

# Chapter 4

## Implementation and Recommendations

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### Introduction

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

- State and Borough Land Classifications
- Coordination With State and Borough Plans And Procedures
- Procedures For Plan Review, Modification, and Amendment
- Recommendations

### State and Borough Land Classification

To implement the plan, DNR must classify state lands in the categories of land classification set out in State regulations: 11 AAC 55. State law requires that classification precede disposal of many types of state interests in land, such as leases, timber sales, or agriculture or residential land sales. These land classifications are the formal record of uses and resources for which state lands will be managed. The classification for each of the plan's management units are recorded on state land status plats, with a reference to the final plan. Many units have more than one classification. All classifications are intended to allow for multiple uses.

While the classifications are the formal record on the status plats and are required by regulation, they contain no specific land management directives; those directives are expressed through the use of the land use designations in the plan, described in detail for individual management units in Chapter 3. These are both primary and secondary designations. Consistent with state regulation, classifications on the status plats will reflect only the primary designation. The secondary designations are still important and a way to convey the management intent. State and Borough personnel will use the primary and secondary designations, along with the management intent and guidelines when making decisions about uses of the land.

For the purposes of the State land status records, the land use designations in Chapter 3 are converted to classifications shown in the table below.

The Borough classifies, manages, and disposes land per MSB Code Title 23 and the Land and Resource Management Division Policy and Procedure Manual adopted by Ordinance Serial # OR 94-069 identifies methods for those actions. All lands must be classified prior to disposal however; some Borough lands are not yet classified due to their remote location.

### Applicability of Plan Designations/ Classifications to State or Borough Lands not Identified in the Plan Text or Plan Maps

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

The following guidelines apply:

- **Parcels in or near Existing Communities.** If the parcel 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 public purposes.

Table 4.1. Conversion of Upland Designations to Classifications

State Lands

Designation in the Fish Creek Management Plan	Classification
Agriculture	Agricultural land
Forestry	Forest land
Wildlife Habitat	Wildlife habitat land
Resource Management	Resource management land
Public Recreation	Public recreation land
Settlement	Settlement land
Water Resources	Water resources land

Borough Lands

Designation in the Fish Creek Management Plan	Classification
Agriculture	Agricultural Lands
Forestry	Forest Management Lands
Habitat	Resource Management Lands
Resource Management	Resource Management Lands
Public Recreation	Public Recreation Lands
Settlement	Reserve Use, General Purpose Lands
Water Resources	Watershed Lands, Wetland Bank Lands, Resource Management Lands

- Parcels near other State or Borough Land. If the parcel adjoins or is surrounded by other State or Borough 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.
- Parcels not near Other State or Borough Land. Parcels not near other state land or that occur within areas designated Resource Management are to be designated 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 landowner may be appropriate but will require reclassification to Settlement Land.
- Newly Acquired State or borough Lands. Lands that were acquired proactively through exchange, purchase, or other methods will be managed and classified consistent with the purposes or which they were acquired.
- Other Lands. If the designation/classification of a parcel of acquired or omitted public land cannot be adequately determined, the parcel

- is to be designated and classified Resource Management.

## Survivor Designations and Classifications

This revision of the Fish Creek Management Plan replaces and supersedes all previous plan designation and land classifications (termed ‘survivor’) that affect the planning area.

## Coordination With Other State and Borough Plans And Procedures

### Surface Leasing

Under the authority of AS 38.05 and 11 AAC 58.300-.350, state land within the Matanuska Susitna Borough is available for surface leasing, provided that the leasing is allowed under the classifications implemented by the plan and consistent with the management intent set forth in the area plan.

Applications for uses of state land within the Matanuska Susitna Borough will be considered by the Regional Manager, Department of Natural Resources, Division of Mining, Land and Water, Southcentral Region, 550 West 7th Ave. Suite 900C, Anchorage, AK 99501-3579.

The Borough uses the term “permitting” for uses of Borough land. Permits are allowed under MSB Code, Title 23 with approval by the Manager or Assembly. Applications for Borough land use will be considered by the Land and Resource Management Chief, Matanuska-Susitna Borough, Land and Resource Management Division, 350 E Dahlia Avenue, Palmer, AK 99645

### Alaska Coastal Management Program

The Matanuska Susitna Borough Coastal Management Program will be implemented by the Alaska Coastal Management Program (ACMP) 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 the Matanuska Susitna Borough Coastal Management Plan.

### Mineral Orders

Alaska law, AS 38.05.185, requires that the Commissioner of DNR determine that mineral entry and location is incompatible with significant surface uses in order to close state-owned mineral rights to mineral entry. The Department closed the area to new mineral entry in 1982 (Mineral Closing Order 423). The Fish Creek Management recommends no new mineral orders.

### Oil and Gas Leasing

This plan does not make decisions concerning leasing for oil and gas on state mineral estate. Those decisions are made under separate processes under state law and regulations.

### Public Trust Doctrine

Under the Alaska Constitution, the state has special duties and management constraints with respect to state-owned land underlying navigable waters. The Alaska Constitution contains provisions embracing the principles commonly known as the public trust doctrine. That doctrine, as it has evolved in court decisions over hundreds of year, requires the state to exercise authority to ensure that the paramount rights of the public to use navigable water for navigation, commerce, recreation and related purposes is not substantially impaired.

