H B

588

HOUSE COMMITTEE REPORT

(5)
Date Referred: March 26, 1990 FURTHER REFERRALS:

RESOURCES

Date of Committee Action: 4/27/90

The COMMUNITY & REGIONAL AFFAIRS Committee considered: HB 588

HOUSE BILL NO. 588 MUNICIPAL LAND GRANT SELECTIONS

"An Act relating to general grant land selections; and providing for an effective date."

RECOMMENDATIONS:
[X] be replaced with CSHB 588 (C&RA) [X] the same title
[ ] a new title
[ ] have attached amendment(s)
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[X] fiscal impact DNR
[X] zero fiscal note C&RA
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____
[ ] zero fn/analysis _____

SIGNING DO PASS:

Richard Foley
Eileen P. Marbean
Eugene A. Kubina

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
Cheri Davis		X	

Eileen P. Marbean
Chairman's Signature

STATE OF ALASKA

1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 588(C&RA) No.1

PUBLISH DATE: HOUSE 4/28/90

FISCAL NOTE

REQUEST:

Revision Date: 24-Apr-90

Agency Affected: Natural Resources

Title: An Act relating to general grant land selections.

BRU: Land & Water Mgmt

Sponsor: C&RA Committee

Components: Land & Water Mgmt

Requestor: C&RA Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	95.0	95.0	95.0			
TRAVEL	5.0	5.0	5.0			
CONTRACTUAL	5.0	5.0	5.0			
SUPPLIES	1.0	1.0	1.0			
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	106.0	106.0	106.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	106.0	106.0	106.0			
FEDERAL FUNDS						
OTHER						
TOTAL	106.0	106.0	106.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	2.0	2.0	2.0			
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attachments

Prepared by: Larry Ostrovsky

Phone: 465-2400

Division: Commissioner's Office

Date: 24-Apr-90

Approved by Commissioner: Lennie Gorsuch

Date: 24-Apr-90

Agency: Department of Natural Resources

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

ANALYSIS

The monies requested will fund two full time positions with necessary support funds. One position will be a Natural Resource Manager I (pay grade 18). This positions will be responsible for the regulation development needed to implement this act including appeals and the land mediation committee process. This position will also be responsible for process municipal recertifications of existing municipalities and the certification of any newly formed municipal governments that are created after passage of this act.

The second position will be a Natural Resource Officer II (pay grade 16). This position will be responsible for helping in the recertification process and processing certifications of any newly formed municipal governments that are formed after passage of this act. This position will also be responsible for the processing, including the decision writing process for land conveyances and rejections of land selected by municipal governments.

Travel monies are needed to meet with municipal officials concerning their land selections and public hearings for regulation adoption. Contractual and supply funds are needed for normal office support items.

Position Title	No. of Positions	Range/Step	Barg. Unit
Natural Resource Manager I	1	18/A	GGU

Time Status	Staff Months	Location	Election District
F	12	Anchorage	

Justification

This position is needed to develop the regulations required for the process used on appeals of land conveyance approvals and denials. Regulations are also needed for the municipal land mediation committe. This position will also be responsible for processing municipal certifications and appeals.

Type of Expenditure		Amount
1	2	3
Salary*	37,356	
Benefits*	13,187	
Premium Pay (Included in Above)		
Other		
Total Personal Services		50,543
Travel		3.0
Contractual		2.5
Commodities		.5
Equipment		
Other		
Total Cost		56.5

Funding Source for Total Cost:		
Federal Receipts	1002	
G.F. Match	1003	
General Fund	1004	56.5
Program Receipts/GF	1005	
I-A Receipts	1007	
CIP Receipts	1061	
Other		

* Personal Services Salary and Benefits Costs are from PACS.

REQUEST FOR NEW POSITION

AGENCY Dept of Natural Resources

BRU Land & Water Management

COMPONENT

Page 3 of 4
Revised Data 4/24/90

FY 91

Position Title	No. of Positions	Range/Step	Barg. Unit
Natural Resource Officer II	1	16/A	GGU

Time Status	Staff Months	Location	Election District
F	12	Anchorage	

Type of Expenditure		Amount
1	2	3
Salary*	32,424	
Benefits*	12,059	
Premium Pay (Included in Above)		
Other		
Total Personal Services		44,483
Travel		2.0
Contractual		2.5
Commodities		.5
Equipment		
Other		
Total Cost		49.5

Funding Source for Total Cost		
Federal Receipts	1002	
G.F. Match	1003	
General Fund	1004	
Program Receipts/GF	1005	
I-A Receipts	1007	
CIP Receipts	1061	
Other		

* Personal Services Salary and Benefits Costs are from PACS.

Justification

This position is needed to help process and recertify municipal entitlements and to certify new municipalities that form after passage of this act. In addition, this position will process fund conveyance decisions issued to municipalities until each municipal entitlement has been reached.

REQUEST FOR NEW POSITION

AGENCY Natural Resources

BRU Land & Water Management

COMPONENT Land & Water Management

Page 4 of 4
Revised Date 4/24/90

FY 91

No. 2

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 588(C&RA)
PUBLISH DATE: HOUSE 4/28/90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to general grant land selections;..."
Sponsor: House C&RA Committee
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal effect for FY 90.

Prepared by: Marty Rutherford, Director — Phone: 465-4750
Division: Municipal & Regional Assistance — Date: 4/26/90

Approved by Commissioner: Remond Henderson For DCH — Date: 4/27/90
Agency: Community & Regional Affairs

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

May 4, 1990

To: House Resources Committee
From: [illegible] Taylor, Manager, Lake and Peninsula Borough
President, Southwest Alaska Municipal Conference
Re: SB for HB 585

By passing this bill you will be honoring the intent of the Alaska Constitution which provides for maximum local control. Municipalities should have the option of owning and managing as much land as possible within their boundaries.

The Lake and Peninsula borough has had difficulties, through no fault of our own, since our inception. Conveyance of additional lands through the general grant land selection process would help mitigate some of our problems. It would also increase the confidence of people watching this borough while contemplating forming their own--there is considerable interest in the question of Lake and Pen's ultimate viability and such a small amount of selectable state land is not encouraging.

Currently, as existing policies provide, this borough will receive approximately 6 acres per person (14,000 acres), less than one acre per square mile. If this bill is passed we will be eligible to receive up to 126,500 acres. We will not necessarily be selecting lands with future development in mind. There are areas which the borough would likely select to maintain as they are, to protect and preserve them for future public recreation and subsistence use.

We like the provision in this bill for an appeal process and also believe, since DCRA is closely involved with the state's municipalities, that it should be involved in the selection and approval phases of this program.

Thank you for the opportunity to comment on this proposed legislation.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3820

MEMORANDUM April 23, 1990

SUBJECT: Sectional Summary of CSHB 588(C&RA)

TO: Representative Eileen MacLean

FROM: Tamara Brandt Cook
Director
Division of Legal Services

Here is the sectional summary you requested of the draft CSHB 588(C&RA).

Sec. 1. Removes the requirement that a municipality incorporated after July 1, 1978 not receive a general grant land entitlement that exceeds 20 acres per resident.

Sec. 2. Existing law grants a municipality 90 days after a selection is rejected to select additional land in fulfillment of its entitlement. A reference to the appeal process is added so that the 90 day period begins after the final decision on appeal.

Sec. 3. Before the director of the division of lands acts on a selection, the Department of Community and Regional Affairs must review the selection and recommend approval or disapproval. A selection may be disapproved only upon a finding that the public interest in retaining state ownership of the land outweights the municipality's interest in obtaining the land.

Sec. 4. A new appeal process is added allowing a municipality to appeal disapproval of a selection to a municipal land mediation committee. An adverse decision of the committee may be appealed to the superior court.

Sec. 5. The commissioner of natural resources is prohibited from placing restrictions on the shape of a parcel of land that may be selected by a municipality.

Sec. 6. The definition of "vacant, unappropriated, unreserved land" used to determine both the amount of land and

the classes of land that a municipality may select is expanded to include certain land classified as wildlife habitat.

