

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MATANUSKA-SUSITNA BOROUGH, an)
Alaskan Municipal Corporation,)

Plaintiff,)

vs.)

STATE OF ALASKA, ALASKA)
DEPARTMENT OF NATURAL)
RESOURCES, ALASKA DIVISION)
OF LAND; GLENN A. OLDS,)
COMMISSIONER OF THE ALASKA)
DEPARTMENT OF NATURAL)
RESOURCES; and RON SWANSON,)
DIRECTOR OF THE ALASKA)
DIVISION OF LAND,)

Defendants.)

Case No. 3AN-91-8375 Civil

FILED ALASKA
STATE OF ALASKA
THIRD DISTRICT
92 DEC 11 PM 4:22
CLERK, JUDICIAL COURTS
BY DEPUTY CLERK

STIPULATION FOR DISMISSAL WITH PREJUDICE
UPON ACCEPTANCE OF SETTLEMENT AGREEMENT

Plaintiff Matanuska-Susitna Borough and defendants State
of Alaska, Alaska Department of Natural Resources, Alaska Division
of Land, Glenn A. Olds, Commissioner of the Alaska Department of
Natural Resources, and Ron Swanson, Director of the Alaska
Division of Land, through their undersigned counsel, stipulate as
follows:

1. The Agreement and Compromise Settling Litigation
dated December 10, 1992, between the parties shall be submitted to
the Superior Court for acceptance.

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DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 268-6100

1 2. Upon acceptance by the Court, the litigation shall
2 be dismissed with prejudice, each party to bear its own costs, and
3 attorney's fees.

4 Respectfully submitted at Anchorage, Alaska.

5
6 December 11, 1992

Thomas E. Meacham
Thomas E. Meacham
Burr, Pease & Kurtz
Counsel to the Matanuska-
Susitna Borough

9 CHARLIE E. COLE
10 ATTORNEY GENERAL
11 Counsel for Defendants

12 December 11, 1992

By: *Elizabeth J. Barry*
Elizabeth J. Barry
Assistant Attorney General

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I hereby certify that this is a true and correct copy of the original on file in my office.

ATTEST:

Clerk of the Trial Courts at Anchorage

By: *James R. Borch* 12-22-92
Deputy Date

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
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Defendants.)

FILED
STATE OF ALASKA
THIRD DISTRICT
DEC 11 PM 4:22
CLERK OF TRIAL COURTS
BY DEPUTY CLERK

Case No. 3AN-91-8375 Civ.

AGREEMENT AND COMPROMISE SETTLING LITIGATION

This Settlement Agreement is entered into this 10th
day of December, 1992, between plaintiff Matanuska-Susitna
Borough (the "Borough"), and defendants State of Alaska, Alaska
Department of Natural Resources, Alaska Division of Land, Glenn
A. Olds, Commissioner of the Alaska Department of Natural
Resources, and Ron Swanson, Director of the Alaska Division of
Land (collectively the "State"), through their respective
undersigned principals and counsel.

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For and in consideration of the mutual promises, covenants, acts and forbearances from acting which are stated in this Settlement Agreement, the parties plaintiff and defendant to this litigation agree as follows:

1. Amendment of Existing Land Patents. Certain land patents previously issued by the State to the Borough under the Municipal Land Entitlement Act, AS 29.65.010-.140 (the "Act"), and its predecessor statutes contain the following non-development covenant or condition:

Said public access easement shall be identified by the grantee and shall be subject to the covenant that no development or conveyance shall occur on the land conveyed by this patent until the grantee has platted such easements and formally notified the grantor of the location of such public access easements.

