

HB

212

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 212
(H) Publish Date: 4/10/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
Title Land Transfer Alaska RR and Eklutna RDU _____
Component Alaska Railroad Corporation
Sponsor Stoltze, Fairclough
Requester House Community & Regional Affairs Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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 EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation transfers the 48-acre rock quarry site in Eagle River, currently owned by the Alaska Railroad Corporation (ARRC), to Eklutna Inc. ARRC is a public corporation supported by revenues generated through its freight, passenger and real estate services. Because ARRC does not receive state funding for operations or capital improvements and is operated as an independent state-owned enterprise, this legislation would not create a fiscal impact for the State.

Prepared by: Wendy Lindskoog, Assistant Vice President, Corporate Affairs Phone 907.265.2498
Division Alaska Railroad Corporation Date/Time 3/22/07 7:10 PM
Approved by: Emil Notti, Commissioner Date 3/22/2007
Agency Commerce, Community, and Economic Development

ALASKA STATE LEGISLATURE

Vice Chair:
House Finance Committee

Chair:
House Finance Subcommittees for;
Department of Public Safety
Department of Law



Session:
Alaska State Capitol, Rm. 501
Juneau, AK 99801-1182
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600 E. Railroad Ave.
Wasilla, AK 99654

BILL STOLTZE
STATE REPRESENTATIVE
Representative_Bill_Stoltze@legis.state.ak.us

House Bill 212

Alaska Railroad Land Transfer of Eklutna Quarry to Eklutna, Inc.

House Bill 212 would authorize the Alaska Railroad Corporation (ARRC) to transfer its entire interest in the Eklutna Quarry site north of Eagle River to Eklutna, Inc., the ANCSA village corporation created for the Eagle River area containing the quarry site.

On February 1, 2007, ARRC, Eklutna Inc. and the Native Village of Eklutna signed an agreement memorializing this land transfer. The agreement allows ARRC to obtain appropriate permits and begin removing stockpiled material in the quarry with a replacement value of approximately \$2 million. All parties understood that legislative approval would be required before ARRC could carry out the land transfer.

This 48-acre property and its use as a quarry has been the subject of a long-running dispute between ARRC on the one side and the Native Village of Eklutna and the Municipality of Anchorage on the other. That dispute culminated in three Alaska Supreme Court decisions, which denied ARRC continued use of the quarry without first obtaining a municipal conditional use permit, and prevented ARRC from obtaining federal approval to use the rock on federally funded projects.

While ARRC has recently obtained local and federal approval to remove the processed material, it is unlikely to ever obtain future permits for new blasting without consent of the Village as tribal representative of the Dena'ina Native people. That consent is highly unlikely because the hills that comprise the quarry have valid historic and cultural significance to the Dena'ina. As a result, ARRC determined that it will not use the Eklutna Quarry again for mining rock and has developed a new quarry site on property it owns near Curry, which is approximately 20 miles north of Talkeetna.

Certain agreements that resolved ANCSA Native land claims long ago identified Eklutna, Inc. as the eventual recipient of title to the quarry. Under the North Anchorage Land Agreement (NALA), and the ARRC-Eklutna 3(e) Claims Settlement Agreement, the Quarry will revert to Eklutna, Inc. when it ceases to be used for certain transportation purposes.

Legislative approval of HB 212 will execute these long-standing agreements and pave the way for ARRC and Eklutna, Inc. to work on future land negotiations that are beneficial to both entities.

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP
KNIK RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK



NATIVE VILLAGE OF EKLUTNA

February 21, 2007

Rep. Bill Stoltze:
Alaska State Legislature
600 E. Railroad Avenue
Wasilla, AK 99654

RE: NVE, ARRC and EI MOU

Dear Representative Stoltze:

As Tribal Administrator of the Native Village of Eklutna, I am writing to assure you that the that the Native Village of Eklutna supports the "Memorandum of Agreement Regarding the Eklutna Quarry" that was recently signed by the Native Village Eklutna, the Alaska Railroad Corporation, and Eklutna, Inc. As we agreed when we signed the Memorandum of Agreement, ARRC will transfer the land of the Quarry to Eklutna, Inc., subject to legislative approval, and ARRC already has the consent to remove stockpiled rock from the Eklutna Quarry. We support both those goals and hope that legislation can be passed that will allow ARRC to make the transfer. If any changes are to be made, we want to be in that loop. When a bill is introduced, we want a copy for our review. Thank you for your consideration of our wishes.

Sincerely,

Daniel Alex, Tribal Administrator, The Native Village of Eklutna

**Agreement Regarding Eklutna Quarry
Between
Alaska Railroad Corporation,
Eklutna, Incorporated and
the Native Village of Eklutna**

Dated as of 1/22/2007

Recitals:

The Eklutna Hills have a documented historic cultural use by the Eklutna Natives of major significance.

The Alaska Railroad developed a rock quarry in the Eklutna Hills sometime between 1920 and 1940. The Railroad has used rock from the quarry for railroad and other projects since that time.

The Eklutna Quarry (Quarry) transferred from the Federal Government to the Alaska Railroad Corporation (ARRC) with the purchase of the Railroad by the State of Alaska in 1985.

The Quarry was also identified for eventual transfer to Eklutna, Incorporated (EI) in the North Anchorage Land Agreement (NALA), and was further addressed in the Agreement dated January 8, 1987 between the ARRC and EI resolving native land claims (the "3(e) Agreement").

Because of the cultural significance of the Quarry, the ARRC is not able to use the rock resources on Federal projects. The continued use of the Quarry has also been a matter of considerable dispute between the Native Village of Eklutna and the ARRC.

Pursuant to a Memorandum of Understanding dated December 21, 2005, as amended, (MOU) between ARRC, EI, and the Native Village of Eklutna (NVE), the parties have been working together to develop an agreement to allow the ARRC to transfer control, either by ownership or lease, of the ARRC Eklutna rock quarry site; and to provide for other concerns of the parties.

While the above referenced MOU references other properties and negotiations towards agreements regarding other properties and issues are in progress, this Agreement is specific to the Quarry and the stockpiled materials at the Quarry.

Agreement:

1. The mechanism for transfer of control and title to the Quarry is agreed to as follows: ARRC agrees to transfer title and control of the Quarry to EI as soon as practicable on such further terms and conditions as shall be mutually agreed to by the parties as provided for in the December 21, 2005 MOU. EI and NVE understand that a title transfer may require legislative action. All parties are also desirous of accomplishing the transfer under the terms of NALA.

2. The ARRC wishes to utilize the previously mined rock materials (materials) on the ground at the Quarry for ARRC purposes, including federally funded projects. EI and NVE agree that removal of these materials by the ARRC is a necessary part of the transfer process and support ARRC's effort to obtain a conditional use permit for this purpose.

