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STATE OF ALASKA
DEPARTMENT OF COMMUNITY
& REGIONAL AFFAIRS

POSITION PAPER

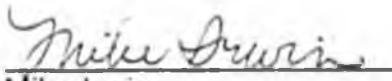
Bill no.: SB 56
Sponsor: Senator Leman

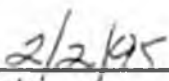
DCRA FN: Zero (submitted)
Position: Support

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


Date

File: SB 56 1/30/95

DEPARTMENT OF FISH AND GAME POSITION PAPER

BILL NO: SB56

SPONSOR: Senator Leman

DIVISION: Habitat and Restoration

DEPARTMENT POSITION:

The department recommends that this bill be amended to:

1. Require that lands to be conveyed to municipalities be classified for conveyance based on an adopted state land use plan and not be classified as Wildlife Habitat; and
2. Remove legislatively designated areas from lands that are eligible for conveyance.

SB 56 would allow municipalities, including those created after 1964, to acquire ownership of tidelands and submerged lands. While this would place newer cities and boroughs on an equal footing with older municipalities, many tidelands and submerged lands available for municipal conveyance under this bill are currently covered by adopted state land management plans which address, among other things, a variety of public uses including commercial, subsistence and recreational fishing; recreational and subsistence hunting; and the production of fish, wildlife and aquatic plant resources. Important fish and wildlife areas needed to support fish and wildlife production are classified as Wildlife Habitat and should not be available for conveyance to municipalities.

Additionally, some tidelands and submerged lands have been legislatively designated as critical habitat areas, refuges, sanctuaries, and parks because of their extraordinary values for fish and wildlife resources and public uses. For example, approximately 1.3 million acres of tidelands and submerged lands are legislatively designated as critical habitat areas and refuges to be managed jointly by the departments of Natural Resources and Fish and Game to protect and maintain fish and wildlife production and public uses. Examples include: Kachemak Bay Critical Habitat Area, Anchorage Coastal Wildlife Refuge, Mendenhall Wetlands State Game Refuge, and Izembek State Game Refuge. The Attorney General has held that these areas cannot be administratively removed from state authority. Legislatively designated areas should be retained under state management and should not be conveyed to municipalities.

COMMISSIONER'S SIGNATURE

Geron Bruce for

DATE

2/27/95

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB56

Revision Date:	Dept. Affected: <u>Fish and Game</u>
Title: <u>An Act relating to certain tide and submerged land</u>	BRU: <u>Habitat and Restoration</u>
Sponsor: <u>Senator Leman</u>	Component: <u>Habitat</u>
Requester: <u>CRA, RES</u>	COMPONENT SERIAL NO. <u>486</u>

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
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	34.3	35.7	37.3	38.9	40.6	42.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	34.3	35.7	37.3	38.9	40.6	42.4

Estimate of any current year (FY95) cost: \$ _____

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

The Department of Fish and Game will require approximately one-half full time equivalent for a Habitat Biologist to review municipal tideland and submerged land selections and advise the Department of Natural Resources on the effects of conveyance to fish and wildlife resources, public uses of fish and wildlife, and potentially for legislatively designated state game refuges, critical habitat areas, and game sanctuaries. Additionally, as municipal conveyances are made, existing state land use plans and Special Area Management plans will need to be revised to reflect the changes in land management. This will require approximately one-half full time equivalent of Habitat Biologist participation.

Prepared by: Ellen Fritts, Acting Director
 Division: Habitat and Restoration
 Approved by Commissioner: *Fritz*
 Agency: Department of Fish and Game

Phone: 465-4105
 Date: 2/21/95
 Date: 2/25/95

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FISCAL NOTE

STATE OF ALASKA

BILL NO. CSSB56 (CRA)

1995 LEGISLATIVE SESSION

Revision Date: 8-Mar-95 Dept Affected: Natural Resources
 Title: An Act relating to rights in certain BRU: Resource Development
tides and submerged land Component: Land Development
 Sponsor: Senator Leman
 Requestor: _____ Compenen. Serial No. 431

Expenditures/Revenues	(Thousands of Dollars)					
	FY96	FY97	FY98	FY99	FY00	FY01
OPERATING EXPENDITURES						
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	FY96	FY97	FY98	FY99	FY00	FY01
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 the 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 that 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: 8-Mar-95
 Approved by Commissioner: _____ Date: 3-7-95
 Agency: Natural Resources

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FISCAL NOTE ATTACHMENT - PAGE 2 - SB56
Amendments Proposed

While we support the bill in concept, the changes suggested below would better protect the public interest.

