

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

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HRES

HB 289

58

NED

SB 196
HB 289

REPRESENTATIVE
SAM COTTEN
DISTRICT 15



P.O. BOX 296, EAGLE RIVER AK 99577
P.O. BOX V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

M E M O R A N D U M

TO: Resources Committee members
FROM: Rep. Sam Cotten, Co-Chair
SUBJECT: Proposed Committee bill relating to state land management
DATE: April 7, 1987

Yesterday I handed out a draft bill on state land planning and management; the bill needs your review for possible introduction as a Resources Committee bill. The planning issues raised in the bill are urgent, needing legislative attention this year if possible.

The Supreme Court has held that land classifications (and possibly ensuing disposals of interest in state land) must be preceded by land use planning under AS 38.04.065. This statute requires an area plan prior to classification. The Supreme Court decision and some related documents were included in the packet I distributed yesterday.

At this time, about 36 million acres of state land are covered under adopted area plans, and plans are underway for another 19 million acres. At least thirty million acres of state land (Kenai, Kodiak, Brooks Range, Aleutians, Lower Kuskokwim, North Slope, Upper Yukon, Yukon-Koyukuk, most Southeast tidelands) are not yet scheduled for area planning.

If disposal actions are postponed in these areas, pending area planning, there could be very broad ramifications for state land management, economic uses of land, and state revenues. Disposals that could be affected, depending on interpretation and application of the Supreme Court decision, include oil and gas lease sales, sand and gravel sales, leases for public and private purposes, rights-of-way, and mining leases.

The proposed bill will amend the planning statute to clarify that area planning is not required before all classifications; however, public notice and a site-specific planning report will be required. The bill differs from SB 196 (the Senate

measure introduced by Senator Coghill) in that it is neutral on the topics of mining and resource development.

The bill includes some other Title 38 housecleaning proposals advanced by the Department of Natural Resources. Rep. Shultz has proposed additional language (attached) which the Department and I have no objection to including.

The bill will have zero or positive fiscal impact.

Sectional analysis

Sections 1-6, 12, and 13 amend the state's planning statutes to require a site-specific plan (not an area plan) before land classification and validates classifications made under the former law.

Section 7 conforms the definition of a short-term lease to the new language in statute, amended in SB 375 in 1984 (AS 38.05.070(b)).

Section 8 allows the commissioner of DNR to sell land held by another agency if the land is surplus to the agency's needs. This would most likely be used by DNR for DOTFF lands.

Section 9 would allow the reoffering of oil and gas lease lands within three years of an existing best-interest finding without repeating the best-interest finding process. This will be valuable for oil and gas leases returned to the state by lessees who do not intend to develop their properties.

Sections 10-11 and 14 amend the homestead act to allow five years for completion of survey (rather than two, a change the committee has already included in its substitute for HB 111) and to dismiss the brushing requirement for parcels described by aliquot parts.

AS 38.09.030 (c) is amended by adding a new subsection:

(5) unless disapproved by the commissioner parties may exchange permits within the same homestead areas to facilitate better land use or ownership patterns.

REPRESENTATIVE
SAM COTTEN
DISTRICT 15



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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

M E M O R A N D U M

TO: Resources Committee members
FROM: Rep. Sam Cotten, Co-Chair
SUBJECT: HB 289, on state land management
DATE: April 27, 1987

The Committee will hear HB 289 (state land management) on April 28. The bill was introduced by the Resources Committee to address major land classification and disposal issues raised last summer when the Supreme Court found that the Department of Natural Resources acted 'llegally by issuing a land classification (which led to a land disposal) before completing an area plan for the affected area. (This court decision will be in your bill packets.)

As noted in my April 7 memo to you suggesting introduction of the bill, the Supreme Court decision may have important ramifications for economic uses of state land in areas of the state where area plans have not yet been completed. To allow the situation to continue without repair may jeopardize past and future land management decisions, including many that are important for local and statewide economic development (rights-of-way, leases, sand and gravel sales, other resource disposals).

It is not the intent or effect of this bill to subvert the planning process; instead, the bill is intended to allow sensible land management during the interim period while regionwide "area" plans are being prepared for all state lands by the Department of Natural Resources. The Department has given high priority to completion of these plans over the past four years and will continue to do so. However, at this time over thirty million acres of state land are not even on the area planning schedule.

The bill is not intended to address the specific court case (Alaska Survival vs. DNR) decided by the Supreme Court last year. The issue in this case has been remanded to DNR for

reconsideration by the Court; I have asked DNR to provide assurance that the bill will not affect the reconsideration.

I am attaching a sectional analysis of the bill, which includes other land management language requested by committee members or resource groups on state land management in general. However, the most important issue is resolution of the standing planning requirement which may set an unattainable standard, at least in the short term, for planning before state land classifications and disposals.

SECTIONAL ANALYSIS

HB 289

April 27, 1987

PLEASE NOTE: Those sections preceded by an asterisk relate to the state's land use planning process.

* Section 1. This section amends existing law (the controlling statute on land use planning for state lands) to require plans, rather than regional/area plans for state lands.

* Section 2. This section removes the word "region" in existing law, to remove any implied or inferred distinction between an "area" and a "regional" plan. This is a technical change.

* Section 3. This section continues the existing requirement for regional plans, but removes the requirement that regional plans underlie land classification. Other plans, on a lesser scale, can serve the same planning purposes more quickly and less expensively.

* Section 4. This section replaces existing AS 38.04.065(d) (attached). It removes another requirement that area plans precede land classifications. The new language provides for full public and governmental participation in regional planning, allows the commissioner to adopt local plans (including borough plans, city plans, and coastal management plans) where state plans have not been completed; allows land classification and disposal on the basis of site-specific plans, except for programmatic land disposals such as subdivisions and homesteads; and requires that land classifications after the adoption of an area plan must follow the adopted plan.

* Section 5. This section amends existing law to allow siting of easements and rights-of-way without area plans.

* Section 6. This section amends existing law to clarify that state land use plans must be consistent with municipal plans (rather than local plans) as they accord with state interests.

Section 8. This section amends the definition of a short-term lease to conform with the change adopted in AS 38.05.070(b) in 1984. This amendment is technical.

Section 9. This section amends the existing law on best interest findings, required prior to the disposal of state interests, to allow the commissioner to reoffer oil and gas lands within three years after a prior best interest finding. This could include lands contiguous or adjacent to previous

sales. Under existing law, when leases are rescinded or are not sold at a lease sale, the commissioner may be required to go through the best-interest-finding process a second time.

Some amendments have been suggested to this section. The first would clarify that the commissioner could not exercise this section if new information has become available that would militate in favor of a new best interest finding. The second would clarify or delete "contiguous or adjacent."

This bill is similar to SB 182, introduced by the Senate Special Committee on Oil and Gas and now in Senate Finance.

Section 10. This section will allow homestead permit holders to exchange permits within a homestead area. This will allow family members or friends to attempt to locate near each other within a homestead area.

Section 11. This section amends existing homestead requirements to allow five years for survey of the homestead parcel instead of two, and to delete the lot-line brushing requirement for parcels described by aliquot parts. The Committee adopted similar amendments when it passed out HB 111 on cadastral survey. The section is also amended to remove a reference to a statute repealed in Sec. 15 of the bill. (See below.)

Section 12. This section provides for the same conditions for the issuance of homestead patents as would be adopted in Sec. 11, above.

* Section 13. This section validates land classifications made prior to the Supreme Court decision in Alaska Survival pending the completion of plans.

* Section 14. This section validates land management and disposal decisions made by the commissioner on the basis of site-specific plans prior to the effective date of the bill, whether or not area plans underlay the classification orders leading to disposal.

Section 15. This section repeals the provision allowing the commissioner to extend the deadline for submittal of a homestead survey by three years. The amendments in Sections 11 and 12 will allow all homestead permit-holders five years to submit their surveys.

(b) In the development and revision of land use plans, the commissioner shall

(1) use and observe the principles of multiple use and sustained yield;

(2) consider physical, economic, and social factors affecting the region or area and involve other agencies and the public in achieving a systematic interdisciplinary approach;

(3) give priority to planning and classification in areas of potential settlement and critical environmental concern;

(4) rely, to the extent that it is available, on the inventory of the state land, its resources, and other values;

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

(6) consider the supply, resources, and present and potential use of land under other ownership within the area or region of concern;

(7) plan for compatible surface and mineral land use classifications; and

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

(c) As a basis for more detailed land use planning and classification, the commissioner shall develop regional land use plans for the use of all state land. These regional plans shall identify and delineate

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

(2) areas which must be retained in state ownership and planned and classified for various uses and purposes in accordance with AS 38.04.015

(d) Official regional or area plans and subsequent amendments adopted by the commissioner after public and local governmental participation shall be signed and dated by the commissioner. After adoption of an official regional or area plan, land classifications shall be made in accordance with these official plans

(e) Land shall be classified as provided in AS 38.05.300.



(f) Decision about the location of easements and rights-of-way, other than for minor access, shall be integrated with land use planning and classification for the appropriate area or region.

(g) Land use plans adopted by the commissioner under this section shall be consistent with local governmental land use plans to the maximum extent determined consistent with the state interests and the purposes of this chapter. (§ 5 ch 181 SLA 1978; am § 8 ch 113 SLA 1981; am § 93 ch 6 SLA 1984)

Effect of amendments. — The 1981 amendment substituted "after adoption of an official regional or area plan, land" for

"land" preceding "classifications" in the second sentence of subsection (d)

The 1984 amendment reference in subse-

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Sec. 38.04.070. uses and purpose: included in the fol

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HB 289
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- Section
- 85. Term of lease
 - 87. Forest Service permittees' leasing preference
 - 90. Removal or reversion of improvements upon termination of leases
 - 95. Subleases
 - 97. Exemption from rental payments on

- Section
- land leased by nonprofit organizations
 - 98. Senior citizens exemption
 - 102. Lessee preference
 - 103. Rights of holder of security interest
 - 105. Periodic rent adjustments

Cross references. — For reservation to which contracts for sale, lease or grant of state land and deeds to state land,

properties or interest to state land are subject, see AS 38.05.125.

Sec. 38.05.070. Generally. (a) Land, including tide, submerged or shoreland, to which the state holds title or to which it may become entitled, may be leased, except for the extraction of natural resources, in the manner provided in AS 38.05.070 — 38.05.105.

(b) The director, with the approval of the commissioner, shall determine the land to be leased and the limitations, conditions and terms of the lease. The director shall preserve reasonable and traditional access to state land and water. If the appraised value of the transaction is \$5,000 a year or less the director may negotiate a lease for a period not to exceed 10 years, and on the limitations, conditions and terms that the director considers are in the best interests of the state. A lease negotiated under this subsection is not eligible for a preference under AS 38.05.102.

HB289
Sec
8

(c) A lease may be issued for a period up to 55 years, if the commissioner determines it to be in the best interests of the state. The commissioner shall consider the useful life of any improvements proposed and approved under AS 38.05.075 in determining the term of the lease. If the commissioner determines that the land or a part of it which is the subject of a grazing lease is not being used for the purpose issued, the lease may be declared void. (§ 1 art V ch 169 SLA 1959; am § 21 ch 113 SLA 1981; am §§ 27, 28 ch 152 SLA 1984)

Effect of amendments. — The 1981 amendment added the third sentence of subsection (b).

The 1984 amendment, in subsection (b), inserted the second sentence and, in the third sentence, substituted "\$5,000" for "\$250," "10" for "5," and "that the director" for "which he" and deleted "without advertisement" following "lease"; and, in subsection (c), substituted "the commissioner

determines it to be in the best interests of the state" for "it appears to be in the best interests of the state and if the commissioner approves" in the first sentence, inserted the second sentence, and deleted the former last sentence, which read "However, a nonrenewable lease for school lands may be issued for a period not to exceed 99 years."

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Sec. 38.09.040. Revocation of entry permits. (a) A homestead entry permit may be revoked by the commissioner for any substantial breach of the permit conditions or the requirements of this chapter, including

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

(2) failure of the permit holder to submit a plat of survey to the commissioner within two years after the issuance of the permit or under (b) of this section;

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

(4) failure to brush the boundaries of the land within 90 days after issuance of the homestead entry permit;

(5) failure to clear and either put into production or prepare for cultivation 25 percent of the land classified for agricultural use within five years after the issuance of the permit.

(b) If the commissioner determines that a permit holder has made a good faith effort to obtain a plat of survey, the commissioner may extend the time required for completion of the plat of survey for not more than three years after the issuance of the permit.

(c) If a homestead entry permit is revoked under (a) of this section, improvements or personal property upon the land shall be managed under AS 38.05.090 and the state land remains available for homestead entry under this chapter. (§ 1 ch 103 SLA 1983)

Sec. 38.09.050. Issuance of patent. (a) The commissioner shall issue a patent to homestead entry land if the permit holder

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

(2) completes an approved survey of the land within five years after the issuance of the permit or under AS 38.09.040(b);

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

(4) brushes the boundaries of the land within 90 days after the issuance of the permit;

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

(b) Nothing in this chapter prohibits a homestead entry permit holder from residing in a temporary dwelling on the homestead before erection of the permanent dwelling.

HB 289
Sec. 15
repeal



**WILDLIFE
FEDERATION
OF ALASKA**

The Alaska Affiliate of the
National Wildlife Federation

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April 30, 1987

House Resources Committee
Representatives Sam Cotton and Adeineid Herrmann, Co-Chairs
Alaska House of Representatives
PO Box V
Juneau, AK 99811

RE: HB 239: Proposed Area Planning Requirement Repeal

Dear Representatives Cotton and Herrmann:

We would like to take this opportunity to address what is perhaps the most important piece of land use legislation before the legislature this session: the proposed repeal of the area planning requirement. The legislation is the result of the Department of Natural Resource's reaction to the Alaska Supreme Court's Case III decision. We believe that the possible adverse impacts of that decision have been substantially exaggerated and that the proposed solution goes far beyond what is necessary. We do not dispute the fact that the Case III decision has created some problems. We feel confident, however, that those problems can be fully resolved by establishing statutory exceptions where appropriate to the very sound general rule that area planning should precede the disposal of interests in state land.

1. The Value of Planning. No one seems to dispute the wisdom of completing comprehensive area plans before disposing of interests in state land wherever practical. Consequently, it is a bit surprising to see how ready the state seems to be to abandon this general rule. Area planning provides the following major benefits, among others:

- a. It provides an opportunity to gather the greatest possible amount of resource information about an area and to subject that information to as high a level of analysis as possible.
- b. It allows decisions to be reached far enough ahead of time to avoid the excessive political and economic pressures that can be applied when actual site specific proposals are being evaluated.
- c. It provides for the greatest possible amount of public participation. This results in better decisions, more stability, and less future conflict, including litigation.

Land Use Planning Reports, on the other hand, which would replace area plans, have generally been both brief and conclusory, and have often appeared to be largely justifications for decisions that have already been made.

2. The Present Planning Status. 83 million acres of state land have been Patented or Tentatively Approved. In less than a year area plans should be in place for approximately 66.5 million acres of state land. Most of the areas of the state where development pressures are greatest will be planned for. Two possible exceptions are most of the state's tidelands and the Kenai Peninsula.
3. Needed Plans. A number of the problems created by Chase III could be resolved if plans were in place for the state's tidelands and for the Kenai Peninsula. A comprehensive tidelands policy might be a reasonable interim substitute for a site specific plan for all of Alaska's tidelands. We strongly recommend that the legislature provide adequate funding for the Division of Land and Water Management to prepare a comprehensive tidelands policy as well as an area plan for the Kenai Peninsula.
4. Necessary Exceptions to Area Planning Requirement. In order for the interested public and the legislature to adequately evaluate the nature and extent of the problems created by the Chase decision, and to fashion the best possible solution, we need to see in some detail what specific activities, in what unplanned areas, are not able to go forward because of the decision. That list could start with the activities noted in Department Order 124, although it might be wise to see whether the Attorney General's office agrees that those activities are unaffected by the decision. After a full list has been developed, those activities that can not wait for the completion of an area plan, and that do not need to be subjected to the level of analysis provided by an area plan, could be excepted from the area planning requirement. Routine rights-of-way, most gravel sales, most auctions, and perhaps most timber sales undertaken for the purpose of disease control, are examples of activities that could be excepted.

Examples of activities that we believe require the level of analysis and public participation provided by an area plan are large agricultural sales, large timber sales, tidelands permits for mariculture, state roads, and of course programmatic land disposals such as homesteads, homesteads, and subdivisions. We appreciate, incidentally, the provision in HB 289 which would still require the latter disposals to be preceded by an area plan. This is a significant improvement over legislation that would repeal all area planning requirements.

5. Adoption of Local Government Plans. We are very concerned about the provision that would allow the commissioner, upon finding that it is in the best interest of the state, to adopt local government plans as regional plans, and we urge you to delete it. Local government plans do not provide for either continuous public participation from start to finish of the planning process by individuals and groups with statewide interests, or for review and comment by those interests. The Division of Land and Water Management's area plan public participation process is probably the best in the state, at any government level, and losing it would indeed be a serious loss regardless of whether we agree or disagree with the final decisions in the plan.

