



## CSHB 52 (FSH) – Sponsor Statement

### **“An Act adding state land to Kachemak Bay State Park; removing the Tutka Bay Lagoon Hatchery and Tutka Bay Lagoon from Kachemak Bay State Park; and providing for an effective date.”**

**House Bill 52** seeks to cure a legal land disposal issue within Kachemak Bay State Park (KBSP) by providing a boundary adjustment that benefits both the park and Tutka Bay Lagoon Hatchery (TBLH). This proposal adds additional land parcels north of Kachemak Bay and excludes the hatchery and lagoon from the park lands.

The Tutka Bay Lagoon Hatchery is owned by the State of Alaska and has been in operation since 1975 and privately operated on behalf of the state since 1995. Emerging caselaw regarding what constitutes an “impermissible disposal of park lands” has made it clear that this is a legal issue that must be resolved.

This bill adds three parcels (A-C on the map) totaling approximately 267 acres to KBSP in the Cottonwood-Eastland unit, on the north side of Kachemak Bay, and removes approximately 123 acres from the park that includes uplands surrounding the TBLH and portions of Tutka Bay Lagoon. Parcel A would provide much needed access from East End Road to the underutilized Cottonwood Eastland unit about 17 miles northeast of Homer; offering enhanced recreational opportunities. Parcels B and C would connect adjacent portions within the Cottonwood-Eastland unit, harmonizing long-term park management objectives.

The indirect benefit of curing this legal land disposal issue within KBSP, is securing the success of the China Poot Dipnet Fishery that is stocked with eggs from TBLH. This dipnet salmon fishery is a source of food security for the community and to many across the state.

By legislatively removing the Tutka Bay Lagoon Hatchery from Kachemak Bay State Park, HB 52 cures the legal disposal issue of these legislatively designated lands.



**CS FOR HOUSE BILL NO. 52(FSH)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

**BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES**

**Offered: 5/19/21**

**Referred: Resources**

**Sponsor(s): REPRESENTATIVES VANCE, Gillham, Carpenter**

**A BILL**

**FOR AN ACT ENTITLED**

**"An Act adding state land to Kachemak Bay State Park; removing the Tutka Bay Lagoon Hatchery and Tutka Bay Lagoon from Kachemak Bay State Park; and providing for an effective date."**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

**\* Section 1.** AS 41.21.131(a) is amended to read:

(a) The presently state-owned land and water, and all that acquired in the future by the state, lying within the parcels described in this section are designated as the Kachemak Bay State Park. In order to protect and preserve this land and water for its unique and exceptional scenic value, the park is established and shall be managed as a scenic park. The land and water lying within the following described parcels is reserved from all uses incompatible with its primary function as a scenic park and is assigned to the department for control, development, and maintenance:

(1) **Township 4 South, Range 11 West, Seward Meridian**

**Section 33: W1/2SE1/4 and SW1/4SE1/4, lying southerly**

1                                    **and easterly of East End Road;**

2                                    **(2)** Township 5 South, Range 10 West, Seward Meridian Chugachik

3                                    Island

4                                    Sections 31 - 32;

5                                    **(3)** [(2)] Township 5 South, Range 11 West, Seward Meridian

6                                    Section 2: Lot 1, excluding Tract A

7                                    Section 3: Lots 1 - 8, SW1/4NE1/4, S1/2NW1/4, N1/2SW1/4

8                                    Section 4: Lots 1 - 4, S1/2N1/2, SE1/4, E1/2SW1/4

9                                    Section 8: E1/2NE1/4, SE1/4

10                                   Section 9: Lots 1, [AND] 2, **4, 6, and 7**, NW1/4NE1/4,

11                                   NE1/4NW1/4,                    W1/2NW1/4,                    N1/2NE1/4SW1/4,

12                                   SW1/4NE1/4SW1/4, **Tracts E, F, G, and H, Kachemak Bay**

13                                   **View Estates Subdivision, Plat No. 79-143** [EXCLUDING

