

COMMITTEE REPORT  
SENATE

FURTHER:

4/9/84

Date 5/17/84

Mr. President

The Committee on FINANCE considered CSHB 576 (Res)  
grant of state land to the City of Whittier.

and (a majority of the committee) (the committee) reports it back with  
the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt JCS for CSHB 576 (Res)
- new title
- same title and recommends Do Pass *Senate Resources* w/letter of Intent
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation *FN 1.5 DNC 2/29/84*
- recommends referral to \_\_\_\_\_ *accompanied bill into and out of committee* Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

*Bob Mulvaney*

*[Signature]*

*[Signature]*

*John Sackett*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*[Signature]*  
Chairman

Chairman recommendation \_\_\_\_\_

Offered: 4/9/84  
Referred: Finance

Original sponsors: Cato, Lindauer,  
McBride and Shultz

1 IN THE HOUSE BY THE RESOURCES COMMITTEE.

2 SENATE CS FOR CS FOR HOUSE BILL NO. 576 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a grant of state land to the City  
7 of Whittier."

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

9 \* Section 1. LEGISLATIVE FINDINGS. It is the finding of the legisla-  
10 ture in enacting sec. 2 of this Act that the City of Whittier is uniquely  
11 lacking in available private land. The legislature seeks to correct this  
12 situation by providing a grant of land to the City of Whittier that the  
13 state had planned to offer for private ownership.

14 \* Sec. 2. (a) The commissioner of natural resources shall grant 600  
15 acres of state land to the City of Whittier. The grant shall include no  
16 less than 400 acres of state land from Shotgun Cove and no less than 200  
17 acres from the Whittier Subdivision.

18 (b) As used in (a) of this section,

19 (1) "Shotgun Cove" means land within sections 10, 11, 14, 15,  
20 and 16, Township 8 North, Range 5 East, Seward Meridian;

21 (2) "Whittier Subdivision" means land within sections 8, 9, and  
22 17, Township 8 North, Range 5 East, Seward Meridian.

23 (c) Except for land retained by the City of Whittier for community  
24 development and expansion, land conveyed to the city under this section and  
25 not sold within 10 years of the enactment of this Act reverts to the state  
26 unless the commissioner of natural resources finds that the City of  
27 Whittier has diligently prepared for a sale of the land. If the commis-  
28 sioner finds that the city has diligently prepared for a sale of the land,  
29 the commissioner may extend the deadline for a period determined proper by

1 the commissioner.

2 (d) Sale of land under this section shall occur after public notice

3 and by a competitive method.

# Alaska State Legislature

*This material  
accompanied the  
bill into committee*

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
PAUL FISCHER  
VIC FISCHER  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITAL  
JUNEAU, ALASKA 99811  
(907) 485-3834  
(907) 485-3835

## Senate

### Committee on Resources

SENATE RESOURCES COMMITTEE  
LETTER OF INTENT  
FOR  
SCS CS HB 576 (Resources)

The legislature, in its passage of SCS CS HB 576 (Resources), finds that special legislation is necessary and appropriate for the resolution of the unique problem of land availability in the City of Whittier. There is no general legislation that could resolve this problem.

Whittier, with a private land base of about 15 acres, is surrounded by state, federal, and native lands. Many of Whittier's residents live in a single building in the city. The presence of reserved federal lands and unavailable state lands, with the absence of a private land base for development, has been a clear obstacle to private settlement in Whittier. SCS CS HB 576 (Resources), while special in its focus, complies with the constitutional mandate for settlement and development of state lands and will provide the City of Whittier with the private lands that it so uniquely needs.

It is the intent of the legislature that the Department of Natural Resources coordinate with the Department of Transportation and Public Facilities to ensure that land needed for the Shotgun Cove Road right-of-way is excluded from those lands granted to the City of Whittier. Design work on the Shotgun Cove Road has been completed by the Department of Transportation and Public Facilities, and land necessary for the right-of-way should remain in State ownership.

*Bettye Fahrenkamp*  
Bettye Fahrenkamp, Chairman  
Senate Resources Committee

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: 2/29/84

REQUEST

Bill/Resolution No.: CSHB 576 (Res)  
Title: An Act... Grant of State Land  
to... Whittier  
Sponsor: Rep. Cato  
Requestor: House Resources  
Date of Request:

FISCAL DETAIL

Agency Affected: DNR  
Program Category Affected: NRMEC  
BRU, Program or Subprogram(s) Affected:  
Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL	1.0					
300 CONTRACTUAL	.5					
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	1.5	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	1.5					
FEDERAL FUNDS	-0-					
OTHER	-0-					
TOTAL	1.5					

POSITIONS:

FULL-TIME	-0-					
PART-TIME	-0-					
TEMPORARY	-0-					

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

General Fund

ANALYSIS: Attach a separate page for analysis

Prepared By: Ned Farquhar *NF* Phone: 465-2400  
Division: Commissioners' Office Date: 2/29/84

MH Approved by Commissioner: *William D Amos Deguli* Date: 2/29/84  
Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: 2/29/84

Page 1 of 2

REQUEST  
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Title: An Act... Grant of State Land to... Whittier  
Sponsor: Rep. Cato  
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Date of Request: \_\_\_\_\_

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FUNDING: (Thousands of Dollars)

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FEDERAL FUNDS	-0-					
OTHER	-0-					
TOTAL	1.5					

POSITIONS:

FULL-TIME	-0-					
PART-TIME	-0-					
TEMPORARY	-0-					

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General Fund

ANALYSIS: Attach a separate page for analysis

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Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

12/1/83

DNR FISCAL BACKUP FOR  
CSHB 576 (Res)

The Department will incur some small expenses for travel and preparation for the Whittier land conveyance.

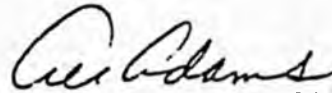
Travel (200)	\$1.0	(South Central District Office staff visits to Whittier)
Contractual (300)	\$0.5	(air charter and photography of subject lands)
	<hr/>	
Total	\$1.5	

HOUSE JOURNAL

HOUSE FINANCE COMMITTEE  
LETTER OF INTENT  
FOR  
CS HB 576 (Resources)

The legislature, in its passage of CS HB 576 (Resources), finds that special legislation is necessary and appropriate for the resolution of the unique problem of land availability in the City of Whittier. There is no general legislation that could resolve this problem without creating significant problems that do not now exist and that the legislature does not at this time find appropriate for consideration.

Whittier, with a private land base of about 15 acres, is surrounded by state, federal, and native lands. Many of Whittier's residents live in a single building in the city. The presence of reserved federal lands and unavailable state lands, with the absence of a private land base for development, has been a clear obstacle to private settlement in Whittier. CS HB 576 (Resources), while special in its focus, complies with the constitutional mandate for settlement and development of state lands and will provide the City of Whittier with the private lands that it so uniquely needs.



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Al Adams, Chair  
House Finance Committee





Dept. of Transportation & Public Facilities

# Position Paper

HB 576

**BILL NO:** CS HB 576

**TITLE:** An Act relating to a grant of State land to the City of Whittier

**APPROVED:** R. J. Knapp  
Commissioner

**DATE:** April 2, 1984

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Language should be included in CS HB 576 to the effect that since the Department of Transportation and Public Facilities (DOT&PF) has prepared the design for the Shotgun Cove Road, The Department of Natural Resources should coordinate with the DOT&PF to ensure that land needed for road right-of-way be excluded from the grant to the City of Whittier.

