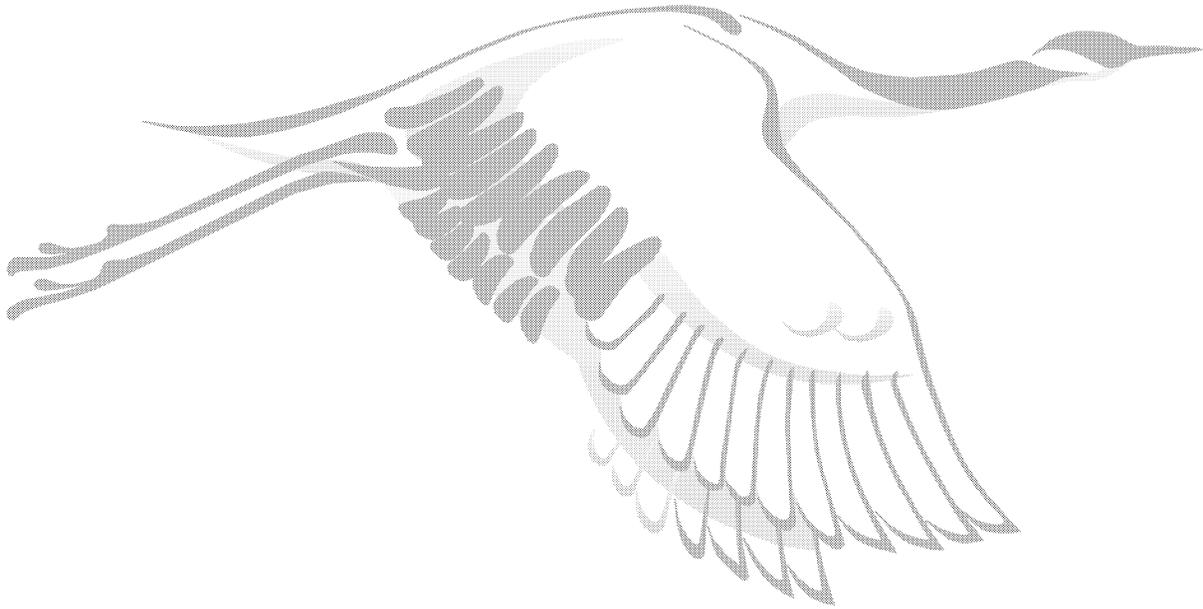


# Great Salt Lake Comprehensive Management Plan and Decision Document

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Prepared by the Great Salt Lake Planning Team  
Utah Department of Natural Resources



March 1, 2000

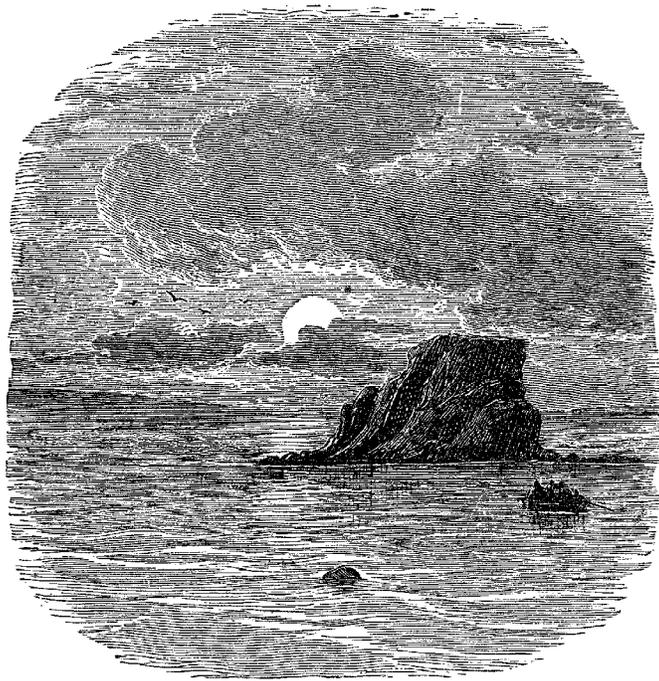
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<b>Karl Kappe</b>	<b>Strategic Planner Division of Forestry, Fire and State Lands</b>

