

**Final Decision on
Yakataga Area Plan Amendment
Alaska Department of Natural Resources
Division of Mining, Land and Water
January 2004**

Decision

This decision, to amend the Yakataga Area Plan, changes the plan designations for all or portions of 11 subunits of the Yakataga Area (see Table 3) as well as adding some minor guidelines and definitions. Public and agency comments were received on a Draft Amendment dated July 3, 2003, and upon evaluation it has been determined that it is in the best interest of the State to proceed with the action identified in the Draft Amendment. An evaluation of the public comments is provided on page 6 and in the attached Issue-Response Summary.

Summary

This Plan Amendment (Amendment) to the Yakataga Area Plan (YAP) will allow the Department of Natural Resources (DNR) to convey land selected by the City and Borough of Yakutat (CBY) as part of their entitlement under the Municipal Entitlement Act. Concurrent with this action, DNR has prepared four Final Findings and Decisions (FFDs) that will convey entitlement land to the CBY. The Amendment is necessary since the current land use designations in the YAP convert to land use classifications that preclude such conveyance to CBY. The conversion to land classifications that allow such conveyance requires a Land Classification Order (LCO); a LCO that implements this decision is attached. This Plan Amendment is intended to only convey state lands to the CBY and to add some minor guidelines and definitions; no other change to the YAP is intended nor occurs in this Amendment.

Background

The YAP is the plan used by DNR to manage land and resources on state owned uplands, shorelands, tidelands and submerged lands in the planning area. Municipalities, including boroughs, are entitled to state-owned uplands within their corporate boundaries under the Municipal Entitlement Act (AS 29.65.010-140). A total of 21,500 acres can be conveyed to the CBY under this Act.

The CBY has current selections of approximately 22,766¹ acres of state upland at four separate locations: (1) land along the coast between Cape Suckling and the Seal River (5,464 acres);

¹ This acreage figure is higher than that presented in the draft since 782 acres of navigable waterbodies were inadvertently omitted from the selection acreage. Since these waterbodies will remain in state ownership there is no net effect on the municipal selections that are ultimately conveyed.

(2) land in the coastal strip south of the Yakataga State Game Refuge (9,804 acres); (3) on the western shore of Icy Bay where the Log Transfer Facility is located (5,538 acres); and (4) along Ophir Creek (1,960 acres). The total municipal entitlement for the CBY is 21,500 acres, 355 acres of which have been conveyed, 1,058 acres which have been approved for conveyance, and 22,766 acres that are in pending selection status and that are the focus of the FFDs and Amendment (see Table 1).¹ The land within these areas is classified Wildlife Habitat, Forest, Heritage Resources, or Public Recreation lands. The classifications of Wildlife Habitat, Heritage Resources, and Forest lands must be changed in order to convey state land to the CBY. No other change to the YAP designations and subsequent classifications is required or proposed in this decision.

The Yakataga Area Plan

The YAP² encompasses State lands in an area extending from Glacier Bay National Park and Preserve to Cape Suckling and covers lands from the border with Canada and to the boundary of Wrangell-St. Elias National Park. Elevation ranges from sea level to 18,008 feet (Mt. St. Elias) and major portions of the Bering, Malaspina, and Novatak glaciers are located in the area. Physiographically, the plan includes a swath of coastal and mountainous terrain that includes the City of Yakutat, Yakutat Bay, Icy Bay, the Robinson Mountains and Barbazon Range of the Wrangell Mountains, and outlets to or major portions of the Alsek, Situk, Duktoth, Kaliakh, Tsiu, and Seal River drainages. The area plan provides land use designations and management intent for approximately 1,383,000 acres of state land -- 412,000 acres of uplands and 971,000 acres of tide, submerged, and shore lands.

Municipal Selections

The purpose of the Municipal Entitlement Act is to provide lands that would create or expand a tax base, generate revenue through land sales and leases; and provide a land base that could be reserved for public areas or facilities as well as provide a land base for community expansion. Alaska Statutes (AS 29.65.010-140) provide for the conveyance of vacant, unappropriated, and unreserved (VUU) state general grant land within the corporate boundaries of a municipality. Lands currently established as conveyable, from the State to a municipality, include unclassified lands and lands classified as: agricultural, grazing, material, settlement, public recreation or resource management (AS 29.65.130 (10)).