We believe that this issue is of a great deal more interest to Alaskans than most legislators realize at this time. Relatively few people are aware that the area planning requirement is being proposed for repeal, and to date there have been virtually no opportunities for the public to communicate directly with their legislators. We hope that the House Resources Committee will take the time necessary to review this matter very carefully, and will be willing to craft a more balanced piece of legislation than the present one. Doing so will both meet DNR's concerns and protect the general public's long-term interest in its most valuable asset, its public lands.

Sincerely,

Ann Rothe by dgh

Ann Rothe, President
Wildlife Federation of Alaska

HB 289



Alaska Center for the Environment

700 H Street, Suite 4 • Anchorage, Alaska 99501 • (907) 274-3621

May 1, 1987

Ned Farquhar, Staff
House Resources Committee
PO Box V
Juneau, AK 99811

RE: HB 289

Dear Ned,

As a result of the work session I have drafted two sets of language that I hope can at least serve as starting points. The first assumes that a planning requirement is the exception rather than the rule. Please remember, however, that our clear preference still is for retaining the requirement as the general rule and listing exceptions to it.

The second set attempts to deal with notice and hearing needs in cases where a municipal plan is proposed for adoption as a regional plan.

A major concern for which we don't have a proposed solution is how to deal with substantial tidelands permitting, for example for mariculture. We'll continue to work on this.

Thanks again for letting Gail and I participate in your work session.

Sincerely,

Cliff

Cliff Eames
Issues Director

HOUSE BILL 289
DNR LAND CLASSIFICATION

STANDARD ALASKA PRODUCTION COMPANY SUPPORTS HOUSE BILL 289 AS A MEANS OF RESOLVING THE UNCERTAINTIES IN LAND STATUS CREATED BY THE ALASKA SURVIVAL DECISION. AS NOTED IN THE COMMENTS ON THE BILL FROM COMMISSIONER JUDITH M. BRADY TO CHAIRMAN OF THE SENATE RESOURCES COMMITTEE, THE HONORABLE JACK COGHILL, THE IMPLICATIONS OF THE ALASKA SURVIVAL DECISION HAVE CREATED UNINTENDED PROBLEMS AND CONFLICTS IN THE STATE'S MANAGEMENT OF ITS LANDS AND UNREALISTICALLY BLOCKED CERTAIN LAND MANAGEMENT ACTIONS UNTIL COMPLETION OF REGIONAL PLANNING BY THE DEPARTMENT OF NATURAL RESOURCES. WHILE WE DO NOT BELIEVE THE DECISION DIRECTLY AFFECTS OIL AND GAS LEASING, IT MAY AFFECT ANCILLARY LAND USES. THE UNCERTAINTY AND IMPEDIMENTS IT CREATES CLEARLY AFFECTS ALL CITIZENS OF THE STATE. THE PROPOSED LEGISLATION AND THE COMMENTS OF THE DEPARTMENT OF NATURAL RESOURCES PRESENT A RATIONAL METHOD OF RESOLVING THE PROBLEMS WHILE MAINTAINING PLANNING REQUIREMENTS FOR LAND MANAGEMENT.



Alaska State Legislature

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

Representative Sam Cotten, co-Chair (465-3715)
Representative Adelheid Herrmann, co-Chair (465-4942)

Saturday, May 9, 1987

1:30 - 4:00

BILLS PREVIOUSLY BEFORE THE COMMITTEE:

- , SCR 15 - Preferential Use of Alaska Work Products
- HB 266 - Document Recording
- ← HB 289 - State Land Management
- SB 205 - Extend Railbelt Energy Council
- SB 94 - Alaska Mineral Policy
- SB 53 - Establishing Criteria for the Allocation of Fisheries Resources by the Board of Fish

4:00 - 5:00

TELECONFERENCE

SJR 35 - Timber Industry in Southeast Alaska

HB 289

A M E N D M E N T

Offered in the HOUSE

By the Resources Committee

TO: HB 289

Page 4, after line 26:

Insert a new bill section to read:

"* Sec. 10. AS 38.05.810 is amended by adding a new subsection to read:

(g) A conveyance under this section to a municipality that did not receive and is not eligible to receive its land entitlement under AS 29.65 is not subject to a reversionary interest ~~created by this section~~ ^S on behalf of the state unless the municipality agreed to the reservation of the interest at the time that the ^{land is transferred} ~~reversionary interest~~ ^{was created}."

Renumber remaining bill sections accordingly.

New

- Substitute for lines 27-29 at page 2 the following: except for a land disposal under AS 38.05.057, AS 38.08, or AS 38.09; a commercial agricultural disposal under AS 38.05.045-38.05.069 or AS 38.07; ~~(a competitive timber)~~ sale under AS 38.05.110-38.05.120; and the construction of a component of the state highway system under AS 19.10, a connecting highway under AS 19.20, or an access or local service road under AS 19.30. A land classification for purposes of a land disposal under AS 38.05.057, AS 38.08, or AS 38.09; a commercial agricultural disposal under AS 38.05.045-38.05.069 or AS 38.07; a competitive timber sale under AS 38.05.110-38.05.120; and the construction of a component of the state highway system under AS 19.10, a connecting highway under AS 19.20, or an access or local service road under AS 19.30; shall be based on a regional land use plan.

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- Insert between "interests" and "Before" at line 24 of page 2 the following: The notice given and the hearing opportunities provided for the adoption of such a municipal plan as a regional land use plan shall be equal to that given and provided prior to the adoption of other regional land use plans.

OK
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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

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) The commissioner shall, with local governmental and public
10 involvement under [IN ACCORDANCE WITH] AS 38.05.945, [develop.] main-
11 tain, and, when appropriate, revise ^{regional} land use plans that [WHICH] pro-
12 vide [, BY REGIONS OR AREAS,] for the use ^{mgmt} of the state-owned land.

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

14 (b) In the ^{development} [development] and revision of 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 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 pub' - and affected municipal governments. ~~The commissioner may adopt~~
21 as a [regional] land use plan a comprehensive plan adopted by a munic-
22 ipality of the state having planning and zoning powers ^{OR a LMP adopted by with} if the commis-
23 sioner determines that the [municipal] plan 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.
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.

(c)

Handwritten notes and scribbles on the right margin, including a large scribble and the text "OR a LMP adopted by with" and "pub. art."

~~unfeasible~~ DWK

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:

Director may

17 (10) negotiate the sale or lease of improved state land 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.

(10) As current receipt

A

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

↗

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

- 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. *DDDDDDDDDD*

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];

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.

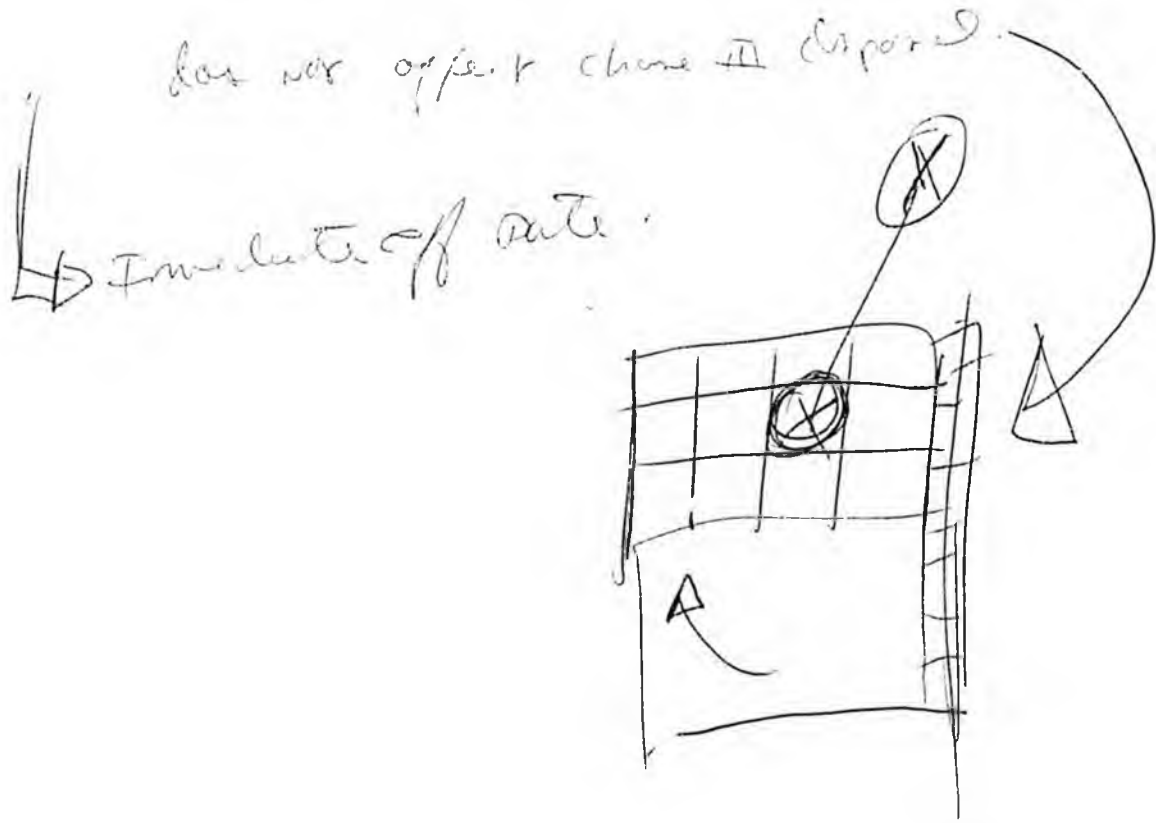
20 * Sec. 13. Land that was classified for disposal or other purposes on
21 the basis of a site-specific land use plan before August 29, 1986, remains
22 subject to the classification order in effect on that date until the land
23 is reclassified under AS 38.04.065, as amended in secs. 1 - 6 of this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

*Class
out
?*

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. AS 38.09.040(b) is repealed.



HB 289

A M E N D M E N T

Offered in the HOUSE

By the Resources Committee

TO: HB 289

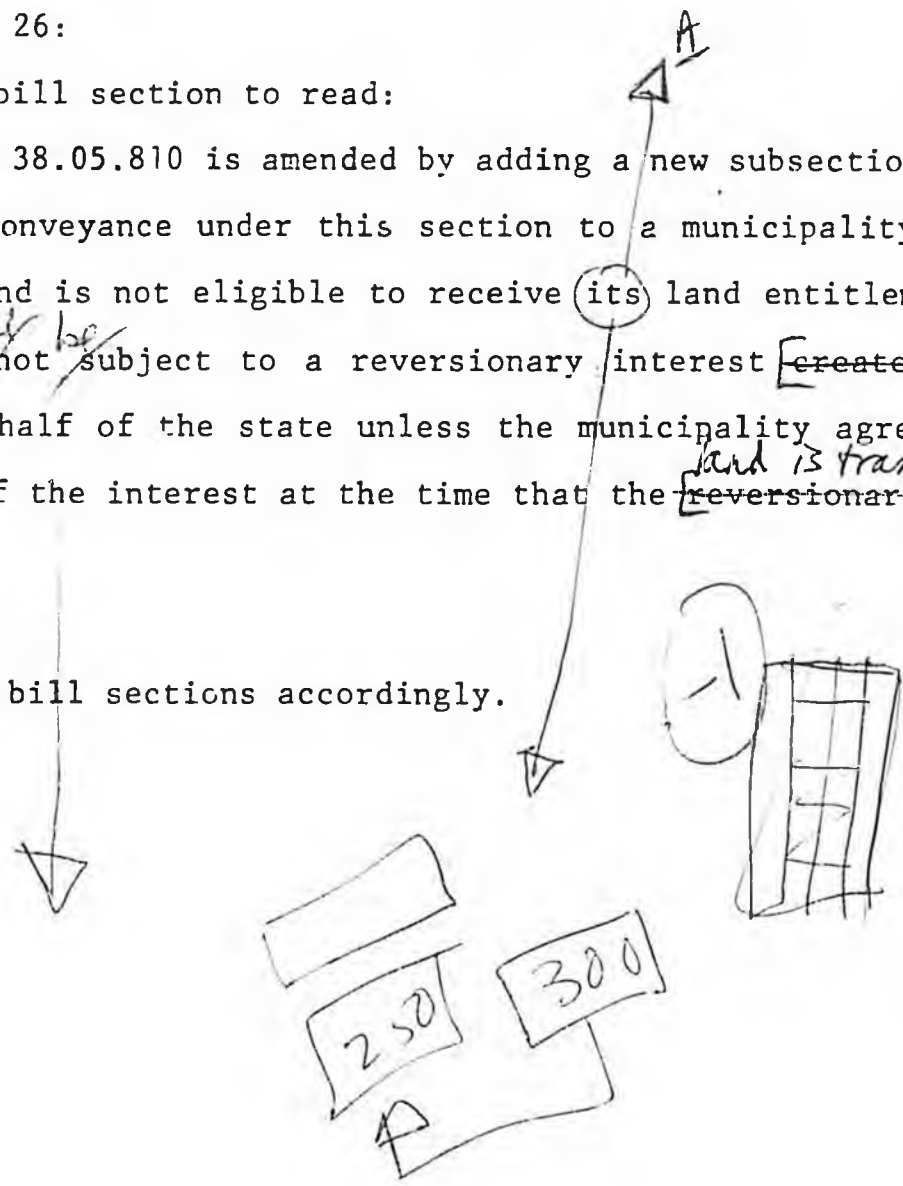
Page 4, after line 26:

Insert a new bill section to read:

"* Sec. 10. AS 38.05.810 is amended by adding a new subsection to read:

(g) A conveyance under this section to a municipality that did not receive and is not eligible to receive (its) land entitlement under AS 29.65 ^{shall be} ~~is~~ not subject to a reversionary interest ~~[created by this section]~~ on behalf of the state unless the municipality agreed ^S to the reservation of the interest at the time that the ~~reversionary interest~~ ^{land is transferred} ~~was created~~."

Renumber remaining bill sections accordingly.





STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Habitat	BILL NUMBER HB 289	SPONSOR (H) Resources
DEPARTMENT POSITION Support with amendment			
PREPARED BY Habitat Division	DATE 4/27/87	COMMISSIONER'S SIGNATURE <i>Omni Williams</i>	DATE 4-30-87

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Natural Resources	CONSTITUENT GROUP(S) AFFECTED BY BILL All Users of State Land
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Sections 1 through 7 amend AS 38.04.065 to allow the Department of Natural Resources to classify land for disposal or other purposes on the basis of site-specific land-use plans, excepting land disposals under the lottery, homesite, and homestead programs. Sections 10, 11, and 12 amend procedural aspects of the Homestead Act, AS 38.09. Section 9 provides certain exemptions for state exempt oil/gas lease sales from the best interest finding requirement of AS 38.05.035(e).

ANALYSIS OF BILL/PROGRAM EFFECTS

Sections 13 and 14 of this measure will validate all previous land classifications, including public recreation and wildlife habitat designations, that might be subject to legal challenge as a result of the Alaska Supreme Court ruling in Alaska Survival v. State, 723 P.2d. 1281 (August 29, 1986). Sections 1 through 7 will restore limited flexibility to the Department of Natural Resources to classify land based on a site-specific land-use plan, rather than a regional plan. Major land disposals under the lottery, homesite and homestead programs will continue to be based on a regional land use plan, as required by the Alaska Survival v. State decision.

Section 9 of this measure will exempt AS 38.05.180(d) oil and gas lease sales from an AS 38.05.035(e) best interest finding if an .035(e) finding has been completed for the area or an adjacent or contiguous area within the last three years. The Department of Fish and Game does not support this exemption. In our opinion, it is inappropriate to make potentially
(continued)

AMENDMENTS PROPOSED

Section 9 - Reword AS 38.05.035(e) (7) as follows:
"(7) an exempt oil and gas sale under AS 38.05.180(d) for which a written best interest finding has been issued for the area of sale [OR FOR A CONTIGUOUS OR ADJACENT AREA] within the 36 months before the date of the sale." It is not in the public interest to extend an AS 38.05.035(e) best interest finding to adjacent and contiguous areas that may be very different economically, socially, and environmentally from the area of the original .035 best interest finding.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

ANALYSIS OF BILL/PROGRAM EFFECTS (Continued)

major, long term (e.g., 10 to 20 year) commitments of public resources without first providing the public an opportunity to review and comment on the proposed action. Written best interest findings are the only public review documents that evaluate the cumulative and the potential socioeconomic and environmental consequences of proposed state exempt oil/gas lease sales. Written findings further constitute the formal decision document describing how and why a proposed sale is or is not in the public interest. Written findings describe what information was considered in evaluating the cost/benefits of a proposed lease sale, the key issues associated with the sale, and provides a summary of public and agency comments and concerns regarding a proposed sale. The Department of Fish and Game believes that it is essential to maintain such an administrative record in a single document, so that the state's justification for holding, postponing, or cancelling a lease sale is readily available.

If Section 9 is enacted, many future sales on the North Slope and in the Cook Inlet/Bristol Bay Region could potentially be exempted from any formal leasing process, public hearing, or best interest finding requirement.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Revision Date: _____

Title: An Act relating to management
of state land

Sponsor: Resource Committee

Requestor: _____

Bill Version: HB 289

Publish Date: 4/27/87

Agency Affected: _____

BRU: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
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	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Bruce H. Baker

Prepared by: Bruce H. Baker Phone: 465-4105

Division: Habitat Date: 4/27/87

Approved by Commissioner: *Omne Greenworth* Date: 4-30-87

Agency: Department of Fish and Game

Distribution (by preparer):

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

5-0719B
Bradley
5/7/87

Original sponsor: Resources Committee

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 289 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to management of state land; and
7 providing for an effective date."

