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K E T C H I K A N G A T E W A Y B O R O U G H

RESOLUTION NO. 1035

A RESOLUTION OF THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, POSITION STATEMENT ON THE AMENDMENTS TO SENATE BILL 465; AND PROVIDING AN EFFECTIVE DATE.

R E C I T A L S

WHEREAS, the Ketchikan Gateway Borough Assembly has supported the Alaska Department of Natural Resources-Cape Fox Corporation land exchange and has understood that the DNR has not been in a fiscal position, nor is it likely to be, to open, operate and maintain the public recreation lands resulting from this trade. A lease arrangement between the Borough and the DNR has been predicated on the Borough developing a Land Management Plan that would best express the recreation needs of the citizen of the Borough.

WHEREAS, the Borough Assembly has stated its position in two resolutions. Resolution No. 954, dated December 3, 1990, supported the land exchange. Moreover, Section 3 of that resolution specified that the Borough would complete a Land Management Plan as a condition of approval of the land exchange. In Resolution No. 1027, dated April 22, 1992, the Borough again supported the land exchange with Section 2 of that Resolution again specifically stating a commitment to preparing a Land Management Plan.

WHEREAS, Sections 4, 5, and 6 of Senate Bill 465 (Rules) requires the Borough to prepare a Land Management Plan, and Article II, Section 19 of the Alaska Constitution requires the approval of the majority of the voters of a political subdivision when a local act necessitates the appropriation of money by the political subdivision. The mechanism to accomplish this is a vote on the land exchange issue at the next regular election.

NOW, THEREFORE, IT IS RESOLVED BY THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, as follows:

Section 1. Opportunity For Public Vote.

The Borough Assembly acquiesces in the amendments to Senate Bill 465, as adopted by the State Senate. The Assembly welcomes the opportunity for a public vote on the land exchange and the Borough's role in the preparation of a Land Management Plan.

Section 2. Effective Date. The resolution shall be effective upon adoption.

ADOPTED this 4th day of May, 1991.

[Handwritten Signature]

BOROUGH MAYOR

ATTEST:

[Handwritten Signature]

BOROUGH CLERK

APPROVED AS TO FORM:

[Handwritten Signature]

BOROUGH ATTORNEY

Public Hearing:	<u>N/A</u>		
Effective Date:	<u>5-4-92</u>		
Roll Call:	Y	N	A
Boatwright	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cote	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cruise	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fader	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
McCarty	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Holman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Four (4) affirmative votes required for passage			

FISCAL NOTE

Version: SB 465
 (S) Publish Date: 4-10-92

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: 3/12/92
 Title: Cape Fox Land Exchange

Department Affected: Fish and Game 465
 BRU: Habitat
 Component: Habitat

Sponsor: Rules Committee by Governor
 Requestor: _____

COMPONENT SERIAL NO.

	4	8	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: No impact on current changes in CS SB 465 (RWS) have no fiscal impact. This fiscal note is appropriate.

ANALYSIS: (Attach a separate page if necessary.)

5/1/92 date TH Comte A. de (initial)

Prepared By: Frank Rue, Director Phone: 465-4105
 Division: Division of Habitat Date: 3/12/92
 Approved by Commissioner: [Signature]
 Agency: Department of Fish and Game Date: 3/13/92

FISCAL NOTE

No. 2

Bill Version: SB 465

SI (S) Publish Date: 4-10-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____
Title: Cape Fox Land Exchange
Sponsor: Governor
Requestor: Governor

Department Affected: Environmental Conservation
BRU: Environmental Quality
Component: _____

COMPONENT SERIAL NO.

1	0	1	6
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EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: none

ANALYSIS: (Attach a separate page if necessary.)

Changes in CS SR 465 (RIS) have no fiscal impact. This fiscal note is appropriate.

5/1/92 None
date Comptroller (initial)

Prepared by: Janice Adair
Division: Commissioner's Office

Phone: 465-5010
Date: _____

Approved by Commissioner: Janice Adair for Gov. Seward
Agency: Environmental Conservation Date: 3/13/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL

Revision Date: 16-Mar-92 Department Affected: Natural Resources
 Title: Cape Fox Land Exchange BRU: Land Management
 Components: Land Management
 Sponsor: Rules Committee
 Requestor: Rules Committee COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS.CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
Funding Source:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
Funding Source:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME				
PART-TIME				
TEMPORARY				

Changes in CS 56 465 (2.15) have no fiscal impact. This fiscal note is appropriate.

Slide 2 date THP Come Aide (initial)

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)
 Zero if the State is not required to maintain the road.

Prepared by: Ron Swanson Phone: 762-2692
 Division: Land Management Date: 16-Mar-92
 Approved by Commissioner: Harold C. Heinze Date: 16-Mar-92
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

PROPOSED CAPE FOX EXCHANGE SUMMARY
(APRIL 29, 1992)

WHAT IS THE EXCHANGE?

State would exchange with Cape Fox Corporation (CFC) the surface estate of 2,335 acres located near Leask Lake for the surface estate of 4,366 acres of CFC land located at White River, Harriet Hunt Lake and Talbot Lake. CFC would also be required to upgrade five miles of existing road and construct an additional six miles of road to recreation standards. CFC would also be required to construct two parking lots, and to work with the state to ensure that any material wasted from construction is used to create turnouts and or additional parking at strategic locations

ADVANTAGES OF EXCHANGE TO STATE AND/OR RESIDENTS OF KETCHIKAN?

- * 87% increase in the state's surface estate (state gets 4,366 acres and gives away 2,335 acres)*
- * More diversified portfolio of state land and resources *
- * 25% increase in Ketchikan's road access to recreational areas*
- * Protection of important fish habitat in both the White River and Leask Creek drainages *
- * Sensitivity to protection of visual impacts from Leask Lakes *
- * Attempt to protect important deer habitat and travel corridors *
- * Retention of continued access of the public to 42% of the lands to be traded to CFC *
- * Retention of 300 foot Right-of-Way for a DOT/PF road on land traded to Cape Fox*
- * Retention of right to do the upgrades and reduce state land and resources committed to the exchange proportionally *
- * Acquisition of harvested lands at bargain basement prices *
- * Detriments primarily accrue to the communities which support and benefit most from the exchange *
- * The proposed use is compatible with the purpose for the state selection (community recreation and expansion) *
- * Allows public use of CFC land as well as Leask Lakes *
- * The additional road represents an alternative way to build part of the tie road connecting Ketchikan to the Forest Service's proposed Shelter Cove system *

The Exchange was found by the Commissioner of the Department of Natural Resources to be in the public interest. The land to be received and the value of road to be upgraded by CFC are substantially equal or exceed the fair market value of state land to be exchanged.

WHAT IS THE STATE GIVING UP AND WHAT IS THE STATE GETTING
PROPOSED CAPE FOX EXCHANGE
(May 6, 1992)

1. Amount of Surface Estate:

GIVING UP: 2,335 acres, 42% of which is still open to the public;

RECEIVING: 4,366 acres;

2. Amount frontage along a salt water body, a river, or a lake:

GIVING UP: NONE;

RECEIVING: OVER FIVE MILES, not counting several islands that the state will receive;

2.35 miles fronting Upper George Inlet;

2.5 miles along the South shore of Lake Harriet Hunt

.6 miles along the shore of Talbot Lake;

3. Amount of Timber:

GIVING UP: Approximately 40 million board feet (19% spruce);

RECEIVING: Approximately 38 million board feet (29% spruce);

4. Amount of lands that have been clear cut:

GIVING UP: NONE;

RECEIVING: Approximately 1039 acres or about 24% of the CFC lands (Area #4 which is 650 acres almost entirely clearcut is valued at \$254/ac);

5. Habitat: Presumed Mostly Fish Habitat:

GIVING UP: The timber appraiser estimated 13 acres would need protection under forest practices. This amounts to about 377,000 board feet of timber;

RECEIVING: The timber appraiser estimated 250 acres would need protection under forest practices. This amounts to about 3,734,000 board feet of timber;

THE STATE IS RETAINING OR RECEIVING THE BEST FISH HABITAT LANDS IN BOTH DRAINAGES, WHITE RIVER, AND LEASK LAKE;

6. Amounts of Deer Habitat:

Rather than presenting this as to the amount of deer habitat given up or received, the data and tables represent expected impacts from CFC logging exchanged lands from several perspectives.

ADF&G estimates as much as 71% greater mortality to deer during medium to severe winters on the Leask Lake exchange area, due to scheduled cutting associated with the exchange. CFC felt it was important to balance this loss against deer that would be protected on CFC lands by not cutting. The magnitude of losses is dependent on the scope of the area viewed.

The decline of deer populations is off-set by other benefits of the exchange. For example, logging on CFC land that could occur if not acquired by the state would also impact wildlife populations. The table below was constructed from data developed by CFC consultant ANI, and ADF&G.

DNR Summary of Results of Combined ANI/ADF&G Impacts Analysis on Deer Populations created by the Exchange:

Impact Analysis-Exchange Areas Only:

<u>Year</u>	<u>Assumption</u>	<u>No. Deer</u>	<u>%Decrease</u>
1992	Base (LL&CFC Exch. Land)	258	-
2030	No Add. Cut	239	7
2030	Log CFC Land Only	206	20
2030	Log LL Land Only	142	45
2030	Log Both CFC&LL	109	58

Impact Analysis-All State Leask Lake Land (5000ac plus) & All CFC Exchange Land (4,000ac plus):¹

<u>Year</u>	<u>Assumption</u>	<u>No. Deer</u>	<u>%Decrease</u>
1992	Base (All LL & CFC Exc.)	345	-
2030	No Add. Cut	326	6
2030	Log CFC Land Only	293	15
2030	Log LL Land Only	225	35
2030	Log Both LL&CFC	192	44

OTHER FACTORS:

1. Timber layout indicates a sensitivity to visual impacts from Leask Lakes. Additional 40 acres was removed, and 13.5 acres transferred to open space, after the public hearings to provide additional visual protection;
2. CFC will be required to construct and/or upgrade 11.11 miles of road to recreation standards (25 miles per hour horizontal alignment, 20 foot running surface, six inches of graded rock, screened to two inch minus, with two foot ditches, etc. This will increase the road system in Ketchikan by about 25%;
3. CFC will also be required to develop two parking areas, and to work with the state to waste material from road construction in a manner which will create additional parking or turnouts;
4. CFC is also required to widen the section of the White River road, between 1.5 and 2 miles within the first year.
5. If the state finds a quicker way to do the road upgrades it has reserved the right to do so, and to adjust the state resources committed to the exchange accordingly;
6. This exchange has the additional advantage that any detriments will also accrue to the community benefiting.

Appraised Values

CAPE FOX PARCELS

	-1-	-2-	-3-	-4-	-5-
Timber Value	\$2,700,000	\$408,000	\$102,000	\$45,000	\$2,141,000
Residual Land Value +	\$1,438,290	\$650,080	\$68,409	\$165,100	\$278,622
Subsurface Adj.	\$14,383	\$6,501	\$684	\$1,651	\$2,786
Final Value =	\$4,123,907	\$1,051,579	\$169,725	\$208,449	\$2,416,836
Total Original Value of Cape Fox Parcels:					\$7,970,496
Less 17 ac. of KGB timber (Talbot Lake)					- 20,389
Total Adjusted Value of Cape Fox Parcels:					= \$7,950,107
Rounded:					\$7,950,000

The right hand column below is adjusted for removal of 110 acres, and placement of an additional approximately 33 acres into open space. To equalize the values the state had to reduce the amount of road to be upgraded by approximately 10,500 feet.

LEASK LAKE PARCELS

	Original w/Road Fee	Orig w/o Road Fee	Adj w/o Road Fee
Timber Value	\$ 9,411,000	\$ 9,828,042	\$ 9,090,000
Residual Land Value +	\$ 1,775,224	\$ 1,775,224	
Subsurface Adj. -	\$ 17,752	\$ 17,752	
Open Space Adj. -	\$ 636,781	\$ 636,781	
Real Estate Value =	*\$10,526,014	*\$10,943,056	\$10,123,386
Extra Road Cost -	\$ 2,529,000	\$ 2,529,000	\$ 2,171,045
Final Value	*\$ 7,997,014	*\$ 8,414,056	\$ 7,952,341
Rounded:			\$ 7,950,000

* original decreased by \$5,677 for road R/W adjustment requested by the state.

RESIDUAL LAND VALUE FOR CFC LAND BEFORE SUBSURFACE ADJUSTMENT = APPROXIMATELY \$596/ACRE;

RESIDUAL LAND VALUE FOR STATE LAND BEFORE SUBSURFACE AND OPEN SPACE ADJUSTMENTS = APPROXIMATELY \$724/ACRE.

DEPARTMENT OF NATURAL RESOURCES
SUMMARY STATUS OF PROPOSED CAPE FOX CORPORATION LAND EXCHANGE
(May 5, 1992)

Public review of the proposed agreement for an exchange of state land in the Leask Lakes area near Ketchikan has been completed. The Department of Natural Resources held hearings in Saxman, Ketchikan and Juneau on March 11, and 12. Public comments were taken until March 26. The final report, and the final exchange agreement have since been completed and the exchange, as required by law, advanced to the legislature for approval.

The following is a brief summary of the exchange:

1. Cape Fox Corporation (CFC) land (five parcels) included in the exchange consists of the White River Valley, land adjacent to Harriet Hunt Lake and land adjacent to Talbot Lake totaling 4,366 acres;
2. State of Alaska land in the exchange consists of three parcels in the Leask Lake area totaling 2,335 acres. This was reduced, after public review, from 2445 acres to give additional protection to habitat and Leask Lake view sheds;
3. The exchange includes only the surface estate as defined by the Alaska Native Claims Settlement Act;
4. State land in the exchange includes approximately 40.0 million board feet of commercial timber on 1,350 acres. The remaining acreage to be conveyed to CFC is dedicated to "open space." This is a reduction from the preliminary exchange agreement of approximately 2.6 million board feet and 110 acres of timber harvest. This reduction is to reduce wildlife and visual impacts.
5. Land exchanged to CFC not within the areas proposed for timber harvest (designated open space) will be open to public use. CFC will have limited use rights in these areas;
6. CFC will upgrade the existing White River road to "recreation" standards, thereby providing access to the land acquired by the state;
7. CFC will construct the main road into the Leask Lakes area to "recreation" standards, thereby adding access to state land near Leask Lakes;
8. 90% of the anadromous streams in the entire Leask Lake tract, the largest and most sensitive streams, have been deliberately buffered and excluded from the exchange;
9. Substantial areas of the critical deer winter range

within the State land proposed for exchange has been deliberately preserved and will not be logged. Habitat was identified in a study commissioned by CFC and conducted by America North, Inc. of Anchorage;

10. The exchange, as proposed, would add 11.11 miles to the main road system of Ketchikan, a 25% increase. A two mile reduction was required to compensate for lands and timber removed from the exchange after public review. The new roads would access a variety of areas, both CFC and State, totalling 6,811 acres, with high recreation potential. These roads would access lands the state acquires through the exchange;
11. The Ketchikan Gateway Borough has supported the exchange through a planning analysis that resulted in a specific exchange recommendation and a resolution of support by the Assembly;
12. The Borough's planning analysis included a community survey that found the following:
 - a. 9 of 10 Borough residents want the road system expanded, 50% want expansion immediately;
 - b. 86% of Borough residents support outdoor recreation development near areas that have been harvested;
 - c. Preservation of sport fisheries and wildlife in outdoor recreation areas rated highest in value to residents.
13. A total of 137 individuals registered at the three public hearings (30 in Saxman; 93 in Ketchikan; and 14 in Juneau). Eighty-six people testified at the hearings. Fifty-five letters or notes, and two petitions were also received.

Comments For The Exchange: 44 persons testified, 18 wrote letters or notes, and 112 signed one of two petitions supporting the exchange. The following entities, in addition to the Ketchikan Gateway Borough, supported the exchange: cities of Saxman and Ketchikan, Ketchikan Chamber of Commerce, Ketchikan Liaison Committee, Sealaska Corporation, Kootznowoo, Inc., Goldbelt, Inc., Cape Fox Corporation, Ketchikan Indian Corporation, Alaska Native Brotherhood, Fox River Timber Co., Klukwan Forest Products, Alaska Forest Association.

Comment Against The Exchange: 42 persons testified, 36 wrote letters or notes, and 42 signed a petition (questionnaire) opposing the exchange. Organizations in opposition were: Tongass Conservation Society, Tongass

Sport-fishing Association, Sierra Club Legal Defense Fund, Alaska Environmental Lobby, Northern Alaska Environmental Center, and the Southeastern Alaska Conservation Council.

Neutral: In addition to several residents, the Ketchikan State Parks Advisory Board (SPAB) were neutral, but wanted the remaining lands at Leask Lake, the Salt Chuck lands, and any land received by the state through the exchange protected for habitat and recreation.

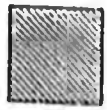
14. The Department of Natural Resources believes that although the testimony "for and against" was somewhat balanced, analysis indicates clear support from within the community of Ketchikan for the exchange.

The State is not trading pristine lands for a clear-cut waste land which is the primary argument of opponents. Only about 24% (1039 acres) of the CFC lands the State is acquiring have been clear cut. The state is purchasing these clear-cut lands for \$254-\$650/acre instead of over \$8,000/acre for forested lands. The State is also receiving approximately 37,000,000 million board feet of timber, while giving up about 40,000,000 million board feet. The exchange protects the most important fish habitat of two drainages, Leask Creek and White River. The timber appraiser estimated that while 380,000 board feet (13 acres) of the original 1500 acres designated for cut on the State's Leask Lake lands would require protection under forest practices, over 3,700,000 board feet of timber would require the same protection on CFC lands.

The primary issues are: the loss of old growth timber, impact on deer populations, and a difference in what one may or may view as a satisfying his or her recreational experience. The exchange as proposed clearly represents the interests of a majority of the residents of Ketchikan and Saxman, and in the Department's opinion is an good investment for the State.

Attached: Maps

Legend



Cutting Unit 19



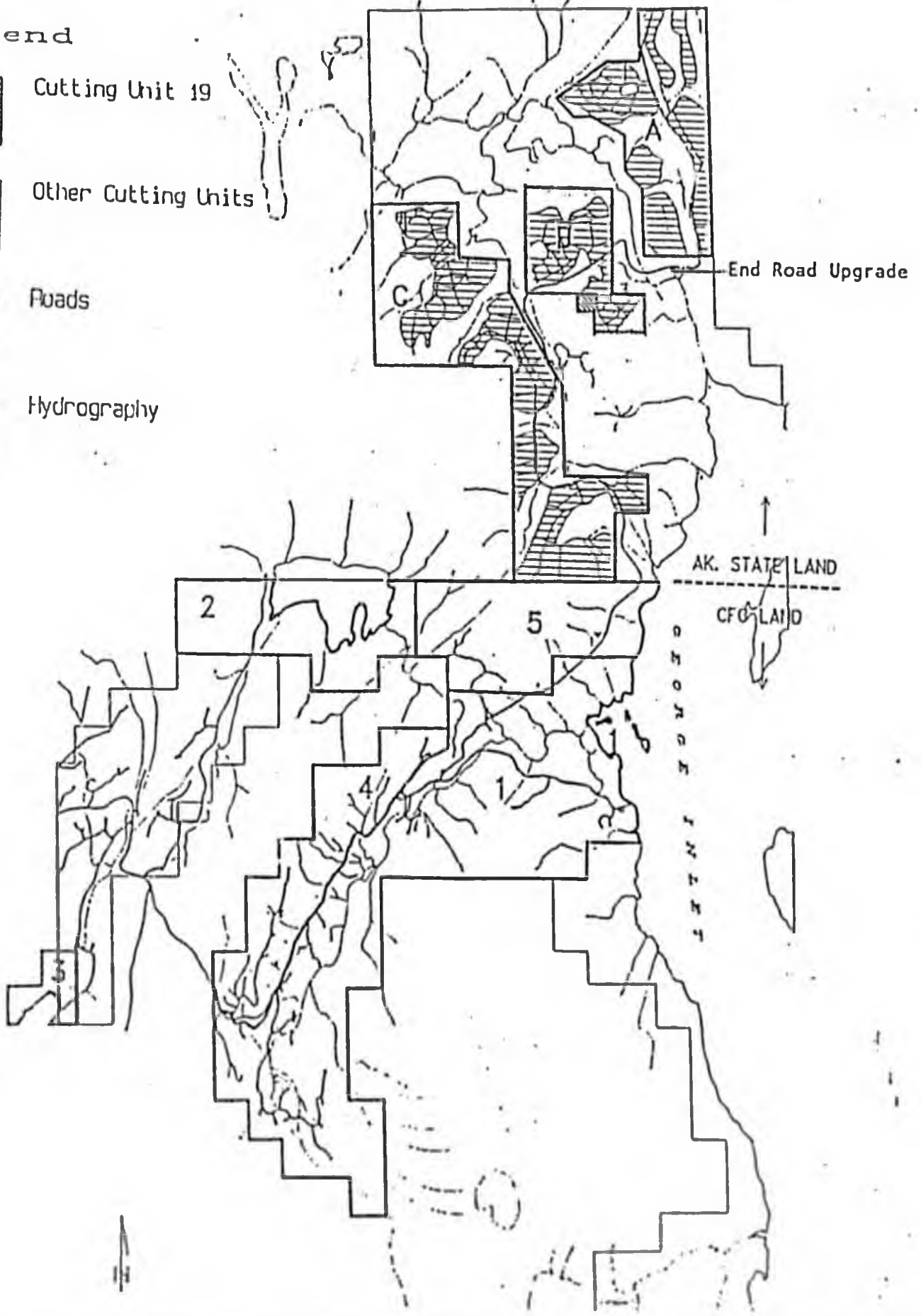
Other Cutting Units



Roads



Hydrography



To House Resources	From Tracy Abell
Co. Committee	Co.
Dept.	Phone #
Fax # 465-3444	Fax #

5/6/92

Testimony by Tracy Abell
on SB 465 & HB 578 (Leask Lakes Land Trade)
in the House Resources Committee

Mr. Chairman and members of the committee, I am Tracy Abell, and I am here speaking for myself.

I am opposed to SB 465 and HB 578. I believe that the Alaska Department of Natural Resources's proposal to trade the undeveloped Leask Lakes acreage for the heavily-logged White River lands is contrary to the interests of the people of Alaska. It is senseless to trade pristine state land for private land that has been clearcut without regard for sustained yield. From a public policy viewpoint, it is not a good idea to trade trees for stumps.

The Leask Lakes area is valuable not only for its lumber but also as fish and wildlife habitat. If the state were to trade this land, there would be significant decreases in the populations of various species, including a 71% decrease in deer numbers on the state traded land. The White River lands have already experienced significant habitat loss due to clearcutting and logging the state land would intensify the already existing problem.

The justification for this proposed trade is that the White River lands will be accessible for recreational purposes because of the logging roads that are left behind. Clearcut areas have no recreational value and it is highly unlikely that these lands will attract tourists. Even if a person wished to travel on these residual logging roads, they would be impassable without ongoing road maintenance. There is no provision for maintenance and if the state commits to this trade, it will also be committing to ongoing funding. If the state is concerned about providing more recreational acreage, it should apply its efforts to the Leask Lakes area that has true recreational value.

I am concerned that the DNR has not followed proper procedures with this proposed trade. It is my understanding that no final appraisal has been made available to the public. I don't think the people of Alaska are getting a fair deal when there are negotiations to trade away our land in a questionable procedure.

If the state goes through with this trade, it will be setting a very bad precedent. This trade would send a clear message to the corporations telling them they can trade their land in to the state after they've drained it of its resources. This would remove any incentives for the private corporations to manage their resources in a sustainable manner. The trade would encourage rapid resource extraction without concern for the future.

STATE OF ALASKA - CAPE FOX CORPORATION
LAND EXCHANGE

The Tongass Conservation Society and the Southeast Alaska Conservation Council oppose the State of Alaska -Cape Fox Corporation land exchange. They have made statements and allegations which are untrue.

ALLEGATION

FACTS

The exchange is "Instant development, Wally Hickel style."

The exchange was initiated in 1989 during the Cowper Administration.

Although SB 465 and HB 578 were introduced by the Governor's office, they originate from the State DNR, Ketchikan Gateway Borough and Cape Fox Land Exchange Agreement. This is a 3 way public/private partnership that has worked for three years to accomplish this exchange.

It is bad public policy and a waste of valuable State resources to exchange forested land for previously harvested land.

The Ketchikan Gateway Borough requested that the tract containing the majority of harvested land be included in the exchange. The purpose is for long range public land management planning.

The U.S. Forest Service recently completed a land exchange with Goldbelt, Inc., a Native village corporation. A large portion of the land which the USFS acquired had been logged by Goldbelt.

The Forest Service is currently negotiating a land exchange with Kootznoowoo Inc., a Native village corporation. In this exchange the Forest Service would also receive a significant acreage of logged land.

The Forest Service contracted the Institute of Social and Economic Research, University of Alaska Anchorage to study

ALLEGATION

FACTS

All of the high value old growth forest in the Cape Fox parcel has been clearcut and only marginally economic timber remains. The White River has no recreation, fish or wildlife value.

the potential for acquisition of private timber land, land that has been harvested. The U.S. Congress directed the Forest Service to conduct the study and to consider acquiring additional harvested land.

Harvested land is at its lowest monetary value immediately following and up to 15 years after harvest has been completed. This is the time to acquire land at lowest cost to the public.

Harvested land will recover rapidly. Forests in Southeast regenerate naturally.

38 million board feet of timber are on the Cape Fox land offered for exchange. The percentage of Sitka spruce, the preferred commercial species, in the White River is 35%, higher than average for southern Southeast.

Only 24%, approximately 950 acres, was harvested by Cape Fox. The remainder of the harvested area, 87 acres, was a result of the Swan Lake power line. 3,366 acres remain in their natural or old growth condition.

The White River contains 23,000+ sq. meters of fish habitat.

A retired Alaska Department of Fish and Game commercial and sportfish biologist, Don Seidman, surveyed and inspected the White River in 1989. He concluded, based on a 1976 ADFG survey of the White River, that the river since 1976. Cape Fox did not receive title to the White River until 1979 and did not log until 1981. He was of the opinion that there is significant sportfish potential

ALLEGATION

The exchange will destroy habitat and ADFG predicts a 68% decline in the deer population and a parallel decline in other species.

in the White River.
FACTS

Anadromous fish habitat will not be effected. 90% of this habitat will remain in State ownership. The remaining 10% to go into Cape Fox ownership will be protected by Forest Practices Act provisions for stream buffers.

There will be effects on and changes to wildlife habitat. There will be a decline in deer population, particularly in severe winters. However, the ADFG prediction of a 68% decline, 97 deer, was calculated on only those areas in the Leask Lake area proposed for timber harvest and over a 20 year period. When the entire land area of Leask Lake is considered the decline is estimated to be 45% over 20 years. When the Cape Fox exchange parcels, which are contiguous to the State land, are included the decline is estimated to be 35% over 20 years. No analysis has been conducted on other wildlife species.

Without the exchange, wildlife habitat in the White River tract and other Cape Fox land in the exchange will be completely effected as Cape Fox harvests all commercial timber not protected by the Forest Practices Act.

ALLEGATION

FACTS

The appraisal has not been accepted and is not suitable for public review because the public could not understand it.

The 3 parties to the exchange reviewed the appraisal document, understood it and accepted the results. Two parties, Cape Fox and the Borough, accepted the draft as written. DNR accepted the results but requested text clarification. The appraisal has been finalized and signed by an MAI appraiser.

The value of the State properties was reduced through bookkeeping. State timber was discounted over two years while Cape Fox timber was discounted over 1 year.

The timber appraiser separated timber into logical harvest operations for both ownerships and discounted using standard accounting techniques and knowledge of the current market.

The State is giving away 958 acres of land for \$71 an acre.

The land in question is predominantly muskeg and non-commercial timber land that is not included in areas proposed for timber harvest. In these areas Cape Fox has agreed to accept restricted development rights. The land may not be subdivided and can only be used for roads, soil and wood waste disposal and limited staging areas to facilitate the proposed timber harvest. These uses will be reviewed and approved by DNR. The land in question will be open to public use. The remaining 1377 acres is valued as commercial timber land with an approximate value of \$7,500 per acre.

There are other alternatives to finance and build a road into the Leask Lake tract. The U.S. Forest Service has publicly stated that if this exchange is not successful that they will build a road into the area.

In a recent memo to The Ketchikan Gateway Borough Forest Supervisor Dave Rittenhouse clearly states that the Forest Service does not have plans to construct such a road nor do they intend to propose such. He also states that funding for this would be virtually impossible to obtain.

ALLEGATION

The exchange would eliminate prime recreation areas and have extensive visual impacts to the lakes.

The deer study is self serving and is suspect because Cape Fox contracted the work.

FACTS

The Leask Lake tract is a typical Southeast forest full of brush and windfalls. There are no recreation amenities other than the lakes, streams and their immediate surroundings in the tract.

The lakes and streams are the recreation resources of the area and have buffers of at least 500' and in many cases 1000' where timber harvest is proposed. North and west of the lakes timber harvest is not proposed.

A benefit of the exchange would be the creation of road access to the boundary of the Naha River roadless area. The Naha River area is managed by the Forest Service and is comprised of 32,000 acres of old growth forest, Forest Service recreation cabins and trails, 5 large lakes and sportfishing including steelhead trout and salmon.

Cape Fox conducted a visual analysis of the proposed timber harvest using the U.S. Forest Service Visual Management System. The proposed harvest meets or exceeds the U.S.F.S. visual management standards.

The study was conducted by America North Inc., a professional consulting firm. Please see the attached memo from America North.



America North/EMCON, Inc.

Environmental Consulting & Engineering • Health & Safety

April 14, 1992

Senator Lloyd Jones, Chairman
Senate Resources Committee
Juneau, Alaska 99801-1182
(FAX) 465-3922

RE: Senate Bill No. 465; House Bill No. 578

Dear Senator Jones:

This letter is in response to testimony provided to your committee by Mr. Dave Katz of the Tongass Conservation Society with regards to the White River-Leask Lakes Land Exchange.

America North/EMCON, Inc. (formerly America North Inc.) completed an evaluation of the effects of timber harvest on deer in the Leask Lakes area for the Cape Fox Corporation (CFC) in 1991. Mr. Katz has repeatedly discredited this report in the press, public hearings, and most recently before your committee. His primary allegation stems upon his belief that since CFC paid for the deer study it is flawed and should not be considered credible.

As a reputable and credible environmental consulting firm, AN/E strives to provide its clients with objective studies and reports. Our staff opinions cannot be bought nor altered to suit a client's need. Clearly, a scientific consulting firm which works for both private industry and state and federal agencies would not be in business for any period of time if its clients were able to sway or buy the consulting firm's findings.

The CFC contracted with AN/E to obtain our professional opinion and have never requested we alter our findings to reflect more positively on their proposal. AN/E has found the CFC to be a responsible and objective client who asked for nothing but professionalism and objectivity. Our staff and subcontractors worked hard to meet their expectations, and we stand behind the report and its conclusions.

Sincerely,
America North/EMCON, Inc.

Lisa Haas, CEO

Cheryl Moody, Project Manager

cc: House Finance Committee
House Resources Committee
Senate Finance Committee
Cape Fox Corporation

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND

**Proposed Exchange With Cape Fox Corporation
ADL No. 105565**

**REPORT ON PROPOSED
LAND EXCHANGE**

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ADL NO. 105565**

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**DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND**

**Proposed Exchange with Cape Fox Corporation
ADL No. 105565**

REPORT ON PROPOSED LAND EXCHANGE

I. Introduction

This report is prepared pursuant to Alaska Statutes (AS) 38.50.130 for a proposed land exchange between the State of Alaska and Cape Fox Corporation, a Village Corporation established under the Alaska Native Claims Settlement Act (PL 92-203). The report discusses the objectives of the exchange, the physical aspects of the land involved in the exchange, the appraised fair market value of each tract, the benefits and detriments which can be expected to accrue, and alternatives to the proposed exchange. A summary of information and comments received through the public hearing process are incorporated in this report.

A draft of this exchange report was distributed for public review on February 10, 1992. Public comments have resulted in several modifications to the exchange agreement. Public comments and information acquired during public review have resulted in some changes and updates to this exchange report. The draft report included sixteen attachments that totalled over 250 pages. Rather than reproduce these attachments, they are incorporated into this final report by reference. Copies of the attachments are available from the DNR Southeast Regional Office.

Supplemental information attached to this report includes the Final Exchange Agreement, attached hereto.

II. Proposed Action, Maps and Legal Description

Through this proposed exchange, Cape Fox Corporation (CFC) would acquire 2,335 acres of the state's land (surface) estate less rights to sand, gravel, and rock, near Leask Lake, in exchange for an equal value from CFC's 4,366 acre surface estate at White River, Lake Harriet Hunt, and Talbot Lake (see attachment "A" and "B" and Map 1 to the Final Exchange Agreement for the location and legal description of proposed exchange areas). The state and CFC parcels are located near Upper George Inlet on Revillagigedo Island north of Ketchikan.

CFC would acquire lands with at least 30,000,000 board feet (30,000 Mb $\text{\textcircled{f}}$) of harvestable commercial timber. The Department of Natural Resources (DNR) would restrict cutting of timber and development on over 40% of the land proposed for conveyance to CFC. These Leask Lake parcels would be conveyed to CFC with a restriction that requires all non-harvested areas to

Proposed Exchange with Cape Fox Corporation

remain as permanent open space. In the proposed exchange, CFC is required to upgrade the existing White River and proposed Leask Lake roads to recreation standards. Conveyance of an equal value amount of state land will be deferred until substantial portions of the required upgrades have been completed.

III. Objectives

Primary state objectives are: 1) to acquire lands in the vicinity of White River and Lake Harriet Hunt to provide greater opportunities for roaded recreation in the Ketchikan area, while attempting to minimize adverse impacts, and 2) to acquire additional resource lands.

IV. Authority

Land Exchange Statutes and Regulations; AS 38.50 (11 AAC 67.200-280). AS 38.50.010, allows the Director, with the concurrence of the commissioner, to dispose of state land or interest in land by exchanging it for land, interest in land, or other consideration for: 1) the purpose of consolidating state land holdings, 2) creating land ownership and use patterns which will permit more effective administration of state public domain, 3) facilitating other objectives or state programs, or 4) other public purposes. AS 38.50.040, authorizes the Director to exchange any state land or interest in land regardless of the authority under which the land or interest was obtained by the state.

Other statutes and regulations: AS 38.05.185 (11 AAC 86.135) - Mineral Closing Orders. AS 38.05.035(e) - Findings. AS 38.05.945, AS 38.50.110, 11 AAC 02.010-.080 - Public Notice. AS 38.04.065 (11 AAC 55.040(i)(4) - Planning and Classification.

V. Administrative Record

The administrative record consists of case file ADL 105565, and DNR, Division of Land, Southeast Region Office (SERO) state selection file NFCG-143. Incorporated by reference are: Alaska statutes and regulations.

VI. Background

The proposed exchange area is located approximately 10 miles north of Ketchikan. Although the application now under consideration was accepted by DNR in March of 1991, CFC interest to exchange dates back to 1977. On November 18, 1980 the state actually amended its Upper George Inlet selection (NFCG-143) to add lands at Leask Lake to accommodate a possible

Proposed Exchange with Cape Fox Corporation

exchange. A "memorandum of understanding" for CFC's earlier proposal was developed in 1982 but was never executed. The initial exchange proposal died due to its complexity, personnel changes within the Division of Land, and lack support by key personnel within the Division of Land's Southeast office.

Several attempts were later made by CFC to revive the exchange, but it was not until 1989 that another serious attempt was mounted. At that time CFC supported by a resolution of the Ketchikan Area State Parks Advisory Board wrote the state. This was followed by several letters from the public indicating concern over the inclusion of Leask Lake.

Due to the controversy associated with this proposal, DNR asked the Ketchikan Gateway Borough (KGB) to assemble a work group consisting of agency representatives and interest groups to explore alternatives, and return a recommendation. Although DNR knew there was support for acquisition of the White River corridor, it was not clear whether to include state land at Leask Lake. The department did not want to pursue a new proposal without additional direction and indication of community support.

KGB's Assembly directed its Planning Department to identify and evaluate alternatives. If Leask Lake appeared to be the best alternative, the planning department was directed to develop a consensus approach that would include the best features of various proposals involving that area. A community survey to determine residents' recreational needs and attitudes was performed by the McDowell Group as part of the study. The Planning Department report, which contained five alternatives, was submitted to the Assembly for review and selection of a preferred alternative. The Assembly selected the "Timber/Environment" alternative which involved the state's Leask Lake lands.

The report, accompanied by Borough Assembly Resolution No. 954 recommending an exchange between CFC and the state, was submitted by CFC to the state as a part of its exchange application package. At the time of submittal, KGB felt the Timber/Environment alternative, a variant of the original CFC exchange proposal, best recognized the expressed public desires for additional recreation areas and road access while protecting and managing fish and wildlife habitat. DNR generally agreed, and felt that criticisms leveled at the Borough process could be resolved through its own agency and public review processes.

DNR proceeded with distribution of the exchange package to agencies and interested parties for first review on April 21, 1991. Comments were consolidated and forwarded to DNR's Director of the Division of Land. On May 22, 1991 Division Director Gustafson executed and forwarded to CFC a

Proposed Exchange with Cape Fox Corporation

letter indicating the state's interest in negotiate a preliminary land exchange agreement under 11 AAC 67.230 with two conditions: 1) written clarification of Sealaska's position relative to inclusion of its subsurface estate in the proposed exchange; and 2) submission of CFC's written analysis of alternatives to the state timber land near Leask Lake. The state received Sealaska's confidential response on May 31, 1991, and CFC's response as to alternatives on June 26, 1991. Sealaska also reviewed and concurred in the language developed for Section XIII of this document.

An environmental assessment was completed by DNR on June 27, 1991. The assessment revealed no significant environmental contamination or unauthorized activity on state or CFC land.

DNR in cooperation with CFC, and KGB then developed a Preliminary Exchange Agreement (PEA). At the request of KGB, a parcel of CFC land at Talbot Lake was added to this PEA. The PEA executed by Director Gustafson on July 1, 1991 and accompanied by the letter of intent and comments generated from the initial review, were forwarded to agencies and interested parties on July 3, 1991. A copy of "Cape Fox Corporation Leask Lakes-White River Land Exchange Deer Winter Habitat Evaluation" was later received, and circulated by DNR on September 6, 1991. The State of Alaska Department of Fish and Game (ADF&G) also reviewed the resource matrix and deer study. ADF&G and ANI persone. met in Anchorage to resolve data differences. The table in XVI.D. represents data created from that meeting.

Request for Proposals for a Timber Cruise of the state's Leask Lake parcels, and appraisal of all exchange parcels was jointly developed by DNR, CFC and KGB. The timber cruise contract was awarded to Klukwan Forest Products. Don Karabelnikoff of Karabelnikoff and Associates was awarded the contract to appraise both state and CFC properties. To help, Mr. Karabelnikoff retained additional professional appraisal support from Calvin L. Kerr of Kerr and Associates (logging methods and timber values), Michael L. Robbins, and Charles Horan.

An updated and rough summary of resources by acreage together with Klukwan Forest Products, Inc. estimates of timber remaining on CFC exchange parcels was received and forwarded to Alaska Department of Fish and Game's Ketchikan office on September 8, 1991. On September 10, a DNR representative met with Tongass Conservation Society's (TCS) attorney Gregg Cook to discuss the exchange and provide information requested by TCS in earlier correspondence.

Results of the cruise of timber at Leask Lakes were received by DNR on September 20, 1991. The area was later modified to add the Leask Lake

Proposed Exchange with Cape Fox Corporation

Right-of-Way and Unit 19 timber. An extract from Klukwan Forest Products, Inc. estimates of Timber, and Kerr's estimates of logging costs and timber values for both the state and CFC lands can be viewed in Attachment - "F" to the original exchange report. These values have since been adjusted for additional Leask lands removed from the conveyance and lands placed in open space.

VII. Physical Characteristics

Physical characteristics of the land involved in the exchange, including the surface and mineral resources are addressed below. A matrix describing acreages of generalized land types in the exchange can be found in Attachment - "E" of the original report, although the data shown for Talbot Lake is not reliable. The appraisal document, not attached as a part of this document, also contains an expanded analysis of social and economic factors.

Available data indicates little or no commercial potential for minerals or the extraction of rock, sand or gravel on state or CFC lands proposed for exchange. state lands involved are now open to mineral entry, but DNR intends to close to mining and mineral entry the state lands involved in the exchange.

CFC lands proposed for exchange contain an estimated 37,984 Mbf of timber, consisting of 29% spruce, 49% hemlock, and 22% cedar. Operable acres is estimated at 2,273 (16.7 Mbf/acre) acres or about 52% of the CFC land.

Original State lands proposed for exchange and cutting contain an estimated 42,642 Mbf of timber, consisting of 19.1% spruce, 75.9% hemlock, and 4.0% cedar. This was based on 1500 acres or 61% of the state land. Additional portions of the state lands are timbered but will be conveyed subject to a restriction limiting development activities. The acreage scheduled to be conveyed and amount of timber scheduled to be cut has been adjusted downward for reasons covered later in this document. Actual cut will be reduced to approximately 40,000Mbf and approximately 1350 acres.

Please see Attachment - "F" for the original detailed summaries of timber by area, and Attachment - "D" for additional descriptive material. Both references are to attachments to the original report.

State Lands:

Leask Lake: The state land proposed for exchange at Leask Lakes consists of approximately 2,335 of 5,240 acres of unclassified state property. This

Proposed Exchange with Cape Fox Corporation

state land adjoins CFC's White River properties. The tracts consist essentially of undisturbed mature ("old growth") forest, primarily western hemlock, but with substantial amounts of spruce and cedar at specific locations. The terrain is generally rolling or broken. The lakes are relatively small and are bordered with extensive meadows and marshes. Leask Creek is approximately two miles long and runs through a narrow draw. The area includes a number of important habitat resources, with the aquatic resources focusing on the lakes, their tributaries, and Leask Creek which empties into Upper George Inlet to the east. Leask Lake is anadromous and includes runs of steelhead trout, and coho, sockeye, and pink salmon. Wetlands are extensive and scattered throughout the area, comprising important hydrologic features adjacent to the lakes and Leask Creek, as well as isolated palustrine types in upland forested areas.

The area possesses important scenic values, and offers a range of recreational (fishing, viewing, and hunting) and commercial forest opportunities. Although most of the area meets the preferred elevation criteria for wintering deer, low snow interception capacity in most of the commercially viable timber stands and low coverages of preferred winter forage species in closed canopy stands may limit deer use in these areas during moderate to severe winters.

The proposed layout for the timber cut on the state's Leask Lake land, has been modified to accommodate CFC recommendations on the deer study completed by America North Inc., but does not address all aspects of the "old growth" issues. It does offer significant protection for fish streams, some critical deer winter range, travel paths, and recreation resources.

Archaeology: DNR's Division of Parks and Outdoor Recreation, Office of History and Archaeology was contacted and had no objection to the exchange. Although they indicated there was evidence of pre-historic use within the region, no known cultural sites were identified on the subject parcels.

CFC Lands:

The Cape fox Corporation land to be acquired by the state, totals 4,366 acres that are described as five parcels. Three of the parcels are contiguous tracts that encompass much of the White River drainage, the other two border Lake Harriet Hunt and Talbot Lake. Of the 4,366 acres the state is acquiring, approximately 1,000 acres are clear-cut, 2,000 acres are wetlands, and the remaining 1,300 acres contain varying amounts and types of timber.

Note: The Environmental Assessment section contains additional material to supplement descriptions of CFC tracts outlined below.

Proposed Exchange with Cape Fox Corporation

Map Area - 1; White River Valley: This area consists of 2,283 acres occupying the eastern portion of the valley of the White River, from its mouth at Upper George Inlet some 4.5 miles southwesterly to the national forest boundary near Brown Mountain. This property also includes the existing CFC White River Road, and approximately 250 acres of corporation land north of the road. The property is a broad valley containing a low gradient, low velocity stream having significant anadromous fish runs. Areas of previous timber harvest exist in the southern parts of the exchange area and along approximately 70 % of both sides of the White River. Approximately 21% of the area has been clear-cut. The remainder of the property includes scattered stands of spruce, hemlock, and cedar. Wetlands adjoin parts of the White River and significant portions of the areas to the east of the stream throughout its length, and to the north of the stream within three miles of its mouth at Upper George Inlet. Wetland types cover approximately 65% of this area. These wetlands are predominately of a palustrine type, but riverain wetlands occupy significant portions of the valley and provide hydrologic connections to White River. A number of important habitat areas occur along the stream, including waterfowl, fur bearers, as well as coho, chum, king, and pink salmon. White River has runs of steelhead and cut-throat trout and Dolly Varden. The area contains a log transfer site at George Inlet and beaches which are much in demand in Ketchikan.

Map Area - 2; Lake Harriet Hunt: This parcel consists of approximately 640 acres of land at and under Lake Harriet Hunt. This area is accessed by a state-maintained two-lane road. The area occupies the southern, eastern, and western portions of the area near Lake Harriet Hunt, and adjoins National Forest properties. The area is generally flat to moderately rolling. It consists of a mixture of wetland areas, mostly adjacent to the lake, and stands of hemlock, cedar, and spruce at the western and eastern boundaries of CFC's properties. The wetland types which, non-exclusive of the lake, cover 70% of the area include riverain, palustrine, and lacustrine. They are particularly extensive in the southern and southwestern areas of the parcel. Important habitat resources exist adjacent to the lake, associated with fur bearers and waterfowl populations. State land adjoins the Lake Harriet Hunt area immediately to the north, and this area has been proposed at various times for a state park. In addition, the Ketchikan Gateway Borough selected 600 acres of state land as part of its municipal land entitlement; this parcel is situated immediately west of the CFC holdings.

The area proposed for exchange is predominately level and open muskeg or non-commercial timber land. The area, including the lake, receive significant recreation use year round, including cross country skiing, snow machine use, ice skating, canoeing, boating, hiking, picnicking, swimming, camping and ATV use.

Proposed Exchange with Cape Fox Corporation

Map Area - 3; Talbot Lake: This area consists of 120 acres around and under Talbot Lake and is accessed from the by a single lane road and on the west by the old Ward Creek Trail. About 48% of the area is covered by open-growth commercial stands, the remainder is for the most part composed of wetland types, with relatively flat or rolling land to the northeast and east to relatively steep land to the west. The lake is quite small, but does represent some recreational opportunities, predominately picnicking and hiking. KGB has purchased timber rights previously sold by CFC to Klukwan Forest Products, Incorporated.

Map Area - 4; White River Second-growth: This area contains 650 acres, approximately 9% of which consists of wetland types. The land is steep, undulating or broken in the southeast portion, and steeply pitching southeast to the White River over the remainder. The area comprises the greater part of the western slopes of White River Valley. About 67% of the area has been clear-cut. Little of the remaining area represents important habitat. Protection of the White River road, including protection of the view shed after the slopes regenerate and continuity of management are the prime interests.

Map Area - 5; White River Hillside: This parcel consists of 673 acres of hillside and beaches located along the west shore of Upper George Inlet, and south of Leask Lake. The area is probably second only to Map Area-1 of the CFC properties in total resource values. Only 20% of this area has been clear-cut. Thirty-two percent of the area has recognized habitat potential for deer or fur bearers. The area also includes several small islands near the mouth of White River.

VIII. Appraised Values

The fair market appraised value of the five CFC parcels, after adjusting for 17 acres of timber in the northern forty already owned by KGB, and rounding is \$7,950,000. The three Leask Lake parcels, after adjustments removing 110 acres in cruise units 7 and 19, changing an additional 33 acres in these units from cut to "open space", and reducing the amount of road CFC will be responsible for constructing or upgrading by 10,500 feet, to 11.11 miles, were valued after rounding at \$7,950,000 (assuming there is no road fee associated with logging operations).

This was a complicated appraisal assignment for which the contract appraiser, Karabelnikoff and Associates, used a complex statistical analysis to arrive at values. The appraisal assignment was complicated because of several factors including: 1) only the surface estate is being appraised; 2) much of the land supports commercially valuable timber; 3) the state land to be transferred to CFC that is not designated for timber harvest is permanently reserved as "open space"; and 4) the proposed exchange requires the CFC to build roads suitable for public use.

Proposed Exchange with Cape Fox Corporation

The appraiser assumed that the highest and best use of the land is to log the timber and then make the land available for a wide range of recreational uses, including cabin sites and lodge operations. The appraiser, therefore, determined the net value of a logging operation, and then determined the residual value of the land after logging. The value of the subsurface estate was then deducted from the surface values. For the state tracts near Leask Lake, two significant deductions were made. First, residual land value was reduced due to the restriction that non-harvested areas remain as permanent open space, which adjusted the residual value of these tracts to 10% of their market value. In essence, the restrictions imposed on these parcels made them of limited value to CFC. Second, the costs of the road upgrade are deducted from the total appraised value of the state land and timber. The summary of values for each parcel is shown below.

CAPE FOX PARCELS

	-1-	-2-	-3-	-4-	-5-
Timber Value	\$2,700,000	\$408,000	\$102,000	\$45,000	\$2,141,000
Residual Land Value +	\$1,438,290	\$650,080	\$68,409	\$165,100	\$278,622
Subsurface Adj.	\$14,383	\$6,501	\$684	\$1,651	\$2,786
Final Value =	\$4,123,907	\$1,051,579	\$169,725	\$208,449	\$2,416,836
Total Original Value of Cape Fox Parcels:					\$7,970,496
Less 17 ac. of KGB timber (Talbot Lake)					- 20,389
Total Adjusted Value of Cape Fox Parcels:					= \$7,950,107
Rounded:					\$7,950,000

LEASK LAKE PARCELS

	Original w/Road Fee	Orig w/o Road Fee	Adj w/o Road Fee
Timber Value	\$ 9,411,000	\$ 9,828,042	\$ 9,090,000
Residual Land Value	\$ 1,775,224	\$ 1,775,224	
Subsurface Adj.	\$ 17,752	\$ 17,752	
Open Space Adj.	\$ 636,781	\$ 636,781	
Real Estate Value =	\$10,531,691	\$10,948,733	\$10,124,988
Extra Road Cost	\$ 2,529,000	\$ 2,529,000	\$ 2,171,045
Final Value	\$ 8,002,691	\$ 8,419,733	\$ 7,953,943
Rounded:			\$ 7,950,000

Proposed Exchange with Cape Fox Corporation

Public review and comments have lead to changes in the specific configuration of the exchange, ultimately affecting final dollar values of the exchange. The appraiser organized the data to accommodate such adjustments. Adjustments have been made to compensats for less road upgrades, less cutting, and elimination of acreage to be conveyed to CFC. Existing data indicates the exchange as proposed in the Final Exchange Agreement to be of equal value.

DNR and an independent appraiser have thoroughly reviewed the draft appraisal and found the values to be generally correct. Much of the value of the appraised parcels are derived from timber and road construction values, which DNR finds acceptable. The residual land values were arrived at through the use of a complex statistical analysis. This analysis, while statistically valid, is not widely accepted in the appraisal community. Both the timber and land appraisals have been adjusted for modifications that result from the public review process. Final values have been incorporated in the Final Exchange Agreement.

IX. Benefits and Detriments

There are social, economic, and environmental benefits and detriments (adverse impacts) that may be derived from the exchange.

The exchange would increase public opportunities for roadside recreation in the Ketchikan area by adding approximately 11.11 miles of road; an increase of about 25%. Over both the short and long term, the exchange would provide the opportunity for additional state ownership of important recreation and habitat resources. For the most part, negative aspects of the trade are confined to the community benefitted. Although it is possible that the roads desired could be built and/or upgraded by other means, it is doubtful given declining state revenues. The existing roads in their current condition or ownership would not provide the public legal or safe access to CFC lands. The state has retained the option so that if the road upgrades are not accomplished, the amount of state lands committed to the exchange will be reduced accordingly. If the state did the upgrades the commitment of state lands could be reduced by about 274 acres.

Additional logging that results from the exchange will provide temporary jobs. Because of the nature of CFC, much of the logging proceeds are expected to recirculate within the community and positively affect the local economy. Acquisition by the state of Areas 1 and 5 will offer opportunity for additional protection of the remaining timbered areas along the mouth of White River and adjacent hillside, protecting both important habitat and views from George Inlet. The exchange should remove obstacles to support for more permanent protection, such as a legislative designation, of the remaining Leask Lake land, and state lands adjacent to the Salt Chuck. After the exchange, the state will still own 2,905 acres around Leask Lakes and additional lands in and around the Salt Chuck.

Proposed Exchange with Cape Fox Corporation

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Proposed Exchange with Cape Fox Corporation

Some adverse affects or impacts can also be expected. "Old growth" forest land will be fragmented. The exchange would consolidate public ownership at White River, but at the same time fragment ownership near Leask Lake. Opening additional lands to public use, with or without adequate management, can have adverse impacts. The recreation and use of Leask Lake as a natural ecosystem would be altered, and the existing wilderness experience although not entirely lost would be reduced or further removed. Although work has been done to protect aesthetics in the Leask Lake area, it is expected that some of the clear cuts will be observable from the lake. Deer, and "interior forest" species, e.g. martin, although not expected to be lost, can be expected to decline. The significance of the impact of timber cutting on deer is expected to increase during moderate to severe winters (please see Attachment - "G" to the draft report and Section XVI.D. of this report). Numbers and resultant viewing opportunities could be affected by timber cutting and increased human access. The need for more intensive and costly wildlife and road management will likely increase as human use of the area intensifies. Hunting bag limits may have to be altered. Maintenance money for roads, bridges, and other service facilities will have to be provided. Without funding for maintenance (see Attachment - "I") estimated at \$20,000-\$30,000 per year, acquisition of CFC lands will not ensure that road access will be maintained. If the roads are not upgraded and maintained they will probably be closed. DNR does not have the funds needed to maintain the roads, and would more likely look to the Borough to provide those services.

X. Alternatives

AS 38.50.100 requires that, the director consider other alternatives to achieve the objectives of the proposed exchange in an effort to determine whether the proposed exchange will best serve the public interest. In making this determination, the director is required to consider, among other things, the advantages and disadvantages of acquiring the land or interest in land for the state by means of purchase, lease, selection or condemnation.

A. Purchase: This option would be acceptable to Cape Fox Corporation, but would cost the state almost \$8,000,000 without upgrade of the White River road or construction of the road to Leask Lake. If, however, another way to build public roads could be found, this alternative would provide many of the other exchange benefits with less impact on the Leask Lake area. Timber harvest would likely be much lighter. Ownership patterns would be consolidated without fragmentation of the Leask Lake parcel. Physical access comparable to that proposed by the exchange would require additional funding. Because of declining state budgets, a legislative appropriation for outright purchase is considered unlikely. There is also a feeling that protection of the White River, Lake Harriet Hunt and other CFC land should

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involve some level of sacrifice by the community benefitted.

B. Lease: A lease of all CFC lands involved in the exchange, assuming 8% rental would cost the state approximately \$640,000 per year, without addressing the necessary road upgrades. This option is not practical for many of the same reasons addressed in "A". Furthermore, under this option, the state would never acquire ownership of the CFC land.

C. Selection: This is not an option. The state cannot select lands either interim conveyed or patented to CFC. Selecting other federal land to exchange to CFC is also not an option. The state has used most of its National Forest Selection entitlement, and cannot select land from the National Forest for timber alone, which is the type of land Cape Fox is interested in (Please also refer to Section X, Subsection I);

D. Condemnation: DNR's authority to condemn land is limited to providing access to its resources, e.g. timber. Although the Department of Transportation and Public Facilities has broader powers and could possibly condemn the road corridor it has indicated no interest in owning or managing the White River road. DOT/PF could not condemn adjacent CFC lands which the community desires for public use. All condemnations require payment of "fair market value", and considering CFC's willingness to sell, condemnation is unnecessary. Condemnation, even if an available option, would still require the state to purchase the land, see A (Purchase) above.

E. Trade Timber Rights on State Lands Only: Trading only timber rights on state land at Leask Lake, appeared to be a solution more acceptable to parties both generally supportive and opposed to inclusion of Leask Lake lands in the exchange. Although this solution would diminish the value of the state lands exchanged, it would also prevent the fragmentation of ownership of the state's Leask Lake parcel. However, there are significant problems with this approach. If the land remained in state ownership, CFC's timber harvest would be subject to the Annual Allowable Cut requirements needed for the state to manage at a sustained yield harvest rate. This could make harvesting and the exchange uneconomical for CFC. Furthermore, other recent attempts by the state to separate timber from the other bundle of property rights has lead to litigation. This is not a practical alternative.

