

ALASKA STATE COLLEGE

1918 SB 710 - SB 731

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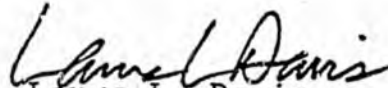
Hon. Hugh Malone  
Alaska House of Representatives

February 8, 1982  
Page #7

appropriate. We cannot advise you on the likelihood of obtaining such a repeal. However, we expect that Congress would be more favorably disposed toward the state if our actions demonstrated a commitment to carrying out our obligations under the Alaska Mental Health Enabling Act.

Very truly yours,

WILSON L. CONDON  
ATTORNEY GENERAL

By:   
Laura L. Davis  
Assistant Attorney General

LLD/pjg

cc: Hon. Charles Parr  
Alaska State Senate

Carole Burger  
Office of the Governor

MAR 29 1982

CHARLIE PARR  
ALASKA LEGISLATURE

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MEMORANDUM

TO: Senator Fahrenkamp - Chairman - Senate  
Resources

FROM: Charles H. Parr *CP*

SUBJECT: SB 710 and SB 711

These bills, presently in your committee, attempt to rectify what I consider the state's failure to live up to its trust responsibility regarding mental health lands. Unless some action is taken this session the Alaska Mental Health Association plans to sue the state.

I would appreciate it if a hearing could be held on SB 710 and SB 711 soon.

CHP:sr

*Pass  
Schedule*  
*[Signature]*

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y. STATE CAP T.  
JUNEAU, ALASKA 998  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 12, 1982

SUBJECT: Mental health trust as "money trust"  
(SB 710)

TO: Senator Charles H. Parr

FROM: Richard A. Bradley **B**  
Legislative Counsel

Nancy Dietrick has asked that I prepare an analysis of the legislative history of the mental health trust laws, particularly with reference to the transition from a "land trust" to a "money trust" in 1978.

The quick answer to your question is that the "redesignation" provisions of Chapters 181 and 182, SLA 1978 constitute the sections that make the transition from the land trust to the money trust. See Sec. 3 of Chapter 181 and Sec. 1 of Chapter 182. To put these provisions in some context, it is useful to review the two bills and their contents.

The provisions of AS 37.14 are derived from these two bills. See Sec. 4 of Chapter 181, SLA 1978 and Sec. 4 of Chapter 182, SLA 1978. The Revisor's Note following the chapter 37.14 heading (page 47 of the AS 37 pamphlet) notes that the two chapters both contained provisions adopting AS 37.14. Because the revisor says, the provisions in Chapter 182 are subsequent in time and contains a "more comprehensive treatment of trust funds," (though see the discussion below) the provisions of the latter formulation of AS 37.14 were treated as superseding those contained in Chapter 181.

The provisions of Chapter 182 were adopted as SB 159 [FCCS CSSB 159]. This bill started out having nothing to do particularly with the various trust funds' management that eventually appeared in it; it was rather a legislative solution to the rather heated problems that arose in the

early years of the Hammond administration from that administration's review of the policies of the division of lands. It involved reappraisal of the Teaster's Mall lease in Anchorage and a number of other leases that the administration believed were not properly delivering to the state a proper return. Reappraisals raised land valuations and rentals in some cases 1,000 percent in recent years.

I have reviewed the work order request file on FCCS CSSB 159 and there is no indication of the source of the trust fund management sections. In fact, the provisions of HB 720 (FCCS SCS CSH 720) which became Chapter 181 show a more complex evolution of these provisions.

The closest thing that appears in the SB 159 file is a copy of a letter signed by Ted Smith as co-chairman of the "Ad Hoc Committee" on land policies and procedures, dated February 22, 1977. It is addressed to Governor Hammond as a report on administration of the state's "land patrimony".

Recommendation No. 11 notes that:

The committee believes that state trust lands (school, mental health, and university) are now and have been managed at a low intensity. These lands may be returning only a fraction of their potential value that could be realized by a small full time management staff. The Division manages these lands at no charge to the various trust funds and receives no reimbursement for its services. Therefore it has traditionally placed low priority on the management of these lands. This committee recommends that the State Legislature authorize each trust board the authority to freely contract with any agency or private firm for the management of its lands for revenue production in accordance with the state's land act.

At the time of this report [before the adoption of Chapters 181 and 182, SLA 1978], the lands held in trust were managed under general laws for the management of public lands but under competitive bidding procedures. Under FCCS CSSB 159, mental health lands (as well as the other trust lands) may be leased either by competitive bidding or by noncompetitive disposal methods (direct negotiation, lottery, etc.) if the commissioner determines that the method selected is in the best interests of the state.

This result occurs because the provisions of both Chapters 1 and 182 provide for the "redesignation" of the mental health lands as general grant lands. See Sec. 3 of Chapter 181:

\* Sec. 3. REDESIGNATION AND DISPOSAL OF MENTAL HEALTH LAND. (a) Land granted to the state under the Mental Health Enabling Act of 1956, 70 Stat. 709, and patented to or approved for patent to the state on July 1, 1978 and land designated as mental health land which was received by the state in exchange for land granted under the federal land grant is redesignated as general grant land and shall be managed and disposed of by the Department of Natural Resources under applicable provisions of law.

(The provisions of (b) do not concern us.)

Sec. 1 of Chapter 182 is essentially identical.

The intent of these two sections states the core of your concern; those sections changed the character of mental health land into general grant land; they sought simultaneously to establish a fund to replace the segregated lands granted for the trust purposes.

It seems that the goal was reasonable.

Congress permitted the lands granted for mental health purposes to be sold or held and managed. It seems therefore that there was no need to maintain the lands in a segregated trust status. The concept of one and one-half percent dedication is also reasonable; 2,000,000 acres of the 104 million acres granted to the state from the various sources are mental health trust lands; one and one-half percent of the lands is a fair if not precise allocation which should do justice to the purposes of the trust established by Congress.

There is [at least] one difference of substance between the two formulations of the mental health funds established in each bill. While I do not disagree with the determination made by the revisors to use the provisions of the later adopted bill in determining which chapter 37.14 became effective, I note that the provisions of AS 37.14 in Chapter 181 required the commissioner to make the contributions to the fund without the qualification found in

Senator Charles H. Parr  
Page 4  
April 12, 1982

Chapter 182: "subject to legislative appropriation". See in this context Sec. 37.14.070 in Chapter 181 and Sec. 37.14.050 in Chapter 182.

Therefore, if the provisions of Chapter 181 had been utilized, at least a large part of the present problem addressed in SB 710 would not have occurred.

If I may assist further, please advise.

RAB:ljb



# Alaska State Legislature

## SENATE Resources Committee

### Official Business

BETTYE FAHRENKAMP, Chairman  
VIC FISCHER, Vice-Chairman  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI

POUCH V  
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JUNEAU, ALASKA 99811  
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TO: Senate Resources Committee  
FROM: Senate Resources Committee Staff  
RE: Monday Committee Hearing, 4/12/82  
DATE: April 8, 1982

-----  
Please find attached background information for Monday's hearing on the following bills:

SB 710

Relating to state trust funds and their administration.

SB 806

Relating to the issuance of citations for fish and game violations.

The meeting will be held from 1:00 to 2:00 p.m. in the Peltz Room.

SELECT - QUERY

00002 1 SECTION EQ 37.14.010,37.14.020,37.14.030,37.14.040,37.14.050,37.14.060,37.14.120,37.14.130,37.14.150

AS37.14.010 DOCUMENT= 1 OF 9

HEADINGS TITLE 37.  
PUBLIC FINANCE.  
CHAPTER 14.  
TRUST FUNDS.  
ARTICLE 1.  
MENTAL HEALTH FUND.

CITATION SEC. 37.14.010.

CATCH LINE

MENTAL HEALTH FUND ESTABLISHED.

TEXT (A) THERE IS ESTABLISHED AS A SEPARATE FUND THE MENTAL HEALTH FUND.

(B) THE PRINCIPAL OF THE FUND ESTABLISHED IN (A) OF THIS SECTION CONSISTS OF SUMS TRANSFERRED UNDER SEC. 50 OF THIS CHAPTER.

(C) THE INCOME OF THE FUND ESTABLISHED IN (A) OF THIS SECTION CONSISTS OF THE INTEREST AND DIVIDENDS EARNED FROM INVESTMENTS OF THE PRINCIPAL OF THAT FUND UNDER SEC. 170 OF THIS CHAPTER.

HISTORY (SEC. 4 CH 181 SLA 1978; SEC. 4 CH 182 SLA 1978)

AS37.14.020 DOCUMENT= 2 OF 9

HEADINGS TITLE 37.  
PUBLIC FINANCE.  
CHAPTER 14.  
TRUST FUNDS.  
ARTICLE 1.  
MENTAL HEALTH FUND.

CITATION SEC. 37.14.020.

CATCH LINE

MENTAL HEALTH FUND ADVISORY BOARD CREATED.

TEXT (A) THERE IS CREATED IN THE DEPARTMENT OF REVENUE THE MENTAL HEALTH FUND ADVISORY BOARD COMPOSED OF THE DIRECTOR OF THE DIVISION OF MENTAL HEALTH, THE CHAIRMAN OF THE MENTAL HEALTH ADVISORY COUNCIL, AND THE COMMISSIONER OF THE DEPARTMENT OF REVENUE.

(B) THE BOARD CREATED IN (A) OF THIS SECTION SHALL ELECT A CHAIRMAN FROM THE MEMBERSHIP OF THAT BOARD. MEMBERS SERVE WITHOUT COMPENSATION BUT ARE ENTITLED TO PER DIEM AND TRAVEL EXPENSES AUTHORIZED BY LAW FOR OTHER BOARDS.

HISTORY (SEC. 4 CH 181 SLA 1978; SEC. 4 CH 182 SLA 1978)

AS37.14.030 DOCUMENT= 3 OF 9

HEADINGS TITLE 37.  
PUBLIC FINANCE.  
CHAPTER 14.  
TRUST FUNDS.  
ARTICLE 1.  
MENTAL HEALTH FUND.

CITATION SEC. 37.14.030.

CATCH LINE

POWERS AND DUTIES OF BOARD.

TEXT THE BOARD CREATED IN SEC. 20 OF THIS CHAPTER HAS THE FOLLOWING POWERS AND DUTIES:

(1) TO HOLD REGULAR MEETINGS AND SPECIAL MEETINGS  
CONSIDERED NECESSARY;

(2) TO HAVE PREPARED AN ANNUAL ACCOUNTING OF THE TOTAL  
PRINCIPAL AND INCOME OF THE FUND ESTABLISHED IN SEC. 10 OF  
THIS CHAPTER; AND

(3) TO PREPARE LONG-RANGE INVESTMENT PLANS FOR THE FUND  
ESTABLISHED IN SEC. 10 OF THIS CHAPTER.

HISTORY (SEC. 4 CH 181 SLA 1978; SEC. 4 CH 182 SLA 1978)

AS37.14.040 DOCUMENT= 4 OF 9

HEADINGS TITLE 37.  
PUBLIC FINANCE.  
CHAPTER 14.  
TRUST FUNDS.  
ARTICLE 1.  
MENTAL HEALTH FUND.

CITATION SEC. 37.14.040.

CATCH LINE

FUND UTILIZATION.

TEXT THE PRINCIPAL OF THE FUND ESTABLISHED IN SEC. 10 OF THIS CHAPTER  
SHALL BE RETAINED IN THAT FUND FOR INVESTMENT AS SPECIFIED IN  
SEC. 170 OF THIS CHAPTER. THE INCOME OF THE FUND MAY NOT BE  
APPROPRIATED FOR A PURPOSE OTHER THAN THE SUPPORT OF THE STATE  
MENTAL HEALTH PROGRAM.

HISTORY (SEC. 4 CH 181 SLA 1978; SEC. 4 CH 182 SLA 1978)

AS37.14.050 DOCUMENT= 5 OF 9

HEADINGS TITLE 37.  
PUBLIC FINANCE.  
CHAPTER 11.  
TRUST FUNDS.  
ARTICLE 1.  
MENTAL HEALTH FUND.

CITATION SEC. 37.14.050.

CATCH LINE

CONTRIBUTIONS.

TEXT DURING EACH FISCAL YEAR, SUBJECT TO LEGISLATIVE APPROPRIATION OF  
SUFFICIENT FUNDS, THE COMMISSIONER OF THE DEPARTMENT OF REVENUE  
SHALL TRANSFER TO THE FUND ESTABLISHED IN SEC. 10 OF THIS CHAPTER  
A SUM EQUAL TO ONE AND ONE-HALF PER CENT OF THE TOTAL REVENUE  
DERIVED FROM THE MANAGEMENT OF STATE LAND, INCLUDING AMOUNTS PAID  
TO THE STATE AS PROCEEDS OF SALE OR ANNUAL RENT OF SURFACE  
RIGHTS, MINERAL LEASE RENTALS, ROYALTIES, ROYALTY SALE PROCEEDS,  
AND FEDERAL MINERAL REVENUE-SHARING PAYMENTS OR BONUSES.

HISTORY (SEC. 4 CH 181 SLA 1978; SEC. 4 CH 182 SLA 1978)

AS37.14.060 DOCUMENT= 6 OF 9

HEADINGS TITLE 37.  
PUBLIC FINANCE.  
CHAPTER 14.  
TRUST FUNDS.  
ARTICLE 2.  
UNIVERSITY FUND.

CITATION SEC. 37.14.060.

CATCH LINE

UNIVERSITY FUND ESTABLISHED.

TEXT (A) THERE IS ESTABLISHED AS A SEPARATE FUND THE UNIVERSITY  
FUND.

(B) THE PRINCIPAL OF THE FUND ESTABLISHED IN (A) OF THIS

SEARCH - QUERY  
00001 '37.14.110' CITATION.

AS37.14.110 DOCUMENT= 1 OF 1

HEADINGS TITLE 37.  
PUBLIC FINANCE.  
CHAPTER 14.  
TRUST FUNDS.  
ARTICLE 3.  
PUBLIC SCHOOL FUND.