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

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

10 (a) Except as provided in (d) and (h) of this section, the [THE]
11 commissioner shall, with local governmental and public involvement
12 under [IN ACCORDANCE WITH] AS 38.05.945, adopt [DEVELOP], maintain,
13 and, when appropriate, revise regional land use plans that [WHICH]
14 provide [, BY REGIONS OR AREAS,] for the use and management of [THE]
15 state-owned land.

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

17 (b) In the adoption [DEVELOPMENT] and revision of regional and
18 site-specific land use plans, the commissioner shall

19 (1) use and observe the principles of multiple use and
20 sustained yield;

21 (2) consider physical, economic, and social factors affect-
22 ing the [REGION OR] area and involve other agencies and the public in
23 achieving a systematic interdisciplinary approach;

24 (3) give priority to planning and classification in areas
25 of potential settlement and critical environmental concern;

26 (4) rely, to the extent that it is available, on the inven-
27 tory of the state land, its resources, and other values;

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

29 (6) consider the supply, resources, and present and

1 potential use of land under other ownership within the area [OR
2 REGION] of concern;

3 (7) plan for compatible surface and mineral land use clas-
4 sifications; and

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

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

9 (c) The [AS A BASIS FOR MORE DETAILED LAND USE PLANNING AND
10 CLASSIFICATION, THE] commissioner shall adopt [DEVELOP] regional land
11 use plans for [THE USE OF ALL] state land. Each regional land use
12 plan [THESE REGIONAL PLANS] shall identify and delineate

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

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

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

21 (d) The commissioner may adopt as a land use plan a comprehen-
22 sive plan adopted by a municipality of the state having planning and
23 zoning powers or a land management plan adopted by another govern-
24 mental entity if the commissioner determines that the plan adequately
25 recognizes and protects state interests. A decision to adopt the plan
26 must be preceded by public hearings in affected and interested commu-
27 nities and by a draft decision, available for public review, that
28 describes the state's interests and how the state will implement the
29 plan.

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

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

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

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

11 * Sec. 7. AS 38.04.065 is amended by adding new subsections to read:

12 (h) Before the commissioner adopts a regional land use plan, a
13 land classification may be made on the basis of a site-specific land
14 use plan, except a classification for a land disposal under AS 38.-
15 05.057, AS 38.08, AS 38.09, or a new commercial agriculture project
16 under AS 38.05.020(b)(6). After adoption of a regional land use plan,
17 land classifications shall be made under the plan.

18 (i) An oil and gas lease sale is not subject to this section.
19 Oil and gas lease sales are subject to the planning process estab-
20 lished under AS 38.05.180.

21 * Sec. 8. AS 38.04.910(7) is amended to read:

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

24 * Sec. 9. AS 38.05.035(b) is amended by adding a new paragraph to read:

25 (10) negotiate the sale or lease of state land at fair
26 market value to a person who acquired by contract, purchase, or lease
27 rights to improvements on the land from another state agency or who
28 leased the land from another state agency.

29 * Sec. 10. AS 38.05.035(e) is amended to read:

1 (e) Upon a written finding that the interests of the state will
2 be best served, the director may, with the consent of the commission-
3 er, approve contracts for the sale, lease, or other disposal of avail-
4 able land, resources, property or interests in them, and, in addition
5 to the conditions and limitations imposed by law, may impose addition-
6 al conditions or limitations in the contracts as the director deter-
7 mines, with the consent of the commissioner, will best serve the
8 interests of the state. A contract for the sale, lease, or other
9 disposal of available land or an interest in land is not legally
10 binding on the state until the commissioner approves the contract but
11 if the appraised value is not greater than \$50,000 in the case of the
12 sale of land or an interest in land, or \$5,000 in the case of the
13 annual rental of land or interest in land, the director may execute
14 the contract without the approval of the commissioner. Before a
15 public hearing, if held, or in any case no less than 21 days before
16 the sale, lease, or other disposal of available land, property, re-
17 sources, or interests in them, the director shall make available to
18 the public a written finding that sets out the facts and applicable
19 law upon which the determination that the sale, lease, or other dis-
20 posal will best serve the interests of the state was based. A written
21 finding is not required before the approval of

22 (1) a contract for a negotiated sale authorized under
23 AS 38.05.115;

24 (2) a lease of land for a shore fishery site under AS 38.-
25 05.082;

26 (3) a permit or other authorization revocable by the com-
27 missioner;

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

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

1 (6) a production license issued under AS 38.05.207; or
2 (7) an exempt oil and gas sale under AS 38.05.180(d) for
3 which a written best interest finding has been issued for the area of
4 the sale within the 36 months before the date of the sale unless the
5 commissioner determines that new information has become available that
6 justifies a revision of the best interest finding.

7 * Sec. 11. AS 38.05.810 is amended by adding a new subsection to read:

8 (g) A conveyance under this section to a municipality that did
9 not receive and is not eligible to receive a land entitlement under
10 AS 29.65 is not subject to a reversionary interest created by this
11 section on behalf of the state unless the municipality agreed to the
12 reservation of the interest at the time that the reversionary interest
13 was created. A municipality that is eligible to receive land under
14 AS 29.65 but that has not received the full entitlement may also
15 receive land under this subsection up to the limit of the entitlement,
16 except that the commissioner may convey additional land under this
17 subsection if the conveyance would be in the best interests of the
18 state.

19 * Sec. 12. AS 38.09.030(c) is amended to read:

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

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

28 (5) after the approval of the commissioner, by an exchange
29 between parties in the same homestead area.

1 * Sec. 13. AS 38.09.040(a) is amended to read:

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

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

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

10 (3) failure of the permit holder to erect a dwelling in the
11 time required under AS 38.09.050(a), except that if the commissioner
12 finds that the dwelling has been nearly completed and progress toward
13 completion is being made at the expiration of the time required, the
14 commissioner may extend the time required for completion for not more
15 than one year;

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

19 (5) failure to clear and either put into production or
20 prepare for cultivation 25 percent of the land classified for agricul-
21 tural use within five years after the issuance of the permit.

22 * Sec. 14. AS 38.09.050(a) is amended to read:

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

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

28 (2) completes an approved survey of the land within five
29 [TWO] years after the issuance of the permit [OR UNDER

1 AS 38.09.040(b)];

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

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

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

11 * Sec. 15. Land that was classified for disposal or other purposes
12 before August 29, 1986, remains subject to the classification order in
13 effect on that date until the land is reclassified under AS 38.04.065, as
14 amended in secs. 1 - 7 of this Act, and AS 38.05.300.

15 * Sec. 16. A land management and disposal decision, including a dis-
16 posal under AS 38.05.057, AS 38.08, or AS 38.09, or a commercial agricul-
17 ture project under AS 38.05.020(b)(6), made before the effective date of
18 this Act under a classification order under AS 38.05.300 is valid, notwith-
19 standing the adoption of the classification order before the adoption of
20 the regional land use plan, if other requirements of law were met.

21 * Sec. 17. A minerals management or disposal decision made before the
22 effective date of this Act is valid, whether or not the land was classified
23 if other requirements of law were met.

24 * Sec. 18. Nothing in this Act affects the Chase III Agricultural
25 Homestead disposal decision of the Department of Natural Resources, remand-
26 ed by the courts for reconsideration by the department.

27 * Sec. 19. AS 38.09.040(b) is repealed.

28 * Sec. 20. This Act takes effect immediately under AS 01.10.070(c).
29

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

1 AS 38.09.040(b)];

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

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

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

11 * Sec. 15. Land that was classified for disposal or other purposes
12 before August 29, 1986, remains subject to the classification order in
13 effect on that date until the land is reclassified under AS 38.04.065, as
14 amended in secs. 1 - 7 of this Act, and AS 38.05.300.

15 * Sec. 16. A land management and disposal decision, including a dis-
16 posal under AS 38.05.057, AS 38.08, or AS 38.09, or a commercial agricul-
17 ture project under AS 38.05.020(b)(6), made before the effective date of
18 this Act under a classification order under AS 38.05.300 is valid, notwith-
19 standing the adoption of the classification order before the adoption of
20 the regional land use plan, if other requirements of law were met.

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26 ed by the courts for reconsideration by the department.

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29

HOUSE BILL 289
DNR LAND CLASSIFICATION

STANDARD ALASKA PRODUCTION COMPANY SUPPORTS HOUSE BILL 289 AS A MEANS OF RESOLVING THE UNCERTAINTIES IN LAND STATUS CREATED BY THE ALASKA SURVIVAL DECISION. AS NOTED IN THE COMMENTS ON THE BILL FROM COMMISSIONER JUDITH M. BRADY TO CHAIRMAN OF THE SENATE RESOURCES COMMITTEE, THE HONORABLE JACK COGHILL, THE IMPLICATIONS OF THE ALASKA SURVIVAL DECISION HAVE CREATED UNINTENDED PROBLEMS AND CONFLICTS IN THE STATE'S MANAGEMENT OF ITS LANDS AND UNREALISTICALLY BLOCKED CERTAIN LAND MANAGEMENT ACTIONS UNTIL COMPLETION OF REGIONAL PLANNING BY THE DEPARTMENT OF NATURAL RESOURCES. WHILE WE DO NOT BELIEVE THE DECISION DIRECTLY AFFECTS OIL AND GAS LEASING, IT MAY AFFECT ANCILLARY LAND USES. THE UNCERTAINTY AND IMPEDIMENTS IT CREATES CLEARLY AFFECTS ALL CITIZENS OF THE STATE. THE PROPOSED LEGISLATION AND THE COMMENTS OF THE DEPARTMENT OF NATURAL RESOURCES PRESENT A RATIONAL METHOD OF RESOLVING THE PROBLEMS WHILE MAINTAINING PLANNING REQUIREMENTS FOR LAND MANAGEMENT.

HB 289

A M E N D M E N T

Offered in the HOUSE

By the Resources Committee

TO: HB 289

Page 4, after line 26:

Insert a new bill section to read:

"* Sec. 10. AS 38.05.810 is amended by adding a new subsection to read:

(g) A conveyance under this section to a municipality that did not receive and is not eligible to receive its land entitlement under AS 29.65 is not subject to a reversionary interest ~~created by this section~~ on behalf of the state unless the municipality agreed ^S to the reservation of the interest at the time that the ~~reversionary interest was created~~ ^{land is transferred}."

Renumber remaining bill sections accordingly.

HB 289



Alaska Center for the Environment

700 H Street, Suite 4 • Anchorage, Alaska 99501 • (907) 274-3621

May 1, 1987

Ned Farquhar, Staff
House Resources Committee
PO Box V
Juneau, AK 99811

RE: HB 289

Dear Ned,

As a result of the work session I have drafted two sets of language that I hope can at least serve as starting points. The first assumes that a planning requirement is the exception rather than the rule. Please remember, however, that our clear preference still is for retaining the requirement as the general rule and listing exceptions to it.

The second set attempts to deal with notice and hearing needs in cases where a municipal plan is proposed for adoption as a regional plan.

A major concern for which we don't have a proposed solution is how to deal with substantial tidelands permitting, for example for mariculture. We'll continue to work on this.

Thanks again for letting Gail and I participate in your work session.

Sincerely,

A handwritten signature in cursive script that reads "Cliff".

Cliff Eames
Issues Director

1. Substitute for lines 27-29 at page 2 the following: except for a land disposal under AS 38.05.057, AS 38.08, or AS 38.09; a commercial agricultural disposal under AS 38.05.045-38.05.069 or AS 38.07; a competitive timber sale under AS 38.05.110-38.05.120; and the construction of a component of the state highway system under AS 19.10, a connecting highway under AS 19.20, or an access or local service road under AS 19.30. A land classification for purposes of a land disposal under AS 38.05.057, AS 38.08, or AS 38.09; a commercial agricultural disposal under AS 38.05.045-38.05.069 or AS 38.07; a competitive timber sale under AS 38.05.110-38.05.120; and the construction of a component of the state highway system under AS 19.10, a connecting highway under AS 19.20, or an access or local service road under AS 19.30; shall be based on a regional land use plan.

✓ OK
 ✓ OK
 DOF
 Kodiak? EIS/CC
 X Kani? DOT/PF
 ✓ OK
 DOF
 DOT/PF

2. Insert between "interests" and "Before" at line 24 of page 2 the following: The notice given and the hearing opportunities provided for the adoption of such a municipal plan as a regional land use plan shall be equal to that given and provided prior to the adoption of other regional land use plans.

OK.
 shouldn't have
 to do 3 needs.

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 Kriak? EIS/ce
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 to do 3 needs.

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Renumber remaining bill sections accordingly.

*
* DELIVER TO: LIOCSSC *
*
* ORIGINAL *
* SENT: 05/04/87 TIME: 08:10 *
* FROM: LIOCANC *
* SUBJECT: HRES TELE ON HB 289 *
* PRINT DATE: 05/04/87 TIME: 08:12 *
*

***** ANCHORAGE PARTICIPANT LIST *****

THE FOLLOWING PEOPLE ARE STANDING BY TO PARTICIPATE IN TODAYS
HOUSE RESOURCES PUBLIC HEARING ON HB 289: MANAGEMENT OF ST LAND
TELECONFERENCE:

TO TESTIFY:

- 1.) CLIFF EAMES, AK CENTER FOR THE ENVIRONMENT
- 2.) JIM SYKES, CHASE COMM, AK SURVIVAL
- 3.)
- 4.)

TO OBSERVE:

- 1.)
- 2.)
- 3.)

EOM

 * DELIVER TO: LI00SSC *
 * ORIGINAL *
 * SENT: 05/04/87 TIME: 08:09 *
 * FROM: LTCCFBX *
 * SUBJECT: 5/5/87 HRES. HD289 *
 * PRINT DATE: 05/04/87 TIME: 08:12 *

DATE: MAY 4, 1987
 SITE: FAIRBANKS
 SPONSOR: HOUSE HESS
 SUBJECT: HB289 MANAGMENT OF STATE LAND
 MODERATOR: ANNIE

TESTIFY:

NAME\REPRESENTING	ADDRESS	PHONE #
1.) CELIA M. HUNTER	1819 MUSKOX TRAIL, FBKS. 99709	479-2754
2.)		
3.)		
4.)		
5.)		
6.)		
7.)		
8.)		
9.)		
10.)		

OBSERVE:

NAME\REPRESENTING	ADDRESS	PHONE #
1.)		
2.)		
3.)		

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 289 (SB196)
Publish Date: _____

REQUEST: _____

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						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
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 *Tom Hawkins* Phone: 465-2400
Division: Land and Water Management Date: _____

Approved by Commissioner: James G. Smith 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

Cliff Eames

Pro Regional Planning - public participation

Some disposals should be allowed

NO program land disposals

want offer 65+ million

planning be the rule w/ exceptions

3 add'l exceptions

+ tidelands leases for mariculture

abolition of local Plans in lieu
of regional Plan.

Celia Hunter -

Agrees w/ Cliff Eames
+ Review w/ FSLUPC

Trail access

Jim Dykes - AKS survival

Beaumont case vs. Public interest

.345 publication - when are hearings mandatory?

record does it reflect public testimony?

