ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5615 HOUSE COMMUNITY & REGIONAL AFFAIRS

response in the state;

(2) provide for cooperative review of oil discharge contingency plans submitted to the department under AS 46.04.030;

(3) provide for cooperative inspections of oil terminal facilities by the department and the United States Coast Guard or United States Environmental Protection Agency; and

(4) provide for cooperative oil discharge notification procedures.

* Sec. 15. AS 46.04.030 is amended by adding a new subsection to read:

(h) Before approving an oil discharge contingency plan under this section, the commissioner shall

(1) consult with municipal officials and with representatives of affected regions and community organizations; and

(2) disseminate the draft plan to the public for review and comment.

* Sec. 16. AS 46.04.900(5) is amended to read:

(5) "containment and cleanup" includes all direct and indirect efforts associated with the prevention, abatement, containment, or removal of <u>discharged oil or</u> a pollutant, <u>and</u> the restoration of the environment to its former state; <u>when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred in response to the discharge of a pollutant, including</u> [, AND ALL INCIDENTAL] administrative <u>expenses for the incremental</u> costs <u>of providing the function or service</u>;

* Sec. 17. AS 46.04.900 is amended by adding new paragraphs to read:

(18) "service" means a function performed or service provided by the state, a municipality, or a village, including functions not previously performed and services not previously provided by the state, the municipality, or the village;

(19) "village" means a place in which 25 or more persons reside as a social unit that is not incorporated as a municipality under state law.

* Sec. 18. AS 46.08.040 is amended to read:

Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use money from the fund to

(1) investigate and evaluate the release or threatened release of oil or a hazardous substance, and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment; an assessment made under this paragraph may include an assessment of the social and economic effects of the release or threatened release;

(2) pay all costs incurred to establish and maintain the oil and hazardous substance response office and for the expenses of the oil and hazardous substance response corps and the oil and hazardous substance response depots established by that office;

(3) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); [AND]

(4) recover the costs to the state, [OR TO] a municipality, or a village of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance; [.]

(5) prepare, review, and revise

(A) the state's master oil and hazardous substance discharge and prevention contingency plan required by AS 46.04.-200; and

(B) a regional master oil and hazardous substance discharge and prevention contingency plan required by AS 46.04.-210; [AND]

(6) restore the environment by addressing the effects of an oil or hazardous substance release; and

(7) make grants under AS 46.08.072.

* Sec. 19. AS 46.08.070(c) is amended to read:

(c) The department shall [MAY] reimburse a municipality or village for actual expenses [, OTHER THAN NORMAL OPERATING EXPENSES,] incurred in the abatement of a release or threatened release of oil or a hazardous substance if

(1) the municipality or village has entered into an agreement with the commissioner under AS 46.04.020(e) or AS 46.09.020(e); and

(2) the commissioner determines that the expenses were an appropriate [FOR A NECESSARY EMERGENCY FIRST] response to a release or threatened release that, at the time of the release or threatened release, posed an imminent and substantial threat to the public health or welfare, or to the environment.

* Sec. 20. AS 46.08 is amended by adding a new section to read:

Sec. 46.08.072. GRANTS. (a) The department may make grants to a municipality or a village to enable the municipality or village to carry out an emergency first response to a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare or to the environment. A grant may be used by the grant recipient to pay costs incurred by the recipient for the direct efforts associated with the containment and clean up of oil or a hazardous substance and related incidental administrative costs.

(b) When an applicant submits an application for a grant under this section, the department shall review and accept or reject the grant application as promptly as possible to permit the municipality or village to execute a proper response.

(c) After consultation with the Department of Community and Regional Affairs, the department shall adopt regulations to carry out this section. The regulations must establish

(1) eligibility requirements of applicants;

(2) procedures for review of applications submitted under (a) of this section so that the department may make the decisions under (b) of this section;

(3) standards for the evaluation of applications; and

(4) other conditions for the receipt of a grant.

(d) Regulations adopted under (c) of this section must include as a factor the applicant's ability to provide an emergency first response if the grant application is not approved.

(e) In reviewing and making a determination about the application submitted under this section, the department may not consider whether the amount to be expended as a grant is an expense recoverable under AS 46.08.070.

* Sec. 21. AS 46.08.900(3) is amended to read:

(3) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of oil or a hazardous substance, and the restoration of the environment; when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred in response to the discharge of the oil or hazardous substance, including [, AND INCIDENTAL] administrative expenses for the incremental costs of providing the function or service;

* Sec. 22. AS 46.08.900 is amended by adding new paragraphs to read:

(11) "service" means a function performed or service provided by the state, a municipality, or a village, including functions not previously performed and services not previously provided by the state, the municipality, or the village;

(12) "village"

(A) means a place in which 25 or more persons reside as a social unit that is not incorporated as a municipality under state law;

(B) does not include a place within a borough if the relevant power, function, or service is exercised or provided by the borough on an areawide or nonareawide basis at the time the grant application or request for reimbursement is submitted.

* Sec. 23. AS 46.09.060(b) is amended to read:

(b) Authority to contain, clean up, or prevent a release or threatened release of oil or of a hazardous substance, and to exercise other powers necessary to implement this chapter, AS 46.04, and AS 46.08, are granted to municipalities that do not otherwise have that authority. Except as provided in (a) of this section, a municipality may exercise its police power within the area of the municipality.

* Sec. 24. AS 46.09.900(2) is amended to read:

(2) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of a hazardous substance, and the restoration of the environment; when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred in response to the discharge of the hazardous substance, including [, AND INCIDENTAL] administrative expenses for the

incremental costs of providing the function or service;

* Sec. 25. AS 46.09.900 is amended by adding a new paragraph to read:

(8) "service" means a function performed or service provided by the state, including functions not previously performed and services not previously provided by the state.

* Sec. 26. Sections 12 and 13 of this Act are retroactive to March 24, 1989.

* Sec. 27. This Act takes effect immediately under AS 01.10.070(c).

HB

588

HOUSE COMMITTEE REPORT

(5)
Date Referred: March 26, 1990 FURTHER REFERRALS:
RESOURCES

Date of Committee Action: 4/27/90

The COMMUNITY & REGIONAL AFFAIRS Committee considered: HB 588

HOUSE BILL NO. 588 MUNICIPAL LAND GRANT SELECTIONS

"An Act relating to general grant land selections; and providing for an effective date."

RECOMMENDATIONS:
[X] be replaced with CSHB 588 (C&RA) [X] the same title
[ ] a new title
[ ] have attached amendment(s)
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[X] fiscal impact DNR
[X] zero fiscal note C&RA
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____
[ ] zero fn/analysis _____

SIGNING DO PASS:

Richard Mackey
Eileen P. Macbean
Eugene A. Kubena

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
Cheri Davis		X	

Eileen P. Macbean
Chairman's Signature

STATE OF ALASKA

1990 LEGISLATIVE SESSION

BILL VERSION : CSHB 538

PUBLISH DATE :

FISCAL NOTE

REQUEST:

Revision Date: 24-Apr-90

Agency Affected: Natural Resources

Title: An Act relating to general grant land selections.

BRU: Land & Water Mgmt

Sponsor: C&RA Committee

Components: Land & Water Mgmt

Requestor: C&RA Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	95.0	95.0	95.0			
TRAVEL	5.0	5.0	5.0			
CONTRACTUAL	5.0	5.0	5.0			
SUPPLIES	1.0	1.0	1.0			
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	106.0	106.0	106.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	106.0	106.0	106.0			
FEDERAL FUNDS						
OTHER						
TOTAL	106.0	106.0	106.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	2.0	2.0	2.0			
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attachments

Prepared by: Larry Ostrovsky

Phone : 465-2400

Division: Commissioner's Office

Date : 24-Apr-90

Approved by Commissioner: Lennie Gorsuch

Date: 24-Apr-90

Agency: Department of Natural Resources

Distribution (by preparer) :

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

ANALYSIS

The monies requested will fund two full time positions with necessary support funds. One position will be a Natural Resource Manager I (pay grade 18). This positions will be responsible for the regulation development needed to implement this act including appeals and the land mediation committee process. This position will also be responsible for process municipal recertifications of existing municipalities and the certification of any newly formed municipal governments that are created after passage of this act.

The second position will be a Natural Resource Officer II (pay grade 16). This position will be responsible for helping in the recertification process and processing certifications of any newly formed municipal governments that are formed after passage of this act. This position will also be responsible for the processing, including the decision writing process for land conveyances and rejections of land selected by municipal governments.

Travel monies are needed to meet with municipal officials concerning their land selections and public hearings for regulation adoption. Contractual and supply funds are needed for normal office support items.

Position Title	No. of Positions	Range/Step	Barg. Unit
Natural Resource Manager I	1	18/A	GGU

Time Status	Staff Months	Location	Election District
F	12	Anchorage	

Justification

This position is needed to develop the regulations required for the process used on appeals of land conveyance approvals and denials. Regulations are also needed for the municipal land mediation committee. This position will also be responsible for processing municipal certifications and appeals.

Type of Expenditure		Amount
1	2	3
Salary*	37,356	
Benefits*	13,187	
Premium Pay (Included in Above)		
Other		
Total Personal Services		50,543
Travel		3.0
Contractual		2.5
Commodities		.5
Equipment		
Other		
Total Cost		56.5

Funding Source for Total Cost:		
Federal Receipts	1002	
G.F. Match	1003	
General Fund	1004	56.5
Program Receipts/GF	1005	
I-A Receipts	1007	
CIP Receipts	1061	
Other		

* Personal Services Salary and Benefits Costs are from PACS.

REQUEST FOR NEW POSITION

AGENCY Dept of Natural Resources

BRU Land & Water Management

COMPONENT

Position Title	No. of Positions	Range/Step	Barg. Unit
Natural Resource Officer II	1	16/A	GGU
Time Status F	**Staff Months** 12	**Location** Anchorage	**Election District**

Type of Expenditure		Amount
1	2	3
Salary*	32,424	
Benefits*	12,059	
Premium Pay (Included in Above)		
Other		
Total Personal Services		44,483
Travel		2.0
Contractual		2.5
Commodities		.5
Equipment		
Other		
Total Cost		49.5

Funding Source for Total Cost		
Federal Receipts	1002	
G.F. Match	1003	
General Fund	1004	
Program Receipts/GF	1005	
I-A Receipts	1007	
CIP Receipts	1061	
Other		

* Personal Services Salary and Benefits Costs are from PACS.

Justification

This position is needed to help process and recertify municipal entitlements and to certify new municipalities that form after passage of this act. In addition, this position will process fund conveyance decisions issued to municipalities until each municipal entitlement has been reached.

REQUEST FOR NEW POSITION

AGENCY Natural Resources

BRU Land & Water Management

COMPONENT Land & Water Management

Revised Date 4/24/90

FY 91

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CS HB 588
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to general grant land selections;..."
Sponsor: House C&RA Committee
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal effect for FY 90.

Prepared by: Marty Rutherford, Director — Phone: 465-4750
Division: Municipal & Regional Assistance — Date: 4/26/90

Approved by Commissioner: Remond Henderson For DCH — Date: 4/27/90
Agency: Community & Regional Affairs

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

April 24, 1990

The Honorable Eileen MacLean
Chair
House Community and
Regional Affairs Committee
P.O. Box V
Juneau, AK 99811

Dear Representative MacLean:

Subject: CS for HB 588 (C&RA), General Grant Land Selections.

Background: This bill would amend the Municipal Entitlements Act, AS 29.65. Amendments in 1987 greatly expanded both the amount and type of state-owned land new municipalities could select. The 1987 amendments also "capped" the increases by imposing a 20-acre-per-resident ceiling. That figure represented the maximum municipal land grants in the past (those to the North Slope and Matanuska-Susitna Boroughs; other municipalities' entitlements were much lower).

Section 6 of CSHB 588 (C&RA) would further expand new municipalities' entitlements by adding the department's wildlife habitat classification, which we commonly use for land in the rural areas of the state, to the definition of selectable land. Section 1 would complete this expansion by deleting the 20-acre-per-person cap. Together, these changes would increase the Northwest Arctic Borough's entitlement from 133,920 acres under the current law to about 285,000 acres, Aleutians East Borough's from approximately 7,600 acres to about 40,000 acres, and Lake and Peninsula Borough's from less than 14,000 acres to about 126,500 acres. (Atka would still have no entitlement because of a lack of state land; the entitlement of Coffman Cove, the only other new municipality, has not yet been determined.)

Section 3 of the bill would require a recommendation from the Department of Community and Regional Affairs before the Department of Natural Resources decides whether to approve a municipality's selection of state land. The selection could be disapproved only if the public interest in retaining the land

"outweighs" the municipality's interest. A decision to disapprove would be subject to a new appeal process and regulations under Section 4, with the Department of Community and Regional Affairs, the Department of Natural Resources, and a municipal official making the final state land disposal decision.

Section 5 is the original content of HB 588, on which this department previously expressed its position.

Section 7 would require a recertification of the new municipalities' entitlements and would give municipalities additional time to file selections.

Position: The Department of Natural Resources opposes the bill.

1) Repealing the cap and allowing municipalities to select wildlife habitat land are both unacceptable. Wildlife habitat land is essential to retain in state ownership, because only the state has wildlife management authority. The Legislature has never delegated this power to Alaska's municipalities. As for the cap, the administration would not have supported the 1987 expansion without it. The proposed changes would grant about 300,000 additional acres of state-owned land to the three new boroughs without any showing of need. If the land is worth $400 per acre, the grant amounts to a transfer of roughly $120 million.

2) Three decades of law and case law make it clear that a state land disposal is constitutional only if it is in the public interest to proceed with it. Section 3 seeks to reverse this presumption.

3) It is equally questionable for state land disposal decisions to be made by a three-member committee, two of whose members speak for municipal interests, with only one representative from the department responsible for managing state-owned land. The interests of the state as a whole are unlikely to be served by such a process.

I am proud of my department's record in managing Alaska's municipal entitlement program and would be happy to present you with the full details. We believe that any major changes in the law at this time would only be disruptive.

Sincerely,

Jennifer Gorsuch
Commissioner

cc: Committee Members
Bill Sponsors
Bob Evans, Legislative Liaison
Office of the Governor
Denby Lloyd, Special Staff Assistant
Office of the Governor
Gary Gustafson, Director
Division of Land and Water Management

LG/GG/ln

Alaska State Legislature

House of Representatives
Community & Regional Affairs

April 25, 1990

Honorable Steve Cowper
Office of the Governor
P.O. Box A
Juneau, Alaska 99801

Dear Governor Cowper:

I would like to respond to the Department of Natural Resources (DNR) position papers on CSHB 588, relating to municipal land entitlements. The original bill, sponsored by the House C&RA Committee, prohibited DNR's ability to place restrictions on the shape of a parcel of land selected by a municipality. The CS expands the bill substantially to explicitly include a review and comment period by the Department of Community & Regional Affairs (C&RA), adds an appeal process, and includes certain land classified as wildlife habitat in the definition of "vacant, unappropriated and unreserved land" (vuu).

In their April 3rd, letter, DNR states that they do not support the original legislation because, "it would not serve the state's interests" to block public access to adjacent state land and interfere with land management.

