ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2859 SRES SB 375

2859

SENATOR
ARLISS STURGULEWSKI

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Alaska State Legislature

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Senate

M E M O R A N D U M

September 6, 1983

TO: Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee

FROM: Senator Arliss Sturgulewski
Senate Resources Committee

RE: Title 38 of the Alaska Statutes

Thank you for an opportunity to comment on the staff work being undertaken dealing with Title 38 of the Alaska Statutes. I think that a review of the title is extremely timely and I'll look forward to hearing the dates of scheduled committee meetings regarding the subject. As early notice as possible will be helpful as the fall rush seems to be starting.

I would hope that Pat can take a look at the procedure currently used by the Department of Natural Resources in the area of demand assessment. I've raised a number of questions over the procedure that was used a couple of years ago and would like to know what the present approach is and how it's working. I think it would be extremely useful to contact municipalities and boroughs, particularly the Kenai Peninsula Borough, the Matanuska-Susitna Borough and the North Star Borough as well as the Municipality of Anchorage, to see what impact state disposals are having on them. It seems to me that the state can in some cases create unwarranted competition with the borough development patterns as well as borough disposal plans.

Another area that needs review is how we are handling land trades. Currently the administration has a great deal of flexibility. At one time I considered developing legislation that would call for all sales over 640 acres to be brought before the legislature. Some idea of the numbers and complexities of anticipated trades might be helpful in determining whether or not this portion of the statute needs strengthening.

Without question there needs to be a major look taken at the interrelationship of the various land disposal programs, particularly in light of court decisions dealing with residency. As a senator representing an urban population, I have had surprisingly few comments, either positive or negative, directed to me regarding specifics of the land disposal program. We may gain valuable input at your committee meetings if we are able to get sufficient publicity about dates and the fact that we would like major input into the general question of the state's role in land stewardship which includes the disposal programs.

Thanks for an opportunity to comment. I would hope that I can add further specifics as committee work progresses.

cc: Pat Pourchot
Margo Waring

Northern Alaska Environmental Center

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September 16, 1983

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

Dear Pat:

Thank you for the opportunity to offer comments on the review of Title 38. Our comments focus on land disposals and land classification as we look towards some form of cohesive statewide plan within which the disposal system could function in an effort to avoid many of the problems developing between the state government, borough governments and citizens.

Firstly, 38.05.035(a)(14) could be amended so that all sales, leases, permits, and resource disposals are subject to reformed "best interest findings." We would like the best interest findings to be improved to address social, environmental and economic benefits as well as impacts on land use. "Critical habitat" should be defined under this section.

"interest of the state will be best served"

The state Constitution mandates a balance between private and public uses of state land. Title 38 should require ADNR to assess the public land demand for future as well as current generations.

38.05.035(c) should be repealed. All disposals should proceed through the planning and public participation activities of the classification process. exemption preference rights to correct errors

38.05.035(f) could be amended so that land previously offered, but remaining unsold, is included in ADNR's annual demand assessment. Also, accurate statistics should be available to the public on all aspects of disposal sales. This information is currently not available to the public in an organized and useful format. Without accurate information, how can the public be expected to make reasonable decisions?

38.05.079 should be amended to allow remote cabin permits only on lands specifically identified for that purpose. A change to a lease system from a permit system would bring the remote cabins within the scope of "best interest" findings of 38.05.035.

I hope that these suggestions will be of value to the committee in its review of Title 38.

Kindest regards,

Bob Warren

Robert D. Warren
Executive Director

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
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Official Business

September 9, 1983

Senator Bettye Fahrenkamp, Chair
Senate Resources Committee
1024 W 6th Avenue
Anchorage, Alaska 99501

Dear Bettye:

You have asked for my comments and suggestions on state land management and disposal practices and areas of concern to be addressed by the Resources Committee. Here they are.

In general, I agree that it's particularly appropriate for the Committee to undertake a review of the program at this time and make efforts towards cleaning up confusing and ambiguous statutes governing state land management. An independent overview is long overdue and is crucial to a continued land disposal program that is appropriate and equitable for all Alaskans.

Specifically, I'd like to see the following concerns addressed during your overview and subsequently in statute, should that appear the proper course to take.

1. DNR POLICY GUIDELINES. We should request greater clarity from DNR about their guiding policies for land disposals. Often it seems ad hoc decisions are made and no overall strategy is being followed. In the past, DNR has inadvertently scheduled disposals of sites previously selected for marine parks, native allotments, and rights-of-way for part of the Iditarod Trail. Such mistakes shouldn't happen with coordinated policy guidelines in place. Basic policy questions need to be addressed by DNR such as:

- what public purpose is DNR trying to meet with the program? (that should determine how much and which lands they offer).

- how should DNR decide how much of which lands should be disposed of when?

- how are those decisions coordinated with all the other land

management decisions the department makes?

- how are they coordinated with land management decisions other state agencies make (ie. DOTPF, DOA, etc.)

- A particularly thorny problem is DNR's policy on disposals in remote lands.

How can DNR rationalize and apply the policy of no disposals west of the Alaska range?

Why did DNR develop this policy and how?

What will that mean for disposals in the Mat-Su valley and near Fairbanks?

DNR's land disposal policy literally shapes the future for all Alaska from settlement patterns to mineral development (or no mineral development) These policy decisions appear to be made in the dark, with little or no public input, and virtually no critical analysis. DNR needs to make it's policies a lot clearer if we are to evaluate them.

In addition, DNR should cease making "in-house" needs assessments and other crucial policy decisions. Often, when DNR holds extensive public hearings on policy and land management issues, it appears the script has been set in advance. Even though there is adequate public input, there is no apparent agency response to it. The decisions are already made by the data presented and the nature of the questions asked. Using independent research and analysis by a group with no personal or professional stake in land disposals, and reporting to the Commissioner and not the disposers, could help correct DNR's current myopic basis for policy development.

2. INFORMATION AND ACCOUNTING. Statutes and regulations governing land disposals programs should require enough accounting to provide data sufficient to answer significant questions about the programs. Among the questions I believe the state should review routinely are:

- How many individuals have applied for state land disposals?
- How much money does DNR collect each year in application fees?
- How many parcels remain in the hands of the original purchaser?
- How many parcels remain untouched or undeveloped since purchase?
- How much land (per acre) has been disposed of into how many hands? What is the maximum number of acres/parcels allowed to to an individual, by program?
- What is the total cost to the state to administer the land disposal program including survey, purchase, advertising, staffing, printing, customer service, billing, processing,
- payment division staffing, etc?
  What is the total amount of revenues received from rents, application fees, and payments?
- What effect has land disposals had on recreation and tourism

development? Subsistence? Commercial and sports hunting and fishing?

- How many parcels have been sold on the private market and what is the average profit made per acre over what period from purchase price to resale price?
- How much was the land worth at the time of disposal and how much has it appreciated in value, by year, since then. How much does the state "save" therefore, by delaying or greatly slowing the disposal process?

I do not understand why it hasn't been possible to establish an inexpensive automated record-keeping system for basic land disposal data. Whatever the reasons, it is imperative we have such a record-keeping system in place before we proceed with new disposals.

3. LOCAL CONTROL. Statutes and regulation should be changed to allow greater opportunity for local government decisions and suggestions regarding potential land disposals in their area. Local control needs to be beefed up.

A way to do this might be to require DNR to follow local comprehensive plans as a matter of policy unless unusual circumstances prevent this (exceptions need to be allowed for).

4. MUNICIPAL/BOROUGH DISPOSALS. DNR should assist municipalities and boroughs with disposal of their lands. Doing so would make available to the public some of the most suitable land remaining in public ownership (future disposal was one of the main uses for which the boroughs selected their lands), and help shift some of the political demand for more disposals off the state and on to local governments.

5. ECONOMIC IMPACT REVIEW. The committee's overview should include an economic review of the impact of state land disposal programs on state revenues, local taxation, property values, mineral exploration and development, recreation, hunting, fishing, construction, revenue sharing, local government services, environmental pressures, and community relations. What are the hidden costs and benefits of the land disposal program, particularly future fiscal costs to the state and municipalities? Are we committing ourselves to patterns of development that we won't be able to afford?

6. FIRE SUPPRESSION. On a similar point, we need to consider the consequences of remote disposals on forest fire fighting costs - the state gives the highest level of fire protection to settled areas. This is much more expensive than lesser protection levels and usually, because the terrain and vegetation make it possible to stop large fires, requires protecting areas much larger than actual settlements. To complicate the matter further, some areas and resources benefit from occasional fires. We need to be careful that we do not inadvertently commit ourselves to fire suppression policies that are unnecessarily expensive and ecologically unsound.

8. SURVEYING. In a June 29 letter to Gov. Sheffield, Commissioner Wunnicke discusses critical funding problems for cadastral land survey. Current statutes should contain provisions requiring adequate surveying before state owned lands are disposed of. Included in this provision should be means to address grievances when a survey was incomplete or in error and assurances that surveys will continue on an ongoing basis until all state owned lands are adequately accounted for, regardless of the state's current intent for the lands in question. As you know, lack of proper surveys presents a myriad of problems to the state from land disposals, to municipal entitlements and to native allotments. Alaska must not recede from its responsibility to properly survey its lands.

9. PROPERTY LAWS. State laws should be amended to allow property owners more flexibility in the manner in which they hold property in common. Tenants by the entirety (husbands and wives) should be repealed and joint tenancy (with it's common law rights of survivorship) should be reinstated. Provisions for joint tenancy (with rights of survivorship) and tenants in common (without rights of survivorship) would allow Alaskans more options in land ownership than the current choice between tenants in the entirety or tenants in common.

Along the same lines, the Division of Land should develop a program where several taneants may own and use a remote parcel site in common for recreational purposes.

10. RECREATION CABINS & REMOTE PARCELS. Consideration should be give.. to having the Division of Parks begin a public-use cabin program, similar to the Forest Service's. Many people who want to use remote lakes for recreation might find that such cabins satisfy their needs. The program would cost something to administer but would take in some revenue. This should considerably lessen pressure for land disposals on attractive recreation sites and will allow the state to permit broad public use of these sites rather than limit that use to a few individuals.

Short of a state operated remote recreation cabin program, the best and most cost effective way to provide recreational cabins is to let the people build and maintain them themselves. State law might be amended to allow several families to own recreation sites in common, with adequate protections for each owner's interests. I believe many Alaskans would take advantage of a program that could allow them to develop a recreation site at a quarter the cost. Such a program would allow a much more efficient use of state owned remote recreation land and help Alaskans develop these sites in the least environmentally disruptive manner.

11. STATEWIDE TRAILS SYSTEM. Management and designation of trails on state owned land continues to be a problem. Basic management authority for statewide trails should be addressed in legislation directed toward state land management policy, particularly when trails and trail-head rights-of-way are routinely included in disposals.

In addition, land disposals should have appropriate conveyance language to protect the public's right to use trails and rights-of-way included

in parcels passed into private ownership. DOTPF and DNR (specifically the Division of Lands and Division of Parks) should coordinate efforts to identify, survey, and catalogue known trails and assure their rights-of-way are protected with adequate conveyance language, or better yet, to not dispose of land bordering or crossing public-use trails.

12. PUBLIC HEALTH AND SAFETY. DNR should assess public health and safety concerns during the process of identifying lands for disposal. These concerns should go beyond normal leaching and sanitation considerations and address issues such as land disposals in areas where transportation is minimal and known to be extremely hazardous. Unless we can provide adequate search and rescue response in a remote area, we should refrain from disposing of land in such a way as to increase the use of the area beyond a citizen's ability to access the areas in relative safety or beyond our ability to provide assistance in an emergency (or at least retrieve the bodies).

Current plans for land disposals on Perry Island in Prince William Sound, for instance, seems to ignore the state's responsibility and/or liability for offering "free" land that requires Alaskans to journey into extremely hazardous waters by boat or airplane in an area with virtually no search and rescue response capabilities. The same could said for suggested disposals along the backside of the Kenai Penninsula.

13. INTERFACING STATE AND LOCAL DATA. Statutes or regulations should require the state to use some identifying number in common with local governments to designate land disposals. Currently, Alaskans who purchased land from the state cannot call their local borough offices to obtain an estimate on their tax bill using any of the state's numbers to identify the parcel (i.e. ADL number, property description, parcel number). This is not only frustrating to all parties, it has resulted in state land disposals not being entered in local government private property owner records, causing loss of tax revenues and considerable confusion on the part of the public.

14. RESIDENT DISCOUNTS. The overview should address and identify effects of the Supreme Court's decision regarding resident discounts. How has this affected the number of applicants? Can one estimate how this will affect the number of defaults on purchases? Have Alaskans been prevented or limited in their selection due to loss of the discount? Does the state have any plans to address the loss of discount privileges for Alaskans who were unable to take advantage of the program while it still applied? A land disposal that gives precedent in choice (such as having a 30 day filing period with the first 10 days open only to residents who have yet to use their discount or participate in the program) may be an appropriate way to mitigate some of the lost opportunity.

15. LAND DISPOSAL BANK. Finally, I personally would like to see DNR greatly reduce the acreage in its proposed land disposal bank. DNR appears to be maintaining an average of 100,000 acres for sale at any given time, in spite of the legislature's withdrawal of the 100,000 acre quota. We are disposing of too much land too fast without adequate review of the process or knowing how it affects Alaskans in the long

run, how much it costs the state, and whether it is either appropriate or affordable to pursue a program of disposing of public owned land forever into private hands.

I believe a real need exists in Alaska for affordable, livable land. We should address that need in a rational and workable way with a real commitment to providing Alaskans the means to obtain the land they need. The current land disposal program isn't the way to do it. It's kind of a cheap shot when we really need a class act.

Thanks again for giving me the opportunity to comment and offer suggestions for the committee to pursue in it's overview. I hope to work closely with you on this over the interim.

