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IN THE SUPREME COURT OF THE STATE OF ALASKA

ALASKA TRAPPERS ASSOCIATION, )  
 INC., NATIONAL TRAPPERS )  
 ASSOCIATION, INC., )  
 )  
 Appellants, )  
 v. )  
 )  
 CITY OF VALDEZ, )  
 )  
 Appellee. )

Supreme Court No. S-18189

Case No. 3VA-20-15 CI

**APPELLANTS' BRIEF**

Submitted by:  
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Filed in the Supreme Court  
 for the State of Alaska this  
 \_\_\_\_\_ day of June 2022.

By: \_\_\_\_\_  
 Deputy Clerk

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## AUTHORITIES PRINCIPALLY RELIED UPON

### Alaska Statutes

#### **AS 16.05.221. Boards of Fisheries and Game.**

(a) For purposes of the conservation and development of the fishery resources of the state, there is created the Board of Fisheries composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the board, and with a view to providing diversity of interest and points of view in the membership. The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Fisheries, but shall be ex officio secretary.

(b) For purposes of the conservation and development of the game resources of the state, there is created a Board of Game composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the board, and with a view to providing diversity of interest and points of view in the membership. The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Game, but shall be ex officio secretary.

#### **AS 16.05.251. Regulations of the Board of Fisheries.**

(a) The Board of Fisheries may adopt regulations it considers advisable in accordance with AS 44.62 (Administrative Procedure Act) for

(12) regulating commercial, sport, guided sport, subsistence, and personal use fishing as needed for the conservation, development, and utilization of fisheries; Fishery Management Council, and the International Pacific Halibut Commission;

#### **AS 16.05.255. Regulations of the Board of Game; Management Requirements.**

(a) The Board of Game may adopt regulations it considers advisable in accordance with AS 44.62 (Administrative Procedure Act) for

(1) setting apart game reserve areas, refuges, and sanctuaries in the water or on the land of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and areas for the taking of game;

(3) establishing the means and methods employed in the pursuit, capture, taking, and transport of game, including regulations, consistent with resource conservation and development goals, establishing means and methods that may be employed by persons with physical disabilities;

(4) setting quotas, bag limits, harvest levels, and sex, age, and size limitations on the taking of game;

(5) classifying game as game birds, song birds, big game animals, fur bearing animals, predators, or other categories;

(6) methods, means, and harvest levels necessary to control predation and competition among game in the state;

(7) watershed and habitat improvement, and management, conservation, protection, use, disposal, propagation, and stocking of game;

(8) prohibiting the live capture, possession, transport, or release of native or exotic game or their eggs;

(9) establishing the times and dates during which the issuance of game licenses, permits, and registrations and the transfer of permits and registrations between registration areas and game management units or subunits is allowed;

(10) regulating sport hunting and subsistence hunting as needed for the conservation, development, and utilization of game;

(11) taking game to ensure public safety;

(12) regulating the activities of persons licensed to control nuisance wild birds and nuisance wild small mammals;

(12) promoting hunting and trapping and preserving the heritage of hunting and trapping in the state.

(b) [Repealed, Sec. 12 ch 52 SLA 1986].

(c) If the Board of Game denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later.

(d) Regulations adopted under (a) of this section must provide that, consistent with the provisions of AS 16.05.258, the taking of moose, deer, elk, and caribou by residents for personal or family consumption has preference over taking by nonresidents.

(e) The Board of Game shall adopt regulations to provide for intensive management programs to restore the abundance or productivity of identified big game prey populations as necessary to achieve human consumptive use goals of the board in an area where the board has determined that

(1) consumptive use of the big game prey population is a preferred use;

(2) depletion of the big game prey population or reduction of the productivity of the big game prey population has occurred and may result in a significant reduction in the allowable human harvest of the population; and

(3) enhancement of abundance or productivity of the big game prey population is feasibly achievable utilizing recognized and prudent active management techniques.

(f) The Board of Game may not significantly reduce the taking of an identified big game prey population by adopting regulations relating to restrictions on harvest or access to the population, or to management of the population by customary adjustments in seasons, bag limits, open and closed areas, methods and means, or by other customary means authorized under (a) of this section, unless the board has adopted regulations, or has scheduled for adoption at the next regularly scheduled meeting of the board regulations, that provide for intensive management to increase the take of the population for human harvest consistent with (e) of this section. This subsection does not apply if the board

(1) determines that intensive management would be

(A) ineffective, based on scientific information;

(B) inappropriate due to land ownership patterns; or

(C) against the best interest of subsistence uses; or

(2) declares that a biological emergency exists and takes immediate action to protect or maintain the big game prey population in conjunction with the scheduling for adoption of those regulations that are necessary to implement (e) of this section.

(g) The Board of Game shall establish population and harvest goals and seasons for intensive management of identified big game prey populations to achieve a high level of human harvest.

(h) [Repealed, 2000 Ballot Measure No. 6].

(i) For the purpose of encouraging adults to take children hunting, the board shall establish annual hunting seasons in appropriate areas of the state for big game, other than bison and musk ox, that are open before schools start in the fall and before regular hunting seasons begin. Only a resident child accompanied by a resident adult or a child accompanied by the child's resident parent, resident stepparent, or resident legal guardian may take big game in an area where a season established under this subsection is in effect. The adult, parent, stepparent, or legal guardian who accompanies the child may only assist the child in taking big game. A big game animal taken under this subsection must be counted against the bag limits of both the child and the adult, parent, stepparent, or legal guardian who accompanies the child. In this subsection,

(1) "adult" means an individual who is 21 years of age or older;

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(2) "child" means an individual who is not more than 17 years of age and not younger than eight years of age.

(j) In this section,

(1) "harvestable surplus" means the number of animals that is estimated to equal the number of offspring born in a game population during a year less the number of animals required for recruitment for population maintenance and enhancement, when necessary, and the number of animals in the population that die from all causes, other than predation or human harvest, during that year;

(2) "high level of human harvest" means the allocation of a sufficient portion of the harvestable surplus of a game population to achieve a high probability of success for human harvest of the game population based on biological capabilities of the population and considering hunter demand;

(3) "identified big game prey population" means a population of ungulates that is identified by the Board of Game and that is important for providing high levels of harvest for human consumptive use;

(4) "intensive management" means management of an identified big game prey population consistent with sustained yield through active management measures to enhance, extend, and develop the population to maintain high levels or provide for higher levels of human harvest, including control of predation and prescribed or planned use of fire and other habitat improvement techniques.

(5) "sustained yield" means the achievement and maintenance in perpetuity of the ability to support a high level of human harvest of game, subject to preferences among beneficial uses, on an annual or periodic basis.

