UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
P.O. Box 1628
Juneau, Alaska 99802

1950
5430
May 5, 1978

Ms. Esther Wunnicke and Mr. Walt Parker
Joint State Federal Land Use Planning Comm.
of Alaska
733 W. Fourth Ave.
Anchorage, AK 99501

Dear Chairpersons:

This is in follow-up to the April 25 meeting in the Federal-State Land Use Planning Commission (LUPC) offices in Anchorage concerning the Chugach Natives March 13, 1978 12(c) land exchange and the related 12(b) and 14(h) 8 selection proposals. Forest Supervisor Clay Beal and Jim Calvin of my office participated in that meeting. It was agreed to meet again on May 5 at which time the Forest Service and other agency positions on these selection and exchange proposals would be discussed.

In view of the pending State and local community land selections totaling 247,596 acres and the remaining 100,000 acres of land still to be selected for community development, expansion and recreation purposes all selection and exchange proposals that can significantly effect these selections must be discussed with the State and local community leaders. Similarly, recreation, aquaculture, timber, mining and other users or interest groups should have the opportunity to consider the environmental, social, economic and other impacts of the proposals made. Accordingly, full public disclosure and discussion of the proposals (and alternatives) is essential. The enclosed April 7 letter from Mr. D. L. Finney of Louisiana-Pacific Corporation indicates potential contractual violations may also be involved. I understand SEALASKA and other native communities and corporations are concerned with the proposals and would want to be informed and involved in further discussion of these proposals.

Our suggestion for achieving the necessary public involvement is outlined in my enclosed May 3 letter to Mr. G. R. Andersen, Jr., President of Chugach Natives, Inc. Because of our prior commitments on processing the pending State selections I could not agree to delaying approval of State of Alaska Land Selections (my Feb. 8, 1978 letter also enclosed). Our position remains the same on this point.

We would be pleased to discuss alternative actions for resolution of the issues and dealing with the proposals Chugach Natives, Inc. have made. As to the possibility of an out-of-court settlement, reference to that is included in the March 13, 1978 proposal by Chugach Natives, Inc. and I understand discussions have been held with Guy Martin and others of the U.S. Department of Interior. Insofar as National Forest lands become involved in such negotiations, I believe it is essential Forest Service and the office of General Counsel at the Washington and Regional levels be involved. Similarly the State, local communities and user-interest groups should be given the opportunity to study and react to actions which will effect them.

We recognize the time requirements involved with the Environmental Impact Statement process. However, with the status of our land management planning on both the Tongass and Chugach National Forests, draft statements covering the proposals can be completed in June and July. We are reordering manpower and funding priorities insofar as possible to process the Chugach Natives, Inc. proposal. If two or three of your staff would be available for work with our Chugach and Alaska Planning Team Staffs we could cover salary costs during the May - July period.

We look forward to working with you on this and related matters.

Sincerely,

JOHN A. SANDOR
Regional Forester

Enclosures

Louisiana-Pacific Corporation

Ketchikan Division

Post Office Box 6600
Ketchikan, Alaska 99901, U.S.A.
Telephone: 907-225-2151
Telex: 099-55-251
Answer back: KAYPULPCO KET

April 7, 1978

Mr. John Sandor, Regional Forester
U. S. Forest Service
Box 1628
Juneau, Alaska 99801

Dear John:

We have just recently learned that the Chugach Natives, Inc. have asked for withdrawals to be made in the Tongass National Forest as a possible solution to their land selection problems under A.N.C.S.A.

We wish to put the Forest Service on notice that we protest any further native selections on any area in the Tongass that would cause a reduction in the annual allowable cut.

We also wish to put you on notice that we view any withdrawals in the Ketchikan working circle as a possible violation of our Long Term Timber Sale Agreement No. A10fs-1042. We are undertaking an investigation of our legal position concerning this possible violation.

We also wish to go on record as viewing the Chugach Natives, Inc. proposal to enter the Tongass as one which is highly controversial, will have a large and lasting effect on the environment, and for which there needs to be an environmental impact statement written.

As we are able to further investigate our legal rights under our timber sale agreement we will notify you of any further action on our part.

Sincerely,

D. L. Finney, Manager
Forestry & Government Affairs

hr
cc: J. Watson

RECEIVED
APR 12 1978
USFS REGION 10
TIMBER MANAGEMENT

RECEIVED
APR 1 [illegible]
REGIONAL FORESTER
FOREST SERVICE
JUNEAU, ALASKA

P.O. Box 1628, Juneau, Alaska 99802

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FEB 8 1978

Mr. G. R. "Bob" Andersen, Jr.
President
Chugach Natives, Inc.
912 East 15th Avenue
Anchorage, Alaska 99501

Dear Mr. Andersen:

Thank you for your letter of January 23, regarding the Chugach Natives, Inc. land selection needs.

Your letter specifically requests that we delay approval of State of Alaska land selections until final markup and related Congressional action by both Houses of Congress. We received the State of Alaska's land selection proposals on December 23, 1977, and have a commitment to act on those adjacent to established communities where the need for land is the greatest by February 23 - 60 days following receipt of those proposals. Other outlying selections are to be addressed shortly thereafter and approvals or disapprovals transmitted to the State by mid-March. Because of this commitment and the fact that the Alaska Native Claims Settlement Act does not specify Chugach Natives, Inc. selection rights on the Chugach National Forest, I have decided that I cannot comply with your request. You may appeal my decision in accord with the administrative appeal regulations (copy enclosed). If you wish to discuss this with me and my staff and representatives of the State of Alaska, I will be pleased to do so.

Because of the interest of the Congressional Delegation in this matter as well as that of the State, I have provided copies of this exchange of correspondence to them.

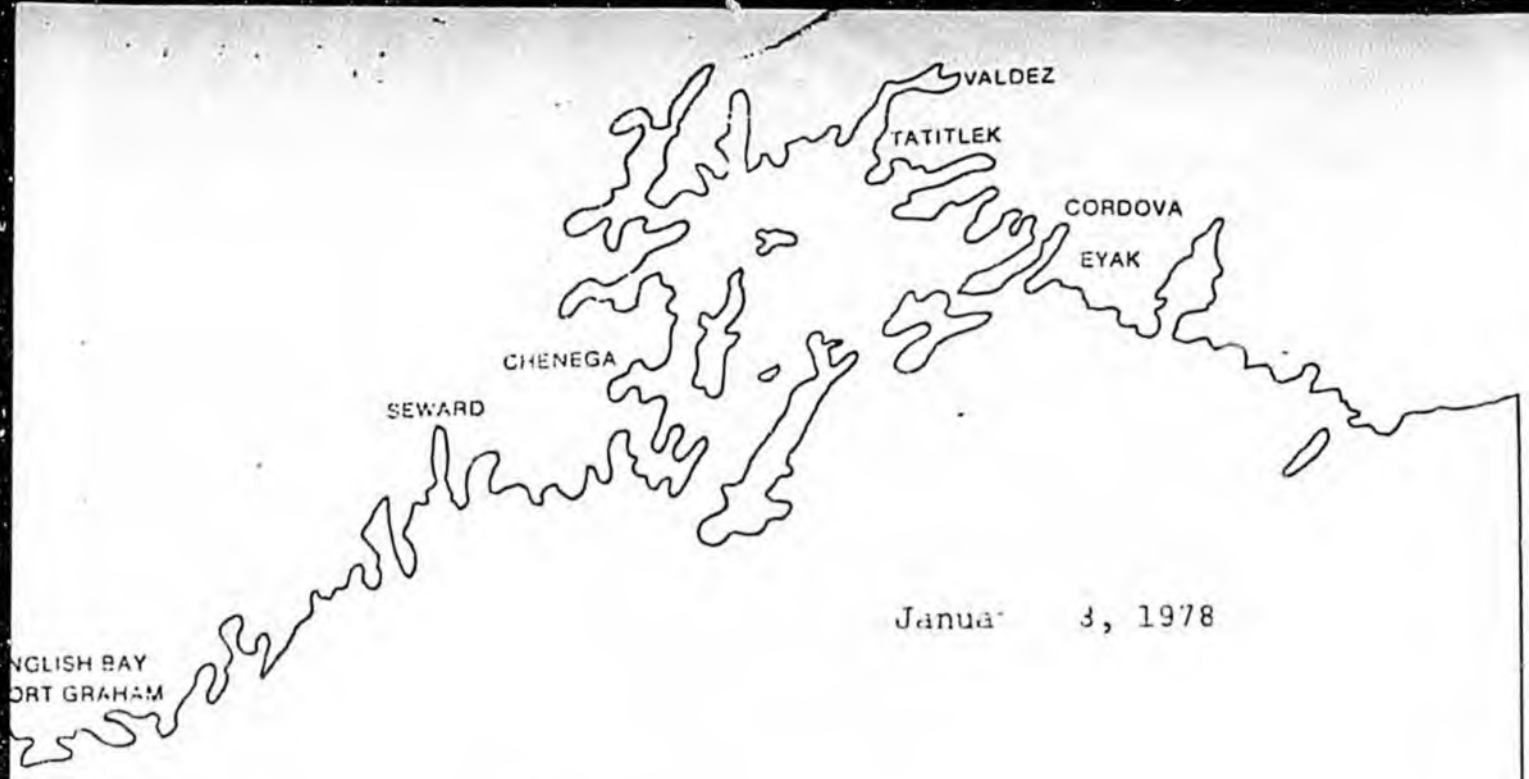
Sincerely,

JOHN A. SANDOR

JOHN A. SANDOR
Regional Forester

Enclosure

cc: Senator Mike Gravel
Senator Ted Stevens
Representative Don Young
Alaska Department of Natural Resources
WO



Janua 3, 1978

Mr. John Sandor, Regional Forester
U. S. Forest Service
P. O. Box 1628
Juneau, Alaska 99801

Dear Mr. Sandor,

In December the State of Alaska filed for a large portion of its entitlement under section 6(a) of the Alaska Statehood Act. Prior to this submission staff from our office met with Commissioner LeResche and his Forest Selection Team in an attempt to persuade them to delay making certain of these selections until the land ownership pattern in some areas was closer to finalization.

Although this specific request was refused, the Commissioner was appreciative of our position. He understands well that during final mark-up on D-2 and even afterwards major decisions on land ownership and implementation of the ANCSA will be made. Some of these could radically alter the existing and anticipated patterns in the Chugach National Forest.

Therefore, Chugach requests that you delay your approval of any of the State's December land selections within the Chugach National Forest until final mark-up on D-2 and any other ANCSA-related amendments is completed by both houses of Congress. At that time we would like to confer with you on the impacts of the State's selections upon our land holdings.

Respectfully yours,

G. R. Andersen

Chugach

G. R. "Bob" Andersen, Jr.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
P. O. Box 1628, Juneau, Alaska 99802

5450

May 3, 1978

Mr. G. R. Andersen, Jr.
President
Chugach Natives, Inc.
912 East 15th Avenue
Anchorage, Alaska 99501

Dear Bob:

This is in follow up to the April 25 meeting in the Joint Federal-State Land Use Planning Commission (LUPC) offices in Anchorage concerning your March 13, 1978 section 12(c) land exchange and the related 12(b) and 14(h)8 selection proposals. Forest Supervisor Clay Beal and Jim Calvin of my office participated in that meeting.

It was agreed to meet again on May 5 at the same location, and we were asked to present at that time our agency's position on these selection and exchange proposals.

In the light of pending State land selections totaling 247,596 acres and the remaining 100,000 acres of land still to be selected for community development, expansion and recreation purposes, all selection and exchange proposals that can significantly affect these selections must be discussed with the State and local community leaders. Similarly recreation, timber, aquaculture, mining, and other users or interest groups also should have the opportunity to consider the environmental, social, economic and other impacts of the proposals made.

There are also other Native land selections and exchange proposals under consideration which must be taken into account. For example, your proposals for selections on the Tongass National Forest could significantly affect pending and proposed urban and Regional corporation exchanges. Also, although we have not yet confirmed this, your suggestions of possibly selecting lands on Prince of Wales Island could be of concern to the Native villages on that island, as well as the Louisiana Pacific Corporation, which has the long-term timber sale contract that includes timber on that island. As to other areas that could be considered for selection on the Tongass National Forest by the Chugach Natives, Inc., Goldbelt, Inc., Shee Atika, Inc., and Kootznoowoo, Inc. (Angoon), are also looking at alternative opportunities for selection-exchange off Admiralty Island. Thus, proposals for selections on the Tongass National Forest must, in all fairness, be referred to these and other communities and corporations for comment.

Although you report general support of the Sierra Club and other members of the Alaska Coalition for your selection-exchange proposal on the Tongass and Chugach National Forests (providing you do not export the timber to be harvested), not all conservation or environmental groups may do so. Accordingly, we are obligated to contact these organizations for their reactions to these proposals.

Fortunately, the Tongass Land Management Plan is at a stage where your proposal can be promptly incorporated into the Tongass Draft Environmental Impact Statement to be issued in June. Similarly, the development of the Southcentral Area Guide is well underway and the Chugach National Forest Land Management Plan is also in the process of being updated. The available information from these processes and the previously completed Wrangell Mountains Area Guide, along with information available from the Land Use Planning Commission and other agencies, will enable us to issue a draft environmental impact statement on the Chugach National Forest proposals in July.

We and our counsel have concluded that the 1976 National Forest Management Act and the National Environmental Policy Act clearly requires public involvement and the applications of the environmental statement process on decisions of this magnitude. It is our finding that decisions on the proposal submitted constitute major Federal actions and are likely to be controversial. Alternatives to the proposals must be identified and addressed with full public participation before approval or disapproval can be recommended or taken. We clearly recognize the need for prompt action on your March 13, 1978 proposals. As noted above, the Tongass Land Management Plan Draft Environmental Impact Statement to be issued in June will incorporate your proposals covering that Forest. Also, the Chugach National Forest, Alaska Planning Team and other personnel can complete the Draft Environmental Impact Statement for the Chugach National Forest proposals in July. We see an excellent opportunity for strong involvement of the LUPC staff, State of Alaska departments, University of Alaska personnel and other public and private agencies in this effort.