# Great Salt Lake Comprehensive Management Plan and Decision Document

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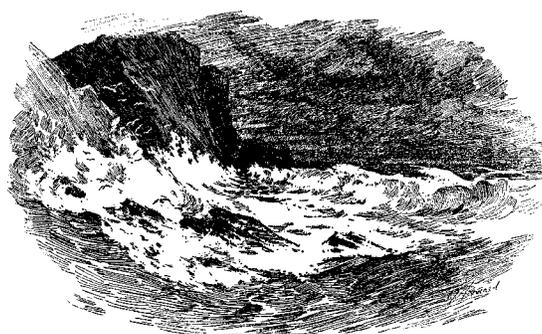


Prepared by the Great Salt Lake Planning Team  
Utah Department of Natural Resources



March 1, 2000

# Record of Decision



# RECORD OF DECISION

Record of Decision Number 00-0301-GSL CMP

## PROPOSED ACTION

Approval of the final Comprehensive Management Plan (CMP) for Great Salt Lake (GSL). This action includes all state lands below or adjacent to the surveyed meander line of GSL. This action involves satisfying statutory requirements and administrative purposes for the CMP.

## RELEVANT FACTUAL BACKGROUND:

In 1997 the Great Salt Lake Planning Project was initiated to develop a CMP. A planning team (team) consisting of representatives of Department of Natural Resources (DNR) divisions was assembled. The purposes of the project were: (1) To establish unifying DNR management objectives and policies for GSL trust resources; (2) To coordinate the management, planning and research activities of DNR divisions on GSL; (3) To improve coordination among DNR divisions, establish a decision-making review and appeal process, develop a sovereign land management plan for the lake that balances multiple-use and sustainability, resolves issues and improves management of the lake and its resources; (4) To develop a sovereign lands and resources management plan, and; (5) To establish a process for plan implementation, monitoring, evaluation and amendment.

Formal notice that the project was proceeding was sent to the Resource Development Coordinating Committee (RDCC) in February 1998 (State Identifier Number UT980203-010). Public Notices regarding public meetings for the project were published in The Salt Lake Tribune (2/8/98-2/15/98), Deseret News (2/8/98-2/15/98), Box Elder News Journal (2/11/98-2/18/98), Davis County Clipper (2/6/98-2/10/98), Tooele Transcript-Bulletin (1/29/98-2/5/98), and Ogden Standard Examiner(2/6/98-2/8/98). Notice of the meetings was also sent to persons on a mailing list that included permittees and lessees. Five public scoping meetings were held in Box Elder, Davis, Salt Lake, Tooele and Weber counties in February and March 1998. Representatives of the team met with federal agencies, local government officials, citizen and industry groups, and interested individuals for a variety of purposes from November 1997 through November 1999. A draft Statement of Current Conditions and Trends was distributed for public review and comment in October 1998. A draft array of GSL management alternatives was distributed for public review and comment in January 1999. Five public meetings on the management alternatives were held in Box Elder, Davis, Salt Lake, Tooele and Weber Counties in January and February 1999. A draft CMP was distributed for public review and comment in November 1999. The comment period ran through January 7, 2000. RDCC review concluded with a letter from RDCC on January 7, 2000 (State Identifier Number UT991116-010). The team reviewed the public comments and prepared responses. Based on this review the GSL Board of Directors approved the selected alternatives for inclusion in the final CMP.

## CRITERIA FOR EVALUATION

Article XX, Section 1 of the Constitution of Utah affirms the public trust over state lands: "All lands of the State that have been, or may hereafter be granted to the State by Congress, and all lands acquired by gift, grant or devise, from any person or corporation, or that may otherwise be acquired, are hereby accepted, and . . . are declared to be the public lands of the State; and shall

be held in trust for the people, to be disposed of as may be provided by law, for the respective purposes for which they have been or may be granted, donated, devised or otherwise acquired.”