Best regards,

Senator Vic Fischer

cc: DNR Commissioner, Esther Wunnicke

/gb

COOPERATIVE EXTENSION SERVICE
UNIVERSITY OF ALASKA, USDA & SEA GRANT COOPERATIVE

University of Alaska, Fairbanks, Alaska 99701

September 12, 1983

Senator Bettye Fahrenkamp
Alaska State Legislature
Pouch V
State Capital
Juneau, AK 99811

Dear Bettye:

Attached is a Cooperative Extension response on Title 38 relating to your recent request for review. Because of relatively short time for response and staff schedules, our effort should be considered in the context of a beginning draft.

After your review we would be very pleased to elaborate where you feel important. Alan Epps is a primary contributor to this response. Kirk Baker, Resource Economist, has also contributed.

Thanks for your consideration. We'll look forward to further dialogue after your review.

Sincerely,

Jim Matthews

James W. Matthews
Director

JWM/ml

Attachments

REVIEW OF TITLE 38, STATE OF ALASKA STATUTES

A preliminary report to the Senate Resources Committee
of the Alaska State Legislature

Alan C. Epps
Professor, Natural Resources
University of Alaska

In this preliminary report, only those sections or subsections needing address are listed and commented upon. Other sections could be justified if you wish.

38.04.020. Land disposal bank. The use of the term "bank" has potential confusion with the Land Bank, Title 9 of ANILCA. If the section is retained, possibly the term "pool" would be more appropriate. Better yet would be appropriate legislation to meet the intent of Title 9 of ANILCA so that the State can participate fully.

(c) The basic motivation for this section seems unnecessary and, in any event, is contrary to sound resource assessment and management. It is not based on today's real needs, but on yesterday's presumed needs, which even then were unsubstantiated.

(d) The term "remote" is a misnomer only applicable at a given point in time. It implies a committment on the part of the State to retain the remotness of parcels. This may or may not be possible as we move into the future. The term "remote" should be defined in law so that there is no question to the meaning, or the term should be changed.

(g) This section should be dropped. Disposals should be based on resource assessment, planning objectives established locally with local quantifiable needs; not arbitrary percentages established completely out of context by the legislature.

(h) This section should be dropped. Soil conditions and/or other resource values may indicate greater than five-acre parcels.

38.04.040. Availability of university land.

Actions last year seem to have changed this section.

38.04.045. Survey and Subdivision.

(q) Contradicts 38.04.020(h). The wording in 34.04.045 is preferable.

38.04.065. Land use planning and classification.

(b)(6). This should be reworded to read, "Consider the supply, resources, and present and potential use of land under State and other ownership within the area or region of concern."

38.04.070. Management categories.

(1) "State public...state forest reserves, reindeer reserves and state wildlife reserves..."

By adding reindeer reserve, the state would recognize the three major low-intensity, large area land uses in the state. In all three, the intent is to bring equality in the planning process for consideration of resources values.

38.04.910. Definitions.

(4) "'multiple use'...it includes as under 38.04.065..."

This simply would tie the definition of multiple use back to the title.

(10) "'sustained yield'...in perpetuity of ((a high)) at least an average level annual..."

By changing the wording here, a true recognition of what is happening would be presented. Without the change, there is an implication of more intense management for most resources than State practices, or is likely to implement, in many cases.

38.05.020. Authority and duties of the commissioner.

(b)(5) "not withstanding...if he finds that compliance with the requirements is or was prevented by reason of war, riots, State government inability to respond or act of God."

A shift in State policies may dramatically alter investment strategies of individual investors, particularly in the early years of a resource development effort. A delay in building access which the State plans or a shift in loan amounts or interest could dramatically alter an individual's ability to comply and would be beyond the individual's control.

(b)(6). Recent judicial determinations have changed this one.

38.05.035. Powers and duties of the director.

(6) This one restricts agricultural disposals to lottery, which may not always be the best way.

38.05.057. Disposal of land by lottery.

(c)(3) The regulation on experience, is it still valid following the Point MacKenzie litigation?

38.05.058. Land discount program.

What is the State's position on this relative to the Zobles case?

38.05.058. Limitation on purchases of agricultural land.

Why limit the number of parcels one might own? If limited, it should only be from the state so that an individual could buy any number from other individuals.

38.05.069. Preference to persons for agricultural purposes.

The preference right is a questionable principle. If retained, it should have no upper acreage limit.

38.05.070. Generally.

(c) The 55-year lease is questionable. Ninety-nine years is a standard on many federal lands. The length is needed to allow for amortization of range improvements. A key need on leases is required use. The state should not allow one to hold a lease if they do not use it to a predetermined use.

38.05.075. Leasing procedures.

Need a statement which says that the value of a lease shall be determined based only on the resource value being leased.

38.05.077. Classification and disposal of remote parcels.

See discussion under 38.04.020(d).

38.05.079. Remote cabin permit.

See discussion under 38.04.022(d).

Review of Title 38, State of Alaska Statutes

by Kirk Baker

Statutes are general in most cases with regulations allowed by the Director or Commissioner. In most cases, this is desirable as it takes the legislature out of direct administration. Exceptions might include:

Section 38.05.050. Limitations and conditions should include a provision that no sales would be made for residences, including leasee preference sales where it is apparent the residence will be on a 100 year flood plain.

Section 38.05.105. With present interest rates, potential for inflation, and possibilities of more beneficial uses, rents should be considered for adjustment at more frequent intervals.

Section 38.10.050. When land is available for entry in open unplotted areas for agriculture or other uses larger than a 5 acre homesite, the entrant should select land from within 40 acre or larger size blocks of the Alaska Coordinate System for identification and as a check of prior private ownership.

9/8/83

(1)

eklutna INC.
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ANCHORAGE, ALASKA 99501

November 17, 1983

Bettye Fahrenkamp, Chairman
Pouch V
Juneau, AK 99811

Dear Bettye:

Thank you very much for the opportunity to comment on the Title 38 revision process. I've tried to key my comments to your October 31, 1983, draft to expedite review.

38.04.005	I wholeheartedly agree. I also feel these goals and objectives need to reflect a statewide perspective and a long term policy direction. We also need to determine the role of Alaska's public lands in Alaska's future.
38.04.010	I agree that this goal should be retained and strengthened.
38.04.020(e)	The budget cycle has always been a problem. I suppose you could budget total cost as a capitol item.
38.04.020(3)(4)	This section should be deleted.
38.04.020(f)	This provision has never been implemented in the way it was designed to be. It can't be done on a statewide basis. It should be done at a regional or even subregional level. It should be part of DNR's regional planning process. I think the process should be retained but modified to provide some useful information.
38.04.020(g)(2)	It may be appropriate to give DNR more supervised discretion.
38.04.020(h)	Public necessity must also play a role. Mere desire to own a larger parcel may not be sufficient justification, unless we're just

	trying to "get rid" of the land. Five acres is probably large enough for most uses.
38.04.020	I agree with limiting subdivisions in remote areas.
38.04.020	Public hearings are required by Article VIII., Section 10 of the Alaska Constitution. I am not sure it needs to be repeated here.
38.04.020	This provision should probably not be in statute. These disposal goals should be developed through the regional planning process and the need assessment as discussed earlier.
38.04.021	This program should be fostered through legislative budgetary support.
38.04.025	This provision can probably be combined with 38.04.020(f)
38.04.035(4)	Leases should only be used in trespass situations after the trespass has been dealt with. A lease should not be the reward for trespass.
38.04.040	No comment.
38.04.045(a)	This provision should be made consistent with 38.04.020(h).
38.040.045(b)	I feel that disposals within local governments should comply with local platting rules.
38.04.050	The State should have to meet the same test of access required of other subdividers.
38.04.055	All of the access and right-of-way provisions should be combined. Access to all lots should be reserved and public access through disposals to public resources should be reserved.
38.04.065	Regional plans should be required. However, the Department of Natural Resources must get the budgetary support from the administration and legislature before this can be accomplished. The BLM is required under FLPMA to plan before action, but they have disregarded

this requirement. Broad parameters should be given to the planning process, including public hearings participation. The participation of large private owners in the area should also be sot.

38.04.070 Classifications should probably be in regulations instead of legislation. The legislature should set aside State Parks, Forest and wildlife refuges. But classifications should be more dynamic. The legislature should condone classifications that are retention classifications.

38.04.910 No comment.

38.05.030 Someplace the State needs to know what it owns, and DNR is a good place for that to happen. For this to happen a good notification system needs to be in place.

38.05.035(a) Long term authorizations and disposal should require a "best interest" finding. Temporary authnorizations should probably be based on a lower level of documentation. But in all cases there should be some written documentation that records the basis for the decision. I use temporary to mean less than a year with no permanent improvements.

38.05.035(b) & (b)(5) No comment.

38.05.045 Timber land doesn't need to be sold to enhance timber harvest. In fact the long-term cost of administering the land could make the cultivation of timber uneconomical.

38.05.050 Local assessor are only one source of information and not always the best. Repeal wouldn't preclude contracting the local assessor.

38.05.058 The land base of the State is a valuable resource. I'm not sure giving a discount is in the long term base interest of the State. It inflates demand for land. It also is not wise from the fiscal standpoint. We dispose of valuable assets at a discounted price. Much of that land doesn't pay property tax and yet the owners demand services. It also makes resource exploitation more difficult, by deversifing ownership. It also creates a

local vested interest group that will be very vocal in the management of land in the area.

38.05.065(a) No comment.

38.05.065(c) A process is needed to regain title in the case of a default on a loan.

38.05.067 No comment.

38.05.069 It seems this system can be simplified.

38.05.070(b) $250 may be too low, but $5,000 seems to high.

38.05.077 - 078 Transition periods are always difficult. It would be a year after enactment of the Homestead Act before it could be passed. I question its usefulness in that situation. If there is a need to pass legislation dealing with remaining remote parcels, the legislature should straighten out the process.

38.05.079 I question whether a permit is the right way to authorize a cabin. I think a lease is more appropriate. The lease would provide land tenure that could be sold or that could be used to secure financing. A lease hold is a property interest. A permit just allows somebody to use something. Leases might be a good way to provide remote sites.

38.05.110 The State should be careful about competing with other land owners. State resources should be used to spur markets and to fill-in supplies. But State resource should not control the market.

38.05.125 The mineral reservation is required by the Alaska Constitutions and the Alaska Statehood Act. This provision should be broad enough to cover all disposals.

38.05.127 This provision needs to be streamlined. It seems that there is no need to reserve an easements when conveying to another government. The Federal government doesn't reserve easement in conveyances to the State. There isn't a need for a reservation if the lease allows public access. The easement size and procedures should probably be in regulation not legislation. All the easement provisions should be put together.

38.05.140 - 181	Different minerals have different requirements, consistency should not be the primary goal.
38.05.150(e)	I'm not sure it takes that long to look for coal.
38.05.185 - 275	A leasing system would meet the requirement of section 6(i) of the Statehood Act. It is another revenue source that should be explored.
38.05.185	I think the legislature should take the lead on the leasehold issue.
38.05.190(a)(i)	No comment.
38.05.195	No comment.
38.05.200 or 210	No comment.
38.05.205	The notice requirement should be as consistent as possible, so as to avoid confusion.
38.05.240	No comment.
38.05.245(a)	This should be streamlined somehow.
38.05.245(c)	No comment.
38.05.250(a)	No comment.
38.05.250(b)	No comment.
38.05.265	No comment.
38.04.275	No comment.
38.05.300	I think it would be best to give the Municipality an option. I have no comment on the size of closure question.
38.05.301	The inclusion of Citizen review panels could be very useful, however, the whole State is not covered by Coastal Resource Service Area Boards. I am not sure veto power is a good idea.
38.05.310	In many cases a year is fine, but in some areas values change rapidly. Put one year in the statute, but give the Commissioner discretion to ask for a new appraisal at any time.

38.05.345	The mandated public notice should be as broad as possible. The exception for mineral leases may be unconstitutional.
38.05.350	Policy statements should all be included in one place at the beginning of the title.
38.05.362	No comment.
38.05.365	No comment.
38.07.030	I thought we had a revolving agriculture loan program.
38.08	The Commissioner should be given the discretion to convert the purchase terms, so that inequalities can be remedied, but the Commissioner should have to approve the conversion.
38.09.010(b)	No comment.
38.09.010(e)	The spacing of parcels should be determined through regulation and should probably vary from disposal to disposal.
38.09.020	Permits should be required to enter a parcel. Then they should be converted to a lease. After they "prove up" a patent should be issued.
38.09.050(d)(e)	No comment.
38.09.080(b)	The State should comply with State and local subdivision regulations.
38.09.090	Give the Commissioner the ability to convert the entry.
38.35.050(a)	It seems that a cost reimbursement system would be more equitable.
38.35.140(b)	I think this would be a good way to recoup these cost, which can be considerable.
38.50.020(a)	There shouldn't be a need for legislative review of equal value trades. Anything other than equal value should probably have legislative concurrences.
38.05.020(b)	The appraisal should be good for a year.

38.20	No comment.
38.050.275	A clear policy directive needs to be given regarding submerged lands. A lease seems to fill this need best.

Title 38 - General Comments

Land Bank -	We feel that it would be very valuable for the State to enter the Land Bank system. It would have some very beneficial aspect for the State. It could be an avenue to make private land available for public purposes.
Conflict of Interest	We feel it is very important for public confidence, for the State to have strong Conflict-of-Interest Legislation. It should probably include public disclosure and a ban on participation in decisions that might be to the employees benefit.
Restrictions -	No comment.
SB 41 -	The Statutes should of course be made consistent with SB 41 and the litigation settlement.

