

S B

329

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

March 27, 1990

The Honorable Mike Szymanski
Alaska State Senator
P.O. Box V
Juneau, Alaska 99811

Dear Senator Szymanski:

Subject: SB 329, Addition of Powder Island to Kachemak Bay State Park

Background: SB 329 would add Powder Island in Seldovia Bay to Kachemak Bay State Park. Powder Island consists of 11.9 acres located on the east side of Seldovia Bay about 3/4 mile south of the Seldovia small boat harbor. The island is one of two tracts of public land on Seldovia Bay, the other being Outside Beach north of Seldovia.

Powder Island consists of three wooded knolls with primarily steep rocky shorelines, separated by two low grassy areas with sandy beaches. There are two unauthorized cabins on the island. The island is included in the pool of state land identified for possible trade to the Seldovia Native Association (SNA) in order to acquire SNA's land in Kachemak Bay State Park. A 1989 appraisal valued the island at \$165,000.

Position: At this time there is an existing written agreement with SNA which requires us to keep this parcel available for possible exchange. There will soon be a legislative proposal to acquire SNA's land in Kachemak Bay State Park via purchase at fair market value, in which case this parcel would not be needed for the exchange. However, until the future of the SNA land trade is decided, DNR has a Preliminary Exchange Agreement that reserves this land for possible exchange. Powder Island is one of the parcels of state land that is of greatest interest to SNA.

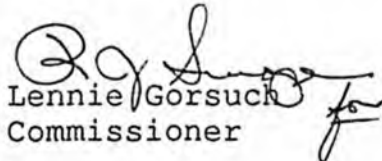
Senator Mike Szymanski

-2-

March 27, 1990

If included in a land exchange with SNA, DNR proposes to retain a one acre public use easement on the island.

Sincerely,


Lennie Gorsuch
Commissioner

cc: Committee Members
Denby Lloyd, Special Staff Assistant
Office of the Governor
Gary Gustafson, Director
Division of Land and Water Management
Neil Johannsen, Director
Division of Parks and Outdoor Recreation

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: SB 329 Addition of Powder
Island
 Sponsor: Szymanski
 Requestor: Senate C&RA

Agency Affected: Department of Natural Resources
 BRU: Parks Management
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)


GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Lawrence Z. Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 3/27/90

Approved by Commissioner:  Date: 3/27/90
 Agency: Department of Natural Resources

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

JUNE 30, 1989

ATTACHMENT B

SELDOVIA NATIVE ASSOCIATION / STATE OF ALASKA
LAND EXCHANGE ADL 224612

POWDER ISLAND IN SELDOVIA BAY

<u>Parcel</u>	<u>Legal</u>	<u>Approx Acres</u>
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No. 1	T9S, R14W, SM SEC 6: LOT 4	11.9
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- One acre public use site easement (for day use only) to be reserved on the nob at the west end of the island, along with the beach between this nob and the larger nob to the east.

FORMER PLO 316 - JAKOLOF BAY

<u>Parcel</u>	<u>Legal</u>	<u>Approx Acres</u>
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No. 1	T8S, R13W, SM: A PORTION OF TRACT "A" WITHIN SECS. 20, 29 AND 30 DESCRIBED BY METES AND BOUNDS IN PLO 316. PARCEL APPROX. 2640' x 5280' FRONTING ON JAKOLOF BAY; ACQUIRED UNDER MENTAL HEALTH GRANT MH-128.	320
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- ADL 39029 - Letter of non-objection to public utility right-of-way fifty (50') feet in width for existing power line constructed by Homer Electric Association, Inc.
- ADL 37929 - Letter permit for a public access road right-of-way 200 feet in width along existing roadway from Seldovia to Jakolof Bay through subject parcel.
- ADL 39789 - Letter permit issued for an access road 100 feet in width (Alaska Project No. S-1190)
- ADL 224138- Upland lease authorization (lease application) for approximately 0.25 acres at the end of Jakolof Bay airstrip to support mariculture activities associated with Tideland Use Permit ADL 224137 (Southcentral Region Finding and Decision dated October 31, 1988).

Subject to valid existing rights (airstrip identified on state tidelands adjacent to parcel) and subject to a public use easement under AS 38.05.127.

- ATTACHMENT B -



Alaska State Legislature

Senator Mike Szymanski

While in Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-4978

Interim:
3111 C Street, Suite 510
Anchorage, Alaska 99503
(907) 561-7617
or
165 E. Parks Highway
Wasilla, Alaska 99687
(907) 376-6453

SPONSOR STATEMENT

Last year, the Department of Natural Resources began working on a land exchange to trade state lands for parcels held by the Seldovia Native Association within Kachemak Bay State Park. When DNR presented its proposal to SNA, Powder Island was included in the proposed package of state lands to be traded. At that time, I introduced Senate Bill 329 as a measure to add Powder Island to Kachemak Bay State Park and preserve the island for public access and use. Currently, the land trade negotiations are stalled and a new plan to purchase SNA's lands within Kachemak Bay State Park is being developed by the Administration. Since a land purchase arrangement would remove Powder Island from the bargaining table, I would like to see Powder Island kept in the public domain.

In reviewing the attached map, it is obvious that the only remaining public land within Seldovia Bay is Powder Island. Seldovia Bay is an extremely popular and well utilized recreational boating area which provides sheltered moorage that is not available anywhere else in the surrounding area. Relinquishing this public land to the Seldovia Native Association, the major land holder in Seldovia Bay, or to any other private entity, will preclude public access and recreational usage of Seldovia Bay. Of course, the tidelands are available for public use, but they are not particularly appropriate or convenient for camping, picnicking or hiking.

I feel that it is not in the public's best interest to eliminate Seldovia Bay as a public recreational use area. While we cannot reverse past land decisions, we can certainly retain state ownership of the last remaining parcel of public land by including it in the Kachemak Bay State Park system.

