

SB

107

Alaska State Legislature

SENATOR
MIKE MILLER

P.O. Box 55094
North Pole, Alaska 99705
(907) 488-0867

Senate District 0

While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4976

Senate


March 13, 1995

RECEIVED

MAR 15 1995

Ans'd.....

TO: Sen. Torgerson, Chairman
Community & Regional Affairs

FROM: Sen. Miller, Chairman 
Rules Committee
Attention: Sharon Clark
Legislative Aid

RE: SB 107

I would like to request scheduling in the Community & Regional Affairs committee SB 107 "An act relating to grant land entitlements for the Denali Borough" at your earliest convenience.

Thank you.

Alaska State Legislature

SENATOR

MIKE MILLER

P.O. Box 55094

North Pole, Alaska 99705

(907) 488-0862

Senate District Q



Senate

While in Juneau

State Capitol

Juneau, Alaska

99801-1182

(907) 465-4976

Sponsor Statement - Senate Bill No. 107

"An Act relating to general grant land entitlements for the Denali Borough."

SB 107 was introduced by request along with a resolution from the Mayor and the Denali Borough Assembly, constituents in Senate District Q.

The purpose of SB 107 is to amend present statute (AS 29.65.010) to include sub-section (13) a land grant entitlement for the Denali Borough.

The Denali Borough was incorporated in December 1990, the present population is 2,077 and is rapidly growing. The Borough assembly passed and approved a resolution on February 12, 1995, to seek 71,000 acres in the Municipal Land Entitlement for the Denali Borough.

The Land Entitlement expected acreage to be was, certified as insufficient for future growth and development of the Borough. The Borough residents have stated in public testimony that they desire more land to be made available for various reasons identified as essential to the Borough. The Borough through the Comprehensive Land Use Plan process, has identified 71,000 acres as the minimum necessary for autonomy.

Thank you for your consideration.

— SPONSOR STATEMENT —

DENALI BOROUGH, ALASKA

RESOLUTION NO. 95-05

A RESOLUTION TO SEEK 71,000 ACRES IN THE MUNICIPAL LAND ENTITLEMENT ACT FOR THE DENALI BOROUGH.

WHEREAS, the Municipal Land Entitlement Act was put in place by the Alaska State legislation to insure the resources are available for a Borough to be successfully independent; and

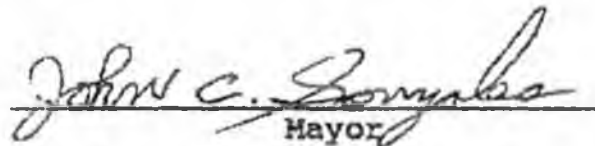
WHEREAS, the Denali Borough deems the Municipal Land Entitlement expected acreage to be certified as insufficient for future growth and development of the Borough; and

WHEREAS, Borough residents have stated in public testimony that they desire more land be made available for various reasons identified as essential to the Borough; and

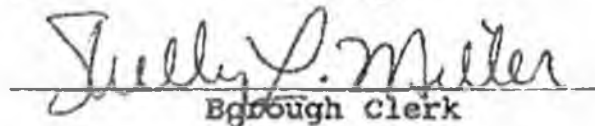
AND WHEREAS, the Borough has through the Comprehensive Land Use Plan process identified 71,000 acres as the minimum necessary for autonomy.

NOW THEREFORE BE IT RESOLVED: The Denali Borough Assembly authorizes the Mayor to seek State Legislative intervention to acquire the 71,000 acres as the Denali Borough's Municipal Land Entitlement.

PASSED and APPROVED by the DENALI BOROUGH ASSEMBLY this 12th day of February, 1995.



Mayor



Borough Clerk

ATTEST:

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 7, 1995

SUBJECT: Sectional Summary of SB 107

TO: Senator Mike Miller

FROM: Tamara Brandt Cook *TBC*
Director of Legal Services

You have requested a sectional summary of the above-described bill.

Section 1 Sets the general grant land entitlement of the Denali Borough at 71,000 acres. Without this provision the borough would qualify for 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within its boundaries between the date of incorporation and two years after that date. (See AS 29.65.030)

Section 2 Permits the Denali Borough to nominate land for selection to satisfy the general grant land entitlement before October 1, 1998.

TBC:lmb:klb
95-140.lmb

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 subsection 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 — 39,350 acres.

(b) *[Repealed, § 12 ch 34 SLA 1987.]* (§ 17 ch 74 SLA 1985; am § 12 ch 34 SLA 1987)

Sec. 29.65.020. Determination of entitlement for cities. (a) The general grant land entitlement of a city formerly eligible to receive general grant land under the provisions of former AS 29.18.190 and 29.18.200 is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land in the boundaries of each city at any time between the initial date of eligibility under former AS 29.18.190 and 29.18.200 and January 1, 1988. Within six months after January 1, 1988, the director shall determine the entitlement for each city eligible to receive general grant land under this section and certify that entitlement to the city.

(b) *[Repealed, § 12 ch 34 SLA 1987.]* (§ 17 ch 74 SLA 1985; am §§ 1, 12 ch 34 SLA 1987)

Sec. 29.65.030. Determination of entitlement for newly incorporated municipalities. (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.

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

*Sectional
Reference*

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 to the city on an expeditious basis. The director shall determine and certify the entitlement within six months after receipt of the resolution.

(c) [Repealed, § 12 ch 34 SLA 1987.] (§ 17 ch 74 SLA 1985; am §§ 2, 3, 12 ch 34 SLA 1987; am §§ 1, 2 ch 51 SLA 1991)

Effect of amendments. — The 1991 amendment, effective June 16, 1991, deleted the last two sentences in subsection (a) and added the last two sentences in subsection (b).

Editor's notes. — Section 11, ch. 34, SLA 1987 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 38.04.065, the governor shall submit to the legislature recommendations for additional general grant land entitlements for the Northwest Arctic Borough consistent with the general grant land entitlement policy developed by the governor. The governor shall also submit recommendations for additional general grant land entitlements for other newly-formed municipalities

consistent with the general grant land entitlement policy developed by the governor."

Section 9, ch. 51, SLA 1991 provides that, notwithstanding subsection (b), as amended by § 2, ch. 51, SLA 1991, "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 June 16, 1991, redetermine and recertify the entitlement in accordance with AS 29.65.030(a), as amended in § 1, ch. 51, SLA 1991."

Under § 10, ch. 51, SLA 1991, the 1991 amendment to subsection (a) is retroactive to June 2, 1986.

Sec. 29.65.040. Status of entitlements. (a) After July 1, 1978, general grant land entitlements provided in former AS 29.18.201 and 29.18.202 are vested property rights that must be fulfilled as provided in AS 29.65.050 or 29.65.080. After January 1, 1988, general grant land entitlements provided in AS 29.65.010 are vested property rights that must be fulfilled as provided in AS 29.65.050 or 29.65.080.

(b) General grant land entitlements provided by AS 29.65.030 are property rights that vest on the date of incorporation of the municipality. The entitlement shall be fulfilled as provided in AS 29.65.050.

(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.

(d) Land or grant land every year after the

(e) The time exercising a

(1) the portion date because of and industrial land;

(2) payment

(3) the portion the land selected to select

(4) the portion the land nominated approved for § 34 SLA 1987

Effect of amendment, effective subsection (c), in

Sec. 29.65. age of each municipality issued before entitlement of

(b) All applications 29.18.200 for July 1, 1978, after July 1, inappropriate the date of § 29.18.201, 29. municipality or plat of survey, municipality's patent under under AS 29.6 municipal selection unreserved on not be issued if occurred. Transactions subject to AS § status records tive of land or

(c) The director patent within :

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the borough has received a grant for the same service. (§ 1 ch 74 SLA 1992; am § 1 ch 38 SLA 1993)

Effect of amendments. — The 1993 amendment, effective August 25, 1993, added subsection (c).

Sec. 29.60.650. Definitions. In AS 29.60.600 — 29.60.650,

(1) "essential human services" and "services" have the meaning given "social services" in AS 47.75.060 except that they include only services whose unavailability would subject persons needing the services to serious mental or physical hardship;

(2) "municipality" means a (A) city whose population is over 20,000; (B) unified municipality whose population is over 100,000; or (C) second class borough whose population is over 65,000; population for purposes of this paragraph shall be determined by the Department of Community and Regional Affairs. (§ 1 ch 74 SLA 1992; am § 2 ch 38 SLA 1993)

Effect of amendments. — The 1993 amendment, effective August 25, 1993, re-wrote paragraph (2).

Chapter 65. General Grant Land.

Section

10. Determination of entitlement of boroughs and unified municipalities

Section

40. Status of entitlements
60. School and mental health land

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 subsection 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) Lake and Peninsula Borough — 125,000 acres;
- (11) Matanuska-Susitna Borough — 355,210 acres;
- (12) North Slope Borough — 89,850 acres.

(b) *[Repealed, § 12 ch 34 SLA 1987.]* (§ 17 ch 74 SLA 1985; am § 12 ch 34 SLA 1987; am § 1 ch 108 SLA 1994)

Effect of amendments. — The 1994 amendment, effective June 11, 1994, in subsection (a), added present paragraph (10) and redesignated former paragraphs (10) and (11) as present paragraphs (11) and (12), respectively.

Sec. 29.65.040. Status of entitlements. (a) After July 1, 1978, general grant land entitlements provided in former AS 29.18.201 and 29.18.202 are vested property rights that must be fulfilled as provided in AS 29.65.050 or 29.65.080. After January 1, 1988, general grant land entitlements provided in AS 29.65.010 are vested property rights that must be fulfilled as provided in AS 29.65.050 or 29.65.080.

(b) General grant land entitlements provided by AS 29.65.030 are property rights that vest on the date of incorporation of the municipality. The entitlement shall be fulfilled as provided in AS 29.65.050.

(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(a)(1) — (9), (11), or (12) at any time before October 1, 1990. Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under AS 29.65.010(a)(10) at any time before October 1, 1996. 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.

(d) Land may be selected by a municipality to satisfy a general grant land entitlement under AS 29.65.030 at any time within one year after the director certifies the entitlement to the municipality.

(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

(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. (§ 17 ch 74 SLA 1985; am §§ 4, 5 ch 34 SLA 1987; am § 3 ch 51 SLA 1991; am § 2 ch 108 SLA 1994)

Effect of amendment,
subsection (c)

Sec. 29.65.060. ment determined by the board of land and natural resources. The board shall determine the acreage, the number of acres, the manner in which the land shall be conveyed to the municipality. This chapter shall not apply to land standing title within the boundaries of the municipality and 29.18.010. The municipality shall define in its charter the

(b) The board shall determine the acreage, the number of acres, the manner in which the land shall be conveyed to the municipality.

(c) Land selected by a municipality shall be conveyed to the municipality.

(d) With respect to school or residential grant land, the board shall determine the acreage, the number of acres, the manner in which the land shall be conveyed to the municipality. The board shall determine the acreage, the number of acres, the manner in which the land shall be conveyed to the municipality.

(e) The board shall determine the acreage, the number of acres, the manner in which the land shall be conveyed to the municipality. The board shall determine the acreage, the number of acres, the manner in which the land shall be conveyed to the municipality.

(f) For the purpose of this section, the board shall determine the acreage, the number of acres, the manner in which the land shall be conveyed to the municipality. The board shall determine the acreage, the number of acres, the manner in which the land shall be conveyed to the municipality.

(g) Notwithstanding any other provision of law, the board shall determine the acreage, the number of acres, the manner in which the land shall be conveyed to the municipality. The board shall determine the acreage, the number of acres, the manner in which the land shall be conveyed to the municipality.

FISCAL NOTE

STATE OF ALASKA

BILL NO. SB107

1995 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources
 Title: An Act relating to general grant land BRU: Resource Development
entitlements for the Denali Borough. Component: Land Development
 Sponsor: Senator Miller
 Requestor: _____ Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ None

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

There is no additional fiscal impact associated with this bill. Under the Municipal Entitlement Act (AS 29.65) all municipalities are entitled to 10% of all vacant, unappropriated, unreserved state land within their municipalities. This legislation would set that entitlement by law rather than an administrative certification process which is to be completed by December 31, 1995. If certified today the Denali Borough's entitlement would be approximately 51,000 acres.

This entitlement will be processed in the next ten years with existing resources. Municipalities can expedite their conveyances providing funding for the process. A rough estimate for an entitlement this size would be \$200.0.

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 9-Mar-95
 Approved by Commissioner: *Michael R. ...* Date: 3-9-95
 Agency: Natural Resources

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FISCAL NOTE

Revisi n Date: March 6, 1995 Dept. Affected: Community & Regional Affairs
 Title: An Act relating to general land grant BRU: none
entitlements for the Denali Borough Component none
 Sponsor: Senator Miller
 Requestor: Senator Miller COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0

REVENUE FUND SOURCE: _____

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

This legislation would provide for a land grant for the municipality of the Denali Borough of 71,000. Existing DCRA staff in the Fairbanks Regional Office could be called upon to assist the Borough in planning for such land selections. There is no incremental fiscal impact on DCRA from this bill.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Division of Administrative Services Date: 3/6/95
 Approved by Commissioner: *Mike Huva* Date: 3/6/95
 Agency: Community & Regional Affairs

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ALASKA STATE LEGISLATURE

Senate Community & Regional Affairs Committee

State Capitol

Juneau, AK 99801-1182

(907) 465-4989

MEMORANDUM

To: Members of the Senate Community & Regional
Affairs Committee

From: Senator John Torgerson, Chairman *JT/sgn*

Subject: Senate Bill 107 (Land Grant for Denali Borough)

Date: April 14, 1995

During a hearing held by the Senate Community & Regional Affairs Committee on the above referenced legislation, several of you requested additional information as it pertains to the municipal entitlements program.

I have attached the background materials on this subject which have been provided by the Division of Lands in the Department of Natural Resources.

