COOK
INLET
LAND
SWAP

David Jackman
February 25, 1976

WHAT'S WRONG WITH THE COOK INLET LAND TRADE

Simply a bad deal for the state

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

1) The four-year dispute over the adequacy of the lands withdrawn by the Interior Department for the satisfaction of Cook Inlet Native Corporation's land selection rights; and

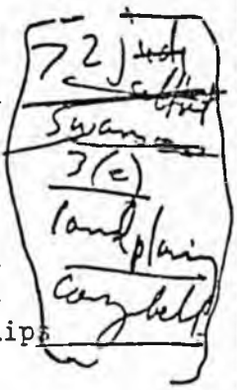
2) The need to get private ownership (in the form of pending Native corporate land selections) out of the Lake Clark area, so that the National Park Service will have a more salable national park proposal for the d-2 lands in that area.

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

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

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

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



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

The Campbell Tract

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

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

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

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

A Cloud Over the North-South Runway

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

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

No Special Protection for Fisheries

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

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

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

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

Out-of-Region Selection Rights

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

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

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

Impact on the Proposed Lake Clark National Park

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

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

Disposal Without Planning or Classification

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

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

Swanson River Oil Revenues

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

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

Serious Breach of Public Trust

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

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

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

Better Alternatives Are Still Available

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

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

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

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

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

Conclusion

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

To: Senator Kay Poland

From: George C. Silides, P.E.

Subject: Cook Inlet Land Trade

Transmitted herewith is the final Committee Report on HR 6644. I can find no substantive changes from the preliminary report you received earlier, except that this edition is much more complete.

Pages 1 - 10 represent the final language of the Bill itself as passed. The earlier edition of HR 6644 that we sent you shows, also, the original language that was deleted. Sections 12 and 17 of HR 6644 deal with the land trade between the State of Alaska and the Cook Inlet Native Regional Corporation. Section 12 describes the trade, and Section 17 sets aside the restrictions of the Alaska Statehood Act to permit accomplishment of this and any other and future trade. (Emphasis added).

Pages 10 - 14 constitute a letter of intent. It is noted that the State-Cook Inlet trade was not included in the Purpose description of the original Bill.

Pages 14 - 54 are a Section - By - Section Analysis. Section 12, which describes the trade in general terms begins on page 30. A detailed description of terms and conditions of the trade begins on page 35 and extends through page 52. The present prohibitions of the Statehood Act and the consequences of its being amended are recited at the bottom of page 34 and the top of page 35.

Pages 54 - 58 describe changes in existing law that were caused by HR 6644. Section 17 on page 56 is germane.

Pages 58 - 85 include reports by the various federal departments concerning their feelings on the measure. Not all are favorable. The Department of Agriculture specifically objects to the inclusion of Section 12 on the basis that the section reopens conflicts that ANCSA was intended to resolve.

The Congress had taken due note of the existing debate as to the propriety of the State's involvement and of the nature and extent thereof. The Governor has promised that he will not implement the terms of Section 12 of HR 6644 unless the Legislature concurrs. Section 12 (c) (3) (i) (center-of page 8), calls for a report by the Secretary of the Interior to Congress by April 15, 1976. The Legislature's decision must reach him in time to prepare that report. He reserves until December 18, 1976 to make other

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.

I. COOK INLET REGION RECEIVES:	Agreement Document (Page) & Section Reference	Map Reference
A. FROM FEDERAL GOVERNMENT:		
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)I-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)I-B (43)IV	--
3. All federal lands in the following:		
(a) T.10S., R.9W., F.M. (near Healy).	(37)I-B-(1)	--
(b) T.20N., R9E., S.M. (Glenn Highway near Matanuska Glacier).	(37)I-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)I-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)I-B-(3)	--

	Agreement Document (Page) & Section Reference	Map Reference
4. Outside Region - 29.66 townships outside Cook Inlet Region (from native deficiency or d(1) lands in the Ahtna, Bristol Bay, Calista, 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 IA-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 I-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

	Agreement Document (Page) & Section Reference	Map Reference
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)III-B	Appendix F
D. Early conveyance of Point Woronzof, Point Campbell and Goose Lake withdrawals.	(41)I-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:

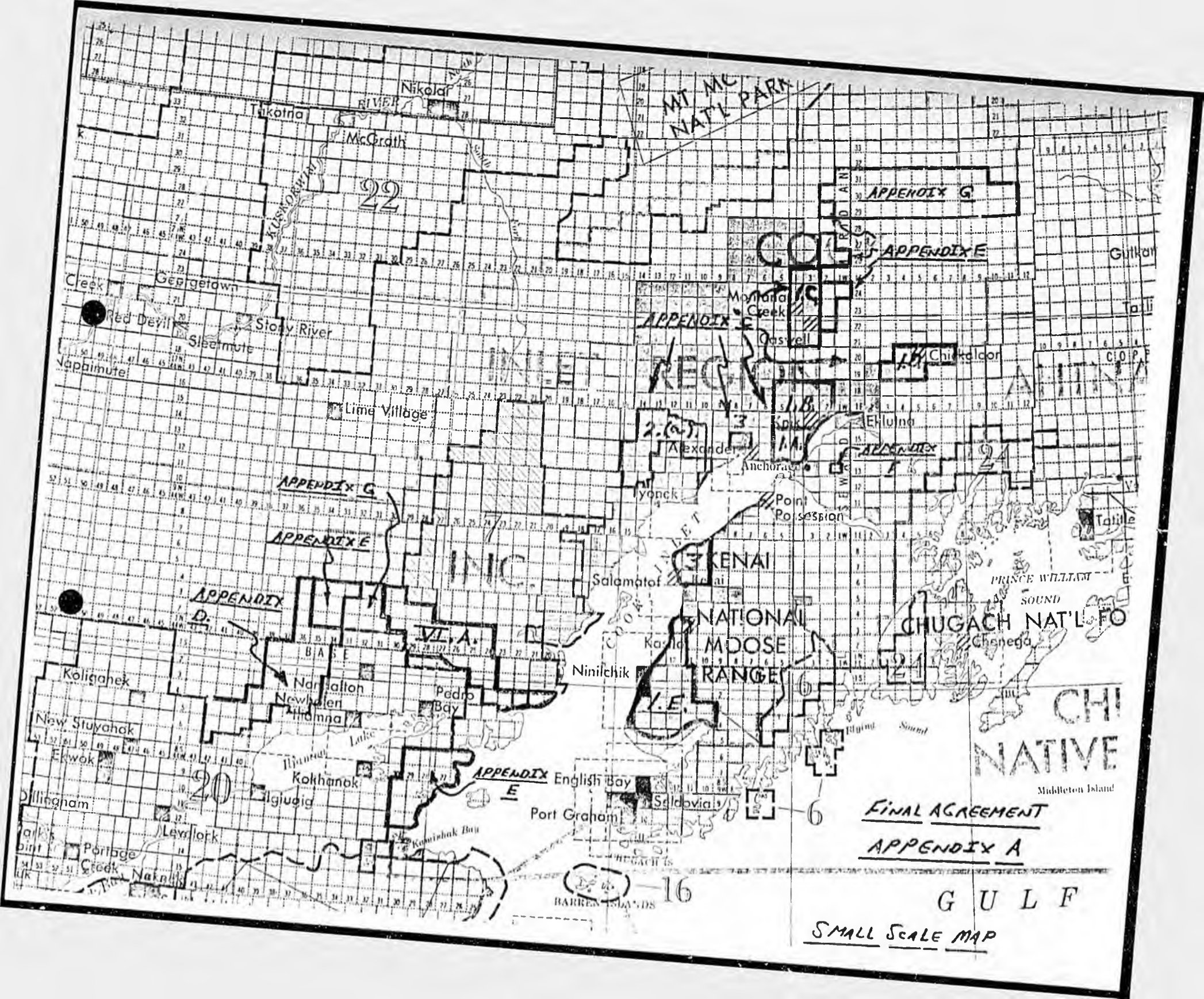
(a) Settlement of Cook Inlet Region's entitlement under ANCSA.
(b) Settlement of Cook Inlet Region's suit against the Secretary.
(c) Minimal impact upon lands in the Kenai National Moose Range.
(d) Improoved land ownership pattern in the Lake Clark area.

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.


Nikolai
Telkotna
McGrath
RIVER
MT MC
NAT'L PARK
APPENDIX G
APPENDIX E
APPENDIX C
Gulkana
Talkeetna
Montana Creek
Cassell
Chickaloon
Lime Village
Alexander
Eklutna
Anchorage
Tyonek
Point Possession
Talkeetna
APPENDIX G
APPENDIX E
APPENDIX D
APPENDIX C
KENAI
Salamatof
PRINCE WILLIAM SOUND
NATIONAL MOOSE RANGE
CHUGACH NAT'L FO
Chenega
Ninilchik
Koliganek
Nondalton
Newhalen
Pedro Bay
New Stuyahok
Iliamna
Lake
Ekwok
Kokhanok
APPENDIX E
English Bay
Port Graham
Seldovia
Igiugig
Levelock
Portage Creek
Kamishak Bay
BARREN ISLANDS
CHI
NATIVE
Middleton Island
FINAL AGREEMENT
APPENDIX A
GULF
SMALL SCALE MAP

February 11, 1978

Mr. Roy Huhndorf, President
Cook Inlet Region, Inc.
1211 West 27th Avenue
Anchorage, AK 99503

Dear Roy:

The directors of the Anchorage Chapter, Alaska Miners Association, voted Monday to oppose the Cook Inlet compromise, and we advised Kay Poland and Nels Anderson of our position and reasons by telegram. Enclosed is a copy of the wire.

We realize that it again throws Cook Inlet into unknown ground and that it is possible that another settlement compromise could be worse. However, the actions detrimental to mining--particularly uncertain timing and making definite commitments to a Lake Clark National Park--were more than we could go along with.

The absolute failure of the Department of Natural Resources to go into the negotiation with any knowledge or commitment other than to Parks and Wildlife is the cause of the problem as we see it. We are on record as desiring a better settlement which would give Cook Inlet needed lands. We do not intend to publicize our decision widely.

Sincerely,

C. C. Hawley
Chairman, Anchorage Branch
Alaska Miners Association

ams
Enclosure a/s
cc: Jeff Knaebel ✓
Kay Poland
Nels Anderson

Alaska State Legislature

Senate

JUNEAU, ALASKA

March 4, 1976

MEMORANDUM

TO: ALL MEMBERS

FROM: SENATOR KAY POLAND

We have received copies of the Complaint and Memorandums filed against the Cook Inlet Land Trade in Anchorage Superior Court, and they are hereby transmitted for your information.

These documents, together with the comments of Dave Jackman and Michael Smith, sent you earlier, should give you a reasonable resume of the basic issues.

The earlier packet contained a transcript of the Anchorage testimony plus written material received since that date. Tapes of the Juneau testimony are available but not transcribed because of repetition.

The entire matter will be calendared early next week. The Senate Resources Committee has endeavored to secure testimony from every source for your information.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

J. R. LEWIS and HAROLD H. GALLIETT, JR., Citizens and Taxpayers of the State of Alaska,

Plaintiffs,

vs.

STATE OF ALASKA; GOVERNOR JAY HAMMOND; GUY R. MARTIN, Commissioner of Natural Resources; MICHAEL C. T. SMITH, Director, Division of Lands,

Defendants.

No. 76-1608

COMPLAINT FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTION

Plaintiffs, HAROLD H. GALLIETT, JR. and J. R. LEWIS, citizens and taxpayers of the State of Alaska, pursuant to Alaska Civil Rule 23, and on behalf of all citizens and taxpayers of the State, complain and allege as follows:

COUNT ONE

I

Plaintiffs have been and now are residents, citizens and taxpayers of the State of Alaska and reside in Anchorage, Alaska. Defendants are the State and its Governor, Commissioner of Natural Resources and Director of Division of Lands.

II

Plaintiffs are commencing this action in order to permanently enjoin the state from participating in an exchange of lands involving the alienation of subsurface mineral rights belonging to all the people of the State of Alaska. This

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attempted alienation is in violation of the Constitution of the United States, the Constitution of the State of Alaska, the Alaska Statehood Act, and Title 38, Alaska Statutes.