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 commerce, navigation, fishing, hunting, swimming and protection of areas for ecological study.

The 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 result in 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 water under Article VII, Section 14, AS 38.05.127 requires that the state commissioner of natural resources must “provide for the specific easement 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 land 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.

### **Municipal Entitlement**

Each municipality in Alaska is entitled to conveyance of certain state lands under AS 29.65. The municipal entitlement for the Matanuska-Susitna Borough has been satisfied as of the date of the Fish Creek Management Plan. For that reason, the plan did not consider issues related to selection of state lands by the Borough under its municipal entitlement.

## **Changes to the Plan**

The method for changing the plan depends on the type of change required. There are three types of changes possible to a plan: amendments, special exceptions, and minor changes. Amendments and special exceptions are plan revisions subject to the planning process requirements of AS 38.04.065; minor changes are not. On State land, the Director of DNR’s Division of Mining, Land and Water determines if a proposed change constitutes an amendment, a special exception, or a minor change. On Borough land, the Planning Director makes the decision. Changes to the plan may be proposed by agencies, municipalities, or members of the public. Requests for changes on state land are submitted to the Southcentral Region of the Division of Mining, Land and Water in Anchorage; changes on Borough land are submitted to the Planning Director of the Matanuska Susitna Borough. Changes involving both

State and Borough may be submitted to either location. In either case, the State and Borough will coordinate with one another prior to reaching a decision on a requested change.

### **Amendments**

An amendment permanently changes the plan by adding to, or modifying, its basic intent. Changes in allowed uses, prohibited uses, policies, guidelines, and some implementation actions constitute amendments. For example, an amendment may 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 land disposal in an area the plan designated for retention in public ownership. Plan amendments for state land must be approved by the Commissioner of DNR, and for Borough land an amendment must be approved by the Planning Commission and the Assembly.

Amendments must be accompanied by a written finding that explains the new information or new conditions that warrant the revision, describes the alternative course of action and the reasons for it, and includes interagency review and public notice of the proposed revision. This finding may be incorporated into a DNR finding under AS 38.05.035. DNR or the Borough may schedule a public meeting if the Commissioner of DNR or the Manager of the Matanuska Susitna Borough determines that the level of controversy warrants it.

### **Special Exceptions**

A special exception does not permanently change the provisions of the 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 may be used to grant an eligible applicant a preference right under AS 38.05.035 in a subunit designated for retention in public ownership. Special exceptions may be made if complying with the plan would be excessively difficult or impractical, or if it would be inequitable to a third party, and if the purposes and spirit of the plan can be achieved despite the exception. Special exceptions must be accompanied by a written finding that explains the new information

or new conditions that warrant the revision, describes the alternative course of action and the reasons for it, and includes interagency review and public notice of the proposed revision. Similar to amendments, the finding may be incorporated into a DNR finding under AS 38.05.035. In addition, the State or the Borough may schedule a public meeting if the Commissioner of DNR or the Manager of the Matanuska Susitna Borough determines that the level of controversy warrants it.

### **Minor Changes**

A minor change does not modify or change the basic intent of the plan. Minor changes may be necessary to clarify the plan, make it consistent, facilitate its implementation, or make technical corrections. Minor changes are made at the discretion of the Regional Manager of DMLW for state land, and the Borough Planning and Community Development Director for Borough land. They do not require public review. The Borough or the State, as appropriate, will notify planning team representatives when minor changes are made. Affected agencies will have the opportunity to comment on minor changes following notification; the comment period may be provided through existing interagency review processes for associated actions. If the agencies disagree with the regional manager's decision, the decision may be appealed to the Commissioner of DNR, or the Borough Manager.

## Implementation

Action	Plan Reference	Timing	Notes
West Mat-Su Access Project	Chapter 1, Access section; page 6	In progress	Determines feasibility, timing, and route of proposed road connection into Fish Creek area from east
Timber management plans	Chapter 2, Forest section; pages 7-10	State & Borough regional plans - in progress; site specific plans - prior to harvest	The Borough will include the timber plan into its Forest Management Plan once it is completed
Financial analysis before agriculture and/or settlement land disposal	Chapter 2, Ag & Settlement section, Guideline H; page 17	As part of planning for specific disposals	Evaluate cost of administration, survey, and road costs attributable to the disposal, with the intent that revenues to State and Borough more than balance costs
Agricultural lot layout	Chapter 3, Fish Creek Mgt Unit, Management Guidelines; page 18	As part of planning for specific agricultural disposals	Includes evaluation of water needs, public access
Monitor ORV use	Chapter 2, Trails and Access, Guideline L; page 27	Monitor in the near term to the degree resources permit; need for monitoring will be greatest if and when access improves	Determine if special use areas are needed to protect resources while maintaining access.
Respond to railroad routing decision	Chapter 1, Access section; page 6	Once decision is made on timing, routing of proposed new rail link	Plan would need to be reviewed, and perhaps updated, if proposed railroad goes through area