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SENATE

RESOURCES

1975/76

COOK

INLET

LAND

TRADE

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

Office of the Attorney General
Pouch K - State Capitol
Juneau 99811

April 9, 1976

The Honorable Fred E. Brown
House of Representatives
Alaska Ninth Legislature
Pouch V
Juneau, Alaska 99811

Re: Hb 626, relating
to repurchase of
Kachemak Bay leases

Dear Representative Brown:

You have asked for our views on the constitutionality of legislation which would temporarily suspend the rights of the Kachemak Bay oil and gas lessees to drill or otherwise explore or develop their leases. The purpose of the temporary suspension is twofold: (1) to allow the Department of Fish & Game a reasonable period in which to develop plans and regulations to protect the living resources of Kachemak Bay from possible pollution incident to development activities, and (2) give the Commissioner of Natural Resources a reasonable opportunity to negotiate a repurchase of the leases.

The precise question you have raised was addressed and answered in two recent cases: Union Oil Co. of California v. Morton, 512 F.2d 743 (9th Cir. 1975), and Gulf Oil Corp. v. Morton, 493 F.2d 141 (9th Cir. 1973). In Gulf Oil Corp., the rule was established that a temporary suspension of drilling rights for a reasonable period in which Congress might act to cancel the leases (with compensation) was permissible. In Union Oil Co., the rule was established that an open-ended suspension based on considerations which were not by their nature temporary constituted an unauthorized cancellation.



"1776-A TRIBUTE FROM OUR STATE TO OUR NATION-1976"



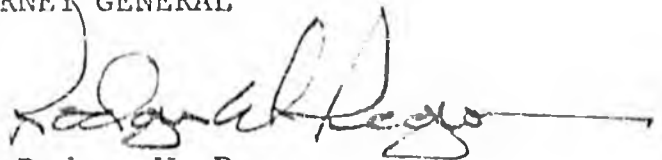
We are of the view that the temporary inconvenience to the lessees, including a speculative loss of profit, does not impair the legislature's power to impose a fixed, temporary suspension on the lessees' drilling and development rights. The proposed legislation falls within the rule of Gulf Oil Corp., and that rule was expressly reiterated and distinguished in Union Oil Co. Indeed, the situation here is even stronger. In Gulf Oil Corp., the Secretary of the Interior acted on his own initiative, suspending the drilling rights and submitting a cancellation proposal (never acted upon) to Congress. Here, the legislature would be imposing the suspension and fixing the time itself. Under these circumstances, there is simply no room for reasonable dispute as to the legislature's power to act on this subject.

There is no rule better settled than that the legislature may enact any law not prohibited by the state or federal constitutions. The rule from Gulf Oil Corp., is that there is no unconstitutional taking here. The prohibition in the state constitution against local and special legislation simply cannot be applied to a situation of such singularity as the Kachemak Bay leases. Both Gulf Oil Corp. and Union Oil Co. agree that this exercise of police powers does not unconstitutionally deprive the lessees of contract rights. Accordingly, the proposed legislation presents no constitutional problems.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By:



Rodger W. Pegues
Assistant Attorney General

	<u>Agreement Document (Page) & Section Reference</u>	<u>Map Reference</u>
4. 11 townships on Kamishak Bay (near Mt. Augustine).	(51)	Appendix G
52 TOWNSHIPS TOTAL		
B. The right to select an additional 12.4 townships in the Talkeetna Mountains and Koksetna River areas.	(52)	Appendix G
C. Immediate conveyance of approximately 4,000 acres in the Campbell Tract in the heart of the Anchorage Bowl.	(42)111-B	Appendix F
D. Early conveyance of Point Woronzof, Point Campbell and Goose Lake withdrawals.	(41)1-C-2(e)	--
E. Protection of approximately 12 townships of land previously selected by the State in 1972, but which would be selected by Cook Inlet Region if the proposed land trade is not effected.	--	--

iii FEDERAL GOVERNMENT RECEIVES:

- A. No lands directly, but will retain title to a number of specific townships within Cook Inlet Region which the Regional Corporation will otherwise select.
- B. Several other benefits not directly related to the receipt of land:
 - (a) Settlement of Cook Inlet Region's entitlement under ANCSA.
 - (b) Settlement of Cook Inlet Region's suit against the Secretary.
 - (c) Minimal impact upon lands in the Kenai National Moose Range.
 - (d) Improved land ownership pattern in the Lake Clark area.

IV MISCELLANEOUS PROVISIONS:

- A. No oil and gas fields will be transferred to native ownership (all revenues currently received by the State will continue).

- B. All lands transferred to native corporations will contain ANCSA safeguards (e.g. easements).
- C. All state lands conveyed will additionally contain dedicated or platted section line easements and highway or other rights-of-way.

BRIEF SYNOPSIS OF
THE PROPOSED COOK INLET LAND TRADE

The following is a short summary of the major aspects of the proposed Cook Inlet Land Trade. The "agreement document" which forms the basis of the agreement among the three parties is found in the U.S. House of Representatives' Report No. 94-729 dated December 15, 1975. The "agreement document" is found on page 35 of that report and is entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area." To assist parties interested in the specific details of the "agreement document", appropriate page and section references follow each specific point in the summary below. In addition, where appropriate, a map reference refers to the attached map.

<u>I COOK INLET REGION RECEIVES:</u>	<u>Agreement Document (Page) & Section Reference</u>	<u>Map Reference</u>
<u>A. FROM FEDERAL GOVERNMENT:</u>		
1. 10,000 acres excised from the Kenai National Moose Range abutting the western end of Lake Tustumena (with the following covenant: no sale for 25 years; if then sold, first right of refusal to the federal government; strict development restrictions along edge of Lake Tustumena).	(35)1-A	--
2. Up to 9.6 townships of sub-surface rights to oil, gas and coal (subject to normal Moose Range surface restrictions; coal may only be removed in a liquid or gaseous state).	(37)1-B (43)IV	--
3. All federal lands in the following:		
(a) T.10S., R.9W., F.M. (near Healy).	(37)1-B-(1)	--
(b) T.20N., R9E., S.M. (Glenn Highway near Matanuska Glacier).	(37)1-B-(1)	--
(c) T.1N., R.21W., S.M. (west side of Cook Inlet - 15 sections - title to metalliferous minerals only; Secretary must approve surface mining plans).	(37)1-B-(2)	--
(d) T.1S., R.21W., S.M. (west side of Cook Inlet - 18 sections - ownership in fee; surface use only for mining needs).	(37)1-B-(3)	--

	<u>Agreement Document (Page) & Section Reference</u>	<u>Map Reference</u>
4. Outside Region - 29.66 townships outside Cook Inlet Region (from native deficiency or d(1) lands in the Ahtna, Bristol Bay, Callista, Chugach or Doyon Regions; certain protections for the Federal government, State and regional and village corporations).	(38)I-C-(1)	--
5. Within Region pool (up to 138,000 acres of federal surplus lands; any acres selected come from "out-of-region" selection entitlement; State has certain safeguards to protect public interests).	(38)I-C-(2)	--

B. FROM STATE:

1. 1.2 townships of scattered tracts (lands in the vicinity of Point McKenzie, Knik, Kashwitna and Chickaloon).	(48)I-AtoD	Appendix C 1A-D
2. 1.8 townships to the certified native villages and groups of Chickaloon, Knik, Alexander Creek, Salamatof, Ninilchik, Montana Creek and Caswell (to trade villages out of Lake Clark).	(50) 3	Appendix C 3
3. 5.0 townships on the Kenai Peninsula.	(49)I-E	Appendix C 1-E
4. 13.5 townships in the Beluga area	(49) 2	Appendix C 2
21.5 TOWNSHIPS TOTAL		

STATE RECEIVES:

A. The following lands over and above its statehood entitlement:

1. 26 townships in the Lake Clark area.	(50)	Appendix D
2. 7 townships in the Tutna Lake area.	(51)	Appendix G
3. 8 townships in the Talkeetna Mountains.	(51)	Appendix G

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LANDS, 323 E. 4TH AVENUE, ANCHORAGE 99501

OPENING STATEMENT Cook Inlet Public Hearing (October 2-3, 1975)

The transaction which will be described in this briefing and then discussed in public sessions is a unique attempt at governmental/private sector/public interest cooperation to resolve a complex problem of real importance. The problem relates to the right of the Cook Inlet Native Regional Corporation to select Federal lands under the terms of the ANCSA.

Briefly stated, the problem is as follows: The Cook Inlet Region has an entitlement under the ANCSA for land selections, and the Department of Interior has an obligation to withdraw lands for these selections. Unlike other regions, the ability to find adequate land for withdrawal and selection is greatly limited by the high percentage of private ownership and publically classified land in the key Cook Inlet areas. The Department of Interior made withdrawals under these already difficult circumstances which, from the standpoint of the Region were unfair, inequitable and illegal, and which, from the perspective of both the State and the Federal Government, probably created unsatisfactory land ownership patterns in the entire area.

Cook Inlet Region has brought suit challenging the legality of the Interior withdrawals under the Act, and that suit is now on appeal after losing in the District Court. The State is not a party to the suit, although the appeal could have great implications for the State if Cook Inlet Region prevails on one of its requests that land previously selected by the State be redirected to the Regional selections. Thus, there is an element of judicial uncertainty here.

Looking only at the Region and the Department; only two outcomes are possible depending on the outcome of the appeal and subsequent litigation. The first is that Interior will prevail, and Cook Inlet will be forced to select in areas generally agreed to be inappropriate for private ownership and probably inequitable for the Regional Corporation as compared to what other Regions selected under the Act.

The second is that Cook Inlet will prevail, and receive selection rights which, although perhaps more equitable to the Region, would involve selection in areas still inappropriate for private development (Hoose Range) or perhaps invalidate State selections, although this is less likely.

Either of these outcomes will have undesirable consequences, and this has been recognized by the State, by the Region, by Interior, by various public interest groups, by Alaska's Congressional Delegation and other members of Congress, and by various other parties in the private sector.

What has emerged from this situation is a widely shared desire to explore the possibility of some compromise which would avoid the inflexible results of an administratively or judicially imposed solution. Such a compromise could not be possible without the participation of the State, for the constricted land ownership patterns in the Cook Inlet Region make total resolution of the problem using only Federal land untenable.

As a result of the widespread understanding of the problem and of the need to explore some resolution in the public interest, the State has engaged in a lengthy and complex series of discussions to seek a common answer. We have been encouraged by our Congressional Delegation, assisted by a variety of informed and expert people, and barraged whenever it has appeared that an improper idea has been considered.

At all times, the State has been aiming at a solution to this problem which can achieve a broad consensus of public acceptance after full public briefing and discussion. This is the purpose of the series of meetings being held this week.

We solicit the public's response, and hope you share our view that this solution makes sense. Public comments will be reviewed by the Division of Lands, the Commissioner of Natural Resources, and the Governor's Office prior to any finalization of a State position.

There are really a limited number of outcomes to this situation. Interior could win the lawsuit and force its original withdrawals to be the basis of selection. Cook Inlet could win and gain whatever selection rights the Court confers. Congress could act unilaterally to legislate a solution on its own, but does not wish to do so unless necessary, or the agreement we will be discussing today could be certified to Congress as the solution upon which all agree. Our Delegation and others have asked for such an agreement.

By our presentation today, the State is recommending the latter course as the one which best serves the public interest under the circumstances, and presenting to the public the substance of the terms basically agreed upon by negotiators for the three parties.

In summary, what you will be hearing reflects a great deal of work by many people on an extremely complex issue. We hope that you will consider it as a local citizen, a State citizen, and a national citizen, as well as a neighbor of the Cook Inlet Region.

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF NATURAL RESOURCES

IMMEDIATE PRESS RELEASE

DIVISION OF LANDS, 323 E. 4TH AVENUE. ANCHORAGE 99501

BACKGROUND

Cook Inlet Land Trade Proposal

In the discussions with Cook Inlet Region, Inc. and the Department of the Interior the State has attempted to accomplish a number of objectives, including the assurance of a rational land ownership pattern within the Cook Inlet Basin and the ability of the State to control certain lands which it feels necessary to properly protect its future interests. This latter point is predicated upon the State's firm conviction that it can govern more effectively and be more responsive to its citizens' needs than could the federal government.

As it is the role of the State to provide its citizens with a number of public services (i.e. transportation, communications, education, public safety, etc.) it is in the State's interest, both socially and economically, to insure that future development occurs in those areas best suited for such development, i.e. within areas which contain good land forms, ground water, no flowing, etc. and to which governmental services may be brought in an economical manner. This was a prime consideration in determining which lands the State tentatively offered to Cook Inlet Region, Inc.

With respect to lands which the State seeks to gain through this transaction, the emphasis was on those lands in the Cook Inlet and nearby Iliamna Lake areas which the State feels should remain in public ownership and which it wishes to own itself to insure that its objectives in those areas are under its' own control. In particular, two areas were sought. First, the lands presently in federal ownership in the Talkeetna Mountains area, where Cook Inlet Region would select, north and east of the populated Matanuska and Susitna Valleys respectively. In addition to timber, watershed, mineral, and high recreational values, these lands will become increasingly more important to the State as future development and settlement intensifies on the periphery in the Matanuska and Susitna Valleys.

The second area of interest is Iliamna Lake. This watershed produces the worlds largest red salmon fishery and it is upon this fishery which the major portion of our citizens in the Bristol Bay Region are dependent. The area is also the focus of the finest trophy rainbow trouts system in North America. The State has management control of these fisheries and by gaining control of the remaining public lands would be able to more effectively manage these fisheries in the public interest. Also, with approximately 15 percent of the lands in the Bristol Bay area going into native village corporate ownership the State feels it can be much more responsive to both their private needs and those of the public in this area than could be the geographically removed federal government. In addition to the very high fishery values, this area has high wildlife and recreational values as well as some oil and gas potential.

COOK INLET LAND TRADE PROPOSAL

This proposal is fairly complicated as a result of the existing land ownership patterns within the Cook Inlet Basin, the individual interests of the three parties concerned, and the legal constraints of the Alaska Native Claims Settlement Act (ANCSA). Additionally, the parties felt it imperative to deal with several closely associated issues such as ANCSA land selections by certain villages within the Cook Inlet Region. The various aspects of the tentative proposal are outlined below in conjunction with the attached map. The reader must realize that this is a simplified, capsulized summary and that persons wanting more information are requested to contact the Alaska Division of Lands in Anchorage.

TABLE I.

COOK INLET LAND TRADE PROPOSAL

PARTIES	LAND TRADED		MAP NO.*	COMMENTS
	LOCATION	AMOUNT		
State to Cook Inlet Region, Inc.	Kenai Penn.	5 Twps.**	1	These are lands suitable for pvt. ownership and development where settlement has occurred or will occur in the future.
	Beluga Area	12 Twps.	2	
	Scattered Tracts (Matanuska & Susitna Valleys)	1.2 Twps.	3 a-d	
	Total	<u>18.2 Twps.</u>		
State to Villages or Certified Native Groups	Montana Ck.	.5 Twp.	3d	More suitable lands for pvt. ownership and to prevent native selection of key Kashwitna River lands in proposed state park.
	Caswell Ck.	.5 Twp.	3d	
	Salamatof Area	.5 Twp.	4	
	Alexander Ck. Area	.5 Twp.	5	

* See Attached Map for area location

** "Twp" = "Township" = 36 Sections = 23,040 acres

COOK INLET LAND TRADE PROPOSAL

PARTIES	LAND TRADED		MAP NO.*	COMMENTS
	LOCATION	AMOUNT		
	Tyonek Area	<.5 Twp.	2	Lands offered to Tyonek to reduce to a minimum Tyonek ownership of land within the Kenai National Moose Range.
	Knik Area	.21 Twps.	3a	More suitable lands near villages in return for public ownership of important lands selected by these villages on Lake Clark.
	Chickaloon Area	.08 Twps.	3c	
	Total	<u>2.8 Twps.</u>		
Cook Inlet, Inc. to State	Talkeetna Mtns. Lake Clark west side of Cook Inlet	31 Twps.	6 a-f	State will designate which twps. from a total pool of approximately 180 twps. from which Cook Inlet, Inc. may select.
Villages and Groups to State	Montana Ck.	.5 Twp.	6 a	State receives lands selected by these groups within proposed Talkeetna Mtns. State Park.
	Caswell Ck.	.5 Twp.	6 a	
	Tyonek	<.5 Twp.	7	State receives lands selected by Tyonek on Kenai Penn. within or on edge of National Moose Range.
	Knik	.85 Twp.	6 e	State receives these lands on shores of Lake Clark.
	Chickaloon	.32	6 e	
	Total	<u>2.7 Twps.</u>		
Federal Gov't. to Cook Inlet	Kenai Nat'l. Moose Range	.87 Twps (20,000 ac.)	8	Moose Range boundary to be adjusted to <u>exclude</u> these lands; a 1/4 mi. "no development zone" on edge of Tustumena Lake.
	Kenai Nat'l. Moose Range	.87 Twps (20,000 ac.)	9	Lands to be <u>within</u> Moose Range and subject to restrictions such that any use of the land must be beneficial to the purposes of the Moose Range.

* See Attached Map for area location
 ** "Twp" = "Township" = 36 Sections = 23,040 acres

COOK INLET LAND TRADE PROPOSAL

PARTIES	LAND TRADED		MAP NO.*	COMMENTS
	LOCATION	AMOUNT		
	West side of Cook Inlet	1 Twp.	6 f	From lands in which Cook Inlet is entitled to select.
	Extra-Regionally	26 Twps.	--	To be selected adjacent to village or region corporation lands in certain other native regions. State is able to direct location of these selections and can block selections of certain twps. the State wishes to keep in public ownership.
	Throughout Region	2 Twps.	--	A maximum of 2 twps. of surplus lands from Federal withdrawals which might be found to be surplus by the Secretary pursuant to ANCSA Section 3(e).
	Throughout Region	1.5 Twps.	--	Other federal lands on Kenai Peninsula or elsewhere (e.g. reverted homesteads).
Federal Gov't. to Villages	Kenai Nat'l. Moose Range	8-12 Sections	7	Federal gov't. may offer to exclude certain of Tyonek selected lands from Moose Range restrictions in return for Tyonek substantially reducing it's selections within Moose Range.
Federal Gov't. to State	Lake Illamna Area	30 Twps.	10	In return for lands remaining in federal ownership which Cook Inlet would otherwise select absent the State's trade, the State would receive from the Federal gov't. lands which the State could not otherwise select.
	Kenai Nat'l. Moose Range	5-12 Sections	11	Moose Range lands to be added to the State's Captain Cook Recreation Area or otherwise given to the State for state lands used to reduce Tyonek's selections within Moose Range.

* See Attached Map for area location

** "Twp" = "Township" = 36 Sections = 23,040 acres

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737

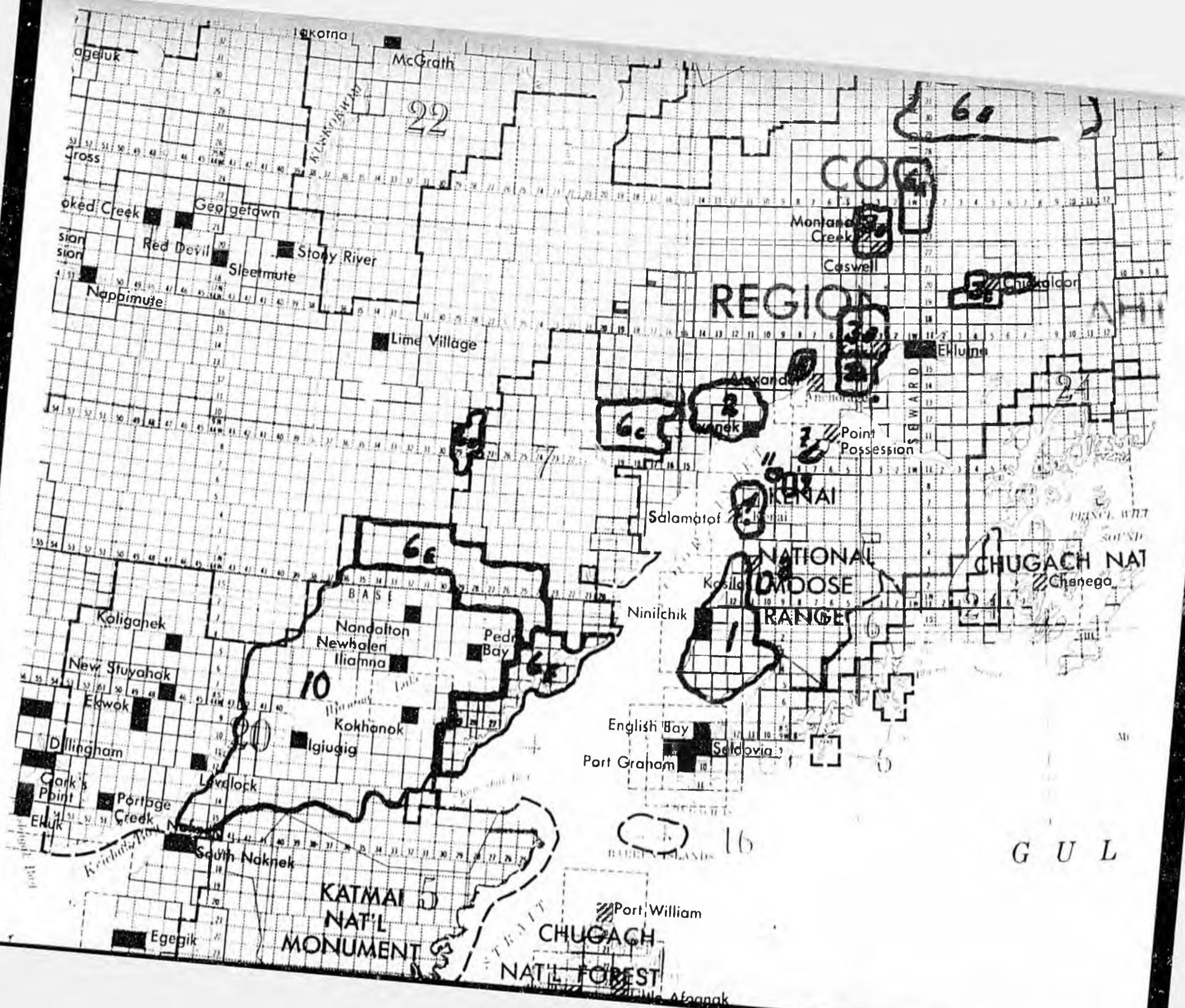
COOK INLET LAND TRADE PROPOSAL

PARTIES	LAND TRADED		MAP NO.*	COMMENTS
	LOCATION	AMOUNT		
Cook Inlet to Villages	Salamatof	1.5 Twps.	6f	"Out of court" offer to Salamatof to drop village eligibility suit which, if successful, would significantly reduce Cook Inlet's land within National Moose Range.
	Knik Area	.21 Twps.	3 a	More suitable lands near villages to ensure public ownership of important lands selected by these villages on Lake Clark.
	Chickaloon Area	.08 Twps.	3 c	

MISCELLANEOUS

The proposal does not convey to Cook Inlet, Inc.:

- 1) Subsurface resources in any producing oil and gas fields (e.g. Swanson River).
- 2) Any of the Swanson River canoe system lands.
- 3) The Russian River area
- 4) The present federal lands at Point Woronzoff, Point Campbell or the Campbell Tract.



McGrath

22

60

REGION

CO

6c

24

6c

NATIONAL MOOSE RANGE

CHUGACH NAT'L FOREST

10

16

G U L

KATMAI NAT'L MONUMENT

CHUGACH NAT'L FOREST

Ageluk

McGrath

Gross

oked Creek

Georgetown

Red Devil

Stony River

Sleemute

Nappimute

Lime Village

Montana Creek

Caswell

Chitka

Eklunna

Alexander

Point Possession

KENAI

Salamatof

CHUGACH NAT'L FOREST

Chanega

Koliganek

BIASE

Nandalton

Newhalen

Iliamna

Pedro Bay

Ninilchik

New Stuyahok

Ekwok

Dillingham

Kokhanok

Igiugig

English Bay

Port Graham

Seldovia

Gark's Point

Portage Creek

South Naknek

Port William

Egegik

Afognak

STATE
of ALASKA**MEMORANDUM**DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDSAPPENDIX BTO: Cook Inlet Land Trade File

DATE : November 6, 1975

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

SUBJECT: Public Notice & input

As it was decided very early in the discussion stage that any final decision would not be made until the proposal was made public and the resulting input analyzed, the administration went to significant lengths to insure as public a process as possible before the final decision was made. Below, in approximate chronological order, is summarized that public notice and input process.

In late April and May, preceding the initial House and Senate hearings concerning CIRI's proposed legislation, the State was in contact with a number of individuals and agencies. This included numerous meetings with Tom Meacham, Anchorage Borough Attorney, to insure that the Borough's interests in its recreational and open-space lands were protected. In a similar manner contacts were made with Stan Thompson, Kenai Borough Mayor, and John Spencer, Anchorage City Attorney. Regular contact was also maintained with the Joint Federal-State Land Use Planning Commission. Preceding and following the Congressional hearings in May the media was briefed and carried numerous stories concerning the proposal. With relatively minor exceptions, all aspects of the proposal which have received public comment during the past months were published in the media as long ago as last May. Additionally, detailed presentations concerning the proposal were made before both the House and Senate sub-committees addressing CIRI's proposal. These detailed presentations are, of course, part of the official committee hearing records. In mid-June contact was also made with representatives of the Placer Amex Co., owner of several of the coal leases in the Beluga area to determine their feelings concerning the proposal. On June 27th a meeting was held with Mike Spain, Administrative Assistant to Senator Ted Stevens, and on the following day another meeting was held with Senator Stevens concerning the proposal in Anchorage. Additionally, at approximately the same time and in response to a request by Peter Burrell and a reporter from the Anchorage Daily News, the Cook Inlet Land Trade File was made available for their review and this was again followed by a detailed release of the then current proposals in a new article.

Following more testimony concerning the proposal before Senator Haskel's Interior sub-committee in late September, the State launched a five-week public briefing and input campaign to insure public awareness of the proposal.

The specifics are listed below.

Sept 23rd - Letters to all Legislators containing copy of the press release announcing public hearing dates.

" 26th - Public hearing news release distributed to media.

- Sept. 27-28 - Public meeting announcements carried by the press and radio in Anchorage
- Oct. 1st - Detailed media briefing including radio, TV, daily press and Alaska Scouting Report representative.
- Special briefing of groups which had indicated interest in learning specifics of the proposal at an early date (Bicentennial Park Committee, Mountaineering Club, Issac Walton League, Alaska Conservation Society, Alaska Float Plane Association, etc.).
- " 2nd - Special briefing for organized Boroughs affected by proposal (Anchorage, Kenai, and Matanuska-Susitna Boroughs).
- Briefing for Legislators
- Telephone conversation with Placer Amex
- A 2 1/2 hour public briefing and question presentation at Loussac Library in Anchorage (over 70 in attendance).
- " 3rd - Meeting with David Pree, Esquire Re: Mental Health Lands
- Meeting with Alaska Miners Association (Bill Wagonman, President, and Chuck Haulley).
- Public hearing at Loussac Library to receive input (three hours with over 75 persons attending).
- " 6th - Briefing of Capital Site Selection Committee
- " 7th - Public briefing and input presentation held at Alaska-land in Fairbanks following three days of radio and press advertisement of the meeting.
- " 10th - Briefing of Bureau of Land Management personnel.
- " 12th - Meeting with representatives of Placer Amex
- " 22nd - Briefing of Anchorage Chamber of Commerce Special Land Trade Committee
- " 24th - Public briefing of Federal-State Land Use Planning Commission
- Nov. 4th - Public briefing of Kenai peninsula Borough Assembly

In addition, numerous contacts were had with interested groups and members of the public who contacted the Division of Lands to gain more specific information following exposure to the proposal in the media or at public meetings.

STATE
of ALASKA

MEMORANDUM

TO: Cook Inlet Land Trade File

DATE : December 2, 1975

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

SUBJECT: Public Notice and Input
(Addendum to 11/6/75 Memo to File)

The following is an update of an earlier memorandum detailing some of the specifics of the Public Notice and Input process concerned with the Cook Inlet Land Trade Proposal.

October--the October issue of the Division's Publication "Alaska Land Lines" carried a five page outline of the details of the proposal as presented publicly the first week of October.

Nov. 7--the Governor, the Commissioner of Natural Resources and the Director of Lands met for three and one-half hours with a special land trade subcommittee of the Legislative Council. A detailed briefing was given to the subcommittee.

Nov. 17--meeting with representative Ted Smith and Harold Gallette at the Division of Lands.

Nov. 25--meeting with Tom Meacham, Land Trust Lawyer for the Anchorage Municipality.

Nov. 25--luncheon speaker presentation by Director of Lands to the Alaska Society of Civil Engineers.



JUNEAU, ALASKA

Alaska State Legislature

Senate

March 11, 1975

Senator Kay Poland, Chairman
Senate Resources Committee

Re: Senate Bill 175

Attached is a statement of position by the Oil and Gas Industry as it pertains to Land Use Planning and Coastal Zone Management. The statement is part of a background paper on Oil and Gas prepared for the Coastal Zone Workshop, Woods Hole Oceanographic Institution. That background paper with attendant bibliography is now available at the Committee office for review by members.

For your convenience, I have summarized the position paper as follows:

1. State lands should be administered in the best public interest. Critical areas should be designated, but indefinite moratoriums on development or declaration of areas to single use sanctuaries should not be permitted.
2. Multiple compatible uses of land allowing free enterprise and protecting private property rights should be encouraged. This can be done by performance standards that will also protect marine and wildlife resources, recreational facilities, parks and wildlife preserves. Regulatory systems may also be needed, but they should not be preemptive or prohibitive.
3. State policy must dominate, but not to the extent of participating directly in local use planning. Broad goals and the State's needs can be expressed for essential local government cooperation. Compacts with local governments are preferable to solutions mandated by a State authority.
4. The role of State and local governments should be carefully delineated. Local authority should not permit domination by special interests. Industry and citizens' groups should be represented in planning. Authority of any coastal zone management agency should be limited to receiving federal funds, providing for a system of management, and to providing a means for coordination with local governments. Control or cessation of existing

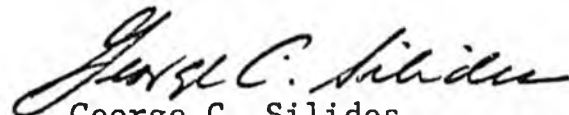
March 11, 1975

inimical activities should be through the courts or remedial legislation. Changes of standards should be in response to technological and social needs and should be in subject to due process.

5. The economic climate should also be promoted and protected.
6. Coastal zone limits should be clearly delineated in distances, rather than in the abstract terms of ecological protection.
7. Specific needs expressed by the oil and gas industry are:
 - A. Access to land and water, surface, and subsurface.
 - B. Space for facilities and supply routes.
 - C. Right to compete for land use and the opportunity for profit.
 - D. Sanctity of contract and fair administration of laws.

As we indicated in our memo of March 5, 1975, a Coastal Zone Management Act must be sufficiently accomodating to diverse interests. The above views were made available to us for study. In turn, we submit them to you, without evaluation, for your ready information in the attempt to produce a Committee Substitute.

Sincerely,



George C. Silides
Galliett and Silides
Consultants

LAND USE PLANNING AND MANAGEMENT
STATEMENT OF POSITION

In some areas of the nation, society's many and varied demands for the use of finite land resources has resulted in a growing awareness that existing systems of land management are unable to prevent loss in productivity, the misallocation of resources, or provide adequate environmental protection. In such critical areas, states and federal governments have complimentary roles to play and new or revised systems of land use planning and management are needed in order to assure proper resource development and adequate land and water sites for essential activities and to provide a proper balance among economic achievement, environmental conservation, and other emerging social concerns. Such systems must protect private property rights, maintain a climate for competitive free enterprise, encourage compatible multiple uses of land resources, protect the environment and desirable ecosystems, and be sufficiently flexible to adapt to social and technological changes. Although the exact structure of planning and management systems may differ from state to state, there exists a common set of principles by which each may be tested and these are set out below.

New Land Use Systems Applied to Areas of Critical Concern. The imposition of new or revised systems of land use planning and management implies greater or more effective restriction on freedom of choice for the use of land and water sites. Such is not needed in all areas of the nation, but only in certain critical areas where the competition for finite land resources has become or likely will become excessive. Therefore, limited geographically determinable areas of such critical concern should be specifically and formally designated by the state land use system for planning and management purposes. Such an area could be designated one of critical concern pursuant to public notice and hearings. Areas of critical concern should be designated early enough to prevent environmental or economic deterioration, however, indefinite moratoriums on development of such areas pending consideration should not be permitted.

Protect Private Property Rights. The right of private property owners to use their lands in any lawful manner of their choosing is essential to our democracy and the progress of our economy. It should be a goal of land use systems to avoid unduly preempting an owner's choice of land use or overly restricting the choices available to him. Land use systems relying primarily upon preemptive state-wide zoning or national or regional land use plans or specification of single-use designations are undesirable in this respect and should be discouraged.

Compatible Use and Performance Standards Encouraged and Dominant Uses Recognized. State land use systems which adhere to the concept that multiple compatible uses of land are desirable should be encouraged. Management systems based on uses meeting prescribed performance standards are to be preferred over permit, zoning or regulatory systems although these latter, too, may be consistent with the goal of encouraging compatible uses, particularly in urban areas. Performance standards for areas of critical concern could be developed by the land use authority pursuant to a study of the area and its use values and pursuant to the usual administrative due process, including public notice and hearings.

In some areas of critical concern, it will be recognized that the area is particularly suited for one or more uses. It is proper for the authority to recognize such dominant uses and prescribe performance standards for other compatible uses so as to protect the dominant use or uses. All uses which meet the performance standards should be allowed.

Free Enterprise Encouraged. While it is a proper role and function of government to assist in the orderly, efficient development and use of lands through the establishment of reasonable and fair performance standards of activities in such areas with due regard for the legitimate needs of all users, it is essential that such assistance be provided in ways consistent with a favorable climate for private investment. The best interests of the nation are served, and the natural resources are most efficiently developed through the operation of a system of competitive enterprise under enlightened regulation. Legislation affecting land use management should state that it is the goal of government to promote and protect such an economic climate.

States Should Dominate. Land use planning and management systems will involve all levels of government and the role of each should be carefully delineated. In our system of government, the states have the basic authority to manage non-federal lands and therefore should have the dominant role in the land use system. The degree of concentration of administrative power at the state level is a matter of state concern and will vary with the type and nature of state government involved. It is a legitimate function of state government to delegate authority to agencies, municipal corporations and other substate bodies as needed for proper and efficient exercise of state responsibility. However, in many instances, local actions are at variance with the broader needs of society and it would be expected, therefore, that proposed land use systems will place much of the land use planning and management authority at the state level.

It is recognized that in exercising the dominant role in land use planning and management, the state authorities must so act as to protect national interests in matters of national concern. The states, however, are not always capable of defining such interests and should conform to federal guidelines in such matters. The federal guidelines should be expressed broadly and should cover only matters of legitimate national concern.

Interstate Cooperation Needed. Recognizing that planning for some areas, such as economically or ecologically interdependent regions, may transcend state boundaries, the formation of compacts or commissions as needed by adjoining states' authorities is preferable to the solution of such interstate matters by federal or federal-state commissions.

Administration of Federal Lands. As administrator of federally owned lands, it is the responsibility of the federal government to provide an efficient management organization and administrative system to utilize the federal lands in the best public interest. It is a proper function of federal and state governments to protect recreational and wildlife resources through the creation of parks, wilderness and wildlife preserves and the like on publicly owned land and/or to acquire land for that purpose. Also, public lands should be made available on an equitable,

competitive basis for proper resource development by private enterprise. The goals of compatible use and environmental protection of the state land use systems should also apply to federal lands. Since by far the most populated and economically productive lands are in private ownership, the federal land administration should conform to and be coordinated with the state land use authorities where federal lands exist in areas of critical concern.

Federal Role in Matters of National Concern Affecting State Lands and Private Properties. In matters of national importance, federal policy must dominate and thereby affect state-local government or private prerogatives. The federal role should not be to participate directly in land use planning and management at state levels as regards matters of national concern, but should be to provide broad guidelines to inform state land use planners of national needs. Through national policy statements, broad goals and national needs can be expressed.

Thus, in some instances, the activities of states acting through the land use agencies may impinge on or be at variance with the needs of the nation as a whole. In such cases, enforceable federal guidelines could be adopted to guide state action.

It is the responsibility of the state planners to implement and execute programs consistent with the federal guidelines on matters of national concern.

Federal Financial Support. To the extent possible, the states should be encouraged to be financially self-supporting in their land use planning and management. However, it will likely be necessary for the federal government to financially support the states' land use activities. It is vitally important that this aspect of federal-state relations in land use management not be used to subordinate the states to the federal will. It is appropriate that the federal government review the states' land use systems to be assured 1) that the federal funds will be spent effectively and 2) that matters of national concern are being adequately considered by the states' authorities. The federal government in qualifying states for financial assistance should not specify any particular form of state land use planning and management system nor should the federal government participate in the states' planning process.

Administration Aspect of Land Use Systems. The needs for resource development, the private property rights, ecological and environmental considerations, the wishes of local populace, national security should all be given fair and even-handed consideration. For this reason, it is important that the state land use authority have a balanced bias and not be established in agencies representing only one point of view. Land use planning and management should represent all views and should be responsive to elected bodies. Performance standards, dominant uses and plans should be subject to periodic review. The land use system should bear evenly on all land users and appeal procedures should be available. The state land use systems should not have the power to abrogate contracts or order cessation of activities undertaken prior to the findings of an area of critical concern. The land use authority should not be empowered to declare unlimited moratoriums pending hearings or planning studies nor should it have power to declare areas of critical concern to be single-use sanctuaries.

COASTAL ZONE MANAGEMENT
STATEMENT OF POSITION

Due to the increasing competition for use of resources of coastal areas and a growing awareness that increasing care of the coastal environment is needed, it is likely that new systems providing for coastal planning and management will be established. It is believed that such systems must maintain a climate for competitive free enterprise, encourage compatible uses of coastal areas, and be sufficiently flexible to adapt to social and technological change. At the same time, it is recognized that private enterprise has a responsibility to help maintain an acceptable natural environment, and that there must be a proper balance between the economic development of the coastal zone and environmental conservation.

Needs of Oil Industry

When considering proposed coastal zones management systems at either state or federal levels, there are certain essential conditions necessary for the oil industry to operate which should be protected:

1. Access to land and water spaces, including their surface and subsurface as well as the land beneath water bodies.
2. Space for facilities and supply routes on and beneath the surface of land and water as well as on the land beneath water bodies.
3. Right to compete for mineral rights and leases.
4. Sanctity of contract with government and private parties.
5. Reasonable, consistent and fair administration of laws.
6. Competitive environment.
7. Profit opportunities.

Position on Aspects of Coastal Zone Management

States should dominate. Proposed coastal management systems may involve both the federal and state governments. The role of each should be carefully delineated. Since coastal zone management matters are largely matters of local concern, and since the states have the power and capacity to manage local affairs, the state governments should be the focus of coastal zone management. Therefore, as between federal and state governments, coastal zone management should be a function of the respective coastal states with the federal role limited to financial assistance to state programs, coordination of federal agency activity and protection of national interests. It is a legitimate function of the states to delegate authority to agencies, municipal corporations and other sub-state bodies as needed for proper and efficient exercise of state responsibility. However, delegation of state authority should not be extended to the point where coastal zone management would be dominated by special interests in coastal areas.

Multi-state matters. Recognizing that coastal zone considerations may transcend state boundaries, the formation of compacts and commissions between adjoining states as needed to plan and administer for their mutual benefit activities in commonly occurring coastal areas such as harbors, bays, estuaries, rivers, etc., is believed preferable to the administration of multi-state coastal matters by federal commissions.

The federal role. The federal government role should be limited to 1) providing financial assistance to the states 2) coordinating traditional activities and user services of existing federal agencies with the state coastal zone authorities and 3) protecting national interests through the establishment of broad, national goals. Such goals should recognize, for example, that the coastlines of the United States are national assets as well as coastal state territory and that the interests of all the citizens should be considered in the coastal zone plan. However, the foregoing does not require that the federal government be placed in an active role in planning for or managing a state's coastal zone authority. Federal involvement in state coastal zone management should be limited to assuring compliance with broad, national goals. Additionally, since the state governments should specify their own most efficient organizations, the federal government should not require, as a precondition for financial assistance, a specified or mandatory form of state coastal zone management authority.

Coastal zone management authority. The degree of concentration of administrative power in a coastal zone authority is a matter of state concern and will vary with the type and nature of state government involved. If coastal zone management authorities or other government structures at the state level are established, they should serve to eliminate unnecessary conflicts, improve the efficiency of government operation, maintain an investment climate conducive to competitive free enterprise, encourage multiple use and protect the bio-physical environment. The judgment as to whether these criteria can best be met by an existing government agency, a commission on which existing agencies are represented, an advisory board, a new agency, or some other administrative arrangement should be made within each state or compact of states. The functions of such a coastal zone management body should be limited to receiving federal funds, to providing for the development of a system for coastal zone planning and management, and to providing for coordination of federal and state government activities.

Coastal zone management system. Proposed coastal zone management systems should favor multiple use and encourage competitive enterprise. Management systems based on meeting prescribed performance standards are to be preferred over permit, zoning or regulatory systems although these latter, too, may be consistent with the goals of achieving multiple use and competitive enterprise. Performance standards could be developed by the coastal zone authority pursuant to a study of the area and its use values and pursuant to the usual administrative due process, including public notice and hearings. Performance standards could apply to the commercial use of private property. The non-commercial use of private property is not addressed in this statement.

The goal of such a system should be to encourage multiple use of coastal resources. Any legitimate activity which can meet the performance standards should be allowed. It is a proper function of federal and state governments to protect recreational and/or wildlife resources through the creation of parks and wildlife preserves on publicly owned land and/or to acquire land for that purpose. However, coastal zone management

systems which would be preemptive or prohibitive and tend to freeze coastal areas to present or any specific future use should be opposed. The coastal zone management system should be dynamic in concept, and structured to be responsive to both the evolving needs of society and technological change.

Maintain competitive enterprise environment. While it is a proper role and function of government to assist in the orderly, efficient development and use of coastal areas through the establishment of reasonable and fair performance standards of activities in such areas with due regard for the legitimate needs of all users, it is essential that such assistance be provided in ways consistent with a favorable climate for private investment. A prime need is for government to coordinate its technical assistance and administrative activities so as to increase efficiency of government, prevent undesirable duplication or lack of authority, and to inform the public of the arms of government responsible for various governmental functions. The best interests of the nation are served, and the natural resources are most efficiently developed through the operation of a system of competitive enterprise under enlightened regulation. Legislation affecting coastal zones management should state that it is goal of government to promote and protect such an economic climate.

Geographical limits. Delimitation of coastal zones to definite, determinable geographical areas are to be favored. Thus, inland distances of fixed miles from known baselines or references to known political subdivisions are to be preferred over boundaries defined by less determinable measures such as ecological effects or tidal distances. In addition, the geographic limits of the coastal zone should not extend further inland than is necessary to accomplish the stated purpose of proposed coastal zone management legislation. In order to avoid multiple jurisdictions, the seaward limit of the coastal zone should extend to the limit of state jurisdiction. Each state should be authorized to define the landward extent of its coastal zone for itself.

Non-government advisory groups. The coastal zone authority should provide a means for securing the advice and assistance of citizens advisory groups representing industry and other coastal resource users in the planning and implementation processes.

Limitations of authority. The function of a coastal zone authority should be to provide for a system for coastal zone planning and management. The coastal zone authority should not have the power to abrogate contracts or to order the cessation of activities undertaken prior to the establishment of the authority. Control or cessation of existing activities inimical to the public interest should be accomplished through the operation of existing law enforced by duly constituted agencies or through remedial legislation. Decisions of the coastal zone authority should be subject to appellate review.

Provisions for review of performance standards. Methods should be provided for updating or changing performance standards in response to changing technological and social needs. Procedures for modifying performance standards should be subject to the usual administrative due process including public notice and the opportunity for all affected parties to be heard.



JUNEAU, ALASKA

Alaska State Legislature

Senate

March 5, 1975

Senator Kay Poland, Chairman
Senate Resources Committee

Attached are the Preliminary Comments of our analysis of SB 175, Coastal Zone Management Act.

These comments attempt to show the Resources Committee what the present language of the Bill actually does. Paragraphs 1 - 5 consist of a general statement and paragraphs 6 - 27 deal with specific sections. We recognize that our analysis may be in variance with what the authors of the Bill believe it to say or intend for it to do.

In the attached comments we tried to refrain from judging the Bill as written. However, it is apparent that we find the language restrictive.

We share the universal view that a Coastal Zone Management Plan is an essential and necessary product of the Ninth Legislature, and did so recommend to you in our February 11, 1975, report on the OCS proceedings. However, we do not believe that SB 175, as presently written, sufficiently accomodates the principle of environmental protection and the realities of economic development. As review of the Bill progresses, we shall give the Committee such assistance as it may request in the preparation of a Committee Substitute.

Sincerely,

A handwritten signature in cursive script that reads "George C. Silides".

George C. Silides
Galliett and Silides
Consultants

PRELIMINARY COMMENTS
SB 175
COASTAL ZONE MANAGEMENT

1. For those communities which will be included within the Coastal Zone, their power to plan, zone, and issue or deny construction permits has been effectively removed. Senate Bill 175 limits those powers to the point of usurpation, by placing these powers in the hands of the Coastal Zone Management Council. No governmental entity is exempted regardless of the status or viability of its governing body.
2. The power of the Commission is double edged. While it can deny a community the right to issue a construction permit for non-conformance with Coastal Zone Plan criteria, it can also force a community to allow an installation it may not wish, if the Commission decides that such an installation would be of regional (and presumably State) benefit. All of Alaska is affected by these decisions.
3. All State agencies are subservient to the Commission in their actions whether these actions are within municipal boundaries or wholly on State lands. For example, no boat harbor, road, or airport may be built within the coastal zone unless approved by the Commission. This is not withstanding the lengthy and detailed review such projects already receive, especially if Federal or State funds are involved. The question of duplicated effort and jurisdiction arises.

4. The Act embraces all State lands under its control. (Sec. 40.27.410) In view of the lack of a State Land Use Plan, this could be viewed as a positive and beneficial step--depending on the final criteria of the Act.
5. The Legislature may wish to consider limiting the jurisdiction of the Commission to State Lands only. The State can always move through the Courts against a municipality in order to protect the physical, social, esthetic, or economic health of its people. As has been evidenced, groups and individuals frequently ask the courts to enjoin specific projects.
6. Addressing the particulars of SB 175, there are indications that while the Act addresses a definite need, a tendency to subvert all philosophies in favor of one also appears present.

In 46.27.010(5) and (6) clearly state the need and purpose of the Coastal Zone Act. Consideration should be given eliminating (1), (2), (3), and (4) as excess verbiage. In any event, highly conjectural adjectives such as "delicately", "permanent", "paramount", and "uniquely", can be suspected of grinding a special ax and will hinder passage.

Consideration should be given to defining the word "natural", under Section 940 of the Bill.

7. Sec. 020 and 290 - That Act provides for a Council which draws up a Plan, and for a Commission which enforces it. Section 20 creates a Council, the majority of which is composed of cabinet members who would normally be the Governor's Planning Council. We note, however, that the one member directly from the Office of the Governor, and who is proposed as Chairman, is not subject to the confirmation process.
8. Section 030 - Three public members are proposed. The Legislature should consider public members other than from the Land Use Planning Commission as directed in Section 30(c), so that greater public input and scrutiny can be provided.
9. Section 050 - Consideration should be given to changing the Quorum to two public members and any other four, instead of the language provided.
10. Section 100 - The Plan or portions of the Plan, should be submitted to the Legislature for adoption by resolution, rather than simple adoption by the Council.
11. Section 110- the purposes of the Act appear well taken except for (4) which deals with population density. Is the right of the people to move and settle to be limited or infringed?

12. Section 130 - the concept of hearings throughout the State recognizes the economic interdependence of all areas of the State, and the need and opportunity for public input is well stated. The word "adoption" should be changed to "submission" if the principle of legislative review and concurrence is to be upheld.

13. Section 140 and 150 - This language does not apply if the jurisdiction of the Commission is restricted to State owned lands. Otherwise the basis appears sound.

14. Section 170 - (1) and (2) are good clear statements. In discussing (3), (4), and (5), the following questions appear in need of clarification:
 - A. Is the Council assuming functions and policy decisions already specifically designated to other agencies? (Section 950 subverts other agency functions.)

 - B. Are the elements listed simply as a guideline as to the matters of concern to the Council? In that case, the elements listed are insufficient in scope and line 18, page 7, should read "...which includes at least the following elements, since we note that there are no specific elements relating to refineries, petrochemical plants, timber harvesting, products

manufacturing, fish and shellfish processing, or gas liquifaction, just to name a few.

(6) seems to gut the powers of the Commission being established by this Act.

(7) That a "precise" ranking could, or should, be attempted by a quasi-judicial agency such as this Council is extremely doubtful. Furthermore, this sub-paragraph superimposes the value of judgement of the Council over every other State agency or local government. (See item 1 of this analysis.)

Consideration should be given to eliminating 170 (3) - (7).

15. Section 230(b) - What is "substantial"? Should fishermen, loggers, etc., be excluded?
16. Section 290 (B)(4) - The powers of the Commission to conduct investigations appear overly broad.
17. Section 320 - Usurpation of all private and local government options.
18. Section 330 - No person or company can be expected to invest capital or begin construction under a Commission exemption

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that may be nullified upon adoption of the Coastal Zone Plan. It should be noted again that the Council has until 1978. By then all lead time for plant construction depending on oil or gas feedstocks will have been dissipated, leaving no option but to send our royalties outside.

19. Section 340 - (1), (2), and (3) contain words and clauses of debatable degree which usually result in poor legislation.

(4) - with the elimination of the word "otherwise", this subparagraph clearly serves the purpose of Section 340.

20. Section 350 - Of themselves, the procedures outlined are good. The question still remains one of jurisdiction.

21. Section 360(a) - This section, together with 320 usurps all State agency and local government planning, zoning, and development policy functions.

(b) - The figure of \$10,000 is totally unrealistic to installations worth hundreds of millions of dollars. The criteria are just as unrealistic, and are without regard to safety of life or property.

22. Section 380 - Appropriate only to the extent that the jurisdiction of the Council and the Commission embraces local governments in the final act.
23. Section 390 and 400 - These are the sections which can require a municipality to issue a building permit against its will if the proposed development is deemed by the Commission as being beneficial to the region and, presumably, the State. Regardless of how one might debate the merits or shortcomings of these sections which, together with 320, constitute the essence of the Act, it appears that they violate either or both spirit and the letter of the constitutional rights granted to local governments under their charters.
24. Section 410 - The language of this section effectively bans all development on State lands by requiring "all" of the criteria to be present. See line 11, page 17. An industrial plant, for example, though it might furnish economic or cultural development to the people of a city, a region, or a the state, is not allowable unless it is "essential to the maintenance of a necessary flow of revenue to the State". We interpret this to mean the State treasury from which all blessings are to flow. As a reasonable solution to this restriction it is suggested that:

1) Delete "all of" on line 11, page 17

2) Change (1) to read: "the proposed sale or lease contributes to a flow of revenue to the State."

It should be noted that (2) and (3) of this section are already the functions of other agencies.

25. Section 920 - No one, including the Commission being proposed under this Act, should be granted interlocutory relief without a proper showing of cause. Especially since in this case the word "relief" is synonymous with injunction.

26. Section 940 (1) - This could mean the entire State, since any stream flowing to the ocean will impact coastal ecology. Also, the word "shorelands" should be defined.

Hiding behind the word "significant" does not help. Consideration should be given to some limit.

(4) through (8) is usurpation of policy and function by definition in case you missed it before.

27. Section 950 - This section makes all State agencies subservient. However, since the Council is composed mainly of Commissioners,

the argument that such a coordinating agency has some merit, especially with regard to State lands, should not be overlooked amongst the criticism.

28. The effective date is of more consequence and sensitivity to this Act than to most. Consideration should be given to having separate effective dates for portions of the Act. For example, Articles 1, 2, 3, and Section 940 of Article 6 could have an immediate effective date, while the remainder would go into effect upon adoption of the Plan by the Legislature.

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

TO: Guy R. Martin
Commissioner

DATE : December 6, 1975

FROM: Michael C. T. Smith, Director
Division of Lands *McSmith*SUBJECT: Proposed Cook Inlet Land
TradePROPOSED COOK INLET LAND TRADEBrief History

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

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

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

The State was thus faced with the following factors:

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

- State participation. This is a risk of not taking any State action.
2. Although CIRI had lost in District Court, its appeal to the 9th Circuit included a request that the court nullify the September 1972 agreement between the Secretary and the State of Alaska which gave Alaska selection rights to lands south and southwest of Mount McKinley National Park which CIRI claimed it should have been entitled to select. Should the court find in favor of Cook Inlet, the Secretary would be directed to make available to CIRI for its selection a more acceptable array of lands. The Secretary might then have to reject the State's approximately 484,000 acre selection in this area in favor of making these lands available to CIRI for selection. Additionally, if this should happen and the Secretary can respond to a reversal by the Ninth Circuit by seeking to recover from the State the 484,000 acres sought by CIRI, he might also be forced to recover, on behalf of other Regions, conservation groups and other parties aggrieved by the September 1972 settlement, the other of the remaining forty-three and one-half million acres covered by the September 1972 State-Federal settlement. Although the State would oppose any such legal result it remains a distinct possibility to this day. It is a risk of taking no action.
 3. Assurances had been given by members of Congress (Congressman Meeds and Senator Jackson) that Cook Inlet would receive favorable legislation if their problem could not be settled by other means. The bills before the Congress at that time were essentially identical to the largely unacceptable "Frizzel offer." A similar bill is before Congress today as an alternative to the proposal below, and is a risk of taking no

State action.

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

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

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

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

Implications

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

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

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

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

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

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

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

Basic Objectives Of Proposal

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

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

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

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

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

- A. provide CIRI with lands physically well suited to settlement and development.
- B. guarantee that such developable lands would be located in close proximity to existing government services and, therefore, significantly reduce future expense in providing communication, education, transportation, and public safety services to these areas.
- C. hasten the development of these suitable lands in a much shorter time frame than could be expected for the remote lands which CIRI would otherwise be forced to select.
- D. a sophisticated but critical point is the fact that certain State selection rights, such as the 11(a)(1) (ANCSA) issue, will have to be resolved very shortly. The State believes it can select in these areas, and if it prevails, such 11(a)(1) selections, in combination with the selections under this proposal, would result in a highly desirable State resource ownership pattern, particularly in the Iliamna area.

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

long view for a large resource area.

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

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

required substantial governmental resources.

Negotiation Process

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

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

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

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

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

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

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

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

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

Specific Nature of Proposal

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

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

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

Characterization of Public and Agency Input

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Current Status

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

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

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

2. Bristol Bay Area--the original total of approximately 30 townships in the area of the Interior Department's Lake Clark d(2) proposal which were to be traded by the State in return for an equal number of townships in the Bristol Bay Area has been reduced to approximately 25. This change resulted from a determination by the State that it would be of greater benefit for the State to receive title to approximately 5 townships in the Lake Chakachamna Lake area. In addition to the inherent value of these lands, the Interior Department is very interested in these townships for inclusion in its d(2) proposal. For this reason, the State would retain a very strong bargaining position by obtaining title at this time to those lands.
3. Anchorage Bowl Federal Surplus Lands--while the original proposal specifically prevented CIRI from obtaining title to Federal Surplus Lands in the Campbell Tract, Point Campbell and Point Woronzof withdrawals, the modified proposal goes further in also protecting the Goose Lake withdrawal and in guaranteeing transfer of the Campbell

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

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

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

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

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

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

Major Considerations Before Decision

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

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

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

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

The authority cited above does not prohibit the alienation of minerals as proposed in the trade. Although there is no State statutory obstacle, the Statehood Act prohibition against such alienation, found in Section 6(1), is regarded by some as a Federal constraint. Many persons take the position that Section 6(1) has been amended by implication in Section 22(f) of ANCSA so that it does not come into play in such exchange transactions. To erase any questions, the Federal Legislation which will implement the land

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

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

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

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

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

TABLE 1.

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

<u>LANDS GIVEN BY STATE</u>					
<u>LOCATION</u>	<u>ACREAGE</u>	<u>VALUES (\$MILLIONS)</u>			
		<u>LAND</u>	<u>MINERALS</u>	<u>TIMBER</u>	<u>TOTAL</u>
Scattered					
Tracts	69,721	15.7	---	1.8	17.5
Kenai Penn.	107,650	16.1	---	1.3	17.4
Beluga	314,640	22.0	15.9 ^a	1.2	39.1
TOTAL	492,011	53.8	15.9	4.3	74.0

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

NOTE:

- a. The 15.9 value for the Beluga Coal resources is based on the middle of three scenarios for production in that area (pessimistic, medium, optimistic). The value has been discounted at eight percent from future revenues to present dollar values. The most optimistic scenario, which makes several very optimistic assumptions, would yield a discounted value of \$38.2 million (figures attached to memo).
- b. A very conservative figure of three thousand dollars per acre has been assumed for the Campbell Tract. This figure has then been discounted fifty percent under the assumption that if the State did not gain immediate title to the area under this proposal it would still stand a respectable chance of obtaining the land at some time in the future.
- c. Although other values including timber and specifically gravel are found on the Campbell Tract, sufficient data were not immediately available to make a good estimate of value. However, the value of gravel alone, located as it is within the center of the Anchorage Bowl, would be very substantial, certainly totaling in the millions of dollars.
- d. As with the Campbell Tract the values of the Point Campbell and Point Woronzoff surplus lands has been discounted to recognize that the State might obtain these lands at some unknown future date in other ways if the proposal is not executed. However, because these lands are outside of the two-mile radius of the old city boundaries, and because they are not as important as the Campbell Tract for other public purposes, there is a measurably greater probability that these surplus

Table I. NOTE d. continued.

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

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

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

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

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

A third value which must be estimated is that of the

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

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

with any degree of certainty.

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

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

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

of success with its court suit were measurably increased.

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

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

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

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

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

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

(f) Addition To Captain Cook Recreation

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

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

(h) Increased State Presence In Bristol Bay--

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

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

be revoked, it could be selected by the State.

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

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

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

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

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

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

<u>GIVEN BY STATE</u>	
Existing values relinquished	74.0
TOTAL	74.0
<u>RECEIVED BY STATE</u>	
New values received	65.0
Existing values not lost	32.1
TOTAL	97.1

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

them in determining the overall equal value consideration.

Finally, it should be emphasized that the agreement represents a negotiated settlement, which is an extremely important factor.

First, it can certainly be suggested that negotiation, particularly regarding non-quantifiable items, is man's best procedure for reaching equity. While this is not relied upon for legal foundation here, it is nonetheless crucial for public policy reasons.

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

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

Conclusions and Recommendations

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

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

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

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

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