ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5018 HRES SB 196 - SB 200

There is a significant risk, however, that the decision will be construed by the courts to prohibit all disposals of land and resources before regional plans are completed. Under a broad interpretation of the decision, DNR could be precluded from granting rights of way, selling gravel, leasing commercial property or holding oil and gas lease sales. The validity of classifications and disposals made before the court's decision may also be questioned.

The scope of the court's ruling has already been the subject of question and controversy. For example, in an October 2, 1986, letter commenting on the proposed five year oil and gas leasing program, Trustees for Alaska questioned the effect of Alaska Survival on the oil and gas leasing system. A copy of this letter is attached. As the letter points out, many of DNR's proposed oil and gas lease sales are in areas with no regional land use plans. Significantly, no regional planning process has been initiated for the North Slope. The lack of a regional land plan has also been raised in litigation, now dismissed, challenging the validity of an agreement to settle Anchorage's municipal entitlement. Pending litigation challenges the mandatory renewal of an offshore mining lease, initially issued in 1964, because no regional plan or classification covers the leased submerged land.

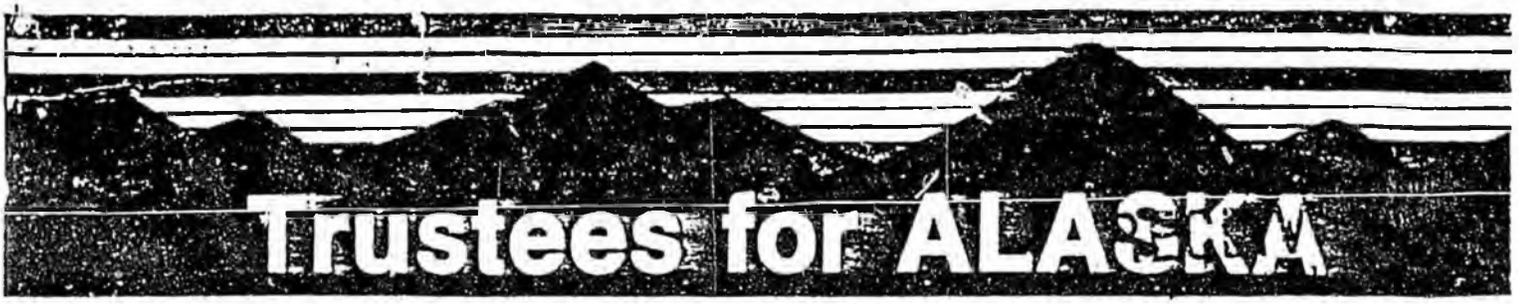
It appears likely that the scope of the Alaska Survival decision will continue to be the subject of controversy and litigation in the absence of legislation amending AS 38.04.065. DNR's efforts to effectively manage and develop state land and resources may therefore be substantially hindered. Legislation which clarifies DNR's land planning responsibilities will resolve these issues without litigation. An immediate effective date would insure that previous disposals and disposals occurring within the first ninety days after enactment will be free from the risks and costs of litigation.

Yours sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: M. Francis Neville
M. Francis Neville
Assistant Attorney General

MFN/jmo
Encl:



October 2, 1986

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

re: Proposed Five-Year Oil and Gas Leasing Program

Dear Mr. Eason:

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

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

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

725 Christensen Drive, Suite 4 Anchorage, Alaska 99501 (907) 276-4244

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

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

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

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

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

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

Very Truly yours,

Bob Adler

Bob Adler
Executive Director

MAY - 4 1987

DT: APRIL 27, 1987

TO: MEMBERS OF THE STATE HOUSE RESOURCES COMMITTEE

FR: JIM SYKES, 309 GAYLENE CIRCLE, ANCHORAGE 99504

RE: HB289
"What kind of process can be created that will protect the public and give DNR the ability to classify lands without a regional plan?"

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

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

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

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

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

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

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

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

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

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

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

James L. Sykes
Bunbury Sub-Committee
Chase Community Council

4
HB289

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR
P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

1180
SB 196

February 19, 1987

M E M O R A N D U M

TO: Honorable Steve Cowper
Governor

FROM: for Grace Berg Schaible
Attorney General

RE: Attached bill on land use planning and classification
Our file: 773-87-0104

Attached is a bill to amend the land use planning requirements of AS 38.04.065 for state land. It was recommended by the Department of Natural Resources (DNR) to allow land classifications for disposal or other resource management purposes to be made before comprehensive regional land use plans are completed. The request was approved by Mike Bradner January 12, 1987.

According to Tom Hawkins, director of DNR's division of land and water management, the department considers this bill essential to its land management responsibilities.

In connection with constituent inquiries, Senators Faiks and Coghill have asked for copies of this bill, which we are furnishing them today.

Before the Supreme Court's recent decision in Alaska Survival v. State, 723 P.2d 1281 (August 29, 1986), the Department of Natural Resources, in accordance with its regulations, routinely classified land on the basis of site-specific land use plans if the land was located in an area of the state which was not included in a comprehensive regional land use plan. The court held that this procedure violated AS 38.04.065 and that the legislature intended that comprehensive regional planning precede the classification of land for disposal or other purposes.

Because regional land use planning is a time-consuming and expensive process, comprehensive regional plans have not yet been completed for most state land. The department's ability to make land and resource management decisions in many areas of the state, including the Kenai Peninsula and the North Slope, is therefore severely restricted.

CJ — 033LH

... state land, its resources, and other values.

The attached bill amends AS 38.04.065 to allow the department to classify land on the basis of site-specific land use plans until the regional planning process is completed. The bill also validates classification orders and the management and disposal decisions based on them which were made between the 1978 enactment of the statute and the date of the court's decision.

A draft transmittal letter to the legislature, explaining the bill in more detail, is also attached.

GBS:MFN:amh

cc w/enc.: Hon. Judy Brady, Commissioner
Dept. of Natural Resources

Hon. Jan Faiks
Alaska State Senate

Hon. Jack Coghill
Alaska State Senate

[illegible] of the state land, its resources, and other values;

D R A F T

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to land use planning for and classification of state land. This bill amends AS 38.04.065 to allow the Department of Natural Resources (DNR) to classify state land for disposal or other resource management purposes on the basis of site-specific land use plans. The bill also would resolve certain questions concerning the validity of previous land classification and disposal decisions which may be raised as a result of the supreme court ruling in Alaska Survival v. State, 723 P.2d 1281 (August 29, 1986).

The Alaska Survival decision involved a challenge to the proposed Chase III agricultural homestead disposal near Talkeetna. Classification of a portion of the Chase III land and the decision to make Chase III land available for homesteading preceded the adoption of the Susitna Area Plan, a comprehensive regional land use plan adopted by DNR in April 1985. The court ruled in favor of local residents who challenged the homestead offering, stating:

> 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.

Alaska Survival v. State, 723 P.2d at 1289. The court invalidated a DNR regulation that allowed classifications to be made on the basis of site-specific land use plans.

The court's ruling has created uncertainty with respect to the ability of DNR to manage and develop the resources on a significant amount of state land. Only 36 million acres, or approximately 44 percent of the land patented or tentatively approved for patent to the state is now covered by regional land use plans. Regional planning, although necessary, is expensive and time consuming. DNR has informed me that each of the four regional plans now in progress will require between two and three years to complete and will cost between $300,000 and $400,000.

The Department of Law has advised me that there are unresolved questions concerning the scope of the supreme court's ruling. The decision can be construed narrowly as having only prospective effect and as prohibiting new classification actions, but not necessarily disposals, before regional plans are complete. There is a risk, however, that the decision will be interpreted by the courts to prohibit all disposals of land and resources before regional plans are adopted. Under such a broad interpretation, DNR might be precluded from granting rights of way, selling timber, or

issuing oil and gas or other leases. Questions might also be raised about the validity of classifications and disposals that occurred before the court's decision.

This bill would permit DNR to actively manage state land and resources until regional plans are adopted by authorizing DNR to classify land for disposal or other purposes. The bill would require that a site-specific land use plan be adopted as the basis for any classification made before the adoption of a regional plan.

In addition, the bill would clarify the status of those existing classification orders issued by DNR before the date of the supreme court's decision. Classifications based on site-specific land use plans would be effective until DNR acts to reclassify the land. Past land disposal decisions and other management decisions based on the classification orders would be validated.

This bill would ensure that DNR has the authority to manage all state land and develop its resources based on sound planning, but without the delay that completing the regional planning process would necessitate. The bill would also eliminate the likelihood of additional litigation to determine the scope of the Alaska Survival decision. I urge your

prompt and favorable action on this measure.

Sincerely,

Steve Cowper
Governor

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to land use planning and classification; and providing for an effective date."

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

* Section 1. AS 38.04.065 is amended to read:

Sec. 38.04.065. LAND USE PLANNING AND CLASSIFICATION. (a) The commissioner shall, with local governmental and public involvement in accordance with AS 38.05.945, develop, maintain, and, when appropriate, revise land use plans that [WHICH] provide[, BY REGIONS OR AREAS,] for the use of the state-owned land.