F. Exchange as Proposed in the Preliminary Exchange Agreement (PEA): This proposal would achieve the objective of state ownership of the CFC land and resources but does not address road upgrades and thus would not provide assurance of timely physical access to the acquired lands. However it would reduce the state timber and lands scheduled for conveyance by about 30%.

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G. Modified Leask Lake Exchange Proposal: This is the current proposal. DNR has modified the exchange proposed in the PEA to: 1) require upgrade by CFC of both the existing White River Road and the proposed road to Leask Lake to recreation standards; 2) reduced the acreage and timber volume and adjusted the cutting pattern to better conform to CFC's recommended modifications to the deer study; 3) added a provision to ensure that the road upgrades are provided before state timber or lands that fund the upgrades can be cut or title conveyed; 4) added a provision that would allow the state or its agent to accomplish the road upgrades and reduced the amount of state acreage committed to the exchange accordingly for doing so; and 5) added language to ensure that CFC rights to use the DEC permitted waste disposal site (#9113-BA012) and state tideland leases (#'s: 100898 and 105135) adjacent to the Log Transfer Facility at Upper George Inlet terminate consistent with the intent of the PEA as it applies to the use of the LTF, and that disposal of waste on the DEC permit area is restricted to that generated from the long transfer facility. DNR also removed an additional 40 acres, and placed another 13.5 acres south of Leask Lake into Open Space to provide protection for additional viewshed.

H. No Action Scenario: Until recently, and with few exceptions, "no action" has been the state's position since 1977. In light of CFC and Borough (community) efforts, a decision to take no action would disappoint both the Borough and CFC, with possible serious economic consequences to CFC. It would put the community no closer to achieving goals indicated by KGB's public survey, and may actually reduce support which appears to be building for legislative designation of the Salt Chuck at Upper George Inlet as a "Critical Habitat Area." Removal of Leask Lake from the exchange could also expose the area to consideration for inclusion in one or more outstanding settlements (such as the Mental Health Trust Lands) or selection by KGB should it receive additional entitlement. A no action scenario would most likely lead to additional cutting on CFC lands.

I. Other Access Alternatives: Several access alternatives have been considered. These include Forest Service proposals using either logging receipts and/or a combination of logging receipts and "hard money" for design and construction. DOT/PF has also contracted a study of possible transportation corridors for Revillagidedo Island (see Attachment - "O" of the original report for some of the alignments). This study may have been precipitated by a desire to intertie the Tyee and Swan Lake Hydro Projects.

Although DOT/PF may favor routes to the west and north of Lake Harriet Hunt, and these would be fine for accessing Leask Lake, neither provide desired roaded access to White River, and Upper George Inlet. DOT/PF proposal H&K (see Attachment - "O" of the original report) which for the most part parallels the KGB/CFC alignment, best achieves access to both of these areas.

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DOT/PF's proposal (see Attachment - "O" to the original report) which would connect Ketchikan to the Bradfield Canal near the Tyee Hydropower Project, carries a price tag of up to \$150,000,000 or about \$1,000,000 per mile. If funds were limited, and the KGB/CFC proposed roads were in place, attention could be focused on stretches of road beyond Leask Lake, eliminating the immediate need for construction of the first eleven miles from Ketchikan, and deleting or deferring the need for almost \$11,000,000 required to provide the Ketchikan connection from its intersection with the proposed Leask Lake recreation road.

Any road dissecting rather than skirting the Naha, a U.S. Forest Service LUD II area, could be expected to encounter opposition. Although the Forest Service alignment running north of Lake Harriet Hunt best accesses its lands, the KGB/CFC alignment proposed in Alternative "G" (see Map 1, attached to the Final Exchange Agreement) provides the best access to lands now in state ownership or proposed for state ownership, and could act as a recreation loop if a better road is later constructed using DOT/PF's interior alignment.

J. Other Exchange Alternatives: Exchanges are difficult even when they are strongly supported and clearly benefit the areas involved in the exchange. The small amount of non-trust land in Southeast Alaska in state ownership, coupled with the high demand for its lands, e.g. need for lands for University of Alaska and Mental Health settlements, etc., adds to the difficulty. Alternatives (see Attachment - "K" to the original decision) were explored by CFC and the Borough, and Leask Lake was determined to be the only suitable site, and more importantly the only site of further interest to CFC. Although an attempt was made to interest CFC in timber rights in the Thorne Bay area, it indicated that it was clearly not interested because the more valuable timber in the Thorne Bay parcel has already been cut. KGB does own a stand of timber located at Whipple Creek estimated to contain approximately 15.3 million board feet. KGB, however, feels that there are problems which need to be addressed and is not willing to commit substantial amounts of this resource to an exchange at this time. It is likely that in addition to the problems that need to be worked out, that the Borough perceives these lands as not great enough to accommodate the primary objectives of the exchange but may be substantial enough to generate funds necessary to manage the lands ultimately acquired from the state exchange. This could be extremely important, given predictions again of diminished state revenue.

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XI. Public Access

Public access to all major water bodies and courses in the area are expected to be enhanced by the exchange. Roaded access to White River and Upper George Inlet, now possible only with the consent of CFC, would be controlled by the state or its assignee. A road to the vicinity of Leask Lake will also be added. One may expect vehicular access by the general public to be curtailed until the roads are actually upgraded, and curtailed and or restricted during periods of major construction and/or logging. The exchange, and upgrade of the roads will not only provide access closer to Leask Lake, but also to and along the shores of Upper George Inlet both north and south of the existing CFC log transfer facility.

Regardless of the roaded access, legal public access to all the parcels acquired by the state, including the White River Valley and Lake Harriet Hunt, will result from the exchange. Portions of Lake Harriet Hunt, now controlled by CFC, would pass to the state. Legal and physical access to Talbot Lake will also be provided.

XII. Classification and Planning

The state's Leask Lake parcel is neither classified nor covered by a state area plan. However, neither is required by state statutes or regulations for an exchange. All areas covered by the proposed exchange are within the Ketchikan Gateway Borough and covered by its approved Comprehensive and Alaska Coastal Zone Management plans. Future use of the land acquired by both the state and CFC, including the timber harvest on CFC land near Leask Lake, will be subject to the Coastal Management and comprehensive plans. The proposed exchange is consistent with these plans.

XIII. Subsurface (Mineral) Rights

The ownership of the surface and subsurface estate of the CFC parcels is split between the state and Sealaska Corporation respectively. AS 38.50.050 prevents the state from separating the surface estate of land from the mineral rights unless he finds that the separation of estate is necessitated by a prior separation of ownership (which exists in this situation) or that the conveyance or receipt of the surface or mineral estates, one without the other, is necessary to achieve a significant public purpose.

Acquiring lands in vicinity of White River and Lake Harriet Hunt to provide greater opportunities for roaded recreation and acquisition of additional resource lands are objectives with significant public purpose that will not be attained without the exchange. Equal value land exchanges for subsurface resources are difficult to accomplish due to the extreme problems of establishing subsurface values. Further, Sealaska is reluctant to reduce its

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land base which has much to do with their perception that the land is a heritage which should not be diminished. The problem and policy is evident even when dealing with small exchanges and sales. Although both the state, and Sealaska would prefer retaining the integrity of the estates, the state does not feel that it would be practical in this case and that the split of the estates is necessary and justified to meet objectives a with significant public purpose.

The state's acquisition of the surface estate, overlying Sealaska's subsurface estate, will not enhance or diminish any rights and interests of Sealaska as the subsurface owner. Sealaska shall have all rights of reasonable access, use and development of its subsurface. Sealaska's exercise of its rights as subsurface owner shall include reasonable protection of the state's surface estate and resources.

The potential for marketing and removal of large amounts of sand, gravel, rock and minerals is low, and that there are adequate ways to guide any removal to ensure reasonable protection of other surface resources.

XIV. Title

The state received Tentative Approval to the Leask Lake lands March 14, 1983. These lands were selected for community expansion and recreation under the National Forest Community Grant. CFC has patent to most of its lands and Interim conveyance to the remainder. Please see Attachment - "L" to the original report for a map indicating CFC status, and specific conveyance documents and title reports pertinent to both state and CFC properties.

XV. Environmental Assessment

An environmental assessment of all potential exchange lands was completed by the SERO on June 25, and 26, 1991. No major environmental contaminations or unauthorized uses were discovered on either the state or CFC land.

XVI. Issues

Primary issues are as follows:

A. Issue: Should the state commit land and "old growth" timber near Leask Lake to acquire one or more of the five parcels of CFC lands which includes some land where timber has been harvested?

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XI. Public Access

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Acquiring lands in vicinity of White River and Lake Harriet Hunt to provide greater opportunities for roaded recreation and acquisition of additional resource lands are objectives with significant public purpose that will not be attained without the exchange. Equal value land exchanges for subsurface resources are difficult to accomplish due to the extreme problems of establishing subsurface values. Further, Sealaska is reluctant to reduce its

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Discussion: Although deer, interior species, and the quality of a more remote experience can be affected by this trade, the total benefits to Ketchikan and the state are considered to outweigh detriments. The state would gain access or control over almost twice as much surface estate, and although differently configured, almost as much timber as it would give up. About one-fourth (1,000 acres) of the CFC lands have been harvested, the remainder includes valuable timber land and wetlands that support a variety of recreation, fish and wildlife resources. The cut-over land in time will be reforested, making it even more valuable.

B. Issue: Although the exchange will consolidate ownership and grant the state control of more acreage, it will also fragment ownership near Leask Lake.

Discussion: Fragmentation of Leask Lake lands is considered one of the undesirable results of the exchange proposal. It is, however, off-set by consolidation into state ownership of the surface estate of the White River lands which are more accessible and useable to the public. Although there were ways to reduce the fragmentation on state lands, attempts to minimize habitat impacts, with special attention to fish and deer were considered more important. From a habitat perspective, the fragmentation is preferred over conveyance of a larger contiguous block. A larger block would likely include valuable riparian areas.

C. Issue: In light of other possible alternatives for providing access to the Leask Lakes area, is it worth the estimated \$2,500,000 to upgrade the roads now; particularly with no assurance from CFC that the upgrades will occur in the near future?

Discussion: Considering continuing state budget shortages and the lack of any Forest Service plans to construct roads, this exchange is the most viable means of providing access to the Leask Lakes area and other recreation land. Although DNR would have preferred a condition requiring CFC to provide the roads immediately, it also understands that CFC's actions are dependent on market forces. Although under the agreement CFC has ten years to log and build the roads, CFC intends to market the timber as soon as practicable. CFC anticipates that roads should be constructed and available for access within three to five years. The state has retained the opportunity, to accomplish the upgrades and reduce the resources scheduled for conveyance to CFC accordingly. Although there are many other access proposals, there are none that can be depended on at this time, nor that could be expected to be designed and constructed in less than three to four years.

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There are also different places the proposed Leask Lake road could be terminated to reduce the amount and cost of road construction. Terminating the road four miles south of the state's northern boundary, and east of Leask Lake would save about \$720,000. This would translate into about 90 acres of state land, and 2,600,000 board feet of timber that would not have to be committed to the exchange. Terminating the road at this location would, however, require those desiring to access the Naha from a location east of Leask Lake to hike through several miles of intermittent clear cuts.

Although timber types, volumes, and values vary greatly, the average acre cruised at Leask Lake contains approximately 29,000 board feet of timber valued at about \$7900 per acre. The cost of road upgrade also varies by location but averages approximately \$180,000 per mile.

D. Issue: The exchange will impact deer and interior species. Deer will more probably be affected during medium to severe winters.

Discussion: ADF&G estimates as much as 71% greater mortality to deer during medium to severe winters on the Leask Lake exchange area, due to scheduled cutting associated with the exchange. CFC felt it was important to balance this loss against deer that would be protected on CFC lands by not cutting. The magnitude of losses is dependent on the scope of the area viewed.

The decline of deer populations is off-set by other benefits of the exchange. For example, logging on CFC land that could occur if not acquired by the state would also impact wildlife populations. The table below was constructed from data developed by CFC consultant ANI, and ADF&G.

DNR Summary of Results of Combined ANI/ADF&G Impacts Analysis on Deer Populations created by the Exchange:

Impact Analysis-Exchange Areas Only:

Year	Assumption	No. Deer	%Decrease
1992	Base (LL&CFC Exch. Land)	258	-
2030	No Add. Cut	239	7
2030	Log CFC Land Only	206	20
2030	Log LL Land Only	142	45
2030	Log Both CFC&LL	109	58

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Impact Analysis-All State Leask Lake Land (5000ac plus) & All CFC Exchange Land (4,000ac plus):¹

<u>Year</u>	<u>Assumption</u>	<u>No. Deer</u>	<u>%Decrease</u>
1992	Base (All LL & CFC Exc.)	345	-
2030	No Add. Cut	326	6
2030	Log CFC Land Only	293	15
2030	Log LL Land Only	225	35
2030	Log Both LL&CFC	192	44

E. Issue: The survey of Ketchikan residents while indicating the need for additional roaded recreational opportunities, stresses even more the need to protect habitat.

Discussion: KGB's public survey is subject to interpretation. Habitat protection was rated the highest. Next with only a tenth of a point of separation came both increased recreational opportunities, and increased roaded recreational opportunities. The survey appeared to indicate a sensitivity to the environment, but also a desire for increased recreational access. DNR has interpreted this survey as an indication that the residents of Ketchikan are willing to accept some timber harvest to achieve more roaded access. The timber cutting layout at Leask Lake has been completed with a sensitivity to protection of prime fish habitat and recreation values.

The desire for additional roaded access is a statewide issue. The results of a survey by Dittman Research Corporation of Alaska conducted during the period August 7 through August 14, 1991 of 528 Alaskans over the age of 18, in 51 Alaskan communities indicated that 59% supported to some degree expansion of Alaska's road network.

F. Issue: Talbot Lake is an "add-on". It involves timber rights purchased by KGB from KFP and should not be considered. Are there other CFC parcels that should not be considered, to help reduce the impact on the lands near Leask Lake?

¹ Estimates assuming moderate to severe winter. No adjustments for reduction in acreage (110 acres) scheduled for conveyance to CFC or additional acreage placed in "open space" (33 acres).

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Discussion: Talbot Lake is an "add-on" recommended by the Borough due to its proximity to Ketchikan, the presence of the lake, access road, and trail system. The value of the timber already owned by KGB were removed from the appraisal value of the parcel. Although it could be dropped from the exchange, it is valued under \$150,000 and would do little in itself to alter impacts of the exchange. It could, however, reduce the potential cut from state land by about 500 Mbf or 18 acres.

G. Issue: Should the state trade for only the surface rights and not acquire Sealaska's subsurface ownership.

Discussion: Because the surface and subsurface ownership of the CFC land is already split, for the state to acquire the subsurface would require an additional exchange with Sealaska. There are no known subsurface resources on either the CFC/Sealaska land or the state land at Leask Lake. Appraising and exchanging subsurface land is difficult, and considering low subsurface values and Sealaska's lack of interest in an exchange, DNR has concluded the exchange should proceed for surface estates only. For further discussion of this issue, please refer to Section XIII - Subsurface (mineral) Rights in this report.

H. Issue: Should the Leask Lakes area be designated a state park and the Salt Chuck a State Critical Habitat Area.

Discussion: Previous statewide planning for state parks has not identified Leask Lakes as a priority for legislative designation as a state park. The exchange does not include the most valuable recreation or habitat land immediately adjacent to either the lakes or the Salt Church. In fact, less than half (2,335 acres or 44%) of the state's 5,240 acre Leask Lakes tract is proposed for transfer to CFC. The remaining land has been recommended by the Ketchikan Area State Parks Advisory Board for legislative designation for recreation use. The exchange would not preclude such designations.

L. Issue: Should the state trade the Leask Lake land, which is used for wilderness recreation, to acquire road accessible recreation.

Discussion: Much of the opposition to the exchange is based on the desire to protect the "wilderness" recreation values of the Leask Lakes area, while much of the support is from those who desire road accessible recreation. It is clear that what Ketchikan lacks, and many residents desire, is more road accessible recreation. The CFC parcels the state is acquiring, include the White River - a relatively slow-flowing river that provides opportunities for sport fishing, two road accessible lakes including Lake Harriet Hunt, beaches

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along and road access to Upper George Inlet, and other road accessible public lands. The road to the Leask Lakes area will also provide more convenient access to Leask Lakes. There is also significant acreage set aside for roadless and wilderness recreation near Ketchikan, including the Naha drainage and over 2 million acres in Misty Fiords National Monument. The exchange and resultant timber harvest on land CFC acquires will negatively impact the wilderness recreation values of Leask Lakes. However, there are ample (and better) areas for this recreation.

The benefits of the exchange in terms of increased roaded recreation will occur to many more people. In balance, the exchange increases the public's recreation opportunities.

J. Issues: Should the state enter into an exchange that gives CFC more timber land to cut?

Discussion: Land exchanges only succeed when all the parties to the exchange receive benefits. A primary benefit to CFC is more timbered land to harvest in order to generate revenue. Benefits to the state are road accessible land for recreation and other uses close to Ketchikan.

K. Issues: Should the exchange proceed without an approved land appraisal?

Discussion: DNR has thoroughly reviewed the appraisal and finds the values generated by the appraisals to be generally correct. Much of the value of the appraised parcels are derived from timber and road construction cost appraisals, which DNR finds acceptable. At issue are the residual land values (see Section VIII - Appraised Values in this report). These values were arrived at through use of complex statistical analysis, which while statistically valid, are not widely accepted in the appraisal community.

DNR has chosen to proceed with the exchange despite the lack of a final appraisal for several reasons:

1. The values arrived at seem correct.
2. The same process was applied to both the CFC land and the state parcels, the same comparable properties were used to set the values.
3. If the exchange is not approved by the current legislative session, the exchange may never occur, and a revised appraisal cannot be completed in time for consideration by the current legislature. If the exchange does not occur this year, CFC may harvest additional timber in the land it proposes to trade to the state, or may lease or sell some of this land.

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4. The legislature can approve an exchange which does not have an appraisal approved by DNR.

L. Issue: Several public commentators suggest that DNR is by-passing the legislative appropriation process and state procurement code by trading CFC land in (partial) exchange for CFC's road-building.

Discussion: Alaska Statutes 38.50.020 allows DNR to enter into exchanges that include "other considerations" besides land or cash. State procurement codes and legislative appropriations deal with how the state spends money.

M. Issue: Will the exchange result in visual impacts?

Discussion: The timber harvest that results from the exchange will negatively impact views looking south and east from Leask Lakes and northwest from upper George Inlet. Leask Lakes have a fairly boggy shoreline and there is no recreation development or maintained trail to the lakeshore, hence, the recreation use of the lakes is limited. In response to public concerns, 40 acres close to Leask Lakes were removed from the final exchange proposal and an additional 13 acres was placed in Open Space to protect wildlife and visual resources. An additional 70 acres was removed and 20 acres placed in Open Space in Cruise Unit 19 to protect deer habitat. If the exchange does not occur, CFC is likely to harvest additional timber visible from Upper George Inlet.

XVII. SUMMARY OF PUBLIC COMMENTS

The report on the proposed exchange was released on February 10, 1992. Public hearings were held in Saxman (March 11), Ketchikan (March 11) and Juneau (March 12). The public comment period closed on March 26, 46 days after the exchange report was released.

The exchange report was a 20-page document, with 16 attachments. The report and attachments (over 250 pages) were mailed to 42 individuals, agencies or special interest groups, all members of the Alaska Legislature, the Ketchikan Gateway Borough, and others. A public notice describing the exchange and the public hearings was published in the Ketchikan Daily News, Juneau Empire, Fairbanks News Miner, and Anchorage Times.

A total of 137 individuals signed-in at the three public hearings (30 in Saxman, 93 in Ketchikan, and 14 in Juneau). Eighty-six (86) persons testified at the hearings. Fifty-five (55) letters or notes, one petition with 109 signatures were received by March 26, 1992, was submitted and one questionnaire signed by 45 people. Most individuals who commented (270

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out of 287)² are residents of the Ketchikan Gateway Borough (based on mailing addresses).

Nearly all persons who commented on the exchange voiced either support or opposition to the exchange. Many voiced reasons for their position, and only a few provided specific suggestions on how to modify the prepared exchange.

A total of forty-four (44) persons testified at the hearings in support of the exchange. Eighteen (18) notes or letters were received in support of the exchange. The Ketchikan Gateway Borough submitted testimony in support of the exchange. The Borough, as well as the cities of Ketchikan and Saxman are previously on record in support of the exchange. The Ketchikan Chamber of Commerce and Ketchikan Community Liaison Committee support the exchange. Sealaska Corporation, Kootznoowoo, Inc., Goldbelt, Inc., Cape Fox Corporation, the Ketchikan Indian Corporation and Alaska Native Brotherhood all expressed support for the exchange. Timber interests that commented in support of the exchange were Fox River Timber Company, Sealaska Timber Corp., Klukwan Forest Products and the Alaska Forest Association.

The following are reasons stated by supporters of the exchange:

- A. Increased road-accessible recreation.
- B. It will provide jobs and other economic benefits to Ketchikan, including jobs from timber harvest.
- C. The original area available for selection by Cape Fox Corporation (CFC) under the Alaska Native Claims Settlement Act were inappropriate, the exchange will correct this and provide better ownership patterns.
- D. The exchange provides long-term benefits and is in the state's interest.
- E. Development (roads, timber harvest, recreation) will result from the exchange.
- F. The exchange may make additional land available for development.
- G. The exchange can be accomplished (CFC, the state, the borough, and Sealaska were all in agreement).
- H. There is already enough wilderness. What's needed is more road-accessible recreation.
- I. Elderly need recreation and cannot back-pack and hike.
- J. The exchange benefits me (the commentor).
- K. If the exchange fails, the land (and timber) near Leask Lakes will be transferred to the Mental Health Trust and cut anyway.

² A total of 287 individuals either testified at hearings, wrote letters, or signed the petition, excluding duplicates (9 people testified at the hearings and also wrote a letter or signed a petition).

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- L. Families need a place to go to picnic and recreate that is a short drive from Ketchikan and not too difficult to reach.
- M. Leask Lakes is beautiful and the exchange and related road construction will provide access to the area.
- N. The open areas, including clear-cuts, provide good berry picking.
- O. The logged areas make wildlife viewing and hunting easier.
- P. Prefer to recreate along the White River than a muddy lake.
- Q. The exchange provides additional land for recreation and resource development.
- R. Benefits of the exchange outweigh detriments.
- S. Sets a good pattern for other equal value exchanges.
- T. Man needs to be able to use resources.
- U. Provides better management of important resources.
- V. White River has good fishing and wildlife viewing.
- W. The beach near the mouth of White River is a unique resource that the state will acquire through the exchange.

A total of 42 persons testified at the hearings in opposition to the exchange. Thirty-six (36) letters or notes were received in opposition to the exchange. Organizations that responded in opposition to the exchange were the Tongass Conservation Society, the Tongass Sportfishing Association, Sierra Club Legal Defense Fund, the Alaska Environmental Lobby, the Northern Alaska Environmental Center, and the Southern Alaska Conservation Council (SEACC). A questionnaire was submitted with 45 signatures, forty-two (42) indicating their opposition to the trade and 3 showing they support the exchange.

The following are reasons or concerns expressed by those who opposed the exchange (and resultant timber harvest):

- A. The exchange will negatively effect views from Leask Lakes and Upper George Inlet.
- B. The exchange is bad public policy.
- C. The state should not exchange timbered land for clear-cut land.
- D. Access will not be available in winter.

- E. Wildlife habitat and species (particularly deer) will suffer.
- F. Land ownership around Leask Lakes will be fragmented.
- G. The state should not try to prop-up a shaky corporation (CFC).
- H. Does not want to see more logging, timber activity.
- I. The state should not trade without acquiring the subsurface.
- J. Keep Leask Lake a high quality recreation area.
- K. The exchange will affect hunting.
- L. There is no public benefit or overriding public interest in the exchange.

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- M. Timber harvest of CFC land will be exported without primary manufacturing, therefore the economic benefits will be less than predicted.
- N. Leask Lake should be designated a State Park or Critical Habitat Area.
- O. Leask Lakes timber is old growth, the state should protect old growth.
- P. The exchange cannot be evaluated because the appraisal is not complete. The draft appraisal failed to consider habitat and recreation values, under-valued some CFC land, and used incorrect discounting factors.
- Q. DNR is by-passing the legislative appropriation process and state procurement code by giving CFC land and timber in [partial] exchange for CFC building roads. The state is financing a capital project (road-building) without competitive bids.
- R. Pristine land at Leask Lake provide better recreation experience.
- S. Leask Lake as a state park, in its pristine condition, would provide long-term economic development through tourism. One person cited the impact Chilkat Eagle Preserve has had in Haines as an example.
- T. The Leask Lake area resources are superior to White River's resources even before White River area timber was cut.
- U. The White River area does not provide quality recreation.
- V. The exchange is not equal value.
- W. The timing of construction, quality and maintenance of roads is uncertain.
- X. The proposed exchange has too much uncertainty (primarily road improvements and maintenance).
- Y. Pristine recreation makes more economic sense.
- Z. The exchange would set a bad precedent - by the state acquiring clear-cut land and giving a Native Corporation more timber to cut. It encourages corporations to manage land for short-term gain and not for sustained yield.
- AA. Proper exchange procedures were not followed because there is no approved appraisal and the legal (newspaper) notice did not include maps.
- BB. DNR did not adequately evaluate Leask Lake resources and other options.
- CC. There are alternate ways of providing road-accessible recreation through U.S. Forest Service road building.
- DD. The community is split regarding the exchange - public support is at best tepid.
- EE. Regarding the Community Survey conducted for the Borough, "considering wildlife and fisheries habitat impacts" was by a wide margin the most important value.

Proposed Exchange with Cape Fox Corporation

- FF. The impacts of the trade on wildlife other than deer have not been investigated.
- GG. The proposal may be inconsistent with the important upland habitat standard of the Alaskan Coastal Management Program due to impacts on deer. The exchange violates the sustained yield requirement of the Alaskan Constitution. DNR may be required to go through an area land-use planning process before trading land.
- HH. Enforcing logging and other restrictions on land conveyed to CFC may be problematical.

The Ketchikan Area State Parks Advisory Board (SPAB) and several individuals were neutral on the exchange. The SPAB passed a resolution stating that if the exchange is pursued, the remainder of the Leask Lake land should be designated by the Legislature for recreational purposes. The SPAB also passed a resolution stating that if the exchange fails, the entire Leask Lake area should be legislatively designated as a State Park.

For the department's response to these comments, please refer to the revised Issues discussion, Section XVI in the exchange report.

XVIII. Suggested Addition to Commissioner's Decision:

The department conducted a 46-day public review of the proposed exchange. Public hearings were held in Saxman, Ketchikan and Juneau. A total of 137 individuals signed-in to these meetings, with testimony split between those in support (44) and those opposed (42) to the exchange. Fifty-five (55) letters or notes were received, with 36 opposed and 18 in favor. A petition signed by 109 persons was submitted in support of the exchange. A "questionnaire" with 45 signatures was submitted, with forty-two (42) indicating opposition and 3 showing support for the exchange. Very few specific suggestions were made to modify the exchange, most only expressed their reasons for support or opposition to the proposal.

While the numbers of people testifying on the exchange were divided, those in favor of the trade include the Ketchikan Gateway Borough, the Ketchikan Chamber of Commerce, several Native corporations and timber interests. Those opposed included several environmental organizations.

My decision to proceed with this exchange is based not only on this public testimony, but also taking into consideration the extensive public discussion conducted by the Ketchikan Gateway Borough that resulted in this exchange proposal. After hours of public hearings, the Borough Assembly and Planning Commissioner endorsed this proposal. Both the City Councils of Ketchikan and Saxman are on record in support of this exchange.

Proposed Exchange with Cape Fox Corporation

Several modifications have been made to the exchange agreement in response to specific suggestions made in the public review process. The acreage of land to be conveyed to CFC has been reduced to 2335 (approximate) by retaining 110 acres in Parcel B of the proposed exchange land, 40 acres of which is land close to Leask Lake. An additional 33 acres has been altered from cut to open space. This deletion is to be lessen visual and wildlife impacts. An additional 70 acres was deleted and 20 acres redesignated as open space to provide added protection to deer in Parcel B. The final exchange agreement more clearly addresses the road building requirements, specifically the agreement will specify land which will not be conveyed to CFC until road construction is well underway.

I am submitting this exchange for legislative approval without a final, approved land appraisal. The appraisal for this exchange was prepared under contract to the Ketchikan Gateway Borough. The appraisal assignment was complex to begin with because 1) much of the land supports commercial timber; 2) surface and subsurface ownership are split; 3) the state land transferred to Cape Fox Corporation that is not designated for timber harvest is permanently reserved as "open space", and; 4) the proposed exchange requires CFC to build roads for public use. The appraisal firm used a complex statistical analysis to arrive at the values, and DNR continues to have concerns over some aspects of the appraisal methodology.

I have chosen to proceed without approving the appraisal for several reasons:

1. The values arrived at seem correct, this is after extensive review by DNR's appraisers and independent appraisers hired to review the report.
2. The same appraisal process was applied to the CFC and state land.
3. The majority of the appraised values come from commercial timber or road building costs which DNR has approved and we are not at issue with the appraisal - at issue is the residual land value.
4. The exchange cannot wait for another legislative session. It has taken over a year to reach the final exchange agreement, to delay another year would require that CFC forego another year's opportunity to raise any revenue from the land it is willing to trade to the state. By next legislative session, CFC may harvest additional timber on land it agreed to trade to the state, or may sell or lease some of this land.
5. The legislature can approve an exchange that does not have an appraisal approved by DNR, provided they believe it is in the public interest. This exchange is clearly in the public interest.

Proposed Exchange with Cape Fox Corporation

I find the Final Exchange Agreement as proposed, and attached hereto to be in the state's interest, and that the exchange as proposed should be advanced for submission to the Legislature for approval.

It is further my finding that the split of surface and subsurface estates is necessary and justified because of a prior separation of estates as a result of ANCSA, and to achieve the objectives of the exchange and significant public benefits.

The Final Exchange Agreement and this report will be the Department's final administrative documents for the exchange. An appeal to the final exchange agreement, and report of exchange executed by the Commissioner of DNR must be made to Superior Court of the State of Alaska.

Executed this 6th day of April, 1992.

Harold C. Heinze
Harold Heinze, Commissioner
Department of Natural Resources

Attachments: Final Exchange Agreement with attachments

**FINAL EXCHANGE AGREEMENT
BETWEEN THE STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
AND CAPE FOX CORPORATION**

ADL 105565

THIS AGREEMENT is entered into on this ___day of April, 1992 by and between the State of Alaska, Department of Natural Resources, hereafter referred to as the State, whose address of record is Suite 400, 400 Willoughby Avenue, Juneau, Alaska 99801, Cape Fox Corporation, hereafter referred to as CFC, whose address of record is P.O. Box 8558, Ketchikan, Alaska 99901, and the Ketchikan Gateway Borough, hereafter referred to as KGB, whose address of record is 344 Front Street, Ketchikan, Alaska 99901. Nothing in this Agreement obligates KGB to anything it was not obligated to under the preliminary agreement.

I. RECITALS:

A. Cape Fox Corporation (CFC) owns certain lands through the Alaska Native Claims Settlement Act (ANCSCA) within the Ketchikan Gateway Borough (KGB) that have been recognized as having important community values related to access, habitat, recreation, and economic opportunity. Prior to CFC ownership, the lands in question were significant recreational resources for the community of Ketchikan;

B. The State of Alaska selected approximately 5,000 acres in the Leask Lake area from the national forest to accommodate community growth and recreation needs. Some of this area is the same area as proposed for conveyance to CFC in this agreement;

C. The Ketchikan Gateway Borough, the local unit of government affected by this exchange, believes that the resultant direct and indirect benefits of the land exchange, including economic, recreation, habitat, environmental and transportation benefits represent a unique and significant community benefit;

D. The State of Alaska has provided notice pursuant to AS 38.50.110 and AS 38.05.945, and has conducted public hearings regarding the worth and reasonability of the proposed land exchange consistent with the requirements of AS 38.50.120;

E. A timber cruise of State of Alaska and CFC properties determined the inventory of timber, and an appraisal of the CFC and State properties occurred under the direction of the Ketchikan Gateway Borough to determine the value of the aforementioned properties consistent with the requirements of 11 AAC 67.240;

F. By reason of the foregoing, and in accordance with 11 AAC 67.260, the Commissioner of the Department of Natural Resources of the State of Alaska has determined that it is in the public interest to enter into this Final Exchange Agreement;

G. The State's authority for entering into this agreement is found in AS 38.50 and 11 AAC 67.200-.280. AS 38.50.020 requires this agreement to have legislative approval before it takes affect.

H. Under the agreement, the State will: 1) acquire the surface estate of 4,366 acres of CFC land within the White River, Lake Harriet Hunt and Talbot Lake areas; 2) have CFC construct and or upgrade to recreation standards approximately 11.11 miles of road in the White River and Leask Lake areas; 3) retain right-of- ways for future access and use of existing roads, including a through corridor on the lands it conveys at Leask Lake, and 4) restrict development on a portion of the lands scheduled to conveyance to CFC.

I. In the exchange, CFC will acquire the surface estate on approximately 2335 acres of State land in the Leask Lake area; an amount considered equal in value to the CFC land and other rights and considerations that may be included in this exchange. Under the agreement, CFC would also retain the right to access its lands in the White River and Leask Lake areas.

J. The final configuration and details of this exchange have been determined as a result of the appraisal and negotiation processes between the State and CFC, following public and agency review.

II. AGREEMENT: All parties to the exchange agree:

A. Lands and Interest to be Conveyed and Retained:

1. CFC:

a. CFC will convey to the State the surface estates only of parcels 1-5 as described in Attachment A and as shown on Map 1. The surface estates shall be as defined by the Alaska Native Claims Settlement Act and court decisions construing that Act. The conveyance of CFC land to the State will also be subject to the following:

The right of CFC to use the existing White River LTF and mainline White River road from its junction with the proposed mainline Leask Lakes road to the LTF for the period of time necessary to complete timber harvest of the area in the Leask Lake parcels proposed for exchange, not to exceed ten (10) years from the date of Legislative approval of the exchange. This right shall be limited to those uses associated with timber harvest and timber transport from CFC lands in these areas;

The right of access to its lands over the White River road beginning at F.H. 39 and ending at the junction with the proposed Leask Lakes road, and the Leask Lake ROW to and through the exchange area, in perpetuity or until replaced with a public ROW;

b. CFC will also convey to the State a 60 foot general access ROW for use by the State and or public of the Talbot Lake road, beginning at its junction with F.H. 39 and ending at the boundary of the proposed exchange area.

2. State:

The State will convey to CFC the surface estates only to parcels A-C as described on Attachment B and as shown on Map 1. The State is to convey only the land, excluding in addition to the mineral estate, all rights to sand, gravel, and rock. The conveyance of the State land to CFC shall also be subject to the following:

Reservation by the State of all rights in those areas between "Timber Harvest Areas" and "Boundary of Exchange Areas", as depicted in Map 1 as "Open Space", except for the owner's right of entry and movement (walk across or hunt), and to clear, construct and use and maintain mainline and spur roads, temporary staging and storage areas, and borrow pits and debris waste sites associated with access to and timber development of the CFC Leask Lake parcels. The owner of the open space may not cut trees, make improvements or clear the land except as indicated above, or construct any buildings on areas subject to this reservation;

Reservation by the State of a general access/road ROW corridor 300 feet in width to provide for a "through road and utility " corridor;

Reservation by the State of a general access/road ROW 100 in width for public use on the mainline logging road that CFC will construct (shown on Map 1) as well as the remaining 10,500 feet which will not be upgraded from the area just south of Parcel A to the northern boundary of Parcel A;

Easements 100 feet wide between each section of land owned by the State, as established by AS 19.10.010, except that the State shall cooperate with CFC toward the removal of such rights-of-ways from these parcels in the survey and platting process necessary to convey these lands to CFC should CFC so choose.

The State shall not, nor is there anything in this agreement that shall be construed as to obligate the State, to convey title to Parcel A to CFC until CFC has performed adequate work on required White River and Leask Lake road upgrades. The State shall, after receiving proof that the following work has been completed, convey to CFC title to this parcel, subject to CFC having to first furnish the State a bond for not less than 100% of the estimated remaining work, to ensure that the work is completed. CFC may demand and receive immediate title (within 30 days of notice of satisfaction to the State's office of record) after completing: 1) completion of the road bed (widening and realignment), ditches, bridge installation, and any culvert installation which is not expected to be otherwise damaged by logging operations, and 2) installation and grading of the surface material from the Lake Harriet Hunt intersection of the White River Road to the intersection of the White River Road with the Leask Lake Road.

B. Subsurface Interest and Retained Sealaska Rights:

The ownership of the surface and subsurface estate of the CFC parcels is split between CFC and Sealaska Corporation. The state's acquisition of the surface estate, overlying Sealaska's subsurface estate, will not enhance or diminish any rights and interests of Sealaska as the subsurface owner. Sealaska shall have all rights of reasonable access, use and development of its subsurface. Sealaska's exercise of its rights as subsurface owner shall include reasonable protection of the state's surface estate and resources. Rock and gravel used for road construction from these lands will have to be purchased from Sealaska.

C. Other Required Performance, Solely a CFC Responsibility (Road Construction/ Upgrades, Logging Practices), Penalties for Lack of Performance by CFC:

1. Other Required Performance, Solely a CFC Responsibility;

a. Road Construction/Upgrades: CFC agrees to construct or upgrade at its cost approximately 11.11 miles of White River and Leask Lake roads, the general alignment being depicted on Map 1.

Road construction and upgrades shall be completed as soon as practicable, and not later than 10 years from the date the exchange is approved by the Legislature. Construction and upgrades shall meet or exceed standards outlined in Attachment C, unless otherwise waived in writing by the State. Reasonable concessions will be allowed for cut slopes involving good rock. The six inches of graded rock required for surfacing shall be screened to 2 inches, minus.

CFC agrees to widen and improve the surface on approximately one half mile of the White River road within one year of approval of this agreement by the legislature.

CFC further agrees to make the widening of the first three miles of the White River Road and establishment of the full width base road one of its first priorities. It is understood, however, that the placement of culverts, and final surfacing shall be delayed where logging trucks may be expected to damage the same.

b. **Construction of Parking Areas:** CFC further agrees to construct at least two parking areas at points south of Leask Lakes mutually agreeable to the State and CFC, the parking areas to be located on State land and to be constructed with State furnished rock; the mining and processing to be done by CFC. Each parking area shall be designed and constructed to accommodate 10 full size and 5 mid-size passenger vehicles.

CFC will provide parking in the area of the LTF for five to six vehicles. This parking shall not be farther than 1,000 feet from the shores of Upper George Inlet.

c. **Identification of Sites to Beneficially Waste Material:** CFC further agrees to work with the state during road construction to identify areas and to ensure that waste rock and other material is wasted in a manner which will best benefit the state by providing additional turnouts or parking areas, one area of interest being at the intersection of the CFC logging spurs into the Southern portion of CFC Area 1 and the White River Road.

d. **Logging Practices (Application of "New Forestry Techniques" for Logging:** CFC agrees to use "New Forestry Techniques" in the harvesting of timber on the Leask Lake parcels, to the extent that it is feasible and prudent.

2. **Penalties for Failure to Perform:** Failure of CFC to perform the necessary upgrades in a timely manner, shall constitute a breach, and unless corrected within 60 days prior notice by the State to CFC's address of record, shall result in a forfeiture of the remaining unconveyed lands to the State. If all lands have been conveyed, the State shall retain that portion of the CFC bond required to ensure that the project can be completed.

D. **State Protection:** The State, as provided for in Section II.A.2. of this Agreement shall retain title and or require bonding to ensure that the required road construction is completed by CFC.

E. State Reservation of Right to Construct and Adjust: The State reserves the right, with 60 days constructive notice to CFC, to accomplish, or otherwise have accomplished a portion or all of the road upgrades itself, providing that it does not otherwise interfere with a CFC Contract which is in force to accomplish the same in a reasonable time (one year). Should the State exercise this option, it shall have the right to reduce proportionally the amount of land and resources scheduled for conveyance to CFC accordingly. The basis for any adjustment shall be the existing appraisal. Unless otherwise mutually agreed to, adjustments will come from Parcel A, from north to south.

F. Maintenance of Roads and LTF: CFC shall be responsible only during periods of use for maintenance of those sections of road and areas used by it or its agents during their logging operations.

G. Use and Closure of Roads: CFC will be allowed by the State to close portions of the road and LTF to public use during road construction and or logging. An attempt will be made to minimize such closures.

H. Conveyance Instruments, Title Documents, and Encumbrances:

1. Conveyance Instruments, Title Documents: The State will transfer its land and interest in land to CFC through a quit claim deed or State patent. The State obtained its lands that are part of this Agreement through the Alaska Statehood Act. The State has Tentative Approval to its lands.

CFC will transfer its land and interest in land to the State through a warranty deed. The CFC secured its land and interest in land from the Federal Government under the Alaska Native Claim Settlement Act through patent and interim conveyance.

The State and CFC agree to provide a current title or litigation report on their properties prior to the conveyance of land or interest in land.

Should there be any CFC or State lands not yet patented by the Bureau of Land Management, the State and /or CFC agree to provide the other party a confirmatory patent or deed as may otherwise be required in this agreement to any land or interest in land that have been conveyed as a result of their exchange;

Conveyance instruments, with exception of Leask Lake Parcel A shall be exchanged simultaneously.

2. Additional Encumbrances:

a. **State Land:** There are no liens, claims, encumbrances, easements, right-of-way, leases, reservations, covenants, or other agreements that affect the land that is to be transferred by the State to CFC, except those listed earlier in this document as conditions or "subject to's" and the following:

The land is subject to the restrictions, limitations, and conditions of Title VI of the Civil Rights Act of 1964;

There is excepted and reserved from the conveyance a right-of-way for ditches or canals constructed by the authority of the U.S. in accordance with the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C.959;

Also excepted and reserved is a right-of-way for the construction of railroads, telegraph and telephone lines in accordance with the Act of March 12, 1914, 38 Stat. 305; 48 U.S.C. Sec. 305.

Subject to Mineral Closing Order 643.

b. **CFC Land:** CFC has the following liens, claims, encumbrances, easements, right-of-way, leases, reservations, covenants, or other agreements that affect the land it intends to transfer to the State in addition to those disclosed as reservations or "subject to's" earlier in this document:

Klukwan Forest Products, Inc. has the right of access on and over the existing logging road within the White River Valley, as depicted in Map 1. The use of this road shall continue until or when Klukwan Forest Products deeds this right back to CFC when current logging operations are finished;

There is a 100 foot easement for the power transmission line from Swan Lake to Ketchikan to the Alaska Energy Authority. This easement traverses portions of the White River Valley and White River Hillside areas and is shown in Map 2:

There is a 100 foot right-of-way to the State for the access road, including the parking lot, in the Lake Harriet Hunt area as shown in Map 2;

There is a one year permit or lease to Alaska Travel Adventures for Float and tourist staging facilities at Lake Harriet Hunt;

The KGB retains a ownership right to all commercial timber in the northern 40 acres of the Talbot Lake parcel. This right was purchased from Klukwan Forest Products who had previously purchased those rights from CFC.

I. Survey and Appraisal: Surveys of State and CFC land involved in the Land Exchange shall be done in accordance with the survey requirements of the State and KGB. CFC will accept the responsibility to contract and administer all land surveys. All surveys of real property necessary to affect the exchange will be completed prior to the exchange of deeds. Lot, in combination with aliquot part descriptions will be used whenever possible to configure and describe the land included in this exchange.

Costs: Appraisal and survey costs will be equally borne by the state, CFC and the KGB. Other incidental costs will be borne by the party actually accruing the expense. It is recognized by all parties, however, that the State responsibility shall be construed as having been met through the previous appropriation and tendering of \$30,000 to the KGB by the State Legislature for the purpose of survey and appraisal of the lands to be exchanged.

J. Spur Roads, and Rock Pits on State Land: The State will require ACMP and Forest Practices reviews and approval, and DNR approval for the location and construction of all spur roads, and rock pits located on lands it owns or has an interest in. DNR will require a right-of-way permit for all spur roads located on lands it owns, and timber and/or material contracts for any material removed from State lands or retained interests, except that no permit shall be required for material (rock) needed for the construction of parking areas on State land, not removal of material from Sealaska's remaining interests.

K. Other Consideration: There is no amount of money or other considerations to be paid to, or offered by, any party to the proposed exchange to equalize the values of the land or interest in land proposed for exchange other than that outlined in this agreement.

L. Liability: The parties to this agreement agree to hold each other harmless from liabilities that may otherwise be caused by their individual actions, uses of land and contracts, except where such actions, due to the nature of the agreement are shared.

M. ACMP Consistency: The exchange of CFC and State lands has been determined to be consistent with the Alaska Coastal Management Program (ACMP) pursuant to AS 46.40. However, nothing in this agreement is intended or should be construed as allowing CFC or the State to carry out timber cutting or other development without further review and permits. CFC development of land acquired from the State will require CZM project review to the same extent as private land. If CFC needs State or federal permits to undertake a particular use (for example, a state permit to place a road culvert in a fish stream or to install a new sewage system as part of a subdivision development), another ACMP determination specific to that particular use will be necessary. However, future ownership changes by CFC, i.e. sales of land or timber to other private individuals or companies- may not require State approval and therefore may not be subject to the ACMP.

N. Succession in Documents: This Agreement supersedes all previous agreements and is the sole document now under consideration.

O. Modification of the Agreement: This Agreement, unless amended by mutual consent, subject to legislative approval; represents all consideration.

P. Existing Permits and Leases: CFC agrees that unless otherwise approved by the Department of Natural Resources in writing, existing DEC Waste Disposal Permit #9113-BA012 shall be used exclusively for debris generated from the Upper George Inlet LTF, and that the waste site and State Tideland Leases ADL's 100898, and 105135 shall be groomed and released to the State within six months of the completion of the Logging of CFC's Leask Lake property, or within 10 years of the approval of this exchange by the legislature, whichever occurs first.

Q. Schedule for Completion: The following represents a tentative schedule that the State, CFC and the KGB agree to attempt to adhere to for completion of this exchange.

<u>REQUIREMENT</u>	<u>STATE</u>	<u>CFC</u>	<u>KGB</u>	<u>Completion</u>
Submission to Legislature	X			04/07/92
Legislative Approval				05/15/92
Request Survey Instructions		X		05/16/92
Issue Survey Instructions	X			06/01/92
Complete Survey		X		09/01/92
Preparation of Title Documents	X	X		10/01/92
Execution of Title Documents	X	X		10/15/92

SIGNATORIES TO FINAL EXCHANGE AGREEMENT ADL 105565:

CAPE FOX CORPORATION

BY: _____ DATE: _____
CHIEF OPERATING OFFICER

STATE OF ALASKA

BY: Harold C. Fleming DATE: 4/6/92
COMMISSIONER,
DEPARTMENT OF NATURAL RESOURCES

KETCHIKAN GATEWAY BOROUGH

BY: _____ DATE: _____
BOROUGH MANAGER

Attachments: Maps 1,2, and Attach.-"A"- "C"

SIGNATORIES TO FINAL EXCHANGE AGREEMENT ADL 105585:

CAPE FOX CORPORATION

BY: *[Signature]*
CHIEF OPERATING OFFICER

DATE: 4/6/92

STATE OF ALASKA

BY: _____
**COMMISSIONER,
DEPARTMENT OF NATURAL RESOURCES**

DATE: _____

KETCHIKAN GATEWAY BOROUGH

BY: *[Signature]*
BOROUGH MANAGER

DATE: 4-6-92

Attachments: Maps 1,2, and Attach.-"A"& C

ATTACHMENT-"A" TO FINAL EXCHANGE AGREEMENT ADL 105565

CAPE FOX PROPERTIES

Area 1

Township 74 South, Range 91 East, Copper River Meridian; uplands within:

Section 2	Lots 3 through 8, NW1/4SE1/4, S1/2SW1/4, NE1/4SW1/4;
Section 3	S1/2SE1/4;
Section 9	SE1/4, all that lies south of the northern edge of the main line "White River Road";
Section 10	E1/2, W1/2, all that lies south of the northern edge of the main line "White River Road";
Section 11	W1/2, NE1/4, N1/2SE1/4;
Section 16	NE1/4, all that lies south of the northern edge of the main line "White River Road", N1/2SE1/4, SW1/4SE1/4, W1/2, all that lies south of the northern edge of the main line "White River Road";
Section 17	E1/2SE1/4, all that lies south of the northern edge of the main line "White River Road";
Section 20	E1/2NE1/4;
Section 21	W1/2NE1/4, NW1/4, E1/2SW1/4, NW1/4SW1/4, SE1/4;
Section 28	NE1/4NE1/4.

Containing approximately 2,283 acres more or less.

Area 2

Township 74 South, Range 91 East, Copper River Meridian; uplands within:

Section 3	Lots 1 through 3;
Section 4	Lots 1 through 10, NE1/4SE1/4;
Section 5	NE1/4.

Containing approximately 478 acres more or less. And all shorelands within:

Section 3	W1/2NW1/4;
Section 4	N1/2.

Containing approximately 162 acres more or less.

Total area of Area 2 is approximately 640 acres more or less.

Area 3

Township 74 South, Range 91 East, Copper River Meridian; uplands within:

Section 18 W1/2SE1/4, SE1/4SW1/4.

Containing approximately 99 acres more or less. And all shorelands within:

Section 18 SW1/4SE1/4, SE1/4SW1/4.

Containing approximately 21 acres more or less.

Total area of Area 3 is approximately 120 acres more or less.

Area 1

Township 74 South, Range 91 East, Copper River Meridian; uplands within:

Section 9 S1/2NE1/4;
SE1/4, all that lies north of the northern edge of the main line
"White River Road";
SE1/4SW1/4;

Section 10 W2, all that lies north of the northern edge of the main line
"White River Road";

Section 16 W1/2, all that lies north of the northern edge of the main line
"White River Road";

Section 17 E1/2SE1/4, all that lies north of the northern edge of the main
line "White River Road";

Containing approximately 650 acres more or less.

Area 5

Township 74 South, Range 91 East, Copper River Meridian; uplands within:

Section 1 Lot 2;

Section 2 Lots 1 and 2, W1/2NE1/4, NW1/4, NW1/4SW1/4'

Section 3 NE1/4, N1/2SE1/4, E1/2NW1/4.

Containing approximately 673 acres more or less.

Total acreage for the five parcels is: 4,366 acres.

ATTACHMENT-"B" TO FINAL EXCHANGE AGREEMENT ADL 105565

STATE PROPERTIES TO BE CONVEYED TO CFC

Township 73 South, Range 91 East, Copper river Meridian:

Section 13 Lot 1, SW1/4NW1/4, E1/2NW1/4, SW1/4;

Section 14 S1/2 SE1/4 NE1/4, NE1/4 SE1/4, E1/2 SE1/4 SE1/4, S1/2 NW1/4
SE1/4,

A triangular area with corners at the NE corner of the SE1/4
SW1/4 NE1/4, the SE corner of the NE1/4 NW1/4 SE1/4, and at
the SW corner of the NE1/4 NE1/4 SW1/4,

A triangular area with the corners at the NE, and SE corners of
the NW1/4 SE1/4 SE1/4 and the NW corner of the NE1/4 SW1/4
SE1/4,

A triangular area with corners at the NE, SE, and NW corners of
the SE1/4 NE1/4 SW1/4;

Section 22 SW1/4 SW1/4 NE1/4, S1/2 SE1/4, W1/2 NW1/4 SE1/4, SW1/4, S1/2
S1/2 NW1/4;

Section 23 NE1/4 NE1/4 NE1/4;

A triangular area with corners at the NE, SE, and NW corners of
the SE1/4 NE1/4 NE1/4,

SW1/4 NE1/4, W1/2 SE1/4, E1/2 SW1/4, E1/2 W1/2 SW1/4, SE1/4
NW1/4, E1/2 SW1/4 NW1/4;

Section 24 N1/2 SW1/4, NW1/4;

Section 26 NE1/4 NE1/4, E1/2 NW1/4 NE1/4, SW1/4 NE1/4 SW1/4, W1/2
SE1/4 SW1/4, SW1/4 SW1/4, S1/2 NW1/4 SW1/4,

A triangular area with corners at the SW corner of the NW1/4
NW1/4 SW1/4, the NE corner of the SW1/4 NE1/4 SW1/4, and the
NW corner of the NW1/4;

Section 27 N1/2;





Section 35 S1/2 NE1/4, W1/2 SE1/4, SW1/4, W1/2 NE1/4 NW1/4, S1/2 NW1/4,
NW1/4 NW1/4;

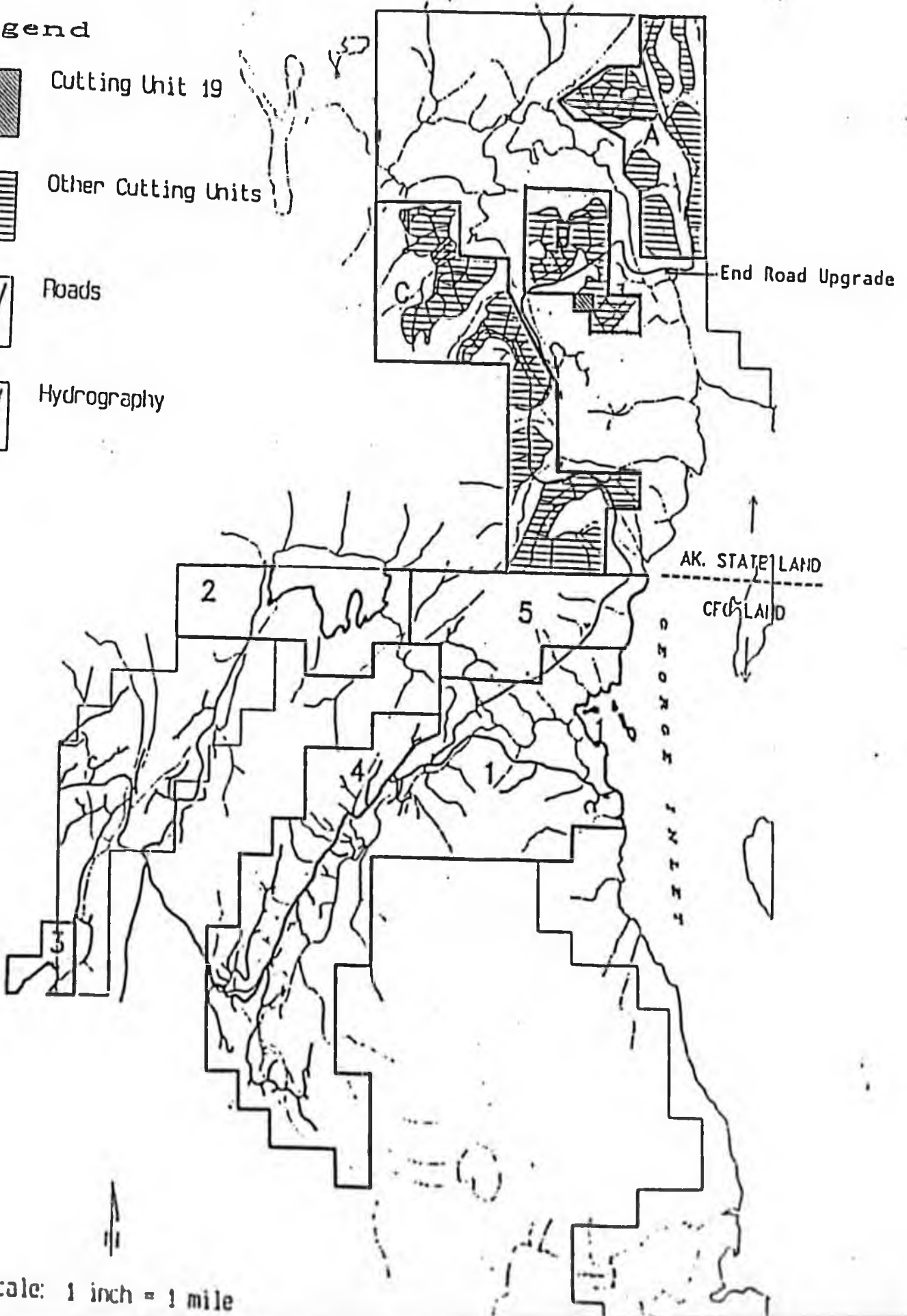
Contains approximately 2335 acres.

