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SENATE AMENDMENT

MAR 15 1962

By Community & Regional Affairs Committee

To: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

*file #B 172
C+RA
Table 29*

PAGE: 33 LINE: 27

Insert "(26) 29.35.060 (franchise and permits)". Renumber following paragraphs accordingly.

* Page 33, line 29, insert:

"(28) 29.35.075 (disputes and conflicts with state certificated utilities)"

Page 77, after line 3, insert:

"(c) This section applies to home rule and general law municipalities."

Page 77, line 4-19, delete Section 29.35.070 and insert:

"Sec. 29.35.070. PUBLIC UTILITIES. (a) The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may regulate the service, and may fix, establish, and change the rates and the charges imposed for a utility service provided to the municipality or its inhabitants by a utility except to the extent

(1) the utility is subject to regulation under AS 42.05; or

(2) municipal regulation is prohibited by AS 42.05.711(k) or otherwise specifically prohibited by law.

(b) The municipality may provide for a reasonable deposit for meters and service to be given if interest is paid on the deposit.

(c) Unless the utility is owned by the municipality that is regulating it, all rates, charges and regulations established under this section shall be established as provided by an ordinance of the municipality establishing

the procedures for regulating service and procedures for establishing and changing the rates and charges of the utility. The ordinance shall provide for notice, hearing and other procedures necessary to guarantee due process. The rates and charges established shall be reasonable and shall permit a fair return on invested capital.

(d) This section applies to home rule and general law municipalities.

Page 77, after line 19, insert:

"Sec. 29.35.075. DISPUTES AND CONFLICTS WITH STATE CERTIFICATED UTILITIES. (a) A dispute as to the reasonableness of the fees for or the terms, conditions, or exceptions to a permit for a utility certificated under AS 42.05 to use municipal streets, alleys or other public ways of the municipality shall be decided under AS 42.05.251.

one (b) In case of a conflict between the provisions of AS 29.35.070 or AS 42.05 or an action taken under either as to the regulation of service rates or charges of a utility, the provisions of AS 42.05.641 apply.

* (c) This section applies to home rule and general law municipalities.

Page 195, after line 19, insert:

"*Sec. 62. AS 42.05.711 is amended by adding a new subsection to read:

(k) Except for municipally owned and operated utilities subject to (b) of this section, municipalities may not regulate utility services, including but not limited to rates, terms and conditions of services, provided by a person, utility or cooperative that is exempt from regulation under AS 42.05.711."

Renumber following sections accordingly.

SENATE AMENDMENT

By Community & Regional Affairs Committee

To: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

PAGE: 74 LINE: 9

Delete "utility services,"

Page 77, after line 17, insert:

"(d) A municipality that owns or operates a utility may extend service to adjacent areas outside its municipal boundaries. For that purpose the municipality may acquire, maintain and operate utility facilities together with necessary interests in real property outside its municipal boundaries."

Page 77, line 18, delete:

"(d)" and insert "(e)"

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 3, 1983

SUBJECT: Impact of land use regulation on development
of energy resources (Work Order No. 13-0881)

TO: Representative Barbara Lacher
Chairman, House Community and
Regional Affairs Committee

FROM: Tamara Brandt Cook
Legislative Counsel *TBC*

You have asked whether the changes in HB 172 to the provisions dealing with land use regulation discourage development of energy resources as compared to existing laws that authorize land use regulation by municipalities.

Under AS 29.33.090, a municipality is required to regulate the use of land in accordance with a comprehensive plan through zoning by districts. The zoning regulations must be uniform for each type of building or area within a particular district, but the regulations may differ between the various districts. In addition, a municipality is authorized to rezone property to a less restricted use if the owner of the property agrees to place restrictions on the use of the land beyond those restrictions imposed under the general zoning requirements. Subsection (b) of that section contains a list of the types of restrictions that may be imposed through zoning. While paragraphs (2) - (6) deal with very specific restrictions relating to buildings, paragraph (1) grants broad authority to restrict "land use". It should be noted that the list is by way of example of various zoning restrictions and does not limit the types of restrictions that a municipality may impose through zoning. However, under this section a municipality is authorized to regulate land use only through zoning and may not use other land use techniques.

In contrast to existing law, under sec. 29.40.040 of HB 172, a municipality may implement the comprehensive plan through zoning, land use permit requirements, or any other method of

land use regulation. To the extent that greater flexibility is authorized in the implementation of a comprehensive plan, HB 172 makes it more practical for a municipality to adopt measures that may have the effect of discouraging the development of energy resources. Nevertheless, under both HB 172 and under existing law a municipality has the general authority to regulate land use regardless of whether this regulation places burdens on the development of energy resources and thereby discourages that development. In addition, the change in HB 172 that allows municipalities to use other techniques in addition to zoning impacts only general law municipalities, since under existing law home rule municipalities are not limited to the use of zoning in regulating land use.

In considering whether the changes in HB 172 may discourage development of energy resources it is necessary to determine whether the power to regulate land use has been significantly expanded under this bill with respect to each class of municipality. Under secs. 29.10.200(32), 29.35.180(b), 29.35.250(c), and 29.35.260(c) of HB 172, a home rule borough and home rule city in the organized borough or in the third class borough must provide for land use regulation, but a home rule municipality is not bound by the general provisions dealing with land use regulation set out in Title 29. Under existing law, although some provisions appear contradictory, most home rule municipalities are not required to provide land use regulation, nor are they restricted from providing land use regulation. A home rule municipality that does regulate land is not required to comply with provisions contained in Title 29 dealing with land use regulation except for provisions dealing with zoning and platting of state land (AS 29.13.100(37) and (39)). The general requirement that boroughs provide for planning, platting and zoning contained in AS 29.33.070 is not a home rule limitation. Under AS 29.43.040 home rule cities in third class boroughs and outside boroughs are required to provide for planning, platting and zoning ". . . as provided for boroughs". This is a home rule limitation under AS 29.13.100(12). Since, under AS 29.43.010, powers incorporated by reference to laws governing boroughs apply to home rule cities outside boroughs only if applicable to home rule boroughs and home rule boroughs are not required to provide for planning, platting and zoning, the net result is that only home rule cities in third class boroughs are required to provide land use regulation.

In summary, under HB 172, home rule boroughs and home rule cities in the third class borough or in the unorganized borough must provide land use regulation, but need not comply with provisions dealing with land use regulation contained in Title 29. Under existing law, only home rule cities in the third class borough are required to provide land use regulation, but home rule boroughs and home rule cities in the unorganized borough are not prohibited from providing land use regulation. No home rule municipality must comply with provisions contained in Title 29 dealing with land use regulation, with the minor exception of the provisions dealing with state land. The changes in HB 172 do not appear to confer broader authority upon home rule municipalities than they now have in the area of land use regulation, and consequently should not present any special discouragement to the development of energy resources in home rule municipalities.

HB 172 does not appear to expand the authority of the various classes of general law municipalities to provide land use regulation. As in existing law, these must comply with specific provisions regarding land use regulation contained in Title 29. Under AS 29.33.070, first and second class boroughs must provide for planning, platting and zoning. Under secs. 29.35.180(a) and 29.40.010 of HB 172 first and second class boroughs must provide for land use regulation. AS 29.41.010(b) allows third class boroughs to exercise the power of planning, platting and zoning in service areas. Secs. 29.35.220 and 29.35.300(b) of HB 172 provide for exercise of the power of land use regulation by third class boroughs in service areas. AS 29.43.040 authorizes first class cities and second class cities in the unorganized borough or in the third class borough to provide for planning, platting and zoning. Secs. 29.35.250 and 29.35.260 of HB 172 grant the same authority to regulate land use to these cities. HB 172 does not grant the power to regulate land use to any general law municipality that does not have that power under existing law, so, in that respect, does not present additional impediments to development of energy resources.

TBC:ljb
9/039

Sec. 29.40.210. ACTIVITIES AUTHORIZED BY STATE OR FEDERAL AGENCIES. (a) Ordinances, regulations, permit decisions, coastal management or other land use plans adopted or promulgated under AS 29.35.180, AS 29.40 or AS 46.40 may not preclude or otherwise impede a hydrocarbon, mineral or geothermal exploration, development or production activity or project conducted pursuant to a lease, license, permit or other authorization issued by a state or federal regulatory agency or department having jurisdiction over the activity or project.

(b) The provisions of this section apply to home rule and general home rule and general law municipalities.

= Voted down -



CITY OF BETHEL

P.O. Box 388 • Bethel, Alaska 99559

543-2297—Area Code 907

check 4/15/76

MAR 28 1983

March 10, 1983

Rep. Barbara Lacher
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Representative Lacher:

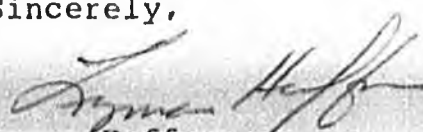
As presented in the enclosed Resolution #398, the City of Bethel has gone on record fully supporting the adoption of legislation revising and reorganizing Title 29 of the Alaska Statutes.

A great deal of work has gone into this most important piece of legislation; but more importantly, the communities of Alaska need Title 29 revised. Not only does this piece of legislation make the municipal code more understandable, but it also grants to local governments greater flexibility in handling local problems. Bethel's difficulty in moving Home Rule status demonstrates the need for such flexibility in the municipal code statute. At the present time Bethel is a second class city. The community has considered the option of becoming a first class city and assuming the administration of the Bethel school system. However, Bethel is reluctant to do so because first class status is more restrictive than Home Rule. But Bethel is precluded from going directly to the more favorable Home Rule status under the present Title 29 provisions. The flexibility given to local governments under the proposed Title 29 revisions would save Bethel the unneeded expense and time delay now required by Title 29 to achieve its goal of Home Rule.

The City of Bethel requests your full support for the Title 29 revision now before the Legislature in the form of SB 1.

Thank you.

Sincerely,


Lyman Hoffman
City Manager

LH:skj

RESOLUTION #393

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BETHEL, ALASKA, FULLY SUPPORTING THE ADOPTION OF LEGISLATION REVISING AND REORGANIZING THE MUNICIPAL CODE AS PRESENT IN THE FORM OF SENATE BILL NO. 1.

WHEREAS, the existing Alaska Statute, Title 29, Municipal Government, has been amended numerous times; and

WHEREAS, the revision of the Municipal Government Statute was mandated in 1980 by SCR66 "Directing the Alaska Legislative Council to revise AS 29 (Municipal Government)"; and

WHEREAS, a thirteen (13) member Policy Advisory Group was appointed from the Legislature and various levels of local government to draft a revision of AS 29; and


WHEREAS, the present Senate Bill No. 1 revision represents a simplification of the title's organization and provides for maximum flexibility in the structure and functioning of local government; and

WHEREAS, several drafts and much work at numerous meetings have resulted in this revision; and

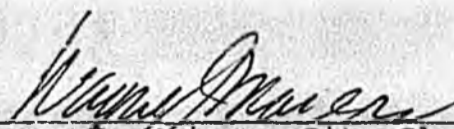
WHEREAS, communities across the State of Alaska are awaiting the adoption of this most important piece of legislation,

NOW THEREFORE BE IT RESOLVED that the City Council of Bethel, Alaska, fully supports the adoption of legislation revising and reorganizing the Municipal Code as present in the form of Senate Bill No. 1.

PASSED AND APPROVED THIS 28th DAY OF FEBRUARY, 1983.


John Guinn, Mayor

ATTEST:


Wayne J. Maiers, City Clerk

Check #B172 ✓

check w/ Ky Campbell
Burgess

check w/ John Galinelli
Navy's office



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

February 8, 1983

Senate Community and
Regional Affairs Committee
Juneau, Alaska

File: Legislature - 1983 - Senate Bill 1

Gentlemen:

Please consider the following recommendations in your deliberations on Senate Bill 1.

On page 42, line 22, insert the phrase "charter or" immediately before the word "ordinance." In at least one community, and possibly others, this matter is dealt with by a charter provision rather than by ordinance.

On page 56, beginning at line 25, I suggest that lines 25 through 29 be deleted along with the reference to this section under the home rule laundry list at line 17 on page 23. Alaska Statute 36.25.025 applies to all municipalities whether home rule or general law. If a home rule municipality wishes to exempt its contractors from those provisions it must do so in accordance with the procedures set out in AS 36.25.025. Those procedures clearly specify the use of an ordinance to establish the exemption.

Page 76, line 17. Although this is the language used in the present law, I think it is inartful. Municipalities do not exercise the right of eminent domain merely to determine fair market value. Eminent domain is used to acquire property. The determination of fair market value is merely one of the incidences of acquiring property through the use of eminent domain. I suggest the phrase "determine fair market value" which starts in line 16 be deleted and replaced with the phrase "acquire the certificate, equipment and facilities of the carrier, or that portion of the certificate that would be affected".

Page 78, beginning at line 25 and extending through line 8 on page 80. I think this entire section is unneeded. The authority for a municipality to enter into a joint agreement for the exercise of one of its powers or functions with other municipalities, the state and the federal government is found in Section 13 of Article 10 of the Alaska Constitution. The subject section in the Bill just provides unnecessary details. It is my recollection that this section was included in the revision because it was adopted either while the Title 29 Revision Committee was revising Title 29 or shortly after the committee produced its revision. It was incorporated in the revision without substantive review. We do not have provisions in the code detailing the procedures for entering into joint

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Consider in
Committee*

agreements with the Forest Service for fire protection of rural properties of mutual concern, or for joint state, federal, and local drug enforcement operations or for a host of other municipal functions which are exercised jointly or in cooperation with state or federal agencies or other municipalities. I strongly suggest that this section be eliminated as it is not only superfluous, but its existence may lead courts to two unfortunate conclusions; first, that the only way municipalities may engage in a cooperative or joint emergency service communication center is as provided in the subject section; and second that inasmuch as the legislature went to great pains to detail the procedures and structures for joint operation of emergency communication centers, other similar joint operations must have specific and detailed legislative authorization. It was for these types of reasons that the technical committee for the Title 29 revision recommended striking or generalizing such detailed procedures found in the present Title 29. If there is some feeling that striking this section would jeopardize the authority of municipalities to enter into such arrangements, I suggest the section be struck and replaced with a new section under the general powers portion of the Bill which would authorize a municipality to enter into an agreement or association, including membership in a corporation, with any other municipality, the state, or federal agencies, for the purpose of exercising any power or function of the municipality. 29,35,010(13)

Page 96, beginning at line 5. Subsection (c) of this section makes subsections (a) and (b) applicable to all home rule municipalities. Actually, there appears to be little need to have this apply to any home rule municipality; however, because subsection (a) deals with the different disposition of a vacated public square depending on whether the square is within a city or outside a city but within the borough, it may be appropriate to make subsection (a) applicable only to home rule boroughs and general law municipalities. In addition, the last sentence of subsection (a) which begins in line 17 could lead to some very awkward situations. If, in the original plat, a lot is dedicated as a holding area for storm waters, or as a park or for some other non-street use and is later vacated because the lot is no longer needed for that purpose it may be very difficult to determine who is the "rightful" owner; and if this "rightful" owner is someone other than the abutting property owners, it may be impossible to locate the owner. I suggest deletion of the sentence which begins on line 17, and in line 14, just before the word "public" the insertion of the phrase "lot or".

Page 105, beginning at line 7. I don't think that the definition of "developed" clarifies anything. For example, when a native corporation subdivides some of its property and puts in roads and

Must
7 ok in amendment

Senate Community and
Regional Affairs Committee
February 8, 1983
Page Three

utilities, that would seem to be "developed" under the common use of that word; however, this definition casts serious doubts as to whether such land would be developed for tax purposes. Lines 19 and 20 establish a situation which is contrary to the subdivision laws and will create problems if there is a tax foreclosure on non-exempt land. Unless I read this part of the section incorrectly, its intent is to limit the loss of the exemption to only that portion of the parcel which is developed. That is, if the corporation owns a U.S. Survey consisting of 25 acres and it develops three acres of that parcel with an industrial park, only the three acres would be taxable. The problem this approach creates is that if the municipality forecloses on the property it must foreclose on the parcel of record; that is, the 25 acre parcel and not some lesser parcel. If it were to foreclose on a parcel other than a parcel of record, the foreclosure proceeding would have the effect of subdividing the property without going through the platting procedure. Therefore, I suggest that the language relating to the loss of the exemption to the smallest practicable tract be deleted. The corporation may protect its remaining property by subdividing the parcel into two lots; one which will be developed and will lose its exemption, and one which will not be developed. This will protect the undeveloped property.

IN ok
Amendment
policy

Page 106, beginning at line 1. I suggest you consider deleting this section (n) as municipalities are already going to have a difficult enough time determining when an exempt property is "developed." To foist on it the burden of also determining if the property has subsequently become "undeveloped" is merely adding more situations for conflict between the municipality and certain of its property owners. Once property becomes taxable because it is put to productive use, is there any real reason it should not remain taxable even though the productive use may cease?

miss

Page 107, lines 24 through 28. I believe this section should be rewritten to eliminate the now superfluous reference to excluding personal property from taxation as this is now included as a specific power for all municipalities in line 22 above. I also believe the reference to extending the redemption period should be deleted as it has nothing to do with exemptions. It also appears that this language contemplates some sort of system of partial redemption of property. If you believe this is an appropriate option for municipalities, I suggest that it should be placed in the section of this chapter which deals with foreclosure and redemption.

ok
in part

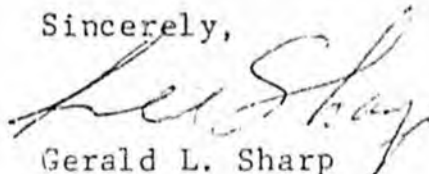
Page 109, beginning at line 19. You may want to consider whether to leave greenhouses under this section. Exempting greenhouses does not fit at all with the policy or purpose of the special

Senate Community and
Regional Affairs Committee
February 8, 1983
Page Four

*in
packet.*

procedure used to determine the value of farm or agricultural land for tax purposes. That purpose is to assist the owner of farm or agricultural land in resisting the pressures of urban growth so that he or she can afford to continue farming rather than being forced to subdivide farm land because of inflated land values. Note that only the farm land receives the special treatment, not improvements to the land such as barns, sheds, irrigation systems, etc. However, with greenhouses, the greenhouse, that is the improvement, also receives the special valuation. The effect of the addition of greenhouses to the existing farm land section results in special tax treatment for commercial greenhouses which raise dieffenbachia and cactus to be sold for use in hotel and office lobbies and to adorn file cabinets and kitchen windows. It has been my understanding that the special tax treatment for farm land was to help the industry which provides us with food to keep the price of this basic need to a minimum. Extending such special treatment to greenhouses which exist for the purpose of raising ornamental plants does not seem to fall within this lofty purpose. I believe the committee should consider incorporating the existing Title 29 language in this section by deleting the changes that were made to incorporate greenhouses.

Sincerely,



Gerald L. Sharp
City-Borough Attorney

GLS:jr

THIRTEENTH ALASKA LEGISLATURE

FIRST SESSION

Copy & put
in packets
RECEIVED 4/11/85

HB172 Suggested Amendments - Cape Fox Corporation

Line 15, Page 105

- ① (m) (1) ... gainful and [or] productive present use...

Line 18-19, Page 105

- ② (m) (1) ... process even though income may be derived from related incidental timber harvesting, utility usage, or similar activities.

Line 3, Page 106 - Add New Subsection:

- ③ (m) (4) "Gainful" means a condition resulting in net taxable income or when revenue derived from an activity taking place over the tax year of the property owner exceeds the expenses and deductions related to the activity.



Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-4801

BOROUGH ATTORNEY'S OFFICE

April 6, 1983

The Honorable Barbara Lacher
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Barbara:

Subject: HB 172 "DEVELOPED" DEFINITION

The present version of HB 172 provides for a tax exemption as required by 43 U.S.C. 16.20(d) for certain Native lands. This exemption provides a definition of "developed" for implementing the federal law. I recommend that this matter be treated in a separate bill rather than in HB 172 or SB 1, the parallel bills intended as housekeeping measures to revamp Title 29.

During the last legislative session certain amendments were made to the Title 29 bill on the House floor which caused a great deal of controversy. In re-introducing the Title 29 in the present legislature, all of these amendments were removed except for the provisions for implementing the tax exemptions under 43 U.S.C. 16.20(d). This amendment was incorporated in AS 29.45.030 of the bill.

Pursuant to federal law, certain Native lands are not taxable until "developed". The intent of the proposed definition in AS 29.45.030 is to clarify what improvements of land will constitute "development" for tax exemption status.

I believe that the intent of this section is to assure that lands will not be taxed simply because an access road is constructed to the property or improvements are placed on the property in anticipation of future development. However, the language is sufficiently ambiguous to permit the interpretation that even a regular, residential or commercial subdivision development would not be taxable until the lots were sold. Once land is subdivided, roads are constructed and other improvements are put in place, the available lots become the sale inventory of the real estate developer. An exemption from taxation of these lots would give the exempted developer an unfair advantage over other developers with which it was in competition.

Because this provision is not in existing Title 29 and because there is potential controversy involved, I recommend that

File Bill
W. Bill

it not be included in HB 172, a housekeeping bill. As a separate bill, I believe that the Borough would support a definition between a taxable subdivision development and tax exempt lands which have been surveyed and have constructed roads.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steven H. Morrisett".

Steven H. Morrisett
Borough Attorney

er

cc: Steve VanSant, Borough Assessor

HB 172



KENAI PENINSULA BOROUGH

BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

STAN THOMPSON
MAYOR

February 24, 1983

TO: Stan Thompson, Mayor

FROM: Don Thomas, Assessor

SUBJECT: Native Lands, Title 29 Revisions - sec M #1 *lines 28 & 29*
100-100-101

By the definition included in the work draft of Title 29 the Kenai Peninsula Borough would lose approximately 13.9 Million in assessed valuation. This would equal about \$41,727 based on a 3 mill average.

This would also put the Native lands in a better position to develop and compete in the open market, if they wished. They could do all the preliminary work, such as roads, utilities, survey, and hold the property for the highest return, and still not pay taxes. *- this would only apply to native lands - would potentially be unfair to other land owners*
We currently have 13.9 million in assessed value that the different regions have been paying taxes on. We have had them on the tax rolls for 4 or 5 years and they paid their taxes without paying under protest.

available to the Borough

Cook Inlet	7,281,205
Ninilchik	924,950
Seldovia Native	2,882,300
Slamatoff	589,500
English Bay	2,708,800
Port Graham	1,068,000
<hr/>	
Total	15,454,755

Also when 20 years are up & Native Lands would be ~~back~~ ^{be} on the tax rolls - then they would be ~~front~~ ^{front} at a tremendous loss to the Borough - until sold

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 1

Page 35, line 4:
After "request" insert "by a member of the governing body"

Page 35, line 5:
Delete "and"

Page 35, line 6:
After "request" insert "by a member of the governing body"

Page 35, line 8:
Delete "." insert ";

Page 35, after line 8:
Insert "(4) a municipal employee or official, other than a member of the governing body, may not participate in any official action in which the employee or official has a substantial financial interest.

(b) If a municipality fails to adopt a conflict of interest ordinance within 180 days after July 1, 1983, the conflict of interest provision of this section is automatically applicable to and binding upon that municipality."

Page 35, line 9:
Delete "(b)" and insert "(c)"

Page 163, line 24:
Delete "allocable" insert "allocatable"

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 2

The following changes are proposed by Ginny Chitwood, Alaska Municipal League.

Page 68, lines 5-7:
Delete section 29.26.250.

Page 68, line 15:
Delete "grounds of", insert "reasons for".

Page 68, line 24:
Delete "grounds" insert "reasons".

Page 69, lines 20,24:
Delete "25", insert "35".

Page 71, line 18:
Delete "grounds of" insert "reasons for".

Explanation: The issue of determining the sufficiency of grounds for a recall election was discussed by the committee. It appeared that a consensus was reached to eliminate the requirement for providing legal grounds to conduct a recall election and to increase signatory requirements for the petitioners.

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 3

Page 76, lines 19 and 20:

Delete "determine fair market value" insert "acquire the certificate, equipment and facilities of the carrier, or that portion of the certificate that would be affected".

Explanation: The right of eminent domain is not used to determine fair market value. The determination of fair market value is a step in the process of exercising eminent domain. As written, the statement may not meet the intent of allowing municipalities to exercise the right of eminent domain to acquire certificates or property.

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811
Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 4

Page 126, line 3:
Delete "\$100,000.00" insert "\$20,000.00".

Explanation: During Committee review of House Bill 172, there appeared to be a consensus of the committee that the minimum value of property to be foreclosed upon without notification to the owner by certified mail is too high (\$100,000.00).

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 5

Page 204, lines 7 and 8:
Recommend change to read:

Sec. 85. AS 29.45 "as enacted in Sec. 11 of this Act is effective on January 1 of the year following enactment.

Explanation: HB 172 may be enacted into law in 1983 or 1984, depending on legislative action. The amendment will avoid the possibility of a "split" tax year and will provide time for municipal planning purposes.

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 6

The attached letter of intent and proposed language for implementation was prepared during hearings of SB 1, comparison legislation to HB 172.

Present law requires first class and home rule cities in the unorganized borough to accept the responsibility for delivery of Educational services. It is perceived that the requirement to be responsible for educational services may be a deterrant to certain cities or areas to organizing or upgrading to first class or home rule status. The opposition for a city to assume the educational powers could come either from an existing REAA or the city

The proposed change to HB 172 would resolve the issue of the assumption of education powers by vote of the residents in the city and in the REAA.

Alaska State Legislature



Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs
FROM: Staff
DATE: April 25, 1983
RE: House Bill 172 amendment 7

During Committee review of HB 172 there was discussion but no apparent consensus concerning the exemption of greenhouses from assesement at full valuation for taxation purposes (Page 109, line 22).

The existing law does not give special treatment for greenhouses. The intent of providing special tax treatment for farm lands (not including barns, houses, sheds, etc.) was to assist the farmer in resisting the pressures of urban growth rather than being forced to subdivide farm land because of inflated land values. The effect of the new language is to provide a special tax treatment for greenhouses, including commercial greenhouses raising ornimental flowers.

Alaska State Legislature



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Mac Tischer, Vice-Chairman
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Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

TO: Committee on Community and Regional Affairs

FROM: Staff

DATE: April 25, 1983

RE: House Bill 172 amendment 8

Sec. 29.45.030 dealing with required tax exemptions contains new language that defines "developed" for the implementation of a required federal tax exemption (Page 105, line 10). The new definitions are supported by Alaska Native Corporations and are opposed by municipalities. Similar definitions were added as last minute floor amendments during legislative action on the municipal code revision in 1982 which were, in large part, responsible for the subsequent Governor's veto.

In that the purpose of HB 172 is to administratively revise Title 29 into a usable document and not to make substantive or controversial changes, staff recommends that all new materials pertaining to the federal tax exemption, including references to reverting to an undeveloped state, be deleted from HB 172 and that the issue be addressed in separate legislation.

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
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Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

M E M O R A N D U M

TO: Committee on Community and Regional Affairs

FROM: Staff

DATE: April 25, 1983

RE: House Bill 172 proposed amendment number 9

The attached amendment proposed by representatives of utility companies is a significant change from present law.

The net effect of the amendment is to prohibit municipalities from regulating utilities unless the type of regulation proposed or the particular utility is also subject to regulation by the Alaska Public Utilities Commission. Stated in another way, if the Alaska Public Utilities Commission does not or can not regulate a utility or a matter pertaining to a utility, then a municipality may not impose a regulation.

Present law provides municipalities the power to regulate utilities and matters pertaining to utility services to the extent the utilities are not regulated by the Alaska Public Utility Commission.

In several instances, the regulation of a condition of service by a utility company, or the regulation of a utility company is optional for the Public Utilities Commission, or optional for the utility.

In cases where utilities are not regulated by the Alaska Public Utilities Commission, municipalities generally feel they need to have the authority to exercise regulatory powers. On the other hand, utility companies believe that; if the Alaska Public Utility Commission does not regulate them, then the municipalities should not have the authority to provide regulation.

Sec. 29.40.210. ACTIVITIES AUTHORIZED BY STATE OR FEDERAL AGENCIES. (a) Ordinances, regulations, permit decisions, coastal management or other land use plans adopted or promulgated under AS 29.35.180, AS 29.40 or AS 46.40 may not preclude or otherwise impede a hydrocarbon, mineral or geothermal exploration, development or production activity or project conducted pursuant to a lease, license, permit or other authorization issued by a state or federal regulatory agency or department having jurisdiction over the activity or project.

(b) The provisions of this section apply to home rule and general home rule and general law municipalities.

PROPOSED AMENDMENT TO

HB 172

Page 33, after line 28, insert:

"(26) AS 29.35.060 (franchise and permits)"
Renumber following paragraphs accordingly.

Page 33, after line 29, insert:

"(28) AS 29.35.075 (disputes and conflicts with state
certificated utilities)"
Renumber following paragraphs accordingly.

Page 74, line 12, delete:

"utility services,"

Page 77, after line 6 add a new subsection to read:

"(c) This section applies to home rule and general
law municipalities."

Page 77, lines 7 through 22, delete present language and
replace it with the following:

"Sec. 29.35.070. PUBLIC UTILITIES. (a) The
assembly for the area outside all cities in the borough
and the council acting for the area in a city may
regulate a utility service and fix, establish, and
change the rates and charges imposed for a utility
service provided to the municipality or its inhabitants
by a utility except to the extent

(1) the utility is subject to regulation under AS
42.05; or

(2) municipal regulation is prohibited by AS
42.05.711(k) or other law.

(b) A municipality may provide for a reasonable
deposit for meters and service to be given if interest
is paid on the deposit.

(c) A municipality that owns or operates a utility
may extend service to adjacent areas outside its
municipal boundaries. For that purpose the
municipality may acquire, maintain, and operate utility
facilities together with necessary interests in real
property outside its municipal boundaries.

(d) Unless a utility is owned by the municipality
that is regulating it, all rates, charges, and
regulations shall be established by the municipality in
accordance with an ordinance that provides procedures
for regulating service and establishing and changing

rates and charges. The ordinance shall provide for procedures necessary to guarantee due process, including notice and hearing requirements. Rates and charges established under this section shall be reasonable and permit a fair return on invested capital.

(e) A dispute involving a utility certificated under AS 42.05 as to the reasonableness of the fees for or the terms, conditions, or exceptions to a permit to use municipal streets shall be decided under AS 42.05.251.

(f) In case of a conflict between the provisions of this section and AS 42.05 or concerning an action taken under this section or AS 42.05 involving the regulation of service or the rates or charges of a utility certificated under AS 42.05, the provisions of AS 42.05.641 apply.

(g) This section applies to home rule and general law municipalities."

Page 195, after line 22, add a new section to read:

"* Sec. 62. AS 42.05.711 is amended by adding a new subsection to read:

(k) A public utility that is exempt or partially exempt under (d) through (j) of this section from the provisions of AS 42.05.010 - 42.05.721 may not be regulated by a municipality."



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT - 586-5242

May 20, 1983

Bob Harris
House Community & Regional
Affairs Committee
Pouch V
Juneau, Alaska 99811

FILE: HB 172

SUBJECT: Substitute Utility Language
for Title 29 Revision

Dear Bob:

If the House Community and Regional Affairs Committee would like to consider alternative language to that which has been proposed for the utilities section of the Title 29 revision, may I suggest the following. This language, I believe, accommodates the interests of the municipalities and of the utilities. It would exempt from municipal regulation those utilities, including co-ops, which have elected to exempt themselves from APUC regulation by a vote of the subscribers or members. It would also exempt from municipal regulation those small electric, telephone and garbage utilities which are presently exempt from APUC regulation but which may come under APUC regulation if 25% of the subscribers petition the commission for regulation. In addition, it would exempt from municipal regulation those utilities which the APUC itself exempts upon a finding of no legitimate public interest in regulation if the commission also finds that the utility should also be exempt from municipal regulation. If cable TV is given an exemption from APUC regulation, and the legislature believes that it should also be exempt from municipal regulation, a simple amendment to the following language making reference to the statute exempting cable TV would extend the exemption to municipal regulation of cable TV also. The substitute language would be as follows:

AS 29.35.070 PUBLIC UTILITIES. (a) The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may regulate the service and may fix, establish and change the rates and charges imposed for a utility service provided to the municipality or its inhabitants by a utility except as provided in (b).

(b) A municipality may not regulate a utility

(1) to the extent it is subject to regulation under AS 42.05; or

Re: HB 172 Substitute Language
May 20, 1983
Page Two

- (2) exempt from Alaska Public Utility Commission regulation under AS 42.05.711(d) if the commission finds that no legitimate public interest will be served by regulation by the commission or a municipality; or
 - (3) exempt from Alaska Public Utility Commission regulation under AS 42.05.711(e), (f), (g), (h) or (i); or
 - (4) specifically exempted by law from municipal regulation.
- (c) The municipality may provide for a reasonable deposit for meters and service to be given if interest is paid on the deposit.
- (d) Unless the utility is owned by the regulating municipality, all rates, charges and regulations established under this section shall be established as provided by an ordinance of the municipality which sets forth the procedures for regulating service and establishing and changing the rates and charges of the utility. The ordinance shall provide for notice, hearing and other procedures necessary to guarantee the utility due process. The rates and charges established shall be reasonable and shall permit a fair return on invested capital.
- (e) This section applies to home rule and general law municipalities.

Sincerely,



Gerald L. Sharp
City/Borough Attorney

GLS:jr

1984 DRAFT POLICY STATEMENT

Following is the 1984 draft policy statement prepared by the Alaska Municipal League Legislative Committee and Board of Directors at their summer meetings. Please review it in preparation for the policy section meetings that will be held on Wednesday afternoon and all day Thursday at the Annual Local Government Conference to be held in Juneau, November 2-5, 1983. Changes, additions, and deletions will be made at that time, to be voted on by all the delegates at the business meeting on Saturday, November 5.

PART I
TAXATION AND FINANCE

A. LOCAL TAX RELIEF

The League supports state-funded relief for local taxpayers where such relief does not reduce the tax base or the tax-levying authority of the municipality and does not adversely affect the marketability of municipal bonds.

B. STATE ASSISTANCE IN FINANCING LOCAL GOVERNMENT

1. Funding Legislation Passed in Timely Manner: In order to assist local governments in financial planning, the League urges the Governor and the Legislature to pass the necessary funding legislation for state revenue sharing and local school funding in sufficient time for municipalities to incorporate the additional revenues in the annual budgets. The League also urges the Governor and the Legislature to pass the necessary funding legislation for on-going, state-funded grant and contract programs to local governments in sufficient time to maintain an orderly continuation of operations, but in no case later than June 1 of each year. The League further advocates that if such funding legislation is not approved by that date, that the Legislature authorize funding and disbursement of the on-going programs for the first quarter of the year.

2. Administration of Grants & Entitlements: The League supports legislation eliminating delay, administrative regulations, and complexity associated with administration of municipal entitlements and grants programs by state departments and agencies. Administration of grants and entitlements should, when possible, be consolidated in a single state department. The League further supports elimination of administration fees deducted by state departments administering the grants.

3. Pass-Through Funds and Grants: The League encourages the Legislature to adopt policies for pass-through funds to non-profit corporations that do not cause any present or future liabilities to the municipality.

4. Population Determination and Impact: The League supports following federal census practices for determination of population based on residency and encourages the Legislature and Governor to recognize the need for a comprehensive policy to alleviate the social and economic impact of major development on municipalities by state funding from funds appropriated separately from revenue sharing and municipal assistance funding.

C. MUNICIPAL ASSISTANCE/REVENUE SHARING PROGRAMS

1. Consolidation of Municipal Assistance and State Revenue Sharing Programs: The League endorses the consolidation of the current Municipal Assistance and State Revenue Sharing Programs together with the funding of the consolidated program at a level of at least 8% of the prior year's state operating budget so that municipalities can continue to provide important, needed services while holding down taxes.

2. State Revenue Sharing: (a) If the Legislature does not consolidate the current State Revenue Sharing and Municipal Assistance programs, the League supports annual increases in the State Revenue Sharing Program. The annual appropriation by the Legislature to the State Revenue Sharing Program should include an increase of the FY 84 legislative appropriation based on such criteria as state population, inflation, cost of local government services, and other timely considerations.

(b) In those cases where legislation is approved increasing the state revenue sharing entitlement for specific recipients or for a specific purpose, the League advocates that the total funding for state revenue sharing be increased accordingly in order to preclude the dilution of funding to other recipients.

(c) The League supports an increase in the state revenue sharing minimum allocation to \$100,000 for each city and \$50,000 for each eligible unincorporated community.

(d) The League supports continued full state funding for road maintenance at levels determined by the First Session of the 11th State Legislature and adjusted annually to reflect increased cost of maintenance.

3. Municipal Assistance: (a) If the Legislature does not consolidate the current State Revenue Sharing and Municipal Assistance Programs, the League supports the funding of the FY 85 entitlement at the statutory level of at least 30% of the FY 84 corporate income tax proceeds.

(b) The League further endorses a change to the existing Municipal Assistance Program that would provide for the disbursement of municipal assistance funds to all municipalities on February 1 of each year.

4. FY 84 Supplemental Appropriation: The League supports the supplemental appropriation of \$10.5 million FY 84 Municipal Assistance revenues to fully fund the entitlement at the level authorized by state statutes. The League further encourages the Legislature to appropriate and the Governor to approve this supplemental appropriation by April 15, 1984 so that local governments can use the additional funding in setting their 1984 mill levies.

D. OTHER STATE ASSISTANCE PROGRAMS

1. Permanent Endowment For Local Government: The League encourages legislation to place on the 1984 ballot a constitutional amendment to establish a permanent endowment for local governments. The purpose of the endowment would be to establish a predictable source of income to fund the programs of state assistance to municipalities. Criteria for developing any permanent endowment and allocation of income approach should include equity, predictability, and maximum local control.

2. State-Collected, Locally Shared Taxes: Municipalities in Alaska presently derive significant revenues from state-collected, locally shared taxes to help meet their basic operating expenses. The League, therefore, opposes reduction of such revenues through elimination of such taxes unless other equal sources of revenue are made available to local governments, or appropriations to compensate for lost revenues are made by the state.

3. Funding of Local Capital Projects: The League supports the establishment by statute of a "block grant" approach to the state funding of local capital projects in order to allow the decisions regarding local capital project priorities to be made at the local level.

E. LOCAL TAXES

1. State-Mandated Exemptions: The League opposes the imposition of state-mandated exemption of certain classes of property, individuals, organizations, or commodities from the application of taxes unless adequate compensation is made by the state to reimburse local governments for revenues lost due to these exemptions.

2. Payments-in-Lieu: The League endorses the position whereby the state would pay to the local governments a payment-in-lieu of ad valorem taxes for the state-owned property as well as payments for its share of the cost of improvements and services which specially benefit such property.

3. Right To Tax: The League opposes any further effort on the part of the state to levy a property tax which would infringe upon the rights of local governments to levy the same rate of tax as levied on other property within the taxing jurisdiction.

4. Personal Property: The League supports legislation which would provide for the optional exemption or a partial exemption of personal property.

5. Interest Rate Limit: The League supports legislation to remove the limits established in Title 29, the Municipal Code on the penalty and interest rate for delinquent property and sales tax payments and allow municipalities to set their own rates.

6. Waiver of Tax Collection: The League endorses legislation to permit the waiver of collection of taxes when collection costs exceed taxes due.

F. FORMATION OF NEW MUNICIPALITIES

The League supports legislation to provide adequate funds to assist in the study of the feasibility of forming new municipalities and in the formation of newly organized municipalities.

