

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6003 HOUSE RESOURCES

407



Alaska State Legislature

HOUSE RESOURCES COMMITTEE

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3715

MEMORANDUM

TO: MEMBERS OF HOUSE RESOURCES COMMITTEE
FROM: CO-CHAIR CURT MENARD
DATE: MARCH 6, 1990
RE: AMENDMENTS TO CS HB 290 (1/30/90) WORK DRAFT

REORDER AND AMEND AS 38.05.073 (a) - (b) as follows:

PAGE 1, LINE 11 - 24, COMBINES THE PLANNING REQUIREMENTS OF SUBSECTION (b) WITH THE RECREATIONAL SITE IDENTIFICATION IN SUBSECTION (a) as follows:

(a) The Commissioner may not identify land suitable for recreational facilities development leasing except through a regional land use plan or a site specific land use plan adopted under AS 38.04.065. If an adopted land use plan specifically allows the type of development under consideration, the Commissioner may request proposals from potential lessees under (c) of this section. Consistent with AS 38.04.065, the development of a land use plan used to identify land suitable for recreational facilities development leasing shall consider the supply of recreational opportunities and alternatives, economic and social factors, fish and wildlife and other resources affected by the specific type of recreational facilities development under consideration.

(b) AS 38.05.070 -- 38.05.105 do not apply to leasing under this section, except for AS 38.05.070 (a), 38.05.085 (c), 38.09.090, and 38.05.103.

PAGE 1, LINES 25 - 29, PAGE 2, LINES 1 - 14, AMEND AS FOLLOWS:

(c) If the Commissioner identifies land for recreational facilities development leasing under (a) of this section, the Commissioner shall prepare a written request for proposals that includes [IF, AFTER COMPLIANCE WITH (B) OF THIS SECTION AND AFTER EVALUATING THE INFORMATION AND COMMENTS OBTAINED UNDER (B) OF THIS SECTION, THE COMMISSIONER DETERMINES THAT REQUESTING PROPOSALS FROM POTENTIAL LESSEES FOR RECREATIONAL FACILITIES DEVELOPMENT LEASING OF LAND IDENTIFIED UNDER (A) OF THIS SECTION IS IN THE BEST INTERESTS OF THE STATE, THE COMMISSIONER SHALL ISSUE A WRITTEN DETERMINATION INDICATING]

(1) the specific type of recreational facilities development for which the land may be leased;

(2) the form of compensation that the Commissioner intends to require [THE MINIMUM COMPENSATION THAT THE STATE WILL ACCEPT] for the lease under (1) of this subsection [WHICH MUST AT LEAST EQUAL THE FAIR MARKET RENTAL VALUE OF THE LAND TO BE LEASED];

(3) the selection criteria that the Commissioner will use to determine the eligibility of a developer, including the developer's financial backing and capability, experience in the proposed undertaking, ability to meet bonding or insurance requirements. [INSURANCE COVERAGE,] and ability to comply with resource and environmental analysis requirements; and

(4) the criteria that the Commissioner will use to determine the suitability of proposals.

PAGE 2, LINES 15 - 21, AMEND AS FOLLOWS:

(d) After preparation of a request for proposals [ISSUING THE DETERMINATION] under (c) of this section, the Commissioner may issue the request to solicit [FOR] proposals from persons who are interested in leasing the land for recreational facilities development. A request for proposals must be advertised at least three times in a newspaper of general circulation in the state. The proposals submitted to the Commissioner must include the specific facts on which the potential lessee bases its ability to comply with the terms identified in (c) (1) -- (4) of this section.

PAGE 2, LINES 26 - 29, PAGE 3, LINES 1 - 5, AMEND AS FOLLOWS:

(f) After soliciting proposals under (d) of this section, if the Commissioner determines that two or more potential lessees are acceptable, the Commissioner may select the potential lessee who submits the highest bid during an auction or by sealed bids, whichever method the Commissioner

chooses. The minimum bid must equal the amount established by the Commissioner [MUST EQUAL AT LEAST THE FAIR MARKET RENTAL VALUE OF THE LAND] plus the administrative fee established under (j) of this section. The Commissioner shall also require the potential lessee to make an earnest money deposit under AS 38.05.860(b). After the Commissioner selects a potential lessee, the Commissioner may begin negotiations with the potential lessee to develop the terms and conditions for the lease.

PAGE 3, LINES 6 - 13, ADD A SENTENCE AS FOLLOWS:

(g) After developing proposed lease terms and conditions with a potential lessee under (e), (f) or (i) of this section, the Commissioner may issue a preliminary decision under AS 38.05.035 (e) that leasing the land to the potential lessee on the proposed terms and conditions serves the best interests of the state. During preparation of the preliminary decision, the Commissioner shall consult with affected state agencies regarding issues within the agencies' areas of responsibility and expertise. The Commissioner shall give public notice of the preliminary decision under AS 38.05.945 and request comments from the public and state agencies. The preliminary decision must include [A STATEMENT OF]

PAGE 3, LINES 16 - 27, ALSO IN (G), A PHRASE IS ADDED TO CLARIFY ITEMS 1 - 7, ADD A NEW (2), RENUMBER THE SUBSEQUENT PARAGRAPHS, AND ADD A NEW (8) AS FOLLOWS:

- (1) a statement of the specific type of recreational facilities development for which the land will be leased;
- (2) an analysis of alternative sites;
- (3) a statement of the terms and conditions to be required in [OF] the proposed lease agreement;
- (4) a statement of the compensation that the state may require under the proposed lease agreement;

(5) a statement of the potential economic, social, and environmental effects of the proposed development, including the effect on water quality, and the traditional and recreational uses of the land;

(6) a statement of the long-term commitments of fish, wildlife and other natural resources that would be involved in the proposed development;

(7) a statement of alternatives to the commitments identified under (6) of this subsection and alternatives or measures that may reduce or eliminate the effects identified under (5) of this subsection; and

(8) an identification of any studies, including economic feasibility studies, or plans to be required by the Commissioner.

PAGE 4, LINES 5 - 7, AMEND THE LAST PART OF (H) AS FOLLOWS:

(h) ... If a study or plan is required, the potential lessee shall [MAY] be required to provide and pay for the study or plan. For a large project where it has been determined under (g) of this section that there may be significant economic, social, or environmental effects or long-term commitments of fish, wildlife or other natural resources, the Commissioner shall require the potential lessee to prepare and submit a comprehensive economic feasibility study, to be completed no later than 18 months after the execution of the lease. State agencies with pertinent expertise or responsibilities shall be involved in the review of required plans and studies.

PAGE 4, LINES 15 - 17, IN (J), CONSISTENT WITH ADDITIONS ABOVE, THE SECOND SENTENCE IS REMOVED AND INSERTED INTO (F)

PAGE 4, LINE 18, AMEND AS FOLLOWS:

(k) The Commissioner shall [MAY] reject all proposals or bids for a lease when it is in the best interest of the state.

PAGE 4, LINE 29, PAGE 5, LINE 1, AMEND (L) AS FOLLOWS:

(1)

(5) a fee for each user; [OR]

(6) other compensation acceptable to the
Commissioner; or

(7) any [A] combination of the above.

PAGE 5, LINE 6, AMEND THE LAST SENTENCE IN (M) AS
FOLLOWS:

(m) ... The annual compensation for each five-year
period after the initial five years of the lease shall be
calculated by the same method [AND FORMULA] used to establish
the compensation for the initial five-year period.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
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March 27, 1989

MEMORANDUM

TO: Representative Curt Menard

ATTN: Johanna Munson

FROM: Gretchen Keiser *G. Keiser*
Legislative Analyst

RE: Leasing State Lands for Commercial Development
Research Request 89.329

You asked us to obtain information on the provisions other states make for the leasing of state lands for commercial development. You were specifically interested in provisions for land-use planning, solicitation of bids, compensation to the state and other lease terms and conditions, and public notice, as proposed under Senate Bill No 213 (Attachment A). You asked us to consider commercial development in general and specifically development of recreational facilities, as elaborated in SB 213.

In the time available, I was able to obtain information for Colorado, Montana, Vermont, and Washington. Since many commercial recreational facilities, particularly ski resorts, in the western states are located on National Forest lands, I also contacted the U.S. Forest Service (USFS) in order to determine how it allows for commercial development of federal lands. This memorandum summarizes the main points, and several attachments provide more details for your review.

Summary

The other states and the USFS follow a different sequence for the leasing of public lands for commercial development than is proposed in SB 213. They determine the minimum acceptable compensation to the state or federal government prior to requesting proposals and do not restrict the award of leases to the highest bidder. In cases where one developer approaches the states or USFS with a commercial proposal and no other interest exists, the public agency still conducts sufficient market analysis to determine fair market value of the proposed lands for that type of commercial development.

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Land-use Planning

States' approaches vary with respect to the extent of state land-use planning that specifically identifies potential sites for commercial development. Montana classifies and reclassifies state lands for grazing, timber, agricultural, and "other" (including commercial activities) purposes (Attachment B). According to Reed Lommen, land management specialist, Montana Department of State Lands, the state--rather than initiate development proposals itself--often responds to a proposal by a private developer who wishes to lease state lands for commercial activities (e.g., apple orchards, Christmas tree farms, or industrial buildings).

During the 1980s, Washington has begun to designate more of its state "resource" lands--traditionally managed for their timber, oil/gas, or agricultural value--as "transition" lands available for leasing for commercial development. To date, most of the commercial leasing has been highly urban in nature (i.e., buildings, supermarkets, etc.) although the state is investigating the potential for land exchanges with the U.S. Forest Service in order to obtain title to existing ski developments and adjacent federal land in order to expand into overnight accommodations and encourage tourism. Attachment C provides considerable detail on Washington's Transition Lands program and policy.

In Vermont, there has been considerable public sentiment since the 1970s against further recreational skiing developments because of the rapid development and urbanization of formerly rural areas since ski resorts blossomed in the early 1960s. As a result, the state has had a policy that there will be no new leasing of state lands for ski developments.¹ The Colorado State Board of Lands, as a general rule, contracts for land-use planning services and requests the consultant to identify potential recreation sites.

On the other hand, the U.S. Forest Service undertakes an in-house land management planning process and has been in the mode of identifying sites and permitting ski developments on federal lands since the 1930s. The USFS planning process includes a survey of state and local officials and the public to get a sense of the public need and marketability of a new recreational development.

All individuals noted that their agencies react to a private developer's specific proposal as much as actively designate specific sites for potential commercial or recreational development. Proposals are examined in light of existing land-use plans for serious conflicts which would preclude further consideration. The USFS conducts an in-house public need/marketability analysis as part of its preliminary review of unsolicited proposals. It does not appear to be unusual for states to have the flexibility to modify existing

¹Rod Barber, Assistant Director of State Lands, Vermont Department of Forests, Parks, and Recreation, personal communication, March 22, 1989.

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land-use plans or to classify state lands for other purposes. Senate Bill 213 appears to provide this flexibility and also references AS 38.04.065, which specifies several factors that must be taken into consideration by the commissioner of the Department of Natural Resources (DNR) in land-use planning decisions.

Solicitation of Proposals for Commercial Development

Without exception, the individuals I contacted indicated that their agency identifies the minimum acceptable state compensation and other major elements of the lease document prior to the solicitation of proposals or bids for commercial development of state lands.² In general, the solicitation requires information on a developer's financial backing/capability, experience in the proposed commercial undertaking, development idea/project, and what the developer is willing to pay (at or above the state's minimum)--all of which constitute selection criteria. Although the bid is an important criteria, the other factors are given serious consideration, and the various states contacted apparently do not specify the automatic selection of the highest bidder.

Although the USFS issues long-term special use permits instead of leases, they also define conditions and require detailed information from respondents to their prospectus. For your information, Attachment D provides USFS regulations governing special use applications and Attachment E presents a 1987 USFS prospectus seeking interest in a tour boat operation on Portage Lake south of Anchorage. Even in the case where a developer approaches an agency regarding a specific development proposal, the state or USFS will, at a minimum, issue a public notice regarding the proposal/application and seek other potential competitors. Several individuals noted that the public solicitation ensures that competitors have an opportunity and that the state receives fair market value.

Under SB 213, the DNR would provide the public an opportunity to comment on the agency's intent to seek proposals for commercial development of specific state lands. Following public review, the DNR would issue a written decision that is in the state's best interest to solicit development proposals. Senate Bill 213 specifies that 1) the written decision would present eligibility criteria for "potential lessees," 2) the Commissioner would select the highest bid if two or more potential lessees were acceptable, and 3) the department would then begin negotiations on the terms and conditions of the lease. It is unclear to me what potential lessees would bid on if the lease terms and conditions--particularly the minimum acceptable compensation to the state--are not in hand at the time proposals or bids are solicited.

²Alaska's procedures for leasing of state lands for oil and gas activities involve detailed specification of the lease terms and conditions at the time of a lease sale. Companies offer bids on the basis of these lease specifications.

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State Compensation and Other Lease Terms and Conditions

Unlike Alaska, much of the state lands in western states is trust land received from the federal government at statehood. These lands are to be managed for the maximum benefits to the designated trust beneficiaries (e.g., public school, universities, mental hospitals, etc.) Montana, Colorado and Washington are required to obtain fair market value for state lands which they lease for commercial development. Larned Waterman, of the Colorado State Board of Lands, suggested that Alaska has to determine what is a minimum acceptable rate of return for private use of state land; Colorado and Washington seek returns of ten and 11 percent, respectively. Today, these states lease lands under varying combinations of up to ten to 11 percent fair market annual rental (typically reappraised every five years) and 3.0 to 5.0 percent of the annual gross receipts. Vermont's leases for state lands in several of its well known ski areas of Killington, Stowe, Jay Peak, Smuggler's Notch and Okemo require five percent of gross receipts. A percentage of gross receipts is preferred because it allows for a development stage and also encourages efficiency in operations by not basing the state's share on net receipts.

Unlike the states--which are more oriented toward economic development--the Forest Service approaches commercial recreational development from a perspective of seeking private partners who are willing to provide a recreation opportunity for the general public on federal lands. The Forest Service employs a fairly complicated, graduated rate fee system which generally translates to about three percent of gross receipts.³

Several individuals offered caution regarding commercial development leasing, noting that commercial real estate experience is a crucial requirement for state staff. Rod Hilden, real estate manager in the Washington Department of Natural Resources, said that states cannot expect foresters or recreation planners to have the in-house expertise needed to conduct preliminary market studies, determine fair market values, and negotiate successfully with private developers. Attachment F provides a copy of a sample commercial lease from the Washington Department of Natural Resources.

Lease terms are typically 30 to 55 years, depending upon the type of commercial development. The USFS is operating under recent federal legislation which extended the maximum term for special use permits for winter sports from 30 years to 40 years.

³Jim Cochran, director, Recreation, Subsistence and Cultural Resources Section, U.S. Forest Service, Alaska Regional Office, personal communication, March 23, 1989.

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Public Notice

All the states contacted and the USFS generally provide for public notice and public participation throughout the land-use planning and commercial leasing process. Likewise, requests for development proposals are widely advertised. In general, previous research that I have conducted regarding various states' public process with respect to the leasing or sale of public resources suggests that Alaska's statutes (Title 38: Public Lands) provide comparatively greater opportunities for public participation.

Please contact me if you have any questions regarding this information.

Attachments

3/5/90 CS for HB 290

Bryce:

Because we have some concerns about the intent and interpretation of subsection (a), it would be helpful to ask DNR to clarify what is specifically intended in this subsection.

Although the language is an improvement from the 1/30/90 draft, it still leaves open the question of whether the more general commercial recreation leasing provisions of a regional land use plan (also referred to as an area plan) will be construed as providing enough justification for DNR to proceed with the leasing process without having to do a site specific land use plan under 38.04.065. (Note: everyone pretty much agrees that the planning process under 38.04.065 includes adequate agency and public participation etc.)

This is a concern because all or most regional plans (which have been prepared for pretty much the entire state now) are general land use plans covering millions of acres which, understandably, do not provide real detailed management guidelines addressing leasing of state lands for commercial recreational development. For example, the Bristol Bay Area Plan (BBAP) states that leases for commercial recreation uses and development (ie "lodges, tent camps, or other private facilities designed to be run as private, profit-making recreation facilities") are generally allowed on state lands throughout the Bristol Bay planning area. In some of the other plans, such as the Kusko'um Area Plan, leases in certain drainages are either prohibited or limited to a small number, but are still generally allowed on the remainder of state lands. In both cases, neither plan identifies site specific projects. *My concern is that we need to be more specific as to what can & cannot be leased.*

Subsection (a) could be interpreted and applied to the BBAP example to mean that no site specific land use plan under AS 38.04.065 is needed because the plan already allows for leasing state lands for commercial recreation development and mentions the general types of development this could include (lodges, private facilities etc.). Because this same interpretation would also apply to virtually all of the regional land use plans that have been prepared, there would be very few instances in which a site specific land use plan under 38.05.065 would need to be prepared. This would also mean that the public would not have much opportunity to be involved until a preliminary decision is issued under subsection (g) after the project identification stage in subsection (a).

It has also been suggested that subsection (a) is intended to mean that a site specific land use plan would be required if a regional land use plan does not identify the site-specific project under consideration. We much prefer this interpretation as do other organizations and individuals that have an interest in this bill.

We feel that it is important for Rep Jacko to bring up in the committee hearing the ambiguity of subsection (a) and to pin DNR down as to what their interpretation and intent of this subsection really is. This would help in formulating subsequent amendments to the bill which are clearly needed if everyone is coming up with different interpretations.

Another possibility would be to recommend that page 1, line 13 be reworded as follows: "If an adopted land use plan [SPECIFICALLY ALLOWS THE TYPE OF DEVELOPMENT] allows the specific project under consideration, the commissioner may request proposals from potential lessees under (c) of this subsection." (deletions are bracketed and new wording underlined)

Otherwise, to ask that legislative intent be ^{language} ~~attached to~~ ^{included in} the bill clarifying that above intent to avoid confusion later on.

I'll be at the 3:00 p.m. teleconference if you need to reach me.

Sue F.

AGENCY INVOLVEMENT

PAGE 3, LINES 10-13, AMEND AS FOLLOWS:

(g) During preparation of the preliminary decision, the commissioner shall [CONSULT WITH] defer to affected state agencies regarding issues within their area of responsibility and expertise.

JUSTIFICATION: ADF&G is the state agency that has expertise in the commercial, subsistence, recreational, and non-consumptive uses of fish and wildlife and is responsible for maintaining these resources for public use. ADNR should defer to ADF&G's expertise and responsibilities in identifying the potential impacts of recreational facilities development on fish and wildlife resources and requiring and reviewing studies. Likewise, ADEC should maintain authority in addressing impacts on air and water quality.

ALEUTIANS WEST

COASTAL RESOURCE SERVICE AREA

February 1, 1990

Representative George Jacko
Alaska State Legislature
House of Representatives
P. O. Box V
Juneau, Alaska 99811

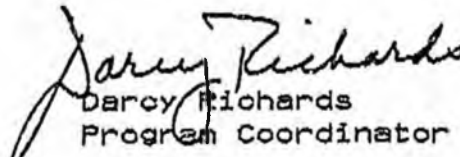
Dear Representative Jacko:

I am writing in reference to HB 290 relating to leasing of state land for recreational facilities development. It has come to my attention that several key provisions have been taken out of the bill regarding public input and agency review. I request that you hold a public hearing on this bill which would give the public a chance to review the proposed changes.

As a representative of the Aleutians West CRSA, which has a regional planning role, I am most concerned that the public be informed and be given opportunities to comment on significant changes to this bill.

I urge you to give the public ample opportunity to give its input.