JT/sgn

cc: Senator Mike Miller

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND

3601 C STREET, SUITE 1122
ANCHORAGE, ALASKA 99503-5947
PHONE: (907) 762-2692

March 28, 1995

The Honorable John Torgerson
Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182

Re: SB 107

Dear Senator Torgerson:

At last weeks Community and Regional Affairs Committee hearing on SB 107, you asked for some background material on municipal entitlements. Enclosed is that information.

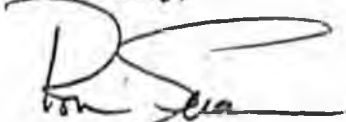
The first paper is a brief overview of the Municipal Land Act, how entitlements are determined, selection and conveyance process, history, and present entitlements.

Also included is a report on municipal entitlements done by a member of my staff in 1990. The Municipal Land Act was amended after this report was released so it is a bit dated.

I am also enclosing a report on the same subject done by the Legislative Research Agency in 1991.

Please feel free to contact me for additional information.

Sincerely,



Ron Swanson
Director

cc: Committee Members
Nico Bus

MUNICIPAL ENTITLEMENT BACKGROUND INFORMATION

March 27, 1995

The Municipal Land Act has been amended by the legislature eight times since its inception in 1963. Most of the amendments were made in an effort to provide municipalities with more land (e.g., extension of deadlines or addition of new classifications to the land base from which selections could be made. Each municipality selects land for a different reason. The underlying reason for making land available, however, was to provide an economic base. The amount and quality of state land available for selection varies among municipalities. While one municipality may have a large amount of high-quality state land within its boundaries, another may have little or no state land from which to base an entitlement.

HOW ENTITLEMENTS ARE DETERMINED

Under the 1978 Municipal Entitlement Act, boroughs and Home-Rule municipalities in existence in 1978 were granted a specific acreage of state land based on a formula that factored in population, areal extent of the municipality, and availability of state land within their boundaries.

Cities that existed in 1978 received ten percent of the vacant, unappropriated, unreserved (VUU) land within their boundaries. Because the areal extent of cities and the amount of state land within them varies, city entitlement have ranged from 0 acres (there is no state VUU land in many cities), to over 7,000 acres for both Valdez and Skagway.

The entitlement for cities and boroughs formed after 1978 is set in AS 29.65.020 as ten percent of the maximum VUU land that existed between the date of incorporation and two years thereafter.

The definition of vacant, unappropriated, unreserved (VUU) land has been changed by the legislature over time, the current definition includes all general grant land (land acquired by the state under section 6 of the Statehood Act) that is:

- unclassified land
- classified for agriculture, grazing, material, public recreation, resource management, or settlement
- has not been set aside by statute for public purposes (state parks, forests, etc.)

Classifications are based upon land use plans prepared by the department with local government participation.

VUU land does not include land acquired under the Mental Health, University, or School land grants. VUU does not include land acquired through purchase, donation, foreclosure, etc, these are known as Other State Lands. These Other State Lands can be acquired by municipalities for a specific public purpose under AS 38.05.810.

SELECTION and CONVEYANCE PROCESS

Within 2 1/2 years after incorporation DNR determines the municipality's entitlement. The municipality then has one year to select their lands. AS 29.65.050(c) requires DNR to approve or disapprove each selection within nine months after it is selected by a municipality. DNR has not

been able to approve or disapprove all selections within this time-frame because of land status problems and lack of staff to adjudicate applications. If selections are disapproved, the municipality has 90 days to file a new selection.

Once the department approves a selection, management is transferred to the municipality. If the land is not yet patented from the federal government to the state, the state cannot issue a patent to the municipality. If the land is patented to the state but not surveyed sufficient for the state to issue a patent, the municipality is required to survey the land prior to receiving patent. Over 300,000 acres of selections have been approved to municipalities but not patented because of the lack of federal surveys or surveys by municipalities. While boroughs manage these unpatented lands, the lack of patent prevents many municipalities from selling these lands.

The total acreage committed by the legislature to municipalities under AS 29.65 is about 1.1 million acres. The state has conveyed approximately 430,000 acres. The department currently has about 315,000 acres of municipal selections from 21 municipalities pending adjudication. Boroughs have unselected obligations of over 333,000 acres.

Much of the department's current conveyance effort is directed at small, high value parcels where communities have an immediate need. These small parcels require extensive research into land title and often require DNR to mediate between conflicting claims for use of the land. At current rates of conveyance, it will be many years before all entitlement are fulfilled. Furthermore, most municipalities do not have money to conduct the surveys required to issue patents for the land.

HISTORY

Since 1962, the legislature has granted state land to local governments. Reasons for these grants to municipalities include: to provide an incentive to form local governments, to raise money through sales or through a tax base to support local governments, and to provide land for community development and public facilities.

Early legislation that allowed for municipal entitlement to cities (1962) and later Boroughs (1963) provided little procedural guidance and resulted in many disputes between the state and municipalities over the acreage each municipality was entitled to and what lands could and could not be conveyed. The municipal entitlement issue was further compounded by the disputes between the state, Alaska Native Corporations, and the federal government regarding land claims. By 1978, thousands of acres of state land had been conveyed to some municipalities, but other conveyances were tied up in administrative and judicial appeals.

In 1978, the legislature amended the municipal entitlement act to resolve some of these disputes. Some of the major provisions of the 1978 act were:

- 1) unified and home rule municipalities were granted acreage specific land entitlement; 2) vacant, unappropriated, unreserved (VUU) land was defined;
- 3) entitlement were extended to municipalities incorporated after the act (the 10 % rule was established);
- 4) under certain circumstances, municipalities could select University, Mental Health, and School Grant lands.

In 1987, the act was amended to require recalculation of all past entitlement based upon the maximum amount of VUU lands between 1970 and 1988. This amendment was added because the state had acquired a significant amount of additional land from the federal government between 1970 and 1988. This resulted in increased entitlement for several cities. The 1987 amendments also changed the definition of VUU to include Public Recreation, Material, and Resource Management land. The act was amended again in 1990 to remove a 20 acre per capita cap, which resulted in a significant increase to the entitlement of the Northwest Arctic Borough.

BOROUGH ENTITLEMENTS

The entitlement for all boroughs and home-rule municipalities follows. Keep in mind that the land area and the amount of land the state owns within each municipality varies significantly.

Legislative Entitlement established by the 1978 Act:

Municipality of Anchorage - 44,893 acres
City and Borough of Juneau - 19,584 acres
City and Borough of Sitka - 10,500 acres
Bristol Bay Borough - 2,898 acres
Fairbanks - North Star Borough - 112,000 acres
Haines Borough - 2,800 acres
Kenai Peninsula Borough - 155,780 acres
Ketchikan Gateway Borough - 11,593 acres
Kodiak Island Borough - 56,500 acres
Matanuska - Susitna Borough - 355,210 acres
North Slope Borough - 89,859 acres

Entitlement for boroughs formed since 1978 ¹:

Northwest Arctic Borough - 285,000 acres
Aleutians - East Borough - 7,633 acres
Lake and Peninsula Borough - 125,000 acres (set by legislation)
City and Borough of Yakutat - 138 acres
Denali Borough - est 51,000 acres

¹ Boroughs incorporated after 1978 have generally found that the formula in AS 29.65.030 provides sufficient entitlement. The exception was the Lake and Peninsula Borough, where a large acreage of non-VUU land existed in the Borough, and the entitlement under AS 29.65.030 would have been under 29,000 acres.

Alaska State Legislature



Legislative Research Agency

P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 165-3991
Fax: (907) 163-3311

September 26, 1991

MEMORANDUM

TO:

FROM: Glenn T. Gray ^{GTG}
Legislative Analyst

RE: An Overview of the Municipal Land Entitlement Program
Research Request 92.008

You asked for an overview and analysis of the municipal land entitlement program. Specifically, you asked us to trace the history of the program back to statehood including a discussion of the rules that municipalities have had to follow to make land selections. You also asked if some municipal governments have been treated differently from others.

These matters are addressed below under seven subtopics: a summary, classification of Alaska municipalities, federal legislation that addresses municipal land selections, programs to distribute state land to municipalities, history of the municipal land entitlement program, current status of municipal land selections, and the question of whether municipalities may have received lands of different value.

Summary

The state has utilized several programs to transfer land to municipalities, but the most renown program is the municipal land entitlement program (AS 29.65). Through this program, the state has committed over 1,000,000 acres of land to municipalities. The Department of Natural Resources (DNR) has issued patents for about one-half of this land; the municipalities manage the remainder of the land until issued patents by the DNR.

The legislature has amended the municipal land entitlement program eight times since the inception of the program in 1963. Most of the amendments were made in an effort to provide municipalities with more land (e.g., extension of deadlines or addition of new classifications to the land base from which selections could be made).

We have no reason to believe that the Department of Natural Resources has treated any one municipality more favorably than another. The amount and quality of state land available for selection, however, varies among municipalities. While one municipality may have a large amount of high-quality

state land within its boundaries, another may have little or no state land from which to base an entitlement.

Classification of Municipalities

Alaska statutes define a *municipality* as a "political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality" [AS 29.71.800(13)]. *General law municipalities* do not have a charter and include first and second class cities as well as first, second and third class boroughs.¹ *Home rule municipalities* are cities or boroughs that have adopted home rule charters through an election. Home rule municipalities have all powers not prohibited by statute or charter. *Unified home rule municipalities* result from the unification of a borough and all the cities within it into a single government entity (AS 29.06.190).

Federal Legislation Concerning Land Grants For Alaska Municipalities

Several federal acts address municipal land grants in Alaska. The Alaska Statehood Act entitled the state to select up to 800,000 acres of federal land for community development and expansion (P.L. 85-508).² Another federal law (P.L. 85-303), passed in 1957, authorized conveyance of tidelands to the territory for several purposes including municipal uses. Section 14(c)(3) of the Alaska Native Claims Settlement Act (ANCSA) requires village corporations to convey land (improved land on which a Native village is located or land that is needed for expansion or rights-of-way) near Native villages to municipal corporations or to the state in trust for possible future municipalities.³ This legislation was necessary because village Native corporations were required to select the core township in which they were located. The ANCSA required Native village corporations to transfer no less than 1,280 acres to a village, but this requirement was modified by the Alaska National Interest Land Conservation Act. This modification permitted the conveyance of fewer than 1,280 acres to a village with the consent of the village corporation or the state if no village corporation existed.

¹Each category of municipalities has different powers. A more complete explanation of each of these categories may be found in AS 29.04.

²Section 6(a) of the Alaska Statehood Act authorized the state to select up to 400,000 acres of national forest land and up to 400,000 acres of other vacant, unappropriated and unreserved public lands.

³The Department of Community and Regional Affairs (DCR&A) administers these lands in trust for future municipalities under the Municipal Trustee Lands Program.

State Land Grant Programs for Municipalities

Since statehood, the Alaska State Legislature has created several means to transfer state land to municipalities. The Alaska Land Act in 1959 authorized the state to dispose of land to political subdivisions of state and federal government for public use (Section 4 Article III Chapter 169 SLA 1959).⁴ The Alaska Land Act also gave municipalities preference rights to tidelands and submerged lands "occupied or developed for municipal business" (Section 5 Article III Chapter 169 SLA 1959). Alaska Statute 38.05.320 outlines the conditions under which tidelands may be conveyed to municipalities. Another state program, authorized in 1962, permitted any first class city to apply for conveyance of all surplus state lands within the city's boundaries (Chapter 168 SLA 1962).⁵ Before it was repealed in 1976, this statute resulted in land grants of approximately 4,500 acres to a few municipalities. The municipal land entitlement program, enacted in 1963, is the focus of this memorandum. Most of the state land transferred to municipalities has been done through this program (AS 29.65). Attachment A contains the session laws relating to these programs.

History of the Municipal Land Entitlement Program

The municipal land entitlement program has undergone many changes since its inception in 1963. It began as a vaguely defined program to supply communities with vacant, unappropriated and unreserved (VUU) general grant land for residential, commercial and industrial uses.⁶ This program has since been amended eight times: in 1970, 1972, 1978, 1981, 1985, 1987 and 1991 (current statutory provisions are located in AS 29.65). The legislature enacted most of the amendments to provide more land to municipalities by extending selection deadlines, expanding the classifications of land that could be selected or by

⁴Amendments to this statute changed its title from public use to public and charitable use (AS 38.05.810). While there is no limit to the amount of land that may be transferred to municipalities "for less than appraised value," land received under this authority is credited against a municipality's entitlement under the municipal land entitlement program (AS 29.65.100).

⁵The act defined surplus state lands as "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" (AS 38.05.347).

⁶Alaska Statute 29.65.130 defines general grant land as "land patented or tentatively approved to the state from the United States under section 6(a) or 6(b) of the Alaska Statehood Act."

streamlining procedures.⁷ Major statutory revisions to the entitlement program occurred in 1978 and 1987, but minor changes made to the statutes in other years have had important ramifications. For example, while initially only boroughs could obtain lands through the program, a minor revision of the statutes in 1972 entitled all municipalities to select a portion of the vacant, unappropriated and unreserved state land within their boundaries. Throughout the years, the amendments to the program have broadened its purpose to include the transfer of state land to municipalities for community expansion, local revenue production and local recreation opportunities.

The attached table summarizes the various changes made to the law since its adoption. The following history of the entitlement program may be supplemented by reading House Research Agency Memorandum 88.071 (Attachment B), the Governor's General Grant Land Entitlement Policy (Attachment C) and a 1990 Department of Natural Resources publication entitled Municipal General Grant Land Entitlement (Attachment D).