Subsequent to adoption of the YAP, the CBY completed and submitted land selections to the DNR towards its municipal entitlements. The CBY is entitled to receive an additional 20,087 acres of land under its entitlement; see Table 1.

¹ The number of acres selected is more than the remaining entitlement to ensure that an adequate amount of acreage is available for transfer after certain lands are retained by the State. Also, the exact acreage will not be established until a survey is completed. In the end the amount of land transferred under this entitlement will be 21,500 acres.

² Adopted April 3, 1995

Table 1 – Current Status of Municipal Selections¹

Category	Acres	Location
Total Entitlement	21,500	
Already Conveyed	-355	City of Yakutat Vicinity
Approved Selections	-1,058	City of Yakutat Vicinity
Remaining Entitlement	20,087	
Pending Selections	22,766	Yakutat Bay to Cape Suckling

The pending selections are located primarily in four separate blocks¹, depicted on Maps A-1 to A-4. The first block of selections (ADL 106619) is within Unit 1, Subunits 1a5, 1a8, and 1a9 of the YAP, located generally along the coast from Cape Suckling to the Seal River; these selections total approximately 5,464 acres. The Cape Suckling selections abut State/University of Alaska settlement lands to the north. The second block of selections (ADL 106621) is within Unit 3, Subunits 3a1, 3a2, and 3a3 of the YAP, extending generally along the coast from the Tsiu River to the Duktoth River; these selections total approximately 9,804 acres. These selections border the Yakataga State Game Refuge to the north. The third block of selections (ADLs 106620 & 106532) is within Unit 4, Subunits 4a1, 4a2, and 4a3 of the YAP on the western shore of Icy Bay generally from Claybluff Point to Kichyatt Point; these selections total approximately 5,538 acres and border Mental Health Lands on the west and State Lands on the north. The fourth block of selections (ADL 106531) is located within Unit 8, Subunits 8a6 and 8a8, on the Phipps Peninsula on the south side of the city of Yakutat; these selections total 1,960 acres. Unlike other Municipal Entitlements, the statute that establishes the Yakutat municipal selections anticipated a land reclassification process and allowed for restrictions to be applied to the conveyances.² Municipal conveyances typically do not include the same type and breadth of stipulations as provided under the Yakutat Entitlement.³

Most of the CBY municipal selections are on lands that are not currently in a conveyable status. The following table shows the outstanding municipal selections, the affected YAP subunits, the acreage selected, and the land use designation and land classification of those lands. Only one of those selections (in subunit 1A8) is in a land classification that is of a conveyable status.

¹ Detail on the land selections is provided in the four Final Findings and Decisions.

² “If the director determines that the public interest in land selected in satisfaction of an entitlement under AS 29.65.010(a)(13) can be adequately protected by issuing a patent that is subject to stipulations, conditions, or covenants, and if the municipality agrees to accept the land subject to those stipulations, conditions, or covenants, the director may approve a selection that would otherwise be disapproved and may issue the patent with the stipulations, conditions, or covenants agreed to by the municipality. (AS 29.65.050(c))”

³ The CBY also agreed to the use of specific stipulations in correspondence to ADF&G dated February 24, 1998. The CBY has addressed these concerns by agreeing to protect habitat in the 500 foot wide coastal fringe of timber discussed in the Area Plan, manage lands in the Cape Suckling area to maintain fish and wildlife resources and recreational purposes, and establish a no-development greenbelt on Ophir Creek.

