HB
133

COMMITTEE REPORT

SENATE

FURTHER: COMMUNITY & REGIONAL AFFAIRS AND FINANCE

Date: 4/6/78

Mr. President:

The Committee on S.SCR 25 has had CSHB 163 (Fin) and selection and transfer of state land to municipalities under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Chairman

S 60 (rev. 6/77)

from being taken away from its owners by the force of its invasion.[36] This being the case, property acquired by the exercise of eminent domain power and strictly devoted to the authorized purpose for which it was condemned can be taken away from the first taker by another who has been adequately armed by the legislature with eminent domain power to do so,[37] and, likewise, it is possible to take property received through grant or franchise from the government and used in fulfillment of its public purpose obligations,[38] and property voluntarily devoted to public use or purpose.[39] All must submit to acquisition through the exercise of the power of eminent domain, upon the principle of the prerogative power of sovereignty. If this were not so, it has been said by a learned judge, "great public improvements rendered necessary by the increasing wants of society in the development of civilization and the progress of the arts might be prevented".[40]

However, the "due process" clause of the federal and state constitutions enunciates another principle in behalf of the individual property owner, and, when it has come in conflict with the principle of the prerogative of sovereign eminent domain, the latter sometimes has had to give way. It has been held that eminent domain power cannot be employed to take property by the kind of undue process of law whose description has found expression in the classical example of "taking the property from *A* to convey it to *B*".[41] The fact that the taking has behind it the prestige and power of eminent domain, and that the property is to be paid for by ample compensation, has not been allowed to impair the integrity and applicability of this ancient example. In an early case before the Supreme Court of the United States, Mr. Justice Story said:

[36] See the list of cases in 20 C. J. 599, n. 77 (1920).

[37] New York, etc., R. R. v. Boston, etc., R. R., *supra* note 35.

[38] COOLEY, CONSTITUTIONAL LIMITATIONS (6th ed. 1890) 337.

[39] Starr Burying Ground Ass'n v. North Lane Cem. Ass'n, 77 Conn. 83, 58 Atl. 467 (1904). This does not include certain dedicated property devoted to public use under trust conditions previously referred to in this article.

[40] Bigelow, J., in Central Bridge Corporation v. Lowell, *supra* note 8, at 482.

[41] West River Bridge Co. v. Dix, *supra* note 35, at 537.

> "Although the sovereign power in free government may appropriate all the property, public as well as private, for public use, making compensation therefor, yet it has never been understood, at least never in our Republic, that the sovereign power can take the private property of A and give it to B by the right of eminent domain."[42]

Mr. Justice Story's statement, made in 1837, very well expresses what should be the correct rule today.[43] The word "private" refers to ownership and not to use, so that if *A*, as an individual or corporation, is devoting his or its property to a public use, it would still be "private property" under the relations which we are discussing.[44] Under the above rule it could not be taken away from *A* merely in order to give it to *B*, and it has been held that this could not be done even though *B* was attempting to acquire it by eminent domain power for a recognized public use or purpose, which was the same use or purpose to which *A* had been devoting the property.[45] This would amount to nothing more than the compulsory change of hands in the property and would result in eminent domain power's taking it from *A* merely in order to give it to *B*.[46] Property in public use cannot be taken to be used for the same purpose and in the same manner.[47] This being a constitutional prohibition, under the due process clause, it is not only a prohibition on the one to whom the power of eminent domain has been delegated by the legislature, but it is a restriction upon the legislature itself, and any law authorizing generally or specifically such a taking is unconstitutional and should so be held.[48]

[42] Charles River Bridge v. Warren Bridge, *supra* note 35, at 642.

[43] 2 Lewis, *op. cit. supra* note 9, § 440.

[44] Lake Shore and Mich. So. Ry. v. Chicago & Western Ind. R. R., 97 Ill. 506 (1881); West River Bridge Co. v. Dix, *supra* note 35.

[45] Lake Shore & Mich. So. Ry. v. Chicago & Western Ind. R. R., *supra* note 44.

[46] Suburban R. R. v. Metropolitan West Side El. R. R., 193 Ill. 217, 61 N. E. 1020 (1901).

[47] See cases cited *infra* note 48.

[48] West River Bridge Co. v. Dix, *supra* note 35; Starr Burying Ground Ass'n v. [illegible] Cem. Ass'n, *supra* note 39; Marsh Min. Co. v. Inland Empire Min. [illegible], 30 Idaho [illegible], 165 Pac. 1128 (1916); Suburban R. R. v. Metropolitan West Side El. R. R., *supra* note 46; St. Louis, etc., R. R. v. Belleville City Ry., 158 Ill. 390, 41 N. E. 916 (1895); Chicago West Div. Ry. v. Metropolitan West Side El. R. R., 152 Ill. 519, 38 N. E. 736 (1894); Chicago & N.

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BERNARD J. DOUGHERTY
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G. RODNEY KLEEDEHN
J. MICHAEL ROBBINS
ROGER H. BEATY
STEPHEN D. ROUTH
WEV W. SHEA

OF COUNSEL:
G. KENT EDWARDS

KODIAK OFFICE:
KODIAK PLAZA, BOX 503
KODIAK, ALASKA 99615
(907) 486-3143
(907) 486-3144

April 13, 1978

REPLY TO: Anchorage

Honorable Kay Poland
Chairman, Senate Resources Committee
Pouch V
Juneau, AK 99811

Re: CSHB 133 (Finance)am
Our File 101-28

Dear Kay:

Enclosed is a copy of the amendments and additions to CSHB 133 (Finance)am, which were approved by a working group which met last week, pursuant to your suggestion.

Present at the meeting, in addition to myself, were:

Jim Nordale, representing the Fairbanks North Star Borough

Donald Thomas, representing the Kenai Peninsula Borough

Donald Gilman, Mayor of the Kenai Peninsula Borough

Kim A. Hutchinson, representing the North Slope Borough

Lee Sharp, representing the City and Borough of Juneau

George E. Gee, representing the Ketchikan Borough

Wesley Howe, representing the Mat-Su Borough

Ted Berns, representing the Municipality of Anchorage

Dale P. Tubbs, representing the Kodiak Island Borough

In addition, Ted Berns, Dale Tubbs and I met pursuant to the direction of the group to draft the necessary language to accommodate the unique problems of Kodiak and Anchorage. Essentially, the group sought to use the draft of the bill as it passed from the House Finance Committee with the exception of certain amendments which were added on the House floor.

Also enclosed is a copy of the letter sent to all of the individuals who were in attendance at the working group meeting. A copy of this letter has also been provided to Mike Smith, Director, Division of Lands.

It is my understanding that Dale Tubbs and I will be meeting informally with you on Tuesday, April 18th, and I plan to present testimony on this bill during the hearing on the 19th.

We have not retyped the entire bill, as it is our understanding that the Legislative Affairs Agency discourages this practice and that it is already on mag cards.

I look forward to discussing these changes with you next week.

Yours truly,

COLE, HARTIG, RHODES,
NORMAN & MAHONEY
Counsel for Kodiak Island Borough

By: Bob
Robert L. Hartig

RLH:kh

Enclosures

cc: Client

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

323 E. 4TH AVENUE – ANCHORAGE 99501

April 14, 1978

The Honorable Kay Poland, Chairman
Senate Resources Committee
Pouch V
Juneau, AK 99811

Re: Municipal Land Selection Regulations

Dear Senator Poland:

As you know, despite agreement last year by the State and almost all municipalities concerning the municipal land selection question, manifested originally in CSHB 133, that legislation has had a very checkered and sporadic history. Because settlement of this issue is of critical importance to both the State and the municipalities with respect to future land and resource management, particularly land disposals, both the State and the municipalities are concerned that the issue be settled in the very near future. While we would still prefer that appropriate legislation be enacted, the State is looking at the alternative of individual settlements with each municipality under existing law to address this matter if legislation presently before the Senate Resources Committee is not adopted this session.

Attached is a copy of draft regulations, as sent to each municipality, which would serve as the basis for any such settlements. These regulations will be needed whether or not the present legislation is enacted and, as discussed in the attached cover letter to each municipality, we are requesting a review of these regulations at this time to ensure that they meet with municipal approval and can serve as the basis for individual settlements should pending legislation not be enacted.

If you have any questions concerning these regulations, please do not hesitate to ask.

Sincerely,

Michael C. T. Smith
Assistant Commissioner

Enclosures

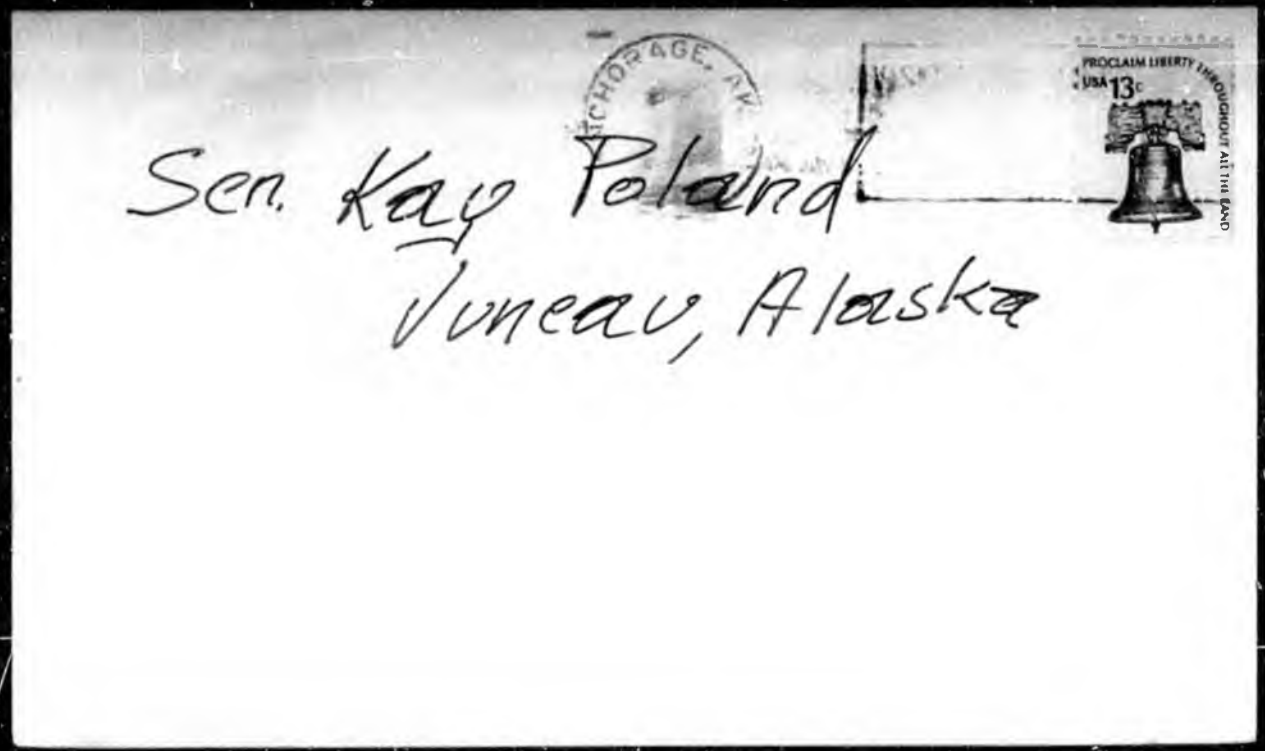
Sen. Kay Poland

Juneau, Alaska

Please don't let
any more land
be given to Boroughs.
We are poor now,
we don't want to
pay any taxes to
Boroughs, or let
them tie it up.