Sincerely,


Darcy Richards
Program Coordinator

cc: AWCERSA Board



Ric Davidge (563-1912)

Alaska Public Policy Consultant

January 8, 1990

Mr. Walter Stieglitz
Regional Director
U.S. Fish and Wildlife Service
Anchorage, Alaska

Dear Mr. Stieglitz,

In response to your request and that of Keith Bayha I agreed to meet with Keith and his assistant, Sue Detweiler, last week. I apologize for the delay of this meeting and this letter, but as you know I recently spent some time in the hospital with serious back surgery and have been in recovery - and it is very difficult for me to sit down for very long.

What I have been asked specifically to do, by Keith on behalf of the FWS, is to recall for you in this letter, the development of the Federal Subsistence Resource Management Program which is in the form of regulations. To describe what was done, how it was accomplished, under what political direction and/or pressures I functioned, or other circumstances I was placed in, or influenced by, as the Chairman of the Federal Multi-Agency Task Force to develop and articulate the Federal Subsistence Resource Management Program. You have also asked that I offer any recommendations and observations that I believe are constructive and of use to the FWS.

As I pointed out to Keith and Sue I had previously written a Memorandum - from myself as Assistant to the (National) Director of the U.S. Fish and Wildlife Service in Washington, D.C. - Thru: the Regional Director (then Bob Gilmore) To: the Director in Washington. This memorandum was delivered to Bob Gilmore at the completion of the Federal Multi-Agency Task Force responsibility. Keith has confirmed with a number of remaining Regional FWS senior managers in your office that such a memo was produced and, in fact, discussed at the Regional office level in 1986. I do not know if it was ever forwarded to Washington. I will attempt to recall portions of that memo, but it has been some time since that memo was written and, as is the proper practice, I turned over all files and records of the Task Force to the Regional Director upon my departure from the US FWS. I do not even have a copy of the Federal Subsistence Resource Management Program/Regulations to which I may refer. Having a copy would have been helpful in preparing this letter.

Mr. Walter Stieglitz
Federal Subsistence Resource Management Program/Regulations
January 8, 1990
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Some general comments regarding how the Task Force was managed.

Being a trained public sector planner, policy analyst and manager I believe in and practice the collegial form of management and problem solving. As you know I had previously put together and chaired a number of national working groups or task forces for a number of years while in Washington D.C. and upon returning to Alaska. In each case the success of the effort was positive, in that we accomplished our goal on time and within budget and the product was considered consistent with direction. The products of many of these task forces were recognized by Congress and/or the White House for their quality and "professionalism".

In 1980 I was appointed as the Chairman of the Federal Land Policy Group which oversees all federal land managing agency acquisition of lands for NPS, FWS, BLM and US Forest Service. I also chaired policy task forces on a new Federal Land Protection Policy, a new National Recreation Policy and the task force that wrote and implemented the new Historic Preservation/Cultural Resources Policies for our nation. I served as the Chairman of the Department of Interior Management By Objectives working group as well as a number of special budget working groups. Just prior to leaving Washington I completed a year of work as the Chairman of the Federal Multi-Agency Task Force on Undeveloped Coastal Barriers resulting in the delineation and designation by Congress of over 900 miles of coast line along the east and southern coasts into a new conservation system.

Based on these successful experiences I directed that the subsistence group would approach its responsibilities in the following manner:

1. Define the problem(s) or issue(s)?
Not the symptoms, or illusions (fact vs opinion)
Was the problem the law or its implementation?
2. Determine why the problem(s) exist?
3. Identify what alternatives exist, within the constraints of policy direction and law, that offer solutions to the problem?
4. Identify the best or most plausible alternative?
5. Provide additional recommendations

To perform this task we were given the following "tools" to work from:

1. Talent, space and materials sufficient to meet the objective. The Task Force included initially representatives from the NPS, FWS, BLM and the DOI Solicitors office.

2. Public Law 96-487-Dec.2,1980, 94 STAT.2371 an Act by Congress that may be cited as the "Alaska National Interest Lands Conservation Act" (ANILCA).

3. Legislative History of ANILCA:

a) House Report No. 96-97, pt. I (Comm. on Interior and Insular Affairs) and pt. II (Comm. on Merchant Marine and Fisheries).

b) Senate Report No. 96-413 (Comm. on Energy and Natural Resources).

c) Congressional Record:

Vol. 125 (1979): May 4, 10, 15, 16 considered and passed the House.

Vol. 126 (1980): July 21-25, Aug. 4, 5, 18, 19, considered and passed Senate, amended.

Nov. 12, House concurred in Senate amendment.

d) Weekly Compilation of Presidential Documents:

Vol. 16, No. 49 (1980): Dec. 2, Presidential statement.

4. Letter of formal Delegation of Authority to the Director of the U.S. Fish and Wildlife Service from the Secretary of Interior and the Assistant Secretary for Fish, Wildlife and Parks. This letter formally delegated the US FWS as the lead agency, over the objections of the NPS, in preparing the Federal Subsistence Resource Management Program/Regulations.

Political/Policy Direction Given:

As Task Force Chairman I received "Policy" direction from the following:

1. Bill Horn, The Assistant Secretary for Fish, Wildlife and

Mr. Walter Stieglitz
Federal Subsistence Resource Management Program/Regulations
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Parks formerly the Deputy Under Secretary of Interior for Alaska
(now in private law practice in Washington, D.C.)

2. Robert Jantzen, The Director of the U.S. Fish and Wildlife Service (to whom I was an Assistant following departure from the Assistant Secretary FWP's office) (Bob is now retired)

3. Robert (Bob) Gilmore, Regional Director, Alaska, FWS

4. Vernon Wiggins, Federal Co-chairman of the Alaska Land Use Council (now Deputy Under Secretary of Interior for Alaska).

Generally my "Policy" direction came from Horn, Wiggins and Gilmore - in that order.

Specific directions given:

a) Horn, by phone - The definition of "rural" must be as constrictive as possible within the limitations of the law and its legislative history. That was the intent of Congress.

b) Wiggins - concurred in Horn direction.

c) Gilmore - do the best professional job you can under the law. All communications to the public were to be directed through Gilmore, and he would function as my day-to-day supervisor. I was to report to him daily on the Task Force and its progress and what talents or tools were needed to meet the responsibilities delegated to the FWS in preparation of this plan. Gilmore also requested I maintain close and confidential contact with my friends in the Alaska State Legislature to track its efforts at passing legislation that would meet the requirements of Title VIII of ANILCA. I was also to provide what ever assistance legislators may request, upon approval of Gilmore. Gilmore and I maintained a high degree of confidence and communication.

The Task Force Was Formed

Originally the Task Force was formed of high level regional and national land managing agency representatives including, the NPS, BLM, US Forest Service, Regional and Department of Interior Solicitors and FWS subsistence resource professionals. The first meeting of the Task Force was held at the Elmendorf AFB Officers Club, at the insistence of Wiggins, to ensure a degree of confidentiality from the press and others who may become aware of the Task Force and its purpose if it met in an agency office.

At my request (insistence), through Gilmore and Horn the Secretary also allowed the participation of the Regional Director, or his designated representative, of the Bureau of Indian Affairs (BIA) for the purpose of representing the Native peoples of Alaska. I also insisted that representatives of the Subsistence Division of the Alaska Department of Fish and Game, who had wrestled with this issue and were conducting a variety of studies on subsistence cultures in small villages, be included - and they were.

The Work Began

All members of the Task Force were required to review the Law and its legislative history. Then began a number of day long discussions/debates in an effort to define the problem(s). These discussions concluded with the following points:

1. The law (Title VIII of ANILCA) was poorly written in that it "punts" on the critical issue of important term definitions.

2. The legislative history is confusing, inconsistent, appeared incomplete in that issues discussed by one committee were not addressed by other committees, yet substance was contained in ANILCA, and severely suffered from not having a Conference Committee Report because of the manner in which amendments were "worked out" between the House and the Senate. Critical definitions were not adequately addressed in the law or its legislative history.

3. Only the Senate Committee report really attempts to addresses the critical definitions of "Rural" and "Urban". But they did it in an indirect manner by implying that "cities such as Ketchikan, Juneau, Anchorage and Fairbanks" are, at the time of Congressional deliberation, not rural and therefore assumed to be urban. And that it was their intent to, "limit application of the definition of areas of "rural" Alaska including communities such as Dillingham, Bethel, Nome, Kotzebue, Barrow, and other native and non-Native villages scattered throughout the State." ("Such as" is underlined to highlight that it is used in an illustrative manner not as an all inclusive delineation or definition) This became a point that was often brought forth in our deliberations that "Congress new what a rural community was when it saw one, but it could not define one in law" and thus the "punt".

Then, in an important statement, the Senate Committee said that it, "does not intend to imply that the rural nature of such communities is a static condition". "It should be emphasized that

this amendment is not intended to impose a 'durational' rural residency requirement in the definition or impede the traditional movement of Alaska residents between the rural areas and the major population centers and vice versa. In other words, what Congress illustrated as rural at the time of passage (1980) may not be rural in 1986, which was the time the Task Force was attempting to prepare a federal program.

4. As a result of this "example" the Task Force began an extensive examination of social, economic, cultural "indicators" (used in the social science sense) to identify common characteristics of the "such as" examples offered by the Senate Committee. This resulted in great frustration because the common characteristics found were few and the differences many.

5. The Task Force concluded that the Legislative History was not sufficient to resolve the definition question of "rural" and "urban". One of the difficult lessons learned in my work on Coastal Barriers, is when Congress is not clear you just cannot go back and ask for clarification unless the entire law is brought back before the body. This was not likely according to Alaska's Congressional Delegation. Additional referenced materials in the legislative history were requested as they also addressed the need for subsistence resources and intent that subsistence users be protected. These included the Marine Mammal Protection Act 16 USC 1371(b), the Endangered Species Act (16 USC 1539 (e)), House Report No. 95-1045, Part I pp 181-187 and the Court decision *Kleppe vs New Mexico*, 496 U.S.C. 529 (1976) regarding federal authority over public lands. These were not helpful in resolving the term definitions.

In consultation with the regional and Washington, D.C., Department of the Interior Solicitor's office the Task Force asked two questions.

1. Given the status of State Legislation did they believe that the State could pass a law providing a subsistence preference to rural Alaskans which would be in compliance with Title VIII of ANILCA and consistent with the Common Use Clause of the State Constitution? The answer was no - not in their professional opinion. I was, however, reminded that this was an informal opinion and one that would not be provided in writing.

2. Given the lack of clarity in ANILCA on the definition of rural and urban, what approach should the Task Force take in attempting to clarify the definition of these terms? The solicitor advised that the best alternative, at this point, was to

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examine other existing federal laws and programs that defined these two terms.

There was a brief review of some laws and programs regarding, what I believe were HUD programs, but the Task Force found them not applicable in this context particularly as Horn insisted that a "needs based criteria" was not consistent with Congressional intent. The only existing federal program that we discovered and we determined applicable has classified communities as "rural" and "urban" in Alaska and the nation for years. This was the U.S. Census Bureau.

A careful review of the U.S. Census Bureau's delineation of communities as "rural" or "urban" and what that delineation meant in regards to federal programs was found by the Task Force to be applicable in an effort to establish some standard for defining the same terms in ANILCA. Although the delineation of urban and rural communities by the Census Bureau was triggered on a population level (2,500 being the cut off point) the Bureau pointed out that this was not an arbitrary number. That, in fact, this number of people indicated a certain "critical mass" which by its own dynamics changed the character of the community. The Bureau also pointed to its past history of studies and Census reports which were regularly adjusted to reflect community character changes.

By applying the 2,500 population test on those communities listed in the Senate Report as examples, the Task Force determined that some met this standard while others did not. Given the way in which these examples are characterized in the Senate Report it was assumed that the Senate Committee was unaware or unwilling to state a particular standard and offered these "examples" for regulators to use as a "touch stone" from which to promulgate. [In other words they took a shot at it and missed a couple]

The Task Force recognized that the application of this standard on Alaska would have significant implications. I reported these concerns to Gilmore, Horn and Director Jantzen. Their response was to proceed in the manner and direction we were.

Therefore, it is my best recollection, that the Federal Subsistence Resource Management Program delineates communities as "rural" and "urban" on the basis of the current population (2,500) as adjusted by the U.S. Census Bureau formally every 10 years and informally adjusted each year. We also included reference to customary and traditional use as a significant portion of the

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socioeconomic behavior of each "rural" community. This was in response to a great amount of work done by the State in trying to establish some community indicators that differentiated one community from an other.

Now that these definitions were resolved the Task Force moved rapidly forward with the writing of formal regulations that would cover all "public lands" in Alaska. It is clear that the application of Title VIII is limited to public lands by law and its legislative history.

Regulatory specialists from the National Park Service were added to the Task Force and the program was completed under my supervision.

The completed regulatory program was presented to Gilmore, Regional Director, U.S. FWS in Alaska. Attached was a Confidential Memorandum from myself as the Task Force Chairman identifying issues and concerns as well as the status of State legislative efforts to pass a new (1986) State Subsistence Law. I also stated that it was my recommendation that the Federal Subsistence Resource Management Plan be published in the Federal Register, immediately, rather than holding it until after the Legislature either passed or failed to pass a new State Subsistence Law. The reason for this recommendation was that I believed it consistent with the intent of the Federal Administrative Procedures Act to release the regulations. Also, in my opinion and given the substance of the federal program, immediate publication was the appropriate and responsible public policy.

To this date, and to my knowledge, the Federal Subsistence Resource Management Regulatory Program has not been released for public review and comment. I also recall making this same recommendation just prior to leaving the FWS as litigation was underway that challenged the constitutionality of the new state law and I believed it was in the public interest to release the federal regulations for public review and comment prior to a decision by the State Supreme Court that the law was, as many of us expected, found unconstitutional. That recommendation was not accepted as it was felt in Washington, D.C. that such a release would "pour gas on the fire" (Horn) and it was best to "leave things alone". The regulations were written to be published as Emergency Regulations under regulatory authorities of the Department of Interior. Such action would not allow public review or comment until after implementation. Over time public participation would be allowed, but not prior to implementation.

General Observations

One of the clips I keep pasted inside my bound copy of ANILCA is a portion of a story about Don Mitchell, the non-Native lobbyist for Native interests during Congressional deliberation on ANCSA, D-2 and ANILCA.

"Congress has the constitutional right not to know what it's doing. Congress doesn't have any idea of the ramifications of legislation it has enacted and though Congress might be an idiot, that is not unconstitutional. Until someone figures out what Congress has been up to for the past 30 years (in regards to native Alaskans), no one can make a judgement about what to do."

I found this insight helpful because we often asked ourselves why Congress did or did not address issues.

What is subsistence? It is defined in ANILCA as "the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade".

But was Congress addressing "personal" use or "communal" use? "By rural Alaska residents" Congress seems to imply - personal use within rural communities. Could a regulatory program be developed that focused on personal use based on proven customary and traditional behavior?

But what about those who must remain transient within Alaska, which in itself is customary and traditional and recognized by Congress, to maintain their chosen lifestyle including their personal use of fish, wildlife and other resources? The Senate recognized that type of behavior in Alaska by both Native and non-Native. But how would they fall within regulatory delineations?

And under ANILCA is subsistence a right or an extended privilege? It appears to be a right, granted by Congress, to individuals who have customarily and traditionally used fish, wildlife and other resources but only within rural Alaska.

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And is that civil right, given or bestowed by Congress, for ever - in perpetuity? No. Congress clearly states, in the legislative history, that what is rural one year may not be rural the next year. This implies some community dynamic that can alter its behavior from rural to urban or the reverse.

Is it a property right? No. It appears that it was the intent of Congress not to transfer any right of property or ownership by this "grant". This insight is taken from the House Committee report.

Is it a civil right? Yes, it appears that it was Congressional intent, at least in the manner they addressed civil process, that the grant was a "civil" right to individuals within rural communities but that it could be lost or gained by some community dynamic.

Therefore, Subsistence (as defined by ANILCA) is a civil right of individual rural people (no racial or economic class distinctions) who customarily and traditionally use fish, wildlife and other resources to survive or continue clan and community traditions. This right can be lost or acquired by "rural" community status which is recognized as a moving target.

Is it a civil right granted just to Native people in Alaska? No. It is clear, in the law and legislative history, that this grant of an individual civil right within rural communities is not race related, but location related. There is, however, mention in the legislative history that the predominance of subsistence traditions in rural Alaska are Native based.

I must agree with Congress and with the extensive Congressional public processes extended during the D-2 and ANILCA debates which is referred to often in the legislative history. There is clear and persuasive evidence that Alaska rural peoples rely, often for their very survival, on the harvest, consumption and trade of fish, wildlife and other natural resources. But the Committee reports also recognize that people move around and a person who at one point in time lives or works within an urban area may at any other given point in time live and/or work in a rural area. But what of people, Native and non-Native who live seasonally in urban communities, travel to rural Native and/or non-Native communities to work, hunt and fish based on their well established custom and tradition?

Is subsistence a question of survival or one of culture and tradition? In ANILCA it appears to be both. I find, however, it

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curious that in the Section 801 "Findings", the only difference between Native and non-Native is that the term "culture" is present only in relationship to "essential Native existence" but not in relationship to "essential non-Native existence". This assumes, at least it appears this is the intent of Congress, that non-Native people are without a "cultural" base to claim subsistence as a granted civil right in rural communities. Yet Congress granted a subsistence preference to non-Natives if they reside within a rural community. This racial or cultural discrimination is clearly fallacious. Non-Native people have - since the beginning of time passed down through family, clan and community traditions a cultural basis for the harvesting and sharing of fish, wildlife and other resources for the same basic purposes as have Native people. This is particularly true in Alaska where non-Natives harvest and share often the same resources in urban as well as rural communities. Non-Native people also often "retreat" from society and practice the "subsistence lifestyle" in its truest sense. And this "lifestyle" can be practiced in a village of 30 or in an urban community of 250,000 (Anchorage). And yet according to Congress, at least in ANILCA, non-Native people do not have a "cultural" basis to claim subsistence uses (although granted by Congress) as a civil right. The assertion that Natives have culture and non-Natives do not, particularly in this context is not true - nor is it based on a clear picture of human history.

The assertion that cultures are different is, by degree, true but that is more a function of alternatives or the lack thereof, and sometimes of choice. But not in the case of harvesting, consuming and sharing fish, wildlife and other natural resources. For both Native and non-Native people have these same cultural traditions although with subtle and location specific variables. It is also true that neither Native or non-Native cultures are stagnant. They are both in constant change. Look at the reality of change in urban and rural Alaska over the past three decades. Change is the only constant in our collective human experience and this is grossly accentuated in Alaska as it becomes a part of our national and global reality.

There is clearly a legitimate need in some areas of Alaska, and in the world - as a matter of human survival - for "subsistence". There is also a legitimate right of choice to such a life style, particularly given Alaska's uniqueness. Congressional attempts to address this in the Findings Section of Title VII, Section 801 are not based on fact and make class distinctions which are inconsistent with the total application of ANILCA and civil rights law.

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The Random House College Dictionary, used by Federal agencies as the standard, defines culture as, "a particular form or stage of civilization (such as Greek culture)". In the Sociological sense, culture is defined, by Random House, as "the sum total of ways of living built up by a group of human beings and transmitted from one generation to another". This definition applies equally to Native and non-Native people in Alaska both rural and urban.

I submit that when the findings, and/or basic assumptions of a law are built on fallacious reasoning or false facts, then the conclusions are surely to fall apart in regulatory and management application. ANILCA is not the first law that offers this realization nor, I'm afraid, will it be the last. This is one of the reasons, in my opinion (shared by many federal professionals), that the federal government really does not want to "take over".

Random House also defines rural as - "of, pertaining to, or characteristic of the country, country life, or country people; rustic. The country as apposed to the city. It is a subjective term referring to charm, rustic, homelike. The term can be used in a favorable or unfavorable connotation. Rustic simplicity".

I submit that this definition is based on Western European values and experiences and not easily applicable to the delineation of rural and urban in Alaska.

