

**CHAPTER 4**

**IMPLEMENTATION AND  
RECOMMENDATIONS**

State land classification.....4-1

Coordination with the City and Borough of Yakutat.....4-3

Mineral closures and leasehold locations.....4-3

State land conveyance proposals.....4-4

Yakutat State Game Refuge.....4-5

Potential state park at Bering Glacier.....4-5

Additional fish and wildlife data.....4-6

Hydrologic evaluation recommendations.....4-6

Field staff and enforcement.....4-7

Procedures for plan review and modifications.....4-7

How the area plan implements the  
December 1994 settlement agreement.....4-9

## **CHAPTER 4**

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# **IMPLEMENTATION AND RECOMMENDATIONS**

This chapter includes information and recommendations necessary to implement this plan. Included is information about:

- land classifications
- coordination with the City and Borough of Yakutat
- mineral closures
- state land conveyance proposals
- Yakataga State Game Refuge
- potential state park at Bering Glacier
- additional fish and wildlife data
- hydrologic evaluation recommendations
- field staff and enforcement
- procedures for plan review and modification.

### **State land classification**

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To implement the plan on state lands, DNR must *classify* state lands to reflect the intent of land use designations made by the plan. 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.

State law requires that classification precede most leasing of state uplands, tidelands, or submerged lands and most conveyances of state uplands and tidelands.

All classifications are intended for multiple use. The classifications are more general than the land use designations of this plan. There might be several land use designations within any given classification. The relation of land use designations to classifications is shown in Tables 4.1 and 4.2.

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

<b>Table 4.1</b>		
<b>Upland designations conversion to classifications</b>		
<b>Map Symbol</b>	<b>Designation</b>	<b>Classification</b>
<b>F</b>	Forestry (timber production)	Forest land
<b>G</b>	General use	Resource management land
<b>H</b>	Fish and wildlife habitat	Wildlife habitat land
<b>HR</b>	Heritage resources	Heritage resources land
<b>HV</b>	Fish and wildlife harvest	Wildlife habitat land
<b>M</b>	Minerals development	Mineral land
<b>RD</b>	Recreation & tourism - dispersed use	Public recreation land
<b>RP</b>	Recreation & tourism - public use site	Public recreation land
<b>S</b>	Settlement	Settlement land

<b>Table 4.2</b>		
<b>Tideland, submerged land, and shoreland designations conversion to classifications</b>		
<b>Map Symbol</b>	<b>Designation</b>	<b>Classification</b>
<b>H</b>	Fish and wildlife habitat	Wildlife habitat land
<b>HV</b>	Fish and wildlife harvest	Wildlife habitat land
<b>M</b>	Minerals development	Mineral land
<b>RD</b>	Recreation & tourism - dispersed use	Public recreation land
<b>RP</b>	Recreation & tourism - public use site	Public recreation land
<b>T</b>	Transportation	Transportation corridor land
<b>WD</b>	Waterfront development	Waterfront development land

## **Coordination with the City and Borough of Yakutat**

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### **Land classifications and municipal entitlements**

A new borough is entitled to select ten (10) percent of the maximum total acreage of vacant, unappropriated, and unreserved (VUU) state land located in its boundaries between the time the borough is incorporated and two years thereafter. VUU land is defined as general grant land, excluding tidelands or submerged lands, that is not set aside by statute; **and** is classified agricultural, grazing, mineral, public recreation, settlement or resource management **or** is unclassified. University Grant lands and Mental Health Trust lands do not qualify as VUU land.

In December 1990, the City of Yakutat filed a petition to incorporate the City and Borough of Yakutat (CBY). The borough was proposed to extend from Cape Suckling to Cape Spencer, which includes the entire planning area. The state Local Boundary Commission (LBC) reduced the boundary to include only the area from the 141st Meridian (which is east of Icy Bay) to Cape Spencer, which excludes the large area of state uplands between Icy Bay and Cape Suckling. In 1992, borough residents approved formation of this smaller version of the CBY (the area from the 141st meridian to Cape Spencer). CBY lost a subsequent appeal to the courts to establish the borough's western boundary at Cape Suckling.<sup>1</sup>

In March 1995, DNR certified the City and Borough of Yakutat's general grant land entitlement as 138 acres pursuant to AS 29.65.030.