Without this language, the State may be put in the position of having to buy back from the City of Whittier, the right-of-way land necessary to build the Shotgun Cove Road.

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99611  
PHONE: 907-465-2400

The Honorable Al Adams  
Chairman  
House Finance Committee  
Alaska State Legislature  
Pouch V  
Juneau, AK 99501

March 21, 1984

Dear Representative Adams:

The question has arisen, in connection with CSHB 576 (City of Whittier land grant), of whether the City's land ownership situation and its need for corrective legislation are unique. I am writing because I am concerned that the Attorney General's March 16 letter to you may be interpreted as indicating that the Department does not consider the City's situation and need as unique.

The City of Whittier, with a private land base of about 15 acres, is surrounded by State, federal, and Native lands. Many of Whittier's residents live in a single building in the City. The presence of reserved federal lands and unavailable State lands, with the absence of a private land base for development, has been a clear obstacle to private settlement in Whittier.

Thus, the uniqueness of Whittier's situation springs not from the fact that the City did not receive municipal entitlement lands under Title 29, but rather from the current land situation, which has produced such a unique condition of settlement in the City. This is the basis of the change of wording between Representative Cato's original bill (HB 576) and the Committee Substitute.

The Department has supported Representative Cato's proposal to mend the situation by providing the City with a grant of lands that the State itself would have offered for settlement. The City will have the advantages of being able to conduct the land sales according to its own planning. For the State to comply with local wishes and conduct land sales in the area might take longer and produce different results.

The Honorable Al Adams

-2-

March 21, 1984

The Department, of course, would defer to the Legislature in the determination of whether such a land grant advances its purposes in formulating public policy. It is our belief that the legislation would advance the Constitutional mandate for settlement and development of lands in Alaska. The Department recognizes Whittier's land situation as unique and supports the passage of CSHB 576.

Please contact me or my staff if you have any further questions.

Sincerely,

*Esther C. Wunnicke*  
Esther C. Wunnicke  
Commissioner

cc: Representative Cato

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 16, 1984

The Honorable Albert Adams  
Chairman, House Finance Committee  
Alaska State House of Representatives  
Pouch V  
Juneau, AK 99811

Re: CSHB 576 (grant of state land  
to City of Whittier)

Dear Representative Adams:

This letter is to bring to your attention possible constitutional problems with CSHB 576 ("An Act relating to a grant of state land to the City of Whittier"), which has been referred to the Finance Committee. The most serious question is whether this bill violates the state constitutional prohibition against "local and special" legislation. Article II, section 19, of the Alaska Constitution provides as follows:

The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination. Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected.

CSHB 576 requires the commissioner of natural resources to grant 600 acres of state land to the City of Whittier because "the City of Whittier is uniquely lacking in available private land." In Abrams v. State, 534 P.2d 91 (Alaska 1975), the Alaska Supreme Court held that legislation is not "local" merely because it operates on only a limited number of geographical areas, rather than on a statewide geographical basis. 534 P.2d at 94. Instead, the test for whether legislation is local and special is whether the legislation is "reasonably related to a matter of common interest to the whole state." It is quite doubtful that the amount of private land available in the City of Whittier is of statewide interest. Nonetheless, local and special acts are prohibited only if "a general act can be made applicable." Thus, the question is whether the problem faced by the City of Whittier can be resolved by a general act.

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

The Honorable Albert Adams, Chairman  
House Finance Committee  
Re: CSHB 576

March 16, 1984  
Page 2

From the Department of Natural Resources, I have learned that the City of Whittier's predicament is largely the result of the fact that it did not receive any land under AS 29.18.190 -- 29.18.200 or AS 29.18.202 because there was no "vacant, unappropriated, unreserved state land" located within its boundaries. The Department of Natural Resources has also informed me that the City of Whittier is not unique in this respect. There are other cities that also did not receive any land under these statutes, or received only a negligible amount of land from the state.

This suggests that the problem faced by the City of Whittier can be resolved by general legislation that addresses the problem of all cities that did not receive any land, or received only a negligible amount of land, under the entitlement statutes. One form of such legislation would be a law requiring the Department of Natural Resources to grant to all such cities a certain percentage of the state land that becomes available for disposition in the vicinity of the city. Another form of general legislation addressing this problem would be a law requiring the payment of money by the state to these cities for the deficiency of suitable land. This would be similar to AS 29.18.208, which requires such payment to boroughs and unified municipalities. These forms of legislation would not only constitute general acts, but would also avoid the initial problem of being local or special legislation because there is a statewide interest in redressing the problems faced by an entire group of similarly situated cities.

There is one other potential constitutional issue raised by this bill, although it is not of the same magnitude as the local and special legislation problem. In Thomas v. Bailey, 595 P.2d 1 (Alaska 1979), the Alaska Supreme Court concluded that the word "appropriations" includes dispositions of land, as well as of money. 595 P.2d at 7. This conclusion was reached in the context of determining whether the Beirne Initiative was an impermissible appropriation under article XI, section 7, of the Alaska Constitution, which prohibits using an initiative to make appropriations. The court could logically give "appropriations" the same definition for purposes of article II, section 13, which states that "[b]ills for appropriations shall be confined to appropriations." Accordingly, it is possible that paragraphs (c) and (d) cannot be included in this bill, even if the local and special legislation problem were overcome, because these paragraphs arguably set out impermissible riders on the "appropriation." More significantly, this analysis would make it impermissible to include this bill in another bill relating to public lands.


The Honorable Albert Adams, Chairman  
House Finance Committee  
Re: CSHB 576

March 16, 1984  
Page 3

Please note that these comments do not represent the Administration's policy posture on this bill; rather, they indicate the constitutional issues that are presented by the bill in its current form.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:   
Margot O. Knuth  
Assistant Attorney General

MOK:dlm

cc: Arthur H. Peterson  
Assistant Attorney General

CITY OF WHITTIER

RESOLUTION NO. 1-19-84

A Resolution requesting the State Legislature act to convey certain lands to the City of Whittier.

WHEREAS: Whittier has an extremely limited land base to enable future community growth, (with exception of several small tracts of land less than fifteen acres). All available lands have been developed or are in the hands and restrictive ownership of the Alaska Railroad or U.S. Army, and

WHEREAS: The City needs to have maximum possible control over the remaining developable land to provide any growth, and

WHEREAS: The only land base the City has is lands purchased from the GSA at the time the Army terminated their interest in the area, and

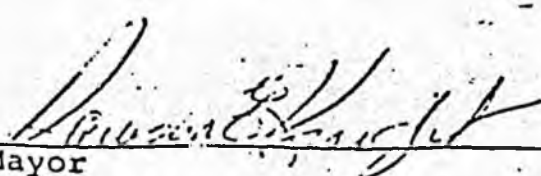
WHEREAS: The State Department of Natural Resources is planning a land disposal of two tracts of land, (the only developable lands within the City limits) in a manner that would take the only remaining lands and put that land in the hands of speculators, and

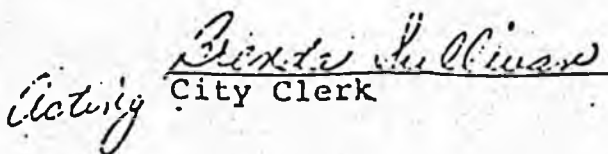
WHEREAS: The City has a Master Plan for a Planned Community in the areas of the proposed land disposal,

NOW THEREFORE BE IT RESOLVED that the State legislature act to transfer these lands to the City of Whittier to develop into a Planned Community to enhance the Harbor areas and the beautiful Gateway to Prince William Sound.