The 1963 legislation establishing the municipal land entitlement program authorized only organized boroughs to select 10 percent of the vacant, unappropriated and unreserved state lands located within its boundaries. The legislation specified that municipal selections were to be made "within five years after the date of availability of state lands in the borough" (Chapter 52 SLA 1963).⁸ The legislation directed the Department of Natural Resources (DNR) to patent the land after it surveyed the exterior boundaries of the area requested for selection (at the expense of the borough). Selections were to be made in "reasonably compact tracts."

Two amendments during the next thirteen years made slight changes to the land selection program, but municipalities continued to perceive several problems with the program. Legislation enacted in 1970 removed the five-year selection deadline and opened up the program to first and second class cities (Chapter 213 SLA 1970).⁹ In 1972, amendments combined Title 7 (Boroughs) and Title 29 (Municipalities) of the statutes into Title 29 (Municipal Government). The content of the municipal land selection statutes remained intact, but a new phrase was added:

In the selection of land under the Alaska Statehood Act, it is the policy of the state to make available to cities and boroughs the

⁷Such procedures include the certification of a municipality's entitlement (i.e., the amount of acreage it could select), approval or disapproval of its selection and adjudication of selections not approved.

⁸Statutes authorizing the municipal land entitlement program were originally found in AS 07.10.150-160 but are now located in AS 29.65.

⁹A new section, AS 07.05.040, included first and second class cities in the program.

maximum land area from which to make selections under this section consistently with the best interests of the state (Chapter 118 SLA 1972).¹⁰

Some municipalities thought that a lack of a specified time frame for adjudication and conveyance resulted in the state unnecessarily delaying the transfer of land. Boroughs in Southeast Alaska wanted simpler procedures to obtain school, university and mental health trust lands. The North Slope Borough thought that it should be able to select 10 percent of the state land within its boundaries whether or not it was classified as VUU land. While municipalities wanted to speed up the selection process, the state thought that "land selections occurred on an ad hoc basis, often before the state could evaluate resources and perform its mandated land planning functions."¹¹

The legislature further amended the law in 1978 in an effort to remove ambiguities and to accelerate the transfer of land under the municipal entitlement law (Chapter 180 SLA 1978). Before the 1978 amendments, the legislation stated that municipalities *may* select land; the new legislation considered general grant land entitlements as vested property rights. The 1978 amendments repealed the previous municipal land entitlement statutes (AS 29.18.190 and AS 29.18.200) and added 13 new sections. The new sections:

- entitled each of the eleven home rule municipalities to select a specific amount of acreage,
- permitted other existing cities to select up to 10 percent of the maximum total VUU land that was available within their boundaries between the date of their eligibility and July 1, 1978,
- entitled new municipalities to 10 percent of the VUU land within their boundaries at the date of incorporation,
- specified a deadline for obtaining entitlement (two years after expiration of the state's right to select land under the Alaska Statehood Act unless there is a shortage of VUU land available),
- directed the DNR to approve or disapprove selections and issue patents within certain time periods,
- directed the director of DNR to work with each eligible municipality to consider land which is appropriate for selection,

¹⁰The municipal land entitlement statutes were reorganized into two new sections: AS 29.18.190 and AS 29.18.200.

¹¹Dennis Daigger, January 1990, Municipal General Grant Land Entitlement, Department of Natural Resources.

- permitted municipalities to appeal denials of land selections,
- permitted municipalities with a per capita entitlement of less than one-half acre to select vacant school, university or mental health land,¹²
- provided a mechanism to give municipalities money if there is a deficiency of land available for selection or if lands selected by the municipality were also selected by a Native corporation,
- permitted municipalities to select lands that are tentatively approved for state selection by the federal government,
- stated that it is the policy of the state to select federal land to provide adequate grant land for a municipality with insufficient lands for settlement and development,
- directed municipalities in litigation with the state over previous selections to either accept the new provisions of the land grant program or to abide by the results of the litigation (thereby waiving entitlement claims under the new provision), and
- expanded the meaning of VUU land by adding new land classifications thereby making these lands eligible selection.

This legislation defined for the first time many of the pertinent terms used in the program.

¹²The DNR did not consider mental health or university lands located within a municipality as VUU land and therefore did not use these lands to determine a municipalities entitlement (even though some communities were eligible to select this land). Therefore communities with university or mental health lands, but no other VUU state land received a zero entitlement. Two communities in Southeast Alaska administratively appealed the DNR's finding and one community filed suit in superior court. Although it is quite possible that a court would have ruled in favor of the state, the DNR settled the matter out of court giving these communities 10 percent of the mental health and university lands within municipal boundaries.

¹³The North Slope Borough decided to risk its entitlement and to continue its court action against the state. The courts decided in favor of the state and therefore the North Slope Borough lost its entire entitlement of 89,850 acres. In 1985 the legislature removed the provision in AS 29.18.211 that required a municipality to waive its entitlement if it continued to engage in an action against the state (thereby reinstating the North Slope Borough's land entitlement).

In 1979, the legislature further amended the law by changing the deadline for completion of most municipal land selections. In an effort to accelerate the process for municipal land selection, the legislature imposed a new deadline of October 1, 1980 (replacing the former deadline of two years after expiration of the state's right to select land under the Alaska Statehood Act--effectively 1996).¹⁴ New municipalities or those without adequate land to select were not bound by this deadline in an effort to provide them with more time to settle their entitlement (Chapter 85 SLA 1979).

The requirement that all land had to be selected October 1, 1980 caused problems for municipalities that had selections rejected by the DNR. These municipalities were not able to select additional replacement land before the deadline. Therefore the legislature included those lands *nominated for selection* along with those lands actually selected in the 1980 deadline. The legislature also added a clause that permitted municipalities to select new land no later than 90 days after the DNR rejected other selections.

In 1985, legislation reorganized and renumbered the municipal code including the municipal land entitlement sections (Chapter 74 SLA 1985). To comply with a court decision resulting from litigation initiated by the University of Alaska Board of Regents, the legislation removed university lands from the pool of lands available to municipalities (for those municipalities with entitlements of less than one-half acre per capita).

The legislature completed the second major revision to the municipal land entitlement program in 1987 in an attempt to provide more land to municipalities and to bring the statutes in line with recent court decisions. The legislature extended the time period for calculating municipal entitlements ten years, from 1978 to 1988 (Chapter 34 SLA 1987). Extending the deadline ten years increased the entitlement for some municipalities because the state had selected more federal land during that decade. New municipalities could select 10 percent of the maximum acreage of VUU land within their boundaries from the date of incorporation until two years later. The legislation removed school and mental health lands from selections made after October 4, 1985 (this was the date of a court decision regarding mental health lands). The 1987 legislation also increased the amount of land that could be selected by a municipality by amending the definition of VUU land to include additional classifications of lands (material, public recreation, settlement, and resource management lands).¹⁵ Some people feared, however, that without any restrictions, the inclusion of resource management land would encourage

¹⁴The state's original deadline for selection of federal land was 25 years from statehood. This deadline was extended to 1994 by the Alaska National Interest Conservation Act.

¹⁵A 1985 statewide reclassification of lands changed the status of much of the unclassified lands (lands outside of boroughs or outside areas covered by an area plan) to a resource management category.

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sparsely populated areas to form boroughs solely for the purpose of obtaining land. The legislature therefore placed a 20 acre per person cap on land entitlements (the maximum that had ever been awarded to any municipality).¹⁶

The legislature removed the twenty acre per person cap during the 1991 legislative session. According to Dennis Daigger, a DNR municipal land entitlement program specialist, the Northwest Arctic Borough is the only municipality that was affected by the removal of the cap, and it is now entitled to 285,000 acres of land. The 1990 amendments direct the DNR to defer certification of entitlements until after January 2, 1994 but before January 1, 1996. After January 2, 1994 municipalities may request that certification of their entitlements be expedited. The legislation also permits the Department of Community and Regional Affairs (DCR&A) to review selections before a patent is issued, and it specifies that the DNR must consult with the DCR&A before adopting new regulations. This legislation expanded the appeal procedure by providing a hearing procedure to address selections that have been denied. It also required that selections be no longer than four times their width.

Current Status of Municipal Land Selection

The State of Alaska has certified land entitlements for over one million acres of land under the municipal land entitlement program (AS 29.65) and about one-half of this acreage has been patented to the municipalities. Between the time a selection is approved and a patent is issued, municipalities assume management responsibilities. According to Mr. Daigger, most of the selections from the 1978 and 1988 entitlement certification have been approved or rejected.

The 1987 amendments required the governor to establish a policy for determining additional land grant entitlements for the Northwest Arctic Borough [above the entitlement specified in AS 29.64.030(b)] and for municipalities that have been created since incorporation of the Northwest Arctic Borough. This policy, developed during the Cowper administration, restricts consideration of additional land entitlements to municipalities that have inappropriate lands in their VUU land base for purposes of expansion, revenue production, public recreation, or protection of cultural resources (Attachment C).

Land selections for new municipalities will not be certified until 1994 but will likely have either a zero entitlement or one that is far less than the

¹⁶While the inclusion of resource management lands in definition of VUU land increased the Northwest Arctic Borough's entitlement from 13,000 to 285,000 acres, the 20 acre per person cap reduced the borough's entitlement to 133,920 acres. The 1987 legislation also contained a mandate for the governor to develop a policy for awarding additional lands to the Northwest Arctic Borough and other newly created municipalities.

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former ceiling of 20 acre per person cap. For example, the Aleutians East Borough has a large amount of state land classified for wildlife habitat and therefore it has an estimated entitlement of less than four acres per person. The Lake and Peninsula Borough entitlement will be approximately eight acres per person. The entitlement for the municipalities of Coffman Cove, False Pass and the Denali Borough are unknown but are expected to be less than the previous 20 acres per capita cap.

Differential Treatment of Municipalities

The amount and quality of a municipality's land entitlement depends on several factors: the amount of land owned by the state within the municipality's boundaries, the quality of the land, and the acreage classified as VUU land (and therefore able to be selected). Consequently, boroughs with large amounts of VUU land within their borders (e.g., the Northwest Arctic and the Matanuska-Susitna Borough) have a proportionally larger entitlement than municipalities with smaller land bases from which to choose. Some cities have no VUU state land within their boundaries and therefore have no entitlement. The timing of a municipality's selection may have also affected its ability to select the highest quality land. As the state selected more land from the federal government, higher quality land may have become available, and municipalities which selected their full entitlement early on were prevented from selecting the higher quality land. Municipalities incorporated after the state has adopted an area plan will likely have less land to select (completion of an area plan generally reduces the amount of VUU land and therefore reduces the acreage a municipality is entitled to). According to the governor's policy,

Questions of equity often arise as specific entitlements for municipalities are compared. The municipal entitlement law was never intended to work equitably for all municipalities, but rather was a vehicle for the state to share its land wealth with communities that had state general grant land within their boundaries (p. 4).

We found no evidence the DNR has shown favoritism to certain municipalities. The department, however, did reach a compromise with some municipalities that contested the department's rejection of land selections rather than to continue court proceedings.

Almost any change to selection deadlines, time periods for determining entitlements, or the types of land that may be selected will affect municipalities selectively, which may give rise to the perception of differential treatment. For example, the 1963 statute permitted only boroughs to select land under the municipal land entitlement program (other municipalities were not included in the program until 1970). The 1978 amendments to the municipal land entitlement program gave the 11 unified home rule municipalities specific acreage entitlements while other municipalities

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were entitled to only 10 percent of the VUU land.¹⁷ The 1978 amendments also treated some municipalities differently by permitting those municipalities with less than one-half acre per person to select university or mental health lands. Throughout the history of the program, the definitions of VUU land changed and generally municipalities fared better if they waited to select their land until these changes were made (e.g., inclusion of resource management lands as part of lands that could be selected).¹⁸ Additionally, the twenty acre per capita cap instituted in 1987 treated the Northwest Arctic Borough differently in so far as it reduced the borough's entitlement to less than 10 percent of the VUU lands within its border. Likewise, the repeal of the 20 acre cap in 1990 might be perceived by some municipalities as special preference for the Northwest Arctic Borough because its entitlement increased from 133,920 to 285,000 acres.

A detailed analysis of the equity of the program is beyond the scope of this memorandum. It appears, however, that an equal distribution of similar quality land to all municipalities was not an objective of the municipal land entitlement program.

I hope that this memorandum answers your questions. Please contact this agency if we may be of additional assistance.

Attachments

¹⁷Certain factors such as population size and the extent of state land available were part of a complex formula used to arrive at the acreage available to the eleven unified home rule municipalities. Two of these municipalities (Anchorage and the Kodiak Island Borough), however, did not have enough VUU land to select the amount of acreage specified.

¹⁸This action increased the amount of land that the Northwest Arctic Borough could select.

Legislative History of the Municipal Land Entitlement Program

Year	Action	Session Law	Statute
1959	Alaska Land Act permits state to dispose of land at less than appraised value. The act also gives municipalities rights for certain tidelands.	Ch 169	38.05.810 38.05.320(b)
1962	Alaska Land Act amended to permit 1st class cities to acquire "surplus state lands."	Ch 168	38.05.347
1963	Mandatory Borough Act permits organized boroughs to select up to 10% of the vacant, unappropriated & unreserved (VUU) land within the borough within 5 years after the lands are available. This act creates the municipal land entitlement program.	Ch 52	07.10.150 07.10.160
1970	Five-year selection deadline removed. 1st and 2nd class cities also eligible to select land.	Ch 213	07.10.150 07.05.040
1972	Title 7 (Boroughs) & Title 29 (Municipal Corporations) combined into Title 29.	Ch 118	29.18.190 29.18.200
1976	Legislature repeals the 1962 program to transfer state land to municipalities (AS 38.05.347).	Ch 218 Ch 257	
1978	First major revision to the municipal land entitlement program. Land entitlements become a vested property right & some municipalities may be paid for land that they are unable to receive. The 11 unified home rule municipalities and boroughs are allotted specific acreages above the 10% limit. Some municipalities are permitted to select university & mental health trust lands. VUU lands are defined. Selections must be made within 2 years after state selection of federal lands.	Ch 180	29.18.201- 29.18.213
1979	A court decision cancels the North Slope Borough's selections. Several Southeast communities challenge the DNR determination that mental health lands not be used as part of entitlement calculation. DNR settles out of court.		
1979	Deadline for selections changed from 1996 to 1980.	Ch 85	29.18.204
1981	Selection deadline of 1980 amended to include parcels nominated for selection and that new selections be made up to 90 days after initial ones are denied by the DNR.	Ch 113	29.18.204

program. Land encumbrance becomes a right & some municipalities may be paid for land that they are unable to receive. The 11 unified home rule municipalities and boroughs are allotted specific acreages above the 10% limit. Some municipalities are permitted to select university & mental health trust lands. VUU lands are defined. Selections must be made within 2 years after state selection of federal lands.

