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LAND SELECTION AND MANAGEMENT  
IN ALASKAN MUNICIPALITIES

By

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B.S., University of Wisconsin-Stevens Point, 1976

Presented in partial fulfillment of the requirements  
for the degree of

Master of Science

University of Montana

1985

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## CHAPTER I

### INTRODUCTION

Since Alaska first became a territory of the United States in 1867, as a result of the Treaty of Cession, development of land management policies have become increasingly important.<sup>1</sup> These policies are clearly needed because of the increased pressure that has been placed on the state's resource base. Since the early days of the fur trader and trappers, Alaska has attracted resource oriented companies and people. The need for land management policies has emphasized the need for Federal, state and local governments to develop meaningful land management policies and guidelines. Where Federal and state governments have reserved much of their land for uses such as resource development, rights-of-ways reservations, etc.; local municipalities, especially in rural areas, have the only land which is readily available for purposes of development.

As a result of the strain placed on Alaska's resources, five key pieces of Federal legislation have been

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<sup>1</sup> Ernest Gruening, The State of Alaska, (New York: Random House), 1954, p. 24.

enacted. These pieces of legislation play a crucial role in land management in Alaska and are: 1) the Organic Acts of 1884 and 1912;<sup>2</sup> 2) the Native Allotment Act of 1906;<sup>3</sup> 3) the Alaska Statehood Act;<sup>4</sup> 4) the Alaska Native Claims Settlement Act;<sup>5</sup> and, 5) the Alaska National Interest Land Conservation Act.<sup>6</sup> In addition, there have been three pieces of state legislation which have also had an effect on land management in Alaska. They are: 1) the State Constitution;<sup>7</sup> 2) the Alaska Lands Act;<sup>8</sup> and, 3) the Municipal Entitlement Act.<sup>9</sup>

The purpose of this study is to provide the layperson involved in Alaska local government an overview of the major Federal and state legislation affecting land management in Alaska. Furthermore, this study provides the reader with a guidance for selection and management of locally owned public land as well as several methods which

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<sup>2</sup> Organic Act, 29 Stat. 24 (1884).  
<sup>3</sup> Native Allotment Act, 34 Stat. 170 (1906).  
<sup>4</sup> Alaska Statehood Act, 72 Stat. 339 (1958).  
<sup>5</sup> Alaska Native Claims Settlement Act 85 Stat. 688 (1971).  
<sup>6</sup> Alaska National Interest Lands Conservation Act, 94 Stat. 2371 (1980).  
<sup>7</sup> Alaska Const.  
<sup>8</sup> Mandatory Borough Act (Ch 180 SLA 1963).  
<sup>9</sup> Municipal Entitlement Act (Ch 180 SLA 1978).

the local government can use to implement these policies.

The Alaska Statehood Act conveyed 102.5 million acres of Federal land to the state for purposes of state and community development and expansion.<sup>10</sup> The Mandatory Borough Act and the Municipal Entitlement Act were the vehicles created for conveying Federal land through the state to the communities. With these acts, plus section 14 (c)(3) of the Alaska Native Claims Settlement Act (ANCSA), Alaskan municipalities have received or are in the process of receiving significant amounts of land making them, in many cases, the major landowner in the community.<sup>11</sup> Many of these municipalities are rural in nature. Some are quite isolated and still retain an economy which emphasizes a subsistence lifestyle. These same idyllic environments are on the verge of being adversely impacted by significant natural resource developments. Thus it is important that rural municipalities have methods for determining how to manage their land for the benefit of their residents.

To understand land management problems in Alaska it is important that the reader be aware of how Alaska municipalities came to own land. Thus, a brief history of

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Alan Epps, "Alaska National Interest Lands, A Congressional Dilemma", Journal of Soil and Water Conservation, (January-February) 1978, p. 8.

11

U.S. Congress, House. An act to provide for the settlement of certain land claims of Alaska Natives, and for other purposes. Pub. L. 92-203, 92nd Cong., 1st sess., 1971. H.R. 10367, p. 16.

land acquisitions is presented. This acquaints the reader with the reasons for the legislative actions and identifies some of the consequences resulting from poor land management practices.

The second section of this paper identifies the types of Alaskan municipalities and provides guidance for the selection and management of these lands. These techniques are useful in developing management policies for municipally owned land. This guidance utilizes the experience of the author which was gained by working as a planner in Alaska. This "experience factor" is interdigitated with recognized planning principles. Hopefully the discussion will serve as a starting point for stimulating the development and use of sound land management guidelines and policies in Alaskan municipalities.

## CHAPTER II

### FEDERAL LEGISLATION

#### INTRODUCTION

When Alaska was purchased from Russia on March 30, 1867, few people could even imagine the magnificent bargain the United States had just acquired for seven million<sup>12</sup> dollars. The land transaction consisted of 586,400 square miles, at a mere two cents per acre. It was a transaction which later proved to be a stroke of genius produced by the foresight of the Secretary of the Interior, William H. Seward.

The United States is indeed fortunate to have had a man with such vision, for the wealth and strategic location of Alaska can hardly be measured. Alaska's wealth first became evident with the Klondike Gold Rush in the late 1800's. This was followed by the discovery of gold on the beaches near Nome in northwest Alaska. The harvest of fur seals and sea otters together with a variety of land animals bearing valuable pelts added to the wealth. The salmon industry also prospered after the purchase by the United States. Today, salmon remains one of the major

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<sup>12</sup>

Gruening, The State of Alaska, p. 24.

economic activities in Alaska. However, it was the discovery of oil in the early 1960's near Prudhoe Bay north of the Arctic Circle which made the immense wealth of Alaska evident to the lower 48 states.

