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STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER / POUCH M – JUNEAU 99811

February 24, 1978

The Honorable Morris K. Udall, Chairman
House Committee on Interior
and Insular Affairs
1327 Longworth House Office Bldg.
Washington, D.C. 20515

Re: Analysis of Revised Language for Proposed State of Alaska Amendments to "D-2" Legislation

Dear Representative Udall:

On January 17, 1978, I delivered to Representative Seiberling of the House Interior Subcommittee on Alaska Lands a revised version of the proposed State of Alaska conveyance legislation which the State urged be substituted for language presently contained at section 805 of H.R. 39, Subcommittee Print No. 2. The language analyzed and recommended by my letter of January 17 was in turn a refinement of the original land conveyance language proposed by the State and furnished to Representative Seiberling on November 29, 1977.

Our January 17 draft and our earlier November 29, 1977 draft had both been furnished to representatives of the Department of the Interior at the time they were made available to the Seiberling subcommittee, but no official response was forthcoming from the Department on either of these drafts at the time state administration representatives traveled to Washington to participate in the subcommittee mark-up of Title 8 of Subcommittee Print No. 2. On January 31 and February 1 of this year intensive meetings with DOI agency personnel and Native corporation representatives took place, at which time substantial changes were made to our proposed January 17 draft to accommodate criticisms and concerns voiced by Interior Department and Native representatives. However, when Title 8 was placed before the subcommittee on February 3, an official Interior Department position had not

been reached on the proposed state language, and thus the subcommittee declined to substitute the State's recommended provisions, as modified by the discussions mentioned previously, for the state conveyance language now contained in Subcommittee Print No. 2. Mr. Seiberling requested by letter of February 2, 1978, that the Secretary of the Interior comment upon the State's proposed suggestions in the near future, so that analysis of our suggestions would be possible before the full Interior Committee.

I anticipate that the Secretary's comments will be available for review by your committee and staff at the time the mark-up of Title 8 of the H.R. 39 Committee Print dated February 15, 1978 begins. In order to aid you in the analysis of the State's proposed language, and the accommodations with representatives of the Interior Department and Native interests which were reached in recent weeks regarding several aspects of our January 17 draft, I am outlining in this letter our view of the effect these changes have made to the State's January 17 proposed language. In addition, I am furnishing a copy of our modified legislative proposal, dated February 2, 1978, which incorporates these changes. Subsequent technical changes may be needed to conform the State's proposal to requirements of legislative drafting form and structure; however, I anticipate barring significant objections from the Interior Department, that the substance of the draft attached to this letter is in a nearly "final" form. The following references are to our January 17 draft.

Subsection (a). Subsection (a) of the proposed section 805 has been altered significantly to eliminate the previous subparagraphs (2) and (3), and in general to make more specific its reference to the extension of time for state selection opportunity as to lands made available under section 6(a) of the Alaska Statehood Act. Reference is now made to "national forests and other public lands", to parallel the reference in the Alaska Statehood Act.

Paragraph (2) of subsection (a), which attempted to clarify the relationship of the approval authority of the Secretary of Agriculture to the congressional grant made to the State under section 6(a) has been eliminated, since it was difficult to fairly draft such a provision without either eliminating all approval authority which the Secretary now has under

the Statehood Act, or alternatively investing in that authority authority the power to qualify or restrict the grant of lands made by Congress. Since neither of these objectives could have been intended by Congress in the Statehood Act, it was agreed that the most equitable solution would be to not try to solve this administrative problem by means of an amendment to H.R. 39.

Paragraph (3) of subsection (a), which would have granted the State the authority to receive its full acreage of Statehood Act-granted lands from both the surface and subsurface estates owned by the federal government. This provision has been deleted because its full ramifications could not be ascertained at this time, and because section 6(h) of the Statehood Act has at least arguably granted the State the right to select and receive only the federal government's retained mineral estate in certain cases, with the implication that such selections were to be counted as "full" acres against Alaska's Statehood Act entitlement.

Subsection (b). This section has been clarified by the elimination in paragraph 2 of retroactive approval by Congress of land selections made by the State north and west of the PYK line, originally a requirement of sections 6(b) and 10 of the Alaska Statehood Act, as to those state selections for which no approval or disapproval has yet been issued. In acceeding to the Department's expressed policy against legislating retroactively, the State has agreed that in accordance with an opinion of the Associate Solicitor of December 8, 1977 such prior selections by the State remains perfectable, and efforts are being made to obtain PYK review by the Department of Defense and Department of the Interior of these selections in the immediate future. The Department representatives expressed no opposition to the elimination of the PYK approval requirement for future selections made by the State, and this proposed amendment to the Statehood Act remains in our draft. If, however, the Department of the Interior does not act expeditiously to obtain the necessary review of these existing state selections, we will return to Congress before completion of the (d)(2) legislative process to seek legislative approval because of administrative inaction.

Paragraph (3), allowing for selection and fulfillment of the State's general purposes grant through "split-estate" land selections has been eliminated, for the reasons stated in reference to subsection (b)(3) above.

Subsection (c). This subsection, dealing with fulfillment of the grant to the Territory of indemnity lands for those school selections reserved to it but which, upon their survey, were unavailable due to prior disposition or reservation by the federal government, has been modified in detail to clarify its purpose and extent. The date upon which the indemnity entitlement is to be calculated is set as July 7, 1958, the date of adoption of the Alaska Statehood Act, and a ceiling of 80,000 acres has been placed upon this indemnity provision; probable acreage indemnity figures from 1958, the last date for which those figures had been calculated, indicated an indemnity entitlement slightly in excess of 70,000 acres.

Subsection (d). This subsection remains the same as before, except for the addition of paragraph (3) which makes the procedures and principles set forth in the subsection applicable to future tentative approvals received by the State.

Subsection (e). The intent of this subsection remains the same as before, and its text is unchanged, with the exception of deletion of the last sentence of subsection (e) containing a statement confirming that equitable title to state-selected lands was deemed to have vested in the State. The State believes that applicable legal principles support its view that valid selections under the Statehood Act carry with them the transfer of an equitable interest in the lands selected; however, some (but not all) DOI agency representatives expressed the view that the Secretary may have the power to withdraw lands previously under valid selection by the State. Since the proposed amendments were not intended to finally resolve legal controversies of this nature, and since the proposed language of the second sentence might add nothing to either of these opposing interpretations, it has been deleted. A Paragraph (4) has been added to subsection (e) to make the procedures and principles set forth in that subsection applicable to land selections filed by the State in the future.

Subsection (f). This subsection has been altered in detail to clarify the authority of the State to select lands which were not, on the date of their selection, available lands within the meaning of section 6 of the Alaska Statehood Act, but which subsequently become available. This subsection

has also been structured so as to preserve the legal grounds upon which either the State or the Secretary may assert that a particular selected parcel is, or is not, available for state selection within the meaning of section 6 of the Statehood Act, a desired result which the previous draft did not entirely achieve because both the State and the Interior Department representatives believed that in certain instances valid legal positions of either party may have been conceded. In addition, a phrase has been added making such state selection subject to valid existing rights.

Subsection (g) This subsection has been altered by deletion of the sentence allowing the State to transfer "excess" selections from a fulfilled statehood grant category to an unfulfilled category. This sentence was found unnecessary, since under the preceding provisions of the same subsection state overselections would be reduced as conveyances occur, and there would in fact be no amount of "excess selections" upon fulfillment of each grant category.

Paragraph (g)(2) of this subsection, which would have allowed the State, by agreement with the Secretary, to relinquish tentatively-approved land selections has been deleted. It was determined that, without more procedural elaboration and examination of relevant federal and state authority to accomplish these ends, this provision may have created an ambiguity with other provisions of the proposed amendment having the effect of transferring "all right, title and interest" of the federal government to the State upon issuance of tentative approvals to state selections.

Paragraph (g)(3), now numbered paragraph (2), was altered to eliminate the reduced but fixed minimum tract size selectable by the State, and instead now permits the Secretary, in his discretion, to waive the minimum tract selection size when appropriate to achieve desired state and federal land ownership patterns and management goals.

Paragraph (g)(4) of subsection (g) has been deleted in its entirety, since it was felt that it did little to clarify the authority of the State to select lands by exterior boundary description which was not already provided by existing law and other provisions of the proposed amendment.

Subsection (h). This subsection, which is intended to list specific tracts of federal land upon which the State may, or may not, have previously filed land selections and to which it wishes to receive a Congressional conveyance of title, has been altered only slightly to include reference to "vacant, unappropriated and unreserved" lands as those suitable for conveyance under this section. This limitation is taken directly from the limitations contained in the Statehood Act. This section, together with subsection (i) and the definition contained in subsection (k), must be analyzed together to understand the scope of the proposed legislative conveyance, and the types of lands which may be protected from this conveyance through subsection (h).