Statute (Chapters 65A-2 and 65A-10) and rule (R652-90) combine to establish the management framework and planning requirements for the Division of Forestry, Fire and State Lands.

65A-2-1. Administration of state lands - Multiple-use sustained yield management.

The division shall administer state lands under comprehensive land management programs using multiple-use sustained yield principles.

65A-2-2. State land management planning procedures for natural and cultural resources - Assistance from other state agencies - Division action.

The division:

- (1) shall develop planning procedures for natural and cultural resources on state lands; and
- (2) may request other state agencies to generate technical data or other management support services for the development and implementation of state land management plans.

R652-90-500. Notification and Public Comment.

1. Once a planning unit is designated for a comprehensive management plan, notice shall be sent to the Office of Planning and Budget for inclusion in the RDCC agenda packet and, if appropriate, the weekly status report.
2. The division shall conduct at least one public meeting in the vicinity of a planning unit that has been designated for a comprehensive management plan.
  - (a) The meeting shall provide an opportunity for public comment regarding the issues to be addressed in the plan.
  - (b) The public meeting(s) shall be held at least two weeks after notice in a local newspaper.
  - (c) Notice of public meeting(s) shall be sent directly to lessees of record, local government officials and the Office of Planning and Budget for inclusion in the RDCC agenda packet and weekly status report. A mailing list shall be maintained by the division.
  - (d) Additional public meetings may be held.
3. Notice that a site-specific or resource planning effort is under way shall be given to:
  - (a) affected parties as required by rule for exchange, or lease;
  - (b) the Office of Planning and Budget for inclusion in the RDCC agenda packet and the weekly status report.

65A-2-4. State land management plans - Division to adopt rules for notifying and consulting with interested parties.

- (1) The division shall adopt rules for notifying and consulting with interested parties including the general public, resources users, and federal, state, and local agencies on state land management plans.
- (2) Division rules shall provide:
  - (a) for reasonable notice and comment periods; and
  - (b) that the division respond to all commenting parties and give the rationale for the acceptance or nonacceptance of the comments.

65A-10-8. Great Salt Lake - Management responsibilities of the division.

The division has the following powers and duties:

- (1) Prepare and maintain a comprehensive plan for the lake which recognizes the following policies:
  - (a) develop strategies to deal with a fluctuating lake level;
  - (b) encourage development of the lake in a manner which will preserve the lake, encourage availability of brines to lake extraction industries, protect wildlife, and protect recreational facilities;
  - (c) maintain the lake's flood plain as a hazard zone;
  - (d) promote water quality management for the lake and its tributary streams;
  - (e) promote the development of lake brines, minerals, chemicals, and petro-chemicals to aid the state's economy;
  - (f) encourage the use of appropriate areas for extraction of brine, minerals, chemicals, and petro-chemicals;
  - (g) maintain the lake and the marshes as important to the waterfowl flyway system;
  - (h) encourage the development of an integrated industrial complex;
  - (i) promote and maintain recreation areas on and surrounding the lake;
  - (j) encourage safe boating use of the lake;
  - (k) maintain and protect state, federal, and private marshlands, rookeries, and wildlife refuges;
  - (l) provide public access to the lake for recreation, hunting, and fishing.
- (2) Employ personnel and purchase equipment and supplies which the Legislature authorizes through appropriations for the purposes of this chapter.
- (3) Initiate studies of the lake and its related resources.
- (4) Publish scientific and technical information concerning the lake.
- (5) Define the lake's flood plain.
- (6) Qualify for, accept, and administer grants, gifts, or other funds from the federal government and other sources, for carrying out any functions under this chapter.
- (7) Determine the need for public works and utilities for the lake area.
- (8) Implement the comprehensive plan through state and local entities or agencies.
- (9) Coordinate the activities of the various divisions within the Department of Natural Resources with respect to the lake.
- (10) Perform all other acts reasonably necessary to carry out the purposes and provisions of this chapter.
- (11) Retain and encourage the continued activity of the Great Salt Lake technical team.