PASSED AND APPROVED by a duly constituted quorum of the City Council of Whittier, Alaska this 19 day of January, 1984.

ATTEST:

  
Mayor

  
Acting City Clerk

RECEIVED DEC 16 1983

# Alaska State Legislature

## COMMITTEES

- Chairman — House Resources Committee
- Chairman — REAA Budget Control Committee
- Member — House State Affairs Committee
- DOT — Finance Sub Committee

While in Session  
 P.O. Box 11  
 State Capitol  
 Juneau, Alaska 99801  
 Phone 907-586-4351  
 99801

## House of Representatives

Home Phone 907-586-4351  
 District Office Phone 907-586-4351

Dick Shultz

December 13, 1983

Ms. Margaret J. Hayes, District Manager  
 Alaska Department of Natural Resources  
 Division of Land Management  
 3601 C Street, Pouch 7-005  
 Anchorage, Alaska 99510

Dear Ms. Hayes,

As you may or may not be aware, I have, as Co-Chairman of the House Resources Committee, been a constant and outspoken critic of Alaska's Land Disposal efforts. As a rural legislator, I have seen lands opened and ultimately placed in the hands of people from far outside the area in which the lands are located. This creates a multitude of problems for the local community, including a lack of planning ability due to the fact that much of this land is acquired for speculation. Additionally, those lands which are occupied put strong demands on local resources for the provision of services such as roads and power.

The City of Whittier is unique to all of Alaska. Whittier has virtually NO LAND BASE and what little land they do have has already been developed or is in the hands of the State, the U.S. Army or the Department of Transportation (for the Alaska Railroad). Even if the State were to acquire the railroad, this would have little effect on Whittier's ability to determine their own destiny.

I STRONGLY support Whittier's request to have all lands within the Whittier Subdivision and all remaining lands in Shotgun Cove transferred to City ownership. A municipal land disposal program would be in the best interests of all concerned, including the State, as it would allow for zoning, road development, power, etc.

Please feel free to contact me should you have questions concerning my position on Land Disposals; in general, or concerning Whittier in particular.

Sincerely,

DICK SHULTZ  
 District 17

DS/bh:A23

- cc: 1.) Esther Wunnicke, Commissioner  
 Dept. of Natural Resources
- 2.) Paul Mullenix, City Manager  
 City of Whittier





Unique • even in Alaska!

## THE CITY OF WHITTIER

September 15, 1983

Margaret J. Hayes  
District Manager  
State of Alaska  
Department of Natural Resources  
Division of Land Management  
3601 C Street, Pouch 7-005  
Anchorage, AK 99510

Dear Ms. Hayes,

You have asked for comments on the proposed disposal of lands in our area.

The City of Whittier agrees that the lands in both Shotgun Cove and Whittier Subdivision should be put in hands of developers so Whittier will have a chance to expand and become a planned community.

All lands in question are within the City limits of Whittier and fall within our planning efforts. Whittier has an extremely limited land base to enable future community growth. All available land in the City core area have been developed or are in the hands of the Alaska Railroad or U.S. Army.

The City needs to have maximum control over the remaining lands in our city limits to plan the direction for future growth.

The City requests that all lands within the Whittier Subdivision and all remaining lands in Shotgun Cove be transferred to City ownership. The City would then be able to establish a municipal land disposal program to guide disposal of these lands.

If the City had ownership of these lands, the City would be in a position to determine the tenancy, size, and natures of the land disposals and would be able to use revenues generated through land disposals to help offset the cost of providing service to these areas like road maintenance, utilities, police, and fire protection.

The City requests:

1. Lands identified for disposal in these two areas be transferred to ownership of the City of Whittier.



2. Lands to be disposed of in the two areas comply with all applicable zoning and planning powers of the City of Whittier.

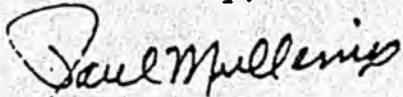
The City of Whittier's request for ownership of these lands should receive consideration because of Whittier's rather unique history of attempting to obtain a land base.

The only lands owned by the City of Whittier were obtained through purchase of GSA excess property at the time of the Army's termination of interest in the area.

The City has never received a Municipal Entitlement of lands in conjunction with incorporation or annexation and to date has never received any entitlement from the State.

Your consideration in the above matter will be appreciated.

Sincerely,



Paul Mullenix  
City Manager

Ms. Hayes.  
September 20, 1983  
Page 2

#### McGrath Area

The Division of Municipal and Regional Assistance has been working with the City of McGrath and other communities along the Upper Kuskokwim in response to their concern about coordinating on issues of mutual interest. With them, we are in the early stages of developing a regional strategy for the area which would address, among other things, land disposals and other land management decisions. As the project becomes fully operational, the strategy effort may provide an opportunity for DNR to obtain additional input on the disposal areas and to benefit from a more coordinated regional response with respect to State lands and resource management decisions. This would seem especially true if DNR initiates an Upper Kuskokwim Basin Plan in FY 84-85.

Regardless of the progress of this planning effort, we would like to stress the importance of public hearings to review disposal projects. Although there has been considerable interest in State land disposals in McGrath, there have also been a number of concerns expressed throughout the area. There should be ample opportunity for local input.

#### Whittier Area

For the past year, the Division has been working with the City of Whittier to develop a comprehensive plan. Development of the plan has involved frequent discussions on future land use with the Whittier Planning Commission, City administration and local residents. The plan, projected to be submitted to the Whittier City Council for adoption by October, 1983, will provide direction on future land use. The comments offered below only reflect policies identified in the draft comprehensive plan and concerns expressed by Whittier residents during development of the plan. The comments do not reflect formal action taken by the City Council.

All lands within the proposed Whittier Subdivision disposal and the majority of and potentially all land within the Shotgun Cove disposal are within Whittier's municipal boundaries. The Poe Bay disposal is approximately 3 1/2 - 4 miles east of Whittier's municipal boundaries. Although the City is concerned with potential service delivery and secondary impacts on the City from the Poe Bay disposal, the majority of concern is focused on the Whittier Subdivision and Shotgun Cove disposals.

With the exception of lands in the Shotgun Cove and Section 18 areas (approximately 500 acres) that have been selected by Chugach Regional Native Corporation, lands identified by DNR

Ms. Hayes..  
September 20, 1983  
Page 3

for disposal comprise virtually all remaining lands within Whittier's municipal boundaries that are suitable for residential development. As such, the City is very concerned that maximum beneficial use of this limited land base occurs to enable desired community expansion. The Division recommends that the following issues/actions receive consideration for any land disposals within Whittier's municipal boundaries.

As indicated, Whittier has an extremely limited land base to enable future community growth. With the exception of several small tracts of land (less than 15 acres), all available lands in the Whittier core area have been developed or are under the restrictive ownership of the Alaska Railroad. In addition, the majority of land within Whittier's boundaries is unsuitable for development because of extremely steep slopes, poor soils, poor drainage, and glaciation. These conditions underscore the need for the City to have maximum possible control over the remaining land base to provide avenues for future growth.

To assist in accomplishing this goal, we understand the City intends to request that the State transfer ownership of lands within the Whittier Subdivision and Shotgun Cove disposals to the City. If this transfer were to occur, the City would be able to establish a municipal land disposal program to guide disposal of these lands. Through ownership of these lands, the City could best determine timing, size and nature of the land disposals and would be able to use revenues generated through municipal land disposals to help offset future costs of providing municipal services to these areas, e.g., road maintenance, utilities and fire protection.