#### **AS 16.05.260. Advisory Committees.**

The Board of Fisheries and the Board of Game may adopt regulations they consider advisable in accordance with AS 44.62 (Administrative Procedure Act) establishing, at places in the state designated by the individual boards, advisory committees to be composed of persons well informed on the fish or game resources of the locality. The boards shall set the number and terms of each of the members of the advisory committees, shall delegate one member of each committee as chairman, and shall give the chairman authority to hold public hearings on fish or game matters. Recommendations from the advisory committees shall be forwarded to the appropriate board for their consideration but if the Board of Fisheries or the Board of Game chooses not to follow the recommendations of the local advisory committee the appropriate board shall inform the appropriate advisory committee of this action and state the reasons for not following the recommendations. The commissioner shall delegate authority to advisory committees for emergency closures during established seasons. The commissioner is empowered to set aside and make null



and void only opening of seasons set by the advisory committees under this section. The appropriate board shall adopt the necessary regulations governing these closures.

**AS 16.05.790. Obstruction or Hindrance of Lawful Hunting, Fishing, Trapping, or Viewing of Fish or Game.**

(a) Except as provided in (e) of this section, a person may not intentionally obstruct or hinder another person's lawful hunting, fishing, trapping, or viewing of fish or game by

(1) placing one's self in a location in which human presence may alter the

(A) behavior of the fish or game that another person is attempting to take or view; or

(B) feasibility of taking or viewing fish or game by another person; or

(2) creating a visual, aural, olfactory, or physical stimulus in order to alter the behavior of the fish or game that another person is attempting to take or view.

(b) For purposes of (a) of this section, "lawful" means

(1) in compliance with

(A) this title, regulations adopted under this title, or applicable federal statutes and regulations;

(B) the Marine Mammal Protection Act (P.L. 92-522) or the Endangered Species Act (P.L. 93-205); or

(C) federal regulations adopted under 16 U.S.C. 3111 - 3126 relating to subsistence hunting, fishing, or trapping on federal land; and

(2) with the permission of the private landowner if the hunting, fishing, trapping, or viewing of fish or game occurs on private land.

(c) Notwithstanding AS 12.25, only a peace officer may arrest a person for violating this section. A peace officer who has probable cause to believe that a person has violated this section may arrest or cite the person or order the person to desist.

(d) In a prosecution under this section, it is an affirmative defense that the person was lawfully entitled to obstruct or hinder the hunting, fishing, trapping, or viewing of fish or game.

(e) This section does not apply to

(1) lawful competitive practices among persons engaged in lawful hunting, fishing, or trapping;

(2) actions taken on private property with the consent of the owner; or

(3) the obstruction or hindrance of the viewing of fish or game by a person actively engaged in lawful fishing, hunting, or trapping.

(f) A person who violates this section is guilty of a misdemeanor and is punishable by a fine of not more than \$500 or imprisonment for not more than 30 days, or both.

**AS 16.20.010. Legislative Recognition; Prohibition Against Ceding State Authority.**

(a) The legislature recognizes that

(1) the state has jurisdiction over all fish and game in the state except in those areas where it has assented to federal control;

(2) the state has not assented to federal control of fish and game in

(A) those areas that were set apart as National Bird and Wildlife Refuges while the state was a United States territory; and

(B) Glacier Bay National Park and Preserve or the navigable waters within or adjoining the park and preserve;

(3) special recognition of the value to the state and the nation of areas of unspoiled habitat and the game characteristic to it will be demonstrated by designating as state game refuges those federal lands that were National Bird and Wildlife Refuges or Ranges at the time that Alaska achieved statehood.

**AS 27.05.010. Department Responsible For Mineral Resources.**

(a) The department has charge of all matters affecting exploration, development, and mining of the mineral resources of the state, the collection and dissemination of all official information relative to the mineral resources, and mines and mining projects of the state, and the administration of the laws with respect to all kinds of mining.

**Ordinances**

**Section 5 AAC 84.260 - Application of 5 AAC 84.270**

It is lawful to trap a furbearer only in a game management unit or a portion of a unit open to trapping in accordance with the open season and bag limit prescribed in 5 AAC 84.270. Bag limits and open seasons are based upon the regulatory year.

**Section 5 AAC 84.270 - Furbearer trapping**

Trapping seasons and bag limits for furbearers are as follows:

Species and Units Open Season Bag Limit (1) Beaver Units 1 - 5  
Nov. 10 - May 15 No limit. Unit 14 (except Unit 14(C)) Nov. 10 -  
May 15 No limit. Unit 6 Nov. 10 - Apr. 30 No limit. Units 7 and  
15 Oct. 15 - Apr. 30 20 per season. Unit 8 Nov. 10 - Apr. 30 30  
per season. Units 9, Oct. 10 - May 31 No limit. firearms may be  
used to take up to 2 beaver per day from Apr. 15 - May 31 Unit 10  
No open season. Units 11, 13, and 16 Sept. 25 - May 31 No limit.  
Unit 14(C), that portion within the drainages of Glacier Creek,  
Kern Creek, the Twentymile River, the drainages of Knik River  
outside Chugach State Park, the Birchwood Management Area, and

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the Joint Base Elmendorf-Richardson (JBER) Management Area Nov. 10- Apr. 30 20 per season. Remainder of Unit 14(C) No open season. Unit 17, Oct. 10 - May. 31 No limit. firearms or bow and arrow may be used to take beaver from Dec. 1- Apr. 14, and firearms may be used to take up to 2 beaver per day from Apr. 15 - May 31 Unit 18 No closed season. No limit. Units 12, 20(A), 20(C), 20(E), and 20(F) Sept. 15 - June 10 No limit. Units 19, 21, 24, and 25 Sept. 1 - June 10 No limit. Unit 20(B), that portion of the Chena River downstream from its confluence with the Little Chena River No open season; however, the department may set seasons and bag limits, by permit only, to curb high beaver populations and reduce property damage. Remainder of Unit 20(B), and Unit 20(D) Sept. 25 - May 31 No limit. Unit 22 No closed season. No limit. Unit 23 No closed season. No limit. Unit 26 No open season. (2) Coyote Units 1 - 5 Nov. 1 - Apr. 30 No limit. Units 6, 10, 11, 14(A), and 18 Nov. 10 - Mar. 31 No limit. Units 7 and 15 Oct. 15 - Mar. 31 No limit. Unit 9 Oct. 1 - Apr. 30 No limit. Units 14(B) and 17 Nov. 10 - Apr. 30 No limit. Units 13 and 16 Oct. 15 - Apr. 30 No limit. Unit 14(C) Nov. 10 - Last day of Feb. No limit. Units 12 and 20(E) Oct. 15 - Apr. 30 No limit. Units 19, 20 (except 20(E)), 21, 24, and 25 Nov. 1 - Mar. 31 No limit. Units 22, 23, and 26 Nov. 1 - Apr. 15 No limit. (3) Fox, arctic, white, or blue Units 8 Nov. 10 - Mar. 31 No limit. Units 9 and 10 Nov. 10 - Last day of Feb. No limit. Unit 17 Nov. 10 - Mar. 31 No limit. Unit 18 Nov. 10 - Mar. 31 No limit. Units 22, 23, and 26 Nov. 1 - Apr. 15 No limit. Units 24 and 25 Nov. 1 - Last day of Feb. No limit. (4) Fox, red (including the cross, black, or silver color phases) Units 1 - 4 Dec. 1 - Feb. 15 No limit. Unit 5 Nov. 10 - Feb. 15 No limit. Units 6, 9 Unit 8 - 11, 13, 14, excluding Chugach State Park, and Unit 16 Nov. 10 - Last day of Feb. No limit. Units 7, 14(C), that portion within Chugach State Park, and Unit 15 Nov. 10 - Last day of Feb. One per season. Unit 8 Nov. 10 - Mar. 31 No limit. Units 20, except 20(E), and Units 21, 24, and 25 Nov. 1 - Last day of Feb. No limit. Units 12 and 20(E) Nov. 1 - Mar. 15 No limit. Unit 17 Nov. 10 - Mar. 31 No limit. Unit 18 Nov. 10 - Mar. 31 No limit. Unit 19 Nov. 1 - Mar. 31 No limit. Units 22, 23, and 26 Nov. 1 - Apr. 15 No limit. (5) Lynx Units 1 - 5 Dec. 1 - Feb. 15 No limit. Units 7, 11, and 13 - 16 Nov. 10 - Last day of Feb. No limit; season may be closed by emergency order. Units 10 No open season. Units 6 and 9 (except 9(B)) Nov. 10 - Last day of Feb. No limit. Unit 9(B) Nov. 10 - Mar. 31 No limit. Unit 17 Nov. 10 - Mar. 31 No limit. Unit 18 Nov. 10 - Mar. 31 No limit. Units 12, 19, 20, 21, and 25 Nov. 1 - Mar. 15 No limit. Units 22, 23, and 26 Nov. 1 - Apr. 15 No limit. Unit 24 Nov. 1 - Last day of Feb. No limit. (6) Marten Units 1 - 3 (except Kuiu Island) Dec. 1 - Feb. 15 No limit. Unit 3 (Kuiu Island) No open season. Unit 4, that portion of Chichagof Island east of Idaho Inlet and north of the Trail River and Tenakee Inlet and north of a line from the headwaters of Trail River to the head of Tenakee Inlet Dec. 1 - Dec. 31 No