Bobby Yako

Sleetmute Alk
99668



Sen. Kay Poland

Juneau, Alaska

As you and I know we are ruled by to many laws.
I am not in favor in any Bourougins recieving any more land. They only want to control the land, tax it, and only the rich get it.

Mauri Elving
Sleetmute, Ak
99668

From The Desk Of:

Michael C. T. Smith 9/9/77

KAY,

BOB HARTIG IS RIGHTFULLY CONCERNED ABOUT KODIAK'S PROBLEMS WITH ANCSA IMPLEMENTATION. I'VE SUGGESTED THAT WE WORK WITH YOU TO EXPLAIN SOME OF THOSE PROBLEMS MORE SPECIFICALLY AS THEY RELATE TO THE MUNICIPAL LAND EXCHANGE LEGISLATION NOW IN THE LEGISLATURE. IT'S JUST THE CRITICAL POINT THAT WE GET THE MATTER SETTLED DURING THE COMING SESSION.

IF I CAN HELP, PLEASE LET ME KNOW.

Mike

Director, Alaska Division Of Lands

10-J2LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER / 323 E. 4TH AVENUE – ANCHORAGE 99501

September 12, 1977

Mr. Robert L. Hartig
Cole, Hartig, Rhodes, Norman and Mahoney
Suite 201
717 "K" Street
Anchorage, Alaska 99501

Dear Bob:

I enjoyed the opportunity last week to discuss with you the problems and conflicts of land ownership within the Kodiak Island Borough. Following that conversation I thought it appropriate to reiterate the Department of Natural Resources's view of its role with respect to those conflicts.

We are very much aware of the problems resulting from conflicts between the existing municipal land selection statute and implementation of the Alaska Native Claims Settlement Act. On several occasions we have discussed these problems at length with members of the Borough Administration, the Assembly, and various Native and non-Native members of the public. Kodiak's land problems are among the most difficult in Alaska with respect to the implementation of ANCSA.

As you know, Section 11(a)(2) of the Act permits a Native village corporation to select up to three townships of state-selected or tentatively-approved lands. With respect to such Native 11(a)(2) Selections, lands selected by, approved to, or patented to the Kodiak Borough by the State will continue to be defended by the State as we believe these interests supercede ANCSA. Specifically, lands to which the State of Alaska holds tentative approval or patent from the federal government, and which have been approved to or patented to the Borough, will be defended by the State as valid existing rights in any attempted transfer by the United States to a Native corporation under ANCSA. The State has not yet appealed a BLM decision to convey lands which have only been selected by the State.

As you know, one of the major obstacles faced by most municipalities with respect to the implementation of the Claims Act is a final determination of exactly what each municipality's land selection entitlement is under the existing municipal selection law (AS 29.18.190). As we

discussed, the Administration made a very determined effort last year, in close coordination with five of the major boroughs, including Kodiak, to secure legislation which would establish those final entitlements statewide. However, it did not pass the Legislature. We intend to push equally hard this session for similar legislation. With your [illegible] representing the Borough I am sure their interests will [illegible] taken into consideration as they were last year. Concerning the legislation, I believe it would be appropriate for yourself and/or others in the Borough Administration or with the Assembly to work closely with Senator Kay Poland on this matter. As chairman of the Senate Resources Committee, Senator Poland is in an excellent position to insure that the legislation is acted upon this session, and to represent Kodiak's unique needs.

Regarding your question concerning land exchanges, the State is very willing to consider exchanges which will simplify the land ownership problems within the Borough. If the Borough and/or Native corporations are considering a specific exchange, we would be very happy to participate at an early time. One of the problems with land exchanges at this time is that ownership to a considerable amount of land within the Borough is still not settled, therefore, exchanges may be very difficult until clear ownership is established. One of the biggest unknowns affecting this question will be settled when the Washington, D. C. circuit court rules on the "Eleven-Village Eligibility Case." At that time, the issue of the eligibility of several Kodiak villages will be substantially clarified. That decision could come at any time.

I look forward to working with you during the coming session on the municipal land exchange legislation and hope that its passage will substantially alleviate many of the problems faced by the Borough today.

Sincerely,

MICHAEL C. T. SMITH
Assistant Commissioner

bcc: Senator Kay Poland
Tom Meacham
Ron Swanson
Ted Smith
Larry Dutton
Michael Whitehead
Bob LeResche

TELECON W/ BOB HARTIG
(9/1/77 @ 1215 HRS.)

BOB WILL REPRESENT KODIAK THIS YEAR

WOULD PREFER:

① STATE PAY KODIAK FOR LOSS OF ENTITLEMENT

② - GIVE OTHER LANDS

Write a letter to Bob regarding that of recognizing the Conflict

- Bring out our goal for Legislative Compromise solution
- Get Hoy up to Speed
- Land Exchanges possible.
- We'll ~~support~~ title ~~[illegible]~~ WE'VE passed to Bow

File
Gov's Letter

August 19, 1977

Mr. Robert L. Hartig
Cole, Hartig, Rhodes,
Norman and Mahoney
Suite 201
717 "K" Street
Anchorage, Alaska 99501

Dear Mr. Hartig:

Thank you for your letter of July 19 outlining the Kodiak Borough's desire to protect its land interests while minimizing conflict with Native selections under ANCSA. I am aware of the problems and conflicts you cited and am pleased to hear of the Borough's interest in expediting conveyances under the claims act.

The State, as in the past, is very willing to do anything it can to assist in solving these knotty problems. As you know, in response to requests from the Kodiak Borough, and Koniag, Inc., the Division of Lands spent considerable time this winter preparing detailed land status maps of Kodiak Island. Representatives from the Division of Lands, as well as the Department of Community and Regional Affairs and the Department of Fish and Game also attended the excellent workshop discussions sponsored by the Kodiak Borough Assembly in March.

I have asked Assistant Commissioner of Natural Resources Mike Smith to contact you directly concerning the meeting you request, and for any other followup which may be appropriate. If you feel that representation from other state departments would facilitate in solving the problems you mentioned, please feel free to contact them directly.

Sincerely,

Jay S. Hammond
Governor

cc: The Honorable Ted Stevens
The Honorable Mike Gravel
The Honorable Don Young

274-3576

bcc: Commissioner LeResche
Mike Smith
Kevin Waring
NATURAL RESOURCES/LANDS/REL/cb

COLE, HARTIG, RHODES,
NORMAN & MAHONEY
A PROFESSIONAL CORPORATION
717 K STREET, SUITE 201
ANCHORAGE, AK 99501

Memorandum
LETTER

The Honorable Jay S. Hammond
Governor of Alaska
MacKay Building
338 Denali
Anchorage, AK 99501

DATE August 3, 1977

SUBJECT Conflicts in Land Selection
Kodiak Island Borough
Our Reference 101-30

MESSAGE: Enclosed is a copy of a letter mailed today by our office to the mayor of the Kodiak Island Borough regarding the subject matter.

COLE, HARTIG, RHODES,
NORMAN & MAHONEY

BY Robert L. Hartig

ANCHORAGE:
HOYT M. COLE
ROBERT L. HARTIG
JAMES D. RHODES
JOHN K. NORMAN
ROBERT J. MAHONEY
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J. MICHAEL ROBBINS
ROGER H. BEATY
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KODIAK, ALASKA 99615
(907) 486-3141
(907) 486-3144

August 3, 1977

REPLY TO: Anchorage

The Honorable Wayne Kotula
Mayor, Kodiak Island Borough
P. O. Box 1246
Kodiak, AK 99615

Re: Conflicts in Land Selections
Kodiak Island Borough
Our Reference 101-30

Dear Mayor Kotula:

The purpose of this letter is to provide you and the Borough Assembly members a status report of the problems surrounding the land selections made by the borough and the native corporations, in preparation for the forthcoming meetings by the assembly persons with our congressional leaders and state officials.

Pursuant to Alaska Statute 29.18.190, which permits the boroughs the right to select ten per cent of the vacant, unappropriated, unreserved state land located within their boundaries, the Kodiak Island Borough has selected some 36,000 acres of land. Of that 36,000 acres of land, approximately 2,000 acres have been patented to the borough, some 7,000 acres have been approved for selection by the borough*, and approximately 27,000 acres have not received any adjudication by the state. It should be noted, however, that the individual native corporations, pursuant to the Alaska Native Claims Settlement Act, have also selected a majority of the same land, and have voiced their opposition to some of the patent grants to the borough made by the state. It should also be noted that, according to the maps prepared by the Division of Lands for the state, there exist approximately 150,000 acres of state land* within the Kodiak Island Borough which, under present state law, would permit the borough to select, at the present time, approximately 45,000 acres of land.

*probably means have been approved for patent by the state
* "vacant, unappropriated, unreserved" land

As implementation of the Alaska Native Claims Settlement Act proceeds, conflicts between the borough and the native corporations have developed in regard to land selections. Specifically, as a result of the ability of the native groups to select tentatively approved state lands, the amount of state land which would be available for selection by the borough is drastically reduced, and the ten per cent entitlement is lessened. As an example, under present circumstances with state ownership of some 450,000 acres of land, the Kodiak Island Borough would be permitted to select an additional 9,000 acres of land; however, under the freeze imposed by the Alaska Native Claims Settlement Act, it is questionable whether this 9,000 acres of land could be selected. In addition, as adjudication proceeds with regard to the native corporations and the Bureau of Land Management proceeds to "vacate" tentatively approved state lands, the 450,000 acres of state land continues to be reduced, thus reducing the ten per cent entitlement.

NOT IF THE 10% ATTACHES AT THE POINT OF "WITHDRAWAL" MAX. LAND ALLOWED IN THE ADMIN. BILL.

Also, the borough cannot take comfort in the fact that their land selections were made prior to the passage of the Settlement Act. In that regard, and, while borough selections for the Monashka watershed were made in October of 1967, and both the borough and city governments have expended considerable time and money in the planned development of that watershed, the Bureau of Land Management, in its proposed order dated May 6, 1977, stated that those lands would be conveyed to the village of Ouzinkie in the near future. It can thus be expected that there will be continued confrontation with the native groups with regard to the selected lands.

Recent oversight hearings were held in Washington, D.C., by Congressman Sieberling in an effort to determine the causes for delay in transferring land entitlements to the natives under the Alaska Native Claims Settlement Act. On behalf of the Kodiak Island Borough, I filed a statement before that committee, outlining the predicament that we face with regard to possible delays; i.e., that, in order to protect its interests, the borough is required to file appeals in most of the land selection decisions and would be required to file subsequent actions in the courts, appealing those decisions which it felt did not conform to the law. As a result, it could be expected that land entitlements would be delayed for several years.

Following the meeting of the borough assembly this past month, and their direction to me to attempt a meeting of our congressional leaders and the governor, I contacted their respective offices in Anchorage and mailed a letter to them, outlining the problems.

In your discussion with these leaders, it might be helpful to review the possibility of obtaining additional federal lands for native or borough selections and to inquire of the state whether or not they would support legislation such as was considered in the first session of the Tenth State Legislature (CSSB 241) which sought to compensate municipal governments for the lands which were selected but not granted, or for lands which were not available for selection as a result of the claims act. As you are aware, that particular legislation did not receive favorable action during the first session, but, hopefully, will be again considered in the second session of the legislature.

YES WE SUPPORT THE BILL.

If you have any questions concerning these matters, please do not hesitate to call or write.

