COOK INLET LAND TRADE

David Jackman
February 25, 1976

WHAT'S WRONG WITH THE COOK INLET LAND TRADE

Simply a bad deal for the state

For all its alleged complexity, the proposed Cook Inlet land trade is not that hard to understand. In return for 52 townships (approximately 1.2 million acres) of federal lands that are mostly remote and of questionable value, the state is giving the federal government 21.5 townships (approximately .5 million acres) of very valuable lands that the federal government will in turn use to solve two nettlesome federal problems:

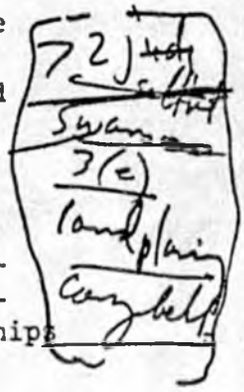
1) The four-year dispute over the adequacy of the lands withdrawn by the Interior Department for the satisfaction of Cook Inlet Native Corporation's land selection rights; and

2) The need to get private ownership (in the form of pending Native corporate land selections) out of the Lake Clark area, so that the National Park Service will have a more salable national park proposal for the d-2 lands in that area.

The 21.5 townships the state is giving up are located on the Kenai peninsula (5 townships), in the Mat-Su Valley (3 townships), and in the Beluga area across northern Cook Inlet from Anchorage (13.5 townships). All of these areas are within zones very favorable for the occurrence of oil and gas, and the Beluga area is also a known coal area with reserves of immense proportions. All of these lands are low-lying and well-suited for future settlement. Furthermore, because they are located near the population centers of southcentral Alaska, they also have extremely high importance for recreation and public use by the common man who cannot afford to fly-in long distances.

The 52 townships the state will receive in exchange are for the most part quite remote, have little income producing potential, and are of relatively little value for either future settlement, the protection of state wildlife resources, or even public recreational use. Half of these lands (26 townships) are located in the Mulchatna river drainage northwest of Lake Iliamna. Another 7 townships are located in the adjacent Tutna Lake area approximately 25 miles west of Lake Clark.

Eleven townships will be adjacent to Kamishak Bay on the west coast of Cook Inlet, southwest of Augustine Island. There will also be 8 townships in the Talkeetna Mountains and the 4,000 acre Campbell tract in the Anchorage bowl.



There are many other aspects of this trade to be reviewed, but the basic inequality of the land values alone is enough to condemn it. To put it in perspective, consider one of the worst hypotheticals advanced by proponents of the trade: that Cook Inlet Inc. wins its law suit on appeal (it has already lost at the trial level), and that Interior is also ordered to break its 1972 agreement with the state and make state selected lands available for Cook Inlet's regional selections. Cook Inlet is due to receive approximately 54 townships total. At least 20-30 townships presently withdrawn from federal lands are probably acceptable to Cook Inlet region. Therefore, at most, 24-34 additional townships would then be made available from remote, generally lower-value state-selected lands, either in the area across the Alaska Range toward the Stony River country or northwest of the Susitna valley toward Denali.

According to any scale of values these 24-34 townships would be worth far less than the 21.5 townships the state plans to give up in the proposed trade. It is worth re-emphasizing that we would be less out-of-pocket with this "worst hypothetical" than with the proposed trade, and even the advocates of the trade place the likelihood of this hypothetical at less than 20 percent.

The Campbell Tract

In contrast with the other lands to come to the state, the 4,000 acre Campbell tract in the heart of the Anchorage bowl is valuable land of the first order. But even this benefit is more apparent than real because either the state or borough was almost certain to get this tract anyway, and in any event it had clearly been placed off limits for Native selection by the federal government. So here as elsewhere throughout this trade we are getting lands we would likely get anyway, and protecting public interests that were already protected.

Even advocates of the trade concede that the state "would stand a respectable chance of obtaining the (Campbell tract) lands at some time in the future" under the federal Recreation and Public Purposes Act. High sources within the Interior Department emphasize that this was almost certainly to be so. These same sources also stated that in earlier discussions between the Interior Department and Cook Inlet Region, Interior announced its firm opposition to this tract being made available for Native selection. The only Anchorage-area tracts that

Interior seriously considered letting the Natives select were Fire Island and surplus lands from Fort Richardson, and these may well still go to Native ownership under the trade agreement.

Much of the Campbell tract was further protected from any possibility of Native selection by the two-mile buffer zone in Section 22(1) of the Settlement Act. Finally, there is every indication that the federal government intended to keep this tract in public open space use because of its importance as a watershed and recreational area. So about all the state "gained" here was the administrative expense and the "pride of ownership".

A Cloud Over the North-South Runway

Another much-touted plus of the proposed trade agreement is that it will insure the early transfer of the Point Woronzof, Point Campbell and Goose Lake tracts to the state. In the words of the agreement, "such lands shall be reserved by the United States for early conveyance to the State for park and recreation purposes...." But this language creates a new problem in view of the importance of the Woronzof tract for the proposed north-south runway at the Anchorage airport.

Without this agreement the state or borough was still very likely to get most of these tracts under the Recreation and Public Purposes Act. The terms of that Act are broad enough to permit a "public purpose" such as an airport runway. The more restrictive language regarding "park and recreation purposes" in the proposed trade agreement may well have the effect of blocking such an important public use.

No Special Protection for Fisheries

The importance for the state of getting lands in the Iliamna area has been tied by the advocates of the trade to the protection of Bristol Bay fishery values. Presumably this extra protection would occur through state ownership of the upland drainages adjacent to important spawning streams. So far so good.

However, under the actual terms of the trade, the state will not get a single acre within the Iliamna Lake watershed which is the key salmon producer for the Bristol Bay fishery. The lands the state does receive are in the upper Mulchatna River drainage, an area of very minor importance for the Bristol Bay fisheries.

With or without the proposed trade, the State will have an opportunity, recognized in Section 17(d) of the 1971 Settlement Act, to select lands in the Iliamna drainage within the Bristol Bay village withdrawals after

Native selections are completed. Furthermore, the fishery values of public lands in that area are perfectly well protected with the lands in federal ownership, and nothing significant is gained by transferring them to state ownership. Add to this fact the existence of state regulatory tools such as the Anadromous Fish Stream Act which can be used to protect fisheries habitats.

Out-of-Region Selection Rights

Under the proposed trade agreement, Cook Inlet Region will have an additional three years to identify and select approximately 30 townships of land from available federal lands outside the region. They are prohibited by the agreement from selecting any lands the Federal Government wants, such as d-1 or d-2 lands included in the Secretary's park, refuge, and forest proposals, or any of the d-1 buffer lands around these areas called "zones of ecological concern". This will throw Cook Inlet into those lands that would otherwise be prime candidate areas for State selection. Cook Inlet Region will have the opportunity to take the best available lands from a resource utilization standpoint.

The out-of-region selections constitute a loss to the State because these are lands that otherwise would have been available for State selection. (Approximately 35 million acres of land remain to be selected out of the Statehood Act grant of 103.5 million acres.) Cook Inlet will be looking for the same kind of income-producing resource lands or other valuable lands that would be high on the list for State selection. With respect to the millions of acres that could be nominated under this procedure, there will be a freeze on the processing of any State selections for three years.

Thirty townships broken up in isolated private tracts will create the same kind of land management problems outside Cook Inlet Region that it was the partial purpose of this trade to avoid within this region. So in order to consolidate ownership in the Cook Inlet area, we are furthering a fragmented land pattern elsewhere in the state.

Impact on the Proposed Lake Clark National Park

This trade will make it difficult for the State to ever oppose the establishment of a National Park or other area managed by the National Park Service in the Lake Clark area. The proposal would result in the return of certain key lands around Lake Clark to federal control, and would prevent further Native selections in this area. In the agreement, the Secretary, Cook Inlet Native Corporation, and the State all acknowledge that there are nationally significant resources in the Lake

Clark area, and that the "scenic, recreational and inspirational resources of this area should be preserved." "Nationally significant" is a catch phrase applying to d-2 lands indicating that they should be permanently preserved in federal park or refuge status. Nothing is said of the significant mineral resources in the Lake Clark area.

By the express terms of the agreement, Cook Inlet Native Corporation is bound to publicly support the establishment of such a National Park Service management unit around Lake Clark. There are three other national parks either existing or proposed for the Alaska Range: Wrangell Mountains, Mt. McKinley and Katmai; many view the proposed Lake Clark National Park as a far less justifiable fourth proposal.

Impact on the Kenai National Moose Range

Much of what the conservationists might view as net gains in the Lake Clark area under the proposed trade, they lose in the Kenai Moose Range. Cook Inlet Native Corporation will receive full ownership of 16 sections of key public use lands in the Lake Tustemena area. There will be some restrictions on waterfront development, but basically, these will be private lands. Elsewhere in the Moose Range, Cook Inlet will receive full rights to oil, gas and coal under another 9.5 townships of land.

Why was it necessary for any lands to come out of the Moose Range? In earlier settlement negotiations between Cook Inlet and the Interior Department, before Cook Inlet lost its suit at the trial court level, some lands were offered from the Moose Range. However, this so-called "Frizzel offer" was withdrawn and never re-offered. The legal authority of the Interior Department to ever offer the Moose Range for Native regional selections without Congressional authorization was then and is still seriously questioned. Under the proposed trade the loss of these lands to private ownership in this important recreational area, so heavily used by the Kenai and Anchorage area people, will be irreplaceable.

In-region Selection Pool of Surplus Federal Lands

The Secretary of the Interior, working with the General Services Administration is obligated to try to find 138,240 acres (6 townships) or acre equivalents (in terms of appraised land values figured at $500 an acre) of land within Cook Inlet region made up of odd federal tracts such as lapsed homestead entries, surplus federal lands, or revoked federal reserves. These lands would then be made available for selection by Cook Inlet Region using some of the 30 townships of out-of-region entitlement, and also made available for land exchanges with villages to trade them out of proposed National Park lands on the west side of Cook Inlet.

Some of the federal lands to be included in this pool, without this agreement, would be available for State selection under the 90-day preference right guaranteed in the Statehood Act. These are potentially very valuable lands, and could include tracts such as Fire Island and surplus lands at Fort Richardson. The $500/acre equivalent formula agreed on in the proposal would imply total land values for this 6 township pool of over $69 million, and the State would have the right to veto only 1,500 acres from this pool.

Disposal Without Planning or Classification

As the agreement is written the state does not know exactly what lands will go to Cook Inlet Corporation on the Kenai or in the Mat-Su Valley. The specific lands are to be identified over the next eighteen months "to the extent possible by mutual agreement" from five selection pools: the Point McKenzie pool, the Knik-Willow pool, the Kashwitna pool, the Chickaloon pool, and the Kenai pool. If the state and the Natives cannot agree, then the state identifies one and a half times their entitlement, and Cook Inlet chooses.

This process of mutual agreement may work very well or it may break down completely. It is impossible to know now. In either event eighteen months is hardly adequate time to complete the kind of land use planning and classification process that would normally precede the disposal of such large tracts into private ownership. Private ownership of more land in these areas may make good sense, but the state is losing most of its ability to determine what specific tracts are best suited for private development in terms of local government needs, public services, and provision for recreation and open space lands. It is true that local zoning could serve as a stopgap, but it can never be as effective as a wise and carefully thought out disposal policy.