(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) The [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 must [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 that [WHICH] must be retained in state ownership and planned and classified for various uses and purposes in accordance with AS 38.04.015.

(d) The commissioner shall sign and date official [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]. The commissioner may adopt as a regional plan a comprehensive plan adopted by a local government having planning and zoning powers, if the commissioner finds that the plan adequately recognizes and protects state interests. After adoption of an official regional [OR AREA] plan, land classifications must [SHALL] be made in accordance with it. Before adoption of an official regional plan, land classifications for disposal or for any other purposes may be made on the basis of site-specific land use plans [THESE OFFICIAL PLANS].

(e) Land must [SHALL] be classified as provided in AS 38.05.300.

(f) Decisions [DECISION] about the location of easements and rights-of-way, other than for minor access, must [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 must [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.

* Sec. 2. Land that was, before August 29, 1986, classified for disposal or other purposes on the basis of a site-specific land use plan remains subject to the classification order in effect on that date unless the land is reclassified in accordance with AS 38.04.065, as amended by sec. 1 of this Act, and AS 38.05.300.

* Sec. 3. Land management and disposal decisions made before the effective date of this Act under classification orders based on site-specific land use plans are declared valid, notwithstanding the fact that they preceded the adoption of regional land use plans, if other requirements of law were met.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

WILDLIFE FEDERATION OF ALASKA
The Alaska Affiliate of the National Wildlife Federation

April 30, 1987

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

RE: HB 289: Proposed Area Planning Requirement Repeal

Dear Representatives Cotten 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 Chase 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 Chase 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.

P.O. Box 103782 • Anchorage, Alaska 99510
(907) 278-3420

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. <u>The Present Planning Status.</u> 33 million acres of state land have been Patented or Tentatively Approved. In less than a year area plans should be in place for approximately 60.7 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. <u>Needed Plans.</u> A number of the problems created by the decision 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. <u>Necessary Exceptions to Area Planning Requirement.</u> 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 <u>unplanned</u> 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 exempted from the area planning requirement. Routine rights-of-way, most gravel sales, most additions, and perhaps most timber sales undertaken for the purpose of disease control, are examples of activities that could be exempted.

Examples of activities that we believe do need 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. [illegible] the subdivisions [illegible] appropriate, including the provision in HB 139 which would still require land 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 interested 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. 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 [illegible] statewide interests, or for review and comment by area interests. The Division of Land and Water Management's open public participation process is effective at the state, at any government level, and [illegible] indeed be a serious loss. Regardless of whether we disagree with the final decision of the plan.

We believe that this issue is of great importance to Alaskans than most legislative issues at this [illegible]. Relatively few people are aware of the proposed [illegible] requirement is being proposed for [illegible] and [illegible] been virtually no opportunities for the public to communicate directly with their legislators. We note that the House Resources Committee will take the [illegible] matter very carefully, and will be trying to craft a more fine-tuned piece of legislation than is presented now. Only it will both meet DNR's concerns and protect the general public long-term interest in the most natural assets, its public lands.

Sincerely,

Ann Rothe by dgh

Ann Rothe, President
Wildlife Federation of Alaska

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

TO: Resources Committee members
FROM: Rep. Sam Cotten
SUBJECT: HB 289, land management
DATE: May 5, 1987

I am attaching a copy of the proposed committee substitute on HB 289, as drafted by the subcommittee and staff. All changes from the original bill are marked. Additions are underlined; deletions are signalled by a pound sign (#).

I have requested an opinion from the Attorney General outlining the potential liability of the state if the legislation does not pass, and the need for the legislation to allow land management in unplanned areas. This opinion should be available soon.

The most significant changes in the bill as amended by the subcommittee are these:

1. An effective date is added. This is important to allow land management decisions and actions this summer, rather than 90 days after the Governor's signature on the bill. The Camden Bay lease sale this summer is an example of an action that could be subject to delay or question if the bill is not immediately effective. (page 1, lines 6-7)

2. The regional planning requirement is restored to its prominent position at the beginning of AS 38.05.065. The bill allows site-specific land planning and the adoption of other plans as exceptions. (1/13)

3. Site-specific land plans are subject to the same considerations and process as regional plans. (1/17-18)

4. After public hearings and circulation of a draft decision for public review, the commissioner may adopt land management plans developed by another agency. (2/23-24)

5. Commercial agriculture projects may not occur without area planning. (The Environmental Lobby has

proposed two additional exemptions from this site-specific planning provision: major timber sales and extensions of the state highway system.) (3/15-16)

6. Oil and gas lease sales are exempted from the area planning requirement as long as the commissioner complies with the existing five-year sale process, which includes numerous public review and hearing opportunities and a best-interest finding. (3/18-20)

7. The preference right for occupants of state housing is revised to allow the sale of land to "the holder of rights created by another state agency." (3/26)

8. Areas "contiguous and adjacent" to areas already covered under an existing best interest finding for an oil and gas lease sale are no longer allowed to be offered under the existing best-interest finding. Additionally, the commissioner should evaluate new information before deciding to rely on an old best interest finding for an exempt oil and gas lease sale. Although the staff was asked to prepare this amendment in less than 15 words, the draft shows 19 words for the amendment. (5/2-4)

9. Sections 15 and 16 of the bill (p.7) have been amended to validate all classifications, not those preceded by a site-specific plan. This will allow to stand land classifications affecting at least forty million acres of state land classified for "resource management."

10. Minerals management decisions made before the effective date are validated. (7/18-20)

11. The bill does not affect the Chase III land disposal decision, remanded by the courts to DNR for reconsideration. (7/21-22)

12. The bill is immediately effective. (7/24)

Please let me know if you need more information on this bill. <u>It is my intention to have another meeting on the bill at 5:00 p.m., May 6, so that the bill can be prepared for final committee action this week.</u>

attachment

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

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

APR [illegible] 1987

April 27, 1987

The Honorable Virginia M. Collins
Alaska State House
P.O. Box V
Juneau, AK 99811

Dear Representative Collins:

A copy of HB 289 and the Department's comments on it are enclosed for your review. I urge your support of this legislation which would allow the sale of land to Mr. Hageman in the Hope area. Additionally, this bill would resolve the conflict between AS 38.04.065 and AS 38.05.300 which has brought a halt to so many land actions.

Sincerely,

Judith M Brady

Judith M. Brady
Commissioner

Enclosure

cc: Rod Swope, Governor's Office
George Sullivan, Governor's Office

10-J9LH

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: All House members
FROM: Rep. Sam Cotten
SUBJECT: SB 196, management of state land
DATE: May 14, 1987

This bill contains language on several land management issues. Largely the bill is intended to amend the state's land planning statutes to allow land use and management in areas where regional planning has not yet been completed.

Planning for state lands

In a ruling last August, the Supreme Court found that DNR had acted illegally by classifying land without first completing an area plan -- a violation of AS 38.04.065. CSSB 196 (Rls) will allow the Department of Natural Resources to manage state lands not yet included in an adopted area plan and will validate classifications on tens of millions of acres of state land classified without area plans.

The bill is deemed necessary by DNR, the Attorney General, and many Alaskans whose land actions have been suspended in reaction to the Court decision.

The bill continues the requirement for regional planning but allows most actions (except for programmatic land disposal and new agricultural projects) to proceed on the basis of a site-specific plan. It also permits the commissioner to adopt a plan prepared by another governmental entity, if the commissioner assures that the state's interests are protected and public hearings are held.

Other parts of the bill

Besides amending the planning statutes in response to the Supreme Court decision, the bill includes other amendments to Title 38 which:

- redefine "short-term lease" to conform to a 1985 amendment of the leasing statute (38.05.070(b)) [Sec.8];

- establish a new preference right provision for certain lands held by other agencies and committed to third parties [Sec. 9];

- allow the re-use of a best-interest finding less than three years old for oil and gas lease sales, except where new information has come to light [Sec. 10];

- provide for some public/charitable conveyances to municipalities without reverter clauses for the state [Sec. 11];

- conform the definition of a veteran under 38.05.940 [Sec. 12];

- allow the exchange of homestead permits among permits holders within the same area [Sec. 13]; and

- revise survey, clearing, and brushing requirements for homesteads to be more practical [Secs. 14, 15, and 20].

Attached are pertinent AG's opinions, a copy of the Alaska Survival decision prompting legislative action, and a definition of "cropland" supplied by DNR.

Please contact me if you have questions. I hope that you will be able to support this important bill.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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May 6, 1987

The Honorable Sam Cotten
Co-Chairman
House Resources Committee
P. O. Box V
Juneau, Ak 99811

Dear Representative Cotten:

This letter responds to your request for an opinion concerning the potential implications of Alaska Survival v. State, 723 P.2d 1281 (Alaska 1986), in the absence of legislation amending AS 38.04.065.

Before the Alaska Survival decision, the Department of Natural Resources (DNR), in accordance with its regulations, routinely classified land on the basis of site-specific land use plans if the land was located in an area of the state which was not yet included in a comprehensive regional land use plan. The court held that this procedure violated AS 38.04.065, stating:

> 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.