I also submit that the real question is resource allocation to persons, their clans and communities given possible moments in time when those most dependent for survival of life upon such resources may need protection from those less dependent upon the same resources. This is clear in Section 804 of ANILCA where Congress does establish an allocation hierarchy in the event of limited resources -

"When ever it is necessary to restrict the taking of populations of fish and wildlife on such (public) lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

- 1) customary and direct dependence upon the populations as the mainstay of livelihood;
- 2) local residency; and

3) the availability of alternative resources."

Direct dependence, local residency, availability of alternative resources - all key and important phrases in developing a regulatory framework from within which to manage - consistent with ANILCA and Congressional intent. When facing scarcity, the allocation should be based on need for customary and personal dependence; on location; and the availability of an alternative source? But this allocation formula is only triggered when the viability of a specific bird or animal population or other consumed resources is of concern. It is not generally applicable to subsistence preferences.

What are the roles of the Federal and State governments in determining this allocation? It is clear from the legislative history of ANILCA that Congress intended the State of Alaska to resolve this question even on "public (federal) lands". It is also clear that Congress recognized that the tradition of fish and wildlife management for all resident and non-resident species within the boundaries of a State are the responsibility of the State in cooperation with federal land managers and international treaties. It is also clear that Congress recognized that the State of Alaska was competent (in 1980) to continue its practice as the lead government entity in subsistence and other resource management - always in cooperation with federal land managers.

It is also clear that there are "standards of management" within some federal areas that require the State to change its management approach. This is particularly true with respect to National Parks and Fish and Wildlife Refuges as specific language in the law (ANILCA) require these resources to be managed/protected in their "natural state". This would not allow proven and traditional management (manipulative enhancement techniques) practices, no matter how valid or scientifically proven by the State. Yet Congress did not imply, in the face of this change, that the State was not competent to continue in its traditional role as the lead manager of all fish, wildlife resources within the State.

The role of the State is to be the principle manager of fish and wildlife resources and the role of the Federal government is to work in cooperation with the State, consistent with the special constraints in ANILCA, to protect and enhance these resources. This includes subsistence resource allocation decisions according to ANILCA, its legislative history and existing standards and practices in all other 49 states including Nevada which has by

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percentage more federal land than any other state. This is why, following the passage of ANILCA, a Master Memorandum or Agreement was negotiated and signed by the Secretary of the Interior and the Governor of Alaska on the management of fish, wildlife and other resources within Alaska. To my knowledge this Master MOA is still in effect and a reasonable place to begin, at least in part, in resolving many of these resource allocation conflicts.

Each new Secretary of the Interior and each new Governor should review this Master MOA to ensure it is consistent with new law and regulation as well as State and Federal management policies. There is no reason, in fact there is every reason, that the management conflicts surrounding "subsistence" could not be, at least in part, addressed in this "cooperative management agreement".

As previously stated it was the conclusion of the Task Force and its solicitors, that the State of Alaska can not pass a law, regarding subsistence preference, that is both consistent with the State Constitution and Title VIII of ANILCA.

What if a subsistence program focused on allocation based on personal use - and "rural" was not a "location concept" but rather a Native and non-Native custom in Alaska?

I believe the State must craft a law that provides recognition of the uniqueness of Alaska's people as well as the uniqueness of Alaska's State Constitution and that is all the State can do within itself. Then Alaskans must ask Congress to correct or complete the law (ANILCA) they passed regarding Title VIII or go to federal court.

I believe that a management agreement can and should be negotiated and agreed to between our Governor and the Secretary of Interior which clearly places the State (consistent with the Equal Footing Doctrine) in the Lead Role for all fish and wildlife management consistent with federal law as well as international treaties - and in cooperation with federal managers.

That Native and non-Native leaders stop arguing about cultural differences and start recognizing Alaska's cumulative value - as a whole and diverse people of the North - each with cultural ties to the "common use" resources of our State. Recognize that together we are more than the sum of our cultural or racial parts - we are Alaskans.

I hope this letter is of some use in your deliberations on the

Mr. Walter Stieglitz

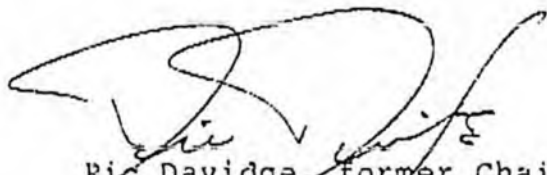
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federal role in subsistence resource management. As I have always pointed out, even while in Washington, D.C. - I am an Alaskan first. I am an Alaskan by choice. I believe in the spirit and the vision of Alaska as a free and equal state within our federation of states. Alaska is a State with cultural diversity - not an extension of the Federal Department of Interior - and that was recognized by Congress upon passage of the Statehood Act. The Statehood Act is a contract or compact between the Congress of the United States and the people of Alaska that, according to the Supreme Court of the United States, can not be changed or in any manner altered without the free and mutual consent of Alaskans.

I am free because I must be free. I am an Alaskan because I must be free. I am an American because I must be free. And because of this freedom I have responsibilities to myself, my family, my state and my nation. Is this so different from the feelings of many Alaskans - rural and urban? I hope this letter satisfies some of those responsibilities.



Ric Davidge, former Chairman,
Multi-Agency Task Force
Federal Subsistence Resource
Management Program

State of Alaska
CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS
250 Cushman Street, Suite 4H
Fairbanks, Alaska 99701
(907) 456-2012

F A X T R A N S M I T T A L M E M O

TO: Nancy Peterson
FROM: Stan Leaphart *SL*
DATE: January 30, 1990

TO: NANCY PETERSON - SEN. FAHRENKAMP
DEPT: _____ FAX #: 463-4867
FROM: S. LEAPHART PHONE: 456-2012
OO: CACFA FAX #: 456-2039
Post-It brand fax transmittal memo 767

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RE: Federal Subsistence Resource Management Program

In September, 1985 the U.S. Department of the Interior notified the State of Alaska that it was no longer in full compliance with the requirements of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). This determination of non-compliance was based on the interpretation given by the Alaska Supreme Court to the Alaska subsistence statute in the Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985). In the same notification, the State was informed that the Department of the Interior would be forced to take over administration of subsistence use on public lands (federal lands) if the State program was not brought back into compliance with ANILCA by June 1, 1986. Passage of the State's 1986 subsistence statute prevented a federal take-over at that time.

In preparation for assuming administration of subsistence uses, the federal government created the Federal Subsistence Resource Management Board consisting of officials from the Bureau of Land Management, National Park Service, Bureau of Indian Affairs, Forest Service and U.S. Fish and Wildlife Service. These federal agencies also drafted regulations defining the operation of the Federal Subsistence Resource Management Program to manage subsistence activities within Alaska. These regulations were never released for public review and were shelved when the State subsistence statute was passed.

It is my understanding that these same federal agencies are now taking another look at this program because of the recent Alaska Supreme Court decision in the McDowell v. State of Alaska case, which overturned the current State subsistence statute. It appears, that if the federal government assumes management of subsistence activities on federal lands, this or a similar program would be utilized. It would be beneficial for our legislators to be aware of this proposal and to understand some of its ramifications.

The purpose of this memo is to briefly outline some of the key points of the draft proposal and to give you some idea about how the federal agency would manage subsistence activities under a federal program. I have also attached some additional material which should help clarify a number of the points in the draft proposal. You also have Ric Davidge's letter to Walter Stieglitz which discusses development of the program.

Subpart A- General Provisions

§30.1 through §30.3- These sections outline the Federal government's authority to manage subsistence under Title VIII of ANILCA. The language is derived directly from Title VIII.

§30.4- Definitions. The definition of "rural Alaska residents" in §30.4(a)(1) is essentially the same definition contained in the 1986 state subsistence statute. As you know, the courts ruled in the Kenaitze decision that this definition was inconsistent with the definition of "rural" as used in ANILCA, Title VIII. It would appear that this definition would require revision if the federal program is implemented. (See attachment #1 for an explanation of the process used for identification of rural Alaskan residents)

Both ANILCA and its legislative history provide little useful guidance on the definition of "rural". In fact, the legislative history generally only mentions a number of communities that Congress considered to be non-rural and several that they believed may be considered rural. Davidge explains this more fully in his letter to Stieglitz.

In determining whether or not subsistence uses of a community or area are "customary and traditional", the federal program would utilize the same eight criteria developed by the State Boards of Fisheries and Game. (See attachment #2, under A(2) for additional information)

Another important point to be considered (see: §30.4(b)(2)) is the application of this program to those lands, not federally owned, but within the exterior boundaries of a conservation system unit (national parks, monuments, preserves, national wildlife refuges, Forest Service wilderness areas, wild & scenic river corridors, national conservation areas, and national recreation areas). This means that subsistence activities on millions of acres of State and Native owned lands within these federal conservation system units would be under federal management. I would question the legal authority of the federal government to regulate hunting and fishing activities on State owned land, even if that land is within the exterior boundaries of a federal conservation system unit.

§30.5- Policy. This general policy is derived from Sections 802 & 804 of ANILCA which established the federal government's policy on subsistence and the preference for subsistence uses.

Subpart B- Program Structure

§30.10- Program diagram. I have attached an organizational chart for the subsistence resource management program. (See attachment #3)

§30.11- Use of State entities. The federal program would utilize the existing State system of local fish and game advisory committees, regional fish and game councils, the Board of Fisheries, and the Board of Game.

§30.12- Local fish and game advisory committees. This section of the proposal authorizes the Secretary of the Interior to establish advisory committees in addition to those established by the State, if he determines that the establishment of such committees are necessary to satisfy the requirements of ANILCA Section 805.

§§30.12 & 30.13 also outline the functions and responsibilities of the local fish and game advisory committees and the regional fish and game councils. I am not familiar enough with their current functions and responsibilities to determine how they might differ under a federal program. You may want to consult the Division of Boards in the Department of Fish & Game for additional analysis on this point.

§30.14- State Boards of Fisheries and Game. Under the current system, the Boards of Fisheries and Game set subsistence seasons and bag limits and make determinations of customary and traditional use of subsistence resources for communities and areas of the State. In the proposed federal program, it appears that the Boards would only fulfill an advisory role with respect to subsistence activities on federal lands. §30.14(b) of the proposal states, in part:

"With respect to the program, these State Boards may perform the following functions:

- (3) Recommendations to Federal agencies and the State Board concerning the program."

§30.14(c) further points to the strictly advisory role of the Boards in the federal program:

"Restrictions or other limitations established by the Boards of Fisheries and Game to govern the taking of fish and wildlife on lands under their jurisdiction, including but not limited to seasons, permit and license requirements, and quantity limits, may be adopted by the Secretary to regulate subsistence activities, to the extent that such measures are not in conflict with ANILCA or other applicable Federal laws or regulations."

While it does appear that under a federal subsistence management program the Boards of Fisheries and Game will have only an advisory role with respect to subsistence activities on federal lands in Alaska, it is not clear whether they would still be able to establish regulations for sport fishing, sport hunting or commercial fishing activities on those same federal lands.

§30.16 Federal monitoring. Section 806 of ANILCA requires that federal agencies, on behalf of the Secretary of the Interior, monitor the functions of the local advisory committees and regional councils in providing for a preference for subsistence activities. The federal agencies would also monitor the actions of the State Boards of Fisheries and Game with respect to subsistence uses.

30.17 Park and park monument subsistence resource commissions. These commissions have already been established for seven park and park monument areas, as required by Section 808 of ANILCA. The proposal defines their responsibilities under a federal management program. Those responsibilities would remain essentially the same as they are under the current system.

One very important point that needs to be brought out is the fact that these subsistence resource commissions for the park units have been severely mismanaged by the National Park Service over the last six years. The agency has provided very little in the way of technical or administrative support which has served to delay the commission's development and implementation of subsistence hunting plans. Many of the commissions have submitted recommendations on subsistence activities to the Secretary of the Interior and with very few exceptions those recommendations have been rejected. The only recommendations that have been accepted are those which could actually result in a decrease in the number of people who could engage in subsistence activities in a given park unit.

The Secretary of the Interior has the responsibility to appoint 3 members to each of the subsistence resource commissions. In several cases these appointments have not been made for up to two years, again hindering the functioning of the commissions. In addition, the agency often dictates what items the commissions can place on their agendas for discussion and, in at least one instance, has failed to forward a recommendation to the secretary for consideration. In short, I have grave concerns about the future of subsistence activities within national park units if the federal government, in this case the National Park Service, assumes management.

§30.18 Federal land management agencies. This section of the proposal authorizes federal agencies to develop "(s)uch agency-specific regulations as are required to carry out agency responsibilities under the Program." Depending upon agency policies, programs and statutes other than ANILCA, this may also result in significant change in the current system. This may be one of the

most critical aspects of this proposed program. (See Attachment #2, page 3, Item E.)

§30.19 Federal Subsistence Resource Management Board. This is the entity that will govern the federal subsistence program if the federal government assumes control of subsistence activities on the federal lands in Alaska. The Board will consist of: the regional director for the U.S. Fish & Wildlife Service (chair and lead official for developing and implementing the program), the area director of the Bureau of Indian Affairs, the state director of the Bureau of Land Management, the regional director of the National Park Service, and the regional forester for the U.S. Forest Service.

The board will coordinate interagency implementation of the program, review recommendations of other entities in the program, develop policies and procedures necessary to operate the program and recommend to the Secretary of the Interior such regulations as are necessary to carry out the functions of the board and discharge the Secretary's responsibilities under Title VIII of ANILCA.

§30.20 Federal regulations. This section states that in the event that the Secretary of the Interior assumes control of subsistence activities, the regulations establishing the federal board and program will be supplemented by such additional regulations as are found to be necessary to implement federal control of these activities.

Subpart C- General Requirements

§30.31 Rural residents. This section clearly states that subsistence activities are limited to rural Alaska residents, as previously defined (§30.4(b)) and in accordance with supplementary criteria established by the board. (Again, see Attachments #1 & #2 for the supplementary criteria that would likely be used.)

§30.32 Aircraft Use. This section prohibits, except in extraordinary cases, any use of aircraft of any type for access to or from public lands for subsistence activities. This represents a significant departure from the current situation. Currently the only categorical prohibition of aircraft use for subsistence activities applies to national parks and park monuments. This proposal apparently would apply to all federal public lands, regardless of their designation.

Subpart D - Subsistence Hunting and Trapping

Subpart E- Subsistence Fishing

These sections contain specific guidelines on means and methods of harvest as well as area specific regulations. Again, I do not have sufficient knowledge of the current State regulations to determine if significant changes are proposed under a federal program. These

proposals are also subject to change on an annual basis, if the board determines changes are necessary.

Subpart F-Procedures for Issuance of Annual Regulations. This section provides guidance for the issuance of annual regulations and directs the board to develop regulations in consideration of the following:

- 1) The policies established by ANILCA to provide for a preference for subsistence uses of fish and wildlife.
- 2) Public input, scientific information, and recommendations received from the general public and from agencies and bodies such as local advisory committees, park and park monument subsistence resource commissions, regional councils, the State Boards of Fisheries and Game, the Alaska Department of Fish and Game, and federal land management agencies, and
- 3) Applicable non-conflicting State and federal laws and regulations.

§§30.101 & 30.102 provide for annual seasons and bag limits on hunting and fishing activities and for annual seasons and taking and possession limits for aquatic plants and finfish.

Conclusion

In developing this plan, the federal agency have proposed adoption of many of the existing definitions, guidelines and advisory mechanisms in the State's program. The obvious, most important change, is the fact that the federal government, not the State, would be setting policy and establishing regulations for subsistence activities on all federal lands in Alaska. The State would be relegated to an advisory role in the decisions made regarding subsistence activities on some 218 million acres of land.

Promulgation of federal regulations requires a nation-wide review before implementation. This, in my opinion, increases the risk that the federal agencies will be subjected to considerable public pressure to develop increasingly more restrictive regulations. An example that comes to mind is the national park units in Alaska. There are a considerable number of people who view consumptive uses in national parks as inappropriate, regardless of what ANILCA says. In fact, as a hunter yourself, you must be aware of the growing opposition to hunting anywhere! There is already pressure to limit the levels of subsistence activities that occur in the park units. Federal management, I believe would ultimately result in the elimination of much, if not all, subsistence hunting and fishing in the Alaskan park units.

Finally, a dual system of fish and game management in Alaska would be very complicated and confusing. The complicated land ownership patterns virtually ensure conflict between State hunting and

fishing regulations and those developed by the federal agencies for the lands under their control. I simply believe that a federal takeover of subsistence activities on federal lands would not be in the best interest of Alaskans.



IN REPLY REFER TO.

DRAFT

ATTACHMENT # 1

United States Department of the Interior

FISH AND WILDLIFE SERVICE
1011 E. TUDOR RD.
ANCHORAGE, ALASKA 99503

PRIORITY

May 7, 1986

Process for Identification of Rural Alaska Residents

"Rural Alaska residents" are defined as those persons whose principal residence is in a community or area of Alaska in which a significant portion of the economy and culture is dependent on uses of fish or wildlife characterized by the following criteria:

1. a long-term consistent pattern of use of fish or wildlife populations, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions
2. use patterns that usually recur in specific seasons of each year
3. use patterns consisting of methods and means of harvest that are characterized by efficiency and economy of effort and cost, conditioned by local circumstances
4. the consistent harvest and use of fish or wildlife near, or at locations reasonably accessible to, the residence of the persons taking such fish or wildlife
5. the handling, preparing, preserving and storing of such fish and wildlife in a manner that has traditionally been used by past generations, but not excluding recent technological advances in appropriate instances
6. use patterns that include the handing down of knowledge of fishing, trapping, or hunting skills and values from generation to generation
7. use patterns in which the products derived from such fish or wildlife are distributed or shared among others within a definable community of persons, including customary trade (excluding significant commercial enterprises) barter, sharing, gift-giving.
8. use patterns that include reliance upon the wide diversity of fish and wildlife populations of an area for personal and family consumption and that provide substantial benefits to the economic, cultural, social, and nutritional well-being of persons who take or consume fish and wildlife for their sustenance.

The Federal Subsistence Resource Management Board shall periodically review communities and areas of Alaska to determine whether they comply with these eight criteria. In the absence of adequate evidence documenting conformance with these criteria, the Federal Board shall determine whether or not a community or area is rural according to the definition of "rural" employed by the U.S. Bureau of Census. Those communities or areas with populations less than 2,500, as determined by the most recent certified State or Federal census, will be considered rural, and those communities or areas with populations greater than 2,500 will be considered non-rural until information related to the aforementioned eight criteria is presented to the Board to indicate otherwise.

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IN REPLY REFER TO.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
1011 E. TUDOR RD.
ANCHORAGE, ALASKA 99503

PRIORITY

FEDERAL SUBSISTENCE RESOURCE MANAGEMENT BOARD
SUBSISTENCE POLICY

I. SUBSISTENCE USES

MAY 7 1986

The Federal Subsistence Resource Management Board (Board) will implement the Federal Subsistence Resource Management Program (Program) to ensure the conservation of the fish and wildlife resources on federal lands in Alaska pursuant to existing federal laws and policies. The program will be consistent with the purposes of the conservation system units as defined by ANILCA.

A. The Program will be implemented as follows:

(1) The board will assess the biological status of fish and wildlife resources and determine whether a portion of a fish or wildlife population may be harvested during a regulatory year consistent with the conservation, protection and utilization of healthy populations of these resources as required by ANILCA.

(2) The board will identify subsistence uses of fish and wildlife resources, recognizing the customary and traditional subsistence uses by rural Alaska residents of renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. Subsistence uses shall be considered to be customary and traditional for a community or area conforming to the following criteria:

- a. a long-term consistent pattern of use of fish or wildlife populations excluding interruption by circumstances beyond the user's control such as regulatory prohibitions
- b. use patterns that usually recur in specific seasons of each year
- c. use patterns consisting of methods and means of harvest that are characterized by efficiency and economy of effort and cost, conditioned by local circumstances
- d. the consistent harvest and use of fish or wildlife near, or at locations reasonably accessible to, the residence of the persons taking such fish or wildlife
- e. the handling, preparing, preserving, and storing of such fish and wildlife in a manner that has traditionally been used by past generations, but not excluding recent technological advances in appropriate instances

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f. use patterns that include the handing down of knowledge of fishing, trapping, or hunting skills and values from generation to generation

g. use patterns in which the products derived from such fish or wildlife are distributed or shared among others within a definable community of persons, including customary trade (excluding significant commercial enterprises), barter, sharing, gift-giving

h. use patterns that include reliance upon the wide diversity of fish and wildlife populations of an area for personal and family consumption and that provide substantial benefits to the economic, cultural, social, and nutritional well-being of persons who take or consume fish and wildlife for their sustenance.