Sec. 7. The period for making land selections is extended for those municipalities with entitlements that have not been fulfilled by July 1, 1991.

Sec. 8. Provisions removing the upper cap on the amount of acreage that may be selected based on population and expanding the definition of "vacant, unappropriated, unreserved land" are retroactive to June 2, 1986.

Sec. 9. The retroactive provisions have an immediate effective date.

Sec. 10. The rest of the bill takes effect July 1, 1991.

TBC:gc
G14/029

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

April 24, 1990

The Honorable Eileen MacLean
Chair
House Community and
Regional Affairs Committee
P.O. Box V
Juneau, AK 99811

Dear Representative MacLean:

Subject: CS for HB 588 (C&RA), General Grant Land Selections.

Background: This bill would amend the Municipal Entitlements Act, AS 29.65. Amendments in 1987 greatly expanded both the amount and type of state-owned land new municipalities could select. The 1987 amendments also "capped" the increases by imposing a 20-acre-per-resident ceiling. That figure represented the maximum municipal land grants in the past (those to the North Slope and Matanuska-Susitna Boroughs; other municipalities' entitlements were much lower).

Section 6 of CSHB 588 (C&RA) would further expand new municipalities' entitlements by adding the department's wildlife habitat classification, which we commonly use for land in the rural areas of the state, to the definition of selectable land. Section 1 would complete this expansion by deleting the 20-acre-per-person cap. Together, these changes would increase the Northwest Arctic Borough's entitlement from 133,920 acres under the current law to about 285,000 acres, Aleutians East Borough's from approximately 7,600 acres to about 40,000 acres, and Lake and Peninsula Borough's from less than 14,000 acres to about 126,500 acres. (Atka would still have no entitlement because of a lack of state land; the entitlement of Coffman Cove, the only other new municipality, has not yet been determined.)

Section 3 of the bill would require a recommendation from the Department of Community and Regional Affairs before the Department of Natural Resources decides whether to approve a municipality's selection of state land. The selection could be disapproved only if the public interest in retaining the land

10-J9LH

"outweighs" the municipality's interest. A decision to disapprove would be subject to a new appeal process and regulations under Section 4, with the Department of Community and Regional Affairs, the Department of Natural Resources, and a municipal official making the final state land disposal decision.

Section 5 is the original content of HB 588, on which this department previously expressed its position.

Section 7 would require a recertification of the new municipalities' entitlements and would give municipalities additional time to file selections.

Position: The Department of Natural Resources opposes the bill.

1) Repealing the cap and allowing municipalities to select wildlife habitat land are both unacceptable. Wildlife habitat land is essential to retain in state ownership, because only the state has wildlife management authority. The Legislature has never delegated this power to Alaska's municipalities. As for the cap, the administration would not have supported the 1987 expansion without it. The proposed changes would grant about 300,000 additional acres of state-owned land to the three new boroughs without any showing of need. If the land is worth $400 per acre, the grant amounts to a transfer of roughly $120 million.

2) Three decades of law and case law make it clear that a state land disposal is constitutional only if it is in the public interest to proceed with it. Section 3 seeks to reverse this presumption.

3) It is equally questionable for state land disposal decisions to be made by a three-member committee, two of whose members speak for municipal interests, with only one representative from the department responsible for managing state-owned land. The interests of the state as a whole are unlikely to be served by such a process.

I am proud of my department's record in managing Alaska's municipal entitlement program and would be happy to present you with the full details. We believe that any major changes in the law at this time would only be disruptive.

Sincerely,

Lennie Gorsuch
Commissioner

cc: Committee Members
Bill Sponsors
Bob Evans, Legislative Liaison
Office of the Governor
Denby Lloyd, Special Staff Assistant
Office of the Governor
Gary Gustafson, Director
Division of Land and Water Management

LG/GG/ln

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

April 3, 1990

The Honorable Eileen MacLean, Chair
House Community and Regional Affairs Committee
P.O. Box V
Juneau, AK 99811

Dear Representative MacLean:

Subject: HB 588, General Grant Land Selections for Municipalities.

Position: The Department of Natural Resources cannot support the bill. Under the Alaska Constitution, land can be conveyed out of state ownership only if the conveyance serves the state's interests. As it would not serve the state's interests to convey long, narrow tracts that could block public access to adjacent state land and interfere with sound land management, the department needs the ability to deny or amend such selections. Existing law allows the department to fine-tune selection boundaries to reduce or eliminate such land management conflicts and should not be changed.

Background: DNR is responsible for deciding whether to convey tracts of state-owned land to municipalities under AS 29.65 and other laws. The department is in the final stages of adopting regulations to implement AS 29.65. Among other things, those regulations require municipal selections to be "compact." This requirement is similar to that imposed upon the state when we select land from the federal government. This bill would prohibit the department from restricting, by regulation or otherwise, the shape of land parcels that municipalities can select.

The department's draft regulations were written to implement legislative policy for the municipal entitlement law, which has been in effect since 1978. When it enacted the new law, the Legislature stated that one of its goals was to create "rational ownership patterns for sound land management." The size and shape of land parcels is an important factor in achieving this goal. Long, narrow tracts have a very high ratio of boundary

10-J9LH

line to total area. A parcel that is not compact results in increased surveying costs, boundary disputes, trespass problems, and right-of-way acquisition expenses. Such a result would be inconsistent with the purposes of the law.

The department currently uses a four-to-one width-to-depth ratio as our standard policy during our review of municipal land selections. Using this ratio has helped to avoid difficult to-manage remnant ownership patterns and has been accepted by local governments as a reasonable standard.

Sincerely,

Lennie Gorsuch for
Commissioner

cc: Committee Members
Bill Sponsor
Denby Lloyd, Special Staff Assistant
Office of the Governor
Bob Evans, Legislative Liaison
Office of the Governor
Commissioner David Hoffman
Department of Community and Regional Affairs
Gary Gustafson, Director
Division of Land and Water Management

Alaska State Legislature

House of Representatives
Community & Regional Affairs

April 25, 1990

Honorable Steve Cowper
Office of the Governor
P.O. Box A
Juneau, Alaska 99801

Dear Governor Cowper:

I would like to respond to the Department of Natural Resources (DNR) position papers on CSHB 588, relating to municipal land entitlements. The original bill, sponsored by the House C&RA Committee, prohibited DNR's ability to place restrictions on the shape of a parcel of land selected by a municipality. The CS expands the bill substantially to explicitly include a review and comment period by the Department of Community & Regional Affairs (C&RA), adds an appeal process, and includes certain land classified as wildlife habitat in the definition of "vacant, unappropriated and unreserved land" (vuu).

In their April 3rd, letter, DNR states that they do not support the original legislation because, "it would not serve the state's interests" to block public access to adjacent state land and interfere with land management.

I believe that State Constitution provides that the state's best interest may best be served by allowing municipalities to manage and develop their own land. The drafters of the State Constitution conferred autonomy and broad powers on municipalities of Alaska throughout the constitution. The State of Alaska furthers the goal of maximum local self-government by offering incentives to encourage municipal incorporations. Since 1962, one of these incentives has been the ability to select and receive state general grant land.

There is no reason that the state's interest in protecting public access could not be granted by securing easements to municipal land selections, rather than the restrictive four

Room 128, Capitol Building, P.O. Box V, Juneau, Alaska 99811 (907) 465-3882 or 465-4833

to one policy currently in force. A waiver could be granted to provide for a four to one selection, as an exception to the rule, rather than the rule.

In their April 3rd position paper, DNR also states that regulations require municipal selections to be "compact". This is based on the erroneous premise that rural land development should meet the same standards of compact development of urban land.

On the contrary, rural land selections, by definition, should have greater flexibility to meet changing and diverse needs of sparsely populated communities spread out over vast areas. Rural selections should not be restricted by the same guidelines as used for urban selections.

DNR's report (entitled Municipal General Grant Land Entitlements, A State-Municipal Partnership) predetermines that it may not be in the best interests of the state that land in rural Alaska be managed and developed by local governments because the rural character of the state land "is often not well suited for development or other municipal purposes". Many areas in rural Alaska are in the very initial stages of development and it is premature to make broad generalizations about the use or character of land in rural Alaska. Subsistence is a major influence in the rural economy and therefore could result in large selections of land held sacrosanct. It is necessary to include language to provide for liberal construction of the law, as provided for in the State Constitution.