G. PUBLIC EMPLOYEES RETIREMENT

The League urges that in any legislation passed which increases benefits under the Public Employees Retirement System and Teachers Retirement System, the increased cost be borne by contributions from the employees. The League urges the Legislature to recognize the effect on participating municipal employers if any amendments are made to PERS and TRS.

.. LOCAL HOSPITAL USE

1. Utilization of Local Health Facilities: The League urges the state and federal agencies responsible for health care to utilize the local health facilities and to transport patients to regional centers only when necessary services are not available.

2. Increased State Funding: The League strongly supports increased state funding of hospital construction costs and of special hospital and health facility construction and operating costs.

3. Separate Funding For Hospitals: The League strongly supports funding of hospital and health facility grants outside the municipal revenue sharing program.

4. Funding for Air Ambulance Services: The League supports a program to cover the cost of transporting patients to regional health care facilities for treatment in a medical emergency.

I. FISCAL NOTES/STATE MANDATES

1. Fiscal Notes: The League supports enactment of legislation requiring preparation of notes assessing the fiscal impact on local government of any proposed bill or regulation, including pass-through grants.

2. State Mandates: The League urges passage of legislation which would require the state to reimburse municipalities for costs they incur in programs or activities mandated by the State of Alaska.

PART II EDUCATION

A. SCHOOL SUPPORT

1. Permanent Endowment: The League supports the concept of a permanent endowment for funding public school education. The income from this endowment would be made available for use for public school education expenses and/or capital programs.

2. Funding for Schools: The Constitution of Alaska is very specific in its requirement that education is the responsibility of the state. Therefore, the League urges the Legislature to modify the foundation program formula to reflect the actual cost of public school education with awareness toward the different funding needs of public education in the rural and urban areas including special education, student transportation (including kindergarten, inclement weather, and hazardous bus routes), and community schools. Full funding should not be used as a reason for the state to infringe upon the rights of local people to supplement the foundation formula or to administer local schools.

3. Funding for School Construction: The League urges the Legislature to support school capital projects at full construction level (as defined by the rules and regulations established by the Department of Education), and calls upon the Legislature and Governor to fund this amount annually. The League also supports legislation under which the state will provide funding for all approved school capital projects to the local district at the time of approval, including value of land provided by municipalities for school sites. The League also urges the Legislature to assume the total state approved school capital indebtedness incurred by municipalities.

4. Funding of State Programs: The League recommends that the Legislature fully fund all special programs required by state law.

5. Education Program on Abuse: The League recommends passage of legislation that funds educational programs in the area of substance and person abuse, including staff training, with such programs to be optional by each school district.

6. PSFP Unit Value: The League strongly urges the Legislature to resume the policy establishing the amount of the public school foundation support unit value two years in advance.

7. Bilingual Programs: The League recommends that the Legislature continue to provide funding for multi-cultural programs and for bilingual programs to assist those for whom English is not their first language.

8. Rural BIA Schools: The League urges the Legislature and the Office of the Governor to continue considering the impact of the transfer of BIA schools in rural areas of the state and taking the leadership in acquiring the funds needed to bring these facilities up to state standards.

9. Reclassification Guidelines: The League urges the Legislature to set up guidelines to assist communities considering municipal reclassification with the educational system aspects of

the transfer, to include, but not be limited to, feasibility studies, transfer of funds and control, transfer of assets, and resolution of disputes.

B. ASSEMBLY/COUNCIL-SCHOOL BOARD RELATIONSHIPS

The League supports legislation to clarify assembly/council-school board relationships and opposes legislation which would diminish assembly/council authority in education matters.

C. PUBLIC COMMUNICATIONS

1. Education by Satellite: The League encourages state and federal governments to improve satellite communication facilities for education in the state. The telecommunications system should provide a harmonious balance of instruction for student-teacher interaction.

2. Televising of Legislative Sessions: The League urges full funding of the limited televising of legislative sessions to assure that the general public has the greatest access possible, not only to floor sessions, but also to major committee hearings and teleconferencing, but not to interfere with the normal state satellite program.

PART III PUBLIC SAFETY

A. ALCOHOL/DRUGS

1. Public Intoxication: The League supports legislation which would amend the State Alcoholism Act to include public intoxication as an offense so as to provide the court with alcoholism treatment as an alternative to incarceration in order to provide a measure of control in the initial phase of rehabilitation and, additionally, to streamline the process of involuntary commitment within the State Alcoholism Act.

2. Alcohol & Substance Abuse and Domestic Violence: The League recognizes the serious individual and public safety problems that exist in all communities in Alaska as a result of alcohol and substance abuse and domestic violence. It supports the enforcement of the Domestic Violence sections of Title 9, Code of Civil Procedure (AS 09.55.600 - AS 09.55.640) in all parts of the state as a public safety priority. It further supports financial support for shelters and programs within communities to meet the needs of victims. The League further supports the establishment and utilization of mandatory rehabilitation programs for offenders in domestic violence cases as an alternative to incarceration.

3. Drug Enforcement Units: Recognizing the state-wide and interstate nature of narcotic and dangerous drug traffic, the League recommends full state support of state-wide and metropolitan drug enforcement units.

B. PUBLIC SAFETY TRAINING

1. Local Safety Training: The demand for trained competent local police and fire departments is accelerating throughout Alaska. The League urges the Legislature to assure that full-time and volunteer police, fire, and emergency medical personnel throughout the state have access to adequate facilities and program resources for training of local safety people and to provide financial support to assist the communities who participate.

2. Public Fire Education and Arson Investigation: The League urges the state to establish a comprehensive public fire education program and a comprehensive statewide arson investigation

program, through the state fire marshal's office, that will utilize professionally trained fire educators.

3. Village Public Safety: The League supports the Village Public Safety Officer Program to include all village communities in Alaska. The League further supports the continuation and expansion of the VPSO Program, which constitutes the only access to law and order available within small rural communities. The League urges the Legislature to ascertain that adequate funding continues to be made available to provide for the salaries, support, and training of these officers.

C. COURT SYSTEM

1. Use of TV Capacity: The League encourages the Court System to make maximum use of TV capacity for arraignment, grand jury, and similar court functions to release the burden on highly trained public safety personnel.

2. Judicial Presence: The League supports the funding of a judicial system that would assure the presence of a judicial officer in each community in the state when the need arises.

D. STATE ASSISTANCE PROGRAMS

1. Police Standards Council: The League supports full state funding for the Alaska Police Standards Council to provide the training necessary for municipal police officers to meet the requirements of the Police Standards Act and recommends increased funding to the Council for specialized police training programs.

2. Detention Costs: The League recommends that costs associated with prisoner care and prisoner transportation be borne by the state. When a municipal police officer makes an arrest for a violation of either a state or municipal law, the state should assume the legal and financial responsibility for the prisoner as soon as the prisoner is presented to a magistrate or a correctional facility.

3. Civil Defense: The League supports full state and federal funding of civil defense and emergency preparedness activities, particularly in regards to emergency communications, medical and food supplies.

4. Fire Fighting Equipment: The League supports full funding for basic fire fighting equipment which meets minimum Insurance Services Office (ISO) or state criteria for small Alaska cities and fire service districts.

E. CORRECTIONS FACILITIES

1. Short Term Detention: Recognizing that corrections is a state function, the League urges the state to fund the construction and operation of short-term detention facilities within local communities, or pay the cost of construction of new facilities to local communities and contract with local communities for the care of prisoners.

2. Long-Term Maximum Security: Recognizing that the determinate sentencing provisions of the State Crime Code will increase the volume of long-term state prisoners and the fact that the Federal Correctional System which currently houses this state's long-term prisoners has reduced its level of prisoner acceptance from the state, the League urges the immediate funding and construction of a long-term maximum security correctional facility within the state.

F. ANIMAL CONTROL

The League requests an amendment to Prohibited Use of Decompression Chambers sections of Title 3, Agriculture and Animals (AS 03.60.005) to state that the use of decompression chambers shall be regulated by the Department of Environmental Conservation. DEC regulations shall contain all the information necessary to ensure the humane disposal of animals.

PART IV LAND USE

A. LOCAL OPTIONS

The League feels strongly that laws pertaining to the powers of local planning and zoning must allow for the greatest flexibility at the local level.

B. LAND SELECTION

1. Easements: The League urges modification of state statutes which encourage the undesirable practice of blanketing all waterways within municipal selections with reservations for public easements and unnecessarily encumbering patents with undefined easements. The League, however, supports the policy of preserving needed specific rights-of-way and easements which provide for present and future public access.

2. Conveyance and Land Use: The League urges (A) immediate conveyance of native and state lands presently identified and jointly agreed upon for selection, and (B) the state move expeditiously to convey lands to municipalities with the least amount of encumbrance and restrictions. ~~The League encourages~~ funding of a cooperative intergovernmental land use planning commission to expedite land conveyance that considers municipal, state, and federal lands affected by the land selection process.

3. Energy Project Sites and ^{related} Rights-of-Way: The League urges the state selection of potential hydroelectric and alternative energy project sites by providing headwater rights, sites for dam sites, corridors for water and electric transmission lines, power houses, associated substations, and all attendant facilities. ~~The League further supports the preservation of rights-of-way across all land selected and classified for the purpose of providing for future construction of public access of various types.~~

4. Fish Ladder and Hatchery Sites: The League urges that potential fish ladder and fish hatchery sites be selected by the state. The sites would be those identified by the FRED division of ADF&G and aquaculture organizations, formally organized within the State of Alaska.

5. C. HISTORIC AND RECREATION SITES

1. Monuments & Historic Sites: In order to help municipalities to retain as much as possible of Alaska's colorful and historic past, the League supports continuation of a state matching grant program and funding for acquisition, maintenance, and rehabilitation of monuments, historic sites, and rights-of-way.

2. Outdoor Recreation Sites: In order to help municipalities to provide local outdoor recreation sites, the League supports the establishment of a state matching grant program to be used to assist in the cost of projects initiated by communities to acquire, develop, or extend local outdoor recreation sites and facilities.

5. Support legislation this session to allow state to return land with proven native allotments to BIA for adjudication + conveyance to rightful owners.

A = add stream enhancement

3. Recreational Opportunities: Since many of Alaska's citizens recreate outside of local government jurisdictions in which they reside, the League urges the state to exercise its responsibility to provide a broad spectrum of recreation opportunities for all Alaskans. The League strongly supports adequate funding for improved development and maintenance of accessible parks, recreation areas, and trails.

D. COASTAL MANAGEMENT

1. Local Control: The League supports continued and maximum local control in the development, management and implementation of coastal planning and policies.

2. Extra-Territorial Planning: The League supports the concept of "extra-territorial" planning by municipalities in the unorganized borough with statutory provisions to permit the Alaska Coastal Policy Council to adopt the "extra-territorial" planning as part of the Alaska Coastal Management Program, provided that the planning process allows for participation and comment by all affected private and quasi-public parties and is mutually agreed on by affected local governments, until such time as a resource district plan is adopted.

3. Agency Review of Local District Programs: All state and federal agency comments and recommendations must be made expeditiously by these agencies prior to local government conceptual approval of the district plan.

4. Coastal Leasing: The League discourages the state from pursuing oil, gas, tideland, or mineral leasing activity in a coastal area until a local coastal management plan is in effect or the deadlines for establishment of that plan have expired.

5. Financial Support: The League encourages state financial support of the Alaska Coastal Management Program.

E. SUBDIVISIONS

1. Proof of Approval: Subdivision of land is a major factor in community development, creating patterns which have long lasting effects. Although present legislation clearly recognizes the need for regulation of subdivisions, means of enforcement are inadequate. The League supports legislation which would require proof of approval by local authorities prior to the filing of an instrument, including those filed by the state, which would change the boundaries of land and prior to any judicial partition of real property.

2. Compliance with Local Ordinances: The League urges passage of legislation which requires the State of Alaska to comply with all local subdivision ordinances and regulations in connection with state land disposal programs. The state should meet the same local requirements imposed on private citizens.

F. STATE LAND DISPOSAL

1. Improvement Funding: Recognizing the pressure on both state and municipal governments to dispose of land, the League supports a cooperative effort by the state and municipalities to dispose of land in a continuous and orderly manner. The League also supports state funding to provide planning grants, funds for necessary access roads, survey costs for land scheduled for disposal, and state, borough and city subdivision roads, sewers and utilities to meet local subdivision improvement ordinances.

2. Mandated Programs: The League continues to oppose any state mandated program regarding disposal of municipal selected land relative to timing, size, or use.

3. Compliance with Municipal Planning: The League supports state legislation or administration policy which would require state land disposals to recognize local planning efforts, such as comprehensive plans and coastal management plans, including existing or planned municipally approved trails, by means of right-of-way dedication.

PART V
TRANSPORTATION, DOCKS, AND PORTS

A. TRANSPORTATION PLANNING

1. DOT/PF Reorganization: The League supports the further regionalization and localization, where appropriate, of the Department of Transportation and Public Facilities to increase local knowledge and efficiency of the department.

2. Rights-of-Way: With the difficulty in acquiring public rights-of-way throughout the state, primarily due to different land classification and ownerships, the League supports the identification of adequate corridors for construction for public access through such lands and early acquisition of adequate rights-of-way.

3. Transportation Systems: (a) The League continues to support state planning for a state transportation system comprised of marine and land highway components. This system would embody: (1) shorter ferry runs between communities with extensions to the land highway system and by the utilization of high speed ferries and end-loading vessels with more frequent ferry service with minimal on-board facilities for passengers, and (2) transportation of freight by surface, water, and air and to include specific provisions addressing the needs of individual communities for docks, dredging, and riverbank stabilization, with priority consideration to communities not connected to the state's highway or rail system.

(b) The League urges the review of all transportation resources within a community in the development and support of transit programs to meet local mobility needs.

4. Ports and Harbors: Since Alaska's economy depends heavily upon ocean and inland water shipping, fishing, and other marine travel, the League finds the existing port and harbor grant programs to be inadequately funded and urges expansion of these programs. Major port and harbor facility plans should be prepared and developed consonant with the municipalities' plans.

B. SURFACE TRANSPORTATION

1. Railroad System: The League supports efforts towards an expanded and improved railroad system to better serve all areas of Alaska, including, but not limited to, extension to additional tide-water ports, and to link the State of Alaska with Canadian rail facilities. The League supports the transfer of the Alaska Railroad, including all present and future needed rights-of-way.

2. Highways and Trails: a. The League supports implementation of a scheduled maintenance program encompassing the entire Alaska primary road system.

b. Since the Alaska economy depends on the existence of transportation routes, the League supports the continued use and expansion of the state highways and trails systems. In view of the increased use of bicycles, the League urges that new state roads and state road construction, whenever feasible, have provisions for safe use by bicyclists and pedestrians.

c. The League urges that a program of permanent trail marking be established and funded by the state.

C. AIR TRANSPORTATION

1. Construction Assistance: The League supports an equitable approach to state construction assistance for all airports and supports the concept of continued expansions and upgrading of airports, airport facilities, and air navigational aids in Alaska. The League urges the state to provide increased levels of funding to provide for these facilities.

2. Maintenance: The League supports the adequate funding and maintenance of airports, including dust control measures when appropriate.

3. Air Service: The League strongly recommends the State of Alaska maintain the level of essential air service established in the deregulation act for Alaska communities to maintain the provision that allows these communities to be served by large (jet) aircraft.

4. Land Transfer: The League supports transfer to municipalities of federal and state lands to provide for needed construction and expansion of municipal airport facilities and operations.

D. MARINE TRANSPORTATION

1. Citizens Advisory Committee: The League supports creation of a marine highway citizen's advisory committee to develop an action plan for correcting maintenance, scheduling, reservations, and personnel attitude problems and for implementing a program of major and minor in-state ferry maintenance.

2. Expansion of the Alaska Marine Highway: With the ongoing development of natural resources in Alaska, the League supports legislation which will expand the Alaska Marine Highway to Western Alaska and improve transportation to tie the Central Alaska ports in with the Aleutian Alaskan ports, and further supports the expeditious procurement of a number of appropriate ocean going vessels to accomplish the expansion of the Alaska Marine Highway System.

3. Efficiencies in Operation: The League supports efforts to provide efficiencies in the operation of the Alaska Marine Highway System providing these efficiencies are based on publicly available economic and technical data. However, the League strongly objects to any reduction in existing marine highway systems and strongly urges community input be required prior to establishing marine highway rates, schedules, and operational changes, and requests public input for studies affecting the operation of the Alaska Marine Highway System be solicited on a state-wide basis.

4. Jones Act: The League urges the state join in requesting modification of the Jones Act limits on the time permitted and number of port calls in Alaska by foreign bottom ships.

5. Shipping Corridors: The League requests that the State of Alaska support mandatory shipping corridors within Alaska waters wherever local communities request such mandatory shipping corridors.

6. Acquisition: The League supports transfer to municipalities of federal and state lands to provide for needed expansion of municipal port facilities and operations.

PART VI
UTILITIES

A. STATE REGULATION

1. Grants and Loans for Services: The League supports continued funding which would make available to the various essential utilities in the State of Alaska direct grants and/or low interest loans in order that they may meet the needs of the citizens served by the utilities.

2. APUC: The League supports the current statutory exemptions which allow municipal utilities to operate in the best interest of the consumer public without regulation by the APUC.

3. Grants and Loans for Energy Sources: The League supports the concept of direct grants and low interest loans from state funds for the construction of conventional and alternative energy sources, including fossil, hydroelectric, geothermal, wind power, and other means, and for the exploration of alternative energy sources, in order that rates paid by the Alaska consumer for these necessary services may be set at a reasonable level.

4. Acquisition: In order to eliminate service area conflicts between municipalities and utilities, the League supports legislation which would allow municipalities to acquire the facilities of a utility under specific terms which would fairly compensate the utility.

5. Utility Relocation Costs: The League opposes any effort to shift to municipalities the cost of all non-municipal utility relocation within existing rights-of-ways associated with municipal street work.

B. WATER, SEWER, AND SOLID WASTE

1. Clean Water Act: Amendments were passed by the US Congress to allow exemption to the Clean Water Act with respect to sewage disposal in marine waters with sufficient fluctuation. The League opposes any federal regulation for implementing Section 301(h) of the Clean Water Act which would unduly burden the Alaska community in receiving these exemptions.

2. Construction Grant Program: The League strongly endorses the concept of the state paying at least 75% for sewage, solid waste facilities, and water systems constructed by municipalities under the State of Alaska Construction Grant Program and that the replacement of out-moded systems be grant eligible in the same manner as the installation of new systems. The League strongly supports appropriation levels to meet statewide needs.

3. General Fund Support: The League endorses an amendment to federal law which would allow general fund support from the State of Alaska and municipalities for operation of sewage treatment facilities.

4. Rural Facilities: The League strongly urges the state, through the Department of Environmental Conservation, to assess the needs of rural communities and service districts for adequate and appropriate water treatment and waste disposal facilities, including the need for operator training and assistance with facility maintenance.

PART VII
MUNICIPAL ELECTIONS

A. PLURALITY

The League strongly supports legislation which would permit a municipality to opt out of

the 40% plurality requirement for election to office and which would clarify the 40% rule for municipalities that continue to use it.

B. POLL HOURS

Experience has proven that extension of polling hours has not increased voter turnout and has been costly. The League, therefore, opposes legislation which would expand the hours beyond the present 8:00 a.m. to 8:00 p.m.

C. REGISTRATION

1. State Voter Registration: The League opposes legislation which would eliminate or erode the state registration system and supports efforts to improve the processing and quality of the state voter registration system.

2. On-Line Computer Access: The League supports state funding to promote immediate on-line computer access for the election supervisor offices of Juneau, Fairbanks, Anchorage, and Nome.

D. ADMINISTRATION

The League strongly supports legislation which consolidates all functions pertaining to elections, conflict of interest, and campaign disclosure into one agency.

E. DISCLOSURE RESTRICTIONS

The League opposes imposition upon local governments of campaign and financial disclosure restrictions. The League urges the Legislature to review the laws and make the reporting requirements less onerous than present, in effect. The League specifically supports legislation which would exempt from campaign disclosure and/or financial disclosure elected or appointed advisory boards as defined in the Services Areas section of Title 29, The Municipal Code (AS 29.63.090).

F. VOTER QUALIFICATION

The League supports legislation that would allow a municipality, by ordinance, to require persons to be state registered voters in, and residents of, the precinct, district, or service area in which they seek to vote.

G. QUALIFICATION FOR ELECTIVE OFFICE

The League supports legislation that would include provisions in Title 29, the Municipal Code and Title 14, the Education Code for municipalities to set qualification for all elected municipal officials including school board members.

H. TITLE 29 REVISIONS

1. Signature Requirements: The League supports legislation which would clarify the Initiative and Referendum sections of Title 29, the Municipal Code (AS 29.28.070(b)) to specify that signature requirements for petitions be based upon the last regular municipal election held just preceding the date of first circulation of the petition.

2. Recall: The League supports legislation amending the Recall sections of Title 29, The Municipal Code (AS 29.28.070) to provide that the number of signatures required to initiate a petition for recall be 35% of the number of voters voting in the last regular municipal election

for that office regardless of population of the municipality, and to make recall procedures clearer, including provisions to make the grounds more specific.

PART VIII
LOCAL GOVERNMENT POWERS

A. LOCAL AUTONOMY

1. Effective Local Government: Because certain restrictions currently exist in the Alaska Statutes which impede effective independent local government, the League supports legislation which would promote more effective and independent local government in all organized boroughs and cities, and opposes any legislation which unduly restricts local government operations.

2. Lobbying: The League supports the continued exemption of municipal officials and employees from the lobbying reporting requirements under the Lobbying sections of Title 24, the Legislative Code (AS 24.45).

3. Anti-Trust Laws: The League supports legislation at both the state and federal levels placing municipalities in an equal posture with state governments with respect to federal anti-trust laws.

4. Enforcement of Municipal Ordinances: The League opposes state restriction on enforcement of municipal ordinances and supports legislation clearly establishing local autonomy in the creation of mandatory sentences and other remedies for violation of local ordinances.

5. Public Records: The League supports legislation ensuring that local governments are free to adopt, through ordinance or resolution, their own policies and procedures concerning local public records.

6. Utility Regulation: The League endorses the return to municipalities of the authority to regulate all utilities, other than co-op utilities and utilities that have opted out of the Alaska Public Utility Commission (APUC) regulation, within their jurisdiction to the extent not regulated or specifically exempted from municipal regulation under state law.

7. Interest on Retainage: The League supports repeal of the application to municipalities of the Public Construction Contract Payments section of Title 36, Public Contracts Code (AS - 36.90.001) relating to payment of interest on retainage on construction contracts. *(check)*

8. Eminent Domain: The League strongly supports legislation amending the Prerequisites to Taking of Private Property section of Title 9, Code of Civil Procedure (AS 9.55.270) to create a rebuttable presumption that the choice of the condemning authority has been made in a manner compatible with the greatest public good and least private injury.

9. Local Construction: Local governments should have autonomy to administer local construction projects. Title 36, the Public Contracts Code should be amended to permit local governments to establish their own notice, reporting, and prevailing wage requirements for local construction.

P. PUBLIC EMPLOYEE LABOR RELATIONS

1. Alaska Public Employees Labor Relations Act: The League strongly opposes any legislation which would force municipalities to be subject to the provisions of the Alaska Public Employees Labor Relations Act. The League opposes just as strongly any legislative efforts to

dictate the provisions of local public employees labor relations ordinances. The League supports legislation to allow each municipality at any time to reject or withdraw from the terms of the Alaska Public Employees Relations Act.

2. Binding Arbitration: The League opposes legislation imposing binding arbitration on local governments. Such legislation would hinder local governments' ability to determine their personnel costs and prevent local governments from having complete control of determining the local tax rate.

C. CLASSIFICATION OF MUNICIPAL GOVERNMENTS

The League urges the Legislature to address the classification of municipal governments, including the organization of the unorganized borough.

D. TRIBAL/LOCAL GOVERNMENT RELATIONS

The League supports and encourages efforts on the part of the Legislature and other concerned parties to address tribal/local government relations. → BZA

E. TITLE 29 REVISIONS

1. Fundamental Elements: The League encourages the Governor and Legislature to recognize the significance of the effort to revise Title 29, the Municipal Code and the importance of maintaining this legislation in a basic form and of insuring that the legislation contain only the fundamental elements and guidelines for a basic municipal code.

2. Other Proposals: The League requests other proposals which would constitute or policy revisions or innovations in the function of local government be considered in separate legislation which, if approved, would be incorporated into Title 29 once the revised basic code has been adopted.

* 3. THE LEAGUE SUPPORTS OF TITLE 29 REVISION TO ALSO ALLOW THE ELECTION AT LARGE MAYOR OF A 2ND CLASS CITY.

PART IX RESOURCES

A. NON-RENEWABLE

1. Oil and Gas Policy: The League supports a clear policy for gas and oil encouraging the exploration, production, and processing of state royalty oil and gas within Alaska with due consideration for local municipalities.

2. Energy Efficiency: (a) The League urges the federal government, the State of Alaska, and League members to design, construct, and use their facilities with an emphasis on energy efficiency, as a part of life cycle cost considerations.

(b) The League urges regionalized studies by the state recommending changes in building codes which would achieve maximum cost effective energy savings over the lifetime of new facilities.

3. Coal: In consideration of having a diversified, dynamic Alaska mineral industry and recognizing the current importance of petroleum products for energy production and the potential for a considerable coal export market, the League urges the state to vigorously encourage the development of Alaska's coal resources by private industry.

4. Mineral Policy: The League strongly urges the administration and legislature to establish a clear mineral policy to encourage resource development and in-state ore concentration and/or reduction.

5. Gas Liquids: The League strongly supports optimum use of gas liquids as feed stocks for in-state petrochemical development, with coal or other energy sources to be used for the processing.

6. Site Reclamation: The League encourages the state and federal agencies to vigorously enforce reasonable and best use of regulations for the reclamation of mined areas.

7. Alternate Fuels: The League strongly supports the use of alternate fuels (compressed natural gas), as a substitute to gasoline or diesel in areas where it is feasible.

B. RENEWABLE

1. Development and Processing Policy: The League requests that the executive and legislative branches of the state establish a policy strongly encouraging the development and processing of renewable resources in Alaska, and through appropriate inventory and management practices make all renewable resources available for development and processing on a sustained yield basis. The League encourages a federal/state policy requiring out-of-state and foreign processors to comply with federal and state regulations.

2. Study and Development: The League requests the executive and legislative branches of the state to accelerate the study, research, development, and marketing of Alaska's renewable resources.

3. Fisheries: (a) The League supports legislation for the development of aggressive and substantially accelerated marketing studies and market development for Alaska's seafood industry, with emphasis on a quality assurance program.

(b) The League requests the State of Alaska take a stronger stance in negotiating with respect to salmon interception treaties with foreign nations as well as negotiations with the North Pacific Fisheries Management Council with regards to salmon harvest quotas. The League urges the state to carefully evaluate, identify, and attempt to minimize the negative economic impact to communities caused as a result of these negotiations.

(c) The League urges the state to provide adequate funding for the full operation of viable FRED hatcheries and continue to support and provide sufficient loans to regional non-profit aquaculture associations for expansion of their programs.

(d) The League encourages the state to support modification of the Fisheries Management Act (FMA) so that the North Pacific Fisheries Management Council has a greater representation of Alaskan delegates.

(e) The League urges the State of Alaska to take a stronger stance in negotiating with the North Pacific Fisheries Management Council in opposition to the proposed share-quota system in the halibut fishery.

4. Agriculture: The League supports state encouragement of agriculture through farmland preservation and opening up of new agriculture lands, with adequate road access within a farm area and by encouraging the development, processing, and marketing of Alaska agriculture products.

C. HUMAN RESOURCES

1. Alaska Hire: The League supports and encourages, within the confines of the constitution and human resource limitations, any efforts on the part of the Governor and the Legislature to implement an Alaska hire policy particularly within state government.

2. Resources of Institutions of Higher Learning: The League encourages the Legislature and Administration to use both human resources and technical resources of the institutions of higher learning inside the state over institutions outside the state.

3. Training Incentives: The League supports the development of incentives that would encourage contractors and other employers to train and apprentice local workers and encourage their employment.

4. Day Care: The League supports state funding for day care at a sufficient level to insure that a high standard of day care is available to Alaska families who desire day care and pre-school services.

D. PLANNING

1. Resource Development Projects: The League supports resource development and funding policies which provide that state assisted resource development projects substantially impacting communities should be approved by the municipalities.

2. Waste Disposal: The League encourages the state to maintain high standards concerning waste disposal from processing of all resources.

3. Cooperative Planning: The League recognizes the many of the state's most valuable resource lands are already under private control through mining claims, leases, and conveyances pursuant to the Alaska Native Claims Settlement Act. Thus, in furthering its goals of both resource development and the protection of Alaska's environment, the League urges meaningful, cooperative planning between the state, municipalities, and appropriate private parties, particularly Alaska Native Corporations.

PART X ECONOMIC DEVELOPMENT

A. IMPACT

The exploration, development, and industrial utilization of renewable and non-renewable resources, both inside and outside municipal boundaries, creates a substantial and immediate impact on the need for municipal facilities and services which exceeds the financial ability of most municipalities to meet in the short period of time available to have such facilities and services operational. The League urges adoption of legislation which would provide financial assistance to municipalities which are facing such impacts. Such legislation needs to establish criteria for impact assistance with appropriate trigger mechanisms to activate such assistance.

B. INCENTIVES

1. Resources: The League supports legislation that will aid in the exploration, development, and in-state processing of Alaska's raw materials and vast mineral wealth, and urges the state to provide incentives to those industries engaging in in-state primary and secondary processing of Alaska's resources.

2. Economic Development: The League urges that legislation be enacted to allow local municipalities to adopt and implement incentives for economic development, such as economic development corporations and tax increment financing authorities.

3. Permanent Fund: The League supports maximum investment of the Permanent Fund in the state.

C. PAPERWORK REDUCTION

The League supports a reduction of state regulations requiring redundant reports for small business and local governments.

D. LOANS

1. State Funding: The League supports the continued state funding for small business loans. The League also supports the Alaska Industrial Development Authority concept where appropriate, but recognizes as well a need for smaller businesses and projects to obtain funding, and most importantly, the inclusion of working capital providing lower interest rates and more flexibility in its application process and provisions.

2. Financial Institutions: The League supports a program to educate the lending institutions so as to expedite loans to small businesses. The League encourages the administration to revamp current Alaska Industrial Development Authority policy to encourage greater service on the part of local financial institutions, where the business loan needs of smaller communities are not being met.

E. TOURISM DEVELOPMENT

The League recognizes the importance of tourism to the economy of the State of Alaska and encourages increased assistance to municipalities for tourism promotion and attraction programs, especially within the Visitor Information Center and Tourist Attraction Development Grant Programs administered by the Division of Tourism.

F. BONDED INDEBTEDNESS

The League supports the adoption of legislation which would raise the level of bonded indebtedness for the Alaska Municipal Bond Bank to \$300 million and approve a suitable level of bonded indebtedness for revenue bonds.

*File with
reverts*

There are currently three procedures in practice within the state regarding taxation of motor vehicles. When the present statute [AS 28.10.411 (d)] was written, it took into account only one of those practices, leaving the other two as problem areas.

In the case where a municipality has opted to have the state collect taxes on motor vehicles for the municipality, the senior citizen is exempt, and the municipality is reimbursed. That is the way the program was intended to work.

One of the problems occurs in a municipalities where a local property tax is levied on motor vehicles. Based on the current statute, the State reimburses those municipalities. However, Title 29 presently does not allow the municipalities to exempt Seniors, therefore the Senior pays the tax and the State "reimburses" the municipality, producing a double payment.

The second problem occurs in municipalities which do not tax motor vehicles. Under the current statute, the state reimburses those municipalities for revenues which they might have lost had they assessed and exempted the motor vehicles.

Currently, the Seniors complete an exemption form when they buy their license plates. That form is forwarded to the Department of Community and Regional Affairs, and the affected municipality is subsequently reimbursed based on the schedule located in AS 28.10.431 (b).

The following suggested language would correct the problems which exist under current law and would allow the State to continue with the current very simple and inexpensive administrative procedure.

AS 28.10.411 (d) The state shall reimburse a municipality for revenues lost to it under (c) of this section. The payment shall be an amount equal to the tax levied under AS 28.10.431 (b) for each vehicle for which a senior citizen exemption form is approved.

Alaska State Legislature

HB 172



FEB 7 1983

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

February 4, 1983

Mr. Wayne Mabry
Ombudsman
Municipality of Anchorage
Pouch 6-650
Anchorage, Alaska 99502

Dear Wayne:

Thank you for your recent letter regarding the lack of clarification in statutes and case history as it refers to recall petitions. I am aware of the recent problems this has caused in Anchorage and can appreciate the position you have been put in.

A complete revision of Title 29, Municipal Code, is indeed taking place again this year. Last year, as I am sure you are aware, a similar bill passed but later became mired in controversy and was vetoed. SB 1 is now in the Senate committee process and is the vehicle which is being used to address this question. Eventually, should it pass the Senate, it will be referred to the Community and Regional affairs committee in the House chaired by Representative Barbara Lacher.

I am forwarding your letter and backup to her at this time for investigation and consideration. This matter could be taken up as a separate issue or incorporated as part of the overall Title 29 examination. In any case, it warrants investigation and Representative Lacher's committee has proper jurisdiction over this matter. I will keep in touch with her to monitor the progress on this situation. You may wish to contact her as well at 465-4894.

I hope we can reach an acceptable solution. Please feel free to contact me at any time if I can be of assistance.

Very truly yours,

Joe L. Hayes
Speaker

JLH/jkd

Barbara- Joe has asked
that you take this into
consideration as you review
Title 29- Thader.
JLH

Municipality
of
Anchorage



POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 264-4461

FEB 3 1983

OFFICE OF THE OMBUDSMAN

FEB 3 1983

February 1, 1983

Joe L. Hayes, Legislator
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Joe:

I have recently investigated a complaint about a recall petition for a Municipal Assemblyman. My investigation found that the State Law (AS 29.28.130) on recall petitions is not clear as to the legislative intent regarding a clerk's authority and/or responsibility. The legal opinions regarding similar cases are, in my view, conflicting. In the case I reviewed, the Anchorage Municipal Clerk ruled that the "grounds" stated in the recall petition did not "constitute incompetence or failure to perform prescribed duties" and rejected it. The Municipal Clerk's decision was based on several legal opinions which stated the Clerk had the responsibility and authority to review the grounds based on the word "content" in AS 29.28.160.

My case summary disagrees with those legal opinions and states that a recall petition can only be rejected for one of the reasons stated in AS 29.28.150. I feel that no individual can rule the grounds for recall insufficient except the voters in a duly called recall election. A copy of my case summary is enclosed with four attachments covering the legal opinions. Also enclosed is a copy of the Anchorage Municipal's Clerks January 11th letter to the complainant, Tom Staudenmaier.

I understand that you are involved in revising this portion of the Alaska Statutes and ask that you review my case summary. I would appreciate your comments on this problem and would like to be informed of any proposed changes to this state law. Also, if any hearings are being planned, please let me know as I would like to testify.

February 1, 1983
Recall Petition
Page 2

If you have any questions, please don't hesitate to call.

Sincerely yours,

Wayne

Wayne D. Mabry
Ombudsman

WDM:s1

cc: Ruby Smith, Municipal Clerk
Jerry Wertzbaugher, Municipal Attorney
Steve Morrissett, Matanuska-Susitna Borough Attorney
Tom Staudenmaier, complainant

Attachments



3 JUN 83 11:30

PETITION FOR RECALL

OF GERRY O'CONNOR, ASSEMBLYMAN

SECTION (2) TWO, SEAT C

507
91
16

P.O. BOX 8-9110
ANCHORAGE, AK
694-4982
694-2322

We the undersigned registered voters of Section (2) two, Seat C, of the Municipality of Anchorage, which includes Fort Richardson, Eagle River and Chugiak, hereby petition for the recall of Assembly Member Gerry O'Connor under the Anchorage Municipal Charter, Article III, Section 3.03, Recall; Title 29, Section 29.28.140 for incompetence and failure to perform prescribed duties.

Said recall is based upon dereliction of duty of this representative of Eagle River and Chugiak. At the December 2nd, 1982 Municipal Assembly Meeting, Gerry O'Connor joined Tony Knowles, Mayor of Anchorage and voted to increase property taxes up to 50%. His other past actions and this tax increase are contrary to the best interest of the citizens of Eagle River and Chugiak.

Print first and last name	Signature	Date	Full Residence Address (No P. O. Box Numbers)
1. TEASNE BLATTOT	Teasne Blattot	12-31-82	58 2nd St #314 Eagle River AK 99577
I.A. Christopher Walters	Chris Walters	12/31/82	PO Box 1334 Chugiak
I.B. Roger R Rasmussen	Roger R Rasmussen	12/31/82	P.O. BOX 447 Eagle River 99577
II.A. Song Laining Cell	Song Laining Cell	12/31/82	133 Marlene St E.R. 99577
NR RONALD WILD	Ronald Wild	12/31/82	551 Box 3505 Chugiak AK
NR SHARON WILD	Sharon Wild	12/31/82	" " " " " "
#7. Clifford Wilson	Clifford Wilson	12/31/82	PO Box 1252 Chugiak 99567
8. RITA E WILSON	Rita E Wilson	12/31/82	Box 1252 Chugiak 99567
9. FRANK CAPPAS	Frank Cappas	12-31-82	Box 7713 Chugiak AK 99577
10. FRANK CAPPAS	Frank Cappas	12-31-82	" " " " " "
11. CLIFFORD WILSON	Clifford Wilson	1-2-83	Box 70 citation ER 99577
12. LESTER KIDDY	Lester Kiddy	1-2-83	" " " " " "
13. RA Morris	RA Morris	11/2/83	Lot 6 Blk 4 Horizon
II.A. FRANK CAPPAS	Frank Cappas	1/7/83	2011K 5 Mountain View
15. JENNIFER LEGAT	Jennifer Legat	1/7/83	28 CARIBOU
II.B. FRANK CAPPAS	Frank Cappas	1/2/83	Box 393 Eagle River AK

Date Petition Started: Dec. 29, 1982

ALASKA CONSERVATIVE POLITICAL ACTION COMMITTEE

Paid for by AKC-PAC Tom Staudenmaier, Chairman P.O. Box 11-9110 Anchorage, AK 99508

Municipality
of
Anchorage



POUCH 6-650
ANCHORAGE, ALASKA 99502-0650.
(907) 264-4311

OFFICE OF THE CLERK

January 11, 1983

Mr. Tom Staudenmaier, Chairman
AKC-PAC
P.O. Box 8-9110
Anchorage, AK 99508

RECEIVED

JAN 11 1983

OFFICE OF THE OMBUDSMAN

Dear Mr. Staudenmaier:

On January 3, 1983, you presented to the Municipal Clerk a petition for recall of Assemblyman Gerry O'Connor. In accordance with AS. Section 29.28.160, the Municipal Clerk shall, within 10 days, review the petition for content and signatures and shall certify on the petition whether it is accepted or rejected.

A review of the signatures was made and of the 509 signatures, 354 were registered voters. In reviewing the grounds, the petition was found to be insufficient because the act i.e., voting on the municipal budget, does not constitute incompetence or failure to perform prescribed duties.

It is the decision of the Municipal Clerk the petition is insufficient and it is therefore rejected and will be filed for public record.

