

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4967 HRES HB 266 - HB 289

539

BE IT ENACTED etc. etc. . . . that public policy of this State is declared as follows: to maintain a convenient means of regularly recording legal documents and to obtain information concerning existing recorded documents. In the making of rules and regulations to facilitate the legitimate administrative needs of the various recording offices, reasonable doubts shall be resolved in favor of recording rather than of rejection. The Recorder shall not make judgments as to the legality of the contents of any document offered for recording. Nevertheless, the Department of Natural Resources shall adopt such rules and regulations as it requires to control indiscriminate filings of documents that do not meet certain minimum requirements. These regulations may include but shall not be limited to the requirement for a legal description, if needed, names of parties, capacity of parties, legibility and other such reasonably required information to assure that the Recorder's Office functions in a manner consistent with the needs of the citizens of this state.

The foregoing suggestions for a statutory change to control the rule-making authority of DNR is one suggestion. The second is that a request be made to DNR for proposed new amendments to the existing provisions contained in the Alaska Administrative Code relative to recording. Your Committee recommends that at least the following amendments be specifically requested of DNR:

1. All documents valid at the time they were made shall be recorded, notwithstanding that they may not meet the requirements contained in later-adopted rules and regulations.
2. A document shall not be rejected on the ground that it serves more than a single purpose nor shall it be required that a document be recorded separately for each of the

various purposes for which it may appear to stand. (This shall not preclude the multiple recording by the offering party of a document which has several purposes.)

3. A document which makes reference to an attached exhibit shall not be rejected on the ground that the exhibit does not contain a label.
4. A document shall not be rejected on the ground that it lacks the recording information contained in another document that is being amended by the one being offered.
5. An official certified document from any governmental office in this state or a sister state shall not be rejected on the ground that it is not the original provided it is legible.
6. A document shall not be rejected on the ground that it does not specify the name of the recording district provided that that information is given to the Recorder by the person offering the document, or such information is contained in a cover letter accompanying the document. (The information so received by the Recorder may be noted by the Recorder elsewhere on the document for future reference.)

CONCLUSION

It is recognized that many of the existing regulations may be desirable in the abstract. However, uncompromising loyalty to multiple details, often of questionable importance, result in the rejection of instruments and consequent delays in giving notice. Such delays can have disastrous results. All persons who are drawing legal instruments and submitting them for recording are not attorneys or title companies. The public's right to record ought to be paramount.

DATED: December 5, 1986.

Respectfully submitted,

\_\_\_\_\_  
Douglas L. Gregg

\_\_\_\_\_  
Larry Weeks

\_\_\_\_\_  
Fred J. Baxter

Do you feel that the recorder should refuse to record or file a document because:

YES NO

17 15 Contains no "return to" address.

30 4 Lacks trustee name on deed of trust.

29 8 Lacks real property description.

15 17 Lacks a title reflecting its overall content.

26 10 Document not executed entirely in English.

26 9 Lacks the recording information of the original document being amended, corrected, extended, modified, or released.

16 13 Document is larger than 8 1/2 by 14 inches.

29 9 Document must state in what capacity the signatory executed the document; individually, as attorney-in-fact, partner, corporate officer, executor, administrator, guardian or trustee.

22 11 Lacks the name of the recording district in which it is to be recorded.

16 14 Lacks reference to attached exhibit/Exhibit not clearly labeled.

26 5 Lacks attached exhibit when reference is made to such.

5 27 An original, recordable document may not be accepted as an attachment to another document.

3 32 The document serves more than one purpose. Recording fee is charged separately for each purpose.

19 14 Does not name person against whom assessment is placed.

3 29 Document is valid instrument executed prior to effective date of regulations but does not conform to current regulations.

282 217

COMMENTS:

499 RESPONSES

APPROX 35 INDIVIDUAL RESPONSES

HB

267

Original sponsor: Resources Committee

IN THE HOUSE

BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 267 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the levy and collection of fees for the use of state park facilities; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 41.21 is amended by adding a new section to read:

Sec. 41.21.023. FEES FOR THE USE OF STATE PARK CAMPSITES. (a)

The department may establish and collect fees for the overnight use of state park developed campsites. When setting these fees, the department shall consider

(1) the cost to the state of operating the facility;

(2) the fees charged for the use of a similar facility by a nongovernmental entity;

(3) the cost of administering a fee collection program for the facility; and

(4) the public interest.

(b) In this section

(1) "developed campsite" means a campsite having access to the following public facilities: restrooms, a picnic table, an outdoor cooking facility, and an approved water source,

(2) "state park" has the meaning given in AS 38.04.910.

\* Sec. 2. AS 28.10.411(e) and AS 41.35.045(b) are repealed.

\* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

BILL SHEFFIELD, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF PARKS AND OUTDOOR RECREATION

February 19, 1985

Re: Legislation for Campground Fees

225A CORDOVA STREET  
ANCHORAGE, ALASKA 99501  
PHONE (907) 275 2553

MAILING ADDRESS  
POUCH 7001  
ANCHORAGE, ALASKA 99510

The Honorable Bettye Fahrenkamp  
Alaska State Legislature  
Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

We recently discussed the concept of generating additional revenue for the state by charging fees for the use of state park campgrounds in Alaska. I'm hoping to see a bill introduced into this year's legislative session to authorize state park campground fees. My staff and I have compiled some facts, figures, and projections which I'd like to share with you.

#### The History of Fees in Public Campgrounds

The federal government began collecting fees in national parks over 50 years ago. Today, Alaska is the only state to not charge for the use of recreational facilities. Of the country's 50 state park systems, only Alaska has no campsite fee program. Here in Alaska, the U.S. Forest Service, National Park Service, U.S. Fish and Wildlife Service and Municipal campgrounds all charge fees for camping. And, of course, private campgrounds charge.

In 1976, there was a \$10.00 annual entrance fee established in the Alaska State Park System. This program was terminated two years later by legislation dealing with motor vehicles [AS 28.10.411(e)] which stated that any vehicle with an Alaskan license plate need not pay State Park fees. To have a campsite fee program in Alaska's 100 state parks will require legislation.

#### Why Should We Charge Fees Again?

In a few words -- declining revenues and increasing demands. In 1982, there were 2.2 million visitors to our state park system; in 1983, 4.3 million; and last year, about 5 million! Information from other agencies charging fees shows that people desire well-developed, well-maintained camping facilities and they are willing to pay for them. Managers have also found a decrease in vandalism and a number of positive management spin-offs which occur when campsite fees are charged. Although government-operated campgrounds are seldom fully self-supporting, nationwide approximately 10% are. At a minimum, we can reduce the government subsidy of this popular, but nonetheless expensive, program. Developed campgrounds are very expensive to develop and operate. They are also very popular.

### How Do People Feel About Campground Fees?

Surprisingly, more than half of facility users will pay without hesitation. The Forest Service here in Alaska reports 77% compliance at more remote facilities and 92% compliance where a volunteer campground host is on the premises. My field staff tells me that many visitors, especially those from Outside, are amazed that no fees are charged in Alaska State Park campgrounds. Owners of private campgrounds are very much in favor of the charge. They are tired of the free competition. Last year, the Alaska Visitors' Association supported a previous attempt at legislation authorizing campsite fees.

### How Much Would Be Charged and At Which Facilities?

Fees would be approximately \$6.00 per overnight use of a campsite for residents, and approximately \$8.00 for non-residents. At first, only those campgrounds with substantial improvements would be included, with a graduated fee being charged for facilities with running water and modern restrooms. A "season pass" should also be made available at between \$50.00 and \$75.00 per year. Many of the less-developed, more primitive campgrounds would remain free. But generally, the fancier the campground, the higher the fee.

### How Would The Fees Be Collected?

The "iron ranger" self-registration fee station has been very successful for other agencies through the years. This is essentially a simple, slotted iron container located near the park entrance into which fees are deposited by visitors who will be overnighing at the campground. The fee station is self-operating and does not require staff. The station issues a camping permit which is placed on each vehicle dashboard. Park staff can then readily determine who has paid while on routine patrol. At larger facilities, a volunteer campground host will welcome each visitor, assisting with nearby facility locations and assuring general compliance with the campsite fee program.

### How Much Revenue Would Be Generated and How Soon?

If legislation is passed in the 1985 session, the program could be started in May of 1986 at selected sites. Estimating a visitation rate for this year (1986) of nearly 7 million, initially \$400,000 to \$500,000 could be realized, increasing considerably each year. Indiana State Parks, for example, now collects 80% of their operating costs through fees and concession revenues.

Along with this proposed camping fee, I hope to work through existing regulations and statutes to generate revenue from programs such as public use cabins, guides and outfitters permits, concessions and tours of historical sites. I feel that with tourism being one of the largest job and revenue producing industries in Alaska, State Parks should be an active member of that

The Honorable Bettye Fahrenkamp  
February 19, 1985  
Page 3 -

industry. And with a declining revenue curve, it is encumbant on me to formulate economic strategies which make money and save money while serving the public.

Sincerely,  


Neil C. Johannsen  
Director

enclosure

cc: Esther C. Wunnicke, Commissioner, DNR

NCJ:cik



# ALASKA VISITORS ASSOCIATION

P.O. BOX 10-2220  
ANCHORAGE, AK 99510  
(907) 276-6663

Telex  
Within Alaska 25-147  
Lower U.S. 090-25-147  
Canada 0305 25-147  
International 314-25-147

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1977-1978

JIM BINKLEY  
1978-1979

MARTHA EDWARDS  
1979-1980

ROLF KLUG  
1980-1981

DAVE PALMER  
1981-1982

CHRIS VON IMHOF  
1982-1983

April 16, 1984

Honorable Robert Bettisworth  
Alaska House of Representatives  
State Capital  
Pouch V  
Juneau, Alaska

Dear Rep. Bettisworth:

I am pleased to inform you that the AVA Board of Directors last week voted to support passage of House Bill 486, relating to user fees for parks facilities. As sponsor of the measure, I'm sure you understand how private industry feels about unfair competition the state currently participates in around Alaska.

The state will benefit from this legislation and AVA lends it support to efforts to getting the bill passed.

Sincerely,

Dale Fox,  
Executive Director

cc: Neil Johannsen



Province of  
British Columbia  
Ministry of  
Lands, Parks  
and Housing

# FORUM

## SELF REGISTRATION IN PARKS A SUCCESS

Will B.C. campers voluntarily register and pay for campground use when there isn't an official there to ask for their money? The answer is an overwhelming "yes", as the Parks and Outdoor Recreation Division showed this year in 52 provincial parks.

Two years ago, the division launched a pilot program of self-registration fee collections in seven parks, then increased it to 11 parks in 1979 and 52 this year. The objective was to monitor both the response of campers and the effectiveness from an operations standpoint. It has proven to be an entirely valid system for both users and operators.

B.C. was the first Canadian province to use the self-registration system, but credit for its organization goes to the U.S. Forest Service, which pioneered it in the early 1970's.

The principle behind self-registration is simple: the responsibility for registering and paying camping fees falls to the camper rather than park staff. The advantage to campers is obvious: convenience. They can now pay their fee when they arrive instead of waiting for a collector to come around at a specified time. They can also pay in advance for as many nights as they wish. Assuming they do (and statistics now show this to be an entirely valid assumption), fee collectors are now free to work in other areas of park operations to improve service to the public.

The implementation of the system is also fairly simple: as campers enter the campground, a sign advises them that attendants do not collect fees. Campers are asked to select a site, then go to the self-registration station and pay. At these fee stations, envelopes are provided, the camper fills in the registration information, puts the fee in the envelope, seals it, and deposits it in a vault, first tearing off the receipt stub. During the evening, park staff check each vault to ensure payment has been received.

During the two year period, the average voluntary compliance rate was over 80% and, when additional information, instruc-

tions, or reminders were given, the average was a stunning 96%! This rate is as high as that achieved with traditional methods of fee collection. Based on B.C.'s experimental program, Yoho National Park started a similar system in the summer of 1979. Their volunteer compliance averaged 92% — another indication of the system's viability and people's basic honesty!

