

IN THE SUPREME COURT OF THE STATE OF ALASKA

Alaska Trappers Association, Inc., and)
National Trappers Association, Inc.)
)
Appellants/Cross Appellees,)
v.)
)
City of Valdez,)
)
Appellee/Cross Appellant.)

Supreme Crt. No. S-18189
Trial Court Case No. 3VA-20-00015CI

Appeal from the Superior Court Third Judicial District at Valdez
the Honorable Rachel Ahrens Superior Court Judge

**BRIEF OF THE ALASKA WILDLIFE ALLIANCE, INC.
AS AMICUS CURIAE**

Law Office of Kneeland Taylor P.C.



Kneeland Taylor (ABA#7510096)
2244 Loussac Drive
Anchorage, AK 99517
(907) 382-08521
For the Alaska Wildlife Alliance, Inc.

Filed in the Supreme Court
of the State of Alaska on
August _____, 2022.

MEREDITH MONTGOMERY
CLERK
Appellate Courts

By: _____
Deputy Clerk

TABLE OF CONTENTS

TABLE OF AUTHORITIES	-iii-
AUTHORITIES PRINCIPALLY RELIED UPON	-vi-
PARTIES.....	1
ISSUES PRESENTED FOR REVIEW.....	1
STATEMENT OF THE CASE.....	2
STANDARD OF REVIEW	2
ARGUMENT.....	3
A. The Appellants and the State Have Overlooked Precedent Expressly Rejecting Their Principal Argument.....	3
B. Municipal Ordinances Restricting Hunting and Trapping Within Their Jurisdictions Are Not <i>Ultra Vires</i> as the Result of Implied Preemption. . .	7
C. Municipalities Have Authority to Enact Ordinances Restricting Trapping Within their Borders.	11
D. The Assertions Made by the Trappers Associations and the State are Contradicted by at Least 40 Years of History	15
CONCLUSION	22

TABLE OF AUTHORITIES

Cases

<i>Brooks v. Wright</i> , 971 P.2d 1025 (Alaska 1999)	4, 5, 6
<i>Hagblom v. City of Dillingham</i> , 191 P.3d 991,996 (Alaska 2008)	14
<i>Jacko v. State, Pebble Ltd. Partnership</i> , 353 P.3d 337 (Alaska 2015)	8, 9,11
<i>Johnson v. City of Fairbanks</i> , 583 P.2d 181 (Alaska 1978)	8, 11
<i>L St. Investments v Municipality of Anchorage</i> , 307 P.3d 965, 969 (Alaska 2013)	14
<i>Pebble Limited Partnership ex rel Pebble Mines Corporation v. Parnell</i> , 215 P.3d 1064 (Alaska 2009)	6
<i>R & Y, Inc. v. Municipality of Anchorage</i> , 34 P.3d 289, 297 (Alaska 2001)	13
<i>Rabin v. State</i> , 537 P.2d 494, 511 (Alaska 1975)	13
<i>Richardson v. Fairbanks North Star Borough</i> , 705 P.2d 454, 456 (Alaska 1985)	14
<i>State v. Bernhardt</i> , 500 F.3d 889, 914-915 (D. Alaska 2020)	10

Constitutional Provisions

Article X, § 1	3, 20
Article VIII, §§ 1-4	3
Article X, § 11	12
Article X, § 11	13

Alaska Statutes

AS 09.70.010 11
AS 11.46.350(b). 10
AS 16.05.221(b). 9
AS 16.05.255 9
AS 27.05.010(a) and (b). 11
AS.29.04.030 (4) and (5) 13
AS 29.10.200 12
AS 29.10.200(40). 12
AS 29.35.145(b)(2) 12, 14, 16
AS 29.35.180(a). 13
AS 29.35.220 13
AS 29.35.250 13
AS 29.35.260 13
AS 29.35.400 7
AS 29.35.410 7
AS 29.35.420. 7
AS 29.40.040 (a)(2). 13
AS 29.65.010 10
AS 29.65.020 10
AS 29.65.030 10
AS 29.65.070 11
AS 29.65.130(6). 11
AS 38.05.300 9

Alaska Regulations

5 AAC 92.550 22
5 AAC 96.040 20
5 AAC 96.060(e)(1). 21

Federal Statutes

43 U.S.C. § 1601. 10
43 U.S.C. § 1611 (c). 10

Other Authorities

1982 Inf. Op. Att’y Gen. 1982 WL 43763 (1982). 15

Municipal Ordinances

Anchorage Municipal Code; 14.70.200 17
Cordova Municipal Code; 8.04.195 17
Fairbanks Municipal Code; Section 46-77 17, 18
Homer Municipal Code; Chapter 5.30 17
Juneau Municipal Code; 08.45.030 17, 22
Kenai Municipal Code; 3.10.060(d). 17
Mat-Su. Borough Municipal Code; 24.05.105 18
Nome Municipal Code; Chapter 10.30.170 17
Seward Municipal Code; 9.05.310 17
Skagway Municipal Code; 9.05.310. 17
Soldotna Municipal Code; 6.04.200(l) 17
Valdez Municipal Code, Chapter 9.38 18

AUTHORITIES PRINCIPALLY RELIED UPON

Constitutional provisions:

Alaska Const. Article X, § 1. Purpose and Construction. The purpose of this article is to provide for maximum local self-government with a minimum of local governmental units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Alaska Const. Article X, § 2. Local Government Powers. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

Alaska Const. Article X, § 10. Extended Home Rule. The legislature may extend home rule to other boroughs and cities.

Alaska Const. Article X, § 11. Home Rule Powers. A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

Alaska Statutes:

AS 09.10.070. Actions for torts, for injury to personal property, for certain statutory liabilities, and against peace officers and coroners to be brought in two years

(a) Except as otherwise provided by law, a person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment; (2) for personal injury or death, or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking, detaining, or injuring personal property, including an action for its specific recovery; (4) upon a statute for a forfeiture or penalty to the state; or (5) upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the cause of action.

(b) A person may not bring an action against a peace officer or coroner upon a liability incurred by the doing of an act in an official capacity or by the omission of an official duty, including the nonpayment of money collected upon an execution, unless brought within two years. This subsection does not apply to an action for an escape.

AS 11.46.350(b). Definition: privilege to enter or remain on unimproved lands. For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so

unless

- (1) notice against trespass is personally communicated to that person by the owner of the land or some other authorized person; or
- (2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances.

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.
- (b) The department is the lead agency for all matters relating to the exploration, development, and management of mining, and, in its capacity as lead agency, shall coordinate all regulatory matters concerning mineral resource exploration, development, mining, and associated activities. Before a state agency takes action that may directly or indirectly affect the exploration, development, or management of mineral resources, the agency shall consult with and draw upon the mining expertise of the department.

