Add to AS 38.04.065(d) "In areas where regional or area plans are underway and are scheduled to be completed within one year, actions such as land disposals which will significantly affect the area shall be postponed pending plan approval."

15. Comment 22.

We believe that there should be some middle ground between the substantial impermanency of classifications, which can so easily be changed, and legislative designations.

16. Section 13 - AS 38.05.030(c).

We support requiring sister agencies to notify the department of disposals of state land.

17. Section 16 - AS 38.05.035(b).

We support the three year limitation for receiving the preference right.

18. Comment 28.

We very much agree that timber lands should be leased, not sold, thereby retaining them in state ownership and keeping them available for other appropriate public uses.

19. Section 17 - AS 38.05.050.

We support the retention of the provision requiring land disposal sales to be held in the area of the disposal, and requiring personal attendance, and the substitution of "community" for "municipality." This discourages speculation and gives a slight benefit to local residents who are apt to have a greater real need for the land.

20. Comment 33.

As we mentioned in another context, we are very much opposed to the use of discounts and rebates in the state land disposal program. We believe the legislature made a very wise decision in repealing the residency discount, and agree that the benefits of discounts are far outweighed by their disadvantages. State land is far too valuable a public resource to be squandered, which is what happens when the state attempts to meet false demands for cheap land. Because of the disadvantages of disposing of state land, we should do so only to satisfy real needs, and should be fully aware of the trade-offs and the impact on future generations of land disposal. A better way in many instances to get raw land into private hands would be for the state to make it easier or cheaper for persons to purchase land on the private market.

21. Comment 34.

We agree that the interest rate on state land disposal contracts should not be lowered at this time.

22. Section 19 - AS 38.05.065(d).

We support the appeal and foreclosure procedure.

23. Comments 38 and 39.

We agree that $5,000/year unadvertised leases may be granting too much authority, and that maximum 55 year terms are adequate.

24. Comment 40.

The Alaska homestead program is somewhat confusing. Traditionally, homestead programs have implied payment by sweat equity. Alaska's program provides for sale as well. We believe that the state is disposing of too much valuable public land for private recreation. Nevertheless we know that the department will continue to dispose of state land primarily for that purpose. Is there sufficient flexibility in the homestead program to provide relatively small lots (by homestead standards) for private recreation in areas where year-round settlement is inappropriate?

We do not believe that the option of leasing for a period of time should be reinstated. The leasing of many parcels of land which may very well not result in ownership introduces uncertainty into land ownership patterns, ties up additional public land, and unnecessarily encourages people who are only moderately interested in purchasing state land.

25. Comment 41.

See our earlier comments on Section 9. In addition, permits, not leases, are most appropriate for remote cabins since they give the state the flexibility which is one of the major benefits of the system.

26. Section 27 - AS 38.05.127(a).

We strongly support authorizing, in addition to easements and rights-of-way, the retention of land in state ownership along bodies of water or waterways. Sales adjacent to bodies of water or waterways have a tremendous potential for

adverse impacts and conflicts. The habitat in these areas is apt to be prime, for fish of course, and for moose and much other wildlife. Because of the habitat, the fishing, the aesthetics, and the availability of the water for access, public use is apt to be substantial.

Easements are generally not adequate to protect these resources and uses. Easements are often ill-defined, perhaps not defined at all, or subject to varying interpretations, and may often provide for access only, that is, may not provide for even such a limited use as standing on the bank and fishing. The public may not know that easements have been retained. Apparently some property owners will post land in violation of reserved easements.

A far better solution is to retain these extremely valuable lands, even if doing so may in the short run be more expensive because of survey costs. Making a decision such as this because of survey costs is terribly short-sighted. We should take a lesson from British Columbia, which I understand will not patent lands within 100 feet of elevation from the shoreline, sometimes therefore a very great distance back.