III

In 1955 the then Territory of Alaska through its legislature, provided for a constitutional convention. Elected delegates adopted a constitution on February 5, 1956 which was ratified by the people of Alaska on April 24, 1956.

IV

This constitution adopted by the people of Alaska served as a basis for subsequent petitions to Congress for statehood and constituted an offer to accept the privileges and responsibilities of that status in accordance with the terms of said constitution.

V

Article VIII, Section 9 of the Constitution of the State of Alaska provided in part as follows:

> Section 9. Sales and Grants. Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources.

VI

Two years after the people of Alaska adopted the above constitutional provisions, Congress passed the Alaska Statehood Act, approved on July 7, 1958. Sec. 6(i) of the Statehood Act is a direct response by Congress to the provisions contained in Article VIII, Sec. 9 of the Alaska Constitution set forth above. The Alaska Statehood Act stated in this section as follows:

> All grants made or confirmed under this Act shall include mineral deposits. The

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> grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, . . .

Sec. 6(i) of the Act further provided that any lands or minerals disposed of by the State of Alaska contrary to the provisions of the above section would be forfeited to the United States by appropriate proceedings instituted by the Attorney General.

VII

By Public Law 92-203, 85 Stat. 688, approved December 18, 1971, Congress enacted the Alaska Native Claims Settlement Act. This Act provided for the fair and just settlement of all claims by native groups in Alaska based upon their aboriginal land claims. All prior conveyances of public land pursuant to federal law and all tentative approvals pursuant to Sec. 6(g) of the Alaska Statehood Act were declared to be an extinguishment of the aboriginal title of Alaska natives. The Act further provided for 12 geographic regions within the State and for appropriate regional native corporations which were given the right to select land and share in the revenues from the sale of minerals. Sec. 12 of the Alaska Native Claims Settlement Act provided for the selection of land by each village corporation within the township in which the village is located, plus an area that would make the total selection equal to the acreage to which the village was entitled under Sec. 14 of the Act.

VIII

Because of existing federal withdrawals, state land selection and other non-native settlement patterns within the Cook

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Inlet region, Cook Inlet Region, Inc., a native corporation, was not able to select lands which it considered of like and similar character under the formula established by the Alaska Native Claims Settlement Act. For approximately three years following the enactment of this Act, Cook Inlet Region, Inc. negotiated with the Secretary of the Interior in an attempt to insure its land selection of a similar and like character.

IX

Cook Inlet Region, Inc. was dissatisfied with these negotiations with the United States Department of the Interior, and it filed suit in a District Court. Negotiations continued, however, and the solicitor for the Department of Interior made an offer to convey to Cook Inlet Region, Inc. ten surface and fifteen subsurface townships within the Kenai National Moose Range, including the Swanson River oilfield, as well as additional federal lands in the then Greater Anchorage Area Borough. These lands included land at Point Woronzof, Point Campbell, and a sizable portion of the Campbell air strip tract. Cook Inlet Region, Inc. declined this offer and it was later withdrawn by the Department of the Interior.

X

The United States District Court ruled in favor of the Secretary of the Interior and against Cook Inlet Region, Inc. in February of 1975. Pending the appeal of the case to the Ninth Circuit Court of Appeals, Cook Inlet Region, Inc. appealed to Congress for legislative relief. Despite the fact that Cook Inlet Region problems were solely with and concerning the federal government and federal land, the State entered into the negotiations in an attempt to help solve the problems between the Cook Inlet Region and the federal government.

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X

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XI

The State, Cook Inlet Region, Inc., and the Department of the Interior entered into the negotiations concerning the exchange of lands pursuant to Sec. 22(f) of the Alaska Native Claims Settlement Act which provided as follows:

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

XII

Pursuant to the exchange provisions cited above, the State volunteered the trade of various patented lands to the Department of the Interior for exchange and grant to the Cook Inlet Region, Inc. The terms of the settlement were, in summary, that the State of Alaska obligated itself to convey lands to the United States for exchange with Cook Inlet Region, Inc. in accordance with "Terms and Conditions for Land Consolidation and Management in Cook Inlet Area" made a part of the report from

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the Committee on Interior and Insular Affairs accompanying HR 6644, the amendment to the Alaska Native Claims Settlement Act. Further, Cook Inlet Region, Inc. was to dismiss its lawsuit in the case of Cook Inlet v. Kleppe, 75-2232, Ninth Circuit Court of Appeals; and other native village selections under Sec. 12 of the Settlement Act concerning lands within Lake Clark, and other areas outside the Cook Inlet Region, Inc., would be withdrawn to enable the exchange to take place by substituting land outside Cook Inlet region. These terms are summarized in Sec. 12(a) of Public Law 94-204, known as Alaska Native Claims Settlement Act Amendments, approved January 2, 1976. Sec. 12(f) of the Amendments states that all conveyances of lands made or to be made by the State of Alaska in satisfaction of the Terms and Conditions "shall pass all of the state's right, title, and interest in such lands, including the minerals therein, as if those conveyances were made pursuant to Sec. 22(f) of the Settlement Act."

XIII

Sec. 17 of the Amendment purports to amend Sec. 22(f) of the Alaska Native Claims Settlement Act by stating that in any exchange made pursuant to Sec. 22(f), the State may convey its lands, "free of the restrictions of Sec. 6(i) of the Alaska Statehood Act."

XIV

In the "Terms and Conditions" contained within the report accompanying HR 6644, Sec. II at P. 42, the State of Alaska was asked to give its consent to the exchange and settlement agreement within sixty days of the commencement of the 1976 session of the Alaska State Legislature. Upon such consent being given, the State of Alaska is bound to convey to the United States for reconveyance to Cook Inlet Region, Inc. the lands set forth

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within the "Terms and Conditions." Plaintiffs allege on information and belief that said consent must be given, if at all, prior to March 12, 1976.

XV

In an attempt to implement Sec. 22(f) of the Alaska Native Claims Settlement Act, the Alaska legislature, in 1972, enacted what is now Sec. 38.95.060 Alaska Statutes which authorizes the exchange of state land with a native corporation "with the consent of the governor," when the purpose is to effect land consolidations or to facilitate the management or development of the land. Similar to ANCSA, Sec. 22(f), the Alaska Statute provided that exchanges shall be on the basis of equal value, with either party being allowed to accept or pay cash in order to equalize the value of the properties exchanged.

XVI

The governor and the State, through its Commissioner of Natural Resources and Director of the Division of Lands, is proposing to give away large parcels of land and is also proposing to convey the subsurface mineral rights in such a manner as would convey all the coal, oil and gas resources of the lands. The State is proposing to give away the following estimated resources:

Present value of coal	$4,732,000,000
Minimum probable present value of oil and gas	62,500,000
Present value of surface estate	451,695,000
TOTAL	$5,246,195,000

The State proposes to receive the following estimated value as a result of the exchange:

Present value of surface estate	165,917,440

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From the above summary of the exchange values, the net result to the State of Alaska is as follows:

Net loss $5,030,187,560

XVII

The proposed conveyance violates the Alaska Constitution and its compact with the federal government through the Alaska Statehood Act. The Alaska Constitution and the Alaska Statehood Act prohibit any conveyances, deeds, grants or sales of state lands without reservations to all the people of the State of the mineral rights contained therein.

XVIII

The exchange of land as proposed by the Hammond Administration fails to effect land consolidations or to facilitate the management or development of the land as required by A.S. 38.05.062.

XIX

There is no adequate remedy at law for plaintiffs and the taxpayers and citizens of the State of Alaska to effect redress should this illegal conveyance take place. Damages would be astronomical for the replacement of the values of the coal, oil and gas reserves and resources. In any event, damages would have to come from the treasury of the State of Alaska, which consists of assets already owned by the people of the State. If this proposed exchange is not permanently enjoined, the plaintiffs and other citizens and taxpayers of the State of Alaska will suffer irreparable harm on the magnitude of billions of dollars in lost resources.

COUNT TWO

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

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II

Article VIII, Sec. 9, Constitution of the State of Alaska, subject to the reservation to the State of all resources, allows the Legislature to provide for the sale or grant of state lands, or interests therein, and specifically allows for the establishment of sales procedures.

III

Pursuant to this constitutional authority, the Alaska Legislature in Sec. 38.05.045, Alaska Statutes, provided in part as follows:

> All lands owned in fee by the state or to which the state may become entitled, excepting tide, submerged or shorelands, and timber or grazing lands, may be sold as provided in §45-69 of this chapter.

IV

Sec. 38.05.055, Alaska Statutes, states in part as follows:

> Except as provided in §315(d) of this chapter, the sale shall be made at public auction to the highest qualified bidder as determined by the director.

Sec. 38.05.125 A.S. states that each contract for the sale lease or grant of state land, and each deed to state land, properties or interest in state land, made under Sec. 315-325 of this chapter or Sec. 45-120 of this chapter, . . . is subject to the reservation that the State of Alaska "expressly saves, excepts, and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind or description, ..."

VI

Sec. 38.05.310, Alaska Statutes, states that no land may be sold or leased for less than the approved, appraised market value.

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VII

If Sec. 38.05.125, Alaska Statutes, providing for the reservation to the State of all mineral rights, is not in violation of Article VIII, Sec. 9, Constitution of Alaska, the reservation must apply to all authorized and legal state sales or grants in accordance with the contractual and compact provisions of Article VIII, Sec. 9, Constitution of Alaska and Sec. 6(i) of the Alaska Statehood Act. In this event, Sec. 38.95.060, Alaska Statutes, providing for the exchange of land with a native corporation would not be in accordance with the public auction and competitive bid requirements set forth in Sec. 38.05.045-120, Alaska Statutes.

VII

If the State is assuming for the purposes of the proposed exchange transaction that Sec. 38.95.060 (exchange provision) is outside the scope of the auction and competitive bidding provisions, and outside the reservation of mineral rights provisions, then Sec. 38.95.060 and Sec. 38.05.125 are in violation of Article VIII, Sec. 9 of the Alaska Constitution and the compact provisions between the Constitution and the Alaska Statehood Act. The proposed exchange is, therefore, illegal.

COUNT THREE

I

Plaintiffs reallege Paragraph I through XIX of their First Count herein.

II

Article VIII, Sec. 10 of the Constitution of the State of Alaska states as follows:

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

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Although the State has conducted numerous hearings on the proposed land trade, the actual lands to be made the subject of the trade with the native corporation have not yet been determined. In accordance with Sec. 12(b) of the Amendments of ANCSA, and the "Terms and Conditions," the Cook Inlet region is allowed to select lands from various "pools." How much of the Beluga coal land and other lands now belonging and patented to the State will be selected from these "pools", and the exact location and value of such lands, still has yet to be determined and probably will not be determined until long after the Governor gives his consent.

III

The public notice requirements of Article VIII, Sec. 10 of the Alaska Constitution have not been complied with insofar as said provisions must require that notice not only be given of the exchange, but of the value and appraisals of the resources and surface rights contained therein, and the exact nature of the trade so as to give the public real notice of what is contemplated in terms of economic impact to the State Treasury now and in the future. Without these additional facts, notice is meaningless and ineffective.

IV

Article VIII, Section 10 also requires "other safeguards of the public interest as may be prescribed by law" as a part of a notice requirement prior to disposal of state lands. Plaintiffs allege that the terms of the proposed sale to this date remain indeterminate, indefinite, and of such an ambiguous nature that the public has received inadequate notice of the economic consequences of the proposed exchange. Even the legislature is unable to prescribe safeguards because it, like the plain-

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tiffs, has no exact knowledge of specific lands and resources involved. The proposed exchange, therefore, violates Article VIII, Section 10, Constitution of the State of Alaska.

COUNT FOUR

I

Plaintiffs reallege Paragraph I through XIX of their First Count herein.

II

Article VIII, Section 17, Constitution of the State of Alaska, provides as follows:

> Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

III

Plaintiffs allege that the proposed land trade involving the Cook Inlet region violates Article VIII, Section 17 of the Alaska Constitution in that the trade or exchange will result in valuable state resources being conveyed to a private corporation for less than fair value and for the use and benefit of less than all citizens of the State of Alaska.

