HB

20

SFIN

FILE

HOUSE COMMITTEE REPORT

(1)

Date Referred: February 13, 1995 FURTHER REFERRALS:

Date of Committee Action: 3/10/95

The FINANCE Committee considered: HB 20

HOUSE BILL NO. 20 RIGHTS IN TIDE/SUBMERGED LAND

"An Act relating to rights in certain tide and submerged land."

recommends it be replaced with the following committee substitute CS HB 20(Fin) [ ] the same title [X] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

2 [X] fiscal note(s) 1 F&G, 1 DNR [X] fiscal note(s) DNR 2/3/95 #(1)

[ ] zero fiscal note(s) _____ [X] zero fiscal note(s) DCRA 2/3/95 (#3)

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
Mark Hanley	Hanley			X	
Gene Therriault	Therriault			X	
Ben Grussendorf	Grussendorf	X			
Vic Kohring	Kohring			X	
Tom Brown	Brown		/	X	
Mike Kelly	Kelly	/			
Don Mulder	Mulder			X	

CO CHAIR'S SIGNATURE Mark Hanley Hanley

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 20

Revision Date: 3/8/95
Title: Rights in Tide/Submerged Land
Sponsor: Representative Moses
Requester: House Finance

Dept. Affected: Fish and Game
BRU: Habitat and Restoration
Component: Habitat

COMPONENT SERIAL NO. 486

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	31.2	31.2	31.2	31.2	31.2	31.2
TRAVEL	1.6	1.6	1.6	1.6	1.6	1.6
CONTRACTUAL	1.0	1.0	1.0	1.0	1.0	1.0
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	34.3	34.3	34.3	34.3	34.3	34.3
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	34.3	34.3	34.3	34.3	34.3	34.3
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	34.3	34.3	34.3	34.3	34.3	34.3

Estimate of any current year (FY95) cost: 0.0

POSITIONS

FULL-TIME						
PART-TIME	0.5	0.5	0.5	0.5	0.5	0.5
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached page.

Prepared by: Ellen Fritts
Phone: 465-4105
Division: Habitat and Restoration
Date: 3/8/95
Approved by Commissioner: Ward Boston for Frank Rue
Date: 3/9/95
Agency:

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

Analysis:
Habitats on tidelands and submerged lands support nearly all of Alaska's fishery resources at various life stages, and many wildlife resources, including waterfowl and marine mammals. Tidelands and submerged lands are the focus of fish and wildlife harvest activities that are of enormous economic value to the state.

It is the Department of Fish and Game's responsibility to advise the Department of Natural Resources on land use decisions affecting fish and wildlife and public use of these resources. The Department of Fish and Game's comments to the Department of Natural Resources identify any management issues concerning the protection of sensitive fish and wildlife habitats, and public uses of fish and wildlife, that may be affected by a municipal conveyance.

To fulfill the department's responsibilities in the land conveyance process proposed by this legislation, the Division of Habitat and Restoration will need funding equivalent for half of a full-time habitat biologist position. This additional funding will be used to bring an existing part-time habitat biologist to a full-time status to review applications for municipal submerged land and tideland conveyances from an unknown, but potentially large number of municipalities.

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB20

1995 LEGISLATIVE SESSION

Revision Date: 9-Mar-95

Dept Affected: Natural Resources

Title: An Act relating to rights in certain tides and submerged land

BRU: Resource Development

Component: Land Development

Sponsor: Representatives Moses, Kubina

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 (1005)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)

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)

In addition to the general grant land entitlement under AS 29.65, qualified municipalities which were incorporated prior to 1964 have been conveyed tide and submerged land (22,848 acres). This legislation would authorize the department to convey improved tidelands or land required for the accomplishment of a public or private development to all home rule, first and second class municipalities. Currently, the department can only issue leases that create a financial burden to the municipality and a liability to the state. This legislation will reduce the amount of lease monitoring and compliance activities currently required of the department on these existing leases, however the department anticipates no reduction in expenses due to the continuing effort to process and monitor other current and additional leases.

A zero fiscal note on expenditures is submitted assuming that staff would normally be processing leases to municipalities will be issuing conveyances instead.

The reduction of $100.0 in general fund program receipts is a rough estimate of the amount of annual lease revenue that will be lost with the implementation of this legislation.

See attached proposed amendments.

Prepared by: Ron Swanson, Director — Phone : 762-2692

Division: Land — Date : 9-Mar-95

Approved by Commissioner: — Date: 3-9-95

Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

(CSHB20.XLS Rev 3/9/95) For further distribution information call the Governor's Legislative Office

FISCAL NOTE ATTACHMENT
CSHB20

Delete the phrase "or sale" from page 2, line 20. Tide, shore and submerged lands are all managed under the Public Trust Doctrine. This is a living doctrine that has evolved and continues to evolve over time. other states and the courts have long found that the sale of these lands, while not necessarily violating the public trust doctrine at the time of sale, may be its use over time violate the doctrine at a later date.

In a recent survey conducted by the State of Washington, all 22 western states currently prohibit the sale or exchange of these lands. They have all found that short or long term leases (up to 55 years) provide the protection needed and allow the stipulations to be changed at periodic intervals.

Except in rare circumstances, the Department of Natural Resources cannot convey tide, shore or submerged lands to private individuals. This proposed legislation, however, would allow local municipalities that ability without any side boards or restrictions.

STATE OF ALASKA
1995 LEGISLATIVE SESSION

FISCAL NOTE

No. 3
Bill Version: HB 20
(H) Publish Date: 2/3/95

Revision Date: January 24, 1995
Dept. Affected: Community & Regional Affairs
Title: An Act relating to nghts in certain tide and submerged land.
BRU: none
Component none
Sponsor: Representative Moses
Requestor: House C & RA Committee
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 give the Department of Natural Resources (DNR) the authority to convey tidelands and submerged land to municipalities. Presently, DNR can only issue leases (unless the municipelity was incorporated before 1964). There is no fiscal impact on DCRA from this bill.

Prepared by: Remond Henderson, Director Remond Henderson Phone: 465-4708
Division: Division of Administrative Services Date: 1/24/95
Approved by Commissioner: Julie Brown Date: 1/24/95
Agency: Community & Regional Affairs

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

COMMITTEE COPY

9-LS0118\G
Cook
2/23/95

Adopted 3/21/95

CS FOR HOUSE BILL NO. 20( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MOSES, Kubina

A BILL

FOR AN ACT ENTITLED

"An Act relating to conveyance of certain tide and submerged land to municipalities; and providing for an effective date."

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

*** Section 1.** AS 38.05 is amended by adding a new section to read:

Sec. 38.05.825. CONVEYANCE OF TIDE AND SUBMERGED LAND TO MUNICIPALITIES. (a) Unless the commissioner finds that the public interest in retaining state ownership of the land clearly outweighs the municipality's interest in obtaining the land, the commissioner shall convey to a municipality tide or submerged land requested by the municipality that is occupied or suitable for occupation and development if the

(1) use of the land would not unreasonably interfere with navigation or public access;

(2) municipality has applied to the commissioner for conveyance of the land under this section;

(3) land is classified for waterfront development or for another use that is consistent or compatible with the use proposed by the municipality, or the proposed use of the land is consistent or compatible with a land use plan adopted by the municipality, the department, or the Alaska Coastal Policy Council; and

(4) land

(A) is required for the accomplishment of a public or private development approved by the municipality;

(B) is the subject of a lease from the state to the municipality; or

(C) has been approved for lease to the municipality.

(b) The commissioner may not convey land under this section that has been designated by statute unless the commissioner determines that the proposed use is consistent or compatible with the purpose of the statutory designation. If land designated by statute is conveyed, uses of the land after conveyance are restricted to those uses determined by the commissioner to be consistent or compatible with the purpose of the designation.

(c) Upon receipt of an application, the commissioner shall determine whether the requested conveyance meets the requirements of this section and issue a written decision regarding that determination. Upon a determination that the requirements have been met, the commissioner shall approve the conveyance of the land to the municipality. After conveyance to the municipality is approved, the municipality has management authority of the land and may convey the land by lease or sale. The cost of the survey and all subdivision or other platting required for conveyance shall be borne by the municipality.

(d) A conveyance under this section may contain only those restrictions required by law, including AS 38.05.127 and (b) of this section. Land conveyed is subject to the public trust doctrine that may be enforced by the state in a court of competent jurisdiction. The municipality shall be required to ensure that reasonable access to public waters is provided. Title to land conveyed under this section that is retained by the municipality reverts to the state upon the dissolution of the municipality.

(e) This section does not enlarge or diminish the general grant land entitlement of a municipality under AS 29.65, nor is a conveyance under this section counted against the municipality's general grant land entitlement.

* **Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).

Amendment: to HB20

In the House Resources Committee on 2/13/95

to the title:

After "...submerged land."

Add "to municipalities."

to read: "An Act relating to rights in certain tide and submerged land to municipalities."

Alaska State Legislature

Representative Carl E. Moses

CHAIRMAN
HOUSE RULES COMMITTEE

CHAIRMAN
HOUSE SPECIAL COMMITTEE FISHERIES

MEMBER FINANCE SUBCOMMITTEES ON
DEPT OF FISH AND GAME
DEPT OF PUBLIC SAFETY

SESSION
CAPITAL BUILDING, ROOM 204
JUNEAU, ALASKA 99801-1182
PHONE (907) 465-4451
FAX (907) 465-3445

INTERIM
716 W 4TH AVE. #630
ANCHORAGE, AK 99501-2133
PHONE (907) 258-8167
FAX (907) 258-8468

To: Representative Mark Hanley, Co-Chair
House Finance Committee

From: Representative Carl E. Moses, Chair
House Rules Committee

Date: February 27, 1995

Re: HB 20, relating to conveyance of tide and submerged land to municipalities

HB 20 is currently scheduled to be heard before the House Finance Committee on Thursday, March 2nd.

The attached CS HB 20( ) has the following changes:

A title change to tighten up the title to insure that tide and submerged lands are limited conveyances to municipalities; and

An immediate effective date.