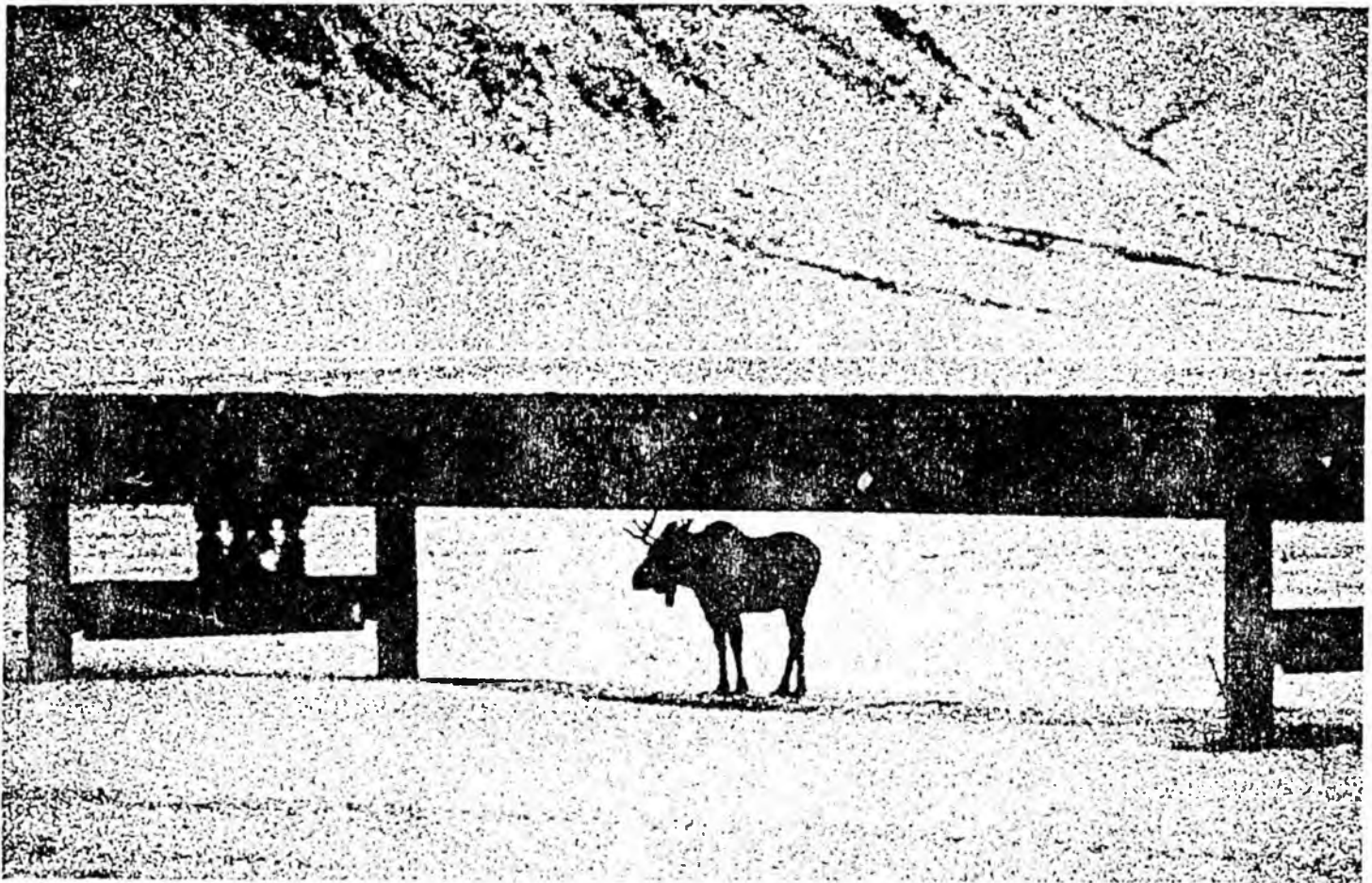
333-5209

333-3513

~~260~~ ~~89~~

STATE LAND CLASSIFICATION AND LAND DISPOSAL BANK

1986 REPORT TO THE LEGISLATURE



JANUARY, 1987

Steve Cowper
Governor
State of Alaska

Judith M. Brady
Commissioner
Department of Natural Resources



Alaska Department of
**NATURAL
RESOURCES**

DIVISION OF LAND AND WATER MANAGEMENT

P.O. BOX 7005, ANCHORAGE, ALASKA 99510

STATE LAND CLASSIFICATION AND LAND DISPOSAL BANK

1986 REPORT TO THE LEGISLATURE

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Governor
State of Alaska

Judith M. Brady
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Department of Natural Resources

Prepared by Gary Johnson
Resource Allocation Section
Veronica Clark, Section Chief
Division of Land and Water Management
Tom Hawkins, Director

Cover photograph courtesy of Alyeska Pipeline Service Company



STATE OF ALASKA

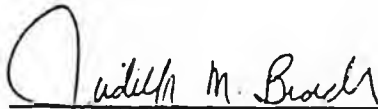
DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

PO. BOX 7005
ANCHORAGE, ALASKA 99510-7005
PHONE: (907) 561-2020

In fulfillment of AS 38.05.300(b) and AS 38.04.020(d), I submit the 1986 State Land Classification and Land Disposal Bank Report. The report presents useful information on land classification activity, mineral orders and state land set aside for disposal.



Judith M. Brady, Commissioner
DEPARTMENT OF NATURAL RESOURCES

1-2-86
Date

ACKNOWLEDGMENTS

The authors would like to acknowledge our debt to the long laboring crew who typed this report - Amy Garrett and Crystal Wood who remained remarkably cheerful through innumerable rounds of "one-more-time please." Also deserving thanks are Patty Kerschner and Elaine Thomas for the good looking maps and graphics. Finally, thanks to the regional office land disposal and classification staffs in Juneau, Anchorage and Fairbanks who contributed to the classification and land bank figures on short notice.

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STATE LAND CLASSIFICATION AND LAND DISPOSAL BANK

1986 Report to the Legislature

This report fulfills two requirements:

1. A report to the legislature which describes and shows the location of all classifications of state land during the preceding year due on February 1 of each year. [AS 38.05.300(b)]
2. A report to the legislature on the status of land in the disposal bank, due on January 15 of each year. [AS 38.04.020(d)]

Summary

1. Land classification identifies the purposes for which state land has been allocated.
2. All land classification actions are based on a land use plan prepared by the Department of Natural Resources.
3. Adopted plans cover about 36 million acres (44%) of state-owned land. Plans are in progress for another 19 million acres. When the ongoing plans are complete, two-thirds of state-owned land will be covered by a land use plan.
4. All classification categories are for multiple use, although a particular use may be considered primary. Land may be given up to three classifications in combination.
5. In 1986, the department classified 2,275,275 acres of state land, bringing the total amount of classified land to 64,008,155 acres. Most of the 1986 classifications resulted from the Susitna Area Plan, the Tanana Basin Area Plan, the Hatcher Pass Management Plan, and the Matanuska Valley Moose Range Management Plan.
6. The land disposal bank contains land classified for disposal. The total amount of land in the disposal bank as of December 31, 1986, is 504,943 acres: 121,192 acres for homesteads; 23,728 acres for subdivisions; 378,662 acres for agricultural disposal; 1,640 acres for commercial and industrial disposal; and 655 acres for other purposes. (20,934 acres of agricultural lands are included in both homesteads and agricultural disposal and are therefore subtracted to avoid double counting.)

PLANNING, CLASSIFICATION, AND MANAGEMENT

Land and Resource Planning

All land classification actions are based on a land use plan prepared by the Department of Natural Resources. Land use plans provide guidance for the use and development of state land and resources. State law requires that these plans be consistent with local governmental land use plans to the maximum extent determined to be consistent with state interests. The department prepares two kinds of land use plans: area plans and management plans.

Area plans, such as the 11-million acre Bristol Bay Area Plan, cover relatively large regions of the state. With participation by agencies and the public, resources are identified and land use values are determined. Area plans allocate state land for primary and secondary uses. To ensure multiple use and avoid conflict, the allocations are accompanied by management intent statements which give direction to land managers and guidelines for applying specific land classification. About 36 million acres of state land are now covered by adopted area plans in the most populated regions of the state.

Management plans, such as the 115,000-acre Matanuska Valley Moose Range Management Plan, are more detailed than area plans and usually cover much smaller areas. The process for preparing a management plan is similar to that of an area plan.

Figure 1. LAND USE PLANNING ALASKA DEPARTMENT OF NATURAL RESOURCES



*classification will be done by DLWM subsequent to the area plan

** 1:63,360 scale and larger

Status of Area Plans

Plans are listed below with the acreage of patented and tentatively approved state land within their planning areas. Patent and tentative approval apply to uplands only. The Submerged Lands Act gave states ownership of tidelands and submerged lands. Some plans, such as the Southwest Prince of Wales Island Area Plan, address primarily tidelands and submerged lands and, therefore, have a relatively small acreage of patented and tentatively approved land.

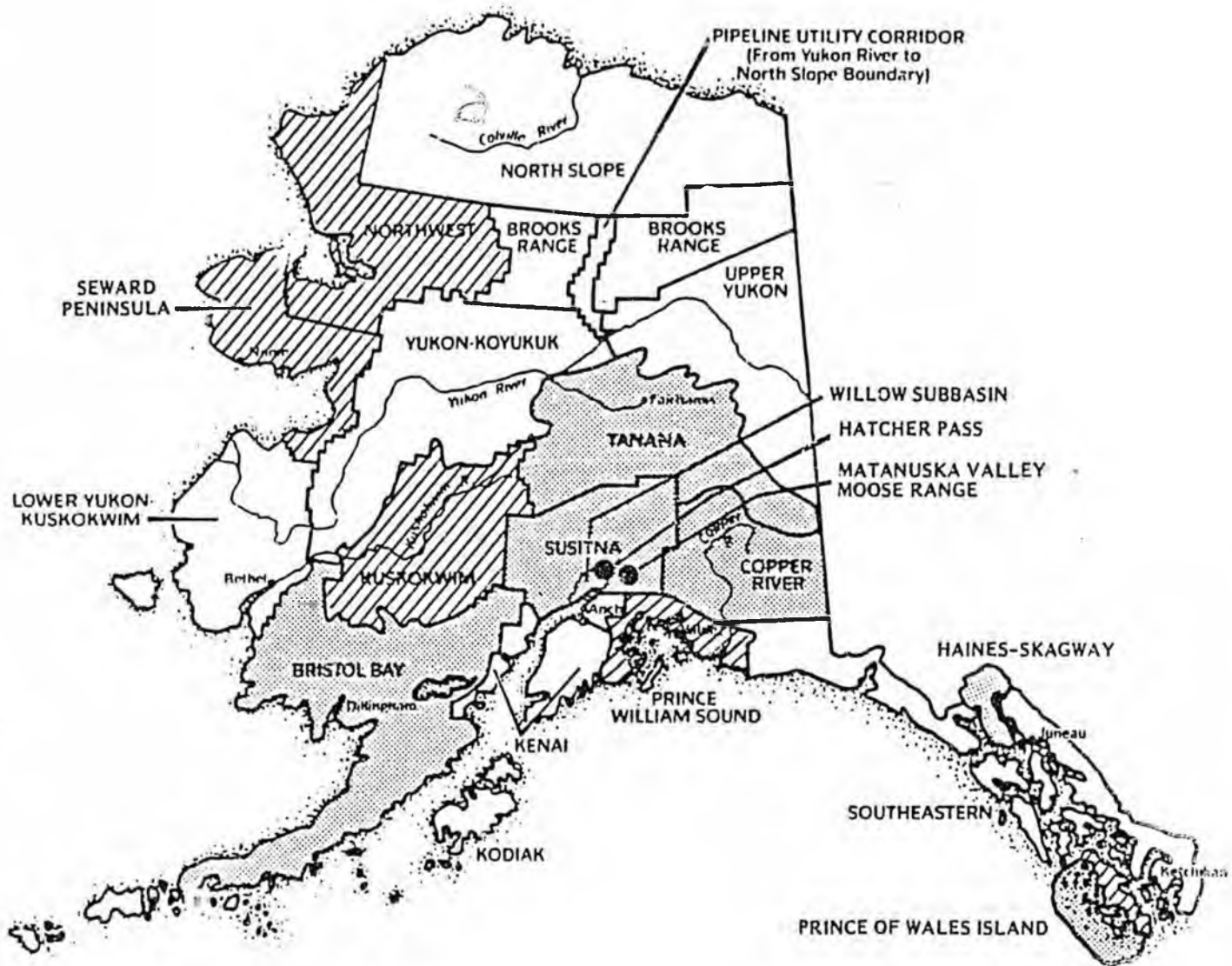
Table 1.
Status of Area Plans and Management Plans

ADOPTED AREA PLANS	ACRES
Bristol Bay	11,000,000 acres
Copper River Basin	2,500,000 acres
Delta-Salcha	1,300,000 acres
Haines-Skagway	400,000 acres
Nenana-Totchaket	1,000,000 acres
Southwest Prince of Wales Island	3,400 acres
Susitna	9,500,000 acres
Tanana Basin	9,600,000 acres
Willow Subbasin	<u>460,000 acres*</u>
SUBTOTAL	35,763,400 acres
AREA PLANS IN PROGRESS	
Kuskokwim	14,300,000 acres
Northwest	4,200,000 acres
Prince of Wales Island	30,000 acres
Prince William Sound	<u>800,000 acres</u>
SUBTOTAL	19,330,000 acres
GRAND TOTAL	55,093,400 acres

*The Willow Subbasin includes Hatcher Pass and the Matanuska Valley Moose Range, for which management plans were completed in 1986. Acreage of patented and tentatively approved land reclassified as a result of these management plans are:

Hatcher Pass	211,000 acres
Matanuska Valley Moose Range	115,000 acres

Figure 2. PLANNING REGIONS ALASKA



AREA PLANNING STATUS

- Completed area plans
- ▨ Area plans in progress
- Not scheduled for area planning

Classification

Land classification is an integral step in the process of making Alaska's land available for public and private use. It serves to identify the purposes for which the land has been allocated.

All classification categories are for multiple use, although a particular use may be considered primary. In some cases, land may be given up to three classifications in combination. Uses are presumed to be compatible until proven otherwise. All of the categories also allow surface leasing, mining claims, sale of materials and oil and gas leasing unless restricted through a land use plan. The settlement classification category provides for the sale of land and the agricultural classification provides for the sale of rights in the land for agricultural purposes. Public notice must be given prior to classifying or reclassifying land (AS 38.05.945).

State land and water may not be administratively closed to multiple use if the area involved contains more than 640 acres. Larger, single-purpose areas such as parks and critical habitat areas must be established by the legislature.

On September 7, 1983, new land classification regulations became effective (11 AAC 55). These amendments simplified the previous regulations, modified the classification requirement for mineral location, and placed a greater reliance on land use plans and land planning reports to provide land management guidance. Seven of the old classifications were eliminated and seven categories were added. Disposal classifications such as private recreation, residential, commercial, industrial and utility were combined under the single classification category called settlement land. New classifications include coal, geothermal, oil and gas, transportation corridor, water resources, and heritage resources land. The classification regulations continue to provide for up to three classifications where more than one primary resource value exist.

Land classified since September 1983 remains open to locatable mineral entry unless specifically closed by a mineral order. Land classified under certain categories before September 1983 was automatically closed to mineral entry or required the use of leasehold location. Lands so classified retain their mineral entry restrictions or closure until they are reclassified.

Alaska Survival v. State of Alaska

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 Homesteads because the department classified state land for this project before the Susitna Area Plan was adopted and thereby violated the statutory requirement that classification of land be based on a regional or area plan. The department's petition for rehearing was recently denied without any further clarification of the ruling. To comply with the court ruling, the department no longer classifies land outside adopted area plans.

The court ruling in Alaska Survival v. State of Alaska does not affect the validity of classifications in effect before August 19, 1986. To comply with the court ruling, the department no longer classifies land outside adopted area plans. However, since the court's interpretation of state law in Alaska Survival v. State of Alaska amounts to a moratorium on the use of much of the state's land, the department intends to ask the legislature to clarify its intent by amending AS 38.04.065.

Land and Water Management

Land use plans and the classifications that result from them are fundamental tools in achieving the department's basic goals of sound land and resource stewardship, responsible decision-making, and greater economic vitality and quality of life for Alaskans. The decisions made through planning and reflected in classification attempt to help achieve these goals by ensuring that suitable land is acquired by the state, managed for the overall welfare and satisfaction of present and future generations, and made available for private development of resources where doing so benefits the state.

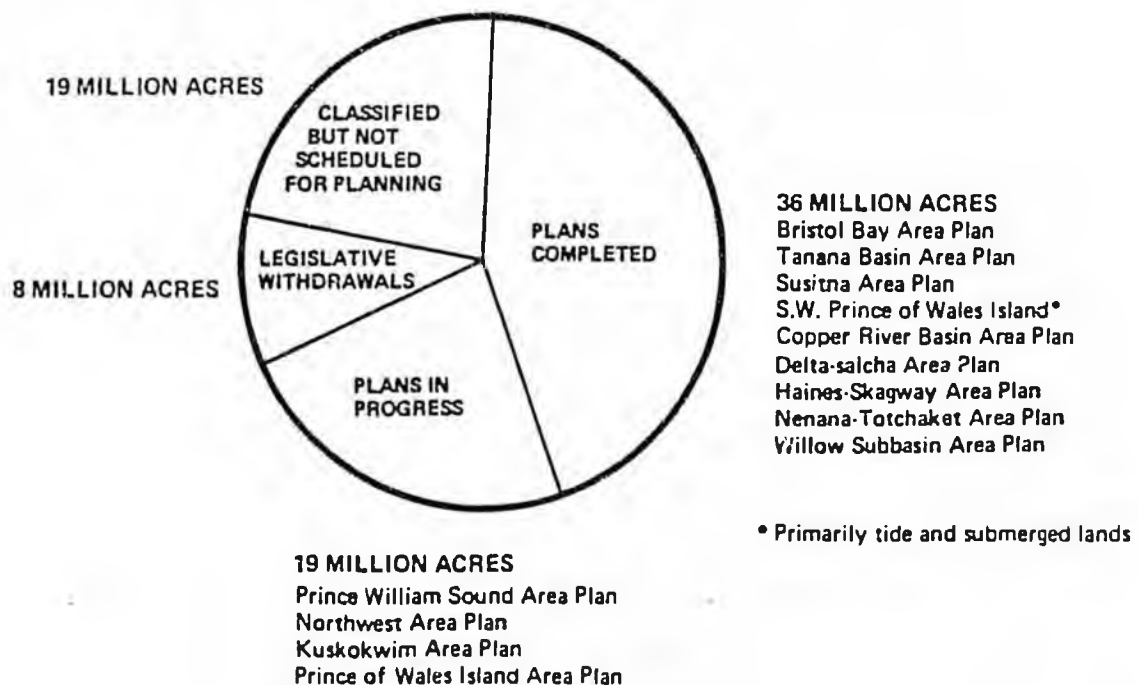
Plans recommend lands to select to fill the remainder of our 105 million acre land entitlement and lands to be relinquished. The state's land base of 82 million acres is increasing annually. As it approaches our entitlement the remaining selections become particularly important.