The strategic location of Alaska became evident during World War II. In 1942, Japanese forces invaded and occupied Attu and Kiska on the Aleutian Chain. Shortly thereafter, work began on the Alaska-Canadian Military Highway (ALCAN). The purpose of the ALCAN was to transport military supplies to Alaska. Several military bases were also constructed in the state. During the Cold War period, Alaska again played a significant role because of its proximity to the Soviet Union.

#### The Treaty of Cession

The Treaty of Cession, signed when Alaska was transferred to the United States, stated that Russian citizens residing in Alaska could return to Russia within three years. It further stated, if they chose to remain in Alaska, "they shall be admitted to the enjoyment of all rights, advantages and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property and religion." Thus, the Treaty of Cession gave rights to the Russians, but did nothing for

other citizens of the region.

THE ORGANIC ACT

For seventeen years after its purchase, Alaska was neglected with the exception of a large influx of miners and trappers. This influx created and emphasized the need for some type of Federal control over the region. This control was initiated with the Organic Act of 1884. But the Organic Act failed to provide United States citizens with the basic right of political representation.

The major obstacle to Alaska gaining political representation was the remoteness, the migratory character of its habitants and its small population. With the advent of the gold rush of the 1800's and the increased fishing and fur trapping activity more people migrated to the territory increasing the pressure for political representation. In addition, the population influx created significant conflict with the Native culture. The Organic Act of 1884 was purely administrative, providing Alaska with a governor, a clerk of court and four lesser judges. It did not provide for representation in Congress.

The stated intention of the committee sponsoring the bill which later became the Organic Act of 1884 was "to save

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Gruening, The State of Alaska, p. 49.

from all possible invasion the rights of Indian residents of Alaska until such time as the Secretary [of the Interior] could ascertain what their claims were."<sup>15</sup> The Act provided that Indians and whites were not to be disturbed regarding the possession or use of any lands. The method by which they would receive title to such lands was reserved for future congressional actions.<sup>16</sup>

It was not long before the inadequacies of the Organic Act prompted the white residents to voice their strong objections to not having the same political rights that were enjoyed by residents of other territories of the United States.

While the Natives still lacked fair treatment, the white residents were making inroads in representation. The Organic Act of 1912 provided for a semblance of home rule for Alaskans. Through this act, the residents could form their own legislature, but the legislature was highly limited in its powers.<sup>17</sup> For example, it could not alter or amend the existing laws pertaining to Alaska and the Federal Government had the final veto power over any legislation.

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<sup>15</sup>

Robert D. Arnold, Alaska Native Land Claims, Anchorage, Alaska, Alaska Native Foundation, 1976), p. 69.

<sup>16</sup>

Homestead Act of 1898 afforded settlers in Alaska the opportunity to acquire title to 80 acres, Alaska Natives had to wait until the Native Allotment Act of 1906 until they could obtain title to land.

<sup>17</sup> Gruening, The State of Alaska, p. 151.

In 1912, Alaska was made a territory of the United States. Until this time Alaska was simply a possession of the United States.

The Native Allotment Act of 1906

Some relief was provided through the Native Allotment Act of 1906 which allowed adult Natives to select and receive "restricted" title to 160 acres of public land. The Native to whom the title was issued could not sell or lease the property without the approval of the Secretary of the Interior.<sup>18</sup> The Native Townsite Act of 1926 allowed for the surveying of village lots and conveyance of "restricted" title of these lots. The title was held in trust by the United States government and could not be conveyed to another person without the permission of the Federal Government.<sup>19</sup>

The Statehood Act

The first of several statehood bills was introduced in Congress in 1943. Even though the residents of Alaska voted 9,630 to 6,822 in favor of statehood, the bill lacked strong support in Congress.<sup>20</sup> The next statehood bill was introduced in 1947. This time the bill had the support of

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<sup>18</sup> Arnold, Alaska Native Land Claims, p. 80.  
<sup>19</sup> Native Allotment Act, 34 Stat.170.  
<sup>20</sup> Gruening, The State of Alaska, p. 469.

the House Sub-Committee on Interior and Insular Affairs.

But Alaska was controlled by the Democratic party and the Republican party was in the White House -- a situation not conducive to success. Thus, the bill was defeated.

In 1952 another statehood bill was introduced. Although support for Alaska statehood was growing in Congress, President Eisenhower and his administration felt that Alaska was not ready for statehood, principally because of its small population and unstable economy.

Finally, in 1958 President Eisenhower had a change of mind and urged Congress to introduce legislation which would grant Alaska statehood. On May 21, 1958 H.R. 7999 was introduced in the House of Representatives -- a bill which dealt with the Territory's admission as a State.

This bill call for a land grant of 182,000,000 acres to the new state. An amendment by Representative William A. Dawson to reduce the land grant to 102,500,000 acres was accepted as was an amendment by Representative Jack West requiring the residents of Alaska to vote on whether or not the Territory should be admitted as a state.

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21

Ibid., p. 467.

22

Claus M. Naske, An Interpretive History of Alaska Statehood, (Anchorage: Alaska Northwest Publishing Company), p. 166.