Recommendation: In lines 19-23, after the words "provide for the" substitute the following for the existing language - "the retention in state ownership of a minimum of 200 feet along ocean coastlines, lake shorelines, and on both sides of waterways. The commissioner may waive this requirement and provide for easements or rights-of-way instead only after finding in writing that the body of water or waterway does not have substantial value for fish and wildlife or other environmental purposes and does not receive nor is expected to receive substantial public use for access or other purposes. The commissioner may waive all of these requirements only after finding in writing that regulating or limiting access is necessary for other more important beneficial uses or public purposes."

27. Comment 67.

Considering the controversy which still surrounds the land disposal program, we believe that citizen advisory boards could provide valuable advice prior to the formal, sometimes adversarial public hearings. Although we recognize the limited role that such boards are sometimes permitted to play, we agree that veto power would probably not be appropriate at this time.

Recommendation: Add a subsection (b) to AS 38.05.050 - "The commissioner shall appoint a minimum of three citizen advisory boards to provide advice on the disposal of state lands, including the location and amounts of such disposals. Regional boards shall be established in Anchorage, Fairbanks, and Juneau. Local boards shall be established, or existing bodies shall be utilized, in areas where planned disposals are expected to be controversial, or where otherwise appropriate."

28. Section 33 - AS 38.05.345(a).

Where in the statutes is there a requirement that notice of proposed disposals must be given? There certainly should be such a requirement.

29. Section 34 - AS 38.05.345(b).

a. We support requiring that more than one method of public notice be given. However, we believe that the department should be required to maintain and mail to a mailing list, since this is the surest method of notice for interested persons, as well as giving notice by more than one of the listed methods.

Recommendation: In line 17, insert after "given" the phrase "by mailing

a copy of the notice to persons who have asked to be placed on a mailing list and".

b. Although the department attempts to give adequate notice by advertising in the legal section of newspapers, and sometimes in addition with, for example, more prominent newspaper ads and with posters, in fact the right kind of information is gererally not made available in these notices. Few people regularly read the legal section; when they do the legal descriptions of property proposed for disposal is to most people indecipherable. Newspaper ads, media ads and posters, while advising of hearings, fail to tell people where the land is that is proposed for disposal. Consequently, there is nothing to alert them to the fact that their interests might be affected. The last sentence of subsection (b) requires more informative notice.

Recommendation: In line 27, add "including somewhere other than in the legal section of newspapers a list in lay terms of the names and locations of all of the lands to be affected."

30. Section 37 - AS 38.08.060.

If enacted, the proposed provision allowing a homestead entrant to purchase the parcel if a good faith effort to meet the occupancy requirement has been made should be rigorously enforced. Does the department have the personnel and funds to do this? We are concerned that if the occupancy requirement is relaxed people will then be able to purchase large blocks of land that would not have been offered except on the understanding that the entrants would be living on the land and would need a large parcel. Two possible unfortunate results are that more public land will have been disposed of than might have been necessary, and that the parcels are more likely to be subdivided subsequently, resulting in greater density than was originally intended.

31. Comments 82 and 98.

a. We believe that the majority of the legislature and the public do not think that our valuable public lands should be disposed of for speculative or investment purposes.

Recommendation: Existing restrictions on the subsequent sale or subdivision of state land should be made applicable to all of the non-commercial disposal methods.

b. When a considerable amount of land which might better be retained for multiple public purposes is being disposed of, it is hard to justify allowing an individual to obtain several parcels.

Recommendation: Existing restrictions on the number of times an individual can participate in non-commercial disposal programs should be extended. An individual should not be allowed to obtain more than one parcel of non-commercial land, regardless of the method by which it was obtained.

32. Comment 93.

We agree that existing authority to grant cabin permits for hunting, fishing, or other guiding activities is adequate.