Alaska Survival v. State, 723 P.2d at 1289.

The court's ruling has created considerable uncertainty with respect to the authority of DNR to manage and develop state land and resources because less than half of the land owned by the state is now covered by regional land use plans. In addition, there are a number of unresolved questions concerning the scope of the supreme court's ruling.

DNR, with the advice of this office, has interpreted the Alaska Survival decision narrowly as having only prospective effect and as prohibiting only new classification actions, but not necessarily disposals, before regional plans are complete.

There is a significant risk, however, that the decision will be construed by the courts to prohibit all disposals of land and resources before regional plans are completed. Under a broad interpretation of the decision, DNR could be precluded from granting rights of way, selling gravel, leasing commercial property or holding oil and gas lease sales. The validity of classifications and disposals made before the court's decision may also be questioned.

The scope of the court's ruling has already been the subject of question and controversy. For example, in an October 2, 1986, letter commenting on the proposed five year oil and gas leasing program, Trustees for Alaska questioned the effect of Alaska Survival on the oil and gas leasing system. A copy of this letter is attached. As the letter points out, many of DNR's proposed oil and gas lease sales are in areas with no regional land use plans. Significantly, no regional planning process has been initiated for the North Slope. The lack of a regional land plan has also been raised in litigation, now dismissed, challenging the validity of an agreement to settle Anchorage's municipal entitlement. Pending litigation challenges the mandatory renewal of an offshore mining lease, initially issued in 1964, because no regional plan or classification covers the leased submerged land.

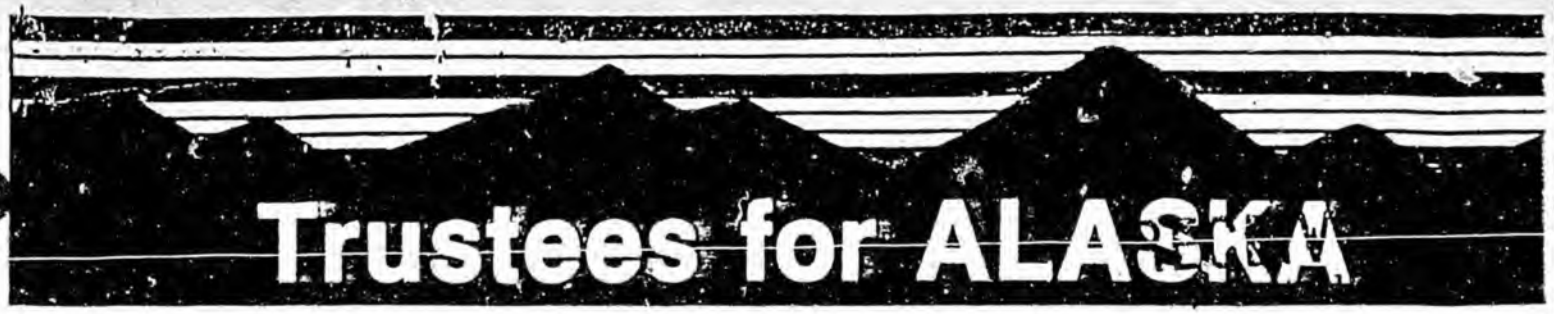
It appears likely that the scope of the Alaska Survival decision will continue to be the subject of controversy and litigation in the absence of legislation amending AS 38.04.065. DNR's efforts to effectively manage and develop state land and resources may therefore be substantially hindered. Legislation which clarifies DNR's land planning responsibilities will resolve these issues without litigation. An immediate effective date would insure that previous disposals and disposals occurring within the first ninety days after enactment will be free from the risks and costs of litigation.

Yours sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: M. Francis Neville
M. Francis Neville
Assistant Attorney General

MFN/jmo
Encl:



October 2, 1986

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Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

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DIVISION OF OIL & GAS
ANCHORAGE, ALASKA

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

re: Proposed Five-Year Oil and Gas Leasing Program

Dear Mr. Eason:

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

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

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

725 Christensen Drive, Suite 4 Anchorage, Alaska 99501 (907) 276-4244

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

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

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

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

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

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

Very Truly yours,

Bob Adler

Bob Adler
Executive Director

Sectional by DNR
* = planning-related section

HB 289 (SB 196) was introduced by the House 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 illegally by issuing a land classification before completing an area plan for the affected area.

The Supreme Court decision may have important ramifications for economic uses of state land in areas of the state where area plans have not been completed. To allow the situation to continue without repair will jeopardize past and future land management decisions, including many that are important for local and statewide economic development (rights-of-ways, 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 bills purpose is to reconcile a conflict between two existing statutes (AS 38.04.065 and AS 38.05.300) and allow sensible land management during tne interim period while regionwide plans are being prepared for all state lands. The Department has given high priority to the area plan process and continues to do so. However, at this time, over 30 million acres of state land are not even on the 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. The Department has provided assurance that the bill will not affect that reconsideration.

The bill also addresses a number of other land management issues requested by committee members and resource groups on state land management in general.

* Sec. 1: The section amends existing law to require plans be adopted instead of developed by the Commissioner.

* Sec. 2: This section removed the word "region" in existing law, to remove any implied or inferred distinction between an "area" and a "regional" plan. It also gives priority to the consideration of renewable and non-renewable resource development.

* Sec. 3: Same improvements as Sec. 2.

* Sec. 4: This new language allows the department to use plans adopted by other governmental entities and local governments as a basis for classification actions when the Commissioner, after public and agency review, determines those plans are in the best interest of the state. This is a dollars and sense provision that lets us take advantage of other plans when we haven't done our own.

Sec. 5: Technical change.

Sec. 6: The changes are intended to reinforce the required consistency of state plans with municipal plans.

Sec. 7: The section makes clear that a regional plan must be adopted before the department may proceed with a programmatic land disposal (homesite, homestead, lottery) or a new commercial ag project. It also makes clear that oil and gas lease sales are subject to the 5-year planning and sale process in existing law.

Sec. 8: This technical amendment brings the definition of short term lease current with changes adopted in AS 38.05.060(b) in 1984.

Sec. 9: This amendment allows the department to sell land at fair market value to folks who acquired improvements on the land from another state agency when that land is excess to existing state programs.

Sec. 10: This section amends existing law on best interest findings, required prior to disposal of state interests, to allow the Commissioner to reoffer oil and gas interests within 3 years after a prior best interest finding. 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.

Sec. 11: This amendment makes clear that the department shall retain a reversionary interest in land which it conveys at less than fair market value to a local government or charitable institution. It further requires a written best interest finding and public notice if the reversionary interest retention is not in the best interest of the state and should be waived.

Sec. 12: This amendment conforms the definition of veteran in this section to that which is the standard in all other definitions of veteran for the purpose of land discounts.

Sec. 13: This amendment allows homesteaders to trade entry permits upon the commissioners approval. It allows family members and friends to receive adjacent parcels when everyone is willing.

Sec. 14: This amendment give a little breathing room to homesteaders who currently have only 2 years to survey their parcels. Funding cuts to the department have slowed the issuance of survey instructions. It also clarifies the clearing requirements made necessary by massive soil reclassifications by SCS.

Sec. 15: This section deletes the lot line brushing requirements for a homesteader when a parcel is described by aliquot parts. It also conforms the soil classification language improved in Sec. 14.

* Sec. 16: This section validates land classifications made prior to the supreme court decision in Alaska Survival pending the completion of plans.

* Sec. 17: This section validates land management and disposal decisions made by the commissioner on the basis of AS 38.05.300 (site specific plans) prior to the effective date of this bill, whether or not area plans underlay the classification orders leading to disposal.

* Sec. 18: This section makes clear that mineral management decisions made pursuant to existing law before this Act are valid whether or not the land was classified.

* Sec. 19: This section reinforces the decision of the Supreme Court that DNR must reconsider its Chase decision.

Sec. 20: This section repeals the provision which allowed up to 3-year extensions of homestead surveys on a case-by-case basis and complements the section that was amended in Sec. 15.

Sec. 21: Provides for an effective date.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

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

May 14, 1987

The Honorable Sam Cotten
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Cotten:

I anticipate that this Department will, in the near future, implement a regulation defining the term "cropland soils."

Tentatively, we are considering the definition set out below:

> CROPLAND SOILS on lands that are classified as agricultural are soils that can be developed by conventional means for production of one or more of the following: improved pasture, hay, grains, vegetables, or horticultural crops. These may include soil of capability Class II-VI according to the USDA, Soil Conservation Service soil surveys.

Sincerely,

Dennie Gorsuch

for Judith M. Brady
Commissioner

cc: Mark Weaver

10-J9LH

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, distractable, 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 ⇐142⅔

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 considered 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 ⇐142⅔

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 resources, 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 ⇐142⅔

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 ⇐142⅔

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 ⇐142¼

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

10. Public Lands ⇐142¼

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 ⇐142¼

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 ⇐142¼

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, emphasized 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

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.

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 proceed 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 Esther C. Wunnicke, 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)(14). That section was repealed in 1984 and substantially the same language placed in AS 38.05.035(e). *See* ch. 152, §§ 20, 88, SLA 1984.