Table 2 - City and Borough of Yakutat Municipal Selections by Unit

Selection ADL#	Plan Subunit	Land Use Designation*	Acres Selected	Existing Land Use Classification	Conveyable Classification?
106619	1a5 ¹	H1, HV1, RD1	500	Wildlife Habitat, Public Recreation	No
106619	1a8	RD1	1,732	Public Recreation	Yes
106619	1a9	H1, RD2	3,232	Wildlife Habitat	No
106621	3a1	HV1, RP1	3,160	Wildlife Habitat, Public Recreation	No
106621	3a2	H1, RD1	3,906	Wildlife Habitat, Public Recreation	No
106621	3a3	H1, HV1, RD2	2,738	Wildlife Habitat	No
106532	4a1	F1	1,680	Forest	No
106532 & 106620	4a2	H1, HV1	1,200	Wildlife Habitat	No
106620	4a3	H2	2,658	Wildlife Habitat	No
106531	8a6	H1, HV1, RD1, F2	1,300	Wildlife Habitat, Public Recreation	No
106531	8a8	H1, HV1, HR, RD1	660	Wildlife Habitat, Public Recreation, Heritage Resources	No
		Total	22,766		

* F = Forestry; H = Fish and Wildlife Habitat; HV = Fish and Wildlife Harvest; RD = Recreation and Tourism (dispersed); RP = Recreation and Tourism (public use site); HR = Heritage Resources; 1 = primary use; 2 = secondary use.

The University Settlement

Although not directly related to the CBY land entitlement, a Settlement Agreement affects large portions of the YAP planning area. This Agreement gives timber harvest rights to the University of Alaska in portions of the Area Plan classified Forest Land in the Yakataga and White river drainages, generally between the Duktath River on the west and the Mental Health Trust land in the east. However, an element of this Agreement indirectly relates to the conveyance of land that is the subject of the Plan Amendment and the Preliminary Findings and Decision. Section 4(c)(iii) of the MOU, dealing with the University’s rights to harvest timber in the Cape Suckling, White River, Yakataga, and what are termed ‘substitute’ tracts, required that the Preliminary Finding and Decision and the Final Finding and Decision for an amendment of the YAP reexamine all forestry and other land classifications in the Yakataga area when the area plan is amended.

¹ In order to avoid split management of a lease, all of the land encompassed by lease ADL 106194 to Alaska Gulf Coast Adventures Inc., more properly described as ASLS 97-46, Lots 1 & 2, containing 5.82 acres, are made a part of the CBY selections and are treated the same as other lands within Selection ADL 106619, Plan Subunit 1a5.

As part of this action, DNR reexamined the land classifications and management intent for all the subunits of the YAP. This included subunits that are not part of this Amendment. This Amendment does not change the current Forest Land classifications in the Area Plan that are part of the Settlement Agreement and form the basis of sustained yield estimates for state land in the Area Plan. The single area considered for conveyance and classified as Forest Land includes the tract of land on the west shore of Icy Bay whose principal function is to support timber harvest. This tract contains the Sort Yard, Log Transfer Facility and Wood Waste Site. This tract is steep in many parts and does not contain significant stands of merchantable timber.¹

Because the Plan Amendment does not affect the areas of state land that contain the principal inventory of merchantable timber or the area used for the sustained yield calculations, DNR does not believe that this Amendment affects the fundamental management strategy described in the Area Plan for timber harvest. Moreover, the principal areas of Wildlife Habitat Land, situated in the Vitus Lake, Kiklukh, Kaliakh, and Duktoth drainages above the coastal strip, are unaffected by this Amendment. Stipulations to protect wildlife and wildlife habitat, derived from the Area Plan, are imposed on those tracts that are co-designated Wildlife Habitat Land and are proposed for conveyance to the CBY in the Preliminary Findings and Decision. For these reasons, DNR considers that the overall integrity of the Area Plan is retained in the Plan Amendment and the Final Findings and Decisions.

Yakataga Area Plan Amendment

The Amendment is intended to provide for the conveyance of state land to the CBY but to otherwise not affect the Area Plan. A Draft Yakataga Area Plan Amendment was submitted for public review from July 8, 2003 to September 2, 2003. The issues raised and DNR's response are summarized in the attached "Issue-Response Summary". One change resulting from this review is a clarification of the definition for the "coastal fringe of timber" (see Issue 10). The Plan Amendment deletes the designations of Harvest and Habitat in all or portions of Subunits 1a5, 1a9, 3a1, 3a2, 3a3, 4a2, 4a3, 8a6 and 8a8; designates Subunits 4a2 and 4a3 for Recreation and Tourism (dispersed); deletes the designation of Heritage Resources in Subunit 8a8; and converts the designation of Forestry to General Use in Subunit 4a1. These changes are identified in Table 3. Those portions of Subunits 1a5 and 1a9 that are retained by the State will have an additional guideline - that DNR may consider commercial recreation leasing or permitting within the aforementioned subunits if DNR determines that there are no adjoining Yakutat borough lands available for such use or development. Except for these few changes, all other aspects of the Yakataga Area Plan are unaffected by this action and remain valid.

