ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672
8511 HOUSE COMMUNITY & REGIONAL AFFAIRS

MEMORANDUM

State of Alaska
Community & Regional Affairs

TO: Tom Wright
Representative Ivan's Office

DATE: January 22, 1996

FILE NO: Legislative Public Hearing

FROM: Jo E. Cooper
Block Grant Program Manager

TELEPHONE: 907-452-4468

SUBJECT: Scheduling for Legislative Public Hearing CSBG

This memorandum will confirm our telephone conversation regarding scheduling of a Legislative Public Hearing through the Legislative Information Office network for **February 15, 1996 from 1:00 PM until no later than 3:00 PM**. The purpose of the hearing will be to accept public testimony and comment on the **Draft Federal Fiscal Year 1996 Community Services Block Grant (CSBG) State Plan.** The Hearing will be chaired by Representative Ivan and Representative Austerman, Co-Chairpersons of the House Community & Regional Affairs Committee.

We would like to have the following Legislative Information Offices on line for the teleconference if possible: **Anchorage; Barrow; Bethel; Fairbanks; Juneau; Kenai Peninsula; Kotzebue; Matanuska-Susitna; Nome; Sitka; Fort Yukon; Hooper Bay; and Klawock.** The Director of the Division of Community & Rural Development, Jeff Smith, will participate through the Anchorage LIO and I will participate through the Fairbanks LIO.

Community Services Block Grant funds are allocated to the State for Alaska's only Community Action Agency, RurAL CAP Inc. The objective of the CSBG program is to impact the causes and conditions of poverty. The CSBG State Plan describes how the State administers the program and the activities which RurAL CAP proposes to undertake during the Federal Fiscal Year 1996.

I will send you copies of the Draft State Plan early next week. In the meantime, if you have any questions about the program or the Public Hearing, please feel free to give me a call at 907-452-4468. Thanks for your assistance in this matter.

cc: Commissioner Irwin & Jeff Smith

State of Alaska

Send to LRA for hearings
REP. Ivan

Local Boundary Commission

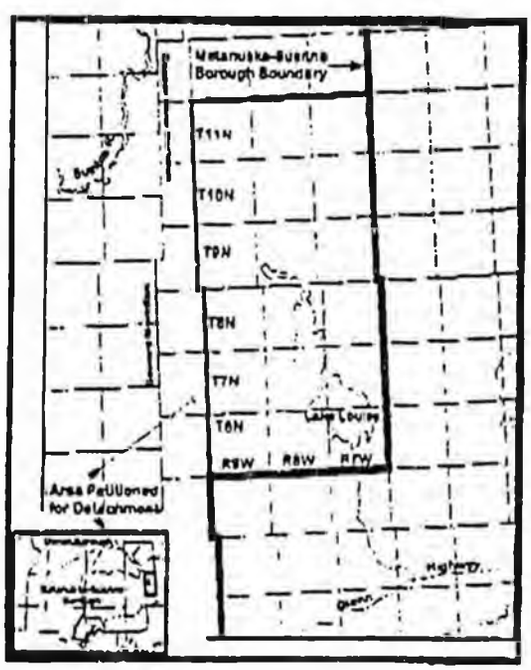
Darroll Hargraves, Chairperson
Kathleen Wasserman, Member, First Judicial District
Nancy Cunningham, Member, Second Judicial District
H. Toni Salmeier, Member, Third Judicial District
William Walters, Member, Fourth Judicial District

Statement of Decision

IN THE MATTER OF THE PETITION FOR)
DETACHMENT FROM THE MATANUSKA-)
SUSITNA BOROUGH OF THE LAKE)
LOUISE AREA, ENCOMPASSING AN)
ESTIMATED 648 SQUARE MILES)

SECTION I
PROCEEDINGS

On April 10, 1995, resident voters in the Lake Louise area submitted a petition to the Alaska Department of Community and Regional Affairs (DCRA) for detachment from the Matanuska-Susitna Borough (MSB). Detachment would place the territory in Alaska's unorganized borough.



The territory encompasses an estimated 648 square miles, including Lake Louise, Susitna Lake, Tyone Lake and Tyone River. According to the petition, the area is inhabited by 39 residents.

Following a technical review of the petition, DCRA accepted the petition for filing on April 13, 1995. Public notice of the filing of the petition was subsequently given by publication, posting and through the mail. A copy of the petition was served on the MSB. A copy of the petition was also made available for public review at Lake Louise.

The public notice invited responsive briefs and comments on the petition to be filed with DCRA by June 15, 1995. The MSB filed a timely 136-page responsive brief in opposition to the petition. Sixty-three individuals wrote timely letters in support of the petition.

On July 17, 1995, the petitioners filed a 47-page brief in reply to the Borough's responsive brief.

DCRA issued a 72-page draft report regarding the detachment proposal on October 3, 1995. November 1 was established as the deadline for comment on DCRA's draft. The report was distributed to more than 80 individuals and organizations. Fourteen individuals, including the petitioners and the MSB, submitted comments on the draft. The written comments totaled 79 pages.

On November 15, DCRA issued its final report and recommendation on the detachment proposal. The 24-page final report was presented as a supplement to the 72-page draft. The final report affirmed DCRA's draft recommendation that the Commission approve the detachment of an estimated 252 of the 648 square miles petitioned for detachment. Further, the final report reiterated recommendations in the draft report that the Commission impose stipulations requiring the Lake Louise area to: (1) assume a proportional share of the Borough's bonded indebtedness, (2) reimburse the Borough for a proportional share of its local contribution in support of education for two years, and (3) assume responsibility for a sewage management site at Lake Louise. Ninety-three copies of the report were distributed to interested parties.

The Commission conducted two hearings on the petition. The first was held at the Point Lodge at Lake Louise on December 7, 1995 from 1:00 p.m. to approximately 7:00 p.m. The second was held at the Wasilla City Council Chambers on December 8 from 3:15 p.m. to approximately 10:00 p.m.

Immediately following the hearing on December 8, the LBC amended and approved the petition with stipulations. The amendment reduced the area to be detached from approximately 648 square miles to approximately 252 square miles. The Commission stipulated that detachment could occur only if and when the area were included within another organized borough formed within two years of tacit legislative approval of the detachment. On December 15, the Commission met by teleconference to adopt its Statement of Decision. A copy of the decisional statement was mailed that same day to the Petitioners and the Matanuska-Susitna Borough. Thus, the decision became final on December 15 under 19 AAC 10.570(g). In accordance with 19 AAC 10.580, January 4 became the deadline for filing requests for reconsideration in the matter.

On December 20, the Petitioners filed a 12-page request for reconsideration. The Petitioners asked the Commission to modify its December 15 decision to allow detachment upon the alternative of forming a second class city. On December 27, the LBC unanimously agreed to reconsider its decision as requested by the Petitioners.

On January 4, 1996, the Matanuska-Susitna Borough filed a separate request for reconsideration. The Borough asked the Commission to amend its December 15 decision to stipulate that the Borough be held harmless with regard to financial impacts relating to education funding, bonded indebtedness and other considerations.

On January 8, the Petitioners filed a 9-page brief in support of their proposal to allow detachment upon incorporation of a city. On the same date, the MSB filed a 15-page brief opposing the Petitioners' proposal.

The LBC met on January 12 at Palmer in the MSB Assembly Chambers to address the requests of the Borough and the Petitioners. The Commission denied the Borough's request for reconsideration, stressing that the substance of the request could be addressed in the context of the Petitioners' proposed modification. The Commission subsequently approved the Petitioners' request to modify its December 15 decision. In doing so, the Commission added several stipulations, including provisions to hold the Borough harmless in terms of debt service and education funding.

On January 12, the Commission adopted this Statement of Decision. A copy of the Statement of Decision was mailed to the Petitioners and the Matanuska-Susitna Borough on January 17.

If, on reconsideration, the LBC amends its original final decision, that amended decision is final for the purposes of legislative review of the matter under Article X, Section 12 of Alaska's Constitution. No further reconsideration process is provided for in statute or regulation and none is thereby legally required.

SECTION II
FINDINGS AND CONCLUSIONS

The Commission is guided in this matter by three principal considerations. The first is Article X, Section 1 of the Constitution of the State of Alaska. In relevant part, it provides that, *"The purpose of this article is to provide for maximum local self-government with a minimum of local government units . . ."*

The second principal consideration is Article X, Section 3 of the Constitution of the State of Alaska. In relevant part it provides that, *"Each borough shall embrace an area and population with common interests to the maximum degree possible."*

The third principal consideration is the standard for detachment from boroughs set out in 19 AAC 10.270. It provides as follows:

> (a) In addition to the requirements of AS 29.06, territory may be detached from a borough or unified municipality if the commission determines that the detachment will serve the balanced best interests of the state, the territory to be detached, and the political subdivisions affected by the detachment. In this regard, the commission will, in its discretion, consider relevant factors, including
>
> (1) the health, safety and general welfare of the borough or unified municipality and the territory after detachment;
>
> (2) the ability of the borough, unified municipality, or other governmental entity to efficiently and effectively provide reasonably necessary facilities and services to the territory after detachment;
>
> (3) the reasonably anticipated potential for, and impact of, future population growth or economic development that will require local government regulation in the territory after detachment;
>
> (4) the historical pattern of providing to the territory municipal services that have been, or should be, supported by tax levies in the territory;
>
> (5) the historical pattern of cooperation and shared commitment between the people of the borough or unified municipality and the people of the territory;
>
> (6) the extent to which detachment might enhance or diminish the ability of the remaining borough or unified municipality to meet the standards for incorporation contained in the Alaska Constitution and AS 29.05 and 19 AAC 10.045 - 19 AAC 10.060;

(7) the extent to which a transition plan of a previous annexation has been implemented and is effective;

(8) the effect of the proposed detachment on the long-term stability of the finances of the remaining borough or unified municipality, other municipalities, and the state;

(9) whether the proposed detachment will promote local self-government with a minimum number of governmental units; and

(10) whether the territory's requirements for local government services will be adequately met following detachment.

(b) If, to fulfill the requirements of (a)(10) of this section, petitioners have proposed, or the commission requires, incorporation of the territory into a new municipality, the commission will, in its discretion, condition the approval of the detachment upon voter approval of the incorporation.

The reference in 19 AAC 10.270(a) to additional requirements of AS 29.06, is made with regard to AS 29.06.040. That deals with the requirement for either legislative review or a local election in the event the Commission grants a petition for detachment.

There are no standards for detachment established in statute. However, AS 44.47.567(a)(2) gives the Commission the power and duty to establish such standards by regulation. The Commission fulfilled its duty by adopting 19 AAC 10.270 addressed earlier.

Based on: (1) the petition for detachment, (2) MSB's responsive brief, (3) letters from 63 parties who commented on the petition, (4) the petitioners' reply brief, (5) DCRA's draft report, (6) comments from the 14 parties on DCRA's draft report, (7) DCRA's final report, and (8) testimony at the December 7 and 8 hearings, the Local Boundary Commission makes the findings and conclusions set out in this section.

A. REGARDING THE PUBLIC POLICY IMPORTANCE OF ARTICLE X, § 1 OF ALASKA'S CONSTITUTION.

As noted previously, Article X, § 1 of the Constitution of the State of Alaska calls for maximum local self-government. That section of the constitution has been viewed by the Alaska Supreme Court as encouraging the creation of borough governments. Further, the Supreme Court reads the provision to favor upholding organization of boroughs by the Local Boundary Commission whenever the requirements for incorporation have been minimally met.

The Commission finds that, as a matter of public policy, great importance should be placed on the constitutional provision calling for maximum local self-government. The Commission further finds that detachment of territory from an organized borough to the unorganized borough results in a serious diminution of local self-government. Consequently, both the factors and the standard set out in the previously listed provisions of 19 AAC 10.270(a) will be prejudicially affected by any proposal to detach territory from an organized borough to the unorganized borough.

Based on the foregoing findings, the Commission concludes that any detachment from an organized borough to the unorganized borough is to some degree contrary to the provisions of Article X, § 1 of Alaska's constitution. Approval of the detachment petition as presented would, in fact, remove local self-government from Lake Louise. This would not, however, be the case if the territory were being detached to become part of another organized borough or part of a city government within the unorganized borough.

B. REGARDING ARTICLE X, § 3 OF ALASKA'S CONSTITUTION AND LAKE LOUISE'S INTERRELATIONSHIPS.

As noted previously, Alaska's constitution mandates that each borough embrace an area and population with common interests to the maximum degree possible. The Commission takes the position that this particular provision is consistent with the standard relating to the balanced best interests of the State, the territory and the affected political subdivisions.

Further, the Commission takes the position that Article X, § 3 of Alaska's constitution applies to all boroughs, organized and unorganized. It is apparent to the Commission that the 1961 legislature, in providing for a single residual unorganized borough encompassing all of the state not within organized boroughs, failed to adhere closely to the principle of Article X, § 3. Consequently, the Commission has difficulty applying the principle in this instance. The Commission is concerned with the suggestion that it should compare Lake Louise to the MSB vs. the Copper River Basin -- the latter being only a small part of the unorganized borough. If the Copper River Basin were an organized borough or even an unorganized borough unto itself, the provisions of Article X, § 3 would take on much different dimensions, and the proposal's compliance with Article X, § 3 could be balanced against its compliance with Article X, § 1. That is, the effect of the proposal on local self-government could be weighed against its impact on ensuring "common interests".

The constitutional principle is examined in the context of Lake Louise's interrelationships. The Commission makes the following findings in this regard.

Primary and Secondary Education. Students from Lake Louise attend schools operated by the Copper River Regional Educational Attendance Area. Historically, these have included the Lottie Sparks and Glennallen schools, respectively located approximately 33 and 45 miles from Lake Louise. Lake Louise students have the option of attending the MSB's Glacier View School, located about 74 miles from Lake Louise. However, public transportation to the Glacier View School is not provided by the MSB for Lake Louise students. Those students also have the option of correspondence study offered by the MSB. The MSB correspondence study program requires once-a-month trips to Wasilla during the school year. Alternatively, Lake Louise students may receive education services through the State's correspondence study program.

Higher Education. Some residents of Lake Louise currently attend, at least on a part-time basis, college classes through the Prince William Sound Community College. The community college has a campus at Glennallen.

State Judicial Services. Lake Louise is within the Palmer District and Superior Court venues established under Alaska Rules of Court, CrR 18(a). However, just as Lake Louise is served by a school district other than the one in which it is formally located, Lake Louise receives State judicial services from Glennallen. Glennallen has a deputy magistrate who handles certain district court matters (AS 22.15.120). Glennallen has no district court judge or superior court judge. Historically, matters beyond the authority of the magistrate but within the jurisdiction of the superior court have been typically heard by the superior court judge in Valdez. It was recently reported, however, that the Valdez Superior Court position is to be transferred to Palmer.

State Trooper Service. Lake Louise residents are typically served by the Glennallen Detachment of the State Troopers. That same detachment routinely operates to milepost 110 of the Glenn Highway.

Service by Other State Agencies. In addition to State education services, trooper services and judicial services, it appears that State agencies in Glennallen and the immediate vicinity are more likely to serve the needs of Lake Louise residents than are agencies located in Palmer or Wasilla. These include the following:

- Department of Fish and Game, Game Division;
- Department of Fish and Game, Sport Fish Division;
- Department of Labor, Alaska Employment Service;
- Department of Natural Resources, Division of Forestry;
- Department of Natural Resources, Division of Parks;
- Department of Transportation (Nelchina Station);
- Department of Public Safety, Fish & Wildlife Protection Division;
- Department of Public Safety, Division of Motor Vehicles;
- Division of Social Services (Copper Center);
- Glennallen Health Center, Public Health Nurse; and
- Legislative Affairs Agency.

U.S. Postal Service. Lake Louise receives mail service from the U.S. Post Office in Glennallen. On July 1, 1995, mail service from the Glennallen Post Office was extended to milepost 120 of the Glenn Highway.

Service by Other Federal Agencies. In addition to mail service, it is reasonable to assume that federal agencies with offices in Glennallen and the vicinity serve Lake Louise residents. These include the following:

- Department of Commerce, NOAA/National Weather Service (Gulkana);
- Department of the Interior, Bureau of Land Management;
- Department of the Interior, Wrangell - St. Elias National Park & Preserve;
- Department of Transportation, Federal Aviation (Tahneta Pass); and
- Department of Transportation, Flight Service Station.

Telephone Service. Lake Louise is served by the Copper Valley Telephone Cooperative through the use of radio telephones. The utility's telephone service extends to milepost 120 of the Glenn Highway.

Economic Development. Testimony was given that the Copper Valley Economic Development Council (the Alaska Regional Development Organization formed under AS 44.33.026) informally serves the Lake Louise area.

Lake Louise businesses are also active members of the Greater Copper River Valley Chamber of Commerce. It was also noted that two Lake Louise residents were recently elected to the board of directors of the Greater Copper River Valley Chamber of Commerce. One of the two was also elected to a two-year term as President of the Chamber of Commerce.

Commerce. Many of the Lake Louise residents and property owners who wrote comments in support of the detachment proposal stressed that they routinely shop in the Glennallen vicinity. Some indicated that to the extent that they do not shop in Glennallen for major purchases or specialty items, they bypass businesses in the MSB and shop in Anchorage.

Assuming that businesses advertise where their existing and prospective patrons are, DCRA reviewed the yellow pages of the telephone directory used by Lake Louise residents. DCRA reported 298 listings in the Copper Valley Telephone Cooperative yellow pages for businesses in the Glennallen vicinity. Anchorage was close behind with 246 listings. Businesses in Palmer and Wasilla had 15 and 27 listings, respectively. The figures for commerce did not include listings for health and social services, religious organizations and clubs, all of which were reported separately by DCRA.

Private Social and Health Services. The Cross Road Medical Center in Glennallen is a primary care medical facility. It is staffed by one physician, one physician's assistant and one nurse practitioner. The Cross Road Medical Clinic operates an emergency room open 24 hours each day.

In its responsive brief, the MSB indicated that the lack of a major medical facility in the Glennallen area presupposes that *"Lake Louise residents would use the medical facilities in the Palmer, Wasilla or Anchorage area. In addition, if a specialty medical problem arises, the residents of the area would likely use specialists in either Wasilla, Palmer or the Anchorage area, because there are limited doctors in their area."* (MSB Brief, Exhibit P)

DCRA reported that during the 18 months from January 1, 1993 to June 30, 1995, 19 individuals with a Glennallen/Lake Louise zip code were treated at the Valley Hospital in Palmer on an inpatient basis. In addition, 30 people with a Glennallen/Lake Louise zip code were treated at the Valley Hospital on an outpatient basis. Of the 30 outpatients, 25 involved emergency room visits, 4 involved outpatient surgery and 1 was hospitalized for "observation".

DCRA reported 22 listings in the Copper River Valley Telephone Cooperative yellow pages for private health and social service providers located in the Glennallen vicinity. These included health counseling services, clinics, physicians, dentists, drug abuse treatment facilities and the like. Forty-three such listings were counted for the Anchorage area; one was counted from Palmer and four were counted from Wasilla.

Religious Organizations. Some of the Lake Louise residents who submitted written comments in support of the proposed detachment indicated that they attend church in Glennallen. DCRA counted 13 churches and religious organizations in the Glennallen vicinity listed in the yellow pages of the Copper Valley Telephone Cooperative. No listings were included for religious organizations based in Anchorage, Palmer or Wasilla.

Social Clubs. Two social clubs in the Copper Valley yellow pages were from Glennallen. No clubs in Palmer or Wasilla were listed, while 2 clubs in Anchorage were listed.

Electrical Utility Service. The Copper Valley Electrical Cooperative's power lines run westerly more than 50 miles past the Lake Louise cutoff to milepost 108 of the Glenn Highway. However, its utility service is not currently available at Lake Louise. Lake Louise residents generate their own electricity.

Commercial Broadcast Radio Coverage. Lake Louise receives radio broadcasts from KCAM-AM, a 5,000 watt station based in Glennallen. KCAM's primary coverage area includes the Copper River Basin, but extends to the Sheep Mountain area at approximately milepost 115 of the Glenn Highway. Lake Louise is also served by KCHU-FM, a public radio station headquartered in the Prince William Sound region. KCHU's primary coverage area extends to the Gunsight Mountain area at approximately milepost 123 of the Glenn Highway. In July, KCAM staff expressed the belief that one or more Anchorage stations were constructing translators to extend service to the Glennallen region.

