

Chapter 4

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Chapter 4

Implementation and Recommendations

Introduction

This chapter includes information and recommendations necessary to implement plan goals, management intent, and guidelines. Information is included on the following:

- State Land Classification
- Relationship of Plan Designations to Classifications
- Classification Order
- Applicability of Plan Designations and Classifications
- Survivor Designations
- Public Trust Doctrine
- Surface Leasing
- Alaska Coastal Management Program
- Municipal Entitlement
- State Land Selections
- Coordination with Federal Land Management
- Mineral Order
- Procedures for Plan Changes

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. According to state statute classification means, “. . .the designation of lands according to their apparent best use.” It “. . . identifies the primary use for which the land will be managed . . .” but “. . . all other uses are initially presumed as compatible with the primary use.” For this reason, all plan classifications are intended for multiple uses.

In some instances more than one designation is identified; these are termed “codesignations” and indicate that two (or more) uses are considered to be compatible within a specific parcel of state land. In a few instances more than two designations are used. The General Use (Gu) designation is used frequently in this plan, typically applying to the larger parcels of state land where two or more uses are judged to be compatible within specific portions of the parcel. Compatibility should be able to be achieved through distance separation, or siting and design techniques that should reduce or preclude the undesirable effects of a particular use.

Following is a list of land classifications, and their associated definitions in Alaska regulations, which will apply to state lands in the planning area as a result of plan adoption. DNR will manage state lands and resources consistent with these classifications, with areawide policies described in Chapter 2, and the management directions given in Chapter 3 for specific parcels of state land.¹

11 AAC 55.055. Coal Land. Land classified coal is land where known coal resources exist and where development is occurring or is reasonably likely to occur, or where the coal potential has been determined to be high or moderate under 11 AAC 85.010.

11 AAC 55.130. Mineral Land. Land classified mineral is land where known mineral resources exist and where development is occurring or is reasonably likely to occur, or where there is reason to believe that commercial quantities of minerals exist.

11 AAC 55.160. Public Recreation Land. Land classified public recreation is land that is suitable for recreation uses, waysides, parks, campsites, scenic overlooks, hunting, fishing or boating access sites, trail corridors, or greenbelts along bodies of water or roadways.

11 AAC 55.200. Resource Management Land. Land classified resource management is either:

A. Land that might have a number of important resources, but for which a specific resource allocation decision is not possible because of a lack of adequate resource, economic, or other relevant information; or for which a decision is not necessary because the land is presently inaccessible and remote and development is not likely to occur within the next 10 years; or

B. Land that contains one or more resource values, none of which is of sufficiently high value to merit designation as a primary use.

11 AAC 55.202. Settlement Land. An upland area classified settlement is land that is, by reason of its physical qualities and location, suitable for year-round or seasonal residential or private recreational use or for commercial or industrial development. Tidelands are to be managed to support those existing or proposed upland settlement uses.

¹ Land not otherwise classified on the plan maps within the planning area are to be considered classified according to the standards of ‘Applicability of Plan Designations/Classifications’, following.

11 AAC 55.205. Transportation Corridor Land. Land classified transportation corridor is land that is identified for the location of easements and rights-of-way under AS 38.04.065(f) including transportation, pipeline, or utility corridor purposes, or is under consideration for a right-of-way lease.

11 AAC 55.230. Wildlife Habitat Land. Land classified wildlife habitat is land which is primarily valuable for:

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

Relationship of Designations to Classifications and Conversion of Plan Designations into Classifications

The classifications contain no specific land management directives; those directives are expressed through the use of plan designations, described in detail for individual parcels included in Chapter 3. However, the designations used in the area plan must be converted into classifications outlined in state regulation (11AAC 55) that reflect the intent of the plan.

Since plan designations are central to the management of state land in this area plan, knowledge of the amount of area associated with particular designations is important, allowing a comparison between plan designations and classifications. Table 4-1 identifies the acreage associated with the designations recommended in this plan, separated into upland and tideland parcels. Descriptions of each of the following designations are also provided in Chapter 3 in the section ‘Land Use Designations’.