In their April 24th position paper on CSHB588, DNR states that "repealing the 20 acre cap and allowing municipalities to select wildlife habitat are both unacceptable".

The per capita limit was established at 20 acres based on the highest per capita entitlement to any municipality statewide created by the 1978 amendments to the municipal entitlement law. It is inferred that the 20 acre cap is the most generous entitlement formula because it represents the highest per capita entitlement given to any municipality. (The Mat-Su Borough had an entitlement of about 20 acres per capita based on the population of the borough in 1978). While this may at first seem a fair and equitable justification, it is neither, given the very broad range of values of lands. Urban area lands often being worth three times the rural acreage. A more equitable distribution of land would be based on a 'value' determination, not a per capita determination which is discriminatory to sparsely populated areas. Since establishing values of lands is such a difficult, if not

impossible effort in rural selection, it then makes more sense to rely upon the historical 10 percent of available land formula.

(Note: had the Matanuska-Susitna Borough been restricted to the 20 acre cap based on the population on the date of incorporation, (which is the way current law reads), their entitlement would have been no more than 216,680 acres, not the 355,210 acre entitlement they received in 1978).

Furthermore, legislative records for the 1978 legislation allude to a number of considerations that influenced final acreage determinations, but little, if no, information is available which describes the need to limit entitlements to municipalities using a population cap.

Section 3 of the CS would require a recommendation from DCRA before DNR decides whether to approve a municipality's selection of state land. The selection could be disapproved only if the public interest in retaining the land is greater than the municipalities interest. A decision to disapprove would be subject to a new appeal process. DNR has also opposed this provision.

It appears that DNR's opinion of the "state's best interest" is that all land should stay within the jurisdiction of DNR, except when it can be justified that a minimal selection should be released for a municipal land entitlement.

I differ again with DNR, and return to provisions in the state constitution providing for maximum local self government.

As for the appeal process, I believe it is a necessary and appropriate section to include. DNR exercises tremendous discretion in deciding the rules by which justifications are reviewed for municipal purposes and for evaluations of these selections for state interest. An appeal section should be included to insure the public interest is served.

Regarding the inclusion of certain land classified as wildlife habitat, just because land may be classified under this category, it should not automatically be excluded from consideration by municipalities. Granted, there will be occasions where duplication of interest may conflict, however, I believe that DNR will continue to exercise substantial discretion and will not easily be overturned if valid state interests can be shown. The discretion of any regulatory agency is great and, even given the appeal committee's existence, could adequately protect state

concerns, thus there is no reason to restrict the entire category as a general rule. I feel it is important to note once again that the amended formula will only address 10% of state lands, leaving the state with 90%.

In closing, the Department of Community and Regional Affairs has not provided the committee with what I believe could be very useful and important information. Since DNR has had the opportunity to express their concerns, I would like to request that DCRA be allowed to freely express their opinions on this important and vital issue to municipalities.

Sincerely,

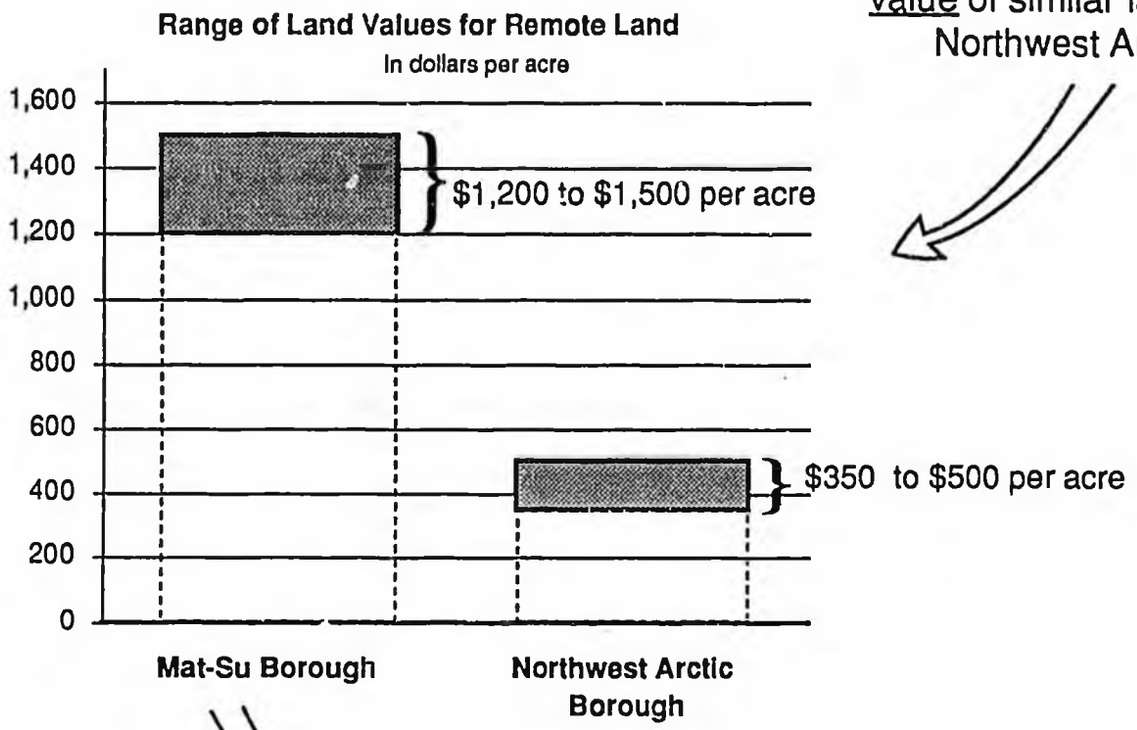
Eileen P. MacLean

Eileen P. MacLean, Chairman
House Community & Regional Affairs Committee

cc: Lennie Gorsuch, Commissioner, Department of Natural Resources
Bob Evans, Legislative Liaison, Office of the Governor

A Population Cap on Acreage is Not an Equitable Approach for Municipal Land Entitlements:

Remote land located in the Mat-Su Borough has about <u>three times the value</u> of similar land located in the Northwest Arctic Borough.



The Mat-Su Borough land entitlement of 355,210 acres was processed in 1978. At that time, the Borough population was 17,760 — the land entitlement represented 20 acres per capita. At an average value of $1,350 per acre, this equates to $27,000 per capita. A similar entitlement in the Northwest Arctic Borough would equate to $8,500 per capita.

Therefore, to receive an <u>equivalent value per capita</u> for its land entitlement, the Northwest Arctic Borough would have to receive three times the acreage per capita compared to the Mat-Su Borough, or approximately 60 acres per capita.

A SPECIAL REPORT

MUNICIPAL GENERAL GRANT LAND ENTITLEMENTS

A State-Municipal Partnership

DEPARTMENT OF NATURAL RESOURCES
Division of Land and Water Management

January 1990

Prepared by Dennis P. Daigger

CONTENTS

CONVEYANCE SUMMARY: UNIFIED HOME RULE MUNICIPALITIES AND BOROUGHS

CONVEYANCES BY AUTHORITY

City or Borough	Incorp	.347	AS 07	AS 29	.810	.320	Legislative	Other
Aleutians East Borough	Oct-87							
Bristol Bay Borough	Oct-62			2,672.7				
City & Borough of Juneau	Jul-70			3,622.6	11.1	852.9		
City & Borough of Sitka	Dec-71	1.8		1,390.3	6,064.6	194.5		0.6
Fairbanks North Star Borough	Jan-64			83,964.9	44.9			
Haines Borough	Jul-68			1,082.8				
Kenai Peninsula Borough	Jan-64			79,206.0	181.9			117.0
Ketchikan Gateway Borough	Sep-63			4,033.3				
Kodiak Island Borough	Sep-63			11,654.0	14.3			
Lake & Peninsula Borough	Apr-89							
Matanuska-Susitna Borough	Jan-64		40.3	201,623.4	400.3			79.3
Municipality of Anchorage	Sep-75	391.1		12,883.7	5,897.1	1,328.5		1,256.4
North Slope Borough	Jul-72							
Northwest Arctic Borough	Jun-86							
	TOTALS	392.9	40.3	402,133.6	12,614.1	2,375.9	0.0	1,453.3

TABLE 2

Municipal General Grant Land Entitlements
January 1990

INTRODUCTION

Decades of neglect by the federal government, resource exploitation by corporations and individuals outside Alaska and a lack of control of their destiny instilled in the fifty-five drafters of the Alaska Constitution a unique vision of what would become America's 49th state. The observations and experiences of the residents of the territory who were self-reliant and independent would manifest themselves throughout the constitution. Nowhere are these concepts more evident than in Article X of the constitution where the relationship between state government and local government are unselfishly defined.