Subsection (i). This subsection, at paragraph (2), has been altered slightly to parallel the land selection approval and patent procedures contained in the previous subsections (d)(1) and (e)(2). Subsection (i)(4), which would have required the Secretary to make a determination of the "smallest practicable tract" enclosing land actually used for federal installations, and to make lands not so used available to the State under the legislative conveyance provisions of subsection (h), has been deleted. This provision is not now necessary, since the eligibility of lands for conveyance under the legislative conveyance provisions will be governed by the language of subsection (h) and the definition contained at subsection (k).

Subsection (j). This subsection has been modified slightly to eliminate the requirement that the Secretary "clear the administrative record". Existing practice has been to adjudicate the validity of conflicting claims, but not, for example, to file contest proceedings against existing mining claims in order to "clear" the administrative record. Since it is not the State's intention to impose a burden upon the Secretary any different from that which he now has under section 6(g) of the Statehood Act, reference to "clearing the administrative record" has been deleted.

Subsection (k). While the concept of "vacant, unappropriated and unreserved lands" eligible for legislative conveyance to the State remains unchanged in this subsection, the language used to define the scope of this term has been altered substantially in the interest of clarity. First, this subsection makes it clear that the scope of "vacant,

unappropriated and unreserved" lands applies only to legislative conveyances made under section (h) of the proposed amendment, and to future state selections pursuant to the Alaska Statehood Act. As a result of the eventual enactment of "d-2" legislation certain withdrawal categories for lands not placed into one of the four national conservation systems will disappear or will become otherwise available for state selection. The definition of "vacant, unappropriated, unreserved lands" is intended to be concurrent with adoption of the proposed "d-2" legislation, and prospective, in operation only. It will not apply to selections previously filed by the State, and will thus not make existing federal withdrawal categories available for selection by amendment of existing state selections.

The approach taken in subsection (k) has been altered to define the types of land withdrawal categories which will not, of themselves, make unavailable certain lands sought to be transferred by legislative conveyance under subsection (h), or by future state selection. In other words, for example, lands classified as "d-1 lands" under section 17(d)(1) of ANCSA will be available for legislative conveyance to the State under subsection (h), or by future state selection, if the "d-1" withdrawal is the only withdrawal imposed upon the lands. If, however, in addition to the "d-1" withdrawal, there is an overlapping withdrawal or reservation for a military installation or communications site, for example, the land encompassed by that overlapping withdrawal would not be available for conveyance to the State since "vacant, unappropriated, and unreserved" lands are not defined as lands covered by existing military or communications withdrawals. The general concept followed in the definition in subsection (k) has thus been to define the types of withdrawal categories which will not, by themselves, make the land unavailable for legislative conveyance to the State, or for future state selection.

Subsection (l). This subsection has been added to clarify the relationship of the proposed state land conveyance amendments to existing laws and agreements, and in particular to meet the concerns voiced by several Native corporations. The proposed amendments should not alter a right or obligation of any party under the "Cook Inlet Land Exchange" amendments to ANCSA contained in P.L.# 94-204 and P.L.# 90-456, nor contained in the Memorandum of Understanding between the Secretary and the State regarding the 1972 out-of-court settlement. In addition, nothing in the proposed section is intended to alter the position of any party regarding third-party interests created by the State under the Statehood Act, a subject which may be presently on administrative appeal or in litigation.

I hope that this section-by-section analysis of the State's proposed legislative conveyance language, as amended through intensive discussions with representatives of the Department of the Interior and a number of Native corporations, will be helpful to you and your staff. While we believe that virtually all of the areas of controversy or question have been resolved to our mutual satisfaction, we await the specific comments of the Secretary to our proposed draft to confirm this belief. If I or any of my staff may be of further assistance to you in the analysis of this proposed legislation and its effect on existing and future land interests in Alaska, please don't hesitate to contact me.

Sincerely yours,

for Robert E. LeResche
Commissioner

Enclosure

cc: Honorable Don Young
Honorable John Seiberling

Sec. State of Alaska Land Selections and Conveyances.

(a) In furtherance and confirmation of the State of Alaska's entitlement to certain federal lands in Alaska for community development and expansion purposes, Section 6(a) of the Act of July 7, 1958, 72 Stat. 339, as amended, hereinafter referred to as the Alaska Statehood Act, is amended in part by addition of the following provisions[:] immediately following the last sentence of said subsection:

"(1). The State is hereby provided a ten-year extension of the time limit originally specified in the Act, that is, until January 3, 1994, within which to [fulfill] select its land entitlement under this subsection in its entirety.

(2). Lands selected pursuant to this subsection as suitable, in the judgment of the State, for the purposes specified herein shall not be subject to any administrative approval which [does not] in any manner [qualify] qualifies or restricts the congressional grants to the State.

(3). The State shall apply for both the surface estate and the mineral estate in each tract selected. If one estate or the other is unavailable for selection, the State may withdraw its selection application in its entirety. If the State instead maintains that application for the available land estate, it may select, from lands elsewhere which are otherwise available

for selection, an equal acreage of the land estate which was unavailable, with the result that the grant to the State under this subsection shall consist of 400,000 acres of surface estate entitlement and 400,000 acres of mineral estate entitlement from the National Forests in Alaska, and 400,000 acres of surface estate entitlement and 400,000 acres of mineral estate entitlement from other public lands in Alaska which are vacant, unappropriated, and unreserved at the time of their selection."

(b) In furtherance and confirmation of the State of Alaska's entitlement to certain federal public lands in Alaska, Section 6(b) of the Alaska Statehood Act is amended in part by addition of the following provisions[:] immediately following the last sentence of said subsection:

"(1). The State is hereby provided a ten-year extension of the time limit originally specified in the Act, that is, until January 3, 1994, within which to [fulfill] select its land entitlement under this subsection in its entirety.

(2). The proviso regarding Presidential approval of land selections heretofore or hereafter made north and west of that line described in Section 10 of the Alaska Statehood Act is hereby repealed.

(3). The State shall apply for both the surface estate and the mineral estate in each tract se-

lected. If one estate or the other is unavailable for selection, the State may withdraw its selection application in its entirety. If the State instead maintains that application for the land estate which is available, it may select, from lands elsewhere which are otherwise available for selection, an equal acreage of the land estate which was unavailable, with the result that the grant to the State under this subsection shall consist of 102,550,000 acres of surface estate entitlement and 102,550,000 acres of mineral estate entitlement."

(c) The State of Alaska is hereby granted and shall be entitled to select [on or before] until January 3, 1994, from surveyed or unsurveyed federal lands which are vacant, unappropriated and unreserved at the time of their selection, those school lands and school indemnity lands [reserved] to which the Territory of Alaska was entitled under Section 1 of the Act of March 4, 1915, as amended by the Act of March 5, 1952, and the Act of August 27, 1958, 72 Stat. 928. The entitlement of the State to school lands and to school indemnity lands in lieu of those surveyed sections made unavailable for school reservation purposes by prior Federal disposal, appropriation or reservation for other purposes shall be determined as of January 3, 1959. [Patent to the State of Alaska of indemnity land selections granted by this subsection is authorized pursuant to the provisions of 43 USC Sec. 852.] The provisions of the Act of February 28, 1891 (26 Stat. 791, 43 USC Sec. 852) are made applic-

able to the selection and conveyance of indemnity lands granted by this subsection.

(d) All tentative approvals of State of Alaska land selections pursuant to the Alaska Statehood Act are hereby ratified and confirmed, subject only to valid existing rights and to land conveyances made pursuant to lawful selections filed by Native village corporations on or before December 18, 1974, pursuant to Sections 12(a) of 12(b) of the Alaska Native Claims Settlement Act, 85 Stat. 688 (1971)[.], and the United States hereby confirms that all right, title and interest of the United States in and to such lands is deemed to have vested in the State of Alaska as of the date of tentative approval.

(1). Upon approval of land survey by the Secretary, such lands shall be patented to the State of Alaska.

(2). If the State elects to receive patent to any of the lands which are the subject of this subsection on the basis of protraction surveys in lieu of field surveys, the Secretaryshall issue patent to the State on that basis within six months after notice of such election.

(e) All valid State of Alaska land selections heretofore made pursuant to the Alaska Statehood Act are hereby confirmed, subject only to valid existing rights, conveyances made pursuant to lawful selections filed by Native village corporations on or before December 18, 1974[,] pursuant to Sections 12(a) or 12(b) of the Alaska Native Claims Settlement Act, 85 Stat. 688 (1971), and tentative approval and patent pursuant to Section 6(g) of the Alaska Statehood Act. [Accordingly,] Equitable title to such lands is hereby deemed

to have vested in the State[.], subject only to the exceptions specified in this subsection.

(1). Within one year after the date of passage of this Act, the Secretary shall issue tentative approvals to [the] such State selections as required by section 6(g) of the Alaska Statehood Act[.], and pursuant to subsection (j) of this section. All right, title and interest of the United States shall vest in the State of Alaska upon issuance of such tentative approvals.