The first change is the addition of the following to Section 1(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...

This addition (which is already contained in HB20) will give the commissioner discretion to reject municipal selections in areas outside of legislatively designated areas which section (b) of this bill allows. This will rarely be needed and only when the greater public interest is at stake.

As example, the City of Valdez selected the entire Anderson Bay proposed Trans-Alaska Gas Pipeline terminal facility. Three years ago, for a variety of reasons, the department rejected the selections as not being in the greater public interest. Under SB56, we would not have this discretion.

The second change would be the deletions of the phrase "or sale" from page 2, line 18. Tidelands, shorelands, 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 by its use 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 tide, shore, or submerged land. 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.

As a side note, I find it somewhat ironic, except for rare circumstances, that the department 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.

FISCAL NOTE

STATE OF ALASKA

BILL NO. SB56

1995 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources
 Title: An Act relating to rights in certain BRU: Resource Development
tides and submerged land Component: Land Development
 Sponsor: Senator Loman
 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
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CHANGE IN REVENUES (1005)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
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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. This legislation would authorize the department to convey improved bdelands 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.

The reduction of \$50 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: 2-Feb-95
 Approved by Commissioner: [Signature] Date: 2-5-95
 Agency: Natural Resources

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB56

Revision Date: Original Dept Affected: Natural Resources
 Title: An Act relating to rights in certain BRU: Resource Development
tides and submerged land Component: Information Resource Management
 Sponsor: Senator Leman
 Requestor: _____ Component Serial No. 427

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES	6.0					
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	6.0	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)						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	6.0					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	6.0	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)

This bill will require the development of a new Land Administration System (LAS) casetype for these conveyances to municipalities. The actual notation of these conveyances to the status plats is considered regular work and will be absorbed by the component. The incremental work to develop a new casetype is estimated to be a one-time cost of \$6.0 in personal services.

Prepared by: Nico Bus, Acting Director Phone: 465-2406
 Division: Support Services Date: 6-Feb-95
 Approved by Commissioner: Nico Bus for Mr. Lutherford, Act. Comm. Date: 2/6/95
 Agency: Natural Resources

FISCAL NOTE ATTACHMENT - PAGE 2 - SB56
Amendments Proposed

While we support the bill in concept, the changes suggested below would better protect the public interest.

The first change is the addition of the following to Section 1(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...

This addition (which is already contained in HB20) will give the commissioner discretion to reject municipal selections in areas outside of legislatively designated areas which section (b) of this bill allows. This will rarely be needed and only when the greater public interest is at stake.

As example, the City of Valdez selected the entire Anderson Bay proposed Trans-Alaska Gas Pipeline terminal facility. Three years ago, for a variety of reasons, the department rejected the selections as not being in the greater public interest. Under SB56, we would not have this discretion.

The second change would be the deletions of the phrase "or sale" from page 2, line 18. Tidelands, shorelands, 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 by its use 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 tide, shore, or submerged land. 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.

As a side note, I find it somewhat ironic, except for rare circumstances, that the department 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.

FISCAL NOTE

Revision Date: 2/1 January 31, 1995 Dept. Affected: Community & Regional Affairs
 Title: An Act relating to rights in certain tide and submerged land. BRU: none
 Sponsor: Senator Leman Component: none
 Requestor: Senator Leman 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 municipality 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: 2/23/95
 Approved by Commissioner: *Diana M. ...* Date: 2/23/95
 Agency: Community & Regional Affairs

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SENATE COMMITTEE REPORT

DATE: 2/21/95

FURTHER:

DATE TURNED INTO OFFICE: 3-9-95

Resources Committee considered SENATE BILL NO. 56

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

and recommends:

- be replaced with CS SB56 (RES)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:
 same title
 new title
 House Bill:
 technical change
 new: SCR# _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Rich Halford</i>		✓	
		<i>[Signature]</i>		✓	
		<i>[Signature]</i>		✓	
		<i>[Signature]</i>	✓		
		<i>[Signature]</i>	✓		
<i>Robin W Taylor</i>	✓				
CHAIR: <i>Loren J. Linn</i>	✓				

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
DF+G	2/15/95		34.3

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
DNR - IIRM	2/15/95		6.0
DNR - Land Dev.	2/15/95		1500
C+RA	2/15/95	0	0

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

9-LS0516F

Cook

3/6/95

CS FOR SENATE BILL NO. 56()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR LEMAN

A BILL

FOR AN ACT ENTITLED

1 "An Act allowing the Department of Natural Resources to acquire land or
2 interests in land, including submerged or shore land, to a municipality to correct
3 errors or omissions of the municipality when inequitable detriment would result
4 to a person due to that person's reliance upon the errors or omissions of the
5 municipality; relating to conveyance of certain tide and submerged land to
6 municipalities; and providing for an effective date."

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

8 • Section 1. AS 38.05.035(b) is amended to read:

9 (b) The director may

10 (1) delegate the administrative duties, functions or powers imposed
11 upon the director to a responsible employee in the division;

12 (2) grant preference rights for the lease or purchase of state land
13 without competitive bid in order to correct errors or omissions of a state or federal

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administrative agency when inequitable detriment would otherwise result to a diligent claimant or applicant due to situations over which the claimant or applicant had no control; the exercise of this discretionary power operates only to divest the state of its title to or interests in land and may be exercised only

(A) with the express approval of the commissioner; and

(B) if the application for the preference right is filed with the director within three years from

(i) the occurrence of the error or omission;

(ii) the date of acquisition by the state of the land; or

(iii) the date of a court decision or settlement nullifying a disposal of state land;

(3) grant a preference right to a claimant who shows bona fide improvement of state land or of federal land subsequently acquired by the state and who has in good faith sought to obtain title to the land but who, through error or omission of others occurring within the three years before (A) the application for the preference right, (B) the date of acquisition by the state of the land, or (C) the date of a court decision or settlement nullifying a disposal of state land, has been denied title to it; upon a showing satisfactory to the commissioner, the claimant may lease or purchase the land at the price set on the date of original entry on the land or, if a price was not set at that time at a price determined by the director to fairly represent the value of unimproved land at the time the claim was established, but in no event less than the cost of administration including survey; the error or omission of a predecessor in interest or an agent, administrator, or executor which has clearly prejudiced the claimant may be the basis for granting a preference right;

(4) sell land by lottery for less than the appraised value when, in the judgment of the director, past scarcity of land suitable for private ownership in any particular area has resulted in unrealistic land values;

(5) when the director determines it is in the best interest of the state and will avoid injustice to a person or the heirs or devisees of a person, dispose of land, by direct negotiation to that person who presently uses and who used and made improvements to that land before January 3, 1959, or to the heirs or devisees of the

1 person: the amount paid for the land shall be its fair market value on the date that the
2 person first entered the land, as determined by the director; a parcel of land disposed
3 of under this paragraph shall be of a size consistent with the person's prior use, but
4 may not exceed five acres;

5 (6) dispose of an interest in land limited to use for agricultural purposes
6 by lottery;

7 (7) convey to an adjoining landowner for its fair market value a
8 remnant of land that the director considers unmanageable or a parcel of land created
9 by a highway right-of-way alignment or realignment, or a parcel created by the
10 vacation of a state-owned right-of-way if

11 (A) the director determines that it is in the best interests of the
12 state;

13 (B) the parcel does not exceed the minimum lot size under an
14 applicable zoning code; and

15 (C) the director and the platting authority having land use
16 planning jurisdiction agree that conveyance of the parcel to the adjoining
17 landowner will result in boundaries that are convenient for the use of the land
18 by the landowner and compatible with municipal land use plans;

19 (8) for good cause extend for up to 90 days the time for rental or
20 installment payments by a lessee or purchaser of state land under this chapter if
21 reasonable penalties and interest set by the director are paid;