However, if the selection areas are conveyed to the CBY, the net affect, in practice, is to delete these areas from the requirements of the Area Plan since land status and corresponding management will have been transferred to the Borough. The stipulations contained in the Area

¹ The Final Finding and Decision affecting this tract (ADLs 106532 & 106620) does not provide for the conveyance of the land in the vicinity of the Wood Waste Site, Sort Yard, Log Transfer Facility, and the road. These area components are used by DNR, the Mental Health Trust, and the University in support of their timber harvest and management functions and it is considered inappropriate to convey these common use components to the CBY.

Plan¹ within the affected subunits are imposed as stipulations of conveyance in each of the four Final Findings and Decisions. See these for detailed information on these stipulations.

Table 3 outlines the changes to the land designations for selected lands in Units 1, 3, 4, and 8, as previously described. The areas of the road, wood waste site, sort yard and upland portions of the log transfer facility in Unit 4 are retained by the state, as are the beds of all navigable rivers. This approach protects the State, has minimal effect upon the YAP, and makes possible the maximum potential conveyance to the municipality. This Plan Amendment revises the Plan to incorporate these changes in land use designation, and the Land Classification Order, attached, implements these changes.

Table 3 - Yakutat Area Plan Amendment

Selected Lands in Plan Subunit:	From Land Use Designation:*	To Land Use Designation:*	Resulting in Classification:
1a5 ⁶	H1, HV1, RD1	RD1	Public Recreation
1a8	RD1	RD1	Public Recreation
1a9	H1, RD2	RD1	Public Recreation
3a1	HV1, RP1	RP1	Public Recreation
3a2	H1, RD1	RD1	Public Recreation
3a3	H1, HV1, RD2	RD1	Public Recreation
4a1	F1	G	Resource Management
4a2	H1, HV1	RD1	Public Recreation
4a3	H2	RD1	Public Recreation
8a6	H1, HV1, RD1, F2	RD1	Public Recreation
8a8	H1, HV1, HR, RD1	RD1	Public Recreation

* F = Forestry; H = Fish and Wildlife Habitat; HV = Fish and Wildlife Harvest; RD = Recreation and Tourism (dispersed); RP = Recreation and Tourism (public use site); HR = Heritage Resources; G = General Use; 1 = primary use; 2 = secondary use.

Public Review

A preliminary decision was made in the draft Yakataga Area Plan Amendment that was issued in July 2003. The draft Amendment was under public review from July 8, 2003 to September 2, 2003. Nineteen responses were received commenting on various aspects of the plan amendment and municipal conveyance. The comments dealt with access issues, land classifications, the Yakataga State Game Refuge, wildlife protection, historic properties, and the retention of state lands in west Icy Bay. The issues raised and DNR's response are summarized in the attached "Issue-Response Summary". This evaluation led to one change to the Amendment, a clarification of the definition for the "coastal fringe of timber" (see Issue 10). Other than this no change is warranted that would modify the draft Amendment dated July 3, 2003.

¹ Stipulations from separate agreements between the CBY and DNR are also included; the inclusion of these affords a higher degree of management control than would be afforded under the Area Plan alone.

Commissioner's Decision

Pursuant to AS 38.04.065, I adopt this Plan Amendment to implement the change in plan designations to the Yakataga Area Plan (YAP) identified in Table 3 of this decision. I also adopt Land Classification Order SE-95-002A01, which will reclassify state land to be consistent with the approved changes in plan designations to the YAP. Changing the land use designations in the 1995 YAP and adopting the Land Classification Order (LCO) will enable the Department, through Final Findings and Decisions (FFD) for ADLs 106619, 106621, 106532, 106620, & 106531, that are part of a separate but concurrent action by the Department, to convey the lands identified in these FFDs to the City and Borough of Yakutat (CBY). I find the proposed actions, identified above, to be in the overall best interest of the state.