Upon execution by the parties and acceptance by the court, this Settlement Agreement shall be recorded by the Borough. The eighty-four (84) affected land patents previously issued by the State to the Borough (copies of which are contained in Exhibit "B" to the Borough's complaint in this litigation and which are listed in Attachment I to this Settlement Agreement) shall thereupon be deemed amended by deletion of the non-development covenant or condition quoted immediately above and by insertion of the following paragraph in complete substitution therefor:

The Borough, by recordation of the Settlement Agreement in Matanuska-Susitna Borough v. State of Alaska, et al., (3AN-91-8375 Civil) covenants and agrees to identify and provide,

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Agreement and Compromise Settling Litigation - 1
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by suitable reservations and dedications, easements to ensure public access in perpetuity pursuant to AS 38.05.127 along all navigable or public water bodies previously determined by the State and identified in each affected patent, or identified by mutual agreement during the Borough land entitlement audit, and to such water bodies from the nearest existing public easement, which may include roads, trails, surveyed or protracted section line easements dedicated under AS 19.10.010 and any surveyed, protracted, or dedicated quarter-section easement, at intervals of approximately one mile in conformity with AS 38.05.127(f), or by metes and bounds descriptions provided in individual instruments.

The Borough further covenants and agrees that the free public access easements to and along the identified water bodies will be reflected in any subsequent land surveys, subdivision plat notes, and/or conveyances by the Borough pertaining to any land conveyed by the State's patents which is adjacent to such water bodies;

Provided, however, that public access shall not be reserved by the Borough if a dedicated public access easement to any such water body already exists across land owned by the State, by the Borough or by a third party within a distance of not more than one mile from the land conveyed to the Borough under the Act.

2. Future Conveyances under the Act. With regard to future conveyances of land to the Borough under the Act which, as of the date of this Settlement Agreement, have been approved by a final decision document issued by the State and accepted by the Borough, the State agrees to issue its patents

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Agreement and Compromise Settling Litigation - 2
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in due course in conformity with Paragraph 1 of this Settlement Agreement, and the Borough agrees to be bound by the covenants and agreements stated in that paragraph.

In all other future conveyances by the State to the Borough under the Act, the State agrees that where practical and feasible, it will determine and identify both the navigable or public water bodies as defined by AS 38.05.965(12) and (16), and the easements for free public access to and along such water bodies required to be reserved by AS 38.05.127, prior to issuance of a final decision to convey the affected land to the Borough. Easements to such water bodies may be reserved by survey, metes and bounds descriptions or by plat notes on the State's survey plats in the form stated in Paragraph 3 of this Settlement Agreement. However, at the election of the Borough and with the concurrence of the State, future conveyances may be issued to the Borough under the Act in which easements required by AS 38.05.127 are not reserved by specific description or identification. In such cases, the State and the Borough agree that the amendatory covenant stated in Paragraph 1 of this Settlement Agreement shall be stated in the survey plat and in the newly-issued conveyance, and the Borough agrees to be bound thereby. The State agrees that the non-development covenant previously used by the State in its

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Agreement and Compromise Settling Litigation - 3
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patents to the Borough under the Act, and which is the subject of the above-captioned litigation, will not appear in future state land conveyances to the Borough under the Act.

3. State's Form of Plat Note. The State agrees that in fulfillment of its statutory duty pursuant to AS 38.05.127 to reserve free public access easements to and along the navigable or public water bodies it determines and identifies in its future land patents to the Borough under the Act, the State will include in its survey instructions a requirement to include a plat note in substantially the following form:

There is hereby reserved and dedicated a public access easement 50 feet wide, along the ordinary or mean high water line of the navigable or public water bodies within this survey shown on the plat or identified as named or unnamed water bodies which have been determined and identified by the State in fulfillment of AS 38.05.127(a), as shown on this plat. There is further reserved and dedicated a public access easement 50 feet wide, to the identified navigable or public water bodies within this survey, in fulfillment of AS 38.05.127(a) and (f), as shown on this plat.

4. Borough's Form of Plat Note. The Borough agrees that in fulfillment of its covenant to reserve free public access easements to and along the navigable or public water bodies identified by the State in its land patents, or identified by mutual agreement during the Borough land

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entitlement audit¹, the Borough will include in any subsequent land survey or subdivision plat of the affected land a plat note in substantially the following form:

There is hereby reserved and dedicated a public access easement 50 feet wide along the ordinary or mean high water line of all navigable or public water bodies within this survey which were determined by the State and identified in its survey plat and its patent of this land to the Borough, or which have been identified by mutual agreement during the Borough land entitlement audit, in fulfillment of AS 38.05.127(a), as shown on this plat. There is further reserved and dedicated a public access easement 50 feet wide to all navigable or public water bodies within this survey which were determined by the State and identified in its survey plat and its patent of this land to the Borough, or identified by mutual agreement during the Borough land entitlement audit, in fulfillment of AS 38.05.127(a) and (f), as shown on this plat.