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, 108 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. LeResche*, 581 P.2d 1112, 1115 (Alaska 1978) (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 groundbreaking. *See* 11 AAC 67.155.

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. 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).[6] 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

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

suitable only for grazing and, in some cases, growing hay.

This new information obviously was significant: a special meeting of division directors 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, particularly 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.

[4, 5] There is no explicit statutory requirement for an amended finding and/or additional public comment upon the discovery 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 agency has "taken a '*hard look*' at the salient problems" and has "genuinely engaged in reasoned decision making." *Id.* at 549 (quoting Leventhal, *Environmental Decision Making and the Role of the Courts*, 122 U.Pa.L.Rev. 509, 511) (emphasis in original). We have recognized that complete 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 decision 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 information, but that a supplemental environmental impact statement (EIS) is not always required when new information becomes available. *Warm Springs Dam Task Force v. Gribble*, 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 without 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 consider whether to proceed with the disposal. The director of the Division of Lands prepared a Decision Memorandum which analyzed 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 agricultural uses." The memorandum recommended 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 assistant to the Commissioner concurred. Following the lottery, DNR informed the winners of the new soils data.

[7] Given these facts, we are not prepared 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 considered the new soils information, then decided 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 758–59. 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*

[8] 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 8, 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 Susitna 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 1,257 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 38.05.945, 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. 85, § 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*, 684 P.2d 103, 107 (Alaska 1984).

8. The state asserts that the 1984 classification order affected only 280 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.

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 adopted a site-specific "land planning report" covering the 1,287 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-

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 15.8 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 3,530-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. 181, § 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 ag [agricultural] homestead area, the project is halted entirely."

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 ratified 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 cultivable 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 land 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.

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)(8); *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]

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 35,000 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. 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 Ballard v. Stich*, 628 P.2d 918, 920 (Alaska 1981).

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. *Hunsicker v. Thompson*, 717 P.2d 353, 359 (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 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*, 568 P.2d at 989–91, 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-

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.

14. *See, e.g., Kenai Lumber Co. v. LeResche*, 646 P.2d 215, 223 (Alaska 1982) (competing lumber company seeking commercially valuable timber denied public interest status); *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92, 104 (Alaska 1974) (denial of public interest status proper where large sums at stake).

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

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 ⇐66(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.

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.
>
> ....
>
> 3.1.6 Provide site supervision for construction, material receiving, material control, and the general efficient control of the work.
>
> ....
>
> 3.1.8 Obtain subcontractors for specialty work.

The contract specifically stated that the contractor would not be responsible for "[t]he materials incorporated in the work,

AS 38.05.020(b) is amended by adding the following subsection:

(8) Limit the numbers, uses, or types of watercraft that may be allowed on public and navigable water, after notice of the proposed limitation in the area where the water is located. Prior to imposing any such limitation the commissioner shall adopt regulations under the Administrative Procedure Act (AS 44.62).

DELIVER TO: Frank Mielke LOCATION
FROM: Swanson LOCATION
TELEPHONE/TELECOPIER # TOTAL NUMBER OF PAGES 1
TRANSMITTING ON/SPEED DATE TIME
PHONE FOR PROBLEMS-NAME/NUMBER
COMMENTS

AS 38.05.065(a) is amended as follows:

(a)The contract of sale for land sold at public auction under AS 38.05.055 shall require the remainder of the purchase price to be paid in monthly, quarterly or annual installments over a period of 20 years, with interest at the [prevailing] rate for non-subsidized mortgage loans by the Alaska Housing Finance Corporation [real estate mortgage loans made by the federal land bank for the farm credit district for Alaska] at the time the contract is signed. Installment payments plus interest shall be set on the level-payment basis.

AS 38.05.065(b) is amended as follows:

(b)The contract of sale for land sold under AS 38.05.057 and under AS 38.05.078 shall require the remainder of the purchase price to be paid in monthly, quarterly, or annual installments over a period of not more then 20 years. Installment payments plus interest shall be set on the level-payment basis. The interest rate to be charged on installment payments is the [prevailing] rate for non-subsidized mortgage loans by the Alaska Housing Finance Corporation [real estate mortgage loans made by the federal land bank for the farm credit district for Alaska] at the time the contract is signed. Installment payments plys interest shall be set on the level-payment basis.

AS 38.05.065 is amended by adding the following subsection:

(h)Purchasers holding land sale contracts issued before the effective date of this subsection shall have the option to refinance their contracts to have the remaining balance financed at the interest rate provided for in subsections (a) and (b) herein, upon payment of a refianncing fee of $250.

~~DAR~~
~~Bradley~~.

~~HB 289~~

~~Sam~~ ?

Henry Springer
4/17

At the end of AS 38.05.810 add the following:

A conveyance under this section to a municipality that did not receive, and is not eligible to receive a land entitlement under AS 29.65 shall not be subject to a reversionary interest on behalf of the state, unless the municipality agrees to the reservation of such an interest.

Reasoning: Municipal entitlements under AS 29.65 are not subject to a reversionary interest to guarantee continued public use; therefore a city that did not and will not get an entitlement should get conveyances similarly unrestricted.

Additionally, grants made under AS 38.05.810 to a municipality that are charged against the entitlement are not subject to a reversionary interest.

Unalakleet
State got airport fr. feds -
City landlocked by airport -
14(c)(3) -
CIRI · ANCSA def'y w/drwl -

6.15

Bruce Baker

Section 9 - Reword AS 38.05.035(e)(7) as follows: 4/27

"(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.

CHH
4/15

1. Area planning before making important land use decisions, especially irrevocable ones, generally extremely sensible
   a. most comprehensive inventory and analyses
   b. economic and political pressures less immediate
   c. greatest amount of public participation
2. Chase decision might have created some serious problems
3. What Chase decision didn't do
   a. create problems where plans are already complete - 39 million acres; or where plans will be completed by Fed '85 - 27.5 million acres. Total: 66.5 million acres. Most areas of greatest pressure (around Anch/Wasilla/Palmer, & Fairbanks) already planned for.
   b. create problems for programatic land disposal. Lots of areas planned for; areas not planned for generally remote and controversial; disposal program in recent years has gotten out large amounts of acreage; little or no funding expected for FY88 land disposal, & for foreseeable future; disposal not a necessary program. So disposal at least [redacted] can be exempted from area planning requirement repeal.
4. What Chase decision did
   a. Request DNR to supply a list of activities that it needs to pursue in unplanned areas, and evaluate activities for exception from area planning requirement
   b. Are any of these activities ones that the Dept of Interior (and see DNR's DO 124) believes are not affected by Chase decision anyway?
   c. Write a bill that exempts from the area

planning requirement activities that DNR has demonstrated are important, are affected by Chase decision need to take place in unplanned areas, and can't await the completion of an area plan

5. Retroactivity issue probably largely a red herring. Very little indication that retroactivity will be pursued, or that Chase decision is retroactive

6. Adoption by commission of local plans for state lands not acceptable. local govt interest not likely to coincide with state interest, and no opportunity for public participation by other than local interests - formulation of plan.

Francis

HOUSE COMMITTEE REPORT

(9)

Date referred: 5/14/87

FURTHER REFERRALS:

DATE: ____________________

The Resources Committee has considered CSSB 196(Rls)

"An Act relating to management of state land; and providing for an effective date."

RECOMMENDS:

[ ] replace with ______________________________ [ ] the same title

[ ] a new title

[ ] attached amendment(s)

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the ____________________ Committee

ADOPTS: [ ] __________ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published ____________________

[ ] same as previous zero fiscal note published ______________

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Adelheid Herrmann No Rec.

Chairman's signature

Offered: 5/13/87

5-0841N

Original sponsors: Coghill, Faiks and Fahrenkamp

IN THE SENATE BY THE RULES COMMITTEE

CS FOR SENATE BILL NO. 196 (Rules)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

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

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

(b) In the adoption [DEVELOPMENT] and revision of regional and site-specific 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, renewable and nonrenewable resource development, 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.

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

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

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

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

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

(d) The commissioner [may] adopt as a land use plan a comprehensive plan adopted by a municipality of the state having planning and zoning powers or a land management plan adopted by another governmental entity if the commissioner determines that the plan adequately recognizes and protects state interests. A decision to adopt the plan must be preceded by public hearings in affected and interested communities and by a draft decision, available for public review, that describes the state's interests and how the state will implement the

plan.

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

(f) Each decision [DECISIONS] 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].

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

(g) Each land use plan [LAND USE PLANS] adopted by the commissioner under this section shall be consistent with municipal [LOCAL GOVERNMENTAL] land use plans to the maximum extent determined consistent with the state interests and the purposes of this chapter.

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

(h) Before the commissioner adopts a regional land use plan, a land classification may be made on the basis of a site-specific land use plan, except a classification for a land disposal under AS 38.05.057, AS 38.08, AS 38.09, or a new commercial agriculture project under AS 38.05.020(b)(6). After adoption of a regional land use plan, land classifications shall be made under the plan.

(i) An oil and gas lease sale is not subject to this section. Oil and gas lease sales are subject to the planning process established under AS 38.05.180.