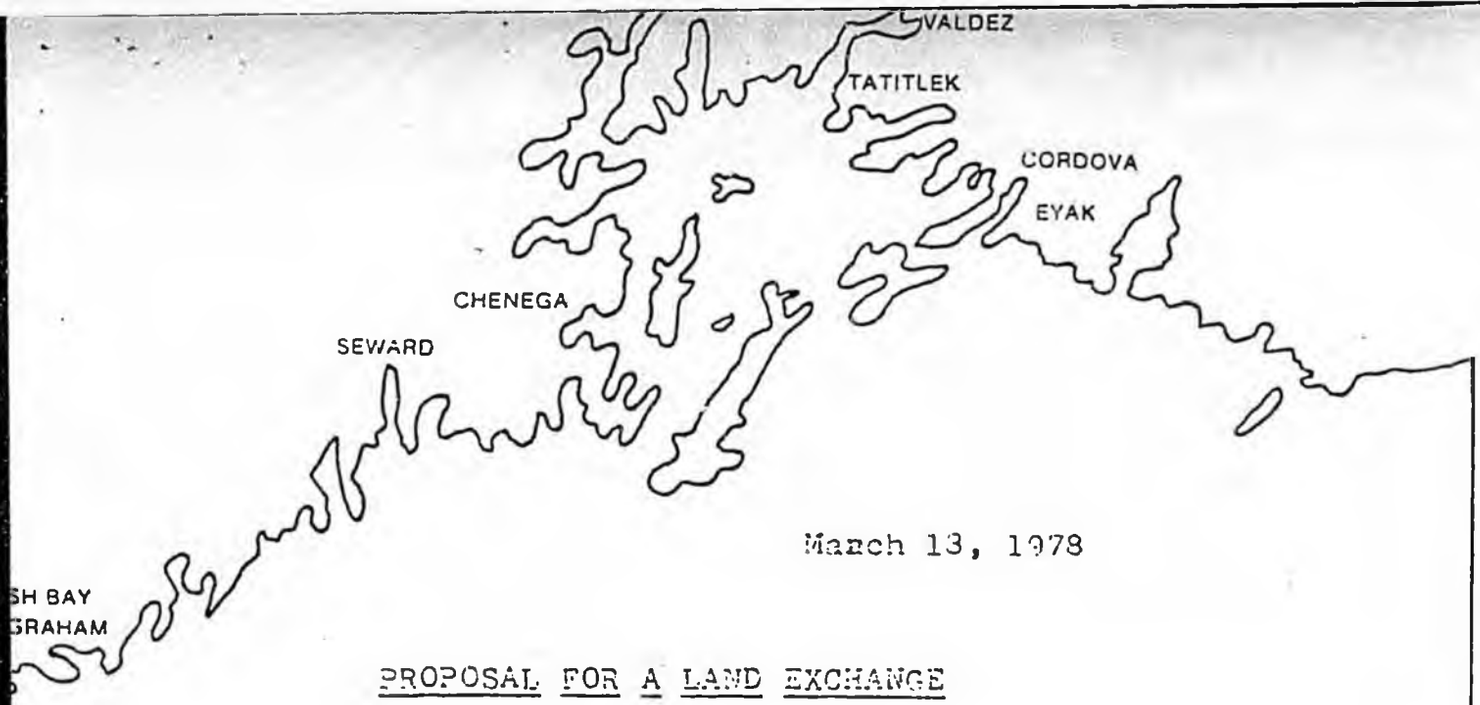
As noted in my letter of April 20, we would appreciate receiving as soon as possible, the specific areas of the Tongass you propose for selection or exchange. These could then be addressed in the draft environmental statement being prepared for the Tongass Land Management Plan. Meanwhile, as we pointed out in our February 8, 1978 letter, we are obligated to proceed with the process of approving State and local community land selections.

We would be pleased to respond to further questions regarding our position or our proposed course of action in this matter.

Sincerely,

JOHN A. SANDOR
Regional Forester

cc: Jt. Federal-State Land Use Planning Comm.
Alaska Dept. of Natural Resources
Senator Stevens
Senator Gravel
Congressman Young
Tongass and Chugach communities
OGC (Portland)
Washington Office



March 13, 1978

PROPOSAL FOR A LAND EXCHANGE

I. Background:

1. Chugach was unable to select any of its section 12(c) entitlement of approximately 350,000 acres from the statutory section 11 withdrawals within its region. Two of our five villages were totally on state selected and tentatively-approved lands, while the other three villages are located within the Chugach National Forest. Therefore, from the very beginning Chugach realized that all of its lands would have to be selected from so-called "deficiency" areas.

2. Prior land appropriations to the state of Alaska and the reservation of the C hugach National Forest, along with the withdrawal of proposed D-2 system lands, virtually exempted the rest of the coastline in the Chugach Region from selection by the regional corporation. Nearly all of the Secretary's deficiency withdrawals for Chugach therefore had to come from inland areas.

3. The Chugach Region is perhaps the smallest in the state of Alaska, with less than 10 million acres within its boundaries. Yet it has without question the most rugged terrain and the highest percentage of snow and ice cover of any region in Alaska. Thus, it was lands of thisscharacter which were eventually withdrawn by the Secretary of the Interior for Chugach's deficiency.

4. Chugach's deficiency withdrawals clearly did not meet the requirement of section 11(a)(1)(A) of the Act, in that they were not"of a character similar to those on which the village is located". Incidentally, all of the five Chugach villages are located on the coastline around the Gulf of Alaska, and the Chugach people have always had a direct dependence on the sea for their dependence and their culture.

Chugach

5. In 1975 Chugach filed litigation against the Secretary, charging, among other things, that the deficiency withdrawals made for the Region were inadequate and in violation of the Secretary's statutory mandate.

6. On January 18, 1977, Chugach withdrew this claim against the Secretary in order to reach an out-of-court settlement of the requirements for compactness and contiguity pertaining to its land selections.

7. Therefore, although the litigation over this issue has ended, it is widely acknowledged that Chugach received both a poor land settlement, when compared with that of the other corporations, and an unjust land settlement with respect to the law.

II. Specific Selection Problems:

A land area equivalent to that in 55 whole townships was withdrawn for selection by the Chugach Regional Corporation. Chugach's 12(c) entitlement is roughly the equivalent of 15 whole townships, or about 350,000 acres.

Of all the lands withdrawn, the approximate equivalent of 30 whole townships, or in excess of 46% of the entire withdrawn area, was covered by either glaciers or ice fields. Of the 35 townships remaining, 14 ice-free ones were within a "dual" D-2/regional deficiency withdrawal in the southern part of the proposed Wrangell Mountains National Park. This left only 21 townships from which "reasonable" land selections could be made. Of these, Chugach wasn't informed that three of them were available for regional deficiency selection until after the selection deadline had expired. Of the 18 townships remaining for possible selection, 2.25 not covered by ice in the Nellie Juan area were discovered to be improperly withdrawn, as they were included in a wilderness study area pursuant to PLO 3665 in 1964.

This left only 15.75 townships, approximately, which were still available for filing on by Chugach, or roughly the equivalent of the Corporation's 12(c) entitlement. By not selecting, or rather not identifying as priority selections, most of the lands within the so-called Ice Worm Peak withdrawal area, Chugach forfeited its earlier "blanket" selection thereon. This reduced the number of townships not covered by ice which were still available for priority selection by Chugach by two more, or now down to 13.75. Finally, I would venture that no more than six or seven of these remaining withdrawal areas which are suitable for selection consist of lands which are not entirely impassable because of their precipitous terrain.

III. Proposal:

We are approaching all possible parties of interest at this time for their support in principle of Chugach's proposed exchange of lands in the Bremner River withdrawal area for alternate selections elsewhere. Additionally, we are seeking comments on the "in-lieu" areas proposed below, and suggestions for other areas. Legislation pending before the Congress to implement section 17(d)(2) of the ANCSA offers an appropriate vehicle into which we can incorporate the terms and conditions of the proposed exchange.

IV. General Areas Where Chugach has an Interest in Acquiring In Lieu Lan

A. Chugach National Forest lands-
1. western Prince William Sound copper belt (ie. Latouche, Knight and Naked Islands). - max. 90,000 acres

2. Bering River coal fields - max. 54,000 acres

B. Yakataga Forelands - max. 75,000 acres
Chugach would be quite interested in obtaining coastal lands between Cape Yakataga and Icy Bay which are now selected by or tentatively approved to the state. This would mean that other federal lands would have to be made available for state selection which the state rates more desirable than the Yakataga lands. Any 3-way trade would also have to be exempt from the section 6(i) restriction in the Statehood against deeding subsurface estate to other parties.

C. Tongass National Forest lands-

D. Cash payment in lieu of some acreage

E. Surplus or Excess federal holdings

F. Others

V. Chugach Concessions:

A. Receive no conveyance of lands in the Ice Worm Peak, Nellie Juan and Keystone Glacier regional deficiency areas.

B. Receive no conveyance of lands within the Controller Bay regional deficiency area (would involve amending CNI/DOI Agreement in CNI v. Andrus (No. 75-2113 Dist of Columbia).

C. Receive no conveyance of lands within the Bremner River watershed, and possibly only along the Copper River in the entire Bremner River regional deficiency area.

VI. Special Terms and Conditions:

A. Amend the partial agreement reached by Chugach and DOI in CNI v. Andrus to allow Chugach to receive conveyance to less than all of the priority selection area which it has identified in the past in the Icy Bay Withdrawal.

B. Amend the same Agreement to allow Chugach to take conveyance to none of its priority selections in the Controller Bay withdrawal area.

C. Include a special provision allowing Chugach to reinstate its now relinquished 12(c) selections in all of the Carbon Mountain withdrawal area. This would only be done after we are assured of obtaining 14(h)(8) lands from the Chugach National Forest. As it stands we were forced to relinquish some of our 12(c) filings in order to make valid 14(h)(8) selections on unappropriated lands.

F: CSHB 133

KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

May 15, 1978

The Honorable Joseph Orsini, Chairman
Senate Community & Regional Affairs Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99801

Re: Municipa' Entitlement Legislation

Dear Senator Orsini:

Your committee office has advised me that the Committee will be accepting testimony from Southeast Alaska municipal officials on the municipal entitlement bill this Tuesday afternoon. Our meeting schedule precludes my being in Juneau for this hearing, therefore; I am hoping that you will accept and consider this written statement.

The Ketchikan Gateway Borough is extremely anxious to have the municipal entitlement question resolved as rapidly as possible. The bill before you now is very similar to the bill agreed upon early last legislative session. Ketchikan was a party to that agreement and remains firm to our basic support of the legislation.

Ketchikan has a land problem; a problem of land for community expansion. Ketchikan has the highest density use of land of any community within the entire State as we are virtually landlocked, surrounded entirely by National Forest Lands. The State is making a selection of approximately 23,000 acres within our Borough, the majority of which is adjacent or near the present roaded system. These forest selections and the Mental Health lands bounding the City limits are those lands into which the community must expand. If these lands are available for community expansion, they will be so utilized without regard to suitability for such purposes because this is all the land there is and all the land there ever will be in the future.

The "magic acreage" municipal entitlement figure to be included in this legislation simply will be arbitrary in Southeast. A figure of 9,200 or 11,000 acres of community expansion lands for eternity is just a guess. It may be necessary to select 30,000 acres to have 9,200 acres of usable land or there may not be 9,200 acres of usable land in eventual State ownership from which to make our municipal selections. This is information we just don't have today and will take years and be very costly to determine.

There must be an entitlement figure listed at some point and the Southeast boroughs should have entry into the difference (lands in State ownership) if through a legitimate determination process, additional land is needed for community expansion purposes. This flexibility must be written into the legislation. Basically, the State should not be in the land ownership business in Southeast as there are virtually no large State interests in land in Southeast other than to hold land for community needs. This is supported by the State's acceptance of the Borough's recommendation for withdrawal of forest lands with only very minor changes by the State. Therefore, it would be in the best interests of the State and the Ketchikan Gateway Borough that language be included in the municipal entitlement legislation to insure the entry of our Borough into the remaining State lands at such a time in the future that there is an identified need for additional land for community expansion purposes.

I hope these comments will be helpful in your deliberations. Your endeavors toward passage of this legislation are appreciated.

Sincerely yours,

KETCHIKAN GATEWAY BOROUGH

Judith A. Slajer

Judith A. Slajer
Borough Manager

JAS:gb

F: CSSB 133

THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

DATE: May 23, 1978

FILE NO. CSHB 133

SUBJECT: Land Availability in the Juneau Area

Joseph Orsini, Chairman
Senate Community and Regional Affairs Committee
Pouch V - State Capitol Building
Juneau, Alaska 99803

Dear Senator Orsini,

The following is in response to your request for the municipality's estimation of acreage which is or could be made available in the City and Borough of Juneau and how much is developable. After reviewing the matter with our planning staff, we have concluded that the differences between the figures which were ultimately developed at the hearing on May 16, 1978 are not so significantly at variance from our estimates as to warrant pursuit of the differences. Below is a table which sets forth the figures as I understood them at the hearing and with which our plainning staff has only insignificant differences.

Type	Total Acreage	Developable Acreage	
		Inc. Goldbelt Topfiling	Exc. Goldbelt Topfiling
Mental Health	11,480 (to 12,690)	5,700	5,700
Prior 6(a) selections TA	2,925	1,650	1,650
University	440	200	200
6(b) patented or TA	4,160	780	780
6(b) not TA	9,000 (aprox)		
New 6(a) selections (not TA)	23,618	12,650	8,650
Total: selected, TA, patented	51,623		
Total developable: selected, TA, patented		20,980	
Total developable: selected, TA, patented, less Goldbelt topfiled			16,980

FORM NO. CBJ 7

Of the approximately 4 000 developable acres which have been topfiled by Goldbelt, we estimate that well over 2,000 of those would become available to the state for selection if Goldbelt receives its first priority choices in other areas outside the City and Borough of Juneau. This would increase the 16,980 acres to over 19,000 acres.