Comments on Related Subjects

28.18.201 - 208	The Municipality of Anchorage should receive its full entitlement in either land or cash. Anchorage should not be penalized because of its population and location. The lands conveyed to municipality should be closed at the request of the municipality. There does need to be a limit someplace to conveying lands without survey. It's not a matter of not needing surveys, it's a matter of postponing the survey. A public agency should have a survey before spending public money on facilities, and a private party will need a survey before they can get financing for a private project.
29.33.150	State land disposals should have to comply with the same requirements as non-public subdividers.
Title 27	We have no comments on the content of this title. However, there may be some value in moving portions of this into Title 38. We

have a Title for Public Land and a Title for Public Resources and a Title for Mining. I think that many of these Statutes could be combined in a Title on Public Resources.

Most of the issues discussed in the Administration and Budgetary Considerations are dealt with in the section by section discussion. However, I would like to lend support to an increase in the funding level for the management of Alaska's land. This valuable resource must be protected and wisely managed to provide the maximum benefit to the State and it's people.

Once again I'd like to congratulate the committee for undertaking this over whelming tasks and for giving us an opportunity to comment on this project. If I can be of any further assistance, please feel free to call on me at any time.

Sincerely,

Roland Shanks
Land Manager

jf

cc Esther Wunnicke
Tanana Chiefs Conference
Municipality of Anchorage
Alaska Federation of Natives

HAWLEY
RESOURCE
GROUP, INC.

November 15, 1983

The Honorable Bettye M. Fahrenkamp
4016 Evergreen
Fairbanks, Alaska 99701

SUBJECT: Title 38

Dear Senator Fahrenkamp:

Thank you for the opportunity to comment on the compilation of suggested changes to Title 38.

Titles 38 and 27 form the foundation for the development of the State's vast land and mineral resources, and any changes made will be critical in forming the direction this development will take. With this in mind, I have attempted to review the proposed changes with an objective eye, as well as from the viewpoint of a user of resources who has many years of background in the study of mineral law.

If there develops a "round three" of your review process, I would appreciate the continued opportunity to comment and cooperate in any way.

Sincerely,

C. C. Hawley

CCH/skg

Enclosure

8740 Hartzell Rd
Anchorage Alaska
99507-3498
Telex 26-418
(907) 349-4673

COMMENTS ON SUGGESTED CHANGES TO TITLE 38

C. C. Hawley

November 12, 1983

.04.020 Disagree that public hearings should be required either by statute or by administrative procedure. Public hearings should be limited to addressing general policy issues or decisions on large areas. Public hearings are used primarily by special interest groups. They do not attract a valid cross-section of public opinion.

.04.065 Disagree with the need for regional or area planning throughout the state. Would like to see the state's policy change entirely from "classifying" all land to managing the land for its various uses: hunting, fishing, agriculture, forestry, mineral development, etc., under statutes already in place.

Planning would be most helpful near urban areas where immediate uses would cause the most conflict.

Present planning and classification procedures become a contest between those who favor development and those who favor non-development. Whichever side can round up the most vocal supporters wins. This is not planning.

Strongly advise reconsideration of the state's planning and classification need, intent, direction, and policy.

.04.070 The suggestion to retain state lands "more permanently" than is done in state parks and state forests is a request for state wilderness areas. The state currently contains an overabundance of wilderness lands held in federal ownership. Disagree with request.

.05.035(a) Disagree with the suggestion to include those areas specifically exempt from "best interest findings" (shore fisheries leases, negotiated sales, and permits). The Director should be allowed some latitude for carrying out preference rights, minimal disturbance, or short-term land management.

.05.035(b) Agree with the concept for change, but three years is a very short time for such errors to be located. They may not be noticed until another user challenges validity. Prefer to leave this statute alone or use a 10 year limit.

.05.070(b) Agree with raising the annual amount involved in land leases that can be negotiated without advertisement. Simplification procedures for smaller projects is advised.

.05.127 Agree that it should not be a requirement to determine navigability and access prior to lease of oil and gas or mineral lands for reasons presented in suggested change.

.05.150(c) Agree with requested change if diligence is demonstrated.

.05.185-.275 These proposals correlate the large mega corporation oil and gas leasing activities with mineral exploration and mining. Coal operations are already under an extremely rigid leasing and regulatory system; therefore, this discussion addresses the locatable minerals such as gold, silver, tin, beryllium, tungsten, copper, etc. In areas open to mineral entry on state land, mineral deposits may be claimed by a discovery/location method. The purpose of this system is to encourage prospecting by individuals and exploration companies to locate the mineral deposits in the state. The location system, having been used since 1872 on federal lands, has had a long-term success. Any abuse of the system can be challenged by other claimants and adjudicated. A system that is working, is understandable, and accomplishes its purpose should not be changed.

The lease proponents appear to be concerned mainly with problems of an operating mine. When a mineral deposit advances to the development stage, it is regulated in many ways already established through laws and regulations controlling clean air, clean water, health and safety, etc. What is lacking in DNR's oversite is

enforcement of a plan of operations on state mining claims which can be handled through its existing permitting authority without the complications, time, staff, and all other red tape that accompanies a leasing system. Lack of enforcement of DNR permit stipulations should not be blamed on the miner. Miners should follow "best management practices" but should not be expected to be self-policing.

Only recently a "leasehold location" system which converts to a lease was established for claiming deposits in areas where potential conflict has been determined to exist between mining and another use. The law specifically states: "State land may not be restricted to mining under lease unless the commissioner determines that potential use conflicts on the state land require that mining be allowed only under written leases issued under AS 38.05.205 or the commissioner has determined that the land was mineral in character at the time of state selection."

Geologic reconnaissance and exploration require great latitude over large tracts of land in order to follow any geologic trends which may lead to tracking down the location of a mineral deposit. Prospecting and exploration have taken placed all over the world, and new deposits are continually located. It may take many prospectors over many years to cover an area in enough

detail to determine the locatin of a mineral deposit. To make the exploration procedure burdensome with leasing procedures, public notice, public hearings, "best interest" findings, etc., would do everything short of closing the state's land to mineral location. The only method of locating the mineral resources in the state is to encourage this continued search. Exploration money spent in the search for minerals is mainly a non-productive use of funds for a company, but is income for the state.

.05.195 Agree

.05.200-.210 Agree

.05.205 Agree

.05.240 Agree. Simplify recordkeeping for DNR.

.05.245(a) Agree

.05.245(c) Agree. With mineral leasing coming to the fore, prospecting permits may be more important to the prospector.

.05.250 Agree

.05.301 Do not agree that local boards should be given veto authority over DNR activities.

.05.310 Agree

TITLE 27

To apply surface coal mining reclamation requirements to all mining operations would result in only major projects being developed. The research, compilation of data, engineering, reporting, bonding, paperwork, etc., required for developing a coal prospect cannot be handled by medium to small companies.

Oversight of mining operations is already established in existing regulations and in performance standards being developed. They need enforcement by DNR.

Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-3246

PLANNING DEPARTMENT

September 9, 1983

The Honorable Betty Fahrenkamp
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

We thank you for the opportunity to add our comments on various sections of Title 38 of Alaska Statutes.

First, we would like to comment on the present State land disposal program which we believe has been bad in many instances--sometimes as a result of crippling legislation and sometimes as a result of administrative policy.

In the past there has been no comprehensiveness or cohesiveness in State land disposal programs. This has led to scattered locations of land disposals without concern for feasible access, joining growth areas, realistic size of parcels and quality of soils.

You need comprehensive and cohesive goals. The old 100,000 acre a year disposal requirement as interpreted by the Department of Natural Resources resulted in a helter skelter program.

All disposal programs should address the likelihood of future services which will be demanded. The major problem being encountered in the Matanuska-Susitna Borough is the constant requests for construction and maintenance of roads. We are being forced into diverting money from areas which were properly subdivided with constructed roads to areas where the State ignored subdivision improvement requirements.

From the inception, until February of 1982, the last date for which we have exact figures, the State has subdivided in this Borough a total gross area of some 69,000 acres into subdivision parcels and some 39,000 acres into agricultural parcels resulting in a total of some 108,000 acres being subdivided for settlement and agricultural purposes. Of this gross acreage, 34,000 acres have been subdivided into 5,700 lots and 39,000 acres subdivided into 127 agricultural parcels yielding a total of 73,000 net subdivision and agricultural acres creating 5,800 parcels. These figures do not reflect open-to-entry and remote parcel disposals, which are estimated to be in the neighborhood

of 300,000 acres bringing the grand total to a figure somewhere in the area of some 400,000 acres.

By February of 1982, the State's Land Disposal Program had been in existence approximately five to six years. The original legislative mandate was that the State would dispose of 100,000 acres per year. Six years at 100,000 acres per year would equal 600,000 acres. Of this total, the Matanuska-Susitna Borough has contributed approximately two-thirds of the total Statewide offering.

Within the subdivisions created, there are some 380 miles of roadway which will eventually need to be constructed. Within the agricultural parcels, an additional 48 miles of roadway is required resulting in a need for 428 miles of roadway within State subdivision and agricultural disposals.

From figures derived by the State of Alaska Department of Natural Resources, we estimate the cost to construct the subdivision and agricultural roads within each development at approximately 100 million, 1982 dollars. In addition, it will be necessary to construct some 780 miles of access road to State subdivisions and some 26 miles of access road to State agricultural developments, resulting in a total of 806 miles of necessary access road. When combining the cost for construction of the roads within State subdivisions and agricultural parcels together with the cost of constructing the access roads to these developments, the estimate for full construction is 494 million dollars. Were this cost to be apportioned among owners of the parcels created in the State's land disposal program, the cost to each parcel holder would be 85 thousand dollars per parcel.

The State land disposal people often say that quality settlement lands are no longer available to it for disposal because most of the good lands have been identified for other uses such as parks, fish and game habitat, forestry reserves, mineral development, mental health, the University of Alaska, and municipal entitlements. With this in mind, and together with the fact that each municipality has acquired, or is about to acquire, lands under the Municipal Entitlement Program, a logical extension of this argument would be for the State of Alaska and individual municipalities to jointly develop municipal entitlement lands with the State then limiting itself to creation of remote recreational subdivisions, agricultural developments, remote parcels, and homestead disposal.

The State may have already moved in that direction as we have not seen in the past two years any subdivisions such as the Greensward Subdivision in the Meadow Lakes area which was a particularly unfortunate venture into suburban real estate. See the attached memorandum of July 5, 1983.

The State of Alaska and individual municipalities could jointly offer quality lands to the public in locations which are

readily accessible by existing roads or roads constructed by the municipality for a particular disposal. The State of Alaska would supply funding for road and participate in some of the development costs of each disposal. In this light, some specific revisions to Titles 29 and 38 would be necessary. Among other things, you may need authority to recycle land payments into subdivision road improvements.

We recommend the following changes of Alaska Statutes:

1. Construction of access roads. AS 29.33.150(b) should be amended so that the State of Alaska is required to comply with municipal ordinances requiring construction of improvements, the same as any other land developer.

2. State financial assistance for municipal disposals. AS 38.04.021(a) should be modified to allow the State to provide financial assistance for disposal of Municipal Entitlement lands and to provide that these monies may be spent on the planning and engineering necessary for the development of those lands.

AS 38.04.021(D) and (E) should be repealed in their entirety. grant $

Additionally, certain modifications to AS 38.04.020(G)(2) is necessary for clarity and consistency.

For the State to gain patent to lands from the federal government, it is first necessary that these lands be surveyed so that their boundaries are fixed on the ground and so that an adequate representation is contained within the patent document. These surveys are conducted by the U. S. Bureau of Land Management at federal expense. Conversely the State of Alaska, once having acquired patent to these lands, requires that each municipality survey and plat municipal entitlement lands not currently platted or surveyed, before title transfer. The State of Alaska appears to be getting the best in both instances. Someone else pays for the survey in order that they may acquire title and they turn around and require the entity acquiring title from them pay for the necessary survey. This arrangement is inconsistent. The State of Alaska should embark upon a program to survey and establish monuments fixing locations of, at the minimum, section lines within the populated areas of the State where municipal land selections have been made. Municipalities could then acquire patent to their municipal entitlement lands and subsequently offer them for disposal.

3. Acquisition and survey of legal rights of way. The Borough has consistently maintained that feasible physical access must be constructed before disposal, and legal access must be verified along physically feasible routes to access the subdivisions. This should be the minimum requirement for State land subdivisions and subsequent disposals. If for any reason road construction is not required then, the very least, appropriations

for the Department of Natural Resources for land disposal should include an authorization to expend monies for right-of-way acquisition and survey.

4. Road construction and improvement fund. In all State disposal programs a certain percentage of revenues derived from the sales should be applied towards costs for construction of roads. At least 25% of sales revenues should be applied for this. In fact sufficient revenues should be applied from this source to do the job right regardless of percentage.

5. Angle point surveys. When rights-of-way are granted a minimum centerline angle-point survey with a point of beginning and stopping point should be required.

6. Farm production requirement. Clearing requirements for remote agricultural lands does more harm than good when they are not accompanied by requirements for soil conservation plans and by actual farming. If such clearing and farming are to be required, transfer of title should not occur until the land has been verified as having been placed into production.

7. Implementation. Finally, State policies and guidelines accomplish little when personnel are not available to carry out the policies. The Department of Natural Resources should reduce their land disposal efforts to match personnel available to carry out the various policies and guidelines.

We hope these comments will aid you in your endeavor to correct some of the deficiencies of Title 38 of the Alaska Statutes.

Please do not hesitate to contact us if you have any further questions.

Sincerely,

Robert J. Stickles

Robert J. Stickles
Planning Director

er

cc: Gary Thurlow, Borough Manager

Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-4801

DEPARTMENT OF ADMINISTRATION

July 5, 1983

MEMORANDUM

To: Vern Roberts, Finance Director
David McClelland, Chief of Road Maintenance
Ray Niemi, Platting Officer

From: Gary Thurlow, Borough Manager

Subject: NEW STATE SUBDIVISIONS IN MEADOW LAKES AREA

Fermin Strickland of Greensward Subdivision (2.2 miles west of Church Road south of Pittman near Jaland Pond) is unhappy with absence of State road effort in Greensward Subdivision. The State created the subdivision in about 1979, but since it was exempt from Borough subdivision improvement requirements the State did not build any roads. The Borough does not maintain the roads because they are not built to Borough subdivision road standards. ↖ We do maintain but bare

There are 67 parcels and about 17 houses. There are about one or two school children.

