HB

143

7-LS1338\A
Cook
5/7/91

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE G.PHILLIPS

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

"An Act relating to general grant land entitlements for municipalities."

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

* **Section 1.** AS 29.65.030(a) is amended to read:

(a) The general grant land entitlement of a municipality [INCORPORATED AFTER JULY 1, 1978, THAT DOES NOT QUALIFY FOR AN ENTITLEMENT UNDER AS 29.65.010 OR 29.65.020] is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within the boundaries of the municipality between the date of its incorporation and two years after that date or [. HOWEVER, A MUNICIPALITY MAY NOT RECEIVE AN ENTITLEMENT UNDER THIS SUBSECTION THAT EXCEEDS] 20 acres per person residing in the municipality on the date of its incorporation, whichever is more. For purposes of this section, the population of a municipality shall be determined by the department in accordance with AS 29.60.020 and 29.60.150.

* **Sec. 2.** AS 29.65.040(e) is amended to read:

(e) The time limitations imposed by [(c) AND] (d) of this section for exercising a vested

general grant land entitlement do not apply to

(1) the portion of an entitlement that cannot be satisfied by that date because of a shortage of land suitable for residential, commercial, and industrial purposes that is vacant, unappropriated, unreserved land;

(2) [PAYMENTS FOR LAND DEFICIENCY UNDER AS 29.65.080;

(3)] the portion of an entitlement that cannot be satisfied because the land selected by a municipality has been selected by a party entitled to select land owned by the United States or the state; or

(3) [(4)] the portion of an entitlement that cannot be satisfied because the land nominated for selection by the municipality is not tentatively approved for patent to the state.

* Sec. 3. AS 29.65.050 is amended to read:

Sec. 29.65.050. FULFILLMENT OF LAND ENTITLEMENTS. (a) The acreage of each municipality's land selections for which patent has been issued **under former law** [BEFORE JULY 1, 1978,] shall be credited toward fulfillment of the entitlement of that municipality.

(b) [ALL APPROVED SELECTIONS UNDER FORMER AS 29.18.190 AND 29.18.200 FOR WHICH PATENT HAS NOT BEEN ISSUED TO A MUNICIPALITY ON JULY 1, 1978, SHALL BE REVIEWED BY THE DIRECTOR WITHIN NINE MONTHS AFTER JULY 1, 1978. ANY APPROVED SELECTION OF LAND THAT WAS VACANT, UNAPPROPRIATED, OR UNRESERVED ON THE DATE OF SELECTION IS VALID AS OF THE DATE OF THE APPROVAL UNDER FORMER AS 29.18.190, 29.18.200, 29.18.201, 29.18.202, AND 29.18.203 AND A PATENT SHALL BE ISSUED TO THE MUNICIPALITY WITHIN THREE MONTHS AFTER APPROVAL BY THE DIRECTOR OF A PLAT OF SURVEY. THE ACREAGE SHALL BE CREDITED TOWARD FULFILLMENT OF THE MUNICIPALITY'S ENTITLEMENT. A MUNICIPALITY IS NOT ENTITLED TO RECEIVE PATENT UNDER THIS CHAPTER TO MORE THAN ITS ENTITLEMENT DETERMINED UNDER AS 29.65.010 - 29.65.030. ANY PRIOR APPROVAL BY THE DIRECTOR OF MUNICIPAL SELECTIONS FOR LAND THAT WAS NOT VACANT, UNAPPROPRIATED, OR UNRESERVED ON THE DATE OF SELECTION SHALL BE RESCINDED, AND PATENT MAY NOT BE ISSUED EXCEPT WHEN DISPOSAL TO A THIRD PARTY BY SALE OR LEASE HAS OCCURRED.] Transfers of land to municipalities under this chapter are subject to AS 38.05.321. Classification actions as reflected on the land status records of the

Department of Natural Resources are determinative of land classification status for purposes of this chapter.

(c) The director shall approve each selection for patent within nine months of its selection by a municipality, and a patent shall be issued to the municipality for land selected in satisfaction of a general grant land entitlement vested under AS 29.65.030 [AS 29.65.010 - 29.65.030] within three months after approval by the director of a plat of survey.

* Sec. 4. AS 38.05.321(b) is amended to read:

(b) State land classified as agricultural land that has been selected by a municipality under former AS 29.18.190 - 29.18.200 or former AS 29.18.205(e) may be approved by the director for patent under AS 29.65.050(c); however, only rights in the land for agricultural purposes may be transferred and all other interests in the land will remain with the state. Agricultural land approved for patent to a municipality shall be credited, acre for acre, toward fulfillment of that municipality's entitlement under AS 29.65.030 [AS 29.65.010 - 29.65.030] or former AS 29.18.201 - 29.18.203, AS 29.65.010, and 29.65.020. If the director later determines it to be in the best interests of the state to transfer some or all of the additional rights in that approved or patented agricultural land, those rights shall pass without consideration to the municipality in which the land is located. The notice and review provisions of AS 38.05.945 are applicable to conveyance of rights under this section.

* Sec. 5. AS 38.05.321(c) is amended to read:

(c) The provisions of this section do not apply to

(1) state land classified as agricultural land that has been selected by a municipality under the provisions of former AS 29.18.190 - 29.18.200 if the selection is an approved selection before April 1, 1978, and is otherwise valid under [AS 29.65.050(b) OR] former AS 29.18.205(b) or AS 29.65.050(b); or

(2) a quitclaim of the interest of the state to the federal government under AS 38.05.035(b)(9).

* Sec. 6. AS 29.65.010, 29.65.020, 29.65.040(a), 29.65.040(c), 29.65.060, and 29.65.080 are repealed.

* Sec. 7. Within three years after the effective date of this Act, the director of lands shall, for each municipality for which an entitlement was certified before the effective date of this Act, redetermine and recertify the entitlement in accordance with AS 29.65.030(a), as amended in sec. 1 of this Act. If as a result of the recertification the entitlement of a municipality is increased, the municipality may select

the amount of land that, when added to land selected under former law or for which a land deficiency payment was received under former AS 29.65.080, equals the increased entitlement. If as a result of the recertification the entitlement is decreased, the entitlement of the municipality under former law remains unchanged.

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.

VUU LAND BASE TRENDS OF UNIFIED HOME RULE MUNICIPALITIES AND BOROUGHS BETWEEN JUL 1978 AND JUNE 1987

Municipality	Incorp	Area Plan	Pop 1987	20 Acres Per Capita	AS 29.65 010 Entitlement	1978 VUU Land Estimates
Muni of Anchorage	1975	none	173,600–248,263	4,965,260	3,442,000 44,893	207,453
Fairbanks North Star	1964	Tanana 1985	12,720–75,079	1,501,580	859,900 112,000	962,923
Matanuska-Susitna	1964	Susitna 1985	5,700–44,280	885,600	114,000 355,210	3,661,947
Kenai Peninsula	1964	none	12,100–43,612	872,240	242,000 155,780	1,605,960
City and Boro Juneau	1970	none	13,500–29,370	587,400	271,200 19,584	4,359
Kodiak Island	1963	none	7,850–14,127	282,540	157,000 56,500	451,980
Ketchikan Gateway	1963	none	9,160–12,982	259,640	183,200 11,593	2,936
North Slope	1972	none	3,700–8,308	166,160	74,000 89,850	unavailable
City and Boro Sitka	1971	none	6,100–8,160	163,200	122,000 10,500	246
Haines	1968	Haines-Skagway 1979	1,220–1,991	39,820	25,600 2,800	10,804
Bristol Bay	1962	Bristol Bay 1984	894–1,326	26,520	17,880 2,898	19,380

Estimated Population of Alaska Boroughs at the Time of Formation

Borough	Year Incorporated	Estimated Population*	
Aleutians East Borough	1988	2,300	
Anchorage Borough	1975	173,600	
Bristol Bay Borough	1962	894	
Denali Borough	1991	1,750	**
Fairbanks North Star Borough	1964	42,720	
Haines Borough	1968	1,280	
Juneau Borough	1970	13,560	
Kenai Peninsula Borough	1964	12,100	
Ketchikan-Gateway Borough	1963	9,160	
Kodiak Island Borough	1963	7,850	
Lake and Peninsula Borough	1989	1,790	
Matanuska-Susitna Borough	1964	5,700	
North Slope Borough	1972	3,700	
Northwest Arctic Borough	1986	5,890	
Sitka Borough	1971	6,100	

Alaska Department of Labor, Research & Analysis, Demoraphics Unit.
* Estimated Populations are interpolated using decennial census statistics.
or are from Alaska Dept of Labor Estimates.
** April 1, 1990 is the most current data available.

HB 143 (Finance) Relating to General Grant Land Selections (5/8/91)

Sec. 1: POPULATION CAP - removes 20 acres per capita population cap instituted in 1987

Sec. 2: EXPEDITED ENTITLEMENT - an expedited entitlement can be requested rather than waiting for 2 1/2 years

Sec. 3: CROSS REFENCE TO NEW APPEAL PROCEDURE

Sec. 4: DCRA REVIEW / ADDS STATE VS. MUNICIPAL INTEREST DETERMINATION

Sec. 5: APPEAL PROCESS ESTABLISHED

Sec. 6: SIZE AND SHAPE OF PARCEL - when restricting the size and shape of a selection the burden of survey costs on the municipality; and alternatives to preserve access will be considered

Sec. 7: DCRA CONSULTATION ON REGULATIONS

Sec. 8: POLICY STATEMENT - returns to the original policy of 10% of vuu lands (without the 20 acre cap)

Sec. 9: RECERTIFICATION - of existing entitlements and new certifications will be delayed until DNR completes federal land transfers by Janary 1, 1994

Sec. 10: POPULATION CAP REMOVAL IS RETROACTIVE TO JUNE 2, 1986

Sec. 11: EFFECTIVE DATE IMMEDIATELY

CS FOR HOUSE BILL NO. 143 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/15/91
Referred: Rules

Sponsor(s): REPRESENTATIVE MACLEAN

A BILL

FOR AN ACT ENTITLED

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

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

* **Section 1.** AS 29.65.030(a) is amended to read:

(a) The general grant land entitlement of a municipality incorporated after July 1, 1978, that does not qualify for an entitlement under AS 29.65.010 or 29.65.020 is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within the boundaries of the municipality between the date of its incorporation and two years after that date. [HOWEVER, A MUNICIPALITY MAY NOT RECEIVE AN ENTITLEMENT UNDER THIS SUBSECTION THAT EXCEEDS 20 ACRES PER PERSON RESIDING IN THE MUNICIPALITY ON THE DATE OF ITS INCORPORATION. FOR PURPOSES OF THIS SECTION THE POPULATION OF A MUNICIPALITY SHALL BE DETERMINED BY THE DEPARTMENT IN ACCORDANCE WITH AS 29.60.020 AND 29.60.150.]

* **Sec. 2.** AS 29.65.030(b) is amended to read:

(b) Within two years and six months after the date of incorporation of the municipality,

the director shall determine the entitlement of each municipality eligible to receive general grant land under (a) of this section and certify the entitlement to the municipality. **However, the governing body of a city may, by resolution, request the director to certify the entitlement of the city on an expeditious basis. The director shall determine and certify the entitlement within six months after receipt of the resolution.**

* **Sec. 3.** AS 29.65.040(c) is amended to read:

(c) Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under former AS 29.18.201 and 29.18.202 at any time before October 1, 1980. Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under AS 29.65.010 at any time before October 1, 1990. However, if a municipal selection or nomination or a part of a municipal selection or nomination is rejected by the director, the municipality may, not later than 90 days after receipt of the rejection **or final decision on an appeal filed under AS 29.65.050(d)**, select additional state land as necessary to satisfy its entitlement.

* **Sec. 4.** AS 29.65.050(c) is amended to read:

(c) The director shall approve **or disapprove** each selection for patent within nine months of its selection by a municipality. **Before a decision is issued the Department of Community and Regional Affairs shall review the selection and recommend approval or disapproval of it. The director may 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.** A [, AND A] patent shall be issued to the municipality for land selected in satisfaction of a general grant land entitlement vested under AS 29.65.010 - 29.65.030 within three months after approval by the director of a plat of survey.