Table 4-1(a): Acreages Associated with Upland Designations

Symbol	Designation	Acreage (K = thousand)
Ha	Habitat	2,158 K
Ha, Hv	Habitat and Harvest	2,417 K
Ha, Rd	Habitat and Public Recreation	64 K
Co, Ha	Coal and Habitat	1,122 K
Mi, Ha	Mineral and Habitat	1,736 K
Mi, Rd	Mineral and Public Recreation	175 K
Mi	Mineral	1,909 K
Gu	General Use	3,249 K
Tc	Transportation Corridor	571 K
Se	Settlement	109 K
	Total	13,510 K

Table 4-1(b): Acreages Associated with Tideland, Submerged Land, and Shoreland Designations

Symbol	Designation	Acreage (K = thousand)
Ha	Habitat	374 K
Ha, Hv	Habitat and Harvest	1,230K
Ha, Rd	Habitat and Public Recreation	903 K
Gu	General Use	3,046 K
Total		5,553K

The conversion of land use designations into state land classifications is indicated in the following two tables. These are intended to identify the allowable uses of a state upland or tideland area, consistent with the definitions described previously and with any management intent given in Chapter 3. Note that acreage estimates for shorelands is not included.

Table 4-2(a): Upland Designations – Conversion to Classifications

Symbol	Designation	Classification
Co	Coal	Coal Land
Gu	General Use	Resource Management Land
Ha	Habitat	Wildlife Habitat Land
Hv	Harvest	Wildlife Habitat Land
Mi	Minerals	Mineral Land
Rd	Public Recreation and Tourism-Dispersed	Public Recreation Land
Se	Settlement	Settlement Land
Tc	Transportation Corridor	Transportation Corridor Land

Table 4-2(b): Tideland, Submerged Land, and Shoreland Designations – Conversion to Classifications

Symbol	Designation	Classification
Gu	General Use	Resource Management Land
Ha	Habitat	Wildlife Habitat Land
Hv	Harvest	Wildlife Habitat Land
Rd	Public Recreation and Tourism-Dispersed	Public Recreation Land

Classification Order

State land is classified under the authority of AS 38.04.005, AS 38.05.300, and 11 AAC 55.010 - 11 AAC 55.280 according to the plan designations and management intent set forth in this plan.

Land Classification Order NC-08-001 classifies all state land within the plan area not previously classified and rescinds and replaces the previous land classification orders classifying state land. See Appendix B.

See also the section ‘Application of Plan Designations/Classifications’, following. This section describes how lands inadvertently omitted from classification or acquired by the state the Classification Order are to be treated in terms of plan designation and classification.²

Table 4-3 provides estimates of the acreage by classification for uplands and tidelands.

Table 4-3: Acres of State Lands Classified (K = thousand)

Classification	Upland Acreage	Tideland and Submerged Land Acreage	Total
Wildlife Habitat Land	4,575 K	1,604 K	6,179K
Wildlife Habitat & Public Recreation	64 K	903	967 K
Coal & Wildlife Habitat	1,122K		1,122 K
Mineral & Wildlife Habitat	1,736 K		1,736 K
Mineral & Public Recreation	175 K		175 K
Mineral Land	1,909 K		1,909 K
Resource Management Land	3,249 K	3,046 K	6295K
Settlement Land	109 K		109K
Transportation Corridor Land	571 K		571 K
Total	13,510 K	5,553 K	19,063 K

Note: Acreage estimates for shorelands is not included.

² Special Use Designations predating the adoption of this Order are unaffected.

Plan Revision

This Plan Revision supersedes the 1989 plan and plan amendments to date.³

Applicability of Plan Designations/Classifications

This section deals with those lands that are not designated in the NWAP or classified in the Land Classification Order. Such lands include those state lands inadvertently omitted in the NWAP and those lands that may be acquired by the state in the future but not designated or classified in the area plan. The state has acquired and will continue to acquire isolated units of land through foreclosure, escheat, and other methods. The purpose of this section is to give direction to the designation of these lands by the Department when future issues of unit classification and management arise.

Uplands. The following guidelines of plan designation/classification and potential disposal out of state ownership are to apply for uplands:

- **Units in or near Existing Communities.** If the unit is in or is immediately adjacent to an existing community or past state land offering, the designation of Settlement and classification of Settlement Land apply. Such land can be considered for disposal use unless it is appropriate as a site(s) for schools, material sites, roads, parks, or other similar public use. Unsold lots identified for disposal in existing subdivisions and lots that return to state ownership will be available for lease, sale, or conveyance. Tracts identified for community purposes in existing subdivisions will not be sold but may be conveyed to municipalities or homeowner associations if they are not needed for state purposes.
- **Units near other State Land.** If the unit adjoins or is surrounded by other state land, the designation of that area(s) applies. It is to be managed according to the management intent and guidelines applicable to the adjacent lands. Such lands can be considered appropriate for disposal if they are designated Settlement or Settlement-Commercial unless it is appropriate as a site(s) for schools, material sites, roads, parks, or other similar public use. They may also be conveyed to a municipality even if it is suitable for these public uses as long as the proposed uses are for comparable municipal (public) use.