These are the only changes to the bill and I would ask that you consider them for inclusion in a House Finance Committee Substitute. Thank you.

Alaska State Legislature

Representative Carl E. Moses

CHAIRMAN
HOUSE RULES COMMITTEE

CHAIRMAN
HOUSE SPECIAL COMMITTEE FISHERIES

MEMBER FINANCE SUBCOMMITTEES ON
DEPT. OF FISH AND GAME
DEPT. OF PUBLIC SAFETY

SESSION
CAPITAL BUILDING, ROOM 204
JUNEAU, ALASKA 99801-1182
PHONE (907) 465-4451
FAX (907) 465-3445

INTERIM
716 W. 4TH AVE. #630
ANCHORAGE, AK 99501-2133
PHONE (907) 258-8167
FAX (907) 258-8468

SPONSOR STATEMENT

HB 20, relating to rights in certain tides and submerged land to municipalities.

I introduced HB 20, relating to conveyance of tide and submerged lands, to assist communities at the local level in obtaining tide and submerged lands for waterfront development.

Background: Upon becoming a state, Alaska authorized all first class and home rule cities to receive all tidelands within their boundaries. These cities were required to reconvey lands to private persons based on prior use and development of the tideland. Tidelands can't be conveyed to first class and home rule cities formed after April 1, 1964, but the Alaska Department of Natural Resources (DNR) can issue leases for tide and submerged lands.

Reason for the bill:

I have introduced HB 20 because leases vary in terms and duration, and because unified municipalities, second class cities, or boroughs of any class cannot qualify for conveyance of tide and submerged land. All coastal municipalities have similar needs for tidelands to give them the tools needed to encourage, control, and ensure responsible development of tidelands within their boundaries. Obtaining a tidelands lease can be a cumbersome, lengthy process that may require the posting of a performance bond that cost the municipality more in annual premiums than the fair market annual rent for the tidelands. Properly administering leases to remote areas is also cumbersome for the department.

HB 20:

HB 20 requires DNR to convey to a municipality tide or submerged land that is occupied or suitable for occupation and development if four conditions are met. The four conditions required are: (1) lack of unreasonable interference or public access resulting for the proposed use of the land; (2) application for conveyance by the municipality; (3) compatibility of the proposed use and the land classification or land use plan for the area; and (4) need for the land for development.

The DNR then determines if it is in the State's best interest to convey the land to the municipality.

Public interest safeguards are provided for in the bill. Land conveyed under the bill is subject to the public trust doctrine which is expressly stated in the bill. Title to land conveyed would revert to the State if the municipality is dissolved. Conveyances of land under the bill would not enlarge or diminish the general land grant entitlement of a municipality provided under AS 29.65 nor does a conveyance count against the municipality's general grant land entitlement.

Prior legislative history:

HB 20 essentially contains section 2 of HB 398, relating to rights in certain tide and submerged land by Representative Olberg, which passed the House last year and died in Senate Rules Committee in the final day of session.

I have provided you with some background materials, including a general history of tide and submerged lands, and position papers that help explain the need for and effect of this bill. The bill is supported by the Alaska Department of Natural Resources (no formal position paper until Commissioner Shively is on board) and the Department of Community and Regional Affairs. HB 20 is supported by the Alaska Municipal League and the Alaska Association of Harbormasters & Port Administrators, Inc.

I would appreciate your support.

2/16/95

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

4(B 20

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

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

MEMORANDUM March 14, 1994

SUBJECT: "Public Trust Doctrine"

TO: Representative Harley Olberg
ATTN: John Walsh

FROM: Jack Chenoweth
Legislative Counsel

Per your request, enclosed are copies of an Opinion of the Attorney General of July 3, 1984, and of the decision in CWC Fisheries, Inc. v. Bunker, 755 P.2d 1115 (Alaska 1988), both bearing on the subject of the "public trust doctrine." The Opinion of the Attorney General speaks generally of the doctrine's application, while the court decision makes clear that the "public trust doctrine" has validity and application in Alaska at least in the context of conveyances of titles to tidelands.

JBC:pl
94-198.plm

MEMORANDUM

State of Alaska

TO:	Tom Hawkins, Director Div. of Land & Water Management Dept. of Natural Resources	DATE	July 3, 1984
		FILE NO:	366-579-84
	Norman C. Gorsuch Attorney General	TELEPHONE NO:	465-3600
FROM:	By: Douglas K. Mertz Assistant Attorney General Department of Law	SUBJECT	Quiet title actions concerning accreted lands

On April 30, 1984, you requested this office's opinion concerning two questions having to do with ownership of accreted lands. First, you asked whether, when the state is faced with claims to former state lands which may have accreted to an upland owner, the state is obligated to defend the original survey line at mean or ordinary high water. 1/ Second, you ask whether, if the state determines that such lands are in fact accreted lands, there is any mechanism other than a quiet title action whereby the state can convey record title to the upland owner.

1. In our opinion the state is obligated to defend its title to land whenever the state has an arguable good faith basis for its claim of ownership. We reach this conclusion after considering both the constitutional basis for state stewardship over public lands and the common law status of the state as trustee for the public over state lands. The Alaska Constitution in Article VIII provides significant safeguards for state lands and restricts the ability of the state to alienate lands without public notice "and other safeguards of the public interest." Likewise the Alaska Land Act, AS 38.05., restricts the authority of the Department of Natural Resources to alienate state land without public notice and a variety of other safeguards, including, in almost all instances, the requirement of disposal only at fair market value. Although there is no statutory provision speaking directly to the accretion situation, we believe the policy permeating the Alaska Land Act as well as the relevant constitutional provisions should be read as setting out a standard of caution for use in resolving adverse land claims against the state. This conclusion is buttressed by the common law doctrine of the public trust, whereby the government holds title to public lands as trustee for the public and can take no steps regarding those

---

1/ Accretion is the gradual and imperceptible increase in land area beside a body of water; title to accreted lands ordinarily vests in the shoreline owner. See Honsinger v. State, 642 P.2d 1352 (Alaska 1982).

lands except in fulfillment of the trust obligation. This doctrine may be particularly relevant in the case of a wildlife refuge or other state lands specifically set aside for public purposes.

Against this general background we find an absence of statutory authority for the state to simply accede to adverse claims of ownership of state lands. We thus conclude that it is the duty of the state to defend state claims of ownership whenever the state has a good faith arguable position in its assertion of title. Thus, in cases where transfer of title by accretion is alleged, the state should not simply accede to such claims by upland owners unless it is convinced after careful examination of the facts that the state could not advance any good faith argument that title remains in the state.

2. You have also asked how, in those situations where the state does not have any basis for disputing a claim of transfer of title by accretion, the state can accomplish an actual conveyance of the lands such that the upland owner could in the future demonstrate recorded evidence of title. This is a considerably more difficult problem than might at first appear. This office has given the opinion in the past that there is no statutory authority to simply quitclaim or disclaim ownership of state lands when we believe a claimant has a valid right to title (see 1983 Inf. Op. Att'y Gen. (Aug. 4; 166-683-83) by Assistant Attorney General Barbara Malchick). It is clear, however, that in the context of good faith litigation the state may settle quiet title claims by means of a conveyance by deed to the lands in dispute in the litigation (see 1981 Op. Att'y Gen. No. 9 (Oct. 7) by Assistant Attorney General Thomas Meacham). There is an argument that the state, although unable to simply disclaim ownership to real property, could issue a certificate that, according to a state survey, certain lands were accreted and were no longer tidelands and hence were apparently not state-owned. This method would encounter at least two problems. First, as noted above, it is doubtful that DNR has authority to dispose of state lands by this method (although theoretically this would not be a disposal, but rather a recognition of lack of state title); and secondly it would also not bind the state from changing its interpretation of either the facts or the law in the future. A third problem would be that such a document probably could not be recorded and hence would be of doubtful validity in establishing an unclouded chain

of title to the lands in question. 2/

In short, the only method of signifying that the land has changed title through accretion which would provide certainty and a clear recordable proof of title is a decree under quiet title litigation. Of course, if the state determines that accretion has in fact occurred and that the state has no arguable claim to accreted lands, it should not mount a spurious defense to a quiet title action. It should, however, create a record in such a proceeding to demonstrate that the factual and legal situation has in fact been examined sufficiently to demonstrate the lack of an arguable state claim. In such a proceeding the burden would be on the upland claimant to establish the accretion and the right to a recordable deed of title. We believe this burden is not unjust given the fact that such a determination would be for the benefit of the upland owner and given the rarity of true accretion situations, and should not give rise to any great increase in litigation.

I hope this answers your questions. Let us know if you have further inquiries.

DKM:dlm

cc: Paula Twelker
DNR-SEDO

Dave Zimmerman
F&G - SERO

2/ It has been suggested that AS 38.05.035(b)(2) could be a device for allowing a state deed to be issued for accreted state lands. That section, however, permits alienation of state land only to correct "errors or omissions" by the state or federal government; an accretion might be considered an error by nature, at least by the tideland owner who loses title, but it could hardly be considered an error by the government.

to which she has become accustomed. As the majority correctly notes, we have repeatedly held that where property can provide support, alimony should not be awarded. The award of alimony should therefore be reversed, and the marital property redistributed in a manner which treats Virginia equitably. In short I would reverse the award of alimony and remand with instructions that Virginia be awarded a share of the marital property that will enable her to maintain a semblance of the lifestyle to which she has become accustomed, taking particular note of the $85,000 savings account which was originally awarded to Ben.[2]

CWC FISHERIES, INC. and Eric Randall, Appellants,

v.

Dean B. BUNKER, Appellee.

No. S–1995.

Supreme Court of Alaska.

June 3, 1988.

