

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2793 SRES NORTH ANCH. LAND AGREEMENT

to administer valid existing rights as long as any revenues derived from the rights are distributed as provided in the exchange agreement (AS ch 240 SLA 1976)

Sec. 38.50.080. Prohibition against future consideration of alienation of selection rights. (a) The director may not enter into a land exchange agreement which requires the identification of land, interest in land, or other consideration, except for the performance of necessary survey work, at any time after the agreement is initially executed.

(b) The director, in implementing the provisions of this chapter, shall not alienate or agree not to exercise selection rights granted to the state in the Alaska Statehood Act or other applicable law authorizing the state to select land or interest in land. (§ 1 ch 240 SLA 1976)

Sec. 38.50.090. Coordination with other state agencies. (a) In the negotiation of a land exchange, the director shall consult with the departments and other divisions of the Department of Natural Resources relative to matters which are within their jurisdiction. If a department under the jurisdiction of a state agency other than the Department of Natural Resources may be involved in a proposed exchange, the director shall afford the head of that agency an opportunity to participate in discussions respecting the land.

(b) The director shall be afforded an opportunity to review and comment on any land exchange proposed by a state agency other than the Department of Natural Resources. (§ 1 ch 240 SLA 1976)

Sec. 38.50.100. Finding requirement as to alternatives. In circulating notice under § 110 of this chapter, the director shall consider other alternatives to achieve the objectives of the proposed exchange in an effort to determine whether the proposed exchange will best serve the public interest. In making this determination, the director shall consider, among other things, the advantages and disadvantages of acquiring the land or interest in land for the state by means of purchase, lease, or selection under the Alaska Statehood Act, or condemnation. In addition, he shall consider alternatives to the disposal through exchange of the state land or interest in land, including, but not limited to, sale or sale. (§ 1 ch 240 SLA 1976)

Sec. 38.50.110. Notice of proposed exchange. (a) Not more than 60 days nor less than 30 days before a public hearing is scheduled under § 120 of this chapter the director shall circulate a notice containing the information specified in (b) of this section. The director shall

(1) publish or post the notice as provided in AS 38.05.345, unless otherwise specified in this section. The director shall publish the notice in a newspaper of general circulation in the vicinity of the land to be exchanged and in the three most populated cities of the state

the notice to any person who desires to comment on the exchange;

the notice to each member of the exchange; the notice to each municipality or are located within six miles of the exchange;

the notice to the Office of the Director of the Department of Natural Resources;

the notice to the appropriate local authority as indicated in the proposed exchange; the notice to any corporation or organization within a radius of 15 miles of the proposed exchange;

the notice to any other person that he considers appropriate; notice of proposed exchange;

statement of the proposed action; a map of the tracts and potential exchange;

a map of sufficient scale to allow reference to points which are the same and post office address;

statement that any person who desires to comment on the exchange should contact the director at the following date, time, and place of the hearing;

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Public Lands

notice to any person who has filed a request for notice of exchanges;

notice to each member of the legislature;

notice to each municipality the boundaries of which are located within six linear miles of land involved in the exchange;

the notice to the Office of the Governor and to all state

notice to the appropriate board or other entity or person authority as indicated in § 40 of this chapter and AS university land, school land, or mental health land is proposed exchange;

notice to any corporation organized under the Alaska Settlement Act, which corporation owns or has selected within a radius of 15 linear miles from land or property proposed exchange; and

notice to any other party, including an organization of that he considers appropriate.

Each notice of proposed exchange shall include the following

description of the proposed action and a legal or other appropriate description of the tracts and potential uses of land involved in the exchange;

a map of sufficient scale to allow identification of each tract in the exchange and reference points which are easily identified by laymen;

the name and post office address of each party to the proposed exchange;

a statement that any person asserting a claim to the property involved in the exchange should contact the office designated in the notice of proposed exchange;

the time, and place of a public hearing which has been held in connection with the proposed exchange. (§ 1 ch 240 SLA 1976)

120. Public hearings. (a) The director may hold as many public hearings as is considered appropriate. There shall be at least one public hearing in each area in which a proposed exchange is being considered.

Who desires to testify at a hearing shall be provided an opportunity to do so, subject to reasonable time limits. In addition, the director shall hold the hearing record open for at least two weeks after the conclusion of a hearing in order to receive supplemental statements. (§ 1 ch 240 SLA 1976)

121. Report on proposed exchange. (a) In conjunction with the notice required by § 110 of this chapter, the director shall prepare and distribute the report required by this section to the parties to the exchange.

Title 39
Public Officers
and Employees

Title 43
Revenue and Licenses

Title 40
Public Records
and Recorders

Title 41
Public Resources

Title 42
Public Utilities
and Careers

listed in § 120(a)(2) — (8) of this chapter and to any other party who requests it. The report shall contain, among other things, a copy of the notice required by § 110 of this chapter and a discussion in a standard format designed to facilitate public understanding of the issues:

- (1) the physical characteristics of the land involved, including surface and mineral resources associated with the land;
- (2) the appraised fair market value of each tract involved in the exchange or, if the exchange is for other than equal appraised market value, the non-monetary values which are involved;
- (3) the benefits and detriments which can be expected to result, including possible social, economic, and environmental impacts;
- (4) alternatives to the proposed exchange.

(b) Upon termination of the period provided for agency and public comment, the report and the proposed land exchange may be revised, if appropriate, to reflect comments or other information which has come to the director's attention. A brief summary of all comments and other information received shall be appended to the report. (§ 1 ch 240 SLA 1976)

Editor's note. — The reference to § 120(a)(2) — (8) of this chapter in the introductory paragraph of subsection (a) is incorrect. The reference should be to § 110(a)(2) — (8) of this chapter.

Sec. 38.50.140. Legislative review. Within 10 days of the commencement of a regular legislative session, the governor shall transmit to the president of the senate and the speaker of the house of representatives any proposal for a land exchange for other than equal appraised market value which is scheduled to occur before the next legislative session. If, in his view, exigent circumstances seriously affecting public interests so require, the governor may submit the proposed exchange to the legislature at some other time. A finding of exigent circumstances shall be carefully documented in the letter of transmittal. The director is authorized to conclude a proposed exchange agreement unless the house of the legislature by simple resolution disapproves the exchange within 60 legislative days of transmittal by the governor. A decision by the legislature to disapprove a proposed exchange shall be accompanied by a recommendation to the governor with respect to future actions which the director should take concerning the exchange. (§ 1 ch 240 SLA 1976)

Sec. 38.50.150. Execution of exchange. If a deed, contract of exchange, or other instrument of conveyance which the director is authorized to effectuate an exchange is properly executed, acknowledged, and authorized by the appropriate party, the director shall issue a patent conveying title to the land and other property which the director receives as consideration, and he shall issue a patent, contract of exchange or other instrument of conveyance to the appropriate party.

property which he is then obligated to convey to the owner of a deed, contract of exchange, or other instrument of conveyance by him or by any other state official. (§ 1 ch 240 SLA 1976)

§ 38.50.160. Regulations. The commissioner shall promulgate regulations under the Administrative Procedure Act to carry out the purposes of this chapter.

§ 38.50.170. Definitions. In this chapter:

- "commissioner" means the commissioner of public lands;
- "director" means the director of the department of public lands;
- "state land" means all lands including severed resources belonging to the state, including interests in land severed or conveyed to the state. (§ 1 ch 240 SLA 1976)

Chapter 95. Miscellaneous

Conveying State's Interest in Land under Contracts and Land Exchanges. P.L. 95-100
Act for Alaska Lands (§§ 38.95.100-105)

Article 1. Manner of Conveying State's Interest in Land under Its Jurisdiction

State's interest may not be obtained by adverse possession or prescription.

§ 38.95.010. State's interest may not be obtained by adverse possession or prescription. No prescription shall acquire the title or interest of the state. No title or interest in the state may be acquired by adverse possession or prescription in any manner except by conveyance to the state. (§ 1 ch 77 SLA 1955)

Act (1962). — Section 47-241 of the Alaska Statutes relating to the conveyance of state lands to territorial lands is hereby declared as obsolete since this

which he is then obligated to convey. Before acceptance of a deed, contract of exchange or other instrument, no person or by any other state official creates a right against the state with respect to state land. (§ 1 ch 240 SLA 1976)

Regulations. The commissioner may adopt rules under the Administrative Procedure Act (AS 44.62) to carry out the purposes of this chapter. (§ 1 ch 240 SLA 1976)

Definitions. In this chapter, unless otherwise defined:

"Commissioner" means the commissioner of natural resources;

"Director" means the director of the division of lands;

"Lands" means all lands including shore, tide and submerged

resources belonging to or acquired by the state

in land severed or constructively severed from the

state. (§ 1 ch 240 SLA 1976)

Chapter 95. Miscellaneous Provisions.

- § 38.95.010 State's Interest in Land under Its Jurisdiction (§ 38.95.010)
- § 38.95.050 Contracts and Land Exchanges; P.L. 92-203 Corporations (§§ 38.95.050 - 38.95.059)
- § 38.95.100 Alaska Lands (§§ 38.95.100 - 38.95.140)

Section 47-2-1 Manner of Conveying State's Interest in Land under Its Jurisdiction.

State's interest may not be obtained by adverse possession or prescription

47-2-1. State's interest may not be obtained by adverse possession or prescription. No prescription or statute of limitations shall apply to the title or interest of the state to land under the jurisdiction of the state. No title or interest to land under the jurisdiction of the state may be acquired by adverse possession or prescription, or in any other manner except by conveyance from the state. (§ 47-2-1 SLA 1955)

1955 — Section 47-2-1 was added to the Alaska Code upon statehood. The 1955 amendment added the above wording to § 47-2-1 ACIA 1948.
Revisor's note (1973). — Before 1973, this section was designated AS 38.15.010.

Title 39
Public Officers
and Employees

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Title 42
Public Utilities
and Carriers

Title 43
Revenue and Taxation



Official Business

Alaska State Legislature

Senate Resources Committee

Pouch V
State Capitol
Juneau, Alaska 99811

Memo

To: Billy G. Berrier, Director
Division of Legal Services

From: Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee

Subject: Applicability of AS 38.50 to North Anchorage Land Agreement

Date: January 24, 1983

On this date DNR Commissioner Wunnicke briefed a joint meeting of the Senate and House Resource Committees on the North Anchorage Land Agreement. Attached are some materials describing this agreement.

At the briefing the Commissioner stated that because no lands which have actually been conveyed to the State of Alaska were involved in the agreement or subject to any exchange, the agreement did fall under the provisions of AS 38.50 and would not be submitted to the Legislature for approval (or more correctly, possible veto).