Swanson River Oil Revenues

Without this proposed agreement, there is some chance that either an administrative or a legislative settlement arrived at by the Federal Government alone might give Swanson River oil revenues to Cook Inlet Region. At present, the State receives 90 percent of these royalty revenues although there is a recent opinion of the U.S. Comptroller General challenging the right of the State to these revenues.

Under this Comptroller General's opinion, the State may lose Swanson River revenues anyway unless the State is successful in legally overturning this opinion. Also, in the absence of a finding by the Secretary that these lands are no longer necessary for the Moose Range, federal legislative action would probably be required to give these subsurface benefits to Cook Inlet Region.

Serious Breach of Public Trust

Aside from its citizens, this state's public land is its most basic asset. It should go without saying that both the legislative and the executive branches should use the highest standard of care in managing or disposing of this land patrimony.

The only standard that presently exists in state law against which land trades can be measured is equal value. This legal standard has always been viewed in the past as meaning equal appraised dollar values. Where this was not possible a cash equalizer was permitted.

Even if we now allow this equal value test to be broadened into a public benefit versus public cost analysis, there has been no such rigorous and complete cost-benefit comparison offered by the administration that can meet even such a liberalized test. Thus we are asked to discard the only standard that presently exists in state law, and to rely on the individual judgement of one or two administrators. To borrow Governor Hammond's analogy of Alaska, Inc., the Cook Inlet trade appears to constitute an unwarranted dissipation of corporate assets.

Better Alternatives Are Still Available

It is simply not true that this agreement must be approved if Cook Inlet is to have a satisfactory resolution of its land selection problems. The federal legislation that authorized the Interior Department's participation in the trade recognized that the parties might not be able to finally agree, and provided full protection for Cook Inlet's selection rights in that event.

This Act requires the Secretary to report to Congress by April 15th of this year on the implementation of this agreement. If there is no agreement at that time, the Secretary must until the end of 1976 hold on to those federal lands that would have gone to Cook Inlet Corporation so that Congress can consider an alternative solution. All of Cook Inlet's original selection rights would be restored, and they would continue to pursue the appeal of their law suit.

The simplest alternative to the proposed trade would be for Interior to simply withdraw additional d-1 and d-2 federal land within Cook Inlet region for Native selection. This would require neither legislation nor a single acre of state land.

Governor 3/e)

A second quite simple alternative is suggested by the proposed trade agreement. Since 30 townships of out-of-region selection rights have already been approved by Congress as a part of this trade, Congress could

pass a two-sentence amendment simply directing the Secretary to specifically withdraw up to 90 townships from within these same d-1 land areas outside the region as an additional deficiency area for Cook Inlet's regional selections. The other regions have already accepted this concept in the present trade, and by requiring the selection area to be identified and narrowed down, state selections would not be frozen over so broad an area.

Conclusion

It is now up to the state legislature to either approve or disapprove this proposed trade. If they choose not to approve it, they may well decide to suggest an alternative that would throw it back into federal hands. Whatever course is taken they must eventually decide the larger issue concerning standards and procedures to govern such trades in the future if the public interest is to be adequately protected.

Poland

Outline for Oral Presentation
February 11, 1976
David Jackman - John Katz
(This outline represents the personal views of the speakers only).

AN ANALYSIS OF ISSUES RELATED TO THE PROPOSED COOK INLET LAND TRADE

Comparative value of lands given and lands received

The State is giving up 21.5 townships of land:
8 townships in Mat-Su Valley and on the Kenai Peninsula,
13.5 townships in the Beluga area.

The State is receiving approximately 52 townships in exchange:
26 townships in the Mulchatna River drainage northwest of Lake Iliamna,
11 townships adjacent to Kamishak Bay (on west coast of Cook Inlet, southwest of Augustine Island),
7 townships in the Tutna Lake area (approximately 25 miles west of Lake Clark),
4,000 acres (.17 township) of the Campbell tract for recreation and public uses only.

ARGUMENT FOR: The State is giving up lands that are already destined for private development and receiving lands that should best be kept in public ownership.

ARGUMENT AGAINST: The State is giving up lands worth far more than those it is receiving, and is losing both future revenues and planning control over the disposal of large tracts of land in the Anchorage Bowl and Kenai Peninsula area.

lue of the Campbell tract

ARGUMENT FOR: "...the State would receive title immediately to the Campbell tract in the heart of the Anchorage bowl...A very conservative figure of three thousand dollars per acre has been assumed for the Campbell tract. This figure has then been discounted fifty percent under the assumption that if the State did not gain immediate title to the area under this proposal, it would stand a respectable chance of obtaining the lands at some time in the future." (These and subsequent quotes are taken from Mike Smith's memorandum of December 6, 1975. The Committee has access to that document and can place these brief excerpts in their fuller context).

ARGUMENT AGAINST: Seven-eighths of this tract was protected from any possibility of Native selection by the two-mile buffer zone in §22(1) of ANCSA. Either the State or borough was very likely to receive this

tract anyway under the Recreation and Public Purposes Act. Even if this did not occur there is every indication that the Federal Government favors keeping this tract in public open space use due to its importance as a watershed and recreational area.

Protection of Bristol Bay Fishery Values

ARGUMENT FOR: "In the Lake Iliamna and Bristol Bay National Resource Range proposal approximately 15 percent of the lands will be under the control of private Native corporations. The State can more effectively administer to the requirements of its citizens in those areas if it owns the other lands within that region. Additionally, the tremendous dependence upon the salmon fishery resources of that region, and the current responsibility of the State to manage those resources, argue cogently that the State should also control the uplands in that area".

ARGUMENT AGAINST: The State will get no lands at all in the Iliamna watershed which is the critical area for the Bristol Bay fisheries. The lands the State will receive in the Mulchatna drainage are much less important from a fisheries standpoint. Irrespective of the proposed trade, the State will have an opportunity recognized in §17(d) of ANCSA to select lands in the Iliamna drainage within the Bristol Bay village withdrawals after Native selections are completed. The State has other regulatory tools such as the Anadromous Fish Stream Act which can be used to protect fisheries habitats.

Out-of-Region Selection Rights

ISSUE: Under the proposed trade agreement, Cook Inlet Region will have an additional three years to identify and select approximately 30 townships of land from available federal lands outside the region. They are prohibited by the agreement from selecting any lands the Federal Government wants, usch as d-1 or d-2 lands included in the Secretary's park, refuge, and forest proposals, or any of the d-1 buffer lands around these areas called "zones of ecological concern". This will throw Cook Inlet into those lands that would otherwise be prime candidate areas for State selection. As to these lands, State selections could be frozen for three years, with Cook Inlet Region having the opportunity to take the best available lands from a resource utilization standpoint.

ARGUMENT FOR: There are provisions allowing the Secretary of the Interior, after consultation with the State, to submit a list of areas to Cook Inlet Region where approval of out-of-region selections is unlikely. At the end of three years, when the pool of at least 90 townships has been nominated by Cook Inlet Region for selection, State public interests can be further protected by the right of the State to pre-emptively strike 10% of the pool and then by the alternating selecting and striking process.

ARGUMENT AGAINST: The out-of-region selections constitute a loss to the State because these are lands that otherwise would have been available for State selection. (Approximately 35 million acres of land remain to be selected out of the Statehood Act grant of 103.5 million acres). Cook Inlet will be looking for the same kind of income - producing resource lands or other valuable lands that would be high on the list for State selection. With respect to the millions of acres that could be nominated under this procedure, there will be a freeze on the processing of State selections for three years. Thirty townships broken up in isolated private tracts will create the same kind of land management problems outside Cook Inlet Region that it was the partial purpose of this trade to avoid within this region.

Ownership and Control of Key Settlement and Development Lands

ISSUE: Should a private corporation be given control over the timing of development and pattern of disposal for large remaining tracts of land within the heavily impacted Kenai Peninsula and Mat-Su Valley areas?

ARGUMENT FOR: These lands are well-suited for settlement and slated for development anyway. Local sub-division and zoning laws will adequately protect the public interest.

ARGUMENT AGAINST: Control over the pattern and timing of State land disposals is an important public policy tool. The State may want to use or dispose of lands for other than minimum dollar returns. It is in the heavily-impacted, growth areas that the State should be careful to hang on to what public land remains.

Impact on the Proposed Lake Clark National Park

ARGUMENT FOR: The proposal results in the return of certain key lands in the Lake Clark area to federal control and prevents further Native selections in this area. In the agreement, the Secretary, Cook Inlet Region and the State, all acknowledge that there are nationally significant resources in the Lake Clark area, and that the scenic, recreational and inspirational resources of this area should be preserved.

ARGUMENT AGAINST: This trade makes it difficult for the State to ever oppose the establishment of a National Park Service management area around Lake Clark. By the terms of the agreement, Cook Inlet Region is bound to publicly support the establishment of such an area. There are three other National Park proposals for the Alaska Range, and many view Lake Clark as the least justifiable proposal. In order to trade the villages out of Lake Clark, this agreement has become much more complicated than would have been necessary to resolve the regional selection problem alone. Existing village withdrawals are thought to satisfy village selection criteria.

Impact on The Kenai Moose Range

ARGUMENT FOR: Potential inroads into the Moose Range, such as those represented by the "Frizzel offer" for the settlement of the Interior Department's litigation with Cook Inlet Region, have been minimized. Restrictions on surface use and prohibitions on strip-mining will further protect public values on lands that are given up.

ARGUMENT AGAINST: The "Frizzel offer" was withdrawn and not re-offered. The legal authority of the Interior Department to ever offer the Moose Range for regional selections is seriously questioned. Sixteen sections of surface rights in the Tustemena Lake areas still constitute a substantial inroad, and development of the 9.5 subsurface townships could still cause major deterioration of public values.

Value of State Lands in the Beluga Area

ISSUE: Even thought the State may still control the major share of the area coal resource, these 13.5 townships could still represent a substantial future economic loss to the State. In a strict economic sense, the present discounted value of development 15-20 years in the future may be low, but in terms of long-term State interest, it may be highly desireable to have some revenue producing resource ready to bring on line 20 years hence when Prudhoe Bay is winding down. Royalty terms on existing leases could be renegotiated at the end of the initial 20 year terms. Controlling the timing and environmental impacts of coal development would be much easier if the State continued as lessor.

In-region Selection Pool of Surplus Federal Lands

ISSUE: The Secretary in conjunction with the General Services Administration is obligated to try to find 138,240 acres (6 townships) or acre equivalents, in terms of appraised land values (figured at $500. an acre), of land within Cook Inlet region made up of small odd tracts such as lapsed homesteads, surplus federal lands, or revoked federal reserves. These lands would then be made available for selection by Cook Inlet Region using some of the 30 townships out-of-region entitlement, and also made available for land exchanges with villages to trade them out of proposed National Park lands on the west side of Cook Inlet.