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limit. Remainder of Unit 4 Dec. 1 - Feb. 15 No limit. Unit 5 Nov. 10 - Feb. 15 No limit. Units 7, 8, 14(B), 15, and 16 Nov. 10 - Jan. 31 No limit. Units 6, 9, 11, 13, and 17 Nov. 10 - Last day of Feb. No limit. Units 12, 19 - 21, 24, and 25 Nov. 1 - Last day of Feb. No limit. Units 14(A) and 14(C) Nov. 10 - Dec. 31 No limit. Unit 18 Nov. 10 - Mar. 31 No limit. Units 22, 23, and 26 Nov. 1 - Apr. 15 No limit. (7) Mink and weasel Units 1 - 3 Dec. 1 - Feb. 15 No limit. Unit 4, that portion of Chichagof Island east of Idaho Inlet and north of the Trail River and Tenakee Inlet and north of a line from the headwaters of Trail River to the head of Tenakee Inlet Dec. 1 - Dec. 31 No limit. Remainder of Unit 4 Dec. 1 - Feb. 15 No limit. Unit 5 Nov. 10 - Feb. 15 No limit. Units 7, 8, and 14 - 16, Nov. 10 - Jan. 31 No limit. Units 6, 9, 10, 11, 13, and 17 Nov. 10 - Last day of Feb. No limit. Unit 18 Nov. 10 - Mar. 31 No limit. Units 12, 19 - 21, 24, and 25 Nov. 1 - Last day of Feb. No limit. Units 26(B), and 26(C) Nov. 1 - Apr. 15 No limit. Units 22, 23, and 26(A) Nov. 1 - Apr. 15 No limit. (8) Muskrat Units 1 - 5 Dec. 1 - Feb. 15 No limit. Units 6, 8 - 11, and 16 Nov. 10 - June 10 No limit. Units 7, 14, and 15 Nov. 10 - May 15 No limit. Units 12 and 20(E) Sept. 20 - June 10 No limit. Unit 13 Sept. 25 - June 10 No limit. Unit 17 Nov. 10 - Mar. 31 No limit. Units 19, 20 (except 20(E)), 21, 22, and 24 - 26 Nov. 1 - June 10 No limit. Units 18 and 23 No closed season. No limit. (9) Otter, land Units 1 - 4 Dec. 1 - Feb. 15 No limit. Unit 5 Nov. 10 - Feb. 15 No limit. Units 6, 9 - 11, 13, 14(A), 14(B), and 16 - 18 Nov. 10 - Mar. 31 No limit. Units 7 and 14(C) Nov. 10 - Last day of Feb. No limit. Unit 8 Nov. 10 - Jan. 31 No limit. Units 12 and 19 - 26 Nov. 1 - Apr. 15 No limit. Unit 15 Nov. 10 - Last day of Feb. No limit. (10) Otter, sea Units 1 - 26 No open season. (11) Repealed 4/24/88 (12) Squirrel (red, flying, parka, or ground) and marmot Units 1 - 26 No closed season. No limit. (13) Wolf Unit 2 Nov. 15 - Mar. 31 No limit. Unit 1(C), that portion west Nov. 1 - Apr. 30 No limit. of Excursion Inlet and north of Icy Passage, by registration permit only Unit 1, except that portion of Nov. 1 - Apr. 30 No limit. Unit 1(C) west of Excursion Inlet and north of Icy Passage, and Units 3 - 5 Unit 2 Nov. 15 - Mar. 31 No limit. Units 6, 11, 14(A), and 18 Nov. 10 - Mar. 31 No limit. Units 7 and 15 Oct. 15 - Mar. 31 No limit Unit 9 Aug. 10 - June 30 No limit. Unit 10 Nov. 10 - June 30 No limit. Unit 14(B) and 17 Nov. 10 - Apr. 30 No limit. Units 12, 13, and 16 Oct. 15 - Apr. 30 No limit. Unit 14(C) Nov. 10 - Last day of Feb. No limit. Units 19(D), 21(A), and 25(D) Oct. 1 - Apr. 30 No limit. Remainder of Unit 19, and Units 20 (except 20(D) and 20(E)), 21(B), 21(C), 21(D), 21(E), 22 - 24, 25(A), 25(B), 25(C), and 26 Nov. 1 - Apr. 30 No limit. Units 20(D) and 20(E) Oct. 15 - Apr. 30 No limit. (14) Wolverine Units 1 - 5 Nov. 10 - Last Day of Feb. No limit. Units 6, 7, 9(A), 9(C), 9(D), 9(E), 10, 15, and 16(B) Nov. 10 - Last day of Feb. No limit. Unit 9(B) Nov. 10 - Mar. 31 No limit Units 11 Nov. 10 - Last day No limit of Feb.

Units 13 Nov. 10 - Feb. 15 No limit. Unit 14(A) Dec. 15 - Jan. 31 2 per season. Units 14(B), 14(C), and 16(A) Nov. 10 - Jan. 31 2 per season. Units 20(A), 20(B), 20(C) east of the Toklat River, 20(D), 20(F), and 25(C) Nov. 1 - Last day of Feb. No limit. Units 12 and 20(E) Nov. 1 - Mar. 15 No limit. Units 17 and 18 Nov. 10 - Mar. 31 No limit. Units 19, remainder of 20(C), 21, 24, and 25 (except 25(C)) Nov. 1 - Mar. 31 No limit. Units 22, 23, and 26 Nov. 1 - Apr. 15 No limit. (15) Fisher Units 1 - 5 Dec. 1 - Feb. 15 1 per season.

