

IN THE SUPREME COURT OF THE STATE OF ALASKA

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

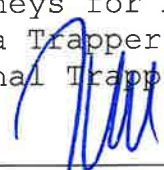
Supreme Court No. S-18189

Case No. 3VA-20-15 CI

APPEAL FROM THE SUPERIOR COURT
THIRD JUDICIAL DISTRICT AT VALDEZ
HONORABLE RACHEL AHRENS

APPELLANTS' REPLY BRIEF

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for the State of Alaska this
_____ day of October 2022.

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AUTHORITIES PRINCIPALLY RELIED UPON

Alaska Statutes

AS 14.12.030. School Boards.

(a) Each borough and city school district with an average daily membership of 5,000 or less has a school board of five members, except that the governing body of the borough or city may by ordinance, concurred in by a majority of the district school board, provide for a school board of seven members.

(b) Each borough and city school district with an average daily membership exceeding 5,000 has a school board of seven, nine, or eleven members, as established by ordinance.

(c) The provisions of (a) and (b) of this section do not apply if the assembly serves as the school board of the borough school district.

(d) The provisions of (a) and (b) of this section do not apply to a regional educational attendance area that converts to a city or borough school district. The number of school board members may be changed by the qualified voters in a district by placing the question on the ballot at a regular school board election in the manner prescribed by law.

(e) Each city or borough school district that is operating schools on a military reservation under AS 14.12.020 (a) has one nonvoting delegate from the military reservation or reservations to the school district board to advise and assist the board in matters relating to the military reservation schools operated by the school district and to act as liaison between the board and the military community. The nonvoting delegate shall be appointed by the school district board, shall serve at the pleasure of the school district board, and must be an inhabitant of the area served by the military reservation schools operated by the school district by contract. If an elected community school committee is established on a military reservation, the only inhabitants of that military reservation who are eligible for appointment as the nonvoting delegate are those inhabitants who are members of the elected school committee.

AS 14.12.035. Advisory School Boards in Borough School Districts.

A borough school district board may establish advisory school boards, and by regulation shall prescribe their manner of selection, organization, powers, and duties.

AS 14.12.040. Transition From Five to Seven Member Board.

The transition from a five-member to a seven-member school board shall be made at the regular election following, or being held within 90 days preceding, the completion of the second regular school term during which the district maintains an average daily membership exceeding 5,000 or at the regular election following

the effective date of an ordinance increasing board membership as provided in AS 14.12.030 (a). Once the district has a seven-member school board, the number of members may not be changed.

AS 14.12.050. School board terms

(a) The term of office of a member of a borough or city school board is three years and until a successor takes office. However, the members of a newly created five-member school board hold office for initial terms as follows: two for a term of three years, two for a term of two years, and one for a term of one year, the terms being assigned to the members by lot. The members of a newly created seven-member school board hold office for initial terms as follows: three for a term of three years, two for a term of two years, and two for a term of one year, the terms being assigned to the members by lot.

(b) When a transition is made from a five-member school board to a seven-member school board, the length of the terms of office for the two new members to be elected shall be determined by lot so that when the terms of office for the two new members are assigned, the terms of office for the entire seven-member board shall be as follows: three members have a three-year term, two members have a two-year term, and two members have a one-year term. A seven-member school board, the terms of office of whose members at the time of transition from a five-member board did not result in terms expiring in the manner provided in this section, may, by resolution adopted by a majority of the members of the board, adjust the terms of office to conform to the schedule for expiration of terms of office provided in this section.

(c) Nothing in this section prevents school board members from succeeding themselves.

AS 14.12.070. Vacancies.

If a vacancy occurs on the school board, the remaining members shall within 30 days fill the vacancy. The person selected shall serve until the next regular election when a successor shall be elected to serve the balance of the term.

AS 14.12.080. Qualification of Members.

To be eligible to be a member of a school board, a person must have the same qualifications as are necessary to be a municipal voter in the school district.

AS 14.12.090. Oath.

School board members, before taking office, shall take and sign the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska and

that I will honestly, faithfully, and impartially discharge my duties as a school board member to the best of my ability."

AS 14.12.100. Application.

AS 14.12.010 - 14.12.100 apply to home rule and general law municipalities.

AS 4.12.110. Single body as assembly and school board

Notwithstanding the provisions of this chapter or other law, a single body may serve as both the assembly and school board in the manner provided for third class boroughs under AS 29.20.300(b), if

(1) an ordinance for that purpose is approved by the assembly and ratified by a referendum of a majority of the qualified borough voters voting on the question at a regular or special election; and

(2) the public school population within the borough is 500 pupils or less.

AS 14.12.115. Indemnification

A school board shall insure or indemnify and protect the board, any member of the board, or any agent, employee, teacher, student teacher, officer, or member of the supervisory or administrative staff of the school district against financial loss and expense, including reasonable legal fees and costs arising out of any claim, demand, suit, or judgment by reason of alleged negligence, alleged violation of civil rights, or alleged wrongful act resulting in death or bodily injury to any person or accidental damage to or destruction of property, inside or outside the school premises, if the board member, agent, employee, teacher, student teacher, officer, or member of the supervisory or administrative staff, at the time of the occurrence, was acting under the direction of the school board within the course or scope of the duties of the board member, agent, employee, teacher, student teacher, officer, or member of the supervisory or administrative staff.