14                                   LOT 6]

15                                   Section 10: Lot 1

16                                   Section 16: Lot 1

17                                   Section 17: Lots 1, **2**, 3, 4, NW1/4SW1/4, S1/2NW1/4,

18                                   **N1/2NW1/4, NW1/4NE1/4**

19                                   Section 18: Lot 4, SE1/4, E1/2NE1/4

20                                   Section 19: Lots 1 - 6, NW1/4NE1/4, NE1/4NW1/4

21                                   Section 20: Lot 1

22                                   Sections 24 - 25, excluding tide and submerged land within the

23                                   Kachemak Bay Critical Habitat Area

24                                   Section 26: SE1/4, excluding tide and submerged land within

25                                   the Kachemak Bay Critical Habitat Area

26                                   Section 35, excluding tide and submerged land within the

27                                   Kachemak Bay Critical Habitat Area

28                                   Section 36;

29                                   **(4)** [(3)] Township 6 South, Range 11 West, Seward Meridian;

30                                   **(5)** [(4)] Township 7 South, Range 11 West, Seward Meridian

31                                   Sections 1 - 4

1 Section 5: N1/2  
 2 Sections 7 - 36;  
 3 **(6)** [(5)] Township 7 South, Range 12 West, Seward Meridian  
 4 Section 12, except N1/2NE1/4  
 5 Section 13  
 6 Sections 19 - 36;  
 7 **(7)** [(6)] Township 7 South, Range 13 West, Seward Meridian  
 8 Sections 25 - 26  
 9 Sections 35 - 36;  
 10 **(8)** [(7)] Township 8 South, Range 11 West, Seward Meridian  
 11 Sections 1 - 8  
 12 Section 9: N1/2  
 13 Section 10: N1/2  
 14 Section 11: N1/2  
 15 Section 12: N1/2  
 16 Sections 17 - 18;  
 17 **(9)** [(8)] Township 8 South, Range 12 West, Seward Meridian;  
 18 **(10)** [(9)] Township 8 South, Range 13 West, Seward Meridian  
 19 Sections 1 - 2  
 20 Sections 10 - 14  
 21 Section 15: E1/2  
 22 Section 23: N1/2 and SE1/4  
 23 Sections 24 - 25  
 24 Section 26: E1/2  
 25 Section 35: E1/2  
 26 Section 36;  
 27 **(11)** [(10)] Township 9 South, Range 8 West, Seward Meridian  
 28 Section 2: W1/2  
 29 Section 3 - 10  
 30 Sections 15 - 22  
 31 Sections 27 - 34;

- 1                   **(12)** [(11)] Township 9 South, Range 9 West, Seward Meridian;  
 2                   **(13)** [(12)] Township 9 South, Range 10 West, Seward Meridian  
 3                   Sections 10 - 15  
 4                   Sections 22 - 27  
 5                   Sections 34 - 36;  
 6                   **(14)** [(13)] Township 9 South, Range 12 West, Seward Meridian  
 7                   Sections 1 - 6  
 8                   Section 8: NE1/4  
 9                   Sections 9 - 12  
 10                  Section 13: N1/2  
 11                  Section 14: N1/2;  
 12                  **(15)** [(14)] Township 9 South, Range 13 West, Seward Meridian  
 13                  Sections 1 - 2;  
 14                  **(16)** [(15)] Township 10 South, Range 8 West, Seward Meridian  
 15                  Sections 4 - 8  
 16                  Sections 17 - 19;  
 17                  **(17)** [(16)] Township 10 South, Range 9 West, Seward Meridian  
 18                  Sections 1 - 4  
 19                  Sections 10 - 15  
 20                  Sections 22 - 24.