Newspapers. The *Copper River Country Journal* (circulation 1,800), headquartered in Glennallen, is provided by mail without charge to all Copper River residents. Lake Louise residents are included, since the editor of the Journal considers them to be part of the Copper River basin. The same applies to the area extending to approximately milepost 120 of the Glenn Highway. The *Copper River Country Journal* also sends complimentary copies of the paper as far west as milepost 102 of the Glenn Highway as a courtesy to an area at the gateway of the Copper River Basin. The editor of the Journal advised DCRA that the MSB occasionally publishes public notices in, and

provides news reports to, the Copper River Country Journal, "but not as often as it should."

The *Frontiersman* (circulation 7,000) and the *Valley Sun* (circulation 9,500), published by the Mat-Su Valley Newspapers, Inc., in Wasilla, serve the central MSB area. The latter is a free weekly shopper. According to Mat-Su Valley Newspaper staff, the *Valley Sun* had been provided to the Glennallen area until February or March of 1995 when the practice ended. The *Valley Sun* newspaper rack currently nearest to Glennallen is located in Palmer. The *Valley Sun* is distributed free of charge by mail to residents as far east as Chickaloon, at milepost 76 of the Glenn Highway.

The *Frontiersman* provides news coverage of the area within the entire MSB. However, like the Valley Sun, its newspaper rack nearest to Lake Louise is located at Palmer. The Mat-Su Valley Newspaper staff indicated that there is only one subscriber with a Glennallen/Lake Louise zip code.

Emergency Medical Service. The MSB's EMS dispatching staff indicated that the MSB's ambulance located at Sutton consistently responds to calls from milepost 54 to milepost 123 of the Glenn Highway. The area from milepost 123 to milepost 140 is considered a "mutual aid area." For calls in that area, the MSB dispatches the Sutton ambulance, but immediately thereafter checks with the Copper River EMS Council to see if it is available to respond. If it is available, the Sutton ambulance is recalled.

The MSB's EMS dispatcher noted that the MSB has an obligation to respond to calls at Lake Louise, but conceded that the distance for the Sutton ambulance was so great as to render it much more practical to obtain service from Glennallen. The MSB notes in its brief that it "*has negotiated an agreement with the Lifeguard helicopter to medivac injured individuals out of the [Lake Louise] area.*" It is noteworthy, however, that because Lake Louise and the area extending to milepost 120 of the Glenn Highway are on the Copper Valley Telephone system, 911 calls from that area will be received in Glennallen whenever the dispatcher is on duty. When the dispatcher is not on duty, the calls are forwarded to Anchorage.

Seven Lake Louise residents received 40 hours of "Emergency Trauma Technician Training" in October of 1995. The training was funded by the Lake Louise Community Nonprofit Corporation and was provided by "Copper River Emergency Medical Services."

Libraries. The Copper Valley Community Library, operated by a non-profit corporation in Glennallen, serves the Copper River Basin. As of June of last year, it was open 25 hours per week. At that time the library held 5,000 books, 500 video materials and 50 subscriptions. The total circulation of books and other library materials at the Glennallen library for the year ending June 30, 1994, was 17,389 items. Staff at the Glennallen library indicated that Lake Louise residents use that library, although they were unable to provide any statistics concerning such patronage.

The public libraries nearest to Lake Louise that are in the MSB are at Sutton and Palmer. The Sutton library is open 35 hours per week and held 8,231 volumes of books and other materials at the end of fiscal year 1994. The Palmer library is open 36 hours per week and held 40,802 volumes at the end of last fiscal year. Officials of the public library system in the MSB report that seven patrons have Glennallen addresses (three are patrons of the Wasilla library and four are patrons of the Palmer library). It appears that none of the seven lives at Lake Louise. Two of the patrons are at milepost 156, one is at milepost 185, one is at Manker Creek and the rest appear to be at Glennallen.

De Facto Enclave Status. As far as travel by roadway is concerned, Lake Louise is an enclave separated from the rest of the MSB. The MSB's eastern boundary crosses the

Glenn Highway at approximately milepost 137. The turnoff to Lake Louise is approximately 23 miles past that point at milepost 160 of the Glenn Highway. One re-enters the MSB at approximately milepost 14 of the Lake Louise Road. Thus, one has to travel approximately 37 highway miles through the unorganized borough to get from one part of the MSB to Lake Louise.

Native Regional Corporation Boundaries. Lake Louise is within the boundaries of the Arctna Regional Corporation established under the Alaska Native Claims Settlement Act. The Corporation's boundary extends approximately to milepost 102 on the Glenn Highway. The vast majority of the remaining inhabited portions of the MSB are within the boundaries of the Cook Inlet Regional Corporation. While regional corporation boundaries are, by definition, a measure of social and cultural ties among Natives, their importance in this proceeding is tempered by the fact that there are few Natives living in the Lake Louise area (the petition estimates the Native population to be only 5%).

Property Ownership. Ownership by Copper River Basin residents of private taxable property at Lake Louise is minimal, amounting to only one-half of 1% of the acreage and less than three-tenths of 1% of its taxable value. Most of private taxable property in the territory proposed for detachment is owned by individuals who live in the Municipality of Anchorage (67.9% in terms of acreage and 61.4% in terms of assessed value). Residents of the MSB, exclusive of the Lake Louise area, own 11.5% of the acreage (10.7% in terms of its value), while residents of Lake Louise own 3.9% of the acreage (11.7% of its value).

House Election District Boundaries. Lake Louise is in State House Election District 27 which was established under the reapportionment plan adopted by then-Governor Walter Hickel on March 24, 1994. Election District 27 is wholly within the MSB. In addition to Lake Louise, it includes the communities of Palmer, Sutton and Chickaloon. The district occupies roughly the eastern two-fifths of the MSB.

The MSB claims that because Lake Louise is in the same house election district as other parts of the MSB and that the district is wholly within the MSB, there exists, "*a prima facie case that Lake Louise should not be detached from Mat-Su.*" (MSB's Brief, page 6) This contention is based on a recent case in which the Alaska Supreme Court held that, "*a borough is by definition socio-economically integrated. It is axiomatic that a district composed wholly of land belonging to a single borough is adequately integrated. Thus, district 27 complies with that requirement.*" [Hickel v. Southeast Conference, 846 P.2d 38 (Alaska 1992)]

In that same case, the Court held that election districts must be "relatively" integrated. The Court explained that, " '*Relatively*' *means that we compare proposed districts to other previously existing and proposed districts as well as principal alternative districts to determine if socio-economic links are sufficient.*"

In addition to being relatively integrated, election districts must also be of an approximately equal population. Typically, the courts limit the maximum deviation between election districts to no more than 10%. In other words, because the Court presumes that a borough embraces an area and population with common interests to the maximum degree possible, it makes allowances for the use of borough boundaries as election districts. In fact, the Court is so willing to accommodate the use of borough boundaries that it will allow election districts to exceed a 10% population deviation if borough boundaries are consistently used as election district lines.

It is readily apparent from a comparison of borough boundaries and election district boundaries that the requirement for approximately equal population districts often dictates that election districts and organized borough boundaries differ. Some

election districts encompass multiple organized boroughs in their entirety. Other election districts include portions of organized boroughs in less than their entirety.

Physiographic Characteristics. Lake Louise is in the Susitna River drainage as is much of the MSB. However, the Susitna Area Plan (DNR, 1985) describes the Lake Louise Subregion as, "*. . . a unique and popular residential and visitor recreation area, with an 'interior' Alaska character quite different from the rest of the [Susitna drainage].*"

The Talkeetna Mountain Range sometimes acts as a barrier to air traffic between Palmer and Lake Louise. Staff at the U.S. Department of Transportation FAA Flight Service Station in Glennallen roughly estimated that the Chickaloon/Tahneta Pass between Upper Cook Inlet and the Copper River Basin was closed due to weather about 35 percent of the time.

Employment. The representative of the petitioners for detachment estimated that 11 Lake Louise residents are self-employed at the five businesses in the community. An additional seven Lake Louise residents are employed by those business on a full-time or part-time basis. It was further estimated that three residents work in the oil industry on the North Slope and one resident works for the U.S. Forest Service building cabins (presently in the Sitka area). The remainder of the residents are unemployed or not in the job market (i.e., retired, students or pre-school age residents).

Based on the foregoing findings, the Local Boundary Commission concludes that the 252-square mile area identified by DCRA in its report as that portion of the 648-square mile area proposed for detachment that is inhabited, developed and contains privately owned property, has more in common with Glennallen and the rest of the Copper River Basin than it does with the rest of the Matanuska-Susitna Borough.

C. REGARDING WHETHER DETACHMENT WILL SERVE THE BALANCED BEST INTERESTS OF THE STATE, THE TERRITORY TO BE DETACHED, AND THE POLITICAL SUBDIVISIONS AFFECTED BY THE DETACHMENT.

The Commission finds that the principal effects of detachment upon the territory proposed for detachment include the following:

1. elimination of property taxes (FY '95 @ 16.7 mills; FY '96 @ 14.55 mills);
2. elimination of the MSB's 5% bed tax;
3. elimination of municipal authority in the area, including planning, platting and land use regulation;
4. in a de facto sense, voters in the area will be enfranchised regarding the school board;
5. the area will qualify for State Revenue Sharing and State Capital Matching grants;
6. the area would be responsible for its own solid waste collection; and
7. if DCRA's recommended stipulations were imposed, the area would be responsible for the Lake Louise septic management site.

The Commission finds that the principal effects of detachment upon the MSB include the following:

1. property tax revenues will be reduced by roughly 1/2 of 1% ($180,000 in FY '95);
2. bed tax revenues will be reduced by an estimated $2,000 annually;
3. funding under the State education formula will be increased by an estimated $46,500 annually;
4. responsibility for Lake Louise solid waste collection would be eliminated;
5. responsibility for Lake Louise septic management site would be eliminated; and

6. Revenue Sharing, Municipal Assistance and Capital Grants reduced by an estimated $3,500 annually.

The Commission finds that the principal effects of detachment upon the State include the following:

1. education funding requirements would be increased by an estimated $46,500 annually;
2. responsibility for replatting in the area would be assumed by the Department of Natural Resources;
3. Capital Matching grants program costs would likely increase by $25,000 annually;
4. Revenue Sharing funds to other recipients would likely be diluted by an estimated $7,327 annually;
5. Municipal Assistance Funding to other recipients would be concentrated by an estimated $1,602 annually; and
6. the unorganized borough would be expanded which only worsens inequities involving organized boroughs vis-à-vis the unorganized borough.

The Commission finds that the health, safety and general welfare of the territory would be negatively affected if detachment occurs. This finding is based largely on the fact that detachment would eliminate local self-government from the territory. Consequently, it would greatly diminish the area's ability to meet the health, safety and general welfare needs of the community. The Commission finds that the health, safety and general welfare of the remnant MSB would be minimally affected by the detachment.

The Commission finds that the Copper River Regional Educational Attendance Area is able to efficiently and effectively provide educational facilities and services to the territory. The Department of Environmental Conservation will continue to have regulatory authority over water quality in the area if detachment occurs. Authority for municipal planning, platting and land use regulation will be eliminated.

Regarding the reasonably anticipated potential for future population growth or economic development and the need for local government regulation, the Commission finds that the residents of the area are genuinely motivated to ensure proper development in the territory. They are particularly motivated to maintain high water quality since Lake Louise serves as their principal source of potable water. However, leaving a municipal government diminishes their ability to ensure proper development and to maintain high water quality. Additionally, DCRA also reported that the Department of Natural Resources is selling 23 parcels on Lake Louise encompassing 91.27 acres. The sale of that land will add to development pressures in the territory.

Regarding the historical pattern of providing to the territory municipal services that have been or should be supported by tax levies in the territory, the Commission finds that the level of services is clearly not to the satisfaction of the residents of Lake Louise. The lack of satisfaction may be due in part to the lack of communication on the part of both sides in this issue. The MSB's services available to the area include solid waste disposal, planning, platting, land use regulation, tax assessment, tax collection, education services through correspondence study and other functions. Residents of Lake Louise choose not to avail themselves of some of the services offered by the MSB on an areawide and nonareawide basis. Nonetheless, those services must be funded in part by property taxes. There are parts of the MSB that receive even fewer services than those provided to the Lake Louise area. Detachment of the territory on the basis of the lack of services could lead to a landslide of other detachment proposals that could, in turn, seriously diminish the MSB's ability to pay for the services that are necessary.

Regarding the historical pattern of cooperation and shared commitment, the Commission finds that there is greater social, cultural, economic and other ties between the Lake Louise area and the Copper River Basin than there is between the Lake Louise area and the rest of the MSB. It appears reasonable to conclude that this circumstance will not change in the foreseeable future. This particular factor has greater significance than others listed in 19 AAC 10.270(a). The issue remains, however, that the Copper River Basin is not an organized or unorganized borough unto itself. The Commission is concerned whether it is proper to compare Lake Louise's interrelationships between an organized borough and only a portion of the unorganized borough.

Regarding the ability of the MSB to meet the standards for incorporation contained in the Alaska Constitution, AS 29.05 and 19 AAC 10.045 - 19 AAC 10.060, the Commission finds that detachment will have minimal effect.

The Commission finds that the extent to which a transition plan of a previous annexation has been implemented and is effective is irrelevant in this instance.

The Commission finds detachment will have adverse financial effects on the State and remnant MSB as identified earlier in the discussion of this standard. However, if Lake Louise remains in the MSB, it is reasonable to conclude that expectations and demands for services from the MSB by the residents of Lake Louise will increase.

With respect to the financial interests of the MSB, the Commission believes that it would be ideal to require, as a condition of any detachment, that the territory assume a proportional share of the MSB's bonded indebtedness. Further, the area should be required to reimburse the MSB for that portion of the required local contribution provision of the education foundation program (AS 14.17.025) which it must pay based on the full and true value of taxable property in the territory after detachment occurs. However, the Commission is concerned that State law provides no express authority for the MSB to collect taxes on detached territory.

The Commission finds that detachment will not increase the number of local government units. However, detachment will eliminate local self-government for the residents of Lake Louise because it will place the territory in the governmental vacuum known as the unorganized borough.

The Commission finds that certain of the territory's requirements for local government services will not be adequately met following detachment. Testimony indicated that the residents of Lake Louise will rely to a large extent on the Lake Louise Community Nonprofit Corporation to provide services such as solid waste collection, management of the sewage disposal site and efforts to promote responsible development in the area. Regardless of how successful the nonprofit corporation is in these endeavors, it will not be able to carry out its functions with governmental authority. Detachment from an organized borough to the unorganized borough is an abdication of governmental authority. Further, there was evidence that roughly fifty percent of the property owners in the Lake Louise area are not members of the local nonprofit corporation.

This Commission's findings show that the interests of the State, the MSB and the Lake Louise area are affected in favorable and unfavorable ways by the proposed detachment. The Commission concludes that the proposed detachment is not in the balanced best interests of the State, the territory to be detached and the political subdivisions affected by the detachment. The Commission concludes further that if the territory were being detached to an organized borough, the unfavorable effects of the detachment would be diminished to the extent that detachment would serve the

balanced best interests of the State, the territory to be detached, and the political subdivisions affected by the detachment. The Commission also concludes that if this territory is incorporated into a city government within the unorganized borough, it is possible that the balanced best interests could still be served if the city is structured in such a way as to take up a significant portion of the responsibilities of a borough for its own territory.

The Commission specifically notes that this area could qualify only as a second class city under Alaska Statutes, and it could not take on its own educational responsibilities. As a city in the unorganized borough, the education of the children of its residents would be the complete responsibility of the State, and no borough taxes could be levied on the area's properties to aid organized public education. For this reason, incorporation as a city is clearly a less desirable resolution of this dilemma than incorporation in a Copper River borough. Nevertheless, the Commission recognizes the great difficulties the residents of this territory face in attempting to organize a borough. Considering the particularly compelling facts in this case, the Commission concludes that the balanced best interests of the State, Matanuska-Susitna Borough, and territory to be detached could best be served by allowing the petitioners both options.

SECTION III
ORDER OF THE COMMISSION

Based upon the foregoing findings of fact and conclusions of law, the Local Boundary Commission determines in a general sense that the proposal satisfies to a degree the principles set out in Article X, § 3 of Alaska's constitution. That is, the MSB would better satisfy the constitutional requirement that it embrace an area and population with common interests to the maximum degree possible, if the detachment of the inhabited and developed properties surrounding Lake Louise occurred. This area clearly has more in common with the Copper River Basin. On the other hand, the Copper River Basin is not an organized or unorganized borough unto itself. Therefore, satisfaction of the constitutional principle is limited in the sense that detachment would place Lake Louise in the huge residual unorganized borough. Lake Louise has little or nothing in common with many of the regions in the unorganized borough.

While the proposal furthers the extent to which Article X, § 3 is satisfied, it fails to fulfill the constitutional principle set out in Article X, § 1. Again, that provision calls for maximum local self-government. Without an organized borough or city government in place, detachment of Lake Louise would abolish rather than promote local self-government in the territory.

The proposal fails to maximize local self-government as required by Article X, § 1. This fault could be overcome, however, if the territory were included within another organized borough or a city government. The Commission's regulations expressly allow the Commission to condition the approval of a detachment upon voter approval of the incorporation of a new municipality into which the territory will be placed [19 AAC 10.270(b)].

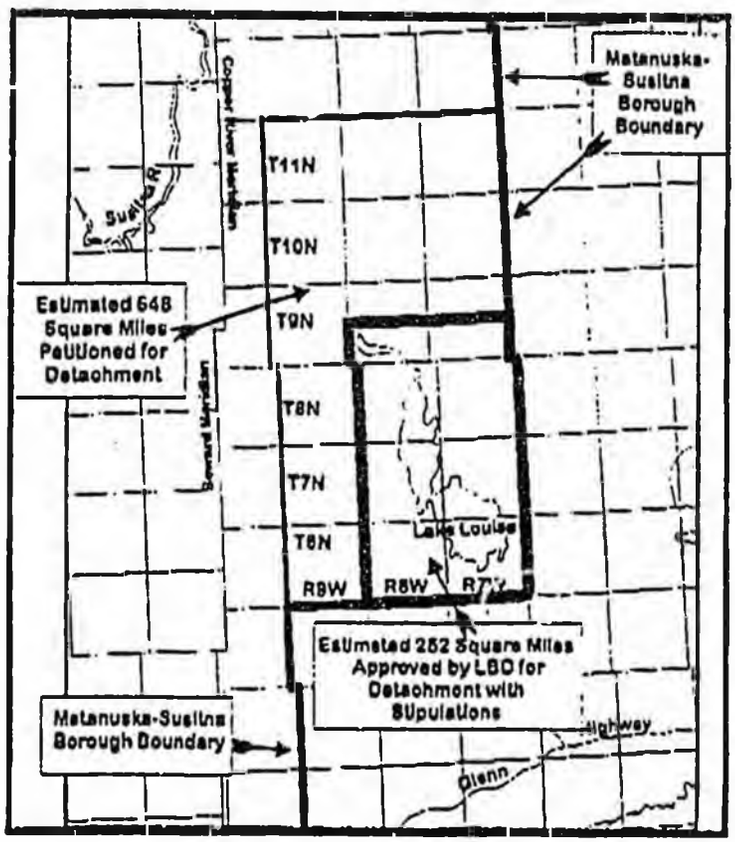
Therefore, the Commission orders as follows:

1. The petition for detachment is hereby amended to exclude the following estimated 396 square miles from the area proposed for detachment:

   T6N, R9W; T7N, R9W; T8N, R9W; T9N, R9W; T10N, R9W; T11N, R9W; N1/2 T9N, R8W; T10N, R8W; T11N, R8W; N1/2 T9N, R7W; T10N, R7W; T11N, R7W; all in the Copper River Meridian.

The amended petition for detachment encompasses an estimated 252 square miles as described below and shown on the map that follows:

T6N, R8W; T6N, R7W; T7N R8W; T7N R7W; T8N, R8W; T8N R7W; S 1/2 T9N, R8W; S 1/2 T9N; R7W; all in the Copper River Meridian.