The City and Borough of Yakutat may select the amount of this entitlement and an additional 10 percent of this amount. The purpose of this overselection acreage is to ensure that adequate land of interest to the borough is available to fulfill the entitlement. As an alternative to selecting new acreage, the City and Borough of Yakutat may use some or all of this entitlement to have DNR remove the reverter clause or waive purchase requirements (as-yet-unpaid) on lands DNR previously conveyed to the City and Borough of Yakutat under AS 38.05.810.

### **Coastal management coordination**

State actions within the coastal zone must be consistent with the provisions of the Alaska Coastal Management Plan and the Yakutat District Coastal Management Program. The City and Borough of Yakutat reviews activities within the borough boundaries to determine consistency with the Yakutat District Coastal Management Program.

## **Mineral closures and leasehold locations**

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### **Yakataga State Game Refuge**

On the shorelands of the segments of the Tsiu, Tsiwat, and Kaliakh rivers that are located in the Yakataga State Game Refuge and support anadromous fish DNR will apply leasehold location to new mineral entry. Each of the three rivers has a peak escapement count of at least: a) 500 pink salmon and 500 chum salmon; or b) 1,000 pink salmon; or c) 1,000 chum salmon; or d) 500 coho salmon; or e) 500 sockeye salmon. The purpose of the leasehold policy is to protect high quality anadromous fish habitat and to avoid impacts to water quality that is essential for sustaining the productivity of the Yakataga area's commercial, sport, and community harvest fisheries. See Appendix B for a map of the areas of the game refuge where leasehold location applies.

<sup>1</sup> [*Petitioners for Incorporation of City and Borough of Yakutat v. Local Boundary Commission*, Alaska Supreme Court No. 5-5760 (Superior Court No. 1JU-92-C1) issued April 28, 1995].

### **Mineral orders**

The Commissioner of DNR may close areas smaller than 640 contiguous acres to mineral entry based on a determination that mineral entry and location is incompatible with significant surface uses (AS 38.05.185). This plan and mineral closing orders in Appendix B close certain land to mineral location and apply leasehold location to other lands. Mineral closures are summarized in Chapter 2 in the *Sub-surface Resources* section and are also described within respective subunits in Chapter 3.

Closure of more than 640 contiguous acres requires a legislative act, except when the closure is necessary for land disposal, land exchange, or development of infrastructure (AS 38.05.300(a)). The Commissioner may make interim closures larger than 640 acres which the legislature must approve if they are to become permanent. If not approved by the legislature, interim closures expired on the 90th day of the legislative session, or final adjournment of the session, whichever comes first.

DNR will support an initiative by DFG to seek legislative approval to close to new mineral entry the state-owned shorelands and tidelands of the Itallo, Tsiu, and Akwe rivers, as mapped in the draft area plan, in order to protect anadromous fish habitat. If the legislature approves these closures, DNR will amend the Yakataga Area Plan to reflect the closures.

## **State land conveyance proposals**

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### **Potential state land disposals**

The demand for land for residential and commercial uses is high in the Yakutat vicinity. The major landowners with land suitable to support settlement uses are the City and Borough of Yakutat, Yak-tat Kwaan, the Evangelical Covenant church, DNR, and the Mental Health Trust.

The plan designates the following subunits for potential settlement: 8a-1, 8a-2, 8a-3, and 8a-5. DNR will manage these lands to promote sale, leasing, or permitting to allow private commercial, industrial, or residential uses, or community uses. Note: parts of 8a-1, including waterfront, are to be retained in state ownership and managed for public recreation.

The settlement designation does not imply that DNR will immediately initiate land sales. DNR is unlikely to initiate land sales in the Yakataga area in the next five years. DNR land sales depend on funding. There is greater demand for state land sales in other parts of the state. Any sale would require two or more years of planning by DNR.

The City and Borough of Yakutat is entitled to acquire 138 acres of additional land under the Municipal Entitlement Act (AS 29.65). See explanation of municipal entitlements on page 4-3.