AS 29.10.200 (40) Limitation of home rule powers.

Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise than as provided. These provisions supersede existing and prohibit future home rule enactments that provide otherwise:

[Subparts 1-39 not shown]

(40) AS 29.35.145 (regulation of firearms and knives);

[Subparts 41-50 not shown]

AS 29.35.145(a), (b)(2), (d) and (e). Regulation of firearms and knives.

(a) The authority to regulate firearms and knives is reserved to the state, and, except as specifically provided by statute, a municipality may not enact or enforce an ordinance regulating the possession, ownership, sale, transfer, use, carrying, transportation, licensing, taxation, or registration of firearms or knives.

(b) Municipalities may enact and enforce ordinances.....

(2) restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that people, domestic animals, or property will be jeopardized; ordinances enacted or enforced under this paragraph may not abridge the right of the individual guaranteed by art. I, sec. 19, Constitution of the State of Alaska, to bear arms in defense of self or others;.....

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

(e) In this section,

(1) "firearms" includes firearms, or any other element relating to firearms or parts thereof including ammunition and reloading components;....

AS 29.35.400. General construction. A liberal construction shall be given to all powers and functions of a municipality conferred in this title.

AS 29.35.410. Extent of powers. Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident to the purpose of all powers and functions conferred in this title.

AS 29.35.420. Enumeration of powers. A specific example in an enumerated power or function conferred upon a municipality in this title is illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

AS 29.65.130. Definitions. In this chapter, unless the context otherwise requires, (6) "patent" means a document, issued by the director to a municipality for a previously approved selection, that conveys and quitclaims all the right, title, and interest of the state without reservation or condition except as may be required by law;

AS § 38.05.300(a) and (c). Classification of land.

(a) The commissioner shall classify for surface use land in areas considered necessary and proper. This section does not prevent reclassification of land where the public interest warrants reclassification, nor does it preclude multiple purpose use of land whenever different uses are compatible. If the area involved contains more than 640 contiguous acres, state land, water, or land and water area may not, except by act of the state legislature, (1) be closed to multiple purpose use, or (2) be otherwise classified by the commissioner so that mining, mineral entry or location, mineral prospecting, or mineral leasing is precluded or is designated an incompatible use, except when the classification is necessary for a land disposal or exchange or is for the development of utility or transportation corridors or projects or similar projects or infrastructure, or except as allowed under (c) of this section.

(c) Notwithstanding (a)(2) of this section, if the commissioner considers it necessary and proper, the commissioner may provide by order for an interim classification that precludes, or designates as an incompatible use, mining, mineral entry or location, mineral prospecting, or mineral leasing. Within 10 days after the convening of each regular legislative session, the commissioner shall transmit to the legislature for consideration all the interim classification orders issued under this subsection during the preceding calendar year. Unless the legislature approves by law an interim classification

contained in an order transmitted under this subsection, that order expires on the 90th day of that legislative session or upon adjournment of that session, whichever occurs first. Approval by the legislature of an interim classification satisfies the requirement of (a) of this section for an act of the state legislature.

Municipal Ordinances:

Anchorage Municipal Code 14.70.200 - Prohibited trapping zones for safe trails.

A. It is unlawful for any person to knowingly or negligently place a trap, or attempt to place a trap, in a prohibited trapping zone. Where trapping is otherwise permitted by the Alaska Department of Fish and Game or Board of Game regulations, the municipality's prohibited trapping zones are within:

1. Fifty yards of developed trails, excluding off-shoot trails; and
2. One-quarter mile of trailheads, campground, and permanent dwellings.

B. The assembly may establish a list of "developed trails" by resolution for purposes of this section, and the list, if adopted, shall be posted on the municipal web site. Failure to list a trail that otherwise meets the definition of "developed trail" in this section does not mean the prohibited trapping zone is inapplicable.

C. All game traps and snares set within the municipality shall be marked with a trapper identification number issued by the State of Alaska or with contact information for the owner of the trap or snare.

D. This section shall not apply to any official of the United States, the state, or the municipality who is authorized to trap animals in the course of official duties.

E. Definitions.

"Developed trail" means any trail or footpath designated under AS 41.21.850 et seq., or marked, signed or designated by the municipality, excluding off-shoot trails. Any trailhead with a graded parking area and signage is a developed trail and the prohibited trapping zone extends the length of the mainstem(s) of the trail(s).

"Game" has the meaning in the Alaska Fish and Game Code, AS 16.05.940.

"Off-shoot trail" is a secondary and unmarked trail with indicia of less frequent usage, maintenance, or development than the mainstem(s) of a developed trail.

"Trapping" means the taking of mammals declared by Alaska Department of Fish and Game or Board of Game regulation to be furbearers. For purposes of this section, trapping includes placing or setting of a trap, and it does not include the possession or transportation of traps.

F. Violation of this section shall be punishable by a civil penalty in accordance with chapter 14.60.

Anchorage Municipal Code 25.70.040 A. Prohibited activities generally. Except in areas specifically designated for such use in accordance with law, no person may engage in any of the following activities on municipal land.

[Subparts 1-9 not relevant and therefore not provided here]

Subpart 10. Sport or commercial hunting of wild or game animals.

Cordova Municipal Code 1979, Chapter 8.04.195 - Regulation of trapping.

A. No person may engage in trapping, except as provided in this section, in the following areas: within the city limits as of February 1993, in the area annexed to the city on or after March 1993 that is directly south, south-west and west of the city limits as of February 1993, and not within the parks and open space zoning district established under Title 18. Within these areas, trapping is permitted:

1. Within an enclosed structure, by, or with the permission of, a person who owns or is in lawful possession of the structure, using traps of any size and type;
2. By employees or governmental units or agencies who, using live-traps, in the course of their duties, are required to trap animals for authorized purposes or specific animal nuisance problems.

B. No person may engage in trapping, except as provided in this section, within two hundred yards of the right of way of Power Creek Road which is in the area annexed to the city on and after March 1993. Trapping is permitted:

1. Within an enclosed structure, by, or with the permission of, a person who owns or is in lawful possession of the structure, using traps of any size and type;
2. By employees or governmental units or agencies who, using live-traps, in the course of their duties, are required to trap animals for authorized purposes or specific animal nuisance problems.

C. No person may engage in trapping, except as provided in this section, in the following areas: in the area annexed to the city on and after March 1993 which is north, north-east, east and south-east of the city limits as of February 1993, but not within two hundred yards of the right of way of Power Creek Road. Within these areas, trapping is permitted:

1. Within two hundred yards of the right-of-way of any publicly maintained road including without limitation the following roads: Copper River Highway, Sheridan Glacier Road, Cabin Lake Road, and the Ibeck Creek dike road, using boxed Conibears no larger than one hundred twenty, and completely submerged traps of any size and type.
2. More than two hundred yards from the right-of-way of any publicly maintained road, using traps of any size and type.