21       \* **Sec. 2.** AS 41.21.131 is amended by adding a new subsection to read:

22               (d) The following land and water, commonly known as Tutka Bay Lagoon,  
 23               and the land on which the Tutka Bay Lagoon Hatchery is located, containing  
 24               approximately 123.45 acres of land, is excepted from (a) and (b) of this section and is  
 25               not part of the Kachemak Bay State Park: commencing at control point no. 99, a 2-  
 26               inch aluminum cap on 5/8-inch rebar, marked CP 99, LS 4469, 2012, at latitude 59  
 27               degrees 26 minutes 09.172 seconds North and longitude 151 degrees 24 minutes  
 28               52.651 seconds West; from which control point no. 101, a 2-inch aluminum cap on  
 29               5/8-inch rebar, marked CP 101, LS 4469, 2012, at latitude 59 degrees 26 minutes  
 30               12.651 seconds North and longitude 151 degrees 24 minutes 50.806 seconds West  
 31               bears north 16 degrees 20 minutes 07 seconds East, a distance of 365.84 feet; thence

1 south 17 degrees 36 minutes 32 seconds East, a distance of 649.17 feet to the south  
 2 corner no. 1 of the parcel, an unmonumented position at latitude 59 degrees 26  
 3 minutes 03.12 seconds North and longitude 151 degrees 24 minutes 48.60 seconds  
 4 West, and the true point of beginning of the herein described parcel; thence north 47  
 5 degrees 11 minutes 33 seconds West, a distance of 1817.08 feet to corner no. 2, an  
 6 unmonumented position at latitude 59 degrees 26 minutes 15.00 seconds North and  
 7 longitude 151 degrees 25 minutes 14.88 seconds West; thence north 63 degrees 25  
 8 minutes 05 seconds West, a distance of 1194.84 feet to corner no. 3, an  
 9 unmonumented position at latitude 59 degrees 26 minutes 20.04 seconds North and  
 10 longitude 151 degrees 25 minutes 35.76 seconds West; thence north 62 degrees 18  
 11 minutes 23 seconds West, a distance of 1476.37 feet to corner no. 4, an  
 12 unmonumented position at latitude 59 degrees 26 minutes 26.52 seconds North and  
 13 longitude 151 degrees 26 minutes 01.32 seconds West; thence north 29 degrees 51  
 14 minutes 17 seconds East, a distance of 582.91 feet to corner no. 5, an unmonumented  
 15 position at latitude 59 degrees 26 minutes 31.56 seconds North and longitude 151  
 16 degrees 25 minutes 55.92 seconds West; thence south 81 degrees 46 minutes 26  
 17 seconds East, a distance of 1500.30 feet to corner no. 6, an unmonumented position at  
 18 latitude 59 degrees 26 minutes 29.76 seconds North and longitude 151 degrees 25  
 19 minutes 27.12 seconds West; thence south 67 degrees 27 minutes 47 seconds East, a  
 20 distance of 3217.16 feet to corner no. 7, an unmonumented position at latitude 59  
 21 degrees 26 minutes 18.24 seconds North and longitude 151 degrees 24 minutes 29.16  
 22 seconds West; thence south 34 degrees 26 minutes 11 seconds West, a distance of  
 23 1834.95 feet to corner no. 1, the point of beginning.

24 \* **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).





# Fiscal Note

State of Alaska  
2021 Legislative Session

Bill Version: HB 52  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB052-DNR-DPOR-4-28-21  
Title: TUTKA BAY HATCHERY  
Sponsor: VANCE  
Requester: House Fisheries

Department: Department of Natural Resources  
Appropriation: Parks & Outdoor Recreation  
Allocation: Parks Management & Access  
OMB Component Number: 3001

## Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below.

(Thousands of Dollars)

	FY2022 Appropriation Requested	Included in Governor's FY2022 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	FY 2022	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

## Fund Source (Operating Only)

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

## Positions

Full-time							
Part-time							
Temporary							

## Change in Revenues

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2021) cost:** 0.0 (separate supplemental appropriation required)

**Estimated CAPITAL (FY2022) cost:** 0.0 (separate capital appropriation required)

**Does the bill create or modify a new fund or account?** No  
(Supplemental/Capital/New Fund - discuss reasons and fund source(s) in analysis section)

## ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

## Why this fiscal note differs from previous version/comments:

Not applicable, initial version.