Whittier is very concerned with the potential future costs to the City for providing municipal services to these areas, and is particularly concerned that offering virtually all developable lands through these two simultaneous disposals will severely restrict the City's ability to accommodate future growth. The timing of these two disposals may encourage speculative and seasonal recreational development, as current housing, community development, and economic growth demands may not require disposal of this amount of acreage in 1986 to accommodate existing needs. The City's goal is to establish single family year-round residential development as the primary use for these areas, and Whittier is not sure this interest will be accommodated by the proposed disposals.

The only lands owned by the City were obtained through municipal purchase of GSA excess property when the U.S. Army terminated its interests in the Whittier area. The City conducted a municipal bond sale to generate sufficient revenues to purchase these lands in the Whittier core. The

Ms. Hayes.  
September 10, 1983  
Page 4

mid-1970's, the City annexed lands east of the core (including the majority of land within these two disposals) in an attempt to provide more lands for community growth. However, the City did not receive a municipal entitlement of lands in conjunction with this annexation and to date, has received no municipal entitlements from the State. The only lands projected to be transferred from the State to the municipality are approximately 100 acres in the Shotgun Cove area and these lands contain a covenant restricting use of public services related to the proposed Shotgun Cove small boat harbor. In addition, Whittier does not have a Native village corporation in its area. If a village corporation were in Whittier, 14(c)(3) provisions of ANCSA would mandate transfer of a maximum of 1,280 acres to the municipality. In short, Whittier has never received any land entitlements and has virtually no lands available to it to encourage or accommodate community expansion.

As a second overall concern, the Division supports use of the adopted Whittier Comprehensive Plan, Land Use Plan, and Zoning Ordinance as guides for land disposals in the Whittier Subdivision and Shotgun Cove areas, whether or not the land is transferred to the City. At present, these areas are designated as R-1 and R-2 zones. The R-1 zone allows single family homes on 3-acre minimum size lots. The R-2 zone allows single family homes on 1 1/2 acre minimum size lots or cluster development of two homes on 2 acre minimum size lots. The City recognizes that higher density may be necessary in the future, but prefers this density at present. Concerns with density are best addressed at the local level. The Division requests that DNR recognize the applicability of City plans and ordinances on land use and density within the municipal boundaries.

The Whittier Comprehensive Plan draft has also identified the desirability of a landward buffer zone a minimum of 50 feet in width from the mean high water level. This buffer zone would enable public access to the coastline in all areas. The Division requests this City draft policy receive consideration in DNR's disposal plans.

Consideration should also be given to scheduling the Whittier Subdivision disposal before the Shotgun Cove disposal. Access to much of the Whittier Subdivision disposal is available at present via the uncompleted Shotgun Cove road and would facilitate its development as a residential area. Access to the Shotgun Cove disposal area at present is possible only by boat, although road access may be possible in the future with construction of the Shotgun Cove road. Timing of the Shotgun Cove disposal should be coordinated with completion of the proposed Shotgun Cove small boat harbor and road projects.

Ms. Hayes  
September 10, 1983  
Page 5

In summary, the Division requests that the following receive consideration in relation to the Whittier Subdivision and Shotgun Cove proposals:

Transfer to ownership of the City of Whittier

Applicable zoning and planning powers of the City of Whittier

A landward buffer zone a minimum of 50 feet in width from the mean high water level

The Whittier Subdivision disposal occur prior to the Shotgun Cove disposal and both be coordinated with the Shotgun Cove road and harbor projects

A requirement for low density year-round residential use

The impact on municipal services

The Department has minimal comments on the Poe Bay disposal. Major concerns are potential service delivery and secondary impacts on Whittier and potential conflicts with high recreational use of this area.

We appreciate the opportunity to comment and would request some indication by phone or letter as to your thoughts on the views presented here. We look forward to coordinating with you in the near future.

Sincerely,



Nelda Warkentin  
Acting Planning Supervisor

cc: ✓ Department of Natural Resources

Linda Freed, Community Planning Department  
Kodiak Island Borough

Paul Mollinex, City Manager  
City of Whittier

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

RECEIVED JAN 19 1984  
BILL SHEFFIELD, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811  
PHONE: 907-485-2400

January 11, 1984

Mr. Paul Mullenix  
City Manager  
City of Whittier  
P.O. Box 608  
Whittier, Alaska 99693

Dear Mr. Mullenix:

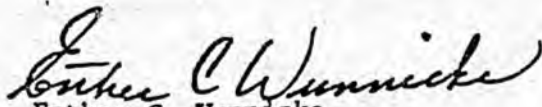
I appreciated your visit in November with Mr. Wheelright, Ms. Brown, Mr. Wootten, and Mr. Wardlow to discuss the possible conveyance of State lands to the City of Whittier. I have reviewed some of the issues and am able now to respond to your inquiries.

The City of Whittier, as you know, has no municipal entitlement, and I do not see any way that the City can become eligible for entitlement lands without major legislative action. Therefore, the options available include State land offerings in the Whittier area and public purpose conveyances of lands to the City for retention. If the City is able to pay for survey costs, the City could conduct an offering of State lands similar to the one at McGrath as we discussed.

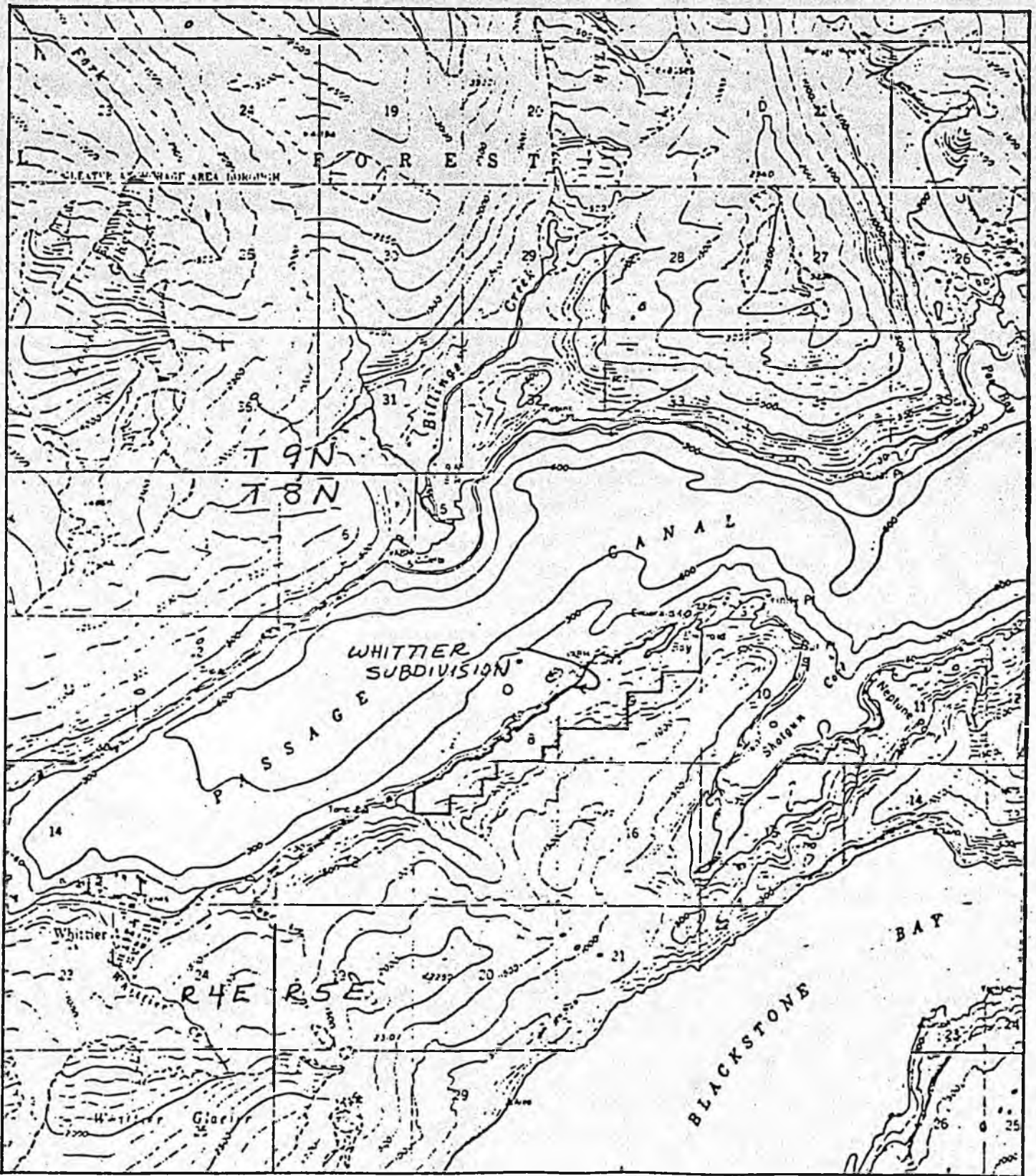
The four proposed State land offerings in and near Whittier would expand Whittier's available land base for private ownership, and the State is willing to consider other nominations for State offerings. However, if the City proposes conducting the offerings itself, it will be necessary for you to seek funding for associated costs from the Legislature.

