

SB

281

SENATE COMMITTEE REPORT

DATE: 2/24/98

FURTHER: Finance

DATE TURNED IN TO OFFICE: 4/17/98

Resources Committee considered SENATE BILL NO. 281

"An Act relating to general grant land entitlements for the City and Borough of Yakutat; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 281 (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:**
- same title
 - technical title
 - new: SCR# _____

| SIGNING DO PASS | DP | OTHER RECOMMENDATIONS | NR | DNP | AM |
|----------------------------|----|-----------------------|----|-----|----|
| <i>John Ingerson</i> | ✓ | <i>Demond...</i> | | | |
| <i>Brew D. Leman</i> | | <i>Bob M. ...</i> | | | |
| | | <i>Lyle ...</i> | | | |
| CHAIR: | | <i>Rich Halford</i> | ✓ | | |

NEW FISCAL NOTE(S):

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
| DNR | 4/16 | | ✓ |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

PREVIOUS FISCAL NOTE(S):*

| Department | Date | Zero | Fiscal |
|----------------|-----------------|------|--------------|
| DNR | 4/16 | | ✓ |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB 281(RES)

Revision Date: 16-Apr-98 Dept Affected: Natural Resources
 Title: Yakutat General Grant Land Entitlement BRU: Resource Development
 Component: Land Development
 Sponsor: Sen. MACKIE
 Requestor: SRES Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY99 | FY00 | FY01 | FY02 | FY03 | FY04 |
|---------------------------------------|------------|-------------|-------------|-------------|-------------|------------|
| PERSONAL SERVICES | 5.0 | 57.0 | 47.0 | 9.0 | 18.0 | 1.0 |
| TRAVEL | 1.0 | 2.0 | 2.0 | | | 0.5 |
| CONTRACTUAL | | 3.0 | 5.0 | 1.0 | 1.0 | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 6.0 | 62.0 | 54.0 | 10.0 | 19.0 | 1.5 |
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CHANGE IN REVENUES (fund code) | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

FUND SOURCE (Thousands of Dollars)

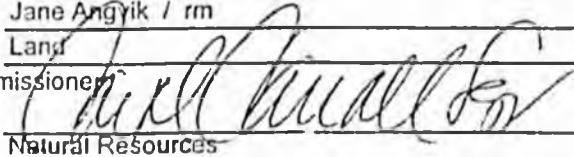
| | | | | | | |
|--------------------------------|------------|-------------|-------------|-------------|-------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 6.0 | | | | | 1.5 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| 1108 Stat. Des. Prog. Receipts | | 62.0 | 54.0 | 10.0 | 19.0 | |
| TOTAL | 6.0 | 62.0 | 54.0 | 10.0 | 19.0 | 1.5 |

Estimate of any current year (FY98) cost: \$ none

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 1 | 1 | 0 | 1 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: *(Attach a separate page if necessary)*
 CSSB281(res) establishes entitlement at 8552 acres, assumes that the borough files selections in early FY 00 (deadline is 10/1/99)
 Assumes that borough selects areas identified in letters to DNR, 5,000 acres will require amending Yakataga Area Plan
 Fiscal Note assumes that borough will pay processing costs, otherwise DNR will process CBY's selections after processing other outstanding obligations, which will delay most conveyances up to 20 years.
 FY 99 tasks - assist borough to file selections
 FY 00 tasks - receive applications, agency review, draft decisions and plan amendments
 FY 01 tasks - public notice, review, meetings, final decisions, final plan amendments
 FY 02 tasks - issue survey instructions to borough
 FY 03 tasks - assumes borough surveys land - review/approve surveys, issue title documents
 FY 04 tasks - monitor/enforce covenants

Prepared by: Jane Angvik / rm Phone: 907-269-8503
 Division: Land Date: 16-Apr-98
 Approved by Commissioner:  Date: 4/16/98
 Agency: Natural Resources

CS FOR SENATE BILL NO. 281(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR MACKIE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to general grant land entitlements for the City and Borough of
2 Yakutat; and providing for an effective date."