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Ch 85

29.18.204

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Ch 113

29.18.204

Legislative History of the Municipal Land Entitlement Program

Year	Action	Session Law	Statute
1985	Municipal land entitlement statutes are reorganized & renumbered. Selection of university lands is no longer permitted.	Ch 74	29.65-010- 29.65.140
1985	DNR reclassifies state land outside boroughs & area plans as resource management lands.		
1987	Time period for determination of entitlements extended. Maximum of 20 acres per person may be selected by new municipalities. Northwest Arctic Borough's entitlement is a partial entitlement. Mental health lands selected after Oct. 4, 1985 are not approved. Resource management lands may be selected. North Slope Borough entitlement lost as a the 1978 court case is reinstated.	Ch 34	29.65
1991	Legislature repeals 20 acres per person limit. Hearing procedures are established.	Ch 51	29.65

Sources: Alaska Statutes, House Research Memorandum 88.071 and the Municipal General Grant Land Entitlements, January 1990, Department of Natural Resources

Prepared by the Legislative Research Agency, September 1991 (92.008)

amended to include:

1994	Legislature increases Lake and Peninsula Borough entitlement from 11,000 to 125,000 acres	Ch	29 55
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A SPECIAL REPORT

**MUNICIPAL GENERAL GRANT
LAND ENTITLEMENTS**

A State-Municipal Partnership

DEPARTMENT OF NATURAL RESOURCES
Division of Land and Water Management

January 1990

Prepared by Dennis P. Daigger

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INTRODUCTION

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

SECTION 1. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

SECTION 3. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

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

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

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

municipality receiving the land has an outstanding municipal land grant entitlement, the acreage of the conveyance is subtracted from this balance.

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

BACKGROUND: MUNICIPAL LAND GRANTS

Legislative History

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

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

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

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

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

This act provided:

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

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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(c) 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 entitlement 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.

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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 incorporated after the Northwest Arctic Borough depends upon the governor's recommendation to the legislature, after completion of the Northwest Area Plan, for additional entitlement consistent with

his general grant land entitlement policy.

10) Reinstates the 89,850 acre entitlement to the North Slope Borough lost through litigation in 1978.

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

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

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

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

The Municipality of Anchorage received \$4,000,000 as deficiency payment under AS 29.18.208 for 4,000 acres of entitlement land and in 1985 entered into an agreement with the state to zero out

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a yet unfulfillable entitlement with 4,628 designated acres of state land within the municipal boundaries. Prior to the agreement, 20,671 acres of land had been approved or patented to the municipality. Under the settlement Anchorage can also receive up to 1,000 acres of National Forest Community Grant land at Girdwood if land is ever conveyed to the state.

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

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

VUU Land Definitions History

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

In 1978, the amended law adopted specific definitions for VUU land.

Following were the limitations placed on this definition:

- 1) Land must be Statehood Act section 6(a) or 6(b) land that has been patented or tentatively approved to the state and excludes the mineral estate;
- 2) Land cannot have been set aside by statute for one or more particular uses or purposes;
- 3) Land must be unclassified or if classified is classified agricultural, grazing, commercial, industrial, private recreational, residential, utility or open-to-entry.

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

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

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

1978 Entitlement Status

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

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

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

Although all land selections for municipalities with entitlements from the 1978 law are in place, somewhat less than half of the

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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 29.65.100(c) 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

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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

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date for cities incorporated after July 1, 1978 (AS 29.65.030).

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

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

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

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

PURPOSES FOR GENERAL GRANT LAND ENTITLEMENTS

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

- 1) Siting public facilities/aiding community expansion;
- 2) Providing a means of revenue production through sales or lease which also expands the municipal tax base; and;
- 3) Providing local public recreation opportunities.

The provisions of Alaska Native Claims Settlement Act (ANCSA) defeated state's title to selected and tentatively approved land within the vicinity of ANCSA village corporations. This results in extremely limited or totally absent state land bases in or near ANCSA cities (population centers) for a new borough to realize the first two purposes. The provisions of ANCSA 14(c)(3) do however, compensate for this shortcoming by requiring that an ANCSA village corporation convey up to 1,280 acres of land to the municipal corporation. This provision includes title to the remaining surface estate of the improved land and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs.

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

SUMMARY

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

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

The 1987 amendments to AS 29.65 created new entitlements for two cities totalling over 1,200 acres, reestablished an 89,850 acre entitlement for a borough and expanded entitlements for seven cities and one borough for over 130,000 new acres.

Over 1,000,000 acres of state land have been committed under AS 29.65 to 41 municipalities statewide for local use. The state has patented nearly 430,000 acres of uplands to 48 municipalities since statehood and 25,000 acres of tidelands to 28 cities.

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

MUNICIPAL ENTITLEMENT CERTIFICATION SUMMARY

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

TABLE 1

CONVEYANCE SUMMARY: UNIFIED HOME RULE MUNICIPALITIES AND BOROUGHS

CONVEYANCES BY AUTHORITY

City or Borough	Incorp	.347	AS 07	AS 29	.810	.320	Legislative	Other
<i>Aleutians East Borough</i>	Oct-37							
<i>Bristol Bay Borough</i>	Oct-52			2,872.7				
<i>City & Borough of Juneau</i>	Jul-70			3,822.9	11.1	852.9		
<i>City & Borough of Sitka</i>	Dec-71	1.8		1,290.3	8,084.6	194.5		0.8
<i>Fairbanks North Star Borough</i>	Jan-54			83,984.9	44.9			
<i>Haines Borough</i>	Jul-58			1,082.3				
<i>Kenai Peninsula Borough</i>	Jan-54			79,208.0	131.9			117.0
<i>Ketchikan Gateway Borough</i>	Sep-53			4,033.3				
<i>Kodiak Island Borough</i>	Sep-53			11,654.0	14.3			
<i>Lake & Peninsula Borough</i>	Apr-89							
<i>Matanuska-Susitna Borough</i>	Jan-54		40.3	201,823.4	400.3			79.3
<i>Municipality of Anchorage</i>	Sep-75	331.1		12,883.7	5,897.1	1,328.5		1,258.4
<i>North Slope Borough</i>	Jul-72							
<i>Northwest Arctic Borough</i>	Jun-88							
TOTALS		392.9	40.3	402,133.6	12,614.1	2,375.9	0.0	1,453.3

TABLE 2

CONVEYANCE SUMMARY: CITIES

CONVEYANCES BY AUTHORITY

City or Borough	Incorp	.347	AS 07	AS 29	.810	.320	Legislative	Other
Aniak	May-72				24.6			
Barrow	Jan-59					870.0		
Eathel	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-50			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-48	105.5				201.4		
Houston	Jan-58			418.8				
Hydaburg	Oct-27					175.0		
Kake	Nov-52					218.3		1.4
Kasaan	Feb-75				0.4			
Kenai	May-50	3,594.7		355.3	175.5	2,752.1		1.9
Ketchikan	Jan-00				1.2	169.7		
King Cove	Jan-47					178.1		
Kiwook	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
Nonana	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			
Stagway	Jan-00			122.1		193.5		
Soldotna	Jan-67			111.9	391.5			60.3
Tenakee Springs	Oct-71					30.2		204.8
Thome Bay	Aug-82			249.2				
Unalaska	Jan-42							9.3
Valdez	Jan-01			4,420.2		1,368.6		34.5
Wasilla	Jan-74				129.8			
Wrangell	Jan-03			18.5	788.7	148.8		
Yakutat	Jan-48			123.6	31.2	248.3		
TOTALS		4,063.3	0.0	7,097.1	1,970.3	22,848.4	8.9	744.9

GRANT TOTALS (ANCHORAGE) FY 95

STATS TAKEN FROM DEPARTMENT OF HEALTH & SOCIAL SERVICES
DISCRETIONARY GRANTS REPORT FOR FY 95

ANCHORAGE RECEIVED HUMAN SERVICES BLOCK GRANT IN FY 95 IN THE
AMOUNT OF \$ 1,348,400 (GF)

ANCHORAGE ORGANIZATIONS RECEIVING DHSS DISCRETIONARY GRANTS IN FY 95
AND HUMAN SERVICES BLOCK GRANTS -- DHSS GRANTS TOTAL \$ 5,157,401

\$	1,219,101	GF
	50,000	GF/FED
	691,851	GF/MHT/IA
	2,213,164	GF/MHT/FED
	176,475	MHT/FED
	806,810	FED

MUNICIPALITY OF ANCHORAGE RECEIVED DHSS DISCRETIONARY GRANTS IN FY 95
TOTALING \$ 2,784,733

\$	301,475	GF
	483,653	GF/MHT
	1,126,112	GF/FED
	873,493	FED

ANCHORAGE SCHOOL DISTRICT RECEIVING DHSS DISCRETIONARY GRANT IN FY 95
IN THE AMOUNT OF \$ 153,720 (GF/MH/FED)

SPECIAL EDUCATION SERVICES RECEIVING DHSS DISCRETIONARY GRANTS
IN FY 95 TOTALING \$ 477,284 (\$ 278,377 GF/MH) AND
(\$ 198,907 GF/MH/FED)

OTHER ANCHORAGE ORGANIZATIONS RECEIVING DHSS DISCRETIONARY GRANTS
IN FY 95 TOTALING \$ 27,756,517

\$	4,511,785	GF
	655,754	GF/MHT
	1,146,600	GF/FED
	18,057,011	GF/MHT/IA
	2,409,157	GF/MHT/FED
	976,210	FED

TOTAL ANCHORAGE GRANTS FROM DHSS \$ 36,329,655

TOTAL ANCHORAGE GRANTS HUMAN SERVICES BLOCK
GRANT AND DISCRETIONARY DHSS \$ 37,678,055

KENAI ORGANIZATIONS RECEIVING DHSS GRANTS
TOTALING \$ 5,212,483 (ALL FUND SOURCES)

GRANT TOTALS (FAIRBANKS) FY 95

STATS TAKEN FROM DEPARTMENT OF HEALTH & SOCIAL SERVICES
DISCRETIONARY GRANTS REPORT FOR FY 95

FAIRBANKS RECEIVED HUMAN SERVICES BLOCK GRANT IN FY 95
IN THE AMOUNT OF \$ 421,200 GF

FAIRBANKS ORGANIZATIONS RECEIVING DHSS DISCRETIONARY GRANTS IN FY 95
AND HUMAN SERVICES BLOCK GRANTS -- DHSS GRANTS TOTAL \$ 2,987,111

\$ 437,831	GF
36,410	GF/MHT
149,731	GF/MHT/IA
1,342,200	GF/MHT/FED
1,020,939	FED

OTHER FAIRBANKS ORGANIZATION RECEIVING DHSS DISCRETIONARY GRANTS
IN FY 95 TOTALING \$ 10,376,356

\$ 1,451,133	GF
77,353	GF/MHT
7,350,009	GF/MHT/IA
629,926	GF/MHT/FED
867,935	FED

TOTAL FAIRBANKS GRANTS FROM DHSS \$ 13,363,467

TOTAL FAIRBANKS GRANTS HUMAN SERVICES BLOCK
GRANT AND DISCRETIONARY DHSS \$ 13,784,667

KENAI ORGANIZATIONS RECEIVING DHSS GRANTS
TOTALING \$ 5,212.483 (ALL FUND SOURCES)

Chapter 1 Introduction

THE PLANNING PROCESS - The Denali Borough was incorporated in December, 1990. The borough has a nine-person assembly and directly elected mayor. The school board is composed of nine members with a chair elected from the board membership. The Borough Assembly acts as the planning commission through the Land Use Planning Committee. The committee is composed of assembly members as well as members of the public. The committee was charged with development of a comprehensive plan for the borough. Development of the plan was initiated in the fall of 1993. The Land Use Planning Committee has provided information and sought public input about the plan by:

Public Hearings The Land Use Planning Committee has met throughout the borough to seek public input on which lands the borough should attempt to obtain from the state. Maps showing land status were provided for public review at several community centers in the borough.

Committee Newsletter The borough sent to all residents a periodic newsletter describing the process and key events and current land use planning.

Community Survey Residents were sent a questionnaire covering key regional issues. A high percentage, about one-third, of the households responded.

Issue Papers A number of issue papers ranging from land use planning and economics to transportation issues were made available to the Land Use Planning Committee and the public.

The Land Use Planning Committee intends to hold future hearings on the draft plan before making a recommendation to the Borough Assembly. The Land Use Planning Committee requests comments and suggestions from borough residents on this public hearing draft. Based on public input, a plan will be presented to the assembly for its review, comments and eventual approval.

COMPREHENSIVE PLAN OBJECTIVES

1. Provide boroughwide inventory of existing demographic and physical features, social conditions and services, economic conditions and activities, public services and private facilities.
2. Accurate base maps for the borough, with appropriate overlays showing current land use, land ownership, land selection, transportation and recreation areas, geologic resources and hazards, wildlife habitats and housing.
3. Training for the assembly, Land Use Planning Committee, and staff who attend and conduct public meetings.
4. Establish policies, goals and actions for the borough relative to each major component of the plan.