Yours truly,

COLE, HARTIG, RHODES,
NORMAN & MAHONEY

By: Robert L. Hartig
Robert L. Hartig

RLH:kh

Form 01-006

STATE OF ALASKA
OFFICE OF THE GOVERNOR

TO: Department of

- [ ] Administration
- [ ] Commerce & Econ. Develop.
- [ ] Community & Regional Aff.
- [ ] Education
- [ ] Env. Conservation
- [ ] Fish and Game
- [ ] Health & Social Svcs.
- [ ] Highways
- [ ] Labor
- [ ] Law
- [ ] Military Affairs
- [ ] Natural Resources
- [ ] Public Safety
- [ ] Public Works
- [ ] Revenue

ATTN: Comm. LeResche

- [ ] Return letter w/draft final
- [ ] Return letter w/comment
- [ ] Reply direct
- [ ] Your information
- [ ] Call me
- [ ] Appropriate action
- [ ] As requested
- [ ] _____

REMARKS:

RECEIVED
JUL 27 1977
Department of
Natural Resources

From: _____ Date: 7/25

DEPARTMENT OF NATURAL RESOURCES
10-002
(12-23-70)
INTRA-DEPARTMENT ROUTE SLIP

TO: DIV/SEC: _____ LOCATION: _____

ATTN: _____

Approval	Signature	Comment	Contact Me	Prepare Reply	For Your File	Note & Return
☐	☐	☐	☐	☐	☐	☐
Initial & Return	Return As Requested	Return For Approval	Necessary Action	Your Information		
☐	☐	☐	☐	☐		

REMARKS:

RECEIVED
JUL 28 1977
Division of
Dept. of
Natural Resources

FROM: _____ DATE: 7/27
BY: _____
DIV/SEC: _____ LOCATION: _____

ANCHORAGE:
HOYT M. COLE
ROBERT L. HARTIG
JAMES D. RHODES
JOHN K. NORMAN
ROBERT J. MAHONEY
BERNARD J. DOUGHERTY

G. RODNEY KLEEDEHN
J. MICHAEL ROBBINS
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KODIAK:
MICHAEL W. SHARON

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KODIAK, ALASKA 99615
(907) 486-3143
(907) 486-3144

response
cc: Ted S

July 19, 1977

REPLY TO: Anchorage

The Honorable Jay S. Hammond
Governor of Alaska
MacKay Building
338 Denali
Anchorage, AK 99501

Re: Conflicts in Land Selections Kodiak Island Borough
Our Reference 101-30

Dear Governor Hammond:

As implementation of the Alaska Native Claims Settlement Act progresses, numerous conflicts regarding land selections by the native corporations and the Borough of Kodiak have developed. As a result, the borough, in an effort to protect its interests, has been forced to file protests with regard to certain village land selections which cover the same lands previously selected by the borough. In addition, as the Bureau of Land Management makes its findings for the village corporations with regard to these selections, the borough is forced to file administrative appeals and to further consider legal action in the event the appeals are not successful.

Several meetings of the borough assembly and the city council have been held in an effort to resolve the land conflicts problem and in an effort to prevent direct confrontation between the native groups and the local governments. A resolution passed by the Kodiak Island Borough this past week, in addition to recommending other actions, has requested that an early meeting be established between a representative of the borough, the Alaska congressional leaders, the Governor of Alaska and representatives of the individual native corporations, in order to review the land selection conflicts towards a view to attempting to resolve them in an amicable manner. In the past, the borough and city have attempted to work with the native corporations, in an effort to assist, at an early date, the transfer of lands

to them under the settlement act. But as a result of the need to protect their own interests, they have been placed into a position which has resulted, and may continue to result, in delays in the transfer of the lands to which they are entitled.

On behalf of the Borough and City of Kodiak, I would appreciate it if you would review the matter of the land conflicts within the Kodiak Island Borough and be willing to meet with the other representative groups at an early date to attempt resolution of these problems.

Yours truly,

COLE, HARTIG, RHODES,
NORMAN & MAHONEY

By: Robert L. Hartig
Robert L. Hartig

RLH:kjb

cc: Senator Ted Stevens
Senator Mike Gravel
Congressman Don Young

COLE, HARTIG, RHODES
NORMAN & MAHONEY
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
717 K STREET, SUITE 201
ANCHORAGE, ALASKA 99501

James Wickersham

The Honorable Jay S Hammond
Governor of Alaska
MacKay Building
338 Denali
Anchorage, AK 99501

Mr. Robert L. Hartig

Cole, Hartig, Rhodes, Norman & Mahoney

Suite 201

717 K Street

Anchorage, AK 99501

Dear Mr. Hartig:

Thank you for your letter of July 19 outlining the Kodiak Borough's desire to protect its land interests while minimizing conflict with Native selections under ANCSA. I am aware of the problems and conflicts you cited and am pleased to hear of the Borough's interest in expediting conveyances under the claims act.

The State, as in the past, is very willing to do anything it can to assist in solving these knotty problems. As you know, in response to requests from the Kodiak Borough, and Koniag, Inc., the Division of Lands spent considerable time this winter preparing detailed land status maps of Kodiak Island. Representatives from the Division of Lands, as well as the Department of Community and Regional Affairs and the Department of Fish and Game also attended the excellent workshop discussions sponsored by the Kodiak Borough Assembly in March.

I have asked Assistant Commissioner of Natural Resources Mike Smith to contact you directly concerning the meeting you request, and for any other followup which may be appropriate. If you feel that representation from other state departments would facilitate in solving the problems you mentioned, please feel free to contact them directly.

Sincerely,

JAY S. HAMMOND

Governor

cc: Honorable Ted Stevens

Honorable Mike Gravel

bcc: Bob LeResche

Mike Smith

Kevin Waring - CRA/Juneau

CITY OF SKAGWAY

GATEWAY TO THE GOLD RUSH OF "98"

P. O. BOX 415 SKAGWAY, ALASKA 99840

April 4, 1978

Senator Kay Poland, Chairman
Senate Resource Committee
Pouch V Mail Stop 3100
Juneau, Alaska 99811

Dear Senator Poland:

The subjects here are proposed legislation concerning selection and transfer of State land to municipalities - S.B. No. 241 and C.S. for H.B. No. 133 - and H.B. No. 886 - State Aid for Municipal Capitol Improvements. The Common Council of the City of Skagway submits for consideration the following comments and recommendations on these pieces of legislation:

S.B. No. 241, Sec. 29.18.202 states "---For purposes of determination of entitlement, the boundaries of each municipality are those which existed on the initial date of eligibility under former Secs. 190 - 220."

The boundaries of the City of Skagway on the "initial date of eligibility" were established early in the century and do not encompass any significant amount of vacant, unappropriated, unreserved general grant land, 10% of which might be transferred to the City. Although the City has recently extended its boundaries through annexation, the new municipal limits include very little land that is suitable for development by the City. Even if transfer were permitted, there is a dearth of developable land in the Skagway area. There are some State and Federal lands, tentatively allocated for State selection, adjacent to the City which, subject to future annexation, could be selected by and transferred to the City and, subsequently, developed by the City or sold or leased to private enterprise. It is the City's view that this course of action offers the most practicable means of resolving the land shortage problem yet it appears that S.B. 241 will preclude this approach.

The C.S. for H.B. 133 contains much of the same material and, more specifically, limits the land entitlements or payments in lieu thereof to several boroughs and the Municipality of Anchorage. Is the omission of consideration of the land needs of other municipalities, such as Skagway for example, an oversight or is it the intent of the legislation?

H.B. No. 886: The City Council supports this legislation.

It is suggested that, as presently drafted, S.B. 211 and C.S. for H.B. 133 do not fulfill their Statements of Purpose and it is recommended that these two pieces of legislation be reviewed and revised so as to include equitable consideration of the needs for land or in lieu payments for all of the municipalities in Alaska.

Sincerely,

G.D. Acker
City Manager

cc: Senator Bill Ray
Representative Mike Miller
Representative Jim Duncan
DCRA - Pritchard
City Attorney - Ruddy
Senate DCRA Committee- J. Orsini

GDAcp

Matanuska-Susitna Borough, Inc.

BOX B, PALMER, ALASKA 99645 • PHONE 745-3246

DEPARTMENT OF ADMINISTRATION

March 29, 1978

The Honorable Kay Poland, Chairman
Senate Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

Subject: CSHB 133--Municipal Land Selections

This Borough favors the enactment of the subject bill, but, with the restoration of subsection (g) which was deleted by the House. This section sets forth criteria to be used by the State in determining whether municipal selections are primarily of State concern. These provisions and other provisions of that section protect municipalities from arbitrary denial of selections by the State.

We also favor restoration of that section because it appears that the bill would not have much chance of passage without it, since without the section the bill will logically be opposed by the State administration.

We urge that section (g) be restored to the bill and that it be reported favorably by the Senate Resources Committee.

Very truly yours,

Wesley M. Howe

Wesley M. Howe
Borough Manager

WMH:er

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

11TH FLOOR, STATE OFFICE BLDG.
POUCH M — JUNEAU 99811

April 19, 1978

Honorable Clem Tillion
Alaska Senate
Pouch "V"
Juneau, Alaska 99811

Dear Senator Tillion:

This letter is in response to your request for information about the number of acres of land the State of Alaska owns within the municipality of Anchorage which could be made available to fulfill Anchorage's municipal land entitlement of 20,865 acres.

The figures below, for lands to which the State presently has either patent or tentative approval, are for lands which are not in Chugach State Park and are not affected by Eklutna Native Village land selections under ANCSA. The acreages listed as selected are for lands which the State has already selected and has a high probability of receiving from the federal government within the next few years. They also are not included within Chugach State Park and will not be affected by Native selections.

The lands listed as coming to the State under the Cook Inlet Land Exchange will definitely come to the State, and are generally of a nature more suitable for municipal management than State management.

Types of Land	Acres	
I. General Selection		
A. Patent and Tentative Approval	6,728	
B. Selected	240,280	
		247,008
II. Trust		
A. Patent or Tentative Approval	28,475	
B. Selected	6,998	
		35,473

	Types of Land	Acres	
III.	Cook Inlet Land Exchange		
	A. Goose Lake	20	
	B. Point Woronzoff	325	
	C. Campbell Tract	4,892	
	D. Point Campbell	1,282	
			6,519
IV.	Totals		
	A. Presently Available for Early Transfer	6,720	
	B. Available After Exchange for Trust Lands*	28,475	
	C. Available Upon Receipt via Cook Inlet Land Exchange	6,519	
			41,714
	D. Selected Lands Available When Transfered From Federal Government	247,278	
V.	Anchorage's Existing Situation		
	A. Entitlement	20,865	
	B. Patented or Approved to Anchorage	6,728	
	C. Remaining Entitlement	14,137	
	D. Remaining Entitlement After Conveyance of Existing Lands Available for Early Transfer	7,417	

It should also point out that in the future the State will certainly receive substantial land from the Elmendorf and Fort Richardson military bases within the municipality. In most cases, these lands will be more suitable for municipal than State ownership. As an example, as part of their land exchange entitlement Cook Inlet Region, Inc., is currently working with the Departments of Interior and Defense, as well as the State, to have a parcel of about 5,700 acres removed from Fort Richardson. Since portions of that parcel are not suitable for private ownership, the State will seek to receive title to those areas (e.g., green belts, aquifer recharge, etc.).

*Approx. 3,000 acres are prime lands within the Anchorage Bowl.

Because of their location and local importance, these lands would be best conveyed to the Anchorage municipality for management. The acreage would probably be a minimum of 500 to 800 acres.

I hope this information answers your requests. Please let me know if you have any questions.