23

Ibid., p. 163.

24

Ibid., p. 163.

The bill was passed on a roll call vote of 210 to 166. It was then sent to the Senate for concurrence. About the same time, the Senate introduced S.B. 50, which also provided for Alaskan statehood. Both the House and Senate bills were similar. The Senate floor manager of the Alaska bill, Senator Henry Jackson, accepted the House bill and introduced it in the Senate. On June 30, 1958 the Senate concurred with the House on a roll call vote.<sup>25</sup> The legislation was passed to the President and was signed into law on July 7, 1958. In August, residents of Alaska voted 40,452 to 8,010 for immediate admittance into the Union as a state.

The Statehood Act allowed the new state of Alaska to select 102.5 million acres of land over a 25 year period.<sup>26</sup>

Alaska also received 28 million dollars of transitional grants from 1960 to 1965. In addition, the Statehood Act granted Alaska the right to 90 percent of all revenues from Federal oil and mineral leases, sales, rentals and royalties within the new state.<sup>27</sup> The purpose of these measures was to help with the development and expansion of Alaska and its communities. Even so, the

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George Laycock, Alaska: The Embattled Frontier, Boston: Houghton Mifflin Company, 1971), p. 21.

26

Ibid., p. 7.

27

Gordon Scott Hanson, ed., Alaska Public Policy: Current Problems and Issues, (College, Alaska: Institute of Social, Economic and Government Research, 1971), p. 30.

magnitude of the transitional problems that faced Alaska were incomprehensible.

When statehood occurred, the Federal Government reserved 85 million acres of the state's 375 million acres for military use, national parks, wildlife refuges and national forests. Only 600,000 acres were in private ownership at that time.<sup>28</sup>

The selection of land by the State was complicated by Alaska Natives who feared they would lose land which was rightfully theirs. For generations they had used hundreds of thousands of acres for subsistence. The Statehood Act had clearly failed to meet the needs of the Alaskan Natives by not providing them with adequate land. In addition, state land claims threatened the Natives' way of life in that the state was allowed to claim the Natives' traditional hunting and fishing grounds.

Thus, claims on most of the land in Alaska were disputed by the Natives. The Natives felt that they had an aboriginal right to these lands and as such, they began filing claims on the land with the Secretary of the Interior. In 1966, Secretary of the Interior Stewart Udall put a freeze on all state land selections as well as native claims until the settlement of Native claims occurred.<sup>29</sup>

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28

Robert Cahn, "Alaska: A Matter of 80,000,000 Acres", Audubon, July 1974, p. 5.

29

Arnold, Alaska Native Land Claims, p. 117.

To complicate matters, the oil industry had just discovered major petroleum and natural gas deposits at Prudhoe Bay. With these finds, the largest new oil fields in the United States were about to be developed. This development was to include well development and the building an oil pipeline from Prudhoe Bay to Valdez, but the land freeze put a temporary halt to these plans. The reason was simply that the Natives laid claim to the Prudhoe Bay area as well as other areas of the state, including the land along the proposed right-of-way for the oil pipeline. The Natives felt they should receive compensation for the pipeline running through land that they claimed. With these issues confronting a nation and industry in the midst of an energy crisis, the Federal Government resolved the problems in a much more timely fashion than it had with other state problems.

To address the issue of native land claims the Federal Government established the Federal Field Committee For Development Planning In Alaska. <sup>30</sup> The Committee produced a document entitled "Alaska Natives and the Land", which discussed not only the social and economic status of the natives, but also their needs. <sup>31</sup> The Committee found that the Alaska Natives, who claimed two-thirds of the state,

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<sup>30</sup> Ibid., p. 126.

<sup>31</sup> Ibid., p. 127.

owned less than 500 acres in fee simple title and held  
restricted title to only 15,000 acres.

The Committee documented that the Native claims were indeed valid. The report recommended that 60 million acres would be required for Native subsistence. Seven to ten million acres should be owned outright by the Natives and the rest should be made available for their use. They also recommended that one billion dollars be appropriated as compensation for lands which were claimed by the Natives, but which had been selected and conveyed to the State.

The Alaska Native Claim Settlement Act

The recommendations of the Federal Field Committee became the basis of the Alaska Native Claims Settlement Act. The administration proposed the Alaska Natives Claims Settlement Act. The Act proposed giving the Natives 40 million acres in fee simple title, \$500 million in compensation which was to come from the Federal treasury and an additional \$500 million to come from mineral revenues on Federal land which the natives laid claim to, but did not receive.

The Alaska Federation of Natives introduced its own bill. It proposed a 60 million acre land withdrawal, an initial payment of \$500 million, perpetual sharing of minerals from land given up and the establishment of regional

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corporations.

The original administration bill, as amended, prevailed and was signed by President Nixon on December 18, 1971. It allowed for 40 million acres to be selected, of which twenty-<sup>34</sup> two million acres were to be reserved for Native villages. Of the remaining 18 million acres, the Native regional corporations would select 16 million with the remaining two million to be set aside for grants of lands to special Native corporations which exist in the non-Native<sup>35</sup> cities of Sitka, Kenai, Kodiak and Juneau.

The Act also established the Alaska Native Fund. This fund which amounted to 962.5 million dollars was financed by 462.5 million dollars from the Federal treasury paid over a 11-year period. The remaining 500 million dollars came from<sup>36</sup> the sale of mineral resources on Federal and state lands.