CITATION SEC. 37.14.110.

CATCH LINE PUBLIC SCHOOL FUND ESTABLISHED.

TEXT (A) THERE IS ESTABLISHED AS A SEPARATE FUND THE PUBLIC SCHOOL FUND.

(B) THE PRINCIPAL OF THE FUND ESTABLISHED IN (A) OF THIS SECTION CONSISTS OF

(1) THE BALANCE OF THE PUBLIC SCHOOL PERMANENT FUND ON JULY 1, 1978; AND

(2) SUMS TRANSFERRED UNDER SEC. 150 OF THIS CHAPTER.

(C) THE INCOME OF THE FUND CREATED IN (A) OF THIS SECTION CONSISTS OF THE INTEREST AND DIVIDENDS EARNED FROM INVESTMENTS OF THE PRINCIPAL OF THAT FUND UNDER SEC. 170 OF THIS CHAPTER.

HISTORY (SEC. 4 CH 182 SLA 1978)

R0601 \* END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

SECTION CONSISTS OF

(1) THE BALANCE OF THE TRUST FUND ESTABLISHED IN AS 14.40.400 ON JULY 1, 1978; AND

(2) SUMS TRANSFERRED UNDER SEC. 100 OF THIS CHAPTER.

(C) THE INCOME OF THE FUND ESTABLISHED IN (A) OF THIS SECTION CONSISTS OF THE INTEREST AND DIVIDENDS EARNED FROM INVESTMENTS OF THE PRINCIPAL OF THAT FUND UNDER SEC. 170 OF THIS CHAPTER.

HISTORY (SEC. 4 CH 181 SLA 1978; SEC. 4 CH 182 SLA 1978)

AS37.14.120 DOCUMENT= 7 OF 9

HEADINGS TITLE 37.  
PUBLIC FINANCE.  
CHAPTER 14.  
TRUST FUNDS.  
ARTICLE 3.  
PUBLIC SCHOOL FUND.

CITATION SEC. 37.14.120.

CATCH LINE

PUBLIC SCHOOL FUND ADVISORY BOARD CREATED.

TEXT

(A) THERE IS CREATED IN THE DEPARTMENT OF REVENUE THE PUBLIC SCHOOL FUND ADVISORY BOARD COMPOSED OF THE COMMISSIONER OF THE DEPARTMENT OF EDUCATION, THREE MEMBERS ELECTED BY THE BOARD OF EDUCATION FROM AMONG ITS MEMBERSHIP, AND THE COMMISSIONER OF THE DEPARTMENT OF REVENUE.

(B) THE BOARD CREATED IN (A) OF THIS SECTION SHALL ELECT A CHAIRMAN FROM THE MEMBERSHIP OF THE BOARD. MEMBERS SERVE WITHOUT COMPENSATION BUT ARE ENTITLED TO PER DIEM AND TRAVEL EXPENSES AUTHORIZED BY LAW FOR OTHER BOARDS.

HISTORY (SEC. 4 CH 182 SLA 1978)

AS37.14.130 DOCUMENT= 8 OF 9

HEADINGS TITLE 37.  
PUBLIC FINANCE.  
CHAPTER 14.  
TRUST FUNDS.  
ARTICLE 3.  
PUBLIC SCHOOL FUND.

CITATION SEC. 37.14.130.

CATCH LINE

POWERS AND DUTIES OF BOARD.

TEXT

THE BOARD CREATED IN SEC. 120 OF THIS CHAPTER HAS THE FOLLOWING POWERS AND DUTIES:

(1) TO HOLD REGULAR MEETINGS AND SPECIAL MEETINGS CONSIDERED NECESSARY;

(2) TO HAVE PREPARED AN ANNUAL ACCOUNTING OF THE PRINCIPAL AND INCOME OF THE FUND ESTABLISHED IN SEC. 110 OF THIS CHAPTER; AND

(3) TO PREPARE LONG-RANGE INVESTMENT PLANS FOR THE FUND ESTABLISHED IN SEC. 110 OF THIS CHAPTER.

HISTORY (SEC. 4 CH 182 SLA 1978)

AS37.14.150 DOCUMENT= 9 OF 9

HEADINGS TITLE 37.  
PUBLIC FINANCE.  
CHAPTER 14.  
TRUST FUNDS.  
ARTICLE 3.  
PUBLIC SCHOOL FUND.

CITATION SEC. 37.14.150.

CATCH LINE

CONTRIBUTIONS.

TEXT DURING EACH FISCAL YEAR THE COMMISSIONER OF THE DEPARTMENT OF REVENUE SHALL TRANSFER TO THE FUND CREATED IN SEC. 110 OF THIS CHAPTER A SUM EQUAL TO ONE-HALF OF ONE PER CENT OF THE TOTAL RECEIPTS DERIVED FROM THE MANAGEMENT OF STATE LAND, INCLUDING AMOUNTS PAID TO THE STATE AS PROCEEDS OF SALE OR ANNUAL RENT OF SURFACE RIGHTS, MINERAL LEASE RENTALS, ROYALTIES, ROYALTY SALE PROCEEDS, AND FEDERAL MINERAL REVENUE-SHARING PAYMENTS OR

HISTORY (SEC. 4 CH 182 SLA 1978)

R0601 \* END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

In answer to a question regarding the regulations, Mr. Hold advised Section .040 deals with approval of plans and requires that, before construction, the district submit plans. Section .050, he advised, deals with approval of purchase for non-facilities, which speaks for the REAA's; and .060 specifically set forth the requirements the Department will meet. There was further discussion on school construction. Representative Cotten stated existing regulations are the only ones being considered.

At this time, Mr. Rolle testified in support of the bill, since it has been redrafted, but questioned the portion dealing with retirement of all debt. He stated it is his understanding that cash payments would be treated. Representative Buchholdt commented the HESS committee decided the State could not continue to pay the cash debts forever; therefore, decided on a cut-off date of June 30, 1977. Representative Cotten referred to page 2, line 5, and stated this means the State will take over all the payments incurred on all bonds before July 1, 1977. There was further discussion regarding the language, and Mr. Rolle indicated he had "no problem" with the bill.

There was brief discussion on the revised fiscal note, dated 4-19-78.

Representative Buchholdt moved and asked unanimous consent that Finance Committee Substitute for HB 681 be reported out. Representative Rhode objected by stating he feels those districts paying cash are being penalized and proposed FY 76 be included in the bill. Representative Buchholdt stated it was the HESS committee's position that the State would not have to help those districts who could afford this. Discussion followed.

Representative Rhode moved the following amendment be adopted: page 2, line 8, add "and cash payments made by the borough and city before July 1, 1977 to pay costs of school construction;". Representatives Buchholdt and Duncan objected. Discussion on the fiscal impact followed. The question was called for (Representatives Rhode, Guy and Schaeffer in favor), and the motion failed.

AMENDMENT

There being no further objection, Finance CS for HB 681 was reported out.

FINANCE  
FOR HB  
REPORTED

Vice Chairman Freeman brought up HB 720 for discussion:

HB 720

"An Act relating to state land; and providing for an effective date."

Vice Chairman Freeman briefly explained the background on the bill and stated the workdraft presently before the Committee is the result of the subcommittee's recom-

mendations. He stated Representative Bradley, prime sponsor, would explain the Finance Committee Substitute (workdraft).

Representative Bradley distributed to the Committee a sectional analysis (attached) by Mr. Baldwin, Legislative Affairs. He discussed the bill's intent to make State land available for private use and noted the designation of a specific date. He commented on the provision for lottery sales. He advised Representative Gruening's amendment regarding mental health land has been incorporated in the bill, which frees up land without impacting the original concept. Commenting on the land discount provision, he advised this takes into account short terms rather than long terms.

At this time, Mr. Baldwin stated the Committee might want to consider the inclusion of language dealing with classified land--a provision that a list be received from the Director of Land before that land can be expedited. He advised this was not included in the bill--that the land be classified--and that it probably should be.

At this time, Mr. Conrady presented testimony regarding the position of the Department of Natural Resources. (See written statement attached.) He discussed those portions of the bill the Department finds fault with and offered several amendments. In commenting on Section 38.05.043(d), regarding acquisition of surface rights to State land, he stated this section needs to be clarified to note that the discount applies "only" to interest in surface rights--not subsurface. Discussion followed, with Mr. Baldwin urging the Committee to be careful of putting in arbitrary figures (such as the 1-1/2% figure discussed) with regard to prudent-man rule, which, he stated, does not give away assets. He advised the Committee consider carefully if it wants the subsurface included.

At this point, Mr. Rolle testified on behalf of the Alaska Municipal League. (See written statement attached.) He stated he finds no fault with the intent of the bill but is concerned that this bill, as currently drafted, will hamper efforts of the municipalities throughout the State. Vice Chairman Freeman stated, as one of the sponsors of the bill, the intent was to "get the land out to the people as quickly as possible--to mandate this." He commented it would not seem very consistent if the State has to part with the land and then allows the municipalities to have veto power over this. He advised the purpose of the bill is to provide an alternative to the Bierne "hippy homestead" Initiative.

Mr. Rolle advised he feels HB 133 is a good vehicle, but expressed concern that HB 720 would undo all that HB 133

is would accomplish. He commented, however, that HB 720 is better than the Bierne Initiative. Discussion followed on the various land bills. Vice Chairman Freeman commented it may be that all the land bills will be incorporated into one.

Representative Hayes testified briefly in support of the objectives and concerns contained in HB 720. He stated he feels it is a reasonable approach "to get land into the hands of the people." In commenting on subsection (c) (4), page 4, lottery sales, he stated too many things can happen during the period of 10 years to disqualify a person. He also advised he would like to see the "old-timers" who live on forest service land get title to their land.

Vice Chairman Freeman requested Mr. Conheady and Mr. Rolle prepare written statements of their testimony presented today for the Committee. He advised the subcommittee would then go over these comments and suggestions and report their recommendations back to the full committee next week. Further action on HB 720 was deferred until that time.

HB 720  
HELD OV

The meeting adjourned at 3:40 p.m.

ADJOURN

-----  
HFC 78-116 #0793 - End  
78-117 #0001 - #0623

STATE OF ALASKA  
THE LEGISLATURE

FOUCH Y - SI  
JUNEAU, AL  
907-cc

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 18, 1978

SUBJECT: Section-by-Section Analysis: proposed CSHB 720  
dated 5/18/78

TO: House Finance Committee

FROM: James L. Baldwin, Legislative Counsel *J.L.B.*

Section 1: General intent stated.

Section 2: (a) - (c) directs the director of the division of lands to designate for disposal before November 1, 1978 land in the following categories and amounts:

(a) homesite entry land (AS 38.08) -- 20,000 acres.

(b) vacant, unappropriated and unreserved land suitable for residential use in five acre lots -- 10,000 acres.

(c) classified land (agricultural, commercial, industrial, private recreation, residential, utility, or open-to-entry) that is surveyed and platted on July 1, 1978.

(d) provides that the designation and disposal of land required in (a) - (c) of sec. 2 is not subject to the usual predisposal procedures. These procedures are:

(1) director's findings (AS 38.05.035(a)(14));

(2) appraisal (AS 38.05.310);

(3) zoning requirements before disposal (AS 38.08.080); and

(4) state adherence to local subdivision requirements (AS 40.15.200).

The requirement that the director classify land before disposal was not included as an applicable pre-disposal procedure. This was an oversight and is mentioned here for clarification. Reference to AS 38.05.300 should be added in the sec. 2(d) is adopted by the committee.

Public notice of land disposals required in (a) - (c) will be given by newspaper in the vicinity in which the land to be sold or entered is located.

Section 3: Redesignation and Disposal of Mental Health Land.

(a) Redesignates approximately 975,000 acres of mental health land as unappropriated and unreserved state land.

(b) Opens former mental health land to disposal for homesite entry or private land use or ownership programs under the Alaska Land Act (AS 38.05) if:

(1) the land is unclassified and not reserved by statute; or

(2) the land is classified for agricultural, grazing, commercial, industrial, private recreational, residential, utility, or open-to-entry uses.

(c) Municipalities may select former mental health land to satisfy land entitlement under AS 29.18.190 - 200 (transitional assistance to municipalities). Municipalities are required to certify that at least 30 percent of the former mental health land will be committed to disposal for private use or ownership.

(d) Reaffirms existing leases of former mental health land.

Section 4: Various amendments to the Alaska Land Act (AS 38.05).

AVAILABILITY OF LAND (AS 38.05.041):

(a) Beginning fiscal year 1980 (July 1, 1979) the director is required to initiate a continuing, annual land disposal program of at least 70,000 acres each year with at least 20,000 acres of that amount to be devoted to homesite entry and land sales.

(b) Requires the governor to submit three options as a part of his budget submission for the division of lands. The options include:

(1) an increased acreage land disposal program;

(2) a land disposal program with acreage equal to the preceding year's disposal program; and

(3) a land disposal program with reduced acreage from the preceding year's program.

LOTTERY SALES (AS 38.05.042):

(a) Requires the director to sell at least 10,000 acres of state land by lottery each year (July 1 to June 30).

(b) The purchase price is to be set at not more than fair market value; requires a deposit of five per cent of the purchase price at the conclusion of the sale.

(c) Sets eligibility requirements for lottery participants. A three year durational residency requirement is specified and may be unconstitutional under either the state or federal constitutions, or both.

(d) - (g) Specifies application and lottery procedures.

(h) Allows the director to include terms in lottery sales contracts which require use and/or occupancy requirements and restrictions or resale until use and occupancy terms are satisfied.

LAND DISCOUNT PROGRAM (AS 39.05.043):

(a) Grants a discount on the purchase price of land sold under the annual land availability program. The discount is determined by multiplying the number of full years of residency in the state by 5 percent of the purchase price of a parcel. The discount may not exceed 50 percent of the purchase price or a value of \$25,000.

(b) Sets eligibility requirements.

(c) Requires persons to submit proof of eligibility and makes false submissions a criminal offense and sets maximum punishments.