* **Sec. 5.** AS 29.65.050 is amended by adding a new subsection to read:

(d) Before disapproving a selection, the director shall notify the municipality in writing of the decision and set out reasons for it. The municipality may submit a written response within 30 days after receipt of the notice. Within 30 days after the period for responding has expired, the director shall affirm, modify, or reverse the decision and supply the municipality with written notice of that action. If the selection is disapproved, the municipality may file notice of an appeal with the director. The appeal shall be heard under procedures adopted by regulation of the Department of Natural Resources by a municipal land mediation committee composed of a

person appointed by the commissioner of natural resources, a person appointed by the commissioner of community and regional affairs, and an elected municipal official appointed by the governor. A decision on the appeal shall be submitted to the municipality in writing within 30 days after the notice of appeal was filed with the director. A municipality may appeal an adverse decision of the municipal land mediation committee to the superior court under AS 44.62.560 - 44.62.570.

* Sec. 6. AS 29.65.070 is amended by adding a new subsection to read:

(d) The commissioner of natural resources may [not] restrict the shape of a selection [without] considering municipal interests, considering the burden of survey costs to the municipality, and evaluating other alternatives to preserve access or uses of statewide concern. Restrictions imposed on the shape of a parcel that may be selected may be waived by the director if waiver is in the public interest.

* Sec. 7. AS 29.65.120 is amended to read:

Sec. 29.65.120. ADMINISTRATION. The commissioner of natural resources may, **after consultation with the Department of Community and Regional Affairs,** adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) necessary to carry out the purposes of this chapter.

* Sec. 8. AS 29.65 is amended by adding a new section to read:

Sec. 29.65.129. POLICY. Consistent with the best interest of the state, it is the policy of the state to provide a newly formed municipality with a general grant land entitlement that is no less than 10 percent of vacant, unappropriated, unreserved land located within its boundaries. It is the policy of the state to provide for expeditious transfer and patent of land to a municipality in fulfilling its entitlement.

* Sec. 9. Notwithstanding AS 29.65.030(b) as amended in sec. 2 of this Act, the director of lands may not certify an entitlement to a municipality until after January 2, 1994. Each entitlement for which certification is delayed under this section shall be certified by the director no later than January 1, 1996. The director shall by January 1, 1996, for each municipality incorporated after June 1, 1986, for which an entitlement was certified before the effective date of this section, redetermine and recertify the entitlement in accordance with AS 29.65.030(a), as amended in sec. 1 of this Act.

* Sec. 10. Section 1 of this Act is retroactive to June 2, 1986.

* Sec. 11. This Act takes effect immediately under AS 01.10.070(c).

SPONSOR STATEMENT

CS FOR HB 143 (FINANCE) GENERAL GRANT LAND SELECTIONS

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 without considering the burden of survey costs to the municipality, and evaluating other alternatives to preserve access or uses of statewide concern.

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.

NEW CERTIFICATION'S AND RECERTIFICATION'S OF ENTITLEMENTS

Section 9 provides that the director of lands may not certifify any new entitlements to a municipality until after January 2, 1994. This will enable the Department of Natural Resources to complete the transfer of 20 million acres of land from the federal government without the burden of meeting deadlines for municipal certifications. Each certification which has been delayed shall be certified by no later than January 1, 1996.

The director will also recertify entitlements for municipalities incorporated after June 1, 1986 to determine final entitlement lands that may be selected as a result of this legislation. The recertification will also be delayed until Janaury 1, 1996.

SECTIONAL ANALYSIS

CS FOR HB 143 (FINANCE) GENERAL GRANT LAND SELECTIONS

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

Section 1:
Deletes the limitation on the size of a general grant land entitlement for a municipality based on population. Returns to the former "10 percent of vacant, unappropriated or unreserved land".

Section 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.

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

Section 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.

Section 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.

Section 6:
When placing restrictions on the shape of a selection consideration must be given to the burden of survey costs on

the municipality, alternatives to preserve access, and other municipal interests.

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

Section 9:
Requires the director of lands to delay entitlements until after January 2, 1994. Entitlements which have been delayed will be certified by Janaury 1, 1996. Requires the director to redetermine and recertify the entitlement of each municipality incorporated after June 1, 1986 in accordance with the new provisions of the bill, by January 1, 1996.

Section 10:
Makes section 1 of the bill retroactive to June 2, 1986.

Section 11:
The bill has an immediate effective date.

WALTER J. HICKEL
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

Hickel Administration Position on CS HB 143 (Finance)

General Grant Land Selections for Municipalities.

The Departments of Community and Regional Affairs, Natural Resources, and Fish and Game, support this bill, but believe some clarifying adjustments related to appeal procedures, the shape of a selection and the delay of certification may be needed. We firmly support municipal land transfers as a basis for local government self-determination. The delay in new entitlement certifications until 1994 will allow the state to freely complete its final land selection project before additional lands are transferred to local governments.

FISCAL NOTE

No. 3

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Version: Hb 143
(H) Publish Date: 3/15/91

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. | | 4 | 8 | 6 |

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)

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

POSITIONS:

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] Date: 3/14/91

Agency: Department of Fish and Game

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

Rev 10/90

COMMITTEE COPY

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)

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

POSITIONS:

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

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: _____

Agency: Community & Regional Affairs Date: 2/28/91

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

Rev 10/90

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101

MEMORANDUM March 19, 1991

SUBJECT: General Grant Land Selections (HB 143)

TO: Representative Eileen MacLean

FROM: Tamara Brandt Cook
Director TBC

You have supplied me with a document labeled "Hickel Administration Position on HB 143" which contains the suggestion that removal of the 20 acre per person cap under Section 1 of the bill be limited to boroughs incorporated after July 1, 1987. You have informed me that, if this were done, the Northwest Arctic Borough would not qualify for any additional general grant land. You have asked whether this suggestion comports with legislative intent expressed in Section 11, Ch. 34, SLA 1987. That section provides

> 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 38.34.065, 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.

Clearly, the language of that section reflects an intent on the part of the legislature that additional general grant land be made available to the Northwest Arctic Borough. Since the change advocated in the position paper to HB 143 will have the effect of limiting the provision that makes additional land entitlements available so that it will not apply to the Northwest Arctic Borough, it appears that the legislative intent that the borough receive additional land will no longer be accomplished through HB 143 if this change is adopted. That intent could, of course, be accomplished through some other legislation in a different way.

You have also asked whether the change advocated in the position paper comports with the "Municipal Grant Land Entitlement Policy" dated March 12, 1990, a copy of which you supplied me with. The policy actually consists of two parts that are relevant to this issue. First, it is the stated to be policy that the basic municipal land entitlement shall not be less than 10% of the vacant, unappropriated, unreserved state land within the municipality's boundaries--an amount greater than the amount certified to tl e Northwest Arctic Borough under existing AS 29.65.030. However, the second part of the policy appears to modify the first by stating that a municipality be granted land in addition to that certified under AS 29.65.030(b) (presumably a reference to existing law) only upon demonstrated need for land for specific purposes. The policy contains no recommendation that the 20 acre per capita cap be removed for either new or existing municipalities. The relationship between the first part of the policy (that municipalities receive 10% of the land) and the second part (that they receive additional land only upon demonstrated need) is unclear. However, it may be that, under this policy, the governor will recommend additional land for the Northwest Arctic Borough (and, presumably others) only if the borough demonstrates the required need.

Because the position paper recommends retaining the provision removing the 20 acre per resident cap, it comports with the first prong of the "Municipal Grant Land Entitlement Policy". However, to the extent that the position paper advocates limiting application of a provision that would make additional land available without a demonstration of need, it comports with the second prong of the policy. This demonstrates the ambiguity inherent in the policy itself. Note, additionally, that nothing in the position paper will help implement the second prong of the policy - that of making some additional land available if need is demonstrated. It suggests no mechanism for that.

TBC:lmb
91-087.lmb

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

REPRESENTATIVE GAIL PHILLIPS

P.O. Box V
State Capitol
Juneau, Alaska 99811

Steve -

Attached is some of the info I've put together on HB 143!

I've included the amendment I offered on the floor. I've requested a bill that will address virtually the same points, and I plan to work during the interim to put together all the detailed info and how it will impact all municipalities.

Please give me a call if you have any questions. I'd appreciate the bill not being scheduled until we can get this equality issue settled.

Thanks much -

Gail

Failed House
20/20

7-LS0174\G.3
Cook
05/02/91

Revised

AMENDMENT #1

OFFERED IN THE HOUSE BY REPRESENTATIVE G.PHILLIPS

TO: CSHB 143(FINANCE)

Page 1, lines 4 - 12:

Delete all material and insert:

(a) The general grant land entitlement of a municipality [INCORPORATED AFTER JULY 1, 1978, THAT DOES NOT QUALIFY FOR AN ENTITLEMENT UNDER AS 29.65.010 OR 29.65.020] is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within the boundaries of the municipality between the date of its incorporation and two years after that date **or** [. HOWEVER, A MUNICIPALITY MAY NOT RECEIVE AN ENTITLEMENT UNDER THIS SUBSECTION THAT EXCEEDS] 20 acres per person residing in the municipality on the date of its incorporation**, whichever is more**. For purposes of this section the population of a municipality shall be determined by the department in accordance with AS 29.60.020 and 29.60.150."

Page 3, after line 23:

Insert a new bill section to read:

"* Sec. 9. AS 29.65.010, 29.65.020, and 29.65.080 are repealed."

Renumber the following bill sections accordingly.

Page 3, line 27:

Delete "January 1, 1996"

Insert "January 1, 1998"

Delete "incorporated after June 1, 1986,"

Page 3, line 28:

Delete "section"

Insert "Act"

Page 3, line 29, after "Act."

Insert "If as a result of the recertification the entitlement of a municipality is increased, the municipality may select the amount of land that, when added to land selected under former law or for which a land deficiency payment was received under former AS 29.65.080, equals the increased entitlement. If as a result of the recertification the entitlement is decreased, the entitlement of the municipality as determined under former law remains unchanged."

Page 3, after line 29:

Insert a new bill section to read:

"* **Sec. 11.** By February 1, 1992, the revisor of statutes shall submit a bill to the Rules Committees of each house making technical corrections to adjust references to AS 29.65.010, 29.65.020, and 29.65.080, repealed in sec. 9 of this Act."

Page 3, line 30:

Delete all material.

Renumber the following bill section accordingly.

HB 143

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE GAIL PHILLIPS

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Representative Cliff Davidson, Chairman
House Resources Committee

FROM: Representative Gail Phillips

DATE: April 2, 1991

RE: HB 143

We spent a considerable amount of time on this bill in Community and Regional Affairs Committee. I feel there are several serious problems with this piece of legislation that I would like to bring to your attention.

1) Section 1 (a): I feel this amended version causes inequality in the process of land entitlement. Before 1978, there was an established procedure for making land entitlement; the procedures were amended to prohibit greater than a 20 acre per capital allotment after that date. Now, with the establishment of new municipalities, this bill would change the allotment back to the 10% factor rather than 20 acres per capita.

We cannot keep changing the laws whenever it would appear a change may be more or less beneficial. I would like to see Section 1 amended thusly: (a) move to amend to allow organized municipal land selections to be retroactive to Statehood, allowing any past-organized municipality or any future-organized municipality to a general land grant entitlement of either 10% of vacant, unappropriated, unreserved land or 20 acres per capita, whichever is more beneficial to that municipality.

2) Section 3 (c) (also Section 7): These sections appear to be trying to dilute and/or subvert the responsibility of DNR for land decisions by adding the provision that the Department of Community and Regional Affairs must review the actions taken by DNR. To date DNR is the lead agency on land policy; this bill would appear to alter the basic responsibility of state land management.