Tom Irwin, Commissioner
Alaska Department of Natural Resources

1/16/04
Date

Appeal Procedures

A person affected by this decision may request reconsideration, in accordance with 11 AAC 02. Any reconsideration request must be received by February 5, 2004 at 5:00 PM and may be mailed or delivered to Tom Irwin, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to dnr_appeals@dnr.state.ak.us. If reconsideration is not requested by that date or if the commissioner does not order reconsideration on his own motion, this decision goes into effect as a final order and decision on February 16, 2004. Failure of the commissioner to act on a request for reconsideration within 30 days after issuance of this decision is a denial of reconsideration and is a final administrative order and decision for purposes of an appeal to Superior Court. The decision may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. An eligible person must first request reconsideration of this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER**

LAND CLASSIFICATION ORDER NO. SE-95-002A01

I. Name: **Yakataga Area Plan (YAP) Amendment**

II. The classifications in Part III are based on written justification contained in:

Area Plan: Yakataga Area Plan Amendment
Adopted (X) Revised () Dated 01/16/2004

III. Legal Description	Acreage	Acquisition Authority	Existing Classification	Classification by this action
See YAP Amendment Maps A-1 to A-4 (Excluding the beds of public navigable waters as detailed in the Final Findings and Decisions for ADLs 106619, 106621, 106532, 106620, and 106531) ¹	21,247		See YAP Amendment Table 2	See YAP Amendment Table 3

IV. This order is issued under the authority granted by AS 38.04.065 and AS 38.05.300 to the Commissioner of the Department of Natural Resources. The lands described in Section III of this Land Classification Order (LCO) are hereby reclassified as indicated, which is intended to enable the conveyance of land under the City and Borough of Yakutat's Municipal Entitlement. I find that the proposed actions, identified above, to be in the overall best interest of the state.

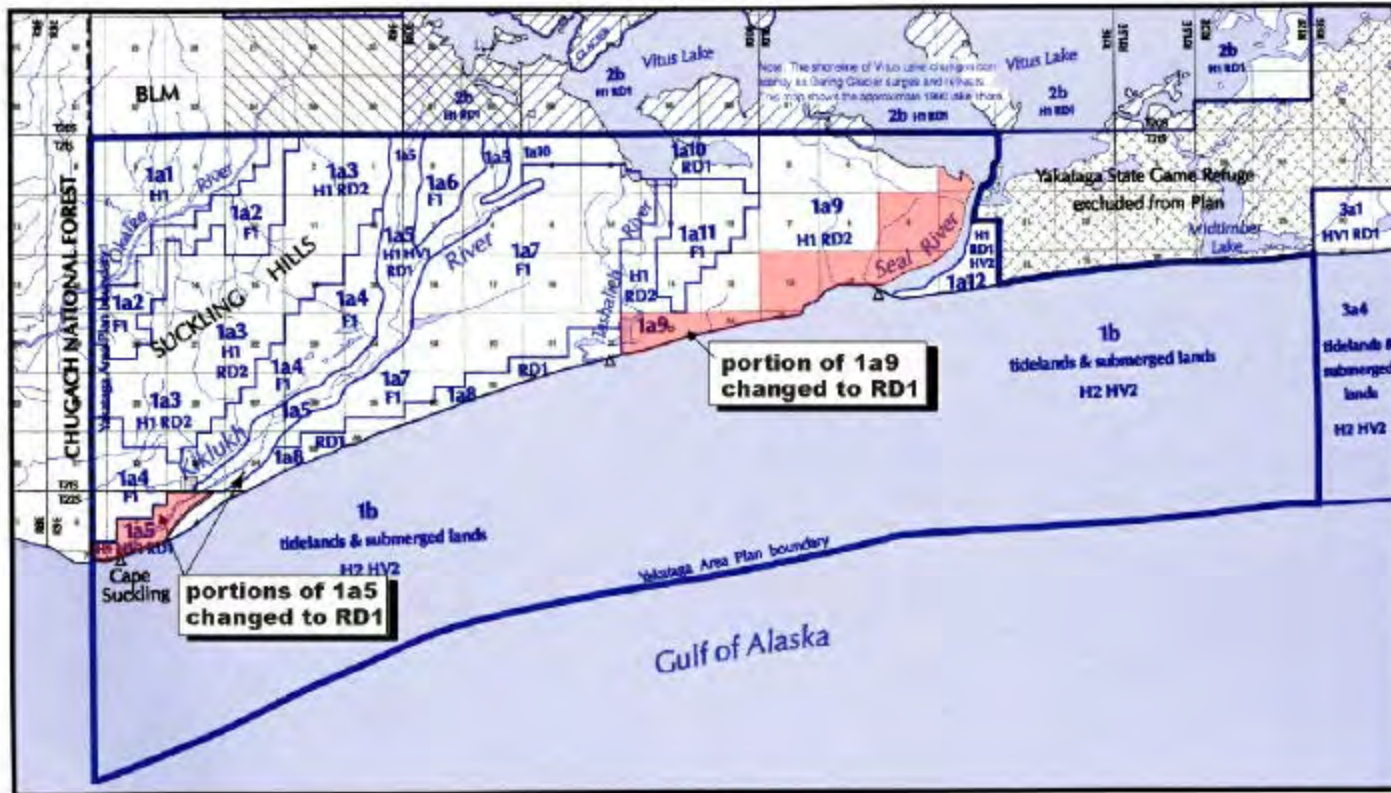
Classified: 
Tom Irwin, Commissioner
Alaska Department of Natural Resources