(2). Upon approval of land survey by the Secretary, such lands shall be patented to the State of Alaska.

[(2)](3). If the State elects to receive patent to any of the lands which are the subject of this subsection on the basis of protraction surveys in lieu of field surveys, the Secretary shall issue patent [any of such lands] to the State on that basis within six months after notice of such election.

(f) The State, at its option, shall be permitted to file selection applications for lands which are not, on the date of their selection, vacant, unappropriated, and unreserved lands within the meaning of section 6 of the Alaska Statehood Act. Each such selection application shall remain in effect as long as the State's entitlement under the specific grant remains unfulfilled, and shall become an effective selection upon the [date such lands subsequently became vacant, unappropriated, and unreserved.] Revocation of any order of withdrawal in Alaska. Selections by the State made prior to

the adoption of this Act shall be treated in the same manner, subject only to the provisions of the Alaska Native Claims Settlement Act, 85 Stat. 688 (1971).

(g) The State of Alaska may select lands exceeding by twenty-five per cent in total area the amount of State entitlement which [remains unpatented] has not been tentatively approved under each grant or confirmation of lands contained in the Alaska Statehood Act or other law. [Once] If its selections under a particular grant [have exceeded] exceed [that] such remaining entitlement, the State shall thereupon list all [existing] selections for that grant which have not been tentatively approved or patented in desired priority order of conveyance, in blocs no larger than one township in size; Provided, however, that the State may alter such priorities prior to receipt of tentative approval. Such excess selections shall become void upon fulfillment of each grant unless transferred by the State to any remaining unfulfilled grant, if the lands are otherwise eligible for conveyance under such remaining entitlement.

(1). The State of Alaska may, by written notification to the Secretary, relinquish any previously-filed selections of land prior to receipt by the State of tentative approval.

(2). The State, by agreement with the Secretary, may relinquish any land selection to which it has received tentative approval.

(3). Section 6(g) of the Alaska Statehood Act is amended in part by addition of the following pro-

vision[:] immediately following the last sentence of said subsection: "All selections and amendments to prior selections made by the State after January 1, 1977 shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved, and each tract selected shall contain at least one thousand two hundred and eighty acres unless isolated from other tracts open to selection or, in the case of selections under subsection (a) of this section, one hundred and sixty acres."

(4). Land selection applications heretofore or hereafter filed by the State which select all available lands within the exterior boundary descriptions set forth in the selection applications shall select all lands, including lands selected by but not conveyed to Native corporations under the Alaska Native Claims Settlement Act, 85 Stat. 688 (1971), which are otherwise available at the time of selection but which did not pass to the State pursuant to section 6(m) of the Alaska Statehood Act, or which later become available prior to fulfillment of the land grants made by the Alaska Statehood Act or other law.

(h) [The United States hereby recognizes as valid State of Alaska land selections the following described Federal lands:] In furtherance of its entitlement to lands under Section 6(b) of the Alaska Statehood Act, the United States hereby conveys to the State of Alaska all right, title and interest of the United States in and to the following described lands:

DESCRIPTION

(i) Lands identified in subsection (h) shall be [tentatively approved] conveyed to the State[,] subject to valid existing rights.[, but without regard to existing federal classification. Accordingly, equitable title to such lands is deemed to have vested in the State.] All right, title and interest of the United States in and to such lands shall vest in the State of Alaska as of the date of this Act.

(1). Within one year after the date of passage of this Act, the Secretary shall issue to the State tentative approvals to such lands [to the State] as required by section 6(g) of the Alaska Statehood Act and pursuant to subsection (j) of this section.

(2). Upon approval of land survey by the Secretary, those lands identified in subsection (h) shall be patented to the State of Alaska, subject only to subsection (j) and paragraph (3) of this subsection.

[(2)](3). If the State elects to receive patent to any of the lands which are identified in [this] subsection (h) on the basis of protraction surveys in lieu

of field surveys, the Secretary shall issue patent [any of such lands] to the State on that basis within six months after notice of such election.

[(3)](4). The Secretary of the Interior shall determine, within two years after the date of passage of this Act, the smallest practicable tract enclosing land actually used in connection with the administration of any Federal installation occupying lands within those areas identified in subsection (h) of this section. All of such identified lands, excepting the smallest practicable tract as specified herein, shall be [tentatively approved and] patented to the State pursuant to this subsection.

(j) Nothing contained in this section shall relieve the Secretary of the duty to adjudicate conflicting claims and clear the administrative record regarding the lands specified herein or otherwise selected under authority of the Alaska Statehood Act prior to the issuance of tentative approval, pursuant to the requirements of that Act and this section.

(k) For the purposes of this Act and the Alaska Statehood Act, the term "vacant, unappropriated, and unreserved" lands shall include, among other lands, those which are classified pursuant to sec. 17(d)(1) of the Alaska Native Claims Settlement Act, 85 Stat. 688 (1971), the Classification and Multiple Use Act, 78 Stat. 987 (1964), or the Federal Land Policy and Management Act, 90 Stat. 2743 (1976).

Sec. 805. State of Alaska Land Selections and Conveyances.

(a) In furtherance and confirmation of the State of Alaska's entitlement to certain national forest and other public lands in Alaska for community development and expansion purposes, Section 6(a) of the Act of July 7, 1958, 72 Stat. 339, as amended, hereinafter referred to as the Alaska Statehood Act, is amended in part by addition of the following provision immediately following the last sentence of said subsection: "The State is hereby provided a ten-year extension of the time limit originally specified in this Act, that is, until January 3, 1994, within which to select its land entitlement under this subsection in its entirety."

(b) In furtherance and confirmation of the State of Alaska's entitlement to certain public lands in Alaska, Section 6(b) of the Alaska Statehood Act is amended in part by addition of the following provisions immediately following the last sentence of said subsection:

(1). The State is hereby provided a ten-year extension of the time limit originally specified in this Act, that is, until January 3, 1994, within which to select its land entitlement under this subsection in its entirety.

(2). The proviso regarding Presidential approval of land selections north and west of that line described in Section 10 of this Act is hereby repealed.

(c) The State of Alaska is hereby granted and shall be entitled to select until January 3, 1994, from surveyed or unsurveyed federal lands which are vacant, unappropriated and unreserved at the time of their selection, those school indemnity lands to which the Territory of Alaska was entitled under Section 1 of the Act of March 4, 1915, as amended by the Act of March 5, 1952 and the Act of August 27, 1958, 72 Stat. 928; Provided, however, thiat this entitlement of the State to school indemnity lands is limited to lands in lieu of surveyed sections made unavailable for school reservation purposes as of July 7, 1958, and shall not exceed 80,000 acres. The provisions of the Act of February 28, 1891 (26 Stat. 791, 43 USC Sec. 852), as amended, are made applicable to the selection and conveyance of indemnity lands granted by this subsection, insofar as such Act does not conflict with this subsection.

(d) All tentative approvals of State of Alaska land selections pursuant to the Alaska Statehood Act are hereby ratified and confirmed, subject only to valid existing rights and to land conveyances made pursuant to lawful selections filed by Native village corporations on or before December 18, 1974 pursuant to Sections 12(a) or 12(b) of the Alaska Native Claims Settlement Act, 85 Stat. 688 (1971), as amended, and the United States hereby confirms that all right, title and interest of the United States in and to such lands is deemed to have vested in the State of Alaska as of the date of tentative approval.

(1). Upon approval of land survey by the Secretary, such lands shall be patented to the State of Alaska.

(2). If the State elects to receive patent to any of the lands which are the subject of this subsection on the basis of protraction surveys in lieu of field surveys, the Secretary shall issue patent to the State on that basis within six months after notice of such election.

(3). Future tentative approvals of State of Alaska land selections, when issued, shall have the same force and effect, and shall be treated in the same manner, as those existing tentative approvals specified in this subsection.

(e) All valid State of Alaska land selections heretofore made pursuant to the Alaska Statehood Act are hereby confirmed, subject only to valid existing rights, conveyances made pursuant to lawful selections filed by Native village corporations on or before December 18, 1974 pursuant to Sections 12(a) or 12(b) of the Alaska Native Claims Settlement Act, 85, Stat. 688 (1971), as amended, and tentative approval and patent pursuant to Section 6(g) of the Alaska Statehood Act.

(1). Within one year after the date of passage of this Act, the Secretary shall issue

tentative approvals to such State selections as required by section 6(g) of the Alaska Statehood Act, and pursuant to subsection (j) of this section. All right, title and interest of the United States shall vest in the State of Alaska upon issuance of such tentative approvals.

(2). Upon approval of land survey by the Secretary, such lands shall be patented to the State of Alaska.

(3). If the State elects to receive patent to any of the lands which are the subject of this subsection on the basis of protraction surveys in lieu of field surveys, the Secretary shall issue patent to the State on that basis within six months after notice of such election.