(3) After identifying subsistence uses based upon the criteria as set out in A.(1) & (2) of this section and in accordance with section 805 of ANILCA, the board will determine the amount of fish and wildlife necessary to provide for reasonable opportunities to engage in these customary and traditional uses.

(4) The board will recommend to the Secretary of the Interior regulations that provide an opportunity for the subsistence taking of fish and wildlife resources in amounts sufficient to provide for the customary and traditional uses identified in A (2) of this section, while being consistent with sound conservation and management principles and the laws, regulations and policies governing the management of the conservation system units and other Federal Lands. In no instance will the level of subsistence uses of fish and wildlife within a conservation system unit be inconsistent with the conservation of healthy populations.

(5) When circumstances such as increased numbers of user, weather, predation, or loss of habitat may jeopardize fish or wildlife populations, the board will exercise all practical options for restricting non-subsistence harvest before subsistence uses are restricted. If all available restrictions for non-subsistence uses have been implemented and further restrictions are needed, the board will reduce the take for subsistence by giving maximum protection to subsistence users who:

- (1) live closest to the resources;
- (2) have fewest available alternative resources; and
- (3) have the greatest customary and direct dependence upon the resource.

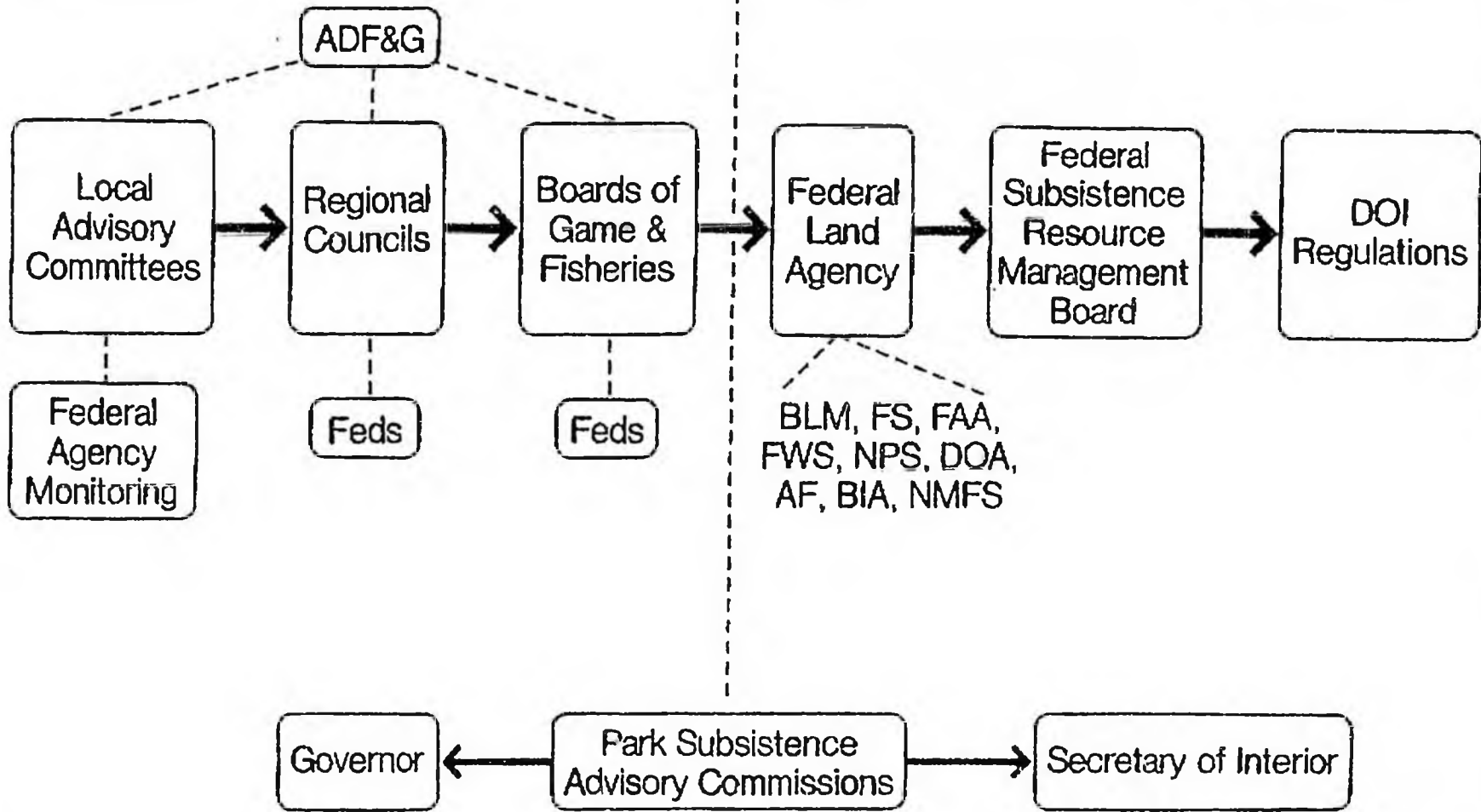
B. The board may, in cooperation with the State of Alaska, recommend to the Secretary of the Interior regulations that provide an opportunity for non-subsistence uses of the resource, to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation of healthy populations of fish or wildlife resources or with the opportunity for taking these resources for customary and traditional subsistence uses as provided in A (4) of this section.

C. Except in extraordinary situations, aircraft shall not be used for access to fish and wildlife populations for subsistence purposes. Section 811 of ANILCA authorizes the use of snowmachines, and motor boats for subsistence purposes and also allows for the use of other means of surface transportation that have been traditionally used for subsistence.

D. In its discussions regarding implementation of the Program with regard to lands within the National Park System and the National Wildlife Refuge System, the Board shall, in conformance with the requirements of ANILCA, limit subsistence activities to use by local rural residents.

E. The Board shall, in making decisions or recommendations concerning the Program, consider and ensure compliance with specific statutory requirements regarding the management of resources on each type of conservation system unit or other type of Federal land, recognizing that the management policies applicable to some units may entail methods of resource and habitat management different from methods appropriate for other units.

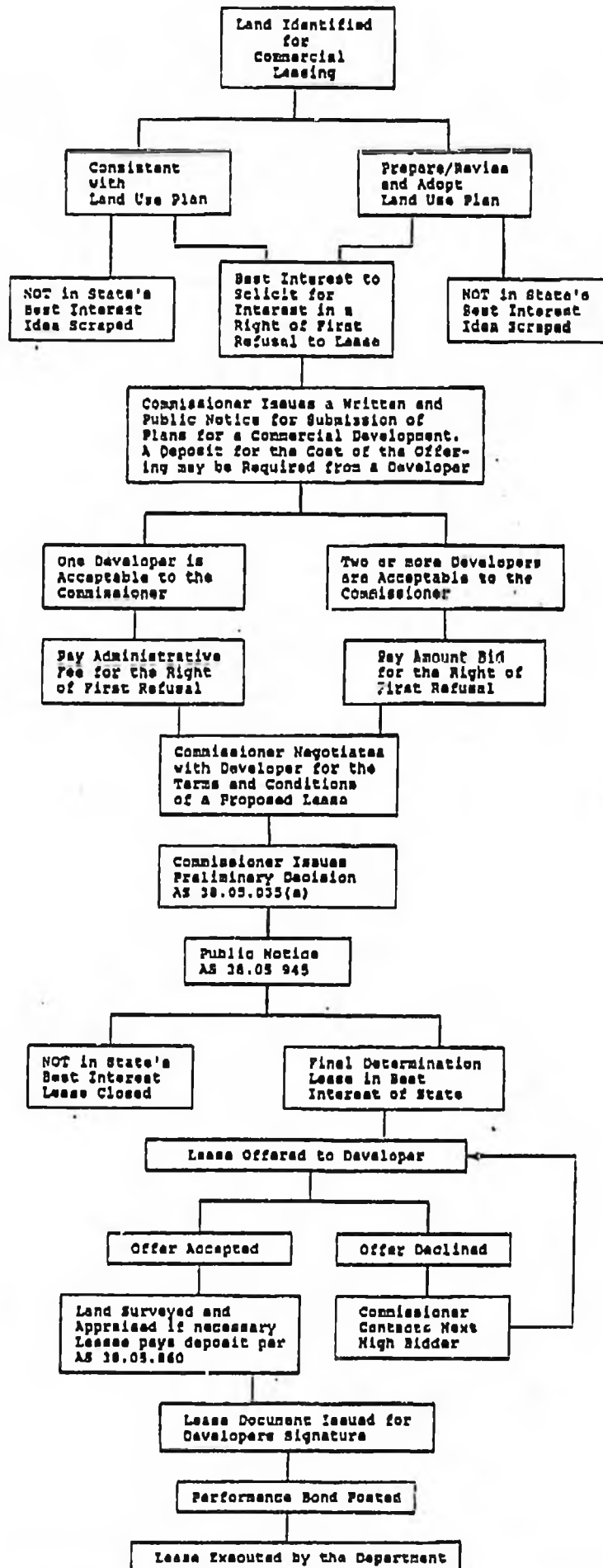
FEDERAL SUBSISTENCE RESOURCE MANAGEMENT PROGRAM



Existing State System

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ATTACHMENT 1.4.3

FLOW CHART FOR COMMERCIAL LEASING AS 38.05.073



by subsection (b)(6). The initial inquiry thus is whether the pleadings and the trial herein established the competing property interests. *Talbot's, Inc. v. Cessanun Enters., Inc.*, Sup. Ct. Op. No. 998 (File No. 1735), 518 P.2d 1064 (1974); *Talbot's, Inc. v. Cessanun Enters., Inc.*, Sup. Ct. Op. No. 1462 (File Nos. 2561, 2671), 566 P.2d 1320 (1977).

Sufficient interests established for determination of easement reasonably necessary. — Sufficient interests were established by both a landowner and an adjoining landowner to call for the city engineer to decide, under subsection (b)(6), whether an easement across the former's land was reasonably necessary to the latter's use of its adjoining land. *Talbot's, Inc. v. Cessanun Enters., Inc.*, Sup. Ct. Op. No. 998 (File No. 1735), 518 P.2d 1064 (1974).

The language following the semicolon in subsection (d)(1)(F) creates an exception to the restriction of (F) immediately preceding it. *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964).

Occupant must have improved land. — An occupant of the tide and submerged lands for which he is seeking a preference right must have improved the land. *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964).

Beneficial uses made by lessee accrue to benefit of lessor by reason of subsection (d)(1)(F). *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 177), 397 P.2d 280 (1964).

Fill as permanent improvement. — Fill which is placed solely for the purposes of disposing of waste or spoils cannot qualify as a permanent improvement. On the other hand, fill in place to a level above the line of mean high tide and actually utilized for beneficial purposes is intended to qualify as a permanent improvement. *City of Juneau v. Copley*, Sup. Ct. Op. No. 415 (File No. 752), 429 P.2d 21 (1967).

Nonbeneficially used sloping fill, which only furnished lateral support, was not intended to be encompassed within the cat-

egory of permanent improvement. *City of Juneau v. Copley*, Sup. Ct. Op. No. 415 (File No. 752), 429 P.2d 21 (1967).

Rock fill was put to beneficial use to the extent that it was used for the sale of fill materials. *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964).

And became a permanent improvement. — Rock fill, by reason of its suitability and utilization for a business use and the procurement of such a use by applicant, became a permanent improvement owned by applicant to the extent that it could be owned within the meaning of this section. *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964).

Open storage of machinery and equipment did not establish existence of permanent improvement. *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964).

But it did establish a beneficial use, directly related to the business activities of applicant and its lessees, and to this extent accrued to the benefit of applicant in determining whether it was entitled to a preference right. *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964).

A barge ramp installation, its use and its maintenance were all factors that accrued to defendant's benefit for the purpose of determining whether it was entitled to preference rights. *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964).

A shed, abandoned by the Army when it terminated its activities, and taken over by applicant constituted a permanent improvement which, although not established or constructed by applicant, was under its control and being put to a beneficial use. *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964).

Applied in *United States v. Alaska*, 201 F. Supp. 796 (D. Alaska 1962).

Collateral references. — 63 Am. Jur. 2d, Public Lands, § 42.

Sec. 38.05.821. Tidelands seaward of public recreational sites. (a) Notwithstanding any other provision of law, a home rule or general law municipality which accepts by conveyance or other disposition

from the state a public recreation area facility developed under the terms of P.L. 507 (70 Stat. 130), upon application, shall receive by conveyance from the director all land owned by the state seaward of the public recreation area facility which is between the mean high tide line and the mean low tide line. The director may adopt necessary regulations providing for the conveyance of land under this section.

(b) Interests obtained by lease for shore fisheries development, sale, permit or lease for mineral exploration, development, or extraction, or for any other purpose, before August 13, 1974, are affected by this section only on the date of their expiration or termination. (§ 1 ch 108 SLA 1974)

Revisor's notes. — Formerly AS 38.05.323. Renumbered in 1984.

Sec. 38.05.830. Land disposal in the unorganized borough. Before a sale, lease under AS 38.05.070 — 38.05.105, or other disposal of state land in the unorganized borough, the commissioner shall consider the effect that the sale, lease, or other disposal may be expected to have on the density of the population in the vicinity of the land, and potential for conflicts with the traditional uses of the land that could result from the sale, lease, or disposal. If necessary, the commissioner shall develop a plan to resolve or mitigate the conflicts in a manner consistent with the public interest and the provisions of this chapter. (§ 33 ch 113 SLA 1981)

Revisor's notes. — Formerly AS 38.05.301. Renumbered in 1984.

Sec. 38.05.840. Appraisal. (a) Land may not be sold or leased, or a renewal lease issued, except in the case of an oil or gas or mineral lease, unless it has been appraised within one year before the date fixed for the sale or lease. When land is offered at public sale but is not sold and is available at private sale, a reappraisal is not required unless the director considers that a change in value of the land may have occurred. A grazing lease may be granted to a lessee of federal grazing land without prior appraisal, if the federal lease was cancelled to allow the state to select the land under lease. Land may not be sold or leased for less than the approved, appraised market value, except as provided in AS 38.05.055, 38.05.057, 38.05.075 — 38.05.085, 38.05.097, 38.05.810, and 38.05.820.

(b) Appraisals required by this section may be made by employees of the department who are qualified to determine the value of land under standards set by the commissioner. (§ 3 art III ch 169 SLA 1959; am § 5 ch 61 SLA 1960; am § 14 ch 182 SLA 1978; am §§ 37, 38 ch 85 SLA 1979; am § 41 ch 152 SLA 1984)

Revisor's notes. — Formerly AS 38.05.310. Renumbered in 1984.
Effect of amendments. — The 1984 amendment, in subsection (r), substituted

"one year" for "120 days" in the first sentence and made a series of technical and internal reference changes throughout the rest of the subsection.

NOTES TO DECISIONS

Inadequate appraisal. — Routine application of \$100 minimum without making any inquiry into the market value of parcels was not such an appraisal as would satisfy the requirements of this section. *State v. Weidner*, Sup. Ct. Op. No. 2788 (File Nos. 6220, 6240, 6272), P.2d (1984).

Applied in *Moore v. State*, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

Cited in *State v. Aleut Corp.*, Sup. Ct. Op. No. 1198 (File No. 2215), 641 P.2d 730 (1975); *Wessells v. State, Dep't of Hwys.*, Sup. Ct. Op. No. 1402 (File No. 2834), 562 P.2d 1042 (1977).

Sec. 38.05.850. Permits. (a) The director, without the prior approval of the commissioner, may issue permits, rights-of-way or easements on state land for roads, trails, ditches, field gathering lines or transmission and distribution pipelines not subject to AS 38.35, telephone or electric transmission and distribution lines, log storage, oil well drilling sites and production facilities for the purposes of recovering minerals from adjacent land under valid lease, and other similar uses or improvements, or for the limited personal use of timber or materials. The commissioner, upon recommendation of the director, shall establish a reasonable rate or fee schedule to be charged for these uses, subject to the exception for nonprofit cooperative associations specified in (b) of this section. In the granting, suspension or revocation of a permit or easement of land, the director shall give preference to that use of the land which will be of greatest economic benefit to the state and the development of its resources. However, first preference shall be granted to the upland owner for the use of a tract of tideland, or tideland and contiguous submerged land, which is seaward of the upland property of the upland owner and which is needed by the upland owner for any of the purposes for which the use may be granted.

(b) The fee charged for a right-of-way approved under (a) of this section shall be waived by the commissioner if the right-of-way is for a transmission or distribution line established by a nonprofit cooperative association organized under AS 10.25 for the purpose of supplying electric energy and power, or telephone service, to its members, and the waiver is considered by the commissioner to be in the best interests of the state. (§ 7 art III ch 169 SLA 1959; am § 7 ch 61 SLA 1960; am § 4 ch 72 SLA 1972; am § 28 ch 3 FSSLA 1973; am § 13 ch 257 SLA 1976; am §§ 1, 2 ch 25 SLA 1979)

Revisor's notes. — Formerly AS 38.05.330. Renumbered in 1984.

NOTES TO DECISIONS

Quoted in *Swindel v. Kelly*, Sup. Ct. Op. No. 812 (File Nos. 1416, 1418), 499 P.2d 291 (1972).

Cited in *Chevron U.S.A., Inc. v. LeRoeche*, Sup. Ct. Op. No. 2659 (File Nos. 6396, 6648), 663 P.2d 923 (1983).

Collateral references. — 63 Am. Jur. 2d, Public Lands, §§ 27, 28.

Sec. 38.05.860. Deposits. (a) The director may require an applicant seeking the sale, lease or other disposal of land, other than under an oil and gas or mineral lease, to deposit an amount covering the estimated cost of an appraisal, survey and necessary advertising. All deposited funds not expended shall be refunded to the applicant. If land is sold or leased to other than the applicant making the deposit, the party awarded the land shall pay the total actual cost of appraising and surveying the land, together with the total actual cost of advertising, and the deposit shall be returned to the original applicant.

(b) Except as provided in (c) of this section, if a competitive sale or lease of state land, minerals, timber or materials is to be made by sealed bid, the director may require each bidder to submit an earnest money deposit with each bid. If the sale or lease is by public auction, the director may require each person desiring to bid to make an earnest money deposit before bidding. The earnest money deposit of the highest qualified bidder shall be applied toward the sale or lease price. If the successful bidder defaults in the payment of the amount bid, the deposit shall be forfeited to the state. All other earnest money deposits shall be returned unless the commissioner decides to award the contract to the second highest qualified bidder upon default by the highest bidder rather than call for new bids, in which case the commissioner may retain the deposit of the second highest qualified bidder until final disposition of the land is made. A successful bidder for a mineral lease who can prove to the satisfaction of the commissioner within 45 days after notification of the lease award that there is a reasonable doubt as to the ability of the state to grant a valid lease to the land may withdraw the amount bid and have the earnest money deposit returned.

(c) The commissioner shall require each bidder for the competitive leasing of oil and gas land to submit with each bid a deposit of money equal to 20 per cent of the bonus. (§ 8 art III ch 169 SLA 1959; am § 1 ch 145 SLA 1966; am § 4 ch 155 SLA 1978)

Revisor's notes. — Formerly AS 38.05.335. Renumbered in 1984.