> SECTION 1. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.
>
> SECTION 3. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

The delegates having been deprived of the right of self determination, thoughtfully remembered territorial governance and conferred autonomy and broad powers on municipalities of Alaska through the constitution. By offering incentives to encourage municipal incorporations, the State of Alaska furthers the goal of maximum local self-government contained in Article X.

Since 1962, one of these incentives has been receipt of state general grant land within the boundaries of the local government thereby providing a means of creating or expanding a tax base, a means to generate revenue through land sales and leases, a land base for community expansion and a land base for other public purposes.

In addition to these general grant land entitlements, municipalities can acquire otherwise unavailable state land under the public and charitable use statute (AS 38.05.810). Land acquired under this statute must be used for a public purpose that is available to the public at large. However, if the municipality receiving the land has an outstanding municipal land grant

entitlement, the acreage of the conveyance is subtracted from this balance.

Tide and submerged lands are the last category of state land made available to cities who were incorporated on or before the date of statehood. Under rigid guidelines established in the Alaska Land Act, cities could acquire tidelands adjacent their boundaries. This provision was codified AS 38.05.320.

BACKGROUND: MUNICIPAL LAND GRANTS

Legislative History

Alaska's first municipal land entitlement was created in 1962 when a new section was added to the Alaska Land Act. This section stated:

> Any city of the first class may apply in the manner prescribed by the director, within five years from the effective date of this Act, for a conveyance to the city of all surplus state lands located within the present boundaries of the city. "Surplus state lands" means all land owned by the state which is not presently used or for which there is no anticipated use by the state for governmental purposes.

This act, codified AS 38.05.347, although containing scant procedural guidance, resulted in the conveyance of thousands of acres of state land to a small number of municipalities throughout the state. This law was repealed June 21, 1976.

In 1963 the state legislature enacted the "Mandatory Borough Act". This act was unrelated to the Alaska Land Act but, like AS 38.05.347, created opportunities for municipalities to acquire state land for their local use. The intent of this act (ch 52, SLA 1963) was "to provide maximum local self-government" and caused the creation of numerous boroughs statewide. These boroughs encompassed the populated areas of the state. Although boroughs could not opt out of organizing, some local options existed in the law, such as final location of the municipal boundaries. The act, additionally, provided incentives in the form of cash grants and grants of state land.

Unlike the 1962 act, the "Mandatory Borough Act"(codified AS 07.10.150) provided a formula for the amount of the state land grant entitlement.

This act provided:

> (that) "an organized borough may select 10 per cent of the vacant, unappropriated, unreserved state lands located within its boundaries within five years after the date of availability of state lands in the borough."

The act also provided certain necessary procedural guidance for the selection, survey and conveyance of these entitlement lands.

Several changes to the law were eventually enacted. In 1970 Chapter 213, SLA 1970 removed the five year selection deadline, and extended general grant land entitlements to first and second class cities by adding AS 07.05.040. In 1972 AS 07.10 was renumbered to AS 29.18.

Fifteen years of disputes between municipalities and the state over interpretation of the law culminated in the first major amendment to AS 29.18 in 1978. Some of the more important disputes illustrate the range of problems faced by the program.

-Land selections by municipalities had no time frames for adjudication and conveyance. Municipalities felt that the state deliberately dragged its feet on selections that it wanted to retain and that after approving selections that the conveyances were unnecessarily delayed.

-Southeast boroughs believed that getting concurrence of the land trust boards for conveyance of university, mental health and school trust lands was an unduly cumbersome process.

-The North Slope Borough had selected resource management and industrial lands at Prudoe Bay which were rejected in the state's interests.

-When municipalities selected agricultural lands they received only the agricultural interest. These lands often were more valuable for subdivisions and other uses than as agricultural land and municipalities wanted more than just the agricultural interest.

-Municipal land selections occurred on an ad hoc basis, often before the state could evaluate resources and perform its mandated land planning functions.

-Contention by the North Slope Borough that they have an absolute right to select 10 percent of the state land within their boundaries, irrespective the land classification.

Features of the new law were:

1) Unified home rule municipalities and all boroughs were granted acreage specific entitlements;

2) "vacant, unappropriated, unreserved" (VUU) land was now statutorily defined based on a two part test: 1) the grant type under which the state acquired the land from the federal government and 2) the state's land classification system;

3) General grant land entitlements were limited to general grant land that the state acquired under sections 6(a) and 6(b) of the Statehood Act;

4) Entitlements were fixed as of July 1, 1978, based on the state's VUU land base on that date;

5) Entitlements were extended to municipalities incorporated after July 1, 1978, and a method of computing these entitlements was established;

6) Entitlements became vested property rights and could be fulfilled at any time before two years after the state's right to select federal land under 6(a) or 6(b) of the Statehood Act expired;

7) Selections must be approved or disapproved within nine months of selection and further patent issuance must occur within three months of survey plat approval;

8) Municipalities with an entitlement of less than one and one-half acre per capita could select vacant school, university or mental health trust lands;

9) Deficiency payments were established for municipalities whose entitlment land bases were unsuitable for residential, commercial or industrial purposes;

10) Authority for land exchanges between municipalities and the state when in the public interest was established;

11) Municipalities in litigation with the state over general grant land entitlements had to elect to benefit under the new law or receive the fruits of the litigation, but not both; and;

12) A comprehensive and detailed definitions section was added.

For the first time, a detailed and clear law existed, specifying important policies and procedures, under which general grant land entitlements would be administered.

In 1979, AS 29.18 was amended so that entitlements could no longer be fulfilled by selections filed up to two years after the state's selection rights with the federal government expired, but now must be made prior to October 1, 1980.

In 1981, to ensure that all entitlements were fulfilled, amendments gave municipalities 90 days to re-select new land upon rejection of a previous selection. This was necessary because in law a selection deadline had been established.

In 1985 university trust land was removed from the group of lands

available to a municipality with a per capita entitlement of less than one and one-half acres. This resulted from successful litigation by the University Board of Regents against the state over management of its land trust corpus.

In 1985 AS 29.18.201 - 29.18.205 were repealed effective January 1, 1986. These sections were the major provisions of the general grant land entitlement law. They were, however, replaced with the same provisions that were renumbered AS 29.65.010 - 29.65.140.

In 1987 the most recent amendments to the law occurred. The major provisions of the new law are:

1) Expands general grant entitlements to capture all state VUU land within the municipal boundaries between September 16, 1970 and January 1, 1988;

2) Bases entitlements of cities and boroughs incorporated after July 1, 1978, on the maximum amount of VUU land within their boundaries between incorporation and two years thereafter;

3) Establishes upper limit of entitlements to newly incorporated municipalities not to exceed 20 acres per capita based on the population of the municipality on the date of incorporation;

4) Extends selection deadline of boroughs and unified home rule municipalities listed in AS 29.65.010 to October 1, 1990.