Senate District E

Mat-Su Borough • So. Anchorage • Bird/Indian • Girwood • Nikiski • Copper Landing • Hope • Seward • Prince William Sound







MEMORANDUM (Brief Communications)

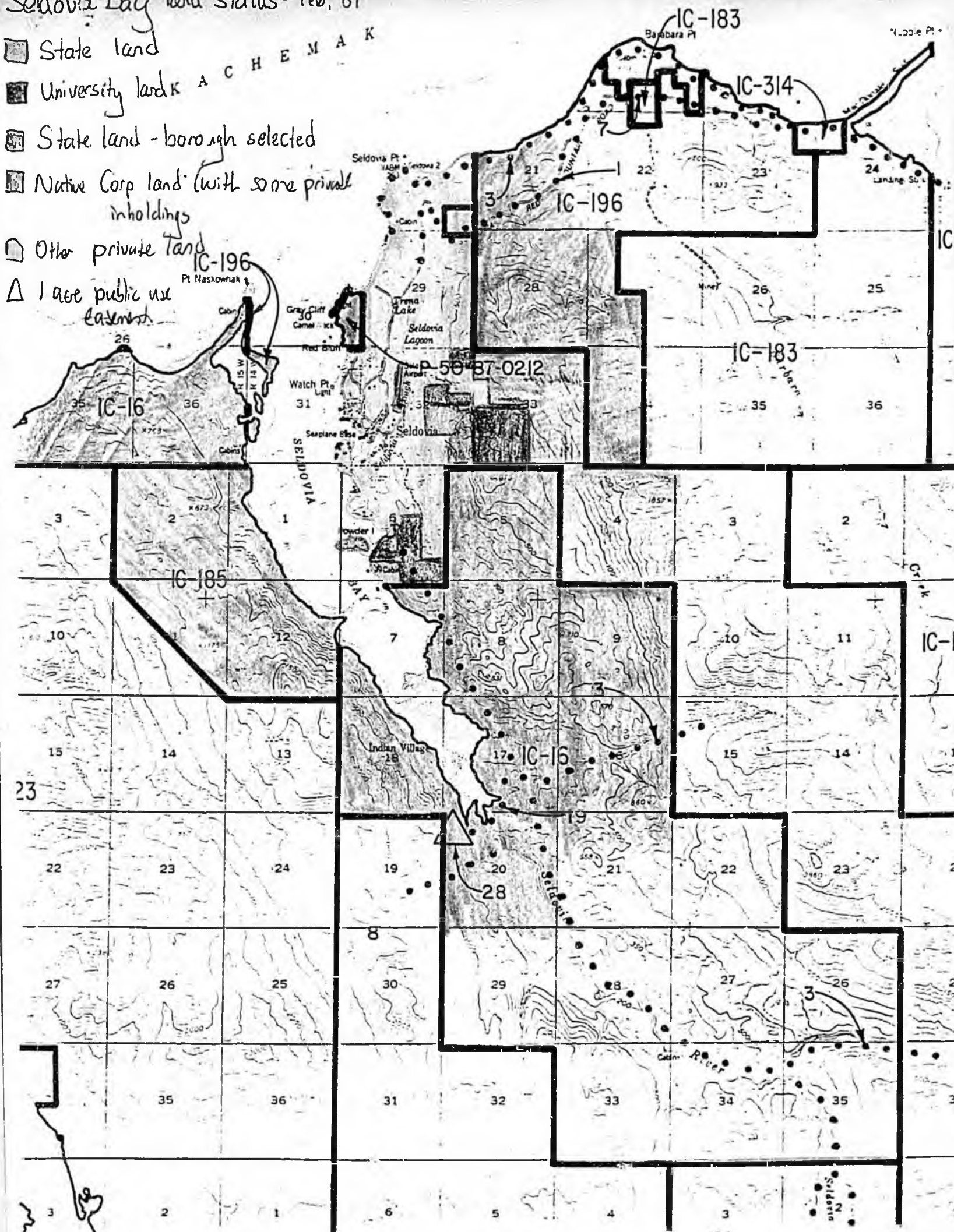
State of Alaska

TO:	Name Mary McBurney	Dept./Div./Sect. Alaska Senate - Sen Szumanski's Office	Mall Stop
FROM:	Name Dick Mylitis	Dept./Div./Sect. Natural Resources Land & Water	Phone 762-2660
SUBJ:	Seldovia Land Exchange - Powder Island		RECEIVED January 16, 1990 JAN 19 1990

Enclosed is the map you requested that shows land ownership in Seldovia Bay. Also enclosed is an excerpt from the land conveyance to Seldovia Native Association that describes the trail and site easements reserved at the south end of the bay. The third enclosure is from the preliminary land exchange agreement signed by DNR and SNA, describing the proposed easement we would reserve on Powder Island.

Seldovia Bay land status - Feb. 89

-  State land
-  University land
-  State land - borough selected
-  Native Corp land (with some private inholdings)
-  Other private land
-  Large public use easement



3. The subsurface estate therein, and all rights, privileges, immunities and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688; 43 U.S.C. 1601-1624;
4. The public easements designated pursuant to section 17(b)(3) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 708; 43 U.S.C. 1616(b)(3), upon the conditions of use prescribed by 43 CFR 2650.4-7, and identified as follows:
 - a. A 25-foot trail easement for the existing trail from the village of Seldovia to Seldovia Lake. Also included are spur trails to the coastline easement and the campsite (D9-28) at the mouth of the Seldovia River and two proposed spur trails to provide access to public lands. Subject easements (P-4, S-3) are described in easement case file AA-9791.
 - b. An easement of 1 acre (approximately 200 feet by 200 feet) for a campsite near the mouth of the Seldovia River, and a 25-foot easement for a trail from the campsite southwesterly to the public lands in T. 9 S., R. 14 W., Seward Meridian, section 19. Subject easements (D9-28, S-8) are described in easement case file AA-9791.
 - c. A 25-foot continuous linear coastline easement from mean high tide along the entire selection.