As was mentioned at the hearing, the City and Borough withdrew its selection of an area in the Eagle River area. It is estimated that there were well over 2,000 developable acreas in that selection. The withdrawal came after the State National Forest selection team suggested to the City and Borough that it consider whether it wanted to withdraw its Eagle River nomination. Shortly after the state's suggestion, the assembly received a substantial amount of input from conservation oriented groups to drop the nomination. Pursuant to an assembly decision, the nomination was dropped; however, it was fully understood that the parcel could be nominated in the future after more study and planning. Thus, while the state has not counted this particular nomination as part of its developable acreage, it nevertheless does have potential for future selection and would raise each of the developable acreage figures by something in excess of 2,000 acres each.

Please bear in mind that the City and Borough of Juneau is interested not only in developable land but in land which will serve community recreation needs and will provide protection for our watershed. Part of the approximately 9,000 acres of unapproved 6(b) selection may be of interest to the municipality either for recreation or for watershed protection purposes. Also, the Eaglecrest selection of almost 4,000 acres is classified as undevelopable yet it is obvious the community has a great interest in acquiring this "undevelopable" land.

The concept of allowing municipalities to satisfy their entitlement out of developable land is one which has been recently suggested. The City and Borough of Juneau has never taken the position that its entitlement should be satisfied only from developable land. We have always anticipated that if we receive a fair entitlement under the bill, part of the entitlement would be met with land which was not developable. We believe that 28,000 acres is a fair entitlement and that certainly nothing less thant 24,000 should be placed in the bill for Juneau considering its population, area and the special position it occupies, along with some other southeast communities, under section 6(a) of the Statehood Act. We would not expect a "developable lands only" restriction to apply to the City and Borough of Juneau

under the conditions of the more reasonable entitlement suggested. We would, under such circumstances, be looking at well in excess of 50,000 acres out of which to satisfy our entitlement.

I realize that there is some feeling that there must be an end to communities coming in and asking for more land. Please consider the following. When Senate Bill 241 was first introduced, it was the product of all the large communities involved except the North Slope Borough and the three large southeast boroughs. Juneau, Ketchikan and Sitka were not even invited to discuss the land settlement problem, and in fact, to my knowledge, were not even aware that discussions were taking place which would affect them as adversely as was proposed in SB 241. By the time the southeast communities became aware of the discussions and "agreements" the die had been pretty well cast. As you will recall, the state gave the three southeast communities 32,000 acres to divide among themselves and the three communities were told to take it or leave it. Those can hardly be called the conditions under which an "agreement" was reached. Juneau has consistantly requested acreage greater than the 13,600 acres proposed except last year when it agreed to such acreage if the bill could be passed during the last session. Since last year, both Anchorage and Kodiak who were parties to the original agreement, have come in asking for substantially increased entitlements in either acres or dollars. If these communities are given increases, why should a reasonable entitlement be denied to the City and Borough of Juneau which has been requesting an increase all along and which is not asking for an entitlement which will permit it to go into the in lien fund or otherwise receive dollars as with Kodiak and Anchorage.

I should also point out that the Meekins formula has not been entirely taken out of the bill. The acreage for the North Slope Borough is what was produced by the Meekins formula. If some form of equity is being done for the North Slope Borough I strongly suggest that the same can be done for the City and Borough of Juneau. I urge you to increase Juneau's entitlement as requested above.

Very truly yours,

Gerald L. Sharp
City/Borough Attorney

GLS/sm

cc: Senators Willis, Ferguson, Hackney and Sumner

F: C514B
133

Alaska State Legislature

House of Representatives

Office of the Speaker

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Senator Joe Orsini

FROM: Hugh Malone

DATE: June 1, 1978

As you are well aware, there has recently been considerable interest concerning the state's "trust lands."

The need to resolve, or reconcile, complex state land management programs, provide municipalities with valuable and accessible local lands, and to help insure a more adequate return of revenue from state lands - to support those services as designated by the trusts - is most crucial.

The future of our "trust lands": mental health, school and university; lands granted to territorial Alaska by the Federal government; will be profoundly shaped by a variety of pending legislation, if enacted. Presently, a number of bills, i.e., HB 133 (state land selections by municipalities), HB 720 (homesites), and SB 159 (an act relating to state land) deal, to differing degrees, with the "trust lands" issue. HB 477 and SB 562 may become involved in this as well.

Like youself, I agree that fundamental changes are needed in our "trust lands" program, but, because of the burgeoning number of approaches to this problem, coupled with the complexity fc the issue, I'm deeply concerned with the prospect of passing confusing, if not contradictory legislation.

I would urge you to review all pertinent bills; its necessary that all concerned parties be aware of the differing proposals. The need to pass comparable, or uniform legislation - as it pertains to this issue - is no less important than solving the issue itself - if long run legal and administrative complications are to be avoided.

Hugh G

OUZINKIE NATIVE CORPORATION

P.O. BOX 89

OUZINKIE, ALASKA 99644

June 2, 1978

RE: Senate CS for CS for House Bill No. 133

Dear Senators:

We have just been informed of the miniciple land selection Bill CSCS HB # 133 that has been introduced by Parr, Brown, and Cowper. This action, we believe, is one of the most logical pieces of legislature proposed by the State since the passage of the Alaska Native Claims Act.

It is the Ouzinkie Native Corporation's position that we support State Compensation to municipalities for lands which had been tentatively approved to the State of Alaska, and of which lands have been selected and will eventually be conveyed to Village Corporations, under the Alaska Native Claims Settlement Act.

Compensation to the municiple government by the State, would, in our opinion, resolve much of the friction that has been created between the municiple governments and Village Corporations on the legalities of ownership of land.

F: CSSB
84 (

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

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

April 14, 1978

The Honorable Joseph Orsini
Chairman, Senate & Community
Regional Affairs Committee
Pouch V
Juneau, AK 99811

Re: Municipal Land Selection Regulations

Dear Joe:

As you know, despite agreement last year by the State and almost all municipalities concerning the municipal land selection question, manifested originally in CSHB 133, that legislation has had a very checkered and sporadic history. Because settlement of this issue is of critical importance to both the State and the municipalities with respect to future land and resource management, particularly land disposals, both the State and the municipalities are concerned that the issue be settled in the very near future. While we would still prefer that appropriate legislation be enacted, the State is looking at the alternative of individual settlements with each municipality under existing law to address this matter if legislation presently before the Senate Resources Committee is not adopted this session.

Attached is a copy of draft regulations, as sent to each municipality, which would serve as the basis for any such settlements. These regulations will be needed whether or not the present legislation is enacted and, as discussed in the attached cover letter to each municipality, we are requesting a review of these regulations at this time to ensure that they meet with municipal approval and can serve as the basis for individual settlements should pending legislation not be enacted.

10-J2LH

If you have any questions concerning these regulations, please do not hesitate to ask.

Sincerely,

Mike

Michael C. T. Smith
Assistant Commissioner

Enclosures

DRAFT REGULATIONS
IMPLEMENTING
AS 29.18.190 - .200

11 AAC _____. DETERMINATION OF ENTITLEMENT FOR MUNICIPALITIES. (a) The general grant land entitlement of a municipality in existence on January 1, 1978 and which is eligible to receive general grant land under the provisions of AS 29.18.190 - .200 is 10 per cent of the maximum total acreage of vacant, unappropriated, unreserved land within the boundaries of each such municipality at any time between the initial date of eligibility under AS 29.18.190 - .200 and January 1, 1978.

(b) The general grant land entitlement of a municipality created subsequent to January 1, 1978 and which is eligible to receive general grant land under the provisions of AS 29.18.190 - .200 is 10 per cent of the total acreage of vacant, unappropriated, unreserved land within the boundaries of each such municipality on the date such municipality first becomes eligible for a land entitlement under AS 29.18.190 - .200.

(c) The general grant land entitlement of a municipality which enlarges its boundaries by annexation shall, upon the effective date of such annexation, be increased by an amount equal to 10 per cent of the vacant, unappropriated, unreserved land within such annexed area on the effective date of annexation.

(d) The general grant land entitlement of a municipality which is created by the unification, merger or consolidation of two or more municipalities pursuant to AS 29.68.030-.440 shall be the sum of the entitlements of each of the constituent municipalities at the time of such unification, merger, or consolidation.

(e) The general grant land entitlement of a borough containing one or more cities of any class within its boundaries shall be 10 per cent of only that vacant, unappropriated, unreserved land within the borough but outside the boundaries of each city within the borough.

(f) The general grant land entitlement of a city which is subsequently formed within a borough shall be 10 per cent of the vacant, unappropriated, unreserved land

within the boundaries of the city, and the borough's land entitlement shall be reduced by such amount.

(g) The director shall annually determine the entitlement for each municipality eligible to receive general grant land under (a) and (b) of this section and certify that entitlement to the municipality.

Authority: AS 29.18.190
AS 29.18.200
AS 38.05.035

11 AAC _____. STATUS OF ENTITLEMENTS. (a) No municipal selection vests any interest in or right to receive a particular tract of land except as provided by sec. ___ of this chapter.

(b) General grant land entitlements determined under secs. _____ of this chapter may be exercised at any time before the date which is two years after the expiration of the State's right to make selections under secs. 6(a) or (b) of the Alaska Statehood Act (P.L. 85-508).

Authority: AS 29.18.190
AS 29.18.200
AS 38.05.035

11 AAC _____. FULFILLMENT OF LAND ENTITLEMENTS.

(a) The acreage of each municipality's land selections under AS 29.18.190 - .200 for which patent has been issued before the effective date of these regulations shall be credited toward fulfillment of the entitlement of that municipality.

(b) All approved selections under AS 29.18.190 - .200 for which patent has not been issued to a municipality on the effective date of these regulations shall be reviewed by the director within nine months after the effective date of these regulations. Any approved selection of land which was vacant, unappropriated or unreserved on the date of selection is valid as of the date of the approval, and a patent shall be issued to the municipality within three months after approval by the director of a plat of survey. The acreage shall be credited toward fulfillment of the municipality's entitlement.

(c) Any prior approval by the director of municipal selections for land which was not vacant, unappropriated or unreserved on the date of selection shall be rescinded, and patent

may not be issued except when disposal to a third party by sale or lease has occurred.

(d) Transfers of land to municipalities under AS 29.18.190 - .200 are subject to AS 38.05.321 regarding the preservation of the State's agricultural land base. Classification actions as reflected upon the land status records of the Department of Natural Resources are determinative of land classification status under this chapter.

(e) All municipal land selections under AS 29.18.190-200 not approved as of the effective date of these regulations shall be recognized by the director as representing the priority selection interests of the municipalities, and such selections shall be given first consideration under (f) of this section unless the municipality indicates different priorities.

(f) Each eligible municipality and the director shall jointly consider which vacant, unappropriated, unreserved land, including federal land of interest to the municipality which may be selected by the state as general grant land, located within the boundaries of the municipality, is appropriate for municipal selection and approval by the director to fulfill any remaining municipal general grant land entitlement.

(1) The joint consideration made by the parties may include a cooperative land planning process which will, in addition to the normal objectives of such a process, seek to identify both local and state interests in tracts of vacant, unappropriated and unreserved land remaining within the municipality.

(2) Adjacent tracts shall be considered simultaneously except when such simultaneous consideration would cause significant delay or expense.

(3) Once a tract has been jointly considered, it may be selected by a municipality.

(g) Each selection must be approved or disapproved for patent by the director under (h) of this section within nine months of its selection by a municipality, and a patent shall be

issued to the municipality within three months after approval by the director of a plat of survey.

(h) In reviewing a municipal selection for approval or disapproval, the director shall consider the state's responsibilities for developing and protecting values which are of greater than local concern, including development which will have statewide impact, and critical environmental concerns.

(1) Specific state responsibilities to be considered, if such responsibilities have not been authorized or delegated by the state to a municipality, include air quality; water; minerals and energy; timber; agriculture; grazing; fish and wildlife and their habitat; public recreation, natural, historical, and archaeological areas of greater than local concern; access to public land and water; transportation; communications; and public safety.

(2) Specific municipal responsibilities to be considered by the director include residential, commercial and industrial needs; support of municipal services; education; local transportation; private recreation; public recreation, natural, historical and archeaological areas of local concern; and other responsibilities authorized or delegated by the state to a municipality.

(3) A selection by a municipality of land which is primarily of local concern shall be approved.

(4) When the interests of the state may be protected through the conveyance of title that is less than a fee title, the municipality, at its option, may accept the title in acre-for-acre fulfillment of its entitlement.

(i) Every decision of approval or disapproval of a municipal selection by the director under of this section shall include a written explanation of the decision based upon the criteria of (h) of this section.

(1) Before any decision to disapprove a selection becomes effective, the director shall notify the affected municipality in writing, by certified mail, of his reasons for the proposed decision.

(2) The municipality shall have 30 days from receipt of the proposed decision to respond to the director in writing enumerating the reasons for which the municipality believes the proposed decision to be in error. Any decision disapproving a selection to which the municipality makes no timely response to the director shall automatically become final on the thirty-first day after receipt by the municipality of THE PROPOSED DECISION.

(3) Upon timely receipt of the municipality's statement of reasons, the director shall, within 30 days, affirm, modify or reverse his proposed decision in writing and give written notice of his decision to the municipality. The decision of the director, or the failure of THE MUNICIPALITY to respond to the director within 30 days after receipt of the proposed decision, constitute final administrative action in the matter.

(h) A municipality may appeal an adverse decision by the director to the superior court under AS 44.62.560-44.62.570.

(k) No municipality is entitled to receive patent pursuant to this chapter to more than its entitlement as determined under sections _____(a) or (b) of this chapter.

Authority: AS 29.18.190
AS 29.18.200
AS 38.05.035
AS _____

11 AAC _____. SELECTION AND CONVEYANCE OF AGRICULTURAL OR GRAZING LANDS. (a) State land classified as agricultural or grazing land which has been selected by a municipality under AS 29.18.190 - 29.18.200 may be approved by the director for patent; however, only rights in the land for agricultural or grazing purposes may be transferred, and all other interests in the land will remain with the state. Agricultural or grazing land approved for patent to a municipality shall be credited, acre for acre, toward fulfillment of that municipality's entitlement under AS 29.18.190 - .200. If the director later determines it to be in the best interests of the state to transfer some or all of the additional rights in that approved or patented agricultural or grazing land, those rights shall be conveyed without

consideration to the municipality in which the land is located.

(b) The provisions of this section do not apply to state land classified as agricultural or grazing land which has been selected by a municipality under the provisions of AS 29.18.190-29.18.200 if the selection is an approved selection before the effective date of these regulations.