The State of Alaska created a propertyowners' association but the property owners are never able to get 50% of the owners together for a meeting as required by their quorum requirements. As a result they are unable to adopt any dues for road upgrades or maintenance.

Other persons interested in this is Floyd Aycock 376-6307 or 688-3206.

There is a similar problem at Bruce Lake Subdivision east of Kalmbach Lake. The State relied upon a privately owned road for access until the property owner told the State that he was going to close off the road until the State should agree to construct the road to Borough subdivision standards which the State has refused to do. Shell Ewing at 376-2800 states that the State has located another feasible constructable access to the area but has not built it.

As I recall lots in both State subdivisions were sold by lottery. Buyers were required to build in subdivision within four years and were required to live in subdivision at least 35 months of a four to six year period.

It sounds like a effort to create two rural slums in Meadow Lakes area. No thought of the future.

Do you have any ideas for these roads? Any ideas for state appropriations for these roads?

Gary Thurlow
Borough Manager

er

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

State Land Hearing, Oct. 5, 1983, Anchorage Present: Betty F., Vic Fischer, Paul Fischer, Arlis S (via teleconference) Esther Wunnicke, Commissioner DNR and Tom Hawkins, Director Div. Land &Water Mang.

New policies : Want better quality land, which is surveyed and patented from BLM, but will mean slower conveyances from feds.

Staff review of disposal policies:
---year round residential areas should be road-accessible, quality lands
---Will be seeking funds to help Boroughs dispose of lands
---Favor compliance with local planning and subdivisoon regs on disposals
---remote lands will not be geared to having future needs for services
---offered areas identified in Area planning process
----Fair market value disposals except for sweat equity programs

All dependent on level of funds for planning, surveys, grants to local govt.

Tom H. 350,000 acres transferrred to private ownership from state., 240,000 since 1978. received one million $ since 1978 for disposals
There are now 3500 subdivision parcels available over-the-counter and 52 remote staking areas open.
disposals help expand survey net which benefits other uses, also helps develop additional resource information.
DNR disposals have contracted a lot with private sector for mapping , surveying
LADS process good public input process
Will be offering 15 remote parcel areas this fall--spring lottery, including homestead areas.
Homestead regs out for review late October

In response to questions from BF and VF, Esther said would support putting new policies in statute.

Ted Smith: 38.04 planning requirements in conflict with later laws
should conform statutes to court decisions
less than fair market value (check with Ted to clarify point)
want more retention of public lands like forests in general public use category.
Under current initial permit system, can't borrow on land to build
Hard to enforce residence, dwelling requirements
Favors: Fair market value sale with 5-10% down, sign assignable assumable contract which would be good financing.
If you meet a schedule of improvements, you get credits against purchase price, similar to former ag homestead progr

Leases need to apply to commercial, industrial uses
Want compliance with local planning and subdiv. regs, costs to purchasers
Shouldn't require ag land development plans, too hard to administer, rather, reward developments against purchase price.

Cal Kerr, should consider selling timber land for development
review policy of primary manufacturing requirement

Howard Grey, no major changes, but will suggest technical amendments
problems with DNR regs not following legislative intent or being unclear
thwarting 640 acre closure limit with multiple classifications

George Lustick--no farm plans required in ag disposals
less intervention in disposals

Ray Mann, consistency of disposals with local regs
muni of Anc entitlement not met with land or in lieu cash payments
need better mineral closure orders for state lands to muni
Grant program doesn't apply to Anc because little land available to dispose of--any land muni disposes of goes into fund to by more.
Fair market value sales, use money to pay defiency payments to Anc

Vic Fisher--need statutory changes to get muni full entitlement.

Michael Grijalva--want good mine practices, reclamation, sediment control

Ray Morgan, In homestead law doesn't like ag provisions, purchase option or filing fees--defeats the purpose of program

Diane Muri, want placer mining reclamation, grading to contours and replace top soil

Don Argetsinger--want state planning esp. in rural, mixed land ownership areas like northwest Alaska, need more $ for planning,

Tom Pittman--want DNR policies in Title 38
wnat conformity with local planning and subdiv. reg.
Wnat $ from state for disposals, esp. road building and maintenance
Want legal, feasible access in state disposals
Want ag clearing in homesteads to utilize good soil conservation practices
Want mineral closure orders on muni land from state

Mary Core, need better organized, retrievable disposal info--comptuerized

Katherine Ernst.
disposals should be coordinated, follow regional planning
no subdivisions in remote areas
past disposals did not take carrying capacity into account
don't want dense settlement
no disposal quotas
prevent speculation
no ag homesteads in Tokosha area
no subdivision allowed on disposal parcels
want maximum local input

Bob Loeffler--
local subdiv reg conformity
current level of disposals too high--lots of vacant lots
inflated demand for state land--need better assessment of demand and availability of private lands--if private exists , no state disposals
need to take into account carrying capacity

Jim Scheffle, don't like ag homestead parcels
want disposal level at 5-10,000 acres of high quality land

want longer anti-subdivision requirements
want remote areas emphasizing rec values, small parcels, dispersed
want local planning input in plan and disposals

John Strasenburgh--want carrying capacity determinations and followed
low densities needed
want tougher anti-subdivision restrictions
more planning prior to disposals and minimizing use conflicts
reduce acreage disposed of
don't require building to avoid waste for non proving up

Dave McCargo
want hard-rock mineral leasing program
want reclamation of placer mining
lease program would have prospecting licenses, exploration permits and then production leases with gross royalties tax (10-20%)
non-competitive leasing for hard-rock minerals, competitive fortohers

Paul Lowe--use premise of conserving state $$ and environmental values will be conserved.
Want to maximize return on state resources
Need accurate assessment of demand for disposals

Chuck Hawley--don't want ill-considered disposals where mineral values may be present
Favor technical changes in 38--will submit
would favor mining reclamation if reasonable and doable.

ALASKA FEDERATION OF NATIVES, INC.

411 W. 4th Avenue, Suite 1A • Anchorage, Alaska 99501 • Phone 907-274-3611

September 20, 1983

SEP 2 2 1983

Bettye Fahrenkamp
Chairman
SENATE COMMITTEE ON RESOURCES
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Bettye:

As you mentioned in your letter of August 9, 1983, a review of State land management and disposal practices and law is both timely and necessary. At it's 1982 Convention, the Alaska Federation of Natives passed two resolutions on this subject. These resolutions, copies of which are enclosed, make specific recommendation on the land disposal program and request the State to complete adequate plans and to cooperate with and consider the views of local residents prior to making land classification and land disposal decisions. We recommend that the concerns expressed in these resolutions be addressed by State statutes.

Pat, there were no enclosures.

State land disposal policy should be viewed within the context of overall State land management plans and both the plan and the policy should be coordinated with plans of adjacent landowners. Past land disposal programs have resulted in policies which in large measure ignore long range needs and local needs. Local concerns and needs have been overlooked for several reasons. State personnel have been diverted from this process by vocal demands and public pressure from urban areas. Most legislators and administration officials and their staffs are located in Anchorage and Juneau and most of them have not lived in rural Alaska. And, rural Alaskans have only recently developed land planning and land management expertise to participate actively in the development and implementation of land disposal policy.

A process should be developed whereby local concerns about State land management planning can be heard and addressed on a regular basis. This process should include the ongoing availability

of State personnel in key rural locations on a predetermined basis. Such a process will allow the State to assess the impact of statewide land management decisions on rural Alaskans and to update the statewide plans to include existing or forseeable local development plans.

We recommend that existing State statutes be amended to reflect the above-mentioned. We also recommend that current policies including departmental order 82-022, the Land Availability Determination System, and departmental order 83-17, a Land Disposal Policy, be reviewed and as appropriate codified as part of Title 38. Lastly, we recommend the enactment of enabling legislation to authorize the State to enter into Alaska Land Bank cooperative land management agreements as established by section 907 of the Alaska National Interest Land Conservation Act.

Thank you for the opportunity to comment on your review of State land management and disposal policies. The Alaska Federation of Natives looks forward to continuing to work with you and your staff, and the Department of Natural Resources, to develop a legislative proposal which embodies sound State land management and disposal laws.

Sincerely,

Janie Leask
President

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
Anchorage, Alaska 99501
(907) 278-3654

Official Business

October 28, 1983

Senator Bettye Fahrenkamp, Chair
Senate Resources Committee
1024 W 6th Ave.
Anchorage, Alaska 99501

Dear Bettye:

In light of the testimony received at the two Title 38 public hearings and some additional facts and developments that have come to my attention, I'd like to add some further comments concerning state land management and disposal practices.

I was pleased to learn that the committee's goal will not be limited to legislation, but that the review will result in a comprehensive report. In looking over the statutes and in listening to public testimony, I was struck by the fact that many of the problem areas identified were less statutory than administrative ones.

Therefore, I believe that the committee has embarked on a valuable course of communication and cooperation with the department, and that a report of findings and suggestions would be very helpful to all parties -- the legislature, DNR, other departments, and the public.

In general, I was very supportive of the tentative conclusions and recommendations presented by the DNR study group concerning the disposal program. I look forward to more closely reviewing their document when it is made available to the committee.

My specific comments follow:

DISPOSAL POLICY. I would like to see a clearer policy statement made in 38.04 concerning selection, amounts, location, and scheduling of land disposals. As you know, I believe that we're presently offering too much too fast, and not always in desirable areas or following a classification process that takes conflicting land values into account. I believe those concerns should be addressed in statute.

COMPLIANCE WITH LOCAL ORDINANCES AND REGULATIONS. 38.04.045 needs strengthening in order that the state, in disposing of land, comply with all local requirements, not just those for platting. In addition, 38.04.050 needs beefing up to require the state to provide adequate access.

FISH AND GAME CONCERNS. Of the concerns expressed by ADF&G, I'm particularly supportive of their suggestion for selected fee simple retention of public access areas. This would require changes in 38.05.055 and 38.05.127 along the lines they suggested.

DNR BUDGET. I have been repeatedly struck by the direct relationship between identified problems and a lack of adequate funding. I strongly suggest that a part of the committee's report address DNR funding and be directed to the Finance Committee to assist them in their work.

One issue that I feel the committee should address is the need for computerization of records. Without this it is costly and difficult, if not impossible, to assess information that is necessary for evaluating the land disposal program and tailoring it to meet the needs of all Alaskans.

Further, additional areas I would like to see addressed that concern funding shortages include surveying, research, enforcement, compliance, determinants, land use planning, and classification. On the capital side, I see a need for additional purchases of recreational land on the Kenai and in Mat-Su.

ANCHORAGE ENTITLEMENT. The committee heard testimony from the Municipality of Anchorage that they have yet to receive their land entitlement or deficiency payments in lieu of it. Although the entitlement issue is contained in Title 29, I believe that the committee should bear in mind that it is a land issue that will need to be addressed. I am personally very interested in seeking a solution and plan to introduce legislation that will provide for deficiency payments to be made to Anchorage's new Heritage Land Bank for the purchase of public use lands.

PUBLIC USE CABIN SYSTEM. I believe that this concept has great value in meeting recreational needs and possibly substituting for land disposals in remote areas. I would like to see it receive more study.

TRESPASS. This issue arose just recently when DNR announced a new policy of evicting blatant trespassers on state land. The department estimates that there are 3500 cases of trespass statewide. The committee should take a lead in establishing policy to deal with trespassers.

Specifically, eviction policy should reflect two basic considerations: (1) There are limited funds available to pursue squatters. Therefore, priorities should be set as to which violators to pursue first, as DNR clearly won't be able to evict all of them. Squatters who derive commercial benefit from their illegal activities such as air, hunting and fishing guides, and those who take gravel and timber should have the first priority for eviction.

It was very dismaying to see headlines in local newspapers about DNR evicting a family from their only dwelling, in the beginning of winter, with the wife only days away from birth. Worse than that, within the same week stories appeared which listed known squatters holding duck shacks and commercial hunting cabins. That list, as you know, read like the local "Who's Who" of Alaskan political and business leaders. Clearly, better priorities must be established.

In cases where there is an historic use pattern, such as traditional fishing sites, it might be most appropriate to allow permitting under the existing but inactive remote cabin permit or another program. A strict policy regarding new trespasses should be adopted while historic cases are settled in a fair and equitable manner, consistent with the best interests of the public.

CLEAN-UP. I encourage the committee to do as much as possible to cleanup the statutes, particularly concerning contradictions -- both internal and with court decisions. Sections that are unnecessary, vestigial, unworkable, or ignored should be so identified and eliminated or fixed as appropriate. Programs that are on the books but inactive should be repealed, altered, or activated. (As an example, the remote cabin permit program was set up in 1979 and has yet to be implemented; no regulations have been adopted or land classified).

Thank you for the opportunity to participate in this valuable effort. I look forward to continuing with it.

Best regards,

Vic Bl

Senator Vic Fischer

cc: Commissioner Esther Wunnicke, DNR

/gb

eklutna INC.
840 "K" STREET, SUITE 202
ANCHORAGE, ALASKA 99501
(907) 272-9215 or 276-5701

August 19, 1983

Senator Bettye Fahrenkamp
515 7th ST. Suite 320
Fairbanks, AK 99701

Dear Bettye,

I'm glad to see this project getting off the ground. It's a pretty ambitious under taking.