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

4 * Section 1. AS 29.65.010(a) is amended to read:

5 (a) The general grant land entitlement of each of the municipalities in this
6 subsection is the amount set out opposite each:

- 7 (1) Municipality of Anchorage - 44,893 acres;
- 8 (2) City and Borough of Juneau - 19,534 acres;
- 9 (3) City and Borough of Sitka - 10,500 acres;
- 10 (4) Bristol Bay Borough - 2,898 acres;
- 11 (5) Fairbanks North Star Borough - 112,000 acres;
- 12 (6) Haines Borough - 2,800 acres;
- 13 (7) Kenai Peninsula Borough - 155,780 acres;
- 14 (8) Ketchikan Gateway Borough - 11,593 acres;

- 1 (9) Kodiak Island Borough - 56,500 acres;
2 (10) Lake and Peninsula Borough - 125,000 acres;
3 (11) Matanuska-Susitna Borough - 355,210 acres;
4 (12) North Slope Borough - 89,850 acres;
5 **(13) City and Borough of Yakutat - 8,552 acres.**

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

7 (c) Land may be selected or nominated for selection by a municipality to
8 satisfy a general grant land entitlement under former AS 29.18.201 and 29.18.202 at
9 any time before October 1, 1980. Land may be selected or nominated for selection by
10 a municipality to satisfy a general grant land entitlement under AS 29.65.010(a)(1) -
11 (9), (11), or (12) at any time before October 1, 1990. Land may be selected or
12 nominated for selection by a municipality to satisfy a general grant land entitlement
13 under AS 29.65.010(a)(10) at any time before October 1, 1996. **Land may be**
14 **selected or nominated for selection by a municipality to satisfy a general grant**
15 **land entitlement under AS 29.65.010(a)(13) at any time before October 1, 1999.**

16 However, if a municipal selection or nomination or a part of a municipal selection or
17 nomination is rejected by the director, the municipality may, not later than 90 days
18 after receipt of the rejection or final decision on an appeal filed under
19 AS 29.65.050(d), select additional state land as necessary to satisfy its entitlement.

20 * Sec. 3. AS 29.65.050(c) is amended to read:

21 (c) The director shall approve or disapprove each selection for patent within
22 nine months of its selection by a municipality. Before a decision is issued, the
23 Department of Community and Regional Affairs shall review the selection and
24 recommend approval or disapproval of it. The director may disapprove a selection
25 only upon a finding that the public interest in retaining state ownership of the land
26 outweighs the municipality's interest in obtaining the land. **If the director determines**
27 **that the public interest in land selected in satisfaction of an entitlement under**
28 **AS 29.65.010(a)(13) can be adequately protected by issuing a patent that is subject**
29 **to stipulations, conditions, or covenants, and if the municipality agrees to accept**
30 **the land subject to those stipulations, conditions, or covenants, the director may**
31 **approve a selection that would otherwise be disapproved and may issue the patent**

1 with the stipulations, conditions, or covenants agreed to by the municipality. A
2 patent shall be issued to the municipality for land selected in satisfaction of a general
3 grant land entitlement vested under AS 29.65.010 - 29.65.030 within three months after
4 approval by the director of a plat of survey.

5 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB 281(CRA)

Revision Date: _____ Dept Affected: Natural Resources
 Title: Yakutat General Grant Land Entitlement BRU: Resource Development
 Component: Land Development
 Sponsor: Sen. MACKIE
 Requestor: SRES Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY99 | FY00 | FY01 | FY02 | FY03 | FY04 |
|---------------------------------------|-------------|--------------|--------------|-------------|-------------|------------|
| PERSONAL SERVICES | 9.4 | 120.0 | 130.0 | 18.2 | 39.8 | 5.0 |
| TRAVEL | 1.0 | 3.0 | 3.0 | | | 1.0 |
| CONTRACTUAL | | 5.0 | 10.0 | 1.0 | 2.0 | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 10.4 | 128.0 | 143.0 | 19.2 | 41.8 | 6.0 |
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CHANGE IN REVENUES (fund code) | 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 | 10.4 | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| 1108 Stat. Des. Prog. Receipts | | 128.0 | 143.0 | 19.2 | 41.8 | 6.0 |
| TOTAL | 10.4 | 128.0 | 143.0 | 19.2 | 41.8 | 6.0 |