A copy of the legal opinion from the Municipal Attorney is enclosed for your information.

If you have any questions, please contact this office.

Sincerely,

Ruby E. Smith
Ruby E. Smith
Municipal Clerk

Municipality of Anchorage

MEMORANDUM

DATE: January 20, 1983
TO: Ruby Smith, Municipal Clerk
FROM: Office of the Ombudsman
SUBJECT: CASE SUMMARY, NO. 82-3

The following case summary is provided for your information and review. If you have any questions, clarifying information, or comments regarding our determination or any other aspect of the case, please bring them to our attention so that we can incorporate them into this summary.

CASE SUMMARY

Investigator Wayne D. Mabry In Date: 1-11-83 Close Date: 1-17-83

Category: MUNICIPAL CLERK'S OFFICE

Complaint Summary: The complainant presented a petition for the recall of Assemblyman Gerry O'Conner to the Municipal Clerk's office on January 3, 1983. On January 11, 1983, the Municipal Clerk rejected the petition as being insufficient on the grounds that "voting on the Municipal budget does not constitute incompetence or failure to perform prescribed duties". The complaint is that the Clerk's office does not have the authority under state law (AS 29.28.160) to rule on the alleged grounds.

Case Description: The complainant approached this office on January 3, 1983, after delivering the petition to the Clerk's office, and wished to file a complaint that the petition was going to be rejected based on an opinion by the Municipal Attorney. The complainant felt the Clerk had no right to solicit the Municipal Attorney's opinion. On that date, I informed the complainant the Clerk did have the right to solicit the Municipal Attorney's opinion and since no action had been taken by either the Clerk or the Municipal Attorney, this office could not investigate.

Based on the complainant's contact I did discuss the matter with the Municipal Clerk and Attorney explaining that an official complaint was probably going to be filed with this office if the petition was rejected. At that time, neither the Clerk nor the Attorney had made their determination; a reply by the Clerk to the petition was required by January 11, 1983.

In anticipation of a complaint being filed with this office and a decision to look into the matter on this office's "own motion", I then contacted the Matanuska-Susitna Borough attorney's office and the State Attorney General's office in Anchorage. I spoke with Steven H. Morrissett, Matanuska-Susitna Borough Attorney, about recall petitions because his office has gone through several in the last few years. Mr. Morrissett had given his opinion on the last recall petition filed in the Borough in a memorandum dated August 13, 1981, (attachment #1) which determined that the recall petition was insufficient. I provided a copy of this memorandum to the Municipal Clerk.

On January 11, 1983, the complainant came to this office to lodge a formal complaint based on the Clerk's rejection of the recall petition he had filed. His specific

complaint was that the Municipal Clerk did not have the authority to review the grounds and determine if they constituted "incompetency or failure to perform prescribed duties". I explained to the complainant that this office would accept the complaint and open a case file; however, any recommendation from this office could not change the outcome. Furthermore, the only possible way to change the outcome of the Clerk's decision is through the court system. This was based on my assumption that once the Clerk made a decision, within the 10 day time limit allowed by state law, there is no mechanism to allow the Clerk to change that decision.

I contacted Mr. David LeBlond at the State Attorney General's office. He helped me locate two memorandums regarding recall that had been prepared by the Attorney General's office in 1977. I went to the Attorney General's office, reviewed their files and made copies of the two memorandums regarding a recall petition of a School Board member located in the upper Railbelt School District. In this case there was no municipal clerk involved to handle the recall petition, so the Commissioner of the State Department of Education was handling it. [Later in this Case Summary, I will be quoting from the memorandums by the Assistant Attorneys General, Roger W. Pegues, dated April 12, 1977 and Ronald W. Lorensen, dated June 6, 1977 (attachment #2, #3).]

I then met with the Municipal Clerk, Ruby Smith, to discuss her decision and she informed me that she had contacted numerous Municipal Clerks around the State and had requested an opinion from the Municipal Attorney, Jerry Wertzbaugher. Ms. Smith tended to agree with my analysis that the term "content" in Section 29.28.160 of the State Statutes, Examinations of Sufficiency, did not relate to determining if the grounds stated in the recall petition were sufficient. She made her decision based on legal opinions she had reviewed and discussions with other clerks around the State, giving the overwhelming opinion that state law did require her to rule on whether the grounds constituted "incompetence or failure to perform prescribed duties". Ms. Smith had contacted Mr. Rubini of the State Attorney General's office in Juneau and the discussion included the opinion by the lawyer that the petition was valid and should go on the ballot. When Ms. Smith requested this opinion in writing the response was that the State Attorney General's office would not give an opinion as the Municipality of Anchorage had an attorney for that purpose.

Basis for Determination: After my first contact with the complaint I reviewed a copy of the applicable state law regarding recall petitions. My first impression of the state law was that there was no legislative intent to have municipal clerks across the state of Alaska determine if the grounds stated in a recall petition were, in fact, "misconduct in office, incompetence, or failure to perform prescribed duties". I then discussed this concept with the Municipal Clerk and the Municipal Attorney, but neither had yet formed a specific opinion although the Municipal Clerk did tend to agree with my concerns. I then met with the Matanuska-Susitna Borough attorney and also reviewed the files of the State Attorney General's office here in Anchorage. There were several other memorandums in the State Attorney General's files regarding recall petitions, but the two attached were the only ones that related to the specific question of "content".

In reading the January 11, 1983, opinion by Jerry Wertzbaugher, Municipal Attorney, (attachment #4) to the Municipal Clerk, I find that his basic premise revolves around the word "content" located in Section 29.28.160 and that this word "content" means the Municipal Clerk can determine if the grounds stated in the recall petition are in fact grounds for recall as stated in Section 29.28.140. Mr. Wertzbaugher's memorandum goes to great lengths to prove that the term "content" could only refer to the statement of grounds.

My position regarding the term "content" as used in the state law is that it does not nor could not refer to the grounds. In the State Statutes regarding recall petitions, Section 29.28.140 states the grounds for recall. Then Section 29.28.150 entitled "Petition" states:

- (a) A petition seeking recall of one or more municipal officials is filed with the Municipal Clerk. The petition shall contain
- (1) the signatures and residence addresses of a number of voters as prescribed in §70(b) of this chapter for initiative and referendum;
 - (2) the date each voter signed the petition; and
 - (3) a statement of the grounds of the recall stated with particularity as to specific instances; B. A petition for recall must be filed with the Clerk within 60 days after the date of the earliest signature on the petition. (§2 ch 118 SL 1972)

Then comes Section 29.28.160, Examination for Sufficiency. It states "The Municipal Clerk shall review the petition for content and signatures and shall certify the petition within 10 days of the filing date whether it is accepted or rejected" In my non-legalistic mind it appears that the term "content" in Section 29.28.160 refers to the words "shall contain" in Section 29.28.150 and the only thing the Clerk can look at relating to the grounds is stated in number 3 above: that the grounds will be particular and specific. There is nothing in the law that says the Clerk can determine if the grounds, if assumed to be true, must fit the test of being "misconduct in office, incompetence or failure to perform prescribed duties". As stated in Mr. Morrisett's August 13, 1981 memorandum, I feel the charges must be definite enough to allow the public to determine the truth or falsity of those charges. Mr. Morrisett's memorandum rejecting the recall petition submitted was rejected on the basis that all five charges were too vague and would not give the voter a chance to determine if the Assemblyman should be recalled or not. I think Mr. Morrisett's memorandum tends to support my opinion because the reason for rejecting that recall petition was based on vagueness.

Also, two other recall petitions in 1980 were accepted by the Matanuska-Susitna Borough Clerk based on grounds related to how a particular Assemblyman voted on issues similar to the one in this case (copies of the two 1980 petitions are attached to Mr. Morrissett's memorandum).

It is difficult for me to imagine that the legislative intent was to have any clerk make this decision on the grounds for recall as it could relate to one or more of their bosses. If the clerk is appointed by a manager, the clerk's action could be construed as a political move by the administrative branch against the legislative branch. This would be a terrible position for a clerk to be put in; to have to say one of the members of the legislative body is guilty of "incompetence, misconduct in office or failure to perform prescribed duties" and could put a clerk's job in jeopardy.

The April 12, 1977 memorandum from the Assistant Attorney General regarding the recall of a School Board member states "The recall petition must contain a statement of grounds 'with particularity as to specific instances.'" The petition in question stated that its aim was to correct the incompetency of the School Board and cited two particular instances: "(1) the Board's approving a new position of Assistant Superintendent and (2) the Board's approving funds for a computer." The memorandum further goes on to state:

It is not the role of the officer charged with ascertaining the petition's sufficiency to judge the merit or truth of the grounds asserted (68 Am. Jur.2d Public Officers and Employees § 245) It suffices that the reasons have been stated and with sufficient particularity to inform the office holder and the electorate. The latter will determine the merit of the charges.

I feel these "grounds" are similar in nature to the ones filed by the complainant and these were acceptable enough to call for a recall election. Also, it is clear that the electorate should determine the merits of the charges, not the clerk.

The second memorandum from the Attorney General's office dated June 6, 1977, goes into even further detail regarding the allegations and what exactly can or cannot be determined by the Commissioner in this case. The first part of the memorandum speaks to the fact that the allegation's truth or untruth is irrelevant to the question of whether or not the recall petition is legally sufficient. The memo goes on to say:

The decisions of those courts are virtually unanimous in their holding that the question as to whether or not the charges contained in the

petition are true or false is irrelevant. ... the only question to be decided is whether or not the charges which have been made are sufficiently specific to allege incompetence or misfeasance if they were in fact true. ... 'recall is political in nature and it is for the people and not the courts to decide the merits of the reasons stated in the petition'.

Further, the memo goes on to say:

In those states where the power of recall is constitutionally established, the courts have viewed recall as a 'fundamental right' and have consistently said that statutes dealing with recall should be liberally interpreted and that any restrictions which are placed on the power of recall must be strictly construed. ... Consequently, neither you nor the Board may determine the propriety of the policy in this area or the sufficiency of the petitions based on potential factual inaccuracies. A good general description of the judicial approach to recall can be found in State ex rel. Citizens Against Mandatory Bussing v. Brooks, 492 P.2d 536 (Wash., 1972):

First, in determining the validity of recall charges, courts are limited to examination of the charges stated and cannot inquire into factual matters extraneous to the allegations. Second, courts must assume the truth of the charges in determining whether legally sufficient grounds for recall

have been stated. Third, just as there can be no inquiry into the truth or falsity of the charges, there can be no inquiry into the motives of those filing the charges. Fourth, recall charges are sufficiently specific if they are definite enough to allow the charged official to meet them before the tribunal of the people.

These statements lead me to believe that rejecting the petition because the grounds are political is invalid as everything a politician does is political. Also, rejecting the petition because it does not fit the definitions of "incompetence or failure to perform prescribed duties" is a right that can only be exercised by the voters.

My concern is if the legal opinion stated by Jerry Wertzbaugher and Steven Morrissett is correct. Then, what I hear this saying to those voters who wish to submit a recall petition, is to make allegations that, although possibly blatant lies, could be determined non-political statements and therefore allow a recall election. I do not think this concept is the intent of the state law. I totally agree with the statement that the recall petition is a "fundamental right" and that these petitions should be liberally interpreted and that restrictions placed on the power of recall must be strictly construed. Otherwise, the voters, as in this case, are not being allowed their fundamental right to a recall election.

Based on all of the above information, my opinion is that the state law does not allow the Municipal Clerk to review the content of a recall petition as it relates to the grounds for recall as stated in the state law, I have determined this case to be JUSTIFIED.

Note: I did not seek another legal opinion for two reasons. The first is my assumption that this matter will have to be settled in the courts which will generate additional legal opinions. Secondly, I felt I had enough information on which to base my determination.

Case Action:

This investigation leads me to the opinion that the state law needs to be revised in such a way that this question of content can be cleared up and made very specific as to what the legislature's intent is in regards to review by any municipal clerk within the State. Based on that I will be forwarding my memorandum on to members of the State Legislature who are interested in amending the Alaskan Statues regarding recall petitions. It is my understanding that some changes were recently passed by the State Legislature but vetoed by the Governor.

January 20, 1983
R. Smith, Municipal Clerk
Case Summary 82-3
Page 7

In my discussions with the complainant I stated that I felt the recall effort was premature if based on a Municipal tax increase. My reasoning is that approving the budget does not automatically raise taxes. Taxes are set in April or May by the Assembly only when it approves a specific mill rate for each Municipality service area. At this time the Assembly still retains the option to not raise the mill rate which, in effect, would lower the budget.


WAYNE D. MABRY, OMBUDSMAN

WDM:s1

Attachments (4)

cc: Complainant
Assembly Representatives
Jerry Wertzbaugher, Municipal Attorney
Steve Morrissett, Matanuska-Susitna Borough Attorney



Matanuska-Susitna Borough

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

BOROUGH ATTORNEY'S OFFICE

August 13, 1981

RECEIVED

JAN 07 1983

OFFICE OF THE OMBUDSMAN

ATTACHMENT
#1

MEMORANDUM

To: Evelyn Thompson, Borough Clerk
From: Steven H. Morrissett, Borough Attorney
Subject: Recall of an Elected Official--Procedures

The recall of an elected official is governed by AS 29.28.130-- .250. Any elected official of the Borough may be recalled by the voters after he or she has served six months in office, subject to the provisions of those sections. The subject of this memorandum is discussed in relation to a petition received on August 6, 1981, to recall Assemblyperson Dorothy Jones.

Recall Charges

It is for the voters to decide whether the charges in the recall petition are true and, if true, whether they are enough reason for recalling the elected official. However, it is the duty of the Borough Clerk to determine whether the charges alleged, if taken as true, constitute "misconduct in office, incompetence or failure to perform prescribed duties" within the meaning of the law. Bocek v. Bagley, 505 P. 2d 814 (Wash 1973). AS 29.28.140.

The requirement that reasons be provided means that a recall petition is not sufficient if it is submitted solely for political reasons. However, the Clerk must look only to the language of the charge in determining whether adequate reasons are alleged in the petition.

Charges must be made which "state the grounds with particularity as to specific instances." AS 29.28.150(a)(3). An allegation of "misconduct", for instance, must be supplemented by specific facts which demonstrate "misconduct". The charges must be definite enough to allow the public to determine the truth or falsity of the charges. If even one charge, or if all together meet these requirements then the petition is sufficient.

"Misconduct in office" includes any wrongful conduct which affects or interferes with performance of official duty and includes misfeasance or malfeasance: the performance of a duty in an improper manner or the doing of an unlawful or unethical act. Knowledge by the official that the act was "misconduct" may not be relevant except to the extent that knowledge is required to show misconduct.

"Incompetence" ordinarily means intellectual, physical or moral inability to carry out a required task. It may include serious ignorance of basic information or a lack of mental or emotional ability necessary to carry on the duties of the official. It would not include making decisions which were politically unpopular.

"Failure to perform prescribed duties" means a failure to carry out those responsibilities of the office set out in state or local laws. Prescribed duties are numerous, from the obligation to attend Assembly meetings unless excused, to ordering elections on the acquisition of Borough powers if requested by the voters. MSB 2.12.070(F), 2.04.050. A "prescribed" duty may be created by implication; e.g., when the Assembly as a whole is required to perform a function, it is the implicit duty of each official who is a member to aid in the performance of that function. However, it is not a "prescribed duty" of each Assemblyperson to take every conceivable action which might make that official a more informed or more popular representative. Thus, it is not a "prescribed duty" to attend meetings which are not official or are sponsored by other non-Borough organizations. It is not a "prescribed duty" of an Assemblyperson to inform all constituents of the economic impact of an Assembly decision.

On the Jones recall petition, five charges were made, as set forth in the footnote below.^{1/} The petition characterizes these charges as "incompetency and/or failure to perform prescribed duties." However, the sufficiency of the petition is not determined by this characterization, but by whether any charge, or all of the charges together, constitutes misconduct in office, incompetency or failure to perform prescribed duties.

The first charge is that Assemblyperson Jones has generally failed to consult with constituents or keep them informed. Taking this as true, it fails to allege specific instances which would constitute

^{1/} (1) Has generally failed to consult with constituents and has failed to keep citizens informed concerning the various activities of the Borough Assembly and Borough Government; (2) Has failed to inform constituents concerning the true size and scope of Borough Government and the sources of revenues for the operation of Borough Government. This was especially true during early 1981 at Borough budget meetings; (3) Has failed to inform and/or consult with constituents concerning future property tax liabilities if and when present sources of state and federal revenues should cease to be available for the operation of the Borough Government. Specifically, she failed to discuss these matters at Borough budget meetings in 1981; (4) Has failed to recognize the desires of many constituents to lead quiet, peaceful, and uncomplicated lifestyles with a minimum of government regulation, intrusion, and interference. Has sponsored and/or voted for ordinances which interfere with privacy rights and individual freedoms of citizens; and (5) Has favored and/or voted for more expensive and burdensome Borough Government despite the objections of many of her constituents. Specifically, in May 1981, she ignored a petition signed by approximately 50 of her constituents, the purpose of which was to inform the Borough Assembly that many Borough citizens were against the addition of permanent employees to the general Borough Government staff.

statutory grounds for recall. It does not allege refusal to talk with constituents in specific cases, nor does it state the nature of the failure to inform. It is not a prescribed duty of an Assemblyperson to inform all constituents of all matters. The charge is not specifically clear to establish a valid reason for recall, nor would it generally be a sufficient charge if referenced to a specific instance.

The second charge is that Jones has failed to inform constituents concerning the true size and scope of the government and its sources of revenue, particularly during the 1981 Budget hearings. This charge sets a specific time, but is as vague as the first charge in showing an act constituting misconduct, incompetence or failure of duty. The "true size and scope of government" is no more specific a subject than "various activities". There is no categorical duty of Assemblypersons to inform all constituents of all matters in a representative form of government.

The third charge is that Jones has failed to inform constituents of future tax liability "if and when present sources of state and federal revenues should cease to be available..." This is so vague as to be impossible to respond to or for voters to determine whether the charge is true. It also fails for the reasons stated previously.

The fourth charge is that Jones has "failed to recognize the desires of many constituents..." This is strictly a "political" reason for wanting a different representative. It is inevitable that some voters will be disappointed by every action taken by an Assemblyman. The elective process is the remedy. Recall requires specific, limited grounds for removal of an official before the end of his or her regular term.

The fifth charge is that Assemblyperson Jones has voted for "expensive Borough government", despite objections and a petition signed by 50 constituents. If true, this is a charge that the elected official has acted contrary to the wishes of certain voters, not that the official is guilty of misconduct or failure of duty.

No charge states an allegation of incompetence, i.e. that Assemblyperson Jones is incapable of performing her duties. No charge alleges misconduct in office, i.e. an illegal or unethical act. Allegations directed towards claims of failure to perform prescribed duties establish no duties that were not performed. No allegation is made by the petition which is a basis for recall and which could be considered by informed voters as to its truth. The charges set forth in the recall petition are therefore insufficient. 2/

2/ This opinion is consistent with two previous written opinions of attorneys Allen Tesche and Harland Davis, provided at the request of the Clerk in 1980. Each of those opinions, issued in relation to petitions for the recall of Assemblypersons Schmall and Hitchcock, concluded that certain reasons on the petition were not legally sufficient. The charges that Schmall and Hitchcock failed to discuss "certain matters and general charges were noted not to be sufficient. However, charges of a specific instance of slander, excessive absences from meetings and illegal actions related to dismissal of the manager in violation of the law were detailed and sufficient to present to the voters.

Form of Petition Signatures

A recall petition must have a statement of the grounds of the recall stated with particularity. It must have the signature, residence address and signing date for each signer.

There is no requirement that the petition be on one page. Where the petition extends to several pages, each page should be attached to the others which form a complete petition and should be identified clearly as to the purpose of the petition to assure no signer is misinformed as to what he is signing. However, it is permissible to circulate more than one petition, each of which can be filed in a joint petition, if the form of each petition is identical.

It is preferable if each page of a petition has a full statement of the petition or a summary clearly setting forth the purpose. There is no apparent requirement that proof be provided that all sheets in a petition were circulated as a unit; some states require an affidavit to that effect.

The signatures on the petition must meet certain statutory requirements. If the area concerned by the petition in the Borough has fewer than 7,500 persons, the petition must contain the signatures of persons who are registered to vote in and living in the concerned area equal to 25% of the total number of votes cast at the last general election within that area. If the concerned area has 7,500 persons or more, the petition must be signed by voters equal in number to at least 15% of the total votes cast in the last general election in that area. In this case, the concerned area is District 5 only.

The signature must be in ink or indelible pencil. To be valid a signature must be followed by the date of signature and the person's current residence address. Each and every signature on the petition must have been signed within 60 days of the filing of the petition with the clerk.

Only those persons who are currently registered voters within the concerned area may be counted toward the petition. The petition itself is not an affidavit of residency; the required voter registration establishes the validity of a person's signature, residence and right to sign the petition. Because of the lack of specific residence addresses within the Borough, certain leeway must be granted to describing the location of residence. However, a signature may not be counted if it cannot be ascertained from the address that the person lives within the area concerned.

Processing a Petition

The municipal clerk is required to review the petition for content and signatures and accept the petition within ten days of the filing date. Until such time as the petition is accepted, any signer of the petition may withdraw his signature upon written application to the clerk.

RECALL PETITION
 THE PETITION FOR RECALL OF ASSEMBLYPERSON DOROTHY JONES

13
 11/12/81
 [Handwritten notes and scribbles]

THE UNDERSIGNED VOTERS of the Matanuska-Susitna Borough Assembly District 5, currently composed of Precincts 3, 8, 15, 17, 21, and 50, seek the recall of DOROTHY JONES due to incompetency and/or failure to perform prescribed duties. Each of the undersigned states that he/she petitions for the recall of DOROTHY JONES for each of the instances of incompetency and/or failure to perform prescribed duties cited below with or without the other, and whether such instances constitutes incompetence, failure to perform assigned duties, or both: (1) Has generally failed to consult with constituents and has failed to keep citizens informed concerning the various activities of the Borough Assembly and Borough Government; (2) Has failed to inform constituents concerning the true size and scope of Borough Government and the sources of revenues for the operation of Borough Government. This was especially true during early 1981 at Borough budget meetings; (3) Has failed to inform and/or consult with constituents concerning future property tax liabilities if and when present sources of state and federal revenues should cease to be available for the operation of the Borough Government. Specifically, she failed to discuss these matters at Borough budget meetings in 1981; (4) Has failed to recognize the desires of many constituents to lead quiet, peaceful, and uncomplicated lifestyles with a minimum of government regulation, intrusion, and interference. Has sponsored and/or voted for ordinances which interfere with privacy rights and individual freedoms of citizens; and (5) Has favored and/or voted for more expensive and burdensome Borough Government despite the objections of many of her constituents. Specifically, in May 1981, she ignored a petition signed by approximately 50 of her constituents, the purpose of which was to inform the Borough Assembly that many Borough citizens were against the addition of permanent employees to the general Borough Government staff.

THE VOTERS OF ASSEMBLY DISTRICT 5 RESPECTFULLY REQUEST THAT A RECALL ELECTION BE HELD AS SOON AS POSSIBLE.

11/10/1983
 OFFICE OF THE OMBUDSMAN
 DATE

PRINTED NAME	SIGNATURE	MAILING ADDRESS	RESIDENCE ADDRESS	DATE
✓ AE Frantz	<i>AE Frantz</i>	Box 17-351 Big Lake	Same	7-15-81
✓ JUDY RIFE	<i>Judy Rife</i>	P.O. BOX 2637 Palmer	KNICK RD 1/2 mile APT #6	7-15-81
✓ JAMES OLSON	<i>James Olson</i>	P.O. Box 17-248 Big Lake	Same Big Lake	7-15-81
✓ Raymond A Puhl	<i>Raymond A Puhl</i>	P.O. Box 17306 Big Lake	Lot 25 Burkshire	7-15-81
✓ Bethel C. Puhl	<i>Bethel C Puhl</i>	70 Box 17306 Big Lake	Lot 25 Burkshire	7-15-81
✓ Mike Winchester	<i>Mike L. Winchester</i>	P.O. BOX 17229 Big Lake	Lot 22 Butler Sub	7-15-81
✓ LOLA J JENSEN WINCHESTER	<i>Lola Jensen Winchester</i>	P.O. Box 17229 Big Lake	Lot 22 Butler Sub	7-15-81
✓ Herbert L. Riem	<i>Herbert L Riem</i>	57. RT # BOX 470 Willow	Mile 9 1/2 PHW	8-1-81
✓ MARGARET S. RIEM	<i>Margaret S. Riem</i>	SRA-Box 470, Willow, AK.	Mile 9 1/2, Parker Highway	8-1-81
✓ Paula Sue Apper	<i>Paula S. Apper</i>	Box 133 - Hopper Creek, AK	Mile 1 1/2 Hopper - Spruce Rd	8/1/81
✓ Stephanie Cordill	<i>Stephanie Cordill</i>	P.O. Box 17048 Big Lake	mile 2 1/4 Big Lake rd.	8/2/81
✓ Mary J. Oberg	<i>Mary J. Oberg</i>	Box 17-234 Big Lake	Knollwood Heights Big Lake	8/2/81

RECALL PETITION

THE PETITION FOR RECALL OF ASSEMBLYPERSON KATHRYN R. SCHMALL

*Certified for submission to electorate
261 signatures
Engelmann
Borough Clerk
8-1-80*

The undersigned voters of the Matanuska-Susitna Borough Assembly District 4, currently composed of precincts 18, 19 and 35, seek the recall of Kathryn R. Schmall due to incompetence and/or misconduct. Each of the undersigned states that he/she petitions for the recall of Kathryn R. Schmall for each of the instances of incompetence and/or misconduct cited below with or without the others, and whether such instance constitutes misconduct, incompetence, or both.

- A. Voting at the Assembly meeting on June 3, 1980 to dismiss the Borough Manager, constituting incompetence because (1) the vote was based upon unsubstantiated charges presented at an executive session, which charges affected the character and reputation of the Manager, without allowing the Manager an opportunity to respond to the charges or confront the witnesses against him; (2) failing to publish the topic of the Manager's dismissal on the Assembly's agenda, not allowing for appropriate input from all interested segments of the community; and (3) voting to dismiss the Manager capriciously, without making any provision for a smooth administrative transition at a critical period in the development of several major economic development projects in the Point McKenzie area, generating the likelihood of great economic loss to the Borough and its residents.
- B. Voting to hold executive sessions beyond the authority granted by statutes, in derogation of the people's right to attend and observe the Assembly's deliberations.
- C. Refusing to discuss Borough Assembly actions with constituents, who have a right to know.
- D. Making slanderous remarks against the Borough Manager at the Wasilla Chamber of Commerce meeting of May 20, 1980.

RECEIVED

JAN 10 1983

OFFICE OF THE OMBUDSMAN

The voters of Assembly District 4 respectfully request that a recall election be held as soon as possible.

PRINTED NAME	SIGNATURE	MAILING ADDRESS	RESIDENCE ADDRESS	DATE
<i>John Jones</i>	<i>Roy Johnson</i>	<i>Box 513 Wasilla 99587</i>	<i>1 - ... Ave,</i>	<i>6/26/80</i>
<i>Wesley Jones</i>	<i>Wesley Jones</i>	<i>Box 513, Wasilla</i>	<i>Southway Ave</i>	<i>6/26/80</i>
<i>Charlotte Cremer</i>	<i>Charlotte Cremer</i>	<i>P O Box 657 Wasilla 99587</i>	<i>Southway Ave</i>	<i>6/30/80</i>
<i>Thomas Cremer</i>	<i>Theodore F. Cremer</i>	<i>P O Box 657 Wasilla 99587</i>	<i>Southway Ave</i>	<i>6/30/80</i>
<i>John Poljs</i>	<i>John Poljs</i>	<i>Box 525 Wasilla</i>	<i>Porter Highway + Airport Rd</i>	<i>7/4/80</i>
<i>John M. ...</i>	<i>John M. ...</i>	<i>Box 155 Wasilla</i>	<i>Suburban ...</i>	<i>7/4/80</i>
<i>Robert G. Cottle</i>	<i>Robert G. Cottle</i>	<i>P O Box 341 Wasilla</i>	<i>Recreation Ave</i>	<i>7-4-80</i>
<i>Oliver Minnick</i>	<i>Oliver Minnick</i>	<i>P.O. Box 455 Wasilla</i>	<i>Suburban East</i>	<i>7-4-80</i>

If the petition is sufficient, the clerk should immediately submit it to the Borough Assembly to be placed on the ballot within 75 days of submission of the petition to the clerk. If the clerk finds that there are insufficient signatures, or that the petition is otherwise inadequate, the clerk must let the petitioners know within the ten day period for review of the petition. The petitioners are entitled to an additional ten days from the date of rejection to provide additional signatures.

If the petition is insufficient for any reason other than insufficient signatures, it must be rejected in its entirety. If insufficient signatures are provided within a supplemental ten day period, the petition shall also be rejected. A new recall petition cannot be filed for six months after rejection of the first petition.

The recall petition must be placed on the ballot within 75 days of submission of the petition. The question on the ballot must include:

- (1) The grounds for recall as stated in the recall petition.
- (2) The elected officer's response to the petition, in 200 words or less.
- (3) The proposition questions: "Shall (the elected official) be recalled from the office of (office)?
Yes ___ No ___

A majority vote on the question is required to recall an officer. Failure to recall an elected official prevents the filing of a new recall petition within six months after the election. A successful recall requires that an election be conducted for its successor at least ten but not more than 45 days after the date of the recall election, except that the election for the successor may be held at a regular election if occurring within 75 days of the recall election.



Steven H. Morrisett
Borough Attorney

RECALL PETITION

THE PETITION FOR RECALL OF ASSEMBLYPERSON KATHRYN R. SCHMALL

*certified for summary
to elect a later
able signature
Engelmann
Borough 8-1-80*

The undersigned voters of the Matanuska-Susitna Borough Assembly District 4, currently composed of precincts 18, 19 and 35, seek the recall of Kathryn R. Schmall due to incompetence and/or misconduct. Each of the undersigned states that he/she petitions for the recall of Kathryn R. Schmall for each of the instances of incompetence and/or misconduct cited below with or without the others, and whether such instance constitutes misconduct, incompetence, or both.

- A. Voting at the Assembly meeting on June 3, 1980 to dismiss the Borough Manager, constituting incompetence because (1) the vote was based upon unsubstantiated charges presented at an executive session, which charges affected the character and reputation of the Manager, without allowing the Manager an opportunity to respond to the charges or confront the witnesses against him; (2) failing to publish the topic of the Manager's dismissal on the Assembly's agenda, not allowing for appropriate input from all interested segments of the community; and (3) voting to dismiss the Manager capriciously, without making any provision for a smooth administrative transition at a critical period in the development of several major economic development projects in the Point McKenzie area, generating the likelihood of great economic loss to the Borough and its residents.
- B. Voting to hold executive sessions beyond the authority granted by statutes, in derogation of the people's right to attend and observe the Assembly's deliberations.
- C. Refusing to discuss Borough Assembly actions with constituents, who have a right to know.
- D. Making slanderous remarks against the Borough Manager at the Wasilla Chamber of Commerce meeting of May 20, 1980.

RECEIVED
JAN 10 1983

OFFICE OF THE OMBUDSMAN

The voters of Assembly District 4 respectfully request that a recall election be held as soon as possible.

PRINTED NAME	SIGNATURE	MAILING ADDRESS	RESIDENCE ADDRESS	DATE
Mark Jones	<i>Mark Jones</i>	Box 513 Wasilla 99687	Southway Ave	6/26/80
Marian Jones	<i>Marian Jones</i>	Box 513 Wasilla	Southway Ave	6/26/80
Charlotte Cremer	<i>Charlotte Cremer</i>	P O Box 657 Wasilla 99687	Southway Ave	6/30/80
Theodore E. Cremer	<i>Theodore E. Cremer</i>	P O Box 657 Wasilla 99687	Southway Ave	6/30/80
John Polis	<i>John Polis</i>	Box 525 Wasilla	Post Highway + Airport Rd	7/4/80
John M. Munnich	<i>John M. Munnich</i>	Box 455 Wasilla	Suburban Country Club	7/4/80
Robert G. Cottle	<i>Robert G. Cottle</i>	P O Box 341 Wasilla	Recreation Area	7-4-80
John Munnich	<i>John Munnich</i>	P.O. Box 455 Wasilla	Suburban Est.	7-4-80

ATTACHMENT
#2

Hon. Marshall L. Lind
Commissioner
Dept. of Education

April 12, 1977

RECEIVED
JAN 12 1983
OFFICE OF THE OMBUDSMAN

Ayrum M. Gross
Attorney General

Petition for recall,
Upper Railbelt school
board

W: Rodger W. Pegues
Assistant Attorney General

As you requested, we have reviewed the recall petition from REAA #14, the Upper Railbelt School District. In our opinion, the petition meets the statutory requirements, and we advise that it be accepted as sufficient in form and substance. */

By law, the grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties. AS 29.23.140. The recall petition must contain a statement of the grounds, "with particularity as to specific instances." AS 29.23.150(a)(3). **/ While certain of the recall petition's allegations are vague and do not meet the statutory requirements for particularity, the petition recites that the "aim is to correct the incompetency of the School Board," and the petition states two particular instances of alleged misconduct or incompetency: (1) the board's approving a new position of assistant superintendent, and (2) the board's approving funds for a computer. Accordingly, while far from a perfect instrument, the petition does facially meet the statutory requirements.

It is not the role of the officer charged with ascertaining the petition's sufficiency to judge the merit or truth of the grounds asserted. 60 Am. Jur.2d Public Officers and Employees § 245. It suffices that the reasons have been stated and with sufficient particularity to inform the office holder and the electorate. The latter will determine the merit of the charges.

*/ This assumes that a check of the signatures results in a determination that the petition has been signed by the required number of qualified voters.

**/ AS 14.08.081 makes REAA school board members subject to recall under AS 29.23.130--250, except that the commissioner of education performs the municipal clerk's functions and the state Board of Education performs the functions of the assembly. All elected public officials in Alaska, except judicial officers, are subject to recall. Alaska Const., art. XI, § 8.

In preparing the recall ballot, you are required to include on it "the grounds as stated in the recall petition." AS 29.23.210(1). In our view, this should be interpreted to mean the grounds as stated with particularity so as to comply with AS 29.23.150(a)(3), which requires particularity. Therefore, the statement of grounds on the ballot should exclude the non-specific grounds and include those stated "as to specific instances."

The first statement of grounds in the petition (consistently ignored the will, etc.) may or may not meet these criteria. It is probably sufficiently particular to advise the officers and the electorate in the district. It does not give "specific instances." You should exercise your own judgment as to whether it should be included on the ballot based on your knowledge of the situation, i.e., if you believe that, under the circumstances, the statement adequately recites the alleged misconduct, you should include it on the ballot.

The second statement (created dissension, etc.) is facially inadequate. It states a broad conclusion without the slightest reference to a particular act or instance. It should not be placed on the ballot.

The third statement (new position) and the fourth statement (allocated funds for a computer) are particularized and give specific instances. They should be placed on the ballot.

The statements of grounds placed on the ballot are to be "as stated in the recall petition." AS 29.23.210(1). Following these allegations, the official's rebuttal or defense of not more than 200 words is placed. AS 29.23.010(2).

This is a proceeding without precedent in Alaska, and if you require additional assistance, please do not hesitate to request it.

RMP:chp

AMMUNITION
#3

June 6, 1977

Marshall L. Lind
Commissioner
Department of Education

RECEIVED

Avrum M. Cross
Attorney General

JAN 12 1983
OFFICE OF THE OMBUDSMAN

Recall petition of the
Upper Railbelt School
Board
A.G. File No. J-66-512-77

By: Ronald W. Lorensen
Assistant Attorney General

This will confirm my oral advice to you of May 19, 1977 in response to certain questions which you raised as to whether or not the charges contained in the recall petition filed in the above-referenced matter were legally sufficient to require that a recall election be undertaken. I advised you that those charges were in fact sufficient, despite some substantial questions which you had raised as to the apparent untruth of certain of the factual allegations.

While a review of the relevant school board minutes for the Upper Railbelt School District does seem to indicate that certain of the factual allegations contained in the petitions are indeed not correct, this factor, under applicable judicial decisions dealing with the question of recall elections, is irrelevant to the question of whether or not the recall petition is legally sufficient to bring on the holding of the recall election. This point has been addressed in numerous judicial decisions throughout the United States, although it has not yet been addressed in Alaska. The decisions of those courts are virtually unanimous in their holding that the question as to whether or not the charges contained in the petition are true or false is irrelevant. According to those decisions, the only question to be decided is whether or not the charges which have been made are sufficiently specific to allege incompetence or misfeasance if they were in fact true. As recently stated by the Wisconsin Supreme Court in In re Recall of Certain Officials, 217 N.W.2d 277 (1974), "recall is political in nature and it is for the people and not the courts to decide the merits of the reasons stated in the petition."

The power of the people to recall their elected officials is established by our state constitution in Article XI, Section 8 which provides as follows:

All elected public officials in the State, except judicial officers, are subject to recall by the voters of the State or political subdivision from which elected. Procedures and grounds for recall shall be prescribed by the legislature.

In those states where the power of recall is constitutionally established, the courts have viewed recall as a "fundamental right" and have consistently said that statutes dealing with recall should be liberally interpreted and that any restrictions which are placed on the power of recall must be strictly construed. See, for example, Burns v. City of Boulder, 525 P.2d 416 (Col., 1974).

Although you and the state Board of Education may disagree with respect to the established policy behind the widespread judicial support for recall powers, and though you have substantial concerns over the truth of the factual allegations made in the petitions, neither of these areas are concerns with which either you or the Board in your respective roles in the recall procedure have any vested authority. Consequently, neither you nor the Board may determine the propriety of the policy in this area or the sufficiency of the petitions based on potential factual inaccuracies. A good general description of the judicial approach to recall can be found in State ex rel. Citizens Against Mandatory Bussing v. Brooks, 492 P.2d 536 (Wash., 1972):

This court has on numerous occasions interpreted and applied these constitutional and statutory provisions. Some basic rules may be gleaned from these prior cases. First, in determining the validity of recall charges, courts are limited to examination of the charges stated and cannot inquire into factual matters extraneous to the allegations. Second, courts must assume the truth of the charges in determining whether legally sufficient grounds for recall have been stated. Third, just as there can be no inquiry into the truth of falsity of the charges, there can be no inquiry into the motives of those filing the charges. Fourth, recall charges are sufficiently specific if they are definite enough to allow the charged official to meet them before the tribunal of the people. Finally, any one sufficient charge requires the holding of a recall election. (Citations omitted.)

Consequently, as you can see from the above, I am able to reach only one conclusion in this matter and that is that you and the state Board must proceed to hold the recall election called for under AS 14.03.001.

RML:jf

Municipality of Anchorage

MEMORANDUM

**ATTACHMENT
#4**

DATE: January 11, 1983
TO: Municipal Clerk
FROM: Municipal Attorney
SUBJECT: Petition for Recall of Gerry O'Connor, Assemblyman,
Section 2, Seat C

ISSUE PRESENTED

Are the grounds set forth in the above referenced recall petition sufficient as a matter of law under the provisions of AS 29.28.150 to permit a submission by the Clerk to the Municipal Assembly for the purpose of calling an election pursuant to AS 29.28.200?