#### **Section 5 AAC 92.450 - Description of game management units**

(6) Game Management Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield, including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, and all seaward waters and lands within three miles of these coastlines, but excluding the Copper River drainage upstream from Miles Glacier and those drainages on the north side of Miles Glacier, and excluding the Nellie Juan and Kings River drainages; (A) Unit 6(A) consists of Gulf of Alaska drainages in Unit 6 east of Palm Point near Katalla, including Kanak, Wingham, and Kayak Islands; (B) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages in Unit 6 west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point; (C) Unit 6(C) consists of drainages in Unit 6 west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet; (D) Unit 6(D) consists of the remainder of Unit 6;

#### **Section 5 AAC 92.990 - Definitions**

(a) In addition to the definitions in AS 16.05.940, in 5 AAC 84 - 5 AAC 92, unless the context requires otherwise;

(54) "open season" means the time when game may be taken; an open season includes the first and last days of the period prescribed;

#### **Constitutional Provisions**

##### **Article 8 - Natural Resources**

###### **§ 1. Statement of Policy**

It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

###### **§ 2. General Authority**

The legislature shall provide for the utilization, development,

and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

§ 3. Common Use

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

§ 4. Sustained Yield

Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

§ 5. Facilities and Improvements

The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

**Article 10 - Local Government**

§ 11. Home Rule Powers

A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

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## I. JURISDICTIONAL STATEMENT

The trial court entered final Judgment on August 31, 2021, pursuant to its previous grant of summary judgment to the City of Valdez (hereafter the City) which dismissed the entirety of the Alaska Trappers and National Trappers Association, Inc.'s (hereafter Alaska Trappers) Complaint. This court has the authority to consider this appeal pursuant to AS 22.04.010.

## II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

The following issues are presented for review:

1. Whether the trial court erred when it concluded that the City's anti-trapping ordinances were not impliedly preempted by the Alaska Constitution or Alaska Statutes.

2. Whether the Court erred in its conclusion that the City's ordinance prohibiting and criminalizing trapping did not conflict with the State's Board of Game regulation concerning lawful trapping or otherwise impede a statewide policy.

3. Whether the trial court, having entered an order permitting municipal regulation of the taking of game, erred by failing to rule on the Alaska Trappers argument that at a minimum the City of Valdez, when exercising this authority, must still comply with applicable constitutional requirements.

## III. STATEMENT OF THE CASE

The City enacted an ordinance barring trapping within certain areas, permitting only snares in other areas, and

requiring trappers to attend trapping safety classes conducted by the City, mark their traps with identification tags, mark their traplines with signs and to register exact locations of traplines with the City.<sup>1</sup> Violations of the City's anti-trapping ordinance were subject to fines and, in some instances, mandatory court appearances.<sup>2</sup>

The Alaska Trappers' Complaint against the City requested a declaratory judgement that both the Constitution and Alaska statutes impliedly preempted municipal regulation of trapping and that the City's ordinance conflicted with state law.<sup>3</sup> After the filing of the Complaint, the City repealed all of its anti-trapping ordinance except the section banning trapping in certain areas located within the City of Valdez.<sup>4</sup>

Both the Alaska Trappers and the City filed motions for summary judgment.<sup>5</sup> The trial court's Order on the Cross-Motions (hereafter Order) denied the Alaska Trappers' motion for summary judgment and granted the City's.<sup>6</sup> Specifically, the Order ruled that Article VIII of the Alaska Constitution did not exclusively confer lawmaking powers on the State Legislature<sup>7</sup> nor did the State Legislature (despite its creation of a State Board of Game)

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<sup>1</sup> [Exc. 26-27].

<sup>2</sup> [Exc. 27].

<sup>3</sup> [Exc. 5].

<sup>4</sup> [Exc. 29-31].

<sup>5</sup> [Exc. 13-36 and [Exc. 37-139].

<sup>6</sup> [Exc. 254].

<sup>7</sup> [Exc. 251].



exclusively delegate its authority to regulate the State's wildlife population to the Board of Game.<sup>8</sup> Instead, the Order concluded that all home rule cities and boroughs may manage the State's natural wildlife resources, not through Article VIII establishing the State's natural resource policy and directing the State Legislature to implement that policy; but through Article X, § 11 of Alaska's Constitution granting home rule municipalities "all legislative powers not prohibited by law or charter." Finally, the Order concluded that the City's anti-trapping ordinance neither impeded a statewide policy<sup>9</sup> nor conflicted with state law.<sup>10</sup>

The Order found no conflict between state law and the challenged ordinance barring trapping despite the Board of Game's adoption of 5 AAC 84.260 and 5 AAC 84.270 (setting open seasons and bag limits in game management units). As interpreted by the trial court, 5 AAC 84.260's declaration that: "*It is lawful to trap a furbearer only in a game management unit or a portion of a unit open to trapping in accordance with the open season and bag limit prescribed in 5 AAC 84.270*",<sup>11</sup> merely made it unlawful to trap in a game management unit without established open seasons, not the converse.<sup>12</sup>

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<sup>8</sup> [Exc. 250-251].

<sup>9</sup> [Exc. 251].

<sup>10</sup> [Exc. 252-253].

<sup>11</sup> (Emphasis added).

<sup>12</sup> [Exc. 252-253].

Specifically, the trial court held:

Logically speaking, the regulation's use of the word 'only' makes it the positive form of the negative prohibition "It is unlawful to trap a furbearer in a game management unit...that is not open to trapping in accordance with ...." The regulation is a ban on trapping outside of specific areas, not an affirmative opening of all land within those areas.<sup>13</sup>

Alaska Trappers filed a timely Motion for Reconsideration and Motion for Additional Ruling.<sup>14</sup> In its Motion for Reconsideration Alaska Trappers argued that the trial court's interpretation of 5 AAC 84.260 judicially reversed 5 AAC 84.260's declaration that "[i]t is lawful to trap..." in areas opened to trapping through the setting of an open season in that unit, effectively finding that despite establishment of open seasons in game management units, no one may trap in any game management unit within the entire state.<sup>15</sup>

Additionally, Alaska Trappers argued that the trial court, having entered an order permitting the City to regulate the taking of game, should then rule on the Alaska Trappers' argument that any exercise of the City's purported power to regulate the taking of game could only occur in full compliance with Article VIII of the Alaska Constitution and other game management statutes.<sup>16</sup> The

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<sup>13</sup> [Exc. 252].

<sup>14</sup> [Exc. 256].

<sup>15</sup> [Exc. 256].