R652-90-600. Public Review.

1. Comprehensive management plans shall be published in draft form and sent to persons on the mailing list established under R652-90-400, the Office of Planning and Budget, and other persons upon request.

- (a) A public comment period of at least 45 days shall commence upon receipt of the draft in the Office of Planning and Budget.
- (b) All public comment shall be acknowledged pursuant to 65A-2-4(2).
- (c) The division's response to the public comment shall be summarized in the final comprehensive management plan.
- (d) Comments received after the public comment period shall be acknowledged but need not be

summarized in the final plan.

2. Resource plans shall be published and made available upon request.

(a) Persons wishing to comment on these plans may do so at any time.

(b) The division shall acknowledge all written comments.

3. Upon completion of a site-specific planning process, the Record of Decision or other document summarizing final division action and relevant facts shall be provided to any persons requesting notice from the division.

#### EVALUATION OF FACTS:

The Division of Forestry Fire and State Lands (DFFSL) acknowledges its public trust responsibility. The Draft CMP includes the following text:

Briefly stated, the overarching management objectives of DFFSL and DNR are to protect and sustain the trust resources of, and to provide for reasonable beneficial uses of those resources, consistent with their long-term protection and conservation. This means that DFFSL will manage GSL and its resources under multiple-use sustained yield principles (Section 65A-2-1), implementing legislative policies (Section 65A-10-8) and accommodating public and private uses to the extent that those policies and uses do not compromise public trust obligations and sustainability is maintained. Any beneficial use of public trust resources is subsidiary to long-term conservation of resources.

Reasonable people may disagree over the extent to which the management direction in the CMP is consistent with public trust obligations because management actions are generally evaluated in the context of impairment of the public's trust rights. Substantial impairment is difficult to justify, but what constitutes "substantial"? Anything exceeding "small percentage" or "limited" seems to have constituted substantial impairment in various court rulings. An evaluation in this context leaves room for debate.

Multiple-use is defined in statute as the management of various surface and subsurface resources in a manner that will best meet the present and future needs of the people of this state. Sustained yield is defined as the achievement and maintenance of high level or periodic output of the various renewable resources of land without impairment of the productivity of the land. Some respondents believe that some actions under alternative A in the Draft CMP may jeopardize sustainability of public trust resources because of the way the relationship between multiple-use and the Public Trust Doctrine is interpreted. Arguments in support of this position include a statement that there is no legal authority to support the assertion that the Public Trust Doctrine includes whatever uses the legislature deems appropriate. There is merit to this argument. Proper interpretation of state statutes must be consistent with the state constitution, and rules promulgated by DFFSL must be consistent with statutes. There is no question that the division's implementation of the multiple-use sustained yield statute is subject to consistency with public trust obligations. All possible uses under a multiple-use framework are not necessarily protected uses under the Public Trust Doctrine. Any private uses of sovereign lands must yield to the criterion to avoid substantial impairment of protected public uses. Any inference in the CMP that multiple use takes precedence over public trust obligations should be remedied.

Public notification and public meeting requirements in statute and rule have been complied with.

Specific legislative policies have been addressed in the CMP. Strategies to deal with a fluctuating lake level are addressed in issue 1.2. GSL development is addressed in issues 6.1, 10.1 and 10.2. The flood plain is addressed in issue 1.1. Water quality is addressed in issue 3.1. Mineral leasing is addressed in issues 7.1 and 7.2. Waterfowl flyway system is addressed in issues 5.1 and 6.1. Recreation is addressed in issues 8.1, 8.2, 9.1 and 9.2. Boating is addressed in issues 8.1, 8.2 and 10.2. Federal and private wetlands are addressed in issue 16.1. Access is addressed in issues 9.2 and 10.2. Studies and publications regarding the lake are addressed in the section on monitoring and research. Public works and utilities are addressed in issue 12.1. Coordination and implementation of the plan is a separate section in the CMP. The Great Salt Lake Technical Team is addressed in the section on process and structure. The GSL Board of Directors has determined that the CMP complies with statute and rule.