3) Section 9 (also Section 10 (c)): Wildlife habitat areas would be added to the allowed selectable lands under this amended version. I can see terrific problems that could arise by allowing a municipality control over the wildlife in that area; would this

circumvent the control Fish and Game has for managing this function? Would the municipalities be able to establish their own rules and prohibit others from having access to wildlife, whether for subsistence purposes or other? I think this could create far more problems than benefits.

4) Section 6 (d): This section prohibits regulations that place restrictions on the shape of a parcel that may be selected by a municipality. This causes concern because it allows a community to select only prime river valleys, etc., and not have to include unproductive land that wouldn't be of benefit to anyone else. This amendment could also cause access problems. I think this section needs careful consideration.

When we first began hearing this bill, we were given conflicting opinions by the Administration. I sent a note, asking that they clarify their position, and the attached is the Administration's response. I have also included all the Department's answers to my questions, for your discussions of this bill.

Thank you for your consideration of my concerns.

survey. The cost of the survey shall be borne by the municipality. If land selected by a municipality has been surveyed at the time of its selection, the boundaries shall conform to the public land subdivisions established by the approved survey.

(b) The director may approve municipal selections of land that have been tentatively approved or patented to the state by the federal government but may not issue patent to a municipality until the land has first been patented to the state. After approval of a selection by the director, but before patent to a municipality, the municipality may execute conditional leases and make conditional sales only with the consent of the director. Conditional sales and conditional leases made before July 1, 1978, do not require the consent of the director.

(c) Nothing in this chapter affects a valid existing claim, location, or entry under the laws of the state or the United States whether for homestead, mineral, right-of-way, or other purposes. Nothing in this chapter affects the rights of an owner, claimant, locater, or entryman to the full use and enjoyment of the land so occupied. (§ 17 ch 74 SLA 1985)

Sec. 29.65.080. Payment for land deficiency. (a) The Alaska municipal land account is established in the general fund for the following purposes:

(1) providing payment to the boroughs and unified municipalities designated in AS 29.65.010 for a deficiency of land physically suitable for residential, commercial, or industrial purposes; or

(2) providing payment to the boroughs and unified municipalities designated in AS 29.65.010 for certain general grant lands selected by the state and conveyed to a Native corporation under the provisions of the Alaska Native Claims Settlement Act.

(b) A municipality shall receive payment for its land deficiency from the municipal land account. A municipality is eligible to receive payment for land deficiency if, after July 1, 1980, the amount of land selected by a municipality that is physically suitable for residential, commercial, or industrial purposes amounts to less than one-third acre per capita. Any entitlement under AS 29.65.010 that is less than one-third acre per capita will, for the purposes of this subsection, be considered a land deficiency. An unselected remaining entitlement will, for the purpose of deficiency payment under this subsection, be considered as land physically suitable for residential, commercial, or industrial purposes. A municipality eligible under this subsection is entitled to receive a payment for land deficiency equal to $1,000 per acre for a number of acres equal to the difference between one-third of the population of the municipality less the number of acres physically suitable for residential, commercial or industrial purposes that has been selected by the municipality. For the purpose of this subsection,

ANC got $14,000,000

the population of the municipality shall be the population determined in accordance with AS 29.65.060(f). No payment may be made to a municipality under this subsection in excess of $9,000,000.

(c) If a municipality selected vacant, unappropriated, unreserved land on or before December 18, 1971, to which the state had received tentative approval or patent, and that land was also selected by a Native corporation organized under the Alaska Native Claims Settlement Act (P.L. 92-203), and title to that land is ultimately vested in that Native corporation, the municipality may, at its option, request payment for land deficiency from the municipal land account. The acceptance of payment under this subsection by a municipality constitutes a relinquishment of any other right, title, or claim to the land by that municipality. The total payment to a municipality under this subsection may not exceed $1,000 per acre to a maximum of 8,000 acres.

(d) The governor shall annually submit to the legislature a request for an appropriation to the municipal land account for the municipalities that have elected to receive payments under (b) and (c) of this section. The request for appropriation shall distinguish between amounts necessary to make payments for land deficiency under (b) of this section and those required to make payments for land deficiency under (c) of this section.

(e) For purposes of fulfilling entitlements under this section, the legislature is authorized to appropriate

(1) not more than $4,000,000 per fiscal year, and not more than $12,000,000 in total, for the purpose of paying entitlements under (b) of this section;

(2) not more than $1,000,000 per fiscal year, and not more than $8,000,000 in total, for the purpose of paying entitlements under (c) of this section.

(f) If an annual appropriation is not sufficient to meet the amount due to all municipalities that have elected to accept payment for land deficiency under (b) or (c) of this section, the governor shall apportion the appropriation among the municipalities in proportion to the payment calculated for each municipality for that year. When a distribution of payments is made under (c) of this section, the remaining entitlement of a municipality to which payment is made shall be reduced in an amount equal to the number of acres for which payment was received. An appropriation made under this section is in addition to other grants and entitlements authorized to eligible municipalities.

(g) Payments authorized by this section may not be made to a municipality eligible for an entitlement under AS 29.65.020 or 29.65.030.

(h) Payments made under this section shall be used by a municipality that levies property taxes to reduce the levy in proportion to the amount of state payments received by the municipality for a given fiscal year. The governing body of each municipality shall furnish a

Sec. 29.60.440. Limitation. AS 29.60.400 — 29.60.440 do not require that a recipient of a grant for a feasibility study must proceed with construction of the project, regardless of whether the project is determined to be feasible. (§ 16 ch 74 SLA 1985)

Chapter 63. Special Assessments and Service Areas.

[Repealed, § 88 ch 74 SLA 1985.]

Chapter 65. General Grant Land.

Cross references. — For statement of purpose of 1978 Act that enacted the provisions from which this chapter derived, see § 1, ch. 180, SLA 1978 in the Temporary and Special Acts.

Sec. 29.65.010. Determination of entitlement of boroughs and unified municipalities. (a) The general grant land entitlement of each of the municipalities in this section is the amount set out opposite each:

(1) Municipality of Anchorage — 44,893 acres;
(2) City and Borough of Juneau — 19,584 acres;
(3) City and Borough of Sitka — 10,500 acres;
(4) Bristol Bay Borough — 2,898 acres;
(5) Fairbanks North Star Borough — 112,000 acres;
(6) Haines Borough — 2,800 acres;
(7) Kenai Peninsula Borough — 155,780 acres;
(8) Ketchikan Gateway Borough — 11,593 acres;
(9) Kodiak Island Borough — 56,500 acres;
(10) Matanuska-Susitna Borough — 355,210 acres;
(11) North Slope Borough — 89,850 acres.

These are the Boroughs I've identified that would be affected.

(b) This section is a continuation of the provisions of former AS 29.18.201 and does not grant additional entitlements. (§ 17 ch 74 SLA 1985)

DCRA Response to DNR

MEMORANDUM

State of Alaska
Community and Regional Affairs

TO: Gary Gustafson, Director
Division of Land and Water
Management
Department of Natural Resources

DATE: March 23, 1990

FILE NO: 0407C/MR/ds

TELEPHONE NO: 563-1073

THRU:

SUBJECT: Comments on draft policy for municipal general land grants

FROM: Marty Rutherford, Director
Municipal and Regional
Assistance Division
Dept. of Community and Regional Affairs

Thank you for the opportunity to comment on the draft governor's policy paper related to the municipal general grant land program. We appreciated meeting with you and your staff and have given your draft policy paper and background report considerable thought and study. We found it difficult to comment on these products separately and eventually decided that one paper which develops the basis for the policy and then makes recommendations would be more comprehensive. With this thought in mind, we developed the enclosed stand-alone document which reiterates some background information, describes the current setting, and then offers some recommendations.

We welcome the opportunity to continue the dialogue on the governor's policy paper and would recommend another meeting at your convenience.

Recommendations for Governor's Policy
on Municipal General Grant Land Entitlements
Department of Community and Regional Affairs
March 1990

INTRODUCTION

BACKGROUND

Constitution defines a framework for the relationship between state and local governments

Legislative history
- The beginning (1962 - 1963)
- Deadline removed and cities granted entitlements (1970 - 1972)
- Major amendments to the program (1978 - 1979)
- Reselections and university lands (1981 - 1985)
- New entitlements and more changes (1987)

CURRENT SETTING

Motivation for borough formation
Land selection and approval
- Applying the vuu concept
- Evaluating selections for state interest
- Timing of municipal land selections and approvals

POLICY RECOMMENDATIONS

BACKGROUND[1]

Constitution defines a framework for the relationship between state and local governments

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 and local government are unselfishly defined.

> SECTION 1. The purpose of this article is to provide for maximum 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. 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 the ability to select and receive 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 revenues through land sale or lease, 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 land under the tideland grant

program or land for public and charitable uses. Public and charitable use lands and tideland grants are outside the scope of this policy paper and will only be mentioned briefly here.

Public and charitable use statutes allow selection of previously unavailable state land (AS 38.05.810). Public and charitable use land must be used for a public purpose that is available to the public at large. If the municipality has an outstanding municipal general grant land entitlement, the acreage of this land is subtracted from the balance.

Tideland grants are available to municipalities that were incorporated on or before the date of statehood. Under rigid guidelines provided by the Alaska Land Act and codified in AS 38.05.320, cities could acquire tidelines adjacent to their boundaries.

Legislative History

The beginning (1962 - 1963)

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."

what munip.?

This act, codified AS 38.05.347, contained scant procedural guidance but resulted in the conveyance of at least 4400 acres of state land to about [redacted] municipalities. This law was repealed in June 21, 1976.

In 1960, the state legislature enacted the Mandatory Borough Act "to provide maximum local self-government" (ch. 52, SLA 1963 and codified AS 07.10.150). Mandatory boroughs were created which encompassed the most populated areas of the state. Although formation of regional governments was mandatory, options were allowed on the final location of municipal boundaries. This act was unrelated to the Alaska Land Act, but it created opportunities for municipalities to acquire state land for local use and provided incentives in the form of cash and local grants.

This act also provided some guidance for the selection, survey and conveyance of entitlement lands and introduced a formula for the amount of state land grant entitlement:

> (that) "an organized borough may select 10 percent 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."

It appeared that the concept of vacant, unappropriated, unreserved land was adopted from similiar guidelines used by federal administrators who evaluated state land selections of federal land. A definition of vacant, unappropriated, unreserved land - commonly referred to as "vuu land" - was not provided in the legislation nor in policies. As a result, municipalities and the state disagreed about the application of this concept.

Deadline removed and cities granted entitlements (1970 - 1972)

The five-year selection deadline was removed and general grant land entitlements were extended to first and second class cities (Ch. 213, SLA 1970 as later provided in AS 07.05.040). In 1972, AS 07.10 was renumbered to AS 29.18.

Major amendments to the program (1978 - 1979)

Fifteen years of disputes after the 1963 legislation culminated in 1978 with the first major amendment to AS 29.18 (Chapter 180, SLA 1978). Between 1963 and 1978, selections and conveyances of State land to municipalities proceeded slowly and erratically, due in large part to inadequate implementing regulations which left critical questions unanswered about specific land entitlements and about the classification process which defined which lands could be legally transferred from state ownership. In addition to the disagreement over the application of the vuu concept, some of the more crucial disputes between the state and municipalities illustrate the range of problems with the program:

- Land selections by municipalities had no time frames for adjudication and conveyance. Municipalities felt the Department of Natural Resources often delayed action on selections and conveyances.

- 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 Prudhoe Bay which the state rejected in the state's interest.

- Agricultural lands could be selected by municipalities for their agricultural interests only, however, these lands were often more valuable for subdivisions and other uses and municipalities wanted more than just the agricultural interest.

By the mid-70s, several municipalities became frustrated with the lack of progress and initiated court action to obtain immediate conveyance of some or all of their entitlements. This action prompted an intensive two-year period of discussion and negotiation between the Department of Natural Resources and the affected municipalities and led to the eventual passage of the Municipal Entitlement Act of 1978. Features of the bill included:

- Unified home rule municipalities and boroughs were granted specific acreage entitlements and a method was established for computing entitlements for municipalities incorporated after July 1, 1978.