Date

¹ That portion of YAP Subunit 4a1 that is not part of this LCO is described as: T22S, R23E, CRM, all land within Section 29; the S1/2 of the S1/2 of Section 20; and the land within Section 30 that lies north of the southern boundary of the right-of-way for the Cape Yakataga-Icy Bay Road (parcel 4 in the survey for ADL 105890).

Yakataga Area Plan Amendment

Unit 1 Cape Suckling



YAKATAGA AREA PLAN

Unit 1 Cape Suckling

PLANNING UNITS

- management unit boundary
- subunit boundary and number

LAND STATUS

STATE OWNED OR SELECTED: SUBJECT TO PLAN

- NO PATTERN: state owned - patented or tentatively approved
- diagonal lines: state selected
- cross-hatch: state and Native selection (dual selection)

STATE OWNED BUT EXCLUDED FROM PLAN

- stippled: Yakataga State Game Refuge

OTHER LAND OWNERSHIP

- horizontal lines: federal
- vertical lines: Native selected
- diagonal lines: private, including Native Allotments

MAP FEATURES

- triangle: anadromous fish stream mouth
- wavy line: glacier margin

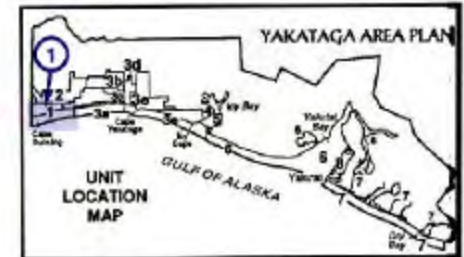
Amendments

- red shaded area: portion of subunit with changes

Note: The Yakataga Area Plan's 3-mile offshore limit is measured in nautical miles rather than statute (land) miles. One nautical mile is equal to 1.151 statute miles.