To get public reaction to the new system, the division monitored some of the 20,000 camping parties who participated in the 1978 pilot program. At that time, users did not show any strong objections to the system. They were undecided as to whether or not there was a decrease in contact with staff and it was generally felt there were no problems with change, foreign currency (American) or the instructions. They did, however, remark on the appearance of the fee station, because it did not blend with park environment. This response was welcomed because the fee stations and vaults were designed to be easily identified.

As with most new concepts, improvements are an integral part of their success. The self-registration system was no exception. Several recommendations were made by field staff and improvements and modifications were made.

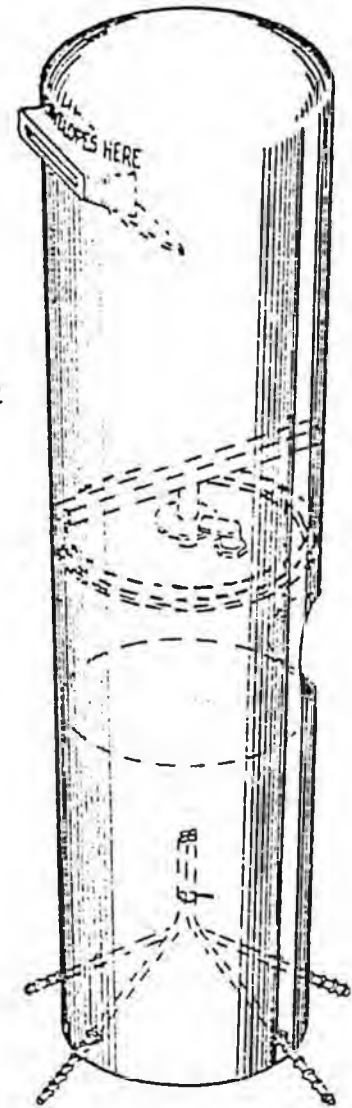


*Ron Kerr of the Parks and Outdoor Recreation Division Operations Branch demonstrates the self-registration fee system. Ron is filling out the permit envelope following the instructions on the sign. In the foreground is the vault where Ron will deposit the permit envelope and camping fee.*

# ENVELOPE DEPOSITORY

EXAMPLE

- D-625 DEPOSITORY BOX 48" HIGH
- DOMED HEAD AND REINFORCED SLOT PREVENTS DISTORTION BY PRYING
- STURDY 5" IRON PIPE PREVENTS USE OF PIPE CUTTER
- HIDDEN LOCK PANEL INACCESSIBLE FOR CHISELING, DRILLING OR PRYING
- ANTI TILT RING ABOVE LOCK PLATE
- CEMENT CAST INTO PIPE ANCHORS IT PERMANENTLY TO BASE
- FOREST GREEN PAINT



72.50 EACH

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Shipping charges will appear as a separate item on your invoice.



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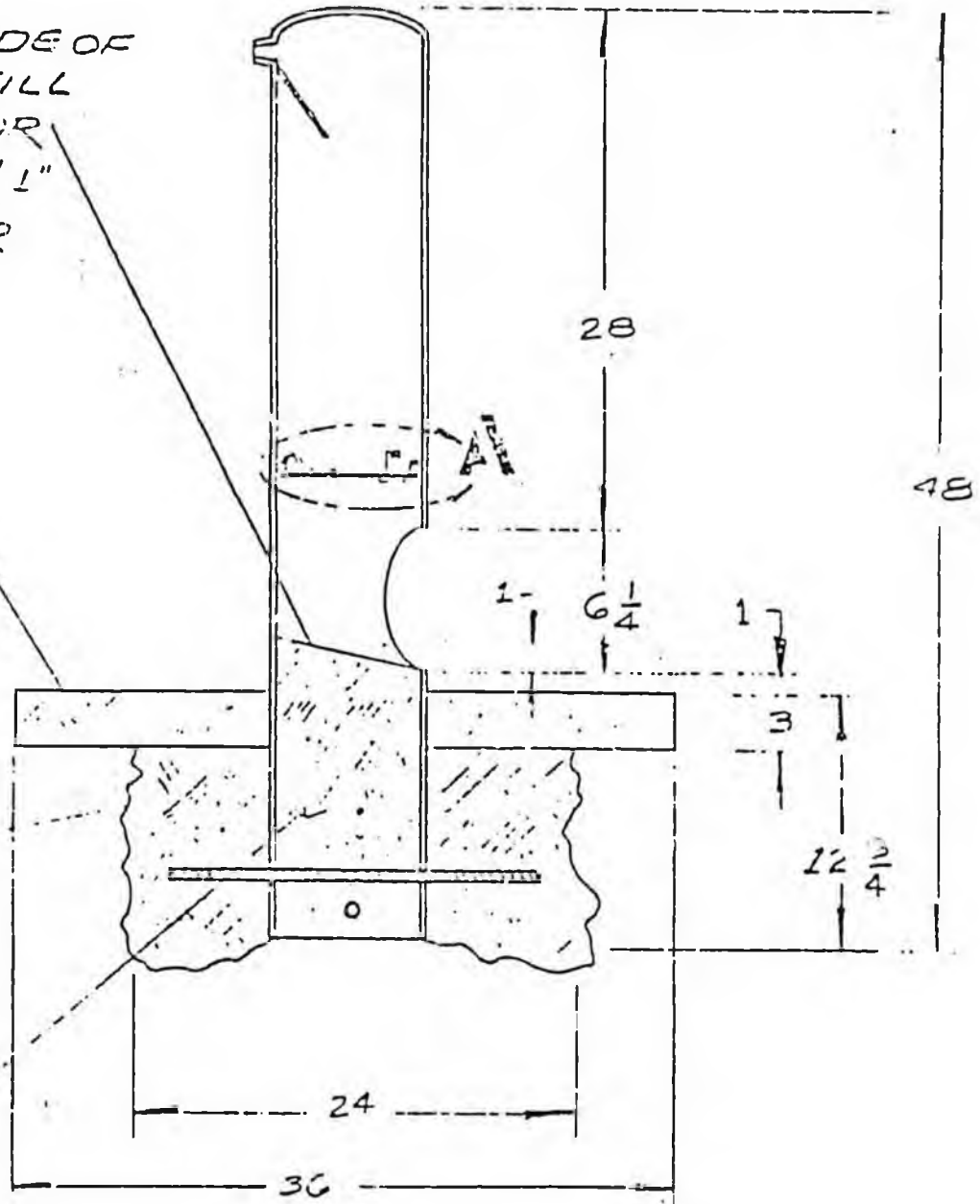
P.O. BOX 876 • ORLAND, CA. 95963 • (916) 865-4777

NOTE: FILL INSIDE OF  
TUBE W/ CONC. TILL  
EVEN WITH DOOR  
COVER LID, W/ 1"  
FLANGE TO OTHER  
TUBE

20 X 20 X 3"  
CONC. PAD  
2.15 CU. FT.

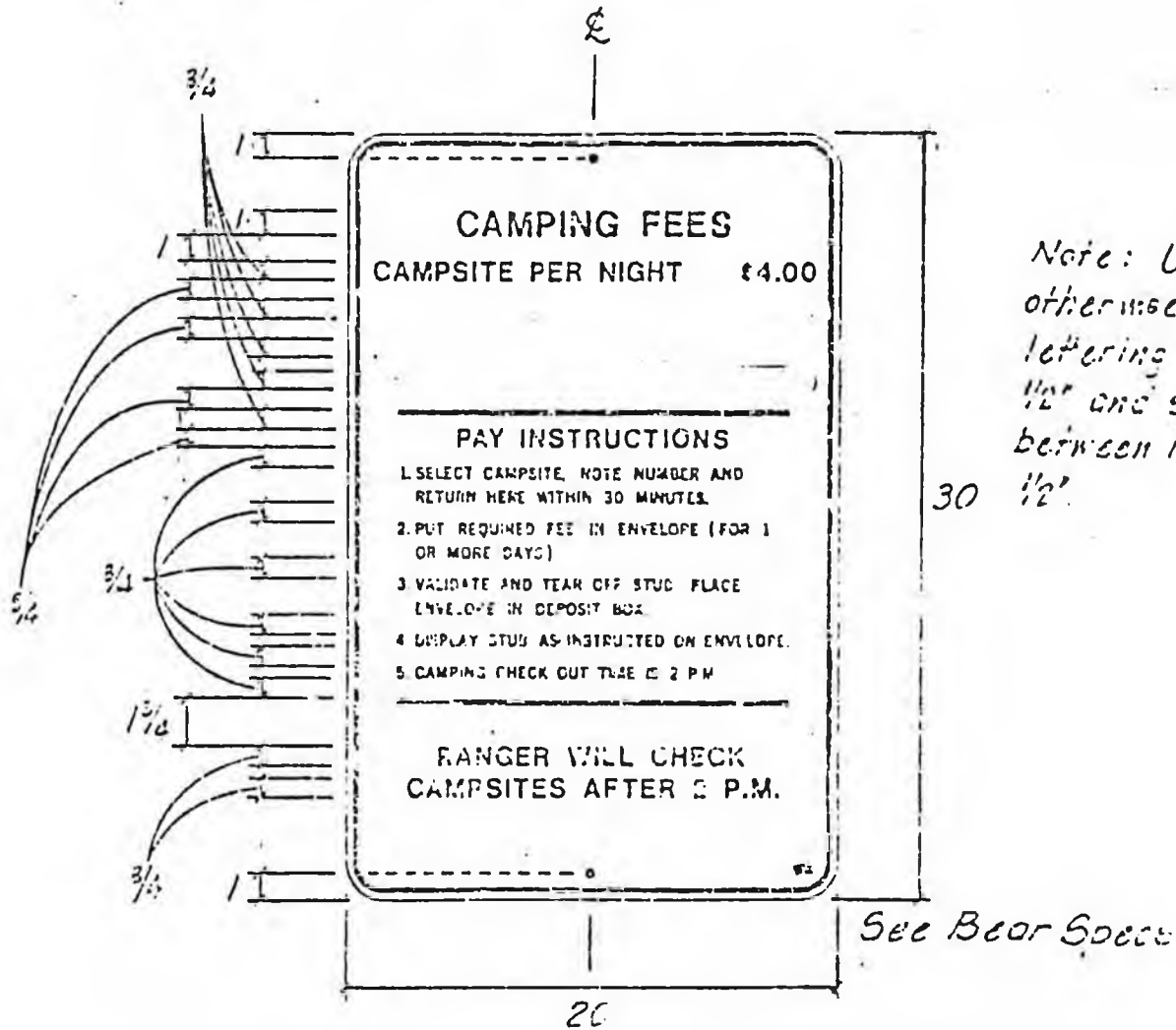
31 CU. FT.  
CONCRETE

.458 CU. FT.  
CONCRETE



Side view of a typical  
fee collection devise  
or "iron ranger".

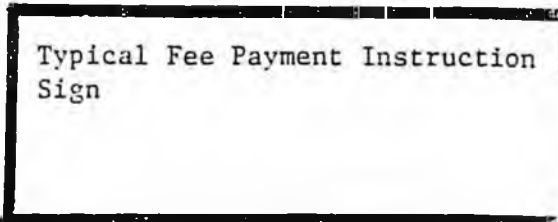
SIGN DIMENSIONS



Sign Number: 790-477 (Revised) ALL DIMENSIONS IN INCHES

Size	Border Width	Margin				Frame Stiffener			Bear	Hole	Gauge	Corner Radius	
		Top	Bottom	Left	Right	Dwg.	A	B					C
20x30	1/4	3	4	1	1	—	—	—	—	1/2	5/16	0.80	1/2

Colors		Production Method	
Background		Reflective	Non-reflective
Border	White	Background	
Background	White	Border	
Letters	White	Letters & Symbols	
Diamonds		Die Cut Letters	
Diamond Letters		Die Cut Letters & Symbols	
Approved		Drawn By: J.F.	



PERMIT

Valid Only if This Site for  
the Day(s) Paid Beginning  
Purchase Date \_\_\_/\_\_\_/\_\_\_  
Campers Check Out 2 p.m.  
Number of Days Paid \_\_\_



No. B 0531009

Detach this stub and display on  
vehicle dashboard clearly visible  
from outside.