ARGUMENT FOR: "...other federal surplus lands and unperfected public land entries which might go to CIRI within the region would be subject to a State veto (for up to 1,500 acres) and/or appeal process to protect State and public interests in these lands. Since the eventual settlement CIRI receives, whether by agreement, legislation, or by court action, will undoubtedly include these lands, the proposal represents the State's only opportunity to participate in protecting the public interests on these lands.

ARGUMENT AGAINST: Many, though not all, of the federal lands to be included in this pool would without this agreement be available for State selection under the 90-day preference right guaranteed in the Statehood Act. These are potentially very valuable lands. The $500/ acre equivalent formula agreed on in the proposal would imply total land values for this 6 township pool of over $69. million.

Swanson River Oil Revenues

ISSUE: Without this proposed agreement, there is some chance that either an administrative or a legislative settlement arrived at by the Federal Government alone might give Swanson River oil revenues to Cook Inlet Region. At present, the State receives 90% of these royalty revenues although there is a recent opinion of the U.S. Comptroller General challenging the right of the State to these revenues.

ARGUMENT FOR: "To the values to be received by the State as estimated above must be added values which, if the proposal is not consumated, might be lost to the State. The two most prominent values in this category are the ninety percent royalty revenues which the State receives from oil production in the Swanson River area of the Kenai National Moose Range...Any estimation of the value of these two possibilities...must assume certain levels of probability...and assumption of a .5 probability does not appear unreasonable...(this) yields an estimated value of $20.5 million".

ARGUMENT AGAINST: Under the present Comptroller General's opinion, the State may lose Swanson River revenues anyway unless the State is successful in legally overturning this opinion. In the absence of a finding by the Secretary that these lands were no longer necessary for the Moose Range, federal legislative action would probably be required to give these benefits to Cook Inlet Region.

Amendment of Statehood Act

ISSUE: Section 6(i) of the Alaska Statehood Act prohibits the State from ever conveying away the mineral estate in State public lands. Under State law, resources are disposed of by lease or location only. The recent amendments to ANCSA include a provision waiving the applicability of ¢6(i) in land trades such as the one proposed for Cook Inlet Region.

ARGUMENT FOR: This amendment will facilitate this trade and future land trades.

ARGUMENT AGAINST: This unilateral amendment of the Statehood Act creates an undesireable precedent. Unlike the treatment of native selection of some State lands under ANCSA, this time there was no formal acquiescence by the State in this federal action. Because the

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 2, 1976

SUBJECT: Cook Inlet Land Trade (Work Order 2316)

TO: Senator Kay Poland
Chairman, Senate Resources Committee

FROM: Billy G. Berrier BGB
Director, Legal Services

As a result of substantial negotiations between the State of Alaska, the United States and the Cook Inlet Region, Inc., an agreement was reached concerning the exchange of land among the parties. Since the agreement is quite complex and has been presented in great detail to your committee I will not attempt to setout the terms except to point out that one essential element of the agreement is the transfer of subsurface lands by the State of Alaska. This transfer is to be made to the United States which will in turn transfer the lands to CRIR.

It is my opinion that under existing state law adequate authority to implement this agreement does not exist and that, therefore, for the State of Alaska to make the conveyances required under the agreement enabling legislation is mandatory.

While it would appear that problems exist under section 6(i) of the Alaska Statehood Act, in my opinion these problems are apparent rather than real. This section provides:

> "(i) All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express conditions that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: Provided, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska."

This section is not a prohibition to the State of transfer of mineral rights. It is legally a conditional conveyance to the state, conditioned upon the requirement that mineral lands granted by the state be granted subject to reservation of all the minerals, with the enforcement of the condition being forfeiture of the lands to the United States by appropriate proceedings.

Under this pattern a transfer to the United States is not included. To look at it another way in the direct context of this bill if the section did not apply to the transfer to the United States, then the contemplated transaction is valid and title to the land and minerals passes to the United States; but if it were held that the section does apply to the United States a grant to the United States of the minerals, would be a breach of condition making both lands and minerals subject to forfeiture to the United States. In either event title would go to the United States contingently under the second hyposthesis upon a forfeiture action. It would be an unreasonable interpretation of the section to consider it applicable to transfers to the United States.

In any event, at this stage the question is hypothetical since it would have been removed by passage of HR 6644.

However, passage of the federal act has no effect on the state law. It is clear that the United States does not have authority to override state law in this area, and it is equally clear that in this bill Congress did not attempt to assert such an authority.

In my opinion the transfer of the surface estate contemplated in the agreement is authorized under AS 38.05.315 which provides in relevant part:

> "(a) the lease, sale, or other disposal of state land or resources may be made to a state or federal agency or political subdivision..."

This leaves the question as to whether there is adequate authority to convey the mineral estate. In my opinion there is not.

Alaska law requires reservations of mineral rights to the State of Alaska in any conveyance AS 38.05.125 provides in relevant part:

> "RESERVATION. Each contract for the sale, lease, or grant of state land, and each deed to state land, properties or interest in state land, made under §§315-325 of this chapter or §§45-120 of this chapter, except for those lands originally acquired by purchase, exchange, condemnation, gift, escheat or foreclosure are subject to the following reservations:..."

This section then goes on to setout the wording of the reservation.

Transfers to the United States are specifically included in the section. It should be noted here that the rationale under which transfers to the United States are excluded from the operation of section 6(i) of the Statehood Act is not applicable. Unlike section 6(i), which is a condition on a grant between sovereigns, section 125 is positive law. As the section is worded the mineral reservations apply whether set out in the conveying document or not and would apply ever though the conveying document expressly attempted to convey the subservice estate.

The administration has set out three sources of authority for the proposed land exchange. Two of the three are clearly not relevant to a proposed subsurface conveyance. The authority of the commissioner of natural resources under AS 38.05.020(b)(2) and the authority of the director of the division of lands under AS 35.05.335(a)(14) were cited as authorization. While these do give authority to enter into land trades and agreements this authority is clearly limited to transactions made in accordance with other law. Any contention that these sections authorize either the commissioner or the director to waive positive provisions of law must rest on the fundamentally unsound assumption that, except for these sections, the rest of the title has legal effect only to the extent that the commissioner and director determine that it should have legal effect.

The provisions of AS 38.95.060 especially when considered in the light of the 1972 House Judiciary statement in connection with the bill is relevant, but in my opinion not adequate authority for the proposed land exchange. Paragraph (b) of that section provides:

> "(b) An individual Native (as defined in the federal Act) or a corporation referred to in (a) of this section may exchange land or an interest in land with any other individual Native or corporation referred to in (a) of this section or the state for the purpose of effecting land consolidations or to facilitate the management or development of the land."

The report from House Judiciary Committee accompanying CSHB 731 which was the source of this section, comments on this section as follows:

"AS 38.15.060. Exchange of Land. Under the 1968 state Act, Native corporations were granted the right to obtain state-patented lands near the villages through exchange of lands with the state, with the consent of the Alaska Native Commission. This section revises and relocates those provisions to reflect the form of the federal Act, substituting the consent of the governor for consent of the commission, and adds a provision comparable to section 22(f) of the federal Act which provides for exchanges between the federal government and Native corporations or the state. The principle is

extended in this section to exchanges between Native corporations and the state. A "boot" clause comparable to the federal language is also included. The statehood Act will have to be amended to permit the state to exchange mineral interests, or the Secretary of the Interior will have to consent to being an intermediary under section 22(f) transfers in order to gain full utility from the exchange concept."

In light of these comments, section 22(f) of the Alaska Native Claims Settlement Act must also be looked at. That section provides:

> "(f) The Secretary, the Secretary of Defense, and the Secretary of Agriculture are authorized to exchange any lands or interest therein in Alaska under their jurisdiction for lands or interest therein of the Village Corporations, Regional Corporations, individuals, or the State for the purpose of effecting land consolidations or to facilitate the management or development of the land. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged."

It can and has been, argued that the clearly stated purpose of the Alaska law was to facilitate settlement under the Alaska Native Claims Settlement Act and, since section 22(f) was specifically referred to AS 38.95.060 gives to the state administration equivalent authority to the authority given to the secretaries under section 22(f).

Although there is logic to this argument, it has extremely serious shortcomings. The most obvious shortcoming is that the language of paragraph .060(b) simply is not as broad as the language of 22(f). Unlike 22(f) which gives direct authority to the secretaries, paragraph (b) on its face gives authority only to the individual natives and native coorporations. The argument by inference is if these are given authority to exchange land or interest in land with the state, the state inferentially must have been given authority under this section to exchange land is somewhat weak but plausable. But the inference that follows, if this section is to be treated as authorization for the proposed transfer, is quite far fetched. That inference is that since the purpose of the act was to facilitate settlement under the Alaska Native Claims Settlement Act and since the section inferentially authorizes the state to exchange land or an interest in land, it also authorizes the state to transfer any interest they may have in land regardless of other laws. One of the sections necessarily waived would be AS 38.05.125. To accept this hypothesis one would have to accept that by a double pyramid inference the legislature repealed for this specific type case a major state policy embodied both in the statehood act and in state statute. In my opinion this interpretation places far more weight on inferential reasoning and the statement of intent than the reasoning or statement can bear.

A more reasonable interpretation of the legislature's decision not to grant authority commensurate with that granted in section 22(f), (and as noted in the committee report, section 22(f) was before the legislature), is found in the last sentence in the Statement of Intent quoted. That is the transfers of subsurface estates to other than the United States are prohibited by the Statehood Act, no amendment to the Statehood Act had been made at that time leaving a serious problem of possible forfeitures if the problem were dealt with then rather than awaiting possible amendment of the Statehood Act. Under this interpretation, as under the clear language of the statute, the provisions of AS 38.05.125 are unaffected by AS 38.95.060.

Based upon this analysis, it is my opinion that the transfer of the subsurface estate contemplated in the Cook Inlet Land Exchange is specifically prohibited by state law, that this law is uneffected by the federal act, and that if it is desired that the exchange be made enabling legislation will be necessary. At any event, regardless of the legal theory adopted, it is clear that basing title to land of very substantital value upon a legal foundation open to serious question is most unsatisfactory.

Corrective legislation would fall in three classes:

1. General legislation covering all of the land transfers and exchanges that will be necessary in order to fully implement the Alaska Native Claims Settlement Act, or;

2. Specific enabling legislation for the Cook Inlet Exchange, or;

3. Specific enabling legislation for this exchange with subsequent general legislation.

Although specific enabling legislation for the Cook Inlet Exchange must surmount the constitutional hurdle posed by Article II, Section 19 of the Constitution which prohibits a local or special act if a general act can be made applicable, it would appear that specific enabling legislation to be followed by general enabling legislation is the only practicable course. Both factually and legally, the Cook Inlet Land Exchange is unique. The scope of the problem, the size of the exchange contemplated, the peculiar impact of concentrated selections on the Cook Inlet region, the time parimeters set on this exchange, and the actual and potential litigation make this a special situation. The subject is clearly a matter of statewide interest since highly important economic and planning values are involved and since implementation of the Native Claims Settlement Act is clearly of importance to the state. Further the unusual aspects here are significant and present an insurmountable barrier to action pursuant to a general statute. It would seem clear that under the tests in Boucher v. Engstrom, 528 P2 534 91 (Alaska 1974) and Abrams v. State, 534 P2 91 (Alaska 1975) carefully drawn enabling legislation for this specific transfer would be

upheld. General legislation involves very substantial policy decisions concerning the procedural mechanics by which such transactions will be allowed and consideration of the mechanics, if any, of legislative approval. It may very well be because of the unique nature of large transactions involved in implementing the Settlement Act the legislature may require specific approval by it of certain transfers.