5. Implementation of the Borough's Public Access Easements. The Borough agrees that upon the survey, subdivision, or conveyance of any Borough-owned land adjacent to a navigable or public water body which has been identified by the State pursuant to AS 38.05.127 in its survey plat and

¹ For purposes of this Settlement Agreement and the amendatory patent covenant stated in Paragraph 1 of this Settlement Agreement, the term "Borough land entitlement audit" refers to the specific administrative process, and the results of that process, which were agreed to by the Matanuska-Susitna Borough and the Division of Land, Alaska Department of Natural Resources, in the Memorandum of Understanding between those parties dated August 25, 1992, a true copy of which is Attachment II to this Settlement Agreement.

its patent to the Borough, or which has been identified by mutual agreement during the Borough land entitlement audit; or upon the survey, subdivision or sale of any Borough-owned land lying between such a water body and the nearest dedicated public access easement (whether an existing or surveyed dedicated public access easement, surveyed or protracted section line, surveyed, protracted or dedicated quarter-section line, or metes and bounds description), the Borough will specify the location of the easements reserved in the covenant stated in Paragraph 1 above and/or the form of plat note stated in Paragraph 4 above. The Borough may further require the survey of the reserved public access easements in conjunction with the subsequent development or disposal of the affected land. The Borough may not be required to acquire privately-owned land to meet the easement obligations stated in this Agreement, except in the subsequent provision of alternate access pursuant to Paragraph 6 of this Settlement Agreement.

6. Reservation of Alternate Public Access. The State, Division of Land, shall be notified of the proposed vacation of a section line, quarter-section line, or other existing public access easement which serves as access to a navigable or public water body determined by it, and pursuant to AS 38.05.127(d) the State must concur before such vacation can become effective. If a continuing right of access is

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necessary to fulfill the requirements of AS 38.05.127, the Borough agrees to reserve, dedicate, acquire, or otherwise provide for suitable alternate public access to reasonably meet that criterion.

7. Public Notice. The State will give public notice of this Settlement Agreement in accordance with AS 38.05.945 prior to submission to the court for approval.

8. Dismissal of Litigation. Upon the respective parties' agreement to the terms and conditions stated in this Settlement Agreement and their acceptance by the court, the above-captioned litigation shall be dismissed with prejudice, with each party to bear its own costs and attorney fees. The parties' respective legal counsel are authorized to execute and file a suitable stipulation dismissing this litigation upon such terms.

9. Entire Agreement. This Settlement Agreement and its Attachments I and II comprise the entire agreement between the parties with regard to settlement and dismissal of the above-captioned litigation. No other verbal or written representations shall be binding upon the parties, or either of them, which conflict with or purport to modify any of the terms herein.

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FOR THE BOROUGH:
MATANUSKA-SUSITNA BOROUGH

FOR THE STATE:
STATE OF ALASKA

By *Don Moore*
Don Moore
Borough Manager

By *Glenn A. Olds*
Glenn A. Olds
Commissioner of Natural
Resources

By *John J. Duffy*
John J. Duffy
Planning Director

By *Ron Swanson*
Ron Swanson
Director,
Alaska Division of Land

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Michael Gatti
Michael Gatti
Borough Attorney

Charles E. Cole
Attorney General

By: *Elizabeth J. Barry*
Elizabeth J. Barry
Assistant Attorney General

Thomas E. Meacham
Thomas E. Meacham
Burr, Pease & Kurtz
Counsel to MATANUSKA-SUSITNA
BOROUGH

I hereby certify that this is a true and
correct copy of the original on file in my office.
ATTEST:
Clerk of the Trial Court of Anchorage
By: *James R. Bondi* 12-22-90
Deputy Date

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RESOURCES; and RON SWANSON,)
DIRECTOR OF THE ALASKA)
DIVISION OF LAND,)

Defendants.)

