HB
143

HOUSE COMMITTEE REPORT

(7)
Date Referred: February 19, 1991 FURTHER REFERRALS: Resources
Finance

Date of Committee Action: 3-14-91

The COMMUNITY AND REGIONAL AFFAIRS Committee considered: HB 143

HOUSE BILL NO. 143 MUNICIPAL LAND GRANT SELECTIONS

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

RECOMMENDATIONS: [ ] the same title
be replaced with ______________________ [ ] a new title
[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[X] no recommendations
[ ] individual recommendations
[ ] additional referral to the ______________________ Committee

ADOPTS: ______________________ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)
[✓] fiscal impact Natural Resources [ ] fiscal note(s) ______________________
[✓] zero fiscal note DCRA / F&G [ ] zero fiscal note(s) ______________________

SIGNING DO PASS: SIGNING OTHER RECOMMENDATIONS:

Signing Do Pass	Check appropriate column:	Do Not Pass	No Rec	Amend
Richard Foster (signature) Foster	John G. Davies (signature)		X	
	Cheri Davis (signature)		X	
	Jerry Mackie (signature) MACKIE		X	
	George Jacko (signature)		X	
	Gail Phillips (signature)	X		
	Larry Baker (signature) BAKER	X		

(signature) MACKIE
Chairman's Signature

WALTER J. HICKEL
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

Hickel Administration Position on HB 143

The Departments of Community and Regional Affairs, Natural Resources, and Fish and Game, support the concept of transferring state land to municipalities to help ensure local and statewide economic health. We believe the formation of additional boroughs should be encouraged. To that end we support the removal of the 20 acre per capita municipal land selection restriction (Section 1 of the bill) for new boroughs and boroughs whose entitlements have not yet been certified (Aleutians East, Lake and Peninsula, Denali). We do not, however, believe the cap should be retroactively removed.

The Hickel Administration municipal grant land entitlement policy assures that additional land will be made available to boroughs that are already formed, as well as new boroughs, above what has already been certified as their statutory entitlement, if a need for the additional land can be demonstrated.

We do not believe that wildlife habitat should become part of the vacant, unreserved, unappropriated land (VUU) from which basic statutory municipal selections can be made.

We believe that keeping some restrictions on the size and shape of parcels is in the public interest. Adjustments to the 4 to 1 ratio should be made on a case-by-case basis, to meet statewide and local needs.

The Department of Natural Resources is the state's land manager and has the expertise to approve or disapprove municipal land selections. The Department of Natural Resources will consult with the Departments of Fish and Game and Community and Regional affairs when determining whether a municipal land conveyance is in the best interest of the state.

Municipalities may appeal municipal selection decisions of the Director of Land and Water to the Commissioner of Natural Resources, according to the department's standard appeal process.

In line with this philosophy, the Departments recommend the following additions and deletions to HB 143:

1. Add a Section to the bill that requires the Governor to present a policy on municipal selection of state land to the first session of each Legislature. Included with the policy will be information about selections approved and disapproved to date.
2. In Section 1, make it clear that the cap is removed only for boroughs incorporated after July 1, 1987.
3. Delete sections 4,5,6,9,10, and 11.
4. Modify Section 2 to allow more time for certification and selection by municipalities or the state, if both parties agree.

MUNICIPAL GRANT LAND ENTITLEMENT POLICY

March 12, 1990

The Hickel Administration supports the transfer of state land to municipalities to help ensure local and statewide economic health. Accordingly, it is the policy of the State of Alaska that the basic municipal land entitlement shall not be less than 10% of the vacant, unappropriated, unreserved state land within the municipality's boundaries. It is also the policy of the State of Alaska that a municipality be granted additional land, above the municipal entitlement certified under AS 29.65.030 (b), when the municipality demonstrates that additional land is necessary for:

1. A public facility site;

2. Revenue production through sales or leases;

3. The overall economic vitality of the municipality;

4. Local public recreation;

5. Protection of locally unique or important cultural, traditional, archeological, or other public resources;

6. Other important local or statewide needs.

Municipalities may select additional land, above the amount certified under AS29.65.030 (b), from any land classification category, including wildlife habitat, but must demonstrate that the conveyance of land currently classified as non-VUU land is in the public interest. The size and shape of parcels selected by municipalities can be adjusted from the standard 4:1 ratio, as necessary, to meet statewide and local needs and concerns.

The Department of Natural Resources will consult with the Department of Community and Regional Affairs and the Department of Fish and Game when considering whether conveyance of a municipality's land selection is in the best interest of the state.

Municipalities may appeal municipal selection decisions of the Director of Land and Water to the Commissioner of Natural Resources, according to the department's standard appeal regulations.

In response to the House Committee on Community and Regional Affairs interest, particularly Representative Gail Phillips' questions on House Bill 143, the Departments' of Community and Regional Affairs, Fish and Game and Natural Resources are pleased to provide the following responses:

<u>Question 1:</u> Should wildlife habitat land be added to the land base that is selectable by a municipality?

The administration supports the selection of wildlife habitat or any other state land when a municipal entitlement is not adequate to meet the municipalities needs, and those needs outweigh the state's interest in retention of the land. Existing law allows such a transfer.

<u>Question 2:</u> Will land be added to the VUU land base by the addition of wildlife habitat lands?

The addition of wildlife habitat lands to the VUU land base would not add to the VUU land base for municipalities formed prior to 1986. For new municipalities formed after 1986 the base would be increased as shown on the attached chart. We have no figures available for areas in the unorganized borough.

<u>Question 3:</u> With regard to fairness among municipalities, how will existing municipalities be affected by HB 143 if enacted. If they are not affected by HB 143 as drafted, what would be the effect on these municipalities if HB 143 were applied to them?