COMPARATIVE ROAD STANDARDS

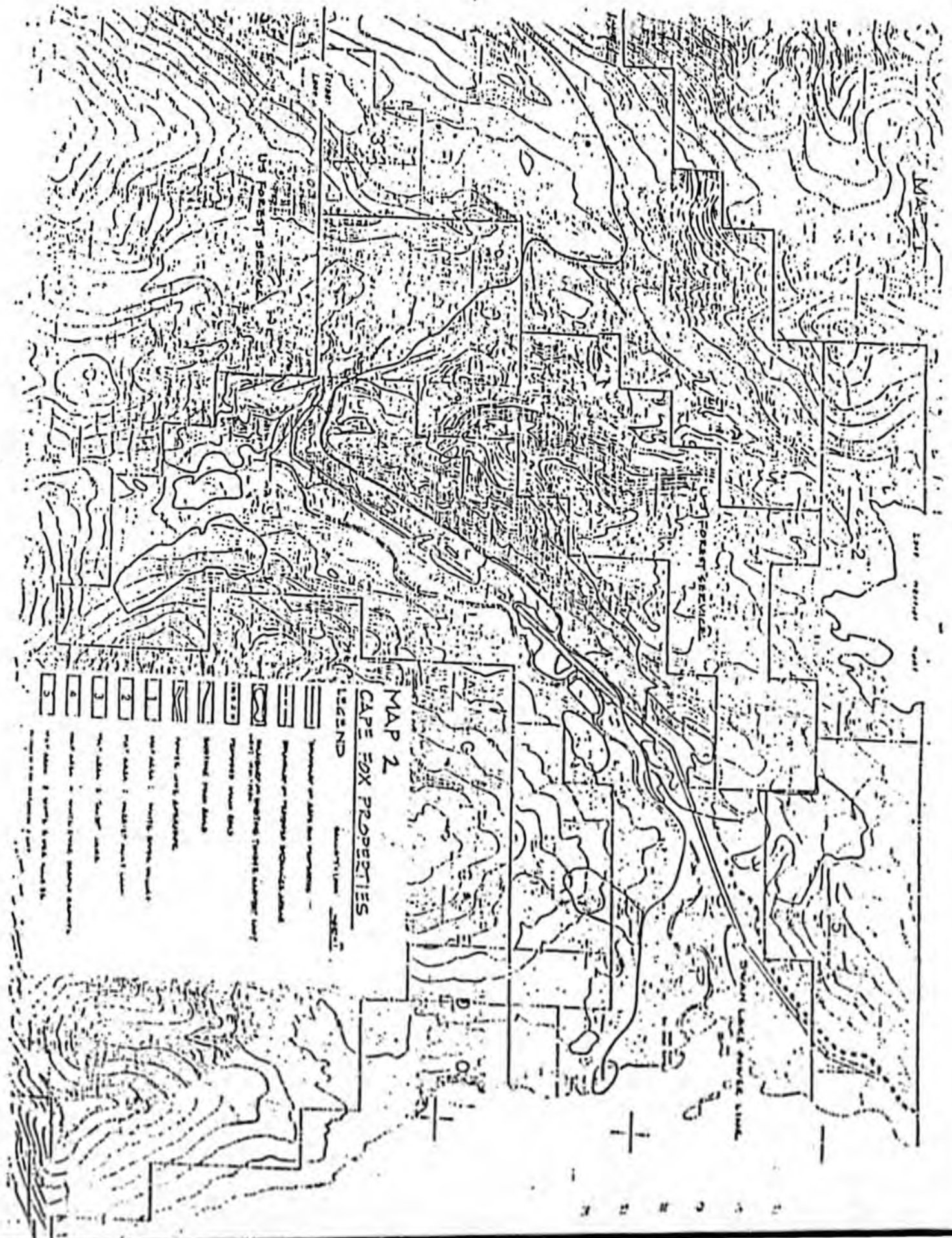
STANDARDS	George Inlet & Leask Lakes (Public) Roads	Ordinary Temporary Logging Road (Same Location)
<u>Alignment</u>		
horiz.	25 mph (200' rad.)(28½ deg. curve)	variable - down to 80 - 100' when necessary
vert.	no standard given	max. 20%
<u>Width</u>		
running surf	20'	14' - 18' (not constant)
shoulders	none	none
<u>Drainage</u>		
ditch	2' continuous w/ no blind ends	2' to none; if unstable backslopes ditches abandoned & replaced by outsloping & waterbars
<u>culverts</u>	CMP's properly sloped, good repair, stable catch-basins, ends open & beyond fill toe	wood or CMP's replaced by crossdrains where necessary
<u>Slopes</u>		
cut	laid back to as much as 1½:1 if required	averages 1:1 in soil
fill	1½:1	1½:1
<u>Surfacing</u>		
road crnc.	6"	6"
material	graded shot rock	pit run shot rock
<u>Distances</u>		
stopping	160'	no standard
passing	no standard	no standard (turnouts only)
<u>Intersections</u>		
logging spur	no standard (temporary use only)	"Y" intersections okay; no sight requirements
public spur	"T" intersections to min. 70 degree; 160' sight distance; 100' of max. 5% approach grade	not applicable
<u>Standard Reductions</u>	horizontal alignment reduction down to 100' radius in no more than two locations of no more than 500' each	not applicable
<u>Signing</u>	none	none
<u>Bridges</u>		
abutments	perm.: piling, treated timber, concrete, or steel	log sill
type	perm. Hamilton type or equiv.	Hamilton type (to be removed) or log stringer
width	16' between bullrails min.	varies; 12' - 18' between bull rail logs
<u>Guard Rail</u>	on bridge approaches and where there is a continuous drop of at least 20' of vertical dist. on a sideslope of at least 50%	none

Legend

-  Cutting Unit 19
-  Other Cutting Units
-  Roads
-  Hydrography



Scale: 1 inch = 1 mile



STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

May 5, 1992

The Honorable Cliff Davidson, Chair
House Resources Committee
State Capitol
Juneau, AK 99811-1182

Dear Representative Davidson:

Subject: HB 578, relating to the Legislature's approval of a land exchange between the Cape Fox Corporation and the State of Alaska.

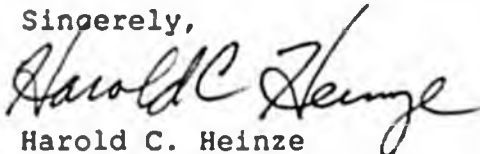
Position: The Department of Natural Resources supports this bill. The value of the land to be received and the value of the road construction or upgrading by Cape Fox are substantially equal or exceed the value of the state land to be exchanged, as required by AS 38.50.020. The exchange is in the public's best interest and will allow Ketchikan area residents to continue using a popular recreation area, increase access to local recreational opportunities, protect important fish habitat, and increase job opportunities and economic development in the area.

Background: If approved by the Legislature, this exchange will result in a trade of the surface estate of land located near Ketchikan. The state will increase its surface estate by 87% through acquisition of road accessible Cape Fox lands that provide valuable recreation and fishing opportunities for the public. The Cape Fox Corporation will acquire land with economic potential for construction, tourism and timber support industries.

If this exchange is not approved this year, there is no guarantee that the Cape Fox Corporation will leave the offer open until next session.

Recommendation: Approve the exchange.

Sincerely,



Harold C. Heinze
Commissioner

cc: Paul Fuhs, Legislative Liaison, Office of the Governor

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 578

Revision Date: 5-May-92 Department Affected: Natural Resources
 Title: Cape Fox Land Exchange BRU: Land Management
 Components: Land Management
 Sponsor: House Rules for Governor
 Requestor: House Resources COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

REVENUE						
Funding Source:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
Funding Source: 1007						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact: -0-

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Ron Swanson Phone: 762-2692
 Division: Land Date: 5-May-92

Approved by Commissioner: Harold C. Heinze Date: 5-May-92
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,
 & Impacted Agency(ies).

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND

3601 C STREET
P.O. Box 107005
ANCHORAGE, ALASKA 99510-7005
PHONE: (907) 762-2692

February 12, 1992

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

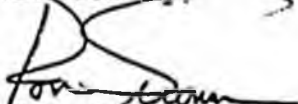
Dear Representative Grussendorf:

The attached information is a summary and the preliminary agreement of a proposed land exchange between the State of Alaska and Cape Fox Corporation, a native village corporation organized under the Alaska Native Claims Settlement Act. All lands involved in the proposal are located 10-12 miles north of Ketchikan. The legislature appropriated \$30,000 to the Ketchikan Gateway Borough last year in support of this exchange.

This notice which is required by law will be followed by public workshops in Ketchikan, and hearings in Saxman, Ketchikan, and Juneau. The hearings are scheduled for March 11, and 12, 1992. The deadline for public comments is March 26, 1992. At that time, if the decision is still to proceed, the proposed exchange agreement and report of exchange will be finalized and the exchange submitted to the legislature for approval.

The full exchange package consists of another 254 pages. The land and timber appraisal consists of another 575 pages. Should you desire any of these documents, or additional information, please contact Andy Pekovich, Manager of our Southeast Region Office in Juneau. He can be reached at 465-3400.

Sincerely,


Ron Swanson
Director

Attachments: Summary
Exchange package w/o attachments

cc: All House of Representative Legislators

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

SOUTHEAST REGIONAL OFFICE

DIVISION OF LAND AND WATER

400 WILLOUGHBY AVENUE
SUITE 400
JUNEAU, ALASKA 99801
PHONE (907) 465-3400

February 10, 1992

Re: Land Exchange ADL 105565
Mineral Closing Order 643
Preliminary ACMP Determination
Proposed Cape Fox Exchange

Dear Reviewer:

The attached material is related to the proposed land exchange between the State of Alaska and Cape Fox Corporation. The package contains almost 290 pages, consisting of three decisions (exchange, mineral closing order, and preliminary ACMP determination), and two notices and or solicitations for comment.

With the following exceptions, the larger of the divided packet represents attachments to the exchange decision in order. Due to the time limitations, it was necessary to print and bind the attachments in advance. Later some alterations occurred and more information was added. A general map showing the proposed exchange parcels was added just behind the cover sheet for the decision. The public notice, Attachment-"B" was completed and added. Attachment-"C", the finding of the Commissioner concerning Mineral Closing Order 643 was slightly altered. And a preliminary ACMP determination was developed and added. The corrected, and or new information is affixed, in the order presented, to this cover letter.

I hope that you find the material informative. I would also like to thank those who provided input. Please feel free to contact me should you have any questions.

Sincerely,



Andrew W. Pekovich
Regional Manager, Southeast Region

Attachments:

**DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND
SOUTHEAST REGIONAL OFFICE
400 WILLOUGHBY AVENUE, SUITE 400
JUNEAU, ALASKA 99801
PHONE NO. (907) 465-3400
PUBLIC NOTICE UNDER
A.S. 38.05.945 & A.S. 38.50.110
OF ACTIONS AND HEARINGS FOR
LAND EXCHANGE ADL NO. 105565
AND MINERAL CLOSING ORDER NO. 628**

Subject to the provisions of A.S. 38.05.945(b) and A.S. 38.50.110, notice is given that the Department of Natural Resources under the authority of A.S. 38.05.185(a), and A.S. 38.50 proposes to close to mineral location and mining, and to exchange the surface estate of approximately 2445 acres of state uplands located in the vicinity of Leask Lakes, for a like estate on approximately 4,366 acres of Cape Fox Corporation (CFC) lands located in vicinity of the White River, Lake Harriet Hunt, and Talbot Lake. All lands are located 10 to 12 miles north of the City of Ketchikan. state lands are more specifically described as fractional portions of Sections 13, 14, 22-24, 26, 27, and 35, Township 73 South, Range 91 East, Copper River Meridian. CFC lands are more specifically described as fractional portions of Sections 2-5, 9-11, 16-18, 20, and 21, Township 74 South, Range 91 East, Copper River Meridian. The exchange, as proposed, would also require CFC to upgrade the existing White River Road to recreation standards (25 miles/hour), and to construct to recreation standards a spur off of the White River road to access the Leask Lakes area. By intent, all roads as presently proposed, would stop short of accessing Leask Lake. The exchange would allow a maximum of 1500 acres of timber to be logged in the vicinity of the lake. Although substantial buffers have been retained along all major stream courses and the cutting has been designed to protect deer winter habitat and travel corridors, some impact on deer populations and interior forest species is expected. However, the impact is expected to be off-set to some extent by other benefits of the exchange, including acquisition of CFC lands which may otherwise be logged. Impact on deer is more likely to occur during medium to severe winters. One of the primary objectives of the exchange is to provide greater opportunities for "roaded" access in the Ketchikan area while attempting to minimize the impact.

Because of the size of the documents, copies of the draft appraisals have not been disseminated with the decision document, but may be viewed at the address above or the Planning Office of the Ketchikan Gateway Borough. Copies of the Preliminary Exchange Agreement, and the Preliminary Report of Exchange, and finding concerning Mineral Closing Order 643 may be acquired by contacting the above offices, or any of the regional offices of the Division. Copies of these documents will automatically be conveyed to the 41 individuals, agencies, and special interest groups already on the exchange's current mailing list, all legislators, and the Alaska Miners Association. A copy the Draft appraisals (about, 575 pages) will, as requested, be sent to the Tongass Conservation Society, the Sierra Club Legal Defense, the

Ketchikan Daily News, and KRFM Radio in Ketchikan. Additional black and white copies will be provided without the computer discs at approximately \$140/copy. Although the draft appraisals represent what is felt to be true values of the lands, there will continue to be clarifications as well as adjustments that may result as an outcome of the public review process.

Hearings on the Exchange: The Department of Natural Resources will conduct public hearings in Saxman, February __, 1992, from 2:00-4:00 P.M., at Room ___ of the (name and address of building); Ketchikan, February __, 1992, from 7:00-10:00 P.M., at Room ___ of the (name and address of building), and Juneau, 7:00-9:00 P.M., at Room ___ of the (name and address of building). The hearing place shall be open at least one half hour before the times above to allow those wishing to testify to preregister. Those wishing to be assured of the ability to testify should take advantage of the preregistration. Preregistration allows the hearing officer to better allocate time to ensure that everyone desiring is given the opportunity to testify. An attempt will be made to allow each person testifying at least three minutes to do so.

The purpose of the hearing is not to disseminate information but to receive testimony. DNR provide an agent in Ketchikan February 26, and March 9 and 10, 1992 to conduct informal, "drop-in" workshops in the area. The agent would expect to be available at the offices of the Ketchikan Borough Planning offices during normal working hours of those days. The planning office will also have the name of the hotel where the agent is staying so that anyone desiring may leave a message should they wish to make special arrangements after normal working hours.

Following the hearings, hearing records shall remain open until 4:30 P.M., March __, 1992 to allow those desiring to submit additional information or statements. Shortly thereafter, the Department will consolidate comments, and if the decision is still to proceed, finalize the Final Exchange Agreement, and Final Report of Exchange for submission to the legislature. The Commissioner's execution is the final administrative action. An appeal of this action must be made to the Superior Court of the State of Alaska within 30 days of the date of execution.

More About Mineral Closing Order 643: The closure will be effective upon execution by the Commissioner, estimated to be on or about _____, __, 1992 (30 days after first notice). The finding and order, unless extended by a future action, effects termination of the closure and reopens the area to mining and mineral entry effective 10:00 A.M., July 1, 1994.

Any comments, objections or expressions of interest pertaining to the proposed action must be received by the Division of Land at the above address by 4:30 P.M., __ (30 days after first publication). Any person who is adversely affected by the mineral closure may request the commissioner's reconsideration in accordance with 11 AAC 02 by writing to the Commissioner at the above address no later than 20 calendar days after approval of the mineral closing order. An appeal must be filed no later than 30 days after approval. A copy of 11 AAC 02 may be obtained from any DNR office.

Questions: Questions concerning any of these action (mineral closure or exchange) should be referred to Andrew Pekovich at the above address.

The Division of Land reserves the right to waive technical defects in this publication.

Andrew W. Pekovich, Regional Manager Southeast Regional Office

Publish: _____, __ and __, 1992.

**FINDING OF THE COMMISSIONER
AS 38.05.185**

**MINERAL CLOSING ORDER 643
VICINITY OF LEASK LAKE, NORTHEAST OF THE CITY OF KETCHIKAN**

A Preliminary Exchange Agreement (ADL 105565) was approved by the Director of Land on July 22, 1991 for the parcels described in Attachment - "A". The agreement involves the exchange of state uplands east and south of Leask Lake, Ketchikan, more specifically described as fractional portions of Sections 13, 14, 22-24, 26, 27, and 35, Township 73 South, Range 91 East, Copper River Meridian, containing 2445 acres, more or less (See Attachment - "A" for legal description). Regulations for land exchanges, as referenced under 11 AAC 67.230(b), state that upon entering into a preliminary exchange agreement under this section, the Department will initiate procedures to close the state land proposed for exchange to mineral entry and location under AS 38.05.185. The closure to mineral entry is necessary to avoid the creation of any new third-party interest.

Therefore, it is my finding, in accordance with AS 38.05.185(a) that mining would conflict with making this land available, and that the best interest of the state and its residents are served by the closing the above referenced land to entry under the locatable mineral and mining laws of the State of Alaska. Unless extended, or otherwise terminated with notice, this order shall automatically terminate and the area reopened to mineral entry at 10:00 A.M., July 1, 1994.

Commissioner _____ Date _____
Department of Natural Resources

Attachment: Maps and Legal Description

ACMP; PRELIMINARY DETERMINATION, Attachment To: Report of Proposed Exchange ADL No. 105565

The proposed conveyance of state land and timber rights is subject to the Standards of the Alaska Coastal Management Program (ACMP) because it would be a disposal of interest in state land (6 AAC 50.190). The Department of Natural Resources is coordinating this ACMP review, following the procedures set out in 6 AAC 50.

The purpose of public review of this exchange is to determine if the exchange of any or all of these parcels, for Cape Fox Corporation's land in the White River, Lake Harriet Hunt, Talbot Lake areas of Ketchikan is in the state's best interest. A tract proposed for exchange may be kept in state ownership if the Commissioner of DNR concludes transferring is not in the state's best interest or is not consistent with the Alaska Coastal Management Program.

This ACMP determination was necessarily general. Although the coastal program deals with land uses, it was not known in most cases how CFC will subsequently use the land. The review was based on the likeliest uses that could produce revenue for CFC: sales or leases for residential, recreational, commercial, or industrial purposes, as well as logging. Some of the state land proposed for conveyance to CFC would be conveyed with severe development restrictions.

The determination is subject to Ketchikan Gateway Borough's (KGB) Coastal Management and Comprehensive plans. KGB strongly supports the exchange.

None of the land or interests being transferred has been identified as involving a significant geophysical hazard or area of historic or archeological importance. Nor has any tract been designated by the district plan for seafood processing or as a subsistence zone. The Leask Lakes area was selected for community expansion and recreation. There is support for the exchange. There is also support for state retention, and designation of the entire Leask Lake Tract as a state Park. Breaking up the state's Leask Lake lands and possible affects on interior species are two undesirable aspects of the exchange, but DNR feels that the exchange will provide the best combination of recreational and habitat opportunities. Although the exchange places restrictions on lands that cannot be developed, it does not in itself authorize or permit timber cutting or remove it from the necessity to acquire regulatory permits that may otherwise be required to log or develop private lands. Therefore, the action does not conflict with the standards on geophysical hazards; historic, prehistoric, and archeological resources; fish and seafood processing; subsistence; and recreation. In addition, public access to coastal waters (part of the recreation standard) will be enhanced by the state's acquisition of CFC lands along the shore of Upper George Inlet, as well as White River, Lake Harriet Hunt, and Talbot Lake.

The transfer does not pose a conflict with the transportation and utilities standard. Easements have been reserved to allow access to Leask Lake, as well as DOT/PF's proposed interior alignment for the Tyee/Swan Lake road should the lands at Leask Lake be needed.

Laws and regulations regarding timber harvesting and air, land, and water quality will continue to apply, ensuring consistency with the two affected standards.

Finally, the transfer is consistent with the habitat standard because the tracts exclude most habitat types listed in that standard. No offshore land or intertidal areas will be conveyed. Important upland habitat has either been deleted from the parcels or is protected by stipulations. Any wetlands or non-navigable water bodies included within transferred parcels will continue to be protected by applicable federal law controlling dredge and fill projects.

Future ACMP Reviews: CFC development of land acquired from the state will require CZM project review to the same extent as private land. If CFC needs state or federal permits to undertake a particular use (for example, a state permit to place a road culvert in a fish stream or to install a new sewage system as part of a subdivision development), another ACMP determination specific to that particular use will be necessary. However, future ownership changes by CFC, i.e., sales of land or timber to other private individuals or companies - will not require state approval and therefore will not be subject to the ACMP.

Preliminary Determination: The proposed action is found generally consistent with the standards of the ACMP and appropriate district programs.

Call for Comments: Comments regarding the consistency of the proposed transfer with affect to Ketchikan's District ACMP plan, should be submitted to DNR along with comments on this entire exchange proposal. Comments must be received by 4:30 P.M., March 26, 1992. Descriptions and maps of parcels are found in Section VII and Attachment - "M" of the exchange report.

Signed:



Date:

2/10/92

Andrew W. Pekovich
Regional Manager, Div. of Land



ALASKA'S LAND

ALASKA ♦ DEPARTMENT ♦ OF ♦ NATURAL ♦ RESOURCES

Focus On.... CAPE FOX LAND EXCHANGE: A Summary of the Exchange to Date

The Department of Natural Resources proposes to exchange the surface estate of three parcels (approximately 2,445 acres) of state uplands in the vicinity of Leask Lake for a similar estate on five parcels (approximately 4,366 acres) of Cape Fox Corporation (CFC) lands in the White River valley, and adjacent to Lake Harriet Hunt and Talbot Lake. All lands are 10-12 miles north of Ketchikan.

A mineral closing order will be imposed on the state land to avoid establishment of additional third party rights.

The proposed exchange allows a maximum of 1,500 acres of timber (42.6 million board feet) to be logged in the vicinity of Leask Lake on land traded to CFC. This land is currently used for dispersed recreation, and hunting. The CFC lands to be acquired include commercial timber land and previously harvested timber land suitable for road accessible recreation, hunting, and fishing.

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A primary objective of the exchange is to provide greater opportunities for "roaded" access in the Ketchikan area. CFC will upgrade the existing White River Road and will construct a spur off the White River Road to access the Leask Lake area. Both will meet "public access standards" (25 mph). This will add 13.1 miles to the main road system (a 30% increase) and will access a variety of areas with high recreation potential.

The Ketchikan Gateway Borough and the Ketchikan Assembly support the exchange.

Seventy-nine percent (79%) of the critical deer winter range within the state land proposed for exchange has been deliberately preserved and will not be logged. Habitat was identified by a study commissioned by CFC.

Although substantial buffers have been retained along all major stream courses and cutting has been designed to protect deer winter habitat and travel corridors, some impact on deer populations and interior forest species is expected. However, the impact is expected to be offset to some extent by other exchange benefits, including acquisition of CFC lands that may

otherwise be logged. Impact on deer is more likely to occur during medium to severe winters.

The exchange appraisal is extremely complex. Present projections indicate, after certain adjustments, that CFC and state properties will both be valued at eight million dollars. Timber is the overriding value. Appraisal clarifications and adjustments may result from the public review process.

DNR will hold hearings and workshops in Southeast Alaska during February and March, and will keep the record open into March. Comments will be considered, and if the decision is still to proceed, DNR will finalize the exchange agreement and report of exchange for submission to the legislature, hopefully by the end of March.

The commissioner's execution of the exchange is the final administrative action.

For further information, contact Andy Fekovich, Division of Land Southeast Region Office, 400 Willoughby Avenue, Fourth Floor, Juneau, AK 99801 (phone 465-3400).

SUMMARY

CAPE FOX CORPORATION/STATE OF ALASKA

LAND EXCHANGE

1. Cape Fox Corporation, CFC, land (five parcels) included in the exchange consists of the White River Valley, land adjacent to Harriet Hunt Lake and land adjacent to Talbot Lake totaling 4,336 acres.
2. State of Alaska land in the exchange consists of three parcels in the Leask Lake area totaling 2,445 acres.
3. The exchange includes only the surface estate as defined by the Alaska Native Claims Settlement Act.
4. State land in the exchange includes 42.6 MMbf of commercial timber on 1,500 acres. Anticipate adjustment down to approx. 40.5 MMbf.
5. Land exchange to CFC not within the areas proposed for timber harvest will be open to public use. CFC will have limited use rights in these areas.
6. CFC will upgrade the existing White River road to "public access standards."
7. CFC will construct the main road into the Leask Lakes area to "public access standards."
8. 90% of the anadromous streams in the entire Leask Lake tract, the largest and most sensitive streams, have been deliberately buffered and excluded from the exchange.
9. 79% of the critical deer winter range within the State land proposed for exchange has been deliberately preserved and will not be logged. Habitat was identified in a study commissioned by CFC and conducted by America North, Inc. of Anchorage.
10. The exchange, as proposed, would add 13.1 miles to the main road system of Ketchikan, a 30% increase. The new roads would access a variety of areas, both CFC and State totaling 6,811 acres, with high recreation potential.
11. The Ketchikan Gateway Borough has supported the exchange through a planning analysis that resulted in a specific exchange recommendation and a resolution of support by the Assembly.

12. The Borough's planning analysis included a community survey that found the following:
 1. 9 of 10 Borough residents want the road system expanded, 50% want expansion immediately.
 2. 86% of Borough residents support outdoor recreation development near areas that have been harvested.
 3. Preservation of sport fisheries and wildlife in outdoor recreation areas rated highest in value to residents.
13. The appraisal is extremely complex and the reason for delay. It is now over two months over deadline. Present projections appear to indicate that after adjustments for stumpage not due the university, a reduction of 1.9 MMbf to accommodate recommendations of the CFC's deer study, and upgrade of both roads to recreation standards, both CFC and state properties will be valued at \$8,000,000. Timber is the overriding value.
14. DNR's goal was to have this exchange before the legislature within 10 days of the opening of the session. Because of the appraisal delays we not anticipate public hearing's the first week of February with submission the last week of March.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

SOUTHEAST REGIONAL OFFICE
DIVISION OF LAND AND WATER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE
SUITE 400
JUNEAU, ALASKA 99801
PHONE: (907) 465-3400

February 13, 1992

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Grussendorf:

The "summary" referred to in Director Swanson's of February 12, 1992 concerning the proposed Cape Fox exchange was inadvertently omitted. The summary is hereby attached to this letter. Please accept my apology for any inconvenience this may have caused.

Sincerely,



Andrew W. Pekovich
Regional Manager, Southeast Region

Attachment: Summary

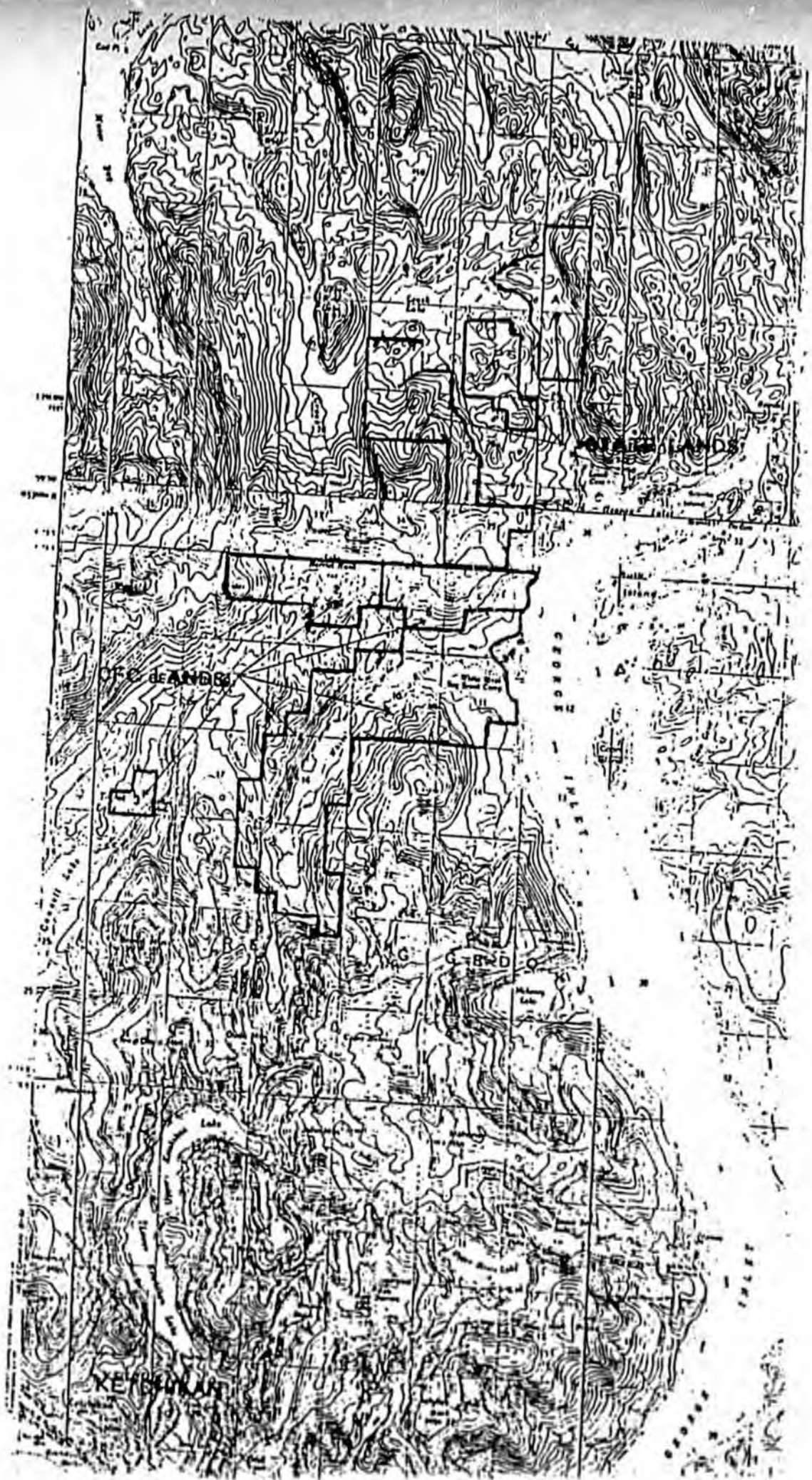
cc: All House of Representative Legislators

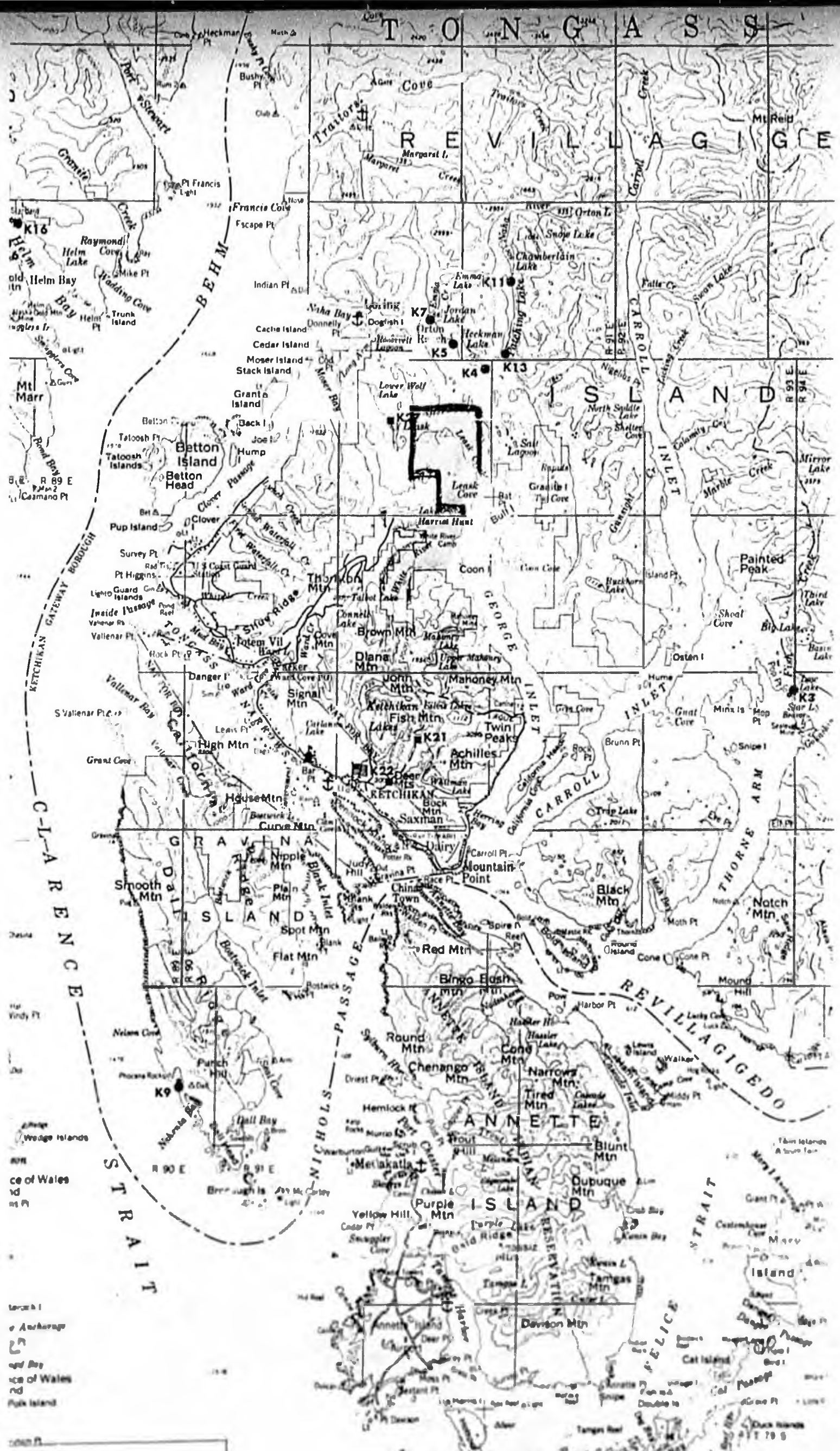
DEPARTMENT OF NATURAL RESOURCES
SUMMARY OF STATUS OF PROPOSED CAPE FOX CORPORATION (CFC) EXCHANGE
(January 22, 1992)

1. Cape Fox Corporation, CFC, land (five parcels) included in the exchange consists of the White River Valley, land adjacent to Harriet Hunt Lake and land adjacent to Talbot Lake totaling 4,336 acres.
2. State of Alaska land in the exchange consists of three parcels in the Leask Lake area totaling 2,445 acres.
3. The exchange includes only the surface estate as defined by the Alaska Native Claims Settlement Act.
4. State land in the exchange includes 42.6 MMbf of commercial timber on 1,500 acres. Anticipate adjustment down to approx. 40.5 MMbf.
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14. DNR's goal was to have this exchange before the legislature within 10 days of the opening of the session. Because of the appraisal delays we not anticipate public hearing's the first week of February with submission the last week of March.

Map Attached





T O N G A S S

REVILLAGIGEDO

ISLAND

GRAVINA ISLAND

ANNETTE ISLAND

STRAIT

REVILLAGIGEDO

Scale bar and other small text in the bottom left corner.

THE PUBLIC TRUST DOCTRINE IN ALASKA

by

GREGORY F. COOK

To be presented May 9, 1992, at Centennial Hall, Juneau, Alaska, at a Continuing Legal Education Seminar, "WILDLIFE AND FISHERIES LAW IN ALASKA," co-sponsored by the Alaska Bar Association and the Wildlife and Fisheries Law Institute (an Alaska non-profit corporation).

AUTHOR:
Gregory F. Cook
P. O. Box 240618
Douglas, Alaska 99824
(907) 586-9719

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I. INTRODUCTION.

A. The Public Trust Doctrine In A Nutshell

What is the public trust doctrine? It is one part of our government's complex system of checks and balances. It is a strong tradition in American government which enables the judicial branch to restrain the legislative and executive branches from alienating certain "common property" public resources comprising the wealth of the state.

At its simplest level, the public trust doctrine revolves around the concept that government owes its citizens special duties of care, or stewardship, regarding certain natural resources which the state holds in trust for the public. At this most basic level, the public trust doctrine holds that government must act as a fiduciary in its management of the resources which constitute the corpus of the trust. The beneficiaries of the trust are the citizens of the state--current and future generations.

For purposes of the public trust, state-owned property is conceptually divided into two, discrete categories: either it is held by the state as a "proprietor," or it is held by the state in its "sovereign capacity." SEE, e.g., Caminiti v Boyle, 732 P. 2d 989 (Washington, 1987).

Resources which the state holds as a proprietor would include, for example, cars in the motor pool; office furniture; computer equipment; books, and the like. Resources held by the state as a proprietor are not subject to the public trust.

In contrast to proprietary resources like those listed above, "common property" resources like fish, wildlife, waters, minerals, and land are held by a state in its sovereign capacity and are subject to the public trust.

The import of the distinction between holding property as a proprietor versus holding property as a sovereign has been set forth in one leading case as follows:

The title of both of these (classes of property), for the greater order, and perhaps, of necessity, is placed in the hands of the sovereign power, but it is placed there for different purposes. The citizen cannot enter upon the domain of the crown and apply it, or any part of it, to his immediate use. He cannot go into the king's forests and fall and carry away the trees, though it is the public property; it is placed in the hands of the king for a different purpose; it is the domain of the crown, a source of revenue; so neither can the king intrude upon the common property, thus understood, and appropriate it to himself, or to the fiscal purposes of the nation, the enjoyment of it is a natural right which cannot be infringed or taken away.... Matthews v Bay Head Improvement Assn., 471 A. 2d 355 (New Jersey, 1984), cert. denied, 469 U.S. 821 (1984), citing Arnold v Mundy, 6 N.J.L. 1 (Sup. Ct. 1821) per Chief Justice Kirkpatrick. (emphasis added in Bay Head), cited and relied on in Shively v Bowlby, 152 U.S. 331,

The development of the public trust doctrine in the United States has historically been marked by consistent recognition of this elemental distinction in the rights and duties of state governments vis-a-vis public trust resources compared to the rights and duties of the state when it deals with non-trust resources.

A more modern case has re-phrased that historic formulation of the public trust doctrine more prosaically, but with greater brevity:

Traditionally, the (public trust) doctrine has functioned as a constraint on states' ability to alienate public trust lands (footnote omitted) and as a limitation on uses that interfere with (public) trust purposes. (footnote omitted)

District of Columbia v Air Florida, 750 F. 2d 1077, 1082-1083 (D.C. App., 1984).

The fundamental distinction between lands and resources held by the state in trust is that the state as trustee acts :

...not as proprietors, but in their sovereign capacity as the representatives and for the benefit of all their people in common.

Organized Village of Kake v Egan, 174 F. Supp. 500, 504, (D.C. Alaska, 1959).

B. A Short History of the Public Trust Doctrine

The historical antecedents of the public trust doctrine¹ reach back at least as far as Roman times. In the sixth century A.D., the Emperor and jurist Justinian wrote that by "the law of nature,

¹ For the student who seeks extensive historic treatment of the Public Trust Doctrine, a variety of fascinating academic surveys of the public trust doctrine are available: e.g., Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention," 68 Mich. L. Rev. 471 (1970); Sax, "Liberating the Public Trust Doctrine from its Historical Shackles," 14 U.C.D.L.Rev. 185 (1980); Johnson, "Public Trust Protection for Stream Flows and Lake Levels," 14 U.C.D.L. Rev. 233 (1980); Wilkinson, "The Public Trust Doctrine in Public Land Law," 14 U.C.D. L. Rev. 269 (1980); Bean, The Evolution of National Wildlife Law, p. 37 (1983); Note: "The Public Trust in Tidal Areas: A Sometimes Submerged Traditional Doctrine," 69 Yale L. J. 762 (1970); "The Public Trust and the Waters of the American West: Yesterday, Today and Tomorrow," Lewis and Clark, Northwestern School of Law (1988).

the air, running water, the sea, and consequently the shores of the sea" were "common to mankind." Justinian, Institutes 2.1.1 (T. Sandars trans. 1st Am. ed. 1876.); SEE ALSO: 2 Blackstone, Commentaries 403 (1803).

This indefeasible public interest in certain natural resources remains the heart of the Public Trust Doctrine as we prepare to enter the twenty-first century A.D.

In American jurisprudence, courts that have faced public trust issues have looked primarily to English law, including the Magna Carta, to explain the scope and impact of the public trust doctrine. SEE, e.g., Martin v Waddell's Lessee, 41 U.S. (16 Pet.) 367, 410 (1842); Geer v Connecticut, 161 U.S. 519 (1896).²

Federal law in the United States has a long and continuing history of public trust jurisprudence. Nonetheless, the Public Trust Doctrine in America has been primarily a creature of state common law.³ District of Columbia v Air Florida, 750 F. 2d 1077, 1082 (D.C. App., 1984). SEE, e.g., State v Longyear Holding Co., 29 N.W. 2d 657 (Minnesota, 1947); City of Madison v State, 83 N.W. 2d 674 (Wisconsin, 1957); Metlakatla Indian Community, Annette Island Reserve v Egan, 362 P. 2d 901, 905 (Alaska, 1961); aff'd, 369 U.S. 45 (1962); Herscher v State, 568 P. 2d 996, 1003, 1005 (Alaska, 1977); Owsichek v State, 763 P. 2d 488, 492-496 (Alaska, 1988); CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115 (Alaska, 1988); McDowell v State, 785 P. 2d 1, 12, 16, 18 (Alaska, 1989); Gilbert v State, 803 P. 2d 391, 398-399 (Alaska, 1990).⁴

² Spanish law, and subsequently Mexican law, recognized the Public Trust Doctrine. SEE: City of Los Angeles v Venice Peninsula Properties 644 P. 2d 792 (California, 1982). Some commentators have suggested that public trust rights guaranteed by the Treaty of Guadalupe Hidalgo serve as an independent basis for the Public Trust Doctrine in California. SEE: Stevens, "The Public Trust: A Sovereign's Ancient Prerogative Becomes the People's Environmental Right," (1980) 14 U.C. Davis L. Rev. 195, 197; Dyer, "California Beach Access: The Mexican Law and the Public Trust," (1972) 2 Ecology L. Q. 571.

³ There is no universal and uniform law on the subject; (the public trust doctrine)...each State applies the doctrine to the lands under the tide waters within its borders according to its own views of justice and policy. ... Great caution, therefore, is necessary in applying the precedents in one State to cases arising in another. Shively v Bowlby, 152 U.S. 1, 26 (1894).

⁴ For a review of most Alaska Statutes governing administration of natural resources in Alaska, SEE: "Natural Resources and the Public Trust Doctrine," Alaska Bar Association, 1986. This symposium antedates and therefore does not discuss the key Alaska cases of CWC Fisheries v Bunker, 755 P. 2d 1115 (Alaska, 1988), and Owsichek v State, 763 P. 2d 488 (Alaska, 1988). Also,

C. History of the Public Trust Doctrine in Alaska

1. The Alaska State Constitution

In Alaska, the evolution of the public trust doctrine is not so historically elaborate as it is in many other states. Because of Alaska's relatively recent admission to the Union, it is not possible to adequately describe the purview of the doctrine in Alaska without some reference to jurisprudence from sister jurisdictions. Nonetheless, Alaskan public trust law is already surprisingly well-developed.

Even before Statehood, Alaska recognized the force of the public trust doctrine. This is easily understood in the context of a Territory as rich in resources as Alaska facing the imminent prospect of Statehood and the attendant responsibilities of managing immense natural resource wealth.

To protect the patrimony of Alaska against intemperate disposal, Alaskans adopted a State Constitution with exceptional provisions regarding natural resources. (SEE: Alaska Constitution, Article VIII.) Among those constitutional provisions, one finds the ontogenesis of the public trust doctrine in Alaska law.

The Alaska Constitution--adopted by the Constitutional Convention on February 5, 1956 and ratified by the people of Alaska on April 24, 1956--is the primary source of the public trust doctrine in Alaska.⁵

The framers of the Alaska Constitution were conversant with and understood the nature of and obligations of the public trust doctrine. SEE: The Alaska Constitutional Convention Proceedings, Vol. 6, pp. 75-103.

Although the Framers of the Alaska Constitution did not elect to explicitly incorporate the public trust doctrine into Alaska's organic law,⁶ the Framers intended the "common use" clause of Article VIII, § 3, to implicitly adopt the public trust doctrine.⁷

the 1986 ABA symposium omitted discussion of Alaska's public trust umbrella statute: AS 38.05.502.

⁵ The Alaska Constitution did not become operative until Statehood was formally proclaimed on January 3, 1959.

⁶ The Alaska Constitution, Article VIII, §6, as originally proposed, would have placed all state lands "in trust." SEE: Committee Proposal No. 8, §7, 6 Alaska Constitutional Convention, p. 78, and commentary.

⁷ Often what is implied is as much a part of the Alaska Constitution as what is expressed. SEE: Wade v Nolan, 414 P. 2d 689 (Alaska, 1966).

The "common use" clause provides:

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

Alaska Constitution, Article VIII, §3.

Since Statehood, a host of decisions by the Alaska Supreme Court have recognized the force of the public trust doctrine in Alaska and have consistently expanded the scope of the public trust. SEE: e.g., Metlakatla Indian Community, Annette Island Reserve v Egan, 362 P. 2d 901, 905 (Alaska, 1961); aff'd, 369 U.S. 45 (1962); Herscher v State, 568 P. 2d 996, 1003, 1005 (Alaska, 1977); Owsichuk v State, 763 P. 2d 488, 492-496 (Alaska, 1988); CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1117-1121 (Alaska, 1988); McDowell v State, 785 P. 2d 1, 16-18 (Alaska, 1989); Gilbert v State, 803 P. 2d 391, 398-399 (Alaska, 1990).

Various decisions of the Alaska Supreme Court have established beyond debate that the public trust doctrine is implicit in the "common use" clause.

We begin by examining the constitutional history to determine the framers' intent in enacting the common use clause. This was a unique provision, not modeled on any other state constitution. Its purpose was anti-monopoly. This purpose was achieved by constitutionalizing common law principles imposing upon the state a public trust duty with regard to the management of fish, wildlife, and waters. (footnote omitted)

Owsichuk v State, 763 P. 2d 488, 493 (Alaska, 1988), citing 4 Proceedings of the Alaska Constitutional Convention 2492 (Jan. 18, 1956).

...title (to fish and wildlife) is reserved to the people, or the state on behalf of the people. (emphasis added)

Owsichuk v State, 763 P. 2d 488, 493 (Alaska, 1988), citing 4 Alaska Constitutional Convention Papers, Folder 210.

...the power or control lodged in the state...is to be exercised like all other powers of government as a trust for the benefit of the people, and not as a prerogative for the advantage of the government as distinct from the people, or for the benefit of private individuals as distinguished from the public good.

Owsichuk v State, 763 P. 2d 488, 494 (Alaska, 1988), citing Geer v Connecticut, 161 U.S. 519, 529 (1896) (emphasis added by the court in Owsichuk).

In light of this historical review (e.g., Geer v Connecticut,

161 U.S. 519, 529 (1896), and Illinois Central Railroad Co. v Illinois, 146 U.S. 387 (1892)), we conclude that the common use clause was intended to engraft in our constitution certain trust principles guaranteeing access to the fish, wildlife, and water resources of the state.

Owsichuk v State, 763 P. 2d 488, 496 (Alaska, 1988).

Thus, common law principles incorporated in the common use clause impose upon the state a trust duty to manage the fish, wildlife, and water resources of the state for the benefit of all the people. (footnote omitted)

Owsichuk v State, 763 P. 2d 488, 495 (Alaska, 1988).

To recapitulate, the Alaska Supreme Court has recognized the constitutional stature of the public trust doctrine in Alaska and its integral role in Alaskan law in the preservation of our natural resources since the earliest days of Statehood. Metlakatla Indian Community, Annette Island Reserve v Egan, 362 P. 2d 901, 905 (Alaska, 1961); aff'd, 369 U.S. 45 (1962).

2. The Public Trust Doctrine in the Alaska Statutes:
The 1983 "Sagebrush Rebellion" Initiative, §5

The public trust doctrine has been enshrined in the Alaska Constitution and it has been repeatedly recognized by the Alaska Supreme Court. Perhaps in recognition of its status as the cynosure of Alaskan resource law, the public trust doctrine in Alaska has also been explicitly recognized by our State's electorate.

Through the constitutional process of the Initiative (Alaska Const., Art. XI, §§ 1-4), the voters of Alaska in 1983 proposed and adopted an Initiative⁵ containing an express statutory statement of the public trust doctrine:

...all land in the state and all minerals not previously appropriated are the exclusive property of the people of the state and the state holds title to the land and minerals in trust for the people of the state.

⁵ The public trust doctrine was certainly not the focus of the 1983 Initiative. Most of the public debate regarding the Initiative dealt with tension between the respective rôles of the federal government and the State of Alaska in land management, in keeping with the general tenor of the "Sagebrush Rebellion."

AS 38.05.502 (1983 Initiative Proposal No. 5, §1). (emphasis added)⁹

This extraordinary Initiative--reiterating the most fundamental tenet of law regarding management of the main source of Alaska's current and future wealth--has not yet been the basis for a reported decision by the Alaska Supreme Court.

Legislative history for this Initiative is not helpful, either. Lacking judicial gloss as well as a reliable indication of the animus behind the trust portion of the Sagebrush Initiative, one must rely on other tools of statutory interpretation to explicate AS 38.05.502. Interpretation of AS 38.05.502 will call for judicial recourse to the rule of law that is most advisable in light of reason and public policy.

As a matter of statutory interpretation, courts should not assume that AS 38.05.502 is a mere redundancy. AS 38.05.502 must be seen as expanding the purview of the public trust doctrine beyond that which is contained in our State Constitution and strengthening the affirmative obligations of stewardship imposed upon the state *qua* trustee.

AS 38.05.502 enlarges the scope, and thereby also enlarges the purposes of the public trust in Alaska, by clearly applying the public trust doctrine to minerals and all publicly-owned land, regardless of the land's relationship to the ebb and flow of the tides. It remains for Alaska's judicial branch of government to recognize and interpret those additional purposes adumbrated in AS 38.05.502. SEE, e.g., National Audubon Society v. Superior Court of Alpine County, 658 P. 2d 709, 719 (California, 1983) (In Bank), citing Marks v. Whitney, 491 P. 2d 374 (California, 1971) (In Bank).

The usual rule applied by the Alaska Supreme Court is to construe Initiatives broadly. Thomas v. Bailey, 595 P. 2d 1, 3 (Alaska, 1979); City of Fairbanks v. Fairbanks Convention and Visitors Bureau, ___ P. 2d ___ (Alaska, 1991), Supreme Court Opinion No. 3760, October 11, 1991.

It does not seem overly adventurous to hazard the supposition that a broad judicial construction of AS 38.05.502 would result in the conclusion that the statutory component of Alaska's public trust doctrine protects all State-owned land in Alaska, including the fish, wildlife, timber, and water resources found on the land, and all state-owned minerals not appropriated prior to adoption of the 1983 Initiative.

Although ambiguity is usually in the eyes of the beholder, it may be useful to make a few guesses how the Alaska Supreme Court would view AS 38.05.502. When a statute is unambiguous, legislative history is not generally used to determine the meaning of the statute. TVA v. Hill, 437 U.S. 153, 184, n. 29 (1978); State

⁹ The public trust provision of the Initiative was renumbered by the Revisor of Statutes as AS 38.05.502.

v City of Haines, 627 P. 2d 1047, 1049 fn. 6 (Alaska, 1981).

The language of AS 38.05.502 appears unambiguous as to the fact that one purpose of this Initiative was to unequivocally state that all state-owned land in Alaska and all unappropriated minerals¹⁰, are held in trust for the people of the State.

There is at least a latent ambiguity in AS 38.05.502 insofar as the meaning intended to be given to the term "land" as it was used in the Initiative. That ambiguity disappears, however, when AS 38.05.502 is construed in conjunction with Alaska's pre-existing statutory definition of "land" or "state land." AS 38.05.965 (19).

The term "land" has been given an extremely broad definition in Alaska:

"state land" or "land" means all land, including shore, tide and submerged land, or resources belonging to or acquired by the state;

AS 38.05.965 (19) (emphasis added). SEE ALSO: A.G. Op. #166-136-85, February 21, 1985, pp. 6-7.

The 1983 Initiative's application of the public trust doctrine to all "land" therefore should be interpreted to mean that the public trust doctrine extends beyond tidewater and includes state-owned uplands and resources found thereon, such as fish, wildlife, timber, and water. AS 38.05.965 (19).

Although the precise contours of the public trust doctrine itself are not subject to "bright line" delineation, there is no ambiguity at the bedrock level: the public trust in Alaska is meant to apply to all State land and all unappropriated minerals."¹¹

¹⁰ Under Alaska law, the mineral estate is the dominant estate and carries with it the right to make such use of the surface estate as is reasonably necessary to remove the minerals. Norkan Corp. v McGahan, ___ P. 2d ___ (Alaska, 1991) Supreme Court Opinion No. J771, November 15, 1991, Slip Opinion at p. 13.

Nonetheless, the rights of the mineral estate are to be exercised with due regard for the rights of the owner of the servient estate. Norkan Corp. v McGahan, ___ P. 2d ___ (Alaska, 1991) Supreme Court Opinion No. J771, November 15, 1991, Slip Opinion at p. 14. SEE ALSO: 70 ALR 3rd 383 (1976).

Where mineral extraction would be wholly incompatible with public trust uses of the land, a strong argument could be made that the mineral extraction is forbidden.

¹¹ Under Alaska law, gravel is not a mineral. Norkan Corp. v McGahan, ___ P. 2d ___ (Alaska, 1991) Supreme Court Opinion No. J771, November 15, 1991, Slip Opinion at p. 13.

Gravel is the essence of the surface estate, and its extraction can render land unsuited for public recreation or wildlife or fisheries habitat.

Courts are virtually unanimous in holding that gravel is not

Thus, in interpreting and applying AS 38.05.502, the only interpretive tasks arguably presented for a court to determine are the extent of the State's fiduciary obligations under the public trust and the extent of the resources included within the ambit of the term "land."¹²

The fact that the public trust doctrine in Alaska emanates from our State Constitution and has also been embraced by the electorate as a whole, through the Initiative process, means that courts should sedulously protect the values embodied in the trust. It also means that courts should broadly construe the purposes of the public trust, since a narrow construction would risk the loss, through alienation of the ius privatum, of the inherently public resources that constitute the corpus of the trust.

The Alaska Legislature has plenary authority over state-owned resources, including lands conveyed to the state under the terms of the express, statutory, university trust, ch. 181, 38 State. 1214, and 45 Stat. 1091. The authority of the Legislature is not so great, however, as to enable it to ignore or violate its legal responsibilities as fiduciary for the public trust.

To summarize, the public trust doctrine in Alaska, including government's fiduciary role in management of trust resources, is one of the hallowed principles of Alaskan law. This tradition has been vigorously and repeatedly upheld in Alaska by our Constitutional Framers, by the Alaska Supreme Court, and by the

a "mineral" in the legal sense of that word. e.g. Anchorage Sand & Gravel Co. v Schubert, 114 F. Supp. 436, 437-438 (D. Alaska, 1953); Miller Land & Mineral Co. v State Highway Commn., 757 P. 2d 1001, 1003-1004 (Wyoming, 1988); and cases cited in Norken Corp. v McGahan, ___ P. 2d ___ (Alaska, 1991) Supreme Court Opinion No. 3771, November 15, 1991, at fn 4.

¹² "state lands" or "lands" means all lands, including shore, tide, and submerged lands, or resources belonging to or acquired by the state. AS 38.05.365 (16), cited in Moore v State, 553 P. 2d 8, 25 (Alaska, 1976) (emphasis added by the court), renumbered as AS 38.05.960 (19).

Assuming that the word "resources" is not a mere redundancy, the conclusion seems reasonable that land-tied resources, such as timber, come within the ambit of the definition of "lands."

Title 38 of the Alaska Statutes contains an additional definition of "state lands" that reinforces the very broad sweep of the term. AS 38.50.170 defines "state land" as: "including shore, tide, and submerged land or unsevered resources belonging to or acquired by the state excluding interests in land severed or constructively severed from the land..."

Thus, a court should logically give an expansive definition to the term "land" as used in AS 38.05.502, so that it includes, inter alia, state-owned uplands, fish and wildlife habitat, waters, recreation, scientific, educational, scenic, and aesthetic values.

electorate at large.

The fact that the public trust doctrine in Alaska emanates from our State Constitution, and has been reiterated by the electorate through the Initiative process, means that courts should sedulously protect the values embodied in Alaska's public trust.

The public trust also imposes an affirmative duty on the executive branch of state government. State agencies must thoroughly consider the public trust ramifications of their actions, especially where disposal of state land, forest resources, water, or unappropriated minerals are concerned.

Any disposal of trust resources must be strictly pursuant to the obligatory nature of the trust. Illinois Central R. Co. v State of Illinois, 146 U.S. 387 (1892); Geer v Connecticut, 161 U.S. 519 (1896).

State agencies must communicate the potential impacts of actions that may harm those resources to the entire Alaskan public in a clear and intelligible manner. State agencies should also observe standards of prudent self-restraint where disposal or exchange of state resources are at issue in order to assure protection of public trust resources.