- Entitlements were limited to general grant land that the state acquired under sections 6(a) and 6(b) of the Statehood Act. Municipalities with an entitlement of less than one and one-half acre per capita could select vacant school, university, or mental health trust land.

- Entitlements became vested property rights and could be fulfilled at any time but no later than two years after the state's right to select federal land expired under the provisions of section 6(a) and 6(c) of the Statehood Act.

- Municipal selections are required to be approved or disapproved within nine months of selection and a patent must be issued within three months after the approval of a survey plat.

- Deficiency payments will be granted in lieu of land when the land within the municipality is unsuitable for residential, commercial, or industrial purposes.

- Entitlements became fixed as of July 1, 1978 and were based on a legislatively specified entitlement for unified home rule municipalities and organized boroughs, and based on separate vuu formulas for cities and newly-formed municipalities.

- Authority for land exchanges between the state and municipality was granted when exchanges are in the public interest.

- Municipalities that were in litigation with the state over general grant land entitlements must elect to benefit under the new law, or the fruits of the litigation, but not both.

- A detailed definitions section was provided.

In 1979, facing increasing pressure for state land disposals, the legislature passed Chapter 85, SLA 1979 (which amended AS 29.18). The new law drastically accelerated the selection, approval, and transfer of state lands to municipalities in order to remove the impediment of municipal selection rights from the state's land disposal program. These amendments gave municipalities 15 months, until October 1, 1980, to complete land selections. The state/municipal joint consideration process and the criteria for state and municipal interests in state lands was eliminated. The amendments severely reduced both the State's ability to disapprove a municipal selection and a municipality's ability to relinquish a selection once made. The 1979 amendments also eliminated the requirement that land classifications greater than 3200 acres require consent from the affected municipality. As a result of these amendments, however, land selections by municipalities were essentially completed by the fall of 1980.

Reselections and university lands (1981 - 1985)

In 1981, amendments gave municipalities 90 days to re-select land upon rejection of a previous selection. A re-selection process was needed to ensure that entitlements were fulfilled. In 1985, university trust land was removed from lands available to a municipality with a per capita entitlement of less than one and one-half acres. This change was a result of successful litigation by the University Board of Regents against the state over management of its land trust corpus. AS 29.18.201 - .205 was repealed and renumbered AS 29.65.010 - .140.

New entitlements and more changes (1987)

The most recent amendments to the entitlement law (Ch. 34, SLA 1987) had these features:

- Grant entitlements are expanded to capture all state vuu land within the municipal boundaries between September 16, 1970 and January 1, 1988.

- Newly incorporated municipalities are entitled to the maximum amount of vuu land within their boundaries between incorporation and two years thereafter. An upper limit of 20 acres per capita is established based on the population of the municipality on the date of incorporation, although

the law requires the governor to submit recommendations for additional grant land entitlements for newly-incorporated municipalities consistent with the governor's policy.

- The selection deadline of boroughs and unified home rule municipalities listed in AS 29.65.010 is extended to October 1, 1990.

- All selections of school or mental health trust land occurring after October 5, 1985 are invalid (date of a litigation decision).

- A municipality is prohibited from trading entitlement land for federal subsurface rights or any interest in the Arctic National Wildlife Refuge.

- The vuu definition is expanded to include material, public recreation, and resource management lands that were classified on or after September 1, 1963.

- An 89,850-acre entitlement to the North Slope Borough is restored.

- An entitlement acreage is specified for the Northwest Arctic Borough as a partial entitlement. Additional entitlement for the Northwest Arctic Borough will depend upon the governor's recommendation to the legislature, after completion of the Northwest Area Plan.

CURRENT SETTING

Motivation for borough formation

The Department of Natural Resources has stated that an acreage cap is necessary to dissuade formation of boroughs "for the sole purpose of obtaining large general land entitlements from the state"[4]. This comment reflects a misunderstanding of the basis under which boroughs have been formed in the past and the reasons behind the current high level of interest in borough formation.

The fact is, most people -- particularly Alaskans -- are extremely resistant to additional levels of government if such can be avoided. Municipal land entitlements have never been a driving force in borough formation. For example, in 1963 Anchorage voters rejected a proposal to form the Captain Cook Borough by a margin of more than 3 to 1, despite the fact that there would have been a significant entitlement to state lands.

A group calling itself the "Committee for Common Sense Government" led the opposition to formation of the Captain Cook Borough (encompassing Anchorage and the Matanuska-Susitna Valleys communities) because the area already had "too much government, too much bureaucracy and too many taxes".

The Anchorage Borough, as well as most other boroughs in the state were formed only because of a legislative mandate. In fact, 96 out of every 100 Alaska borough residents live in boroughs which were formed under the Mandatory Borough Act of 1963 (or as a consequence of the withdrawal of education funding which led to the incorporation of the Haines Borough).

While, the land entitlement is undeniably an attractive feature of borough formation, it has <u>never</u> been characterized by petitioners for incorporation as "the sole purpose" or even a major consideration in any proposal to incorporate a borough. Land entitlements were first provided under the Mandatory Borough Act of 1963 merely in the hope that they would <u>reduce opposition</u> to mandatory incorporation.

Motives which are driving the current interest in borough formation include the following:

- The need to offset recent and anticipated declines in state revenues which have led to reductions in financial aid and state services to communities (e.g. reductions in manpower). These revenue and service losses may be offset by local taxes.[4] Cities and boroughs are the only political subdivisions which have authority to tax. Boroughs enjoy a major advantage in their taxing capabilities due to the extensive areas under their jurisdiction.

- The fear that reapportionment of the state legislature following the 1990 census (which will affect the 1992 elections) will shift significant legislative influence away from the Unorganized Borough. At the time of the last statewide reapportionment, 19 out of every 100 Alaskans lived in the Unorganized Borough. Today, that number is only 14 of every 100 Alaskans, a 26 percent drop. A shift in legislative influence is expected to bring increased pressure to modify current formulas and mechanisms for regional service delivery in the Unorganized Borough.

- The fear that the legislature will adopt a new mandatory borough bill. Indeed, a bill to mandate borough formation throughout the state was introduced in the legislature in 1987 and a version of that bill has been before every legislature since.

- The threat that existing boroughs will seek to annex regions of the Unorganized Borough.

- The need to make service delivery more efficient. Current service delivery in the Unorganized Borough is often fragmented and, as a result, relatively expensive. For example, one small school district spent nearly $6,500 per pupil in administrative costs in FY89 ($2,775 for "school administration" and $3,714 for "district administration"). Borough formation would consolidate many of the small school districts, thereby creating considerable savings. Similar benefits can be gained from consolidating other types of services.

In addition to describing the reasons for imposing a cap on entitlements, DNR's draft report also describes the reason for the selection of a 20-acre cap (p. 12):

> "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."

It is inferred, then, that the 20-acre cap is the most generous entitlement formula because it represents the highest per capita entitlement given to any municipality. Upon closer scrutiny, two comments can be made about the premise of this formula:

- If the Matanuska-Susitna Borough was subject to a 20-acre cap of their entitlement based on the population on the date of incorporation, as is proposed for

newly-created municipalities, their entitlement would have been no more than 216,680 acres rather than the 355,210-acre entitlement that 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 describes the need to limit entitlements to municipalities by using a population cap. Indeed, it is fair to say, as DNR concluded in their draft report, that the legislature "established acreage entitlements on a complicated scheme that considered population, areal extent, and availability of state land within the municipalities" (p. 6).

The discussions between the state and municipalities before the passage of the 1978 legislation represented a lengthy period of discussion, evaluation of available information, and negotiation. The decisions made during this process attempted to balance municipal interests with state powers, bearing in mind the unique circumstances that existed for various regions of the state.

Population seemed to have played a more important role when there was <u>insufficient</u> state land available for selection, not when there was an abundance of state land. Per-capita evaluations were used -- either because acreage data was non-existent or inadequate to make helpful analogies -- or to allow the application of certain statutory provisions to particular municipalities. For example, a per-capita formula allowed certain municipalities the option of obtaining a monetary payment from the state if there was insufficient state land within the municipal boundaries, and in another instance, allowed the selection of land which was not selectable in other regions of the state (mental health, university lands).

Land selection and approval

Applying the vuu concept

Once the 1978 law paved the way for municipal entitlements, the 1979 law accelerated the approval of land selections by removing planning requirements that would slow down the process and removing a mandate that selections had to be evaluated for state interests. Municipalities in 1978 had a good measure of influence on the classifications for their region and a provision in the 1978 law required their consent before classifications were made. At least one municipality -- Kodiak Island Borough -- faced the critical dilemma of having their entitlements negatively affected by classification orders which they had originally advocated and requested. They were able to get their entitlement adjusted upward when they

successfully demonstrated this "Catch-22". Between 1978 and presently, Department of Natural Resources has been prolific in completing area plans which have recommended over 66 million acres of classifications for state land. The far-reaching impact of applying the 1978 VUU concept based on these plan recommendations, however, did not come to the forefront of the area plan/classification process until the newly-formed Northwest Arctic Borough raised the concern during the ongoing development of the Northwest Area Plan.

The final recommendation of the plan was to delay classification of 610,000 acres of land in the Northwest area in the interest of facilitating municipal conveyances not only to the Northwest Arctic Borough, but to the North Slope Borough for possible selections in the Point Hope and Lisburne area. According to the plan document:

> "Classification. The Northwest Area Plan has proposed classifications for the state lands within the planning area boundaries (see Land Use Classifications in this chapter). Classifications have been based on the best information available during the planning process at the scale appropriate to the planning effort, generally 1:250,000. These classifications are broad and have not taken into account future transfer of land to municipalities. Much land is classified in categories not available for transfer, such as Wildlife Habitat Land and Mineral Land. However, settlement of municipal entitlements is a high priority of the department and current classifications will not preclude considering of parcels of land for reclassification and transfer to a municipality.
>
> "When a municipality incorporates under state law, it may select state land within its boundaries that, except for classification, otherwise meets the definition of vacant, unappropriated, unreserved land under AS 29.65. When such lands are selected, DNR and the Department of Fish and Game will do a more detailed, site-specific analysis of the resource values. This analysis may result in the changing of a classification to one that is available for transfer. Changes in designations and classifications will require plan amendment and reclassification before the selection is approved."
>
> "Existing Boroughs. The Northwest Arctic Borough was established in 1986, one year after the beginning of the Northwest Area Plan. The borough did not want the Northwest Area Plan to restrict its municipal entitlements. The borough is currently identifying

> state lands of interest for municipal selection. The borough will review its interest areas with borough residents and submit final selections to DNR by January 1990. Additionally, the 1987 amendments to the municipal entitlement act allow the North Slope Borough to select 89,000 acres from state lands within its boundary. To facilitate the transfer of lands to the boroughs, DNR will defer classification of preliminary areas of interest for the Northwest Arctic Borough selection (approximately 450,000 acres), and for the North Slope Borough (approximately 160,000 acres), until the borough selections are formally submitted."

The plan's recommendations represented the most workable compromise between municipal interests and state management powers and authorities within the area plan process. The final decision on state interests, however, was not within the scope of the area plan, given the broad level of resource analysis used in a rural land plan and the large land base which would have to be evaluated. The adjudication of municipal selections for state interests will be done at the time municipal selections are submitted.

Evaluating selections for state interest

The state and municipalities debated the evaluation of municipal selections for state interests before passage of the 1978 legislation. It was eventually conceded that a criteria for evaluating municipal land selections should be established. Assistant Commissioner Mike Smith, Department of Natural Resources, described the importance of this criteria in an April 4, 1978 letter to Chairman Kay Poland with the Senate Resources Committee:

> "As I stressed in my testimony, and was echoed by the large majority of municipalities which testified, the reinsertion of these two subsections is most important to permit the municipal land settlement to work properly. That specific language was agreed to by all parties because it was felt that the criteria adequately protected both state and municipal interests in deciding which lands should be made available for municipal selection and which land should remain in state ownership. The criteria are based upon the general concept found in similar legislation, for example Alaska's Coastal Zone Management Act, which defines matters of local concern versus matters of greater than local concern. The adoption of these criteria removes the tremendous discretion which now exists

> within the Department of Natural Resources to decide which municipal selections should be approved and which should not."