As drafted HB143 does not affect existing municipalities created prior to 1986. The eleven boroughs established prior to that date had their entitlement established by statute. It is possible to retroactively add any cities or boroughs to this legislation if desired which would require DNR to recertify all entitlements not previously established by statute. See the attached chart for a conveyance summary.

<u>Question 4:</u> Should shape criteria be a part of municipal land entitlement selections? If not, what are the possible effects on state land and state land policy? If kept, what are the effects on land selections?

Shape criteria as currently used today generally involve a four to one ratio length to width. There is authority to waive this requirement in proposed DNR regulations when it can be proved to be in the best interest of all parties. Size and shape requirements have always been a part of a variety of land selection programs to include mining claims, state land selections, and homestead programs to name a few. Without these criteria a municipality could select a narrow strip of land along the banks of a river course. Such a strip would reduce the value of adjacent land and reduce access. Shape criteria tend to limit selections to useful parcels and to permit better land management patterns.

Deleting shape criteria for the selection process would restrict management opportunities

to the state and invites possible abuse.

Question 5: What agency within the executive branch is in charge of land policy? Would this change with HB 143?

DNR is the lead agency on land policy. Often agencies, such as DF&G or DCRA have occasional roles, usually through interagency coordination to facilitate reaching established goals.

HB 143's inclusion of DCRA in an appeal process would alter that by introducing an appeal board comprised of a DNR representative, a DCRA representative, and an elected municipal official appointed by the Governor. This would appear to alter the basic responsibility authority of state land management.

Municipal Entitlement Estimates for New Boroughs under SSHB 143

Borough	*Incorporation Date*	*Population*	*Total State Land*	*VUU Land* ****	*Present Entitlement*	*Entitlement W/O 20 Acre Cap*	*Entitlement W/ Wildlife Hab*
*Northwest Arctic**	6/2/86	6,696	2,669,552	131,402			
			2,854,382	2,854,382	133,920***	285,438	285,438
Aleutians East	10/23/87	2,091	1,122,016	76,334	7,633	7,633	35,000
Lake and Peninsula	4/24/89	1,800**	4,885,000	150,000	15,000	15,000	115,000
Denali	12/7/90	2,000**	2,898,000	494,000	40,000***	49,400	189,400

*The first acreage figures are for the original certification prior to 1987 law change
The second set is after passage of Chap. 34, SLA 87, which defined Resource Management land as VUU

**Estimates from DCRA

***Established by 20 acre cap

****VUU is defined as Statehood Act Sections 6(a) or 6(b) land that is unclassified or if classified is agricultural, grazing, material, public recreation, settlement or resource management (if classification effective on or after Sep 1, 1983). Further, land that has been set aside by statute for one or more particular uses or purposes is not VUU land.

CONVEYANCE SUMMARY: UNIFIED HOME RULE MUNICIPALITIES AND BOROUGHS

CONVEYANCES BY AUTHORITY

Municipality	Incorp	38.05.347	AS 07	AS 29	38.05.810	38.05.320	Legislative	Other
Aleutians East Borough	Oct-87							
Bristol Bay Borough	Oct-62			2,672.7				
City & Borough of Juneau	Jul-70			4,279.6	11.4	852.9		
City & Borough of Sitka	Dec-71	1.8		2,276.4	6,237.7	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	201,771.0	432.1			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	403,824.4	12,819.4	2,375.9	0.0	1,453.3

The state has conveyed land to municipalities under various authorities; AS 38.05.347, AS 07.05, AS 07.10, AS 29.18, AS 29.65, AS 38.05.315, AS 38.05.810 and AS 38.05.320.

The authority for many early conveyances is not always stated. Where the authority is unknown, the conveyance is included in the AS 29 column.

The figures in this table represents the actual amount of land conveyed to each individual municipality and does not reflect the entitlement. In most cases, however, the municipality manages its full entitlement. Land cannot be conveyed to a municipality until a land survey is complete.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 143

Revision Date: 27-Feb-91
Department Affected: Natural Resources
Title: An Act relating to general grant land selections; and providing for date
BRU: Land & Water Management
Components: Land & Water Management
Sponsor: Rep. MacLean
Requestor: House Community and Regional Affairs
COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	136.6	136.6	136.6			
TRAVEL	3.5	3.5	3.5			
CONTRACTUAL	7.5	7.5	7.5			
SUPPLIES	0.5	0.5	0.5			
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	148.1	148.1	148.1	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
GENERAL FUND	148.1	148.1	148.1			
FEDERAL FUNDS						
OTHER						
TOTAL	148.1	148.1	148.1	0.0	0.0	0.0

POSITIONS:

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
FULL-TIME	3.0	3.0	3.0			
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Dennis Daigger
Phone: 762-2680
Division: Land & Water Management
Date: 27-Feb-91

Approved by Commissioner: Harold Heinze
Date: 27-Feb-91
Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

REV 10/90

Fiscal Note HB 143, continued.

Enactment of HB 143 will result in approximately 246,000 new municipal selection acres for the Northern Region Office of the Division of Land and Water to process, and approximately 125,000 new acres for the Southcentral Region Office to process.

100	Personal Services 1 NRO II (Fbx) 1 NRO I (Fbx) 1 NRO II (Anch.)	136.6
200	Travel (to visit affected communities and sites)	3.5
300	Contractual (required public notices in newspapers)	7.5
400	Supplies	.5

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 143

Revision Date: ____
Department Affected: Community & Regional Affairs
Title: "An Act..general grant land selections...."
BRU: Local Government Assistance
Component: Local Government Support
Sponsor: Rep MacLean
Requestor: ____
COMPONENT SERIAL NO. | | 6 | 7 | 5 |

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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)

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: ____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
Division: Administrative Services Date: 2/28/91

Approved by Commissioner: [signature]
Agency: Community & Regional Affairs Date: 2/28/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 143

Revision Date: 3-14-91

Department Affected: Fish and Game

Title: Municipal Land Grant Selections

BRU: Habitat

Component: Habitat

Sponsor: Representative MacLean

Requestor:

COMPONENT SERIAL NO. 486

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: no impact on current year

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Frank Rue, Director

Phone: 465-4105

Division: Division of Habitat

Date: 3/14/91

Approved by Commissioner: Carl Rosier by [signature]

Agency: Department of Fish and Game

Date: 3/14/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

February 27, 1991

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

Dear Representative Mackie:

Subject: HB 143, relating to general grant land selections for municipalities.

