

Ron Swanson
Director, Division of Land
Department of Natural Resources

December 14, 1993

661-94-0104

269-5240

Yakutat
municipal

City and Borough of
incorporation of
entitlement

Nancy J. Nolan
Assistant Attorney General
Natural Resources, Anchorage

This memorandum addresses the effect of the dissolution of the City of Yakutat and simultaneous incorporation of the City and Borough of Yakutat on the general grant land entitlement of the newly incorporated municipality. Basically, you have asked whether the entitlement made to the City of Yakutat prior to its dissolution should be credited toward fulfillment of the entitlement of the newly incorporated municipality.

Your office previously forwarded an August 3, 1993, letter from James Brennan to Ron Schonenbach, of your Southeastern regional office, protesting the credit of conveyances made to the former City of Yakutat under AS 38.05.810 against the entitlement of the City and Borough of Yakutat. In his letter, Mr. Brennan asserts that conveyances made pursuant to AS 38.05.810 can only be credited against "remaining entitlements" in existence at the time of the section 810 conveyance. Mr. Brennan reasons that since the City and Borough of Yakutat was not in existence at the time of the section 810 conveyances, formation of the new municipality creates a new entitlement right unaffected by section 810 conveyances previously made to the City of Yakutat. However, the statutory definition of "remaining entitlement" does not support Mr. Brennan's assertion that the determination of remaining entitlement must be made at the time of the conveyance, thus prohibiting credit of general grant lands conveyed to the former municipality against the entitlement of the new municipality. Furthermore, the result urged by Mr. Brennan is contrary to the policy expressed in Title 29 of the Alaska Statutes.

According to your October 4, 1993, memorandum, the City of Yakutat dissolved pursuant to the authority granted in Alaska Statute 29.06.450(c), which provides: "A city is dissolved when all its powers become areawide borough powers." Alaska Statute 29.06.520 provides: "A municipality succeeding to a dissolved municipality succeeds to all assets and liabilities of the dissolved municipality."* Pursuant to AS 29.06.520, when the City and Borough of Yakutat was formed, it succeeded to the assets and liabilities of the former City of Yakutat, including

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general grant lands conveyed to the former municipality pursuant to AS 29.65 and AS 38.05.810. Since the newly incorporated City and Borough of Yakutat receives the benefit of lands previously conveyed to the City of Yakutat, determination of the new entitlement of the City and Borough of Yakutat should take account of conveyances made to its predecessor.

This is consistent with the interpretation of AS 29.06.150(a) and (b) set forth in a September 16, 1993, memorandum from this office regarding the effect of mergers and consolidations on general land grant entitlement rights. Additionally, this interpretation is supported by the policy of AS 29.10.200, limiting the power of home rule municipalities to alter certain provisions of law, including AS 29.65 governing general grant land.

The policy expressed by a full reading of Title 29 is that municipal alterations through such devices as mergers, consolidations, and dissolutions should not be used to arbitrarily enlarge the rights granted in AS 29.65. To permit a municipal alteration to trigger a new entitlement without regard to prior conveyances under AS 29.65 or 38.05.810 would result in certain municipal lands being counted twice in the determination of a municipal entitlement. To allow the result urged by Mr. Brennan would permit municipalities to abuse legitimate means of municipal alterations in order to gain such an advantage. That practice would contravene the orderly determination of entitlement based on the factors set forth in AS 29.65.010 -- 29.65.030. Finally, to allow altered municipalities to claim an additional entitlement without regard to former conveyances would elevate the form of the municipal alteration over its substance.

Therefore, the position taken by the Department in the July 9, 1993, letter signed by Ron Schonenbach is correct. Please let me know if our office can provide any additional assistance in this matter.

cc: Dennis Daigger
Arlan DeYoung

* This statute applies to home rule and general law municipalities. It is similar to AS 29.06.150, governing the effect of municipal mergers and consolidations.