Sincerely,

Michael C. T. Smith
Assistant Commissioner

Kodiak Island Borough

Classification Order #	Date of Class. Order	Total Acres Involved	classification
130	11/2/62	11070	Grazing - Timber
315	10/28/65	183	Public Recreation
380	5/23/66	7630	Watershed
479	2/7/68	50342	Timber
656	9/27/69	4316	Watershed
715 (A-4)	1/24/72	1990	Resource Mgmt
715 (A-6)	8/23/73	5242	Resource Mgmt
805	3/10/72	11300	Resource Mgmt
		92073	

Total TA'ed Acres in State — 623997 acres

Less Fort Abercrombie #315 — 183

623,814

10% rounded — 62,400 acres.

Total TA'ed Acres to State — 623,997 acres

Less	Fort Abercrombie	# 315	183 acres	
Less	Marmot Island	# 130	11070	
Less	Red Meat Lease	# 805	11300	
			22,553	22553

601,444 acres.

10% rounded — 60,100 acres

Total TA'ed Acres to State — 623997 acres

Less Fort Abercrombie	183	
Less Red Meat Lease	11300	
	11,483	11483

612514 acres.

10% rounded — 61,250 acres

29.18.201(9) should be amended to delete the portion in brackets and add the underlined portion, as follows:

Kodiak Island Borough -- [45,200] 56,500 ~~62,400~~ acres;

29.18.202(e): Add wording which is underlined:

The requirements of (c) and (d) of this section shall be waived by the director as to a home rule or unified municipality which so requests and as to any other municipality which manifestly demonstrates that a commitment of acreage to residential or commercial purposes required by this section as a condition of election of an entitlement

29.18.205(d): Delete portion in brackets:

On the effective date of this Act and for five years thereafter, no classification of a parcel of general grant land in excess of 3,200 acres under AS 38.05.300 shall be effective, unless otherwise required by law, if the municipality in which the parcel is located, within 30 days after receipt of notice of the proposed classification, advises the director in writing that it does not consent to the classification and indicates the reasons for its nonconsent. [This subsection applies only to land to which the state has received patent from the federal government prior to the effective date of this Act.]

29.18.205(e): Add wording which is underlined:

Each eligible municipality and the director shall jointly consider which vacant, unappropriated, unreserved land, including federal land of interest to a municipality which may be selected by the state as general grant land, located within the boundaries of the municipality, is appropriate for municipal selection and approval by the director to fulfill any remaining municipal general grant lard entitlement. <u>The joint consideration made by the parties shall include a cooperative land planning process which will, in addition to the normal objectives of such a process, seek to identify both local and state interests in tracts of vacant, unappropriated and unreserved land remaining within the municipality</u>. Adjacent tracts shall be considered simultaneously except when such simultaneous consideration would cause significant delay or expense. Once a tract has been jointly considered, it may be selected by a municipality.

29.18.205(f) should be amended to read as follows, adding the portion which is underlined:

Each selection must be approved or disapproved for patent by the director under (g) of this section within nine months of its selection by a municipality, and a patent shall be issued to the municipality within three months after approval by the director of a plat of survey.

29.18.205(g) should be amended in toto, deleting the section in brackets and adding the underlined section:

[A municipality may appeal an adverse decision by the director to the superior court under AS 44.62.560 - 44.62.570.]

In reviewing a municipal selection, the director shall consider the state's responsibilities for developing and protecting values which are of greater than local concern, including development which will have statewide impact, and critical environmental concerns. Specific state responsibilities to be considered, if such responsibilities have not been authorized or delegated by the state to a municipality, include air quality; water; minerals and

energy; timber; agriculture; fish and wildlife and their habitat; public recreation, natural, historical, and archaeological areas of greater than local concern; access to public land and water; transportation; communications; and public safety. Specific municipal responsibilities to be considered include residential, commercial and industrial needs; support of municipal services; education; local transportation; private recreation; public recreation, natural, historical and archaeological areas of local concern; and other responsibilities authorized or delegated by the state to a municipality. A selection by a municipality of land which is primarily of local concern shall be approved. When the interests of the state may be protected through the conveyance of title that is less than a fee title, the municipality, at its option, may accept the title in acre-for-acre fulfillment of its entitlement.

29.18.205(h): A new paragraph should be added, to read as follows:

Every decision of approval or disapproval of a municipal selection by the director under (f) of this section shall include a written explanation of the decision based upon the criteria of (g) of this section. Before issuing any decision to disapprove a selection, the director

shall notify the affected municipality in writing, by certified mail, of his reasons for the proposed decision. The municipality shall have 30 days from receipt of the proposed decision to respond to the director in writing enumerating the reasons for which the municipality believes the proposed decision to be in error. After receipt of the municipality's statement of reasons, or after expiration of the period in which the municipality may respond to the proposed decision, the director shall, within 30 days, affirm, modify or reverse his proposed decision in writing and give written notice of his decision to the municipality. The decision of the director constitutes final administrative action in the matter.

29.18.206(d): Delete portion in brackets:

No selection of school, university or mental health land may be approved [by the director] under this section without the concurrence of

29.18.206(e) should be amended to read as follows, deleting the portion in brackets and adding the underlined portion:

[Within three years after the approval under (d) of this section of a municipal selection of school, university or mental health land, the director, with the concurrence of the respective board, shall designate appropriate state general grant land of approximately equal value as school, university or mental health replacement land.] Within six months after request by a municipality for selection of school, university or mental health land, the director shall identify state general grant land of approximately equal value to the land requested by the municipality, and shall propose such replacement land for the concurrence of the appropriate board under (d) of this section. If a proposal by the director is rejected by the board, the director shall meet with the board as often as necessary to determine the type and amount of equal value replacement land that would be required to obtain the board's concurrence under (d) of this section, and shall propose such land for consideration by the board. The replacement land shall thereafter be managed for the purposes for which the land selected by the municipality was acquired

by the Territory and the State of Alaska. Nothing in this subsection shall preclude the appropriate board from approving a municipality's selection of school, university or mental health land prior to the identification of specific replacement land.

29.18.208(c) should be amended as follows, adding the underlined portion:

A municipality eligible for payment under this section may, by October 1 of each fiscal year of eligibility, notify the director of its election to accept payment in lieu of land from the account. A municipality may accept payment for not more than 15 per cent of its entitlement under secs. 201 - 203 of this chapter, to a maximum of 10,000 acres, in each fiscal year. A municipality which chooses to accept payment in lieu of land shall be entitled to an amount based on the cumulative total number of acres of remaining entitlement which it relinquishes or which were selected and to which title vested in another entity under (g) of this section. Payment shall be made according to the following schedule:

29.18.208(e) should be amended as follows, adding the underlined portion:

If the total appropriation is not sufficient to meet the amount due to all municipalities which have elected to accept payment in lieu of land under (c) of this section, the governor shall apportion the appropriation among the municipalities in proportion to the payment calculated for each municipality for that year. When a distribution of payments is made under this subsection, the remaining entitlement of a municipality to which payment is made shall be reduced in an amount equal to the number of acres for which payment was received. An apportionment may correspondingly increase the acreage for which a municipality may request payment in a succeeding year, but this increase in acreage does not authorize a municipality to request payment in lieu of land of more than 10,000 acres in any one year. <u>All such appropriations shall be in addition to other grants and entitlements authorized for a municipality</u>.

29.18.208(f) should be amended as follows, adding the underlined portion and deleting the portion in brackets:

The total payment to a municipality under this section, except as provided in (g), may not exceed [$100] $250 per capita for each person resident in the municipality on the July 1 preceding the effective date of this Act, as determined by the Department of Community and Regional Affairs.

29.18.208(g): A new paragraph should be added, to read as follows:

If a municipality has selected state lands on or before December 18, 1971, to which the state has received tentative approval or patent and such lands are also selected by a Native corporation under the Alaska Native Claims Settlement Act (Pub. L. No. 92-203) and title to that land is ultimately vested in that Native corporation, the municipality shall be entitled to payment under subparagraph (c) of this section. Acceptance of payment pursuant to this subparagraph shall constitute a relinquishment of any other right, title or claim to such land by the municipality.

29.18.211(a) should be amended, to add the underlined wording, as follows:

Except as to those lands to which section 208(g) of this chapter applies, a municipality which on the effective date of this Act is engaged in litigation, or which becomes engaged in litigation, regarding a claim to state land under former secs. 190 - 200 of this chapter shall elect either to obtain the benefits provided in secs. 201 - 215 of this chapter or to pursue the litigation and thereby waive any claim to entitlement under secs. 201 - 215 of this chapter. An election shall be made by filing a motion for dismissal with prejudice in the court in which the litigation is pending. If the claim involves a municipality identified in secs. 201(a) or 202(a) of this chapter, the municipality shall file its motion for dismissal within 60 days of the effective date of this Act. If the claim involves a municipality not listed in secs. 201(a) or 202(a) of this chapter, the municipality shall file its motion for dismissal within 60 days after receiving the certificate of entitlement provided by the director under sec. 203(b) of this chapter. Failure of the municipality to file a motion for dismissal during the time period provided in this subsection shall be considered a waiver of entitlement under secs. 201 - 215 of this chapter.

29.18.213(11)(C): Amend by adding the underlined portion:

is unclassified or, if classified under AS 38.05.300, is classified for agricultural, grazing, commercial, industrial, private recreational, residential, utility or open-to-entry purposes, or where classified pursuant to state and municipality management agreements.

38.05.321: Delete portion in brackets:

RESTRICTION ON SALE, LEASE OR OTHER DISPOSAL OF AGRICULTURAL [AND GRAZING] LAND. (a) The sale, lease or other disposal of state land classified as agricultural [or grazing] land transfers only rights for agricultural [and grazing] purposes, and all other interests in the land remain with the state unless otherwise required by law.

(b) State land classified as agricultural [or grazing] land which has been selected by a municipality under AS 29.18.190 - 29.18.200 or 29.18.205(e) may be approved by the director for patent under AS 29.18.205(f); however, only rights in the land for agricultural [or grazing] purposes may be transferred and all other interests in the land will remain with the state. Agricultural [or grazing] land approved for patent to a municipality under

AS 29.18.205(f) shall be credited, acre for acre, toward fulfillment of that municipality's entitlement under AS 29.18.201 - 29.18.203. If the director later determines it to be in the best interests of the state to transfer some or all of the additional rights in that approved or patented agricultural [or grazing] land, those rights shall pass without consideration to the municipality in which the land is located.

(c) The provisions of this section do not apply to state land classified as agricultural [or grazing] land which has been selected by a municipality under the provisions of AS 29.18.190 - 29.18.200 if the selection is an approved selection before the date of enactment of this Act and is otherwise valid under AS 29.18.205(b).

Sec. 4 should be amended as follows, adding the underlined portion:

It is the intention of the legislature that future municipalities shall have the benefit of * Sec. 2. of this Act. Within 90 days of passage of this Act, the Department of Natural Resources shall adopt regulations which shall, as closely as is practicable, apply the provisions of * Sec. 2. of this Act to future municipalities. After adoption of

such regulations, the department shall transfer all lands to which a municipality is entitled under this section to such municipality within three years of the date upon which the municipality assumes a legal existence. Consistent with the best interests of the state, in the selection of general grant land it is the policy of the state to make available the maximum land area from which municipalities may fulfill land entitlements under AS 29.18.201 - 29.18.215.

MANAGEMENT AGREEMENT

This agreement made and entered into this 17 day of June, 1965 between the State of Alaska, Department of Natural Resources, Division of Lands, hereinafter referred to as the State and the Kodiak Island Borough, organized and existing pursuant to the laws of the State of Alaska, hereinafter referred to as the Borough.