(d) Only one chance to use a discount is granted. Specifies certain costs that must be paid by a purchaser in cash and requires a cash down payment of at least 5 percent at the time of purchase.

(e) The Commissioner of the Department of Natural Resources is granted authority to adopt regulations to implement the land discount program.

Section 5: AS 37 is amended by adding a new chapter.

MENTAL HEALTH FUND ADVISORY BOARD CREATED (AS 07.14.010):

(a) The board is created within the Department of Revenue; membership is specified.

(b) Selection procedure for the office of Chairman of the Board is specified.

POWERS AND DUTIES OF BOARD (AS 37.14.020):

Authorizes the board to conduct an annual accounting of the mental health fund, and prepare long-range investment plans for that fund.

MENTAL HEALTH FUND ESTABLISHED (AS 37.14.030):

Establishes the mental health fund, specifies the source of the principal and income of the fund.

DUTIES OF COMMISSIONER OF REVENUE (AS 37.14.040):

Designates the commissioner of revenue as the treasurer of the fund, specifies the responsibilities of the commissioner and directs him to manage the fund so that the principal and income are readily distinguishable.

FUND UTILIZATION (AS 37.14.050):

Requires that the principal of the fund be invested for the generation of income, prohibits the appropriation of the income of the fund except for the support of the state mental health program.

INVESTMENTS (AS 37.14.060):

(a) The commissioner of revenue is directed to invest the fund in the same manner as currently required for the investment of surplus money in the public employee's retirement fund.

CONTRIBUTIONS (AS 37.14.070):

Directs the commissioner of revenue to transfer as contributions to the mental health fund an amount equal to 1 1/2 percent of the total revenue received from the state for the sale, lease, or other disposal of state land during a fiscal year. This section may need further revision to specify whether or not revenues attributable to subsurface leasing are intended to be included. Specific instructions regarding this matter were not given to the draftsman.

In addition, the rate set for contributions may not adequately compensate the "mental health trust" for the conversion of land subject to the trust. The rate was set on the theory that on the average, mental health lands are more valuable than similar general grant lands. Data was gathered by Mr. Burke Riley of the division of lands which allegedly supports the rate set in this section. However, Mr. Riley has since cautioned against relying on his earlier conclusion. The Committee should regard the proposed contribution rate with caution and, perhaps, request further testimony from the division of lands on this point.

(Secs. 6 - 21 are not included in this analysis due to time constraints imposed by legislative business.)

JLB:hjd

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

11TH FLOOR, STATE OFFICE BLDG.  
POUCH M - JUNEAU 99811

May 19, 1978

The Honorable Oral Freeman  
Vice Chairman, House Finance  
Alaska House of Representatives  
Pouch V  
Juneau, Alaska 99811

Dear Oral:

In response to your request for written comments on the proposed Committee Substitute for HB 720 (Finance) following are the views of this Department on policy matters addressed in this legislation and suggested amendments of both a substantive and a technical scope:

1. Section 2, subsection (d). This subsection abrogates the power of local municipalities to exercise zoning and platting authority within their boundaries on the disposal of 30,000 acres of state land. Sound land use management dictates a planning approach which in municipalities is exercised by the local government. In vesting this power at a local rather than a state level, it was envisioned that maximum local input on developmental matters is the best means to achieve sound land use plans. Many communities have already adopted municipal land use plans which would be valueless if disposals are mandated and inconsistent with those plans. The Department believes as a matter of public policy that the short range goals of HB 720 are not sufficient to override sound land use planning decisions.

2. Section 3. This section, as written, is confusing due to an abundance of superfluous language. In the interest of clarity, the same results can be achieved with the following amendment: On line 10, after the word "unreserved" delete "state land" and insert in lieu thereof "general grant land." Delete subsections (b) and (c) and renumber subsection (d) as subsection (b).

3. Section 38.05.041. The Department is unalterably opposed to a continuing mandate of disposal of 70,000 acres annually. Although subsection (b) appears to provide an annual option as was present in SB 562 and HB 904, when the section is read in its entirety, this option is obviously illusory. The section portends of a situation where the Legislature opts for a reduced-level disposal program in the future,

yet the dictates of subsection (a) require the Department to dispose of 70,000 acres irrespective of the funding.

Furthermore, mandating minimum disposals within specific programs does not allow the necessary flexibility the Department would need in future years to meet the range of needs for land throughout the State. Suggested amendment: This section should be replaced with Sections 38.04.020 and 38.04.025 from CSSB 562 am.

4. Section 38.05.041 and 38.05.042. Taken together it would appear that in addition to the 70,000 acres made available for disposal under .041 and additional 10,000 acres should be made available for lottery sales under .042. To clarify the Committee's intent to have the lottery sales incorporated in the 70,000 acres disposed of under .041 on line 7, AS 38.05.045 should be changed to read AS 38.05.042.

5. Section 38.05.042(b) requires disposal of land at "fair market" value. As this term connotes a sale procedure, lottery sales should be made at "appraised" value. (line 29)

6. Section 38.05.042(c)(2) requires residency of three years for participation in a lottery disposal. This provision is constitutionally suspect and the Department would like to caution the Committee in adopting such a provision as it may delay disposals under this program through legal action.

7. Section 38.05.042(c)(3) addresses lottery disposals on agricultural tracts. This section is more appropriately handled in a separate section (38.07).

8. Section 38.05.042(e). This section specifies the period of time for lottery disposals. As one of the major issues addressed by this legislation is the length of time required for disposal of state lands, mandating a 3 1/2 month period for a lottery disposal is counterproductive. The simultaneous filing period in (1) can be shortened to 30 days with no adverse effects, (this was the period utilized in the recent homesite disposal). The 45 day period after close of filing can likewise be shortened to 15 days.

9. Section 38.05.042(f). This subsection is redundant and should be deleted.

10. Section 38.05.043(a). If the discount program is intended to apply to lottery disposals, recommendation 4 needs to be adopted.

May 19, 1978

11. Section 38.05.043(a). The maximum level of discount is too high as most tracts will sell for less than \$25,000. This section should be amended by deleting all language after the word "state" on line 22 and inserting in lieu thereof: "to 50 percent of the total purchase price of the land not to exceed \$25,000."

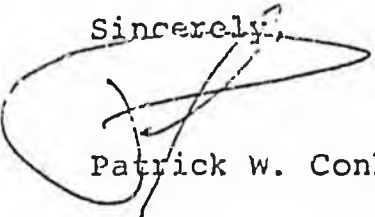
12. Section 38.05.043(d). This subsection should be clarified to illustrate that the application of the discount applies only to acquisition of an interest in surface rights to the land. To this end, on line 17, between the words "applied" and "to" insert "only".

13. Section 8. AS 38.05.102. These amendments to existing law would give existing leaseholders on state land a 90 percent credit towards the purchase price of that land based on prior lease rentals. As the mechanism for exercising preference rights on these lands gives converting leaseholders a major advantage, further credits as granted in this section would result in major windfalls for such leaseholders. The Department views the provision as a major rip-off of state interests and oppose enactment of the measure if this provision remains.

14. Section 17. AS 38.08.110. This section mandates adoption of regulations within 90 days after the effective date of this act. The 90 day provision is totally unrealistic in light of the dictates of AS 44.62 and suggest this period be lengthened to 180 days.

This concludes the Department's comments on H.B. 720. We appreciate the opportunity to present our comments and urge the Committee to consider our proposed amendments.

Sincerely,



Patrick W. Conheaçy

TESTIMONY BY  
JIM ROLLE  
ALASKA MUNICIPAL LEAGUE

before the  
HOUSE FINANCE COMMITTEE  
MAY 18, 1978

HOUSE FINANCE COMMITTEE

Mr. Chairman:

I would like to thank you for this further opportunity to testify on CSHB 720 (Finance).

Mr. Chairman, our concerns are very basic. We feel that this bill degradates the integrity of municipalities. While we do, in fact, see and agree with the need for the bill, we feel that the same product could be delivered without hurting municipalities.

Our first concern is that this bill is requiring the state to deliver 30,000 acres of land to the people by November 1, 1978. Mr. Chairman, that is only 120 days from the effective date of the bill. We are concerned that the state is going to take land that is the most accessible which, in our mind, will be land that is now within municipal boundaries or contiguous to municipalities. We just don't have a sufficient amount of time to plan for the impact that will occur, especially in light of Mental Health Lands being made available. Another problem we visualize with the time schedule is that we have hopes that this Legislature will pass the Municipal Land Selection Bill. For the most part, these lands are currently unknown. We feel that this bill would take prime land away the municipal land selection process. Mr. Chairman, municipalities have been trying to get this land since 1964.

Our next concern is with Section 2(D). This provides that the provisions of AS 38.05.035(A)(4), 38.05.310, AS 38.08.080 and AS 40.15.200 are inapplicable. Although our main concern is with 38.08.080 and 40.15.200, we believe that the provisions in the other two are important and should be maintained.

AS 38.08.080 says - No state land that is located within the boundaries of a municipality which excercises planning and zoning and zoning authority under AS 29 may be offered by the Director for homesite entry until the land has been zoned by the governing body of the municipality for residential use only.

By ignoring this section you are denying municipalities the opportunity to bear fruit from many long years of land use planning. Most municipalities have, or are in the process of comprehensive land use plans. This bill could totally destroy the rational behind these plans.

Section 40.15.200 says - All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to the provisions of this chapter and As 29.33.150, 29.33.240, Home Rule ordinances or regulations governing subdivisions and other local regulations adopted under this chapter and As 29.33.150, 29.33.240 or under Home Rule authority, IN THE SAME MANNER AND TO THE SAME EXTENT AS SUBDIVISIONS MADE BY OTHER LAND OWNERS. For a moment, Mr. Chairman, I would like to cite 29.33.150-240, which is as just referenced in Section 40.15.200.

These areas are of great concern, not only to municipalities, but to all of the citizens of the State of Alaska. These sections concern platting jurisdiction and power, procedures for platting boards, waiver in certain cases, information required, penalties, alteration of replat petition, hearing notices, hearing and determination procedures and title to vacated areas.

Mr. Chairman, laws were made to serve the best interest of the majority. I fear that what this bill is saying is that the laws made, the laws that the majority has had to follow, are now inappropriate for the few that will receive land under this bill. I just can't imagine that what we are really saying is that laws be damned. We are not just talking about one use, but for all land uses. Imagine for a moment that the land available under this bill, in a municipality, exceeds the amount of land in private ownership now. How would you suggest we deal with planning and zoning matters? There will be rebellion against local government. I would submit we have enough problems already.

Our next concerns are toward the end of the bill, section 15. This will amend section 38.08.070. The amendments are nothing more than further attempts to say that municipal regulations are to be ignored. This is seen on line 28, page 16, where we change the word "classified" to "designated", and on line 29, where we eliminate the words "and approved". Then on page 17, the bill goes on to say, lines 2-6, that this bill has right over the Municipal Land Selection bill. Mr. Chairman, municipal government is a good form of government and can be trusted to respond to the needs of its citizens.

Section 16 deals with an even different kind of problem. In section 2(D), it said that 38.08.080 is inapplicable. However, we find in section 16 that there is an amendment. We feel this totally inappropriate. We would hope that it is not the state's intentions to develop a time table for local zoning matters in all future land selections.

Our final section of concern is section 17. This will amend section 38.08.110. Our concern appears on page 17, line 19. You are adding language that says the state shall adopt regulations that effect land in municipalities that are not limited to regulations relating to easements and access routes. Mr. Chairman, we have enough problems with the Feds, and d(2) legislation. We would ask that you not impose further encroachments on us.

In conclusion, we would like to say that the Alaska Municipal League encourages a cooperative intergovernmental land use planning process that considers municipal, state and federal lands effected by the land selection process. Mr. Chairman, we hope the State Legislature shares our views and gives serious consideration to our testimony.

POSITION PAPER

SENATE BILL NO. 710

"An Act relating to state trust funds and their administration; and providing for an effective date."

The effect of this act insofar as mental health programs is concerned is that it will (Sec. 1, 47.14.040) make the mental health fund income mandated for use first for mental health programs with any balance available for general public use.

Section 2, 37.14.050 removes the current permissive wording and requires that the one and one-half percent total receipts from "land use" be transferred each year.

Section 5, 37.14.170(a) removes the advisory board from direct involvement in the investment of the fund.

Section 7, 18.07.011 charges the Statewide Health Coordinating Council with review and reporting to the legislature of the fund's activity.

Section 8, 47.10.350(a) charges the Commissioner of health and Social Services with review and reporting to the legislature of the fund's activity.

Section 9, 47.30.605(b) charges the Governor's Mental Health Advisory Council with review and reporting to the legislature of the fund's activity.

Section 10, 47.80.090 charges the Governor's Council for the Handicapped and Gifted with the review and reporting to the legislature of the fund's activity.

Section 11, 37.14.020 repeals the mental health land fund use advisory board. 37.14.030 repeals the powers granted to the mental health land fund use advisory board.

Analysis: This legislation will have the effect of establishment of a permanent fund which was implied when State mental health lands were placed in public ownership by 1978 legislation. This fund is to replace the earlier established mental health lands trust; the lands with a dollar value. First call on the revenue from this trust goes to fund mental health programs. The review of activity and fund use from the trust is made by a multiplicity of boards and councils. No direct authority over the fund is given to any persons other than the legislature and the Commissioner of Revenue. All other reviews are advisory in capacity.

The existence of this funding source for mental health programs should have no direct impact on the State mental health system because the revenue from the fund will require a legislative appropriation which is the procedure that currently exists. The major difference will be a change in the funding source for the appropriation.

Position Paper  
Senate Bill No. 710

Recommendation: The Division of Mental Health and Developmental Disabilities supports Senate Bill No. 710; however, we suggest that the multiplicity of council and board reviews be evaluated as a possible duplication, as each of these groups currently does review that part of the mental health budget which is pertinent to their area of responsibility. Senate Bill No. 710 will require that the role of each council be increased beyond their area of interest, i.e., the Governor's Council for the Handicapped and Gifted may not wish to consider the funds allocated to operate the Alaska Psychiatric Institute. The Department of Revenue will furnish monthly reports on the fund's income which can be given needed distribution.