For now I'd like to offer some general comments, and I will provide more detailed comments in a later letter. I hope you will restructure the title so that it is easier to work with. Right now it is very difficult to find things. I also hope that you would make the title fit the reality of the department. References to the Director of Lands should be changed. Those powers should in most cases be given to the Commissioner for delegation within the department. The management of Alaska's land hasn't always been the best, and part of the problem has always been a lack of direction. The title should include some basic land management objectives. The department has done alot of management based on "Department Order" and procedure memos. These documents seldom get public review and are very difficult for the general public to obtain, this should be changed.

It may also be useful to deal specifically with the 6(i) problem and State management of submerged lands. It would also be good to clarify management responsibility on Wildlife santuaries. The planning and classification provisions are pretty weak and should be strenghtened. It may also be good to include some enforcement provisions. It currently is very difficult to enforce the laws and regulations. Some large private land owners now exist, the Native Corporation, it might be a good idea to beef up the cooperative management provisions. I also think it would be good to deal with advisory boards. Some are volunteer, some are appointed, some meet, some don't, and this would be a good opportunity to straighten this out.

This may be a good time to address the exchange provision, which needs to be restructured. It just doesn't work. There also needs to be more thought given to surveying state land. The issue of State land and borough zoning also needs to be resolved.

Thank you very much for the opportunity to comment on this issue. I will provide more detailed comments in a later letter.

Sincerely,

Roland Shanks

cc: Pat Pourchot
1024 N. 6th
Anchorage, AK 99701

8/24/83

TESTIMONY
SENATE RESOURCES COMMITTEE
TITLE 38
September 21, 1983

Good afternoon. My name is Darryl Sickler and I am representing the Alaska Miners Association.

The percentage of federal land available for mineral entry in 1960 was 99 percent. The percentage of federal land available for mineral entry in 1970 was 83 percent, in 1980 only 40 percent. The state of Alaska has closed 9.8 million acres to mineral entry - this is between 40 and 50 percent of the total lands classified by the state up to this time. Is this what is intended for a state that is so heavily dependent upon natural resources for providing its economic base?

Under Title 38 (38.05.300) no classifications in excess of 640 acres which would close lands to multiple use are to be made by DNR without legislative approval. The purpose of this requirement was to insure that vast tracts of land would not be closed to mineral entry and other use. In recent years, this law has been circumvented by multiple classifications falling within the 640 acre rule. In fact, very few classifications actions, with the exception of some park areas, were brought before the legislative body.

There is also evidence of de facto classification, for want of better terminology, resulting in the closure of lands to mineral development without benefit of the classifications proceedings required by Title 38. An excellent example of this is the Bristol Bay Cooperative Management Plan which will be addressed to the

committee later this afternoon. In this case, while many of the lands within the so called preferred Alternative I are theoretically open to mineral entry, minerals development has been assigned to low priority and access will be all but denied through the closure of a spider web of closed streams and stream band corridors.

Furthermore, preliminary information from DNR indicates a preference toward leasing rather than location for mineral acquisition. This will, for all intents and purposes, effectively close the state lands to minerals exploration because of the uncertainties of management perogatives. An example of the state's success in mineral leasing offerings was seen in a recent coal and geothermal lands offering which was over three years in the planning and which generated one single bid.

The recommendation of a lease form to acquire mineral location is not supported by the AMA. This concept would give the large mineral companies more ability to secure leases than the small prospectors. AMA advocates the continuance of the location system as the basic means of acquiring an interest in locatable minerals. We feel that this is the most fair and equitable approach to the development of these minerals for all Alaskans. Any trend deviating from this would grievously affect the small miner and the mining companies. Regardless of the size of the company, operations under the location system are vastly preferred from the standpoint that land tenancy is clearly defined.

Other aspects or recent developments regarding mining controls or regulations could and probably will clearly effect the mining community and mining provision under Title 38. Examples are:

(1) The recently promulgated Hazardous Waste Regulations which in the case of mine tailings disposal will require a duplication effort on the part of an applicant applying for use of state lands for mine development;

(2) In Stream Flow Regulations 46.15.145: Proposed requirements or stipulations to be incorporated as a part of the In Stream Flow Regulations will result in another unnecessary duplication of effort and potential conflict with other sections of the law, notably the water use act. The methods of separating rights acquired under the water use act from the stream maintenance requirements are unclear. It may be that in some cases stream flow maintenance will result in closure of an operation.

(3) Presently claimholders on state selected land have located their claims at their own risk. The risk that the state will not receive title to the land cannot be eliminated. The state needs to take more of a management responsibility of lands at the time of selection. Where there are valid existing mining claims on lands that the state has selected for its mineral potential, claimholders should be exempt from subsequent classification activities either prior to or following TA or Patent.

I thank you for the opportunity to testify.

Northern Alaska Environmental Center

218 DRIVEWAY
FAIRBANKS, ALASKA 99701
(907) 452-5021

9/21/83

Good afternoon. My name is Robert Warren and I am the Executive Director of the Northern Alaska Environmental Center of Fairbanks, Alaska. We are a private, non-profit citizen action organization of over 700 members and growing. I'd like to thank the Committee for the opportunity to comment on the review of Title 38.

I'd like to focus my comments on the issue of land disposals and land classification at this time while expressing the need to also evaluate the need for statutory changes in the regulations governing Alaska's mining industry.

We would like to see the Committee take a close look at 38.05.035(a)(14). We would recommend amendments requiring that all sales, leases, permits. and resource disposals are subject to a reformed "best interest findings" procedure. We feel that this best interest findings procedure could be improved to address social, environmental, and economic benefits as well as the potential impacts on local land use planning. In order to facilitate accurate best interest findings there should be a defenition of "critical habitat" under this section.

Title 38 should require the ADNR to address the demand for public lands as well as the demand for private lands. The Alaska Constitution mandates a balance between the private and public uses of state land in order to guarantee an adaquate supply of both for future generations of Alaskans to enjoy our unique way of life.

All land disposals should proceed through the planning and public participation activities of the classification process. Therefore; 38.05.035(c) should be repealed.

We would like to see 38.05.035(f) amended to provide for the inclusion of previously offered but unsold land in ADNR's annual demand assessment. We would also like to see accurate and well organized statistics, available to the public, on all phases of disposal sales. Without accurate and available information it is difficult for the public to participate in the decision process.

Lastly, 38.079 could be amended to allow remote cabin permits only on lands specifically identified for that purpose. A change to a lease system from a permit system would bring the remote cabins within the scope of "best interest findings" procedures of 38.05.035.

I sincerely hope that our comments will be helpful in your review of Title 38 as we look forward to a cohesive statewide plan within which the disposal system would function in an effort to avoid many of the problems we see developing between the state government, borough governments and Alaskan citizens. Thank you very much.

eklutna INC.
840 "K" STREET, SUITE 202
ANCHORAGE, ALASKA 99501
(907) 272-9215 or 276-5701

September 16, 1983

Pat Pourchot
Senate Resources Commission
1024 W. 6th Avenue
Anchorage, AK 99501

Dear Pat:

I've finally managed to wade through Title 38 and supplement. It's not very easy to piece the whole thing together.

First, I have some general comments about the current Title. It's hard to tell what topics should be in Title 38 and what topics should be in Title 41 Public Resources. Forest Management is in Title 41, but oil and gas management is in Title 38. These distinctions are confusing. It seems that there needs to be a consistent criteria for what goes into which Title. I also feel that the State should have some "conflict of interest" language somewhere. Title 38 may not be the appropriate place, but it needs to be dealt with. While it is important to respect peoples' rights, I really feel that people who work for Public Resource agencies must be above even the perception of impropriety. There have been some problems in this respect in the past. The lack of direction in resource policy also falls into this category. The constitution, of course, provides broad policy direction to protect and develop the State's natural resources, but it would be useful for the legislation to fill out the policy statement a little. It would also be helpful to put all the definitions in one section.

The planning provisions should be strengthened. Planning should be mandated by stature, although I feel that the fine points should be left to regulation. Land owners within the planning areas should be given an opportunity to participate in the planning also. The planning needs to be as broadly based and as cooperative as possible without limiting the State's prerogatives. A classification system should also be mandated, but again the details should probably be left to regulations There is currently a problem with the agriculture classification, it limits all disposals to agriculture rights only. It does not allow for necessary surface disposals like easements for roads

and utilities. Subsurface disposals are also questionable under that classification. This issue should be addressed during these revisions.

While I was with the Department of Natural Resources we completed a portion of the Seldovia exchange and discussed several other exchanges. It became obvious that the exchange provisions were cumbersome and almost unworkable. It is almost impossible to complete an exchange in six months, but the appraisals are only good for six months. The appraisal deadline should be adjusted. I also understand the legislature's desire for oversight. However, the Department needs to be fairly free to complete exchanges unimpeded. I would think that the legislature could hold hearings and give direction on any exchange they are interested in. Since exchange must receive public notices, maybe a copy of that notice could be provided to both Houses's Resource Committees. The Committee could then take action as they deem appropriate.

I would also hope that the public notice and comment provisions would remain substantially as they are. Public notice for disposals is mandated by the constitution. It would be very helpful to the department and the public to define "disposal" as it is used in this context. While I am on the topic of public input, I feel that Advisory Committees are very important. This is a good opportunity to take stock of which ones do exist and which one should exist, and to make the necessary adjustments. I also feel it is important to mandate meetings, so future administrations allow the committees to meet.

As an adjunct to cooperative planning it would be a good idea to beef up the cooperative management provisions. Some large parcels of private land could probably be incorporated into State planning and management through cooperative management agreements. Native lands can currently be Land Banked with the Federal Government. This provides that the Native corporation can receive management assistance in return for allowing certain uses on their land. The State should develop a system to take advantage of the same opportunities.

Once again I'd like to commend the Committee for taking on this long overdue task, and to offer my assistance in any way you may deem appropriate.

Sincerely,

Roland Shanks

DEPARTMENT OF FISH AND GAME
STATEMENT FOR THE SENATE RESOURCES COMMITTEE
REVIEW OF TITLE 38

The Department of Fish and Game appreciates the opportunity to participate in the Senate Resources Committee's review of the State's land planning, classification and disposal statutes found under Title 38. This important section of law establishes policy and procedures for determining the use of public lands, including the disposal of some of those lands, or interests in lands, to private uses.

The Department is interested in the use of lands from the standpoint of how those uses might affect important wildlife habitats and the continued ability of people to have access to, and use of, fish and wildlife resources. Because it was the intent of the Committee to concentrate its attention on the land planning, classification and disposal program, it is that process which the Department considers in its review. If the Committee later decides to concentrate on other aspects of Title 38, we will be glad to provide comments on relevant sections. The Department was an active participant in commenting on the planning, classification and disposal aspects of Title 38 when it was being drafted two and three years ago. Furthermore, we are currently actively involved in the program as it is being implemented by the Department of Natural Resources (DNR). We feel that our participation in both the drafting of language and the implementation process provide a familiarity with the program that enables us to adequately comment during this review.

Land Planning, Classification and Disposal

Although the Department is not given specific authorities or responsibilities under Title 38, that body of law provides for consideration of fish and wildlife resources and their use by:

(1) setting out policy in this regard with respect to the public interest in retaining state land in public ownership (AS 38.04.015 and AS 38.04.070),

(2) providing for the retention of important lands (AS 38.04.020),

(3) providing for a program to determine the choice of land best suited for public and private use through the inventory, planning, and classification processes set out in AS 38.04.060 - 38.04.070 (AS 38.04.005), and AS 38.05.300 and .301,

(4) providing that land use plans consider physical, economic, social, and environmental factors as well as present and potential uses of state land and land under other ownership (AS 38.04.065),

(5) providing for public access on and across land which is made available for private use (AS 38.04.005(b), .055, and .127),

(6) providing for "meaningful" participation by the general public and state agencies (AS 38.04.065), and

(7) providing for written findings that the interests of the State will be best served by a particular sale, lease or other disposal (AS 38.05.035(a)(14)).

The Department has been an active participant in the planning and classification process carried out by the State. While we may at times prefer that classification actions give more emphasis to the Department's recommendations, we find the overall direction given by the Land Policy Act (AS 38.04) and relevant portions of AS 38.05, to be responsible to fish and wildlife concerns. We support the direction given by the Act, with particular reference to the provisions noted above.

With this said, the Department does wish to bring three issues to the attention of the Committee. These issues are addressed in more detail in Enclosure (1). Generally, our recommendations are to:

(1) provide, to the maximum extent feasible, for fee simple retention of public access areas through private use areas and lands along public lakes and waters to better facilitate public use of public lands and waters, and, where easements or rights-of-way are reserved for access instead of fee simple retention, to clarify whether such access routes include retention of sufficient public interest in lands to accommodate public uses of public waters;

(2) consider the need for amending certain currently exempted disposals from the "best interest" finding requirement of AS 38.05.035(a)(14), and

(3) consider the need to provide for the issuance of remote cabin permits only on lands specifically classified for that purpose and approved by State regional plans if greater emphasis is to be placed on the use of remote cabin opportunities for providing for land disposal needs, and consider the need for a public recreational cabin program on lands classified for that purpose.

ENCLOSURE ( )

Senate Resource Committee Title 38 Review

ACCESS (AS 38.04.005(b), 38.04.055 and 38.05.127)

Statement of Issue: The present statutory mandate to ensure that the public retains access rights to, and use of, public lands and waters can be strengthened to protect both present and future public use rights.

Background: The Alaska Constitution and State Statutes both provide that the waters of the State are reserved to the people for common use and further mandate that a provision for reasonable public access to those public areas is an inherent aspect of the public trust. Although current law appropriately requires that the director shall reserve public easements and rights-of-way through private use areas, it is our belief that the provision of access by less-than-fee-simple retention of State lands is not always adequate to protect public use rights. For example, lake and river front property is generally in great demand for private recreation sites. However, if this demand is satisfied through land disposals without constraint, a situation could result in which entire lakefronts or major stretches of public waters are completely held by private landowners, thereby inhibiting or precluding opportunities for free public use. It is our impression that the constitutional and statutory requirements mandating free public access have been restricted by a lack of specific definitions delineating the exact public rights embodied in this provision. Without explicit statutory language delineating these rights, we believe that conflicts between competing private and public interests will occur. Although easements and rights-of-way may technically provide legal public access, they can unwittingly pit private land owners against public users and lead to dissatisfaction for both.