Authority: AS 29.18.190
AS 29.18.200
AS 38.05.035
AS _____

11 AAC _____. SCHOOL, UNIVERSITY AND MENTAL HEALTH LAND. (a) A municipality may select vacant school, university or mental health land within the municipality in partial fulfillment of its land entitlement under AS 29.18.190 - .200. School, university or mental health land may be selected notwithstanding the fact that these lands are not unappropriated and unreserved within the meaning of this chapter and secs. 190 and 200 of AS 29.18.190 - .200. Each selection of school, univeristy or mental health land by a municipality must be of vacant, unappropriated, or unreserved land as defined in this chapter, except that it need not be general grant land.

(b) The acreage of school, university or mental health land, if any, within a municipality shall not be included in the determination of entitlement under secs. ___ - ___ of this chapter.

(c) Upon receipt of a selection by a municipality of school, university or mental health land, the director shall determine whether the land selection should be approved. The decision of the director shall be based upon the criteria of sec. _____ of this chapter, and shall follow the procedures set out in sec. _____ of this chapter. Land approved for selection under this section will be credited against a municipality's remaining land entitlement under this chapter.

(d) No selection of school, university or mental health land may be approved by the director under this section without the concurrence of

(1) the state Board of Education, for school land;

(2) the Board of Regents of the University of Alaska, for university land; or

(3) the members of the Mental Health Land Board specified in AS 38.05.035(13), for mental health land.

(e) Prior to the approval under (d) of this section of a municipal selection of school, university or mental health land, the director, with the concurrence of the respective board, shall designate appropriate state general grant land of approximately equal value as school, university or mental health replacement land, and shall remove the trust classification from the selected MUNICIPAL land. The replacement land shall thereafter be managed for the purposes for which the land selected by the municipality was acquired by the Territory and State of Alaska.

Authority: AS _____

11 AAC _____. SELECTION AND CONVEYANCE PROCEDURE.

(a) All municipal selections of state land pursuant to this chapter shall be made by submission of a form approved by the director for this purpose, and shall be signed by a municipal officer whose authority to sign such selection forms on behalf of the municipality shall be on file with the director.

(b) All municipal selections shall be made in reasonably compact tracts, taking into account the use capabilities of a tract and its relationship to surrounding land uses.

(1) A selection filed by a municipality which has not been approved by the director may be relinquished at any time.

(2) An approved selection may be relinquished by a municipality if the relinquishment is approved by the director.

(3) An approved selection relinquished by a municipality shall increase the remaining entitlement of the municipality on an acre-for-acre basis.

(c) A municipality may maintain selections for not more than 110 per cent of its remaining entitlement. Municipal selections for general grant land which was withdrawn under sec. 11(a)(2) and selected under sec. 12 of the Alaska Native Claims

Settlement Act (43 U.S.C. 1601 et seq., P.L. 92-203) is not included in the limitation of this subsection.

(d) Municipal selections may be filed only upon lands patented or tentatively approved from the United States to the State.

(e) If land selected by a municipality is unsurveyed at the time of approval, the director shall survey, or may approve the municipality's survey of, the exterior boundaries of an approved selection without interior subdivision, and shall issue patent in terms of the exterior boundary survey. The cost of the survey shall be borne by the municipality. If land selected by a municipality has been surveyed at the time of its selection, the boundaries shall conform to the public land subdivisions established by the approved survey.

(f) The director may approve municipal selections of land which had been tentatively approved or patented to the state by the federal government, but he shall not issue patent to a municipality until the land has first been patented to the state.

(g) Borough selections of state land inside the boundaries of any city contained within the borough shall not be approved until each such city has received approval or patent to its entire general grant land entitlement, unless such city shall approve in writing of the borough's selection.

(h) Prior to approval of a municipal land selection, the director shall give public notice of his proposed action pursuant to AS 38.05.305 and AS 38.05.345.

(i) After approval of a selection by the director, but before patent to the municipality, the municipality may execute conditional leases and make conditional sales only with the consent of the director. Conditional sales and conditional leases made before the effective date of these regulations do not require the consent of the director.

(j) Nothing in this chapter shall affect a valid existing claim, location or entry under the laws of the state or the United States, whether for homestead, mineral, right-of-way or other purposes. Nothing in this chapter shall affect the

rights of an owner, claimant, locater or entryman to the full use and enjoyment of the land so occupied.

11 AAC _____. LAND EXCHANGES. (a) The director, with the concurrence of the commissioner, and any municipality may exchange land or interests in land when it is in the public interest.

(b) Land or interests in land exchanged under this section must be of approximately equal value, including the non-monetary value of public benefits. Exchange procedures shall comply with applicable law and municipal ordinances.

Authority: AS _____
AS _____

11 AAC _____. OTHER LAND TRANSFERS. Nothing in this chapter limits or impairs the authority of the director to transfer land to municipalities, without limit or consideration, for public purposes in accordance with AS 38.05.315. If there is a remaining entitlement of the municipality, land transferred under AS 38.05.315 shall be credited toward fulfillment of that entitlement.

Authority: AS 38.05.315
AS 38.05.035

11 AAC _____. DEFINITIONS. In secs. ___ - ___ of this chapter, unless the context otherwise requires,

(1) "approved selection" means a municipal land selection which has been approved in writing by the director for transfer by patent to a municipality;

(2) "commissioner" means the Commissioner in the Department of Natural Resources, or his designee.

(3) "director" means the director of the division of lands, Department of Natural Resources, or his designee;

(4) "eligible municipality" means a municipality which on the date of eligibility contains vacant, unappropriated unreserved state general grant land within its boundaries.

(5) "general grant land" means land patented or tentatively approved to the state from the United States under secs. 6(a) or (b) of the Alaska Statehood Act;

(6) "mental health land" means land granted under Title II, sec. 202 of P.L. 84-830, as amended;

(7) "municipal land selection" means a request by a municipality, filed in writing with the director under authority of AS 29.18.190 - .200, for vacant, unappropriated, unreserved general grant land within its municipal boundaries in partial fulfillment of its municipal entitlement;

(8) "municipality" means a home rule or general law city or organized borough of any class, and includes unified municipalities established under AS 29.68.240 - 29.78.440;

(9) "patent" means a document, issued by the director to a municipality for a previously-approved selection, which conveys the quitclaims all the right, title and interest of the state without reservation or condition except as may be required by law;

(10) "remaining entitlement" means the general grant land entitlement determined in accordance with secs. ___-___ of this chapter, reduced by the total acreage of approved selections, including both patented and unpatented parcels;

(11) "school land" means those rectangular sections 16 and 36 within each township surveyed on or before January 3, 1959, and confirmed and transferred to the State of Alaska upon its admission under sec. 6(k), Alaska Statehood Act, 72 Stat. 339; lands selected in lieu thereof; and any other land designated solely for school]ir]pses pr revenues;

(12) "university land" means all sections 33 reserved to the university under 38 Stat. 1214, as amended (48 U.S.C. 353) and all land granted to or reserved for the benefit of the university;

(13) "vacant, unappropriated, unreserved land" means general grant land as defined in (5) of this section, excluding minerals as required by sec. 6(i) of the Alaska Statehood Act, which

(A) has not been set aside by statute for one or more particular uses or purposes;

(B) has not been approved for patent to a municipality under secs. ___ - ___ of this chapter or previously under AS 29.18.190 - .200; or

(C) is unclassified or, if classified under AS 38.05.300, is classified for agricultural, grazing, commercial, industrial, private recreational, residential, utility or open-to-entry purposes.

Authority: AS 38.05.035
AS 29.18.190
AS 29.18.200

SENATE COMMUNITY AND REGIONAL AFFAIRS
COMMITTEE MINUTES

May 2, 1978

Present: Senators Hackney, Willis Sumner and Orsini; Pat Conheady, Department of Natural Resources; Jack Chenoweth, Legislative Affairs Agency; Ben Marsh, Cook Inlet Air Resources; Janet Pursley, Cook Inlet Air Resources; Karla Pursley, Cook Inlet Air Resources.

Absent: Senator Ferguson

Senate Bill 599, SCR 103 and CSHB 133 were before the Committee.

SENATE BILL 599

Jack Chenoweth, Legislative Affairs Agency, stated that since the coastal management regulations are prepared by the Coastal Policy Council and are not defined by the Coastal Management Act as part of the program, they need not be presented to the Legislature for approval. He also stated that, if the Legislature were not required to approve them, they are no more or less than any other set of regulations that are adopted by any other state agency and are therefore subject to any resolution put in by a member or by the Administrative Regulation Review Board.

Chairman Orsini stated that his interpretation of a conversation with Jack Chenoweth earlier lead him to believe that there were possible legal ramifications to adopting the resolution that formally approves the regualtions, and thereby not being able to disapprove them in the future.

Mr. Chenoweth stated that he could not say that there were no legal ramifications but the regulations are not obligated to come before the legislature for approval.

The Committee concluded that either with or without Legislative endorsement the regulations would take effect. The Committee agreed to see the Federal Coastal Zone Officials at Tursday's C&RA meeting if they were available.

CS FOR HOUSE BILL 133

Chairman Orsini stated that since other committees have insufficiently addressed the Anchorage land situation involving this bill that this Committee would have to go more deeply into it. He also stated that this version of the bill is roughly comparable to the version that came out of House C&RA with the exception of monetary possibilities and slightly changed acreages. Pat Conheady, Department of Natural Resources stated that some additions added from the House Finance Committee were still in the bill and that the most important of those was the availability of trust lands for selection. He also stated that the Department thinks this is a good provision. Mr. Conheady, stated that trust lands would enable the state in those communities which do not have suitable land to obtain their entitlement. Senator

Sumner stated that Anchorage had selected 20,000 acres of land on the basis that trust lands were not available for selection, and it wound up, in terms of usable land, with around 14,000. He expressed concern as to whether Anchorage was facing a situation similar to Kodiak's. He stated that he felt Mr. Hartig who has represented Kodiak, should come and talk to the Committee. Chairman Orsini asked Mr. Conheady if it would make any difference if the state had a law like this if the Beirne Initiative passes. Mr. Conheady replied that it would be good to have one to protect the municipalities' rights to selection land first before the Beirne Initiative.

Mr. Conheady stated that the fiscal note would be different from that of the House version of this bill because DNR is involved in the selection process in the Senate version and is not in the House version.

He also stated that the Department probably would not have the lands transferred by November but would have identified what lands they were looking at.

Chairman Orsini asked Mr. Conheady if the letter sent to Senator Tillion on April 19 outlining certain acreagea available was still valid. Mr. Conheady replied that it was. Chairman Orsini stated to Mr. Conheady that if the Committee finds reasons to believe that those figures are not valid that his credibility with this Committee will have suffered. Mr. Conheady replied that he believed the letter to be valid to the extent of his knowledge.

The meeting was adjourned at 4:00.

SENATE COMMUNITY AND REGIONAL AFFAIRS
COMMITTEE MINUTES

May 9, 1978

Present: Senators Orsini, Willis, Ferguson and Hackney; Jim Rolle, Alaska Municipal League, Mike Smith, Department of Natural Resources; Mitch Gravo, Municipality of Anchorage, Ted Berns, Municipality of Anchorage; B.A. "Bud" Dowling, Municipality of Anchorage; Ron Swanson, Department of Natural Resources; Royce Weller, Hugh Malone's Staff; Lee Sharp, City and Borough of Juneau.

Absent: Senator Sumner

The meeting was called to order at 3:15. SCS CSHB 133 was the bill before the Committee.

SCS FOR CS FOR HOUSE BILL 133

Chairman Orsini stated that the meeting was to get the correct data about land availability to make a policy decision on the bill. There was, for example, a dispute over how much acreage was available to the Municipality of Anchorage. One provision of the bill would allow, a municipality to select trust land where general land was not available. Chairman Orsini stated that he wanted to determine specifically to everyones satisfaction just what land was available and suitable for municipal expansion and utilization and also meet the various criteria involved in municipal land selection.

Chairman Orsini stated that in a letter to Senator Clem Tillion dated April 19 and a letter to Senator Orsini dated May 5 there was substantially a large difference in the total acreages available. Mike Smith, Department of Natural Resources explained that the letter of April 19 was hurriedly put together and that he basically agreed with the Municipality of Anchorage on the figure of 10,300. Acres of state-owned trust lands lying within the municipality.

Ted Berns and Bud Dowling, Municipality of Anchorage, gave a presentation with maps showing the Committee how they derived the 1,700 acres from 6,720 with the selection of being for municipal purposes. This is land they felt was appropriate for local management and control.

Mr. Berns brought out that there is presently approximately 9,000 acres that had been identified for municipal selection and stated that records indicate another 9,700 acres as available for selections on top of the TA'd and patented that the municipality already has. He state, however, that from what the municipality has been able to determine most would be land that would either not meet VUU criteria under the present bill and therefore would have to be rejected or is in the area known as the Campbell Tract (which is 5,000 of the 9,000 acres). The Municipality does not feel would be appriate to count the Campbell tract against the Anchorage entitlement, since much of the tract is under strict federal use conditions. The Municipality was also concerned that the land designated for municipal selection at Point Woronzoff was also in fact under restricted use conditions since it lay within the landing path of the Anchorage International Airport. Mr. Smith disagreed but concurred

in the need for both the State and the Municipality to look further into the matter.

Mr. Berns stated that Anchorage has, or could receive patent to about 8,400 acres under the present land selections. Mr. Smith agreed with this.

Chairman Orsini asked Mr. Berns and Mr. Smith if they agreed that construction such as the University and other types of public facilities could take place on all or part of Campbell tract. They both agreed that only about 1200/1500 acres along Tudor Road could be developed in such a way.

Chairman Orsini asked Mr. Berns if any of the 10,300 acres trust lands available would not be desirable. Mr. Berns stated that it was fair to say that most of the mental health land, or about 8,000 acres, was going to be highly desirable land. He mentioned, however, that some of this acreage was tied up in legal suits with the Eklutna Natives. He believed that about 3-4,000 acres would ultimately be available.