IV

The purported and invalid attempt on the part of Congress to waive provisions of the Alaska Statehood Act, requiring reservations of all minerals for the benefit of all citizens of the State, and the purported and invalid attempt of the State to convey the mineral rights underlying state lands in violation of the State Constitution, results in the application of federal and state law which is not uniform and which does not apply to all citizens of the State equally. The State through the proposed exchange is violating the intent and purpose of Article VIII, Section 17, Constitution of the State of Alaska.

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COUNT FIVE

I

Plaintiffs reallege Paragraph I through XIX of their First Count herein.

II

Sec. 38.95.060, Alaska Statutes, providing for the exchange of state lands with lands owned by the regional corporation, cannot and does not purport to amend, change or waive the provisions of Article VIII, Sec. 9 of the Alaska Constitution and Sec. 6(i) of the Alaska Statehood Act, both of which require that all deeds or grants of state lands reserve to the State all mineral rights contained therein.

III

The purported land exchange between the State and the Cook Inlet Region, in addition to conveying subsurface mineral rights in violation of Article VIII, Sec. 9 of the Alaska Constitution and Sec. 6(i) of the Statehood Act, is also in excess of the authority set forth in Sec. 38.95.060, Alaska Statutes, which does not in any manner refer to subsurface mineral rights as a part of the exchange.

COUNT SIX

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

Sec. 6(i) of the Alaska Statehood Act in conjunction with Article VIII, Section 9 of the Alaska Constitution created a compact which thereafter and until amended according to law, guaranteed to all the people of the State of Alaska that the mineral resources of the State would be retained by the State and its citizens. The grant of lands from the federal government

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to the State was expressly conditioned upon the State preserving the mineral rights for all its citizens, and the State cannot now legally, without a proper vote of the people as required to amend the Alaska Constitution, convey said mineral rights and thereby bestow a special benefit on any person or corporation, public or private, at the expense of the citizens of Alaska.

III

The Alaska Statehood Act and the Alaska Constitution place the State in the position of trustee over the mineral resources of the citizens of the State, and the State cannot now legally abdicate its duty as trustee without the consent of its citizens any more than it could abdicate its police powers and duty to protect persons and their property.

COUNT ~~SIX~~ SEVEN

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

Sec. 38.95.060, Alaska Statutes, providing for the exchange of land, states that a corporation organized under Alaska law pursuant to the federal Alaska Native Claims Settlement Act may obtain "up to 23,040 acres of state land."

III

The purported land exchange between the State and the Cook Inlet Region purports to grant far in excess of 23,040 acres of state land; to the contrary, the proposed exchange would involve over 400,000 acres. Therefore, even if Sec. 38.95.060, Alaska Statutes, is a valid delegation of legislative authority to the Governor, the proposed exchange is not within the limitations imposed by this section.

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actually 495,360 acres of state patented lan

COUNT ~~SEVEN~~ EIGHT

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

Sec. 38.95.060, Alaska Statutes, states as follows:

> (c) Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged.

III

The proposed exchange of lands between the State and Cook Inlet region are not based upon equal value. The State has not conducted adequate appraisals of the coal and other natural resources underlying the lands attempted to be exchanged in this transaction, and the State is proposing to give away coal resources which ultimately may be of more value and benefit to the State of Alaska than the resources underlying the Prudhoe Bay oil fields.

IV

The State is attempting to exchange state lands involving enormous coal resources in exchange for lands which, although useful for park and recreational purposes, contain little inherent value. Sec. 38.95.060(c) incorporates the concept of "cash" in equalizing values, and the actual monetary benefits and disadvantages should be the primary factor in determining equality in this proposed exchange. Although park and recreational lands do have value to the State, the enormity and magnitude of the economic value and benefit to the State of its mineral rights far outweigh any assertion on the part of the State that the proposed exchange is on the basis of equal value.

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COUNT ~~EIGHT~~ NINE

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

Sec. 17 of the Amendments to the Alaska Native Claims Settlement Act, which purports to allow the State to convey its lands in conjunction with the Cook Inlet Region settlement free of the restrictions of Sec. 6(i) of the Alaska Statehood Act, is a unilateral attempt on the part of the Congress to waive and amend the compact provisions of the Statehood Act in order to obtain state lands and their underlying mineral rights for the sole purpose of effecting a federal settlement with the natives of Alaska.

III

The purported attempt of Congress in Sec. 17, to authorize the disposal of state lands contrary to the Alaska Statehood Act and the Alaska Constitution, is in violation of the Supremacy Clause of the Constitution of the United States. This clause declares that the laws of the United States shall be the supreme law of the land, but also directly limits the supremacy to that area solely within the sphere of lawful federal power and that area not reserved to the states by the Tenth Amendment.

IV

Amendment X of the Constitution of the United States specifically states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." The federal government, through its Congress, does not possess the constitutional authority to enact Sec. 17 of the Amendments,

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which is nothing more than an attempt to control the power or authority of the State of Alaska concerning the dispositions of its own lands. Congress determined in the Statehood Act the circumstances under which the State of Alaska would be admitted into the Union, but this did not and does not give Congress any power to change or modify, either directly or indirectly, the provisions of the Constitution of the State of Alaska.

VI

By the enactment of Sec. 17 of the Amendments, the Congress of the United States is violating the compact provisions of the Statehood Act which provide that upon the issuance of the proclamation of the President, the State of Alaska "is hereby declared to be a State of the United States of America, is declared admitted into the Union on an equal footing with the other states in all respects whatever, ..."

VII

Should the attempt of Congress pursuant to Sec. 17 of the Amendments be construed to be a valid exercise of federal authority concerning state lands, the State of Alaska would, in effect, be denied admission into the Union on equal footing. Any such attempt is, therefore, in violation of federal law.

COUNT ~~NINE~~ TEN

I

Plaintiffs reallege Paragraph I through XIX of their First Count herein.

II

Sec. 38.95.060 providing for the exchange of land with a native corporation, states that "with the consent of the governor, a corporation . . . may obtain up to 23,040 acres

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of this land, if it has not been disposed of or developed, by exchanging land or interest in land with the State." This section further states that exchanges shall be on a basis of equal value.

III

The legislative delegation of authority to approve of exchanges of land granted to the governor pursuant to the above-cited statute is an unconstitutional and invalid delegation of legislative authority by virtue of insufficient standards, rules and regulations to govern the sale and exchange transaction contemplated therein.

IV

Sec. 38.05.035, Alaska Statutes, states that the Director of the Division of Lands shall " . . . (2) manage, inspect and control state lands and improvements on them belonging to the State and under the jurisdiction of the division;" . . . . The same section states that the Director shall" . . . (7) have jurisdiction over state lands . . . and shall perform the duties necessary to protect the state's rights and interest in state lands, including the taking of all necessary action to protect and enforce the state's contractual or other property rights; . . . . "

V

Sec. 38.05.035, Alaska Statutes, further states that the power of the Director of the Division of Lands authorizes him . . . "(14) when he finds that the interest of the state will be best served, he may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available lands, resources, property or interest in them, . . . and no contract for the sale, lease, or other disposal of available lands or interest in them, is legally binding on the

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State until the commissioner formally records his consent to the contract; . . . . "

VI

Article VIII, Section 9, Constitution of the State of Alaska, authorizes the legislature to provide for the sale or grant of state lands, and establish sales procedures. Pursuant thereto the Alaska legislature delegated to the Department of Natural Resources, its Commissioner, and the Director of the Division of Lands the duty of making findings and determinations relating to the best interests and welfare of the State of Alaska. The legislature established sale procedures for the sale of state lands in Section 38.05.045 et seq.

VII

By virtue of Section 38.95.060, Alaska Statutes, the legislature is attempting to delegate the decision of making a land exchange concerning valuable state resources not to an administrative agency, but to the Governor, a single employee of the executive branch, contrary to the established sale procedures, regulations and statutes which give exclusive jurisdiction over the sale and disposal of state lands to the Director of the Division of Lands and the Commissioner of Natural Resources. There are no standards set forth in the exchange provisions governing the appraisal and determination of equal values, and there is not even a requirement that the consent of the governor be withheld until the exact lands involved have been identified and the exact appraisal and valuation of the exchange is made definite.

VIII

The legislature in Section 38.95.060, Alaska Statutes, is, pursuant to invalid federal legislation, attempting illegally

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to give away irreplaceable natural resources at the sole discretion of the Governor, thereby divesting the Division of Lands and its Director of its constitutional and statutory power to control and manage state lands through established procedures.

COUNT ~~THE~~ ELEVEN

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

The proposed exchange attempts, through federal legislation to unilaterally waive or amend the Alaska Statehood Act; subverts the jurisdiction of the Division of Lands; disposes of lands without established and appropriate sale procedures; and denies the citizens of the State of Alaska the protection of Article VIII, Section 9 of their Constitution and its compact with the federal government pursuant to Section 6(i) of the Statehood Act. For these reasons the proposed exchange and its implementing legislation deprive plaintiffs and the citizens of the State of Alaska of their property and resources without due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and Article I, Section 7 of the Constitution of the State of Alaska. Further, the proposed exchange denies the citizens of Alaska of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 1, Alaska Constitution.

WHEREFORE, plaintiffs on their own behalf and on behalf of all of the citizens of the State of Alaska, pray for an order of this court granting them judgment declaring that the

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proposed exchange of land between the State of Alaska and the Cook Inlet Region, Inc. be declared illegal as in contravention and in violation of the Federal and State Constitutions, and the applicable Alaska Statutes; further,

Plaintiffs pray for judgment permanently enjoining defendants, their agents and employees, from consenting to, implementing, negotiating, or in any manner conveying or attempting to convey any of the lands and mineral rights as contemplated in Section 12 of the Amendments to the Alaska Native Claims Settlement Act; and further,

For judgment awarding plaintiffs their costs and attorney fees for protecting their interests and the interests of all citizens of the State of Alaska.

DATED at Anchorage, Alaska this 15th day of March, 1976.

RAYMOND A. NESBETT
Attorney for Plaintiffs

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

J. R. LEWIS and HAROLD H. GALLIETT, JR., being first duly sworn on oath, depose and say:

That they are the plaintiffs in the above-entitled action; that they have read the foregoing Complaint, know the contents thereof and believe the same to be true.

J. R. LEWIS

HAROLD H. GALLIETT, JR.

SUBSCRIBED AND SWORN to before me this 15th day of March, 1976.

Notary Public in and for Alaska
My Commission Expires: 2-18-77

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(e) The extremely valuable patented state lands which these top officials are attempting to exchange for unconscionably less valuable lands, are as follows:

(1) POINT MACKENZIE POOL - An unspecified 3,200 acres of land, together with mineral estate. This land could include uniquely-valuable, Point Mackenzie port lands or enormously-valuable lands containing an estimated 550 million tons of coal between the surface and a depth of 2,000 feet, as estimated from oil well logs.

(2) KNIK-WILLOW POOL - An unspecified 4,480 acres of land, including mineral estate. This land could include enormously-valuable coal lands containing an estimated 770 million tons of coal between the surface and a depth of 2,000 feet, as estimated from oil well logs.

(3) KASHWITNA POOL - An unspecified 38,400 acres of land, together with mineral estate. This land could include valuable home and agricultural land, for which Alaskans and outside speculators alike have competed to purchase at rapidly escalating prices.

(4) CHICKALOON POOL - An unspecified 4,800 acres of land, including mineral estate. This land could include extremely-valuable coal lands containing large reserves of bituminous coal. Some of this coal is of high-priced, coking-quality, as determined from U. S. Geological Survey and U. S.

Bureau of Mines investigations.

(5) KENAI POOL - An unspecified area of at least 115,200 acres - and possibly much more acreage, depending on as yet uncertain Native village corporation entitlement - together with mineral estate. This land could include enormously-valuable coal lands containing about 20 billion tons of coal between the surface and a depth of 2,000 feet, as estimated from oil well logs and surface outcrop data.

(6) BELUGA POOL - An unspecified area of 13½ townships (311,040 acres), including mineral estate. This land is to be selected by the Cook Inlet Region, Inc., from a larger area consisting of 16 townships (368,640 acres), after possible selection of one township of surface estate by the Tyonek village corporation. The attempted land exchange permits the Cook Inlet Region, Inc., to select the most valuable lands in the pool. Under the terms of the attempted exchange, enormously-valuable patented state coal lands will be granted by the state. The most valuable coal lands in this pool contain about 26 billion tons of coal between the surface and a depth of 2,000 feet, as estimated from nearby oil well logs, surface outcrop data and geophysical surveys.