It is relevant to note that the Department has at several times requested and received appropriations for the purpose of acquiring land for access and recreational use purposes. Enclosure (2) identifies land acquisitions made for the purpose of providing access to, and use of, important recreational areas. We believe that fee simple retention of lands can provide a substantial, long run economic benefit to the State, as well as provide for maximum opportunities for use of public lands and waters.

Recommendation: To the greatest extent feasible, public access rights through private use areas and along public lakes and waters should be reserved to the public trust through State retention of the tracted area. It is our belief that only through State retention of an adequate public land base along the State's rivers, lakes, trails and roadside areas will sufficient land be reserved for future generations to protect public recreation, hunting and fishing opportunities as well as permit expansion of a major export industry -- tourism.

As a suggestion, perhaps the statutory language of AS 38.04.055 and AS 38.05.127 could be amended to express a policy directive that "To the greatest extent feasible, the director shall reserve, in State ownership, sufficient land to preserve present and future public access across private use areas, and land along public waters to ensure present and future public uses of those waters. In the absence of preferred State ownership, the director shall reserve easements and rights-of-way on and across land which is made available for free public use..." These easements and rights-of-way should include language delineating a statutorily defined "free public use" which includes a "reservation of sufficient public interest in lands to and along navigable and public waters, tidal and submerged lands to accommodate recognized public uses of water resources such as access, fishing, hunting, viewing and other activities. AS 38.04.055 implies that such uses may be allowed for in making reservations of land for access purposes. A statutory clarification would be helpful.

BEST INTEREST FINDINGS (AS 38.05.035(a)(14)

Statement of Issue: Certain negotiated sales are currently exempted from a best interest finding under AS 38.05.035(a)(14).

Background: Under 38.05.115, up to 500 m.b.m. of timber and up to 25,000 cubic yards of materials may be sold by non-advertised, negotiated sale to any one purchaser within a one year period. These disposals are exempted from the requirements of a written best interest finding and notice by AS 38.05.035(a)(14).

While the Department is not aware of any specific problems, to date, created by disposals as they are currently authorized, we believe that as developments may intensify the need for notice and a finding of best interest may be desirable. Depending on the location of proposed disposals, the Department and others may be interested in knowing of, and commenting on, the proposed action.

The Department suggests that findings and notice need not apply to every negotiated sale. Successive sales at a previously developed site need not be subject to notice and a finding of best interest. Rather, only disposals at new sites or locations should be considered for placement under the notice and best interest finding provisions of AS 38.05.035(a)(14).

Recommendation: It is recommended that, in the course of its review of Title 38, the Committee consider the need to provide for a finding of best interest and notification pursuant to AS 38.05.035(a)(14) for the two negotiated sales discussed in this section. If it is found desirable to do so, then corrective statutory revision to AS 38.05.035(a)(14) could repeal the current exclusion of timber sales or gravel sales from a new site under AS 38.05.035(a)(14)(A).

REMOTE CABIN PERMIT (AS 38.05.079)

Statement of Issue: AS 38.05.079 provides that remote cabin sites may be provided for in areas classified for that purpose under AS 38.05.047(a)(5)(B). AS 38.05.047(a)(5)(B) was repealed by the Legislature in 1981.

Background: Remote cabin permit regulations 11 AAC 55.020(d) and 11 AAC 55.040(h) currently allow the issuance of remote cabin permits on public lands under any classification unless specifically prohibited in an approved land use plan. The situation that has resulted is that since by regulation all land is open to remote cabins under any classification (no specific remote cabin classification is currently available in regulation) and only closed in areas where an approved land use plan is in place, virtually the entire State is open to settlement under the remote cabin program.

Because remote cabin permits essentially reserve the use of land for a relatively long period of time (25 years) and allow physical alterations on the parcel, the effect of remote cabin permits is very similar to land disposals. Remote cabin sites such as land disposals can conflict with established resource use patterns by introducing increased competition for already limited supplies of natural resources including firewood and wildlife. In addition, remote cabin sites may limit maintenance of the essential mix of habitat types which results from providing a variety of plant successional stages through the use of the full range of fire management options.

Recommendation: The Department is not aware of any problems to date associated with the nonclassification of lands for remote cabin usage. If, during its consideration of changes to Title 38, the Committee determines to more heavily emphasize the use of remote cabin disposals, it may wish to clarify the classification requirements for such disposals. If the Committee determines to promote extensive usage of the remote cabin program, the Department recommends consideration of requiring classification of land for that purpose prior to a disposal for remote cabin usage.

For lands so classified, the Department also recommends that the Committee consider the establishment of a remote cabin permit program wherein public cabins could be built and made available to recreational users on a first come basis.

ENCLOSURE (2)

LAND ACQUISITIONS

Over the past few years the Department has either independently, or jointly with the Division of Parks, acquired the following lands for the purpose of protecting areas. In the case of Parcel 5, the ultimate expenditure was made by the Mat-Su Borough.

	PARCEL*	SIZE	APPROXIMATE COST (in thousands)	LOCATION
1.	Sheep Creek	5 Ac	30.0	Mat-Su Valley
2.	Keplar Bradley Lake Complex	----	3,000.0	Near Palmer
3.	Montana Creek	----	465.0	Near Talkeetna
4.	Willow Creek Access Road	----	600.0	Mat-Su Valley (Mat-Su expenditure)
5.	Psagshak River Access	12 Ac	135.0	Kodiak
6.	Moose River/Kenai River Confluence	9 Ac	125.0	Kenai Peninsula
7.	Seven Parcels on Kenai Peninsula	----	2,250.0	Kenai Peninsula
	[252.0 SF + 2.0 mill Parks]			
		TOTAL	6,605.0	

The Department has identified in its preliminary budget proposal a need for $1.161 million for acquisition of parcels in the Mat-Su Borough and Kenai Peninsula. Proposed parcels are identified in Enclosure (3).

*All parcels are managed by the Division of Parks.

PROPOSED

PROPOSED

Kenai Peninsula Properties

I. Kasilof River - Crooked Creek Confluence

51 acres. Estimated value $250,000.

This is the fastest growing fishery on the Kenai Peninsula. Effort on king salmon during the June fishery has increased from 2,000 man-days in 1979 to over 21,000 man-days in 1983. This fishery is currently conducted on private land and the landowner has stated his intention to close the area to public use. King salmon catches have increased to 3,000 fish with the bulk of this being produced by the Kasilof State Hatchery. There is also increasing effort in this area on Dolly Varden as well as sockeye and coho salmon.

II. Whiskey Gulch

15 acres. Estimated value $204,000.

This access site is needed to help alleviate increasing fishing effort in the marine waters of Cook Inlet south of Deep Creek. The Deep Creek king salmon fishery alone received 24,000 man-days of effort in 1982 during a two month period. All access to this fishery is restricted to a single State campground at Deep Creek. Deep Creek is very congested with many prospective anglers desiring to fish for salmon and halibut being unable to locate camping or even parking space. Whiskey Gulch is the only entry point to the beach between Deep Creek (at Ninilchik) and Anchor Point. An access at Whiskey Gulch at the southern end of the Deep Creek marine troll fishery would greatly expand the use of the important king salmon trolling area, would eliminate the need for boaters to travel extensively over often treacherous waters and would provide access to the beach for clam digging and other recreational activities.

III. Ninilchik River Site

28.4 acres. Estimated value $317,000.

This popular stream receives over 20,000 man-days of effort annually. Anglers stand shoulder to shoulder in this area when the king fishery is open. It is one of the four major steelhead trout streams in South-central Alaska. It also has significant populations of king and coho salmon and Dolly Varden. A significant portion of the fishery has been conducted on private property. The property owner has blocked access to further public use of the land. Although there is State land on other parts of this stream, it is imperative that this site be acquired to provide continuous streambank access and facilitate legal movement of anglers to other public areas along the streambank.

PROPOSED

4. Anchor River Site

PROPOSED

40 acres. Estimated value $80.000.

This is the most popular anadromous fish stream on the southwestern Kenai Peninsula. It receives angler effort up to 44,000 man-days. The Anchor River contains the greatest populations of steelhead trout, Dolly Varden and king and coho salmon in the lower Cook Inlet area. This particular site not only increases access to additional salmon fishing waters near the stream mouth, but also provides access to the river's terminus with Cook Inlet for launching boats to fish for king salmon and halibut.

Matanuska-Susitna Valley Properties

I. Wasilla Creek Site

165 acres*. Estimated value $185,000.

This fishery is in trespass on private land. The need is to acquire land near upper limits of tidewater for public use. This salmon stream presently provides over 6,300 man-days of fishing opportunity annually. Wasilla Creek is considered one of the finest coho salmon fisheries in northern Cook Inlet. A public access site at this location would also serve the needs of recreationists wishing to use the vast public resource of the Hayflats Game Refuge.

* The large acreage is because a single large property is involved. Most of the property is swampy and it is not feasible to subdivide for partial purchase.

II. Cottonwood Creek Site

20 acres. Estimated value $40,000.

This fishery is also trespass on private property. The need is to purchase private parcel connecting Hayfield Road to intertidal portion of creek which is currently in public ownership. Cottonwood Creek is a salmon stream that provides 9,200 man-days of fishing use annually. A public use site at this location would also provide legal access to the popular Hayflats Game Refuge.

III. Little Willow Creek Site

20 acres. Estimated value $85,000.

Acquire parcel at Parks Highway Bridge (m. 75) that links creek to highway. More than 8,200 man-days of recreational fishing is recorded annually from this creek. Acquisition of land and eventual development of a public boat launch at this location will assure continued public use of Little Willow Creek from its confluence with the Susitna River upstream to the Parks Highway. Non-mechanized boat float trips down Little Willow Creek and the Susitna River to the proposed Willow Creek boat launch would become possible with the acquisition of land at the Parks Highway.

fairbanks north star borough

p.o. box 1267 520 fifth ave. fairbanks, alaska 99707 907-452-4761

December 20, 1983

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

Dear Senator Fahrenkamp:

Thank you for the opportunity to review the compilation of comments from "Round One" of the Resource Committee's hearings on the State's land management and disposal statutes, Title 38, held during September and October, 1983.

I have attached detailed comments forwarded to me by our Department of Community Planning and Land Development. As you know, this area of legislative concern continues to be of particular interest to me.

Please keep me informed as to your progress in implementing necessary revisions to the statute or administrative code regarding natural resources.

Thanks, Bettye.

Sincerely,

B.B. Allen
Borough Mayor

cc: Mach
Zybach

Attachment

BBA/kea

fairbanks north star borough

p.o. box 1267 520 fifth ave. fairbanks, alaska 99707 907-452-4761

M E M O R A N D U M

TO: Dawn D. Mach, Executive Director, Community Planning and Land Development
FROM: Allen R. Cronk, Acting Director, Division of Land Management a.R. Cronk 12/15/83
RE: Review of Title 38, Alaska Statutes
DATE: December 14, 1983

RECOMMENDED CHANGES IN TITLE 38

38.04.005 through 38.04.015. Taken together, these sections establish the policy for State land retention and disposal. They fail miserably to furnish a clear and concise policy.

Deficiencies include:

1. Lack of a minerals management policy which is needed to guide retention or disposal of mineral land. Such a policy should include a caveat that mineral land (surface) be retained in public ownership until a certain minimum level of exploration has occurred.

2. Lack of formal recognition of mining claims as a vested and saleable property interest. Disposal of the surface estate to third parties virtually assures conflict between the surface owner and the mineral developer. Such conflicts cannot be in the best public interest and should not be promoted by government entities.

3. Continued disposals in previous low density disposal areas defeats the intent of existing policy and reduces the attractiveness of such areas for purchasers. The policy should be strengthened to require a predetermined density level that cannot be exceeded until services are extended or an economic base is established in the area.

4. No requirement presently exists to assess natural hazards prior to disposal nor is there a prohibition to the disposal of State land for residential use even though it is known to contain natural hazards some of which are very dangerous to public health and safety. Of particular concern are heavy metals in ground water, flood plain settlement, and slide or avalanche hazards. Even though these hazards are sometimes noted on the plat, the public is lulled into a false sense of security that government would not be disposing of the land if the dangers were serious.

5. There is no requirement to include an impact analysis prior to a State land disposal. Done properly, such an analysis would identify reductions in the local resource base, demand for public funding for road extensions and utility extensions, loss of public interest areas such as woodcutting areas, water frontage, access roads and trails, increased public costs resulting from fire hazards from development of disposal land, etc.

38.04.020 This section covers a wide range of topics that need to be reorganized and clarified. Consideration should be given to the following points:

(e) Disposal budget estimates. Disposal costs estimates of which budget estimates are only a part should be considered. Disposal costs estimates would include not only the disposal budget but also:

1) Post administration;
2) Improvement costs whether constructed or not;
3) Local government costs;
4) Costs incurred by purchasers and/or entrymen.

These costs coupled with the recommended impact analysis would reflect the true benefits or liabilities of a specific State land disposal.

Benefits to be derived would include:

1) An indication of demands for public funding that can be expected at both State and local levels.

2) Evaluation of disposal procedures for cost effectiveness.

3) Evaluation of effectiveness from both the public and private standpoint of State disposal programs.

At the present time, the State must establish a survey grid in remote areas and the entryman must then survey the entry. The cost of two survey efforts is very high. Significant cost savings by both the State and the individual can be realized if the State surveyed the disposal parcels initially thus eliminating the need for staking, several field checks by the State, a great deal of paperwork, and a second survey. From the cost estimates, it should be possible to improve the disposal system so that maximum cost savings can be realized by all rather than just the State administration.