No. B 0531009

U.S. Department of Agriculture  
Forest Service

COMPLETE THIS BLOCK ONLY ONCE DURING YOUR STAY			
ARRIVAL	_____	_____	(AM or PM)
	(HOUR)		
No. PEOPLE IN VEHICLE	_____	HOME ZIP CODE	_____
EXPECTED DEPARTURE	_____	_____	(AM or PM)
	(DATE)	(HOUR)	

**TO VALIDATE COMPLETE THE FOLLOWING**

Amount Enclosed \$ \_\_\_\_\_ Number of Days Paid \_\_\_\_\_

Purchase Date \_\_\_/\_\_\_/\_\_\_

Car License \_\_\_\_\_ State \_\_\_\_\_

Golden Age Passport No. (if applicable) \_\_\_\_\_

**CAMPGROUND USERS MUST COMPLETE THE FOLLOWING:**

Camp Unit No. \_\_\_\_\_

2300-26b (2/76)

PERMIT

Valid Only if This Site for  
the Day(s) Paid Beginning  
Purchase Date \_\_\_/\_\_\_/\_\_\_  
Campers Check Out 2 p.m.  
Number of Days Paid \_\_\_



No. B 0531010

Detach this stub and display on  
vehicle dashboard clearly visible  
from outside.

No. B 0531010

U.S. Department of Agriculture  
Forest Service

COMPLETE THIS BLOCK ONLY ONCE DURING YOUR STAY			
ARRIVAL	_____	_____	(AM or PM)
	(HOUR)		
No. PEOPLE IN VEHICLE	_____	HOME ZIP CODE	_____
EXPECTED DEPARTURE	_____	_____	(AM or PM)
	(DATE)	(HOUR)	

**TO VALIDATE COMPLETE THE FOLLOWING**

Amount Enclosed \$ \_\_\_\_\_ Number of Days Paid \_\_\_\_\_

Purchase Date \_\_\_/\_\_\_/\_\_\_

Car License \_\_\_\_\_ State \_\_\_\_\_

Golden Age Passport No. (if applicable) \_\_\_\_\_

**CAMPGROUND USERS MUST COMPLETE THE FOLLOWING:**

Camp Unit No. \_\_\_\_\_

2300-26b (2/76)

DRAFT  
Alaska State Park System User Fee Policy

The policy of the Division of Parks and Outdoor Recreation regarding user fees in state park units is:

1. To establish and levy affordable entry, facility use and program fees where it is practical to do so and where the facilities or programs are worthy of the fees charged. Initial fees shall be levied only for high quality and urban adjacent campsites and for tours of the Wickersham State Historic Site.
2. Fees should be charged for highly specialized developments or programs catering to a specific clientele. Fee schedules shall seek to significantly reduce, or if possible eliminate, user subsidies.
3. Some fees may be adjusted annually, effective January 1. The overall percentage fee increase shall not be greater than the rate of inflation for the preceding year and/or a reasonable amount of increase if it is found that a user fee has been artificially low.
4. Fees schedules shall generally be in round dollar numbers to avoid the expense and inconvenience of making change.
5. Fees may be waived for school groups on a reservation basis, when their visit or trip is in conjunction with an educational program for grades K through 12.
6. Where fees are charged on an individual rather than a per vehicle basis, fees may be reduced for visitors under 12 or over 65 years of age.
7. Insofar as possible every effort should be made to insure that user fees do not unreasonably discriminate against economically disadvantaged or other minority groups.
8. Annual use permits may be established and used in lieu of paying daily fees to provide a moderate savings to frequent users of park facilities.

Projected revenue from  
State Park Campground Fee  
Summer 1986

South Central Region	RTS	% mean occup.	Capacity	Open days	Comml. Rate	Total
<u>A. Mat-Su</u>						
1. Byers Lake SRS	6	40	60	90	80	10.4
2. Nancy Lk. SRS	6	60	30	120	80	10.4
3. South RollyCG	6	30	100	110	80	15.8
4. Finger Lk. SRS	6	50	40	120	85	12.2
5. King MNT SRS	6	50	20	110	75	5.0
6. Moose R. SRS	6	50	10	110	75	2.5
7. Matanuska. GL	6	50	13	110	75	3.2
8. Rocky Lk. SRS	3	50	10	110	75	1.2
<u>B. Copper Basin</u>						
1. Dry CRK. SRS	6	60	60	120	80	20.7
2. Lk. Louise SRS	6	40	20	90	60	2.6
3. Blueberry SRS	6	40	10	90	60	1.3
4. Little Tonsina	6	60	10	110	70	2.8
5. Porcupine Crk	6	60	10	110	70	2.8
<u>C. Chugach</u>						
1. Eklutna CG.	6	50	50	150	75	16.9
2. Eagle R. CG.	8	80	36	150	85	29.4
3. Bird Creek CG	6	80	25	150	85	15.3
<u>Kenai Area</u>						
1. Izaak Walt. srs	6	75	25	120	85	5.9
2. Discovery CG.	6	40	67	120	70	11.5
3. Johnson Lk. srs	6	40	40	120	80	9.2
4. Ninilchik SRA	6	60	50	120	80	17.3
5. Anchor R. SRA	3	60	38	120	80	6.7
6. Kasilof R. SRS	6	50	16	120	80	4.6
<u>Kodiak Ranger District</u>						
1. Ambercr. SHP	6	80	14	120	85	6.9
2. Bushkin R. Srs	6	80	18	120	70	7.3
<u>SE Region</u>						
1. Settlers Cove	6	60	12	120	70	3.6
2. Chilcoot Lk.	6	80	32	150	85	19.6
3. Chilkat SP.	6	50	32	150	80	11.5
<u>Northern Region</u>						
1. Quartz Lk. sra	6	60	16	110	75	4.8
2. Harding Lk. sra	6	40	90	110	90	21.4
3. Chena R. SRA	6	35	56	110	60	7.8
4. Chena SRS	8	85	60	120	90	44.0
5. Eagle Tr. SRS	6	50	40	110	70	9.2

NORTHERN (CON'T)	RTS	% MEAN OCCUP.	CAPACITY	OPEN DAYS	COMPL RATE	TOTAL
6. Tok River SRS	6	50	40	110	70	9.2
7. Clearwater SRS	6	50	20	90	70	<u>3.8</u>
SUBTOTAL RESIDENT						357.8
NON-RESIDENT SURCHARGE . . . . .						62.2
GRAND TOTAL						<u>\$420.0</u>

HB

209

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE. (907) 465-2400

OFFICE OF THE COMMISSIONER

April 27, 1987

The Honorable Sam Cotten  
Co-Chair, House Resources Committee

The Honorable Adelheid Herrmann  
Co-Chair, House Resources Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99801

Dear Representatives Cotten and Herrmann:

Subject: House Bill 289 which relates to the management of land.

Position: The Department of Natural Resources supports the amendments to Title 38 that address the unintended effects of the Supreme Court's Alaska Survival decision. Alaska can ill afford the chaos that could result from the retroactive application of the Survival decision. In its current economic condition the state should avoid a moratorium on all land actions pending comprehensive plan adoption. The department supports the Committee's attempt in this bill to limit the implications of the Supreme Court decision to future programmatic land disposals. The department supports the other amendments to Title 38 proposed in this bill (See section-by-section comments).

Recommendation: The department has provided some specific recommendations that we feel would clarify the bill.

The department is pleased to work with the committee to reach mutual agreement on language in this bill. We have also prepared a detailed position paper which we enclose for your information.

Sincerely,

*Lennie Boston Gorsuch*  
for Judith M. Brady  
Commissioner

Enclosure

cc: Committee members  
Rod Swope, Governor's Office  
George Sullivan, Governor's Office  
Norm Cohen, ADF&G  
Tom Hawkins, DLWM  
Meg Hayes, DLWM

The department supports HB 289 because it makes clear what we believe the Legislature intended when it enacted AS 38.04.065: important land management decisions must not be held in abeyance while the state continues to plan for the management of its land.

We believe the Legislature never intended to issue a moratorium on land management actions until regional plans were complete. However, a recent court case, Alaska Survival v. State of Alaska, casts doubt on the department's interpretation of the statute. The court said, "[W]e conclude that AS 38.04.065 requires regional planning to precede land classification, and that a regulation which permits classification based on a site-specific plan covering only 1,287 acres contravenes the language and intent of the statutes."

Alaska Survival v. State of Alaska addressed an agricultural land disposal at Chase. However, its implications go much further than programmatic land disposals. Since August 29, 1986, the department has stopped all new classification actions that are not based on comprehensive plans. In the past six months, the department has confronted the following problems:

1. On March 9, 1987, the Chinik Eskimo Community sued the State of Alaska, alleging that the department's "findings and decision to grant to Auric Offshore Mining

Company a lease of state lands violate AS 38.04.065, requiring the development of regional land use plans and the classification of state lands before disposal of any interest in state lands."

2. The Northwest Arctic Borough has appealed its municipal entitlement certification in part because the classification order did not reflect a comprehensive, broad scale planning process prior to classification. If this argument prevails, land now classified resource management may have to be reclassified for settlement.
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The assessment and alternative land management proposals would be subject to interagency review and public hearings in Talkeetna, Wasilla, and Anchorage. Finally, any amendment would have to be approved by the commissioner. This process could be completed in under six months. This process would consider information in a manner consistent with the goals and objectives of the Susitna Area Plan. For example, it could propose retention in state ownership for multiple use management, or a new configuration of agricultural homesteads, or perhaps even a non-agricultural finding and sale of fee homesteads.

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funding we anticipate in coming years, we remain committed to this process. In time, there will be area plans for all state uplands and tidelands. However, there are no practical reasons or ways to plan every acre of state land in the next three years to satisfy a court directive; neither can we tolerate defacto moratorium on state land management actions. We seek the ability to continue to manage land for private use while planning is underway.

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What follows is a section-by-section analysis of HB 289. The department would gladly work with the committee, coalitions and individuals to gain broad acceptance of this bill. The department's objective is to strike a reasonable balance between planning for future use of our major capital asset - our resources - while making some urgent decisions about their use today.

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the commissioner's intention to adopt a municipal or federal plan as the basis for classification. Of course, 38.05.945 presently requires notice before classification and would continue to do so.

We support the exception on lines 27 to 29 that requires programmatic land sales to be based on a regional land use plan.

Sec. 5. The revision could be construed as requiring planning and classification to precede any easement or rights-of-way. Since these actions often occur in areas outside plans, this would be a hinderance to access and use of state lands. We suggest adding at the beginning of line 4, after (f), the phrase "When feasible,".

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suggest adding "to its current occupant" after state land in line 17.

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Sec. 14 In order to further clarify which decisions are affected by the bill, the department recommends adding the following language: "A minerals management or disposal decision made before the effective date of this act is valid, regardless whether the land was classified if other requirements of the law were met."

The department has testified in hearings on SB 196 (the Senate version of HB 289) that for the Chase III land disposal, DNR would abide by the Court's decision in Alaska Survival v. Alaska. To make this intention clear in this legislation, we suggest adding the following sentence to section 14: "This section does not require the Commissioner of Natural Resources to proceed with the 1984 Chase III Agricultural Homestead disposal decision."

THANK YOU.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_

Bill Version: HB 289  
Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: An act relating to management  
of state land

Agency Affected: Natural Resources  
BRU: Land and Water Management

Sponsor: Cotten  
Requestor: House Resources

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
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GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The Department of Natural Resources anticipates no additional expenditures with respect to this legislation.

Prepared by: Tom Hawkins Phone: 465-2400  
Division: Land and Water Management Date: \_\_\_\_\_

Approved by Commissioner: *Samuel Gorsuch* Date: 4-26-87  
Agency: Natural Resources

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)
  - Senate Secretary

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400

OFFICE OF THE COMMISSIONER

April 27, 1987

The Honorable Sam Cotten  
Co-Chair, House Resources Committee

The Honorable Adelheid Herrmann  
Co-Chair, House Resources Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99801

Dear Representatives Cotten and Herrmann:

Subject: House Bill 289 which relates to the management of land.

Position: The Department of Natural Resources supports the amendments to Title 38 that address the unintended effects of the Supreme Court's Alaska Survival decision. Alaska can ill afford the chaos that could result from the retroactive application of the Survival decision. In its current economic condition the state should avoid a moratorium on all land actions pending comprehensive plan adoption. The department supports the Committee's attempt in this bill to limit the implications of the Supreme Court decision to future programmatic land disposals. The department supports the other amendments to Title 38 proposed in this bill (See section-by-section comments).