THE GRANT OF THE ABOVE-DESCRIBED LAND IS SUBJECT TO:

1. Issuance of a patent confirming the boundary description of the lands granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;
2. Valid existing rights therein, including but not limited to those created by any lease (including a lease issued under section 6(g) of the Alaska Statehood Act, 72 Stat. 339, 341) contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him;
3. Requirements of section 14(c) of the Alaska Native Claims Settlement Act, 85 Stat. 688, 703; 43 U.S.C. 1613(c), that the grantee hereunder convey those portions of land hereinafter granted, as are prescribed in said section.

Interim Conveyance No. 016

Date OCT 17 1975

JUNE 30, 1989

ATTACHMENT B

SELDOVIA NATIVE ASSOCIATION / STATE OF ALASKA
LAND EXCHANGE ADL 224612

POWDER ISLAND IN SELDOVIA BAY

<u>Parcel</u>	<u>Legal</u>	<u>Approx Acres</u>
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<u>Parcel</u>	<u>Legal</u>	<u>Approx Acres</u>
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Subject to valid existing rights (airstrip identified on state tidelands adjacent to parcel) and subject to a public use easement under AS 38.05.127.

- ATTACHMENT B -

KENAI PENINSULA CAUCUS

AN ORGANIZATION REPRESENTING
MUNICIPAL GOVERNMENTS AND CHAMBERS OF COMMERCE
OF THE KENAI PENINSULA BOROUGH
177 North Birch Street, Soldotna, Alaska 99609
Phone: 262-9107

Board of Directors:

Municipal Governments:

Don Gilman, Kenai Peninsula Borough
Betty Gilck, Kenai Peninsula Borough
John Williams, City of Kenai
Dolly Farnsworth, City of Soldotna
Michael Bundy, Kachemak City
William Noll, City of Seward
Jim Filip, City of Seldovia

Chambers of Commerce

Buzz Kyllonen, Anchor Point
Gloria Wisecarver, Funny River
Duane Hyatt, Homer
Jim Carter, Kenai
Jack Brown, North Peninsula
Susan Springer, Seldovia
Andy Patapoff, Seward
Phil Turkington, Soldotna

April 24, 1990

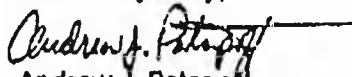
Sen. Mike Szymanski
P.O. Box V
Juneau, Alaska 99811

Dear Sen. Szymanski:

At our Board of Directors meeting on April 12, 1990 it was brought to our attention that after many years of negotiation, the Seldovia Native Association and the State of Alaska may be coming to an agreement on the terms of a land sale in the Kachemak Bay State Park. Because time is of the essence in the remainder of this legislative session and our by-laws won't allow us to send you this information in the form of a resolution, I have been tasked by the other Directors of our Board to send you this letter supporting the transaction of this land sale as outlined in the Kenai Peninsula Borough Assembly Resolution 90-30 (substitute) adopted on April 3rd of this year. We, the Kenai Peninsula Caucus, in turn support the bill before the House (introduced by Rep. Navarre) specifically dealing with this sale of land from the Seldovia Native Association to the State of Alaska.

Thank you for your time and efforts in dealing with this matter in a timely fashion.

Yours Very Truly,



Andrew J. Patapoff
President, Kenai Peninsula Caucus

TELECOPY COVER SHEET

DIVISION OF LAND & WATER MANAGEMENT
P.O. Box 107005
Anchorage, Alaska 99510-7005
phone (907)762-2692
FAX (907)762-2529

Deliver to: Senator Mike Szymanski.

Telecopy Number: 465 2657

From: Gary Gustafson DNR, DLW

Comments: How is Kachemak Bay trade Preliminary

Exhibiting Agreement. I only sent first page of Attachment B -

listing Plover Island Remaining 15 pages listed out other kind in pool

DATE: March TIME: 1:30 NO. OF PAGES: 18 including cover

Telecopier Operator: Mylin PHONE: 962 2692

If Telecopy does not transmit properly, please call TELECOPIER OPERATOR.

PRELIMINARY EXCHANGE AGREEMENT

RECITALS:

A. In 1970, the Alaska State Legislature established the Kachemak Bay State Park as a scenic park. This park was established by the legislature "in order to protect and preserve this land and water for its unique and exceptional scenic value." (§ 1 Ch. 115, SLA 1970.)

B. The Seldovia Native Association ("SNA") owns certain lands which are located within the boundaries of the Kachemak Bay State Park (hereinafter "the SNA inholdings").

Timber rights held by TTC
C. In 1987, SNA sold the timber on 12,400 acres of the SNA inholdings to Timber Trading Company, an Alaska-based forest products company (hereinafter "TTC").

D. Continued ownership of the SNA inholdings by SNA and continued ownership of the timber on 12,400 acres of the SNA inholdings by TTC prevents the State from carrying out its statutory mandate to protect and preserve the unique and exceptional scenic value of the Kachemak Bay State Park.

E. By reason of the foregoing, and in accordance with 11 AAC 67.210(d), the Commissioner of the Department of Natural Resources of the State has determined in writing that it is in the public interest to negotiate a preliminary exchange agreement under 11 AAC 67.230.

F. The State's authority for entering into this agreement is found in AS 38.50 and 11 AAC 67.200-67.280. However, certain of the provisions in this agreement, specifically, the bid credit system described below, and the absence of a limitation on consideration other than land and timber rights flowing to SNA and TTC, are not consistent with current State statutes and regulations. In addition to the legislative approval required by AS 38.50, specific legislative approval is needed to authorize these provisions. Regardless of the provisions of the final exchange agreement, the exchange is likely to require legislative approval under AS 38.50.020.

G. The State seeks to acquire SNA land and TTC timber within the legislatively established boundary of Kachemak Bay State Park through an equal appraised fair market value exchange of land and timber. The combined value of State interests to be exchanged to SNA and TTC shall equal the appraised fair market value of SNA's surface estate within Kachemak Bay State Park and the appraised fair market value of that portion of TTC's timber that is commercially viable.