Seventy comment letters, faxes and emails were received on the draft CMP. The comments were reviewed in their full text, organized by subject matter, and responded to as required by statute. A summary evaluation of comments and responses follows for each issue.

#### Issue 1.1 Flood plain

Public comments reflected a concern that the preferred alternative has no enforcement power, that a flood plain management plan is needed, and that such a plan is justified under public trust responsibility. In response, the regulatory role of local government and its adoption of flood plain delineations approved by the Federal Emergency Management Agency was noted. This is where incentives and enforcement exist in the form of participation in national flood insurance programs. In absence of substantial interference in public uses of sovereign land, and in absence of evidence that ecosystem sustainability is being lost, there is no public trust-based obligation at this time to do anything more than the action in alternative A.

#### Issue 1.2 Fluctuating lake level strategy

Public comments generally expressed some uncertainty over how the strategy would be implemented, and a need for a flood plain management plan was reiterated. Flood plain planning is addressed above. How the strategy would be implemented is addressed in comment responses.

#### Issue 1.3 West Desert Pumping Project (WDPP)

As expected, this issue generated a lot of comments from various perspectives. Much of the comment reflected some misunderstanding of the process that resulted in the original installation of WDPP. In the 1980s, the evaluation of alternatives to deal with flooding of GSL found that the most cost-effective alternative, as well as the one that could lower the lake level the greatest (amount) in the shortest period of time, was to pump the lake out into the west desert and create a large evaporation pond. The WDPP was designed to remove, through evaporation, as much water as possible. Pumping at 4208 is most consistent with environmental concerns, avoiding substantial startup and operational costs associated with pumping at 4205, minimizing conflict with the U.S. Air Force, and is reasonably expected to reduce peaks and duration of high lake levels. Implementation relies on adjoining landowner cooperation.

#### Issue 1.4 Locomotive Springs

This issue generated very little comment. The comments were in support of alternative A.

### Issue 1.5 Water rights

In absence of substantial interference in public uses of sovereign land, and in absence of evidence of irreversible ecosystem impacts, there is no public trust-based reason at this time to interfere with existing water rights.

### Issue 1.6 Large embayments

The east side of the lake is where all of the proposals over the years have focused. This area is the most important area for wildlife, recreation and, as community development approaches GSL from the east, the most important area for ecosystem sustainability. The hydrology of this area has altered to the point that any further alteration is difficult to justify under the public trust. This decision can be reevaluated in 30-50 years if additional sovereign land is needed to meet water demands.

### Issue 2.1 Salinity

As expected, this issue generated the most public comment. This is the most critical issue for ecosystem sustainability. Whether the reason is decreased causeway permeability or the loss of salt from WDPP is irrelevant. Something must be done now to address declining salinity in the south arm. In light of valid land use authorities, the extremely high cost of alternative B, the reasonable likelihood that alternative A will suffice to restore south arm salinity to its historical range, alternative A is prudent at this time. Extensive salinity monitoring will continue.

### Issue 2.2 Accounting for salts

No comments were received in opposition to alternative A. There is no royalty obligation on waste salts.

### Issue 3.1 Water quality

The Division of Water Quality (DWQ), the state regulatory authority, stated reasons it is opposed to development of numerical standards and changes to narrative standards at this time. In absence of substantial interference in public uses of sovereign land, and in absence of evidence of irreversible ecosystem impacts, there is no public trust-based reason at this time to challenge the adequacy of DWQ's regulatory actions. Monitoring may lead to a different conclusion.

### Issue 3.2 Wetland policy

It is appropriate for the state, as trustee and landowner, to assert a role in wetland regulation, not only to assess the adequacy of federal regulation from a public trust perspective, but also to address potential impacts not covered by federal regulation.

### Issue 4.1 Air quality

Coordination with the Division of Air Quality, the state regulatory agency, will improve DFFSL's understanding of potential air quality implications for public trust management.