Recommendation: The department has provided some specific recommendations that we feel would clarify the bill.

The department is pleased to work with the committee to reach mutual agreement on language in this bill. We have also prepared a detailed position paper which we enclose for your information.

Sincerely,

*Lennie Boston Gosuch*  
for Judith M. Brady  
Commissioner

Enclosure

cc: Committee members  
Rod Swope, Governor's Office  
George Sullivan, Governor's Office  
Norm Cohen, ADF&G  
Tom Hawkins, DLWM  
Meg Hayes, DLWM

The department supports HB 289 because it makes clear what we believe the Legislature intended when it enacted AS 38.04.065: important land management decisions must not be held in abeyance while the state continues to plan for the management of its land.

We believe the Legislature never intended to issue a moratorium on land management actions until regional plans were complete. However, a recent court case, Alaska Survival v. State of Alaska, casts doubt on the department's interpretation of the statute. The court said, "[W]e conclude that AS 38.04.065 requires regional planning to precede land classification, and that a regulation which permits classification based on a site-specific plan covering only 1,287 acres contravenes the language and intent of the statutes."

Alaska Survival v. State of Alaska addressed an agricultural land disposal at Chase. However, its implications go much further than programmatic land disposals. Since August 29, 1986, the department has stopped all new classification actions that are not based on comprehensive plans. In the past six months, the department has confronted the following problems:

1. On March 9, 1987, the Chinik Eskimo Community sued the State of Alaska, alleging that the department's "findings and decision to grant to Auric Offshore Mining

Company a lease of state lands violate AS 38.04.065, requiring the development of regional land use plans and the classification of state lands before disposal of any interest in state lands."

2. The Northwest Arctic Borough has appealed its municipal entitlement certification in part because the classification order did not reflect a comprehensive, broad scale planning process prior to classification. If this argument prevails, land now classified resource management may have to be reclassified for settlement.
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PART-TIME						
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ANALYSIS : (Attach a separate page if necessary)

The Department of Natural Resources anticipates no additional expenditures with respect to this legislation.

Prepared by: Tom Hawkins  
Division: Land and Water Management

Phone: 465-2400  
Date: \_\_\_\_\_

Approved by Commissioner: [Signature]  
Agency: Natural Resources

Date: 4-26-87

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
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- Senate Secretary

draft Res CS

Dick:

Here are the amendments to HB 289. They should go into a draft CS. We need to get it back by the end of the day, so call if you have any problems or questions.

There is one amendment on a separate sheet (which has been revised from your draft of 5/1/87, No. 5-0719a) in the packet that needs to be incorporated in the bill. There is also a draft title amendment that we do not wish to have included in the bill but wish to have drafted up.

All of the other amendments are shown in the bill. The renumbering and relettering I will leave entirely to you.

Thanks. Call anytime!

Ned

Ned S/S

This amendment should be placed into the draft CS:

AS 38.05.810 is amended by adding a new subsection:

(g) A conveyance under this section to a municipality that did not receive and is not eligible to receive a land entitlement under AS 29.65 shall not be subject to a reversionary interest on behalf of the state unless the municipality agrees to the reservation of the interest at the time that the land is transferred. A municipality that is eligible to receive land under AS 29.65 but has not received its full entitlement may also receive land under this subsection up to the limit of its entitlement, except that the commissioner may convey additional land under this subsection if the conveyance would be in the best interests of the state.

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2

HOUSE BILL NO. 289

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

*and providing for an effective date*

6

For an Act entitled: "An Act relating to management of state land."

7

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8

\* Section 1. AS 38.04.065(a) is amended to read:

9

*Except as provided in (d) and (h) of*  
(a) The commissioner shall, with local governmental and public

10

involvement under [IN ACCORDANCE WITH] AS 38.05.945, <sup>*adopt*</sup> ~~[develop]~~ main-

11

tain, and, when appropriate, revise <sup>*regional*</sup> land use plans that [WHICH] pro-

12

vide [, BY REGIONS OR AREAS,] for the use <sup>*and management*</sup> of the state-owned land.

13

\* Sec. 2. AS 38.04.065(b) is amended to read:

14

(b) In the <sup>*adoption*</sup> ~~[development]~~ and revision of <sup>*regional and site-specific*</sup> land use plans, the

15

commissioner shall

16

(1) use and observe the principles of multiple use and

17

sustained yield;

18

(2) consider physical, economic, and social factors affect-

19

ing the [REGION OR] area and involve other agencies and the public in

20

achieving a systematic interdisciplinary approach;

21

(3) give priority to planning and classification in areas

22

of potential settlement and critical environmental concern;

23

(4) rely, to the extent that it is available, on the inven-

24

tory of the state land, its resources, and other values;

25

(5) consider present and potential uses of state land;

26

(6) consider the supply, resources, and present and poten-

27

tial use of land under other ownership within the area [OR REGION] of

28

concern;

29

(7) plan for compatible surface and mineral land use

1 classifications; and

2 (8) provide for meaningful participation in the planning  
3 process by affected local governments, state and federal agencies,  
4 adjacent landowners, and the general public.

5 \* Sec. 3. AS 38.04.065(c) is amended to read:

6 (c) The [AS A BASIS FOR MORE DETAILED LAND USE PLANNING AND  
7 CLASSIFICATION, THE] commissioner shall ~~[develop]~~ <sup>adopt</sup> regional land use  
8 plans for ~~[the use of]~~ all state land. Each regional land use plan  
9 [THESE REGIONAL PLANS] shall identify and delineate

10 (1) areas of settlement and settlement impact, where land  
11 must be classified for various private uses and for public recreation,  
12 open space, and other public uses desirable in and around settlement;  
13 and

14 (2) areas that [WHICH] must be retained in state ownership  
15 and planned and classified for various uses and purposes under [IN  
16 ACCORDANCE WITH] AS 38.04.015.

17 \* Sec. 4. AS 38.04.065(d) is repealed and reenacted to read:

18 ~~(d) [The commissioner shall sign and date a regional land use~~  
19 ~~plan and each revision to it after participation by members of the~~  
20 ~~public and affected municipal governments.]~~ The commissioner may adopt  
21 as a ~~[regional]~~ <sup>or a land management plan adopted by another governmental entity.</sup> land use plan a comprehensive plan adopted by a munic-  
22 ipality of the state having planning and zoning powers. ~~If the commis-~~  
23 sioner determines that the ~~[municipal]~~ <sup>plan</sup> adequately recognizes and  
24 protects state interests, ~~Before the commissioner adopts a regional~~  
25 land use plan, a land classification for disposal or for another  
26 purpose may be made on the basis of a site-specific land use plan,  
27 except for a land disposal under AS 38.05.057, AS 38.08, and AS 38.09; ~~or~~  
28 ~~[A land classification for purposes of a disposal under AS 38.05.057,~~  
29 ~~AS 38.08, or AS 38.09 shall be based on a regional land use plan.]~~

new  
subsection  
starts at 25  
"Before..."  
can be placed  
at the end  
of 03-065 as  
new (h) 29

-2-  
insert after "interests": A decision to adopt another plan  
must be preceded by public hearings in affected and interested  
communities and by a draft decision, available for public  
review, that describes the state's interests and how the state will  
implement the plan.

1 After adoption of a regional land use plan, land classifications shall  
2 be made under the plan.

3 \* Sec. 5. AS 38.04.065(f) is amended to read:

4 (f) Each decision [DECISIONS] about the location of easements  
5 and rights-of-way, other than for minor access, shall be integrated  
6 with land use planning and classification [FOR THE APPROPRIATE AREA OR  
7 REGION].

8 \* Sec. 6. AS 38.04.065(g) is amended to read:

9 (g) Each land use plan [LAND USE PLANS] adopted by the commis-  
10 sioner under this section shall be consistent with municipal [LOCAL  
11 GOVERNMENTAL] land use plans to the maximum extent determined consis-  
12 tent with the state interests and the purposes of this chapter.

13 \* Sec. 7. AS 38.04.910(7) is amended to read:

14 (7) "short-term lease" means a lease for a term of 10  
15 [FIVE] years or less;

16 \* Sec. 8. AS 38.05.035(b) is amended by adding a new paragraph to read:

17 (10) negotiate the sale or lease of improved state land at  
18 fair market value to the holder of rights created by another state  
19 agency. ~~after the improvements to the land have been de-~~  
20 ~~clared surplus by another agency of the state to the needs of that~~  
21 ~~agency].~~

22 \* Sec. 9. AS 38.05.035(e) is amended to read:

23 (e) Upon a written finding that the interests of the state will  
24 be best served, the director may, with the consent of the commis-  
25 sioner, approve contracts for the sale, lease, or other disposal of avail-  
26 able land, resources, property or interests in them, and, in addition  
27 to the conditions and limitations imposed by law, may impose addition-  
28 al conditions or limitations in the contracts as the director deter-  
29 mines, with the consent of the commissioner, will best serve the  
interests of the state. A contract for the sale, lease, or other

HB0289A

-3-

HB 289

(i) Oil and gas lease sales are not subject to AS 38.04.065 as long as the commissioner conducts the complete five-year oil and gas lease sale process required by AS 38.05.180.

new (h) from p. 2/1.24.13 at "Before" 14  
new (i) at bottom of p. 3:

1 disposal of available land or an interest in land is not legally  
2 binding on the state until the commissioner approves the contract but  
3 if the appraised value is not greater than \$50,000 in the case of the  
4 sale of land or an interest in land, or \$5,000 in the case of the  
5 annual rental of land or interest in land, the director may execute  
6 the contract without the approval of the commissioner. Before a  
7 public hearing, if held, or in any case no less than 21 days before  
8 the sale, lease, or other disposal of available land, property, re-  
9 sources, or interests in them, the director shall make available to  
10 the public a written finding that sets out the facts and applicable  
11 law upon which the determination that the sale, lease, or other dis-  
12 posal will best serve the interests of the state was based. A written  
13 finding is not required before the approval of

14 (1) a contract for a negotiated sale authorized under  
15 AS 38.05.115;

16 (2) a lease of land for a shore fishery site under AS 38.-  
17 05.082;

18 (3) a permit or other authorization revocable by the com-  
19 missioner;

20 (4) a mineral claim located under AS 38.05.195;

21 (5) a mineral lease issued under AS 38.05.205; [OR]

22 (6) a production license issued under AS 38.05.207; or

23 (7) an exempt oil and gas sale under AS 38.05.180(d) for

24 which a written best interest finding has been issued for the area of

25 the sale ~~or for a contiguous or adjacent area~~ within the 36 months

26 before the date of the sale <sup>(unless the commissioner determines that new information</sup>  
<sup>has become available that justifies revision of the</sup>  
27 \* Sec. 10. AS 38.09.030(c) is amended to read: best interest finding.

28 (c) The homestead entry permit may not be assigned, conveyed, or  
29 in any manner transferred except

1 (1) by testate or intestate succession;  
2 (2) to a spouse during marriage;  
3 (3) by order of a court as part of a divorce settlement;  
4 (4) to either a member of the immediate family or a grantee  
5 of the applicant in the case of an extreme emergency or illness which  
6 disables the applicant; or

7 (5) by exchange by parties in the same homestead area, with  
8 a notice to the commissioner of the change in the ownership of the  
9 entry permit. *The exchange is effective after the approval of the*  
10 *commissioner.*

\* Sec. 11. AS 38.09.040(a) is amended to read:

11 (a) A homestead entry permit may be revoked by the commissioner  
12 for a [ANY] substantial breach of the permit conditions or the re-  
13 quirements of this chapter, including

14 (1) an assignment, conveyance, or transfer of the permit  
15 not authorized under AS 38.09.030(c);

16 (2) failure of the permit holder to submit a plat of survey  
17 to the commissioner within five [TWO] years after the issuance of the  
18 permit [OR UNDER (b) OF THIS SECTION];

19 (3) failure of the permit holder to erect a dwelling in the  
20 time required under AS 38.09.050(a), except that if the commissioner  
21 finds that the dwelling has been nearly completed and progress toward  
22 completion is being made at the expiration of the time required, the  
23 commissioner may extend the time required for completion for not more  
24 than one year;

25 (4) failure to brush the boundaries of the land not de-  
26 scribed by aliquot parts or as a lot of record within 90 days after  
27 issuance of the homestead entry permit;

28 (5) failure to clear and either put into production or  
29 prepare for cultivation 25 percent of the land classified for

1 agricultural use within five years after the issuance of the permit.