Holder of state-granted patent in tidelands brought trespass claim against commercial fisherman. The Superior Court, Third Judicial District, Kenai, Charles K. Cranston, J., entered judgment dismissing the claim, and patent holder appealed. The Supreme Court, Burke, J., held that: (1) any state tideland conveyance which fails to satisfy requirements of United States Supreme Court's *Illinois Central* "public trust" decision will be viewed as a valid conveyance of title subject to continuing public easements for purposes of navigation, commerce and fishery, and (2) tidelands conveyed to private parties pursuant to class I preference rights under preference statute were conveyed subject to those easements.

Affirmed.

1. Navigable Waters ⇐37(4)

Any state tideland conveyance which fails to satisfy requirements of United States Supreme Court's *Illinois Central* "public trust" decision will be viewed as a valid conveyance of title subject to continuing public easements for purposes of navigation, commerce, and fishery.

2. Navigable Waters ⇐37(4)

In determining whether state conveyance has passed title to tideland free of any trust obligations under United States Supreme Court's *Illinois Central* decision, Court must ask, first, whether conveyance was made in furtherance of some specific public trust purpose and, second, whether conveyance can be made without substantial impairment of public's interest in state tidelands; if either question can be answered in affirmative, conveyance free of public trust would be permissible.

3. Navigable Waters ⇐37(4)

Before any tideland grant may be found to be free of the public trust under "public trust purposes" theory, Legislature's intent to so convey it must be clearly expressed or necessarily implied in legislation authorizing transfer; if any interpretation of statute is reasonably possible which would retain public's interest in tidelands, court must give statute such an interpretation.

4. Navigable Waters ⇐37(4)

Statutory conditioning of preference right for acquisition of tidelands upon existence of "substantial permanent improvements" on property cannot be interpreted as expression of state's intent to abdicate its public trust responsibilities; "substantial permanent improvements" requirement

2. The factors enunciated in *Merrill v. Merrill*, 368 P.2d 546, 547–48 n. 4 (Alaska 1962) and *Wanberg v. Wanberg*, 664 P.2d 568, 574–75 (Alaska 1983) should provide guidance to the superior court in its reconsideration of the distribution of the marital estate after cancelling the alimony award.

simply serves as additional factor in determining equitable distribution as between occupants. AS 38.05.820.

5. Navigable Waters ⇐37(4)

State's intent to abdicate its public trust responsibilities as to tidelands conveyed pursuant to preference statute was not "necessarily implied" by circumstances surrounding enactment of statute; provision of Alaska Constitution in effect at time statute was enacted explicitly provided that fish, wildlife and waters were reserved to the people for common use where occurring in their natural state. AS 38.05.820; Const. Art. 8, § 3.

6. Navigable Waters ⇐37(4)

Conveyance of fee simple title in tidelands free of any public trust obligations pursuant to statute allowing preference rights in acquisition of tidelands would amount to substantial impairment of public's interest in state tidelands as whole, in violation of public trust doctrine, where statute made available for private ownership virtually all Alaska tidelands occupied and developed prior to statehood. AS 38.05.820.

7. Navigable Waters ⇐37(4)

Tidelands conveyed to private parties pursuant to class I preference rights under preference statute were conveyed subject to public's right to utilize those tidelands for purposes of navigation, commerce and fishery; patent holders are free to make such use of their property as will not unreasonably interfere with those continuing public easements, but they are prohibited from any general attempt to exclude the public from the property by virtue of their title. AS 38.05.820.

R. Eldridge Hicks and Bruce Falconer, Hicks, Boyd & Chandler, Anchorage, for appellants.

Arthur S. Robinson, Soldotna, for appellee.

Before RABINOWITZ, BURKE, COMPTON and MOORE, JJ.

OPINION

BURKE, Justice.

This appeal presents the question of whether tidelands conveyed pursuant to class I tideland preference rights under AS 38.05.820 were conveyed subject to the public's right to fish the waters above those tidelands. We conclude that they were, and we therefore affirm the judgment of the superior court dismissing CWC Fisheries' trespass claim against Dean Bunker.

I

Shortly after statehood, as part of the Alaska Land Act, the legislature enacted AS 38.05.820 (formerly AS 38.05.320).[1] Under this provision, occupants of tideland tracts not seaward of a municipal corporation, who had erected substantial permanent improvements on their property prior to statehood, were given a "class I preference right" to their property. AS 38.05.820(c), (d)(5). A class I preference right entitled the occupant to obtain title to the occupied tideland tract from the state for a nominal fee.[2] AS 38.05.820(d)(1), (d)(8).

On October 3, 1963, Snug Harbor Packing Company applied for a class I preference right to an area of tideland fronting its fish cannery on the southwestern shore of Chisik Island in the Tuxedni Channel. The Department of Natural Resources (DNR) granted the application, and issued a patent to Snug Harbor on March 20, 1972. The patent granted Snug Harbor the tideland lot "to have and to hold ... with the appurtenances thereof unto the said Grantee and their heirs and assigns forever," subject to the State of Alaska's ex-

1. The tidelands provision was renumbered in 1984, and has undergone several minor amendments since its enactment. For purposes of this opinion, however, the statute remains substantially the same as originally enacted; thus, all future references will be to the present version of the statute.

2. The occupant was required to pay an amount "not exceeding the costs of surveying, transferring and conveying title" to the property. AS 38.05.820(d)(1).

press reservation of mineral rights, and an express prohibition on the taking of herring spawn at the site. The lot, known as ATS 360,[3] was used by the company primarily in its canning and processing operations throughout the period of Snug Harbor's ownership.

In August, 1964, Dean Bunker, a commercial fisherman operating salmon set nets in the Tuxedni Channel, applied for a shore fishery lease on a tract of tideland encompassing the present ATS 360 location. The DNR informed Bunker that he could not lease the ATS 360 site because Snug Harbor had already applied for a class I preference right on that site. However, the Department told Bunker that he could continue to fish the site under a reservation of fishing rights which would be placed in the patent issued to Snug Harbor. The reservation promised by the DNR was never placed in the patent issued to Snug Harbor. Nonetheless, Bunker claims to have regularly fished the waters above ATS 360 from 1964 to 1985.[4]

In 1980, CWC Fisheries, Inc. (CWC) bought Snug Harbor's operation and took over the premises. Since the acquisition, CWC has gradually phased out cannery and fleet operations at ATS 360. The site now serves only as a refueling and support facility for CWC's fishing operations.

The present dispute arose in 1985, when CWC granted set net fishing rights at ATS 360 to Eric Randall, as part of an agreement to employ Randall as winter caretaker and summer superintendent at the site. Since fish and game regulations prohibit any two parties from set net fishing concurrently on a lot the size of ATS 360, *see* 5 AAC 21.335 (eff. 4/14/82); 11 AAC 64.020(2) (eff. 4/18/64; am. 3/30/85),[5] the CWC/Randall agreement has, apparently for the first time, placed CWC's use of ATS 360 in direct conflict with Bunker's.

CWC and Randall filed suit against Bunker, alleging trespass and requesting damages and injunctive relief. Bunker denied CWC's claims of trespass, and argued that the State's conveyance of ATS 360 was made subject to the right of the general public to enter those tidelands for purposes of navigation, commerce, and fishery under the "public trust" doctrine established by the United States Supreme Court in *Illinois Central Railroad Co. v. Illinois*, 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed. 1018 (1892).[6]

On September 24, 1986, the superior court granted summary judgment for Bunker, holding that CWC held title to ATS 360 subject to the public trust, and that neither CWC nor its assignee could rightfully exclude Bunker from the site. Accordingly, the court dismissed CWC's trespass claim against Bunker. CWC appeals the dismissal.

II

The public trust doctrine was first advanced by the United States Supreme Court in *Illinois Central Railroad Co. v. Illinois*, 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed. 1018 (1892). In that case, the Court held that the State of Illinois was free to revoke a prior state grant of 1,000 acres of submerged land beneath the waters of Lake Michigan, because it had possessed no power to validly convey such land in the first place. The Court held that when a state receives title to [illegible] beneath navigable waterways within its borders at the time of its admission to the Union, it receives such land "in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fish-

3. Alaska Tidelands Survey No. 360.

4. Randall vehemently disputes Bunker's claim of continuous use of ATS 360. Resolution of this factual question, however, is unnecessary for our purposes.

5. The parties agree that these regulations, which require that set net sites be located at least 600 feet apart, prevent any concurrent use of the lot.

6. Bunker also counterclaimed, arguing that he had acquired the site by adverse possession, and filed a third-party claim against the DNR for negligent misrepresentation with regard to the fishery reservation which was never placed in Snug Harbor's patent. These claims have since been dismissed, and are not at issue here.

ing therein freed from the obstruction or interference of private parties." *Id.* at 452, 13 S.Ct. at 118, 36 L.Ed. at 1042. The Court noted that the state is entitled to convey such lands to private parties, free of the public trust, only under very limited circumstances. It stated:

> The control of the State for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining.

Id. at 453, 13 S.Ct. at 118, 36 L.Ed. at 1042–43. In all other instances, the Court held, the state is prohibited from "abdicat[ing] its trust over [the] property" by absolute conveyance to private parties. *Id.* at 453, 13 S.Ct. at 118, 36 L.Ed. at 1043.