I believe that State Constitution provides that the state's best interest may best be served by allowing municipalities to manage and develop their own land. The drafters of the State Constitution conferred autonomy and broad powers on municipalities of Alaska throughout the constitution. The State of Alaska furthers the goal of maximum local self-government by offering incentives to encourage municipal incorporations. Since 1962, one of these incentives has been the ability to select and receive state general grant land.

There is no reason that the state's interest in protecting public access could not be granted by securing easements to municipal land selections, rather than the restrictive four

Room 128, Capitol Building, P.O. Box V, Juneau, Alaska 99811 (907) 465-3882 or 465-4833

to one policy currently in force. A waiver could be granted to provide for a four to one selection, as an exception to the rule, rather than the rule.

In their April 3rd position paper, DNR also states that regulations require municipal selections to be "compact". This is based on the erroneous premise that rural land development should meet the same standards of compact development of urban land.

On the contrary, rural land selections, by definition, should have greater flexibility to meet changing and diverse needs of sparsely populated communities spread out over vast areas. Rural selections should not be restricted by the same guidelines as used for urban selections.

DNR's report (entitled Municipal General Grant Land Entitlements, A State-Municipal Partnership) predetermines that it may not be in the best interests of the state that land in rural Alaska be managed and developed by local governments because the rural character of the state land "is often not well suited for development or other municipal purposes". Many areas in rural Alaska are in the very initial stages of development and it is premature to make broad generalizations about the use or character of land in rural Alaska. Subsistence is a major influence in the rural economy and therefore could result in large selections of land held sacrosanct. It is necessary to include language to provide for liberal construction of the law, as provided for in the State Constitution.

In their April 24th position paper on CSHB588, DNR states that "repealing the 20 acre cap and allowing municipalities to select wildlife habitat are both unacceptable".

The per capita limit was established at 20 acres based on the highest per capita entitlement to any municipality statewide created by the 1978 amendments to the municipal entitlement law. It is inferred that the 20 acre cap is the most generous entitlement formula because it represents the highest per capita entitlement given to any municipality. (The Mat-Su Borough had an entitlement of about 20 acres per capita based on the population of the borough in 1978). While this may at first seem a fair and equitable justification, it is neither, given the very broad range of values of lands. Urban area lands often being worth three times the rural acreage. A more equitable distribution of land would be based on a 'value' determination, not a per capita determination which is discriminatory to sparsely populated areas. Since establishing values of lands is such a difficult, if not

impossible effort in rural selection, it then makes more sense to rely upon the historical 10 percent of available land formula.

(Note: had the Matanuska-Susitna Borough been restricted to the 20 acre cap based on the population on the date of incorporation, (which is the way current law reads), their entitlement would have been no more than 216,680 acres, not the 355,210 acre entitlement they received in 1978).

Furthermore, legislative records for the 1978 legislation allude to a number of considerations that influenced final acreage determinations, but little, if no, information is available which describes the need to limit entitlements to municipalities using a population cap.

Section 3 of the CS would require a recommendation from DCRA before DNR decides whether to approve a municipality's selection of state land. The selection could be disapproved only if the public interest in retaining the land is greater than the municipalities interest. A decision to disapprove would be subject to a new appeal process. DNR has also opposed this provision.

It appears that DNR's opinion of the "state's best interest" is that all land should stay within the jurisdiction of DNR, except when it can be justified that a minimal selection should be released for a municipal land entitlement.

I differ again with DNR, and return to provisions in the state constitution providing for maximum local self government.

As for the appeal process, I believe it is a necessary and appropriate section to include. DNR exercises tremendous discretion in deciding the rules by which justifications are reviewed for municipal purposes and for evaluations of these selections for state interest. An appeal section should be included to insure the public interest is served.

Regarding the inclusion of certain land classified as wildlife habitat, just because land may be classified under this category, it should not automatically be excluded from consideration by municipalities. Granted, there will be occasions where duplication of interest may conflict, however, I believe that DNR will continue to exercise substantial discretion and will not easily be overturned if valid state interests can be shown. The discretion of any regulatory agency is great and, even given the appeal committee's existence, could adequately protect state

concerns, thus there is no reason to restrict the entire category as a general rule. I feel it is important to note once again that the amended formula will only address 10% of state lands, leaving the state with 90%.

In closing, the Department of Community and Regional Affairs has not provided the committee with what I believe could be very useful and important information. Since DNR has had the opportunity to express their concerns, I would like to request that DCRA be allowed to freely express their opinions on this important and vital issue to municipalities.

Sincerely,

Eileen P. MacLean

Eileen P. MacLean, Chairman
House Community & Regional Affairs Committee

cc: Lennie Gorsuch, Commissioner, Department of Natural Resources
Bob Evans, Legislative Liaison, Office of the Governor

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

April 3, 1990

The Honorable Eileen MacLean, Chair
House Community and Regional Affairs Committee
P.O. Box V
Juneau, AK 99811

Dear Representative MacLean:

Subject: HB 588, General Grant Land Selections for Municipalities.

Position: The Department of Natural Resources cannot support the bill. Under the Alaska Constitution, land can be conveyed out of state ownership only if the conveyance serves the state's interests. As it would not serve the state's interests to convey long, narrow tracts that could block public access to adjacent state land and interfere with sound land management, the department needs the ability to deny or amend such selections. Existing law allows the department to fine-tune selection boundaries to reduce or eliminate such land management conflicts and should not be changed.

Background: DNR is responsible for deciding whether to convey tracts of state-owned land to municipalities under AS 29.65 and other laws. The department is in the final stages of adopting regulations to implement AS 29.65. Among other things, those regulations require municipal selections to be "compact." This requirement is similar to that imposed upon the state when we select land from the federal government. This bill would prohibit the department from restricting, by regulation or otherwise, the shape of land parcels that municipalities can select.

The department's draft regulations were written to implement legislative policy for the municipal entitlement law, which has been in effect since 1978. When it enacted the new law, the Legislature stated that one of its goals was to create "rational ownership patterns for sound land management." The size and shape of land parcels is an important factor in achieving this goal. Long, narrow tracts have a very high ratio of boundary

line to total area. A parcel that is not compact results in increased surveying costs, boundary disputes, trespass problems, and right-of-way acquisition expenses. Such a result would be inconsistent with the purposes of the law.

The department currently uses a four-to-one width-to-depth ratio as our standard policy during our review of municipal land selections. Using this ratio has helped to avoid difficult to-manage remnant ownership patterns and has been accepted by local governments as a reasonable standard.

Sincerely,

Lennie Gorsuch for
Commissioner

cc: Committee Members
Bill Sponsor
Denby Lloyd, Special Staff Assistant
Office of the Governor
Bob Evans, Legislative Liaison
Office of the Governor
Commissioner David Hoffman
Department of Community and Regional Affairs
Gary Gustafson, Director
Division of Land and Water Management

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M April 23, 1990

SUBJECT: Sectional Summary of CSHB 588(C&RA)

TO: Representative Eileen MacLean

FROM: Tamara Brandt Cook TBC
Director
Division of Legal Services

Here is the sectional summary you requested of the draft CSHB 588(C&RA).

Sec. 1. Removes the requirement that a municipality incorporated after July 1, 1978 not receive a general grant land entitlement that exceeds 20 acres per resident.

Sec. 2. Existing law grants a municipality 90 days after a selection is rejected to select additional land in fulfillment of its entitlement. A reference to the appeal process is added so that the 90 day period begins after the final decision on appeal.

Sec. 3. Before the director of the division of lands acts on a selection, the Department of Community and Regional Affairs must review the selection and recommend approval or disapproval. A selection may be disapproved only upon a finding that the public interest in retaining state ownership of the land outweights the municipality's interest in obtaining the land.

Sec. 4. A new appeal process is added allowing a municipality to appeal disapproval of a selection to a municipal land mediation committee. An adverse decision of the committee may be appealed to the superior court.

Sec. 5. The commissioner of natural resources is prohibited from placing restrictions on the shape of a parcel of land that may be selected by a municipality.

Sec. 6. The definition of "vacant, unappropriated, unreserved land" used to determine both the amount of land and

the classes of land that a municipality may select is expanded to include certain land classified as wildlife habitat.

Sec. 7. The period for making land selections is extended for those municipalities with entitlements that have not been fulfilled by July 1, 1991.

Sec. 8. Provisions removing the upper cap on the amount of acreage that may be selected based on population and expanding the definition of "vacant, unappropriated, unreserved land" are retroactive to June 2, 1986.

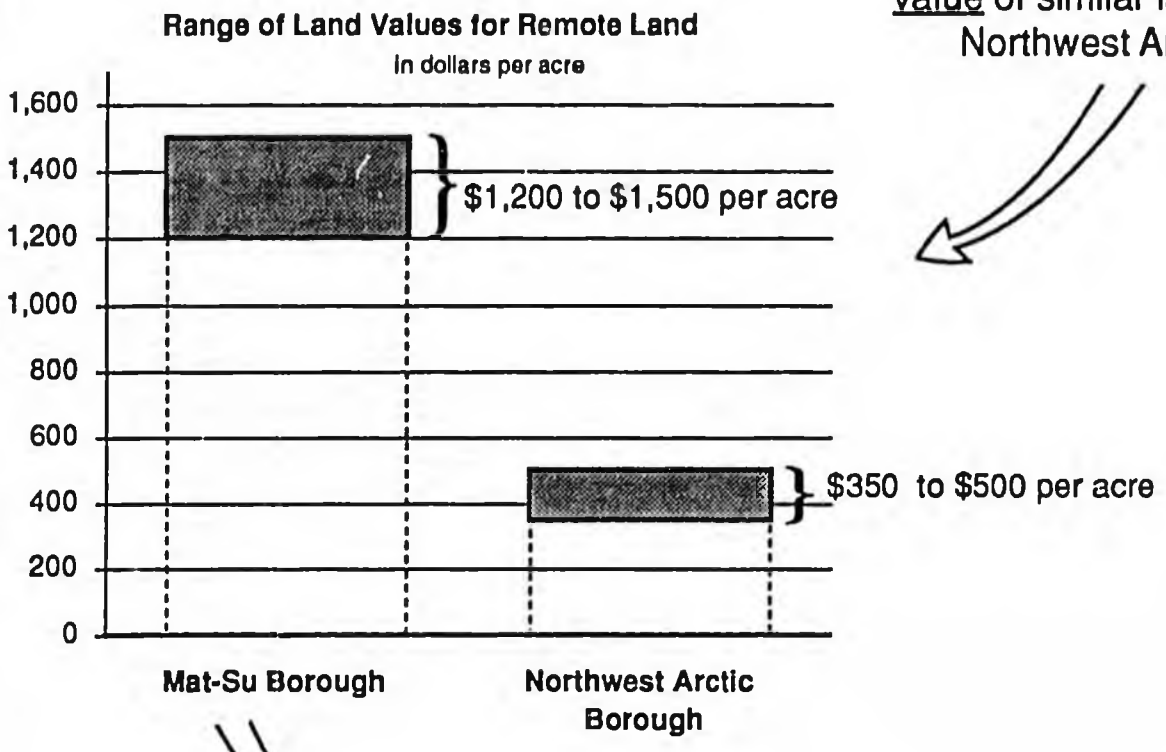
Sec. 9. The retroactive provisions have an immediate effective date.

Sec. 10. The rest of the bill takes effect July 1, 1991.

TBC:gc
G14/029

A Population Cap on Acreage is Not an Equitable Approach for Municipal Land Entitlements:

Remote land located in the Mat-Su Borough has about three times the value of similar land located in the Northwest Arctic Borough.



The Mat-Su Borough land entitlement of 355,210 acres was processed in 1978. At that time, the Borough population was 17,760 — the land entitlement represented 20 acres per capita. At an average value of $1,350 per acre, this equates to $27,000 per capita. A similar entitlement in the Northwest Arctic Borough would equate to $8,500 per capita.

Therefore, to receive an equivalent value per capita for its land entitlement, the Northwest Arctic Borough would have to receive three times the acreage per capita compared to the Mat-Su Borough, or approximately 60 acres per capita.

A SPECIAL REPORT

MUNICIPAL GENERAL GRANT LAND ENTITLEMENTS

A State-Municipal Partnership

DEPARTMENT OF NATURAL RESOURCES
Division of Land and Water Management

January 1990

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CONTENTS

CONVEYANCE SUMMARY: UNIFIED HOME RULE MUNICIPALITIES AND BOROUGHS

CONVEYANCES BY AUTHORITY

City or Borough	Incorp	.347	AS 07	AS 29	.810	.320	Legislative	Other
Aleutians East Borough	Oct-87							
Bristol Bay Borough	Oct-62			2,672.7				
City & Borough of Juneau	Jul-70			3,622.6	11.1	852.9		
City & Borough of Sitka	Dec-71	1.8		1,390.3	6,064.6	194.5		0.6
Fairbanks North Star Borough	Jan-64			83,964.9	44.9			
Haines Borough	Jul-68			1,082.8				
Kenai Peninsula Borough	Jan-64			79,206.0	181.9			117.0
Ketchikan Gateway Borough	Sep-63			4,033.3				
Kodiak Island Borough	Sep-63			11,654.0	14.3			
Lake & Peninsula Borough	Apr-89							
Matanuska-Susitna Borough	Jan-64		40.3	201,623.4	400.3			79.3
Municipality of Anchorage	Sep-75	391.1		12,883.7	5,897.1	1,328.5		1,256.4
North Slope Borough	Jul-72							
Northwest Arctic Borough	Jun-86							
	TOTALS	392.9	40.3	402,133.6	12,614.1	2,375.9	0.0	1,453.3

TABLE 2

INTRODUCTION

Decades of neglect by the federal government, resource exploitation by corporations and individuals outside Alaska and a lack of control of their destiny instilled in the fifty-five drafters of the Alaska Constitution a unique vision of what would become America's 49th state. The observations and experiences of the residents of the territory who were self-reliant and independent would manifest themselves throughout the constitution. Nowhere are these concepts more evident than in Article X of the constitution where the relationship between state government and local government are unselfishly defined.

> SECTION 1. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.
>
> SECTION 3. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

The delegates having been deprived of the right of self determination, thoughtfully remembered territorial governance and conferred autonomy and broad powers on municipalities of Alaska through the constitution. By offering incentives to encourage municipal incorporations, the State of Alaska furthers the goal of maximum local self-government contained in Article X.

Since 1962, one of these incentives has been receipt of state general grant land within the boundaries of the local government thereby providing a means of creating or expanding a tax base, a means to generate revenue through land sales and leases, a land base for community expansion and a land base for other public purposes.

In addition to these general grant land entitlements, municipalities can acquire otherwise unavailable state land under the public and charitable use statute (AS 38.05.810). Land acquired under this statute must be used for a public purpose that is available to the public at large. However, if the municipality receiving the land has an outstanding municipal land grant

entitlement, the acreage of the conveyance is subtracted from this balance.

Tide and submerged lands are the last category of state land made available to cities who were incorporated on or before the date of statehood. Under rigid guidelines established in the Alaska Land Act, cities could acquire tidelands adjacent their boundaries. This provision was codified AS 38.05.320.