2 \* Sec. 12. AS 38.09.050(a) is amended to read:

3 (a) The commissioner shall issue a patent to homestead entry  
4 land if the permit holder

5 (1) resides and lives on the homestead entry land for not  
6 less than 25 months within five years after the issuance of the home-  
7 stead entry permit;

8 (2) completes an approved survey of the land within five  
9 [TWO] years after the issuance of the permit [OR UNDER AS 38.09.-  
10 040(b)];

11 (3) erects a habitable, permanent dwelling on the homestead  
12 within three years after the issuance of the homestead entry permit;

13 (4) brushes the boundaries of the land not described by  
14 aliquot parts or as a lot of record within 90 days after the issuance  
15 of the permit;

16 (5) clears and either puts into production or prepares for  
17 cultivation either 25 percent of the land classified for agricultural  
18 use or 50 percent of the land having class II or III soils, whichever  
19 is less, within five years after issuance of the permit.

20 \* Sec. 13. Land that was classified for disposal or other purposes ~~for~~  
21 ~~the basis of a site specific land use plan~~ before August 29, 1986, remains  
22 subject to the classification order in effect on that date until the land  
23 is reclassified under AS 38.04.065, as amended in secs. 1 - 6 of this Act,  
24 and AS 38.05.300.

25 \* Sec. 14. A land management and disposal decision, including a  
26 disposal under AS 38.05.057, AS 38.08, or AS 38.09, made before the  
27 effective date of this Act under a classification order under AS 38.05.300  
28 ~~that is based on a site specific land use plan~~ is valid, notwithstanding  
29 the adoption of the classification order before the adoption of the region-

1 al land use plan, if other requirements of law were met.

2 \* Sec. ~~15~~<sup>16</sup>. AS 38.09.040(b) is repealed.

A minerals management or disposal decision made before the effective date of this act is valid, regardless of whether the land was classified, ~~or~~ if other requirements of the law were met. ~~This act~~

Sec. 15. Nothing in this act affects the Chase III Agricultural Homestead disposal decision, which the ~~Supreme~~ Courts ~~has~~ have remanded to the Department of Natural Resources for reconsideration.

Sec. 17 This act is effective immediately.

House Resources amendments to HB 289

Please prepare the following title amendment and have it ready for us, but don't put it into the draft CS:

Amend title: An Act relating to regional and site-specific planning requirements for classification of state lands; amending the survey and brushing requirements for homesteads and allowing the exchange of homestead permits; changing the definition of "short-term lease"; providing for the sale of rights created by another state agency; permitting the use of prior best-interest findings for oil and gas lease sales; and providing for an effective date.

MAY - 4 1987

DT: APRIL 27, 1987

TO: MEMBERS OF THE STATE HOUSE RESOURCES COMMITTEE

FR: JIM SYKES, 309 GAYLENE CIRCLE, ANCHORAGE 99504

RE: HB289

"What kind of process can be created that will protect the public and give DNR the ability to classify lands without a regional plan?"

HB289 which requires programmatic land disposals for homesites, homestead, and lotteries to go thru the regional comprehensive planning process, is a significant step in the right direction. There are other types of land classifications and disposals that deserve the same kind of careful consideration. For example, agricultural lands are not required to go thru regional plans, and it is widely recognized that more than 100 Million State dollars was wasted on the Delta Barley project. Delta was not feasible from the beginning, and it was not subject to the kind of careful consideration required of a regional comprehensive plan. Looking back, maybe the Delta Barley mistake was made in part because we were awash in money and enthusiasm. Now that the big money is gone we can not afford such colossal mistakes. Careful planning must continue. It's regrettable many regional plans could have been done for the Delta 100 million dollars.

We recognize that DNR must deal with lands which are unlikely to be included in regional plans. Currently the rule of law requires regional planning. That law may need to be amended to exclude specific types of land classifications. HB289 is completely backwards because it makes the exceptions the law and the law the exceptions. In order to make a meaningful and enforceable law, the Department of

Natural Resources should draw up a list of exceptions to the CURRENT law that they feel they need, along with the generic activities that would be required to deal with such land classification decisions. A public process could then be developed to meet those needs, if the exceptions truly need to be made. Since there is no funding in FY '88 for disposals, this is an ideal time to work out these difficulties.

We agree with the goals DNR Commissioner Judy Brady has stated for land disposals: 1) A thorough public process, 2) inspection of the lands to be disposed, 3) consideration of unbiased scientific evidence, and in the case of lands for settlement, maximum local input in deciding which lands will go into <sup>private</sup> ~~public~~ hands. This sounds a lot like regional planning, which helps resolve these important questions. If DNR is to be exempted from regional planning in certain instances, the question must be asked, "What kind of process can be created that will protect the public and give DNR the ability to classify lands without a regional plan?"

That brings us back to HB289. While the current law protects Alaska's citizens, HB289 removes that protection by allowing DNR to determine their own regulations which MAY NOT necessarily be in the best interest of Alaska's citizens. DNR's past history of disregarding public input, making decisions without inspecting the site in question, and rejecting or ignoring scientific evidence, obligates the legislature to favor the citizen's interests rather than the agency's ease of oureaucratic action.

One of DNR's major concerns appears to be reclassification of tidelands. If the tidelands are covered by a regional plan, or about

to be within the next two years, the classification changes should be made in accordance with the regional plan. If the area is not going to be included in a regional plan, then there must be a thorough process which mandates widespread public input and public hearings, on-site inspection, and evaluation of unbiased scientific data. There may be a way that DNR can use the Coastal Zone Management process to insure that tidelands, (which belong to all Alaskans), are classified in a sensible manner.

If there are exceptions to be made to the current law, certain sections of the law should remain. AS 38.05.345 basically requires publications, public service announcements, posting, notification to possible interested parties, and notice to other governments and Native Corporations. In addition, there should be a mandatory public hearing, which is not now required, and the publication notice should be extended from 30 to 60 days. Provisions in AS 38.04.065 should also be kept in order that a more site specific plan will also be considered in larger terms, and provide for meaningful public participation. The more advance notice, the greater likelihood that increased public participation will reduce pressure for a bad decision. Industry and government hold all the cards until there is a significant amount of public awareness and understanding.

The goal of the existing law is to create the most sensible land disposal decisions, and we share that goal. There are a few problems with DNR accepting a site specific plan, as proposed in HB289. For example, we in Chase are sitting down with people who do not generally agree with us, to try and reach some sort of consensus about land use

in our area. Even if we find a solution, our deliberations will take place largely out of the wider public eye. At least we are working within the regional planning process so that wider implications can be considered. In places where there will be no regional plan, a decision could be made at a local level which might not be in the best interest of the wider general public. The public would have no opportunity for input before DNR could make an irrevocable decision. It could lead to the same type of serious problem in Chase that we felt compelled to take to court. We support maximum local input, but other citizen and state interests should not be excluded. The wider participation will insure a more comprehensive inventory and analysis of resources and competing uses.

People in Chase and Talkeetna are pleased about the sensible HB289 provisions requiring regional land planning for most lands which will be disposed for settlement. There are other similarly important land classification issues that deserve the same kind of careful consideration. Those equally important issues remain absent from HB289. Under HB289 Alaska citizens are not protected from an agency that has a history of violating the public trust. Until there is a thorough understanding of the specific areas of land classification that DNR wants to exempt from the current law, and until adequate public process provisions can be firmly entrenched in law, HB289 should NOT be passed out of committee.

*James L. Sykes -  
Boundary Sub-Committee  
Chase Community Council*

4  
HB289

1 A land classification for the purposes of a disposal under AS 38.05.-  
2 057, AS 38.08, or AS 38.09 shall be based on a regional land use plan.  
3 After adoption of a regional land use plan, land classifications shall  
4 be made under the plan.

5 \* Sec. 5. AS 38.04.065(f) is amended to read:

6 (f) Each decision [DECISIONS] about the location of easements  
7 and rights-of-way, other than for minor access, shall be integrated  
8 with land use planning and classification [FOR THE APPROPRIATE AREA OR  
9 REGION].

10 \* Sec. 6. AS 38.04.065(g) is amended to read:

11 (g) Each land use plan [LAND USE PLANS] adopted by the commis-  
12 sioner under this section shall be consistent with municipal [LOCAL  
13 GOVERNMENTAL] land use plans to the maximum extent determined consis-  
14 tent with the state interests and the purposes of this chapter.

15 \* Sec. 7. AS 38.05.035(b) is amended by adding a new paragraph to read:

16 (10) negotiate the sale or lease of state land at fair  
17 market value to the holder of rights, ~~created~~ under the authority of  
18 the Department of Transportation and Public Facilities.

19 \* Sec. 8. AS 38.05.940(b) is amended to read:

20 (b) To be eligible for a discount under this section, a veteran  
21 shall submit proof, as required by regulation, that the veteran

22 (1) is 18 years of age or older on the date of sale;

23 (2) has been a state resident for a period of not less than  
24 one year immediately preceding the date of sale;

25 (3) has served on active duty in the U.S. Armed Forces at  
26 least 90 days [TWO YEARS], unless tenure was shortened due to a ser-  
27 vice connected disability or due to receiving an early separation upon  
28 return from a tour of duty overseas; and

29 (4) has received an honorable discharge or a general

*better  
language*

*Saw  
This is  
what  
DNR  
really  
wants  
from sec.  
8 of HB 229*

1 discharge under honorable conditions.

2 \* Sec. 9. Land that was classified for disposal or other purposes on  
3 the basis of a site-specific land use plan before August 29, 1986, remains  
4 subject to the classification order in effect on that date until the land  
5 is reclassified under AS 38.04.065, as amended in secs. 1 - 6 of this Act,  
6 and AS 38.05.300.

7 \* Sec. 10. A land management and disposal decision made before the  
8 effective date of this Act under a classification order under AS 38.05.300  
9 that is based on a site-specific land use plan is valid, notwithstanding  
10 the adoption of the classification order before the adoption of the region-  
11 al land use plan, if other requirements of law were met.

1 After adoption of a regional land use plan, land classifications shall  
2 be made under the plan.

3 \* Sec. 5. AS 38.04.065(f) is amended to read:

4 (f) ~~Each decision~~ <sup>Each decision</sup> [DECISIONS] about the location of easements  
5 and rights-of-way, other than for minor access, shall be integrated  
6 with land use planning and classification [FOR THE APPROPRIATE AREA OR  
7 REGION].

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9 (g) Each land use plan [LAND USE PLANS] adopted by the commis-  
10 sioner under this section shall be consistent with municipal [LOCAL  
11 GOVERNMENTAL] land use plans to the maximum extent determined consis-  
12 tent with the state interests and the purposes of this chapter.

13 \* Sec. 7. AS 38.04.910(7) is amended to read:

14 (7) "short-term lease" means a lease for a term of 10  
15 [FIVE] years or less;

confirm  
to  
38.05.070

16 \* Sec. 8. AS 38.05.035(b) is amended by adding a new paragraph to read:

17 (10) negotiate the sale or lease of improved state land <sup>at</sup> ~~at~~  
18 fair market value after the improvements to the land have been de-  
19 clared surplus by another agency of the state to the needs of that  
20 agency. (See SB 196)

to its current occupant /  
DOTPF

21 \* Sec. 9. AS 38.05.035(e) is amended to read:

22 (e) Upon a written finding that the interests of the state will  
23 be best served, the director may, with the consent of the commis-  
24 sioner, approve contracts for the sale, lease, or other disposal of avail-  
25 able land, resources, property or interests in them, and, in addition  
26 to the conditions and limitations imposed by law, may impose addition-  
27 al conditions or limitations in the contracts as the director deter-  
28 mines, with the consent of the commissioner, will best serve the  
29 interests of the state. A contract for the sale, lease, or other

o/g

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w/rew 5/4

DNF-

1 disposal of available land or an interest in land is not legally  
2 binding on the state until the commissioner approves the contract but  
3 if the appraised value is not greater than \$50,000 in the case of the  
4 sale of land or an interest in land, or \$5,000 in the case of the  
5 annual rental of land or interest in land, the director may execute  
6 the contract without the approval of the commissioner. Before a  
7 public hearing, if held, or in any case no less than 21 days before  
8 the sale, lease, or other disposal of available land, property, re-  
9 sources, or interests in them, the director shall make available to  
10 the public a written finding that sets out the facts and applicable  
11 law upon which the determination that the sale, lease, or other dis-  
12 posal will best serve the interests of the state was based. A written  
13 finding is not required before the approval of

14 (1) a contract for a negotiated sale authorized under  
15 AS 38.05.115;

16 (2) a lease of land for a shore fishery site under AS 38.-  
17 05.082;

18 (3) a permit or other authorization revocable by the com-  
19 missioner;

20 (4) a mineral claim located under AS 38.05.195;

21 (5) a mineral lease issued under AS 38.05.205; [OR]

22 (6) a production license issued under AS 38.05.207; or

23 (7) an exempt oil and gas sale under AS 38.05.180(d) for

24 which a written best interest finding has been issued for the area of  
25 the sale ~~or for a contiguous or adjacent area~~ within the 36 months  
26 before the date of the sale.