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5. Action plans to accomplish and implement policies, goals and objectives for each major plan component including land use, land selection, economic development, transportation, public facilities, housing and recreation and culture.

LAND SELECTIONS The Land Use Planning Committee has set as a priority for this planning project the selection of the lands the borough will acquire under the municipal land entitlement program. This program allows new municipalities to receive up to 10 percent of vacant, unreserved and unappropriated 6a and 6b lands of the Alaska Statehood Act within their boundaries. Second, the committee has focused on state land transfers to the mental health trust fund and the University of Alaska in the region. Borough residents, particularly in the McKinley Village area, have expressed concern about large tracts of former state lands being transferred to supply revenues for these organizations. The borough seeks to insure that borough and local community concerns are addressed. This comprehensive plan includes a discussion of these issues along with suggested approaches.

VISION FOR THE FUTURE Throughout this planning process, the Land Use Planning Committee has been guided by several basic principals:

1. Doing nothing is not an option. Failure to act will only result in a future with continuing erosion of our regional character, quality of life and independence. By planning for the future and involving all the residents of the borough, we can maintain and improve the qualities we like about this region.
2. We have the ability and the resources to shape a positive future. We do not have to accept unilateral decisions made by organizations outside the borough.
3. Confronting the challenges ahead and creating the community we want will require all of us to make difficult choices. Protecting and enhancing our quality of life does not require arbitrary government interference or control of our lives; it requires each of us to have an open mind and examine alternate solutions to the community's problems.
4. Our efforts to shape a better future must be driven by the values and concerns of the entire community. This plan has been shaped by hundreds of individuals who took the time to respond to the questionnaire, attend Land Use Planning Committee meetings and put their knowledge to use on the land selection maps.

The Denali Borough Comprehensive Plan is a milestone in the borough's quest to create a better future for everyone in the community. For the last eight months the Denali Borough Land Use Planning Committee acting as public servants, residents and business people have been focused on the future of the area. The Land Use Planning Committee feels that it is important to be very plain and upfront about the position of the borough on issues of importance to its residents. The following Denali Bill of Rights states the core values that the borough government should support.

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DENALI BOROUGH BILL OF RIGHTS

- The right of residents to be secure in their homes shall be supported.
- The right of residents to be free from interference in their chosen lifestyle shall be supported.
- The right of residents to hold full property rights shall be supported.
- The right of residents to maximize involvement and self-determination in governmental and local affairs shall be supported.
- The right of residents to access educational opportunities shall be supported.
- The right of residents to seek economic security shall be supported.
- The right of residents to access public lands and waters shall be supported.
- The right of residents to live in a clean, safe and orderly environment shall be supported.
- The right of residents to have safe and effective transportation shall be supported.
- The right of residents to have efficient and adequate public facilities shall be supported.

Through adopting and implementing this plan, the Denali Borough can and will make this a better place to raise a family, to retire, to own a business, to work or to take part in recreation. The borough will continue to grow in the next 20 years, though we do not know exactly how much. Growth and change, properly done, can provide expanded economic and social opportunities for today and for future generations. To ensure that the borough remains a healthy, growing family of communities and to continue to provide a place where the freedom is available for people to express themselves by living their own lifestyles, the borough pledges to support the Denali Bill of Rights and to protect the best interests of the residents of Denali Borough.

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Cantwell — at mile 319.5 on the Alaska Railroad. The ARIR showed Cantwell as a flag stop in its 1922 Alaska Railroad Timetable. The town was named after the nearby Cantwell River, which was later renamed to the Nenana River.

Carlo Creek — at about mile 224 of the George Parks Highway, was first homesteaded by school teachers in the 1960's

Clear — at mile 392.9 on the Alaska Railroad; established in 1918 as a station stop with the name "Clear Site".

Ferry — at mile 371.2 on the Alaska Railroad; appeared on the 1922 timetable as a flag stop. It is also listed in a 1919 Seattle Chamber of Commerce promotional folder about farming in Alaska.

Healy — begun as a mining camp in 1905 at mile 358.1 on the Alaska Railroad; named after the Healy Fork of the Nenana River. A post office was established in 1921, and the population was listed as 36 by 1930. The Healy residential area is along Healy Spur Road. Today's commercial area is along the Parks Highway approximately 109 miles southwest of Fairbanks and 248 miles north of Anchorage. Healy is about 12 miles north of the entrance to Denali National Park and Preserve.

Kantishna — established as a mining camp in 1905 after gold was discovered in Kantishna Hills in 1903 by Judge James Wickersham. The community was also known as Eureka after a nearby stream. The local post office was established in 1905.

McKinley Village — Founded in 1985 as a state land sale subdivision.

Punguingue Creek — Founded as the result of several different state land sales in the early 1970s and mid 1980s.

Rex — a site near Clear on the Parks Highway about 10 miles northwest of Rex Dome. The site was shown as Kobe on a 1925 Alaska Railroad Commission map.

Suntrana — the site of an early mining camp and town about five miles east of Healy. It was listed in territorial censuses with 61 people in 1930, 78 in 1939 and 130 residents in 1950.

GEOLOGY

The 12,000 square miles of the borough include spectacular and complex geologic features. The borough includes the highest mountain in North America, productive coal fields, gold mines, limestone quarries and everything from 50 mile long glaciers to thermal hot springs.

The major geologic feature, Mount McKinley, was named in 1896 by William A. Dickey, prospector, after William McKinley of Ohio, who had been nominated for the presidency. One of the first mentions of the "stupendous snow mountain" was by Captain George Vancouver who saw it from Cook Inlet in 1794. Earlier Russian explorers descriptively called the mountain Bolshaya Gora or Big Mountain. The Athabaskan Indian name for the mountain, Denali, has been adopted as the most commonly used appellation for the area. The north peak, at 19,470 feet, was first reached by two prospectors, Peter Anderson and William Taylor on April 3, 1910. The south peak, 20,320 feet, was scaled on June 7, 1913 by Hudson Stuck, Walter Harper, Robert Tatum and Harry Karstens.

Evidence of ancient volcanic activity, submergence below sea level and massive uplifting, along with numerous active glaciers, demonstrate the forces that have shaped the land. Glaciated valleys are often partially filled with extensive deposits of rock debris and outwash gravel. The

USIBELLI COAL MINE

The Usibelli Coal Mine at Healy opened in 1943, and is the only operating coal mine in Alaska. From an employment standpoint Usibelli is the third largest mine in the state. Until 1981 most of the coal was used in the Fairbanks area to generate power. In 1981 Usibelli began to export coal to Korea.

Production has remained relatively steady since 1985 at about 1.5 million short tons. About half the coal is exported, while the remainder is used to power five Interior Alaskan power plants. In 1992 downward adjustments in the price per ton were placed on Usibelli and to a lesser extent on Sunco and the Alaska Railroad. Currently, the state receives 90 cents per ton, and the borough receives 5 cents per ton. Denali Borough was the first municipality to institute a severance tax on mining operations.

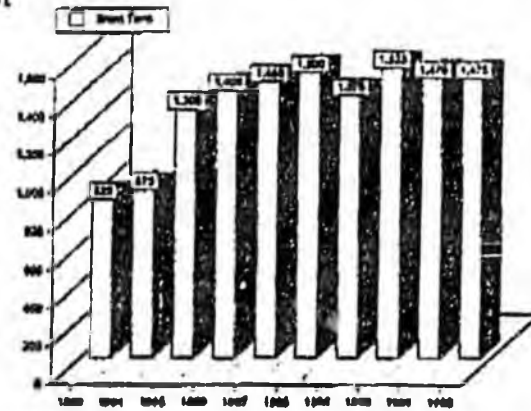


Figure 4-9 Production at the Usibelli Coal Mine

Usibelli Coal Mine employs about 110 people on a permanent, year-round basis. The miners average wage is \$25 per hour, and Healy's average household income is \$56,313, about 36 percent above the statewide average. The borough levies a modest severance tax on coal and other minerals. This severance tax represents about 3 percent to 10 percent of the borough's revenues.

MINING ACTIVITIES

According to State Division of Mining, the number of active and new claims within the borough has declined somewhat over the last three years, following a statewide trend. The future level of claim activities is unclear.

Table 4-2 Active and New Claims Assessment Work

Quadrangle	Active Claims			New Claims		
	1990	1991	1992	1990	1991	1992
Kantishna River	243	133	80	9	15	58
Mt. McKinley	233	338	238	20	25	0
Healy	4,307	3,536	3,001	84*	204*	44*
				605**	42**	12**
Total	4,883	4,008	3,310	718	286	114

*State lands only **State and Federal Lands (Source: Alaska Mineral Industry 1992)

Table 4-3 Prospecting Sites on State Lands, 1992

Quadrangle	New Sites	Extensions	Totals
Kantishna River	3	6	9
Healy	59	12	71

Source: Alaska Mineral Industry 1992

GVEA

Golden Valley Electric Association of Fairbanks operates a coal-fired power plant near the mine, with approximately 30 employees. The plant supplies electricity to the Railbelt and local area through a power line intertie with Fairbanks and Anchorage.

HEALY CLEAN COAL PROJECT

During the summer of 1995 construction is scheduled to start on a state-of-the-art, coal-fired power plant near Healy. The \$242 million project will be constructed over a four year period (1995-98). The project was initially projected to commence in 1994. However, no major construction will start until the summer of 1995. This 50 megawatt power plant is designed to demonstrate new clean burning technology. The U.S. Department of Energy provided primary funding, with the state providing matching funds. The Alaska Industrial Development and Export Authority will own the plant, and Golden Valley Electric Association (GVEA) will run it and buy the power. The lowest bid (H.C. Price Inc.) was \$25 million over the funding for the project. The state is negotiating varieties of cost-cutting measures with participating parties. GVEA and UCM have adjusted their budgets and the federal government has been approached to provide advance funding for the project. The interest from the advance funding could be used to make up a portion of the project cost.

The construction work force is expected to bring the largest economic impact. The permanent work force will be much smaller. Construction should take three years with a peak work force of about 300 people in 1997. Since many of these workers will come from outside the region, and bring their families, the Borough's population could increase by as much as 350-500 people. This project will provide a temporary boom to the borough employment and should modestly boost its permanent work force. The mine plans to increase its work force by eight and Golden Valley Electric will increase its local staff by 25 personnel. The plant will also use a significant amount of limestone which is mined at a quarry near Cantwell. Since more coal and limestone will be extracted for the power plant, the borough should see a slight increase in severance tax revenues.

Given the employment skills needed for the project, the majority of construction and operational employees will come from outside the borough. A few of these may remain as some of the workers at the new GVEA power plant.

HCCP EFFECTS

The influx of the construction work force and operational employees will produce a number of effects, such as increased indirect employment, more local income, and temporary and long-term population increases. These population increases will in turn generate additional

effects such as demand for housing, community services and recreational opportunities. The need for services from the borough may change.

The direct and indirect work force created by HCCP construction will result in a large temporary increase in the borough population over the 4-year period (1994-1998), but will result in only a small long-term population increase. The annual average population increase from construction is projected to be 32 in 1995, as high as 342 in 1997, and decreasing slightly to 339 in 1998, the last year of construction. At its peak in 1997, the construction work force would represent an increase in the central area of the borough along the George Parks highway of 46 percent over the 1990 revenue sharing population of 740.

The vast majority of the work force will be migration from outside the Denali Borough. It is estimated that 95 percent of the work force will reside in the Healy area. The remaining 5 percent will live in McKinley Village/Denali Park. Ninety percent of the work force would live in camp housing without families and that 10 percent would live with their families. The assumption is that 80 percent of workers accompanied by family members will have school age children. The family size and distribution of the new work force should resemble those of the existing GVEA and UCM operations. For example, about 85% of the UCM employees are married and 94 percent live in the Healy area. An average household size of 3.7 persons household is typical of the large family size in the area. Probably about 95 percent of the employees operating the new power plant will live in the borough, most likely between the Anderson turnoff and McKinley Village/Denali Park. They will probably have fairly large family units. Improvements to the George Parks Highway and land ownership patterns might encourage some of these people to commute a longer distance, spreading these people over a larger area along the highway corridor.

HCCP BENEFITS

The major benefit to borough residents would be indirect jobs because of spin-off expenditures by the temporary construction workers. The analysis for the project assumes one indirect job will be created for each four construction positions. Furthermore, 75 percent of the indirect jobs will be taken by a borough resident. This means about 56 of the 75 indirect jobs will be filled by borough residents. HCCP will generate on the average \$8 million in total annual wages for the duration of the project. The salaries for the indirect wages would produce about \$460,000 annually.

The EIS for the HCCP assumes that 90 percent of the construction workers would live in group quarters at the project site. The total demand for off-site housing for both direct and indirect employment would be 49 units, 35 for families and 14 for single workers. The potential impacts may be easily met because of the availability of temporary units, vacancies in permanent units and the availability of vacant lots in the UCM subdivision. What the EIS does not address however, is housing needs if more of the on site employees desire to live in single family housing or single employee housing. If this is the case, housing demand, principally for rental units, would increase in the vicinity of the project site.

SCHOOL IMPACTS

The Denali Borough School District should see an increase in students from the HCCP as construction workers and permanent workers move to the area with their families. Starting in

1997. 40 permanent additional students are estimated from the operation of the new power plant. Combined with growth from the existing community, the school can expect to enroll 246 students in 1996 and about 300 students in 1997-98. Providing for additional student populations will mean building additional classrooms, and adding more teachers and staff which will further add to the population increase. The cost of education to the Denali Borough would increase by at least \$68,046 because of the HCCP. The Denali Borough School District would be required to use additional facilities. The Denali Borough School District estimates the cost of needed expansion at \$10 million. The borough received \$3.2 million in 1993 from the state for a new facility. Under state law the borough is required to contribute 30 percent of the total cost. A total funding package plan has not been developed. The problem with the Tri-Valley site is compounded by the growth in the area not related to the project. The school site was constructed for 160 students. The current enrollment is 237 students. The EIS estimates an additional 51 students at the height of the construction period. Short of immediate construction, school officials expect double shifting of students.