Position: The Department of Natural Resources is unable to support this bill. It would increase the land entitlement of certain municipalities (those incorporated after July 1, 1978) by a large amount, whether or not a local need for additional land exists (as is required under current state policy). While we firmly support municipal land transfers as a basis for local government self-determination, the approach in this bill is contrary to existing state law and policy. If it is the Legislature's intent to place more state land under local control, the entire policy for state land needs to be changed.

Background: In 1978, after 15 years of disputes between municipalities and the state over interpretations of the existing law, a number of amendments to the municipal land entitlement law (AS 29.18) were enacted. The new version of the law granted unified home rule municipalities and all boroughs specific state land acreage entitlements, and specified important policies and procedures. In 1987, the law was again amended. Additions expanded the category of land eligible for selection by a municipality and, among other things, placed an upper limit on the amount of "vacant, unappropriated, unreserved" land a municipality could select. The law also specified that the new land entitlement for the Northwest Arctic Borough was a partial entitlement that could be increased on a recommendation by the Governor to the Legislature. The Governor then submitted his general grant land entitlement policy to the legislature.

This bill removes the current 20 acre per capita limit on the land entitlement of a new municipality, and eliminates the criteria for the shape of a land selection. The 20 acre per capita limit is approximately equal to the maximum per capita acreage any borough has received from the state since statehood. Removal of this per capita limit, combined with the inclusion of wildlife habitat land within the "vacant, unappropriated, unreserved" land category eligible for selections, will greatly increase the land entitlement for new boroughs. Shape criteria are important if public access to adjacent state land is to be protected and sound land management

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policies are to be maintained.

<u>Recommendations</u>: The municipalities affected by this bill have not yet received any entitlement land. It seems logical to allow them to receive their existing land entitlement before determining that additional land is needed for municipal purposes. However, the department supports Section 2 of this bill. It allows municipalities that wish to receive their land early an opportunity to have their land entitlements certified within six months of incorporation. Currently, municipalities must wait two years for certification. We would be happy to work with the committee to improve other municipal land entitlement administrative procedures that present problems to municipalities.

Sincerely,

Harold C. Heinze

cc: Committee Members
Representative MacLean
Bruce Kendall, Legislative Liaison, Office of the Governor
Edgar Blatchford, Commissioner, Department of Community and Regional Affairs
Gary Gustafson, Director, Division of Land and Water

FISCAL NOTE

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1991 LEGISLATIVE SESSION

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LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	148.1	148.1	148.1	0.0	0.0	0.0

CAPITAL						

REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	148.1	148.1	148.1			
FEDERAL FUNDS						
OTHER						
TOTAL	148.1	148.1	148.1	0.0	0.0	0.0

POSITIONS:

FULL-TIME	3.0	3.0	3.0			
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Dennis Daigger
Phone: 762-2680
Division: Land & Water Management
Date: 27-Feb-91

Approved by Commissioner: Harold Heinze for
Date: 27-Feb-91
Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

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400	Supplies	.5

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

M E M O R A N D U M

February 23, 1991

SUBJECT: General Grant Land Selections (HB 143)

TO: Representative Eileen MacLean

FROM: Tamara Brandt Cook TBC
Director

Here is the sectional summary that you requested.

Sec. 1. Deletes the limitation on the size of a general grant land entitlement for a municipality based on population.

Sec. 2. Permits the governing body of a city to request expeditious certification of its entitlement by resolution and requires the entitlement to be certified within six months after receipt of the resolution.

Sec. 3. Adds a cross reference to the new appeal procedure added under section 5 of the bill.

Sec. 4. Requires the director of the division of lands to disapprove a selection only upon a finding that the public interest in retaining state ownership of the land outweighs the municipality's interest in obtaining the land. The Department of Community and Regional Affairs is required to review each selection and recommend approval or disapproval of it to the director.

Sec. 5. Before disapproving a selection, the director is required to notify the municipality. The municipality may submit a written response and, if the selection is disapproved, file notice of an appeal. The appeal will be heard by a municipal land mediation committee and the decision of that committee may be appealed by the municipality to the superior court.

Sec. 6. No restrictions may be placed on the shape of a parcel of land that may be selected by a municipality.

Sec. 7. Requires the commissioner of natural resource to consult with the Department of Community and Regional Affairs before adopting regulations to carry out the general grant land entitlement program.

Sec. 8. Adds a statement of policy to the general grant land entitlement program.

Sec. 9. Amends the definition of "vacant, unappropriated, unreserved land" to include land classified for wildlife habitat other than critical wildlife habitat for purposes of determining both the size of an entitlement and the land that may be selected in fulfillment of the entitlement.

Sec. 10. Requires the director of lands to redetermine and recertify the entitlement of each municipality incorporated after June 2, 1986 in accordance with the new provisions of the bill. If the entitlement of a municipality is increased, land may be selected within one year after the recertification.

Sec. 11. Makes two bill sections retroactive to June 2, 1986. These sections may have the effect of increasing entitlements for certain municipalities.

Sec. 12. The bill has an immediate effective date.

TBC:gc
91-098.glc

By: Rep. MacLean
2/26/91

THE NEED FOR HB 143

The purpose of HB 143 is to restore equity in the General Grant Land Entitlement process, to return the emphasis of the program to its original intent of developing independent and strong local governments, and to temper the Department of Natural Resource's (DNR's) broad discretion in determining the process and procedure for transferring general grant land to municipalities.