2. The amended petition is hereby approved with the stipulation that it will not take effect unless and until substantially the same territory approved for detachment becomes part of another organized borough or becomes incorporated as a second class city within two years of the date of tacit legislative approval of a recommendation for the detachment of Lake Louise. It is stipulated that the organized borough or second class city:

   a. pay $160,000 to the Matanuska-Susitna Borough within two years of incorporation; said payment is to reasonably compensate the Matanuska-Susitna Borough for: (1) the estimated $93,000 "local contribution" it is expected to be required to make under AS 14.17.025 based on the taxable value of property in the detached territory after detachment occurs -- provided, however, that if the Matanuska-Susitna Borough is not legally required to make those "local contributions" (as a result of an amendment of the law; modification of the interpretation of the law by the Department of Education or some other basis), the amount to be paid to the Borough shall be reduced by $46,500 for each year that such contribution is not required, and (2) a proportional share of the principal of the Matanuska-Susitna Borough's bonded indebtedness, less reasonably

anticipated payments from the State for partial reimbursement of principal and interest payments on bonds for school improvements;

b. assume full responsibility for the Lake Louise sewage management site (ADL 224505; ASLS 92-162) in a manner that provides minimal or no interruption in service after detachment;

c. assume responsibility for solid waste collection and disposal in a manner that provides minimal or no interruption in service after detachment;

d. assume responsibility for platting, planning and land use regulation in a manner that provides minimal or no interruption in service after detachment;

e. assume responsibility for emergency medical services in a manner that provides minimal or no interruption in service after detachment.

It is further stipulated in the event a city government is formed, that incorporation be conditioned upon the passage of a proposition authorizing the city to levy a property tax at a rate that will generate revenues (in combination with State aid to the city) sufficient to pay the $160,000 noted above to the Matanuska-Susitna Borough within two years of incorporation and to carry out the duties listed above and other reasonably anticipated functions of the city.

3. That the Local Boundary Commission shall be the arbitrator of any dispute between the Petitioners and the Matanuska-Susitna Borough concerning the payments required by this action or the implementation of any other aspect of the detachment and the conditions stipulated above.

4. The Local Boundary Commission shall submit a recommendation for the detachment of the territory described above to the Second Session of the Nineteenth Alaska Legislature in accordance with the provisions of Article X, Section 12 of the Constitution of the State of Alaska. The recommendation shall include the stipulation noted in number 2 above. The recommendation shall be deemed to have been tacitly approved by the legislature 45 days from the date it is submitted, unless the recommendation is disapproved by a resolution concurred in by a majority of the members of each house.

APPROVED IN WRITING THIS 12TH DAY OF JANUARY, 1996.

STATE OF ALASKA
LOCAL BOUNDARY COMMISSION

BY: */s/ Kathleen Wasserman*
Kathleen Wasserman, Acting Chairperson

ATTEST: */s/ Dan Bockhorst*
Dan Bockhorst, Staff

Steve Heide
Associate Publisher

Vicki Naegele
Managing Editor

Growing with the Valley since 1947

Borough continues struggle in Juneau

By PAUL STUART
Frontiersman reporter

PALMER -- Mat-Su Borough is more determined than ever not to let Lake Louise go without a fight.

Escalation of the borough's battle to prevent the secession of the region now includes a resolution to the Legislature, faxed back-up letters of the resolution to every member of both the House and Senate, and a $20,000 appropriation to hire a lobbyist at once, with a primary mission of going to Juneau to halt the Lake Louise move.

The Legislature already has in hand a recommendation by the state Local Boundary Commission (LBC) to allow the secession of the 252-square mile Lake Louise region from Mat-Su, and the secession will automatically become effective March 2 unless the lawmakers to vote to stop it.

Tuesday night the borough assembly voted 5-1 to send both houses of the Legislature a strongly worded resolution opposing the secession. District 3 Assemblyman Jim Colberg sponsored the resolution. Only District 1 Assemblyman Larry DeVilbiss dissented.

Colberg also said he had faxed a back-up message to every member of both the House and Senate, and encouraged the other assembly members to do the same.

It took a tie-breaking vote by Borough Mayor Barbara Lacher to do it, but a measure passed Tuesday authorized Borough Manager Don Moore to spend up to $20,000 to hire a lobbyist, whose main job will be to go to Juneau immediately to make every effort to convince the Legislature to halt the secession.

The assembly also appealed to the Valley's five legislative delegates to actively fight to stop the Lake Louise action.

Lacher, a former legislator herself, said she will personally go to Juneau to intervene on the borough's behalf, and she urged as many members of the assembly as have the time and willingness to do the same.

The possibility has not been ruled out that the borough might also seek court action to block the Lake Louise secession, especially since constitutional questions regarding the move have been expressed by Borough Attorney Michael Gatti.

Meanwhile, the LBC has scheduled its own meetings to discuss the Lake Louise matter with the committees on Community and Regional Affairs in both bodies of the Legislature.

The LBC will meet with the House committee on Feb. 13 and with the Senate committee on Feb. 14.

Proposed city, Mat-Su Borough face challenges

Alaska might soon find the name of a new city on its maps, but the change will not come without a fight.

Lake Louise residents have won their appeal to the Local Boundary Commission (LBC) to allow them to form a second-class city and break away from the Mat-Su Borough. Those who have supported the secession movement claim they will work rapidly to form their new city.

It is likely they will find the task much more complicated, and much more expensive, than they anticipated. Already they have been ordered to pay the borough some $160,000 as part of the secession agreement to cover their current part of borough debt. And under the mandate of the LBC, the new city will have to tax itself and its residents in some form to pay for that obligation. The LBC has also decreed that the new entity must be responsible for platting, planning, land-use oversight and solid-waste disposal, none of which comes free.

But money may be the least of their woes. The Mat-Su Borough Assembly has launched an all-out offensive to derail the formation of the new city. The assembly passed a resolution, which will be sent to both the Senate and the House, calling on state solons to block Lake Louise from leaving the confines of the Mat-Su. Assembly members have also sent faxes to each and every member of the Legislature supporting their resolution, and have voted to send a lobbyist to Juneau with the express priority mission of fighting the secession.

The borough has good economic reasons to oppose the loss of some of the regions most promising resort and recreation property. They also raise concerns that the proposed second-class city would not be as capable of providing for the public's health, safety and welfare issues as the borough.

While these concerns are likely based in fact, they do not address the whole picture. Those in the Lake Louise area truly feel they are not being served by the borough, and they are willing to put forth the effort, and agree to take on the expense, of forming a new city to rectify that situation.

That determination must put borough representatives on notice that these concerns are real. With the borough facing other possible secession threats in the future, it would serve both sides best to sit down and and resolve these issues before continuing down separate paths that could lead to serious economic woes for all involved.

— Steve Heide

Lake Louise Community Non-Profit Corporation

HC01 Box 1736
Glennallen, Alaska 99588
(907) 822-5566

January 22, 1996

Representative Ivan Ivan
State Capitol
Juneau, Ak. 99801

Re: Local Boundary Commission (LBC) Decision to Detach
Lake Louise from the Matanuska-Susitna (Mat-Su) Borough
Conditioned Upon Formation of a Second Class City

Dear Representative Ivan,

As residents and landowners of Lake Louise who assisted in petitioning for the detachment of our community from the Mat-Su Borough, we ask that you uphold the Local Boundary Commission's carefully considered Statement of Decision dated January 12, 1996. The decision permits the detachment of Lake Louise from the Mat-Su Borough, conditioned upon our formation of a second class city within two years.

The LBC conducted extensive hearings, at both Lake Louise and Wasilla, and held three separate decisional meetings, the last one in Palmer. The LBC gave full hearing to those both in support of and opposed to the detachment, including representatives of the Mat-Su Borough. The concerns now expressed to you by the Mat-Su Borough were aired and argued fully by the Borough attorney and Borough manager to the LBC. The LBC is made up of competent, hard-working Commissioners who were not automatically swayed by either side. The Commission carefully balanced the concerns of the Mat-Su Borough, Lake Louise, and the State, and reached a conclusion which weighed the facts against all of the pertinent constitutional, statutory, and regulatory provisions concerning boroughs and detachments. The LBC did not ignore the Mat-Su Borough's concerns, but found that they were outweighd only when overwhelming evidence was presented showing that (1) Lake Louise has more in common with Glennallen and the Copper River Basin than it does with the rest of the Mat-Su Borough, and (2) the dearth of services and connections between the Mat-Su Borough and Lake Louise. It is noteworthy that testimony from citizens, at both Lake Louise and Wasilla, was overwhelming in support of detachment. The **only** opposition was from Mat-Su Borough officials. Two Mat-Su Borough Assemblymen even testified in support of our detachment.

After the thorough and careful consideration the LBC has given to this question, and in absence of any evidence that they were improperly influenced or hadn't considered the Mat-Su Borough's concerns, it would be wrong for the Legislature to overturn its decision. The Legislature previously created the LBC as a specialized body, advised by the Department of Community and Regional Affairs (DCRA), which in this case, supported the detachment upon the condition that the Lake Louise area incorporate into a second class city.

There is a historical pattern of cooperation and shared commitment between Lake Louise and the Copper River Basin. And there are greater social, cultural, economic and other ties between Lake Louise and the Cooper River Basin than there are between Lake Louise and the rest of the Mat-Su Borough. As far as travel by roadway, Lake Louise is an enclave separated from the rest of the Mat-Su Borough. One has to travel 37 highway miles through the unorganized borough to get from one part of the Mat-Su Borough to Lake Louise. Glennallen is approximately 41 miles from Lake Louise versus Palmer being approximately 132 miles from Lake Louise (see attached map prepared by DCRA). Our students have always been and will continue to be educated in the Copper River Basin REAA, rather than in Mat-Su Borough schools because of distance. The nearest Mat-Su Borough school is over 70 miles away from Lake Louise. ✓ Fact - Number

The only actual service provided to Lake Louise by the Mat-Su Borough are the garbage dumpsters, at an expense of approximately $20,000 per year to the Borough. We have been paying far greater property taxes to the Mat-Su Borough (approximately $170,000 in FY '95). Mat-Su Borough's water polution control efforts are limited principally to enforcement of a 75 foot building set back from water bodies. In 1988, when undertaking proceedings to enforce the 75 foot set back at Lake Louise, the Mat-Su Borough did not prosecute those who failed to comply because "*it was viewed as an inefficient use of resources.*" (DCRA Provisional Report, Oct. 1995).

The reality is that we have long been included in the wrong regional borough area because of watersheds. The Susitna Area Plan (DNR, 1985) describes the Lake Louise Subregion as, "*...a unique and popular residential and visitor recreation area, with an 'interior' Alaska character quite different from the rest of the [Susitna drainage].*" We are a part of the Copper River Basin.

If a Copper River Basin Borough were to form, we would support our inclusion in it. We do not have the voting force to create such a Borough. In the meantime, our only method for providing substitute municipal government is a second class city, which we intend to form. The LBC decision imposed the requirement that we reimburse the Borough for our proportionate share of its bonded indebtedness, and any education expenses it would incur due to our having been in the Borough. Though the LBC has not imposed such a requirement in any of the five prior detachments approved by it, we readily agreed to make this payment. It is an express condition for detachment in the LBC's Statement of Decision dated January 12, 1996..

Our detachment will not set a precedent for other detachments. The LBC stated it will continue to judge each case **on its own merits**. Lake Louise is relatively unique because (1) we conclusively demonstrated that we have far stronger ties with the Copper River Basin than the Mat-Su Borough region, and (2) we are willing and able to form a second class city, which DCRA has preliminarily indicated would be feasible. Those who seek to detach from boroughs merely to escape municipal taxes cannot look to us for an example. We would continue to pay municipal taxes, but this time, to a truly local government which can actually deliver local government services. Because Lake Louise serves as our principal source of potable water, we are highly motivated to maintain our water quality. No one has a greater interest in prudent land use planning than the residents and property owners of Lake Louise.

The Mat-Su Borough's argument that our detachment disserves the constitutional purpose of maximizing local government fails, because the Borough has provided us neither "maximum" nor "local" government. We can provide better local government to Lake Louise with a second class city.

Please uphold the Local Boundary Commission's carefully considered decision.

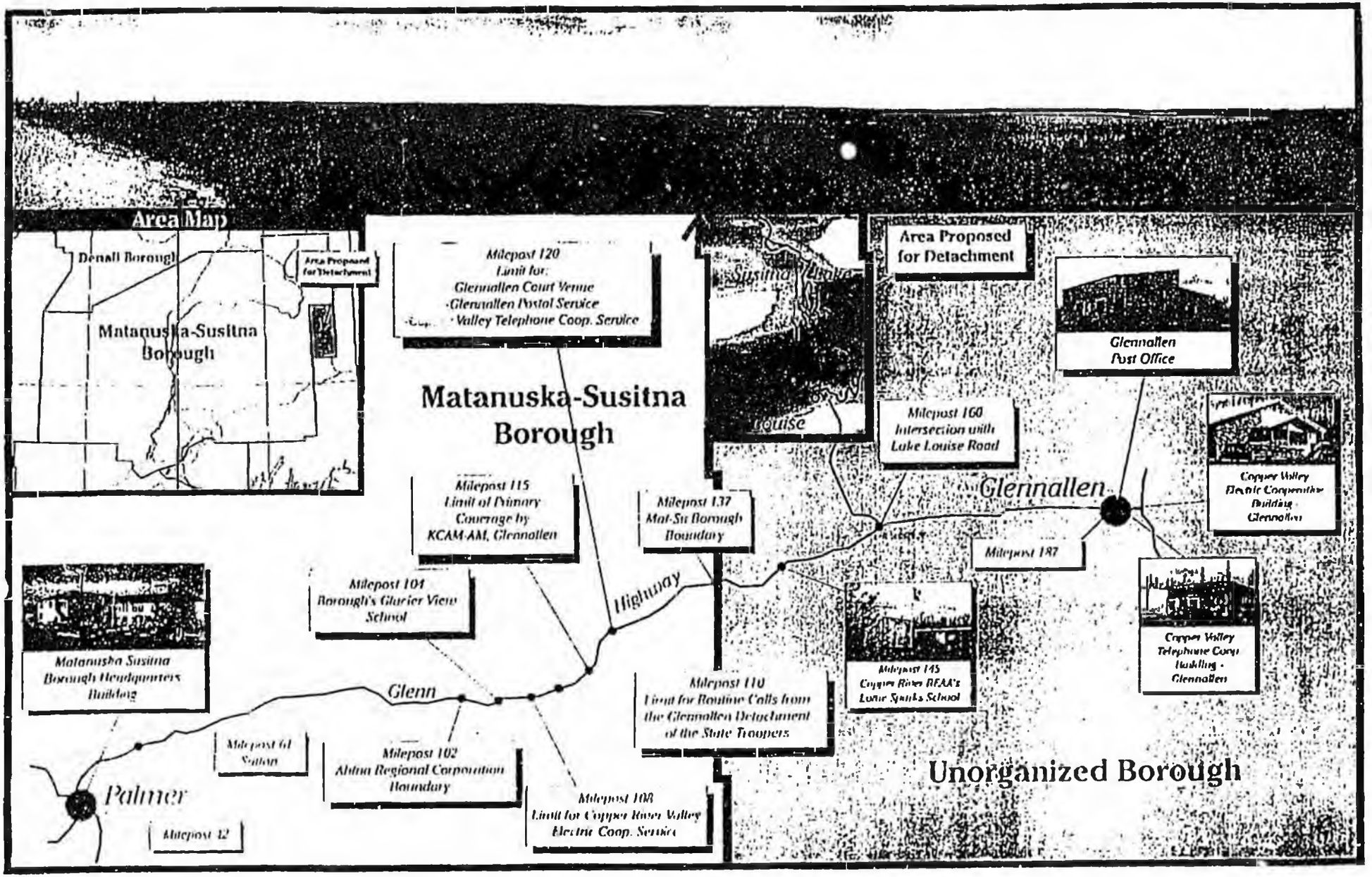
Sincerely,

Bob Rolley

Bob Rolley, President
Lake Louise Community Non-Profit Corporation

Patti Billman

Patti Billman
Petitioner for Detachment of
Lake Louise Conditioned upon
Formation of a Second Class City


Area Map
Denali Borough
Area Proposed for Detachment
Matanuska-Susitna Borough
Milepost 120
Limit for:
Glennallen Court Venue
Glennallen Postal Service
Valley Telephone Coop. Service
Susitna Lake
Louise
Area Proposed for Detachment
Glennallen Post Office
Matanuska-Susitna Borough
Milepost 160
Intersection with Lake Louise Road
Copper Valley Electric Cooperative Building Glennallen
Milepost 115
Limit of Primary Coverage by KCAM-AM, Glennallen
Milepost 137
Mat-Su Borough Boundary
Glennallen
Milepost 187
Milepost 101
Borough's Glacier View School
Highway
Matanuska Susitna Borough Headquarters Building
Milepost 145
Copper River BEAA's Lower Sparks School
Copper Valley Telephone Coop Building - Glennallen
Glenn
Milepost 110
Limit for Routine Calls from the Glennallen Detachment of the State Troopers
Milepost 61
Sutton
Milepost 102
Ahtna Regional Corporation Boundary
Unorganized Borough
Palmer
Milepost 108
Limit for Copper River Valley Electric Coop. Service
Milepost 42

February 2, 1996

HC31 Box 5175-V
Wasilla AK 99654

Ref: Lake Louise Boundary Changes
& Mat-Su Borough

Representatives Finsterman and Ivan
Co-Chairs Community & Regional Affairs Comm.
State Capitol
Juneau, AK 99801-1182

The newspapers report the Matanuska-Susitna Borough has hired a lobbyist to contact all legislators to object to the removal of the Lake Louise area from within its borough boundaries. I live within the Mat-Su Borough. Living in this community I would like to say I can understand where they were coming from when they chose to start the process of leaving the borough. There is a very high value placed on the property up there because it is a popular recreation area and because of their remoteness from the rest of the borough they do not feel they receive in turn what they pay in taxes.

The Matanuska-Susitna Borough, in my mind, is much too large to accommodate the needs of all its people. Because the core of the borough is so heavily populated it must meet the demands of a growing urban area. High density areas do require so much more to accommodate the numbers of people --- more roads, sewers, schools, buses, garbage disposal, etc.

The borough's concerns with the core area become more pressing than those of more outlying areas. But, is that right to those in a more remote setting that do not demand all of the same services of a large urban area?

I would prefer the legislator stay out of this one and let what the boundary commission recommended stay. No matter how small the entity; if they can effectively manage their land and themselves they should have the right to do it. Look at the variety of sizes in states from Alaska to little Rhode Island. If the Lake Louise area feels it can manage better than the borough they should have that right. It's the people who should dictate -- not Government!

Sincerely,
Carol A. Compton

cc: Representative James
State Affairs Committee
Mat-Su Delegation

EO

93

Introduced in the House: 1/8/96
Referred: Community and Regional Affairs, Labor and Commerce, State Affairs, Finance

Introduced in the Senate: 1/8/96
Referred: Community and Regional Affairs, Labor and Commerce, Finance

EXECUTIVE ORDER NO. 93

Under the authority of art. III, sec. 23, of the Alaska Constitution, and in accordance with AS 24.06.210, I order the following:

*** Section 1.** FINDINGS. As governor, I find that it would be in the best interests of efficient administration to transfer the responsibility for the Alaska regional economic assistance program from the Department of Commerce and Economic Development to the Department of Community and Regional Affairs.

*** Sec. 2.** AS 09.65.170(c)(2) is amended to read:

(2) "regional development organization" has the meaning given in AS 44.47.900 [AS 44.33.026].

*** Sec. 3.** AS 36.30.850(b)(30) is amended to read:

(30) contracts entered into with a regional development organization; in this paragraph, "regional development organization" has the meaning given in AS 44.47.900 [AS 44.33.026];

*** Sec. 4.** AS 44.47 is amended by adding a new section to read:

ARTICLE 9A. REGIONAL ECONOMIC ASSISTANCE PROGRAM.

Sec. 44.47.900. ALASKA REGIONAL ECONOMIC ASSISTANCE PROGRAM. (a) The department shall

(1) encourage the formation of regional development organizations by providing assistance in forming organizations to interested individuals, including information on how to qualify and apply for regional development grants and federal funding under 42 U.S.C. 3121 - 3246 (Public Works and Economic Development Act of 1965), as amended;

(2) assist an interested individual in establishing boundaries for a proposed organization to ensure that the region

(A) is of sufficient geographic size and contains a large enough population to form an economically viable unit with shared interests, resources, traditions, and goals;

(B) contains at least one municipality that serves as a regional center; and

(C) contains the entire area of each municipality included in the region;

(3) gather information about regional economic issues, international trade, and tourism from organizations;

(4) serve as liaison between organizations and other state agencies and encourage other agencies to make resources available to help accomplish goals of the organizations;

(5) assist each organization to

(A) provide services designed to encourage economic development to local communities and businesses;

(B) collect and distribute economic information relevant to the region;

(C) participate in state marketing campaigns and join state trade missions that are relevant to the region; and

(D) develop and implement strategies to attract new industry, expand international trade opportunities, and encourage tourism within the region.