Cliff Eames
Alaska Center for the Environment
February 1, 1984

TO PAT

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L. ANDREW ROBINSON

July 11, 1983

REPLY TO: Anchorage

The Honorable Bettye M. Fahrenkamp
Alaska Senate, Resources Committee
Pouch V (MS 3100)
Juneau, AK 99811

Re: Coal Prospecting Permits
Statutory Amendments

Dear Senator Fahrenkamp:

I had been in touch with Commissioner Esther Wunnicke's office earlier this year concerning the need for an amendment to the coal prospecting permit statutes to enlarge the time period allowed for exploration under a permit.

The Department of Natural Resources had prepared a proposed amendment to AS 38.05.150(c) to expand the prospecting period, and this was to have been submitted along with other proposed changes to Title 38. Last month I was advised that the Administration had changed its mind and decided for the time being not to submit the proposed list of Title 38 amendments, in which this proposal was included. I am, therefore, contacting you in the hope of enlisting your support in obtaining this needed change in the statute. It is my understanding that if this amendment were introduced during the next legislative session, it would have the support of the Department of Natural Resources.

This amendment, enlarging the time period for exploration under permit, is needed because of the substantial start-up time needed for projects in Alaska, the relative inaccessibility of the areas being explored, and the relatively high risk involved in Alaska development projects. Because the proposed amendment will encourage investment in Alaska and the development of our

important coal resources, it would appear to be in the best interest of the State.

Many potential investors are concerned about committing substantial expenditures to coal exploration and development projects in Alaska when existing law allows only a limited four-year period for prospecting permit holders to convert to a lease. Most serious exploration programs take six to ten years before a decision can be made concerning the economic feasibility of production. Placer Amex's experience with the Beluga coal project is a good example. The Beluga area is much easier to explore than other prospective areas, such as the Susitna area, because of the existence of extensive outcrops. Nevertheless, it took 15 years to explore and delineate the Beluga field, and more than 20 years will have elapsed before the first Beluga coal reaches the marketplace.

Attached is a copy of the version of the amendment as drafted by the Department of Natural Resources prior to their decision not to introduce a bill to make amendments to Title 38.

After you have had a chance to consider this, I would appreciate the opportunity to confer further with you or members of your staff concerning this needed legislation.

Very truly yours,

HARTIG, RHODES, NORMAN,
MAHONEY & EDWARDS

By
John K. Norman

JKN:bw
Enclosure

Tanana Chiefs Conference, Inc.

Doyon Building
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Fairbanks, Alaska 99701
Phone (907) 452-8251

September 12, 1983

Patrick Pourchot
Senate Resources Committee
Legislative Information Office
1024 West 6th Ave.
Anchorage, Alaska 99501

Dear Pat:

The Tanana Chiefs Conference appreciates the opportunity to comment on the Title 38 review project. As you know, our region is highly affected by this title. Our comments focus on land disposal, land classification, and land planning as requested. The "demand" for the type of land needed among the Native and non-Native factions of our communities simply cannot be met by the state land disposal system. State land is simply not located close enough to our communities to allow those people to live on and still participate in the communities. Instead, we have a situation where land disposals, for the most part, increase the number of users of diminishing natural resources, thus increasing competition. In time, the new communities will also be competing for state money and services. The following suggestions are aimed at reducing land-use conflicts and increasing public input on what happens to their state lands.

a) "Best Interest" Findings 38.05.035(a)(14)

We have two major suggestions in this area:

1. All sales, leases, permits, and other land and resource disposals should be subject to best interest findings. Currently some of these are excluded from the mandate, such as permits, small timber sales, and shore fishery site leases.

2. The best interest findings should be improved. Currently for land disposals, a written statement that some person or persons working for DNR believes an action is in the best interest of the state, along with scanty notation of conflicts, is called a "best interest" finding. These must be upgraded and statutorily required to address and balance social, environmental, and economic benefits and impacts of existing land-use and the proposed action. This would improve ADNR decisions as well as provide more information about those decisions to the public.

b) Public Trust Land

The emphasis these days seems to be on sales of state land to the public for private use. Our state constitution, as well as the

statutes, mandates state land to be managed providing a balance between private and public uses. Title 38 should contain language which requires ADNR to assess the public land supply and projected demand for at least 20 or 30 years. Perhaps the establishment of a Public Trust Land Bank would assist in this balance and operate similarly to the current land disposal bank.