The Mandatory Borough Act, enacted in 1963, created opportunities for municipalities to acquire state land for their local use. The intent was "to provide maximum local self-government". General grant land provides a means of creating a tax base, of generating revenues through land sales and leases, and a land base for community and public purposes.

The State Constitution was based on the premise that municipalities should be independent and self governing. Clearly, the intent is to provide for strong local governments. It can be argued that the state's best interest is best served by allowing local governments the opportunity to manage and develop their own land base, thereby developing local economies and strengthening the statewide economy.

However, 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".

Because many areas in remote parts of Alaska are in the very initial stages of development, it is premature to make broad generalizations about the use or character of land in rural Alaska. Furthermore, subsistence is a major influence in the rural economy and therefore could result in large selections of land being held sacrosanct.

Finally, it is important for the legislature to evaluate the municipal entitlement statutes, to include language to provide for liberal construction of the law, as provided for by the State Constitution and, to make changes which favor the original intent of this program.

POPULATION CAP

Section 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; and returns to the former "10 percent of vacant, unappropriated and unreserved land".

A per capita limit on municipal grant land was established at 20 acres, based on the Mat-Su Borough entitlement in 1978. At that time it was the highest per capita entitlement to any municipality.

DNR has suggested that the 20 acre cap is the most generous entitlement formula because it represents the highest per capita entitlement given to any municipality. 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 are often 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 selections, it makes more sense to rely upon the historical 10 percent of available land formula.

It should be noted that 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.

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 describe the need to limit entitlements to municipalities using a population cap.

Finally, the population cap was put into effect in 1987, and only after urban areas organized leaving rural areas with greater restrictions and less available land on which to base their future growth and development.

STATE INTEREST VS. MUNICIPALITY'S INTEREST

Section 4 of the bill requires that before 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 outweighs the municipality's interest in obtaining the land. A decision to disapprove would be subject to a new appeal process which specifically evaluates state and municipal interests.

This process does not exclude DNR's usual practice of consulting with resource agencies to evaluate municipal land selections. It assures, however, that the agency established by the Constitution to advise and assist local governments is inherently involved in this process.

Most municipalities received entitlements as part of the 1978 statutes. At that time they played a greater role in determining their municipal land selections by influencing both legislative and regulatory provisions. For example, these municipalities negotiated a compromise in the 1978 legislation which required a municipality's consent for classification over 3,200 acres; established a joint planning process where DNR and municipalities jointly considered state and municipal interests; and which provided the state and municipalities to jointly determine what areas would be available for selection.

Through efforts to expedite the land disposal process, the provisions which required consent and joint planning were dropped and replaced with a one-year deadline for both the state and municipalities to determine selectable lands. There was no need for a special appeal process because DNR and municipalities were constrained by the one year period. That is, DNR had little time to decide state interests and new classifications within this one-year period had little potential to negatively affect these municipalities. As a result of dropping consent and joint planning, however, DNR was left with greater discretion and responsibility for making policy decisions with little or no mechanism for oversight by the newer municipalities.

DNR exercises tremendous discretion in deciding the rules by which justifications are reviewed for municipal purposes and for evaluations of selections for state interest. Municipalities have little say in the award process, have no ability to work with DNR to jointly determine land classifications, and have no appeal process which evaluates these land selections for municipal interests.

MUNICIPAL LAND MEDIATION COMMITTEE / APPEAL PROCESS

Section 5 provides for a notification process to be made to municipalities and, for an appeal process by a municipal land mediation committee composed of a person appointed by the commissioner of DNR, an appointee by the commissioner of C&RA, and an elected municipal official. An adverse decision of the committee may be appealed to the superior court.

This section is necessary to insure that the municipalities' interests are protected in the land selection process. As stated above, the ability of new municipalities to influence the municipal land selection process has been greatly diminished. 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. It should be noted that the public interest is served when municipal interest is considered.

Drafters of the early municipal entitlement program clearly intended for municipalities to play a role in the decision making process. This requirement will restore parity between the two philosophically differing agencies.

SIZE AND SHAPE OF PARCELS

Section 6 of the bill requires that the commissioner may not impose restrictions on the shape of a parcel and land selected by a municipality.

DNR currently uses a 4:1 width to depth ratio as a standard policy for limiting the size of municipal land selections. The length of any parcel cannot be more than four times it width.

DNR has suggested a ratio of 4 to 1 because it is the same one they use for their mineral leasing program. It does not logically follow that a rule used for leased lands is one which should be used for lands which become the management responsibility of a municipality. It is cumbersome and unwieldy for efficient land selection processes and can quadruple the cost of surveying.

Furthermore, DNR has imposed this stipulation because "it would not serve the state's best interest to convey long narrow tracts that could block public access to adjacent state land and interfere with sound management". However, the state's interest in protecting public access could easily be granted by reserving easements on municipal land selections.

DNR has also stated that regulations require municipal selections to be compact and that they will implement a 4 to 1 ratio on the erroneous premise that rural land development should meet the same standards of compact development on 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 used for urban selections.

DNR REGULATIONS

Section 7 requires the Commissioner of Natural Resources to consult with the Department of Community and Regional affairs prior to adopting regulations necessary to carry out the General Grant Land program.

DNR has developed elaborate regulations to carry out the municipal land entitlement program. Although these regulations deeply affect the municipal statutes (Title 29), the Department of Community and Regional Affairs has no vested authority in the promulgation of those regulations.

Fish and Game statutes for example have similar provisions in Title 16 which require DNR to consult ADF&G before adopting regulations which govern public use areas managed by DNR.

POLICY STATEMENT

Section 8 adds a statement of policy to the general grant land entitlement program.

The 1987 legislation included a reference that the entitlement for the Northwest Arctic Borough was a partial entitlment and that the governor would submit recommendations to the legislature for additional general grant land entitlements for the the Northwest Arctic and other newly formed municipalities, consistent with a general grant land entitlement policy.