D. Any traps deemed unsafe or illegal by a city police officer may be removed by these

officials. The officials shall attempt to notify the owner of the trap.

(Res. No. 03-14-16, 3-13-14)

Editor's note— Res. No. 03-14-16, adopted March 13, 2014, set out provisions for use herein. At the direction of the city those provisions have been treated as enacting a new § 8.04.195.

Code of Ordinances City of Fairbanks §§ 46-77 - Use of snares and traps.

(a) It shall be unlawful for any person to set a snare or steel jaw trap in any exterior place or property, whether privately or publicly owned, within the city limits; except that an administrative waiver may be issued by the mayor when it is deemed to be in the public's interest and sufficient safeguards are imposed to prevent injury to any person or property.

(b) "To set" means to place a snare, or open, lock and place a steel jaw trap for the purpose of snaring, trapping or injuring any wildlife, domesticated animals or humans.

This does not include display of such snares or traps for the purpose of sale.

(Code 1960, § 6.305)

Homer City Code Chapter 5.30 Hunting and Trapping.

5.30.010 Definitions. In this chapter, unless the context requires otherwise:

"Game" means any species of bird and mammal, including a feral mammal, but excluding domestic birds and mammals.

"Hunting" means the stalking or other pursuit of game with the intention of capturing and/or killing same, with or without the use of bow and arrow or any other means, exclusive of firearms.

"Problem animal" means animals causing damage or creating the potential to cause damage to public health and safety, infrastructure, or private property.

"Take or taking" means taking, pursuing, hunting, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, trap, or in any manner capture or kill game.

"Trapping" means the taking of any bird or animal.

5.30.020 Hunting prohibited. Hunting game within the boundaries of the City of Homer with bow and arrow or by any other means is prohibited.

5.30.025 Trapping prohibited.

Trapping within the boundaries of the City of Homer using traps or any other method of taking defined herein or by State law as trapping is prohibited.

5.30.030 Exceptions.

a. This chapter does not apply to the capture and disposal of game by authorized law enforcement of fish and game protection personnel, or to the protection of life or property.

b. HCC 5.30.025, Trapping prohibited, does not apply to Animal Control Officers, Department of Fish and Game staff, members of the City Police Department, and City employees designated by the Chief of Police if they are trapping problem animals; provided, that the trapping is performed in accordance with State law.

5.30.040 Penalty. The violation of any provision contained in this chapter shall be punished by a fine not to exceed \$300.00 and/or confiscation of any game killed by the violator.

Compiled Laws of the City and Borough of Juneau, Alaska Volume 1, 08.45.030 - Trapping prohibited.

Except if done by an agent or employee of the federal, state, or municipal government on official business, it is unlawful for any person to set traps within one-half mile of any public or private street, road, right-of-way, or highway within the City and Borough.

Matanuska-Susitna Borough Code, Chapter 24.05.105 Trapping Prohibitions and Restrictions.

(A) Except as provided in MSB 24.05.110, no person may engage in trapping, attempting to trap, or aiding and abetting any person in trapping any wild or domesticated animal:

(1) On the following borough-owned recreation lands including the Crevasse Moraine system, Lazy Mountain Recreation Area, Matanuska River Park, Alcantra Athletic Complex, West Bodenbug Butte, and Jordan Lake Park there shall be no trapping unless they are performing an educational demonstration, pursuant to a borough-issued permit, and the traps are removed at the end of the day the presentation began.

(2) On any part of public school property owned by the borough, unless they are performing an educational demonstration pursuant to written permission from the school administration, and the traps are removed at the end of the day the presentation began.

(B) The borough will prepare and keep current a map showing areas where trapping is not allowed pursuant to this section. A copy of the map shall be provided to any person upon request.

(C) The Alaska Department of Fish and Game, Alaska Department of Public Safety, United States Fish and Wildlife Service, or their authorized agents or designees may trap animals within the area in which trapping is expressly prohibited by this chapter.

(D) This section shall not apply to property owned by other entities. This section shall not apply to the trapping or capturing of rats, mice, shrews, or similar vermin. This section shall not apply to the possession or transportation of traps.

(E) Violation of this section shall be punishable as set forth in MSB 24.40.

(Ord. 17-021, § 4, 2017)

Code of Ordinances of Nome, Chapter 10.30.170 Trapping.

(a) Except as provided by this chapter it is unlawful to attempt to capture any fur-bearing land animal, the taking of which is regulated by the state of Alaska Department of Fish and Game with any type of trap that physically harms the animal, including, but not limited to, steel jaw traps, snares and spring traps, within the following areas inside municipal boundaries:

(1) South of the Nome Bypass Road and the Little Creek Road (FAS Route No. 1312) to Center Creek Road (FAS Route No. 1411);

(2) Within fifty feet of any residence;

(3) Within one hundred feet of the centerline of a platted right-of-way; and

(4) Within fifty feet of the centerline of any: (i) road easement authorized under AS 19.10.010 or RS 2477; (ii) recorded public use easement, ANSCA 14(c)(3) trail or ANSCA 17(b) public use trail easement; or (iii) Omnibus Road easement for the Nome Council Road (FAS Route No. 130), Nome-Teller Road (FAS Route No. 131), Nome-Taylor Road (FAS Route No. 141), Snake River Road (FAS Route No. 1311), Osborne Road (FAS Route No. 1412) or Buster Road (FAS Route No. 1413), except an authorized city, state or federal employee or agent.

(b) No person may place any type of trap anywhere within municipal boundaries that physically harms a fur-bearing land animal, the taking of which is regulated by the state of Alaska Department of Fish and Game, without first providing the city clerk with a trapping registration form. Forms may be obtained from the city clerk.

(c) The city will prepare and keep current a map showing areas where trapping is allowed and not allowed within municipal boundaries. A copy of the map shall be provided to each person completing the trapping registration form.

(d) Special permits to allow trapping in areas where trapping is prohibited may be issued by the city. Before any such special trapping permits are issued, the city council shall find by resolution that it is in the public interest to allow trapping in a prohibited area. Any such permits will describe the area where trapping will be allowed, will be for a limited duration not to exceed thirty days and will allow a specific number of traps to be placed in the permitted area. No person may place a trap within any specially permitted area without markings sufficient to allow members of the public to see where any such specially permitted traps are located.

(e) No person shall dispose of the remains of any fur-bearing animal, having been trapped or obtained otherwise, at any place within city limits except the Nome landfill.

(Ord. O-14-01-01 § 2 (part), 2014)

The Code of the City of Seward 9.05.310 - Trapping of animals prohibited.