BACKGROUND: MUNICIPAL LAND GRANTS

Legislative History

Alaska's first municipal land entitlement was created in 1962 when a new section was added to the Alaska Land Act. This section stated:

> Any city of the first class may apply in the manner prescribed by the director, within five years from the effective date of this Act, for a conveyance to the city of all surplus state lands located within the present boundaries of the city. "Surplus state lands" means all land owned by the state which is not presently used or [illegible]r which there is no anticipated use by the state for governmental purposes.

This act, codified AS 38.05.347, although containing scant procedural guidance, resulted in the conveyance of thousands of acres of state land to a small number of municipalities throughout the state. This law was repealed June 21, 1976.

In 1963 the state legislature enacted the "Mandatory Borough Act". This act was unrelated to the Alaska Land Act but, like AS 38.05.347, created opportunities for municipalities to acquire state land for their local use. The intent of this act (ch 52, SLA 1963) was "to provide maximum local self-government" and caused the creation of numerous boroughs statewide. These boroughs encompassed the populated areas of the state. Although boroughs could not opt out of organizing, some local options existed in the law, such as final location of the municipal boundaries. The act, additionally, provided incentives in the form of cash grants and grants of state land.

Unlike the 1962 act, the "Mandatory Borough Act"(codified AS 07.10.150) provided a formula for the amount of the state land grant entitlement.

This act provided:

> (that) "an organized borough may select 10 per cent of the vacant, unappropriated, unreserved state lands located within its boundaries within five years after the date of availability of state lands in the borough."

The act also provided certain necessary procedural guidance for the selection, survey and conveyance of these entitlement lands.

Several changes to the law were eventually enacted. In 1970 Chapter 213, SLA 1970 removed the five year selection deadline, and extended general grant land entitlements to first and second class cities by adding AS 07.05.040. In 1972 AS 07.10 was renumbered to AS 29.18.

Fifteen years of disputes between municipalities and the state over interpretation of the law culminated in the first major amendment to AS 29.18 in 1978. Some of the more important disputes illustrate the range of problems faced by the program.

-Land selections by municipalities had no time frames for adjudication and conveyance. Municipalities felt that the state deliberately dragged its feet on selections that it wanted to retain and that after approving selections that the conveyances were unnecessarily delayed.

-Southeast boroughs believed that getting concurrence of the land trust boards for conveyance of university, mental health and school trust lands was an unduly cumbersome process.

-The North Slope Borough had selected resource management and industrial lands at Prudoe Bay which were rejected in the state's interests.

-When municipalities selected agricultural lands they received only the agricultural interest. These lands often were more valuable for subdivisions and other uses than as agricultural land and municipalities wanted more than just the agricultural interest.

-Municipal land selections occurred on an ad hoc basis, often before the state could evaluate resources and perform its mandated land planning functions.

-Contention by the North Slope Borough that they have an absolute right to select 10 percent of the state land within their boundaries, irrespective the land classification.

Features of the new law were:

1) Unified home rule municipalities and all boroughs were granted acreage specific entitlements;

2) "vacant, unappropriated, unreserved" (VUU) land was now statutorily defined based on a two part test: 1) the grant type under which the state acquired the land from the federal government and 2) the state's land classification system;

3) General grant land entitlements were limited to general grant land that the state acquired under sections 6(a) and 6(b) of the Statehood Act;

4) Entitlements were fixed as of July 1, 1978, based on the state's VUU land base on that date;

5) Entitlements were extended to municipalities incorporated after July 1, 1978, and a method of computing these entitlements was established;

6) Entitlements became vested property rights and could be fulfilled at any time before two years after the state's right to select federal land under 6(a) or 6(b) of the Statehood Act expired;

7) Selections must be approved or disapproved within nine months of selection and further patent issuance must occur within three months of survey plat approval;

8) Municipalities with an entitlement of less than one and one-half acre per capita could select vacant school, university or mental health trust lands;

9) Deficiency payments were established for municipalities whose entitlment land bases were unsuitable for residential, commercial or industrial purposes;

10) Authority for land exchanges between municipalities and the state when in the public interest was established;

11) Municipalities in litigation with the state over general grant land entitlements had to elect to benefit under the new law or receive the fruits of the litigation, but not both; and;

12) A comprehensive and detailed definitions section was added.

For the first time, a detailed and clear law existed, specifying important policies and procedures, under which general grant land entitlements would be administered.

In 1979, AS 29.18 was amended so that entitlements could no longer be fulfilled by selections filed up to two years after the state's selection rights with the federal government expired, but now must be made prior to October 1, 1980.

In 1981, to ensure that all entitlements were fulfilled, amendments gave municipalities 90 days to re-select new land upon rejection of a previous selection. This was necessary because in law a selection deadline had been established.

In 1985 university trust land was removed from the group of lands

available to a municipality with a per capita entitlement of less than one and one-half acres. This resulted from successful litigation by the University Board of Regents against the state over management of its land trust corpus.

In 1985 AS 29.18.201 - 29.18.205 were repealed effective January 1, 1986. These sections were the major provisions of the general grant land entitlement law. They were, however, replaced with the same provisions that were renumbered AS 29.65.010 - 29.65.140.

In 1987 the most recent amendments to the law occurred. The major provisions of the new law are:

1) Expands general grant entitlements to capture all state VUU land within the municipal boundaries between September 16, 1970 and January 1, 1988;

2) Bases entitlements of cities and boroughs incorporated after July 1, 1978, on the maximum amount of VUU land within their boundaries between incorporation and two years thereafter;

3) Establishes upper limit of entitlements to newly incorporated municipalities not to exceed 20 acres per capita based on the population of the municipality on the date of incorporation;

4) Extends selection deadline of boroughs and unified home rule municipalities listed in AS 29.65.010 to October 1, 1990.

5) Invalidates all selections of school or mental health trust lands occurring after October 4, 1985 the date of the mental health land trust litigation decision;

6) Prohibits a municipality from trading entitlement land for federal subsurface rights or any interest in the Arctic National Wildlife Refuge;

7) Categorizes material and public recreation classified land as VUU;

8) Categorizes resource management classified land as VUU if the classification occurred on or after September 1, 1983;

9) Specifies that the new entitlement for the Northwest Arctic Borough is a partial entitlement. Additional entitlement for the Northwest Arctic Borough and municipalities incorporating after the Northwest Arctic Borough depends upon the governor's recommendation to the legislature, after completion of the Northwest Area Plan, for additional entitlement consistent with his general grant land entitlement policy.

10) Reinstates the 89,850 acre entitlement to the North Slope

A brief discussion of Alaska's statehood land grant entitlement will help focus the parallel municipal general grant land entitlements. The Alaska Statehood Act granted land entitlements to the state under sections 6(a) and 6(b) totaling 103,350,000 acres to be selected from the federal public domain. In 1962, when the state enacted the first municipal entitlement law, less than eight million acres of the statehood entitlement had been received from the federal government. There were less than 40 municipalities in the state at that time. Up until the 1978 law, a municipality was entitled to select 10% of the VUU land within the municipality without a date final for fulfilling that entitlement. This appears to have been intended as an ongoing process so that as the state received more of its entitlement, the municipality could continue to select 10% of that which was VUU.

The 1978 law, for the first time established date certain time lines. The pool of land from which to compute the 10% of VUU entitlement was limited to land within the municipal boundaries between the first date of eligibility for each municipality (September 16, 1970, or date of incorporation which ever came later) and July 1, 1978. The deadline for selection was, however, set two years after expiration of the state's selection rights from the federal public domain. The state's selection deadline was 25 years from statehood (1984). The Alaska National Interest Lands Conservation Act (ANILCA) extended this by ten years to 1994.

In 1978 the state had received about 35 million acres of its entitlement. The 1978 city certifications resulted in an allocation of 7,727 acres to 19 qualifying cities and 861,608 acres to 11 unified home rule municipalities and boroughs. A total of 869,335 acres of state land were granted to municipalities under the 1978 law.

Entitlement acreages for unified home rule municipalities and boroughs contained in AS 29.18.201, as amended in 1978, did not always represent fulfillable entitlements. When the state legislature was considering provisions to be incorporated into the AS 29.18 amendments, they established acreage entitlements for each of the unified home rule municipalities and boroughs based on a complicated scheme that considered population, areal extent and availability of state land within the municipal boundaries. The Municipality of Anchorage and the Kodiak Island Borough had considerably less state VUU land within their boundaries than was needed to meet the statutory entitlement.

The Municipality of Anchorage received $4,000,000 as deficiency payment under AS 29.18.208 for 4,000 acres of entitlement land and in 1985 entered into an agreement with the state to zero out a yet unfulfillable entitlement with 4,628 designated acres of state land within the municipal boundaries. Prior to the agreement, 20,671 acres of land had been approved or patented to the municipality. Under the settlement Anchorage can also receive up to 1,000 acres

of National Forest Community Grant land at Girdwood if land is ever conveyed to the state.

The Kodiak Island Borough likewise entered into an agreement with the state to zero out its entitlement with 48,700 designated acres of state land within their boundaries. As part of the agreement the borough would return to the state 3,069 acres of the 13,960 acres of land that had been patented or approved for patent prior to the agreement. The borough would also receive up to 17,800 acres of land under selection by ANCSA corporations if the land was ever available to the state.

The amount of additional state land granted to cities by the 1987 amendments is 11,892.3 acres. The state had about 80 million acres of its entitlement in 1987. The major affect of the new law, however, is re-establishing a 1978, 89,850 acre entitlement to the North Slope Borough and increasing the 13,000 acre entitlement certified under the old statute to the new Northwest Arctic Borough to 133,920 acres. In round figures about 236,000 acres of state VUU land will be conveyed to two boroughs and nine cities under the 1987 law.

VUU Land Definitions History

Between 1963 and 1978, municipal entitlement selections were limited to "vacant, unappropriated, unreserved land". It appears, by extension of application, that state administrators conceptually adopted the similar guidelines used by federal administrators when statehood land selections were being adjudicated. Neither statutory nor policy definitions existed for VUU land and as a result municipalities and the state disagreed about whether specific parcels of land were VUU.

In 1978, the amended law adopted specific definitions for VUU land. Following were the limitations placed on this definition:

1) Land must be Statehood Act section 6(a) or 6(b) land that has been patented or tentatively approved to the state and excludes the mineral estate;

2) Land cannot have been set aside by statute for one or more particular uses or purposes;

3) Land must be unclassified or if classified is classified agricultural, grazing, commercial, industrial, private recreational, residential, utility or open-to-entry.

The definition of VUU land specifically excluded minerals citing section 6(i) of the Statehood Act. Section 6(i) was incorporated into the Alaska Land Act as AS 38.05.125.

disputes between the state and municipalities. All of the classifications that are defined VUU are categories which the state was already allowed to dispose of by law. In 1983 the state's land classification regulations were changed so that commercial, industrial, open-to-entry, private recreation, residential and utility classifications were subsumed by a new 'settlement' classification. The effect was that unclassified land, settlement land, grazing land and the agricultural interest in agricultural land were available to municipalities for fulfillment of entitlement.

In 1987 three additional categories were added to the list of VUU classifications: 1) material; 2) public recreation; 3) resource management if classified as such on or after September 1, 1983.

1978 Entitlement Status

On July 1, 1978, there were 139 cities incorporated under state law. Certifications of entitlement under ch 180, SLA 1978, resulted in 19 cities receiving entitlements totalling 7,727 acres.

In 1978 the legislature redesignated university and mental health trust land state general grant land (Chap 182, SLA 1978). Based on what they believed to be representations by DNR that these lands would now be, not only general grant land, but also VUU available for entitlement computation as well as available for fulfillment of entitlement. Three cities in Southeast Alaska certified as "zero entitlement" believed that the department erred in the certifications because redesignated mental health trust land as general land statewide was not included as part of the land base within their corporate boundaries for the certification process. Petersburg filed suit in State Superior Court (1JU-78-1109 civ) and Kupreanof and Wrangell administratively appealed their zero entitlement certifications. The state reached an agreement with Petersburg and granted 10% of the mental health lands within their boundaries to the city. This amounted to 461.27 acres of land. The conveyances were under the authority of AS38.05.315(a) [renumbered AS 38.05.810].

As resolution of the other two appeals, the department extended the terms of the Petersburg settlement. Kupreanof received 180.82 acres of mental health land and Wrangell received 310 acres of mental health land.

Although all land selections for municipalities with entitlements from the 1978 law are in place, somewhat less than half of the land has been patented to them. The state cannot convey land to a municipality until the federal government has patented the land to the state. However, all 1978 municipal selections have, with few

exceptions, been approved or rejected. When the state approves a selection, the municipality assumes management responsibility as if it owned the land. By statute municipalities can create third party interests on approved selections prior to patent with the approval of the director. The director generally confers broad management authority to a municipality on an approved selection unless there is an overriding public interest requiring continued involvement by the state.

1988 Entitlement Certification Results

Between the 1978 round of certifications and the 1987 amendments to AS 29.65, eight cities incorporated under state law. Only Thorne Bay had state general grant land within its boundaries that was VUU and in 1982 their entitlement was established at 612 acres. This was in error and was corrected to the proper figure of 675 acres in the 1988 certification.

Three other cities received land from the state during the period July 1, 1978, to January 1, 1988. Tenakee Springs had entered into an agreement in 1977 with Alaska Lumber and Pulp Company (AL&P) and the Department of Natural Resources. The purpose of the agreement was to "permit the proposed operations [AL&P timber contract with the USFS on Chichagof Island] to proceed in a climate of consensus and cooperation". The state's obligation in the agreement was:

> "The state will convey to the City title to any selected lands conveyed to the State by the Bureau of Land Management, except that the State may retain title to those sites necessary for present or anticipated essential public purposes. The State will convey to the City all tidelands and submerged lands within or subjacent to the Sunny Cove dump, and will expeditiously consider the City's application for conveyance of other tidelands and submerged lands adjacent to any selected lands conveyed to the State by the Bureau of Land Management."

The state's part of the agreement was not carried out and in 1980 Tenakee Springs filed suit against the state in State Superior Court (1JU-80-1666). An out of court settlement resulted in a split of the state lands within the city boundaries, granting the city 2,958 acres and leaving in state ownership 1,027 acres.

Whittier sought and received a legislative grant of state land. Under chap 73, SLA 1984 Whittier received 600 acres of state general grant land within its boundaries.

Pelican sought and received a legislative grant of 8.863 acres of state land under Ch 53, SLA 1985.

The amendments to AS 29.65 in 1987 resulted in certifications of new or enhanced entitlements to nine cities of the 147 cities in existence on January 1, 1988. Kupreanof, Petersburg, Pelican, Tenakee Springs, Whittier and Wrangell each had state general grant land within their boundaries that were VUU. The previous agreements, settlements and legislation, however, resulted in the entitlements being certified at zero acres. The conveyances to Kupreanof, Petersburg and Wrangell were done under the authority of AS 38.05.810 and as provided in AS 29.65____ if a municipality with an entitlement is conveyed land under .810 it may be charged against the entitlement. Wrangell administratively appealed this certification because the amount of land that they received in 1978 was less than 10% of the VUU land that was available for the 1988 certification. The director reconsidered the facts and agreed with the City of Wrangell that their entitlement should be the full 10 percent of the VUU land within the city boundaries.