(4). Future valid State of Alaska land selections, when filed, shall be treated in the same manner as those existing State land selections specified in this subsection.

(f) The State, at its option, shall be permitted to file selection applications for lands which are not, on the date of their selection, available lands within the meaning of section 6 of the Alaska Statehood Act. Each such selection application shall remain in effect as long as the State's entitlement under the specific grant remains

unfulfilled, and shall become an effective selection upon the date such lands subsequently become available within the meaning of said section 6. Selections by the State made prior to the adoption of this Act shall be treated in the same manner, subject only to valid existing rights and to the provisions of the Alaska Native Claims Settlement Act, 85 Stat. 688 (1971), as amended.

(g) The State of Alaska may select lands exceeding by twenty-five percent in total area the amount of State entitlement which has not been tentatively approved under each grant or confirmation of lands contained in the Alaska Statehood Act or other law. If its selections under a particular grant exceed such remaining entitlement, the State shall thereupon list all selections for that grant which have not been tentatively approved in desired priority order of conveyance, in blocs no larger than one township in size; Provided, however, that the State may alter such priorities prior to receipt of tentative approval. Upon receipt by the State of subsequent tentative approvals, such excess selections shall be reduced pro rata to maintain a maximum excess selection of twenty-five percent of the entitlement which has not yet been tentatively approved to the State under each grant.

(1). The State of Alaska may, by written notification to the Secretary, relinquish any previously-filed selections of land prior to receipt by

the State of tentative approval.

(2). Section 6(g) of the Alaska Statehood Act is amended in part by addition of the following provision immediately following the last sentence of said subsection: "As to all selections made by the State after January 1, 1979 pursuant to section 6(b) of this Act, the Secretary of the Interior, in his discretion, may waive the minimum tract selection size where such a reduced selection size would result in a better land ownership pattern or provide for improved land or resource management opportunities."

(h) In furtherance of its entitlement to lands under section 6(b) of the Alaska Statehood Act, the United States hereby conveys to the State of Alaska all right, title and interest of the United States in and to the following described vacant, unappropriated, and unreserved lands:

Description of Lands Listed Here

(i) Lands identified in subsection (h) shall be conveyed to the State subject to valid existing rights. All right, title and interest of the United States in and to such lands shall vest in the State of Alaska as of the date of this Act.

(1). Within one year after the date of passage of this Act, the Secretary shall issue to the

State tentative approvals to such lands as required by section 6(g) of the Alaska Statehood Act and pursuant to subsection (j) of this section.

(2). Upon approval of land survey by the Secretary, those lands identified in subsection (b) shall be patented to the State of Alaska.

(3). If the State elects to receive patent to any of the lands which are identified in subsection (h) on the basis of protraction surveys in lieu of field surveys, the Secretary shall issue patent to the State on that basis within six months after notice of such election.

(j) Nothing contained in this section shall relieve the Secretary of the duty to adjudicate conflicting claims regarding the lands specified herein or otherwise selected under authority of the Alaska Statehood Act prior to the issuance of tentative approval, pursuant to the requirements of that Act and this section.

(k) The following withdrawals, classifications, or designations shall not, of themselves, remove the lands involved from the status of "vacant, unappropriated, and unreserved" lands for the purposes of subsection (h) of this section and future State selections pursuant to the Alaska Statehood Act:

(1). Withdrawals for classification pursuant to section 17(d)(1) of the Alaska Native Claims Settlement Act, 85 Stat. 688 (1971), as amended;

(2). Withdrawals pursuant to section 17(d)(2) of said Act;

(3). Withdrawals pursuant to section 11 of said Act, and which are not conveyed pursuant to sections 12, 14, or 19 of said Act;

(4). Classifications pursuant to the Classification and Multiple Use Act, 78 Stat. 987 (1974);

(5). Classifications or designations pursuant to the Federal Land Policy and Management Act, 90 Stat. 2743 (1976).

(1) Nothing in this section shall alter the rights or obligations of any party with regard to section 12 of the Act of January 2, 1976, P.L. 94-204, sections 4 and 5 of the Act of October 4, 1976, P.L. 94-456, or the Memorandum of Understanding between the United States and the State of Alaska dated September 2, 1972. Nothing in this section shall prejudice a claim of validity or invalidity regarding any third-party interest created by the State of Alaska prior to December 18, 1971 under authority of section 6(g) of the Alaska Statehood Act or otherwise.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

10-J2LH

STATE OF ALASKA

(d)(2) proposed language

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER / 323 E. 4TH AVENUE – ANCHORAGE 99501

January 20, 1978

Senator Mike Colletta
Pouch V
Juneau, AK 99811

Dear Senator Colletta:

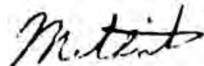
In early December I sent to you a copy of proposed language which the State of Alaska had submitted to Representatives John Sieberling and Don Young concerning a number of issues generally related to land conveyance under the Statehood Act. We hope that this language will be incorporated in any (d)(2) legislation passed by Congress.

Attached is a copy of the second draft of that proposed language. The changes have come from comments received from entities outside of state government, as well as review within state government.

Since we are seeking to make this language as "clean" as possible, i.e. acceptable to all parties before the issue is brought up in Congress, I would be most grateful if you would review this draft and forward any comments to me at your earliest convenience.

If you have any comments concerning the proposed language, please contact me or Assistant Attorney General Thomas Meacham in the Anchorage office of the Department of Law.

Sincerely,



Michael C. T. Smith
Assistant Commissioner

Attachment

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

323 E. 4TH AVENUE – ANCHORAGE 99501

January 17, 1978

The Honorable John Sieberling
Chairman, Subcommittee on General Oversight
and Alaska Lands
House Interior and Insular Affairs Committee
Room 1225 Longworth Building
Washington, D.C. 20515

Re: Recommended Changes to
Proposed State of Alaska
Amendments to "D-2" Legislation

Dear Representative Sieberling:

On November 29, 1977 I forwarded to you draft legislation proposed by the State of Alaska entitled "State of Alaska Land Selections and Conveyances." That draft is being recommended by the State for inclusion in the Alaska "D-2" legislation now pending before your subcommittee, and was accompanied by a letter explaining, on a section-by-section basis, the concepts embodied by the State in each paragraph of the proposed legislation.

That original draft legislation has undergone a process of review and refinement since that date by the Department of Natural Resources and the Alaska Attorney General's Office, and attached to this letter I am pleased to offer for your consideration the revised draft of the State's proposed legislative provisions, which is dated January 17, 1978. This revision does not alter the concepts advanced by the State in its earlier draft, but instead generally refines, clarifies, and makes more certain various provisions which appeared in the earlier proposal.

Following is a section-by-section analysis of the State's revised legislative proposal. This analysis will concentrate on any substantive changes which have been made from the earlier draft. Changes in punctuation and syntax will not be discussed, except insofar as they may have substantive legal significance. This revised draft follows the standard practice of bracketing language from the earlier draft which the State seeks to have omitted, and underlining new language which the State wishes to have added to its proposal.

<u>Subsection (a).</u> One change to this subsection involves recognition of the fact that the Alaska Statehood Act has, in prior years, been amended by Congress; furthermore, the present amendments proposed by the State to §6(a) of the Alaska Statehood Act are clarified by language indicating precisely where the proposed amendments are to be placed in the Statehood Act.

Subsection (a)(2) is altered to place the requirement for administrative approval in the negative rather than in the positive, so as not to impose a duty or burden upon the Department of Agriculture or the Department of the Interior to establish any particular system of administrative approval. The purpose of this section remains the same which is a clarification for the involved administrative agencies of the intent of Congress in its section 6(a) Statehood Act grant, to avoid future conflict and potential litigation between the State and these agencies.

Subsection (a)(3) is added to the proposed legislation to clarify the Statehood Act grant of 400,000 acres of National Forest lands and 400,000 acres of other public lands for community development and expansion purposes, by making certain that the State's entitlement is not credited on a "numerical acre" basis if the Federal Government can only convey either the surface estate, or the mineral estate, to the State of Alaska. While the State will be required to file selection applications on both the surface estate and the mineral estate, if one or the other is unavailable the State will have the right to make an in-lieu selection of the unavailable estate from available federal lands located elsewhere. The result will be that when the State fulfills its entitlement under the section 6(a) grant, the 400,000 acres granted to it will consist of 400,000 acres of surface estate and 400,000 acres of mineral estate. This concept parallels that embodied in section 12 of the Alaska Native Claims Settlement Act and regulations, in which the Native regional corporations are guaranteed the right to fulfill their land entitlements from both surface and subsurface acreage, and are not charged for a full acre of entitlement if only the surface estate, or the subsurface estate, is available. Without guidance from Congress regarding implementation of the Alaska Statehood Act, the Department of the Interior at the present time is charging the State for the full acreage of its entitlement even though only one land estate, and not the other, may be available for conveyance to it.