CONCLUSION

The above referenced petition is legally insufficient and no recall election may therefore be called. Under AS 29.28.160 - .170, the Municipal Clerk is required within 10 days of submission to examine the sufficiency of the recall petition, both as to the adequacy of signatures and for content with respect to compliance with AS 29.28.130 - .150. On the basis of the authorities and the reasoning referenced below, it is my opinion that an individual assembly member's vote on an ordinance approving the municipal budget cannot, as a matter of law, constitute misconduct in office, incompetence, or failure to perform prescribed duties under the meaning of AS 29.28.140, if that vote was in compliance with state and municipal law governing ethics and conflicts of interest and if the measure passed was in all respects a lawful action.

DISCUSSION

The necessity and sufficiency of specific grounds to support a recall petition is a matter governed by applicable constitutional or statutory provisions. For this reason, the weight given to various legal precedents from other jurisdictions depends on an examination of the specific legal framework involved. Generally, there would be no examination of the legal sufficiency of grounds where the governing statute permits removal from office for any reason or where grounds must be stated in a general manner. This is the case in many states, including, for example, Colorado, Michigan, Oklahoma and Wisconsin. In those states, it is held that recall can be based merely on a disagreement with the policies of the officeholder. A different rule applies, however, where, as in Alaska, the governing statute dictates that only certain grounds are suf-

finitely at the expense of the taxpayers. And suppose the faction seeking power through recall of those in office should be successful and the first, second, or third attempt, then the ousted faction could then in turn employ the same in repeated trials to regain its lost prestige, and the interminable wrangell and turmoil would go on. This would result in the fostering and maintaining of political feuds to the detriment of society and the great expense of the taxpayers. 121 S.E. at 493.

Additional support for this conclusion is found in AS 29.28.160 entitled, EXAMINATION FOR SUFFICIENCY. That section requires that the Municipal Clerk review a recall petition for content as well as for signatures. Since a petition is required to contain only dated signatures with addresses and a statement of grounds, the term "content" could refer only to the statement of grounds. Any other conclusion would make the use of the term "content" superfluous. On this point, note that AS 29.28.170(a) provides for a supplemental petition if, and only if, it is rejected on the basis of insufficient signatures. The statute also provides that "if the petition is insufficient for any other reason, it shall be rejected and filed as a public record." (emphasis added). Obvious from the emphasized language, the legislature contemplated that the Clerk's duties include an examination of the petition for compliance with other requirements. This interpretation of the Clerk's authority is consistent with the Alaska Supreme Court's decision in Warren v. Boucher, 543 P.2d 731. In that case, the Court approved the Lt. Governor's determination that an initiative petition was "substantially the same" as a measure passed by the legislature and therefore barred from the ballot. The Court's approval of the Lt. Governor's authority in that case involved a statute which, like the one under analysis here, permitted the highest election officer of the jurisdiction to make certain threshold decisions on the validity of a petition. This is not an unusual position. In the case of Steadman v. Halland, 641 P.2d 448, the Supreme Court of Montana addressed the same issue; "We agree that the statement of grounds for recall to be included in the petition is 'part of the form of the petition' and find that the filing officer not only is 'empowered to' but is required to reject the petition when it does not comply with statutory requirements." (emphasis added) 641 P.2d at p. 453.

The inquiry need not be confined to the governing statute alone as there exists precedent from other states with similar statutory language.

In states where the law permits recall to be based on political grounds alone, the above referenced statement (or any statement for that matter) would be sufficient. It is, however, insufficient to support the grounds of incompetence or failure to perform prescribed duties.

Relative to removal from public office, the terms "incompetence" and "dereliction of duty" have well established meanings. 63 Am.Jur.2d, Public Officers, §§ 191-192. The petition describes one act allegedly constituting incompetence. The allegation does not meet judicially defined standards for "incompetence" as that term has been defined by the courts. "Incompetence" means "some demonstrated lack of capacity or ability to perform the professional functions of office", Vivian v. Examining Board of Architects, 213 N.W.2d 359 (Wisc. 1974), including physical handicap inability to perform official functions; Tafoya v. New Mexico State Police Board, 472 P.2d 973 (N.M. 1970), or other legal disqualification, incapacity, or fitness to discharge the required duty. It means want of physical, intellectual, or moral ability, insufficiency, inadequacy, want of legal qualifications. Appeal of School District of Bethlehem, 30 A.2d 726 (Pa. Super. 1943); Hughes v. Hughes, 271 P.2d 172 (C.A. 4th 1954). The allegation in the petition falls short of claiming lack of capacity, ability, or physical, educational or mental ability to perform official functions; rather the allegation merely recites an action of the Assembly to which petitioners object. Failure to perform prescribed duties means a failure to carry out those responsibilities of the office set out in state or local law. Prescribed duties are numerous, from the obligation to attend assembly meetings unless excused to voting on matters for which one is not excused on the basis of a conflict of interest. A prescribed duty may be created by implication, as for example, when the assembly as a whole is required to perform a function. It is the implicit duty of each official who is a member to aid in the performance of that function. It is not, however, a prescribed duty of each assembly person to take every conceivable action which might make that official more informed or a more popular representative. Thus, it is not a prescribed duty to attend meetings which are not official or are sponsored by other nonmunicipal organizations. It is not a prescribed duty of an assembly person to inform all constituents of the basis of his or her political decisions, nor is it a prescribed duty to follow the popular will of ones constituency on any particular issue.

While the Alaska Supreme Court has not ruled on the precise question addressed here, at least one Superior Court Judge has

Amendments to Recall Sections

- page 68*
Line 5-7
p. 68, Line 15 Sec 29.26.250 - delete
- p. 68, Line 24* Sec 29.26.260(a)(3) - change "grounds of" to "reasons for"
- p. 69 Line 20, 24* Sec 29.26.270(a)(2) - change "grounds" to "reasons"
- p. 71, Line 18* Sec 29.26.280(b) - change "25" to "35" in both places
- p. 71, Line 18* Sec 29.26.330(1) - change "grounds of" to "reasons for"

Alaska Municipal League

Ginny Chitwood
Executive Director

204 N. Franklin St.
Juneau, Alaska 99801

Phone (907) 586-1325

1 recall of municipal officials in AS 29.26.240 - 29.26.350 [AS 29.28.-
2 130 - 29.28.250]. The lieutenant governor functions in place of the
3 assembly or council and municipal clerk for receipt and review of
4 recall petitions and the conduct of recall elections.

5 * Sec. 81. AS 46.40.210(2)(A) is amended to read:

6 (A) unified municipalities [ESTABLISHED UNDER AS 29.-
7 68.240 - 29.68.440];

8 * Sec. 82. AS 47.35.010(b) is amended to read:

9 (b) The department shall, within 90 days after receiving a
10 written request that it do so, delegate its powers relating to nur-
11 series under this section and under AS 47.35.040, 47.35.050 and 47.-
12 35.060 to a municipality which has adopted an ordinance providing for
13 day care licensing under home rule powers or as authorized under
14 AS 29.35.200 - 29.35.210 [AS 29.48.035(a)(20)]. A municipality to
15 which these powers have been delegated may waive or modify any regu-
16 lation or standard established by the department under the authority
17 of AS 47.35.010 - 47.35.080 as it applies to nurseries or the applica-
18 tion of any such regulation or standard as it applies to a particular
19 day care licensee but must notify the department of any waiver.

20 * Sec. 83. The following laws are repealed: AS 04.11.400(c); AS 04.-
21 21.080(11); AS 14.56.065(b), 14.56.180(3); AS 15.13.130(6); AS 18.55.950-
22 (10); AS 19.20.015(f); AS 24.55.330(3); AS 28.35.260(a)(10); AS 29.08;
23 AS 29.13; AS 29.18; AS 29.23; AS 29.28; AS 29.33; AS 29.38; AS 29.41; AS
24 29.43; AS 29.48; AS 29.53; AS 29.58; AS 29.63; AS 29.68; AS 29.73; AS 29.-
25 78; AS 29.88; AS 29.89; AS 29.90; AS 29.95; AS 30.15.070(3); AS 30.30.170-
26 (2); AS 35.15.120(3); AS 42.06.630(6); AS 43.18.500(j)(6); AS 43.20.016;
27 AS 43.56.210(8); AS 44.47.310(5); and AS 44.85.410(4).

28 * Sec. 84. A right or liability of a municipality existing on July 1,
29 1983, is not affected by the enactment of this Act. Ordinances and

1 regulations in effect on July 1, 1983, remain in effect unless they
2 conflict with provisions of this Act. Ordinances and regulations in effect
3 on July 1, 1983, that conflict with provisions of this Act remain in effect
4 for 180 days after July 1, 1983. The terms of elected or appointed
5 municipal officials in office on July 1, 1983, are not affected by this
6 Act, and their terms expire as provided before July 1, 1983.

7 * Sec. 85. AS 29.45 as enacted in sec. 11 of this Act is retroactive to
8 January 1, 1983. - *for tobacco*

9 * Sec. 86. AS 29.45 as enacted in sec. 11 of this Act and sec. 85 of
10 this Act take effect immediately in accordance with AS 01.10.070(c).

11 * Sec. 87. Except for AS 29.45 as enacted in sec. 11 of this Act and
12 except for sec. 85 of this Act, this Act takes effect July 1, 1983.



~~SB~~ 20 April 83
HB 172 -

End page 181 (top) line 23

22 April -

Amend page 204, Line 8 -

to read beginning of tax year.

Start on amendments

28 22 March 83 - HB 172

1. P. 105 'Developed' definition -

get thurlow's opinion.

2. Class 'B' misdemeanor - throughout - too much?
definition.

~~24~~ 3. Page 126 - \$100,000 - too much -
\$20,000

Finished Line 3, page 126

Amend population definition on
page 161

- page 163 - allocatable spelling

- End page 163

SENATE AMENDMENT

By Community & Regional Affairs Committee

To: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

PAGE: 33 LINE: ~~27-28~~ 10

CSRB 1 ok

Page 34.

Insert "(26) 29.35.060 (franchise and permits)". Renumber following paragraphs accordingly.

NO

Page 33, line 29, insert:

"(28) 29.35.070 (disputes and conflicts with state certificated utilities)"

Page 77, after line ~~3~~ ²⁰, insert:

OK in CSRB 1

"(c) This section applies to home rule and general law municipalities."

Page 77, line ~~19~~ ²², delete Section 29.35.070 and insert:

OK CSRB 1

"Sec. 29.35.070. PUBLIC UTILITIES. (a) The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may regulate the service, and may fix, establish, and change the rates and the charges imposed for a utility service provided to the municipality or its inhabitants by a utility except to the extent

OK (1) the utility is subject to regulation under AS 42.05; or

(2) municipal regulation is prohibited by AS 42.05.711(k) or ~~otherwise specifically prohibited by law.~~
other laws

(b) The municipality may provide for a reasonable deposit for meters and service to be given if interest is paid on the deposit.

Shall be with (d) ~~Unless the utility is owned by the municipality that is regulating it, all rates, charges and regulations established under this section shall be established as provided by an ordinance of the municipality establishing~~ *in accordance that*

provides

the procedures for regulating service and ~~procedures for~~ establishing and changing ~~the~~ rates and charges ~~of the~~ utility. The ordinance shall provide for ~~notice, hearing~~ and other procedures necessary to guarantee due process. ~~The Rates and charges established shall be reasonable and shall permit a fair return on invested capital.~~ *including notice and hearing requirements*

(g) ~~(e)~~ This section applies to home rule and general law municipalities. *under this section*

Page 78, after line ~~19~~ ²⁰ 20, insert:

~~"Sec. 29.35.075. DISPUTES AND CONFLICTS WITH STATE CERTIFICATED UTILITIES. (a) A dispute as to the reasonableness of the fees for or the terms, conditions, or exceptions to a permit for a utility certificated under AS 42.05 to use municipal streets, alleys or other public ways of the municipality shall be decided under AS 42.05.251."~~

This section and involving ~~(a)~~ ^(b) In case of a conflict between the provisions of AS ~~29.35.075~~ ^{42.05} of an action taken under either ~~as to~~ ^{the regulation of service rates or charges of a utility,} the provisions of AS 42.05, ~~and~~ ^{or the} apply. *The provisions of AS 42.05, 641 apply.*

(g) This section applies to home rule and general law municipalities.

Page 196, after line ~~19~~ ²⁹ 29, insert:

"*Sec. 62. AS 42.05.711 is amended by adding a new subsection to read: (K) ~~a public utility that is exempt or partially exempt under this section from the provisions of AS 42.05.010 - 42.05.701 may not be regulated by a municipality. These subsections do not apply to a public utility exempt under (b) of this section.~~ (k) Except for municipally owned and operated utilities subject to (b) of this section, municipalities may not regulate utility services, including but not limited to rates, terms and conditions of services, provided by a person, utility or cooperative that is exempt from regulation under AS 42.05.711."

Renumber following sections accordingly.

p. 78, line 20

(e) a dispute involving a utility certificated under AS 42.05 as to the reasonableness of the fees for or the terms, conditions, or exceptions to a permit to use municipal streets shall be decided under AS 42.05.251.

SENATE AMENDMENT

By Community & Regional Affairs Committee

To: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

PAGE: 74 LINE: 212

Delete "utility services," *? where?*

Page 78, after line ~~27~~²⁰⁶, insert:

OK "(c) A municipality that owns or operates a utility may extend service to adjacent areas outside its municipal boundaries. For that purpose the municipality may acquire, maintain and operate utility facilities together with necessary interests in real property outside its municipal boundaries."

Page 77, line ~~28~~³¹, delete:

OK "(d)" and insert "(e)"

SENATE AMENDMENT *Lee Sharp*

By COMMUNITY & REGIONAL AFFAIRS COMMITTEE

To: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

PAGE: 107 LINE: ~~26~~ 29

109 Line 9

After "borough", delete:

"including but not limited to, excluding personal property from taxation, establishing exemptions, and extending the redemption period"

SENATE AMENDMENT

Lee Sharp

By COMMUNITY & REGIONAL AFFAIRS COMMITTEE

To: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

PAGE: 61 LINE: ~~210~~
21

OK After "(3)", delete "is", and insert "has been"

After "elections", insert "for 30 days immediately preceding the election"

SENATE AMENDMENT

TAM COOK

PROPOSED SENATE AMENDMENT

By Community & Regional Affairs Committee

To: _____ SENATE BILL No. 1

To: _____ HOUSE BILL No. _____

Can't find this in CSSB it

PAGE: _____ LINE: _____

Note: This change is listed as a proposal rather than an amendment because of the complex drafting that will be required to make sure all the necessary sections are cross referenced. Legal Services has reviewed this proposal and suggested this approach because of time constraints. If the Committee approves this proposal, Legal Services will incorporate it as part of the Committee Substitute.

Page 10, after line ²⁰19, insert new section:

"29.05.145. ASSUMPTION OF THE EDUCATION POWER. (a) When an unincorporated area or second class city that is part of a Regional Education Attendance Area incorporates or upgrades to first class or home rule city status, the assumption of the education power shall be in accordance with this section.

(b) When an unincorporated area or city that is part of a REAA incorporates or upgrades to first class or home rule city status, that Director of Elections shall conduct an election in the REAA within 90 days of the incorporation.

(c) At this election, voters of the REAA shall be given an opportunity to approve or disapprove the assumption of the education power by the newly incorporated or upgraded first class or home rule city.

(1) The vote shall be counted separately within the city limits of the newly incorporated or upgraded city and in the remainder of the REAA.

(2) A majority of voters in both areas must approve the assumption of the education power by the newly incorporated or upgraded city or it may not assume the education power"

Alter other sections as necessary to conform.

AMENDMENT

Offered in the SENATE

By Halford

TO: Senate Bill No. 1

Page 14, line 25:

Delete "." and insert ";

Page 14, after line 25 insert:

"(4) standards and procedures governing detachment shall be identical to standards and procedures governing annexation, except that procedures governing detachment shall provide for equitable prorated payment--of debts acquired by the municipality prior to the detachment."

~~The~~
Newly worded - see p 14 line 17

A M E N D M E N T

Offered in the SENATE

By Halford

TO: Senate Bill No. 1

Page 14, line 25:

. Delete "." and insert ";"

Page ¹⁵~~14~~, after line ⁴~~25~~ insert:

OK "(4) within 90 days after receipt of a petition for annexation or detachment the Local Boundary Commission shall make a decision on the petition."

A M E N D M E N T

Offered in the HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

TO: HB 172

Page 35, line 4:

After "request" insert "by a member of the governing body"

Page 35, line 5:

Delete "and"

Page 35, line 6:

After "request" insert "by a member of the governing body"

Page 35, line 8:

Delete "." and insert ";

Page 35, after line 8:

Insert:

"(4) a municipal employee or official, other than a member of the governing body, may not participate in any official action in which the employee or official has a substantial financial interest.

(b) If a municipality fails to adopt a conflict of interest ordinance within 180 days after July 1, 1983, the conflict of interest provision of this section is automatically applicable to and binding upon that municipality."

Page 35, line 9:

Delete "(b)" and insert "(c)"

Senate Community and
Regional Affairs
February 8, 1983
Page Two

agreements with the Forest Service for fire protection of rural properties of mutual concern, or for joint state, federal, and local drug enforcement operations or for a host of other municipal functions which are exercised jointly or in cooperation with state or federal agencies or other municipalities. I strongly suggest that this section be eliminated as it is not only superfluous, but its existence may lead courts to two unfortunate conclusions; first, that the only way municipalities may engage in a cooperative or joint emergency service communication center is as provided in the subject section; and second that inasmuch as the legislature went to great pains to detail the procedures and structures for joint operation of emergency communication centers, other similar joint operations must have specific and detailed legislative authorization. It was for these types of reasons that the technical committee for the Title 29 revision recommended striking or generalizing such detailed procedures found in the present Title 29. If there is some feeling that striking this section would jeopardize the authority of municipalities to enter into such arrangements, I suggest the section be struck and replaced with a new section under the general powers portion of the Bill which would authorize a municipality to enter into an agreement or association, including membership in a corporation, with any other municipality, the state, or federal agencies, for the purpose of exercising any power or function of the municipality. 29,35,010(15)

Page 96, beginning at line 5. Subsection (c) of this section makes subsections (a) and (b) applicable to all home rule municipalities. Actually, there appears to be little need to have this apply to any home rule municipality; however, because subsection (a) deals with the different disposition of a vacated public square depending on whether the square is within a city or outside a city but within the borough, it may be appropriate to make subsection (a) applicable only to home rule boroughs and general law municipalities. In addition, the last sentence of subsection (a) which begins in line 17 could lead to some very awkward situations. If, in the original plat, a lot is dedicated as a holding area for storm waters, or as a park or for some other non-street use and is later vacated because the lot is no longer needed for that purpose it may be very difficult to determine who is the "rightful" owner; and if this "rightful" owner is someone other than the abutting property owners, it may be impossible to locate the owner. I suggest deletion of the sentence which begins on line 17, and in line 14, just before the word "public" the insertion of the phrase "lot or".

Page 105, beginning at line 7. I don't think that the definition of "developed" clarifies anything. For example, when a native corporation subdivides some of its property and puts in roads and

(now)

A.S. 29,48,260 Copies for committed

Replaced by ~~Rs~~ 29,35,090

Cape Fox Corp
Sewell & Gallogher letter -
taxation

Developed definition: grossed up production present use -
change word or to and

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 28, 1983

SUBJECT: Mayor's veto power
(HB 172)

TO: Representative Barabara Lacher
Chairman, House Community and
Regional Affairs Committee

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

You have asked for a comparison of the veto power of a mayor under HB 172 as compared to the veto power of a mayor under existing law.

Existing

Under AS 29.23.170, the mayor of a borough is authorized to veto ". . . any ordinance, resolution, motion or other action of the assembly and may, by veto, strike or reduce items in appropriation ordinances except for school budget items". However, the mayor may not veto an action of the assembly calling for an election on adopting or abandoning a manager plan (AS 29.23.240(d)), or an action of the board of equalization or board of adjustment. The assembly sits as the board of equalization and hears appeals from decisions of the borough assessor, or the assembly may delegate this authority to another board (AS 29.53.135). An action taken by the board of equalization may not be vetoed, whether the assembly sits as the board or whether other appointed members form the board. The assembly is the board of adjustment for purposes of hearing appeals from land use decisions, but the assembly may delegate this function to a city for the area within the city's boundaries (AS 29.33.110). An action taken by the board of adjustment may not be vetoed by the borough mayor, whether the assembly is sitting as the board or a city board is involved.

Existing

In addition to general limitations on the veto power of a borough mayor, with respect to a third class borough AS 29.41.020 provides in part:

The borough executive is the presiding officer of the borough assembly and president of the school board. The borough executive has all powers of a borough executive except for the veto power.

Under this language it appears that the mayor of a third class borough has no veto power, whether acting as presiding officer of the assembly or as president of the school board.

Existing
Under AS 29.23.270, the mayor of a first class city ". . . may veto any ordinance, resolution, motion, or other action of the council and may by veto strike or reduce items in appropriation ordinances except, in a city outside an organized borough, for school budget items". The mayor of a second class city may not veto any action. The section is silent as to whether the mayor of a first class city in a borough may veto an action of the council sitting as a board of equalization or adjustment pursuant to a delegation of authority by the borough assembly.

NEAR
The veto provision contained in sec. 29.20.270 of HB 172 applies to both cities and boroughs. Just as in existing law, a mayor is authorized to veto ". . . an ordinance, resolution, motion, or other action of the governing body and may strike or reduce appropriation items". As in existing law, the mayor may not veto items in a school budget or adoption or repeal of a manager plan of government, and the mayor of a second class city may not exercise a veto at all. In addition, the mayor of a city or borough may not veto ". . . actions of the governing body sitting as the board of equalization or board of adjustment" Since the mayor is authorized to veto only actions of the governing body and not actions of other boards, the result of this provision is the same as the existing prohibition against veto of an action of the board of equalization or board of adjustment even if the governing body delegates the functions under sec. 29.40.050 or sec. 29.45.200. However, under HB 172 it is clear that neither the mayor of a city nor the mayor of a borough may veto actions of the board of adjustment or board of equalization.

While, in HB 172, the mayor of a third class borough continues to have no power to veto actions of the assembly sitting as a school board, under sec. 29.20.300(b) the mayor is not precluded from vetoing other actions of the assembly.

1 subsection is limited to

2 (1) an amount equal to two percent of the value of the
3 structure based on the assessment for 1981, if the fire protection
4 system is a fixture of the structure on January 1, 1981; or

5 (2) an amount equal to two percent of the value of the
6 structure based on the assessment as of January 1 of the year immedi-
7 ately following the installation of the fire protection system if the
8 fire protection system becomes a fixture of the structure after
9 January 1, 1981.

10 (m) The tax exemption required by 43 U.S.C. 1620(d), as amended,
11 shall be implemented according to the following conditions and inter-
12 pretations:

13 → (1) "developed" means a purposeful modification of the
14 property from its original state that effectuates a condition of
15 gainful or productive present use without further substantial modifi-
16 cation; surveying, construction of roads, providing utilities or other
17 similar actions normally considered to be component parts of the
18 development process, but which do not create the condition described
19 in this paragraph, do not constitute a developed state within the
20 meaning of this paragraph; developed property, in order to remove the
21 exemption, must be developed for purposes other than exploration, and
22 be limited to the smallest practicable tract of the property actually
23 used in the developed state;

24 (2) "exploration" means the examination and investigation
25 of undeveloped land to determine the existence of subsurface nonrenew-
26 able resources;

27 (3) "lease" means a grant of primary possession entered
28 into for gainful purposes with a determinable fee remaining in the
29 hands of the grantor; with respect to a lease that conveys rights of

1 exploration and development, this exemption shall continue with re-
2 spect to that portion of the leased tract that is used solely for the
3 purpose of exploration.

4 (n) If the property or interest in the property reverts to an
5 undeveloped state, or if the lease is terminated, the exemption shall
6 be reinstated, subject to the provisions of (m) of this section.

END
7 Sec. 29.45.040. PROPERTY TAX EQUIVALENCY PAYMENTS. (a) A

8 resident of the state 65 years of age or older who rents a permanent
9 place of abode is eligible for tax equivalency payments from the state
10 through the department.

11 (b) For purposes of determining payments to eligible persons,
12 the department shall calculate at the rate of one percent per mill a
13 property tax equivalent percentage for each municipality that levies a
14 property tax. The property tax equivalent percentage applied to the
15 annual rent charged to the applicant equals the property tax equiva-
16 lency payment payable under this section.

17 (c) To obtain tax equivalency payments the eligible resident
18 must apply to the department for payment for the preceding year by
19 January 15 of each year on forms and in the manner prescribed by the
20 department. Each applicant shall submit with the application rental
21 receipts or, if rental receipts are not available, other evidence
22 satisfactory to the department for determination of the fact of pay-
23 ment of rent and the amount paid.

24 (d) If two or more persons occupy a residence as tenants, not
25 all of whom are eligible for tax equivalency payments under this
26 section, the assessor shall determine equitable partial payments to be
27 made to the eligible tenants. However, tax equivalency payments to an
28 eligible applicant may not be reduced because the spouse is less than
29 65 years of age. If all occupants in a residence are eligible for tax

ALASKA ASSOCIATION OF ASSESSING OFFICERS

SENATE BILL NO. 260 (proposed substitute)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to exemption from municipal property

taxation of certain property exempt from taxation from federal law; and providing for effective date."

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

*Section 1. AS 29.53.020 (a) is amended by adding a new paragraph to read:

(9) real property or an interest in real property that is exempt from taxation under 43 U.S.C. 1620(d), as amended.

*Sec. 2. AS 20.53.020 is amended by adding new subsections to read:

(k) For the purpose of determining property exempt under (a)(9) of this section, the following definitions apply to terms used in 43 U.S.C. 1620(d) unless superseded by applicable federal law:

(1) "developed" means a purposeful modification of the property from its original state that affectuates a condition of productive present use or makes the property marketable for use or development in accordance with local ordinances and state statutes without further subdivision or substantial modification. Developed property, in order to remove the exemption, must be developed for purposes other than exploration and be limited to the smallest practicable tract of the property actually used in the developed state;

(2) "exploration" means the examination and investigation of undeveloped land to determine the existence of subsurface nonrenewable resources;

(3) "lease" means a grant of primary possession entered into for gainful purposes with a determinable fee remaining in the hands of the grantor; with respect to a lease that conveys rights of exploration and development, this exemption shall continue with respect to the portion of the leased tract that is used solely for the purpose of exploration.

(4) If property or an interest in property that is determined not to be exempt under (a)(9) of this section reverts to an undeveloped state, or if the lease is terminated, the exemption shall be granted, subject to the provisions of (a)(9) and (k) of this section

7 months?

talks all of it?

*Sec. 3. AS 209.53.060 is amended by adding a new subsection (c) reading.

(c) The assessment of property which has lost its exempt status under 43 U.S.C. 1620(d) because it is developed or leased shall be based on the full and true value of the improvements to the property and of so much of the property and/or natural resource as is used or useful in connection with the improvements.

*Sec. [3]4. This Act takes effect January 1, 1984

NOTE OF INTENTION

Attached is a proposed substitute for Senate Bill 260, which is an act relating to the exemption from municipal property taxation of certain property exempt from taxation under federal law; and providing for an effective date.

The proposal was drafted at a quarterly meeting of the Alaska Association of Assessing Officers held in Soldotna on May 23 and 24, 1983.

It was the opinion of the assessing officers that the original Senate Bill 260 was unfair, as it related to other persons in the State of Alaska who are involved in the subdividing and developing of property. The original bill allowed Native organizations to completely develop a subdivision, including survey, roads and utilities, and still not be obligated to pay local taxes until such time as the property was sold. We realized that it was probably the intent of the federal government in passing the Native Land Claim Settlement Act to allow a moratorium on local taxes so that the Native organizations could get their feet on the ground and not forfeit their property to taxes in the early years. We felt the original Senate Bill 260 allowed the corporations not only to get their feet on the ground, but to remain in a tax exempt status virtually in perpetuity, as far as purposeful modifications to their property are concerned.

Our proposed bill would allow a future subdivision in the state of being developed a tax exemption, but as such time as the subdivision is completed in conformance with the subdivision agreement, it would become taxable. This, in essence, gives the Native organizations developing subdivisions or natural resources a tax free period of time during the development process, but once the development criteria has been met it places the property on the tax roll of local taxing jurisdictions.

The proposal also provides in section 2(k)(1) for the taxation of only a small portion of a larger tract, if only that portion has been developed. It eliminates taxation as does the original Senate Bill 260 of land being used for exploration. It allows, as did the original bill, for property that has been leased to be taxed, but deletes this property from the tax roll should the lease be terminated. If the lease is terminated, and due to the lease, a portion of the property was developed, that portion would remain taxable to the Native corporation.

Our proposed bill would bestow an additional benefit on the Native corporations over what most of them have at the present time. Most of the assessing jurisdictions within the State begin to assess the property at the time it is surveyed, and continue through the development stage. As mentioned above, the proposed bill by our association would allow the development to take place prior to beginning the assessment procedures.

Should you have any questions concerning our position, please contact the undersigned.

Glenn M. "Pat" McKee, CRA *264-6595*
Chairman, Legislative Committee
Alaska Association of Assessing Officers
Pouch 6-650
Anchorage, Alaska 99502

Alaska State Legislature



House of Representatives

COMMITTEES

CHAIRMAN

HOUSE TRANSPORTATION

MEMBER

COALITION POLICY COMMITTEE
HOUSE HEALTH EDUCATION
AND
SOCIAL SERVICES

REPRESENTATIVE
BETTE CATO

DISTRICT 6
BOX 775

VALDEZ, ALASKA 99686
(907) 835-4568

WHILE IN JUNEAU
POUCH V

JUNEAU, ALASKA 99811
(907) 465-4858
(907) 586-2660

April 12, 1983

Lyman Hoffman, City Manager
CITY OF BETHEL
P.O. Box 388
Bethel, Alaska 99559

Dear Lyman:

Thank you for your recent letter requesting my support for SB 1. As I'm sure you know, HB 172 is the House version of the Municipal Code revision bill.

The bills in question are monolithic, and due to their size and impact there will be a considerable amount of time spent on them in committee. SB 1 has gone from Senate C&RA to Judiciary. At this time, hearing dates in Judiciary have not been set. Once the bill gets through Judiciary, it will then go to the Finance and Rules Committees respectively. On the House side, the C&RA Committee will be passing the bill out sometime near the end of April. HB 172 has the same committee referrals as SB 1. Obviously, unless we're here till August, it looks like the bills will be carried over to the second session.

Lyman, I believe that the majority of legislators, including myself, support the concept of revising and reorganizing Title 29. However, at this time I cannot make a commitment to the bill until I see how it is amended. I'm sure you understand. In any event, you can always feel free to contact me on this.

Thank you for writing. Please give my best to my friends in Bethel.

Most sincerely,

A handwritten signature in cursive script that reads "Bette Cato".

Bette Cato
Alaska State Representative
District 6

cc: Representative Barbara Lacher, Chairman ✓
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Senator Bill Ray, Chairman
SENATE JUDICIARY COMMITTEE

BC:er

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
9C7-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 4, 1982

SUBJECT: Chapter summary of Municipal Code
Revision [CSHB 170] (Work Order
No. 12-2379)

TO: Representative Patrick M. O'Connell
Chairman, House Community and
Regional Affairs Committee

FROM: Tamara Brandt Cook
Legislative Counsel

You have requested a chapter summary of the municipal code revision (CSHB 170) highlighting significant changes to existing law. For your convenience, I have attached a table of contents by chapter and article to the revision. Corresponding chapter numbers in the existing Title 29 are included in parentheses.

Chapter 03. The Unorganized Borough. No significant change.

Chapter 04. Classification of Municipalities. No significant change.

Chapter 05. Incorporation. Does not authorize incorporation of a third class borough.

Chapter 06. Alteration of Municipalities. Does not authorize incorporation of a third class borough through merger or consolidation.

Chapter 10. Home Rule Municipalities. Authorizes a second class city to adopt a home rule charter if the city has at least 400 permanent residents. Requires home rule municipalities to provide land use regulation.

Chapter 14. Capital City. No significant change.

Chapter 20. Municipal Officers and Employees. Requires a municipality to adopt a conflict of interest ordinance that requires a member of the governing body to declare a substantial financial interest he has in an official action. The presiding officer must then determine whether to excuse him from a vote and this decision may be overturned by majority vote of the membership. Allows a special meeting to be called if a majority of the members are given at least 24 hours notice and reasonable efforts are made to notify all members. A special meeting may be conducted with less than 24 hours notice if 11 members are present or if absent members waive in writing the required notice. Requires the governing body to appoint within 7 days the number of members needed for a quorum if the membership is reduced to fewer than the number needed. Requires that a veto be overridden at the next regular meeting or within 21 days after exercise of the veto. Grants authority to a municipality to establish advisory, administrative, technical, or quasi-judicial boards and commissions. Allows the governing body to provide for a classified service and to designate positions that are wholly or partially exempt from the classified service.

Chapter 25. Municipal Enactments. A penalty not to exceed that imposed for a class B misdemeanor may be imposed for a violation of an ordinance. A mandatory, nonsuspendable term of imprisonment for 5 days may be imposed for violation of an ordinance. A civil action may be instituted against a person who violates an ordinance and a civil penalty of up to \$1,000 may be imposed for each violation. An action to enjoin a violation may be brought and the court must grant the injunction on finding a violation. Each day a violation continues is a separate violation.

Chapter 26. Elections. The judge of a precinct must be a voter of the precinct for which he is appointed unless no voter is willing to serve. Both general law and home rule municipalities are required to give at least 20 days notice of a regular or special election. A runoff election shall be held if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the governing body or school board. There is no super majority requirement for other elected offices, and a municipality

Bad!

clarity at large elections

may change the requirement for mayor, member of the governing body, or member of the council by ordinance. The initiative and referendum process and the recall process have been substantially altered. An application must be filed with the clerk for a petition. The clerk prepares the petition and provides it to the voters who will sponsor the petition. When a petition is returned, the clerk certifies whether it is sufficient and notifies the sponsors. The petition may be supplemented with additional signatures obtained and filed within 10 days after the petition is first rejected, except that a recall petition may only be supplemented if it contains an adequate number of signatures, counting both valid and invalid. A person may not be recalled until after he has served 120 days and may not be recalled if there are only 180 days left in his term.

Chapter 35. Municipal Powers and Duties. The following have been included in the list of facilities that a municipality may provide outside its boundaries: solid and septic waste facilities, utility services, transportation facilities, wharves, harbors and other marine facilities. A municipality that provides a facility outside its boundaries may regulate its use only to the extent that the jurisdiction in which the facility is located does not. Extends eminent domain and declaration of taking power to second class cities as it may be exercised by other municipalities. Unless a grant of a franchise or permanent permit is made on a competitive basis, the grant of an exclusive right to use a public street or right-of-way for more than five years to a utility or transportation system that is not certified is valid only if approved by vote. (Under existing law no franchise is valid unless it is submitted to the voters for approval.) The governing body is required by ordinance to establish a formal procedure for acquisition and disposal of land, but is not otherwise limited in its ability to dispose of land. A first class borough is allowed to exercise on a nonareawide basis any power, and on an areawide basis any power that is acquired, so long as exercise of the power is not specifically prohibited by law. Allows a second class borough to exercise on a nonareawide basis any power approved by the voters living outside cities, unless the power is prohibited by law. Allows a second class borough to exercise an areawide power if it is approved by the voters or transferred by the cities in the borough, unless prohibited by law. A city may exercise any power not prohibited by law.

Chapter 40. Planning, Platting, and Land Use Regulation. A planning commission is authorized to utilize methods other than zoning to implement a comprehensive plan. The governing body must update the plan as necessary. Requires the assembly to provide for an appeal from the application of a land use regulation before a hearing officer or board of adjustment. The governing body must establish a platting authority, but the planning commission need not act as platting authority. Plat requirements may not be waived, but in certain cases a short plat procedure may be followed rather than the regular procedure. A person who violates a land use regulation or condition imposed by a platting authority is subject to the penalties that may be imposed for violation of an ordinance.

Chapter 45. Municipal Taxation. Allows a municipality to exempt by ordinance personal property from taxation. Extends the limit on assessing farm use land to greenhouses so that they are assessed at full and true value for farm use. A penalty not to exceed 20 percent of the tax due may be added to delinquent taxes, and interest not to exceed 15 percent shall accrue on unpaid taxes. The right to repurchase foreclosed property is cut off after 10 years. If, in the absence of a suit, it becomes obvious to the governing body that judgment for recovery of taxes would be obtained the municipality must refund the taxes. A petition for incorporation of a second class city may be combined with a sales and use tax proposal, so the incorporation proposition fails if the tax proposal fails.

OR
Chapter 46. Special Assessments. Costs that may be included in a special assessment are listed. These may not exceed actual costs, but may include reasonable estimates of the costs of issuing bonds. If an assessment is increased a new public hearing must be held unless all owners of property subject to the increase agree to the increase in writing. A municipality may issue notes for the costs of a local improvement project to be eventually paid from assessments for the improvement.

Chapter 47. Municipal Debt. The issuance of revenue bonds and use of proceeds from revenue bonds are not subject to the prohibition against a political subdivision making a subscription to the capital stock of a corporation, lending its credit for the use of a corporation, or borrowing money for the use of a corporation. Refunding bonds may be

exchanged at the discretion of the governing body and need not be exchanges at par for bonds being refunded. Revenue bonds may be issued to finance any project and to be secured solely from the revenue and property of that project. Bonds and notes may be sold in the manner and at the price determined by the municipality regardless of the par value. Allows the interest rate payable on bonds or notes to exceed the contract usury rate. Indebtedness of a service area remains a debt even though a court subsequently determines that the service area was not validly formed under law.

Chapter 55. Municipal Programs. No significant change.

Chapter 60. State Programs. No significant change.

Chapter 65. General Grant Land. No significant change.

Chapter 71. General Provisions. Dedication of streets, rights-of-way, easements of other areas for public use may not be construed to require the municipality to maintain, improve or provide for municipal services in the area dedicated.