The outcome of acreages agreed upon by the Municipality and the Department of Natural Resources:

1,700 - VUU
4,200 - Patented Now
2,450 - TA
4 to 5,000 - Trust Land
3 to 4,000 - Tied up in Court Decisions

16,400 acres

As Anchorage reviewed it's land entitlement, Mr. Smith asked that it keep in mind that a major portion of Fort Richardson and Elmendorf AFB lands are likely to be turned over to the State sometime in the future. These lands would be extremely valuable and very suitable for municipal purposes.

Chairman Orsini stated that CSHB 133 would be brought up again Thursday and that the Committee would go into detail on the Kodiak situation.

The meeting was adjourned at 4:40 p.m.

SENATE COMMUNITY AND REGIONAL AFFAIRS
COMMITTEE MINUTES

May 11, 1978

Present: Senators Orsini, Willis and Hackney; Ronald Kuczek, Cook Inlet Air Resources Management District; Dale P. Tubbs, Kodiak Island Borough; Bob Hartig, Kodiak Island Borough; Ron Swanson, Department of Natural Resources; Mike Smith, Department of Natural Resources; Tom Hanna, Department of Environmental Conservation; Jerry Reinwand, Department of Environmental Conservation.

Absent: Senators Ferguson and Sumner

The meeting was called to order at 3:05 with CSHB 133 and CSHB 190 before the Committee.

SCS FOR CS FOR HOUSE BILL 133 (KODIAK)

Chairman Orsini summarized the land situation in Kodiak. He stated that Kodiak contends the State was negligent in transferring land to the Borough, which the Borough had received as tentatively approved land. When ANCSA was enacted, the State allowed the transfer of the tentatively approved borough land to Native corporations as part of the settlement. These lands were of prime quality and the Borough states that no other comparable lands are now available to the Borough in exchange for those it lost under ANCSA.

Bob Hartig, Representing the Kodiak Island Borough, stressed that Kodiak's concern did not center around the amount of its land entitlement, since there was sufficient acreage available, but around its quality. Kodiak would be willing to take these lands of lesser quality if it could be compensated monetarily for the prime lands the State took from it. Otherwise the Kodiak Borough would be forced to exercise its fiduciary responsibility and file suit in court challenging the State's action and ultimately calling into question not only the present municipal land selection bill but also ANCSA.

Mr. Hartig and Dale Tubbs, Kodiak Island Borough, went over maps of Kodiak island and outer islands and explained to the Committee members what lands were selected, which were top-filed and where were involved in court suits involving village selections under ANCSA.

Mr. Hartig stated that Kodiak is confident that it can obtain at least 10,000 additional acres and possibly as much as 26,000. He summed up Kodiak's land possibly land entitlement break-down as follows: 4,000 acres already in hand; 18.000 acres tied up in village selection litigation; 32,000 acres that could be selected from state-owned lands; and possibly 15,000 acres currently under Coast Guard ownership. This would bring Kodiak's maximum selection possibility to 76,000 acres.

Mr. Hartig stated that he could not over-emphasize the importance of financial compensation for the land taken by the State since it would eliminate the need to initiate litigation between Natives and non-Natives on Kodiak. He also stated that, without the provision of payment in lieu of land, Kodiak would see no need for the land selection bill.

Mike Smith, Division of Lands, Department of Natural Resources, replied that the State had no control over the enactment of ANCSA and noted that without ANCSA there would actually be 26,000 fewer acres available to Kodiak for selection. Yet Kodiak is requesting, in effect compensation for 26,000 acres when there was no guarantee that Kodiak would have received these acres if there had been no ANCSA. Mr. Smith stressed that the Governor will only agree to a maximum payment of $20 million under HB 133, and that there still remains one community in Alaska where there is not enough land, physically, to meet its municipal entitlement.

Chairman Orsini stated that the Committee would look at the bill again Tuesday on the Southeastern situation.

CS FOR HOUSE BILL 190

Jerry Reinwand, Department of Environmental Conservation, stated that the bill does two things: it gives the districts a method for seeking approval with definite time restraints and if the Department rejects it the Department would give them the reasons why the program was rejected and the districts could make the adjustments to meet the approval of the State. He stated that the Department does not have any problem with delegating authority or approving the Cook Inlet Air Resources District program but has never received an application to do this. He stated that he would be very happy to have the CIARMD run the permanent program up in the Cook Inlet area. But he stressed that he did want to make sure that the CIARMD not give away more than 50% of the air quality increment than it already has to so to allow for additional growth to take place in the Kenai area. He wanted to make sure that in issuing industry permits that the CIARMD apply tougher standards so that the 50% air quality increment could be reserved for future industrial use.

Mr. Reinwand stated that he does not see any need for the bill personally but if it is the desire of the Committee the Department would not oppose it as long as the amendments that are suggested in the letter that Commissioner Mueller sent on April 15 are incorporated.

Ronald Kuczek, Cook Inlet Air Resources Management District, stated that the district hadn't applied because it has repeatedly tried to find out what we needed in seeking approval to run its resources control program and the information that was returned to the CIARMD was never satisfactory. He also stated that the Department said on an informal basis that approval probably would not be granted because of certain programs that the district had not implemented, but neither which the state intended to carry out.

Mr. Reinwand agreed that in the past CIARMD probably had been discouraged for approval but now the Department would accept an application.

The Committee took up a proposed draft committee substitute for HB 190 which had been prepared by the CIARMD and reviewed by DEC Commissioner

Ernst Mueller in a letter to the Committee dated April 13, 1978. The proposed committee substitute was discussed in detail with Mr. Kuszek and the DEC representatives, and final language was agreed to by the DEC and the CIARMD.

Chairman Orsini stated that the bill would be drafted with the revised amendments as agreed by both the Department and CIARMD and it would then be brought back to the Committee for signature and passed out.

The meeting was adjourned at 5:20 p.m.

SENATE COMMUNITY AND REGIONAL AFFAIRS
COMMITTEE MINUTES

May 16, 1978

Present: Senators Orsini, Willis, Hackney and Sumner; Ron Swanson, Dept. of Natural Resources; Mike Smith, DNR, Division of Lands; Jack Chenoweth, Legislative Affairs Agency; Natalie Alton, Senator Rader's Staff; Royce Weller, Hugh Malone's Staff; Gerald L. Sharp, City and Borough of Juneau.

Absent: Senator Ferguson

The meeting was called to order at 3:08.

SCS FOR CS FOR HOUSE BILL 133 (SOUTHEAST)

Chairman Orsini stated that the Committee had received a letter from the Ketchikan Gateway Borough, and had not heard from Sitka, apparantly because Sitka felt satisfied with its pending entitlement.

Chairman Orsini stated that today's meeting was to try and identify what kind of land is available in the Southeast portion of the state, where severe terrain problems existed. He said that much of the land available was not suitable for development.

The members of the Committee received a hand-out from the Department of Natural Resources indicating what type of land to be selected, as well as total acreages and developable acreages for Juneau and Ketchikan. Mr. Smith explained that the hand-out was put together hastily to fill a request by Chairman Orsini for a break-down of the acreages of developable land in Southeast Alaska. He noted that only the second column of the hand-out should be used.

Lee Sharp, City Attorney for C&B of Juneau, stated that he did not concur with the figures in the hand-out. He stated that the City and Borough's inventory shows that there are approximately 12,690 acres of mental health lands in the borough but the Department's figure is 11,500, which had recently been increased from an earlier figure of just over ?,000 acres.

The Committee, Mr. Smith and Mr. Swanson reviewed the land situation in Ketchikan and Sitka. Mr. Sharp stated that Juneau would be very interested in receiving non-developable land for recreational purposes, such as Eagle Crest, in addition to developable or community settlement land. He pointed out that this could mean a substantially higher entitlement for land available.

Mr. Sharp stated that Juneau submitted to the state a suggested 65,000 acres either for local or state ownership and for local purposes. He stated that the Borough felt that about 20 to 30,000 would be high priority. Mr. Sharp also stated that Juneau had not prioritized their selection of land as of yet.

Mr. Sharp gave a brief background of how the state lands were to be divided in the three Southeastern communities. In the original version of the bill the State gave the 3 southeastern communities a total of

32,000 acres to be divided among them. At that time it was decided that 9,200 acres could go to Sitka, 9,200 to Ketchikan and 13,600 to Juneau. He stated that two things have changed since last year. The National Forest selections have been made in the Southeast, and the State has selected significantly larger acreages in the region than had been expected last year. In Wrangell and Petersburg, both much smaller communities than Juneau, Mr. Sharp noted that the State had selected 16,500 and 12,000 acres respectively. On the basis of population and future need, Mr. Sharp estimated that Juneau would require 60,000 acres but would request 24-28,000. In that respect, he noted that the 24,000 acres currently available for Juneau selection. included 6,000 top-filed acres by the Goldbelt Native Corporation. Mr. Sharp stated that there was another selection pending of approximately 15,000 acres on Gold Creek Road. He though, however, only about 9,000 would be approved. He said that most of this land is probably not developable yet it would be an additional 9,000 acres that would be available for Juneau to meet its entitlement. He stated that it is land of Borough concern because of its recreation potential and its water shed. Mr. Smith stated that the State was not sure Juneau could get this land.

Jack Chenoweth and the Committee discussed the possibility of mandating various trust lands in the bill to go directly to a municipality in trade for other equal value land as opposed to the current bill which says that the concurrence of the trust boards must be obtained before a land exchange could take place.

Chairman Orsini noted that state-owned trust lands might be made available only to those municipalities which could not fulfill their entitlements through vacant, unappropriate, unreserved state land.

Mr. Smith expressed concern that the North Slope has yet to indicate what acreage it would like. He stated that the only formal comments the North Slope has made to his knowledge was by Senator Ferguson before the Senate Resources Committee that "89,000 acres is enough for now". Chairman Orsini stated that he discussed this with Senator Ferguson and Kim Hutchinson, representing the North Slope Borough. He had asked Mr. Hutchinson if the 89,000 acres would be sufficient for the North Slope. Chairman Orsini said Mr. Hutchinson replied in Senator Ferguson's presence that 89,000 was sufficient and if the North Slope got that amount it would be satisfied.

Mr. Smith also commented that there were two sections of the bill, 201 and 202 that set out entitlement for boroughs and cities respectively. A municipality receives its land entitlement under either 201 or 202, not both. He stated that some of the language later on it the bill refers to "Sec. 201" AND "202" and suggested that it should say, "Sec. 201" OR "202".

Mr. Smith stated that the Department would like to see the Committee use the SCS for CSHB 133 as the mark-up bill.

The meeting was adjourned at 4:30.

SENATE COMMUNITY AND REGIONAL AFFAIRS
COMMITTEE MEETING

May 23, 1978

Present: Senators Orsini, Hackney, Willis and Ferguson; Tom Singer, House Permanent Fund; Pat Conheady, DNR; Annette Smith, House C&RA; Jack Chenoweth, Legislative Affairs Agency, Royce Weller, Hugh Malone's Staff; Representative Dick Eliason, Richard Engen, Division of State Libraries and Museums.

Absent: Senator Sumner

The bills before the Committee were CSHB 133, HB 766 and SB 580. The meeting was called to order at 3:08.

SENATE BILL 580

Richard Engen, Division of State Libraries and Museums, stated that this bill would increase the present grant and aid program for assistance to the Public Libraries Association throughout the state from $250 a year on a reimbursable basis to a $500 grant for purchase of library materials.

He stated that it eliminates much of the paper work now required by statute. He explained that his office has to submit invoices on a reimbursable basis and this would be eliminated through the grant provision of the bill. He also stated that the bill removes the restriction from purchasing religious materials which is in the original statutes.

Senator Hackney moved to increase the $500 grant amount to $1,000. There were no objections. Senator Hackney then moved to pass the bill out with a "DO PASS" recommendation.

HOUSE BILL 766

Chairman Orsini went through the proposed recommendations for the bill. He stated that there was a CS for increasing the $250,000 to $400,000 and adding certain conditions to the increase.

Representative Eliason stated that the bill was introduced at the request of the borough Administrator of Sitka. He stated that small contractors in rural areas and smaller communities of the state who have ample equipment and the experience to handle a number of municipal jobs are falling short of other contractors from out of the community and even out of te state because of the difficulty in establishing a bond.

Senator Ferguson moved that the Committee adopt a CS for HB 766 including the recommendations by Chairman Orsini and pass it out with "INDIVIDUAL RECOMMENDATIONS".

CS FOR HOUSE BILL 133

Jack Chenoweth, Legislative Affairs Agency, went over the proposed committee substitute for CSHB 133 and explained section by section

changes in the bill and new language that had been put into it. As a result of committee discussion, a revised work draft of the proposed committee substitute was requested.

Chairman Orsini stated that CSHB 133 would be scheduled for Committee action Thursday.

The meeting was adjourned at 4:00.

SENATE COMMUNITY AND REGIONAL AFFAIRS
COMMITTEE MEETING

May 25, 1978

Present: Senators Orsini, Willis, Hackney and Sumner; Roger Allington, City and Borough of Juneau; Stuart H. Bowdoin, Bristol Bay Borough; Phil R. Holdsworth, S.E. Conference; Richard M. Burnham, Attorney, General's Office; Floyd Johnson, Division of Emergency Services, Jim Rolle, AML; Pat Conheady, Department of Natural Resources; Jack Chenoweth, LAA; Don Berry, Municipality of Anchorage; Annette Smith, H/C&RA; Royce Weller, Hugh Malone's Staff

Absent: Senator Ferguson

The meeting was called to order at 3:04. The bills before the Committee were HB 941 and CSHB 133.

HOUSE BILL 941

Richard Burnham, Assistant Attorney General representing the State in the litigation over the Highway complex in Anchorage, stated that that agreement may not have been entered into in good faith. He moved that there was an affidavit form filed in the AG's office giving the Municipality of Anchorage notice that it was doubtful that the Commissioner of the Department of Highways had the authority to dispose of the land on which the complex is located. He also stated that the Department of Administration appraised the land in 1973 at 3 1/2 million dollars. The next spring an appraiser, presumably hired by the Municipality and approved by the Commissioner, appraised the property at 1 million dollars. It was on the second appraisal that the lease purchase agreement was made. He stated that he did not feel that this was in the best interest of the state to lose 2 1/2 million dollars between two appraisals. Senator Orsini pointed out that he was assuming the first appraisal was correct and the second appraisal incorrect.