After adopting this area plan, DNR issued a decision to convey to the university limited one-time timber cutting rights on Yakataga Tract 20, in accordance with the December 1994 settlement agreement.

### **Conveyances to DNR**

DNR will work with the Bureau of Land Management for conveyance of the 79,062 acres of state-selected lands.

Chapter 3 provides priorities for conveyance of state selections.

### **Inter-agency Land Management Transfer**

The Division of Parks and Outdoor Recreation has applied for management transfer of lands near Kardy Lake that include the New Russia historical sites. This site is the location of the first Russian settlement on the coast, dating back to 1796. The site is a National Historic Land mark. There is an existing Native allotment on some of these lands, and a portion of the state lands is therefore likely to be relinquished.

## **Yakataga State Game Refuge**

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In 1990, the Alaska Legislature passed an act (SCS CSHB 346) establishing the Yakataga State Game Refuge. The Refuge was established to protect fish and wildlife habitat and populations (including salmon spawning and rearing habitat and critical goat and moose winter habitat), and provide for continued commercial, sport, and subsistence fishing and hunting, and public recreation opportunities in a high quality environment. The Act directed DNR to prepare an area plan for the Yakataga area that considers, among other things, reducing or expanding the boundaries of the Yakataga State Game Refuge. It further established the area east of the Kaliakh River as a temporary Special Management Area and directed the area plan process to evaluate the area for inclusion in the Yakataga State Game Refuge.

### **Recommended additions to the State Game Refuge**

Following the direction of the Legislature, the plan process evaluated the boundaries of the Refuge. The plan recommends that the Legislature add Subunit 3c-4 (Kulthieth Mountain and lower Kaliakh River) to the Yakataga State Game Refuge. The subunit contains mountain goat winter habitat and hunting areas, and bear spring feeding concentration areas. Adding this subunit to the Refuge helps meet the legislative intent for creating the Refuge.

There are two possible road corridors to access timber in the Hope Creek drainage. One route would parallel the Duktoth River and access the Hope Creek drainage via Hope Pass. This route would cross Subunits 3b-10, 3c-2, 3c-3, and 3d-2. DNR prefers this Hope Pass route because it avoids areas with sensitive goat habitat that DNR proposes to add to the Refuge.

An alternative route is located south of Kulthieth Mountain and passes through Subunits 3d-1 and 3c-4. This Kulthieth Mountain route passes near sensitive goat habitat and may result in higher levels of disturbance and hunting which will diminish wildlife viewing opportunities. DNR will authorize a road south of Kulthieth Mountain if the applicant demonstrates to the satisfaction of the department that it is not feasible and prudent to use the Hope Pass route. If this route is used, DNR may authorize timber harvest adjacent to the road to help fund the road construction, if the timber harvest is consistent with the purpose of the Refuge.

## **Potential state park at Bering Glacier**

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### **State selections at Bering Glacier**

The state has selected portions of Bering Glacier (Management Unit 2) because geologists predict Bering Glacier will continue its rapid retreat and will form a spectacular and unique lake or fiord. The fiord has the potential to rival Glacier Bay as a scenic, geologic and tourist attraction. The purpose of the state selection is to acquire the uplands adjacent to, and islands within, this lake or fiord.

The plan strongly supports this selection. However, because the shoreline of this lake or fiord cannot be identified with certainty at this time, this selection should remain a low priority for conveyance and patent to the state. The reason for delayed conveyance is to avoid conveyance of shorelands and submerged lands that would automatically become state-owned as they were exposed by the retreating glacier.<sup>2</sup> Because the values this area is selected for may not be fully realized for several decades,

<sup>2</sup> If the land is surveyed and patented as uplands before the glacier retreats, the acreage patented to the state would be counted as part of the state's 102.5 million acre land grant. If the land becomes submerged lands or shorelands prior to patent, the state acquires these lands through an act of nature and can use its entitlement elsewhere.

the state does not need patent to this land in the near term. More information on the Bering Glacier can be found in the *Recreation and Tourism Resources Report* compiled for the Yakataga Area Plan.

DOL, DPOR, and DGGs should continue to evaluate this area with a view toward the potential for scientific study, and scenic, recreation, and tourism values.