In 1979, the legislature removed this criteria so that municipal land selections could be accelerated and the land disposal program could be aggressively pursued. Without a criteria to evaluate municipal land selections for state interests, newly-formed municipalities will be subject to the Department of Natural Resources "tremendous discretion" to define state interest and to decide "which lands should be available for muncipal ownership".

Timing of municipal land selections and approvals

Newly-created boroughs will have to carry out the responsibility of selecting land and obtaining approval of their land selections at the same time they are putting governing and administrative institutions in place. Unlike the past boroughs which earnestly underwent land selections and approvals nearly 15 years after incorporation, the newly-created boroughs will be required to deal with this responsibility soon after incorporation. For example, the Northwest Arctic Borough, which incorporated in June 1986, received a certification of their entitlement in 1988, and was subsequently required to submit selections by January 1990.

The tremendous responsibility which faces a newly-formed municipality is reflected in this partial list of initial tasks:

- Set up service areas and delivery systems.
- Assume educational responsibilities by coordinating with existing Rural Education Attendance Areas, negotiating debt and asset take-overs, and possibly negotiating new teacher contracts.
- Develop office structures, codes, budgets, capital construction plans, and payroll and finance systems.
- Train new staff, assembly, and commission members on roles and duties.
- Respond to existing issues and problems within their region which require establishing their relationship and responsibilities with federal and state officials and their activities.
- Set up a tax process and work with state officials on quantifying the full value determination for their region.

POLICY RECOMMENDATIONS

At this juncture of the municipal land entitlement program and the state's land planning/classification program, it is recommended that the legislature clarify the statute with regard to how the municipal land entitlement program should be implemented for newly created municipalities.

In 1978, after 15 years of disputes, a piece of legislation was passed which represented a compromise of interests. This legislation included a definition of selectable land based on the state's classification sytem, a provision which required classifications be approved by the affected municipalities, and a section which required joint planning by the state and municipality to ultimately decide what lands merited state retention. In 1979, the use of the classification system to define selectable land remained intact, but the other provisions were removed and a deadline for selections was added.

Years later, the tangible, practical effect of these legislative changes was evident during the development of DNR's Northwest Area Plan. This rural land plan required a huge investment of time and energy by the Northwest Arctic Borough and provided an invaluable lesson for newly-formed municipalities. It is now evident that the current land planning process for rural areas is not well suited to comprehensively evaluate state lands for state/municipal interests and plan recommendations can severely affect the entitlement amount for a newly-formed borough. Between the 1979 amendments in the Muncipal Entitlement Act and 1988, state land plans recommended classifications for over 66 million acres[3] with little consideration given to the impact of these classifications on municipal interest -- at least until the unique occurrence of the formation of a newly incorporated borough at the same time that an area plan was underway in the same region.

Applying the use of classifications as a method of deciding acreage entitlements and defining selectable land will severely and negatively impact newly-formed municipalities. Municipalities in the late 70s actively participated in the final determinations of their entitlement acreages and negotiated provisions which most affected the unique circumstances of their region. The newly-formed municipalities should be afforded the same opportunity to influence their entitlement amounts and how this program is presently implemented.

DNR's draft report predetermines that it may not be in the best interest of the state that land in rural Alaska be managed and developed by local governments because the rural character of state land "is often not well suited for development or other municipal purposes"[4]. It is clearly necessary for the legislature to clarify the intent of this program for

newly-formed municipalities or DNR will use its broad discretion to impose regulations and make determinations which will negatively impact these municipalities.

In reviewing the current statute and deciding what provisions merit adjustment, it is necessary to evaluate the circumstances that affect a municipality's entitlement, the definition of vud or selectable land, and the process to approve municipal selections.

Consistent with this position paper, the following recommendations are made with regard to municipal general grant land entitlements and the implementation of this program in the current setting:

Determination of entitlement acreages

Current statute which use the state's classification system to determine entitlement acreages was agreed to by municipalities in 1978 knowing they would be asked to consent to the classifications and at a time when municipal selections were actively being considered for their region. The requirement for consent was dropped in 1979, but the large-scale effect of these classifications had lessened as their selections were completed by 1980.

Newly-formed municipalities, on the other hand, are subject to classifications which are based on a broad resource analysis and were made with little regard to the impact of these classifications on municipal entitlement acreages or their ability to select land.

It is consistent with the best interests of the state, the direction of the constitution, and the original legislative intent to afford municipalities "maximum local self-government" to provide an entitlement which more equitably reflects the land base a municipality would receive had they been given the opportunity to influence the use of classifications within their region.

Therefore, it should not be the policy of the state to begrudge municipalities a relatively large entitlement because of the abundance of state land within their municipal boundaries. Indeed, the Municipality of Anchorage submitted a May 5, 1978 letter to Senator Joseph Orsini, who chaired the Senate Community and Regional Affairs Committee, described the need to equitably settle selections despite the fact that their entitlement could be considered meager in comparison to other municipalities:

> "it should be noted that Anchorage has not and does not begrudge other boroughs their relative large

> entitlement under the proposed bill. Certainly no one would argue that all of the circumstances existing when the land selection program was started exist today. Consequently, it could be argued that it would be in the best interest of Anchorage to propose a simple repeal of the old program. The sale of state land could then be used to fund local government programs on some sort of equitable, per capita basis. The Municipality has not taken such a position and has instead agreed to work toward an equitable settlement of the old land selection program."

After a substantial review of the history and current setting of this program and the premise of the population cap, it is recommended that the population cap which was conditionally included in the 1987 legislation be dropped as a limitation on municipal entitlements and that entitlement acreages, where abundant state land is available, should be no less than 10 per cent of the state land base within the boundaries of a newly-formed borough.

Justifying land selections and evaluating state interests

In 1978, the Legislature made changes to the municipal land entitlement program when conflicting or overlapping responsibilities and interests of state and municipal government needed resolution. Consideration needs to be given to the current circumstances of this program for newly-formed municipalities.

It is well-recognized that rural governance will take a different form than urban governance and that the Constitution allows a liberal construction of powers for these local governments. The Department of Natural Resources bases their recommendations for municipal land entitlements and implementing regulations on the premise that rural land development should meet the same standards of compact development of urban land. The vuu definition would be used to require municipalities to negotiate and justify entitlements and land selections. DNR exercises tremendous discretion in deciding the rules by which these justifications are reviewed for municipal purposes and for evaluations of these selections for state interest.

The desire of newly-formed municipalities to control development within their municipal boundaries is no different than the desires of municipalities in the late 70s. An eloquent statement about balancing state and municipal

interests by the Municipality of Anchorage in 1978 could be written by any one of the newly-formed municipalities today[9]:

> "Among the purposes of the municipal land selection program were to provide a source of revenue for municipalities lacking an established tax base and to make available a 'resource and community development tool' which would give local governments a measure of control over development within their boundaries. [footnote reference here in original document].
>
> "Unfortunately, the passage of time coupled with the radically changing economic conditions in Alaska have created numerous problems in attempting to implement the muncipal land selection program. Because the 1963 legislation was silent concerning the proper relationship between statewide land management goals, and municipal land interests, disputes arose between the state and municipalities concerning which lands were appropriate for transfer to local governments."

DNR's justification requirements will impose a tremendous burden on newly-formed municipalities as they will be required to expend considerable time and expense to meet administrative requirements and obtain approvals. The process of evaluating municipal land selections should not require an arduous administrative process, particularly when state funding priorities are being preciously evaluated and newly-formed boroughs are bearing tremendous responsibilities within the first five to ten years of incorporation.

It should not be the policy of the state that newly-formed municipalities be required to justify their selections by standards which are impertinent to rural land development. On the other hand, provisions should be defined which allow the state to judiciously adjudicate the most obvious state interests in each region.

Selection/approval deadlines and funding requirements

Northwest Arctic Borough was able to intervene in the implementation of land classifications which would limit their municipal selections. Other newly-formed municipalities are subject to land plans which are already in place and have recommended or implemented classifications which impact their selections. At the very minimum, plan amendments and reclassifications will be required before these municipalities can gain approval of their municipal selections. It is important, then, that selection and approval deadlines consider the time and expense of amending area plans.

Municipal grant land
March 1990

It is recommended that sufficient funds be made available to the Department of Natural Resources and the Alaska Department of Fish and Game to ensure that these selections are reviewed and approved in an expeditious and timely manner. Furthermore, it may be necessary to augment organizational grants or provide separate funds to newly-formed governments which would assist municipalities in developing a local consensus on land selections, and allow the fullest participation in the plan amendment process.

ENDNOTES

1. To facilitate a speedy response to the Department of Natural Resources and in the interest of creating a stand-alone document, this report uses text from DNR's draft background report. Some of the information is used verbatim, some information has been reformated to make the information more accessible to the reader, and some information has been revised, based on staff research, to clarify the issue from a municipal perspective.

   Although an extensive effort was made to research these issues using legislative records, existing publications, and contact interviews, it was not possible in the time allowed to verify or provide an accurate and thorough documentation on the history of municipal land entitlement issues, particularly from the perspective of municipalities. Nevertheless, this response represents the best possible effort to incorporate information which more completely represents the development of this program and its responsiveness to municipal interests.

2. Pg. 12 from DNR's January 1990 draft report on "Municipal General Grant Land Entitlements".

3. Twelve area and management plans were done between 1979 and 1988. Two plans are within incorporated municipalities (Willow Sub-basin and Haines-Skagway). Portions of the Tanana Basin and Susitna Basin Plan are within incorporated municipalities. It is not know what exact acreage for these plans are within incorporated municipalities, or in the Unincorporated Borough.

4. Pg. 12 from DNR's January 1990 draft report on "Municipal General Grant Land Entitlements".

5. April 28, 1977 letter by Municipality of Anchorage to Community and Regional Affairs Committee, House of Representatives.

Recommendations for Governor's Policy on Municipal General Grant Land Entitlements

Department of Community and Regional Affairs

March 1990

INTRODUCTION

Section 11, Chapter 34, SLA, requires a governor's general grant land entitlement policy be adopted and submitted to the Legislature. This section specifically states:

> "Sec. 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 Arctic 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 development by the governor."

In late January, the Department of Natural Resources offered a draft policy paper to Department of Community and Regional Affairs for our review and comment before submitting it to the Governor's Office. The draft policy paper was accompanied by a draft background report. This position paper serves as a response to these draft documents and embodies DCRA's position with regard to municipal general grant land entitlements and any proposed policy related to the implementation of this program.

This position paper is divided into three parts -- background, current setting, and policy recommendations. The background section provides general information on the municipal land entitlement program. The section on current setting discusses issues which most affect the newly-formed municipalities. The final section discusses and recommends a policy for entitlement amounts and subsequent policies which relate to the current implementation of this program.

A SPECIAL REPORT

MUNICIPAL GENERAL GRANT LAND ENTITLEMENTS

A State-Municipal Partnership

DEPARTMENT OF NATURAL RESOURCES
Division of Land and Water Management

January 1990

Prepared by Dennis P. Daigger

CONTENTS

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.

Municipal General Grant Land Entitlements
January 1990

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.