AS 14.14.060. Relationship Between Borough School District and Borough; Finances and Buildings.

(a) The borough assembly may by ordinance require that all school money be deposited in a centralized treasury with all other borough money. The borough administrator shall have the custody of, invest, and manage all money in the centralized treasury. However, the borough assembly, with the consent of the borough school board, may by ordinance delegate to the borough school board the responsibility of a centralized treasury.

(b) When the borough school board by resolution consents, the borough assembly may by ordinance provide a centralized accounting system for school and all other borough operations.

The system shall be operated in accordance with accepted principles of governmental accounting. However, the assembly, with the consent of the borough school board, may by ordinance delegate to the borough school board the responsibilities of the accounting system.

(c) Except as otherwise provided by municipal ordinance, the borough school board shall submit the school budget for the following school year to the borough assembly by May 1 for approval of the total amount. Within 30 days after receipt of the budget the assembly shall determine the total amount of money to be made available from local sources for school purposes and shall furnish the school board with a statement of the sum to be made available. If the assembly does not, within 30 days, furnish the school board with a statement of the sum to be made available, the amount requested in the budget is automatically approved. Except as otherwise provided by municipal ordinance, by June 30, the assembly shall appropriate the amount to be made available from local sources from money available for the purpose.

(d) The borough assembly shall determine the location of school buildings with due consideration to the recommendations of the borough school board.

(e) The borough school board is responsible for the design criteria of school buildings. To the maximum extent consistent with education needs, a design of a school building shall provide for multiple use of the building for community purposes. Subject to the approval of the assembly, the school board shall select the appropriate professional personnel to develop the designs. The school board shall submit preliminary and subsequent designs for a school building to the assembly for approval or disapproval; if the design is disapproved, a revised design shall be prepared and presented to the assembly. A design or revised design approved by the assembly shall be submitted by the board to the department in accordance with AS 14.07.020 (a)(11).

(f) The borough school board shall provide custodial services and routine maintenance for school buildings and shall appoint, compensate, and otherwise control personnel for these purposes. The borough assembly through the borough administrator, shall provide for all major rehabilitation, all construction and major repair of school buildings. The recommendations of the school board shall be considered in carrying out the provisions of this section.

(g) State law relating to teacher salaries and tenure, to financial support, to supervision by the department and other general laws relating to schools, governs the exercise of the functions by the borough. The school board shall appoint, compensate, and otherwise control all school employees and administration officers in accordance with this title.

(h) School boards within the borough may determine their own policy separate from the borough for the purchase of supplies and equipment.

(i) Notwithstanding (e) and (f) of this section, a borough assembly and a borough school board may divide the duties imposed under (e) and (f) of this section by agreement between the borough assembly and borough school board.

AS 14.14.065. Relationship Between City School District and City.

The relationships between the school board of a city school district and the city council and executive or administrator are governed in the same manner as provided in AS 14.14.060 for the school board of a borough school district and the borough assembly and executive or administrator.

AS 14.14.090. Duties of School Boards.

In addition to other duties, a school board shall

(1) determine and disburse the total amount to be made available for compensation of all school employees and administrative officers;

(2) provide for, during the school term of each year, an educational program for each school age child who is enrolled in or a resident of the district;

(3) withhold the salary for the last month of service of a teacher or administrator until the teacher or administrator has submitted all summaries, statistics, and reports that the school board may require by bylaws;

(4) transmit, when required by the assembly or council but not more often than once a month, a summary report and statement of money expended;

(5) keep the minutes of meetings and a record of all proceedings of the school board in a pertinent form;

(6) keep the records and files of the school board open to inspection by the public at the principal administrative office of the district during reasonable business hours;

(7) establish procedures for the review and selection of all textbooks and instructional materials, including textbooks and curriculum materials for statewide correspondence programs, before they are introduced into the school curriculum; the review includes a review for violations of AS 14.18.060 ; nothing in this paragraph precludes a correspondence study student, or the parent or guardian of a correspondence study student, from privately obtaining or using textbooks or curriculum material not provided by the school district;

(8) provide prospective employees with information relating to the availability and cost of housing in rural areas to which they might be assigned, and, when possible, assist them in locating housing; however, nothing in this paragraph requires a school district to provide teacher housing, whether district

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owned, leased, rented, or through other means, nor does it require a school board to engage in a subsidy program of any kind regarding teacher housing;

(9) train persons required to report under AS 47.17.020 , in the recognition and reporting of child abuse, neglect, and sexual abuse of a minor;

(10) provide for the development and implementation of a preventative maintenance program for school facilities; in this paragraph, "preventative maintenance" means scheduled maintenance actions that prevent the premature failure or extend the useful life of a facility, or a facility's systems and components, and that are cost-effective on a life-cycle basis.

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;

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(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;

(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.

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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 29.35.160. Education.

(a) Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060 . A military reservation in a borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education and Early Development. However, operation of the military reservation schools by the borough school district may be required by the Department of Education and Early Development under AS 14.14.110 . If the military mission of a

military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education and Early Development, operation, management, and control of schools on the military reservation transfers to the borough school district in which the military reservation is located.