³ A significant amendment to the North West Area Plan occurred in November, 2005. The 2005 plan amendment reclassified or classified nearly 215,000 acres of state-owned and state-selected land in order to convey land to the Northwest Arctic Borough under the state Municipal Entitlement Program. This amendment also established certain criteria for the conveyance of state land near Red Dog and along the Squirrel River drainage. Land within the Squirrel River drainage is in selection status and cannot be conveyed to the Borough until the state is conveyed these lands by the federal government. These specific requirements are superseded by this 2008 revision.

- Units not near Other State Land. Units not near other state land or that occur within areas designated General Use are to be designated General Use and classified as Resource Management Land. These lands are to be managed according to the management intent and guidelines applicable to the adjacent lands. Disposal of these lands to the adjacent land owner may be appropriate but will require reclassification to Settlement Land.
- Newly Acquired State Lands. Lands that were acquired proactively through exchange, purchase, or other methods will be managed and classified consistent with the purposes for which they were acquired.
- Other Lands. If the designation/classification of a unit of acquired or omitted state land cannot be adequately determined, the unit is to be designated General Use and classified Resource Management Land.

Tidelands, Shorelands, and Submerged Lands: Tide and submerged lands not identified on the plan maps are designated General Use. Shorelands not identified on these maps are to follow the standards given in the section, ‘Management Intent: Rivers and Lakes’, under Navigable Rivers and Lakes in Chapter 3.

Survivor Designations and Classifications

This revision of the NWAP replaces and supersedes all previous plan designations and land classifications (termed ‘survivor’) that affected the NWAP planning area prior to the adoption of the area plan. It does not replace or supercede Special Use Designations predating this action, however.

Public Trust Doctrine

See the Navigable Rivers and Lakes section at the end of Chapter 3.

Surface Leasing

Under the authority of AS 38.05 and 11 AAC 58.300-.350, state land within the planning area is available for surface leasing, provided that the leasing is allowed under the classification and is consistent with the management intent set forth in this area plan.

Applications for uses of state land within the planning area will be considered by the Regional Manager, Department of Natural Resources, Division of Mining, Land and Water, Northern Region, Fairbanks, Alaska.

Alaska Coastal Zone Management Program

The state Alaska Coastal Management Program will be implemented through the coastal consistency review process described under Title 46 of the Alaska Statutes and associated regulations, contained in 11 AAC 112. State actions within the coastal zone must be consistent with the provisions of the Alaska Coastal Management Plan⁴ and with the enforceable policies of the three District Plans affecting portions of the planning area⁵. Adjudicators are to review these policies prior to the issuance of authorizations. Additional guidance on the preparation of state best interest findings under AS 38.05.035(e) as related to the Alaska Coastal Management Program can be found on the internal DMLW WebPage.

Municipal Entitlement

The Municipal Entitlement Act (AS 29.65) determines a municipal general grant land entitlement and identifies what lands are available for transfer to a municipality. The term “municipality” includes both incorporated cities and organized boroughs. The size of a municipality’s entitlement is 10 per cent of the vacant, un-appropriated, unreserved (VUU) of state general grant land within municipal boundaries. There are two municipalities within the planning boundary that have remaining entitlements: Northwest Arctic Borough and the North Slope Borough.

Northwest Arctic Borough. The municipal entitlement of the NWAB has largely been fulfilled.⁶ The remaining areas of municipally selected land, totaling approximately 70,600 acres, coincide with areas of state selections within the Squirrel River drainage plus a small amount of acreage near the Red Dog Mine. Plan requirements affecting these areas are described in the Resource Summary Tables for management units B-03 in the Baird Mountains and K-04 in the Kotzebue Sound regions. While these plan designations allow conveyance, the actual transfer of land is contingent upon the state acquiring title from the federal government and a municipal entitlement decision that determines that it is in the best interest of the state to convey this land to the NWAB.

North Slope Borough. The municipal entitlement of the North Slope Borough has been largely unfilled within the plan boundary. While the majority of the Borough’s selections are situated near and south of Prudhoe Bay or in the Brooks Range Foothills, some occur along the Kukpuk River in the southern part of the Lisburne region. Approximately 21,020 acres along the Kukpuk were reclassified in a 2007 plan amendment and land classification order. The 2008 Revision continues the approach developed in the 2007 plan amendment. However, since

⁴ ACMP standards are contained in 11 AAC 112, which can be accessed at:
dnr.alaska.gov/coastal/acmp/Clawhome/11AAC112/112.pdf

⁵ The three District Plans affecting portions of the planning area are those by the North Slope Borough, Northwest Arctic Borough, and Bering Straits CRSA Coastal Management District. Enforceable policies of these plans can be accessed at dnr.alaska.gov/coastal/acmp/Explore/alldistEPS.html

⁶ Nearly 214,825 acres of state land were approved by the state for conveyance in 2005.

these lands remain in state selection status, they can only be conveyed after this land is conveyed by the federal government to the state and subsequent to a municipal entitlement best interest finding. Area Plan requirements, which enable conveyance if the municipal entitlement decision determines that it is appropriate to convey the land to the NSB, are described in the Resource Summary Table for management unit L-07.