(b) Subject to (c) of this section, the department may make regional development grants to organizations for projects the department determines will be of value in encouraging economic development. During a fiscal year the department may make no more than 15 grants and may only make grants to one organization from a particular region. An organization that is designated an economic development district under 42 U.S.C. 3171 qualifies for grants under this subsection. The department shall by regulation adopt procedures for applying for regional development grants, including application deadlines. The department may by regulation establish additional grant eligibility requirements.

(c) To qualify for a grant, a regional development organization must match the grant by providing an amount of money from nonstate sources. The department shall establish by regulation a formula that determines the amount of the match required under this subsection based upon the capability of each organization to generate money from nonstate sources. The amount of match required may not exceed the amount of grant money and may not be less than 20 percent of the grant. The total amount of grant money provided to an organization during a fiscal year may not exceed $100,000.

(d) There is established in the department the regional development fund consisting of appropriations to the fund. Money from the fund may be used only for regional development grants.

(e) In this section, "regional development organization" or "organization" means a nonprofit organization or nonprofit corporation formed to encourage economic development within a particular region of the state that includes the entire area of each municipality within that region and that has a board of directors that represents the region's economic, political, and social interests.

* **Sec. 5.** AS 44.33.026 is repealed.

* **Sec. 6.** Section 3, ch. 94, SLA 1988, as amended by sec. 1, ch. 35, SLA 1992, is further amended to read:

Sec. 3. AS 44.47.900 [AS 44.33.026] is repealed July 1, 1997.

* **Sec. 7.** TRANSITION. (a) Litigation, hearings, investigations, and other proceedings pending under a law amended or repealed by this Order, or in connection with functions transferred by this Order, continue in effect and may be continued and completed notwithstanding a transfer or amendment or repeal provided for in this Order.

(b) Contracts, rights, liabilities, and obligations created by or under a law amended or repealed by this Executive order, and in effect on June 30, 1996, remain in effect notwithstanding this Order's taking effect. Records, equipment, appropriations, and other property of agencies of the state whose functions are transferred under this Order shall be transferred to implement the provisions of this Order.

(c) Regulations adopted by the Department of Commerce and Economic Development before July 1, 1996 concerning the Alaska regional economic assistance program remain in

effect and may be implemented and enforced by the Department of Community and Regional Affairs until its own regulations take effect.

* Sec. 8. This Order takes effect July 1, 1996.

DATED:_____

_____
Tony Knowles
Governor

No. 2

FISCAL NOTE

(H) Version: EO 93

(H) Publish Date: 1-8-96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date:

Department: Commerce and Economic Development

Title: Executive Order transferring the ARDOR Program to the Department of Community and Regional Affairs

BRU: Trade and Development

Component: Trade and Development

Sponsor: Rules

Requestor: Governor

COMPONENT SERIAL NO. 2056

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	

CHANGE IN REVENUES	

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: $

POSITIONS

FULL-TIME	
PART-TIME	
TEMPORARY	

ANALYSIS: (Attach a separate page if necessary)

This Executive Order will have no fiscal impact. The financial transfer will be accomplished with an amendment to the FY 97 budget transferring the $650.0 grant program and $15.0 for administrative costs from the Department of Commerce and Economic Development, Division of Trade and Development, to the Department of Community and Regional Affairs.

Prepared by: Guy Bell, Director — Phone: 465-2505

Division: Administrative Services — Date: January 5, 1996

Approved by Commissioner: William L. Hensley — Date: 1-5-96

Agency: Commerce and Economic Development

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STATE OF ALASKA
1996 LEGISLATIVE SESSION

FISCAL NOTE

No. 1
Bill Version: EO 93
(H) Publish Date: 1-8-96

Revision Date:
Title: EO - ARDOR
Sponsor: Rules Committee
Requestor: Governor

Dept. Affected: Community & Regional Affairs
BRU: Employment/Training/Rural Dev.
Component Rural Development Grants
COMPONENT SERIAL NO. 667

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1007 I/A						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY96) costs:

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The ARDORS program is being transferred by Executive Order from the Department of Commerce and Economic Development to the Department of Community and Regional Affairs. Fiscal impacts will be addressed by budge. amendment at a later date.

Prepared by: Remond Henderson, Director Remond Henderson Phone: 465-4708
Division: Division of Administrative Services Date: 01/04/96
Approved by Commissioner: Mike Irwin Mike Irwin Date: 01/04/96
Agency: Community & Regional Affairs

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E093

TONY KNOWLES
GOVERNOR

P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 8, 1996

The Honorable Gail Phillips
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Phillips:

Under the authority of art. III, sec. 23, of the Alaska Constitution, I am transmitting an Executive Order to transfer the Alaska regional economic assistance program (AS 44.33.026) from the Department of Commerce and Economic Development (DCED) to the Department of Community and Regional Affairs (DCRA).

The transfer of this program to DCRA is in the interest of more efficient functioning of state government. There are already several loan programs administered by DCRA to encourage rural economic development. Because the Alaska regional economic assistance program has essentially the same goals, placing this program in DCRA should result in more efficient operation.

I urge your support of this Executive Order.

Sincerely,

Tony Knowles
Governor

HB

20

SENATE CS FOR CS FOR HOUSE BILL NO. 398(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 5/3/94
Referred: Rules

Sponsor(s): REPRESENTATIVES OLBERG, Mackie, Green

A BILL

FOR AN ACT ENTITLED

"An Act relating to conveyance of certain land to municipalities."

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

* Section 1. AS 38.05.035(b) is amended to read:

(b) The director may

(1) delegate the administrative duties, functions or powers imposed upon the director to a responsible employee in the division;

(2) grant preference rights for the lease or purchase of state land without competitive bid in order to correct errors or omissions of a state or federal administrative agency when inequitable detriment would otherwise result to a diligent claimant or applicant due to situations over which the claimant or applicant had no control; the exercise of this discretionary power operates only to divest the state of its title to or interests in land and may be exercised only

(A) with the express approval of the commissioner; and

(B) if the application for the preference right is filed with the

director within three years from

(i) the occurrence of the error or omission;

(ii) the date of acquisition by the state of the land; or

(iii) the date of a court decision or settlement nullifying a disposal of state land;

(3) grant a preference right to a claimant who shows bona fide improvement of state land or of federal land subsequently acquired by the state and who has in good faith sought to obtain title to the land but who, through error or omission of others occurring within the three years before (A) the application for the preference right, (B) the date of acquisition by the state of the land, or (C) the date of a court decision or settlement nullifying a disposal of state land, has been denied title to it; upon a showing satisfactory to the commissioner, the claimant may lease or purchase the land at the price set on the date of original entry on the land or, if a price was not set at that time at a price determined by the director to fairly represent the value of unimproved land at the time the claim was established, but in no event less than the cost of administration including survey; the error or omission of a predecessor in interest or an agent, administrator, or executor which has clearly prejudiced the claimant may be the basis for granting a preference right;

(4) sell land by lottery for less than the appraised value when, in the judgment of the director, past scarcity of land suitable for private ownership in any particular area has resulted in unrealistic land values;

(5) when the director determines it is in the best interest of the state and will avoid injustice to a person or the heirs or devisees of a person, dispose of land, by direct negotiation to that person who presently uses and who used and made improvements to that land before January 3, 1959, or to the heirs or devisees of the person; the amount paid for the land shall be its fair market value on the date that the person first entered the land, as determined by the director; a parcel of land disposed of under this paragraph shall be of a size consistent with the person's prior use, but may not exceed five acres;

(6) dispose of an interest in land limited to use for agricultural purposes by lottery;

(7) convey to an adjoining landowner for its fair market value a remnant of land that the director considers unmanageable or a parcel of land created by a highway right-of-way alignment or realignment, or a parcel created by the vacation of a state-owned right-of-way if

(A) the director determines that it is in the best interests of the state;

(B) the parcel does not exceed the minimum lot size under an applicable zoning code; and

(C) the director and the platting authority having land use planning jurisdiction agree that conveyance of the parcel to the adjoining landowner will result in boundaries that are convenient for the use of the land by the landowner and compatible with municipal land use plans;

(8) for good cause extend for up to 90 days the time for rental or installment payments by a lessee or purchaser of state land under this chapter if reasonable penalties and interest set by the director are paid;

(9) quitclaim land or an interest in land to the federal government on a determination that the land or the interest in land was wrongfully or erroneously conveyed by the federal government to the state;

(10) negotiate the sale or lease of state land at fair market value to a person who acquired by contract, purchase, or lease rights to improvements on the land from another state agency or who leased the land from another state agency;

(11) quitclaim land or an interest in land, including submerged or shore land, to a municipality to correct errors or omissions of the municipality when inequitable detriment would result to a person due to that person's reliance on the errors or omissions of the municipality; the quitclaim shall be made on the terms and conditions the director considers appropriate except that, if the municipality has a remaining entitlement to land under AS 29.65, the land or interest quitclaimed under this paragraph is counted against the municipality's remaining entitlement.

* Sec. 2. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.825. CONVEYANCE OF TIDE AND SUBMERGED LAND TO

MUNICIPALITIES. (a) Unless the commissioner finds that the public interest in retaining state ownership of the land clearly outweighs the municipality's interest in obtaining the land, the commissioner shall convey to a municipality tide or submerged land requested by the municipality that is occupied or suitable for occupation and development if

(1) the use of the land would not unreasonably interfere with navigation or public access;

(2) the municipality has applied to the commissioner for conveyance of the land under this section;

(3) the land is classified for waterfront development or for another use that is consistent or compatible with the use proposed by the municipality, or the proposed use of the land by the municipality is consistent or compatible with a land use plan adopted by the municipality, the department, or the Alaska Coastal Policy Council; and

(4) the land

(A) is required for the accomplishment of a public or private development approved by the municipality that is designed to provide jobs, enhance the local economy, and establish new commercial ventures;

(B) is the subject of a lease from the state to the municipality; or

(C) has been approved for lease to the municipality.

(b) The commissioner may not convey land under this section that has been designated by the legislature unless the commissioner determines that the proposed use is consistent or compatible with the purpose of the legislative designation. If land designated by the legislature is conveyed, uses of the land after conveyance shall be restricted to those uses determined by the commissioner to be consistent or compatible with the purpose of the designation.

(c) Upon receipt of an application, the commissioner shall determine whether the requested conveyance meets the requirements of this section and issue a written decision regarding that determination. Upon a determination that the requirements have been met, the commissioner shall approve the conveyance of the land to the

municipality. After conveyance to the municipality is approved, the municipality has management authority of the land and may convey the land by lease or sale. The cost of the survey and all subdivision or other platting required for conveyance shall be borne by the municipality.

(d) A conveyance under this section may contain only those restrictions required by law, including AS 38.05.127. Land conveyed is subject to the public trust doctrine that may be enforced by the state in a court of competent jurisdiction. The municipality shall be required to ensure that reasonable access to public waters is provided. Title to land conveyed under this section that is retained by the municipality reverts to the state upon the dissolution of the municipality.

(e) This section does not enlarge or diminish the general grant land entitlement of a municipality under AS 29.65, nor is a conveyance under this section counted against the municipality's general grant land entitlement.

*** Sec. 3.** AS 38.05.035(b)(11) is repealed January 1, 1998.

ALASKA STATE LEGISLATURE

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Representative Harley Olberg

Sectional Analysis of CSHB 398 (RES)

The following is a sectional analysis of CSHB 398(RES); "An Act relating to conveyance of certain land to municipalities."

Section 1 amends AS 38.05.035(b). Title 38 deals with "Public Lands," chapter 05 deals specifically with the "Alaska Land Act" and section 035 is entitled "Powers and duties of the director."

Section 1 allows the director of the division of lands of the Department of Natural Resources to quitclaim to a municipality land or an interest in land including submerged or shore land. The director would be authorized to make such a transfer in cases where a person has detrimentally relied upon an error made by the municipality.

If a municipality has any remaining entitlement land the land or interest in land transferred under this section would count against that remaining entitlement.

Section 2 amends AS 38.05 by adding a new section entitled "conveyance of tide and submerged land to municipalities."

Subsection (a) establishes the guidelines to be followed when a municipality requests the commissioner to transfer to the municipality tide or submerged land appropriate for development.

Subsection (b) states that land designated by the legislature may not be transferd unless the transfer is consistent with the legislative purpose behind the designation

Subsection (c) States that if the commissioner has determined that an application for conveyance meets the appropriate standards the commissioner shall transfer the land to the municipality. This subsection also states that after the commissioner has approved the application the municipality shall have control over the land.

Subsection (d) limits the restrictions that the state can put on the land conveyed under this section but there must be reasonable public access to the public waters. Any land that has been transferred under this section reverts back to the state upon the dissolution of the municipality.

Unlike the provisions established under section 1 of the Act (transfers to correct municipal errors) subsection (e) states that land transferred under this section does not count against a municipality's general land grant.

Section 3 repeals section 1 of this Act on January 1, 1998.

5/08/94	4539	(S)	RECON TAKEN UP - IN THIRD READING
5/08/94	4539	(S)	HELD ON RECONSIDERATION TO 5/9 CALENDAR
5/09/94	4589	(S)	IN THIRD READING ON RECONSIDERATION
5/09/94	4590	(S)	CROSS SPONSOR(S): LINCOLN
5/09/94	4590	(S)	PASSED ON RECONSIDERATION Y14 N6
5/09/94	4611	(S)	TRANSMITTED TO (H) AS AMENDED
5/10/94	4297	(H)	HELD UNDER UNFINISHED BUSINESS
5/10/94	4340	(H)	CONCUR AM OF (S) Y34 N3 A3
7/15/94	4499	(H)	10:00 AM 6/7/94 TRANSMITTED TO GOVERNOR
7/15/94	4521	(H)	SIGNED INTO LAW 6/28 CHAPTER 123 SLA 94
7/15/94	4521	(H)	EFFECTIVE DATE OF LAW 9/26/94

HB 398
CSHB 398(RES)
"An Act relating to conveyance of certain land to municipalities."

SPONSOR(S): REPRESENTATIVE(S) OLBERG,Mackie,Green

CURRENT STATUS: (S) RLS STATUS DATE: 5/03/94

JRN-DATE	JRN-PG		ACTION
1/26/94	2153	(H)	READ THE FIRST TIME - REFERRAL(S)
1/26/94	2154	(H)	COMMUNITY & REGIONAL AFFAIRS, RESOURCES
2/15/94	2405	(H)	CRA RPT CS(CRA) NEW TITLE 4DP 2NR
2/15/94	2405	(H)	DP: SANDERS, BUNDE, TOOHEY, OLBERG
2/15/94	2405	(H)	NR: WILLIS, WILLIAMS
2/15/94	2405	(H)	-ZERO FISCAL NOTE (DNR) 2/15/94
2/28/94	2546	(H)	RES RPT CS(RES) NEW TITLE 9DP
2/28/94	2546	(H)	DP: HUDSON, CARNEY, GREEN, JAMES
2/28/94	2546	(H)	DP: FINKELSTEIN, DAVIES, MULDER
2/28/94	2546	(H)	DP: BUNDE, WILLIAMS
2/28/94	2546	(H)	-PREVIOUS ZERO FISCAL NOTE (DNR) 2/15/94
3/04/94	2610	(H)	RULES TO CALENDAR 3/4/94
3/04/94	2610	(H)	READ THE SECOND TIME
3/04/94	2610	(H)	RES CS ADOPTED UNAN CONSENT
3/04/94	2610	(H)	ADVANCED TO THIRD READING UNAN CONSENT
3/04/94	2610	(H)	READ THE THIRD TIME CSHB 398(RES)
3/04/94	2611	(H)	PASSED Y37 N- E3
3/04/94	2611	(H)	ULMER NOTICE OF RECONSIDERATION
3/04/94	2625	(H)	COSPONSOR(S): MACKIE, GREEN
3/07/94	2664	(H)	RECONSIDERATION NOT TAKEN UP
3/07/94	2664	(H)	TRANSMITTED TO (S)
3/09/94	3104	(S)	READ THE FIRST TIME - REFERRAL(S)
3/09/94	3104	(S)	CRA, RES
3/16/94	3242	(S)	CRA RPT SCS 1DP 2NR SAME TITLE
3/16/94	3242	(S)	PREVIOUS H ZERO FN APPLIES (DNR)
5/03/94	4273	(S)	RES RPT SCS 4DP SAME TITLE
5/03/94	4273	(S)	PREVIOUS H ZERO FN APPLIES (DNR)
5/03/94	4273	(S)	REFERRED TO RULES

HB 399

"An Act amending schedule IIA of the schedules of controlled substances applicable to offenses relating to controlled substances to add the drug methcathinone, commonly identified as 'cat.'"

SPONSOR(S): REPRESENTATIVE(S) BRICE,Sitton,Nordlund

CURRENT STATUS: (H) HES THEN JUD STATUS DATE: 1/26/94

JRN-DATE	JRN-PG		ACTION
1/26/94	2154	(H)	READ THE FIRST TIME - REFERRAL(S)
1/26/94	2154	(H)	HES, JUDICIARY
1/28/94	2192	(H)	COSPONSOR(S): SITTON
5/06/94	4087	(H)	COSPONSOR(S): NORDLUND

HB 400

"An Act relating to administrative proceedings involving a determination of eligibility for a permanent fund dividend or authority to claim a dividend on behalf of another."

SPONSOR(S): REPRESENTATIVE(S) GREEN

CURRENT STATUS: (S) RLS STATUS DATE: 4/28/94

JRN-DATE	JRN-PG		ACTION
1/26/94	2154	(H)	READ THE FIRST TIME - REFERRAL(S)
1/26/94	2154	(H)	STATE AFFAIRS, FINANCE
3/07/94	2638	(H)	STA RPT 2DP 3NR
3/07/94	2639	(H)	DP: VEZEY, KOTT
3/07/94	2639	(H)	NR: G.DAVIS, OLBERG, ULMER
3/07/94	2639	(H)	-FISCAL NOTE (REV) 3/7/94
4/12/94	3370	(H)	FIN RPT 1DP 7NR 1AM
4/12/94	3370	(H)	DP: LARSON
4/12/94	3370	(H)	NR: MACLEAN, HANLEY, MARTIN
4/12/94	3370	(H)	NR: GRUSSENDORF, NAVARRE, BROWN, FOSTER
4/12/94	3370	(H)	AM: PARNELL
4/12/94	3370	(H)	-FISCAL NOTE (REV) 4/12/94
4/14/94	3522	(H)	RULES TO CALENDAR 4/15/94
4/15/94	3522	(H)	READ THE SECOND TIME
4/15/94	3522	(H)	OBJECTION TO ADVANCEMENT MOTION
4/15/94	3522	(H)	ADVANCED TO THIRD READING 4/18 CALENDAR
4/18/94	3562	(H)	READ THE THIRD TIME HB 400
4/18/94	3562	(H)	PASSED Y31 N7 E2
4/18/94	3574	(H)	TRANSMITTED TO (S)
4/19/94	3774	(S)	READ THE FIRST TIME - REFERRAL(S)
4/19/94	3774	(S)	STATE AFFAIRS, FINANCE
4/25/94	3970	(S)	STA RPT 1DP 2NR
4/25/94	3971	(S)	PREVIOUS H FN (REV)
4/28/94	4070	(S)	FIN RPT 5DP 1NR
4/28/94	4070	(S)	PREVIOUS H FN (REV)
4/28/94	4070	(S)	REFERRED TO RULES

HB 401

"An Act establishing a procedure for review of proposed projects under the Alaska coastal management program, and relating to petitions for compliance with and enforcement of district coastal management programs under that program and to the disposition of those petitions."