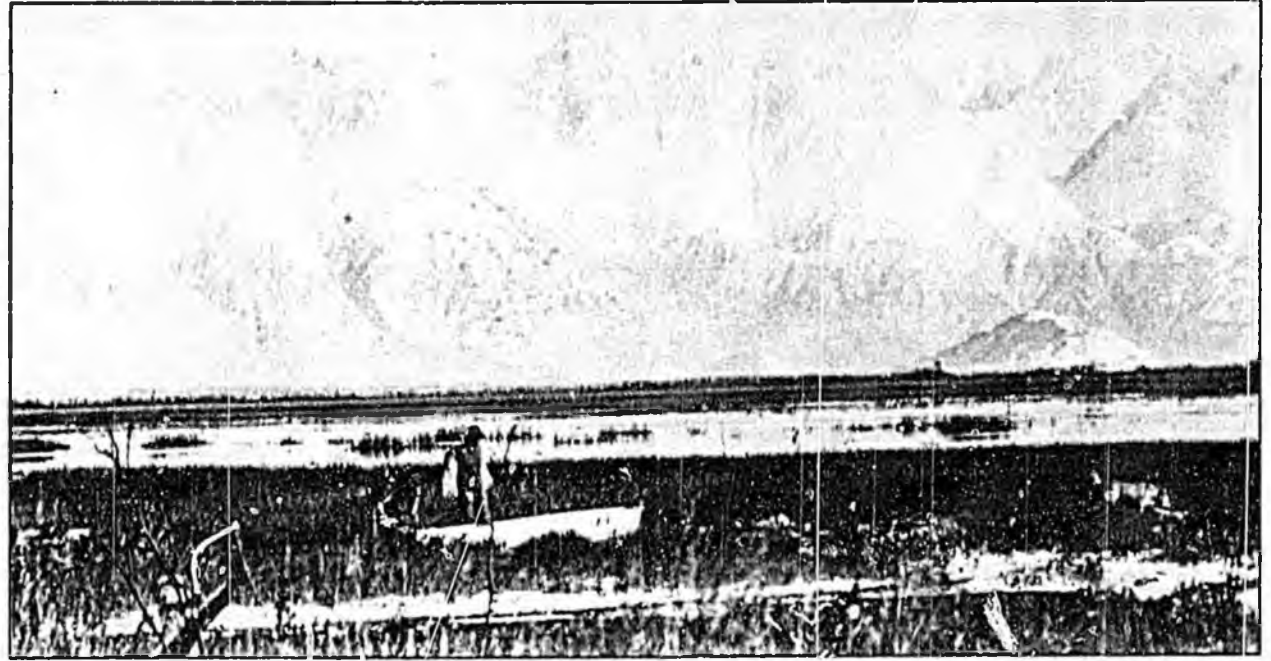
While this interpretation, which reportedly came from the Attorney General's office, may indeed be correct, the possibility of a precedent-setting denial of a prerogative of the Legislature appears to warrant a second opinion in the matter. I would appreciate your review of this agreement and your opinion as to the applicability of AS 38.50.

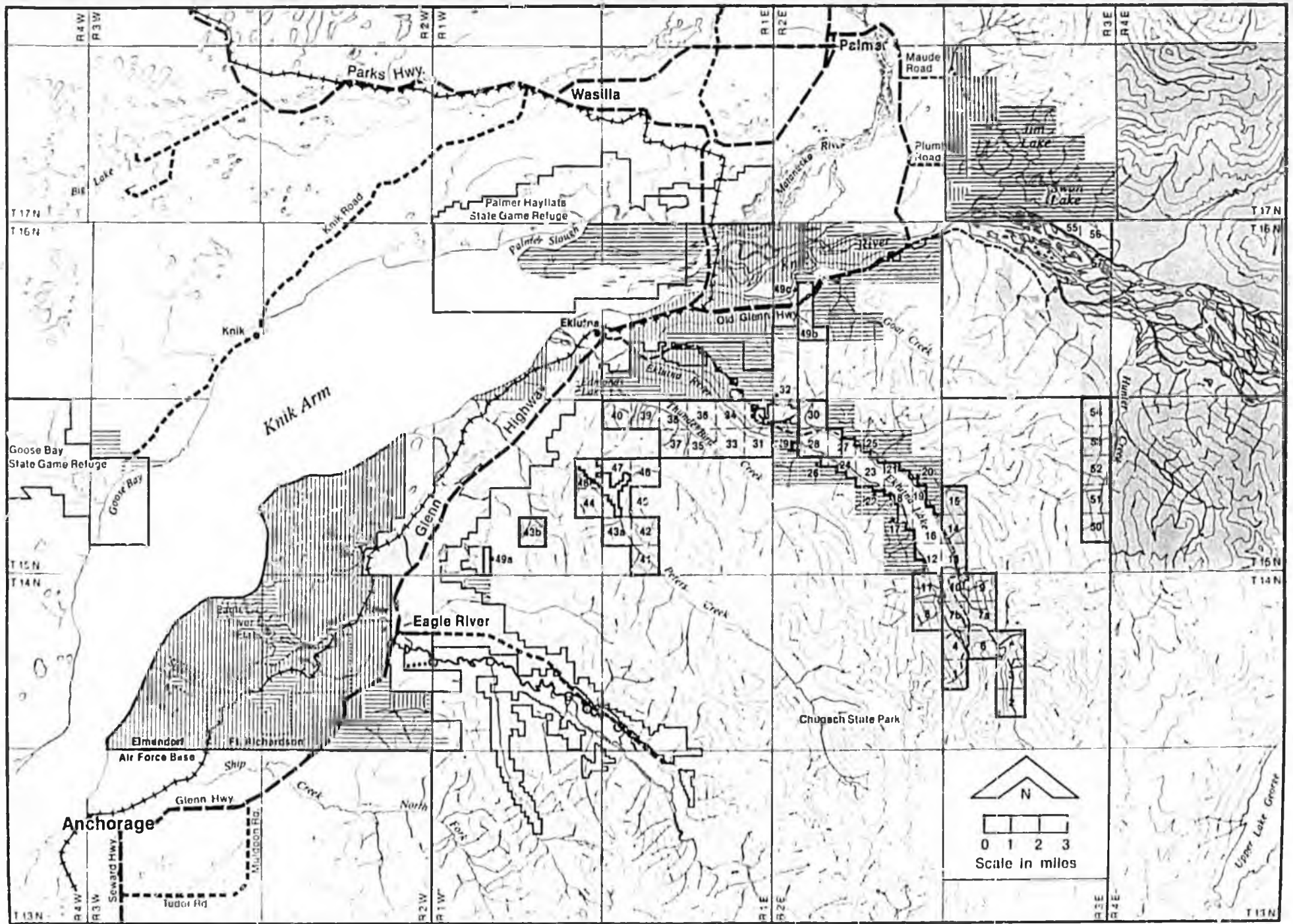
Please contact my administrative assistant for the Resources Committee, Patrick Pourchot, should you have any questions and please mark your opinion to his attention.

Thank you for your prompt attention on this matter.



North Anchorage Land Agreement





Introduction

The North Anchorage Land Agreement (NALA) provides for resolution of several longstanding land ownership and management issues in the area north of Downtown Anchorage and south of the City of Palmer. Authority for NALA is found in Section 1425 of the National Interest Lands Conservation Act (ANILCA) passed by Congress in 1980. This section is unusual in that it allows local people to solve local problems and then to impose the solutions on the federal government. NALA involves more than 100,000 acres and affects the land holdings of the State of Alaska, the Municipality of Anchorage and Eklutna, Inc. (a Native corporation formed under provisions of the Alaska Native Claims Settlement Act—ANCSA).

Through the agreement, two lawsuits are settled between Eklutna, Inc., and the federal government. This litigation affects ownership of a significant amount of land in the northern portion of Chugach State Park, in the Eklutna Village/Edmonds Lake area, in and around Palmer Hayflats State Game Refuge, and in the area of the Jim and Swan lakes north of Knik River. While the litigation is between Eklutna and the federal government, the lands involved have been selected by the state, and—without this agreement—legal intervention would be required by the state to protect its interests in these lands.

NALA also establishes the future interests of all three parties in certain military lands in the north Anchorage area *if and when* those lands are designated as excess by the military. Also by means of this agreement, 27,000 acres of Native-selected land within Chugach State Park are returned to the public for its use: all Native-selected lands within the Palmer Hayflats State Game Refuge are maintained in public ownership as are 11,360 acres of land with high public recreational and wildlife habitat values in the Jim and Swan lakes area; and regional transportation interests—such as rights-of-way for the Knik Arm Crossing, lands for a new floatplane base, and land for a new railroad yard and protection of existing railroad lands—are provided for.

The agreement is considered by all parties to be the best, and perhaps the only, opportunity to settle in one comprehensive action a variety of longstanding disputes and conflicts. Both Eklutna, Inc., and the state believe the risks of continuing the lawsuits—which usually results in a winner-takes-all solution—are simply too great not to

resolve these issues at this time. The provisions of Section 1425 of ANILCA are unique in allowing the federal government, through the rewriting of excess property laws regarding portions of Fort Richardson and Elmendorf Air Force Base, to contribute to the solution of these land conflicts. Additionally, the agreement provides a unique opportunity for the Municipality of Anchorage to obtain necessary community service and community expansion and development lands that it might otherwise never receive.

NALA was signed by all parties and submitted to the Secretary of Interior on March 15, 1982.

Military Lands

The agreement in no way prevents or inhibits the military mission in Alaska. Instead, it provides for future allocation of existing military land in the event that it, or a portion of it, is declared excess to Department of Defense needs in the future. Approximately 42,300 acres of military land are involved in the agreement.

Certain of these areas, which in the agreement are specified as public interest lands, will be transferred to the state. These include the Eagle River Flats (as wildlife habitat); a large tract south of Eagle River and east of the Glenn Highway (as a key winter range for moose); a corridor of land extending upland 200 feet from the line of ordinary high water of each bank of Eagle River (as a public greenbelt); 160 acres at either Clunie or Six Mile lake (for a future floatplane base); and as much as 1,000 acres from an area south of Eagle River (for mass or bulk transportation purposes—probably a new railroad yard). Also conveyed to the state will be other interests including the existing Alaska Railroad right-of-way and the right to realign the track if needed (Note: In the event the Alaska Railroad is not transferred to the state, these rights will remain with the federal government); the rights-of-way for a Knik Arm crossing and as many as three 300-foot-wide approach roads; and any rights-of-way for streets or highways existing and maintained or constructed and maintained by the state on former military base lands.

An additional 3,000 acres of public interest lands—which are not yet identified, will be conveyed to the Municipality of Anchorage for schools, police stations, libraries, local parks and recreational facilities, greenbelts and other

municipal purposes. In the event any of these lands produces income—such as fees for lease of airport lands—then Eklutna, Inc., will be entitled to 50 percent of the revenues.