27 \* Sec. 10. AS 38.09.030(c) is amended to read:

28 (c) The homestead entry permit may not be assigned, conveyed, or  
29 in any manner transferred except

*Handwritten:*  
findings  
15 words or less  
APP 16

*exempt / O+G lease sales /  
mm. eff. date.*

MASTER

1 IN THE HOUSE BY THE RESOURCES COMMITTEE  
2 HOUSE BILL NO. 289  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL

*TITLE  
in stone*

6 For an Act entitled: "An Act relating to management of state land."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS 38.04.065(a) is amended to read:

9 (a) *except as provided in (c)* The commissioner shall, with local governmental and public  
10 involvement under [IN ACCORDANCE WITH] AS 38.05.945, *adopt* ~~develop~~ main-  
11 tain, and, when appropriate, *region* revise land use plans *and management* that [WHICH] pro-  
12 vide [BY REGIONS OR AREAS] for the use of the state-owned land. *planning*

*Frances  
5/4  
DWR*

13 \* Sec. 2. AS 38.04.065(b) is amended to read:

14 (b) In the *adoption* ~~development~~ and revision of *regional and site specific* land use plans, the  
15 commissioner shall

*Frances  
5/4*

- 16 (1) use and observe the principles of multiple use and
- 17 sustained yield;
- 18 (2) consider physical, economic, and social factors affect-
- 19 ing the [REGION OR] area and involve other agencies and the public in
- 20 achieving a systematic interdisciplinary approach;
- 21 (3) give *top* priority to planning and classification in areas
- 22 of potential settlement and critical environmental concern;
- 23 (4) rely, to the extent that it is available, on the inven-
- 24 tory of the state land, its resources, and other values;
- 25 (5) consider present and potential uses of state land;
- 26 (6) consider the supply, resources, and present and poten-
- 27 tial use of land under other ownership within the area [OR REGION] of
- 28 concern;
- 29 (7) plan for compatible surface and mineral land use

1 classifications; and

2 (8) provide for meaningful participation in the planning  
3 process by affected local governments, state and federal agencies,  
4 adjacent landowners, and the general public.

5 \* Sec. 3. AS 38.04.065(c) is amended to read:

6 (c) The [AS A BASIS FOR MORE DETAILED LAND USE PLANNING AND  
7 CLASSIFICATION, THE] commissioner shall <sup>adopt</sup> [develop] regional land use  
8 plans for ~~the use of~~ all state land. Each regional land use plan  
9 [THESE REGIONAL PLANS] shall identify and delineate

DNR

10 (1) areas of settlement and settlement impact, where land  
11 must be classified for various private uses and for public recreation,  
12 open space, and other public uses desirable in and around settlement;  
13 and

14 (2) areas that [WHICH] must be retained in state ownership  
15 and planned and classified for various uses and purposes under [IN  
16 ACCORDANCE WITH] AS 38.04.015.

17 \* Sec. 4. AS 38.04.065(d) is repealed and reenacted to read:

18 (d) [The commissioner shall sign and date a [regional] land use  
19 plan and each revision to it after participation by members of the  
20 public and affected municipal governments.] <sup>(2)</sup> The commissioner may adopt  
21 as a [regional] land use plan a comprehensive plan adopted by a munic-  
22 ipality of the state or a land management plan adopted by another governmental entity  
23 if the commis-  
24 sioner determines that the [municipal] plan adequately recognizes and  
25 protects state interests. <sup>clerk's note 1/1/07</sup> Before the commissioner adopts a regional  
26 land use plan, a land classification for disposal or for another  
27 purpose may be made on the basis of a site-specific land use plan,  
28 except for a land disposal under AS 38.05.057, AS 38.08, and AS 38.09.

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DNR

New  
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highways  
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28 ~~[A land classification for purposes of a disposal under AS 38.05.057,~~  
29 ~~AS 38.08, or AS 38.09 shall be based on a regional land use plan.]~~

- 1 (1) by testate or intestate succession;
- 2 (2) to a spouse during marriage;
- 3 (3) by order of a court as part of a divorce settlement;
- 4 (4) to either a member of the immediate family or a grantee
- 5 of the applicant in the case of an extreme emergency or illness which
- 6 disables the applicant; or

7 (5) by exchange by parties in the same homestead area, with  
8 a notice to the commissioner of the change in the ownership of the  
9 entry permit. *^ The exchange is effective on the affirmative approval*  
*of the commissioner.* } *shulte*

*DNR*

10 \* Sec. 11. AS 38.09.040(a) is amended to read:

11 (a) A homestead entry permit may be revoked by the commissioner  
12 for a [ANY] substantial breach of the permit conditions or the re-  
13 quirements of this chapter, including

14 (1) an assignment, conveyance, or transfer of the permit  
15 not authorized under AS 38.09.030(c);

16 (2) failure of the permit holder to submit a plat of survey  
17 to the commissioner within five [TWO] years after the issuance of the  
18 permit [OR UNDER (b) OF THIS SECTION];

} *home*  
*stead*

19 (3) failure of the permit holder to erect a dwelling in the  
20 time required under AS 38.09.050(a), except that if the commissioner  
21 finds that the dwelling has been nearly completed and progress toward  
22 completion is being made at the expiration of the time required, the  
23 commissioner may extend the time required for completion for not more  
24 than one year;

25 (4) failure to brush the boundaries of the land not de-  
26 scribed by aliquot parts or as a lot of record within 90 days after  
27 issuance of the homestead entry permit;

}

28 (5) failure to clear and either put into production or  
29 prepare for cultivation 25 percent of the land classified for

1 agricultural use within five years after the issuance of the permit.

2 \* Sec. 12. AS 38.09.050(a) is amended to read:

3 (a) The commissioner shall issue a patent to homestead entry  
4 land if the permit holder

5 (1) resides and lives on the homestead entry land for not  
6 less than 25 months within five years after the issuance of the home-  
7 stead entry permit;

8 (2) completes an approved survey of the land within five  
9 [TWO] years after the issuance of the permit [OR UNDER AS 38.09.-  
10 040(b)];

11 (3) erects a habitable, permanent dwelling on the homestead  
12 within three years after the issuance of the homestead entry permit;

13 (4) brushes the boundaries of the land not described by  
14 aliquot parts or as a lot of record within 90 days after the issuance  
15 of the permit;

16 (5) clears and either puts into production or prepares for  
17 cultivation either 25 percent of the land classified for agricultural  
18 use or 50 percent of the land having class II or III soils, whichever  
19 is less, within five years after issuance of the permit.

20 \* Sec. 13. Land that was classified for disposal or other purposes ~~for~~  
21 ~~the basis of a site-specific land use plan~~ before August 29, 1986, remains  
22 subject to the classification order in effect on that date until the land  
23 is reclassified under AS 38.04.065, as amended in secs. 1 - 6 of this Act,  
24 and AS 38.05.300.

25 \* Sec. 14. A land management and disposal decision, including a  
26 disposal under AS 38.05.057, AS 38.08, or AS 38.09, made before the  
27 effective date of this Act under a classification order under AS 38.05.300  
28 ~~that is based on a site-specific land use plan~~ is valid, notwithstanding  
29 the adoption of the classification order before the adoption of the region-

*Francis 5/4*

*does not affect choice 5/4*

1 al land use plan, if other requirements of law were met.

2 \* Sec. 15. AS 38.09.040(b) is repealed.

DNR

A mineral management or disposal decision made before the effective date of this act is valid, regardless of whether that land was classified if other requirements of the law were met. This section does not require the Commissioner of Natural Resources to proceed with the 1984 Chase III Ag Homestead disposal decision.

This section does not affect the Chase III Ag Homestead disposal decision, which ~~was~~ the Supreme Court remanded to DNR for reconsideration.

shd validate classif no ex'g bef .065?

# MEMORANDUM

*Ned Fargher*  
State of Alaska

DEPARTMENT OF NATURAL RESOURCES

TO: Deputy Commissioners  
Division Directors  
Special Assistants

DATE: January 12, 1987

FILE NO:

TELEPHONE NO: 465-2400

FROM: Judith M. Brady *JMB*  
Commissioner

SUBJECT: Department Order 124:  
Land Use Planning  
and Classification

## ISSUE

Is it necessary for the department to complete a comprehensive regional plan before the classification or sale of certain state lands or resources?

## BACKGROUND

The Chase III homestead project was offered to the public in September 1984. Alaska Survival, claiming the department violated a number of statutory requirements, sued to block the land disposal. Although the state prevailed in Superior Court, the Supreme Court remanded the land offering back to the department. A petition for rehearing to clarify the Court's ruling was denied.

## DISCUSSION

The Supreme Court clearly interprets AS 38.04.065 as requiring that comprehensive land use planning precede classification. However, as described in the state's petition for rehearing, several other points in the Court's opinion are vague or contradicted by the facts in the Chase III land offering.

Although lacking clarification from the Court, the department recognizes its responsibility to make land and resources available for maximum use consistent with the public interest. The economic vitality of the state and reliance of third parties on the actions of the department require that the department take a pragmatic approach to interpreting the Chase III decision. The department will request amendment of AS 38.04.065 to clarify legislative intent.

## POLICY

After August 19, 1986 and pending legislative amendment of AS 38.04.065, site-specific land planning reports, as described in 11 AAC 55.030(e), will not be used as the basis for classification. The Court ruled that the land

planning report requirement does not "properly implement" and is inconsistent with AS 38.04.065. Classification must be based on a land use plan of a geographic unit large enough to support the comprehensive process mandated by the Supreme Court.

Classifications may be based on a comprehensive plan adopted by a local government having planning and zoning powers if the commissioner finds that such a plan adequately recognizes and protects state interests.

The Chase III decision does not invalidate classifications already in effect on August 19, 1986.

Nothing in the Chase III decision affects 11 AAC 55.040(i). Thus, the following actions continue to be exempted from the requirement of prior classification: mineral location, leasable mineral leasing, preference right conveyances under AS 38.05.035(b), land exchanges under AS 38.50, negotiated sales of up to 10 MBF of timber and any amount of materials, right-of-way leasing if no appraisal is necessary, conveyances to municipalities and other state agencies, and land disposals in conformance with a local comprehensive plan and local zoning ordinance.

Disposals of land or interests in land, as actions independent of classification, are not affected by the Chase III decision. That decision applies only to the land use planning and classification process.

Reclassification of land included in an approved area or management plan may proceed under the amendment process described in the relevant plan.

Ned Engler

# MEMORANDUM

# State of Alaska

DEPARTMENT OF NATURAL RESOURCES - Office of the Commissioner

TO: Deputy Commissioners  
Division Directors  
Special Assistants

DATE: October 1, 1986

FILE NO: 2300

TELEPHONE NO: 465-2400

SUBJECT: Department Order No. 114 - Interim Response to Alaska Survival v. State of Alaska

FROM: *Ernest C. Wunnicke*  
Ernest C. Wunnicke  
Commissioner

DEPARTMENT OF  
NATURAL RESOURCES  
OCT 20 1986

### Issue

On August 19, 1986 the Alaska Supreme Court rendered a decision in Alaska Survival v. State of Alaska. The decision reversed the department's decision to dispose of the Chase III Agricultural Homestead because the department violated statutory planning requirements when classifying state land for this project.