The policy statement in HB 143 clarifies that the intent of the legislature is that no less than 10 percent of vacant, unappropriated, or unreserved land will be provided to newly formed municipalities; and that the transfer of such land will be prompt and efficient.

In addition, the state has 20 million acres of land still to select of its entitlement under the Statehood Act and it is important, as a policy matter, to encourage full and expeditious transfers of land. Because the municipal entitlement program was created as an incentive for borough formation and was based on a 10% formula, it is only reasonable to return to its original intent. This will still leave the state with 90% of its land base.

WILDLIFE HABITAT IN "VUU"

Section 9 expands the definition of "vacant, unappropriated and unreserved land" used to determine both the amount of land and the classes of land that a municipality may select, to include certain land classified wildlife habitat, other than critical wildlife habitat.

Using land classifications to define selectable land (vuu land) was put into place in 1979. Past municipalities had to select their land by 1980, so the use of land classifications had no affect on the amount of their entitlement and little potential to impact which lands could be selected.

Newly formed municipalities, on the other hand, are detrimentally impacted by classifications which were imposed on millions of acres of land between 1978 and the present

time. These classifications were developed with little or no regard to municipal interests and are based on broad, generalized resource information. There is no justifiable reason to restrict this entire category as a general rule.

There will be occasions where state and municipal interests may conflict. DNR will continue to exercise substantial discretion and will not be easily overturned when valid interests are shown. The discretion of any regulatory agency is great and could adequately protect the state concerns, even given the appeal committee's existence. Thus, there is no reason to automatically exclude wildlife habitat from consideration, particularly when the state is still left with 90% of its land base.

RECERTIFICATION OF ENTITLEMENTS

Section 10 requires Department of Natural Resources to recertify entitlements for municipalities incorporated after June 2, 1986 to determine final entitlement lands that may be selected as a result of this legislation.

By: Rep. MacLean
2/26/91

HB 143 GENERAL GRANT LAND SELECTIONS

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

Section 1: removes the requirement that a municipality incorporated after July 1, 1978 can not receive a general grant land entitlement that exceeds 20 acres per resident; returns to the former "10 percent of vacant, unappropriated or unreserved land".

Section 2: allows a city to request an expedited entitlement to be determined within six months.

Section 3: after a municipal selection is rejected, existing law grants a municipality 90 days 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 appeal decision.

Section 4: before the Director of the Division of Lands acts on a selection, the Department of Community & Regional Affairs (DCRA) 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 outweighs the municipality's interest in obtaining the land.

Section 5: provides for a notification process to be made to municipalities, and for an appeal process by a municipal land mediation committee composed of a person appointed by the Commissioner of Natural Resources, an appointee by the Commissioner of Community & Regional Affairs, and an elected municipal official. An adverse decision of the committee may be appealed to the superior court.

Section 6: the Commissioner of Natural Resources may not place restrictions on the shape of a parcel of land that may be selected by a municipality.

Section 7: requires the Commissioner of Natural Resources to consult with Department of Community and Regional Affairs prior to adopting regulations necessary to carry out the General Grant Land Entitlement program.

Section 8: the policy of the state is to provide newly formed municipalities with entitlements that are no less than 10 percent of "vuu" property; and to provide for expeditious transfer of land.

Section 9: the definition of "vacant, unappropriated, and 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, other than critical wildlife habitat.

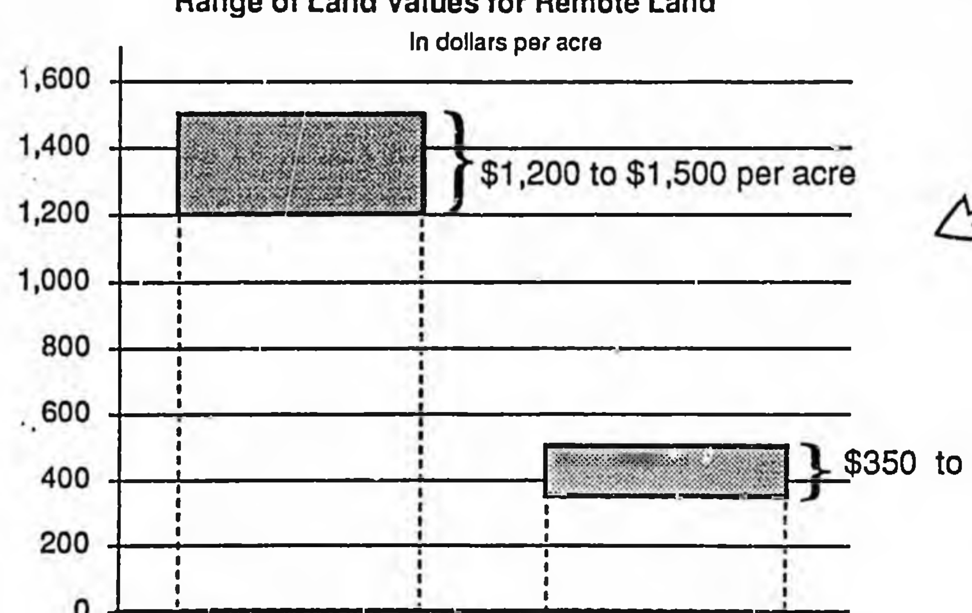
Section 10: the Department of Natural Resources will recertify entitlements for municipalities incorporated after June 2, 1986, to determine the final entitlement that may be selected as a result of this legislation.

Section 11: sections 1 and 9 are retroactive to June 2, 1986.

Section 12: this Act takes effect immediately.

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

Remote land located in the Mat-Su Borough has about three times the value 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 equivalent value per capita 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.