WITNESSETH:

WHEREAS, Title 7 - Article 2 - Sec. 07.10.150, Alaska Statutes vests the Borough with the authority to select certain of those state-owned lands which lie within the Borough boundaries, and,

WHEREAS, the aforementioned statute further provides that the Borough is vested with the authority to manage, lease or sell the lands so selected, and,

WHEREAS, the Borough does not at this time have the financial ability nor the manpower to initiate and maintain an efficient land management program, and,

WHEREAS, the State, through the Division of Lands, does maintain the staff capability and is willing to enter into an agreement for the management of Borough selected lands, NOW THEREFORE,

The Borough does by these presents delegate to the State the authority to manage Borough selected lands and the State, through the Division of Lands, agrees to accept management authority over said lands upon the following terms and conditions to wit:

1. All lands disposed of by the State, pursuant to this agreement, shall first be subjected to a land use plan and such plan shall, prior to becoming final, be reviewed jointly and agreed upon by the Borough and the State.

2. Prior to disposal by the State of any lands selected pursuant to Section 6(b) Public Law 85-508, General Grant lands, the Borough shall first be afforded the opportunity to select the same for its use or disposal in accordance with the terms of this agreement.

3. Upon selection of eligible lands by the Borough, the State shall, without delay, note the same on the records to be maintained by the Division of Lands, and the State shall periodically thereafter make an accounting to the Borough revealing acreage entitlement, acreage selected, acreage disposed of and such other information as shall be deemed necessary for the purpose of keeping the Borough properly informed.

4. All leases, sales or other disposals which are made by the State on behalf of the Borough pursuant to this agreement shall be made only with consent of the Borough and shall be conducted in accordance with the Alaska Land Act (Title 38, A.S.) and the regulations promulgated by the State pursuant thereto. All lands which have been selected by the Borough, as herein provided, and which the Borough may wish to sell, lease or otherwise dispose of shall be sold, leased or disposed of in accordance with the provisions of this agreement for so long as the agreement shall remain in full force and affect.

5. All monies received by the State from the sale, lease or other disposal of Borough lands shall be deposited with the Department of Revenue, State of Alaska. Upon request of Borough Assembly and certification by the Director that payment is in order, the monies so deposited shall be transferred to the Borough. The State shall, during the month of January of each year that this agreement is in effect, render an accounting of all monies received from disposals conducted during the course of the year. Concurrent with the final accounting the State shall withhold survey, appraisal and other appropriate direct management costs, exclusive of overhead costs, from the total receipts.

6. To preserve the principle and integrity of sustained yield forest management and protection, those forest and grazing lands selected by the Borough shall remain under the direct management of the Division of Lands with all revenues from such forest and grazing lands or forest products being transferred to the Borough at the same time and in the same manner as stipulated in Item #5 of this agreement.

Nothing in this agreement shall prevent, through mutual agreement, the reclassification of any lands subject to this contract as provided in the Classification regulations of the Division of Lands, State of Alaska.

This agreement shall remain in full force and effect until such time as it may be cancelled or modified by mutual agreement between the parties. This agreement may also be cancelled by one party provided it gives the other party one (1) year notice of such cancellation.

KODIAK ISLAND BOROUGH

By _____
President of the Assembly

By _____
Borough Chairman

ATTEST:

_____
Borough Assembly Clerk

STATE OF ALASKA

By _____
Director, Division of Lands

CONCURRED:

_____
Commissioner, Department of Natural Resources

APPROVED AS TO FORM:

for _____
Attorney General, State of Alaska

ADDENDUM TO
LAND MANAGEMENT AGREEMENT

WHEREAS, the Kodiak Island Borough and the State of Alaska Department of Natural Resources Division of Lands entered into a Land Management Agreement dated June 17, 1965, and

WHEREAS, the parties hereto desire to amend said Agreement by adding thereto a new paragraph to be entitled Paragraph 7.

NOW, THEREFORE, it is hereby agreed by and between the parties hereto that the Land Management Agreement be and the same is hereby amended by adding thereto Paragraph 7 to read as follows:

"7. In the event that specific parcels of Borough selected lands, adjudicated by the Alaska Division of Lands to be eligible for patent to the Borough, are desired by the Borough for exclusive Borough use and/or management, the same, upon proper notice to the Division shall be patented to the Borough and the management thereof, including subsequent disposal, shall no longer be subject to this Agreement.

When lands have been patented to the Borough as provided in this Section, the Borough agrees that, prior to any disposal of such borough lands, where the same lie adjacent to or are interspersed with State-owned lands, the proposed program of disposal will be subject to joint review between the Borough and the Division, and likewise, State-owned land disposals will be subject to such joint review."

In all other respects the original agreement will remain the same.

KODIAK ISLAND BOROUGH

By _____
Presiding Officer

By _____
Borough Chairman

LANDS SELECTED PRIOR TO DECEMBER 18, 1971

Selection Number	Acres Selected	Acres Tentatively Approved to Borough	Acres Patented to Borough	Acres of Borough Selections on State Tentatively Approved Land Involved in Native Selections	Remarks
1	16.51	16.51	16.51	0	
2	46.26	46.26	46.26	0	
3	15 ±	-	-	0	Within 2 miles of Kodiak
4	175.12	175.12	175.12	0	
5	3.59	3.59	3.59	0	
6	159.75	159.75	159.75	0	
7	15.85	15.85	15.85	0	
8	210.06	177.57	170.36	0	
9	39.29	39.29	19.85	19.44	Port Lions area
10	69.61	69.61	0	0	
11	17.84	17.84	17.84	0	
12	7,189.	7,459.	788.4	7,459.	Bells Flat area
13	387.88	387.88	387.88	0	Within 2 mile limit
14	58.01	0	0	58.01	Port Lions
15	14,331.	0	0	8,900.	Shuyak
16	0.17	0.17	0.17	0	Within 2 mile limit
17	4.85	4.85	4.85	0	Within 2 mile limit
18	202.51	202.51	202.51	0	Within 2 mile limit
19	110.78	110.78	110.78	0	Within 2 mile limit
20	0	0	0	0	Not applicable to AS 29.18.190
21	0.92	0.92	0.92	0	Within 2 mile limit
22	250.	120.	0	250.	Chiniak
23	11,451.52	0	0	6,440.	Monashka Bay
24	310.	0	0	0	Within 2 mile limit
25	2,000.	0	0	2,000.	Chiniak
26	840.	800.	0	840.	Chiniak
27	0.184	-	-	0	Not applicable
	38,187.70	9,807.5	2,120.67	25,966.45	

LANDS SELECTED AFTER DECEMBER 18, 1971

28	2,611.	0	0	965.
29	2,330.	0	0	2,330.
30	5,750.	0	0	5,750.
31	2,590.	0	0	1,680.
32	2,940.	0	0	2,090.
33	1,735.	0	0	820.
34	2,500.	0	0	1,220.
35	2,020.	0	0	2,020.
36	540.	0	0	540.
37	2,490.	0	0	1,940.
38	1,925.	0	0	0
39	1,655.	0	0	0
40	1,920.	0	0	1,920.
41	22,545.	0	0	0
Total	53,551.	0	0	21,275.
Total From Above:	38,187.70	9,807.5	2,120.67	25,966.45
Grand Total:	91,738.70	9,807.5	2,120.67	47,241.45

Note: Total tentatively approved lands to State on Kodiak Island are in the amount of 623,997.12 acres.

Compiled by Alaska Division of Lands — Kodiak Island Borough — 2/10/78

Date	Tentative Approval TA (1)	Lands Selected by ANCSA Corporations (A) (2)	Net Tentative Approval (TA) (3)	Occupied (B) (4)	Net Vacant (NV1) (NV1)=(TA)-(B) (5)	Classified at Boro Request & Boro Selected (By Selec. date) (C) (6)	Net Vacant (NV2) (NV2)=(TA)-[(B)-(C)] (7)	Classified at Boro request, not Boro Selected (by Cl. date) (D) (8)	Net Vacant (NV3) (NV3)=(TA)-[[(B)(C)]-(D)] (9)
			1-2=3		3-4=5		3-4+6=7		3-4+6+8=9
6/30/60	0	0	0	0	0	0	0	0	0
12/31/60	0	0	0	0	0	0	0	0	0
6/30/61	0	0	0	0	0	0	0	0	0
12/31/61	0	0	0	0	0	0	0	0	0
6/30/62	0	0	0	0	0	0	0	0	0
12/31/62	11,070	0	11,070	#130 11,070	0	0	0	0	0
6/30/63	11,070	0	11,070	11,070	0	0	0	0	0
12/31/63	229,898	0	229,898	11,070	218,828	0	218,828	0	218,828
6/30/64	361,738	0	361,738	11,070	350,688	0	350,688	0	350,688
12/31/64	435,176	0	435,176	11,070	424,106	0	424,106	0	424,106
6/30/65	435,194	0	435,194	11,070	424,124	0	424,124	0	424,124
12/31/65	435,194	0	435,194	# 315 11,315	423,879	? 0	423,879	? 0	423,879
6/30/66	435,475	0	435,475	# 390 19,166	416,309	? 0	416,309	? 0	416,309
12/31/66	464,788	0	464,788	19,221	445,567	10	445,577	0	445,577
6/30/67	525,396	0	525,396	19,426	505,970*	23	505,993*	0	505,993*
12/31/67	525,396	0	525,396	19,876	505,520	343	505,863	0	505,863
6/30/68	525,396	0	525,396	# 479 77,685	447,711	14,675	462,386	36,012	498,098
12/31/68	525,396	0	525,396	77,672	447,724	14,675	462,399	36,012	498,111

designates land classification order number

Compiled by Alaska Division of Lands — Kodiak Island Borough — 2/10/78

Date	Tentative Approval TA (1)	Lands Selected by ANCSA Corporations (A) (2)	Net Tentative Approval (TA) (3)	Occupied (B) (4)	Net Vacant (NV1) (NV1)=(TA)-(B) (5)	Classified at Boro Request & Boro Selected (By Selec. date) (C) (6)	Net Vacant (NV2), (NV2)=(TA)-[(B)-(C)] (7)	Classified at Boro request, not Boro Selected (by Cl. date) (D) (8)	Net Vacant (NV3) (NV3)=(TA)-[[(B)-(C)]-(D)] (9)
		1-2=3			3-4=5		3-4+6=7		3-4+6+8=9
6/30/69	525,396	0	525,396	77,695	447,701	14,675	462,376	36,012	498,388
12/31/69	525,396	0	525,396	#656 82,028	443,368	14,675	458,043	40.327	498,370
6/30/70	525,396	0	525,396	82,342	443,054	14,675	457,729	40,327	498,056
12/31/70	525,396	0	525,396	82,342	443,054	14,675	457,729	40,327	498,056
6/30/71	525,396	0	525,396	82,342	443,054	14,675	457,729	40,327	498,056
12/31/71	525,396	300,000	225,396	82,342	143,054	14,675	157,729	40,327	198,056
6/30/72	525,396	300,000	225,396	#805 95,633	129,763	14,675	144,438	40,327	184,765
12/31/72	525,396	300,000	225,396	95,633	129,763	22,180	151,943	40,327	192,270
6/30/73	525,396	300,000	225,396	# 715 A-4 96,545	128,851	22,180	151,031	40,327	198,358 ?
12/31/73	525,396	300,000	225,396	# 715 A-6 102,152	123,244	22,180	145,424	40,327	185,751
6/30/74	525,396	300,000	225,396	102,152	123,244	22,180	145,424	40,327	185,751
12/31/74	525,396	300,000	225,396	102,152	123,244	22,180	145,424	40,327	185,751
6/30/75	525,396	300,000	225,396	102,152	123,244	22,180	145,424	40,327	185,751
12/31/75	623,997	300,000	323,997	102,152	221,845	22,180	244,025	40,327	284,352
6/30/76	620,163	300,000	320,163	102,152	218,011	22,180	240,191	40,327	280,518
12/31/76	620,163	300,000	320,163	102,152	218,011	22,180	240,191	40,327	280,518
6/30/77	611,734	300,000	311,734	102,152	209,582	22,180	231,762	40,327	272,089
12/31/77	611,734	300,000	311,734	102,152	209,582	25,829	235,411	40,327	275,738
							66,156		

* Maximum Net Vacant Per Column

Note: The figures shown in Column "A" are:
Those lands that are actually selected up to the maximum allowed by the affected Native Corporations. This figure is shown as a minimum which could go as high as 350,000 acres.