(f) The market assessment requirement should be strengthened by identifying the components of such an assessment. Among others, the following components should be considered:

1) The amount of land in each category both, public and private, that is available for development but remains undeveloped. This should be measured in both acreage and parcels.

2) The need for land and how the need is assessed.

3) The demand for land and how it is assessed.

4) The amount of past State disposals:

   a) By municipality;
   b) By year;
   c) Percent of disposals by type of land, municipality, year;
   d) Amount of past disposals which are developed;
   e) Increase in value (disposal price to present value.)

(g) Categories of land disposals. While this section needs revision to comply with recent court judgements, thought should be given to concentrating homesite entries. At present each subdivision has homesites that require early development and occupancy. Because the cost of access and utility extensions are prohibitive for so few and since there is no time to wait for these amenities to be publically funded, development of the homesites is limited to either minimum development or they go to default. Provisions should be made where homesites can be concentrated and the percentage goal averaged over several years. Perhaps disposal of an entire subdivision by homesites to meet the percent requirement for several years would be acceptable. In this manner, everyone in the subdivision will have a common goal for obtaining roads and utilities and a special assessment district can be formed if necessary. Further, the likelihood of minimal or eyesore type development is greatly decreased.

38.04.020(h) Parcel size restrictions for subdivision disposal should be retained to discourage resubdivision. Subdivision density should be related to land bearing capacity. Individual preferences for larger parcel sizes can be satisfied through the private sector market or homestead provisions.

38.04.021 Concur with comments. The joint disposal issue should be expanded to address improvements construction perhaps with the Borough recovering improvement costs from State sale receipts.

38.04.025 This section should be part of the overall policy statement set out in 38.04.005.

38.04.030 ibid.

38.04.045 (see comments under 38.04.020(e)) Again, if the cost of the control survey together with the cost of the individual parcel surveys are considered along with the cost of remote parcel staking and program administration, it probably is much less expensive to survey the disposal parcels at the onset and sell them to interested parties. Total costs, both public and private, must be considered if the public interest is to be served.

38.04.055 Reservation of easements in fee carries a heavy cost of defining the right of way on the ground. The interest served by such a fee-reservation must be critically evaluated. If the reservation is necessary, survey must be completed and paid for in a timely manner by the State to avoid administrative abuse.

38.04.065 Concur with comments. However, unless there are clear and concise policies on land disposal, land retention and resource management, the land planning process reflects only the interest and desires of the planners. This does not necessarily reflect the best public interest or full consideration of all aspects of the situation.

38.05.035(a) Best interest findings should be a requirement for all land actions.

38.05.035(b) Three years limit of preference right too short and arbitrary. More suitable time frame is 7 years.

38.05.045 Lands identified as Timber Land should be retained and managed by the State. If sold, suitable provisions must be made to insure that the timber resources continue to be managed for sustained yield. (i.e. sell Timber rights as the State presently sells Agricultural rights.)

38.05.057 There are a number of factors in this section that should be reconsidered, among which are:

1. Consultation with the Assessor. Unless clarified and given weight, such consultation wastes everyone's time.

2. Present at the lottery. The expense of getting to the lottery is often excessive and consumes private resources that are better spent on the land acquisition. With this caveat, the land is <u>not</u> equally available to all residents. No purpose is served that could not equally be served by requiring the downpayment or a substantial bid deposit to accompany the application <u>if</u> the applicant is not to be present.

3. Reference to discounts should be deleted.

38.05.069(a) and (b) While a preference right option may be a desirable feature in ag land disposal, the 60 day option is excessive. If the option is to be exercised, it should be exercised on the same day as the disposal in the same manner that the sale contract is executed.

In addition, the option should be available only to existing farmers who derive 50% or more of their income from the existing farm. Grants of preference rights to hobby farmers which increase land holdings 5 to 20 fold are unlikely to be in the public's best interest.

Reconsideration of this section is needed.

38.05.070(c) Excessively long leases are not in the best public interest. Federal leases are generally for a much shorter period than the 99 years suggested. A good compromise would be a lease term based on the life of the proposed facility plus a reasonable development period. In this manner, financing should not be a problem and if development is not undertaken, a valuable public resource is not tied up for speculation for an excessively long period.

38.05.070(3) The proposed new limit of $5,000 per year is too high. Non-advertising implies a minimal value, if a lease value is $5,000/year. Fee value can be expected to $50,000. A more appropriate limit should be between $1,200 and $2,000 per year.

38.05.078(d)(1) and (2) These sections should be clarified. It appears that the intent is to preclude alienation of the land while it is under sale contract. While this is a reasonable consideration, it quickly becomes unreasonable if, as written, disposal or subdivision is precluded after the sale contract is paid off, lacking an overriding public interest. While prepayment appears acceptable, these sections still apply and unnecessarily limit private interest with no apparent public benefit.

(f) This should be clarified to reflect local practice for blocking or founding mobile homes. Common practice in Fairbanks is to found mobile homes on timber square sets which in the normal sense would not be considered a "permanent" foundation.

38.05.079 A remote cabin leasing program would minimize many anticipated access problems associated with the non-agricultural homestead program. Should be pursued.

38.05.110, 115 and 120 This section, if still applicable, should be recodified into Title 41 with the rest of the forest management statutes.

38.05.127 This section is unreasonably enforced and should be modified to require full compliance by the State administration and to relieve the onerous provisions when applied to both public and private disposals. Problem areas are:

1. The State administration has failed to determine the status of waterbodies by regulation.

2. Every waterbody including dry sloughs and intermittent streams are impressed with easements.

3. The requirements for easements to waterbodies is interpreted to require the recipient of State land to acquire easements across private land to reach State waters. The cost of acquiring such easements can easily exceed the value of the State land received and may be beyond reasonable effort without the use of condemnation powers.

4. There are no guidelines established to evaluate the quality of the State water being served nor the public interest therein. However, once criteria have been established defining public and navigable waters, which by their importance require access easements, those easements should be identified and reserved in all disposals including oil, gas and mineral leases. Fee simple easement reservations serve no constructive purpose, yet serve as a reserved strip which may be subjected to unreasonable abuse in the future.

38.05.185 As noted under comments on 38.04.005, unless a minerals management policy is formulated, even a determination of mineral character for such lands affords no protection. It is in the public's best interest to retain the surface of such land in public ownership at least until a certain level of exploration has been carried out.

38.05.185-275 The comments addressing these sections are better addressed in pending litigation. Because of political realities, the Fairbanks North Star Borough should not support the leasing rather than staking proposal.

38.05.195 The requirement to stake in cardinal directions results in a great deal more land being filed upon because creeks do not run in cardinal directions. Placer claims following drainages would require staking only the desired land.

38.05.275 State mining claims on State selected but not tentatively approved land is a federal trespass!! Acceptance of these claims continues to be a problem particularly when federal mining claims are ove-filed, when federally granted interests are overfiled, and when exploration funds are expended before a bonafide interest can be acquired. Further, such allowance conflicts with 38.04.020(c) and 38.04.015.

38.05.300(a) To be meaningful, "multiple purpose" use must be defined. It would be best to address major categories of use such as mineral development, commercial timber harvest, recreation, etc.

(b) The annual written report should include not only the acreage of land classified in the preceding year, but also the total acreage in each classification category. Further, it would be helpful to include the total acreage closed to each major category of use. In this manner, the Legislature can easily see the direction being taken by State land managers and assess whether or not legislative intent is being served.

38.05.301 A suggestion has been put forth that would give veto authority over proposed disposals to Boards in the unorganized boroughs. Be aware that no such authority exists in the organized boroughs. The special treatment or exemptions in the unorganized boroughs with regard to disposal quotas is already at unacceptable levels.

38.05.340 This section conflicts with 38.05.078(d)(1) and (2) and with 38.09.030 and should be amended to reflect the prohibitions set out therein.

38.05.345 Should be changed to require notice by a method determined to provide the broadest scope of coverage in the effected area.

38.09.010(b) No change to the one mile distance from a survey monument can be acceptable unless the State is willing to absorb the initial cost of surveys, and to then prorate and require payment of such prorated costs to the entryman. Too many abuses and hidden costs are lurking in the wings.

38.09.050(d) Existing statutory prohibitions are adequate. There is no requirement to attempt semi-permanent lockup of lands conveyed.

38.50.020(a) A fast track for small exchanges is desirable. However, no exchange for less than equal value should be tendered or considered without a detailed justification. Legislative review of exchanges for less than equal value is probably desirable. The Borough should exercise great caution in supporting amendments to this article unless such changes are parallel with our exchange ordinance.

TITLE 38 GENERAL COMMENTS

1. At the present time all appeals by parties of interests from administrative decisions must be submitted to the very entities that issued the adverse decision. It is rare that an appeal is forwarded to higher authority and even more rare for higher authority to overturn a subordinates position. Virtually never are legal issues addressed or even cited in a response to an appeal.

   As a result of past handling of appeals, many people feel it is a waste of time to bother. To "buck" the existing system is to invite vindictiveness and inaction on future needs. Certainly the appeal process is not viewed as one which improves operations by clarifying and modifying existing procedures. The net result is that appeals are handled somewhat differently in each office depending upon the expertise of the employee issuing the decision and handling the appeal. The same problems continue to arise until the public becomes so outraged that legislative intervention is sought.

   An independent Board of Appeals established at the departmental level, but preferably at the Department of Administration level, would be a great help and would go a long ways toward elimination of the mistrust which presently exists against State government. Such a board would assure at least a fair and impartial review of the merits of the case and the legal issues involved without going to court. Both the public and State government would be much better served.

2. There is a pressing need for a journal to be published which includes all proposed regulations. At the present time, the average member of the public cannot keep up with regulation promulgation and has a very difficult time obtaining copies from the many agency offices.

   Such a journal, fashioned after the Federal Register would be a great help if available at a reasonable subscription rate. Further, a central clearing house, such as the Governor's local offices or the Legislative Affairs Office, would also be a great help.

ARC/kea

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March 6, 1984

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

MAR 8
MAR 9 1984

Dear Bettye:

Thank you for the opportunity to review and comment on your proposed legislation to revise Title 38, S.B. 375. In general, we feel you have made an excellent effort to correct many of the technical and substantive problems now plaguing effective implementation of our state land laws.

Several of the provisions or proposed amendments to S.B. 375 are of particular concern to NANA. We fully support Section 59 as drafted which permits the Commissioner some discretion in the issuance of trapping cabin permits. We have no objection to the issuance of trapping cabins for serious trappers when needed. But the current wording of the law prohibits the Commissioner from denying a permit when other resource or use conflicts may occur with cabin construction and use. Frankly, we have had problems in our region with new trappers moving into long-established trapping areas which are used on a "rotational" basis every two or three years (much like sustained-yield farming techniques). The ability of new trappers to demand and to receive permits for cabins effectively preempts other established trappers in the area.

The problem is further exacerbated when the very localized fur bearer population is not able to sustain yearly intensive trapping brought about through permanent or semi-permanent cabin use. In short, the Commissioner needs some flexibility to weigh the resources and competing uses involved before granting an individual such an exclusive and preemptive right to use land.

We also support the provision of Sections 53-58 changing the requirements of state land exchanges. The rather rigid land selection patterns permitted under the Alaska Native Claims Settlement Act (ANSCA) and the Alaska National Interest Lands Conservation Act (ANILCA) has resulted in complex and

interdependent land ownership patterns in the state. Rational, optimal management and use of the state's natural resources will be greatly dependent on future consolidation and transferring of land among the several major landowners in the state through mutually agreeable land trades. To the extent that such trades are facilitated by federal and state law and regulation, the greater will be the benefit to all landowners.

For this reason, we would support further amendments to 38.50 to reduce legislative and administrative "red tape" in negotiating and approving land exchanges. While recognizing the valid and necessary oversight role of the Legislature, we would support reducing or limiting the formalized oversight role in statute, especially for smaller tracts proposed for trade.

Additionally, the distinction between equal appraised value trades and those "for other than equal appraised value" has received far too much emphasis in the law and in corresponding administrative negotiations. Many lands proposed for trade are located in remote regions of the state where traditional appraised values are of dubious utility due to the absence of land sales and the lack of direct use of the land. Furthermore, many trades classically involve "apples and oranges" with such things as wildlife habitat or public recreation values being traded for lands of mineral, timber, or other divergent and incomparable values. Hence, trades which are simply determined to be in the best interest of the state should be encouraged, regardless of any disparity in the "paper" values which may have been arrived at.

Finally, while we support the changes which have been made in 38.04 to take into account other values and other uses of the land in land disposals, we feel that the language could be further strengthened to protect existing residents and users in an area proposed for disposal. Land disposal problems become especially acute in areas where local residents are dependent on fish, wildlife, timber, and other resources for their day-to-day livelihood. The introduction of additional people and disturbances have significant adverse impacts on these resources and on the traditional uses of the area.

We would recommend that a more formalized local input process, including local hearings, be required and that area or regional plans be completed prior to disposals to ensure that existing uses and resources are taken into account prior to such a permanent commitment of the state's resources.

Thank you for this opportunity to comment. We would be happy to discuss any of the points further with you or your staff.

Sincerely,

Walter Sampson

Walter Sampson
Director of Lands

WS/mc

cc Senator Frank Ferguson
Representative John Ringstad
Representative Al Adams
Esther Wunnicke, Commissioner DNR

REMARKS OF

ESTHER C. WUNNICKE

COMMISSIONER OF NATURAL RESOURCES

BEFORE THE

SENATE COMMITTEE ON RESOURCES

OCTOBER 5, 1983

Thank you for inviting me to appear before your committee on the subject of Alaska's lands.

Although members of your committee are well-informed about Alaska's land estate, it would, perhaps, be helpful to other listeners to be reminded of some particulars about it.

* The State of Alaska owns more than 72 million acres of land, almost one fifth of all the land in the State.