Case No. 3AN-91-8375 Civ.

DESCRIPTION OF LANDS AFFECTED

Plaintiff/Grantee:

Matanuska-Susitna Borough
350 E. Dahlia Avenue
Palmer, AK 99645-6488

Defendant/Grantor:

State of Alaska
Department of Natural Resources
Division of Land
3601 C Street
P.O. Box 107005
Anchorage, AK 99510-7005

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BOOK 0142) PAGE 0342

BOOK 0704 PAGE 487

<u>Alaska State Patent Number</u>	<u>Original Recording Book/Page</u>	<u>Legal Description: Section, Township, Range</u>
4730	74/47 (Talkeetna)	Secs. 15, 16, 21, 22, T.24N., R.7W., S.M.
4785	73/968 (Talkeetna)	Sec. 4, T.21N., R.9W., S.M.
4811	74/242 (Talkeetna)	Sec. 3, T.26N., R.8W., S.M.
4813	74/49 (Talkeetna)	Sec. 25, T.26N., R.7W., S.M.
5012	211/55 (Palmer)	Secs. 1, 2, 6, 7, 8, 11, 12, 17, 18, 20, 29, 30, 32, T.20N., R.4W., S.M.
5013	210/746 (Palmer)	Secs. 1, 2, 11, 14, T.19N., R.5W., S.M.
5014	210/748 (Palmer)	Secs. 12, 13, 23, 24, 25, 26, 36, T.19N., R.5W., S.M.
5020	212/553 (Palmer)	Secs. 1, 3, 4, 5, 8, 9, 10, 30, 31, T.16N., R.3W., S.M.
5021	212/555 (Palmer)	Secs. 20, 29, T.16N., R.3W., S.M.
5022	211/59 (Palmer)	Secs. 3, 10, T.22N., R.4W., S.M.
5023	211/57 (Palmer)	Sec. 11, T.22N., R.4W., S.M.

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<u>Alaska State Patent Number</u>	<u>Original Recording Book/Page</u>	<u>Legal Description: Section, Township, Range</u>
5023/ 8084	414/166 (Palmer)	Sec. 11, T.22N., R.4W., S.M.
5024	216/744 (Palmer)	Secs. 5, 7, 18, 19, 26, 27, 29, 30, 31, 32, 33, 34, 35, T.22N., R.4W., S.M.
5046	74/689 (Talkeetna)	Secs. 4, 9, 10, 22, 23, 26, 35, T.24N., R.5W., S.M.
5047	74/692 (Talkeetna)	Secs. 13, 15, 22, 23, T.24N., R.5W., S.M.
5109	74/694 (Talkeetna)	Sec. 17, T.26N., R.4W., S.M.
5123	212/612 (Palmer)	Sec. 4, T.19N., R.5E., S.M.
5148	218/390 (Palmer)	Sec. 4, T.18N., R.4W., S.M.
5149	216/740 (Palmer)	Secs. 7, 8, T.18N., R.3E., S.M.
5153	216/742 (Palmer)	Secs. 23, 25, 26, 32, T.18N., R.2W., S.M.
5162	214/939 (Palmer)	Sec. 16, T.17N., R.1W., S.M.
5166	217/367 (Palmer)	Secs. 35, 36, T.19N., R.5W., S.M.
5167	75/736 (Talkeetna)	Sec. 36, T.24N, R.4W., S.M.
5168	75/897 (Talkeetna)	Secs. 28, 29, T.22N., R.5W., S.M.
5170	216/738 (Palmer)	Secs. 2, 8, 11, 12, 13, 24, 25, 26, T.21N, R.4W., S.M.