Illinois Central remains the leading case regarding public rights in tide and submerged lands conveyed by the state. *See, e.g., City of Berkeley v. Superior Court*, 26 Cal.3d 515, 162 Cal.Rptr. 327, 330–31, 606 P.2d 362, 365–66 (Cal.), *cert. denied*, 449 U.S. 840, 101 S.Ct. 119, 66 L.Ed.2d 48 (1980); *Kootenai Environmental Alliance v. Panhandle Yacht Club*, 105 Idaho 622, 625–26, 671 P.2d 1085, 1088–89 (1983); *Caminiti v. Boyle*, 107 Wash.2d 662, 732 P.2d 989, 994 (1987). While we have never had prior occasion to apply the public trust doctrine to tidelands in Alaska,[7] those modern courts which have considered its application have generally held that any attempted conveyance of tidelands by the state which fails to meet the *Illinois Central* criteria for passing title free of the public trust will pass only "naked title to the soil," subject to continuing public trust "easements" for purposes of navigation, commerce, and fishery.[8] *People v. California Fish Co.*, 166 Cal. 576, 138 P. 79, 88 (1913). *Accord City of Berkeley*, 162 Cal.Rptr. at 332, 606 P.2d at 367; *Kootenai*, 105 Idaho at 631, 671 P.2d at 1094; *Boston Waterfront Development Corp. v. Commonwealth*, 378 Mass. 629, 393 N.E. 2d 356, 365 (1979); *Orion Corp. v. State*, 109 Wash.2d 621, 747 P.2d 1062, 1072–73 (1987). The grantee may "assert a vested right to the servient estate (the right of use subject to the trust)," *National Audubon Society v. Superior Court*, 33 Cal.3d 419, 189 Cal.Rptr. 346, 360, 658 P.2d 709, 723 (Cal.), *cert. denied*, 464 U.S. 977, 104 S.Ct. 413, 78 L.Ed.2d 351 (1983), but may not enjoin any member of the public from utilizing the property for public trust purposes. *See California Fish*, 138 P. at 83; *Orion Corp.*, 747 P.2d at 1072–73.

[1] We adopt the approach employed by our sister states on this question and hold that any state tideland conveyance which fails to satisfy the requirements of *Illinois Central* will be viewed as a valid conveyance of title subject to continuing public easements for purposes of navigation, commerce, and fishery.[9]

7. We made passing reference to the public trust doctrine in *State, Dep't of Natural Resources v. City of Haines*, 627 P.2d 1047, 1050–52 (Alaska 1981), but did not decide whether, and to what extent, the doctrine applied to tideland conveyances by the state.

8. Some courts have expanded the public trust doctrine to include additional public uses, such as boating, swimming, water skiing, and other recreational or scientific activities for which the waters might be utilized. *See, e.g., Marks v. Whitney*, 6 Cal.3d 251, 98 Cal.Rptr. 790, 796, 491 P.2d 374, 380 (1971); *Orion Corp. v. State*, 109 Wash.2d 621, 747 P.2d 1062, 1073 (Wash.1987); *Menzer v. Village of Elkhart Lake*, 51 Wis.2d 70, 186 N.W.2d 290, 296 (1971); *see also* ch. 82, § 1(c), SLA 1985 (Alaska Statutes, Temporary and Special Acts and Resolves 1985) (refers to trust as including "recreational purposes or any other public purpose for which the water is used or capable of being used"). We are concerned in this case only with the traditionally recognized fishery interest.

9. This approach is entirely consistent with ch. 82, § 1(c), SLA 1985 (Alaska Statutes, Temporary and Special Acts and Resolves 1985), wherein the legislature recently declared that

> [o]wnership of land bordering navigable or public waters does not grant an exclusive right to the use of the water and any rights of title to the land below the ordinary high water mark are subject to the rights of the people of the state to use and have access to the water for recreational purposes or any other public purpose for which the water is used or capable of being used consistent with the public trust.

While this act expressly excepted "valid existing rights," ch. 82, § 1(d), SLA 1985, we nonetheless agree with the superior court's assessment that the statement quoted above constitutes a clear

[2] In determining whether a state conveyance has passed title to a parcel of tideland free of any trust obligations under *Illinois Central*, we must ask, first, whether the conveyance was made in furtherance of some specific public trust purpose and, second, whether the conveyance can be made without substantial impairment of the public's interest in state tidelands. *See Illinois Central*, 146 U.S. at 435, 453, 13 S.Ct. at 118, 36 L.Ed. at 1036, 1042–43; *Caminiti*, 732 P.2d at 994–95. If either of these questions can be answered in the affirmative, conveyance free of the public trust would be permissible. *See Illinois Central*, 146 U.S. at 453, 13 S.Ct. at 118, 36 L.Ed. at 1042–43.

Initially, CWC argues that the conveyance of ATS 360 was a grant "in aid of navigation and commerce." It notes that the property was originally used by Snug Harbor in its commercial canning and processing operations, and that the site's wharfage and docking facilities were, and are, utilized by commercial fishermen in Cook Inlet. Further, CWC points to the "substantial permanent improvements" language of AS 38.05.820, which, it maintains, constitutes clear evidence of the state's intent to further commerce and navigation through its tideland allocations under the Alaska Land Act. *See* AS 38.05.820(c), (d)(5). We are not persuaded by CWC's argument.

[3] Before any tideland grant may be found to be free of the public trust under the "public trust purposes" theory, the legislature's intent to so convey it must be clearly expressed or necessarily implied in the legislation authorizing the transfer. *See, e.g., City of Berkeley*, 162 Cal.Rptr. at 334, 606 P.2d at 369; *Opinion of the Justices to the Senate*, 383 Mass. 895, 424 N.E.2d 1092, 1100 (1981); *State v. Bunkowski*, 88 Nev. 623, 503 P.2d 1231, 1237–38 (1972). If any interpretation of the statute which would retain the public's interest in the tidelands is reasonably possible, we must give the statute such an interpretation. *City of Berkeley*, 162 Cal.Rptr. at 334, 606 P.2d at 369. Here, the operative language of AS 38.05.820 reads simply:

> (a) It is the policy of the state to allow preference rights for the acquisition of tide and submerged land occupied or developed for municipal business, residential or other beneficial purposes on or before the date of admission of Alaska into the Union.
>
> ....
>
> (c) An occupant of tide or submerged land which is not seaward of a municipal corporation, who occupied or developed it on and prior to September 7, 1957, has a class I preference right to the land from the state....
>
> (d) For the purposes of this section, unless the context otherwise requires,
>
> ....
>
> (5) "occupant" means a person or the successor in interest of a person, who actually occupied for business, residential or other beneficial purpose, tideland, or tide and submerged land contiguous to tideland, in the state, on and before January 3, 1959, with substantial permanent improvements.

Id.

[4] The statute does not expressly state that the preference rights were given in aid of navigation and commerce, nor does it state that the lands in question would be conveyed free of the public trust. While it is true that the statute conditions the preference right upon the existence of "substantial permanent improvements" on the property, such a requirement can hardly be interpreted as an expression of the state's intent to abdicate its trust responsibilities. As we noted in *City of Homer v. State, Department of Natural Resources*, 566 P.2d 1314, 1316 (Alaska 1977), at least one purpose of the Alaska Land Act was "to establish equitable methods of disposing of certain tidelands." The "substantial permanent improvements" requirement simply serves as an additional factor in determining equitable distribution as between occupants. We find nothing in the language of AS 38.05.820 that expresses a clear legisla-

"legislative expression of ... continued adherence to the 'public trust' doctrine."

tive intent to convey state tidelands free of the public trust.

[5] Likewise, we do not think such intent is "necessarily implied" by the surrounding circumstances. Indeed, article VIII, section 3 of the Alaska Constitution, which was in effect at the time AS 38.05.820 was enacted, explicitly provides that

> [w]herever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

At least in the absence of some clear evidence to the contrary, we will not presume that the legislature intended to take action which would, on its face, appear inconsistent with the plain wording of this constitutional mandate.[10] In sum, we are not persuaded that this conveyance was made "in furtherance of trust purposes" such as would free the property from any continuing public trust obligations.

Next, we turn to the "substantial impairment" aspect of the *Illinois Central* test. CWC argues that ATS 360 is a small, rather remote, parcel of tideland, one which can hardly be considered to involve the degree of impairment suggested by the public trust cases. Moreover, CWC notes that, under existing law, only one person is permitted to set net fish on the site at any one time. To vest such fishing privilege in the patent holder, CWC maintains, would no more impair the public's interest in the tidelands than does the state's shore fishery leasing program, under which particular individuals are granted exclusive fishing privileges at specified sites. *See* 11 AAC 64.010–.570 (eff. 4/18/64).

[6] Again, we disagree. Even if we were to accept CWC's suggestion that size and location might, by themselves, be decisive factors in determining whether a given legislative conveyance amounts to a substantial impairment of the public's interest in state tidelands, these tidelands would still fail to meet the test.[11] This case does not involve a mere isolated conveyance of a remote piece of tideland. The statute at issue here made available for private ownership virtually all Alaska tidelands occupied and developed prior to statehood. *See* AS 38.05.820. To hold that persons receiving title under that statute hold the fee free of any public trust obligations would, we believe, amount to a substantial impairment of the public's interest in state tidelands as a whole.[12]

Finally, we fail to see how the state's shore fisheries leasing program can be said to bear any reasonable resemblance to the proposition urged upon us by CWC. Lessees under that program do not exercise their fishing privileges as an incident of title to the tidelands. They do not hold or enjoy such privileges in perpetuity. Rather, they are granted a limited fishing privilege on specified tracts of state-owned tideland for a period of reasonable, but finite, duration.[13] Whatever the validity of the state's shore fisheries leasing program under the public trust doctrine, we are satisfied that the fee simple ownership claimed by CWC in this case goes far beyond any

10. We need not decide at this time whether a fee simple tideland conveyance which satisfied the strictures of *Illinois Central* would nonetheless run afoul of article VIII, section 3.

11. Because we conclude below that conveyances under AS 38.05.820 substantially impact upon the public's interest in state tidelands, we find it unnecessary to decide whether, and to what extent, the "substantial impairment" prong might be applied to tideland conveyances under other legislative enactments or different factual circumstances.

12. We note in this regard that, under present state law, explicit easements protecting public access to navigable waters must be reserved by the state before *any* interest in state land may be transferred. AS 38.05.127. While this statute was not in effect at the time of the conveyance at issue here, it nonetheless serves as a clear indication of the public's concern for the preservation of public access rights to all navigable waters. The "substantial impairment" requirement must be viewed in this context.