As Alaska's land base and population grow and stabilize, and as development in the state expands, demand for public and private use of state land increases tremendously. Planning is a primary mechanism used by the department to resolve competing demands, decide the best use, and minimize conflicts between coexisting multiple uses.

A basic decision the department must make is which lands will remain in state ownership and which should be offered for sale. Disposal projects are often controversial. Area and management plans ensure that a sufficient amount of good quality land is offered for sale, and for deciding which land to offer. Classification for settlement follows the plan and is the initial step in the formal process of land disposal.

Figure 3. Area Plan Status

TOTAL = 82 Million Acres Patented and Tentatively Approved State Land

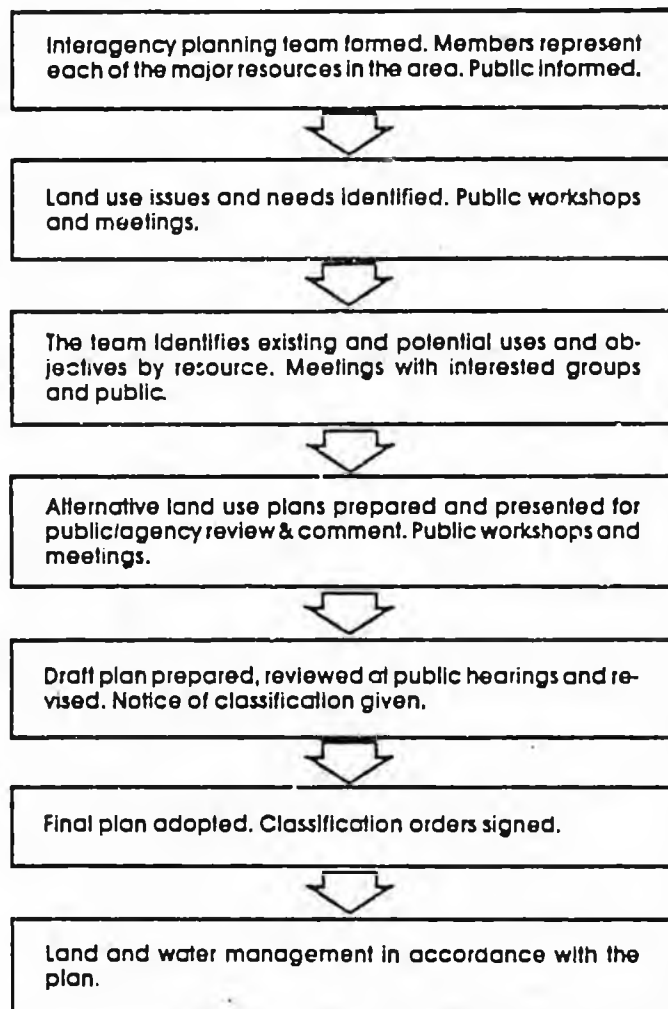


Most land retained by the state is managed for public use. The department's plans give land managers guidance on such actions as granting permits, leases, material sales (i.e., sand and gravel) and rights-of-way. Statements of management intent for each area determine whether a proposed action should take place and guidelines specify how actions will be managed to protect other resources and minimize conflicts. Classification for retained land reflects the primary uses designated in area plans. Classification by itself does not give guidance for how areas should be managed. Plans must be referred to for this guidance.

Water management by the state is similarly tied to the department's land use plans and their resulting classifications. Land allocations consider water quality and quantity; its value for human consumption, recreation, fish and wildlife habitat, land transportation; and its use in various kinds of resource development, such as mining or agriculture.

Water management decisions such as the allocation of water rights must be consistent with the plan's land management intent and guidelines. Plans also may give some guidance directly to water management, for example, by setting priorities for studying rivers in a region for possible instream flow reservations to protect important resource areas.

Figure 4. Planning Process



SUMMARY OF 1986 LAND CLASSIFICATION ACTIONS

Hatcher Pass

The Hatcher Pass Management Plan was adopted by the Department of Natural Resources on September 30, 1986. The management plan specifies how 211,000 acres of state land will be classified and managed. The classification became effective on October 16, 1986.

Table 2. Hatcher Pass Classification Acreage

CLASSIFICATION	ACRES
Forest/Grazing/Public Recreation and	618
Grazing/Public Recreation/Wildlife Habitat Land	5,318
Mineral/Public Recreation Land	8,360
Mineral/Public Recreation/Wildlife Habitat Land	9,240
Public Recreation Land	6,745
Public Recreation/Water Resource Land	9,890
Public Recreation/Water Resource/Grazing Land	260
Public Recreation/Water Resource/Wildlife Habitat Land	33,300
Public Recreation/Wildlife Habitat Land	137,301
TOTAL	211,032

Matanuska Valley Moose Range

The Matanuska Valley Moose Range Management Plan was adopted by the Department of Natural Resources on August 27, 1986. Because the plan contains guidelines which are to be implemented by the Department of Fish and Game, the plan was also signed by the commissioner of that department on October 2, 1986. The management plan specifies how 115,000 acres of state land will be classified and managed. The classification became effective on October 15, 1986.

Table 3.
Matanuska Valley Moose Range Classification Acreage

CLASSIFICATION	ACRES
Wildlife Habitat/Coal/Forest Land	89,573
Wildlife Habitat/Public Recreation	25,336
TOTAL	114,909

Susitna

The Susitna Area Plan was adopted by the Department of Natural Resources on April 24, 1985. Major portions of the planning area have been classified but in some areas the classification work is still in progress. The acreage figures for some of the land classified in 1986 were not available for this report. Net acreage will be reported for these in next year's report to the legislature.

Table 4. Susitna Classification Acreage

CLASSIFICATION	ACRES
Coal/Oil and Gas/Wildlife Habitat	52,010
Forest/Oil and Gas/Wildlife Habitat	37,330
Forest/Public Recreation/Water Resources	98,132
Forest/Public Recreation/Wildlife Habitat	29,970
Mineral/Public Recreation/Wildlife Habitat	88,313
Mineral/Wildlife Habitat	75,435
Oil and Gas/Settlement	1,520
Public Recreation	4,065
Public Recreation/Settlement/Wildlife Habitat	15,480
Public Recreation/Water Resources/Wildlife Habitat	76,814
Public Recreation/Wildlife Habitat	175,856
Reserved Use	11,640
Settlement	108,426
Water Resources/Wildlife Habitat	118,040
Wildlife Habitat	131,760
TOTAL	1,024,791

Tanana Basin

The Tanana Basin Area Plan was adopted in April 1985 and the land was classified in June 1985. During the past year, the 1985 classification orders were researched for their accuracy in reflecting the intent of the plan and land status. As a result of this effort, some of the initial classification orders were amended. The department expects to complete this project in 1987.

Table 5. Tanana Basin Classification Acreage

CLASSIFICATION	ACRES
Agricultural Land	2,290
Forest/Wildlife Habitat Land	177,192
Public Recreation/Wildlife Habitat Land	565,130
Settlement Land	56,669
Wildlife Habitat Land	21,447
TOTAL	822,728

Classification for the Land Disposal Program

In 1986, the department classified about 186,000 acres to allow the offering of state land through subdivision, lottery, homesite offering, homestead entry and agricultural programs. All classifications for disposal were based upon area plans, except the Crazy Mountain Homestead area near Central (16,990 acres), the cape Fanshaw subdivision area near Petersburg in Southeast Alaska (1,135 acres), and land near Homer (240 acres). These three classifications became effective before the Alaska Supreme Court ruled in Alaska Survival v. State of Alaska. The identification of land for sale is now accomplished through the area planning process.

The annual classification acreage figures will not match the annual disposal acreage. Reasons for this are: (1) some acreage is lost to right-of-way and common area during the subdivision process; (2) some of the land classified this past year will not be offered until some future year; (3) some of the land being offered for sale has been classified in previous years; and (4) some of the land classified and offered for homestead staking is never staked.

Table 6. Land Disposal Program Classification Acreage

REGION	CLASSIFICATION	ACRES
Northern Region	Settlement	73,659 acres
	Agriculture	2,290 acres
Southcentral Region	Settlement	108,680 acres
Southeast Region	Settlement	1,135 acres
TOTAL		185,764 acres

Classification of Tide and Submerged Lands

The state may classify tide and submerged land into any appropriate state land classification. Preference is granted to the upland owner for the use of a tract of tideland, or tideland and contiguous submerged land, which is seaward of the upland property (AS 38.05.850).

In the Southeast Region, 175 acres were classified settlement to allow the lease of a log transfer site on tidelands near Point Macartney. Approximately 75,000 acres of submerged lands (lakes and rivers) will be classified public recreation/water resources/wildlife habitat on the basis of the Copper River Basin Area Plan.

Classification by Region

The division maintains three land and water management regional offices. The Northern Region is located north of the Alaska Range and an east-west line from Norton Sound to the Alaska Range. The Southcentral Region is located south of this line and west of Yakutat Bay. East and south of Yakutat Bay is the Southeast Region. The following is a summary of land classification actions by each region.

Southcentral Region. The majority of classification activity which took place in the Southcentral Region resulted from the Susitna Area Plan (1,024,791 acres) and the management plans for Hatcher Pass (211,032 acres) and the Matanuska Valley Moose Range (114,909 acres). About 17,000 acres were reclassified from reserved use to public recreation/wildlife habitat land to facilitate the issuance of personal use cabin permits. Another reclassification of 265 acres to grazing land was related to a grazing lease. Other classifications totaling less than 50 acres facilitated several preference right disposals and the transfer of land to the Kenai Peninsula Borough.

Northern Region. All the classification activity in the Northern Region was related to the Tanana Basin Area Plan (822,728 acres) and the Crazy Mountain disposal area (16,990 acres).

Southeast Region. In the Southeast region, 175 acres of tidelands were classified near Point Macartney and 1,135 acres of uplands at Cape Fanshaw.

Table 7. 1986 Land Classification by Region

REGION AND CLASSIFICATION	ACRES ADDED	ACRES REMOVED	NET ACREAGE
NORTHERN			
Agricultural Land	2,290	-0-	2,290
Forest/Wildlife Habitat	177,192	-0-	177,192
Resource Management	-0-	(16,990)	(16,990)
Settlement Land	73,659	(2,290)	71,369
Wildlife Habitat Land	21,447	-0-	21,447
Wildlife Habitat/Public Recreation	565,130	-0-	565,130
SUBTOTAL	839,718	(19,280)	820,438

1986 Land Classification by Region

(Table 7 continued)

REGION AND CLASSIFICATION	ACRES ADDED	ACRES REMOVED	NET ACREAGE
SOUTHCENTRAL			
Agricultural Land	-0-	(12,950)	(12,950)
Coal/Oil and Gas/Wildlife Habitat	52,010	-0-	52,010
Forest Land	-0-	(38,905)	(38,905)
Forest/Grazing/Public Recreation	618	-0-	618
Forest/Oil and Gas/Wildlife Habitat	37,330	-0-	37,330
Forest/Public Recreation/ Water Resources	110,036	-0-	110,036
Forest/Public Recreation/Wildlife Habitat	65,940	-0-	65,940
Grazing Land	265	-0-	265
Grazing/Public Recreation/Wildlife Habitat	5,318	-0-	5,318
Mineral Land	-0-	(3,160)	(3,160)
Mineral/Public Recreation	8,360	-0-	8,360
Mineral/Wildlife Habitat	75,435	-0-	75,435
Mineral/Wildlife Habitat/Public Recreation	96,963	-0-	96,963
Oil and Gas/Settlement	1,520	-0-	1,520
Public Recreation Land	8,440	(78,281)	(69,841)
Public Recreation/Settlement/ Wildlife Habitat	15,480	-0-	15,480
Public Recreation/Water Resources	9,890	-0-	9,890
Public Recreation/Water Resources/ Grazing	16,830	-0-	16,830
Public Recreation/Water Resources/ Wildlife Habitat	91,043	-0-	91,043
Public Recreation/Wildlife Habitat	357,900	(500)	357,400
Public Recreation/Wildlife Habitat/ Water Resources	139,360	-0-	139,360
Reserved Use Land	11,671	(19,102)	(7,431)
Resource Management Land	-0-	(491,556)	(491,556)
Settlement Land	108,680	(16,301)	92,379
Wildlife Habitat Land	131,760	(66,420)	65,340
Wildlife Habitat/Coal/Forest Land	89,573	-0-	89,573
SUBTOTAL	1,434,422	(727,175)	707,247
SOUTHEASTERN			
Resource Management Land	-0-	(1,135)	(1,135)
Settlement Land	1,135	-0-	1,135
SUBTOTAL	1,135	-0-	-0-
STATEWIDE TOTAL	2,275,275	(747,590)	1,527,685

Table 8. 1986 Land Classification Statewide Total ¹

CLASSIFICATION	ACRES ADDED	ACRES REMOVED	NET ACREAGE	TOTAL ACRES 12/31/85	TOTAL ACRES 12/31/86
Agricultural Land	2,290	(12,950)	(10,660)	628,925	618,265
Agricultural/ Settlement Land	-0-	-0-	-0-	14,872	14,872
Coal Land	-0-	-0-	-0-	2,560	2,560
Coal/Oil and Gas/ Wildlife Habitat Land	52,010	-0-	52,010	-0-	52,010
Forest Land	-0-	(38,905)	(38,905)	3,234,090	3,195,185
Forest/Grazing/ Public Recreation Land	618	-0-	618	-0-	618
Forest/Oil and Gas/ Wildlife Habitat Land	37,330	-0-	37,330	-0-	37,330
Forest/Public Recreation/Water Resource Land	110,036	-0-	110,036	-0-	110,036
Forest/Public Rec- reation/Wildlife Habitat Land	65,940	-0-	65,940	-0-	65,940
Forest/Wildlife Habitat Land	177,192	-0-	177,192	283,420	460,612
Geothermal Land	-0-	-0-	-0-	-0-	-0-
Grazing Land	265	-0-	265	152,775	153,040
Grazing/Public Recreation/Wildlife Habitat Land	5,318	-0-	5,318	-0-	5,318
Heritage Resources	-0-	-0-	-0-	-0-	-0-
Material Land	-0-	-0-	-0-	5,088	5,088
Mineral Land	-0-	(3,160)	(3,160)	83,742	80,582
Mineral/Public Rec- reation Water					
Mineral/Wildlife Habitat Land	75,435	-0-	75,435	352,034	427,469
Mineral/Wildlife Habitat/Public Recreation Land	96,963	-0-	96,963	2,073,993	2,170,956

¹ Because of an extraordinary volume of planning and classification activity it was not possible to report all net acreage figures for the Tanana Basin Area Plan and Susitna Area Plan this year. Please refer to the 1985 Classification Report to the Legislature for a full listing of total acreage.