Floyd Johnson, Division of Emergency Services, Department of Military Affairs, stated that the division would need a supplemental appropriation for rent due to the Municipality of Anchorage if this bill were to pass. He stated that the supplemental would require $92,467 and asked that the bill be amended to require the Municipality and his agency to sit down in good faith and negotiate a new 3 year rental sublease agreement. He told the Committee that his agency can get 50/50 matching monies from the federal government for construction of emergency operation center, that it would take about 2 to 3 years to get this money committed, and any relocation of his office would be complicated by the need to move the division's complex communication system. He stated that it would take around $100,000 to make a move to another location, preferably to another downtown location, even if one were available.

Don Berry, Municipality of Anchorage, supplied the Committee with a letter from the Assistant Municipal Attorney.

Senator Willis moved to pass out HB 941 with "INDIVIDUAL RECOMMENDATIONS".

CS FOR HOUSE BILL 133

Roger Allington, City and Borough of Juneau, asked the Committee to take a second look at the 13,600 acreage allotment for Juneau and restore at least the amount of 19,584 acres which came out of the Senate Resources version. He stated that the city was in need of the land specifically in Juneau because of the need to relocate persons now living in hazardous downtown slide areas. Mr. Allington noted that an allotment of 24,000 acres for Juneau would be more appropriate for the Municipality's needs.

Stuart Bowdoin, Bristol Bay Borough, stated that his borough was in support of the bill. He stated that the Borough was in dire need of the land and would take about anything that becomes available.

Phil Holdsworth, Southeastern Conference, stressed the need for Southeastern communities such as Petersburg, Wrangell and Skagway to have access to trust lands which now hem them in and restrict any future growth.

Jim Rolle, Alaska Municipal League, stated that the League does not feel that access to trust lands should be based on population and urged that cities, as well as boroughs, also be eligible for trsut lands and deficiency payments.

Pat Conheady, Department of Natural Resources, opposed the increase of the Anchorage allotment to 44,893 and referred to a letter of May 19 from the Director of the Division of Lands, Mike Smith. According to Mr. Conheady, a correct allotment figure for Anchorage would be 37,665 acres. He discussed the section of payment for land deficiency and supported the need for cities to have access to trust lands, particularly in Southeastern.

Mr. Conheady expressed concern regarding the January 1, 1980 deadline for determining land deficiency payments, the State was not sure when the 6A selections would be made and available for municipal selection.

Senator Sumner moved that the amendments be passed and pass out SCS for CSHB 133 with "INDIVIDUAL RECOMMENDATIONS".

The meeting was adjourned at 4:10 p.m.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

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

May 8, 1978

Senator Joe Orsini
Pouch V
Juneau, AK 99811

Dear Joe:

In response to your request the following is a list by Municipality of the amount of vacant, unappropriated, unreserved state land that existed at the time each municipality became eligible. This date is the date of incorporation or January 1, 1964, which is the date of the original passage of the Mandatory Borough Act, whichever is later.

Municipality	Date	VUU	10% VUU
Bristol Bay Borough	1/1/64	0	0
City & Borough of Juneau	1/1/64	4,148.	415
City & Borough of Sitka	1/1/64	180.	20
Fairbanks North Star Borough	1/1/64	470,136.	47,015
Haines Borough	8/29/68	1,097.	110
Kenai Peninsula Borough	1/1/64	1,402,614.	140,260
Ketchikan Gateway Borough	1/1/64	4.	0
Kodiak Island Borough	1/1/64	218,828.	21,885
Matanuska-Susitna Borough	1/1/64	3,129,271.	312,930
Municipality of Anchorage	1/1/64	16,346.	16 35
North Slope Borough	7/1/72	6,007.	605

Hopefully this information will be useful to you.

Sincerely,

Mike

MICHAEL C. T. SMITH
Assistant Commissioner

10-J2LH

WHAT SENATE RESOURCES DID TO CSHB 133 (FINANCE) am

The following municipalities had their land allotments decreased:

Municipality of Anchorage	20,865 acres (from 90,863 acres)
City and Borough of Juneau	13,600 acres (from 19,584 acres)
City and Borough of Sitka	9,200 acres (from 11,593 acres)
Bristol Bay Borough	1,940 acres (from 2,898 acres)
Haines Borough	1,080 acres (from 3,985 acres)

The following municipality had its land allotment increased:

Kodiak Island Borough	56,500 acres (from 45,200 acres)

The land allotments of the remaining municipalities were left unchanged.

Senate Resources restored paragraphs (g) and (h) of AS 29.18.204, which were stripped from the House Finance Committee version of the bill on the House floor. These two paragraphs restored to the director of the Division of Lands the authority to "consider the state's responsibilities for developing and protecting values which are of greater than local concern" and requiring the director to provide written explanation for his approval or disapproval of a municipal selection

Sec. 29.18.207 PAYMENT IN LIEU OF LAND goes into effect July 1, 1982, whereas the rest of SCS CSHB 133 would take effect immediately. This three year delay was intended to give the State the time to clear up title of ownership to presently contested lands, allowing in principle the municipalities a greater land pool to select from.

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HB
134

Alaska State Legislature

House

JUNEAU ALASKA

MEMORANDUM

TO: Chairman, Judicial Committee

FROM: Rep. Charles Parr

RE: HB 134

DATE: February 2, 1977

This bill was introduced by me. The Fairbanks North Star Borough reported difficulty in enforcing ordinances, particularly zoning ordinances. The maximum fine of $500 in the present statute proved inadequate for violations. A statement from Borough Attorney, James Nordale this date is as follows:

> John Carlson, Borough Mayor and I discussed HB 134. We would be pleased to have the whole bill passed. We are especially interested in seeing the fine increased to $1000. This should enable us the opportunity to make people adhere to the ordinances. We are not as concerned about increasing the jail sentence from 30 days to 60 days. The city might (BE INTERESTED IN INCREASING THE NUMBER OF DAYS FROM 30 TO 60) We are in support of HB 134 as it is now written.

ab

House Judiciary Committee
February 2, 1977

The meeting was called to order at 3 p.m. by Chairman, Gardiner. Members present were Gardiner, Dankworth, Eliason, Specking and Brown. Members absent were Miles and Rudd.

HB 35 Relating to Construction Contractors HB 35

Mr. Duncan testified as to the intent of this bill for which he is a sponsor. Discussion, during which questions were asked of Mr. Duncan, followed.

Sharon Andrew, Director of Occupational Licensing from the Department of Commerce, and Richard Dunham from the Alaska Dump-truckers Association, testified in support of the bill.

Mr. Specking moved that HB 35 be moved out of committee. There was no objection, so this was done.

HB 134 Penalties for Violation of a Municipal Ordinance HB 134

Mr. Parr, who is sponsor for this bill, was not here to testify, but he had provided written testimony for the committee members.

As discussion on this bill began, it became apparent that the committee did not feel that they had the necessary information to come to a decision on this bill. Mr. Specking desired to obtain information as to what types of ordinances would carry a fine of $1,000 if they were violated, i.e. "Who's going to get fined $1,000 vs. $500 and for what? Mr. Dankworth felt that it was necessary for the committee to get an opinion as to how the various municipalities feel about this bill.

It was decided that any further consideration of this bill would wait until further input had been provided to the committee.

The meeting was adjoured at 3:45.

House Judiciary
February 10, 1977

The meeting was called to order at 3 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Rudd, Brown, Eliason and Specking. Mr. Dankworth was absent.

HB 134 Penalties for violation of a municipal ordinance HB 134

Marilyn Miller from the Municipal League was here to present a letter from Lee Sharp, Juneau City and Borough Attorney.

Several amendments were agreed upon for the bill. (Line 10: delete "knowing and willful"; Line 12: change imprisonment from "60" to "30" days.)

There was a motion to move the bill out of committee. There was no objection, so this was done.

HB 90 Estrays HB 90

Rep. Ose, who is sponsor for this bill, was here to explain the intent of the bill.

Dr. F.S. Honsinger who is the State Vetenarian with the Division of Agriculture for the Department of Natural Resources came to speak in support of the bill.

Rick Barrier testified that the Court System is basically in favor of the bill, but that it needed some "cleaning up".

The committee felt that the intent of this bill is good. However, they objected to the way the bill was written and felt that a mojor redrafting was necessary. Mr. Specking agreed to meet with Mr. Ose and a drafter to make this bill more workable.

The meeting was adjourned at 4 p.m.

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

DATE: February 10, 1977

FILE NO.

SUBJECT: Comments on House Bill 134

Don Berry, Executive Director
Alaska Municipal League
204 Franklin Street
Juneau, Alaska 99801

Dear Don:

You had previously asked that I provide you with comments on the implications of House Bill 134 or to present my comments to the committee. I'd intended to do the latter, however, it appears now that I have a conflicting engagement. Following are off the cuff comments on the bill.

The bill makes two changes in the present statutory language. First, it raises the maximum penalty from the current $500 and/or 30 days imprisonment to $1,000 and/or 60 days imprisonment. This change needs no comment. The second change is the new requirement that would have the effect of preventing a municipality from imposing a penalty for the violation of an ordinance unless the violation were both knowing and willful. Presently, it is up to the local legislative body in adopting an ordinance to determine the level of culpability required to constitute a violation of the ordinance. The proposed bill would withdraw this authority from municipalities.

Courts very often divide punishable offenses into two basic catagories. First are those which are malum in se, that is, wrong in themselves. The second category is labeled malum prohibitum and constitutes those offenses which are statutory in origin. This latter category includes such things as parking, zoning, sanitation, and tax code violations. In the former category are the crimes involving moral turpitude, crimes which have been recognized as common law crimes or the traditional crimes which are deemed infamous and which have always included guilty knowledge as an element of the offense. Larceny and assault and battery are examples. When a statute or ordinance is silent as to whether guilty knowledge required for a conviction under a statute which prohibits acts which are malum in se, the courts impose the common law requirement of guilty knowledge which is often cast in terms of "knowing and willful." Thus, the courts have already worked out a system which requires the presence of the "knowing and willful" element for those violations

which have traditionally required such guilty knowledge. The courts also recognize that there are many violations of statutes and ordinances which are regulatory in nature and for which the state must be able to prosecute on the mere fact that the acts constituting the violation have been committed without reference to whether the person committing the violation intended to violate the law. For example, it is necessary for the municipality to be able to prosecute people who park automobiles in such a manner as to block traffic. This is not a malum in se violation but rather is one which is statutory in origin. If a person parks a vehicle in such a manner as to block traffic but does so without the knowledge that it is a violation of the ordinance or if he does so not realizing that the vehicle will be blocking traffic, such a person could not be punished under the proposed bill as it could not be shown that there was a "knowing and willful" violation of the ordinance. While a substantial part of the prosecutorial effort of some municipalities may be in the traditionally criminal area in which knowing and willful violation is an essential condition of the offense, the greater portion of the ordinances adopted by a municipality are of the malum prohibitum type which have traditionally never required the level of guilty knowledge which is an element of the traditional or common law crime. One of the effects of this bill would be to make ignorance of the law an excuse. The bill would make the prosecution of the violation of most ordinances extremely difficult, if not impossible. The bill would not change the present court-made law as it relates to prosecutions for acts which are malum in se.

There are numerous state statutes which deal with malum prohibitum acts and which do not require a "knowing and willful" violation before such acts can be punished. I am not able to discern why the state should be able to enforce its sanitation regulations without having to prove a knowing and willful violation while a municipality must prove a knowing and willful violation of its sanitation code before it can be enforced.

As to the crimes which are malum in se, many communities have adopted the Model Penal Code language. The Model Penal Code defines four different levels of culpability which are acting purposely, knowingly, recklessly, or negligently. The Model Penal Code was promulgated to overcome many of the ambiguities and outmoded concepts of the common law. Thus, a community which has turned to the Model Penal Code for guidance may have to engage in a substantial revision of its

code inasmuch as its code is based on concepts and definitions of levels of culpability which do not include "willfully."

The "knowing and willful" language in the bill will not add anything to the law as it commonly exists in the malum in se arena. It will, however, impose such a burden on municipalities and the prosecution of malum prohibitum type ordinances as to practically eliminate their enforcement. It would seem that so long as the local elected legislative body is authorized to declare what acts shall not be permissible in its community, it should not be denied the authority to establish the level of culpability required. A state mandated heart full of malice should not be the touchstone of a violation of a municipal regulatory ordinance.

GLSmmb

Very Truly Yours,

Gerald L Sharp

City and Borough Attorney

CHARLIE PARR

ALASKA LEGISLATURE

S. R. Box 50599
Fairbanks, Alaska 99701
456-5029

Pouch V
Juneau, Alaska 99811
465-3797

MEMORANDUM

TO: Senator Orsini

FROM: Representative Charles Parr CP

RE: HB 134

DATE: January 30, 1978

I introduced this bill to help solve a problem reported by the Fairbanks North Star Borough Assembly, i.e., that the existing maximum penalty for violation of a borough ordinance is insufficient deterrent. The problem is especially acute in planning and zoning areas, as a violator can make more profit than he can lose in fines.

A statement by the Borough Attorney on February 2, 1977 follows:

> John Carlson, Borough Mayor, and I discussed HB 134. We would be pleased to have the whole bill passed. We are especially interested in seeing the fine increased to $1000. This should enable us the opportunity to make people adhere to the ordinances. We are not as concerned about increasing the jail sentence from 30 days to 60 days. The city might. We are in support of HB 134 as it is now written.

The Ketchikan Gareway Borough Assembly has also endorsed the bill. A copy of the resolution is enclosed.

sg

enclosure

F. CSHB 134

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

rec'd 1-30-78

Senator Joseph Orsini, Chairman
Community and Regional Affairs Committee
Alaska State Senate

Dear Senator Orsini:

We would like to take this opportunity to support CSHB 134.

It is our belief that this act would allow more flexibility to a municipality in determining its local law enforcement programs.

Sincerely,

Tim Rolle
Executive Director

Joe:

Rep. Parris A.A called & wanted to know the status on CSHB 134 (Increase the fine from $500 to $1000 for violation of a municipal ordinance).

I told him we had this bill up for consideration once already but Rep Parr did not show up to testify on the bill, so we tabled it.

He asked if we were going to take it up again & I said I would check with you.