STATE AND LOCAL GOVERNMENT

The State Court System and the Department of Transportation & Public Facilities (DOT&PF) have offices in Healy. The Denali Borough School District and the borough offices are also based in Healy. The borough has been in operation for just three fiscal years and is on very sound financial footing. Denali Borough was the first of only two municipal governments in Alaska to use forward funding. Under this financial system, the borough pays for expenses out of funds in hand, rather than through anticipated revenues. Instead of a budget deficit, the borough has had excess revenues over expenses each year. As of July 1, 1994 the reserve carry-over fund for the borough is \$1,196,009.

Table 4-4 Denali Borough Revenues and Expenses

Fiscal Year	Revenues	Expenses
1991	\$454,155	\$78,846
1992	\$963,021	\$142,321
1993	\$943,078	\$249,701

Table 4-5 Denali Borough Revenue Sources

Fiscal Year	Overnight Accommodations Tax	Severance Tax	Other Revenue Sources
1991	\$9,041	\$26,348	\$418,766
1992	\$442,757	\$70,278	\$449,986
1993	\$504,246	\$72,611	\$366,221

The Denali Borough employs two full-time employees along with a elected part-time mayor. The city of Anderson has a staff of two to three people. The Denali Borough School District has 47 full time and 10 part time employees. The K-12 school population for the borough has been relatively stable in the last five years with a slight increase for 1993-1994. The largest change has been at the Tri-Valley school in Healy, which increased from 185 to 228 students in 1993. The other areas have been reasonably stable. The only projected change is for the Tri-Valley School during the construction period for the Clean Coal Project. Project documents report that school enrollment may increase by 40-50 students during the construction period. This number is speculative, and will not be actually known until the project is underway.

Table 4-6 Denali Borough School District, Student Enrollment, K-12

School Site	1989	1990	1991	1992	1993
Anderson	115	116	105	121	117
Cantwell	28	24	29	31	25
Tri-Valley	185	180	182	219	228
Correspondence	16	17	11	11	3
Total	344	337	327	382	373

EMPLOYMENT

Other sources of employment within the borough include seasonal work in construction, placer mining, prospecting, fishing, fur trapping and guiding services, including horse packing and hunting. Some residents outside the borough commute to Healy or Clear Air Force Station on a daily basis. Long range commuting, common in the two adjoining Boroughs (Fairbanks and Matanuska-Susitna), is not common in the Denali Borough. Fairbanks is the nearest large employment center, but the one-way commute is about two hours.

Businesses along the George Parks Highway include numerous road houses and cafes, auto service businesses and service stations. Some Cantwell businesses will provide services to the employees of the Valdez Creek mine for one more year. Kantishna also has a very active, but short summer season that includes small scale mining and tourist related businesses.

SEASONALITY OF EMPLOYMENT

Employment is very seasonal throughout the borough. Of every 10 people working in August, only three will be working in January. This seasonal economy is caused by the tourist industry associated with Denali National Park. The influx of tourists directly affects the elaborate, growing network of service stations, restaurants, campgrounds, Laundromats and lodges. Most tourism-related businesses are shut down from October through April. Denali National Park received about 350,000 visitors in 1992. Attendance at the park is leveling off, due to saturation of the existing park road, and concern for the quality of the experience and environment. Many borough families rely on the tourist season for a substantial portion of their

annual income. Estimates indicate that about 2,500 people are employed in private tourism associated with the park.

POPULATION CHARACTERISTICS

Historically, the population of the area within the borough has had significant spikes during this century. Past events such as the gold rush at Kantishna, construction of the Alaska Railroad and the George Parks Highway, the development of the coal mines at Healy and antimony mines at Stampede, establishment of Clear AFS, construction of the GVEA Healy power plant, and increasing tourism at Denali National Park and Preserve have all had a significant influence on population swings in the borough. The Denali Borough conducted a population survey in 1993. The survey indicated a population of 1,832 with 903 households. The average household size found by the borough was 2.3 people.

Denali Borough was incorporated too late to be counted as a distinct area in the 1990 federal census. Instead, the census has identified specific areas in the Denali Borough within the larger Yukon-Koyukuk Census Area:

The City of Anderson

Healy is counted as a Census Designated Place (CDP).

Cantwell is counted as a CDP.

Ferry is counted as a CDP.

Liguite is counted as a CDP.

McKinley Village/ Denali Park is counted as a CDP.

All other locations, including Kantishna and areas along the Stampede Road are counted within the balance of the Koyukuk-Middle Yukon Census Subarea.

For the 2000 federal census, Denali Borough will be counted separately, in addition to any cities and census designated places within the borough. Areas outside these designated areas will be counted within the boundaries of the borough.

HIGH GROWTH

According to the census, the highway communities of Healy, McKinley Village/ Denali Park and Cantwell have grown at "boom town" rates over the past decade. Factors contributing to this higher growth rate include increased mining and employment opportunities associated with the Usibelli Coal Mine, and government and commercial activities related to the tourism and service industry around the Denali National Park. Growth in private sector hotel and lodging at the park entrance have surged. Anderson saw modest growth, while the City of Nenana actually lost over 15 percent of its population.

Another indication of how Denali Borough communities have changed between 1980 and 1990 is their relative position within the list of over 325 "Alaska Places" maintained by the Alaska Department of Labor. While most communities remained relatively static, McKinley Village/ Denali Park jumped in standing from 234th to 181st place.

DNR and NPS prepared the Nenana River Corridor Recreation Study in July 1991. The report reviews a number of issues and potential problems and presents a range of alternative solutions. The report recommends several specific actions. This plan provides a comprehensive review and much data about the activities along the river.

ANILCA established Denali National Park and Preserve with the following mandate:

"To protect and interpret the entire mountain massif, and additional scenic mountain peaks and formations; and to protect habitat for, and populations of fish and wildlife including, but not limited to, brown/grizzly bears, moose, caribou, Dall sheep, wolves, swans and other waterfowl; and to provide continued opportunities, including reasonable access, for mountain climbing, mountaineering and other wilderness recreational activities. Subsistence uses by local residents shall be permitted in the additions of the park where such uses are traditional ..."

NPS's mandate is clearly oriented towards the natural environment. Hotels, restaurants, lodges, and associated visitor industry businesses are not encouraged within the park. Consequently, the Parks Highway outside the park boundary has exploded in recent years with strip commercial development, causing concerns for public health (water/sewer/solid waste), traffic congestion, and unsightly conditions. The NPS should begin to recognize a responsibility for land development outside the park. It has begun a 3-year study to examine land use and transportation impacts along the Parks Highway. The *Front Country Development Concept Plan* will focus on transportation, economic, land use and development issues from the Park entrance to Kantishna, and along the Parks Highway between the bridges three and four (M.P. 230-235). Strip development along the highway will be an issue. The project is being administered from the Denver Service Center.

MUNICIPAL LAND SELECTIONS

The state Municipal Entitlement Act (Section AS 29.65) provides that the Denali Borough is entitled to select an amount up to 10 percent of the vacant, unappropriated, unreserved state land (VUU) within its boundaries at the date of the borough incorporation (December 7, 1990). The state has not officially calculated the borough entitlement until and may not release an official number until January 1996. The Municipal Entitlement Act defines which state lands are available for selection as only those lands that are patented or tentatively approved under Sections 6(a) or (b) of the Alaska Statehood Act. The Municipal Entitlement Act further requires that to calculate the entitlement, the land must be classified in one of the following categories:

Agricultural	Public Recreation
Grazing	Settlement
Resource Management (after September 1, 1983)	Material

The same criteria, grant category and classification apply to the land eligible for selection. Since classifications can change over time, the land used to calculate the borough entitlement may be different from the pool of land that the borough will be selecting from.

There are about three million acres of state land in the Denali Borough. About 490,000 acres of that land qualifies for selection under the exact terms of the Municipal Entitlement Act (VUU). That means that the borough entitlement is estimated to be 49,000 acres (10 percent of VUU). These are very preliminary numbers, and the entitlement estimate could be off by 10,000

acres. At 20 acres per person under the old law, the borough would have received about a 41,000 acre entitlement. A good portion of the state land in the borough is adjacent to or on the road system. This ready access to transportation and existing development makes this land very valuable. Even at a low average value of \$1,000 per acre the borough entitlement is worth at least \$49,000,000. The borough will identify lands that fit its own criteria based on its needs and strive to get as much high quality land as possible. The borough will pursue the following strategy:

- Determine a preliminary borough selection amount in the late fall of 1994.
- Strive to develop a selection pool that is kept current and equals 110 percent of the remaining entitlement.
- Make formal selections to DNR as soon as possible after the preliminary selections are approved by the Assembly.
- Select land that is already leased and/or permitted. All leases and permits will transfer with the land to the borough. This includes any lease stipulations, rents and revenues (if any), and the term of the lease or permit.
- Consider all state lands managed by DNR, DOTPF or ADF&G for selection, regardless of the classification.
- The borough feels that it is not strictly limited to the amount of acreage set as its entitlement by the state. The borough will, if necessary, seek an amendment to the Municipal Entitlement Act to add to its entitlement acreage.

LAND SELECTION CRITERIA

The rationale and reasons for borough land selections are very important to document. Questions regarding intent, potential uses, disposition, etc. of various parcels may be asked in the future. This Land Use Plan recommends the following criteria :

Selection by community workshop: The primary criteria will be nomination by residents of a community. Nominations have been done during community workshops which reflect the needs and wishes of the borough residents.

Cost: The borough will seek to balance the expenses of acquiring and managing the property with the potential value or return on investment.

Proximity to Existing Communities: Land in or near existing communities is a priority for selection. Some communities in the borough experience a shortage of land for development. Land selectable under the exact terms of the Municipal Entitlement Act is scarce near some borough communities, however.

Potential for Land Exchange: There are areas which the borough will select that have the potential for trade or exchange to another owner.

Potential for Commercial Use: The commercial recreation industry; hotels, lodges, air taxis, and hunting, fishing and rafting guides, has contributed to the economy of the borough. Borough land selection will focus on lands suitable for commercial activities.

Potential for Agriculture: The Denali Borough contains areas considered suitable for agriculture. The borough will select agricultural lands and will examine these areas with local expertise to ascertain their suitability for agriculture.

Potential for Settlement: About 10,000 acres in the borough have been designated as suitable for settlement by the TBAP. The state has already offered about 16,300 acres of land in the borough as recreational subdivisions and homestead land. The borough will select land classified for settlement as part of its municipal entitlement.

Future Municipal and Public Use: The borough will identify parcels in existing state subdivisions that may be appropriate for future community services in the area.

Existing Development: Some parcels with existing development, such as gravel pads and pits, are a priority if they are useful to the borough.

LAND SELECTION ORDER

Level 1 The first group of nominations will be made from land which is clearly eligible for transfer under the Municipal Entitlement Act. These selections will be made on lands which meet all the following:

- Appropriately classified.
- Additional surveys are not necessary.
- Easy access to existing communities.
- Already developed, or needed for existing development.

Level 2 The next group of lands meet all the above tests, except that parcels would need to be surveyed prior to patent. Management authority can be assigned prior to the survey.

Level 3 The last group are lands that do not meet the exact terms of the Municipal Entitlement Act because they need to be reclassified or are managed by DOTPF or ADF&G. While the outcome of these land selections are uncertain, selecting certain key tracts may be the only way to access some of the most important lands in the borough.

State regulations shed some light on what types of land, which qualifies as selectable, might be rejected on the basis of overriding state interest. The regulations list four situations that may make a nomination inconsistent with the state's best interests:

- (1) The land is identified in an adopted land use plan for legislative designation or long term retention in state ownership;
- (2) The land is part of a transportation facility or corridor, including a pipeline corridor;
- (3) The land is an oil and gas production area;
- (4) The land is of statewide interest or is important for uses of more than local concern.

Note that (2) and (3) were written with the North Slope Borough in mind, to keep them from selecting land along the Haul Road (aka Dalton Highway) and at Prudhoe Bay.

BOROUGH LAND MANAGEMENT

Many people have the misconception that there is something called "free land". Free land sounds like a great idea. Unfortunately "free" land turns out to be not so free. The borough will incur costs both with the selection and managing of its municipal entitlement. How much these costs are depends on how the state interprets its regulations, potential and existing uses on the lands and the location of lands the borough selects. The borough may be receiving land as early as 1995. The land the borough receives may have existing leases and uses. In any event, even vacant lands will need to be managed. This management will cost the borough money and staff time. Revenues from borough lands may, at some point in the future, pay for their own management. Few, if any, municipalities in Alaska are able to generate enough revenues from

their land holdings to pay for the expense of holding the land.

Transfer costs: The state has a priority list for transfer of land to municipalities. Some municipalities have waited twenty years on the list to get their land. The ability of the state to transfer land is based upon the availability of funding from the state legislature. The state has negotiated agreements with a few municipalities to have the municipality pay for the land transfer. The borough may be in the position of paying to get land that will cost it money to manage.

Survey Cost: The borough will have to pay the survey costs of the land it selects before title will be transferred from the state. Surveying in some areas of the borough will be very expensive. Generally, large parcels in areas distant from reliable control points will be very expensive to survey and small parcels near or within existing surveyed areas will cost less.