(b) This section applies to home rule and general law municipalities.

Valdez Municipal Code

09.38.020 - Definitions

The following words and phrases shall have the meanings respectively ascribed to them by this section:

"Trap" means any device used for the purpose of catching, capturing, snaring, holding or killing animals.

"Trapping" means the placing or setting of traps with the intent to catch animals. This definition does not apply to the catching of animals within a dwelling place or garage, shed or barn.

09.38.030 - Trapping Allowed

Trapping for both recreational and for subsistence purposes is allowed within the Valdez city limits except that:

A. Trapping shall not be allowed within one-half mile in any direction of an occupied subdivision.

B. Trapping shall not be allowed within five hundred feet of any road, excluding bridges and culverts outside the downtown area and past the duck flats. No trapping is allowed within the area known as the Valdez duck flats, which is defined as that area bounded on the east by Mineral Creek Loop Road, on the west by the Richardson Highway, on the south by a line extending from the Valdez Container Terminal to and including Dock Point and on the north by elevation of one thousand feet.

C. Trapping shall not be allowed within portions of Mineral Creek Canyon and all areas northeast of the Richardson Highway from Airport Road to the Glacier Stream Bridge. No trapping is allowed within five hundred feet of the Mineral Creek trails, located in Mineral Creek Canyon as designated on Exhibits A and B to Section 12.08.010.

D. No trapping is allowed within the area known as Mineral Creek State Park, which is defined as a fifty-acre parcel known as Tract A-2, ASLS 99-21; and a 91.68-acre portion of U.S. Survey 5113 bounded on the north by Raven Subdivision and Tract A-1, ASLA 79-117, on the east by Tract A-1, ASLA 79-117, on the south by Blueberry Subdivision and Port Valdez, and on the west by Tract A-2, ASLA 99-21.

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 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

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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 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.

5 AAC 92.550 - Areas closed to trapping

The following areas are closed to the trapping of furbearers as indicated:

(1) Unit 1(C) (Juneau area):

(A) a strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(B) Auke Lake and the area within one-quarter mile of Auke Lake;

(C) that area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(D) a strip within one-quarter mile of the Douglas Island coast along the entire length of the Douglas Highway and a strip within one-quarter mile of the Eaglecrest Road;

(E) that area within the United States Forest Service Mendenhall Glacier Recreation Area;

(F) a strip within one-quarter mile of the following trails as designated on United States Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and the Nelson Water Supply Trail, Sheep Creek Trail, Point Bishop Trail, Amalga Trail, Auke Nu/John Muir Trail, Eagle Glacier Trail, Point Bridget Trail, Treadwell Ditch Trail, and Salmon Creek Trail; however, traps that are completely submerged and traps with an inside jaw spread of five inches or less which are set at least five feet above the ground and snow are allowed if set more than 50 yards from the trail;

(G) the area described as the Mendenhall Wetlands State Game Refuge in AS 16.20.034 is closed to trapping; the use of off-road or all-terrain vehicles, motorcycles, or other motorized vehicles (except boats) within the boundaries of Mendenhall Wetlands State Game Refuge is prohibited at all times;

(2) Unit 9: the McNeil River State Game Sanctuary and contiguous tidelands are closed to trapping;

(3) Unit 14(C) (Anchorage Area):

(A) the drainages into Eklutna River and Eklutna Lake, within Chugach State Park except Thunderbird Creek and those drainages flowing into the East Fork of the Eklutna River upstream from the bridge above the lake;

(B) the Eagle River Management Area;

(C) that portion of Chugach State Park outside of the Eagle River, Anchorage, and Eklutna management areas is open to trapping under Unit 14(C) seasons and bag limits, except that trapping of wolf, wolverine, land otter, and beaver is not allowed; killer style steel traps with an inside jaw spread seven inches or greater are prohibited; a person using traps or snares in the area must register with the Department of Natural Resources Chugach State Park area office and provide a trapper identification; all traps and snares in the area must be marked with the selected identification; the use of traps or snares is prohibited within (i) 50 yards of developed trails; (ii) one-quarter mile of trailheads, campground, and permanent dwellings; (iii) repealed 7/1/2009;

(D) all land and water within the Anchorage Management Area as described in 5 AAC 92.530(3);

(E) in the Anchorage Coastal Wildlife Refuge in Unit 14(C), described in AS 16.20.031: all land and water south and west of and adjacent to the toe of the bluff that extends from Point Woronzof southeasterly to Potter Creek;

(F) the Joint Base Elmendorf-Richardson (JBER) Management Area, except for beaver, muskrat, mink, weasel, marten, otter, fox, and coyote in areas designated by the commander;

(4) Unit 15:

- (A) repealed 7/1/2005;
- (B) repealed 7/1/2005;
- (C) repealed 7/27/2005;

(D) the Kenai Moose Research Center Closed Area in Unit 15(A), which consists of that area within the outer boundary fences of the Kenai Moose Research Center, located west and south of Coyote and Vixen Lakes is closed to trapping;

(5) Unit 17: all islands within the Walrus Islands State Game Sanctuary as described in AS 16.20.092 are closed to trapping;

(6) Unit 2: Joe Mace Island Marine Park, a small island off Point Baker on Prince of Wales Island, is closed to trapping;

(7) repealed 8/10/2010;

(8) repealed 8/10/2010.