TBC:ljb

Attachment

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HISTORY
TITLE 29 LEGISLATION
SB 180

CSSB 180(CRA)am

- 1) 600 Pop. requirement for reclassification
- 2) Temp. Law Sect. added for pending applications (relating to 600 pop.)
- 3) No change

PAGE # HOUSE CSSB 180(CRA)

2. & 3. 400 Pop. requirement for reclassification
- No change
60. notification of certification
65. of petitions/recall & initiative

SENATE FLOOR ACTIONS

- 4) Allow borough mayors to vote in event of a tie (2nd class w/mgr. govt)
- 5) Deleted language of mandatory, nonsuspendable imprisonment for violation of ordinance
- 6) Changed (may) to shall re/short plat procedure
- 7) Retained current law regarding tonnage taxation \$5 min/\$15 max
- 8) Retained Rates of Penalty & Interest at 10% - 8% - 10%

43. Adopted by (concurred) House CRA Committee
55. Adopted by House CRA (concurred)
86. Adopted "Abbreviated Plat or Waiver"
97. Deleted \$5 max & \$15 min tax on tonnage
110. Increased Penalty & Interest Rates 20% - 15% - 20%

CSSB 180(CRA)am

- 9) Amended definition of subdivision
- 10) No change

169. Retained current law definition of subdivision
175. Self-Insurance Amendment

=====

*PAGE NUMBER RELATED TO SPECIFIC VERSION OF BILL

HOUSE CSSB 180(Jud)

- | | |
|---|---|
| 11) No change | 71. 29.35.060 - Franchised & Permits lines 18 & 19. Inserted language |
| 12) No change | 81. Added new Article 8 to Chapter 35 Definition of "Powers" - 29.35.700 |
| 13) No change | 137. 29.47.390 - lines 25 & 26 Municipal Revenue bonds secured and payable from project only and not municipal revenues, including tax revenues |
| 14) Retained current language "Aid to Native Village Govts" - no change - | 149. 29.60.140 Rewritten: State Aid to Unincorporated Communities (language by Ted Bearnes) |

=====

CSSB 180(CRA)am

HOUSE CSSB 180(Fin)

- | | |
|--|---|
| 15) same (600 Pop) | 2-3-4 Reinserted 600 Pop. figure |
| 16) Temp. Law Sect. re/600 pop. for pending applications | no change |
| 17) No change | 10-12 Inserted SB 735 & 737 Home Rule & Organization Grants 29.05.180 FY 83 - 405,000 |
| 18) No change | 98. Inserted SB 314 CRA am - Motor Vehicle Exempt/Senior Citizens - 0 Fiscal |
| 19) No change | 96. Line 13 - added sub (7)(8) Exempt Forest Land as in 41.17.950 - 0 Fiscal ✓ |
| 20) No Change | 99. Inserted SB 802 Definitions of "developed", "exploration" and "lease" (m)(n) ANCSA Lands |
| 21) No Change | 146. Amended 29.60.020 amended "Determination of Population" for purposes of revenue sharing to include "isolated job sites" ✓ |
| 22) No Change - Retained current law "Aid to Native Village Governments" | 159. Inserted SB 830: Moves Municipal Assistance Program to Revenue and adds Dept. language to 29.60.140 "State Aid to Unincorporated Community (Different from (Jud) language) Fiscal - FY 83 38,000 |

CSSB 180(CRA)am

23) No Change

Page # House CSSB 180(Fin)

189-191 Inserted SB 240 Feasibility
Studies for Proposed Boroughs-
Added new Section 69 to Amend
Title 44 Fiscal FY 83 \$375,000

CSSB 180(CRA)

24) No Change

Page # 2nd House CSSB 180(Fin)

106 Line 21 "Determination of Population" ✓
for purposes of revenue sharing
to include "isolated job sites"

107 Line 23 "

108 line 1&2 "

146 Line 29 "

147 Line 1-9 "

153 Line 17-24 "

POSSIBLE FLOOR AMENDMENTS

By Bettisworth through House Finance Committee

Page 75- 29.35.120 "Firearms Amendment - No municipality may regulate firearms"

Rick Lauber/Roger Painter

By _____ to amend 29.45.050 Optional Exemptions and Exclusions -

(b)(1) Re-insert limit on tonnage fees to current language \$5 min. and \$15 max.

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

MEMORANDUM

TO: Committee on Community and Regional Affairs

From: Staff

Date: May 20, 1983

Re: Amendments to HB 172

The Committee has completed action on proposed amendments One through eight; except that representatives of the Cape Fox Corporation were offered an opportunity to prepare new language for amendment No. 8.

Amendment No. 8 deals with a definition of developed lands for tax exempt status. A revised definition has been prepared for Committee review.

Amendment No.9 has been requested by representatives of the Alaska Rural Electric Cooperative Association. A staff summary has been prepared in an attempt to clarify the basis of the issue.

Following Committee decision on the above proposed amendments, staff will request a Committee Substitute HB 172 that will incorporate all approved amendments.



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT - 586-5242

May 16, 1983

Tony Strong
Sealaska Building
One Sealaska Plaza
Juneau, Alaska 99801

Kellus Sewell
8489 Jennifer Drive
Juneau, Alaska 99801

FILE: Legislature - 1983/84 - SB 260

SUBJECT: Proposed Substitute

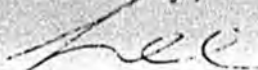
Gentlemen:

Enclosed is a proposed substitute for Senate Bill 260 which I believe incorporates the changes we agreed could be made to help clarify the definition of "developed" in the bill. As you requested, I have shown the changes which the three of us propose by using brackets and underlining.

I appreciate the time you spent with me in discussing the changes. Please note that I still feel that subsection (1) should be deleted as it will lead to a changing tax status for property which cannot be pinned down to some specific event such as a transfer of ownership. While I recognize that such a system may be beneficial to the native corporations, it creates a situation which will undoubtedly lead to disagreements (and perhaps court battles) between municipalities and native corporations.

While I believe the language in the attached proposed substitute is more clear than that in Senate Bill 260, I strongly suggest that this proposal be reviewed by the attorneys and assessors in other municipalities as well as other native corporations. The situation varies from municipality to municipality and from native corporation to native corporation. It may even be profitable to try to set up a meeting of officials from concerned municipalities and native corporations to try to work out something to which a majority of us can agree.

Sincerely,


Gerald L. Sharp
City/Borough Attorney

GLS:jr
Enclosure

Alaska State Legislature

Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski



Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

MEMORANDUM

To: Committee On Community and Regional Affairs

From: Staff

Re: HB 172, proposed utilities amendment. (#9)

The attached amendment to HB 172 has been requested by Mr. Dave Hutchins, representing the Alaska Rural Electric Cooperative Association.

The controversy over the proposed amendment is based on the authority of municipalities, or lack of authority, to regulate utilities that are not subject to regulation by the Alaska Public Utilities Commission under AS 42.05.

A summary of the controversial portions of the three options presented to the committee is as follows:

1. Present Statues:

- a. Municipalities cannot regulate or grant franchises to any utility that is regulated by the Alaska Public Utilities Commission (APUC) under AS 42.05.
- b. APUC approval is required for a municipality to extend a municipal utility's service area.

The present laws are silent on the authority--or lack of authority-- of municipalities to regulate non-municipal owned utilities that are not regulated under AS 42.05. Since a General Law municipality has only the powers granted by law, it would probably be upheld that a General Law municipality does not have the authority to regulate a non-municipal owned utility that is not regulated by APUC.

2. HB 172 Provides:

- a. Municipalities may grant franchises and regulate utilities to the extent they are not subject to regulation by APUC under AS 42.05, or not otherwise prohibited by law.
- b. Municipal owned utility services may be extended outside of the municipal boundaries (subject to approval by APUC).

3. Amendment requested by utilities:
 - a. Whenever a utility is exempted from regulation by APUC or subject to regulation under AS 42.05, a municipality may not regulate the utility.
 - b. A municipality may only extend utility services to an area adjacent to the municipal boundaries. This provision would prevent a municipal utility from providing utility services to an area that is not adjacent to the municipal boundaries.

The utilities that are, or may be, exempted from APUC regulation and as such are the utilities that are at the center of this issue are identified in AS 42.05.711 (copy attached).

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
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ORIGINAL.

Page 33, after line 28, insert:

"(26) AS 29.35.060 (franchise and permits)"
 Renumber following paragraphs accordingly.

Page 33, after line 29, insert:

"(28) AS 29.35.075 (disputes and conflicts with state
 certificated utilities)"
 Renumber following paragraphs accordingly.

Page 74, line 12, delete:

"utility services,"

Page 77, after line 6 add a new subsection to read:

"(c) This section applies to home rule and general
 law municipalities."

Page 77, lines 7 through 22, delete present language and
 replace it with the following:

"Sec. 29.35.070. PUBLIC UTILITIES. (a) The
 assembly for the area outside all cities in the borough
 and the council acting for the area in a city may
 regulate a utility service and fix, establish, and
 change the rates and charges imposed for a utility
 service provided to the municipality or its inhabitants
 by a utility except to the extent

(1) the utility is subject to regulation under AS
 42.05; or

(2) municipal regulation is prohibited by AS
 42.05.711(k) or other law.

(b) A municipality may provide for a reasonable
 deposit for meters and service to be given if interest
 is paid on the deposit.

(c) A municipality that owns or operates a utility
 may extend service to adjacent areas outside its
 municipal boundaries. For that purpose the
 municipality may acquire, maintain, and operate utility
 facilities together with necessary interests in real
 property outside its municipal boundaries.

(d) Unless a utility is owned by the municipality
 that is regulating it, all rates, charges, and
 regulations shall be established by the municipality in
 accordance with an ordinance that provides procedures
 for regulating service and establishing and changing

rates and charges. The ordinance shall provide for procedures necessary to guarantee due process, including notice and hearing requirements. Rates and charges established under this section shall be reasonable and permit a fair return on invested capital.

(e) A dispute involving a utility certificated under AS 42.05 as to the reasonableness of the fees for or the terms, conditions, or exceptions to a permit to use municipal streets shall be decided under AS 42.05.251.

(f) In case of a conflict between the provisions of this section and AS 42.05 or concerning an action taken under this section or AS 42.05 involving the regulation of service or the rates or charges of a utility certificated under AS 42.05, the provisions of AS 42.05.641 apply.

(g) This section applies to home rule and general law municipalities."

Page 195, after line 22, add a new section to read:

"* Sec. 62. AS 42.05.711 is amended by adding a new subsection to read:

(k) A public utility that is exempt or partially exempt under (d) through (j) of this section from the provisions of AS 42.05.010 - 42.05.721 may not be regulated by a municipality."

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Chugach Elec. Ass'n, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978); B-C Cable Co. v. City of Juneau, Sup. Ct. Op. No. 2112 (File No. 4587), 613 P.2d 616 (1980).

Sec. 42.05.711. Exemptions. (a) The provisions of AS 42.05.010 — 42.05.721 do not apply to a person who furnishes water, gas or petroleum or petroleum products by tank, wagon, or similar conveyance, unless the person is thereby supplying water, gas, petroleum or petroleum products to a public utility in which he has an "affiliated interest."

(b) Public utilities owned and operated by a political subdivision of the state and none of whose utilities is in competition with any other utility, are exempt from the provisions of AS 42.05.010 — 42.05.721, other than the provisions of AS 42.05.221 — 42.05.281, unless the owner and operator elects to be subject to all provisions of AS 42.05.010 — 42.05.721.

(c) The ownership in whole or part, of the corporate stock of a public utility does not make the owner a public utility.

(d) The commission, on a finding that no legitimate public interest will be served, may exempt a utility from all or any portion of AS 42.05.010 — 42.05.721.

(e) Notwithstanding any other provisions of AS 42.05.010 — 42.05.721, any electric or telephone utility that does not gross \$50,000 annually is exempt from regulation under AS 42.05.010 — 42.05.721 unless 25 percent of the subscribers petition the commission for regulation.

(f) Notwithstanding any other provisions of AS 42.05.010 — 42.05.721, an electric or telephone utility that does not gross \$325,000 annually may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721 other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(g) A utility, other than a telephone or electric utility, that does not gross \$100,000 annually may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721 other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(h) A cooperative organized under AS 10.25.010 — 10.25.650 may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721, other than AS 42.05.221 — 42.05.281, under the procedure described in AS 42.05.712.

(i) A utility which furnishes collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of \$200,000 or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 — 42.05.281,

unless 25 percent of the subscribers or subscribers representing 25 percent of the gross revenue of the utility petition the commission for regulation.

(j) The provisions of this chapter do not apply to sales, exchanges or gifts of energy to an electric utility certificated under AS 42.05.010 — 42.05.721 when the energy which is the subject of the sale, exchange or gift is waste heat, electricity, or other energy which is surplus or the by-product of an industrial process. In an area in which no electric utility is certificated for service, energy provided by sale, exchange or gift may be provided to any utility which is certificated for service to that area. A contract for the sale, exchange or gift of energy exempt under this subsection does not make the supplier a public utility, and does not transfer the responsibility to provide utility services from a certificated utility to any other person. (§ 6 ch 113 SLA 1970; am § 3 ch 76 SLA 1973; am § 8 ch 83 SLA 1980; am §§ 7-9 ch 136 SLA 1980; am § 89 ch 59 SLA 1982)

Revisor's notes. — As enacted by chs. 83 and 136, SLA 1980, present subsections (j) and (i) were designated as subsections (n) and (j), respectively, but were redesignated by the revisor of statutes pursuant to AS 01.05.031(b). Former subsection (i) of this section was transferred as § 13, ch. 136, SLA 1980 to the 1980 Temporary and Special Acts and Resolutions by the revisor of statutes pursuant to AS 01.05.031(b).

Effect of amendments. — The first 1980 amendment added subsection (j).

The second 1980 amendment deleted "excepting the furnishing of collection and disposal service of garbage, refuse, trash or other waste material" following "none of whose utilities" near the beginning of subsection (b), deleted the former second sentence in subsection (b), which read: "Notwithstanding any other provisions of this chapter, municipalities providing collection and disposal service of garbage, refuse, trash or other waste material within their corporate boundaries are not subject to regulation by the Alaska Public Utilities Commission unless the municipality elects to be subject to the provisions of this chapter," substituted "\$50,000" for "\$25,000" following "does not gross" near the middle of subsection (e), substituted "under this chapter" for "hereunder" following "exempt from regulation" near the middle of subsection (e), and added subsections (n) through (i).

The 1982 amendment, effective May 28, 1982, deleted "on June 30, 1980" preceding

"a utility," and inserted "annual" preceding "gross revenue" in subsection (i).

Editor's notes. — Section 13, ch. 136, SLA 1980, as revised by the revisor of statutes, provides: "Cable television systems are exempt from the provisions of AS 42.05 [AS 42.05.010 — 42.05.721], other than the provisions of AS 42.05.221 — 42.05.281, until July 1, 1983. This exemption does not apply in cities or villages which have a population of less than 3,500 people and which are not located on a state road or marine highway. The effects of the exemption of cable television systems from rate regulation by the Alaska Public Utilities Commission provided in this section shall be reviewed by the legislature before July 1, 1983. If the legislature fails to extend the exemption before July 1, 1983, this section is repealed on that date and cable television systems lose their exempt status on that date and become subject to regulation by the Alaska Public Utilities Commission."

Opinions of attorney general. — An electrical utility owned and operated by a regional electrical authority would continue to qualify for the broad exemption from this chapter, available to political subdivisions under subsection (b) of this section once the regional electrical authority had completed its proposed organization as a nonprofit corporation pursuant to AS 10.20.005 et seq. June 7, 1976, Op. Att'y Gen.

(a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, for the construction, operation and maintenance of bus transportation systems and public utilities not regulated under AS 42.05 and may permit them the use of streets and other public places under regulations prescribed by ordinance.

(b) No franchise is valid until it has been submitted to the qualified voters of the city or borough area outside cities in which it applies, and at least 55 per cent of the votes cast are in favor of the franchise. At least 30 days notice of a franchise referendum election shall be given in the same manner as is provided for notice of regular municipal elections, and the notice shall specify the purpose of the election. The ordinance granting a franchise shall provide for its submission for ratification to the qualified voters of the city or borough area outside cities at either a regular or special election, and the result of the election shall be canvassed publicly by the council or assembly and spread upon the records of the minutes and the result declared and certified in the same manner as in a regular election.

(c) Public utilities regulated under AS 42.05 have the right to use the streets and other public places, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the assembly or council requires. A dispute as to whether fees, terms, conditions, or exceptions are

reasonable shall be decided by the Alaska Public Utilities
Commission.

Sec. 29.48.060. PUBLIC UTILITIES RATES.

The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a municipally owned utility not regulated under AS 42.05.010 - 42.05.721 and may regulate and provide what is a reasonable deposit for meters and security for service to be given, provided that interest is paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital.

NOTE REGARDING THE FOLLOWING FRAME(S) ON MICROFILM:
COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES.
TITLE PAGE ONLY HAS BEEN FILMED.

Alaska
MUNICIPAL
League

Juneau ★ November 2-5, 1983

33rd Annual Local Government Conference

HB 172

was read the first time and referred to the Community & Regional Affairs and the Judiciary Committees.

HB 172 was accompanied by a fiscal note which appears in House Journal Supplement No. 4, and the following letter:

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill revising the municipal code (AS 29). By our using the data prepared by the Legislative Affairs Agency, this bill is identical to the bill introduced this session as Senate Bill No. 1, except for the correction of a typographical error (page 35, line 5 -- "overridden"), the justification of the right-hand-margin on several pages, and 11 rather technical changes that are described below. The bill was modeled on the bill approved last session by the House Finance Committee as HCS CSSB 180 (Fin). A detailed section-by-section analysis of SB 1 is being prepared by the Legislative Affairs Agency.

The bill does not contain any of the provisions which were criticized by Governor Hammond in his July 15, 1982 veto message for HCS CSSB 180(Jud) am H. See 1982 Senate Journal, pages 1788 -- 1792. This bill makes many non-controversial improvements to our municipal code and I urge its prompt consideration and passage. It is my hope that the AS 29 issues on which last year's amendments created such a controversy will be addressed by separate legislation so that this needed code revision is not once again delayed.

For your convenience in comparing SB 1 and this bill, here is a list of the 11 changes from SB 1 which are contained in this bill (with page and line numbers referring to SB 1):

1. page 8, line 26 -- following "council" the phrase "in a first class city" is added;
2. page 11, line 1 -- between the words "city" and "incorporated," the phrase "in the unorganized borough" is added;
3. page 29, line 8 -- following the first use of "commission," the phrase "of seven elected members" is added;

HB 172

4. page 29, lines 14 and 15 -- following "shall be" on line 14, the phrase "prepared by the petitioners and" is added and the word "incorporation" is deleted; following "petition" on line 15, the phrase "to incorporate a home rule municipality" is added;

5. page 62, line 3 -- a sentence to read "The runoff election shall be between the two candidates receiving the greatest number of votes for the seat." is added to sec. 29.26.060(c);

6. page 63, lines 7 and 26, and page 64, line 15 -- replace the words "bill" and "Act" with the phrase "ordinance or resolution";

7. page 82, line 18 -- following "emergency," the word "services" is added, and following "center," the phrase "under AS 29.35.130" is added;

8. page 85, lines 4 and 5 -- subsection (c) is amended as follows:

(c) A third class borough acquires an additional power to exercise in a service area in accordance with AS 29.35.490(b) and (c) [AREAS BY HOLDING AN ELECTION ON THE QUESTION IN WHICH EACH PERSON WHO IS A VOTER OF THE BOROUGH MAY VOTE].

9. page 106, line 8 -- the first sentence of sec. 29.-45.040(b) is amended as follows:

(b) For purposes of determining payments to eligible persons, the department shall calculate at the rate of one percent per mill a property tax equivalent percentage for each municipality that levies a property tax [AT THE RATE OF ONE PERCENT PER MILL].

10. page 161, line 20 -- "29.60.120" is replaced with "29.60.130";

11. page 182, line 1 -- following "general law," the phrase "first or second class" is deleted.

Sincerely,

Bill Sheffield
Bill Sheffield
Governor

TITLE 29 FACT SHEET

SUMMARY OF HB 172/SB 1 - TITLE 29 (MUNICIPAL CODE)

HB 172 and SB 1 are comprehensive bills that reorganize and clarify Title 29 (Municipal Code), but do not substantially change that part of the state statutes that direct the operation of local government in Alaska.

History: The current Title 29, last revised in 1972, is a hodgepodge of 13 years worth of amendments. It is very difficult for the average citizen to read and understand.

Recognizing the problem, the Legislature adopted SCR 66 in 1980, directing the rewrite of Title 29. A broadly representative policy committee, with the assistance of a technical committee, prepared a revised code after an exhaustive series of meetings, hearings, and public presentations.

HB 170 and SB 180 were introduced in 1981. More hearings were held during the 1981 legislative session, during the interim, and continuing through the 1982 session. SB 180 passed the legislature, but because of controversial floor amendments, Governor Hammond vetoed the bill.

In 1983, SB 1 was introduced by Senators Sturgulewski and Gilman; HB 172, by Governor Sheffield. Both bills are basically the same as the bill that had passed the previous year minus the controversial amendments. More committee work was done in both the House and Senate on the 204 page bill.

Changes: For the most part, these bills reorganize and reword Title 29 for clarity and flexibility. Policy changes of any substance are very few. The main changes are:

Third Class Boroughs: The existing third class borough, Haines Borough, continues in existence, but there is no provision for incorporating new third class boroughs in the future.

Home Rule Status: Second class cities and unincorporated areas are authorized to adopt home rule charters, which must be ratified by a vote of the people.

Municipal Powers: A general grant of municipal powers is given to municipalities, instead of a long list of enumerated powers. The difference is more semantic than actual, since the list includes almost every conceivable municipal power. There is no change in the manner in which boroughs acquire powers.

Organizational Grants/Feasibility Studies: The organizational grants are increased and expanded, depending on the category of local government. Studies for the feasibility of local government are authorized.

Incorporation Requirements: The minimum number of people required for incorporation as either a first class or home rule city is increased from 400 to 600.

Ordinance Violation: Penalties for ordinance violations are increased from a maximum \$500 and 30-days to class B misdemeanor penalties, which are a maximum of \$1000 and 90-days.

Extraterritorial Jurisdiction: Solid and septic waste disposal, utility services, wharves, harbors, and other marine services are added to the list of powers that may be exercised outside the boundaries of the municipality, if the municipality has the authority to exercise the power inside its boundaries.

Economic Development: Allow economic development as a non-area-wide power for second class

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. _____
 Title "An Act Relating to Municipal Government"
 Requested by Governor's Office _____ Date: 1/5/83

II. FISCAL DETAIL

Agency Affected Department of Community & Regional Affairs
 Program Category Affected Development
 BRU, Program, Or Subprogram(s) Affected Local Government Assistance Grants
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL				175.0	175.0	
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		100	150	450.0	350.0	250.0
TOTAL		100.0	150.0	625.0	525.0	250.0

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		100.0	150.0	625.0	525.0	250.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME		0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

SEE ATTACHED

IV. DATE 1/5/83 PREPARED BY Terry Earley
 AGENCY Community & Regional Affairs
 Original: Legislative Finance PHONE 465-4730
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/82)

CJM

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. _____
 Title "An Act Relating To Municipal Government"
 Requested by _____ Committee by request of Governor _____ Date _____

II. FISCAL DETAIL

Agency Affected Dept. of Community & Regional Affairs
 Program Category Affected Development
 BRU, Program, Or Subprogram(s) Affected Local Government Assistance
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	100.0	150.0	625.0		

FUNDING (Thousands of Dollars)

	0	100.0	150.0	625.0		
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

RECEIVED

FEB 10 1983

LEGISLATIVE FINANCE

IV. DATE 1/27/83 PREPARED BY *Tommy Farley*
 AGENCY Community & Regional Affairs
 Original: Legislative Finance PHONE 465-4730
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT

FISCAL NOTE
"An Act Relating to Municipal Government"

Article 3 of the Bill appears to be the only portion that has fiscal impact on this Division. That Article "TRANSITIONAL ASSISTANCE" provides for organizational grants to newly formed and newly reclassified cities. These grants are \$50,000 the first year and \$25,000 the second year.

Additionally, the bill provides for organization grants to newly formed Boroughs in the following amounts:

\$300,000 for the first fiscal year
\$200,000 for the second fiscal year
\$100,000 for the third fiscal year

Finally, it provides for the department to establish an initial sales tax structure and an initial property tax structure.

Assumptions: In estimating the fiscal impact of the bill the following assumptions were made.

1. There would be two incorporations or reclassifications each year. This would produce an FY 84 cost of \$100,000 and an annual cost of \$150,000 from that point forward.
2. There will be one Borough Incorporation in 1986. This incorporation would necessitate expenditure of the 3 step organization grant in 1986, 1987, and 1988. Based on this assumption it is also estimated that contractual costs for setting up the two tax systems would be \$350,000 in contractual costs spread over a 2 year period.

LAND
MANAGEMENT
REGULATIONS

NORTH SLOPE BOROUGH

WICKERSHAM & FLAVIN
PLANNING CONSULTANTS
1577 "C" ST. SUITE 226
ANCHORAGE, ALASKA 99501
(907) 272-9061

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CHAPTER 10

INTRODUCTION, PURPOSE, SCOPE AND MISC. PROVISIONS

19.10.010 Introduction. This Title creates a unique set of land management principles and procedures for development in the North Slope Borough. The ideas contained in this Title were developed by officials and residents of the Borough in many public meetings held between 1979 and 1982 to develop the Borough's Comprehensive Plan, Coastal Management Program, and other planning studies. Reliance has also been placed on the Borough's previous interim zoning ordinance and other draft regulations. Procedural and administrative matters are designed to be as efficient and fair as possible to all concerned, and to comply with legal requirements.

19.10.020 **Purposes.** This Title 19 is adopted:

- (a) To achieve the goals and objectives, and implement the policies, of the Borough Comprehensive Plan, including its Coastal Management Program;
- (b) To ensure that the future growth and development of the Borough is in accord with the values of its residents;
- (c) To identify and secure, for present and future residents, the beneficial impacts of growth;
- (d) To identify and avoid, mitigate, or prohibit the negative impacts of growth; and
- (e) To ensure that future growth is of the proper type, design and location, and is served by a proper range of public services and facilities.

~~19.10.030 **Geographic Scope.** This Title applies to all private, State-, Borough- and Municipally-owned land in the Borough. To the extent allowed by law or administrative regulation or policy, it also applies to federal lands in the Borough.~~

19.10.040 **Severability.** Should any provision of this Title be held to be in violation of State law, the State Constitution or the United States Constitution, such holding shall not affect the validity of any other provision.

19.10.050 **Consistency with Coastal Management Plan.** Issuance of a Use Permit pursuant to an adopted Resource Development Master Plan, or issuance of a Development Permit for a conditional use, together with conditions on approval if any, is conclusive evidence of the Development's compliance with the North Slope Borough Coastal Management Plan when adopted.

19.10.060 **Effective Date.** This ordinance shall become effective on January 1, 1983.

CHAPTER 20

DEFINITIONS

19.20.010 Rules of Construction.

For the purpose of this Title, certain terms or words used herein shall be interpreted as follows:

- (a) Words used in the present tense include the future tense;
- (b) The singular number includes the plural;
- (c) The word "person" includes a corporation, partnership, joint venture, the Borough and any other public agency, as well as an individual or individuals;
- (d) The word "lot" also includes the words "plot," "parcel," or "tract;"
- (e) The term "shall" is mandatory and the word "may" is permissive;
- (f) The word "used" or "occupied" as applied to any land, or structure or building includes the words "intended," "arranged," or "designed" to be used or occupied;
- (g) The word "including" means including but not limited to.

19.20.020 **Definitions.** The following words shall have the following meanings for the purpose of this Title 19:

Accessory Use or Structure means a use or structure customarily subordinate or incidental to, and located on the same lot with a principal use, building or structure.

Administrator means the Borough Land Management Administrator, or his designee.

Agenda Item. An agenda item shall state the address or location of the site, a brief description of the proposed Development (including variances and incentives if any), the action requested and the Administrator's decision or recommendation thereon.

Agenda, Posted. The agenda shall state the name of the hearing body; the time, date and place of the meeting; and a list of each agenda item. The Commission shall establish, by resolution, at least one location in each Village and two locations in Barrow, in addition to the Borough offices, for the posting of the agenda. The agenda shall be posted at the Borough office and the Village location, if applicable, at least five days prior to the date of the meeting.

Alteration. Means a change to a use or development. A **Minor Alteration** is a change which has no appreciable affect on its surroundings as conclusively determined by the Administrator. A **Major Alteration** is any alteration except a minor alteration.

Animal Husbandry is a use involving the keeping of any animal other than household pets or working dogs.

Area Special Area, or Area, is a term used to indicate the geographic extent of a policy or policies, such as the Coastal **Area**, where the Coastal Management Program policies apply. Areas may overlap each other and the various zoning districts.

Area, Building means the total of areas taken on a horizontal plane at the main grade level of the principal building, and all accessory buildings or structures, exclusive of steps and porches.

Assembly means the North Slope Borough Assembly.

Best Available Technology means the technology or technologies that best and most safely implements the relevant policy and that is available to the applicant at the time of application or within a reasonable time thereafter.

Best Efforts means the best available technology or (where that term is inapplicable) the methodology or course of conduct, which will most likely result in minimizing the negative impacts of the Development.

Block. A piece or parcel of land entirely surrounded by public highways, streets, shorelines, streams, railroads right-of-way, survey lines or a combination thereof.

Borough Means the North Slope Borough, Alaska.

Building means any structure which is enclosed on the top and sides, including dome-shaped structures.

Coastal Area means the area within the Borough below 200 feet in elevation, and certain other areas, as indicated on ZMP Map II-6.

Commercial Use is a use involving the storing, wholesaling or retailing of any substance, and accessory uses.

Commission means the Borough Planning Commission.

Conditional Use means any use except uses-by-right and prohibited uses. It is subject to a Development Permit pursuant to Chapter 60.

Density means the number of square feet of lot area per dwelling unit in any residential development except a group home or rooming house.

Developer means the person who makes the application for a Development Permit, and his successors in title or interest. If the Developer is other than the owner of the land subject to the application, the owner must also sign the application.

Development, unless specifically exempted below, means any of the following:

- (a) Construction, reconstruction or major alteration of a structure;
- (b) A Preliminary Subdivision Plat and the initial lease or sale of a parcel for resource exploration, extraction or development purposes;
- (c) Change in the use of a site, including any structure thereon, from one type of development to another;
- (d) Installation of a mobile home;
- (e) Construction or enlargement of a public, quasi-public or private facility or improvement, including airports, roads and trails, ice roads, water or sewer mains or treatment facilities; electric, telecommunications, telephone, cable TV and similar lines, substations, generating facilities, transmission facilities, etc.; schools, hospitals and clinics, fire stations, police and other public safety facilities; parks, recreation facilities and buildings; cemeteries; and meeting halls;
- (f) Disturbance of the surface of the ground (including submerged grounds) including but not limited to dredge or fill activities; construction of roads, or parking areas; creation of airstrips, piers, jetties, gravel pads, etc; creation of an equipment or material storage site, or tailing pile; creation of a refuse pile, dump or landfill; creation of a reservoir, settling or evaporation pond, or leach field; and creation of placer mining sites;

- (g) Setting off flares, fires or explosions, or vibrations, specifically including seismic exploration; and
- (h) Any site work in preparation or anticipation of the above except surveying.

The following are specifically excluded from the term "Development":

- (i) A single family dwelling or duplex, other than a mobile home, on a single lot;
- (j) Conduct of a home occupation;
- (k) Subsistence, including the construction or emplacement of structures in furtherance of subsistence activities;
- (l) Existing uses and minor alterations thereto;
- (m) Alterations to uses set forth in (i), (j), and (k) above;
- (n) Uses or structures accessory to those set forth in (i), (j), (k), and (l) above.
- (o) Projects adopted as part of the Borough's annual Capital Improvements Program.

Development Permit means the permit for development as set forth in Chapter 60, including Revocable Development Permits.

Duplex means a building designed for or occupied exclusively by two families and constituting two dwelling units.

Dwelling Unit means a building or portion thereof providing independent and complete cooking, living, sleeping and toilet facilities for one family.

Dwelling, Multifamily means a building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling, Single-family means a detached building designed for long-term human habitation exclusively by one family, having complete living facilities and constituting one dwelling unit. The term includes factory-built and prefabricated dwellings, but not mobile homes.

Easement. A grant by the property owner to another person or to the public of the use of any designated part of his property for specific purposes.

Existing Use means a structure in existence and the use or uses to which it is put on the effective date of this Title 19.

Family means one or more persons occupying a physically secure premises and living as a single housekeeping unit, as distinguished from a group home, or rooming house.

Feasible and Prudent Alternative means an alternative to the Development's proposed conduct or method which is consistent with sound engineering practice and which does not cause environmental, social, or economic impacts that outweigh the net public benefit to be derived from compliance with the relevant policy.

Floor Area Ratio is the ratio of the floor area of all buildings on the site to the gross area of the site, or (if applicable) the area of the built-up surface (pads, roads, airstrips, etc.) to the area of the lease.

Floor Area means the total horizontal area of all of the floors of a building or structure, measured on the exterior perimeter.

Gross Area means the total site area, excluding bodies of water, to be included within a proposed development as indicated on a site plan.

Group Home is a use, which serves as a dwelling either for persons seeking rehabilitation or recovery from any physical, mental, emotional, or legal infirmity, or for the elderly.

Home Occupation is a commercial use conducted in a dwelling unit, by the occupants of that dwelling unit.

Industrial Use is a use involving manufacturing, processing, warehousing, storage, landfills and dumps, resource extraction, and any use which is not a residential, commercial, service/professional, or public facility; and accessory uses.

Intensity of Use means the density of residential developments, and the floor area ratio of nonresidential developments.

Lot means a distinct parcel of land for ownership and tax purposes unless otherwise specified, the lot will be deemed to be the site for a development. See site.

Master Plan is the program for development of a Resource Development District, and constitutes an amendment to the Comprehensive Plan and these Regulations. See Section 19.40.056.

Mobile Home is a use involving a detached, single-family dwelling designed for long-term human habitation and having complete living facilities, constructed and fabricated into a complete unit at a factory and capable of being transported to location of use on its own chassis and wheels, identified by a model number and serial number by its manufacturer, and designed primarily for placement on an impermanent foundation, and accessory uses.

Net Public Benefit means that the beneficial impacts of a Development outweigh its detrimental impacts, as set forth in the policies contained in Chapter 80. Impacts shall be measured on the Borough and its residents, with consideration given to residents of any Village Area of Influence.

Nonresidential Use means a commercial, service/professional, subsistence, resource extraction, recreational or industrial use, or a public facility.

Notice, Meeting. For variances, incentives, appeals and rezonings, notice shall consist of both of the following:

- (a) An agenda item in the posted agenda; and
- (b) Public notice

Notice, Public Public notice shall consist of: a minimum of five days prior to the date of the meeting:

- (a) Publication of the agenda item in a newspaper of general circulation in the Borough, and on Barrow radio;

- (b) Mailing a copy of the agenda item to the Developer, and to the Village Council(s) if the Development is in a Village Area of Influence; and
- (c) Delivering a copy of the agenda item to the Commission and the Mayor.

Plan means the North Slope Borough Comprehensive Plan, as amended from time to time.

Prohibited Use means a use not allowed in the zone.

Public Facility is a use involving a building or structure owned or used by a public body or utility company, or a dump or landfill, and accessory uses.

Recreational Use is a use involving activities or structures for recreational activities not for commercial or subsistence purposes, including but not limited to hunting, fishing, touring, sightseeing, boating, hiking, or athletics.

Regulations or Land Management Regulations means this Title 19, as amended from time to time.

Residential Use means a use involving the occupation of a building or structure for living, cooking, sleeping and associated recreation, and accessory uses.

Resource Extraction is a use involving the removal for commercial purposes of native vegetation, topsoil, fill, sand, gravel, rock, petroleum, natural gas, coal, metal ore, or any other mineral, and other operations having similar characteristics.

Revocable Development Permit means a Development Permit issued pursuant to Sections 19.60.090 and 19.70.080.

Rooming House is a use in which three or more persons either individually or as families are housed or lodged, with or without meals. Oilfield or pipeline camps, base facilities and boarding houses are specifically included in the term.

Service/Professional Use is a use involving the provision of personal services, whether for profit or not, churches, and accessory uses.

Sign is an accessory structure involving any lettered or pictorial device designed to inform or attract attention. The surface area of a sign is the entire area used for the above purpose, including all of the elements of the matter displayed, but not including black masking, frames, or structural elements outside the advertising elements of the sign which bear no advertising matter.

Site The location of a development. The site is the lot in all cases except resource extraction and accessory uses, in which case the site is the surface area to be disturbed, plus a radius of 100 feet.

Special Habitat is either: Discrete geographical areas which support essential life functions of significant fish or wildlife species including breeding, nesting, pupping, calving, spawning, rearing, feeding and hauling out areas; or which provide unique population elements including very high concentrations or isolated occurrence; or which provide habitat essential to the maintenance of endangered species; or

Habitat which supports seasonal concentrations of a significant fish or wildlife species including winter, spring, summer or fall concentrations; supports highly productive fish or wildlife populations; provides elements necessary for special uses including migration corridors and feeding areas; or provides supporting habitat essential to the maintenance of critical habitat (i.e. stream banks).

Street. Any right-of-way, private or public, which provides for vehicular or pedestrian circulation, including snow machines and related vehicles commonly used in the Arctic.

Structure means anything which is placed, constructed or erected and located on or under the ground, or attached to something fixed to the ground, such as a floating structure anchored to submerged ground, regardless of size, purpose or temporality, including but not limited to:

- (a) A building;
- (b) A tower, sign, antenna, pole or similar structure;
- (c) Drilling or excavating apparatus, pipelines, pump stations and similar structures;
- (d) A foundation, or gravel pad

- (e) A fence;
- (f) A sign;
- (g) A street, road, ice road, parking area, pad or storage area;

Structure, Principal means a structure in which is conducted the main use of the lot on which the structure is situated.

Subdivision means the division of a tract or parcel of land into two or more lots or other divisions for the purpose, whether immediate or future, of sale, financing, lease, development or the transfer of any interest, including any resubdivision, and when appropriate to the context, relates to the process of subdividing or to the lands or areas subdivided. For the purposes of this title, "subdivision" does not include a division of land by the lease of subsurface right solely for the purpose of exploring such rights. The extraction of subsurface resources pursuant to each lease and related surface development, such as the construction of non-seasonal streets, utilities and structures necessarily incident to the extraction of subsurface resources shall be considered a "subdivision" subject to the provisions of this title.

Subsistence Use is a use and includes hunting, whaling, fishing, trapping camping, food gathering, and other traditional, and cultural activities performed in support of the basic beliefs and needs of the residents of the Borough.

Use-By-Right means a use, determined pursuant to the process for rezoning to the Resource Development District, as set forth in Section 19.40.052.

Use Permit is a permit issued for a use-by-right pursuant to Chapter 50.

Variance means the relaxation of the strict application of the terms of a Mandatory Policy. It does not apply to Best Efforts or Beneficial Policies, or use or intensity restrictions. See Sections 19.60.060.

Village means the communities of Point Hope, Point Lay, Wainwright, Atkasuk, Barrow, Nuiqsut, Anaktuvuk Pass, and Kaktovik.

Village Area of Influence means the area outside the City limits of a Village which is used in common by some or all of the residents thereof for subsistence, transportation, public facilities or other purposes, as indicated on Maps 11 A, B and C.

Village Council means the City Council of incorporated cities and the IRA Council of unincorporated villages.

Wetlands include areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

CHAPTER 30

ADMINISTRATIVE

PROVISIONS

19.30.010 Administrator. The Administrator is authorized and empowered to carry out all of the duties set forth for him in this Chapter, and shall have all other power and authority reasonably necessary or desirable to carry out those duties, including the power to delegate those duties to other employees of the Borough.

19.30.020 Planning Commission — Creation and Membership. There is hereby recreated the North Slope Borough Planning Commission (the "Commission") to consist of eight registered voters of the Borough. Members shall be appointed by the Mayor subject to confirmation by the Assembly for staggered terms of three years. Vacancies in the Commission shall be determined by the Mayor and shall be filled only for the unexpired portion of the term.

19.30.030 Commission Procedures. The Commission shall elect a chairman and such other officers as it deems advisable. It may establish such subcommittees as it deems necessary or desirable in the discharge of its powers and duties.

No action set forth in Section 19.30.040 below, shall be undertaken by the Commission except by the affirmative vote of a majority of members present and voting at a properly noticed public hearing.

The Commission shall meet on the last Friday of each month, and upon call of the Chairman.

The Commission shall keep a permanent record of its meetings and its actions.