II. THE PURPOSES AND SCOPE OF THE PUBLIC TRUST

A. The Purposes of the Public Trust in the United States

As defined in the various courts of the United States, the objectives of the public trust have evolved in concert with changing public perceptions of the values and uses of the trust resources that are managed by State government.

In the context of state-owned lands, the public trust doctrine has most frequently been applied in the context of tidelands. SEE, e.g., Martin v Waddell's Lessee, 41 U.S. (16 Pet.) 367 (1842); Shively v Bowlby, 152 U.S. 1 (1894); CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115 (Alaska, 1988).

During the nineteenth century, the purposes of the tidelands trust were traditionally defined in terms of navigation, commerce, and access for commercial fisheries.

Yet the public trust doctrine has never been so constricted.

The public trust doctrine was never the exclusive creature of littoral states, and the purposes of the public trust have never been limited to the triad of commerce, navigation, and fishing.¹³

As society and its needs have evolved, the scope and purposes of the public trust doctrine have also evolved and expanded. This evolution should be expected to continue.

There is a growing public recognition that one of the most important public uses of the tidelands--a use encompassed within the tidelands trust--is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.

National Audubon Society v. Superior Court of Alpine County, 658 P. 2d 709, 719 (California, 1983) (In Bank), citing Marks v Whitney, 491 P. 2d 374 (California, 1971) (In Bank).

What has been the result of this doctrinal evolution?

Caveat: The list set out below does not purport to be complete. The Public Trust Doctrine almost certainly has been held to protect additional resources and uses thereof; this writer does not pretend to have exhausted all avenues of research. Also, the doctrine is likely to be expanded as the years go by and public habits and needs change. Nonetheless, this listing should provide the reader with an appreciation of the current status of the way in which the purposes of the public trust doctrine are expressed in different states.

¹³ As discussed infra, the public trust doctrine in Alaska does not lose its force at the mean high tide line; the scope of the public trust in Alaska stretches beyond the capacious mud flats of Bristol Bay or Cook Inlet.

With those caveats in mind, the purposes of the public trust doctrine in the United States have been held to include at least:

- protection of navigational and commercial fishing rights over tidelands, e.g., Martin v Waddell's Lessee, 41 U.S. (16 Pet.) 367, 410 (1842);
- recreational fishing, boating, swimming, water skiing, and other related purposes, e.g., Wilbour v Gallagher, 462 P. 2d 232 (Washington, 1969) cert. denied, 400 U.S. 878 (1970);
- protection of the public's right to hunt, e.g., Opinion of the Justices, 424 N.E. 2d 1092 (Massachusetts, 1981); Delmarva Power & Light Co. of Maryland v Eberhard, 230 A. 2d 644 (Maryland, 1967); Bell v Town of Wells, 557 A 2d 168 (Maine, 1989); Hartford v Gilmanton, 146 A. 2d 851 (New Hampshire, 1958); Swan Island Club v White, 114 F. Supp. 95 (E.D.N.C., 1953), aff'd sub nom. Swan Island Club v Yarborough, 209 F. 2d 698 (4th Cir., 1954);
- protection of fish and wildlife habitat, e.g., Kootenai Environmental alliance v Panhandle Yacht Club, 671 P. 2d 1085 (Idaho, 1983); People of the Town of Smithtown v Poveromo, 336 N.Y.S. 2d 764 (New York, 1972); Just v Marinette County, 201 N.W. 2d 761 (Wisconsin, 1972); SEE ALSO: §2(c), ch. 82, S.L.A. 1985, Temporary and Special Acts and Resolves;
- recreational access to the ocean, e.g., County of Hawaii v Sotomura, 517 P. 2d 57 (Hawaii, 1973);
- sunbathing, swimming, other shore activities, and access to and use of shorelands and upland dry sand beaches, e.g., (Matthews v Bay Head Improvement Assn., 471 A. 2d 355, 365 (New Jersey, 1984), cert. denied, 469 U.S. 821 (1984),;
- enjoyment of scenic beauty, City of Madison v State, 83 NW 2d 674, 678 (Wisc. 1957); Obrecht v National Gypsum Co., 105 NW 2d. 143, 149, 151 (Michigan, 1960);
- conservation of fishery resources, e.g., Metlakatla Indian Community, Annette Island Reserve v Egan, 362 P. 2d 901, 915 (Alaska, 1961); aff'd, 369 U.S. 45 (1962), Owsichuk v State, 763 P. 2d 488, 492-496 (Alaska, 1988), Gilbert v State, 803 P. 2d 391, 398-399 (Alaska, 1990), and McDowell v State, 785 P. 2d 1, 12, 16, 18 (Alaska, 1989); Nathanson v State. 554 P. 2d 456, 458 fn. 9, (Alaska, 1976);
- conservation of wildlife resources, e.g., Herscher v State, 568 P. 2d 996, 1005 (Alaska, 1977); Owsichuk v State, 763 P. 2d 488, 492-496 (Alaska, 1988), McDowell v State, 785 P. 2d 1, 12, 16, 18 (Alaska, 1989) Gilbert v State, 803 P. 2d 391, 398-399 (Alaska, 1990), and Arnold v Mundy, 6 N.J.L. 1, 86 (2d e.d 1875) cited in Matthews v Bay Head Improvement Assn., 471 A. 2d 355, 361 (New Jersey, 1984), cert. denied, 469 U.S. 821 (1984),;
- waters and minerals, e.g, Herscher v State, 568 P. 2d 996, 1003 (Alaska, 1977); and
- existing and future recreational uses Ch. 82, §1(c), SLA 1985 (Alaska Statutes, Temporary and Special Acts and

Resolves) .¹⁴

B. Alaska Law and the Public Trust

1. The Purposes of the Public Trust in Alaska

Like most common law doctrines, the public trust doctrine in Alaska is flexible.¹⁵ As certain natural resources have become progressively more scarce, the purposes for which the public trust has been judicially invoked in Alaska have expanded. For example, in 1985, the Alaska Legislature recognized the necessity of endowing the public trust doctrine with sufficient flexibility to accommodate future uses in the context of recreational aspects of the public trust. SEE: ch. 82, §1(c), SLA 1985 (Alaska Statutes, Temporary and Special Acts and Resolves 1985).

The purposes of the public trust doctrine in Alaska have never been definitively established. The wisdom of not doing so is manifest.¹⁶

¹⁴ In Matthews, supra, the New Jersey Supreme Court found a public trust right of access to all municipally-owned beaches above and below the high tide line. The Court therein wrote: "Beaches are a unique resource and are irreplaceable." Matthews at 364.

The remaining unlogged, old growth rain forests of Southeast Alaska are no less unique a resource than the sandy beaches of New Jersey. Given the fact that once an Alaskan old-growth forest is logged, it may take roughly 300-500 years to regenerate old growth conditions, they too, are well-nigh "irreplaceable" subsistence and recreational resources.

¹⁵ The Alaska Constitution, which is the source of the public trust doctrine in Alaska, has previously been described as a document that is adaptable to changing circumstances. SEE: Waarwick v State, 548 P. 2d 384 (Alaska, 1976). Alaska's Court would be likely to agree with this statement:

Archaic judicial responses are not an answer to a modern social problem. Rather, we perceive the public trust doctrine not to be "fixed or static," but one to "be molded and extended to meet changing conditions and needs of the public it was created to benefit."

Matthews v Bay Head Improvement Assn., 471 A. 2d 355, 365 (New Jersey, 1984).

¹⁶ Although it is unwise to attempt to create a single statement of the purposes of the public trust doctrine, the need to exercise wise stewardship over Alaska's natural resource patrimony commands, at a minimum, that attention be paid to the public trust purposes enunciated by the California Supreme Court, sitting en banc, in National Audubon Society v. Superior Court of Alpine County, 658 P. 2d at 719.

The precise contours of the public trust doctrine in Alaska may never be permanently set. It is to be expected that Alaskan courts will continue to recognize that new uses of public trust resources deserve the legal guaranty of the public trust.

It has been shown, *supra*, that the "common use" clause of the Alaska Constitution, Article VIII, §3, is the source of the public trust doctrine in Alaska. Yet, since the trust is only implicit in the "common use" clause, how can the purposes of the public trust under Alaska law be discerned?

In interpreting Article VIII (the Natural Resources Article) of the Alaska Constitution, the Alaska Supreme Court has recognized the value of the three volume series of Constitutional Studies prepared by the Public Administration Service on behalf of the Alaska Statehood Committee for the Alaska Constitutional Convention (cited as "A Report to the People of Alaska from the Alaska Constitutional Convention"). *State v Lewis*, 559 P. 2d 630, 637-638 (Alaska, 1977). Naturally, it is useful to refer to this document to discern the purposes of the public trust doctrine as it exists at the State constitutional level in Alaska.

Referring to the importance of "A Report to the People of Alaska from the Alaska Constitutional Convention" as a judicial tool for elucidating provisions of the Alaska Constitution (and Article VIII in particular), the Alaska Supreme Court wrote:

We can envision no more cogent expression of the intent of the drafters and of those voting for ratification of the Constitution.

State v Lewis, 559 P. 2d 630, 638 (Alaska, 1977).

Let us then refer to Volume I, §III, of "A Report to the People of Alaska from the Alaska Constitutional Convention," for the portion titled "The State and its Patrimony" to aid in clarifying the constitutional dimension of the public trust doctrine in Alaska.

The portion of the Report cited below has particular poignancy when it is read in the context of the State of Alaska's recurring proposals to dispose of old growth forest lands of special value to fish and wildlife with the intention that the lands be developed at the expense of wildlife whose abundance depends on the forest.¹⁷

¹⁷ The following words were directed at private individuals who own forests, but they are just as appropriately applied to the State of Alaska as trustee of the public's forest wealth.

It is a scurvy trick of Fortune when she gives large wealth to a man with no feeling for trees.

Rev. Hudson Stuck, (Archdeacon of the Yukon and the man who made the first ascent of Denali) Ten Thousand Miles with a Dog Sled, p. 154. Wolfe Publishing Co., Prescott, Arizona (1988), originally

On a constitutional level, the Public Trust Doctrine in Alaska was intended by the Framers to function as a safeguard against inappropriate sales or disposals of public resources.¹⁸ In a subsection of "A Report to the People of Alaska from the Alaska Constitutional Convention," entitled "The Psychology of the Alaska Citizen and Resources Exploitation and Fraud," it was written:

At no point is the need for thoughtful judgment more necessary than in establishing the basic policy for the management and disposal of the tremendous resources which have been given him (the Alaskan citizen) as his patrimony. (emphasis added)

In the first flush of statehood, the average Alaskan will react, and very justifiably so, against the unnecessary restrictions which have bound him for so many years. He will not take kindly to the substitution of state red tape for federal red tape, nor should he. But the Alaskan will, as he thinks over his situation, be aware that any state control over resources which his judgment tells him is necessary is his control, ordained by him through the political process and subject to control and change through the same media. (emphasis in original)

Psychologically, the emphasis in the first days of statehood, so far as land and resources policy is concerned, will be in the direction of disposing of the patrimony as rapidly as possible, to get it into private hands so that immediate, and long-delayed, development may commence at once. Yet precipitate action could easily result in a situation which the people would have cause to regret in a few years.

This will be the critical point in Alaskan development, not alone for resources policy but for the entire future of the State of Alaska. The stakes are huge, and they will attract persons and corporations interested in them. Some of the ventures will be legitimate, some speculative, and some insidious. If the drive is for slam-bang disposal, without discrimination in the choice of terms of sale or lease, the interests of all the people of Alaska will suffer. (emphasis in original) If disposition of the land and its resources is made at ridiculously low prices, the parable of Jacob, Esau, and the bowl of pottage will be repeated; Alaska's patrimony will have been dissipated for the small-benefit of exploitation, or the non-benefit of fraud.

Lord Acton in a rather indelicate but expressive and oft-quoted statement pointed out that "Where the body is, there will the vultures be gathered." The expression is aptly applied, in part, to the Alaskan resources picture. Fortunately, an alert and enlightened citizenry can serve as

published in 1914.

¹⁸ SEE GENERALLY: Owsichek v State, 763 P. 2d 488 (Alaska, 1988).

a counterbalance; fortunately, too, not all developmental interests operate solely on the exploitative level, but sincerely seek to benefit permanently the society of which they are a part as well as to take the profits which are a basic and recognized part of the American system.

No constitutional provisions can be devised which will present a perfect and complete barrier to the determined commission of land and resources fraud or to "giving away" the resources of the people to interests for the purpose of exploitation rather than orderly development. But provisions can be devised which will make it easier for the public officials of the state to carry their burdens. If there are constitutional provisions to which they can point when some lobby urges them to take action which they know full well is not to the ultimate benefit of the people, the strain of maintaining moral as well as strictly legal honesty is less.

"A Report to the People of Alaska from the Alaska Constitutional Convention," Volume I, §III., "The State and its Patrimony," pp. 54-56, (1955).

"The State and its Patrimony," *supra*, was an important part of the context out of which the "common use" clause, and Alaska's public trust doctrine, arose.

The foregoing quotation demonstrates that Alaska's Public Trust Doctrine was intended to function as a safeguard against ill-advised sales or disposals of public resources. It also implicitly recognizes the need for close judicial scrutiny of attempted alienation of public resources in order to protect long-term public interests.¹⁹

Courts should look with considerable skepticism on any state conduct calculated to transfer public resources to private hands. Illinois Central R. Co. v State of Illinois, 146 U.S. 387, 452 (1892).

The constitutional history of the Article VIII "common use" clause is by no means the only source to which one can turn to

¹⁹ Considering timber sales such as Icy Cape, or DNR's plan to trade old growth forest at Leask Lakes for the stumps at White River (ADL # 12555), one might well argue that, psychologically, Alaska is still in the risky, pro-disposal, stage which the above writers referred to as "the first flush of statehood." *Id.*

The duties of the public trust require a court to exercise a high level of scrutiny over the actions of the cestui que trust. Metlakatla Indian Community, Annette Island Reservation, 362 P. 2d 901 (Alaska, 1961).

The proposed Leask Lakes exchange (ADL #12555) demands close judicial scrutiny to prevent permanent loss of important public resources. SEE: Kootenai Environmental Alliance v Panhandle Yacht Club, Inc., 671 P. 2d 1085, 1091 (Idaho, 1983), cited with approval in CWC Fisheries, 755 P. 2d 1115, 1118 (Alaska, 1988).

discern the broad contours of the public trust doctrine in Alaska. Much useful case law and judicial gloss also exist.

In explication of the "common use" clause of Article VII, §3, the Alaska Supreme Court has favored a broad interpretation of the scope of protection afforded by the public trust doctrine in Alaska:

...the common use clause was intended to guarantee broad public access to natural resources (not merely wildlife, which was at issue in Owsichek).

Owsichek v State, 763 P. 2d 488, 493, see also pp. 494-496 (Alaska, 1988) (emphasis added); Herscher v State, 568 P. 2d 996, 1003 (Alaska 1977); McDowell v State, 785 P. 2d 1, 6 (Alaska, 1989).²⁰

The pivotal importance of guaranteeing the right of public access to natural resources, and navigable or public waters in particular, was recognized by the Alaska Legislature in 1985:

Ownership of land bordering navigable or public waters does not grant an exclusive right to the use of the water and any rights of title to the land below the ordinary high water mark are subject to the rights of the people of the State to use and have access to the water for recreational purposes or any other public purpose for which the water is used or capable of being used consistent with the public interest.

§2(c), ch. 82, S.L.A. 1985, Temporary and Special Acts and Resolves.

One key purpose of the public trust doctrine in Alaska, then, is to serve as a safeguard against inappropriate sales, exchanges, or other disposals of public lands, natural resources, or other public trust resources. In particular, permanent impairment of public access to natural resources is forbidden by the public

²⁰

...the article VIII provisions were designed to ensure to the public the broadest possible access to wildlife...."the common use clause impose[s] upon the state a trust duty to manage the fish, wildlife, and water resources of the state for the benefit of all the people." (citation omitted) [A] minimum requirement of this duty is a prohibition against any...special privileges. (citation omitted)

McDowell v State, 785 P. 2d 1, 6 (Alaska, 1989) (emphasis in original).

The public trust's prohibition against "special privileges" is especially important in Alaska at this point in history due to the ongoing allocation battles between subsistence users, commercial users, recreational users, and non-consumptive users.

trust.²¹

As trustee, the State stands in a fiduciary relationship to all Alaskans--including future generations. As a fiduciary, the State must zealously protect the corpus of the trust from needless attrition. As a fiduciary, the State must also ensure that the options for future generations to use and manage trust resources are not unnecessarily diminished. SEE: SEACC v State, 665 P. 2d 544, 557 (Alaska, 1983) (Rabinowitz, dissenting, discussing the sustained yield concept).

What is a fiduciary relationship? The general law of trusts answers that question.

Out of such a relation, the law raises the rule that neither party may exert influence or pressure upon the other, take selfish advantage of his trust, or deal with the subject-matter of the trust in such a way as to benefit himself or prejudice the other except in the exercise of the utmost good faith and with the full knowledge and consent of that other, business shrewdness, hard bargaining, and astuteness to take advantage of the forgetfulness or negligence of another being totally prohibited as between persons standing in such a relation to each other.

Black's Law Dictionary, (1968) p. 754.

Impairment of the corpus of the trust would be a violation of the most fundamental of the State's fiduciary duties.

Any disposal of state-owned natural resources must be closely scrutinized by courts to ensure that short-term, "small-benefit" resource exploitation is not the net result of the disposal.²²

²¹ "...a state has constitutional power to insist that its natural advantages shall remain unimpaired..." Obrecht v National Gypsum Co., 105 NW 2d 143, 150 (Michigan, 1960).

In Owsichuk v State, 763 P. 2d 488, 494 (Alaska, 1988), the Alaska Supreme Court, in dictum, approved leases and exclusive concessions on state land as not violating the public trust. The Court's dictum was premised on the principle that leases and concessions were of finite duration and were subject to competitive bidding. In contrast to Owsichuk, exchanges of state land, e.g., Leask Lakes, bear neither of those indicia. Thus, the entire state land exchange program may be unconstitutional.

²² Final determination whether the alienation or impairment of a public trust resource violates the public trust doctrine will be made by the judiciary. ...this court will take a "hard look" at the action to determine if it complies with the public trust doctrine and it will not act merely as a rubber stamp for agency or legislative action. In making such a determination, the court will

"A Report to the People of Alaska from the Alaska Constitutional Convention," Volume I, §III., "The State and its Patrimony," pp. 54-56, (1955); SEE ALSO: Matter of Stone Creek Channel Improvements, 424 N.W. 2d 894, 902-903 (North Dakota, 1988).

Whenever the state alienates resources subject to the public trust, the net result must not be a significant diminution of the public's patrimony. Otherwise, the public trust is violated; i.e., the State fails to fulfill its fiduciary duties as trustee.

This is not to imply that every violation of the public trust will be judicially enjoined; traditional equitable principles will always be applied to weigh the advisability of judicial invalidation of the legislative or executive act at issue. Constitutional provisions, including the public trust, are given a reasonable and practical interpretation in accordance with common sense. Kochutin v State, 739 P. 2d 170, 171 (Alaska, 1987).

Although the public trust doctrine in Alaska has strong constitutional underpinnings, it is undeniable that there is a potential for tension within the State Constitution between the public trust provisions and other provisions of Article VIII.

In particular, there is a potential for tension between the public trust provisions for minerals of AS 38.05.502 and Article VIII, §§ 11 and 12.

It is true that the different provisions of Article VIII should be interpreted in a manner that makes the sections consistent with one another. SEE: Abrams v State, 534 P. 2d 91, 95 (Alaska, 1975). Nonetheless, other sections of Article VIII might be viewed as having the potential to conflict with the public trust obligations of the "common use" clause of Article VIII, § 3.

SECTION 8. The legislature may provide for the leasing of, and the issuance of permits for exploration of, any part of the public domain or interest therein, subject to reasonable concurrent uses. Leases and permits shall provide, among other conditions, for payment by the party at fault for damage or injury arising from noncompliance with terms governing

examine, among other things, such factors as the degree of effect of the project on public trust uses...; the impact of the individual project on the public trust resource; the impact of the individual project when examined cumulatively with existing impediments to full use of the public trust resource...; the impact of the project on the public trust resource when that resource is examined in light of the primary purpose for which the resource is suited, i.e., commerce, navigation, fishing, or recreation; and the degree to which broad public uses are set aside in favor of more limited or private ones. Kootenai Environmental Alliance v Panhandle Yacht Club, Inc., 671 P. 2d 1085, 1091 (Idaho, 1983), cited in CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1118 (Alaska, 1988).

concurrent use, and for forfeiture in the event of breach of conditions.

SECTION 9. Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources. Reservation of access shall not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages.

SECTION 10. No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

SECTION 11. Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which, upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery, location, and filing, as prescribed by law, shall establish a prior right to permits, leases, and transferable licenses for their extraction. Continuation of these rights shall depend upon the performance of annual labor, or the payment of fees, rents, or royalties, or upon other requirements as may be prescribed by law. Surface use of land by a mineral claimant shall be limited to those necessary for the extraction or basic processing of the mineral deposits, or for both. Discovery and appropriation shall initiate a right, subject to further requirements of law, to patent of mineral lands if authorized by the State and not prohibited by Congress. The provisions of this section shall apply to all other minerals reserved to the State which by law are declared subject to appropriation.

SECTION 12. The legislature shall provide for the issuance, types and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other minerals as may be prescribed by law. Leases and permits giving the exclusive right of exploration for these minerals for specific periods and areas, subject to reasonable concurrent exploration as to different classes of minerals, may be authorized by law. Like leases and permits giving the exclusive right of prospecting by geophysical, geochemical, and similar methods for all minerals may also be authorized by law.

SECTION 13. All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters,

are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

The Framers of Alaska's Constitution clearly foresaw that state-owned land could legitimately be conveyed out of the public domain by lease, sale, or grant. Alaska Const., Art. VIII, §§ 8, 9. All Alaskans must admit that development of State resources was high on the list of reasons for Statehood. Yet, at the same time, the Framers provided that conveyances by lease must be "subject to reasonable concurrent uses." Alaska Const., Art. VIII, § 8.

The framers of our state constitution were united in the view that the lands and other natural resources of this abundant state are among its most prized assets. Although favoring productive use of these resources, the framers believed that development should proceed only when it benefitted the people of the state and only in compliance with applicable constitutional and statutory processes.

Moore v State, 553 P. 2d 8, 30 (Alaska, 1976).

Pursuant to Article VIII, § 8, the State of Alaska should make no disposal of public land into private hands that will result in preventing public use of those lands for purposes of navigation, fishing, and hunting, but should retain easements for those public uses. It is unclear to what extent the Framers intended public trust uses to be subsumed within this provision, but there is certainly no inherent conflict between the power to lease and the duty to safeguard trust resources.

The Framers also clearly authorized the Legislature to sell or grant State land. Alaska Const., Art. VIII, § 9. Yet that power is limited. All conveyances by sale or grant "shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources." Id. On its surface, this provision appears to complement the public trust doctrine rather than to diminish it.

Procedural protections against rash disposals or leases of State lands and interests in land appear in Alaska's Constitution, Art. VIII, § 10. Prior public notice must be given, and the legislature is expressly authorized to require "other safeguards of the public interest." Id.

The purpose of § 10's mandate is "to safeguard the public's interest in the disposition of state natural resources." Moore v State, 553 P. 2d 3, 25 (Alaska, 1976).

The constitutional history of § 10 does not explicitly tie it to the "common use" clause of § 3. The only explicit purpose of the public notice provisions was to ensure that the new State would receive top dollar for its land, timber, mineral, water, and other

resources if they were sold. SEE: pp. 2469-2470, Proceedings of the Alaska Constitutional Convention.

The constitutional requirement of prior public notice could easily complement the goals of the public trust by interpreting § 10 to protect the public's beneficial interest in state lands and resources.

In order to comply with its public trust responsibilities, Article VII, § 10 public notices for land disposals or exchanges should do more than has yet been articulated by the Legislature.

To comply with the State's fiduciary responsibilities, public notices under Article VIII, § 10 should examine, among other things, such factors as the degree of effect of the project on public trust uses; the impact of the individual project on the public trust resource; the impact of the individual project when examined cumulatively with existing impediments to full use of the public trust resource; the impact of the project on the public trust resource when that resource is examined in light of the primary purpose for which the resource is suited, e.g., commerce, navigation, fisheries, wildlife, or recreation; and the degree to which broad public uses are set aside in favor of more limited or private ones. SEE: Kootenai Environmental Alliance v Panhandle Yacht Club, Inc., 671 P. 2d 1085, 1091 (Idaho, 1983), cited in CMC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1118 (Alaska, 1988).

Meaningful public participation in the land exchange process is thwarted where citizens lack key factual information. Alaska Survival v State, 723 P. 2d 1291, 1291 (Alaska, 1986). The State's failure to provide the information outlined in the preceding paragraph could rise to the level of seriousness implicating a Constitutional violation of Art. VIII, §10.

Water rights in Alaska's Constitution are shaped around the western states' common principle of prior appropriation. Alaska Const., Art. VIII, §§ 13. Yet private appropriation of water is expressly subordinated to "the general reservation of fish and wildlife." Id. There seems to be no reasonable debate as to whether this provision was intended to augment the power of the public trust doctrine or diminish it: it reinforces the public trust doctrine.

In conclusion, it seems fair to say that although there is a potential for conflict between the public trust responsibilities imposed by the "common use" clause of Article VIII, § 3, and several of the subsequent provisions of Article VIII, it is also possible to interpret the different clauses of Article VIII synergistically and harmonize those various sections so that they complement one another.

2. The scope of the Public Trust in Alaska: What Resources and Uses Are Protected By the Public Trust?

The public trust was confined to tidelands and tidewaters in the original thirteen states during the early days of our Republic. Today, it is well settled in the United States generally that "the public trust is not limited by the reach of the tides, but encompasses all navigable lakes and streams." National Audubon Society v. Superior Court of Alpine County, 658 P. 2d 709, 719-720 (California, 1983) (In Bank) (citations omitted).

In Alaska, the scope of the resources covered by the umbrella of the public trust doctrine is far broader than in most other states. The Public Trust Doctrine in Alaska is not limited to tidelands and submerged lands. As befits its prerogative²⁵, Alaska has broadly defined its trust resources to include all state land and all unappropriated minerals. SEE: 1983 Initiative, §5, codified at AS 38.05.502.

Perhaps the Alaskan electorate's decision to extend the protection of the public trust doctrine in Alaska to all state land is due to the fact that Alaska is radically different from most other states in the Union in the extent of the natural resource wealth that is held by our state as sovereign.

In any event, in Alaska the resources protected by the public trust include, at a minimum:

- a) wildlife and fish (ferae naturae), plus the habitat that supports those resources, and navigable and non-navigable waters, wherever occurring in the natural state (Alaska Constitution, Art. VIII, §3; Metlakatla Indian Community, Annette Island Reserve v Egan, 362 P. 2d 901, 915 (Alaska, 1961); aff'd, 369 U.S. 45 (1962); Ovsichuk v State, 763 P. 2d 488, 492-496 (Alaska, 1988), Gilbert v State, 803 P. 2d 391, 398-399 (Alaska, 1990);
- b) all state-owned land--including tidelands and uplands--and all minerals not previously appropriated (AS 38.05.502; CYC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1119 (Alaska, 1988); SEE ALSO: Informal A. G. Opinion,

²⁵ The rights of the public in trust resources is a question of property law, and it is the general principle that "the law of real property is...left to the individual states to develop and administer." Davies Warehouse Co. v Bowles, 321 U.S. 144, 155 (1944).

Thus, state courts "have the authority to define the limits of the lands held in public trust and to recognize such private rights in such lands as they see fit." Phillips Petroleum v Mississippi, 484 U.S. 469, 475 (1988).

April 25, 1985, No. 566-230-85, p. 7.²⁴ It is critical to recognize that the public trust doctrine in Alaska is not limited to tidelands or submerged lands.

- c) recreational uses of navigable or public waters or any other public purpose for which the water is used or is capable of being used consistent with the public trust, e.g., wildlife habitat, fishery habitat, scientific or educational value, scenic beauty, etc. ch. 82, §1(c), SLA 1985 (Alaska Statutes, Temporary and Special Acts and Resolves 1985).

This list of resources protected by the Alaskan public trust is not an exclusive compilation of all the resources or uses of those resources that come under the aegis of the public trust. In all likelihood, the umbrella of the public trust doctrine in Alaska extends beyond the foregoing list of resources. The resources cited above are at least the bare minimum corpus of the ius publicum in Alaska.

The Alaska Supreme Court may find protection for additional resources through judicial interpretation of the Alaska Constitution or statutes.

Case law from other jurisdictions is replete with holdings by state supreme courts that have extended the scope of the public trust doctrine to include protection for specific activities necessary and proper to the use and enjoyment of trust resources that have yet to be considered by the Alaska Supreme Court. In many instances, those state supreme courts have found public trust protection for resources and uses, viz., sunbathing, dry sand beach use and access. e.g., District of Columbia v Air Florida, 750 F. 2d 1077, 1083 (D.C. App., 1984).

²⁴ The Alaska Supreme Court, referring to the Alaska Constitution, Article VIII, § 10, has noted several times the high value which the framers of the Alaska Constitution placed on the state's land resources. e.g., Alaska Survival v State, 723 P. 2d 1281, 1289 (Alaska, 1986); North Slope Borough v Leresche, 581 P. 2d 1112, 1114 (Alaska, 1978); Moore v State, 553 P. 2d 8, 30-32 (Alaska, 1976); McCurray v DNR, 526 P. 2d 1353, 1357 (Alaska, 1974); Alyeska Ski Club v Holdsworth, 426 P. 2d 1006, 1011 (Alaska, 1967).

3. The Duties of the State as Trustee For the Use and Benefit of the Public

a. General Principles of the Law of Trusts Define the State's Obligations as Trustee

Courts have historically exercised equitable jurisdiction over trusts. Clews v Jamieson, 182 U.S. 461, 479 (1901). Within this historic context, courts will decree the scope and extent of equitable rights and duties appurtenant to the Public Trust Doctrine. Courts may also define the nature of the state's fiduciary duties, and may create any remedy that furthers the cause of justice.

As with other aspects of the Public Trust Doctrine, each state, including Alaska, is free to develop its own unique body of law regarding the obligations of the state as trustee.²⁵

Alaska's Supreme Court has yet to articulate the standard of care owed by the State as a trustee in the context of the public trust doctrine. Various fundamental questions have not yet been decided in Alaska, such as whether and how the State's fiduciary duties as trustee overseeing public resources differ from those of an ordinary trustee who oversees private resources.²⁶

The extent to which this public trust duty, as constitutionalized by the common use clause, limits a state's discretion in managing its resources is not clearly defined.

Owsichuk v State, 763 P. 2d 488, 495 (Alaska, 1988).

Decisions from other jurisdictions are helpful in defining the obligations of the state as trustee of the public trust in Alaska. Also helpful is the immense body of common law on the traditional, equitable role of the judicial branch for supervision of a fiduciary's performance of his trust duties.

Slocum v Borough of Belmar, 569 A.2d 312 (Sup. Ct., New Jersey, 1989), considered a municipality's delegated duties as trustee over its beach area, and held that in the absence of a trust document which specifies the duties of a trustee, "a public

²⁵ SEE: Phillips Petroleum v Mississippi, 484 U.S. 469 (1988).

²⁶ The law of private trusts has been applied to funds derived from lands held by the State in trust for schools, and university lands. SEE: State v University of Alaska, 624 P. 2d 807, 813, fn. 6 (Alaska, 1981).

The Alaska Supreme Court has also applied the general law of private trusts to mental health trust lands in Alaska. SEE: State v Weiss, 706 P. 2d 681, 683, and cases cited in fn. 3 (Alaska, 1985).

trustee is endowed with the same duties and obligations as an ordinary trustee." Id., at 317.

Although the Alaska Supreme Court has not yet confronted the precise problem of defining the limits of state discretion in management of public trust resources, it seems probable that the common law traditions of equity would provide the framework Alaska's Court would be most likely to adopt.

In all situations and under all circumstances, whether new or old, the principles of equity will point the way to justice... Where a new condition exists, and the legal remedies afforded are inadequate or none are afforded at all, the never failing capacity of equity to adapt itself to all situations will be found equal to the case, extending old principles, if necessary,...for that purpose.

Story, 1 Story's Equity Jurisprudence, §4 (14th ed. 1918), cited in ASEA v APEA, ___ P. 2d ___ (Alaska, 1991), Alaska Supreme Court Opinion No. 3779, Slip Opinion at p. 8.

For lack of a better benchmark, it is useful to refer to the "black letter" law of trusts to clarify the duties of the State of Alaska as trustee of public trust resources.

Briefly summarized, a trustee owes the following duties to the beneficiaries of the trust:

1. A duty of loyalty, i.e., no self-dealing;
2. A duty not to delegate;
3. a duty to furnish information;
4. a duty to take control and keep control of property;
5. a duty to preserve the trust property;
6. a duty to deal impartially with beneficiaries;
7. a duty to enforce the claims of beneficiaries;
8. a duty to make trust property productive.

Each of these duties is discussed separately below.

LOYALTY: "The trustee is under a duty to the beneficiary to administer the trust solely in the interest of the beneficiary." Restatement, Second, Trusts, § 170 (1).

The duty of loyalty, sometimes expressed as a prohibition against self-dealing, can be stated affirmatively: a trustee has a duty to act for the benefit of the beneficiaries of the trust.

For example, if a State exercises its authority as trustee for the particular benefit of the State itself by selling public trust lands primarily to increase tax revenues, or for the benefit of an individual or a small group of individuals; or by exchanging land or timber principally to benefit a private corporation, the State's action would violate the trustee's fiduciary duty of loyalty.

NON-DELEGATION: A fundamental duty owed by the trustee to the beneficiaries of the trust is the duty not to delegate to others

the job of administering the trust. SEE GENERALLY Scott, The Law of Trusts, (Fourth Ed., 1987) § 171. This duty is not absolute, however; certain, limited duties may properly be delegated by a trustee. Id., and § 171.1.

Under general principles of constitutional and administrative law, a legislature may not delegate its functions to an agency without establishing reasonably clear standards for the agency to follow. Nor may a legislature delegate powers it does not possess, or delegate certain "non-delegable" powers intended by the Constitution to be exercised only by the Legislature itself. SEE GENERALLY: Tribe, American Constitutional Law, §5-17 (1978).

While the Legislature may properly delegate administration of the public trust to executive branch agencies, it must do so with clear guidelines. Where the guidelines are insufficiently clear, or contravene the mandates of the public trust doctrine, a court of equity could intervene to clarify the trustee's obligations pursuant to the public trust.

PRODUCTIVITY: "The trustee is under a duty to the beneficiary to use reasonable care and skill to make the trust property productive." Restatement, Second, Trusts, §§176, 181.

This responsibility competes to some extent with the trustee's duty of preservation (*infra*). These duties are not mutually exclusive, however, and do not diminish the trustee's obligations of resource conservation under the public trust doctrine. (SEE, for example, AS 38.04.005-.015)

PRESERVATION: "The trustee is under a duty to the beneficiary to use reasonable care and skill to preserve the trust property." Restatement, Second, Trusts §176; SEE ALSO: Scott, The Law of Trusts, (Fourth Ed., 1987) § 176; and State v Weiss, 706 P. 2d 681, 683 (Alaska, 1985). Where loss to the estate is the result of the trustee's failure to use proper care or skill, or is due to the trustee's negligence, the trustee is liable to the beneficiaries for the loss.

This black letter duty is similar to the public trust's mandate of "equitable and wise" management of public trust resources.

INFORMATION: "The trustee is under a duty to the beneficiary to keep and render clear and accurate accounts with respect to the administration of the trust." Restatement, Second, Trusts, §§ 172, 176, 181.

The law of trusts imposes upon a trustee a duty to supply complete and accurate information regarding the administration of the trust to the beneficiaries upon request and at reasonable times. } Scott on Trusts, § 173.

The State's duty as trustee to provide information to the public is an area where substantial activity may reasonably be expected in the future. Although Alaska case law on fiduciary duties is still sparse and undeveloped, a good idea of what the Alaska Supreme Court might say can be gained from recent statements

by courts in Oregon and Washington:

...the trustee's fiduciary duty includes the responsibility to inform the beneficiaries fully of all facts which would aid them in protecting their interests. (Citations omitted) If the beneficiaries are [to be] able to hold the trustee to proper standards of care and honesty and procure the benefits to which they are entitled, they must know of what the trust property consists and how it is being managed. (citation omitted)

Allard v Pacific National Bank, 663 P. 2d 104, 110-111 (Washington, 1983) (En Banc). SEE ALSO: Bogert, Trusts & Trustees, § 961 (2d ed., 1962).

One interpretation of this duty is that the State of Alaska is under a duty to provide the Alaskan public with regular reports assessing the extent, current status, and future of public trust resources. This may mean that an extensive information-gathering responsibility exists whereby the State would compile benchmark data upon which future public reports could be made. Pending completion of that information, most disposals and exchanges of public trust resources should probably be held in abeyance.

The wisdom of delaying alienation of Alaska's public trust resources until full information can be disclosed to the public and digested by them is simple: how can we be sure we are getting full value for our resources if we are unaware of what they are worth?

A trustee has the duty to determine, usually through appraisal, the fair market value of trust assets before any sale or other transfer of those trust assets. Hatcher v U.S. National Bank of Oregon, 643 P. 2d 359, 364-366.

To prevent impairment of the corpus of the trust, it is essential that no alienation of trust resources be permitted in the absence of a full and complete public disclosure of the full value of the trust resources involved. Allard v Pacific National Bank, 663 P. 2d 104, 110-111 (Washington, 1983) (En Banc); Bogert, Trusts & Trustees, § 961 (2d ed., 1962); Hatcher v U.S. National Bank of Oregon, 643 P. 2d 359, 364-366.

For example, in Alaska, there is generally a paucity of information that would constitute a fair and complete appraisal or inventory of all the public assets involved in a land sale or timber sale. Yet it seems clear under basic principles of trust law, that the State should not be able to alienate public trust resources unless and until it has made prior disclosure of the true value of those resources to the public, as beneficiaries of the public trust. Id.

Following these fiduciary duties and legal principles, the State of Alaska, through the Department of Natural Resources and Department of Fish and Game, should be making periodic reports to the Alaskan public regarding the value and extent of public trust resources. Also, before any sale or exchange of state land occurs, the State must work sedulously to ensure that it knows and

discloses the full extent and value of all of the resources involved in a land sale, land exchange, timber sale, or other transfer of public trust resources. Facets such as cumulative impacts of land disposals should not be ignored in this process.

If the Alaskan public is to be able to enforce its rights as beneficiary of the public trust, there must be a regular flow of information to the public from the State as trustee in order to enable the public to satisfy itself that administration of the trust's resources is proper.

It is in the State's best interests, under sound principles of trust administration, to gather and disseminate information regarding the value of public trust resources held by the State for the use and benefit of the people.

Fraud can be established by silence or non-disclosure when a fiduciary relationship exists between the parties....The fiduciary has a duty to fully disclose information which might affect the other persons's rights and influence his action.

Carter v Hoblit, 755 P. 2d 1084, 1086 (Alaska, 1988).

The duty of a fiduciary embraces the obligation to render a full and fair disclosure to the beneficiary of all facts which materially affect his rights and interests.

Greater Area Inc. v Brookman, 657 P. 2d 828, 830 (Alaska, 1982).

IMPARTIALITY: When there are two or more beneficiaries of a trust, the trustee is under a duty to deal impartially with them." Restatement, Second, Trusts, § 183.

This duty speaks for itself. The State clearly cannot prefer the interests of one segment of its population over those of another segment. The State's fiduciary duties require it at all times to act in favor of the interests of the State as a whole, not for the discrete advantage of one geographic region, ethnic group, or other faction.

This includes the fiduciary duty to avoid actions whose primary motivation is to benefit state government.

The power lodged in the state...is to be exercised...as a trust for the benefit of the people and not as a prerogative for the advantage of the government as distinguished from the public good."

Geer v Connecticut, 161 U.S. 519, 529 (1896).

b. Common Law Obligations of the State of Alaska
as Trustee

The essence of judicial enforcement of the Public Trust Doctrine is to guarantee that state government fulfills its fiduciary duties to current and future generations of Alaskans.

The fiduciary duties of trustees have been defined over centuries of experience by courts of equity. They provide safeguards that protect against dissipation of the natural resource wealth Alaskans are privileged to enjoy. The State's fiduciary duties as a trustee define the legal standard of wise stewardship over Alaska's common property resources.

What the law has labeled the "fiduciary duties" of trustees is, in many respects, nothing more than an attempt to codify some basic rules of common sense.

The Alaska Supreme Court has not yet given detailed attention to the State's common law obligations as trustee in the context of the Public Trust. Nonetheless, the Court has given some general guidance to the State's obligations as trustee.

The paramount duty of the State is to "equitably and wisely" regulate the harvest of Alaska's wildlife and fisheries resources. Metlakatla Indian Community, Annette Island Reserve v Egan, 362 P. 2d 901, 915 (Alaska, 1961). An inescapable corollary of this mandate is the state's obligation to maintain the habitat it controls and on which the vitality and abundance of many public trust resources depend. The importance of habitat protection is, unfortunately, too often underrated.²⁷

The State is obligated to "equitably and wisely" manage Alaska's wildlife and fisheries resources at all times, not merely during the public's limited harvest opportunities. In other words, the state as manager of the public lands on which wildlife and fisheries resources are found is under a public trust obligation to "equitably and wisely" manage its wildlife and fish at all times, under all circumstances, and for the benefit of "all the people of the state." Metlakatla, supra.

Although the Alaska Supreme Court has not yet directly addressed the issue, it seems reasonable to anticipate that the Court would apply the standard of "equitable and wise" management beyond the sphere of fish and wildlife to include all of the other

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When game begins to get scarce, people generally think and act in the order of (1) preservation of breeding stock by means of game laws restricting the harvest; (2) artificial stocking; and (3) habitat improvement, which is sometimes unfortunate, since the third item is often more important than the first two. If suitable habitat is lacking, ...protection or stocking is useless.

E. Odum, H. Odum, Fundamentals of Ecology, p. 433 (2d Ed., 1959).
SEE ALSO: Mathiesen, Wildlife in America, Penguin Books (1977) p. 205.

resources within the protection of the public trust doctrine in Alaska. In other words, whenever the State deals with fish, wildlife, timber, State land (regardless of whether or not the lands are washed by the tides), waters that occur in the natural state, or unappropriated minerals, the State owes public trust fiduciary duties of equitable and wise management.

What is meant by equitable and wise management? Although the Alaska Supreme Court's choice of terminology was probably deliberately general, and not susceptible of precise definition, some fundamental management principles can reasonably be imputed to the State as trustee under those broad standards. My research disclosed no specific guidance more useful than the following statements:

...fish and game resources are permitted to be harvested, but at the same time must be conserved to avoid depletion and extinction.

Herscher v State, 568 P. 2d 996, 1005 (Alaska, 1977).

Temporary inconveniences must be subordinated to a policy dedicated to preventing exploitation or annihilation of one of the greatest natural food resources known to mankind, to equitable regulation of seasonal harvests for the greatest benefit to the greatest number, while conserving and rebuilding for posterity.

Metlakatla Indian Community, Annette Island Reservation, 362 P. 2d 901, 932 (Alaska, 1961).

The Alaska Supreme Court has ruled that the State does not have the right to manage natural resources as if it were a private, individual owner, seeking to maximize the income it can derive as quickly as possible. e.g., Metlakatla Indian Community, Annette Island Reserve v Egan, 362 P. 2d 901, 915 (Alaska, 1961). SEE ALSO: Organized Village of Kake v Egan, 174 F. Supp. 500, 529, (D.C. Alaska, 1959).

The State of Alaska is required to manage its public, natural resource wealth not as an owner, but as a trustee. Metlakatla Indian Community, Annette Island Reserve v Egan, 362 P. 2d 901, 915 (Alaska, 1961); aff'd, 369 U.S. 45 (1962); Herscher v State, 568 P. 2d 996, 1003, 1005 (Alaska, 1977); Owsichek v State, 763 P. 2d 488, 492-496 (Alaska, 1988); CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115 (Alaska, 1988); McDowell v State, 785 P. 2d 1, 12, 16, 18 (Alaska, 1989); Gilbert v State, 803 P. 2d 391, 398-399 (Alaska, 1990).

The state as trustee must manage its resources for the benefit of the beneficiary of the trust: all the people of the State of Alaska.

Alaskans will not want, and above all else do not need, a resources policy which will prevent orderly development of the great treasures which will be theirs. But they will want, and

demand effective safeguards against the exploitation of the heritage by persons and corporations whose only aim is to skim the gravy and get out, leaving nothing that is permanent to the new state except, perhaps, a few scars in the earth which can never be healed...

E.L. Bartlett's Address to the delegates of the Alaska Constitutional Convention, Fairbanks, 1955.

The power to manage public trust resources lies with the state, as sovereign, but:

...it is to be exercised like all other powers of government as a trust for the benefit of the people, and not...for the benefit of private individuals as distinguished from the public good.

Owsichuk v State, 763 P. 2d 488, 494 (Alaska, 1988), citing Geer v Connecticut, 161 U.S. 519, 529 (1896) (emphasis in original).²⁸

Among the state's conservation and management duties as trustee must be the obligation to prevent impairment of options for future generations of Alaskans. This derives from the State's fiduciary duty to prevent impairment of the corpus of the public trust.

Although it arose in the context of discussion of the sustained yield requirement of Article VIII, § 4, rather than the common use clause of Art. VIII, § 3, the duty to prevent erosion of the quality of Alaska's public trust resources was well-expressed by Alaska Supreme Court Chief Justice Jay Rabinowitz:

Quality as well as quantity of available resources must be considered in determining whether sustained yield requirements have been met. The framers and legislature must have intended that the level of timber available to future generations...be undiminished.

²⁸ In a case nullifying a grant of a license to construct a hydroelectric power plant on the Snake River, the United States Supreme Court ruled as follows:

The test is whether the project will be in the public interest. And that determination can be made only after an exploration of all issues relevant to the "public interest," including further power demand and supply, alternative sources of power, the public interest in preserving reaches of wild rivers and wilderness areas, the preservation of anadromous fish for commercial and recreational purposes, and the protection of wildlife.

Udall v Federal Power Commission, 387 U.S. 428, 450 (1967).

SEACC v State, 665 P. 2d 544, 557 (Alaska, 1983) (Rabinowitz, dissenting).

Governor Jay Hammond, the foremost conservationist among all Alaska's Governors, aptly stated the importance of considering the needs of future generations of Alaskans regarding public trust resources:

...While a particular species of...wildlife may have little relative value now, the future may find it suddenly in great demand. If the land is incapable of producing it to the demand level, an important land management option is lost, to the detriment of the public welfare.

Governor Jay S. Hammond's transmittal letter, April 8, 1978, accompanying SS SB 59, cited in SEACC v State, 665 P. 2d 544, 556-557, fn. 6 (Alaska, 1983) (Rabinowitz, dissenting).

It would be a violation of the public trust if any one of the public uses of public trust property would be destroyed or greatly impaired as a result of State action. SEE: City of Madison v State, 83 NW 2d 674, 678 (Wisc. 1957), (regarding potential permanent impairment of Lake Monona).

c. Who Are the Beneficiaries of the Public Trust in Alaska?

The beneficiaries of Alaska's public trust doctrine are all the people of the State of Alaska, including future generations. First and foremost, the state has a fiduciary obligation to manage public trust resources for the benefit of "all the people of the state" of Alaska. Metlakatla Indian Community, Annette Island Reserve v Egan, 362 P. 2d 901, 915 (Alaska, 1961).

...the pub[li]c trust doctrine dictates that...(public trust resources) must be open to all on equal terms and without preference and that any contrary state or municipal action is impermissible. (emphasis supplied in original)

...in order to exercise rights guaranteed by the public trust doctrine, the public must have access...

Slocum v Borough of Belmar, 569 A. 2d 312, 316 (Sup. Ct., New Jersey, 1989).

The class of people who are properly seen as comprising the beneficiaries of the public trust in Alaska includes all Alaska citizens, as well as future generations of Alaskans. SEACC v State, 665 P. 2d 544, 557 (Alaska, 1983) (Rabinowitz, dissenting); SEE ALSO: Shively v Bowlby, 152 U.S. 331, 337 (1894), referred to as the "seminal case in American public trust jurisprudence" in Phillips Petroleum v Mississippi, 484 U.S. 469, 473 (1988).

The public trust doctrine maintains that government holds untaken wildlife in trust for public use, and that government owes a fiduciary duty to manage such resources for the common good of the public as beneficiary.

McDowell v State, 785 P. 2d 1, 16, fn 9, and 18 (Rabinowitz dissenting) (Alaska, 1989); SEE ALSO: Gilbert v State, 803 P. 2d 391, 398 (Alaska, 1990) (citations omitted).

In summary, the State must manage all public trust resources for the benefit of the entire State, without disregarding the needs of future generations of Alaskans.

d. Exchange or Disposal of State Land and the Continuing Obligations of the Public Trust

Can the government of the State of Alaska free itself of its obligations under the public trust doctrine by selling or exchanging public trust resources to private parties?

The answer in almost all circumstances is "No." The public trust entails governmental responsibilities that cannot be disregarded, delegated, sold, or otherwise alienated.

The public trust doctrine...requires the state to maintain its dominion in trust for the people. (citation omitted)

Orion Corp v State, 747 P. 2d 1062, 1072 (Washington, 1987) (*en banc*), cited with approval in CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1118 (Alaska, 1988).

The State can no more abdicate its trust over property in which the whole people are interested...than it can abdicate its police powers in the administration of government and the preservation of peace.

Illinois Central R.R. v Illinois, 146 U.S. 387, 453 (1892).

Although the State may convey a jus privatum interest in trust resources, the public's jus publicum (public trust) interest cannot ordinarily be alienated. Illinois Central R.R. v Illinois, 146 U.S. 387, 453 (1892).²⁹

The State has an affirmative fiduciary obligation to prevent unnecessary diminutions in the corpus of the public trust. The State must ensure that there is no avoidable, significant reduction of the rights of the public to resources held by the State in trust

²⁹ Brusco Towboat Co. v State, By and Through Superior Court v Lyon, 29 Cal. 3d 210, 226 (1981): "It is well established that if the state holds these lands in trust for the benefit of the public, its conveyance of title to private persons does not necessarily free the property from the burden of the public trust."

for the benefit of the public. SEE: Bean, The Evolution of National Wildlife Law, p. 41 (1983), quoting State v Jersey Central Power & Light Co., 351 A. 2d 337 (New Jersey, 1976).

Under the public trust doctrine, the State...[has] the right and the duty to protect and preserve the public's interest in wildlife resources.

In re Steuart Transportation Co. 495 F. Supp. 38, 40 (E.D. Virginia, 1981).

Briefly summarized, the public trust imposes the following limitations on the power of the State to convey public trust resources free of the public trust:

1. Clear legislative authority and intent are required. Conveyances of public trust resources are interpreted strictly against the grantee.
2. The conveyance should not be made to further private interests; it should further the public's trust interests.
3. There should be no substantial impairment of the public's use of the remaining trust resources.
4. A private owner's use of trust resources may be restricted or prohibited in order to protect public uses of public trust resources.
5. Conveyances of public trust resources are revocable by the State.

A more detailed analysis of these points of law follows.

In Alaska there are many procedural safeguards regarding the disposal, sale, or lease of state land. e.g., Alveska Ski Corp. v Holdsworth, 426 P. 2d 1006, 1114 (Alaska, 1967); Moore v State, 553 P. 2d 8, 30 (Alaska, 1976); Alaska Constitution, Article VIII, §10. Special, additional, protections govern disposal of state-owned timber resources. SEE: AS 38.

In accordance with the mandate of the Alaska Constitution, Article VIII, §10, the first Alaska Legislature enacted the Alaska Land Act, AS 38.05, which contains at least two provisions requiring that any disposition of State-owned land must be consistent with the best interests of current and future generations of Alaskans. AS 38.05.035; AS 38.05.285.

One of the procedural prerequisites of a best interests finding is "a reasoned evaluation of the wisdom of a proposed disposition of land..." Moore v State, 553 P. 2d 8, 31 (Alaska, 1976). DNR's record of decision for any land disposal or land exchange must demonstrate that the agency made a reasoned evaluation of the available evidence, otherwise its decision will be arbitrary and capricious. Moore v State, 553 P. 2d 8, 36 (Alaska, 1976).

No Alaska Supreme Court case yet applied a public trust analysis to a state land disposal or exchange. The following

analysis is one way in which the Court could approach such a problem.

The public trust doctrine is the source of additional safeguards, substantive in nature, that apply to disposals of the State's natural resource patrimony.

...the ownership and dominion and sovereignty over lands...within the limits of the several states, belong to the respective states...to use or dispose of any portion thereof, when that can be done without substantial impairment of the interest of the public...³⁰

...
This follows necessarily from the public character of the property, being held by the whole people for purposes in which the whole people are interested.

...
There can be no irrevocable contract in a conveyance of property by a grantor in disregard of a public trust, under which he was bound to hold and manage it.

(emphasis added) Illinois Central R. Co. v State of Illinois, 146 U.S. 387 (1892). SEE ALSO: Golden Feather Community Association v Thermalito Irrigation District, 244 Cal. Rptr. 830 (1988).

Many state supreme courts that have considered the effect of the public trust doctrine on attempts by a state to alienate public lands have concluded that the state has continuing obligations under the public trust from which the state can only be freed under rare circumstances.³¹

Under public trust principles, the State as trustee has the duty to protect and maintain the trust property and regulate its use. Presumptively, this duty is to be implemented by devoting the land to actual public uses, e.g., recreation. Sale of the property would be permissible only where the sale

³⁰ The proposed conveyance of public trust resources at Leask Lakes (ADL #12555) would violate the rule of "no substantial impairment." The proposed conveyance would result in a substantial net loss and impairment of wildlife habitat by trading unlogged land for largely cut-over land at White River. The proposed exchange would also promote fragmentation of wildlife habitat and substantially reduce the wildlife habitat value of public trust land at George River, adjacent to the Leask Lakes tract. SEE: ADF&G Memorandum, May 14, 1991, from Richard Reed to Andy Pekovich, DNR; ADF&G Memorandum, September 17, 1991, from Matt Kirchoff to Dave Anderson.

³¹ As with most aspects of the public trust doctrine, individual states are free to formulate the rule they deem most appropriate.

promotes a valid public purpose. (specific public trust purposes appear in the Hawaiian Admission Act, 31 Stat 141.)

State by Kobayashi v Zimring, 566 P. 2d 725, 737 (Hawaii, 1977).

...in the exercise of...[the public] trust the state may dispose of a partial interest in such lands, in the interest of all the people of the state, provided the primary purposes of the trust are not unduly abridged or burdened thereby.

[the state]...cannot parcel or alienate them or otherwise interfere with the public purposes of the trust in which they are held.

State v Longyear Holding Co., 29 N.W. 2d 657, 669-570 (Minnesota, 1947). (emphasis added); compare Gould v Greylock, 215 N.E. 2d 114, 121-123 (Massachusetts, 1966).

When lands are owned by the State for the public trust, it is the State's duty to protect the trust and not surrender the rights thereto. (citation omitted) It is thus the public policy of this State with respect to... (public trust submerged lands) that they may be disposed of only when the Department of Conservation determines that such lands are of no substantial public value for hunting, fishing, swimming, pleasure boating, or navigation, and that the general public interest will not be impaired. (citation omitted)

People ex rel. MacMullan v Babcock, 196 N.W. 2d 489, 497 (Michigan, 1972).

The formulation of the State's public trust duties in Michigan was based on interpretation of the public trust set forth in Michigan's State Constitution. People ex rel. MacMullan v Babcock, 196 N.W. 2d 489, 497 (Michigan, 1972). The Alaska Constitution's public trust, augmented by the popular Initiative of 1983, cannot reasonably be said to impose obligations that are any weaker than Michigan's.

A decision by the State to trade public lands cannot stand unless the trade is clearly in the public interest. A determination (pursuant to AS 38.50) that a land exchange is in the public interest can only be made after evaluating and making known to the public a reasonable quantum of information to enable the public to reach rational conclusions about the value of the respective parcels of land to be exchanged.³²

³² Examples of the type of information that should be made public prior to an AS 38.50 land exchange would include (but not necessarily be limited to) supply and demand data, including current value, for all of the timber, fisheries, wildlife, water, recreational, and other resources present on the lands to be

One of the fundamental obligations of a trustee under centuries of equitable tradition is that a trustee must not permit the wasting away of the corpus of the trust. Restatement, Second, Trusts, §§ 176, 181.