The regional corporations were to be the vehicles from which the Natives would receive the compensation. The Act established twelve corporations: 1) the Arctic Slope Native Association; 2) the Bering Straits Native Association; 3) the Northwest Alaska Native Association; 4) the Association of Village Council Presidents; 5) the Tanana Chiefs Conference;

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33  
Ibid., p. 130.

34  
Ibid., p. 149.

35  
Ibid., p. 151.

36  
Ibid., p. 146.

6) the Cook Inlet Native Association; 7) the Bristol Bay Native Association; 8) the Aleut League Native Association; 9) the Chugach Native Association; 10) the Tligint-Hiada/Central Council; 11) the Kodiak Area Native Association<sup>37</sup> and 12) the Copper River Native Association. Each corporation was allowed to select land based on a formula using population and size of the corporation land boundaries.

In addition to the Alaska Natives receiving land, the municipalities were also entitled to receive land from the local Native village corporations which were established by the Alaska Native Claims Settlement Act (ANCSA). Section 14(c)(3) of the act provided that the village corporations would convey a minimum of 1,280 acres to each municipality<sup>38</sup> within the corporation's boundaries.

The Alaska National Interest Land Conservation Act

The large number of acres (a minimum of 1280 acres) to be conveyed to each municipality presented problems and led to the inclusion of section 1405 in the Alaska National Interest Land Conservation Act of 1980 which amended section 14(c)(3) of ANCSA by allowing the village corporation and the municipality to agree on a lesser number of acres to be<sup>39</sup> conveyed. As a result, a municipality is now entitled to

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37

Ibid., p. 158.

38

Alaska Natives Claims Settlement Act, 85 Stat. 688, Section 14(c)(3).

receive an unspecified number of acres from the village corporation. The amount of land received depends upon negotiations between the municipality and the village corporation -- a much more sensible approach to case-by-case needs. The State received no land from ANCSA, but passage of the act did lift the land freeze on land selections within the state. Since passage of ANCSA, the State has selected land and has enacted legislation to convey a portion of that land through state land disposals and sales to municipalities and private individuals.

ANCSA also made provisions to get land into private ownership by allowing the village corporations to convey up to 1.5 acres to each shareholder. The projected land ownership in Alaska, once the selections have been completed by both the State and the Native corporations, will be sixty percent Federal land, twenty-eight percent State land, eleven percent Native private land, and one percent non-Native private land.<sup>40</sup> Federal legislation has had a significant impact on the land ownership patterns within the State of Alaska. After Alaska was purchased from Russia, the Federal Government controlled nearly one hundred percent of the land in Alaska. With the passage of the Homestead Act, private individuals became eligible to own land within the

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Alaska National Interest Lands Conservation Act, 94 Stat. 2371, Section 1402.

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Arnold, Alaska Native Land Claims, p. 272.

territory. Passage of the Statehood Act and ANCSA has changed the land ownership pattern dramatically. Land ownership is now dispersed among the Federal Government, the State, Native corporations, municipalities and the private sector.

The pieces of Federal legislation that have been discussed in this chapter were important in the historical evolution of Alaska. Some were more significant than other, in distributing land to native corporations, the state and local municipalities. But clearly, they set the stage for state legislation that was needed to finish the process of land distribution.

## CHAPTER III

### STATE LEGISLATION

#### Alaska Lands Act

Article VII of the Alaska Constitution states that it shall be the policy of Alaska to encourage the settlement of its land and the development of its resources by making land available for maximum use consistent with the public<sup>41</sup> interest.

To fulfill the intent of the state constitution, the Alaska Land Act of 1963 was passed. This Act established the initial process for transferring land to municipalities within the state. The purpose of the Act was to encourage the settlement of large boroughs and to give boroughs a source of revenue as well as a tool for community development. Organized boroughs were given the right to select ten percent of the "vacant, unappropriated, unreserved state land" within the municipality's<sup>42</sup> boundaries. In 1970, this right was extended to incorporated cities.

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<sup>41</sup>

Alaska Statute, Title 29, Chapter 43.

<sup>42</sup>

Kevin Waring Associates, Municipal Land Programs-State Conveyed Land, (Alaska Department of Community and Regional Affairs, 1982), p. 10.

It was the intention of the Alaska Lands Act to quickly transfer lands to entitled municipalities. Title 29 of the Alaska Statutes established general guidelines which the municipalities must follow when acquiring, holding and disposing of land.

### Municipal Entitlement Act

Because of significant questions concerning what constituted "vacant, unappropriated, and unreserved" state lands, the conveyance process moved along slowly. As a result, the Municipal Entitlement Act of 1978 was passed by the State legislature. Its purpose is:

"to remove uncertainties in the existing municipal land selection law of the state; to provide for an immediate final determination and settlement of municipal land entitlements; to provide for the completion of rational ownership patterns for sound land management; to provide for expeditious patent of land to municipalities to fulfill their respective entitlement; and, to provide payment for land within certain municipalities which are unable to receive full entitlement rights in appropriate vacant, unappropriated, unreserved lands."<sup>43</sup>

The entitlements of Alaska's municipalities are shown in Table 1. Entitlements of boroughs and unified municipalities are presented in Table 2. These entitlements were established by the legislature in the Entitlement Act of 1978. As a result of this Act, 868,935 acres will be transferred to 19 municipalities and one unified

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Alaska, Municipal Entitlement Act, Chapter 180, SLA 1978, section 1.