State Land Selections

Land Selections

Under the Statehood Act, Alaska is entitled to approximately 130 million acres of federal land. Large areas within the planning boundary have been selected under the General Grant authority and, to a much lesser extent, under the Community Grant authority. The acreages selected under these authorities, including ANILCA top-filed selections, total 5.9 million throughout the planning area. State selections are extensive and are distributed throughout each of the 7 regions. Unlike the initial plan (1989) which identified selection priorities, the state has recently developed a comprehensive listing of statewide selection priorities and submitted this to the Bureau of Land Management in 2006. No additional recommendations on selection priorities under the General Grant and Community Grant programs are therefore identified in the 2008 Revision. Areas of selections have been assigned plan designations and management intent similar to state-owned lands, and are identified by the ‘hatch’ pattern through the state land symbol.

ANILCA Topfiled Lands

There are certain areas that are ‘topfiled’ by the state under the provisions of ANILCA legislation. These selections are extensive and are distributed throughout the planning area, although there is a concentration of these selections in the Lisburne and Kotzebue Sound regions. ANILCA selections are ‘top-filed’ over Native village and regional corporation selections and only apply or ‘attach’ when Native regional or village selections are adjudicated by the Bureau of Land Management (BLM). Because of over-selection by the village and regional corporations not all of the Native selections will apply in the planning area and the state ‘topfiled’ selections attach at the time this adjudication decision is made by BLM. It is uncertain how many of the state’s ANILCA selections will actually attach, although many will and since the exact location of these will not be known until the lengthy BLM adjudication process has been completed, the 2008 Revision provides plan designations and management intent for all of the ANILCA top-filed areas⁷. ANILCA top-file selections are also included in

⁷ Note: It is also likely that a significant number of DNR top-filed areas will not be conveyed to the state. Accordingly, adjudicators are cautioned to review current land status before assuming that the requirements of this plan apply to an area of ANILCA top-filed decisions.

the statewide selection priority listing developed by DNR and no additional recommendations on selection priorities related to these types of selections are included in the 2008 Revision. ANILCA top-filed selections are treated similar to General Grant selections on the plan maps and can be identified by the 'hatch' pattern through the state land symbol.

Coordination with Federal Land Management

Large portions of the planning area are within federal wildlife game refuges, national parks, and national preserves. Each of these areas is covered by a type of management plan prepared by the agency responsible for the management of a given federal conservation unit. These plans describe both general and, typically, detailed management direction for the federal lands affected by the plan. These plans do not affect state land and it is the state's contention that they also do not apply to areas of navigable waterbodies. Rather, the management of navigable waterbodies within federal conservation units are guided by the plan designations and management contained in Chapter 3, 'Navigable Waters'. Adjudicators should review pertinent federal land management plans prior to issuing authorizations that adjoin federal lands.

Although the area plan only makes decisions for state lands, it is appropriate to coordinate state uplands and tidelands management with the management of federally owned uplands, to avoid the siting and development of incompatible uses. To this end, State land authorizations are to made compatible with applicable federal land management plans to the extent practicable and if consistent with the overall best interests of the state.

Mineral Order

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 2008 revision continues Mineral Closing Order #568, affecting 13 coastal bird rookeries and 7 sheefish spawning areas along the Kobuk River and totaling about 10,200 acres. No additional mineral closures are recommended in this plan revision.

Procedures for Plan Changes

The various kinds of changes allowed in 11 AAC 55.030 are:

“A revision to a land use plan is subject to the planning process requirements of AS 38.04.065. For the purposes of this section and AS 38.04.065, a 'revision' is an amendment or special exception to a land use plan as follows:

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 might close to new mineral entry an area that the plan designated to be open, allow a land use in an area where the plan prohibited it, or allow land to be opened to homestead entry in an area that the plan designated for retention in public ownership.

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. A special exception might be made if complying with the plan would be excessively burdensome or impractical 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.

A minor change to a land use plan is not considered a revision under AS 38.04.065. A ‘minor change’ is a change that does not modify or add to the plan’s basic intent, and that serves only to clarify the plan, make it consistent, facilitate its implementation, or make technical corrections. Authority: AS 38.04.065, AS 38.04.900, AS 38.05.020, AS 38.05.300.”