Recommended by: Robert W. Marshall  
Robert W. Marshall, M.D.  
Director, Division of  
Mental Health and Deve-  
lopmental Disabilities

Date: 17 Feb 82

Approved by: Helen D. Beirne  
Helen D. Beirne  
Commissioner  
Department of Health and  
Social Services

Date: 2-17-82

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 710  
 Title Relating to state trust funds and their administration.  
 Requested by Commissioner's Office Date 2/17/82

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services  
 Program Category Affected Mental Health & Developmental Disabilities  
 BRU, Program, Or Subprogram(s) Affected \_\_\_\_\_  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No cost impact is foreseen to the Department of Health and Social Services as a result of this legislation.

IV. DATE \_\_\_\_\_

*Robert W. Marshall*  
 PREPARED BY Robert W. Marshall, M.D., Director ACC  
AGENCY Health & Social Services, Mental Health & DD  
 PHONE 465-3370

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 6, 1982

SUBJECT: Mental health trust fund  
(CSSB 710 (Resources))

TO: Senator Arliss Sturgulewski

FROM: Richard A. Bradley *B*  
Legislative Counsel

You have requested a sectional analysis of CSSB 710  
(Resources).

The Resources Committee substitute abandons the broader goals of SB 710 and CSSB 710 (HESS); CSSB 710 (HESS) had been concerned with the administration of the trust funds established in AS 37.14 generally, including not only the mental health trust fund [AS 37.14.010 - 37.14.050] but also the public school fund [AS 37.14.110 - 37.14.150]. The university fund provisions [AS 37.14.060 - 37.15.100] never took effect and therefore were not treated in the HESS committee substitute; the error of including the university trust funds was discovered after the introduction of SB 710 and corrected in the first committee substitute. See the editor's note to these sections in the supplement to AS 37 at page 310.

Therefore the Resources Committee substitute is concerned exclusively with mental health trust fund amendments. The title of the bill is amended for consistency.

When Congress granted the land to the state for the support of the mental health program, it contemplated that the state would use the land for the support of the mental health program. Congress expected that the state would make a determination as to the needs, address those needs, and if those needs were met, use any surplus for other public purposes as determined by the legislature.

Senator Arliss Sturgulewski

Page 2

April 6, 1982

At this point in the state's history, while the legislature has clearly appropriated to the mental health program, there may not have been a "needs assessment". Similarly, it has not been determined whether the appropriated funds granted to the support of the mental health by the legislature have met the needs or whether under or over-funding has occurred.

What this bill does is establish a set aside of state funding approximating the income that could be anticipated from the mental health trust land; the bill also establishes a mechanism for determining what the mental health needs of the state are.

Sec. 1 of the bill amends AS 37.14.030, a section dealing with the power and duties of the mental health fund advisory board (created under AS 37.14.020) and grants the board the responsibility to "assess and report to the legislature" the "needs for mental health services" in the state, the "degree to which the needs for mental health services are being met in the state", and "recommendations and priorities for use of the income of the mental health fund".

Sec. 2 of the bill amends AS 37.14.040, a section dealing with "fund utilization". The existing provisions of AS 37.14.040 require that the principal of the fund be retained for investment under AS 37.14.170 (investment by the commissioner of revenue). The amendment to sec. 40 provides that the income of the fund shall be "first" appropriated to the support of the state mental health program. The second amendment to the section permits the balance of the income from the fund to be appropriated to other public purposes.

Before commenting on the implications of the amendment to sec. 40, the provisions of the amendment to AS 37.14.050 [in Sec. 3] should be noted. This provision deletes the requirement that contributions to the fund under the existing formula established in sec. 50 be accomplished by appropriation. The commissioner of revenue is directed to transfer the funds on their receipt; the provision requires that "one and one-half percent" of the receipts from listed rentals, royalties, etc. be paid into the fund. The existing requirement of an appropriation before funds go into the fund is deleted; the effect is an automatic deposit.

Senator Arliss Sturgulewski

Page 3

April 6, 1982

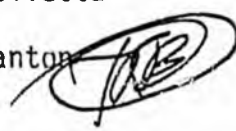
My understanding is that there are no funds in the mental health trust fund because AS 37.14.050 (at least until its amendment in this bill) requires the legislature to appropriate the funds that go into the fund and it has failed to do so. If sec. 50 is amended as this bill provides, there will be a principal established under sec. 50 and the legislature will have its income for distribution under sec. 40 to the mental health program and for other purposes.

Sec. 4 of the bill establishes a new section giving the Legislative Budget and Audit Committee oversight responsibilities.

RAB:ljb

TO: Senator Mike Colletta

FROM: Thomas R. Branton



Proposed amendment to AS 37.14.050:

Shall be amended by the deletion from the first sentence of the words [subject to legislative appropriation of sufficient funds]

Purpose of proposed amendment:

This change will remove the legislative determination language from the existing law. No funds have been appropriated to this trust and, consequently, there has been no restitution to the State mental health program for the transfer of State mental health lands per chapter 181 and 182 of the Session Laws of Alaska, 1978.

This proposed amendment will also make AS 37.14.050 consistent with AS 37.14.100 which is a response to the loss of university land per chapter 181 and 182 of the Session Laws of Alaska, 1978.

*Charlie —*

*this is the end I spoke to you about*

*Mike Colletta*

CHARLIE PARR  
ALASKA LEGISLATURE

S.R. Box 50599  
Fairbanks, Alaska 99701  
(907) 456-5029

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Juneau, Alaska 99811  
(907) 465-4907

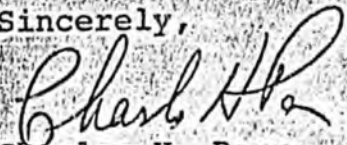
March 17, 1982

Joe Cladouhos  
Chairman, Statewide Health  
Coordinating Council  
Pouch H 01A  
Juneau, AK 99811

Dear Mr. Cladouhos:

Thank you for your letter of March 15 about SB 710 and 711.  
These bills have been passed out by the HESS Committee and  
are now in the Senate Resources Committee. Your letter will  
be forwarded to Senator Bettye Fahrenkamp, Chairman of that  
Committee.

Sincerely,

  
Charles H. Parr

cc: Senator Bettye Fahrenkamp ✓

CHP:sr ✓

# STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

STATEWIDE HEALTH COORDINATING COUNCIL

JAY S. HAMMOND, GOVERNOR

POUCH H 01A  
JUNEAU, ALASKA 99811

PHONE: 465-3037

March 15, 1982

Honorable Charles H. Parr  
Chairman, Senate HESS Committee  
Alaska State Senate  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Parr:

The Alaska Statewide Health Coordinating Council, a 30-member advisory board to the Department of Health and Social Services and author of the State Health Plan for Alaska, has been on record for several years in support of statewide mental health programs.

During the February 20, 1982 meeting, the Council voted to endorse the following Resolution #1 in support of Senate Bills 710 and 711 and to urge the House HESS or Finance Committees to introduce companion bills:

"Whereas the United States Congress created a source of and mechanism for stable funding of services for the mentally ill when it created the Alaska Mental Health lands trust; and

Whereas the Territory of Alaska accepted and State of Alaska reaffirmed responsibility for the management of that trust responsibility; and

Whereas the State of Alaska ignored, mismanaged, and ultimately abrogated that trust responsibility, stripping the mentally ill of a guaranteed resource and substituting instead the uncertain generosity of future legislatures; and

Whereas Senate Bills 710 and 711 would help restore a portion of this lost resource and meet a moral obligation incurred, accepted, and abandoned by the State of Alaska;

Now therefore be it resolved that the Alaska Statewide Health Coordinating Council supports Senate Bills 710 and 711 and urges the House HESS or Finance Committees to introduce companion bills."

Sincerely,

*Joe Cladouhos*  
Joe Cladouhos (by ACH)

Chairman

cc: Helen D. Beirne

DMH & DD  
 Schedule of Expenditures  
 FY 1977 - FY 1981

Year	Mental Health	APR	Assisted Living	Regional Community MH Svcs.	Developmental Disabilities	HDC	Council on Handicapped / G.I. Vet.	Regional Community DD Svcs.	Administration	Central Office	Others	TOTAL
1977	6,139,128	190,812	1,795,630	6,809,802	2,370,210	9,479,019	223,865	1,677,704	2,597,924	7,710,269	749,778	17,939,066
1978	7,921,868	220,008	2,841,446	10,565,969	5,322,210	150,522	8,227,137	2,752,375	193,869	709,544	17,492,650	
1979	8,060,922	194,977	3,226,945	11,482,344	5,296,904	286,477	8,650,273	3,066,892	112,011	718,802	20,851,919	
1980	9,559,297	267,200	4,295,829	14,122,346	6,211,056	320,246	3,730,111	10,261,463	619,008	365,626	982,634	25,364,443
1981	9,559,297	267,200	4,295,829	14,122,346	6,211,056	320,246	3,730,111	10,261,463	619,008	365,626	982,634	25,364,443

2 Positions '83 - automated MH information  
 50 100 - Transferred from Central Office

SUBJECT: Mental health trust land liabilities

(Work Order Request #12 - 2465)

TO:            Sen. Charles H. Parr

FROM:         Richard A. Bradley  
               Legislative Counsel

*B*

You have asked that I comment on the general question of the Mental Health Trust Lands granted to the Territory and the State of Alaska as well as the bill presently pending before the legislature relating to the trust lands, SB 710.

In preparing these comments, I have reviewed the memorandum of February 8, 1982 to Representative Malone from the Department of Law which I believe that you also received a copy of. While I did not draft SB 710, I have been advised that SB 710 is the same as HB 151, the bill reviewed in the Department of Law memorandum. Accordingly, it seems that the comments in that memorandum are usefully generally also to your question.

Because of the brief time allowed for the proeparation of this memorandum, it was necessary to cast my views in general conclusory statements:

- (1) I agree that it is unlikely that a court would conclude that the mental health trust responsibility imposed on the state to use the lands received for mental

health purposes was terminated at statehood by the Statehood Act or by the Omnibus Act.

(2) I agree that it is likely that a court would conclude that the Alaska Mental Health Enabling Act imposed an affirmative trust on the State.

(3) It may be that the prohibition against the dedication of funds under the Alaska Constitution will, at some time in the future, have practical implications for the provisions of AS 37.14. I do not believe that it does at this point.

Several aspects of this problem may be noted. This office disagrees with the Department of Law views on the nature of the constitutional requirement; in our view, the income from the disposal of lands does not constitute the income from a "tax or license." We believe those words have meaning, whether or not our constitutional fathers correctly anticipated the actual sources of state income in the 1980's.

Until litigation resolves the question, it will be open to the legislature to interpret the constitution and dedicate the income from the disposal of lands if it wishes.

But I suspect that we also disagree with the suggestion that if the legislature dedicates the proceeds of a tax

or license but the funds remain subject to legislative appropriation, that an unconstitutional dedication occurred.

Put in other words, if the dedication of the proceeds of a tax or license are subject to affirmative legislative appropriation, there also no violation of the constitution occurs; in effect, the dedication constitutes nothing more than an allocation to an account within the treasury for accounting purposes.

I think it is premature, therefore, to pay too much attention to those concerns, particularly as long as there remains an obligation on the legislature to appropriate all the funds granted under the one and one-half percent formula. A dedication that remains subject to the discretion of the legislature to appropriate is not in fact a dedicated fund.

(4) I agree that so long as AS 37.14 remains the method by which the legislature seeks to execute its trust land responsibilities, the legislature should honor its own commitment to fund AS 37.14. I suggest that a legislative determination that the state is meeting or has met its mental health responsibilities, if based on reasonably well founded facts, will go some distance towards blunting the possibility of litigation on a theory that the state has failed in that liability. Whether that

Sen. Charles H. Parr  
02/17/82  
Page 4

conclusion can be justified (and be well founded), is a more difficult question on which I have no answers.

(5) If the legislature remains with a reasonable commitment to AS 37.14 and supports funding under that concept, the needs for an appraisal of the mental health lands may be avoided.

(6) I agree that the allocation of money to the mental health funds may be achieved without appropriation and that it is reasonable to do so.

As suggested, the money should be used for mental health purposes but if the legislature makes an implicit determination that mental health needs are adequately funded, the mental health funds may be appropriated by the legislature to a different purpose.

The provisions of SB 710 seem consistent with these conclusions and I offer no proposals for amendments to deal with the assumed liability or otherwise.

POSITION PAPER

SENATE BILL NO. 710

"An Act relating to state trust funds and their administration; and providing for an effective date."

The effect of this act insofar as mental health programs is concerned is that it will (Sec. 1, 47.14.040) make the mental health fund income mandated for use first for mental health programs with any balance available for general public use.

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Position Paper  
Senate Bill No. 710

Recommendation: The Division of Mental Health and Developmental Disabilities supports Senate Bill No. 710; however, we suggest that the multiplicity of council and board reviews be evaluated as a possible duplication, as each of these groups currently does review that part of the mental health budget which is pertinent to their area of responsibility. Senate Bill No. 710 will require that the role of each council be increased beyond their area of interest, i.e., the Governor's Council for the Handicapped and Gifted may not wish to consider the funds allocated to operate the Alaska Psychiatric Institute. The Department of Revenue will furnish monthly reports on the fund's income which can be given needed distribution.

Recommended by: Robert W. Marshall  
Robert W. Marshall, M.D.  
Director, Division of  
Mental Health and Deve-  
lopmental Disabilities

Date: 17 Feb 82

Approved by: Helen D. Beirne  
Helen D. Beirne  
Commissioner  
Department of Health and  
Social Services

Date: 2-17-82

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
 Bill/Resolution No. Senate Bill No. 710  
 Title Relating to state trust funds and their administration.  
 Requested by Commissioner's Office Date 2/17/82

II. FISCAL DETAIL  
 Agency Affected Department of Health & Social Services  
 Program Category Affected Mental Health & Developmental Disabilities  
 BRU, Program, Or Subprogram(s) Affected \_\_\_\_\_  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No cost impact is foreseen to the Department of Health and Social Services as a result of this legislation.