H. In exchange, SNA seeks to acquire State land with development and revenue generation potential and other forms of compensation equal in value to the SNA inholdings, and TTC seeks to acquire timber rights and other consideration from the State equal in value to its commercially viable timber as referenced in the timber cruise provided for in paragraph 8(c) below, consisting of 4,435 acres of the SNA inholdings (hereinafter the "commercially viable forest land").

I. The State has appropriated \$50,000 in FY 1989 and \$50,000 in FY 1990 which is to be paid to SNA as partial consideration for the SNA inholdings. In addition, \$50,000 in federal matching funds have been requested for payment to SNA, and an additional \$50,000 in federal matching funds is likely to be obtained in FY 1990. Thus, the sum of \$100,000 to \$200,000 in cash is available to be paid to SNA immediately upon legislative approval of a land exchange, in partial compensation for the SNA inholdings.

State already working on a bankroll

A G R E E M E N T:

In order to further the purposes of the proposed exchange, the State, SNA, and TTC agree as follows:

1. The SNA inholdings and TTC timber that the State desires to acquire from SNA and TTC are described in Attachment A.

2. The State land to be acquired by SNA shall be selected from the land pool identified in Attachment B. If necessary, two supplemental pools will be identified by July 19 and August 9, and will be added to this agreement by amendment. To the extent that SNA does not acquire lands of equal value from the land pool, subject to legislative approvals, its entitlement to compensation shall be satisfied by (a) transfer of lands subject to land sales contracts; and/or (b) bid credits redeemable against State oil and gas lease sales, or State lands sales conducted in the future, the terms and conditions of which, including discount rates, will be negotiated between the parties prior to execution of a final exchange agreement; and (c) cash, including a minimum payment of \$100,000 to \$200,000 to be paid immediately upon legislative approval of the trade.

3. The pool of state lands subject to sales contracts which will be available for transfer to SNA will be identified by a supplemental land pool which will be added to this agreement by amendment by August 9, 1989.

4. The replacement timber rights to be acquired by TTC shall be selected from a timber pool to be identified by a

supplemental pool which will be added to this agreement by amendment by July 19, 1989.

5. The signatories to this agreement have the authority to negotiate on behalf of their principals. The signatories have established that they are the owners of the property and timber in Attachments A and B.

6. SNA will convey the surface estate only, as surface estate is defined pursuant to the Alaska Native Claims Settlement Act and court decisions construing that Act, to land identified in Attachment B, subject only to valid existing rights and other reservations of record.

7. The State will convey to SNA the lands selected by SNA from the selection pool, subject only to an exclusion of the mineral estate as defined in AS 38.50.125(a), and to valid existing rights and reservations of record.

8. The land, timber, and timber rights to be exchanged by the parties shall be on the basis of equal appraised fair market value. Land, timber, and timber rights thus appraised may be included in the exchange in the priority agreed to by the parties.

The market value of the SNA inholdings will be determined as follows:

(i) SNA will select a qualified senior appraiser(s) with the MAI designation who appears upon the most current State list of approved appraisers to conduct an appraisal of the SNA inholdings;

(ii) The appraiser shall be paid by SNA;

(iii) The appraiser will be instructed to determine the current fair market value of the surface estate (as defined in ANCSA) of each of the SNA inholdings as encumbered, including any planned easements and encumbrances described in the inventory of reservations and third party interests. In conducting the appraisal, the appraiser will be instructed to produce two appraisal reports. The first report will consist of a determination of the value of the commercially viable forest land within the SNA inholdings, the timber on which is valued pursuant to section 8(c) below. In

Ground rules for determining market value of inholdings

*1st report
Value land as cut over*

*2nd report
Value land with no cut timber*

conducting this appraisal of land, the appraiser will be instructed to value the land as cut over land. The resulting report for the value of the cut over land will appear with the report produced pursuant to paragraph 8(c) below to establish a value for the commercially viable forest land.

The appraiser will also be instructed to produce a second report which will determine the current fair market value of the remaining SNA inholdings. In making this report, the appraiser shall assume that none of the timber on the remaining SNA inholdings will be cut;

- (iv) The appraiser will perform the appraisal in conformance with the State's "Appraisal Instructions Pertaining to Valuation of State Land," a copy of which is attached hereto as Attachment C;
- (v) The resulting appraisal reports will be furnished to the State on September 15, 1989. The State will then review the appraisal reports. If the State does not concur with the appraisals, it must notify SNA and the appraiser(s) of the basis for its objections within (10) working days after receipt of the appraisals or such rights as are provided in Section 8(a)(vi) of this agreement be waived. The appraiser(s) will respond to the objections in writing within five (5) working days and revise the appraisals within ten (10) days, if appropriate;
- (vi) In the event the State does not concur with valuation of all or part of the real property as set forth in the appraiser's response, it may, at its own expense and effort contract with a senior appraiser with the MAI designation, acceptable in writing to the other party, to conduct a second appraisal of all or part of the real property involved in this proposed exchange. Appraisal instructions will be in writing and approved by both parties prior to commencement of any work on the

second appraisal. This second appraisal will be completed within sixty (60) days from receipt of the first appraiser's response to objection. If the second appraisal results in a value difference of ten percent (10%) or less from the original appraised value, the two (2) values will be averaged and the result will be used in any final exchange agreement.

*Appraisal
Arbitration*

In the event the value difference exceeds ten percent (10%), and agreement cannot be reached between the parties, a third senior appraiser with the MAI designation selected by the two parties will act as an arbitrator to review the first and second appraisals and render an opinion as to the appropriate fair market value of the properties which is within the range of the two original appraisals. Such appraiser shall be chosen within fifteen (15) days of receipt of the second appraisal and shall render his opinion within thirty (30) days of his selection. Both parties and their appraisers will have the right to meet with the third appraiser to explain the previous appraisals and to answer any questions the appraiser might have. The opinion furnished by the arbitrating appraiser will be binding on both parties and will be used in any final exchange agreement. Costs of the arbitrating appraiser will be paid equally by the State and SNA;

*Value
Determination* (vii)

The value of SNA's inholdings shall be the total of the cutover value established for the commercially viable forest land and the value of the remaining SNA inholdings.