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 proscribed;

Constitutional Provisions

Article 7 - Health, Education and Welfare

Section 1. Public Education

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

Article 8 - Natural Resources

Section 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.

Section 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.

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Section 3. Common Use

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

Section 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.

I. ARGUMENT

A. The State's "Pervasive Control" of Alaska's Natural Resources Precludes the City from Enacting an Ordinance Regulating Game Absent Express Legislative Delegation

1. *Alaska's Constitution mandates pervasive state control over natural resources.*

According to the City, Alaska's constitution failed to grant pervasive control to the State Legislature over natural resources because the constitutional language differs from that used in the grant of pervasive state control in education.¹ Admittedly, the constitutional language differs as Article VII, Section 1 of the Alaska Constitution requires the Legislature to "establish and maintain a system of public schools" while Article VIII, Section 2 of the Alaska Constitution requires the legislature to "provide for the utilization, development and conservation of all natural resources belonging to the State for the maximum benefit of its people." But hyperfocus on differing language misses the substantive underlying point: in both, education and natural resource, the constitution directs, mandates and vests in the State Legislature unshared responsibilities and legislative power.²

¹ Appellee's Brief at 32.

² Alaska Const. art. VII, Section 1 and art. VIII, Section 2. See e.g., *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971) ("[T]he provision is unqualified; no other unit of government shares responsibility or authority.").

Moreover, while Alaska's constitution expressly mandates that the Legislature "maintain" the education system,³ the Legislature could and did delegate a significant portion of this ongoing responsibility to local governing bodies by explicitly granting certain municipalities an areawide education power and establishing local school districts that mirrored municipal boundaries.⁴ Locally elected school boards generally manage their local school district with some oversight by local governing bodies.⁵ Unlike a public school system, however, natural resources are assets "belonging to the State"⁶ that must be managed pursuant to both a constitutionally adopted state policy and constitutionally imposed statewide managerial principles⁷ including management "for the maximum benefit of its people."⁸

Nothing in Article VIII's grant of natural resource management powers to the State Legislature, subject to constitutionally imposed statewide management principles, suggests or permits local management only for the benefit of municipal constituents. Instead, it impliedly precludes localized game management because:

[E]ffective statewide game management, including regulation of species that transverse local political boundaries, requires uniform management decisions,

³ Alaska Const. art. VII, Section 1.

⁴ AS 29.35.160(a).

⁵ AS 14.12.030-115, AS 14.14.090 and AS 14.14.060-065.

⁶ Alaska Const. art. VIII, Section 2.

⁷ Alaska Const. art. VIII, Sections 1-4.

⁸ Alaska Const. art. VIII, Section 2.

leaving no room for independent game management jurisdiction by local governments. Localized game control would 'substantially interfere' with the purposes of conservation and development of the resources and the functions of the Board of Game ...⁹

The City, however, continues to confuse the court's refusal in *Brooks v. Wright*¹⁰ to interpret Article VIII as explicitly creating a public trust with a broader rejection of "the argument that Article VIII provides the legislature with exclusive authority for game-management regulation."¹¹ *Brooks* merely recognized the constitutional right of the people, through a statewide initiative, to exercise "the law-making powers of the state legislature in this area."¹² Recognizing the constitutional right of state citizens to wield directly the state's legislative power through a voter initiative does not undermine the exclusivity of the state legislative power over natural resources. And even the initiative power has constitutional limitations for fish and wildlife.¹³

Similarly, the right of private landowners including municipal landowners to bar activities, including trapping on their private land, provides no indication of a shared legislative

⁹ Appellee's Brief, Appendix A at 5.

¹⁰ 971 P.2d 1025 (Alaska 1999).

¹¹ Appellee's Brief at 40.

¹² *Jacko v. State*, 353 P.3d 337, 345 (Alaska 2015) (emphasis in original).

¹³ See *Pullen v. Ulmer*, 923 P.2d 54, 69 (Alaska 1996) (salmon are an asset of the state which may not be appropriated by initiative).

power or otherwise diminishes the state's exclusive legislative power over its natural resources. A landowner can bar access to their property, not close the Board of Game authorized trapping season.

2. A separate preemption test applies when a municipality acts in a field where Alaska's constitution grants the State "pervasive control".

When discussing implied preemption, this Court has drawn an important distinction between general preemption standards where "it is not enough for state law to occupy the field" and attempted municipal regulation in "a field subject to 'pervasive' state control."¹⁴ In the first context, municipalities retain their power, even if the state enacts legislation in that area, as long as the ordinance and the statute are not "substantially irreconcilable".¹⁵ Under the latter test, first applied in *Macauley v. Hildebrand*,¹⁶ if a field is subject to "pervasive state control," home rule municipalities are precluded "from acting unless exercising a power expressly delegated to it by the legislature."¹⁷

The City's confusion between the two standards caused it to dismiss the Alaska Trappers application of the *Macauley* test as

¹⁴ *Municipality of Anchorage v. Repasky*, 34 P.3d 302, 311 (Alaska 2001) (quoting *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971)).