Subsection (b). The previous comments regarding clarification of incorporation of the proposed amendments into the Alaska Statehood Act are also applicable to this subsection. In addition, the proposed additional paragraph regarding selection of surface and mineral estates, and the availability of in-lieu selection rights, is applicable to this subsection also.

Subsection (c). The language of the paragraph proposed to entitle the State to those school land indemnity selections which were intended to be made available to the Territory by the Act of August 27, 1958 (72 Stat. 928), is clarified, including the applicability of the Act of February 28, 1891 (43 USC §852) to the selection and conveyance of such lands. An additional sentence is included in subsection (c) which makes the State's entitlement to school and indemnity lands fixed as of January 3, 1959, the date of Alaska's Statehood, at which time the original school land reservation act of March 4, 1915 was automatically repealed. Thus the events which entitle the State to receive reserved school sections, and which, by this amendment, would entitle the State to receive those indemnity lands under circumstances which other states received such lands is fixed as of a date certain in the past, and pursuant to the concepts embodied in the Alaska Statehood Act, the State makes no claim to sections numbered 16 and 36 which may have been surveyed subsequent to the date of Statehood.

Subsection (d). A phrase has been added to subsection (d) which confirms that, pursuant to the concept of tentative approval as embodied in the Statehood Act, the State has been vested with all right, title and interest of the United States to such lands as of the date of tentative approval, and subject to only valid existing rights and to conveyances authorized under ANCSA. Paragraphs (1) and (2) of subsection (d) have been added to outline the procedure by which patents shall be issued to tentatively-approved lands. These paragraphs would legislatively authorize the practice which has developed in some instances, when it has not been possible for BLM, due to budgetary or time factors, to complete a field survey prior to patent. In such instances, at the State's option it may elect to receive patent on the basis of protraction surveys instead of field surveys. A deadline of six months is established to assure prompt conveyance if the State chooses this option, since no field work will be involved.

Subsection (e). This subsection has been altered to clarify the vesting of equitable title to pending state selections, and the legal rights to which such selections are subordinated. Paragraph (1) of this subsection fixes a time limit and procedure for the issuance of tentative approval to these selections, and confirms

that upon such issuance, the State will have full management right and "working title" to these lands. These concepts are paralleled by Subsections (d) and (h) of this proposed legislation, and by Section 6(g) of the Alaska Statehood Act.

Subsection (f). The text of subsection (f) has been amended slightly to reflect the exact language contained in the Alaska Statehood Act with regard to lands selectable by the State. In addition, the status of lands presently under withdrawal or reservation, but whose orders of withdrawal may be subsequently revoked, is clarified from the previous draft. This change adopts the language and legal significance of the State's preferred right of selection in Section 6(g) of the Alaska Statehood Act as to such lands.

Subsection (g). The language of this subsection has been altered slightly to improve the clarity of its meaning. In addition, the State in this modified subsection will be required to prioritize its outstanding land selections on the basis of the amount of that entitlement which has not been tentatively approved, rather than simply the amount which is not yet patented. This change will require the State to prioritize its outstanding selections on the basis of all lands to which it had not yet received management rights or "working title". Paragraph (3) of this subsection clarifies the intended location of the amendment to section 6(g) of the Alaska Statehood Act which is set forth in this paragraph. The intent of this amendment, to allow the State the same latitude regarding acreage limitations for its selections which has previously been afforded Native corporations under ANCSA, remains unaltered.

Subsection (h). The concept of this subsection has been altered, from recognition of the described lands as "valid State of Alaska selections" to the simultaneous conveyance by the federal government to the state of all right, title and interest of the United States to the lands which are to be described in this subsection. Again, this subsection is intended to be a direct product of the "D-2" legislation, and the lands anticipated to be described here will be certain federal lands which are not included in permanent federal reservations as a result of the D-2 legislation; by this amendment they will be immediately transferred as State selections under §6(b) of the Alaska Statehood Act, subject only to valid existing rights. This intention to legislate an "instant conveyance" of the described lands is further amplified in subsection (i).

Subsection (i). In conjunction with the previous subsection, subsection (i) sets forth a mechanism by which the "instant conveyance" of certain described federal lands is to be integrated into the

public land records. Subparagraph (1) requires the Secretary to issue tentative approval to the described lands within one year after passage of the Act, but only subsequent to the adjudication of any conflicting claims and clearing of the administrative record as required by subsection (j). Paragraph (2) of this subsection has been added to outline the process for approval of land survey and patent, which is identical to the procedures set out regarding existing state land selections and tentative approvals.

Subsection (j). This subsection has been added to clarify the duty of the Secretary, through the Bureau of Land Management, to adjudicate conflicting claims and clear the administrative record regarding all state land selections and conveyances prior to the issuance of tentative approval. This clarification is necessary both from the standpoint of the existing requirements of the Alaska Statehood Act and the fact that certain time deadlines would be imposed upon the Secretary for the issuance of tentative approval to those lands conveyed or confirmed by this proposed legislation.

Subsection (k). This subsection has been added to narrow the range of possible controversy regarding the meaning of the term "vacant, unappropriated, and unreserved" lands. This term originally appears in the Alaska Statehood Act as a limitation upon the availability of federal lands for selection by the State. The proposed subsection is not intended as a comprehensive definition of the term "vacant, unappropriated, and unreserved" lands, but instead specifically includes certain possible land classifications, under §17(d)(1) of ANCSA, the Classification of Multiple Use Act of 1964, and the Federal Land Policy and Management Act of 1976, as eligible for selection by the State.

I hope that this brief analysis of the suggested changes to the State's original proposed draft regarding state land selections and conveyances will be useful to you and your staff. It is our desire that this amended proposal of the State be integrated smoothly into the proposed "D-2" legislation, and that these concepts be embodied, verbatim if possible, in the final bill which may be reported out of your subcommittee. My staff and I again stand ready to assist you regarding any questions or comments you may have on this proposal.

Sincerely yours,

f.r Robert E. LeResche
Commissioner

Enclosure
cc: Honorable Lloyd Meeds

Sec. State of Alaska Land Selections and Conveyances.

(a) In furtherance and confirmation of the State of Alaska's entitlement to certain federal lands in Alaska for community development and expansion purposes, Section 6(a) of the Act of July 7, 1958, 72 Stat. 339, as amended, hereinafter referred to as the Alaska Statehood Act, is amended in part by addition of the following provisions[:] immediately following the last sentence of said subsection:

"(1). The State is hereby provided a ten-year extension of the time limit originally specified in the Act, that is, until January 3, 1994, within which to [fulfill] select its land entitlement under this subsection in its entirety.

(2). Lands selected pursuant to this subsection as suitable, in the judgment of the State, for the purposes specified herein shall not be subject to any administrative approval which [does not] in any manner [qualify] qualifies or restricts the congressional grants to the State.

(3). The State shall apply for both the surface estate and the mineral estate in each tract selected. If one estate or the other is unavailable for selection, the State may withdraw its selection application in its entirety. If the State instead maintains that application for the available land estate, it may select, from lands elsewhere which are otherwise available

for selection, an equal acreage of the land estate which was unavailable, with the result that the grant to the State under this subsection shall consist of 400,000 acres of surface estate entitlement and 400,000 acres of mineral estate entitlement from the National Forests in Alaska, and 400,000 acres of surface estate entitlement and 400,000 acres of mineral estate entitlement from other public lands in Alaska which are vacant, unappropriated, and unreserved at the time of their selection."

(b) In furtherance and confirmation of the State of Alaska's entitlement to certain federal public lands in Alaska, Section 6(b) of the Alaska Statehood Act is amended in part by addition of the following provisions[:] immediately following the last sentence of said subsection:

"(1). The State is hereby provided a ten-year extension of the time limit originally specified in the Act, that is, until January 3, 1994, within which to [fulfill] select its land entitlement under this subsection in its entirety.

(2). The proviso regarding Presidential approval of land selections heretofore or hereafter made north and west of that line described in Section 10 of the Alaska Statehood Act is hereby repealed.

(3). The State shall apply for both the surface estate and the mineral estate in each tract se-

lected. If one estate or the other is unavailable for selection, the State may withdraw its selection application in its entirety. If the State instead maintains that application for the land estate which is available, it may select, from lands elsewhere which are otherwise available for selection, an equal acreage of the land estate which was unavailable, with the result that the grant to the State under this subsection shall consist of 102,550,000 acres of surface estate entitlement and 102,550,000 acres of mineral estate entitlement."