— 4 ch 103 SLA 1983; am §§ 5 — 8 ch 152 SLA 1984; am §§ 51, 52 ch 74 SLA 1985)

Effect of amendments. — The 1985 amendment inserted "AS 29.65 or former" in paragraph (1) of subsection (b) and substituted "authority" for "board under AS 29.33.150" at the end of paragraph (4) of subsection (e).

Sec. 38.04.021. Disposal of municipal grant land entitlements.

(a) A municipality may apply for financial assistance for the execution of a land disposal program of general grant land entitlements received from the state under AS 29.65 or former AS 20.18.201 — 29.18.213 by submitting a request to the commissioner for inclusion in the request submitted to the legislature under AS 38.04.020(e). A municipality may request financial assistance for expenses of surveying land, designing subdivision plats, installing improvements required by municipal ordinance or regulation of the local platting authority, and other reasonable direct costs of land disposal.

(b) A request by a municipality under this section must be accompanied by

(1) a schedule for the disposal of municipal land for the next five years; the schedule shall be based on an assessment of the demand for private land within the municipality and included in the assessment submitted under AS 38.04.020(f);

(2) an estimate of the number of acres of municipal land that the municipality plans to dispose of during each fiscal year of the five-year period;

(3) a description of the methods to be used for the disposal of municipal land and the terms under which it will be offered to the public; and

(4) a description of the municipal land that the municipality plans to dispose of each fiscal year during the five-year period.

(c) The commissioner shall determine that a request by a municipality meets the requirements of this section before it is submitted to the legislature. The commissioner shall administer money appropriated by the legislature for financial assistance to a municipality under this section. Money spent under this section constitutes a grant unless otherwise provided by the legislature.

(d) A grant made under this section may not exceed five times the amount of money appropriated by a first class city, a borough, or a unified municipality for the disposal of municipal land in the current fiscal year unless the commissioner exempts the municipality from this subsection.

(e) A grant made under this section may not exceed seven times the amount of money appropriated in the current fiscal year for disposal of municipal land by

(1) a second class city; or

(2) a first class city, a borough, or a unified municipality that is exempted by the commissioner under (d) of this section. (§ 5 ch 113 SLA 1981; am §§ 53 — 55 ch 74 SLA 1985)

Effect of amendments. — The 1985 amendment in subsection (a) inserted "AS 29.65 or former" in the first sentence and substituted "authority" for "board" in the last sentence; in subsection (d) substituted "unified municipality" for "municipality unified under AS 29.68.240 — 29.68.440"; and in paragraph (2) of subsection (e) substituted "unified municipality that" for "municipality unified under AS 29.68.240 — 29.68.440 which."

Sec. 38.04.045. Survey and subdivision. (a) *(Repealed, § 88 ch 152 SLA 1984.)*

(b) Before the issuance of a long-term lease under AS 38.05.070 or of a patent for state land, an official cadastral survey shall be accomplished, unless a comparable, approved survey exists that has been conducted by the federal Bureau of Land Management. Before land may be offered under AS 38.05.055 — 38.05.057, AS 38.08, or AS 38.09, an official rectangular survey grid shall be established. The rectangular survey section corner positions shall be monumented and shown on a cadastral survey plat approved by the state. For those areas where the state may wish to convey surface estate outside of an official rectangular survey grid, the commissioner may waive monumentation of individual section corner positions and substitute an official control survey with control points being monumented and shown on control survey plats approved by the state. The commissioner may not issue more than one conveyance for each section within a township outside of an official rectangular survey grid. No portion of land to be conveyed may be located more than two miles from an official survey control monument except that the commissioner may waive this requirement on a determination that a single purpose use does not justify the requirement if the existing status of the land is known with reasonable certainty. The lots and tracts in state subdivisions shall be monumented and the cadastral survey and plats for the subdivision shall be approved by the state. Where land is located within a municipality with planning, platting, and zoning powers, plats for state subdivisions shall comply with local ordinances and regulations in the same manner and to the same extent as plats for subdivisions by other landowners. State subdivisions shall be filed and recorded in the district recorder's office. The requirements of this section do not apply to land made available through a cabin permit system, for material sales, for short-term leases, for parcels adjoining a surveyed right-of-way, or for land that has been open to random staking under the remote parcel program or homestead program in the past; however, for short-term leases the lessee must comply with local subdivision ordinances unless waived by the municipality under procedures specified by ordinance. In this subsection, "a single pur-

pose use" includes a communication site, an aid to navigation, and a park site. (§ 5 ch 181 SLA 1978; am §§ 11, 88 ch 152 SLA 1984; am § 1 ch 123 SLA 1988; am § 29 ch 161 SLA 1988)

Effect of amendments. — The first 1988 amendment, effective June 9, 1988, in subsection (b), substituted "issuance of a long-term lease under AS 28.05.070 or of a patent for" for "conveyance of surface rights to" and "approved" for "acceptable" in the first sentence, inserted the second sentence, deleted "However" at the beginning of the fourth sentence, substituted "rectangular survey grid, the commissioner may waive monumentation of" for "cadastral survey grid, the director may waive monumentation of all" in the fourth sentence, inserted the fifth sentence, substituted "an official survey control" for "such a survey control" and "a single purpose use does not justify the requirement if the existing status of the land is known

with reasonable certainty" for "topographic features, diffuse settlement, or the public interest do not justify the requirement" in the sixth sentence, and "for material sales, for short-term leases, for parcels adjoining a surveyed right-of-way, or for land that has been open to random staking under the remote parcel program or homestead program in the past" for "material sales, or short-term leases" in the tenth sentence, and added the last sentence.

The second 1988 amendment, effective January 1, 1989, inserted "and recorded" in the ninth sentence in subsection (b).

While neither amendment gave effect to the other, both have been given effect in this section as set out above.

Article 3. Inventory, Planning, and Classification.

Section

65. Land use planning and classification

Sec. 38.04.065. Land use planning and classification.

(a) Except as provided in (d) and (h) of this section, the commissioner shall, with local governmental and public involvement under AS 38.05.945, adopt, maintain, and, when appropriate, revise regional land use plans that provide for the use and management of state-owned land.

(b) In the adoption 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 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 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 commissioner shall adopt regional land use plans for state land. Each regional land use plan 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 must be retained in state ownership and planned and classified for various uses and purposes under AS 38.04.015.

(d) The commissioner may adopt as a land use plan a comprehensive plan adopted by a municipality 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.

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

(f) Each decision about the location of easements and rights-of-way, other than for minor access, shall be integrated with land use planning and classification.

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

(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. (§ 5 ch 181 SLA 1978; am § 8 ch 113 SLA 1981; am § 93 ch 6 SLA 1984; am §§ 1 — 7 ch 75 SLA 1987)

Effect of amendments. — The 1987 amendment in subsection (a) substituted "Except as provided in (d) and (h) of this section, the" for "The," "under" for "in accordance with," "adopt" for "develop," and "that" for "which," inserted "regional" and "and management," and deleted "by regions or areas" following "provide" and "the" preceding "state-owned" and made minor punctuation changes; in subsection (b) in the introductory language substi-

tuted "adoption" for "development" and inserted "regional and site-specific," deleted "region or" preceding "area" in paragraph (2), inserted "renewable and nonrenewable resource development" in paragraph (3), and deleted "or region" following "area" in paragraph (6); in subsection (c) in the first sentence substituted "The" for "As a basis for more detailed land use planning and classification, the" and "adopt" for "develop" and deleted "the use

of all." substituted "Each regional land use plan" for "These regional plans"; at the beginning of the second sentence, inserted "renewable and nonrenewable resource development" in paragraph (1), and in paragraph (2) substituted "that" for "which" and "under" for "in accordance with"; rewrote subsection (d); in subsection (f) substituted "Each decision" for "Decisions" and deleted "for the appropriate area or region" at the end of the subsection; in subsection (g) substituted "Each land use plan" for "Land use plans" and "municipal" for "local governmental"; and added subsections (h) and (i).

Editor's notes. — Section 16, ch. 75, SLA 1987, provides that "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 by secn. 1 — 7 of this Act (ch. 75, SLA 1987), and AS 38.05.300."

Section 17, ch. 75, SLA 1987 provides that "[a] land management and disposal decision, including a disposal under AS 38.05.057, AS 38.08, or AS 38.09, or a commercial agricultural project under AS 38.05.020(b)(6), made before June 16, 1987, 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."

NOTES TO DECISIONS

Mandate of section. — When read in its entirety the meaning of this section is plain: it mandates a comprehensive, broad-scale planning process prior to site-specific planning and classification. Consequently, a decision of the state Department of Natural Resources to dispose of

land in a lottery was invalid where the department failed to comply with the land use planning process mandated by statute. *Alaska Survival v. State, Dep't of Natural Resources*, Sup. Ct. Op. No. 3101 (File No. S-996), P.2d (1986).

Article 4. General Provisions.

Section
900. Regulations
910. Definitions

Sec. 38.04.900. Regulations. (a) The commissioner shall adopt under the Administrative Procedure Act (AS 44.62) regulations believed necessary to carry out the purposes of this chapter.

(b) A municipality has standing to petition the commissioner for the adoption of a regulation, or for the amendment or repeal of an existing regulation, or to appeal a decision of the commissioner with respect to classification, management, or disposal of land made under authority of a regulation adopted under (a) of this section with respect to state land outside the corporate boundaries of the municipality to protect any interest which the municipality is authorized to regulate outside its boundaries under AS 29.35.020.

(c) If the regulations adopted by the commissioner under (a) of this section fail to provide for a process by which decisions of the commissioner may be appealed, an interested person may petition for reconsideration of a decision. The petition shall contain the information required to be submitted by AS 44.62.220 and shall be acted upon by the commissioner in the manner provided in AS 44.62.230. For purposes of this section, a municipality is an interested person with respect to

its interests in land defined in (b) of this section. (§ 5 ch 181 SLA 1978; am § 94 ch 6 SLA 1984; am § 56 ch 74 SLA 1985)

Effect of amendments. — The 1985 for "AS 29.48.037" at the end of subsection substituted "AS 29.35.020" section (b).

Sec. 38.04.910. Definitions. In this chapter, unless the context otherwise requires,

(1) "commissioner" means the commissioner of the Department of Natural Resources;

(2) "director" means the director of the division of lands of the Department of Natural Resources;

(3) "fair market value" means the price at which a willing seller and a willing buyer will trade;

(4) "long-term lease" means a lease for a term of 10 years or more;

(5) "multiple use" means the management of state land and its various resource values so that it is used in the combination that will best meet the present and future needs of the people of Alaska, making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; it includes

(A) the use of some land for less than all of the resources, and

(B) a combination of balanced and diverse resource uses that takes into account the short-term and long-term needs of present and future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historic values;

(6) "official cadastral survey" means a United States public land survey or a survey executed under survey instructions issued by the division for the purpose of preparing a cadastral survey plat, and approved and accepted by the division for the state's official records;

(7) "official control survey" means a position marked on the ground by triangulation or traverse stations established in conformity with standards adopted by United States Coastal and Geodetic Survey for first, second and third order work, whose geodetic positions have been rigidly adjusted on the North American datum of 1927 and approved by the division;

(8) "short-term lease" means a lease for a term of 10 years or less;

(9) "state park" means an area of state land designated by law to be managed for public use and enjoyment of recreational, scenic, cultural, historical, wilderness, and similar values, and includes roadside rests and recreational beaches, state monuments and historic sites, state recreation areas and state parks, including marine parks;

(10) "state trail" means an area designated by law to be managed as a public historic or recreational trail including but not limited to

(A) trails designated under AS 41.21.850 — 41.21.860, wilderness trails and campsites; and

(B) trails and footpaths designated under AS 41.21.864 — 41.21.872;

(11) "sustained yield" means the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of the state land consistent with multiple use;

(12) "wild and scenic river" means a free-flowing river or stream designated as provided in 16 U.S.C. 1271-1287 (Wild and Scenic Rivers Act, 82 Stat. 906). (§ 5 ch 181 SLA 1978; am § 95 ch 6 SLA 1984; am § 8 ch 75 SLA 1987; am § 2 ch 123 SLA 1988)

Revisor's notes. — Reorganized in 1988 to alphabetize the defined terms. Effect of amendments. — The amendment, effective June 16, 1987, substituted "10" for "five" in paragraph (8). The 1988 amendment, effective June 9, 1988, inserted paragraph (4).

Chapter 05. Alaska Land Act.

Article

1. Administration (§ 38.05.035)
2. Sale of Lands (§§ 38.05.057, 38.05.065)
3. Leasing of Lands Other Than for the Extraction of Natural Resources (§§ 38.05.075, 38.05.083)
4. Disposal of Timber and Materials (§ 38.05.115)
5. Reservation of Rights to Alaska (§§ 38.05.127, 38.05.128)
6. Leasing of Mineral Lands (§§ 38.05.180, 38.05.183)
7. Mining Rights (§§ 38.05.195 — 38.05.205, 38.05.210, 38.05.220, 38.05.230, 38.05.245 — 38.05.252, 38.05.265, 38.05.275)
9. Land Selection (§ 38.05.290)
11. Classification of Land (§ 38.05.321)
13. Miscellaneous Provisions (§§ 38.05.800, 38.05.810, 38.05.855, 38.05.856, 38.05.874, 38.05.875)
14. General Provisions (§§ 38.05.940 — 38.05.946, 38.05.965)

Cross references. — For interim mental health trust commission, see ch. 132, SLA 1986, in the Temporary and Special Acts.

Article 1. Administration.

Section

35. Powers and duties of the director

Sec. 38.05.020. Authority and duties of the commissioner.

Editor's notes. — Section 17, ch. 75, SLA 1987 provides that "[n]o land management and disposal decision, including a disposal under AS 38.05.057, AS 38.08, or AS 38.09, or a commercial agricultural project under AS 38.05.020(a)(6), made before June 16, 1987, 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. 38.05.035. Powers and duties of the director. (a) The director shall

(1) have general charge and supervision of the division and may exercise the powers specifically delegated to the director; may employ and fix the compensation of assistants and employees necessary for the operations of the division; and is the certifying officer of the division, with the consent of the commissioner, and may approve vouchers for disbursements of money appropriated to the division;

(2) manage, inspect and control state land and improvements on it belonging to the state and under the jurisdiction of the division;

(3) execute laws, rules, regulations and orders adopted by the commissioner;

(4) prescribe application procedures and practices for the sale, lease or other disposition of available land, resources, property, or interest in them;

(5) prescribe fees or service charges, with the consent of the commissioner, for any public service rendered;

(6) under the conditions and limitations imposed by law and the commissioner, issue deeds, leases or other conveyances disposing of available land, resources, property or any interests in them;

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

(8) *[Repealed, § 20 ch 182 SLA 1978.]*

(9) maintain such records as the commissioner considers necessary, administer oaths, and do all things incidental to the authority imposed; the following records and files shall be kept confidential upon request of the person supplying the information:

(A) the name of the person nominating or applying for the sale, lease, or other disposal of land by competitive bidding;

(B) before the announced time of opening, the names of the bidders and the amounts of the bids;

(C) all geological, geophysical and engineering data supplied, whether or not concerned with the extraction or development of natural resources;

(D) except as provided in AS 38.05.036, cost data and financial information submitted in support of applications, bonds, leases and similar items;

acquired by exercise of the option granted in this subsection may not exceed 320 acres. Agricultural land that is acquired under this section must be used for agricultural purposes as required by law.

(b) [Repealed, § 88 ch 152 SLA 1984.]

(c) Under this section

(1) the director may transfer state land classified for agriculture only for agricultural purposes;

(2) the sale or lease shall be at public auction.

(d) When not in conflict with this section, the provisions of AS 38.05.045 — 38.05.105 apply to disposals under this section.

(e) In this section,

(1) "agricultural purposes" includes farming, ranching, grazing, and storage or control of agricultural crops or livestock;

(2) "approximate vicinity" includes an area in which the land does not have a common boundary to presently held land or in which the land is physically separated from presently held land by any type of barrier.

(f) Nothing in (c) of this section affects the disposal of minerals under AS 38.05.135 — 38.05.183. (§ 1 ch 97 SLA 1965; am §§ 1, 2 ch 71 SLA 1976; am §§ 4 — 6 ch 257 SLA 1976; am § 30 ch 85 SLA 1979; am §§ 25, 26, 88 ch 152 SLA 1984)

Cross references. — For provision restricting the sale, lease or other disposal of agricultural land in a manner inconsistent with this section, see AS 38.05.321.

Effect of amendments. — The 1984 amendment, in subsection (a), substituted "first option at" for "60-day first option after the date of" and "land presently held by the Alaskan resident" for "or in the approximate vicinity of his presently held land" in the first sentence, inserted the second sentence, and made a series of technical changes throughout the rest of the subsection; repealed former subsection (b), relating to the procedure to be followed where more than one person was eligible for a first option; and, in subsection (c), divided former paragraph (1) into present paragraphs (1) and (2), rewrote paragraph (1), which formerly read "the director may convey or lease an interest in the land only for agricultural purposes, and all other interests in the land remain in the state," and repealed former paragraphs (2)-(6), relating to the remaining interests.

Changes throughout the rest of the subsection; repealed former subsection (b), relating to the procedure to be followed where more than one person was eligible for a first option; and, in subsection (c), divided former paragraph (1) into present paragraphs (1) and (2), rewrote paragraph (1), which formerly read "the director may convey or lease an interest in the land only for agricultural purposes, and all other interests in the land remain in the state," and repealed former paragraphs (2)-(6), relating to the remaining interests.

NOTES TO DECISIONS

Quoted in *State v. Weidner*, Sup. Ct. Op. No. 2788 (File Nos. 6220, 6240, 6272), P.2d (1984).

Article 3. Leasing of Lands Other than for the Extraction of Natural Resources.

<p>Section 70. Generally 75. Leasing procedures 79. Remote cabin permit</p>	<p>Section 80. Rejection of bids 82. Leases for shore fisheries development</p>
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<p>Section 85. Term of lease 87. Forest Service permittees' leasing preference 90. Removal or reversion of improvements upon termination of leases 95. Subleases 97. Exemption from rental payments on</p>	<p>Section land leased by nonprofit organizations 98. Senior citizens exemption 102. Lessee preference 103. Rights of holder of security interest 105. Periodic rent adjustments</p>
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Cross references. — For reservation to which contracts for sale, lease or grant of state land and deeds to state land, prop. (lea or interest to state land are subject, see AS 38.05.125)

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

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

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

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

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

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

NOTES TO DECISIONS

Adjudicatory provisions of the Alaska Administrative Procedure Act (AS 44.62) do not apply to the termination of grazing leases by the state division of lands. *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

There is no indication in subsection (c), or other provisions which apply to state grazing leases, that requires application of the procedures of the Administrative Procedure Act (AS 44.62). *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

But state must afford notice and hearing before termination. — While the adjudicatory provisions of the Administrative Procedure Act (AS 44.62) are not applicable, due process considerations lead to the conclusion that it is incumbent upon the state to afford notice and a hearing to ensure due process before a state grazing

lease may be terminated for noncompliance. *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

Terminating state grazing leases without affording the lessee notice and hearing would undermine both the policy evinced by Alaska Const., art. VIII, and the explicit due process guarantee provided by Alaska Const., art. I, § 7. *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

Procedure required by due process prior to termination of grazing lease. — See *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

Quoted in *Alyaska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1606 (1967).

Collateral references. — 33 Am. Jur. 2d, Public Lands, §§ 108 to 116; 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 66-70.

73A C.J.S., Public Lands, § 197; 81A C.J.S., States, § 150.