SPONSOR(S): SPECIAL COMMITTEE ON OIL AND GAS

CURRENT STATUS: (H) RES STATUS DATE: 2/09/94

JRN-DATE	JRN-PG		ACTION
1/26/94	2154	(H)	READ THE FIRST TIME - REFERRAL(S
1/26/94	2154	(H)	O&G, RESOURCES
2/09/94	2313	(H)	O&G RPT 3DP 2NR
2/09/94	2313	(H)	ATTACHED AMENDMENTS
2/09/94	2313	(H)	DP: SITTON, KOTT, GREEN
2/09/94	2313	(H)	NR: G. DAVIS, OLBERG
2/09/94	2314	(H)	-FISCAL NOTE (GOV) 2/9/94
2/09/94	2314	(H)	REFERRED TO RESOURCES

HB 398
Bill History
18th Legislature

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB20

Revision Date:	Original	Dept Affected:	Natural Resources
Title:	An Act relating to rights in certain tides and submerged land	BRU:	Resource Development
		Component:	Information Resource Management
Sponsor:	Representatives Moses, Kubina		
Requestor:		Component Serial No.	427

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES	6.0					
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	6.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1005)						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	6.0					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	6.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: $ None

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: (Attach a separate page if necessary)

This bill will require the development of a new Land Administration System (LAS) casetype for these conveyances to municipalities. The actual notation of these conveyances to the status plats is considered regular work and will be absorbed by the component. The incremental work to develop a new casetype is estimated to be a one-time cost of $6.0 in personal services.

Prepared by:	Rich McMahon, Chief	Phone :	762-2384
Division:	Land Records Information Section	Date :	26-Jan-95
Approved by Commissioner:		Date:	1/26/95
Agency:	Natural Resources		

(HB20.XLS Rev 1/26/95) **PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE** Page 1 of 1

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FISCAL NOTE

STATE OF ALASKA

1995 LEGISLATIVE SESSION

BILL NO. HB20

Revision Date: Original

Dept Affected: Natural Resources

Title: An Act relating to rights in certain tides and submerged land

BRU: Resource Development

Component: Land Development

Sponsor: Representatives Moses, Kubina

Requestor:

Component Serial No. — - 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1005)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: $ None

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: (Attach a separate page if necessary)

In addition to the general grant land entitlement under AS 29.65, qualified municipalities which were incorporated prior to 1964 have been conveyed tide and submerged land. This legislation would authorize the department to convey improved tidelands or land required for the accomplishment of a public or private development to all home rule, first and second class municipalities. Currently, the department can only issue leases that create a financial burden to the municipality and a liability to the state. This legislation will reduce the amount of lease monitoring and compliance activities currently required of the department on these existing leases, however the department anticipates no reduction in expenses due to the continuing effort to process and monitor other current and additional leases.

The reduction of $50.0 in general fund program receipts is a rough estimate of the amount of annual lease revenue that will be lost with the implementation of this legislation.

Amendment to this bill and HB79 could be combined as they are very similar, but address different tide and submerged land conveyance issues.

Prepared by: Ron Swanson, Director — Phone: 762-2692

Division: Land — Date: 25-Jan-95

Approved by Commissioner: Pat Bar for M. Lutherford Act. Comm — Date: 1/25/95

Agency: Natural Resources

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STATE OF ALASKA
1995 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO: HB 20

Revision Date: January 24, 1995
Dept. Affected: Community & Regional Affairs
Title: An Act relating to rights in certain tide and submerged land.
BRU: none
Component none
Sponsor: Representative Moses
Requestor: House C & RA Committee
COMPONENT SERIAL NO.

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

Estimate of current (FY94) impact $ none

ANALYSIS: (Attach a separate page if necessary)

This legislation would give the Department of Natural Resources (DNR) the authority to convey tidelands and submerged land to municipalities. Presently, DNR can only issue leases (unless the municipality was incorporated before 1964). There is no fiscal impact on DCRA from this bill.

Prepared by: Remond Henderson, Director Remond Henderson Phone: 465-4708
Division: Division of Administrative Services Date: 1/24/95
Approved by Commissioner: Date: 1/24/95
Agency: Community & Regional Affairs

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Alaska State Legislature

Representative Carl E. Moses

CHAIRMAN
HOUSE RULES COMMITTEE

CHAIRMAN
HOUSE SPECIAL COMMITTEE FISHERIES

MEMBER FINANCE SUBCOMMITTEES ON
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SPONSOR STATEMENT

HB 20, relating to rights in certain tides and submerged land

I have introduced HB 20, relating to conveyance of tide and submerged lands to assist communities at the local level in obtaining tide and submerged lands for waterfront development.

Background: Upon becoming a state, Alaska authorized all first class and home rule cities to receive all tidelands within their boundaries. These cities were required to reconvey lands to private persons based on prior use and development of the tideland. Tidelands can't be conveyed to first class and home rule cities formed after April 1, 1964, but the Alaska Department of Natural Resources (DNR) can issue leases.

Reason for the bill:
I have introduced HB 20 because leases vary in terms and duration, and because unified municipalities, second class cities, or boroughs of any class cannot qualify for conveyance of tide and submerged land. All coastal municipalities have similar needs for tidelands to give them the tools needed to encourage, control, and ensure responsible development of tidelands within their boundaries. Obtaining a tidelands lease can be a cumbersome, lengthy process that may require the posting of a performance bond that costs the municipality more in annual premiums than the fair market annual rent for the tidelands. Properly administering leases to remote areas is cumbersome for the department.

HB 20:
HB 20 requires DNR to convey to a municipality tide or submerged land that is occupied or suitable for occupation and development if four conditions are met. The four conditions required are: (1) lack of unreasonable interference or public access resulting for the proposed use of the land; (2) application for conveyance by the municipality; (3) compatibility of the proposed use and the land classification or land use plan for the area; and (4) need for the land for development.

Public interest safeguards are provided for in the bill. Land conveyed under the bill is subject to the public trust doctrine which is expressly stated in the bill. Title to land conveyed would revert to the State if the municipality is dissolved. Conveyances of land under the bill would not enlarge or diminish the general land grant entitlement of a municipality provided under AS 29.65 nor does a conveyance count against the municipality's general grant land entitlement.

Prior legislative history:
HB 20 essentially contains section 2 of HB 398, relating to rights in certain tide and submerged land by Representative Olberg, which passed the House last year and died in Senate Rules Committee in the final day of session (bill history is in your packet).

I have provided you with some background materials, including a general history of tide and submerged lands, and position papers that help explain the need for and effect of this bill. The bill is supported by the Alaska Department of Natural Resources (no formal position paper until Commissioner Shively is on board) and the Department of Community and Regional Affairs. It is also supported by the Alaska Municipal League and the Alaska Association of Harbormasters & Port Administrators, Inc.

I would appreciate your support.

CITY OF BETHEL

P.O. Box 388 • Bethel, Alaska 99559
907-543-2087
FAX # 543-4171

Testimony on House Bill 20 by William J. Hunter, City Manager
February 2, 1995

Co-chair Austerman, Co-chair Ivan, and members of the Committee of Community & Regional Affairs. I want to thank you for allowing me the opportunity to comment on HB 20. My name is William J. Hunter, I am the City Manager for the City of Bethel. The City of Bethel is a second class City with a first class attitude and we live in third world conditions. The issue before your committee is important for the City of Bethel as the largest second class city in the State.

The City of Bethel has had numerous meetings with Alaska Department of Natural Resources dating back to 1986, regarding obtaining a Tideland lease. As you know, there has been a number of changes in City Administration at the City of Bethel as well as a number of changes in personnel at DNR. This has resulted in 9 years of negotiations. The City of Bethel finds these tidelands extremely important and urges passage of HB 20 for the following reasons:

Many of the municipalities which are currently required to pay for a lease of their tidelands are second class cities. These Cities are the poorest in the State because of their limited taxation powers. The requirements set forth in acquiring a tidelands lease are often much more onerous than the lease fee. Insurance, bonding, and the liability clauses in a typical DNR lease are overwhelming for a second class City. Repetition of paperwork and bureaucracy is unnecessarily created.

The City of Bethel has its own Coastal Management Plan, Comprehensive Plan, Riverfront Land Use Study, and Port Development Plan. The State law governing lease of tidelands requires a separate plan for the area within the leasehold despite being adequately addressed by the other plans. A City the size of Bethel's must contract out these expensive services.

The City of Bethel is working in conjunction with the Corps of Engineers and the State Department of Transportation and Public Facilities on a 19.7 million Bank and Seawall Stabilization Project. The City has to secure site control on all lands within the construction boundary of the construction project. This includes all the tidelands. After completion of this 19.7 million project, the City will have to maintain the Seawall. It is critical that we receive conveyance of these tidelands in order to ensure that we do not have any future access problems maintaining

the Federal, State and local investment.

The City feels it is time to facilitate the development of needed infrastructure in Alaska. The City of Bethel is committed to maintaining public access for all the people to enjoy, and guarantee the integrity of the Public Trust Doctrine.

WJH/sg

STATE OF ALASKA

DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS

POSITION PAPER

Bill no.: HB 20 — **DCRA FN: Zero** (submitted)
Sponsor: Representative Moses — **Position: Support**

Title: **An Act relating to rights in certain tide and submerged land**

This legislation amends AS 38.05 by adding a new section that would give the Department of Natural Resources (DNR) the authority to convey tidelands and submerged lands to municipalities. Presently, in accordance with AS 38.05.820, DNR may convey such lands only to municipalities incorporated on or before April 1, 1964. DNR may only lease these lands to municipalities incorporated after that date.

The department supports the principle of treating municipalities equally in the process of conveyence or lease of state lands. The current artificial distinction among municipalities based on date of municipal incorporation should be eliminated. Also, as an advocate for stronger local government and stronger local economies, the department supports the long-range development stability provided by municipal land ownership rather than leasing of state lands. Therefore, the department supports this legislation.

Mike Irwin
Commissioner

1/24/95
Date

File No: HB 20 1/24/95

ALASKA MUNICIPAL LEAGUE

217 Second Street, Suite 200 ▪ Juneau, Alaska 99801 ▪ Tel (907) 586-1325 Fax (907) 463-5480

January 27, 1995

TO: Representative Carl Moses
Members, House Community and Regional Affairs

FROM: Kevin C. Ritchie
Executive Director

RE: HB 20 - Rights in certain tide and submerged land

The Alaska Municipal League supports HB 20, which would allow all Alaskan cities the right to select and receive title to state-owned tide and submerged lands within their municipal boundaries. In November 1994, AML members discussed this issue and passed Resolution 95-11 (copy enclosed) supporting the concept included in HB 20.

Present statutes limit the ability of municipalities to obtain ownership to tide and submerged lands within their boundaries, yet often these lands are among the most valuable for economic development purposes. AML and its members support making such lands available to all municipalities, as part of their municipal entitlement to state-owned land.

Attachment

JK/Leg95/hb20.126

Resolution of the Alaska Municipal League

Resolution 95-11

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE URGING THE PASSAGE OF LEGISLATION REQUIRING THE CONVEYANCE TO CITIES AND BOROUGHS OF STATE TIDELANDS THAT ARE LEASED TO MUNICIPALITIES OR ARE NEEDED OR APPROPRIATE FOR DEVELOPMENT

WHEREAS, upon becoming a state, Alaska authorized all first class and home rule cities to receive all tidelands within their boundaries and these cities were required to reconvey to private persons only those tidelands to which such persons had a claim through their prior use and development of the tidelands; and

WHEREAS, the right to receive such tidelands was never extended to unified municipalities, second class cities, or to boroughs of any class, nor to any cities that reclassified as first class or home rule after April 1, 1964; and

WHEREAS, all coastal municipalities have similar needs for tidelands to give them the tools needed to encourage, control, and ensure responsible development of tidelands within their boundaries and to ensure that such development is consistent and coordinated with other developments and needs of the municipality; and

WHEREAS, the State of Alaska currently will convey an interest in tidelands to municipalities only through a lease; and

WHEREAS, obtaining a tidelands lease from the State of Alaska is a cumbersome, lengthy process and the leases often require the posting of a performance bond that costs the municipality more in annual premiums than the fair market annual rent for the tidelands, create an unnecessary ongoing relationship with the State with respect to the tidelands parcel, and impose other unreasonably burdensome requirements; and

WHEREAS, municipalities, as well as the State of Alaska, have a duty to ensure that the use of their lands, including tidelands, is in the public interest; and

WHEREAS, it would be equitable and in the public interest for the State of Alaska to convey to boroughs and to cities that have not received their tidelands under AS 38.05.820 (formerly AS 38.05.320) tidelands that are needed or have been identified as appropriate for public or private development; and

WHEREAS, HB 398, as it passed the Alaska House of Representatives during the Second Session of the Eighteenth Alaska Legislature, would have met these needs of municipalities:

NOW, THEREFORE, be it resolved that the Alaska Municipal League urges the Legislature and the Governor to pass either legislation substantially in the form of HB 398 as passed by the Alaska House of Representatives during the Second Session of the Eighteenth Legislature or other legislation requiring the expedited conveyance to municipalities of tidelands leased to municipalities and tidelands that are appropriate or needed for development.

John Torgerson, President

ATTEST:

Kevin C. Ritchie, Executive Director

Alaska Association of Harbormasters & Port Administrators, Inc.

RESOLUTION 95-1

A RESOLUTION OF THE ALASKA ASSOCIATION OF HARBORMASTERS AND PORT ADMINISTRATORS SUPPORTING THE CONCEPT OF THE EXPEDITED CONVEYANCE OF TIDELANDS TO MUNICIPALITIES AS OUTLINED WITHIN H.B. 398.

WHEREAS, upon becoming a State, Alaska authorized all first class and home rule cities to receive all tidelands within their boundaries, and

WHEREAS, the right to receive such tidelands was never extended to unified municipalities, second class cities, or to boroughs of any class, nor to any cities that reclassified as first class or home rule after April 1, 1964, and,

WHEREAS, all coastal municipalities have similar needs for tidelands to give them the tools needed to encourage, control and ensure responsible development of tidelands within their boundaries and to ensure that such development is consistent and coordinated with other developments and needs of the municipality, and

WHEREAS, the State of Alaska currently will convey an interest in tidelands only through a lease, and

WHEREAS, obtaining a tidelands lease from the State of Alaska is a cumbersome, lengthy process and the leases often require the posting of a performance bond that costs the municipality more in annual premiums than the fair market annual rent for the tidelands, create an unnecessary ongoing relationship with the State with respect to the tidelands parcel, and impose other unreasonably burdensome requirements, and

WHEREAS, municipalities, as well as the State of Alaska, have a duty to ensure that the use of their lands, including tidelands, are in the public interest, and

WHEREAS, it would be equitable and in the public interest for the State of Alaska to convey to boroughs and cities that have not received their tidelands under AS 38.05.820 (formerly AS 38.05.320) tidelands that are needed or have been identified as appropriate for public or private development, and

WHEREAS, H.B. 398, as it passed the Alaska House of Representatives during the Second Session of the Eighteenth Alaska Legislature would have met the needs of municipalities;

Alaska Association of Harbormasters & Port Administrators, Inc.

NOW THEREFORE, be it resolved by the Alaska Association of Harbormasters and Port Administrators:

That the Association supports the concept of H.B. 398 as passed by the Alaska House of Representative during the Second Session of the Eighteenth Legislature requiring the expedited conveyance to municipalities of tidelands leased to municipalities and those that are appropriate or needed for development.

Copies of this Resolution shall be sent to the Governor of the State of Alaska, to each legislator elected to represent the state of Alaska, to the House Community and Regional Affairs and Resources Committees, the Commisioner of Natural Resources, the Director of Division of Lands, and the Alaska Municipal League.

ADOPTED this 9th day of November 1994

Joseph L. Graham

Association President

Attest:

Ken Russo

Association Secretary/Treasurer

TOTAL P.03

- Analysis of Bill/Program Effects: DNR -

In addition to the general grant land entitlements under AS 29.65, 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.

In 1898 Congress passed an act extending the homestead laws to the District of Alaska. 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]."

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. AS 38.05.320(b) provided:

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.

In 1964 (ch 81, SLA 1964) "municipal corporation" was changed to "(h)ome rule cities and cities of the first class"

Incorporated on or before Aoril 1, 1964.

Following is a current list of Alaska's home rule, first class and second class cities that would qualify under this bill.

Home Rule	First Class	Second Class
*Cordova	*Barrow	Akhlok
*Kenai	*Craig	Akutan
*Ketchikan	Dillingham	Angoon
*Kodiak	*Haines	Atka
*Petersburg	*Homer	Bethel
*Seward	*Hoonah	Brevig Mission
*Valdez	*Hydaburg	Chignik
*Wrangell	*Kake	Clark's Point
	*King Cove	Coffman Cove
	*Klawock	Cold Bay
	*Nome	Deering
	*Pelican	Diomede
	Sand Point	Elim
	*Seldovia	False Pass
	*Skagway	Gambell
	Soldotna	Golovin
	Unalaska	Goodnews Bay
		Hooper Bay
		Kachemak
		Kaktovik
		Kasaan
		Kivalina
		*Kotzebue
		Kupreanof
		Larsen Bay
		Mekoryuk
		Nightmute
		Old Harbor
		Ouzinkie
		Pilot Point
		Platinum
		Point Hope
		Port Alexander
		Port Heiden
		Port Lyons
		Quinhagak
		Saint George
		Saint Michael
		Saint Paul
		Savoonga
		*Saxman
		Scammon Bay
		Shaktoolik
		Sheldon Point
		Shishmaref
		Stebbins
		Teller
		*Tenakee Springs
		Thorne Bay
		Togiak
		Tooksook Bay
		Unalakleet
		Wainwright
		Wales
		Whittier

*home rule and first class cities as April 1, 1964 that received tidelands previously

part of it has not been used by the lessee for the purpose specified in the lease for a period of two years. No lease may be assigned or subleased except with the consent of the director, and in any case may only be transferred to an applicant eligible under (b) — (d) of this section. A lessee may not change the use specified in the lease to another or additional use except with the consent of the director. If, at any time after the land is leased, the lessee attempts to assign the lease or transfer control over the land to another, or if the land is devoted to a use other than that for which the land was leased without the consent of the director, the lease automatically terminates.

(e) The lease, sale, or other disposal of state land at appraised fair market value may be negotiated with a licensed public utility or a licensed common carrier by the director with the approval of the commissioner if the utility or carrier reasonably requires the land for the conduct of its business under its license.

(f) The commissioner shall lease state land for telephone or electric transmission and distribution lines for less than the appraised value of the land if the lessee is a nonprofit cooperative association organized under AS 10.25. The commissioner may lease state land that is not located within the boundary of a municipality for the disposal of garbage, refuse, trash, or other waste material for less than the appraised value of the land if the lessee is a licensed public utility authorized to collect and dispose of garbage, refuse, trash, or other waste material outside the boundaries of a municipality. Before determining the annual rental, the commissioner shall consider the nature of the public service rendered by the nonprofit cooperative association or licensed public utility and the terms of the grant under which the land was acquired by the state. A nonprofit cooperative association may not construct improvements other than transmission or distribution lines and substations on land leased under this subsection. A licensed public utility may not construct permanent improvements on land leased under this subsection that are not related to the purpose of the lease.

(g) The commissioner shall retain a reversionary interest on each sale or other disposal granted under (a) or (e) of this section. The commissioner may waive the reversionary interest on a written determination that the waiver is in the public interest. (§ 4 art III ch 169 SLA 1959; am § 1 ch 155 SLA 1960; am § 1 ch 137 SLA 1962; am § 1 ch 36 SLA 1976; am § 12 ch 257 SLA 1976; am § 1 ch 76 SLA 1980; am §§ 34, 35 ch 113 SLA 1981; am § 1 ch 86 SLA 1984; am § 42 ch 152 SLA 1984; am § 4 ch 55 SLA 1986; am § 11 ch 75 SLA 1987)

Revisor's notes. — Formerly AS 38.05.815. Renumbered in 1984.

Cross references. — For reservation to which contracts for sale, lease or grant of state land and deeds to state land, properties or interest to state land are subject, see AS 38.05.125.

Effect of amendments. — The 1986 amendment at the beginning of subsection (a) substituted "Except as otherwise provided in AS 38.05.183(b), the" for "The."

The 1987 amendment added subsection (g).

Opinions of attorney general. — It is unclear whether quitclaims to the federal government by the division of natural resources to correct initial erroneous conveyances by the federal government to the state for purposes of the Mental Health Enabling Act fall within the scope of this section. August 4, 1983, Op. Att'y Gen.

Providing state land for a long-term, exclusive lease, at no cost, to a "youth encampment" (exempt from rental fees pursuant to subsection (d)), where the express purpose is to lead youthful campers to Christ, would result in the undeniable effect of placing the power, prestige and property of the state behind the advancement of one particular religious belief in violation of the Establishment Clauses of the state and federal constitutions. September 2, 1983, Op. Att'y Gen.