Prepared By: Matt Wedeking, Division Operations Manager  
Division: Parks and Outdoor Recreation  
Approved By: Cheri Lowenstein, Administrative Services Director  
Agency: Office of Management and Budget

Phone: (907)269-8702  
Date: 04/28/2021  
Date: 04/28/21

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2021 LEGISLATIVE SESSION

BILL NO. HB 52

### Analysis

This bill adds a new subsection that states the Tutka Bay Lagoon Hatchery is a compatible use within the boundaries of Kachemak Bay State Park. The Division of Parks and Outdoor Recreation does not anticipate any fiscal impact and therefore submits a zero fiscal note.

## **HB 52 – Tutka Bay Lagoon Hatchery – Sponsored by Rep. Vance Briefing Paper**

### **HB 52 – Land Summary**

The bill removes approximately 123.45 acres from Kachemak Bay State Park (KBSP) that includes uplands surrounding the Tutka Bay Lagoon Hatchery (TBLH) and portions of Tutka Bay Lagoon. The bill adds three parcels (A-C on the map) totaling approximately 266.67 acres to KBSP in the Cottonwood-Eastland unit of the park. These parcels are contiguous with a portion of KBSP on the north side of Kachemak Bay about 17 miles northeast of Homer near East End Road. Parcel A would provide much needed road-based access to the underutilized Cottonwood Eastland unit of the park offering enhanced recreational opportunities. Parcels B and C would connect adjacent portions of KBSP harmonizing park management objectives.

### **The Disposal Issue**

When the Alaska Legislature created KBSP in 1970 these lands were withdrawn from the public domain and designated as special purpose sites under Article VIII, section 7 of the Alaska Constitution. KBSP was created “in order to protect and preserve this land and water for its unique and exceptional scenic value”<sup>1</sup> and mandated that the lands and waters be managed as a scenic park. Being legislatively designated lands, the executive branch is prohibited from disposing of any real property interests, including granting leases and easements.<sup>2</sup>

State land disposal case law has developed over the last twenty years. These cases reveal a fact intensive inquiry to determine whether an agreement constitutes an unconstitutional disposal:

1. In 2000, the Alaska Supreme Court in *Northern Alaska Environmental Center v. State, Dep’t of Natural Resources*, adopted the functionally irrevocable test.<sup>3</sup> The test does not focus on the wording of the permit or agreement, but instead considers “the likelihood of revocation” and “the long-term and harmful character of the environmental impact.” A significant investment in a project and the need for the project to continue to generate revenue pursuant to that investment means there is a low “likelihood of revocation” of any agreement related to that facility.
2. In 2013, the Alaska Supreme Court in *SOP, Inc. v. State*<sup>4</sup> held that a “non-revocable ATV permit” created an easement and thus constituted an unconstitutional disposal of legislatively designated lands.

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<sup>1</sup> AS 41.21.131(a)

<sup>2</sup> See *SOP, Inc. v. State*, 310 P.3d 962, 966-967 (Alaska 2013) [“This provision allowing the legislature to reserved recreational lands for public use, means that those lands cannot be conveyed by the executive branch for private use.”]

<sup>3</sup> 2 P.3d 629 (Alaska 2000).

<sup>4</sup> 310 P.3d 962 (Alaska 2013).