### Issue 5.1 Biology

There is no hierarchy of protected public uses of sovereign land. In light of adverse impacts to wildlife that have occurred from other management activity on GSL, it is important that our understanding of wildlife functions in the ecosystem improves, and that wildlife values be better protected. In order to decide whether DFFSL or DWR has primary responsibility for certain management actions of GSL, it is appropriate to ask the Wildlife Board to take action regarding which 23-21-5 lands are to be formally designated as wildlife management areas.

### Issue 6.1 Sovereign land classifications

With the changes to the 1995 classifications associated with alternative A, a reasonable mix is provided. As site-specific planning is conducted in response to applications submitted that affect the development areas, alternative A for issue 5.1 will be taken into

account. This will achieve roughly the same purpose as the changes suggested in the public comment.

#### Issue 6.2 Geologic hazards

Public comments supported the preferred alternative.

#### Issue 6.3 Bear River Migratory Bird Refuge (BRMBR)

The U.S. Fish and Wildlife Service (USFWS) asserts ownership of land below meander in the old refuge. DNR is working with USFWS on issues relating to management of lands below meander.

#### Issue 6.4 Diking policy

Much of the public comment reflected a desire for a blanket ban on new dikes. There is no question about the adverse affects of some dikes, but other dikes serve public purposes as well as public uses protected under the Public Trust Doctrine. A blanket ban is inappropriate, but better evaluation of diking proposals is needed than has occurred in the past.

#### Issue 7.1 Mineral lease zones

The zones and policies of the 1996 Mineral Leasing Plan (MLP) address the concerns expressed in public comment. Action taken by the Wildlife Board under alternative A in issues 5.1 and 6.1, and site-specific planning may lead to revisions of the MLP.

#### Issue 7.2 Mineral lease policies

The zones and policies of the MLP address the concerns expressed in public comments.

#### Issue 8.1 Water recreation

The concerns expressed in public comments can be addressed through Division of Parks and Recreation plans such as the Strategic Boating Plan, resource management plans for individual park units, and in site-specific planning.

#### Issue 8.2 Navigation

Most of the comments on this issue were in reference to the northern railroad causeway. Associated benefits of improved water circulation, improved search and rescue capability, and improved research and monitoring capability were identified as justification for doing something other than alternative A. Interference with valid land use authorizations, the extremely high cost of dealing with geotechnical difficulties, and the fact that some navigation is possible through the causeway are reasons for continuing with alternative A mentioned in the team's response. Unless the existing land use authorizations are determined to be inconsistent with public trust responsibilities, alternative A is acceptable.

#### Issue 9.1 Off Highway Vehicles (OHV)

OHV use is a public recreation use. The area to be opened was identified through a process that involved upland owners and administrative agencies. Implementation is not an irreversible or irretrievable commitment. Monitoring will help identify the nature and extent of potential adverse impacts.

#### Issue 9.2 Recreation access

The concern over collateral damage from public recreation is acknowledged, but recreation is an appropriate use of sovereign land. DNR will address concerns as they arise.

#### Issue 9.3 Education and interpretation

Public comments supported the preferred alternative.

#### Issue 10.1 Commercial and industrial use

Reasons stated in opposition based on the Public Trust Doctrine have been addressed by clarifying the relationship between multiple-use and the doctrine. The preferences expressed in

favor of wildlife can be achieved to a great degree through alternative A, issue 5.1. While actual mineral pond relocations have not occurred, the management direction in the MLP to evaluate opportunities to trade existing leases with significant resource conflicts for the right to operate areas with less conflict is working.

#### Issue 10.2 Brine shrimp harbors

Alternative A is consistent with policies announced years ago. Brine shrimp companies have been given the opportunity to demonstrate to DNR how exclusive use can be compatible with the current policy. The brine shrimp industry would like to see Antelope Island State Park (AISP) Marina remain open, but the industry agreed to limit availability of the marina. Conversion of the AISP Marina was a stopgap measure.

#### Issue 10.3 Unauthorized construction

The only negative comments regarding alternative A were voiced by persons on whose previous trespass activity the policy is focused.