Any specific legislation should (1) contain recitalsrelating to the Cook Inlet Land Trade and what the legislature intends to accomplish by approval of the land trade; (2) a specific waiver of the provision of AS 38.05.125 since this is clearly the major impediment existing currently; (3) a specific waiver of the equal value exchange requirement contained in AS 38.95.060. While arguably this equal value requirement would not apply in any event, the values on both sides of the transaction are of such nature that appraisals would be complex and subject to substantial dispute. For that reason waiver of the equal value requirement removes a cloud which is potentially significant and which could lead to litigation; (4) a general waiver clause of other provisions of law to make it clear that the legislature intends to waive any barriers to the consummation of the transaction.

This memorandum, of course, expresses no opinion as to whether it is desirable that the Cook Inlet Land Transfer be approved, but is intended to sketch the problems in existing law and steps that should be taken if the legislature elects to approve the transfer.

BGB:smh

02-0018

STATE
of ALASKA
DEPARTMENT OF NATURAL RESOURCES

MEMORANDUM

TO: Guy R. Martin
Commissioner

DATE : December 6, 1975

FROM: Michael C. T. Smith, Director
Division of Lands

SUBJECT: Proposed Cook Inlet Land Trade

PROPOSED COOK INLET LAND TRADE

Brief History

Because of existing federal withdrawals, state land selections and non-Native settlement patterns within Cook Inlet Region, Cook Inlet Region, Inc., unlike the other regional corporations created under ANCSA, has not been able to select lands which it considered of like and similar character under the formulae established by the Act. For approximately three years following enactment of ANCSA, Cook Inlet Region, Inc. ("CIRI") carried on a long series of discussions with the Secretary of the Interior in an attempt to insure its ability to select lands considered of like and similar character. While the Secretary made a number of withdrawal adjustments, he was not able to satisfy the Region and CIRI went to court seeking redress. Discussions continued between the two parties while litigation ensued and in approximately September of 1974, Interior solicitor Kent Frizzel made an offer to Cook Inlet which specified certain lands which the Secretary would convey to Cook Inlet in settlement of the suit. The "Frizzel offer" proposed, in part, to convey to CIRI ten surface and 15 subsurface townships within the Kenai National Moose Range, including the Swanson River oil field, as well as additional federal lands in the then Greater Anchorage Area Borough. These latter lands included certain parcels which had been eyed by the Greater Anchorage Area Borough for public open space and recreation purposes, more specifically Point Woronzof, Point Campbell, and at least a sizeable portion of the Campbell Airstrip tract. The State did not participate in these discussions and thus was not aware of all contents of the

"Frizzel offer" and the tremendous impact that it would have had upon State interests, particularly financially. CIRI declined the initial offer although it apparently later changed its mind. However, the offer had been withdrawn by that time.

The U.S. District Court ruled in favor of the Secretary in February of 1975, by which point CIRI had gone to Congress to gain support for its problem. Congressional support for some form of amelioration of Cook Inlet's troubles was found with Senator Jackson and Congressman Meedis. These Members of Congress, both Chairmen and both strongest and most effective advocates for Natives and Indians in their respective House, have each publically pledged to see that Congress protects Cook Inlet Region's ANCSA rights. This guarantee must be taken very seriously. Proposals were introduced which were essentially identical to the "Frizzel offer" and hearings were scheduled on these bills for May. At the same time, CIRI had indicated that they were going to appeal the District Court decision in the 9th Circuit. At this time, the Alaska Delegation and others in Congress suggested to the State that it explore the possibility of entering the discussions between CIRI and the Secretary to see if some mutually agreeable solution to Cook Inlet's land selection problem could be agreed upon which involved State land. This was suggested for the reason that inadequate Federal land was available in the Region, and this was at the heart of the problem.

The State was thus faced with the following factors:

1. Some seven months previous an offer, largely unacceptable to the State, had been offered by the Secretary without significant notice to the State. Such an out-of-court or pre-legislative action offer might be again proposed by the Secretary without

State participation. This is a risk of not taking any State action.

2. Although CIRI had lost in District Court, its appeal to the 9th Circuit included a request that the court nullify the September 1972 agreement between the Secretary and the State of Alaska which gave Alaska selection rights to lands south and southwest of Mount McKinley National Park which CIRI claimed it should have been entitled to select. Should the court find in favor of Cook Inlet, the Secretary would be directed to make available to CIRI for its selection a more acceptable array of lands. The Secretary might then have to reject the State's approximately 484,000 acre selection in this area in favor of making these lands available to CIRI for selection. Additionally, if this should happen and the Secretary can respond to a reversal by the Ninth Circuit by seeking to recover from the State the 484,000 acres sought by CIRI, he might also be forced to recover, on behalf of other Regions, conservation groups and other parties aggrieved by the September 1972 settlement, the other of the remaining forty-three and one-half million acres covered by the September 1972 State-Federal settlement. Although the State would oppose any such legal result it remains a distinct possibility to this day. It is a risk of taking no action.

3. Assurances had been given by members of Congress (Congressman Meeds and Senator Jackson) that Cook Inlet would receive favorable legislation if their problem could not be settled by other means. The bills before the Congress at that time were essentially identical to the largely unacceptable "Frizzel offer." A similar bill is before Congress today as an alternative to the proposal below, and is a risk of taking no

State action.

4. The Congressional Delegation had asked that the State take a more active role in discussions to seek an equitable solution to the problem.

5. By entering the discussions, the State could seek to effect other land trades within the region which would guarantee certain favorable land ownership patterns as well as bring under state control specified areas which the State wished to select itself, but would be unable to select if a CIRI settlement were finalized without State participation.

On the basis of the above the State began discussions with CIRI and the Department of Interior in approximately April of 1975. The discussions continued, becoming particularly intense preceding the Congressional hearings in the middle of May. Because of the complicated nature of the discussions, and with additional time available following the May hearings, the discussions progressed throughout the summer and early autumn. At each hearing, the State responded to Congressional requests, and testified regarding progress on a negotiated settlement. Each time, the State and the other parties were requested and encouraged to continue the discussions, and were advised of Congressional time restraints. Following Congressional hearings in the latter part of September, the land trade proposal was almost complete and the State publicly presented the proposal on October 2, concomitantly holding numerous briefings of smaller, more specialized groups interested in the trade (borough governments, conservation groups, Chamber of Commerce, Legislators, etc.). A thorough press briefing was also held. Following public input, addtional discussions were held with Cook Inlet Region and the Department of Interior to reflect public sentiment of the

proposal. Details of the public input and subsequent changes in the proposal based upon that input are documented in greater detail below.

Implications

If the State endorses the proposal and it is passed by Congress and implemented, the benefits outlined later will accrue to the State and other parties involved. If the State does not support the proposal, or if the proposal is not implemented for other reasons, a significant number of possible permutations exist with respect to the final outcome of Cook Inlet's selection problem. The four most likely are listed here, but others which would have profound effects are possible.

1. Cook Inlet loses its suit--The CIRI appeal is now in the 9th Circuit. Should the suit ultimately be lost, and no other remedy found, the Region would select according to the withdrawals presently in existence which precipitated the litigation. Selections would be in conflict with over 20 townships the State had previously selected and between 10 to 20 townships that the State would now like to select (including Kamishak Bay which is the prime lower west side harbor site in Cook Inlet). The pattern of Cook Inlet Region selections would be dispersed and would create difficult management patterns throughout the Region. Substantial land would be selected which is deemed more appropriate for public ownership and use (such as the harbor site and lands in the Lake Clark area).

   It should be pointed out that this result is somewhat unlikely, even if the suit is lost, because its loss would very likely precipatate unilateral Congressional action for the reason that these selections are generally regarded as inequitable to the Region.

2. CIRI wins its suit--ramifications of this alternative would depend largely upon the court's directives. Cook Inlet would undoubtedly receive lands of more like and similar character which would be more physically suitable for settlement and development, but such lands are likely to conflict with land uses thought more appropriate by the State. Swanson River revenues might also be included. Sizeable portions of the Kenai National Moose Range, which is also a State wildlife refuge, might be selectable by the Region. The State could lose selections totaling approximately 600,000 acres in the Upper Susitna Valley near Chalatna Lake if the court concurred with one of CIRI's requests for redress (further details are indicated on the attached maps). Much more importantly, the entire Alaska v. Morton out-of-court settlement of September 1, 1972 will be threatened in that the remaining forty-three and one-half million acres of state selected lands pursuant to that agreement would be in jeopardy from other Native regions or other groups who might like to see substantial portions of that state acreage in other ownership.

3. Congressional action--having made commitments to help Cook Inlet, and having waited a considerable amount of time for discussions among the three parties to prove fruitful, Congress might well legislate an alternative amendment over any objections made by the State or others. It is hard to be specific about the form such an amendment might take, however, there is good reason to believe that some alternate form of the "Frizzel offer" might emerge. As discussed earlier, this proposal has extremely unfavorable consequences for the State.

4. Administrative settlement--although the least likely of the four, some administrative settlement between Cook Inlet and the Secretary might be arrived at which would not be in the interests of the state. Past experience indicates that any settlement proposed by Interior must be, because of land availability in the Region, either unacceptable to the Region or if acceptable, then probably extremely unfavorable for the State.

Additionally, certain advantages which the State has been able to gain through the discussions would not accrue. Specifically, the ability of the State to guarantee its selection and ownership of lands in the Talkeetna Mountains, Kamishak Bay and, more importantly, lands in the Bristol Bay areas. If Cook Inlet is forced to select lands in the Lake Clark area, the State's bargaining chip of guaranteeing that those lands remain in public ownership would be lost, and our leverage to bargain decisively for state selection rights within the Lake Iliamna-Bristol Bay proposed National Resource Refuge would be lost. One of the most compelling advantages of this proposal is the leverage which ownership of lands in the Bristol Bay area may give the State in what may be the most important single post-ANCSA federal political decision in the State's history: The 17(d)(2) question.

Basic Objectives Of Proposal

Each of the three parties had its own objectives in the discussions and would emerge with certain specific benefits.

State--The objectives of the State were basically two.

1. State land ownership--by trading 21.4 townships the State would gain selection rights and control substantially larger areas of the Talkeetna Mountains, Chakachamna Lake, Kamishak Bay, and the Lake Iliamna

and Bristol Bay areas. In these cases the State has operated from the standpoint that the State is much more capable, because of governmental infrastructure and location, to more effectively meet the needs of its people by owning these lands than can the federal government which lacks the "local" governmental structure needed to respond effectively to Alaska's needs. The juxtaposition of the Talkeetna Mountains to the rapidly expanding population in southcentral Alaska will become even more critical upon the possible establishment of a new capital city, very possibly immediately adjacent to Talkeetna Mountain lands which CIRI presently plans to select. In the Lake Iliamna and Bristol Bay National Resource Range proposal approximately 15 percent of the lands will be under the control of private Native corporations. The State can more effectively administer to the requirements of its citizens in those areas if it owns the other lands within that region. Additionally, the tremendous dependence upon the salmon fishery resources of that region, and the current responsibility of the State to manage those resources, argue cogently that the State should also control the uplands in that area.