It shall be a violation of this chapter for any person to trap, attempt to trap or aid and abet

any person in trapping any animal, wild or domestic, within the City of Seward, provided, that this section shall not apply to the following persons or activities:

- (a) Hunting, trapping, or capturing of animals or birds by city, state or federal law enforcement, game department or animal control personnel while engaged in the performance of their official duties or any person authorized by the city manager or his designee for purposes of animal control or research;
- (b) Hunting, trapping or capturing of rats, mice, shrews, or similar vermin; or
- (c) The nonlethal live capturing of loose domesticated animals or birds by means designed to ensure the safety and well-being of the animals. Any animal captured shall be cared for in a humane manner and returned without unreasonable delay to the animal's owner or an animal control officer.

(Ord. 99-11)

Skagway Municipal Code Chapter 9.04 Trapping

9.04.010 Purpose. The purpose of this chapter is to protect the safety and welfare of the public, domesticated animals and pets by designating areas where trapping is a prohibited land use activity.

9.04.015 Applicability.

A. This chapter shall apply to lands within the Skagway Borough as determined by Sections 9.04.025 through 9.04.035.

B. For the purposes of this chapter, the assembly shall establish a list of "established trails" by resolution. These established trails will require adequate signage at the trailhead detailing each respective trail map, and signage shall be affixed along each trail route indicating the correct path.

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

A. "Trap" means any device designated or identified by the state of Alaska in any statute or regulation as a "trap," or otherwise commonly referred to as a "trap" by the state of Alaska. "Trap" does not apply to the capturing of sea creatures through use of shrimp and crab pots.

B. "Trapping" means the definition of "trapping" used by the state of Alaska. "Trapping" does not apply to live traps, mouse traps or to the catching of animals within a dwelling place, garage, shed, greenhouse, barn, or the ocean.

C. "Trails" are primary and are marked and/or published as "established trails."

1. For the purposes of this chapter, "trails" exclude current and future secondary off-shoot trails.

D. "Off-shoot trails" are secondary and unmarked and/or unpublished trails, and are not considered to be "established trails."

9.04.025 Tree trap regulations. Tree traps must be at least five feet (5') above the ground

and/or fifty (50) yards from any public street, road or right-of-way, highway or marked/established trail within the boundaries of the Skagway Borough.

9.04.030 Leg-hold trap regulations. Leg-hold traps and other ground traps are prohibited within one-eighth (1/8) mile of any public street, road or right-of-way or highway or established/marked trail within the boundaries of the Skagway Borough.

9.04.035 Areas in which trapping is prohibited.

A. Trapping is prohibited within fifty (50) yards of any public street, road, right-of-way or highway, or established/marked trail within the boundaries of the Skagway Borough, unless the area is a designated rural trapping area per subsection (B) of this section.

B. Rural Trapping Areas. Trapping is prohibited within twenty-five (25) yards of any public street, road, right-of-way or highway, or established trail within the designated rural trapping areas designated as follows:

1. Beginning one-half (1/2) mile north of Mile Marker 3 on the Klondike Highway and extending to the north boundary of the Skagway Borough;
2. Beginning one-half (1/2) mile north of the Gold Rush Cemetery on the railroad tracks on the east side of the Skagway River and extending to the north boundary of the Skagway Borough;
3. Beginning at the West Creek Bridge and extending north and west (Dyea side) to the Borough boundaries;
4. Alaska State Land Survey No. 97-36, which is the location of the municipal incinerator.

C. In addition to the areas designated in subsections (A) and (B) of this section, trapping is prohibited on properties within the following parks and common use areas: Mollie Walsh Park, Pullen Creek Park, Yakutania Point and Smugglers Cove, Seven Pastures, Dyea Point, Dyea Campground and Flats and community cemeteries.

9.04.040 Private property.

A. When trapping occurs on private property, "Active Trapping" signage must be prominently posted.

B. Trappers must have permission from landowners to trap on private property.

9.04.050 Other exceptions. Exceptions to this section shall be authorized by the chief of police in writing as deemed necessary to protect the public health and safety. Examples of exceptions include, but are not limited to, the following:

A. Employees or agents of governmental units or agencies who use live traps in the course of their duties, or are required to trap animals or birds for authorized purposes.

B. Scientists in their work identifying and studying wildlife, animals, and birds for scientific purposes.

C. Persons who have documented in writing specific animal nuisance problems and establish to the chief of police in writing how the safety of persons shall be protected.

No employee, representative, assembly, mayor nor the chief of police has any actual or

apparent authority to grant any verbal exceptions to this chapter.

9.04.060 Fines for trapping violations. For violations of this chapter, refer to Chapter 1.20, General Penalty. Violations of this chapter are subject to civil fines established by resolution.

Soldotna, Alaska Municipal Code Title 6 Chapter 04 Section 200(I) .

No person may use a trap or snare within the city limits that can kill, or injure a domestic animal except under the supervision of a state or federal wildlife agency addressing a specific nuisance wildlife issue. In addition, the animal control officer must be notified prior to any trap(s) being set and provided with the name and contact information of any person who will be working the trap(s), the type of trap(s) and the location of trap(s) being used.

PARTIES

The Alaska Trappers Association Inc. and the National Trappers Association Inc. are the appellants. The City of Valdez is the appellee. The State of Alaska has filed an amicus brief, which the Court has accepted. The Alaska Wildlife Alliance (“AWA”), which is providing this brief as *amicus curiae*, is a non-profit corporation incorporated in the State of Alaska in 1978. The AWA has an interest in the issues presented in this case because the AWA has advocated and will continue to advocate for responsible regulation of trapping in places where traps present a significant threat to people and their pets.

The AWA submits this brief as *amicus curiae* to support the position of the City of Valdez.

ISSUES PRESENTED FOR REVIEW

The following issues are presented for review:

1. Whether the Legislature and Board of Game have the sole authority to enact regulations which impact or concern the placement of traps within the borders of municipalities.
2. Whether trust law principles take precedence over Article X of the Alaska Constitution.
3. Whether municipalities in Alaska are impliedly preempted from enacting

ordinances regulating the placement of traps in places within their borders.

4. Whether municipalities with police power have the authority to enact regulations regulating the placement of traps within their borders which are reasonably necessary to protect life or property.

STATEMENT OF THE CASE

The City of Valdez in 2005 enacted an ordinance regulating the places where traps and snares may be placed within the borders of the City. The Appellants (hereinafter “the Trappers Associations) filed an action in the Superior Court for Valdez seeking a declaratory judgment that the ordinance is an invalid and unconstitutional attempt to regulate trapping and for other relief. The Superior denied all claims of the Appellants and declared the Appellee the prevailing party. As described, *infra*, at least eleven (11) other municipalities in the State of Alaska have enacted similar ordinances, but the Appellants did not seek a declaratory judgment against any of these other municipalities.