¹⁵ *Jefferson v. State*, 527 P.2d 37, 43 (Alaska 1974).

¹⁶ 491 P.2d 120 (Alaska 1971).

¹⁷ *Repasky*, 34 P.3d at 311 (emphasis added).

a "veiled attempt" to restore the "occupying the field" preemption test.¹⁸ Similarly, the City also mistakenly claims that *Jefferson v. State* abrogated the *Macauley* "pervasive state control test" when it reaffirmed its rejection of the doctrine of "occupying the field"¹⁹ and replaced the "traditional tests such as statewide versus local concern"²⁰ with the "substantially irreconcilable" test. Nothing in *Jefferson*, however, abrogated the separate *Macauley* preemption test applicable in a field where the state possesses pervasive control. Instead, *Jefferson* actually noted the distinction between the two separate preemption sources, observing that:

Although the statutory prohibition in *Macauley* was direct, the court offered another reason for striking down the questioned ordinance. The statute involved in *Macauley* was an express delegation by the state legislature to municipal corporations of a constitutionally mandated legislative power. We reasoned that the language of the state constitution mandating maintenance of a school system by the state vested the legislature with pervasive control over education. Thus, home rule municipalities were precluded from exercising power over education unless, and to the extent, delegated by the state legislature and the local ordinance was therefore overridden by the statute.²¹

Accordingly, *Municipality of Anchorage v. Repasky*,²² an education case decided more than twenty years after *Jefferson*,

¹⁸ Appellee's Brief at 19.

¹⁹ *Id.* at fn 33.

²⁰ *Jefferson v. State*, 527 P.2d 37, 43 (Alaska 1974).

²¹ *Id.* at 44.

²² 34 P.3d 302 (Alaska 2001).

applied the *Macauley* “pervasive field” test to a challenged home rule ordinance authorizing a mayoral veto of a school budget. Because education is a field where the state has “pervasive” control, *Repasky* upheld the ordinance because it found first that the legislature “expressly gave municipalities the power to approve or reduce the total amounts of the proposed budget”²³ and then that the “veto is not substantially irreconcilable with that power.”²⁴

The court did not apply the *Macauley* test in *Jacko v. State*,²⁵ (a 2015 natural resource’s opinion) because it invalidated the municipal ordinance on statutory grounds. The court, however, pointedly referenced *Macauley* noting that the State, “under the factors articulated in *Macauley*, had made a compelling argument that natural resource management is an area of ‘pervasive state authority.’”²⁶

3. *The State Legislature has not delegated any of its natural resource authority to home rule municipalities.*

Article VIII, Section 2 mandated that the “legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State” Thus, in Alaska’s

²³ *Repasky*, 34 P.3d at 314 (emphasis added) (i.e. the *Macauley* test).

²⁴ *Id.* (i.e. the separate *Jefferson* test).

²⁵ 353 P.3d 337 (Alaska 2015).

²⁶ 353 P.3d at 346, fn 60.

1958 Statehood Act,²⁷ the federal government retained authority over Alaska's fish and wildlife resources until "the Alaska State Legislature has made adequate provision for the administration, management and conservation" of these resources.²⁸ Only after the Legislature created the position of Commissioner and the Board of Game, empowering the Board at its inception with the authority to "establish[] open and closed seasons and areas for fish and game," did the U.S. Secretary of the Interior "certif[y] [to Congress] that the Alaska State Legislature ha[d] made adequate provision for the administration, management and conservation of the fish and wildlife resources of Alaska"²⁹ In other words, any delegation of the legislature's constitutional authority required, from its beginning, an express, specific legislative act.

The City does not and cannot point to any Legislative delegation of this constitutional authority to local municipalities, before or after the Legislature created the Board of Game. Nonetheless, the City ordinance here improperly exercises the regulatory power directly delegated only to the Board of Game--to open and close seasons and areas for trapping.³⁰

²⁷ Pub.L. No. 85-508, § 6(e), 72 Stat. 339, 340-41 (1958).

²⁸ *Id.*

²⁹ *Inlet Fisherman's Fund v. State Cook*, Op. No. 7611 (August 12, 2022) (quoting in part a Letter from Fred A. Seaton, Secretary of the Interior, to Sam Rayburn Speaker of the House (Apr. 27, 1959)).

³⁰ AS 16.05.255(a)(2).

Specifically the City's ordinance regulates the taking of game by closing largely state land, including a state park,³¹ that the Board of Game opened to trapping.³²

B. Claiming a Different Even Laudable Purpose Neither Opens the Door to Direct Regulation of Game Free of Constitutional Policies nor Permits Municipal Veto of a State Statute

1. *Even if a gap existed in the Board of Game's powers, the City lacks the power to directly regulate trapping.*

The City overtly and directly criminalizes trapping (regardless of means, method, type of trap, etc.) in an area where the Board of Game licenses trapping.³³ Nonetheless, the City disclaims an intent to regulate wildlife noting that its regulation recites a public safety purpose. According to the City, it may bar trapping, pursuant to this purpose, even in an area where the Board of Game has licensed trapping because the Board of Game lacks authority to regulate game for public safety purposes.³⁴

The Board's powers, however, are construed liberally to "embody concepts of utilization of resources."³⁵ Although the Board of Game may not enact a regulation "solely" or "strictly"

³¹ State of Alaska Amicus Brief at 10-11.