2. Land ownership pattern--as it is the State which must provide those services and governmental functions based upon the land ownership pattern which emerges from Cook Inlet's ultimate selections, it is very much in the State's interest to assure a workable selection pattern. Under the proposal, ownership patterns would:

A. provide CIRI with lands physically well suited to settlement and development.

B. guarantee that such developable lands would be located in close proximity to existing government services and, therefore, significantly reduce future expense in providing communication, education, transportation, and public safety services to these areas.

C. hasten the development of these suitable lands in a much shorter time frame than could be expected for the remote lands which CIRI would otherwise be forced to select.

D. a sophisticated but critical point is the fact that certain State selection rights, such as the 11(a)(1) (ANCSA) issue, will have to be resolved very shortly. The State believes it can select in these areas, and if it prevails, such 11(a)(1) selections, in combination with the selections under this proposal, would result in a highly desirable State resource ownership patter, particularly in the Iliamna area.

It might well be emphasized that, although the State believes that its own ownership in this area is critical, an equally high value must be placed on simple consolidation of ownership under as few owner-managers as possible (regardless of who is the owner). This is so far the reason that it is a "mix" of ownership and management patterns that creates the greatest difficulties over the

long view for a large resource area.

CIRI--The basic objectives of CIRI are to obtain lands of more like and similar character to those historically occupied by their ancestors within the Cook Inlet Basin. The proposal would largely accomplish this, although the Region will have reduced its entitlement significantly in obtaining these more suitable lands and would be taking over 50 percent of its entitlement outside the Region. The benefits to the 6,000+ members of Cook Inlet Region, Inc. would be increased, and as members of the Southcentral Alaska community these benefits would have substantial favorable economic and social impacts upon the State. Most important, the Region would finally have accomplished certainty in its selections, which is extremely important for the stability of the Corporation.

Federal Government--The objectives of the Federal Government were to settle the responsibilities of the Secretary with respect to the requirements of ANCSA and to accomplish this in a manner which would have minimal impacts upon other values for which the Secretary is charged with protection. More specifically, the proposal would permit a more acceptable incursion into the Kenai National Moose Range, thus protecting fish, wildlife and their habitat as well as the substantial recreational values of the Refuge. The proposal would also leave certain key areas in the Lake Clark area under Federal control and management. This makes sense in terms of other Federal ownership in the area. Most important, it would settle with finality one of the most difficult and complex legal and resource issues under ANCSA, one which has

required substantial governmental resources.

Negotiation Process

The first approach to the State requesting State participation in land trade discussions occurred in mid-February when Andy Johnson, President of CIRI, met with the Director at the Division of Lands. Following the loss of its District Court suit, and the resultant hardening of the Department of Interior's bargaining position, Cook Inlet then took the legislative solution route and only occasional discussions among and between the three parties occurred during the remainder of February, March, and early April. However, as it became obvious that a legislative solution not in the State's interest was a real probability, and following a request for State participation during Congressional hearings, a decision was made to pursue discussions concerning the proposed trade. At this time, the Commissioner and Governor were briefed, guidelines and general policies and objectives were set, and authorization was procured.

Somewhat regular meetings began in approximately mid-April and intensified considerably toward the latter part of April and the first week of May. By this time considerable public interest had been generated by media reports of the proposed amendment and the Anchorage Area Borough, in addition to the State, was working with representatives of CIRI on a very regular basis. Discussions on the part of the State were led by the Director of Lands. Staff assistance was requested when necessary and various staff attended certain of the meetings. Other divisions within the Department of Natural Resources, particularly the Divisions of Oil and Gas and Parks were consulted to a significant extent and other departments were asked to input when it was felt certain terms in the discussions affected their areas of interest. The Division of Aviation and the Department of Fish and Game were particularly involved. The ongoing progress of the discussions was regularly transmitted to the Commissioner of Natural Resources.

By the end of the first week in May substantial progress had been made and it appeared that CIRI would be willing to withdraw its proposed amendment on the basis of the tentatively proposed agreement. However, it was explicitly stated to the Region and Interior Department that final State concurrence could not be had until a public review and comment process had been effected. CIRI understood this and agreed to request that Congress not act immediately on their proposed amendment, but rather allow enough additional time for the proposed land trade to be agreed to by all parties. On May 7 a briefing was conducted by the Director of Lands for the Commissioner, the Governor, and the several appropriate department heads in Juneau. On the basis of that presentation and ensuing discussions, the decision was made for the State to also request that Congress refrain from acting on Cook Inlet's proposed amendment immediately and to allow additional time within which the parties could move to a final agreement following public input in Alaska.

On May 16 the Commissioner and the Director presented such testimony to the appropriate House and Senate Interior Subcommittees respectively. Prior to this testimony the three members of the Alaska Congressional Delegation and appropriate staff were briefed in considerable detail concerning the tentative proposal as it then existed.

Shortly following the Congressional testimony, the Cook Inlet Region, Inc. Board of Directors, for internal reasons not fully understood, voted to reject the then existing proposal and this led to an approximately three week period during which little discussion occurred between the State and CIRI. The lack of agreement was based primarily upon the Region's insistence that it ultimately obtain full surface entitlement under ANCSA, even if outside the Region. The State felt that full entitlement in addition to the lands which the State had proposed to trade to CIRI

was unacceptable. The latter part of June, following some Region concession on the full entitlement issue, discussions began again and continued intermittantly throughout July, August, and September as Congressional deadlines for action continued to recede. The extra time available was invaluable in allowing the State to more closely scrutinize various aspects of the proposal and to work with the Interior Department to insure the State could agree with the concessions which Interior was proposing. During this period additional meetings with the Congressional Delegation, other division and departmental staff and representatives from CIRI occurred. Documentation of these meetings is contained in greater detail in the file.

On September 24 additional testimony was presented before Senator Haskell's Interior Subcommittee concerning the proposal. Presentations and discussions were held with various interested parties in Washington, including the Congressional Delegation, and a more detailed presentation concerning the state-federal aspects of the proposal was made by the Commissioner and Director to the Department of Interior's Alaska Task Force.

On September 26 the Director announced that a public briefing of the proposal would be held in Anchorage on October 2 with public testimony to be received orally on October 3 with an additional period for written input. On September 30 a very detailed briefing of the proposal was made to both Division of Lands staff and a second briefing to representatives from other divisions within the Department of Natural Resources and representatives of other State departments. On October 1 another very detailed briefing was given to the Press, radio, and television media. Before the public presentation additional detailed presentations were made to various groups which had expressed considerable interest in the ongoing discussions. These included representatives of three affected municipal governments (Anchorage, Matanuska-Susitna Borough, Kenai Borough),

Legislators, and environmental groups. Public presentation on October 2 and the meeting the following night for public input were very well attended and, in response to requests for a similar hearing in Fairbanks, another presentation was made in Fairbanks on October 7. As a result of the media campaign and the public meetings, significant public input was received and a number of meetings were held between the Director and interested parties as well as several additional detailed briefings to groups specifically requesting them. These latter included the Bureau of Land Management, Anchorage Chamber of Commerce, Kenai Borough Assembly, Capital Site Selection Committee, and the Federal-State Land Use Planning Commission. A summary of the input from the public and the various interested groups, as well as the State's response to this input, is detailed later.

Specific Nature of Proposal

The proposal is basically composed of three different parts; a State-CIRI agreement, a CIRI-Federal agreement, and a State-Federal agreement. All aspects of each sub-agreement must be executed before the entire proposal would be binding. In essence, the State of Alaska would make available to CIRI State lands which the Region feels are of like and similar character to those lands which it has historically used. In return, the State would fall heir to approximately one-half of Cook Inlet's 12(c) entitlement in the Talkeetna Mountains, Chakachamna Lake, Lake Clark, and the Kamishak Bay areas. The remaining approximately one-half of Cook Inlet Region's 12(c) entitlement would remain in federal hands and the Federal Government would in turn convey to the State an equivalent amount of acreage in the Bristol Bay area. Additionally, the Federal Government would convey to Cook Inlet certain other lands within the region, including lands from the Kenai National Moose Range, as well as a total of approximately 26 townships to be selected from federal lands outside of Cook Inlet Region.

Because certain Cook Inlet Region village selections have or are likely to impact state, federal or CIRI interests related to Cook Inlet's selections, smaller sub-agreement proposals have been discussed with approximately seven villages or groups. These proposals function very rationally within the framework of the Cook Inlet Region selection proposal. Without the inclusion of these sub-agreements the interests of one or more of the three major parties would be likely frustrated by the existing village or group selection patterns.

Attached as Appendix A to this document is a more detailed breakdown of the specific aspects of the "original" proposal as presented publicly on October 2. Each aspect of the proposal was specifically keyed by number to an attached map which shows the location of that particular aspect of the proposal. Each aspect was also briefly explained as it pertained to the overall proposal. With only a few exceptions those aspects were the same ones which we had been discussing since last May and, therefore, there was relatively little new with respect to the proposal at that time. Following public input, as described below, and as a result of the U.S. District Court's finding Salamatof and Alexander Creek as certified villages, the proposal was modified and is shown in its final form under the "Current Status" hearing below.

Characterization of Public and Agency Input

The more or less finalized "original" proposal was presented to state agencies and the public in detail during the first week of October. As a result of this process input was received from many sources, primarily the public. This input was used for a series of additional sessions with CIRI in which significant modifications were made. This resulted in the "modified" proposal described later. The characterization below represents agency and public input with respect to the "original" proposal before modification.

As with the public input, other state agencies generally supported the concept of the State's attempts at insuring rational land ownership patterns. One aspect of the proposal, that of the approximately 12 township selection in the Beluga area, generated significant comment from the Division of Geological and Geophysical Survey as well as the Minerals Section within the Division of Lands. This input, both oral and written, emphasized both the amount of known and inferred coal reserves as well as the potential for coal exploitation under various conditions. While general parameters of the coal resource in the Beluga area had been known during the discussions with CIRI, more detailed and specific input from these agencies was requested and received. The specifics of this input may be found in the case file. Input from other state agencies which requested specific alterations or suggestions, e.g. the Department of Highways, was inputted during the modification discussions and this input may again be found in the file. Other agencies generally expressed approval either orally or written of the basic aspects of the proposal.

Public input following presentation of the "original" proposal came in both oral and written form. The vast majority of respondents indicated favorable support for the concept of the State entering the discussions and the general expression was that, with the exception of certain aspects of the proposal, the overall benefit which accrues to the State outweighed any deficits involved. Against this background of significant public support for the concept of the proposal, eight specific areas were singled out which received comment.