5) Invalidates all selections of school or mental health trust lands occurring after October 4, 1985 the date of the mental health land trust litigation decision;

6) Prohibits a municipality from trading entitlement land for federal subsurface rights or any interest in the Arctic National Wildlife Refuge;

7) Categorizes material and public recreation classified land as VUU;

8) Categorizes resource management classified land as VUU if the classification occurred on or after September 1, 1983;

9) Specifies that the new entitlement for the Northwest Arctic Borough is a partial entitlement. Additional entitlement for the Northwest Arctic Borough and municipalities incorporating after the Northwest Arctic Borough depends upon the governor's recommendation to the legislature, after completion of the Northwest Area Plan, for additional entitlement consistent with his general grant land entitlement policy.

10) Reinstates the 89,850 acre entitlement to the North Slope

A brief discussion of Alaska's statehood land grant entitlement will help focus the parallel municipal general grant land entitlements. The Alaska Statehood Act granted land entitlements to the state under sections 6(a) and 6(b) totaling 103,350,000 acres to be selected from the federal public domain. In 1962, when the state enacted the first municipal entitlement law, less than eight million acres of the statehood entitlement had been received from the federal government. There were less than 40 municipalities in the state at that time. Up until the 1978 law, a municipality was entitled to select 10% of the VUU land within the municipality without a date final for fulfilling that entitlement. This appears to have been intended as an ongoing process so that as the state received more of its entitlement, the municipality could continue to select 10% of that which was VUU.

The 1978 law, for the first time established date certain time lines. The pool of land from which to compute the 10% of VUU entitlement was limited to land within the municipal boundaries between the first date of eligibility for each municipality (September 16, 1970, or date of incorporation which ever came later) and July 1, 1978. The deadline for selection was, however, set two years after expiration of the state's selection rights from the federal public domain. The state's selection deadline was 25 years from statehood (1984). The Alaska National Interest Lands Conservation Act (ANILCA) extended this by ten years to 1994.

In 1978 the state had received about 35 million acres of its entitlement. The 1978 city certifications resulted in an allocation of 7,727 acres to 19 qualifying cities and 861,608 acres to 11 unified home rule municipalities and boroughs. A total of 869,335 acres of state land were granted to municipalities under the 1978 law.

Entitlement acreages for unified home rule municipalities and boroughs contained in AS 29.18.201, as amended in 1978, did not always represent fulfillable entitlements. When the state legislature was considering provisions to be incorporated into the AS 29.18 amendments, they established acreage entitlements for each of the unified home rule municipalities and boroughs based on a complicated scheme that considered population, areal extent and availability of state land within the municipal boundaries. The Municipality of Anchorage and the Kodiak Island Borough had considerably less state VUU land within their boundaries than was needed to meet the statutory entitlement.

The Municipality of Anchorage received $4,000,000 as deficiency payment under AS 29.18.208 for 4,000 acres of entitlement land and in 1985 entered into an agreement with the state to zero out a yet unfulfillable entitlement with 4,628 designated acres of state land within the municipal boundaries. Prior to the agreement, 20,671 acres of land had been approved or patented to the municipality. Under the settlement Anchorage can also receive up to 1,000 acres

of National Forest Community Grant land at Girdwood if land is ever conveyed to the state.

The Kodiak Island Borough likewise entered into an agreement with the state to zero out its entitlement with 48,700 designated acres of state land within their boundaries. As part of the agreement the borough would return to the state 3,069 acres of the 13,960 acres of land that had been patented or approved for patent prior to the agreement. The borough would also receive up to 17,800 acres of land under selection by ANCSA corporations if the land was ever available to the state.

The amount of additional state land granted to cities by the 1987 amendments is 11,892.3 acres. The state had about 80 million acres of its entitlement in 1987. The major affect of the new law, however, is re-establishing a 1978, 89,850 acre entitlement to the North Slope Borough and increasing the 13,000 acre entitlement certified under the old statute to the new Northwest Arctic Borough to 133,920 acres. In round figures about 236,000 acres of state VUU land will be conveyed to two boroughs and nine cities under the 1987 law.

VUU Land Definitions History

Between 1963 and 1978, municipal entitlement selections were limited to "vacant, unappropriated, unreserved land". It appears, by extension of application, that state administrators conceptually adopted the similar guidelines used by federal administrators when statehood land selections were being adjudicated. Neither statutory nor policy definitions existed for VUU land and as a result municipalities and the state disagreed about whether specific parcels of land were VUU.

In 1978, the amended law adopted specific definitions for VUU land. Following were the limitations placed on this definition:

1) Land must be Statehood Act section 6(a) or 6(b) land that has been patented or tentatively approved to the state and excludes the mineral estate;

2) Land cannot have been set aside by statute for one or more particular uses or purposes;

3) Land must be unclassified or if classified is classified agricultural, grazing, commercial, industrial, private recreational, residential, utility or open-to-entry.

The definition of VUU land specifically excluded minerals citing section 6(i) of the Statehood Act. Section 6(i) was incorporated into the Alaska Land Act as AS 38.05.125.

disputes between the state and municipalities. All of the classifications that are defined VUU are categories which the state was already allowed to dispose of by law. In 1983 the state's land classification regulations were changed so that commercial, industrial, open-to-entry, private recreation, residential and utility classifications were subsumed by a new 'settlement' classification. The effect was that unclassified land, settlement land, grazing land and the agricultural interest in agricultural land were available to municipalities for fulfillment of entitlement.

In 1987 three additional categories were added to the list of VUU classifications: 1) material; 2) public recreation; 3) resource management if classified as such on or after September 1, 1983.

1978 Entitlement Status

On July 1, 1978, there were 139 cities incorporated under state law. Certifications of entitlement under ch 180, SLA 1978, resulted in 19 cities receiving entitlements totalling 7,727 acres.

In 1978 the legislature redesignated university and mental health trust land state general grant land (Chap 182, SLA 1978). Based on what they believed to be representations by DNR that these lands would now be, not only general grant land, but also VUU available for entitlement computation as well as available for fulfillment of entitlement. Three cities in Southeast Alaska certified as "zero entitlement" believed that the department erred in the certifications because redesignated mental health trust land as general land statewide was not included as part of the land base within their corporate boundaries for the certification process. Petersburg filed suit in State Superior Court (1JU-78-1109 civ) and Kupreanof and Wrangell administratively appealed their zero entitlement certifications. The state reached an agreement with Petersburg and granted 10% of the mental health lands within their boundaries to the city. This amounted to 461.27 acres of land. The conveyances were under the authority of AS38.05.315(a) [renumbered AS 38.05.810].

As resolution of the other two appeals, the department extended the terms of the Petersburg settlement. Kupreanof received 180.82 acres of mental health land and Wrangell received 310 acres of mental health land.

Although all land selections for municipalities with entitlements from the 1978 law are in place, somewhat less than half of the land has been patented to them. The state cannot convey land to a municipality until the federal government has patented the land to the state. However, all 1978 municipal selections have, with few

exceptions, been approved or rejected. When the state approves a selection, the municipality assumes management responsibility as if it owned the land. By statute municipalities can create third party interests on approved selections prior to patent with the approval of the director. The director generally confers broad management authority to a municipality on an approved selection unless there is an overriding public interest requiring continued involvement by the state.

1988 Entitlement Certification Results

Between the 1978 round of certifications and the 1987 amendments to AS 29.65, eight cities incorporated under state law. Only Thorne Bay had state general grant land within its boundaries that was VUU and in 1982 their entitlement was established at 612 acres. This was in error and was corrected to the proper figure of 675 acres in the 1988 certification.

Three other cities received land from the state during the period July 1, 1978, to January 1, 1988. Tenakee Springs had entered into an agreement in 1977 with Alaska Lumber and Pulp Company (AL&P) and the Department of Natural Resources. The purpose of the agreement was to "permit the proposed operations [AL&P timber contract with the USFS on Chichagof Island] to proceed in a climate of consensus and cooperation". The state's obligation in the agreement was:

> "The state will convey to the City title to any selected lands conveyed to the State by the Bureau of Land Management, except that the State may retain title to those sites necessary for present or anticipated essential public purposes. The State will convey to the City all tidelands and submerged lands within or subjacent to the Sunny Cove dump, and will expeditiously consider the City's application for conveyance of other tidelands and submerged lands adjacent to any selected lands conveyed to the State by the Bureau of Land Management."