The Commission shall make such other rules and regulations governing the conduct of its business as it deems necessary or desirable.

19.30.040 Commission - Powers and Duties

19.30.041 Comprehensive Plan and Land Management Regulations.

The Commission may, from time to time, and shall at least once every five years, consider amendments to the Comprehensive Plan and Land Management Regulations, and if appropriate, recommended amendments to the Assembly for adoption. In this regard, it is the policy of the Borough to incorporate and integrate future environmental, sociocultural, capital improvements, and other studies into the Plan. The Borough intends to adopt the policy recommendations of these studies into the Plan

and these Regulations, to the end that there be a consistent body of policy to guide and direct public and private activities in the Borough.

The text of the Plan and the Regulations shall remain as consistent with each other as possible, and the policies set forth in each shall be substantially identical. Therefore, any proposed change should be examined for its effect on the goals, objectives and policies contained in the Plan, and any change in the Plan policies (i.e. addition, deletion or rewording of one or more policies) must automatically trigger an amendment to the comparable provisions of these Regulations.

19.30.042

Coastal Management Plan. The Commission shall consider and recommend adoption of a Coastal Management Plan for the Borough, and any future amendments thereto. The Coastal Management Plan, when adopted by all relevant parties, will become a component of the Comprehensive Plan, and the policies contained in the Coastal Management Plan shall be adopted as part of these Regulations and govern (together with all other applicable policies) development in the Coastal Area.

19.30.043 Development Permits Involving Density Bonuses and Variances from Mandatory Policies. The Commission shall hear and decide all permit applications involving a request for density bonus or a variance from a Mandatory Policy, and all appeals of permit decisions, and impose conditions and modifications thereon.

19.30.044 Other Incentives and Rezonings. The Commission shall make recommendations to the Borough Assembly on all permit applications involving incentives other than density bonuses and all proposed rezonings, indicating its opinion on the proposed Development's compliance with the Policies, and recommended conditions or modifications.

19.30.045 Review of the Capital Improvements Program. The Commission shall review annually the Capital Improvements Program of the Borough and submit its recommendations thereon to the Borough Assembly. The Mayor shall submit the Capital Improvements Program to the Commission in a reasonable period in advance of the fiscal year.

19.30.046 Reports and Recommendations on Public Improvements. The Commission shall review and report to the Borough Assembly regarding the location, design, construction, demolition or disposition of any public building, facility, collector or arterial street, park, greenbelt, playground or other public facility. The report and recommendation of

the Commission shall be based upon the Policies, the Plan, and the Capital Improvements Program.

19.30.047 **Subdivisions.** The Commission shall decide Preliminary Plats except for minor subdivisions. The decision shall be based on the Policies, the Plan, the Capital Improvements Program, and the Subdivision Regulations. The existing subdivision ordinance shall be a component of the Comprehensive Plan. The new draft subdivision ordinance shall, when adopted by the Borough Assembly, become a component of the Comprehensive Plan and all policies, standards and guidelines shall be adopted as part of these regulations.

19.30.048 **Rules.** The Commission may, by motion, establish its own rules of procedure and committees, meeting times, dates and places; media for public notice, development application and evidentiary forms, referral and review agencies and procedures, and any other matter reasonably necessary or desirable for the full and complete conduct of its duties, and those of the Administrator, pursuant to this Title 19 and any other provision of Borough or State law.

19.30.049 Statute. In addition, the Commission has all powers and duties of planning commissions of a Home Rule Borough as set forth in law.

19.30.050 Fees. The fee for a Use Permit shall be \$25.00. The fee for a Development Permit shall be \$100.00. The fee for a rezoning shall be \$1,000.00.

19.30.060 Enforcement.

19.30.061 Compliance. The developer of a use-by-right shall apply for and obtain a Use Permit prior to any initial site work, except surveying. The developer of all other Development shall apply for and obtain a Development Permit prior to any site work, except surveying.

19.30.062 Enforcement Orders. The Administrator may order:

- (a) The discontinuance of activity for any development which does not comply with the terms of this Title 19;
- (b) The removal or abatement of buildings or structures subject to the Revocable Development Permit provisions of Section 19.60.090; or
- (c) Any other action necessary to ensure compliance with all provisions of this Title 19, including, but not limited to, suspension of Use Permits and Development Permits.

Any such enforcement order shall be signed by the Administrator and served upon the developer or his agent or supervisor on the site (if known), or (if not known) posted in a conspicuous place on the site. The Administrator shall transmit a copy of the enforcement order to the Chairman of the Commission, and shall keep a copy thereof in permanent record.

Upon application of the developer, or upon its own motion, the Commission shall review the enforcement order at its next regular meeting. The review shall be limited to the presence of the violations stated in the enforcement order, and in such review the burden shall be upon the developer to prove that the violation does not exist or did not occur. The Commission, by resolution, may modify or rescind the enforcement order.

19.30.063 Violations, Penalties and Remedies.

- (a) **Civil Remedies.** Upon violation of any of the provisions of this Title 19, or any of the conditions placed upon any permit issued pursuant hereto, the Administrator, on behalf of the Borough, or any aggrieved citizen, may institute or cause to be instituted any appropriate civil action to prevent, enjoin, abate, estop, remove or punish such violation and to obtain monetary damages suffered

by such party. In addition to injunctive and compensatory relief, each violation shall be subject to a civil penalty not to exceed \$10,000.00 and attorney's fees as provided by law. An action to enjoin a violation of this Title 19 may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and the finding of an existing or threatened violation, the Court shall grant injunctive relief to restrain the violation.

- (b) **Criminal Remedies.** Every act where the maintenance of any condition prohibited by this Title 19, or by any condition placed upon any permit issued pursuant hereto, is unlawful, and the willful commission of such act or maintenance of such condition is a misdemeanor. Every person convicted of a violation of any provision of this Title 19 or of any condition placed upon any permit issued pursuant hereto shall be punished by a fine of not more than \$500.00, a jail term not to exceed 30 days, or both.

Each unlawful act or condition, and every day upon which such shall occur, shall constitute a separate violation of this section.

- (c) **Parties.** A proper party for any enforcement action under Subsections (a) and (b) hereof shall include, but shall not be limited to, the owner of the site

or any part thereof; any lessee or occupant of the site or any part thereof; and the developer, and its agents, contractors and subcontractors, and employees who participate in, assist, commit, or maintain a violation.

19.30.070 Interpretation. All questions of interpretation of the provisions of this Title 19 shall be treated as an appeal, either pursuant to the provisions of Section 19.50.040 or the provisions of 19.60.070, respectively.

CHAPTER 40

ZONING

DISTRICTS

19.40.010 **Map Adoption.** North Slope Borough Maps 1-10 and 11A, B and C, inclusive, are hereby adopted and made a part of this Title 19. The map attached hereto entitled, **Zoning Districts Map of the North Slope Borough, Alaska**, together with the Special Area Overlays thereto, is hereby adopted and made a part of this Title 19.

19.40.011 **Effect and Interpretation of the Zoning Districts Map.**
Map 1 - Zoning Districts - graphically depicts the geographic location of the zoning districts set forth in Sections 19.40.020, 19.40.030, 19.40.040 and 19.40.050. The map is binding and may be amended only by the process set forth in Sections 19.40.060 et seq. The map is not accurate because of scale, and therefore the following principles of interpretation apply:

- (a) The City limits of Barrow and each incorporated village are the boundaries of the applicable B and V districts, respectively;
- (b) The limits of the V district for Point Lay are the lots, tracts and right-of-way indicated on the H.V. Lounsbury and Associates Plot, which is adopted and incorporated herein by reference;
- (c) The limits of the seven designated unitization fields are the boundaries of the respective Resource Development Districts;
- (d) The Conservation District extends seaward to the full limit of the Borough's jurisdiction.

19.40.012 Other Maps — Effect and Interpretation. Comprehensive Plan Maps 2-10 and 11A, B and C, inclusive, indicate the probable existence of areas where various special policies apply. These maps are representational only, and in all instances, policies will be applied on an actual occurrence basis. The maps create a rebuttable presumption of the occurrence or nonoccurrence of the indicated element and, since this is their only legal effect, they may be amended merely by motion of the Commission.

19.40.020 Village (V) Districts.

19.40.021 Intent. The Village Districts govern the city limits of each incorporated Village, and the sites and immediate environs of unincorporated Villages in the Borough. The intent of the various Village Districts is to accomodate Development which:

- (a) Reinforces traditional values and lifestyles;
- (b) Is in accord with the Capital Improvements Program and Comprehensive Development Plan for the Village;
- (c) Is in accord with the desires of the residents of the Village.

19.40.022 Uses By Right. There are no uses-by-right in the Village Districts. (It should be noted that these Regulations only govern "Development", and uses and activities excluded from the definition of that term may take place without any form of regulation under this title).

19.40.023 Prohibited Uses. Industrial uses (except warehousing or storage of supplies or commercial goods to be used in the Village by the residents thereof) are prohibited in the Village Districts.

19.40.024 Conditional Uses. All other types of Development are conditional uses in the Village Districts, and are subject to a Development Permit pursuant to Chapter 60.

19.40.025 Special Policies. Special policies in the various Village Districts may be adopted as part of the Village Comprehensive Development Plan, if so, shall be incorporated into Chapter 80 by ordinance.

19.40.030 Barrow (B) District.

19.40.031 Intent. The Barrow District encompasses the city limits of the City of Barrow. The intent of the Barrow District is to accomodate a full range of urban development which:

- (a) Does not materially adversely impact existing and future subsistence activities by residents of the City;
- (b) Recognize and reinforces, through special policies, various existing neighborhoods in the City;
- (c) Is in accord with the Capital Improvements Program and Comprehensive Development Plan for the City; and
- (d) Is in accord with the desires of the residents of the City.

19.40.032 Uses-by-Right. There are no uses-by-right in the Barrow District. (It should be noted that these Regulations only govern "Development", and uses and activities excluded from the definition of that term may take place without any form of regulation under this title).

19.40.033 Prohibited Uses. Resource extraction is prohibited in the Barrow District.

19.40.034 Conditional Uses. All other types of Development are conditional uses in the Barrow District, and are subject to a Development Permit pursuant to Chapter 60.

19.40.035 Special Policies. Special policies governing the Barrow District may be adopted as part of the Barrow Comprehensive Development Plan and, if so, shall be incorporated into Chapter 80 by ordinance.

19.40.040 Conservation (C) District.

19.40.041 Intent. The Conservation District encompasses the entire area of the Borough, except the Villages, the City of Barrow, and areas specifically zoned for Resource Development pursuant to Sections 19.40.060 et seq., below. The District is intended to conserve the natural ecosystem for all the various species upon which Borough residents depend for subsistence. Subject to this overall intent, it can accommodate resource exploration and development on a limited scale, but major resource development projects will find it advantageous to apply for rezoning to the Resource Development District.

19.40.042 Uses-by-Right. There are no uses-by-right in the Conservation District. (It should be noted that these Regulations only govern "Development", and uses and activities excluded from the definition of that term may take place without any form of regulation under this title).

19.40.043 Prohibited Uses. There are no prohibited uses in the Conservation District.

19.40.044 Conditional Uses. All types of Development are conditional uses in the Conservation District, and are subject to a Development Permit pursuant to Chapter 60.

19.40.050 Resource Development (RD) District.

19.40.051 Intent. The intent of the Resource Development District is to accomodate large scale resource extraction and related activities which:

- (a) Does not permanently and seriously impair the capacity of the surrounding ecosystem to support the species upon which Borough residents depend for the major portion of their subsistence;
- (b) Is planned, phased and developed as a unit, or series of interrelated units, (the "Master Plan"), with provisions made for all necessary public and private facilities;
- (c) Meets the various special policies set forth for all Resource Development Districts, as well as those imposed on each individual Resource Development District at the time of designation.

The Resource Development District is designed and intended to handle the cumulative impacts of large scale development, and to offer developers quick, inexpensive, predictable permit approvals.

- 19.40.052 Uses-by-Right.** All Development indicated on the approved Master Plan, and minor alterations thereto, is a use-by-right in the Resource Development District, subject to any conditions on the Master Plan imposed pursuant to Chapter 70.
- 19.040.053 Prohibited Uses.** No type of Development is prohibited in the Resource Development District per se, although certain uses and activities may be restricted or prohibited by the Master Plan or by conditions imposed on it at the time of adoption.
- 19.040.054 Conditional Uses.** All uses not indicated on the approved Master Plan as uses-by-right or prohibited uses, and major alterations to uses-by-right, are conditional uses in the Resource Development District.
- 19.040.055 Application.** An application for a rezoning to the Resource Development District shall be accompanied by:
- (a) Maps, at a scale to be determined by the Administrator, indicating the site requested to be rezoned, the occurrence of all Special Areas on and within two miles of the site, all existing Development on the site and within two miles of the site, and all proposed Development, as defined in these Regulations, on the site to be governed by the proposed district;
 - (b) Engineering drawings and analyses of all proposed public or quasi-public facilities, and architectural renderings of all other proposed structures;

- (c) A phasing program for development of the proposed uses-by-right;
- (d) An analysis of the cumulative impact of the proposed Development in the proposed district pursuant to each applicable Policy in Chapter 80.
- (e) Requested policy changes (modification in wording or application of policies, additions of new policies, or suspension of existing applicable policies) for the proposed district, and an analysis of the cumulative impact of the proposed Development in the proposed district pursuant to the policies if changed;
- (f) Incentives, if any, requested pursuant to Chapter 90.
- (g) A Preliminary Plat;
- (h) The unitization Plan of Development if applicable; and
- (i) Such other information as the Commission by rule may prescribe.

19.040.056 Master Plan. Adoption of a Resource Development District shall be accomplished pursuant to the procedures set forth in Sections 19.40-020 et seq. for rezonings.

The ordinance shall contain a Master Plan consisting of:

- (a) A map or maps indicating all Development activity which will be a uses-by-right and conditional uses, identified as such;
- (b) Prohibited uses;

- (c) Special policies applicable in the District, and relevant supporting information if available;
- (d) Conditions on approval of the District, or on approval of any Development in it, pursuant to Chapter 70;
- (e) Incentives, if any, pursuant to Chapter 90; and
- (f) The approved final Plat; and
- (g) Such other material as the Commission and Assembly deem advisable.

19.40.057 Prudhoe Bay, Milne Point and Kuparuk River. The Prudhoe Bay, Milne Point and Kuparuk River unit fields are hereby zoned to the Resource Development District, and the relevant Plan of Development and Operations for the unitized fields as approved by the Alaska Department of Natural Resources on the effective date of this Ordinance, are hereby adopted as the Master Plan for each of those Districts.

19.40.058 Gwydyr Bay, Duck Island, West Mikkelsen and Point Thompson. The Gwydyr Bay, Duck Island, West Mikkelsen and Point Thompson unit fields are hereby zoned to the Resource Development District. No Master Plan is approved for any part of these districts, and until such time as a Master Plan is approved for all or part thereof pursuant to Sections 19.40.060 et. seq., there are no uses-by-right or prohibited uses in these districts, and all Development is subject to a Development Permit pursuant

to Chapter 60.

19.40.060 Rezoning.

19.40.061 Initiation. A rezoning may be initiated by the Administrator, the Commission, a Village Council, the Borough Assembly, or the owner or developer of the land. A rezoning from the Conservation District (but not the Resource Development District) to the Village or Barrow Districts, as applicable, will take place automatically upon official notification to the Borough that the boundaries of a City have been altered.

19.40.062 Restrictions on Rezoning. Rezonings covering less than ten acres may not be considered, unless the rezoning constitutes the expansion of an existing contiguous zone, or unless it comprises the alteration of City boundaries mentioned in Subsection 19.40.021, above. Rezonings which are substantially the same as a proposed amendment which was rejected within the previous three months may not be considered.

19.40.063 Procedure. A rezoning shall follow the procedure set forth in Sections 19.60.060 et seq. for variances, except that the Commission's decision shall merely constitute a recommendation to the Borough Assembly. As soon as possible after the Commission recommendation, the Borough Assembly shall post public notice and hold a public hearing on the proposed rezoning. At such hearing, the recommendation of the Commission shall be rebuttably

presumed to be correct, which presumption may be overcome with a preponderance of the evidence.

A rezoning shall be adopted by ordinance, and any conditions thereon shall be contained in the ordinance. Upon adoption of any rezoning, the Administrator shall cause the official zoning map to be changed, to reflect the operation of the ordinance.

CHAPTER 50

USE PERMITS FOR USES-BY-RIGHT IN RESOURCE DEVELOPMENT DISTRICTS

19.50.010 Permit Required. All uses-by-right are required to obtain a Use Permit pursuant to this Chapter 50 prior to commencement of site work.

19.50.020 Burden of Proof. In all applications for a Use Permit the burden shall be on the Administrator to prove by a preponderance of the evidence that the Development does not implement a policy.

19.50.030 Procedure - Administrator Decision.

19.50.031 Submission. The Developer shall submit one copy of a completed and properly executed Use Permit application to the Administrator.

19.50.032 Staff Procedure. The Administrator will:

- (a) On the same business day determine whether: (1) the Development contains no use other than uses-by-right; (2) whether the submission requirements are met; and (3) whether the

application is void of any major alterations. If not, he shall return the application to the Developer.

- (b) If the application for a use-by-right is complete and contains no major alterations, he shall determine, within three business days, whether the Development meets the requirements of the adopted Master Plan. He shall also indicate in the appropriate place on the application form any Master Plan conditions pursuant to Chapter 70 placed on his approval.
- (c) **Major Alterations.** The Administrator does not have the authority to process Use Permit applications for Development which contains a major alteration from the approved Master Plan. Such Development is processed as a conditional use pursuant to Chapter 60.

19.50.033 Decision. If the Development meets the requirements of the adopted Master Plan, the Administrator shall issue a Use Permit and the Master Plan conditions shall be part of the approved permit. If the Development does not meet the requirements, the Administrator shall deny the permit and note his reasons. The Administrator shall issue his decision within five business days of submission of the application.

The Administrator shall mail a copy of the application and the decision to the Developer and the Chairman of the Commission, and shall keep a permanent record thereof.

19.50.040 Appeals. An appeal to the Commission of the Administrator's decision on any Use Permit may be undertaken in the manner set forth in Sections 19.60.070 et seq.

CHAPTER 60

DEVELOPMENT PERMITS FOR CONDITIONAL USES IN ALL DISTRICTS

19.60.010 **Permit Required.** All conditional uses, and uses-by-right which contain major alterations from the approved Master Plan, are required to obtain a Development Permit prior to commencement of site work. Permits are decided by the Administrator unless a variance or a density bonus is requested by the Developer, in which case they are decided by the Commission.

19.60.020 **Burden of Proof.** In all applications for a Development Permit, the burden of proof shall be as follows:

- (a) **Permit Decision.** Except as noted below, the burden shall be on the Developer to prove, by a preponderance of the evidence, that the standards set forth in Section 19.60.030 are met, or that a variance should be granted from a Mandatory Policy.

- (b) **Appeals.** For the purposes of appeals from the Administrators decision to the Commission or from the Commission to the Assembly, the initial decision is presumed to be correct, but that presumption may be rebutted by a preponderance of the evidence.
- (c) **Village Districts and Village Areas of Influence.** Within the Village Districts and Village Areas of Influence, consideration will be given to the opinions of residents of the Village on all matters in which they have a special expertise.
- (d) **Special Areas Maps.** The Special Areas Maps are presumed correct, which presumption may be rebutted by a preponderance of the evidence.
- (e) **Referral Agencies.** Consideration will be given to the comments and recommendations of referral agencies, including regulations and lease stipulations by State and Federal agencies, if any.

19.60.030 **Decision-Making Standards.** The Borough shall issue a Development permit if it finds that all four of the standards set forth below are met by the Development, and shall not issue the permit otherwise:

19.60.031 **Mandatory Policies.** The Development implements each relevant Policy, or the grounds for granting a variance are met where a variance is requested;

19.60.032 Best Efforts and Minimization Policies. The Development represents the best effort possible to implement the Best Efforts and Minimization Policies;

19.60.033 Beneficial Policies. On the basis of its performance on the Policies taken as a whole, the Development represents a net public benefit; and

19.60.034 Conditions. The conditions imposed will be sufficient to guarantee compliance with the relevant policies.

Prior to denying, or placing a condition more restrictive than that placed by the State government upon a permit for a Use of State Concern as defined in Title 46, Alaska Statutes, or a Resource Development District Master Plan, the Administrator shall specifically:

- (a) consult with and consider the views of appropriate federal, state and regional agencies;
- (b) consider the availability of reasonable alternative sites in an adjacent location the use of which is authorized by the Administrator; and
- (c) base his decision on an analysis showing that the proposed Development is incompatible with the proposed site on the basis of the policies set forth in Chapter 80.

19.60.040 Application.

19.60.041 Pre-Application Conference. Prior to submission of an application, the Developer shall meet with or telephone the Administrator for the purpose of discussing the site, the proposed Development, and the Development Permit procedure. The Administrator shall discuss these matters with the Developer, with special attention to policies which may pose problems or constraints on the site or the proposed Development activity, (especially policies for which the Development may need a variance), and Beneficial Policies which may create opportunities for the Developer.

19.60.042 Submission. The Developer shall submit a completed and properly executed Development Permit application in the number of copies established by rule of the Commission. The application shall contain such information as the Commission, by rule, may prescribe, and shall be accompanied by maps, architectural drawings, and engineering plans as prescribed by rule of the Commission, and a completed evidentiary form for each relevant policy. To the maximum extent possible without violating the intent of the policies set forth in Chapter 80, submission requirements shall conform to the submission requirements of State and/or Federal agencies.

19.60.050 Procedure and Decision - Normal Application. Within three days of submission, the Administrator shall:

- (a) Determine whether the application is complete and the submission requirements of Section 19.60.042 are met. If not, the Administrator shall return the application to the Developer. If so, the Administrator shall;
- (b) Determine whether a variance or an incentive is requested. If so, he shall follow the procedure set forth in Sections 19.060.060 et seq. If not, he shall then:

19.60.051 Cause public notice to be made and transmit copies of the application (or the relevant portions thereof) to designated referral agencies, including Villages for Development within a Village Area of Influence. Such referral agencies shall be indicated by rule of the Commission and may vary depending on the location of the site and the type of use proposed. Referral agencies and the public shall have fifteen days to respond, or longer if allowed by rule of the Commission.

19.60.052 Within twenty days of his determination that the requirements of Section 19.60.042 are met, or longer if the response time for referral agencies and the public has been extended, the Administrator shall determine:

- (a) Whether the Development meets the requirements of each Mandatory Policy. He shall indicate in the appropriate place on the evidentiary form: 1) whether the policy is applicable to the Development; and 2) (if so) whether the Development implements the policy or does not implement the policy; and 3) any conditions or

requirements for guarantees pursuant to Chapter 70;

(b) The Development's performance on each Best Efforts, Minimization and Beneficial Policy. He shall indicate on the appropriate place on the evidentiary form: 1) whether he agrees or disagrees with the Developer's statement of performance for the policy; and 2) (if he disagrees) his reasons for disagreement and; 3) any conditions pursuant to Chapter 70.

(c) His decision on the permit application, pursuant to the standards set forth in Section 19.60.030, with the conditions set forth on the evidentiary forms.

19.60.053 On or before the close of business on the last available day, he shall transmit his decision to the Developer and to the Commission.

19.60.060 **Variance From A Mandatory Policy.** For applications involving a violation of a Mandatory Policy, the Development Permit application shall be denied unless the Developer applies for, and obtains, a variance.

19.60.061 **Grounds for Variances.** No variances may be granted from the terms of a Best Efforts, Minimization or Beneficial Policy. Variances from the terms of a Mandatory Policy may be granted by the Commission if, and only if, the Developer shows by a preponderance of evidence that both of the following requirements have been met:

- (a) The development implements the spirit, but not the letter, of the Mandatory Policy; and
- (b) Enforcement of the strict terms of the Mandatory Policy would either:
 - * Work an undue hardship on the developer and/or the future occupants or users of the Development, without a concomitant public purpose; or
 - * Require a site design or building design which is completely out of character with the surroundings, and which is not justified by a concomitant public benefit.

19.60.062

Administrator's Recommendation. Within three days of submission the Administrator shall determine whether the application is complete and the submission requirements of Section 19.60.042 are met. If not, the Administrator shall return the application to the Developer. If so, the Administrator shall as soon as reasonably possible:

- (a) Schedule the application for a public hearing, notify the Developer of the date of the hearing, and cause notice of the meeting to be made;
- (b) Transmit copies of the application (or the relevant portions thereof) to designated referral agencies, including Villages for Development within a Village Area of Influence. Such referral agencies shall be indicated by rule of the Commission and may vary depending on the location of the site and the type of use proposed. Referral agencies and the public

have fifteen days to respond, or longer if allowed by rule of the Commission.

(c) Within twenty days of his determination that the requirements of Section 19.60.042 are met, or longer if the response time for referral agencies and the public has been extended, the Administrator shall determine:

- * Whether the development meets the requirements of each relevant Mandatory Policy. He shall indicate in the appropriate place on the evidentiary form: 1) whether the policy is applicable to the Development; and 2) (if so) whether the Development implements the policy or does not implement the policy; and 3) any conditions or requirements for guarantees pursuant to Chapter 70; or 4) (if the Development does not implement the policy) whether he recommends that a variance be granted therefrom together with his reasons.
- * The Development's performance on each Best Efforts, Minimization and Beneficial Policy. He shall indicate on the appropriate place on the evidentiary form: 1) whether he agrees or disagrees with the Developer's statement of performance for the policy; and 2) (if he disagrees) his reasons for disagreement and; 3) any conditions pursuant to Chapter 70.

* His recommendation for action by the Commission, pursuant to Section 19.60.030.

(d) On or before the close of business on the last available day he shall transmit his recommendations to the Developer and to the Commission.

19.60.063 Commission's Action and Decision. The Commission shall hold a public hearing on the Development Permit application. If the proposed Development is located in a Village District or a Village Area of Influence, it may hold the hearing in the affected Village (or Villages) and may hold another hearing in Barrow if such is deemed necessary or desirable. The Commission shall adopt the Administrator's recommendation on each policy unless it finds, by a preponderance of the evidence, that the Administrator's recommendation was in error, and states its reasoning for such finding with particularity. In addition, for good cause, the Commission in its discretion may alter the conditions on approval recommended by the Administrator.

If the Commission finds that the Development meets all the standards of Section 19.60.030, it shall issue a Development Permit and the conditions and requirements shall be part of the approved permit. If the Development does not meet the standards of Section 19.60.030, the Commission shall deny the permit and note with particularity its reasons for the decision.

The Administrator shall then transmit a copy of the decision to the Developer and the Borough Assembly, and shall keep a permanent record thereof.

19.60.070 Appeals.

19.60.071 Appeals to the Commission.

Any aggrieved person, including the Developer, may appeal the Administrator's decision on any Use or Development Permit by serving written notice to the secretary of the Commission and the Developer prior to the Commission's next regularly scheduled meeting. The notice shall state the policy or policies on which the appellant disagrees with the Administrator and the reasons why the appellant believes the Administrator is incorrect. The Commission may, but need not, hold a hearing on the appeal. The issues before the Commission shall be limited to those raised on appeal, and the evidence shall be limited to a review of the record, although further argument may be allowed. The burden of proof shall be on the appellant. The Commission may affirm or reverse the Administrator's decision, return the matter to the Administrator for further evidence, or change the conditions on approval.

19.60.072 Appeal to the Assembly.

An appeal to the Assembly of a Commission decision may be made in the same manner as set forth in Section 19.60.071 for appeals to the Commission. The Assembly's decision shall be final.

19.60.080 **Duration of Permits.** Development Permits are valid for the duration of the occupancy and existence of the Development and the Developer's compliance with the terms and conditions thereof, except that they expire automatically upon the earliest of any of the following:

- (a) Twelve months after approval if no actual construction has commenced; or
- (b) The expiration date of a Revocable Development Permit.

19.60.090 **Revocable Development Permits.**

19.60.091 **Issuance.** Revocable Development Permits may be issued for any Development except uses-by-right, pursuant to Section 19.70.080. Revocable Development Permits are issued pursuant to the same standards and procedures as set forth for Development Permits in this Chapter 60.

19.60.092 **Effect.** On or before the expiration date of a Revocable Development Permit, the Developer shall cease the use or occupancy subject thereto. The Developer may apply for a new Development Permit or Revocable Development Permit prior to expiration but, unless specifically allowed by the Commission in advance, the pendency of such application shall not extend the expiration date.

CHAPTER 70

CONDITIONS ON APPROVAL

The Administrator may place conditions upon issuance of a permit which he deems necessary or desirable to ensure that a policy will be implemented in the manner indicated in the application. To the maximum extent possible without violating the intent of the policies set forth in Chapter 80, the Administrator shall conform the conditions to the conditions, restrictions and stipulations contained in State or Federal permits, leases or similar instruments. The conditions may consist of one or more of the following:

19.70.010 Development Schedule. The conditions may place a reasonable time limit on construction activity associated with the Development, or any portion thereof, to prevent speculation in permits, to enable new applications or revisions to come forward for unviable projects, to minimize construction-related disruption to ensure that Development is not used or occupied prior to substantial completion of required public or quasi-public facilities, or to implement other policies.

- 19.70.020** **Use.** The conditions may restrict the future use of the Development to that indicated in the application and uses of similar impact or effect on the policies.
- 19.70.030** **Common Maintenance Agreement.** The conditions may require that if an agreement among Developers or users, or a homeowner's association or special district is necessary or desirable to hold or maintain common property, that it be created prior to occupancy.
- 19.70.040** **Dedications.** The conditions may require conveyances of title or easements to the public, to public utilities or to a common entity. They may require construction to public standards, and then dedication, of public facilities to serve the Development and the public.
- 19.70.050** **Construction Guarantees.** The conditions may require the posting of a bond or other surety or collateral (which may provide for partial releases), to ensure that all construction features required by a policy are in fact constructed as represented and approved.
- 19.70.060** **Commitment Letter.** The conditions may require a letter from a utility company or public agency legally committing it to serve the Development.
- 19.70.070** **Covenants.** The conditions may require the recording of covenants on the site to ensure continued implementation of a policy by future owners or occupants.

19.70.080 **Revocation of Permits.** The conditions may provide that the permit shall be automatically revoked upon the occurrence of a certain event or events, or at a date certain. In such case, it shall be the sole responsibility of the owner to apply for a new permit. Any condition mandating the revocation of a permit shall state with particularity, the grounds therefor and the policy or policies to be reviewed upon reissuance. Thereafter, reissuance shall be determined solely on the issue of the Development's compliance with the specified policy or policies.

CHAPTER 80

POLICIES

19.80.010 Introduction The policies contained in this Chapter constitute the rules by which a Development other than a use-by-right is reviewed and approved or denied. They are reformatted from the Development Policies in the Comprehensive Plan, and the citations are to the relevant Development Policy in the Plan.

19.80.020 Mandatory Policies All Development must comply with each of the policies set out in Section 19.80.021 and 19.80.025 unless:

- (a) The Administrator determines that the policy is not applicable to the Development; or
- (b) The Commission grants a variance from the policy pursuant to Sections 19.60.060 et seq.

19.80.021 Prohibited Development The following Development is prohibited:

- (a) Development which will likely result in depleting a subsistence resource, as set forth in Section 3.5.1 of the Plan, below the subsistence needs of local residents of the Borough. (3-1.1, 5-1.2)
- (b) Drilling and other high-impact activities within the area of bowhead whale migration routes during the migration season. (3-3.1)
- (c) Development that does not meet the standards of the Borough Coastal Management Program, when adopted, for management of Sensitive Areas such as estuaries, wetlands, tideflats, beaches, rivers, streams and lakes, permafrost landscape, and high energy ice impacted shorelines. (3-3.3)
- (d) Deposition of toxic materials and untreated solid waste on the barrier islands, sea ice, artificial islands, at sea, in any wetlands, rivers or lakes which support or are capable of supporting significant populations of fish and wildlife. (3-7.1, 5-7.2)

- (e) Development which precludes subsistence user access to subsistence resource. (3-1.4)
- (f) Development which significantly disturbs cultural or historic sites listed on the National Register of Historic Places or eligible for inclusion on the National Register. (4-1).
- (g) Development which significantly interferes with traditional activities at cultural or historic sites identified in this Plan. (4-1).
- (h) Surface disturbance of newly discovered historic sites prior to archaeological investigation. (4-2)
- (i) Development which grossly violates guidelines on the rate or amount of growth adopted by a Village as a part of its Comprehensive Development Plan. (4-3)
- (j) Mining during portions of the year when there would likely be substantial harm to the environment, such as the excessive silting of rivers and streams. (5-5.5)

- (k) Any development located outside the Prudhoe Bay Base Area, Pump Station 3, or the Chandalar Base Area, and tourist and recreational facilities located anywhere, within the Haul Road Corridor Special Area. (7-3)

19.80.025 Required Features The following policies are required for applicable development:

- (a) Vehicles, vessels, and aircraft usage in Special Habitat Areas is required to be confined to corridors designated in the permit. (3-2.3)
- (b) Offshore exploration, development and production drilling outside the landfast ice area (Plan Map 9, CMP Map I-2 and Plan Section 5.5.3.5 Zone AO) is required to be sited on a barrier island or artificial islands. A variance from this policy to allow offshore platforms will be granted only if the requirements of Sections 19.60.060 et seq. are met and, in addition, the Developer demonstrates the actual capability of the structure to withstand all natural forces, specifically including ice. (3-5.3)
- (c) Development with water or airborne emissions is required to comply with all State Department of Environmental requirements. (5-5.2)

- (d) Industrial and commercial development is required to be served by solid waste disposal facilities which meet state and federal regulations. (5-7.1)
- (e) Development not on a sewer system is required to impound and process effluent to state and federal quality standards. (5-7.3)
- (f) Marine tankers to be utilized in offshore areas must be specially designed to withstand environmental hazards specifically including sea ice. (3-6.8).
- (g) Residential development associated with industrial and resource extraction development must be removed when the industrial or extractive use is completed unless pursuant to Plan policies removal is more harmful than non-removal. (5-3.2, 3-8.3)
- (h) Development in a Village is required to be consistent with the relevant Village Comprehensive Development Plan, when adopted. (3-8.1)

19.080.030 Best Efforts Policies All Development must comply with each of the policies set out in Sections 19.80.031 and 19.80.032 unless:

- (a) The Administrator determines that the policy is not applicable to the Development; or
- (b) The Administrator determines that the Developer has used his best efforts to comply with the policy and that there is no feasible and prudent alternative to the proposed compliance:

19.80.031 Prohibited Development

- (a) Development that will likely result in significantly decreased productivity of subsistence resources or their ecosystems. (3-1.2)
- (b) Development which restricts subsistence user access to a subsistence resource (3-1.3, 3-7.4)
- (c) Development within Special Habitat Areas identified in Section 10.4.1 of this Plan. (3-2.1)
- (d) Resource extraction uses within a Special Habitat Area. (3-2.2)
- (e) Development in Sensitive Areas such as estuaries, tideflats, beaches, rivers, streams and lakes, and high energy ice impacted shorelines. (3-3.2)

- (f) Facility siting, drilling or other high-impact activities at Barrier Islands that are intensively used by Beluga whales as feeding and resting areas as identified on CMP Map II-3. (3-3.4)
- (g) Development on a shoreline that does not require a shoreline location, landfills, fuel or toxic material storage areas and dumps on or near a shoreline. (3-4.2, 5-2.3)
- (h) Public highway development, except for village roads and streets and highways indicated in the Capital Improvements Program. (3-6.3)
- (i) Transportation development including pipelines which significantly obstructs wildlife migration. (3-6.5)
- (j) Development to accomodate petroleum transportation via marine tankers. (3-6.6)
- (k) Duplicative transportation corridors from resource extraction sites to tidewater or railroads. (3-6.7)
- (l) Development associated with purely recreational uses of land and wildlife habitat, such as commercial hunting and fishing camps or lodges and recreational second home subdivisions. (3-9.1, 6-2.2.1)

- (m) Development of tourist facilities except as provided for pursuant to a Village Comprehensive Plan. (3-9.2, 6-2.2.2)
- (n) Development which significantly violates guidelines on the rate or amount of growth adopted by a Village and adopted as a part of its Comprehensive Development Plan. (4-3)
- (o) Development which substantially pollutes the natural environment (including water, air, noise and vibration). (5-1.1)
- (p) Development in flood plains and other geologic hazard areas. (5-4.1)
- (q) Siting, design, construction, and maintenance of transportation and utility facilities (including ice roads) are required to minimize alteration of shorelines, water courses, wetlands, and tidal marshes and significant disturbance to special habitat; and to avoid critical fish migration periods. (7-5)
- (r) Disturbance of subsistence resource habitat, or migration routes during migration periods, by transportation modes or development. (7-4)

- (s) Resource development which uses suppliers or subcontractors from outside the Borough for work which can be accomplished competitively by local private businesses or regional or village corporations. (8-2.2)
- (t) Resource development which will not significantly employ local Borough residents, unless residents of the local village expresses no interest in the work. (8-1.2)

19.80.032 Required Features The following features are required of applicable Development:

- (a) Industrial and commercial development and resource extraction development are required to be located, designed, and maintained in a manner that prevents significant adverse impacts upon subsistence resources and their habitat, including water circulation and drainage patterns and coastal processes. (3-4.3, 3-5.1)
- (b) Resource extraction development for administration, operations, residence and other uses not absolutely required in the field is required to be located in a designated service base which is sited, designed, constructed and

maintained to be as compact as possible; and to share facilities to the maximum extent possible. (5-5.1)

(c) Development is required to maintain the natural permafrost insulation quality of existing soil and vegetation. (5-4.3)

(d) New subdivisions or other residential development near the shoreline or in Special Habitat Areas are required to provide adequate water and sewer service to prevent damage to the environment and habitat of subsistence species. (5-3.1, 3-8.2)

(e) Mining on beaches or offshore is prohibited unless no alternatives exist for extraction of the resource, and in those circumstances substantial alteration of shoreline dynamics is prohibited. (5-5.6)

(f) Independent verification by a Borough approved agent is required for a developer's environmental assessment and design and engineering criteria for offshore development outside the landfast ice zone. [Plan Map 9, CMP Map I-2 and Section 5.5.3.5 Zone AO of this Plan] (5-4.5)

- (g) Transportation facilities for resource development and extraction are required to be consolidated to the maximum extent possible. (7-1)

19.80.040 Minimization of Negative Impacts Applicable development is required to minimize its impact on the following features:

- (a) Airports and helicopter pads are required to be sited, designed, constructed and operated to minimize their impact upon significant wildfowl migration routes, breeding grounds and nesting areas. (7-2, 3-6.1)
- (b) Siting, design, construction and maintenance of transportation and utility facilities (including ice roads) are required to minimize alteration of shorelines, water courses, wetlands, and tidal marshes and significant disturbance to special habitat; and to avoid critical fish migration periods. (3-6.2, 3-4.1, 3-7.2, 5-2.2, 5-6.2, 5-7.4)
- (c) When linear structures such as roads and pipelines are located in areas used as corridors by migratory species of wildlife, a means of crossing shall be included for those migratory species. Pipelines shall be designed, using the best available information, to minimize disruptions of migratory patterns and other major movements of wildlife. Above ground pipelines shall be elevated a minimum of

five (5) feet, except at those points where the pipeline intersects a road, pad or caribou ramp. (3-6.4)

(d) Development in floodplains, shoreline areas, and offshore is required to be sited, designed and constructed to minimize loss of life or property due to oceanic storms, sea waves, ice gouging and override, and shore erosion. (5-4.2)

(e) Mining and mineral processing in the coastal area is required to be designed and conducted to minimize impacts on subsistence species habitat, land and water resources, and general environmental conditions. (5-5.3)

19.80.050 Beneficial Impacts The Administrator will consider the following features when making the determination set forth in Section 10.60.030.