1. Mental Health Lands - Testimony brought out the fact, inadvertently overlooked by all parties, that approximately six and one-half townships from within the original pool of land CIRI could select from in the Beluga area had been selected by the State as mental health lands. Input and interest concerning these lands was received not only at the public hearings but

also through several telephone calls from interested members of the public. It might be noted that this finding alone made the extensive public process invaluable, and demonstrates the need for public exposure on all similar complex issues.

2. Coal Deposits - By far the most controversial aspect brought out by the public hearings and subsequent input concerned the inclusion of the "Beluga Coal Fields" in the proposal. Concern was genuinely expressed, although facts, figures and questions were often uninformed in nature. However, the sum total of input at the public hearings, from interested calls and appearances at the Division of Lands by interested parties, and inquiries from several groups indicated a definite feeling that significant acreage of lands with coal potential were felt to be "too much."

3. Insufficient Time - A number of comments were received which indicated that because of the complexity of the proposal insufficient time was available within which to satisfactorily study and comment. Interested parties were understanding of the fact that the "deadlines" were largely a result of a Congressional time schedule beyond our direct control, but the feeling of inappropriate time constraints was still evident. Later announcements by the State that over five weeks were available for public input ameliorated this feeling considerably.

4. State Agency Input - A few respondents indicated that they felt that insufficient input had been received from some State agencies during the negotiation process. While such comments generally indicated an understanding that specific recommendations from all agencies could not necessarily be accommodated in the proposal, the feelings were that all resource aspects should be addressed equally before a final decision is made on the proposal.

5. Legal Aspects - Two respondents raised the question of the authority of the State to enter into such a proposed trade. Their comments were almost exclusively directed at the authority of the State to alienate sub-surface resources in apparent contradiction to the Alaska Statehood Act and to the process by which "equal value" was determined.

6. Parks and Recreation Protection - A very significant number of respondents indicated approval of those few aspects of the proposal which offered some measure of protection for future open space and/or recreational options.

7. Accelerated Development - Several respondents indicated a favorable disposition to those aspects of the proposal which, by providing the Native corporations with lands appropriately located and suitable for development, would hasten the settlement and development of these lands in a manner which would favorably impact the State's economy. It was also felt that the location of private development in the Cook Inlet basin was appropriate and timely.

8. Extra-Regional Selection - Comments were received from three regional corporations which protested the out-of-region entitlement for Cook Inlet. These comments centered largely on a fear that CIRI's interests would not be compatible with those of Native residents of other regions, particularly with respect to CIRI's responsiveness to their life styles and subsistence needs. A fourth region, however, testified in favor of the proposal.

At a meeting of the Alaska Legislative Council in Anchorage on November 4, a presentation to the Council concerning the proposed Cook Inlet land trade was made by Mr. Harold H. Gallett, Jr. Mr. Gallett was particularly concerned with the Beluga lands aspect of the proposal. Not being familiar with the

"modified" proposal which resulted from public input of the preceding month, Mr. Gallett's presentation unfortunately conveyed some erroneous information. As a result of the presentation and an ensuing discussion, the Council became very interested in the proposal, and a subcommittee, chaired by Senator Kay Poland of Kodiak, was appointed to look into the matter and to report back to the Council. This subcommittee met in Juneau with the Governor, Commissioner of Natural Resources, and Director of Lands on Novem. r 7. In addition to Senator Poland, other Legislators present included Senator Rader and Representatives Smith, Miller, and Specking. The session included a detailed presentation of all aspects of the proposal followed by extensive questioning. The session lasted approximately three and one-half hours. On Monday, November 10, a conference telephone call was held among members of the Legislative Council concerning the proposal and the response of the Council was made in a letter from Council Chairman Genie Chance to Commissioner Martin on November 12. The Council felt that because of the early time deadlines and complexity of the proposal that the Council was in no position to either condone or oppose the trade proposal. Senator Chance did, however, indicate that members of the Council were free to express individual opinions on this or future land trade proposals.

The press was somewhat indecisive in commenting on the entire proposal. The "Daily News" did not discuss specifics, but rather applauded this attempt by government to actively participate in a proposal which would have such a great effect on the State. The "Daily Times" pointed out some of the benefits to be accrued, particularly the aspects of putting lands more suitable for development into native hands at an early time, but also questioned whether all aspects of the trade had been publicized so that a full and complete judgement might be made by the public. More recently, following the interest expressed by the Legislative Council in early November, the "Times" questioned

why the State was even involved in the matter in light of the paper's feeling that the problem was really one between the Federal Government and the Natives.

Generally, press coverage of the entire process has been extensive, and it is safe to conclude that public exposure, for those who chose to follow the issue, was extremely high. The Press briefing given by the State regarding the initial proposal was probably the most extensive ever given on any issue regarding State lands.

Current Status

As a result of public and agency input certain substantial changes were made to the tentative proposal which was made public during the first week of October. In addition, the decision by Judge Gazell in the United States District Court, which found that the villages of Salamatof and Alexander Creek were certified and therefore entitled to select large acreage within areas very important to the agreement, caused other necessary changes to the original proposal since certain aspects of the proposal sought an agreement before a decision was rendered. The significant changes to the "original" proposal, which have resulted in a "modified" proposal, are outlined below.

1. Beluga Area--the original proposal would have permitted CIRI to select 12 townships from a pool of approximately 22.5 townships in the Beluga Area. The modified proposal would permit CIRI to select 13.5 townships out of a pool of approximately 16 townships. The reduced pool reflects the 6½ townships of Mental Health lands which were withdrawn from the pool. This reduction would leave approximately 75 per cent of the measured or indicated coal reserves in State ownership. Despite this very significant diminu-

tion of value to Cook Inlet Region, the modified proposal calls for only 1.5 additional townships which may be selected from the diminished pool. In addition, a much larger area on the coast southwest of the Tyonek Reservation would remain in State ownership for future resource development in that area. Rather than CIRI owning a land corridor from its selected lands to the coast, the State would guarantee a public right-of-way for various resource and other transportation needs.

2. Bristol Bay Area--the original total of approximately 30 townships in the area of the Interior Department's Lake Clark d(2) proposal which were to be traded by the State in return for an equal number of townships in the Bristol Bay Area has been reduced to approximately 25. This change resulted from a determination by the State that it would be of greater benefit for the State to receive title to approximately 5 townships in the Lake Chakachamna Lake area. In addition to the inherent value of these lands, the Interior Department is very interested in these townships for inclusion in its d(2) proposal. For this reason, the State would retain a very strong bargaining position by obtaining title at this time to those lands.

3. Anchorage Bowl Federal Surplus Lands--while the original proposal specifically prevented CIRI from obtaining title to Federal Surplus Lands in the Campbell Tract, Point Campbell and Point Woronzof withdrawals, the modified proposal goes further in also protecting the Goose Lake withdrawal and in guaranteeing transfer of the Campbell

Tract to the State immediately and the Point Campbell and Point Woronzof of those surplus properties to the State or the Anchorage Municipality surplus properties as soon thereafter as possible.

4. Other Federal Surplus Lands Or Withdrawals--the original proposal permitted CIRI to select up to 3 townships of Federal lands in the Cook Inlet region from a pool of Federal surplus property, revoked Federal withdrawals and unperfected public land entries such as homesteads, etc., on an acreage basis. The modified proposal recognizes that such Federal lands may have significant economic values and there is therefore a provision to reduce CIRI's selection entitlement by 1 acre for every $500 of land value selected by CIRI from such Federal lands. In addition, the State is given certain veto and appeal prerogatives to insure that public interests are protected prior to selection by CIRI.

5. Extra-Regional Selections--In response to input by other Native regional corporations which expressed apprehension at CIRI's ability to select lands in close approximation to their land selections, the modified proposal permits affected village and regional corporations outside Cook Inlet to exercise a veto over CIRI's land selections in their 11(a) withdrawals. This will assure the other Native corporations of protection for subsistence, economic or other values. To insure that CIRI would have sufficient lands available to select from, the modified proposal permits CIRI to select from d(1) lands extra-regionally by following a selection process which guarantees both the Federal and State governments a role in determining the location of selections and in protecting each government's own specific interests.

6. Kenai National Moose Range--the District Court's finding that Salamatof is an eligible village immediately impacted the Moose Range with an additional 56,500 acres of selections. Since it appears the Federal government may appeal the decision, the impact and final date of land selections on the refuge are unknown at this time. The modified proposal therefore assumes a maximum selection by all Native corporations of approximately 108,000 acres. If the Federal government appeals and is successful, then the lands otherwise selected by Salamatof would probably go the CIRI as shown in the original proposal. However, if Salamatof does remain an eligible village, CIRI would obtain lands in the refuge only to the extent that some of the villages were willing to trade out of the Moose Range and make lands available for CIRI. In essence, therefore, total impact upon the refuge would remain roughly the same as in the original proposal; the only difference would be which corporation would own the lands.

7. Lake Clark Village Selection Tradeouts--as a result of the District Court decision which found Salamatof and Alexander Creek as eligible villages, the acreage of village selections in the Lake Clark area approximately doubled. Although the State would still trade out those village selections on a 1 for 4 basis, total State acreage involved would remain about the same. The only differences from the original proposal would be that 4 rather than 2 villages would be involved, and the Federal government would be required to provide any other additional acreage from within other village deficiency withdrawals.

Eight specific aspects of the original proposal were commented upon during the public input process. These aspects are outlined above on pages 15-17. Aspects number 1 (Mental Health lands) and 2 (coal deposits) were very substantively addressed and the changes described under number 1 of current status above. Aspect number 3 (insufficient time) has been taken care of by the continued Congressional postponement of action which has provided over 60 days for public reaction and input. Aspect number 4 (State agency input), if a valid basis for comment ever existed, was also addressed during this 60 day period. Contacts with most state agencies, particularity the Division of Geological and Geophysical Survey, resulted in additional comment and input from these agencies. The Division of Geological and Geophysical Survey in particular submitted additional memoranda and reports concerning resource values in the Beluga area. Items number 6 (Parks and Recreation Protection) and 7 (accelerated development) were merely supportive of certain aspects of the original proposal. These aspects were retained in the modified version. Aspect number 8 (extra-regional selection) was specifically addressed in number 5 under current status above. Only aspect number 5 (legal aspects) of the public input summary has not yet been specifically addressed in this memorandum. These legal points of the proposal are discussed in greater detail in the following section.

Major Considerations Before Decision

Two important considerations in all land exchanges were emphasized by a few members of the public and also by the Special Legislative Council Subcommittee:

1. Is there existing legal authority to conclude an exchange?
2. Would the State be receiving at least equal value for the value it gives?

These aspects had, of course, been investigated by the State at the onset as an integral part of any such decision-making process.

1. Authority - It is the opinion of the Attorney General and, we believe, of most other attorneys who have addressed the matter in detail that the Executive presently has State statutory authority to undertake this proposed land exchange. Authority has apparently existed since the enactment of the Alaska Land Act shortly after Statehood for the State to conclude an agreement such as this land trade proposal. Under AS 38.05.020(b)(2), the Commissioner, and, under AS 38.05.035(a)(14), the Director, have several times since Statehood entered into land trades or other agreements affecting lands that were not treated as sales or leases under the Land Act. Additional specific authority for land exchanges such as the present proposal was provided by the 1972 Legislature in the form of AS 38.95.060 as a counterpart to Section 22(f) of ANCSA. Among other things, this law permits the State to exchange land or interest in land with a Native corporation for the purpose of affecting land consolidations or to facilitate the management or development of the land.

