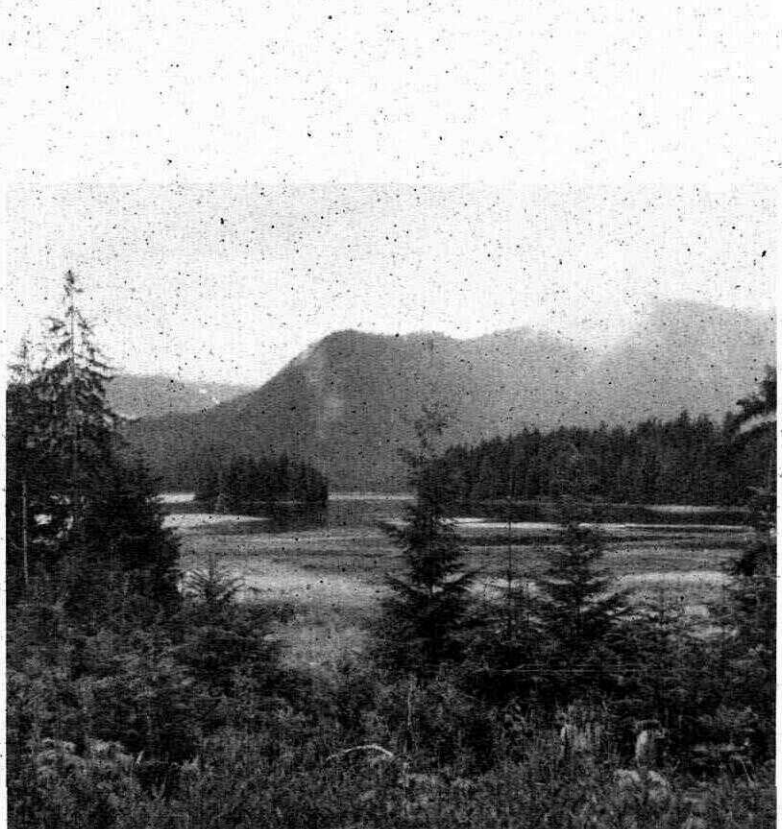


CHAPTER FOUR

IMPLEMENTATION & RECOMMENDATIONS

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CHAPTER 4

Implementation & Recommendations

Introduction

This chapter includes information and recommendations necessary to implement plan goals, management intent, and guidelines. Included is information about:

- land classifications
- land conveyance proposals
- land selection proposals
- mineral orders
- coastal management coordination
- hydrologic study recommendations
- land management consolidation recommendations
- procedures for plan review, modification, and amendment

State Land Classification

To implement the plan on state lands, DNR must classify state lands to reflect the intent of land use designations made by the plan. State law requires that classification precede most leasing of state uplands, tidelands, or submerged lands and most conveyances of state uplands and tidelands.

Land classification is the formal record of uses and resources for which state lands will be managed. Classifications will be recorded on state land status plats, with a reference to this plan. All classifications are intended for multiple use. There might be several land use designations within any given classification. The breakdown of land use designations within classifications is shown in Tables 4.1 and 4.2.

DNR managers will use the plan's land use designations, management intent, and guidelines, to make decisions on proposed activities.

TABLE 4.1 - Upland Designations Conversion to Classifications

| Map Symbol | Designation | Classification |
|------------|---|------------------------------|
| G | General uses | Resource management land |
| Ha, Hb | Fish and wildlife habitat | Wildlife habitat land |
| Hv | Fish and wildlife harvest | Wildlife habitat land |
| M | Minerals development | Mineral land |
| Mt | Materials | Material land |
| Pr | Public facilities reserved site - retain | Reserved use land |
| Pt | Public facilities reserved site- transfer | Settlement land |
| Rd | Recreation and tourism - dispersed | Public recreation land |
| Rp | Recreation and tourism - public use site | Public recreation land |
| S | Settlement | Settlement land |
| Tr | Transportation corridor | Transportation corridor land |
| W | Water resources and uses | Water resources land |

TABLE 4.2 - Tideland, Submerged Land, & Shoreland Designations Conversion to Classifications

| Map Symbol | Designation | Classification |
|------------|--|-----------------------------|
| G | General uses | Resource management land |
| Ha, Hb | Fish and wildlife habitat | Wildlife habitat land |
| Hv | Fish and wildlife harvest | Wildlife habitat land |
| Pr | Public facilities reserved site - retain | Reserved use land |
| Pt | Public facilities reserved site - transfer | Settlement land |
| Rd | Recreation and tourism - dispersed use | Public recreation land |
| Rp | Recreation and tourism - public use site | Public recreation land |
| Sh | Shoreline use | Settlement land |
| Wd | Waterfront development | Waterfront development land |