The state could not directly sell a parcel of property to a historical society for use as a cemetery without public auction or indirectly to the society through a third party pursuant to AS 38.05.035(b)(5). However, the parcel could be leased to the society for a term not to exceed 55 years, renewable indefinitely at 55 year intervals at the discretion of the director of the division of lands. August 6, 1985, Op. Att'y Gen.

There would be no constitutional problem with a transfer of state land to a Methodist camp which is a nonprofit corporation organized for charitable purposes with nothing in its articles of incorporation indicating that its objective is to further the religious beliefs or dogmas of the Methodist Church, and where the lease or sale of the land to the camp would provide for the continued operation of a camp which, in the past, had served a broad cross-section of the public, and thus would accomplish a valid public purpose. February 21, 1986, Op. Att'y Gen.

There is no legal authority for the department to convey fee title to tidelands to a unified home rule municipality under subsection (a), but as long as the use to which the municipality intends to put the tidelands is a permissible use, it would be consistent with the public trust for the department to lease the tidelands to a unified home rule municipality for less than fair market value under this section. April 15, 1988, Op. Att'y Gen.; December 2, 1988, Op. Att'y Gen.

NOTES TO DECISIONS

Cited in Moore v. State, 553 P.2d 8 (Alaska 1976); State v. Bering Strait Regional Educ. Attendance Area School Dist., 658 P.2d 784 (Alaska 1983).

Sec. 38.05.820. Occupied tide and submerged land. (a) It is the policy of the state to allow preference rights for the acquisition of tide and submerged land occupied or developed for municipal business, residential or other beneficial purposes on or before the date of admission of Alaska into the Union. Nothing in this section vests the right in a person to acquire the land until a conveyance from the state is delivered to the grantee.

(b) Home rule cities and cities of the first class incorporated on or before April 1, 1964, may apply, in the manner prescribed by the director, and in accordance with such regulations as the director may adopt, for a conveyance to them of all land seaward of the home rule cities and cities of the first class which is between the mean high tide line in, or forming the boundary of, the home rule cities and cities of the first class, and a line to be shown on a plat made a part of the application which shall be the pierhead line established under the Act of September 7, 1957, or the harbor line established under the Act of March 3, 1899, or if no pierhead line or harbor line is established then a line subject to approval by the director, with the concurrence of the commissioner, which shall be seaward of all tide and submerged land

AS. 38.05.820 Tide + Submerged land

occupied or suitable for occupation and development without unreasonable interference with navigation. The director shall convey that tide and submerged land to home rule cities and cities of the first class. Applications by preference right claimants filed with the director before June 30, 1964, shall continue to be processed to a final determination and conveyance, if any, by the director, if such preference right claimants are entitled to a conveyance from the director under the laws existing previous to July 22, 1964.

(1) Each home rule city and city of the first class granted a conveyance shall prepare an official subdivision plat of the area conveyed showing all structures and improvements and the boundaries of each tract occupied or developed, together with the name of the owner or claimant. The subdivisional plat shall include within the boundaries of each tract occupied or developed such surrounding tide and submerged land as is reasonably necessary in the opinion of the governing body of the home rule cities and cities of the first class for the use and enjoyment of the structures and improvements by the owner or claimant, but shall not include tide or submerged land which if granted to the occupant would unjustly deprive an occupant of adjoining land from reasonable use and enjoyment of it.

(2) An occupant of land included in the conveyance to home rule cities and cities of the first class, who occupied or developed the land on and before September 7, 1957, has a class I preference right to the land from the home rule cities and cities of the first class upon the execution of a waiver to the state and the home rule cities and cities of the first class of all rights the occupant may have acquired under Public Law 85-303 (71 Stat. 623).

(3) An occupant of land included in the conveyance to home rule cities and cities of the first class, who has a class II preference right by reason of the conveyance to home rule cities and cities of the first class, and is unwilling to waive the right has a preference right to the land which it is mandatory for the home rule cities and cities of the first class to expeditiously honor upon application from the occupant after the Secretary of the Army has submitted to the Secretary of the Interior and the governor of the state maps showing the pierhead line established by the corps of engineers with respect to the tract so granted.

(4) An occupant of land included in the conveyance to home rule cities and cities of the first class, who occupied or developed the land after September 7, 1957, and before January 3, 1959, and who continued to occupy it on January 3, 1959, has a class III preference right to the land from the home rule cities and cities of the first class.

(5) In making a conveyance to an occupant, the home rule cities and cities of the first class shall include as a part of the tract conveyed and in addition to the occupied or developed land, such additional tide and submerged land as is reasonably necessary in the opinion of the gov-

erning body of the home rule cities and cities of the first class for the occupant's use and enjoyment of the occupied or developed land, but the conveyance shall not include any area which would unjustly deprive an occupant of adjoining land from reasonable use and enjoyment of it or which, if developed, will interfere with navigation.

(6) Each home rule city and city of the first class receiving conveyances shall by ordinance provide for reasonable regulations governing the filing and processing of applications, publication of notices, and the adjudication of disputes between claimants by the governing body of the home rule cities and cities of the first class. A party aggrieved by its determination may appeal to the superior court.

(7) When no preference right has been granted to purchase or lease tideland, the home rule cities and cities of the first class may sell or lease the tideland conveyed to them, and may impose terms or conditions for the sale or lease. Such terms and conditions shall include such reservation of rights-of-way as are necessary to provide reasonable access to public waters.

(c) An occupant of tide or submerged land which is not seaward of a municipal corporation, who occupied or developed it on and prior to September 7, 1957, has a class I preference right to the land from the state. However, if the land is seaward of a surveyed townsite, the occupant shall execute a waiver to the state of all rights which the occupant may have acquired under Public Law 85-303 (71 Stat. 623), before the preference right may be exercised.

(1) A person who has a class II preference right in the disposition of land by the state not provided for under paragraph (b)(3), and who is unwilling to waive that right, has a preference right to the land which it is mandatory for the director to expeditiously honor upon application from the occupant after the Secretary of the Army has submitted to the Secretary of the Interior and the governor of the state maps showing the pierhead line established by the corps of engineers with respect to the tract so granted.

(2) An occupant of tide or submerged land which is not seaward of a municipal corporation, who occupied or developed it after September 7, 1957, and before January 3, 1959, and who continued to occupy it on January 3, 1959, has a class III preference right to the land from the state.

(3) The preference right granted an occupant in (c) of this section is lost unless the occupant of tide or submerged land not seaward of a home rule or first class city makes application to the director to exercise the preference right by July 1, 1967.

(4) Each occupant shall furnish at the cost of the occupant a plat showing the exterior boundaries of the tide and submerged land covered by the application, in form and with proof of accuracy as set out in regulations of the director, and shall show the location and nature of all fill material, buildings, structures and improvements, which

form the basis of the application and which are situated upon the tract applied for. The applicant may include within the boundaries of the tract applied for such surrounding tide and submerged land as is reasonably necessary in the opinion of the applicant for the use and enjoyment of the structures and improvements by the occupant, but may not include any tide or submerged land which if granted to the occupant would unjustly deprive an occupant of adjoining land from reasonable use and enjoyment of it.

(5) In making a conveyance to an occupant, the director shall include as a part of the tract conveyed, and in addition to the occupied or developed land, such additional tide and submerged land as is reasonably necessary in the opinion of the director for the occupant's use and enjoyment of the occupied or developed land, but the conveyance shall not include any area which would unjustly deprive an occupant of adjoining land from reasonable use and enjoyment of it or which, if developed, will interfere with navigation.

(6) The director shall by regulation provide for reasonable procedures governing the filing and processing of applications, the publication of notices and the adjudication of disputes between claimants. A party aggrieved by an adjudication may appeal to the superior court.

(7) The holder of a valid corps of engineers permit issued before November 15, 1959, may be given a preference to a lease or permit by the state if justified in accordance with the policy of this chapter and if in the best interests of the state. This preference is subordinate to all other preferences recognized under this chapter.

(d) For the purposes of this section, unless the context otherwise requires,

(1) "class I preference right" means the right of an occupant to acquire tide and submerged land for a consideration not exceeding the costs of surveying, transferring and conveying the title to it;

(2) "class II preference right" means the right to acquire tide or submerged land as defined in Public Law 85-303 (71 Stat. 623) for a consideration not exceeding the costs of surveying, transferring and conveying the title to it;

(3) "class III preference right" means the right of an occupant to acquire tide and submerged land for a consideration not exceeding the cost of appraisal, administration and transfer plus the appraised fair market value, exclusive of value accruing from improvements or development, such as fill material, buildings or structures, by the occupant or predecessor in interest of the occupant or reflecting, equities of the occupant;

(4) "home rule cities and cities of the first class" do not include a borough;

(5) "occupant" means a person or the successor in interest of a person, who actually occupied for business, residential or other beneficial purpose, tideland, or tide and submerged land contiguous to tideland,

in the state, on and before January 3, 1959, with substantial permanent improvements. The holder of a permit or clearance in respect to interference of navigation, or of a special use permit from a government agency does not qualify as an "occupant" unless entry on the land had, through exercise of reasonable diligence, resulted in occupancy and substantial permanent improvements; no person is an occupant by reason of having (A) placed a fish trap in position for operation or upon the tide or submerged land for storage, (B) placed a set net or piling for a set net, or any other device or facility for taking fish, (C) placed pilings or dolphins for log storage or other moorage, (D) placed floats or vessels upon the tide or submerged land, (E) placed telephone, power or other transmission facilities, roads, trails or other improvements not requiring exclusive use or possession of tide or submerged land, or (F) claimed the land by virtue of some form of constructive occupancy; where land is occupied by a person other than the owner of the improvements on it, the owner of the improvements is, for the purposes of this section, the occupant of the land;

(6) "occupied or developed" means the use, occupancy and control of tide or submerged land by the establishment on it of substantial permanent improvements other than those uses, facilities and improvements not qualifying a person to be an occupant;

(7) "person" means a person, firm, corporation, cooperative association, partnership or other entity legally capable of owning land or an interest in land;

(8) "preference right," subject to the classification of preference right established in this section, means the right of an occupant to acquire, by lease, purchase, or otherwise, at the election of the occupant, except as otherwise limited or prescribed in this chapter, a tract of tideland, or tide and submerged land contiguous to tideland, occupied or developed by the occupant on and before January 3, 1959. (§ 5 art III ch 169 SLA 1959; am § 6 ch 61 SLA 1960; am § 1 ch 18 SLA 1962; am §§ 1, 2 ch 81 SLA 1964; am § 1 ch 4 SLA 1966)

Revisor's notes. — Formerly AS 38.05.320. Renumbered in 1984. Subsection (d) was reorganized in 1984 to alphabetize the defined terms.

Cross references. — For reservation to which contracts for sale, lease or grant of state land and deeds to state land, properties or interest to state land are subject, see AS 38.05.125.

Opinions of attorney general. — The occupants of tidelands lying offshore of cities have present vested property rights under the 1957 federal Tidelands Act, which the state must recognize in acquiring rights-of-way for state roads. 1961 Op. Att'y Gen., No. 18.

Before the state uses tidelands lying offshore of cities, the tideland occupants must be paid for the full value of the property they occupy. 1961 Op. Att'y Gen., No. 18.

The division of land and water management may convey to a city tidelands and submerged lands located seaward of the city's municipal boundaries, but this conveyance is subject to prior existing rights. The transfer should take the form of a quitclaim conveyance, which conveyance transfers only whatever right, title, and interest the grantor has in the property conveyed. November 26, 1984, Op. Att'y Gen.

The state may not make a conveyance of tidelands under this section to a unified

home rule city, since a unified home rule city is a single political entity consisting of a borough and all cities within it, and paragraph (d)(4) provides that home rule cities and cities of the first class, the types of cities which may apply for such conveyances, do not include a borough. April 15, 1988, Op. Att'y Gen.; December 2, 1988, Op. Att'y Gen.

NOTES TO DECISIONS

Purpose of section. — One purpose of the Alaska Land Act was to establish equitable methods of disposing of certain tidelands. Toward this end, and within the federal parameters requiring the recognition of "preference rights," this section was included in the Act. City of Homer v. State, 566 P.2d 1314 (Alaska 1977).

Due process required. — Private parties are entitled to due process of law before property rights may be removed; therefore, the minimal protection provided by adjudicatory procedures of the Department of Natural Resources must meet that standard. City of Homer v. State, 566 P.2d 1314 (Alaska 1977).

Municipalities are entitled to due process in the adjudication of claims to tide and submerged lands. City of Homer v. State, 566 P.2d 1314 (Alaska 1977).

With respect to the disposition of tidelands, municipal corporations are to be afforded the same rights of due process as are private parties. City of Homer v. State, 566 P.2d 1314 (Alaska 1977).

The language of subsection (b) is clear and unambiguous. State Dep't of Nat'l Resources v. City of Haines, 627 P.2d 1047 (Alaska 1981).

Scope of subsection (b) grant. — The grant in subsection (b) of this section encompasses tideland adjacent to subsequently expanded municipal boundaries. State, Dep't of Nat'l Resources v. City of Haines, 627 P.2d 1047 (Alaska 1981).

In order for easement under paragraph (b)(6) of this section to be established, it must appear that it is reasonably necessary for the enjoyment of the property, the term "necessary" meaning that there could be no other reasonable mode of enjoying the dominant tenement without the easement. An easement by implication does not arise merely because its use is convenient to the beneficial enjoyment of the dominant portion of the property. Talbot's, Inc. v. Cessnun Enters., Inc., 566 P.2d 1320 (Alaska 1977).

While strict or absolute necessity is not required, something more than mere convenience must be shown before an occupant of tidelands is entitled to an easement under paragraph (b)(6) of this section. Talbot's, Inc. v. Cessnun Enters., Inc., 566 P.2d 1320 (Alaska 1977).

Liberal construction. — A liberal construction of this section in favor of an applicant's asserted beneficial use of tidelands fill is appropriate. City of Juneau v. Cropley, 429 P.2d 21 (Alaska 1967).

In light of the provisions of paragraphs (1) and (5) of subsection (b) of this section of the Alaska Land Act, which reflect the State of Alaska's policy of permitting inclusion within the boundaries of occupied or developed tracts of such additional surrounding tide or submerged lands as are reasonably necessary for the occupant's use and enjoyment, the superior court was correct in according a liberal construction to the term "occupant" and to the requirement that "beneficial use" be made of fill material before such material qualifies as a "permanent improvement." City of Juneau v. Cropley, 429 P.2d 21 (Alaska 1967).

Discussion of preference rights given under Federal Tidelands Act. — See Talbot's, Inc. v. Cessnun Enters., Inc., 518 P.2d 1064 (Alaska 1974).

Public easement to use private tidelands. — Tidelands conveyed to private parties pursuant to Class I preference rights under this section were conveyed subject to the public's right to utilize those tidelands for purposes of navigation, commerce and fishery. While patent holders are free to make such use of their property as will not unreasonably interfere with these continuing public easements, they are prohibited from any general attempt to exclude the public from the property by virtue of their title. CWC Fisheries, Inc. v. Bunker, 755 P.2d 1115 (Alaska 1988).

A city is given title to dispose of strictly according to the terms of this section. Talbot's, Inc. v. Cessnun Enters., Inc., 518 P.2d 1064 (Alaska 1974).

And it cannot depart from its terms or the terms of its own ordinance, adopted pursuant to this section, which ordinance adopted a tidelands subdivision plat. Talbot's, Inc. v. Cessnun Enters., Inc., 518 P.2d 1064 (Alaska 1974).

Power to include or remove tide, etc., lands from occupied boundaries. — The governing body of a city is delegated the power to include or remove tide and submerged lands from the various occupied boundaries. Talbot's, Inc. v. Cessnun Enters., Inc., 518 P.2d 1064 (Alaska 1974).

When power is invoked. — The power to include or remove tide and submerged lands from the various occupied boundaries is invoked when it is deemed necessary for an adjoining owner to have reasonable use and enjoyment of his occupied tidelands. Talbot's, Inc. v. Cessnun Enters., Inc., 518 P.2d 1064 (Alaska 1974).

Thus, there is latitude to settle competing claims of use. Talbot's, Inc. v. Cessnun Enters., Inc., 518 P.2d 1064 (Alaska 1974).

City may include land as is reasonably necessary to occupant's use. — A city is authorized to include in an occupant's conveyance such other parts of the whole available land as are reasonably necessary to the occupant's use. Talbot's, Inc. v. Cessnun Enters., Inc., 518 P.2d 1064 (Alaska 1974).

The only limit upon this power is the requirement that an occupant of adjoining land not be unjustly deprived of reasonable use and enjoyment. Talbot's, Inc. v. Cessnun Enters., Inc., 518 P.2d 1064 (Alaska 1974).

Interest adjoining occupant may justly be deprived of. — By inference, the adjoining occupant may be deprived, justly, of such interest as does not interfere unduly with his use and enjoyment. Talbot's, Inc. v. Cessnun Enters., Inc., 518 P.2d 1064 (Alaska 1974).

Incorporeal hereditament may be imposed on adjoining property. — If additional land may be carved out of an adjoining occupant's property, certainly an incorporeal hereditament may be imposed, being a lesser burden. Talbot's, Inc. v. Cessnun Enters., Inc., 518 P.2d 1064 (Alaska 1974).

By "justly" one would understand that the alteration of interests must be supported by reasonable necessity, concluded in a proceeding affording due process, and conformed to the requirement that undue hardship not be worked upon the adjoining owner. Talbot's, Inc. v. Cessnun Enters., Inc., 518 P.2d 1064 (Alaska 1974).

In effect, this section gives the authorities of a city the power to adjudicate an easement by reasonable necessity on application for a conveyance. The adjoining occupant may contest the determination in an adversary adjudicatory proceeding from which appeal to the superior court is guaranteed by paragraph (b)(6). The initial inquiry thus is whether the pleadings and the trial herein established the competing property interests. Talbot's, Inc. v. Cessnun Enters., Inc., 518 P.2d 1064 (Alaska 1974); Talbot's, Inc. v. Cessnun Enters., Inc., 566 P.2d 1320 (Alaska 1977).

Sufficient interests established for determination if easement reasonably necessary. — Sufficient interests were established by both a landowner and an adjoining landowner to call for the city engineer to decide, under paragraph (b)(6), whether an easement across the former's land was reasonably necessary to the latter's use of its adjoining land. Talbot's, Inc. v. Cessnun Enters., Inc., 518 P.2d 1064 (Alaska 1974).

The language following the semicolon in paragraph (d)(5)(F) creates an exception to the restriction of (F) immediately preceding it. State v. A.J. Indus., Inc., 397 P.2d 280 (Alaska 1964).

Occupant must have improved land. — An occupant of the tide and submerged lands for which he is seeking a preference right must have improved the land. State v. A.J. Indus., Inc., 397 P.2d 280 (Alaska 1964).

Beneficial uses made by lessee accrue to benefit of lessor by reason of paragraph (d)(5)(F). State v. A.J. Indus., Inc., 397 P.2d 280 (Alaska 1964).

Fill as permanent improvement. — Fill which is placed solely for the purposes of disposing of waste or spoils cannot qualify as a permanent improvement. On the other hand, fill in place to a level above the line of mean high tide and actually utilized for beneficial purposes is intended to qualify as a permanent improvement. City of Juneau v. Cropley, 429 P.2d 21 (Alaska 1967).

Nonbeneficially used sloping fill, which only furnished lateral support, was not intended to be encompassed within the category of permanent improvement. City of Juneau v. Cropley, 429 P.2d 21 (Alaska 1967).

Rock fill was put to beneficial use to the extent that it was used for the sale of fill materials. State v. A.J. Indus., Inc., 397 P.2d 280 (Alaska 1964).

And became a permanent improvement. — Rock fill, by reason of its suitability and utilization for a business use and the procurement of such a use by applicant, became a permanent improve-

ment owned by applicant to the extent that it could be owned within the meaning of this section. State v. A.J. Indus., Inc., 397 P.2d 280 (Alaska 1964).

Mine tailings. — Where mine tailings which were deposited on tidal and submerged lands constituted real estate, title thereto passed to the state under the Statehood Act, and minerals contained in the tailings were reserved by the state in a 1967 deed from the state to a corporation. Hayes v. Alaska Juneau Forest Indus., Inc., 748 P.2d 332 (Alaska 1988).