TABLE 1

## MUNICIPAL LAND ENTITLEMENTS

<u>CITY</u>	<u>ENTITLEMENT (acres)</u>
Bethel	40
Cordova	235
Delta Junction	400
Dillingham	1
Fairbanks	15
Homer	16
Hoonah	15
Houston	405
Kenai	307
Ketchikan	.5
Kodiak	32
North Pole	.5
Ouzinke	240
Port Lions	35
Seward	562
Skagway	500
Soldotna	14
Valdez	4,805
Yakutat	104
TOTAL	7,727

SOURCE: Kevin Waring Associates, Municipal Land Programs-State Conveyed Land, (Alaska Department of Community and Regional Affairs, 1982), p. 17-18.

TABLE 2

## BOROUGH AND UNIFIED MUNICIPALITY LAND ENTITLEMENTS

BOROUGH OR UNIFIED MUNICIPALITY	ENTITLEMENT(acres)
Municipality of Anchorage	44,893
City and Borough of Juneau	19,584
City and Borough of Sitka	10,500
Bristol Bay Borough	2,898
Fairbanks-North Star Borough	112,000
Haines Borough	2,800
Kenai Peninsula Borough	155,780
Ketchikan Gateway Borough	11,593
Kodiak Island Borough	56,500
Matanuska-Susitna Borough	355,210
North Slope Borough	89,850
TOTAL	861,608

SOURCE: Kevin Waring Associates, Municipal Land Programs-  
State Conveyed Land, (Alaska Department of Community and  
Regional Affairs, 1982), p. 17-18.

municipality, 8 boroughs and 2 city/boroughs within the state. This land is for community expansion and a source of revenue.<sup>44</sup>

The Entitlement Act accelerated the selection, approval and transfer process. It gave the municipalities until October 1, 1980 to complete their land selections. With a few exceptions, all land selections have been completed. At this time the emphasis is on state approval of the selections, surveying the land and issuance of the patents.

In reviewing municipal selections, the State Division of Lands considers the State's responsibility for protecting values which are of greater concern to the state than the municipality. Municipal interests which are to be considered in the State review include residential, commercial and industrial needs and other needs to fulfill responsibilities such as support of municipal services, education, local transportation and public recreation.

The State also reviews the selection in terms of the state's interests. The criteria for determining this interest include the parcels land classification according to the State's land use classification system, whether the parcel is reasonably free from hazards to public safety, and whether the parcel's location relative to other state land

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Ibid.

would make it more efficient for the State to administer and manage than the municipality.

Once the Division of Lands approves a municipality's selection, surveying of the parcel occurs. If the parcel has not been previously surveyed, the municipality is responsible for all costs.

The Department of Natural Resources, Division of Technical Services, reviews the survey for technical considerations. Upon approval of the survey a patent is issued for title to the parcel.

During the time between approval of the selection and issuance of the patent, the municipality has conditional use of the land. This allows the municipality to enter into conditional leases and sales agreements.

In addition to the above entitlement lands, the Alaska Lands Act has a provision requiring the state to convey land without remuneration to municipalities for specific public purposes. These lands are referred to as "315 lands" because of the particular section of the Alaska Statute--AS 38.05.315. There is no limit to the amount of "315 land" which a municipality may receive. However, the land must be used for public purposes such as school sites, parks, landfills, etc.

Title 29, Section 29.48.260 of the Alaska Statutes contains provisions by which municipalities may acquire, hold and dispose of property. The municipality can enter

into sales, leases, donations and exchanges of real property with the Federal Government, the state or a political subdivision. Any assembly or council shall by ordinance establish the procedures for sale, lease or disposition of real property. The value of the property must be determined by a qualified appraiser or the assessor. If the property is valued at more than \$25,000, the ordinance to dispose of the property must be ratified by the majority of the qualified voters voting in a general or special election.

The pieces of state legislation that have been discussed in this chapter were important in fulfilling the constitutional intent of encouraging the settlement of the state and development of its resources. These legislative acts established the amount of land to be conveyed to the municipalities and the procedures for conveying the land.

## CHAPTER IV

### FORMS OF ALASKA MUNICIPAL GOVERNMENT

Alaska is unique in its system of local government in that most of the state's land mass is not part of the regional governments incorporated under State law. Eleven borough governments have been formed since statehood. Nearly seventy-five percent of the land area lies outside of these boroughs in what is called the unorganized borough<sup>46</sup> (Map 1).

#### Boroughs

Boroughs are divided into three classes; home rule, second class and third class.<sup>47</sup> The mandatory powers available to the three classes of boroughs vary. Home rule and second class boroughs shall assess and collect property taxes, sales taxes, and use taxes. They shall also organize and operate a school system, and provide for planning, zoning and the platting of land. Third class boroughs shall only exercise powers in matters of education, tax assessment and

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<sup>46</sup> Alaska Department of Community and Regional Affairs, Division of Community Planning, Problems and Possibilities for Service Delivery and Government in the Unorganized Borough, September, 1981, p. 3.

<sup>47</sup> Ibid., p. 35.

tax collection.<sup>48</sup> The boroughs also have a number of descretionary powers. For example they may provide for garbage and solid waste collection and disposal, provide for water pollution control, provide for the acquisition and construction of local service roads and trails, and establish or participate in Federal and state government loan programs for housing rehabilitation and improvement for conservation of energy.