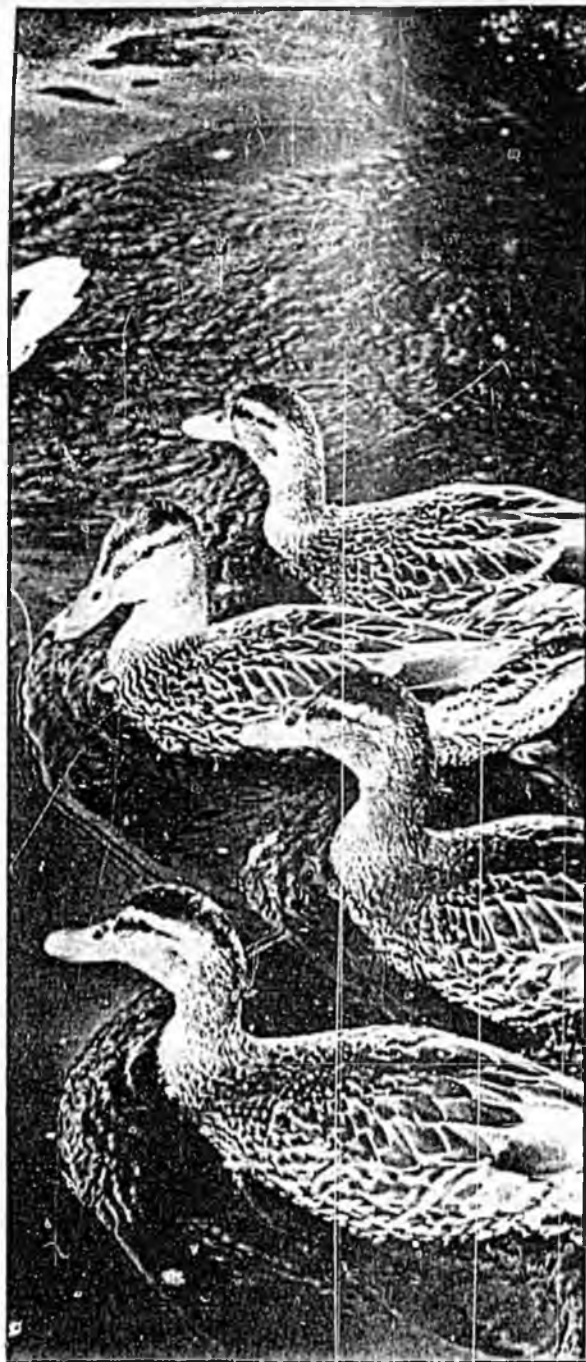
The remaining former military lands will be conveyed to Eklutna, Inc., and the Municipality of Anchorage as tenants in common. These lands are referred to as development lands. Eklutna, Inc., and the Municipality of Anchorage will prepare a land use plan for these lands in the event transfer of military land is to occur. The two parties will meet annually to review and update, if necessary, the generalized land use plan. This plan will be used to identify the 3,000 acres of public interest lands and to identify lands which can be conveyed solely to either of the two parties. Each party is entitled to receive as many as 15,404.5 acres; however, the parties to this agreement think the actual amount of land each is likely to receive is probably between 6,000 to 8,000 acres each.

Areas identified for development under the land use plan will be developed according to a Site Development Plan prepared jointly by Eklutna, Inc., and the municipality. The land may continue to be managed by both parties as cotenants or be partitioned, with each party receiving full ownership to specific portions of the land.

In lieu of sharing in the development lands in the future, the state receives management rights to approximately 27,000 acres of lands selected by Eklutna, Inc., within Chugach State Park. The state will have the right, in perpetuity, to manage these lands as part of Chugach State Park and in the manner other park lands are managed. All developments contemplated in the existing *Chugach State Park Master Plan* may occur without the consent of Eklutna, Inc. New developments, not contemplated in the master plan, which would result in the clearing of more than one-half acre of Eklutna owned land would require concurrence of Eklutna, Inc.

The state will receive patent to 80 acres for the development of a campground on land selected by Eklutna, Inc., in the upper portion of Eklutna Valley.

If and when Eklutna, Inc., and the Municipality of Anchorage begin receiving former military lands, Eklutna, Inc., shall deed to the state 4.5 acres of land within the park for every acre of former military land it receives; by the time 6,015 acres of former military land have been conveyed to Eklutna, Inc., the state will have received deeds from the



Mental Health Lands

The acreage contained within the mental health lands portion of NALA is land selected by the state under provisions of the Mental Health Act of 1956 and also selected by Eklutna, Inc., under terms of ANCSA. These overlapping selections have resulted in litigation between Eklutna, Inc., and the federal government. The state is not yet a party to this lawsuit; however, by execution of this agreement, the state will invoke the Congressional authority of Section 1425 of ANILCA and bind the federal government to terms agreed upon by the state and Eklutna, Inc. The two parties agree that terms of this settlement are preferable to continued litigation and a winner-takes-all solution through the courts.

Under this agreement, the state will receive title to 21,570 acres within legislatively-established Palmer Hayflats State Game Refuge and Chugach State Park. Eklutna, Inc., will receive title to 12,990 acres around its village, in the lower Eklutna Valley, and along Knik River between the old and new Glenn Highway bridges.

An area in dispute downstream of the Knik River bridge was identified as a key gravel recharge area. Because of potentially high value of this area—due to its ability to supply gravel on a sustained-yield basis for construction in Anchorage—the gravel interests in these lands will be split equally between the state and Eklutna, Inc., with actual title to the land conveyed to the state. Under the agreement, the state and Eklutna, Inc., will jointly prepare a mining plan of operation using professional engineers. The plan must insure that gravel removal operations do not damage the highway bridge or streamfront lands in the area.

Other Provisions of the Agreement

The Alaska Railroad: The adjudication of claims—under Section 3e(1) of ANCSA—by Eklutna, Inc., to land controlled by the Alaska Railroad is not affected by the agreement. The Alaska Railroad's interests in the railroad right-of-way and land previously withdrawn for railroad purposes remain unchanged, except for the enhancement of these interests through the Alaska Railroad's develop-

ment of a new 1,000-acre railroad yard and potential realignment of track on military lands without the necessity of purchasing new land or right-of-way.

Other Federal Withdrawals: Section 3e(1) of ANCSA allows Eklutna, Inc., to file selections on federal lands which are being used by federal agencies. The Secretary of Interior is then required to review the land and determine what portion was actually used by a federal agency in 1971. If land is determined not to have been used by an agency, then it will be made available for conveyance to Eklutna, Inc., under ANCSA. Section 1425 of ANILCA allows specification as to which of the parties to the agreement will receive lands retained by the federal government under the Section 3e(1) process should they ever be declared excess to the holding agency's needs. Under this agreement, the state would receive all such lands except for certain parcels in the immediate vicinity of Eklutna Village which would be conveyed to Eklutna, Inc.

Cook Inlet Region, Inc. (CIRI) Interest in Subsurface Lands in Chugach State Park: Under the terms of the agreement, CIRI will remain owner of the subsurface estate included within the management agreement between Eklutna, Inc., and the state. However, if CIRI desires, it may instead choose subsurface ownership on former military lands as Eklutna gains title to those lands. This opportunity is solely at the discretion of CIRI.

Public Access to Eagle River and Thunderbird Falls: Through NALA, the state receives an option to purchase six tracts of land and a conservation easement along Eagle River where Eklutna, Inc., has received patent to land. The state is also granted an option to purchase land (now owned by Eklutna, Inc.) upon which a parking lot was constructed some years ago for users of the trail to Thunderbird Falls. The parcels shall be purchased by the state through an exchange of land with Eklutna, Inc. The state's option to purchase is assignable to the Municipality of Anchorage. Both state and municipal lands suitable for the exchange have been identified in Chugach State Park and near the Eagle River Correctional Facility. An arbitration procedure for resolving disputes over land values is provided for in the agreement.

Allocation of Military Land if and when Excessed as Provided in the Anchorage Land Agreement

(Military Lands continued)

Native corporation for all 27,000 acres within Chugach State Park.

















Two other parcels of military land are also involved in this agreement: A withdrawal near Goose Bay (southwest of Knik) is approximately 1,280 acres in size and will be conveyed to the state if and when it is declared excess by the Department of Defense. The other parcel, 700 acres in size, is located in lower Eklutna Valley and would be conveyed to Eklutna, Inc., if and when it is declared excess. This parcel is surrounded by other land to be conveyed to Eklutna, Inc., under terms of the agreement.

Jim and Swan Lakes Area

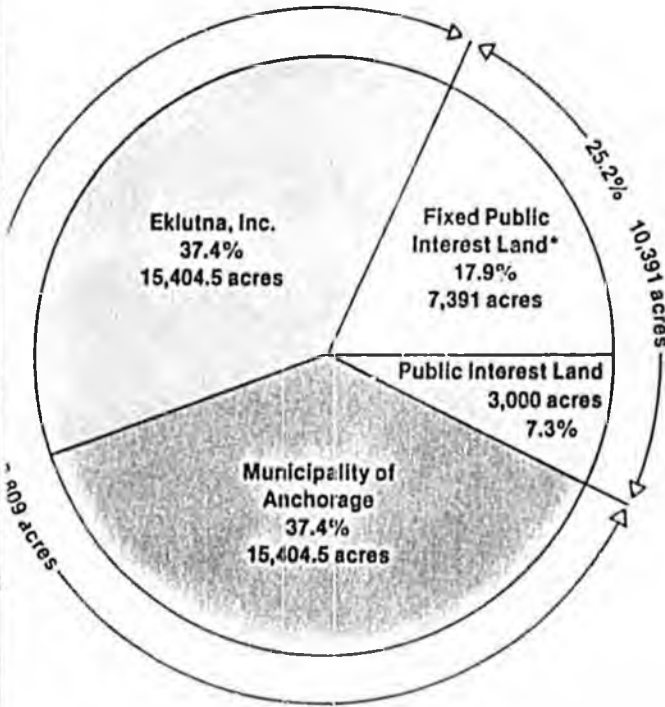
Land involved in this aspect of the agreement is located within Township 17 North, Range 3 East, Seward Meridian—more commonly referred to as the Jim and Swan lakes area. It is located north of the Knik River and East of the Old Glenn Highway. Land within this area has been tentatively approved to the state and also has been selected by Eklutna, Inc., under ANCSA. The selection by Eklutna, Inc., is the subject of litigation to determine whether this land is available to it under the terms of the act. Several homesteads in the western portion of the area have been conveyed by the state to individuals. The Matanuska-Susitna Borough has selected lands in this same area. Due to a legal dispute over interpretation of ANCSA, the interests of all parties currently are clouded.

Under the terms of this agreement, the litigation will be settled. The state is not currently a party to this litigation; however, by executing the agreement, the state will invoke the Congressional authority of Section 1425 of ANILCA and bind the federal government to settle in accordance with the terms agreed to by the state and Eklutna, Inc. The state will receive clear title to 11,360 acres of land in this area: the areas homesteaded (thus providing clear title to the original homesteaders) and the land around Jim and Swan lakes heavily used by recreationists and hunters from the Palmer and Anchorage areas. Eklutna, Inc., will receive the state's concurrence that approximately 3,600 acres in the western portion of this area shall be considered available for selection by Eklutna, Inc., under ANCSA. The state will receive rights-of-way for Plumby and Maude roads, thus providing public access to state land. The agreements will allow the Matanuska-Susitna Borough to litigate with Eklutna, Inc., for title to borough-selected land which it claims are valid existing rights under ANCSA.