3. In the 2015 case *Nunamta Aulukestai v. State, Dept. of Natural Resources*, the Alaska Supreme Court determined boreholes represented a “long-term and harmful” impact to state lands under the functionally irrevocable test.<sup>5</sup>
4. Most recently, in 2020, in *SEAAC v. State of Alaska*, the above legal precedents and case law on land disposal were reaffirmed and further expanded suggesting that certain agreements between agencies may constitute a disposal.<sup>6</sup>

Applying the functionally irrevocable test, the TBLH, as operated by the Cook Inlet Aquaculture Association (CIAA), constitutes a disposal of legislatively withdrawn lands for the following reasons:

1. The plain language of ADF&G’s 2014 agreement with CIAA suggests a lease – and thus a disposal – of these lands. The agreement allows CIAA to operate the TBLH for twenty years. The agreement states that the parties would work towards transferring the TBLH facilities to CIAA.
2. DCCED has invested \$16.1 million to CIAA to operate the hatchery. DCCED wants a return on that \$16.1 million investment.
3. Similarly, the hatchery’s operational expenses are funded through cost recovery. This means the hatchery must continue to operate to ensure cost recovery.
4. To the extent boreholes have a long-term effect, the buildings and the operations within the lagoon have a long-term effect on those state park lands and waters.

To summarize, the terms of the ADF&G agreement, the use of cost recovery, and DCCED’s investment in the TBLH all suggest ADF&G cannot revoke at will its agreement with CIAA. Therefore, under the functionally irrevocable test, the TBLH constitutes an impermissible disposal of state park lands.

The KBSP Plan lists TBLH as incompatible because of this disposal problem. To acknowledge TBLH constitutes a disposal of legislatively withdrawn lands but is compatible would be inconsistent.

## **Conclusion**

By legislatively removing TBLH from KBSP, HB 52 cures the disposal of these legislatively designated lands. Hatcheries, and in particular the applicability of the AS 16.05 programs, are not part of this bill. Whether TBLH should remain – on state public domain lands – is a separate issue.

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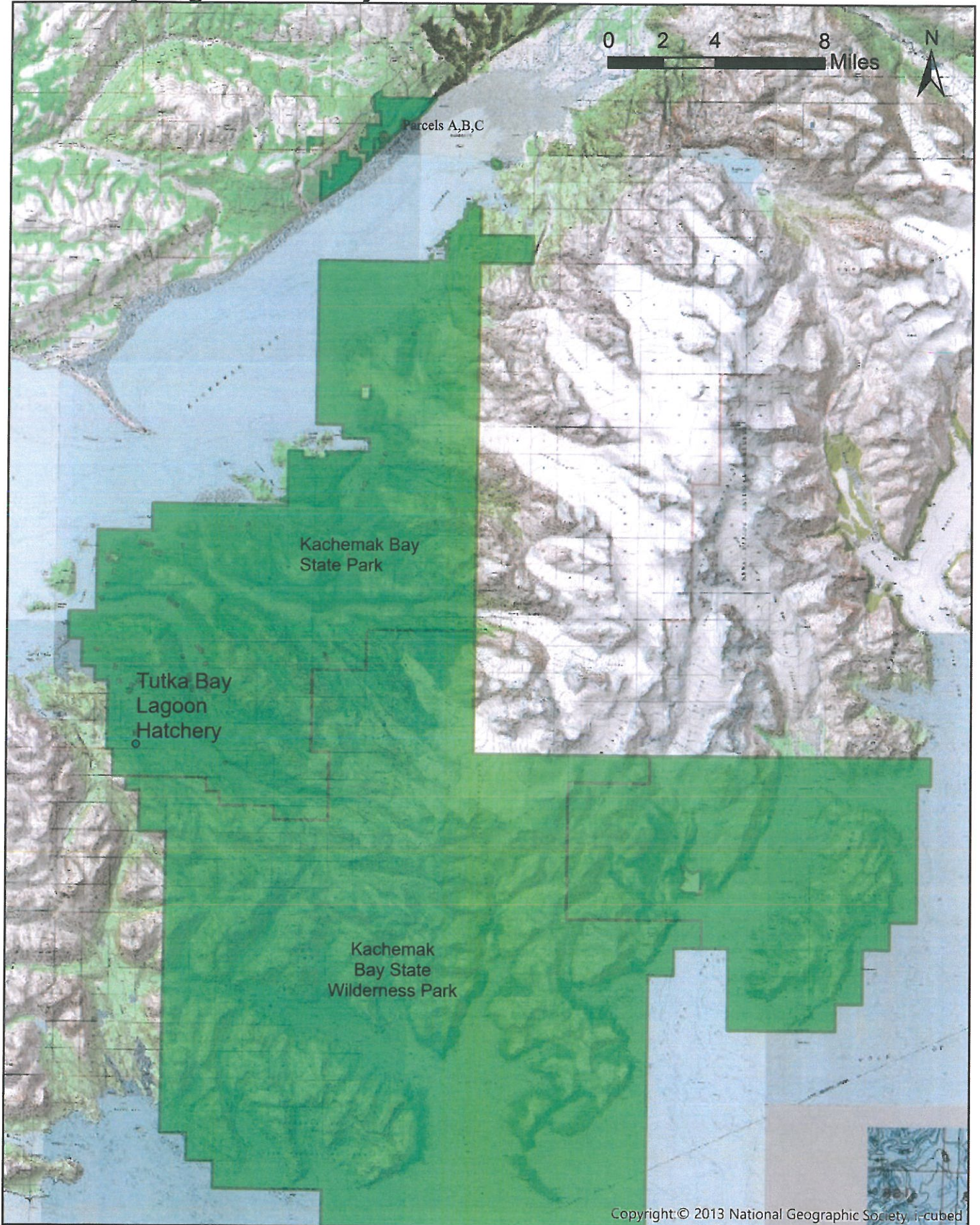
<sup>5</sup> *Nunamta Aulukestai v. State, Dept. of Natural Resources*, 351 P.3d 1041 (Alaska 2015).