The authority cited above does not prohibit the alienation of minerals as proposed in the trade. Although there is no State statutory obstacle, the Statehood Act prohibition against such alienation, found in Section 6(i), is regarded by some as a Federal constraint. Many persons take the position that Section 6(i) has been amended by implication in Section 22(f) of ANCSA so that it does not come into play in such exchange transactions. To erase any questions, the Federal Legislation which will implement the land

trade proposal will specifically address this matter to remove any doubt as to Congressional intention regarding state authority to enter into such a proposal.

2. Equal Value Consideration--In determining whether equal value will be received for value given in an exchange such as this proposal, there are basically two different types of "values" which require consideration. One is a value which can be determined with reasonable accuracy to have an economic value, often expressed in dollars. Secondly, there is value which either may be capable of expression in economic terms but for which a specific dollar value cannot be estimated with any particular degree of certainty at this time, or for which an economic value may never be specifically determined. However, values in this second category are very real and a reasonable person would recognize their existence and importance in computing the overall value received or given in a trade. With respect to this proposal paragraphs A and B below outline, respectively, the two types of values mentioned above.

A. Economic Values--The information presented below represents a summary of economic values identified with respect to State interests in the proposal. The information is based upon reports from various State sources and is expressed in terms of current 1975 dollars, i.e. economic values of resource potentials such as the Beluga coals have been discounted back to present day value. Only those resources specifically known to exist were valued. For example, although there are unquestionably very real and significant subsurface economic mineral values on lands which the State

would receive under the proposal, since they are as of this time unidentified no attempt was made to infer a particular economic value. In the Beluga area where certain measured or indicated reserves exist, however, estimated valuations were made.

Under the proposal the State would exchange approximately 21.2 townships of its land in return for 51 townships of Federal land and the right to select, at the State's discretion, an additional 20 townships. Also, the State would receive title immediately to the Campbell Tract in the heart of the Anchorage Bowl as well as a commitment to an expedited transfer of the Federal surplus lands at Point Campbell and Point Woronzoff. In estimating the economic value of the lands to be given and received by the State, estimates were made on the value of the land itself, any timber thereon, and any known mineral resources thereunder. The table below summarizes these values. Documentation may be found in the files.

TABLE I.

ESTIMATED ECONOMIC VALUES, IN PRESENT DOLLARS, OF LANDS GIVEN AND RECEIVED BY THE STATE

LANDS GIVEN BY STATE

LOCATION	ACREAGE	VALUES ($MILLIONS) LAND	MINERALS	TIMBER	TOTAL
Scattered Tracts	69,721	15.7	---	1.8	17.5
Kenai Penn.	107,650	16.1	---	1.3	17.4
Beluga	314,640	22.0	15.9[a]	1.2	39.1
TOTAL	492,011	53.8	15.9	4.3	74.0

LANDS RECEIVED BY STATE

LOCATION	ACREAGE	VALUES ($MILLIONS) LAND	MINERALS	TIMBER	TOTAL
Kamishak Bay	276,480	11.1	---	.2	11.3
Koksetna R.	161,280	6.4	---	.2	6.6
Talkeetna Mts.	161,280	6.4	---	.1	6.5
Bristol Bay	576,000	23.0	---	---	23.0
Campbell Tract	3,930	5.9[b]	c	c	5.9
Pt. Campbell	1,179	6.6[d]	---	---	6.6
Pt. Woronzoff	593	4.2[d]	---	---	4.2
Capt. Cook Rec. Area	4,800	.8	--	.1	.9
TOTAL	1,228,742	64.4	---	.6	65.0

NOTE:

a. The 15.9 value for the Beluga Coal resources is based on the middle of three scenarios for production in that area (pessimistic, medium, optimistic). The value has been discounted at eight percent from future revenues to present dollar values. The most optimistic scenario, which makes several very optimistic assumptions, would yield a discounted value of $38.2 million (figures attached to memo).

b. A very conservative figure of three thousand dollars per acre has been assumed for the Campbell Tract. This figure has then been discounted fifty percent under the assumption that if the State did not gain immediate title to the area under this proposal it would still stand a respectable chance of obtaining the land at some time in the future.

c. Although other values including timber and specifically gravel are found on the Campbell Tract, sufficient data were not immediately available to make a good estimate of value. However, the value of gravel alone, located as it is within the center of the Anchorage Bowl, would be very substantial, certainly totaling in the millions of dollars.

d. As with the Campbell Tract the values of the Point Campbell and Point Woronzoff surplus lands has bee.. discounted to recognize that the State might obtain these lands at some unknown future date in other ways if the proposal is not executed. However, because these lands are outside of the two-mile radius of the old city boundaries, and because they are not as important as the Campbell Tract for other public purposes, there is a measureably greater probability that these surplus

Table I. NOTE d. continued.

lands would go to CIRI under some other form of settlement of their claims. Therefore, the conservative values of $8,000 and $10,000 per acre, respectively, are further discounted only thirty percent.

To the values to be received by the State as estimated above must be added values which, if the proposal is not consummated, might be lost to the State. The two most prominent values in this category are the ninety percent royalty revenues which the State receives from oil production in the Swanson River area of the Kenai National Moose Range, and 26 townships of state selected land which CIRI would select if they prevailed in their court suit and the Secretary made such lands available for native selection by refusing to convey them to the State. Any estimation of the value of these two possibilities to the State must assume certain levels of probability that the situation would occur without execution of the proposal.

Swanson River Revenues--There are any number of factors which may enter into assuming a probability that the Secretary or the Congress might convey to CIRI substantial subsurface title in the Moose Range. While only 15 months ago such a possibility would have seemed small to the State, ownership of 15 townships of Moose Range subsurface estate was offered to CIRI by the Secretary in September of 1974. Had CIRI accepted the offer at

that time the possibility of that event would have been one-hundred percent. In view of both that offer and Congress' assurance to CIRI of some settlement of their land claims problem, and assumption of a .5 probability does not appear unreasonable. Using State revenue projections for oil and gas royalty receipts from the Moose Range for only the next 14.5 years, and discounting those revenue projections at eight percent, a figure $41 million is obtained. Use of a probability of .5 yields an estimated value of $20.5 million.

Chalatna Lake 26 Townships--In assuming a probability that the State might lose title to lands currently selected south of Mount McKinley National Park in the Lake Chalatna area two probabilities must be estimated. The first is the possibility that CIRI would prevail in its court suit. Assuming that CIRI did prevail, a probability must then be estimated as to whether the Secretary would attempt to break the 1972 out-of-court settlement of Alaska v. Morton and whether he would be successful in that attempt over almost certain State court action. Numerous agruments may be proposed regarding these two probabilities but for this analysis probabilities of 50 and 40 percent respectively are used. Applying these probabilities to an estimated current land value for the 26 townships of $24.0 million and an estimated value for timber of $3.3 million, a value of $5.5 million is found.

A third value which must be estimated is that of the

additional 20 townships which the State may select at its discretion. Although statehood selection entitlement would be used, three factors must be considered. First, there is a possibility that the State may never be able to exercise its full selection rights under the Statehood Act and that the State must look closely at every opportunity it has to select lands. Secondly, the lands which could be selected are, relative to the lands that will be remaining after implementation of ANCSA and settlement of the d(2) question, certainly in closer proximity to existing state lands and populated areas. Thirdly, an exercise of State selection rights would be the first selections under the Statehood Act in the past four years. In other words, the "right to select" certain lands now that are in close proximity to existing state selections is in and of itself of value. Using the very conservative total value for these lands of $40 per acre, and discounting the 20 township selection right by a factor of two-thirds to account for the use of selection entitlement, the result is an estimate of $6.1 million.

Thus, the total estimated value of the three factors described above is $32.1 million. This total, when added to the estimated appraised values cited in Table I. above, gives a total estimated economic value to the State of $97.1 million. To this total must be added or subtracted the values described below to which a reasonable economic value cannot be applied at this time, or perhaps ever,

with any degree of certainty.

B. Other Values--As mentioned earlier, there are two types of other values which must be taken into consideration for purposes of evaluating this proposal. First are economic values which cannot be identified with any reasonable specificity at this time, and secondly there are those values which might never be capable of having a specific economic value attached to them, but which are unquestionably of significant value none the less. Paragraphs number one and two below present, respectively, positive and negative values to the State associated with the present proposal. Although certainly not exhaustive, the listing attempts to outline the major non-economic values involved.

1. Positive Values--the following positive values would accrue to the State should the proposal be consummated.

(a) CIRI Court Suit--as explained earlier in this memorandum, if Cook Inlet wins its appeal the State might lose not only considerable acreage from its present selections south of Mt. McKinley National Park, but it might also lose substantial additional lands should the September 1972 out-of-court settlement with the Secretary be abrogated. In view of the District Court's decision that the Secretary was in error concerning his finding eleven villages ineligible, Cook Inlet Region's chances

of success with its court suit were measurably increased.

(b) Moose Range Surface Protection--private surface ownership within the Moose Range would be kept to a minimum, thus protecting the very significant wildlife and recreational values of the Moose Range. The Moose Range is also a state wildlife refuge and its already tremendous value for recreational pursuits including hunting, fishing, canoeing, etc., will continue to grow with increased settlement and development of state and private lands outside the refuge on the Kenai Peninsula. Some, however, would argue that maximum Moose Range lands should be given to the natives so that development may occur.

(c) Suitable Lands In Private Ownership--the state lands received by the Native corporations are lands suitable for settlement and development because of physical characteristics and location, thus substantially reducing future costs to the State to provide services to these areas. Additionally, the Native corporations receiving these lands will be in a much better position to develop them at an earlier date, thereby stimulating economic development and providing an

additional tax base both to the State and to the local governments involved.

(d) Kamishak Bay Lands--under the prooosal the State would receive title to approximately 12 townships of land on the west side of Cook Inlet on Kamishak Bay. These lands would represent the only State presence on the west side of Cook Inlet for at lest 400 miles south of Kalgin Island. Kamishak Bay itself, owned by the State, is believed to have significant oil and gas resource potentials and these coastal lands represent the only feasible areas for onshore development facilities. This proposal would put these lands in State hands. Additionally, the terminus of the Interior Department's "western transportation corridor", which originates in Petroleum Reserve Number 4, terminates on Bruin Bay which the State would also receive.

(e) Talkeetna Mountain Land--the State would receive approximately 14 townships in the Talkeetna Mountains area, some of which would be located immediately adjacent to currently State patented land. Three of these townships are contiguous to one of the three final sites to be considered for the new State Capital. Additionally, the proposal would bring to

State ownership lands otherwise selected by Native groups which would be included in the current Talkeetna Mountain State Park proposal. The land trade would permit a manageable park boundary proposal to be established, thus obviating the inevitable costly routine of buying back private property in the future. Also, watershed protection for a new Capital or for other settlement to the west would be assured.