(8) 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 ... 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 either 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

Patent or Quitclaimed land

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	5,807.1	1,328.5		1,256.4
North Slope Borough	Jul-72			89,950				
Northwest Arctic Borough	Jun-86							
	TOTALS	392.9	40.3	402,133.6	12,614.1	2,375.9	0.0	1,453.3

CONVEYANCE SUMMARY: CITIES

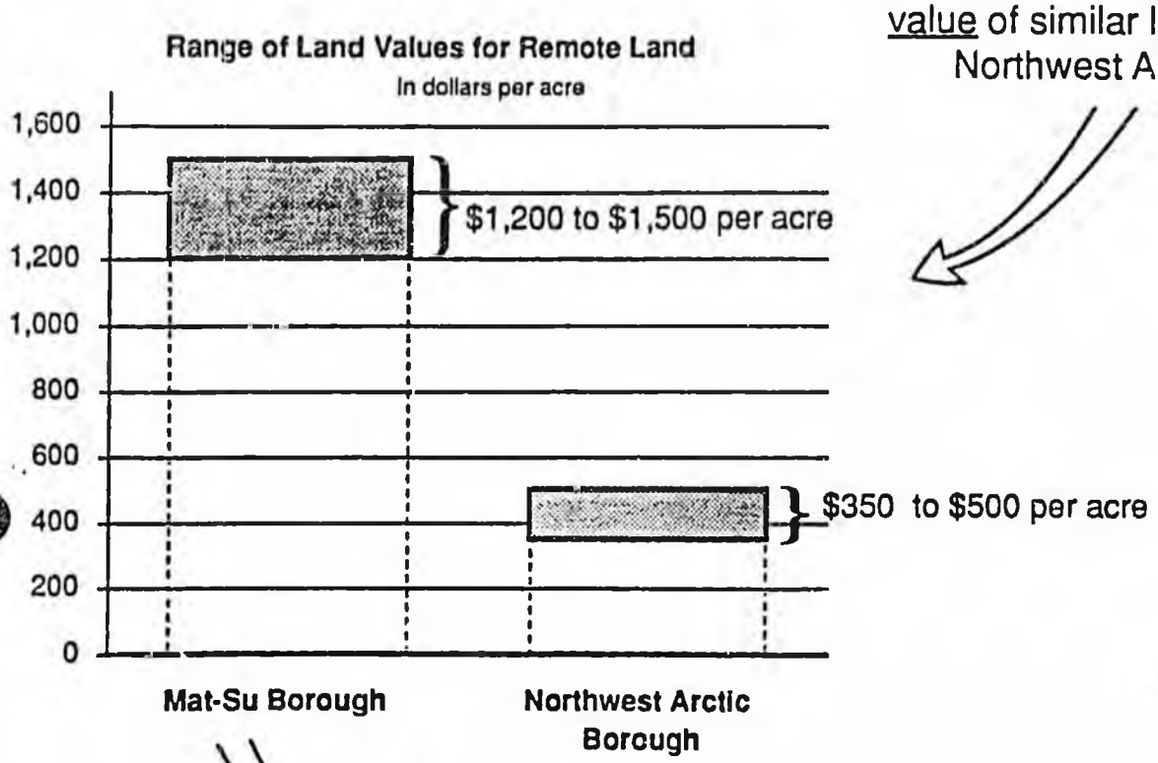
CONVEYANCES BY AUTHORITY

City or Borough	Incorp	17(c).347	AS 07	AS 29	17(d).810	.320	Legislative	Other
Aniak	May-72				24.8			
Barrow	Jan-69					870.0		
Bethel	Jan-57	82.1		5.0	317.0			42.4
Cordova	Jan-09			0.5		321.7		
Craig	Jan-22				18.2	73.0		
Delta Junction	Dec-60			340.3	40.0			
Dillingham	Jan-63				10.7			
Fairbanks	Jan-03			0.5	96.1			
Fort Yukon	Feb-59							0.3
Haines	Jan-10			20.0		109.1		
Homer	Jan-64					6,831.1		292.8
Hoonah	Jun-46	105.5				201.4		
Houston	Jan-66			418.8				
Hydaburg	Oct-27					175.0		
Kake	Nov-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	109.7		
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
Nanana	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		1,363.8		34.5
Wasilla	Jan-74				129.6			
Wrangell	Jan-03			18.5	288.7	148.8		
Yakutat	Jan-48			123.6	31.2	248.3		
	TOTALS	4,063.3	0.0	7,092.1	1,970.3	22,848.4	8.9	744.9

TABLE 3

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

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



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

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

Lake and Peninsula Borough
P. O. Box 495
King Salmon, Alaska 99613
(907) 246-3421
Fax: (907) 246-6602

May 3, 1991

The Honcrable Richard Eliason
Senate President
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: General Grant Land Selections/HB 143

Dear Senator Eliason:

Early in the session, Representative MacLean introduced HB 143 which added wildlife habitat to vacant, unappropriated, unreserved (VUU) lands. New municipalities are entitled to ten percent of VUU lands within their boundaries. Also, the twenty acre per capita restriction was removed in the original version of HB 143. However, in CS for HB 143, habitat lands were removed from VUU. Enclosed is a land status map of the Lake and Peninsula Borough. Please note that the amount of acreage to which we will be entitled (in very dark blue) under current law is so small it is hardly worth the time, money and effort to pursue selection and conveyance.

The removal of the 20 acre per capita cap will benefit new municipalities with small populations such as ours (1,844) if wildlife habitat is included in VUU lands. With the bill as it stands right now, Lake and Peninsula Borough will be entitled to receive approximately 15,000 acres. Some of those acres are undesirable, e.g., mountain tops and swamp lands. Consequently, we would select considerably less than the acres to which we are entitled. Removing the 20 acre cap and adding wildlife habitat lands to the VUU category would entitle this borough to approximately 115,000 acres, much more appropriate for a borough which covers some 25,000 square miles.

Added in the committee substitute for HB 143 was a provision to extend the time during which eligible land may be certified by DNR and selected by municipalities. This is helpful since the land grant program has not been funded in DNR's budget for several years so little or no agency technical assistance will be available to us. The extension of time to select may also allow for additional lands to be included which have not yet been conveyed by the federal government to the state.

The Hickel administration supports municipalities selecting some non-VUU lands if it can be demonstrated that such conveyances would be in the public interest. A process would be developed to address this and, as it would no doubt be complicated and cumbersome, would place an unrealistic and unreasonable burden on municipalities since those lands would not be certified by DNR as eligible--we would have to justify being given ineligible (non-VUU) lands. Further, the administration states the Governor will present a policy on municipal land selection to the first session of each Legislature. Such a policy invites inconsistency and might discourage unorganized areas from incorporating.

The Lake and Peninsula Borough would appreciate your support in adding wildlife habitat areas to VUU lands, extending the time in which municipalities may make land selections, and keeping the twenty acre per capita cap out of the formula.

If you should have questions or if there is additional information I can provide, please do not hesitate to contact me. Thank you very much for your time and consideration.

Sincerely,

Chow Taylor
Borough Manager

Enclosure as stated

CITY OF PALMER

231 W. EVERGREEN AVE.
PALMER, ALASKA 99645

Phone (907) 745-3271

A HOME RULE CITY

April 4, 1991

The Honorable Cliff Davidson
Representative
State of Alaska
Box V
Juneau, Alaska 99811

RE: HB 143

Dear Representative Davidson,

On April 2, 1991, the House Resources Committee held hearings on HB 143 regarding Land Entitlements which impacted the new boroughs. An amendment was being discussed which could benefit the Northwest Arctic Borough with additional land under a revised formula.

During the testimony which I gave, the City of Palmer is one of those few communities which did not receive a land entitlement and not having any state land within its corporate boundaries has no chance of receiving an entitlement.

Back in 1986, the City of Anderson had the entitlement procedure changed so they could acquire their entitlement in land which was situated outside their corporate limits.

With declining revenues both on the State and local front, a land entitlement allocation to the City of Palmer of property outside the corporate limits could help to stave off increasing taxes through diversification.

After my testimony on April 2, 1991, I did not have enough time to stay for the outcome of HB 143 due to other commitments. Is there is a possibility of amending HB 143 before it passes out of your committee which would allow municipalities that have not received an entitlement, such as the City of Palmer to select land outside their corporate boundaries; or making an appropriation which would allow us to use these funds only to acquire vacant private land which

may be adjacent to the City for economic development.

I would appreciate your consideration of this matter which is an inequity for some municipalities.

Should you have any questions, please feel free to contact me.

Yours truly,

David L. Soulak
City Manager
City of Palmer

DLS/cac

cc: Mayor Carte'
Representative Ron Larson
Representative Patrick Carney
Senator Curt Menard
Senator Jalmar Kerttula
Scott Burgess, AML

CITY OF VALDEZ, ALASKA · GATEWAY TO THE INTERIOR ·

Office of the City Manager
April 2, 1991

Representative Cliff Davidson, Chairman
House Resources Committee
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Davidson:

On March 27th David Dengel of my staff testified before your committee via teleconference. I would like to reiterate what Mr. Dengel stated concerning the City of Valdez's position regarding House Bill 143. The City of Valdez supports the passage of House Bill 143.

Section 4 of the bill as proposed will amend the Alaska Statute to require the Director of the Division of Land & Water Management for the Department of Natural Resources to approve or disapprove each selection for patent within nine months of selection by a municipality. The City of Valdez supports this change, in that it is important to all municipalities that lands be transferred from the state to local government as rapidly as possible. To this end the City of Valdez would like to recommend that the legislature make the transfer of these lands to municipalities a priority for the Department of Natural Resources.

According to the Department of Natural Resources it has been some time since land has been transferred to Municipalities through the Municipal Entitlement Land Program. This is due primarily to budget cuts according to the department.

The City of Valdez also supports Section 6 of the bill which would prohibit the Commissioner from placing restrictions on the shape of a parcel of land that may be selected by a municipality. This is important in that a number of instances, the existing regulation that requires the width and depth of a parcel not exceed a 4 to 1 ratio makes it impossible for lands to be selected, surveyed and transferred in an economical fashion.

The City of Valdez wholeheartedly endorses the policy that is set forth in Section 8 which states that it is the policy of the state to provide for expeditious transfer and patent of land to a municipality. To accomplish this policy the Department of Natural Resources needs sufficient funding and direction from the

P.O. BOX 307 • VALDEZ, ALASKA 99686
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legislature to fulfill this policy.

Finally, the City of Valdez would like to see that Section 9 of the bill is further amended to provide for allowing all State land within a municipality to be eligible for selection by that municipality unless it has been set aside by statute for one or more particular uses or purposes.

If you should have any questions concerning the City of Valdez's position on this bill, I would ask that you contact Dave Dengel, Director of Community Development. Mr. Dengel will be more than willing to discuss this bill with you or members of your staff.

Sincerely,

Doug Griffin
City Manager

cc: Senator Jalmar Kertulla
Senator Curt Menard
Representative Gene Kubina
Deputy Commissioner Mary Rutherford,
Department of Community and Regional Affairs
David Dengel, Director of Community Development

#51Davidson.A02

ALASKA MUNICIPAL LEAGUE

217 Second Street, Suite 200 ▪ Juneau, Alaska 99801 ▪ Tel (907) 586-1325, Fax (907) 463-5480

March 26, 1991

POSITION PAPER

HB 143 - Relating to general grant land selections

The Alaska Municipal League supports HB 143, relating to general grant land selections, in concept. Quoting from the AML 1991 Policy Statement:

> State Policies: The League supports state policies that encourage rather than discourage the formation of new municipalities. (Page 50)
>
> Conveyance and Land Use: d. The League urges a cooperative intergovernmental effort to expedite conveyances of lands not yet jointly agreed upon by considering municipal, state, and federal interests in lands affected by the land selection process. (Page 31)
>
> Land Entitlements: The League calls upon the Governor and the Alaska Department of Natural Resources to take appropriate action to correct the inequities and overcome any and all remaining obstacles to fulfilling land entitlements for all municipalities. (Page 33)

With declining state assistance to municipalities and increased responsibilities, there are increasing disincentives for areas of the state to incorporate. To the degree HB 143 increases the amount of state land available to municipalities to produce revenues through sales or leases and an expanded tax base and to aid in community expansion, the AML supports the legislation as an incentive to incorporation.

The AML supports increasing land entitlements to encourage municipalities to incorporate and to assist newly-formed municipalities produce revenues and provide for community development (Section 1). The population cap is arbitrary and has no relation to a municipality's need for land or land value. If the state is concerned about the amount or type of land to be conveyed in a given area, i.e. resource management, then perhaps some other mechanism or protection is needed to deal with specific cases.