³² VMC 09.38.030 "Trapping . . . is allowed within the Valdez city limits except that . . . A. Trapping shall not be allowed" in specified areas. [Exc. 30].

³³ [Exc. 30].

³⁴ Appellee's Brief at 15.

³⁵ *Kenai Pen. Fisherman's Co-op Ass'n. v. State*, 628 P.2d 897, 903 (Alaska 1981).

for public safety purposes; nothing prohibits it from considering public safety when adopting regulations related to the conservation, utilization and development of game.³⁶ After all, the Board can and should exercise its powers of game management (conservation, utilization and development of game) pursuant to the constitutionally established state policy requiring the State to make natural resources available "for maximum use consistent with the **public interest.**"³⁷

In other words, the Board of Game may "adopt regulations that serve a conservation and development purpose, but which incidentally have a public safety effect."³⁸ As the City acknowledges, the Board has in fact exercised this authority to prohibit some trapping near trails and certain residential areas.³⁹ This regulatory power of fish and game management, when exclusively exercised by the Board of Game (as opposed to the City), ensures statewide game management pursuant to constitutionally mandated principles, including consideration of the public interest. Thus, the assertion that somehow the City's direct regulation of trapping may be justified by an alleged gap

³⁶ Appendix A to Appellee's Brief at 3.

³⁷ Alaska Const. art. VIII, Section 1 Statement of Policy (emphasis added).

³⁸ Appendix A to Appellee's Brief at 2.

³⁹ Appellee's Brief at 16; 5 AAC 92.550 (closing certain areas near trails and other recreation areas in both Anchorage and Juneau to trapping).

in Board of Game powers necessary to protect the public from the claimed danger of trapping lacks both legal and factual support.

Conversely, absolutely nothing empowers the City, with or without a gap in the Board of Game's powers, to regulate directly the taking of game on state land free of constitutional restraints or legislatively imposed limitations and regulations. Assuming anyone could constitutionally manage game purely for an alleged public safety purpose without consideration of constitutionally imposed management principles, any "gap" in the Board of Game's powers may not be filled by local municipalities except and until the Legislature delegates municipalities that authority.

2. A legitimate public purpose does not convey regulatory authority over fish and game.

Merely possessing a legitimate public purpose such as general police powers does not confer regulatory or management power over the state's natural resources, it simply serves as a prerequisite to adoption of any public ordinance. The *Macauley* court did not, as the City erroneously suggests, preclude Juneau from controlling its school district's accounting function because the court determined Juneau "was directly interfering ... without any underlying legitimate public purpose, such as public safety"⁴⁰ Far from lacking any legitimate public purpose, Juneau by law "constitutes a borough school district and

⁴⁰ Appellee's Brief at 33.

establishes, maintains and operates a system of public schools on an areawide basis as provided in AS 14.14.060"⁴¹ Despite this directly delegated educational power, however, Juneau still could not mandate control over its school district's accounting function because state law required the school board's consent.⁴²

3. *The City's ordinance directly regulates the taking of game.*

Here the City's ordinance does not even purport to regulate anything other than the taking of game by trapping. The Alaska Attorney General in its 1982 opinion carefully distinguished between the direct and indirect regulation of natural resources concluding that:

Local governments do not have authority to **directly** regulate the management of fish and wildlife, but may enact legitimate police power regulations such as restrictions on the use of firearms where they are reasonable necessary to protect life or property.⁴³

Although the City relies on *Liberati v. Bristol Bay Borough*,⁴⁴ which upheld a municipal ordinance taxing raw fish sales, *Liberati* provides no authority for a municipality's direct regulation of fish or game as it specifically found that the

⁴¹ AS 29.35.160(a)

⁴² State law at the time provided that: "When the borough school board by resolution consents, the borough assembly may by ordinance provide a centralized accounting system for school and all other borough operations." *Macauley v. Hildebrand*, 491 P.2d 120, 121 (Alaska 1971).

⁴³ 1982 Inf. Op. Att'y Gen. 1982 WL 43763 (Appendix A to Appellee's Brief at 5) (emphasis added).

⁴⁴ 584 P.2d 1115 (Alaska 1978).

challenged ordinance only served to "raise money, and has no regulatory component."⁴⁵

The City here adopted an ordinance directly regulating the taking of game. Directly barring the taking of game in a geographical area simply does not equate to an ordinance indirectly burdening the ability to trap or hunt. Instead, the City's ordinance serves as the functional equivalent of an ordinance directly regulating trapping despite no legislative grant of that power and in a manner that overrides a state trapping law.

4. The City's ordinance vetoes state law.

Assuming that the City possess some authority to regulate in the area of natural resources through exercise of its police or land use powers, this does not extend so far as to empower it to prohibit an act specifically permitted by a state agency. Although the City inexplicably asserts that its ordinance "can and should be read together with the trapping regulations promulgated by the Board of Game,"⁴⁶ an ordinance prohibiting trapping in an area simply cannot be reconciled with a Board of Game regulation permitting trapping in that same area.