1986 Land Classification Statewide Total

(Table 8 continued)

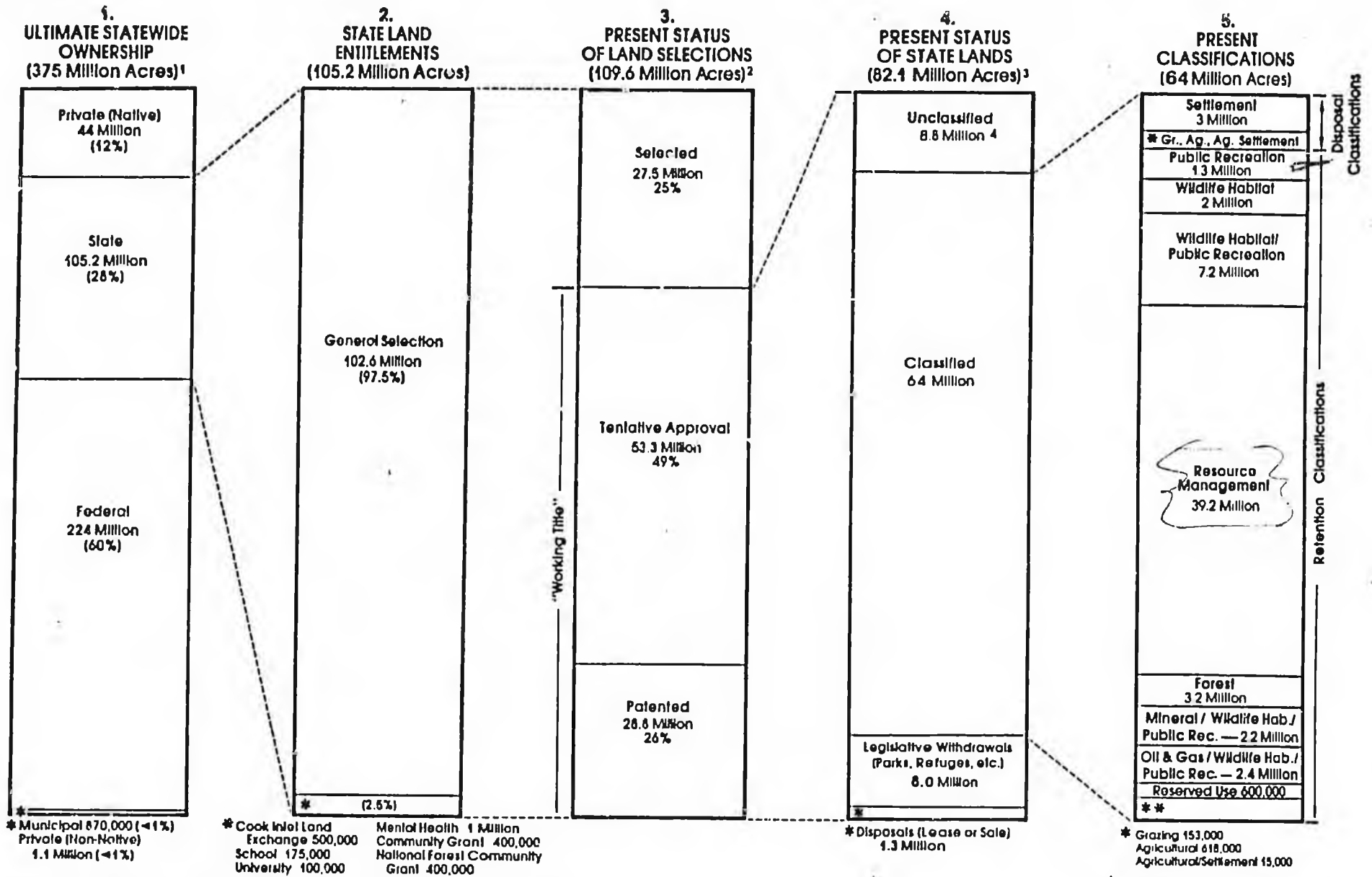
CLASSIFICATION	ACRES ADDED	ACRES REMOVED	NET ACREAGE	TOTAL ACRES 12/31/85	TOTAL ACRES 12/31/86
Oil and Gas Land	-0-	-0-	-0-	-0-	-0-
Oil and Gas/Settle- ment Land	1,520	-0-	1,520	-0-	1,520
Oil & Gas/Wildlife Habitat Land	-0-	-0-	-0-	226,192	226,192
Oil & Gas/Wildlife Habitat/Public Recreation Land	-0-	-0-	-0-	2,396,537	2,396,537
Public Recreation Land	8,440	(78,281)	(69,841)	1,353,340	1,283,499
Public Recreation/ Settlement/Wildlife Habitat Land	15,480	-0-	15,480	-0-	15,480
Public Recreation Water Resources/ Grazing Land	16,830	-0-	16,830	-0-	16,830
Public Recreation/ Water Resources Land	9,890	-0-	9,890	-0-	9,890
Public Recreation/ Water Resources/ Wildlife Habitat	91,043	-0-	91,043	-0-	91,043
Reserved Use Land	11,671	(19,102)	(7,431)	596,949	589,168
Resources Land	8,360	-0-	8,360	-0-	8,360
Resource Assessment Land ²	-0-	-0-	-0-	150,000	150,000
Resource Management Land	-0-	(509,681)	(509,681)	39,751,196	39,241,515
Settlement Land	183,474	(18,591)	164,883	2,850,634	3,015,517
Transportation Corridor Land	-0-	-0-	-0-	-0-	-0-
Water Resources Land	-0-	-0-	-0-	127,535	127,535
Wildlife Habitat Land	153,207	(66,420)	86,787	1,913,947	2,000,734
Wildlife Habitat/ Public Recreation Land	923,030	(500)	922,530	6,227,945	7,150,475
Wildlife Habitat/ Water Resources Land	139,360	-0-	139,360	55,046	194,406
Wildlife Habitat/ Coal/Forest Land	89,573	-0-	89,573	-0-	89,573
Total	2,275,275	(747,590)	1,527,685	62,480,470	64,008,155

² This classification category will be eliminated when these lands are reclassified under the new classification regulations.

Figure 5.

ALASKA LAND STATUS (In Acres)

December, 1986



¹ Represents ultimate ownership if land entitlements and private land ownership had remained static at the time of passage of the Alaska Native Claims Settlement Act. In reality, proportions have and will continue to change as a result of public land sales, Native land sales and land exchanges.

² Includes 4.4 million acres of over selection

³ Does not reflect submerged, tide or shoreland ownership

⁴ Does not reflect uncounted but arranged of approximately 6 million acres classified in the Kenai Basin

MAJOR CLASSIFICATION ACTIONS PROPOSED FOR 1987

In 1987 the department expects to classify land as a result of the Copper River Basin Area Plan and the Prince William Sound Area Plan.

Copper River Basin

The Copper River Basin Area Plan was adopted by the Department of Natural Resources on November 26, 1986. The Commissioner of the Department of Fish and Game signed the plan on December 5, 1986. The Copper River Basin Area Plan covers about 3.5 million acres of state owned and selected land. The final notice proposes classification and closure of certain lands to mineral entry on February 6, 1987. The net classification acreage will be reported in the January 1987 classification report to the legislature.

Table 9. Copper River Classification Acreage

CLASSIFICATION	ACRES
Agricultural land	8,097
Agricultural/Settlement Land	4,120
Forest/Public Recreation/Wildlife Habitat Land	361,649
Forest/Settlement Land	11,011
Forest/Transportation Corridor/Settlement Land	46,296
Forest/Wildlife Habitat Land	201,883
Geothermal/Public Recreation/Wildlife Habitat Land	350
Heritage Resources/Public Recreation/Wildlife Habitat Land	5,165
Mineral/Wildlife Habitat Land	41,635
Public Recreation Land	154,310
Public Recreation/Transportation Corridor/Wildlife Habitat Land	17,096
Public Recreation/Wildlife Habitat Land	151,147
Resource Management Land	449,007
Settlement Land	52,947
Transportation/Wildlife Habitat Land	62,432
Wildlife Habitat Land	1,893,734
TOTAL	3,460,879

Prince William Sound Area

The Prince William Sound Area Plan will cover about 800,000 acres of state land widely interspersed throughout the Chugach National Forest. The plan is in its final stages and classification is expected in late 1987.

LAND DISPOSAL BANK REPORT

Land disposal bank contains land classified for disposal.³ AS 38.04.020(d) requires that on January 15th of each year, the commissioner report to the legislature the status of certain categories of state land:

1. land suitable for homestead disposal
2. land suitable for subdivision disposal
3. land suitable for agriculture, commercial or industrial disposal
4. land suitable for other purposes

Acreages within the land disposal bank are as follows:⁴

Homestead Disposal

A total of 121,192 acres are identified for homestead disposal and considered suitable for staking in the homestead program. Homestead land is classified agricultural land for agricultural homesteads and settlement for non-agricultural homesteading.⁵

Subdivision Disposal

An estimated 23,728 acres, including parcels previously offered and not yet sold, are classified and suitable for disposal as subdivision parcels.⁶

Agricultural, Commercial and Industrial Disposal

A total of 378,662 acres are classified for agricultural purposes.⁷ Commercial and industrial land has been converted to the settlement classification. The bank contained about 1,640 acres of land designated for commercial and industrial use as of January 1, 1983.

³ AS 38.04.020(a). Lands must be classified into a disposal category before they are actually included in the Land Bank [AS 38.04.020(c)].

⁴ Portions of the land disposal records are manually maintained. Therefore, while actual figures have been used in this report when available, conservative estimates are used in cases where they are reasonably accurate and actual data collection time would substantially outweigh the marginal benefit which might be derived from more precise figures.

⁵ Land considered suitable for homestead disposal includes land which has been identified for sale in FY87 and FY88 and has been classified in a settlement or agricultural disposal classification. The "Annual Report on State Land Offerings" identifies a substantial amount of additional land for sale after 1988. Not all that land, however, is classified.

⁶ This acreage excludes all parcels sold in 1983.

⁷ The acres classified for agricultural purposes and considered to be in the land disposal bank are land which have not been sold. About 2,778 acres were sold in 1984 which are not included in this total.

Other Purposes

Most land is made available through the categories mentioned above. Certain land, however, is sold by auction in odd lots or for other special purposes. About 555 acres in odd lots are currently identified for sale.

Total Land in Disposal Bank

The total amount of land in the disposal bank as of December 31, 1986, is estimated to be 504,943 acres.⁸

⁸The total reflects the subtraction of 20,934 acres of agriculturally classified land which are also identified under 1 and 3 above.

APPENDIX

Description of Classification Categories 11 AAC 55

Agricultural Land. Land classified agricultural is, by reason of climate, physical features, and location, suitable for present or future agricultural cultivation or development and is intended for present or future agricultural use. When agricultural land is disposed of, only an agricultural interest may be conveyed.

Coal Land. Land classified coal is where known coal resources exist and development is occurring or is reasonably likely to occur, or where the coal potential has been determined to be high or moderate under 11 AAC 58.010.

Forest Land. Land classified forest is, or has been, forested and is suited for forest management because of its physical, climatic, and vegetative conditions.

Geothermal Land. Land classified geothermal is where known geothermal resources exist and where development is occurring or is reasonably likely to occur, or where there is reason to believe commercial quantities of geothermal resources exist.

Grazing Land. Land classified grazing is suitable in the cultivated or uncultivated state, for supporting domestic livestock or reindeer.

Heritage Resources Land. Land classified heritage resources is where there is active preservation of, or research for, significant historical, prehistorical, paleontological, or other cultural values or where there is reason to believe that these values exist.

Material Land. Land classified material is land suitable for the extraction of common varieties of sand, gravel, stone, peat, clay, and similar materials.

Mineral Land. Land classified mineral is where known mineral resources exist and where development is occurring, or is reasonably likely to occur, or where there is reason to believe that commercial quantities of minerals exist.

Oil and Gas Land. Land classified oil and gas is where known oil and gas resources exist and where development is occurring, or is reasonably likely to occur, or where there is reason to believe that commercial quantities of oil and gas exist.

Public Recreation Land. Land classified public recreation is suitable for recreation uses, waysides, parks, campsites, scenic overlooks, hunting, fishing or boating access sites, trail corridors, or greenbelts along bodies of water or roadways.

Reserved Use Land.

(a) Land classified reserved use is:

- (1) reserved for transfer to another governmental or nongovernmental agency that is performing a public service;
- (2) reserved for transfer through land exchange; or
- (3) designated for a public facility.

(b) Nothing in this section requires classification of land identified for a future land exchange under AS 38.50.

Resource Management Land. Land classified resource management is presently ~~unaccessible and remote and~~ may have a number of resources but where there is the lack of adequate resource, economic, or other relevant information combined with the unlikelihood of resource development within the next 10 years makes a specific resource allocation decision unnecessary.

Settlement Land. Land classified settlement is, by reason of its physical qualities and location, suitable for year-round or seasonal residential or private recreational use or for commercial or industrial development.

Transportation Corridor Land. Land classified transportation corridor is identified for the location of easements and rights-of-way under AS 38.04.065(f), including transportation, pipeline, or utility corridor purposes, or is under consideration for a right-of-way lease.

Water Resources Land. Land classified water resources encompasses watersheds or portions of watersheds and is suitable for such uses as water supply, watershed protection, or hydropower sites.

Wildlife Habitat Land. Land classified wildlife habitat is primarily valuable for:

- (1) fish and wildlife resource production, whether existing or through habitat manipulation, to supply sufficient numbers or a diversity of species to support commercial, recreational, or traditional uses on an optimum sustained yield basis; or
- (2) a unique or rare assemblage of a single or multiple species of regional, state, or national significance.

ALASKA SURVIVAL v. STATE. DEPT. OF NAT. RES. Alaska 1281

Cite as 723 P.2d 1281 (Alaska 1986)

ing from a conduct disorder, "undersocialized and aggressive," that he is resentful of authority, has superficial emotional ties to others, has difficulty in forming relationships, lacks conscience, is without internal controls, Saathoff will only do well if closely supervised which is borne out by his behavior, when his father is at home.

The chance that Saathoff will be rehabilitated by age 20 is not good. He is undersocialized, aggressive, distractible, hyperactive, has no capacity to delay gratification and when confronted, acts aggressively. The onset of his antisocial behavior was very early, age nine or ten. There is no evidence that he wants to change.

Despite the dismal outlook for Saathoff's treatment by age 20, I must look at the alternatives. If the juvenile is treated as an adult, he will be sentenced to a possible thirty years to serve, the same as his accomplice is subject to pursuant to a plea bargain. I know of no treatment he will receive in the adult system which would give him any opportunity to internalize a value system that would give any degree of assurance that he would act responsibly in an unstructured setting. After serving whatever portion of thirty years that he might have to serve, I believe Saathoff would constitute as great a danger to society as he does today.

Society's best opportunity to be protected from the actions of which Saathoff has demonstrated his capacity is for him to be dealt with in the juvenile justice system where he may be classified to the closed treatment unit at McLaughlin Youth Center if deemed appropriate by the Commissioner of Health and Social Services, the court having no authority in that decision. In the closed treatment unit an effort would be made to instill a value system which would control Saathoff even after he is released from custody.

Therefore, based upon the assumption that Saathoff has consented to be treated through age 20, I find that he is amenable to treatment as a child.

An additional reason for retaining Saathoff in the juvenile system is that he is only 14 years old, has not begun to mature,

and has the appearance of an 11-year old. Confining an immature boy among adults is inappropriate and would necessitate solitary confinement by the Department of Corrections. Also, no information was presented about programs available in the adult system for youthful offenders and from my prior experience I know of nothing like the closed treatment unit program at McLaughlin Youth Center which offers an opportunity for rehabilitation of juvenile delinquents.

Therefore, because of the paucity of programs available in the adult system and the only viable program being available for juvenile delinquents, I have weighted my decision on amenability toward the juvenile system. I am not optimistic of success in this case but find a denial of waiver to be in both Saathoff and society's best interest.

DATED at Anchorage, Alaska, this 19th day of November, 1984.

/s/ Victor D. Carlson
Victor D. Carlson
Superior Court Judge



ALASKA SURVIVAL, Paul Bratton,
Judy Price, G.M. Chartrand, and
Millie Gray, Appellants.

v.

STATE of Alaska, DEPARTMENT of
NATURAL RESOURCES; Esther C.
Wunnicke, Commissioner, State of
Alaska, Department of Natural Resources; and Thomas Hawkins, Director, Division of Forest, Land and Water Management, State of Alaska, Department of Natural Resources, Appellees.

No. S-996.

Supreme Court of Alaska.

Aug. 29, 1986.

Rehearing Denied Oct. 29, 1986.

Local residents filed suit to block state land disposal of 32 agricultural home-

steads. The Superior Court, Third Judicial District, Anchorage, Karen L. Hunt, J., upheld decision of Department of Natural Resources to dispose of the land in a lottery, and residents appealed. The Supreme Court, Moore, J., held that: (1) finding by Department that disposal was in state's best interests was reasonable; (2) decision of Department to proceed with lottery after considering revised soils data was not arbitrary; but (3) failure of Department to develop regional land use plan before classifying and disposing of the land rendered the disposal invalid and was not cured by Department's adoption of regional plan seven months after the lottery; and (4) residents, who were economically dependent on use of land in disposal area to gather firewood and house-building logs and to hunt and fish for food, were "public interest plaintiffs" entitled to their full reasonable attorney fees.

Reversed and remanded.

1. Administrative Law and Procedure ⤵763

Review by Supreme Court of decision committed to agency discretion is confined to determining whether decision was arbitrary, unreasonable, or abuse of discretion.

2. Public Lands ⤵142½

Department of Natural Resources, in deciding to dispose of 32 agricultural homesteads, did not act arbitrarily in determining water quality would be adequately protected, where Department specifically considered water quality, when designing site plan and reducing parcel sizes, and consulted Department of Environmental Conservation study concerning effects of agricultural development on water quality and input from local residents offered during numerous public hearings. AS 38.05.010 et seq.

3. Public Lands ⤵142½

Fact that state land disposal of 32 agricultural homesteads with little or no soils generally suitable for cultivation would result in minimal clearing requirements did not render disposal a waste of public re-

sources, in that homesteaders would have to mark boundaries, survey land, and build permanent dwellings, and legislature recognized that agricultural homesteads might be located in marginal areas. AS 38.09.050(a)(5).

4. Administrative Law and Procedure ⤵763

Failure of administrative agency to consider important factor will render its decision arbitrary.

5. Administrative Law and Procedure ⤵751

Role of Supreme Court, when reviewing decision of administrative agency, is to ensure that agency has taken "hard look" at salient problems before it and has genuinely engaged in reasoned decision making.

6. Public Lands ⤵142½

Decision of Department of Natural Resources to proceed with lottery for state land disposal of 32 agricultural homesteads after soils data used to plan the disposal had been revised was not arbitrary, where Department considered new soils information and decided to proceed because project still contained enough land suitable for agricultural homesteads. AS 38.05.010 et seq.

7. Administrative Law and Procedure ⤵759

Public Lands ⤵142½

Issue as to whether public land is suitable for agricultural homesteads and whether public interest is best served by state land disposal for such homesteads falls directly within area of expertise of Department of Natural Resources, for which Supreme Court will not substitute its judgment. AS 38.05.010 et seq.

8. Statutes ⤵219(1)

Where interpretation of statutes does not require special expertise of administrative agency, court exercises its independent judgment to determine whether agency complied with statutory requirements.

9. Public Lands $\approx 142\frac{1}{4}$

Regional land use planning must precede land classifications and disposals. AS 38.04.065(c, d).