<sup>16</sup> [Exc. 258].

trial court, however, cursorily denied both the motions without substantive response.<sup>17</sup>

After the trial court issued its Order, the State of Alaska (hereafter State) moved to intervene in the case.<sup>18</sup> The State asserted that allowing the City to regulate trapping would interfere with and undermine the Board of Game process and regulations and create an environment of regulatory unpredictability.<sup>19</sup> The trial court denied the State's request to intervene.<sup>20</sup> Following this denial, the trial court entered final judgment against Alaska Trappers.<sup>21</sup>

#### IV. APPLICABLE STANDARD OF REVIEW

All of the issues presented for review in this case involve purely legal issues to which the court applies its "independent judgment"<sup>22</sup> and adopts "the rule of law most persuasive in light of precedent, reason and policy."<sup>23</sup>

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<sup>17</sup> [Exc. 276].

<sup>18</sup> [R. 438-455].

<sup>19</sup> [R. 442].

<sup>20</sup> [R. 348].

<sup>21</sup> [Exc. 277].

<sup>22</sup> *Smallwood v. Central Peninsula Gen. Hosp.*, 227 P.2d 457, 459 (Alaska 2010).

<sup>23</sup> *Guin v. Ha*, 591 P.2d 1281, 1284 n. 6 (Alaska 1979).

## V. ARGUMENT

### A. Alaska's Constitution Requiring Statewide Management of Natural Resources and Directing the State Legislature to Implement the Constitutionally Established Policy of Management for the Maximum Benefit of All Alaskans Impliedly Preempts Municipalities from Managing Alaska's Natural Resources including the Taking of Game.

In *Sagoonik v. State*, this court discussed the drafting of Article VIII of Alaska's Constitution and the importance the framers put on this article due to the widely held view that Alaska's success as a state depended upon natural resource development.<sup>24</sup> Alaska's "convention delegates specifically, 'sought to enshrine in the state constitution the principle that resources of Alaska must be managed for the long-run benefit of the people as a whole.'"<sup>25</sup> Thus, while Alaska's Constitution emphatically encourages development of Alaska's natural resources, it permits only development occurring "in a manner that recognizes the collective interests of the people as owners of these . . . resources."<sup>26</sup> Notably, *Sagoonik* observed that, at the time of its approval, Article VIII, was the "most comprehensive state constitution provision addressing natural resource management policies and principles, and it reflects careful consideration of each government branch's role in

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<sup>24</sup> *Sagoonick v. State*, Slip Op No. 7583 at 4 (Alaska Jan. 28, 2022).

<sup>25</sup> *Sagoonick v. State*, at 5 (Alaska Jan 28, 2022).

<sup>26</sup> *Sagoonick v. State*, at 7 n. 13 (Alaska Jan 28, 2022) (quoting *Gordon Harrison, Alaska Legislative Affairs Agency, Alaska's Constitution: A Citizen's Guide* 131 (5<sup>th</sup> ed. 2021)).

managing Alaska's resources and **textually establishes the legislature's importance in this policy making area.**"<sup>27</sup>

1. *Article VIII of Alaska's Constitution mandates management of game for the benefit of all Alaskans not certain residents of home rule municipalities.*

In *Jacko v. State*,<sup>28</sup> (ultimately resolved on statutory grounds) this Court noted that the State of Alaska made a compelling argument that municipalities are constitutionally pre-empted from managing Alaska's natural resources. It also firmly rebuffed the suggestion that it had previously rejected the State's claim to exclusive law-making authority over the State's natural resources.<sup>29</sup>

Alaska's Constitution makes Alaska's natural resources, including game, available for "maximum use consistent with the public interest"<sup>30</sup> for the "maximum benefit of its people."<sup>31</sup> Article VIII specifically directs that Alaska resources be managed "for the maximum benefit of its people"<sup>32</sup> and reserves these resources "to the people for common use."<sup>33</sup> This language unequivocally contemplates statewide management benefitting all Alaskans—the antithesis of individual management by a mishmash of

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<sup>27</sup> *Sagoonick v. State*, at 9-10 (Alaska Jan. 28, 2022) (emphasis added).

<sup>28</sup> 353 P.3d 337 (Alaska 2015).

<sup>29</sup> *Id.* at 345.

<sup>30</sup> Alaska Const. art. VIII, § 1.

<sup>31</sup> Alaska Const. art. VIII, § 2.

<sup>32</sup> Alaska Const. art. VIII, § 2.

<sup>33</sup> Alaska Const. art. VIII, § 3.

cities and boroughs beholden only to their local voters. Nothing in the language employed by the constitutional drafters suggests or even contemplates localized management by a multiplicity of individual municipalities each separately managing a state resource, not in the interest of the entire State; but, instead, by the inherent nature of local government bodies, catering to and reflecting only their local residents' issues and concerns.

Moreover, only through statewide management can the State effectively and comprehensively regulate a transitory natural resource like fish and game that otherwise may, depending on the time of year or season, be located in different cities and boroughs and thus subject to differing game management opinions and philosophies. Neither fish nor game, by their nature, naturally confine their location within a particular city or borough boundary but may regularly traverse through large areas of the State-requiring management not by municipal boundaries but by natural habitat, like the Board of Game's established game management units.<sup>34</sup> Regulation by one municipality, like what Valdez did here to limit the trapping of predators, logically impacts both the predator population and other game populations like deer or moose outside City boundaries and without regard to functional game populations. Management by a multiplicity of municipalities thus precludes competent management of game

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<sup>34</sup> 5 AAC 92.450.

designed to ensure maximum use benefiting the entire State—the primary goal of Article VIII. Accordingly, Alaska’s Constitution Art. VIII § 3 effectively rejected local management based on the location of game by reserving for common use *all Alaskans’* fish, wildlife and waters “[w]herever occurring in their natural state...”

*2. Article VIII, § 2 of Alaska’s constitution makes the state legislature responsible for and requires the legislature to provide for natural resource management benefiting all Alaskans.*

Article VIII, § 2 of the Alaska Constitution directs that: “[t]he legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State . . . for the maximum benefit of its people.” The State’s natural resources include wildlife.<sup>35</sup> The *Jacko* court interpreted Article VIII, § 2 as specifying that “...the state legislature is responsible for ‘provid[ing] for the utilization, development, and conservation of all natural resources belonging to the State . . . for the maximum benefit of its people.’”<sup>36</sup> More recently, this Court found that, “[a]rticle VIII, § 1 and 2 . . . express Alaska’s resource development policy and *direct the legislature to implement it...*”<sup>37</sup> Here, however, the trial court

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<sup>35</sup> Alaska Const. art. VIII, § 3, 4 and 5.

<sup>36</sup> *Jacko* at 345 fn. 57 (emphasis added).

<sup>37</sup> *Sagoonick v. State of Alaska*, Slip Op No. 7583 at 6 (Alaska Jan. 28, 2022) (emphasis added).

explicitly rejected this argument, finding instead that Article VIII, § 2 of the Alaska Constitution "...merely gives a directive to the Legislature [to manage natural resources], and does not prohibit its delegation to or exercise by municipalities."<sup>38</sup>

If, however, Alaska's Constitution, by granting home rule legislative powers separately conferred this legislative power over Alaska's natural resource on all home rule municipalities (as concluded by the trial court) no hint of this can be found anywhere in Article VIII, the article constitutionally setting Alaska's natural resource policy and devoted entirely to natural resources. Instead, Article VIII, § 2 mandates that the Legislature provide for natural resource management, a power never expressly delegated by the Legislature to home rule municipalities.<sup>39</sup> Accordingly, the State Dept. of Law, has historically interpreted this article as conveying pervasive state authority that constitutionally preempts municipal regulations.<sup>40</sup> Moreover, Article VIII, § 2's direction to the Legislature to implement this constitutional policy "for the maximum benefit of its people" constitutionally imposes on the State a legislative mandate directly at odds with the exercise of that mandate by local governing bodies.