22 (9) quitclaim land or an interest in land to the federal government on
23 a determination that the land or the interest in land was wrongfully or erroneously
24 conveyed by the federal government to the state;

25 (10) negotiate the sale or lease of state land at fair market value to a
26 person who acquired by contract, purchase, or lease rights to improvements on the land
27 from another state agency or who leased the land from another state agency;

28 (11) quitclaim land or an interest in land, including submerged or
29 shore land, to a municipality to correct errors or omissions of the municipality
30 when inequitable detriment would result to a person due to that person's reliance
31 on the errors or omissions of the municipality, the quitclaim shall be made on

such terms and conditions as the director considers appropriate except that, if the municipality has a remaining entitlement to land under AS 29.65, the land nr interest quitclaimed is counted against the municipality's remaining entitlement.

* Sec. 2. 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 es 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

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1 the requested conveyance meets the requirements of this section and issue a written
2 decision regarding that determination. Upon a determination that the requirements
3 have been met, the commissioner shall approve the conveyance of the land to the
4 municipality. After conveyance to the municipality is approved, the municipality has
5 management authority of the land and may convey the land by lease or sale. The cost
6 of the survey and all subdivision or other platting required for conveyance shall be
7 borne by the municipality.

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

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

18 • Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

#2

March 7, 1995

AMENDMENT

2-2
L. Johnston
fid

CSSB 56

By: Department of Fish and Game

Page 4, line 31

Insert: (c) Before land that is legislatively designated as a state game refuge, game sanctuary, or critical habitat area is conveyed under this section, the commissioner of the Department of Fish and Game shall concur that the proposed use is consistent or compatible with the purpose of the state game refuge, game sanctuary or critical habitat area.

Re-letter the remaining paragraphs in Section 2 of the bill.

March 6, 1995

Enrolled 3-2 (not entered)
AMENDMENT #1

OFFERED IN THE SENATE:
CS SB 56(RES)

BY: SENATOR LEMAN

Page 4, Lines 6-7:

DELETE: [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, t]

Insert: (a) The commissioner shall convey

not entered by 2011 12 15

ARTICLE VIII

NATURAL RESOURCES

At the time of the constitutional convention, Alaska had a slender economic base. Mining and fishing were the economic mainstays, and neither industry was robust. Proponents of statehood realized that the future of the state of Alaska depended upon the successful development of all its natural resources. Statehood bills pending in Congress indicated that the new state government would acquire an enormous amount of land from federal holdings, and it would assume responsibility for managing all fish and wildlife. Alaska's delegate to Congress, Bob Bartlett, devoted his keynote speech to the constitutional convention to the role of resource development in Alaska's future and to the ease with which the benefits of this development could be lost by careless management: ". . . fifty years from now, the people of Alaska may very well judge the product of this Convention not by the decisions taken upon issues like local government, apportionment, and the structure and powers of the three branches of government, but rather by the decision taken upon the vital issue of resources policy."

Delegate Bartlett and others urged constitutional defenses against freewheeling disposals of public resources and colonial-style exploitation that would contribute nothing to the growth and betterment of Alaska. Such abuses were common in the early history of resource management in the western states, and manifestations of them were visible in contemporary Alaska under the complacent management of federal bureaus. Thus, the convention delegates sought to enshrine in the state constitution the principle that the resources of Alaska must be managed for the long-run benefit of the people as a whole - that is, the resources of the state must be managed as a public trust. They did not attempt to write a resource code; rather, they sought to fix the general concept of the public interest firmly in the resource law and resource administration of the state, as well as in the consciousness of Alaskans, so it would not be subverted through the indifference or avarice of future generations.

In drafting this article, delegates were unable to refer to other state constitutions or the *Model State Constitution* for ideas and guidance, as none of them dealt with natural resource policy as broadly as the Alaskans thought necessary. At the time of Alaska's constitutional convention, only the proposed Hawaii constitution addressed natural resource policy in a separate article, and that only briefly. Other state constitutions, if they contained reference to resources at all, focused on specific matters of local relevance (irrigation and water rights in the western states, tidelands in Washington, reforestation

Article VIII

in Oregon, and so on). These state constitutions were, for the most part, written before modern principles of conservation and resource policy (sustained yield and multiple use, for example) were articulated. Thus, Alaska's natural resource article was a unique product of the 1956 convention, and it remains unique among the states, even though constitutional treatment of natural resource and environmental issues in other states has grown through amendment and revision in recent years.