10. Public Lands $\approx 142\frac{1}{4}$

Regulation adopted by Department of Natural Resources, permitting classification of land based on site-specific plan covering only 1,287 acres, contravened land use planning and classification statute. AS 38.04.065.

11. Public Lands $\approx 142\frac{1}{4}$

Land use planning and classification statute mandates comprehensive, broad-scale planning process prior to site-specific planning and classification. AS 38.04.065.

12. Public Lands $\approx 142\frac{1}{4}$

Failure of Department of Natural Resources to have adopted regional land use plan before classifying and disposing of public land as agricultural homesteads rendered the state land disposal invalid and was not cured by Department's adoption of regional plan seven months after lottery was conducted for the disposal, where regional plan simply ratified, without comprehensive analysis. Department's earlier decision to dispose of the land as agricultural homesteads, and disclosure and public discussion of certain information in regional plan would have prompted closer consideration of alternative disposal areas. AS 38.04.065.

13. Costs ≈ 172

Prevailing public interest litigant is generally entitled to full reasonable attorney fees, rather than partial fees.

14. Costs ≈ 172

Local residents, who were economically dependent on use of land in state land disposal area to gather firewood and house-building logs and to hunt and fish for food, did not have substantial economic interest sufficient to bar them from qualifying as "public interest plaintiffs" entitled to their full reasonable attorney fees, rather than partial fees, in their action challenging disposal of 32 agricultural homesteads, in that residents, in challenging the disposal, em-

phasized their concerns about contamination of water supplies, impact on area wildlife, and general effect that increased settlement would have on quality of their subsistence life-styles, and relied on resources in area for personal, rather than commercial, purposes.

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

Robert W. Adler, Eric Smith, Stephan H. Williams, Trustees for Alaska, Anchorage, for appellants.

M. Francis Neville, Asst. Atty. Gen., Anchorage, and Harold M. Brown, Atty. Gen., Juneau, for appellees.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS, COMPTON and MOORE, JJ.

OPINION

MOORE, Justice.

This appeal challenges a state land disposal of thirty-two agricultural homesteads near Talkeetna. A group of local residents sued to block the 3,530-acre offering. The superior court upheld the decision of the State Department of Natural Resources (DNR) to dispose of the land in a September 1984 lottery. We conclude that the disposal was invalid because DNR failed to comply with the land use planning process mandated by statute. We reverse the superior court judgment and remand DNR's disposal decision for reconsideration by the agency. We also conclude that the court erred in denying the plaintiffs status as public interest litigants for purposes of awarding attorney's fees.

I. FACTS AND PROCEDURAL HISTORY

The land disposal at issue, referred to as "Chase III," is located approximately five miles north of Talkeetna, near the community of Chase. The state first proposed to offer land in this area for agricultural development in 1979. Between 1979 and 1983

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DNR held several public hearings in Talkeetna to discuss what it initially proposed to be a commercial agriculture project involving disposal of parcels ranging in size to 560 acres.

Local residents repeatedly objected that increased settlement would threaten their subsistence-type lifestyle and overtax area resources. Many Chase-area residents rely on the use of surrounding state land to gather firewood, set traplines, hunt and fish. Besides threatening their lifestyle, local residents argued that the area is not suited for commercial farms due to steep slopes, drainage problems and poor soils.

In response, DNR made several changes in its disposal plan, including a reduction in the amount of land to be offered from 7,000 acres to approximately 4,500 acres. In February 1983 DNR issued a written finding, pursuant to former AS 38.05.035(a)(14),¹ that the Chase III commercial agriculture disposal was in the state's best interests. However, the Commissioner of DNR subsequently "postponed" the scheduled April land sale in response to local opposition.

The commercial disposal was never implemented. Instead, in late 1983 DNR revised the disposal to meet the objectives of a newly enacted homestead program. Alaska Statute 38.09, enacted in 1983, authorizes the disposal of smaller, noncommercial agricultural homesteads to applicants who agree to meet certain requirements. DNR's new plan called for disposal of about 6,000 acres in parcels ranging from 40 to 160 acres each. The plan focused on subsistence-type farming rather than commercial agriculture development.

DNR published a legal notice stating that a written best interests finding had been made regarding the agricultural homestead disposal, and a public meeting was scheduled for January 27, 1984. In a January 13 letter to DNR, Judy Price, one of the appellants here, requested a copy of the finding. She did not receive a copy by

mail nor was the finding made available to her or other people when they attended the meeting.

During the meeting local residents questioned why DNR was proceeding with the Chase disposal prior to completion of the Susitna Area Plan, a statutorily mandated land use plan for the region. They also reiterated concerns raised regarding the commercial disposal, including their view that the area is not suitable for farm development. Following the meeting DNR officials took a brief field trip to the Chase area and subsequently made several changes to the site plan. The final version called for a smaller disposal of 3,530 acres and a reduction in the number of parcels to thirty-two, with four more scheduled for a later offering.

In April 1984 the director of DNR's Division of Forest, Land and Water Management signed an amendment to the previous best interests finding for the commercial disposal. The amendment concluded that the revised agricultural homestead disposal was in the state's best interests. DNR issued an order classifying 1,286 acres of Chase-area land for agricultural use. Other Chase lands had been classified in 1980. A September 14 lottery was scheduled.

Several individuals and an organization of local residents known as Alaska Survival appealed the director's best interests determination to the Commissioner of DNR. DNR held a hearing at the appellants' request and the Commissioner subsequently affirmed the director's decision to proceed with the agricultural homestead disposal.

In mid-August, less than a month before the scheduled lottery, DNR received new information that the soils in the Chase area were of poorer quality than initial surveys indicated. Throughout its planning process DNR had relied on soils information provided by the United States Soil Conservation Service (SCS), based on a preliminary 1980 SCS soils survey. This survey showed that

1. The language in former AS 38.05.035(a)(14) now appears in AS 38.05.035(e). See *infra* note 5.

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Cite as 723 P.2d 1281 (Alaska 1986)

88.7 percent of the acreage ultimately included in the homestead disposal contained class II or III soils.² In March 1984 DNR requested SCS to update its survey. The revised data showed that none of the thirty-two parcels contained class I or II soils and that twelve of the parcels contained little or no class III soils. Overall, the disposal area contains predominantly class IV or worse soils.³

Some DNR officials were concerned that the new data represented a major deviation from the soils information upon which the Chase disposal was premised. When the director of DNR's Division of Agriculture received preliminary word of the new data he wrote the SCS requesting a report as soon as possible. His letter stated: "We have been informed ... that some of the parcels in the Chase III agricultural homestead area may not have any class II or III soils. The political and public policy problems associated with offering [such] land for agricultural homesteading ... are obvious."

After receiving the SCS report, DNR officials met to consider the new information and decided to proceed with the disposal without any changes. The lottery was held and DNR notified the winners that the soils information in the State Land Disposal Brochure had been revised.

A week before the lottery, Alaska Survival and four individuals (hereafter referred to collectively as Alaska Survival) filed a complaint in superior court appealing from the Commissioner's decision and seeking injunctive relief to halt the lottery.⁴ The trial court denied a temporary restraining order and allowed the lottery to pro-

ceed after the state agreed to delay staking of the land pending a decision on the merits of the suit. The trial court subsequently affirmed DNR's decision to offer Chase land for agricultural homesteading, and awarded the state \$10,420 in attorney's fees. The court issued a stay closing the area to entry by the lottery winners pending this appeal.

II. DISCUSSION

Alaska Survival appeals the decision upholding the Chase III disposal and the award of attorney's fees. Appellant challenges the disposal on both substantive and procedural grounds, arguing 1) that the disposal is not in the state's best interests, and 2) that DNR did not follow the land use planning and decision-making process mandated by statute.

A. *The Best Interests Determination*

Alaska's Constitution and the Alaska Land Act, AS 38.05, express a policy of encouraging settlement of the state's lands "by making them available for maximum use consistent with the public interest." Alaska Const. art. VIII, § 1; AS 38.05.910. Alaska Statute 38.05.035(e) authorizes the director of DNR's Division of Lands, acting with the consent of the Commissioner, to dispose of state land upon making a "written finding that the interests of the state will be best served."⁵ Alaska Survival contends the Chase agricultural homestead disposal is unlawful because it is not in the state's best interests.

[1] In reviewing DNR's substantive decision to dispose of Chase-area land, we apply the "reasonable basis" standard of

2. The SCS classification system takes into account soils and climatic conditions. Class I through IV soils are generally suitable for cultivation, although the recommended use in Alaska of class IV soils with steep slopes is hay cultivation and grazing; classes V through VII are suitable only for grazing.

3. The new data was due in part to a 1983 revision of SCS guidelines for Alaska and also to inaccurate mapping that underestimated slope steepness, erosion potential and wetness conditions.

4. The suit named as defendants the Department of Natural Resources, DNR Commissioner Estner C. Wunnicker, and Thomas Hawkins, director of DNR's Division of Forest, Land and Water Management.

5. The best interests finding requirement formerly appeared in AS 38.05.035(a)(1-4). That section was repealed in 1984 and substantially the same language placed in AS 38.05.035(e). See ch. 152, §§ 20, 38, SLA 1984.

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review. This limited review is appropriate when a court considers "an administrative agency's decision where questions of fact and law involve agency expertise and/or broad policy considerations." *State v. Weidner*, 684 P.2d 103, 103 n. 4 (Alaska 1984) (citations omitted). Here, the decision to dispose of agricultural homesteads involves both policy considerations and agency expertise on a matter committed to DNR's discretion. We thus confine our review to determining "whether the decision was arbitrary, unreasonable or an abuse of discretion." *North Slope Borough v. LeRocche*, 551 P.2d 1112, 1115 (Alaska 1975) (footnote omitted).

(2) Alaska Survival first argues that DNR's disposal decision was arbitrary because the agency failed to adequately consider the potential effects on area water quality. However, the record shows that DNR officials specifically considered water quality when they designed the site plan and when they later decided to reduce parcel sizes. DNR also considered a Department of Environmental Conservation study concerning the effects of agricultural development on water quality as well as input from local residents offered during the numerous public hearings held to discuss plans for a Chase disposal. DNR concluded that water quality could be protected by retaining "buffer zones" of state land along streams and by requiring farmers to file and secure DNR approval of homestead conservation plans showing the location of proposed clearing and ground-breaking. See 11 AAC 07.155.

Based on this record we conclude that DNR did not act arbitrarily in determining water quality would be adequately protected.

(3) We next address appellant's contention that the disposal violates the intent of the Homestead Act, AS 38.09, and contravenes the constitutional mandate that state land be developed "consistent with the public interest." Alaska Const. art. VIII, § 1.

AS 38.09.050(a)(5) requires a homesteader to clear and either put into production or prepare for cultivation 25 percent of the land classified

Alaska Survival asserts that because the disposal involves land with "severely limited agricultural uses," the resulting homesteads will not be economically feasible and clearing requirements will be minimal. In appellant's view, the transfer of such land for "free" constitutes an illegal waste of state resources.

Alaska Survival is correct that the disposal of parcels with little or no class II or III soils will result in minimal clearing requirements. See AS 38.09.050(a)(5).⁹ However, this does not violate any statutory requirement and DNR could reasonably conclude that such a disposal also does not constitute a waste of state resources. First, even where clearing requirements are minimal, a homesteader still must mark the boundaries and survey the land, build a permanent dwelling and reside there. AS 38.09.050(a). Second, there is no statutory requirement for actual cultivation or harvesting, regardless of the soil quality. The legislature apparently recognized that agricultural homesteads might be located in marginal areas. In fact, the legislature in 1984 amended AS 38.09.050(a)(5) to reduce the clearing requirement on parcels with poor-quality soil. Ch. 152, § 53, SLA 1984. We therefore reject appellant's claim that the Chase disposal will result in a waste of public resources.

We turn now to Alaska Survival's argument that it was unreasonable and arbitrary for DNR to proceed with the lottery after learning that the soils data used to plan the disposal was seriously inaccurate. DNR had based both the original commercial agriculture proposal and the revised homestead proposal on the premise that the land contained predominantly class II and III soils, and therefore was suitable for farming. These soil classifications were specifically noted in the best interests finding. The new information received shortly before the scheduled lottery showed that the disposal area contained predominantly class IV or worse soils, which are generally

for agricultural use of 50 percent of the land having class II or III soils, whichever is less. (Emphasis added.)

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suitable only for grazing and, in some
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This new information obviously was sig-
nificant: a special meeting of division di-
rectors was called to discuss the soils data
and decide whether to alter the planned
disposal. Alaska Survival asserts that the
decision by DNR officials to proceed with
the disposal was improper and that DNR
should have postponed the lottery, sought
additional public comment and seriously
evaluated the new soils information, partic-
ularly the effect grazing might have on
water quality and area wildlife. If the
agency then decided to proceed, Alaska
Survival contends DNR should have issued
an amended best interests finding.

[1.5] There is no explicit statutory re-
quirement for an amended finding and/or
additional public comment upon the dis-
covery of new information. However, an
agency's failure to consider an important
factor will render its decision arbitrary.
Southeast Alaska Conservation Council, Inc. v. State, 665 P.2d 544, 548-49 (Alaska
1983). Our role is to ensure that the agen-
cy has "taken a 'hard look' at the salient
problems" and has "genuinely engaged in
reasoned decision making." *Id.* at 549
(quoting Leventhal, *Environmental Deci-
sion Making and the Role of the Courts*,
122 U.Pa.L.Rev. 509, 511) (emphasis in
original). We have recognized that com-
plete and accurate information is not a
prerequisite for all disposal decisions. For
example, in *Hammond v. North Slope
Borough*, 645 P.2d 750 (Alaska 1982), we
upheld the Commissioner of DNR's deci-
sion that the sale of oil and gas leases in
the Beaufort Sea was in the state's best
interests, despite some uncertainty about
the impact on the subsistence lifestyle of
the Inupiat Eskimos. *Id.* at 759-61.

Similarly, the federal courts, in construing
the National Environmental Policy Act,
have held that an agency has a continuing
duty to gather and evaluate new informa-
tion, but that a supplemental environmen-
tal impact statement (EIS) is not always
required when new information becomes
available. *Warm Springs Dam Task*

Force v. Griddle, 621 F.2d 1017, 1023-24
(9th Cir.1980). The test is whether the
agency evaluated the information and
made a "reasoned determination" not to
re-open the review process. *Id.* at 1024.

A question similar to the one before us
was raised in *State of California v. Watt*,
683 F.2d 1253 (9th Cir.1982), *rev'd on other
grounds sub nom. Secretary of Interior v.
California*, 464 U.S. 312, 104 S.Ct. 656, 78
L.Ed.2d 496 (1984). There, plaintiffs
sought to enjoin a federal off-shore lease
sale on the grounds that revised estimates
of oil and gas reserves in the lease area
required supplementation of the EIS. The
new data showed twice the reserves as
originally estimated. *Id.* at 1267. The
court upheld the decision to proceed with-
out supplementation after concluding that
the Department of Interior had "carefully
considered" and made public the new data.
Id. at 1268.

[6] Here, DNR division directors met to
evaluate the new soils information and con-
sider whether to proceed with the disposal.
The director of the Division of Lands pre-
pared a Decision Memorandum which ana-
lyzed the soils data and its effect on the
Chase project. He concluded that while
some of the disposal area was not suitable
for traditional cultivation as originally
planned, the land still was suitable for
grazing and other "less intensive agri-
cultural uses." The memorandum recom-
mended that no changes be made in the
disposal plan. The directors unanimously
decided to go ahead with the lottery—then
scheduled for two weeks away—and both
deputy commissioners and a special assis-
tant to the Commissioner concurred. Fol-
lowing the lottery, DNR informed the win-
ners of the new soils data.

[7] Given these facts, we are not pre-
pared to say that DNR acted arbitrarily or
unreasonably, although we consider it a
very close question whether DNR gave the
new soils information the kind of scrutiny
necessary. Agency officials clearly con-
sidered the new soils information, then de-
cided to proceed because, in their view, the

project still contained enough land suitable for agricultural homesteads. The question whether land is suitable for such a purpose and whether the public interest is best served by such a disposal falls directly within the agency's area of expertise. We will not substitute our judgment. *Hammond v. North Slope Borough*, 645 P.2d at 753-59. We note, however, that it would have been preferable for DNR to have made public the new soils information prior to the lottery, and to have more extensively analyzed the information and its impact on the planned disposal.

In summary, we hold that there was a reasonable basis for DNR's finding that the Chase agricultural homestead disposal would be in the state's best interests, and that DNR's subsequent decision to proceed with the lottery after considering the revised soils data was not arbitrary.

B. Procedural Violations

[3] We next address whether DNR's disposal decision was invalid due to procedural violations. To resolve this issue we must interpret certain statutes that govern the state's land planning and disposal process. Because interpretation of these statutes does not require the special expertise of the agency, we exercise our independent judgment to determine whether DNR complied with the statutory requirements in deciding to dispose of Chase III land. *Moore v. State*, 553 P.2d 3, 26, 33 (Alaska 1976); *State v. Aleut Corp.*, 541 P.2d 730, 736 (Alaska 1975).