IV. DATE \_\_\_\_\_ PREPARED BY Robert W. Marshall, M.D., Director ACC  
Health & Social Services, Mental Health & DD  
 Original: Legislative Finance PHONE 465-3370  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

S B

730

COMMITTEE REPORT  
SENATE

2/9/82

FURTHER: None

Date: 2/10/82

Mr. President:

The Committee on WATER RESOURCES has had SS 730

authorizing the Alexander Archipelago State Game Refuge

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_  
 \_\_\_\_\_  
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CHAIRMAN

LAND PLANNING REPORT  
PROPOSED ALEKSANDR BARRANOV STATE GAME REFUGE,  
SHUYAK ISLAND  
September 23, 1981

Kodiak Island Borough  
Kodiak, Alaska  
RECEIVED

NOV - 3 1981

7: 8: 9: 10: 11: 12: 1: 2: 3: 4: 5: 6: P.M.

Existing Classification - Forestry - SC-80-037  
Recommended Classification - Wildlife Habitat  
Acreage - Approximately 10,400 acres of uplands

Proposed Classification/Justification

The proposed classification is wildlife habitat. This classification action will implement the Agreement of Settlement and Consent Decree between the State of Alaska and the Kodiak Island Borough.

Location

The subject parcel is located on the eastern portion of Shuyak Island and includes adjacent small islands and offshore rocks. Shuyak Island is the northernmost major island in the Kodiak archipelago. It is 50 miles north of Kodiak, Alaska and 85 miles southwest of Homer, Alaska.

Legal Description

(Unsurveyed land--All sections are protracted)

Beginning at the E 1/16th corner common to Sections 23 and 26, T18S, R19W, S.M.;

Thence south-southwesterly, approximately 8.86 miles to the section corner common to Sections 31 and 32, T19S, R19W, S.M., and Sections 5 and 6, T20S, R19W, S.M.;

Thence westerly along the township line between Townships 19 & 20 South, Ranges 19 and 20 West, S.M., approximately 2.5 miles to the  $\frac{1}{2}$  corner common to Section 35, T19S, R20W, S.M. and Section 2, T20S, R20W, S.M.;

Thence southerly along the N-S centerline of Section 2, T20S, R20W, S.M. approximately 0.5 miles to the center  $\frac{1}{4}$  corner of said Section 2;

Thence southeasterly approximately 2.5 miles to the section corner common to Sections 5, 6, 7 and 8, T20S, R19W, S.M.;

Thence northwesterly, approximately 7.5 miles to the section corner common to Sections 20, 21, 28 and 29, T19S, R18W, S.M.;

SHUYAK ISLAND  
September 23, 1981  
Page 2

(Unsurveyed land--All sections are protracted) (continued)

Thence northerly approximately 11 miles to the section corner common to Sections 28, 29, 32 and 33, T17S, R18W, S.M.;

Thence westerly approximately 5 miles to the section corner common to Sections 27, 28, 33 and 34, T17S, R19W, S.M.;

Thence southerly approximately 5 miles to the section corner common to Sections 21, 22, 27 and 28, T18S, R19W, S.M.;

Thence easterly approximately 1.75 miles to the E 1/16th corner common to Sections 23 and 26, T18S, R19W, S.M., the point of beginning.

This description contains approximately 10,400 acres of uplands.

Background

The Kodiak Island Borough pursuant to AS 29.18.201-.213 is entitled to select 56,500 acres from State general grant land within its boundaries and has filed such selections in the manner provided. However, a considerable portion of the land selections filed by the Kodiak Island Borough were administratively rejected by the State. As a result the Kodiak Island Borough filed three separate judicial appeals of the administrative decisions in the Superior Court, Third Judicial District under case numbers 3AN-80-3070 (Woody Island), 3AN-80-6710 (Land Classification), and 3AN-81-1385 (Shuyak Island). Both parties desired to settle the question of which lands will be conveyed to the Kodiak Island Borough without extended litigation and entered into an agreement of settlement and consent decree which was approved and adopted by the court.

Section 6 of the Agreement of Settlement and Consent Decree provides both parties shall support legislation to create a State game refuge denominated the "Aleksandr Baranov State Game Refuge" on the subject parcel.

Section 8 of the Agreement of Settlement and Consent Decree provides that in the event the lands to be included in the proposed "Aleksandr Baranov State Game Refuge" are not finally included by legislation such lands shall be at all times classified and managed by the State in a manner maintaining and enhancing such lands for wildlife habitat and public recreation purposes.

SHUYAK ISLAND  
September 23, 1981  
Page 3

Physical Description

Shuyak Island is the northernmost and smallest of the major islands in the Kodiak Island Archipelago, which is formed by the Kodiak Mountains, a structural southwest continuation of the Kenai-Chugach Mountains. The area is characterized by an irregular coastline with many fiords and islands. Short, swift, clear streams, small lakes and numerous small ponds are widely scattered over the glacially sculptured topography. Unlike the larger islands of the group the topography of Shuyak Island is of rather low relief with elevations ranging from 0 to 660 feet above sea level with predominantly gently rolling slopes.

Shuyak Island is in a maritime climatic zone, however, climatic data for the area is sporadic. The only major recording station is on Kodiak Island, with supporting data from ship movement through the areas. The maritime climatic zone is strongly influenced by the marine environment and characterized by moderately heavy precipitation, cool temperatures, high cloud and fog frequency with little or no freezing weather. Temperature patterns are characterized by relatively cool summers and warm winters, as compared to interior land temperatures at similar latitudes. The mean high temperature for January is 32 to 36° F while the mean high temperature for July is only 56 to 62° F. Above freezing temperatures, which are common during all winter months, usually keep the snow depth from becoming excessive at low elevations. However, the warm temperatures at low elevations also result in wet heavy snow with high water content.

Severe storms with high winds are common in the area. Surface winds are more hazardous to human activities in the area than temperature or precipitation. Sustained extreme wind speeds during storms may range from 50 to 75 knots, with gusts as high as 100 knots. From June through September when the air contains the most moisture and is warmer than the water, fog is common and the principal cause of reduced visibility.

The vegetation on Shuyak Island is characterized by well developed extensive stands of large size, over-mature Sitka spruce, stands of pole size Sitka spruce, sedges and other water tolerant plants in the lowland areas, and alder and grasses in the non-timbered areas.

Resource Values

Timber

Extensive commercial stands of mature and over-mature timber are the primary resource value of Shuyak Island. It is estimated there are 23,518 acres of timber land and 10,250 acres of non-timber land on the island.

Resource Values (continued)

Wildlife/Fisheries

There is a thriving deer herd on the island. Brown bear and elk are also present but there is little information available as to numbers or concentration. There is a high density of both sea otter and harbor seals in the bays and fiords of Shuyak Island as well as sea lions along the northeasterly end of the island.

There are numerous seabird colonies along the coastline and particularly on the small islands and offshore rocks within the area.

Agriculture

The raising of field crops is not feasible due to the poor soils and cool summer temperatures. Grazing of livestock might be possible, however, there would be bear-livestock conflicts. In addition competition between livestock and deer for available food supplies would present problems.

Reasons for State Selections

Extensive commercial stands of mature timber and potential of subsurface mineral resources were prime considerations in state selections. In addition the numerous fiords and small islands along the coast provide excellent habitat for marine mammals and seabird colonies as well as an area of unsurpassed natural beauty with a nearly unlimited potential for outdoor recreation.

Socio/Economic Conditions

The economic mainstay of the Kodiak Island Archipelago is fishing and seafood processing. The major species taken include king, tanner, and dungeness crab, salmon, halibut and shrimp. Employment in the area tends to be seasonal because of the heavy dependence on the fishing and seafood processing industry. Other employment available includes Federal, State and local government positions, trade and service industries, tourism, finance, insurance, real estate, construction, transportation and communications.

There are no communities on Shuyak Island. The City of Kodiak, the only major community in the archipelago, is 50 miles south of Shuyak Island and has a population of approximately 6,000.

# KODIAK ISLAND BOROUGH

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Telephones 486-5736 - 486-5737 — Box 1246

KODIAK, ALASKA 99615

October 7, 1981

The Honorable Bob Mulcahy  
The State Senate  
State of Alaska  
Box 246  
Kodiak, Alaska 99615

Dear Senator Mulcahy:

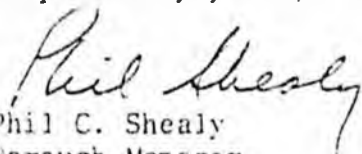
Enclosed find a certified copy of Kodiak Island Borough Resolution No. 81-71-R requesting state legislation to create the Aleksandr Baranov State Game Refuge as well as Resolution No. 81-72-R requesting state legislation to create the Shuyak Island State Park. Both resolutions were unanimously passed at the regular Borough Assembly meeting on October 1, 1981 and are accompanied by proposed language for the text of the act. We have also enclosed a copy of a letter from Dale P. Tubbs, Land Management Consultant for the Kodiak Island Borough, dated August 17, 1981 outlining the steps necessary to effect the Agreement of Settlement and Consent Decree between the Borough and the State of Alaska.

As you can see from the letter, the Kodiak Island Borough is to use its best efforts to have legislation introduced to create the state park and state game refuge on Shuyak Island for those portions not to be conveyed to the Kodiak Island Borough.

We hope that you would be able to assist in the adoption of the proposed legislation and would urge you to contact either myself or the mayor and Borough Assembly for further particulars on this matter.

Thanking you in advance for your assistance in this matter, I remain,

Respectfully yours,

  
Phil C. Shealy  
Borough Manager

Enclosures

mdd

A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY REQUESTING STATE LEGISLATION TO CREATE THE ALEKSANDR BARANOV STATE GAME REFUGE.

WHEREAS, on August 14, 1981 the Superior Court ordered the Agreement of Consent Decree to effectively dismiss the appeals the Kodiak Island Borough brought against the Alaska Department of Natural Resources in regards to its lands selections, and

WHEREAS, a condition in the Agreement of Settlement and Consent Decree is that the Kodiak Island Borough is to use its best efforts to have legislation introduced to create a State Park and State Game Refuge on Shuyak Island for those portions not to be conveyed to the Kodiak Island Borough, and

WHEREAS, the Aleksandr Baranov State Game Refuge is established to protect fish and wildlife habitats and population of all fish and wildlife species, particularly deer and brown bear, feeding, wintering and migration areas as well as to provide public uses of fish and wildlife in their habitat for hunting, viewing, photography and general recreation in a high quality environment, and

WHEREAS, the Kodiak Island Borough has caused to be prepared a proposed bill entitled "An Act Creating the Aleksandr Baranov State Game Refuge".

NOW, THEREFORE, BE IT RESOLVED by the Kodiak Island Borough Assembly that legislation entitled "An Act Creating the Aleksandr Baranov State Game Refuge" be introduced and assigned a number providing for the creation of said state game refuge.

BE IT FURTHER RESOLVED by the Kodiak Island Borough Assembly that the Borough administration be directed to send this resolution to Senator Mulcahy and Representatives Sutcliffe and Zharoff and implore their assistance in the successful adoption of this legislation.

PASSED AND APPROVED this 1st day of October, 1981 by the Borough Assembly.

KODIAK ISLAND BOROUGH

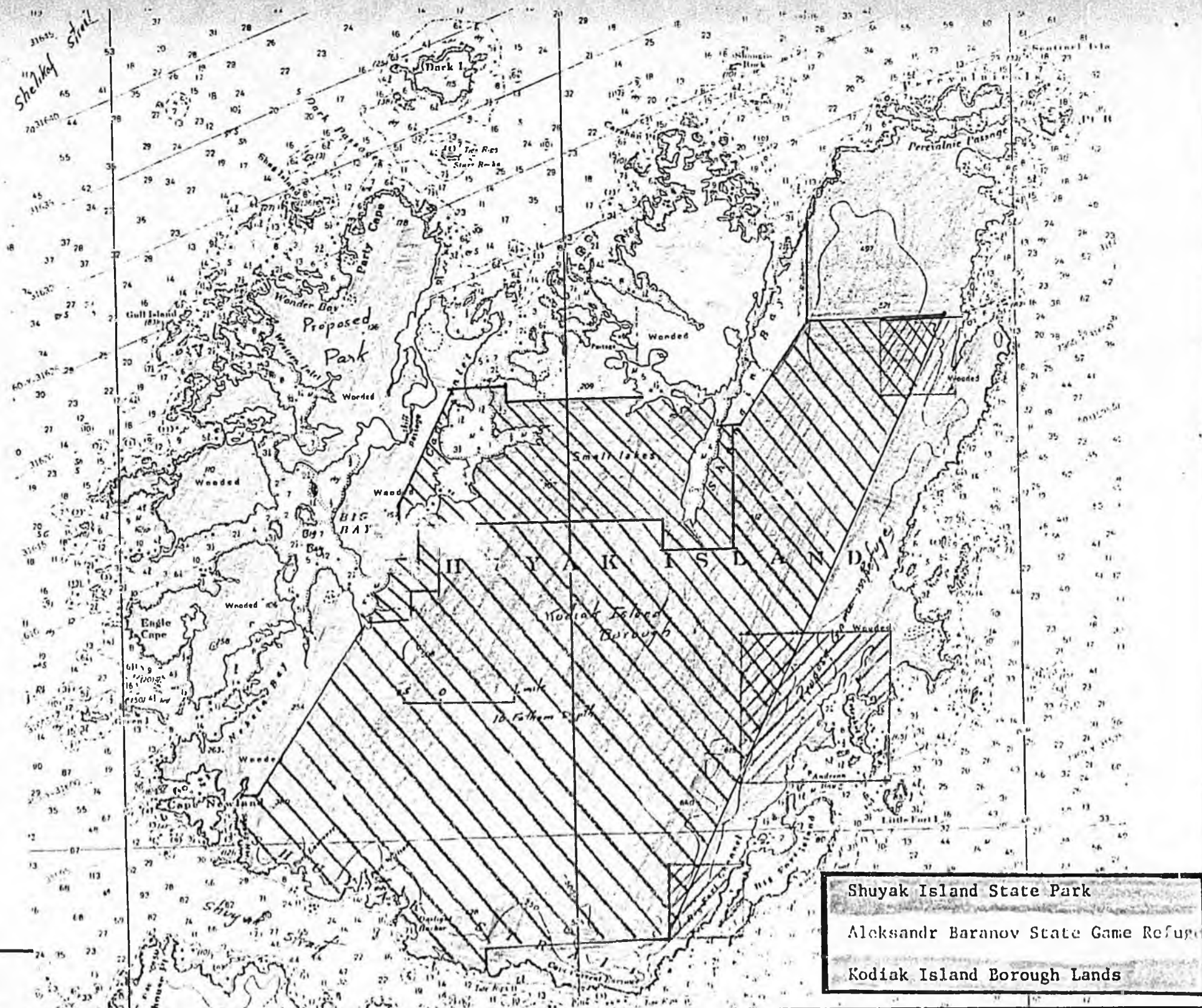
By R. D. [Signature]  
Borough Mayor

ATTEST:

By [Signature]  
Borough Clerk

I, Margaret D. Duros, do certify this to be a true and correct copy of Resolution No. 81-71-B passed and approved by the Kodiak Island Borough Assembly on October 1, 1981.