STANDARD OF REVIEW

The issues presented for review in this appeal involve legal issues to which the Court applies its independent judgment.

ARGUMENT

A. The Appellants and the State Have Overlooked Precedent Expressly Rejecting Their Principal Argument.

The State of Alaska (the “State”) has submitted an *amicus brief* which asks the Court to ignore the express directive contained in Article X, § 1 of the Alaska Constitution. That section of the Alaska Constitution, Article X, § 1, provides for “maximum local self-government”¹, and a “liberal construction” of local government powers.² A similar argument is made by the Trappers Associations.³

Notwithstanding these express constitutional directives, the State and the Trappers Associations would have the Court find that Article VIII, §§ 1-4 direct the Alaska Legislature to “comprehensively occupy the field leaving no room for conflicting local regulation.”⁴

The Trappers Associations and the State both rely on appellate cases, addressing Article VIII of the Alaska Constitution, in an effort to support their position that the

¹ Alaska Const. Art. X, § 1.

² *Id.*

³ Appellants’ Brief, pages 6-10.

⁴ State’s Amicus Brief, page 3; Trappers Associations’ Brief, pages 9-10.

Constitution provides for a trust benefitting all Alaskans in which Alaska's wildlife are the asset.

The State's and the Trappers Associations' trust theory has been expressly rejected by this Court in a decision the Trappers Associations and the State overlooked: namely, *Brooks v. Wright*, 971 P.2d 1025 (Alaska 1999)⁵. In *Brooks v. Wright*, the Court reversed a Superior Court decision which prohibited the Lieutenant Governor from placing on the ballot an initiative which, if approved, would have prohibited the use of snares in taking wolves. In the first part the *Brooks v. Wright* decision the Court found that Alaska's Constitutional delegates approved of direct democracy in wildlife management issues.⁶ In the second part the decision, the Court expressly rejected the position that Article VIII provides for a public trust and exclusive legislative authority in game management policy-making. Specifically, the Court held:

We most recently visited the public trust doctrine in the natural resource context in *Pullen v. Ulmer*. [923 P.2d 54 (Alaska 1996)] In that case, we decertified an initiative allowing subsistence, personal use, and sport fisheries to have preference over other fisheries with respect to the harvestable salmon surplus. [Citation omitted.] We concluded that salmon should be considered "assets" of the state for purposes of carrying out the state's trust duties with respect to wildlife. [citation omitted] Because state assets may not be appropriated by initiative pursuant to Article XI, [citation omitted] and because we viewed the preferential treatment of certain

⁵ It appears that the overlooking of this decision was not intentional: a review of the record on appeal reveals no mention of this decision by the parties, the State, or the Superior Court.

⁶ *Brooks v. Wright*, *id* at 1030.

fisheries over others as an appropriation, [citation omitted] we removed the initiative from the ballot. We left open the question of whether the state's trust responsibilities under Article VIII give the legislature exclusive law-making control over wildlife management. [citation omitted.]

We find little support in the public trust line of cases for the proposition that the common use clause of Article VIII grants the legislature exclusive power to make laws dealing with natural resource management. Article VIII does not explicitly create a public trust; rather, we have used the analogy of a public trust to describe the nature of the state's duties with respect to wildlife and other natural resources meant for common use. Additionally, the wholesale application of private trust law principles to the trust-like relationship described in Article VIII is inappropriate and potentially antithetical to the goals of conservation and universal use. And in *Pullen*, the only case in which we discussed the initiative process, we declined to hold that the public trust doctrine gives the legislature exclusive law-making authority over the subject matter of Article VIII. We therefore reject Wright's argument to the contrary and decline to decertify the initiative on public trust grounds.

Id at 1033 (emphasis added).

The foregoing explicit language is then supplemented by the following:

Other jurisdictions have held that, while general principles of trust law do provide some guidance, they do not supercede the plain language of statutory and constitutional provisions when determining the scope of the state's fiduciary duty or authority. One commentator notes that general trust law should not be applied to the public trust doctrine in a way that limits or destroys the democratic process:

Id at 1033 (emphasis added).

The Court's rejection of trust theory in *Brooks v. Wright* is additionally illustrated by the Court's recognition that the mitigation of cruelty to animals was the purpose of the

citizen initiative challenged by the appellees in *Brooks v. Wright*.⁷ Were Article VIII to have created a trust benefitting Alaska's citizens, a measure the purpose of which was to mitigate cruelty to animals would have been unauthorized since the mitigation of animal cruelty would not benefit the beneficiaries of the trust.

The Court's decision in *Brooks v. Wright* has been cited with approval in subsequent decisions of this Court. For instance, in *Pebble Limited Partnership ex rel Pebble Mines Corporation v. Parnell*, 215 P.3d 1064 (Alaska 2009) the Court cited *Brooks v. Wright* for the following point:

We have previously noted that natural resource management is an appropriate subject for a public initiative. In holding that the initiative process was not clearly inapplicable to an initiative banning the use of wolf snares, we noted that the legislative history of the drafting of the Alaska Constitution and the language of the constitution itself "evidences the delegates' intent that natural resource issues would be subject to the initiative."⁸

Under *Brooks v. Wright* the arguments made by the Trappers Associations and the State regarding a trust and exclusive legislative decision-making authority should be rejected. The application of *Brooks v. Wright* is clear and compelling here. Not only does Article X, § 1 expressly provides for maximum local self government and liberal construction of the powers granted to local government, but the Legislature has enacted

⁷ *Brooks v. Wright*, *id* at 1030, fn. 31.

⁸ *Pebble Limited Partnership ex rel Pebble Mines Corporation v. Parnell*, *supra* at 215 P.3d 1077; citing *Brooks v. Wright* at fn. 42.

three statutes which expand upon these constitutional directives; namely AS 29.35.400; A.S 29.35.410; and AS 29.35.420. These statutes provide for a liberal construction of all municipal powers and functions conferred by statute,⁹ the authority to exercise all functions necessarily or fairly implied,¹⁰ and the direction that the failure to enumerate a municipal power should not be construed as limitation or exclusion.¹¹

The fact that *Brooks v. Wright* concerns a citizen initiative and not a municipal ordinance makes no difference. It is the position of the Trappers Associations and the State that only the Legislature and the Board of Game may enact restrictions on the taking of game. That this Court in *Brooks v. Wright* held that citizens may by initiative enact a restriction on taking game proves their position is mistaken.

B. Municipal Ordinances Restricting Hunting and Trapping Within Their Jurisdictions Are Not *Ultra Vires* as the Result of Implied Preemption.

(1) The Cases Relied Upon by the Trappers Associations and State Involve Statutory Schemes and Circumstances Very Different From Those Relevant to Valdez's Ordinance.