### Cities

There are three classes of cities in Alaska -- first and second class and home-rule cities. First class cities must have 400 or more permanent residents and second class cites have 25 to 400 residents.<sup>49</sup> Home-rule cities are first class cities which have adopted a charter.

Cities located within home rule and second class boroughs, which do not have home rule status, have the general powers as set forth in Chapter 48 of the Alaska Statutes, Title 29. They are: 1) to establish and prescribe the functions of municipal departments, offices or agencies;

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Alaska Statutes, Title 29, Chapter 33-42.

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Idem, Problems and Possibilities for Service Delivery and Government in the Unorganized Borough, September 1981, p. 35.

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A home rule municipality is a municipal corporation and political subdivision and is a city of the first class or an organized borough that has adopted a home rule charter. It has all legislative powers not prohibited by law or charter.

2) to establish and prescribe salaries for the elected and appointed municipal officers and employees; 3) to investigate the affairs of the municipality and to inquire into the conduct of municipal departments; 4) to enter into agreements, (for example, cooperative agreements or joint administration of any function or power with a local government), with the private sector ,the state, or with the United States; 5) to require periodic and special reports from municipal departments; 6) to sue and to be sued; 7) to levy taxes and special assessments; and, 8) to enforce ordinances and to prescribe penalties for ordinance violation.

Both, home rule cities within home rule and second class boroughs and first class cities in the unorganized borough have the powers of education, planning, zoning, platting, and tax assessment and collection.<sup>50</sup>

#### Options of Municipal Governments

In Alaska, a municipality can be one of a number of types. The Alaska Department of Community and Regional Affairs has provided the following outline of possibilities:

Unorganized Borough: Areas of the state which are not within the boundaries of an organized borough constitute a single unorgainzed borough.

Unified Municipality: An organized borough and all cities included within it may unite to form a single unit of home rule local government called a unified municipality.

Home Rule, Second, and Third Class Boroughs: An area may incorporate as an organized borough if it conforms to the following standards: (1). Populations of the area are interrelated integrated as to its social, cultural, and economic activities and is large and stable enough to support organized government; (2). The boundaries of the proposed borough conform generally to natural geography and include all areas necessary for full development of local government services; (3). The economy of the area includes the human and financial resources capable of providing local services; and, (4). Land, water, and air transportation facilities allow for communication and exchange necessary for the development of integrated local government.

Home Rule boroughs have three mandatory areawide powers; taxation, education, and planning, platting and zoning. Additional services such as police, water, sewer, etc. are added by action of the assembly. No vote of the people is required.

Second class boroughs also have the three mandatory areawide powers and may add additional services with the approval of the voters through a referendum.

Third class boroughs have two mandatory areawide powers, taxation and education.

First Class City: A community having 400 or more permanent residents.

If the city is not within a borough, by law it must provide planning, platting, zoning, taxation, and education. It can add other powers for services (police, sewer, water, etc.) by council action.

Second Class City: A community having 25 or more permanent residents.

If the city is not in a borough, it may provide planning, platting and zoning; however, it is not required by law to do so. It may add other powers for services (such as police, water, sewer, etc.)

by council action. The city does not have the power of education, therefore, the city is not a school district.<sup>51</sup>

Because of the vastness of Alaska and its small population, the State developed options of local governments. These governmental options are intended to provide local control to the extent desired. A less populated area can form a government, but that does not perform all the service functions of larger municipalities unless it has the capability and desire. The larger the population base, the more powers the municipality tend to have.

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Idem, Problems and Possibilities for Service Delivery and Government in the Unorganized Borough. September, 1981, p. 35.

## CHAPTER V

### SELECTION AND MANAGEMENT OF MUNICIPAL LANDS

#### Introduction

Chapter III and IV discussed how Alaskan municipalities received land and discussed briefly the types and powers of Alaskan municipalities. Most municipalities in Alaska are eligible to receive land from the state and/or native corporations.

It is important for municipalities to develop land management policies so that land received from the state will serve the purpose intended by the allocation program. This purpose is to provide the community with land to meet its needs and to encourage community economic development. In most instances the rural municipality is the largest landowner in the area. Since there are few large tracts that are privately owned, the municipality has the responsibility of providing residential, commercial, industrial, recreational and other lands.

This chapter provides guidance for selection and management of municipal lands. Various tools and factors must be developed or considered in the process of efficient land selection and management. These include the: 1) need

for an official municipal map; 2) need to understand the future rate of population growth or decline; 3) need for a land inventory; 4) need to determine municipal land requirements and which lands are suitable for these requirements; and, 5) how can a municipality develop and dispose of land.

#### Official Municipal Map

An official municipal map is clearly a useful document for locating land parcels and making preliminary management decisions. The map should be constructed at a useful scale consistent with the area encompassed by the municipality and map usefulness. Care should be exercised to use sound cartographic techniques in developing the map.

An official municipal map is useful as a tool for public as well as municipal use. The public might include realtors, builders, businessmen, industrial executives, taxpayer groups and the general public. The official municipal map can serve many functions for this diverse audience.

#### Population Growth

The level of population will have an affect on the amount of land required for various types of landuse. Being able to reasonably forecast population growth or decline will assist developing management policies for municipal lands.