Sec. 38.05.075. Leasing procedures. (a) Except as provided in AS 38.05.087 and this section, leasing shall be made at public auction to the highest qualified bidder as determined by the commissioner. An aggrieved bidder may appeal to the commissioner within five days for a review of the determination. The leasing shall be conducted by the commissioner and the successful bidder shall deposit at the auction the first year's rental or that portion of it that the commissioner requires in accordance with the bid. The commissioner shall require qualified bidders to deposit a sum equal to any survey or appraisal costs reasonably incurred by another qualified bidder acting in accordance with the regulations of the commissioner. If a bidder making a deposit of survey or appraisal costs is determined by the commissioner to be the highest qualified bidder under this subsection, the deposit shall be paid to the unsuccessful bidder who incurred those costs. Any survey or appraisal costs reasonably incurred by a qualified bidder under the regulations of the commissioner or deposited under this subsection must be credited under the first and then subsequent years' rentals. All costs for survey and appraisal shall be approved in advance in writing by the commissioner. The commissioner shall immediately issue a receipt containing a description of the land or interest leased, the price bid, terms

of the lease, and the amount of any credit for survey and appraisal costs to the successful qualified bidder. If the receipt is not accepted in writing by the bidder under this subsection, the commissioner may offer the land for lease again under this subsection. A lease, on a form approved by the attorney general, shall be signed by the successful bidder and by the commissioner within 30 days after the auction.

(b) When a valid existing federal grazing lease is cancelled to allow state selection of the area under lease, the lessee of the land has the preference right to lease the land without competitive bidding for a term equal to that originally granted in the cancelled federal lease and upon terms as favorable to the lessee as those contained in the cancelled federal lease.

(c) The owner or lessee of land that fronts on tide or submerged land of the state is entitled to acquire a lease for the tide and submerged land without competitive bidding if the director determines that

(1) the lease of the tide or submerged land is necessary to facilitate water transportation of goods, services, or resources to or from the owned or leased upland or for another water-dependent purpose;

(2) the proposed use of the tide or submerged land is compatible with the classification of the land and with any applicable land use plan adopted under AS 38.04.065; and

(3) issuance of the lease to the tide or submerged land will not interfere with prior existing rights to the leased land.

(d) If the commissioner issues a lease under (c) of this section, the right of access to the tide and submerged land shall be nonexclusive in the lessee unless the commissioner grants the lessee the exclusive right to use the tide and submerged land.

(e) The commissioner may require prequalification of bidders for a lease to be issued under AS 38.05.070. If the commissioner determines to require prequalification, the procedures established by this section and the notice including pre-qualification requirements required to be given under AS 38.05.945 shall be completed within 75 days of the receipt of the first lease application unless the commissioner grants additional time for the completion of the procedures. Within the 75-day period or the additional time granted by the commissioner, the commissioner shall complete

(1) classification under AS 38.05.300;

(2) the procedures required by AS 38.05.035(e);

(3) any other action required by law for the disposal of the lease to a bidder except survey, appraisal, and the auction.

(f) The commissioner may issue a lease without competitive bidding at the approved, appraised market value of the land determined under AS 38.05.840 if, after completion of the procedures required by (e) of this section, the commissioner determines that there is only one qualified bidder. The commissioner may establish terms and conditions for entry to the land pending survey and appraisal of the land. The

commissioner shall issue the lease as soon as is practicable following the survey and appraisal of the land subject to the provisions of AS 38.05.035(e).

(g) Notice of an auction required under this section shall be made by certified mail to all prequalified bidders.

(h) A person aggrieved by a decision of the commissioner under this section may appeal to the commissioner within five days of the prequalification decision. The decision of the commissioner under this subsection or under AS 38.05.035(e) may be appealed to the superior court. (§ 2 art V ch 169 SLA 1959; am § 10 ch 61 SLA 1960; am § 3 ch 74 SLA 1961; am § 2 ch 26 SLA 1963; am § 1 ch 84 SLA 1965; am § 1 ch 106 SLA 1966; am §§ 29, 30 ch 152 SLA 1984)

Effect of amendments. — The 1984 amendment added subsections (b)-(h) and, in subsection (a), deleted the former third sentence, relating to when a valid existing federal grazing lease was cancelled, inserted the fourth through seventh sentences, and rewrote the remaining language.

NOTES TO DECISIONS

Importance of land resources recognized by constitution. — Alaska Const., art. VIII, reflects the framers' recognition of the importance of Alaska's land resources and of the concomitant necessity for observance of legal safeguards in the disposal or leasing of state lands. *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Adherence to legal procedures concerning leasing of state lands. — This section, which accords an aggrieved bidder the right of an administrative appeal, is evidence of the legislature's awareness of the necessity that adherence to legal procedures concerning the leasing of state lands must be insured. *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Determinations subject to judicial review. — Determinations of the director of the division of lands and the commissioner of natural resources made under this section of the Alaska Land Act, and regulations promulgated thereunder, are subject to judicial review. This conclusion is reached in light of the text of Alaska Const., art. VIII, § 13, which prohibits leasing of state owned lands unless made pursuant to public notice and other limi-

tations imposed by law. *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

The judicial review portions of the Administrative Procedure Act govern leasing procedures conducted by the division of lands under the Alaska Land Act. *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Aggrieved bidder has standing to obtain judicial review. — It is consonant with the intent of constitution and with legislative intent that an aggrieved bidder, under this section, have standing to obtain judicial review of alleged violations of his protected interest, as well as to vindicate the public interest in the lawful leasing of Alaska's lands. *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Extent of review available. — The provisions of this section pertaining to an aggrieved bidder's right of appeal do not manifest a clear intent that an administrative appeal was intended to be the full extent of review available to an aggrieved bidder. *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Sec. 38.05.076 Leases for pipeline purposes. [Repealed, § 31 ch 3 FSSLA 1973.]

Sec. 38.05.077. Classification and disposal of remote parcels. [Repealed, § 7 ch 103 SLA 1983. For current law see AS 38.09.]

Sec. 38.05.078. Purchase of land in a remote parcel. [Repealed, § 7 ch 103 SLA 1983. For current law see AS 38.09.]

Sec. 38.05.079. Remote cabin permit. (a) After September 1, 1980, the commissioner may issue a permit for the use of remote state land in a municipality for a cabin site if the land was classified for that purpose under former AS 38.05.047(a)(5)(B). After September 1, 1981, the commissioner may issue a permit for the use of remote state land outside a municipality for a cabin site if the land is classified for that purpose under the procedures required by AS 38.05.300 and 38.05.945.

(b) The fee for a remote cabin permit is \$100 a year. The commissioner shall establish regulations which specify the application procedures for and the terms and conditions of a remote cabin permit. A permit must be for a term of not less than 25 years, and may be assigned by the original permittee during the term of the permit.

(c) A remote cabin permit may be terminated by the commissioner before the expiration of the term of the permit if a permittee fails to use the land under permit in the manner required by the terms of the permit. After termination of a remote cabin permit, improvements or personal property on the land subject to the permit shall be managed in the same manner as required by AS 38.05.090.

(d) If land subject to a remote cabin permit is offered for sale or long-term lease, the commissioner shall first offer to sell or lease the land to the permittee or the assigns of the permittee. The land shall be sold for its fair market value. (§ 32 ch 85 SLA 1979; am § 98 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment made a series of technical and internal reference changes throughout subsection (a).

Sec. 38.05.080. Rejection of bids. Before the director signs the lease, the commissioner may reject all bids for leases when the best interest of the state justifies this action. (§ 2 art V ch 169 SLA 1959; am § 10 ch 61 SLA 1960; am § 3 ch 74 SLA 1961)

NOTES TO DECISIONS

Quoted in *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Sec. 38.05.082. Leases for shore fisheries development. (a) The director, with the approval of the commissioner, may lease tide and submerged land for fisheries development. Fisheries development

includes the utilization of shore gill nets or set nets for the taking of fish. Every lease issued under this section shall reserve to the public a right-of-way for access to navigable waters and other tide and submerged land.

(b) The director may classify land as subject to leases for fisheries development, and publicly invite applications for lease of the selected areas. Each application shall be accompanied by an affidavit to the effect that the applicant presently intends to personally utilize the leased area for fishing purposes the following season. If two or more applications are received for the same shore area, the director shall award the lease to the most qualified applicant. In determining the qualifications of applicants, the director shall consider the length of time during which the applicant has been engaged in set netting, the proximity of the past fishing sites of the applicant to the land to be leased, the present ability of the applicant to utilize the location to its maximum potential, and other factors relevant to the equitable assignment of the disputed area. If the director cannot determine a preference between conflicting applicants for the same lease site on the basis of qualifications, the director shall select between the applicants by lot. An aggrieved applicant may appeal to the commissioner within five days for a review of the director's determination.

(c) A lease for set net fishing may be issued for any period not exceeding 10 years. If the commissioner determines that the land is not being utilized for the purpose for which the lease is issued, the lease may be declared void. The director shall establish a reasonable rental for the lease, equal to the administrative costs involved in processing the leasehold applications.

(d) Subleasing and renewals of leases are governed by AS 38.05.095 and 38.05.102.

(e) The lease of submerged land conveys no interest in the water above the land or in the fish in the water. (§ 2 ch 93 SLA 1963; am § 99 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment changed the internal reference in subsection (d).

Opinions of attorney general. — This section, which authorizes shore fishery leases, does not create an exclusive right of fishery and therefore is not

unconstitutional under § 15, art. VIII, of the state constitution. 1983 Op. Att'y Gen. No. 03.

This section can be amended to limit the issuance of state tidelands leases for fisheries development to residents of Alaska. 1983 Op. Att'y Gen. No. 03.

Sec. 38.05.085. Term of lease. (a) The lease shall provide that

(1) for the initial 25-year period of the lease, the lessee shall pay the state a fixed base annual rent to be agreed upon by the parties in compliance with the provisions of this chapter;

(2) the fixed base annual rent to be paid by the lessee shall be readjusted when the initial 25-year period of the lease has expired and, thereafter, every 10 years; and

(3) the readjusted annual rent may not exceed 10 per cent of the value of the property as determined in (b) of this section or 50 per cent more than the amount paid each year during the initial period or the preceding 10-year period, whichever is lower.

(b) When it becomes necessary to determine the fair market value of property as required by (a) of this section, the director shall have the property appraised by a qualified appraiser. If the lessee disagrees with the appraisal obtained by the director, the lessee may appoint a qualified appraiser to make an appraisal of the property in question. If the two appraisers agree upon the fair market value, the determination is binding on the parties. In the event the two appraisers are unable to agree, they shall appoint a third qualified appraiser who shall then make an appraisal of the property in question. When the third appraisal is completed, the two of the three appraisals which are nearest each other in their determination of the fair market value shall be averaged and the resultant sum shall be the fair market value of the property in question and absolutely binding on the parties. All costs incurred in making the appraisals provided for in this subsection shall be borne by the state and the lessee equally.

(c) The lessee shall make advance payments of the annual rent or portion of it as the director, with the approval of the commissioner, may require.

(d) A preference right lessee of grazing or forest land may follow the payment schedule established in the cancelled federal lease or grazing permit if the lessee so desires.

(e) Notice of all actions by the department affecting the rights of a lease or lessee shall be given to the lessee.

(f) A violation of a provision of this chapter or of a term or provision of a lease subjects the lessee to appropriate legal action, including, but not limited to, a forfeiture of the lease.

(g) In this section,

(1) "annual rent" means the amount of rent paid annually determined by multiplying the fair market value by the rental rate computed at the time of the initial 25-year period of the lease or of each subsequent 10-year period of the lease;

(2) "qualified appraiser" means a senior member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, a person meeting the requirements for certification as an appraiser II by the division of personnel, Department of Administration, or a person qualified according to regulations adopted by the commissioner under the Administrative Procedure Act (AS 44.62);

(3) "rental rate" means the rate, expressed as a percentage of fair market value, which a comparable class of privately owned property would bring in the open market with the same conditions of lease as offered by the state. (§ 3 art V ch 169 SLA 1959; § 11 ch 61 SLA 1960; § 4 ch 74 SLA 1961; am § 9 ch 138 SLA 1977; am §§ 8, 9 ch 182 SLA 1978)

Revisor's notes. — This section was reorganized in 1984 to place the defined terms in alphabetical order.

NOTES TO DECISIONS

Quoted in Alyeska Ski Corp. v. Holdsworth, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Sec. 38.05.087. Forest Service permittees' leasing preference.

(a) Before offering to the public any land for lease which is subject to a valid existing United States Forest Service permit in effect in a state-selected area on the day before the area was tentatively approved for patent to the state, the director shall offer the land for leasing to the permittee at not less than its fair appraised market value before offering it to the general public.

(b) When not in conflict with this section, the provisions of AS 38.05.070 — 38.05.105 apply to leases under this section. (§ 1 ch 26 SLA 1963; am § 3 ch 26 SLA 1979)

Sec. 38.05.090. Removal or reversion of improvements upon termination of leases. (a) Improvements owned by a lessee on state land shall, within 60 days after the termination of the lease, be removed by the lessee if removal will not cause injury or damage to the land. The director may extend the time for removing improvements in cases where hardship is proven. The retiring lessee or permittee may, with the consent of the director, sell improvements to the succeeding lessee or permittee.

(b) If improvements or chattels, or both, having an appraised value exceeding \$10,000 as determined by the director are not removed within the time allowed, the improvements or chattels or both shall, upon notice to the lessee, be sold at public sale under the direction of the director. The proceeds of sale inure to the lessee who placed the improvements or chattels on the land after paying to the state all rents due and expenses incurred in making the sale. If there are no other bidders at the sale, the director may bid in the name of the state. The bid money shall be taken from the fund to which the land belongs and the fund shall receive all money or other value subsequently derived from the sale or leasing of the improvements or chattels. The state acquires all the rights that any other purchaser could acquire by reason of the purchase.

(c) If improvements or chattels, or both, having an appraised value of \$10,000 or less, as determined by the director, are not removed within the time allowed, they revert to the state and absolute title vests in the state. The preference right lessees of grazing or forest land may follow the provisions for removal of improvements upon termination of the lease as authorized in the cancelled federal lease or permit.

(d) Improvements of the lessee which have become fixtures of the land shall be purchased by the subsequent purchaser or lessee of the land if the improvements were authorized in the former lease or by permit from the director. Upon the termination of a lease, and at additional times which may be necessary, the value of the authorized fixtures remaining on the land shall be set by agreement between the former lessee and the director or, if agreement cannot be reached, by an independent appraisal made at cost to the former lessee.

(e) A notice or offer by the state to sell or lease formerly leased land shall state

(1) the value of the authorized fixtures remaining on the land;

(2) that the purchaser or lessee will be required, as a condition of the sale or lease, to purchase the fixtures from the former lessee for an amount equal to the value specified. (§ 4 art V ch 169 SLA 1959; § 12 ch 61 SLA 1960; § 5 ch 74 SLA 1961; am § 1 ch 140 SLA 1966)

NOTES TO DECISIONS

Cited in Swindel v. Kelly, Sup. Ct. Op. No. 812 (File Nos. 1416, 1418), 499 P.2d 291 (1972).

Collateral references. — 63 Am. Jur. 2d, Public Lands, § 28.
73A C.J.S., Public Lands, § 25.

Sec. 38.05.095. Subleases. (a) Except as provided in (b) of this section, a lessee may sublease or assign the leased land or a portion of it if, after application to the director, the director issues a permit. The director may issue a permit upon a finding that it is in the best interests of the state to do so.

(b) A nonprofit organization that is exempted from paying rent on state land under AS 38.05.810 may not sublease or assign the land or a portion of it on which it has a lease. (§ 5 art V ch 169 SLA 1959; am § 10 ch 182 SLA 1978; am § 29 ch 113 SLA 1981)

Effect of amendments. — The 1981 amendment changed the statutory reference in subsection (b)."

Sec. 38.05.097. Exemption from rental payments on land leased by nonprofit organizations. (a) A nonprofit organization using state land leased by it under AS 38.05.070 — 38.05.105 and 38.05.810 for a youth encampment or similar recreational purpose is exempt from lease rental payments on that land. The nonprofit organization shall meet all other terms and conditions of the lease specified under AS 38.05.070 — 38.05.105 and 38.05.810.

(b) In this section, "nonprofit organization" means nonprofit corporations, associations, clubs, or societies organized and operated exclusively for charitable, religious, scientific, or educational purposes or for the promotion of social welfare and which have received an exemption from the payment of federal income tax.

(c) A nonprofit organization which satisfies the requirements of this section that is using land under a lease in effect before July 1, 1978 may convert its lease to a new lease with terms exempting it from the payment of rent by submitting a written request to the director. (§ 11 ch 182 SLA 1978; am § 30 ch 113 SLA 1981)

Effect of amendments. — The 1981 amendment added "and 38.05.315" (now 38.05.810) preceding "for a youth encampment" in the first sentence of subsection (a).

Sec. 38.05.098. Senior citizens exemption. (a) The real property occupied as a permanent place of abode by a resident 65 years of age or over and leased by that resident from the state in accordance with AS 38.05.070 — 38.05.105 is exempt from the payment of annual lease rent. Only one exemption may be granted for the same property, and, if two or more persons are eligible for an exemption for the same property the parties shall decide between or among themselves which shall receive the benefit of the exemption. An exemption may not be granted for a portion of the leased real property which is used for a purpose other than as the permanent place of abode of the leaseholder.

(b) An exemption may not be granted under this section unless a written application for the exemption on a form provided for by the commissioner is submitted. The leaseholder must submit the application not later than 60 days before the anniversary date of the lease, and shall file a separate application for each lease year for which the exemption is sought. If an application is submitted within the required time and is approved by the commissioner, the commissioner shall allow a rental exemption for the lease year commencing on the anniversary date. The commissioner may at any time require proof of the right to an exemption claimed under this section. (§ 32 ch 85 SLA 1979)

Revisor's notes. — In rewriting subsection (b) to remove personal pronouns, the phrase "in the form he considers necessary" was deleted from the last sentence. AS 38.05.020 gives the commissioner authority to prescribe the form and extent of proof required under this section.

Sec. 38.05.100. Renewal of lease. [Repealed, § 15 ch 257 SLA 1976.]

Sec. 38.05.102. Lessee preference. If land within a leasehold created under AS 38.05.070 — 38.05.105 is offered for sale or long-term lease at the termination of the existing leasehold, the director may, upon a finding that it is in the best interest of the state, allow the

holder in good standing of that leasehold to purchase or lease the land for its appraised fair market value at the time of the sale or long-term lease. (§ 2 ch 36 SLA 1976; am § 7 ch 257 SLA 1976; am § 31 ch 113 SLA 1981; am § 100 ch 6 SLA 1984)

Revisor's notes. — AS 38.05.102 was added by both sec. 2, ch. 36, SLA 1976, and sec. 7, ch. 257, SLA 1976. Since ch. 257 had a later effective date, and contained inconsistent provisions, it was treated as an amendment to the section enacted by ch. 36.

Effect of amendments. — The 1981 amendment substituted "its appraised fair market value at the time of the sale or

long-term lease" for "the amount of the high bid received at public auction" near the end of the section.

The 1984 amendment made technical and internal reference changes in the section.

Editor's notes. — AS 38.05.100, referred to at the beginning of the section, was repealed by § 15, ch. 257, SLA 1976.

Sec. 38.05.103. Rights of holder of security interest. (a) If there is a breach or default of a term of a lease or of the provisions of this chapter relating to a lease, the division shall provide written notice of the breach or default by personal service or by registered or certified mail to the lessee and to any holder of record having a security interest in the leased property. The notice shall also make demand upon the lessee to cure or remedy the breach or default within 60 days from the date of receipt of the notice and demand. If a lessee fails to cure or remedy the breach or default within 60 days, or within the additional time which the division may allow for good cause, the state may, subject to (b) of this section, exercise any right which it may have at law or as set out in the lease.