Map Legend

-  Eklutna, Inc., Lands
-  Eklutna, Inc., Lands Managed by State
Numbers show sequence of reconveyance
-  Litigation Settlement Lands to go to Eklutna, Inc.
-  Litigation Settlement Lands to go to State
-  Possible Military Surplus Lands to Anchorage/Eklutna, Inc.
-  Possible Military Surplus Lands to State
-  Exact locations of state parcels within these areas to be determined in the future
-  Eagle River Public Use Sites and Conservation Easement
-  Access Easements
-  Highways
-  Paved Roads
-  Gravel Roads
-  Alaska Railroad
-  Township Lines
-  Section Lines
-  Boundaries

Source: Adapted from map filed on March 15, 1982 with the Alaska Office of the Bureau of Land Management as part of the North Anchorage Land Agreement.



Total acreage: 41,200 acres

* Fixed Public Interest Land

- a) moose/mountain 3,789 acres
- b) river flats 2,272 acres
- c) river corridor 170 acres
- d) float planes 160 acres
- e) railroad yard 1,000 acres

Note: This table does not include military lands at Goose Bay (to go to state) or military lands in Eklutna Valley (to go to Eklutna)

Summary of North Anchorage Land Agreement

- resolves, in a comprehensive manner, a variety of longstanding land disputes and requires the federal government to abide by this locally-agreed-upon solution;
- determines future ownership of federal military lands if they are declared excess to military needs; for example, it speeds up, and ensures state acquisition of Goose Bay lands for correctional facilities and/or other public purposes;
- restores to public use the north half of Chugach State Park;
- restores to public use and ownership the Palmer Hayflats State Game Refuge;
- provides for continued public ownership and use of the Jim and Swan lakes area near Palmer;
- provides for planned development of Fort Richardson lands for residential and commercial purposes in the event these lands leave federal ownership;
- maintains the Alaska Railroad right-of-way and provides for future track realignment and the development of a 1,000-acre railroad yard;
- provides for other regional transportation needs such as a new floatplane base, road and rail approaches for the Knik Arm Crossing, and rights-of-way for future state-developed and maintained roads;
- provides for joint development of Knik River gravel resources; and
- resolves several lawsuits which have clouded property title in the north Anchorage area.

For further information, contact:



Al Meiners (264-2114)
Jack Wiles (264-2115)
Alaska Department of
Natural Resources
619 Warehouse Ave., Suite 210
Anchorage, Alaska 99501



Chip Dennerlein (263-8401)
Ray Mann (264-4545)
Municipality of Anchorage
Pouch 6-650
Anchorage, Alaska 99501



Dan Alex (275-5701)
Eklutna, Inc.
840 K St., Suite 202
Anchorage, Alaska 99501

JAN 31 1983

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 28, 1983

SUBJECT: Applicability of AS 38.50 to North Anchorage
Land Agreement (Work Order NO. 13-0659)

TO: Senator Bettye Fahrenkamp
Chairman, Senate Resources Committee

FROM: Richard A. Bradley *b*
Legislative Counsel

Patrick Pourchot has requested my comments on the applicability of AS 38.50 (Exchange of State Land) to the North Anchorage Land Agreement.

You advise me that at a hearing before the Resources Committee, Commissioner Wunnicke of the Department of Natural Resources indicated that the Department of Law had advised her that technically the law did not require a submission of the agreement to the Legislature under AS 38.50.

In my view, assuming that the premises on which the Department of Law based its opinion are correct, the Department of Law's views are correct. The premise is that AS 38.50 only applies to fee lands of the state, that is, to land owned by the state at the time the exchange is proposed and that it does not apply to land to which the state has, at that time, only a claim or an expectancy.

The provision of law that requires legislative participation in the exchange results from AS 38.50.140; that section provides:

Sec. 38.50.140. LEGISLATIVE REVIEW. Within 10 days of the convening of a regular legislative session, the governor shall transmit to the president of the senate and the speaker of the house of representatives any proposal for a land exchange for other than equal appraised fair market value which is scheduled to occur before the next legislative session. If, in his view, exigent circumstances seriously affecting state

interests so require, the governor may submit the proposed exchange to the legislature at some other time. A finding of exigent circumstances shall be carefully documented in the letter of transmittal. The director is authorized to conclude a proposed exchange agreement unless either house of the legislature by simple resolution disapproves of the exchange within 60 legislative days of transmittal by the governor. A decision by the legislature to disapprove a proposed exchange shall be accompanied by a recommendation to the governor with respect to future actions which the director should take concerning the exchange.

The term "state land" is defined in AS 38.50.170 as including

. . . all lands including shore, tide and submerged land or unsevered resources belonging to or acquired by the state . . .

The definition is apparently designed to achieve the result that only existing vested interests of the state are included within the requirements of the statute. Thus, prospective interests and inchoate claims are not within the scope of the chapter.

I may say that there is a narrow gap between the terms used in sec. 140 ("land") and the definition offered ("state land"). While it might be possible to argue that the legislature wanted to review all land exchanges, whether or not they involved "state land" (since the legislature did not use its defined term "state land"), in my view the better answer is that a drafting error has occurred and that it was not expected by the legislature when it adopted AS 38.50 that the state was going to have that much activity involving non-fee land of the state. I suggest, of course, that in hindsight and possible enlightened foresight, that is an error. For some time before the adoption of the Settlement Act in 1971, the state has been in substantial competition with Native groups and Federal agencies for the useable and useful land of the state.

The gap can, of course, be eliminated by amendatory language.

If I may be of further assistance, please advise.

CONTRACT

This Agreement is made March 15, 1982, between the State of Alaska, ("State"), the Municipality of Anchorage ("Municipality") and Eklutna, Inc. ("Eklutna") pursuant to the provisions of Section 1425 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2371, ("ANILCA"). This Agreement is subject to the following two conditions precedent ("the conditions precedent"):

(a) Approval by the Commissioner of the Department of Natural Resources of the State ("Commissioner"), and

(b) Approval by the Legislature of the State.

Upon the occurrence of each of these conditions precedent, the Commissioner shall notify the Secretary of the Interior ("Secretary") in writing. If the Commissioner notifies the Secretary that he cannot approve the Agreement or if the Commissioner has not notified the Secretary that these conditions have occurred prior to July 1, 1983, the parties agree to relinquish their interest in land created by virtue of Section 1425 of ANILCA and this Agreement and direct the Secretary to terminate the withdrawal made by Section 1425(b) of ANILCA and to authorize all federal agencies to administer the land formerly withdrawn by Section 1425(b) pursuant to applicable federal law. The approval by the Commissioner cannot be revoked by that Commissioner or any successor or commissioner.

The purpose of Section 1425 is to provide for the settlement of certain claims and litigation, and in so doing to consolidate ownership among the United States, the State of Alaska, the Municipality of Anchorage, and Eklutna, Inc., thereby facilitating land management, a fair implementation of

the Alaska Native Claims Settlement Act, the protection of State public park lands and resources, and appropriate development patterns in and about Anchorage, Alaska.

The parties agree that they shall not alienate, transfer, assign, mortgage, or pledge lands subject to this Agreement or grant use permits in such lands, or permit development or improvement on such lands prior to July 1, 1983, or the notification by the Commissioner that the conditions precedent have occurred, or the notification by the Commissioner that he cannot approve the Agreement (whichever date is first), without the prior written consent of the parties.

This Agreement may be modified or amended only by written agreement of all the parties. This Agreement contains a number of self-executing provisions. The parties agree that these shall not in fact become self-executing until the occurrence of the second to occur of the two conditions precedent.

Section I of this Agreement provides for the disposition of the lands withdrawn by Section 1425(b)(1) of ANILCA and for the relinquishment of certain selections and the conveyances of certain lands to the State by Eklutna.

Section II of this Agreement provides for the disposition of lands located within Township 17 North, Range 3 East, Seward Meridian which are the subject of litigation in the case of Eklutna, Inc. v. Andrus, A78-24 Civ., U.S.D.C. Alaska, as authorized by Section 1425(c) of ANILCA.

Section III of this Agreement provides for the relinquishment of certain selections by the State and Eklutna in order to settle and resolve their differences concerning those lands selected by the State under the authority of the Mental Health Enabling Act of 1956 (70 Stat. 709) which are the sub-

lands subject
to agreement
shall not be
encumbered

amendments

Military Lands

TL7N, ESN
lands
litigation

mental health
lands litigation

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

misc. provisions

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

I.

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

*disposition of
military lands
and other
federal withdrawals
subject to
sec. 1424(b)(1)*

A. For the purposes of this Section I, the parties agree that Section 1425(b)(1) of ANILCA withdrew the following lands located within Townships 18 North, Ranges 1 and 2 East, and Ranges 1 and 2 West; Townships 17 North, Ranges 1 and 2 East, and Ranges 1 and 2 West; Townships 16 North, Ranges 1, 2 and 3 East, and Ranges 1, 2 and 3 West; Townships 15 North, Ranges 1, 2 and 3 East, and Ranges 1, 2 and 3 West; and Townships 14 North, Ranges 1, 2 and 3 East and Ranges 1, 2 and 3 West, Seward Meridian, and provided for their disposition pursuant to this Agreement:

- (1) Lands withdrawn or reserved for national defense purposes; and
- (2) Lands determined by the Secretary under Section 3(e)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq. ("ANCSA") not to be public lands for the purposes of ANCSA.

B. The parties agree that upon termination or revocation of any withdrawal or upon a declaration of excess status in whole or in part of lands withdrawn by Section 1425(b)(1), or disposition other than in accordance with Section 1425 and this Agreement, the Secretary shall convey such lands

in accordance with the provisions of Subsections (1), (2) and (3) of this Section.

*submerged lands
not affected*

(1) Submerged Lands. All lands beneath navigable waters as defined in 43 U.S.C. 1301(a) withdrawn by Section 1425(b) shall be conveyed to the State.

(2) Lands withdrawn or reserved for national defense purposes.

lands to state

(a) The lands depicted on the map attached hereto as Exhibit A shall be conveyed by the Secretary to the State of Alaska. The approximate legal description of these lands is attached hereto as Exhibit B. The parties are aware that the depiction on topographical maps of the location of legal descriptions in Alaska may be erroneous and therefore agree that with respect to the Eagle River Flats the map shall be controlling.

railroad lands

(b) The parties are in agreement that the existence of a properly engineered, constructed and maintained rail link between Anchorage and points North is in the best interest of all the parties and therefore intend that the disposition of the existing Alaska Railroad rail line across those lands withdrawn by Section 1425(b)(1) which were withdrawn or reserved for national defense purposes on December 18, 1971, shall be accomplished in the following manner. In the event that Congress adopts legislation authorizing the conveyance of the Alaska Railroad to the State, the Secretary shall convey the lands (fee or easement as the case may be) within 100 feet

either side of the centerline of the Alaska Railroad across lands withdrawn by Section 1425(b)(1) in accordance with the provisions of such legislation. In the event that no such legislation is adopted prior to a conveyance of such lands, the disposition of the rail line across such lands shall be in a manner consistent with the disposition of the rail line crossing other lands conveyed pursuant to ANCSA.

floatplane bases

- (c) The State asserts ownership to the beds of Clunie and Six-Mile Lakes, and of an unnamed lake in the NE4, Section 33, Township 15 North, Range 2 West, Seward Meridian, ("unnamed lake"), pursuant to the provisions of the Submerged Lands Act, U.S.C. 1301 et seq. and Section 6(m) of the Alaska Statehood Act (72 Stat. 343). Should the Secretary determine that any of these lakes are not navigable, the Secretary shall convey the beds of those lakes to the extent they are within the Section 1425(b)(1) withdrawal area to the State. The State, after consultation with the other parties, shall identify 160 acres either around and between Clunie Lake and the unnamed lake, or around Six-Mile Lake for use as a base for airplanes on floats, wheels or skis, by March 15, 1992 or within ninety (90) days of notification by the Secretary that the national defense withdrawal respecting said lands is terminated or upon declaration of their excess status, whichever

occurs first. The State shall notify the other parties thirty (30) days before notifying the Secretary which lands have been identified. The 150 acres identified by the State shall be conveyed to the State by the Secretary.