13. In general, successful applicants under the program are entitled to lease fishing sites on up to three tracts of tideland, 11 AAC 64.080 (eff. 4/18/64; am. 3/30/85), for a renewable period not exceeding 10 years. 11 AAC 64.301, .391 (eff. 3/30/85). Lessees pay an annual rental to the state based upon the cost of administering the program, 11 AAC 64.370 (eff. 4/18/64), and all leases are subject to cancellation upon the lessee's failure to regularly fish the leased tract. 11 AAC 64.180 (eff. 4/18/64; am. 3/30/85).

impairment created under that state-administered regulatory scheme.[14]

[7] We hold that tidelands conveyed to private parties pursuant to class I preference rights under AS 38.05.820 were conveyed subject to the public's right to utilize those tidelands for purposes of navigation, commerce and fishery. While patent holders are free to make such use of their property as will not unreasonably interfere with these continuing public easements, they are prohibited from any general attempt to exclude the public from the property by virtue of their title.

In the instant case, CWC and Randall are entitled to make use of the fisheries at ATS 360, but they are prohibited from excluding other members of the public who seek to do the same.[15] Here, state regulations limit the number of individuals who may fish this tract at any one time; therefore, the parties must look to relevant provisions of state law in determining their respective priority rights.[16] For the reasons discussed above, however, CWC's trespass action must fail.

Accordingly, the judgment of the superior court is AFFIRMED.

14. In addition to the arguments discussed above, CWC argues at some length that, even if ATS 360 were conveyed subject to the public trust, Bunker may not invoke that doctrine because he is seeking to use the property for private commercial purposes. This argument merits little discussion. Even commercial fishermen are members of the public, and, as such, are entitled to use those waters reserved to the public under the public trust doctrine, provided they comply with all relevant statutes and regulations concerning their intended use. *Illinois Central* suggests nothing less.

15. This case does not involve a situation in which one public trust use is directly in conflict with another (*e.g.*, fisheries versus navigation). We note, however, that in such cases, the legislature will generally be afforded broad authority to make policy choices favoring one trust use over another. *See generally National Audubon Society v. Superior Court*, 33 Cal.3d 419, 189 Cal.Rptr. 346, 360–61, 658 P.2d 709, 723–24 (Cal.), *cert. denied*, 464 U.S. 977, 104 S.Ct. 413, 78 L.Ed.2d 351 (1983); *County of Orange v. Heim*, 30 Cal.App.3d 694, 106 Cal.Rptr. 825, 837 (Cal.App.1973).

16. In the absence of any controlling provision of law to the contrary, the dispute would generally be resolved by reference to the "first in time, first in right" doctrine announced by this court in *Snug Harbor Packing Co. v. Schmidt*, 394 P.2d 397, 399 (Alaska 1964). In the case at bar, the parties agreed to dismiss without prejudice the "first in time, first in right" question. Hence, there has been no trial court determination of this issue.

Debra E. ROSE, Appellant,

v.

Duane A. ROSE, Appellee.

No. S–2036.

Supreme Court of Alaska.

June 10, 1988.

In dissolution action, the Superior Court, Third Judicial District, Anchorage, Victor D. Carlson and Peter A. Michalski, JJ., divided assets, and wife appealed. The Supreme Court, Burke, J., held that in marriage of short duration, where there was no significant commingling of assets between parties, trial court could treat property division as action in nature of rescission aimed at placing parties in financial position they would have occupied had no marriage taken place.

Affirmed.

Compton, J., filed dissenting opinion in which Rabinowitz, J., joined.

1. Divorce ⇐253(1)

In determining property dispositions, first step is to determine specific property available for distribution, which includes all assets acquired by parties, plus any premarital property which "balancing of equities" suggests should be divided; thereafter, court must determine value of all property available for distribution; and fi-

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

M E M O R A N D U M March 14, 1994

SUBJECT: "Public Trust Doctrine"

TO: Representative Harley Olberg
ATTN: John Walsh

FROM: Jack Chenoweth
Legislative Counsel

And, in addition, this recent law review article . . . .

Resolution of the Alaska Municipal League

Resolution 95-11

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE URGING THE PASSAGE OF LEGISLATION REQUIRING THE CONVEYANCE TO CITIES AND BOROUGHS OF STATE TIDELANDS THAT ARE LEASED TO MUNICIPALITIES OR ARE NEEDED OR APPROPRIATE FOR DEVELOPMENT

WHEREAS, upon becoming a state, Alaska authorized all first class and home rule cities to receive all tidelands within their boundaries and these cities were required to reconvey to private persons only those tidelands to which such persons had a claim through their prior use and development of the tidelands; and

WHEREAS, the right to receive such tidelands was never extended to unified municipalities, second class cities, or to boroughs of any class, nor to any cities that reclassified as first class or home rule after April 1, 1964; and

WHEREAS, all coastal municipalities have similar needs for tidelands to give them the tools needed to encourage, control, and ensure responsible development of tidelands within their boundaries and to ensure that such development is consistent and coordinated with other developments and needs of the municipality; and

WHEREAS, the State of Alaska currently will convey an interest in tidelands to municipalities only through a lease; and

WHEREAS, obtaining a tidelands lease from the State of Alaska is a cumbersome, lengthy process and the leases often require the posting of a performance bond that costs the municipality more in annual premiums than the fair market annual rent for the tidelands, create an unnecessary ongoing relationship with the State with respect to the tidelands parcel, and impose other unreasonably burdensome requirements; and

WHEREAS, municipalities, as well as the State of Alaska, have a duty to ensure that the use of their lands, including tidelands, is in the public interest; and

WHEREAS, it would be equitable and in the public interest for the State of Alaska to convey to boroughs and to cities that have not received their tidelands under AS 38.05.820 (formerly AS 38.05.320) tidelands that are needed or have been identified as appropriate for public or private development; and

WHEREAS, HB 398, as it passed the Alaska House of Representatives during the Second Session of the Eighteenth Alaska Legislature, would have met these needs of municipalities:

NOW, THEREFORE, be it resolved that the Alaska Municipal League urges the Legislature and the Governor to pass either legislation substantially in the form of HB 398 as passed by the Alaska House of Representatives during the Second Session of the Eighteenth Legislature or other legislation requiring the expedited conveyance to municipalities of tidelands leased to municipalities and tidelands that are appropriate or needed for development.

John Torgerson, President

ATTEST:

Kevin C. Ritchie, Executive Director

CITY OF BETHEL

P.O. Box 388 • Bethel, Alaska 99559
907-543-2087
FAX # 543-4171

Testimony on House Bill 20 by William J. Hunter, City Manager
February 13, 1995

Co-chair Green, Co-chair Williams, and members of the House Resources Committee. I want to thank you for allowing me the opportunity to comment on HB 20. My name is William J. Hunter, I am the City Manager for the City of Bethel. The City of Bethel is a second class City with a first class attitude and we live in third world conditions. The issue before your committee is important for the City of Bethel as the largest second class city in the State.

The City of Bethel has had numerous meetings with Alaska Department of Natural Resources dating back to 1986, regarding obtaining a Tideland lease. As you know, there has been a number of changes in City Administration at the City of Bethel as well as a number of changes in personnel at DNR. This has resulted in 9 years of negotiations. The City of Bethel finds these tidelands extremely important and urges passage of HB 20 for the following reasons:

Many of the municipalities which are currently required to pay for a lease of their tidelands are second class cities. These Cities are the poorest in the State because of their limited taxation powers. The requirements set forth in acquiring a tidelands lease are often much more onerous than the lease fee. Insurance, bonding, and the liability clauses in a typical DNR lease are overwhelming for a second class City. Repetition of paperwork and bureaucracy is unnecessarily created.

The City of Bethel has its own Coastal Management Plan, Comprehensive Plan, Riverfront Land Use Study, and Port Development Plan. The State law governing lease of tidelands requires a separate plan for the area within the leasehold, despite being adequately addressed by the other plans. A City the size of Bethel's must contract out these expensive services.

The City of Bethel is working in conjunction with the Corps of Engineers and the State Department of Transportation and Public Facilities on a 19.7 million Bank and Seawall Stabilization Project. The City has to secure site control on all lands within the construction boundary of the construction project. This includes all the tidelands. After completion of this 19.7 million project, the City will have to maintain the Seawall.

It is critical that we receive conveyance of these tidelands in order to ensure that we do not have any future access problems maintaining the Federal, State and local investment.

The City feels it is time to facilitate the development of needed infrastructure in Alaska. The City of Bethel is committed to maintaining public access for all the people to enjoy, and to guarantee the integrity of the Public Trust Doctrine.

WJH/sg

Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366
Fax: 907-463-3312

The Alaska Environmental Lobby has some serious concerns about HB 20, rights in certain tide and submerged lands. These are outlined below.

HB 20 contains a fatal flaw: It prohibits DNR from imposing any conditions on the conveyance of tide and submerged land other than those required by law. Deliberately or accidentally, HB 20 neglects to provide for reserving mineral rights to the State - - and prevents DNR from correcting the problem.

What this means is that municipalities can get fee simple title to potentially very valuable tide and submerged lands that the State could lease for oil and gas in the future. This might place the State's financial future in jeopardy via a loss of potential oil and gas revenues.

HB 20 requires DNR to convey any tide or submerged lands a municipality wants if four conditions are met. Under this method a municipality could write a land use plan or amend an existing one pursuant to this bill Sec 1 (a) (3) and DNR must convey.

In HB 20, Under Sec 1 conveyances, there is no return to the State (although state funds will be used to make the conveyances), nor any discretion on the State's part. There may not even be public notice, because without any dissection, it is not a discretionary decision, therefore no finding of whether the conveyance would be in the State's best interest could be made. Hence, there would be little point/need in notifying and consulting the general public.

There's more. Sec 1 (b) of HB 20 would allow DNR to convey tide and submerged land out of state lands that have "been designated by statute" if the DNR Commissioner finds that the municipalities proposed use is consistent or compatible with the purpose of the designation. Designated lands include state parks, state wildlife refuges and critical habitats, among others.

In Anchorage, for example, it is foreseeable that a state-municipal deal to transform Potter Marsh State Game Refuge tide and submerged lands (as well as the newly proposed Chickaloon Flats Critical Habitat) and give it to developers of one ilk or another, would devastate a valuable recreation hunting, fishing and waterfowl habitat region.