c) Repeal 38.05.035(c)

38.05.035(c) allows disposal of state land under certain circumstances without the classification process. We strongly feel that 38.05.035(c), which allows the circumvention of the planning and public participation activities of the classification process, should simply be repealed.

d) Amend 38.04.020(f)

We would like to see this language changed in two regards:

1. 38.04.020(f) should be amended to require that land previously offered, but unsold, be included in ADNR's annual demand assessment. Since only a small fraction of state land offered is actually sold, this amendment would very definitely reduce land-use conflicts by reducing the additional acreage placed in the Land Bank per year to accommodate projected demand. This single change could reduce our region's problems tremendously.

2. Accurate statistics of all aspects of disposal sales should be available to the public every year. This would provide some of the basic tools all of us as Alaskans need in order to make decisions about land sales.

e) Amend 38.05.079

The remote cabin permit program could affect our communities as much as the land disposal program, and yet could be allowed on almost any classified land and be excluded from "best interest" findings. AS 38.05.079 should be changed to allow remote cabin permits only on lands specifically identified for that purpose. If they were appropriately changed to leases rather than permits, they would then be subject to .035 "best interest" findings.

We certainly hope that these suggestions are hereby considered in your study.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

William C. "Spud" Williams
President

WCW:LJ/1859m

J1g2

Alaska
Professional Hunters Association, Inc.

P. O. BOX 4-1932
ANCHORAGE, ALASKA 99509 Phone (907) 276-6914

October 14, 1983

Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee
Alaska State Senate
Juneau, Alaska 99811

Dear Senator Fahrenkamp,

I am in receipt of several letters requesting input from the APHA reference the land disposal legislation under consideration by your committee. I tried to attend both the Fairbanks and Anchorage meetings, but weather was a problem on the former and business commitments with the fall season kept me from the second meeting. The fall time is almost impossible for any of us in the guiding industry to get away from camp.

I spoke with Pat Pourchot in Anchorage and he advised me that these comments would still be timely.

Within the guiding industry we have several major concerns about the land disposal programs. Some of these concerns are compatible with public feelings, and some are not owing to the very nature of our business. Our primary concern is one of habitat for game animals. As our entire livelihood relies on good game populations in the areas we hunt, our first and foremost concern must be to do everything possible to maximize not only the quanity of game animals in the areas we hunt, but also to keep the quality of the game animals present up to standard. Quality means not only to have a fair number of 'big' trophy sized animals available, but also to provide for proper recruitment within the game population to replace those animals harvested or otherwise killed by predation, winters, etc. In addition, the areas hunted must represent a 'wilderness Alaska' to our clients.

Experience has shown us that of the major factors affecting game populations in Alaska, the PRIMARY man-controlled factor is access. Earlier programs which allowed six remote parcels per township resulted in approximately one cabin site/airstrip (access) every 5/6th of a mile along the stream or river in question as the steep terrain away from the river caused all the 'location' pressure to occur along the point of access, i.e. the river or stream bed. Such settlement and opening up of areas such as the Eastern and Western Alaska Range mountains, the Talkeetna mountains and other areas not only put a real hardship on the guides in the areas, but also resulted in opening up certain areas so that when all the settlement was completed those who settled there found themselves not in a pristine area as they had envisioned, but often surrounded with neighbors who found that the only stretch of river that would support an airstrip happened to be that same stretch as his neighbor, etc.

Alaska
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For this reason we feel very strongly, and would recommend to your committee that a good long look be taken at declaring certain areas of prime game habitat 'off limits' to settlement of any kind. Now that the national park system has tied up so much of the really top game area in Alaska it is doubly important that Alaska make a real effort to keep the areas left open for hunting as productive and wild as possible. If this smacks of 'Sierra Club' I can only say that no one, not even staunch preservationists, are as concerned about keeping Alaska's game populations at a high level as is its guiding industry.