This decision requires the department to determine if it is necessary to postpone, cancel, or otherwise alter any proposed disposals of land or interest therein conducted outside adopted comprehensive land use plans (e.g. land sales, exchanges, material sales, timber sales, leases, private rights-of-way, oil and gas, lease sales, municipal conveyances)?

### Background

In September, 1984 the department conducted a 3,530 acre agricultural homestead offering (Chase III), consisting of 32 parcels near Talkeetna. Alaska Survival sued to block the offering, claiming the department violated a number of statutory requirements. The Superior Court upheld the department's land offering, prompting an appeal to the Alaska Supreme Court.

The Supreme Court overturned the Superior Court decision and found that AS 38.04.065 requires that comprehensive land use planning must precede land classification. Based upon this finding, the Supreme Court ruled that the department's classification of the Chase III land prior to adoption of the Susitna Area Plan was a serious procedural violation. The court remanded the disposal decision back to the department for further consideration and public comment.

On September 8, 1986 the Attorney General's Office petitioned the court for rehearing, maintaining the Supreme Court decision failed to address legislative intent in AS 38.05.300(b) and AS 38.04.020(c) and did not clarify whether the department could dispose of certain of the Chase III land which were classified in 1980 (under a statutory exception to AS 38.04.065).

Discussion

The Supreme Court decision is unclear with respect to a number of issues. Until the court rules upon the state's petition, the department will employ an interim action program.

It is important for the department to continue its charge of managing state land in the public interest, including the continued disposal of land and interests, consistent with existing classifications. Therefore, as outlined below the department will proceed cautiously in compliance with a reasoned interpretation of the decision, pending the court's response to our petition.

Decision

All classification actions outside adopted area plans are prohibited until further notice. The department may continue to dispose of state land and interests outside adopted comprehensive land use plans, provided such disposals do not require classification action.

In order to avoid exposing additional third-party interests to possible challenge while the court considers the state's petition, the Division of Land and Water Management shall postpone the scheduled October 2 Pilgrim Homestead lottery in Nome and the October 3 Odd-lot auction in Kotzebue. The postponements of these new disposals outside comprehensive land use plans (coupled with the earlier postponement of the September 9 Heiden View Subdivision lottery in Valdez) are evidence of the department's intent to abide by the Supreme Court's final decision.

However, the over-the-counter (OTC) land sales scheduled for October 20 and November 10 will proceed. Although these sales include parcels outside adopted comprehensive land use plans, they are continuations of prior actions which occurred prior to the Supreme Court decision.

The editorial that appeared in the Daily News on March 12, 1988 is yet another example of the News' failure to adequately research an issue before taking a stand. While your interest in state resource policy is laudable, you have a responsibility to your readers to interpret facts rather than hearsay.

The first erroneous assumption made by the Daily News is that the only actions affected by the Supreme Court decision in Alaska Survival are state land disposals. In fact, the court decision specifically relates to CLASSIFICATION of state land in advance of a comprehensive plan.

Classification is required by statute for a variety of different land actions. This includes leases of tidelands for ports and marinas, timber sales, leases for guiding camps, and sales of lands to USFS permittees to mention a few. The court's ruling brings actions like these to a standstill in most of Southeast, the Kenai Peninsula, the Aleutians, and Northern Alaska. The reason is that the Department has no planning process either in progress or proposed for those areas in the near future.

Because of the loss of state revenues, the operating budget in the Department of Natural Resources is also taking a substantial cut. In such circumstances, prudent managers must find creative, cost effective solutions to their problems. The department order referenced in the Daily News editorial allows the department to base classifications on comprehensive plans adopted by local municipalities having planning and zoning authority IF the commissioner of Natural Resources finds that such plans adequately protect state interests.

In most cases, local comprehensive plans include a review of opportunities and constraints, a statement of community goals and objectives, and opportunity for community review and comment. By statute, the department is REQUIRED to consult with local governments prior to disposing of any state interests. While the state and local interests may occasionally be in conflict, in the great majority of cases the interests are very similar. The department order recognizes this, and yet also provides an opportunity for checks and balances.

Finally, anyone reviewing the Department's 1988 budget proposal would note that the land disposal program has been virtually eliminated. The state constitution leaves no doubt as to Alaska's resource development policy: to make resources available for maximum use consistent with the public interest. The department order and the proposed changes to AS 38.04.065 are our suggestion on how to do that efficiently and responsibly.

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# Anchorage Daily News



Winner, 1976 Pulitzer Prize Gold Medal for Public Service  
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## Don't cut corners on state land sales

State agencies need plenty of creative ideas to cope with shrinking budgets. But when it comes to selling off the state's lands, the Department of Natural Resources' new approach would bring back the same old problems.

State law requires some common-sense preparation for a land disposal. Before it decides which lands to sell, the state needs to know what holdings are needed for other uses, such as timber, mining, recreation, or wildlife. That's why the law calls for a regional land plan before the state opens an area to private ownership. DNR has tried to skip this process before, in the 1984 Chase disposal, but the Alaska Supreme Court told the agency to go back and follow the law.

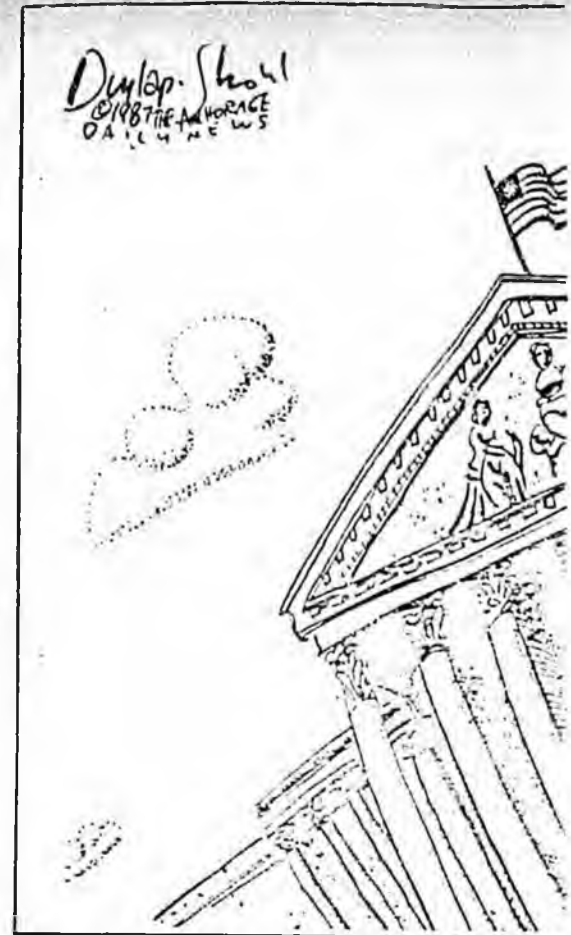
That ruling poses a dilemma, if the agency is going to keep up the pace of disposals. At the same time budget cutters slash its staff, the agency must do more work.

Commissioner Judy Brady's "creative" solution: Loosen the planning requirements, one way or another. Her recent administrative order would let the agency use land plans done by local governments or, in some cases, skip regional planning altogether. To make sure she has the power to do that — a dubious proposition, given current law — she wants the law changed.

Either way, her approach is as unnecessary as it is unwise. Planners have finished the work required for disposals in the Railbelt, where demand for state land should be the highest. In any case, demand for land has fallen off, and the private market offers plenty of selection for would-be buyers.

Unless the legislature changes the law, Commissioner Brady's approach will put her department right back in court. Sticking with current law may force the state to slow down its land offerings. But better to go a bit slow than too fast. If the state sells off lands it should have kept, fixing the mistakes will be difficult and expensive. It's worth taking the time and money to do job right.

## A treasury of songs



## Public paying a

Interior Secretary Donald Hodel was making a startling prediction the other morning over breakfast. He told reporters listening intently that he foresaw another oil crisis within four or five years; a revived OPEC would once again push the price of energy sky high, bringing about long lines at gas stations and all the grief that was with us only a short time ago. Mr. Hodel said this might even happen sooner if the situation in the Mideast were to heat up.

Whatever happened to the United States move toward energy independence?

Hodel said he has repeatedly asked the same question, in an effort to shore up the country's ability to stand up to OPEC (Organization of Petroleum Exporting Countries), but "no one was listening."

President Carter for a while made an all-out effort to free the U.S. from energy dependence on other countries.

Mr. Carter's drop in public

support by this effort. was whacked polls over the hostage crisis energy in gone by the

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# Trustees for ALASKA

October 2, 1986

James Eason, Director  
Division of Oil and Gas  
Department of Natural Resources  
P.O. Box 7034  
Anchorage, Alaska 99510-7034

RECEIVED

OCT 08 1986

re: Proposed Five-Year Oil and Gas Leasing Program

DIVISION OF OIL & GAS  
ANCHORAGE, ALASKA

Dear Mr. Eason:

Trustees for Alaska appreciates this opportunity to comment on the State's proposed 5-year oil and gas leasing program. Most of our comments relate to the general approach to the State's oil and gas leasing program, rather than comments on specific sales. We will submit more detailed specific comments on individual sales as appropriate.

We strongly support the State's suggestion to use increasingly limited resources to focus on fewer lease sales (Schedule B). Any attempt to continue the existing ambitious program in the face of personnel cutbacks would be counterproductive, and would result in less careful attention to each sale. As a result, we believe that environmental protection would receive relatively less focus, i.e. DOG would have less ability to limit or to prohibit leasing in particularly sensitive areas, and to develop conditions and stipulations necessary to protect important environmental resources.

The proposed cutback in the 5-year lease schedule also makes sense from an economic perspective. While the call for comments correctly notes that cutting back the 5-year program will result in less areas being explored and developed quickly, it is not DOG's role to maximize short-term development potential. Rather, as the manager of the State's oil and gas resources, DOG must consider ways to maximize the State's long-term return from its resources in a balanced fashion, while ensuring that development is conducted consistent with the protection of other resources, such as renewable fish and wildlife resources. Given the current oil market, it would appear to make sense to limit production at this time, in order to maximize long-term returns. By slowing down development, more attention can be paid to protecting environmental resources for leases that are issued, and additional areas can be added as oil prices increase. Moreover, future development in sensitive areas can proceed with the benefit of technological advances that may minimize overall environmental impacts. Therefore, we believe that the proposed reduction in the 5-year program is in the long-range interests of the State of Alaska.

Despite our agreement with the overall approach, we do object to the creation in the 5-year plan of a firm expectation that a prescribed minimum number of lease sales will be held each year. The call for comments does note that no final decisions have been made with respect to any given sale. Nevertheless, the general statements establishing minimum numbers of sales result in considerable institutional pressure to proceed with the identified sales, for fear of not meeting the identified "quota". State law requires the Department to make an independent, objective determination, based on all available information and public input at the time of the sale, of whether each individual sale is in the best interests of the State. Therefore, the 5-year plan should state simply that the Department plans to "consider" the listed lease sales within the deadlines set out in the schedule.

We also are interested in the Department's views on the effect of the State Supreme Court's recent ruling in Alaska Survival v. DNR on the oil and gas leasing system. The Court ruled that no classification or disposition of state land may occur prior to the development of comprehensive, regional land use plans. Presumably, this ruling extends to state land classifications and dispositions that involve less than fee simple land conveyance, particularly since the Chase land disposal involved only surface rights for agricultural use. Many of the Department's proposed lease sales, however, are in areas with no regional land use plans. While we have made no decision regarding how we believe the Court's decision applies to oil and gas lease sales, we believe that the issue deserves serious consideration. We would appreciate your views on this issue. It would also be useful if you could provide an explanation of how and when state land is "classified" for purposes of oil and gas lease sales, and how best interests findings for lease sales relate to the land use planning process.