- (b) The Market value of the State lands in the land pool will be determined as follows:
- (i) The State will solicit a qualified senior designated appraiser to conduct appraisals of the State properties;
 - (ii) The State will review the appraisal proposals received by it in response to the RFP and will select an appraiser or appraisal firm ("appraiser") to be retained

to appraise the State real properties based on the evaluation criteria in the RFP;

- (iii) The State will enter into a contract with the appraiser selected, and will bear the cost of all appraisals performed by said appraiser;
- (iv) In the appraisal contract, the appraiser will be instructed to determine the current fair market value of each of the State properties, as encumbered, excluding the mineral estate as defined in AS 38.50.125(a) and including any planned easements and encumbrances described in the inventory of reservations and third party interests;
- (v) The resulting appraisal report will be furnished to SNA on September 15, 1989. SNA will then review the appraisal reports. If SNA desires the land, yet does not concur with the appraisal, it must notify the State and the appraiser of the basis for its objections within ten (10) working days after receipt of the appraisal or such rights as are set forth in Section 8(a)(vi) of this agreement shall be waived. The appraiser will respond to the objections in writing within five (5) working days and revise the appraisal within ten (10) days, if appropriate;
- (vi) In the event SNA does not concur with valuation of all or part of the real property as set forth in the appraiser's response, it may, at its own expense and effort contract with a senior appraiser with the MAI designation, acceptable in writing to the other party, to conduct a second appraisal of all or part of the real property involved in this proposed exchange. Appraisal instructions will be in writing and approved by both parties prior to commencement of any work on the second appraisal. This second appraisal will be completed within sixty (60) days from receipt of the first appraiser's response to objection. If the second appraisal results in a value difference of

ten percent (10%) or less from the original appraised value, the two (2) values will be averaged and the result will be used in any final exchange agreement.

In the event the value difference exceeds ten percent (10%), and agreement cannot be reached between the parties, a third senior appraiser with the MAI designation selected by the two parties will act as an arbitrator to review the first and second appraisals and render an opinion as to the appropriate fair market value of the properties which is within the range of the two original appraisals. Such appraiser shall be chosen within fifteen (15) days of receipt of the second appraisal and shall render his opinion within thirty (30) days of his selection. Both parties and their appraisers will have the right to meet with the third appraiser to explain the previous appraisals and to answer any questions the appraiser might have. The opinion furnished by the arbitrating appraiser will be binding on both parties and will be used in any final exchange agreement. Costs of the arbitrating appraiser will be paid equally by the State and SNA.

Timber Valuation
(c)

The market value of the TTC timber will be determined as follows:

- (i) TTC has selected a qualified timber cruiser or timber cruising firm who has been instructed to determine the standing volume and quality of the TTC timber. A copy of the cruising methodology and instructions that were used is attached hereto as Attachment D;
- (ii) Prior to commencement of the timber cruise, the State approved the cruiser and the methodology and instructions;
- (iii) The cruiser was paid by TTC. The State accompanied the cruiser during the field work portion of the timber cruise for the purpose of monitoring the implementation of the cruise instructions;

- (iv) The cruise report will be the basis for valuation of the timber. TTC has selected a qualified timber appraiser who has been instructed to determine the current fair market value of the commercially viable timber on the TTC timber ownership. TTC and DNR shall agree upon timber appraisal instructions;
- (v) The timber cruise report will be furnished to the State by August 31, 1989, and the appraisal report will be furnished to the State on September 15, 1989. The State will then review these reports. If the State does not concur with the cruise or the appraisal, it must notify TTC and the cruiser or appraiser of the basis for its objections within ten (10) working days after receipt of the cruise or appraisal or such rights as are provided in Section 8(c)(vi) of this agreement be waived. TTC and or its cruiser or appraiser will response to the objections in writing within five (5) working days and revise the cruise or appraisal within ten (10) days, if appropriate;
- (vi) In the event the State does not concur with valuation of all or part of the timber as set forth in the appraiser's response, it may, at its own expense and effort contract with a qualified timber appraiser, acceptable in writing to the other party, to conduct a second appraisal of all or part of the timber involved in this proposed exchange. Appraisal instructions will be in writing and approved by both parties prior to commencement of any work on the second appraisal. This second appraisal will be completed within sixty (60) days from receipt of the first appraiser's response to objection. If the second appraisal results in a value difference of ten percent (10%) or less from the original appraised value, the two (2) values will be averaged and the result will be used in any final exchange agreement.

In the event the value difference exceeds ten percent (10%), and agreement cannot be reached between the parties, a third

qualified appraiser selected by the two parties will act as an arbitrator to review the first and second appraisals and render an opinion as to the appropriate fair market value of the timber which is within the range of the two original appraisals. Such appraiser shall be chosen within fifteen (15) days of receipt of the second appraisal and shall render this opinion within thirty (30) days of his selection. In the event the parties cannot agree on a third appraiser, the parties may petition the Anchorage Superior Court to appoint a third appraiser to act as an arbitrator. Both parties and their appraisers will have the right to meet with the third appraiser to explain the previous appraisals and to answer any questions the appraiser might have. The opinion furnished by the arbitrating appraiser will be binding on both parties and will be used in any final exchange agreement. Costs of the arbitrating appraiser will be paid equally by the State and TTC.