CS HB 133am (Finance)

GUIDE TO SENATE RESOURCES MARK-UP
Based on testimony through April 7
Prepared by Reed Stoops, Asst.

PAGE	SECTION	SUGGESTED CHANGE
(1)	29.18.201	(9) KODIAK - request 62,400 acres instead of 45,200 acres RATIONALE - The higher figure is 10% of all tentatively approved state land selected within the borough (re. Hartig letter) COMMENTS - DNR feels this ignores the language in the existing statute - 10% of vacant, unappropriated, unreserved state lands (re. Smith letter)
(2)	29.18.202	(2) 30% requirement for disposal to private ownership be eliminated. RATIONALE - Should be a local option, not a requirement (re. Rolle testimony - Alaska Municipal League) COMMENTS - Expressed fear that municipalities will not dispose of lands at a significant rate in order to protect high land values. - Administration takes "no final position".
(5)	29.18.205 (b)	Delete the following: line 9 from the word (SHALL) to line 12 to the word (SELECTION) RATIONALE - Eliminates possibility of director reclassifying land already selected into a non-selectable category (re. Hartig letter) COMMENTS - "that specific language was agreed upon by eight municipalities, including Kodiak, because a very limited number of approvals were given for lands with a classification under which the state could not legally approve selections" (re. Smith letter).

CS HB 133am Finance
Guide Mark-up

PAGE	SECTION	SUGGESTED CHANGE
(5)	29.18.205(b)	Delete the following: line 18 from the word (ANY) to line 23 to the word (AS 38.05.321). RATIONALE - Would allow the the director to make present decisions for past acts of the Division of Lands; also full title to agricultural lands (re. Hartig letter). COMMENTS - Eliminating reference to AS 38.05.321 would give full title - not just agricultural rights - to the boroughs. Conflict with existing state law and policy.
(6)	29.18.205(d)	Delete entire subsection RATIONALE - Subsection is in conflict with AS 38.05.305 as .305 requires the state to go back to the boroughs on all classifications. COMMENTS - Agreed to last year by all parties including Kodiak. Administration would not oppose deletion (re. Smith letter).
(6)	29.18.205(e)	Insert additional language which would require review of classified land evey 2 years for possible reclassification. RATIONALE - New conditions might warrant future change in classification (re. Hartig letter) COMMENTS - Should be handled through regulation (re. Smith letter).
(6)	29.18.205 (e-f-g-h)	Reinsert language deleted on House floor from CS HB 133 Finance version. RATIONALE - This language was "agreed to by all parties because it was felt that the criteria adequately protected both the state and municipal interests in deciding which lands should be made available for municipal selection and which should remain in state ownership." Removes tremendous discretion by DNR in approving selections (re. Smith letter).

PAGE	SECTION	SUGGESTED CHANGE
(6)	29.18.205 (e-f-g-h)	Continued COMMENTS - This argument also concurred with by Holdsworth, Gilman (possibly others).
(7)	29.18.206(c)	Delete director's authority to approve selection of trust lands. RATIONALE - Should be a local decision (Sharp testimony - Bern testimony). COMMENTS - Reference to prior language made by Mr. Smith which ties this to former section (g). Should be reinserted whether or not the director has authority to approve selections of trust lands (re. Smith letter).
(7)	29.18.206(d)	Set a time limit in which trustees must act on selections. RATIONALE - Trustees should not be able to delay action for an unreasonable length of time (Bern testimony).
(8)	29.18.207(a)	Delete the following: line 10 from the word (TAKING) to line 12 to the word (USES). RATIONALE - Would further reduce the borough's right to select land (re. Hartig letter).
(9)	29.18.207(b)	Substitute 150% for 110% RATIONALE - Higher figure necessary because the federal government hasn't defined navigability of waters within selections. COMMENTS - 110% is ample. Additional 40% over-selection would severly impact state's ability to manage land (re. Smith letter).

CS HB 113am Finance
Guide for Mark-up

PAGE	SECTION	SUGGESTED CHANGE
(10)	29.18.208 (f)	Change $100 per capita limit to $250 per capita RATIONALE - Is inequitable for Anchorage as it would only receive $20,000,000 instead of $43,102,050 because of the limit (re. Bern letter). COMMENTS - Opposed by Administration due to fiscal impact (re. Smith letter).
(10)	29.18.208	Add new paragraph to include payment in lieu of land to municipalities with ANCSA claims top filed over state selections (i.e Kodiak) RATIONALE - State breached its trust with municipalities by "entering into a compact" with Congress allowing ANCSA claims to have precedence (re Hartig) COMMENTS - Provision should also be made to exempt Kodiak from 208 (f). Opposed by Administration due to fiscal impact, also because there is sufficient state land for Kodiak to select from.

CS HB 133am Finance
Guide for Mark-up

PAGE	SECTION	SUGGESTED CHANGE
(11)	29.18.211	Delete entire section. RATIONALE - Kodiak wants option to litigate if they do not receive payment in lieu of land option (Hartig letter) COMMENT - Kodiak is free to litigate if they are not satisfied. But they should then have to accept the verdict of the judicial system. The purpose of the bill is to make a settlement (Smith letter)
(15)	29.18.213(11)(c)	Amend to read: "Is unclassified or, if classified under AS 38.05.300, is classified for agricultural, commercial, industrial, private recreational, residential, utility, or open to entry purposes, or where classified pursuant to state and municipality management agreements." RATIONALE - Kodiak wants option to select grazing lands or lands classified at the request of the borough. COMMENT - Administration not opposed to this amendment.
(15)	38.05.321	Remove all reference to grazing. RATIONALE - Kodiak finds it should have full title to grazing lands if they are selected-not simply grazing rights (re. Hartig letter) COMMENT - Administration takes no position (re. Smith letter)

CS HB 133 am Finance
Guide for Mark-up

PAGE	SECTION	SUGGESTED CHANGE
(16)	Sec. 4	Change 90 days to 180 days RATIONALE - 90 days insufficient time to adopt regulations (re Smith letter) COMMENT - None
(16)	Sec. 4	Delete final sentence; begin with (after) on line 8 - end with (existence) line 11. RATIONALE - Forces beyond the state control may make it impossible to transfer land to future municipalities within a three year period (re Smith letter)

Federal-State
Land Use Planning Commission
For Alaska

April 12, 1978

Honorable Kay Poland
Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Kay:

Pursuant to the request made by you and other members of the Senate Resources Committee, we are enclosing several copies of our recent correspondence to Senator Jackson concerning the need to develop an alternative vehicle for marking up D-2 legislation in the Senate. If you have any questions or comments relative to this enclosure, please let us know.

On behalf of the Commission, we want to thank you for the opportunity to talk with the Resources Committee about the pending D-2 legislation and the other issues which were considered during last week's briefing.

Sincerely,

Walter B. Parker

Walter Parker
State Co-Chairman

Enclosure (1)
1. Letter to Senator Jackson

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

Federal-State
Land Use Planning Commission
For Alaska

March 17, 1978

Honorable Henry M. Jackson
Chairman
Committee on Energy and Natural Resources
3106 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Jackson:

Over the past five years, the Commission has identified the major policy issues associated with the (d)(2) lands in particular and statewide land use and management in Alaska in general. We have made recommendations on these major policy issues to Federal and State decision makers. In so doing, the Commission placed the use and management of (d)(2) lands within the statewide context of other Federal, State, and private lands in Alaska, as well as within the context of the management systems which apply on Federal lands nationwide.

As one of the architects of the three major pieces of legislation which will set the future of Alaska, you are very conscious of the interrelationship between the rights of Alaska Native corporations and Alaska Native individuals to lands under the Alaska Native Claims Settlement Act and the rights of the State of Alaska to lands under the terms of the Alaska Statehood Act. Underlying both of these acts was the considered Congressional policy to bring Alaska into the Union fully and completely.

We do not intend this letter to be a substitute for our testimony before your committee. But, aware of the amendments made in the House Interior Committee, we wish to express our concern that H.R. 39, as amended, may be the markup document selected by your committee.

We feel that the attempts in the House Committee to accommodate and resolve the many conflicts that were generated by the original H.R. 39 have resulted in such modifications of the National Wilderness System, the National Wild and Scenic Rivers System, the National Park System, and the National Wildlife Refuge System that we feel that it would be impossible by amendment to rectify these major defects of the bill.

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

Of even greater importance, we feel that in attempting to resolve conflicts between developers and conservationists, Natives and sport hunters, Federal energy policy and wilderness, and State and Native land selections, several sections of H.R. 39 instead institutionalize conflict over the next half century in Alaska by trying to perpetuate what are essentially the perceived conflicts of today. These conflicts can only be resolved or mitigated over time by strong cooperation between the Federal and State governments. The management policies of both governments must retain sufficient flexibility to deal with the future and not carry the burden of today's ills into that future in the form of statutory language.

We know of your concern to treat Alaska totally as a full member of the United States; we know of your concern that the settlement of Alaska Native claims be implemented promptly and with certainty; and we know of your concern to protect those nationally significant natural values which exist in Alaska. We are also aware of your interest in meeting the nation's energy needs, and your interest in seeing that Alaska's land ownership and land-use patterns be achieved in a rational and planned manner. Because we share these concerns, we recommend that a new bill be drafted.

In that connection, we would like to compliment you and the members of the Committee staff for your reasoned, systematic, and scientific approach toward accumulating resource information from persons knowledgeable in Alaska resources. From your staff workshop, your committee, in our opinion, will have compiled one of the best records with respect to the resources involved in resolving the (d)(2) question.

There is a great deal to build on in the drafting of such a new bill. Such a bill could certainly incorporate a good deal that has been learned in the public hearing process with H.R. 39 and could benefit from the substantial discussions that have already occurred between the Federal executive, the State of Alaska, and the Federal-State Land Use Planning Commission. Such a bill could also incorporate the best legislative approaches to the issues of transportation access, Federal-State relationships on fish and game management including the need to meet subsistence needs, and cooperative institutions to plan and manage Alaska lands. There is language available in S. 2465, H.R. 10888, as well as parts of H.R. 39 which could better respond to these policy needs.

We would like again to emphasize our belief that drafting of a new bill in the Senate is essential in order to secure the best possible final outcome of this legislation.

Thank you for your consideration of this correspondence.

Sincerely,

Walter B. Parker

Walter B. Parker
State Co-Chairman

Sincerely,

Esther C. Wunnicke

Esther C. Wunnicke
Federal Co-Chairman

Honorable Henry M. Jackson
Chairman
Committee on Energy and Natural Resources
3106 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Henry M. Jackson
United States Senate
137 Russell Senate Office Bldg.
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Mr. Joe Nagle
Special Assistant to the Secretary
Office of the Secretary
U.S. Department of the Interior
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Honorable Jay S. Hammond
Governor
State of Alaska
Pouch A
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Honorable Robert LeResche
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Honorable John F. Seiberling
U.S. House of Representatives
1225 Longworth House Office Bldg.
Washington, D.C.