STATE OF ALASKA

DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS

POSITION PAPER

Bill no.: **HB 20** **DCRA FN: Zero** (submitted)
Sponsor: **Representative Moses** **Position: Support**

Title: **An Act relating to rights in certain tide and submerged land**

This legislation amends AS 38.05 by adding a new section that would give the Department of Natural Resources (DNR) the authority to convey tidelands and submerged lands to municipalities. Presently, in accordance with AS 38.05.820, DNR may convey such lands only to municipalities incorporated on or before April 1, 1964. DNR may only lease these lands to municipalities incorporated after that date.

The department supports the principle of treating municipalities equally in the process of conveyence or lease of state lands. The current artificial distinction among municipalities based on date of municipal incorporation should be eliminated. Also, as an advocate for stronger local government and stronger local economies, the department supports the long-range development stability provided by municipal land ownership rather than leasing of state lands. Therefore, the department supports this legislation.

Mike Irwin
Commissioner

1/24/95
Date

File No: HB 20 1/24/95

ALASKA MUNICIPAL LEAGUE

217 Second Street Suite 200 • Juneau Alaska 9980[illegible] • Tel 907 586 [illegible]

January 27, 1995

TO: Representative Carl Moses
Members, House Community and Regional Affairs

FROM: Kevin C. Ritchie
Executive Director

RE: HB 20 - Rights in certain tide and submerged land

The Alaska Municipal League supports HB 20, which would allow all Alaskan cities the right to select and receive title to state-owned tide and submerged lands within their municipal boundaries. In November 1994, AML members discussed this issue and passed Resolution 95-11 (copy enclosed) supporting the concept included in HB 20.

Present statutes limit the ability of municipalities to obtain ownership to tide and submerged lands within their boundaries, yet often these lands are among the most valuable for economic development purposes. AML and its members support making such lands available to all municipalities, as part of their municipal entitlement to state-owned land.

Attachment

JK/Leg95/hb20.126

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 February 7, 1995

SUBJECT: Conveyance of tideland/public trust (HB 20)

TO: Representative Carl Moses

FROM: Tamara Brandt Cook
Director of Legal Services

HB 20 requires the state to convey tideland to municipalities in certain fairly narrowly defined circumstances. You have asked whether the bill poses problems under the public trust doctrine.

The public trust doctrine is a common law principle under which it is recognized that government owes its citizens duties of care with respect to the management of land and natural resources held by the state in trust for the public benefit. The public trust doctrine has been adopted in Alaska. (CWC Fisheries, 755 P.2d 1115 (Alaska 1988)) Additionally, the common use clause of Article VIII, sec. 3 of the state constitution incorporates the public trust doctrine as a constitutional requirement in this state. (Owsichek v. State, 763 P.2d 488 (Alaska 1988); see also Art. VIII, sec. 14, and AS 38.05.502 enacted by initiative)

The public trust doctrine does not prohibit the conveyance of state land. In fact, conveyance by lease, sale, or grant is specifically permitted under Article VIII, secs. 8 and 9 of the state constitution. However, a conveyance of public trust land "will be viewed as a valid conveyance of title, subject to continuing public easements. . .." (Hayes v. A.J. Associates, Inc., 846 P.2d 131 (Alaska 1993) footnote 4 quoting from CWC Fisheries)

Public trust requirements are recognized in HB 20. (see Sec. 38.05.825(a)(1) and (d)) Those requirements may altogether preclude conveyance of state tideland in some cases and so limit the use that may be made of the land in others as to make conveyance undesirable. Obviously, the public trust doctrine and other constitutional requirements circumscribe the grant of authority to convey state land contained in HB 20.

You have also asked whether HB 20 authorizes conveyance of mineral rights from the state to municipalities and whether they could then convey those rights to private owners. AS 38.05.125 requires a reservation of mineral rights to the state in most contracts for sale, lease, or grant of state land. This provision does not apply to conveyances under HB 20, but it could easily be amended to do so. In the absence of such an amendment, mineral rights may

be alienated by the state subject to reservations that may be required by Congress. (State v. Lewis, 559 P.2d 630 (Alaska), cert. denied, 432 U.S. 901(1977)) As a practical matter, sec. 6(i) of the Alaska Statehood Act requires the state to reserve mineral rights in most conveyances.

Lastly, you asked whether I could suggest a "tighter" title to the bill. Perhaps, "An Act relating to conveyance of certain tide and submerged land to municipalities."

TBC:klb:pl
95-043.klb
Enclosures

Analysis of Bill/Program Effects: DNR- 1/31/94

In addition to the general grant land entitlements under AS 29.65, 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.

In 1898 Congress passed an act extending the homestead laws to the District of Alaska. 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]."

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

The importance of improved tidelands to the vitality of the territory's economy and the health of its people is readily apparent. It was a territory whose economy, mobility and recreation were intimately tied to the sea. Log transfer facilities, seafood processors, municipal docks, private boat ways and even residences were partially or wholly constructed on tidelands with no method for individuals or businesses to acquire proper authorization for use. The need for these activities was readily recognized by the federal managers. However, the mechanism for authorizing such use was non-existent.

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

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

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

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

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.

In 1964 (ch 81, SLA 1964) "municipal corporation" was changed to "(h)ome rule cities and cities of the first class"

Originally Produced by DNR for HB396

Incorporated on or before April 1, 1964.

Following is a current list of Alaska's home rule, first class and second class cities that would qualify under this bill.

Home Rule	First Class	Second Class
*Cordova	*Barrow	Akhlok
*Kenai	*Craig	Akutan
*Ketchikan	Dillingham	Angoon
*Kodiak	*Haines	Atka
*Petersburg	*Homer	Bethel
*Seward	*Hoonah	Brevig Mission
*Valdez	*Hydaburg	Chignik
*Wrangell	*Kake	Clark's Point
	*King Cove	Coffman Cove
	*Klawock	Cold Bay
	*Nome	Deering
	*Pelican	Diomede
	Sand Point	Elim
	*Seldovia	False Pass
	*Skagway	Gambell
	Soldotna	Golovin
	Unalaska	Goodnews Bay
		Hooper Bay
		Kachemak
		Kaktovik
		Kasaan
		Kivalina
		*Kotzebue
		Kupreanof
		Larsen Bay
		Mekoryuk
		Nightmute
		Old Harbor
		Ouzinkie
		Pilot Point
		Platinum
		Point Hope
		Port Alexander
		Port Heiden
		Port Lyons
		Quinhagak
		Saint George
		Saint Michael
		Saint Paul
		Savoonga
		*Saxman
		Scammon Bay
		Shaktoolik
		Sheldon Point
		Shishmaref
		Stebbins
		Teller
		*Tenakee Springs
		Thorne Bay
		Togiak
		Tooksook Bay
		Unalakleet
		Wainwright
		Wales
		Whittier

*home rule and first class cities as April 1, 1964 that received tidelands previously

DNR 2/7/95

Tideland Conveyances (AS 38.05.320) - before 01/04/64

Municipality	Acres	Authority
Anchorage (city)	927	.320
Juneau	232	.320
Juneau/Douglas	113	.320
Ketchikan	163	.320
Kodiak	219	.320
Pelican	60	.320
Petersburg	449	.320
Port Chilkat	32	.320
Sitka	194	.320
Skagway	194	.320
Valdez	220	.320
Wrangell	149	.320
Total before 01/04/64	***2,952 acres***	

Total AS 38.05.320 - 22,848 (through 1990)

Alaska Association of Harbormasters & Port Administrators, Inc.

RESOLUTION 95-1

A RESOLUTION OF THE ALASKA ASSOCIATION OF HARBORMASTERS AND PORT ADMINISTRATORS SUPPORTING THE CONCEPT OF THE EXPEDITED CONVEYANCE OF TIDELANDS TO MUNICIPALITIES AS OUTLINED WITHIN H.B. 398.

WHEREAS, upon becoming a State, Alaska authorized all first class and home rule cities to receive all tidelands within their boundaries, and

WHEREAS, the right to receive such tidelands was never extended to unified municipalities, second class cities, or to boroughs of any class, nor to any cities that reclassified as first class or home rule after April 1, 1964, and,

WHEREAS, all coastal municipalities have similar needs for tidelands to give them the tools needed to encourage, control and ensure responsible development of tidelands within their boundaries and to ensure that such development is consistent and coordinated with other developments and needs of the municipality, and

WHEREAS, the State of Alaska currently will convey an interest in tidelands only through a lease, and

WHEREAS, obtaining a tidelands lease from the State of Alaska is a cumbersome, lengthy process and the leases often require the posting of a performance bond that costs the municipality more in annual premiums than the fair market annual rent for the tidelands, create an unnecessary ongoing relationship with the State with respect to the tidelands parcel, and impose other unreasonably burdensome requirements, and

WHEREAS, municipalities, as well as the State of Alaska, have a duty to ensure that the use of their lands, including tidelands, are in the public interest, and

WHEREAS, it would be equitable and in the public interest for the State of Alaska to convey to boroughs and cities that have not received their tidelands under AS 38.05.820 (formerly AS 38.05.320) tidelands that are needed or have been identified as appropriate for public or private development, and

WHEREAS, H.B. 398, as it passed the Alaska House of Representatives during the Second Session of the Eighteenth Alaska Legislature would have met the needs of municipalities;

Alaska Association of Harbormasters & Port Administrators, Inc.

NOW THEREFORE, be it resolved by the Alaska Association of Harbormasters and Port Administrators:

That the Association supports the concept of H.B. 398 as passed by the Alaska House of Representative during the Second Session of the Eighteenth Legislature requiring the expedited conveyance to municipalities of tidelands leased to municipalities and those that are appropriate or needed for development.

Copies of this Resolution shall be sent to the Governor of the State of Alaska, to each legislator elected to represent the state of Alaska, to the House Community and Regional Affairs and Resources Committees, the Commisioner of Natural Resources, the Director of Division of Lands, and the Alaska Municipal League.