(c) The State of Alaska is hereby granted and shall be entitled to select [on or before] until January 3, 1994, from surveyed or unsurveyed federal lands which are vacant, unappropriated and unreserved at the time of their selection, those school lands and school indemnity lands [reserved] to which the Territory of Alaska was entitled under Section 1 of the Act of March 4, 1915, as amended by the Act of March 5, 1952, and the Act of August 27, 1958, 72 Stat. 928. The entitlement of the State to school lands and to school indemnity lands in lieu of those surveyed sections made unavailable for school reservation purposes by prior Federal disposal, appropriation or reservation for other purposes shall be determined as of January 3, 1959. [Patent to the State of Alaska of indemnity land selections granted by this subsection is authorized pursuant to the provisions of 43 USC Sec. 852.] The provisions of the Act of February 28, 1891 (26 Stat. 791, 43 USC Sec. 852) are made applic-

able to the selection and conveyance of indemnity lands granted by this subsection.

(d) All tentative approvals of State of Alaska land selections pursuant to the Alaska Statehood Act are hereby ratified and confirmed, subject only to valid existing rights and to land conveyances made pursuant to lawful selections filed by Native village corporations on or before December 18, 1974, pursuant to Sections 12(a) of 12(b) of the Alaska Native Claims Settlement Act, 85 Stat. 688 (1971)[.], and the United States hereby confirms that all right, title and interest of the United States in and to such lands is deemed to have vested in the State of Alaska as of the date of tentative approval.

(1). Upon approval of land survey by the Secretary, such lands shall be patented to the State of Alaska.

(2). If the State elects to receive patent to any of the lands which are the subject of this subsection on the basis of protraction surveys in lieu of field surveys, the Secretaryshall issue patent to the State on that basis within six months after notice of such election.

(e) All valid State of Alaska land selections heretofore made pursuant to the Alaska Statehood Act are hereby confirmed, subject only to valid existing rights, conveyances made pursuant to lawful selections filed by Native village corporations on or before December 18, 1974[,] pursuant to Sections 12(a) or 12(b) of the Alaska Native Claims Settlement Act, 85 Stat. 688 (1971), and tentative approval and patent pursuant to Section 6(g) of the Alaska Statehood Act. [Accordingly,] Equitable title to such lands is hereby deemed

to have vested in the State[.], subject only to the exceptions specified in this subsection.

(1). Within one year after the date of passage of this Act, the Secretary shall issue tentative approvals to [the] such State selections as required by section 6(g) of the Alaska Statehood Act[.], and pursuant to subsection (j) of this section. All right, title and interest of the United States shall vest in the State of Alaska upon issuance of such tentative approvals.

(2). Upon approval of land survey by the Secretary, such lands shall be patented to the State of Alaska.

[(2)](3). If the State elects to receive patent to any of the lands which are the subject of this subsection on the basis of protraction surveys in lieu of field surveys, the Secretary shall issue patent [any of such lands] to the State on that basis within six months after notice of such election.

(f) The State, at its option, shall be permitted to file selection applications for lands which are not, on the date of their selection, vacant, unappropriated, and unreserved lands within the meaning of section 6 of the Alaska Statehood Act. Each such selection application shall remain in effect as long as the State's entitlement under the specific grant remains unfulfilled, and shall become an effective selection upon the [date such lands subsequently became vacant, unappropriated, and unreserved.] Revocation of any order of withdrawal in Alaska. Selections by the State made prior to

the adoption of this Act shall be treated in the same manner, subject only to the provisions of the Alaska Native Claims Settlement Act, 85 Stat. 688 (1971).

(g) The State of Alaska may select lands exceeding by twenty-five per cent in total area the amount of State entitlement which [remains unpatented] has not been tentatively approved under each grant or confirmation of lands contained in the Alaska Statehood Act or other law. [Once] If its selections under a particular grant [have exceeded] exceed [that] such remaining entitlement, the State shall thereupon list all [existing] selections for that grant which have not been tentatively approved or patented in desired priority order of conveyance, in blocs no larger than one township in size; Provided, however, that the State may alter such priorities prior to receipt of tentative approval. Such excess selections shall become void upon fulfillment of each grant unless transferred by the State to any remaining unfulfilled grant, if the lands are otherwise eligible for conveyance under such remaining entitlement.

(1). The State of Alaska may, by written notification to the Secretary, relinquish any previously-filed selections of land prior to receipt by the State of tentative approval.

(2). The State, by agreement with the Secretary, may relinquish any land selection to which it has received tentative approval.

(3). Section 6(g) of the Alaska Statehood Act is amended in part by addition of the following pro-

vision[:] immediately following the last sentence of said subsection: "All selections and amendments to prior selections made by the State after January 1, 1977 shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved, and each tract selected shall contain at least one thousand two hundred and eighty acres unless isolated from other tracts open to selection or, in the case of selections under subsection (a) of this section, one hundred and sixty acres."

(4). Land selection applications heretofore or hereafter filed by the State which select all available lands within the exterior boundary descriptions set forth in the selection applications shall select all lands, including lands selected by but not conveyed to Native corporations under the Alaska Native Claims Settlement Act, 85 Stat. 688 (1971), which are otherwise available at the time of selection but which did not pass to the State pursuant to section 6(m) of the Alaska Statehood Act, or which later become available prior to fulfillment of the land grants made by the Alaska Statehood Act or other law.

(h) [The United States hereby recognizes as valid State of Alaska land selections the following described Federal lands:] In furtherance of its entitlement to lands under Section 6(b) of the Alaska Statehood Act, the United States hereby conveys to the State of Alaska all right, title and interest of the United States in and to the following described lands:

DESCRIPTION

(i) Lands identified in subsection (h) shall be [tentatively approved] conveyed to the State[,] subject to valid existing rights. [, but without regard to existing federal classification. Accordingly, equitable title to such lands is deemed to have vested in the State.] All right, title and interest of the United States in and to such lands shall vest in the State of Alaska as of the date of this Act.

(1). Within one year after the date of passage of this Act, the Secretary shall issue to the State tentative approvals to such lands [to the State] as required by section 6(g) of the Alaska Statehood Act and pursuant to subsection (j) of this section.

(2). Upon approval of land survey by the Secretary, those lands identified in subsection (h) shall be patented to the State of Alaska, subject only to subsection (j) and paragraph (3) of this subsection.

[(2)](3). If the State elects to receive patent to any of the lands which are identified in [this] subsection (h) on the basis of protraction surveys in lieu

of field surveys, the Secretary shall issue patent [any of such lands] to the State on that basis within six months after notice of such election.

[(3)] (4). The Secretary of the Interior shall determine, within two years after the date of passage of this Act, the smallest practicable tract enclosing land actually used in connection with the administration of any Federal installation occupying lands within those areas identified in subsection (h) of this section. All of such identified lands, excepting the smallest practicable tract as specified herein, shall be [tentatively approved and] patented to the State pursuant to this subsection.

(j) Nothing contained in this section shall relieve the Secretary of the duty to adjudicate conflicting claims and clear the administrative record regarding the lands specified herein or otherwise selected under authority of the Alaska Statehood Act prior to the issuance of tentative approval, pursuant to the requirements of that Act and this section.

(k) For the purposes of this Act and the Alaska Statehood Act, the term "vacant, unappropriated, and unreserved" lands shall include, among other lands, those which are classified pursuant to sec. 17(d)(1) of the Alaska Native Claims Settlement Act, 85 Stat. 688 (1971), the Classification and Multiple Use Act, 78 Stat. 987 (1964), or the Federal Land Policy and Management Act, 90 Stat. 2743 (1976).

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER / 323 E. 4TH AVENUE – ANCHORAGE 99501

December 6, 1977

Senator Mike Colletta
Box 3188
Anchorage, Alaska 99501

Dear Senator Colletta:

The State of Alaska has submitted to representatives John Sieberling and Don Young draft language which we hope will be included in any "(d)(2)" legislation which may be passed by Congress. This proposed language does many things. It reaffirms Alaska's Statehood land grants, confirms lands already selected and tentatively approved to the State, extends the State's selection period for ten years, and would legislate several other actions which would clarify existing law and recognize certain past and present administrative actions.

Because of your concern for these matters I felt it appropriate to insure that you had an early opportunity to review our draft language. We hope you will constructively comment on this language as we are seeking the full participation of all affected parties.

If you have any questions concerning this proposed language, please contact me or Assistant Attorney General Thomas Meacham.

Sincerely,

MICHAEL C. T. SMITH
Assistant Commissioner

10-J2LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER / POUCH M – JUNEAU 99811

November 29, 1977

The Honorable John Sieberling
Chairman, Subcommittee on
General Oversight and Alaska Lands
House Interior and Insular Affairs
Committee
Room 1225 Longworth Building
Washington, D. C. 20515

Re: Sectional Analysis of
Proposed State of Alaska
Land Selection and Conveyance
Amendments To "D-2" Legislation

Dear Representative Sieberling:

Accompanying this letter is the draft of the proposed State of Alaska land selection and conveyance amendments which the State wishes to be considered in legislation regarding the Alaska "D-2" lands issue, whether that consideration occurs in the form of a bill introduced by you, or amendments to existing introduced bills.