Estimate of any current year (FY98) cost: \$ _____

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 2 | 3 | 0 | 1 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS:

(Attach a separate page if necessary)

Assumes that acreage is reduced to 21,500 acres, borough files selections in early FY 00 (deadline is 10/1/99).
 Assumes that borough selects areas identified in letters to DNR, 18,000 acres will require amending Yakataga Area Plan.
 Fiscal Note assumes that borough will pay processing costs, otherwise DNR will process CBY's selections after processing other outstanding obligations, which will delay most conveyances up to 20 years.
 FY 99 tasks - assist borough to file selections
 FY 00 tasks - receive applications, agency review, draft decisions and plan amendments
 FY 01 tasks - public notice, review, meetings, final decisions, final plan amendments
 FY 02 tasks - issue survey instructions to borough
 FY 03 tasks - assumes borough surveys land - review/approve surveys, issue title documents
 FY 04 tasks - monitor/enforce covenants

Prepared by: Jane Angvik / rm Phone: 907-269-8503
 Division: Land Date: 23-Feb-98
 Approved by Commissioner: [Signature] Date: 2-23-98
 Agency: Natural Resources

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

SENATE DISTRICT C
KODIAK ISLAND
SOUTHEAST ISLANDS

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Senator_Jerry_Mackie@legis.state.ak.us

SENATOR JERRY MACKIE

ALASKA STATE LEGISLATURE

SPONSOR STATEMENT

SB 281, Yakutat Municipal Land Grant.

SB 281 is introduced to complete the formation of the Yakutat Borough and the land entitlements that the state grants to support local government. Initially, the petition of the people of Yakutat to incorporate as a borough in 1992 was considerably reduced in size by the Local Boundary Commission. The land entitlement for the new borough by the formula of 10 % of "vacant, unappropriated, and unreserved" (vuu) state lands was a mere 138 acres.

The City and Borough of Yakutat subsequently petitioned the Local Boundary Commission to reclaim much of the area on its Northern boarder. In a reversal of its earlier decision, the Local Boundary Commission approved the annexation which contains a substantial amount of state "vuu" lands. It is estimated that if the annexed area had been included for the original borough formation, the municipal land entitlement would amount to 33,000 acres.

It has been a long established policy for the state to assist the formation and operation of local governments with generous grants of state land. SB 281 corrects the defects in the borough formation process that resulted in such a small land entitlement for the City and Borough of Yakutat by increasing its entitlement to 21,500 acres. The bill also gives additional authority to the Director of the Division of Lands in the Department of Natural Resources to condition and restrict any of the municipality's selections made under this increased grant.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 25526
JUNEAU, ALASKA 99802-5526
PHONE: (907) 465-4100
FACSIMILE: (907) 465-2332

March 12, 1998

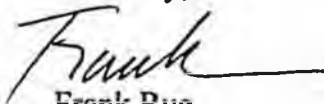
The Honorable Jerry Mackie
Alaska State Legislature
State Capitol, Room 427
Juneau, AK 99801-1182

Dear Senator  Mackie:

The Alaska Department of Fish and Game worked with the community of Yakutat over the past three months regarding their interest in obtaining statutory municipal entitlements in lieu of the entitlements that were not available to the Borough upon its initial incorporation in 1992. The enclosed letter of February 24 from Mr. James Brennan documents the progress made to date and the commitments made by the City and Borough of Yakutat regarding their management intent for certain potential entitlement parcels.

I am pleased to endorse SB 281 given the enclosed letter of commitment from the City and Borough of Yakutat and the provision in the bill which empowers the Department of Natural Resources to prescribe land use stipulations, conditions or covenants to certain parcels.