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

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

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

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

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

(e) Upon a written finding that the interests of the state will be best served, the director may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available land, resources, property or interests in them, and, in addition to the conditions and limitations imposed by law, may impose additional conditions or limitations in the contracts as the director determines, with the consent of the commissioner, will best serve the interests of the state. A contract for the sale, lease, or other disposal of available land or an interest in land is not legally binding on the state until the commissioner approves the contract but if the appraised value is not greater than $50,000 in the case of the sale of land or an interest in land, or $5,000 in the case of the annual rental of land or interest in land, the director may execute the contract without the approval of the commissioner. Before a public hearing, if held, or in any case no less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them, the director shall make available to the public a written finding that sets out the facts and applicable law upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based. A written finding is not required before the approval of

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

(2) a lease of land for a shore fishery site under AS 38.05.082;

(3) a permit or other authorization revocable by the commissioner;

(4) a mineral claim located under AS 38.05.195;

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

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

(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 the sale within the 36 months before the date of the sale unless the commissioner determines that new information has become available that justifies a revision of the best interest finding.

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

(g) The commissioner shall retain a reversionary interest on each sale or other disposal granted under (a) or (e) of this section. The commissioner may waive the reversionary interest on a written determination that the waiver is in the public interest.

* Sec. 12. AS 38.05.940(b) is amended to read:

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

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

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

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

(4) has received an honorable discharge or a general discharge under honorable conditions.

* Sec. 13. AS 38.09.030(c) is amended to read:

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

(1) by testate or intestate succession;

(2) to a spouse during marriage;

(3) by order of a court as part of a divorce settlement;

(4) to either a member of the immediate family or a grantee of the applicant in the case of an extreme emergency or illness which disables the applicant; or

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

* Sec. 14. AS 38.09.040(a) is amended to read:

(a) A homestead entry permit may be revoked by the commissioner for a [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 five [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 not described by aliquot parts or as a lot of record within 90 days after issuance of the homestead entry permit;

(5) failure to clear and either put into production or prepare for cultivation either 25 percent of the land classified for agricultural use or 50 percent of the (cropland soils,) whichever is less, within five years after the issuance of the permit.

* Sec. 15. AS 38.09.050(a) is amended to read:

(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 [TWO] 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 not described by aliquot parts or as a lot of record within 90 days after the issuance of the permit;

(5) clears and either puts into production or prepares for cultivation either 25 percent of the land classified for agricultural use or 50 percent of the cropland [LAND HAVING CLASS II OR III] soils, whichever is less, within five years after issuance of the permit.

* Sec. 16. Land that was classified for disposal or other purposes before August 29, 1986, remains subject to the classification order in effect on that date until the land is reclassified under AS 38.04.065, as amended in secs. 1 - 7 of this Act, and AS 38.05.300.

* Sec. 17. A land management and disposal decision, including a disposal under AS 38.05.057, AS 38.08, or AS 38.09, or a commercial agriculture project under AS 38.05.020(b)(6), made before the effective date of this Act under a classification order under AS 38.05.300 is valid, notwithstanding the adoption of the classification order before the adoption of the regional land use plan, if other requirements of law were met.

* Sec. 18. A minerals management or disposal decision made before the effective date of this Act is valid, whether or not the land was classified

if other requirements of law were met.

* Sec. 19. Nothing in this Act affects the Chase III Agricultural Homestead disposal decision of the Department of Natural Resources, remanded by the courts for reconsideration by the department.

* Sec. 20. AS 38.09.040(b) is repealed.

* Sec. 21. This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature
House

Official Business

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

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

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

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

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

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

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

Section 5 has not been amended.

Section 6 has not been amended.

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

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

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

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

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

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

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

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

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

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

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

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

Section 19 is the same as former sec.15.

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

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

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

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

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

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

SB/HB Sec. 5: identical.

SB/HB Sec. 6: identical.

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

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

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

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

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

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

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

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

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

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

HB Sec. 15: See SB Sec. 9.

HB Sec. 16: See SB Sec. 10.

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

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

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

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

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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

May 14, 1987

The Honorable Sam Cotten
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Cotten:

I anticipate that this Department will, in the near future, implement a regulation defining the term "cropland soils."

Tentatively, we are considering the definition set out below:

> CROPLAND SOILS on lands that are classified as agricultural are soils that can be developed by conventional means for production of one or more of the following: improved pasture, hay, grains, vegetables, or horticultural crops. These may include soil of capability Class II-VI according to the USDA, Soil Conservation Service soil surveys.

Sincerely,

Dennie Gorsuch

Judith M. Brady
Commissioner

cc: Mark Weaver

10-J9LH

Anchorage Daily News

Winner, 1976 Pulitzer Prize Gold Medal for Public Service

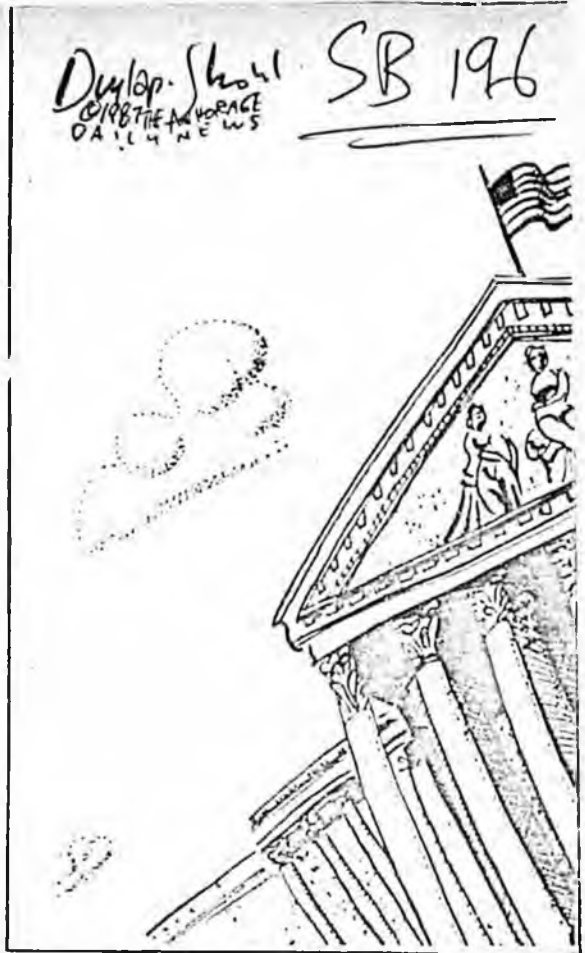
Gerald E. Grilly
Publisher

Howard Weaver
Managing Editor

Suzan Nightingale
Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971

Founded in 1946 by Norman C. Brown



Don't cut corners on state land sales

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

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

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

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

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

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

Public paying a

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

Whatever happened to the United States move toward energy independence?

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

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

Mr. Carter's drop in public

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STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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PHONE: (907) 452-1568

☐ *P.O. BOX K-STATE CAPITOL*
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

May 14, 1987

The Honorable Sam Cotten
Co-Chairman
House Resources Committee
P.O. Box V
Juneau, AK 99801

Dear Representative Cotten:

You have requested an opinion regarding the constitutionality of section 4 of CSSB 196 which would amend AS 38.04.065(d) to provide:

> The commissioner may adopt as a land use plan a comprehensive plan adopted by a municipality of the state having planning and zoning powers or a land management plan adopted by another governmental entity if the commissioner determines that the plan adequately recognizes and protects state interests. A decision to adopt the plan must be preceded by public hearings in affected and interested communities and by a draft decision, available for public review, that describes the state's interests and how the state will implement the plan.

It has been suggested that this provision could violate the Alaska Constitution, article VIII, section 2, by delegating the control over state resources to local or federal government officials.

The Alaska Constitution, article VIII, section 2, requires the "utilization, development, and conservation of all natural resources belonging to the state. . . for the maximum benefit of its people." A formal opinion of this office concerning local zoning authority over state oil and gas development concluded that a statute vesting in local officials the complete control over basic policies concerning state resources would probably be unconstitutional. 1980 Op. Att'y Gen. No. 11 (May 15), p. 11.

The provisions of section 4 of CSSB 196 would not vest complete control over state land use plans in municipal or other non-state governmental officials. Rather, the commissioner would be granted the discretion to adopt another governmental entity's plan

only upon an independent determination that the plan recognizes and protects the state's interests. In addition, the commissioner would be required to issue a draft decision describing the state's interests and how the plan would be implemented. Because the commissioner would not be required to adopt another entity's plan and would have to independently ascertain and protect the state's interests, there are adequate safegards in the bill to meet the requirements of the Alaska Constitution, article VIII, section 2.

Yours sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: M. Francis Neville
M. Francis Neville
Assistant Attorney General

Sam ⇒ Ned

March 5, 1987

might be best for the bill not to apply to land disposals at all - just partial disposals like oil + gas, sand + gravel, timber etc.