(a) The joint siting and use of facilities, and the concentration of development. (3-5.2, 5-2.1)

(b) Accomodation of free cross-migration of tuttu by pipelines. (3-6.4)

- (c) Design and maintenance of residential development associated with industrial and resource extraction which provides for employees to be shuttled into the area for work periods then outside to their permanent residence. (3-8.4, 5-3.3)
- (d) Development of not more than the minimum number of borrow pits to serve all Development in an area. (5-5.4)
- (e) Incorporation of utilities and multimodal transportation facilities in a single corridor. (5-6.1, 7-6)
- (f) Employment of local Borough residents. (6-1.1, 8-1.1)
- (g) Utilization of flexible employment procedures to allow subsistence pursuits by local Borough resident employees. (6-1.2, 8-3, 6-3.3)
- (h) Incorporation of job training programs for local Borough residents. (6-1.3)
- (i) Development which related to or encourages Inupiat arts and crafts. (6-2.1)
- (j) Development which provides local employment in the villages. (6-3.1)

- (k) Utilization of local private businesses or village or regional corporations as suppliers or subcontractors. (6-3.2, 8-2.1)
- (l) Development which provides or materially contributes to lower cost fuel or power to adjacent villages. (6-4.1, 6-5)
- (m) Utilization of locally obtained energy (such as locally produced coal and natural gas) or renewable sources of energy. (6-4.2)
- (n) Resource extraction development that is consistent with subsistence resources and the Inupiat culture and Inupiat character of life. (9-1)
- (o) Excess of tax revenues over demand for expenditures. (9-2)

CHAPTER 90

DENSITY AND INCENTIVES

19.90.010 Basic Density/Intensity. The following chart sets forth the maximum basic density (for residential uses) and intensity (for nonresidential uses) for Development served by both public/quasi-public water and sewer systems:

STRICT

RESIDENTIAL
(square feet of site
per dwelling unit)

GROUP HOMES,
ROOMING HOUSES *
AND
NONRESIDENTIAL
(floor area ratio)

	EXISTING SUBDIVISION	NEW SUBDIVISION	EXISTING SUBDIVISION	NEW SUBDIVISION
Village	1 du/lot	7,000sq ft/du	1:3	1:3
Barrow Downtown Area	2 du/lot	1,000 sq ft/du	1:1.5	1:1
Barrow Residential Areas	1 du/lot	7,000 sq ft/du	1:2	1:1.5
Conservation	1 du/lot	7,000 sq ft/du	1:2	1:1.5
Resource Development	ESTABLISHED BY MASTER PLAN			

Group homes and rooming houses shall have a minimum of 100 square feet per resident

19.90.020 Basic Density/Intensity Non Public Facilities . For Development not on both public/quasi-public water and sewer facilities, the density or intensity of use shall be determined by the Borough health department as the highest density or intensity which can be justified under public health standards. The density or intensity may not be altered pursuant to the provisions of Subsection 19.90.040, below.

19.90.030 Incentives — Application and Eligibility.

19.90.031 Application. Conditional Uses and rezonings to the Resource Development District may request, as part of their application, any of the incentives set forth in Section 19.90.040 et. seq.. Any application requesting incentives shall state, clearly and concisely, the isolated impact of the requested incentives. The application and evidentiary materials shall be prepared as if the requested incentives will be granted and the application should state whether it is dependent on the incentives being approved or whether the Developer will accept a permit only if some or all of the incentives are granted.

19.90.032 Eligibility. To approve incentives requested by a Development, the Commission must find, at the time of permit or rezoning approval, that:

- (a) The Development, if proposed without the requested incentive(s) would represent a significant net public benefit; and

(b) The Development as proposed (with requested incentives) meets all the standards of Section 19.60.030.

(c) Conditions pursuant to Chapter 80 may be placed on approval of incentives.

19.90.040 Density Bonus. Density bonuses up to 50% may be granted, by the Commission for Development served by both public/quasi-public water and sewer, which either;

* Increases public or private services to local residents;

or

* Improves housing for local residents.

No reduction in the minimum living space set forth for residents of group homes or rooming houses may be granted.

19.90.050 Industrial Development Bonds. The Borough Assembly may approve Industrial Development Bond financing for any nonresidential Development with a viable, continuing program for hiring (and training if applicable) residents of the Borough.

19.90.060 Tap Fee Reduction. The Assembly may approve a reduction in water or sewer tap fees for any of the following:

19.90.061 Development by public or quasi-public agencies;

19.90.062 Rent-subsidized residential Development;

19.90.063 Development which constructs and dedicates to public use, water or sewer lines or treatment facilities in excess of its own needs.

19.90.070 **Operation, Security and Maintenance.** The Assembly may contract to operate and provide maintenance for some or all quasi-public facilities (such as water and sewer treatment facilities, roads, training facilities, recreation facilities, etc) and provide fire protection and security for private Development in Resource Development Districts where the Developer agrees to:

19.90.071 Construct the facilities at its own cost;

19.90.072 Provide a specific public benefit for the service provided by the Borough, such as (but not limited to) allowing limited or complete public access to the facility, agreeing to dedicate it to the public in the future, agreeing to a hiring program (in the case of job-training facilities), paying the Borough for the services, using unusually expensive design or techniques to mitigate negative impacts of the Development, or any other monetary or non-monetary public benefit which the Assembly, in its sole discretion, deems adequate.

19.90.080 **Procedure for Incentives.** A Development Permit application with a request for a density bonus will be decided pursuant to the procedure for variances set forth in Section 19.60.060. A Development Permit application with a request for any other type of incentive, and rezonings with a request for any type of incentives, will be decided pursuant to the procedure for rezonings set forth in Section 19.40.063.

**PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
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EXXON COMPANY, U.S.A.

POLICH 6601 • ANCHORAGE, ALASKA 99502 (907) 276-4552

ALASKA OPERATIONS
WESTERN DIVISION

RICHARD H. WEAVER
OPERATIONS MANAGER

December 7, 1982

Re: North Slope Borough Draft
Comprehensive Plan and
Land Management Regulations

Mr. James Stotts
Assembly Chairman
North Slope Borough
Box 69
Barrow, AK 99723

Dear Mr. Stotts:

Exxon appreciates this opportunity to present its comments concerning the referenced Comprehensive Plan and Regulations, scheduled for formal Assembly consideration in the near future. As you may know, Exxon has provided comments on earlier drafts to the Planning Commission. Our goal has been to persuade the Borough to adopt a planning ordinance which will meet its local planning needs without hampering the efforts of state and federal agencies and oil and gas lessees, as well as other developers, from exercising their property rights to develop resources on state and federal lands. To date, our efforts have met with only limited success.

The draft now before you espouses the same fundamental philosophy which has been a matter of primary concern to Exxon throughout the entire process. The planners and their consultants have failed to recognize that the Borough's needs will not be well-served by an ordinance which establishes a cumbersome and duplicative permitting process for activities over which the Borough has only very limited authority.

The current draft has been improved by its stated recognition of geographical limits on Borough authority, and further improved by zoning of existing units of oil and gas leases as Resource Development District. The draft fails, however, to properly recognize the paramount rights of lessees to develop existing and future state and federal leases and future units. Moreover, the draft would attempt to impose numerous technical and operational restrictions upon state and federally approved activities in areas outside the scope of the Borough's geographic authority, including the NPR-A, the Arctic National Wildlife Refuge, the Outer Continental Shelf and other state and federal lands.

The restrictions imposed by the draft ordinance are not only unauthorized by law, but they are also unsupported by scientifically verifiable information. The drafters of this ordinance have placed undue pre-eminence on subsistence uses to the exclusion and/or severe limitation of petroleum development. The drafters have opted for prohibiting development, mandating categorical prohibitions of some activities, and imposing stringent limitations that would effectively block development.

Further, the proposed ordinance does not take into consideration the inescapable fact that Exxon and other industry members have operated safely in the Arctic for many years without a single incident of serious, or even moderate, environmental damage and without any measurable negative effect on wildlife or the subsistence values of the North Slope. The drafters have failed to attribute this safety record to anything more than sheer good luck, ignoring industry's efforts in training personnel to operate safely, designing structures to withstand Arctic conditions, and developing the capability to handle any spills which might occur.

The permitting process which would be established by this proposed ordinance is for the most part unnecessary and, to the extent it applies to oil and gas operations, counterproductive. Although the Borough can and should implement a planning process for the protection of human health and safety, its efforts to establish detailed restrictions on development over a large geographical region are unwarranted for the following reasons: first, there exist state and federal regulatory processes capable of considering and responding to the legitimate concerns of the Borough; second, many of the concerns incorporated in the proposed ordinance are shared by industry as well as state and federal agencies so that the regulations are duplicative; third the provisions of the ordinance are insensitive to developing technology or varied operating conditions; and fourth, to the extent the Borough's restrictions would block development permitted by state and federal agencies having jurisdiction, those restrictions are unenforceable.

The Alaska Constitution, statutes and case law uniformly provide that the regulation of oil and gas activities is a matter of statewide concern. A home rule borough may not adopt regulations that interfere with oil and gas activities authorized by state agencies pursuant to state statute. Alaska cases hold that local regulations cannot block the implementation of a specific statewide policy.

With regard to the ability of a home rule borough to regulate oil and gas exploration and development authorized by a federal agency pursuant to federal law, the Borough's power is limited by the Supremacy Clause of the United States Constitution which provides that the laws of the United States "shall be the supreme law of the land." Federal cases hold that state and local

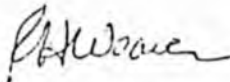
James Stotts
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governments cannot enact regulations which obstruct the achievement of a Congressionally approved use of federal lands.

The Comprehensive Plan and Land Management Regulations before you today have been consciously drafted so as to exceed the limits of home rule authority. The almost certain result of the adoption of this ordinance would be that those limits will be shaped by costly, time-consuming litigation, to the detriment of the Borough, the State, and the nation, as well as our industry.

Exxon fully endorses the comments presented by AOGA. We urge you to carefully consider our comments today and to return the Comprehensive Plan and Land Use Regulations to the Planning Commission for amendment. As we have throughout this process, we wish to work with the Borough and its staff for the development of a workable plan.

Sincerely yours,



R. H. Weaver

RHW:cas/542

Alaska Oil and Gas Association



505 W. Northern Lights Boulevard
Suite 219
Anchorage, Alaska 99503
(907) 272-1481

December 7, 1982

Mr. James Stotts
Assembly Chairman
North Slope Borough
P.O. Box 69
Barrow, AK 99723

Re: North Slope Borough Draft
Comprehensive Plan and Land
Management Regulations

Dear Mr. Stotts:

The Alaska Oil and Gas Association (AOGA) is a trade association whose 39 member companies account for the bulk of oil and gas exploration, production and transportation in Alaska. AOGA appreciates this opportunity to present comments on draft 3 of the Comprehensive Plan and Land Management Regulations which is being considered for adoption by the Assembly at this time.

As you are aware, AOGA, its member companies and state agencies, have been involved in the planning efforts of the NSB since 1978, beginning with the Borough's Coastal Management Program, which was withdrawn in January, 1980. Other efforts of the NSB include the Interim Zoning Ordinance of 1979 and Comprehensive Plan and Zoning Ordinance of 1981. The oil and gas industry and state agencies have expressed serious legal, technical and administrative concerns with those documents. While the documents before us today represent improvements over those previous documents, many of our legitimate concerns remain and new ones have emerged. We hope that the Assembly will accept our expression of these concerns as constructive and will give them full consideration prior to final action. The following remarks highlight our major concerns and recommendations. Attachments to these remarks contain more detailed comments for use in your evaluations.

At the outset, it is important to note that extensive and serious legal problems with the Comprehensive Plan and Regulations still remain unresolved and should be addressed by the Assembly before adoption. These legal issues are detailed in Attachment 1 and will only be briefly addressed in these remarks.

AOGA firmly believes that the Borough is moving much too fast with the adoption of the Comprehensive Plan and Land Management Regulations. During the past three months, three drafts of the proposed Plan and Regulations have been issued in rapid succession for public review and consideration by the Planning Commission. During this period, the oil and gas industry raised a

number of legal, technical and administrative issues with respect to these draft proposals in an effort to assist the Borough in developing a Plan and Regulations which properly address the separate and mutual interests of all parties involved. Many of these issues, which are also important to the Borough's own future development plans, remain unresolved. It is our belief that the public and the Assembly have not had adequate time for consideration of the Plan and Regulations. The present draft is not suitable for adoption at this time.

Aside from the basic issue of the Borough's zoning jurisdiction over oil and gas development of state and federal lands, the petroleum industry is concerned that the proposed Plan and Regulations provide such broad discretionary powers to the Administrator and Planning Commission that oil and gas development projects vital to the state and nation may be seriously impeded. The proposed Plan and Regulations will surely result in many conflicts between the Borough and the state and federal governments. We believe that the only practical and reasonable approach is for the NSB to work through state and federal agencies on oil and gas matters at the various stages of leasing, plan approvals and permitting decisions. The goals, objectives and policies developed by the Borough in the preparation of the Comprehensive Plan and Land Management Regulations will provide the basis for the Borough's participation in state and federal decision-making processes. The establishment of a separate NSB permitting scheme and a Master Plan requirement for oil and gas development, however, would be counterproductive and result in lengthy and expensive litigation.

In addition to these two legal issues, there is a question regarding the ability of the Borough to effectively implement the proposed Comprehensive Plan and Regulations if enacted on January 1. To our knowledge the administrative procedures, forms and checklists necessary to implement the Plan and Regulations are not presently under development and therefore will not likely be available on January 1. Additionally, a major component of the Comprehensive Plan, the proposed Coastal Management Program, to which repeated references are made in the Plan and Regulations, will also not be in place on January 1. As a result, we urge the Assembly to seriously consider delaying adoption of the Plan and Regulations until the Borough's Coastal Management Program has been given conceptual approval. This would provide the necessary additional time to develop the administrative procedures for effective implementation and to more completely address the unresolved issues, thereby assuring an orderly transition from the present program under the Interim Zoning Ordinance.

Should the Assembly nevertheless decide to pursue adoption of the Comprehensive Plan and Land Management Regulations at this time, we offer the following technical changes found in Attachment II for your consideration. Although these changes would not resolve all of the remaining issues, they would go a long way toward facilitating Borough and industry development activities proceeding in a timely manner without significantly compromising the other interests and long range goals of the Borough. These suggested changes can be summarized as follows:

1. The portions of the Land Management Regulations which would require rezoning, master plan approvals and permits should be modified. We commend the Planning Commission for having made modifications in the Land Management Regulations which zone all existing unitized areas as

Resource Development Districts. However, these modifications fall short of satisfying the need that all existing and future state and federal leases and units within the territorial jurisdiction of the Borough be similarly rezoned as a matter of course.

2. The Planning Commission has correctly recognized the priority afforded to uses of state concern under the Alaska Coastal Management Act and has provided some protection for uses of state concern in the proposed Regulations. However, a separate Master Plan and permit approval by the Borough as contemplated in these Regulations will either lead to irreconcilable conflicts with decisions of state and federal permitting agencies or result in a mere duplication of state and federal regulations and permits. The NSB should use the policies developed as part of the Comprehensive Plan and Land Management Regulations and the NSB Coastal Management Program as a basis for its consultation with the appropriate state and federal agencies. Such consultation procedures are established under existing regulations and programs. Where consultation rights are not clearly established in existing processes, the NSB should seek to establish those rights by agreement between the Borough and the appropriate state or federal agency, primarily with the Department of Natural Resources and the Mineral Management Service on oil and gas matters.
3. Vague and discretionary policies which create uncertainty as to their meaning and application should be rewritten to require a conclusive finding of adverse effect and evaluation of possible mitigating measures before prohibitive policies are applied to decisions on development activities.
4. Policies which impose technical or design constraints should be eliminated. Performance criteria with appropriate mitigating measures should be applied on a case-by-case basis. Specific design criteria should not be adopted as Borough policy.
5. Policies not pertaining to land and water uses should be rewritten as goals or objectives, and should not be used as the basis for decisions on development activities.
6. Policies which allow participation by the villages in NSB planning efforts are an important concept adopted by this version of the Comprehensive Plan and Regulations. However, the Borough must ensure that it does not impermissibly delegate decision-making authority to local jurisdictions.
7. Many terms used in the Comprehensive Plan and Regulations are inadequately defined, or are not defined at all, and require further specification before this document is adopted.
8. Miscellaneous corrections, additions or deletions have been suggested to eliminate inconsistencies, clarify intent and otherwise improve the accuracy of the document.

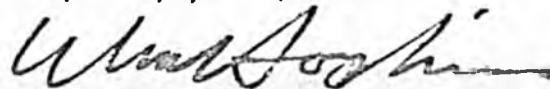
The Alaska Oil and Gas Association recognizes the importance of this planning effort to the Borough. The Assembly must recognize, however, that this document, if adopted, will have far reaching implications for future development in the Borough. We, therefore, urge you to give careful consideration to adoption of our recommendations before this planning effort is brought to a

Mr. James Stotts
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conclusion. We again urge that the Assembly not take action on the Comprehensive Plan and Regulations until the Borough's proposed Coastal Management Program has been adequately developed so that the two documents can be conceptually adopted in concert.

AOGA and its member companies continue to stand ready to offer our advise and assistance to the Borough in bringing these important planning efforts to a satisfactory conclusion.

Very truly yours,



WILLIAM W. HOPKINS
Executive Director

WWH: jlp
NSB008

xc: Mayor Eugene Brower
Members of the NSB Assembly
Mr. Bud Stevens

Attachment I

AOGA Comments

Legal Considerations

NSB Comprehensive Plan and Regulations

Procedural Problems

The North Slope Borough has been in the process of developing a land use management plan since 1978. Starting with its draft Coastal Management Program, which was eventually withdrawn from state consideration in January, 1980, the Borough has sought to gain control over petroleum development across the great expanse of the North Slope of Alaska. In late 1979, the NSB adopted its Interim Zoning Ordinance. Early in 1981, the NSB Planning Commission issued a draft Comprehensive Plan and Zoning Ordinance that has been under revision since August, 1981. Extensive changes were made and on September 15, 1982, the NSB Planning Department issued an entirely new document, entitled Comprehensive Plan and Land Management Regulations (draft 1). This document was the subject of a Comprehensive Plan Policies Workshop on September 24, 1982, in Barrow. Draft 1 was subsequently revised and a new version issued on October 8, 1982. On October 15, 1982, the Planning Commission held a public hearing on draft 2. Another draft, Draft 3, which was not a complete document but merely an addition and partial revision of draft 2, was made available to the public on November 5, 1982; that same day it was adopted by the Planning Commission after a number of amendments had been made. On November 9, 1982, the draft 3 version of the document was presented to the NSB Assembly for action and the Assembly scheduled a hearing for December 7, .

1982. As of this date, an approved complete copy of the Plan, as amended and adopted by the Planning Commission on November 5, has not been made available to the public. Since a complete copy of the Comprehensive Plan is not available, the Borough has failed to provide adequate notice as required by its Charter.

AOGA is very concerned with the lack of opportunity afforded by the NSB for meaningful public participation within the last three months. Members of AOGA have attempted to participate in the development of the Comprehensive Plan and implementing Regulations from the earliest drafts, however, public participation has been frustrated by not having the complete document under consideration by the NSB Assembly and the lack of adequate time for review. Furthermore, industry's comments and recommendations, legal and technical, have been largely ignored, including comments made by industry representatives at the September 24, 1982, workshop.

We firmly believe that the Borough is moving too fast for the adoption of this Plan and Regulations. The Plan is confusing and there are many inconsistencies between the Plan and the Regulations. In addition, it is not clear how the Plan and Regulations will be integrated with the NSB's Coastal Management Program which is currently under development. Lastly, there are serious legal, technical and administrative problems within the documents. We recommend that the NSB Assembly delay action on the proposed Plan and Regulations and develop them in concert with its Coastal Management Program (CMP), since the CMP is a major component of the Plan and Regulations. "Concept approval" by the Assembly should be given both documents simultaneously prior to being submitted to the state for approval.

Substantive Problems

The policies and regulations of the North Slope Borough's (NSB) draft Comprehensive Plan in many cases conflict with both state and federal law. Specifically, the draft Comprehensive Plan and implementing Regulations are in conflict with the Alaska Constitution, Alaska Coastal Management Act, Alaska Lands Act, the Alaska Oil and Gas Conservation Act, the U.S. Constitution, the Federal Coastal Zone Management Act, the Outer Continental Shelf Lands Act, and other federal and state statutes which regulate oil and gas activities.

The goals, objectives and policies of the Comprehensive Plan and implementing Regulations give priority and protection to subsistence activities by right throughout the Borough while restricting or prohibiting other legitimate uses of state and national concern. The proposed Plan and Regulations seek to give the Borough ultimate control over industrial activities (primarily oil, gas, and mineral development) or prohibit/restrict such activities in the Borough. A clear anti-development bias pervades the objectives and policies of the proposed Plan, and the Plan purports to exert control over not only Borough owned lands but also private, state, and federally owned lands. Many of the objectives and policies in the Plan demonstrate the Borough's intention to frustrate oil and gas exploration, development and production operations which are authorized pursuant to federal and state statutes.

The NSB's power to regulate oil and gas activities is limited by the State of Alaska's interest in uniform statewide oil and gas regulations. The Alaska Constitution, its statutes, and its case law uniformly provide that the regulation of oil and gas activities is a matter of statewide concern. Numerous Alaska

statutes have been enacted to control oil and gas activities within the Borough. The principal statutes involved are the Alaska Lands Act (AS 38.05.005-.370) and the Alaska Oil and Gas Conservation Act (AS 31.05.005-.370). The Alaska Coastal Management Act also recognizes petroleum development as a use of a statewide and nation-wide concern [AS 46.40.020(7) and 46.40.210(6)].

Alaska law is clear regarding the limits of a home-rule borough's authority under Title 29 of the Alaska Statutes. A home-rule borough, such as the NSB, may exercise legislative powers so long as they are not "prohibited by law or charter" (Alaska Constitution, Article X, Section 11). The Alaska Supreme Court has stated the test for determining when a local enactment is "prohibited by law or charter" in Jefferson v. State, 527 P.2d 37,43 (1974):

The prohibition must be either by expressed terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law.

In resolving conflicts between state statutes and local ordinances, the Alaska Supreme Court has recognized and applied the "local activity rule." Under this approach, the court must determine whether the matter regulated is of statewide or local concern. (MaCauley v. Hildebrand, 491 P.2d 120, 122 (Alaska 1971)).

The rule was applied in Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska 1970), and restated in Johnson v. City of Fairbanks, 483 P.2d 181 (Alaska 1978) where the Court states: "We resolved the conflict [in

Chugach Electric] by applying a rule requiring the local enactment to yield if it directly or indirectly impeded implementation of statutes which sought to further a specific statewide policy." The rule stated above was recently restated and applied to the zoning and planning area in Kenai Peninsula Borough v. Kenai Peninsula Board of Realtors, Inc., slip op., October 15, 1982.

The Alaska Constitution mandates state control in the use of Alaska's natural resources, including oil and gas. The pertinent provisions are found in Article VII:

Section 1. Statement of Policy. The policy of the State is to encourage the settlement of its lands and the development of its resources by making them available for maximum use consistent with the public interest.

Section 2. General Authority. The Legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including lands and waters for the maximum benefit of its people.

Section 6. State Public Domain. Lands and interests therein including submerged and titled lands possessed or acquired by the State and not used or intended exclusively for governmental purposes constitute the State public domain. The Legislature shall provide for the selection of lands granted to the State by the United States and for the administration of the State public domain.

Section 8. Leases. The Legislature may provide for the leasing of and the issuance of permits for exploration of any part of the public domain or interests therein subject to reasonable concurrent uses. Leases and permits shall provide, among other conditions, for payment by the party at fault for damage or injury arising from non-compliance with the terms governing concurrent use and for forfeiture in the event of breach of condition.

Section 12. Mineral Leases and Permits. The Legislature shall provide for the issuance, types and terms of leases for coal, oil, gas, oil shale, sodium phosphate, potash, sulfur, pumice and other minerals as may be prescribed by law. Leases and permits granting these exclusive rights of exploration for these minerals for specific periods and areas subject to reasonable and concurrent exploration as to different classes of minerals may be authorized by law. Like leases and permits giving the exclusive right of prospecting the physical, geochemical and similar methods for all minerals may also be authorized by law.

The clear policy of the State as provided in the Constitution is to encourage the development of the State's natural resources. The Legislature is exclusively charged with the administration of state lands, and specifically directed to provide for the utilization and development of all natural resources belonging to the State. The Legislature is also directed to regulate the issuance of oil and gas leases. In particular, leases and permits granting the right to explore for oil and gas are authorized by law. These provisions form a constitutional mandate for pervasive state administration of its lands, including the use and development of the state's natural resources. The language is mandatory, not

permissive. Its provisions entrusting these matters to the state legislature are unqualified. Local units of government have neither authority nor responsibility in these fields. Even should the State Legislature delegate a portion of this authority to municipalities to enable them to meet varying conditions within the different localities, such delegation could not diminish its constitutionally mandated control of state lands and natural resources. Given the conflict between the NSB's draft Comprehensive Plan and implementing Regulations and the Legislature's exercise of its constitutional authority, the Legislature's enactment must prevail.

The Alaska Lands Act contains an express prohibition preventing any municipality from closing state lands to oil and gas exploration, development, and production. AS 38.05.135(a) provides in part:

Except as otherwise provided, valuable mineral deposits in lands belonging to the State shall be open to exploration, development and the extraction of minerals. All lands, together with tide, submerged, or shorelands, to which the State holds title or to which the State may become entitled, may be obtained by permit or lease for the purpose of exploration, development and the extraction of minerals.

A clear policy in favor of keeping state lands open for oil and gas exploration, development, and production is found in AS 38.05.350, which provides that "[i]t is a policy of the State to encourage the settlement of its lands and the development of its resources by making them available for maximum use

consistent with the public interest." AS 38.05.035(a) also demonstrates that exploration, development, and production of oil and gas is a matter of statewide concern, and that it is Alaska's policy to encourage such development on state lands. AS 38.05.035(a)(14) authorizes the leasing of state lands once it is found that the "interests of the State will be best served." With specific reference to oil and gas, AS 38.05.180(a) provides:

The legislature finds that (1) the people of Alaska have an interest in the development of State oil and gas resources to (A) maximize the economic and physical recovery of the resources; (B) maximize competition among parties seeking to explore and develop the resources; (C) maximize use of Alaska's human resources in the development of the resources;

The Alaska Lands Act is, therefore, clear and unambiguous: the determination of which state land should be leased and the conditions or limitations to be contained in the lease agreements are matters of statewide concern.

In the absence of the adoption by the North Slope Borough of a district coastal management program pursuant to the Alaska Coastal Management Act, the state coastal management program applies to the North Slope Borough.

The NSB draft Comprehensive Plan and implementing Regulations approve subsistence use as a matter of right throughout the Borough, yet severely restrict competing uses in all land use districts outside the Resource Development District. This designation arbitrarily and unreasonably restricts "uses of State

concern," within the meaning of the ACMA. The Borough employs the subsistence designation to potentially exclude other competing uses, including oil and gas operations, within the Borough's boundaries. Although subsistence is certainly one use of State concern if properly substantiated and limited in scope, the Borough cannot avoid its obligation to balance and accommodate competing uses by simply designating its entire coastal zone and three of the four land use districts as subsistence areas. It is not the purpose of the ACMA to protect any single use, and the ACMA does not authorize the Borough to exclude uses of state and national interest based on purely local concern; it instead requires the balancing of legitimate state interests with reasonable standards for the protection of proper local concern.

As in Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska 1970) and other cases establishing the "local activity rule" in Alaska, the matters covered by the ACMA are of statewide concern. By express statutory definition, the siting of energy facilities and other activities pursuant to a state or federal oil and gas lease are uses of state concern. AS 46.40.210(6)(c). The reasoning of Chugach Electric, therefore, is directly applicable to the NSB's proposed permitting plan. The Borough has no authority to interfere with a State statutory scheme by unreasonably restricting uses of state concern.

The Department of Natural Resources has implemented the Constitutional and statutory policy of natural resources development by issuing oil and gas leases. These leases were issued on the condition that oil and gas work was to be performed on the leased area. The draft Comprehensive Plan and implementing Regulations will impede this policy. Under the draft Comprehensive Plan and

implementing Regulations, all oil and gas activity requires a permit from the NSB. Under the "local activity rule," once the Department of Natural Resources has determined that the issuance of an oil and gas lease is in the best interest of the State, this determination may not be nullified because the Borough withholds a permit under narrowly defined local considerations.

The Alaska Supreme Court has recognized the State's interest in regulating and developing oil and gas resources on a statewide basis. In North Slope Borough v. LeResche, 581 P.2d 1,112 (Alaska 1978), the Court held that the Commissioner of Natural Resources had the authority to reject the Borough's application to select State lands overlaying the Prudhoe oil field on the ground that it was in the best interest of the State.

The NSB's attempt to restrict already limited petroleum related activity in State oil and gas lease areas is analogous to previous cases where the Alaska Supreme Court has held that state law preempts a home rule municipality from validly exercising legislative power. The Commissioner of the Department of Natural Resources has made the determination that certain state lands should be open to oil and gas development, and has promulgated extensive regulations governing such activity. This constitutes a prohibition upon the exercise of the Borough's zoning authority to further restrict or exclude petroleum related activities on these lands. The Borough cannot enact regulations which interfere with petroleum related activities in areas which the Commissioner has determined should be open for such activities.

The Alaska Supreme Court has held that ordinances of home rule municipalities are prohibited if they directly or indirectly impede implementation of State

statutes which seek to further a specific statewide policy. The Alaska Constitution, the Alaska Oil and Gas Conservation Act, and the Alaska Lands Act evidence a strong state policy in favor of oil and gas development. The proposed Comprehensive Plan and implementing Regulations greatly restrict oil and gas activity within the North Slope Borough and require a permit for activity in all areas of the Borough. These restrictions act as an impediment to oil and gas activity in irreconcilable contravention of State policy. To the extent that the Borough's proposed Comprehensive Plan and implementing Regulations interfere with the implementation of State policy, they are invalid.

In addition to the state law prohibitions against Borough regulation of state lands, the federal Constitution forbids such regulation by the Borough on federal lands.

A. The Supremacy Clause

The doctrine of federal preemption is derived from the Supremacy Clause of the United States Constitution (Article VI, Clause 2). This clause elevates federal law above that of a State and provides:

[t]his Constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made or which shall be made under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby anything in the Constitution or laws of any state to the contrary notwithstanding.

The Supremacy Clause has been found directly applicable to local regulatory schemes. In Ventura County v. Gulf Oil Corporation, 601 F.2d 1080 (9th Cir. 1979), aff'd 445 U.S. 947, 100 S.Ct. 1593 (1980), the Court of Appeals held that federal regulations of oil and gas activities on federal lands pursuant to the Mineral Lands Leasing Act of 1920 preempted local regulation of the same activities. Gulf Oil had received an oil and gas lease pursuant to the Mineral Lands Leasing Act and obtained the necessary federal permits to drill a well under the terms of the lease. Ventura County sought to require Gulf to obtain a county oil exploration and extraction permit pursuant to its local zoning ordinance prior to the commencement of activities under the federal lease and permits. The federal appeals court rejected the County's argument that there was no evidence of either the Congressional intent to preempt local regulation nor any conflict between local and federal law that could be resolved only by exclusion of local jurisdiction. It held:

We need not consider the extent to which local regulation of any aspect of oil exploration and extraction upon federal lands is precluded by federal legislation; the local ordinances impermissibly conflict with the Mineral Lands Leasing Act of 1920 and on this basis alone they cannot be applied to Gulf. (601 F.2d at 1083).

The Court stated its conclusion succinctly: "The states and their subdivisions have no right to apply local regulations impermissibly conflicting with achievement of a congressionally approved use of federal lands. (601 F.2d at 1086).

The Ventura County case is directly applicable to the NSB's draft Comprehensive Plan and implementing Regulations. Like Ventura County, the NSB is attempting to regulate oil and gas operations of a lessee on federal lands by ordinance. The draft Comprehensive Plan and implementing Regulations purport to be based on the Borough's home rule powers. Home rule authority, like all state powers, is necessarily limited by the Supremacy Clause of the U.S. Constitution. The Borough is attempting to limit oil and gas operations on federal lands where Congress has provided for the regulation of these activities in the Outer Continental Shelf Lands Act and the Mineral Lands Leasing Act. These statutes are designed to further the national interest in prompt development of domestic operations, considering their environmental impacts, and encouraging state and local government participation. Nevertheless, the NSB seeks a right of final approval by requiring federal lessees to obtain a Borough permit. The Ninth Circuit's response to this demand is certain:

The federal government has authorized a specific use of federal lands, and [the Borough] cannot prohibit that use, either temporarily or permanently, in an attempt to substitute its judgment for that of Congress.

B. The Commerce Clause

Article I, Section 8, Clause 3 of the U.S. Constitution grants Congress the power to regulate interstate commerce exclusive of state control. The Commerce Clause has long been held to allocate decision making between state and federal governments in limitation of state or local action which may burden free trade between the states. Where Congress has not exercised its commerce power so

fully as to preempt state regulations, the courts must decide whether the Commerce Clause standing alone bars a particular state imposition on national commerce. Case law generally holds that state and local legislation will not be sustained unless it is rationally related to a legitimate state purpose and the resultant burden on interstate commerce is outweighed by the state interest involved.

In weighing the burdens on interstate commerce, which would result from the NSB's draft Comprehensive Plan and implementing Regulations, it is conceivable that the tight restriction on pipelines and onshore activities could make OCS and onshore development impossible or prohibitively expensive. In the absence of a compelling local interest, such as protection of some unique physical or biological resource, a court would be unlikely to find that the promotion of local subsistence and unfounded environmental objections justify interference with the flow of OCS and onshore oil through the state. Under the draft Comprehensive Plan, the Borough attempts to restrict development activity to a single Resource Development District. Such a restriction would effectively deny oil and gas lessees access to onshore transportation and other necessary facilities. The burdens imposed on interstate commerce by the NSB's draft Comprehensive Plan and implementing Regulations would be far greater than the benefits received by the Borough. Federal courts in a number of cases have struck down local zoning ordinances which attempt to regulate LNG pipelines. These cases hold that such restraints imposed by a municipality are unreasonable and without justification in the interest of health, safety, and welfare. Such restraints are, therefore, an undue burden on interstate commerce.

The Borough's regulation of oil and gas activity based on protection of subsistence activities must be weighed against the burdens placed upon interstate commerce by such regulation. Whether the burden thereby placed on interstate commerce can withstand a Commerce Clause attack depends on the extent to which the Borough actually restricts or prohibits oil and gas activities. The NSB's draft Comprehensive Plan and implementing Regulations as presented do not assure the balancing of interests required to justify any such interference.

jlp/bsw

NSB/006

Attachment 2

ALASKA OIL AND GAS ASSOCIATION

Detailed Comments

Proposed NSB Comprehensive Plan

and Land Management Regulations

(Draft 3 - November 3, 1982)

INTRODUCTION

As indicated in attachment 1, many of the provisions in the comprehensive Plan and Land Management Regulations will impermissibly conflict with the state and federal governments' regulation of natural resource development. To the extent they do so, the Plan and Regulations exceed the Borough's jurisdiction and home rule powers. We urge the Borough to delete all provisions in the Plan and Regulations which purport to regulate and restrict or prohibit oil and gas activities. In the event that the Borough determines that it wants to retain such provisions and hope that they will pass legal challenges in the courts, many changes will be necessary. The comments set forth below address, for the most part, portions of the Plan and Regulations which attempt to regulate oil and gas activities. The suggested changes will not be appropriate where the Borough deletes the objectionable provisions. AOGA's suggestion of specific changes in language does not indicate that AOGA or its member companies find the policies or provisions to be appropriate.

COMPREHENSIVE PLAN:

Page 3-3, Section 3.1.4: Impacting Factors

The list of so-called forces with potential direct negative and positive impacts on the biological/subsistence resources is incomplete. Other factors may have as much or more impact on the biological/subsistence resources as those listed. The allegation that natural resource development and extraction results in direct negative impacts on biological/subsistence resources are unsubstantiated by industry experience in the Arctic. See letter dated November 1, 1982, from John W. Katz, Commissioner of the Alaska Department of Natural Resources to Mr. George "Bud" Stevens. Commissioner Katz stated in his comments on the draft Comprehensive Plan and Land Management Regulations that:

"Inherent in the Borough's plan is the assumption that oil and gas activities are incompatible with the subsistence lifestyle of the Borough's residents. I question this assumption, especially in light of the limited impact that the existing oil and gas activity has had on fish and wildlife resources on the North Slope. While some habitat has been altered and some animals have been displaced, the cumulative impacts on fish and wildlife have not been significant. In addition, the impact of existing development on subsistence hunting and fishing activity also has been minor. While there are some who are sincere in their beliefs that oil and gas activity has been the cause of lower subsistence yields, I have not seen convincing evidence to support this cause and effect relationship. In the absence of new evidence, I am also confident that future oil and gas activity will not result in significant impacts to wildlife habitats or subsistence activity if

the present level of environmental protection and concern resulting from state and federal regulations is continued. Also, results from state and federal onshore and offshore oil and gas lease sales indicate that the industry is not interested in exploring and developing the entire North Slope."

Page 3-7, Policy 3-1.1: Development/Subsistence

Suggest modifying this policy to the following:

"Development which can be conclusively shown to result in depletion of a subsistence resource, as set forth in Section 3.5.1 of the Plan, below the subsistence needs of local residents of the Borough is prohibited unless the adverse effects of such development can be appropriately mitigated."

The suggested changes incorporate the need for conclusive evidence of adverse effect and consideration of possible mitigation before proposed development activities can be precluded under this policy.

Page 3-7, Policy 3-1.2: Development/Subsistence

Suggest modifying this policy to the following:

"Development that can be conclusively shown to result in significantly decreased productivity of subsistence resources or their ecosystems is prohibited unless the adverse effects of such development can be appropriately mitigated or no feasible and prudent alternative is available."

Comment - same as for Policy 3-1.1 above.

Page 3-7, Policy 3-1.3: Development/Subsistence

Suggest modifying this policy to the following:

"Development which can be conclusively shown to restrict subsistence user access to a subsistence resource is prohibited unless such restriction can be appropriately mitigated or no feasible and prudent alternative is available."

Comment - same as for Policy 3-1.1 above.

Page 3-7. Policy 3-1.4: Development/Subsistence

Suggest modifying this policy to the following:

"Development which can be conclusively shown to preclude subsistence user access to a subsistence resource is prohibited unless such preclusion can be appropriately mitigated."

Comment - Same as for Policy 3-1.1 above.

Page 3-8, Policy 3-2.1: Critical Habitat/Subsistence Species

Suggest modifying this policy to the following:

"Development within Special Habitat Areas identified on Plan Maps 3-6 and CMP Maps 11-2 and 11-5 is prohibited if it can be conclusively shown to significantly affect adversely the special values of such an area, unless the significant adverse effects can be appropriately mitigated or no feasible and prudent alternative is available."