Commissioner

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER 3100

DEPARTMENT _____

ATTENTION Kay Poland

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☑ Your Information

Remarks:

FROM:
MAIL STATION NUMBER _____

DEPARTMENT DNR

BY Renee DATE 4/4

02-002 (REV.10/73)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

323 E. 4TH AVENUE – ANCHORAGE 99501

April 4, 1978

The Honorable Kay Poland, Chairman
Senate Resources Committee
Pouch V
Juneau, AK 99811

Re: Municipal Land Selection Bill
CSHB 133 (Finance) am

Dear Senator Poland:

To assist your committee in its mark up of the Municipal Land Selection Bill I felt it appropriate to submit to you the Administration's comments both on the amended Finance Committee version of the bill before your committee, as well as selected responses to testimony presented to your committee on March 29th and March 31st. The comments below are in the order that one would read the legislation. Many of the comments respond specifically to the testimony of Mr. Robert Hartig, Counsel for the Kodiak Island Borough. This has been done because Mr. Hartig was the only one to testify who, to my knowledge, submitted his testimony in writing (by letter of March 23, 1978), and also because some of his comments were echoed by others in their testimony.

With respect to the general grant land entitlements listed in Section 201, our only comment concerns Mr. Hartig's assertion of a 62,400 acre entitlement for Kodiak. The disagreement between the Kodiak Borough and the Department of Natural Resources on this matter is somewhat complicated and a detailed explanation would not be appropriate here. I believe it is appropriate, however, to point out that the 62,400 acre figure for Kodiak is exactly 10 percent of the total amount of tentatively approved land which the State has ever received within the Kodiak Borough. Simply stated, Mr. Hartig is contending that since January 1, 1964, when the existing legislation went into effect, not one acre of state land within the Kodiak Island Borough has ever been appropriated or reserved. In other words, unlike every other community in the state, Mr. Hartig would give no credence to the Legislature's inclusion of the words "vacant, unappropriated, unreserved lands in the statute." As an

example, Mr. Hartig would have to argue that the creation of the Fort Abercrombie Historical Park was not a reservation of those lands, but rather they remained vacant, unappropriated, and unreserved even after the legislative action, open to borough selection or otherwise available under the State's disposal laws.

In Section 202, with respect to the requirement for municipalities to dispose of not less than 30 percent of the difference in entitlements between Sections 201 and 202, the Administration takes no formal position. However, we are very sympathetic to the legitimate concerns of the municipalities which wish to dispose of those lands within time frames appropriate to each municipality's specific situation.

In Section 205(b), Mr. Hartig suggested that certain language be deleted which would require the Director to review past approvals of borough land selections. He indicated that the reason for this was that the Division of Lands would like to reconsider many of those selections, and reclassify the land in a non-selectable category and thus preclude the borough from selections. This is not the case. That specific language was agreed upon last year by eight municipalities, including Kodiak, because a very limited number of approvals were given for lands with a classification under which the State could not legally approve selections. In addition to the State's concerns with this situation, some municipalities were worried that such a transfer would put a cloud on the title.

In this same subsection, Mr. Hartig also suggested that the language, which indicates that transfers of land to municipalities under this chapter are subject to AS 38.05.321, should be deleted. Such a deletion would mean that agricultural lands transferred to municipalities would include the transfer all title, not just agricultural rights, and would be in contravention of existing state law and policy. The Legislature can, of course, change this existing requirement. However, it would put the Department in a very untenable position in that we might simultaneously be required to transfer several tens-of-thousands of agricultural lands to municipalities, while at the same time trying to meet the very difficult requirement of AS 38.05.362 which requires the Department to classify an additional 650,000 acres of land for agricultural purposes within the next 18 months.

With respect to Section 205(d), I would point out again that this was language agreed to by all parties last year, including the Kodiak Borough. However, we would not oppose this deletion as suggested by Mr. Hartig.

With respect to Mr. Hartig's comment regarding Section 205(e), I concur that most of this section, as well as most of this proposed legislation, could be handled through regulations. However, it was agreed to by all municipalities last year that since there was general agreement with the "settlement," it would be best to have legislative sanction. The Administration, and I believe a majority of the municipalities, would support the settlement of this matter through adoption of appropriate regulations closely parallelling the original legislation.

At this point it is appropriate to bring up the matter of Subsections (g) and (h), which were deleted on the floor of the House. These subsections are found at page 6, line 28, and page 7, line 19, respectively, of the CSHB 133 (Finance) version. As I stressed in my testimony, and as was echoed by the large majority of municipalities which testified, the reinsertion of these two subsections is most important to permit the municipal land selection settlement to work properly. That specific language was agreed to by all parties because it was felt that the criteria adequately protected both state and municipal interests in deciding which lands should be made available for municipal selection and which land should remain in state ownership. The criteria are based upon the general concept found in similar legislation, for example Alaska's Coastal Zone Management Act, which defines matters of local concern versus matters of greater than local concern. The adoption of these criteria removes the tremendous discretion which now exists within the Department of Natural Resources to decide which municipal selections should be approved and which should not. As was pointed out by Representative Jim Duncan on the House floor, not a single municipality had raised one word of protest that these criteria did not protect both municipal as well as state concerns. If these two subsections are reinserted in the bill, certain other references to these subsections found in the House Finance Committee version of the bill must also be added to make sense. These deletions were made in Sections 205(e) (page 6, lines 16-20) and (f) (page 6, lines 24-25), and Section 206(c) (page 8, lines 22-24), all from CSHB 133 (Finance).

In Section 206(c), as mentioned in the last paragraph, the Administration supports the inclusion of the reference to the criteria omitted in Section 205(g). Without these criteria, the Director and the respective trust board will have no criteria with which to approve or disapprove of selections. Even if the ultimate approval decision rests completely with the trust board, without criteria they may

well be faced with many situations where they must decide, without criteria, whether a municipality's reasons for selection are superior to the Director's argument that the land should remain in state ownership to protect some state interest. Whether or not the Director has the authority to approve also, he will certainly have the responsibility to point out the state interest in retaining those lands. Inclusion of the reference to the state and municipal interest criteria would solve this problem.

Section 206(e) permits the director three years, after the approval by the appropriate trust board, to locate and propose replacement lands of approximately equal value to be conveyed to the particular trust. The purpose of this time period was to allow quick approvals of municipal selections without having to wait for an understaffed division to locate suitable replacement lands. If the municipalities would like to see the time period deleted and require that replacement lands be identified at the time of approval by the board, we certainly will not oppose this. However, I believe this may significantly lengthen the process of conveyance of trust lands to municipalities.

Mr. Hartig's testimony suggested that Section 207(b) of the House Finance Committee version should be changed to reflect an overselection of 150 percent rather than 110 percent of remaining entitlement. The purpose of this section, deleted on the House floor, was to stop the problem of overselections which presently exist under the Alaska Native Claims Settlement Act, a problem which is already impacting Kodiak more severely than any other municipality in the State. The 10 percent overselection factor originally proposed is ample, particularly in Kodiak's situation, to handle any navigability determinations. An additional 40 percent overselection, as suggested, would severely impact all state land management in that several hundred thousand overselected acres of state lands would remain in limbo, not available for conveyance to municipalities since their entitlements would be considerably lower, yet not available for state management since some of the land might ultimately go to municipalities. For precisely this reason, we are unable to do anything with respect to managing almost one million acres of state land because of such unnecessary overselection by Native corporations under ANCSA. The 110 percent figure amply protects a municipality from navigability or third party interest adjudications.

With respect to payments in lieu of land, Section 208, the Administration's position has been from the beginning that the municipal land selection legislation was to be a land settlement, not a monetary settlement. With all communities

except Anchorage, there remains ample lands from which each municipality may fulfill its entitlement. Because of Anchorage's somewhat unique situation, a revenue provision was incorporated. It is obvious to everyone, particularly Anchorage, that the original agreement was not, and was never intended to be, a full monetary reimbursement for unavailable land. Rather, it was to be a payment in lieu of land which could provide some basis for land acquisition for public purposes under Anchorage's existing land trust ordinance. Originally, this section would have provided Anchorage with approximately $12 million. As a result of House Finance Committe action, this total was lifted to approximately $20 million. The Administration's position is that this total has reached the upper limits of what the State can responsibly be expected to pay in what is a settlement of outstanding land legislation. Therefore, the Administration opposes the lifting of the $100 per capita limit found in Section 208(f). Certainly, the request by Mr. Hartig that the Kodiak Island Borough be permitted to receive revenue in lieu of land payments for approximately 26,000 acres, a value of approximately $24.6 million if the $100 per capita limit is lifted, is unreasonable at best. This concern becomes even more valid when it is recognized that there is more than ample acreage within the Kodiak Island Borough from which the Borough may fulfill its entitlement. If the $100 per capita limit is raised to $250, as requested by Anchorage, this would mean a total for Anchorage of approximately $42.8 million and for Kodiak approximately $2 million, or a total of approximately $45 million. If there is no dollar limit per capita, as requested by Mr. Hartig, the combined Anchorage and Kodiak totals would be in excess of $67 million.

With respect to Section 211, election of benefits, this section need not be deleted to protect Kodiak's interest in being able to seek a judicial solution if it feels it has not received equity through this legislation. Section 211 requires a municipality to either accept the tenets of this legislation, or to rely instead upon the existing municipal land selection statute. It merely does not permit a municipality to participate both ways. If Kodiak, or any other municipality, is satisfied with the present legislation, it will have no need to litigate. If, however, it is not satisfied with the present legislation, it will obviously indicate that it is unsatisfied and that it does not wish to obtain benefits under the present legislation by entering into litigation within 60 days of the effective date of the act. It is, therefore, perfectly free to litigate on the basis of the existing Municipal Land Selection Law.

In Section 213(11)(C), which is part of the definition of the term "vacant, unappropriated, unreserved land," Mr. Hartig has recommended the deletion of the word "grazing." As discussed later, this is a legislative decision. The

Administration would not oppose its deletion here. In addition, Mr. Hartig would add the phrase "or where classified pursuant to state and municipal management agreements" at the end of Subsection (C). As I stated to Mr. Hartig in a letter dated February 14, 1978, the State is sympathetic to the Borough's position that lands classified pursuant to state and municipal management agreements should not be deducted from the acreage base figure from which the ten percent entitlement is determined, nor otherwise made unavailable strictly because such classifications placed those lands outside the category of "vacant, unappropriated, unreserved land." Therefore, we do not oppose the inclusion of this language as suggested by Mr. Hartig.

In Section 3 of the bill before you, on page 15, Mr. Hartig recommends that all reference to "grazing" be removed from the proposed reenactment of Section 38.05.321. As mentioned earlier, this is a legislative decisicn as to whether the State wishes to retain the relatively small grazing resource base which exists in Alaska.

Finally, Section 4 of the bill before you, on page 16, line 4, directs the Department of Natural Resources to adopt regulations which would permit future municipalities to receive a general grant land entitlement. The Administration supports this section, but feels two technical changes need to be made to the existing language. First, existing statutory requirements for public notice and hearings, in addition to necessary legal review by the Department of Law and the Lieutenant Governor's Office, make it virtually impossible to adopt regulations within only a 90-day period. Therefore, we recommend that the 90-day time period found at line 5 on page 16 be extended to 180 days.