Article VIII of Alaska's constitution clearly establishes that the natural resources of Alaska should be developed. Indeed, to the convention delegates, the very success of statehood hung in the balance. But while this article creates a strong presumption in favor of resource development, it will not abide that which is wasteful, biologically exhaustive, rooted in special privilege, narrowly selfish or contrary to the rights of others and the larger public interest.

With certain exceptions, this article allows the government to sell, lease or give away public land and resources, but it may do so only in accordance with constitutional and statutory guidelines, and all transactions must be in full public view. A governor or commissioner may not, for example, quietly sell to friends a favorite fishing spot, or secretly negotiate the lease of a state-owned coal field to a mining company.

Despite their philosophical aversion to the "give away" of public resources, the delegates were enamored with the long-established federal method of disposing of public mineral lands, which allows a person to obtain fee title to a metallic mineral deposit simply by filing a claim to it. Meanwhile, a draft article on natural resources prepared by consultants to the convention called for the state to retain in public ownership the subsurface title to all mineral lands and to lease the right to produce minerals from these lands. Congress was predisposed to the same idea, and in all likelihood was going to prohibit the state from transferring out of state ownership the mineral rights to land acquired from the federal government. Nonetheless, in the constitution the delegates opted for the existing federal system of obtaining full title to mineral lands "if not prohibited by Congress." As it happened, Congress forced on the state the leasing alternative and required the state to retain ownership of the minerals on its land.

Delegates debated at some length the organization of the executive agency to be charged with managing natural resources. There was vocal public support for a commission of fish and game to oversee the management of those resources (as there was support for the creation of a constitutional board of education to head the state department of education).

In the end, however, the delegates left the way open for a board to head a principal department but willed to the legislature the task of deciding when the use of an executive board was appropriate (see discussion of Article III, Section 25).

It is not surprising that controversies over resource management have been among the most bitter in Alaska's political history and that the courts have been called on frequently to decide the meaning of constitutional language in the context of these disputes. This is because natural resources loom so large in the lives of so many Alaskans, if not as a source of livelihood then as source of cherished recreation. It is also because the language of this article is general and often opaque. A major challenge of the resource management agencies has been to restrict access and establish priorities among competing user groups, which the constitution expects, without creating special privileges and exclusive rights, which the constitution abhors. The courts have had to determine when a management scheme reasonably allocates a scarce resource among those who use it ("beneficial users") and when it violates constitutional guarantees of common use and open access to the public (see commentary under Sections 3, 15 and 17 below).

Section 1. Statement of Policy

It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

This is an emphatic statement that the policy of the state is to encourage the development of its land and resources, but in a manner that recognizes the collective interests of the people as the owners of these lands and resources. The meaning of the phrase "consistent with the public interest" is found elsewhere in this article. For example, it means that the principles of conservation must govern resource management (Sections 2 and 4); that everyone should be treated equally by management rules, particularly rules adopted in the interests of conservation that limit the access of some groups to certain resources (Sections 3, 15, 16 and 17); and that the public must be notified of all disposals of public land and resources, which may occur only according to the terms of general laws (Sections 8, 9 and 10). While the delegates were firmly committed to resource development as the financial salvation of statehood, they were wary of rank profiteers and "boom and bust" enterprises. For example, two tenets among Alaskans were that corporate developments such as the Kennecott copper mines made no lasting contribution

Article VIII

to the territory, and that absentee owners of fish traps had unfair, exclusive rights of access to Alaska's salmon and were depleting the resource in their single-minded quest for profits.

Section 2. General Authority

The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the state, including land and waters, for the maximum benefit of its people.