ALEUTIANS EAST BOROUGH

SERVING THE COMMUNITIES OF

■ KING COVE ■ SAND POINT ■ AKUTAN ■ COLD BAY ■ FALSE PASS ■ NELSON LAGOON

February 22, 1991

Representative Eileen MacLean
P.O. Box V
Juneau, Ak 99811

Re: HB 143

Dear Representative MacLean:

The Aleutians East Borough was formed in 1987. In the existing municipal land entitlement program, it is eligible to receive approximately 7,000 + acres. The program allows for possibly up to 40,000 acres based on the 20 acre per person category requirement. The Borough, because of land classification restrictions, obviously will receive considerably less.

In light of the land entitlements by those who incorporated in the '60's, the AEB is concerned about being treated fairly and equitably under this program. This is compounded by the fact that the State of Alaska settled a dispute with the University of Alaska and an important element of that settlement was the conveyance of some of the little State-owned property in any settlement within the Borough. Additionally, most lands that are available to the Borough, are not of comparable value to that of say the Mat-Su or Kenai Peninsula Borough under their municipal entitlement program. The Borough therefore views the changes as proposed in the HB 143 as a positive step in the right direction to assist not only this Borough with its land entitlement programs but also serve as needed changes which will serve as incentive for other areas to seriously consider a borough organization in the future.

The AEB therefore supports the concept of HB 143 and recommends its passage.

Sincerely,

Lamar J. Cotten
Borough Administrator

LJC:emn

LAKE AND PENINSULA BOROUGH
P.O. Box 495
King Salmon, Alaska 99613

MEMORANDUM

To: Rena
From: Chow Taylor, Borough Manager
Date: February 22, 1991
Re: HB 143

The Lake and Peninsula Borough supports HB 143. By including wildlife habitat other than critical wildlife habitat in the definition of VUU lands the amount of lands selectable by this borough would be significantly increased.

In the Lake and Peninsula Borough, although DNR has not yet certified VUU lands, we believe we will be entitled to select only around 8,000-9,000 acres. If habitat lands were added, since there is a large amount of habitat land in the north end of the borough, we would be entitled to much more. I do believe, under this scenario you are right in removing the 20 acres per person cap.

In the event wildlife habitat is not added to the VUU definition, I would suggest language be added to increase the percentage of VUU lands a borough may select to at least seventy percent. In a borough which covers over 25,000 square miles, the amount of land available to us under current law is unreasonably small.

We also support the addition of Community and Regional Affairs as the first agency to review selections. That agency works extensively and closely with municipalities statewide and therefore has a better perspective as to what is reasonable and what is not. We also agree DCRA should be consulted as regulations are developed.

Thank you for the opportunity to comment.

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

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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 Borough lost through litigation in 1978.

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.

Thus, "VUU" was defined clearing the way to settling many of the 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 convey up to 1,280 acres of land to the municipal 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 1,200 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. 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: 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

CONVEYANCE SUMMARY: CITIES

City or Borough	Incorp	.347	AS 07	AS 29	.810	.320	Legislative	Other
		CONVEYANCES BY AUTHORITY						
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			310.3	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-52					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	8.9	
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	148.6		
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

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 4, 1990

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Sam,

As you know, the general land grant entitlement program for municipalities was amended by Chapter 34, SLA 1987. All of these amendments have now been implemented except Section 11. Following is the complete text of Section 11:

> The general grant land entitlement authorized for the Northwest Arctic Borough under AS 29.65.030(a), as amended in sec. 2 of this Act, is a partial entitlement for the borough.
>
> After completion of the Northwest Area Plan prepared under AS 38.04.065, the governor shall submit to the Legislature recommendations for additional general grant land entitlements for the Northwest Arctic Borough consistent with the general grant land entitlement policy developed by the governor. The governor shall also submit recommendations for additional general grant land entitlements for other newly formed municipalities consistent with the general grant land entitlement policy developed by the governor.

The Northwest Area Plan is now adopted and the Northwest Arctic Borough has recently filed its land selections. Therefore, with this letter I am transmitting the policy envisioned by this section. The policy was developed from nearly 30 years of experience administering the municipal land entitlement program. Also enclosed is a background report describing the policy.

The policy will be used when it is time to make recommendations for additional entitlement to the Northwest Arctic Borough and the other new municipalities. Before I make such recommendations, however, the general grant land entitlement must be certified and accepted by the new municipality.

Deficiencies in acreage amount cannot be assessed until an amount is established. Second, the municipality must have filed the selections necessary to fulfill its entitlement.

Deficiencies in quality cannot be assessed until the character of the selections is established. Third, the Department of Natural Resources must have accepted the selections and processed them through the approval stage or have rejected them in the State's interest. The State's interest will, in this final step, determine the quality-quantity mix actually available to the municipality to fulfill the entitlement.

Once all selections have been adjudicated, I will submit recommendations to the Legislature for any additional entitlement.

Sincerely,

Steve Cowper
Governor

Enclosures

cc: Commissioner David Hoffman
Commissioner Lennie Gorsuch

General Grant Land Entitlement Policy
April 23, 1990

PURPOSE

This general land grant entitlement policy is adopted pursuant to Section 11, Chapter 34, SLA 1987.

BACKGROUND

In 1987, the Alaska Legislature made the most recent changes to the municipal land grant entitlement law (AS 29.65). The last major amendment to the law occurred in 1978, when acreage specific entitlements were established for all unified home rule municipalities and boroughs. Additionally, under the 1978 revision, cities were entitled to 10 percent of the vacant, unappropriated, unreserved (VUU) land that existed within their boundaries between the date of initial eligibility and July 1, 1978. Although the 1978 amendments served the needs of municipalities and the state well for nearly ten years, state land status changes and new municipal incorporations created a favorable atmosphere for adjustments to the law.