Alaska Survival asserts that DNR violated AS 38.04.065 by classifying Chase land for agricultural use before developing a regional land use plan. DNR adopted the Summit Area Plan, a comprehensive regional plan that includes the Chase area, in

April 1985, seven months after the lottery. Land included in the lottery was classified in two orders signed in 1980 and 1984. The first order is not challenged since it occurred while a statutory exception was in effect allowing land classification prior to regional planning.⁷ However, Alaska Survival contends that the 1984 order, which classified 1,287 acres in the Chase area including 907 acres in the Chase III project,⁸ violated AS 38.04.065. The statute provides in relevant part:

Land use planning and classification. (a) The commissioner shall, with local governmental and public involvement in accordance with AS 38.05.045, develop, maintain and, when appropriate, revise land use plans which provide, by regions or areas, for the use of the state-owned land.

(c) As a basis for more detailed land use planning and classification, the commissioner shall develop regional land use plans for the use of all state land. These regional plans shall identify and delineate

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

(2) areas which must be retained in state ownership and planned and classified for various uses and purposes in accordance with AS 38.04.015.

(d) Official regional or area plans and subsequent amendments adopted by the commissioner after public and local governmental participation shall be signed and dated by the commissioner. After adoption of an official regional or area plan, land classifications shall be made in accordance with these official plans.

7. Former AS 38.05.047(a)(5)(C) was enacted by ch. 35, § 13, SLA 1979, and repealed by ch. 113, § 45, SLA 1981. It directed the commissioner of DNR, "[n]otwithstanding the provisions of AS 38.04" to classify, before September 1, 1980, all state lands in municipalities determined to be best suited for disposal for agricultural use. See *State v. Weidner*, 554 P.2d 103, 107 (Alaska 1976).

8. The state asserts that the 1984 classification order affected only 250 acres in the Chase III disposal. However, our reading of the record indicates that 907 acres in the Chase project were covered by the 1984 classification, including 347 acres in the lottery disposal and 560 acres scheduled for a second phase offering.

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We discussed this statute in *State v. Weidner*, 684 P.2d 103 (Alaska 1984), and concluded that AS 38.04.065(d) "generally requires the development of [land] use plans before classification" of state lands. *Id.* at 107. We did not elaborate on this requirement because the land involved in *Weidner* was covered by a specific statutory exception, repealed in 1981, permitting classification prior to planning. *Id.* As explained below, however, the interpretation stated in *Weidner* is consistent with constitutional mandates and the legislature's overall approach to the management of state lands.

The framers of the Alaska Constitution placed a high value on the state's land resources. *Moore v. State*, 553 P.2d at 30. Article VIII, section 10 of the constitution provides: "No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law."

In accordance with this provision, the first Alaska legislature enacted the Alaska Land Act, AS 38.05, to establish procedural safeguards for the management and disposal of state lands and the natural resources they contain. The legislature later added AS 38.04, setting forth state policy for the use and classification of state lands. Alaska Statute 38.04.005(a) provides:

In order to provide for maximum use of state land consistent with the public interest, it is the policy of the State of Alaska to plan and manage state-owned land to establish a balanced combination of land available for both public and private purposes. *The choice of land best suited for public and private use shall be determined through the inventory, planning, and classification processes set out in AS 38.04.060-38.04.070.*

(Emphasis added.) These referenced statutes require 1) an inventory of all state lands, 2) the preparation of regional land use plans based on consideration of a wide range of factors, and 3) the classification of state lands.

[9] In our view, both the organization of the statutory scheme and the particular language of AS 38.04.065(c) and (d) express an unambiguous intent that regional planning precede land classifications and disposals. Subsection 065(c) specifically directs DNR to develop regional land use plans "[a]s a basis for more detailed land use planning and classification." Subsection 065(d) provides, in part: "After adoption of an official regional or area plan, land classifications shall be made in accordance with these official plans." To interpret these provisions to allow classification and disposal before regional planning defies logic. It makes little sense to require comprehensive regional planning after the relevant land use decisions already have been made, especially irrevocable disposal decisions.

DNR, however, suggests a different interpretation of AS 38.04.065(d). DNR contends the planning requirement may be met by a site-specific "land planning report" prepared in advance of a comprehensive regional land use plan. This interpretation is reflected in a regulation adopted by the department. See 11 AAC 55.030 (eff. Nov. 12, 1978; am Sept. 7, 1983). It permits classification of land based on a "brief, site-specific planning document prepared in the absence of an area or management plan" as long as the document considers certain factors identified in the statutory provision. 11 AAC 55.030(e). Relying on this regulation, DNR sought a site-specific "land planning report" covering the 1,257 Chase acres included in the 1984 classification order.

[10, 11] We cannot accept the argument that this regulation properly implements AS 38.04.065. DNR is correct that the statute does not define "regions or areas" when it directs DNR to "develop . . . land use plans which provide, by regions or areas, for the use of the state-owned land." AS 38.04.065(a). When read in its entirety, however, the statute's meaning is plain: it mandates a comprehensive, broad-scale planning process prior to site-specific planning and classification. For example, sub-

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section .065(c) specifies that regional land use plans be developed "[a]s a basis for more detailed land use planning and classification." DNR may be correct that the statute does not require plans on the scale of the Susitna Area Plan, which covers 15.3 million acres. However, it would be difficult to use a planning report covering only 1,287 acres as the basis for more detailed land use planning. We conclude that a regulation which permits land classification based on a planning document covering only 1,287 acres is inconsistent with the statutory scheme.

DNR argues that this interpretation is incorrect because the legislature did not intend, by enacting AS 38.04.065, to halt all state land disposals pending completion of regional plans. We agree that when the statute was enacted in 1978 as part of a land planning and disposal bill the legislature expressed its intent to accelerate the disposal of state lands.⁹ However, the legislature recognized that in order to assure some immediate disposals it would need to temporarily relax the statutory planning requirements. Thus, the legislature enacted former AS 38.05.047(a)(5)(C)¹⁰ to permit, for a limited time period, the classification of agricultural land without meeting the planning requirements of AS 38.04.065. If the legislature did not intend AS 38.04.065 to bar classifications in the absence of regional land use plans, this temporary statutory exception would have been unnecessary. The repeal of the exception in 1981 further indicates that the legislature intended future classifications to be based on regional plans.

For these reasons, we 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 statute. DNR's 1984 classification of Chase lands was therefore improper.

[12] The next question is whether DNR's failure to engage in proper planning requires invalidation of the Chase disposal. DNR argues that since the regional plan is now complete and designates the Chase III area for agricultural homesteading, any planning violation is moot. In deciding this question we must consider whether DNR would have made the same decision concerning the Chase disposal if the agency had first developed a regional plan as required by AS 38.04.065. In other words, did the procedural violation have any real impact on DNR's substantive decision to proceed with the homestead disposal? For the reasons discussed below, we conclude that it did. We therefore reject DNR's mootness argument.

First, the record supports Alaska Survival's contention that the Susitna Area Plan (SAP) simply ratified, without comprehensive analysis, DNR's earlier decision to dispose of Chase agricultural land, and that the planners failed to address certain issues because of this litigation. In a document containing public comments on the draft plan and responses by DNR, several persons criticized the SAP's handling of the Chase area and claimed that the plan contained some factual errors. DNR responded: "The Chase III agricultural homestead disposal is presently the subject of a lawsuit by Alaska Survival. The issues raised above cannot be resolved until the outcome of the litigation is known...."¹¹

We also note that the SAP's designation of the 3,300-acre Chase III area for agricultural homesteading appears inconsistent

9. For example, one section of the bill required DNR to make available for disposal a minimum of 50,000 acres in 1979 and to propose similar disposals in subsequent years. Ch. 131, § 5, SLA 1978. That section, in former AS 38.04.020, has since been repealed.

10. See *supra* note 7.

11. The response document also contained a citizen's suggestion that the Chase management

unit receive a detailed management plan. DNR responded: "The plan will recommend a management plan be done ... if it is determined that lots of important land use decisions remain to be made. This would be the case if, as a result of litigation on the Chase III or [agricultural] homestead area, the project is halted entirely."

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Cite as 723 P.2d 1291 (Alaska 1986)

with the plan's statement of overall management guidelines for agricultural lands. The guidelines state that blocks of 2,000 acres or more of agricultural lands "should be used primarily to support commercial farming under the state's standard agricultural land disposal *rather than under the homestead program...*" (Emphasis added.) The guidelines further state that "[s]cattered, smaller parcels" should be considered for the agricultural homestead program. This inconsistency is a further indication that the plan simply modified DNR's earlier decision to dispose of Chase lands as agricultural homesteads.

DNR's mootness argument also is invalid for a second reason. We are persuaded that the disclosure and public discussion of certain information in the SAP would have prompted closer consideration of alternative disposal areas. According to the SAP, the planning area includes approximately 400,000 acres of publicly owned fertile soils in contiguous blocks large enough to support farming. Of these lands, the SAP identifies 26,120 acres in the planning region which are currently scheduled for state disposals. The Chase III lands thus represents less than one-seventh of the state land in the region identified for agricultural disposal. If this information had been available prior to the Chase III classification and disposal, local residents (or even DNR planners) could have suggested alternative disposals with potentially less impact on area resources. Also, had the plan been completed and made public when the error regarding the quality of Chase soils was discovered, it may have spurred reconsideration to determine if one of the other areas identified for disposals would be better suited for agricultural homesteads.

12. Alaska Survival also contends that DNR violated statutory procedural requirements. See AS 38.04.020(j), in handling a nomination made by one of the individual appellants, Judy Price, to remove 33,600 acres of Chase-area land from the state's land disposal bank. This issue is not properly before us. DNR notified Price in January 1984 of the Commissioner's decision not to reclassify the nominated land as requested. Un-

In short, we believe that DNR's failure to develop a regional plan before classifying and disposing of the Chase III land was a serious procedural violation that may well have affected the agency's disposal decision. We also note that the state's mootness argument ignores one of the purposes of a regional planning process—to allow for "meaningful participation" by local governments, state and federal agencies, adjacent landowners and the general public. AS 38.04.065(b)(3); see also AS 38.04.065(a) and (b)(2). Meaningful participation is thwarted where citizens lack key factual information, such as information in this case regarding other areas within the planning region specifically identified for agricultural disposals.

For these reasons, we conclude that DNR's adoption of a regional plan seven months after the Chase lottery did not cure the agency's prior violation of statutory planning requirements. We therefore hold that the Chase III disposal is invalid. We remand DNR's disposal decision to the agency for further consideration and public comment in view of the regional plan and any revisions deemed necessary to the plan.

Because we hold the disposal invalid due to the planning violation, we need not decide Alaska Survival's claim that a written finding that the homestead disposal was in the state's best interests was not timely made or provided to appellants upon request, as required by AS 38.05.035(e). On remand, when DNR reconsiders its decision in view of the SAP, the agency will have to make a new best interests finding if it decides to proceed with a disposal. If that occurs, DNR will be required to publicize the finding and provide an opportunity for meaningful public comment.¹²

Under Alaska Appellate Rule 602(a)(2) Price had 30 days to appeal the Commissioner's decision to the superior court. No filing occurred until September 1984, when appellants sued to challenge DNR's disposal decision and included the land bank nomination among several claims of error. We therefore decline to consider this issue. See *Julliard v. Stuch*, 623 P.2d 918, 920 (Alaska 1981).

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C. Attorney's Fees

[13] Alaska Survival and the individual appellants contend the trial court erred when it denied their status as public interest plaintiffs and ordered them to pay \$10,420 in attorney's fees.¹³ Because of our holding on the merits of this appeal, the state no longer is entitled to fees as the prevailing party. However, Alaska Survival's claimed status must still be examined since a prevailing public interest litigant is generally entitled to full reasonable attorney's fees rather than partial fees. *Huntaker v. Thompson*, 717 P.2d 858, 859 (Alaska 1986).

In *Oceanview Homeowners Association, Inc. v. Quadrant Construction and Engineering*, we reiterated the four criteria for identifying public interest suits:

(1) whether the case is designed to effectuate strong public policies; (2) whether, if the plaintiff succeeds, numerous people will benefit from the lawsuit; (3) whether only a private party could be expected to bring the suit; and (4) whether the litigant claiming public interest status would lack sufficient economic incentive to bring the lawsuit if it did not involve issues of general importance.

680 P.2d 793, 799 (Alaska 1984) (citing *Kenai Lumber Co. v. LeResche*, 646 P.2d 215, 222-23 (Alaska 1982)).

The state does not dispute that this litigation satisfies the first three criteria. The state contends, however, that the appellants do not qualify as public interest litigants because they had a strong economic incentive to bring this lawsuit whether or not it involved issues of public importance. The state notes that appellants argued to DNR and the trial court that they are economically dependent on use of the land in the disposal area to gather firewood and house-building logs, and to hunt and fish for food. We conclude, however, that

13. Although the trial court apparently did not make a specific finding on the issue, implicit in the court's award of fees against Alaska Survival is the finding that this is not public interest litigation.

a more substantial financial interest is required before a litigant will be deemed to have an independent economic incentive to bring suit.¹⁴

In two analogous cases we recognized the public interest status of residents who challenged zoning decisions affecting their neighborhoods. The first case, *Anchorage v. McCabe*, 563 P.2d at 289-91, involved two homeowners who challenged the constitutionality of an ordinance and a city council decision permitting construction of two high-rises in their neighborhood. The second case, *Oceanview Homeowners Association*, 680 P.2d at 795, involved a group of homeowners who sued unsuccessfully to overturn a zoning board decision allowing continued use of a private airstrip near their homes. In concluding that the *Oceanview* plaintiffs were public interest litigants, we noted they had consistently emphasized health and safety rather than economic concerns. *Id.* at 799.

[14] Here, no argument was made that the Chase disposal would result in economic injury by causing property values to decline. Instead, appellants emphasized concerns about contamination of water supplies, impact on area wildlife and the general effect that increased settlement would have on the quality of their subsistence lifestyle. While appellants stressed their dependency upon the use of state land in the disposal area for hunting, fishing, and wood gathering, they relied on these resources for personal rather than commercial purposes. This is not the type of substantial economic interest sufficient to bar a litigant from qualifying as a public interest plaintiff.

The superior court judgment is REVERSED and DNR's disposal decision is REMANDED to the agency for further consideration. The court is directed to rec-

14. See, e.g., *Kenai Lumber Co. v. LeResche*, 646 P.2d 215, 223 (Alaska 1982) (logging lumber company seeking commercially valuable timber denied public interest status); *Moon Chi Corp. v. Local Boundary Comm'n*, 513 P.2d 92, 104 (Alaska 1974) (denial of public interest status proper where large sums at stake).

SKW/ESKIMOS v. SENTRY AUTO. SPRINKLER Alaska 1293

Cite as 723 P.2d 1293 (Alaska 1986)

recognize appellants' public interest status and award attorney's fees accordingly.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS, COMPTON and MOORE, JJ.

RABINOWITZ, Chief Justice.

OPINION

This appeal arises out of an action which was brought by a sub-subcontractor to recover on a prime contractor's surety bond for materials it used in performing its sub-subcontract. At issue is whether the sub-subcontractor can recover for materials when the bonded contract bound the prime contractor to furnish labor only.

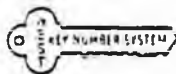
FACTS.

In June 1979, the North Slope Borough ("NSB") entered into a contract with SKW/Eskimos, Inc. ("SKW"). SKW agreed to provide the administration, superintendence, and labor to build the Barrow High School Complex.

SKW's duties under the contract were set forth in Article 3. Specifically, SKW was required to:

- 3.1.1 Furnish all labor, insurance, taxes, tools, subsistence, equipment, transportation, communications, and miscellaneous expendable items required for the construction of the project.
- 3.1.2 Cooperate and work with the Architect and the material supplier for efficient, economical construction of the project.
- 3.1.3 Prepare a cost estimate for the project after receiving construction drawings, technical specifications and a material package cost from H.W. Blackstock.
- 3.1.4 Provide site supervision for construction, material receiving, material control, and the general efficient control of the work.
- 3.1.5 Obtain subcontractors for specialty work.

The contract specifically stated that the contractor would not be responsible for the materials incorporated in the work.



SKW/ESKIMOS, INC. and General Insurance Company of America, Appellants.

v.

SENTRY AUTOMATIC SPRINKLER COMPANY, a foreign corporation, Appellee.

No. S-1109.

Supreme Court of Alaska.

Sept. 5, 1986.

Sub-subcontractor brought action against prime contractor and its surety to recover for labor and materials. The Superior Court, Third Judicial District, Anchorage, Joan M. Katz, J., held for sub-subcontractor and prime contractor appealed. The Supreme Court, Rabinowitz, C.J., held that sub-subcontractor could not recover for materials where bonded contract bound prime contractor to furnish labor only.

Reversed.

Principal and Surety §56(2)

Prime contractor's surety was not liable on labor and material bond for cost of materials supplied by sub-subcontractor where prime contractor was responsible only for labor under its contract with owner; surety cannot be held liable beyond scope of principal's duty.

Paul W. Waggoner, Anchorage, for appellants.

Thatcher R. Beebe, Anchorage, for appellee.

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a recognized residents who factoring their Anchorage Al. involved ted the con- and a city struction of hood. The owners dis- involved a unsuccessful decision ate airstrip or that the ic interest onistically rather than

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Ned Foy, Jr.

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: 2500

TELEPHONE NO: 465-2400

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

FROM: *Escher C. Wunnicke*
Escher 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.