I suggest that you maintain your contacts with the staff of the Division of Land and Water Management, Southcentral District Office. Please contact me if there is anything further I can do.

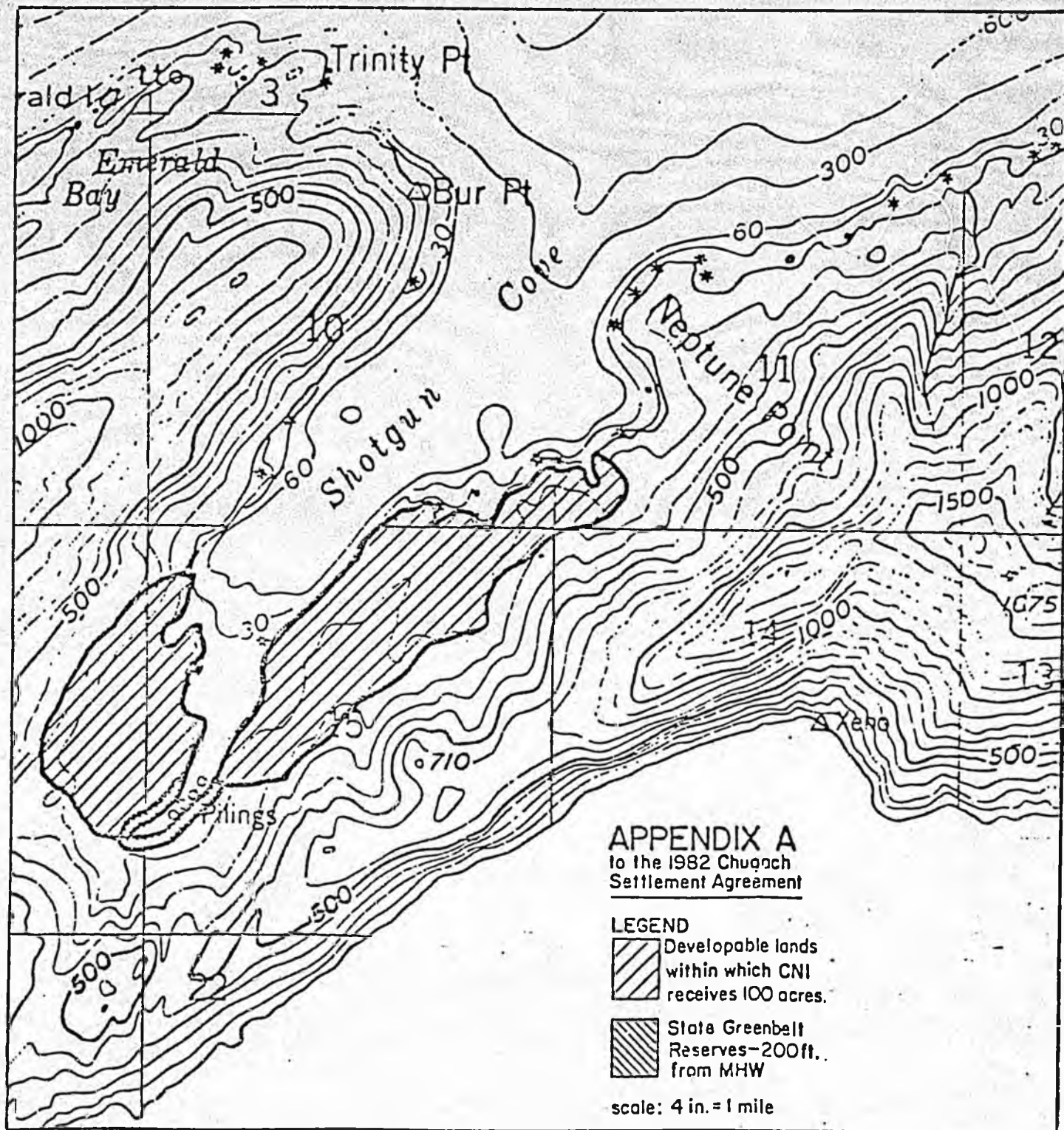
Sincerely,

  
Esther C. Wunnicke  
Commissioner



cc: Tom Hawkins, Director,  
Division of Land and Water Management







**APPENDIX A**  
to the 1982 Chuqoch  
Settlement Agreement

- LEGEND**
-  Developable lands within which CNI receives 100 acres.
  -  State Greenbelt Reserves-200ft. from MHW

scale: 4 in. = 1 mile

STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811  
PHONE: 907-465-2400

The Honorable Al Adams  
Chairman  
House Finance Committee  
Alaska State Legislature  
Pouch V  
Juneau, AK 99501

March 21, 1984

Dear Representative Adams:

The question has arisen, in connection with CSHB 576 (City of Whittier land grant), of whether the City's land ownership situation and its need for corrective legislation are unique. I am writing because I am concerned that the Attorney General's March 16 letter to you may be interpreted as indicating that the Department does not consider the City's situation and need as unique.

The City of Whittier, with a private land base of about 15 acres, is surrounded by State, federal, and Native lands. Many of Whittier's residents live in a single building in the City. The presence of reserved federal lands and unavailable State lands, with the absence of a private land base for development, has been a clear obstacle to private settlement in Whittier.

Thus, the uniqueness of Whittier's situation springs not from the fact that the City did not receive municipal entitlement lands under Title 29, but rather from the current land situation, which has produced such a unique condition of settlement in the City. This is the basis of the change of wording between Representative Cato's original bill (HB 576) and the Committee Substitute.

The Department has supported Representative Cato's proposal to mend the situation by providing the City with a grant of lands that the State itself would have offered for settlement. The City will have the advantages of being able to conduct the land sales according to its own planning. For the State to comply with local wishes and conduct land sales in the area might take longer and produce different results.