### **Additional fish and wildlife data**

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Before timber sales or other disposals, DFG should identify which fish and wildlife species require management provisions, based on the information contained in the Yakataga Area Plan, the area plan's accompanying resource reports and maps, and any additional field surveys needed to more accurately identify the important fish and wildlife habitat areas.

Additional field data is especially needed to further delineate and maintain the following types of habitat:

- moose winter habitat,
- movement corridors between goat winter concentration areas,
- bear denning areas,
- marten populations and habitat requirements,
- trumpeter swan wintering areas,
- bald eagle roosting areas and perch trees,
- staging areas for neotropical migratory birds flying along the Pacific coast,
- ducks, geese and swan nesting, feeding, molting and staging areas, and
- anadromous and high-value resident fish streams.

In accordance with the December 1994 settlement agreement, the university will fund up to \$250,000 in research and data collection regarding wildlife biology, fisheries, and forestry. The university will consult DNR and DFG in designing the research plan, and will provide these agencies with research findings for consideration in future Yakataga Area Plan updates and for DFG planning for the Yakataga State Game Refuge.

### **Hydrologic evaluation recommendations**

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#### **Monitor impacts of timber harvest on hydrology within watersheds. Avoid cumulative watershed effects.**

In watersheds with mapped important fish and wildlife habitat, timber harvest should avoid impacts to the natural hydrology in order to protect habitat productivity. DOF, in coordination with DGGs and DFG, will monitor the effects of timber harvest on stream flows and stream channel equilibrium in watersheds with important mapped fish and wildlife values. If timber harvest is destabilizing natural hydrologic regimes, DOF will schedule future timber harvest within a watershed in phases that avoid cumulative watershed effects.

#### **Instream flow reservation criteria**

The Alaska Department of Fish and Game relies on an interdepartmental team of DFG biologists and resource specialists to initiate and prioritize instream flow reservation applications. 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.

## **Field staff and enforcement**

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The plan relies on existing laws and regulations as well as new guidelines to make multiple uses compatible. DNR must enforce guidelines and regulations to make sure they are effective, and to develop public confidence in the state's ability to manage for multiple use. Fieldwork, monitoring and enforcement are likely to be needed for commercial recreation facilities, commercial timber harvest activities, mining permits and leases, and set net cabin sites.

DNR's ability to enforce guidelines and regulations will depend on its budget. The plan recommends that additional funds be dedicated to enforcement activities to support implementation of the new and continuing land management programs in the Yakataga Area Plan. DNR puts a high priority on monitoring and enforcing compliance with stipulations on leases and permits. DNR also puts a high priority on taking action against unauthorized activities that have a high probability of creating significant adverse impacts to other important resources or uses. Field staffing and funding are currently inadequate to enforce the laws and guidelines on all uplands, tidelands, and submerged lands in the planning area. DNR will continue to reflect the priority for monitoring and enforcement in its budget requests.

## **Procedures for plan review and modifications**

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This plan may be changed if conditions warrant. The plan may be updated if new resource data becomes available, or as changing technology or social or economic conditions place different demands on state lands.

DNR will revise and amend this area plan prior to additional sale or harvest of state timber between Icy Bay and Cape Suckling.<sup>3</sup> The revisions will be in accordance with AS 38.04.065 and 11 AAC 55 or the appropriate statutes and regulations in place at the time and will include re-examination of forestry and other land classifications. DNR's intent is to ensure a thorough agency and public review of the management intent of the area before any additional harvest takes place. DNR must also recalculate the annual allowable cut for state land under revised plan provisions.

If any party to the December 1994 settlement agreement withdraws for causes specified in section 16 (a) of the agreement, all parties return to the full rights they possessed before the agreement. If this happens, DNR would not require area plan modifications to allow the university to harvest timber under ADL 223456 from Cape Suckling tract and the Yakataga tract. This version of the area plan would apply to the university timber harvest. The university would have the same rights it had before the agreement, minus whatever volume of timber it had already harvested under the agreement.

### **Plan review**

An interagency planning team should review this plan every five to ten years to determine if conditions warrant updating the plan. During this review, the planning team will consider the Yakutat Comprehensive Plan and Yakutat District Coastal Management Program.