Two major conditions caused the Department of Natural Resources and certain municipalities to seek amendments to the municipal land grant entitlement law. First, the conveyance of land from the federal government to the state under the statehood act is an ongoing process. Some cities who had no state land within their boundaries for the entitlement certifications of July 1, 1978, did have later as the state received title to new land which was selected as part of the statehood entitlement. The City of Anderson, for example, was an existing city in 1978 and had no VUU land within its boundaries resulting in a 'zero' entitlement. After the 1978 certifications the state received from the federal government thousands of acres of general grant land within Anderson's boundaries. The law, without amendments, did not allow Anderson to share in the municipal land grant entitlement program because the cut-off date, by law, for an entitlement was July 1, 1978.

The second condition needing adjustment resulted from a 1985 statewide classification required by AS 38.04.020(c). All unclassified state land outside the organized borough and outside adopted department area plans was classified resource management, a classification outside the definition of VUU. This caused entitlements to new boroughs created from the unorganized borough (all areas of the state not organized as a borough) to be very small, if any. For example, the Northwest Arctic Borough incorporated in 1986. Most of the land within its boundaries came from the unorganized borough and was outside an adopted area plan. Thus, nearly all of the over two and one-half million acres of state land within its boundaries was classified resource

management by the 1985 statewide classification. Since resource management land was not VUU, the resulting entitlement was just over 13,000 acres (about two acres per capita) based on the formula of 10 percent of the VUU land within the boundaries. An entitlement existed only because the state had received statehood grant lands from the federal government after the 1985 statewide classification, which were unaffected by the previous action.

From the 1987 amendments to the statute came a new round of certifications to all municipalities in existence as of January 1, 1988. Each city with state general grant VUU land within its boundaries has a new or enhanced entitlement correcting the first deficiency (the City of Anderson now has an entitlement of 1,182 acres).

The amendments also subsumed resource management classified land within the meaning of VUU land if the classification occurred on or after September 1, 1983. This date was chosen by the legislature because it was the date of adoption of new classification regulations which changed the definition of resource management land to less restrictive mandates. This adjustment allowed the Northwest Arctic Borough to fully benefit under the municipal entitlement program.

The final significant 1987 amendment to the law placed an upper limit on the amount of an entitlement to a municipality incorporating after July 1, 1978. The legislature set this upper limit at 20 acres per capita, equal to the maximum per capita entitlement of any municipality in the state since statehood. This resulted in a new entitlement to the Northwest Arctic Borough of 133,920 acres. The 20 acre cap had the effect of reducing the maximum possible entitlement to the Northwest Arctic Borough from over a quarter of a million acres based on 10 percent of the VUU land to 133,920 acres.

The last relevant provision of Chapter 34, SLA 1987 is Section 11. This section states that the entitlement authorized by AS 29.65.030(a) to the Northwest Arctic Borough is a partial entitlement, additional entitlement to be determined after completion of the Department of Natural Resources' Northwest Area Plan and based on the policy contained in this document. The department had started the planning process in the Northwest Area at the time the borough incorporation process was beginning. Since the end result of an area plan is land classifications that affect the amount of VUU land, completion of the plan was necessary to access the affect on the entitlement to the new borough.

DISCUSSION

Four additional incorporations have occurred since incorporation of the Northwest Arctic Borough on June 1, 1986: Aleutians East Borough, City of Atka, Lake and Peninsula Borough and the City of Coffman Cove. These five municipalities as well as any others that may be incorporated in the future are affected by this policy. The circumstances of this group illustrate a range of conditions.

The Northwest Arctic Borough incorporated when the state's Northwest Area Plan was initially being developed. The purpose of such plans, which are mandated by AS 38.04.065, is to set policy for managing the state land within the planning area as well as determine which lands are suitable for private ownership and which are suitable for retention in public ownership. This determination is made through land classifications that are the end result of the planning process. These classifications affect the amount of general grant land entitlements because the foundation of the entitlement process is the classification system which determines whether lands are VUU. The timing of the Northwest Arctic Borough incorporation was fortuitous for the new borough allowing it to be intimately involved in the planning process from the start so that they could influence the classifications that would result from the plan and therefore influence the amount of the entitlement.

The Aleutians East Borough incorporated years after completion of the Bristol Bay Area Plan having had no formal role in the planning process or opportunity to affect the size of the entitlement. This borough will have a very limited municipal entitlement as a result of a predominance of wildlife habitat classifications, which do not meet the legislative definition of VUU land. The Aleutians East Borough will have an entitlement estimated at just under four acres per person, well below the 20 acre cap.

The Lake and Peninsula Borough, like the Aleutians East Borough, incorporated years after adoption of the Bristol Bay Area Plan. This borough contains a small part of the Kuskokwim Area Plan as well as a large area of the Bristol Bay Area Plan. Although the Lake and Peninsula Borough had been suggested to the Department of Community and Regional Affairs as the Kuskokwim Area Plan was being developed, formal incorporation action had not been completed. Much of the settlement land (a VUU classification) within the Bristol Bay Area Plan is within the Lake and Peninsula Borough. If the borough's entitlement was based solely on 10 percent of these settlement lands, the entitlement would be quite small because the amount of settlement land is small compared to

the total state land base within the boundaries of the borough. The entitlement to the Lake and Peninsula Borough will, however, be supplemented by resource management land from the Kuskokwim Area Plan. The entitlement will still be relatively small, about eight acres per person. It is noteworthy that the small settlement land base within each of the area plans is generally a result of the residents within the plan boundaries rejecting land disposals unless only local residents are allowed to participate, a goal prohibited by law.

The City of Atka will have no entitlement because there is no state land within its boundaries.

The City of Coffman Cove is recently incorporated and whether the amount of the entitlement will be based on the 10 percent rule or the 20 acres per capita is not known at this time. The city is within the Prince of Wales Area Plan and few non-VUU classifications exist that would hamper the city's ability to select land suitable for municipal purposes.