The Trustee must exercise discretion in making day-to-day management decisions, and in order to be responsible, the discretion must be exercised on the basis of reliable and reasonably complete information. Hatcher v U.S. National Bank of Oregon 643 P. 2d 359, 364-366.

Although some modicum of impairment of public trust uses is probably permissible when it is appurtenant to a land transfer, courts should apply the "hard look" doctrine in assessing infringements on public trust values to determine whether or not the land transfer requires judicial invalidation in order to conform state action to the overriding duties of the public trust.

"Hard look" judicial review of State efforts to alienate public trust resources ensures that arbitrary decisions will be overturned, i.e., decisions where the agency has not "genuinely engaged in reasoned decision making" of all the salient issues. Gilbert v State, 803 P. 2d 391, 398 (Alaska, 1990) (citations omitted).

One key purpose of the public trust doctrine is to police attempted dispositions of public lands by State Legislatures. If courts were simply to rubber stamp legislative decisions that a proposed disposition is in the public interest, the public trust doctrine would have no teeth. Consequently, there is a longstanding judicial policy of closely scrutinizing legislative declarations that a proposed disposition of public land is "in the public interest." Martin v Waddell, 41 U.S. 366, 411 (1842).

Alaskan courts should adopt this salutary policy of judicial skepticism and should strictly scrutinize all proposed exchanges and disposals of public trust resources.

...the self-serving recitation of a public purpose within a legislative enactment is not conclusive of the existence of such a purpose.

City of Salem v McMackin, 291 N.E. 2d 807 (Illinois, 1972).³³

The Trustee is at all times accountable to the beneficiaries

exchanged. This is a hefty informational burden. The alternative--making a decision to trade away state land and resources in the absence of this sort of fundamental information describing the parcels' respective values--would certainly be a breach of the state's fiduciary duties to manage the public lands.

³³ SEE ALSO: Sax, "The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention," 68 Mich. L. Rev. 489-491.

of the trust. Restatement, Second, Trusts, §§172, 176, 181; 3 Scott on Trusts, § 173.

A decision to alienate public trust resources, including land, should be preceded by a thorough governmental assessment of all the public values affected. Public notice should include the degree of effect of the project on public trust uses, the impact of the individual project on the public trust resource, the impact of the individual project when examined cumulatively with existing impediments to full use of the public trust resource, the impact of the project on the public trust resource when that resource is examined in light of the primary purpose for which the resource is suited, i.e., commerce, navigation, fishing, or recreation, the degree to which broad public uses are set aside in favor of more limited or private ones, and clear, advance public disclosure of the pertinent facts and data. SEE GENERALLY: Kootenai Environmental Alliance v Panhandle Yacht Club, Inc., 671 P. 2d 1085, 1091 (Idaho, 1983), cited in CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1118 (Alaska, 1988).

A decision to exchange public land for private land pursuant to AS 18.50 would therefore have to be based on reasonably complete information about the range, quantity, and quality of resources wrapped up in the parcels to be exchanged, with all such information timely communicated to the public in a manner satisfying the safeguards of the Alaska Constitution, Article VIII, §§ 9 and 10.³⁴ Allard v Pacific National Bank, 663 P. 2d 104, 110-111 (Washington, 1983) (En Banc); Bojart, Trusts & Trustees, § 961 (2d ed., 1962); Hatcher v U.S. National Bank of Oregon, 643 P. 2d 359, 364-366.

A decision by the State to trade public lands cannot stand unless the trade is clearly in the public interest. That determination can only be made after evaluating and making known to the public supply and demand data, including current value, for all

³⁴ Alaska Constitution, Art. VIII, §9 provides: Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources. Reservations of access shall not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages. (emphasis added)

Alaska Constitution, Art. VIII, §10 provides:

No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law,

of the timber, fisheries, wildlife, water, recreational, and other resources present on the lands to be exchanged.

To summarize, a State cannot normally convey public trust land unless it can be disposed of without any substantial impairment of the public's trust rights. Illinois Central Railroad Co. v Illinois, 146 U.S. 387 (1892); CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1119 (Alaska, 1988); Morse v Oregon Div. of State Lands, 590 P. 2d 709-711 (Oregon, 1979); Orange County v Hein, 106 Cal. Rptr. 825, 849-852 (Cal. App. 1973); Riviera Association v Town of North Hempstead, 276 N.Y.S. 2d 249, 256-257 (Sup. Ct. Mass. Co. 1967), aff'd sub nom Mannon Marine Realty v Wachtler, 22 NY 2d 825 (1968).

Only in rare instances may a grantee acquire a right to use former trust property free of trust restrictions. National Audubon Society v. Superior Court of Alpine County, 658 P. 2d 709, 723 (California, 1983) (In Bank), cited in CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1121 (Alaska, 1988).

According to the Alaska Supreme Court, the key factor to consider in determining the significance of a conveyance is not the size or location of the particular parcel, but the scope of the authorizing legislation and the potential for all conveyances made pursuant to those statutes." Id.

It is nonetheless possible for the State to pass title to a parcel of State-owned land free of any public trust obligations. Such instances are, admittedly, quite rare.

The test announced by the Alaska Supreme Court for permitting alienation of land subject to the public trust, free of trust duties, is twofold:

...we must ask, first, whether the conveyance was made in furtherance of some specific public trust purpose and, second, whether the conveyance can be made without substantial impairment of the public's interest...(citations omitted) If either of these questions can be answered in the affirmative, conveyance free of the public trust would be permissible. (citation omitted)

CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1119 (Alaska, 1988).

In applying the two-pronged test announced in CWC Fisheries, Inc. v Bunker, the Alaska Supreme Court specifically rejected the argument made by CWC that since the State's conveyance was made in furtherance of navigation and commerce, the conveyance should be free of the public trust. Id., at 1119.

Before any tideland grant may be found to be free of the

³³ The federal rule is somewhat more lenient. It allows transfers of small parcels that advance public trust purposes, such as the small amount needed for piers, wharves, docks, etc. Illinois Central, at 452.

public trust under the "public trust purposes" theory, the legislature's intent to so convey it must be clearly expressed or necessarily implied in the legislation authorizing the transfer. (citations omitted) If any interpretation of the statute which would retain the public's interest in the tidelands is reasonably possible, we must give the statute such and interpretation. (citations omitted)

CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1119 (Alaska, 1988) (emphasis added).

In evaluating a proposed conveyance of state-owned resources subject to the public trust to determine whether or not the conveyance may be made free of the burdens of the public trust, one must also apply the other facet of the two-pronged test announced in Illinois Central, supra, at 453, and embraced by the Alaska Supreme Court in CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1118 (Alaska, 1988): can the property be disposed of without any substantial impairment of the public interest?

The Alaska Legislature has not clearly indicated that the trust is not to be considered in land exchanges. SEE: AS 38.50 and COMPARE AS 38.08.060 where the Legislature specified conveyance of "unencumbered title." Hence, the public trust must continue to be integrated in exchanges of state land.

AS 38.50.010 provides the statutory authority under which DNR effects land exchanges. The Alaska Legislature did not clearly authorize land exchanges free of the public trust; it merely authorized land exchanges:

Subject to the requirements of this chapter, the director, with the concurrence of the commissioner, is authorized to dispose of state land or interest (sic) in land by exchanging it for land, interest (sic) in land, or other consideration. Exchanges shall be for the purpose of consolidating state land holdings, creating land ownership and use patterns which will permit more effective administration of the state public domain, facilitating the objectives of state programs, or other public purposes.

AS 38.50.010.

Any exchange of state lands under AS 38.50 should include an explicit retention of public trust easements for ius publicum purposes, including but not limited to fishing, hunting, recreation, wildlife viewing, etc. However, as a result of the Public Trust Doctrine, the public retains those rights by implication even if the State fails to make an express reservation.

By implication, the Legislature intended that the public trust be integrated into land exchanges. When the Alaska Legislature adopted AS 38.50.060, it provided general authority for reservation of public trust easements.

Conveyances...by the state under this chapter are subject to

valid existing rights...

AS 38.50.070.

The public trust doctrine does not prevent the state from making policy choices between trust uses. National Audubon Society v. Superior Court of Alpine County, 658 P. 2d 709, 723 (California, 1983) (In Bank), cited in CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1121, fn 15 (Alaska, 1988). In Alaska, in such cases, the Legislature will generally be afforded broad authority to favor one trust use over another. Id.

The exception for legislative policy decisions, however, is not intended to swallow the rule of non-impairment of public trust uses. An overly-broad conception of State authority would result in no practical restrictions on the State's ability to alienate public trust property so long as the State can articulate some public trust-related benefit associated with a proposed conveyance.

No authority supports such broad governmental discretion, even if the proposed conveyance is alleged to produce some alternative public trust benefit in the vicinity of the conveyance at issue.

...no one could contend that the state could grant tidelands free of the trust merely because the grant served some public purpose, such as increasing tax revenues, or because the grantee might put the property to a commercial use.

Thus, the public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust.

CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1121, fn 15 (Alaska, 1988), citing National Audubon Society v. Superior Court of Alpine County, 658 P. 2d 709, 724 (California, 1983) (In Bank).

The identical reasons cited by the Alaska Supreme Court, supra, are applicable to land exchanges under AS 38.50. Thus, the State may not exchange uplands or minerals to any private grantee free of the public trust merely because the exchange may serve "some public purpose, such as increasing tax revenues, or because the grantee might put the property to a commercial use." Id.

For example, where the principal "public benefit" supporting a land exchange is favoring private, commercial logging, no valid public purpose would support the exchange, nor would fostering private, commercial logging be a purpose consistent with the

State's trust responsibilities.³⁶

The public trust includes the State's duty to protect the common heritage of all Alaskans in ancient, old growth forests together with the wildlife, fisheries, waters, and mineral resources found thereon. AS 38.05.502.

The State may not surrender the public's right of protection for old growth forest lands of high value to fish and wildlife if the land to be received in exchange is of substantially inferior quality from the standpoints of wildlife habitat, fishery habitat, scenic value, and recreational potential. These public trust values cannot be abandoned without specific Legislative language of cession. CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115 (Alaska, 1988).

In other words, before a conveyance of State-owned land will fall into the "in furtherance of some specific public trust purpose" exception, there must be clear evidence that the Legislature intended to take action which, on its face, would be inconsistent with the plain wording of the Alaska Constitution's mandate regarding "common use" and the public trust. CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1120 (Alaska, 1988); Alaska Constitution, Art. VIII, §3.

There is no reason for courts to treat uplands differently from tidelands insofar as the burdens of the public trust are concerned. All state-owned land in Alaska--tideland and upland--is subject to the public trust. AS 38.05.502.

The executive branch of government in Alaska, through the Department of Law, reached a similar conclusion prior to the Alaska Supreme Court's holding in CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115 (Alaska, 1988).

...it is clear that any state agency with the power to dispose of land must attempt to secure as consideration for such disposal the maximum benefit for the citizens of the state as a whole. A transfer which may benefit the citizens of one community may nevertheless violate the public trust doctrine where the state receives less than adequate consideration on behalf of the citizens of the state as a whole. Absent some showing that a land transfer would benefit the state as a whole, even legislation authorizing a transfer would be invalid. On the other hand, a transfer which may specifically benefit citizens of a particular area will not be invalid if it is also demonstrated that the transfer represents the "most desirable and advantageous solution to multiple issues

³⁶ The primary motive of the State, DNK, in support of its proposal to convey the forest of Leask Lakes to the Cape Fox Corporation is that it will directly benefit the Ketchikan timber industry and thereby increase local tax revenues, with an appurtenant benefit to local recreation being that ten years after the exchange, a road may be built at White River that would allow public access.

confronting the state as a whole," State v Lewis, 559 P. 2d 630 (Alaska, 1977), cert. denied, 432 U.S. 901.

Informal A. G. Opinion, April 25, 1985, No. 566-230-85, pp. 4-5.

Arguably, it is only where state-owned land subject to the public trust is more or less useless to the public, small in area, and part of an overall scheme dominated by a true "public purpose" that the Legislature may remove the public trust burdens. SEE, e.g., City of Long Beach v Mansell, 476 P. 2d 423 (California, 1970); County of Range v Heim, 106 Cal. Rptr. 825 (Cal. App. 1973). As stated by the Oregon Supreme Court:

These resources...can only be spent once. Therefore the law has historically and consistently recognized that rivers and estuaries, once destroyed or diminished, may never be restored to the public and, accordingly, has required the highest degree of protection from the public trustee.

Morse v Oregon Division of Lands, 581 P. 2d 520, 524 (Or. App. 1978).

Ancient, old growth, forest lands "can only be spent once." Their value as extraordinarily productive wildlife habitat depends on unique properties which a Southeastern Alaska forest only begins to acquire after approximately 300 years. SEE GENERALLY: Schoen, J.W., M.D, Kirchoff, and J.H. Hughes (1988) "Wildlife and Old Growth Forests in Southeastern Alaska," Natural Areas Journal, Vol. 8, No. 3, pp. 138-145.

To actively promote private clearcutting of old growth forests would, for all practical purposes, destroy their unique value to the public as wildlife habitat. Such a result would be diametrically opposed to the Public Trust Doctrine.

What is the extent of the public's retained equitable rights in uplands exchanged or otherwise conveyed by the State?

Where uplands are concerned, the public's rights deriving from the public trust will necessarily be broader than the rights appurtenant to tidelands. For example, the public trust on uplands extends beyond purposes of navigation, commerce, and fishery to protect public use of and access to the wildlife, recreation, minerals, and all waters occurring on the public lands.

Before the State of Alaska may make any substantial disposition of its public trust resources, the State must meet a stiff, two-pronged test: First, the State must show that the lands it wishes to dispose of are of no substantial value for Alaskan public trust purposes. Second, the State must show that the disposition will not impair the general public interest.

It is important to keep in mind that a grant of state land is probably not ipso facto illegal merely because the grant causes a reduction in traditional, public trust uses. It is the opinion of this author that courts who face public trust doctrine issues retain considerable discretion within the historical context of

courts of equity to decide how significant an impairment of public trust uses must be present to require judicial invalidation of the state's land grant or other land use decision.³⁷

e. The Public Is Entitled to an Easement Protecting Public Trust Rights in State Lands That Are Alienated

The public trust resembles "a covenant running with the land (or lake or marsh or shore) for the benefit of the public and the land's dependent wildlife." Reed, "The Public Trust Doctrine: Is It Amphibious?", 1 *Envtl. L. & Litigation* 107, 118 (1986) (emphasis added) cited in Orion Corp v State, 747 P. 2d 1062, 1072-1073 (Washington, 1987) (en banc).

The United States Supreme Court has noted that, concerning lands which a state holds in trust, a state is entitled to convey such lands to private parties, free of the public trust, only under very limited circumstances. The Court stated:

The control of the State for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining.

CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1118 (Alaska, 1988), citing Illinois Central R.R. v Illinois, 146 U.S. 387, 453 (1892).

If the public trust doctrine forbids alienating public trust resources of an entire harbor, bay, or lake, as in Illinois Central, the trust just as surely forbids alienating public trust resources of an entire drainage, too. SEE: Illinois Central, supra, 146 U.S. 387, 406, fn 1 (1892).

The rights of the private owner extend only as far as will allow the public to have full benefit of its trust uses of the privately held land.

³⁷ For example, the Alaska Constitution, Article VIII, §4, requires the Alaska Legislature to utilize, develop, and maintain all:

...replenishable resources belonging to the State...on the sustained yield principle, subject to preferences among beneficial uses. (emphasis added)

There is an inherent tension among competing beneficial uses which necessarily requires payment of some opportunity cost almost every time a resource use decision is made. It would be absurd to posit that no legally valid diminution of public trust uses or resources can occur in light of Article VIII, §4.

Putting the Public Trust Doctrine to Work, November, 1990, p. 181, citing Marks v Whitney, 491 P. 2d 374 (California, 1971).

The Alaska Supreme Court has adopted the federal rule regarding conveyances of public trust property and the enduring rights of the public that emanate from the public trust. CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115 (Alaska, 1988).

CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115 (Alaska, 1988) involved a conveyance by the state of tidelands. Tidelands, like all other state lands, are subject to the public trust. Id., AS 38.05.502. The Alaska Supreme Court in CWC Fisheries held that any state conveyance of tidelands which fails to satisfy the requirements of Illinois Central, supra, at 453, will be viewed as a valid conveyance of title "subject to continuing public easements for purposes of navigation, commerce, and fishery." CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1118, 1121 (Alaska, 1988).

Unless there is specific legislative language abjuring the public trust integrated in a conveyance of public land, the State of Alaska may not convey public land--tideland or upland--free of continuing public easements that protect and guarantee the exercise of the full bundle of public rights appropriate to the qualities of the land in question. This conclusion follows from examining AS 38.50 (land exchanges) and AS 38.05 (Alaska Land Act), neither one of which contains explicit language freeing such conveyances of public trust lands from ongoing public trust easements. SEE: CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1119-1120 (Alaska, 1988).

Without legislative language abjuring the public trust, the State may convey public trust land, but the grantee will hold the property subject to the public trust, and while the grantee may assert a vested right of use subject to the trust, and to any improvements he may erect, the grantee can claim no vested right to bar recognition of the trust or state action to carry out the purposes of the public trust. SEE: National Audubon Society v. Superior Court of Alpine County, 658 P. 2d 709, 723 (California, 1983) (In Bank), cited in CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1121 (Alaska, 1988).

The Alaska Supreme Court has not yet considered the impact of the public trust doctrine on uplands or minerals, but there is no clear reason for Alaska's Court to rule that a conveyance of uplands or minerals may be made free of the dominant public trust responsibilities the State owes its citizens.

It would amount to a substantial impairment of the public's interest and rights to permit persons receiving title to state land--be it tideland, submerged land, or upland--to hold their fee free of public trust obligations.

Thus, any State conveyance of land--tidelands as well as uplands--must include a reservation of public easements of use and access for continued enjoyment of the ius publicum.

The argument that a conveyance of land is so small as to be de minimis has been expressly rejected by the Alaska Supreme Court. CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1120 (Alaska, 1988).

If public trust property is sold, exchanged, or alienated, the

property so disposed of remains subject to the paramount public rights embodied in the public trust. Orion Corp v State, 747 P. 2d 1062, 1072 (Washington, 1987) (en banc).

Alaska's Supreme Court has not yet considered the impact of the public trust's duties on upland resources. It is certain, however, that all state-owned land in the State of Alaska is impressed with public trust responsibilities. AS 38.05.502.

In the context of tideland grants, the Alaska Supreme Court has clearly stated that the State may not easily escape the duties of the public trust:

Before any tideland grant may be found to be free of the public trust under the "public trust purposes" theory, the legislature's intent to so convey it must be clearly expressed or necessarily implied in the legislation authorizing the transfer. (citations omitted) If any interpretation of the statute which would retain the public's interest in the tidelands is reasonably possible, we must give the statute such an interpretation.

CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1119 (Alaska, 1988).

The public trust doctrine in Alaska requires that all tidelands must be conveyed subject to the public's rights to use them for navigation, commerce, and fishery. CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1121 (Alaska, 1988).

Since the public trust applies equally to tidelands, submerged lands, uplands, and their fish, wildlife, and mineral resources, the state may only convey uplands, including timber and water, subject to the public's rights use them for public trust purposes.

In other words, if tidelands or any other public trust lands are alienated,

...they are impliedly impressed with certain obligations on the grantee to use the conveyed lands only consistently with the public rights therein.

Borough of Neptune City v Borough of Avon-by-the-Sea, 294 A. 2d 47, 54-55 (1972).

At least in the absence of some clear evidence to the contrary, we [the Alaska Supreme Court] will not presume that the legislature intended to take action which would, on its face, appear inconsistent with the plain wording of this constitutional mandate (Art. VIII, § 3 "common use" clause).

...
To hold that persons receiving title...hold the fee free of any public trust obligations would, we believe, amount to a substantial impairment of the public's interest in state tidelands as a whole.

CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1120 (Alaska, 1988).

A recipient of State-owned land may not enjoin the public from utilizing the property for public trust purposes. CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1118 (Alaska, 1988), citing People v California Fish Co., 138 P. 79, 83 (California, 1913), and Orion Corp. v State, 747 P. 2d 1062, 1072-1073 (Washington, 1987).

It is critical for the State to maintain public rights of access for the continued exercise of public trust purposes whenever the State exchanges, sells, or otherwise disposes of the alienable portion of its interest in public trust lands. CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115, 1120 (Alaska, 1988).

To say the public trust doctrine entitles the public to use the fish, wildlife, water, and other public trust resources of the land without assuring the public of a feasible access route would seriously impinge on, if not effectively eliminate, the rights of the public. c.f. (Matthews v Bay Head Improvement Assn., 471 A. 2d 355, 364 (New Jersey, 1984), cert. denied, 469 U.S. 821 (1984)).

This does not mean the public must have an unrestricted right to cross at will over any and all property bordering on the common property. The public interest is satisfied by "reasonable access."

There is clearly a tension, if not an irreconcilable conflict, between AS 38.50.050 and AS 38.05.502 regarding the State's responsibilities regarding attempted disposal of publicly-owned mineral resources.

According to the canon of statutory construction that the more recently-adopted of two conflicting statutes will control, the public trust responsibilities of AS 38.05.502 must take precedence. Thus, DNR's ability to alienate publicly-owned, unappropriated mineral resources is far more limited than appears from AS 38.50.050.³⁸

...any state agency with the power to dispose of land must attempt to secure as consideration for such disposal the maximum benefit for the citizens of the state as a whole. A transfer which may benefit the citizens of one community may nevertheless violate the public trust doctrine where the state receives less than adequate consideration on behalf of the citizens of the state as a whole. Absent some showing that a land transfer would benefit the state as a whole, even legislation authorizing a transfer would be invalid. On the other hand, a transfer which may specifically benefit citizens of a particular area will not be invalid if it is also demonstrated that the transfer represents "the most desirable and advantageous solution to multiple issues confronting the state as a whole."

Informal Attorney General Opinion 566-230-85, April 25, 1985, p. 4, citing State v Lewis, 559 P. 2d 630 (Alaska, 1977), cert denied,

³⁸ Assuming, arguendo, that the State of Alaska has any legal ability at all to alienate publicly-owned mineral resources in the face of its trust responsibilities.

C. Principles of Republican Government and Enforcement of the Public Trust

As with any trust, the strength of the public trust is largely a function of the vigilance, good judgment, and integrity of the trustee. It is only when a trustee behaves in a manner inimical to the interests of the beneficiaries that courts of equity are historically called on to intervene in the management of trusts.

The effectiveness of the public trust doctrine requires that the judiciary be willing to vigorously assert its traditional rôle in equity as supervisor of trusts and, consequently, as an overseer of the legislative and executive branches' administration of the common property resources comprising the public trust. Without strong judicial oversight, the public trust is a sham.

There is a tendency in current American political rhetoric to decry "judicial activism." The current cant holds that the judiciary should be subordinate to the legislative and executive branches. Such a political perspective would minimize or deny the judicial branch's duty to grant relief from infringement of the public's beneficial interest in public trust resources.

Examination of the roots of republican political philosophy in America indicate that the appropriate role for the judicial branch is one of coequal importance with the legislative and executive branches of government.⁴⁰ The Framers of the United States Constitution saw the republican form of government as requiring a blending of powers between the different branches of government so that each branch could serve as a check on the others.

The accumulation of all powers, legislative, executive, and

³⁹ "Opinions of the Attorney General, while not controlling on matters of statutory interpretation, are entitled to some deference." State, DNR v City of Haines, 627 P. 2d 1047, 1049, fn 6-7 (Alaska, 1981) and Carney v State, Board of Fisheries, 785 P. 2d 544, 548 (Alaska, 1990).

"While attorney general opinions are entitled to some deference in matters of statutory construction, they are not always correct." NBA v Univentures 1231, and State, ___ P. 2d ___ (Alaska, 1992) Supreme Court Opinion No. 3799, January 24, 1992, Slip Opinion, p. 11.

⁴⁰ The need for the judicial branch to act as a "check," "balance," or "brake" on the legislative and executive branches is a recurring theme in The Federalist Papers. SEE, e.g., Number X: "And what are the different classes of legislators but advocates and parties to the causes which they determine?...Enlightened statesmen will not always be at the helm." Madison, Hamilton, Jay, The Federalist Papers, (1788) (Penguin Classics, 1987 ed.), pp. 124-125.

judiciary, in the same hands, whether one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.⁴¹

Madison, Hamilton, Jay, The Federalist Papers, (1788) (Penguin Classics, 1987 ed.), Number XLVII, p. 303.

Beyond any doubt, one of the most important powers and duties of the judicial branch is to serve as a check and balance against over-reaching by the executive or the legislative branch.

Like all powers, the power of the executive and legislative branches to transfer common property resources is only a limited power. The practical limits to this power are defined principally through our common law heritage; they are enforced by the judicial branch in response to citizens' formal complaint. The supervisory power of the judicial branch exercised in the name of the public trust doctrine is firmly within the classic mold of American separation of powers philosophy.

...the powers of government should be so divided and balanced among several bodies of magistracy as that no one could transcend their legal limits without being effectually checked and restrained by the others.

Thomas Jefferson, Notes on the State of Virginia, p. 195, quoted in The Federalist Papers, Number LXVIII Kramnick, ed., Penguin Books Edition (1987), p. 311.

Members of the legislative and executive branches who complain of judicial interference in their management of Alaska's resources may complain that unelected judges have no place in a republican government, but such a complaint flies in the face of history. SEE: The Federalist Papers, Number XXXIX, Kramnick, ed., Penguin Books Edition (1987), p. 256.

America's Founding Fathers did not intend to create a system of government in which the three branches of government would be absolutely separate and distinct. The system of Montesquieu, which served as our Founders' model, provided for each branch of government to have a partial agency in and control over the acts of the others. It is fundamental to the American system of government that there be a partial mixture of powers among the coordinate branches. SEE: The Federalist Papers, Number LXVII, pp. 304-305; Number LI, pp. 318-322.

...the political apothegm [of separation of powers] does not require that the legislative, executive, and judiciary departments should be wholly unconnected with each

⁴¹ Madison, Hamilton, Jay, The Federalist Papers, (1788) (Penguin Classics, 1987 ed.), Number XLVII, p. 303. SEE ALSO: Numbers XLVIII- LI, pp. 308-322.

other....[U]nless these departments be so far connected and blended as to give each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be fully maintained. (emphasis added)

The Federalist Papers, Number LXVIII, p. 308.

The judicial branch has historically been seen as the most effective bulwark against excess by the legislative and the executive branches of government. The Federalist Papers, Number LXXVIII, p. 437. The more transient tenure of legislators and members of the executive branch naturally makes those officials subject to different interests, more focussed on short-term benefits, and more easily affected by the risk of a diminution in their emoluments by way of political retaliation for failure to take a particular action.

Courts exist to guard against encroachments and oppressions of the other two bodies of government. Effective limits on the acts of the other two branches may only be set by the courts:

...whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void.

The Federalist Papers, Number LXXVIII, p. 438.

America's Founding Fathers recognized that judges are less likely to be swayed by the winds of politics than are legislators or members of the executive. Constitutional principles like Alaska's Public Trust Doctrine should not be overridden by the Legislature or the Executive branch.

...where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws rather than by those which are not fundamental.

The Federalist Papers, Number LXXVIII, p. 439; SEE ALSO Number LXXXI.

The State of Alaska and all its employees, including the entire legislative and executive branches, are required to act as "trustees" for the benefit of all the people of Alaska, including future generations of Alaskans.

III. CONCLUSION

No individual and no branch of government enjoys a monopoly on wisdom or foresight. It is necessary and proper that the American system of checks and balances should apply to and restrain transfer of Alaska's publicly-owned wealth into private hands. In its purest essence, this is the meaning of the Public Trust Doctrine.

The Public Trust Doctrine is merely the name given to the rationale relied on by a republican government to limit the power of those who temporarily occupy the seats of governmental power when the governors seek to transfer the common wealth of the governed into private hands.⁴²

Properly understood, the Public Trust Doctrine should act as a restraining influence on the executive and legislative branches of government. By appreciating their fiduciary duties as guardians of the long-term public interest, the legislative and executive branches should voluntarily moderate their behavior and make procedurally and substantively proper decisions.

It is human nature to tend to exaggerate the importance of current events and thoughts. For example, there are many people today who believe that the "Owner State" philosophy is essential to the economic and spiritual development of Alaska. There are perhaps an equal number who abhor the "Owner State" and claim it suffers from a monomaniacal obsession with development that ignores the long-term effects on renewable resources.

It is not the purpose of this paper to embrace either of those positions in the current political spectrum.

The purpose of this paper has been to explain the legal foundation of the Public Trust Doctrine in Alaska. In particular, it has been the goal of this paper to demonstrate that the principles of the Public Trust Doctrine in Alaska are so important that they have been enshrined in our State Constitution, as well as our statutes and the decisions of our Supreme Court. These principles of conservation and wise use have been handed down to us since the Magna Carta. These principles should not be casually discarded in the course of popular political debate over how to achieve the chimera of permanent material wealth.

In large measure, the judicial branch must serve as trustee of the public resources subsumed within the rubric of the Public Trust Doctrine because of the longer duration of the tenure of the

⁴² The sovereignty of the state does not reside in the persons who fill the different departments of its government; but in the people from whom the government emanated, and who may change it at their discretion. Sovereignty, then, in this country, abides with the constituency and not with the agent. And this remark is true, both in reference to the federal and state governments.

Spooner v McConnel, 22 Fed. Cas. 939, 943 (D. Ohio, 1838).

judiciary. Since the persons who serve in the executive and legislative branches are generally present in government for fewer years, the focus of their outlook is often shorter. A short-term outlook is good, but the leavening effect of a long-term view is just as necessary to the health and welfare of society.

There is political boldness in advocating rapidly placing Alaska's public wealth into private hands. Yet there is also an unknown opportunity cost incurred by transferring public resources into private hands.

Viewed in the context of the never-ending debate over the advisability of transferring publicly-owned resources into private hands, the Public Trust Doctrine is the polestar that enables the judicial branch to keep the course of government a moderate one, and to prevent extremism.⁴³

Private rights and interests are in constant danger if the judicial power does not grow more extensive and stronger to keep pace with the growing equality of conditions.

Tocqueville, Democracy in America, Vol. 2, Book IV, Ch. VII.

The best protection which the public enjoys against improvident transfer of public resources into private hands is the power of the judicial branch to void actions that violate the Public Trust. Imperfect though it may be, we must rely on the collective wisdom, experience, and procedural safeguards of the judicial process to protect the vast and multifarious natural wealth constituting Alaska's patrimony from being sold or traded for short-term advantages that will leave all Alaskans poorer.

At the same time, a free and adequate flow of information regarding the extent and value of public trust resources between State agencies and the public is crucial. Without this information, the State will be incapable of preserving the public's trust assets. Without this information, the State will also be unable to assure that it obtains full value for any sale, lease, or exchange of trust assets. Finally, information is critical to enable the public, as beneficiaries, to enforce its rights and hold the State to the appropriate highest, fiduciary, standard of care.

It has been shown that the public trust explicitly and implicitly limits the power of the State of Alaska to dispose of public lands and resources. Many of the requirements of the Public Trust Doctrine that have been set forth in this paper have not yet been recognized by the Executive branch.

43

SEE: Machiavelli, The Discourses, Book One, "The Development of Rome's Constitution," §53 ("The populace, misled by the false appearance of advantage, often seeks its own ruin, and is easily moved by splendid hopes and rash promises.")

It is hoped that in the future, the considerations set forth in this paper will help State government more effectively perform its job as trustee. The State and all Alaskans will benefit from improving the quality and quantity of information exchanged regarding the extent and value of Alaska's public trust resources.

The Public Trust Doctrine will be most effective when it serves as a rule of self-restraint whereby State government checks its plans before acting to ensure that the mandates of the public trust are met and the State fulfills its fiduciary duties.

The Public Trust Doctrine offers a legal framework to enhance the quality of state government by establishing management standards for various public resources. The Public Trust Doctrine provides the best safeguard yet known to preserving the natural resources and the quality of life that make Alaska unique. All three branches of government, together with the public at large, must cooperate in good faith to ensure that the Public Trust Doctrine is used with success for the benefit of all current and future generations of Alaskans.

FAX to: 465-3444

Tongass Tourism & Recreation Business Association

740 Fifth St. • Juneau, Alaska 99801

May 3, 1992

Representative Cliff Davidson
 Capital Building
 Juneau, AK 99801

Dear Representative Davidson:

The Tongass Tourism and Recreation Business Association (TTRBA) strongly opposes HB 578, giving legislative approval to DNR's proposed trade of 2300 acres of virgin state forest land (Leask Lakes) for 4300 acres of logged private lands (White River), near Ketchikan. This legislation is an unfair trade, put forth in a non-public process (out of compliance with AS 38.50) and would establish a regressive precedent we would suffer from for years to come.

TTRBA is about 120 businesses (and growing) involved in outdoor recreation and tourism primarily in southeast Alaska. The outfitters, guides, tour operators, wilderness lodges, fishing charters, retailers and other businesses we represent depend on the wild lands of Alaska for our livelihoods. Much of the allure of our state is derived from the excellent fishing and wildlife viewing opportunities and unspoiled scenery which exist in the wild lands of Alaska. HB 578 stands to trade some of those lands in a "quick and dirty" proposal which, if approved, would leave all state lands at risk for similar swaps of valuable forests for stumps.

Forested state lands are an important resource that are in such short supply in the lower 48 that an increasing number of visitors come to Alaska solely for the opportunity to see these lands and the wildlife they support. The Leask Lakes land, some 958 acres, is valued at only \$72 per acre. This trade would be not only a substantial economic loss for the state, but a needless recreational and habitat loss that the Ketchikan area can ill afford. One only has to realize that tourism is the #2 industry in Alaska, until the Oil runs out and it becomes #1! I hope we can count on you to help protect the growing outdoor recreation and tourism industry by stopping this poorly conceived bill.

Sincerely yours,



Jeffrey Sloss
 Executive Director

Issues in TCS's appeal

1. Appraisal. There is no final appraisal of the lands to be traded. (DNR's chief appraiser has rejected the single appraisal in this case. Of four review appraisers, three have not signed off and one has approved only a portion of the appraisal.)

2. Roads. DNR used a road upgrading project to equalize the values of the trade. The law contemplates cash equalization. DNR awarded a sole-source contract to Cape Fox for this work, bypassing AS 36.30.

3. Sustained yield. DNR evaded sustained yield by failing to consider a timber sale before trading state land, as required by AS 38.50.

4. Mini-EIS. DNR failed to adequately depict or discuss the impacts of the trade, as required by AS 38.50.

5. Conflict of interest. DNR failed to check up on the timber cruise (basis for the appraisal), which may have been subject to a conflict of interest.

6. Unclassified lands. DNR is disposing of land without doing an area plan. Their regulation allowing this is not backed up by the statute.

Other pertinent issues

Capital projects. DNR traded resources it manages for a capital project, bypassing capital budgeting procedures.

Fiscal notes/operating budget. There is no solid maintenance provision for the roads the state will acquire. The Ketchikan Gateway Borough does not have road powers. DOT says it will not maintain the road. Once the state acquires the road, it will be pressured to maintain it. There is presently a \$0 fiscal note.

Double dipping/appraisal. The appraisal of the post-logging land value was based on public road accessibility. Without road access, the appraised values are invalid. Additionally, the announced public benefit of the trade -- recreational road access -- evaporates. The state pays Cape Fox to upgrade its logging roads, then values the land with resulting public access.

Contact: Dave Katz, 463-3366

LEASK LAKES STATE PARCEL -- STATE PARK OR LAND TRADE?

Cape Fox Corporation, an Alaska native corporation located in Saxman, just outside of Ketchikan, is nearly finished cutting the timberlands it received from the federal government under the Alaska Native Claims Settlement Act (ANCSA). Cape Fox now wishes to trade those cut-over lands for more prime timberland. The corporation has proposed a land trade to the Alaska Department of Natural Resources (DNR) in which Cape Fox would trade around 4,000 acres, much of which has been heavily clearcut, to the state, in return for which Cape Fox would receive around 2,400 acres of pristine, state-owned old-growth forest in the Leask Lake area, north of Ketchikan. Cape Fox's purpose in obtaining these lands is to clearcut them extensively. At present market conditions, the Leask Lake timber is worth around \$15 million.

Cape Fox has been proposing this trade or variants of it for over 10 years. And for that long DNR has been avoiding the trade as not in the state's best interest. But under Governor Walter Hickel, the state has changed its tune. DNR is now poised to proceed with this trade. The public "benefits" to be captured are said to be recreational use of the logging roads Cape Fox will leave behind, and economic development. Timber obtained by Cape Fox through this trade will be shipped without processing, as round logs, probably to Japan.

The \$15 million giveaway. The state will get little in return for its valuable Leask Lake resources. The state will lose high-value wildlife habitat, recreational opportunity, and timber. The state will acquire only the surface estate of the Cape Fox lands -- Sealaska will continue to own the rock, sand, gravel, and minerals. The state will gerrymander its remaining ownership to accommodate Cape Fox's interest in only high value timberland. The state will acquire Cape Fox logging roads and easements on logging roads -- with the expectation from the local government that the state will then upgrade and/or maintain these roads. ADOT has stated that it doesn't have the funds to do so. The existing Cape Fox logging roads are unsafe for public use. The state will acquire Cape Fox lands of limited recreational and habitat value, to much of which the public already has access (the public gains little). Finally, public economic gains will be small and short-term. Timber wages will equal \$2 million over two years -- less than 1/2 of 1 percent of the Ketchikan Borough's expected wage and salary total over that time.

Habitat loss. The Leask Lakes parcel is 5,000 acres of old-growth timber, abundant water, low-altitude lakes, moderate relief, and salt-water shoreline. The state-owned area supports a rich array of wildlife species including trumpeter swans, plus coho and sockeye salmon, cutthroat trout, and Dolly Varden char. ADFG predicts that Cape Fox timber harvest will reduce the deer population in the high-value Leask Lakes area by 68%, and other wildlife numbers similarly. These numbers will not support significant hunting and viewing demand.

Recreational loss. The US Forest Service recently stated publicly that if the Cape Fox land trade "ran into problems," the Forest Service would propose building a recreational road into Leask Lakes. The state should keep its high value land and encourage the Forest Service to build (and maintain) that road. This unroaded area apparently receives a surprising amount of use currently. In a recent McDowell Group survey, 20% of respondents said they had been to the area -- a very high number. The Leask Lakes parcel is large and can accommodate a wide variety of high-quality recreational uses -- from family picnicking to hiking to hunting. The Cape Fox lands are of lower recreational value, have been heavily impacted by clearcutting, and would

Leask Lakes State Parcel Briefing -- Page 2

not be accessible to the public until after timber harvest and/or road upgrading -- should that occur.

Local opposition. There is substantial local opposition to this trade. At hearings before the Ketchikan Borough Assembly, 33 people testified against the trade and in favor of a state park. Only 26 favored the trade. (The Assembly then voted 6-1 for the trade.) The Planning and Zoning Commission was split, 3-3. The City Council only narrowly favored the trade, 4-3. These votes all came before the Forest Service announced its willingness to build a different road. In the recent McDowell Group random survey of Ketchikanites' opinions regarding outdoor recreation, the value most important to Ketchikanites was habitat protection -- both in general and with respect to land trades in particular. Increasing recreational activities on the road system was second. This trade would destroy both habitat and recreational opportunity.

The Better Choice -- Leask Lakes State Park. Ketchikan is almost devoid of state parklands, and is genuinely recreational destination-poor. For reasons of size, location, recreational and habitat value, road-access achievability, and ownership status, an outstanding use of this state parcel would be as a park. A park would also have spinoff economic benefits as an attraction to independent tourists. Outstanding native stone fish traps and petroglyphs exist on the site.

Summary. The state has avoided this trade for over 10 years, and with good reason. It will give \$15 million in state resources to a private corporation, while creating new state liabilities and diminishing the value of remaining state resources. It will destroy valuable habitat and diminish recreational opportunity. Moreover, the local community is split as to the trade's desirability. The trade should be rejected and a state park designation supported.

Briefing from Tongass Conservation Society
PO Box 3377
Ketchikan, Alaska 99901
225-5827

Contact persons: David Katz, TCS Staff 225-5827
Marna Schwartz, Alaska Environmental Lobby 463-3366





LEASK LAKES AERIAL VIEW

MAP 2

U.S. FOREST SERVICE

STATE OF ALASKA








MAP 2

STATE OF ALASKA PROPERTY

LEGEND

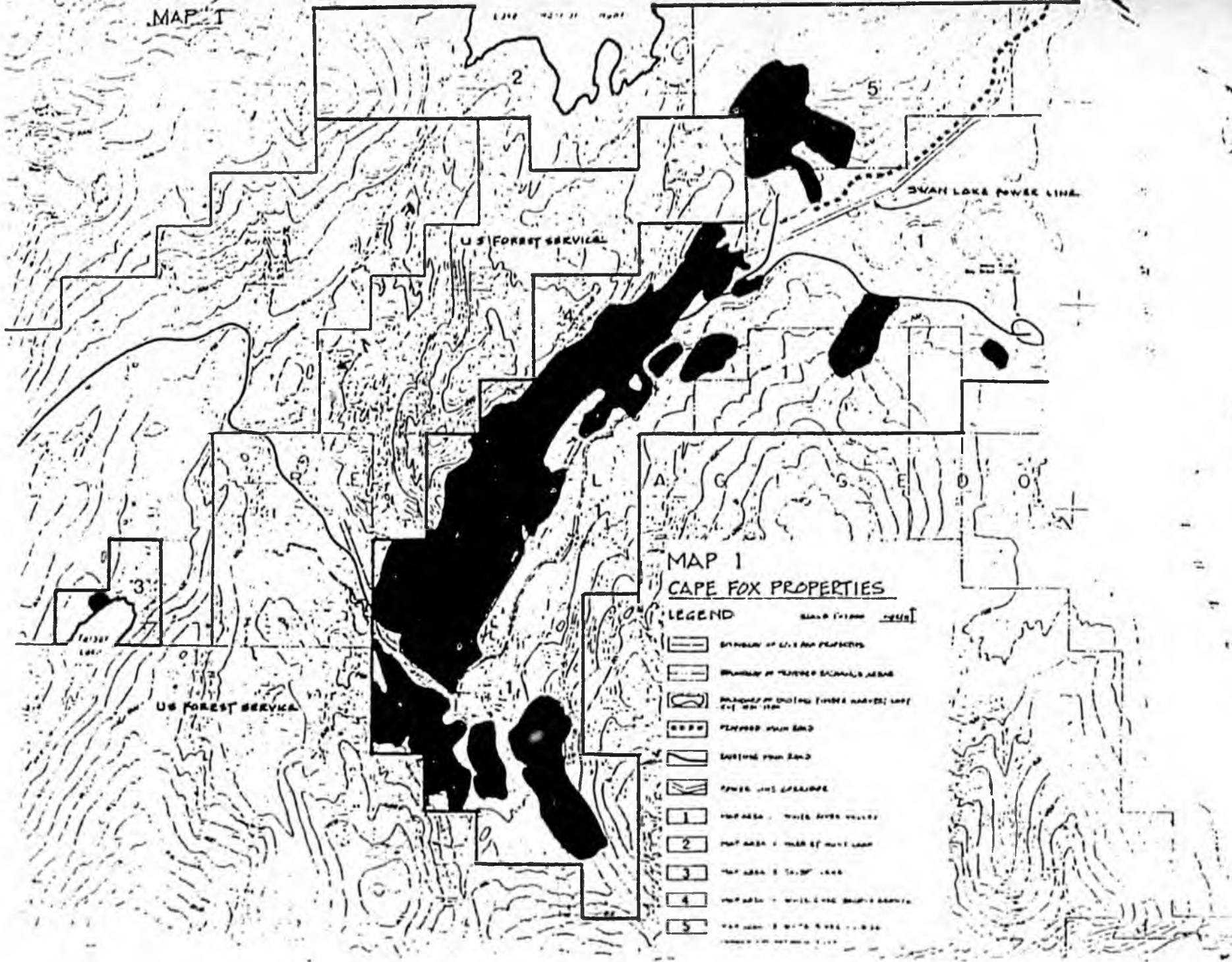
SCALE 1:100,000 NORTH

-  EQUIDISTANT OF LEASED USES TRACT
-  EQUIDISTANT OF PROPOSED EXCHANGE TRACT
-  EQUIDISTANT OF PROPOSED TIMBER INTEREST
-  PROPOSED PLAIN LAND
-  PROPOSED SPA CAMP

SELECTIVE HARVEST

UNIV. OF ALASKA

MAP 1



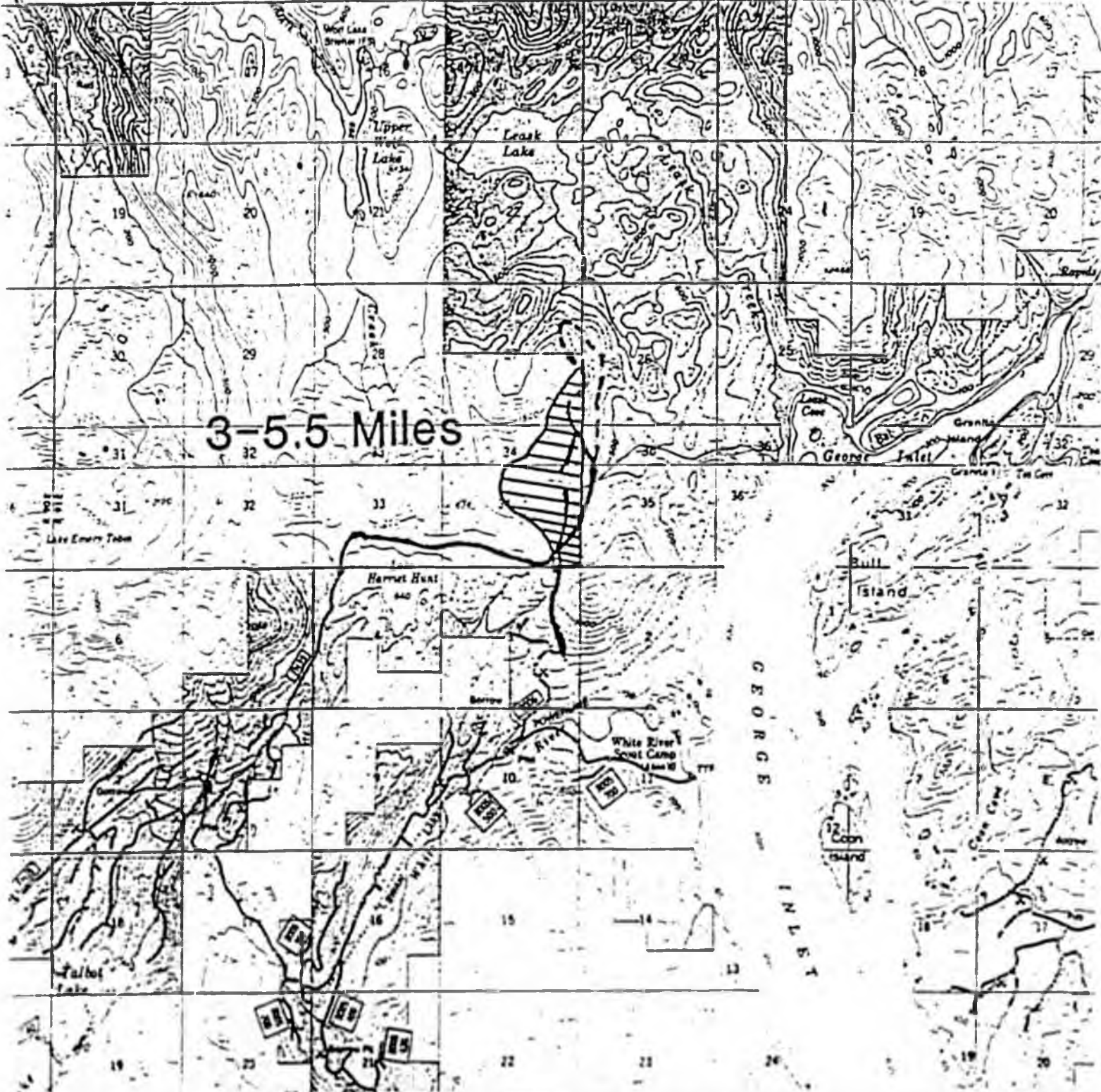
MAP 1
CAPE FOX PROPERTIES

- LEGEND
- [Symbol: Dashed line] BOUNDARY OF U.S. FOREST SERVICE
 - [Symbol: Solid line] BOUNDARY OF PRIVATE LANDS
 - [Symbol: Stippled area] PLANNED FOR CHITINA FOREST HARVEST 1977
 - [Symbol: Diagonal lines /] PLANNED FOR LAND
 - [Symbol: Diagonal lines \] EXISTING FOR LAND
 - [Symbol: Cross-hatched area] POWER LINE CORRIDOR
 - [Symbol: Box 1] PLANNED FOR - WHITE RIVER VALLEY
 - [Symbol: Box 2] PLANNED FOR - WEST OF MOUNT LAMP
 - [Symbol: Box 3] PLANNED FOR - TO THE WEST
 - [Symbol: Box 4] PLANNED FOR - WHITE RIVER MOUNTAIN
 - [Symbol: Box 5] PLANNED FOR - WHITE RIVER MOUNTAIN



HARRIET HUNT PROPOSAL

All road locations must be verified on the ground to determine final location and feasibility. The routes shown would access an area approximately 285 acres in size of which 140 would be cut in the first entry. This would represent 4 million bdtf of timber harvested in the first entry. If timber is to cover road building costs, approximately 1.5 million bdtf/mile is required, If this cannot be met then supplementary sources of funding will be needed.



Attachment F 11/27/11 Ketchikan Daily News

Leask Lakes road

By JANIE LAWLEY
Daily News Staff Writer

If a proposed land swap between the state and Cape Fox Corp. falls through, the U.S. Forest Service will pursue a road project to the Leask Lakes area if the community desires it, according to a Forest Service official.

On Tuesday, Dave Fletcher, timber management assistant with the Ketchikan Ranger District, said the federal agency will pursue the road project if the Ketchikan Gateway Borough and the City of Ketchikan desire it.

At the request of Dave Katz, staff person for the Tongass Conservation Society, Fletcher addressed the Ketchikan City Council last week to let councilmembers know of the recreational opportunities in the area.

Katz said he wanted the council to know of the recreation potential before reaffirming its support of the land swap.

"I only bring this out to show you that there is an opportunity here should there be some problem with the land exchange," Fletcher said at the meeting.

According to Ketchikan District Ranger Steve Segovia, the project is not being pursued now because the Forest Service wants to remain neutral in the land swap decision.

The proposed trade includes Cape Fox's land in White River, Harriet Hunt Lake and Talbot Lake in exchange for state land in the Leask Lakes tract.

According to Andy Pekovich, Southeast Regional Manager for the Department of Natural Resources' Division of Land, the state is waiting for an appraisal on the lands.

He said it is expected sometime this week.

In an article printed earlier in the Daily News, Katz reported that he doesn't believe it is the Forest Service's responsibility to remain neutral.

In an interview Tuesday, Katz the land swap goes through, ancient recreational area for Ketchikents will be lost.

He said the land swap call logging road to be built that expanded to allow residents t Revillagigedo Island.

However, he said, if a road w into the Leask Lakes area, a con road could also be built that wou

'I only bring this to show you that there is an opportunity here should there be some problem with the land exchange.'

— Dave Fletcher

the same thing.

"This road accesses an excellent recreational area and we don't need to clearcut the area to get that access. This road provides us with all of the benefits of the land swap without clearcutting," he said.

The bottom line, Katz said, is that the land swap will cost Ketchikan the recreational opportunities in the Leask Lakes area because it will be undesirable after logging.

It is Katz' hopes to inform the public



million board feet of timber available in the area would not cover the cost of the road.

The road would be between three miles and five and a half miles in length. He said it takes about one and a half million board feet of timber to build one mile of road.

Fletcher estimated that 6.3 million board feet will be needed to pay for the road into the Leask Lakes area.

This means additional funding, Fletcher said.

"The timber won't pay for all of the road," he said.

Fletcher said it would take between two and three years to get a road into the area.

Katz said he is pursuing the project because he hopes it will eventually mean additional roaded recreation for the First City.

"This road is very easy and attainable for roaded recreation for Ketchikan," he said.



RECEIVED MAR 2 1992

Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-463-3366

February 28, 1992

Representative Cliff Davidson
P. O. Box V
Juneau, Alaska 99801

Dear Representative Davidson,

The Alaska Environmental Lobby would like to alert you to a pending land exchange between the State of Alaska and the Cape Fox Corporation (CFC) which would result in the loss of valuable timber, wildlife habitat and recreational resources to the people of Alaska. The proposed exchange is described in a Report on Proposed Land Exchange recently released by the Department of Natural Resources.

DNR proposes to exchange 2400 acres of old growth forest for 4300 acres of CFC land which has been extensively clearcut. Both properties are north of Ketchikan. CFC will clearcut 1500 acres of the land it receives from the state. DNR maintains that the Ketchikan residents would benefit from recreational access to the area provided by upgraded logging roads.

The Cape Fox Corporation has been proposing this land exchange since 1977. Until this past year, DNR has rejected the proposal as not being in the public interest. Nothing has changed; the public still loses by this trade.

The Alaska Environmental Lobby opposes this land exchange on the following grounds:

1) It is not in the public interest to exchange land with high quality, high value old growth forest for land that has been clear cut. Any gain in recreational values by the greater access provided by upgraded logging roads is more than offset by the diminished recreational values caused by clearcuts and by the destruction of wildlife habitat.

2) DNR's evaluation of this exchange is seriously flawed, for example:

- * DNR has accepted an appraisal which assumes that the "highest and best use" of the land is to log the timber; there has been no consideration of park, habitat, or other non-economic values.
- * 39% of the state lands were appraised at only 10% of fair market value.
- * The State of Alaska is paying CFC to upgrade the logging roads, by subtracting the cost of the upgrade from the value of the state lands.
- * DNR has relied on a deer study done by Cape Fox and slighted a projection by the Alaska Department of Fish and Game that there will be a 68% decline in the deer population as a result of logging the state land.



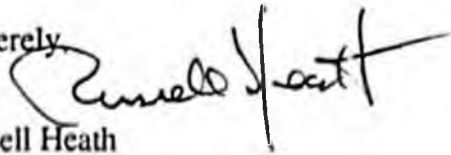
* The value of the state land was reduced by questionable accounting procedures; for example, all state timber was discounted 12% over a two year period, while only some of the CFC timber was discounted and then for a period less than a year.

3) This exchange will set a precedent for future private/state land trades and must be considered carefully. However the Department of Natural Resources is pursuing possibly illegal practices to force the public and the legislature into making a rapid decision on this issue. Alaska statute requires that a comprehensible explanation of the appraisal process be provided to the public thirty days before any public hearings. The current appraisal has been rejected as incomprehensible to the public by DNR itself, yet public hearings are scheduled for early March.

4) Finally, Alaska's timber resources must be managed as a renewable resource. If private corporations are able to exchange lands that can no longer provide revenue, for valuable state land, then no corporation will have the incentive to manage their resources for the long term. Alaska's corporations must be encouraged to follow prudent business practices.

AEL would like to reiterate that careful consideration must be made of the precedents that will be established if this exchange proceeds. These precedents include the assumptions under which state land is appraised; the type of goods or services the state receives in compensation; who and how the public interest is determined and the public process used to facilitate such exchanges.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell Heath". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Russell Heath
Volunteer Lobbyist

RECEIVED MAR 12 1992

**KETCHIKAN
GATEWAY
BOROUGH**

OFFICE OF THE MAYOR

Ralph M. Bartholomew
344 Front Street
Ketchikan, AK 99901-6494
Phone 228-6605 Fax 225-7282

March 9, 1992

The Honorable Cliff Davidson
House of Representatives
P.O. Box V
Juneau, AK 99801

THE LAND TRADE BETWEEN THE STATE OF ALASKA AND CAPE FOX CORPORATION

Dear Representative Davidson:

You will soon review legislation proposing a land trade between the State of Alaska and the Cape Fox Corporation (Saxman Village Corporation) which must be adopted during this session of the Legislature.

The Ketchikan Gateway Borough Assembly supports this exchange (resolution enclosed) and recently endorsed this letter and my testimony at any future hearings.

The State Department of Natural Resources has completed its review and documentation supporting the Exchange Agreement and is now in the public comment phase of the process. Commissioner Harold Heinze unequivocally promotes the land trade as a no-cost, win-win settlement which will benefit not only the people of Southeast but also the people of the entire State of Alaska.

Cape Fox Corporation owns the timber and the land in the White River, Harriet Hunt Lake, and Talbot Lake areas immediately adjacent to Ketchikan. The Corporation is willing to pass title to the State without cutting the multi-million board feet of timber in the valley and surrounding areas. The river is presently followed on one side by a timber road that will be upgraded for public use by Cape Fox Corporation as a condition of the Land Exchange Agreement.