The second problem concerns the last sentence of Section 4 beginning on line 8. This directs the Department to transfer all lands to which a future municipality is entitled to such municipality within 3 years of the date upon which the municipality assumes a legal existence. This directive would place an onus upon the Department which is not found any where else in this legislation, even for existing municipalities. In many if not all cases it will not be possible to adhere to such a directive because of forces totally beyond the State's control. For instance, while vesting of an entitlement will occur as soon as a new municipality is created, if the municipality decides not make land selections the State cannot of course transfer the lands to the municipality. In addition, existing law as well as Section 207(b) of this legislation requires the municipality to bear the cost of survey before land is transferred. Immediately after creation of any new municipality, municipal revenues will unlikely be insufficient to permit survey of its entitlement within a three-year period. Alternatively, this sentence would direct that the State assume the full cost of survey in order to meet the

transfer deadline. Since any new municipalities would be treated in virutally an identical manner as existing municipalities under this bill, we see no reason why the well-thought out procedures and time limits in the existing legislation need be changed for future municipalities. Their interests will be protected through the directives which require specific time deadlines after municipalities make their selections and after they present a plat of survey. Therefore, we recommend that this sentence be deleted.

I would like to thank you for this opportunity to comment on this legislation, and if the Department of Natural Resources may be of any further assistance, please do not hesitate to ask.

Sincerely,

Michael C. T. Smith
Assistant Commissioner

29.18.201(9) should be amended to delete the portion in brackets and add the underlined portion, as follows:

Kodiak Island Borough -- [45,200] 62,400 acres;

29.18.202(e): Add wording which is underlined:

The requirements of (c) and (d) of this section shall be waived by the director as to a home rule or unified municipality which so requests and as to any other municipality which manifestly demonstrates that a commitment of acreage to residential or commercial purposes required by this section as a condition of election of an entitlement

29.18.205(d): Delete portion in brackets:

On the effective date of this Act and for five years thereafter, no classification of a parcel of general grant land in excess of 3,200 acres under AS 38.05.300 shall be effective, unless otherwise required by law, if the municipality in which the parcel is located, within 30 days after receipt of notice of the proposed classification, advises the director in writing that it does not consent to the classification and indicates the reasons for its nonconsent. [This subsection applies only to land to which the state has received patent from the federal government prior to the effective date of this Act.]

29.18.205(e): Add wording which is underlined:

Each eligible municipality and the director shall jointly consider which vacant, unappropriated, unreserved land, including federal land of interest to a municipality which may be selected by the state as general grant land, located within the boundaries of the municipality, is appropriate for municipal selection and approval by the director to fulfill any remaining municipal general grant land entitlement. <u>The joint consideration made by the parties shall include a cooperative land planning process which will, in addition to the normal objectives of such a process, seek to identify both local and state interests in tracts of vacant, unappropriated and unreserved land remaining within the municipality</u>. Adjacent tracts shall be considered simultaneously except when such simultaneous consideration would cause significant delay or expense. Once a tract has been jointly considered, it may be selected by a municipality.

29.18.205(f) should be amended to read as follows, adding the portion which is underlined:

Each selection must be approved or disapproved for patent by the director under (g) of this section within nine months of its selection by a municipality, and a patent shall be issued to the municipality within three months after approval by the director of a plat of survey.

29.18.205(g) should be amended in toto, deleting the section in brackets and adding the underlined section:

[A municipality may appeal an adverse decision by the director to the superior court under AS 44.62.560 - 44.62.570.]

In reviewing a municipal selection, the director shall consider the state's responsibilities for developing and protecting values which are of greater than local concern, including development which will have statewide impact, and critical environmental concerns. Specific state responsibilities to be considered, if such responsibilities have not been authorized or delegated by the state to a municipality, include air quality; water; minerals and

energy; timber; agriculture; fish and wildlife and their habitat; public recreation, natural, historical, and archaeological areas of greater than local concern; access to public land and water; transportation; communications; and public safety. Specific municipal responsibilities to be considered include residential, commercial and industrial needs; support of municipal services; education; local transportation; private recreation; public recreation, natural, historical and archaeological areas of local concern; and other responsibilities authorized or delegated by the state to a municipality. A selection by a municipality of land which is primarily of local concern shall be approved. When the interests of the state may be protected through the conveyance of title that is less than a fee title, the municipality, at its option, may accept the title in acre-for-acre fulfillment of its entitlement.

29.18.205(h): A new paragraph should be added, to read as follows:

Every decision of approval or disapproval of a municipal selection by the director under (f) of this section shall include a written explanation of the decision based upon the criteria of (g) of this section. Before issuing any decision to disapprove a selection, the director

shall notify the affected municipality in writing, by certified mail, of his reasons for the proposed decision. The municipality shall have 30 days from receipt of the proposed decision to respond to the director in writing enumerating the reasons for which the municipality believes the proposed decision to be in error. After receipt of the municipality's statement of reasons, or after expiration of the period in which the municipality may respond to the proposed decision, the director shall, within 30 days, affirm, modify or reverse his proposed decision in writing and give written notice of his decision to the municipality. The decision of the director constitutes final administrative action in the matter.

29.18.206(d): Delete portion in brackets:

No selection of school, university or mental health land may be approved [by the director] under this section without the concurrence of

29.18.206(e) should be amended to read as follows, deleting the portion in brackets and adding the underlined portion:

[Within three years after the approval under (d) of this section of a municipal selection of school, university or mental health land, the director, with the concurrence of the respective board, shall designate appropriate state general grant land of approximately equal value as school, university or mental health replacement land.] Within six months after a request by a municipality for selection of school, university or mental health land, the director shall identify state general grant land of approximately equal value to the land requested by the municipality, and shall propose such replacement land for the concurrence of the appropriate board under (d) of this section. If a proposal by the director is rejected by the board, the director shall meet with the board as often as necessary to determine the type and amount of equal value replacement land that would be required to obtain the board's concurrence under (d) of this section, and shall propose such replacement land for consideration by the board. The replacement land shall thereafter be managed for the purposes for which the land selected by the municipality was acquired

by the Territory and the State of Alaska. Nothing in this subsection shall preclude the appropriate board from approving a municipality's selection of school, university or mental health land prior to the identification or approval of specific replacement land.

29.18.208(c) should be amended as follows, adding the underlined portion:

A municipality eligible for payment under this section may, by October 1 of each fiscal year of eligibility, notify the director of its election to accept payment in lieu of land from the account. A municipality may accept payment for not more than 15 per cent of its entitlement under secs. 201 - 203 of this chapter, to a maximum of 10,000 acres, in each fiscal year. A municipality which chooses to accept payment in lieu of land shall be entitled to an amount based on the cumulative total number of acres of remaining entitlement which it relinquishes, or on the number of acres which were selected and to which title vested in another entity under (g) of this section. Payment shall be made according to the following schedule:

29.18.208(e) should be amended as follows, adding the underlined portion:

If the total appropriation is not sufficient to meet the amount due to all municipalities which have elected to accept payment in lieu of land under (c) of this section, the governor shall apportion the appropriation among the municipalities in proportion to the payment calculated for each municipality for that year. When a distribution of payments is made under this subsection, the remaining entitlement of a municipality to which payment is made shall be reduced in an amount equal to the number of acres for which payment was received. An apportionment may correspondingly increase the acreage for which a municipality may request payment in a succeeding year, but this increase in acreage does not authorize a municipality to request payment in lieu of land of more than 10,000 acres in any one year. <u>All such appropriations shall be in addition to other grants and entitlements authorized for a municipality.</u>

29.18.208(f) should be amended as follows, adding the underlined portion and deleting the portion in brackets:

29.18.211(a) should be amended, to add the underlined wording, as follows:

Except as to those lands to which section 208(g) of this chapter applies, a municipality which on the effective date of this Act is engaged in tigation, or which becomes engaged in litigation, regarding a claim to state land under former secs. 190 - 200 of this chapter shall elect either to obtain the benefits provided in secs. 201 - 215 of this chapter or to pursue the litigation and thereby waive any claim to entitlement under secs. 201 - 215 of this chapter. An election shall be made by filing a motion for dismissal with prejudice in the court in which the litigation is pending. If the claim involves a municipality identified in secs. 201(a) or 202(a) of this chapter, the municipality shall file its motion for dismissal within 60 days of the effective date of this Act. If the claim involves a municipality not listed in secs. 201(a) or 202(a) of this chapter, the municipality shall file its motion for dismissal within 60 days after receiving the certificate of entitlement provided by the director under sec. 203(b) of this chapter. Failure of the municipality to file a motion for dismissal during the time period provided in this subsection shall be considered a waiver of entitlement under secs. 201 - 215 of this chapter.

The total payment to a municipality under this section, except as provided in (g), may not exceed [$100] $250 per capita for each person resident in the municipality on the July 1 preceding the effective date of this Act, as determined by the Department of Community and Regional Affairs.

29.18.208(g): A new paragraph should be added, to read as follows:

vacant, unappropriated, unreserved general grant

If a municipality ~~has~~ selected ~~state~~ lands on or before December 18, 1971, to which the state has received tentative approval or patent, and such lands ~~are~~ were also selected by a Native corporation under the Alaska Native Claims Settlement Act (~~Pub~~. L. No. 92-203) and title to ~~that~~ such lands is ultimately vested in that Native corporation, the municipality shall be entitled to payment under ~~subparagraph~~ (c) of this section. Acceptance of payment pursuant to this ~~subparagraph~~ subsection shall constitute a relinquishment of any other right, title or claim to such land by the municipality.

29.18.213(11)(C): Amend by adding the underlined portion:

is unclassified or, if classified under AS 38.05.300, is classified for agricultural, grazing, commercial, industrial, private recreational, residential, utility or open-to-entry purposes, or where classified pursuant to state and municipality management agreements.

38.05.321: Delete portion in brackets:

RESTRICTION ON SALE, LEASE OR OTHER DISPOSAL OF AGRICULTURAL [AND GRAZING] LAND. (a) The sale, lease or other disposal of state land classified as agricultural [or grazing] land transfers only rights for agricultural [and grazing] purposes, and all other interests in the land remain with the state unless otherwise required by law.

(b) State land classified as agricultural [or grazing] land which has been selected by a municipality under AS 29.18.190 - 29.18.200 or 29.18.205(e) may be approved by the director for patent under AS 29.18.205(f); however, only rights in the land for agricultural [or grazing] purposes may be transferred and all other interests in the land will remain with the state. Agricultural [or grazing] land approved for patent to a municipality under

AS 29.18.205(f) shall be credited, acre for acre, toward fulfillment of that municipality's entitlement under AS 29.18.201 - 29.18.203. If the director later determines it to be in the best interests of the state to transfer some or all of the additional rights in that approved or patented agricultural [or grazing] land, those rights shall pass without consideration to the municipality in which the land is located.

(c) The provisions of this section do not apply to state land classified as agricultural [or grazing] land which has been selected by a municipality under the provisions of AS 29.18.190 - 29.18.200 if the selection is an approved selection before the date of enactment of this Act and is otherwise valid under AS 29.18.205(b).

Sec. 4 should be amended as follows, adding the underlined portion:

It is the intention of the legislature that future municipalities shall have the benefit of * Sec. 2. of this Act. Within ~~90~~ 180 days of passage of this Act, the Department of Natural Resources shall adopt regulations which shall, as closely as is practicable, apply the provisions of * Sec. 2. of this Act to future municipalities. [After adoption of

such regulations, the department shall transfer all lands to which a municipality is entitled under this section to such municipality within three years of the date upon which the municipality assumes a legal existence.] Consistent with the best interests of the state, in the selection of general grant land it is the policy of the state to make available the maximum land area from which municipalities may fulfill land entitlements under AS 29.18.201 - 29.18.215.