- (d) After consultation with the other parties, the State shall identify a tract of land, not to exceed 1,000 acres, to be used for mass and bulk transportation purposes south of Eagle River within the following described area:

Township 14 North, Range 2 West, Seward Meridian

Section 16: S2, NE4

Section 17: S2

Sections 19-21: All

Section 30: All

Section 31: N2

Township 14 North, Range 3 West, Seward Meridian

Section 24: S2, NE4

Section 25: All

Section 26: All

Section 35: All

Section 36: All

The State shall identify the tract by March 15, 1992 or within ninety (90) days of notification by the Secretary that the national defense withdrawal respecting said lands is terminated or upon declaration of their excess status, whichever occurs first. The State shall notify the other parties thirty (30) days before notifying the Secretary which lands have been identified.

mass and bulk
transportation
facility

Location
of 1,000
acre parcel

The 1,000 acres identified by the State shall be conveyed to the State by the Secretary.

- (e) The parties shall identify 3,000 acres of public interest lands which shall be conveyed to the State for reconveyance to the Municipality pursuant to AS 38.05.315. Upon notification to the Secretary these lands shall be conveyed to the State.
- (f) The lands withdrawn by Public Land Order 2787 as amended by Public Land Orders 2834 and 3995 shall be conveyed by the Secretary to Eklutna.
- (g) The remaining lands withdrawn by Section 1425(b)(1) which were withdrawn or reserved for national defense purposes on December 18, 1971, shall be conveyed to Eklutna and the State as tenants in common, the State to receive an undivided one-half interest, and Eklutna to receive the surface estate in an undivided one-half interest, unless prior to a conveyance of such lands the State notifies the Secretary in writing that a conveyance of the surface estate shall be made to Eklutna, alone, or Eklutna notifies the Secretary in writing that a conveyance shall be made to the State, alone. In a conveyance to Eklutna and the State as tenants in common, the parties agree that the Secretary may treat the lands as being conveyed pursuant to ANCSA for the purpose of reserving easements under Section 17(b) of ANCSA. For purposes of calculating the acreage to be charged against

3,000 acre of
floating public
interest

military lands
to Eklutna

"development"
lands to Eklutna
and State (Muri)

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

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

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

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

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

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

Disposition of
lands not public
under 3(e)(1) of
ANCSA

to Eklutna

to State

Eklutna
Powerhouse

Peters Cr. Withdrawal
to State

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

(e) Notwithstanding subparagraph B(3)(a) of the introduction language to this paragraph B, the parties agree that the Alaska Railroad may become the property of the State of Alaska as an operating entity whether or not first exsessed without there being any violation of Section 1425 or this Agreement, to the extent of the lands lawfully determined by the Secretary under Section 3(e)(1) of ANCSA not to have been public lands (including any of the same that may be included in the descriptions in subparagraph B(3)(a)); if lands or interests in lands in Paragraph (a) above are transferred to the State by the United States as part of the railroad transfer, the State will reconvey the land to Eklutna if it ceases to use them in connection with furnishing mass or bulk transportation. For so long as the railroad is in operation, the Secretary shall no convey to Eklutna the lands lawfully determined not to have been public lands.

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

*Railroad operations
and lands*

*Eklutna Lake
Campground site
to State*

following described lands in order to permit the conveyance of said lands to the State: E2NW4, Section 6, Township 14 North, Range 3 East, Seward Meridian.

*Sec. 907 (ANILCA).
Land bank*

Section 1425(g) requires Eklutna to submit to the Section 907 land bank of ANILCA tracts of land of at least equal acreage to that which may be ultimately conveyed to Eklutna under this Agreement from those withdrawn by Section 1425(b). The parties estimate that the lands which may ultimately be conveyed to Eklutna contain approximately 15,900 acres (15,905 acres plus or minus one-half of the amount by the actual acreage withdrawn by Section 1425(b) differs from 41,700).

- (1) Eklutna shall submit to the land bank, pursuant to Section 907 of ANILCA, the lands described on Exhibit C, which shall remain in the land bank until reconveyed to the State or removed by mutual agreement of the State and Eklutna. The parties agree that the terms of the agreement entered into under Section 907(b) shall include the provisions set forth in Section IV L of this Agreement.

*reconveyance
of lands to
State*

The lands shall be reconveyed to the State pursuant to subparagraph (3) below in the order that they are listed on Exhibit C.

*Eklutna to take
title to selections
in Chugach Park*

- (2) Eklutna hereby notifies the Department of the Interior, BLM, that the lands in Subparagraph (1) above are among its highest priority selections and that Eklutna requests immediate conveyances of such lands. Eklutna hereby informs the Secretary that under no circumstances will it relinquish (without prior written consent of the State) these selections

Eklutna Lake
Bed

or any other of its A, B, or C selections not relinquished herein. Eklutna agrees that it will not attempt to delay such conveyances or change their prioritization without the prior written consent of the State. The bed of Eklutna Lake shall be excluded from the Secretary's conveyance to Eklutna.

reconveyance
procedures

- (3) Upon each receipt of lands by Eklutna from those withdrawn by Section 1425(b), whether to Eklutna alone or to Eklutna and the State as tenants in common, Eklutna shall immediately, but in no event later than ninety (90) days thereafter, convey to the State lands in the land bank according to the order set by subparagraph (1) above and in the amount required by subparagraph (4) below. The deed shall be delivered to the Commissioner to be held in escrow for further delivery to the State upon the expiration of the current term of the land bank agreement. After the delivery of such a deed to the Commissioner, Eklutna's right to withhold consent to actions not inconsistent with the provisions of Section 907 of ANILCA shall cease. Whenever a portion of a section is to be conveyed, Eklutna may choose the lands to be reconveyed, which shall be contiguous to lands owned by the State. Eklutna shall reconvey lands in a fashion rounding out 40 acre aliquot parts before commencing to reconvey in a different 40 acre aliquot part.

reconveyance
ratio

- (4) Eklutna shall convey 4.511667 acres to the State from within those in the Section I C land bank for every acre received by Eklutna from those withdrawn by Section 1425(b). The foregoing notwithstanding, when

Eklutna has received 6,000 acres of those withdrawn by Section 1425(b), it shall convey to the State all remaining land in the Section I C land bank other than that in Township 16 North, Range 2 East, Seward Meridian. Eklutna shall convey the remaining land in the Section I C land bank to the State when Eklutna has received 10,000 acres from those withdrawn by Section 1425(b). In each instance of a new conveyance of lands withdrawn by Section 1425(b), the aggregate acreage received to date by Eklutna (including the new conveyance) shall be computed. The aggregate acreage already reconveyed by Eklutna shall also be computed. The aggregate acreage amount required to be reconveyed by Eklutna (by reason of all conveyances including the new conveyance) shall then be computed. The difference between the amount required to be reconveyed and the amount already conveyed shall be rounded to the nearest ten (10) acres, and the resulting balance shall be reconveyed.

II.

LANDS WITHIN TOWNSHIP 17 NORTH, RANGE 3 EAST, SEWARD MERIDIAN

In view of Section 1425(c), the State and Eklutna each reserve the right prior to April 2, 1982, to notify the Secretary by notice to the Alaska State Office, that their agreement to this Section II is revoked.

Section 1425(c) provides for an agreement between the State and Eklutna concerning land within Township 17 North, Range 3 East, Seward Meridian which are the subject of litigation in Eklutna v. Andrus, A78-24 Civ., U.S.D.C. Alaska. The State and Eklutna agree, for the sole purpose of this Section

T17N, R3E SM
Litigation
Settlement

State to
intervene in
litigation

II that, the public lands as defined in ANCSA located within Township 17 North, Range 3 East, Seward Meridian, shall be deemed to have been withdrawn pursuant to Section 11(a) of ANCSA as of December 13, 1971. The Commissioner, after notification to the Secretary that the conditions precedent have occurred, shall direct the Attorney General to intervene on behalf of the State in the litigation for the purpose of settling the case pursuant to the provisions of this Section. Eklutna hereby relinquishes its selections of the lands described Exhibit D within Township 17 North, Range 3 East, Seward Meridian, in order to permit conveyance of such lands to the State.

The State and Eklutna agree that they shall seek an Order of the Court dismissing A78-24 with prejudice, upon the tender of a conveyance to Eklutna by the Secretary of its remaining selections within the township.

public access
easements

Eklutna and the State hereby jointly request the Secretary acting under Section 17(b)(3) of ANCSA, to reserve the following 60 foot rights of way and no more for ground access to the lands to be received by the State listed on Exhibit D: Plumby Road and Mauds Road.

III.

MENTAL HEALTH LANDS

Mental Health
Litigation.
Settlement

Section 1425(f) provides for an agreement between the State and Eklutna concerning lands selected by the State under the authority of the Mental health Enabling Act of 1956 (70 Stat. 709) which are the subject of litigation in Eklutna v. Andrus, A78-192 Civ., U.S.D.C., Alaska. The Commissioner, after notification to the Secretary that the conditions precedent have occurred, shall direct the Attorney General to intervene on behalf of the State in the litigation for the purpose of

settling the case pursuant to the provisions of this Section.

Lands Eklutna Relinquishes

Eklutna hereby relinquishes its selections of the lands described in Exhibit E in order to permit conveyance of such lands to the State.

Lands State Relinquishes

The State hereby relinquishes its selections of the lands described in Exhibit F in order to permit conveyance of such lands to Eklutna.

Dismissal of Litigation

The parties agree that they shall seek an Order of the Court dismissing A78-192 with prejudice, upon the tender of a conveyance to Eklutna by the Secretary of the lands relinquished by the State.

IV.

Misc. Provisions

MISCELLANEOUS AGREEMENTS BETWEEN THE PARTIES

A. All lands withdrawn by Section 1425(b)(1)(A) within Townships 14 and 15 North, Ranges 2 and 3 West, Seward Meridian, shall be referred to herein as "military base lands", except those to which the State alone will receive an interest under the provisions of Section I, subsections B(1), (2)(a), (2)(b), (2)(c) and (2)(d) (direct State conveyance lands). The State agrees to convey to the Municipality, pursuant to applicable law, its interest in all military base lands in which the State receives an interest from the Secretary.