As a result of the land exchange, the public will inherit three prime areas with future unlimited availability for recreation with roaded access. Cape Fox Corporation has committed to a logging plan in the Leask Lake parcel which minimizes environmental impacts and preserves the view corridors from adjacent lakes and roads. The community gains all of this plus the economic benefits from the timber contracts, road building contracts, and future visitor attraction and site use by the public.

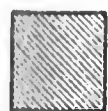
Thank you for your consideration, support and assistance in moving this important proposal during this legislative session. It will be a model for the rest of the State.

Sincerely,



Ralph M. Bartholomew
Mayor

Legend



Cutting Unit 19



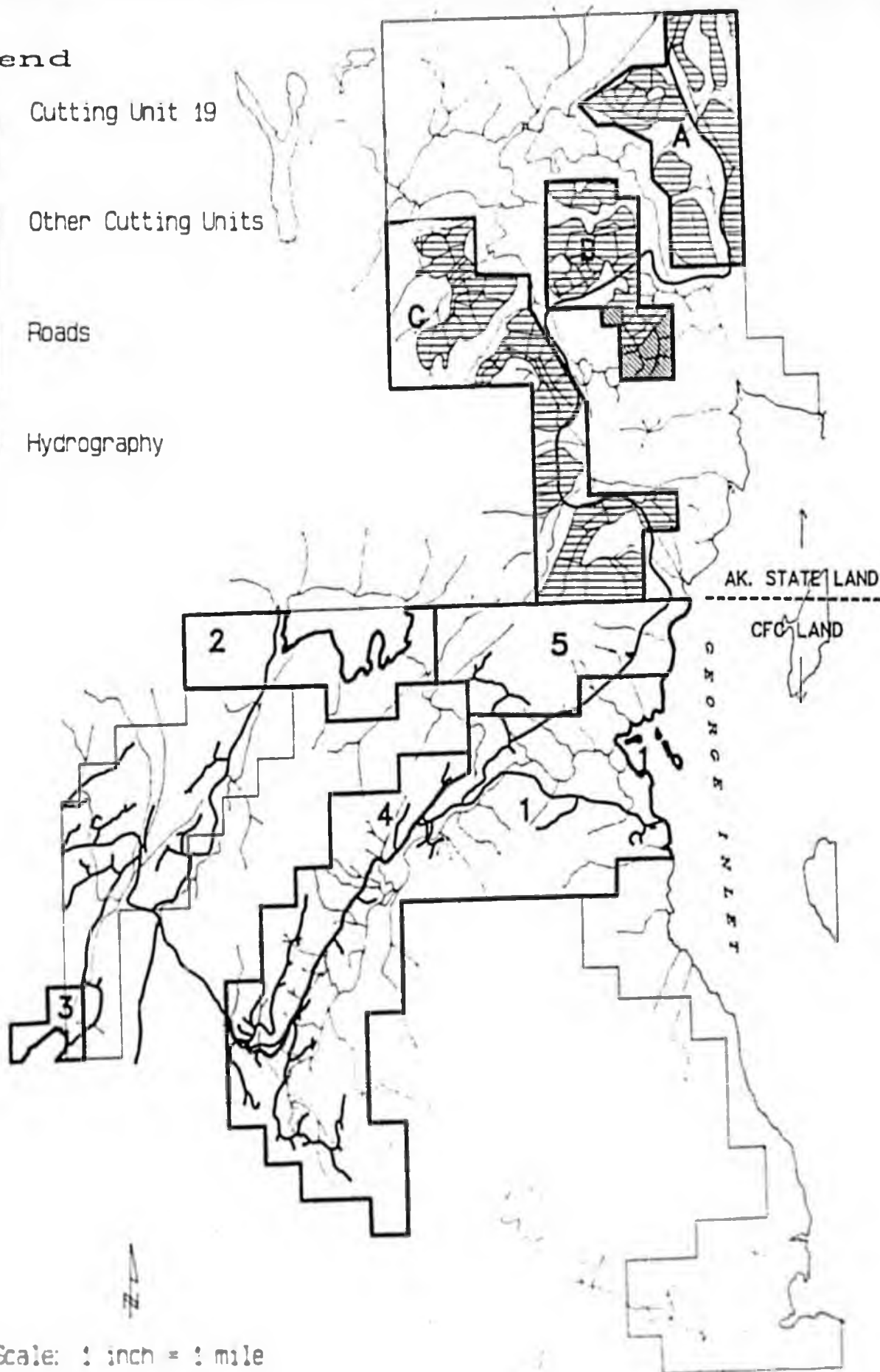
Other Cutting Units



Roads



Hydrography



Proposed Land Exchange Areas

KETCHIKAN GATEWAY BOROUGH

RESOLUTION NO. 954

A RESOLUTION OF THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, SUPPORTING THE CONCEPT OF A LAND EXCHANGE OF CAPE FOX CORPORATION PROPERTIES IN THE LAKE HARRIET HUNT AND WHITE RIVER AREAS FOR STATE OF ALASKA PROPERTIES IN THE LEASK LAKES AREA, REVILLAGIGEDO ISLAND, ALASKA; AND ESTABLISHING AN EFFECTIVE DATE.

RECITALS

- A. The Cape Fox Corporation owns properties in the White River drainage and at Lake Harriet Hunt, and the State of Alaska owns a large, contiguous tract of 5,140 acres in the area known as Leask Lakes.
- B. The Cape Fox Corporation has proposed a land exchange between the Corporation and the State of Alaska. This exchange involves the selection of some 2,450 acres of State land in the Leask Lakes area in exchange for 2,941 acres within the White River and Lake Harriet Hunt areas.
- C. A community survey was conducted in the summer of 1990 by a Juneau consulting firm that identified a strong need for additional outdoor recreational opportunities for the residents of Ketchikan. This survey also determined that such recreation was desired along the road system and that the preservation of sport fisheries and maintenance of wildlife were important considerations in any provision of additional outdoor recreational opportunities. The survey also found significant community support for recreational opportunities in areas where timber clear-cutting was visible from the road system.
- D. A community workshop conducted in November, 1990, on the creation of a Leask Lakes State Park or White River/Leask Lakes Land exchange reconfirmed the importance of habitat protection and the need for additional recreational opportunities on the roaded system. This workshop also established the importance of the provision of a utility/transportation corridor designed to provide intra-island and inter-island accessibility.
- E. Research performed by the Ketchikan Gateway Borough Department of Planning and Community Development evaluated a series of alternative ways that the Leask Lakes/White River/Lake Harriet Hunt areas could be developed and managed, and identified significant additional outdoor recreation and habitat values in the Leask Lakes, White River, and Lake Harriet Hunt areas.
- F. Public hearings were held before the Planning Commission and Borough Assembly addressing the values and issues associated with the creation of Leask Lakes State Park or a Leask Lakes/White River/Lake Harriet Hunt land exchange, and evidenced public interest in and support for a proposed land exchange.

G. A proposed land exchange involving the Lake Harriet Hunt and White River areas of the Cape Fox Corporation for selected State of Alaska properties in the Leask Lakes area should provide greatly augmented outdoor recreation opportunities accessible by vehicle, protect important habitat values in the White River and Lake Harriet Hunt areas, and allow for the eventual provision of an inter-island or intra-island road/utility corridor(s).

NOW, THEREFORE, IT IS RESOLVED BY THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, as follows:

Section 1: Support of Proposed Land Exchange. The Ketchikan Gateway Borough approves, in concept, the proposed land exchange between the Cape Fox Corporation and the State of Alaska involving the Corporation's properties in the White River and Lake Harriet Hunt areas (approximately 2,941 acres) and the State's properties (2,450 acres) in the Leask Lakes area, generally as depicted on Map 1, attached.

Section 2: Support of "Environmental/Timber" Alternative. The Ketchikan Gateway Borough Assembly approves a variant of the land exchange proposal described as the "Environment/Timber State Park", dated November 1, 1990, prepared and retained for public review by the Borough Department of Planning and Community Development. This alternative is intended to provide an additional level of habitat protection over the "Cape Fox Proposal", also described in that report, while retaining significant recreational and visual attributes identified in the Department of Planning and Community Development maps on Recreational Opportunity Spectrum and Visual Quality Objectives.

Section 3: Specific Conditions of Approval. In order to provide proper management of the White River-Leask Lakes area, to ensure adequate utility and transportation access, to provide optimum levels of outdoor recreational opportunities, and both habitat and natural resource protection, the following conditions of approval, affecting the "Environment/Timber" Alternative, are recommended in any subsequent land exchange entered into by the State of Alaska and Cape Fox Corporation, and in any actions required of or involving the Ketchikan Gateway Borough:

a. The White River Land Exchange area include the existing Cape Fox Corporation logging road, and the upgrading of this road to provide for safe public access be included in the evaluation of the proposed exchange.

b. A public access easement be provided by the Cape Fox Corporation within and through private corporation lands involving access between Leask Lakes and White River.

c. The mainline section of new logging roads between the existing terminus of the spur road within the White River area and the probable terminus at or generally near the "ponds" southeast of Leask Lakes be designed to provide horizontal control sufficient to meet United States Forest Service standards for a public access road, that the road have a width of at least 16', and that it utilize a design speed of at least 25 miles per hour.

d. The development of a road/utility corridor(s) for inter-island or intra-island access be explicitly recognized within the White River and Leask Lakes area as being necessary and desirable, and that sufficient right-of-way be reserved for eventual construction.

e. A conservation easement be agreed to by the Cape Fox Corporation on all land transferred to the Corporation from the State that is not to be logged, ensuring that these lands are not

logged.

f. Any portion of the mainline logging road crossing Cape Fox Corporation property within the Leask Lakes area have a public access easement, and pedestrian public access easements be provided for all "put-to-bed" spur logging roads that provide access to the remaining state lands of significant size within Leask Lakes or where recreational use is expected to occur.

g. A logging management plan be developed by the Cape Fox Corporation prior to any logging of the Leask Lakes area, and this plan be reviewed by the Ketchikan Gateway Borough Planning Department prior to the commencement of logging by the Corporation. The purpose of this review will be to ensure conformance with the conditions of approval stated in this Resolution, and to ensure that proposed timber harvest areas generally conform to the intent of the "Environmental/Logging Alternative".

h. The clear-cut area within the White River area, consisting of 725 acres located west of the current logging road, be considered for inclusion in the State-Corporation land appraisal in order to determine the value/worth of including this area within the proposed area of land exchange between the State and the Cape Fox Corporation.

i. A master development plan will be prepared by the Ketchikan Gateway Borough for the properties affected by the proposed land exchange in order to properly assess near-range and long-range planning objectives and consequences. This plan will guide the use and the management of properties involved in the Land Exchange and the remaining State properties in the Leask Lakes area.

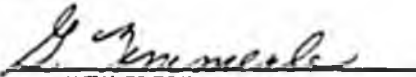
j. State land within the "Leask Lakes Area" not affected by the land exchange between the State and the Cape Fox Corporation be retained under state ownership and management, and be classified as "public use" lands subject to the terms and conditions of an approved master development plan.

Section 4: Effective Date. This resolution is effective upon adoption.



 BOROUGH MAYOR

ATTEST:



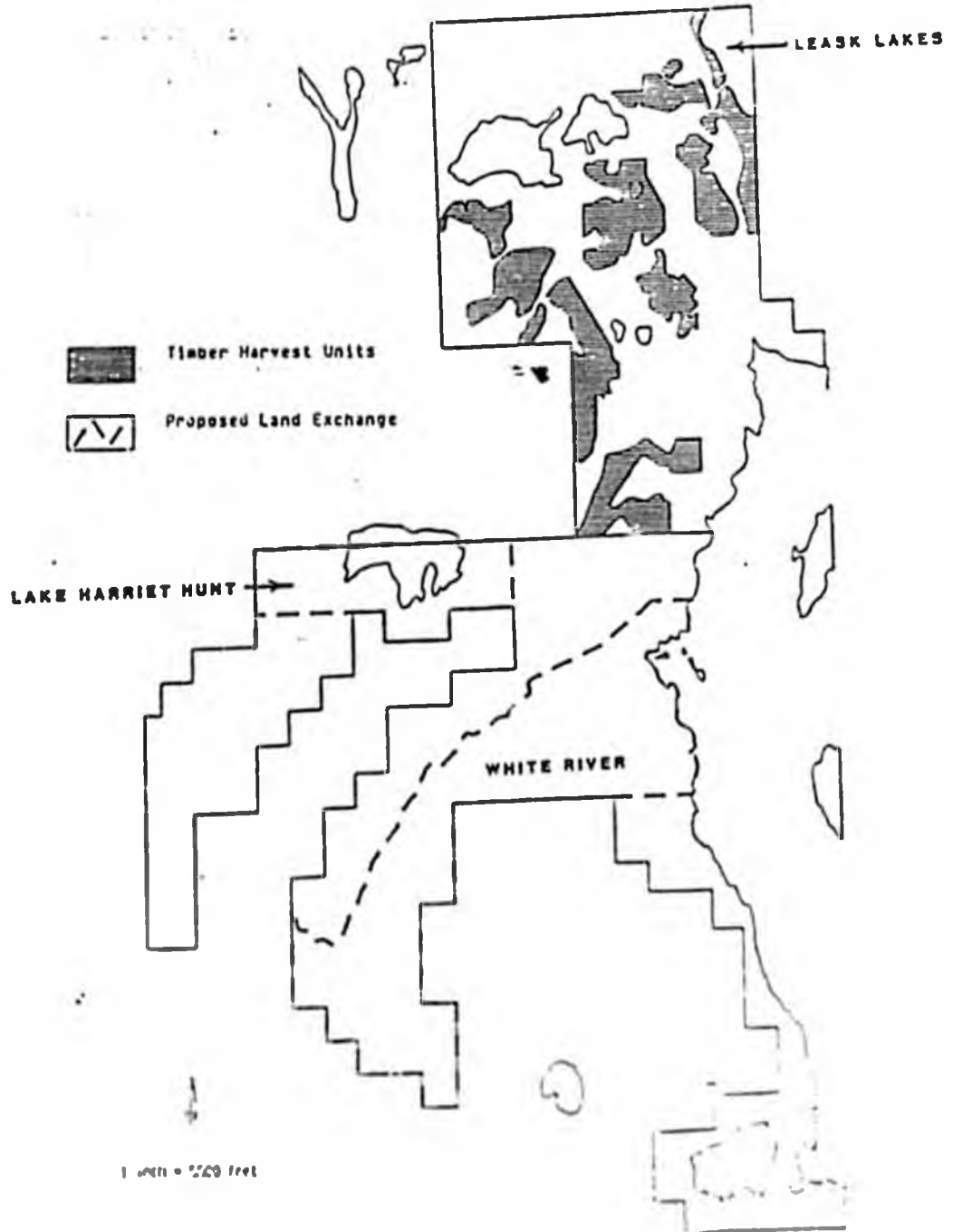
 BOROUGH CLERK

Approved as to form:



 INTERIM BOROUGH ATTORNEY

Map 1



Environmental/Timber Alternative
Prepared by Resource Data, Inc.



Lynn Canal Conservation, Inc.

Post Office Box 964
Haines, Alaska 99827

RECEIVED MAR 21 1992

March 20, 1992

Representative Cliff Davidson
P. O. Box V
Juneau, Alaska 99801

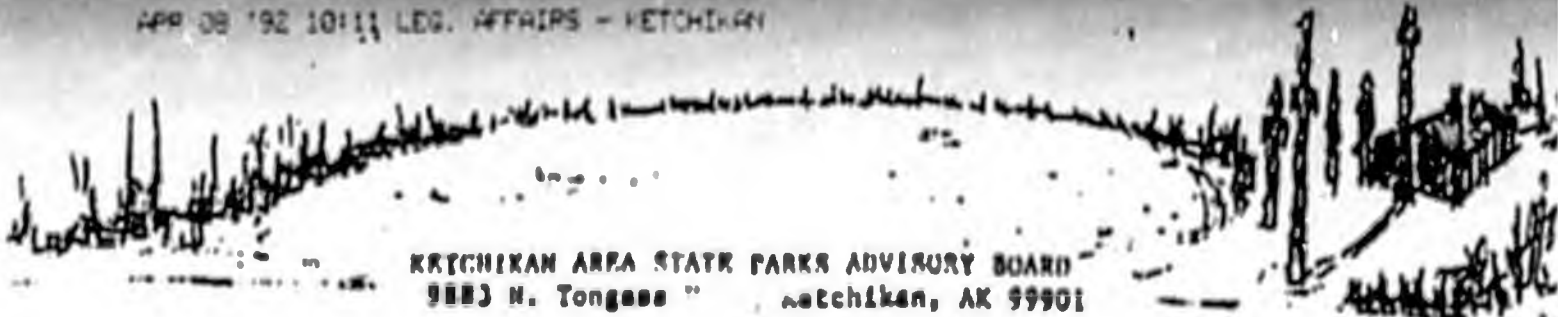
Dear Representative Davidson,

Lynn Canal Conservation opposes the pending land exchange between the State of Alaska and the Cape Fox Corporation which would result in the loss of valuable timber, wildlife habitat and recreational resources to the people of Alaska.

DNR proposes to exchange 2400 acres of old growth forest near Leask Lakes for 4300 acres of extensively clearcut land owed by Cape Fox in the White River area. Both properties are north of Ketchikan. Cape Fox would clearcut 1445 acres of the land it receives from the state. DNR maintains that the Ketchikan residents would benefit from recreational access to the area provided by upgraded logging roads.

Lynn Canal Conservation believes this trade would be bad public policy.

- 1) Cape Fox and other private corporations must not be rewarded for non-sustainable resource management by being able to trade land that no longer produces revenue for valuable state land. Access to state lands will encourage short term, non-sustainable management. Alaska's timber resources must be managed as a renewable resource.
- 2) The public process is being slighted. Alaska Statute requires that a description of the appraisal process that is comprehensible to the public be made available prior to any public hearing. Such a description is not available, yet public hearings were held in mid-March. We believe that any transfer of public lands must be carefully considered by the public. This trade must not be railroad past the people of Alaska.
- 3) DNR is circumventing state procurement laws, by contracting with Cape Fox to upgrade logging roads without soliciting competitive bids. The appraised value of the Leask Lakes property was reduced by 2.5 million dollars to compensate Cape Fox for the cost of upgrading the roads to recreational quality.
- 4) The state lands were appraised under the assumption that the "highest and best use of the land is to log the timber." (Quoted from DNR's Report on Proposed Land Exchange). The public interest can not always be defined as that which produces the greatest economic return. Lesser values or non-economic uses, such as parkland or wildlife habitat, must also be considered. The public must determine the "highest and best use of the land", not DNR or DNR's appraiser.
- 5) There are already plenty of unlogged recreational areas accessible in the Ketchikan area. The logged White River area is not needed for additional recreation.



KETCHIKAN AREA STATE PARKS ADVISORY BOARD
9883 N. Tongass " Ketchikan, AK 99901

At the March 9th, 1992 meeting, the Ketchikan Area State Parks Advisory Board passed the following resolution:

The Ketchikan Area State Parks Advisory Board recommends that after the state of Alaska makes a decision on the proposed Cape Fox Corporation Land Exchange all lands retained by the state should be designated by legislative action to be protected for recreational purposes only.

William Rotecki

Advisory Board Chair





KONCOR FOREST PRODUCTS CO.
3501 DENALI, SUITE 202
ANCHORAGE, ALASKA 99503
(907) 562-3335 FAX (907) 562-0599

Memo

FAX

TO: Representative Cliff Davidson

DATE: April 16, 1992

**SUBJECT: HB - 578 - Cape Fox
Trade Bill**

Hi Cliff:

I would like to encourage you to quickly move HB-578 through your committee. I have been told that some House members are holding this Bill hostage for Kachemak. I would not like to be put in a position of hindering the efforts of a fellow native corporation (Cape Fox) for our benefit. This may be politically naive but I would hope each bill could stand on its own. Your cooperation is appreciated. Thank you.

John L. Sturgeon



April 14, 1992

Representative Cliff Davidson
Chair, House Resource Committee

Dear Representative MacLean:

We at Alaska Travel Adventures, Inc. would like to register our support for the proposed land exchange between the State and the Cape Fox Corporation.

Through agreements with Cape Fox Corporation, Alaska Travel Adventures, Inc. has operated a canoe tour at Harriet Hunt Lake during the past five years. In 1991 we serviced roughly 10,000 Alaska Visitors. We firmly believe the secluded, scenic location afforded us by Harriet Hunt Lake is a large reason for the success of our program. There are very few areas that provide accessibility and attractiveness of Harriet Hunt Lake. Passengers taking the tour rate it very high and are pleased with this site.

The lake is not only an excellent spot for tours such as ours, but is also a natural spot for accessible recreation use. Aside from boating, the area offers trout fishing, a large population of deer, and excellent areas for hiking. It has been a popular local recreation location for many years.

We believe that the Harriet Hunt portion of the proposed exchange is an asset the State would be very fortunate to obtain and Alaska recreation users would be well served. We urge you to proceed with this exchange.

Sincerely,



Robert H. Dindinger
President

cc: House Resource Committee





Tongass Conservation Society

News

4/21/92 For immediate release

Contact: Dave Katz, 463-3366 or 586-1841

Marna Schwartz at Alaska Environmental Lobby, 463-3366

Environmentalists go to court to stop trees-for-stumps trade

Tongass Conservation Society today filed an appeal in Juneau Superior Court to overturn an April 6, 1992 decision of the Alaska Department of Natural Resources trading old growth forest for clearcut land near Ketchikan. TCS is an environmental public interest group located in Ketchikan.

DNR's decision would give Cape Fox Corporation 2,335 acres of pristine, old growth forest owned by the state in the Leask Lakes area, north of Ketchikan. In return, the state would get 4,336 acres of nearby clearcut and lower value land owned by the native corporation. Over 1,000 acres of the Cape Fox lands have been clearcut.

The heart of the Cape Fox lands, the White River Valley, has been heavily logged by the corporation, and is now dominated by a massive, 2-1/2 mile-long clearcut. Under DNR's decision, the state would inherit the White River, and Cape Fox would heavily log the now-pristine Leask Lakes lands, clearcutting over 1,300 acres of the best timber. DNR's stated rationale for proceeding with the trade that Ketchikan residents can recreate on the logging roads Cape Fox leaves behind.

"This trade of the public's forest for private clearcuts is nothing less than a ripoff of Alaska's lands," said TCS spokesperson Dave Katz. "DNR is setting the banquet table for every private corporation hungry to load up on prime state resources. What's really frightening is DNR Commissioner Heinze's Senate Resources testimony that he wants to make trades like this his menu for the future. It's cut-and-run forest devastation at its worst."

He continued, "Not only are we accepting 1,000 acres of Cape Fox clearcuts, at the same time we're actually giving them 1,000 acres of our own lands for just \$72 an acre. That's worse than a bad deal. It's a travesty."

According to Katz, more than half of those testifying at public hearings in Ketchikan opposed the trade. "There is no consensus of support for this trade in Ketchikan," he said.

"Now DNR is trying to muscle this trade through the legislature this session, before anyone catches on to what a bad deal it really is. The agency was supposed to have a final appraisal over two months ago. They've been through two review appraisers, and they still don't have a final appraisal on these lands.

-MORE-

"This trees-for-stumps deal is a scam, and DNR is violating the state's land trade law."

TCS is represented in its appeal by the Sierra Club Legal Defense Fund. According to SCLDF attorney Tom Waldo, the appeal alleges numerous procedural and substantive problems.

"In trying to gain legislative approval for the trade this session," he said, "DNR cut procedural corners and violated public safeguards. DNR has given little more than a cursory analysis to the environmental and economic impacts of the trade. The public has yet to see a final, complete appraisal.

"The appeal alleges that the timber cruise on which the appraisal rests was marred by a conflict of interest, in that the company cruising the timber was also Cape Fox's long-time timber buyer."

The final exchange agreement calls for Cape Fox to upgrade its logging roads to public access standards. This \$2 million-plus project was identified by DNR, which will trade state timber to pay for it -- bypassing normal state capital budgeting and procurement procedures. The cost of the road project was used to balance the books on the trade, by subtracting the cost of the road upgrade from the higher value of the state's lands.

According to Waldo, the appeal alleges that this approach is also fundamentally flawed. "We believe the law contemplates cash -- not capital projects like roads -- to equalize values in land trades," he said.

A coalition of environmental groups is opposing the trade, including the Alaska Environmental Lobby and the Southeast Alaska Conservation Council, as well as TCS. Recently, AEL distributed wooden nickels to legislators, symbolizing the trade's lack of public value.

"This trade would declare open season on Alaska's public lands," said John Sisk, SEACC executive director. Mama Schwartz of AEL concurs. "This would remove any incentive for private corporations to manage their land sustainably," she said. "In fact, it would reward unsustainable management."

-END-

Quality black and white photos available

Thomas S. Waldo
SIERRA CLUB LEGAL DEFENSE FUND, INC.
325 Fourth Street
Juneau, Alaska 99801
(907)586-2751

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

TONGASS CONSERVATION SOCIETY,)
)
 Appellant,)
)
 v.)
)
 STATE OF ALASKA,)
 DEPARTMENT OF NATURAL RESOURCES,)
)
 Appellee.)
 _____)

Case No. _____

STATEMENT OF POINTS ON APPEAL

Appellant Tongass Conservation Society intends to rely on the following points on appeal:

1. The agency relied on an appraisal that was incomplete at the time the decision was executed and at the time the notice of proposed exchange was issued, in violation of AS 38.50.020, AS 38.50.130 and 11 AAC 67.240.

2. The agency relied on the acquisition of road upgrades to equalize the values of the state land and Cape Fox Corporation land, in violation of AS 36.30 and 11 AAC 67.260.

3. The agency failed to consider the alternatives of selling or leasing the state land or interest in land and did not discuss those alternatives in the report on proposed exchange, in violation of AS 38.50.100 and AS 38.50.130.

4. The agency did not include an adequate discussion of the social, economic and environmental impacts of the exchange in the report on proposed exchange, in violation of AS 38.50.130.

5. The agency abused its discretion by relying on an incomplete appraisal that is marred by a conflict of interest in the timber cruise, improperly discounts open space land values, and fails to adequately consider public interest use values.

6. The agency failed to include a map of the tracts proposed for exchange in the notice published in the newspapers, in violation of AS 38.50.110.

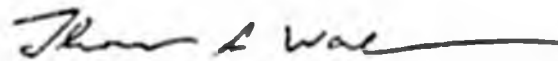
7. The agency failed to classify the land or to complete a regional or site-specific land use plan for the land proposed for exchange, in violation of AS 38.04.065. Any regulations permitting the agency to execute land exchanges without complying with these requirements are invalid as inconsistent with the statute.

Respectfully submitted,

SIERRA CLUB LEGAL DEFENSE FUND, INC.
Attorneys for Appellant

DATED: April 21, 1992

By



Thomas S. Waldo



Tongass Conservation Society

HEARING
BEFORE SENATE
FINANCE COMMITTEE
4/23/92 - 9 AM

**PLEASE OPPOSE SB 465 & HB 578 (LEASK LAKES LAND TRADE):
DON'T TRADE OUR TREES FOR THEIR STUMPS!**

SB 465 and HB 578 would give legislative approval to DNR's proposed trade of 2,300 acres of prime, undeveloped state forest land (Leask Lakes) for 4,300 acres of heavily-logged private lands (White River), near Ketchikan. This proposal offers you a *bad deal*, developed by a *bad process*, and establishing a *bad precedent* we will doubly regret when lines form for similar deals in the future.

BAD DEAL

In order to make this trade look like a fair deal for the state, DNR resorted to "creative accounting." For example:

- DNR assigned almost 1000 acres of the state lands in the proposed trade an absurdly low value of only \$72 per acre! No land anywhere in Alaska sells for that low a price.
- DNR used an excessive 12% discount rate to artificially lower the value of the Leask Lakes land.
- DNR vastly understated the impact to fish and wildlife from logging the pristine Leask Lakes land. The Alaska Department of Fish and Game predicts a 71% drop in deer populations on the Leask Lakes trade lands if the trade goes through.
- DNR vastly overstated the recreation value of the White River clearcuts. More than half the people testifying in Ketchikan opposed this trade!

BAD PROCESS

Alaska law requires DNR to propose land trades only after a professional appraisal considers the values of the tracts. Despite this law, DNR went to the public with a draft appraisal its own reviewers rejected as "incomprehensible." DNR has still not presented either the public or the Legislature with a completed, certified appraisal. DNR also proposes to violate the law by trading state-owned timber for road construction by the private landowner -- bypassing the state's timber sales and road construction bidding processes.

BAD PRECEDENT

In Southeast Alaska alone, there are over 500,000 acres of private timberlands, most of which have been clearcut over the last ten years -- without consideration to sustained yield. If this proposed land trade goes through, all other state lands will be fair bait for similar trades and the public will be left with a legacy of stumps.



KETCHIKAN GATEWAY BOROUGH

Office of the Borough Manager

344 Front Street

Ketchikan, Alaska 99901

(907) 228-6625

April 24, 1992

Representative Cliff Davidson
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Representative Davidson:

RE: HB 378

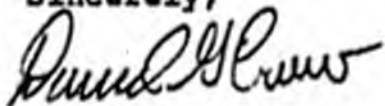
Thank you for the opportunity for the Borough to visit with you yesterday concerning the proposed State/Cape Fox Land Exchange. You asked what the Ketchikan community will receive out of the proposed land exchange. The following represents a summation of the public benefits:

1. When the trade is approved, Cape Fox Corporation will get 2,335 acres of land at Leask Lakes, but the public will get 4,366 acres in the White River drainage, the Harriet Hunt Lake area, and the Talbot Lake area.
2. Cape Fox Corporation will get about 40 million board feet of timber. The public will get about 38 million board feet of timber.
3. The public will get more than 11 miles of recreation roads. This is an important and significant increase of roads in the Borough.
4. The public will get over five miles of ocean-front and lake-front property that has commercial, residential and recreational value.
5. The public will get over seven miles of river-front property on the White River with no loss of river-front on Leask Creek.

6. The public will get access to the White River, a wide, low-gradient river with high recreation value.
7. This trade will protect the important fish spawning and rearing areas of the White River.
8. The harvested area in the White River (about 24%) was not in the original trade proposal from Cape Fox. The Borough asked for that parcel for long-term recreation land management purposes.

I hope you will find this information useful. The Borough appreciates your commitment to scheduling HB 578 for a hearing before the Senate Resources Committee. If you find that there are other questions or issues that you would like to have addressed, please let me know.

Sincerely,



David G. Crow
Borough Manager

DGC/GBM/JMF

RECEIVED APR 23 1992



20
1971-1991

Alaska Center for the Environment

519 West 8th Ave. #201 • Anchorage, Alaska 99501 • (907) 274-3621

April 20, 1992

Rep. Cliff Davidson
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Re: Proposed Leask Lakes Land Exchange

Dear Representative ^{Cliff} ~~Davidson~~ Davidson:

The Alaska Center for the Environment would like to express its strong opposition to legislation (SB 465/HB 578) that would approve the proposed Leask Lakes land exchange with the Cape Fox Corporation. This trade certainly provides very substantial benefits to the corporation, but it is just as clearly not in the state's best interest.

The State of Alaska would trade important old growth habitat for lands that have been heavily clearcut. These lands have not only lower commercial timber value but lower fish and wildlife and recreational values as well. ADF&G has said both that species diversity is substantially greater at Leask Lakes than at White River, and that logging Leask Lakes could result in a 68% reduction in deer numbers in the area. Additionally, since unroaded recreation opportunities will become increasingly scarce in Southeast in future years they should be protected, not lost.

We hope you will vote "no" on this legislation, which is not only a bad deal in itself for Alaskans, but sets a dangerous precedent favoring individual corporate economic interests over the welfare of the general public.

Sincerely,

Cliff Eames
Issues Director



Marine Adventure Sailing Tours

Senators
Alaska State Legislature
Box V
Juneau, Alaska 99811

April 30, 1992

Dear Senators:

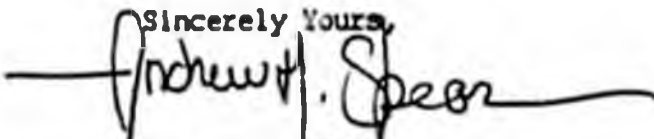
I understand that the Cape Fox land trade (SB 465) is moving through the legislature. Now that the bill is in rules and may be before you soon, I am spurred to write and tell you that I oppose the trade.

I operate a charter business and use the area in spring and fall. Already the clear-cutting prompts remarks from my clients about how irresponsible we are to cut down the forests we depend on for our tourist trade. The "golden goose" so-to-speak. This area is the first thing many tourists see when they enter Alaska and it gives them their first and lasting impression of Alaska and Alaskans. It doesn't take a big study to know that folks who visit here do so because they want to see among other things trees in the upright position. In my business and many like it, we sell the opportunity to see the natural and pristine beauty of the forest. We do this many times each season so the forest still produces for our economy. People come here and pay me to show them what they have lost not a bunch of roads running through a stump forest. They can see that at home. Alaska is different and I hope it stays that way.

Now that many of you will be running for office this fall. I'm sure that if asked, you will say that you are for "responsible development" or "environmentally sound" development. Please show your voters that you mean it and vote against SB 465, the Cape Fox land trade.

Thank you for your consideration.

Sincerely Yours,


Andrew M. Spear



Tongass Conservation Society

Legal issues surrounding SB 465

SB 465 has just passed the Senate and will be moving to the House. SB 465 (HB 578) ratifies a land trade between the state and Cape Fox Corporation. Cape Fox is a village corporation located outside Ketchikan. Cape Fox wants to trade land it has logged, plus other land of lower value, to the state. In return, the state would give Cape Fox prime forest land, high in recreation, habitat, and tourism value, which the corporation would then log. DNR has approved the trade. AS 38.50 requires legislative ratification of the trade before DNR can finalize the deal.

1. Present litigation.

Tongass Conservation Society has appealed DNR's decision in Juneau superior court.

The appeal alleges violations of both process and substance in DNR's decision. Most violations are of AS 38.50, the state's land trade law. (Please see page 2 for a summary of appeal issues.)

2. Further litigation anticipated; new Senate Rules CS.

A Senate Rules CS amended the bill. The citizens of the Ketchikan Gateway Borough will decide by referendum whether to approve this legislative appropriation. The amendment has a severability clause: if the citizens vote the trade down, and a judge finds the referendum illegal, the trade stands. No other Senate Committee has examined this amendment.

3. Constitutional issues.

An attorney familiar with the trade has written an article on the public trust doctrine in Alaska to be published in the University of Oregon's Journal of Environmental Law and Litigation. The article mentions the proposed trade, questioning its constitutionality and urging close judicial scrutiny.

TONGASS SPORTFISHING ASSOCIATION

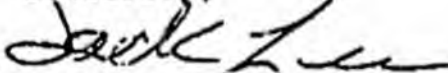
P.O. Box 5898, Ketchikan, AK (907) 247-2427

The Honorable Cliff Davidson
Chairman, House Resources Committee
Fax: 465-3444, Ph: 465-2487

The following position was submitted to D.N.R. by the Tongass Sportfishing Association during the public comment period for the Leask Lakes land trade. Our position on the trade has remained essentially the same. We still question the objectivity and methods used in the "value for value" assessment and doubt that the goal of "roaded recreation" will be achieved given the finances and powers of the State and Borough. The highest and best use of the Leask Lakes area lies in its recreational and habitat value. Recent U.S. Forest Service proposals to improve access to this area are vastly superior to what is proposed in this trade.

Thank you for your consideration of this issue.

Sincerely,



Jack Lee, Vice-Chairman,
Tongass Sportfishing Association,
Chapter 573 of Trout Unlimited

TONGASS SPORTFISHING ASSOCIATION

PO Box 5898, Ketchikan, AK (907) 247-2427

Andy Pakovitch
Division of Land
Alaska Dept. of Natural Resources
Suite 400
Juneau, Ak. 99801

This is to restate Tongass Sportfishing Associations opposition to the proposed Leask Lakes land trade. Our previous opposition centered on the recreation and habitat value of the Leask Lakes area. We did not feel that the trade adequately considered these values and did not consider all possible trade scenarios and options to further open up the Leask Lakes area for recreation.

The trade proposal as it now stands does nothing to answer any of our previous concerns. Two more concerns have been raised in addition, however. The first is with the objectivity and accuracy of the assessment of the value of the two parcels. The "value for value" rating given to this trade leaves much in question as to the equity of this trade to the people of Ketchikan and the State.

We also have grave doubts about the goal of "roaded recreation" ever being attained in this trade proposal as it stands. Neither the State nor the local government have the resources to upgrade or maintain the road, especially given that Cape Fox will not be finishing the roads with D-1. (crushed rock) when they complete logging. This will leave us with an unusable logging road to an undeveloped area with no recreation facilities. Essentially a road to a clearcut.

For these reasons, Tongass Sportfishing Association does not support the proposed Leask Lakes land trade.

Sincerely,


Jack Lee, Vice-Chair,
Tongass Sportfishing Assoc.

RECEIVED MAR 9 1992

David Hoeft
764 E. Pt. Higgins Rd.
Hatchikan, AL 35901

Representative Cliff Davidson
Chair House Resources Committee
Alabama State Legislature
State Capitol
Tuscahoo, AL 35901-1182

Dear Rep. Davidson,

I am writing to you in order to express my strong opposition to the proposed land swap involving the White River- Leask Lakes area near Hatchikan. This trade seems to be a bad idea in every way to me: giving up an area of scenic beauty, with prime old-growth stands of trees, waterfeds, and wildlife for a barren, blasted moonscape that is good only for driving through on the way to somewhere else. I have hiked (or rather, tried to hike) through that cut-over area and it is nearly useless recreationally, whatever supporters of the trade may say. Once Cape Fox has had its way with the Leask Lakes area there is no way it will be worth getting back, once cleared it will only be an eyesore like the White River clearcuts are, and all the timber torn off of it will have only delayed the day when Cape Fox Corporation will have to give up its rape and run logging techniques.

Please don't allow this valuable (in so many ways) resource to be lost or squandered for the short term gain of a few dollars or a few short term jobs; the Leask Lakes area will be worth a lot more, to a lot more people, for a lot longer time, if it is developed and used wisely and sustainably.

Sincerely yours,



David Hoeft

To Representative Cliff Davidson
Chair, House Resources Committee
Alaska State Legislature, State Capitol
Juneau, Ak 99801-1182

RECEIVED MAY 92 1992

I have lived in Ketchikan, Alaska, all but one year of my life (35 years) and would like to say that I am opposed to the Cape Fox Land Trade, for the following reasons:

1. Trading a beautiful old growth, productive, lake ecosystem for half of a muskeg lake and huge clearcut makes no sense at all.
2. There's no guarantee that the remaining roads will be available to us. Cape Fox assures us, now, that the roads will be open to the public. But 10 years later, when the logging is finally done, and the roads are finally available, there'll be new management and suddenly it will be "Oops, sorry! Roads are closed." If the state and borough won't maintain the roads, who will? Cape Fox? Out of the goodness of their hearts? I hardly think so.
3. Cape Fox does a poor job of harvesting. They have few rules to follow, unlike white man. There's no esthetic planning. No secondary processing. One simply has to look at their cut in the Ward Lake area to see their 'rip it out and get rich' style. Natives have learned, too well, the ways of the white man (and this is not prejudice, as I respect original Native Americans more than original whites).
4. Clearcuts are ugly. There is nothing beautiful about a clearcut. People are becoming more sensitive about these huge scars. You can't go anywhere in Ketchikan without seeing one. In our lifetime we will not see the existing cuts as natural-looking forests again. How much more of our surroundings will we allow to be cut down, paved over, built on - manipulated in some way? This is a big issue in the tourist industry where I work.
5. Recreate in a clearcut? It's pathetic when our standard of quality is so low that we have to be happy recreating in a clearcut. It's like telling a little kid - "Sorry about your playground, all the swingsets and merry-go-rounds were yanked out of here yesterday. But here's a couple 2 by 4's to walk on over the mud. And hey, look at the bright side, you'll see the holes in the ground where the equipment once was, and you might find a toy car in the mud. Hope that'll do."

As a society, we are rotting from the inside out.

This is an issue of a private company's economic gain at the expense of public wildlife, its habitat, esthetic beauty, and quality recreation. Short-term profits, long-term greed.

If I have to choose I'll say no to the land trade, yes to a state park. Thank you.

Sincerely,

Cindy Ross Barber
P.O. Box 8598, Ketchikan, AK 99901

Cindy Ross Barber

Mr. & Mrs. Fred Athorp
18 Creek Street
Ketchikan, AK 99901
(907) 225-3452

Honorable Cliff Davidson,
Chairman House Resources Committee
Alaska State Legislature
State Capital, Juneau, AK 99901-1102

Honorable Cliff Davidson,

We wish to express our sincere opposition to Governor Rickal's bills to trade virgin Alaska land for clear cut Cape Fox Corp. land. We feel this is a very dangerous precedent that will be perceived for years to come as "less than honorable".

This exercise of greed does not serve the best interests of the people of Ketchikan or of the State of Alaska and we would appreciate your effort to stop it.

Sincerely,
Fred and Cheryl Athorp

3/11



Dear Rep. Davidson,
I am writing to say
I oppose the proposed
land trade between the Lakes
State and Cape Fox. I
do not enjoy spending
my valuable recreation
time in clearcut. I want
my family to recreate in the
beautiful forest thank you
Burdett Box #143 KTN
1307361

Rep Cliff Davidson
House Resources Comm.
Pouch V
Juneau, AK. 99811

JUST A TOURIST ATTRACTION ... the
few remaining boardwalks and streets were primary
transportation routes in early Ketchikan. In photo
at left, Ketchikan's famous "street on stilts" over-
looks busy Tongass Narrows. Infamous Cross Street
was once Alaska's most famous "red-light" district.
Today it is a designated historic site.
Photos: R W Pictorial Agency
Publ. by J & M Sees, Anchorage, AK 99501

Honorable Cliff Davidson
 Chairman, House Resources Committee
 Alaska State Legislature
 Juneau, Alaska 99801-1182

May 5, 1992

Dear Honorable Chairman Davidson,

I am writing as a Ketchikan resident opposed to the Cape Fox Harriet-Hunt-for-Leask-Lakes Land Trade.

I am a school teacher at Ketchikan H.S. and I am an avid outdoor recreator. I am interested in having a healthy and wholesome area for my students to recreate. Now they ride their four wheelers and trucks at breakneck speeds all through the clear cut of Harriet Hunt, the proposed trade area.

These kids need a place to naturally slow down and appreciate something that is easier to enjoy than speed.

I would like to plead with you and all the members of your committee here in the 11th hour to think long and hard about the significance of this trade so close to Ketchikan. We need a place to recreate and breathe. Even though we are not thinking in terms of funding another State Park in these scary budget times please consider slating Leask Lakes as a State Park yet to be developed. Let's set it aside for the children of Ketchikan.

Thank you so much for your time and efforts.

Sincerely,

Betsy Burdett
 Betsy Burdett

Box 9143
 Ketchikan, Alaska 99901

CC: House Resource Committee Members

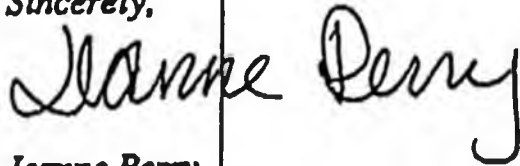
Rep. Lincoln	Rep. Moyer	Rep. Carney
Rep. Zavacki	Rep. Grüssendorf	Rep. Ivan
Rep. Finkelstein	Rep. Hudson	Rep. Leman

*Honorable Cliff Davidson
Chair, House Resources
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Mr. Davidson,

I am a seventeen year, life long resident of Ketchikan. I have to drive through one clear cut on my way to ice skate or ski.... I hate it. I do not want to trade a prime forest recreational area for more clear cuts! Vote down the Cape Fox trade.

Sincerely,



*Jeanne Perry
618 Sunset Dr.
Ketchikan, AK 99901*

Please copy to:

Rep. Lincoln

Rep. Zawacki

Rep. Finkelstein

Rep. Moyer

Rep. Grussendorf

Rep. Hudson

Rep. Carney

Rep. Ivan

Rep. Leman

P.O. Box 3280
Ketchikan, Alaska 99901
May 3, 1992

Honorable Cliff Davidson
Chairman, House Resources Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska 99801-1182

Dear Representative Davidson,

I would like to express my sincere desire that the Alaska State Legislature reject passage of the Cape Fox Corporation's proposed land exchange bill (HB578 and SB 465).

This trade is primarily a short-sighted "timber-deal" which will result in squandering and abusing valuable publicly-owned resources. I am personally familiar with these lands and know that several much better options exist for the intelligent management of this area.

Many people in Ketchikan feel the process to push this bill this far has been contrived and manipulated. The Ketchikan Gateway Borough's (KGB) "public hearing" was little better than a kangaroo court. The KGB appeared to have no intention of providing good accurate and factual technical information to local citizens, and in fact seemed to suppress such information as much as possible. Local citizens have not had the information needed to fairly consider the pros and cons of this trade. Both the timber cruise and appraisal are of dubious value. Information given to the public has been twisted and misused. For each reason given for doing this trade there are better reasons for not doing it. The environmental costs have not been factored into the appraisal. No comprehensive assessment has been done regarding the losses of publicly-owned wildlife resources, and no mention has been given to the value of these lost resources. If state lands and timber are put "on the block" they should go to the highest bidder. The KGB has lands that Cape Fox has shown interest in trading for the White River, but the KGB is unwilling to trade their own lands. Finally, why are we selling valuable undamaged state lands for as little as \$72/acre and buying clear-cuts and other unusable lands for about four times as much??

There is not time enough to properly scrutinize this land exchange or examine it in an open and fair public review process. Please put a stop to this land exchange. Thank you for considering this request.

Sincerely,

J. Canterbury
Jackie Canterbury

cc: House Resources Committee members

*Honorable Cliff Davidson
Chair, House Resources
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Mr. Davidson,

I am writing to the stress my displeasure about the proposed Cape Fox land swap.... It appears to me, to be more of a Cape Fox land swipe.

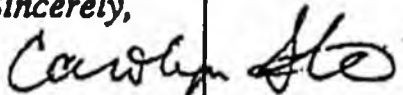
I feel that DNR has not lived up to the public trust of being fair and EQUITABLE to the PUBLIC. The accounting and accountablilty on this trade has not been through, nor is it accurate.

I feel that the process has been slanted. That Cape Fox has put together a "deal" that will benefit Cape Fox almost exclusively.

I feel that this trade will set a negative precedent for other state lands that will reduce our viable forests to stumps.

I urge you the to oppose the Cape Fox land swipe

Sincerely,



Carolyn Stallings

618 Sunset Dr.

Ketchikan, AK 99901

Please copy to:

Rep. Lincoln

Rep. Zawacki

Rep. Finkelstein

Rep. Moyer

Rep. Grussendorf

Rep. Hudson

Rep. Carnry

Rep. Ivan

Rep. Leman

To: Honorable Cliff Davison
Chair, House Resource
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

From: Mike Haddix /
83 Mountain Ash Hts So.
Ketchikan, Ak. 99901

As a resident of the community who allegedly will benefit most directly from the trade, I fail to see any benefits to trading an undisturbed, excellent sport hunting and fishing area for the mostly logged over White River area and the additional parcels included in the Cape Fox-Leask Lakes trade bill (SB 465). Clearly, this proposal is not about roaded access to recreation but rather, economic gains for a corporation. This trade is not a good deal for the public nor does it encourage sustained use and financial responsibility of the Cape Fox Corporation. As a Ketchikan resident I ask you to vote against this bill.

cc: Rep. Lincoln
Rep. Carney
Rep. Ivan
Rep. Finkelstein
Rep. Moyer
Rep. Zawacki
Rep. Hudson
Rep. Leman
Rep. Grussendorf



RECEIVED MAR 6 1992

Beth Antonsen
305 Austin
Ketchikan, Alaska
99901

Alaska State Legislature
State Capitol
Juneau, Alaska
99801-1182

Dear *Representative Cliff Davis*

I am writing in regards to the Leask Lakes/Cape Fox land trade deal. Please, do not let this slip by without a hard look at the facts. This trade is not in the best interest of the people of Ketchikan.

I was born and raised in Ketchikan as were my parents. I love Alaska and it hurts to see our natural resources squanderea for the sake of short term jobs. My family has been involved in the logging industry for over 50 years so I am not anti logging.

We need more forested hiking trails and campgrounds in the Ketchikan area. To offer a clearcut area to us to recreate in simply because it has logging roads is illogical. I don't know anyone with all their marbles who wants to camp or hike in a clearcut. It is a dangerous proposition, especially for children.

What this trade really boils down to is a trade of stumps for trees and favors industry's short term goal (money) at the expense of quality of life for current and future generations. I don't know of any tourist with a desire to camp in a clearcut either.

Again, I implore you to please seek out all the facts about this land trade before you make a decision. There is only so much old growth forest left and once it is gone we can never get it back.

Thank you for taking the time to read this and consider my views.

Sincerely,
Beth Antonsen
Beth Antonsen

CC6DNB

3/9/92

Representative Cliff Davidson
Chair, House Resource Committee

Dear Representative Davidson:

I wish to state my disapproval of the proposed State - Cape Fox land trade.

I have and still do go to the Leask Lakes area to fish, hunt and just relax in the serenity of it all; and I dearly love it there. It is close for boaters as well as being inexpensive to get into by plane.

I used to spend a lot of time in Harriet Hunt even before a road was put into it. The same goes for the White River area. They were beautiful areas to hike into on the weekends and were close to get to by car or boat. I have been back to these places and reminised about the fun times I once had. Now, it just makes me mad that all or most of the was sold in the round to foreigners. This has caused a depressed market and loss of jobs in Alaska. I worked at the spruce mill when the natives started selling logs in the round to the Japanese and shortly thereafter was looking for another job.

Please do not make this trade.

Sincerely,

Ron Whitton
Ronald Whitton

5842 S. Tongass, Ketchikan, AK 99901

3/9/92

Representative Cliff Davidson
Chair, House Resource Committee

Dear Representative Davidson:

I wish to state my disapproval of the proposed State Cape Fox land trade. Cape Fox has shown how badly they manage their lands. Why give them more of our beautiful forest - abundant with old growth and wildlife? Is it so they can sell the logs in the round to Japan? And for much less than they are worth! How does this help Alaska??

As for recreating on the logging roads that Cape Fox leaves behind - what a joke! My heart nearly broke when I saw what had happened to Harriet Hunt and I have not been back since.

Our forests are a precious gift. They should neither be taken nor given lightly.

Sincerely,

Annie Jones Whitten

5842 South Tongass
Ketchikan, AK 99901

3/9/92

Representative Cliff Davidson
Chair, House Resource Committee

Dear Representative Davidson:

I am against the land trade between Cape Fox and the State. It doesn't seem logical to me that the State would accept barren, logged-off land for land that is full of old growth timber. This land is already highly used for recreational purposes. Why give it to Cape Fox to abuse? Please do not make this trade.

Sincerely,

A handwritten signature in cursive script that reads "Michael Patrick". The signature is written in dark ink and is positioned above the typed name and address.

Michael Patrick
PO Box 551
Ward Cove, AK 99928

MAY 5, 1992

FROM: RICHARD E. LOWELL

P.O. BOX 9411

KETCHIKAN, AK 99901

TO: THE HONORABLE CLIFF DAVIDSON

CHAIR, HOUSE RESOURCES

ALASKA STATE LEGISLATURE

STATE CAPITOL

JUNEAU, AK 99801-1102

DEAR SIR,

I AM A KETCHIKAN RESIDENT WRITING YOU TO VOICE MY PROFOUND
 OPPOSITION TO THE PROPOSED LEASK LAMES - CAPE FOX CORP. LAND TRADE.
 TRADING PRISTINE PUBLIC FOREST LANDS FOR PRIVATE CLEARCUTS
 IS NOT AN EQUITABLE TRADE. THIS LAND TRADE WOULD SET A BAD
 PRECEDENT AND ONLY FURTHER DELAY THE BADLY NEEDED REALIZATION
 BY INDUSTRY THAT IT MUST "PROPERLY" MANAGE ITS OWN LANDS IF
 IT IS TO SURVIVE. THERE ALREADY EXISTS AMPLE OPPORTUNITY
 FOR AREA RESIDENTS TO RECREATE IN CLEARCUTS AND THESE
 OPPORTUNITIES WILL NO DOUBT CONTINUE TO IMPROVE EVEN WITHOUT
 THIS LAND TRADE.

PLEASE SAY NO TO THIS RIDICULOUS LAND TRADE.

SINCERELY,

Richard E. Lowell

CC: HOUSE RESOURCE MEMBERS

To Honorable House Resource Member,
 I am a resident of Ketchikan and I am opposed
 to the Leask Lakes - Cape Fox Corp. Land Trade.
 I cannot see how trading cut-over land for timbered
 land is a good or fair deal. Sure, roads are nice for
 family recreation, but I want to take my children
 to see a true Southeast forest, and not stumps and
 second growth.

Sincerely,
 Karalynn Craker-Redford
 243 Wood Road
 Ketchikan

P.O. Box 7243
Ketchikan, AK. 99901
May 5, 1992

Honorable Cliff Davidson
Chair, House Resources
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Honorable Davidson:

I am writing to express my concern about and opposition to the Cape Fox - Leask Lakes land trade. I believe the current proposed plan is short-sighted in terms of economic gain at the expense of proper land use, unfair to the inhabitants of this area, and expresses obsolete values with a disregard for our ecosystem.

Thank you for your consideration

Sincerely,

Robin Crumens
cc: Representatives Lincoln, Zywacki, Finkelstein,
Mayer, Grossendorf, Hudson, Carnet, Swan, Leman

Jeff Budd
Box 7263
Ketchikan, AK 99901

6 May 92

Cliff Davidson
Chair, House Resources Committee
Alaska State Legislature
Capitol Building
Juneau, AK 99801-1182

Dear Mr. Davidson,

I would like to go on record as one Ketchikan resident who does not support the Leask Lakes /Cape Fox land trade. I feel there are many others in Ketchikan who also do not support this trade. I am a member of the Ketchikan city Council, although I am not writing on behalf of the council, and meet a fair number of people during my day. There is a good percentage that do not support this trade in that group. There are many more people that I do not come in contact with who I do not know how they feel one way or the other. I do ~~feel it is not accurate to state that the~~ majority of the community do support the trade.

Thank you for your attention.

Sincerely,
Jeff Budd
Jeff Budd

Honorable Cliff Davidson
 Chair. House Resources Comm.
 Alaska, State Legislature
 State Capitol
 Juneau, Alaska 99801-1182

Dear People,

I am a 21 year resident of Ketchikan and would like to be counted in opposition to the Leask Lake / Cape Fox land exchange. It greatly bothers me that we keep making concessions so a few private corporations can make disproportionate profits. In this case "they" get their "round log" profits and we the people get a stump farm with the promise of a road that this municipality can ill afford to maintain. The people here deserve more than that, they deserve more than a clearing to recreate in. As you know you can't make a silk purse out of a sow's ear and you can't make quality recreation out of a land laid to waste... The Ketchikan area is in dire need of an unspoiled area in which to recreate, teach and enjoy... one that is intact, with an ecosystem that is healthy and thriving... one that can be shared by young and old... Now As it is, the White River tract will take years to recover... it is estimated that it may even take as long as 10 years to properly build the road access.... you and I good people, may never see a balanced healthy environment there in our lifetimes.... Please reconsider this trade... lets do it right the first time... lets have patience and create a world class park out of the Leask Lake area.

Thank You,

Phil M Stage

Phil M Stage
 Box 8164
 Ketchikan, AK
 99901

C.C. Please Forward to House Resource

Rep. Lynch	members	Rep. Grossendorf
Rep. Zawacki	Rep. Hudson	Rep. Carney
Rep. Finkelstein	Rep. Iron	
Rep. Maxey	Rep. Lemon	

May 5, 1992

Honorable Cliff Davidson
 Chair, House Resources Committee
 Alaska State Legislature
 State Capitol
 Juneau, AK 99801-1182

Dear Representative Davidson,

As a concerned resident of Ketchikan, I would like to take this opportunity to express my strong opposition to the Leask Lakes - Cape Fox Corporation Land Trade bill that your committee is currently considering.