Even an ordinance indirectly regulating a natural resource cannot deprive a state law of its substantive effect. As the

⁴⁵ 584 P.2d at 1122.

⁴⁶ Appellee's Brief at 42.

Johnson v. City of Fairbanks court aptly noted: "Despite this wide-ranging municipal power, however, the exercise of that authority is not insulated from possible invalidity when a conflict with state law occurs."⁴⁷ Accordingly, the trial court's opinion correctly conceded that *if* state law closed an area to trapping, then a City ordinance opening it to trapping "might well be impliedly preempted."⁴⁸ Here, the City simply adopted a municipal ordinance closing an area state law opened to trapping.

Nor does the Attorney General's opinion, repeatedly referenced by the City, conditionally permit a City's *direct* regulation of game that overrides a Board of Game regulation pending proof that it frustrates the statewide management of game. Instead, as explained in the Attorney General's opinion, it is a municipalities otherwise acceptable *indirect* regulation such as a "firearms or similar ordinance" that risks invalidation if its incidental impact frustrates statewide management of game.⁴⁹

The City makes no attempt to defend the trial court's interpretation of 5 AAC 84.260 as somehow failing to open every square inch of game management units to trapping.⁵⁰ The City, however, constructs a similar argument assigning unexplained significance to its mistaken assertion that the Board of Game

⁴⁷ 583 P.2d 181, 184 (Alaska 1978).

⁴⁸ [Exc. 253].

⁴⁹ Appendix A to Appellee's Brief at 5.

⁵⁰ [Exc. 252].

opened the Valdez game management unit to trapping only "by default" as opposed to "expressly opening the areas . . . to trapping."⁵¹ Even if some significance arises from this distinction, the City simply has its facts wrong. The Board of Game expressly opened the entire game management unit to trapping when it affirmatively established an open season and bag limit for the Valdez game management unit.⁵² "Open season means the time when game may be taken"⁵³

In any event, the Board did not elect merely to *tolerate* trapping in the Valdez area; it licensed trapping during the game management's open season and established applicable bag limits by species.⁵⁴ While home rule municipalities may prohibit conduct not expressly prohibited by the state, it may not prohibit or criminalize conduct that state law expressly licenses or privileges.⁵⁵ In *Anchorage v. Richards*,⁵⁶ the court upheld a

⁵¹ Appellee's Brief at 15.

⁵² 5 AAC 84.270 which provides in pertinent part: "Trapping seasons and bag limits for furbearers are as follows: Species and Units Open Season Bag Limit"

⁵³ 5 AAC 92.990(a) (54).

⁵⁴ 5 AAC 84.270.

⁵⁵ *Adkins v. Lester*, 530 P.2d 11, 15 (Alaska 1974) reh. Denied, 532 P.2d 1027 (Alaska 1975) (Invalidating a City of Fairbanks ordinance that required emergency vehicle to use warning lights or audible signals at all times when a state regulation permitted these vehicles in certain instances to avoid use of their lights or audible signals). See also, *Cremer v. Anchorage*, 575 P.2d 306, 308, fn 5 (Alaska 1978) (Observing that the *Adkins v. Lester* invalidated an ordinance that "restricted conduct . . . which the statute expressly permitted This . . . amounted to the exercise of home rule powers expressly prohibited by the legislature.").

⁵⁶ 654 P.2d 797, 799 (Alaska Ct. App. 1982).

municipal regulation prohibiting the carrying of a concealed weapon in a vehicle because the court could find "absolutely nothing in state statutes that would suggest an intent to encourage people to carry weapons in automobiles" and, at best, "the legislature elected to tolerate such conduct."

Finally, the City repeatedly describes its ordinance as "narrowly tailored" to that necessary to protect public safety including property.⁵⁷ After the filing of the Complaint in this matter, however, the City removed both its signage and registration requirements (an indirect regulation serving to notify the public of the presence of traps in the area) and adopted a total ban on trapping in specified areas.⁵⁸ Narrow tailoring strongly suggests exactly the reverse. Worse, this ban on trapping made no attempt even to narrow its regulation to certain traps or devices that the City deemed a particular threat to public safety but instead broadly banned the use of "any device used for the purpose of catching, capturing, snaring, holding or killing animals" including even live traps presenting no public safety threat.⁵⁹

5. The City's Ordinance Impedes Both Constitutional and State Regulatory Policies.

Alaska's constitution sets and establishes statewide natural

⁵⁷ Appellee's Brief at 8, 24, 28, 42, and 44.

⁵⁸ [Exc. 30].

⁵⁹ [Exc. 29], VMC 09.38.020 defining "Trap".

resource policies and game management principles that the City argues, without any legal support, that it may ignore simply because its ordinance directly regulates the taking of game for an alleged public safety purpose.⁶⁰

The City similarly dismisses the Board of Game's regulations claiming that regulating game through separate game management units somehow eviscerates the existence of any "statewide policy" as there is no state uniformity.⁶¹ Statewide uniformity, however, arises from the legislature's explicit grant of authority to a statewide Board to adopt regulations "it considers advisable ... for (2) establishing open and closed seasons *and areas* for the taking of game"

Vesting a power in a Board's discretion expands rather than diminishes the Board of Game's statewide authority⁶² -- in no way inviting a local municipality to supplant the Board of Game's discretion for its own. Instead, the legislature explicitly authorized only the Board of Game (a statewide policy maker) to designate, in its discretion, areas where state citizens may harvest game through trapping. In addition, to this very specific

⁶⁰ Appellee's Brief at 41-42.