This section is a broad grant of legislative authority to implement the policy enunciated in Section 1. [The original resource article of the Hawaii constitution written in 1950, began with a similar provision: "The legislature shall promote the conservation, development and utilization of agricultural resources, and fish, mineral, forest, water, land, game and other natural resources" (Article X, Section 1 of the 1950 constitution)]. In addition to utilization and development, conservation appears as an alternative of resource management. The delegates understood the term in its traditional sense of "wise use." The Alaska Supreme Court has said: "The terms 'conserving' and 'developing' both embody concepts of utilization of resources. 'Conserving' implies controlled utilization of a resource to prevent its exploitation, destruction or neglect. 'Developing' connotes management of a resource to make it available for use" (*Kenai Peninsula Fisherman's Co-op. Association v. State*, 628 P.2d 897, 1981).

Section 3. Common Use

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

This section, together with Sections 15 and 17, emphatically prohibits the state from granting to any person or group privileged or monopolistic access to a natural resource. This "anti-monopoly purpose" of the section, the Alaska Supreme Court has said, "was achieved by constitutionalizing common law principles imposing upon the state a public trust duty with regard to the management of fish, wildlife and waters" (*Owsichek v. State*, 763 P.2d 488, 1988). While it prohibits special privileges, the constitution also recognizes that proper resource management may require restricting the harvest of

Article VIII

Section 6. State Public Domain

Lands and interests therein, including submerged and tidal lands, possessed or acquired by the State, and not used or intended exclusively for governmental purposes, constitute the state public domain. The legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain.

The public domain is government-owned land that has not been set aside for special use and remains open for private settlement and development in accordance with public land laws. Thus, all lands, including tidelands and submerged state land beneath navigable rivers and inland bays, are in the public domain except for parcels explicitly withdrawn for a specific governmental purpose. The second sentence of this section is a general authorization for the legislature to select land in accordance with the statehood act (it was evident at the time that Congress would make a large grant of federal land to the new state) and to provide for the administration of state lands. It is technically unnecessary, as managing state lands is an inherent power of all state legislatures.

Section 7. Special Purpose Sites

The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.

This language, like that of Section 5 and Section 6, is not necessary to authorize action which the legislature would otherwise be prevented from taking. However, it makes clear that special-purpose withdrawals are within the constitutional scheme of things even though development objectives are stressed in other sections. That is, this section prevents constitutional objections to such withdrawals on the grounds that they are incompatible with commercial development.

Alaska statute 38.04.070 authorizes withdrawals of land from the public domain for state forest and wildlife reserves, state parks (to protect areas with special recreational, scenic,

Article VIII

Section 9. Sales and Grants

Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources. Reservation of access shall not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages.

In addition to leasing, the legislature may sell or give away (by means of a grant) state-owned resources. "Interests therein" refers to specific uses of the land, such as agricultural uses, which may be sold without transferring full title. The second sentence of this section anticipated that Congress would prohibit the new state from conveying away the mineral rights to its land, and, in fact, Section 6(i) of the Alaska Statehood Act bars the state from selling or giving away mineral rights (the background of this provision is discussed at length in *State v. Lewis*, 559 P.2d 630, 1977; see also Section 11 below, and Article XII, Section 13). A condition of sale or grant of the surface use of land is that the state be allowed access to the subsurface (mineral) resources to which it retains ownership. Should the state ever exercise its right of access, it may not impair the owner's right to use the land and control trespass by others, and the state must compensate the owner for damages it may cause.

The Alaska Land Act, AS 38.05, implements this section by providing for the sale of land by auction, lottery and other methods.

Section 10. Public Notice

No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

This section requires the state, when disposing of state lands and resources as authorized by sections 8 and 9 above, to observe fixed legal procedures that protect the public's interest in these lands and resources. One such procedure is a formal announcement by

the state that it intends to sell, lease or grant a specific parcel before the transaction occurs. This requirement is a protection against fraud and administrative wrongdoing, and against concessions, sales and leases that may inadvertently confer special privileges in violation of Sections 3, 15 and 17. The Alaska Supreme Court underscored the significance of this provision (*Alyeska Ski Corporation v. Holdsworth*, 426 P.2d 1006, 1967). In that case, an unsuccessful bidder for a state lease complained of procedural irregularities in the award of the bid. The Department of Natural Resources rejected the complaint and asserted that the commissioner's decision in the matter was final, not subject to review by the courts. The court held otherwise, compelled by the "unequivocal constitutional mandate requiring that all leases of state lands are to be entered into in accordance with safeguards imposed by law." If the pertinent statutes and regulations were ambiguous regarding judicial review, the constitution was not, in the view of the court. The justices noted that Article VIII, Section 10 "reflects the framers' recognition of the importance of our land resources and of the concomitant necessity for observance of legal safeguards in the disposal or leasing of state lands" (*Alyeska Ski Corporation v. Holdsworth*).