As argued by the Trappers Associations and the State, this Court has in two decisions held that ordinances adopted by home rule municipalities were *ultra vires* because the State had by implication occupied the field. Implied preemption was found

⁹ AS. 29.35.400.

¹⁰ AS. 29.35.410.

¹¹ AS 29.35.420.

in *Johnson v. City of Fairbanks*, 583 P.2d 181 (Alaska 1978), because Fairbanks’ charter provision requiring notice of a claim within 120 days would have had the effect of making irrelevant the two year statute of limitations found in AS 09.10.070. The court found AS 09.10.070 to be a “uniform limitations period” to be applied statewide, regardless of whether a tort claim was against a governmental subdivision of the state or some other type of entity.¹² The statutes relied upon by the Trappers Associations and the State in the current appeal do not provide for a uniform rule to be applied statewide in all circumstances as does AS 09.10.070.

In *Jacko v. State, Pebble Ltd. Partnership*, 353 P.3d 337 (Alaska 2015), implied preemption was found because the municipal ordinance enacted by the Lake and Peninsula Borough directly conflicted with AS 27.05.010 (a) and (b). Those statutory measures expressly provide that the Department of Natural Resources (DNR) “has charge of all matters affecting exploration, development, and mining of the mineral resources of the State”....and....“is the lead agency for all matters relating to the exploration, development and management of mining”, and is given the job of coordinating as lead agency “all regulatory matters” concerning mineral resource exploration, development, mining, and associated activities.¹³

Furthermore, another statute, AS. 38.05.300, requires legislative consent to a

¹² *Johnson v. City of Fairbanks*, *id* at 187.

¹³ *Jacko v. State, Pebble Ltd. Partnership*, *id* at 343.

withdrawal of more than 640 acres from mineral leasing. The challenged Lake and Peninsula ordinance was found to be in direct conflict with AS 38.05.300 because it authorized the Lake and Peninsula Borough to withdraw many thousands of acres without the consent of the state legislature.¹⁴

The statutes relied upon by the Trappers Associations and the State in the current appeal to support their assertion that the City of Valdez is impliedly preempted, including AS 16.05.221(b) and AS 16.05.255, do not contain language providing for the Board of Game to be the lead agency, or directing the Board of Game to coordinate all regulatory matters. For these reasons, the Superior Court correctly found that the delegation of authority to the Board of Game was “relatively modest” when compared to the delegation to the Department of Natural Resources at issue in *Jacko v. State, Pebble Ltd. Partnership*,¹⁵ and correctly held that implied preemption does not apply.¹⁶

(2) Practical Limits on the Board of Game’s Ability to Manage Game Make it Clear That Preemption Cannot be Implied

In addition to the reasons discussed above, there is another reason unrelated to the Alaska Constitution and the statutes discussed above why the authority of Valdez and other municipalities to enact ordinances restricting trapping should not be held to be

¹⁴ *Jacko v. State, Pebble Ltd, Partnership, id* at 343.

¹⁵ Order Re: Cross Motions for Summary Judgment, page 9.

¹⁶ Order Re: Cross Motions for Summary Judgment, page 9.

impliedly preempted. That reason is the fact that, as a practical matter, the ability of the Legislature and the Board of Game to manage game is limited.

One limitation is the fact that large portions of the State are owned by private entities which can close their lands to entry by hunters and trappers, or limit entry to individuals selected by the private entities. For instance, the settlement of Alaska Native land claims made in the Alaska Native Claims Settlement Act¹⁷ resulted in the conveyance of at least 38 million acres into private ownership.¹⁸ The Native corporations to which this acreage was conveyed are fully entitled to close their lands to non-shareholders,¹⁹ or prohibit hunting and trapping entirely. The same is true of the millions of acres conveyed to private owners before and after statehood.

Another limitation is the fact that millions of acres in Alaska are federal lands. Regarding federal lands, game management regulations enacted by the Board of Game must conform with federal law.²⁰

Finally, there is the fact that numerous municipalities were granted large tracts of land pursuant to AS 29.65.010, AS 29.65.020, and AS 29.65.030. With regard to these

¹⁷ 43 U.S.C. § 1601 *et seq.*

¹⁸ 43 U.S.C. § 1611(c).

¹⁹ AS 11.46.350(b).

²⁰ See for instance, *State v. Bernhardt*, 500 F.3d 889, 914-915 (D. Alaska 2020).

land grants, AS 29.65.070 requires the issuance of patents to municipalities. A patent granted to a municipality conveys "all the right, title and interest of the state without reservation or condition except as may be required by law."²¹ There is no reservation or law reserving to the Legislature or to the Board of Game the authority to authorize hunters and trappers to enter on these lands.²²

The aforesaid limitations distinguish the Legislature's mandates contained in AS 09.70.010 and AS 27.05.010(a) and (b) from the statutes which grant to the Board of Game authority to promulgate regulations. By fiat the Legislature can accomplish its goals regarding the time for filing lawsuits, and regarding the extraction of minerals from State owned and private lands. In game management, federal law and the millions of acres of privately and municipally owned land limit the ability of the Board of Game to regulate the taking of game throughout the entire state. This distinction is an additional reason why *Johnson* and *Jacko* provide no precedent for implied preemption.

C. Municipalities Have Authority to Enact Ordinances Restricting Trapping Within their Borders.

The Court found that Valdez is a home rule city, citing the Valdez City Charter, Preamble and § 1.5. (R. 355) . This fact is undisputed. Home rule cities and boroughs

²¹ AS 29.65.130(6).

²² The Trappers' Associations agree that the City of Valdez may prohibit trapping on land the City owns. *See* Appellants' Brief, at page 21, fn. 70. The State in its Amicus brief also acknowledges that the City of Valdez may prohibit trapping on City-owned land. *See* Brief of the State of Alaska as *Amicus Curiae*, at page 8.

are expressly granted wide ranging powers in the Alaska Constitution; that is unless prohibited by law.²³

AS 29.10.200 provides a long list of limitations on home rule powers. Municipal regulation of trapping is not on that list.

Although the regulation of firearms is not directly relevant to this instant appeal, nevertheless, it is worth taking notice that the regulation of firearms is on that list of limitations on home rule powers.²⁴ But that provision is clarified by another statute; namely AS 29.35.145(b)(2). It authorizes the enactment of municipal ordinances restricting the discharge of firearms in “any portion of their respective jurisdictions where there is a reasonable likelihood that people, domestic animals or property will be jeopardized...”²⁵

The fact that municipal regulation of trapping is not on the list of excluded activities set forth in AS 29.10.200 indicates that other provisions of Alaska law apply. One of those provisions is the municipal power to control or restrict activities conducted on municipal land, as discussed above. Other provisions which apply are those which grant municipalities what is generally referred to as “police power”. This term refers to

²³ Article X, § 11.