While it is true that Ketchikan, like most Southeast communities, currently lacks opportunities for quality roaded recreation, it is also true that the roads we do have either pass through or terminate in extensive clearcut areas. Those of the Ward Creek/Lake Harriet Hunt and Whipple Creek drainages (both owned and rapidly clearcut by the Cape Fox Corporation) are fine examples. We certainly don't need another road through a visually and biologically impoverished landscape just for the sake of being able to put a few more miles on our vehicles. What we do need is a road to/through a fine example of Southeast Alaska's unique, albeit rapidly disappearing, temperate rainforest where local users and visiting tourists can have the opportunity to see and experience what southern Southeast Alaska's forest resources have to offer. The state-owned Leask Lakes tract offers the best opportunity for such a quality recreation experience. Promulgating this exchange for the sole economic benefit of a corporation which has liquidated its resources through non-sustained yield management would preclude the possibilities of establishing a road system that accesses a pristine area. I realize that at this late date in the legislative session, you've all got priority issues to consider, but I ask that you take a moment to consider both the obvious inequity of trading "trees for stumps", as it has been called, and the precedent that such an exchange will establish for the future. Thank you for your time and consideration.

Sincerely,

Kevin J. Hanley
 Kevin J. Hanley

cc: Rep. Lincoln
 Rep. Zawacki
 Rep. Finkelstein

Rep. Moyer
 Rep. Grussendorf
 Rep. Hudson

Rep. Carney
 Rep. Ivan
 Rep. Leman

RECEIVED MAR 24 1992

March 23, 1992

Reid Cross
P.O. Box 8983
Ketchikan, AK.
99901-3983

Andrew W. Pekovich
Regional Manager-Southeast Region
Department of Natural Resources
400 Willoughby Avenue
Suite 400 Juneau, AK 99801

Dear Mr., Pekovich:

I am a resident of Ketchikan and I attended the recent public hearings concerning the land exchange between Cape Fox corporation and the State of Alaska, D.N.R.

After listening to both sides of the issue I am going to have to speak against the exchange. The Leask Lakes area should stay in the states care for the following reasons:

1. Preservation of Old Growth. I think that is reason enough this area's preservation. We, as humans need to have some old growth, there is no other justification necessary.
2. Economics. I just do not think that this makes very good business sense. The timber at Leask Lakes is very valuable and will just continue to become more valuable as time goes on. Let us leave this place as it is for a long term investment. In fifty years when our grandchildren are making the decisions this timber will be worth a lot more. It is imperative that we leave them with something worth being a steward of.
3. The majority that spoke during the public hearings in Ketchikan were against the exchange.

Thank-you for considering my opinion, please exercise caution and prudence on this decision.

Sincerely,



Reid Cross

445 Front Street Ketchikan, Ak. 99901

April 6, 1992

Representative Cliff Davidson
Chair, House Resources Committee

re: proposed State of Alaska, Cape Fox Corporation (CFC) land trade

Representative Davidson:

I OPPOSE THIS LAND EXCHANGE

In the preliminary exchange agreement the Ketchikan Gateway Borough states: QUOTE

"The Ketchikan Gateway Borough believes that the resultant direct and indirect benefits of the land exchange including economic, recreation, habitat, environmental, and transportation benefits represent a unique and significant community benefit." ENDQUOTE

I believe there is NO DOUBT that this community supports all of the items listed above.

However, I question that THIS EXCHANGE accomplishes any of these goals terribly well, and there are some that it definitely hinders.

ECONOMICS. The economics of a short term infusion of cash from a timber sale are insignificant compared to the economic benefits of a state park, which is an alternative plan that I support, and there are others possibilities as well. If the trade goes through, I doubt that what we have after logging will be very attractive to our guests, and if the community is even willing to pay for the maintenance of the roads it will be a net loss for year after year. This will likely never end because the road is such that it may never be taken over by DOT or FHA.

RECREATION. I seriously question the recreational benefits of this exchange. The plan is simply a logging plan. It may be a relatively GOOD logging plan. However, there has been no indication, and definitely no guarantees that the state or the borough has interest or money, to open and maintain roads or develop facilities whose real intent recreation. In fact there have been indications from the state that it is NOT interested.

We do not know if there will be any access for a period of ten years by which time CFC will be required to complete its logging, so it is not the quick fix to our recreation needs as has been touted.

Additionally, the majority of the land will greatly resemble the views of the clearcuts along the road to Harriet Hunt. These views have never encouraged me to recreate in the vicinity, and I see little reason for the public to pay for a recreational road that drives through more of them. The recreational needs of this community would be far better served by developing the recreational potential of the land that we already own.

If this exchange goes through, the state will gain ownership of several valuable pieces of property. Some parts of them have recreational potential. However, the best we could do, if they were developed, would be second class compared with what we can do with the Leask Lakes tract as it is today.

HABITAT and ENVIRONMENTAL. This trade does not have habitat benefits. I was greatly disappointed to hear the KGB Planning department call this the "environmental alternative" in their analysis and I feel that it is tremendously irresponsible for a public agency to suggest that, with regards to habitat, two drainages with the best habitat cut out of them are better than one. This trade does not benefit habitat, and it is shameful that public agencies would try to present it as such. The outrageous statements such as only 63 acres of habitat affected when 1200 are harvested would be ludicrous if they were not part of public documents. Current estimates show over 70% deer loss in the land that CFC would retain after the trade.

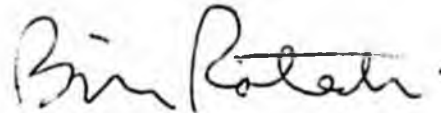
TRANSPORTATION. If we are truly serious about promoting a transportation corridor further up the island, the purchase or upgrade of any roads, such as those in this exchange, should be made with that in mind. In fact the biggest opportunity on the horizon for roaded recreation is linking Ketchikan with the USFS Shelter Cove timber sale. The CFC land exchange buys and upgrades roads which are neither the preferred alternative of the USFS or the DOT. Without resolution of these differences, we may be spending substantial state resources that could in stead be spent on an acceptable alignment that meets DOT, FHA, NEPA, and other standards. To date I see no indication that this exchange

accomplishes its objective of transportation, and may in fact hinder it by spending dwindling resources.

SUMMARY. If there is to be a trade of public resources, it should be done on its merits, with carefully analyzed benefits to the public. As I review the community benefits which this trade is meant to accomplish, I find that it falls very short of achieving its goals. It is my opinion that the best opportunity to achieve economic, recreation, habitat, environmental, and transportation benefits for the community would be to retain the entire Leask Lake Tract in State ownership and use funds raised from limited harvest in partnership with the USFS and DOT to build a road that connects to the Shelter Cove timber sale.

This land trade does not accomplish its intended goals. In fact, it hinders them, decreases the value of the publicly owned land, and decreases our opportunities for future economic benefit and public enjoyment. Please do all within your power to oppose this trade.

Thank you for listening
Bill Rotecki

A handwritten signature in cursive script that reads "Bill Rotecki". The signature is written in dark ink and is positioned below the typed name.

RECEIVED MAR 31 1992
March 28, 1992

Representative Cliff Davidson
Chairman, House Resources Committee
House of Representatives
Juneau, Alaska, 99811

Dear Representative Davidson,

As the chairman of the House Resources Committee, please consider co-sponsoring the enclosed bill. There is a broad based support for protecting the state owned lands within roaded access of Ketchikan for recreational use only.

The agencies such as the Mental Health Trust are charged with the duty to produce income from state land resources vested in their trust. Likewise there is a great motivation at the state level to trade undesignated state lands to the Mental Health Trust to clarify title and fulfill other responsibilities. Because of such forces within Alaska people of Ketchikan are justified in their fears that whatever the outcome of the Leask Lakes Land Trade, any state lands in these areas may be yet be lost for recreational use by the people of Ketchikan.

Specific statutory protection is difficult at this time due to the unresolved issue of the Leask Lakes Land Trade. Through this resolution the legislature can immediately recognize the unique value of these lands to the people of Ketchikan and support development of accessible recreational lands for the people of Ketchikan Gateway Borough.

The resolution reflects accurately the enclosed motion passed unanimously by the Ketchikan State Parks Advisory Board. Included on that board are members from all sides of the Leask Lakes Land Trade Issue. Eric Muensch helped design the land trade for Cape Fox Corporation. Bill Roteki is one of the leaders of the Torgass Conservation Society. Nathan Jackson is a leader within the local Native community. The motion initiating this action passed unanimously.

To facilitate passage of this resolution I have spoken with staff at the offices of Jay Kerttula, Lloyd Jones and Cheri Davis. I have forwarded to them copies of the bill, requesting that they co-sponsor it. If the Resources Committee of both houses introduced the resolution with bi-partisan support, action could be taken in this session of the legislature. Thank you for your time and effort on our behalf.

Sincerely,



Ernest B. Meloche
Member, Ketchikan State Parks Advisory Board
PO Box 6058
Ketchikan, Alaska, 99901
247-6058

P.O. Box 3280
Ketchikan, Alaska 99901
May 3, 1992

Honorable Cliff Davidson
Chairman, House Resources Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska 99801-1182

Dear Representative Davidson,

I would like to express my sincere desire that the Alaska State Legislature reject passage of the Cape Fox Corporation's proposed land exchange bill (HB578 and SB 465).

This trade is primarily a short-sighted "timber-deal" which will result in squandering and abusing valuable publicly-owned resources. I am personally familiar with these lands and know that several much better options exist for the intelligent management of this area.

Many people in Ketchikan feel the process to push this bill this far has been contrived and manipulated. The Ketchikan Gateway Borough's (KGB) "public hearing" was little better than a kangaroo court. The KGB appeared to have no intention of providing good accurate and factual technical information to local citizens, and in fact seemed to suppress such information as much as possible. Local citizens have not had the information needed to fairly consider the pros and cons of this trade. Both the timber cruise and appraisal are of dubious value. Information given to the public has been twisted and misused. For each reason given for doing this trade there are better reasons for not doing it. The environmental costs have not been factored into the appraisal. No comprehensive assessment has been done regarding the losses of publicly-owned wildlife resources, and no mention has been given to the value of these lost resources. If state lands and timber are put "on the block" they should go to the highest bidder. The KGB has lands that Cape Fox has shown interest in trading for the White River, but the KGB is unwilling to trade their own lands. Finally, why are we selling valuable undamaged state lands for as little as \$72/acre and buying clear-cuts and other unusable lands for about four times as much??

There is not time enough to properly scrutinize this land exchange or examine it in an open and fair public review process. Please put a stop to this land exchange. Thank you for considering this request.

Sincerely,

J. Canterbury

Jackie Canterbury

cc: House Resources Committee members

MAY 5, 1992

FROM: RICHARD E. LOWELL.....
P.O. BOX 9411 ..
KETCHIKAN, AK 99901 ..

TO: THE HONORABLE CLIFF DAVIDSON
CHAIR, HOUSE RESOURCES
ALASKA STATE LEGISLATURE ..
STATE CAPITOL ..
JUNEAU, AK 99801-1182

DEAR SIR,

I AM A KETCHIKAN RESIDENT WRITING YOU TO VOICE MY PROFOUND
OPPOSITION TO THE PROPOSED LEASK LAKE - CAPE FOX CORP. LAND TRADE.

TRADING PRISTINE PUBLIC FOREST LANDS FOR PRIVATE CLEARCUTS
IS NOT AN EQUITABLE TRADE. THIS LAND TRADE WOULD SET A BAD
PRECEDENT AND ONLY FURTHER DELAY THE BADLY NEEDED REALIZATION
BY INDUSTRY THAT IT MUST "PROPERLY" MANAGE ITS OWN LANDS IF
IT IS TO SURVIVE. THERE ALREADY EXISTS AMPLE OPPORTUNITY
FOR AREA RESIDENTS TO RECREATE IN CLEARCUTS AND THESE
OPPORTUNITIES WILL NO DOUBT CONTINUE TO IMPROVE EVEN WITHOUT
THIS LAND TRADE.

PLEASE SAY NO TO THIS RIDICULOUS LAND TRADE.

SINCERELY,

Richard E. Lowell

CC: HOUSE RESOURCE MEMBERS

RECEIVED APR 21 1992

April 14, 1992

Heather Muench
Box 6811
Ketchikan, Alaska
99901

Dear Representative,

I am writing you concerning the Cape Fox (White River/Harriet Hunt/Talbot Lake) land trade between and the State of Alaska (Leask Lakes).

We need roaded recreational lands for today's children; not more locked -up wilderness for elite preservationists.

Families need a place to go that is within a short car drive from Ketchikan. Families often do not have the time, or the money or the physical abilities for long extended hikes into the wilderness.

The U.S. Forest Service's Ward Lake area is over-used. This shows a great need for more of the same type of recreation.

I am the mother of 5 children; ages 11 to 3 years. We cannot go on long hard hikes. This land trade will give us and other families the opportunity to continue to use land currently owned by Cape Fox. The trail along Ward Creek down to Talbot Lake and along it's shore is easy hiking for children. Harriet Hunt has vast recreational opportunities. White River is a large slow moving, mandering river with beautiful sand bars. The area is great for picnics, camping, and hiking. The road access to White River makes it unique.

The Leask Lake Area will be another area for families if the proposed logging plan of Cape Fox's happens. Wildlife and fisheries will be protected while opening; up the area.

Logging is not a dirty word as some people would like you to believe. Logging roads offer easy walking, bike riding, stroller pushing, X-country skiing, snowmobiling, etc. for families. You can recreate in a clearcut.

Please don't believe the lies being told by the preservationists. They claim this is a trade of clearcut for wilderness. The fact is Cape Fox is trading 4336 acres of which only 900 acres have been cut. The rest is pristine wilderness with great potential for families and roaded recreation. The State will be trading 2335 acres of which Cape Fox will only be able to cut 1400 acres. The integrity of the Leask Lakes will remain. This trade will also preserve the integrity of White River, Harriet Hunt, and Talbot Lake. This trade will open up lands currently owned by Cape Fox and thier vast potential will be for the average Ketchikanite to enjoy.

The elite preservationist feels nearly driving through a clearcut to get to a beautiful area ruins the experience for them. They are repulsed by the sight of logged areas. If these areas are not pristine enough for the snobby preservationist, there is about 2½ million acres adjacent or very close by for those people.

Please give families the same opportunities for outdoor recreation. Approve the Cape Fox - State land trade.

Thank you for your attention.

Sincerely,

Heather Muench

Honorable Cliff Davidson
Chair House Resources Committee
Alaska State Legislature
State Capitol
Juneau, Ak. 99801

Dear Mr. Davidson,

I am opposed to the Leach Lakes land swap as currently proposed by the Cape Fox corporation. Trading pristine old growth for clear cut lands is not only an unfair trade it also sets a bad precedent.

Ketchikan deserves better than stumps for recreation. Leach Lakes should be set aside as a State Park for all to enjoy with only timber harvests directly on any proposed roadways being sold.

Sincerely, Terry Troll
PO BOX 8894, KETCHIKAN
AK. 99901

To: Honorable Cliff Davidson
Chair, House Resources
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

From: Meg Cartwright
P.O. Box 9506
Ketchikan, Ak. 99901

I am a resident of Ketchikan and am strongly opposed to the Leask Lakes-Cape Fox land trade proposal currently being considered by your committee. I feel the whole trade process has been railroaded by some Borough Assembly members and the Cape Fox Corporation in an effort to generate 50 jobs for 2 years. This trade proposal is not about roaded recreation but rather short-term economic gains that will primarily benefit private shareholders of the corporation. The state owned Leask Lakes tract is unique in that it is centrally located and has the potential to be developed into a high quality recreational area with roaded access and varying levels of outdoor activities for all residents of Ketchikan. Future roads planned in this area for transportation and utility purposes make this a viable alternative to trading old-growth forest for clearcut lands as outlined in the bill proposal in front of you. Please, I urge you to carefully consider the implications of this bill and the lost recreational value of our public lands if this proposal is adopted.

cc: Rep. Lincoln
Rep. Carney
Rep. Ivan
Rep. Finkelstein
Rep. Moyer
Rep. Zawacki
Rep. Hudson
Rep. Leman
Rep. Grussendorf

Meg Cartwright

Mary McCafferty
 PO Box 3203
 Ketchikan, Alaska
 99901

Honorable Cliff Davidson
 Chair, House Resources
 Alaska State Legislature
 State Capitol
 Juneau, Alaska 99801-1182

Honorable Cliff Davidson,

I am adamantly opposed to the Leask Lakes/Cape Fox Land Trade Bill. I am disappointed that such a trade would be considered acceptable for local residents who seek quality recreation areas. Ketchikan locals deserve a recreation area that has been thoughtfully planned for them. I have hiked the White River Road area. This site offers little in the way of an enriching outdoor experience. Our summer visitors are not expected to vacation in clear cut forests. They expect lush rainforested land inhabited by birds and wildlife. Ketchikan residents deserve that same Alaska. Please give serious consideration to the impact this land trade will have on future opportunities for quality recreation sites in Ketchikan.

Respectfully,

Mary McCafferty

Mary McCafferty

cc:

Rep. Lincoln	Rep. Hudson
Rep. Zawacki	Rep. Carney
Rep. Finkelstein	Rep. Ivan
Rep. Moyer	Rep. Leman
Rep. Grussendorf	

the following is a copy of
Chair, House Resources
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

5-4-92

Dear Mr. Davidson,

Hello! My name is Carla Potter. I am a resident of Ketchikan Alaska. I am strongly against the Healy Lakes land trade. Not only does it set a dangerous precedent for exchanging forested state lands for clearcut private lands, but it violates my sense of fair trade. I don't want clearcut lands and a bad road to recreate on. I would rather hike into the pristine - undisturbed environment of the Healy Lakes area. We were never given a honest - final appraisal of this trade prior to the public comment period. I have received a letter from the DNR that Cape Fox prior to receiving titles to Healy Lakes would be required to upgrade the ~~12~~ 1 1/2 miles of White River Road. This is not what I would consider good business. Or of any value to sway my position. We have to start considering a long term (hundreds of years, ~~thousands~~) viable use of our miraculous environment. Short term stimulation to the local economy and a road that is expensive to maintain are short sighted and selfish uses of this precious land. Please vote no to the Trade.

Thank You

Carla Potter

423 Cedar
Ketchikan, AK 99901

cc: Rep. Lincoln
Rep. Zawacki
Rep. Finkelstein
Rep. Moyer
Rep. Grussendorf
Rep. Hudson
Rep. Carney
Rep. Iwan
Rep. Lemay

May 5, 1992

Honorable Cliff Davidson
 Chair, House Resources Committee
 Alaska State Legislature
 State Capitol
 Juneau, AK 99801-1182

Dear Representative Davidson,

As a concerned resident of Ketchikan, I would like to take this opportunity to express my strong opposition to the Leask Lakes - Cape Fox Corporation Land Trade bill that your committee is currently considering.

While it is true that Ketchikan, like most Southeast communities, currently lacks opportunities for quality roaded recreation, it is also true that the roads we do have either pass through or terminate in extensive clearcut areas. Those of the Ward Creek/Lake Harriet Hunt and Whipple Creek drainages (both owned and rapidly clearcut by the Cape Fox Corporation) are fine examples. We certainly don't need another road through a visually and biologically impoverished landscape just for the sake of being able to put a few more miles on our vehicles. What we do need is a road to/through a fine example of Southeast Alaska's unique, albeit rapidly disappearing, temperate rainforest where local users and visiting tourists can have the opportunity to see and experience what southern Southeast Alaska's forest resources have to offer. The state-owned Leask Lakes tract offers the best opportunity for such a quality recreation experience. Promulgating this exchange for the sole economic benefit of a corporation which has liquidated its resources through non-sustained yield management would preclude the possibilities of establishing a road system that accesses a pristine area. I realize that at this late date in the legislative session, you've all got priority issues to consider, but I ask that you take a moment to consider both the obvious inequity of trading "trees for stumps", as it has been called and the precedent that such an exchange will establish for the future. Thank you for your time and consideration.

Sincerely,

Kevin J. Hanley
 Kevin J. Hanley

cc: Rep. Lincoln
 Rep. Zaracki
 Rep. Finkelstein

Rep. Moyer
 Rep. Grussendorf
 Rep. Hudson

Rep. Carney
 Rep. Ivan
 Rep. Lenan

May 3 1992

Honorable Cliff Davidson
 Chair, House Resource Committee
 Alaska State Legislature
 State Capitol
 Juneau, AK 99801-1182

Dear Representative Davidson:

I have been a resident of Ketchikan for 28 years, and I am opposed to the State/Cape Fox land trade. It is not right to give our old growth timber to Cape Fox, so they can sell the logs in the round to foreign markets. They are practically giving away these logs and who is benefitting from this? Because the logging industry is in such poor shape, the State should not be allowed to sell public lands knowing the logs will be sold in the round to foreign markets.

Sincerely,

~~Ronald Whitton~~
 Ronald Whitton
 58 1/2 S Tongass
 Ketchikan, AK 99901

cc: Representatives:

Grussendorf
 Lincoln
 Carney
 Finkelstein
 Hudson
 Ivan
 Moyer
 Leman
 Zawacki

To: Honorable Cliff Davidson
Chair, House Resources
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

From: Meg Cartwright
P.O. Box 9506
Ketchikan, Ak. 99901

I am a resident of Ketchikan and am strongly opposed to the Leask Lakes-Cape Fox land trade proposal currently being considered by your committee. I feel the whole trade process has been railroaded by some Borough Assembly members and the Cape Fox Corporation in an effort to generate 50 jobs for 2 years. This trade proposal is not about roaded recreation but rather short-term economic gains that will primarily benefit private shareholders of the corporation. The state owned Leask Lakes tract is unique in that it is centrally located and has the potential to be developed into a high quality recreational area with roaded access and varying levels of outdoor activities for all residents of Ketchikan. Future roads planned in this area for transportation and utility purposes make this a viable alternative to trading old-growth forest for clearcut lands as outlined in the bill proposal in front of you. Please, I urge you to carefully consider the implications of this bill and the lost recreational value of our public lands if this proposal is adopted.

cc: Rep. Lincoln
Rep. Carney
Rep. Ivan
Rep. Finkelstein
Rep. Moyer
Rep. Zawacki
Rep. Hudson
Rep. Lemman
Rep. Grussendorf

Meg Cartwright

724 Bayview
Ketchikan
Alaska 99901
May 4, 1992

Honorable Cliff Davidson
House Resources Chair
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

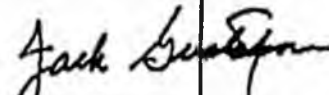
Dear Representative Davidson,

I am a Ketchikan resident and have been following the controversy regarding the proposed Leask Lakes/White River land exchange. I have spent many days in both areas and know each of them well from first-hand experience. Based upon extensive background knowledge, I must tell you that the passage of this land exchange bill would be a terrible mistake. This letter is to express my opposition to SB 465 and HB 578.

If you take the time to examine this bill closely, you will find numerous reasons why this land exchange would be extremely undesirable legislation. We must do a better job of managing Alaska's natural resources if we want to have sustainable development and keep our state a decent and enjoyable place to live. Additionally, if this bill were to pass, I believe it would be an indication that the system of checks and balances designed to safeguard our system of government is no longer functional.

For the good of the general populace of Ketchikan and for the rest of the state, please do not pass this proposed land exchange bill.

Sincerely,


Jack Gustafson

248 P01 MAY 05 '92 14:24
CRAIG FLATTEN
648 BUREN
KETCHIKAN, AK 99901
907-225-1512
4 MAY 1992

HONORABLE CLIFF DAVIDSON
CHAIR, HOUSE RESOURCES
ALASKA STATE LEGISLATURE
STATE CAPITOL
JUNEAU, AK 99801-1182

DEAR SIR:

I AM A KETCHIKAN RESIDENT AND ADAMANTLY OPPOSED TO
THE LEASK LAKES - CAPE FOX CORPORATION LAND TRADE.

WE HAVE NOTHING TO GAIN BY THIS WHOLESALE GIVEAWAY OF
PRISTINE, FORESTED STATE LAND IN OUR VERY BACKYARDS. THE
LEASK LAKES AREA ABOUNDS WITH NATURAL BEAUTY AND
WILDLIFE THAT PROVIDE ENDURING RECREATIONAL VALUE TO
THE PEOPLE HERE. IT MAKES NO SENSE TO TRADE THE
LEASK LAKES FORESTS - AN IDEAL LOCATION FOR A
KETCHIKAN AREA STATE PARK - FOR THE STUMP FARMS
OF CAPE FOX CORPORATION LAND.

THIS TRADE WOULD SET A BAD PRECEDENCE AND IS IN
NO WAY AN EQUAL TRADE. OUR LOSS WOULD BE GREAT.

PLEASE OPPOSE THIS TRADE.

SINCERELY,

Craig Flatten

CC: HOUSE RESOURCE MEMBERS ATTN:

May 4, 1992

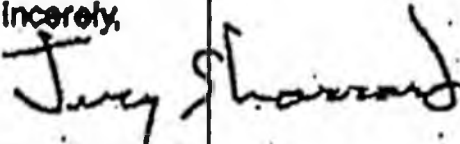
Honorable Cliff Davidson
House Resource Committee
Alaska State Legislature
State Capital
Juneau, AK 99801-1182

Dear Sir:

I would like to urge you to do everything in your power to stop the Lease Lake Land's Trade Bill. I believe this would set a terrible precedent for land trades in the State of Alaska. Trading good timber for stumps makes no economic or recreational sense. I live where there are the most logging roads in the state and they are worthless for anything but use by the industrial timber beasts, not to even mention the lost of wildlife habitat.

Thank you for your consideration.

Sincerely,



Jerry Sharrard
Box 121
Craig, AK 98921

cc: Pat Carney
David Finkelstein
Bill Hudson
Loren Lehman
Georgianna Lincoln
Tom Moyer
Ivan Ivan
James Carwacki
Ben Gruesdorff

RECEIVED MAY 1 1992

Ellen Toll
4204 Cope Street
Anchorage, Alaska 99503
(907) 561-0500

May 2, 1992

Representative Cliff Davidson
P.O. Box V
Juneau, Alaska 99811

Re: Leask Lake Land Exchange

Dear Representative Davidson,

I am writing to voice my opposition to the exchange of old growth forest lands that belong to the State of Alaska to the Cape Fox Corporation in return for heavily logged and clear-cut lands owned by the Corporation. I understand that this exchange has been approved by the Senate and will be before the House for consideration this week. I think the exchange does not serve the interest of the state.

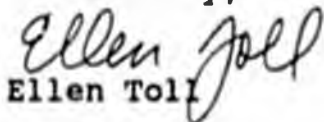
I understand that there has been no final appraisal of the deal, so it is impossible to know whether the acres to be transferred to the state (which have been clear-cut, so the economic, recreational or scenic value must be questionable) are of equal value to the old-growth that would be given up.

I also understand that the Senate amended the bill to provide that the citizens of Ketchikan will be given the opportunity to ratify the exchange. Although I understand that they will be most affected by the exchange, these are state lands. I also wonder about the propriety of a vote by part of the citizens on an appropriation of state money. If the Senate was so unsure of whether the appropriation should be made that they gave Ketchikan veto power over it, then the House should be even more skeptical.

I would urge you to vote against this bill. It is not in the state's interest to give up valuable old-growth forest lands in return for clear-cuts. It also sets a bad precedent for the transfer of state lands into private hands.

Thank you for your consideration.

Yours truly,


Ellen Toll

cc: All members of House Resources Committee

To: Honorable Cliff Davidson
Chair, House Resource
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

From: Tim Zadina
11092 Connie Lane
Ketchikan, Ak. 99901

I am a resident of Ketchikan and am strongly opposed to the Leask Lakes-Cape Fox land trade bill (SB 465) currently being considered. I am an avid outdoors person who enjoys hunting and fishing in the Ketchikan area. The majority of the land we would get in this trade is absolutely worthless as far as I am concerned for recreation. I believe it is possible to get roaded access in to the Leask Lakes area and develop a high quality recreation area without being forced into accepting a land trade that is a bad deal for the public.

cc: Rep. Lincoln
Rep. Carney
Rep. Ivan
Rep. Finkelstein
Rep. Moyer
Rep. Zawacki
Rep. Hudson
Rep. Leman
Rep. Grussendorf

Sincerely


Evon Zerbetz
 PO Box 8943
 Ketchikan
 Alaska 99901

5/4/92

To: Honorable Cliff Davidson
 Chair, House Resources
 Alaska State Legislature
 State Capitol
 Juneau, AK 99801-1182

I am a lifelong Ketchikan resident and
 I am against the Leask Lakes-Cape Fox
 land trade deal.

The idea of trading old growth trees for stumps is
 outrageous. It is obvious that this is not an
 even trade. I feel that many of those Ketchikan
 residents who DO support the trade, have sentimental
 memories of the White River - as it was BEFORE
 being clearcut.

As tourism increases in Alaska, and as local
 population increases, it would be an excellent
 idea to keep some old growth accessible to people.
 Ketchikan recreation opportunities are limited on the
 island itself, but clearcutting as a means of
 opening up recreation IS NOT satisfactory.

We need to use some of our lands to say
 exactly this: Alaska is a great state and
 we are proud to live here. Leask Lakes are a
 chance to say this. Vote against the trade!
 Sincerely, Evon Zerbetz

May 5, 1992

Honorable Cliff Davidson
Chair, House Resources
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Mr. Davidson:

I am writing in regards to the state land swap proposal with Cape Fox Corp., of The Leask Lakes area with White River.

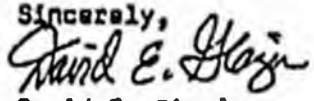
I have been a Ketchikan resident for 5 years. I have been employed full-time with SE Island School District as an itinerant music teacher. I cover the 20,000 square mile district in a floatplane on a daily basis. I see the logging on Prince of Wales and other locations.

I enjoy living and working in SE Alaska. I feel extremely fortunate to be blessed with a wonderful job and the wonderful natural beauty around me.

I sincerely believe that the state should designate the Leask Lakes area as a protected state park. The advantages of preserving such beauty so close to Ketchikan show incredible wisdom and vision. Once it is gone, Ketchikan loses an important resource.

Please support legislation to preserve Leask Lakes and deny the land swap with Cape Fox Corp.

Thank you very much!

Sincerely,

David E. Glazier
614 Main St.
Ketchikan, AK 99901

OG:dg

cc: Rep. Lincoln
Rep. Zawacki
Rep. Finkelstein
Rep. Moyer
Rep. Grussendorf
Rep. Hudson
Rep. Carney
Rep. Ivan
Rep. Leman

To: Honorable Cliff Davidson
Chair, House Resource
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

From: Steve Heint
P.O. Box 3101
Ketchikan, Ak. 99901

I am a resident of Ketchikan and am strongly opposed to the Leask Lakes-Cape Fox land trade bill (SB 465) currently being considered. I feel that there is no benefit to the state or the public in this trade proposal. Why would I want to recreate in a clear-cut area? The White River area is not appealing to me as a recreational area. The economic gains are short term and benefit a handful of corporation shareholders but not the public. I strongly feel that this is a state give away. Please consider the implications of a trade of this nature and vote no.

cc: Rep. Lincoln
Rep. Carney
Rep. Ivan
Rep. Finkelstein
Rep. Moyer
Rep. Zawacki
Rep. Hudson
Rep. Leman
Rep. Crussendorf

Sincerely, Steve Heint

445 Front Street
Ketchikan, Ak. 99901
May 5, 1992

Honorable Cliff Davidson:
Chair, House Resources Committee

re: Cafe Fox Land Exchange HB578

Representative Davidson:

In Ketchikan this trade has been touted as an answer to our "Roaded Recreational Needs" and a road further up the island.

In fact what this bill does is:

-sell State owned recreational land at \$72/acre and buy privately owned clearcut land at an average of \$595/acre .
THIS IS NOT A GOOD DEAL FOR RECREATION

-spend \$2.5 million on a road upgrade for a road that the state doesn't want, that the borough government wants but does not have legal powers to maintain, and is NOT the preferred alternative of the recent DOT highway study, and cannot meet FHA highway standards.
THIS IS NOT A GOOD DEAL FOR A ROAD UP THE ISLAND

-designs clearcuts in a gem of a very accessible and beautiful area, puts a \$2.5 million road through and to these clearcuts, and calls the project a tourist attraction.
A CLEARCUT DOES NOT INCREASE THE TOURISM INDUSTRY

-decrease deer population by 71% on the state traded lands and claim it is being done to "further...environmental protection interests" (quote from the bill)
THIS BILL IS DEVASTATING TO WILDLIFE

This trade does not accomplish what it claims to, is not value for value, and benefits a very few people at a great cost to the state.

PLEASE OPPOSE HB578 and SB1 ~~465~~ 465

Sincerely yours,
Bill Rotecki

Bill Rotecki

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: CAROLYN STALLINGS

TITLE:

ADDRESS: 618 SUNSET DRIVE

CITY: KETCHIKAN, AK

PHONE: 247-4817

BILL NO: SB 465

SUBJECT: LAND EXCHANGE WITH CAPE FOX CORPORATION

MESSAGE: I AM NOT IN FAVOR OF THE TRADES WITH CAPE FOX. I STRONGLY SUPPORT A STATE PARK IN THE LEASK LAKES AREA, AND TRADING FOR MORE STUMPS DOES NOT MAKE GOOD ECONOMIC SENSE IN THE LONG RUN. PLEASE TREAT THIS BILL WITH GREAT, HOUGHTFUL CONSIDERATION.

POMID: 08160130

DATE: 92/04/14

TIME: 16:01:30

LIONAME: KETCHIKAN LIO

COPIES: SENATORS

ELIASON
POURCHOT

ZIP: 99901

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: JOAN E. KAUTZER

TITLE:

ADDRESS: LOT 1, UPPER GEORGE INLET, BOX 129

CITY: POINT BAKER

PHONE: N/R-

BILL NO:

SUBJECT: LEASK LAKES LAND TRADE

MESSAGE: AS A PROPERTY OWNER IN GEORGE INLET, I STRONGLY OPPOSE THIS CORRUP LAND TRADE. THE STATE WOULD ILL SERVE THE PUBLIC IN THIS UNBALANCED SWAP. LEASK LAKES SHOULD BE LEFT IN IT'S EXISTING OLD GROWTH SPLENDOR TO BEST PROVIDE FOR VIABLE RECREATIONAL OPPERTUNITY. DON'T ALLOW THIS PUBLIC THEFT TO OCCUR!

POMID: 15132802

DATE: 92/04/14

TIME: 13:28:02

LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

BROWN	JONES
ELLIS	ELIASON
GRUSSENDORF	KERTTULA
NAVARRE	MENARD

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: ANDI SMITH-GUTHREAU
TITLE: CONCERNED CITIZEN
ADDRESS: P. O. BOX 8033
CITY: KETCHIKAN
PHONE: 225-8033

ZIP: 99901

CALL NO:
SUBJECT: LEASK LAKES-WHITE RIVER LAND TRADE PROPOSAL
MESSAGE: HELLO: I'M WRITING TO STATE MY OPPOSITION TO THE PROPOSED LAND SWAP
BETWEEN CAPE FOX AND THE STATE. I'M IN FAVOR OF THE LEASK LAKES AREA AS A STATE
PARK BUT NOT IF IT'S GOING TO BE LOGGED FIRST. IT WOULD DEFEAT THE PURPOSE OF
RECREATION/PARK AREA! THANKS!

POMID: 08164246
DATE: 92/03/25
TIME: 16:42:46
LOCATION: KETCHIKAN LIO

COPIES: REPRESENTATIVES SENATORS

BROWN	JONES
C.DAVIS	KERTTULA
ELLIS	POURCHOT
GRUSSENDORF	
MACKIE	
NAVARRE	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: SCOTT M. GUTHREAU
TITLE: PRIVATE CITIZEN
ADDRESS: P. O. BOX 8033
CITY: KETCHIKAN
PHONE: 225-8033

ZIP: 99901

BILL NO:
SUBJECT: CAPE FOX CORPORATION LAND SWAP
MESSAGE: I STRONGLY OPPOSE THE LAND SWAP BUT DO SUPPORT A LEASK LAKE STATE
PARK.

POMID: 08164010
DATE: 92/03/25
TIME: 16:40:10
LOCATION: KETCHIKAN LIO

COPIES: REPRESENTATIVES SENATORS

C.DAVIS	JONES
ELLIS	KERTTULA
NAVARRE	POURCHOT
TAYLOR	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: DAVID BEEBE
TITLE: COMMERCIAL FISHERMAN
ADDRESS: BOX 148
CITY: PETERSBURG
PHONE: 772-3808
BILL NO: HB 578

ZIP: 99833

SUBJECT:
MESSAGE: PLEASE VOTE THIS TRADE DOWN! THE POOR CHOICE OF ROAD CONSTRUCTION THAT
IS ORIGINALLY CONDUCTED WILL SADDLE THE STATE WITH HUGE MAINTENANCE COSTS
AND, NOT TO MENTION THE SHAM OF "RECREATION" AND "WILDERNESS" VALUES THAT
EVERY TOURIST IS LURED TO ALASKA UPON.

POMID: 15155240
DATE: 92/04/13
TIME: 15:52:40
LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

BROWN	JONES
HACKIE	KERTTULA
NAVARRE	MENARD
TAYLOR	POURCHOT

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: JOSEPH D. SEBASTIAN
TITLE:
ADDRESS: BOX 1297
CITY: POINT BAKER
PHONE: N/R-
BILL NO: HB 578

ZIP: 99927

SUBJECT: LAND EXCHANGE WITH CAPE FOX CORPORATION
MESSAGE: BE ADVISED THAT THE LEASK LAKES LAND TRADE IS UNWISE AND CORRUPT.
STATE WOULD INHERIT ROAD MAINTENANCE PROBLEMS, UNSTABLE SOILS, AND MANY
EXISTING SLIDES. HOW THIS LAND RIPOFF GOT THIS FAR IS A TESTIMENT TO IN-STATE
CORRUPTION. LEAST LAKES IS AN OPPORTUNITY FOR A FOUL STATE PARK AND TOURIST
DESTINATION.

POMID: 15152312
DATE: 92/04/13
TIME: 15:23:12
LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

BROWN	JONES
ELLIS	ELIASON
HACKIE	KERTTULA
NAVARRE	POURCHOT

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: JOSEPH D. SEBASTIAN

TITLE:

ADDRESS: BOX 1297

CITY: POINT BAKER

ZIP: 99927

PHONE: 772-4864

BILL NO: HB 578

SUBJECT: LAND EXCHANGE WITH CAPE FOX CORPORATION

MESSAGE: BE ADVISED THAT THE LEASK LAKES LAND TRADE IS UN-WISE AND CORRUPT. STATE WOULD INHERIT ROAD MAINTENANCE PROBLEMS, UNSTABLE SOILS, AND MANY SLIDINGSLIDES. HOW THIS LAND RIPOFF GOT THIS FAR IS A TESTIMENT TO IN-STATE CORRUPTION LEASK LAKES IS AN OPPORTUNITY FOR A FOWLSTATE PARK AND TOURIST DESTINATION.

POMID: 15151441

DATE: 92/04/13

TIME: 15:14:41

LOCATION: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

BROWN	JONES
ELLIS	KERTTULA
MACKIE	POURCHOT
NAVARRE	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: DON CORNELIUS

TITLE:

ADDRESS: BOX 1727

CITY: PETERSBURG

ZIP: 99833

PHONE: 772-4864

BILL NO: HB 578

SUBJECT: LAND EXCHANGE WITH CAPE FOX CORPORATION

MESSAGE: PLEASE SAY NO TO LEASK LAKES LAND EXCHANGE. USE ALTERNATE ROUTE FOR ISLAND ROAD SYSTEM. LEASK LAKES WOULD MAKE A VERY POPULAR STATE PARK. WHITE RIVER ROAD SYSTEM IS A MAINTENANCE NIGHTMARE AND WOULD COST TOO MUCH TO MAINTAIN AND INCUR TOO MUCH LIABILITY.

POMID: 15145208

DATE: 92/04/13

TIME: 14:52:08

LOCATION: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

NAVARRE	JONES
FINKELSTEIN	KERTTULA
HUDSON	MENARD
IVAN	POURCHOT
LEMAN	
LINCOLN	
MOYER	
ZAWACKI	
TAYLOR	
C.DAVIS	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: CONSTANCE GRIFFITH
 TITLE: CITIZEN
 ADDRESS: 2509 FOURTH AVENUE
 CITY: KETCHIKAN ZIP: 99901
 PHONE: 225-5069

BILL NO:

SUBJECT: STATE OF ALASKA - CAPE FOX LAND SWAP

MESSAGE: D.N.R. WANTS TO TRADE 2,500 ACRES AROUND LEASK LAKES FOR 4,300 ACRES OF LOGGED-OVER LANDS HEAVILY CLEARCUT. D.N.R. CLAIMS THE TRADE PROVIDES A RECREATION AREA FOR KETCHIKAN. LOGGED AREAS ARE NOT SUITABLE. LEASK LAKE STATE LANDS PROVIDE WILDLIFE, RECREATION AND FISH. A CENTURY IS REQUIRED TO RESTORE LOGGED AREAS WITH THESE VALUES. THE PROPOSED SWAP IS A HOAX. PLEASE DO NOT APPROVE THIS LAND SWAP.

POMID: 08145601

DATE: 92/03/04

TIME: 14:56:01

LIONAME: KETCHIKAN LIO

COPIES: REPRESENTATIVES SENATORS

BROWN	JONES
C.DAVIS	KERTTULA
GRUSSENDORF	POURCHOT
NAVARRE	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: MRS. AMOS BURG
 TITLE:
 ADDRESS: PO BOX 20005
 CITY: JUNEAU, AK ZIP: 99802
 PHONE: N/R-

BILL NO: SB 465

SUBJECT: LAND EXCHANGE WITH CAPE FOX CORPORATION

MESSAGE: SB 465 IS UNCONSTITUTIONAL AND VOID. THE STATE CANNOT EXCHANGE PRIVATE PROPERTY FOR STATE PROPERTY, OTHERWISE THEY COULD TAKE AWAY YOUR HOME FOR STATE PROPERTY? EVEN BEFORE OUR U.S. CONSTITUTION WAS FORMED THERE HERE RESOLVES BY OUR FRAMERS THAT PRIVATE PROPERTY SHOULD NOT BE TOUCHED.

POMID: 00095553

DATE: 92/05/05

TIME: 09:55:53

LIONAME: JUNEAU LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BAKER	BARNES	ADAMS
BOYER	BROWN	COLLINS
BRUCKMAN	CARNEY	COTTEN
CHOQUETTE	B.DAVIS	CRAFT
C.DAVIS	DONLEY	DUNCAN
ELLIS	FINDELSTEIN	ELIASON
FOSTER	GONZALES	FISCHER
GRUENBERG	GRUSSENDORF	FRANK
HANLEY	HUOSON	HALFORD
IVAN	JACKO	HOFFMAN
KOPONEN	KUBINA	JONES
LARSON	LEMAN	KERTTULA
LINCOLN	MACKIE	MENARD
MACLEAN	MARTIN	PEARCE
H.A.MILLER	H.W.MILLER	POURCHOT
MOYER	NAVARRE	RODEY
PARNELL	G.PHILLIPS	SHULTZ
R.PHILLIPS	SHARP	STURGULEWSKI
TAYLOR	ULMER	UEHLING
ZAHACKI		ZHAROFF

Dear Mr. Davidson

3/3/92

I am writing in regard to the Lake
Lake land swap.

I am ~~opposed~~ opposed to the swap for
several reasons but I'll only mention
the ones that are most important to myself.

- 1) I don't believe it is a "Fair" deal. It
sounds like the natives will make
several millions ^(dollars) off the timber sales.
- 2) I don't believe the proposed White River road
improvements will be enough to make the road
safe for recreation i.e. Hanes.
- 3) I don't want to recreate on a clear cut!
I'd rather hike to the lake than drive
to a clear cut!
- 4) I don't want to see this land destroyed
like so many other areas have already
been.

Thank you for your time

Douglas L. Potter

Douglas L. Potter

423 Cedar St

Ketchikan AK 99901

3-19-92

Rep. Cliff Davidson,

Hello! I'm a resident of
Ketchikan Alaska. I am writing to say
I am opposed to the Lease takes
land swap. I feel this trade is
grossly unfair. Forested land is
infinitely more valuable to me than
clear cut land with a road. Not
only is the White River Road area
logged but I feel there are no
guarantees that Cape Fox will be
able to keep its end of the deal to
make the road passable. Even if
they did are there state funds to
maintain it? How can we justify
maintenance of a 13 mile stretch of
road when we are cutting the education
budget? I don't consider a clear cut
a recreational opportunity and would
rather hike in to see the undisturbed
beauty of Lease Lakes. I say no to the
trade! Carla Potter

423 Cedar
KITU, AK 99701

Box 3158
Ketchikan, Alaska 99901
May 3, 1992

Cliff Davidson
Chairman of House Resource Committee
Box V
Juneau, Alaska 99811

Re: Leask Lakes - White River Trade

Dear Mr. Davidson:

I have lived in Ketchikan since 1954. I have taught school for 15 years and am at present teaching school at Schoenbar Junior High. I am an outdoor recreator and am a regular promotor of outdoor recreation for my students.

I am concerned about the Leask Lakes - White River land trade for many reasons.

One: Leask Lakes should be turned into a National or State Park in order that safety regulations would be made. At present there are no rules or regulations in the Harriet Hunt and White River areas. The four wheelers nearly run over the cross-country skiers. They are fighting with each other. There needs to be designated areas so that both groups of people are happy. People are driving their cars out of control on the roads and teenagers go there to drink. The roads are barely maintained. The road to White River is a four wheel road and is not one that people would choose for a Sunday drive with the family. Every year we have totalled cars and people being hit by speeding cars. Someday something disastrous is going to happen to the lives of people.

Two: We need a National or State Park with maintained cross-country trails would enable more people to use the area. It would become a family area. There are people right now that won't take their children up there. If the Leask Lakes area is handled like Cape Fox's White River property or Ketchikan's Parks and Recreation, we will only have more of the same.

Three: Cape Fox's White River property is NOT the type of place one goes to look at the beauty of the countryside because it is nothing but a graveyard of barren stumps. It is very pretty in the winter because the

snow white washes the debris. Mountain biking in the summer is a dreadful sight. It's not the place I take any visitors from out of town unless they mountain bike and they always ask, "What happened out here?"

Four: From the dollar standpoint for the State of Alaska, I think it is a dangerous situation. Does the state want to get into selling land to corporate interests and let them exploit the major raw product we have out there? Is the State of Alaska going to benefit as much as Cape Fox?

Five: Ketchikan and the surrounding area needs a recreation area for the people that live here. Juneau has one, Anchorage and Fairbanks have one. We have nothing other than a few State Parks with walking paths or camping facilities. We need a RECREATION AREA. We need to ride bikes, cross country ski, hike, four wheel, fish, and camp. Our roads are so conglutated with cars and congestion that it is no longer a safe place to ride...so we need to think about our children and where they are going to recreate. We do have the water...but not all people do the water.

I appreciate your consideration in not supporting the Leask Lake, White River trade.

Sincerely,



Rosie Roppel

cc: Ben Guessendor
Georgianna Lincoln
Pat Carney
David Finkelstein
Bill Hudson
Ivan Ivan
Tom Moyar
Lorren LeMan
Jim Zewacky
Johnny Ellis (House Rules Committee)

6489 South Tongass Highway
Ketchikan, Alaska 99901
May 6, 1992

Honorable Cliff Davidson
Chair, House Resources
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Davidson:

I am third generation Alaskan and a Ketchikan native who has spent quite a lot of time in and around the Leask Lakes area. This is one of the most beautiful, pristine, and untouched areas in Southeast Alaska. I strongly feel that a land trade with the Cape Fox Corporation would not only be detrimental to me, but also to my children and grandchildren. I strongly urge you to vote against this land trade.

Respectfully,

Mary Urquhart
Mary Urquhart

cc: Rep. Lincoln
Rep. Zawacki
Rep. Finkelstein
Rep. Moyer
Rep. Grussendorf
Rep. Hudson
Rep. Carney
Rep. Ivan
Rep. Leman

722 Park Avenue
Ketchikan, Alaska 99901
May 6, 1992

The Honorable Cliff Davidson
Chair, House Resources
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Davidson:

I am a Ketchikan native and am strongly opposed to the Leask Lakes-Cape Fox Corp. land trade bill that passed out of the Senate last week. I am also concerned about the pressure that may be exerted on each and every one of you to make a deal rather than to consider this trade on its own merits. I urge you to consider this bill only on its own merits.

Sincerely,



Deidra Holum

cc: Rep. Lincoln
Rep. Zawacki
Rep. Finklestein
Rep. Moyer
Rep. Grussendorf
Rep. Hudson
Rep. Carney
Rep. Ivan
Rep. Leman

LoAnn Swanson
 PO Box 1161
 Ward Cove, Ak 99901
 6 May, 1992

Honorable Cliff Davidson
 Chairman, House Resources Committee
 Alaska State Legislature
 Juneau, Alaska 99801-1182

I am writing to encourage you to oppose the Leask Lakes Cape Fox Land Exchange (HB578). I have been a resident of this community for over 27 years, have raised my family here, and have spent many hours recreating in the places near to Ketchikan including the White River before it was logged. I am deeply concerned that you would consider trading this desecrated area for the Leask Lakes Drainage. I am not alone in this concern. Please note the following:

At the DNR hearing about the proposed exchange:

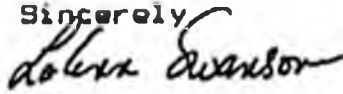
COMMUNITY	OPPOSED	FOR	NEUTRAL
KETCHIKAN	36	26*	
SAXMAN	2	14	1
JUNEAU	2	6*	

* (1 person spoke in support at both hearings)

Written Testimony submitted to DNR about the proposed exchange:
 OPPOSED 37 FOR 16

Furthermore, there was a petition circulated by a group called "The Leask Lakes State Park Committee" calling for the creation of a State Park in the Leask Lakes area. In response to that, the Cape Fox Corporation circulated a petition to oppose the State Park idea. It is my understanding that the petition for the park gathered about 800 signatures, and the one opposing the park received about 110 signatures.

Clearly this community does not "overwhelmingly support" trading stumps for trees. Please give this your careful consideration.

Sincerely,

 LoAnn Swanson

cc:
 Rep. Lincoln
 Rep. Zawacki
 Rep. Finkelstein
 Rep. Moyer
 Speaker Grussendorf
 Rep. Hudson
 Rep. Ivan
 Rep. Carnoy
 Rep. Leman

6469 South Tongass Highway
Ketchikan, Alaska 99901
May 6, 1992

Honorable Cliff Davidson
Chair, House Resources
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Davidson:

I am third generation Alaskan and a Ketchikan native who has spent quite a lot of time in and around the Leask Lakes area. This is one of the most beautiful, pristine, and untouched areas in Southeast Alaska. I strongly feel that a land trade with the Cape Fox Corporation would not only be detrimental to me, but also to my children and grandchildren. I strongly urge you to vote against this land trade.

Respectfully,


Mary Urquhart

cc: Rep. Lincoln
Rep. Zawacki
Rep. Finkelstein
Rep. Moyer
Rep. Grussendorf
Rep. Hudson
Rep. Carney
Rep. Ivan
Rep. Leman

Ralph C. Gregory

Box 4444 Ketchikan, Alaska 99901
(907)225-2432

Cliff Davidson, Chair
House Resources Committee

Dear Cliff:

I have observed the proposed land trade between Cape Fox and the State since its beginning concepts. While I worked for it in its early stages, I no longer feel that the community has a stake in its completion.

The Borough has neither the powers nor financial resources to maintain the road. It should not be assumed that future Assemblies will be obligated to expend local revenue in times when other serious and pressing problems face taxpayers to operate a dead end and expensive ROW.

The State DOT has determined that the proposed ROW would not be suitable for future development into a federal funded highway across the island. Actual development of a transportation link to Canada would be built over another route.

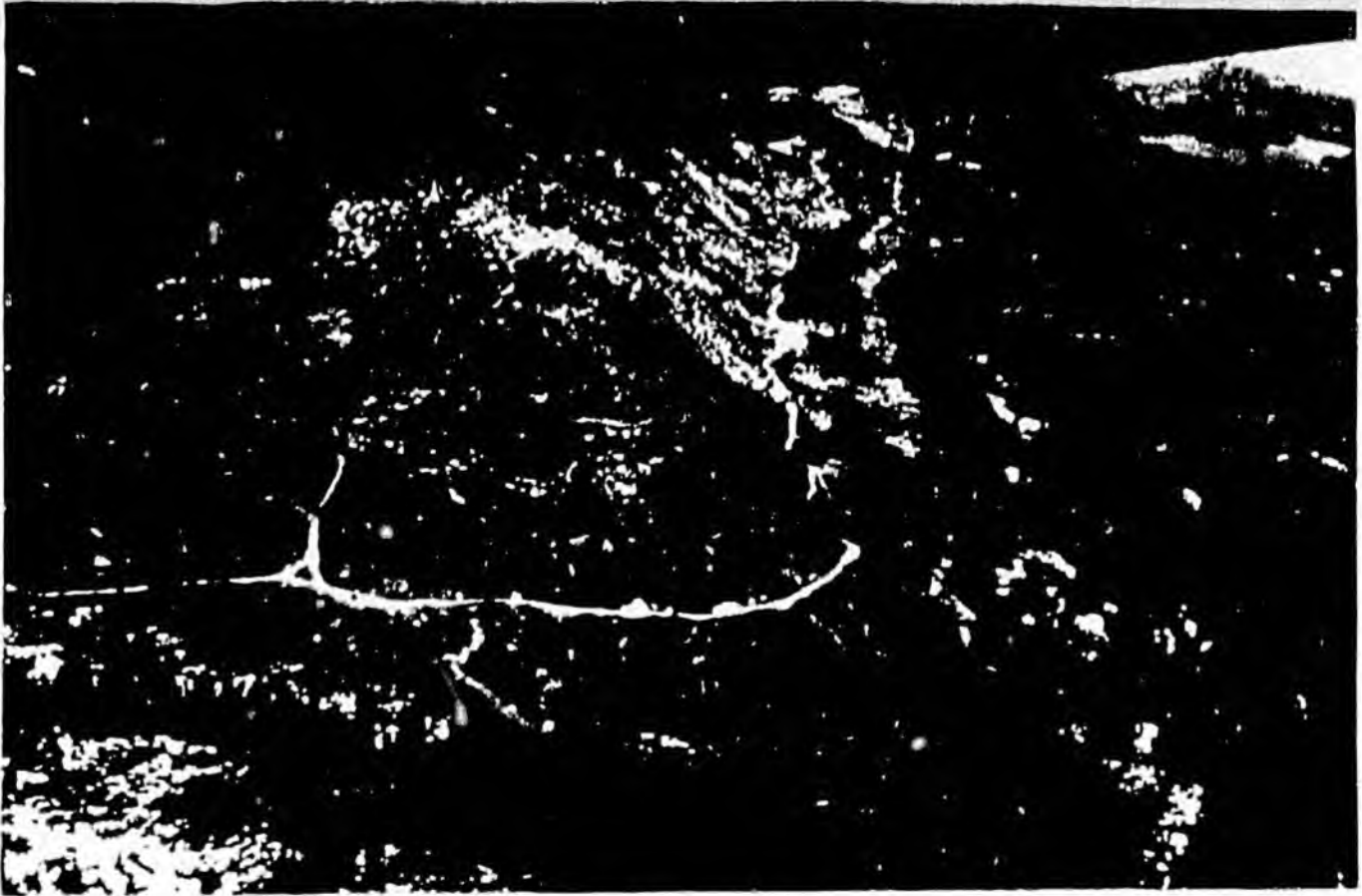
Logging close to Ketchikan is gradually eroding the outdoor experiences available to our residents and extension of clear cut logging in this area would not enhance the visitor industry, personal quality of life or long term employment in the Borough.

Personal regards,

Ralph C. Gregory

INDEX TO DOCUMENTS -- LEASK LAKES LAND TRADE

- DOCUMENT 1 -- COMPARATIVE PHOTOS
- DOCUMENT 2 -- ADF&G COMMENTS ON HABITAT IMPACTS
- DOCUMENT 3 -- ADF&G COMMENTS ON CAPE FOX CONSULTANT DEER REPORT
- DOCUMENT 4 -- LETTER FROM DNR'S CHIEF REVIEW APPRAISER REJECTING
THE APPRAISAL
- DOCUMENT 5 -- LETTER FROM INDEPENDENT REVIEW APPRAISER APPROVING
ONLY A SMALL PORTION OF THE APPRAISAL
- DOCUMENT 6 -- SUMMARY OF LITIGATION -- APPEAL OF DNR'S FINAL
DECISION (SIERRA CLUB LEGAL DEFENSE FUND)
- DOCUMENT 7 -- TONGASS CONSERVATION SOCIETY ISSUE PAPER
- DOCUMENT 8 -- BOROUGH RESOLUTION TO MAINTAIN ROADS "TO THE EXTENT
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ENVIRONMENT
- DOCUMENT 12 -- ALTERNATIVES TO LEASK LAKES TRADE



White River Parcel, owned by Cape Fox Corporation



Leask Lakes Parcel, owned by the State of Alaska

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

SOUTHEAST REGIONAL OFFICE

Habitat Division

STEVE COWPER, GOVERNOR

P.O. BOX 20
DOUGLAS, ALASKA 99824-0020
PHONE: (907) 465-4290

November 13, 1990

Mr. Bruce Phelps
Planning Director
Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901

Dear Mr. Phelps:

Re: Habitat Impacts and Proposed White River/Leask Lakes Land Trade

In the Ketchikan Community Survey completed by the McDowell Group in September 1990, "Consideration of wildlife and fisheries habitat impacts in proposed land exchanges was the most important value overall," as expressed by a representative sample of Ketchikan residents.

