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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
- Land Selection and Selection Priorities
- Coordination with Federal Land Management
- Mineral Order
- Proposed Additions to State Marine Park System
- 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 this plan most parcels are assigned a single, principle designation.

In some instances more than one designation is identified; these are termed “co-designations” 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 and with the management directions given in Chapter 3 for specific parcels of state land.¹

11 AAC 55.070. Forest Land. Land classified forest is land that is or has been forested and is suited for forest management because of its physical, climatic, and vegetative conditions.

11 AAC 55.080. Grazing Land. Land classified grazing is land that is appropriate for grazing and that is suitable, in the cultivated or uncultivated state, for supporting domestic livestock or reindeer.

11 AAC 55.095. Heritage Resources Land. Land classified heritage resources is land where there is active preservation of, or research for, significant historical, prehistoric, paleontological, or other cultural values or where there is reason to believe that these values exist.

11 AAC 55.120. Material Land. Land classified material is land that is suitable for the extraction of common varieties of sand, gravel, stone, peat, clay, and other similar materials.

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 55.170. Reserved Land Use.

A. Land classified reserved use is land that:

1. Is reserved for transfer to another governmental or non-governmental agency that is performing a public service;

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.

2. Is reserved for transfer through land exchanges; or
3. Has been designated for a public facility.

B. Nothing in this section requires classification of land identified for a future land exchange under AS 38.05.50.

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.

11 AAC 55.215. Waterfront Development Land. Land classified waterfront development is tideland, submerged land, or shoreland that is suitable to be used for commercial or industrial activities such as fish processing, aquatic farming, mineral and log transfer facilities, or commercial recreation.

11 AAC 55.222. Water Resources Land. Land classified water resources is land encompassing watersheds or portions of watersheds and is suitable for such uses as water supply, watershed protection, or hydropower sites.

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, specified for upland and tideland parcels. Descriptions of each of the following designations are also provided in Chapter 3 pages 2-5. Note: Acreages associated with plan classifications are given in Table 4-3.

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

Symbol	Designation	Acreage
Gr	Grazing	164,367
Gu	General Use	133,792
Ha	Habitat	185,767
Hr	Heritage Resources	126
Ma	Materials	90
Pr	Public Facilities-Retain	34,517
Rd	Public Recreation and Tourism-Dispersed	176,570
Se	Settlement	27,512
W	Water Resources	6,888
Total		729,629

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

Symbol	Designation	Acreage
	Management Units	
F	Forestry	13
Gu	General Use	1,917
Ha	Habitat	55,025
Hv	Harvest	47,834
Pr	Public Facilities-Retain	36
Rd	Public Recreation and Tourism-Dispersed	12,384
Sd	Shoreline Use	1,149
Wd	Waterfront Development	1,058
Total		119,416
	Tideland Resource Management Zones	
Ha, Rd	Wildlife Habitat Land	432,400
	Public Recreation Land	432,400
Total		864,800

The conversion of land use designations used by this plan into state land classifications is indicated in the two tables below. 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.

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

Symbol	Designation	Classification
Gr	Grazing	Grazing land
Gu	General Use	Resource management land
Ha	Habitat	Wildlife habitat land
Hr	Heritage Resources	Heritage resources land
Ma	Materials	Materials land
Pr	Public Facilities-Retain	Reserved use land
Rd	Public Recreation and Tourism-Dispersed	Public recreation land
Se	Settlement	Settlement land
Sc	Settlement-Commercial	Settlement land
W	Water Resources	Water resources land

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

Symbol	Designation	Classification
F	Forestry	Forest Land
Gu	General Use	Resource management land
Ha	Habitat	Wildlife habitat land
Hv	Harvest	Wildlife habitat land
Pf	Public Facilities-Retain	Reserved use land
Rd	Public Recreation and Tourism-Dispersed	Public recreation land
Sd	Shoreline Use	Settlement land
Wd	Waterfront Development	Waterfront development 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 management intent set forth in this area plan.

Land Classification Order SC-04-001 classifies all state land within the plan area. See Appendix B. This Land Classification Order supersedes and replaces all previous classifications and classification orders affecting the planning area of the Kodiak Area Plan.