Management Expenses: The next cost is management expense, such as staff time to manage the lands acquired. The cost of owning and managing land may be significant in some cases, especially because the costs will be ongoing for as long as the borough owns the land. Areas with a lot of human activity may be valuable but also need a higher degree of looking after. A system for allowing people to use or buy borough lands or the resources on them will need to be established and implemented. Leases, permits and user fees will have to be collected and negotiated. Records will have to be kept. Activities on borough property will need to be monitored. Illegal dumping, trespass, removal of gravel, timber and other resources could place the borough in some unpleasant situations. Land away from the road system that does not have intense or competing uses will need less management and lower long term costs.

The potential value of land that the Denali Borough may receive is large enough to assure some cash flow in the future. The land the borough will receive will probably be worth in excess of \$49,000,000. The borough should view the costs of acquisition and management as an investment. The borough should be willing to spent at least 0.01 percent of this potential value per year to acquire and manage its land. The \$49,000 suggested is well within the Borough's financial ability.

BOROUGH REGULATIONS

The subject of regulation is very controversial in the Denali Borough. Regulation, even if done by and for the local people, is an anathema to some residents. The borough is required by the state, however, to adopt several mandatory powers: education, taxation and planning. The planning powers are divided into three related areas: planning, platting and land use regulation (AS 29.35.180(b)). This Comprehensive Plan is the basis for the Borough's planning efforts and forms the basis for platting regulations and any land use regulations. The Appendix has two suggested approaches for consideration.

PLATTING

State statutes AS 29.40.070 through AS 29.40.200 provide the criteria that boroughs use to adopt their platting requirements. The state statues go into some detail and length about the platting process, requirements, time lines for approval, replats, hearings, recording, title to vacated areas, delegations, waivers, remedies (punishment for violations) and subdividing state land. Since the date the Denali Borough was formed it was technically illegal to record a plat without some sort of action from the borough.

The borough is currently issuing a letter of non-objection to plats that are submitted. The borough is also reviewing options for the regulation of land subdivision. One option, the minimalist one, proposes that the subdivision process be a technical exercise only. The process is intended to produce a high quality, long lasting and accurate map. The other end of the spectrum of options is that the subdivision process involves more than just maps. It holds that the ownership, use and transfer of land involves obligations to the community. This means that land for roads, lot configuration requirements and standards for improvements must be required when land is subdivided. The borough is carefully and deliberately weighing its options.

LAND USE REGULATIONS

State law followed by other boroughs requires that their comprehensive plans have some tools to implement their findings. There are several techniques to implement a comprehensive plan. The most common way to implement land use is through zoning regulations. The effect of a change in land use can last many years, and can directly affect the value and character of not only adjoining property, but the entire community. Sometimes a change of land use can completely alter the character of an entire community or lead to permanent changes in the local environment. Each of us has a large investment, more than just money, in our homes and in the communities we live in. Even modest changes to land use, especially in or near the small communities typically found in the borough, can have a large impact.

Much of the borough is in National Park Service protected status. However, adjoining areas along the Parks Highway are developing rapidly. Tourist related development near the gateways to major National Parks is a major planning issue across the country. Controversy about development is occurring at other parks, most notably Yellowstone, Grand Canyon, Yosemite and the Great Smokies. NPS has acted in these areas to stop or restrict development near the National Parks. The agency is beginning to prepare a plan, the Front Country Plan, to address development in the entrance area of Denali National Park and along the Parks Highway outside of the Park. The results of this plan should be mechanisms to address concerns such as development outside the park boundary. The borough will have some input into plan development, but the final decisions and implementation will be at the federal level.

The state has already taken the first steps to control land use along the Parks Highway in the borough through the designation of two areas along the Nenana River as Special Use Areas. The areas are the Nenana River Gorge Special Use Area and the McKinley Village Special Use Area. The primary outcome of the special use designation so far is to close these state lands to camping.

OPTIONS

The borough is currently assessing its options for land use controls. This type of local regulation is not inherently evil. The fact that most places, even in Alaska, have them suggests that they are necessary or at least useful. Each system of land use regulation has its advantages and drawbacks. No one system is perfect or suitable for every area. The question is, which system and set of techniques are best suited for Denali Borough. The system chosen must fit the purposes of this comprehensive plan and institute a fair system with a uniformity of regulation. Nothing is wrong with a minimal regulatory system as long as it addresses the needs of the residents. Giving the people in the borough an opportunity to effect change and have a formal

voice is not only fair, but a necessary function of local government. The biggest gain from the local regulation of uses and development is that the people in the community can have notice and impact on shaping events that will affect their lives and the places they live. A balance must be made between many things, including community values, safety, health concerns and individual rights.

The borough community questionnaire found that 64 percent of the respondents support the use of local land use controls in certain areas. The greatest support (82 percent) came from Denali area of the borough. An advantage to building a local process for development is that the decision making power is brought closer to home. Currently, decisions about what happens to land within the borough is made at the state or even federal level. The borough and its residents do have mechanisms for input into these decisions, but the decisions are made by people who do not live in the borough and have a very different stake in what occurs. The adoption of borough land use regulations will increase local standing and input into federal and state decisions.

The decision to effect local control or to leave the process to state and federal agencies has not been made. Borough residents are more concerned about the appearance of development rather than about where and what type of use occurs. The borough Land Use Planning Committee is considering several different approaches to land use control, including traditional zoning, development permits and design standards. Input from the public will be critical in this decision.

ANNEXATION

Ahtna Corporation has expressed interest in having some of its lands in the Northeast section of the Matanuska-Susitna Borough become part of the Denali Borough. Ahtna Inc. officials have suggested that their corporation has more in common with the residents and interest of the Denali Borough than those of the Matanuska-Susitna Borough. Moreover, if the corporation intends on developing its lands, the current tax structure of the Denali Borough is viewed more favorably than that of the Matanuska-Susitna Borough.

The state of Alaska, through the Local Boundary Commission (LBC), has the power to alter municipal boundaries. Lands may be annexed if the LBC determines that the action will serve the balanced best interest of the state. The LBC will consider relevant factors including land use and ownership patterns, ethnicity and cultures, population density patterns, existing and reasonable anticipated transportation patterns and facilities, natural geographic features and environmental factors. The Denali Borough currently supplies education services outside its southern boundaries to some residents of the Matanuska-Susitna Borough. The borough is adopting a policy on annexation through adoption of this plan.

Denali Borough Issue Paper # 1 Land Selections

Once the state receives land from the federal government it is segregated into potential use categories called classifications. The state has 16 different classifications of land use categories. Secondary uses may be permitted when they will not adversely affect the objectives for the primary uses. More than one classification may be applied at the same time to a parcel of land.

Private - Among private property owners Fee Simple or Absolute is the term used to describe the greatest amount of ownership in land. The ownership is of indefinite duration with no conditions or restrictions on the use of the land other than public ones. One party can pass on a Restricted Estate by placing Encumbrances on the land. This reservation of rights by a former owner is becoming very common. Easements are an example of the reservation of rights to a third party such as a utility company or to the general public as in a section line.

Miscellaneous - Existing roads and easements are shown on the plat of the area. The Plat is the official map of the area. It may cover just a small area such as a single lot or parcel or an area as large as a township. A township is a square six miles by six miles totaling 36 square miles. A square mile is 640 acres of land. The term valid existing rights refers to the easements and notes shown on the plat and to laws and regulations which address the conveyance. An example of a valid existing right that may encumber the land and not be shown on the plat is a RS2477 right-of-way. RS2477 right-of-ways are trails that were customarily used for access across the public domain to get to a private parcel or a site such as a mining claim. Another right-of-way term you may come across is "17B easement". These are public access easements across native corporation lands.

State Land Plans

The use of all state lands is subject to numerous considerations that include state law, regulations, management plans, land classifications, and management guidelines. During the process of land selection for the Borough it is important to be aware of the resource information and land management planning strategies which apply to state or federal owned lands adjoining or selected by the Borough.

The State prepares Area Management Plan to guide DNR management of state lands. In the area that includes the Borough three area plans are in effect. The Tanana Basin Area Plan, Svalbna Area Plan and the Kuskokwim River Basin Plan have been adopted by DNR. The most important of these is the Tanana Plan. Borough residents participated to some extent in development of these plans through the state public review process. Native regional and village corporations, and other regional organizations had their input but the Borough, because it didn't exist or was still very new at that time, was not included. The plans developed state land classifications and management guidelines for uses on state lands only. Native corporation lands, federal lands and private lands are not affected.

The Area Plan that covers most of the state land in the Borough is the Tanana Basin Area Plan (TBAP). This plan directs the management of about 15 million acres of state land. The plan area is bounded by the Yukon-Tanana uplands on the north, the Canadian border on the east, the Alaska Range on the south and the Kuskokwim Mountains on the west.

The Tanana planning area is divided into seven subregions. The Denali Borough is located in subregions three (Kuskokwim) and four (Parks Highway and West Alaska Range). The bulk of state lands of high interest to the Borough are in subregion four of the TBAP. The Area Plan guides and determines major land uses on state lands within the planning area. The Plan presents Area-Wide Land Management Policies for each major resource or land use category affected by the plan: agriculture and grazing, cultural resources, fish and wildlife habitat, forestry, materials, recreation and tourism, remote cabins, settlement, subsurface resources, transportation, and trapping cabins. The policies apply to state land throughout the region, regardless of the classification. The policies have goals and management guidelines. Goals are the general condition the state is trying to achieve, and guidelines are the specific directives that will be applied to land and water management decisions. These Area-wide Land Management Policies are listed in Appendix B.

Some restrictions, such as easements and prior existing rights, will appear on the title to the Borough and encumber the land. The management policies and guidelines won't appear on the title to the land. The policies and guidelines should be carefully considered when establishing a selection. Most of these policies and management guidelines will evaporate when the management authority is passed on to a private owner or the Borough. Some however will live on as restrictions in the title. In your review of Appendix B you should pay close attention to the sections on Stream Corridors and Instream Flow, Trail Management, and Wetland Management. These sections are very specific about retaining buffers around lakes and wetlands and along streams. Other little gems include the protection of scenic features and the width of trail right-of-ways (generally 100 feet wide). Specific information about the management of state land in the Borough is provided in Appendix C which contains the text and maps for subregion 4. This is very important information as it will relate directly to the Borough land selections. Appendix D contains the Implementation Chapter from the TBAP. It has some specific things to say about the Denali Borough and the reservation of state lands in the Borough.

The Municipal Enticement Act is very definite about what types of classifications of state land the Borough may select from. Classifications are capable of change through an administrative process, which involves state agencies and other and the public. The process to change land classified under the Tanana, which applies to much of the state land in the Borough, is complex, time consuming and difficult. In order for the Borough to receive some lands it will be necessary to reclassify the land. The reclassification will take place in accordance with state regulations and the TBAP. To change the plan or reclassify land will take some time and effort.

Municipal Entitlement Act

The Municipal Entitlement Act defines which state lands are available for selection as only those lands that are patented or tentatively approved under 6(a) or (b) of the Alaska Statehood Act. These are also known as VUU lands. The Municipal Entitlement Act further requires that to calculate the entitlement, the land must be classified in one of the following categories:

Agricultural
Grazing
Material
Public Recreation
Settlement, or
Resource Management; after September 1, 1983

The land that meets these requirements is the base acreage that is used to calculate your Entitlement. The same criteria, grant category and classification, apply to the land eligible for selection. Since the classification on land can change over time some of the land used to calculate your entitlement may be different from the pool of land that you will be selecting from.

Section 29.65.030 of the Municipal Entitlement Act provides that the Denali Borough is entitled to select an amount up to 10 percent of the vacant, unappropriated, unreserved state land (VUU) within its boundaries at the date of Incorporation (December 7, 1990). The state will not officially calculate your entitlement until January 2, 1994 and may wait until January 1996.

The Municipal Entitlement Act under section 29.65.010 lists acreage entitlement for several municipalities. Those cities and boroughs don't rely on a formula but have legislatively set amount. It may be appropriate for the Denali Borough to propose legislation to get its name added to the list with a set amount of acreage.

Reasons for Rejection ☹

State regulations shed some light on what types of land which qualifies as selectable might be rejected on the basis of overriding state interest. The regulations list four situations that may make a nomination inconsistent with the state's best interests:

- (1) The land is identified in an adopted land use plan for legislative designation or long term retention in state ownership;
- (2) the land is part of a transportation facility or corridor, including a pipeline corridor;
- (3) the land is an oil and gas production area;

(4) the land is of statewide interest or is important for uses of more than local concern.

(2) and (3) were written with the North Slope Borough in mind, to keep them from selecting land along the Haul Road (aka Dalton Highway) and at Prudhoe Bay.

Selections Outside of the Municipal Entitlement Act

AS 38.05.B10 (.B10) gives the director of lands the discretionary authority to dispose of land to municipalities for public purposes. DNR may be willing to transfer lands that do not qualify under the act, but they will subtract the acreage transferred from your entitlement. The state may also place a restriction on the use of the land transferred for public or municipal purposes. The restriction is enforced by a reversionary clause that returns ownership back to the state if the conditions of transfer are violated. The Borough may use .B10 as a vehicle to select and receive land prior to the determination of its entitlement (no later than January 1996).

Land that was given to the state outside of the terms of the Statehood Act can be in very useful locations. Its status as OSL makes it unavailable under the terms of the Municipal Entitlement Act. In the past the Department of Natural Resources has been generous in working with municipalities to transfer OSL parcels to them as part of their entitlement. The vehicle for this transfer has been .B10. Usually certain restrictions addressing public use and purpose are placed on the land during the transfer by DNR. The law requires that the commissioner of DNR "give due consideration to the nature of public service or function and the terms of the grant under which the land was acquired." According to state regulation 11 AAC 57.080, the municipality must show that:

(1) that the amount of land available for its selection under AS 29.65, combined with other land that it owns or may reasonably acquire, is too small to enable it to meet its municipal responsibilities, or

(2) that no other land owned by or reasonably available to the municipality is appropriate for the use the municipality plans for the land requested.