²⁴ AS 29.10.200 (40).

²⁵ AS 29.35.145(b)(2).

the power to enact ordinances for public safety purposes.²⁶

The authority of home rule boroughs and cities to enact public safety measures is grounded in Article X, Section 11 of the Alaska Constitution which provides that home rule boroughs and cities "may exercise all legislative powers not prohibited by law or charter." First and Second Class cities have been granted the same authority, but by statute, as follows: AS.29.04.030 (4) and (5) provide that First and Second class cities are general law cities. AS 29.35.250 and AS 29.35.260 grant to general law cities the authority to adopt ordinances not otherwise prohibited by law.

First and Second class boroughs have the authority to engage in land use planning,²⁷ while Third class boroughs may acquire the power to engage in land use planning.²⁸ Land use planning may include the enactment of ordinances the purpose of which is to provide for public safety.²⁹

It is clear that all of the foregoing categories of municipalities may enact ordinances providing for public safety whether by direct constitutional or statutory grant,

²⁶ See *R & Y, Inc. v. Municipality of Anchorage*, 34 P.3d 289, 297 (Alaska 2001); and *Rabin v. State*, 537 P.2d 494, 511 (Alaska 1975).

²⁷ AS 29.35.180(a).

²⁸ AS 29.35.220.

²⁹ AS 29.40.040 (a)(2) provides that, consistent with a comprehensive plan, a municipal assembly may enact ordinances which include "land use permit requirements designed to encourage or discourage specified uses...or to minimize unfavorable effects of uses..."

or as a land use planning function. Public safety measures include measures the purpose of which is to protect property interests.³⁰ Dogs are recognized in the law as personal property (and indeed are recognized as highly valued personal property),³¹ and measures protecting dogs from traps are authorized for that reason, and the other reasons discussed herein.

The grant to municipalities of the authority to enact restrictions on the discharge of firearms made in AS 29.35.145(b)(2) is not in conflict with Article VIII of the Alaska Constitution because the grant is limited to only reasonable ordinances where there is a need to protect people, domestic animals and property from harm. The same is true for trapping ordinances which are similarly limited in scope.

It is notable, however, that the Trappers Associations and the State have not challenged the need for and the scope of Valdez's trapping ordinance in this appeal. Instead, their position is that all ordinances which impact the Board of Game's trapping regulations are absolutely void because they are unconstitutional, or impliedly preempted.³²

³⁰ See *L St. Investments v. Municipality of Anchorage*, 307 P.3d 965, 969 (Alaska 2013) (Special assessment district authorized for business improvement district.)

³¹ *Richardson v. Fairbanks North Star Borough*, 705 P.2d 454, 456 (Alaska 1985); *Hagblom v. City of Dillingham*, 191 P.3d 991,996 (Alaska 2008).

³² Under the Trappers Associations and the State's position, for example, the Board of Game could authorize trapping on Fourth Avenue in downtown Anchorage, and the Municipality of Anchorage would be powerless to stop it.

D. The Assertions Made by the Trappers Associations and the State are Contradicted by at Least 40 Years of History.

Attorney General Wilson Condon in 1982 in a published opinion addressed the question of whether local governments might enact ordinances which are at odds with the State's game management statutes and regulations. The opinion contains the following language:

A borough ordinance that did not directly address legitimate local concerns and which frustrated overall game management would probably be held invalid as preempted by the statewide interest in uniform game management. For example, if a borough, through a firearms or similar ordinance, were effectively to close down huge areas of the state to hunting or trapping, for reasons not reasonably related to protection of life and property, the local ordinance would probably be held invalid as a frustration of the statewide management of game.³³

After a lengthy discussion of the authorities, the Attorney General concludes with the following:

Local governments do not have the 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 reasonably necessary to protect life or property.³⁴

The State cites this same Attorney General's opinion as authority for its position that municipal governments may not directly manage game.³⁵ But the direct relevance of

³³ 1982 Inf. Op. Att'y Gen. at page 5, 1982 WL 43763 (1982).

³⁴ *Id* at page 5.

³⁵ Amicus brief of the State of Alaska, page 7, at fn. 33.

this opinion is that it recognizes that local governments may nevertheless enact regulations reasonably necessary to protect life and property, which is exactly what the City of Valdez did here.

The AWA does not take the position that local government may directly manage game. Nor did the Superior Court. The AWA's position is that local governments may enact ordinances impacting the state's trapping regulations in the exercise of their authority as landowners, and as legitimate public safety measures.

The discussion in Attorney General Condon's opinion, and the authorities cited in the opinion, seem to have been generally understood and followed by numerous elected officials. Among those elected officials are members of the Legislature which in 1985 enacted AS 29.35.145(b), which, in essence, codifies Attorney General Condon's 1982 opinion regarding municipal regulation of firearms.

The logic of Attorney General Condon's 1982 opinion also applies to trapping. Legitimate public safety measures minimally impacting the taking of game by snares and traps make sense. For that reason the elected council and assembly members of at least twelve Alaskan municipalities, including the City of Valdez have enacted police power measures restricting trapping.³⁶ The list of these municipalities is as follows:

³⁶ There may be more municipalities which have enacted ordinances which restrict trapping. Research of the codes of ordinances of Alaska's numerous municipalities is painstaking. There appear to be two sources of municipal codes online. Neither is complete. The citations to the

Fairbanks	Fairbanks Municipal Code; Section 46-77 Use of Snares and Traps ³⁷
Homer	Homer Municipal Code; Chapter 5.30. Hunting and Trapping ³⁸
Kenai	Kenai Municipal Code; 3.10.060(d) Cruelty to Animals ³⁹
Nome	Nome Municipal Code; Chapter 10.30.170 Trapping ⁴⁰
Soldotna	Soldotna Municipal Code; 6.04.200(1) Cruelty or injury to animals
Cordova	Cordova Municipal Code; 8.04.195 Regulation of Trapping ⁴¹
Juneau	Juneau Municipal Code; 08.45.030 - Trapping prohibited. ⁴²
Skagway	Skagway Municipal Code; 9.05.310 Trapping of animals prohibited. ⁴³
Seward	Seward Municipal Code; 9.05.310 Trapping of animals prohibited. ⁴⁴

ordinances shown *infra* are taken from what is available online. To the best knowledge and belief of the undersigned, the municipal trapping measures listed below, which are printed at the beginning of this amicus brief, are accurate.