State Land Conveyance Proposals

The plan identifies four potential settlement areas for future state land conveyance projects. They are:

- Subunit 2d1 - Lena Creek (north of Auke Recreation Area)
- Subunit 2d2 - Lena Loop (portion of communication site)
- Subunit 5a27 - Lemon Creek (small portion of tract is occupied by correctional center)
- Subunit 5b28 - Channel Vista Drive (small parcel)

See Chapter 3 for additional background information and management intent.

Land Selection Recommendations

Taku Harbor Tract: Subunit 14b26 (See Chapter 3) includes uplands on the northwest side of Taku Harbor. The uplands in this subunit have been designated as a State Marine Park even though they are still in U.S. Forest Service ownership and have not been selected by the state. Subunit 14b26 should be selected for community recreation and placed on the selection priority list.

U.S. Forest Service Recreation Areas: Section 906 of the Alaska National Interest Lands Conservation Act establishes the state's right to topfile for future selection of land currently withdrawn from selection. The U.S. Forest Service recreation areas including Lena Cove Picnic Area (Subunit 2c12) and Auke Village Public Recreation Area (Subunit 3a4) are currently withdrawn from selection. The state should topfile on these sites. The U.S. Forest Service intends to retain and manage these sites for recreation. However, if the U.S. Forest Service decides in the future not to retain these sites, the topfiling will allow the state to acquire them.

Mineral Orders

Alaska Statute 38.05.185 requires the Commissioner of DNR to determine that mineral entry and location is incompatible with significant surface uses in order to close state-owned lands to mineral entry. This plan and Mineral Closing Orders 653 and 655 close certain land to new mineral location. Mineral closures are summarized in Chapter 2 in the *Subsurface Resources* section and are also depicted and described within respective management units in Chapter 3. The final findings and maps for these orders are in Appendix B.

Coastal Management Coordination

The City and Borough of Juneau has an adopted Coastal Management Plan. The Juneau State Land Plan used the Juneau Coastal Management Plan, the Juneau Comprehensive Plan, and the CBJ Land-Use Ordinances as the basis for land-use designations. State actions within the coastal zone must be consistent with the provisions of the Alaska Coastal Management Plan and the Juneau Coastal Management Plan. The City and Borough of Juneau reviews activities within the borough boundaries to determine consistency with the Juneau Coastal Management Plan.

Land Management Consolidation Proposals

The City and Borough of Juneau (CBJ) and the Department of Natural Resources should cooperate to consolidate land management responsibilities. The proposals in Table 4.3 would transfer management responsibility to DNR, Division of Parks and Outdoor Recreation (DPOR) for recreation lands near state parks north of Juneau, and transfer management responsibility to CBJ for isolated state parcels near CBJ lands closer to the Juneau urban center.

TABLE 4.3 - Land Management Consolidation Proposals

| Transfer Management from DNR to CBJ | | |
|--|---|--|
| Unit | Area | Reason/Recommendation |
| 3f | Montana Creek | Primarily recreation values - closer to Juneau urban center - adjacent to CBJ lands. Cooperative management agreement. |
| 10b | Southwest Douglas Island | Isolated state parcels adjacent to CBJ lands - other lands nearby owned by Goldbelt. CBJ selects, or .810 transfer. |
| Transfer Management from CBJ to DNR, DPOR | | |
| 1b | Lands between Yankee Cove & Bridget Cove including Mab Island, Yankee Cove, Sunshine Cove | DPOR manages Point Bridget State Park same general area - CBJ lands designated for parks and open space. Cooperative management agreement. |

Hydrologic Study Recommendations

The following streams are priorities for additional hydrologic study if funding becomes available: Bessie Creek, Gold Creek, William Henry Creek, Hilda Creek, Sawmill Creek, creeks at Gilbert Bay, and any anadromous streams along the road system. Pending instream flow reservations include: Auke Creek, Mendenhall River (2 reaches), Montana Creek, and Fish Creek (Douglas).