3. VALUE OF COAL WHICH MAY BE LOST TO THE STATE

(a) I estimate eventual recovery of 50 percent of the coal estimated above.

(b) I estimate the present mean effective state coal royalty in said pools to be 20 cents per ton.

(c) In making my estimate of future state coal royalty income from lands which may be lost, I first estimate that no significant reduction of the estimated resource will occur in the next 20 years as a result of mining. Second, I estimate inflation henceforth at 6 percent per annum, compounded annually. Third, I estimate a real increase in the value of coal due to improvements in technology and increased demand, at 3 percent per annum, compounded annually. Fourth, I estimate that the royalty paid to the state for coal will be changed by law to a percentage of pit head price, and that this percentage of pit head price will become fully effective within 20 years from the date hereof. Fifth, I estimate that the overall escalation factor to be applied to state coal royalties will be 9 percent per annum, compounded annually.

(d) In making my estimate of the present value of future state coal royalty income from lands which may be lost, I first estimate that interest charged the state for bond funds will be 6 percent per annum. Second, I estimate that the required marginal utility of state bond funds above interest cost, will be 50 percent of interest cost. Therefore, I estimate that the overall discount factor to be applied to determine the discounted present value of future state coal royalty income from lands which may be lost, will be 9 percent per annum.

(e) Therefore, I calculate that the escalation factor offsets the discount factor, and that my estimate of the present mean effective state coal royalty may be applied to recoverable coal to compute the present value of future state coal royalty income from lands which may be lost.

(f) Thus, the estimated present value of only a part of the coal which may be lost by the state in this attempted land exchange, is as follows:

(1) POINT MACKENZIE POOL

550,000,000 Tons
X 50% Recovery
X 20¢/Ton Royalty = $55,000,000

(2) KNIK-WILLOW POOL

770,000,000 Tons
X 50% Recovery
X 20¢/Ton = 77,000,000

(3) KENAI POOL

20,000,000,000 Tons
X 50% Recovery
X 20¢/Ton = 2,000,000,000

(4) BELUGA POOL

26,000,000,000 Tons
X 50% Recovery
X 20¢/Ton = 2,600,000,000

(5) PRESENT VALUE OF COAL WHICH MAY BE LOST BY THE STATE $4,732,000,000

(g) The complex Chickaloon coalfields contain large resources of bituminous coal which could be estimated, if need be.

(h) The quantities of coal in the attempted exchange lands below a depth of 2,000 feet are larger than the quantities of coal above a depth of 2,000 feet. These resources could be estimated, if need be, and many mines could be cited which recovered coal as early as 1910 from depths greater than 2,000 feet.

(i) The estimated quantities of coal in the lands to be lost by the state from the Beluga Pool are conservative. These estimated quantities amount to about 2.5 percent of the volume of tertiary sedimentary rocks to a depth of 2,000 feet in the possible Beluga Pool exchange area. The average percentage of coal in nearby tertiary sedimentary rocks, as determined by interpretation of suites of oil well logs, is about 7.8 percent.

4. VALUE OF OIL AND GAS WHICH MAY BE LOST TO THE STATE

(a) The Beluga tertiary basin, much of which is in the attempted exchange lands, has recently, as a result of gravity geophysical work, been recognized as having sufficient depth of sedimentary rocks to offer good possibilities for oil and gas discoveries.

(b) At the Beluga River gas field, drilling by Standard Oil Company of California of three stepout wells has resulted in increasing the probable reserves of this field from 500 billion cubic feet to one trillion cubic feet. Parts of the

Beluga River gas field are excluded from the attempted land exchange. But, continuation of planned stepout drilling is likely to extend this gas field out into the lands attempted to be exchanged.

(c) Ten miles northeast of the Beluga gas field, Cities Service Oil Company and Pacific Lighting Corporation have very recently discovered a gas field estimated to hold one trillion cubic feet of gas. Similar discoveries are likely in the attempted exchange lands.

(d) Gas discoveries in the amount of one trillion cubic feet in the attempted exchange lands would yield about 125,000,000 MCF of in-kind royalty gas to the State of Alaska. I follow the same rationale for estimating present value of future gas income as has been given above for coal royalties. Using a present gas sale price of 50 cents per MCF, gas discoveries in the amount of one trillion cubic feet in the attempted exchange lands would have a present value to the state of $62,500,000.

(e) Yet, the state has thus far assigned no value to the great oil and gas potential in the attempted exchange lands.

5. VALUE OF SURFACE ESTATE WHICH MAY BE LOST BY THE STATE

(a) The present value of surface estate which may be lost by the state in the attempted land exchange is estimated as follows, using the same present value rationale as for coal:

(1) POINT MACKENZIE POOL

3,200 Acres
X $10,000
Per Acre = $32,000,000

(2) KNIK-WILLOW POOL

8,320 Acres
X $2,000
Per Acre = 16,640,000

(3) KASHWITNA POOL

38,400 Acres
X $1,000
Per Acre = 38,400,000

(4) CHICKALOON POOL

5,730 Acres
X $500
Per Acre = 2,865,000

(5) ALEXANDER CREEK

4,560 Acres
X $500
Per Acre = 2,280,000

(6) SALAMATOF

5,945 Acres
X $1,000
Per Acre = 5,945,000

(7) KENAI PENINSULA

117,315 Acres
X $1,000
Per Acre = 117,315,000

(8) BELUGA POOL

11,520 Acres
Port &
Industrial
Site X
$10,000
Per Acre = 115,200,00

5,760 Acres
Townsite
X $10,000
Per Acre = 57,600,00

316,800 Acres
Coal Surface
X $200 Per
Acre = $63,360,000

(9) PRESENT VALUE OF SURFACE ESTATE WHICH MAY BE LOST BY THE STATE $451,[illegible],000

(b) The theory used by state officials in valuation of surface estate has been that all surface estate must be valued as though put on the market at once. Such a one-time sale would yield prices much less than would be realized by spreading sales over a period of years.

(c) My estimates above are based on sales at continuously escalating land prices, over a long period of years. I estimate that the escalation factor for land prices offsets the discount factor derived from the interest cost and required marginal utility of state bond funds.

6. VALUE OF SURFACE ESTATE WHICH MAY BE RECEIVED BY THE STATE

(a) The present value of surface estate which may be received by the state in the attempted land exchange is estimated as follows:

(1) KUSKOKWIM, NULCHATNA & KOKSETNA DRAINAGES

587,520 Acres
X $40 Per
Acre = $23,500,000

(2) TALKEETNA MOUNTAINS, KANISHAK BAY & TUTNA LAKE AREAS

596,480 Acres
X $60 Per
Acre = 35,788,800

2,560 Acres,
Chenik Port
Site, X
$5,000
Per Acre = 12,800,000

(3) CAMPBELL AIRSTRIP TRACT

4,120 Acres
X $20,000
per Acre = 82,400,000

(4) TALKEETNA MOUNTAINS & KOKSETNA DRAINAGE

285,696 Acres
Selection Rights
Only,
Discretionary
With Secretary
of the Interior,
X $40 Per Acre = 11,427,840

(5) PRESENT VALUE OF SURFACE ESTATE WHICH MAY BE RECEIVED BY STATE $165,917,440

7. SUMMARY OF ATTEMPTED EXCHANGE VALUES

(a) The following is my summary of estimated values which the state may lose in the attempted land exchange:

(1)	PRESENT VALUE OF COAL	$4,732,000,000
(2)	MINIMUM PROBABLE PRESENT VALUE OF OIL & GAS	62,500,000
(3)	PRESENT VALUE OF SURFACE ESTATE	451,605,000
		$5,246,105,000

(b) The following is my summary of estimated value which the state may receive in the attempted land exchange:

(1)	PRESENT VALUE OF SURFACE ESTATE	$165,917,440

(c) From this summary, the net loss to Alaska citizens is as follows:

$5,080,187,560

8. LAND CONSOLIDATION AND FACILITATION OF MANAGEMENT OR DEVELOPMENT OF THE LAND

(a) The attempted land exchange will destroy the compact integrity of patented state lands in the heartland of our state. State lands will be broken up, not consolidated.

(b) The attempted land exchange will create conflict of land management where none existed or could exist before.

(c) The attempted land exchange discourages settlement on the land by all citizens equally, except as leasehold tenants on terms dictated by Native corporations.

(d) The attempted land exchange denies Alaska citizens responsible state environmental and economic control in the public interest of an empire of coal on the threshold of development.

(e) The attempted land exchange makes inadequate provision for rights-of-way to and from state lands, across lands which may be lost by the state.

(f) The attempted land exchange could result in the loss to the state of the critical deep-water port and industrial site at Beluga. This site is essential to the future processing and shipment of not only Beluga coal, but also Susitna coal, Matanuska coal, Nenana coal, and other future exports from the Interior and North Slope. The hinterland of this port will be as large as Texas. The result of selection of the Beluga surface estate by the Tyonek village corporation, as provided for in the attempted land exchange, will be to create a virtual monopoly of natural resources port sites on the northwest shore of Cook Inlet in this one, narrowly-based, profit-making corporation.

9. EQUAL VALUE

(a) There is no way to assure equal value in the attempted land exchange. No cash payment to equalize values attempted to be exchanged is authorized under the pertinent federal act. The major values are mineral values. Not enough testing with the drill has been done, and there is not enough time to drill and report and evaluate under the fixed terms and conditions of the importunate federal act.

(b) It is impossible to determine most of the values which will be exchanged in the short time which has been allowed by the federal act. Alaska citizens are denied a map showing the exact patented state lands which will be lost. Alaska citizens are denied a legal description of the specific lands

From The Desk Of:

Dale P. Tubbs

2/18/76

Senator Ray Poland

Enclosed are my comments made at the Cook Inlet Land Exchange hearing. Also enclosed are copies for your comm. the members

Dale P Tubbs

Deputy Director, Alaska Division Of Lands

02-0018

STATE of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS

TO: The Honorable Kay Poland
Chairman, Senate Resources Committee
and the Honorable Nels Anderson
Chairman, House Resources Committee

DATE : February 11, 1976

SUBJECT: Cook Inlet Land Exchange Agreement

The following is the substance and comments made at the Joint Senate and House Resources Committee hearing by myself regarding the Cook Inlet land exchange on February 11, 1976.

I am the Deputy Director of the Alaska Division of Lands, Department of Natural Resources. My involvement in the Cook Inlet land exchange has been minimal. My first involvement was during the 1st half of 1975 to identify some of the resources in the general area of Beluga Lake and the Mt. Susitna. On not more than three or four other occasions was I asked for general type information. At no time was there group staff review by the professionals within the division to discuss and evaluate the negotiations that took place. This is a reason for the conflicting testimony you have been receiving. No questions were posed to the Division of Lands staff to obtain professional opinioned comments regarding the merits of the negotiations.

My concern, questions and observations of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area as follows. There may be answers to some of them, however without the benefit of staff discussion, they remain as questions in my mind.

1. Congress has voided out the requirement for the state to retain the mineral estate when land exchanges are involved. With this being so, then why go through the exercise of conveying title to the Bureau of Land Management for reconveyance to the CIRI or the villages?

2. Even though Congress has voided the requirement to retain the mineral estate, Alaska Statute 38.05.125 requires that all leases, sales or grants of state land contain a specific mineral reservation (see attachment).

3. Under what authority is this exchange being consumated? Is it broad powers of the Commissioner AS 38.05.020; the broad powers of the director AS 38.05.035 or the provision for exchange of native lands AS 38.95? Regardless of which authority, was it the intent of the legislature to allow exchanges of this size to be consumated without a mineral reservation?

4. With Congress changing the mineral condition of the Statehood Act, is a ratification vote by the Alaskan voters necessary?

5. It is my understanding that the Department of Interior has appealed the decision as to the eligibility of some of the villages involved in this agreement. Isn't it premature at this time to convey lands until this is resolved?

6. D2 lands identified in Section III of the Cook Inlet Trade are

being conveyed to the State to protect fish and game values. Wouldn't the D2 classification provide the same protection? In the event the land did not get put into the D2 status, the lands would still be selectable by the State.

7. If the trade is desirable maybe the State should wait for the CIRI to get title to their lands, and then make a 2-way, rather than a 3-way exchange. This way the State would acquire only what it really needs.