<sup>6</sup> *SEAAC v. State of Alaska*, 470 P.3d 129, 136-141 (Alaska 2020).

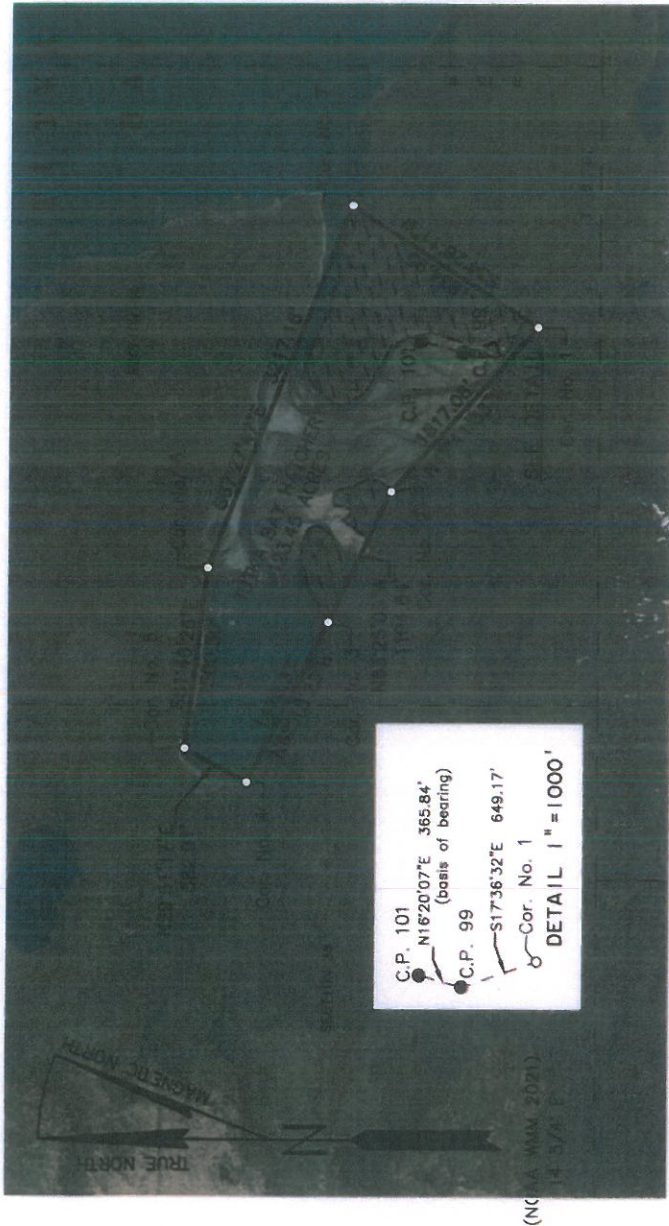


# Kachemak Bay State Park & State Wilderness Park Tutka Bay Lagoon Hatchery

Map for HB52







COORDINATE TABLE		
NAD83, STATE PLANE, ZONE 4, ALASKA		
CORNER #	LATITUDE	LONGITUDE
Cor. No. 1	59° 26' 03.12" NORTH	151° 24' 48.60" WEST
Cor. No. 2	59° 26' 15.00" NORTH	151° 25' 14.08" WEST
Cor. No. 3	59° 26' 20.04" NORTH	151° 25' 35.76" WEST
Cor. No. 4	59° 26' 28.52" NORTH	151° 26' 01.32" WEST
Cor. No. 5	59° 26' 31.56" NORTH	151° 25' 55.92" WEST
Cor. No. 6	59° 26' 28.76" NORTH	151° 25' 27.12" WEST
Cor. No. 7	59° 26' 18.24" NORTH	151° 24' 29.16" WEST
C.P. 99	59° 26' 06.172" NORTH	151° 24' 52.651" WEST
C.P. 101	59° 26' 12.651" NORTH	151° 24' 50.806" WEST

SEE TOPO DRAWING DATED 6-25-2012 FOR CP  
(CONTROL POINT) LOCATIONS

DATE OF SURVEY:  
BEGINNING: NA  
ENDING: NA

SURVEYOR: MULLIKIN SURVEYS  
P.O. Box 790, 381 E. Bonanza Ave.  
Homer, AK 99603-0790  
(907)235-8975

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

## LEGAL DESCRIPTION EXHIBIT A

### TUTKA BAY HATCHERY

LOCATED WITHIN  
PROTRACTED SECTIONS 35 & 36  
TOWNSHIP 8 SOUTH, RANGE 13 WEST  
SEWARD MERIDIAN, ALASKA

Containing 123.45 Acres more or less

SELDOVIA RECORDING DISTRICT

APPROVAL RECOMMENDED

DRAWN BY: M.R.S.  
DATE: 04/15/2021

STATEWIDE PLATING SUPERVISOR  
CHECKED: C, D, & JM  
FILE No.:  
EPF 20210012

1" = 1000'  
SHEET 1 OF 1

### NOTE:

PROPERTY CORNER LOCATIONS WERE DETERMINED UTILIZING  
GEO-REFERENCED SATELLITE IMAGERY. BEARINGS, DISTANCES AND  
COORDINATES ARE REPORTED USING THE NAD83 ALASKA STATE PLANE  
ZONE 4 COORDINATE SYSTEM.

BASIS OF BEARING IS FROM CP 99 TO CP 101.

