

SB

281

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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 border. 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 resources committee version of the bill reduced the additional entitlement to 8,552 acres. The bill also extends the authority of 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.

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.

21,500
8,552

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.

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

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March 12, 1998

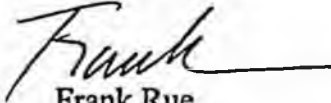
The Honorable Jerry Mackie
Alaska State Legislature
State Capitol, Room 427
Juneau, AK 99801-1182

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

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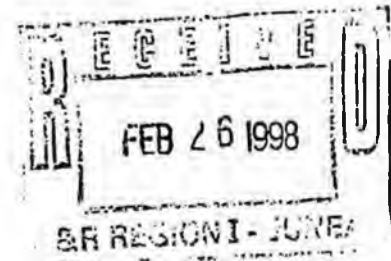
BETHEL:

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 14.17.113 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 Suckling area should be managed to maintain fish and wildlife resources and uses as specified in the University settlement and the Yakataga 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 Rue, Commissioner
re: SB281/City and Borough of Yakutat
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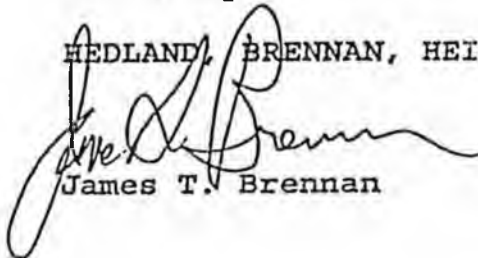
agreeable to a covenant attaching to Ophir Creek watershed parcels that specifies the following:

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: Jana 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\rue0224.ltr)

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

HABITAT AND RESTORATION DIVISION

TONY KNOWLES, GOVERNOR

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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 Kiklukh 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.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into between the Mental Health Trust Land Office (hereinafter "TLO") and the City and Borough of Yakutat (hereinafter "CBY") to summarize understandings reached by the parties' authorized representatives concerning Senate Bill No. 281, which would grant 21,500 acres of state lands to the CBY as municipal entitlements, and concerning the potential conveyance of certain state lands at West Icy Bay to the CBY in the event such or similar legislation is enacted.

In consideration of the mutual commitments and understandings stated herein, the TLO and CBY agree as follows:

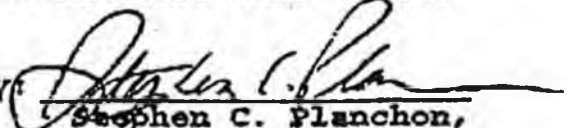
1. Neither the City and Borough of Yakutat ("CBY") or the Trust Land Office ("TLO") will relinquish their present or future rights to select and/or to take title to all or a portion of available State of Alaska ("State") land at West Icy Bay (the "State Tract"). The TLO has selected Sections 19, 20, 29 and 30, T. 22 S., R. 91 E, C.M. The CBY intends to select Sections 19, 20, 21, 22, 29, 30 and 31, T. 22, S., R. 91 E, C.M.
2. The TLO will support the current version of SB 281 or an amended version of the bill if the amendments do not unreasonably affect the Alaska Mental Health Trust (the "Trust").
3. In the event that all or a portion of the State Tract is conveyed to the CBY, the deed(s) will be subject to: (a) valid existing rights; (b) a perpetual public right-of-way reserved to the State, allowing for public access to the bay; (c) use restrictions that are consistent with the CBY zoning designation of "commercial waterfront"; (d) a covenant to not allow uses, or use terms and conditions, that unreasonably interfere with the

management and development of Trust lands in the area; and (e) a covenant to limit use fees chargeable to Trust-related activities to a reasonable fee of no less than the CBY's administrative fees and no greater than ten percent (10%) of the appraised value of the area being used, where a higher fee would unreasonably interfere with the management and development of Trust lands in the area.

- 4. The CBY will not object to expansion of the state-permitted TLO timber related activities on and across the State Tract prior to the time that the CBY may take title to all or a portion of the State Tract.
- 5. This MOU has been drafted through the efforts of both parties hereto. Accordingly, the rule of construction that ambiguities in an agreement are to be construed against the drafter has no application to this MOU.

STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES MENTAL HEALTH TRUST LAND OFFICE

Dated: March 27, 1998

By: 
Stephen C. Planchon,
Executive Director

CITY AND BOROUGH OF YAKUTAT

Dated: 8 April, 1998

By: 
Daryl R. James
Mayor

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