The Honorable Al Adams

-2-

March 21, 1984

The Department, of course, would defer to the Legislature in the determination of whether such a land grant advances its purposes in formulating public policy. It is our belief that the legislation would advance the Constitutional mandate for settlement and development of lands in Alaska. The Department recognizes Whittier's land situation as unique and supports the passage of CSHB 576.

Please contact me or my staff if you have any further questions.

Sincerely,

*Esther C. Wunnicke*  
for  
Esther C. Wunnicke  
Commissioner

cc: Representative Cato

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 16, 1984

The Honorable Albert Adams  
Chairman, House Finance Committee  
Alaska State House of Representatives  
Pouch V  
Juneau, AK 99811

Re: CSHB 576 (grant of state land  
to City of Whittier)

Dear Representative Adams:

This letter is to bring to your attention possible constitutional problems with CSHB 576 ("An Act relating to a grant of state land to the City of Whittier"), which has been referred to the Finance Committee. The most serious question is whether this bill violates the state constitutional prohibition against "local and special" legislation. Article II, section 19, of the Alaska Constitution provides as follows:

The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination. Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected.

CSHB 576 requires the commissioner of natural resources to grant 600 acres of state land to the City of Whittier because "the City of Whittier is uniquely lacking in available private land." In Abrams v. State, 534 P.2d 91 (Alaska 1975), the Alaska Supreme Court held that legislation is not "local" merely because it operates on only a limited number of geographical areas, rather than on a statewide geographical basis. 534 P.2d at 94. Instead, the test for whether legislation is local and special is whether the legislation is "reasonably related to a matter of common interest to the whole state." It is quite doubtful that the amount of private land available in the City of Whittier is of statewide interest. Nonetheless, local and special acts are prohibited only if "a general act can be made applicable." Thus, the question is whether the problem faced by the City of Whittier can be resolved by a general act.

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

The Honorable Albert Adams, Chairman  
House Finance Committee  
Re: CSHB 576

March 16, 1984  
Page 2

From the Department of Natural Resources, I have learned that the City of Whittier's predicament is largely the result of the fact that it did not receive any land under AS 29.18.190 -- 29.18.200 or AS 29.18.202 because there was no "vacant, unappropriated, unreserved state land" located within its boundaries. The Department of Natural Resources has also informed me that the City of Whittier is not unique in this respect. There are other cities that also did not receive any land under these statutes, or received only a negligible amount of land from the state.

This suggests that the problem faced by the City of Whittier can be resolved by general legislation that addresses the problem of all cities that did not receive any land, or received only a negligible amount of land, under the entitlement statutes. One form of such legislation would be a law requiring the Department of Natural Resources to grant to all such cities a certain percentage of the state land that becomes available for disposition in the vicinity of the city. Another form of general legislation addressing this problem would be a law requiring the payment of money by the state to these cities for the deficiency of suitable land. This would be similar to AS 29.18.208, which requires such payment to boroughs and unified municipalities. These forms of legislation would not only constitute general acts, but would also avoid the initial problem of being local or special legislation because there is a statewide interest in redressing the problems faced by an entire group of similarly situated cities.

There is one other potential constitutional issue raised by this bill, although it is not of the same magnitude as the local and special legislation problem. In Thomas v. Bailey, 595 P.2d 1 (Alaska 1979), the Alaska Supreme Court concluded that the word "appropriations" includes dispositions of land, as well as of money. 595 P.2d at 7. This conclusion was reached in the context of determining whether the Beirne Initiative was an impermissible appropriation under article XI, section 7, of the Alaska Constitution, which prohibits using an initiative to make appropriations. The court could logically give "appropriations" the same definition for purposes of article II, section 13, which states that "[b]ills for appropriations shall be confined to appropriations." Accordingly, it is possible that paragraphs (c) and (d) cannot be included in this bill, even if the local and special legislation problem were overcome, because these paragraphs arguably set out impermissible riders on the "appropriation." More significantly, this analysis would make it impermissible to include this bill in another bill relating to public lands.

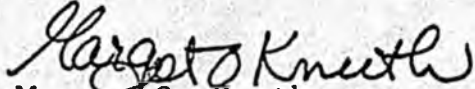
The Honorable Albert Adams, Chairman  
House Finance Committee  
Re: CSHB 576

March 16, 1984  
Page 3

Please note that these comments do not represent the Administration's policy posture on this bill; rather, they indicate the constitutional issues that are presented by the bill in its current form.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:   
Margot O. Knuth  
Assistant Attorney General

MOK:dlm

cc: Arthur H. Peterson  
Assistant Attorney General



Dept. of Transportation & Public Facilities

# Position Paper

**BILL NO:** CS HB 576

**TITLE:** An Act relating to a grant of  
State land to the City of Whittier

**APPROVED:** R. Y. Knapp  
Commissioner

**DATE:** April 2, 1984

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Language should be included in CS HB 576 to the effect that since the Department of Transportation and Public Facilities (DOT&PF) has prepared the design for the Shotgun Cove Road, The Department of Natural Resources should coordinate with the DOT&PF to ensure that land needed for road right-of-way be excluded from the grant to the City of Whittier.

Without this language, the State may be put in the position of having to buy back from the City of Whittier, the right-of-way land necessary to build the Shotgun Cove Road.

# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

RECEIVED JAN 19 1984  
BILL SHEFFIELD, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811  
PHONE: 907-485-2400

January 11, 1984

Mr. Paul Mullenix  
City Manager  
City of Whittier  
P.O. Box 608  
Whittier, Alaska 99693

Dear Mr. Mullenix:

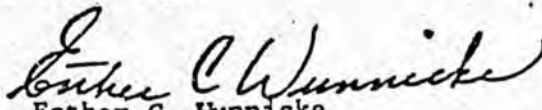
I appreciated your visit in November with Mr. Wheelright, Ms. Brown, Mr. Wootten, and Mr. Wardlow to discuss the possible conveyance of State lands to the City of Whittier. I have reviewed some of the issues and am able now to respond to your inquiries.

The City of Whittier, as you know, has no municipal entitlement, and I do not see any way that the City can become eligible for entitlement lands without major legislative action. Therefore, the options available include State land offerings in the Whittier area and public purpose conveyances of lands to the City for retention. If the City is able to pay for survey costs, the City could conduct an offering of State lands similar to the one at McGrath as we discussed.

The four proposed State land offerings in and near Whittier would expand Whittier's available land base for private ownership, and the State is willing to consider other nominations for State offerings. However, if the City proposes conducting the offerings itself, it will be necessary for you to seek funding for associated costs from the Legislature.

I suggest that you maintain your contacts with the staff of the Division of Land and Water Management, Southcentral District Office. Please contact me if there is anything further I can do.

Sincerely,

  
Esther C. Wunnicke  
Commissioner

cc: Tom Hawkins, Director,  
Division of Land and Water Management



RECEIVED DEC 16 1983

# Alaska State Legislature

## COMMITTEES

- Chairman — House Resources Committee
- Chairman — REAA Budget & Finance Committee
- Member — House State Affairs Committee
- DOT — Finance Sub Committee

White House  
 Capitol  
 State Office  
 Bureau  
 State Office  
 State Office

## House of Representatives

Dick Shultz

December 15, 1983

Ms. Margaret J. Hayes, District Manager  
 Alaska Department of Natural Resources  
 Division of Land Management  
 3601 C Street, Pouch 7-005  
 Anchorage, Alaska 99510

Dear Ms. Hayes,

As you may or may not be aware, I have, as Co-Chairman of the House Resources Committee, been a constant and outspoken critic of Alaska's Land Disposal efforts. As a rural legislator, I have seen lands opened and ultimately placed in the hands of people from far outside the area in which the lands are located. This creates a multitude of problems for the local community, including a lack of planning ability due to the fact that much of this land is acquired for speculation. Additionally, those lands which are occupied put strong demands on local resources for the provision of services such as roads and power.