Vicky Gray Musgrave
PO Box 838
Girdwood, AK 99587

The Honorable Sam Cotten
House of Representatives
PO Box V
Juneau, AK 99811
(Mail Stop 3100)

Dear Mr. Cotten,

I encourage your introduction of a bill on land use planning and classification of state land. A draft of this bill, which would amend AS 38.04.065, was done for the Senate and should also be introduced in the House. It is endorsed by Governor Cowper.

This proposed bill should have a positive effect on the Chase III Agricultural Homestead land. I was a successful applicant for the Chase area. Because of court interpretation of AS 38.04.065 I was denied permit to this land, even after two years of litigation. If it can be amended, there will be no misinterpretation.

I will appreciate your prompt and favorable action on this bill. Please keep me informed on its progress.

Sincerely,

Vicky Gray Musgrave

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

From the desk of:
Alyce Hanley

NED

March 10, 1987

TO: Representative Sam Cotten

Attached is a letter and my response to one of my corstituents regarding a problem area with the Alaska Survival opinion issued by the courts. It appears that owner of 28 lots in the Hope Airport Recreation Group have not been able to purchas their lots. I believe this has been cleared up but there still maybe some problems. I thought maybe the attached letter should be included in the backup file of the draft legislation on this matter.

Alyce

Alyce

Alaska State Legislature
House of Representatives

4007 BRENTWOOD CIRCLE
ANCHORAGE, ALASKA 99502
(907) 243-7574

REPRESENTATIVE
ALYCE HANLEY
DISTRICT 9, SEAT B

WHILE IN JUNEAU
BOX V
JUNEAU, ALASKA 99811
(907) 465-4939

MEMBER
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
REGULATION REVIEW COMMITTEE

March 10, 1987

Jack Van Alstine
7141 Dawn Drive
Anchorage, Alaska 99502

Dear Jack:

Thank you for your correspondence concerning the problems you have encountered in trying to purchase and gain title to your lot in Hope, Alaska.

I can appreciate your distress at not knowing how the wheels of government work. It sounds as though the 28 lot Hope subdivision is the exception to the rule.

I did as you suggested and my office contacted Mr. Frank Mielke and he informed me that a departmental order had been signed by the commissioner that would allow sale of the lots. I have enclosed a copy of the memorandum signed by the previous Commissioner, Esther Wunnicke. It is my understanding that the lots would be classified with the Kenai area plan. Mr. Mielke also mentioned that draft legislation may be introduced in the legislature. My staff spoke with Representative Sam Cotten's, office about the draft legislation. His staff indicated that a draft had been prepared and may be introduced as early as next week. Representative Cotten is the Chairman of the Resources Committee.

It seems that Mr. Mielke knows the situation well and is knowledgeable with most of the facts of this particular situation. I will make your letter available to the Chairman of the Resources committee. I suggest that you stay in contact with the Chairman of House Resources Committee as well as Mr. Mielke.

Please do not hesitate to contact me again with your ideas or concerns. You can call my Juneau office at 465-4939 or write Box V, Juneau, Alaska 99811.

Cordially,

Alyce

Representative Alyce Hanley
District 9

Enclosure
AAH/sla

Date: January 2, 1987

TO: Representative Alyce Hanley
1024 West 6th Ave.
Anchorage, Alaska
99501

RE: Hope Airport Recreation Residence Group

Dear Representative Hanley:

During the past year, I have become involved in a situation that I understand can only be resolved by legislative action. I am appealing to you for your help with the problem. The following information will attempt to explain my predicament.

Presently, I hold a recreational use permit for one acre of land in the Hope area, identified by the state as A.D.L.#222414 . This lot is one of twenty eight, each approximately one acre in size, that once comprised a United State Forest Service recreational use subdivision.

About one year ago (10-30-85) the state acquired the subdivision from the federal government in a tract of approximately 800 acres.

At that time under the guidelines set forth in A.S.38.05.068 and 11 A.S.C.67.052 it became possible to purchase this lot. I want to be able to purchase my permit held land according to these statutes.

On August 29, 1986 the Supreme Court of the State of Alaska issued an

opinion pertaining to state land disposal, referred to as Alaska Survival vs. State of Alaska (File No. S-996, Opinion No. 3101 August 29, 1986). It maintains that unless land is covered by specific statutory exception it must be included in a comprehensive regional plan before it can be classified and then disposed (A.S. 38.04.065).

Of the approximately 800 acres, only the future of this twenty eight lot subdivision remains to be determined by the Department of Natural Resources. It is an area too small for a general plan. "Alaska Survival" also negates the authority of the Department of Natural Resources to classify lands on a site specific basis, particularly acreage this few in number, therefore halting a number of small parcel disposals throughout the state. This occurs when the legislature is seeking <u>new</u> revenue sources.

As I am unfamiliar with the legislative process, I can only suggest a couple of solutions: either exempt the subdivision from the need of a land use plan or possibly satisfy the requirement by including the subdivision in the area plan of the Kenai Borough.

If you need more information regarding the effects of "Alaska Survival" on the Department of Natural Resources, Frank Mielke, Special Projects Coordinator, Division of Land and Water Management, has offered his services (561-2020).

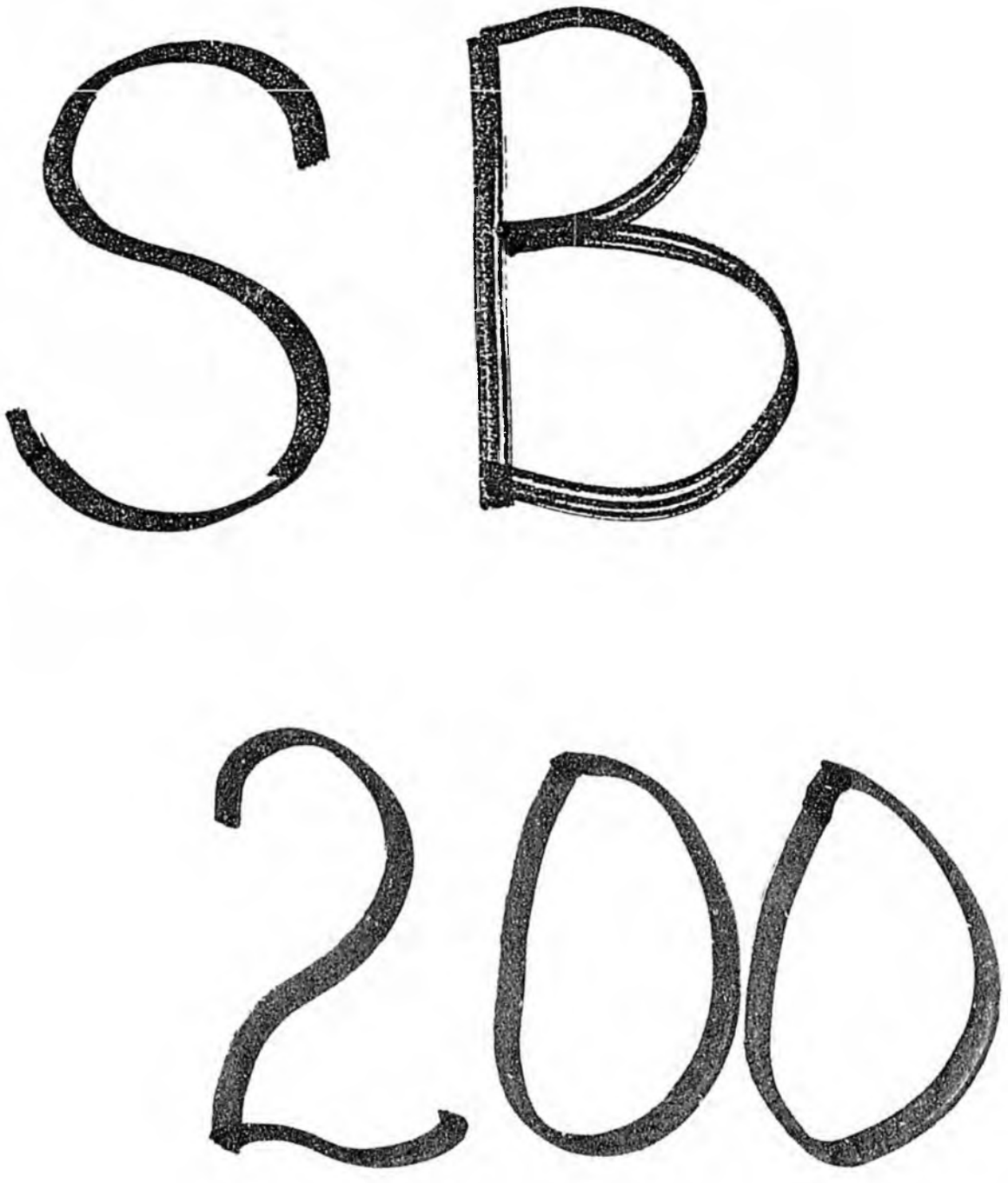
Again, I appeal to you as your constituent, for help in my pursuit

of the purchase of the land which I have held by permit and upon which I have constructed a cabin. Any aid in devising or enacting a solution to the problem will be greatly appreciated.