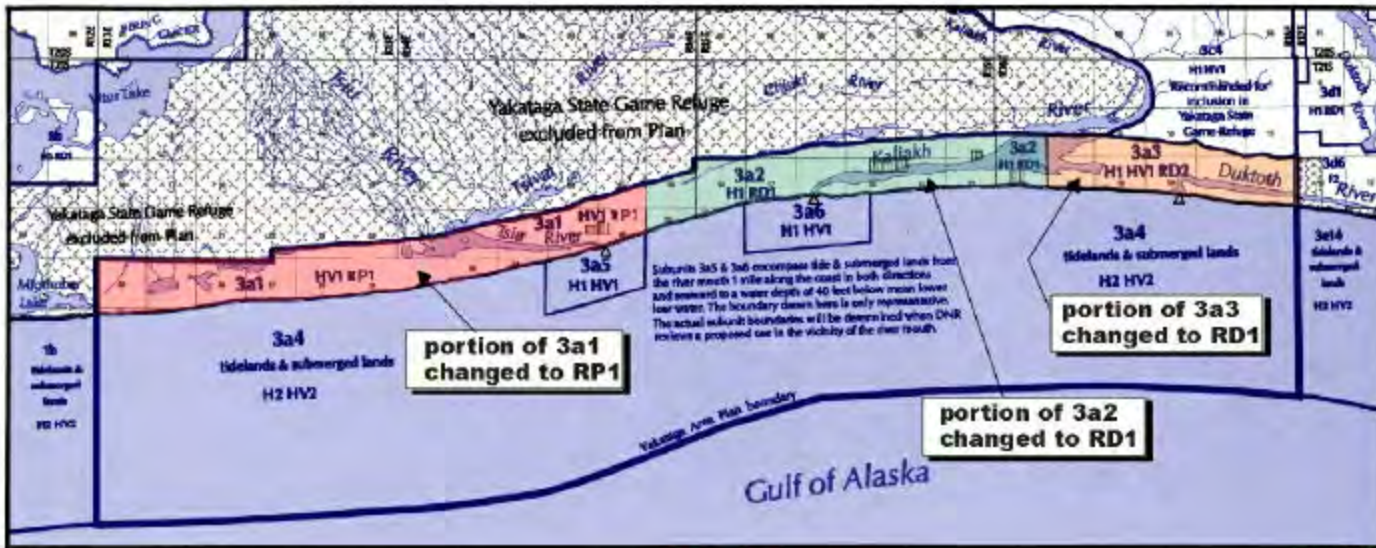
MAP A-1

January 2004



Yakataga Area Plan Amendment

Unit 3A Tsiu to Duktoth coastal strip



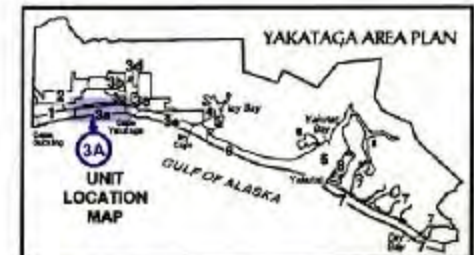
MAP A-2

January 2004

Note: The Yakataga Area Plan's 3 mile offshore limit is measured in nautical miles rather than statute (land) miles. One nautical mile is equal to 1.151 statute miles.