Sincerely,



Frank Rue
Commissioner

cc: Janet Kowalski, ADF&G, Habitat & Restoration
Lana Shea Flanders, ADF&G, Habitat & Restoration, Douglas
Bob Clasby, ADF&G, Commercial Fisheries
Kevin Delaney, ADF&G, Sport Fish
Wayne Regelin, ADF&G, Wildlife Conservation
Mary Pete, ADF&G, Subsistence
Geron Bruce, ADF&G, CO

Enclosure

LAW OFFICES

HEDLAND, BRENNAN, HEIDEMAN & COOKE
A PROFESSIONAL CORPORATION

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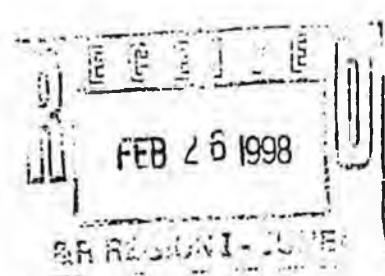
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BETHEL:

CHRISTOPHER R. COOKE
JIM J. VALCARCE

February 24, 1998

Via Facsimile (907) 465-2332
Frank Rue, Commissioner
Department of Fish & Game
P.O. Box 25526
Juneau, AK 99811-5526



Re: SB 281; City and Borough of Yakutat Municipal Entitlements Bill

Dear Commissioner Rue:

I have been assisting the City and Borough of Yakutat (CBY) in obtaining statutory municipal entitlements in lieu of those which were not available to the Borough upon its initial incorporation in 1992. As you are probably aware, the CBY received almost no land entitlements upon incorporation, because nearly all the state VUU land in the region was located between Icy Bay and Cape Suckling, which only became a part of the Borough upon its annexation in 1996.

Borough representatives, including myself, have had discussions and exchanged correspondence with Lana Shea Flanders and Bill Hanson, of the Southeast Regional Habitat and Restoration Office. As a result of these discussions, we were able to insert into the language of the Bill a provision that empowers DNR to prescribe stipulations, conditions, or covenants, agreeable to the CBY, which could accompany approval of conveyance and patent to a specific parcel to be conveyed as an entitlement. This addition to the law will permit DNR to address habitat concerns through conditions or covenants, which concerns might otherwise foreclose conveyance of sensitive areas and the areas around them. As you know, CBY has demonstrated a commitment to habitat concerns in this region, and has generally been supportive of protective measures.

In discussing habitat protection concerns in the context of the pending SB 281, Yakutat has made the following commitments to ADF&G Habitat Division, and Bill Hanson asked that we reiterate these in a letter to yourself. Some of these are of lesser importance now because, since the time we made the commitments on behalf of the CBY, the Borough has agreed to reduce the SB 281

entitlement from 30,000 acres to 21,500 acres, which reduction occurred by amendment in the Senate C&RA Committee hearing on February 23. The purpose of this reduction was to remove Cape Suckling areas classified as forestry from the areas Yakutat intends to seek. The only area currently classified as forestry which will be sought by CBY is the area surrounding the sort yard in west Icy Bay, subunit 4a1 and a small part of subunit 4a2 under the Yakataga Area Plan designations. Despite the reduction in forestry lands sought, the commitments relating to them are reiterated herein.

CBY commits to the following, with regard to entitlement lands conveyed as a result of SB 281:

- (1) Any timberland conveyed to the CBY which lies west of the Duktoth River would be subject to the same riparian standards as would be applicable to forests on State land, under AS 14.17.118 and regulations thereunder.
- (2) Conveyance to the Borough of any lands between the Duktoth River and Cape Suckling would be subject to a moratorium on any timber harvest which will be identical with the remainder of the 20-year moratorium on state timber harvests in the region, as set forth in the December 2, 1994 Memorandum of Agreement (University settlement).
- (3) In sub-units 3a1, 3a2, and 3a3 (Tsiu to Duktoth coastal strip), habitat protection stipulations or conditions would attach to conveyance of the approximately 500-foot wide coastal fringe of timber discussed in the Area Plan, and of any associated ponds or marshlands identified by ADF&G as particularly important habitat.
- (4) Areas conveyed to the City and Borough of Yakutat in the Cape Sucking area should be managed to maintain fish and wildlife resources and uses as specified in the University settlement and the Yagataga Area Plan, as well as for recreational purposes. If, as was discussed with Ms. Flanders, offshore or onshore oil development on federal or state property were to occur in this region, it is conceivable that onshore support facilities might be sited on coastal selection lands in this area. In such eventuality, the Borough would seek to minimize impacts to fish and wildlife resources.
- (5) With regard to Ophir Creek, near the town of Yakutat, the CBY has engaged in cooperative stream restoration work as part of its salmon enhancement program. The CBY would be