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3 Prior to sale or harvest other than the university harvest and harvest incidental to development of a cabin and trail system.



### **Plan changes**

The land use designations, policies, implementation actions, and management guidelines of 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.

Changes to the plan will be made according to procedures outlined in Title 11 of the Alaska Administrative Code (11 AAC 55) and the Procedures Manual of the Division of Land. The relevant section of 11 AAC 55 is given below. For further information, see the Procedures Manual.

The current version of 11 AAC 55.030(f) provides:

1. 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:
  - a. 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.
  - b. 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, if compliance would be inequitable to a third party, and if the purposes and spirit of the plan can be achieved despite the exception.
2. 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.

### **Request for changes**

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

## How the area plan implements the December 1994 settlement agreement

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This area plan implements provisions of the December 1994 Memorandum of Agreement (referred to as the settlement agreement) as follows:

### Chapter 2 - Areawide guidelines

<b>Preface to area-wide guidelines</b>	The University timber harvest will remain subject to and must be consistent with the Yakataga Area Plan [Section 3 of the agreement].
<b>Preface &amp; Forestry guideline A</b>	The plan identifies the university's Annual Operating Plans as the means to implement certain area plan guidelines which require site-specific planning through the Forest Land Use Plan (FLUP) process [Section 3 of the agreement].
<b>Forestry guidelines</b>	Deferral of state timber harvest. There is a new guideline stating that DNR will not hold timber sales or harvest on state lands between Cape Suckling and Icy Bay before December 2014 (no sooner than 20 years from the date of the settlement). This does not apply to the university harvest or harvest incidental to development of a cabin and trail system [Section 4(c) of the agreement].
<b>Forestry guideline F</b>	The mountain goat winter habitat guideline was revised [Section 4(g) of the agreement].
<b>Recreation guideline J</b>	The plan will accommodate a cabin and trail system west of the Duktoth River [See Section 4(c) of the agreement].
<b>Upland guideline T</b>	The plan will accommodate other non-forestry development west of the Duktoth River [Section 4(d) of the agreement].

### Chapter 3 - Management Units

<b>Unit 1</b>	The land status section of Unit 1 states that the University has relinquished all rights to timber in the Suckling tract, and DNR will manage the tract as general state land [Section 1 of the agreement].
<b>Units 1-4</b>	The management consideration sections for Units 1 through 4 note the 20-year timber harvest moratorium except for university timber and timber related to the cabin and trail system [Section 4(c) of the agreement].
<b>Unit 3B</b>	Redesignation of subunit 3b-6 for forestry and habitat (F1 H1) [Section 4(b) of the agreement].
<b>Unit 3D</b>	Creation of a new subunit 3d-1a, designated for forestry (F1) [Section 4(b)]. Subunit guidelines for riparian buffers and for harvest within moose and bear habitat [Sections 4(e) and (f) of the agreement].

## YAKATAGA AREA PLAN

**Unit 3E** Creation of a new subunit 3e-5a, designated F1 [Section 4(e) of the agreement]. Subunit guidelines for riparian buffers and for harvest within moose and bear habitat [Sections 4(e) and (f) of the agreement].

Delete timber moratorium on subunit 3e-11 (Clear Creek) and state new conditions for university timber harvest in this unit [Section 5 of the agreement].

DNR's intent to convey timber rights on Yakataga Tract 20 [Section 3 of the agreement].

**Unit 8** Redesignation of part of subunit 8a-1 for settlement (by combining part of subunit 8a-1 with 8a-2). Redesignation of the remainder of subunit 8a-1 for settlement and dispersed recreation [Section 4(a) of the agreement].

### **Chapter 4 - Implementation**

**Chapter 4** DNR's participation in university-funded fish and wildlife and forestry research [Section 8 of the agreement].

DNR's commitment to amend/revise the plan and recalculate annual allowable cut prior to future state timber harvest [Section 4(c) of the agreement].

Further modification of this plan not needed to allow university timber harvest under previous ADL 223456 (as amended June 1, 1989) if parties to the settlement withdraw from the agreement.