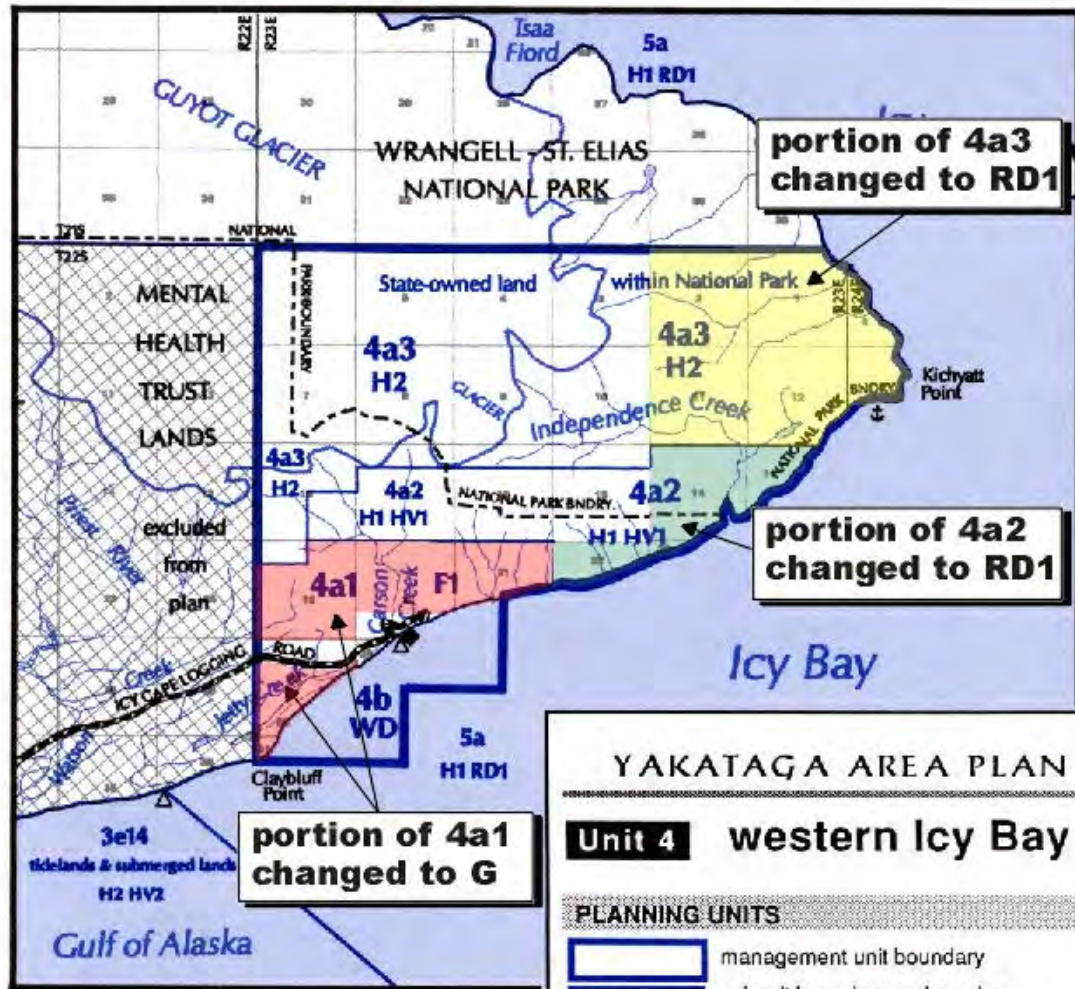


YAKATAGA AREA PLAN	
Unit 3A Tsiu to Duktoth coastal strip	
PLANNING UNITS	
	management unit boundary
	subunit boundary and number
LAND STATUS	
STATE OWNED OR SELECTED: SUBJECT TO PLAN	
	state owned - patented or tentatively approved
STATE OWNED BUT EXCLUDED FROM PLAN	
	Yakataga State Game Refuge
	university owned
OTHER LAND OWNERSHIP	
	private, including Native Allotments
MAP FEATURES	
	anadromous fish stream mouth
	glacier margin
Amendments	
	portion of subunit with changes



Yakataga Area Plan Amendment

Unit 4 western Icy Bay

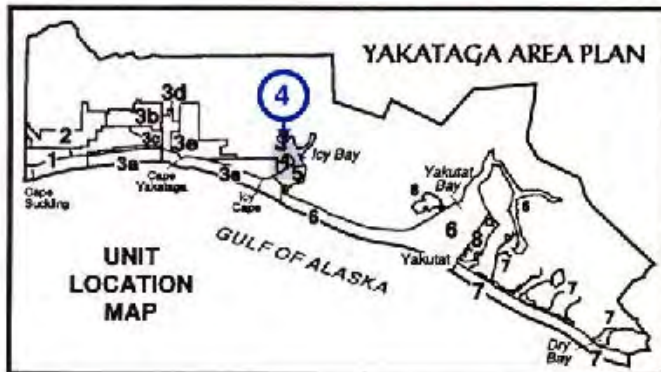


January 2004



0 1 2
SCALE IN MILES

MAP A-3



YAKATAGA AREA PLAN

Unit 4 western Icy Bay

PLANNING UNITS

management unit boundary

subunit boundary and number

LAND STATUS

STATE OWNED OR SELECTED: SUBJECT TO PLAN

NO PATTERN state owned - patented or tentatively approved

STATE OWNED BUT EXCLUDED FROM PLAN

Mental Health Trust land

OTHER LAND OWNERSHIP

LABELED federal (National Park)

federal conservation system unit boundary

MAP FEATURES

anadromous fish stream mouth

road

log transfer facility (LTF)

Amendments

portion of subunit with changes