POLICY

Over a million acres of the state's general grant land entitlement from the federal government under the statehood act is committed to municipal governments. As new borough formations occur throughout the state this number has the potential to increase greatly. Because of its proximity to communities, this million acres represents some of the most valuable surface land owned by the state. Municipalities have been able to fill their entitlements from large pools of state land thereby selecting only the most valuable. This results in the less desirable or undevelopable land remaining in state ownership.

Questions of equity often arise as specific entitlements for municipalities are compared. The municipal entitlement law was never intended to work equitably for all municipalities, but rather was a vehicle for the state to share its land wealth with communities that had state general grant land within their boundaries. While municipalities may wish to maximize their entitlements through this policy, it is important to note that the formulas already contained in the municipal entitlement law work to maximize large, usable entitlements to municipalities. This occurs by allowing municipalities to unilaterally select entitlements from a state land pool that is generally ten times larger than the entitlement and lands most suitable for development and revenue generation are precisely the land classifications from which municipalities may select.

Although unstated, the 20 acre per person cap has been in effect

since the start of the municipal entitlement program and where an adequate state land base exists there are no known instances of municipalities being unable to select the necessary acreage for municipal purposes. It is therefore the policy of the state that additional entitlements to newly incorporated municipalities above the certified entitlement under AS 29.65.030(b) will only be considered when a municipality can clearly demonstrate that the lands in the entire VUU land base from which it can make its selections fulfill none of the following purposes and that the additional land that they wish to select is needed for:

1. Siting public facilities/aiding community expansion;

2. Providing a means of revenue production through sales or leases or contributing to the overall economic vitality of the municipality;

3. Providing local public recreation; and;

4. Protection of locally unique or important cultural, traditional, archeological or other public resources.

Written justification shall be made to the Department of Natural Resources when a municipality believes its entitlement should be expanded.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

February 27, 1991

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

Dear Representative Mackie:

Subject: HB 143, relating to general grant land selections for municipalities.

Position: The Department of Natural Resources is unable to support this bill. It would increase the land entitlement of certain municipalities (those incorporated after July 1, 1978) by a large amount, whether or not a local need for additional land exists (as is required under current state policy). While we firmly support municipal land transfers as a basis for local government self-determination, the approach in this bill is contrary to existing state law and policy. If it is the Legislature's intent to place more state land under local control, the entire policy for state land needs to be changed.

Background: In 1978, after 15 years of disputes between municipalities and the state over interpretations of the existing law, a number of amendments to the municipal land entitlement law (AS 29.18) were enacted. The new version of the law granted unified home rule municipalities and all boroughs specific state land acreage entitlements, and specified important policies and procedures. In 1987, the law was again amended. Additions expanded the category of land eligible for selection by a municipality and, among other things, placed an upper limit on the amount of "vacant, unappropriated, unreserved" land a municipality could select. The law also specified that the new land entitlement for the Northwest Arctic Borough was a partial entitlement that could be increased on a recommendation by the Governor to the Legislature. The Governor then submitted his general grant land entitlement policy to the legislature.

This bill removes the current 20 acre per capita limit on the land entitlement of a new municipality, and eliminates the criteria for the shape of a land selection. The 20 acre per capita limit is approximately equal to the maximum per capita acreage any borough has received from the state since statehood. Removal of this per capita limit, combined with the inclusion of wildlife habitat land within the "vacant, unappropriated, unreserved" land category eligible for selections, will greatly increase the land entitlement for new boroughs. Shape criteria are important if public access to adjacent state land is to be protected and sound land management

policies are to be maintained.

Recommendations: The municipalities affected by this bill have not yet received any entitlement land. It seems logical to allow them to receive their existing land entitlement before determining that additional land is needed for municipal purposes. However, the department supports Section 2 of this bill. It allows municipalities that wish to receive their land early an opportunity to have their land entitlements certified within six months of incorporation. Currently, municipalities must wait two years for certification. We would be happy to work with the committee to improve other municipal land entitlement administrative procedures that present problems to municipalities.

Sincerely,

Harold C. Heinze

cc: Committee Members
Representative MacLean
Bruce Kendall, Legislative Liaison, Office of the Governor
Edgar Blatchford, Commissioner, Department of Community and Regional Affairs
Gary Gustafson, Director, Division of Land and Water

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 143

Revision Date: 27-Feb-91
Department Affected: Natural Resources
Title: An Act relating to general grant land selections; and providing for date
BRU: Land & Water Management
Components: Land & Water Management
Sponsor: Rep. MacLean
Requestor: House Community and Regional Affairs
COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	136.6	136.6	136.6			
TRAVEL	3.5	3.5	3.5			
CONTRACTUAL	7.5	7.5	7.5			
SUPPLIES	0.5	0.5	0.5			
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	148.1	148.1	148.1	0.0	0.0	0.0

CAPITAL						

REVENUE						

FUNDING: (Thousands of Dollars)

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
GENERAL FUND	148.1	148.1	148.1			
FEDERAL FUNDS						
OTHER						
TOTAL	148.1	148.1	148.1	0.0	0.0	0.0

POSITIONS:

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
FULL-TIME	3.0	3.0	3.0			
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Dennis Daigger
Phone: 762-2680
Division: Land & Water Management
Date: 27-Feb-91

Approved by Commissioner: Harold Heinze cw for
Date: 27-Feb-91
Agency: Department of Natural Resources

Distribution (by preparer): Legislative Finance, legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

REV 10/90

Fiscal Note HB 143, continued.

Enactment of HB 143 will result in approximately 246,000 new municipal selection acres for the Northern Region Office of the Division of Land and Water to process, and approximately 125,000 new acres for the Southcentral Region Office to process.

100	Personal Services 1 NRO II (Fbx) 1 NRO I (Fbx) 1 NRO II (Anch.)	136.6
200	Travel (to visit affected communities and sites)	3.5
300	Contractual (required public notices in newspapers)	7.5
400	Supplies	.5