Letter to Frank Rus, Commissioner
re: SB281/City and Borough of Yakutat
Page 3

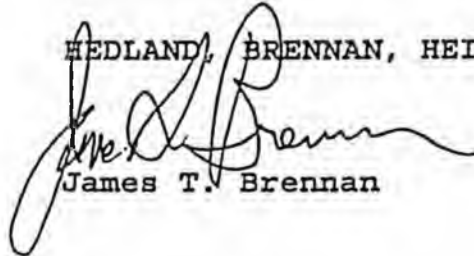
agreeable to a covenant attaching to Ophir Creek watershed parcels that specifies the following:

Both the active channel and 100-year floodplain of Ophir Creek require protection to retain functions and values of a permanent non-disturbed riparian buffer. A no-development greenbelt should extend from the edge of the floodplain the distance of the height of one site-potential tree. This greenbelt should be surveyed, platted, and recorded as a covenant on the deed.

The CBY again appreciates the attention and resources the Department has committed to habitat restoration in the Yakutat Borough region, and makes the foregoing commitments to further the mutual goals of the CBY and ADF&G.

Sincerely,

HEDLAND, BRENNAN, HEIDEMAN & COOKE



James T. Brennan

JTB/djl

cc: Jane Angvik, Director, Division of Lands (via fax and hard copy)
Lana Shea Flanders, Regional Supervisor, SE Habitat and Restoration Division (via fax and hard copy
465-4272)
Tom Armour, Borough Manager (Via fax and hard copy)
(g:\3000.5\rus0224.1tr)

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

HABITAT AND RESTORATION DIVISION

TONY KNOWLES, GOVERNOR

ISLAND CENTER BUILDING
P.O. BOX 240020
DOUGLAS, AK 99824-0020
PHONE: (907) 485-4290
FAX: (907) 485-4272

TO: Geron Bruce ⁴⁶⁵⁻²³³²
Legislative Liason
Department of Fish & Game
Juneau

DATE: February 23, 1998

FROM: Bill Hanson 
Habitat Biologist IV
Douglas

SUBJECT: Yakutat Entitlement

I met with Paul Fuhs (lobbyist), Tom Armour (City Manager), Daryl James (Mayor) and Jim Brennan (attorney) for the City of Yakutat today.

They will prepare a new letter by tomorrow which reconfirms the commitments made in Mr. Brennan's letter of December 12, 1997 (see attached copy). They will add two additional commitments requested by Lana Shea Flanders in her memo of December 12, 1997 (see attached copy). The two additional commitments include a provision for protection of Ophir Creek and a commitment to honor the protections given to Fish and Wildlife resources under the University settlement and the Yakutaga Area Plan.

They indicated that they have significantly reduced their intent to select lands in the Cape Suckling Area. They do not intend to conduct timber harvest operations. They will manage for recreational development. They emphasized that ADF&G will have the opportunity to review specific land selections under DNR's review processes.

We specifically discussed possible selection of Unit 1a5 and other lands within the Kikluh River corridor. I explained that I could not make any commitment regarding these lands, which have especially high values. I explained that ADF&G might or might not oppose selection of this area depending on specific values and their intent for development activities.

These discussions and commitments, which I have also discussed with Phil Mooney and Lana Shea Flanders, meet the concerns and conditions that we have previously expressed. This should clear the way for us to support the language and entitlement proposed in SB281 (copy attached). We do not have any position regarding the quantity of the entitlement.

3601 C Street, Suite 742

Frontier Building

Anchorage, AK 99503

Main: (907) 269-7960

Jeff Jessee's: (907) 269-7963

FAX: (907) 269-7966

**Alaska Mental Health
Trust Authority**

Memo

To: Senator Rick Halford
Attn: Brett Huber, Resources aide

From: Jeff Jessee, Executive Director 

Date: March 5, 1998

Re: SB 281 Yakutat Entitlement

I have enclosed a memorandum I received from Steve Planchon, the Executive Director of the Trust Land Office, which sets out our concerns regarding the possible impact to The Trust if the new borough should attempt to acquire key parcels that are essential for Trust timber operations.