### PARCEL AREAS

UPLANDS: 38.28 Acres  
NON-UPLANDS: 85.17 Acres  
TOTAL PARCEL: 123.45 Acres

### LEGEND

- CONTROL POINT - 2" AL. CAP ON 5/8" REBAR, LS 4469, 2012
- PROPERTY CORNER NOT MONUMENTED







**Proposed HB 52**  
**Additions**  
**State Park**

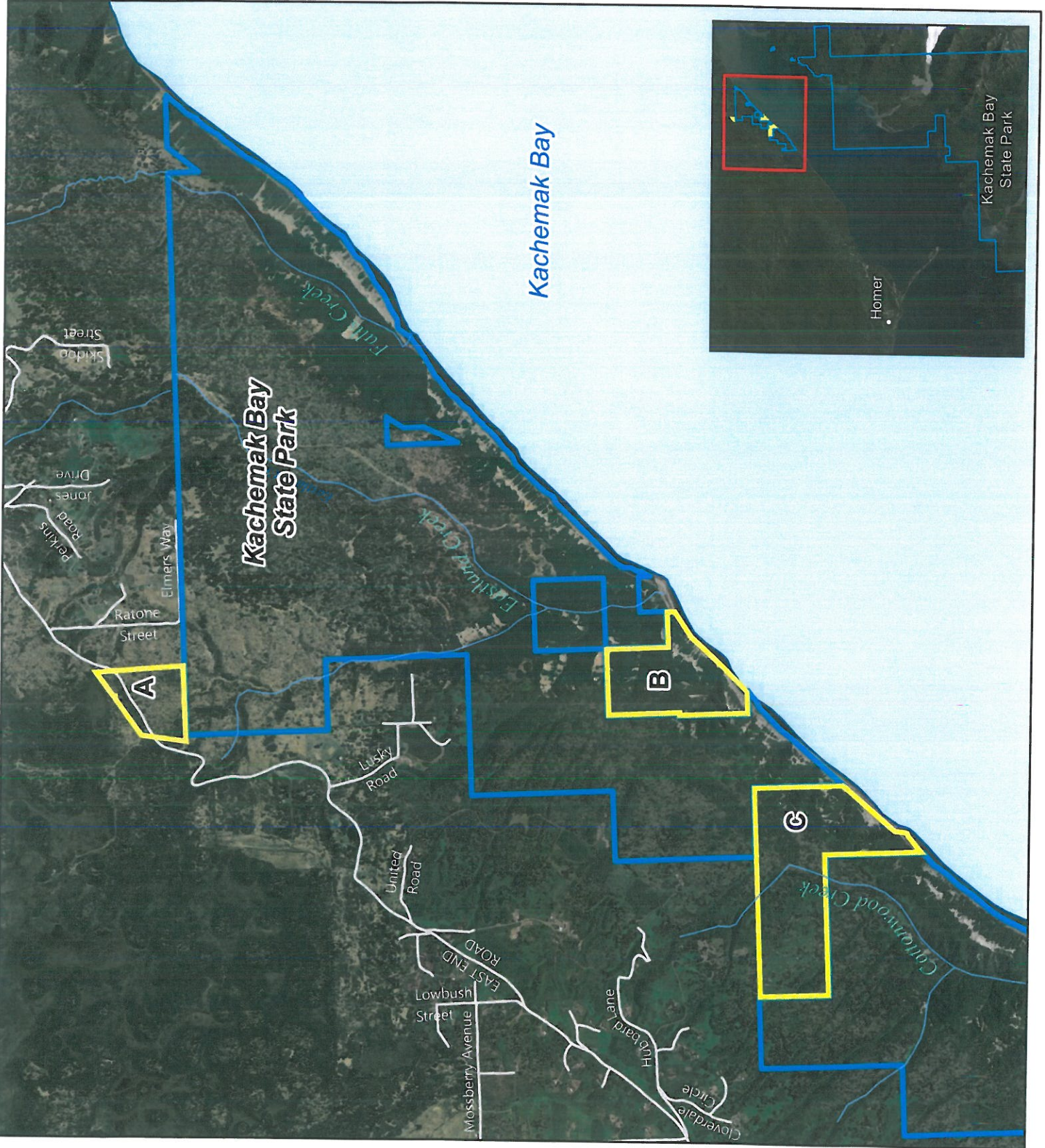


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Created: September 2021  
SB-RE, DNR, DMLW, RADS  
Projected Coordinate System: NAD 1983  
UTM Zone 6 North



0 0.075 0.15 0.3 0.45 0.6 Miles







China Poot Creek