#### Issue 11.1 Grazing

The environmental concerns expressed in public comment will be addressed through monitoring and subsequent planning.

#### Issue 12.1 Transportation and utility corridors

Public comment in support of alternative A focused on potential adverse impacts if the AISP southern causeway were to become a transportation corridor. Comments in opposition to alternative A questioned the use of sovereign land for transportation corridors. Related issues such as diking and freshwater embayments were mentioned. Alternative A focused on the two railroad corridors, the power line corridor along the east side, and the AISP southern causeway. Alternative A calls for continued use of the railroad and power line corridors, but not allowing a corridor along the AISP southern causeway. The decision regarding the AISP southern causeway is consistent with the Division of Parks and Recreation's decision following the 1997 South Shore/Antelope Island Access Road Alignment Feasibility Study. Execution of public trust obligation does not automatically preclude use of sovereign land for transportation.

#### Issue 13.1 Meander line

No comments in opposition were received. Questions asked under this heading do not directly relate to the issue. Using orthophoto quad maps appears to be very promising.

#### Issue 14.1 Search and rescue

Most comments reflected support for alternative A. One comment stated the need for another breach in the causeway, rather than improving the Little Valley harbor, as the best way to improve search and rescue on the north arm.

#### Issue 15.1 Ramsar

Respondents were right to point out the incorrect interpretation of the relationship between the multiple-use mandate and the Public Trust Doctrine. Still, Ramsar designation inhibits multiple use as in the cases of dredging for marina development in Canada, mining in South Africa, and agricultural development in Hungary. Since multiple use can be consistent with the Public Trust Doctrine under certain circumstances and is a statutory directive, it is not appropriate for the state to advocate a potential barrier to multiple use until the management implications of doing so are better understood.

#### Issue 16.1 Open space

No comments in opposition were received. Comments generally support alternative A. Identification of lands for consideration by the critical lands committee continues.

Issue 16.2 Visual resource management (VRM)

Comments were in support of developing a VRM plan. Some expressed a need for additional mitigation. This can be considered as the plan in developed.

CONCLUSION/ACTION

1. There are many substantive changes to the text of the Statement of Current Conditions and Trends section of the Draft CMP, but none will affect the decision on alternatives. A revised statement will be available in the spring of this year.
2. The relationship of the Public Trust Doctrine to multiple use and legislative policies for GSL will be revised throughout the CMP to make it clear that the purposes of the trust have primacy and that other uses must meet the criterion to avoid substantial impairment of public trust uses.
3. Except as noted in #4 below, the selected alternative for the final CMP is alternative A.
4. The selected alternative for issue 6.3, BRMBR, is a modification to alternative A. Alternative A stated that USFWS and DFFSL are reviewing ownership records, that sovereign land would be made available for refuge expansion if hunting, firearm restrictions, and other restrictions on sovereign lands in the expansion area were governed by state law rather than federal refuge regulation, and that sovereign land within the old refuge would continue to be managed under federal refuge regulation. The selected alternative is that USFWS and DFFSL are reviewing ownership records, and that all sovereign lands, including any determined to be within the old refuge boundary or made available for refuge expansion, are subject to state laws.

ADMINISTRATIVE APPEALS:

Persons having an interest in this action may file a petition for administrative review by the executive director of the Department of Natural Resources pursuant to R652-9. The petition must be in writing, must be filed with the Division of Forestry, Fire and State Lands, and shall contain:

- a. the statute, rule or policy with which the division action is alleged to be inconsistent;
- b. the nature of the inconsistency of the division action;
- c. the action the petitioner feels would be consistent under the circumstances with statute, rule or policy, and;
- d. the injury realized by the party that is specific to the party arising from the division action. If the injury identified by the petition is not peculiar to the petitioner as a result of the division action, the executive director will decline to undertake the consistency review.

The petition must be received by the division by 5:00 pm on March 21, 2000.

APPROVED BY: Arthur W. DuFault DATE: March 1, 2000  
Arthur W. DuFault, Director