(d) The Market value of the State timber cutting rights in the replacement timber pool will be determined as follows:

- (i) The State will solicit a qualified timber cruiser or cruising firm ("cruiser") to determine the volume and quality of the timber in the timber cutting rights. The State will also solicit a qualified timber appraiser to appraise the timber cutting rights;
- (ii) The State will enter into a contract with the cruiser and with the appraiser selected, and will bear the cost of all work performed by said cruiser and appraiser;
- (iii) In the appraisal the appraiser will be instructed to determine the current fair market value of each of the State's timber parcels including any planned easements and encumbrances described in the inventory of reservations and any third party interests. The cruise will be completed by August 31,

1989, and will be supplied to the timber appraiser and to TTC;

(iv) The resulting appraisal report will be furnished to TTC on September 15, 1989. TTC will then review the reports. If TTC desires the timber rights, yet does not concur with the appraisal, it must notify the State and the appraiser of the basis for its objections within ten (10) working days after receipt of the appraisal or such rights as are set forth in Section 8(d)(v) of this agreement shall be waived. The appraiser will respond to the objections in writing within five (5) working days and revise the appraisal within ten (10) days, if appropriate;

(v) In the event TTC does not concur with valuation of all or part of the timber cutting rights as set forth in the appraiser's response, it may, at its own expense and effort contract with a qualified timber appraiser, acceptable in writing to the other party, to conduct a second appraisal of all or part of the timber cutting rights involved in this proposed exchange. Appraisal instructions will be in writing and approved by both parties prior to commencement of any work on the second appraisal. This second appraisal will be completed within sixty (60) days from receipt of the first appraiser's response to objection. If the second appraisal results in a value difference of ten percent (10%) or less from the original appraised value, the two (2) values will be averaged and the result will be used in any final exchange agreement.

In the event the value difference exceeds ten percent (10%), and agreement cannot be reached between the parties, a third qualified timber appraiser selected by the two parties will act as an arbitrator to review the first and second appraisals and render an opinion as to the appropriate fair market value of the timber cutting rights which is within the range of the two

original appraisals. Such appraiser shall be chosen within fifteen (15) days of receipt of the second appraisal and shall render his opinion within thirty (30) days of his selection. In the event the parties cannot agree on a third appraiser, the parties may petition the Anchorage Superior Court to appoint a third appraiser to act as arbitrator. Both parties and their appraisers will have the right to meet with the third appraiser to explain the previous appraisals and to answer any questions the appraiser might have. The opinion furnished by the arbitrating appraiser will be binding on both parties and will be used in any final exchange agreement. Costs of the arbitrating appraiser will be paid equally by the State and TTC.

9. The State desires to acquire the SNA inholdings and the TTC timber through an equal value exchange of land and timber. If necessary to equalize values, DNR is willing to support legislation that allows the State to include cash or other considerations (including bid credits on oil and gas lease sales or future State land sales) to SNA and other considerations to TTC. Within forty-five (45) days of the time that the final list of State properties to be included in the land pool is agreed upon, the parties shall by mutual agreement determine the minimum value of State lands which SNA must select from the land pool. Within thirty (30) days of the time that the final list of State timber to be included in the timber pool is agreed upon, the parties shall by mutual agreement determine the minimum value of State timber cutting rights which TTC must select from the timber pool.

10. All surveys of real property necessary to effect the exchange will be completed prior to exchange of deeds. The cost of survey will be borne by the party that owns the land requiring survey.

11. Each party will examine its respective real property and identify and provide a list to the other party of all known authorized and unauthorized entries and uses. Each party will take action to expel unauthorized entries or improvements from their land prior to execution of the exchange. An inventory of all interests to be reserved will be provided to the other party within thirty (30) days of the date of this Agreement. All third party rights will be identified prior to appraisal of replacement lands and timber rights.

12. No new third party interests may be created by either party prior to execution of the final exchange agreement, or twelve (12) months from the date this agreement is signed, whichever occurs first.

13. The State is aware of SNA's position that the 1979 Memorandum of Understanding executed by the State, SNA, CIRI, and the Kenai Peninsula Borough is, and has been for some time, of no force and effect, due to failure over the years to complete the land trades contemplated by this Memorandum,. The State is further aware that if the land trade contemplated by this Preliminary Exchange Agreement is not consummated by the end of the 1990 legislative session, SNA intends to use and develop the SNA inholdings. The State does not agree with these positions, but if the land trade contemplated by this Preliminary Exchange Agreement is not consummated by the close of the legislative session in 1990, the State is prepared to negotiate an agreement with the intent of amending or terminating the 1979 Memorandum of Understanding in accordance with SNA's positions set forth above within one year.

14. Parcel or parcels of land included in the replacement land pools may be deleted from further exchange consideration by written agreement of the parties. Further, a parcel or parcels may be added to exchange consideration by written agreement of the parties.

15. The State will classify or reclassify the land identified in the land pool as needed, pursuant to 11 AAC 67.220 and concurrently will execute a mineral closing order on the same land. pursuant to 11 AAC 67.230(b).

16. Once the parties have finalized the appraisal values of the land and timber to be exchanged, they will enter into a final exchange agreement. The final exchange agreement will contain all terms, conditions, and considerations of the exchange, including specific legal descriptions of the land to be exchanged and identification of any third-party interests created thereon. The final agreement will be submitted to the Alaska State Legislature as required by AS 38.50.020(a).

17. Any of the parties to this Agreement may terminate this Agreement on ten (10) days written notice to the other parties.

18. General Provisions.

- (a) The terms of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the representatives of the parties.

- (b) This Agreement may not be amended except in writing executed by both parties.
- (c) No waiver by any party of its rights under this Agreement is valid unless the waiver is in writing signed by such party. A waiver on one occasion does not operate as a waiver of rights on a future occasion.
- (d) Notices and other communications required or permitted by this Agreement are deemed given when delivered in person to the Director of Land and Water Management for the State or the President of SNA or when either party acknowledges receipt through signature on a form provided by a delivery service and addressed as follows:

TO STATE:

Department of Natural Resources
 Director, Division of Land &
 Water Management
 Box 107005
 Anchorage, Alaska 99510-7005

TO SNA:

Seldovia Native Assoc., Inc.
 P. O. Drawer L
 Seldovia, Alaska 99663

TO TTC:

Timber Trading Company, Inc.
 3501 Denali Street, Suite 202
 Anchorage, Alaska 99503

To the best of their abilities, the State, SNA, and TTC further agree to adhere to the following general time frame for completion of this proposed land exchange:

<u>Requirement</u>	<u>State</u>	<u>SNA</u>	<u>TTC</u>	<u>Completion Date</u>
Preliminary Exchange Agreement	X	X	X	June 30, 1989
Initiation of Appraisal Process		X	X	June 1, 1989
Initiation of Appraisal Process	X		X	

Complete supplemental pool 1 - state subdivision lots	X	X	June 23, 1989
Complete supplemental pool 2 - other parcels, timber	X	X	July 19, 1989
Complete supplemental pool 3 - land sale contracts	X	X	August 9, 1989
Reclassification, Mineral Closure, Amendments to Management Plans	X		Sept. 30, 1989
Appraisals Completed and Approved	X	X	Oct. 7, 1989
Public Notice, Report, Finding	X		October 1989
Public Hearings (Seldovia, Homer, Soldotna, Anchorage)	X	X	Nov. 30, 1989
Negotiated Equalization of Values	X	X	Nov. 30, 1989
Completion of Reclassification and Mineral Closing Order, Amendments to Management Plan	X		Dec. 29, 1989
Final Exchange Agreement	X	X	Jan. 15, 1990
Submission to Alaska Legislature	X	X	Jan. 25, 1990
Execution of Exchange	X	X	

SELDOVIA NATIVE ASSOCIATION, INC.

DATE: June 30, 1989

By Fred Elvsaaas, President

TIMBER TRADING COMPANY

DATE: June 30, 1989

By Charles E. Nelson
ITS GENERAL MANAGER

STATE OF ALASKA

DATE: June 30, 1989

By Mary Gustafson
ITS DIRECTOR, DIVISION OF LAND
AND WATER MANAGEMENT

Agmt. SNA

ATTACHMENT A

SNA LANDS TO BE ACQUIRED BY STATE

* All land described below is within Seward Meridian and is identified in BLM Interim Conveyances 139, 304, 372

Parcel	Legal Description	Approximate Acreage
1	<u>Township 7 South, Range 12 West</u> Sec. 13 (fractional): W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$	575
2	Sections 22 (fractional): excluding Lot 1 of USS 3606	370
	Sec. 21 (fractional): excluding ADL 47665 located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, ADL 41036 located in the N $\frac{1}{2}$, SW $\frac{1}{4}$, ADL 41300 located in S $\frac{1}{2}$, SW $\frac{1}{4}$	495
3	Section 29: excluding USS 4738, ADL 41084-41085 located in NW $\frac{1}{4}$ SW $\frac{1}{4}$	410
4	Section 30: excluding USS 3912, USS 3977 Tracts A, C, D, ASLS 76-114, ADL 41704, located in SW $\frac{1}{4}$ SW $\frac{1}{4}$	408
5	Sections 19 (fractional), 20 (fractional), 21 (fractional), 23 (fractional), 24 (fractional), 25 (fractional), 26, 27, 28, 31, 32, 33, 34, 35, 36: All	7,629
6	<u>Township 8 South, Range 12 West</u> Sections 1, 2, 3, 4, 7, (fractional), 8 (fractional) 9, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 28: All	12,385
7	Section 5 (fractional): excluding ADL 49431 located in the W $\frac{1}{2}$ W $\frac{1}{4}$ SW $\frac{1}{4}$	615
8	Section 6 (fractional): excluding ADL 48787 and ADL 49431 located in the E $\frac{1}{4}$ SW $\frac{1}{4}$; ADL 46149, ADL 46150, ADL 46151, ADL 46152, ADL 46153, and ADL 46650 located in the N $\frac{1}{4}$ SE $\frac{1}{4}$; and ADL 41043 located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$	300

ATTACHMENT A

SNA LANDS TO BE ACQUIRED BY STATE

*All land described below is within Seward Meridian and is identified in BLM Interim Conveyances 139, 304, 372

<u>Parcel</u>	<u>Legal Description</u>	<u>Approximate Acreage</u>
9	Section 16 (fractional): excluding ADL 46773 located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$	615
10	Section 21 (fractional): excluding ADL 47665 located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, ADL 41036 located in the N $\frac{1}{2}$ SW $\frac{1}{4}$, ADL 41300 located in the S $\frac{1}{2}$ SW $\frac{1}{4}$	495
	Cumulative Total	23,802

ATTACHMENT B

SELDOVIA NATIVE ASSOCIATION / STATE OF ALASKA
LAND EXCHANGE ADL 224612

POWDER ISLAND IN SELDOVIA BAY

<u>Parcel</u>	<u>Legal</u>	<u>Approx Acres</u>
No. 1	T9S R14W, SM SEC 6: LOT 4	11.9
-	One acre public use site easement (for day use only) to be reserved on the nob at the west end of the island, along with the beach between this nob and the larger nob to the east.	

FORMER PLO 316 - JAKOLOF BAY

<u>Parcel</u>	<u>Legal</u>	<u>Approx Acres</u>
No. 1	T8S, R13W, SM: A PORTION OF TRACT "A" WITHIN SECS. 20, 29 AND 30 DESCRIBED BY METES AND BOUNDS IN PLO 316. PARCEL APPROX. 2640' X 5280' FRONTING ON JAKOLOF BAY; ACQUIRED UNDER MENTAL HEALTH GRANT MH-128.	320
ADL 39029 -	Letter of non-objection to public utility right-of-way fifty (50') feet in width for existing power line constructed by Homer Electric Association, Inc.	
ADL 37929 -	Letter permit for a public access road right-of-way 200 feet in width along existing roadway from Seldevia to Jakolof Bay through subject parcel.	
ADL 39789 -	Letter permit issued for an access road 100 feet in width (Alaska Project No. S-1190)	
ADL 224138-	Upland lease authorization (lease application) for approximately 0.25 acres at the end of Jakolof Bay airstrip to support mariculture activities associated with Tideland Use Permit ADL 224137 (Southcentral Region Finding and Decision dated October 31, 1988).	