Following is a section-by-section analysis of Alaska's proposal. This proposal is intended to clarify existing law, give approval to past and present administrative practices, and in general confirm and re-state Alaska's land entitlements received through the Alaska Statehood Act and other law, in the context of subsequent events, most notably the administrative "land freeze", the Alaska Native Claims Settlement Act, and the current "D-2" lands issue.

Subsection (a). This subsection amends section 6(a) of the Alaska Statehood Act, which granted the State the right to select certain federal lands in Alaska for community development and expansion purposes, by providing a ten-year extension upon the time limit for selections originally granted in the Statehood Act, which, without amendment, would expire on January 3, 1984. This ten-year extension is based upon the fact that the State, after passage of the Alaska Statehood Act, has been effectively barred from exercising its selection rights granted under that Act for a period which will closely

approximate ten years by the time the "D-2" legislation, including the suggested State amendments, might be adopted. The Secretary of the Interior's "land freeze" order no. 4582 in January of 1969 effectively halted the ability of the State to select lands under its Statehood Act grants, and subsequent land orders and withdrawal of lands for Native selection under ANCSA and for "national interest" consideration under sections 17(d)(1) and (d)(2) of ANCSA have effectively foreclosed the opportunity for State selections in the manner contemplated by the Statehood Act.

Paragraph (2) of subsection (a) clarifies for the administrative agencies involved the intent of Congress in its grant of lands under section 6(a) of the Alaska Statehood Act, defines the criteria upon which administrative decisions are to be based, and avoids future conflict and potential litigation between the State and these administrative agencies.

Subsection (b). This subsection fulfills the same purposes as subsection (a), as to those lands granted the State by Congress in its general land grant contained at section 6(b) of the Alaska Statehood Act. In addition, paragraph (2) of subsection (c) repeals that proviso contained in section 6(b) of the Statehood Ac which required approval of the President or his designated representative for State selections of land north and west of a line formed by the Porcupine, Yukon and Kuskokwim rivers, commonly known as the "PYK" line. The national defense purposes which led to the inclusion of this proviso in the Alaska Statehood Act are no longer significant, since the federal interest has been and can continue to be protected by other means, including the withdrawal authority of the Secretary of the Interior and the national defense prerogatives of Congress. This proviso has, in the past, been applied erratically with the result that the legal status of some State land selections and conveyances may be clouded without such clarifying legislation.

Subsection (c). This subsection grants to the State of Alaska a right which virtually all other public land states possessed, the opportunity to select and receive indemnity or "in-lieu" lands for those designated school and university sections reserved to the Territory of Alaska under Section 1 of the Act of March 4, 1915.

In other states, if such designated sections of land for school purposes had in fact been disposed of prior to, or subsequent to, survey, or lay within existing federal withdrawals which made them unavailable, the states were allowed to select indemnity lands to make up the deficiency. Neither the Territory nor the State of Alaska had any realistic opportunity to achieve this result, though the Act of August 27, 1958 (72 Stat. 928) granted the State that right. However, on July 7, 1958, prior to adoption of that indemnity provision, the Alaska Statehood Act was passed, which in section 6(k) confirmed and transferred to the State only those school grant lands reserved "as of the date of this Act" (July 7, 1958). According to the terms of the Alaska Statehood Act, when statehood was declared on January 3, 1959, the original territorial school grant contained in the Act of March 4, 1915, as amended, was repealed. Thus after passage of the indemnity act of August 27, 1958, the Territory had barely four months within which to exercise any indemnity selection opportunities, and it is unclear, after passage of the Alaska Statehood Act in July of 1958, which lands the territory could calculate for indemnity purposes. The suggested amendment will rectify this situation and will place the State of Alaska on a par with other states concerning fulfillment of its school trust grant.

Subsection (d). This subsection gives Congressional ratification and confirmation to tentative approvals from the federal government which the State has received to date, pursuant to the provisions of section 6(g) of the Alaska Statehood Act. This subsection makes it clear that all tentative approvals which have heretofore been granted are subject only to valid existing rights and to land conveyances made pursuant to lawful selections filed under appropriate provisions of the Alaska Native Claims Settlement Act. Passage of the Alaska Native Claims Settlement Act in 1971 has cast doubt and concern in financial circles regarding the validity and security of all tentative approvals which the State has received for land selections under the Statehood Act. The Native Claims Settlement Act made certain State tentatively-approved lands subject to selection by village corporations under section 12(a) and section 12(b), thus by implication throwing open to question the security of other State tentative approvals which were not subject to selection under ANCSA. Therefore, it is both necessary and desirable to confirm that all tentative approvals which

have been issued, except those subject to valid Native selection and except for valid existing rights which were protected by the Alaska Statehood Act, have granted the State of Alaska the equitable interest in, and legal control over, such tentatively-approved lands as contemplated by the Alaska Statehood Act.

Subsection (e). This subsection confirms the legal status of all valid State of Alaska land selections previously filed, and makes them subject only to valid existing rights, conveyances pursuant to valid Native village selections under ANCSA, and the tentative approval and patent procedures required by section 6(g) of the Alaska Statehood Act. The factors which require the consideration of legislation confirming the validity and effect of State selections are similar to those set forth with regard to State tentative approvals in subsection (d) above, though of course the State's equitable interest is more limited until tentative approval has been received.

Subsection (e) also requires the Secretary to issue tentative approval to all of those State selections now on file within a period of time to be set by legislation, subject to valid existing rights and those Native conveyances mentioned previously. Furthermore, this section gives the State, at its option, the opportunity to receive patent to selected lands on the basis of protraction surveys in lieu of on-the-ground field surveys. The survey requirements imposed by the Alaska Statehood Act have led to very significant delays in issuance of patent in most instances. With the priorities of the Department shifted toward survey and conveyance of Native lands at the earliest possible opportunity, patent to tentatively-approved State lands can be expected to be delayed even further. Under this provision, if the State wishes to obtain a speedy patent, it may elect to receive patent based upon a protraction survey, and the State will thus assume the cost of field survey when it is finally performed.

Subsection (f). This subsection clarifies existing administrative practice with regard to the filing of State land selections upon lands which, at the time of their selection, are not "vacant, unappropriated, unreserved" within the meaning of section 6 of the Alaska Statehood Act, but which may be anticipated to so qualify at some date in the future, even after the State's right to select lands has expired. If the lands subsequently become "vacant, unappropriated, unreserved", the State selection applica-

tion would become effective as to such lands; if the lands never become "vacant, unappropriated, unreserved", the State selection will have no effect. This subsection also clarifies the effect of such State land selections which have been filed in past years on lands then unavailable, and affirms that provisions of the Alaska Native Claims Settlement Act take precedence over such previously-filed State selections.

Subsection (g). This subsection clarifies and sanctions past administrative practice with regard to some of the technical aspects of the land selection process, and in one instance introduces a concept which Congress has adopted, with relation to Native land selections, in the Alaska Native Claims Settlement Act. This subsection allows the State to "over-select" its remaining land entitlement by twenty-five percent, to insure that the State, at the deadline date of its land selections, has sufficient selections on file to guarantee that it will fulfill its land entitlements in their entirety. The authority to "over-select" has been unclear with regard to the Alaska Statehood Act, though in the Alaska Native Claims Settlement Act this administrative practice has been both sanctioned and unregulated, with the result that some Native corporations have selected up to twice their land entitlement, or more. The State proposes to limit by statute its "over-selection" opportunity to twenty-five percent of the amount of each land grant which remains unpatented to it. This paragraph also requires the listing by the State, in priority order, of all its selections under a particular grant when an over-selection situation exists for that grant. It allows the State to transfer selections over and above entitlement to other unfulfilled grants upon the fulfillment of any single grant, provided that the lands so selected are otherwise eligible under the remaining grant.

Paragraph (g)(1) confirms the administrative practice of allowing relinquishment by the State of any filed selection applications prior to the receipt of tentative approval. Paragraph (g)(2) confirms the past administrative practice of relinquishment of State tentative approval by agreement between the State and the Secretary.

Paragraph (g)(3) amends the Alaska Statehood Act at section 6(g) by reducing the minimum area for

selection by the State from 5,760 acres to 1,280 acres. This reduction conforms to the selection standards allowed Alaska Natives under section 12(a)(2) of ANCSA. It is particularly significant in relation to the pattern of State land selection opportunity after implementation of ANCSA, especially with regard to the "checkerboard" Native village and regional corporation selection pattern established by section 11(a) of ANCSA. It was anticipated that, after fulfillment of Native land selections, the State would be able, if it wished, to select the unselected "checkerboard" sections to round out the pattern of State and private land ownership in an area. This amendment will insure that the State can accomplish this intention. Also, now that the State's major large land selections are completed, the new minimum selection size will permit the rational "rounding out" of existing large selections along appropriate hydrological and other physiographic boundaries.