The state's part of the agreement was not carried out and in 1980 Tenakee Springs filed suit against the state in State Superior Court (1JU-80-1666). An out of court settlement resulted in a split of the state lands within the city boundaries, granting the city 2,958 acres and leaving in state ownership 1,027 acres.

Whittier sought and received a legislative grant of state land. Under chap 73, SLA 1984 Whittier received 600 acres of state general grant land within its boundaries.

Pelican sought and received a legislative grant of 8.863 acres of state land under Ch 53, SLA 1985.

The amendments to AS 29.65 in 1987 resulted in certifications of new or enhanced entitlements to nine cities of the 147 cities in existence on January 1, 1988. Kupreanof, Petersburg, Pelican, Tenakee Springs, Whittier and Wrangell each had state general grant land within their boundaries that were VUU. The previous agreements, settlements and legislation, however, resulted in the entitlements being certified at zero acres. The conveyances to Kupreanof, Petersburg and Wrangell were done under the authority of AS 38.05.810 and as provided in AS 29.65____ if a municipality with an entitlement is conveyed land under .810 it may be charged against the entitlement. Wrangell administratively appealed this certification because the amount of land that they received in 1978 was less than 10% of the VUU land that was available for the 1988 certification. The director reconsidered the facts and agreed with the City of Wrangell that their entitlement should be the full 10 percent of the VUU land within the city boundaries.

BACKGROUND: TIDELAND CONVEYANCES TO MUNICIPALITIES

Legislative History

In addition to the general grant land entitlements, qualified cities within Alaska have been conveyed tide and submerged land. To understand the purpose of these conveyances of public trust land it is necessary to review federal mandates for management of tide and submerged land prior to Alaska's admission into the Union.

By act of Congress, on May 17, 1884, Alaska was established as a judicial district with a governor and district court system. The general law of Oregon was applied to the district under this act.

On May 14, 1898, Congress passed an act extending the homestead laws to the District of Alaska and providing for right of way for railroads within the district. The act declared that "all such rights to [tide lands and beds of any navigable waters] shall continue to be held by the United States in trust for the people of any state or states which may hereafter be erected out of said District [Alaska]."

The Organic Act, approved by Congress August 24, 1912, created the Territory of Alaska and granted the new territory legislative powers through an elected legislative assembly. The Organic Act further extended the Constitution of the United States and all laws not locally inapplicable, to the Territory of Alaska.

Thus territorial tidelands constituted a federal trust early in Alaska's history and as such could not be disposed of through lease or sale. Additionally, permanent improvements were not authorized to be constructed upon tide and submerged land.

The importance of improved tidelands to the vitality of the territory's economy and the health of its people is readily apparent. It was a territory whose economy, mobility and

recreation were intimately tied to the sea. Log transfer facilities, seafood processors, municipal docks, private boat ways and even residences were partially or wholly constructed on tidelands with no method for individuals or businesses to acquire proper authorization for use. The need for these activities was readily recognized by the federal managers. However, the mechanism for authorizing such use was non-existent.

In full recognition of these shortcomings, Congress enacted a law on September 7, 1957 (P.L. 85-303), that conveyed tidelands adjacent surveyed townsites to the territory. The conveyance was for tidelands and all improvements and natural resources between the line of mean high tide and the pierhead line. The pierhead line was defined as a "line parallel to the existing line of mean low tide at such distance offshore from the line of mean low tide that encompasses to the landward all stationary, manmade structures in existence as of February 1, 1957". Under this law acceptance by the Secretary of Interior of new townsite surveys effected conveyances of attendant tidelands to the territory.

The act authorized the territory to manage and dispose of any tract of tidelands acquired under the act for municipal, business, residential or other beneficial purposes. A tidelands occupant or the occupant's successor in interest had a preference right to acquire an improved tract if a disposal occurred. These improved tracts could be conveyed to the incorporated town or school district. However, if this occurred, the town or school district must accord any occupant a preference right in any disposals contemplated in the future.

The Army Corps of Engineers was given the authority to establish pierhead lines for all surveyed townsites to enable conveyances to the territory. This process was initiated soon after passage of the act. Alaska's statehood interrupted this process with the conveyance of all tide and submerged land under section 6(m) of the statehood act to the new state.

The Alaska Legislature incorporated specific language in the Alaska Land Act to recognize and implement the provisions of the September 7, 1957, federal law. The provisions were soon codified AS 38.05.320(b).

The Alaska Land Act (ch 169,SLA 1959) section 5(c) enabled the conveyances of tidelands to municipal corporations.. Qualifications in the act were:

1) The corporation must have been incorporated on or before January 3, 1959;

2) Tidelands subject to conveyance lay between the mean high tide line and the pierhead line, the harbor line or in their

absence, a line subject to the approval of the director;

3) The corporation had to prepare a plat of the area conveyed showing all structures and improvements thereon and each tract that was occupied or developed with the owner or claimant noted; and,

4) The corporation had to recognize preference rights for occupied and developed tracts.

The tidelands conveyances to municipal corporations were mandatory and gave the department few discretionary powers over the process.

An amendment to AS 38.05.320(b) occurred in 1964 (ch 81, SLA 1964) when "municipal corporation" was changed to "(h)ome rule cities and cities of the first class." These cities had to have been incorporated on or before April 1, 1964, in order to qualify.

Another amendment to AS 38.05, although unrelated to AS 38.05.320(b), did provide for another type of tidelands conveyance to municipalities. Chapter 108, SLA 1974 (codified AS 38.05.323) allowed home rule and general law municipalities to apply for tidelands between mean high tide and mean low tide adjacent public recreation area facilities if the facility was developed under the terms of P.L. 507 (70 Stat. 130) and it was conveyed from the state to the municipality.

Under AS 38.05.320(b) 25,224.3 acres of tidelands were conveyed to 28 cities from Barrow to Saxman. Apparently no tidelands have been conveyed under AS 38.05.323.

GENERAL GRANT LAND ENTITLEMENT DISCUSSION

There are three categories of general grant land entitlements under AS 29.65:

1) A specified statutory entitlement (AS 29.65.010) for unified home rule municipalities and organized boroughs;

2) 10% of the maximum total acreage of vacant, unappropriated, unreserved (VUU) land within the boundaries between September 16, 1970 and January 1, 1988 for cities incorporated as of July 1, 1978 (AS 29.65.020); and

3) 10% of the maximum total acreage of VUU land within the boundaries between date of incorporation and two years after that date for cities incorporated after July 1, 1978 (AS 29.65.030).

The governor's general grant land entitlement policy required by Section 11, Chapter, 34 SLA 1987 only affects the Northwest Arctic Borough and other municipalities incorporated after formation of the Northwest Arctic Borough (incorporated June 2, 1986). Thus, only general grant land entitlements pursuant to AS 29.65.030 for

municipalities incorporated on or after June 2, 1986 will be affected by this policy document.

Section 2 ch 34 SLA 1987 significantly amended AS 29.65.030 by adding a new upper entitlement limit based on municipal population on the date of incorporation. This limit was imposed to help dissuade formation of municipalities for the sole purpose of obtaining large general grant land entitlements from the state. Since all densely populated areas of the state are presently incorporated, newly incorporated areas will generally be rural in character. State land within these areas is often not well suited for development or other municipal purposes. Creating large entitlements to be fulfilled from the state's rural land base may not be in the state's interests.

The per capita limit was established at 20 acres based on the highest per capita entitlement to any municipality statewide created by the 1978 amendments to the municipal entitlement law. The Matanuska-Susitna Borough has an entitlement of 355,210 acres which is about 20 acres per capita based on the population of the borough in 1978.

From inception, the municipal entitlement law has undergone a gradual philosophical broadening of purpose. Where the early versions of the law were focused on making land available that was suitable for development for residential, commercial or industrial use, the most recent version of the law shifts to include public purpose land. This shift occurs through inclusion of public recreation classified land in the categories of land available to municipalities.

PURPOSES FOR GENERAL GRANT LAND ENTITLEMENTS

The central theme of municipal entitlements today is to provide land to municipal corporations for the purposes of:

1) Siting public facilities/aiding community expansion;

2) Providing a means of revenue production through sales or lease which also expands the municipal tax base; and;

3) Providing local public recreation opportunities.