During the community workshop held on November 3, 1990, these values were once again reiterated. In a paired comparison analysis of important cultural and natural resource values within the study area, the combined effort of many of the workshop participants found that the highest priority goals of the community were to:

- (1) "Provide roaded recreation." and
- (2) "Protect and maintain wildlife species, abundance, diversity, and habitats."

At various times during the past year, Department of Fish and Game staff have informed Borough and Cape Fox personnel that the proposed White River/Leask Lakes land trade would be counterproductive to the goals of fish and wildlife habitat protection within the recreational study area. For example, on 2-12-90, staff transmitted comments to you that the proposed trade, "would result in a net loss to both high quality habitats and recreational opportunities. This trade would have irrevocable consequences to those types of habitats which will become the most limited in future years."

Department staff have informed me that although they had made the proposed land trade their highest priority, and requested close coordination and involvement during each stage of the Borough/Cape Fox planning process, their concerns have not been addressed.

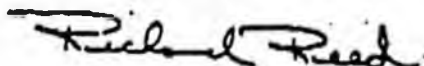
Unfortunately, what has emerged as a result is a product which has significant technical flaws regarding the wildlife and habitat information which is now being publicly presented by the Ketchikan Gateway Borough and the Cape Fox Corporation. Although a logging engineer employed by Cape Fox informally discussed certain aspects of some wildlife species with department staff, the Borough has not made available to us sufficient opportunities to review and participate in the various stages of development of the materials which are being presented.

Consequently, the Borough Planning Department is now displaying "critical habitat" maps for wildlife which are technically incorrect.

This deficiency needs to be remedied and we are willing and available to assist you in this endeavor. Furthermore, when discussing the wildlife related impacts, we would appreciate it if you would instead report that the trade is expected to result in a significant net loss of important habitat values.

For additional information concerning our review of the proposed land trade and options for roaded recreational opportunities in the Ketchikan area, please refer to the enclosed comments which we hope you find useful.

Sincerely,



Richard Reed
Regional Supervisor

enclosure

cc: Mayor Bartholomew
Borough Assembly Members
Frank Rue, ADF&G
Jack Gustafson, ADF&G
Andy Pekovich, ADNR
Mike McKinnon, ADOT/PF

a:leask.ltr

COMMENTS REGARDING THE PROPOSED LEASK LAKES/WHITE RIVER LAND TRADE

ALASKA DEPARTMENT OF FISH AND GAME

NOVEMBER 1990

The Department of Fish and Game has concluded that there are serious problems with the proposed Leask Lakes/White River land trade. We believe that this trade would result in a net loss to both wildlife habitat values and future recreational opportunities. Additionally, further evaluation by qualified transportation experts and other specialists may reveal that a trade could impede the timely extension of a transportation link extending into this area. With proper planning, retention of the Leask Lakes drainage in state ownership could be beneficial to future habitat and recreational values, while concurrently expediting a road extension and the eventual establishment of a transportation corridor. A more complete explanation of our concerns follows:

1. THE TRADE WILL RESULT IN A SIGNIFICANT NET LOSS OF IMPORTANT HABITAT VALUES.

Over the past year, Alaska Department of Fish and Game biologists have met with Forest Service biologists to discuss ways of harvesting timber on southern Revilla Island while attempting to maintain healthy wildlife populations. We have identified the protection of a core area including the Naha River drainage, the George Inlet Saltchuck, and the Leask Lakes drainage as vital to this objective. Most of the lands around this core area will be intensively logged, and the area which includes Leask Lakes will become essential in attempting to maintain the future integrity of wildlife populations on southern Revilla Island, in addition to striving for viable and well distributed representations of wildlife species in southern southeast.

There is a greater diversity of species at Leask Lakes, along with a more complex food chain than exists at the White River. Species which have suitable habitat in the Leask Lakes tract but not in the White River drainage include sockeye salmon, summer run coho salmon, trumpeter swans, loons, Vancouver Canada geese, bufflehead, goldeneye, greater/lesser scaup, hooded mergansers, goshawks, marten, some of the owl species, and possibly others. A half-dozen or more species could be lost from the ecosystem at Leask Lakes if the land trade plan is implemented, and the present abundance of many other species could be greatly reduced. For example, Leask Lakes presently provides suitable habitat for two (swans, goshawks) regionally identified sensitive species, while the White River does not. Consequently, while additional logging in the White River would not affect the habitat of presently identified sensitive species, we can anticipate that both sensitive species could be permanently lost from the Leask Lakes area

under the land trade proposal. Additionally, other wildlife which may disappear from the Leask Lakes tract with the heavy fragmentation and greatly expanded access proposed by the land trade could include some of the species of owls, marten, wolves, and possibly others.

There are three important factors which contribute to the relatively high level of wildlife productivity in the Leask Lakes area compared to the White River. These are (1) the presence of a lake system, (2) lack of previous habitat fragmentation/loss and, (3) geographic juxtaposition in relation to other productive habitats. The Leask Lakes tract is strategically located adjacent to both the Naha and the George Inlet Saltchuck. Some species require large blocks of old growth, and their viability can be much better provided for in the current existing land ownership pattern. Important habitats and suitable connections to other unfragmented areas can be designed if the state retains ownership of the Leask Lakes tract. A trade would severely cripple our planning efforts to maintain viewable, harvestable, and viable population levels of some wildlife species near Ketchikan, especially for wildlife within proximity to an accessible road system.

2. THE TRADE RESULTS IN A NET LOSS TO HIGH QUALITY RECREATIONAL OPPORTUNITIES.

Staff has concluded that there is a much wider diversity, higher quality and greater abundance of future recreational opportunities in the state-owned Leask Lakes tract than on Cape Fox-owned White River lands. Local residents have promoted a plan to keep the Leask Lakes tract under state ownership and provide roaded access to the area for the purpose of opening-up this part of George Inlet for recreational use. They have stated that visitors could pursue a variety of activities including hunting, fishing, camping, hiking, sight-seeing, natural history education, photography, non-motorized boating/canoeing, and winter sports such as ice-skating, ice-fishing, and cross country skiing. A lands committee composed of area residents rated the recreational values of the Leask Lakes area equal to or higher than those for the White River. Department of Fish and Game staff who have spent significant amounts of time in both areas rate the Leask Lakes as having a much greater value in each recreational category than the White River.

It seems, for example, that the amount and quality of sport fishing opportunities at the White River have been somewhat exaggerated. While there are sometimes large runs of pink salmon into the White River, few sportfishermen pursue pinks after they have entered their spawning streams. Other species of fish occur in the White River, but are not abundant. In

the single escapement survey conducted for steelhead, for example, only 22 fish were observed. At this point, biologists are unsure if a viable steelhead season would be possible on the White River if the road were opened for public access. Additionally, some habitat impairment has occurred as a result of the logging activities which have taken place in the White River, particularly where clearcutting has fallen the trees along both streambanks. Donald Siedelman, a fisheries biologist contracting for Cape Fox, concluded that, "The resultant upland activities (logging) have now made the drainage a "temperature sensitive" river system. During above average warm weather conditions, the stream warms creating marginal salmonid habitat...This occurred for the first time in the White River in 1986." It should also be noted that there is a significant opportunity for recreational fisheries enhancement projects in the Leask Lakes area, while the White River contains no lakes and offers few options to improve its recreational fishing opportunities.

3. THE COASTAL ROAD ALIGNMENT MAY BE UNSUITABLE.

There could be major problems with eventually attaining NEPA approval for a connective road along the alignment proposed by Cape Fox. As early as 1985 the Department expressed objections to a coastal road alignment along George Inlet because of environmental concerns. No such environmental problems have been identified on the shorter inland route, which has been preliminarily supported by this department as the location of any transportation link. In addition, in a position paper last year, the Forest Service suggested the White River alignment would not be a usable road location for recreational or through-traffic purposes. Safety and engineering constraints have been identified which they say will be very expensive and difficult to overcome. In the Forest Service position statement, it was also recommended that several miles of road be relocated.

4. THE PROPOSED TRADE DOES NOT APPEAR TO BE VALUE FOR VALUE.

At present, the land trade proposal indicates Cape Fox Corporation would trade approximately 300 acres of commercially important timber in the White River corridor for approximately 1200 acres of commercially important timber in the Leask Lakes tract. An estimated 60 acres of Cape Fox timber along the White River corridor could be in legislatively protected riparian buffers and unavailable for logging. Consequently, it appears Cape Fox would receive about 6.5 acres of commercially marketable timber for each acre they traded to the state. Depending upon market conditions and other factors, the timber values alone appear to be significantly different, in addition a trade of disproportionate timber volume types could result in a

disproportionate loss of wildlife habitat. Cape Fox contends that the fish and wildlife related recreational values of the White River compensate for this difference in values. However, the proposal does not take into account the habitat, and recreational values which would be lost in the Leask Lakes area if the trade were implemented.

5. IF CAPE FOX ACQUIRED THE LEASK LAKES LAND, IT IS UNLIKELY THEIR FUTURE MANAGEMENT WOULD BE COMPATIBLE WITH THE COMMUNITY'S RECREATIONAL GOALS.

Once Cape Fox became a major land-owner in the Leask Lakes area, their land management policies could complicate or confound recreational planning efforts of adjacent lands and be in conflict with the objectives of providing suitable, unencumbered recreational opportunities for the community. Additionally, maintenance of wildlife habitat was the number one major community concern in the McDowell survey, but the diversity and abundance of wildlife in the Leask Lakes tract would be severely curtailed due to habitat losses and the roads Cape Fox would have to construct to access timber.

6. ACCEPTABLE ALTERNATIVES ARE AVAILABLE TO TRADE OTHER PUBLIC LANDS FOR THE WHITE RIVER.

Although the Department of Fish and Game has serious concerns with a trade for the state-owned Leask Lakes tract, we see less problems with trading other publicly-owned lands for the White River. One such area which has been identified for trade and which is acceptable involves borough-owned lands in the Whipple Creek drainage. A Whipple Creek trade does not result in a net loss to important habitat and recreational values, nor does it have the other problems identified with the Leask Lakes trade. Additionally, we believe other areas, such as at Tolstoi Bay or Shelter Cove, continue to be viable options for trading for the White River.

In summary, we do not feel the proposed land trade would meet the highest priority goals of the November 3 Community Workshop which were to "provide roaded recreation" and to "protect and maintain wildlife species, abundance, diversity and habitats."

COMMENTS REGARDING THE PROPOSED LEASK LAKES/WHITE RIVER LAND TRADE

ALASKA DEPARTMENT OF FISH AND GAME

NOVEMBER 1990

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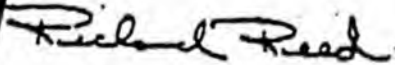
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Richard Reed
Regional Supervisor

enclosure

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a:leask.ltr

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In summary, we do not feel the proposed land trade would meet the highest priority goals of the November 3 Community Workshop which were to "provide roaded recreation" and to "protect and maintain wildlife species, abundance, diversity and habitats."

MEMORANDUM

State of Alaska
Department of Fish and Game

TO: Dave Anderson
Regional Supervisor
Wildlife Conservation
Juneau

DATE: October 8, 1991

FILE NO:

FROM: Matthew Kirchhoff *MK*
Deer Research Biologist
Douglas

TELEPHONE NO: 465-4265

SUBJECT: ANI's deer habitat evaluation

Following is my review of the 1 August 1991 report which America North prepared for Cape Fox Corporation regarding the proposed Leask Lakes - White River land exchange. The report evaluates the effect of the exchange on important deer habitat, and by inference, on hunting and viewing opportunities.

General Comments:

To their credit, the authors acknowledge that this report does not constitute a scientific study, noting that no quantitative data were collected or analyzed, and that the conclusions are based on literature review, consultation with experts, and qualitative field review. Their literature review was fair, and their field observations generally consistent with what I have seen myself in southeast Alaska. I have reservations, however, about the lack of clear methodology, and the simplistic analysis relied upon in this report.

The authors have chosen to illustrate the impact of this land exchange in terms of percent of "important" winter habitat logged. What "important" habitat means, however, is unclear. Although a variety of factors were vaguely considered in mapping these acres, it would be impossible to replicate the results on the basis of information provided. More importantly, there is no connection between acres of "important" habitat lost and the resultant impact on the deer population. To draw meaningful conclusions about likely effects on deer hunting and viewing requires that we know (a) how deer populations will change, and (b) how that change will affect hunting and viewing. The authors acknowledge these factors were not addressed in their evaluation. Their uncertainty is reflected by their range of conclusions:

- 1) "with adherence to the following recommendations, ANI believes deer populations in the Leask Lake area could support limited hunting and viewing." (page 21)
- 2) "Adherence to the six recommendations above, will minimize impacts from the proposal, but will not eliminate the possibility that deer numbers may not always be sufficient to meet hunting and recreational viewing demands" (page 22)
- 3) "(neither alternative) can assure adequate numbers of deer will remain for hunting and viewing after moderate to severe winters (page 22).

A more useful effects analysis should consider *all* acres which contribute to deer carrying capacity, and express those effects in terms of changes to the deer population. In my earlier memo to you (dated 17 September, 1991), I used the Forest Service model to generate current and future deer carrying capacity estimates for the Leask Lakes study area. If logging proceeds according to plan, the model predicts that the deer population will decline by 68% (134 deer to 43 deer) over the next 40 years. Whether or not the 43 deer that remain can still provide satisfactory hunting and viewing is a more subjective question. I personally doubt that having 43 deer in an area that large will satisfy significant hunting or viewing demand.

Page-specific Comments:

Page 1. Cape Fox Corporation staff apparently defined "critical" habitat as "sites containing high-volume timber no more than one-quarter to one-half mile from saltwater". Their definition reflects the mistaken impression that the highest value habitat is adjacent to the beach. Extensive winter deer surveys and radio-telemetry data have revealed this is not the case. The current Forest Service model places no value on proximity to the beach.

Page 1. ANI defines "critical" habitat as "those areas capable of supporting deer in moderate to severe winter based on parameters identified in the deer habitat model". Without specifically saying how many deer can be supported, what constitutes "moderate to severe winters", or precisely how parameters were "considered", the term has limited utility. Are we to believe if none of those 788 "important" acres are cut there will be no impact on deer, or alternatively, if all 788 "important" acres are logged, we will lose all our deer? To be meaningful, one needs to know how saving or logging various amounts of important habitat will affect deer.

Page 1. The report states: "ANI based this determination (of critical habitat) on application of the habitat capability model for Sitka black-tailed deer in southeast Alaska: Winter Habitat (USDA Forest Service, 1991), and other published scientific literature". This is misleading. The Forest Service model calculates the number of deer a given land unit can support based on specific characteristics of the habitat. All forested habitat has some value. The model can not, and does not, identify "important" or "critical" habitat.

Pages 1-2. Authors state, "Significant parameters for deer winter range during deep snow conditions, which are noted in the model and applied to the study area are: (1) elevation (primarily below 800 feet), (2) aspects with southern exposure (136-225 degrees), (3) timber volume (20,000-30,000 bf/acre), (3) snow depth (less than 12 inches), (4) presence of predators..., and (5) minimum habitat area (200-1,000 acre blocks minimum)". The GIS database they used did not differentiate habitat by aspect or elevation, and no data on canopy cover or snow depth (other than the acres they visited) exists. A less ambiguous procedure for identifying "important", "intermediate", and "critical" deer winter range is needed.

Page 2. Schoen and Kirchhoff (1985) are cited as establishing that proximity to coastal climate is important to deer. Quite the contrary, in this and other papers we try to dispel the notion that proximity to coast is important (e.g., see their discussion).

Page 6. I sense an undercurrent of resentment towards ADF&G for lack of cooperation on this project. From my experience that is unwarranted. I had very cooperative and productive discussions with ANI biologists and freely gave advice and technical information. Given constraints of time (2 days afield) and manpower (2-4 persons), I advised it would be impossible to quantitatively measure forage abundance, snow conditions, deer populations, or habitat preference over any meaningful area. They acknowledged this. Alternatively, I suggested evaluating habitat capability using the Forest Service model in conjunction with aerial photos or GIS inventory data. Then, they could spot check selected stands in the field to verify that various habitats had been correctly classified. The field stage could be done anytime during the late spring, summer or early fall. I remain willing to help ANI and Cape Fox with this aspect of the work.

Pages 9-16. This section reviews existing literature on deer/habitat relationships and also includes some results of the field reconnaissance. The review is well done, and the observations on deer use appear consistent with established deer/habitat relationships.

Page 17. The Forest Service's habitat capability model recognizes that all acres contribute to deer carrying capacity. The model calculates how many deer each acre can support, based on habitat attributes (e.g., aspect, elevation, volume class, species composition), winter severity, and predation risk. In

contrast, the analysis used in this report assumes each acre either has, or does not have value. In moderate to severe winters, 788 acres are assumed to have value (i.e., are important), while the remaining 4,612 acres lack value. Subsequent discussion of the impact of the land trade on deer center how many of these 788 valuable acres will or will not be cut. This analysis misses the fact that many other acres, with many deer on them, will be affected by this logging plan.

Page 22. Although I obviously feel the methodology and analysis used in the report could have been improved, I agree with the report's conclusion, stated in the last paragraph:

"While neither (of the) alternatives can assure adequate numbers of deer will remain for hunting and recreational viewing after moderate to severe winters (moderate being the norm), they do retain more critical habitat and other commercial volume forest than originally proposed....(and) should support more deer than the original alternative presented."

Both the ANI report and my own analysis indicate that deer will decline significantly-- probably by 50% or more. We can disagree about the precise extent of those losses, and the best means used to reach those estimates, but the qualitative results are the same. There should be no question that if this logging plan is implemented, there will long-lasting adverse impacts on the deer in this area.

1

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND.

LAND & RESOURCES SECTION
3601 C STREET
P.O. BOX 187006
ANCHORAGE, ALASKA 99518-7006
PHONE: (907) 762-2600

April 25, 1992

Senator Pat Pourchot
Room 516, State Capitol
Juneau, Alaska 99801-1182Re: Cape Fox Exchange Appraisal
Karabelnikof & Associates, Appraisers

Dear Senator Pourchot,

After receiving the latest in a series of revisions to the Cape Fox exchange appraisal it is my carefully considered conclusion that I am unable to recommend use of this report by the department in the exchange process. AS 38.05.020 (a) requires that..."The land, interest in land, and other consideration which the state receives in an exchange made under this chapter shall be equal to or exceed the appraised fair market value of land, interest in land or property exchanged by the state;..." After careful review of this appraisal it is my opinion that the report fails to lead the reader to a clear convincing conclusion that the resulting values represent what could be defended as "fair market value."

I received what was presented as a "draft" appraisal report from Karabelnikof & Associates in January, 1991. Very logically, Mr. Karabelnikof was concerned about the size of the report, how it was organized and preferred to present it to me as a draft, rather than as a final, in the interest of obtaining my in-put and comments on an informal basis. During the first reading it was immediately obvious that the report did not follow what could be loosely described as a standard appraisal format or process. It was ponderous, containing some 300 pages subdivided into nine sections, much more academic in tone than the usual report and extremely technical in terms of statistical processes and applications.

In earlier sections (I through V) the reader is lead through a general analysis of the appraisal problem and a very thorough (and commendable) description of the attributes of the five Cape Fox parcels and the three state parcels. Section VI is the beginning of the valuation methodology. Here the appraisers utilize a stepwise forward regression analysis to determine statistically what needs to be done to adjust eight of what are considered by the appraisers to be the most comparable market sales in southeast Alaska to an indication of value for our subject properties. Some fifteen

Page 2

Cape Fox Exchange Appraisal

possible attributes were selected by the appraisers and each of the eight comparables were statistically tested to determine the extent, if any, each attribute affected the transaction. It is at this point (Section VI) that the ability of the appraisers to explain the statistical process clearly and concisely, in terms that can be understood by any reader, fails. An explanation of the regression process, extremely vague to anyone not familiar with statistics in general, and regression in particular, is presented along with descriptive statistics (in chart form) and scattergrams in Appendix E in the back of the report. I believe it is reasonable to say that the explanation I have just offered regarding what is done in Appendix E is considerably more clear than what would be obtained by a complete reading of what is presented in that appendix.

As a result of this statistical analysis it was determined that five of the thirteen attributes tested were significant enough to warrant consideration. Adjustments were made to each of the eight sales for percent of forested area, date of sale, percent of slope, presence or absence of a stream and for percent forested. Application of adjustments necessary in the case of each sale was completed and resulted in the indicated value for each of the eight subject properties seen on page E-24 of the report.

The appraisers then proceed with valuing the eight subject parcels using a market comparable program called MKTCOMP. It is implied in the report that MKTCOMP is a second method of valuation when, in fact, the process essentially utilizes the same adjustments and sales from the regression analysis. In appraisal practice it is common to utilize as many methods of valuation as possible to support a value, then to correlate the different methods and reach a conclusion (e.g. the market, cost and income approaches used in appraising improved, income producing properties.). The only significant difference between the two programs in this instance appears to be that the regression analysis utilizes eight sales to predict value while MKTCOMP uses five. A comparison of values predicted by regression, on pages VI-10 of the report and by MKTCOMP on page VII-2, demonstrates that the values are very close; not apparently as a result of a meaningfully different process but more due to identical adjustments having being applied to essentially the same sales.

Following my review of the original draft I expressed my concern to the appraisers over the inability of the report to convey clearly and concisely, in language any reader of average intelligence could understand, how the value was determined in this report. In addition to not being lead to a conclusion of value that I would be comfortable recommending my department approve, I made it abundantly clear to the appraisers that this was a document

Page 3
Cape Fox Exchange Appraisal

that would be subject to a public hearing process and close public scrutiny. The report needed to be written to accommodate that use. This is not an unreasonable requirement. It is consistent with our department appraisal instructions, to which this report was subject by contract, and to standards of professional practice with which these appraisers are familiar and to which they are professionally obligated.

In addition to the inability of the report to clearly and understandably explain its valuation process a number of procedural and technical questions have arisen over the several months that have passed since receipt of the first draft. These are as follows:

In particular, there is considerable debate in the appraisal community regarding the propriety of using such a small market data set (eight sales in the regression analysis) to determine market value statistically. The debate appears to be industry wide and not confined to this particular appraisal project. The issue does not involve questioning the use of statistical analysis as an appraisal tool. The method is generally accepted and widely used, particularly in mass appraisal applications such as assessing. The debate, in cases such as we have here, centers on the issue of small data sets; specifically, on the ability of small data sets to meaningfully forecast value using a statistical program.

From the project outset, particularly in view of the procedural debate, it would have appeared appropriate that the results of the MKTCOMP process be placed against another method of valuation as a check of the process. It is my understanding that this was suggested early on in the appraisal process by one member of the appraisal team but the advice was not taken. On several occasions in the review process I suggested the addition of a standard market approach as a check to support the MKTCOMP conclusions. A review of the appraisal was contracted for in February, 1992 by Karabelnikof & Associates. Mr. Dan Swango, Phd, MAI, CRE, SREA, of Swango Real Estate Counseling and Valuation, of Tucson, Arizona, also recommended the inclusion of a second approach. The appraisal team rejected this advice but did prepare a brief report as evidence for Dr. Swango that a standard simulation (market) approach would produce value conclusions that would sufficiently support MKTCOMP. (Dr. Swango also voiced concern to the appraisal team over the small data set issue.) Dr. Lynn Woodward, MAI, SREA, of Lynn Woodward and Associates, Sarasota, Florida, was hired in on April 10, 1992 by Karabelnikof & Associates to complete another review the report. It was also his recommendation that a standard

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Cape Fox Exchange Appraisal

market approach be added to the appraisal. On April 16 I received a report entitled "Value Estimate Using Traditional Judgmental Approach". This represented the long suggested market approach being offered as support for the statistical valuation. It was my conclusion that this document represented little more than the hastily prepared report offered to Dr. Swango back in March. Hardly what could be accepted, by any standard, as a valid, well supported appraisal.

Ignoring the debate over procedure, and the lack of a credible alternative approach to support the appraisers statistical conclusion, the results of the regression process itself raise some concern. It is obvious to an appraiser who has been involved in appraising in Alaska in general, and southeast Alaska in particular, for twenty years that many of the conclusions reached by the statistical analysis fly in the face of what is generally known of the Alaska real estate market.

It is the conclusion of the regression analysis that the most significant adjustment the program has identified is "% Open Space". This refers to the percentage of natural occurring open space, as opposed to clearing or clear cut. This factor has never manifested itself, to my knowledge, in any other appraisal. The adjustment is notably inexplicable, especially as it is apparently the most significant attribute identified by the program from the fifteen attributes analyzed.

It was the conclusion of the regression analysis that a negative adjustment was necessary to account for falling prices in that area of the market over recent years. There is no such evidence available, outside this report, to support that value of southeast large acreage parcels are experiencing a decline. To the contrary, a resale of one of the sales included in the report (Sale No. 97) has occurred which indicates a significant value increase between 1984 and late 1991. This parcel is not logged and heavily timbered and it must be considered that current timber prices may have contributed to the value increase.

It was the conclusion of the regression analysis that no adjustment was necessary to account for the presence or absence of waterfront. Two of the Cape Fox parcels, Parcels 4 and 5, have significant amounts of frontage on Upper George Inlet, including a number of islands. All available evidence indicates waterfrontage accounts for a significant portion of the value of parcels possessing this attribute.

It was the conclusion of the regression analysis that "% Forested"

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Cape Fox Exchange Appraisal

is an attribute significant enough to warrant a positive adjustment. It is not entirely clear how this adjustment is explained in terms of its relationship to "% Open". The two attributes, both requiring positive adjustments, appear opposed to one another.

The regression analysis indicates no adjustment is necessary in consideration of size. The eight sales utilized in the program vary from 40 to 792 acres. That no consideration is given to this attribute is contrary to all available knowledge and appraisal practice.

The regression analysis indicates a significant positive adjustment should be applied in adjusting for presence or absence of a stream. Several of the comparable parcels appear to possess streams. In some cases this was adjusted for in others it was not.

Six of the eight regression comparables are logged off or timber value appeared irrelevant. Two sales, sale 95 in particular, possess amounts of commercially valuable timber. As valuation of the all the subjects is on a clearcut basis the presence of timber would appear to require allocation out of the sale price if these sales are used as comparables.

CONCLUSION

This report essentially remains as cumbersome and unreadable as when it was first submitted. The addition of adjustment charts in the MKTCOMP process, allowing the reader to now mathematically compute the dollar amounts of adjustments made, and some minor editorial adjustments, are the only significant changes. The heart of the report, the regression analysis, remains a technical mystery to most readers.

On several occasions and from several different sources I have satisfied myself that the mathematics of the regression program used by the appraisers are correct. I have examined arguments for and against use of a small data set. It is easy to recognize that one small change in the comparable data could result in broad changes in the adjustments and resulting values, a circumstance not as likely to occur if a much larger number of sales had been used in the regression process. I believe the appraisal team had compiled the best set of large acreage sales data available in southeast Alaska. A larger data set was available.

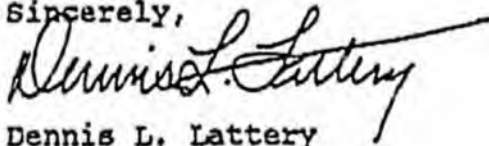
Page 6
Cape Fox Exchange Appraisal

Despite repeated advice of the advisability of a second approach to value to support the statistical process the appraisal team has resisted doing so. Such a report could have been completed months ago. The generic market analysis recently presented to me as representing some form of support for the statistical analysis is considered to be generally irrelevant.

There are numerous conclusions arising out of the regression analysis that fly in the face of a large body of current appraisal practice and knowledge. These inconsistencies and contradictions are too significant to be either ignored or explained away by the sophisticated nature of statistical analysis.

For these reasons I cannot recommend approval of this report as evidence of the fair market value of the Cape Fox and State properties. At the same time, in deference to the appraisal team and a sophisticated computerized process that defies easy explanation, I cannot, unequivocally, state that either the process is incorrect or the value is wrong.

Sincerely,



Dennis L. Lattery
Review Appraiser

cc: Ron Swanson, Director
Martha Welbourn, Chief, Land and Resources
Don Karabelnikof

besides a history of appraising's use of regression, the most probable buyer, timber harvest companies, use regression extensively to value properties and are familiar with its use. This is consistent with appraisal theory of buyer calculus or simulation to use a technique commonly used by the market for the subject property. Although the appraisers use regression and it supports the MKTCOMP technique closely, it was not the prime technique.

MKTCOMP Technique

MKTCOMP is a mechanized adjustment grid. Most appraisers do the same adjustment process on a typewritten page or spreadsheet program, like LOTUS 123. Dr. Robbins has written a computer program, which is more complex. Based on inputs of either judgmental, paired sales, or regression coefficient characteristics developed into factors, MKTCOMP adjusts the comparables to the subject in the same manner as an appraiser does on an adjustment grid.

I studied MKTCOMP program in the mid 1978's and have used it in my appraising since 1981, including land appraisals. I have used both judgmental and regression coefficients as input characteristics. I understand and concur that the MKTCOMP program using regression coefficients is accurate from the data and is the best technique for determining value in this case. Regression coefficients are based on the market and are better than unchecked judgments

MKTCOMP has some unique characteristics, as programmed by Dr. Robbins, compared to a traditional adjustment grid. MKTCOMP can search a comparable data base I choose the best comparables. In this case, the program along with the appraiser's judgment choose five comparables as the best. This program adjusts all comparables based on the factors inputted and chooses based on a C-index. The C-index is simply the squared comparable adjustment amount added up with the square root taken. My personal MKTCOMP program picks the best comparables based on the total of the factors added up. Several methods are available. Dr. Robbins method chooses comparables with the least number of large adjustments to determine the most similar. Five comparables were the chosen to be the best at the point when the C-index stopped changing, when adding an additional comparable.

Another concern is the use of regression coefficients from the regression as factors in the MKTCOMP adjustment grid and whether they represent dollar adjustments. In this case, the regression coefficients (percent non-forested open land, 1648; date, -185; % slope, -1541; stream, 138; and % forest, 247) appear logical and the signs (+/- before the coefficient) are correct compared to any readers understanding of the market. The amounts can not be directly translated to the market individually. Logical amounts and signs are not necessarily the case with regression. Individually the figures do not represent dollar values, but after totaling the adjustments to each comparable, the total adjustment represents dollar per acre.

MKICOMP has an advantage over regression using the same coefficients. The adjustments are calculated on the differences between the subject and the comparables rather than on the subject's characteristic. This lowers the variance around the predicted market value. The MKICOMP with coefficients has a narrower range of values than the small regression formula.

I ran the MKICOMP program with the data base of eight comparables and achieved the same results. I also ran the MKICOMP program using a comparable as the subject and the other seven comparables as comparables. This "holdout" analysis confirms that the model (the set of adjustments) works for this property submarket. On an actual selling price versus MKICOMP with coefficients predicted value chart, all comparables were predicted within two standard deviations and the three best comparables were more accurately predicted.

I redid Exhibits VI-7 through 14 on pages 6-19 to 6-26 into an adjustment grid that looked more like an MAI adjustment grid using the reports figures. This summarized and rounded some of the figures and added the non-comparable adjustments. The authors may include that in their report, but it is not a substantial contribution to the report, only a reformat of their information.

Summary

I have concurred with the \$8,000,000 value based on my review of the land residual land appraisal portion. The report is difficult to read for the average layman, but anyone trained in all techniques of appraising or having the advice of someone familiar with regression should be able to replicate the conclusions in the report. The report wording is ponderous and academic in parts, but it is still readable. The report format does not follow the MAI textbook outline, but all elements seem to be included to determine value. One of the major critics of appraisers, writing in the "Mortgage Banking Magazine", has said appraisers elevate format over substance. This appraisal has supportable adjustments for the differences between the comparables and the subject, substance, rather than simply judgments. I concur with the information provided as allowed by a desk review, have used and agree with the techniques chosen, have checked the mathematics and rerun all analysis. As a review appraiser. I can not rewrite the report to put it into an outline format more typical of MAI format, but can concur with the value.

Respectfully submitted,

Dr. Lynn M. Woodward MAI, SREA
Ph.D. in Real Estate and Urban Land Economics
Review Appraiser, did not inspect

attached: certification and resume

After April 18, 1992, final copy with signature, certification and resume will follow after returning to Florida

Dr. Lynn N. Woodward MAI, SREA
Lynn Woodward and Associates
4518 Pawnee Trail
Sarasota FL 34233-1947
(813) 924-8661

April 18, 1992

Don Karabelnikoff, CRE
Karabelnikoff and Associates
4041 B Street, Suite 201
Anchorage, AL 99503

Re: Review of Cape Fox Corporation/State of Alaska Land Exchange

Dear Mr. Karabelnikoff,

I have read, understood and concur with the value conclusions of the residual land appraisal of the January 1992 copy of the APPRAISAL FOR CAPE FOX CORPORATION/STATE OF ALASKA LAND EXCHANGE. Paragraph 9g., page 7, of your agreement, dated August 8, 1991, with the Ketchikan Gateway Borough states, "The Appraisal shall be delivered with a separate letter report by a review appraiser holding an MAI designation. The reviewer must concur with the conclusions of the Appraisal Report after performing a desk/field review." This letter serves as a review letter. I did not inspect the subject property nor the comparables, but did a desk review of the written report.

The cost approach was not used because the subject property had few improvements. The income approach was included in the timber value. I did not review the timber value as I am not an expert forester, only a property appraiser. I also do not have an opinion on the non-comparable adjustments leading to the \$8,888,888 value, such as subsurface, open space or road costs as I am not a geologist, forester nor road engineer. The income approach was not used for the residual land appraisal because few comparables, which were rented at the time of sale, were found. The market comparison approach was used using two techniques: 1. stepwise forward regression and 2. MKICOMP, which is a mechanized market comparison adjustment grid.

Recommended Addition of a Traditional Market Comparison Technique

Because of the concerns in understanding the report by any reader of the original market comparison techniques included in the report, this reviewer has recommended an additional technique to be used in the market comparison approach. The traditional market comparison adjustment grid uses judgmental factors for adjustments and conclusions of value for each parcel. Although the variances in value for individual parcels were higher, the overall value supported the \$8,888,888 value, which was developed from the other two techniques.

A few report readers have expressed concern that the report did not use the traditional adjustment grid which normally uses judgmental adjustment factors or factors developed from paired matched sales analysis. The judgmental factors were used in the traditional technique, recommended to be added as noted above. Paired matched sales can not be used in this report because of the dissimilar comparables. Paired matched sales analysis is best used when similar comparables have only one or two significantly different features. Each of these comparables have four or more characteristics which are different at any one time. I could not develop a paired matched sales adjustment analysis for the adjustment factors.

Regression

Regression is essentially a multiple matched sales adjustment technique. Regression is an accepted appraisal technique which has been used since the 1960's. Unfortunately most MAI's are not trained comprehensively to understand regression as it is optional to gain a designation.

I ran the CSS stepwise regression program with carefully checked data base from the report on a different computer. I conclude that the technique is developed accurately and five factors -- percent open (non-forested), date, percent slope, presence of stream, and percent forest -- were chosen as the best characteristics to predict value from a search of over ten factors inventoried from the subject and the comparables. Even with the small sample size of eight, five degrees of freedom, these factors have a high significance (F) in determining value. The R-squared is over 98%, even with only three factors. Stepwise forward regression performs similarly to an appraiser by picking the best characteristic that effects value first, then adding each characteristic respectively, which explains most of the value difference between the comparables, in turn. In this case the first three (percent non-forested open land, date, and percent slope) predicts nearly all the variance in value with stream and percent forest only minor contributors to explaining the value. Several other contributors and reviewers have run similar stepwise regression programs on other computers and concluded the same results with little variance. One reviewer run a multiple linear regression program (different from stepwise forward regression) with several data entry errors. Any reader with access to a PC computer and a statistical package program, and maybe statistical advice, using the proper program and input should be able to duplicate, within a reasonable variance, the results.

One concern is the small sample size. The scope of the appraisal, considering the lack of private sales in this area of Alaska was impressive. Over 100 sales were analyzed, 33 sales were inventoried, and 8 sales, a large number for the market, were determined to be representative of the market. I have used regression with small sample sizes, based on classic statistical assumptions, for a long time. It is very difficult to separate real estate into proper submarkets and maintain large sample sizes. As one statistical professor told me, small samples are better than no samples and better than judgments normally used by appraisers. The regression is a representation of the market.



SIERRA CLUB LEGAL DEFENSE FUND, INC.

The Law Firm for the Environmental Movement

125 4th Street Juneau, Alaska 99801 (907) 586-2751 FAX (907) 463-5891

Warren, Mr. M. Kenley Ansel Adams

Tongass Conservation Society, Inc.

v.

State of Alaska, Department of Natural Resources

No. 1JU-92-847CI

The Sierra Club Legal Defense Fund represents the Tongass Conservation Society in a challenge to the DNR land exchange with Cape Fox Corporation at Leask Lakes, near Ketchikan. This appeal is filed in Superior Court in Juneau. Following are the principal legal points raised:

ALASKA OFFICE

Robert B. Briggs
Eric P. Jorgensen
Thomas S. Waldo
Staff Attorneys

Maureen E. Twitchell
Associate Attorney

David M. Chambers, Ph.D.
Mining Analyst

Kaylene Farley
Office Manager

REGIONAL OFFICES

Denver, Colorado
Honolulu, Hawaii
New Orleans, Louisiana
San Francisco, California
Seattle, Washington
Tallahassee, Florida
Washington, D.C.

INADEQUATE APPRAISAL

1. DNR has approved this exchange **without completing an appraisal**, in violation of AS 38.50.020, AS 38.50.130 and 11 AAC 67.240.

2. DNR has **abused its discretion** in several respects by relying on the existing draft appraisal. DNR's own appraisers have found the draft to be severely flawed. The draft is marred by a conflict of interest, improperly discounts open space land values, and fails to adequately consider public interest use values.

UNLAWFUL ROAD ACQUISITION

3. DNR is attempting to use state land and timber to pay for road upgrades valued at \$2.2 million. This sole-source procurement serves the purpose of bolstering the value of Cape Fox's land, which is worth far less than the state land to be parceled up and exchanged. This procedure violates the State Procurement Code, AS 36.30, and DNR's own regulations, 11 AAC 67.260.

INADEQUATE AGENCY REVIEW

4. DNR failed to consider selling or leasing the state land instead of exchanging it, as required by AS 38.50.100 and AS 38.50.130.

5. DNR did not adequately consider the social, economic and environmental impacts of the exchange, as required by AS 38.50.130.

INADEQUATE PUBLIC PROCESS

6. DNR has not completed the land use planning and classification required by AS 38.04.065 for all land disposals before approving this exchange.

7. DNR did not publish a map of the areas proposed for exchange in local newspapers, as required by AS 38.50.110.

K E T C H I K A N G A T E W A Y B O R O U G H

RESOLUTION NO. 1027A

A RESOLUTION OF THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, PROVIDING FOR A LAND MANAGEMENT PLAN, INTERIM PROTECTION OF RESOURCES, AND MAINTENANCE OF PUBLIC RECREATION FACILITIES ON THE STATE PROPERTIES SUBJECT TO THE PROPOSED EXCHANGE BETWEEN THE STATE OF ALASKA AND THE CAPE FOX CORPORATION.

R E C I T A L S

- A. The availability of recreational areas for the residents of the Ketchikan Gateway Borough is now seriously limited.
- B. Lands currently owned by the State of Alaska within the Borough demonstrate great potential for roaded access for recreational activities by the residents of the Borough, including children, the elderly, and the disabled.
- C. Certain lands now owned by Cape Fox Corporation that are being considered for a land exchange with the State also have great potential for similar roaded access for recreational activities by all residents of the Borough.

NOW, THEREFORE, IT IS RESOLVED BY THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, as follows:

Section 1: Statement of Intent. The Ketchikan Gateway Borough Assembly has supported the proposed land exchange on the basis of the roaded recreational opportunities which it will provide to residents and visitors to Ketchikan. The Assembly recognizes that the lands and facilities to be acquired or retained by the State have high recreational value. The Borough Assembly recommends that the State protect these recreational values by limiting the range of permitted use and activities on said lands and facilities to those which are primarily recreationally oriented or otherwise subject to the terms of the Final Exchange Agreement.

Section 1: Land Management Plan. The Ketchikan Gateway Borough recognizes the need to provide a Land Management Plan for all state-owned land that will result from proposed land exchange. These lands include all lands currently owned by the Cato Fox Corporation in the White River drainage, in the vicinity of Lake Harriet Hunt and Talbot Lake which are proposed to be transferred to the State and all lands retained by the State in the Leask Lake tract as a result of the proposed land exchange. The Ketchikan Gateway Borough commits to the preparation of such a plan in cooperation with the State of Alaska.

Section 2: Interim Stewardship. The Ketchikan Gateway Borough supports any administrative dedication by the State to provide for the protection of the natural resources during the period prior to the preparation and prior to adoption of a Land Management Plan which is necessary in order to provide for protection of the recreational values of those lands described in Section 1 hereof.

Section 3: Facility Maintenance. The Borough Assembly understands that the State is unwilling to assume costs associated with the maintenance of road facilities to be provided as a condition of the final exchange agreement. In consideration for opening of areas to be acquired or retained by the State to roaded recreational use, the Borough agrees in principle to assume the cost of facility maintenance in the event that the State continues to be unwilling or unable to and to the extent the Borough is empowered to do so.

Section 5: Effective Date. This Resolution shall be effective upon adoption.

ADOPTED this _____ day of _____, 1992.

BOROUGH MAYOR

ATTEST:

BOROUGH CLERK

APPROVED AS TO FORM:

Gene S. Williams

BOROUGH ATTORNEY

Public Hearing:	_____		
Effective Date:	_____		
Roll Call:	Y	N	A
Beatwright			
Cote			
Cruise			
Fader			
McCarty			
Holman			
Conley			
Four (4) affirmative votes required for passage			

Jeff Budd
Box 7263
Ketchikan, AK 99901

6 May 92

Cliff Davidson
Chair, House Resources Committee
Alaska State Legislature
Capitol Building
Juneau, AK 99801-1182

Dear Mr. Davidson,

I would like to go on record as one Ketchikan resident who does not support the Leask Lakes /Cape Fox land trade. I feel there are many others in Ketchikan who also do not support this trade. I am a member of the Ketchikan city Council, although I am not writing on behalf of the council, and meet a fair number of people during my day. There is a good percentage that do not support this trade in that group. There are many more people that I do not come in contact with who I do not know how they feel one way or the other. I do feel it is not accurate to state that the vast majority of the community do support the trade.

Thank you for your attention.

Sincerely,
Jeff Budd
Jeff Budd



Southeast Alaska Conservation Council

SEACC 419 Sixth Street, Suite 328 Juneau, Alaska 99801 Phone 459-2222

February 27, 1992

Dear Legislator,

On behalf of the Southeast Alaska Conservation Council (SEACC), I would like to call your attention to a pending action by the Alaska Department of Natural Resources (DNR) that will result in the loss of high quality wildlife habitat and recreational resources now owned by all Alaskans. SEACC is a coalition of thirteen local community, volunteer conservation organizations in eleven communities across the Alaska panhandle. We are concerned citizens from all walks of life who share a commitment to the unique quality of life available in Southeast Alaska.

DNR is preparing a land exchange in which it will trade 2,400 acres of pristine, state-owned old growth forest for 4,300 acres of land that has been heavily clearcut by the Cape Fox Corporation, an ANCSA village corporation located outside of Ketchikan. The lands being considered for trade are north of Ketchikan and include the state-owned Leask Lakes area and the White River area owned by Cape Fox. Under the proposed exchange, Cape Fox would then clearcut an additional 1,500 acres of the land it obtains from the state.

DNR supports this exchange because it claims that the left-over logging roads will provide Ketchikan residents with additional recreational access. However, given the amount of past clearcutting in the White River area, and future cutting in the Leask Lakes area, the quality of the resulting recreational opportunities will be significantly lessened.

Please be aware that SEACC strongly opposes this land exchange. Trading high value, state-owned old growth forest for clearcut land and logging roads is short sighted and wastes valuable public forest resources. Trading the Leask Lakes land robs Ketchikan of one of its most important recreational resources. The Leask Lakes parcel is 5,000 acres of abundant timber, watercourses, and wildlife. This trade will destroy habitat, squander truly valuable recreational opportunities, and set a horrible precedent. We believe such a trade is bad public policy and a bad deal for the state.

Because this exchange would involve over \$5 million in state resources, DNR must submit this trade for legislative approval. SEACC requests that legislators scrutinize this proposal carefully -- and reject it.

FELICIAN FORESTRY COUNCIL • FRIENDS OF BERNERS BAY, Juneau • WRANGELL RESOURCE COUNCIL • SITKA CONSERVATION SOCIETY
FALSE ISLAND KOOK LAKE COUNCIL, Tenakee Springs • LYNN CANAL CONSERVATION, Haines • TAKU CONSERVATION SOCIETY, Juneau
NARROWS CONSERVATION COALITION, Prudhoe Bay • FRIENDS OF GLACIER BAY, Gustavus • TONGASS CONSERVATION SOCIETY, Ketchikan
ALASKA SOCIETY OF AMERICAN FOREST DWELLERS, Port Baker • JUNEAU GROUP SIERRA CLUB • YAKUTAT RESOURCE CONSERVATION COUNCIL

☐ Received

DOCUMENT 10

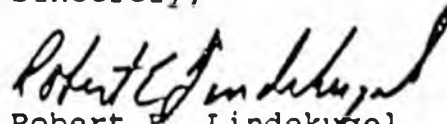
SEACC requests that legislators scrutinize this proposal carefully -- and reject it.

DNR is currently short-cutting the land trade public process required by law, in an effort to obtain legislative approval this session. Under Alaska law, DNR must prepare a report for the public which fully explains the process used to appraise the parcels offered for trade thirty (30) days before public hearings on the proposed trade. The draft appraisal has not yet been accepted, however, because DNR has determined that the public could not understand the appraisal in its present form. Yet in spite of this, DNR is pushing forward with the public process.

Cape Fox has been proposing this trade, or variations of it, since 1977. DNR has rejected each proposal because it was not in the state's best interest. DNR has now, however, changed its tune.

DNR used to be right. Trading trees for stumps is not in the best interest of Alaska or Alaskans. Alaska's prime forest lands, and valuable forest resources, must be managed for the long-term benefit of all Alaskans.

Sincerely,



Robert E. Lindekugel
Staff Attorney



Alaska Center for the Environment

519 West 8th Ave #201 • Anchorage, Alaska 99501 • 907-274-4027

April 20, 1992

Rep. Cheri Davis
Alaska State Legislature
P.O.Box V (MS 3100)
Juneau, AK 99811

Re: Proposed Leask Lakes Land Exchange

Dear Representative Davis:

The Alaska Center for the Environment would like to express its strong opposition to legislation (SB 465/HB 578) that would approve the proposed Leask Lakes land exchange with the Cape Fox Corporation. This trade certainly provides very substantial benefits to the corporation, but it is just as clearly not in the state's best interest.

The State of Alaska would trade important old growth habitat for lands that have been heavily clearcut. These lands have not only lower commercial timber value but lower fish and wildlife and recreational values as well. ADF&G has said both that species diversity is substantially greater at Leask Lakes than at White River, and that logging Leask Lakes could result in a 68% reduction in deer numbers in the area. Additionally, since unroaded recreation opportunities will become increasingly scarce in Southeast in future years they should be protected, not lost.

We hope you will vote "no" on this legislation, which is not only a bad deal in itself for Alaskans, but sets a dangerous precedent favoring individual corporate economic interests over the welfare of the general public.

Sincerely,

Cliff Eames
Issues Director



Tongass Conservation Society

MEMORANDUM

TO: House Resources Committee
FROM: Dave Katz
SUBJECT: Alternatives to Leask Lakes trade
DATE: May 6, 1992

Several viable alternatives exist to the land trade as proposed. Please refer to attachments.

1. Borough timber. See Attachment 1. The Ketchikan Gateway Borough has 15.3 million board feet of high value timber at Whipple Creek, on the Ketchikan road system. (Estimated \$6 million selling value.) So far, the Borough has not contributed any significant amount of its own timber resources toward finding a solution to this local problem.
2. Forest Service land. See Attachment 2. Cape Fox has indicated an interest in Forest Service timber in the nearby area. This timber could contribute to a win-win solution.
3. The Tolstoi tract on Prince of Wales Island. See Attachment 3. This state tract contains \$27 million in timber alone. It is much lower in habitat value than Leask Lakes. Cape Fox says it is not interested in this timber because of its high cedar component. Yet Cape Fox's own lands also have a high cedar component, and you can make money with cedar.
4. Road access to Leask Lakes. A sustained-yield timber sale in the Leask Lakes area could provide for road access into the tract. DNR is required to consider this alternative before trading land, but has not.

Proposed Exchange with Cape Fox Corporation

DOT/PF's proposal (see Attachment - "O" to the original report) which would connect Ketchikan to the Bradfield Canal near the Tyee Hydropower Project, carries a price tag of up to \$150,000,000 or about \$1,000,000 per mile. If funds were limited, and the KGB/CFC proposed roads were in place, attention could be focused on stretches of road beyond Leask Lake, eliminating the immediate need for construction of the first eleven miles from Ketchikan, and deleting or deferring the need for almost \$11,000,000 required to provide the Ketchikan connection from its intersection with the proposed Leask Lake recreation road.

Any road dissecting rather than skirting the Naha, a U.S. Forest Service LUD II area, could be expected to encounter opposition. Although the Forest Service alignment running north of Lake Harriet Hunt best accesses its lands, the KGB/CFC alignment proposed in Alternative "G" (see Map 1, attached to the Final Exchange Agreement) provides the best access to lands now in state ownership or proposed for state ownership, and could act as a recreation loop if a better road is later constructed using DOT/PF's interior alignment.

J. Other Exchange Alternatives: Exchanges are difficult even when they are strongly supported and clearly benefit the areas involved in the exchange. The small amount of non-trust land in Southeast Alaska in state ownership, coupled with the high demand for its lands, e.g. need for lands for University of Alaska and Mental Health settlements, etc., adds to the difficulty. Alternatives (see Attachment - "K" to the original decision) were explored by CFC and the Borough, and Leask Lake was determined to be the only suitable site, and more importantly the only site of further interest to CFC. Although an attempt was made to interest CFC in timber rights in the Thorne Bay area, it indicated that it was clearly not interested because the more valuable timber in the Thorne Bay parcel has already been cut. KGB does own a stand of timber located at Whipple Creek estimated to contain approximately 15.3 million board feet. KGB, however, feels that there are problems which need to be addressed and is not willing to commit substantial amounts of this resource to an exchange at this time. It is likely that in addition to the problems that need to be worked out, that the Borough perceives these lands as not great enough to accommodate the primary objectives of the exchange but may be substantial enough to generate funds necessary to manage the lands ultimately acquired from the state exchange. This could be extremely important, given predictions again of diminished state revenue.

EVALUATION OF U.S. FOREST SERVICE LANDHOLDINGS
AS PART OF THE LAND EXCHANGE PROCESS

The following is a summary of discussion with a Cape Fox Corporation representative (Doug Campbell) regarding the feasibility of harvesting timber in the southern portions of Revilla Island, generally adjacent to urban and rural areas. He and Eric Muench evaluated U.S. Forest Service properties in order to identify areas for inclusion in a potential land exchange.

Slide Ridge. This area probably should not be harvested for the following reasons: Visibility from the Ward Lake area, visibility from Tongass Narrows, and because it is adjacent to the Ward Lake recreation area. In addition, the topography is very steep and the soils are not conducive to logging operations.

Connell and Perseverance Lakes. Perseverance Lake is a principal destination of a major USFS trail within the Ketchikan area. Many residents as well as visitors use the trail, and it is a principle recreational resource for the community. Connell Lake is a source of water for the pulp mill. Because of the visibility of a cut in these areas and because of possible water quality impacts to the water supply of Connell Lake, logging in this area does not appear to be practical.

Talbot Lake. The areas of the lake that are north of this feature have already been logged; the area to the south could be logged but in doing so the areas of clear cut would be clearly visible from the lake, and this area is considered to be a principal recreation area for community residents. The remainder of the area is visible from the Ward Lake road as well as from Ward Lake.

Round Mountain. There is a road in this area, and a logging sale occurred here as recently as a year ago; apparently between 30 and 40 percent of marketable timber was logged from this area. It is impractical to assume the Forest Service will allow additional logging on the basis of the sustained yield principle and other environmental concerns.

Ketchikan Lakes. This is the area of water supply for the community of Ketchikan.

Ridge Behind Saxman. This area, which is heavily forested, is also very steep and visible from the Tongass Narrows.

Whitman Lake. Whitman Lake has good commercial timber. However, the area is very steep and it is the water supply for Herring Bay as well as the fish hatchery. The area of the ridge that continues along George Inlet, generally to the northeast, is heavily forested, very steep, and is very visible from George Inlet.

Upper and Lower Silvus Lake. This is an area of very steep topography as well as an area of recreational use; while areas of this region have marketable timber, the logging that would occur would be clearly visible from Silvus Lake. While the Cape Fox Corporation is interested in this area, to complete the geographic integration with lands it owns and to acquire the land where the power facility is now located, it is probably impractical for this selection to occur because of sensitivities related to the control of price and market for electricity.

Interior of South Central Revilla Island. This area is mountainous and does not contain any extensive stands of marketable timber.

However, in discussions with Cape Fox they have indicated an interest in two other areas. These are now to be discussed.

Easterly parts of Sections 27 and 34, Township 73 south, Range 91 east. This area contains a ridge that is heavily forested. The site is comprised of average value hemlock. The state boundary line splits the ridge and it would make sense to alter that boundary line to put it at a location where it aligns with current state land boundaries. This area consists of approximately 200 to 250 acres.

Area East of Coon Cove. This is an area where Forest Service land immediately adjoins Cape Fox Corporation land, and roads exist in portions of the Cape Fox properties. Within Section 34, which is comprised of Forest Service lands, there are average stands of spruce hemlock forest. In addition, there are areas of similar forested areas immediately to the north of the aforementioned parcels. Importantly, this area to the north cannot be selected by the Cape Fox Corporation, while the area to the south can. In addition, these more northerly areas are positioned in such a way that they can provide access from existing roads of the Cape Fox Corporation to U.S. Forest Service properties having marketable timber.

BGP/bjs

STATE of ALASKA
DEPARTMENT of NATURAL RESOURCES
TIMBER APPRAISAL
THORNE BAY TRACT

AS OF
JUNE 30, 1989

BY
CASCADE APPRAISAL SERVICES, INC.
P.O. BOX 423
WILSONVILLE, OREGON 97070



December 21, 1989

Mr. Joseph F. Wehrman III
Department of Natural Resources
Division of Forestry
3601 "C" Street, Suite 1003
Anchorage, Alaska 99503

Re: State of Alaska - 1989 Thorne Bay Timber Appraisal

Dear Mr. Wehrman:

At your request we have appraised the subject timber in the Thorne Bay Tract owned by the State of Alaska as to its fair market value. The date of valuation is June 30, 1989. The subject timber consists of western hemlock, sitka spruce, and associated species on lands in southeast Alaska. The timber is appraised as an unencumbered fee simple interest. The total estimated fair market value is

TWENTY-SEVEN MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS
(\$27,850,000)

This appraisal utilized information and data provided by the State of Alaska in regards to timber volume within the tract. Log sales data, logging cost, and road construction cost data are based on information from southeast Alaska timber industry sources. Information was also utilized which was provided by persons and/or firms listed in the Addenda. The information provided is believed to be reliable, but no responsibility is assumed for its accuracy.

In developing our opinion, we have made a personal inspection of the subject property. We have reviewed the operating costs, log and timber sale information, and timber marketing conditions as they pertain to the subject property market area.

503 622-3766

PARK PLACE BUILDING SUITE A • 30470 SW PARKWAY AVENUE
PO BOX 423 • WILSONVILLE OREGON 97070

Mr. Joseph F. Wehrman III
December 21, 1989
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This appraisal and its use are subject to the contingent and limiting conditions and the certification listed in the Addenda. This letter serves to introduce the appraisal report which follows. The appraisal procedures are described in that report.

Sincerely,

CASCADE APPRAISAL SERVICES, INC.

Ray E. Granvall, Jr.
Ray E. Granvall, Jr.

Larry L. Ismert
Larry L. Ismert

REG:db