Comments - Same as for Policy 3-1.1 above.

Page 3-8, Policy 3-2.2: Critical Habitat/Subsistence Species

Suggest modifying this policy to the following:

"Resource Extraction uses within a Special Habitat Area identified on Plan Maps 3-6 and CMP Maps 11-2 and 11-5 are prohibited if it can be conclusively shown to significantly affect adversely the special values of such an area, unless the significant adverse effects can be appropriately mitigated or no feasible and prudent alternative is available."

Comment - Same as for Policy 3-1.1 above.

Page 3-9, Policy 3-3.1: Marine or Coastal Development

The statement of Policy 3-3.1 involves activities clearly beyond the Borough's territorial jurisdiction and therefore is not enforceable. This statement of policy is also too vague in that it does not adequately define "high-impact

activities" and "the area of bowhead whale migration routes." We recommend deletion of this policy.

If however, this Policy is to be retained in the Comprehensive Plan and Land Management Regulations, we suggest modifying it to the following:

"Development activities that can be conclusively shown to significantly affect adversely the migration of bowhead whales and cannot be appropriately mitigated are prohibited within the area of bowhead whale migration during the migration season."

Comments - See Policy 3-1.1 above. The changes also eliminate appropriately the reference to the undefined and rather subjective term "high impact activities" without modifying the intent of the policy.

Page 3-9, Policy 3-3.2: Marine or Coastal Development

Suggest modifying this policy to the following:

"Development that can be conclusively shown to significantly impact adversely sensitive areas such as estuaries, tideflats, beaches, rivers, streams and lakes, and high energy ice impacted shorelines are prohibited unless appropriate mitigation measures are taken to minimize such significant adverse impacts or no feasible and prudent alternative is available. See Plan Maps 9 and 15 and CMP Maps 2-4 for known major occurrences of Sensitive Areas; the policy will be applied on an actual occurrences basis, however."

Comment - Same as for Policy 3-1.1 above.

Also, map references are confusing - Plan Map 15 does not presently exist and the CMP Map reference is incomplete.

Page 3-9, Policy 3-3.4: Marine or Coastal Development

Suggest modifying this policy to the following:

"Development is prohibited on or in the immediate vicinity of Barrier Islands intensively used by beluga whales as feeding and resting areas if it can be conclusively shown to significantly affect adversely such feeding or resting activities, unless the significant adverse effects can be appropriately mitigated, or no feasible and prudent alternative is available."

Comment - Same as for Policy 3-1.1 above. The changes also appropriately eliminate the reference to the undefined and subjective term "high-impact activities" without modifying the intent of the policy. Additionally, this change would eliminate the inconsistency with Policy 3-5.3 on page 3-10, which states that barrier islands are preferred over other (non-gravel) structures.

Page 3-10, Policy 3-4.2: Shoreline Development

The revision of this policy to allow development on the shoreline where there is no feasible and prudent alternative available is an improvement. However, coastal dependant industry should not be burdened with the requirement to investigate alternative site locations with the associated economic studies

because the industries are allowed shoreline locations by the Coastal Management Laws. This policy should be written as a relative policy encouraging development outside the shoreline where feasible and prudent inland alternatives exist. This comment applies also to Policy 5-2.3.

Pages 3-10 and 3-11, Policy 3-5.3: Resource Extraction

The Borough should not attempt to regulate the choice and design of offshore structures located outside its territorial jurisdiction. Further, this would needlessly duplicate both federal and state existing authority. We suggest that this policy be modified to the following:

"Offshore exploration, development and production drilling outside the landfast ice area [Plan Map 9, CMP Map 11-2 and Section 5.5.3.5 Zone AO] is required to be conducted from barrier islands, artificial islands or offshore platforms approved by the MMS under its structure verification program or by the State."

Page 3-11, Policy 3-6.2: Transportation and Transportation Facilities

This policy should be written as a relative policy by changing the word "required" to "encouraged." This comment also applies to Policies 3-4.1, 3-7.2, 5-2.2, 5-6.2, 5-7.4 and 7-5 (formerly 7-6).

Page 3-11, Policy 3-6.3: Transportation and Transportation Facilities

This policy has been changed to clearly state that it applies only to public facilities. This is a necessary revision because the policy will now allow roads for oil and gas development.

Page 3-11, Policies 3-6.4 and 3-6.5: Transportation and Transportation Facilities

Recent studies on the North Slope show that pipelines, regardless of orientation, do not present a significant barrier to caribou. We suggest that these two policies be combined and modified as follows to appropriately reflect the latest scientific information while preserving the intent of the original policies:

"Transportation development which can be conclusively shown to significantly obstruct wildlife migration is prohibited unless appropriate mitigation measures are taken or no feasible and prudent alternative is available. Roads and pipelines shall be designed using the best available scientific information to minimize disruptions of migratory patterns and other movements of wildlife. Appropriate mitigation measures for use with pipelines when necessary may include sufficient clearance above ground and provision of crossings satisfactory for the particular wildlife species in question."

Page 3-11, Policy 3-6.6: Transportation and Transportation Facilities

The NSB does not have the authority to prohibit or exercise any jurisdiction over development which accommodates marine oil tankers. This policy could act to prohibit offshore development of future lease sale areas. Such a proposed policy could create an unreasonable burden on interstate commerce in violation of the Commerce Clause of the U.S. Constitution, and would violate the Alaska Coastal Management Act as an unreasonable restriction or exclusion of uses of state concern.

Page 3-12, Policy 3-7.1: Utility Facilities

The words "incidental to drilling, exploration and production," should be deleted from this policy to make it consistent with our understanding of the Borough's intent, and Policy 5-7.2 on page 5-14 (also Policy 3-7.1 as cited in Chapter 10 on page 10-9).

Additionally, the terms "toxic materials" and "untreated solid waste" should be defined. The definitions should conform with applicable state and federal definitions, i.e., under the Resource Conservation and Recovery Act (RCRA), etc.

Page 3-12, Policy 3-7.2: Utility Facilities

The word "significant" should be added before "disturbance" in the fourth line and "special" should be added before "habitat" in the fifth line to make this policy consistent with the identical Policies 3-4.1, 3-6.2, 5-2.2, 5-6.2, 5-7.4 and 7-5 (also Policy 3-7.3/7.2 cited in Chapter 10 on page 10-6).

Page 3-12, Policy 3-7.3: Utility Facilities

Suggest this policy be modified to the following:

"Utility siting and design which can be conclusively shown to preclude subsistence user access to a subsistence resource is prohibited unless appropriate mitigating measures are taken or no feasible and prudent alternative is available."

Comment - Same as for Policy 3-1.1 above.

Page 3-12, Policy 3-7.4: Utility Facilities

Suggest this policy be modified to the following:

"Development which can be conclusively shown to restrict subsistence user access to a subsistence resource is prohibited unless appropriate mitigation measures are taken or no feasible and prudent alternative is available."

Comment - Same as for Policy 3-1.1 above.

Page 3-12A, Policy 3-8.2: Residential Development

This policy should be rewritten to be consistent with Policy 5-3.1 on pages 5-10 and 5-11.

Pages 3-13 and 3-14, Policy 3-A.3: Regulation and Management

The reference to "joint management agreements" needs to be clarified. Is this referring to state agencies or other parties?

Page 3-14, Policy 3-A.7: Regulations and Management

This policy presumes that resource extraction and preservation of Special Habitat Areas are incompatible in all instances. We believe this is an inappropriate generalization. Each circumstance should be considered on its merits. We suggest modifying this policy to the following to incorporate the necessary appropriate considerations of conclusive evidence of effect and mitigation measures:

"Promote the withdrawal of Special Habitat Areas from all resource extraction and non-essential entry and appropriation where such activities can be conclusively shown to significantly affect adversely the values of such areas and no appropriate mitigating measures are available or acceptable."

Page 3-14, Section 3.4.2: Regulation and Management Discussion

We note that the statement "Borough jurisdiction may have, to some degree, been preempted" has been deleted in Draft 3 of the Comprehensive Plan. The Borough should recognize that where regulation purporting to implement its police power invades the jurisdiction of state and federal governmental entities, such regulation is pre-empted, and the Borough retains no jurisdiction in those areas. Specifically, the regulation and management of oil and gas leases and activities have clearly been preempted by state and federal law. The oil and gas industry is willing to work with the NSB and encourages its involvement in existing regulatory processes; however, any attempt by the NSB to disrupt or restrict activities which are authorized by state and federal governments on public lands will be strongly opposed.

Page 3-50, Section 3.5.4.3: Construction

The proposed restriction on geophysical operations noted on page 3-50 should be modified to allow summer seismic operations that use helicopters and rolligons to carry vibroseis and other seismic equipment. Temporary summer seismic operations of this type cause no significant harm to wildlife or the environment.

Page 4.5, Policy 4.1: Development/Cultural & Historical Sites

Suggest this policy be modified to the following:

"Development which can be conclusively shown to significantly disturb cultural or historic sites listed in the National Register of Historic Places

or those which have been substantiated as being eligible for inclusion in the National Register, or to significantly interfere with traditional activities at such cultural or historic sites, is prohibited unless appropriate mitigating measures are taken to minimize this disturbance or interference. Possible interference with traditional activities would include significant visual, noise or other pollution; prolonged increases in activity; driving off subsistence species; or significant surface disturbance."

Suggested changes would clarify the intent of this policy and incorporate the appropriate considerations of a conclusive finding of adverse effect and mitigation.

Page 4-5, Policy 4-2: Development/Newly Discovered Sites

Suggest modifying this policy to the following:

"Surface disturbance which can be conclusively shown to significantly effect adversely newly discovered historic sites is prohibited prior to archaeological investigation unless appropriate mitigating measures are taken to minimize such significant adverse effects."

Suggested changes would incorporate the appropriate considerations of a conclusive finding of adverse effect and mitigation.

Suggest modifying this policy to the following:

"Development which can be conclusively shown to significantly violate guidelines on the rate or amount of growth adopted by a village as part of its Village District Comprehensive Plan is discouraged. Development which can be conclusively shown to grossly violate such guidelines is prohibited unless appropriate mitigating measures are taken to minimize the significant adverse impacts or no feasible and prudent alternatives are available."

Suggested changes would clarify the intent of this policy and incorporate the appropriate considerations of a conclusive finding of adverse effect and mitigation.

Additionally, while we agree that the amount of development within a village should be guided by village policy, development outside the village which occurs on state or federal land is not under the jurisdiction of the NSB. Without detailed maps, the impact of this policy cannot be fully assessed.

Page 4-6, Section 4.4.3: Policy Discussion

The fourth paragraph in this section implies that as a general policy all of the barrier islands along the North Slope should be held "inviolable" with respect to offshore development. This would be inconsistent with what is implied in Policy 3-5.3 on page 3-10, that barrier islands are preferred for offshore drilling over

other (non-gravel) structures. We suggest this paragraph be revised by deleting the fourth and fifth sentences. Standard lease stipulations require identification of such sites prior to development.

Page 4-66, Section 4.5.6.5: Subsistence

The meaning of the third paragraph on page 4-66 is unclear (beginning with "an open-range").

Also, the meaning of the last sentence in the prior paragraph on page 4-66 is unclear. (What is meant by "the subsistence commons will be fragmented"?)

Page 5-1, Section 5.1.1.2: Potential Sources

We suggest that the first sentence in this section be modified to the following:

"Groundwater systems play a relatively minor role in the hydrology of the Borough because the active layer is underlain with permafrost and thaws to a depth of only about two feet during the summer."

The present wording in the draft incorrectly describes the cause and effect relationship between permafrost and the active layer.

Page 5-2, Section 5.1.1.4: Industrial Consumption

We suggest that the first sentence of the third paragraph be modified to the following:

"Mud is normally used only during the drilling phase of a well's life."

Mud is normally not required after a well has been drilled.

Page 5-5, Section 5.1.4.1: Flooding

We suggest the addition of the following before the first full sentence on this page beginning with "In addition to hazards":

"An exception to this is the Sagavanirktok River, which has relatively uniform flow throughout the summer."

Page 5-10, Policy 5-1.1: Development/Environmental Degradation

Suggest this policy be modified to the following:

"Development which can be conclusively shown to substantially pollute the natural environment (including water, air, noise and vibration) is prohibited unless appropriate mitigating measures are taken or no feasible and prudent alternative is available."

Suggested changes would incorporate the appropriate considerations of a conclusive finding of adverse effect and mitigation.

Page 5-10, Policy 5-1.2: Development/Environmental Degradation

Suggest this policy be modified to the following:

"Development which can be conclusively shown to result in depletion of a subsistence resource, as set forth in Section 3.5.1 of the Plan, below the subsistence needs of local residents of the Borough is prohibited unless the adverse effects of such development can be appropriately mitigated."

Comment - Same as for Policy 5-1.1 above (Also see identical policy 3-1.1 on page 3-7).

Page 5-10, Policy 5-2.3: Development/Commercial and Industrial

The words "fuel or toxic material," need to be added following "Landfills," in the third line of this policy to make it consistent with the suggested revision of the identical Policy 3-4.2 on Page 3-10.

Page 5-11, Section 5.4: Development Policy Discussion

Suggest that the fourth paragraph in this section be modified to the following:

"Approved development activities should incorporate mitigation of impact on the quality of the natural environment, including water quality and air quality, and the local or adjacent environments and habitats."

The present wording is misleading. In general, there will be a certain level of localized impact on the environmental as a result of development.

Page 5-11, Section 5.4: Development Policy Discussion

In the fifth paragraph, we suggest replacing "precedence" with "preferential consideration for siting."

The resulting sentence would more clearly state what we presume is intended.

Pages 5-11 and 5-12, Section 5.4: Development Policy Discussion

In the sixth paragraph, we suggest that the second sentence be modified to the following:

"Non-coastal dependent uses or activities which may interfere with or impact subsistence needs in shoreline areas shall be sited in geographically separate locations."

The resulting sentence would more clearly state what we presume is intended.

Page 5-12, Policy 5-4.1: Development/Geophysical Hazard Areas

Suggest this policy be modified to the following:

"Development in flood plains and other geologic hazard areas identified in Plan Map 9 and CMP Maps 1-2-5 and Section 5.5.3.5 of this Plan is prohibited unless appropriate mitigating measures are taken or no feasible and prudent alternative is available."

Suggested change to this policy incorporates the additional appropriate consideration of the availability of technology or other measures which could reduce the risk of such development to acceptable levels.

Page 5-12, Policy 5-4.5: Development/Geophysical Hazard Areas

The Borough should not attempt to regulate the choice and design of offshore structures since this would needlessly duplicate existing federal and state authority. We suggest that this policy be modified to the following:

"MMS approval under its structure verification program or state approval is required for all offshore development outside the landfast ice zone [see Plan Map 9, CZM Map 1-2 and Section 5.5.3.5 Zone AO]."

Page 5-13, Policy 5-5.1: Resource Extraction

We suggest deleting "absolutely" and the second "required" from this policy. These changes would provide increased flexibility in the administration of the policy to allow a developer to operate in the most efficient manner with respect to field support facilities.

Page 5-13, Policy 5-5.3: Resource Extraction

The term "general environmental conditions" should be defined. It should also be noted that such a general term cannot be adequately addressed in a permit application.

Page 5-13, Policy 5-5.5: Resource Extraction

Mining in streams and rivers is regulated by the ADF&G. This should be modified to a relative policy by replacing "prohibited" with "discouraged."

Page 5-13, Policy 5-5.6: Resource Extraction

It should be noted that on state and federal lands and waters, the conduct of mining activities are regulated by the state and federal agencies, and not within the jurisdiction of the NSB. This should be modified to a relative policy by replacing the words "prohibited" with "discouraged".

Page 5-13, Policy 5-6.1: Transportation Facilities

This policy should be identical to Policy 7-6 on page 7-7 (note additional wording in Policy 7-6, "or joint use transportation facilities" and "strongly").

Page 5-14, Policy 5-7.2: Utility Facilities

The terms "toxic materials" and "untreated solid waste" should be defined. The definitions should conform with applicable state and federal definitions, i.e., under the Resource Conservation and Recovery Act (RCRA), etc. (see similar comment for Policy 3-7.1 on page 3-12).

Page 5-14, Section 5-7: Utility Facilities

In the first sentence of the general comments, we suggest replacing "avoid environmental degradation" with "minimize environmental impact."

In the third sentence of the general comments, we suggest replacing "do not degrade the environment" with "minimize environmental impact."

The present wording is misleading - there will be a certain minimum level of localized impact on the environment as a result of development.

Page 5-14, Policy 5-A.2: Public Policies/Geophysical Hazard Areas

Suggest this policy be modified to the following to appropriately recognize state and federal approval processes and the need to minimize redundant reviews and approvals:

"Development in Geophysical Hazard Areas shall be approved only on a site specific basis and in concert with the associated state and/or federal approval requirements."

Page 5-15, Policy 5-A.4: Public Policies/Geophysical Hazard Areas

See previous comment for Policy 3-5.3 on page 3-10 and Policy 5-4.5 on page 5-12.

Suggest the last sentence of this policy be deleted for the reasons stated previously.

Appendix, Table 5.2: Measured Pollutant Levels

Two important footnotes are missing from this table. They are as follows

"3 Ozone standard is attained if the expected number of days per calendar year with maximum hourly average concentration above 0.12 ppm is equal to or less than one."

"4 Guidelines used to achieve compliance of the ozone standard."

Footnote 3 above should be referenced for the 1 hour maximum ozone standard (present reference to footnote 2 should be deleted).

Footnote 4 above should be referenced for the 6-9 AM Maximum Non-Methane Hydrocarbon Standard.

Page 6-8A, Section 6.4(6-1): Development Policies/Full Employment

We support a voluntary local hire policy. However, local hire policies that may be used to influence decisions for approval of permits at any level of government are unconstitutional.

Policies 6-1.1 to 6-1.3 are not appropriate to be used in a permit decision. For Policy 6-1.2, it is important to note that such flexible hiring practices are generally not consistent with prudent management practices and operational requirements of petroleum development.

Page 6-8B, Section 6.4(6-2): Development Policies/Inupiat Industries

Policy 6-2.1 is not objectionable but is not appropriate to be used in a permit decision.

Page 6-8B, Section 6.4(6-3): Development Policies/Local Economic Development

We will continue to diligently pursue any opportunities to utilize the services of local private businesses and regional and village corporations within the Borough. It is contrary, however, to the free enterprise system to regulate by policy the use of local businesses and corporations.

Policies 6-3.1 and 6-3.2 are not objectionable but are not appropriate to be used in a permit decision. For Policy 6-3.3, it is important to note that such flexible hiring practices are generally not consistent with prudent management practices and operational requirements of petroleum development.

Page 7-6, Policy 7-3.1: Haul Road Corridor

The Borough does not have the authority to prohibit facilities in the Haul Road Corridor. Suggest this be modified to a relative policy by replacing "prohibited" with "discouraged."

Page 7-6, Policy 7-4: Disturbance of Habitat

Suggest this policy be modified to the following:

"Disturbance of subsistence resource habitat or migration routes during migration periods by transportation modes or development is prohibited if it can be conclusively shown to significantly affect adversely such habitat or routes, unless such significant adverse effects can be appropriately mitigated, or no feasible and prudent alternative is available."

Suggested changes would incorporate the appropriate considerations of a conclusive finding of adverse effects and mitigation.

Page 8-8, Policy 8-1: Local Employment

We support a voluntary local hire policy. However, local hire policies that may be used to influence decisions for approval of permits at any level of government are unconstitutional. Policies 8-1.1 and 8-1.2 are not appropriate to be used in a permit decision.

Page 8-8, Policy 8-2: Local Business

We will continue to diligently pursue any opportunities to utilize the services of local private businesses and regional and village corporations within the Borough. It is contrary, however, to the free enterprise system to regulate by policy the use of local businesses and corporations. Policies 8-2.1 and 8-2.2 are not appropriate to be used in a permit decision.

Page 8-8, Policy 8-3: Flexible Employment Schedules

It should be noted that such flexible working schedules are generally not consistent with prudent management practices and operational requirements of petroleum development. Policy 8-3.1 is not appropriate for use in a permit decision.

Appendix, Tables 8.5 thru 8.8

It should be noted that the data presented in these tables is very misleading due to the gross measures used for magnitude, term and location, and the fact that a number of the listed actions or impacts have a relatively low probability of occurrence. We suggest that an appropriate comment concerning the use and accuracy of these tables be included on the tables and in the text of Chapter 8 where the tables are referenced.

Page 9-9, Policy 9-2: Public Fiscal Balance

We suggest this policy be modified to the following:

"Development which results in an excess of tax revenues over demand for Borough expenditures necessitated by the development is strongly encouraged."

The comparison of expected increased revenue versus additional expenditures resulting from the proposed development would then be the determinant for this relative policy. We do not believe, however, that this policy is appropriate for use in permit decisions.

Page 9-10, Policy 9-A.2: Consolidated Service Base Facilities

Consolidated service base facilities to be provided by the Borough should be subject to the prior approval of the developer and not forced upon the developer as a permit condition.

Page 10-4, Section 10.3.4: Resource Development District

Item (c) in this section should be modified to be consistent with the Land Management Regulations, Section 19.40.058, which includes Sag Delta/Duck Island, West Mikkelsen and Point Thompson. Also, the section should be modified to include all existing and future state and federal leases for reasons outlined in the comment on Section 19.40.058. Therefore, we suggest the following language:

The last sentence of item (c) should be replaced with:

"The initial Resource Development (RD) Districts are the Prudhoe Bay, Kuparuk, Milne Point, Gwyder Bay, Sag Delta/Duck Island, West Mikkelsen and Point Thompson fields, and all other existing state and federal leases. All future state and federal leases will be automatically re-zoned to Resource Districts upon issuance of the leases."

Pages 10-5 and 10-6, Section 10.4.1.2: Policies/Special Habitat Areas

Policies 3-4.1, 3-6.2, 3-7.2, 5-2.2, 5-6.2 and 7.6 are redundant and should be cited jointly (also should include Policy 5-7.4).

Policies 3-3.1 and 3-3.4 should also be listed as policies affecting Special Habitat Areas.

Policies 3-2.1 and 3-6.5 are cited incorrectly relative to the policies as listed on pages 3-8 and 3-11 of the Plan, respectively.

Policies 3-7.3, 7-5 and 7-6 should be listed as 3-7.2, 7-4 and 7-5 to be consistent with the policies listed on pages 3-12, 7-6 and 7-6 of the Plan, respectively.

Page 10-8, Section 10.4.2.1: Subsistence Use Areas/Purpose

Reference is made in this section to the "great weight" to be accorded village resident comments relative to activities proposed within the "Village Area of

Influence." This reference should be deleted consistent with changes previously adopted for Policy 2-B on page 2-5 of the Plan and Section 19.60.020(c) on page 60-1 of the Land Management Regulations.

Page 10-9, Section 10.4.2.2: Subsistence Use Areas/Policies

Policy 3-7.4 should also be listed as a policy affecting Subsistence Use Areas. Policy 3-1.3 is cited incorrectly relative to the policy as listed on page 3-7 of the Plan.

Pages 10-9 and 10-10, Section 10.4.3.2: Geophysical Hazard Areas/Policies

Policies 5-4.1 (page 10-9), 3-5.3 and 5-4.5 are cited incorrectly relative to the policies as listed on pages 5-12, 3-10 and 5-12 of the Plan, respectively.

The Policy 5-4.1 cited on page 10-10 of this section is incorrectly numbered and does not exist elsewhere in the Plan. If this policy is to be incorporated in Chapter 5 and retained in Chapter 10, we suggest modifying it to the following:

"Drilling in active seismic faults is prohibited unless appropriate mitigating measures are taken or no feasible and prudent alternative is available."

Page 10-11, Section 10.4.4.3: Historical and Cultural Areas/Location

We suggest dropping the phrase "a comprehensive archaeological and Land Use Inventory" from the third line in this section to eliminate any confusion. It is

our understanding that the designated "Historical and Cultural Areas" are to include only "sites that are currently on, or that are awaiting approval for, the National Register," as specified in Policy 4-1 on page 4-5 (and page 10-11).

Page 10-12, Section 10.4.6: Special Area Maps

Suggest modifying this section to the following:

"Maps 2-10 indicate the general location of the special zoning areas where the various Comprehensive Plan policies apply. These maps do not provide the actual location of the special area boundaries, and as a result, the applicable policies will be determined on a case-by-case basis. The final determination relative to the applicability of a particular policy will be the responsibility of the Administrator. The Administrator's decision may be appealed to the Planning Commission, as provided in Section 19.60.071. Amendments to the maps are considered major changes to the Comprehensive Plan and therefore require notice, public review and hearing before the Planning Commission, and final approval of the Planning Commission and Borough Assembly."

Suggested changes would clarify the intent of this section, and appropriately set out the responsibilities, appeal process and amendment process as they pertain to the Special Area Maps.

Page 10-13, Section 10.5: Village Areas of Influence

Reference is made in this section to the "great weight" to be accorded to the knowledge and experience of residents of the affected Area of Influence in development related decisions. This reference should be deleted consistent with changes previously adopted for Policy 2-B on page 2-5 of the Plan and Section 19.60.020(c) on page 60-1 of the Land Management Regulations.

LAND MANAGEMENT REGULATIONS

Comments on policies in the Regulations only address inconsistencies with policies found in the Plan. Recommended changes to policies in the Plan should be included in the policies section (Chapter 80) of the Regulations.

Page 10-1, Section 19.10.020(d): Purpose

The word "prohibit" should be deleted.

Page 20-3, Section 19.20.020: Definitions

The definition of "Best Available Technology" should be modified to include a cost/benefit consideration. We suggest the following language:

"Best Available Technology means the technology or technologies that best and most safely implements the relevant policy(ies); that is available to the

applicant at the time of application; and that considers a cost versus benefit analysis."

Page 20-3, Section 19.20.020: Definitions

The definition of "Best Efforts" should be modified to include a cost/benefit consideration. We suggest "and that considers a cost versus benefit analysis" be added at the end of the present definition.

Page 20-3, Section 19.20.020: Definitions

The definition of "Coastal Area" should be modified to be consistent with the proposed Coastal Management Program (CMP). As presently worded the definition is inconsistent with what is outlined in phase II of the background document for the CMP.

Pages 20-4 and 20-5, Section 19.20.020: Definitions

The definition of "Development" is much too broad. Items (b) and (g) should be deleted.

Page 20-13, Section 19.20.020: Definitions

The "Use-by-Right" described in these definitions results from the rezoning of an area to a Resource Development District. Such rezoning is an uncertain and

cumbersome political process that depends on the current membership of the Planning Commission and Borough Assembly. Prospective bidders on State and Federal Leases need to know that, if they are successful on their bids, they will be able to conduct oil and gas operations in accordance with the lease terms; a requirement for rezoning would create prohibitive uncertainty for these lease sales. A rezoning requirement would also be invalid as State and Federal laws preempt the field of oil and gas operations.

We propose the following language:

"Use by Right means a use pursuant to a local, state or federal agency permit."

Pages 20-12 and 20-13, Section 19.20.020: Definitions

The definition of "subsistence use" is vague and overbroad. Administration of the regulations that rely on this definition could be arbitrary and capricious.

We suggest the following language:

"Subsistence Use is a use and includes hunting, whaling, fishing, trapping, camping and food gathering."

Pages 20-3 through 20-13, Section 19.20.020: Definitions

Definitions should be provided for the following terms: "Mandatory," "Best Efforts," and "Beneficial" policies; "highway"; "shoreline"; "general environ-

mental conditions"; "toxic materials"; "untreated solid waste"; "public benefit"; and "public purpose".

Pages 30-5 and 30-6, Section 19.30.062: Enforcement Orders

This provision creates wide discretionary authority to the Administrator, which, if enacted, will subject the Developer to the potential for arbitrary and capricious actions of the Administrator. This provision should be modified since the authority delegated to a borough by the State legislature does not include the power to regulate or discontinue an activity where State law already preempts the field, e.g., oil and gas operations. The burden of proof should be on the Administrator since he/she initiates an action which could result in the developer being deprived of rights.

We propose the following language:

"The Administrator may:

- (a) recommend to the Planning Commission the discontinuance of activity for any development which does not comply with the terms of this Title 19;
- (b) order the removal or abatement of buildings or structures subject to the Revocable Development Permit Provisions of Section 19.60.090; or

- (c) order any action necessary to ensure compliance with all the provisions of this Title 19, including but not limited to, suspension of Use Permits and Development Permits.

Any such enforcement order shall be signed by the Administrator and served upon the Developer or his agent or supervisor on the site (if known), or (if unknown), posted in a conspicuous place on the site. The Administrator shall transmit a copy of the enforcement order to the Chairman of the Commission, and shall keep a copy thereof in permanent record.

Upon application of the Developer, or upon its own motion, the Commission shall review the enforcement order at its next regular meeting. The review shall be limited to the presence of violations stated in the enforcement order, and in such review the burden shall be upon the Administrator to prove that violation does exist or did occur. The Commission by resolution, may modify or rescind the enforcement order."

Pages 30-7 and 30-8, Section 19.30.063: Violations, Penalties and Remedies

This section provides that an aggrieved citizen may institute a civil action to enjoin violations of the ordinance. The Borough should recognize that the violation of a zoning ordinance generally does not establish a private cause of

action for individuals to enforce the ordinance, absent some unique and substantial harm to such individuals resulting from the activity constituting the violation.

We suggest the following language:

In subsection (a), on the fourth and fifth lines, delete "or any aggrieved citizen."

Further, the action to enjoin a violation may not be brought unless it can be established that no adequate legal remedy exists. For the section to mandate to the contrary is legally inappropriate. The prescription that courts shall grant injunctive relief to restrain violations of the ordinance invades the province of the judiciary, in violation of the Doctrine of the Separation of Powers.

In this regard, we propose the following modification:

In subsection (a), delete the last two sentences.

Page 40-5, Section 19.40.042: Conservation District, Uses by Right

Uses authorized and permitted by the state or federal government on state or federal land should be uses-by-right requiring no permit from the Borough.

We suggest the following language:

"Uses-by-Right. There are no uses-by-right in the Conservation District, except uses authorized and permitted by the state or federal government. These regulations only govern "Development", and uses and activities excluded from the definition of that term may take place without any form of regulation under this title."

Page 40-6, Section 19.40.052: Resource Development District, Uses-by-Right

All existing and future state and federal oil and gas leases should be included in the Resource Development District. Further, uses authorized and permitted by the state or federal government on state or federal land should be uses-by-right requiring no permit from the Borough.

We suggest the following language:

"Uses-by-Right. All development indicated on state and federally approved development plans, and minor alterations thereto, and all uses authorized and permitted by state and federal agencies, are uses-by-right in the Resource Development District."

Pages 40-6 and 40-7, Section 19.40.055: Resource Development District,
Application

An excessive amount of material is stipulated for permit applications. This should be reduced to include only such information as necessary for the Administrator and Commission to assess the overall impact of a proposal.

We suggest the following modifications:

Subitem (b) - "Schematic drawings and analyses of all proposed or quasi-public facilities, and all other proposed structures;"

Subitem (c) - delete entirely.

Subitem (d,e) - delete entirely as these are requirements which the Borough would more appropriately provide.

Subitem (g) - delete entirely as this requirement will be satisfied in subitem (b).

Subitem (h) - delete entirely as this requirement and subitem (c) will be included in the required Master Plan.

Pages 40-8 and 40-9, Section 19.40.057: Prudhoe Bay and Kuparuk River
Resource Development District

The purpose of this provision is to 'grandfather' into the Comprehensive Plan

existing operations at the Prudhoe and Kuparuk Units. However, as presently drafted, the provision only includes Plan of Development Maps. This section should be reworded to read as follows:

"Plans for development of unitized areas as approved by the State are hereby adopted as the Master Plan for each District and uses authorized and permitted by the State or Federal government on state or federal lands are uses-by-right requiring no permit from the Borough. Future leases issued by the State are hereby rezoned to the Resource Development District and provisions above apply."

The Milne Point Unit should also be included in this section. An analysis of the level of development that has occurred at Milne Point suggests it is more appropriately grouped with the Prudhoe Bay and Kuparuk River Units rather than other unitized areas on the North Slope involved in earlier stages of development.

Page 40-9, Section 19.40.058: Milne Point, Gwyder Bay, Duck Island, West Mikkelsen and Point Thompson

This section should be modified to include all existing and future state and federal leases. The rationale for this inclusion is that once the state or federal agencies have determined that an area is appropriate for resource development, specifically oil and gas, then prospective successful bidders will be certain that oil and gas operations may be conducted in accordance with the terms of the lease.

This section should be reworded to read as follows:

"Plans for exploration and development as approved by the State for these and future units are hereby adopted as a portion of the Master Plan for the unit and uses authorized and permitted by the State or Federal government on state or federal land are uses-by-right requiring no permit from the Borough. Unitization Plans of Development, should development occur, are hereby adopted as the Master Plan for each unit. Future leases issued by the state are hereby rezoned to the Resource Development District and provisions above apply."

The Milne Point Unit should be deleted from this section and included under Section 19.40.057. (See comment under Section 19.40.057 for explanation).

Page 50-2, Section 19.50.040: Appeals

The burden of proof should not be on the developer, as an aggrieved party.

Pages 60-2 and 60-3, Section 19.60.034: Conditions

The permitting requirements and conditions proposed for oil and gas development by the NSB have been preempted by State and Federal permitting requirements and oversight authorities.

Page 60-5, Section 19.60.061(b): Grounds for Variances

The terms "public purpose" and "public benefit" should be defined and should include consideration of state and national interests.

Page 80-1, Section 19.80.010: Introduction

Suggest that this section be modified to the following to ensure a clear understanding of its purpose and content:

"The policies contained in this Chapter constitute the guidelines to be used in evaluating a proposed development project for approval or denial. Uses granted by right would not be subject to such an evaluation. The Development Policies contained in the Comprehensive Plan are restated here along with citations to the relevant policies in the Plan."

Pages 80-1 thru 80-3, Section 19.80.021: Prohibited Development/Mandatory Policies

- Item (c) - not cited consistent with Policy 3-3.3. Reference to "Borough Coastal Management Program" should be replaced with "Alaska Coastal Management Program."
- Item (f) - for consistency should delete "is prohibited" at end of Policy.
- Item (g) - for consistency should delete "is prohibited" at end of Policy.

Item (i) - should be deleted from this section and added to Section 19.80.031 since it is a "Best Efforts" Policy.

Item (k) - not cited consistent with Policy 7-3. The words "located anywhere within" should be deleted from third line and replaced with the word "in."

This section should also cite the first part of Policies 3-4.2 and 5-2.3, and Policy 3-7.3 as mandatory policies.

Pages 80-3 thru 80-5, Section 19.80.025: Required Features/Mandatory Policies

Item (b) - not cited consistent with Policy 3-5.3. Note difference in citation for variance requirements (one or the other should be changed).

Item (g) - not cited consistent with Policies 5-3.2 and 3-8.3. The words "unless pursuant to Plan policies removal is more harmful than non-removal" should be added to the end of the Policy to be consistent.

This section should also cite Policy 5-2.4.

Page 80-5, Section 19.80.030:° Best Efforts Policies

Item (b) should be modified to the following to incorporate the concept of mitigation:

"The Administrator determines that the Developer has used his best efforts to comply with the policy thru mitigation or otherwise, and that there is no feasible and prudent alternative to the proposed development."

Pages 80-5 thru 80-8, Section 19.80.031: Prohibited Development/Best Efforts Policies

Item (f) - not cited consistent with Policy 3-3.4. Note difference in Map references.

Item (g) - the first part of this cite "Development on a shoreline that does not require a shoreline location" should be deleted from this section and included in Section 19.80.021 as a mandatory policy.

The balance of this cite "Landfills, Fuel or toxic material, storage areas and dumps on or near a shoreline." should be retained as item (g) in this Section (19.80.031).

Item (k) - not cited consistent with Policy 3-6.7. The words "resource extraction" should be replaced with "mine."

Item (n) - the first part of Policy 4-3 should not be cited in this section as a "Best Efforts" Policy, but rather be included in Section 19.80.040 as a requirement to minimize impact. Also, the policy as cited here is not consistent with the first part of Policy 4-3.

- Item (p) - the Map and Section references should be included in this cite consistent with Policy 5-4.1.

Item (q) - Policy 7-5 should not be cited in this section as a "Best Efforts" policy, but rather be included along with the identical policies in Section 19.80.040 (see Item (c) on page 80-11).

Item (r) - The Policy citation should be 7-4 rather than 7-5.

Item (s) - not cited consistent with Policy 8-2.2. Note that all words after "Resource development which" are misquoted.

Item (t) - not cited consistent with Policy 8-1.2. The words "unless residents of" should be replaced with "if" and "no" should be replaced with "an."

This section should also cite the second part of Policy 4-3, and Policy 5-5.6, as "Best Efforts" policies.

Pages 80-8 through 80-10, Section 19.80.032: Required Features/"Best Efforts"

Policies

Item (e) - Policy 5-5.7 should not be cited in this Section, but rather be included in Section 19.80.031 as a "Prohibited Development/Best Efforts" Policy.

Item (f) - not cited consistent with Policy 5-4.5. The words "third party" should be added after "Independent" in the first line.

Pages 80-10 and 80-11, Section 19.80.040: Minimization of Negative Impacts

Item (b) - Policy citation for Policy 5-7.5 should be 5-7.4. Also, Policy citation should include Policy 7-5.

Item (d) - not cited consistent with Policy 5-4.2. The words "oceanic storms, sea waves, ice gouging and override, and shore" should be deleted.

This section should also cite the first part of Policy 4-3, and Policy 5-4.6, as policies to minimize negative impacts.

Pages 80-11 through 80-13, Section 19.80.050: Beneficial Impacts

Item (a) - not cited consistent with Policies 3-5.2 and 5-2.1. The words ",as methods of minimizing negative impacts on the environment" should be added at the end of this policy.

- Item (b) - Policy 3-6.4 is appropriately cited in Section 19.80.040 and therefore this cite should be deleted. Also, note that the cite in this section is not consistent with Policy 3-6.4.
- Item (c) - not cited consistent with Policies 3-8.4 and 5-3.3. The words "Design and maintenance of" should be deleted and all the words after "which" are misquoted.
- Item (d) - the word "nor" should be "no."
- Item (e) - not cited consistent with Policies 5-6.1 and 7-6. The words "Incorporation of" should be replaced with "Development" and the words ",or joint use of transportation facilities" should be added at the end.
- Item (f) - not cited consistent with Policies 6-1.1 and 8-1.1. Should read "Development which employs local Borough residents in construction and development activities or its work force."
- Item (g) - not cited consistent with Policies 6-1.2, 8-3 and 6-3.3. The words "Utilization of" should be replaced with "Development which."
- Item (h) - not cited consistent with Policy 6-1.3. The words "Incorporation of" should be replaced by "Development which."
- Item (i) - The word "related" should be "relates."

- Item (k) - not cited consistent with Policies 6-3.2 and 8-2.1. The words "Utilization of" should be replaced with "Resource development which," the word "businesses" should be "business," and the words "as suppliers or subcontractors" should be replaced with "in its operations."
- Item (m) - not cited consistent with Policy 6-4.2. The words "Utilization of" should be replaced by "Development which."
- Item (o) - not cited consistent with Policy 9-2. The words "Development which results in an" should be added at the beginning.

jlp:bsw

NSB/007

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.