CITY OF VALDEZ, ALASKA
GATEWAY TO THE INTERIOR

Office of the City Manager
April 2, 1991

Representative Cliff Davidson, Chairman
House Resources Committee
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Davidson:

On March 27th David Dengel of my staff testified before your committee via teleconference. I would like to reiterate what Mr. Dengel stated concerning the City of Valdez's position regarding House Bill 143. The City of Valdez supports the passage of House Bill 143.

Section 4 of the bill as proposed will amend the Alaska Statute to require the Director of the Division of Land & Water Management for the Department of Natural Resources to approve or disapprove each selection for patent within nine months of selection by a municipality. The City of Valdez supports this change, in that it is important to all municipalities that lands be transferred from the state to local government as rapidly as possible. To this end the City of Valdez would like to recommend that the legislature make the transfer of these lands to municipalities a priority for the Department of Natural Resources.

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The City of Valdez wholeheartedly endorses the policy that is set forth in Section 8 which states that it is the policy of the state to provide for expeditious transfer and patent of land to a municipality. To accomplish this policy the Department of Natural Resources needs sufficient funding and direction from the

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legislature to fulfill this policy.

Finally, the City of Valdez would like to see that Section 9 of the bill is further amended to provide for allowing all State land within a municipality to be eligible for selection by that municipality unless it has been set aside by statute for one or more particular uses or purposes.

If you should have any questions concerning the City of Valdez's position on this bill, I would ask that you contact Dave Dengel, Director of Community Development. Mr. Dengel will be more than willing to discuss this bill with you or members of your staff.

Sincerely,

Doug Griffin
City Manager

cc: Senator Jalmar Kertulla
Senator Curt Menard
Representative Gene Kubina
Deputy Commissioner Mary Rutherford,
Department of Community and Regional Affairs
David Dengel, Director of Community Development

#51Davidson.A02

TESTIMONY OF DAVID S. CASE

ON BEHALF OF THE NORTHWEST ARCTIC BOROUGH

HOUSE RESOURCES COMMITTEE HEARING

ON HB 143

MARCH 27, 1991

THE HONORABLE GEORGIANNA LINCOLN, VICE CHAIR
HOUSE RESOURCES COMMITTEE

Madam Chair and Members of the House Resources Committee, I appreciate the opportunity to be asked to testify before this committee on House Bill 143.

INTRODUCTION

My name is David Case, I am an attorney for the Northwest Arctic Borough, but in my practice I represent Native corporations and governments throughout rural Alaska. I travel widely and often throughout Alaska, and have negotiated, written books and articles and taught courses involving federal and state land and resource allocation issues in Alaska. HB 143 is a much needed remedy to a long festering municipal land allocation problem in rural Alaska.

POPULATION CAP

The most glaring inequity in the current law is the 20-acre per capita cap on municipal entitlements imposed under AS 29.65.030(a). Section 1 of HB 143 would repeal this cap. The cap was imposed in 1987 and replaced the prior municipal entitlement standard of 10% of state selected, vacant, unappropriated and unreserved ("VUU") land. At the time, the 20 acre cap may have seemed reasonable for the Mat-Su Borough, because on a per capita basis, it was the highest entitlement given

any municipality up to that time. However, it should be noted that had the Mat-Su Borough been restricted to its 20 acre cap based on its population on the date of its incorporation (as is the case under current law) their entitlement would have been no more than 216,680 acres, instead of the 355,210 acre entitlement they received under the 1987 amendments, many years after that borough was incorporated. Not only is the population cap wholly arbitrary, it was arbitrarily applied even to the Mat-Su Borough. In any event, any per capita limitation on land entitlement unfairly discriminates against rural boroughs.

In the first place, the 20 acre cap was not imposed until after all of the urban boroughs had been formed. The effect of this coincidence is that all of the urban boroughs received a land entitlement based on (or equivalent to) the original 10% factor. The more recently formed rural boroughs are limited to the 20 acre, per capita requirement. The discrepancy is even more glaring, because the rural boroughs are often fairly large in area, but relatively small in population. Among other things, a low population means a relatively narrow tax base. Under these circumstances, borough lands offer one of the prime possibilities for revenue production through sales or leases. If anything, rural boroughs with small populations and narrow tax bases ought to be entitled to more land than urban boroughs. The current statutes have just the opposite effect.

The discrimination is also apparent when it comes to land valuation. The lands in urban areas with larger populations are almost certain to be more valuable in economic terms than the lands in rural areas with smaller populations. With this in mind, the legislature ought to do everything possible to increase the entitlements of rural boroughs in order to maximize their potential for economic independence. Moreover, urban legislators ought to support such a philosophy, because in the long run, economic independence in rural Alaska may mean less reliance on state subsidies for rural programs and service delivery. HB 143 will further that goal by putting more land into the hands of rural boroughs to their ultimate economic benefit.

THE CONSTITUTION

Alaska prides itself on the local government structure imbedded in Article X of the our constitution. In January, 1990, the Department of Natural Resources said in its "MUNICIPAL GENERAL GRANT LAND ENTITLEMENTS" Report that Sections 1 and 3 of Article X "unselfishly define" the relationship between state and local government. The report goes on to say that the state general grant lands to local governments were intended to provide: (1) a means of creating or expanding the tax base, (2) a means to generate revenue through land sales and leases, and (3) a land base for community expansion and other public purposes.

When it comes to the rural boroughs, the current law does exactly the opposite. It can hardly be characterized as "unselfish" when it drastically and discriminatorily reduces the land entitlements of rural boroughs. In the case of the Northwest Arctic Borough, the difference between a 20 acre per capita limit and a 10% limit is about 150,000 acres. If the state is truly intent on maximizing local self-government and encouraging local production of revenue to support local government, then the state general grant lands program should be structured so that it maximizes those goals.

ADMINISTRATION POLICY

In its recently announced "MUNICIPAL GRANT LAND ENTITLEMENT POLICY" of March 12, 1991, the Hickel administration supports a municipal land entitlement of not less than 10% of the VUU state land within a municipality's boundaries. The policy goes on to say that a municipality may acquire more land than its certified entitlement for various purposes specified in the policy. While this is an improvement over the previous administration's policy which only restrictively permitted a municipality to exceed the 20 acre per capita requirement, it will not extend the 10% limit to previously incorporated boroughs whose municipal entitlement has already been certified. As far as we can tell, this limitation extends only to the Northwest Arctic Borough. We can see no reason for such obviously inequitable treatment.

In its opposition to HB 143, the administration says (without explanation) that they do not "believe the cap should be retroactively removed." Madam Chair, whatever may be said about the per capita cap, either it is good policy for all municipalities or it is good policy for no municipality. It simply can't be that it is bad policy for all municipalities except one, especially when that municipality did not have any say in the formation of the policy in the first place. Neither the governor nor the Department of Resources ("DNR") have given any explanation for this perhaps unintentional inequity. Without any sound explanation, it should not be enacted into law. Were such a law to be applied to individuals, it would be held unconstitutional. While municipalities may not have all the constitutional rights of individuals, we do not think they should be treated as though they have no rights at all. Now that the administration is on record as supporting the 10% entitlement, it should apply to all municipalities equally and not arbitrarily exclude some. Indeed, that was the promise of the 1987 legislation a well.

1987 "PARTIAL" ENTITLEMENT

In 1987, the legislature enacted the previous amendments to the general grant land entitlement statute. HB 143 would now further amend those entitlements. In doing so, we think HB 143 would also redeem the promise of the 1987 legislation that:

> The general grant land entitlement authorized for the Northwest Arctic Borough . . . is a partial entitlement for the borough. After completion of the Northwest Area Plan . . . 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. (Emphasis added).

Sec. 11, Ch. 34 SLA 1987.

We think it is fair to say that the governor's March 12, 1991 policy for general grant land entitlements clearly embraces the idea that "the basic municipal land entitlement shall not be less than 10% of the vacant, unappropriated, unreserved state land within the municipality's boundaries." To be consistent with that policy, and consistent with the previous 1987 enactment, the legislature now ought to implement the full 10% entitlement for the Northwest Arctic Borough.

SELECTION ADJUDICATION AND POLICY

Sections 2 through 8 of HB 143 would enable cities to request an expedited certification of their entitlement (Section 2) and give them an additional 90 days to select additional land after a final decision on an appeal under subsection (d). Section 4 would involve the Department of Community and Regional Affairs ("DCRA") in DNR's selection adjudication decision and would impose a requirement that before disapproving a municipal land selection that the director should determine that the "public interest in retaining state ownership of the land outweighs the municipality's interest in obtaining the land." Section 5 would impose more equitable appeal procedures than are now in place for resolving municipal land selection disputes through a mediation committee, which might also reduce the threat of protracted litigation. Section 6 would prohibit any limitation on restrictions of shapes of parcels that may be selected by a municipality. (We are not sure that there should be no limitation on parcel shape, but we think the current four to one width to length ratio is arbitrary and not well suited to municipal land selections. We understand the four to

one ratio was derived from a similar ratio imposed upon mining claims, but that is all the more reason to think it is not a good standard for other forms of land selections.) Section 7 would require DNR to consult with DCRA in the formulation of regulations to implement the land selection statute. (We think the involvement of DCRA in municipal land selection matters is a beneficial and appropriate change that will tend to maximize the possibility of realizing the constitutional goals of maximum local self-government.) We also welcome the succinct statement of municipal land selection policies as described in Section 8 of HB 143.

WILDLIFE HABITAT CLASSIFICATION

We are aware that the redefinition of VUU land in Section 9 to include "wildlife habitat other than critical wildlife habitat" is a controversial portion of this bill. However, we think the concern DNR has expressed about this provision is overdrawn and can be properly addressed in the adjudication provisions specified in Sections 4 and 5 of the bill. Under proposed AS 29.65.050(c), the director will have substantial discretion to determine whether or not retaining wildlife habitat land is in the "public interest" such that it outweighed the municipality's interest in obtaining the land. The review and mediation opportunities under proposed AS 29.065.050(d) would enable all parties to fully consider whether retaining wildlife habitat in state ownership was truly in the public interest.

DNR is also already on record as acknowledging that:

> [The land] classifications [in the Northwest Arctic area] are broad and have not taken into account future transfer of land to municipalities. Much land is classified in categories not available for transfer, such as Wildlife Habitat Land and Mineral Land. However, settlement of municipal entitlement is a high priority of the department and current classifications will not preclude considering of parcels of land for reclassification and transfer to a municipality. (Emphasis added.)

Northwest Area Plan 4-5 (February, 1989).

Rather than reclassifying land (and amending the Northwest Area Plan), it would be far more direct to rely on the new adjudication procedures to determine whether conveying Wildlife Habitat Land would be in the "best interest" of the state. Rather than put the burden on newly formed boroughs to enter into lengthy land reclassification debates with DNR, it would be better to put the burden on DNR to determine the best interest of the state in the first place. If the borough disagrees with that determination as to wildlife habitat (or any other lands) then it would be appropriate for the borough to invoke the mediation and appeal procedures specified in HB 143. This offers a much more efficient procedure and in the long run will be less costly to municipalities with relatively limited resources. Virtually all of the lands selected by the state within the borough have moderate to high wildlife and fisheries values, so "Wildlife Habitat" might be expected to be a predominant land classification within the borough. See descriptions of Selection Regions 3, 4, 5 and 6 in DNR's publication, "PROMISED LAND." a History of Alaska's Selection of its Congressional Land Grants" at pages 82-88.

RECERTIFICATION

Finally, the borough is concerned that the language in Section 10 of HB 143 may have the unintended effect of depriving the borough of the opportunity to recertify its land entitlement under the provisions of the proposed legislation. It is clear (from the terms of Section 11 of the bill) that the bill is intended to be retroactive "to" June 2, 1986. However, as presently drafted, recertification is only available to a municipality incorporated "after" June 2, 1986. Since the Northwest Arctic Borough was incorporated "on" June 2, 1986 the word "after" might have the unintended effect of depriving the borough of recertification. We suggest that the date simply be changed so that the language allows recertification for all municipalities incorporated "after June 1, 1986."