The City of Whittier is unique to all of Alaska. Whittier has virtually NO LAND BASE and what little land they do have has already been developed or is in the hands of the State, the U.S. Army or the Department of Transportation (for the Alaska Railroad). Even if the State were to acquire the railroad, this would have little effect on Whittier's ability to determine their own destiny.

I STRONGLY support Whittier's request to have all lands within the Whittier Subdivision and all remaining lands in Shotgun Cove transferred to City ownership. A municipal land disposal program would be in the best interests of all concerned, including the State, as it would allow for zoning, road development, power, etc.

Please feel free to contact me should you have questions concerning my position on Land Disposals; in general, or concerning Whittier in particular.

Sincerely,

DICK SHULTZ  
 District 17

DS/bh:A23

- cc: 1.) Esther Wunnicke, Commissioner  
 Dept. of Natural Resources  
 2.) Paul Mullenix, City Manager  
 City of Whittier



Unique - even in Alaska!

## THE CITY OF WHITTIER

September 15, 1983

Margaret J. Hayes  
District Manager  
State of Alaska  
Department of Natural Resources  
Division of Land Management  
3601 C Street, Pouch 7-005  
Anchorage, AK 99510

Dear Ms. Hayes,

You have asked for comments on the proposed disposal of lands in our area.

The City of Whittier agrees that the lands in both Shotgun Cove and Whittier Subdivision should be put in hands of developers so Whittier will have a chance to expand and become a planned community.

All lands in question are within the City limits of Whittier and fall within our planning efforts. Whittier has an extremely limited land base to enable future community growth. All available land in the City core area have been developed or are in the hands of the Alaska Railroad or U.S. Army.

The City needs to have maximum control over the remaining lands in our city limits to plan the direction for future growth.

The City requests that all lands within the Whittier Subdivision and all remaining lands in Shotgun Cove be transferred to City ownership. The City would then be able to establish a municipal land disposal program to guide disposal of these lands.

If the City had ownership of these lands, the City would be in a position to determine the tenancy, size, and nature of the land disposals and would be able to use revenues generated through land disposals to help offset the cost of providing service to these areas like road maintenance, utilities, police, and fire protection.

The City requests:

1. Lands identified for disposal in these two areas be transferred to ownership of the City of Whittier.



2. Lands to be disposed of in the two areas comply with all applicable zoning and planning powers of the City of Whittier.

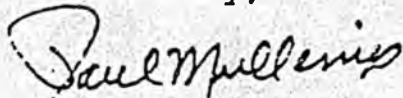
The City of Whittier's request for ownership of these lands should receive consideration because of Whittier's rather unique history of attempting to obtain a land base.

The only lands owned by the City of Whittier were obtained through purchase of GSA excess property at the time of the Army's termination of interest in the area.

The City has never received a Municipal Entitlement of lands in conjunction with incorporation or annexation and to date has never received any entitlement from the State.

Your consideration in the above matter will be appreciated.

Sincerely,



Paul Mullenix  
City Manager

CITY OF WHITTIER

RESOLUTION NO. 1-19-84

A Resolution requesting the State Legislature act to convey certain lands to the City of Whittier.

- WHEREAS: Whittier has an extremely limited land base to enable future community growth, (with exception of several small tracts of land less than fifteen acres). All available lands have been developed or are in the hands and restrictive ownership of the Alaska Railroad or U.S. Army, and
- WHEREAS: The City needs to have maximum possible control over the remaining developable land to provide any growth, and
- WHEREAS: The only land base the City has is lands purchased from the GSA at the time the Army terminated their interest in the area, and
- WHEREAS: The State Department of Natural Resources is planning a land disposal of two tracts of land, (the only developable lands within the City limits) in a manner that would take the only remaining lands and put that land in the hands of speculators, and
- WHEREAS: The City has a Master Plan for a Planned Community in the areas of the proposed land disposal,

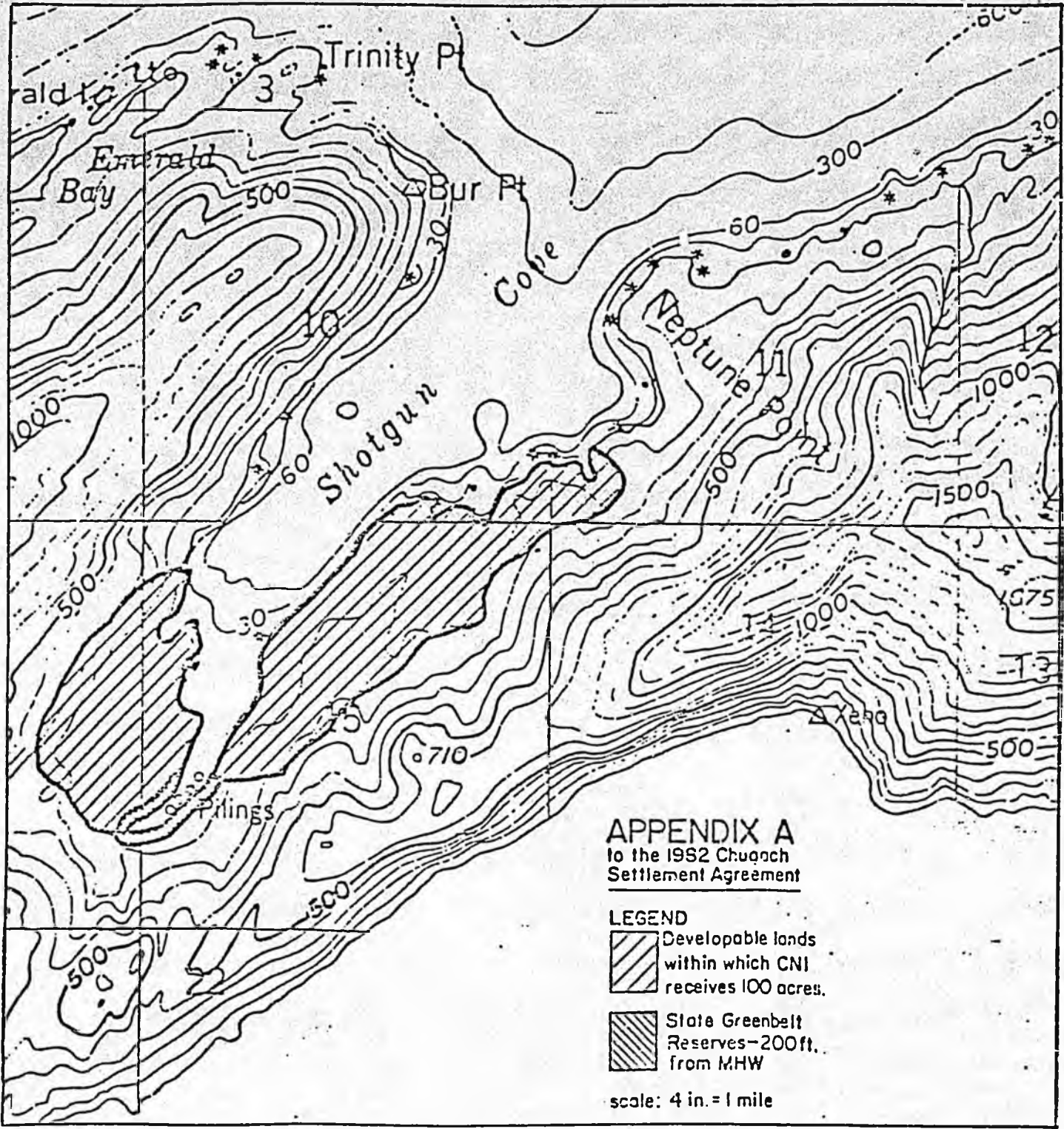
NOW THEREFORE BE IT RESOLVED that the State legislature act to transfer these lands to the City of Whittier to develop into a Planned Community to enhance the Harbor areas and the beautiful Gateway to Prince William Sound.