Shuyak Island State Park  
Aleksandr Baranov State Game Refuge  
Kodiak Island Borough Lands

Sectional analysis of SB 730

Section 1:

16.20.035 (a) This section creates the Aleksandr Baranov State Game Refuge. See provided map for area of the refuge. It is the yellow shaded area.

(b) This section establishes that the game refuge is created to provide for protection of habitat, continued opportunity for sport fishing and hunting, trapping and commercial fishing, and opportunity to view, study, and photograph the plants and wildlife.

(c) This section states that if the Kodiak Island Borough gives back to the state the land detailed in blue with purple cross-hatching on the map, it will become part of the refuge.

(d) This section requires that the Department of Natural Resources allow a 200 foot easement through the areas on the map with red cross-hatching to borough or private property. The specific locations of these easements will be mutually agreed to by the Department of Natural Resources, the Department of Fish & Game, and the Kodiak Island Borough.

(e) This section requires the commissioner of natural resources to adopt regulations governing permits for seasonal cabins or shelters on the refuge. The Department of Natural Resources must consult with the Department of Fish and Game before adopting these regulations. In no case will a permit be for a time period over 5 years.

(f) This section states that the Boards of Fisheries and Game will manage the fish and wildlife within the refuge.

Sectional analysis of SB 731

Section one:

Sec. 41.20.506 establishes that the purpose of the Shuyak Island State Park is to protect the recreational and scenic resources, the fish and wildlife habitat, and to preserve the use of the area for hunting, fishing, trapping, and compatible recreational activities.

Sec. 41.20.507 (a) states that the state owned uplands and freshwater bodies in the following areas are designated as the Shuyak Island State Park. This is the area in green on the map.

(b) states that if the Kodiak Island Borough gives any of the land in the following sections back to the state, it may be added to the park by proclamation of the Governor. This is the area in blue with black cross-hatching.

Sec. 41.20.510 (a) designates the Department of Natural Resources as the agency with responsibility for management of the uplands and freshwater bodies in the park.

(b) designates the Department of Fish and Game as the agency with the responsibility for management of the fish and game resources in the park.

(c) requires the Department of Natural Resources to consult with the Department of Fish and Game before adopting regulations affecting the park.

(d) requires the Department of Fish and Game to consult with the Department of Natural Resources before adopting regulations affecting fish and game in the park.

Sec. 41.20.511 (a) states that DNR will designate incompatible uses in the park.

(b) states that shooting in the park is allowed, except in areas that are closed because of public safety.

(c) allows ADF&G to engage in stream rehabilitation and enhancement.

(d) states that regulations governing public uses in the park will provide reasonable access for hunting, fishing, and trapping.

(e) requires that reasonable access be allowed to the Depart-

Sectional analysis of SB 731 continued

ment of Public Safety and the Department of Fish and Game for the purposes of management and enforcement of fish and wildlife.

Sec. 41.20.515 allows the state to purchase property in the park. The state may not acquire land by eminent domain.

Section two adds an immediate effective date.



Alaska State Legislature  
Senate

JUNEAU, ALASKA

TO: Senator Bettye Fahrenkamp, Chairman  
Senate Resources Committee

FROM: Senator Bob Mulcahy *Bob Mulcahy*

SUBJ: SB 730 and 731

DATE: March 3rd, 1982

During the March 1st hearing on SB 730 and 731, two questions were raised: the first question was in regards to private lands on Shuyak Island, and the second question was in regards to surveying costs being mentioned in the court settlement.

The only patented private lands on Shuyak Island lie outside of the proposed park and the proposed game refuge. These lands will not be affected by either of these bills. There are several small areas claimed under the Native Land Claims that are scattered around the island; these are at present being adjudicated.

There is nothing in the court settlement about surveying costs at all. I am informed by the Kodiak Island Borough that there is no concern about the question of survey costs at this time.

cc: Senator Gilman

LEGISLATION SUMMARY

SB 730: "An Act establishing the Aleksandr Baranov State Game Refuge."

GENERAL: This bill would create the Aleksandr Baranov State Game Refuge, occupying roughly the eastern and northeastern coastal areas of Shuyak Island, and islands within 1 mile of the designated area on Shuyak Island proper.

Sec. 1: Establishes the Aleksandr Baranov State Game Refuge. Describes the area to be included in the Refuge by township, range and section, including all islands within 1 mile of the easterly shore of the areas designated. The Refuge shall consist of all state-owned uplands and uplands that may be acquired by the state in the future lying within the designated area, and any Kodiak Island Borough land selections within certain designated parcels if relinquished back to the State.

Provides for the following uses in the Refuge: habitat protection and enhancement; recreational uses, including fishing, hunting, continued trapping and commercial fishing; opportunity to observe plants and wildlife.

Provides for access to private and borough property within or adjacent to the Refuge through the reservation of easements by the Department of Natural Resources.

Provides for the adoption of regulations governing the issuance of 5-year (or less) renewable seasonal use permits for cabins or shelters within the refuge, with special consideration for owners of existing cabins or shelters. The regulations shall be adopted by the Department of Natural Resources with the approval of the Department of Fish and Game.

The Boards of Fisheries and Game shall adopt regulations governing the taking of fish and game within the Refuge.

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PRIME SPONSOR: Mulcahy

CO-SPONSOR(S): None

SENATE RESOURCES COMMITTEE  
LEGISLATION CHECKLIST

SB 730

BILL NUMBER

IDENTIFICATION:

BILL NAME: establishing the Aleksandr Baranov State Game Refuge

SPONSOR(S): Mulcahy

RELATED BILLS PENDING: SB 731

DATE INTRODUCED: 2/9/82

REFERRALS Resources

INITIAL RESEARCH:

INITIAL BILL SUMMARY COMPLETED ✓ *2/9/82*

SUMMARY BY LEGAL DIVISION:  
DEPT. OF LAW SUMMARY:

SPONSOR CONTACTED FOR BACKUP  
MATERIALS: *Final Sale. Basis Resolution in favor*  
*- hand plan. report*  
*- state/basis agreement*

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR  
REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPARATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET: *3/1/3/5*

STAFF MEMO TO COMMITTEE:

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/CS DRAFTED:

*✓ DOR - Helton - Wolfe 2400*  
*✓ F & G - Greg Voa 4100*  
*✓ Env.*



Official Business

# Alaska State Legislature

## Senate Resources Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

TO: Senate Resources Committee  
FROM: Senate Resources Committee Staff  
RE: Committee Meeting, Friday, March 5, 1982  
DATE: March 4, 1982

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Please find attached background information for this Friday's meeting on the following bills:

- SB 730 An Act establishing the Aleksandr Baranov State Game Refuge
- SB 731 An Act establishing the Shuyak Island State Park
- SB 769 An Act removing the requirement that power projects constructed under the energy program for Alaska be owned by the state.

The meeting will be held at 1:30 p.m. in the Beltz Room.

SHUYAK ISLAND PARK AND REFUGE LEGISLATION: SB 730 AND SB 731

THE SETTLEMENT AGREEMENT TO FINALIZE THE KODIAK ISLAND BOROUGH LAND ENTITLEMENT RESULTED IN MANY ADJUSTMENTS TO THE ORIGINAL KODIAK ISLAND BOROUGH SELECTIONS. IN THE CASE OF SHUYAK ISLAND THE MOST DESIRABLE AREAS (THE WEST AND EAST COASTAL AREAS) WERE GIVEN UP AND LESS DESIRABLE LANDS WERE TAKEN IN THE CENTER OF THE ISLAND. THE STATE, THROUGH THE DEPARTMENT OF NATURAL RESOURCES, STRESSED THE WEST SIDE OF THE ISLAND WAS OF GREATER INTEREST TO THE STATE FOR STATE PARK LAND AND THE DEPARTMENT OF FISH AND GAME STRESSED THE EAST SIDE OF THE ISLAND SHOULD BE PRESERVED AS GAME HABITAT.

IN FINALIZING THE SHUYAK ISLAND SELECTIONS THE BOROUGH INCLUDED A CLAUSE IN THE SETTLEMENT AGREEMENT TO LOCK THE STATE INTO KEEPING THE RELINQUISHED BOROUGH SELECTIONS ON THE ISLAND AS PARK AND REFUGE LAND. THE CLAUSE STATES THAT IF THE STATE EVER CHANGES THE INTENDED PARK AND REFUGE USE THE BOROUGH HAS THE FIRST RIGHT TO OBTAIN THE RELINQUISHED LANDS. BOTH THE PARK AND GAME PEOPLE STATED THAT THEIR ABILITY TO HOLD TO THIS AGREEMENT WOULD BE STRENGTHENED IF LEGISLATION WAS PASSED TO DEDICATE THE LANDS. THE BOROUGH AGREED TO INTRODUCE SUCH LEGISLATION AS AT THE TIME OF NEGOTIATIONS IT WAS TOO LATE FOR THE STATE TO INTRODUCE IT.

ALSO IN THE NEGOTIATIONS OF THE OUT OF COURT SETTLEMENT, THE STATE REPRESENTATIVES DIVIDED UP THE REMAINDER OF THE ISLAND TO ABSORB ANY LANDS RELINQUISHED BY THE BOROUGH. (AS 41.20.507 (b) OF SB 731 AND AS 16.20.035 (c) OF SB 730). ALONG WITH THIS THEY INCLUDED ALL THE TIDE AND SUBMERGED LANDS OUT TO APPROXIMATELY THE THREE MILE LIMIT. AT THIS POINT THE NEGOTIATIONS WERE WEARING THIN. RATHER THAN NEGOTIATE THE ISSUE ANY FURTHER, THE BOROUGH STATED IT WOULD MAKE A REASONABLE EFFORT TO INTRODUCE THE PARK AND REFUGE LEGISLATION BUT WOULD NOT SUPPORT THE INCLUSION OF THE TIDE AND SUBMERGED LANDS.

AT THIS POINT THE INTRODUCED LEGISLATION DOES NOT INCLUDE ANY TIDE AND SUBMERGED LANDS. THE KODIAK ISLAND BOROUGH ASSEMBLY VOTED TO HOLD THIS POSITION EVEN THOUGH SUBSEQUENT PROPOSALS WERE MADE TO INCLUDE THE TIDE AND SUBMERGED LANDS OUT TO THE 10 FATHOM DEPTH (60 FEET) WHICH EXTENDS UP TO ONE MILE OFFSHORE AND INCLUDES THE EXTENSIVE BAY AREAS. BOTH PARKS AND GAME WANT THE WATER INCLUDED. ONE OF THE BIGGEST CONCERNS OF THE KODIAK ISLAND BOROUGH IS THAT PRESENTLY OPEN FISHING WATERS MAY BE CLOSED OR VESSEL USE IN THESE WATERS COULD BE CLOSED BY A DIRECTORS ORDER.

IF ANY TIDE AND SUBMERGED LANDS ARE INCLUDED IN THE LEGISLATION IT WILL BE NECESSARY TO INCLUDE A COMPATABLE USE CLAUSE. WITHOUT IT THE PARKLAND REFUGE DESIGNATIONS COULD PRECLUDE THE PLACING OF WARFS, DOCKS, PILING, ETC. IN TIDE AND SUBMERGED LANDS TO UTILIZE THE ADJACENT UPLANDS. ANOTHER CLAUSE SHOULD BE ADDED TO ALLOW FISHING, (BOTH COMMERCIAL AND SPORT) WITHIN THE PARK AND REFUGE WATERS. THESE CLAUSES WERE INCLUDED IN THE FEBRUARY 6, 1982 DRAFT OF THE BILLS.

A BOTTOM LINE ISSUE THE KODIAK ISLAND BOROUGH'S INTERESTS ARE PROTECTED BY THE AGREEMENT OF SETTLEMENT AND CONSENT DECREE APPROVED BY THE COURT. THE EFFORTS OF THE STATE AGENCIES TO EXPAND THE PROPOSED LEGISLATION TO INCLUDE TIDE AND SUBMERGED LANDS GOES BEYOND THE ORIGINAL ISSUE OF THE BOROUGH SELECTION ENTITLEMENT AND ERRODES THE KODIAK ISLAND BOROUGH'S OPPORTUNITIES TO ENHANCE ITS GENERAL WELFARE AND USE OF ITS LAND ENTITLEMENT.

SIGNED BY DALE P. TUBBS,

LAND CONSULTANT FOR THE  
KODIAK ISLAND BOROUGH

CONSENT DECREE

The parties to this agreement are the State of Alaska, Department of Natural Resources, through its Division of Forest, Land and Water Management ("the State") and the Kodiak Island Borough ("KIB").