The Alaska Department of Community and Regional Affairs has developed a computer model which forecasts population levels related to various resource development activities. This model will project the anticipated population levels throughout the life of a resource project, from construction through production. The model uses information such as the type of resource project, its size, the number of local people that would be hired, the number of skilled and unskilled workers involved and the number of supervisory positions required. Because of the importance of population growth or decline it is recommended that municipalities make use of this model.

#### Land Inventory

The first step in preparing a management program is to inventory all municipal land as well as all land available for selection. In most cases the municipally owned land is not one large tract, but constitutes numerous parcels scattered among diverse types of land use. The inventory will identify not only the location of the tracts but will be useful in determining their potential uses. It should include the legal description of each parcel, its size, identification number, and how the land was obtained (e.g., from the State under the municipal entitlement program, the 315 program, the Native corporations 14 (c)(3), or by some other means). Such information is important because land

obtained by various methods may have restrictions as to how it can be used. Other information that should be included in the inventory is the classification of all zoned land, the availability of municipal services, and any appraisal information which may be available.

### Municipal Land Requirements

#### Residential

As previously mentioned, in many rural municipalities little land is privately owned. Privately owned land occurs, for the most part, within the town limits -- the majority being residential lots and small commercial lots. Thus, the municipality should investigate the need for selecting land suitable for residential use, with a high priority given to selecting land in existing residential areas. For the most part, sewer, water and roads will already service these areas. Therefore, the municipality will minimize costs of providing expensive sewer, water and road projects to make these lots usable by the public.

The next sites to be considered for selecting residential lands would be those tracts adjacent to the corporate limits. This allows for connecting to existing sewer, water and road systems. Maps identifying locations of such services would be useful. Identifying these lands also helps to prevent "leap frog" development.

## Industrial

Many of Alaska's coastal municipalities simultaneously have multiple potential as industrial sites. These municipalities will need to identify which industrial uses will likely occur within their boundaries in the near future. The most likely industries that will develop in coastal regions are outer continental shelf oil and gas exploration, timber harvesting, uses associated with traditional fishing such as docks, repair facilities, fish processing activities, etc. and other types of natural resource type development.

In a region like Alaska, with significant isolated natural areas, the slightest increase in industrial activity can play a positive role in stimulating the economy and a negative role in creating problems. Of immediate importance is to identify potential industrial uses and needed future municipal services and facilities. A case in point is Yakutat. Presently Yakutat is serving as the onshore support facility for offshore exploratory drilling in the Gulf of Alaska. If the exploration proves successful, Yakutat will more than likely serve as the onshore support site for oil production platforms and will also have an onshore crude oil storage facility. These types of economic activity require substantial amounts of land that have direct access to water. If this type of land is owned by the municipality, it will be able to exert

greater control and influence over the oil industry's impact on the community. Another reason municipal control is needed is that increased economic activity will increase municipal population causing an increased demand for various types of landuse as well as accompanying support facilities. It is projected that Yakutat will grow from 463 in 1982 to over 2,000 by 1987 if commercial quantities of oil are discovered off its coast.<sup>52</sup>

Thus, as the Yakutat example illustrates, it is important for municipalities which have the potential to be affected by major levels of resource development to identify and acquire sites which will aid economic development and mitigate adverse human and natural impact. This can be accomplished by determining in advance the needed facilities and their locational requirements.

Municipalities with the potential of outer continental shelf development will want to have industrial facilities located away from the existing and future community residential areas and away from other marine oriented land uses such as fish processing facilities. Industrial facilities should be located away from anadromous fish streams, important watersheds and important wildlife habitat.

Environmentally sensitive areas can be identified on maps. United States Geological Survey (USGS) topographic

map show streams, lakes, coastal zones etc. and can be used to determine which areas are potentially suitable for industrial development. The first step is to identify and map environmentally sensitive areas. Important fish and wildlife habitat can be identified with the assistance of the Alaska Department of Fish and Game. Drainage areas for streams and coastal zones can be identified from a simple USGS map. More detailed studies will be needed once the type and size of the facility has been determined.

### Service

The municipality will want to ascertain future land needs for road extensions and sewer and water expansions. This can be done by analyzing surrounding areas to see if transportation access or municipal services will be needed at some time in the future. The most obvious service and facility needs are educational, medical, sewer, water, roads and administration. Identifying land for expansion of these uses requirements goes hand-in hand with forecasting future population increase or declines discussed earlier.

If the municipality can select land adjacent to existing service facilities and municipal buildings, the opportunity should not be missed since future expansion of those facilities and buildings may be necessary. If the municipality is anticipating a population increase, future sites for fire stations, and water wells should be

determined. These sites should be appropriately located consistent with new residential and industrial areas as expressed in the community's comprehensive development plan. It may be that groundwater potential studies will be needed to determine the exact location for municipal water wells.

#### LAND SUITABILITY

Once potential land selections have been identified, the next step is to determine which lands are suitable for development. Soils, groundwater, drainage, topography and slope are some of the physical attributes which need to be investigated and mapped on mylar maps at the same scale. Each of these attributes should be looked at separately as well as in combination with each other. A topographic map of the area with a contour interval of ten to twenty feet would be useful and can serve as a base map for overlaying the various physical attributes of the land.

For residential land, soil problem areas need to be avoided. A soils survey will help to identify the problem areas. In some instances this information can be acquired from the Soil Conservation Service; in others, the U.S. Forest Service.

Once the information is compiled separately, then the mylar maps can be overlaid on the base map, and areas suitable for residential development can be identified.