Open storage of machinery and equipment did not establish existence of permanent improvement. State v. A.J. Indus., Inc., 397 P.2d 280 (Alaska 1964).

But it did establish a beneficial use, directly related to the business activities of applicant and its lessees, and to this extent accrued to the benefit of applicant in determining whether it was entitled to a preference right. State v. A.J. Indus., Inc., 397 P.2d 280 (Alaska 1964).

A barge ramp installation, its use and its maintenance were all factors that accrued to defendant's benefit for the purpose of determining whether it was entitled to preference rights. State v. A.J. Indus., Inc., 397 P.2d 280 (Alaska 1964).

A shed, abandoned by the Army when it terminated its activities, and taken over by applicant constituted a permanent improvement which, although not established or constructed by applicant, was under its control and being put to a beneficial use. State v. A.J. Indus., Inc., 397 P.2d 280 (Alaska 1964).

Applied in United States v. Alaska, 201 F. Supp. 796 (D. Alaska 1962).

Collateral references. — 63A Am. Jur. 2d, Public Lands, § 51.

Sec. 38.05.821. Tideland seaward of public recreational sites. (a) Notwithstanding any other provision of law, a home rule or general law municipality which accepts by conveyance or other disposition from the state a public recreation area facility developed under the terms of P.L. 507 (70 Stat. 130), upon application, shall receive by conveyance from the director all land owned by the state seaward of the public recreation area facility which is between the mean high tide line and the mean low tide line. The director may adopt necessary regulations providing for the conveyance of land under this section.

(b) Interests obtained by lease for shore fisheries development, sale, permit or lease for mineral exploration, development, or extraction, or for any other purpose, before August 13, 1974, are affected by this section only on the date of their expiration or termination. (§ 1 ch 108 SLA 1974)

Revisor's notes. — Formerly AS 38.05.323. Renumbered in 1984.

Sec. 38.05.830. Land disposal in the unorganized borough. Before a sale, lease under AS 38.05.070 — 38.05.105, or other disposal of state land in the unorganized borough, the commissioner shall consider the effect that the sale, lease, or other disposal may be expected to have on the density of the population in the vicinity of the land, and potential for conflicts with the traditional uses of the land that could result from the sale, lease, or disposal. If necessary, the commissioner shall develop a plan to resolve or mitigate the conflicts in a manner

consistent with the public interest and the provisions of this chapter. (§ 33 ch 113 SLA 1981)

Revisor's notes. — Formerly AS 38.05.301. Renumbered in 1984.

Sec. 38.05.840. Appraisal. (a) Land may not be sold or leased, or a renewal lease issued, except in the case of an oil or gas or mineral lease, unless it has been appraised within one year before the date fixed for the sale or lease. When land is offered at public sale but is not sold and is available at private sale, a reappraisal is not required unless the director considers that a change in value of the land may have occurred. A grazing lease may be granted to a lessee of federal grazing land without prior appraisal, if the federal lease was cancelled to allow the state to select the land under lease. Land may not be sold or leased for less than the approved, appraised market value, except as provided in AS 38.05.055, 38.05.057, 38.05.075 — 38.05.085, 38.05.097, 38.05.810, and 38.05.820.

(b) Appraisals required by this section may be made by employees of the department who are qualified to determine the value of land under standards set by the commissioner. (§ 3 art III ch 169 SLA 1959; am § 5 ch 61 SLA 1960; am § 14 ch 182 SLA 1978; am §§ 37, 38 ch 85 SLA 1979; am § 41 ch 152 SLA 1984)

Revisor's notes. — Formerly AS 38.05.310. Renumbered in 1984.

NOTES TO DECISIONS

Inadequate appraisal. — Routine application of $100 minimum without making any inquiry into the market value of parcels was not such an appraisal as would satisfy the requirements of this section. State v. Weidner, 684 P.2d 103 (Alaska 1984).

Applied in Moore v. State, 553 P.2d 8 (Alaska 1976).

Cited in State v. Aleut Corp., 541 P.2d 730 (Alaska 1975); Wessells v. State, Dep't of Hwys., 562 P.2d 1042 (Alaska 1977).

Sec. 38.05.850. Permits. (a) The director, without the prior approval of the commissioner, may issue permits, rights-of-way or easements on state land for roads, trails, ditches, field gathering lines or transmission and distribution pipelines not subject to AS 38.35, telephone or electric transmission and distribution lines, log storage, oil well drilling sites and production facilities for the purposes of recovering minerals from adjacent land under valid lease, and other similar uses or improvements, or for the limited personal use of timber or materials. The commissioner, upon recommendation of the director, shall establish a reasonable rate or fee schedule to be charged for these uses, subject to the exception for nonprofit cooperative associations specified in (b) of this section. In the granting, suspension or

Sec. 38.05.945. Notice. (a) This section establishes the requirements for notice given by the department for the following actions:

(1) classification or reclassification of state land under AS 38.05.300 and the closing of land to mineral leasing or entry under AS 38.05.185;

(2) zoning of land under applicable law;

(3) a decision under AS 38.05.035(e) regarding the sale, lease, or disposal of an interest in state land or resources;

(4) a competitive disposal of an interest in state land or resources after final decision under AS 38.05.035(e);

(5) a public hearing under AS 38.05.856(b);

(6) a preliminary finding under AS 38.05.035(e) and 38.05.855(c) concerning sites for aquatic farms and reinted hatcheries.

(b) Notice of one or more actions described in (a) of this section shall be given at least 30 days before the action by publication in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action and one or more of the following methods:

(1) publication through public service announcements on the electronic media serving the area affected by the action;

(2) posting in a conspicuous location in the vicinity of the action;

(3) notification of parties known or likely to be affected by the action; or

(4) another method calculated to reach affected persons. A notice shall contain sufficient information in commonly understood terms to inform the public of the nature of the action and the opportunity of the public to comment on the action.

(c) Notice at least 30 days before action under (a) of this section shall also be given to the following:

(1) to a municipality if the land is within the boundaries of the municipality, to a coordinating body established by community councils in a municipality if the coordinating body or a community council within the area served by a coordinating body requests notice in writing; if there is no coordinating body within the municipality, notice shall be provided to each community council established by the charter or ordinance of the municipality if the land is located within the boundaries of the municipality and if the community council requests notice in writing;

(2) to a regional corporation if the boundaries of the corporation as established by sec. 7(a) of the Alaska Native Claims Settlement Act encompass the land and the land is outside a municipality;

(3) to a village corporation organized under sec. 8(a) of the Alaska Native Claims Settlement Act if the land is within 25 miles of the village for which the corporation was established and the land is located outside a municipality;

(4) to the postmaster of a permanent settlement of more than 25 persons located within 25 miles of the land if the land is located outside a municipality, with a request that the notice be posted in a conspicuous location;

(5) to a nonprofit community organization or a governing body that has requested notification in writing and provided a map of its boundaries, if the land is within the boundaries.

(d) Notice at least 30 days before action under (a)(5) or (6) of this section shall be given to appropriate

(1) regional fish and game councils established under AS 16.05.260; and

(2) coastal resource service areas organized under AS 46.40.110 — 46.40.210.

(e) Notice is not required under this section for a permit or other authorization revocable by the department.

(f) The provisions of this section do not apply to a lease issued under AS 38.05.205.

(g) The provisions of this section do not apply to a production license issued under AS 38.05.207.

(h) Failure to give notice under this section to a community council, a coordinating body established by community council, or an organization listed in (c)(5) of this section does not constitute a legal basis for invalidation or delay of the action. (§ 10 art III ch 169 SLA 1959; am § 8 ch 61 SLA 1960; am § 2 ch 74 SLA 1961; am § 3 ch 117 SLA 1976; am § 14 ch 257 SLA 1976; am §§ 39, 40 ch 86 SLA 1979; am § 4 ch 108 SLA 1981; am § 36 ch 113 SLA 1981; am § 3 ch 87 SLA 1982; am §§ 44 — 46 ch 152 SLA 1984; am §§ 6, 7 ch 100 SLA 1988; am §§ 15, 16 ch 145 SLA 1988; am § 6 ch 124 SLA 1990)

Effect of amendments. — The 1990 amendment deleted "Except for oil and gas leasing under AS 38.05.180 and geothermal leasing under AS 38.05.181" from the beginning of subsection (c).

NOTES TO DECISIONS

Quoted in Trustees for Alaska v. State, Dep't of Natural Resources, 795 P.2d 806 (Alaska 1990).

Sec. 38.05.965. Definitions. In this chapter, unless the context otherwise requires,

(1) "acquired land" means land belonging to the state including tide, submerged and shoreland which has been obtained by escheat, purchase, or any means other than by general land grant;

(2) "agricultural land" means land chiefly valuable for agricultural purposes;

(3) "commissioner" means the commissioner of natural resources;

(4) "department" means the Department of Natural Resources;

-38.05.965 Definitions-

(5) "director" means the director of the division of lands of the Department of Natural Resources;

(6) "geothermal resources" means the natural heat of the earth at temperatures greater than 120 degrees Celsius, measured at the point where the highest-temperature resources encountered enter or contact a well or other resource extraction device, and includes

(A) the energy, including pressure, in whatever form present in, resulting from, created by, or that may be extracted from that natural heat;

(B) the material medium, including the geothermal fluid naturally present, as well as substances artificially introduced to serve as a heat transfer medium; and

(C) all dissolved or entrained minerals and gases that may be obtained from the material medium, but excluding hydrocarbon substances and helium;

(7) "grazing land" means land chiefly valuable for grazing purposes;

(8) "industrial and commercial land" means land chiefly valuable for industrial trade, manufacturing or business use;

(9) "lieu and indemnity land" means land which the state is entitled to select under the provisions of 38 Stat. 1214, as amended (48 USC 353) or a similar statute to compensate for land in place of surveyed rectangulars, which have been lost to the state by reason of deficient sections, prior rights, claims, withdrawals, reservations and other appropriations;

(10) "material" includes sand, stone, gravel, pumice, and common clay.

(11) "mineral land" means land prospectively valuable for mineral deposits;

(12) "multiple use" has the meaning given in AS 38.04.910;

(13) "navigable water" means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes;

(14) "park and recreation land" means land chiefly valuable for public park and recreation use;

(15) "preference right forest lease" means a lease granted to a lessee whose United States Forest Service term special use permit was cancelled to allow the land under permit to be selected by the state;

(16) "preference right grazing lease" means a grazing lease granted to a lessee whose federal grazing lease was cancelled to allow the land under lease to be selected by the state;

(17) "public water" means navigable water and all other water, whether inland or coastal, fresh or salt, that is reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest;

(18) "rule of approximation" is the rule which is applied in determining whether or not a lease complies with the area limits set forth in this chapter and regulations adopted under it and in keeping the boundaries of leased land coincidental with legal subdivisions; under the rule, if the area covered by a lease in excess of the permitted maximum is smaller than the area of any deficiency that would result by eliminating from the lease the smallest legal subdivision covered by the lease or application for lease, the excess area will be permitted to remain in the lease; if the excess area is greater than the deficient area would be, then the smallest legal subdivision will be eliminated from the lease;

(19) "shoreland" means land belonging to the state which is covered by nontidal water that is navigable under the laws of the United States up to ordinary high water mark as modified by accretion, erosion, or reliction;

(20) "state land" or "land" means all land, including shore, tide and submerged land, or resources belonging to or acquired by the state;

(21) "submerged land" means land covered by tidal water between the line of mean low water and seaward to a distance of three geographical miles or further as may hereafter be properly claimed by the state;

(22) "tideland" means land that is periodically covered by tidal water between the elevation of mean high water and mean low water;

(23) "timber land" means state land chiefly valuable for timber and other forest products;

(24) "university land"

(A) means

(i) all sections 33 reserved to the university under 38 Stat. 1214, as amended;

(ii) all land granted to or reserved for the benefit of the university that retains its designation as university land;

(iii) all other land owned in fee by the University of Alaska including land transferred in fee to the Board of Regents of the University of Alaska to replace land formerly designated as university land;

(B) does not include former university land that has been conveyed to the department under the settlement approved by the legislature in ch. 22, SLA 1983. (§ 2 art I ch 169S SLA 1959; am § 1 ch 61 SLA 1960; am § 1 ch 74 SLA 1961; am § 3 ch 31 SLA 1964; am §§ 2, 3 ch

72 SLA 1966; am § 8 ch 143 SLA 1968; am § 4 ch 117 SLA 1976; am § 15 ch 181 SLA 1978; am § 5 ch 175 SLA 1980; am § 47 ch 152 SLA 1984; am § 46 ch 50 SLA 1989; am §§ 35, 36 ch 30 SLA 1992)

Revisor's notes. Paragraph (10) enacted as (24). Renumbered in 1992, at which time former paragraphs (10) — (23) were renumbered as (11) — (24).

Effect of amendments. The 1992 amendment, effective May 16, 1992, added paragraph (10) and rewrote paragraph (23).

Chapter 06. Alaska Royalty Oil and Gas Development Advisory Board.

Sec. 38.06.050. Board review and recommendation required. (a) If legislative approval is required by AS 38.06.055, a sale, exchange, encumbrance, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas may not be made by the commissioner of natural resources under AS 38.05.183 without prior review of the proposed sale, exchange, encumbrance, or other disposition by the board. A written recommendation of the board on the proposed sale, exchange, encumbrance, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas shall be submitted to the legislature at the time a bill approving the proposed sale, exchange, encumbrance, or other disposition is introduced in the legislature.

(b) Bids or applications for the purchase of royalty oil or gas may be rejected by the commissioner of natural resources if prior written notice of the proposed disapproval is given to the board.

(c) Competitive bidding in a sale, exchange or other disposition described in (a) of this section may not be waived by the commissioner of natural resources under AS 38.05.183 unless prior written notice of proposed waiver is given to the board.

(d) *[Repealed, § 5 ch 112 SLA 1980]* (§ 2 ch 9 SSSLA 1974; am § 5 ch 112 SLA 1980; am § 43 ch 21 SLA 1991)

Effect of amendments. The 1991 amendment, effective June 11, 1991, in subsection (a), substituted "a bill approving" for "a resolution approving" in the second sentence and made punctuation changes.

Sec. 38.06.070. Criteria. (a) In the exercise of its powers under AS 38.06.040(a) and 38.06.050 the board shall consider

(1) the revenue needs and projected fiscal condition of the state;

(2) the existence and extent of present and projected local and regional needs for oil and gas products and by-products, the effect of state or federal commodity allocation requirements which might be

applicable to those products and by-products, and the priorities among competing needs;

(3) the desirability of localized capital investment, increased payroll, secondary development and other possible effects of the sale, exchange or other disposition of oil and gas or both;

(4) the projected social impacts of the transaction;

(5) the projected additional costs and responsibilities which could be imposed upon the state and affected political subdivisions by development related to the transaction;

(6) the existence of specific local or regional labor or consumption markets or both which should be met by the transaction;

(7) the projected positive and negative environmental effects related to the transaction; and

(8) the projected effects of the proposed transaction upon existing private commercial enterprise and patterns of investments.

(b) When it is economically feasible and in the public interest, the board may recommend to the commissioner of natural resources, as a condition of the sale of oil or gas obtained by the state as royalty, that

(1) the oil or gas be refined or processed in the state;

(2) the purchaser be a refiner who supplies products to the Alaska market with price or supply benefits to state citizens; or

(3) the purchaser construct a processing or refining facility in the state.

(c) The board shall make a full report to the legislature on each criterion specified in (a) or (b) of this section for any disposition of royalty oil or gas that requires legislative approval. The board's report shall be submitted for legislative review at the time a bill for legislative approval of a proposed disposition of royalty oil or gas is introduced in the legislature. (§ 2 ch 9 SSSLA 1974; am § 2 ch 131 SLA 1978; am § 7 ch 112 SLA 1980; am § 103 ch 6 SLA 1984; am § 44 ch 21 SLA 1991)

Effect of amendments. — The 1991 amendment, effective June 11, 1991, in subsection (c), made a stylistic change in the first sentence and substituted "a bill for" for "a resolution for" in the second sentence.

Chapter 07. Clearing and Draining of Agricultural Land.

Sec. 38.07.030. Owners and lessees included. (a) An owner of agricultural land, or a lessee from the state of agricultural land, in the general vicinity of the land to be cleared or drained under AS 38.07.010(a) may apply to the commissioner to have the land cleared or drained or both along with the state land. The applicant's land shall

HB

79

FISCAL NOTE

STATE OF ALASKA

BILL NO. HB79

1995 LEGISLATIVE SESSION

Revision Date: Original

Dept Affected: Natural Resources

Title: An Act allowing the Department of Natural Resources to quitclaim land or interests in land, including...

BRU: Resource Development

Component: Land Development

Sponsor: Representative Mackie

Requestor:

Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: $ None

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: (Attach a separate page if necessary)

This legislation would authorize the department to convey lands to the City of Skagway that they inadvertently subdivided and sold as subdivision lots on filled shore lands within the Skagway River. Conveyance of these lands will eliminate a cloud of title to the private property owners. This legislation will automatically be repealed in 1998 after the conveyance to Skagway has been completed. There are no known public interest values that would be impacted by this conveyance.

There will be no fiscal impact to the department associated with passage of this legislation. The cost to convey land to the City of Skagway will be partially absorbed by the department as part of the municipal entitlement conveyance program work, or paid by the City of Skagway. There is no anticipated loss of revenue associated with this legislation as the lands to be conveyed to Skagway are not currently under lease agreements.

Amendments to this bill and HB20 could be combined as they are very similar, but address different tide and submerged land conveyance issues.

Prepared by: Ron Swanson, Director Phone : 762-2692

Division: Land Date : 25-Jan-95

Approved by Commissioner: Date: 1/25/95

Agency: Natural Resources

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STATE OF ALASKA
1995 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO: HB 79

Revision Date: January 26, 1995
Dept. Affected: Community & Regional Affairs
Title: An Act allowing the Department of Natural Resources to quitclaim land or...
BRU: none
Component none
Sponsor: Representative Mackie
Requestor: House C & RA Committee
COMPONENT SERIAL NO.

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

Estimate of current (FY94) impact $ none

ANALYSIS: (Attach a separate page if necessary)

This legislation would give the Department of Natural Resources (DNR) the authority to quitclaim land or interests in land to a municipality to correct certain errors or omissions of the municipality. There is no fiscal impact on DCRA from this bill.

JH

Prepared by: Remond Henderson, Director — Remond Henderson — Phone: 465-4708
Division: Division of Administrative Services — Date: 1/26/95
Approved by Commissioner: Mike Hanson — Date: 1/26/95
Agency: Community & Regional Affairs

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CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

Estimate of current (FY94) impact $ none

ANALYSIS: (Attach a separate page if necessary)

This legislation would give the Department of Natural Resources (DNR) the authority to quitclaim land or interests in land to a municipality to correct certain errors or omissions of the municipality. There is no fiscal impact on DCRA from this bill.

Prepared by: Remond Henderson, Director — Remond Henderson — Phone: 465-4708
Division: Division of Administrative Services — Date: 1/26/95
Approved by Commissioner: Mike Navarre — Date: 1/26/95
Agency: Community & Regional Affairs

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Alaska State Legislature

REPRESENTATIVE
JERRY MACKIE

ALASKA STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-4925

P.O. BOX 795
CRAIG, ALASKA 99921
(907) 826-3008 OFFICE
(907) 826-2930 HOME

House of Representatives

January 19, 1995

MEMORANDUM

To: Rep. Ivan, Co-chair
Rep. Austerman, Co-chair
CRA Committee

From: Rep. Mackie JM

Re: Request for a hearing on HB 79.

I respectfully request a committee hearing of HB 79 at your earliest convenience. Attached is a sponsor statement, a copy of the bill, and other backup material. The Department of Natural Resources is in the process of Preparing a zero fiscal note.

Thank you for your attention to this request.

Alaska State Legislature

REPRESENTATIVE
JERRY MACKIE

ALASKA STATE CAPITOL
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House of Representatives

SPONSOR STATEMENT
ON
HB 79

I introduced HB 79 at the request of the City of Skagway to correct a long standing land ownership problem in Skagway. Fifty years ago a dike was constructed along the Skagway River to protect the town from flooding. Over the years, the area between the original river bank and the dike has been reclaimed and subdivided by the city with lots sold and built upon (see attached map). Even the High school is located in the area.

The problem is that the city did not have clear title to this land from the start. Hence, the title for subsequent private property owners is also clouded. Not only are the owners' investments and improvements at risk, but bank financing for further improvements or sales is foreclosed.