BACKGROUND: TIDELAND CONVEYANCES TO MUNICIPALITIES

Legislative History

In addition to the general grant land entitlements, qualified cities within Alaska have been conveyed tide and submerged land. To understand the purpose of these conveyances of public trust land it is necessary to review federal mandates for management of tide and submerged land prior to Alaska's admission into the Union.

By act of Congress, on May 17, 1884, Alaska was established as a judicial district with a governor and district court system. The general law of Oregon was applied to the district under this act.

On May 14, 1898, Congress passed an act extending the homestead laws to the District of Alaska and providing for right of way for railroads within the district. The act declared that "all such rights to [tide lands and beds of any navigable waters] shall continue to be held by the United States in trust for the people of any state or states which may hereafter be erected out of said District [Alaska]."

The Organic Act, approved by Congress August 24, 1912, created the Territory of Alaska and granted the new territory legislative powers through an elected legislative assembly. The Organic Act further extended the Constitution of the United States and all laws not locally inapplicable, to the Territory of Alaska.

Thus territorial tidelands constituted a federal trust early in Alaska's history and as such could not be disposed of through lease or sale. Additionally, permanent improvements were not authorized to be constructed upon tide and submerged land.

The importance of improved tidelands to the vitality of the territory's economy and the health of its people is readily apparent. It was a territory whose economy, mobility and

recreation were intimately tied to the sea. Log transfer facilities, seafood processors, municipal docks, private boat ways and even residences were partially or wholly constructed on tidelands with no method for individuals or businesses to acquire proper authorization for use. The need for these activities was readily recognized by the federal managers. However, the mechanism for authorizing such use was non-existent.

In full recognition of these shortcomings, Congress enacted a law on September 7, 1957 (P.L. 85-303), that conveyed tidelands adjacent surveyed townsites to the territory. The conveyance was for tidelands and all improvements and natural resources between the line of mean high tide and the pierhead line. The pierhead line was defined as a "line parallel to the existing line of mean low tide at such distance offshore from the line of mean low tide that encompasses to the landward all stationary, manmade structures in existence as of February 1, 1957". Under this law acceptance by the Secretary of Interior of new townsite surveys effected conveyances of attendant tidelands to the territory.

The act authorized the territory to manage and dispose of any tract of tidelands acquired under the act for municipal, business, residential or other beneficial purposes. A tidelands occupant or the occupant's successor in interest had a preference right to acquire an improved tract if a disposal occurred. These improved tracts could be conveyed to the incorporated town or school district. However, if this occurred, the town or school district must accord any occupant a preference right in any disposals contemplated in the future.

The Army Corps of Engineers was given the authority to establish pierhead lines for all surveyed townsites to enable conveyances to the territory. This process was initiated soon after passage of the act. Alaska's statehood interrupted this process with the conveyance of all tide and submerged land under section 6(m) of the statehood act to the new state.

The Alaska Legislature incorporated specific language in the Alaska Land Act to recognize and implement the provisions of the September 7, 1957, federal law. The provisions were soon codified AS 38.05.320(b).

The Alaska Land Act (ch 169,SLA 1959) section 5(c) enabled the conveyances of tidelands to municipal corporations. Qualifications in the act were:

1) The corporation must have been incorporated on or before January 3, 1959;

2) Tidelands subject to conveyance lay between the mean high tide line and the pierhead line, the harbor line or in their

absence, a line subject to the approval of the director;

3) The corporation had to prepare a plat of the area conveyed showing all structures and improvements thereon and each tract that was occupied or developed with the owner or claimant noted; and,

4) The corporation had to recognize preference rights for occupied and developed tracts.

The tidelands conveyances to municipal corporations were mandatory and gave the department few discretionary powers over the process.

An amendment to AS 38.05.320(b) occurred in 1964 (ch 81, SLA 1964) when "municipal corporation" was changed to "(h)ome rule cities and cities of the first class." These cities had to have been incorporated on or before April 1, 1964, in order to qualify.

Another amendment to AS 38.05, although unrelated to AS 38.05.320(b), did provide for another type of tidelands conveyance to municipalities. Chapter 108, SLA 1974 (codified AS 38.05.323) allowed home rule and general law municipalities to apply for tidelands between mean high tide and mean low tide adjacent public recreation area facilities if the facility was developed under the terms of P.L. 507 (70 Stat. 130) and it was conveyed from the state to the municipality.

Under AS 38.05.320(b) 25,224.3 acres of tidelands were conveyed to 28 cities from Barrow to Saxman. Apparently no tidelands have been conveyed under AS 38.05.323.

GENERAL GRANT LAND ENTITLEMENT DISCUSSION

There are three categories of general grant land entitlements under AS 29.65:

1) A specified statutory entitlement (AS 29.65.010) for unified home rule municipalities and organized boroughs;

2) 10% of the maximum total acreage of vacant, unappropriated, unreserved (VUU) land within the boundaries between September 16, 1970 and January 1, 1988 for cities incorporated as of July 1, 1978 (AS 29.65.020); and

3) 10% of the maximum total acreage of VUU land within the boundaries between date of incorporation and two years after that date for cities incorporated after July 1, 1978 (AS 29.65.030).

The governor's general grant land entitlement policy required by Section 11, Chapter, 34 SLA 1987 only affects the Northwest Arctic Borough and other municipalities incorporated after formation of the Northwest Arctic Borough (incorporated June 2, 1986). Thus, only general grant land entitlements pursuant to AS 29.65.030 for

municipalities incorporated on or after June 2, 1986 will be affected by this policy document.

Section 2 ch 34 SLA 1987 significantly amended AS 29.65.030 by adding a new upper entitlement limit based on municipal population on the date of incorporation. This limit was imposed to help dissuade formation of municipalities for the sole purpose of obtaining large general grant land entitlements from the state. Since all densely populated areas of the state are presently incorporated, newly incorporated areas will generally be rural in character. State land within these areas is often not well suited for development or other municipal purposes. Creating large entitlements to be fulfilled from the state's rural land base may not be in the state's interests.

The per capita limit was established at 20 acres based on the highest per capita entitlement to any municipality statewide created by the 1978 amendments to the municipal entitlement law. The Matanuska-Susitna Borough has an entitlement of 355,210 acres which is about 20 acres per capita based on the population of the borough in 1978.

From inception, the municipal entitlement law has undergone a gradual philosophical broadening of purpose. Where the early versions of the law were focused on making land available that was suitable for development for residential, commercial or industrial use, the most recent version of the law shifts to include public purpose land. This shift occurs through inclusion of public recreation classified land in the categories of land available to municipalities.

PURPOSES FOR GENERAL GRANT LAND ENTITLEMENTS

The central theme of municipal entitlements today is to provide land to municipal corporations for the purposes of:

1) Siting public facilities/aiding community expansion;

2) Providing a means of revenue production through sales or lease which also expands the municipal tax base; and;

3) Providing local public recreation opportunities.

The provisions of Alaska Native Claims Settlement Act (ANCSA) defeated state's title to selected and tentatively approved land within the vicinity of ANCSA village corporations. This results in extremely limited or totally absent state land bases in or near ANCSA cities (population centers) for a new borough to realize the first two purposes. The provisions of ANCSA 14(c)(3) do however, compensate for this shortcoming by requiring that an ANCSA village

corporation. This provision includes title to the remaining surface estate of the improved land and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs.

The results of AS 29.65 and ANCSA must be viewed together. If the land available under these two laws is insufficient to fulfill municipal land entitlement purposes, and other state land unavailable under AS 29.65 will meet the needs, then the municipality may make a written request, including justification, to the Department of Natural Resources for the specific additional land which increases their entitlement.

SUMMARY

The State of Alaska in furtherance of the goal of maximum local government committed in 1978 7,727 acres of state land to 19 cities and another 861,608 acres to 11 unified home rule municipalities and boroughs. With few exceptions land selections have been approved and the municipalities actively manage this land base of nearly 870,000 acres.

New incorporations after 1978 resulted in another 14,000 acres of entitlement to one city and one borough.

The 1987 amendments to AS 29.65 created new entitlements for two cities totalling over 1200 acres, reestablished an 89,850 acre entitlement for a borough and expanded entitlements for seven cities and one borough for over 130,000 new acres.

Over 1,000,000 acres of state land have been committed under AS 29.65 to 41 municipalities statewide for local use. This represents nearly one percent of Alaska's statehood entitlement.

The state has patented nearly 430,000 acres of uplands to 48 municipalities since statehood and 25,000 acres of tidelands to 28 cities.

As the current trend toward more borough incorporations continues, general grant land entitlements promise to play a role in the viability of the new municipalities in a difficult economic environment.

MUNICIPAL ENTITLEMENT CERTIFICATION SUMMARY

City	1978 Entitlement	Other Entitlement	1988 Entitlement	New Acres Under Ch34,SLA 1987
Anderson	0.0	0.0	1,182.0	1,182.0
Bethel	40.0	0.0	0.0	
Cordova	235.0	0.0	0.0	
Delta Junction	400.0	0.0	481.8	81.8
Dillingham	1.0	0.0	0.0	
Fairbanks	15.0	0.0	0.0	
Homer	16.0	0.0	0.0	
Hoonah	15.0	0.0	0.0	
Houston	405.0	0.0	0.0	
Kenai	307.0	0.0	0.0	
Ketchikan	0.5	0.0	4.0	3.5
Kodiak	32.0	0.0	0.0	
Kupreanof	0.0	180.8	0.0	
North Pole	0.5	0.0	0.0	
Ouzinkie	240.0	0.0	0.0	
Pelican	0.0	8.9	0.0	
Petersburg	0.0	461.3	0.0	
Port Alexander	0.0	0.0	53.0	53.0
Port Lions	35.0	0.0	0.0	
Seward	562.0	0.0	565.0	3.0
Skagway	500.0	0.0	7,977.0	7,477.0
Soldotna	14.0	0.0	0.0	
Tenakee Springs	0.0	2,958.0	0.0	
Thorne Bay	0.0	612.0	675.0	63.0
Valdez	4,805.0	0.0	7,593.0	2,788.0
Whittier	0.0	600.0	0.0	
Wrangell	0.0	310.0	551.0	241.0
Yakutat	104.0	0.0	0.0	
TOTALS	**7,727.0**	**5,131.0**	**19,081.8**	**11,892.3**

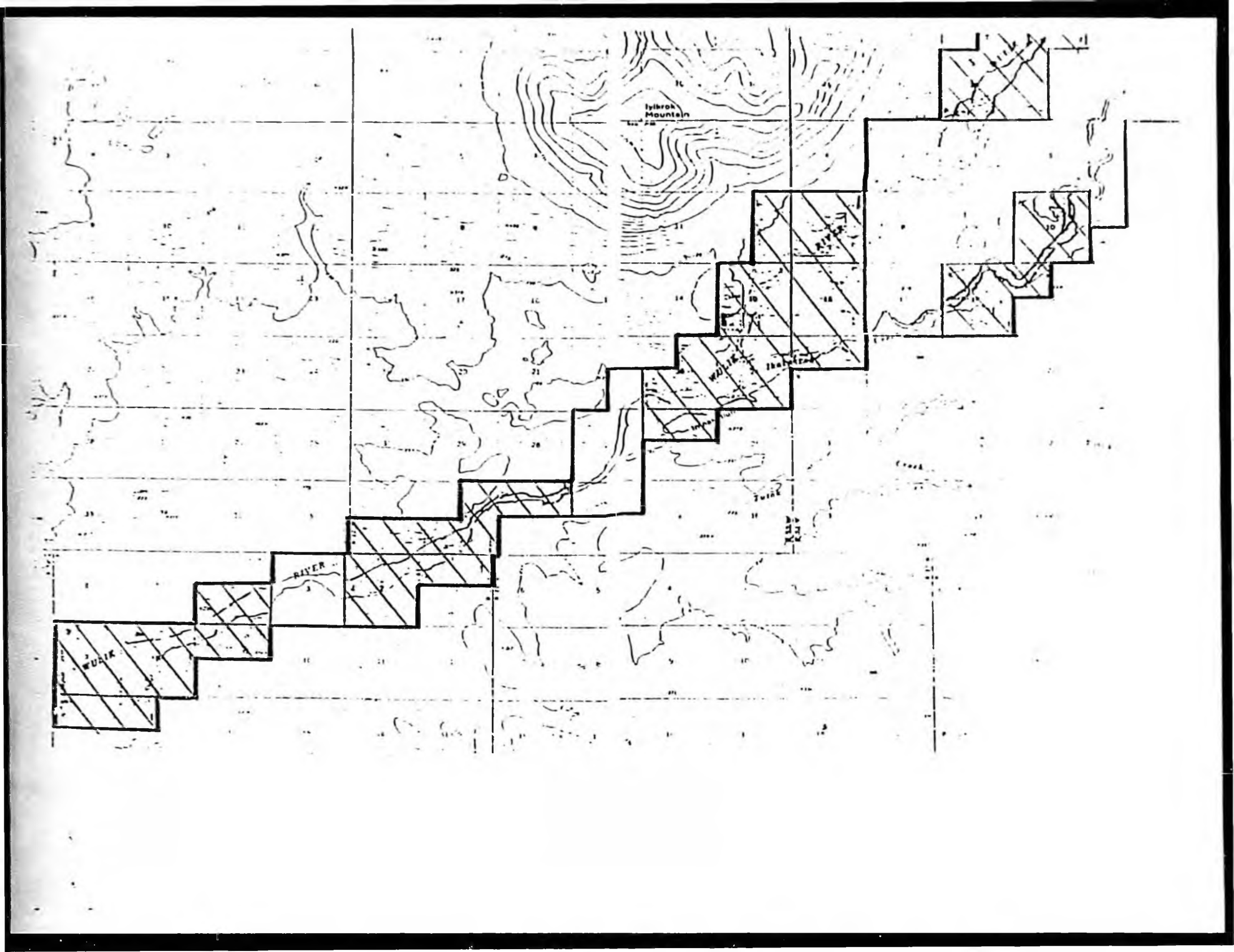
TABLE 1

CONVEYANCE SUMMARY: CITIES

CONVEYANCES BY AUTHORITY

City or Borough	Incorp	.347	AS 07	AS 29	.810	.320	Legislative	Other
Aniak	May-72				24.6			
Barrow	Jan-59					870.0		
Bethel	Jan-57	82.1		5.0	317.0			42.4
Cordova	Jan-09			0.5		321.7		
Craig	Jan-22				18.2	73.0		
Delta Junction	Dec-60			340.3	40.0			
Dillingham	Jan-63				10.7			
Fairbanks	Jan-03			0.5	96.1			
Fort Yukon	Feb-59							0.3
Haines	Jan-10			20.0		109.1		
Homer	Jan-64					6,831.1		292.8
Hoonah	Jun-46	105.5				201.4		
Houston	Jan-66			418.8				
Hydaburg	Oct-27					175.0		
Kake	Nov-52					218.3		1.4
Kasaan	Feb-76				0.4			
Kenai	May-60	3,594.7		355.3	175.8	2,752.1		1.9
Ketchikan	Jan-00				1.2	169.7		
King Cove	Jan-47					178.1		
Klawock	Jan-29					272.5		
Kodiak	Jan-40	281.0		1.2	15.4	219.0		
Kotzebue	Mar-73					392.8		
Kupreanof	Aug-75			180.8				
McGrath	Jun-75				13.5			7.7
Nenana	Jan-21							35.0
Nome	Jan-01					5,717.0		42.1
North Pole	Jan-53				19.7			
Palmer	Jan-51				3.5			
Pelican	Jan-43				4.9	60.1	8.9	
Petersburg	Jan-10			231.1	314.7	449.5		12.4
Sand Point	Oct-66				2.3			
Saxman	Sep-29					53.6		
Seldovia	May-45				21.6	118.0		
Seward	Jan-12			493.1	49.1	1,677.3		
Shungnak	Mar-76				0.6			
Skagway	Jan-00			122.1		193.5		
Soldotna	Jan-67			111.9	391.5			60.3
Tenakee Springs	Oct-71					30.2		204.8
Thorne Bay	Aug-82			249.2				
Unalaska	Jan-42							9.3
Valdez	Jan-01			4,420.2		1,366.6		34.5
Wasilla	Jan-74				129.8			
Wrangell	Jan-03			18.5	288.7	148.8		
Yakutat	Jan-48			123.6	31.2	248.3		
	TOTALS	*4,063.3*	*0.0*	*7,092.1*	*1,970.3*	*22,848.4*	*8.9*	*744.9*

TABLE 3


Ivibrok
Mountain
RIVER
WUSIK
RIVER
WUSIK

April 26, 1990

Testimony of Charles Bettisworth, Chairman
Local Boundary Commission

To: House Standing Committee on Community and
Regional Affairs
Chairman Eileen MacLean

I'd like to first thank you for the opportunity to provide my comments regarding Senate Bill 11 "An Act Authorizing Compensation for Members of the Local Boundary Commission".