³⁷ https://library.municode.com/ak/fairbanks/codes/code_of_ordinances

³⁸ <https://www.codepublishing.com/AK/Homer/>

³⁹ <https://kenai.municipal.codes/>

⁴⁰ <https://www.codepublishing.com/AK/Nome/>

⁴¹ https://library.municode.com/ak/cordova/codes/code_of_ordinances

⁴² https://library.municode.com/ak/juneau/codes/code_of_ordinances

⁴³ <https://www.codepublishing.com/AK/Skagway/>

⁴⁴ https://library.municode.com/ak/seward/codes/code_of_ordinances

Anchorage	Anchorage Municipal Code; 14.70.200 Prohibited trapping zones for safe trails. ⁴⁵
Mat-Su. Borough	Municipal Code; 24.05.105 Trapping Prohibitions and Restrictions ⁴⁶
Valdez	Valdez Municipal Code, Chapter 9.38 - Trapping.

Some of these ordinances have been enacted recently; for instance the ordinances in Skagway (enacted 2014 and amended 2015) and Anchorage (2019). Others were enacted long ago: for instance the ordinances enacted by Seward (1999) and Fairbanks (prior to 1999⁴⁷). These ordinances are provided verbatim at pages ix - xvi of this brief.

Douglas Vincent-Lang is the current commissioner of the Alaska Department of Fish and Game (ADF&G), having been appointed in 2019 (R. 451). Mr. Vincent-Lang asserts in his affidavit that the Superior Court’s decision regarding the City of Valdez’s jurisdiction “potentially reverses decades of established law.” (R. 454) Attorney General Condon’s published opinion disproves Mr. Vincent-Lang’s opinion testimony. So

⁴⁵ https://library.municode.com/ak/anchorage/codes/code_of_ordinances

⁴⁶ <https://codepublishing.com/AK/MatanuskaSusitnaBorough/>

⁴⁷ It is not clear when the Fairbanks ordinance was enacted. But the ordinance appeared in Fairbanks’ 1960 Code, which was updated only through 1999, when Fairbanks’ code was re-codified into the current version. See the note indicating that Section 44-47 of the current code appeared earlier as Code 1960, § 6.305

does the ADF&G's handbook Alaska Trapping Regulations (R. 209).⁴⁸ In the handbook, the ADF&G advises trappers to familiarize themselves with local "ordinances".

The State in its complaint in intervention alleges that the State has occupied and will continue to fully occupy the field (R. 448), and the State's amicus brief makes it clear that the Department of Law now takes the position that the State has occupied the field, and that municipal ordinances are unconstitutional, or impliedly preempted. But the history, including A.G. Condon's opinion, the multiple ordinances, and the ADF&G handbook, all make it clear that the State's position is of recent origin.

The Record on Appeal demonstrates that at least one representative of the Department of Law has advised four municipalities that municipalities do not have the authority to enact ordinances impacting trapping.⁴⁹ This advice illustrates the importance

⁴⁸ The 2020-2021 ADF&G's handbook of trapping regulations (R 208) states:

Know Who Owns the Land Where You Plan to Trap
Although regulations presented in this booklet may show and open season on certain furbearers in a specific game management unit, local regulations, ordinances or state park rules may prohibit access, trapping or the use of firearms, or require an access permit. (R 214)

⁴⁹ See the transcript of Assistant Attorney General Cheryl Brooking which indicates that Ms. Brooking advised the City of Petersburg on January 14, 2019 as follows:

"I've also communicated with the Skagway attorney and with two different mayors over the past four or five years in encouraging them.....because they don't have the authority to regulate trapping. That authority is constitutionally given to

of this case to the maintenance of historical local government police power, throughout the state. The decision of the Superior Court in this instant case, and the authorities cited in this amicus brief indicate that the advice the Department of Law has been giving to municipalities is mistaken. For that reason, clarity is needed regarding the authority of all municipalities to which police power has been granted, constitutionally or by statute.

D. The Board of Game and the Board of Games Local Advisory Committees Are Not Adequate Substitutes For Local Self Government.

Municipalities seeking to protect residents and visitors from the threat of traps and snares should not be compelled to go to the Board of Game or local Fish and Game Advisory Committees in the hope of obtaining public safety measures. Article X, § 1 states that it is the purpose of Article X to provide for “maximum local self government”. It is hard to imagine that the constitutional delegates intended that phrase to refer to an administrative board such as the Board of Game the members of which reside throughout the State, and statewide responsibilities.

It is also hard to imagine that the constitutional delegates intended the phrase “local self government” to refer to the Board of Game’s local advisory committees. Membership in these committees is limited by 5 AAC 96.040. It provides as follows:

To qualify for membership on a committee, a candidate **must have** knowledge of and experience with the fish and wildlife resources and their

the State, and it have been delegated by the Legislature to the Board of Game to set regulations.” [R. 167-169]

uses in the area, and have a reputation within the community consistent with the responsibilities of committee membership.

(emphasis added)

In addition to the above-quoted limitations on membership, 5 AAC 96.060 (e)(1) requires that “members must be representative of fish and game user groups in the area served by the committee.”

The term used by the constitutional delegates is “local self government”. Self government cannot be reasonable construed to mean governance by committees where membership is restricted to consumptive users, and non-consumptive users are deemed unwelcome by the applicable regulations. These advisory committees cannot be reasonably expected to impartially consider municipal proposals for restrictions on trapping because membership of these committees does not reflect the diversity of Alaska’s population.

The State in its Amicus brief⁵⁰ asserts that the City of Juneau was able to successfully use an advisory committee to obtain passage of a state regulation restricting the placement of traps in heavily used recreational areas. But the record is devoid of information regarding how enactment of the state regulation came about. Furthermore, the regulation (5AAC 92.550) to which the State refers is not as extensive as Juneau’s

⁵⁰ Brief of the State of Alaska as *Amicus Curiae*, p. 17.

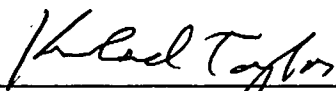
ordinance.⁵¹

But the question presented in this appeal is not whether the Board of Game and its local advisory committees might potentially provide a process for enacting public safety measures which impact trapping. Instead, this appeal solely concerns the question of whether Valdez and other municipalities lack any authority to enact public safety ordinances which restrict the placement of traps within their borders. Again, neither the Trappers Associations nor the State have challenged the reasonableness or scope of the City of Valdez's ordinance.

CONCLUSION

Valdez and other municipalities throughout Alaska have the authority to enact police power ordinances which restrict the placement of traps within their borders on both municipally owned lands, and other lands, both public and private. The AWA asks the Court to affirm the decision of the Superior Court finding the Valdez ordinance valid. The AWA neither supports or opposes the cross appeal by the City of Valdez concerning attorneys fees and costs.

Dated: AUGUST 11, 2022.



Kneeland Taylor ABA#751006
For the Alaska Wildlife Alliance

⁵¹ The ordinance provides for half mile buffers. *See* Juneau's Code of Ordinances 08.45.030, at <https://library.municode.com/ak/juneau/>. The regulation provides for quarter-mile buffers.