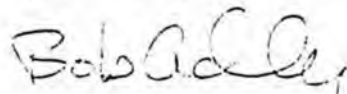
Finally, we have only a few comments at this time regarding specific sales identified in the call for comments. We previously submitted comments on the Prudhoe Bay Uplands Sale, which has now been split into two separate lease sales. We simply wish to reiterate our concern that these sales consider carefully the effect of these sales on the adjacent Arctic National Wildlife Refuge, which is currently being considered for either inclusion in the National Wilderness Preservation System or for oil and gas development. Considerable wildlife migration occurs across the Canning River, and some Central Arctic Caribou Herd calving may occur in this area.

We are also concerned about the size of proposed lease sale 65, which stretches across the arctic coastline from the Canning delta to the region north of Teshekpuk Lake. While we have no general opposition to additional sales in the Prudhoe Bay region, assuming adequate environmental safeguards, we object to the proposed inclusion at this time of coastal areas adjacent to the ANWR and the Teshekpuk Lake Special Area. Our concerns about the arctic

coastline near the ANWR were specified in our comments on the proposed Camden Bay and Demarcation Point Sales. In addition, we question the wisdom of planning a sale along the coastline of the Teshekpuk Lake Special Area, before the Bureau of Land Management decides what the appropriate oil and gas development policy for this area should be. Oil development in the State's coastal region will entail the use of onshore facilities for support and transportation, including pipelines, in order for development to be economically feasible. In addition, the State is undoubtedly aware of the tremendous importance of the Teshekpuk Lake region for waterfowl and other important wildlife populations. Therefore, the State should withhold its plans for development of this area pending a decision by BLM.

Thank you again for this opportunity to comment on the State's proposed 5-year oil and gas leasing plan.

Very Truly yours,



Bob Adler  
Executive Director



Official Business

# Alaska State Legislature

## House

P.O. BOX V  
State Capitol  
Juneau, Alaska 99811

TO: Resources Committee  
FROM: Ned Farquhar, staff *Ned*  
SUBJECT: HB 289 (state land management)  
DATE: May 9, 1987

The subcommittee on HB 289 presents an amended version that has been technically improved and that has addressed several major policy questions. Attached is a comparison of this bill with the Senate version (CSSB 196 (Res)). Following is a sectional analysis of the subcommittee's proposed substitute, compared to the original HB 289.

Section 1 now retains the area planning requirement but establishes two exceptions: the adoption of site-specific plans and the adoption of other governmental entities' plans. Both of these options require full public process and an interest finding, and are described in the bill in later sections.

Section 2 clarifies that the standards for planning pertain to all plans, including site-specific ones.

Section 3 requires regional planning for state land. The word "all" is removed at line 11 to prevent area planning for state lands not controlled by DNR or scraps of land that logically do not need area planning.

Section 4 has been split into several parts: what remains here is language allowing the commissioner to adopt plans developed by other governmental entities. These could include municipal land use plans, coastal plans, and BLM or Forest Service plans. The section has been revised to require hearings and interest findings, as requested by several who testified.

Section 5 has not been amended.

Section 6 has not been amended.

Section 7 is new, derived from parts of former sec.4. It allows the commissioner to adopt site-specific plans except for programmatic land disposals or new commercial

agriculture projects. Under (i), it allows oil and gas lease sales without area planning because there is thorough planning for oil and gas lease sales under AS 38.05.180. The subcommittee considered adding two other land actions that would require area planning (major timber sales and highway extensions into unroaded areas); both of these were not included in the draft.

Section 8 is the same as the former Sec. 7.

Section 9 is improved language (suggested by the Attorney General) for preference rights for holders of rights created by other agencies than DNR. (Former sec.8.)

Section 10 amends the requirements for best interest findings for exempt oil and gas lease sales under AS 38.05.180(d). The language allowing inclusion of "contiguous or adjacent" acreage under a former best-interest finding has been removed at the request of ADF&G and interest groups. This issue will be addressed in the context of SB 182, now in committee. (Former sec.9.)

Section 11 is an amendment requested by Rep. Springer to prevent DNR from putting a reverter clause into some public/charitable conveyances to some municipalities.

Section 12 allows the exchange of homestead permits with the commissioner's approval.

Sections 13 and 14, relating to homestead survey and brushing requirements, have not been changed. (Former secs.11 and 12.)

Section 15 has been amended to validate all past land classifications, not just those done by a site-specific plan. (Former sec.13.)

Section 16 has been amended to validate most land management and disposal decisions, not just those done by a site-specific plan. (Former sec.14.)

Section 17 is new, suggested by the Attorney General. It validates past minerals disposal decisions.

Section 18 is new and states that the bill does not affect the Chase III land disposal, which was the subject of the lawsuit (Alaska Survival) that is the reason for the bill.

Section 19 is the same as former sec.15.

Section 20 provides an immediate effective date, which is important for actions this summer.

CSSB 196(Res) vs. proposed CSHB 289(Res) (5/07/87)

SB/HB Sec. 1: The House bill requires area planning, and makes exceptions that allow the commissioner to adopt other land use plans, including site-specific plans and local, federal, or coastal plans ("other plans").

SB/HB Sec. 2: The House bill clarifies that the commissioner must consider certain factors in adopting a site-specific or other plans. This is a technical change, because the current language might be regarded as ambiguous. The Senate bill refers to "resource development."

SB/HB Sec. 3: The House bill allows the commissioner to adopt (rather than develop) regional plans. The House bill requires regional plans for state land (rather than "all" state land). The Senate bill includes references to mining and resource development.

SB/HB Sec. 4: The House bill removes the first sentence of the new subsection, which is redundant. The Senate bill allows the adoption of municipal plans for regional plans; the House bill allows the adoption of a broader range of plans and not just for regions. The House bill requires public hearings and an interest finding in the adoption of other plans. The House bill separates site-specific planning into another subsection (Sec. 7 of the House bill).

SB/HB Sec. 5: identical.

SB/HB Sec. 6: identical.

SB Sec. 7; HB Sec. 9: Both sections are intended to allow DNR to make land sales under a new preference right. The House language was suggested by the AG.

HB Sec. 7: The House bill separates the site-specific planning option into a separate subsection (h) in AS 38.04.065. Except that it requires area planning for new commercial agriculture projects, the House language has the same effect. The House bill also adds a new subsection (i) that exempts oil and gas lease sales from area planning.

SB Sec. 8: Veterans' discount language not included in the House bill.

HB Sec. 8: A technical amendment to the definition of "short-term lease" not included in the Senate bill.

SB Sec. 9; HB Sec. 15: The sections are the same except that the House version validates all land classifications, not just those based on a site-specific plan.

SB Sec. 10; HB Sec. 16: Same as above.

HB Sec. 10: The House bill includes language similar to that in SB 182 regarding best interest findings for exempt oil and gas lease sales. (Cotten)

HB Sec. 11: The House bill prevents DNR from putting reverter clauses on public/charitable use conveyances to some municipalities. (Springer)

HB Sec. 12: The House bill allows the exchange of homestead entry permits among entrants. (Shultz)

HB Secs. 13 and 14: The House bill allows five years for the submittal of homestead surveys and removes the requirement for brushing homestead boundaries if the homestead parcel was described by aliquot parts. (DNR/Cotten)

HB Sec. 15: See SB Sec. 9.

HB Sec. 16: See SB Sec. 10.

HB Sec. 17: The House bill validates past minerals management and disposal decisions by DNR.

HB Sec. 18: The House bill does not affect (validate) the Class III disposal decision.

HB Sec. 19: The House bill repeals the three-year extension for homestead surveys (all are now automatically extended three years).

HB Sec. 20: The House bill is effective immediately.

MAY - 4 1987

DT: APRIL 27, 1987

TO: MEMBERS OF THE STATE HOUSE RESOURCES COMMITTEE

FR: JIM SYKES, 309 GAYLENE CIRCLE, ANCHORAGE 99504

RE: HB289

"What kind of process can be created that will protect the public and give DNR the ability to classify lands without a regional plan?"

HB289 which requires programmatic land disposals for homesites, homestead, and lotteries to go thru the regional comprehensive planning process, is a significant step in the right direction. There are other types of land classifications and disposals that deserve the same kind of careful consideration. For example, agricultural lands are not required to go thru regional plans, and it is widely recognized that more than 100 Million State dollars was wasted on the Delta Barley project. Delta was not feasible from the beginning, and it was not subject to the kind of careful consideration required of a regional comprehensive plan. Looking back, maybe the Delta Barely mistake was made in part because we were awash in money and enthusiasm. Now that the big money is gone we can not afford such colossal mistakes. Careful planning must continue. It's regrettable any regional plans could have been done for the Delta 100 million dollars.

We recognize that DNR must deal with lands which are unlikely to be included in regional plans. Currently the rule of law requires regional planning. That law may need to be amended to exclude specific types of land classifications. HB289 is completely backwards because it makes the exceptions the law and the law the exceptions. In order to make a meaningful and enforcable law, the Department of

Natural Resources should draw up a list of exceptions to the CURRENT law that they feel they need, along with the generic activities that would be required to deal with such land classification decisions. A public process could then be developed to meet those needs, if the exceptions truly need to be made. Since there is no funding in FY '88 for disposals, this is an ideal time to work out these difficulties.

We agree with the goals DNR Commissioner Judy Brady has stated for land disposals: 1) A thorough public process, 2) inspection of the lands to be disposed, 3) consideration of unbiased scientific evidence, and in the case of lands for settlement, maximum local input in deciding which lands will go into <sup>private</sup> public hands. This sounds a lot like regional planning, which helps resolve these important questions. If DNR is to be exempted from regional planning in certain instances, the question must be asked, "What kind of process can be created that will protect the public and give DNR the ability to classify lands without a regional plan?"

That brings us back to HB289. While the current law protects Alaska's citizens, HB289 removes that protection by allowing DNR to determine their own regulations which MAY NOT necessarily be in the best interest of Alaska's citizens. DNR's past history of disregarding public input, making decisions without inspecting the site in question, and rejecting or ignoring scientific evidence, obligates the legislature to favor the citizen's interests rather than the agency's ease of bureaucratic action.

One of DNR's major concerns appears to be reclassification of tidelands. If the tidelands are covered by a regional plan, or about

to be within the next two years, the classification changes should be made in accordance with the regional plan. If the area is not going to be included in a regional plan, then there must be a thorough process which mandates widespread public input and public hearings, on-site inspection, and evaluation of unbiased scientific data. There may be a way that DNR can use the Coastal Zone Management process to insure that tidelands, (which belong to all Alaskans), are classified in a sensible manner.

If there are exceptions to be made to the current law, certain sections of the law should remain. AS 38.05.345 basically requires publications, public service announcements, posting, notification to possible interested parties, and notice to other governments and Native Corporations. In addition, there should be a mandatory public hearing, which is not now required, and the publication notice should be extended from 30 to 60 days. Provisions in AS 38.04.065 should also be kept in order that a more site specific plan will also be considered in larger terms, and provide for meaningful public participation. The more advance notice, the greater likelihood that increased public participation will reduce pressure for a bad decision. Industry and government hold all the cards until there is a significant amount of public awareness and understanding.

The goal of the existing law is to create the most sensible land disposal decisions, and we share that goal. There are a few problems with DNR accepting a site specific plan, as proposed in HB289. For example, we in Chase are sitting down with people who do not generally agree with us, to try and reach some sort of consensus about land use

in our area. Even if we find a solution, our deliberations will take place largely out of the wider public eye. At least we are working within the regional planning process so that wider implications can be considered. In places where there will be no regional plan, a decision could be made at a local level which might not be in the best interest of the wider general public. The public would have no opportunity for input before DNR could make an irrevocable decision. It could lead to the same type of serious problem in Chase that we felt compelled to take to court. We support maximum local input, but other citizen and state interests should not be excluded. The wider participation will insure a more comprehensive inventory and analysis of resources and competing uses.

People in Chase and Talkeetna are pleased about the sensible HB289 provisions requiring regional land planning for most lands which will be disposed for settlement. There are other similarly important land classification issues that deserve the same kind of careful consideration. Those equally important issues remain absent from HB289. Under HB289 Alaska citizens are not protected from an agency that has a history of violating the public trust. Until there is a thorough understanding of the specific areas of land classification that DNR wants to exempt from the current law, and until adequate public process provisions can be firmly entrenched in law, HB289 should NOT be passed out of committee.

*James L. Sykes -  
Boundary Sub-Committee  
Chase Community Council*