Paul

LM:2/14/77

Voting "yes": Hanger
Watt
Salazar
Davidson
Laurance
Elkins
Kouni
McBride
Johnson
Voting "no": Simpson
Absent: Zastrow

6 4/7 votes required for passage

Effective date: 2/22/77

K E T C H I K A N G A T E W A Y B O R O U G H

RESOLUTION NO. 248

A RESOLUTION OF THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, EXPRESSING TO THE LEGISLATURE OF THE STATE OF ALASKA, THE ASSEMBLY'S SUPPORT OF HOUSE BILL NO. 134, RELATING TO PENALTIES FOR VIOLATION OF A MUNICIPAL ORDINANCE; DIRECTING THE CLERK TO SEND COPIES OF THIS RESOLUTION TO THE MEMBERS OF THE ALASKA LEGISLATURE; AND ESTABLISHING AN EFFECTIVE DATE.

THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, RESOLVES, as follows:

Section 1. The Alaska Legislature is requested to adopt House Bill 134, "An Act relating to penalties for violation of a municipal ordinance." The Assembly fully supports increasing penalties for knowing and willful violation of ordinances.

Section 2. The Clerk is directed to send copies of this resolution to the members of the Alaska Legislature.

Section 3. This resolution is effective immediately.

ADOPTED this 22nd day of February, 1977.

BOROUGH MAYOR

ATTEST:

BOROUGH CLERK

Approved as to form:

Borough Attorney

SB 63, HB 110 & CSHB 134

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTTEE

March 22, 1977

Present: Senators Willis, Hackney, Ferguson and Sumner

Absent: Chairman Orsini

At 3:05 the hearing was begun by Vice-Chairman Willis. He asked for comments on SB 63, and Senator Ferguson moved that the bill be passed on "individual recommendation". The motion was approved and was passed out.

Vice-Chairman Willis asked for comments on HB 110, and Senator Ferguson moved that the bill be passed. There was no objection and the bill was passed out with the unanimous "do pass" vote.

CSHB 134

Committee Substitute for House Bill 134 was introduced and the Committee felt that Representative Parr, sponsor of the bill should be present to testify. Senator Sumner suggested that the bill be tabled until Rep. Parr is present. Senator Ferguson moved that the bill be tabled, and there were no objections.

Senator Sumner asked if the Committee had any objection to acting on SCR 13 and SCR 14 which was tabled after the hearing of March 15, 1977. Senator Willis stated that he felt more information was needed before action should be taken, and that it was agreed among Committee members to wait until March 29th when requested information had been received. Vice-Chairman Willis stated that he desired a better understanding of the issue.

Senator Sumner concurred with the Vice-Chairman.

The meeting was adjourned at 3:25 p.m.

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

January 31, 1978

Present: Chairman Orsini, Senators Willis, Hackney and Sumner; Jim Christopher, Alaska Wreckers Assoc. and Alaska Towers Conference; Gerald Sharp, City Borough of Juneau; Bruce Aronson, Community and Regional Affairs; Steve A. Mizera, Republican Caucus.

Absent: Senator Ferguson

The meeting was called to order by Chairman Orsini at 3:00 P.M.

CSHB 187:

Chairman Orsini noted that CSHB 187 had been before the committee last year.

James Christopher, Chairman of the Alaska Towers Conference, President of the Alaska Wreckers Association, and co-owner of Alaska Towing and Wrecking in Anchorage, testified in support of CSHB 187. Mr. Christopher pointed out that currently wrecking operators had asked the State Attorney General's Office for an opinion as to which law should be complied with and were told that it would be preferable to have the statutes changed along the lines of CSHB 187. Mr. Christopher also noted that the $1.50 daily storage fee was sent in the late 1950's and was unrealistic in view of cost increases since that time. He said that current storage charges for vehicles in Seattle were $5.00, in Portland $4.50, and in Spokane $4.00. Although no court cases have resulted so far from this situation, Mr. Christopher said that wrecking operators in Alaska were concerned that without the enactment of CSHB 187 they could be held in violation of either the statutory storage fee or the tariff set by the Alaka Transportation Commission.

Mr. Christopher asked whether language could be added to the bill that would include the contents as well as the vehicle itself as subject to liens. He stated that this was another area of legal ambiguity. Senator Hackney suggested that appropriate language to cover this situation could be added. To prevent delay, Chairman Orsini recommended that the bill be considered as written and that separate legislation be drawn up if necessary to deal with the other issues raised by Mr. Christopher. Senator Sumner commented that the hearings so far indicated to him that CSHB 187 was more properly a bill for the Commerce Committee to take up than Community and Regional Affairs. The other Committee members agreed.

Lee Sharp, representing the City and Borough of Juneau, spoke in support of CSHB 187 as drafted. He said that discussion so far had tended to confuse the statutory issue of the amount

a wrecking operator could recover on his lien with the regulatory question of the amount the public could be charged for the towing and storage of motor vehicles. CSHB 187 rightfully addressed the statutory issue and not the regulatory. He said the City and Borough of Juneau was concerned that wrecking operators were reluctant to tow and store abandoned vehicles, as requested by the municipality, because they could not statutorily recover more than $1.50 a day in storage charges from their liens. Since this resulted in a loss of money to the wreckers, the municipality was encountering difficulties in having wrecked and abandoned vehicles removed from public view.

This completed public testimony. Chairman Orsini called for a vote. CSHB 187 received 1 Do Pass and 3 No Recommendations.

CSHB 134

Chairman Orsini asked for a motion to bring CSHB 134, which had been tabled by the Committee last year, back before the Committee members. In the absence of the bill's sponsor, Representative Charles Parr, to explain the provisions and purpose of the bill, no motion was forthcoming. CSHB 134 remained tabled.

SENATE COMMUNITY & REGIONAL AFFAIRS
COMMITTEE MEETING

June 9, 1978

Present: Senators Orsini, Ferguson, Sumner and Willis

Absent: Senator Hackney

The Senate Community and Regional Affairs Committee met directly after session this day and passed out CSHB 134 with "INDIVIDUAL RECOMMENDATIONS" and CSHCR 125 am (C&RA) with a 'Letter of Intent' that passed out with "INDIVIDUAL RECOMMENDATIONS".

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Senator Joe Orsini
Chairman

CS House Bill No. 134 — Judiciary Committee-Hohman
Prime Sponsor

_____ Resolution No. ___ _

This Bill is currently in the Senate Community and Regional Affairs Committee for consideration. Your response, as prime sponsor, to the following questions will serve to hasten Committee action on this Bill.

1. What is the need for your proposed legislation; what is the goal you are trying to accomplish?

2. Are there any other viable ways of accomplishing this same goal?

3. Persons or groups you know of who are supporting the legislation.

4. Persons or groups you know of who are opposing the legislation.

5. Can you foresee any new problems that might be caused as a result of enactment of your bill?

6. What is the earliest time you would like the Senate Community and Regional Affairs Committee to consider your bill?

HB
147

CSHB 147, CSHB 188 & CSHB 84

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMUNITY

April 28, 1977

Present: Chairman Orsini, Senators Hackney, Sumner and Willis; Bruce Erinson, Dept. of C&RA; Marge Gorsuch, League of Women Voters; Patty Ann Polley, Division of Elections; and Ed Hildebrand, Elections Official.

Absent: Senator Ferguson

Chairman Orsini began the hearing with an explanation of the proposed CS for HB 147. He stated that the difference between the Committee substitute and the original bill is the clarification of the discrepancy with respect to villages having disapproving authority regarding the construction of a public project by the state as manifested in the bill. The villages do not have the authority to disapprove a public project because they are unincorporated communities. Otherwise, Senator Orsini stated, Section 1 of the bill is the same.

With regard to Sec. 2, Senator Orsini pointed out that this section pertains to the hiring of Alaska residents for construction and pre-construction projects, including engineering studies, surveys and consulting.

To emphasize the problem with the practice of hiring "outside" professionals, Senator Orsini made referen e to a memo dated Sept. 9, 1975, from the Governor to the Department Commissioners stressing his concern over the hiring of outside agencies when there are agencies within the state who can do the job.

Chairman Orsini added that he wrote to all the Commissioners a year ago asking them what their position was regarding Alaska hire, and the response was not very supportive. The Department of C&RA did provide the committee with a list of outside agencies who had entered into a contract with the Department of C&RA, the contracts consisting primarily of impact studies on the state.

Senator Orsini stated that it was his contention that the 1972 amendments to AS 36.10.010 were intended to be broader than has been interpreted by the Attorney General's Office. The intent of Sec. 2 of the SCS CSHB 147 was to insure that

contracts for services that may eventually lead to public construction, such as planning studies, impact assessments, and feasibility studies, would also be covered by the resident preference concept.

Bruce Erinson, Dept. of C&RA, provided the following for the committee to consider. He asked who would provide review of a proposed public project in a borough or city that did not have a planning commission. Chairman Orsini understood this to mean that the municipality should have some sort of review and approval if they don't have a planning commission that perhaps the Council or Assembly could act as a planning commission. Mr. Erinson suggested deleting the words "the planning commission of" on page 1, line 15. The members agreed on this change to the proposed SCS for CCHB 147. Senator Sumner moved that SCS CSHB 147 as amended pass with a "do pass". There were no objections.

Chairman Orsini then explained that HB 84 is not in the Senate CRA Committee, but in the Finance Committee. His intention is to divide the "housekeeping" changes of the election code from the controversial issue of registering on election day.

Senator Orsini asked Ed Hildebrand, Elections Official, Juneau, to testify on CSHB 188 and CSHB 84. He stated that he objected to registering and voting on the same day due to the additional cost for extra people working at the polls and because of the added confusion that would be inevitable at the polls. Senator Sumner asked how residency would be determined at the polls if registration did occur on election day. Mr. Hildebrand stated that the only way would be a challenge or question ballot, which would later be investigated before the final canvass was conducted. Senator Orsini asked how registration takes place at this time, and Mr. Hildebrand explained that when a person signs the registration certificate they are attesting to the fact that they are residents of the state. He added that the form requires the residence and mailing address of the voter, then the registration goes back to the state and goes through the registrations listing which then goes down for each precinct and is distributed out to the precinct workers. That is one of the reasons why the poll workers are chosen from the precinct so they can tell whether a person resides in that place or not.

Senator Orsini then asked for comments. He asked Mr. Hildebrand what he thought of the polls being open for another hour. He added that he had called the municipal clerk in Anchorage, and she had stated that the Municipal Association

is opposed because no matter how long the polls are open there are always people who wait until the last minute. Senator Sumner stated that whoever wants to vote can get there by 8:00.

Mr. Hildebrand also commented in regards to AS 15.13.060(c). He suggested that each candidate for municipal office file the name and address of the campaign treasurer with the commission not later than the date of filing the declaration of candidacy or his nominating petition and shall file a duplicate of the commission's filing with the municipal clerk not later than the last day on which he would file the declaration of candidacy and nominating petition. He stated that he would like to see this filing in the hands of the municipal clerk in addition to the commission.

Marge Gorsuch from the League of Women Voters then testified in regards to Section 10. She stated that the issue is not whether the name of the campaign treasurer is filed but rather if the candidate is filing his campaign financing report. The League believes there should be some mechanism for making the public aware of the non-compliance of candidates before they vote. She offered wording to this effect, but Senator Orsini stated that at this time, the Committee would not address this issue.

Ms. Gorsuch stated that she had no objection to HB 84. She felt that there should be a standard time that the polls are open throughout the state so the voter wouldn't be confused. She added that an additional hour probably wouldn't increase voter turnout, and the League of Women Voters doesn't take a strong position on this issue, but they did not want to leave the decision up to the discretion of the municipality.

The League supports the election day registration. According to Ms. Gorsuch, the voter registration system will encourage maximum voter participation. Ms. Gorsuch referred to other states who have election day registration, and used the following statistics to support the League's position: Minnesota, 68%-75% voter increase: Wisconsin, 62%-65%; and Maine, 61%-65% voter increase. She added that many people don't get around to registering otherwise.

She stated that the major critisizm against this concept is fraud. There has been no fraud in the states of Minnesota, Wisconsin, Maine or North Dakota documented. She added that there was some confusion because of heavy voter turn-out, but no fraud reported. She stated that if there was concern over fraud, then those who registered and voted on election day, could have their ballots designated as question ballots and the question ballot would be put in a separate category

to be checked and counted later. Some concern exists that this would hold up the returns of the election, but the League feels it is more important to give the people a chance to vote. She also stated that when a person registers to vote, they swear under oath that they live at their address, and could perhaps also sign an additional statement that they are voting only once and are subject to penalty if violating that statement.

She stated that in answer to Mr. Hildebrand's concerns regarding the extra cost, that a bill has been introduced, providing a subsidy which would initiate the system. The League does not feel that the extra expense is a valid objection, but that the issue is whether or not people have a right to vote.

In regards to the confusion at the polls expressed by Mr. Hildebrand, Ms. Gorsuch pointed out that at the present time, registration is going on during an election although the voter registration is not effective until 30 days hence.

Her final statement was in regards to the fraud which might occur, and she stated that they would question the validity of this argument, as opposed to the democratic right to vote.

Senator Orsini then asked Ms. Gorsuch if she attributed the percentage of voter increase in those other states totally to registration at the polls and for no other reason, and Ms. Gorsuch said she would find out for sure if there were any other possibilities for the voter increase. She added that she feels this is a very effective method and that she has been very impressed with the number of people who register at the polls even though at the present time, they cannot vote.

Senator Hackney then stated that he is not opposed to people voting but that it is so easy for people to register now, that all they have to do is exert themselves a little ahead of time, and that's not an imposition on the voter.

Regarding HB 188 and HB 84, Senator Orsini pointed out that the intent was to incorporate those proposed amendments by the Lt. Governor's Office into CSHB 188, take out the issue of the registration on election day and put that into CSHB 84.

Patty Ann Polley, Director of the Division of Elections stated that Sec. 6 of CSHB 188 could be changed by making a "sliding scale" in regards to the number of registration

officials per number of voters. She suggested perhaps three officials per 250-500 voters. She concurred with Sections 7, 8, 9 and 10 and stated that sec. 11 could perhaps state that both the voter and official could drop the ballot into the ballot box.