We believe that a written agreement establishing a cooperative approach to the future ownership of these parcels could quickly resolve these concerns and keep this legislation on track. We are in contact with Jim Brennan and will keep you informed of our progress in this regard. Certainly any suggestions or assistance you could offer would be greatly appreciated. Also, please let us know if and when a hearing on the bill is scheduled.

Thanks again for your help.

MEMORANDUM

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

MENTAL HEALTH TRUST LAND OFFICE

TO: Jeff Jessee

DATE: March 3, 1998

TELEPHONE NO.: 269-8657

FROM: Steve Planchon
Trust Land Office



SUBJECT: Yakutat Entitlement
SB281

Trust Lands west of Icy Bay are original Mental Health Trust Lands associated with the Trust's 1956 federal enabling act. As you know, the Trust Land Office has negotiated a five year timber sale on Trust Lands in the area which will result in \$2 million per year to the Trust (over 50% of Trust Land revenues for the next several years).

As part of its effort to increase its statutory land entitlement, the City and Borough of Yakutat has stated its intention to acquire certain State of Alaska ("State") lands that are critical to our commercial timber operations at West Icy Bay. Specifically, the lands are presently used for access, log storage and log shipping, among other things. The University of Alaska timber operations use the same lands for the same purposes.

To complicate matters further, the Trust Land Office has requested that the same lands be included in a pool of lands that will be used to complete the State's remaining land conveyance obligation to the Trust under the 1994 settlement and legislation. I have been told that the lands are too critical to the general interests of the state in the area and will not be included in the pool. The same justification was used by DNR to exclude the lands from consideration during the course of MHT settlement negotiations in the early 1990's.

The current status (general State land) does not adversely affect our settlement values in the area. Therefore, I do not recommend objecting to the State's decision to keep the subject lands in general State ownership. However, if the City and Borough of Yakutat convinces the State to dispose the lands, then the Trust should have a preference right of first consideration. I have been assured by DNR that this will in fact be the case. Language to that effect will be included in a soon-to-be-released best interest finding on remaining lands to be conveyed to the Trust (relevant language attached).

I have also been informed that the City and Borough of Yakutat has been negotiating certain agreements with the University of Alaska regarding non-interference with the timber operations in the Icy Bay area. I will request that the Trust be included in those negotiations, and, based upon preliminary discussions with borough representatives, am relatively confident that the Borough will be willing to do this.

attachments: as cited
cc: Marty Rutherford, Marty Epstein, Jim Brennan

office\ .mem

Performance Guaranties and Insurance

Neither are required as no projects on the parcels are currently planned. Once a project, or further disposal of the subject land is planned, the Mental Health Trust Authority may require performance guaranties and insurance.

Alternative Analysis

The state is required under the Settlement Agreement and state statute to provide the Trust Authority with the land specified in the enacting legislation. If trust land cannot be conveyed because of encumbrances, restrictions, or prior conveyance to a third party, the state is required to provide land of equal revenue producing potential. Generally, this has been interpreted to mean land of equal replacement value.

The 'do-nothing' option cannot therefore be pursued. The replacement land identified in this decision exceeds the value of the trust land that cannot be conveyed. It is intended that parcels will be dropped as a result of public comment and coastal zone review to equal the value of former trust land. The ability to choose between parcels for conveyance to the trust will allow for an alternative analysis of the replacement land parcels.

Agency Review

Agency review was completed on November 22, 1996. Some parcel and sub-parcels have been deleted or amended as a result of this review. A summary of pertinent agency comments is included with each parcel description in the appropriate appendix. Since the first review, one parcel (C30005, Wrangell Narrows) has been added, and parcel C30003 (Yukatat) has been dropped. These will undergo a concurrent public agency review. Copies of agency review comments on these parcels will be provided to the public, if requester.

A parcel² located on Icy Bay west of the city of Yakutat was nominated as replacement land for inclusion in this Preliminary Decision by the Mental Health Trust. DNR carefully considered this nomination, but we propose to retain it in state ownership because it provides the only access to large blocks of state and mental health trust land and small blocks of Chugach-Alaska and University lands in the Cape Yakataga area directly to the west. Keeping this parcel in DNR ownership is in the overall best interest of the state since public ownership should ensure use of the parcel for a variety of interests under usual state permitting procedures. However, if it is determined that it is in the state's best interest to dispose of this parcel at some time in the future, the Mental Health Trust Authority would be given first consideration in a proposed disposal action by DNR because their entitlement and nomination request came first and they already own the adjacent land.