ADOPTED this 9th day of November 1994

Association President

Attest:

Association Secretary/Treasurer

TOTAL P.03

MEMORANDUM
Department of Natural Resources

State of Alaska
Division of Support Services
Land Records Information Section

TO: Nico Bus
Acting Director

DATE: February 6, 1995

FILE NO: 8-250-5

THRU: Richard McMahon
Chief, LRIS

TELEPHONE NO: 762-2390

SUBJECT: Background Information for HB20 Fiscal Note

FROM: Wendy Woolf, Manager
Status Graphics Unit

The Land Records Information Section develops the systems that maintain the public records for the department. The fundamental public record system is the Land Administration System (LAS).

The Land Administration System tracks all resource activity and land ownership on state land. It does this thorough unique case types that describe each activity and captures all the relevant public information through transactions. Currently, there are over 83,000 customers, more than 215,000 cases, and about 2.2 million transactions in this system; see attached LAS statistics for a listing of the case types.

During case type development, it is critical for the department to determine what needs to be tracked, how it should be represented to the public, and what is germane to land management. This planning requires meeting with department land managers and public information staff to ensure the various public and staff needs are met and incorporated into the case type design. The design work then becomes part of the overall LAS structure.

When LAS was originally designed, all possible case types for known or imagined department activities were developed. This was done through a large capital project. Operational funds were allocated to maintain the system, but over time, those funds have eroded to a bare minimum with little specifically allocated for LAS administration (development of case types, codes and transactions). This work could be done with the existing operating base, but it would go into the growing backlog of department LAS administration projects. Currently seven new case types are pending design work.* It would eventually get done, but may take several years (depending on its priority) before the case files can be loaded and the public has ready access to the information.

As an example, the original LAS case types for municipal

---

* The pending case types include Recreational Facilities Leases; Unitization of Oil & Gas Leases; Waste Disposal Sites on State Land; Reclamation of Non-state Land; Div. of Agriculture Grazing Leases/Permits; Federal Condemnation of State Land; and assorted case types for Division of Parks activities.

entitlements were designed without the foresight to include land status codes. On the surface this seemed like a straight forward modification to the system. It wasn't. It took over two years to complete and required a new case type to be designed. The time consuming part entailed working with the user to determine their needs, synthesizing this into a concise design and writing procedures. We are still finalizing procedures for this new case type. In all, LRIS invested over 300 hours in this project, while Division of Land probably spent close to the same amount of time. The total cost to the state was upwards of $20,000.

If the fiscal note is not funded and the department conveys tideland under this statute, the public will not have access to the conveyance information until after the public record system (LAS) is modified to include the new case type. The conveyance cannot be noted on the status plat because this automated system is also dependent on the LAS case type to portray new activity. The department's land record information systems are interrelated to provide a comprehensive public record. The core of these systems are based on case type.

Although the department is not prevented from doing its work if the electronic records are not created, the public is stifled from monitoring the activity of the department. The public's fundamental right to access government information is impeded if the public cannot rely on the published records of the department.

The staff time/costs for developing this new case type is estimated as follows:

LAS Administrator	120 hours	$ 4,000
Natural Resource Officer	40 hours	$ 1,400
Natural Resource Manager	15 hours	$ 600
Total Cost		$ 6,000

Please let us know if additional information is required.

DNR-LAND ADMINISTRATION SYSTEM

COUNT OF CASES ON SYSTEM
as of January 4, 1995

CASE TYPE	CASE TYPE NAME	NUMBER OF CASES	NUMBER OF CASE TRANSACTIONS
101	GENERAL GRANT	7,052	137,011
102	COMMUNITY GRANT	211	2,482
103	NATL FOREST COMM GRANT	399	7,396
104	MINERAL ESTATE	5	2,994
105	FEDERAL GRANT	35	563
106	MENTAL HEALTH	181	3,396
107	SCHOOL SECTION	240	2,702
108	UNIVERSITY SELECTION	237	1,282
109	UNIV SELECTION SECTION 33	226	350
110	PUBLIC LAW 507	53	232
111	RECREATION PUBLIC PURPOSE	37	189
112	TERRITORIAL GRANT	2	14
113	ANILCA SCHOOL SELECTION	4	53
114	OTHER STATE LAND	1,023	7,374
115	LIMITED STATE HOLDING	374	3,016
116	ESCHEAT	56	353
121	LAND BNTH NAVIGABLE WATER	701	1,987
127	CONFLICT OF TITLE	16	63
128	AG REVOLV LN ACQUISITION	42	147
129	SPECIFIC PUBLIC LAWS	1	4
201	SURFACE CLASSIFICATION	2,348	16,995
202	MINERAL OPENING ORDER	73	581
203	LEASEHOLD LOCATION ORDER	15	354
204	MINERAL CLOSING ORDER	604	3,579
205	FOREST LEGISLATIVE DESIG	2	255
206	PARKS LEGISLATIVE DESIG	50	894
207	WILDLIFE LEGIS DESIG	49	1,953
208	MULTIPLE USE LEGIS	11	295
209	SPECIAL USE LAND	9	68
210	LEGIS RESTRICTED AREA	3	358
304	SUPP PLAT STATE	20	56
308	AK STATE CAD SURVEY	404	2,090
309	CONTROL SURVEY	182	788
310	ENGINEERING PLAT FILE	442	2,107
311	AK STATE LAND SUR	4,873	30,300
313	RECORD OF SURVEY	202	472
314	EASEMENT VACATION PLAT	623	3,479
316	AK TIDELAND SURVEY	1,263	6,642
317	MONUMENT RECORD	315	734
318	SHORE FISHERY PLAT	452	2,238
324	AS-BUILT SURVEY	124	423
401	APPRAISAL	3,486	36.590
402	COMPARABLE-SALES	9,961	0
501	TIMBER SALE	690	5,049
502	BEACH LOG SALVAGE LICENSE	2	114
521	SUBDIVISION SALE COMP	1,826	20,167
522	AGRICULTURAL SALE COMP	283	4,299
523	ODDLOT SALE COMP	1,667	15,655
529	OTHER SALE COMP	16	421
531	SUBDIVISION SALE NON-COMP	9,380	123,360
532	AG SALE NON-COMP	293	4,742
533	ODDLOT SALE NON-COMP	277	3,480
534	REMOTE SALE NON-COMP	2,030	38,266
535	OTE SALE NON-COMP	1,239	17,173
536	P & C USE SALE NON-COMP	193	1,869
537	TIDELANDS SALE NON-COMP	417	3,625
538	SHORE FISHERY UPLAND	0	0
539	OTHER SALE NON-COMP	1,108	15,327
541	SUBDIVISION LEASE COMP	353	6,599
542	AGRICULTURAL LEASE COMP	23	512
543	ODDLOT LEASE COMP	327	4,793
544	RECREATION FAC DEV LEASE	1	14
547	TIDELANDS LEASE COMP	450	5,340
549	OTHER LEASE COMP	139	3,201
551	OTE #1 & 2 LEASE/SALE	442	5,854
552	AQUATIC FARM PERMIT/LEASE	178	1,951
553	NEG LEASE NON-COMP	511	4,503
554	REMOTE LEASE NON-COMP	3,355	35,155
555	OTE LEASE NON-COMP	323	1,757
556	P & C USE LEASE NON-COMP	374	3,889
557	TIDELANDS LSE NON-COMP	347	3,255
558	SHORE FISHERY LEASE	1,980	31,254
559	OTHER LEASE NON-COMP	91	1,464
561	MATERIAL SALE	2,637	19,971
562	LAND EXCHANGE	47	446
563	HOMESITE	2,612	45,939
564	AG REVOLV LN DISPOSAL	35	139
565	ASLS TRACKING	0	0
566	RESIDENTIAL HOMESTEAD	1,543	30,126
567	AGRICULTURAL HOMESTEAD	72	1,770
568	REAA SCHOOL CONVEYANCE	19	337
569	DISPOSAL OF ACCRETED LAND	50	302
571	DLWM PERMIT	1,990	15,817
572.	TRANSFERRED FED ENTRY	166	1,185
573	STATE CABIN PROGRAM	427	4,709
581	PUBLIC EASEMENT	2,957	25,243
582	PRIVATE EASEMENT	720	5,585
591	MANAGEMENT AGREEMENT	789	2,568
592	MANAGEMENT RIGHT	442	3,927
593	ANILCA 906(K) CONCURRENCE	344	2,431
596	TRESPASS	405	2,526
601	MUNICIPAL ENTITLEMENT	845	19,914
602	P & C MUNIC ENTITLEMENT	93	1,239
603	MUNICIPAL ENTITLEMENT	4	65
704	GEOTHERMAL LEASE COMP	3	41
712	MINING PROSPECTING SITE	6,543	36,824
713	MINING CLAIM	98,886	1,093,038
714	MINING LEASE NON-COMP	56	654
715	ANNUAL PLACER MINING APLN	3,628	31,335
722	OFFSHORE PROSPECTING PER	927	6,386
723	OFFSHORE LEASE NON-COMP	11	392
732	COAL PROSPECTING PERMIT	523	4,006
733	COAL LEASE NON-COMP	57	1,677
734	COAL LEASE COMP	12	235
783	OIL & GAS LEASE NON-COMP	32	478
784	OIL & GAS LEASE COMP	4,839	69,825
785	O&G TRANS FEDERAL LEASE	28	778
788	SHORELAND PRF RT LEASE	3	119
801	WATER RIGHTS	22,345	179,755
803	WATER DATA POINT	419	1,201
901	UNDEFINED LAND RECORD	34	87
902	AGREEMENT/SETTLEMENT	2	32
903	NATIVE ALLOTMENT	879	6,004
904	RECONVEYANCE	145	1,219
905	AGRICULTURAL RLF LOAN	1,092	2,292
951	OIL AND GAS WELL SITE	4,076	12,472

TOTAL LAS CASE TYPES:	116
TOTAL LAS CASES:	215,450
TOTAL LAS TRANSACTIONS:	2,283,036
TOTAL LAS CUSTOMERS:	83,747

ALEUTIANS EAST BOROUGH

SERVING THE COMMUNITIES OF
■ KING COVE ■ SAND POINT ■ AKUTAN ■ COLD BAY ■ FALSE PASS ■ NELSON LAGOON

February 7, 1995

Representative Carl Moses
Room 204
State Capitol
Juneau, AK 99801-1182

RE: House Bill 20

Dear Rep. Moses:

While we have not discussed the costs of tideland leasing to municipalities, I thought it would be interesting to analyze what a typical tidelands lease costs a local government.