In regards to CSHB 84, she stated that they are opposed to registration on election day. She stated that people will put off registering until then and then confusion will certainly result at the polls. People have enough trouble now finding out which precinct to vote in, and often end up at the wrong places. They would have no way to cancel a registration from another state, so a voter could have an absentee ballot from a previous state, walk into the polls with an Alaskan drivers license that they've had for 30 days and vote. She went on to give instances of fraud and dual registration, and the time involved in investigating registration. She stated that if people register on election day, they would probably never be checked out.

Senator Orsini asked how often fraud occurs and she answered that about 100 occur per year.

(3)

DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS

Out of State Contracts
FY 75 thru FY 77

FY	CONTRACTOR	DOLLAR AMOUNT	DESCRIPTION
76	Robert R. Nathan, Inc. Washington, D.C.	$ 8,846	Report on effect of Federal poverty guidelines as applied to programs in Alaska
76	The Jacobs Company Chicago	325,000	Juneau Indemnification - base year a[illegible]ss
76	The Jacobs Company Chicago	20,000	Coordination of Juneau Indemnification Assessment efforts
76	Dornbusch and Company California	35,000	Develop management guide for OCS related industrial Development study
77	The Jacobs Company Chicago	20,500	Update and reprint appraiser's Cost Manual for Alaska assessors
77	Rudolph and Peck Seattle	10,000	Design and graphics for Gulf of Alaska OCS booklet
77	Woodward, Clyde & Wright San Francisco	50,000	Study Marine facility development in Kodiak
77	Cramer, Chin & Mayo Seattle	60,000	Study OCS impact - Kodiak

of ALASKA

OFFICE OF THE GOVERNOR

TO: All Commissioners

DATE : September 9, 1975

FROM: Jay S. Hammond
Governor

SUBJECT: State Contracts

I have been receiving disturbing communications from the business community indicating a distress with what some believe to be a flagrant disregard for utilization of talent to be found within Alaska. There, of course, have been instances of contracts going to "outsiders". The current headliner is the Tourism Advertising Contract.

While there may well be justification in most if not all such instances for utilizing the services of outside agencies, I want this Administration to bend every effort to improve upon the utilization of Alaskan agencies for such contractual activities.

Specifically, this Administration is being criticized for failure of State agencies to respond to letters of inquiry regarding such contracts without even calling for bids or proposals from Alaskans.

While aware that little can be done regarding contracts already tendered, a number of members of the business community want to know how to approach the problem and "make the bureaucratics at least consider the spectrum of services that are located around the State." I am advised that some members of the business community have considered forming an association in order to combat what they feel to be a severe deficiency on the part of the State Administration.

Henceforth, I would ask that all agencies increase their diligence in responding to inquiries from within the State and bend every effort possible to utilize Alaskan talent when such is available.

JSH/mlp

MEMORANDUM State of Alaska

TO: Dickerson Regan
Assistant Attorney General
AGO-Juneau

DATE: March 24, 1977

FILE NO:

TELEPHONE NO:

FROM: Hal P. Gazaway HPG
Assistant Attorney General
AGO-Anchorage

SUBJECT: CSHB No. 147
Coordination of Public
Projects With
Municipalities

The Division of Aviation has informally expressed some concern as to the applicability of CSHB No. 147. The concern expressed has been whether or not proposed AS 35.30.020 would require formal subdivision plats for the Division of Aviation lands included in state airports.

In an attempt to resolve that question I have reviewed the bill and have certain questions of my own. They are as follows:

1. The definition "public project" appears to be out of order. That definition goes from the specific to the general to the specific. Furthermore, that definition does not indicate whether or not airports are to be included in the definition of public projects. Generally they would be considered public projects.

2. This is an amendment of the title dealing with public works. But the majority of the provisions involve coordination by the Department of Highways. I would suggest a section governing coordination by the Department of Highways and a second section dealing with coordination by the Department of Public Works. Although this would be duplication of effort, it would clarify what appears to in its present form to be an incomplete amendment of the statutes. However, with the impending consolidation of the two agencies this problem might soon be mute.

3. As far as the Division of Aviation is concerned to the extent projects are constructed under the aid to developing airports program administered by the Federal Aviation Administration coordination with the municipality is presently required. See 49 U.S.C.A. 1716(c)(1), (3); (d)(1); (f)(2). The proposed bill, however, would require such coordination in those instances where the airport is not one covered by the ADAP program. However, those non ADAP projects are in

communities that do not have planning commissions and in many instances are not municipalities as such but are no more than settlements or unincorporated villages. Therefore, there would be a considerable question in those instances with whom the Division of Aviation would be required to coordinate.

4. In its present form the bill is so vague as to be meaningless as to what constitutes a public project. In the instance of airports, would a pulbic project be where (a) new airport is designed and constructed, (b) construction of a taxiway, (c) the addition of an apron, (d) the addition of a runway extension, and (e) the resurfacing of a runway. In its present form the bill does not provide guidelines as to when a project is a public project requiring such coordination. In its present form the bill would require coordination with the municipality for any project. The question is should coordination be required for example when a runway extension project or resurfacing project of the runway at Emmonuk is contemplated. The necessity of the supplemental project would far exceed any technical knowledge or expertise on the part of any municipal entity that might be in existence in that community. The requirement might well be imposed due to factors totally unknown to such community. Yet as I read the proposed bill such coordination would be mandated and possibly subject to veto by the municipality.

In practice some aspects of the statute could very well be unenforceable due to federal preemption of aviation. Were they to be applicable to airports the proposed AS 35.30.010(a) and AS 35.30.020 could be unenforceable due to federal pre-emption. The standards for airport construction are set forth in detail in 14 C.F.R. To the extent the review of a municipal planning commission or zoning ordinance conflicts with these requirements the federal regulation would probably govern. I base my conclusion on the following line of cases:

1. Federal preemption of airspace Alleghany Airlines, Inc. v. Village of Cedarhurst, 132 F.Supp. 871 (1955), 238 F.2d 812 (1956).

2. Invalidated maximum altitude ordinance American Airlines, Inc. v. City of Auborn, 297 F.Supp. 207, aff'd. 407 F.2d 1306 (969) cert. denied 396 U.S. 845 (1969).

3. Invalidated noise abatement ordiance American Airlines, Inc. v. Town of Hempstead, 272 F.Supp. 226, aff'd. 398 F.2d 369, cert. denied 393 U.S. 1017. Burbank v. Lockhead, 411 U.S. 624 (1973).

4. Regulation of navigable airspace U.S. v. New Haven, 367 F.Supp. 1338 (1973) aff'd 469 F.2d 452 (1974).

However, the issue is not that clear inasmuch as some aspects of aviation have not been preempted:

1. Entire field of air commerce not preempted Braniff Airways v. Nebraska, 347 U.S. 590; Colorado v. Continental Airlines, 372 U.S. 714.

2. Airport regulation Aircraft Owners Asso. v. New York, 305 F.Supp. 93 (1969).

3. Airport construction Windsor v. Ronan, 329 F.Supp. 1286, 1290-91 aff'd. 481 F.2d 450; Boston v. Volpe, 464 F.2d 254, 259.

4. Authority of municipality to enact ordinace banning taxing-off and landing of aircraft reorganized and not preempted by federal and state control of airspace. Garden State Farms, Inc. v. Boublis, 136 N.J. Super. 1, 343 A.2d 832 (1975).

This is not meant as an objection to the desirability of encouraging public agencies, in particular, the Department of Highways and Division of Aviation, from holding public hearings to gain input as to their projects effect upon any given community. But, merely to point out in the present form the bill does not adequately address certain problems raised by imposing such requirements upon an agency which constructs projects in communities so small as to not even have post offices. An agency whose projects are subject to detailed federal regulation. Furthermore, so many of the airport projects requiring substantial expenditures of public funds are ones which have little if any impact upon the municipality or the inhabitants of that community off of the airport. If such a bill is to be passed by the legislature, I would suggest that these questions and issues be clarified and guidelines established.

cc: Paul Wild, Chief
Lands and Leasing
Division of Aviation

Wendell P. Miller
Technical Service Coordinator
Engineering Section
Division of Aviation

Municipality of Anchorage

MEMORANDUM

DATE: February 7, 1977

TO: Ted Berns, Legal — 274-2525

FROM: Tom Nelson, Planning

SUBJECT: House Bill No. 147

This is just a brief outline of our concern over actions taken by the Alaska State Highway Department that do not comply with Municipal land use regulations such as the Zoning Ordinance and Subdivision Regulations which everyone else must and do comply with. Specific cases of Highway Department actions that have created problems and conflicts will be presented at a later date when more time is available to gather the information together.

The primary cause of most land use problems created by the Highway Department is the creation of non-conforming lots following land acquisition for additional right-of-way. In several instances the Highway Department acquired a portion of a lot or tract and left the owner with a relatively useless parcel. In doing so, resulting land use patterns are ignored. Thus, access problems develop; either normal access is shut off on the front of the lot and thence, alleys become thoroughfares, or every little non-conforming lot remaining has its own access onto the arterial being up-graded. The end result is additional traffic circulation and safety problems.

In several instances the Highway Department has split lots, but filed no plat, thus leaving no record after land was taken. Land is subdivided without filing a plat. The Highway Department may know better, but as long as they can ignore local land use regulations they'll try to get by with it.

These types of actions present problems to land owners and developers. Tax inequities result when owners are taxed for useless land, and Municipal government loses tax revenue when relief is given to the owner because of the non-conformity--all or most of which could have been prevented through adherence to local regulations. In addition, developers are severely limited by problems with access and setbacks for structures.

Another problem that has arisen in regard to highway projects is the Highway Department's source of gravel materials. They have had a practice to buy gravel from private landholders. The private landholder in that case is responsible for getting a Special Exception to extract gravel. However, the Highway Department may not always inform the landholder of that when entering an agreement for the gravel. If the Highway Department decides to extract gravel itself, it can presently do so, without any regulations on such operations. This may be a possibility in the Eagle River/Chugiak area where the Highway Department plans to utilize gravel resources for the construction of Minnesota Drive Extension. In such an instance there is no way the neighboring residents could be protected from noise, dust, traffic, or hazards from such activity.

The purpose of having Special Exceptions, platting procedures, along with all the other land use regulations is to "protect the health, safety and welfare of the public." This responsibility is entailed to the Anchorage Municipality, yet little protection can be offered from actions taken by the Highway Department.

These problems also create unnecessary and costly administration problems with requests for zone changes and variances, not to mention the litigation that has been leveled against the Municipality.

These problems will continue until the Highway Department is forced to abide by the same rules as everyone else. It is this department's firm belief that the Highway Department does not deserve to have any privilege status in regard to local land use regulations. As with other State agencies, if there is a clearly demonstrated over-riding State interest, a waiver from the local compliance requirements may be granted by the governor.

Dave Doris, a member of the Platting Board, is quite familiar with the practices of the Highway Department here in Alaska and similar problems in other states. I would suggest having him testify on this Bill. He would strongly support our stand and has indicated a willingness to help.

PUBLIC WORKS/HIGHWAY PROJECTS--PLANNING

Current Law

AS 35.10.020, as amended by the Ninth Legislature, requires that the construction of a "public works" be commenced only after consultation with municipal planning and zoning authorities and compliance with local planning and zoning ordinances. However, this statute is ambiguous in terms of its affect on highway construction projects and the Department of Highways. The construction or modification of a state highway often poses serious problems for municipal planning programs and should therefore be commenced only after consultation with local planning authorities. Of course, if an overriding state interest in a highway project is demonstrated, a state agency should possess the ability to override local planning and zoning ordinances. This, however, does not detract from the need to incorporate local planning and zoning review into the design and construction of state highway projects.

Proposed Bill

The proposed legislation would clarify the scope of AS 35.10.020 to require consultation with municipal planning authorities and compliance with local planning and zoning ordinances prior to the construction of "any building,

structure, public works, or highway project and prior to commencement of extraction activities in a municipality". In addition, the bill would maintain the state's present authority to override local planning and zoning ordinances to serve overriding state interests in construction projects.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU 99811

April 14, 1977

Honorable Joseph Orsini
Chairman
Senate Community &
Regional Affairs

Re: CSHB No. 147 am - Coordination of Public Projects with Municipalities

Dear Chairman Orsini:

Enclosed is a memorandum sent to us by Hal Gazaway, the Assistant Attorney General who handles the legal work for the Division of Aviation, Department of Public Works.

We have compared CSHB 147 and CSHB 147 am and see that Mr. Gazaway's comments apply as well to the amended version of the bill, except the amended bill clarifies what local body need be contacted in rural locations.

Please note Mr. Gazaway's comment that the bill may be unconstitutional in part as it applies to aviation facilities.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Dickerson Regan
Assistant Attorney General

DR:jeh

cc: Bud Saylors
Dept. of Public Works

TO: Joe Orsini DATE: April 13, 1977

FROM: Paul Conger RE: CSHB 147 am

Guess who I saw again, and wants us to move on a bill in our Committee, Ted Berns. Ted is quite interested in CSHB 147 am, basically because it would eliminate alot of potential lawsuits. He stated that this bill would provide that before the State could come in and start condemning alot of property for the purpose of constructing a highway, ~~that~~ they would have to check with the local planning authority to determine if this construction would cause any hardship on the municipality.

Ted relayed the following example which has prompted this bill. Approximately eight years ago when the Spenard Highway was widened in the Anchorage area, the state was condeming property right and left to provide for the expanded highway. The state condemned a substantial amount of this one property owner's land and paid him for this land. However, this individual retained a strip of property that is currently situated along the highway. The State did pay him a "remainder compensation" because this "strip" of property would be worth less because of the highway running by it.

Now, apparently, this guy wants to develop this strip adjoining the highway for commercial purposes. He applied to the city and the city rejected his request because this area in question is zoned as a residential area. Now the individual is suing the city to a tune of 1/2 million, because the city is depriving him of utilizing this land for commercial purposes.

Ted's point is that if the state would have checked with the city before they initiated buying the land, then they would have been informed that this abutting area was "residential" and they could have just gone ahead and purchased this additional strip of land from the property owner and they, the city, could have certified that this "strip" could not be used for commercial purposes and would have avoided the litigation that has arisen.

PC/js