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<sup>38</sup> [Exc. 251].

<sup>39</sup> See *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971).

<sup>40</sup> [Exc. 152-53].



B. The Legislature Fully Satisfied Its Constitutional Mandate to Provide for the Management of a State-Owned Asset for the Maximum Benefit of All Alaskans by Establishing a Statewide Board of Game.

Article VIII, § 2 of the Alaska Constitution mandates that "[t]he Alaska legislature *shall provide for the utilization, development, and conservation* of all natural resources belonging to the State."<sup>41</sup> The term "shall"<sup>42</sup> is mandatory and required *specific* action by the legislature to fulfill its constitutional mandate. With respect to management of Alaska's wildlife, the Legislature took this required action by enacting AS 16.05.221(b) establishing a State Board of Game and AS 16.05.255 authorizing the State Board of Game to promulgate regulations as needed to regulate this state-owned asset and provide for the statewide taking of game.

Specifically, the Legislature granted the Board of Game the power "to regulate regarding the *conservation, development, or utilization* of game in a manner that addresses whether, how, when and where the public asset of game is allocated or appropriated."<sup>43</sup> In other words, the Legislature's grant of power fully encompassed each and every subject specified in the constitutional directive to it. There is no corollary action affirmatively taken by the Legislature to separately provide for municipal regulation of

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<sup>41</sup> (Emphasis added).

<sup>42</sup> *Faulk v Estate of Haskins*, 714 P.2d 354, 355 (Alaska 1986).

<sup>43</sup> AS 16.05.255(j) (emphasis added).

wildlife owned by the State of Alaska. The legislature used this same authorizing language to create the Board of Fisheries.<sup>44</sup> Thus, if the statutory language used by the Legislature to create the Board of Game failed to preempt a home rule city's regulation of game, the legislative grant of power to the Board of Fisheries similarly permits home rule city and borough management of fishing.

In *Jacko* this Court struck down a municipal law regulating mining within its boundaries, noting that the Legislature had, when it adopted AS 27.05.010, "delegated to DNR 'charge of all matters affecting exploration, development and mining of the mineral resources of the state, ... and the administration of the laws with respect to mining.'"<sup>45</sup> There is no functional difference between the Legislature putting an agency like DNR in "charge of all matters"<sup>46</sup> from legislative language directing and authorizing the Board of Game to broadly regulate *each and every* subject area contained in the constitutional directive to the Legislature, repeating and mirroring the constitutionally required subjects-- conservation, development and utilization. Regardless of the precise language used, both legislative grants of power

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<sup>44</sup> AS 16.05.221(a) created the Board of Fisheries "[f]or purposes of the conservation and development of the fishery resources of the State" and directed the Board of Fisheries in AS 16.05.251(a)(12) to regulate "as needed for the conservation, development and utilization of fisheries."

<sup>45</sup> *Jacko* at 343.

<sup>46</sup> AS 27.05.010(a).

"comprehensively conferred authority over all aspects" of a natural resource<sup>47</sup> to the state agency the Legislature was creating. It is this grant of comprehensive authority that led the *Jacko* court to uphold the trial court's finding of statutorily implied exclusion of concurrent municipal regulatory authority and *Jacko's* underlying reasoning applies equally in this case.

1. *The Legislature's specific grant of power to the Board of Game to establish open and closed seasons and areas for the taking of game logically excludes concurrent municipal authority.*

In addition to its broad grant of comprehensive authority to the Board of Game, the Legislature specifically and explicitly granted the Board of Game the power to establish "open and closed seasons and areas for the taking of game."<sup>48</sup> This specific grant of authority reflects the broader legislative directive to the Board of Game that its regulation of game address: "whether, how, when and where the public asset of game is allocated or appropriated."<sup>49</sup> It is this specifically granted power to the Board of Game--the power to decide how, when and where someone may appropriate a state game resource--that the trial court concluded the City may exercise because it is a home rule city

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<sup>47</sup> *Jacko* at 339-340 (quoting the trial court decision).

<sup>48</sup> AS 16.05.255(a)(2) (emphasis added).

<sup>49</sup> AS 16.05.255(j).

with "all legislative powers not prohibited by law or by charter."<sup>50</sup>

This grant of very specific, particularized and detailed constitutionally derived authority impliedly precludes any concurrent authority by municipalities to *separately* open and close seasons and *separately* establish areas for the taking of game as this authority, once exercised, simply leaves behind nothing for another body to meaningfully regulate without inherent conflict. The State made this clear in AS 16.20.010, where it explicitly reaffirmed its pervasive, jurisdictional state authority over fish and game resources by asserting, that "the state has jurisdiction over all fish and game in the state except in those areas where it has assented to federal control..."<sup>51</sup>

Moreover, in *Jacko* this Court held that "the general provision of authority to home rule boroughs to regulate land use does not override the specific delegation of authority to DNR to regulate resource extraction."<sup>52</sup> The principle barring a general grant of power, whether a grant of land use power or home rule powers, from overriding the state's specific legislative delegation of its constitutional authority applies equally here.

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<sup>50</sup> Alaska Const. art. X, § 11.

<sup>51</sup> AS 16.20.010(a).

<sup>52</sup> *Jacko* at 346.

2. *The alleged grant of power to municipalities exceeds that granted by the legislature to the Board of Game preempting the legislature's constitutionally mandated role to provide for and implement Alaska's resource development policy.*

The Legislature, although complying with the Alaska Constitutional directive to provide for and implement Alaska's resource development policy through its establishment of the State Board of Game, withheld and reserved to itself some authority over game management and conditioned other grants of authority. Specifically, the legislature's grant of authority to the Board of Game requires legislative approval of any Board of Game action "setting apart game reserve areas, refuges, and sanctuaries . . . on the land of the state..."<sup>53</sup> With regard to predator control, the Legislature's grant of authority requires the Board of Game to "establish . . . seasons for intensive management of identified big game prey populations to achieve a high level of human harvest."<sup>54</sup>

Finally, the Legislature restricted the Board's ability to significantly reduce the taking of game by adopting "regulations relating to restrictions on harvest or access to the population or to management of the population by customary adjustments in . . . open and closed areas, methods and means" without the

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<sup>53</sup> AS 16.05.255(a)(1).