The Alaska Department of Fish and Game uses the following criteria to prioritize instream flow reservation applications: locations for reserving instream flows are nominated by an interdepartmental team of ADFG biologists and resource specialists. The Division of Sport Fish makes final selections by evaluating the importance of nominated streams to the sport fishery, the likelihood of competing out-of-stream or diversionary water appropriations, and whether existing hydrologic and biotic data for a stream reach are adequate for performing an instream flow analysis.

Supplemental instream flow evaluations can also be requested and performed for sites not included in the above process if adequate funding to collect, analyze, and report the data are provided.

Procedures for Plan Review, Amendment, & Modifications

PLAN MODIFICATION

This plan may be changed if conditions warrant. The plan will be updated periodically as new data and new technology become available and as changing social or economic conditions place different demands on state lands.

PERIODIC REVIEW

The plan will be reviewed approximately once every five years to determine if revisions are necessary. An interagency planning team will do this review. During this review, changes to the Juneau Comprehensive Plan, Juneau Coastal Management Plan, and the Land Use Ordinances will be taken into consideration.

TYPES OF CHANGES TO THE PLAN

The land use designations, management intent, and guidelines of this plan may be changed if conditions warrant. Three types of changes may be made: amendments, special exceptions, and minor changes. Amendments and special exceptions are plan revisions subject to the planning process requirements of AS 38.04.065 and the regulations in 11 AAC 55.250; minor changes are not.

Changes to the plan may be proposed by agencies, municipalities, or members of the public. The director of the DNR, Division of Land determines what constitutes an amendment, special exception, or a minor change on state land. The director may reject the request for an amendment, special exception or minor changes: if the issue was addressed during plan development and no new information was provided with the request; or if the request is for an action not allowed under other statutes or regulations; or if the request is not in the state's interest.

Plan Amendment

An amendment permanently changes the land use plan by adding to or modifying the basic management intent for one or more of the plan's subunits, or by changing its allowed or prohibited uses, policies, or guidelines. For example an amendment would be required to:

- allow a land use in an area where the plan prohibited it, or conversely, to prohibit a use that is now a designated use;
- close an area to new mineral location;
- propose a land conveyance in an area designated for retention.

According to AS 38.04.065, amendments must be approved by the commissioner. The Department of Natural Resources may convene the planning team as necessary to make recommendations on plan amendments. Management plans developed by the Department of Natural Resources may amend this plan.

Procedures for plan amendment

A. Taking into account the requirements of AS 38.04.065 (b), if DNR proceeds with a plan amendment it will prepare a written document that specifies:

- the reasons for the amendment such as changed social or economic conditions;
- the alternative course of action (what the plan is being changed to); and
- why the plan amendment is in the best public interest.

B. Where practical, the document should be part of, or circulated with, a finding required by AS 38.05.035(e).

C. Before making the final decision, DNR will request comments and give public notice consistent with AS 38.04.065(b)(8) and 38.05.945 to the City and Borough of Juneau, appropriate state and federal agencies, adjacent landowners, and the general public. This notification will include the points described in paragraph A. above and may be combined with public notice required by applicable permitting procedures. If warranted by the degree of controversy, DNR may hold a public meeting before making a decision.

Special Exception

A special exception does not permanently change the provisions of a land use plan and cannot be used as the basis for a reclassification of the subunit. Instead, it allows a one-time, limited purpose variance of the plan's provisions, without changing the plan's general management intent or guidelines. For example, a special exception might be used to grant an eligible applicant a preference right under AS 38.05.035 to purchase land in a subunit designated for retention in public ownership (11 AAC 55.030).

Special exceptions may also occur when the proposed activity requires only a small part of a management subunit, does not change or modify the general management intent, and serves to facilitate the implementation of the plan. An example would be allowing a prohibited use based on more detailed data in a small area on the edge of a management subunit next to a subunit where it is allowed.

A special exception might be made if complying with the plan would be excessively burdensome or impractical to the applicant, or if compliance would be inequitable to a third party, and if the purposes and spirit of the plan can be achieved despite the exception (11 AAC 55.030).

A special exception cannot be used to reclassify an area. Special exceptions may apply to prohibited uses or guidelines.

Procedures for special exception

Decisions concerning special exceptions will be made by the director of the Division of Land. The director's decision may be appealed to the commissioner. Special exceptions require public notice and, if appropriate, public meetings. DNR will convene the planning team as needed to make recommendations on special exceptions.