These areas should have deep, well drained soils with bedrock at least six feet below the surface and slopes of zero to twenty-five percent.<sup>53</sup> If a sanitary sewer is available, soils do not have to be well-drained, but consideration of shrink-swell problems is critical. Moderate slopes and areas of high surface water run-off are obvious limiting factors. Steep slopes and high surface run-off are of course not suitable for residential development.

In some larger municipalities as well as some of the smaller communities, where the communities do not provide community sewer services, rural residential lots can be developed. The primary criteria for development would be: slope, access, suitable soils for individual sewage disposal systems, the proximity of development to anadromous fish streams and potential water supply sources.

With regard to industrial and commercial land suitability, it is important to integrate appropriate physical attributes with good location and good design. Industrial activity conflicts with other types of land use and needs to be separated from them. For industry, good location is critical not only from the point of minimizing conflicts between land uses, but from providing a site with good transportation

access for inputs as well as outputs.

Commercial land should not be scattered helter-skelter throughout the community. Every effort should be made to strengthen the commercial core of small communities. Large communities can develop several commercial nodes with customer travel distances and convenience being an important variables. But clearly, many of Alaska's municipalities are of a size which would not justify multiple nodes.

Many of the studies, maps, and inventories discussed so far in this chapter would already exist in those communities which have a community comprehensive plan. Obviously, the existence of a plan and the selection of land within its context, makes good sense. However, in Alaska, small communities rarely have a community plan and the guidance provided here, if followed, can play a positive role in land selection in those communities.

#### LAND DEVELOPMENT AND DISPOSAL

Once the municipality has determined potential land uses for all community owned land, the process for developing and disposing of the land begins. There are several methods for doing this. Perhaps the easiest is to sell the land to private individuals for development. In doing this, the municipality can place important restrictions on the developer. For example, it can require

that streets, sewer, water and power in all residential developments be installed as a development cost. The legal justification for this can be found in Title 29 of the Alaska Statutes. This statute gives municipalities the power to control subdivisions. In addition, the statute prevents the developers from selling lots before the plat approval by the local Planning Commission. As such, there is an assurance of compliance with all regulations. In addition, traditional zoning can also assist in controlling the type and location of development. When individual lots are sold by the municipality, it can place contractual requirements on the sale of the land and therefore participate in the enforcement of the contractual conditions. For example, contractual conditions can specify covenants and a development schedule for the property which would protect the community from land speculation.

Another approach in developing/disposing community land is leasing of land by the municipality. Under a lease agreement, the municipality retains ownership of the land and retains the right to use it once the lease expires. Also, the municipality may stipulate in the lease agreement how the land will be used. The stipulation of how land will be used would be a good approach for municipalities which have oil and gas land or other natural resource exploration possibilities. Since many resource

developments are short term, 30 to 50 years, the municipality will regain use of the land at the end of the lease. Through lease agreements municipalities can not only attract the type of industry they want but can place appropriate restrictions on these uses.

Another method available in developing/disposing community land is to sell only the rights to use the land. This method is often used to promote a certain type of development. The difference between this method and a traditional lease is that the buyer now holds title to a use right, whereas with a lease, the leasee does not have title. Under this arrangement the buyer is better protected than with a regular lease arrangement because the buyer owns the rights for a particular kind of use and these rights do not expire until it is sold again by the owner. <sup>54</sup> This technique is similar to leasing land, with the exception that the developer is able to use the rights as collateral.

A final technique is for the municipality to develop the land itself and then sell the property. This method can be used for residential, commercial and industrial developments. The municipality can contract with engineering firms to do the platting and surveying and prepare engineering plans for streets, drainage, sewer,

water and lighting. Another contract is let for the construction of the improvements.

Several Alaskan municipalities have completed developments in such a fashion. The Kodiak Island Borough developed a 200 lot residential subdivision with roads and lots consistent with all Alaska Department of Environmental Conservation regulations and design standards. The City of Yakutat recently completed a 35 lot residential subdivision with roads, sewer and power. The cost of improvements in these developments is passed along in the cost of the lot usually in the form of a special assessment.

The City of Cordova is now in the process of developing a commercial park and an industrial park. It is anticipated that these two developments will expand the communities' economic base substantially.

#### CONCLUSION

The preparation of a set of land management policies for municipal land is important to efficient and meaningful development of a community. In some cases, municipal owned land represents a major land holding that is under the control of a single entity. The development of residential, commercial and industrial sites all play an important role in the economic development of the communities. Communities in Alaska can ill afford to miss opportunities of maximizing their economic and social well

being. Clearly, a systematic approach to resource management will enhance the probability of conscious, meaningful land development.

The purpose of this study has been to provide the layperson who is involved in Alaskan local government a quick overview of the major Federal and state legislation which has affected land management in Alaska and to provide some guidelines for municipal selection and disposal of land received from various Alaska land programs.

The effect Federal legislation has had on land management is that it has placed much of Alaska's land under State or corporate control. State legislation has then transferred some state lands to the municipalities. This transfer has provided the municipalities with a tool for community economic development and expansion.

The information presented in this study can be used by even the most rural community for the development of land management policies. In addition, it will help the municipality develop needed base data for decision making on a broad scale. The development of Alaskan communities rests in part with the development of community owned land. It is hoped that Alaskan communities accept the challenge that is before them -- responsible management of municipal lands.

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