Whereas, pursuant to AS 29.18.201-.213 KIB is entitled to select 56,500 acres from state general grant land within its boundaries, and has filed such selection; in the manner provided by statute; and

Whereas, a considerable portion of the land selections filed by KIB were rejected by the State on the grounds that the lands selected had been previously classified by the State for a use or purpose which disqualified those lands for conveyance to KIB pursuant to AS 29.18.201 et seq., or had been designated as state interest lands pursuant to AS 38.05.047; and

Whereas, by reason of said selections by KIB and rejections by the State, the parties are currently involved in three separate judicial appeals from administrative decisions which are now pending in the Superior Court, Third Judicial District under case numbers 3AN-80-3070 (Woody Island), 3AN-80-6710 (Land Classification); and 3AN-81-1385 (Shuyak Island); and

Whereas, both parties desire to settle finally the question of those lands which will be conveyed to KIB in satisfaction of its statutory land entitlement, and further desire to resolve this question in the near future without extended litigation, and to resolve pending litigation.

Now, therefore, the parties agree as follows:

1. a. The State agrees to convey to KIB, as soon as practicable, the lands now owned by the State or hereafter acquired pursuant to Section 6 of the Alaska Statehood Act and which are described in Exhibit A (Shuyak Island) and Exhibit B (other lands). Open to Entry parcels under lease within lands described in Exhibit B which expire shall be conveyed to KIB upon expiration. All conveyances shall be completed not later than nine (9) months after execution of this agreement, except that, with respect to lands as to which the state has not yet received tentative approval, within nine (9) months after tentative approval.

b. KIB agrees that it will invoke its land regulatory powers, including zoning powers, to disallow in the west one-half of Section 10, T. 19 S., R. 20. W., S.M. fronting on Big Bay on Shuyak Island heavy industrial uses incompatible with use and enjoyment of adjacent park or public recreation lands. The Borough agrees to guarantee reasonable public access through the above described parcel for the purpose of utilizing adjacent park or public recreation lands. The State may reserve in the patent to these lands the right to re-enter and take possession upon the determination, by a court of competent jurisdiction, that KIB has breached this paragraph.

2. KIB agrees to execute a quitclaim deed to the State for the property described in Exhibit C (Pillar Creek Watershed and Woody Island).

3. In the event that at any time in the future the state-selected or state-tentatively approved lands described in Exhibit D are finally determined not to be subject to conveyance under the Alaska Native Claims Settlement Act (P.L. 92-203, 43 U.S.C. Sec. 1601 et. seq.), as amended for any reason, the State agrees that it will convey those lands to KIB upon receipt

of written notice from KIB of its election to receive such lands.

4. In the event that all or part of the lands described in Exhibit D are conveyed to KIB, KIB agrees to reconvey to the State, (in sequence from an easterly to a westerly direction), an equal number of acres from lands on Shuyak Island previously conveyed by the State to KIB pursuant to Paragraph 1.a. of this Agreement. Such reconveyance by KIB to the State shall be made first from Area I, and then from Area II which are described below:

Area I. The area within protracted Sections 29, 30, 31, and 32, T. 19 S., R. 19 W., S.M. lying west of the agreed-upon proposed Aleksandr Baranov Game Refuge described in Paragraph 6 below.

Area II. Those lands lying within T. 18 S., R. 19 W. and T. 18 S., R. 20 W., S.M. which are east of Carry Inlet and west of Shangin Bay.

5. If lands described in Exhibit D and which are conveyed by the State to KIB pursuant to paragraph 3 of this Agreement exceed in acreage the lands designated as Area I and Area II in Paragraph 4 above, KIB agrees to reconvey to the State additional sections of land on Shuyak Island until such reconveyances within Area I and Area II are equal in total acreage to the acreage of the lands described in Exhibit D which have been conveyed to KIB. Such additional conveyances shall be designated by KIB from any lands on Shuyak Island then owned by KIB, or designated for transfer to KIB pursuant to this Agreement, provided that such lands are compact and contiguous with other lands on Shuyak Island which are then in state ownership.

6. KIB agrees to attempt to obtain introduction and passage of legislation in the Alaska State Legislature which

would create a state game refuge denominated the "Aleksandr Baranov State Game Refuge" consisting of the lands described in Exhibit E. KIB agrees to support introduction of such legislation beginning with the 1981 legislative session, and to support early passage of such legislation, provided that KIB is not obligated to support inclusion of tide or submerged lands except upon mutual agreement with the state with respect to the regulatory implications of such inclusion. The State agrees to support such legislation in good faith, by such oral and written testimony as may be appropriate.

7. KIB agrees to attempt to obtain introduction and passage of legislation in the Alaska State Legislature creating state park denominated the "Shuyak Island State Park" and consisting of all lands described in Exhibit F. KIB agrees to support introduction of such legislation beginning with the 1981 legislative session, and to support early passage of such legislation, provided that KIB is not obligated to support inclusion of tide or submerged lands except upon mutual agreement with the state with respect to the regulatory implications of such inclusion. The State agrees to support such legislation in good faith, by such oral and written testimony as may be appropriate.

8. In the event that lands to be included in the proposed "Aleksandr Baranov State Game Refuge" or the proposed "Shuyak Island State Park", referred to in Paragraph 6 and 7 respectively, are not finally included by legislation in the proposed game refuge or park, such lands shall be at all times classified and managed by the State in a manner maintaining and enhancing such lands for wildlife habitat and public recreation purposes. Otherwise KIB shall be entitled to select those lands not so classified and managed, and the State shall thereupon promptly transfer the selected lands to KIB. Upon transfer of such lands to KIB, KIB shall reconvey equivalent acreage to the State from Shuyak Island in the manner provided in Paragraph 4, and thereafter in the manner provided in Paragraph 5.

9. The State will designate, on lands owned by it, public easements for the benefit of KIB and the public, each of which shall be 200 feet in width, to provide public access from the line of mean high tide westerly to lands on Shuyak Island which have been conveyed to KIB pursuant to Paragraph 1 of this agreement. The easements will be in the following areas, as more specifically indicated on the attached map entitled Exhibit H, and further subject to exact location in the field:

- A. Traversing Section 26, T. 10 S., R. 19 W., S.M.;
- B. Traversing Sections 15 and 16, 21 and 22, of T. 19 S., R. 19 W., S.M.;
- C. Traversing Section 32, T. 19 S., R. 19 W., S.M..

In the event that lands are conveyed to the State pursuant to paragraphs 4 and 5 above, those easements designated in subparagraphs A, B, and C of this paragraph shall be reserved so as to continue through such lands.

10. The State shall reserve the easements described in Exhibit G. With respect to easements reserved pursuant to AS 38.05.127 or other applicable provision of law, on all other lands conveyed to KIB, their location shall be determined by the borough, subject to approval by the Department of Natural Resources, prior to conveyance by the borough to a private third party.

11. The State and KIB agree that this Agreement is intended by the parties to resolve all outstanding legal and factual differences between them concerning the application of the Municipal Land Selection Act (AS 29.18.201-.213), including particularly, pending Superior Court lawsuits numbered 3AN-80-3070, 3AN-80-6710, and 3AN-81-1385. To achieve this result, the parties agree to accomplish the following actions promptly upon execution of this Agreement:

- a. KIB agrees to relinquish its nominations, selections, and selection approvals not designated for transfer to KIB in this Agreement and further

agrees not to litigate or otherwise challenge the retention by the State of such lands.

- b. KIB agrees not to litigate or otherwise challenge retention by the State of those public easements depicted in Exhibit G.
- c. The State agrees to accept from KIB the relinquishment of those nominations, selections, and approved selections required by this Agreement, and to accept future selections and reconveyances by KIB pursuant to Paragraphs 4, 5, and 8.
- d. All previous transfers of land from the State to KIB are hereby affirmed. Nothing herein affects KIB's right to apply for land under AS 38.05.315 or other applicable law, excluding AS 29.18.201-213.
- e. The State and KIB agree that the terms of this Agreement shall constitute a consent decree and judgment to be presented to the Superior Court for entry in final settlement and dismissal of all pending litigation between the parties with respect to KIB land selections under AS 29.18.201-213, such pending litigation consisting of the following pending judicial appeals from administrative decisions:
  - 3AN-80-3070 (Woody Island)
  - 3AN-80-6710 (Land Classification)
  - 3AN-81-1385 (Shuyak Island)
- f. All such litigation shall be dismissed upon execution and court approval of this Agreement and Consent Decree, with each party to bear its own costs and attorney's fees.

12. The State and KIB agree that this Agreement, together with its Exhibits A through H, embodies all of the terms and conditions of the Agreement for settlement of pending litigation and for conveyance of all lands due to KIB pursuant to AS 29.18.201-.213, and that no additional enforceable agreements or commitments exist between them with regard to this subject which are not contained in the text of this Agreement and its Exhibits. The parties reserve the right, by mutual consultation and agreement, to correct if necessary any technical errors or omissions in the specific land descriptions comprising Exhibits A through H herein, so as to more nearly conform to the mutual intentions of the parties with regard to implementation of this Agreement

DATED this 19<sup>th</sup> day of June, 1981.

DEPARTMENT OF NATURAL RESOURCES

KODIAK ISLAND BOROUGH

[Signature]  
Commissioner

[Signature]  
Borough Mayor

STATE OF ALASKA

Attest: [Signature]  
Borough Clerk

[Signature]  
Director, Division of Forest,  
Land & Water Management

Attest: [Signature]  
Municipal Land  
Selections Officer

APPROVED AS TO FORM:

[Signature]  
Thomas E. Orchard  
Assistant Attorney General  
State of Alaska

[Signature]  
Richard W. Garnett III  
Attorney, Kodiak Island  
Borough

ORDER

IT IS ORDERED, that the foregoing Agreement of Settlement and Consent Decree is hereby adopted and approved and

shall be enforceable as a judgment of the court.

DATED this 12 day of August, 1981 at  
Anchorage, Alaska.

S/ Daniel A. Moore Jr.  
Judge of the Superior Court

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

## Senate

### Committee on Resources

March 1, 1982  
1:30 p.m.

Beltz Room  
Capitol - Room 211

#### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Fischer  
Senator Gilman  
Senator Mulcahy  
Senator Sturgulewski

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#### Hearing:

SB 730 An Act establishing the Aleksandr Baranov State Game Refuge.  
SB 731 An Act establishing the Shuyak Island State Park.  
SJR 59 Relating to support for legislation establishing a National Garden Week.

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#### SB 730 and SB 731

Greg Vos, Alaska Department of Fish and Game, was present to answer questions.

Senator Mulcahy provided background. The bills are the result of negotiations between the Kodiak Island Borough and the Department of Natural Resources, as part of the municipal entitlement settlement. The proposed refuge is on the east side of Shuyak Island to protect the winter deer habitat. The proposed park is on the west side of the island, with the Kodiak Borough maintaining the core portion of the island and being provided with an easement.

Joyce Munson, representing the Kodiak Borough, spoke in support of SB 730 and 731, stating the Borough would oppose any amendments that would include tidal or submerged lands.

Senate Resources Committee  
March 1, 1982  
Page 2

Hilton Wolfe, Division of Parks, Department of Natural Resources,  
expressed support for SB 731

After discussion by the Committee concerning payment for survey work, Senator Fahrenkamp stated that Senate Bills 730 and 731 would be held until this question was answered,

SJR 59

Carol Burnside, Aide to Senator Colletta, was present to answer questions.

Senator Mulcahy moved the bill with individual recommendations.

The meeting was adjourned at 1:50 p.m.

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

## Senate

### Committee on Resources

March 5, 1982  
1:35 p.m.

Beltz Room  
Room 211 - Capitol

#### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Gilman  
Senator Sturgulewski  
Senator Kertulla, President

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#### Hearing:

SB 730 An Act establishing the Aleksandr Baranov State Game Refuge.  
SB 731 An Act establishing the Shuyak Island State Park.  
SB 769 An Act removing the requirement that power projects constructed under the energy program for Alaska be owned by the state.

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#### SB 730

Senator Sturgulewski moved the bill with individual recommendations.

#### SB 731

Chip Dennerlein, Director, Division of Parks, Department of Natural Resources, spoke in support of the bill, but suggested two amendments: page 1, line 18 and page 5, line 17 replace "compatible" with "other", to avoid creating classes of users by implication. The Division of Parks would like to participate in writing the Committee Report or a letter of intent concerning tidelands inclusion, to assure them authority to build a boat ramp or dock in the future. The fiscal note on this bill is zero, as easements will be platted on paper only, and not constructed.

Bob Hinman, Deputy Director, Game Division, Alaska Department of Fish and Game, spoke in opposition to the suggested amendments, stating that "compatible" may have been deliberate wording so as not to exclude commercial hunting or trapping.

Senator Sturgulewski moved that the bill be held until Monday, so this concern could be resolved.

SB 769

Senator Gilman explained the reason for this bill. Bradley Lake is a Corps of Engineers hydro project. Feasibility studies and design work have been completed, but there are no federal funds for construction. SB 769 would allow the State to put money into the project without owning it. However, the Legal Division has informed Gilman that the proposed Committee Substitute may be unconstitutional because it is "special legislation." In addition, there have been several different cost estimates for the project. Gilman suggested the bill be held until he meets with the Alaska Power Authority, the Corps of Engineers, and the Office of Budget and Management to discuss the project.

Senator Fahrenkamp appointed Senator Gilman to chair a committee to resolve this issue, at which time the Resources Committee will expedite their action on SB 769.

The meeting was adjourned at 2:15 p.m.

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
DICK ELIASON  
OCN GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI



Senate

POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

## Committee on Resources

March 8, 1982  
1:35 p.m.