Thank you for your time and consideration. I am looking forward to your response. Good luck in Juneau in 1987.

Sincerely,

Jack Van Alstine
7141 Dawn Drive
Anchorage, Alaska
99502


SB
200

Alaska State Legislature

Senate Resources Committee

Box V
Juneau, Alaska 99811
(907) 465-4907

MEMORANDUM

TO: Senate Resource Committee Members

FROM: Senate Resource Committee Staff ERG

RE: CSSB 200; An Act Amending the mining loan fund law.

DATE: April 27, 1987

Several concerns were raised by the committee during the initial hearing on this measure April 16, 1987. In addition to a sectional clarification of this measure, you will also find further back up information attached.

Section 1. This additional language to the present law provides for the extensions or modifications to the 15 year term of loans granted under this chapter.

Section 2. This new section specifies the conditions under which an extention or modification under section 1 can be granted, and includes wording that gives the Department of Commerce and Economic Development flexibility in granting the extensions or modifications.

This measure is patterned after other existing loan programs. For example the Commercial Fishing Loan Act (AS 16.10.310. attached), allows that the department may "(4) establish amortization plans for repayment of loans, which may include extentions for poor fishing seasons or for adverse market conditions for Alaskan products;".

In the case of the Agricultural Revolving Loan Fund, a letter to Senator Fahrenkamp from Commissioner Brady indicates that an "aggressive and realistic debt restructuring" program is now being under taken by the DNR. The letter further states "[T]his proposal is designed to assist producing farmers with their dept problems on an equal basis throughout the state. The plan emphasizes a postponement rather than a forgiveness of ARLF debt obligations..."

CSSB 200 is in keeping with past legislative act ons regarding other state resource development loan programs.

As indicated by DCED fiscal note comments, any loans which have been referred to the Department of Law for legal action would not be effected by enactment of this legislation. This legislation would also only effect the state's portion of banks participation loans.

It is important to note that DCED's comments recognize that this legislation "gives the department flexibility in assisting borrowers with repayment modifications."

The major complain staff has received regarding state mining loans is that since receiving a mining loan under one set of mine operating regulations the state has changed the criteria under which the miner is forced to repay the loan, namely the operation of his mine.

There was concern expressed by the committee regarding just what a "poor mining season" was. This has not been defined so as to allow the department discretion in the review and granting of extentions or modifications.

Under AS 27.09.030 "a person who requests a loan under AS 27.09.010 shall prepare an operating plan which describes ..., the nature and location of advanced mineral exploration, development, or mining for which the loan is requested, the equipment and other resources available to the person to implement the operating plan, and the economic feasibility of the plan. The person requesting a loan shall submit an operating plan to the department." This section allows for the department to have the information necessary to determine whether the borrower's poor mining season was attributable to circumstance that could have been controlled by the borrower, or were a result, as in other loan programs, of circumstances beyond the borrowers control. An example would be acts of God, or lawsuits against government agencies, which indirectly effect the efficient operation of the mine operating plan under which the loan was granted.

Staff has personal knowledge that many miners are distressed with the states response to problems which are effecting their ability to operate within the law. Many more of them will be filing for protection under bankruptcy laws, if the legislature does not allow them the same opportunities granted other borrowers of state funds, the fiscal impacts of this will exceed DCED's fiscal note substantially.

Presently, the Mining Loan program delinquency rate of 38.3% on Balances Outstanding amounts to $4,705,690.00 of the total loaned. This compares with a 14% delinquency rate on Commercial Fishing loans amounting to $10,321,640.00 of the total loaned.

Given the present regulatory uncertainty which exists for the mining industry, those individuals whose plans of operation were approved by the state and state loans granted, may unnecessarily be removed from local economies, if CSSB 200 is not enacted now. DCED has a present

approval rate on new loans of zero (0). The last two loans in this program were approved in April of 1986. The applications for these two loans were made in 1985 prior to the state changing the water quality regulations.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version : SB 200
Publish Date : 3/19/87

Revision Date:
Title : An Act relating to moratorium on mining loans
Sponsor : Coghill, Fahrenkamp, Bennett & Faiks
Requestor :

Agency Affected : Comm. & Econ. Dev.
BRU : Business Loans
Components : Acct. & Collections

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						
CAPITAL						
REVENUE		[1,225.2]	[1,225.2]			

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached.

Prepared by : Martin J. Richard, Director Phone : 465- 2510
Division : Division of Investments Date : April 8, 1987

Approved by Commissioner : J. Anthony Smith, Commissioner Date : April 8, 1987
Agency : Department of Commerce & Economic Development

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

4025M

Over the two-year moratorium period the Mining Loan Fund would waive an estimated $2.45 million in interest. Collateral for the Mining Loan Fund includes, but is not limited to, buildings, equipment, machinery, claims, leasehold on claims and real estate. In addition to the $2.45 million waived in interest accrued, the Mining Loan Fund will experience a reduction in the value of the equipment securing the portfolio througn depreciation. Seriously delinquent borrowers wno are not operating their claims may not have cash flow to maintain/caretake/winterize their equipment causing early/ advanced deterioration. Also, in spite of the remote locations of the mining claims, there is the risk of the equipment being vandalized, stripped or disappearing. After the two-year moratorium period, the mining portfolio may be undercollateralized.

Assumptions:

1. There are currently 13 loans, $3.9 million, in litigation. These files have been referred to the Department of Law for legal action. All legal activity would continue upon enactment of the moratorium.

2. The moratorium would be enacted only on the state's portion of participating loans. The portfolio includes two bank participation loans with an outstanding balance of $916.4.

Recommendation: The division has mining loan extension packets available. All extension requests are evaluated on a case-by-case basis. Lenient procedures are in place for loan payment extension requests resulting from the injunction or court ordered shutdown of placer mines under BLM lawsuit (Sierra Club vs. Michael Penfold, Director Alaska State Office of Bureau of Land Management).

DG/me4023M
040887c

STATISTICS ON DCED LOAN PROGRAMS
(Thousands of Dollars)

February 28, 1987

	Veterans	Small Business	Commercial Fish	Tourism	Bulk Fuel	Child Care	Hist Dist	Mining	Alternative Energy	Resid. Energy	Fish Enhance	Power Dev.	Water Resource	Total
COMMITMENTS														
Total No. Loans Committed FY 72-87	7,718	1,338	3,156 [3]	59	233	62	12	71	2,944	2,232	134	5	5	17,969
Total Dollar Amount Committed FY 72-87	371,795.2	202,529.3	183,661.3 [3]	29,874.7	8,438.7	2,175.6	1,345.4	28,426.4	19,299.6	8,346.5	52,619.8	193,847.0	2,500.0	1,104,859.5
Total No. Loans Committed FY 87	-0-	-0-	106 [3]	-0-	16	3	1	-0-	10	2	10	1	-0-	149
Total Dollar Amount Committed FY 87	-0-	-0-	6,280.8 [3]	-0-	432.9	150.0	250.0	-0-	88.8	8.6	1,846.3	1,000.0	-0-	10,057.4
APPROPRIATIONS														
FY 84	-0-	-0-	9,091.0	-0-	-0-	659.5	500.0	-0-	2,400.0	3,123.4	6,500.0	N/A	-0-	22,483.9
FY 85	-0-	-0-	3,500.0	-0-	-0-	-0-	-0-	-0-	1,000.0	-0-	5,000.0	210,000.0	-0-	219,500.0
FY 86	-0-	-0-	3,710.0	-0-	-0-	-0-	-0-	-0-	845.0	-0-	812.0	-0-	-0-	5,367.0
FY 87					54.0		400.0							464.0
LOANS OUTSTANDING														
Owned by Fund														
Number of Loans Outstanding	27	20	1,445	3	49	36	5	46	1,559	1,218	114	1	1	4,524
Principal Amount Outstanding	1,595.6	3,074.9	62,423.7	1,071.9	809.3	1,348.9	735.2	12,286.4	10,671.0	3,147.9	45,359.5	186,104.1	867.6	329,496.0
Average Loan Amount Outstanding	59.1	153.7	43.2	357.3	16.5	37.5	147.0	267.1	6.8	2.7	397.9	186,104.1	867.6	72.8
Serviced for AIDA														
Number of Loans Outstanding	1,575	200	320	7	N/A	1	3	N/A	N/A	N/A	11	N/A	N/A	2,117
Principal Amount Outstanding	68,372.6	17,227.5	11,302.3	914.2		6.6	96.4				6,023.2			103,942.8
Average Loan Amount Outstanding	43.4	86.1	35.3	130.6		6.6	32.1				547.6			49.1
Summary														
Total No. of Loans Outstanding	1,602	220	1,765	10	49	37	8	46	1,559	1,218	125	1	1	6,641
Total Principal Amount Outstanding	69,968.2	20,302.4	73,726.0	1,986.1	809.3	1,355.5	831.6	12,286.4	10,671.0	3,147.9	51,382.7	186,104.1	867.6	433,438.8
DELINQUENCY RATES AND DEFAULT STATISTICS														
Statistics Based on Balances Outstanding														
% Delinquent[1]	6.5%	9.3%	14.0%	6.5%	25.7%	10.9%	-0-	38.3%	5.2%	8.1%	5.7%	-0-	-0-	5.9%
% In Default[2]	1.5%	24.2%	4.6%	4.3%	1.6%	12.7%	-0-	31.6%	3.6%	3.6%	3.0%	-0-	-0	3.6%
Statistics Based on Number of Loans														
% Delinquent[1]	5.6%	10.9%	11.3%	22.2%	26.5%	8.1%	-0-	39.1%	4.5%	7.0%	6.4%	-0-	-0-	7.8%
% In Default[2]	1.4%	18.2%	2.9%	11.1%	4.0%	10.8%	-0-	28.2%	4.1%	2.4%	1.6%	-0-	-0-	3.5%

[1] Delinquent is defined as 60 days or more past due, not in litigation.
[2] Default is defined as in litigation.
[3] Prequalifications NOT included

Prepared by: Division of Accounting and Collections

3/17/87

MEMORANDUM State of Alaska

TO: Martin J. Richard, Director
Division of Investments

DATE: March 24, 1987

FILE NO.:

THRU:

TELEPHONE NO.:

SUBJECT: Loan Fund Commitments

FROM: Mary Graham
Accounting Technician I
General Ledger Section

The following are loan commitment amounts through March 20, 1987 and the amount remaining available to lend.