The Commission supports this legislation for the following reasons:

The duties and responsibilities of the Commission have increased since the creation of the Local Boundary Commission 33 years ago. At that time, there were only 30 Municipal governments in the State and today there are 163 Boroughs and Cities.

The Commission, at the time of its creation, met a few times a year. Presently, we meet 15-20 times a year - often in remote communities under hazardous weather conditions.

The additional number of meetings do not account for the additional demands placed upon the Commission. Procedures which were simple years ago have become increasingly complex. With revisions adopted last year, Local Boundary Commission regulations make up more than 50 pages of the State code. Actions which used to be processed in 60 days, now may take as long as 9 months.

All of this means that substantially more time is required for Local Boundary Commission members to appropriately act on issues before it.

As an example of the increased workload which the Commission is currently enduring, we have recently completed evaluations of the various petitions for incorporation of the region north of Matanuska-Susitna and south of Fairbanks North Star Borough (Matanuska-Susitna Borough Annexation petition, Denali Borough Incorporation Petition, and the Valley's Borough Incorporation Petition). The Commission reviewed over 700 pages of documents. These documents included the original petitions, the Departmental reports and draft reports and hearing supplements. Additionally, the Commission held 6 sets of hearings in 6 communities over the period of four days. Finally, on a separate weekend, conducted a decisional meeting in Healy. We are looking at similar levels of activity for petitions submitted by the Fairbanks North Star Borough and the City and Borough of Juneau, all of which require action this year.

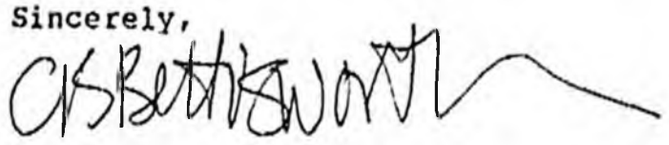
The Local Boundary Commission is a quasi-judicial commission. The issues before it are often controversial, over the years the decisions of the Commission have been challenged in court. As an example, the Alaska Supreme Court has rendered 9 decisions regarding the actions of the Commission. It is incumbent upon the Commission to act with care and thoroughness.

The Local Boundary Commission, along with the University of Alaska Board of Regents, is the only constitutionally-mandated State commission. Our duties and responsibilities are commensurate with those of many of the other State boards and commission which are compensated. It seems only appropriate that the Local Boundary Commission be compensated.

Finally, the impact of this bill is minimal. The current fiscal note attached provides for $150/day per member for an estimated 25 meetings a year, equaling $18,750 annual appropriation.

We very stronly urge you to approve Senate Bill 11 and we thank you for your consideration.

Sincerely,



Charles Bettisworth
Chairman

CBB.emk

testimony to C&RA Committee
subject hb# 588
from Lamar J. Cotten Borough Administrator Aleutians East Borough
and member Local Boundary Commission

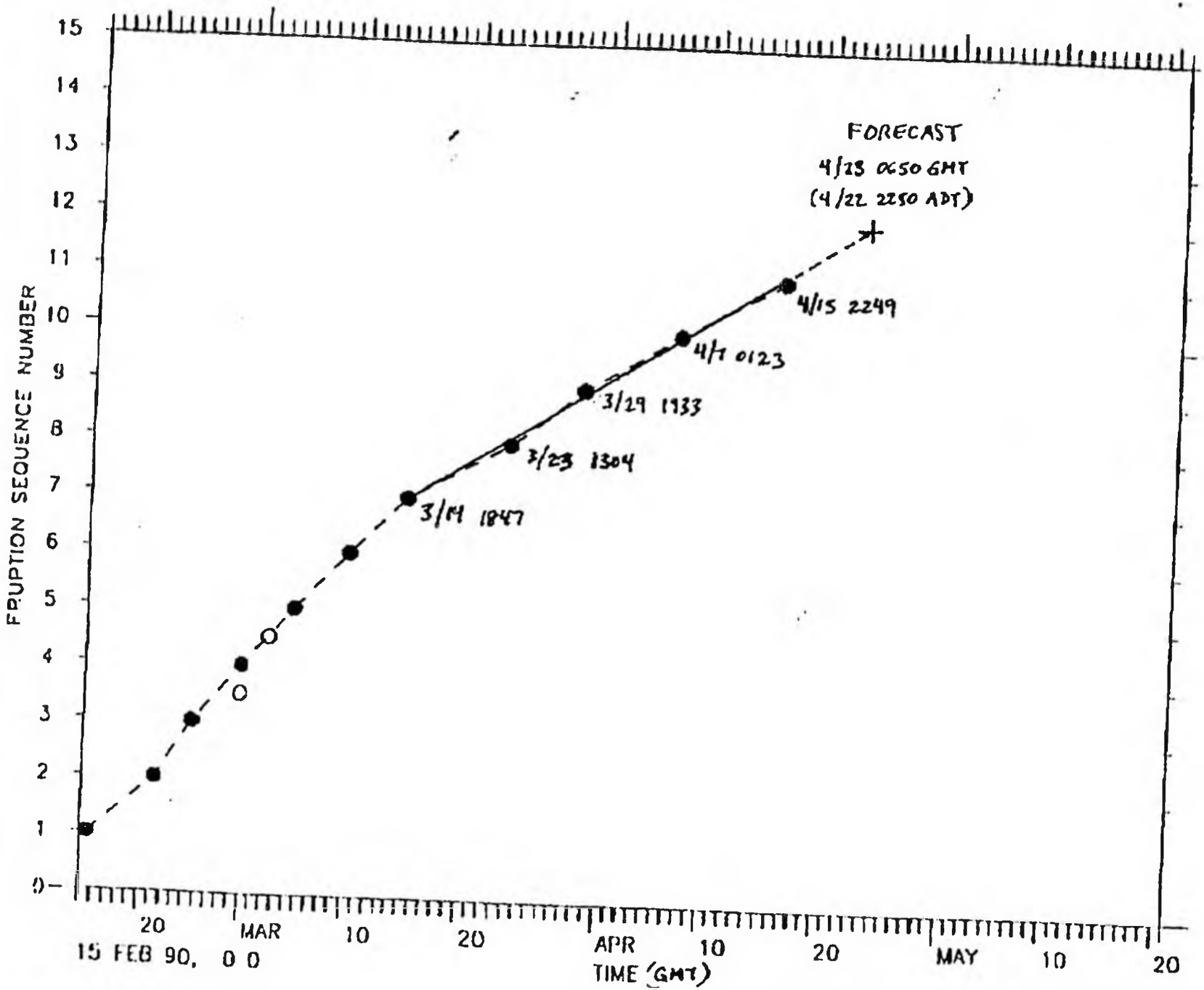
the following are some general comments concerning the bill and its implications to the AE Borough and future incorporation activities.

1. overall intent is good. The state policy toward municipal land entitlement needs to re-focus from an urban orientation to a rural one.
2. The policy must be consistent with the state policy to provide valid incentives for areas to incorporate.
3. the bill addresses the inconsistent issue value differentials between the urban borough and the new rural ones(aeb, nwab andl&pb) and future rural ones inwhich value of land is substanially less in the rural regions.
4.The policy of the 20acre cap per capita compounds the inequity since it futher reduces the total selection amount for rural boroughs. The aeb is good example. At the time of incorporation there were 2091 residents in the borough which meant , in theory, at least that we would receive about 40,000+/- acres. However, based on informal comments from the department the actual amount would be closer to 4,000 acres depending on the different types of classification of lands. My understanding of bill would mean aeb would obtain about 47,000=/- acres.
5. In light of the limited acreage available,poor locations and few selections near existing communities, I feel that the bill attempt to address some if disadvantage that the borough fines itself in with regard to land selections.
6.Considering the revenue options which rural alaska will face in the 1990's andbeyond land may be one of its key assets to operate a small government.
7. Land in of itself is <u>not</u> a motivation to incorporate. What appears to draw people to at least review the matter is (a decline of state dollars b) political power c) tool to deal with developmentd) more efficient method to provide some services.
8.Current situation is <u>not</u> an incentive to incorporate.

end of testimony thank you---

REDOUBT ERUPTION SEQUENCE NUMBER VS TIME

R. PAGE
4/16/90



6-2380E
Cook
4/24/90

Original sponsor(s): C&RA Committee

IN THE HOUSE BY THE C&RA COMMITTEE

CS FOR HOUSE BILL NO. 588 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to general grant land selections; and providing for an effective date."

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

* Section 1. AS 29.65.030(a) is amended to read:

(a) The general grant land entitlement of a municipality incorporated after July 1, 1978, that does not qualify for an entitlement under AS 29.65.010 or 29.65.020 is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within the boundaries of the municipality between the date of its incorporation and two years after that date. [HOWEVER, A MUNICIPALITY MAY NOT RECEIVE AN ENTITLEMENT UNDER THIS SUBSECTION THAT EXCEEDS 20 ACRES PER PERSON RESIDING IN THE MUNICIPALITY ON THE DATE OF ITS INCORPORATION. FOR PURPOSES OF THIS SECTION THE POPULATION OF A MUNICIPALITY SHALL BE DETERMINED BY THE DEPARTMENT IN ACCORDANCE WITH AS 29.60.020 AND 29.60.150.]

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

(c) Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under former AS 29.18.201 and 29.18.202 at any time before October 1, 1980. Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under AS 29.65.010 at any time before October 1, 1990. However, if a municipal selection or nomination or a part of a municipal selection or nomination is rejected by the director, the municipality may, not later than 90 days after

receipt of the rejection or final decision on an appeal filed under AS 29.65.050(d), select additional state land as necessary to satisfy its entitlement.

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

(c) The director shall approve or disapprove each selection for patent within nine months of its selection by a municipality. Before a decision is issued the Department of Community and Regional Affairs shall review the selection and recommend approval or disapproval of it. The director may disapprove a selection only upon a finding that the public interest in retaining state ownership of the land outweighs the municipality's interest in obtaining the land. A [, AND A] patent shall be issued to the municipality for land selected in satisfaction of a general grant land entitlement vested under AS 29.65.010 - 29.-65.030 within three months after approval by the director of a plat of survey.

* Sec. 4. AS 29.65.050 is amended by adding a new subsection to read:

(d) Before disapproving a selection the director shall notify the municipality in writing of the decision and set out reasons for it. The municipality may submit a written response within 30 days after receipt of the notice. Within 30 days after the period for responding has expired, the director shall affirm, modify, or reverse the decision and supply the municipality with written notice of that action. If the selection is disapproved, the municipality may file notice of an appeal with the director. The appeal shall be heard under procedures adopted by regulation of the Department of Natural Resources by a municipal land mediation committee composed of a person appointed by the commissioner of natural resources, a person appointed by the commissioner of community and regional affairs, and an elected municipal official appointed by the governor. A decision on the

appeal shall be submitted to the municipality in writing within 30 days after the notice of appeal was filed with the director. A municipality may appeal an adverse decision of the municipal land mediation committee to the superior court under AS 44.62.560 - 44.62.570.

* Sec. 5. AS 29.65.070 is amended by adding a new subsection to read:

(d) The commissioner may not, through regulations or otherwise, place restrictions on the shape of a parcel of land that may be selected by a municipality.

* Sec. 6. AS 29.65.130(10) is amended to read:

(10) "vacant, unappropriated, unreserved land" means general grant land as defined in (3) of this section, excluding minerals as required by sec. 6(i) of the Alaska Statehood Act, that

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

(B) has not been approved for patent to a municipality under this chapter or former AS 29.18.190 and 29.18.200;

(C) is unclassified or, if classified under AS 38.05.300, is classified for agricultural, grazing, material, public recreation, <u>wildlife habitat other than critical wildlife habitat</u>, or settlement purposes, or is classified in accordance with an agreement between a municipality and the state providing for state management of land of the municipality; or

(D) was classified no earlier than September 1, 1983, as resource management and is still classified as resource management under AS 38.05.300.

* Sec. 7. Notwithstanding AS 29.65.030(b), the director of lands shall, by January 1, 1992, in accordance with AS 29.65.030(a) as amended in sec. 1 of this Act and AS 29.65.130(10) as amended in sec. 6 of this Act, redetermine and recertify the entitlement of each municipality that has a general

grant land entitlement that has not been fulfilled by July 1, 1991. If as a result of the recertification, the general grant land entitlement of a municipality is increased, land may be selected by the municipality in fulfillment of the amount of the increase at any time within one year after the recertification under this section is issued.

* Sec. 8. Sections 1, 6, and 7 of this Act are retroactive to June 2, 1986.

* Sec. 9. Sections 1 and 6 - 8 of this Act take effect immediately under AS 01.10.070(c).

* Sec. 10. Sections 2 - 5 of this Act take effect July 1, 1991.

HJR

21

HOUSE JOINT RESOLUTION 21

TABLE OF CONTENTS

****

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

AGENDA

HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
Thursday, February 16, 1989, 1:00 p.m.

HB 139 "An Act relating to payments for purchases by schoo' districts and municipalities; and providing for an effective date." - LABOR AND COMMERCE

HJR 21 "Disapproving the Local Boundary Commission Recommendation for annexation of territory to the Fairbanks North Star Borough." - WALLIS

HJR 21

WALLIS

The Local Boundary Commission submitted it's annual report to the legislature on January 18, 1989. At that time the Local Boundary Commission recommended that the legislature approve the annexation of 216 square miles or territory. This area is unpopulated and includes 16 miles of the Trans-Alaska Pipeline and Pump Station 7.