A. Taking into account the requirements of AS 38.04.065(b), if the director decides to consider a special exception he will prepare a written document that specifies:

- the alternative action or course of action to be followed;
- the reasons for the special exception (why a variance is needed);
- why the special exception is in the best public interest; and
- how the general intent of the plan and management unit will be met by the alternative course of action.

B. Where practical, the document should be part of, or circulated with, a finding required by AS 38.05.035(e).

C. Before making the final decision, DNR will request comments and give public notice consistent with AS 38.04.065(b)(8) and 38.05.945 to the City and Borough of Juneau, appropriate state and federal agencies, adjacent landowners, and the general public. This notification will include the points described in paragraph A. above and may be combined with public notice required by applicable permitting procedures. If warranted by the degree of controversy, DNR may hold a public meeting before making a decision.

Special exceptions to guidelines modified by "will"

Special exceptions to guidelines modified by the word "will" may be allowed for individual actions. The decision not to follow a pertinent guideline modified by the term "will" must be consistent with the procedures for special exceptions.

Discretion within Guidelines

Some policies in the plan, like those modified by the terms "feasible and prudent" and "should", are written to allow for exceptions if the conditions described in the policy are met. The definitions of these terms are in the Glossary in Appendix A. The procedures for allowing exceptions to these guidelines are given in this section. Exceptions following these procedures are neither revisions nor changes to the plan.

Guidelines modified by "feasible and prudent"

Exceptions to guidelines modified by the phrase "feasible and prudent" (see definitions in Glossary, Appendix A) may be allowed after the steps outlined below have been taken.

A. The DNR regional manager will prepare a written document that specifies:

- the conditions that make compliance with the guideline not feasible or not feasible and prudent;
- the alternative course of action to be followed; and
- how the intent of the plan and management unit will be met by the alternative course of action.

B. Where practical, the document should be part of, or circulated with, a finding required by AS 38.05.035(e).

C. Before making the final decision, the DNR regional manager will give notification required by the applicable permitting procedure and request comments on the proposed action. This notification will include the points described in paragraph A. above.

Guidelines modified by "should"

Exception to guidelines modified by the word "should" can be made by the DNR regional manager, or the manager's designees. The guideline does, however, state an intent of the plan that should be met, using the best managerial practices for the given situation. These exceptions require a written justification in the administrative record. The justification should briefly outline how the action meets the intent of the guideline, or why the particular circumstances justify deviation from the intended action or conditions. In addition, the manager must ensure that any exceptions do not conflict with the Alaska Coastal Management Plan standards or the Juneau Coastal Management Plan.

Minor Change

A minor change is not considered a revision under AS 38.04.065. A minor change does not modify or add to the plan's basic intent, and serves only to clarify the plan, make it consistent, facilitate its implementation, or make technical corrections. (11 AAC 55.030)

Procedures for minor changes

Minor changes are made at the discretion of the DNR regional manager and do not require public review. Affected agencies will be notified and have an opportunity to comment. The comment period may be provided through existing inter-agency review processes for associated actions. The regional manager's decisions may be appealed to the director. The director's decision may be appealed to the commissioner.

Request for Changes

Requests for changes to the plan should be submitted to the Southeast Regional Office of the DNR, Division of Land.

Access and the Public Trust Doctrine

The Alaska Constitution (Article VIII, Sections 1, 2, 3, 6, 13, and 14) and Alaska Statutes (38.05.127 and 38.05.128) are the legal basis for applying the public trust doctrine in Alaska. This doctrine guarantees the public right to engage in such things as navigation, commerce, fishing, and other uses.

The Alaska Constitution provides that "free access to the navigable or public waters of the state, as defined by the legislature, shall not be denied any citizen of the United States or resident of the state, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes." Eliminating private upland owners' reasonable access to navigable waters may require compensation.

Because 99 percent of Alaska was in public ownership at statehood, both federal and state laws providing for the transfer of land to private parties also provide for public access to navigable waters. Implementing the state constitutional guarantee of access to navigable waters under Article VIII, Section 14, AS 38.05.127 requires that the state commissioner of natural resources must "provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the commissioner finds that regulating or eliminating access is necessary for other beneficial uses or public purposes."

It has never been held that any lands normally subject to the public trust doctrine in Alaska are exempt from it, including lands occupied and developed.

These statutes and concepts are considered and used throughout this plan. Any management actions shall be consistent with the public trust doctrine as defined by the Alaska Constitution, statutes, court decisions, and public involvement.