8. The land the State is to receive in the Kamishak Bay area does not include the existing overland route to Lake Illiamna. I am not aware of the significance of State ownership to these mountainous lands, a R/W would probably be sufficient.

9. Does this agreement void out the requirement that the region must select the odd - odd - even - even townships in the 11(a)(1) withdrawal for the Chickaloon area? The agreement in Section IV states that these conveyances constitute CIRI full entitlement. This is a Bureau of Land Management problem.

10. From Bureau of Land Management concerns, I do not believe there are any valid 12(a) selections in the Talkeetna Mountain area where 4.5 townships of 12(b) selections are to be made available. Or does this agreement validate what the Bureau of Land Management considers to be invalid selections in that area? This again is a Bureau of Land Management problem.

11. It appears that the CIRI selection process can extend up to May 18, 1979.

12. Does this agreement really consolidate land ownership patterns for which the state is trying to accomplish?

13. Appendix C-3 identifies lands in an amount equal to 1/4 of the acreage entitlements. Is this acreage pool in addition to the five acreage pools identified in Appendix C-1 A thru E?

14. Do acreage entitlements under these terms and conditions conflict with the out-of-court settlement agreement between the Secretary and the Governor dated September 1, 1971? Is so what prevails?

15. Even though the State receives 2.5 times the acreage it is giving up, is it an equal value deal for the State?

16. How do we arrive at equal values? Is it possible to determine dollar values when such large acreage are involved and the subsurface minerals are unknown? Did the legislature intend that exchanges of this magnitude not include a documented formal appraisal?

17. A selection pool for CIRI is to be made up from federal surplus property, power sites and other reserves with certain exclusions.

But how about if the Eagle River Powersite withdrawal was included? These lands lie within the Chugach State Park boundary. The State would like to have the opportunity to include these lands in the State Park. There are other withdrawals that have simular impacts.

18. Federal lands at Point Woronzof, Point Campbell, Goose Lake and Campbell Tract are to be reserved by the United States for early conveyance to the State for park and recreation purposes. (See attached). This would then include the lands necessary for expansion of the North-South runway at Anchorage International Airport. Would the park and recreation restriction then preclude construction of this runway? Enlargement of the sewage treatment plant may also be effected. These lands are within 2 miles of the Anchorage City limits and would not have been selectable by CIRI regardless of the exchange agreement.

19. There is a surveyed school section 36 within the Campbell Tract. If this Section is conveyed under the Recreation and Public Purposes Act, is the Permanent School Endowment Fund precluded from revenues from what was originally authorized? If this removes the School Section identity, then the States appeal to the Interior Board of Land Appeals may be weakened regarding the school sections within the Tongass National Forest that have been selected by some of the Southeast native villages.

20. I have represented the State in working on a land use plan for the Campbell Tract. This process has been continuing for the last 10 months. Conveyance of the Tract under the Recreation and Public Purposes Act will serve the public interest as long as the Far North Bicentennial Park master development plan remains flexible enough to provide for revisions to meet the community needs. In all probability these lands would have remained available for state selection.

21. The Attorney Generals office has on different occasions provided the Division of Lands with opinions regarding the transfer of state land. Regardless of the granting authority, the processes of AS 38.05 pertaining to review and discussion (AS 38.05.305), appraisal (AS 38.05.310), public notice (AS 38.05.345) and the mineral reservation (AS 38.05.125) are required. If the State legislature is going to approve this land exchange, it would be most expedient if remedial legislation could be included to void the necessity of these actions for the instance. It seems nonsensical to me if we must review and discuss the land parcels to conveyed to the Bureau of Land Management if the local planning authorities do not have a veto power. The same question can be raised in regard to appraisal. If the legislature determines this is an equal value exchange, why perform an appraisal. Compounding the appraisal problem is the impossibility to determine the fair market value of large blocks of land or the mineral estate value of unknown mineral quantities. Public Notice as required in AS 38.05.345 will also serve little purpose if the legislative directive is to exchange the land. In order to clear the hurdle involving the mineral reservation legislative relief is required.

appropriation, funds necessary to carry out its functions under this section. (§ 4 ch 70 SLA 1972)

Editor's note. — Prior to the 1973 relocation of this chapter, this section appeared as AS 38.15.050.

Section 1, ch. 70, SLA 1972, provides: "Purpose. It is the purpose of this Act to implement the Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688; 43 U.S.C. 1601 et seq.) by amending state law to resolve those ambiguities, conflicts and problems directly or impliedly created by the enactment by Congress of the Alaska Native Claims Settlement Act. It is also the purpose of this Act to complement through state policy, in a reasonable and fair manner, the federal policy expressed in that Act."

Legislative committee report.—For report on ch. 70, SLA 1972 (CSHB 731), see 1972 House Journal, p. 837.

Sec. 38.95.060. Exchange of land. (a) With the consent of the governor, a corporation organized under Alaska law pursuant to the federal Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688; 43 U.S.C. 1601 et seq.) which would otherwise be entitled to select land within the area withdrawn by sec. 11(a)(1)(A) and (B) of the federal Act, which, however, has been selected by and patented to the state before December 18, 1971, may obtain up to 23,040 acres of this land, if it has not been disposed of or developed, by exchanging land or interests in land with the state.

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

(c) Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged. (§ 4 ch 70 SLA 1972)

Editor's note. — Prior to the 1973 relocation of this chapter, this section appeared as AS 38.15.060.

Legislative committee report.— For report on ch. 70, SLA 1972 (CSHB 731), see 1972 House Journal, p. 837.

January 15, 1978, to create a selection pool which shall consist of all the following lands, within the exterior boundaries of the Cook Inlet Region, now in existence or hereafter coming into existence by January 15, 1978:

(i) abandoned or unperfected public land entries, provided however, that the United States shall not be obligated to initiate any adversary proceedings other than an adjudication by the BLM to determine if such entries are abandoned or unperfected, and the burden of identifying such lands shall be on CIRI;

(ii) federal surplus property;

(iii) revoked federal reserves;

(iv) cancelled or revoked power site reserves, with the exception of the Bradley Lake reserve, reserves in the Lake Clark proposal, and the Chakachamna Lake reserve, if any are ever cancelled or revoked;

(v) public lands created by the reduction of federal installations as defined in Section 3(e) of ANCSA, except that, if such lands are within a Section 11(a)(1) withdrawal area, they shall be subject to prior Village Corporation selections properly filed prior to December 18, 1975; and

(vi) any other federal lands as agreed by the State the Region and the Secretary, including but not limited to lands withdrawn under Section 17(d)(1) of ANCSA and not withdrawn for any other purpose.

The Secretary shall notify CIRI after any above-described lands have been placed in the pool. With the concurrence of CIRI, the State and any other concurrence that may be required under paragraph I-C(1)(e) of this Document, the Secretary may, in his discretion, contribute to such pool properties of one or more of the foregoing categories from without the boundaries of the Cook Inlet Region, provided that properties described in subparagraphs (2)(a)(ii) and (2)(a)(iii) of this paragraph shall be removed from the pool if not selected by CIRI within 90 days after the Secretary notifies CIRI that such properties have been placed in the pool or valued by the Secretary in Subparagraph 2(c) of this document whichever date is later.

The State shall be advised of all properties located within the exterior boundaries of Cook Inlet Region to be placed in the pool described in subparagraph 2(a) and may require Secretarial consultation with the Joint Land Use Planning Commission with respect to any specific piece of property so included, except those in subparagraph 2(a)(i) hereof, to determine whether private ownership of such property would be incompatible with reasonable land-management principles; provided, that the Secretary shall not be bound by any recommendation of the Joint Land Use Planning Commission. The Secretary shall notify the State, CIRI and the Commission of his decision in writing. The State may conclusively object to the inclusion in the pool of up to 1,500 of the acres, described in paragraph 2(a)(i) and 2(a)(iv), and additional lands within these two categories may be excluded from the pool upon replacement by the State with lands of equal values. Lands not included in the pool as result of the State's conclusive objection or which have been replaced by the State under this subparagraph shall, immediately upon their exclusion or replacement from the pool thereby, be made available by the Secretary to the State for selection under the Alaska Statehood Act for a period of 90 days to the exclusion of all competing claims or parties.

(c) Unless specifically excepted by the Secretary, all tracts of land and improvements thereto in said pool shall be appraised by one or more appraisers mutually agreeable to CIRI and the Secretary.

(d) CIRI shall be entitled to select any tract of land from said pool in exchange for its out-of-Region selection rights, in part or in whole and *pro tanto*, in satisfaction thereof, in the following manner:

(1) any tract of land and improvements thereto specifically excepted from appraisal by the Secretary as described in subparagraph (c) of this paragraph may be exchanged acre for acre;

(2) any tract of land and improvements thereto valued by CIRI and the Secretary, after review of the appraisals, at less than $500 per acre at fair market value may be exchanged acre for acre;

(3) any tract of land and improvements thereto valued by CIRI and the Secretary, after review of the appraisals, at $500 per acre or more at fair market value shall be exchanged as follows:

(i) for each acre of land in said tract, each valued increment of $500 or proportion thereof shall be considered an acre of land or proportion thereof, in the same proportion, hereinafter called an "acre/equivalent"; and

(ii) any acre/equivalents may be exchanged for any acres of CIRI's out-of-region entitlement.

(e) Anything in the foregoing provisions notwithstanding, the selection pool created hereunder shall not include or affect lands within the Point Woronzof, Point Campbell, Goose Lake, and Campbell tracts, to which CIRI waives any claim which it may have had; and such lands shall be reserved by the United States for early conveyance to the State for park and recreation purposes as an integral part of the consideration for this Document.

(f) The Secretary shall utilize his best efforts to maximize the pool through the use of all available properties within the described categories in order to enhance the opportunity for the land exchanges described herein. If, by January 15, 1978, the Secretary and the General Services Administrator have not identified for the pool at least 138,240 acres, or acre/equivalents of lands within the exterior boundaries of Cook Inlet Region, the Secretary shall add to the pool an amount equal to the difference between 138,240 acres, or acre/equivalents, and the number of acres so identified from the following:

(1) with the consent of the State, lands located within the boundaries of the Region, withdrawn for the purposes of section 17(d)(1) of ANCSA, and valued by the Secretary and CIRI at $200 per acre, or more.

(2) with the consent of the State and CIRI, lands described in subparagraph I-C(2)(a) of this Document from without the exterior boundaries of Cook Inlet Region.

CIRI must select all lands in the pool located within the Region which are valued by the Secretary and CIRI at $200 per acre, or more, until CIRI has selected 138,240 acres, or acre/equivalents as described in subparagraph 3(i) of this paragraph.

57-000—76——6

BLM Alaska

February 9, 1976

Briefing Statement

CAMPBELL TRACT AS AFFECTED BY

PUBLIC LAW 94-204

The Act of January 2, 1976 (PL 94-204), an amendment to ANCSA, has the following effects on Campbell Tract.

1. After ratification of the Act by the Alaska State Legislature, the Campbell Tract lands can transfer to the State of Alaska, but not before December 18, 1976.

2. The lands will transfer under the procedures of the Recreation and Public Purposes Act (44 Stat. 741) without consideration for the 640 acre limit, and must be used for public parks, recreation, and public purposes.

3. Use and development will be in accordance with the "Generalized Land Use Plan" as outlined in the September 1974 Greater Anchorage Area Borough Far North Bicentennial Park Master Plan.