<u>Alaska State Patent Number</u>	<u>Original Recording Book/Page</u>	<u>Legal Description: Section, Township, Range</u>
5180	216/736 (Palmer)	Secs. 1, 2, 4, 17, 29, 36, T.23N., R.4W., S.M.
5182	216/734 (Palmer)	Sec. 18, T.20N., R.7E., S.M.
5185	216/730 (Palmer)	Secs. 26, 34, T.19N., R.1E., S.M.
5186	76/285 (Talkeetna)	Sec. 7, T.28N., R.4W., S.M. Sec. 12, T.28N., R.5W., S.M.
5200	218/392 (Palmer)	Sec. 35, T.20N., R.5E., S.M.
5211	546/317 (Anchorage)	Sec. 18, T.16N., R.6W., S.M. Sec. 13, T.16N., R.7W., S.M.
5229	218/388 (Palmer)	Sec. 8, T.18N., R.1E., S.M.
5279	222/755 (Palmer)	Secs. 27, 34, T.20N., R.8E., S.M.
5280	222/757 (Palmer)	Secs. 26, 34, T.20N., R.8E., S.M.
5281	80/799 (Talkeetna)	Secs. 5, 17, 19, 20, 29, 30, 31, 32, T.25N., R.4W., S.M.
5305	222/709 (Palmer)	Secs. 2, 3, 6, 9, 10, 12, T.16N., R.3W., S.M.
5306	222/711 (Palmer)	Sec. 16, T.16N., R.3W., S.M.
5307	77/642 (Talkeetna)	Sec. 1, T.25N., R.5W., S.M.
5324	222/753 (Palmer)	Secs. 7, 18, 19, T.20N., R.4W., S.M.

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<u>Alaska State Patent Number</u>	<u>Original Recording Book/Page</u>	<u>Legal Description: Section, Township, Range</u>
5341	77/640 (Talkeetna)	Sec. 13, T.25N., R.5W., S.M.
5351	222/751 (Palmer)	Secs. 5, 22, 34, T.16N., R.4W., S.M.
5386	242/050 (Palmer)	Secs. 1, 8, 19, T.17N., R.3W., S.M.
5390	238/812 (Palmer)	Sec. 16, T.17N., R.3W., S.M.
5395	80/928 (Talkeetna)	Sec. 18, T.25N., R.4W., S.M.
5401	242/048 (Palmer)	Secs. 31, 32, T.22N., R.4W., S.M.
5404	82/610 (Talkeetna)	Secs. 15, 25, 36, T.24N., R.5W., S.M.
5470	252/660 (Palmer)	Secs. 16, 17, 18, 20, 28, 29, 32, 34, T.19N., R.4W., S.M.
5501	252/665 (Palmer)	Sec. 31, T.19N., R.4W., S.M.
5511	80/930 (Talkeetna)	Secs. 29, 30, 32, T.26N., R.4W., S.M.
5537	249/142 (Palmer)	Secs. 5, 6, T.15N., R.3W., S.M.
5538	249/138 (Palmer)	Secs. 5, 9, 10, T.15N., R.3W., S.M.
5560	229/259 (Palmer)	Secs. 26, 35, 36, T.16N., R.5W., S.M.
5726	81/876 (Talkeetna)	Secs. 1, 2, 3, 4, 9, 10, 15, 16, T.16N., R.5W., S.M.

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BOOK 0704 PAGE 491

<u>Alaska State Patent Number</u>	<u>Original Recording Book/Page</u>	<u>Legal Description: Section, Township, Range</u>
5790	621/078 * (Anchorage)	Sec. 28, T.18N., R.12W., S.M.
5814	239/736 (Palmer)	Secs. 2, 10, 11, 12, 22, 27, 28, 29, T.14N., R.4W., S.M.
5815	239/738 (Palmer)	Sec. 3, T.14N., R.4W., S.M. Sec. 34, T.15N., R.4W., S.M.
5820	238/808 (Palmer)	Sec. 16, T.18N., R.1W., S.M.
5825	243/993 (Palmer)	Secs. 19, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, T.17N., R.4W., S.M.
5826	239/740 (Palmer)	Sec. 30, T.22N., R.4W., S.M.
5828	243/991 (Palmer)	Secs. 9, 16, 17, 18, 20, T.16N., R.4W., S.M.
5838	80/492 (Talkeetna)	Secs. 4, 5, 8, 9, 17, 20, 29, 32, T.27N., R.6W., S.M.
5839	80/490 (Talkeetna)	Sec. 16, T.26N., R.4W., S.M.
5848	80/488 (Talkeetna)	Secs. 25, 26, 27, 28, 29, 30, T.26N., R.6W., S.M.
5852	246/191 (Palmer)	Secs. 23, 25, 26, 36, T.16N., R.5W., S.M.
6157	82/614 (Talkeetna)	Secs. 1, 12, 13, T.26N., R.6W., S.M.
6158	82/612 (Talkeetna)	Secs. 7, 8, 17, 18, 19, 20, 29, 30, T.26N., R.3W., S.M.

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Attachment I

<u>Alaska State Patent Number</u>	<u>Original Recording Book/Page</u>	<u>Legal Description: Section, Township, Range</u>
6164	249/140 (Palmer)	Secs. 1, 4, 25, 34, 35, 36, T.15N., R.4W., S.M.
6195	692/393 (Anchorage)	Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 29, 30, T.16N., R.6W., S.M.
6393	85/590 (Talkeetna)	Secs. 3, 10, 11, 14, 23, 26, T.19N., R.6W., S.M.
6403	765/947 (Anchorage)	Secs. 15, 16, T.16N., R.6W., S.M.
6421	85/224 (Talkeetna)	Secs. 6, 7, 19, T.25N., R.5W., S.M.
6487	85/228 (Talkeetna)	Secs. 2, 3, 4, 9, 10, 11, 14, 15, 16, 19, 21, 22, 23, 27, 29, 30, 31, 33, T.26N., R.5W., S.M.
6488	85/226 (Talkeetna)	Secs. 4, 9, T.21N., R.9W., S.M.
6631	280/077 (Palmer)	Sec. 15, T.17N., R.4W., S.M.
6727	296/844 (Palmer)	Sec. 32, T.18N., R.1W., S.M.
6739	87/503 (Talkeetna)	Secs. 2, 11, 17, 19, 20, 23, 24, 26, 30, 31, 35, 36, T.25N., R.5W., S.M.
6744	89/129 (Talkeetna)	Secs. 5, 6, 7, 8, 26, 35, T.26N., R.5W., S.M.
6785	296/842 (Palmer)	Secs. 10, 15, T.18N., R.4W., S.M.
6832	296/839 (Palmer)	Secs. 18, 20, 21, 33, 34, 35, T.14N., R.4W., S.M.

Alaska State Patent Number	Original Recording Book/Page	Legal Description: Section, Township, Range
7195	97/123 (Talkeetna)	Sec. 26, T.26N., R.6W., S.M.
7839	391/801 (Palmer)	Secs. 16, 17, T.14N., R.4W., S.M.
8543	111/665 (Talkeetna)	Sec. 30, T.26N., R.4W., S.M.
10505	1928/299 (Anchorage)	Secs. 5, 6, 7, 8, T.16N., R.5W., S.M.
10780	2252/458 (Anchorage)	Secs. 1, 12, T.16N., R.7W., S.M.

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I hereby certify that this is a true and correct copy of the original on file in my office.

ATTEST:

Clerk of the Trial Courts at Anchorage

By *James H. Bondi* 12-22-92
 Deputy Date

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Memorandum") is entered into between the Matanuska-Susitna Borough and the Alaska Department of Natural Resources, Division of Land:

W I T N E S S E T H:**I. Introduction**

a. In cooperation with the Matanuska-Susitna Borough ("MSB"), the Alaska Department of Natural Resources, Division of Land ("DNR") has developed an audit process for the Matanuska-Susitna Borough's land selections. A purpose of the audit is to determine the current status of the MSB's 355,210 acre land entitlement and to establish a procedure to verify acreages conveyed and to provide for future conveyances to the MSB.

b. Another purpose of the audit is to satisfy the requirements of AS 38.05.127 as implemented in the Settlement Agreement (the "Agreement") between the DNR and the MSB resolving Case Number 3AN-91-8375 Civil (Matanuska-Susitna Borough v. State of Alaska, et al.). This goal has been made a part of the audit process and will involve the review and determination of which waterbodies and watercourses within state lands conveyed to or selected by the MSB are navigable or public, and are therefore subject to the easement requirements of AS 38.05.127 and the Agreement. This aspect of the audit will lead to a final determination and identification of submerged lands which are retained by the State of Alaska ("SOA") and are therefore not chargeable against the MSB acreage entitlement. It will also determine what easement requirements will be imposed on the MSB. In addition, the audit will be used to verify, update and correct the DNR land administration data base and land status plats.

II. General Methodology and Results of Audit

a. The audit will determine how many acres of land have been patented to the MSB, and will estimate how many acres have been approved for patent to the MSB (the patented and approved acreage being the MSB's "chargeable acreage"), so that the amount of remaining land entitlement and the location of the MSB's remaining land selections can be identified.

b. The method to be used to arrive at chargeable acreage figures will involve the review of all decisions and surveys in each DNR land selection file which has resulted in patent or approval for patent to the MSB. There will be a specific acreage amount associated with each land selection, decision, patent, and approval. Any adjustments of acreage based on surveys and the specific criteria set out in this Memorandum will lead to the tabulation of total patented acres.

c. Protracted measurements using the specific criteria set out in this Memorandum will lead to a verified estimate of total acres approved for patent but not yet surveyed. The total chargeable acreage of the tabulation and the estimate will together provide an estimate of any "over" or "under" selection of remaining land entitlement.

d. The method used to determine public and navigable waterbodies and watercourses which have not previously been determined by BLM, DNR or a court of competent jurisdiction will generally be decided by the criteria set out below, and will also incorporate the consideration of 1) public use; 2) field survey notes; 3) air photo interpretation; 4) review of USGS maps; 5) other appropriate information; and 6) when necessary, an on-site inspection by representatives of DNR and MSB.

III. Definitions of "Waterbody" and "Watercourse"

For the purposes of this Memorandum, the definition of a "waterbody" is any natural, well-defined body of water such as a lake or pond. The definition of a "watercourse" is any natural, well-defined stream, creek or channel, produced wholly or in part by a definite flow of water, whether continuous or intermittent.

IV. Criteria Used for Navigable Submerged Acreage - (Not Chargeable)

a. The fee interest in the submerged lands beneath waterbodies and watercourses determined by DNR to be navigable will be retained by the SOA. The MSB's acreage entitlement will not be reduced by the acreage of this submerged land. The adjacent uplands conveyed to the MSB will be subject to 50-foot-wide easements to and along the ordinary high water ("OHW") mark, as required by AS 38.05.127 and implemented by the Agreement.

b. For the purposes of this Memorandum, waterbodies 50 acres or more in size from OHW to OHW, and watercourses 50 feet or wider from OHW to OHW, are to be considered navigable waters, unless previously determined otherwise by BLM, DNR or a court of competent jurisdiction.

V. Criteria Used for Public Submerged Acreage - (Chargeable)

a. The fee interest in the submerged lands beneath waterbodies and watercourses determined by DNR to be public but not navigable will be conveyed to the MSB, and the MSB's acreage entitlement will be reduced by the acreage of this submerged land. The adjacent uplands conveyed to the MSB will be subject to 50-foot-wide easements to and along the OHW as required by AS 38.05.127 and implemented by the Agreement.

b. For the purposes of this Memorandum, waterbodies of 10 acres or more in size but less than 50 acres in size from OHW to OHW, and watercourses 10 feet or more in width but less than 50 feet wide from OHW to OHW, are to be considered public waters unless previously determined otherwise by BLM, DNR or a court of competent jurisdiction.

VI. Criteria used for Non-Navigable and Non-Public Submerged Acreage - (Chargeable)

a. The fee interest in the submerged lands beneath waterbodies and watercourses determined by DNR to be neither navigable nor public will be conveyed to the MSB, and the MSB's acreage entitlement will be reduced by the acreage of the submerged land. The adjacent uplands conveyed to the MSB will not be subject to public easement reservations to and along the OHW.

b. For the purposes of this memorandum, waterbodies less than 10 acres in size from OHW to OHW, and watercourses less than 10 feet wide from OHW to OHW, are to be considered as neither navigable nor public waters, unless previously determined otherwise by BLM, DNR or a court of competent jurisdiction.