CONCLUSION

Thank you Madam Chair for the opportunity to testify before your committee. On behalf of the borough, I can say that we certainly look forward to your positive consideration of this legislation as a matter of equity, sound planning and to fulfil the promise of the Alaska constitution to all its municipalities and the promise of the 1987 Alaska Legislature to the Northwest Arctic Borough in particular. I would be happy to try to answer any questions or respond to any comments members of the committee may have.

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

PO BOX 349
SAND POINT, ALASKA 99661
(907) 383-2699

PO BOX 37
KING COVE, ALASKA 99612
(907) 497-2340

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.

SECOND SESSION OF THE ELEVENTH ANNUAL
NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE
KOTZEBUE, ALASKA
MARCH 19-20, 1991

RESOLUTION NO. 91-41

A RESOLUTION REQUESTING OF THE NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE URGING THE 1991 LEGISLATURE TO PASS HOUSE BILL NO. 143 "AN ACT RELATING TO GENERAL GRANT LAND SELECTION".

WHEREAS, the delegates to the Alaska Constitutional Convention thoughtfully remembered territorial governance, conferred autonomy, and provided for maximum self-government in the creation of municipalities with broad powers in Article X of the Alaska State Constitution, and

WHEREAS, by offering incentives to encourage municipal incorporations, the State of Alaska advances and promotes the goal of maximum local self-government contained in Article X, and

WHEREAS, since Alaska's first municipal land entitlement was created in 1962, one of the incentives has been the ability to select and receive state general grant lands within the boundaries of the local government to assist in providing... a means of creating or expanding a tax base, a means to generate revenues through land sales or leases, a land base for community expansions, and a land base for other public purposes, and

WHEREAS, the 1963 Mandatory Borough Act provided a formula for the amount of state land grant entitlements: (that) "an organized borough may select 10 percent of the vacant, unappropriated and unreserved state lands located within its boundaries within five years after the date of availability of state lands in the borough", and

WHEREAS, the Mandatory Borough Act required the municipalities to play a role in determining municipal land selections. However, over the years, all of the requirements have been taken out of statutes and all of the responsibilities have been given to the Department of Natural Resources with little or no oversight, and

WHEREAS, this has resulted in disputes and numerous legislative solutions for many municipal entitlement claims, not once for some municipalities, but several times, and

WHEREAS, in the advent of amending the municipal entitlement statutes, AS 29.65.030, in 1987 (Chapter 34 SLA 1987), a 20 acre per capita restriction alterred the original municipal entitlement formula, and

WHEREAS, the purpose of HB 143 is to amend Alaska Statues relating to general grant land section to: restore equity in the municipal 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 broad discretion in determining the processes and procedures for awarding general grant land to municipalities.

NOW THEREFORE BE IT RESOLVED BY THE NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE THAT: that the North & Northwest Alaska Mayors Conference urges the Alaska State Legislature to pass House Bill 143, in its entirety, as introduced into the first session of the seventeenth legislature, 1991.

PASSED AND APPROVED BY THE SECOND SESSION OF THE ELEVENTH ANNUAL NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE this 20th day of March, 1991.

Robert Barr
PRESIDENT

Willis Brower = VP
SECRETARY

INTRODUCED: Kotzebue

VOTE: YES: Unanimous

SECONDED BY: Shishmaref

NO:

PLEASE SPECIFY TO WHOM DIRECTED TO (EVEN LISTS) AND ADDRESSES:

Governor Walter J. Hickel

The Honorable Ben Grussendorf
Speaker of the House of Representatives

AK State Legislature

The Honorable Dick Eliason
President of the Senate

Edgar Blatchford, Commissioner
Dept. of Community & Regional Affairs

Harold Heinze, Commissioner
Dept. of Natural Resources

DENALI BOROUGH, ALASKA

RESOLUTION NO. 91-06

A RESOLUTION REGARDING THE BOROUGH'S SUPPORT OF HOUSE BILL 143.

WHEREAS, the Denali Borough was incorporated on December 7, 1990 as a Home Rule Borough, with mandatory land use planning powers and responsibilities; and

WHEREAS, the Department of Natural Resource's (DNR) 1985 Tanana Basin Area Plan, which imposes classifications on all state land within its scope, predates the organization of the last four boroughs including the Denali Borough, and represents a departmental, regulatory impediment to local land selections and ownership; and

WHEREAS, the Denali Borough Assembly has certain expectations of the state with respect to their timely and ultimate performance of land entitlement conveyances; and

WHEREAS, the Denali Borough Assembly believes that existing State law effectively discriminates against boroughs organized from the unorganized borough after 1985, particularly regarding transfer of state land to newly organized boroughs.

NOW THEREFORE BE IT RESOLVED by the Denali Borough Assembly that the assembly supports House Bill 143 in its entirety, and emphasizes more particularly Sections 10 and 11 concerning retroactivity to 1986, Section 1 concerning removal of the 20 acre cap and Section 9(c) concerning inclusion of wildlife habitat under VUU lands; and

BE IT FURTHER RESOLVED that the Denali Borough Assembly urges the legislature to completely and adequately fund DNR's municipal land entitlement program and staff, to enable DNR to fulfill its obligations in this respect.

PASSED and APPROVED by the DENALI BOROUGH ASSEMBLY this 24th day of March, 1991.

Mayor

ATTEST:

Scott Ruby
acting Borough Clerk

April 3, 1991

Representative Maclean;

I am following HB 143 with a reaffirmed belief that legislators in this state are working for the people. I wholeheartedly support the bill.

Much of rural Alaska offers little in the way of year-round employment, causing many rural residents to reluctantly relocate in or closer to urban centers. This reluctance fuels a desire to develop local resources that provide opportunities for local residents.

As a former elected official and current member of the Denali Borough Land and Planning Committee, I can attest to the frustration of the residents of the Denali Borough. The newly formed Denali Borough will soon be selecting land from municipal entitlement lands. It is the responsibility of the Denali Borough to acquire the maximum amount of land for self-determination in the public interest.

The classification of state land within Denali Borough boundaries severely inhibit the selection of appropriate development land. The Department of Natural Resources has historically classified land with a "broad brush" approach to management. This type of *non-management* reflects a "lock-up" mentality.

"...Classifications are based on the best information available at the scale appropriate to the planning effort, generally 1:250,000. *These classifications are broad and have not considered if the lands should be available for transfer to municipalities in the future...*"(Tanana Basin Area Plan, Nov.1990, p.4-20). [emphasis added.]

The Tanana Basin Area Plan is developed by the Department of Natural Resources in cooperation with other state and municipal agencies. It designates the uses that will occur on state lands within the Tanana Basin. If there is a question about how land should be classified, DNR has historically placed it in a category that makes it inaccessible until such time as a need to reconsider is *proven* to DNR's satisfaction. The expense incurred in developing a justification for DNR is cost inhibitive to most rural communities.

I have read with great concern and deep regret the Hickle Administration Position on HB 143. The Hickle/Coghill platform presented the appearance of supporting economic growth and development in the great State of Alaska. Yet, it is apparent that the Department of Natural Resources is writing the Hickle Administration Position.

As stated by David Case in his testimony to the House Resources Committee on HB 143, "I think HB 143 is a much-needed remedy to a long, festering municipal land allocation problem in rural Alaska." I agree with Mr. Case. The problems vary from region to region and are complex and unique to rural Alaska.

Control of the land and resources is one of the reasons that communities organize. Rural communities are at the mercy of state agencies. They continually turn to legislators to correct problems created by discriminatory legislation and powerful departments of state. The passage of this bill would be a step in the right direction.

Respectfully,

G.W.(Jerry) Mueller
P.O.Box 40046
Clear, Alaska 99704

TESTIMONY OF RICK WEIBEL BEFORE THE HOUSE RESOURCES COMMITTEE
MARCH 28, 1991

Greetings Madame Chair, and members of the Resources committee. Thank you for this opportunity to speak.

My name is Rick Weibel and I serve the Denali Borough as an Assembly member and as chairman of the Land Use Planning Committee. Upon the Committee's recommendation, the assembly has recently passed Resolution 91-06 supporting HB 143, and calling on the legislature to support the municipal entitlement process. This resolution was passed unanimously last Sunday, and copies should be arriving in Juneau soon.

Generally, the assembly finds that all provisions contained in HB 143 appear to be in the best interests of the Denali Borough. For a rural borough to survive on its own, a broad resource base is required. Local ownership of land is an absolute necessity for any municipality to remain viable in the future, and when the State says "less is better" about its budget, the newly formed Boroughs say "more is better" about municipal entitlements. If we are to assume local responsibility as the State demands, we must be given adequate authority and basic resources.

Therefore the Denali Borough supports the equal treatment of the four most recently formed boroughs as would be afforded by HB 143. We support the concept of an entitlement formula for its fairness and as an incentive for further local government organization. We are in favor of Section 10, regarding recertification of entitlements.

In lieu of any oversight on the Department of Natural Resources, we support the concept of a consultative review process for land selections involving the Dept. of Community and Regional affairs. The DNR's institutional resistance to land transfers is no secret; however, transfer of State land is an "established goal," and interagency coordination will further serve the public interest through the representative process. We reject the notion that additional land selections must be justified exclusively to the DNR, and we strongly favor the implementation of Sections 4 and 5.

The Denali Borough Assembly further supports the inclusion of lands classified as wildlife habitat in the VUU land pool. The Assembly recognizes the DNR's need to give some classification to all State land in its Area Plans, but we feel that this change will not prevent DNR from performing its basic obligations regarding critical wildlife habitat. This provision will have a massive, positive impact on the Denali Borough.

Finally, let me say again that HB 143 serves the best interest of the Denali Borough as well as those of the other three most recently formed Boroughs, and this in turn serves the

best interest of the State. The Denali Borough looks forward to the eventual approval of this bill in its present form.

Thank You,

Ricki Weibel

MEMORANDUM

Date: March 28, 1991

TO: Marty Rutherford

FROM: Gordon Lewis

RE: HB 143

General philosophy as to state ownership and management of land within municipalities is the real issue. State ownership makes sense only where there is a mandate to retain ownership for a statewide public purpose. State ownership should be the rather than the rule inside municipalities. Every municipality should have the opportunity to own and manage as much land within its boundaries as it can handle. The state should identify areas such as historic sites, wildlife refuges, parks and natural resource. The state still retains the mineral and oil and gas rights to all the land it transfers. Revenues from these rights are where the state makes its money. Revenue from surface leases, permits and even material sales do not provide a significant cash flow. The state constitution establishes a strong role for local governments. The freedom to act without interference from the next higher level of government is an idea born out of the Alaska struggle to attain statehood and control over its resources. The issue is the same for the relationship between the state and the municipalities. The key question is whether a decision on land use in a municipality should be made in Juneau, Fairbanks or Anchorage, or at the local level. The more land the municipalities have the better they will be able to guide and pay for their own future.

The 4:1 ratio is a poor decision. It scatters parcels of state land and separates ownership of blocks of land. The state would be better off identifying specific site it really needs to retain, rather than relying on some haphazard pattern based on a geometry driven by another entities desires. Remember that for every linear mile two 66 foot wide section line easements are out there for access to state lands across other ownerships. Where the easement is not useable the state has the ability to buy, lease, trade or condemn land to get access. This nasty little checkerboard pattern of land ownership that results from the 4:1 ratio requirement exists in the western states. The states of Arizona, Utah and Washington are peppered with the checkerboard pattern as a result of land grants to the railroads. They spend lots of public money trying to consolidate these holdings to achieve effective management. Please don't let future Alaskans become victims of a poor decision made today.

In summary I support HB 143. I also encourage you to consider delete the 10% VOU limit and delete sub (c) of 29.65.030 (a) the definition of VOU.

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	12/1/90	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.

THE FOLLOWING DOCUMENT
HAS NOT BEEN FILMED
BUT IS AVAILABLE IN THE
ORIGINAL FILE

Lake and Peninsula Borough

Land Status Map

March 1991