LOAN FUND		FY 87 AUTHORIZED	PRE-QUALIFICATION	LOAN COMMITMENTS	BALANCE AVAILABLE
CF	(1)	$14,500,000.00	$1,872,984.00	$6,849,631.97	$5,777,384.03
FE		3,102,000.00		1,846,277.00	1,255,723.00
CC		390,000.00		150,000.00	240,000.00
HD		260,000.00		250,000.00	10,000.00
Mining		325,000.00		-0-	325,000.00
AE		88,300.00		61,153.00	27,647.00
REC		8,600.00		8,550.00	50.00
BF		no restrictions		418,174.00	no restrictions

(1) Authorization to lend increased per Pete Jeans, Office of the Governor, March 13, 1987.

MG/wfs5382W
32487g

cc: Connie S. Green, Accounting Supervisor IV
Greg Winegar, Juneau Regional Loan Manager
Bob Richardson, Anchorage Regional Loan Manager
Willis E. Greimann, Fairbanks Regional Loan Manager

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE:

February 23, 1987

The Honorable Bettye Fahrenkamp
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

As you are aware, there is increasing concern over the future of agriculture in Alaska. Farmers are unable to service the high debt loads incurred during development. This is further intensified by the lowest commodity prices the agricultural industry has experienced.

The Agricultural Revolving Loan Fund delinquency rates are a reflection of that economic condition, mirroring the decline of land prices, commodity prices, marketing and production problems.

The ARLF delinquency rate for 232 borrowers and 632 loans has been steadily increasing to the current level of 59.6%. Concurrently the State is facing severe economic problems and the legislature is in session today dealing with revenue shortfalls.

The Sheffield administration placed a 35% lending restriction on ARLF funding. ARLF had no appropriations into the fund for two years and budget discussions currently indicate that ARLF is facing a serious effort to remove a substantial portion of the remaining funds available. At a minimum, ARLF must immediately become self-sufficient in generating repayment to fund the total operating needs each year.

The ARLF Board has proposed such a debt restructuring program. An aggressive and realistic debt restructuring is necessary. This proposal is designed to assist producing farmers with their debt problems on an equal basis throughout the state. The plan emphasizes a postponement rather than a forgiveness of ARLF debt obligations in recognition of previous state investments in Alaskan agriculture.

Farmer participation in the development of this proposed program is being obtained through teleconferencing, written comments and meetings.

We are bringing this proposal to key legislators for your additional perspective in reaching viable solutions to the debt problem. A briefing is being provided for legislators and their aides on Wednesday, February 25, at 3 p.m. in the Department of Natural Resources Conference Room on the 5th floor Willoughby Building.

If we can work jointly in developing a viable and equitable solution to agricultural debt we will maintain a core agricultural industry in the State as well as create a healthy loan fund.

Sincerely,

Judith M. Brady
Commissioner

cc: John Messenger, ARLF Chairman
Dean Brown, Acting Director
Hal Ward, ARLF Manager

Senator John B. (Jack) Coghill

Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 488-0862

May 17, 1987

Dear Colleague:

I urge you to support CS SB 200.

This legislation contains some of the same language found in the commercial fishing loan fund. AS 16.10.310 allows repayment of loans "which may include extensions for poor fishing seasons or for adverse market conditions for Alaskan products. There is no definition of what a "poor fishing season" is.

We have experienced a dramatic decline in the number of mining operations across the state. This has been the result of declining gold prices as well as the Department of Environmental Conservations action increasing the stringency of water quality regulations. DEC's 1985 action took place after all but 2 of the mining loans had been granted.

This measure does not effect loans already in default. It would allow miners who are operating at reduced levels of production because of the regulation changes, an opportunity to repay their loans without causing the unreasonable burdens.

I urge passage of this legislation.

Sincerely,

Senator John B. Coghill

STATISTICS ON DCED LOAN PROGRAMS
(Thousands of Dollars)

October 31, 1987

	Veterans	Small Business	Commercial Fish	Tourism	Bulk Fuel	Child Care	Hist Dist	Mining	Alternative Energy	Resid. Energy	Fish Enhance	Power Dev.	Water Resource	Total
COMMITMENTS														
Total No. Loans														
Committed FY 72-88	7,718	1,338	3,263 [3]	59	265	63	12	73	2,944	2,232	146	5	5	18,123
Total Dollar Amount														
Committed FY 72-88	371,792.2	202,529.3	189,593.3 [3]	29,874.7	9,627.6	2,200.6	1,345.4	28,597.4	19,299.6	8,346.5	54,734.5	193,847.0	2,500.0	1,114,291.1
Total No. Loans														
Committed FY 88	0	0	33 [3]	0	17	0	0	0	0	0	8	0	0	58
Total Dollar Amount														
Committed FY 88	0	0	1,737.6 [3]	0	630.6	0	0	0	0	0	2,690.0	0	0	5,058.2
APPROPRIATIONS														
FY 85	0	0	3,500.0	0	0	0	0	0	1,000.0	0	5,000.0	210,000.0	0	219,500.0
FY 86	0	0	3,710.0	0	0	0	0	0	845.0	0	812.0	0	0	5,367.0
FY 87	0	0	0	0	64.0	0	400.0	0	0	0	0	0	0	464.0
FY 88	0	0	0	0	0	0	0	0	0	0	2,200.0	0	0	2,200.0
LOANS OUTSTANDING														
Owned by Fund														
Number of Loans														
Outstanding	24	19	1,473	2	48	35	6	46	1,438	1,098	122	1	1	4,313
Principal Amount														
Outstanding	1,372.2	3,058.4	61,434.2	1,029.0	1,123.5	1,267.1	973.4	12,376.0	9,787.5	2,632.1	48,402.2	186,104.1	835.9	330,395.6
Average Loan Amount														
Outstanding	57.2	161.0	41.7	514.5	23.4	36.2	162.2	269.1	6.8	2.4	398.7	186,104.1	835.9	76.6
Serviced for AIDEA														
Number of Loans														
Outstanding	1,513	186	270	7	N/A	1	3	N/A	N/A	N/A	11	N/A	N/A	1,991
Principal Amount														
Outstanding	64,420.7	15,452.3	8,954.4	845.5		5.5	64.4				6,029.1			95,791.9
Average Loan Amount														
Outstanding	42.6	83.1	33.2	120.8		5.5	28.1				548.1			48.1
Summary														
Total No. of Loans														
Outstanding	1,537	205	1,743	9	48	36	9	46	1,438	1,098	133	1	1	6,304
Total Principal														
Amount Outstanding	65,792.9	18,510.7	70,388.6	1,874.5	1,123.5	1,272.6	1,057.8	12,376.0	9,787.5	2,632.1	54,431.3	186,104.1	835.9	426,187.5
DELINQUENCY RATES AND DEFAULT STATISTICS														
Statistics Based on Balances Outstanding														
% Delinquent [1]	6.6%	14.0%	3.3%	5.3%	1.4%	3.8%	0	11.3%	3.7%	8.1%	0.1%	0	0	2.9%
% in Default [2]	1.6%	23.1%	5.1%	5.3%	10.8%	22.5%	0	43.4%	5.6%	4.5%	2.9%	0	0	4.0%
Statistics Based on Number of Loans														
% Delinquent [1]	5.5%	13.7%	2.4%	11.1%	8.3%	2.8%	0	28.3%	3.6%	6.0%	0.8%	0	0	4.7%
% in Default [2]	1.4%	17.6%	3.2%	22.2%	12.5%	16.6%	0	32.6%	5.3%	3.4%	1.5%	0	0	4.3%

[1] Delinquent is defined as 60 days or more past due, not in litigation
[2] Default is defined as in litigation
[3] Prequalifications NOT included

Prepared by: Division of Investments, Accounting Section

11/17/87