4. BLM may reserve up to 1000 acres within the Tract for present needs.

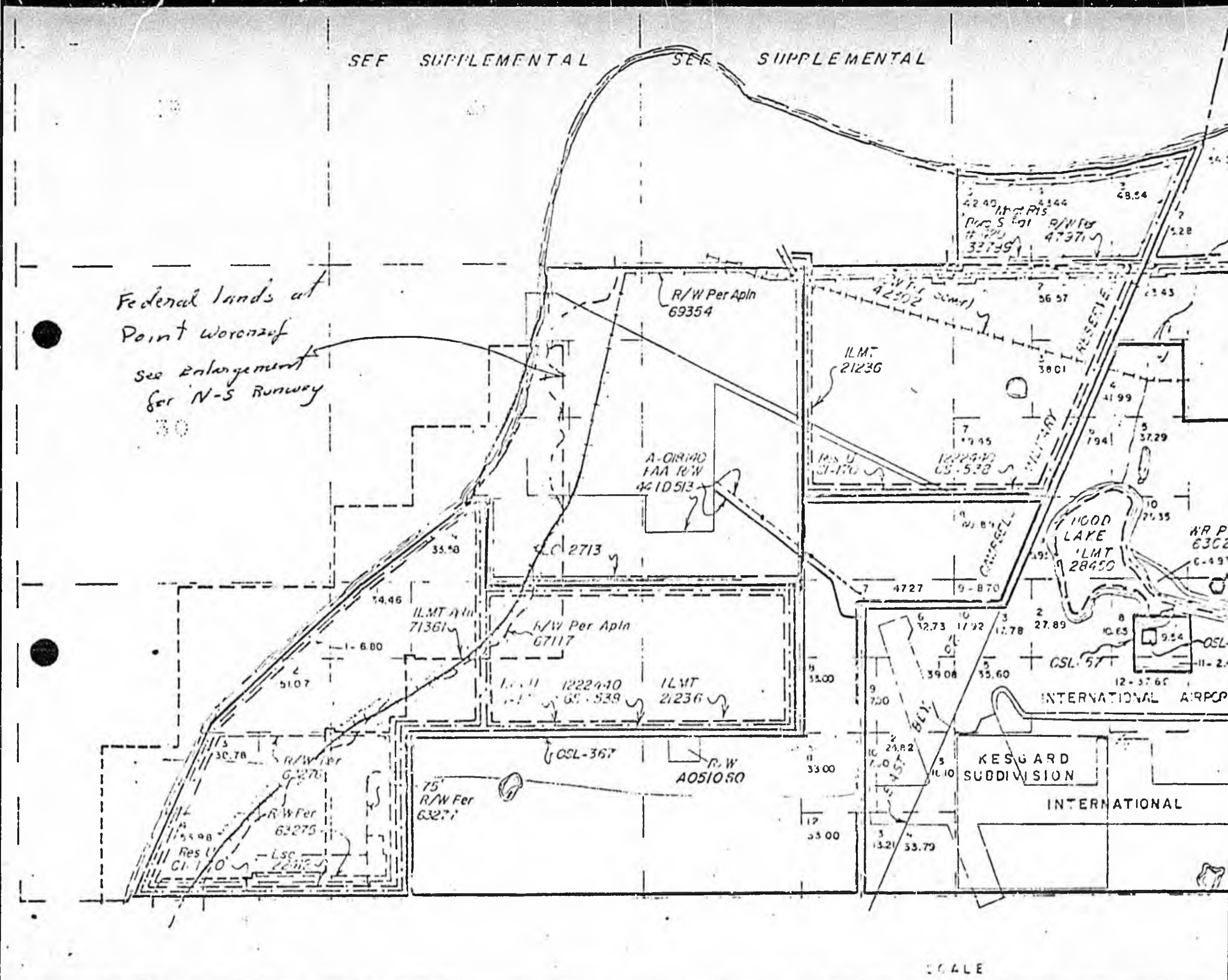
5. Present valid and existing rights within the Tract will continue (State Highways, National Guard, City water well permits, Chugach Electric rights-of-way, etc.)

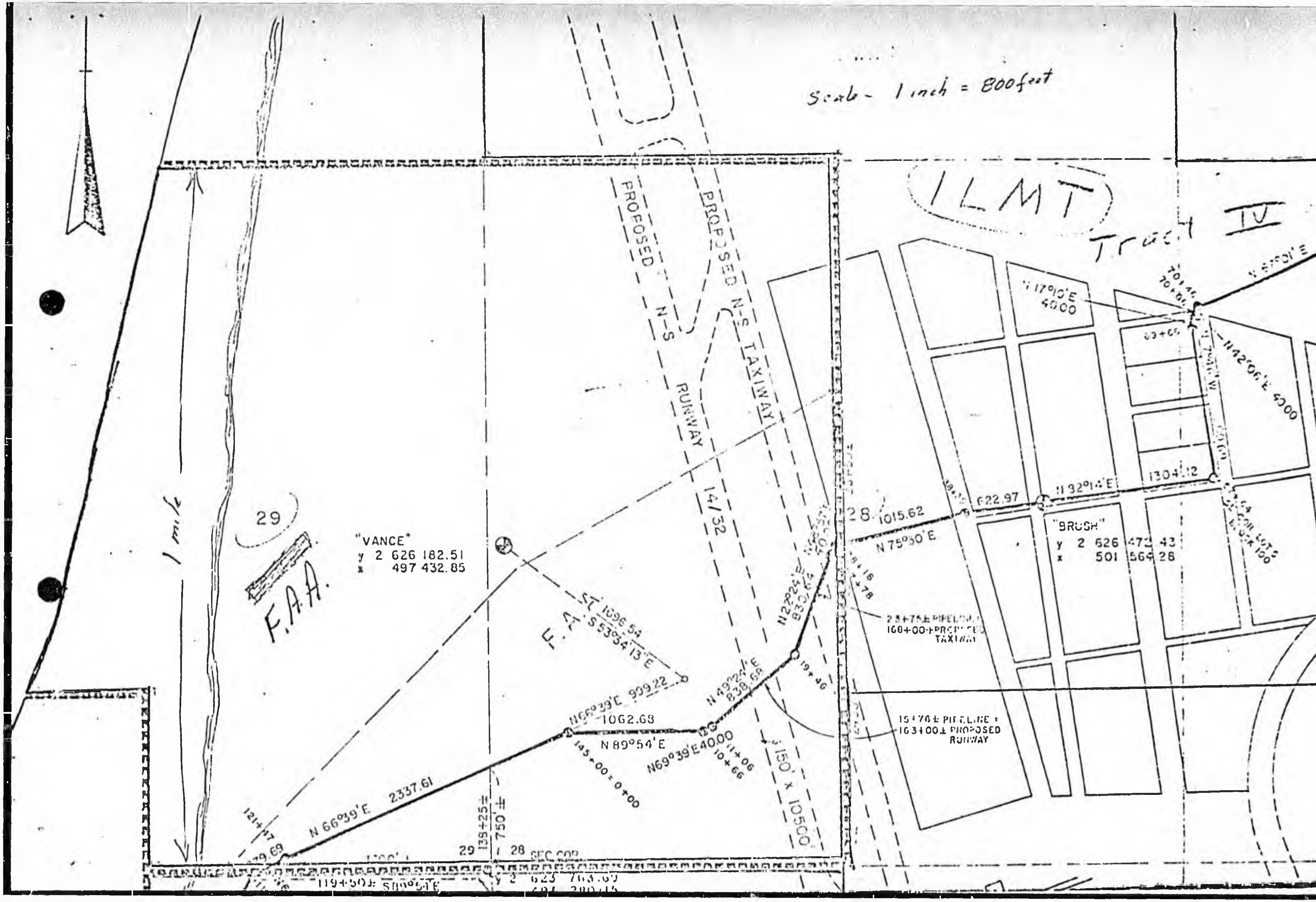
Significant acreages within the 5120 acre area known as Campbell Tract which will not transfer under this act are:

BLM	- 1000 acres
State Highways	- 40 acres
National Guard	- 50 acres
Total	1090 acres

6. The Act does not specify that Campbell Tract will ultimately be transferred to Anchorage for management and development, but this has been the long range goal and is still a valid precept.

7. A slightly revised generalized land use plan by the State, City, and BLM is in draft stages. Upon public exposure, finalization and acceptance by the State, City and BLM, the revised plan may be used to replace the Borough plan as the covenant in the land transfer.


SEE SUPPLEMENTAL
SEE SUPPLEMENTAL
Federal lands at Point Woronzof
See Enlargement for N-S Runway
R/W Per Apln 69354
ILMT 21236
A-018140 FAA R/W
CLC 2713
ILMT A/In 71361
R/W Per Apln 67117
1222440 CS-539
ILMT 21236
CSL-367
R/W A051050
75' R/W Per 63277
R/W Per 62276
R/W Per 62275
HOOD LAKE
ILMT 28450
MILITARY RESERVE
INTERNATIONAL AIRPORT
KESGARD SUBDIVISION
INTERNATIONAL
CSL-57
SCALE


Scale - 1 inch = 800 feet
ILMT
Tract IV
1 mile
PROPOSED N-S RUNWAY
14/32
PROPOSED N-S TAXIWAY
29
28
"VANCE"
y 2 626 182.51
x 497 432.85
F.A.A.
"BRUSH"
y 2 626 473.43
x 501 569.28
N 66°39'E 2337.61
N66°39'E 909.22
1062.68
N 89°54'E
N69°39'E 40.00
145+00 = 0+00
1096.54
N 75°30'E
1015.62
622.97
1304.12
N 17°10'E 40.00
150' x 10500'
23+75± PIPELINE = 160+00± PROPOSED TAXIWAY
15+76± PIPELINE = 163+00± PROPOSED RUNWAY
135+25±
750'±
121+17
19+46

Article 10. Parks and Recreation Areas.

Section
295. Parks and recreation areas

Sec. 38.05.295. Parks and recreation areas. The commissioner shall establish a policy and prescribe rules and regulations by which parks and recreation areas, including public scenic overlooks and cultural sites, shall be developed and managed in a manner that will best serve the interests of the people of the state. The commissioner may classify public lands as parks, scenic overlooks, cultural sites and recreation areas as long as the general intent of this chapter is maintained. (§ 1 art XII ch 169 SLA 1959)

Am. Jur. and ALR references.—39 Am. Jur., Parks, Squares and Playgrounds, § 1 et seq.; 42 Am. Jur., Public Lands, § 1 et seq.

Uses to which park property may be devoted; power of legislature or state officers, 18 ALR 1266; 63 ALR 492; 144 ALR 509.

Article 11. Miscellaneous Provisions.

Section
300. Classification of lands
305. Review
310. Notice and appraisal
315. Public and charitable use
320. Occupied tidelands and submerged lands
325. Homestead entry
330. Permits
335. Deposits
340. Assignment
345. Notices
347. Transfer of state land to cities
348. Grants of land after natural disaster
349. Disposition of state land for flood control projects

Sec. 38.05.300. Classification of lands. The director shall make a preliminary classification for surface use of all lands in areas where he considers it necessary and proper for future development. The classification, together with a land use plan, shall be transmitted to the commissioner for his approval, modification, or rejection. This section does not prevent reclassification of lands where the public interest warrants reclassification, nor does it preclude multiple purpose use of lands whenever different uses are compatible. No state land, water, or land and water area shall, except by act of the state legislature, be closed to multiple purpose use, if the area involved contains more than 640 acres. (§ 1 art III ch 169 SLA 1959; am § 2 ch 31 SLA 1964)

Cross reference.—As to state land and water restricted to use as public recreation areas and state parks, see AS 41.20; ch. 26, SLA 1967, Temporary and Special Acts, which creates the Chena River Recreation Area; ch. 61, SLA 1966, Temporary and Special Acts, which creates the Nancy Lake State Recreation Area.

Sec. 38.05.305. Review. Except for land disposed of under §§ 315—325 of this chapter, no land in or adjacent to an incorporated municipality or other organized community may be sold or leased, or a renewal lease issued, until the proposed use of the land has been studied and reviewed jointly by the director and local authorized planning agencies. (§ 2 art III ch 169 SLA 1959)

Sec. 38.05.310. Notice and appraisal. No land may be sold or leased, or a renewal lease issued without public notice, except in the case of an oil or gas or mineral lease, unless it has been appraised within 90 days before the date fixed for the sale or lease. When land is offered at public sale but is not sold and is available at private sale, no reappraisal is required unless the director considers that a change in value of the lands may have occurred. A grazing lease may be granted to a lessee of federal grazing lands without prior appraisal, if his federal lease was cancelled to allow the state to select the lands under lease. No land may be sold or leased for less than the approved, appraised market value, except as provided in §§ 315 and 320 of this chapter and §§ 75—85 of this chapter. (§ 3 art III ch 169 SLA 1959; am § 5 ch 61 SLA 1960)

Sec. 38.05.315. Public and charitable use. (a) The lease, sale, or other disposal of state land or resources may be made to a state or federal agency or political subdivision, or the lease, sale, or other disposal of coal deposits suitable for mining may be made to a utility owned and operated by a government agency or nonprofit cooperative association organized to participate under the Federal Rural Electrification Act for the purpose of generating electric power and energy or the production of process steam, or both, for less than the appraised value as determined by the director and approved by the commissioner to be fair and proper and in the best interests of the public, with due consideration given to the nature of the public services or function rendered by the agency, subdivision, or utility making application, and of the terms of the grant under which the land was acquired by the state.

(b) Notwithstanding §§ 70—80, 95, and 100 of this chapter the director, upon application filed by an applicant eligible under (b)—(d) of this section, may, by negotiation and without public auction in the manner prescribed in (b)—(d) of this section, lease state land for a term of not more than 55 years. Before leasing, the director shall prepare a land use plan and a land classification to insure that the proposed use is compatible with area utilization. Before the land may be leased under (b)—(d) of this section, it must be shown to the satisfaction of the director that the land is to be used for an established or definitely proposed project, and that the eligible applicant has the financial ability to carry out the project. The commissioner may establish limitations on the acreage which may be leased under (b)—(d) of this section to an applicant.

(c) Eligible applicants under (b)—(d) of this section are

sustained yield principle, subject to preference among other beneficial uses. The director may negotiate sales of timber or materials without advertisement and on the limitations, conditions, and terms which he considers are in the best interests of the state, subject to the approval of the commissioner. However, not more than 500 M.B.M. of timber or more than $2,500 of materials may be sold by nonadvertised, negotiated sale to the same purchaser within a one-year period.

(b) Negotiated sales for timber or materials not exceeding a value of $250 are exempt from the provisions of AS 34.15.150. (§ 2 art VI ch 169 SLA 1959; am § 1 ch 66 SLA 1969)

Sec. 38.05.120. Disposal procedure. Timber and other materials shall be sold either by sealed bids or public auction, depending on which method is determined by the commissioner to be in the best interests of the state, to the highest qualified bidder as determined by the director. An aggrieved bidder may appeal to the commissioner within five days after the sale for a review of the director's determination. The sale shall be conducted by the director or his representative, and at the time of sale the successful bidder shall deposit the amount specified in the terms of sale. The means by which the amount of deposit is determined shall be prescribed by appropriate regulation. The director or his representative shall immediately issue a receipt containing a description of the timber or materials purchased, the price bid, and the terms of sale. The receipt shall be acknowledged in writing by the bidder. A contract of sale, on a form approved by the attorney general, shall be signed by the purchaser and, following the approval of the commissioner, the contract shall be signed by the director on behalf of the state. The director, with the approval of the commissioner, may impose conditions, limitations, and terms which he considers necessary and proper to protect the interests of the state. Violation of any provision of this chapter or the terms of the contract of sale subjects the purchaser to appropriate legal action. (§ 3 art VI ch 169 SLA 1959; am § 13 ch 61 SLA 1960; am § 3 ch 137 SLA 1962; am § 1 ch 200 SLA 1970)

Article 5. Reservation of Rights to Alaska.

Sec. 38.05.125. Reservation. Each contract for the sale, lease or grant of state land, and each deed to state land, properties or interest in state land, made under §§ 315—325 of this chapter or §§ 45—120 of this chapter, except for those lands originally acquired by purchase, exchange, condemnation, gift, escheat or foreclosure are subject to the following reservations: "The party of the first part, Alaska, hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, drilling, and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved." (§ 1 art VII ch 169 SLA 1959; am § 14 ch 61 SLA 1960; am § 1 ch 42 SLA 1966)

Legislative committee report.—For report on ch. 42, SLA 1966 (HB 387 am), see 1966 House Journal, p. 492.

Sec. 38.05.130. Damages and posting of bond. No rights shall be exercised by the state, its lessees, successors or assigns under the reservation as set out in § 125 of this chapter or until the state, its lessee, successors, or assigns make provisions to pay to the owner of the land full payment for all damages sustained by the owner, by reason of entering upon the land. If the owner for any cause refuses or neglects to settle the damages, the state, its lessees, successors, assigns, or an applicant for a lease or contract from the state for the purpose of prospecting for valuable minerals, or option contract or lease for mining coal or lease for extracting petroleum or natural gas, may enter upon the land in the exercise of the reserved rights after posting a surety bond determined by the director, after notice and an opportunity to be heard, to be

PART 6. LANDS

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CHAPTER 52. LAND PLANNING AND CLASSIFICATION

Section
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11 AAC 52.010. SHORT TITLE. This chapter pertains to the classification of lands of the State of Alaska under the jurisdiction of the Division of Lands, Department of Natural Resources, and related matters. The intent of this chapter is to establish a system of land classification which will encourage the maximum development and utilization of all of Alaska's land resources consistent with the public interest. This chapter may be referred to as the "Land Planning and Classification Regulations." (Eff. 7/1/60, Reg. 1; am 5/23/64, Reg. 16)

Authority: AS 38.05.020
AS 38.05.300
AS 41.20.020

11 AAC 52.020. UNCLASSIFIED LANDS. All lands shall, upon transfer to the state's jurisdiction, be unclassified in status. The disposal of minerals only shall be permitted on unclassified lands. All other disposals of lands and resources shall be permitted only after the lands have been classified. (Eff. 7/1/60, Reg. 1; am 5/23/64, Reg. 16)

Authority: AS 38.05.020
AS 38.05.300
AS 41.20.020

11 AAC 52.030. CLASSIFICATION. Lands shall be classified into one or more of the following categories: agricultural lands, commercial lands, grazing lands, industrial lands, material lands, mineral lands, private recreation lands, public recreation lands, reserved use lands, residential lands, timber lands, utility lands, watershed lands, resource management lands or open-to-entry lands.

Classification shall become effective upon the noting of such classification upon the public records maintained by the division.

The classification of lands as agricultural lands, commercial lands, industrial lands, private recreation lands, public recreation lands, reserved use lands, residential lands, watershed lands, resource management lands or open-to-entry lands shall close said lands to the removal of minerals therefrom, except upon the issuance of a mineral or mining lease or permit for such removal. No classification, however, shall preclude the disposal of timber and materials unless deemed inconsistent with the

Rec'd 3-23
applicable to Cook Inlet

The United States of America and Alaska Natives have a very special relationship which requires understanding of its constitutional and historical basis for this special responsibility and authority over the Alaska Natives.

Many Americans are faced with great difficulty if they have not discovered the United States Constitution and what it empowers. Along with many Americans, special Alaska Natives, they must understand the expressed constitutional sources of these special rights.

In the Constitution of the United States of America, Indians are expressed twice:

Article I, Section 2, Clause 3:

> "Representatives and taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons."

And in Article I, Section 8, Clause 3, provides that:

> "To regulate commerce with foreign nations, and among the states, and with the Indian tribes,...
>
> ...and the additional constitutional sou. ces of authority over Natives."

Article I, Section 8, Clause 1, provides that:

> "The Congress shall have powers to lay and collect taxes, duties, imports, and excises to pay the debts and provide for the common defense and general welfare of the United States."

Article I, Section 9, Clause 7, provides that:

> "No money shall be drawn from the Treasury, but in consequence of appropriations made by law."

Article 4, Section 3, Clause 2, provides that:

> "The Congress shall have power to dispose of and make all needed rules and regulations respecting the territory or other property belonging to the United States."

Article II, Section 2, Clause 2, provides that:

"He shall have power, by and with the advice and consent to make treaties..."

"He shall nominate and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of Supreme Court, and all other officers of the United States."

Article II, Section 3, provides that:

"He shall, from time to time, give the the Congress information of the State of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient."

Article IV, Section 3, Clause 1, provides that:

"New states may be admitted by the Congress into this Union but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the two or more states, or parts of states be without the consent of the legislatures of the states concerned as well as of the Congress."

Article I, Section 8, Clause 2, provides that:

"To declare war, grant letters or marque and reprisal, and make rules concerning captures on land and waters."

Article I, Section 8, Clause 9, provides to state:

"To constitute tribunal inferior to the Supreme Court."

Article 3, Section 1, provides that:

"The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

Article I, Section 8, Clause 4, provides that:

"To establish a uniform Rule of Naturalization."

Article I, Section 8, Clause 18, provides that:

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Sovereignty of the United States or any Department of Affairs thereof."

Article I, Section 1, provides that:

> "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Therefore, the United States Government derives its sovereignty from the powers delegated by the States, the Constitution of the United States; ~~the Constitution of the United States~~ forms the basis of federal control over Alaska Natives.

It is paramount that the Alaska Native understand the expressed congressional powers in the areas of: 1) treaty powers, 2) commerce with Indian tribes, 3) expenditures for the general welfare, 5) to admit new states and to prescribe the terms of such admission, 6) to establish tribunals inferior to the Supreme Court, 7) all legislative powers, 8) to establish a uniform rule of naturalization, 9) from the sovereignty itself, and how they relate to Alaska and Native people.

COMMERCE WITH INDIAN TRIBES

United States V. Kagama

The Supreme Court of the United States affirmed that, "Congress is given power to regulate Commerce, with the Indian."

"From their very weakness and helplessness, so largely due to the course dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question had arisen. The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as safety of those among whom they dwell. It must exist in that government, because it has never been denied and because it alone can enforce its laws on all the tribes."

And just as equally important to Alaska Natives is "when a State is admitted into the Union, Congress may, in the enabling act, reserve authority to legislate in the future respecting the Indians residing within the new state, and may declare that existing acts of Congress relating to traffic and intercourse with remain in force."

TREATY POWERS

First, there was the Treaty of Cessions of 1867 whic[illegible]eclared that civilized Indians, should like other inhabitants of the territory, "be admitted to the enjoyment of all rights, advantages and immunities of citizens of the Unites States, and shall be maintained and protected in the free enjoyment of their rights, property and religion." It then went on to add: "The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to the aboriginal tribes of that country."

Commenting on these treaty guarantees, the late Republician Delegate from Alaska, Judge Wickersham, said:

"The clause taking over these people in Alaska, Russians and other is, I think, identically the same clause that is found in the treaty by which we pruchased Louisiana and by which we secured that Mexican provinces after the Mexican War, that is California, Arizona and New Mexico.

"So that the Alaskan Indian at that time came in with the same assurance of citizenship in the United States as those in the Louisiana ans Mexican purchases, and the uncivilized Indians came in with the assurance they would be treated exactly as the Indian tribes of the United States are.

"So that extends to Alaska the policy which this Government has always maintained, and which was maintained before this Government was organized by the British govern-

ment, in respect to the Indians there and their titles were always quieted by a treaty and by purchase.

"Of course, there were some areas of land where there were no Indian claims. Those lands came into the public domain, without that procedure being taken. Where ever there was in Indian claim of possession, however, it has been the policy of our Government from the beginning and the British Governemnt prior to that time, to settle with these Natives and procure the quieting of their passersby right by purchase.

"Now that policy was extended into Alaska by the third article of this treaty of 1867, purposely, intentionally and the courts have universally held that they stand in the same exact relation to the Government of the United States, with their property and other rights, that the Indians in the States do."

UNITED STATES TERRITORY AND PROPERTY

The control of land, water, and other property belonging to the United States is vested exclusively in Congress by the Constitution. The Alaska Natives lived on the national domain, within the geographical limits of the United States. By its virtue of control over public domain and the territories of the United States, the Government is able to exercise broad dominion and control over Alaska Natives and to effectuate many policies. No appropriation of public lands may be made for any purpose except by the authority of Congress.

In the exercise of this authority, that Congress finds and declares that:

2. There is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska based on aboriginal land claims.

26. To the extent that there is a conflict between any provision of the Act, any other Federal laws applicable to Alaska, the provision of this Act shall govern.

This comprehensive authority of Congress over public land includes power to prescribe the times, conditions and mode of transfer thereof, to designate the persons to whom the transfer shall be made, to declare the dignity and effect of titles emanating from the United States, to prevent unlawful occupation of public land and to declare all nuisances, affecting such property and provide for the abatement by Executive orders--for the purpose of creating Indian reservations.

No state can tax public lands of the United States within its borders, nor can state legislation interfere with the power of Congress under this clause or embarrass its exercise.

From the "Law of the Land," in both Johnson V. McIntosh and Worcester V. Georgia, Chief Justice Marshall formulated his conclusions respecting aboriginal title by an historical analysis of the explorations and settlement of the American Continent and by relying upon established principles and practices of the law of nations.

The Chief Justice stated:

"The great maritime powers of Europe discovered and visited different parts of this continent, at nearly the same time. The object was too immense for any one of them to grasp the whole; and the claimants were too powerful to submit to the exclusive or unreasonable pretentions of any single potentate. To avoid bloody conflicts, which might terminate disasterously to all it was necessary for the nations of Europe to establish some principle which all would acknowledge, and which should decide their respective rights as between themselves. This principle, suggested by the actual state of things, was; 'that discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession.' 8 Wheat. 573. This principle acknowledged by all

Europeans, because it was the interest of all to acknowledge it, gave to the nation making the discovery, as its inevitable consequence, the sole right of acquiring the soil and of making settlement on it. It was an exclusive principle, which shut out the right of competition among those who had agreed to it, not one which could annul the previous rights of those who had agreed to it. It regulated the right given by discovery among the European discovers, but could not affect the rights of those already in possession, either as aboriginal occupants, or as occupants by virtue of a discovery made before the memory of man. It gave the exclusive right to purchase, but did not found that right on a denial of the right of the possessor to sell. 31 U. S. (6. Pet.) 515. The court further declared: Michael V. United States, (9. Pet.) 711, 745 (1835) "Indian possession or occupation was considered with reference to their habits and modes of life, their hunting grounds were as much as in their actual possession as the cleared fields of the Whites, and their rights to its exclusive enjoyment in their own way and for their own purposes were as much respected, until they abandoned them, made a cession to the government, or an authorized sale to individuals."

DISCLAIMER CLAUSE

Section 4 of the Statehood Act, which, as amended in 1959, 73 Stat. 141 reads:

> "As a compact with the United States said states and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted, or confirmed to the state or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights) the rights or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called Natives) or is held by the United States in trust for said Natives. That all such lands or other property (including fishing rights) the right or title to which may be held by said Natives as is held by the United States in trust for said Natives shall be and remain under the absolute jurisdiction and control of the United States until dis-

posed of under its authority except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual Natives in fee without restrictions on alienation: Provided that nothing contained in this Act shall recognize, deny, enlarge, impair or otherwise affect any claim against the United States, and any such claim shall be governed by laws of the United States applicable thereto; and nothing in this Act is intended or shall."

LEGISLATIVE PROTECTION/POSSESSORY RIGHTS

From the Constitution, Article 1, Section 1.

"All legislative power herein granted shall be vested in Congress..."

"Congress has declared that shall that not be disturbed in the possession of lands in their use and occupancy and claimed by them (Section 8, ret. of May 17, 1884, 23 Stat. 26) and whether further protection shall be extended to them by the setting aside of specific reservations for their use of a matter policy."

Since 1884, Congress has in four other statutes expressly recognized the possessory rights of Alaska Natives.

In the District Court of Alaska, in the case of Johnson V. Pacific Coast S. S. Co. 2 Alaska Rep. 224 said:

"The evident purpose of Congress is to protect the Natives in the possession of lands continuously claimed and occupied by them." 2 Alaska 224, at 241.

A year later in United States V. Berrigan 2 Alaskan Rep. 142, the District Court of Alaska is issuing an injunction against timber cutting and other forms of trespass on a Native village site declared:

"The Tenneh Tribes of Alaska were uncivilized Native tribes at the date of the treaty with Russia, and the evidence in this case shows that the bar l for which this suit is brought still occupies that plane of culture, as such they are entitled to the equal protection of the law which the United States affords to similar aboriginal tribes

within its borders." (at pp. 447-448)

Congress has also by special enactment provided for the protection of the Indian right of occupancy upon the public domain in Alaska:

"The United States has the right and it is its duty, to protect the property rights of its wards."

In Nagle V. United States 191 Fed. 141 (C.C.A. 9.1911) at p. 450, the court declared:

"There can be no doubt that this stipulation relates to the Indian tribes in Alaska, and manifestly the treaty was designed to insure them like treatment, under the laws and regulations of Congress, as should be accorded Melron Tribes in the United States." (at p. 142)

In Abbate V. United States 270 Fed. 735 (1925), the Circuit Court of Appeals for the Ninth Circuit (at p. 736) said: "...that Alaska, in 1918, was Melron County and, therefore, subject to special Congressional liquor control on that basis."

In its decision, Miller V. United States, 159 F. 2d 997 (1947), on the scope of the 1884 Act, the Circuit Court of Appeals for the Ninth Circuit declared: "From the foregoing statutes and decisions, it is clear that Congress, since 1884, has intended to protect, recognize and even guarantee the possessory rights of those Tlingit Indians. Such rights are compensable, for their holders are neither squatters nor outlaws."

The court in the same, Miller case, rejected the contention of the Department of Justice that only a tribe could claim possessory rights under the 1884 Act and held that the individual plaintiffs (comprising apparently all the known adult members of the tribal group originally occupying this land) could recover the value of all the area. There is no holding in any case that a group of Indians may not present their claims collectively and such claims, when so presented, have regularly been allowed.

In Tee Hit Ton Indians, costly historical lesson was learned of the vulnerability of Native possessory rights to be extincted uncompensated. The court found Tee Hit Ton V. United States that:

"This is not a property right, but amounts to a right of occupancy which the sovereign grants and protest against intrusion by third parties, but which right disposed of by the sovereign itself without any legally enforceable obligation to compensate the Indians." (348 U. S. at 279)

"...Indian occupation of land without government recognition of ownership creates no rights against taking or extinction by the United States protected by the Fifth Amendment or any other principle of law." (348 U. S. at 285)

It is further clear from the opinion in Tee Hit Ton that only Congress may extinguish such rights.

Until Congress acts to extinguish them, these rights to occupancy safeguarded from intrusion by third parties remain intact as an encumbrance on the fee (Walapai tribe, at 347); and, until an authorized transfer of title takes place, the fee remains in the United States. Tee Hit Ton Indians V. United States (348 U. S. at 279) Buttz V. Northern Pacific Railroad 119 U. S. 55, 66 (1886); Beecher V. Wetherby, 95 U. S. (5 Otto) 517, 525 (1877).

In a recent court decision, Edwardsen V. Morton, it so stated that:

"Defendants possible breach of their duty of protection is even plainer where the direct issuance to third parties of special land use permits, blasting licenses, and the like is concerned. Most such permits and licenses would necessarily authorize physical intrusion on the lands for which they were issued, and if plaintiffs could show their use and occupancy was disturbed thereby at a time when their use and occupancy

rights were in force and effect and unextinguished, it would certainly be plain that defendant had violated their duty to protect plaintiffs from third party intrusion. Issuance of such permits or licenses would also be clear violation of Department of Interior regulation designed to protect Native rights in lands actually occupied by them." See e.g. 43 CFR 2091.5 and 2091.6-3 (1972).

The court further states:

"Plaintiffs are entirely correct in their contention that insofar as these claims represent accured causes of action for trespass and breach of fiduciary duty, they are vested property rights protected by Fifth Amendment." Coombes V. Getz 285 U. S. 434, 448 (1932) Ettor V. City of Tacoma 228, U. S. 148 (1913) Keller V. Dravo Corporation 441 F. 2d 1239, 1242 (5th Cir. 1971).

TEST FOR USE AND OCCUPANCY

Aboriginal title has always been determined by exclusive occupancy. A carefully reasoned application of this legal test for aboriginal title is found in Seminole Indians, where Court of Claims upheld, aboriginal title to virtually all of the present State of Florida. The court so stated:

"Had the Seminoles chosen to live by food raising alone, we would regard the village evidence (stressed by the Government) as a persuasive consideration in limiting the Seminoles' "title" to land falling within the compass of their permanent homesites, i.e., the northern half of the peninsula. Cultures that stake their survival upon a close union with the soil, as is the cases with primitive food raising economics, would not demand the vast tracts of land required for a nomadic, hunting existence. But the Seminoles--as was the case with many other Indian groups--survived not simply through

farming, but by food gathering and hunting as well. In other words, Seminole land use clearly encompassed more than the soil actually "possessed." Therefore, other aspects of the Seminole pattern of life demand considerations."

Not only did these Indians wander in search of food supplements, but as already indicated, the appearance of the English in Florida spurred a demand for hides that compelled the Seminoles to make extensive use of the southern peninsula.

Given these facts--which are not in the slightest way disputed--we believe that the Commission, as the trier of fact, could reasonably have concluded that Seminole "use and occupancy" was adequate to sustain a claim of original title to the Florida peninsula. The area acknowledged by the Commission as being within Seminole dominion constituted a definable territory occupied exclusively by the Seminoles. And since the use and occupancy is essential to the recognition of the Indian, title does not demand actual possession of the land, but may derive through intermittent contracts; Spokane Tribes of Indians V. United States 163 ct. cl. 58, 66 (1963) which defines some general boundaries of the occupied land, Upper Chehalis Tribes V. United States 140 ct. cl. 192, 155 F. Supp. 226 (1957). The Commission's determination that the Seminoles occupied all of Florida may not be regarded as legally defective.

Nor does the Government's reference to population thinness compel a different result. In stressing this consideration, the Government leans far too heavily in the direction of equating "occupancy" or capacity to occupy with actual possession, whereas, the key to Indian title has in evaluating the manner of land use over a period of time. Physical control or dominion over the land is the dispositive criterion. Thus, when consideration is given to the fact that Seminoles hunted throughout the southern peninsula and that they also traveled this territory--much of which was covered by

water; and, further, that their emergence as a distinct Indian group was achieved through the amalgamation of many diverse elements, some of which had always dwelt within the southern peninsula--then, we believe, there exists a reasonable basis for our accepting the Commission's determination that Seminole title embraced the entire peninsula.

In Tlingit and Haida Indians of Alaska V. United States 147 ct. cl., 326 (1959) the court said:

"Indian lands, prior to the extinguishment of Indian title, were not surveyed. They were not fenced to shut out trespassers or to mark boundaries."

This in effect said that boundary notions were of Anglo-American jurisprudence, foreign to most Indian cultures, which in a time sense of the word, vulnerable to trespass and result in diminution of such rights by third parties.

As to the Sovereign of the United States, the United States Supreme Court has defined a recognized claim as follows: "There is no particular form for congressional recognition of Indian right of permanent occupancy. It may be established in a ways but there must be the definite intention by congressional action or authority to accord legal rights, not merely permissive occupation. Tee Hit Ton Indians V. United States 348 U. S. at pp. 277-278. Thus resulted that:

"Recognized Indian claims have always been compensable under the Constitution."

Under the tribunal system of the United States, the Court of Claims was established in 1855, with given jurisdiction to entertain suits against the Federal Government. The Doctrine of Sovereign immunity holds that the United States may not be proceeded against in the courts unless special jurisdictioned acts were inacted by Congress. Final by 1946, a bill to establish a special tribunal to adjudicate Indian claims was enacted. In it were claims brought before it are land cessions to the United States by treaty or to

lands taken pursuant to statute for compensation.

Section 2 of the Act provides:

A. Claims in law or equity arising under the Constitution, laws, treaties of the United States, and executive orders of the President.

B. All other claims in laws or equity those sounding in tact with respect to which claimant would have entitled to sue in a court of the United States was subject to suit.

C. Claims, which result of the treaties, contracts, and agreements between the claimant and the United States were raised on the ground of fraud, duress, unconscionable consideration, mental or unliternal mistake, whether of law or fact or any other ground recognizable by a court of equity.

D. Claims arising from the taking by the United States, whether as a result of a treaty or cession or otherwise, of land owned or occupied by the claimant without the payment of such lands of compensation agreed to by claimant, and

E. Claims based upon fair and honorable dealings that are not recognized by any existing rule of law of equity.

The famous case in Alaska is Tlingit and Haida Indians V. United States, where consent of United States was given to sue. Apart from Tee Hit Ton Indians V. United States, lack of standing to sue, Tlingit and Haida 389F 2d 778 (ct. cl. 1968) further established as the court so stated:

"The measure of value is the fair market value on the date of taking. The measure of value is the same whatever the nature of the title involved, i.e., whether aboriginal (Indians) title or recognized (reservations) title. Although a mere possessory right or use and occupancy, it has been held that Indian title is as valuable as a fee simple title."