⁶¹ Appellee's Brief at 23-24.

⁶² See e.g. *Interior Paint Co. v. Rodgers*, 522 P.2d 164, 169 (Alaska 1974) (A board "is entrusted with discretionary authority" such that a "mandate would cause the grant of discretion to become mere illusion."). See also, *Ellingson v. Lloyd*, 342 P.3d 825, 833 (Alaska 2014) (Describing the Department's discretionary authority as being "bestowed").

statewide grant of authority, the Legislature also more broadly authorized the Board "to regulate ... in a manner that addresses whether, how, when and where the public asset of game is allocated or appropriated."⁶³

In *Chugach Electric Association, Inc. v. City of Anchorage*,⁶⁴ the court rejected an argument similar to what the City makes here finding that "the denomination of service areas wherein a public utility may operate" constitutes a matter "unquestionably of a state-wide concern." The statutes at issue in *Chugach* addressed both the type of service and the area where it should be provided.⁶⁵ The *Chugach* court thus "discerned in the statute a strong policy in favor of treating regulation of public utility service areas as a matter of statewide concern."⁶⁶

Here, the Board of Game's statutes, at a *minimum*, similarly reflect a strong policy for statewide management of game, while permitting local input including specifically through local advisory bodies.⁶⁷ "[A] strong policy in favor of treating ... [a] regulation as a matter of statewide concern"⁶⁸ may exist even in the absence of "a clear manifestation of intent to occupy the

⁶³ AS 16.05.255(j).

⁶⁴ 476 P.2d 115, 122 (Alaska 1970).

⁶⁵ *Id.* at 123.

⁶⁶ *Jefferson v. State*, 527 P.2d 37, 44 (Alaska 1974).

⁶⁷ AS 16.05.260; discussed generally in the Brief of State of Alaska as Amicus Curiae at 15-17.

⁶⁸ 476 P.2d at 123.

entire field”⁶⁹ Thus, the *Chugach* court found that even though the City of Anchorage retained jurisdiction to “allow for the proper administration of municipal police powers” it “may not deny Chugach the right to provide the electrical services” approved by the state commission.⁷⁰ The City, here, similarly may not use its police powers to deny state residents the right to trap in areas permitted by the State’s Board of Game.

Additionally, in *Jacko*, the court invalidated a municipal ordinance, prior to any actual exercise of the claimed power, finding that it impeded statewide legislative policies because the ordinance: (1) exercised a power (to regulate mining) that the Legislature had delegated to a state agency and (2) empowered the Borough to “potentially” close its entire watershed to large scale mineral development violating a state law requiring legislative approval to close large areas to resource development.⁷¹

Here, the City claims the power to close areas located in its municipality to trapping, a power that the State Legislature has only expressly delegated to the Board of Game.⁷² Moreover, although the City ordinance “only” removed the right to trap in

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ 353 P.3d at 344.

⁷² Under AS 16.05.255 the Board of Game acquired the power to adopt regulations it considers advisable to establish “open and closed seasons and areas for the taking of game.”

"approximately 25.6 square miles"⁷³ of largely state owned land⁷⁴ its criminalization of trapping effectively removes this area from the Board of Game's trapping jurisdiction resulting in the *de facto* establishment of a game reserve, refuge or sanctuary "on the land of the state" - without legislative approval required regardless of the sanctuary size.⁷⁵

C. The Legislature's Adoption of AS 16.05.790 and AS 16.20.010 Reflect Legislative Rejection of Localized Game Management regardless of the Claimed Purpose

The Legislature in AS 16.20.010(a)(1) stated unequivocally that "the state has jurisdiction over all fish and game in the state except in those areas where it has assented to federal control." AS 16.05.790 (which bars the obstruction of lawful hunting, fishing and trapping) reflects this jurisdictional claim by defining "lawful" trapping only by reference to state and federal laws and regulations. If a municipal ordinance cannot authorize "lawful" trapping it logically lacks any regulatory power to make trapping unlawful.

II. CONCLUSION

The Alaska Trappers, therefore, respectfully requests that the Court grant its request for a declaratory judgment precluding the City from prohibiting trapping in any area where the Board of Game has permitted trapping.

⁷³ Appellee's Brief at 22.

⁷⁴ Brief of State of Alaska as Amicus Curiae at 10-11.

⁷⁵ AS 16.05.255(a)(1).

DATED this 4 day of October 2022.

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CERTIFICATE OF SERVICE

This is to certify that on the 4 day of
October 2022, a copy of the foregoing
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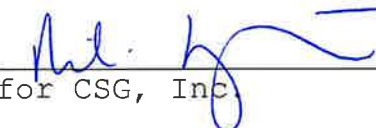
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