House Joint Resolution 21 which was introduced by Representative Wallis would disapprove this recommendation. If this resolution does not pass both bodies of the legislature before March 4th this annexation will take effect.

Two fiscal notes have been issued on this legislation. There is a zero fiscal note from the the Department of C&PA. A fiscal note was also issued by the Department of Revenue reflecting a 1,981.2 dollar loss in revenues in FY 90. This loss would continue yearly at an estimated 7% reduction. This reflects the projected decline of the property valuation.

Would members please note that we are on teleconference.

Here to speak on behalf of HJR 21 is the sponsor Representative Kay Wallis.

45 day limit
extend the Legislature time
for reconsideration
change the amend

ORDER OF TESTIMONY

IN JUNEAU

1. Representative Wallis
2. Representative Boyer? (Against)

Please state Name # Address + telephone

(ON TELECONFERENCE)

IN ANCHORAGE

3. Juanita Helms, Mayor Fairbanks North Star Borough
4. Mike Walleri, Attorney Tanana Chiefs Conference

IN FORT YUKON

5. School District Representative

IN FAIRBANKS

6. Jonathan Solomon, Respected Elder

HOUSE COMMITTEE REPORT

(F)
Date Referred: February 3, 1989 FURTHEP REFERRALS: FINANCE

Date of Committee Action: 2-16-89

The COMMUNITY & REGIONAL AFFAIRS Committee recommends that:

HOUSE JOINT RESOLUTION NO. 21
[DISAPPROVE FBNKS. N. STAR BORO ANNEXATION]
Disapproving the Local Boundary Commission recommendation for annexation of territory to the Fairbanks North Star Borough.

[ ] be replaced with _____ [ ] the same title [ ] a new title

[ ] have attached amendment(s)

[ ] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
[✓] fiscal impact Revenue
[✓] zero fiscal note C+RA
[ ] zero with analysis

APPROVES PREVIOUS:
[ ] fiscal note(s) published:
_____
[ ] zero fiscal notes(s) published:
_____

SIGNING DO PASS:
Eileen P. MacLean
Richard T. Foley

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)
no rec
Cheri Davis Do Not pass

Eileen P. MacLean
Chairman's signature

#1

STATE OF ALASKA
1989 LEGISLATIVE SESSION

Bill Version: HJR 21
Publish Date:

FISCAL NOTE

REQUEST:
Revision Date:
Agency Affected: Department of Revenue
Title: Disapproving Local Boundary Comm.
BRU: Oil and Gas Audit
Rec. for annex of territory to Fbks No Star Borough
Sponsor: Martin and Gruenberg
Components:
Requestor: House State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE		(1,981.2)	*	*	*	*

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Assumed to be effective for FY90, 1-1-90 for property tax purposes. Value estimated to be $161,820,000 as of 1-1-90 with a mill rate of 12.243.

*Property valuation is projected to decline at a rate of 7% per year. Declining valuation will reduce the estimated total dollar loss to the state.

Prepared By: C. D. Heier
Phone: 276-1363
Division: Oil and Gas Audit
Date: 2/15/89

Approved by Commissioner:
Date: 2/16/1989
Agency: Department of Revenue

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

#2

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HJR 21
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
T :e: "A Resolution disapproving the LBC recommendation for annexation to FNSB"
Sponsor: Representative Kay Wallis
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: Local Boundary Commission
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Jim Plasman — Phone: 465-4750
Division: Municipal & Regional Assistance — Date: 2/7/89
Approved by Commissioner: Chuck Gray DC, CRA — Date: 2/7/89
Agency: Community & Regional Affairs

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

page ____ of ____

#3

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF COMMUNITY AND REGIONAL AFFAIRS

MUNICIPAL AND REGIONAL ASSISTANCE DIVISION

☐ 949 EAST 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 561-8586

☐ P.O. BOX 348
BETHEL, ALASKA 99559-0348
PHONE: (907) 543-3475

☐ P.O. BOX 205
DILLINGHAM, ALASKA 99576-0295
PHONE: (907) 842-5135

☐ 1001 NOBLE STREET, SUITE 430
FAIRBANKS, ALASKA 99701-4946
PHONE: (907) 452-7126

☐ P.O. BOX BH
JUNEAU, ALASKA 99811-2110
PHONE: (907) 465-4750

☐ 710 MILL BAY ROAD
KODIAK, ALASKA 99615
PHONE: (907) 486-5736

☐ P.O. BOX 350
KOTZEBUE, ALASKA 99752-0280
PHONE: (907) 442-3696

☐ P.O. BOX 41
NOME, ALASKA 99762-0041
PHONE: (907) 443-5457

January 6, 1989

The Honorable Shelley Dugan
Acting Chairperson
Local Boundary Commission
P.O. Box 55109
North Pole, AK 99705

Dear Commissioner Dugan:

I am writing this letter in response to actions taken by the Local Boundary Commission concerning the proposed annexation of territory to the Fairbanks North Star Borough. Clearly, the proposal is among the more complex and controversial of those the Commission has faced.

I commend the members of the Commission for their commitment to their individual views on this matter and respect the different philosophies which have emerged. I am, however, troubled by the fact that the Commission is now in a position of having to submit a recommendation to the legislature which does not enjoy the support of a majority of the members of the Commission.

Additionally, I find it disturbing that at this point, the matter has been decided on the basis of parliamentary procedure. To my knowledge, there has never been an instance where the Commission has submitted a recommended boundary change to the legislature which has not been supported by a majority of its members.

I assure you that my comments are in no way precipitated by the statements made by officials of the Tanana Chiefs Conference or others. Rather, my concern stems from a desire to avoid the establishment of what I view as an extremely poor precedent concerning the procedures of the Commission.

Consequently, I respectfully urge the Commission to formally reconsider its approval of the petition for annexation by the Fairbanks North Star Borough. Should the Commission desire, the Department is prepared to carefully reexamine all aspects of the proposed annexation. Such an effort on our part would result in the preparation of a supplemental report and recommendation on the matter. Further, the Commission could choose to conduct additional hearings on the proposal.

Taking such action would allow the Commission to enter a clear decision on the petition of the Borough. Because such a decision would be based on the full record and would require a majority of Commission members approval, it would dispel most, if not all, criticism regarding procedures used to arrive at a final decision.

A copy of t..is letter is being provided to other members of the Commission and interested parties. I would welcome the opportunity to discuss this matter with you and other members of the Commission at your convenience.

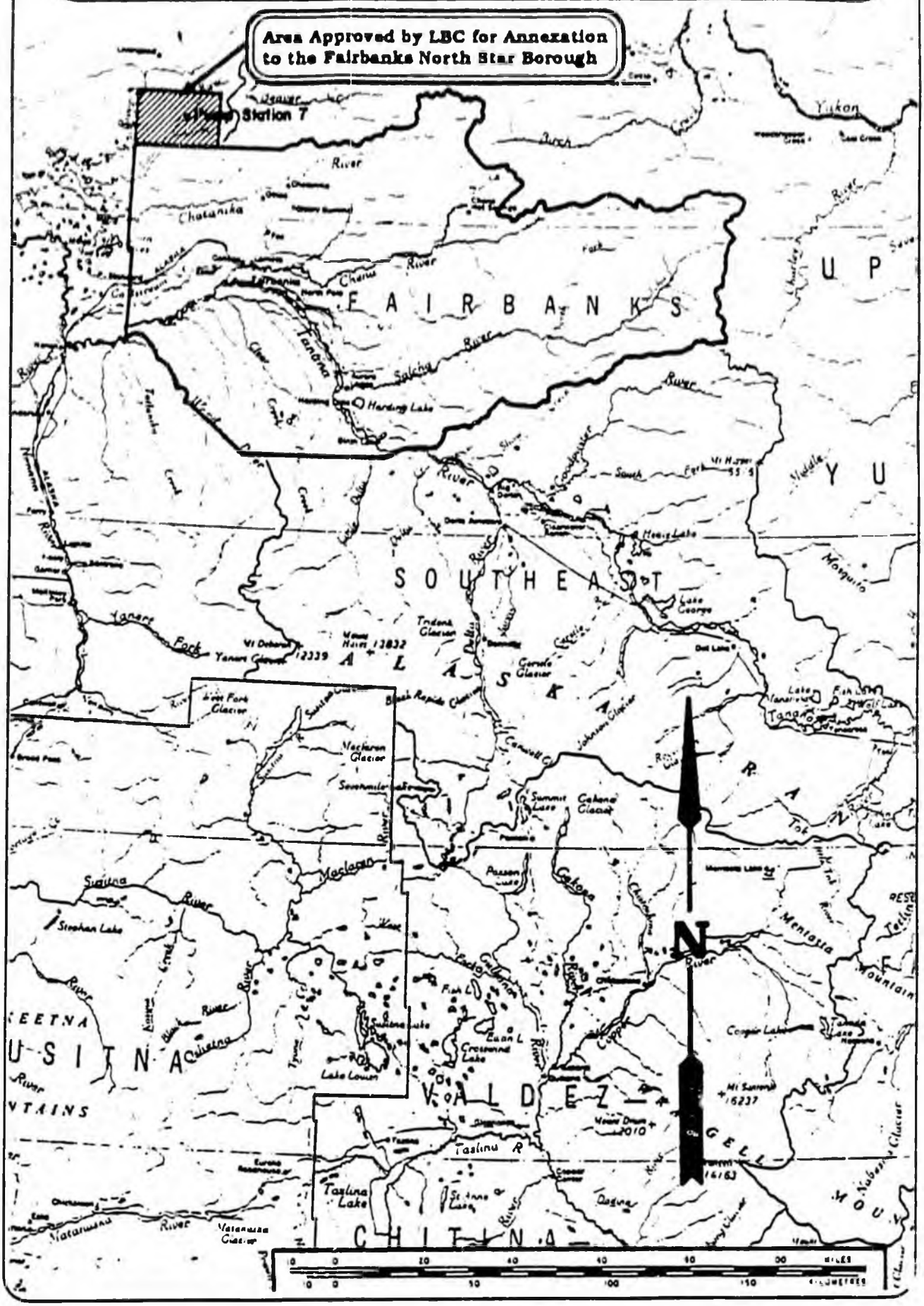
Sincerely,

Marty K. Rutherford
Director

cc: The Honorable Jo Anderson, Member, LBC
The Honorable Lamar Cotten, Member, LBC
The Honorable Ben Nageak, Member, LBC
The Honorable Juanita Helms, Mayor, FNSB
Senator Johne Binkley, Alaska State Legislature
David G. Hoffman, Commissioner, DCRA
Rex Nutter, Petitioner's Representative, FNSB
Mitch Demientieff, President, TCC
Robert I Shoaf, Alyeska Pipeline Service Company
Mike Walleri, TCC

#4

EXHIBIT 4
ANNEXATION TO THE FAIRBANKS NORTH STAR BOROUGH



#5

STATEMENT OF

TANANA CHIEFS CONFERENCE, INC.

BEFORE THE

LOCAL BOUNDARY COMMISSION
STATE OF ALASKA

JANUARY 3, 1989

BY

MICHAEL J. WALLERI
ATTORNEY

The Tanana Chiefs Conference, Inc. (TCC) is the regional Native non-profit for the Interior of Alaska serving 43 villages from Holy Cross to Eagle. To date, TCC has not been involved in the consideration of the proposal by the Fairbanks North Star Borough (FNSB) to annex 216 square miles of land north of its present borders. We apologize for our late entry into this issue, however, the FNSB's proposal has only recently come to our attention. The full impact upon the region could not have been foreseen in light of the draft borough studies released by the Department of Community and Regional Affairs this month. Thus while our intervention in this matter is late, it could not be avoided. Again we apologize to the Commission.

PART I

NEW INFORMATION NOT AVAILABLE AT THE TIME OF THE NOVEMBER 18th HEARING REQUIRES RECONSIDERATION OF THE FNSB PROPOSAL.

In September of this year, the Fairbanks North Star Borough submitted a petition for annexation of 216 sq. miles of land within the Yukon Flats REAA. A hearing was held on November 18, 1988. Based on that hearing, the petition was approved on December 2. On December 28, the LBC voted to reconsider the issue, denied the request, rescinded the denial, and approved the petition setting a hearing on the matter for January 3, 1989 and invited TCC to offer comments.

During this summer, however, collateral developments occurred which raised new issues. Last year, the legislature considered S.B. 1, which proposed incorporation of the unorganized borough. While the bill did not pass, a series of studies were commissioned by the Department of Community and Regional Affairs as to the feasibility of borough incorporation. Study areas included the Yukon-Koyukuk REAA, Denali, Delta-Greely and the Copper River areas. Those studies have not yet been finalized, however, within the last month, the Department has released draft copies,

which we have only hurriedly reviewed. A prior study of a Yukon Flats borough was completed in 1979.

In response to these actions, some of our subregional Boards, which have been meeting, requested that we study the issue and report back to them this winter. We are currently in the process of doing this.

Essentially, the 1979 report on the Yukon Flats suggested that a borough would not be feasible. The Yukon Flats has a tax base which is roughly equal to that of the Yukon-Koyukuk REAA. However, the draft study released this month by the Department of Community and Regional Affairs suggest that the Y-K REAA could support a minimal borough government, similarly, the Department draft studies conclude that the Copper River and Delta-Greely areas similarly could support minimal boroughs, while the Denali area could not.

Our preliminary review of the studies leads us to a conclusion that the proposed areas of incorporation are too small. Large areas of the TCC region would be outside any borough and have no tax base to support future organization. These include the Upper Tanana, Upper Kuskokwim and Lower Yukon. For these areas, borough government would not be feasible within the foreseeable future. On the other hand, the Yukon-Koyukuk, and Yukon Flats areas would have small populations with a large tax base of which the pipeline amounts to about 98% of assessable property. As noted in the Departments report on the proposed annexation, the effect of the state tax cap on pipeline property would create surplus taxable value in the pipeline which these borough's could not legally tax. The effect of the tax cap would substantially limit the size of these boroughs and does not take into consideration the relatively high costs of service in the area.

Our preliminary investigations suggest that if boroughs are to be organized in the Interior, it would be better to organize the

entire TCC region (excluding Delta-Greely) as a single borough. According to the TCC Long Range Health Plan completed in 1988, there are 17,319 people within the TCC region (excluding Delta-Greely). We estimate that the pipeline within this area amounts to about $1.4 billion in assessed valuation, which presently generates about $28 million a year in tax revenues (20 mil). Based upon the recent DCRA reports, we also estimate that the pipeline constitutes 98%+ of taxable property in the region. A tax rate equivalent to the FNSB mill. rate of 12.243 would yield about $17 million in tax revenue. Out of these proposed revenues, we estimate that the local contribution to education in the proposed borough would be about $11 million. Which would be equivalent to about 7.85 mills.[1]

These basic facts were not available prior to our analysis of the DCRA reports which were intended to promote a discussion of borough formation. While we cannot support the proposals to break up the TCC region into weak and powerless boroughs with limited tax bases, we believe that a single TCC region borough deserves serious consideration. This information was not available at the November 18th hearing, and the LBC should reconsider the FNSB proposal in light of this new information. The emergence of a proposal for a single TCC region borough raises questions regarding constitutional, legislative, and administrative standards not previously considered by the LBC.