State to convey lands to the Municipality

B. Pursuant to AS 29.13.210 the Commissioner finds for the purpose of this Agreement that the Municipality does not contain and cannot reasonably acquire sufficient non-federal lands within its boundaries to meet future projected needs for public and private settlement or development. With due consideration to the nature of the public services and functions provided by the Municipality, it is

DNR Commissioner finding on Muni. Entitlement

therefore deemed to be fair and proper and in the best interests of the State that lands to be conveyed to the Municipality under the provisions of Section IV, Paragraph A of this Agreement shall be conveyed irrespective of the value thereof and without monetary compensation or other consideration not provided in this Agreement.

- C. The Agreement of Compromise and Settlement referenced in Section 1426 of ANILCA was executed by the Municipality with the expectation of the enactment of Section 1425 of the Act and with the commitment of Eklutna that it would not seek the enactment of Section 1425 unless the Municipality was a necessary party to any agreement negotiated under the authority of Section 1425. The provisions of Section 1425 waiving Section 14(c)(3) of ANCSA as to the military base lands was further enacted solely because the Municipality was to be a party to this Agreement and could protect those interest directly. Section 1425 was further enacted to solve severe land selection problems affecting Eklutna, while protecting and enhancing State public park lands and resources. But for those rights in lands specified in Section Section I B(2)(g) and Section IV A, neither Eklutna, the State, nor the Municipality would participate in the execution of this Agreement.

D. Preparation for Conveyance.

- (1) The Municipality and Eklutna are aware that this Agreement provides for common land management planning of uses of military base lands in order that they may respond in an intelligent manner to the State with respect to public interest lands and transportation corridors, and to Defense with respect

Agreement of
Compromise and
Settlement
(Muni/Ek.)

Land Use Plan
for Military
Lands

to interim management. The Municipality and Eklutna shall endeavor to agree to a generalized land use plan as part of their land management plan for military base lands from time to time, in order to be able to respond to these agency requests for views and consents, and in order to be prepared in the event a disposition to them becomes imminent. Neither party is obligated to the other to furnish any particular funds or personnel to such a planning effort without further agreement. The Municipality and Eklutna shall meet at least annually to consider the status of the military base lands at the time, and the currency of any land management plan then existing between them.

- (2) "Public interest lands" as used in this Paragraph D and Section I shall mean not exceeding 3,000 acres of military base lands agreed to be designated as public interest lands upon tender of conveyances by the United States, if not sooner. In addition to sites for needed Municipal improvements and Municipal public purposes, such lands may include margins of waterbodies, waterbodies not excluded from upland survey, marshes and estuarine flats, swamps, and other lands which are generally unsuitable for development by conventional techniques without extensive fill or draining. Either the Municipality or Eklutna may nominate lands for consideration as public interest lands. No lands may be claimed to be unsuitable for development under the meaning of this Paragraph which are uplands unaffected by water tables at or

public interest
lands

near the surface. No lands may be nominated for margins of water bodies beyond 200 feet from the nearest open water. Both the Municipality and Eklutna are entitled to participate in and agree to the nomination. The agreement of Eklutna may not be withheld if less than 9% by acreage of the military base lands has been designated or nominated for this category, and if the lands are in fact not generally suited for development or are required for public improvements or public purposes.

- (3) Except as provided in paragraph E below, the Secretary is urged not to reserve in a conveyance of military base lands to the parties any easement for a State or Municipal facility or for the benefit of the public or a party; such interests will be dealt with by the parties in this Agreement and their land management plan. The acreage of the improved streets and utility easements within the urbanized portion of the military base lands shall not be charged to public interest lands; any disagreement respecting the implementation of this sentence shall be arbitrated.
- (4) Lands designated as public interest lands must be held and managed for public purposes only by the Municipality. In the event that any of these lands are sold, leased or rented, or otherwise put to an income producing use. Eklutna shall be entitled to 50% of the sale proceeds or other net income thereof properly attributable to the land as opposed to any improvements constructed thereon; nothing in this

sentence shall be taken to require sharing of reasonable user fees such as airport landing fees or other usual governmental fees and charges for the use of admittedly public facilities or lands.

(5) Should Title 21 of the Anchorage Municipal Code be amended in the future to require dedications for purposes not now required, such dedications when made shall reduce pro tanto any requirement under the provisions of this Agreement to identify public interest lands with respect to military base lands not yet conveyed to the parties.

(6) The Municipality and the State shall have the right to receive rights of way for trails, roads and utilities prior to the excessing of military base lands. Whichever entity desires the right of way shall consult the other parties to this Agreement before requesting the right of way. Any right of way acquired by the Municipality or the State for a coastal trail, bridge or bridge approach, or similar public use right of way shall count upon their respective entitlements under Section IV D, J and M of this Agreement.

E. Receipt of Conveyances. Upon notice that a conveyance of military base lands to the State and Eklutna is pending, Eklutna and the Municipality shall promptly meet to discuss further management of the lands. The Municipality and Eklutna shall agree on the identification of public interest lands to be conveyed to the State for reconveyance to the Municipality, and shall request that conveyance. The Municipality and Eklutna shall consider the

partitioning of the balance of the property between them as may be agreed, and shall request conveyances on that basis. In connection with any such agreement, the Municipality and Eklutna may make provisions for the dedication of rights of way and other easements following their receipt of conveyances. If the Municipality and Eklutna cannot or choose not to agree on a partition, they shall proceed to manage their property jointly, and shall request a conveyance of the balance of the property to the State and Eklutna as tenants in common. Nothing in this Agreement respecting the rights of the Municipality and Eklutna in their roles as proprietors limits their authority and duties as a government and as a Native village corporation, respectively. The State, the Municipality and Eklutna shall, prior to conveyances, consult and agree upon the provision of reasonable access to any of the property designated in Section I, Paragraph B(2)(a) through (d) which is proposed to be included in the conveyances. If the parties are unable to agree, they shall request the Secretary to address the matter under the provisions of Section 17(b) of Public Law 92-203. The State shall reserve corresponding easements in any patent by it of lands to the Municipality. Each pledges to cooperate in an effort to accomplish their wishes by agreement, rather than legal proceedings.

F. Management. In the event that the Municipality and Eklutna find themselves committed to tenancy in common without immediate partition, they shall manage their joint interest as provided in this paragraph.

- (1) The Municipality and Eklutna are aware that they have a responsibility to each other and the public to ensure that lands are used, managed, or developed for public or private purposes in accord with sound land and community planning principles. To that end the Municipality and Eklutna agree to manage their property according to a generalized land management plan, which may be amended from time to time by the written agreement of the parties. In agreeing on a land management plan the two parties shall consider the following:
 - (a) Designation of public interest lands as provided in this agreement;
 - (b) General siting of air commerce locations, industrial locations, including intergrated rail-airport facilities, transportation routes, and other intensive land uses;
 - (c) Identification of commercial areas;
 - (d) Identification of residential areas based upon a variety of housing types and densities; and
 - (e) Intergration of historical and cultural sites, parks, open spaces, transportation routes, and public facilities with identified land use patterns.
- (2) The planning sequence for determining the ultimate disposition of military base lands conveyed under this agreement shall be substantially as follows:
 - (a) When it becomes apparent that military base lands will be conveyed under this agreement, the parties shall meet, to determine the need for preparation of a "Site Development Plan".

- (b) A Site Development Plan shall be prepared for each significant, compact unit of land conveyed, as determined mutually by the Municipality and Eklutna.
- (c) If it is determined that a Site Development Plan is not required for particular units of land to be conveyed, the generalized land management plan and appropriate provisions of this Agreement shall control development of such lands.
- (d) If a Site Development Plan is required, a formal planning document shall be prepared mutually by the Municipality and Eklutna using the best available planning practices. The purposes of the plan shall be, among others, to determine the following:
 - (i) The final location(s) and acreage(s) of public interest lands identified in the generalized land management plan;
 - (ii) Desirable development alternatives;
 - (iii) Other management alternatives; and
 - (iv) Site-specific management plans.
- (e) Based on the adopted Site Development Plan, Anchorage and Eklutna may agree to:
 - (i) Manage lands as co-tenants in accordance with the adopted Site Development Plan;
 - (ii) Partition lands in accordance with the findings of the Site Development Plan and applicable provisions of this Agreement;
 - (iii) Make any other dispositions of the lands in accordance with the Site Development

Plan which is not otherwise in contravention of this Agreement and to which the parties can mutually agree.

- (f) If after the adoption of a Site Development Plan, the Municipality and Eklutna agree to manage the lands covered by the plan as co-tenants, the Municipality and Eklutna shall prepare and execute a binding development agreement which implements the Site Development Plan and other appropriate provisions of this Agreement.
- (3) In like fashion as is provided in paragraph L(5) below Eklutna shall not consent to the exploration, development, or removal of minerals from the subsurface estate in its one-half undivided interest in lands held in tenancy in common with the Municipality, without the prior written consent of the Municipality. Eklutna will not unreasonably withhold that consent if the Municipality desires to open and mine gravel from its undivided one-half interest.
- (4) The parties shall not dispose of land in a fashion permitting speculation or at a price permitting a windfall to the developer. The Municipality shall not introduce subsidies into the marketing at the expense of Eklutna. In disposing of its partitioned property the Municipality shall, however, be free to alienate an interest for less than fair market value in exchange for corresponding public purpose benefits. All dispositions shall be subject to a restrictive covenant, specifying that the use is to be according to the development management plan and site

development plan provided for in this Agreement, with that covenant being enforceable by either the Municipality or by Eklutna, and amendable only with the consent of both.

G. Land Bank. Nothing in this Agreement shall be taken to prohibit Eklutna from making use of the land bank provided for in ANILCA with respect to any of its land, including also its surface estate in an undivided interest in military base lands. Eklutna shall not submit lands to the land bank where the land management plan or a site development plan contemplates their development within the period of the land bank agreement. Eklutna will not assert that lands should be tax exempt solely because they are held in common with the Municipality. The Municipality, Eklutna, and the State agree to consult with each other respecting implementing law, regulations, and programs respecting the land bank.

H. Provision for Mutual Obligation to Receive and Reconvey Title in Accord Herewith in Event United States Deviates from Law and Agreement.

(1) All forms of disposition by the United States of the Section 1425 lands not provided for in Section 1425 and this Agreement are prohibited. The Municipality and Eklutna agree to share equally the costs of any legal proceedings necessary to enforce their joint and several rights with respect to Section I B(2)(g) and IV A lands against the United States or the State.

(2) If legal title is hereafter acquired by a party contrary to the provisions of this agreement, that party

procedure
for correction
of errors

shall forthwith convey the same to the party or parties specified to receive it under this Agreement.