PASSED AND APPROVED by a duly constituted quorum of the City Council of Whittier, Alaska this 19 day of July, 1984.



ATTEST:

*William E. ...*  
Mayor

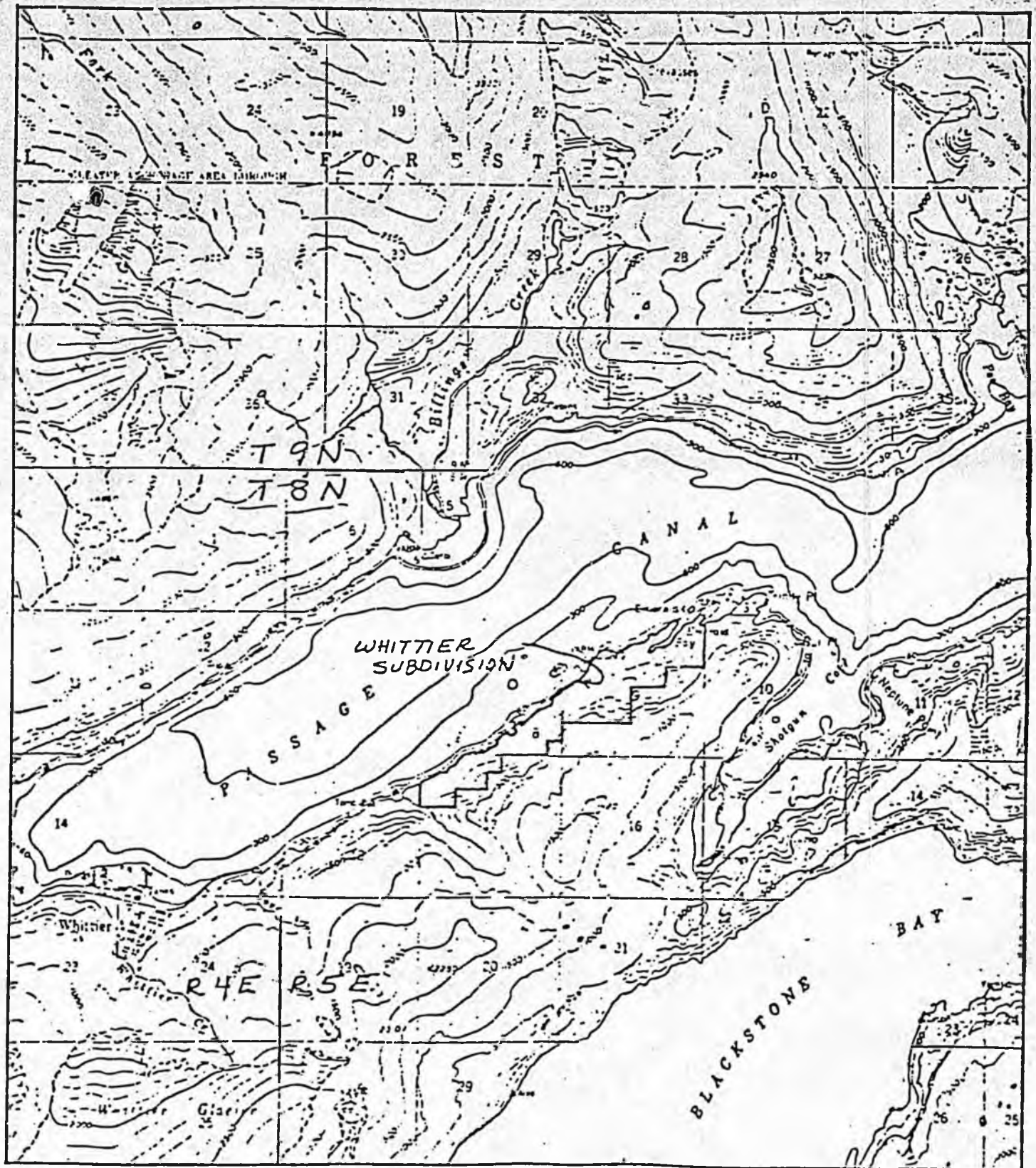
*Brenda Sullivan*  
City Clerk



**APPENDIX A**  
 to the 1992 Chuanch  
 Settlement Agreement

- LEGEND**
-  Developable lands within which CNI receives 100 acres.
  -  State Greenbelt Reserves-200ft. from MHW

scale: 4 in. = 1 mile



COMMITTEE REPORT  
SENATE

FURTHER: FINANCE

3/29/84

Date 4-4-84

Mr. President

The Committee on RESOURCES considered CSHB 576(Res)  
grant of state land to the City of Whittier.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

~~[ ]~~ do-pass

[ ] do pass with attached amendment(s)

[X] replace with/er ~~adopt~~ SCS for CS HB 576 (Res)  
[ ] new title

[X] same title and recommends Do Pass

[X] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

Paul Fricke  
John Sturgis

Bob M... N/R  
W... N/R  
M...

Letter Fahrerkamp  
Chairman  
Do Pass  
Chairman recommendation

Offered: 3/5/84  
Referred: Finance

Original sponsors: Cato, Lindauer,  
McBride and Shultz

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 576 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a grant of state land to the City  
7 of Whittier."

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

9 \* Section 1. LEGISLATIVE FINDINGS. It is the finding of the legisla-  
10 ture in enacting sec. 2 of this Act that the City of Whittier is uniquely  
11 lacking in available private land. The legislature seeks to correct this  
12 situation by providing a grant of land to the City of Whittier that the  
13 state had planned to offer for private ownership.

14 \* Sec. 2. (a) The commissioner of natural resources shall grant 600  
15 acres of state land to the City of Whittier. The grant shall include no  
16 less than 400 acres of state land from Shotgun Cove and no less than 200  
17 acres from the Whittier Subdivision.

18 (b) As used in (a) of this section,

19 (1) "Shotgun Cove" means land within sections 10, 11, 14, 15,  
20 and 16, Township 8 North, Range 5 East, Seward Meridian;

21 (2) "Whittier Subdivision" means land within sections 8, 9, and  
22 17, Township 8 North, Range 5 East, Seward Meridian.

23 (c) Except for land retained by the City of Whittier for critical  
24 public purposes, land conveyed to the city under this section and not sold  
25 within 10 years of the enactment of this Act reverts to the state unless  
26 the commissioner of natural resources finds that the City of Whittier has  
27 diligently prepared for a sale of the land. If the commissioner finds that  
28 the city has diligently prepared for a sale of the land, the commissioner  
29 may extend the deadline for a period determined proper by the commissioner.



1 (d) Sale of land under this section shall occur after public notice  
2 and by a competitive method.