(b) If a lessee fails to cure or remedy a breach or default within the time allowed in (a) of this section, a holder of a security interest who has received notice under (a) of this section may cure or remedy the breach or default if the breach or default can be cured by the payment of money or, if this cannot be done, by performing or undertaking in writing to perform the terms, covenants, restrictions and conditions of the lease capable of performance by the holder. The holder shall act within 60 days from the date of receipt of notice under (a) of this section, or within an additional period as the director may allow for good cause. (§ 10 ch 138 SLA 1977)

Sec. 38.05.105. Periodic rent adjustments. (a) Each lease shall stipulate that at the conclusion of the initial 25-year period of the lease and at intervals of 10 years thereafter the annual rent payment is subject to adjustment. Charges or adjustments shall be based primarily on an adjusted fair market value. However, if the director determines that single-family residential development is the best use of the land, the reappraisal period may be lengthened or the readjustment waived in accordance with regulations adopted by the department. Before a waiver of rent adjustment is issued, the land shall have a current reappraisal. A waiver is valid only if single-family residential

development actually occurs. The regulations adopted under this section shall ensure that the state receives a fair return from the land.

(b) The provisions of AS 38.05.085(b) are applicable to reappraisals of leases required by this section, except that, in determining an adjusted market value,

(1) subject to the provisions of (c) of this section, changes in property value due to governmental actions, including zoning reclassifications, shall be included; and

(2) changes in property value due to private improvements made to the property or other privately owned or leased property since originally entering into the lease shall be excluded.

(c) Changes or adjustments of annual rent on land under lease and used for single-family residential purposes in an area zoned for commercial or other nonresidential uses shall be based on an adjusted fair market value determined by reference to the actual use of the property and not by reference to the other uses permissible under the zoning ordinance. (§ 7 art V ch 169 SLA 1959; am § 1 ch 44 SLA 1964; am § 8 ch 267 SLA 1976; am § 1 ch 267 SLA 1976; am § 11 ch 138 SLA 1977; am §§ 12, 13 ch 182 SLA 1978)

Revisor's notes. — AS 38.05.105(a) was amended by both § 8, ch. 267, SLA 1976, and § 1, ch. 267, SLA 1976. Since the two amendments appear to be inconsistent, and ch. 267 is superseded by ch. 267, only the later enactment has been given effect here.

NOTES TO DECISIONS

Applied in *Wessells v. State, Dep't of Hwys.*, Sup. Ct. Op. No. 1402 (File No. 2834), 562 P.2d 1042 (1977).
Quoted in *Alyeska Ski Corp. v. Holdaworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Sec. 38.05.107. Compensation relating to easements or rights-of-way across state leases. [Repealed, § 1 ch 203 SLA 1975.]

Article 4. Disposal of Timber and Materials.

Section

- 110. Sale of timber and materials
- 115. Limitations and conditions of sale
- 118. Negotiated timber sales in areas of high unemployment
- 120. Disposal procedure

Sec. 38.05.110. Sale of timber and materials. The commissioner shall provide for cruises of timber and appraisals of other materials in or upon state land and shall assess the supply of and current markets for timber on and other materials in privately owned land in close proximity to state land to determine

(1) the timber and other materials that should be offered for sale, and

(2) the terms of sale of the timber or other materials. (§ 1 art VI ch 169 SLA 1959; am § 31 ch 152 SLA 1984)

Effect of amendments. — The 1984 amendment in the introductory language, substituted "commissioner" for "director" and "state land and shall assess the supply of and current markets for timber on and other materials in privately owned land in close proximity to state land to determine" for "lands and transmit this data to the commissioner, together with his recommendations with respect to" and substituted "that" for "which" in paragraph (1).

NOTES TO DECISIONS

Cited in *Southeast Alaska Conservation Council, Inc. v. State*, Sup. Ct. Op. No. 2662 (File No. 5855), 665 P.2d 644 (1983).

Collateral references. — 53 Am. Jur. 2d, Public Lands, §§ 18, 19.
73A C.J.S., Public Lands, §§ 13 to 16.

Sec. 38.05.115. Limitations and conditions of sale. (a) The commissioner shall determine the timber and other materials to be sold, and the limitations, conditions and terms of sale. The limitations, conditions and terms shall include the utilization, development and maintenance of the sustained yield principle, subject to preference among other beneficial uses. The commissioner may negotiate sales of timber or materials without advertisement and on the limitations, conditions, and terms that are considered to be in the best interests of the state. However, not more than 500 M.B.M. or equivalent other measure of timber or more than 25,000 cubic yards of materials may be sold by nonadvertised, negotiated sale to the same purchaser within a one-year period.

(b) Negotiated sales not exceeding 50 M.B.M. or the equivalent other measure of timber or 2,500 cubic yards of materials are exempt from the provisions of AS 34.15.150.

(c) The limitations of this section are not applicable to timber which becomes state property under the provisions of AS 45.50.210 — 45.50.235. (§ 2 art VI ch 169 SLA 1959; am § 1 ch 66 SLA 1969; am § 9 ch 257 SLA 1976; am §§ 2, 3 ch 73 SLA 1978; am § 32 ch 152 SLA 1984)

Effect of amendments. — The 1984 amendment, in subsection (a), deleted "upon recommendation of the director" following "commissioner" in the first sentence and "subject to the approval of the commissioner" at the end of the third sentence and substituted "commissioner" for "director" and "that are considered to be" for "which he considers are," also in the third sentence.

(d) The legislature may appropriate to the fund. The interest earned on funds appropriated to the public access fund by the legislature shall be deposited in the general fund. The commissioner of administration shall separately account for the interest deposited in the general fund under this subsection. The annual estimated balance in the account may be appropriated by the legislature to the public access fund. (§ 3 ch 53 SLA 1988)

Effective dates. — Section 4, ch. 53, May 26, 1988, in accordance with AS SLA 1988, makes this section effective 01.10.070(c).

Sec. 38.05.875. Administration of land acquired under former AS 34.10. The Department of Natural Resources may sell, lease or administer all real property to which the state obtained title under former AS 34.10 in the same manner as it is authorized to sell, lease or administer other state land. Proceeds derived from the sales, leases or administration shall be remitted to the Department of Revenue and deposited into the general fund of the state. (§ 10 ch 134 SLA 1953; am § 6 ch 135 SLA 1955)

Revisor's notes. — Formerly AS 34.10.170. Renumbered in 1985. When the section was renumbered, minor changes were made in the first sentence to reflect the 1978 repeal of the balance of AS 34.10.

Article 14. General Provisions.

Section 940. Veterans' land discount	Section 946. Hearings
945. Notice	965. Definitions

Sec. 38.05.910. Policy.

NOTES TO DECISIONS

Quoted in Alaska Survival v. State, No. 3101 (File No. S-996), P.2d
Dep't of Natural Resources, Sup. Ct. Op. (1986).

Sec. 38.05.940. Veterans' land discount. (a) An eligible veteran is entitled to a discount of 25 percent on the purchase price of state land sold under this title and classified under AS 38.05.005 — 38.05.270 for a use other than commercial or industrial use.

(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, unless tenure was shortened due to a service connected disabili-

ity 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.

(c) A veteran is entitled to only one discount under this section during the veteran's lifetime.

(d) A discount under this section may be applied only to the acquisition of surface rights to state land. A discount under this section may not be applied to survey costs, road development costs, utility assessments, or other costs that the commissioner determines are reimbursable to the state.

(e) A discount under this section may not be used toward the purchase of land offered at a restricted sale under AS 38.05.067. (§ 48 ch 152 SLA 1984; am § 12 ch 75 SLA 1987)

Effect of amendments. — The 1987 amendment substituted "90 days" for "two years" in subsection (b)(3).

Sec. 38.05.945. Notice. (a) This section establishes the requirements for notice given by the department for the following actions:

(1) classification or reclassification of state land under AS 38.05.300 and the closing of land to mineral leasing or entry under AS 38.05.185;

(2) zoning of land under applicable law;

(3) a decision under AS 38.05.035(e) regarding the sale, lease, or disposal of an interest in state land or resources;

(4) a competitive disposal of an interest in state land or resources after final decision under AS 38.05.035(e);

(5) a public hearing under AS 38.05.856(h);

(6) a preliminary finding under AS 38.05.035(e) and 38.05.855(c) concerning sites for aquatic farms and related hatcheries.

(b) Notice of one or more actions described in (a) of this section shall be given at least 30 days before the action by publication in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action and one or more of the following methods:

(1) publication through public service announcements on the electronic media serving the area affected by the action,

(2) posting in a conspicuous location in the vicinity of the action,

(3) notification of parties known or likely to be affected by the action, or

(4) another method calculated to reach affected persons. A notice shall contain sufficient information in commonly understood terms to inform the public of the nature of the action and the opportunity of the public to comment on the action.

(c) Except for oil and gas leasing under AS 38.05.180 and geothermal leasing under AS 38.05.181, notice at least 30 days before action under (a) of this section shall also be given to the following:

(1) to a municipality if the land is within the boundaries of the municipality, to a coordinating body established by community councils in a municipality if the coordinating body or a community council within the area served by a coordinating body requests notice in writing; if there is no coordinating body within the municipality, notice shall be provided to each community council established by the charter or ordinance of the municipality if the land is located within the boundaries of the municipality and if the community council requests notice in writing;

(2) to a regional corporation if the boundaries of the corporation as established by § 7(a) of the Alaska Native Claims Settlement Act encompass the land and the land is outside a municipality;

(3) to a village corporation organized under § 8(a) of the Alaska Native Claims Settlement Act if the land is within 25 miles of the village for which the corporation was established and the land is located outside a municipality;

(4) to the postmaster of a permanent settlement of more than 25 persons located within 25 miles of the land if the land is located outside a municipality, with a request that the notice be posted in a conspicuous location;

(5) to a nonprofit community organization or a governing body that has requested notification in writing and provided a map of its boundaries, if the land is within the boundaries.

(d) Notice at least 30 days before action under (a)(5) or (6) of this section shall be given to appropriate

(1) regional fish and game councils established under AS 16.05.260; and

(2) coastal resource service areas organized under AS 46.40.110 — 46.40.210.

(e) Notice is not required under this section for a permit or other authorization revocable by the department.

(f) The provisions of this section do not apply to a lease issued under AS 38.05.205.

(g) The provisions of this section do not apply to a production license issued under AS 38.05.207.

(h) Failure to give notice under this section to a community council, a coordinating body established by community council, or an organization listed in (c)(5) of this section does not constitute a legal basis for invalidation or delay of the action. (§ 10 art III ch 169 SLA 1959; am § 8 ch 61 SLA 1960; am § 2 ch 74 SLA 1961; am § 3 ch 117 SLA 1976; am § 14 ch 257 SLA 1976; am §§ 39, 40 ch 85 SLA 1979; am § 4 ch 108 SLA 1981; am § 36 ch 113 SLA 1981; am § 3 ch 87 SLA 1982; am

§§ 44 — 46 ch 152 SLA 1984; am §§ 6, 7 ch 100 SLA 1988; am §§ 15, 16 ch 145 SLA 1988)

Revisor's notes. — Subsection (d) and (h) were each enacted as (g). Renumbered in 1988, at which time former subsections (d)-(f) were renumbered as (e)-(g), respectively.

Effect of amendments. — The first 1988 amendment, in subsection (c), added "Except for oil and gas leasing under AS 38.05.180 and geothermal leasing under AS 38.05.181" at the beginning of the introductory language, added all of the language at the end of paragraph (1) begin-

ning with "to a coordinating body," substituted "25" for "six" in paragraphs (3) and (4), and added paragraph (5); and added subsection (h).

The second 1988 amendment, effective June 9, 1988, in subsection (a), deleted "and" at the end of paragraph (3) and added paragraphs (5) and (6); and inserted subsection (d).

While neither amendment gave effect to the other, both have been given effect in this section as set out above.

Sec. 38.05.946. Hearings. (a) A municipality or a corporation entitled to receive notice under AS 38.05.945(c) may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the commissioner shall attend the hearing. The commissioner has discretion to hold a public hearing.

(b) The commissioner shall hold a public hearing in each district identified under AS 38.05.855 within 30 days after giving notice of a preliminary finding under AS 38.05.035(e) and 38.05.855(c) concerning sites for aquatic farms and related hatcheries. (§ 36 ch 113 SLA 1981; am § 17 ch 145 SLA 1988)

Effect of amendments. — The 1988 amendment, effective June 9, 1988, added subsection (b).

Sec. 38.05.965. Definitions. In this chapter, unless the context otherwise requires,

(1) "acquired land" means land belonging to the state including tide, submerged and shoreland which has been obtained by escheat, purchase, or any means other than by general land grant;

(2) "agricultural land" means land chiefly valuable for agricultural purposes;

(3) "commissioner" means the commissioner of natural resources;

(4) "department" means the Department of Natural Resources;

(5) "director" means the director of the division of lands of the Department of Natural Resources;

(6) "geothermal resources" means the natural heat of the earth at temperatures greater than 120 degrees Celsius, measured at the point where the highest-temperature resources encountered enter or contact a well or other resource extraction device, and includes

(A) the energy, including pressure, in whatever form present in, resulting from, created by, or that may be extracted from that natural heat;

(B) the material medium, including the geothermal fluid naturally present, as well as substances artificially introduced to serve as a heat transfer medium; and

(C) all dissolved or entrained minerals and gases that may be obtained from the material medium, but excluding hydrocarbon substances and helium;

(7) "grazing land" means land chiefly valuable for grazing purposes;

(8) "industrial and commercial land" means land chiefly valuable for industrial trade, manufacturing or business use;

(9) "lieu and indemnity land" means land which the state is entitled to select under the provisions of 38 Stat. 1214, as amended (48 USC 353) or a similar statute to compensate for land in place of surveyed rectangulars, which have been lost to the state by reason of deficient sections, prior rights, claims, withdrawals, reservations and other appropriations;

(10) "mineral land" means land prospectively valuable for mineral deposits;

(11) "multiple use" has the meaning given in AS 38.04.910;

(12) "navigable water" means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes;

(13) "park and recreation land" means land chiefly valuable for public park and recreation use;

(14) "preference right forest lease" means a lease granted to a lessee whose United States Forest Service term special use permit was cancelled to allow the land under permit to be selected by the state;

(15) "preference right grazing lease" means a grazing lease granted to a lessee whose federal grazing lease was cancelled to allow the land under lease to be selected by the state;

(16) "public water" means navigable water and all other water, whether inland or coastal, fresh or salt, that is reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest;

(17) "rule of approximation" is the rule which is applied in determining whether or not a lease complies with the area limits set forth in this chapter and regulations adopted under it and in keeping the boundaries of leased land coincidental with legal subdivisions; under the rule, if the area covered by a lease in excess of the permitted

maximum is smaller than the area of any deficiency that would result by eliminating from the lease the smallest legal subdivision covered by the lease or application for lease, the excess area will be permitted to remain in the lease; if the excess area is greater than the deficient area would be, then the smallest legal subdivision will be eliminated from the lease;

(18) "shoreland" means land belonging to the state which is covered by nontidal water that is navigable under the laws of the United States up to ordinary high water mark as modified by accretion, erosion, or reliction;

(19) "state land" or "land" means all land, including shore, tide and submerged land, or resources belonging to or acquired by the state;

(20) "submerged land" means land covered by tidal water between the line of mean low water and seaward to a distance of three geographical miles or further as may hereafter be properly claimed by the state;

(21) "tideland" means land which is periodically covered by tidal water between the elevation of mean high and mean low tides;

(22) "timber land" and "material land" mean state land chiefly valuable for materials, including, but not limited to, sand, stone, gravel, pumice, common clay, or timber and other forest products;

(23) "university land"

(A) means

(i) all sections 33 reserved to the university under 38 Stat. 1214, as amended;

(ii) all land granted to or reserved for the benefit of the university that retains its designation as university land;

(iii) all other land owned in fee by the University of Alaska including land transferred in fee to the Board of Regents of the University of Alaska to replace land formerly designated as university land;

(B) does not include former university land that has been conveyed to the Department of Natural Resources under the settlement approved by the legislature in ch. 22, SLA 1983. (§ 2 art I ch 1698 SLA 1959; am § 1 ch 61 SLA 1960; am § 1 ch 74 SLA 1961; am § 3 ch 31 SLA 1964; am §§ 2, 3 ch 72 SLA 1966; am § 8 ch 143 SLA 1968; am § 4 ch 117 SLA 1976; am § 15 ch 181 SLA 1978; am § 5 ch 175 SLA 1980; am § 47 ch 152 SLA 1984)

Editor's notes. — This section is set out above to correct a typographical error in the main pamphlet.



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DATE 2-16-90. REF NO. 89192 FROM: HAL HOCKEMA
 TO ATTN OF: BILL CHENEY COMPANY: JENSEN MARITIME
 COMPANY: COMM. FISHERIES DIV. NO. OF PAGES (INCL. COVER): 2
 FAX NO: 907 465 2604

SUBJECT: 5 AAC 39.160. MAXIMUM LENGTH OF SALMON SEINE VESSEL.

MR. CHENEY:

THANK YOU FOR TAKING TIME FOR OUR PHONE DISCUSSION THIS MORNING.

THE LAWS REGARDING MEASUREMENT OF VESSELS HAVE CHANGED EFFECTIVE ON OCTOBER 12, 1989. PER NEW 46 CFR PART 69 RULES THE FOLLOWING REGISTER LENGTHS APPLY TO VESSELS LESS THAN 79' LENGTH OVERALL (THERE ARE 2 CHOICES OF MEASURE):

1. STANDARD SYSTEM - REGISTER LENGTH IS DEFINED AS FOLLOWS (SUBPART C)

Registered length means either 85 percent of the length on a waterline at 13 percent of the least molded depth measured from the top of the flat keel or the length from the fore side of the stem to the axis of the rudder stock on that waterline, whichever is greater. In vessels designed with a rake of keel, this length is measured on a waterline parallel to the design waterline.

OUR 57'-11" LENGTH OVERALL VESSEL WOULD HAVE 51'-8" REGISTER LENGTH IN THIS CASE

2. SIMPLIFIED SYSTEM - REGISTER LENGTH IS AS FOLLOWS (SUBPART E)

Registered length means—
(a) For a single-hull vessel, the vessel's overall length; and
(b) For a multi-hull vessel, the horizontal distance between the outboard side of the foremost part of the stern of the foremost hull and the outboard side of the aftermost part of the stern of the aftmost hull, including fittings or attachments.

OUR 57'-11" LENGTH OVERALL VESSEL WOULD HAVE 57'-11" REGISTER LENGTH IN THIS CASE

CORRECTION

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



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Registered length means either 88 percent of the length on a waterline at 13 1/2 feet depth or 85 percent of the least molded depth measured from the top of the flat keel or the length from the fore side of the stem to the axis of the rudder stock on that waterline, whichever is greater. In vessels designed with a rake of keel, this length is measured on a waterline parallel to the design waterline.

OUR 57'-11" LENGTH OVERALL VESSEL WOULD HAVE 51'-8" REGISTER LENGTH IN THIS CASE

2. SIMPLIFIED SYSTEM - REGISTER LENGTH IS AS FOLLOWS (SUBPART E)

Registered length means—
(a) For a single-hull vessel, the vessel's overall length; and
(b) For a multi-hull vessel, the horizontal distance between the outboard side of the foremost part of the stern of the foremost hull and the outboard side of the aftermost part of the stern of the aftermost hull, excluding fittings or attachments.

OUR 57'-11" LENGTH OVERALL VESSEL WOULD HAVE 57'-11" REGISTER LENGTH IN THIS CASE

THE OLD (PRE - OCTOBER 12, 1989) MEASUREMENT RULES REQUIRE REGISTER LENGTH MEASUREMENT AS FOLLOWS:

§ 69.03-13 Register length.

(a) The length measured on the tonnage deck, from the fore part of the outer planking (where it is rabbeted) on the side of the stem of wooden vessels, or fore end of lap of outer plating of steel or iron vessels, to the after side of the main sternpost, shall be accounted the vessel's register length. (See Figures 2 and 3 (§ 69.07-1).)

(b) In the case of screw vessels with no sternpost, take the length to the forward side of the rudder-stock or line of same extended through the deck.

(c) The register length of scows and barges, with a square bow and stern sloping up from the bottom to the deck, and with neither stem nor sternpost, is to be taken on the deck from the extreme point of the hull at the bow to the extreme point of the hull at the stern: that is, the overall length of the hull, not including guards or rubbing strakes, is to be considered the register length of such vessel.