- I. In the event that lands are withdrawn by the Secretary pursuant to Section 1410(b) of ANILCA for future selection by Eklutna, Eklutna agrees that it will not select any lands upon which there is a valid State selection at the time of such withdrawal unless the State agrees to relinquish. In the event that lands are made available to the State by the United States, the State agrees that it will not select or accept conveyance of any lands upon which there is a valid Eklutna selection at the time such lands are made available, unless Eklutna relinquishes.
- J. In the event that the Alaska Railroad is transferred to the State pursuant to future Congressional legislation, this paragraph shall govern any future realignment of the rail line across lands conveyed to Eklutna and/or to the Municipality under the terms of this Agreement pursuant to Section 1425(b)(1). If, within 10 years after the date of this Agreement, and after consultation with the other parties and with due consideration of their land management plan, the State decides to realign the rail line, Eklutna and the Municipality agree to convey to the State a right of way easement for mass and bulk transportation purposes, two hundred feet in width, for the proposed realignment. In exchange, the State shall convey its interest in the original rail line crossing lands owned by Eklutna or the Municipality to the appropriate adjacent landowner(s).
- K. If Eklutna receives a decision to issue conveyance to any portion of the bed of Clunie Lake, outside of the Section 1425(b) withdrawal area, Eklutna and the State hereby

*Railroad
Realignment*

*Clunie Lake
Bed*

St./Ek.
Management
Agreement

agree pursuant to Section 901 of ANILCA that the State may select the portion of the lake bed.

L. Eklutna hereby enters into a management agreement with the State concerning the lands to be placed in the land bank under the terms of Section I C(1) of this Agreement.

authority
delegated

(1) Eklutna hereby delegates its authority to manage said lands to the State's Division of Parks ("Division").

Terms of Management

(2) The land shall be managed as part of the Chugach State Park ("Park") pursuant to the provisions of state law concerning the Park. The Division shall have the same management and regulatory powers over said lands as it has over state land within the Park, including the power to sue for trespass and damage to the land, except that:

=
incompatible uses

(a) the Division may not grant incompatible use permits as defined by 11 AAC 18.010 in 1981 without the prior consent of Eklutna.

park developments

(b) If the Division needs to clear more than one-half acre of land for a project which is not contemplated by the existing (March 15, 1982) Chugach State Park Master Plan, it must obtain the prior consent of Eklutna.

firearm discharge

(c) The Division shall not permit discharge of firearms on the land.

tresspass damages

(3) Any money received as actual damages for trespass or damage to the land shall be used to restore the land unless Eklutna has consented otherwise.

(4) The provisions of this Management Agreement will be incorporated in the land bank agreement required by Section 907 of ANILCA. The 907 agreement shall be

between Eklutna and the Secretary (as well as the State of Alaska if the State has statutory authority to enter into such an agreement).

(5) Eklutna agrees to withhold its consent pursuant to Section 14(f) of ANCSA to the exploration, development, or removal of minerals from the subsurface estate in the lands without the written permission of the State. Eklutna will not object to zoning of lands subject to this management agreement pursuant to AS 41.20.025.

(6) The management agreement will continue until the State receives title to the land pursuant to Section I Paragraph C of this Agreement or the State notifies Eklutna it intends to acquire the land outside of this Agreement. The State agrees that if it seeks to acquire any of the land by eminent domain, the lands shall be valued without regard to the restrictions imposed by the 907 agreement, this management agreement, or any zoning pursuant to AS 41.20.025.

By March 15, 1992, the State shall identify rights of way for purposes of constructing and maintaining a bridge, and appurtenances thereto, crossing the Knik Arm and three approach rights of way to the bridge three-hundred (300) feet wide on military base lands, for whatever mode of transportation. Eklutna and/or the Municipality shall grant without consideration the rights of way so identified within ninety (90) days of request for said lands by the State, provided the rights of way are located in accord with the Official Street and Highways Plan of the Municipality.

*Ek. to withhold
ANCSA 14(f)
consent to subsurface
uses*

*timeframe of
agreement*

*M.
Knik Arm Crossing*

Donation of
ROW's to
State

N. In the event that the use and development of the military base lands results in a request by the Municipality that the State construct and/or maintain roads or other means of public transportation, Eklutna and/or the Municipality shall grant the State without consideration the rights of way within ninety (90) days of request for such lands by the State. The rights of way shall be located in accord with the Official Streets and Highways Plan of the Municipality.

Amendment to
conform to
DOI requirements

O. In the event the Secretary in good faith contends that any provision of the agreement imposes upon the United States obligations or outlays or funds, except as reasonable in the ordinary course of business, or imposes any procedural requirements or requires the reassignment of personnel in violation of Section 1425 of ANILCA, the parties will meet to determine what, if any, technical amendments can be made to conform the Agreement to the Secretary's point of view. Any such amendment shall relate back to the date of this Agreement.

Entire Agreement
Expressed

P. The parties agree to execute such other documents as may be necessary to effectuate this Agreement.

Q. Entire Agreement of Parties Expressed. This Agreement constitutes the entire agreement between the parties, except for the Agreement of Compromise and Settlement between Eklutna and the Municipality dated April 3, 1979, as supplemented by their Agreement of March 26, 1980. No party shall be bound by any other terms, conditions, statements or representations, oral or written not contained in it. Each party hereby acknowledges that in executing this contract it has not been induced, persuaded,

or motivated by any promise or representation made by any other party unless expressly set forth herein. All previous negotiations, statements, and preliminary instruments by the parties or their representatives are merged in this agreement.

*State's option
to purchase*

R. Eklutna grants to the State the irrevocable right, privilege and option to purchase the surface estate in the following described land:

Eagle River

(1) Six tracts of land not to exceed 150 acres in the aggregate on the floor of the valley of Eagle River and rights of way for access thereto as generally depicted on the map attached to this Agreement as Exhibit G, the right to travel upon the water column, and a lineal strip of land or a conservation easement along the river channel shown upon the map.

*Thunderbird
Falls*

(2) Tract E, Thunderbird Heights Subdivision, according to Plat No. 77-226.

*Option terms and
conditions*

It is agreed that the State intends to acquire the land subject to the availability of suitable lands for exchange; however, the transaction must be closed by December 31 of the year in which the second to occur of the two conditions precedent does occur, or the State shall have no continuing rights under this Agreement with respect to the lands identified for purchase. The State may cause a survey to be made of the lands in question; the survey instructions shall be prepared in consultation with Eklutna and the Municipality. Eklutna is entitled to notice of the doing of the field work and to be present. The conservation easement shall require the land to be left in its natural state, and shall not extend beyond the

1,000 year flood plain as shown in Figures 3-17 thru 3-20 in the CH₂M Hill study entitled "Task 2, Preliminary Damsite Investigation" dated December 1981. The right to use the water column includes the right to come ashore in case of emergency at any point, and in connection with such an emergency to cross Eklutna land to the public roads to seek help. Nothing herein shall be construed as an admission by the State or Municipality respecting ownership of waters or of the bed of the River.

The purchase price shall be paid in the form of other land by an exchange under AS 38.50. or, in the event this option is assigned to the Municipality, under AMC 25.

The land used to pay the purchase price shall be uplands of equal value, adjacent to Eklutna land and at an altitude below 1,000 feet. If the State and Eklutna agree that the lands are of the same value, the exchange shall proceed. If the parties do not so agree, each shall appoint an arbitrator. The two arbitrators shall meet and attempt to agree; if they cannot, they shall appoint a third arbitrator. The decision of two of the three arbitrators shall bind the parties, provided that the State shall not be bound to complete the purchase. Each arbitrator must be a M.A.I. appraiser. In the event the lands offered are ruled not to be of equal value, as may be appropriate the State shall offer additional adjacent lands, or Eklutna shall suggest deletion of land included in the offer, until by this process the transaction is completed. Determination of value shall be on the basis of fair market value, being the price a willing and knowledgeable buyer would pay to a willing and knowledgeable seller. The

valuation shall include severance losses. Eklutna cannot, however, be compelled to accept State or Municipal lands the value of which includes severance losses to the State or Municipality.

Nothing herein shall prohibit the State from offering lands in exchange which are not contiguous to Eklutna land, but Eklutna may not be compelled to accept a tract isolated from other Eklutna land or at an altitude above 1,000 feet. Lands within Section 14, Township 14 North, Range 2 West, Seward Meridian, shall not be considered isolated. The provisions of this paragraph respecting grant and exchange of lands shall be construed as an option contract for the sale of real property and shall be specifically enforceable.

Because the construction of water diversion works for public water supply within Eagle River Valley has periodically been studied and found potentially desirable, it may become necessary that the sites be flooded. For this reason, in any deed there shall be reserved the right to repurchase the sites not sooner than 15 years thereafter for their then fair market value if construction of such works is desired by the Municipality or Eklutna. In lieu of a repurchase the State has the right to insist upon an exchange on a fair market value basis for unencumbered, vacant lands which will be riparian lands upon completion of construction, if there are any. The State may assign its rights under this paragraph to the Municipality; it is understood that the Municipality would likely seek to purchase additional rights in such an event.

*Ek. Repurchase
Rights*

Navigability
determinations
not affected

Exhibit. H.
Map (at BLM)
to resolve
disputes

National Military
Cemetery

St./Ekl. Joint
Gravel Mining
Area

S. Nothing in this Agreement shall be interpreted as the expression by a party of a view respecting the navigability of any waterbody.

T. The parties have attached as Exhibit H a map generally depicting their settlement of litigation. In the event that the legal descriptions on the various Exhibits fail to list lands which are the subject of conflicting selections raising the legal issues involved in the litigation described in Section II and III, or in the event legal descriptions on the Exhibits conflict, the map Exhibit H shall be employed to resolve the resulting ambiguity except that Exhibit A controls as to the Eagle River Flats.

The parties do not object to the designation of the existing military cemetery on Fort Richardson as a National Military Cemetery of approximately 19 acres.

V. The State grants to Eklutna the a one-half undivided interest in common with the State to mine and remove sand and gravel from the following lands:

Township 16 North, Range 2 East, Seward Meridian

Section 2: That portion west of the Old Glenn Highway bridge lying between the Ordinary High Water Mark of the left and right banks of the Knik River, subject to valid existing rights of the holder of Material Sale 203537 which shall not, however, be renewed.

Section 3: lands lying south of the right bank of the Knik River

The rights in Eklutna and the State may be exercised only as follows. At such time as either the State or Eklutna

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

STATE OF ALASKA

By: 

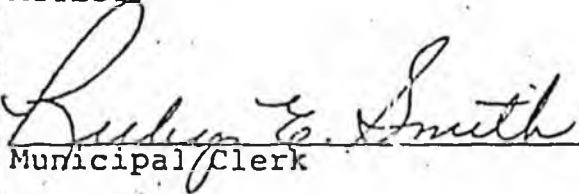
Chip Dennerlein, Director
Subject to the approval of
the Commissioner of the Department
of Natural Resources and the
Legislature of the State of Alaska

WILSON CONDON, ESQ.
Attorney General

By: 

Barbara J. Miracle, Esq.
Assistant Attorney General

ATTEST:


Municipal Clerk

EKLUTNA, INC.

By: 

Daniel Alex, President

ANCHORAGE, a municipal corporation

By: 

Tony Knowles, Mayor

BURR, PEASE & KURTZ

By: 

Edward Gould Burton

RECOMMENDED AND APPROVED:

By: 

Dorothy Cook, Vice President

By: 

Jerry Wertzbaugher
Acting Municipal Attorney

STATE OF ALASKA)
 : ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 15th day of March, 1982, by Chip Dennerlein, Director, Division of Parks.