* The State also owns virtually all 32,000 miles of tidelands.

* And the State owns all of the 10 million acres of water in the State, even if located on private or federal lands.

These lands and waters, together with the resources managed by the Department of Fish and Game, are the foundations of life in Alaska--our healthy economy and quality of life we enjoy. Our Constitution and statutes call for the maximum use of State land consistent with the public interest, achieving a balanced combination of private and public use.

As the result of legislation or in the fulfillment of our department's management responsibilities, the State's lands have been committed to a variety of private and public uses:

* Over 3 million acres are dedicated to State parks and waysides.

* Nearly 4 million acres are leased for oil and gas production.

* About 2 million acres are embraced in two State forests.

* About one-third of a million acres have been transferred to private persons for farms, or residential or seasonal occupation purposes.

* The remaining acreage has been broadly classified as lands suitable for agricultural production, settlement, timber, minerals, or wildlife habitat.

I hope these few particulars provide a backdrop for the areas of policy I'd like to address this evening.

Since the professional staff has provided your committee with a number of proposals for largely technical changes to Title 38, I would like to use this opportunity first, to illuminate the reasoning behind a recent policy shift in land conveyances, and second, to describe some preliminary conclusions arising from our department's review of past land disposal programs.

Our recent policy shift relates to the transfer of lands from the Bureau of Land Management to the State. Under a 1981 agreement between the State and federal governments, lands have been conveyed to us at a rate of 10 to 13 million acres per year. Virtually all of these lands have been unsurveyed. The State's need, however, and the need of Native allotment applicants and Native corporations, is for patent to lands. This requires the federal government to survey and monument the land.

By asking the Department of Interior to give increasing emphasis to the transfer of surveyed lands, we may slow the rate at which former federal lands are transferred to the State. This, however, is a positive result for Alaska. If we were to continue to receive new lands at the recent rate of 10-13 million acres per year, our entitlement of 33 million acres would be met in three years, despite the fact that we have until 1993 to choose the lands so fundamentally important to Alaska's future. To use the longer period of time will allow us to review past selections on the basis of new knowledge, and then to relinquish lands of lesser value; it also will allow us to select high value lands which are presently unavailable because of Native corporation overselections.

For all of these reasons, Governor Sheffield has urged the Secretary of Interior to seek an increase in funding for

survey and patent of land. And, although the Secretary believes the national interest requires rapid transfer of unsurveyed lands, he recognizes, I think, that the State's best interest has led to this policy change.

A second area of policy worth discussing involves prospective changes to what has been called the State's land disposal program, and we prefer to think of as a land offering program.

Given the criticism of the program in recent years, I asked Deputy Commissioner Bob Arnold to undertake a staff review of existing programs in light of that criticism and to develop recommendations for possible changes. Since he discussed some of his study group's preliminary conclusions in his testimony at the Fairbanks hearing of your committee, I will only summarize what I understand to be the consensus so far, and defer my conclusions until members of this committee and the public generally have had an opportunity to comment.

The study group will be proposing for consideration:

- That year-round residential offerings be road accessed and be in locations where services exist or can be efficiently provided;

- That demand for year-round residential lands can best be met by seeking funds to assist boroughs to offer their lands;

- That recreational or seasonally occupied lands be high amenity with sufficient separation to avert demand for services;

- That acreages to be offered for private use will be identified in the department's area plans, above predictable demand, at realistic levels;

- That, unless lands are earned through homestead efforts, lands be offered at fair market value; and

- That offerings in boroughs comply with local comprehensive plans and subdivision ordinances.

Adoption of these policies would have both fiscal and acreage implications. The number of acres offered for private use will always be dependent upon the level of legislative appropriations for survey and other activities. Policies being considered related to meeting borough subdivision requirements would require legislative approval of road-building funds. (The cost of the roads could be recovered, however, through the increased value of the lots.)

The land offering study group will meet tomorrow with representatives of all divisions within the department and will, by mid-October, furnish its conclusions to this committee and the interested public. I am planning, to hold public meetings in a half-dozen communities on the broad subject of managing Alaska's water and land resources this fall and winter, and I expect that the past land disposal program and the future land offering program will be addressed by many citizens.

In closing, I want to express my appreciation to the committee, and especially to your chairman, Senator Fahrenkamp, for the spirit of cooperation which has characterized your staff's approach in your review of land statutes and their implementation.

Thank you for this opportunity to testify.

fairbanks north star borough

p.o. box 1267 520 fifth ave. fairbanks, alaska 99707 907-452-4761

September 23, 1983

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

Dear Madam Chairman:

In aid of the review by your committee of land management provisions in Title 38, Alaska Statutes, I offer comments in areas which most directly impact municipalities.

The policy established by the Legislature to dispose of large numbers of acres in subdivision form, without the properly required construction of roadways to serve lots created, has had and will continue to have a serious negative impact on the Fairbanks North Star Borough. The large number of requests and even demands for assistance and services is an inevitable result of sudden large concentrations of small lot ownership in areas remote from available community services which are normally in place or required in the development of lands within a municipal jurisdiction. This matter has been repeatedly brought to the attention of the administrative and legislative bodies of the State, with little effect. The rationale offered has invariably been that the State cannot finance the improvements required from the budget, and proceeds derived from sales are inadequate due to large discounts made available to buyers, and the large number of lots unsold in a typical disposal, in addition to the fact that land sale proceeds are returned to the general fund and are not necessarily reappropriated to the land disposal program.

The residency discount is no longer in effect so that lots must now be sold at full fair market value. I propose that the percentage of unsold lots will now increase dramatically without the standard amenity of physical access. This defect combined with poor quality and remote lands offerings accounts for the poor return of the State's investment of time, manpower, money and land.

To rectify the existing situation, Title 29 must be amended to delete all references to special status granted to state subdivision disposals. With improvements in place, a proper and reasonable appraisal can be conducted and a successful land sale can be the expected outcome of an offering at true value.

AS 38.04.020(e.4) provides that estimates for engineering design work and construction of access roads and capital improvements normally required for subdivision development be included in the Department's budget request for disposals. In lieu of such estimates, a schedule for obtaining same shall be submitted. To properly prepare a subdivision development for disposal, the legislature must be made aware at the very beginning of the real costs involved. The provision for deferring submittal of estimates should be deleted.

In another area, the Borough has become painfully aware of deficiencies in provisions found in AS 38.05.127, which 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 regulation 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 requires only solicitation of comments from agencies and relies heavily 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 with no discernable recreation or wildlife value, as well as to 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 is unable or unwilling to define criteria to be used to implement legislative intent in this matter, and that such criteria must originated with the Legislature by statute. Hearings held by your committee should include consideration of this matter so that the parameters of public interest and the extent to which linear easements along water bodies and access easements to such linear easements are required to protect those interests, may be established. The results of the hearings will determine the proper legislative criteria.

In testimony at the Fairbanks hearing on September 21, the Department of Fish and Game provided comments and recommendations in this regard. Those comments may be construed in two ways. Either that the State should retain ownership of the lands which would normally be subject to the easement, together with ownership of the reserved easement for access to water bodies, or that the scope of use of those easements be legislatively defined and the State should retain ownership of specific access points on the water bodies. I believe the latter interpretation is more nearly the thrust of testimony offered at the Fairbanks hearing. It also appears that the specific areas of interest are those water bodies that are in fact navigable or those which have indisputable public value because of fisheries or other game use. Upland drainages and minor tributaries to more important waters are not intended to be burdened with the same encumbrances.

I strongly recommend that definition of the scope of use permitted be established as soon as practicable and include as a companion piece to legislative definitions suggested above. I also recommend that if lands are to be retained by the State in selected areas, that funds be also allocated to properly survey and withdraw these lands.

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.

As a final note; due to the heavy revisions and broadening of lines of authority, responsibility and policy encompassed by Title 38, the document is becoming a source document for users well beyond those normally considered in distribution of statutory publications. I strongly recommend that when review and revision are complete, that a large, 8½ x 11 edition similar to "Title 29" , published by the Department of Community and Regional Affairs, be issued.

Thank you for the opportunity to participate in your committee's review.

Sincerely,

dawn

Dawn D. Mach
Executive Director
Community Planning & Land Development

DDM:bcf

cc: Mayor Allen
William Zybach

Alaska State Legislature

superseded

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Senate

Committee on Resources

May 29, 1984

SUMMARY OF MAJOR PROVISIONS OF HCS CS SB 375 (2nd Res)

Access

EXISTING LAW	SB 375
AS 38.04.050 requires that wherever state land is surveyed for private use, adequate rights-of-way and easements be reserved to each parcel. Further, the director is required to arrange for the development of surface access "where necessary and appropriate."	Would specify that legal and feasible access be provided within subdivisions, and that surface access must meet local ordinances for subdivisions.
AS 29.33.150 exempts the state from compliance with local subdivision ordinances which require capital improvements.	This exemption would be removed.

Costs

EXISTING LAW	SB 375
Funds for implementation of land disposal programs and for grants to municipalities are provided through annual legislative appropriation, based on a request pursuant to AS 38.04.020(e).	Proposed AS 38.04.022 establishes a revolving fund within the general fund for deposit and subsequent appropriation of revenues from the sale of state land.

AS 38.05.310(a) limits the length of time an appraisal is valid to 120 days.	Extends the length of time an appraisal is valid to one year.

Land Exchanges

EXISTING LAW	SB 375
AS 38.50.020(a) provides for legislative review of exchanges for other than equal appraised fair market value.	Legislative approval would also be required for any land exchange involving more than 500 acres of state land or valued at more than $1 million.
AS 38.50.120(a) gives the commissioner discretion in holding public hearings on proposed land exchanges.	At least three public hearings would be required for exchanges involving more than 500 acres or having an appraised value of $1 million or more.
AS 38.05.110 establishes notice procedures (in addition to those required under AS 38.05.345) for land exchanges: provide notice to legislators, municipalities and Native Corporations in the area of the proposed exchange, the Governor's Office, and all state departments.	Notice requirements for land exchanges involving less than 500 acres or appraised at less than $100,000 would be only as required under AS 38.05.345 (electronic media, newspaper, posting, personal contact).

Notice

EXISTING LAW	SB 375
Under AS 38.05.345, public notice for classification, sale, lease, or disposal of state lands must be provided by one of the following methods: newspaper, electronic media, posting, or personal contact.	Notice must be given by newspaper plus one other method.

See also "Land Exchanges."

Preference Rights

EXISTING LAW	SB 375
AS 38.05.035(b)(2) allows for granting of preference rights to correct errors or ommissions of a state of federal agency.	Would limit the right to apply for a preference to 3 years from the time of error.
AS 38.05.035(b)(3) allows for granting of preference rights to correct errors or omissions of others.	Would limit the right to apply for a preference to 3 years from the time of error. Adds a new preference, to be granted to long-term landholders who have derived business income from the land.
AS 38.05.069(a) grants owners or lessees of agricultural land a first option to purchase or lease unoccupied adjacent land and establishes a procedure for determining priority if more than one applicant is eligible for the option. This option must be exercised within 60 days after the auction.	Options must be exercised at the time of the auction. A single recipient would be selected by the drawing of lots.

Program Features

EXISTING LAW	SB 375
AS 38.04.020(h) establishes subdivision parcel size at five acres unless topographical features or water and sewage considerations suggest otherwise.	Would allow for consideration of resource values and land uses in determining parcel size.

AS 38.04.020(g)(2) requires that 20% of subdivision parcels be disposed of as homesites.	The number of subdivision parcels disposed of as homesites would be left to the discretion of the commissioner.
AS 38.04.035(4) limits issuance of remote cabin permits to areas where survey and conveyance is impractical.	Permits could also be issued in areas where resource and use conflicts, or a long-range interest in public ownership, exist.
Under AS 38.08.060, the following conditions must be met before a homesite patent can be obtained: Occupancy for 35 months within seven years, erection of a dwelling within five years, payment to the state for survey and platting.	Patent could be obtained prior to expiration of the entry permit through purchase at fair market value if all but the occupancy requirements have been met.
Under AS 38.09, the following conditions must be met before a homestead patent can be obtained: Occupancy for 25 months within five years, survey within two years, erction of a dwelling within three years.	AS 38.09.090. would allow the purchase of a homestead parcel at fair market value prior to expiration of the entry permit if all but the occupancy requirements have been met.
AS 38.09.030(c) allows holders of homestead entry permits to transfer rights to another individual in the event of incapacitating illness or injury.	Grants homesite permit holders the same right to transfer.
Under AS 38.45.080(a), a trapping cabin permit must be issued if the applicant meets certain conditions.	The commissioner would have discretion in issuance of trapping cabin permits.

AS 29.18.210 authorizes the state to contract with a municipality to conduct an auction of state lands, and allows the municipality to retain expenses from the proceeds of the auction.	Clarifies that capital expenses may also be retained from auction proceeds. This will allow for joint disposals, whereby the municipality would construct the roads on state land and recoup its costs through auction proceeds.

Price of Land

EXISTING LAW	SB 375
AS 38.04.035 requires that, unless otherwise provided, lands be sold at fair market value.	AS 38.05.055 would allow bidding at auctions to begin at 70% of the appraised value of the land.
No general land discounts are currently offered.	AS 38.05.940 would grant a 25% discount on land sales to veterans.

Survey

EXISTING LAW	SB 375
AS 38.04.045(b) requires that all land disposed of must be within two miles of a survey monument. AS 38.09.010(b) requires that land made available for homestead entry be within one mile of a survey monument.	Eliminates the requirement that land made available for homestead entry be within one mile of a survey monument, and allows DNR to waive the 2-mile requirement.

Leasing Procedures

EXISTING LAW	SB 375
AS 38.05.070(b) establishes the conditions of a negotiated lease at a 15 year maximum term, and with a maximum appraised value of $250/year.	Increases the value of a lease that may be negotiated to $5000/year, and the term to 10 years.