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[1]This is based upon the assumption of educational services for five REAA's and three city operated school districts.

PART II

THE FNSB PROPOSAL IS CONTRARY TO THE LEGISLATIVE STANDARD CONTAINED IN LEGISLATIVE RESOLVE NO. 52

Legislative Resolve No. 52, passed during the last legislature provided that:

> Be It Resolved by the Alaska State Legislature that the Local Boundary Commission is requested to take into full consideration the desire of residents of an area in the unorganized borough to be self-governing and give them reasonable time to study the concept of self-government; and
>
> Be It Further Resolved that the Local Boundary Commission is requested to postpone borough annexation procedures until after December 1, 1989, in an area where the formation of an organized borough is being studied if a person residing in the area proposed to be annexed and involved in the organization effort requests the delay.

While the territory to be annexed is not within the areas which were the subject of the DCRA studies, the territory is surrounded and immediately adjacent to the Yukon-Koyukuk and Denali study areas. The study area boundaries were not fixed in concrete and are subject to adjustment after the "full consideration" contemplated in the Legislative Resolve. As the Legislative Resolve indicates, that full consideration was not contemplated to be finished until December 1989, and a moratorium on these types of annexations was intended.

The effect of the Resolve is to establish a legislative standard to guide the LBC in considering borough annexations of territory in the unorganized borough before the residents of the unorganized borough could give full consideration of their organizational options. The process contemplated by the Legislature is only half completed. The DCRA studies commissioned by the legislature have not been finalized, and only draft reports have

been released. It is only now that the residents of the unorganized borough have had a first opportunity to provide input into the self-government study. It can hardly be said that there has been reasonable time to study and adjust the proposals. For the FNSB to seek to annex a tax base which generates $2 million a year, and withdraw the area from the new borough(s) is obviously contrary to the language and intent of the legislative resolve.

There has been some attempt to suggest that the Legislative Resolve was intended to apply to limited local controversies. This is simply not the case, and is contrary to plain meaning of the language used. The LBC was requested to postpone all annexation procedures in areas where borough organization is being studied when requested. It is fairly obvious that TCC represents the vast majority of residents of the region and that the FNSB is seeking to annex an important part of the region. Considering the Legislative Resolve, we believe that the LBC should postpone consideration of the annexation until December 1989 and that a failure to do so would violate legislative standards.

A one year postponement to allow the TCC region to fully consider borough formation will not significantly impact the FNSB with respect to their stated need. As noted in the LBC findings, the greatest inequity which the FNSB seeks to avoid relates to the reduction in the State education foundation program which will begin in 1992.[2] The goal of the FNSB is to offset this reduction by the revenues generated by annexation. However, if the annexation is approved now, the FNSB will begin collecting revenues from the annexed area in 1990, a full two years in advance of the reduction in state education foundation funding for which FNSB seeks compensation. By contrast, if the annexation proceeds, the proposed TCC region borough would be permanently denied this

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[2]Decision at p. 2.

revenue source, and may result in the proposal proving to be financially unsound. Postponement, as contemplated by the Legislative Resolve No. 52 is clearly warranted.

PART III

THE DECISION IS INCONSISTENT WITH THE ADMINISTRATIVE STANDARDS ARTICULATED BY THE LBC WHEN A SINGLE BOROUGH IN THE TCC REGION IS CONSIDERED

As stated in the DCRA report to the LBC regarding this matter,

> Essentially, the annexation proposal boils down to an attempt by the FNSB to expand its tax base in support of the above services which it provides to the estimated 73,540 individuals residing within its boundaries.

DCRA Report p. 6.

While the LBC decision finds that revenue enhancement of the FNSB is not sufficient to justify annexation, the LBC compared the condition of the FNSB with other municipalities and found equities favoring the FNSB proposal. Moreover, the LBC only considered a scenario of a Yukon Flats borough and found no harm. Given these comparisons and assumptions about the course of borough formation in the Interior, the decision would seem rationale given the stated goals.

However, the basic assumption about the course of borough formation in the Interior is inconsistent with governing constitutional doctrines[3] and prudent response to the recently released DCRA reports. Specifically, the consideration of a single borough in the region would affect the LBC findings in the following ways:

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[3]Please see discussion of constitutional doctrines in infra.

A. Annexation Would Not Equitably Enhance The Tax Base Of The FNSB

There is no question that annexation of the area would enhance the FNSB tax base, however, the relative loss to the TCC region borough's tax base would be substantially disproportionate. It is noted that the taxable property in the FNSB is [redacted] below the statewide average.[4] Based upon our data respecting population and estimated assessed valuation (see above), we calculate that the per capita assessed valuation within the TCC region, including the subject area, to be 3.1% below the statewide average.[5] However, if the subject area were to be excluded from the TCC region by annexation to the FNSB, the per capita assessed valuation within the TCC region would drop to 17% below the statewide average.[6] The annexation would raise the value of taxable property within the FNSB by 5.2% but lower the taxable property within the proposed TCC borough by 12%. Thus, by trying to correct a perceived inequity with respect to the tax base of the FNSB, the LBC will create a greater inequity with respect to the [redacted].

This effect can be demonstrated more clearly in comparing relative changes in mill rates for educational services. Currently, the FNSB mill rate for local contribution to education is 8.1 mills.[7] The proposed TCC regional borough would require a mill rate of 7.85 mills if the subject area were within the tax base. (supra) However, if the area were excluded from its tax base, the mill rate for education would rise to 9.166 mils, or an increase of 1.69 mils. The revenue enhancement anticipated by the FNSB would only be a reduction of the mill rate by .6 mils. Thus, for local contribution to educational services alone, the

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[4]This is based upon the average statewide per capita assessed valuation figure of $83,430.

[5]$80,836.

[6]$69,288.

[7]See p. 11 of DCRA Report.

relative benefit anticipated by the FNSB is less than half the detriment to be inflicted upon the proposed TCC region borough.

There is no question that the proposed TCC borough will suffer disproportionate harm relative to the benefit sought by FNSB if the annexation is approved.

B. The Annexation Is Contrary To Public Policy As Articulated By The Commission And Prior Judicial Decisions Respecting The Alaska Constitution.

The LBC Decision contains a finding that the annexation represents sound public policy. That finding does not consider the impacts upon formation of a TCC region borough. Consideration of the proposed TCC regional borough substantially alters an analysis of the articulated policy goals and raises a constitutional issue not considered by the LBC.

1) The LBC Did Not Consider Art. X, Sec. I of the Alaska Constitution.

The Local Government Article of the Alaska Constitution provides that,

> The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

This constitutional doctrine has been interpreted by the Courts as espousing a policy of encouraging the creation of borough governments. See Mobil Oil Corp. v Local Boundary Commission, 518 P.2d 92 (Ak. 1982). More specifically, the policy favors the creation of a minimum number of local government units.

The proposal for a TCC region borough would maximize the local self-government available to the region as noted above, if the Yukon-Koyukuk and Yukon Flats organized separately, the other areas of the Interior would lack a sufficient tax base to support borough government. A single borough would provide a sufficient

population base to allow full local taxation of the regions taxable property under existing state law. Additionally, a single borough would meet the second constitutional goal of creating a minimum number of local government units. Considering the available scenarios for borough organization in the region, the single borough option most closely reflects the standard articulated in Art. X, Sec. I of the Alaska Constitution.

The Alaska Constitution, provides for the LBC to decide boundary questions based upon state-wide considerations rather than local political decisions. Fairview Public Utilities v City of Anchorage, 368 P.2d 540 (Ak. 1962); Oesau v City of Dillingham, 439 P.2d 180 (Ak 1968); City of Douglas v City and Borough of Juneau, 484 P.2d 1040 (Ak. 1971). It is clear that the LBC policy respecting tax base equity reflects a statewide perspective. However, the mandate to encourage maximum local self-government with a minimum of local government units presents a constitutional issue which takes precedence over the Commissions efforts to deal with transitory inequities in tax bases. As noted above, the viability of borough organization for a large part of the state will be adversely impacted and possibly frustrated. Moreover, the effort to give equity to FNSB creates greater inequity respecting the TCC region borough. The balancing of such considerations sharply tip against annexation when the constitutional imperative to encourage organization of the unorganized borough is considered.

2) The Financial Gain To The TCC Borough Is Not Excessive or Unwarranted.

In its policy considerations, the LBC found that the gain to FNSB was not excessive or unwarranted. This was based upon a comparison of the per capita revenues from "non-local sources"[8]

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[8]The characterization of local property taxes on pipelines as "non-local sources" is rather curious. Clearly, direct
(Footnote Continued)

received by other boroughs. Examples offered by the LBC ranged from $27,198 to 1,062 per capita. The FNSB would receive $116 per capita. The per capita receipts from pipeline revenues for the proposed TCC region borough, would also not be excessive amounting to about $981 per capita[9], which would be less than the examples of excess used by the LBC.

Moreover, while the net gain to FNSB through annexation would be $27 per capita[10], the net loss to the proposed TCC borough would be $115 per capita, almost four times the gain to FNSB. Thus, in considering the per capita gain to FNSB relative to the per capita loss to the TCC region borough, it is clear that it the FNSB gain is excessive and unwarranted.[11]

(Footnote Continued)
intergovernmental transfers of revenue through municipal assistance and revenue sharing programs are "non-local funds" since they come from the State's general fund. Direct property taxes on local property within a municipal boundary under a coordinated intergovernmental taxing program is obviously locally generated revenues. Under the proposed definition of "non-local", any property tax could not be considered locally generated given the federal income tax system. For example, property taxes on homes and business may be credited against federal income taxes. Consequently, it can be argued that all such taxes result in an indirect transfer of federal revenues to local government and are therefore "non-local" revenue. Similarly, local municipal bond revenues are tax exempt and result in a similar indirect transfer of revenue from the federal government. Consequently, the only revenues which could be truly considered "local" are sale tax revenues and taxable enterprise revenues, since neither revenue source results in a tax credit under State or federal tax law. The FNSB has no such revenue since it does not levy a sales tax and has no taxable enterprise income. Consequently, under the definition of "non-local" used by the LBC, 100% of the revenues of the FNSB are "non-local." As applied by the LBC in its decision, the distinction can only considered to be arbitrary.

[9]The Statement of Decision is in error on this point. It states that the net gain would be $76.99, however the correct calculation is $1,980, 712 ÷ 73, 540 = $27.07.

[10]This assumes a mil rate equal to FNSB.

[11]The use of per capita figures is not adjusted for cost
(Footnote Continued)

3) The Effect of The Annexation on the TCC Region Borough Is Inconsistent With The Commission's Statement on Borough Government.

The Commission's Statement on Borough Government advocates for reassessment of State financial aid to municipalities to provide greater equity to all municipalities. The decisional statement asserts that:

> Certainly this Commission would not view in the same regard an annexation proposal of this nature by a municipality whose tax base was greater than the average of other boroughs.

at p. 3.

The LBC further noted that even after annexation the FNSB will have a weak tax base which will remain 12% below the statewide average. However, annexation will render the proposed TCC region borough - which would currently be only slightly below average (i.e., 3% below) - to be at a greater inequity then currently experienced by the FNSB (i.e., 17% below average). See supra. Consequently, the means selected by the LBC to provide equity to the FNSB is not rationally related to its goal of achieving statewide equity since it will result in imposing greater relative inequity upon the proposed TCC regional borough.

4) The Annexation Will Diminish The Viability of a Potential Borough in the Adjacent Region

The LBC concluded that the annexation would not adversely affect the formation of the Yukon Flats REAA borough since that area had surplus taxable property as a result of the State tax

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(Footnote Continued)
differentials of doing business between rural and urban Alaska. While the relative per capita net loss to the TCC is greater in absolute dollars, the differentials with respect to the cost of doing business in the rural areas exacerbate the disparity. This should be remembered when comparing all per capita figures used in this statement.

cap on pipeline property.[12] However, as noted above, the formation of a single borough in the TCC region would be more consistent with the directive of the Alaska Constitution, and such a borough would not be affected by the State tax cap. Consequently, there is no surplus assessed valuation in a regional borough proposal, and any diminishment of the regions tax base would diminish the viability of the potential borough in the adjacent region.

5) The Haines Annexation Is Not A Precedence For This Annexation

The LBC found a precedence in the Haines Annexations of the 1970s. The precedence is highly questionable. First, as the findings point out, Haines provides educational services to the annexed area through correspondence. In this case, the Borough does not intend to provide any areawide services. The only service planned is non-areawide, i.e., fire service. There is no evidence that the FNSB plans to include the Pump Station in a fire service area. In fact, Alyeska Pipeline Service Company provides its own fire service, which is eminently better than any response which FNSB might offer. In fact, for FNSB to provide or include the Pump Station within a fire service area, Alyeska would have to consent and pay additional non-areawide taxes. There is no evidence that Alyeska intends to do so.

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[12]The LBC noted that recent estimates property value in the region to be about 805 mil. A review of DCRA valuation estimates used in the 1988 Regional Government Study by DCRA show gross errors in valuation methods in this region. The vast majority of private land in the TCC region is subject to restrictions on taxation by operation of the Native Townsite Act, Native Allotment Act, ANCSA (as recently amended), State exemptions for elderly and housing authority projects, etc. The 1988 report did not fully account for these exemptions. Moreover, recent studies by DNR and BIA allotment appraisals suggest a substantial devaluation in the market value of rural property values which were not reflected in the 1988 study.

Secondly, the annexations did not occur at a time when the adjacent area was considering borough formation. There is no evidence that the adjacent area has ever considered borough formation.

Thirdly, the proposed annexations reflected expansion of the Haines borough to natural geographic boundaries taking into the borough the entire eastern slope of the Chilkat Range located on the Chilkat Peninsula.

Such parallels do not exist with regard to the present proposed annexation and any comparison is transparently suspicious.

6) Revenue Enhancement Is Not A Justification For Expansion Of Borough Boundaries.

It is agreed that revenue enhancement is not a justification for annexation.

PART V

THE STATUTORY AND ADMINISTRATIVE REQUIREMENTS HAVE NOT BEEN MET

As noted in pages 9-14 of the DCRA report, one of the first eight standards and all of the remaining listed standards must be met.

Of the first eight, only numbers 3, 7 (both relating to services) and 8 (policy) could be possibly met. The area is uninhabited, and as noted above, the FNSB does not intend to realistically provide any services. In fact, the proposed area immediately abuts the private property of the closest inhabitants, the Hooper family, which receives educational services from the Yukon Flats REAA. The proposal is gerry mandered to obviously avoid providing municipal services. As to number 8, (policy) the policies considerations outlined above strongly militate against approval.

As to standards 9-14, the service requirements expressed in those standards are very questionable, for the above stated reasons.

PART VI

THE COMMISSION FAILED TO APPLY THE STANDARDS AS PROVIDED IN 19 AAC 10.200

The regulations governing annexation procedures provide that:

> 19 AAC 10.200. APPLICATION OF STANDARDS. The commission will not approve an annexation unless the annexing organized borough demonstrates to the satisfaction of the commission that it is capable of extending and willing to extend services to the annexed area in accordance with this subsection. If possible, areawide and non-areawide borough services shall be extended to the annexed area immediately. If the immediate extension of services is not possible, the commission must be satisfied that the services not immediately extended will be extended as soon as possible and that reasonable plans have been formulated for the capital expansion necessary for the extension of services.