Attached is a table called "Tideland Lease Expense" which is based on the Aleutians East Borough's most recent tideland lease with DNR. It is a 20-year lease on 4.4 acres with a rate of $1,100 annually - and may require reappraisal every 5 years. For simplicity's sake, I have taken the actual costs and extended them over the 20 years of the lease. I made no provision for inflation or any other increases. It is interesting to note that DNR receives only 19% of the total cost to the AEB if the lease is reappraised every five years and receives 22% of the annual cost if the lease is never reappraised.

I am also attaching a recent memo to the City of Akutan which outlines the steps needed to secure a tidelands lease. You can easily cross reference the fees to the steps outlined in the memo.

If this proves useful, please feel free to use it. If you have any questions, do not hesitate to call me.

Sincerely,

Robert S. Juettner
Administrator

RSJ:emn

Enclosures as indicated

cc: Nancy Hemmingway

CLERK/PLANNER
P.O. BOX 349
SAND POINT, ALASKA 99661
(907) 383-2699
(907) 383-3496 FAX

BOROUGH ADMINISTRATOR
1600 A STREET, SUITE 103
ANCHORAGE, ALASKA 99501-5148
(907) 274-7555
(907) 276-7569 FAX

FINANCE DIRECTOR
P.O. BOX 49
KING COVE, ALASKA 99612
(907) 497-2588
(907) 497-2386 FAX

Tideland Lease Expense

Category	Unit Cost	Recurring Cost	Prorated Cost 20 Years With 5 Year Re-appraisal	Prorated Cost 20 Years Without Re-appraisal
Application Fee	$5,000	No	$250	$250
Survey Instructions	$50	No	$3	$3
Survey Review	$200	No	$10	$10
Tideland Survey	$6,297	No	$315	$315
Appraisal Fee	$5,000	Every five years	$1,000	$250
Appraisal Travel	$1,172	Every five years	$234	$59
Lease Fee	$1,100	Annually	$1,100	$1,100
Performance Bond	$3,000	Annually	$3,000	$3,000
Annual Cost to Lessee			$5,912	$4,986
% of Annual Lease to Annual Cost			19%	22%

INTEROFFICE MEMO

To: Akutan Project Personnel

From: Terry P. Irwin P.L.S.

Date: February 1, 1995

Subject: Status of Alaska Tidelands near the Akutan Seaplane Ramp

---

Tidelands

The tidelands immediately adjoining the proposed seaplane ramp projects is presently designated ATS No. 781, it contains approximately 16.1 acres of property. The tidelands survey has never been completed.

A conversation with Mary Walters of DNR suggests the following facts:

1) The city appears to have an application on file with DNR to lease the tidelands, It's designation is ADL 224646, initiated on Nov. 23, 1988, for 17.2 acres??

2) To proceed with finalization of the tidelands lease, the following must take place:

a/ Create and submit a current development plan that notes any changes or deviations from the original plan. This development plan should also indicate proposed schedule

b/ Contact Coastal Zone with the new development plan and discuss whether or not a modification to the original application is needed. Fill out a new "Environmental Risk Questionnaire", and submit to DNR and DGC.

c/ Request survey instructions for the actual survey and monumentation of the ATS

d/ Perform the field survey per the state instructions.

e/ Request appraisal instructions from the State of Alaska.

f/ Select a state approved appraiser and have an appraisal performed.

g/ Complete final lease negotiations and pay a $5000 bond to finalize lease.

3) Presently, DNR is severely understaffed due to financial cutbacks. for this reason an application for tidelands lease can take as much as two years to complete within the present first come first served basis. The applicant can chose to pay a fee of approximately $5000 to DNR so that a single employee can be assigned their case for expediting. In this scenario a lease and plat can probably be completed in six months.

4) If materials are going to be utilized for this project, a new materials sale contract may have to be negoited, as the previous contract appears to have been closed in 1989.

5) Some additional thoughts and considerations that come to mind relative to this project:

a/ A determination needs to be made as to who owns the uplands. If the applicant is the owner the permit/lease process will go a lot smoother than if the uplands is owned by a third party. The upland owner generally has first right to adjoining tidelands.

b/ If less area is needed the development plan and subsequent lease application might want to request less acreage, as the cost to lease tidelands as increased in the past few years. It can now typically run $2000 plus or minus , per acre per year.

c/ The city might want to see if they can obtain the tidelands under municipal entitlement statutes, that way they would own the tidelands after the survey and wouldn't have to pay for appraisal, rent, bond, or the asbuilt survey after completion.

CC:

City and Borough of Sitka

100 LINCOLN STREET.SITKA, ALASKA 99835

Summary of Comments of Wells Williams, Planning Director, City and Borough of Sitka before the House Finance Committee on House Bill 20
"An Act relating to rights in certain tide and submerged land"
Testimony Given Friday March 3rd, 1995

Mr. Chairman, thank you for the opportunity to testify on this bill. My name is Wells Williams and I am the Planning Director for the City and Borough of Sitka.

Mr. Chairman, the City and Borough of Sitka strongly supports the passage of House Bill 20 for the many of the reasons outlined in the Sponsor's Statement. We feel that this is a major piece of legislation. The bill will be a significant benefit to the City and Borough of Sitka, communities in Southeast, Alaska, and coastal communities throughout the state.

Mr. Chairman, Sitka owns only a small percentage of the land within our municipal boundaries. While we have an excellent relationship with the Alaska Department of Natural Resources (through Andy Pekovich in the Southeast Regional Office and Ron Swanson as Director of Lands), the municipality is in a far better position to manage lands within the municipality.

As Representative Grussendorf is aware, the municipality has undertaken a comprehensive planning process over the past 13 months involving over 200 residents. This process has allowed us to establish a dialogue with many conservation and development interests in municipality.

The comprehensive planning process will lead to the development of a more formalized land management program. This puts us in a far better position to balance public interests than the Department of Natural Resources which is tight of staff time and resources.

Mr. Chairman, it is our view that the provision of the bill that rests the authority with the Commissioner of Natural Resources is appropriate. There are a number of specific protections in the bill. They include:

1. The requirement that tidelands can only be transferred for a specific purpose, and,
2. The requirement that the use is consistent or compatible with the purpose of the statutory designation.

Once again Mr. Chairman, the City and Borough of Sitka strongly supports the passage of House Bill 20. Thank you for the opportunity to testify.

Questions from Representative Brown concerning the municipality's position on the lease versus sale of the property and the issue of the protection of public access.

Response: Representative Brown, the Municipal Administrator has previously testified before another committee on this bill that the municipality strongly supports the ability to sell the property. My office handles both tidelands leases and tidelands sales. We have seen a few instances in which lease provisions have presented problems for land owners who wish to finance substantial infrastructure improvements. It is out experience that public access can be protected even though tidelands are sold. The public trust doctrine further provides protections.

Questions from Representative Martin concerning the ability of the municipality to tax the land.

(Excerpted response that attempted to answer the question). Representative Martin, I appreciate your concerns. This bill is in the financial interest of the municipality. House Bill 20 goes a long way to correct a current inequity within state statutes. Through historical events involving incorporation dates, the City and Borough of Sitka was only able to take ownership of a small percentage of the tidelands within our municipality (while not stated in testimony, other cities were able to take ownership of larger amounts of tidelands).

Mr. Martin, this bill does not allow the municipality to take ownership of all the tidelands within the corporate limits. There has to be a specific purpose such as a barge landing or a dock and that purpose has to be consistent with local and state plans. The municipality anticipates that it will only ask for 4 or 5 parcels of tidelands over the next 4 to 5 years.

Responses to additional issues raised during the hearing. Williams did not specifically address these issues and the responses are provided for background only.

Mineral Rights: Previous testimony before the committee confirmed that the state will retain all mineral (oil and gas) interests.

Depth of tidelands to be conveyed: Comments were made that the municipality may want to take ownership of lands several miles out. As Bob Juettner from the Aleutians East Borough testified, the only tidelands the municipalities are interested in are lands directly underneath infrastructure such as dock developments, barge developments, airport runways, and commercial and waterfront development. These projects seldom go out more than a few hundred feet into the water.

Concern from Kenai about the protection of recreational areas for clam digging and other activities. The proposed sale or leases have to be consistent with state and (as in Sitka's case) local plans. Municipalities are in a better position to determine and broker local interests than the State of Alaska. Communities such as the City and Borough of Sitka take the protection of high habitat areas and recreation areas extremely seriously.

The Assembly of the City and Borough of Sitka would not lease or sell lands that infringe on those values. Any lease or sale involves a public hearing process and the municipality actively encourages individuals with diverse views to comment during those hearings. We are confident that the concern, while understandable, would not be an issue since both that municipality and the State of Alaska have to agree to the transfer of land within approved land use designations.

Final Issue Touched Upon - Importance of Tidelands to Coastal Communities. Within coastal communities, many of the important lands for development are the tidelands. Unlike several communities in the Kenai Borough and the Matanuska-Susitna Borough, our lives revolve around the marine environment. Many of the uplands are mountainous and the much of the land we were able to select under the Municipal Land Entitlement Process, included steep and undevelopable terrain. As a result, the ability to obtain tidelands would not put us at an advantage over communities that do not have coast lines. It would simply put us on an equal footing.

Mr. Chairman and Members of the Committee, thank you very much for allowing me to send a summary of my testimony and additional supplemental information.

hb20