<sup>54</sup> AS 16.05.255(g).

corollary adoption of regulations designed to increase people's take of the population.<sup>55</sup>

If home rule municipalities constitutionally obtained their authority to regulate natural resources through Article X, § 11 conferring general home rule powers, then their power to regulate remains free of the constraints and restrictions imposed by the Legislature when it delegated its authority to the Board of Game, effectively nullifying the Legislature's express retention of legislative authority and legislative imposed constraints and conditions on the exercise of this delegated power. In *Jacko*, this Court found a statutorily implied preemption based in part on its conclusion that the Borough's *potential* ability (not actually exercised by the Borough), to close the entire Borough watershed to mining development would nullify state law requiring the Department of Natural Resources to obtain legislative approval before closing large tracts of land to resource extraction. Similarly, here, regulation by home rule cities and boroughs of state owned wildlife would permit the establishment of game reserve areas, refuges and sanctuaries *on state land* (e.g., the potential closure of large areas to the taking of game) without the approval of the Legislature.

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<sup>55</sup> AS 16.05.255(f).

3. Nothing in the purported grant of authority to home rule municipalities to manage state game resources incorporates or otherwise complies with the constitutional directive to the Legislature.

The constitutional grant of home rule powers was not "intended to be pre-eminent"<sup>56</sup> nor did the constitutional framers "intend to create 'city states with mini-legislatures.'"<sup>57</sup> The trial court concluded, however, that the City, as a home rule municipality, has the legislative power to close state land to the taking of game because the legislature did not specifically preclude the exercise of this power. *Macauley v. Hildebrand*, implicitly rejected this argument when it invalidated a home rule borough's ordinance regulating a school district based on a "constitutional mandate for pervasive state authority in the field of education"<sup>58</sup> arising from the constitutional directive that the "legislature shall by general law establish and maintain a system of public schools..."(emphasis added).<sup>59</sup>

Like the State's educational system, Alaska's natural resources are a vital aspect of Alaskan life given particular

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<sup>56</sup> *Jefferson v. State*, 527 P.2d 37, 43 (Alaska 1974).

<sup>57</sup> *Id.* quoting in part Duvall, *Delineation of the Powers of the Alaska Home Rule City: The Need for a Beginning*, 8 Alaska L.J. 232-240 (Oct. 1970).

<sup>58</sup> *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska, 1971).

<sup>59</sup> *Id.*; See *Municipality of Anchorage v. Repasky*, 34 P.3d 302, 306 (Alaska 2001)(quoting *Macauley v. Hildebrand* and noting that "while the legislature has delegated significant local control over education, this court has made it clear that the Alaska Constitutional mandates 'pervasive state authority in the field of education.'"") Here the legislature has not delegated any local control over natural resource management.

attention by the framers with their own Article within the Constitution. Both contain specific constitutional mandates to the legislature that are "unqualified" with no other unit of government assigned any responsibility or authority.<sup>60</sup> Thus, although home rule cities constitutionally possess a wide range of legislative powers except those precluded by law,<sup>61</sup> the Legislature's failure to explicitly exclude a legislative power like education and natural resources from the general grant of home rule powers, simply does not override a specific constitutional mandate directed *only* to the state legislature.<sup>62</sup> Nor does it satisfy the legislature's constitutional mandate to *affirmatively (by action rather than inaction)* provide for natural resource management as it did when it created the Board of Game. Nowhere does the Legislature *specifically* provide for municipal regulation of the State's natural resources as required by Article VIII, § 2.

Finally, neither of the supposed sources of this legislative power, land use or home rule, contain any specific powers relevant to municipal regulation of state-owned assets much less any requirement to legislate in a manner maximizing its benefit to all Alaskans consistent with the constitutionally imposed instruction to the Legislature. As *Jacko* aptly observed, "[t]he

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<sup>60</sup> *Id.*

<sup>61</sup> Alaska Const. art. X, § 11.

<sup>62</sup> *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska, 1971).



general provision of authority to home rule boroughs [or cities] to regulate land use does not override the specific delegation of authority to DNR to regulate resource extraction."<sup>63</sup> Similarly, it does not override both the constitutional instructions to the Legislature or the Legislature's resulting delegation of authority to the Board of Game to regulate the State's game resources in the manner provided and as constrained by the Legislature.

*4. State law contemplates, defines and limits local area input into the State's regulatory game management framework.*

Rather than granting a wide unconstrained power to municipalities through the grant of legislative authority to local governing bodies, the Legislature instead provided for local area input through advisory committees to the Board of Game consistent with its broader, statewide regulatory trapping framework.<sup>64</sup> AS 16.05.260 authorizes the Board of Game to establish local advisory committees vested with the authority to hold public hearings on game matters. These local "advisory committees . . . composed of persons well informed on the fish or game resources of the locality" may make recommendations to the Board of Game.<sup>65</sup> The Prince William Sound/Valdez Advisory

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<sup>63</sup> *Jacko* at 346.

<sup>64</sup> AS 16.05.260.

<sup>65</sup> AS 16.05.260

Committee has jurisdiction over Unit 6 (encompassing the City of Valdez) and is an active Committee with six members.<sup>66</sup> The Board of Game has, upon request of local areas, closed certain areas to trapping along trails and other high recreational use areas.<sup>67</sup> Significantly, the legislature explicitly delegated to these local committees, the authority to make "emergency closures during established seasons."<sup>68</sup> Nowhere does the legislature similarly confer this or any other closure power on local municipal governing bodies.

*5. AS 16.05.790 makes it clear that the State Legislature has not delegated any of its constitutionally derived authority to municipalities.*

As further evidence of its intent to vest within the Board of Game the exclusive right to regulate trapping, the Legislature, when it adopted AS 16.05.790 wholly omitted municipalities as a source of lawful trapping regulation. One cannot, under AS 16.05.790, interfere with another's trapping if the trapping complies with state and federal laws and, if on private land, is conducted with the permission of the landowner.<sup>69</sup> AS 16.05.790(f) specifically provides:

For purposes of (a) of this section, "lawful" means (1) in compliance with (A) this title, regulations adopted under this title or applicable federal statutes and regulations; the Marine Mammal Protection Act (P.L.

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<sup>66</sup> [www.adfg.alaska.gov/index.cfm?adfg=process.acinfo&ac=valdez](http://www.adfg.alaska.gov/index.cfm?adfg=process.acinfo&ac=valdez).

<sup>67</sup> [Exc. 91-92]

<sup>68</sup> AS 16.05.270.

<sup>69</sup> See AS 16.05.790.

92.522) or the Endangered Species Act (P.L. 93-205); or federal regulations adopted under 16 U.S.C. 3111-3126 relating to subsistence hunting, fishing or trapping on federal land; and (2) with the permission of the private landowner if the hunting, fishing, trapping or viewing of fish or game occurs on private land.

In other words, the Legislature omits municipalities from its list of lawful sources of trapping regulation and does not require compliance with municipal law to trap lawfully. This is particularly telling when the Legislature incorporated even a private landowner's legal right to bar trapping on private land without even a hint of a municipal regulatory role.<sup>70</sup>

Thus, under AS 16.05.790 a trapper may trap lawfully without regard to municipal trapping ordinances. A city official's removal of a trap for violating city ordinances would constitute illegal obstruction of trapping.<sup>71</sup> Adoption of a statute criminalizing the City's claimed right to enforce its anti-trapping ordinance provides more than a meaningful clue as to whether the Legislature intended to permit municipal management of the State's natural resources, much less specifically provided for it as required by Article VIII, § 2 of Alaska's constitution.