In the past several years, the city and the Department of Natural Resources have unsuccessfully sought an administrative remedy for the problem. While current statute allows DNR administrative discretion in resolving land ownership errors and omissions for individual citizens [AS 38.05.035 (b) (2) and (b) (3)], there is no similar provision for errors and omissions of a municipality.

HB 79 would add such a provision. The new proposed subsection, AS 35.05.035 (b) (11), allows the director of the division of lands the discretion to quitclaim land to a municipality to correct past errors and omissions. The director may also set any terms or conditions that is deemed appropriate for the transaction. Furthermore, land title transferred to a municipality in this manner is counted against the municipality's general land grant entitlement from the state.

Section 2 provides a January 1, 1998 repeal of AS 35.05.035 (b) (11). Thus, the opportunity to correct municipal land ownership errors is limited to a two and one-half year period.

Finally, this bill was introduced in the last session. It progressed through the House and Senate until time ran out in the Senate Rules committee. It is my hope that the bill will be enacted this year so that the problem is resolved.

CITY OF SKAGWAY
GATEWAY TO THE GOLD RUSH OF "98"
P. O. BOX 415 SKAGWAY, ALASKA 99840
(PHONE) 907-983-2297
(FAX) 907-983-2151

January 13, 1994

Representative Jerry Mackie
Room 602, Court
State Capitol
Juneau 99801-1182

Dear Jerry,

I would like to take this opportunity to request your assistance in supporting legislation which would correct a land use problem in Skagway.

The details of the situation focus on a section of the community which was flooded by the Skagway River on a regular basis then protected by the construction of a dike approximately 50 years ago. The newly dried out land was subdivided as an extension of the existing street and lot grid and sold or used for community purposes.

The problem that has resulted today from these earlier efforts involves reluctance on the part of a title insurance company to provide coverage on a lot in the reclaimed zone.

Dave Gray has been working diligently with the city in arriving at a solution to this problem that will serve all parties well.

Your support will help bring resolution to a problem which cannot be solved in another way. Thank you for your help on this issue and I look forward to working with you on other matters of state or local concern.

Sincerely,

Stan

Stan Selmer
Mayor

cc: City Manager

MEMORANDUM State of Alaska

Alaska Department of NATURAL RESOURCES

DEPARTMENT OF NATURAL RESOURCES **DIVISION OF LAND**
S.E. REGIONAL OFFICE

TO: Ron Swanson(Name)
Director, Div. of Land

DATE: December 17, 1993

FILE:

TELEPHONE: 465-3400

FROM: Andrew W. Pekovich
Regional Manager, OCNO
Division of Land
Department of Natural Resources

SUBJECT: City of Skagway
Skagway River Subdivision

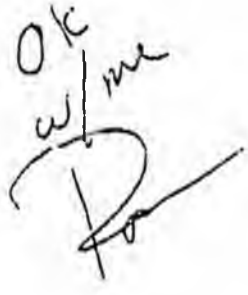
I would recommend consideration of the following legislation to Representative Mackie, unless you want to just sell the land to the City of Skagway at "fair market value" or feel that we already have the right under AS 38.05.810 to convey for "less than fair market value" without any overriding state benefit, without imposing a reverter, and without establishing a president we cannot live with

"The director, pursuant to AS 38.05.035 (b), may without classification or reverter, convey lands to a municipality ~~which made application to the Division for lease or purchase prior to~~ with or without compensation, to allow the municipality to correct an error inadvertently created by its inclusion of these lands in a subdivision and conveyance to third parties."

I believe the language is generic enough to not be labeled special, and would recommend a deadline which would just cover applications existing at the time of the deadline. If you approve I will pass this language to Dave Gray for consideration of Representative Mackie.

Appears that this would affect most of 22 lots and a fraction of 9 others. All are small lots. Have FAXED a plat.

CC: Nan Schonenbach



WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

SOUTHEAST REGIONAL OFFICE

DIVISION OF LAND

400 WILLOUGHBY AVENUE, SUITE 400
JUNEAU, ALASKA 99801
PHONE: (907) 465-3400
FAX: (907) 586-2954

January 7, 1993

Meg Hayes
c/o Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

Re: City of Skagway Title Problem

Dear Meg:

Sorry for the delay, but enclosed please find the map indicating the lands at Skagway that are involved in the title problem which we would like to have released from the list of PSL lands and convey to the City of Skagway. I have also attached a copy of the draft legislation that Representative Mackie may want to advance.

The heavy black line on the attached City of Skagway Base Map represents the eastern boundary of the Skagway River (original meander) in the problem area and the western boundary, in that area, of the original townsite prior to construction of the dike by the Navy in the 40's. The low land behind the dike was later filled, and some of the newly elevated area subdivided and deeded by the city to the respective purchasers. A few of the newly created lots are also in use by the City for public purposes, including the school. To add to the problem, although there are deeds and a base map depicting the new lots, the inclusion of this land into the original townsite subdivision as depicted on the Skagway Base Map is not covered by a proper plat (no recorded plat). Please let me know if you need more. We would like to obtain the release of all lands, including platted right-of-ways, e.g Alaska Street west of the dike. Any suggestions?

I would recommend dropping from the PSL all lands east of the dike abutting the eastern boundary of the Skagway River lying south of the northern boundary of 23rd Street, and west of the original townsite survey.

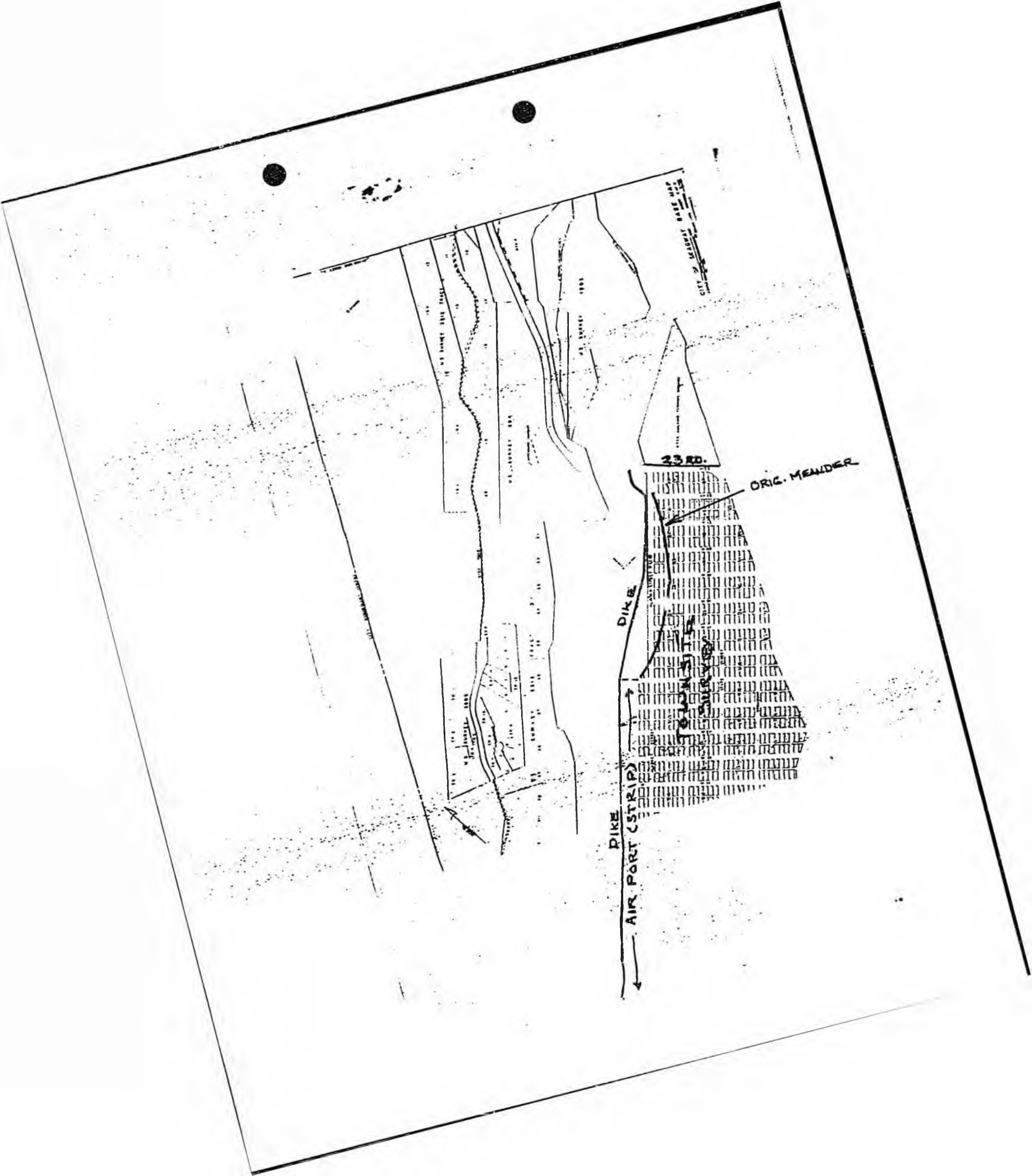
Sincerely,

Andrew W. Pekovich
Manager, Southeast Region

Enclosure: Marked Up Skagway Base Line Map

CC: Jim Filip, City of Skagway w/attach.
Dave Gray, Representative Mackie's Office w/attach.
Salli Salughter, DNR PIO w/attach.
Bruce Phelps, DOL, Anch. w/attach.

0035LH


23 RD.
ORIG. MEANDER
DIKE
AIR PORT (STRIP)
TOWNSITE SURVEY

HB

80

9-LS0200\C
Luckhaupt
2/15/95

CS FOR HOUSE BILL NO. 80( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE JAMES

A BILL

FOR AN ACT ENTITLED

"An Act establishing the Department of Natural Resources as the platting authority in certain areas of the state; relating to subdivisions and dedications; and providing for an effective date."

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

* Section 1. AS 29.03.030 is amended to read:

Sec. 29.03.030. PLATTING AUTHORITY. The [SUBJECT TO AS 40.15.075, THE] Department of Natural Resources is the platting authority for the state except within a municipality that has the power of land use regulation and that is exercising platting authority [IN THE UNORGANIZED BOROUGH IN THE AREA OUTSIDE ALL CITIES].

* Sec. 2. AS 40.15.010 is amended to read:

Sec. 40.15.010. APPROVAL, FILING, AND RECORDING OF SUBDIVISIONS. Before the lots or tracts of any subdivision or dedication may be sold

or offered for sale, the subdivision or dedication shall be **approved by** [SUBMITTED FOR APPROVAL TO] the authority having jurisdiction, as prescribed in this chapter **and** [. THE REGULAR APPROVAL OF THE AUTHORITY SHALL BE SHOWN ON IT OR ATTACHED TO IT AND THE SUBDIVISION OR DEDICATION] shall be filed and recorded in the office of the recorder. The recorder may not accept a subdivision or dedication for filing and recording unless it shows this approval. [IF NO PLATTING AUTHORITY EXISTS AS PROVIDED IN AS 40.15.070 AND 40 .075, LAND MAY BE SOLD WITHOUT APPROVAL.]

* Sec. 3. AS 40.15.070 is amended to read:

Sec. 40.15.070. PLATTING AUTHORITY. If land proposed to be subdivided or dedicated is situated within a **municipality that has the power of land use regulation and that is exercising platting authority** [FIRST OR SECOND CLASS BOROUGH], the proposed subdivision or dedication shall be submitted to the **municipal platting authority** [BOROUGH PLANNING COMMISSION] for approval. [IF THE LAND IS SITUATED WITHIN A CITY IN THE UNORGANIZED BOROUGH OR THE THIRD CLASS BOROUGH, THE PROPOSED SUBDIVISION OR DEDICATION SHALL BE SUBMITTED TO THE CITY PLANNING COMMISSION FOR APPROVAL. THE BOROUGH PLANNING COMMISSION IS THE PLATTING AUTHORITY FOR THE FIRST OR SECOND CLASS BOROUGH, THE CITY PLANNING COMMISSION IS THE PLATTING AUTHORITY FOR THE CITY, AND THE DEPARTMENT OF NATURAL RESOURCES IS THE PLATTING AUTHORITY IN THE REMAINING AREAS OF THE STATE AND THIRD CLASS BOROUGH FOR THE CHANGE OR VACATION OF EXISTING PLATS OR A PORTION OF SUCH PLATS, AS PROVIDED IN AS 40.15.075. IF THE BOROUGH OR THE CITY DOES NOT HAVE A PLANNING COMMISSION, THE BOROUGH ASSEMBLY OR THE CITY GOVERNING BODY, RESPECTIVELY, IS THE PLATTING AUTHORITY AND THE PROPOSED SUBDIVISION OR DEDICATION SHALL BE SUBMITTED TO IT.] A subdivision may not be filed and recorded until it is approved by the platting authority.

* Sec. 4. AS 40.15.070 is amended by adding a new subsection to read:

(b) The Department of Natural Resources is the platting authority in the areas of

the state not described in (a) of this section.

* Sec. 5. AS 40.15.200 is amended to read:

Sec. 40.15.200. APPLICATION TO STATE AND POLITICAL SUBDIVISIONS. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to the provisions of AS 40.15.010 - 40.15.200 [THIS CHAPTER] and AS 29.40.070 - 29.40.160, or home rule ordinances or regulations governing subdivisions, and shall comply with ordinances and other local regulations adopted under AS 40.15.010 - 40.15.200 [THIS CHAPTER] and AS 29.40.070 - 29.40.160 or former AS 29.33.150 - 29.33.240, or under home rule authority, in the same manner and to the same extent as subdivisions made by other landowners.

* Sec. 6. AS 40.15 is amended by adding new sections to read:

ARTICLE 4. PLATTING IN AREAS OUTSIDE CERTAIN MUNICIPALITIES.

Sec. 40.15.300. EXAMINATION OF PLATS BEFORE RECORDING. (a) The commissioner shall exercise the platting authority for the state except within a municipality that has the power of land use regulation and that is exercising platting authority.

(b) The commissioner shall review and approve each plat under AS 40.15.300 - 40.15.380 before the plat is recorded under AS 40.17. The approval by the commissioner shall be affixed to the plat in the form of the following statement:

PLAT APPROVAL

This plat is approved by the commissioner of natural resources, or the commissioner's designee, in accordance with AS 40.15.

_____ _____

Commissioner Date

(c) The recorder may not accept for filing and recording a plat for which the commissioner's approval is required under this section without the approval of the commissioner endorsed on the plat.

(d) Within 45 days after a plat is filed, the commissioner shall approve the plat or return it to the applicant for modification or correction. Unless the applicant for plat approval consents to an extension of time, the plat is approved and a certificate of approval shall be issued by the commissioner if the commissioner fails to act within that

period. The commissioner shall state in writing reasons for disapproval of a plat.

(e) A recorded plat may not be altered or replatted except on petition of the state, a municipality, a public utility, or the owner of a majority of the land affected by the proposed alteration or replat. The petition shall be filed with the commissioner and shall be accompanied by a copy of the existing plat showing the proposed alteration or replat. The provisions of AS 29.40.130 and 29.40.140(a) apply to an alteration or replat submitted under this subsection. The provisions of (d) of this section do not apply to an alteration or replat petition, but the commissioner shall state in writing reasons for disapproval of the petition.

(f) In the case of a vacation of a street, right-of-way, or other public area, the provisions of AS 29.40.140(b) and 29.40.160(a) and (b) apply. When applying these provisions to land outside a municipality, the word "municipality" should be read as "state" when the context requires.

Sec. 40.15.310. REQUIREMENTS FOR PLAT APPROVAL. (a) Each plat must show on its face a certificate of ownership, with the names and addresses of each owner listed. Each owner of record shall sign the certificate and the signatures shall be acknowledged.

(b) The surveyor preparing the plat shall sign and affix the seal of the surveyor.

(c) The commissioner shall require that a plat submitted for approval bear the certificate of approval of any other state agency having subdivision plat approval authority.

Sec. 40.15.320. MONUMENTS. (a) In a subdivision with five or fewer lots, the existence of each monument at a controlling exterior corner of the subdivision shall be established by the surveyor.

(b) In a subdivision of more than five lots, each lot corner shall be monumented.

(c) If a monument of record does not lie on the parcel or tract boundary, the plat shall reflect a boundary survey and tie to a monument of record.

Sec. 40.15.330. PLAT STANDARDS. The commissioner shall establish plat standards by regulation.

Sec. 40.15.340. ENGINEERING STANDARDS. Except for subdivisions of state land, the commissioner may not establish engineering standards for subdivisions.

Sec. 40.15.350. CERTIFIED COPY OF PLAT AS EVIDENCE. A copy of a plat

certified by the recorder of the recording district in which it is filed or recorded as a true and complete copy of the original filed or recorded in the recording office for the district is admissible in evidence in all courts in the state with the same effect as the original.

Sec. 40.15.360. APPLICABILITY. The provisions of AS 40.15.300 - 40.15.380 do not apply to maps, site plans, or other graphic representations prepared for

(1) the purpose of transferring a leasehold interest; the extraction of natural resources; or solely for the issuance of licenses or permits; or

(2) disposing of land by aliquot part descriptions of 40 acres or more within surveyed sections provided that the least aliquot part unit shall be not less than a 1/4 1/4 section.

Sec. 40.15.370. REGULATIONS. The commissioner may adopt regulations to implement, clarify, or make specific the provisions of AS 40.15.300 - 40.15.380.

Sec. 40.15.380. APPLICABILITY TO GOVERNMENTAL BODIES; RIGHT-OF-WAY ACQUISITION PLATS. (a) Except as provided in this section, AS 40.15.300 - 40.15.380 apply to the state, its agencies, instrumentalities, and political subdivisions in the same manner and to the same extent that they apply to other landowners.

(b) A plat for a subdivision created by the acquisition by the state, its agencies, instrumentalities, or political subdivisions, of a right-of-way, airport parcel, or land for a similar public purpose in an area outside a municipality that has the power of land use regulation and that is exercising platting authority, is subject only to the approval provisions of this section and any provision of AS 40.15.300 - 40.15.380 not in conflict with this section.

(c) A right-of-way acquisition plat must contain the

(1) location and name of the acquisition project;

(2) approximate timetable for the acquisition and construction;

(3) dimensions and area of the proposed tract, parcel, or parcels to be acquired and the remainder of the parcel or parcels;

(4) name of the record owner or owners of the subject parcels;

(5) signature and seal of the surveyor preparing the plat.

(d) The commissioner shall review each right-of-way acquisition plat for compliance with this section. If the plat does not meet the requirements of this section,

it shall be returned to the submitting agency with an explanation of the deficiencies. A plat for which the commissioner's approval is required under AS 40.15.300 may not be recorded under AS 40.17 without the commissioner's approval endorsed on the plat.

(e) After approval by the commissioner, the original plat shall be filed with the appropriate district recorder within 30 days by the submitting agency.

(f) The minimum monumentation requirements for

(1) right-of-way acquisition subdivisions are a 5/8" x 24" reinforcement bar with appropriate identification cap set on the margin of the right-of-way at all points marking the beginning and end of each curve and on tangents so that the distance between monumented points does not exceed 1,320 feet; an alternate method may be utilized that consists of placing primary type monuments at centerline points marking the beginning and end of each curve and on tangents so that no distance exceeds 1,320 feet; all recovered monumented property corners of records, the lines of which are intersected by a right-of-way acquisition, shall be monumented as part of the right-of-way plat, either on the right-of-way line or at the original monument position;

(2) an airport parcel and land for a similar public purpose subdivision not defined by centerline shall be as provided in AS 40.15.320.

(g) If construction of improvements is scheduled to follow the right-of-way acquisition, the placement of the centerline monuments may be delayed until the improvements have been completed, in which case a statement designating the schedule for placing the monuments must be included on the plat.

(h) The state, its agencies, instrumentalities, or political subdivisions may acquire or obtain conveyances, including dedication of lots or tracts of a right-of-way acquisition plat, before submittal of a right-of-way acquisition plat for approval by the commissioner. A right-of-way acquisition conveyance may be recorded before approval and recording of the right-of-way acquisition plat.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 40.15.900. DEFINITIONS. In this chapter,

(1) "commissioner" means the commissioner of natural resources;

(2) "monument" means a fixed physical object marking a point on the surface of the earth used to commence or control a survey or to establish a lot corner;