The provisions of Alaska Native Claims Settlement Act (ANCSA) defeated state's title to selected and tentatively approved land within the vicinity of ANCSA village corporations. This results in extremely limited or totally absent state land bases in or near ANCSA cities (population centers) for a new borough to realize the first two purposes. The provisions of ANCSA 14(c)(3) do however, compensate for this shortcoming by requiring that an ANCSA village

corporation. This provision includes title to the remaining surface estate of the improved land and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs.

The results of AS 29.65 and ANCSA must be viewed together. If the land available under these two laws is insufficient to fulfill municipal land entitlement purposes, and other state land unavailable under AS 29.65 will meet the needs, then the municipality may make a written request, including justification, to the Department of Natural Resources for the specific additional land which increases their entitlement.

SUMMARY

The State of Alaska in furtherance of the goal of maximum local government committed in 1978 7,727 acres of state land to 19 cities and another 861,608 acres to 11 unified home rule municipalities and boroughs. With few exceptions land selections have been approved and the municipalities actively manage this land base of nearly 870,000 acres.

New incorporations after 1978 resulted in another 14,000 acres of entitlement to one city and one borough.

The 1987 amendments to AS 29.65 created new entitlements for two cities totalling over 1200 acres, reestablished an 89,850 acre entitlement for a borough and expanded entitlements for seven cities and one borough for over 130,000 new acres.

Over 1,000,000 acres of state land have been committed under AS 29.65 to 41 municipalities statewide for local use. This represents nearly one percent of Alaska's statehood entitlement.

The state has patented nearly 430,000 acres of uplands to 48 municipalities since statehood and 25,000 acres of tidelands to 28 cities.

As the current trend toward more borough incorporations continues, general grant land entitlements promise to play a role in the viability of the new municipalities in a difficult economic environment.

MUNICIPAL ENTITLEMENT CERTIFICATION SUMMARY

City	1978 Entitlement	Other Entitlement	1988 Entitlement	New Acres Under Ch34, SLA 1987
Anderson	0.0	0.0	1,182.0	1,182.0
Bethel	40.0	0.0	0.0	
Cordova	235.0	0.0	0.0	
Delta Junction	400.0	0.0	481.8	81.8
Dillingham	1.0	0.0	0.0	
Fairbanks	15.0	0.0	0.0	
Homer	16.0	0.0	0.0	
Hoonah	15.0	0.0	0.0	
Houston	405.0	0.0	0.0	
Kenai	307.0	0.0	0.0	
Ketchikan	0.5	0.0	4.0	3.5
Kodiak	32.0	0.0	0.0	
Kupreanof	0.0	180.8	0.0	
North Pole	0.5	0.0	0.0	
Ouzinkie	240.0	0.0	0.0	
Pelican	0.0	8.9	0.0	
Petersburg	0.0	461.3	0.0	
Port Alexander	0.0	0.0	53.0	53.0
Port Lions	35.0	0.0	0.0	
Seward	562.0	0.0	565.0	3.0
Skagway	500.0	0.0	7,977.0	7,477.0
Soldotna	14.0	0.0	0.0	
Tenakee Springs	0.0	2,958.0	0.0	
Thorne Bay	0.0	612.0	675.0	63.0
Valdez	4,805.0	0.0	7,593.0	2,788.0
Whittier	0.0	600.0	0.0	
Wrangell	0.0	310.0	551.0	241.0
Yakutat	104.0	0.0	0.0	
TOTALS	**7,727.0**	**5,131.0**	**19,081.8**	**11,892.3**