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

Classification	Upland Acreage	Tideland and Submerged Land Acreage	Total
Forest land	0	13	13
Grazing land	164,367	0	164,367
Heritage resources land	126	0	126
Materials land	90	0	90
Public recreation land	176,570	444,754	621,324
Reserved use land	34,517	36	34,553
Resource management land	133,792	2,833,413	2,967,205
Settlement land	27,512	1,149	28,661
Water resources land	6,888	0	6,888
Waterfront development land	0	1,058	1,058
Wildlife habitat land	185,767	487,425	673,192
Totals	729,629	3,767,848	4,497,477

Note that the total of the sum of the figures above is larger than the acreage total for all parcels. Parcels that are co-designated with two or more designations are counted for each designation under which they are co-designated.

Applicability of Plan Designations/Classifications

This section deals with those lands that are not designated in the KAP or classified in the Land Classification Order. Such lands include those state lands inadvertently omitted in the KAP 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:

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

- 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.
- 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 to be designated General Use. Shorelands not identified on these maps are to follow the standards given in the section, ‘Management Intent: Other Rivers and Lakes’, under Navigable Waters and Lakes in Chapter 3.

Survivor Designations and Classifications

This revision of the KAP replaces and supercedes all previous plan designation and land classifications (termed ‘survivor’) that affected the KAP 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 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, Southcentral Region, Anchorage, Alaska.

Alaska Coastal Zone Management Program

The state and the Kodiak coastal district Alaska Coastal Management Program will be implemented through the coastal consistency review process described under Title 46 of the Alaska Statutes and associated regulations. State actions within the coastal zone must be consistent with the provisions of the Alaska Coastal Management Plan and with the Kodiak District Coastal Management Plan³.

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 the municipal boundaries.

The Kodiak Borough has received all of its municipal entitlement through under a Settlement Agreement and Consent Degree entered into between the state and the Kodiak Island Borough. No additional state land is to be conveyed to the Borough under the Municipal Entitlement program.

³ At the time of this writing the Kodiak District Plan had not been revised according to new standards adopted in 2004. Adjudicators need to check to determine if a revised plan has been adopted.

Land Selections, ANILCA Topfiled Lands, and Public Land Orders

Land Selections

Under the Statehood Act, Alaska is entitled to approximately 130 million acres of federal land. The selections made by the state in the planning area occurred under the ‘General Grant’ program, and nearly all have been either conveyed to the state through patent or are in TA (Tentative Approval) status, which gives management authority to the state. The areas noted as ‘state selected’ land on the Plan Maps depict those few remaining areas of federal land selected for eventual conveyance to the state. These include units A-01 (Redfox Bay), K-14 (Elbow Creek), K-15 (Anton Larsen Bay), K-17 (Spruce Island), K-18 (Spruce Island), K-39B (Mayflower Creek), K-67 (Gibson Cove), K-68 (Swampy Acres), K-69 (Puffin Island), K-70 (Erskine Mountain), K-71 (Cliff Island), and K-72 (Sargent Creek) totaling approximately 6,190 acres⁴. Over 570,000 acres have been conveyed to the state⁵.

ANILCA Topfiled Lands

There are certain areas that are ‘topfiled’ by the state under the provisions of ANILCA legislation, primarily in the vicinity of the City of Kodiak. These are selections made by the state that apply or ‘attach’ when native regional or village selections are adjudicated by the Bureau of Land Management, but it is uncertain how many of these selections will attach during the planning period. The amount of native selections, in terms of acreage, greatly exceeds that allowed under their selection entitlement, and BLM does not require that these selections be prioritized, which would otherwise make it possible to adjudicate the lower ranked native selections.

Areas of topfiled lands are designated General Use and are classified as Resource Management Land in the Area Plan, although these designations do not attach until the land has been conveyed. Appendix C identifies those areas that are topfiled and selected in the planning area; an accompanying map shows their distribution. The map is necessarily generalized since the exact location of many selections areas cannot be determined with precision. The General Use designation for topfiled selections may need to be changed when the land is conveyed to the state, reflecting a better understanding of the type of use that should occur on specific parcels. The continued use of the General Use designation for the topfiled areas are to be reevaluated when the Kodiak Island Area Plan is revised.

⁴ Note to DNR adjudicators: check land status of selection when reviewing authorizations. Several parcels have also been selected by village corporations and may have been conveyed.

⁵ Litigation involving Lesnoi Inc. may have the effect of decertifying this entity as an ANCSA village corporation, and either all of their land holdings will return to some form of public ownership or a settlement may be reached between the interested parties, resulting in some combination of public and private ownership. While the outcome of the litigation is uncertain at this time (2005), the amount of land involved in the litigation is significant and there is the possibility that some of these lands may come into public ownership. Should this occur, the land ownership patterns identified in this plan may significantly change.