OUR 57'-11" LENGTH
OVERALL VESSEL WOULD
HAVE 49'-6" REGISTER
LENGTH IN THIS CASE

THIS IS THE RULE THAT HAS BEEN IN EFFECT FOR DECADES, AND PROBABLY IS THE RULE THAT THE ALASKA LIMIT OF 50' REGISTER LENGTH IS WRITTEN FROM. HOWEVER THIS DEFINITION HAS BEEN REPLACED BY THE TWO CHOICES ON THE PRECEDING PAGE AND THEREFORE IS NO LONGER APPLICABLE.

TO SIMPLIFY MATTERS I SUGGEST THAT THE LAW FOR LIMITING LENGTH OF SALMON SEINERS BE ALTERED TO ONLY ADDRESS 50' "LENGTH OVERALL" AND DELETE ANY REFERENCE TO "REGISTER LENGTH."

I HAVE INCLUDED A PROFILE DRAWING OF ONE OF OUR DESIGNS TO CLARIFY THE DEFINITIONS ABOVE.

THANKS FOR YOUR ATTENTION IN THIS MATTER.

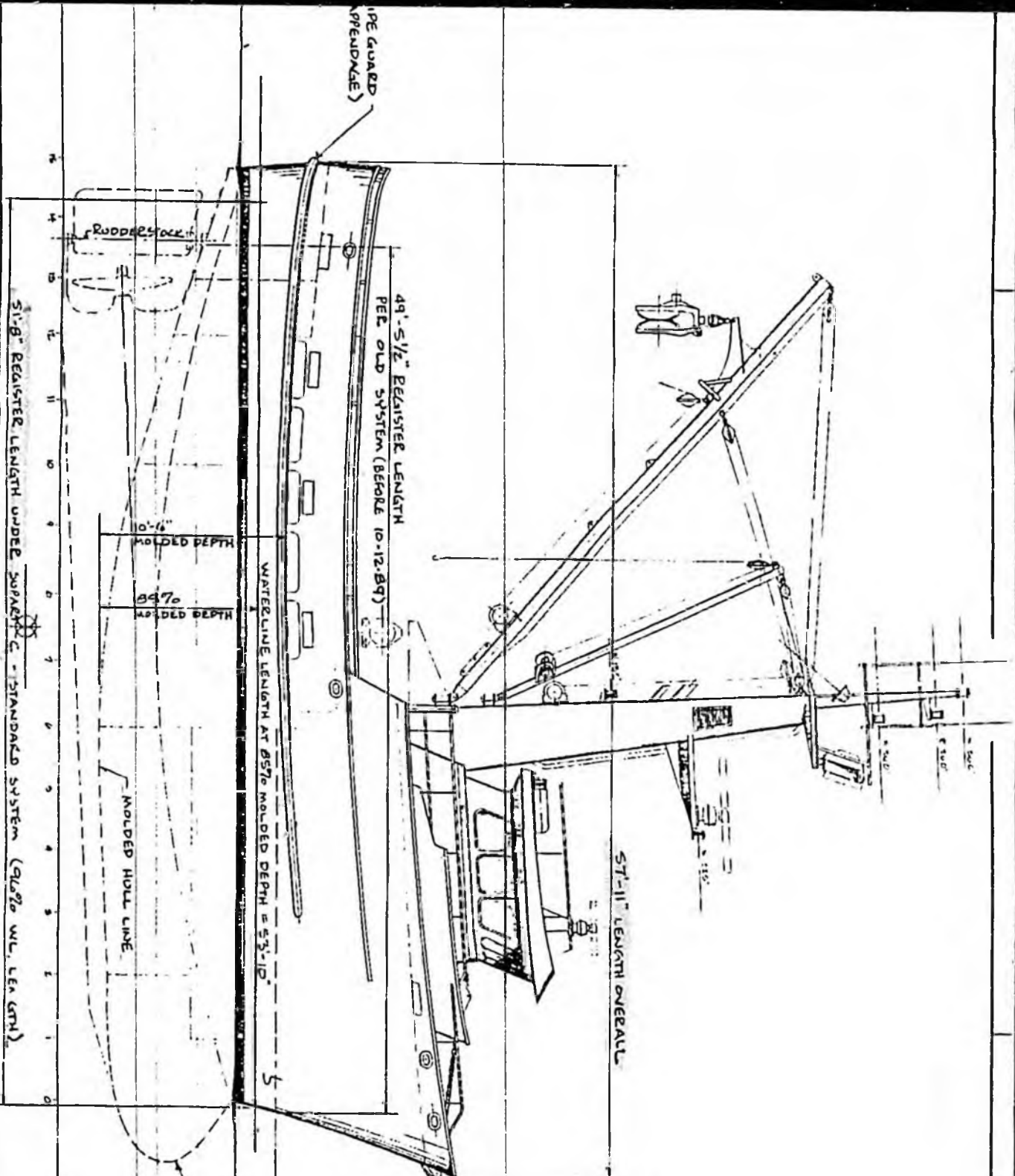




JMC

Jensen Maritime Consultants Inc.

HAL G. HOCKEMA, P.E.
Chief Projects Manager



PE GUARD (APPENDAGES)
 49'-5 1/2" REGISTER LENGTH (BEFORE 10-12-BQ)
 WATERLINE LENGTH AT 85% MOLDED DEPTH = 53'-10"
 MOLDED DEPTH 10'-6"
 MOLDED DEPTH 85%
 MOLDED HULL LINE
 57'-11" REGISTER LENGTH UNDER SURFACE C- STANDARD SYSTEM (90% WL LENGTH)
 MAIN DECK (TOWNAGE DECK)
 ANCHOR & SHROUD (APPENDAGES)
 57'-11" IS ALSO REGISTER LENGTH UNDER SURFACE & SIMPLIFIED SYSTEM
 BULBOUS BOW
 PARTIAL
 LENGTH OVERALL - LENGTH 10' 0" W/ LENGTH ELONGATED BOW AND MOLDED DEPTH OVER AHEAD; DEPTH MOLDED AHEAD
 CAPACITIES
 FRESH WOLD VOLUME 11,000 GAL - SEVERAL VOLUMES
 FUEL OIL
 LUBE OIL
 HYDRAULIC OIL
 RESERVOIR WATER
 PARTIAL
 LENGTH OVERALL - LENGTH 10' 0" W/ LENGTH ELONGATED BOW AND MOLDED DEPTH OVER AHEAD; DEPTH MOLDED AHEAD
 CAPACITIES
 FRESH WOLD VOLUME 11,000 GAL - SEVERAL VOLUMES
 FUEL OIL
 LUBE OIL
 HYDRAULIC OIL
 RESERVOIR WATER

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OUTBOARD PRO
 JEFFER
 50 FT LIVER SERVICE

DATE	
REV.	

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PART #30 - FEDERAL SUBSISTENCE RESOURCE MANAGEMENT PROGRAM

Subpart A - General Provisions

30.1 Purpose

The regulations in this part are intended to define the operation of the Federal Subsistence Resource Management Program as established by the Secretary of the Interior to manage subsistence activities within the State of Alaska.

30.2 Authority

The regulations in this part are issued pursuant to the Secretary of the Interior's authority in Section 814 of the Alaska National Interest Lands Conservation Act (94 Stat. 2371, Pub. L. 96-487) to prescribe such regulations as are necessary and appropriate to carry out his responsibilities to provide for subsistence uses by rural Alaska residents of wild, renewable resources of public lands.

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uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter or sharing for personal or family consumption; and for customary trade. For the purposes of this paragraph;

(1) The term "rural Alaska residents" shall mean those persons domiciled in a community or area of the State of Alaska in which the customary and traditional use of fish, wildlife, or other renewable resources for personal or family consumption is a principal characteristic of the economy of the community or area.

(2) The term "family" shall mean all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis;

(3) The term "barter" shall mean the exchange of fish or wildlife or their parts taken for subsistence uses:

(i) For other fish, wildlife or their parts; or

(ii) For other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

(b) The term "subsistence activities": shall mean the taking, for subsistence uses as defined in paragraph (a) of this section, of fish or

CORRECTION

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

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PART #30 - FEDERAL SUBSISTENCE RESOURCE MANAGEMENT PROGRAM

Subpart A - General Provisions

30.1 Purpose

The regulations in this part are intended to define the operation of the Federal Subsistence Resource Management Program as established by the Secretary of the Interior to manage subsistence activities within the State of Alaska.

30.2 Authority

The regulations in this part are issued pursuant to the Secretary of the Interior's authority in Section 814 of the Alaska National Interest Lands Conservation Act (94 Stat. 2371, Pub. L. 96-487) to prescribe such regulations as are necessary and appropriate to carry out his responsibilities to provide for subsistence uses by rural Alaska residents of wild, renewable resources of public lands.

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30.3 Applicability and scope

(a) The regulations in this part apply to all actions taken by Federal agencies, including agencies other than those within the Department of the Interior, with regard to managing subsistence activities.

(b) As provided in Title VIII of ANILCA, the management of subsistence activities shall be carried out by the State, as long as the program operated by the State is in compliance with ANILCA. Active management of subsistence activities by Federal agencies shall not take place unless the Secretary determines that:

(1) The State program is not in compliance with ANILCA; and

(2) The proper discharge of the Secretary's responsibilities under ANILCA requires that Federal agencies assume control over subsistence activities.

30.4 Definitions

The following definitions shall apply to all regulations contained in this part:

(a) The term "subsistence uses" shall mean the customary and traditional

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uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter or sharing for personal or family consumption; and for customary trade. For the purposes of this paragraph;

(1) The term "rural Alaska residents" shall mean those persons domiciled in a community or area of the State of Alaska in which the customary and traditional use of fish, wildlife, or other renewable resources for personal or family consumption is a principal characteristic of the economy of the community or area.

(2) The term "family" shall mean all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis;

(3) The term "barter" shall mean the exchange of fish or wildlife or their parts taken for subsistence uses:

(i) For other fish, wildlife or their parts; or

(ii) For other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

(b) The term "subsistence activities": shall mean the taking, for subsistence uses as defined in paragraph (a) of this section, of fish or

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wildlife resources of:

(1) Federally owned lands; and

(2) Lands not federally owned, but within the exterior boundaries of a conservation system unit, national recreation area, national conservation area, new national forest, or forest addition, as established by ANILCA.

(c) The term "Program" shall mean the Federal Subsistence Resource Management Program, as described in this part and established by the Secretary of the Interior to manage the taking of fish and wildlife resources of the public lands for subsistence uses.

(d) The term "ANILCA" shall mean the Alaska National Interest Lands Conservation Act (94 Stat. 2371, Pub. L. 96-487).

(e) The term "Federal Board" shall mean the Federal Subsistence Resource Management Board, as established by this part.

(f) The term "park monument" shall mean those national monuments under the management of the National Park Service.

(g) The term "fish and wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk,

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crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or part thereof.

(h) The terms "take" or "taking", as used with respect to fish or wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

(i) The term "Secretary" shall mean the Secretary of the Interior or any official designated to act for the Secretary in carrying out his responsibilities under ANILCA.

30.5 Policy

(a) Consistent with sound management principles and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural Alaska residents who depend upon subsistence uses of the resources of such lands.

(b) Consistent with the management of fish and wildlife in accordance with recognized scientific principles, rural Alaska residents engaged in a subsistence way of life shall be provided an opportunity to do so, pursuant to applicable State and Federal law.

(c) Nonwasteful subsistence uses of fish, wildlife, and other wild renewable resources by rural Alaska residents shall be the priority

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consumptive uses of such resources over other consumptive uses permitted on public lands pursuant to applicable State and Federal law.

(d) Whenever it is necessary to restrict subsistence activities in order to assure the continued viability of fish or wildlife populations, priority for subsistence uses shall be implemented through appropriate regulations based on the following criteria:

- (1) Customary and direct dependence upon the resource as the mainstay of livelihood;
- (2) Local residency; and
- (3) Availability of alternative resources.

(e) Except as otherwise provided by Federal law, Federal agencies responsible for managing subsistence activities and for protecting the continued viability of all wild, renewable resources in Alaska, shall cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies, and other nations.

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Subpart B - Program Structure

30.10 Program diagram.

The figure printed below is a diagrammatic representation of the structure of the Program, showing its component parts and the flow of information, recommendations, and decisions.

(Diagram to be inserted at this point)

30.11 Use of State entities.

The Program shall utilize the existing State system of local fish and game advisory committees, regional fish and game councils, the Board of Fisheries, and the Board of Game. When appropriate, these State entities will coordinate with the individual Federal agencies responsible for the management of subsistence activities and with the Federal Board.

30.12 Local fish and game advisory committees.

(a) The regulations in this section shall define the establishment,

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responsibilities, and functions of local fish and game advisory committees with respect to their position in the Program. The committees may also perform functions not relating to the Program, as provided by State laws and regulations.

(b) Local fish and game advisory committees shall be established and administered in accordance with applicable State laws and regulations. In the event that the Secretary determine that, in order to fulfill the requirements of Section 805 of ANILCA, advisory committees in addition to those established by the State are required, the Secretary shall establish and administer such necessary committees in the same manner as prescribed in State laws and regulations.

(c) A local fish and game advisory committee may perform the following:

- (1) Develop regulatory proposals for submission to the appropriate Board of Fisheries or Game.
- (2) Evaluate regulatory proposals submitted to it and make recommendations to the appropriate Board.
- (3) Provide a local forum for fish and wildlife conservation and use.
- (4) Advise the appropriate regional council regarding the conservation, development, and use of fish and wildlife resources.
- (5) Work with the appropriate regional council to develop

subsistence management plans and harvest strategy proposals.

(6) Cooperate and consult with interested persons and organizations, including government agencies, to accomplish (1) - (3) of this paragraph.

30.13 Regional Fish and Game Councils.

(a) The regulations in this section shall define the establishment, responsibilities, and functions of the regional fish and game councils with respect to their position in the Program. The councils may also perform functions not relating to the Program, as provided by State laws and regulations.

(b) Regional fish and game councils shall be established and administered in accordance with applicable State laws and regulations.

(c) Each regional fish and game council is authorized to perform the following:

(1) Hold public meetings on fish and wildlife matters.

(2) Elect officers.

(3) In consultation with the local fish and game advisory committees in its region and with the Alaska Department of Fish and Game, review,

evaluate, and make recommendations to the Boards of Fisheries and Game on any existing or proposed regulation, policy, management plan, or any other matter relating to the use of fish and wildlife within its region.

(4) Submit to the Boards of Fisheries and Game and the Secretary, by November 15 of each year, an annual report, containing:

(i) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region.

(ii) An evaluation of current and anticipated subsistence needs for use of fish and wildlife populations within the region.

(iii) A recommended strategy for the management of fish and wildlife populations within the region to accommodate the identified fish and wildlife uses and needs.

(iv) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy.

(d) A council shall provide a forum for, and assist its local fish and game advisory committees in obtaining the opinions and recommendations of people interested in fish and wildlife matters so as to achieve the greatest possible local participation in the decision-making process. If differences of opinion exist among the committees, the council shall attempt to develop areas of compromise and to reach a regional consensus on matters of

controversy.

(e) A council will, in its discretion, present recommendations concerning the conservation, regulation, management, and use of fish and wildlife resources within its region, along with the evidence upon which the recommendations are based, to the appropriate Board.

(f) A council will, in its discretion, make recommendations to the Boards of Fisheries and Game on the creation, consolidation, distribution, or operation of the committee system.

30.14 State Boards of Fisheries and Game.

(a) In compliance with State laws and regulations, the State Boards of Fisheries and Game promulgate regulations for the conservation, development and utilization of Alaska's fish and wildlife resources.

(b) With respect to the Program, these State Boards may perform the following functions:

(1) Review, comment upon, and take action on the recommendations of local fish and game advisory committees, regional fish and game advisory councils, and Federal agencies.

(2) Request input from the public, local committees, regional

councils, and Federal agencies concerning subsistence uses of fish and wildlife,

(3) Make recommendations to Federal agencies and the Federal Board concerning the Program.

(c) Restrictions or other limitations established by the Boards of Fisheries and Game to govern the taking of fish and wildlife on lands under their jurisdiction, including but not limited to seasons, permit and license requirements, and quantity limits, may be adopted by the Secretary to regulate subsistence activities, to the extent that such measures are not in conflict with ANILCA or other applicable Federal laws and regulations.

30.15 Alaska Department of Fish and Game.

The Alaska Department of Fish and Game conducts research and provides information relative to fish and wildlife resources and subsistence uses of these resources to the State Boards of Fisheries and Game, the regional councils, local committees, and Federal agencies. With regard to the Program this information will supplement that which is available from Federal and other sources.

30.16 Federal monitoring.

As required by Section 806 of ANILCA, Federal agencies, on behalf of the

Secretary, shall monitor the functions of the local advisory committees and regional councils in providing for a preference for subsistence activities. The actions of the State Boards of Fisheries and Game with respect to subsistence uses shall also be monitored by the Federal agencies. Such monitoring shall include active participation in the hearings, meetings, and other public participation activities of the committees, councils, and boards and the submission of recommendations to these bodies relevant to subsistence activities.

30.17 Park and park monument subsistence resource commissions.

(a) The regulations in this section shall define the establishment, responsibilities, and functions of park and park monument subsistence resource commissions with respect to their position in the Federal Subsistence Resource Management Program.

(b) In accordance with the procedures defined in paragraph (c), a subsistence resource commission shall be established for each of the following areas of the National Park System:

Aniakchak National Monument

Cape Krusenstern National Monument

Denali National Park

Gates of the Arctic National Park

Kobuk Valley National Park

Lake Clark National Park

Wrangell-St. Elias National Park

(c) Each commission shall be composed of the following:

(1) Three members to be appointed by the Secretary.

(2) Three members to be appointed by the Governor of the State of Alaska.

(3) Three members to be appointed by the regional fish and game advisory council for the region in which the park or park monument is located. Each such member shall be a member of either the regional advisory council or of one of the local fish and game advisory committees within the region, and shall also be engaged in subsistence uses within the park or park monument.

(d) A subsistence resource commission shall annually:

(1) Consult with local committees and the regional council concerning subsistence hunting within the park or park monument.

(2) Conduct, in the vicinity of the park or park monument, one or more public hearings concerning subsistence hunting.

(3) Make recommendations to the Secretary for changes in the

subsistence hunting program for the park or park monument.

30.18 Federal Land Management Agencies.

In accordance with ANILCA, other applicable Federal Laws, and the regulations in this part, each Federal agency having a responsibility for the management of public lands shall:

- (a) Monitor the operation of the Program as it pertains to the fish and wildlife resources of the lands for which it is responsible.
- (b) Manage subsistence activities on lands under its administration, if the Secretary assumes control of these activities in accordance with Section 30.3 (b) of this part.
- (c) Develop such agency-specific regulations as are required to carry out agency responsibilities under the Program.

30.19 Federal Subsistence Resource Management Board.

- (a) The Federal Board shall be composed of the following officials:
 - (1) Regional Director, Fish and Wildlife Service. Chair and Lead Official for development and implementation of the Program.

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- (2) Area Director, Bureau of Indian Affairs.
- (3) State Director, Bureau of Land Management.
- (4) Regional Director, National Park Service.
- (5) Regional Forester, Forest Service.

(b) The responsibilities of the Federal Board shall be to coordinate interagency implementation of the Program, to review recommendations of other entities within the Program, to develop policies and procedures necessary to provide for operation of the Program, and to recommend to the Secretary such regulations as are necessary to carry out the functions of the Federal Board and discharge the Secretary's responsibilities under Title VIII of ANILCA.

30.20 Federal Regulations

(a) The regulations contained in Subparts A, B, and C of this part define the program as it will operate under conditions in which the State manages subsistence activities.

(b) In the event that, in accordance with Section 30.3 (b) of this part, the Secretary assumes control of subsistence activities, the regulations in this part shall be supplemented by such additional regulations as he finds are