3. All parties agree that removal of the materials, as soon as practicable, is a desired element of this Agreement. All parties agree to cooperate with each other to this end.

4. Traditional access through or near the Quarry site is permitted for NVE villagers or EI shareholders, for subsistence purposes and to gain access to a traditional fishing site on the western side of the Quarry. Such permissible access is subject to safety concerns if the ARRC is operating at the site. EI and NVE agree to observe ARRC safety measures and precautions while using the traditional access.

5. While industrial noise is unavoidable during ARRC operations pursuant to this Agreement, the ARRC will take measures to minimize noise and the timing of noise to the greatest extent possible.

6. Explosives can be used in conjunction with removal of unsafe loose hanging rock or shaping the face of the Quarry rock wall for safety purposes, on twenty-four (24) hours' prior notice to EI and NVE, unless otherwise provided in the conditional use permit.

7. NVE and EI agree that they support any ARRC effort to obtain a National Historic Preservation Act, Section 106 resolution that allows the use of such materials on federally funded railroad projects.

8. Upon final removal of materials, the ARRC will remove the tracks and crossties and any loose or unstable materials in and around the Quarry that could present a safety hazard.

9. EI and NVE are not requesting or demanding any remedial re-vegetation or importation of remedial materials to the Quarry site as part of this Agreement.

Eklutna, Inc.

By W. Price

Its CEO

Dated 1/30/07

Native Village of Eklutna

By Donald Alex

Its Tribal Administrator

Dated Feb 1, 2007

Alaska Railroad Corporation

By FK Gabel

Its Pres/CEO

Dated 1/23/07



Adopted: 01/22/07

Resolution No. 2007-07

Relating to the Approval Transfer
of the Eklutna Rock Quarry to
Eklutna, Inc.

WHEREAS, the Alaska Railroad developed a rock quarry in the Eklutna Hills sometime between 1920 and 1940 and used rock from the quarry for railroad and other projects; and

WHEREAS, the Eklutna Rock Quarry (Quarry) was transferred by license from the Federal Government to the Alaska Railroad Corporation (ARRC) with the purchase of the Alaska Railroad by the State of Alaska in 1985; and

WHEREAS, the Quarry was among the rail properties claimed by Eklutna, Inc. under the Alaska Native Claims Settlement Act (ANCSA) and was the subject of a settlement agreement regarding ANCSA claims between ARRC and Eklutna, Inc. dated January 8, 1987; and

WHEREAS, under said settlement agreement, ARRC would be entitled to continue mining the Quarry until the rock was removed to track subgrade level or when the property was devoted principally to a use other than mining of rock, at which point it would then revert to Eklutna, Inc.; and

WHEREAS, ARRC continued work in the Quarry from time to time following transfer from the Federal Government, but use of the Quarry has also been a matter of considerable dispute with the Native Village of Eklutna (Village) due to the documented significant historic cultural use of the Eklutna Hills by the Eklutna Natives; and

WHEREAS, the Native Village of Eklutna has taken several legal actions against ARRC and others to protect the historical and physical integrity of the Eklutna Hills, culminating in a 2003 Alaska Supreme Court ruling that ARRC must attempt to comply with local planning and zoning ordinances and seek a conditional use permit before conducting any further activity in the Quarry; and

WHEREAS, there is over one million dollars' worth of inventory stockpiled in the Quarry, consisting of rip rap, ballast and fines, which cannot be removed for use without a municipal conditional use permit; and

WHEREAS, because of the historic cultural significance of the Quarry, a conditional use permit for further rock extraction is difficult to obtain and, in addition, without completing a successful consultation with the Village under the

National Historical Preservation Act, ARRC is not able to use any of the rock resources on Federal projects; and

WHEREAS, ARRC management has located and is developing an alternative rock quarry at Curry and, as a result, further use of the Eklutna Quarry as a source is not urgent and compelling; and

WHEREAS, ARRC management believes that final resolution of the Quarry controversy will allow more efficient use of corporate resources, foster better relations with the Village, and encourage good faith negotiations to proceed with Eklutna, Inc. regarding exchange of other properties in a manner that will serve the parties' respective development and operational needs; and

WHEREAS, pursuant to a Memorandum of Understanding dated December 21, 2005, as amended, among ARRC, Eklutna, Inc. and the Village, the parties have been working together to develop an agreement to allow the ARRC to transfer control, either by ownership or lease, of the Quarry site; and to provide for other concerns of the parties; and

WHEREAS, reaching agreement with Eklutna, Inc. and the Village for transfer of the Quarry will enable ARRC to obtain a conditional use permit for removal of the existing rock inventory stockpiled in the Quarry and also to receive Federal Transit Administration approval for use of said rock inventory on federally funded projects; and

WHEREAS, a proposed Agreement Regarding Eklutna Quarry, as attached to the Resolution, has been negotiated and is recommended by ARRC management for Board approval.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors has reviewed the history of railroad use of the Eklutna Rock Quarry and the surrounding controversy and finds that it is in the best interests of the corporation to cease effort to conduct further quarry operations and to transfer complete ownership of the Eklutna Quarry to Eklutna, Inc. as set forth in the attached Agreement and consistent with the provisions of the January 8, 1987 settlement agreement and any other applicable agreements, laws or regulations; and

FURTHER RESOLVED, the President and CEO or his designee is authorized to negotiate such other conditions of transfer and take such other steps as he deems are appropriate and in the best interests of the corporation, including but not limited to seeking legislative approval of the transfer if required by law.

**MUNICIPALITY OF ANCHORAGE
PLANNING AND ZONING COMMISSION RESOLUTION NO. 2006-066**

A RESOLUTION APPROVING A FINAL CONDITIONAL USE TO ALLOW NATURAL RESOURCE EXTRACTION IN THE T (TRANSITION) ZONE DISTRICT FOR T16N, R1W, SEC. 24, PARCEL B, EKLUTNA ROCK QUARRY SUBDIVISION.

(Case 2006-151; Tax I.D. No. 052-061-04)

WHEREAS, a request has been received from Alaska Railroad Corporation (ARRC) to allow natural resource extraction for Parcel B, generally located northwest of the Village of Eklutna, and

Whereas, the actual rock and gravel quarrying operations have been completed and the applicant proposes to clean up and stabilize the quarry before deeding the property to Eklutna, and requires a conditional use for this purpose, and

WHEREAS, notices were published, posted and mailed and a public hearing was held December 4, 2006.

NOW, THEREFORE, BE IT RESOLVED, by the Municipal Planning and Zoning Commission that:

- A. The Commission makes the following findings of fact:
1. Quarrying operations have been completed. The ARRC conditional use for natural resource extraction is actually for the purpose of removing stockpiled rock and gravel material, general clean-up of the site, and rock face stabilization to return the area to a safe condition before turning the property over to Eklutna.
 2. Eklutna Inc. and the Village of Eklutna support the conditional use.
- B. The Commission APPROVES a final conditional use permit to allow natural resource extraction in the T (Transition) Zone District for T16N, R1W, SEC. 24, Parcel B, Eklutna Rock Quarry Subdivision, subject to the following conditions.
1. A Notice of Zoning Action, including a copy of the approved Commission Resolution for this case, shall be filed with the State Recorder's Office and proof of such shall be submitted to the Planning Department.
 2. The conditional use is intended to allow removal of approximately 145,000 tons of stockpiled rip-rap, ballast, and fines from Parcel B.
 3. All construction shall substantially conform to the petitioner's narrative and submitted plans on file at the Planning Department, except as modified by other conditions herein.

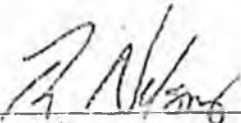
4. Prior to the issuance of any land use or excavation permit, the following shall be accomplished:
 - a. Review and approval of a final Air Quality Plan by the Department of Health and Social Services, Air Quality Office; the plan shall include any dust mitigation measures on public roadways and on the roadways within the site; a copy of the approved plan shall be submitted to the Planning Department.
 - b. Resolve the need for a drainage plan, sedimentation and erosion control plan, and a plan for the treatment of stormwater runoff. Plans shall be submitted to Municipal Project Management and Engineering Section for review and approval. Include copies of any required AK-DNR or AK-DEC applications, permits or plans.
 - c. Resolve the need for a restoration plan with Eklutna Inc. and the Planning Department. If the development of the site does not begin within a year, the site will be sodded or hydro-seeded to maintain runoff and air quality, or shall be restored via an alternative method approved by DHHS, DNR, DEC and PM&E.
 - d. A noise control permit application shall be submitted for review, to be approved by DHHS, with a copy to be provided to the Planning Department. Blasting is to be limited to restoring the rock faces to a safe and stable condition and shall be limited to the hours of 8:00 am to 4:00 pm, Monday through Friday. If the Applicant proposes to store explosives on site, a copy of the approved magazine application shall be submitted to the Planning Department. All equipment used in these operations shall comply with Chapter 15.70 Noise Control of the Anchorage Municipal Code.
5. Operational hours for removal of previously quarried materials shall be limited to loading and train operations from 6:00 a.m. to 7:00 p.m., Monday through Saturday. Only emergency operations are permitted on Sundays and holidays, or outside of the above hours. Removal of quarried material by truck will be allowed only by amendment to this conditional use.
6. The operation of the site shall include the following:
 - a. On-site personnel shall be formally trained on all aspects of the excavation operation.
 - b. The telephone number of the contractor selected to perform the work, as well as a contact telephone number for the owners, shall be placed on site. The sign shall be of sufficient size to be visible from the adjacent roadways and the view of the sign shall be unobstructed by equipment, machinery, vegetation and the like.
 - c. On-site personnel shall have total authority to direct road clean-up and maintenance operations as needed. On-site personnel shall have the

authority to call a sweeper, water truck and motor grader, as necessary, to respond to specific site conditions or complaints.

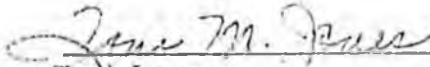
- d. Circulation roads within the excavation area shall be maintained to minimize materials carried onto the adjacent properties.
 - e. The owners shall identify contact people to respond to public inquiries. The numbers of the contact people shall be provided to the Chair of the Chugiak Community Council, representatives of the Village of Eklutna and Eklutna Inc., and to the Manager, Land Use Enforcement. The Community Council chairman and Land Use Enforcement shall be notified of any change in the contact personnel or business telephone number(s).
7. This approval is valid until October 31, 2011. Prior to that date the petitioner may apply for a time extension on the same record supplemented as deemed appropriate by the Department. The time extension would be granted after a non-public hearing if the Commission finds the operation has not violated the conditions of approval nor has it created environmental problems either on-site or off-site.
 8. Beginning December 1, 2007, and every December 1 thereafter until the property is transferred to Eklutna, Inc., the Applicant shall submit to the Planning Department, an annual monitoring report containing the following information:
 - a. A log of any complaints reported in the previous year and how the complaint was resolved.
 - b. An update on the amount of material removed during the previous year, and an update, if necessary, of any change to the proposed completion date.
 - c. A close out inspection of the property with representatives of the Planning Department and Eklutna, Inc. at the completion of operations.
 9. The Alaska Railroad Corporation shall seek a jurisdictional determination from the Corps of Engineers, and seek any necessary Clean Water Act authorizations from the COE and EPA. In addition ARRC shall limit adverse impact to water quality and habitat functions, and plan the work to avoid and minimize activities in the intertidal waters, wetlands, and streams, and to provide a non-disturbance buffer for such areas to the maximum extent practical. Copies of permits and plans shall be provided to the Planning Department.

PASSED AND APPROVED by the Municipal Planning and Zoning Commission
on the 4th day of December, 2006.

ADOPTED by the Anchorage Municipal Planning and Zoning Commission this 29th day of January 2007. If the secretary received a written request and intent to appeal, this written decision/resolution of the Planning and Zoning Commission is final and any party may appeal it within twenty (20) days to the Board of Adjustment pursuant to Anchorage Municipal Code 21.30.030 and Anchorage Municipal Code of Regulations 21.10.304. If the secretary did not receive a written request and intent to appeal within seven (7) calendar days of the date the decision was made on the record, December 4, 2006, then this written decision is final and not appealable to any other administrative body. Final administrative decisions with no further administrative remedy may be appealed to the Superior Court within thirty (30) days.



Tom Nelson
Secretary



Toni Jones
Chair

(Case Number 06-151)
(Parcel ID 052-061-04)

3 (e)

AGREEMENT

BETWEEN

ARRC-EI

JAN 1987

AGREEMENT OF ALASKA RAILROAD CORPORATION
AND EKLUTNA, INC.
SETTLING CLAIMS OF VALID EXISTING RIGHTS
TO RAIL PROPERTIES OF THE ALASKA RAILROAD AND PROVIDING
FOR CONVEYANCES PURSUANT TO THE ALASKA NATIVE CLAIMS
SETTLEMENT ACT AND THE ALASKA RAILROAD TRANSFER
ACT OF 1982

3e agreement

January 8, 1987

16.1 Conveyance of Rock Quarry Lands Upon Cessation of Use. The Parties acknowledge that, pursuant to paragraph I.B(3)(e) of the North Anchorage Land Agreement of March 15, 1982, Among Eklutna, Inc., the Municipality of Anchorage, and the State of Alaska, the State of Alaska or its assignee is required to convey to Eklutna, Inc. certain lands including Parcel B of the Eklutna Rock Quarry, as described in subparagraph 1.5.2, above, and Exhibit No. 3B hereto, if the State of Alaska or its assignee ceases to use such lands "in connection with furnishing mass or bulk transportation." To further implement the requirements of paragraph I.B(3)(e) of the North Anchorage Land Agreement, the Parties agree as follows:

(a) The Alaska Railroad Corporation or its successor will notify Eklutna, Inc., the Governor of Alaska, the Legislature of Alaska, and the Municipality of Anchorage of the cessation of use of Parcel B of the Eklutna Rock Quarry in connection with furnishing mass or bulk transportation when such cessation occurs.

(b) Within 90 days after receipt of notice of cessation of use pursuant to the foregoing clause (a), Eklutna, Inc. will notify the Alaska Railroad Corporation or its successor whether Eklutna, Inc. desires to receive a conveyance of Parcel B of the Eklutna Rock Quarry.

(c) As soon as feasible after receipt of a request for conveyance of Parcel B of the Eklutna Rock Quarry from Eklutna,

Inc., pursuant to the foregoing clause (b), but in no event sooner than January 5, 1995, and subject to legislative approval if necessary at the time of conveyance, the Alaska Railroad Corporation or its successor will convey the lands within Parcel B in accordance with the requirements of paragraph 1.B(3)(e) of the North Anchorage Land Agreement.

(d) The Parties agree that cessation of use of Parcel B of the Eklutna Rock Quarry in connection with furnishing mass or bulk transportation will occur only when (i) the rock structure occupying the parcel has been exhausted and no quarry rock that can be removed remains above the subgrade of the track bed presently situated on the parcel; or (ii) the parcel is devoted principally to a use other than the mining of rock. During the period the Alaska Railroad Corporation is using Parcel B of the Eklutna Rock Quarry for mining purposes, it may also use Parcel B for other incidental railroad support functions, including storage of railroad equipment. The Alaska Railroad Corporation shall not quarry rock situated lower than the existing subgrade of the track bed, and rock below such grade shall not be considered in determining whether the rock structure has been exhausted.

16.2 Conveyance of Easements by Eklutna, Inc. Within three days after its receipt of the conveyance of Parcel A of the Eklutna Rock Quarry, described in subparagraph 1.5.1, above, Eklutna, Inc. shall deliver to the Alaska Railroad Corporation

EXCERPT

§ 1425, Alaska National Interest Lands
Conservation Act (ANILCA)

Public Law 96-487, Dec. 2, 1980, 94 Stat.
2371

EKLUTNA VILLAGE CORPORATION LANDS

Sec. 1425. Eklutna-State Agreements and Negotiations.-(a) The purpose of this section is to provide for the settlement of certain claims and litigation, and in so doing to consolidate ownership among the United States, the State of Alaska, the Municipality of Anchorage, Eklutna, Incorporated, and Cook Inlet Region, Incorporated, thereby facilitating land management, a fair implementation of the Alaska Native Claims Settlement Act, // 43 USC 1601 // the protection of State public park lands and resources, and appropriate development patterns in and about Anchorage, Alaska.

(b) The Secretary shall accept relinquishments and make conveyances of selections in accordance with the specific terms, conditions, covenants, reservations, and other restrictions set forth in any agreement respecting the lands described in subparagraph (1) below, executed by the State of Alaska, by the Municipality of Anchorage, and by Eklutna, Incorporated, and hereafter submitted to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs and filed with the Secretary, the execution and implementation of which agreement are hereby authorized as to those duties and obligations of the United States, the State of Alaska, the Municipality of Anchorage, and Eklutna, Incorporated, which arise under Federal law: Provided, however, That any conveyance under such agreement of lands to Eklutna, Incorporated, shall be only of the surface estate, with a subsequent conveyance to Cook Inlet Region, Incorporated, of the subsurface estate except as otherwise provided in subsection (b). In aid thereof:

(1) The following lands located within the townships described in sections 11(a) (1) and (2) of the Alaska Native Claims Settlement Act // 43 USC 1610. // with respect to the Native Village of Eklutna are withdrawn, subject to valid existing rights, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and including Public Law 94--204, // 43 USC 1604, 1611 // except section 12 thereof, and from selection under the Alaska Statehood Act, // 48 USC prec. 21. // or any statutes authorizing selections by the State of Alaska: (A) lands withdrawn or reserved for national defense purposes; and (B) lands determined by the Secretary under section 3(e)(1) of the Alaska Native Claims Settlement Act // 43 USC 1602. // not to be public lands for purposes of the Alaska Native Claims Settlement Act. This withdrawal and the agreement shall not affect the administrative jurisdiction of the Department of Defense or any other holding agency over the lands withdrawn, but all forms of disposition other than in accordance with this section and the agreement are prohibited: Provided, That the foregoing to the contrary notwithstanding, lands placed prior to July 15, 1979, in the pool contemplated by part I.C.(2) of the document entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area as clarified 8--13--76", but only to the extent authorized by that document under section 12 of Public Law 94--204 // 43 USC 1611 // as amended heretofore and in accordance with the procedures and with the consents and approvals required by laws, regulations and Executive orders in effect on such date of placement, may be selected by Cook Inlet

Region, Incorporated, free of the effects of the agreement pursuant to this section; if the lands placed in that pool are not thereafter selected in accordance with part I.C.(2) of that document any agreement pursuant to this section shall govern: Provided further, That neither the revocation of certain withdrawals of lands made by subsection (b) effective upon the filing of the agreement, nor the expiration of the withdrawal made by subsection (b) in the event no agreement is reached, shall be deemed an action causing those lands affected thereby to be subject to disposition under such section 12. The withdrawal made by this subsection (b) will expire March 15, 1982, if an executed agreement described in this section is not filed by the parties thereto on or before that date with the Secretary in the Alaska State Office of the Bureau of Land Management; but if an agreement is so executed, rights under the agreement shall vest as of the effective date of this Act, and this withdrawal shall become permanent, except as otherwise provided in the agreement. The agreement shall not impose upon the United States obligations or outlays of funds, except as reasonable in the ordinary course of business, or impose any procedural requirements or require the reassignment of personnel; and any of its provisions to the extent to the contrary shall be void as against the Secretary.

(2) Upon termination or revocation of any national defense withdrawal or reservation or of any other withdrawal in effect December 18, 1971, respecting lands described in subsection (b)(1), or upon declaration of their excess status in whole or in part, whichever first occurs, but not before, and from time to time, the lands excessed or as to which the withdrawal is terminated or revoked shall be conveyed to Eklutna, Incorporated, as to the surface estate and Cook Inlet Region, Incorporated as to the subsurface estate, or to the State of Alaska (for reconveyance by the State of Alaska in whole or in part to the Municipality of Anchorage), as may be provided in the agreement described in this subsection: Provided, however, That such conveyance shall not be made of lands in the pool established under part I.C.(2) of the document entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area as clarified 8--31--76" under section 12 of Public Law 94--204 // 43 USC 1611 // as amended heretofore, unless and until removed from that pool in accordance with such part I.C.(2). This section and the agreement shall preempt the procedures of the Federal Property Act (40 U.S.C. 471, et seq., and of 41 CFR 101--47.000 et seq.), (other than as to fixtures and personalty) and the preference right for State selection of section 6(g) of the Alaska Statehood Act. The conveyances to Eklutna, Incorporated, of lands withdrawn by this subsection called for by the agreement shall not be subject to section 1613(c) of title 43, United States Code. This section shall revoke PLO 5187 as it pertains to any lands withdrawn by this subsection and any power project withdrawals other than Power Project 350 as to such lands, effective upon the date of filing of the agreement. Lands conveyed to the State of Alaska, the surface estate of lands conveyed to Eklutna, Incorporated, and the subsurface estate conveyed to Cook Inlet Region, Incorporated, pursuant to this section and the agreement, shall be charged against their respective entitlements under sections 12 and 14 of the Settlement Act // 43 USC 1611, 1613, // and be considered conveyed and received pursuant to the Settlement Act, and section 6 of the Alaska Statehood Act // 43 USC 1601 // or section 906(c) of this Act.

(c) If an agreement to the following effect executed by the State of Alaska and Eklutna, Incorporated, is hereafter filed with the Secretary in the Alaska State Office of the Bureau of Land Management on or before April 2, 1982, the public lands as defined in the Settlement Act, // 43 USC 1601 // located within township 17 north, range 3 east, Seward Meridian, Alaska, shall be deemed to have been withdrawn pursuant to section 11(a) of the Settlement Act // 43 USC 1610. // as of December 18, 1971, and, selections heretofore made by Eklutna, Incorporated, with respect to lands therein shall be processed by the Secretary as though said selections had been made within a township heretofore validly withdrawn pursuant to section 11(a). If no such agreement is filed, this subsection shall not be held to affect the validity or invalidity of such selections. Whether or not any agreement is filed, this subsection shall not be held to affect the validity or invalidity of any third party interest heretofore created by the State of Alaska.

(d) Notwithstanding other provisions of this Act, the State and Eklutna, Incorporated, are each authorized to relinquish, in whole or in part, pursuant to either or both of the agreements contemplated by subsections (b) and (c), any one or more land selections affecting lands to be conveyed under the agreement to the other whether or not such selections have been previously approved or tentatively approved. The lands affected by the State selections so relinquished shall be deemed public lands as of December 18, 1971, as that term is defined in the Settlement Act.

(e) Eklutna, Incorporated, and the Secretary shall stipulate to dismiss cause number A-78--24 Civil in the United States District Court for the District of Alaska, when the Secretary tenders to Eklutna, Incorporated, a conveyance of all lands in township 17 north, range 3 east, Seward Meridian, which are to be conveyed to Eklutna, Incorporated, under the agreement referred to in subsection (c).

(f) Eklutna, Incorporated, and the Secretary shall stipulate to dismiss cause number A-78--192 Civil in the United States District Court for the District of Alaska except as to the lands affected thereby which under the agreement referred to in subsection (b) are to remain in litigation in that cause, if any, when the Secretary tenders to Eklutna, Incorporated, a conveyance of all those lands which under the agreement the State agrees are to be conveyed to Eklutna, Incorporated, from among those selected at one time by the State under the authority of the Mental Health Enabling Act of 1956 (70 Stat. 709).

(g) The Secretary shall convey to Eklutna, Incorporated, its entitlement without regard to the acreage or interests which may ultimately be conveyed to Eklutna, Incorporated, under the agreement from within lands withdrawn by subsection (b). The agreement shall, however, require Eklutna, Incorporated, to subject to section 907 of this Act one or more compact tracts of lands of at least equal acreage to that ultimately to be conveyed to Eklutna, Incorporated, under the agreement from those withdrawn by subsection (b). The agreement shall require Eklutna, Incorporated, to reconvey to the State lands from those subject to section 907 in an amount provided by the agreement, upon the occasion of each receipt of lands by Eklutna, Incorporated, from among those withdrawn by subsection (b). Lands received by the State in such a reconveyance from

Eklutna, Incorporated, shall be charged, to the extent of the acreage received by Eklutna, Incorporated, in the relevant conveyance to it, against the State's entitlement under section 6 of the Alaska Statehood Act, // 48 USC prec. 21. // or section 906(c) of this Act, as the State may elect. If thereby the State receives more than its entitlements under the Act elected, it shall reconvey to the United States a compact tract of unencumbered State lands of equal acreage contiguous to lands belonging to the United States. Eklutna, Incorporated, shall also subject to section 907 of this Act, once an agreement under subsection (c) exists and thereafter from time to time, one or more compact tracts which equals the acreage amount by which Eklutna, Incorporated's entitlement would be over satisfied considering the acreage already conveyed to Eklutna, Incorporated; to the extent such a risk of over entitlement abates the lands may be withdrawn from the Land Bank.

(h) In the event that Eklutna, Incorporated, receives a conveyance from the United States of the surface estate in lands withdrawn by subsection (b) pursuant to the agreement authorized in that subsection, and if a reconveyance from Eklutna, Incorporated, of the surface estate in land to the State from those subject to section 907 of this Act is thereby occasioned, a conveyance of the subsurface estate in the lands conveyed to Eklutna, Incorporated, shall be withheld until the Secretary ascertains to whom the subsurface estate is to be conveyed under this subsection. The entity owning the subsurface estate in those reconveyed lands shall retain that interest, unless it in the agreement or separately consents to convey the same to the State. In the event such entity so consents to convey the subsurface to the State, the Secretary shall convey the subsurface estate in the lands conveyed to Eklutna, Incorporated, to that entity; if such entity does not so consent, the subsurface estate in the lands conveyed to Eklutna, Incorporated, shall be conveyed to the State.

EKLUTNA QUARRY Q&A

Proposal Title:

Railroad Transfers Eklutna Quarry to Eklutna, Inc.

Proposal Summary:

ARRC proposes to transfer its entire interest in the Eklutna Quarry site north of Eagle River to Eklutna, Inc., and seeks legislative approval of the conveyance. This property and its use as a quarry has been the subject of a long-running dispute between ARRC on one side and the Native Village of Eklutna and the Municipality of Anchorage on the other. That dispute culminated in three Alaska Supreme Court decisions, which denied ARRC continued use of the quarry without first obtaining a municipal conditional use permit. While ARRC has recently obtained a permit to remove processed materials stockpiled in the quarry, it is unlikely to ever obtain a permit for new blasting without consent of the Village as tribal representative of the Dena'ina Native people. That consent is highly unlikely because the hills that comprise the quarry have valid historic and cultural significance to the Dena'ina.

Eklutna, Inc. is the ANCSA village corporation created for this area and is entitled to the Quarry property in the future under certain agreements that resolved ANCSA Native land claims. Under the North Anchorage Land Agreement (NALA), and the ARRC-Eklutna 3(e) Claims Settlement Agreement (the 3(e) Agreement), the Quarry will revert to Eklutna, Inc. when it ceases to be used for certain transportation purposes.

ARRC has determined that it will not use the Quarry again for mining rock, which potentially triggers transfer to Eklutna, Inc. An Agreement has been reached between the ARRC, Eklutna, Inc. and the Village that commits ARRC to transferring the Quarry to Eklutna, Inc., subject to legislative approval. The agreement also commits the Village and Eklutna, Inc. to support ARRC's application for a conditional use permit to allow the ARRC to remove previously stockpiled materials at the ARRC Quarry and to support its efforts to obtain federal approval for using the rock on federally funded projects.

Because of the application of NALA to this location, the transfer to Eklutna, Inc. will operate as an ANCSA conveyance under Section 1425 of the Alaska National Interest Lands Conservation Act (ANILCA). Under ANCSA and NALA, CIRI will receive the subsurface rights with Eklutna receiving the surface rights. Any transfer by ARRC of its entire interest in land is subject to legislative approval under the Alaska Railroad Corporation Act. To this end, ARRC is seeking and Eklutna, Inc. and the Village will support appropriate legislation this session.

Attachments:

- Agreement between ARRC, Eklutna, Inc., and Native Village of Eklutna

- Railroad Board of Director Resolution No. 2007-07
- Map/aerial photo of area
- ANILCA Section 1425
- NALA excerpt
- AS 42.40.285
- 3(e) Agreement excerpt
- Conditional Use Permit

Questions & Answers:

What is the history behind the Eklutna Quarry?

The Eklutna Hills, just outside the Native Village of Eklutna, are a culturally significant part of the heritage of the Dena'ina Native people. In addition, the larger area was administered by the Bureau of Indian Affairs as a Native school reserve from 1935 until 1946. During World War II, the BIA authorized the Alaska Railroad to develop a rock quarry on one of the knobs of granite that comprise the Eklutna Hills. That location still exists as the Eklutna Quarry. BIA abandoned the school complex in 1946 and decided to surplus the Native school reserve lands beginning in 1952. BIA transferred the quarry and other nearby lands to the federal Alaska Railroad in 1955. In keeping with the attitudes of the times, the government does not appear to have involved the Eklutna villagers in any of the transactions or decisions about how to handle this land. Usage as a quarry was fairly steady albeit light until the early 1980s, the heaviest use being for earthquake recovery efforts in 1964.

After the passage of ANCSA in 1971, Eklutna, Inc. (as the village corporation established for this area) asserted selection rights for a number of Alaska Railroad lands. Those selections were still in dispute when the State bought the Alaska Railroad in 1985. In 1987 ARRC negotiated a settlement of ANCSA land claims with Eklutna, Inc. known as the "3(e) Agreement" under which ARRC received a limited title to the Quarry and the right to mine the rock down, essentially, to ground level.

The Railroad's somewhat sporadic use of the Quarry intensified in the early 1990s and was opposed by the Native Village of Eklutna, which is a tribal council and a separate legal entity from Eklutna, Inc. This led to three separate lawsuits and three separate Alaska Supreme Court decisions. The cases established that ARRC had to obtain a conditional use permit in order to use the Quarry. The Village's opposition, based on the cultural significance of the Eklutna Hills, made it highly unlikely that ARRC would be able to get a permit. In addition, this opposition prevented ARRC from using rock from the Quarry on federally funded projects because federal law requires certain accommodations for culturally significant properties.

In 2001, the last season of blasting at the Quarry, ARRC produced over \$1 million's worth of railroad ballast and rip rap. Due to the ongoing lawsuits and the federal funding restrictions, most of this inventory remains stockpiled at the Quarry. A conditional use permit is required even to remove this already processed rock, and satisfaction of the Village's concerns is necessary before this rock can be used on federally funded projects.

After years of litigation, the ARRC, Eklutna, Inc. and the Native Village of Eklutna have settled their differences about the Quarry. An agreement was signed effective January 22, 2007 under which ARRC will transfer the Quarry to Eklutna, Inc., subject to legislative approval and other due diligence being agreed and performed (such as an environmental site assessment). A conditional use permit to remove the stockpiled rock is in hand. Based on this most recent agreement, the federal funding agency has removed its prohibition on use. Legislative approval of the transfer of the Quarry to Eklutna, Inc will bring this contentious chapter to a close and create a foundation for a future land exchange at other locations.

What is the North Anchorage Land Agreement and how does it affect the current situation?

The North Anchorage Land Agreement (NALA) was executed by the State of Alaska, the Municipality of Anchorage and Eklutna, Inc. in March 1982 to resolve numerous long-standing land ownership and management issues in the area north of downtown Anchorage and south of the City of Palmer. Native land selections under ANCSA in this area overlapped with state selections and municipal entitlements. Section 1425 of ANILCA authorized local parties to enter an agreement like NALA to resolve their issues directly instead of through BLM adjudications and individual litigation. Section 1425 requires that conveyances made under agreements like NALA be treated as conveyances under ANCSA.

For the Quarry location, NALA has two direct effects. One is the general principle of designating the lands around Eklutna Village as available for selection by Eklutna to the extent it was not actually used by a federal agency in 1971. NALA expressly recognized that the State was negotiating for purchase of the Alaska Railroad and the parties agreed such a transfer would not come within NALA's control. However, they went on to agree that if the State or its assignee (for owning the railroad, i.e. ARRC) ceased to use the lands "in connection with furnishing mass or bulk transportation", the Quarry land would be conveyed to Eklutna.

What is the ARRC-Eklutna "3(e) Agreement" and how does it affect the current situation?

ARRC inherited a number of ANSCA Native land selection disputes when the federal railroad was transferred in January 1985. One of the first negotiations was between ARRC and Eklutna, Inc. and it culminated in an agreement dated January 8, 1987. As to the Eklutna Quarry site, the agreement provided that it

was further implementing the previously agreed requirements of NALA. Specifically, the 3(e) Agreement stated that "cessation of use of the Quarry in connection with furnishing mass or bulk transportation will occur only when (i) the rock structure occupying the parcel has been exhausted and no quarry rock that can be removed remains above the of the track bed presently situated on the parcel, or (ii) the parcel is devoted principally to a use other than the mining of rock."

What is the proposal?

The proposal is to obtain legislative approval and transfer ARRC's entire interest in the 48-acre Eklutna Quarry parcel to Eklutna, Inc. under NALA and Section 1425 of ANILCA.

Why is it needed?

ARRC has determined that the corporation will no longer use the Quarry for mining rock. This is because the likelihood of getting a permit to conduct future blasting is slim and the likelihood of being allowed to use the rock on federal projects, which are the vast majority of ARRC's capital improvements, is even slimmer given the cultural significance of the knob. The cost of seeking these approvals is considerable, both in terms of direct expense and public and community bad will. Given that decision, the ultimate disposition of the land to Eklutna, Inc. under the applicable settlement agreements need not and should not be delayed. Under ARRC's governing statute, AS 42.40.285(1), legislative approval is required before the corporation can convey its entire interest in land. However limited or conditioned ARRC's interest in the Quarry might be, it is still an interest in land and therefore legislative approval is necessary.

Why is it needed now?

There is an estimated 145,000 tons of stockpiled material on the Quarry floor that ARRC needs for the upcoming spring break up season and summer construction projects. These materials cost ARRC over \$1 million to produce six years ago. Without assured access to the stockpile, ARRC would have had to spend at least \$2 million to purchase the same quantity of materials for use this year. The good faith cooperation of Eklutna, Inc. and the Village, which was based on the ARRC's commitment to seek authority for this transfer, has enabled ARRC to obtain the necessary permit and federal approvals. It's now ARRC's turn to follow through on its commitment and pursue this legislation, satisfying any legislative concerns that may be expressed.

Who owns the land value of the quarry?

ARRC currently holds title to the quarry under an interim conveyance issued by the U.S. on November 23, 2004, but the conveyance is expressly subject to the provisions of ARRC and Eklutna's 3(e) Agreement. Under NALA and the 3(e) Agreement, the residual land value of the quarry belongs to Eklutna, Inc. The ARRC can only extract the rock resource down to ground level under those agreements, with the "reversionary interest" belonging to Eklutna.

What is the resource value of the quarry?

The ARRC is unable to extract the resource because of its inability to obtain a conditional use permit from the Municipality of Anchorage for further production. Any third party owning the quarry would face the same requirement. In addition, if more material could be produced, the National Historic Preservation Act (NHPA) would prohibit its use on federal projects, greatly limiting use, without a successful NHPA consultation over the historic cultural aspect with the Village and Alaska SHPO. While a private owner would not face the NHPA issue, it would still have similar difficulties getting a municipal permit. As a result of all this, to the ARRC, there is little value in the raw resource (the remaining undisturbed knob). ARRC estimates that about 5 million tons of rock remain in place at the Eklutna Quarry.

Describe the future land exchange needed between the Alaska Railroad and Eklutna Inc.? Is DOT involved? What about the Birchwood Airport Expansion?

The ARRC and Eklutna, Inc. are considering a future land exchange that would benefit both parties' commercial and operational interests. The ARRC would give up its rights to "Parcel C", an area of about 400 acres adjacent to the North Eagle River interchange. Eklutna would incorporate this into its Powder Ridge development. Any conveyance of this land would, of course, also require legislative approval and we would expect to present a bill on this subject in the 2008 session.

ARRC would receive an equivalent value of land at Birchwood. ARRC intends this land for industrial development. It is zoned industrial and is easily accessible to the railroad.

Alaska DOTPF may be involved in the land exchange. DOTPF wants certain ARRC and Eklutna lands for expansion of the Birchwood Airport. DOTPF has been attending the discussions about a land exchange, but it is not clear that their timing and funding is consistent with the other parties' desired timeline. They will, however, continue to be invited to the discussions in an effort to incorporate their needs.

Isn't the quarry ARRC's leverage for the future land exchange? If yes...why does the transfer need to occur now rather than at the time the larger deal is finalized?

First and foremost, the Eklutna Quarry exchange stands out as an important symbol of good faith. It demonstrates the potential of a new business relationship, one whose strength issues from cooperation and trust as opposed to the exercise of leverage and maneuver.

Second, ARRC has inventory in the Quarry that can be particularly useful in early 2007. The ARRC would like to liquidate this inventory while preparing for

production of similar materials from a new source at Curry, 20 miles north of Talkeetna. Curry production is not expected to come on line until late 2007.

Does the Railroad need the Quarry any longer? Why not?

No. The Railroad has no "long-term" right to the land under NALA and the 3(e) Agreement; it only has the right to extract rock down to ground level. However, any realistic possibilities for further resource extraction are severely limited by the Village's opposition to further destruction of a culturally significant site. The only remaining value to ARRC is in the produced inventory, and as a demonstration of good faith to overcome the harsh legacy of years of litigation and in order to create favorable conditions for a reasonable negotiation on the exchange of lands at Birchwood and Eagle River.

What does the Railroad get out of this agreement?

Immediate use of the stockpiled materials with the associated cost avoidance, and the building of good will with its neighbors, particularly the Village and Eklutna, Inc.

What does Eklutna get out of this agreement?

Expressly, it gets land and the remaining resource intact and well in advance of when it would otherwise. This is important to the many Village residents who are also Eklutna shareholders. CIRI similarly gets the subsurface rights in advance of when it would have gotten them otherwise.

Are there limitations on what Eklutna can do with the land once it is transferred?

No, nor would there be any if it were transferred in the future after ARRC exhausted the above ground level resource. The granite resource probably extends far below ground level, and the regional corporation, CIRI, will own the subsurface rights in keeping with the usual ANCSA ownership scenario.

Are community leaders on board with this proposal?

ARRC has begun concerted public outreach with local government and community leaders, briefings of area legislators, and media briefings, and will continue this effort. We have not had any negative feedback to date.

Is there opposition to this proposal that we are aware of?

No.

Are there adjacent land owners or other land interests that should be considered? (Wells Fargo, CIRI etc.)

Eklutna, Inc. and Wells Fargo own most of the adjacent property. There are also individual land owners who are Village residents. CIRI owns the subsurface rights to the other Eklutna land in the area.

Wells Fargo's situation is somewhat unique. By historical quirk, it owns about half of the larger knob of the two Eklutna Hills, which is the same knob in which the ARRC's Quarry is located. Its predecessor NBA acquired this land through foreclosure on another early homesteader in the area. NBA tried to obtain a conditional use permit to mine its half of the knob in the 1990s, and while it was initially successful at the municipal level, it too was sued by the Native Village of Eklutna and lost at the Alaska Supreme Court level. It has not made any further efforts to mine the knob to our knowledge. It is reported that Wells Fargo is trying to sell the entire parcel of approximately 157.77 acres.

**NORTH ANCHORAGE
LAND AGREEMENT
&
AMENDMENTS**

Work Session

File Copy

MARCH 1982

NORTH ANCHORAGE LAND AGREEMENT

TABLE OF CONTENTS

	<u>Page No.</u>
Purpose.....	1
Amendments.....	2
Military Lands.....	2
Township 17 North, Range 3 East, Lands Litigation.....	2
Mental Health Lands Litigation.....	2
Miscellaneous Provisions.....	2
Disposition of Lands Withdrawn by Section 1425(b)(1) of ANILCA [I].....	3
Submerged Lands [I B(1)].....	4
Lands Withdrawn or Reserved for National Defense Purposes [I B(2)].....	4
Lands to State [I B(2)(a)].....	4
Railroad Right-of-Way [I B(2)(b)].....	4
Floatplane Bases [I B(2)(c)].....	5
Mass and Bulk Transportation Facility [I B(2)(d)].....	6
Location of 1,000 Acre Parcel [I B(2)(d)].....	6
3,000 Acres of Floating Public Interest [I B(2)(e)].....	7
Military Lands to Eklutna and To State [I B(2)(f)].....	7
"Development" Lands to Eklutna and State in Trust for Municipi- pality [I B(2)(g)].....	7
Lands Determined by the Secretary Pursuant to Section 3(e)(1) of ANCSA not to be Public Lands for the Purposes of ANCSA [I B(3)].....	8
Lands to Eklutna [I B(3)(a)].....	8
Lands to State [I B(3)(b)].....	3

ject of litigation in the case of Eklutna, Inc. v. Andrus, A78-192 Civ., U.S.D.C. Alaska. This portion of the Agreement is authorized by Section 1425(f) of ANILCA.

Section IV of this Agreement contains miscellaneous provisions concerning the relationships between and among the parties which do not affect the conveyance of lands by the Department of the Interior.

I.

DISPOSITION OF LAND WITHDRAWN BY SECTION 1425(b)(1) OF ANILCA

- A. For the purposes of this Section I, the parties agree that Section 1425(b)(1) of ANILCA withdrew the following lands located within Townships 18 North, Ranges 1 and 2 East, and Ranges 1 and 2 West; Townships 17 North, Ranges 1 and 2 East, and Ranges 1 and 2 West; Townships 16 North, Ranges 1, 2 and 3 East, and Ranges 1, 2 and 3 West; Townships 15 North, Ranges 1, 2 and 3 East, and Ranges 1, 2 and 3 West; and Townships 14 North, Ranges 1, 2 and 3 East and Ranges 1, 2 and 3 West, Seward Meridian, and provided for their disposition pursuant to this Agreement:
- (1) Lands withdrawn or reserved for national defense purposes; and
 - (2) Lands determined by the Secretary under Section 3(e)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq. ("ANCSA") not to be public lands for the purposes of ANCSA.
- B. The parties agree that upon termination or revocation of any withdrawal or upon a declaration of excess status in whole or in part of lands withdrawn by Section 1425(b)(1), or disposition other than in accordance with Section 1425 and this Agreement, the Secretary shall convey such lands

Eklutna's or the State's entitlement, a conveyance of an undivided one-half interest (or a surface estate in an undivided one-half interest) in an acre shall be charged as if each party had received one-half acre. The parties agree that the cross reference in Section 1425 of ANILCA to Section 906(c) is a typographical error and should in fact be to Section 906(b).

(3) Lands Determined by the Secretary Pursuant to Section 3(e)(1) of ANCSA not to be Public Lands for the Purposes of ANCSA.

(a) Any lands within the following described areas which are finally determined under Section 3(e)(1) of ANCSA not to be public lands shall be conveyed to Eklutna:

Sections 13, 23, 24, 25 and 26, Township 16 North, Range 1 West, and Sections 18, 19 and 30, Township 16 North, Range 1 East, Seward Meridian.

(b) Any other lands which are finally determined under Section 3(e)(1) of ANCSA not to be public lands shall be conveyed to the State.

(c) The parties agree that the revocation of P.L.O. 5187 and power project withdrawals effected by the filing of this Agreement shall not affect the Secretary's authority to make 3(e) determinations under ANCSA concerning such land. The parties understand that the lands within Power Site Classification 107 within Township 14 North, Range 1 East, Seward Meridian, should be conveyed to the State.

(d) This paragraph A shall not affect the rights of Eklutna in lands finally determined by the Secretary under Section 3(e)(1) of ANCSA to be public lands.

(e) Notwithstanding subparagraph B(3)(a) of the introduction language to this paragraph B, the parties agree that the Alaska Railroad may become the property of the State of Alaska as an operating entity whether or not first exsessed without there being any violation of Section 1425 or this Agreement, to the extent of the lands lawfully determined by the Secretary under Section 3(e)(1) of ANCSA not to have been public lands (including any of the same that may be included in the descriptions in subparagraph B(3)(a)); if lands or interests in lands in Paragraph (a) above are transferred to the State by the United States as part of the railroad transfer, the State will reconvey the land to Eklutna if it ceases to use them in connection with furnishing mass or bulk transportation. For so long as the railroad is in operation, the Secretary shall not convey to Eklutna the lands lawfully determined not to have been public lands.

B. Section 1425(c) provides that the State and Eklutna are authorized pursuant to the agreement contemplated by Section 1425(b), to relinquish one or more land selections whether or not such selections have been previously approved or tentatively approved. Pursuant to this authority, Eklutna hereby relinquishes its selections of the

desires to mine, the parties acting by registered professional engineers with experience in fluvial geomorphology shall prepare a plan of operations based upon sustained yield. The plans shall address the volume of materials which can be removed without damage to the bridge or to other riparian lands. Eklutna and the State shall likewise agree upon a system of accounting for materials removed and other necessary aspects of the operation.

STATE OF ALASKA

WILSON CONDON, ESQ.
Attorney General

By: *Chip Dennerlein*
Chip Dennerlein, Director
Subject to the approval of
the Commissioner of the Department
of Natural Resources and the
Legislature of the State of Alaska

By: *Barbara J. Miracle*
Barbara J. Miracle, Esq.
Assistant Attorney General

ATTEST:

ANCHORAGE, a municipal corporation

Rushin G. Smith
Municipal Clerk

By: *Tony Knowles*
Tony Knowles, Mayor

EKLUTNA, INC.

BURR, PEASE & KURTZ

By: *Daniel Alex*
Daniel Alex, President

By: *Edward Gould Burton*
Edward Gould Burton

RECOMMENDED AND APPROVED:

By: *Dorothy Cook*
Dorothy Cook, Vice President

By: *Jerry Weizbaugher*
Jerry Weizbaugher
Acting Municipal Attorney