Beltz Room  
Room 211 - Capitol

### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Fischer  
Senator Eliason  
Senator Gilman  
Senator Mulcahy  
Senator Sturgulewski

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### Hearing:

SB 730 An Act establishing the Aleksandr Baranof State Game Refuge.  
SB 745 An Act extending the lapse date for the FY 82 appropriation for land disposal surveys.  
SB 759 An Act relating to the size of trapping cabins.  
SB 832 An Act extending the lapse date for the FY 82 appropriation for the Citizen Advisory Commission.

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### SB 745

Jeff Haynes, Deputy Commissioner, Department of Natural Resources, explained that this capital appropriation is necessary to continue survey work (\$11 million) and municipal grants (\$2 million).

Senator Fischer asked that SB 832 be heard before any action was taken on SB 745.

### SB 832

Senator Fischer stated he would like SB 745 and SB 832 combined since they both amend the same line of the same statute.

Senator Fahrenkamp expressed opposition in consideration of the sponsors.

Senator Mulcahy moved SB 745 and SB 832 with individual recommendations.

Senate Resources Committee

March 8, 1982

Page 2

SB 759

Jeff Haynes stated that the existing statute limits the size of trapping cabins to 192 square feet. DNR feels the increase to 768 square feet that SB 759 would provide is too great. A smaller size would discourage the establishment of a permanent residence on a \$10/year trapping permit.

Senator Fahrenkamp said a Committee Substitute had been prepared that limits the size to 400 square feet.

Senator Eliason disagreed with the size limit, stating that criteria for obtaining a permit limit the cabin's use to trapping.

Senator Gilman moved the adoption of the Committee Substitute for SB 759. He then moved CSSB 759 with individual recommendations.

SB 730

Senator Sturgulewski moved to rescind the Committee's action on SB 730.

Senator Fahrenkamp explained that after action was taken last Friday, the land manager in Kodiak called about a technical error in the bill.

Senator Mulcahy stated that on page 1 line 29, and page 2 line 1, "21" should read "23". He moved the adoption of the Committee Substitute for SB 730. He then moved CSSB 730 with individual recommendations.

The meeting was adjourned at 2:00 p.m.

S B

731

COMMITTEE REPORT

SENATE

FURTHER:

Date: 2/22/92

Mr. President:

The Committee on Education has had SB 401

Establishing the Special Talent Trade Desk

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for SB 401  same title
- new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_  
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CHAIRMAN

SHUYAK ISLAND PARK AND REFUGE LEGISLATION: SB 730 AND SB 731

THE SETTLEMENT AGREEMENT TO FINALIZE THE KODIAK ISLAND BOROUGH LAND ENTITLEMENT RESULTED IN MANY ADJUSTMENTS TO THE ORIGINAL KODIAK ISLAND BOROUGH SELECTIONS. IN THE CASE OF SHUYAK ISLAND THE MOST DESIRABLE AREAS (THE WEST AND EAST COASTAL AREAS) WERE GIVEN UP AND LESS DESIRABLE LANDS WERE TAKEN IN THE CENTER OF THE ISLAND. THE STATE, THROUGH THE DEPARTMENT OF NATURAL RESOURCES, STRESSED THE WEST SIDE OF THE ISLAND WAS OF GREATER INTEREST TO THE STATE FOR STATE PARK LAND AND THE DEPARTMENT OF FISH AND GAME STRESSED THE EAST SIDE OF THE ISLAND SHOULD BE PRESERVED AS GAME HABITAT.

IN FINALIZING THE SHUYAK ISLAND SELECTIONS THE BOROUGH INCLUDED A CLAUSE IN THE SETTLEMENT AGREEMENT TO LOCK THE STATE INTO KEEPING THE RELINQUISHED BOROUGH SELECTIONS ON THE ISLAND AS PARK AND REFUGE LAND. THE CLAUSE STATES THAT IF THE STATE EVER CHANGES THE INTENDED PARK AND REFUGE USE THE BOROUGH HAS THE FIRST RIGHT TO OBTAIN THE RELINQUISHED LANDS. BOTH THE PARK AND GAME PEOPLE STATED THAT THEIR ABILITY TO HOLD TO THIS AGREEMENT WOULD BE STRENGTHENED IF LEGISLATION WAS PASSED TO DEDICATE THE LANDS. THE BOROUGH AGREED TO INTRODUCE SUCH LEGISLATION AS AT THE TIME OF NEGOTIATIONS IT WAS TOO LATE FOR THE STATE TO INTRODUCE IT.

ALSO IN THE NEGOTIATIONS OF THE OUT OF COURT SETTLEMENT, THE STATE REPRESENTATIVES DIVIDED UP THE REMAINDER OF THE ISLAND TO ABSORB ANY LANDS RELINQUISHED BY THE BOROUGH. (AS 41.20.507 (b) OF SB 731 AND AS 16.20.035 (c) OF SB 730). ALONG WITH THIS THEY INCLUDED ALL THE TIDE AND SUBMERGED LANDS OUT TO APPROXIMATELY THE THREE MILE LIMIT. AT THIS POINT THE NEGOTIATIONS WERE WEARING THIN. RATHER THAN NEGOTIATE THE ISSUE ANY FURTHER, THE BOROUGH STATED IT WOULD MAKE A REASONABLE EFFORT TO INTRODUCE THE PARK AND REFUGE LEGISLATION BUT WOULD NOT SUPPORT THE INCLUSION OF THE TIDE AND SUBMERGED LANDS.

AT THIS POINT THE INTRODUCED LEGISLATION DOES NOT INCLUDE ANY TIDE AND SUBMERGED LANDS. THE KODIAK ISLAND BOROUGH ASSEMBLY VOTED TO HOLD THIS POSITION EVEN THOUGH SUBSEQUENT PROPOSALS WERE MADE TO INCLUDE THE TIDE AND SUBMERGED LANDS OUT TO THE 10 FATHOM DEPTH (60 FEET) WHICH EXTENDS UP TO ONE MILE OFFSHORE AND INCLUDES THE EXTENSIVE BAY AREAS. BOTH PARKS AND GAME WANT THE WATER INCLUDED. ONE OF THE BIGGEST CONCERNS OF THE KODIAK ISLAND BOROUGH IS THAT PRESENTLY OPEN FISHING WATERS MAY BE CLOSED OR VESSEL USE IN THESE WATERS COULD BE CLOSED BY A DIRECTORS ORDER.

IF ANY TIDE AND SUBMERGED LANDS ARE INCLUDED IN THE LEGISLATION IT WILL BE NECESSARY TO INCLUDE A COMPATIBLE USE CLAUSE. WITHOUT IT THE PARKLAND REFUGE DESIGNATIONS COULD PRECLUDE THE PLACING OF WARFS, DOCKS, PILING, ETC. IN TIDE AND SUBMERGED LANDS TO UTILIZE THE ADJACENT UPLANDS. ANOTHER CLAUSE SHOULD BE ADDED TO ALLOW FISHING, (BOTH COMMERCIAL AND SPORT) WITHIN THE PARK AND REFUGE WATERS. THESE CLAUSES WERE INCLUDED IN THE FEBRUARY 6, 1982 DRAFT OF THE BILLS.

AS A BOTTOM LINE ISSUE THE KODIAK ISLAND BOROUGH'S INTERESTS ARE PROTECTED BY THE AGREEMENT OF SETTLEMENT AND CONSENT DECREE APPROVED BY THE COURT. THE EFFORTS OF THE STATE AGENCIES TO EXPAND THE PROPOSED LEGISLATION TO INCLUDE TIDE AND SUBMERGED LANDS GOES BEYOND THE ORIGINAL ISSUE OF THE BOROUGH SELECTION ENTITLEMENT AND ERODES THE KODIAK ISLAND BOROUGH'S OPPORTUNITIES TO ENHANCE ITS GENERAL WELFARE AND USE OF ITS LAND ENTITLEMENT.

SIGNED BY DALE P. TUBBS,  
LAND CONSULTANT FOR THE  
KODIAK ISLAND BOROUGH

# KODIAK ISLAND BOROUGH

Telephones 486-5736 - 486-5737 — Box 1246

KODIAK, ALASKA 99615

October 7, 1981

To: Honorable Bob Mulcahy  
The State Senate  
State of Alaska  
Box 246  
Kodiak, Alaska 99615

Dear Senator Mulcahy:

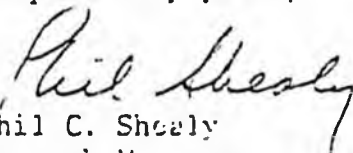
Enclosed find a certified copy of Kodiak Island Borough Resolution No. 81-71-R requesting state legislation to create the Aleksandr Baranov State Game Refuge as well as Resolution No. 81-72-R requesting state legislation to create the Shuyak Island State Park. Both resolutions were unanimously passed at the regular Borough Assembly meeting on October 1, 1981 and are accompanied by proposed language for the text of the act. We have also enclosed a copy of a letter from Dale P. Tubbs, Land Management Consultant for the Kodiak Island Borough, dated August 17, 1981 outlining the steps necessary to effect the Agreement of Settlement and Consent Decree between the Borough and the State of Alaska.

As you can see from the letter, the Kodiak Island Borough is to use its best efforts to have legislation introduced to create the state park and state game refuge on Shuyak Island for those portions not conveyed to the Kodiak Island Borough.

We hope that you would be able to assist in the adoption of the proposed legislation and would urge you to contact either myself or the mayor and Borough Assembly for further particulars on this matter.

Thanking you in advance for your assistance in this matter, I remain,

Respectfully yours,

  
Phil C. Shealy  
Borough Manager

Enclosures

mdd

WHEREAS, on August 14, 1981 the Superior Court ordered the Agreement of Consent Decree to effectively dismiss the appeals the Kodiak Island Borough brought against the Alaska Department of Natural Resources in regards to its lands selections, and

WHEREAS, a condition of the Agreement of Settlement and Consent Decree is that the Kodiak Island Borough is to use its best efforts to have legislation introduced to create a State Park and State Game Refuge on Shuyak Island for those portions not to be conveyed to the Kodiak Island Borough, and

WHEREAS, the primary purpose is the creation of Shuyak Island State Park to protect and enhance the areas recreational, natural, cultural, scenic, and wildlife resources and to protect the areas natural and wild coastline, and

WHEREAS, the Kodiak Island Borough has caused to be prepared a proposed bill entitled "An Act Creating the Shuyak Island State Park".


NOW, THEREFORE, BE IT RESOLVED by the Kodiak Island Borough Assembly that legislation entitled "An Act Creating the Shuyak Island State Park" be introduced and assigned a number providing for the creation of said park.

BE IT FURTHER RESOLVED by the Kodiak Island Borough Assembly that the Borough administration be directed to send this resolution to Senator Mulcahy and Representatives Sutcliffe and Zharoff and implore their assistance in the successful adoption of this legislation.

PASSED AND APPROVED this 1st day of October, 1981 by the Borough Assembly.

KODIAK ISLAND BOROUGH

By W D TJA O H  
Borough Mayor

ATTEST:  
  
By Shirley Miller  
Borough Clerk

I, Margaret D. Duros, do certify this to be a true and correct copy of Resolution No. 81-72-R passed and approved by the Kodiak Island Borough Assembly on October 1, 1981.

Margaret D. Duros  
Notary Public in and for the State of Alaska  
My Commission Expires: October 4, 1984  
My Commission Expires: October 4, 1984

NOV - 3 1981

7 8 9 10 11 12 1 2 3 4 5 6

AGREEMENT OF SETTLEMENT

and

CONSENT DECREE

The parties to this agreement are the State of Alaska, Department of Natural Resources, through its Division of Forest, Land and Water Management ("the State") and the Kodiak Island Borough ("KIB").

Whereas, pursuant to AS 29.18.201-.213 KIB is entitled to select 56,500 acres from state general grant land within its boundaries, and has filed such selections in the manner provided by statute; and

Whereas, a considerable portion of the land selections filed by KIB were rejected by the State on the grounds that the lands selected had been previously classified by the State for a use or purpose which disqualified those lands for conveyance to KIB pursuant to AS 29.18.201 et seq., or had been designated as state interest lands pursuant to AS 38.05.047; and

Whereas, by reason of said selections by KIB and rejections by the State, the parties are currently involved in three separate judicial appeals from administrative decisions which are now pending in the Superior Court, Third Judicial District under case numbers JAN-80-3070 (Woody Island), JAN-80-5710 (Land Classification); and JAN-81-1385 (Shuyak Island); and

Whereas, both parties desire to settle finally the question of those lands which will be conveyed to KIB in satisfaction of its statutory land entitlement, and further desire to resolve this question in the near future without extended litigation, and to resolve pending litigation.

Now, therefore, the parties agree as follows:

1. a. The State agrees to convey to KIB, as soon as practicable, the lands now owned by the State or hereafter acquired pursuant to Section 6 of the Alaska Statehood Act and which are described in Exhibit A (Shuyak Island) and Exhibit B (other lands). Open to Entry parcels under lease within lands described in Exhibit B which expire shall be conveyed to KIB upon expiration. All conveyances shall be completed not later than nine (9) months after execution of this agreement, except that, with respect to lands as to which the state has not yet received tentative approval, within nine (9) months after tentative approval.

b. KIB agrees that it will invoke its land regulatory powers, including zoning powers, to disallow in the west one-half of Section 10, T. 19 S., R. 20. W., S.M. fronting on Big Bay on Shuyak Island heavy industrial uses incompatible with use and enjoyment of adjacent park or public recreation lands. The Borough agrees to guarantee reasonable public access through the above described parcel for the purpose of utilizing adjacent park or public recreation lands. The State may reserve in the patent to these lands the right to re-enter and take possession upon the determination, by a court of competent jurisdiction, that KIB has breached this paragraph.

2. KIB agrees to execute a quitclaim deed to the State for the property described in Exhibit C (Pillar Creek Watershed and Woody Island).

3. In the event that at any time in the future the state-selected or state-tentatively approved lands described in Exhibit D are finally determined not to be subject to conveyance under the Alaska Native Claims Settlement Act (P.L. 92-203, 43 U.S.C. Sec. 1601 et. seq.) as amended for any reason, the State agrees that it will convey those lands to KIB upon receipt