Subject to valid existing rights (airstrip identified on state tidelands adjacent to parcel) and subject to a public use easement under AS 38.05.127.

Complete supplemental pool 1 - state subdivision lots	X	X	June 23, 1989
Complete supplemental pool 2 - other parcels, timber	X	X	July 19, 1989
Complete supplemental pool 3 - land sale contracts	X	X	August 9, 1989
Reclassification, Mineral Closure, Amendments to Management Plans	X		Sept. 30, 1989
Appraisals Completed and Approved	X	X	Oct. 7, 1989
Public Notice, Report, Finding	X		October 1989
Public Hearings (Seldovia, Homer, Soldotna, Anchorage)	X	X	Nov. 30, 1989
Negotiated Equalization of Values	X	X	Nov. 30, 1989
Completion of Reclassification and Mineral Closing Order, Amendments to Management Plan	X		Dec. 29, 1989
Final Exchange Agreement	X	X	Jan. 15, 1990
Submission to Alaska Legislature	X	X	Jan. 25, 1990
Execution of Exchange	X	X	

SELDOVIA NATIVE ASSOCIATION, INC.

DATE: June 30, 1989

By Fred H. Elvsaa
Fred Elvsaa, President

TIMBER TRADING COMPANY

DATE: June 30, 1989

By Charles E. Nelson
Its GENERAL MANAGER

STATE OF ALASKA

DATE: June 30, 1989

By Mary Gustafson
Its DIRECTOR, DIVISION OF LAND
AND WATER MANAGEMENT

Agmt. SNA



Alaska State Legislature

Senator Mike Szymanski

While in Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-4978

Interim:
3111 C Street, Suite 510
Anchorage, Alaska 99503
(907) 561-7617

or
165 E. Parks Highway
Wasilla, Alaska 99687
(907) 376-6453

April 25, 1990

MEMORANDUM

TO: Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee

FROM: Senator Mike Szymanski *Mike*

RE: Request for Hearing

I respectfully request that you schedule SB 329, adding Powder Island to Kachemak Bay State Park, at the earliest possible date.

Thank you for your consideration.

State calls for arbitration in Kachemak Bay land trade

By TOM KIZZIA
Daily News reporter

HOMER — The state hopes an arbitrator can revive efforts to trade for Native-owned land inside Kachemak Bay State Park now that a deadline for completing an agreement has passed.

A final state appraisal of land in the park owned by the Seldovia Native Association was released this month. The total, around \$12 million, was so far below Seldovia's own appraisal of \$22.7 million that the state called off further negotiations and asked for arbitration.

At stake is 24,000 scenic acres in the heart of the park across Kachemak Bay from Homer. Timber rights on the parkland have been sold, but logging has been on hold as the state and the Native association try to work out a trade for state land and timber elsewhere.

The state's decision to cancel negotiations drew an angry response from Seldovia Native Association president Fred Elvsaas. Calling the state's appraisal faulty, he said the association will agree to arbitration only after the state appraises the land for its worth as protected wilderness — a category that he said should increase its value.

Dick Mylius, a negotiator for the Department of Natural Resources, defended the state's method and said the difference between the two appraisals made arbitration necessary. He said the state is required by law to trade for fair market value of land,

“We think that we've got more than enough timber to make up some of the difference (in the parkland appraisals).”

— Dick Mylius

so it could not negotiate for a figure substantially higher than the recommendation of its own appraiser.

“The department has to be solidly behind the number they come up with, because it's going to get a lot of scrutiny from the legislature,” said Rep. Mike Navarre, D-Kenai. Legislative approval is required for the trade.

The state and the association last year set 10 days after start of the legislative session as a goal for submission of a trade package to the legislature. Mylius said he now hopes to have a deal ready before early March.

Navarre said the land trade is “still do-able” if the state and the association can agree on a value for the land in the park by March.

The state is trying to gain title to 24,000 acres of coastline and old-growth forests that were part of the original Kachemak Bay State Park established in 1970. The Native association received rights to the land under the Alaska Native Claims Settle-

ment Act. The land, across the bay from the Homer Spit, is some of the most scenic and accessible in the park.

Efforts to trade for the parklands have sputtered along since 1979, but they gained steam in 1988 after the association sold timber rights to some of the land. Elvsaas has said that this will be the corporation's last effort to trade the park holdings for state land elsewhere.

The state has come up with a package of land parcels and state-owned timber to trade with the Native association and with Timber Trading Company, a logging company that holds timber rights to a portion of Seldovia's park land. Some of those lands are in southeast Alaska. Mylius said state appraisals set the value of Southeast timber parcels at more than \$50 million.

“We think that we've got more than enough timber to make up some of the difference (in the parkland appraisals),” Mylius said.

However, conservation groups in Petersburg and Ketchikan have raised objections to use of local state lands as trading stock to protect land in southcentral Alaska.

The state surprised the association with its sudden decision to call for arbitration, Elvsaas said. He said he had driven to Anchorage for what he thought was a negotiating session, only to be told the negotiations were on hold.

“We came up and they told us to take a

hike,” Elvsaas said. “We can't accept that any more.”

“There was definitely a misunderstanding about what was the purpose of that meeting,” Mylius said.

The state and the association agreed to a schedule that included possible arbitration when they signed an exchange agreement in 1989. Neither side would be forced by that agreement to proceed with the trade if they don't like the arbitrator's decision.

This week, both sides said finding a mutually acceptable arbitrator could be difficult.

Commissioner of Natural Resources Lennie Gorsuch said the Cowper administration remains committed to the trade effort. But she would not say whether the state will commit itself in advance to accepting an arbitrator's decision. Details of how arbitration will work are still being negotiated, she said.

Elvsaas said the two appraisals are so far apart chiefly because the state appraiser judged the Native holdings as inaccessible land with little development potential, while Seldovia's appraiser judged it for its value as permanent parkland.

Mylius said a big difference in the two appraising methods was that the association looked at the 24,000 acres as a single piece, while the state broke it into pieces of beachfront and mountaintop and then appraised the separate pieces.