In 1976 the voters turned down an amendment to this section which would have given the legislature veto power over all disposals of state-owned natural resources. The proposed amendment stemmed from legislative dissatisfaction with certain sales of state royalty oil that had been negotiated by the executive branch. At the time, many proponents of the amendment believed that its failure at the polls resulted from a biased summary of the proposition on the ballot, which was written by individuals in the executive branch who, they claimed, were opposed to the measure (see discussion of Article XIII, Section 1).



Sponsor Statement

SB 56

Current state statutes are working against second class cities and municipalities incorporated after April 1, 1964. To promote self sufficiency and economic development at the local level I am proposing to change current state statute Title 38.

Title 38 of Alaska Statutes fails to recognize second class cities' and municipalities' eligibility to obtain tide and submerged lands despite the fact that home rule and first class cities incorporated prior to April 1, 1964, have this right. The effect of this oversight places coastal second class cities and municipalities at a disadvantage as they pursue economic development along their waterfronts.

SB 56 allows all municipalities, home rule, first and second class cities and boroughs to apply for tide and submerged land and to have them conveyed. There would be four conditions to meet in order for this to happen:

- (1) Lack of unreasonable interference with public access resulting from the proposed use of the land;
- (2) Application for conveyance by the municipality, with the municipality paying all cost;
- (3) Compatibility of the proposed use and the land classification or land use plan for the area;
- (4) Need for the land development.

Land conveyed under this bill is subject to the public trust doctrine. Title to land conveyed under this bill would revert to the state if the municipality is dissolved. Conveyances of land under the bill would not affect the general land entitlement of a municipality provided by AS 29.65.



Sectional Analysis of SB 56

The following is a sectional analysis of SB 56 "An act relating to rights in certain tide and submerged land."

Section 1 amends AS 38.05 by adding a new section. Title 38 deals with "Public Lands", chapter 05 deals specifically with the "Alaska Land Act"

Subsection (a) sets out the four conditions that a municipality must meet before the commissioner shall convey tide or submerged land to the municipality. These are:

- (1) Lack of unreasonable interference with public access.
- (2) The municipality must have applied for land conveyance.
- (3) Land use must be compatible with the proposed use and land classification set by the municipality.
- (4) Need for the land development.

Subsection (b) states that land designated by the legislature may not be conveyed unless the conveyance is consistent with the legislative purpose behind the designation.

Subsection (c) states that if the commissioner has determined that an application for conveyance meets the appropriate standards, the commissioner shall convey the land to the municipality. This subsection also states that after approval by the commissioner, a municipality has responsibility of management and the right to lease or sell the land.

Subsection (d) limits the restrictions that the state can put on the land conveyed under this section and requires reasonable public access to public water. Any land that has been conveyed under this section reverts back to the state upon the dissolution of the municipality.

Subsection (e) states that land transferred under this section does not count against a municipality's general land grant.



February 3, 1995

TO: Senator Loren Leman

FROM: *Kevin C. Ritchie*
Kevin C. Ritchie
Executive Director

RE: SB 56 - Rights in certain tide and submerged land

The Alaska Municipal League supports SB 56, 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 SB 56.

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

Background

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 BOROUGHES 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

ALEUTIANS EAST BOROUGH

SERVING THE COMMUNITIES OF

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

February 7, 1995

Senator Loren Leman
Room 113
State Capitol
Juneau, AK 99801-1182

RE: Senate Bill 66

Dear Senator Leman:

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:amn

Enclosures as indicated

cc: Annette Kreitzer

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BOROUGH ADMINISTRATOR
1600 A STREET, SUITE 103

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Background

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.

Status of Alaska Tidelands near the Akutan Seaplane Ramp

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- 4) If materials are going to be utilized for this project, a new materials sale contract may have to be negotiated, 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 has 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: