

Ron Swanson
Director, Division of Land
Department of Natural Resources

September 16, 1993

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Municipal mergers and
consolidations

Nancy J. Nolan
Assistant Attorney General
Natural Resources, Anchorage

This memorandum addresses the effect of municipal mergers and consolidation on the municipal general grant land entitlement program set forth in AS 29.65. You have asked whether the merger or consolidation of one or more municipalities triggers any additional entitlement rights or triggers AS 29.65.030(a).

The answer to your question is governed by the provisions of AS 29.06.150. Subsection (a) of that statute provides that, when two or more municipalities merge, one succeeds to the rights, powers, duties, assets, and liabilities of the others. Similarly, subsection (b) provides that, when two or more municipalities consolidate, the newly incorporated municipality succeeds to the rights, powers, duties, assets, and liabilities of the consolidated municipalities.¹

Since general grant land entitlements are considered vested property rights, the practical effect of AS 29.06.150 is that merger or consolidation does not create the right to an additional entitlement.² As the result of a merger, one municipality succeeds to the entitlement held by the other. After a consolidation, the newly consolidated municipality succeeds to the entitlements of each of the consolidated municipalities. The merger or consolidation itself does not create any additional entitlement or trigger AS 29.65.030(a).³

¹ This statute applies to home rule and general law municipalities, as those entities are defined in AS 29.04.010 and 29.04.020. General law municipalities include first, second, and third class boroughs, and first and second class cities.

² AS 29.65.040 provides that general grant land entitlements are vested property rights.

³ By its own terms, AS 29.65.030(a) is triggered only when 1) a municipality is incorporated after 1978, and 2) it does not qualify for an entitlement under AS 29.65.010 or 29.65.020. Therefore, when a municipality enters into a merger or a

Ron Swanson, Director
Department of Natural Resources
Our No. 661-94-0104

September 16, 1993
Page 2

In the specific case of consolidation of the Ketchikan Gateway Borough and the City of Ketchikan, the consolidated municipality will acquire general grant land entitlement rights held by the Borough and general grant land entitlement rights held by the City on the date of consolidation. The consolidated municipality does not receive any additional entitlement or trigger AS 29.65.030(a).⁴

With respect to the specific anticipated mergers or consolidations mentioned in your memo, the actual grant land entitlement the municipality ends up with depends on whether the joinder of the two municipalities is accomplished through merger or consolidation. In a merger, it may be necessary to examine the legal documents that effect the merger in order to determine which municipality succeeds to the rights of the other. The consolidation you asked about - the City of Kotzebue and the Northwest Arctic Borough - would trigger AS 29.65.030(a) if the Northwest Arctic Borough was eligible for general grant land entitlements under that statute prior to the consolidation.

I hope this answers the questions raised in your July 13, 1993, memorandum. Please call if you have any additional questions.

NJN:mc
cc: Dennis Daigger, RA & D

(..continued)
consolidation, it carries with it whatever entitlement it is eligible for, whether that is governed by AS 29.65.010, 29.65.020 or 29.65.030.

⁴ This is supported by the policy expressed in AS 29.10.200, which limits the power of home rule municipalities and prohibits them from enactments that attempt to alter certain provisions of law, including AS 29.65 governing general grant land. Similarly, transformations as a result of mergers or consolidations should not trigger additional entitlements or arbitrarily enlarge the rights granted in AS 29.65.