Public Land Orders

Public Land Orders (PLO) of the U.S. Bureau of Land Management withdraw federally owned land for a specific federal use. PLOs may be rescinded if the specific use no longer occurs or the affected area is no longer needed for a federal purpose. These withdrawals may, depending on a variety of considerations, be conveyable to the state and all of the PLOs within the planning area have been topfiled by the state. Most of the PLOs within the planning area are associated with military activities or other government functions near the City of Kodiak, and there is no indication that these intend to relocate. Nonetheless, this plan assumes that all such PLOs that are lifted should be conveyed to the state unless affected by hazardous materials⁶. Areas of land acquired by the state through the withdrawals of Public Land Orders are to be handled in a similar fashion to land acquired through ANILCA top-filings. They are to be designated General Use and classified as Resource Management Land. The General Use designation for topfiled PLO selections may need to be changed when the land is conveyed to the state, reflecting a better understanding of the type of use that should occur on specific parcels. The continued use of the General Use designation for the areas previously affected by PLOs are to be reevaluated when the Kodiak Area Plan is revised.

Coordination with Federal Land Management

Large portions of the planning area are within federal wildlife game refuges. Most of the west side of Kodiak Island and the northwestern part of Afognak Island lie within the Kodiak National Wildlife Refuge. The U.S. Fish and Wildlife Service administers this refuge according to a management plan⁷; which is being revised (2003). The uplands on the Alaska Peninsula, included within the planning boundary since they are part of the corporate limits of the Kodiak Island Borough, lie within the Alaska Peninsula National Wildlife Refuge and the Becharof National Wildlife Refuge. These two refuges are currently administered under separate management plans of the U.S. Fish and Wildlife Service, but are in the process of being revised and incorporated into a combined management plan (2003)⁸. Numerous rocks, islets, and off-shore islands located throughout the planning area are part of the Alaska Maritime National Wildlife Refuge. The Alaska Maritime NWR is also administered according to a Comprehensive Conservation Plan.⁹

The Department reviewed these plans in its preparation of the Area Plan. The area plan only makes decisions for state lands. However, it is appropriate to coordinate tidelands management, over which state has jurisdiction, with the management of federally owned uplands in order to avoid the siting and development of incompatible tideland uses. Certain

⁶ Unless the area of federal land affected by hazardous materials is remediated.

⁷ Kodiak National Wildlife Refuge Comprehensive Conservation Plan/Environmental Impact Statement and Wilderness Review (1987).

⁸ Draft Alaska Peninsula/Becharof National Wildlife Refuge Comprehensive Conservation Plan/Environmental Impact Statement and Wilderness Review (2003).

⁹ Alaska Maritime National Wildlife Refuge Comprehensive Conservation Plan/Environmental Impact Statement and Wilderness Review (1988).

types of mariculture operations and floating facilities are considered generally incompatible with adjacent refuge or park uplands and should not be authorized by the Department. There are certain exceptions to this general management intent, and the sections on Aquatic Farming and Floating Facilities in Chapter 2 must be consulted prior to granting authorizations. Other types of tideland uses may also be appropriate pursuant to ANILCA; see the section on specific tidelands management provisions in 'Management Summary, Tidelands' in Chapter 3. In general, Department land authorizations are to be made compatible with the federal upland management designations to the extent feasible and prudent, consistent with the exceptions noted above and if the authorization is in the overall best interest 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 plan does not recommend the use of mineral closing orders or leasehold location orders since conflicts between mining and sensitive surface uses are not believed to exist.

Proposed Additions to the State Park System

Areas of state owned land, acquired using EVOS funds, managed by DPOR under Management Agreements with DMLW are recommended for inclusion in Afognak Island State Park¹⁰. The Management Agreements provide that these areas are to be managed to be consistent with EVOS deed restrictions and to be compatible with existing portions of this state park. These proposed areas have a total of 34,589 acres. Additions to the state marine or state park system, while not identified in the Area Plan, may be considered if and when public support and funding is secured for this purpose in the future.

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:

¹⁰ This recommendation affects units A-02 and A-05. That area contained within unit A-05 is not affected currently by a Management Agreement, apparently being an oversight. It is recommended that this parcel be included in the current Management Agreement or a new Agreement.

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.”