(f) Addition To Captain Cook Recreation Area--the proposal would insure that a minimum of 7 sections of land would be added to the Captain Cook Recreation Area from federal lands within the Moose Range. Otherwise, Native selection of these sections would result in a significantly less manageable recreation unit.

(g) Public Lands--the proposal would insure that lands with significant public interest would remain in public ownership, particularly in the vicinity of Lake Clark. In addition, the State would receive lands in the Chakachamna Lake area which would give the State significant bargaining power in influencing federal action with respect to hunting, mining or other State interests in any permanent federal withdrawal in the Lake Clark area.

(h) Increased State Presence in Bristol Bay--the proposal would increase the State's presence in the Bristol Bay area by gaining for the State approximately 25 townships of d(2) land in addition to the 12 townships on Kamishak Bay. The 17(d)(2) land would, of course, be otherwise unavailable to the State. This enhanced state position will strengthen the State's bargaining power with respect to the proposed National Resource Range in the Bristol Bay-Lake Illamna area. If the Resource Range proposal is adopted as presently proposed, the State, with the single exception of the Wood River-Tikchik area, would be totally removed from any significant land ownership position west of Cook Inlet.

(i) State Interests in Other Federal Lands--under the proposal other federal surplus lands and unperfected public land entries which might go to CIRI within the region would be subject to a State veto and/or appeal process to protect State and public interests in these lands. Since the eventual settlement CIRI receives, whether by agreement, legislation, or by court action, will undoubtedly include these lands, the proposal represents the State's only opportunity to participate in protecting the public interests on these lands. As an example, the Bradley Lake Power Withdrawal is specifically protected from Native ownership; if the withdrawal should

be revoked, it could be selected by the State.

2. Negative Values--the following negative values would accrue to the State should the proposal be consummated.

(a) Beluga Coal Management--the proposal would remove the State from its current position of almost total ownership of lands in the Beluga area by putting into CIRI's hands approximately 25 percent of the measured and indicated coal reserves and surrounding lands which may contain additional reserves. While the State would still of course have very substantial environmental controls over mining through its air and water quality standards, etc., and while it could pass surface mining legislation applicable to private lands, it would lose the additional landlord power to control strip mining operations. However, with regard to revenues, the State would lose its royalty interest, but all informed opinion agrees that a severance tax would yield the best returns, and is the proper course for the State to follow.

(b) Loss of Port Area--approximately 7 sections of land northeast of the village of Tyonek with potential for industrial development and docking facilities would be transferred to native hands. Perhaps the best site on the west side of northern Cook Inlet, which is located just to the south of these 7 sections, is already owned

by the village of Tyonek. The State would retain, however, another site of at least equal suitability and potential just west of the Tyonek village lands. This latter site is the one which has been primarily suggested and studied from the standpoint of the use and/or shipping of coal from the existing coal leases in the Beluga area.

Economic Summary--As mentioned earlier in determining equal value two types of value have been used; value in economic terms and value in a sense which cannot be strictly expressed in dollars. As outlined above, the economic values themselves which accrue to the State are in excess of those values which the State relinquishes. These are calculated as shown below.

TABLE 2.
SUMMARY OF ESTIMATED ECONOMIC VALUES ($MILLIONS)

GIVEN BY STATE

Existing values relinquished	74.0
TOTAL	74.0

RECEIVED BY STATE

New values received	65.0
Existing values not lost	32.1
TOTAL	97.1

To the total economic values received by the State the non-economic values cited above, both positive and negative, must be added. Since the degree to which these non-economic values accrue positive or negative benefits to the State is somewhat subjective, certainly no quantification is possible. However, they are very important considerations and any decision making process must reasonably incorporate

them in determining the overall equal value consideration.

Finally, it should be emphasized that the agreement represents a negotiated settlement, which is an extremely important factor. First, it can certainly be suggested that negotiation, particularly regarding non-quantifiable items, is man's best procedure for reaching equity. While this is not relied upon for legal foundation here, it is nonetheless crucial for public policy reasons.

Second, a settled three party negotiation implies that each has left the bargaining feeling that either he got a fair and equal share, or more likely, a better share than the others. The Director would certainly assert the latter in terms of a negotiated value for the State, but would recognize that each party may feel the same for its own reasons and seek to demonstrate this to its constituency or higher authority.

Third, it is important to convey some sense of the "paths not taken" regarding trading items and other values. While no blanket conclusion is possible, there can be every assurance that a comprehensive effort took place, over many months, to seek out and discuss a multitude of alternatives before reaching the agreement herein.

Conclusions and Recommedations

This memorandum of transmittal has attempted to outline in a structured fashion the basis for State participation, the process of that participation, and the results as found in the proposal. It is my conclusion that State participation

In the modified proposal as described above is in the best interests of the State and that the State will receive considerable excess value for the value it relinquishes. As your approval and the concurrence of the Governor are needed to authorize State participation in this proposal, this document can serve as basis for that decision, augmented by any further information you may require. In this particular case since you have been very closely and continuously involved with the process, and as the Governor has been fully briefed at several different times, I believe most of the aspects are suitably covered above, and in the complete files on this matter.

While it is my opinion, and that of most others I know who have addressed the matter in detail, that the Executive Branch presently has the state statutory authority to execute this proposed land exchange, it is also true that questions have been raised by members of the public and by legislators concerning the adequacy of this authority. While I believe that these questions would certainly be answered by the courts in the executive's favor, the process of litigating a test case would be inordinately time-consuming. That intervening litigation period would protract the commencement of passage of lands under the agreement, a consequence which all parties regard as undesirable, and possibly fatal, if the basic merits of the agreement are accepted.

There is no doubt that the proposed exchange cannot come to pass without prior federal legislation clearing its way under NEPA and Section 6(i) and dealing with other matters of implementation. The opportunity - perhaps the only opportunity - for such legislation is upon us now with the omnibus ANCSA amendments bill.

After the Congressional legislation is passed, it of course will be necessary for the State to assent to the exchange. While the Commissioner is authorized under existing law to give that assent, unilateral executive action on a matter of this

magnitude would be inconsistent with the policy of the present administration that all important social institutions should have the opportunity to participate to the fullest extent possible in such decisions. Therefore, I believe the State should structure the proposed transaction so as to maximize the Legislature's ability to participate in the decision. (Indeed, the Administration endeavored to involve the Legislature throughout the public review process as the proposal has been developed.) The problem, of course, is that there is no mechanism by which the federal government can legally "negotiate" the matter through the Legislature during the session, for Congress must act now to get federal authority for a specific proposed transaction. Nor is it likely under our Constitution that the Legislature could, or would choose, to do so.

Given these premises, the only opportunity that the State has to insure that the Legislature may pass upon the merits of the proposal is for Congress to enact legislation empowering the Secretary to consummate the transaction (removing federal obstacles to the State's participating), such legislation to be subject to the State's subsequent consent. The state administration, in its turn, pledges that consent to the Congressionally legislated "offer" will be forthcoming, if at all, only after review and consideration by the Legislature. An action by the Legislature disapproving the exchange should result in an action by the Governor denying consent.

If the decision is made to seek legislative review the time factor is particularly important. For several reasons, including the Congressional need for certainty the inexorable progress of Cook Inlet's appeal, and the dynamic nature of land status in Alaska, final action by the State would be needed as soon as practicable consistent with the Legislature's need to have a thorough opportunity to review the proposal in sufficient detail to make responsible public policy. I believe we would be in a position during the first week of the session to thoroughly brief

members of the Legislature and make available to them any information we might have concerning the proposal. Under that scenario it would appear that 50 to 60 days should be sufficient time for the Legislature to thoroughly review the proposal, particularly in view of the already widespread publicity and general public awareness of the various aspects of the proposal.

I close with the request that action taken affirmatively and expeditiously on this matter as I believe it to be a unique, perhaps singular, opportunity to achieve a vital series of public and private objectives. It is important, and in my view, right.

RESOURCE ASSOCIATES OF ALASKA, INC.
3230 AIRPORT WAY, FAIRBANKS, ALASKA 99701
TELEPHONE (907) 479-6231 / 6097
TELEX 090 35402

February 20, 1976

Mr. Frank Ferguson
Alaska State Senate
Pouch V
State Capital
Juneau, AK 99801

Dear Senator Ferguson:

I feel that it is in the best interest of the State of Alaska to approve the Cook Inlet-State-Federal Agreement. This Agreement does the following for the State of Alaska.

(1) Nets 30 more townships of land (691,200 acres) to State above entitlement. The State needs all the land it can get from the Feds and this is the last chance to get it.

(2) Provides the State with an opportunity to select valuable future mineral lands from withdrawals to be abolished by the Agreement.

(3) Protects the State-Federal Agreement of September 1972 involving 45,000,000 acres of valuable mineral lands.

(4) Increase likelihood of early mining at Beluga which will generate tax revenues in excess of lost royalties.

(5) Increases the land tax base of boroughs in the Cook Inlet basin by 453,888 acres.

(6) Provides lands in private ownership in the Anchorage basin badly needed for expansion.

(7) Provides for Native owned lands in the 17D-1 areas outside the region. These will be private lands which can be bought by all and the existence of which helps prevent formation of more grand park plans by the Federal government.

(8) Resolves pending litigation which is adverse to the State's best interest.

I believe that the Agreement is in the best interest of the State of Alaska and should be passed in an expeditious manner.

Sincerely yours,

Lawrence E. Heiner

LEH/dc

MEMORANDUM

State of Alaska

TO: All Members of the Senate

DATE: March 30, 1976

FROM: Senator Mike Colletta

SUBJECT:

For you information I have attached a copy of a letter I received from Kent Frizzell, Under Secretary of the Interior. It clarifies the position of the Department of the Interior on the Cook Inlet Land Trade as pertains to Point Woronzof land.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C.- 20240

March 26, 1976

AIRMAIL

Senator Mike Colletta
Assembly Building
Room 100
Juneau, Alaska 99801

Dear Senator Colletta:

This letter is in response to your inquiry concerning the effect of the State of Alaska Legislature's recent ratification of the Cook Inlet land trade on lands on Point Woronzof. It was certainly not the intent of the Department of the Interior that transfer of lands on Point Woronzof be restricted to park and recreation uses. It is our understanding that the State of Alaska and Cook Inlet Region, Inc., had similar intentions during the negotiation of the land trade agreement. Unfortunately, the language of the agreement does not reflect the intent of the parties, because of typographical errors in the final document.

We view the exclusive language relating to Point Woronzof in the land trade agreement as an oversight, and we intend to take corrective measures to attempt to resolve this matter. In this regard, we are now having discussions with representatives of the state and Cook Inlet Region, Inc., to identify methods by which the intent of the parties may be accomplished.

If the State of Alaska desires a portion of the tract for a runway extension, and the Federal Aviation Administration concludes that such a transfer would be appropriate, we will take whatever actions are necessary, within our authority, to accomplish such a transfer.

We hope that this letter clarifies our position on this matter.

Sincerely yours,

Kent Frizzell

Under Secretary of the Interior

CONSERVE AMERICA'S ENERGY

Save Energy and You Serve America!