Paragraph (g)(4) confirms the status of state selection applications which, by their terms, are intended to select all available lands within a described area, including lands which are not available on the date of selection but which subsequently become available. This purpose is similar to that found at subsection (f), but additionally clarifies the fact that the State may file a "blanket" selection, intending to have its selection application attach to lands both available and unavailable at the time of filing, without the questionable necessity of filing new selection applications at regular intervals in order to insure that lands which subsequently become available are in fact validly selected. This section also establishes the State's position as second in priority behind Native corporations under ANCSA, with those lands selected by, but not ultimately conveyed to, Native corporations being included within a valid state land selection. Further, this subparagraph clarifies the fact that the State of Alaska by virtue of section 6(m) of the Alaska Statehood Act and the Submerged Lands Act (67 Stat. 29), has already received title to the lands underlying navigable waters within the State, and that such acreage is not to be counted again in calculating the acreage selected by the State pursuant to sections 6(a) and 6(b) of the Alaska Statehood Act.

Subsection (h). This subsection is intended to be a direct product of the "D-2" legislation, with certain federal lands which are not included in permanent federal reservations as a result of the D-2 process immediately becoming valid state selections with the vesting of equitable title in the State as a result of this legislation. It is

anticipated that these lands will be specifically identified in the descriptive portion of this subsection. The Secretary's duties with regard to issuance of tentative approval and patent under this provision are identical to those set forth in subsection (e), except that, as to those lands specifically described in subsection (h), the Secretary has the duty to assess existing federal use of any of the lands thus described. Within two years after the enactment of the Act, the Secretary would be required to determine the smallest practical tract enclosing land actually used in connection with the administration of any federal installation on such lands, with all lands outside the "smallest practical tract" made subject to the State selection. This subsection finds a parallel in section 3(e)(1) of the Alaska Native Claims Settlement Act, and it is anticipated that the duties of the Secretary would be similar under both acts.

I hope that this analysis of the State of Alaska's proposed amendment regarding state land selections and conveyances has been helpful to you. This issue is of utmost importance to the State and its people, and it is one which has remained uncertain, unrecognized, and in some cases misdirected for nearly ten years, with the result that the guarantee made to the State by Congress in its Statehood Act has remained unfulfilled and sometimes thwarted. With the resolution of aboriginal claims through enactment of the Alaska Native Claims Settlement Act, and with the determination of the federal interest in public lands in Alaska through pending "D-2" legislation, the State feels that this is the last realistic opportunity to clarify, confirm and implement the promise made by the Congress and the Nation to the people of Alaska nearly twenty years ago. It is my hope that you and your staff can give this proposed amendment your full consideration. My staff and I stand ready to assist you regarding any questions or comments you may have on our proposal.

Sincerely yours,

for Robert E. LeResche
Commissioner

REL/dp

Sec. State of Alaska Land Selections and Conveyances. (a) In furtherance and confirmation of the State of Alaska's entitlement to certain federal lands in Alaska for community development and expansion purposes, Section 6(a) of the Act of July 7, 1958, 72 Stat. 339, hereinafter referred to as the Alaska Statehood Act, is amended in part by addition of the following provisions:

(1). The State is hereby provided a ten-year extension of the time limit originally specified in the Act, that is, until January 3, 1994, within which to fulfill its land entitlement under this subsection in its entirety.

(2). Lands selected pursuant to this subsection as suitable, in the judgment of the State, for the purposes specified herein shall be subject to administrative approval which does not in any manner qualify or restrict the congressional grants to the State.

(b) In furtherance and confirmation of the State of Alaska's entitlement to certain federal public lands in Alaska, Section 6(b) of the Alaska Statehood Act is amended in part by addition of the following provisions:

(1). The State is hereby provided a ten-year extension of the time limit originally specified in the Act, that is, until January 3, 1994, within which to fulfill its land entitlement under this subsection in its entirety.

(2). The proviso regarding Presidential approval of land selections heretofore or hereafter made north and west of that line described in Section 10 of the Alaska Statehood Act is hereby repealed.

(c) The State of Alaska is hereby granted and shall be entitled to select on or before January 3, 1994, from surveyed or unsurveyed federal lands which are vacant, unappropriated and unreserved at the time of their selection, those school indemnity lands reserved to the Territory of Alaska under Section 1 of the Act of March 4, 1915, as amended by the Act of March 5, 1952, and the Act of August 27, 1958, 72 Stat. 928. Patent to the State of Alaska of indemnity land selections granted by this subsection is authorized pursuant to the provisions of 43 USC Sec. 852.

(d) All tentative approvals of State of Alaska land selections pursuant to the Alaska Statehood Act are hereby ratified and confirmed, subject only to valid existing rights and to land conveyances made pursuant to lawful selections filed by Native village corporations on or before December 18, 1974, pursuant to Sections 12(a) or 12(b) of the Alaska Native Claims Settlement Act, 85 Stat. 688 (1971).

(e) All valid State of Alaska land selections made pursuant to the Alaska Statehood Act are hereby confirmed, subject only to valid existing rights, conveyances made pursuant to lawful selections filed by Native village corporations on or before December 18, 1974, pursuant to Sections 12(a) or

12(b) of the Alaska Native Claims Settlement Act, 85 Stat. 688 (1971), and tentative approval and patent pursuant to Section 6(g) of the Alaska Statehood Act. Accordingly, equitable title to such lands is deemed to have vested in the State.

(1). Within one year after the date of passage of this Act, the Secretary shall issue tentative approvals to the State as required by section 6(g) of the Alaska Statehood Act.

(2). If the State elects to receive patent to any of the lands which are the subject of this subsection on the basis of protraction surveys in lieu of field surveys, the Secretary shall patent any of such lands to the State on that basis within six months after notice of such election.

(f) The State, at its option, shall be permitted to file selection applications for lands which are not, on the date of their selection, vacant, unappropriated, unreserved lands within the meaning of section 6 of the Alaska Statehood Act. Each such selection application shall remain in effect as long as the State's entitlement under the specific grant remains unfulfilled, and shall become an effective selection upon the date such lands subsequently became vacant, unappropriated, and unreserved. Selections by the State made prior to the adoption of this Act shall be treated in the same manner, subject only to the provisions of the Alaska Native

Claims Settlement Act, 85 Stat. 688 (1971).

(g) The State of Alaska may select lands exceeding by twenty-five percent in total area the amount of State entitlement which remains unpatented under each grant or confirmation of lands contained in the Alaska Statehood Act or other law. Once, its selections under a particular grant have exceeded that entitlement, the State shall list all existing selections for that grant in desired priority order of conveyance, in blocs no larger than one township in size; Provided, however, that the State may alter such priorities prior to receipt of tentative approval. Such excess selections shall become void upon fulfillment of each grant unless transferred by the State to any remaining unfulfilled grant, if the lands are otherwise eligible for conveyance under such remaining entitlement.

(1). The State of Alaska may, by written notification to the Secretary, relinquish any previously-filed selections of land prior to receipt by the State of tentative approval.

(2). The State, by agreement with the Secretary, may relinquish any land selection to which it has received tentative approval.

(3). Section 6(g) of the Alaska Statehood Act is amended in part by addition of the following provision: All selections made by the State after January 1, 1977 shall be made in reasonably compact tracts, taking into account the situation and potential

uses of the lands involved, and each tract selected shall contain at least one thousand two hundred and eighty acres unless isolated from other tracts open to selection or, in the case of selections under subsection (a) of this section, one hundred and sixty acres.

(4). Land selection applications heretofore or hereafter filed by the State which select all available lands within the exterior boundary descriptions set forth in the selection applications shall select all lands, including lands selected by but not conveyed to Native corporations under the Alaska Native Claims Settlement Act, 85 Stat. 688 (1971), which are otherwise available at the time of selection but which did not pass to the State pursuant to section 6(m) of the Alaska Statehood Act, or which later become available prior to fulfillment of the land grants made by the Alaska Statehood Act or other law.

(h) The United States hereby recognizes as valid State of Alaska land selections the following described Federal lands:

DESCRIPTION

(i) Lands identified in subsection (h) shall be tentatively approved to the State, subject to valid existing rights, but without regard to existing federal classification.

Accordingly, equitable title to such lands is deemed to have vested in the State.

(1). Within one year after the date of passage of this Act, the Secretary shall issue tentative approvals to the State as required by section 6(g) of the Alaska Statehood Act.

(2). If the State elects to receive patent to any of the lands which are identified in this subsection on the basis of protraction surveys in lieu of field surveys, the Secretary shall patent any of such lands to the State on that basis within six months after notice of such election.

(3). The Secretary of the Interior shall determine, within two years after the date of passage of this Act, the smallest practicable tract enclosing land actually used in connection with the administration of any Federal installation occupying lands within those areas identified in subsection (h) of this section. All of such identified lands, except the smallest practicable tract as specified herein, shall be tentatively approved and patented to the State pursuant to this subsection.