Public Notice

Public notice, pursuant to AS 38.05.945, is now being conducted.

The public is invited to comment on the preliminary decision to transfer ownership of the subject

² The parcel is that portion of state land within T.023S., R023E., CRM, including Section 19: S1/2, SE1/4NE1/4, Section 20: S1/2, S1/2NE1/4, S1/2NW1/4. Section 29: All. Section 30: All

STATUTORY AWARD OF MUNICIPAL ENTITLEMENT LANDS TO CITY AND BOROUGH OF YAKUTAT

A.S. 29.65.129 states that it is the policy of the State of Alaska to provide newly formed municipalities, including boroughs, with a general grant land entitlement of no less than ten percent (10%) of vacant, unappropriated, unreserved ("VUU") land located within their boundaries. This land grant is seen as both an incentive to borough formation and as an asset base to further the ongoing viability of the new municipal government. All Alaskan boroughs have received substantial entitlement acreages, either via a statutory grant of a specified number of acres under A.S. 29.65.010, or by a grant of ten percent (10%) of the total VUU land within the borough boundaries, under A.S. 29.65.030.

Unlike all other Alaskan boroughs¹, the City and Borough of Yakutat ("CBY") has been nearly completely denied municipal entitlement land following its 1992 incorporation; it received only 138 acres. This is because the boundaries of the CBY initially approved by the Local Boundary Commission excluded the western area sought by Yakutat, resulting in almost complete exclusion of a VUU land base upon which the ten percent (10%) entitlement is calculated. This error was corrected by the Local Boundary Commission when it approved a 1996 annexation of the western area. However, because of technical language in the entitlement statutes, the ten percent (10%) entitlement calculation could only be made at the time of the initial incorporation of the CBY, when the boundaries included virtually no VUU land.

The current bill would correct this mistake, and grant the CBY nearly as much acreage as it would have received had its present boundaries been approved at initial incorporation in 1992. At that time, the ten percent (10%) calculation would have resulted in approximately 33,000 acres in entitlement grants to the Borough. The CBY now seeks a statutory award of 30,000 acres of entitlement land. Specific statutory entitlement awards have been made to twelve other boroughs, most recently the Lake and Peninsula Borough, which was granted 125,000 in the 1994 session. The amount of acreage per capita granted to the Lake and Peninsula Borough is substantially greater than that now sought by the Yakutat Borough.

The proposed legislation addresses one other matter. Because much of the state land in the area has been reclassified under the Yakataga Area Plan since 1992, it will be necessary for DNR to locate and reclassify acreage available for conveyance to the Borough. While DNR is generally supportive of a statutory award of entitlement lands to the borough, it is concerned that it may not be able to fulfill the requested acreage without the ability to

¹Examples are: Northwest Arctic Borough - 285,438 acres; Kenai Peninsula Borough - 135,780 acres; Matanuska-Susitna Borough - 355,210 acres; Lake and Peninsula Borough - 125,000 acres; and Denali Borough - 49,789 acres.

place conditions upon certain acreages being conveyed. The general municipal entitlement statutes provide for unconditional conveyance, which, because of concerns of the Department of Fish & Game and others, limits the ability of DNR to convey much of the acreage sought. If the Borough had the ability to agree to such conditions in order to obtain conveyance of particular parcels, this would facilitate DNR's ability to grant the total acreage sought. Because of the lack of present surveying, smaller areas of Department of Fish & Game habitat concerns affect and jeopardize the ability of DNR to convey much larger areas which do not feature such concerns. The language of the bill which authorizes DNR to attach conditions agreed upon the CBY will facilitate DNR's ability to convey the total acreages requested by the CBY.

Concerns of various parties regarding any specific parcel would be addressed by DNR in determining whether it is in the State's best interest to grant a particular conveyance requested by the Borough, after the legislation becomes law.