The decision of the LBC failed to apply the service standards as provided in this section. Under this regulation, the FNSB was required to demonstrate that both areawide and non-areawide services will be extended to the annexed area immediately. The petitioner admits, and the LBC found that education services (areawide) would not be extended. Additionally, the only non-areawide service discussed by the LBC was fire service, and it was found that fire service was not needed because of the private services provided by Alyeska. Thus, it was implicitly found that services would not be immediately extended to the area. The wide variety of services offered by the borough and their extension to the area were not even considered.

In such an event, the regulation requires that the FNSB develop a reasonable plan for capital expansion necessary for extension of such services and that the Commission be satisfied as to the adequacy of such plans. The FNSB offered no such plans and the Commission failed to make any finding on this issue.

The failure to comply with an administrative requirement renders the decision defective. See Port Valdez Co. v City of Valdez, 522 P.2d 1147 (Ak. 1974). The petition should therefore returned to the FNSB for resubmission.

CONCLUSION

In summary, we would request that the decision be delayed to allow the Interior to consider borough incorporation. We again apologize for our lateness in responding to the issue. Given the gravity of the proposal, and the ongoing borough study in the Interior, we believe the Commission should not proceed further at this time.

#16

February 14, 1989

TO: Senator Al Adams
Representative Eileen MacLean

FROM: Mike Walleri, Attorney
Tanana Chiefs Conference, Inc.

This is in response to the request of both Senate and House Committee and Regional Affairs Committees to provide written data regarding your testimony presented to the Joint CRA Committees.

As you remember, we criticized the Local Boundary Commission goal of per capita tax base equalization for failure to adjust for cost of service differentials. Attached are our calculations. As you can see, when adjustments are made for the cost of service delivery, the T.C.C. area is very close to average assessed valuation in the State. If you have any other further questions, please feel free to contact me

Sincerely,

Mike Walleri
Attorney
Tanana Chiefs Conference, Inc.

Attachments

TAX CAP CALCULATIONS

VALUE OF TAXABLE PROPERTY IN REGION

DCRA ESTIMATES:[1] 1.676 bil. without annexation
1.513 bil. with annexation

TCC ESTIMATES: 1.428 bil. without annexation
1.266 bil. with annexation

RANGE: w/o annexation 1.676 to 1.428 billion
w/ annexation 1.513 to 1.266 billion

(based on D.C.R.A report to Senator Steve Frank 1/13/89)

POPULATION:[2]

9,635 (D.C.R.A. raw estimates)
13,400 (D.C.R.A. adj./TCC Health Plan Stats)

11,175 (Permanent Fund mail out to Region by zipcode)

TAX CAP [3]

(taxable assessed value in region)

DCRA # 9,635(pop) x 2.25 x $83,430(per capita assessed value)=1.8

TCC #13,400 x 2.25 x $83,430 =2.7

PF #11,175 x 2.25 x $83,430 =2.08

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[1] includes estimates of property value based when per capital statewide values. DOES NOT adjust for tax exempt status of land under Federal Housing Programs, AWCSA, Allotment Act and Townsite Act.

[2] excludes Delta-Greely study area except for village of Healy Lake.

[3] based on formula (b) AS. 29.45.080

ADJUSTED TAX EQUALIZATION

COSTS OF SERVICE DIFFERENTIALS

Fairbanks:	1.04
Yukon Flats	1.46
Yukon Koyukuk	1.34
Galena	1.30
Tanana	1.30
Iditarod	1.33

RANGE OF DIFFERENTIAL VARIANCE (FBX and TCC Region)

26% to 40%

(Source: Dept. of Education)

PERCENTAGE OF PER CAPITA VALUE (Statewide average)

Fairbanks with Annex = 71.1

Fairbanks w/o Annexation = 68.0

TCC Region w/o Annex[1]

	per capita	% state wide	adj[2]
1,676,000,000(DCRA Value#) ÷ 11,175 =	150,000	204%	155 to 122%
1,428,000,000(TCC Value #) ÷ 11,175 =	128,000	175%	133 to 105%
1,513,000,000(DCRA/Value#) ÷ 11,175 =	135,000	184%	140 to 110%
1,266,000,000(TCC/Value#) ÷ 11,175 =	114,000	155%	115 to 93%

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1 Using Permanent Fund Pop #'s Values rounded.

2 Adjustment Relative to Fairbanks per capita.

Pump station annexation ruling stands

By SAM BISHOP
Staff Writer

The Local Boundary Commission Wednesday upheld its decision to recommend that the Fairbanks North Star Borough annex Pump Station 7 after learning of objections to the plan.

The decision followed a confusing meeting during which the commission at one point voted to kill the annexation, members said in interviews this morning.

The confusion began when Mike Walleri, an attorney for the Tanana Chiefs Conference, showed up at the meeting to object to the annexation. However, the initial public comment period had already been closed so the commission did not permit him to speak, according to Shelley Dugan, a commission member and North Pole's city clerk.

Walleri said today he believes the commission violated its own procedural rules when it approved the annexation petition Wednesday.

The decision, which takes effect unless the Legislature kills it within 45 days after it convenes Jan. 9, would permit the borough to annex 216 square miles northwest of Fairbanks.

The land surrounds pipeline Pump Station 7. Property taxes on the station and pipeline could add

(See ANNEX, Page 8)

ANNEX

(Continued from page 1)

$2 million to the borough's annual income. Borough officials advocate the annexation.

Walleri said the commission should not approve the annexation until some broader policy issues have been more thoroughly discussed. TCC is a health service and advocacy organization for rural areas.

At present, the state levies a property tax of 20 mills on the pipeline and facilities in areas that are not within boroughs. When a borough annexes an area, the state reduces its property tax on the pipeline by the equivalent of the borough's property tax. Walleri questioned whether organized boroughs should be taking that money from the state, because it is essentially the rural areas' local contribution to education, Walleri said.

Commission member Dugan agreed that arguments over education funding are behind the annexation proposal, but she supports the idea.

"We think there's a lot of inequities in the state funding programs in school funding and revenue sharing," Dugan said. "Approving the annexation is one way to flag this problem."

Dugan said that if there were a competing borough proposal, the commission might be more hesitant, but there is not.

Walleri said other boroughs are being considered.

"Last year, the Legislature adopted a resolution directing the Local Boundary Commission not to proceed with annexations in areas that were subject to borough studies," Walleri said. "The area that is proposing to be annexed is surrounded by two areas that are under study—the Denali area and Yukon-Koyukuk area."

The reports on those areas were just released by the state Department of Community and Regional Affairs, Walleri said. He is not happy with their recommendations and believes the boroughs proposed by the departments would be too small to support a viable government.

The Fairbanks borough's annexation of Pump Station 7 could make boroughs in the area even less feasible, Walleri said.

Lamar Cotten, a boundary commission member and administrator of the Aleutians East Borough, said he opposes the Fairbanks' borough annexation proposal.

He called the proposal a "land grab." He said it is an obvious attempt to get more money from the state by preempting state taxes without providing any more services.

The Community and Regional Affairs Department said the state should approve the annexation because Fairbanks' tax base is 15 percent lower, per-student, than the average Alaska borough.

Cotten said it's not the boundary commission's responsibility to solve such problems. He suggested that Fairbanks' taxes are higher than other areas because the government provides more services.

The boundary commission took several votes on Wednesday while trying to decide whether to let Walleri testify.

But commission member Ben Nagoak of Barrow, after realizing he had voted to kill the petition, made a motion to rescind the decision, Dugan said. Nagoak's rescinding motion was successful, she said.

Daily News

Winner, 1976 Pulitzer Prize Gold Medal for Public Service
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Fairbanks grabs for a sugarplum

Civic leaders in the Fairbanks North Star Borough are resourceful people. They've found a way to ease their borough's fiscal troubles and stick Alaskans elsewhere with the bill.

How can Fairbanks do it? With a modern-day land grab. The borough has won preliminary permission to annex an essentially uninhabited area that's home to Alaska's biggest property tax sugarplum: a section of the Trans-Alaska Pipeline System.

It's easy to see why Fairbanks is eager to annex the area. Virtually nobody lives there, so there's no need to deliver any costly services. The borough can just sit back and collect an extra $2 million a year in property taxes from the pipeline.

But people in the rest of the state have a right to object. Under state tax laws, that $2 million comes straight from state treasury. Alaska levies its own tax on pipeline property — but every dollar the pipeline pays in local tax is deducted from the amount due the state.

Fairbanks' long-term gain from the move will be somewhat less than $2 million a year. Under the state's revenue sharing formula for schools, Fairbanks will lose about $700,000 a year starting in 1992. But grabbing $1.3 million a year of someone else's money ain't bad work, if you can get it.

The amazing thing about this ploy isn't that Fairbanksans tried it — who can blame them? — but that the state's local boundary commission blessed the deal.

Boundary changes such as this one are supposed to be in public interest. According to the commission, the public interest here is that Fairbanks needs the tax revenue. This is the borough whose voters squawked and howled and eventually repealed a proposed 2 percent sales tax last year. The commission's decision failed to explain why Fairbanks needs the money more than other Alaskans, who will pay the bill through lower state revenues.

By law, the boundary commission's decision goes to the legislature for review. If not rejected within 45 days, the annexation becomes final. Stopping this land grab should be one of legislature's first items of business.

Anchorage Daily News 12/27/88

Transition shows

james re

WASHINGTON — During the presidential campaign, Mike Dukakis insisted that "competence" rather than "ideology" should be the main issue, and that's precisely the word being applied here to George Bush's transition appointments.

Unlike Carter and Reagan, who ran against the Washington "insiders," Bush is hiring them — maybe because he is one of them. To win the election, he appealed to the ideologues on the right. To govern, with the Democrats in control of Congress, he has put experienced individuals at State, Defense, Treasury, Justice, Agriculture, Commerce, Budget, the National Security Council and the Central Intelligence Agency.

The conservatives like his appointment of Jack Kemp, the old supply-sider, at HUD, and Governor Sununu of New Hampshire as White House chief of staff (though he is not likely to have the authority Donald Regan and the two Bakers had). Still, Bush scattered the plums around: the moderates got most of them, the conservatives got Sununu and Kemp and the golfers got Quayle.

"We are the change," Bush said campaign, and app meant his own sort For he's not only s buck stops here," "starts" in the Ov

None of this wil debate over the bi dle East policy or trol. But these deb conducted in a diff sphere. He is not his opponents but them. He has held conferences since t than President Rea year.

When people Reagan about why good, despite all lems, he tells them of the young psych complained to the atrist that he wa from listening to

Binkley would stop annexation

By SAM BISHOP
Staff Writer

A state senator filed legislation Tuesday morning to block the Fairbanks North Star Borough's annexation of Pump Station 7.

Sen. Johne Binkley, R-Bethel, filed Senate Joint Resolution 19. Sen. Al Adams, D-Kotzebue, co-sponsored it.

At a legislative committee meeting Tuesday, Binkley questioned why the Legislature should approve the annexation. He said the borough would incur no additional expenses in the area for services such as garbage removal or schools. No one lives in the 216-square mile area, located on the Elliott Highway northwest of Fairbanks.

The meeting, held in Juneau, was a joint session of the House and Senate Community and Regional Affairs committees.

Binkley asked why borough officials didn't just ask area legislators to introduce a bill giving the borough an extra $2 million from the state this year.

That's the amount the borough stands to gain and the state stands

(See *ANNEXATION, Back Page*)

(Continued from page 1)

to lose in property taxes on the pump station if it is annexed.

"Why didn't you just ask your delegation to come forward and ask for a bill to appropriate $2 million?" Binkley asked Rex Nutter, borough planning director.

"I think this area belongs in the Fairbanks North Star Borough," Nutter replied. "And that's not something I could ask my delegation to come down here and do. It had to go through the Local Boundary Commission."

The commission approved the annexation in a controversial December meeting. The boundary commission's approval will stand unless the Legislature rejects it by March 4.

The borough and Commissioner Shelley Dugan of North Pole said the borough needs to annex the area to increase Fairbanks' tax base, which is lower, per capita, than the rest of the state.

But Lamar Cotten, a commission member who led efforts to stop the annexation, said that should not be the commission's concern.

"We're not a revenue equalization commission," he said. "I think that's the responsibility of the Legislature."

Representatives of the Tanana Chiefs Conference, a non-profit advocacy and health organization for the rural Interior, asked legislators to reject the annexation.

The annexation could reduce the tax base of a rural Interior borough if residents wanted one, according to Will Mayo and Mike Walleri of TCC, who testified Tuesday as well.

Walleri said that, when the high costs of doing business in rural areas are considered, the per capita property tax base for Fairbanks and a rural Interior borough are roughly comparable.

But Sen. Steve Frank, R-Fairbanks, and Rep. Mike Davis, D-Fairbanks, said the Fairbanks borough has more claim to the area than a proposed rural Interior borough. Revenue issues aside, the socio-economic ties to the area justify the Fairbanks annexation, Frank said.

No one lives in the annexation area but a few families and a school are located just outside the proposed boundaries. Davis, who represents the area, said residents of Livengood and the Elliott Highway don't want a borough, but it should be the Fairbanks borough if one i to be formed there.

"If it belongs someplace, it prob ably belongs in the Fairbank North Star Borough," Davis said

Walleri said the area is more ru ral in character than Fairbanks He suggested that the Legislatur defeat the annexation so the peopl living near the area could be asked

Frank asked Walleri and May why they raised the idea of a rura Interior borough for the first tim at the same time the Fairbank borough asked to annex the pum station.

Walleri and Mayo said the timin was coincidental. Rural boroug government has become muc more palatable in the past yea since passage of the "1991 amend ments" to the federal Alaska Na tive Claims Settlement Act, May said.

The amendments protect Nativ corporation land from propert taxes unless it is developed, h said.

"Because of the 1991 amend ments, it puts a whole new light o borough government," Mayo said

"We need the time and that is th major reason we are opposing th annexation."

#8

JOINT SENATE AND HOUSE
COMMUNITY & REGIONAL AFFAIRS COMMITTEE
January 31, 1989
1:10 P.M.

SENATE MEMBERS PRESENT

Senator Al Adams, Chairman
Senator Steve Frank, Vice Chairman
Senator Drue Pearce
Senator Pat Pourchot

HOUSE MEMBERS PRESENT

Representative Eileen MacLean, Chairman
Representative Richard Foster, Vice Chairman
Representative Bette Cato
Representative Cheri Davis
Representative Fritz Pettyjohn

MEMBERS ABSENT

Senator Mike Szymanski

OTHER MEMBERS PRESENT

Senator Johne Binkley
Representative Mark Boyer
Representative Mike Davis

COMMITTEE CALENDAR

Local Boundary Commission Report

WITNESS REGISTER

Charles Bettisworth, Chairman
Local Boundary Commission
PO Box 73209
Fairbanks, AK 99707
POSITION STATEMENT: Boundary Commission Report

Shelley Dugan, Vice Chairman
Local Boundary Commission
4526 Wood River Drive
Fairbanks, AK 99709
POSITION STATEMENT: Boundary Commission Report