The second major concern we have as an industry is in direct contradiction to our major concern in some aspects. That is, we need a place to operate from in these areas where we can build something permanent or semi-permanent to store gear and equipment for our hunting operations. To date, there has been some accommodation for the trappers in Alaska who can get a cabin permit for their business related activities, but nothing has been done for the guides, who even more than the trappers, contribute substantially to tourism and good will in Alaska. Many guides have applied for permits to erect a cabin, or a lease to do so and then been caught in the middle when the rules and regulations changed. A one-year permit is next to useless and works against all the good points of the registered guide area system that we operate under. That system encourages guides to take care of their area - and has all but eliminated the 'rape and run' tactics which brought our industry such a bad name several years ago. Today's guide/outfitter had damn well better think about next year - or else there ain't gonna' be no next year for most of us! ANILCA legislation has put so much pressure on those areas left open to hunt that unless we 'manage' our assigned areas in harmony with resident hunting pressure, fluxuations of game populations and realistic game management, there's not much future for us.

We would like to see some sort of provision made for guides licensed to conduct business in an area to be provided a permit to erect at least a base camp within that area. Restrictions as to quality and not defacing the countryside should be part of such provision, as well as some checks and balances to insure that a guide license is not misused to put someone into the wilderness land business. The program should be aimed at providing the legitimate guide/outfitter who is conducting a business in a lawful and ethical manner a legal means of establishing a base camp to enable him to do business as he is licensed to conduct by the State of Alaska.

As mentioned above, I recognize that these two concerns are not entirely compatible, yet there are many improvements which could be effected to help the situation yet protect Alaska's prime gamelands. We would welcome the opportunity to testify at upcoming hearings regarding this issue. Thank your for the invitation to voice our comments on an issue near and dear to each of us.

Sincerely,

Lynn Castle

Lynn Castle, President

SENATE

S-file w/ PC

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

BILL SHEFFIELD, GOVERNOR

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Pouch 7-005
Anchorage, Alaska 99510
Phone: (907) 276-2653

December 8, 1983

The Honorable Vic Fischer, Chairman
Senate Committee on State Affairs
1024 West 6th Avenue, Suite 204C
Anchorage, AK 99501

Dear Senator Fischer:

The Division of Land and Water Management (DLWM) has received a copy of your October 28 letter to the Senate Resources Committee commenting on Title 38. The specific comments have been reviewed and responses to the comments by DLWM are as follows:

1. Disposal Policy - A clear legislative policy on land disposal would be in the best interest of the State. The one attempt by the Legislature to establish a quantitative measure was repealed two years later (Ch 85 SLA 1979). The programs change regularly, and the lack of consistency reduces administrative effectiveness. A basic problem is the complexity of the land offering process and the many coordinated actions which are required, such as survey, access, ownership, and public participation.

2. Compliance with Local Ordinance and Regulations - The Department is on record as desiring to comply with all local requirements. I hope the Legislature will make the implementation of this policy possible by funding necessary capital improvements. We are also working with individual boroughs and cities to arrange for access development. Pre-built access is a better deal for the State. It gets a higher sales price and it allows the user to pay.

3. Fish and Game Concerns - Compliance with this suggestion in all cases would mean that the State would never dispose of water frontage. However, the Department of Fish and Game (ADF&G) stated that this suggestion did not mean that the State should never sell water frontage. DLWM believes that current practices and policies reserve adequate access and public use areas. It is important to protect public access and use areas, but fee ownership requires additional survey expenses that are not always in the public's interest.

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4. DNR Budget - I totally agree and hope the Finance Committee considers your suggestions. Our record system computerization must be completed if we are to effectively manage State lands.

5. Anchorage Entitlement - I agree that the Municipality should be given deficiency payments under AS 29.18.208 to satisfy its municipal entitlement. I appreciated the opportunity to meet and discuss this matter with you in detail.