Cost to the Borough

Free land sounds like a great idea. Unfortunately "free" land turns out to be not so free. The Borough will incur costs both with the selection and managing of its municipal entitlement. How much these costs are depends on how the state interprets its regulations, potential uses on the lands and the location of lands the Borough nominates.

Application - The selection process itself will add an extra burden on the municipal staff (Lina and Shely). Two part-time people are already very busy working four days a week. The

selection process will involve not only the preparation of the nominations but also follow up activities such as negotiating with the state about questions and the grey areas which are sure to appear. These are the usual expenses that the Borough will incur to select and acquire management authority of land. They are customarily not too expensive. The state has begun asking municipalities to pay for its staff time and expenses spent on processing the selections. In the past the municipalities were only responsible for the cost of publication of the notices about the selection. These added costs from paying directly for state services should be considered.

Survey Cost - The Borough will have to pay to have the land it selects surveyed before title will be transferred from the state. Surveying in most areas of the Borough will be very expensive. In some areas the cost to survey an approved selection will be much very high. The factors that weigh heavily in survey costs are distance and travel for the surveyor, how much effort it takes to establish a control point (The control point is an established reference point to which the survey description is tied to) and how many feet (Miles) of survey line needs to be run. Large parcels in areas distant from reliable control points will be very expensive and small parcels near or within existing surveyed areas will cost less.

The definition of what is surveyed for the purposes of the Municipal Entitlement Act are therefore very important. The definition is currently found in state regulations are as follows:

11 AAC 57.060. SURVEY REQUIREMENTS.(b) For the purpose of this chapter and of AS 29.65.070, "surveyed" includes any of the following:

- (1) For a selection within a cadastral rectangular survey containing protracted or monumented sections and where the survey plat is the document by which the state received title, the tract or block is considered surveyed if the selection includes the entire tract or block (emphasis added).
- (2) For a selection within the cadastral rectangular survey system where, at a minimum, the section corners and the quarter corners on the exterior boundary of the section have been monumented and shown on a survey plat executed by the DNR Division of Lands and Water or by the Bureau of Land Management, that section, one or more square 40-acre aliquot parts of that section, and the government lots or tracts contained in that section are surveyed land.
- (3) For a selection of smaller or irregular divisions of a section, the lots and blocks of a subdivision, or parcels described by metes and bounds, are surveyed land if a surveyed plat and monumentation have been approved by the division or, in the case of U.S. surveys or mineral surveys, by the Bureau of Land Management.

In some cases the question of whether the land is surveyed and the cost in doing so may not matter. Land management authority will be assigned to the Borough before the title is transferred. This is just like a TA or IC grant from the Bureau of Land Management to the

state or a native corporation. The Borough can freely manage the land and could execute conditional sales or leases on it, but the DNR would have to give its approval.

Surveyed selections which clearly meet the exact requirements of state law and regulations will cost less to get through the process.

Management Expenses - The next cost is management expense such as staff time to manage the lands acquired. These costs will continue as long as you own or manage the land. The cost of owning and managing land may be significant in some cases, especially because the costs will be ongoing for as long as the Borough owns the land. Areas with a lot of human activity may be valuable but also need a higher degree of looking after. A system for allowing people to use or buy Borough lands or the resources on them will need to be established and implemented. Leases, permits and user fees will have to be collected, negotiated and records kept. Activities on Borough property will need to be monitored. Illegal dumping, trespass, removal of gravel, timber and other resources could leave the Borough with some unpleasant situations. Land away from the road system that does not have intense or competing uses will need less management and lower long term costs.

Land Selection Analysis

To do a good job with the land selections you will need a process and criteria that enables you to sort through a lot of information and apply agreed upon standards to come up with your nominations. Since the adjudication of your selections will take time and involve adjustments, the process you develop will have to continue. The Borough has a finite number of acres it will own and it must be careful to use the selection right to acquire land that will serve a purpose.

Process - The basic decisions on the selection criteria and which lands to select should be made by resolution of the Land Use Planning Committee and ratified by resolution of the Assembly. The Planning Commission should hold a public hearing or informal meeting on each selection package. Selections near or for a borough community should have a meeting for review in that community and time for them to comment.

The Department of Natural Resources will require a justification for each selection. The state will review each nomination for compliance with state law, regulations and policy. A short written rationale should be included as to why each nomination was chosen and how it conforms to the requirements of the Entitlement Act or section AS 38.05.B10. This will help speed things up on the state side of the transfer process and provide the Borough with a record of what was in mind when they selected a particular parcel. The Department may ask for you to pay for staff time to process your applications. If this is agreed to, you should be very careful to identify the required tasks and the DNR staff time expected to complete them. You may want to consider going in with other municipalities as a package deal to cut cost. The Borough should band with other municipalities to get the state legislature to fund the Municipal Entitlement program.

Initial Recommendations

- The Borough should strive to develop a selection pool that is kept current and equals 110% of its remaining entitlement.
- The selections should begin as soon as possible after the selection criteria are approved by the Assembly. The Borough should identify lands that fit its own criteria and formally nominate them.
- Leased land and lands with permits should be considered. Leases and permits will go with the lands. The Borough will be stuck with what ever lease stipulation DNR negotiated; the rental rate (if any) and the length of the permit or lease.
- Lands in the Mental Health Hypothecated land list should be selected, if they meet the Borough criteria. This will put your name on the land and in the land record system and prevent them from slipping away to other owners or uses or getting encumbered without your input.
- The Borough should consider all state lands managed by DNR, DOTPF or ADF&G for selection regardless of the requirements of the Municipal Entitlement Act. Reclassification and negotiation are always possible. The Borough will never receive land it does not ask for. The Borough should strive to get as much high quality land as possible.
- The Borough should not consider itself limited by the amount of acreage determined as its entitlement by the state. Other Boroughs have successfully amended the Municipal Entitlement Act to add to their acreage. The Borough should go through a preliminary process to see how many acres of selection it comes up with for an open selection process. The Borough should seek an amendment to AS 29.65.010 to get an acreage amount listed as its entitlement.

Criteria.....

It is important to document the reasons behind your land selections. In the future there may be questions about the potential uses or disposition of some lands which the Borough owns. Good records now can help future residents manage the land they inherit. The Borough should adopt a set of criteria and guidelines for municipal selections. This report summarizes a lot of information which should be carefully examined before establishing land entitlement selection criteria. The criteria should be developed first by the Land Use Planning Committee and then approved by resolution of the Assembly. Here are some suggested criteria. They are not in any order or priority. Past work with other municipalities has usually lead to a priority list that is dependant upon location or compliances with the Act.

Cost - A good strategy in making selections, when using cost as a criteria, is to balance the expenses to acquire and manage with the potential value or return of investment from the land. Remember that the Borough will be paying for survey costs, publishing notice and maybe state personnel time.

Proximity to Existing Communities - Land in or near existing communities has been a favorite for selection. Many communities experience a shortage of land for development or resource extraction like shot rock or gravel. Getting the land ownership into Borough government can speed up the use of the resource. Land selectable under the terms of the Municipal Entitlement Act is scarce near existing communities. Land does not necessarily have to be near an existing community to have a good potential for development or high value. Sites and areas which were once inhabited or intensively used may again become active.

Potential For Coal or Mineral Development - Resource extraction activities within the Borough include the possibility mineral extraction and coal development. Whether or not this development takes place on Borough lands there will be a need for facilities associated with the development. Land which has a potential for supporting development of natural resources could be a basis for selection by the Borough.

Known areas of lode, placer mineral occurrences and coal are shown on resource maps in the Tanana Basin Area Plan resource inventory. Specific areas of mineral potential in the region were not evaluated by the state during preparation of the Tanana, but are discussed in plan Minerals Element. Mineral exploration and survey work conducted in the Borough may provide insight to mineral potential of state lands; however, much of the exploratory work remains confidential.

The Borough will be receiving only the surface estate to lands it acquires. That means that you will not receive any direct revenue from the sale, lease or production from these lands involved in mineral or energy development. Lands used for this development do have potential for generating direct revenues to the Borough through user fees or leases. Receiving ownership and managing these lands will be difficult but asking is cheap. Since the Borough has no property tax, revenue from improvements in these areas can only come from lease and permit fees.

Potential for Land Exchange - There maybe areas which the Borough could select that have the potential for trade or exchange to another owner. A land exchange can be an effective way of acquiring property which has a high value to the Borough but is not considered important or appropriate to the present owner. Several municipalities have negotiated trades that involved private owners, the state or the federal government. Most land exchanges end up as being very lengthy and complicated. An example would be a trade between the Borough and the ARR. The ARR may have lands which are used for things like gravel extraction or camping which really do not fit into the scope and purpose of the ARR and are a management problem. The Borough may be able to trade some of its land for the

material source. The Borough and the ARR may be able to jointly develop adjoining parcel in a complementary manner.

Potential for Commercial Recreation - The commercial recreation industry - hotels, lodges, air taxis, and hunting, fishing and rafting guides - have contributed to the economy of the Borough. A potential focus of borough land selection would be on lands suitable for support of commercial recreation activities. Benefits would include increased business revenues and employment opportunities for local residents, and tax and lease revenues from commercial recreation activities.

Land ownership could be used to provide land for commercial or industrial uses. You can also control these uses through land use controls such as zoning, but there is no zoning like owning. The commercial recreation industry is an economic activity that can be expected to grow significantly. The location of the existing commercial area is in a relatively small portion of the borough. There may be potential for selecting lands in this area or other areas along the Parks Highway and in turn leasing or selling them to commercial operations. Economic opportunities associated with commercial operations off the Parks or Denali Highways are somewhat limited.

Potential for Agriculture - The Denali Borough contains several areas that are considered suitable for agriculture. The state has a policy of selling only the agricultural rights to land with soils suitable for agriculture. The agricultural classification is a selectable classification in the Entitlement Act. About 12,000 acres are designated as recommended for agriculture in the Tanana. These areas are shown on the maps in appendix C. Please review this appendix for more detailed information on both agricultural and settlement disposal. The Borough may want to try something here with existing Agricultural Disposal areas. The Borough could select these areas to acquire the remaining development rights.

Agricultural Disposal Areas

Area	Map Area	Acres
Chump	4F3a	1,000
Jullus Creek	4J3	1,000
Koba II	4F3b	4,830
Windy	4F3c	5,000

Potential for Settlement - About 10,000 acres in the Borough have been designated as suitable for settlement by the Tanana Basin Area Plan. The state has already offered about 16,300 acres of land in the Borough as recreational subdivisions and homestead land. The Tanana includes recommendations for subdivided land sales of about 1,600 acres near three

communities in the Borough, Anderson, Healy and McKinley Village. These subdivisions consist of lots smaller than 40 acres. The Tanana also proposes seven areas totaling about 7,700 acres for disposal as homesteads. Homestead parcels are over 40 acres in size. Settlement is a selectable classification under the terms of the Entitlement Act.

Subdivision Area	Map Area	Acres
Anderson	4J2	1,000
Land Swap	4C1a	300
Otto Lake	4F1a	300

Homestead Area	Map Area	Acres
Anderson New	4J2	2,000
Clear Sky II	4H1	2,500
Gold King	4Q1a	300
Slate Creek	4F1b	1,000
Teklanika	4I1	1,250
Whitewater	4C	400
Wood River	4Q1b	250

The Land Swap Subdivision involves a land trade between the state and the National Park Service. The Wood River Homestead area is partly within the Fairbanks North Star Borough. Map Areas can be found in Appendix C.

New State Land - There are some areas in the Borough which are federal land, managed by the Bureau of Land Management which are scheduled to be selected by the state. The Tanana Basin Area Plan lists areas for new state selections and potential uses for those areas. The Borough could select these areas as part of its entitlement. The land would be transferred to the Borough after the (or if) the federal transfer to the state occurs.

Selection Priority....

Level 1

The first group of nominations should be made from land which is clearly eligible for transfer under the Municipal Entitlement Act. These selections should be made on lands which meet all of the following:

- o Appropriately classified
- o Do not require further survey for transfer to the Borough.

- o Are in or have easy access to existing communities.
- o Are currently in use or are needed for existing development.

Level 2

The next group of lands are those lands which meet all of the above, but would need to be surveyed prior to patent. The management authority can be assigned prior to the survey.

Level 3

The next group would be any other lands which are selectable under the terms of the entitlement act that are in large blocks that will need survey for transfer and are far away from the roads and trails or communities and have little potential for use, sale or trade.

Level 4

The last group are lands that don't meet the terms of the Municipal Entitlement Act because they are not 6a or 6b lands or need to be reclassified or are managed by DOT or ADF&G. The process will involve several formal steps including a public review and evaluation process known as a preliminary and final decision by the Director of Lands. The outcome of these land selections will be uncertain, however it may be the only way to access some of the most important lands in the Borough. These lands will be deducted from your entitlement. The transfer will be subject to negotiation between the Borough and the state. Some of these transfers may take place under AS 38.05.810.

Working with the State

The Borough should work on getting as much land that meets your established criteria as possible. Some of this land will come not under the Municipal Entitlement Act but under the discretionary ability of the DNR. You will be working very closely and probably for a period of years, with DNR and its staff to transfer your entitlement. The Department is a agency with multiple missions which can conflict with each other. One mission is to manage and promote the development of state lands to generate income for all the people of Alaska. Another mission is to give away some of this land to municipalities. This schizophrenic nature of the assignment can lead to some strange twists. Your official determination of your entitlement is not due until 1994, and the process will leave you room for negotiation. Until then, the Borough should proceed to select high priority lands in order to get your name on them. You can also make an argument to move up the date of your entitlement certification. Section 29.65.030(b) says that a "city" may ask the director to certify the entitlement early. Some folks have made the argument that a Home Rule Borough is a "City".

o This report is printed on recycled paper.

Witness

SB107

JOHN GONZALES (FORMER REP.)
MAYOR, DANIEL BOROUGH
683-1330