VII. Easements, Rights of Way, and Other Reservations

When easements, rights of way, and other reservations ("Reservations") lie within the boundaries of a conveyance to the MSB, chargeability for the acreage involved will be determined by the following criteria:

a. If the aggregate width of a Reservation is 100 feet or less and its purpose is for public transportation, utilities, or other public uses, the conveyance to the MSB will be subject to the Reservation, and the acreage involved will be charged against the MSB's acreage entitlement.

b. If the aggregate width of a Reservation is greater than 100 feet, the total acreage involved will not be charged against the MSB's entitlement, regardless of the purpose of the Reservation. The Director in his discretion may retain in the State fee ownership of the land underlying the Reservation.

VIII. Land Previously Patented to the MSB

a. If any patent previously issued to the MSB contains submerged land beneath navigable waters, the acreage of which was not properly identified or accounted for consistent with this Memorandum, DNR shall credit the acreage involved to the MSB land entitlement.

b. If any patent previously issued to the MSB contains submerged land beneath public waters, the acreage of which was not properly identified or accounted for consistent with this Memorandum, DNR shall charge the acreage involved against the MSB land entitlement. If any public access easement would otherwise have been required to and along such navigable or public waters under the laws applicable when patent was issued, the MSB shall provide necessary public access easements as required by the Agreement.

c. Existing easements, proposed public access easements, rights of way, and other Reservations which appear in issued patents or may become applicable under the terms of the Agreement will be reviewed based on the criteria set out in this Memorandum, and appropriate acreage adjustments will be made to MSB's remaining land entitlement.

IX. Land Approved for Patent to the MSB

a. Land selections approved for patent but not yet placed under instructions for survey will have waterbodies, watercourses, easements, rights of way and other Reservations reviewed under the criteria stated in Section VII, and the easement requirements of the Agreement and this Memorandum will be incorporated in the survey instructions.

b. Land selections approved for patent and already placed under survey instructions or surveys will have waterbodies, watercourses, easements, rights of way and other reservations reviewed under the criteria stated in Section VII, and the easement requirements of the Agreement and this Memorandum will be incorporated in the amended survey instructions prior to final plat approval.

X. Selected Lands

Any remaining land entitlement of the MSB which is the subject of new or pending but unapproved land selections will be subject to approval and conveyance under the criteria stated in Section VII above and the requirements of the Agreement.

XI. Selections of Original Mental Health Trust Land

Any MSB selection of original Mental Health Trust land which has not yet been approved for conveyance to MSB will be identified by the audit. A decision rejecting such selection will be drafted, but will not be issued unless Chapter 66, SLA 1991 is finally approved by a court from which no appeal is taken by any party litigating the validity of such legislation.

XII. Disagreement Resolution Process

If designated representatives of DNR and MSB cannot resolve any disagreement in implementing this Memorandum and the Agreement, the Director of the DNR Division of Land and the MSB Planning Director will consult and mutually review the disagreement. The Director of the Division of Land will issue a decision following such review and consultation. Any remaining unresolved disagreement will be decided in the administrative appeals process, which shall consist of an appeal to the Commissioner, DNR, and thereafter a timely appeal to the Superior Court pursuant to Appellate Rule 601 if the disagreement is not resolved by the Commissioner.

DATED: August 25, 1992

John Duff
John Duff
Planning Director
Matanuska-Susitna Borough

DATED: August 20, 1992

Ron Swanson
Ron Swanson
Director
Alaska Division of Land

I hereby certify that this is a true and correct copy of the original on file in my office.

ATTEST:
Clerk of the Trial Court, Anchorage
Ann H. Smith 12-22-92
Deputy

BOOK 0142

PAGE 0354

BOOK 0704 PAGE 499

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TALKEETHA REC 87-
DISTRICT
REQUESTED BY _____

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MATANUSKA - SUSITNA BOROUGH
350 EAST DAHLIA AVENUE
PALMER, ALASKA 99645

93-000743
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PALMER REC. DISTRICT
REQUESTED BY _____

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MATANUSKA - SUSITNA BOROUGH
350 EAST DAHLIA AVENUE
PALMER, ALASKA 99645

Return to:

MATANUSKA - SUSITNA BOROUGH
350 EAST DAHLIA AVENUE
PALMER, ALASKA 99645