6. Public Use Cabins - This is a good idea that deserves further study, including a cost analysis.

7. Trespass - The "duck shack" problem is one that is currently undergoing extensive review. A particular problem is the mandatory permits required by CH 85 SLA 1979 and the Refuge Acts for existing structures. Despite this problem, duck shacks are a high priority. For your information, the trespass action cited in your letter was taken only after numerous public complaints. The land in question is public interest land reserved for public use. Complaints were made that the occupants were denying public access to public land and water. A stated priority for trespass abatement is where there are complaints from the public. We have no complaints from the public that duck shacks are restricting or denying public access. However, I am otherwise in agreement with your recommendations.

8. Clean-Up - While I agree with your general statement, Remote Cabin Permit regulations have been adopted (see 11 AAC 67.700 - .790), and considerable land has been classified since 1979.

I look forward to your continued participation in this valuable effort.

Sincerely,

Tom Hawkins

Tom Hawkins
Director

cc: Esther Wunnicke, Commissioner
Senator Fahrenkamp

fairbanks north star borough

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M E M O R A N D U M

TO: Dawn D. Mach, Director, Dept. of Land Management
FROM: Richard S. Navin, Land Management Officer, Dept. of ~~Land~~ Mgmt.
RE: Comments of Title 38 for Senate Resources Committee
DATE: September 14, 1983

I have completed review of Title 38, considering impact on the Borough from a Land Management point of view, and have the following comments:

38.04.020(e.4) requires that a request for appropriations for land disposal each fiscal year must include an estimate of the funding required for "...engineering design work, and construction of access roads and capital improvements..." which are required by municipal platting authorities "...under A.S. 29.33.150". In lieu of such estimates, a schedule for obtaining same shall be submitted. This provision for deferring submittal of information necessary to make a valid disposal decision is harmful to the State, which will eventually be requested to provide funding, the Borough which will continue to be deluged with requests for assistance from the recipients of State land, and the Department of Land Management which will be the recipient of numerous requests for individual rights-of-way and modification of existing rights-of-way which have been issued, but prove impractical or impossible to construct.

Such information required must be submitted with the Governor's budget so that all concerned can make an informed decision as to the proposed disposals. All portions of the cited subsection after "A.S. 29.33.150" should be deleted.

38.05.127 deals with access to navigable or public waters. The Department of Natural Resources is required to reserve access easements to and along public and navigable waters prior to any disposal of any interest in State land, unless regulations or limitation of such access is necessary for other beneficial uses or public purposes. In order to satisfy this requirement the Department shall, "under regulations, determine if the body of water or waterway is navigable water, public water, or neither" [38.05.127(a1)]...and "The Department...shall adopt regulations implementing..." these requirements [38.05.127(b)].

Although this section was adopted by the Legislature in 1976, to date there are no regulations which establish criteria to be used in determination of the status of individual water bodies. At present, 11 AAC 53.310 asks for solicitation of comments from agencies and reliance on opinions or comments

from other sources. As a result, some lands conveyed to the Borough have been impressed with easements to and along seasonal drainages as well as headwaters of fish spawning grounds and other commonly accepted "public" waters. These reservations appear to have as their source, USGS 1" to 1 mile quadrangle maps. Where a blue line is shown, an easement is reserved.

It appears that the Department has no intention of defining criteria to be used to implement Legislative intent in this matter, and that such criteria must originate with the Legislature by statute. Hearings should be held to determine the parameters of public interest and the extent of linear and access easements to such linear easements required to protect those interests. The results of the hearings will determine the proper legislative criteria.

A general cleanup of language is called for in some areas where land disposal determinations are called for. 38.05.070(b) delegates authority to "the director, with the approval of the commissioner,..." to determine lands to be leased, and conditions, yet 38.05.050 provides that "...the commissioner, upon the recommendation of the director, shall determine the land to be disposed of for private use."

This type of defect is simply rectified by editing, which will achieve uniformity throughout the Title.

RSN/kea