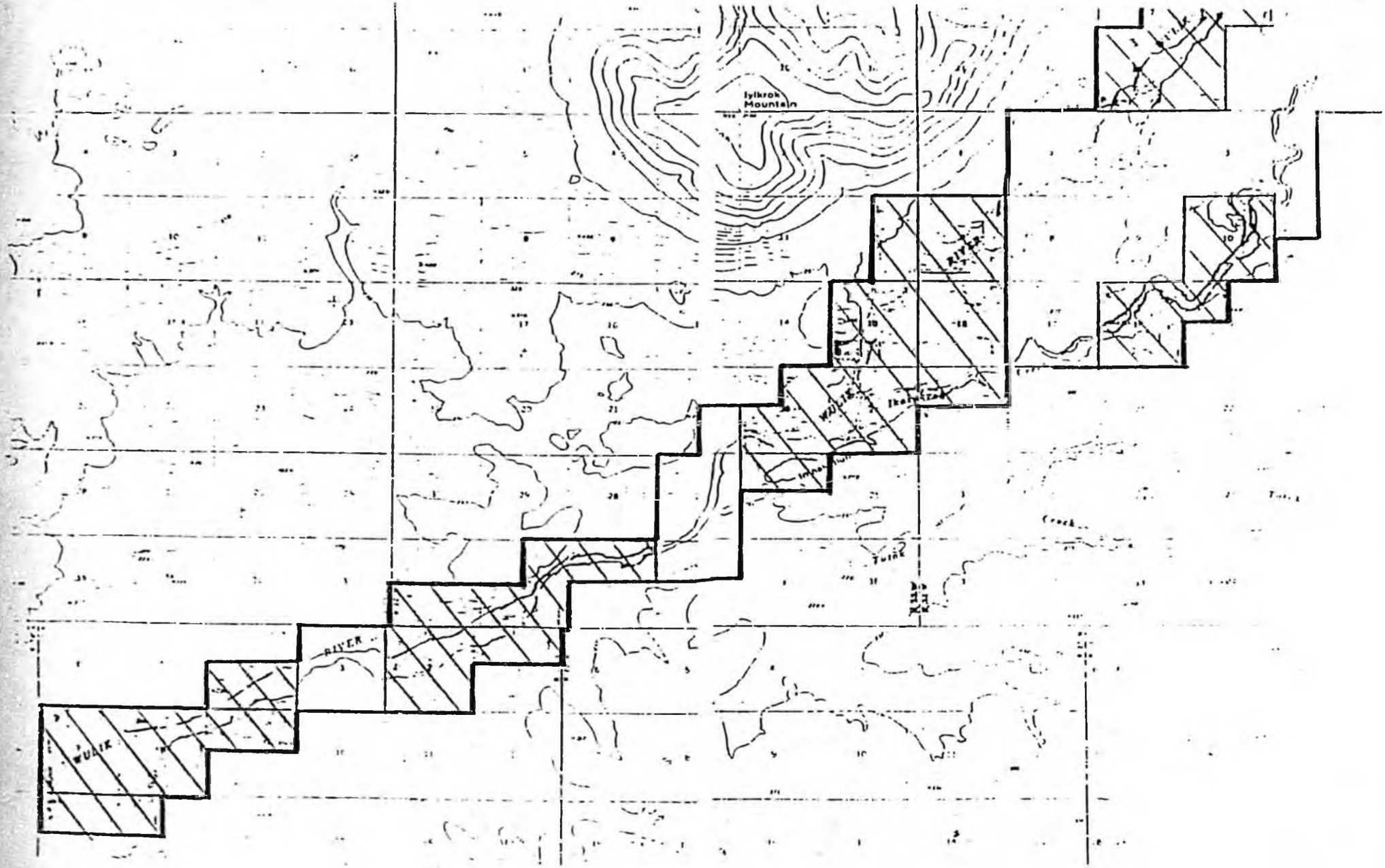
TABLE 1

CONVEYANCE SUMMARY: CITIES

CONVEYANCES BY AUTHORITY

City or Borough	Incorp	.347	AS 07	AS 29	.810	.320	Legislative	Other
Aniak	May-72				24.6			
Barrow	Jan-59					870.0		
Bethel	Jan-57	82.1		5.0	317.0			42.4
Cordova	Jan-09			0.5		321.7		
Craig	Jan-22				18.2	73.0		
Delta Junction	Dec-60			340.3	40.0			
Dillingham	Jan-63				10.7			
Fairbanks	Jan-03			0.5	96.1			
Fort Yukon	Feb-59							0.3
Haines	Jan-10			20.0		109.1		
Homer	Jan-64					6,831.1		292.8
Hoonah	Jun-46	105.5				201.4		
Houston	Jan-66			418.8				
Hydaburg	Oct-27					175.0		
Kake	Nov-62					218.3		1.4
Kasaan	Feb-76				0.4			
Kenai	May-60	3,594.7		355.3	175.6	2,752.1		1.9
Ketchikan	Jan-00				1.2	169.7		
King Cove	Jan-47					178.1		
Klawock	Jan-29					272.5		
Kodiak	Jan-40	281.0		1.2	15.4	219.0		
Kotzebue	Mar-73					392.8		
Kupreanof	Aug-75			180.8				
McGrath	Jun-75				13.5			7.7
Nenana	Jan-21							35.0
Nome	Jan-01					5,717.0		42.1
North Pole	Jan-53				19.7			
Palmer	Jan-51				3.5			
Pelican	Jan-43				4.9	60.1	0.9	
Petersburg	Jan-10			231.1	314.7	449.5		12.4
Sand Point	Oct-66				2.3			
Saxman	Sep-29					53.6		
Seldovia	May-45				21.6	118.0		
Seward	Jan-12			493.1	49.1	1,677.3		
Shungnak	Mar-76				0.6			
Skagway	Jan-00			122.1		193.5		
Soldotna	Jan-67			111.9	391.5			60.3
Tenakee Springs	Oct-71					30.2		204.8
Thorne Bay	Aug-82			249.2				
Unalaska	Jan-42							9.3
Valdez	Jan-01			4,420.2		1,368.6		34.5
Wasilla	Jan-74				129.8			
Wrangell	Jan-03			18.5	288.7	148.8		
Yakutat	Jan-48			123.6	31.2	248.3		
	TOTALS	*4,063.3*	*0.0*	*7,092.1*	*1,970.3*	*22,848.4*	*8.9*	*744.9*

TABLE 3


Iyikrok
Mountain
RIVER
WULIK
RIVER
WULIK

INTRODUCTION FOR HB 588 - HOUSE RESOURCES COMMITTEE 5/4/90

THANKYOU MR. CHAIRMAN. HOUSE BILL 588 IS A MUCH NEEDED PIECE OF LEGISLATION. THE ORIGINAL BILL PROHIBITED DNR'S ABILITY TO PLACE RESTRICTIONS ON THE SHAPE OF A PARCEL OF LAND SELECTED BY A MUNICIPALITY. THE C&RA COMMITTEE SUBSTITUTE EXPANDS THE BILL TO EXPLICITLY INCLUDE A REVIEW AND COMMENT PERIOD BY THE DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS, ADDS AN APPEAL PROCESS, AND INCLUDES CERTAIN LAND CLASSIFIED AS WILDLIFE HABITAT IN THE DEFINITION OF "VACANT, UNAPPROPRIATED AND UNRESERVED LAND".

DNR OPPOSES THIS LEGISLATION BECAUSE THEY BELIEVE IT "WOULD NOT SERVE THE STATE'S INTERESTS". I BELIEVE THAT OUR STATE CONSTITUTION PROVIDES THAT THE STATES BEST INTEREST MAY BE SERVED BY ALLOWING MUNICIPALITIES TO MANAGE AND DEVELOP THEIR OWN LAND. THE DRAFTERS OF THE STATE CONSTITUTION CONFERRED AUTONOMY AND BROAD POWERS ON MUNICIPALITIES THROUGHOUT THE CONSTITUTION. THE STATE OF ALASKA FURTHERS THE GOAL OF MAXIMUM LOCAL SELF-GOVERNMENT BY OFFERING INCENTIVES TO ENCOURAGE MUNICIPAL INCORPORATIONS. SINCE 1962, ONE OF THESE INCENTIVES HAS BEEN THE ABILITY TO SELECT AND RECEIVE STATE LAND.

OVER THE YEARS, THE RESPONSIBILITY OF MAKING POLICY DECISIONS ON MUNICIPAL ENTITLEMENTS HAS GRADUALLY BEEN GIVEN TO THE DEPARTMENT OF NATURAL RESOURCES. NOW, ALL OF

THE DECISIONS ARE MADE BY DNR. THE C&RA COMMITTEE SUBSTITUTE YOU HAVE BEFORE YOU WILL MORE EQUITABLY REPRESENT BOTH THE MUNICIPALITIES AND DNR'S VIEWPOINTS.

IN 1978, AN AMENDMENT WAS MADE TO THE LAW THAT PLACED AN UPPER LIMIT ON THE AMOUNT OF ENTITLEMENTS A BOROUGH COULD RECEIVE. A CAP WAS SET AT 20 ACRES PER CAPITA BASED ON THE POPULATION OF THE MUNICIPALITY AT THE DATE OF INCORPORATION. IT HAS BEEN SUGGESTED THAT THE 20 ACRE CAP IS THE MOST GENEROUS ENTITLEMENT BECAUSE IT REPRESENTS THE HIGHEST PER CAPITA ENTITLEMENT GIVEN TO ANY MUNICIPALITY. WHILE THIS MAY AT FIRST SEEM A FAIR AND EQUITABLE JUSTIFICATION, IT IT NEITHER, GIVEN THE VERY BROAD RANGE OF LANDS. URBAN AREA LANDS OFTEN ARE WORTH AT LEAST THREE TIMES THE VALUE OF RURAL ACREAGE. THE 20 ACRE CAP MAY BE AN EQUITABLE GUIDELINE FOR URBAN AREAS, BUT IT IS NOT FAIR OR EQUITABLE FOR RURAL AREAS.

DNR HAS ALSO STATED THAT REGULATIONS REQUIRE MUNICIPAL SELECTIONS TO BE "COMPACT". THIS IS BASED ON THE ERRONEOUS PREMISE THAT RURAL LAND DEVELOPMENT SHOULD MEET THE SAME STANDARDS OF COMPACT DEVELOPMENT OF URBAN LAND. ON THE CONTRARY, RURAL LAND SELECTIONS, BY DEFINITION SHOULD HAVE GREATER FLEXIBILITY TO MEET CHANGING AND DIVERSE NEEDS OF SPARSELY POPULATED COMMUNITIES SPREAD OUT OVER VAST AREAS.

In their own report entitled Municipal General Grant Land Entitlements, DNR predetermines that it may not be in the best interests of the state that land in rural Alaska be managed and developed by local governments because the rural character of state land "is often not well suited for development or other municipal purposes". I strongly disagree with this presumption. Many areas in rural Alaska are in the very initial stages of development and it is premature to make broad generalizations about the use or character of land in rural Alaska. Subsistence is a major influence in the rural economy and therefore could result in large selections of land held sacrosanct.

In regards to the appeal process, I believe it is necessary and appropriate. DNR exercises tremendous discretion in deciding the rules by which justifications are reviewed for municipal purposes and for evaluations selections for "state interest". Decisions made by DNR on municipal land selections should have oversight, just like any other agency.

Lastly, DNR opposes the inclusion of certain land classified as wildlife habitat. Just because land is classified as wildlife habitat, it should not automatically be excluded from consideration by municipalities. All of the land in rual Alaska is wildlife habitat. Granted, there will be occasions where duplication of interest may

CONFLICT, HOWEVER I BELIEVE THAT DNR WILL CONTINUE TO EXERCISE SUBSTANTIAL DISCRETION AND WILL NOT EASILY BE OVERTURNED OF VALID STATE INTERESTS CAN BE SHOWN. THUS, THERE IS NO REASON TO RESTIRCT THE ENTIRE CATEGORY AS A GENERAL RULE. PLEASE NOTE THAT THE AMENDED FORMULA WILL ONLY ADDRESS 10% OF STATE LANDS, LEAVING THE STATE WITH 90%.

I COULD GO ON MR. CHAIRMAN, BUT I WILL DEFER TO OTHERS WAITING TO TESTIFY ON THE BILL. I WILL BE AVAILABLE TO ANSWER QUESTIONS. THANKYOU.