The Order below summarily dismissed the relevance of AS 16.05.790(f) holding that its definition of "lawful" only applied to that section of the statute that criminalized obstruction with

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<sup>70</sup> Alaska Trappers have never argued that the City is not entitled, as a landowner, to preclude trapping on property it owns.

<sup>71</sup> AS 16.05.790(c) and (f).

lawful trapping.<sup>72</sup> This conclusion, while true, misses the point: AS 16.05.790(f) defines what constitutes lawful trapping and under what circumstances a third party (such as the City) may interfere with that trapping. AS 16.05.790 clearly precludes the City from interfering with lawful trapping even if authorized by City ordinance.

C. Even if the City of Valdez Possesses Lawmaking Powers over State Game Resources, Its Ordinance Attempted to veto State Regulations and Impedes State Policy.

The City cannot, even if it possesses the appropriate municipal power under state law, adopt an ordinance "so substantially irreconcilable [with state law] that one cannot be given its substantive effect if the other is to be accorded the weight of law."<sup>73</sup> Municipal ordinances, even if they serve different purposes from the state's law or further laudable city goals, cannot essentially nullify a state law or otherwise impede state policy.<sup>74</sup> In *Johnson v. City of Fairbanks*,<sup>75</sup> this Court invalidated a city ordinance requiring a potential plaintiff, as a condition to bringing a claim, to notify the city of the claim within a period shorter than the State's statute of limitation for the filing of a claim. Although the State's statute of limitation only expressly prohibited a city from requiring a

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<sup>72</sup> [Exc. 253-254].

<sup>73</sup> *Jefferson v. State*, 527 P.2d 37, 43 (Alaska 1974) (internal citations omitted).

<sup>74</sup> *Johnson v. City of Fairbanks*, 583 P.2d 181, 187 (Alaska 1978).

<sup>75</sup> *Id.*

person to post a bond, the Court concluded that a city's ordinance requiring a notice of claims was impliedly prohibited because the ordinance impeded the implementation of the state statutes.<sup>76</sup>

Here, the City passed an Ordinance banning and criminalizing trapping in certain areas the City carved out from a larger game management unit established by the Board of Game<sup>77</sup> without regard to the open season set by the Board of Game for that Game Management Unit.<sup>78</sup> The Board, in 5 AAC 84.270, established open seasons and bag limits for furbearing species in Game Management Units throughout the State of Alaska, including Unit 6 which encompasses the entire City of Valdez.<sup>79</sup> "Open season" as defined by the Board of Game means "the time when game may be taken."<sup>80</sup> The plain language of 5 AAC 84.260, therefore, authorizes trapping in a game management area during its open season when it states that: "It is lawful to trap a furbearer only in a game management unit or a portion of a unit *open to trapping* in accordance with the open season and bag limit prescribed in 5 AAC 84.270."<sup>81</sup>

According to the Order, however, the Board of Game, despite adopting 5 AAC 84.260 and establishing open seasons for trapping

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<sup>76</sup> *Id.*

<sup>77</sup> There are a total of 26 geographical areas established by the Board of Game in Alaska more fully described and defined in 5 AAC 92.450.

<sup>78</sup> [Exc. 29-31].

<sup>79</sup> 5 AAC 92.450(6)(D).

<sup>80</sup> 5 AAC 92.990(a)(54).

<sup>81</sup> (Emphasis added).

in 5 AAC 84.270, failed to affirmatively legalize trapping within **any** Game Management Unit, much less the game unit encompassing the City of Valdez. As interpreted by the Order, the Board of Game Regulation stating that: "It is *lawful* to trap a furbearer only in a game management unit . . . *open to trapping* in accordance with the open season and bag limit prescribed in 5 AAC 84.270"<sup>82</sup> must be read as: "It is *unlawful* to trap in a game management unit . . . that is *not open to trapping* in accordance with..." [the open season and bag limit prescribed in 5 AAC 84.270].<sup>83</sup> Even this interpretation, however, would create the inherent inference that the converse is true -- it is lawful to trap in an area unless it is specifically closed to trapping.

The Order's inverted interpretation of 5 AAC 84.260 as failing to affirmatively authorize trapping in a game management unit even during the game unit's open season: (1) renders completely superfluous the Board of Game's careful establishment in 5 AAC 84.270 of open seasons and bag limits for individual game units, (2) ignores the language in 5 AAC 84.260 indicating *that it is the setting of the open season* that legalizes trapping in the game unit and (3) flies in the face of the Board of Game's definition of an open season, used in both 5 AAC 84.260 and 5 AAC 84.270 as "the time when game may be taken."<sup>84</sup> Based on this

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<sup>82</sup> (Emphasis added).

<sup>83</sup> [Exc. 252] (additional wording and emphasis in original).

<sup>84</sup> 5 AAC 92.990(a)(54).

distorted and truncated interpretation of straightforward Board of Game regulations in place for over 30 years, the trial court upheld a City's ordinance that effectively altered game management unit boundaries drawn by the Board of Game, transformed an open season set by the Board of Game into a closed season for the City-established game management unit and reduced to zero the Board of Game's bag limit in that game unit.

D. Any Municipal Authority to Regulate State Game Resources Must Comply with Constitutional Restrictions on that Authority.

Alaska's Constitution demands that the State, in managing its natural resources, utilize the management principle of sustained yield<sup>85</sup> and make these resources" available for maximum use consistent with the public interest."<sup>86</sup> The City, operating completely independently even from its local advisory committee, closed areas within a larger Board of Game established game management unit to trapping. This closure not only nullified and vetoed the Board of Game's regulation that opened these areas to trapping, it occurred, by the City's own admission without even a nod to the game management principles mandated by Alaska's Constitution.<sup>87</sup>

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<sup>85</sup> Alaska Const. art. VIII, § 4.

<sup>86</sup> Alaska Const. art. VIII, § 1, Statement of Policy.

<sup>87</sup> [Exc. 35-36].

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The trial court failed to rule on this issue, despite the issue being raised in the initial summary judgment briefing<sup>88</sup> and despite a subsequent specific request by Alaska Trappers requesting that the trial court make an additional ruling on this issue.<sup>89</sup> Even if one concludes, as the trial court did here, that the City possesses the authority to regulate the taking of game without regard to restrictions and limitations imposed on the Board of Game, the City cannot and did not acquire the right to disregard the constitutionally imposed principles of game management which the City, by its own admission, did not consider when enacting the challenged ordinance.

#### VI. CONCLUSION

Alaska Trappers respectfully request that the Court overturn the trial court's ruling upholding the City's anti-trapping ordinance and enter an order that the City's anti-trapping ordinance is preempted by the State of Alaska's constitution, statutes and regulations.

DATED this \_\_\_\_\_ day of June 2022.

CSG, Inc.

By

  
\_\_\_\_\_  
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<sup>88</sup> [Exc. 19] and [Exc. 149].

<sup>89</sup> [Exc. 257].



Rinke Noonan

By

  
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**CERTIFICATE OF SERVICE**

This is to certify that on the 13 day of  
June 2022, a copy of the foregoing  
is being \_\_\_ faxed/\_\_\_ hand-delivered/ \_\_\_ mailed  
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