Elaine A. Bialer
NOTARY PUBLIC FOR ALASKA
My commission expires: 4-22-85

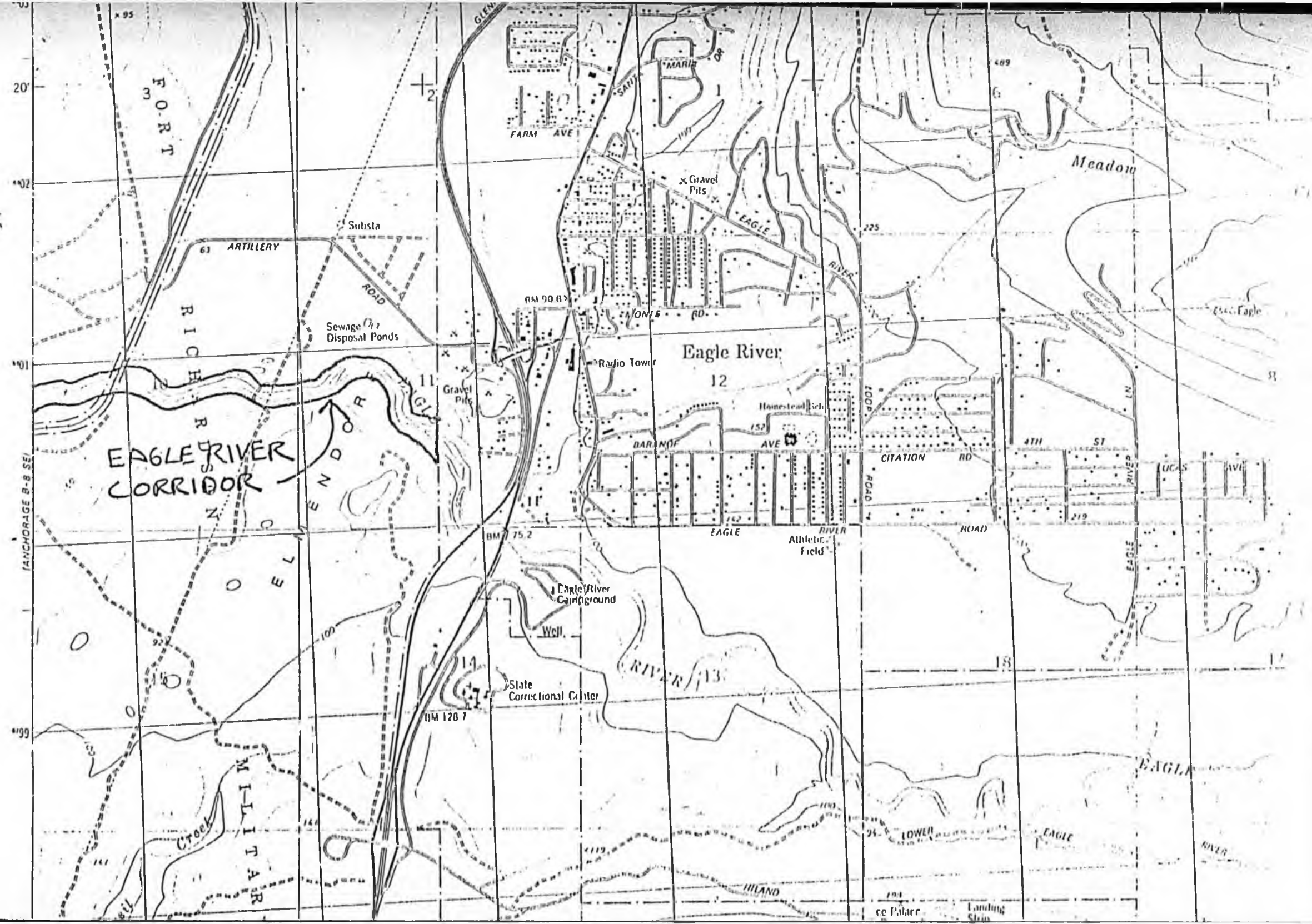
STATE OF ALASKA)
 : ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 15th day of March, 1982, by Dan Alex and Dorothy Cook of Eklutna, Inc., an Alaska corporation, on behalf of the corporation.

Ed Brown
NOTARY PUBLIC FOR ALASKA
My commission expires: 5 April 83

ORIGINALS ON

EXHIBIT A (COPY)



EAGLE RIVER
FLATS

12

EAGLE RIVER

FORT

ROUTE BRAVO

RICHARDSON

EAGLE RIVER
CORRIDOR

FLATS

MILITARY

RESERVATION

ROUTE BRAVO

17 30" '98 '99 '01 '02
(ANCHORAGE S. SW)

Other
Lake 2A

EX 2

Public Area

Gravel Pit

OAD

79

HO

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EX. D

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S A G

EAGLE RIVER
FLATS

EAGLE RIVER
FORT

ROUTE 18
RICHARDSON

EAGLE
CORP

MILNEBURY

RESERV

Route

(ANCHORAGE B-8 SW)

16

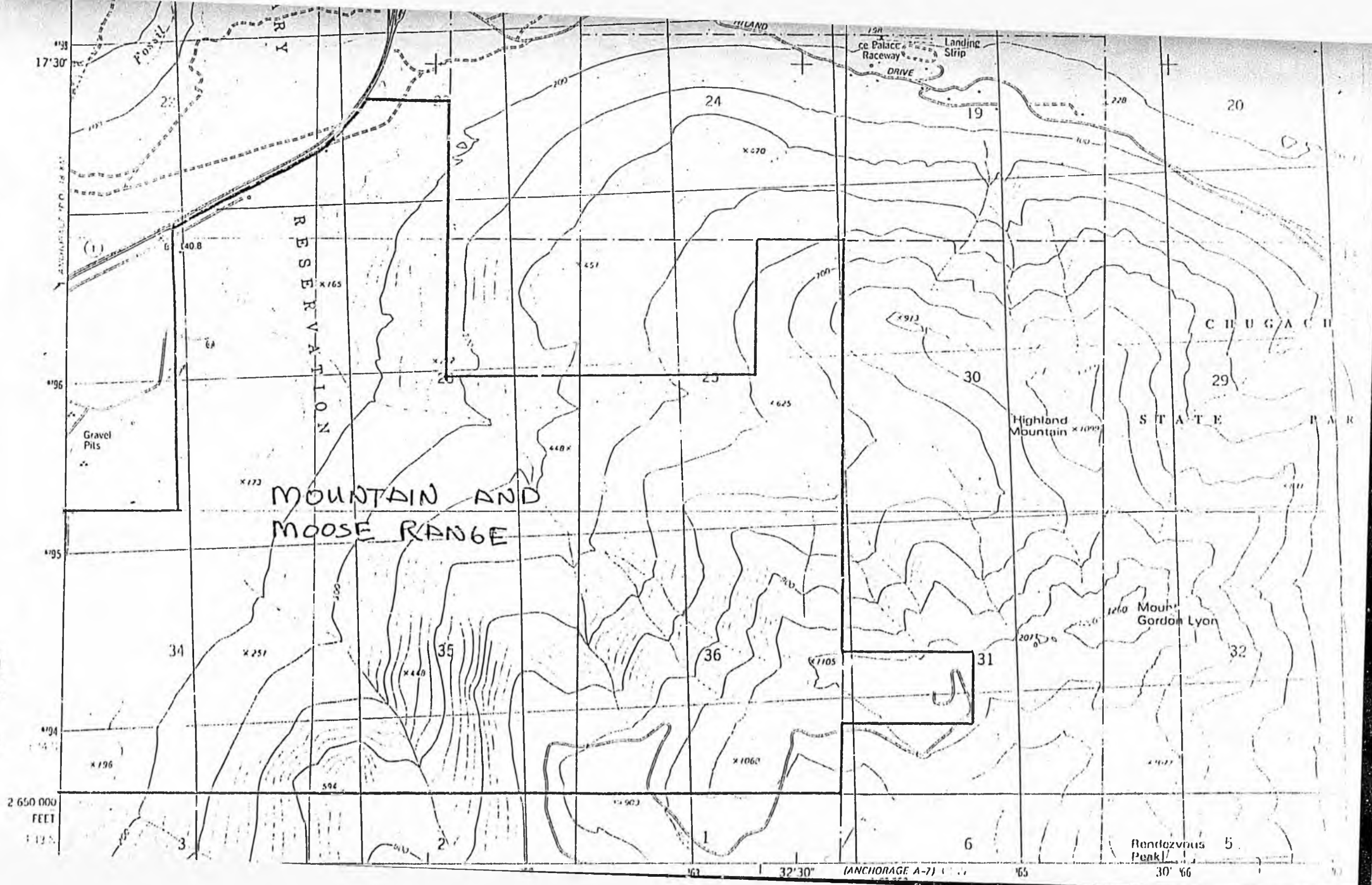
12

18

Snake
Holes



EX. A



2 650 000
FEET

1 13 5

17°30' 17°45' 18°00'

150°00' 150°15' 150°30'

ANCHORAGE A-7

Rondozvius Peak

Military Lands to be Conveyed to the State

Eagle River Flats

All lands with the area known as Eagle River Flats, as depicted on the attached map and approximately described as follows:

Commencing at a point in the S2 of Section 2, Township 14 North, Range 3 West, Seward Meridian, which is formed by the intersection of the line of Mean High Water (MHW) and the north-south 1/4 line of Section 2, Township 14 North, Range 3 West, Seward Meridian; Thence meandering in a counterclockwise direction along the base of the bluff, around Eagle River Flats to an unnamed road sometimes called Route Bravo; Thence northerly along the east side of the unnamed road, leaving said roadway at the point of curvature of the road to the west, in a northerly direction to the intersection of a line 200 feet from and paralleling the left bank of Eagle River which is established elsewhere in this agreement; Thence northwesterly to the unnamed road; Thence northwesterly along the west side of said road and a bridge to the S 1/16th corner common to Sections 7 and 8 of Township 14 North, Range 2 West, Seward Meridian; Thence northwesterly, northerly, westerly, and northwesterly along the base of the bluff to the point of intersection of the line of Mean High Water (MHW) of Knik Arm, said point being located within the NW4NW4 of Section 6, Township 14 North, Range 2 West, Seward Meridian; Thence south and southwesterly along the

line of Mean High Water (MHW), crossing the mouth of Eagle River, and continuing to meander along the line of Mean High Water (MHW) returning to the point of beginning. Subject to the right of the State, the Municipality and Eklutna to use and allow others to use the road.

Eagle River Corridor

All lands lying within a corridor bound by meander lines located 200 feet inland and upland of the lines of Ordinary High Water (OHW) of both the left and right banks of Eagle River, including the lands located between the ordinary high water marks on each bank. Said corridor being located within:

Township 14 North, Range 2 West, Seward Meridian

Section 9: S2
Section 10: S2N2, N2S2
Section 11: W2
Section 16: NW4
Section 17: N2

NOTE: In all legal descriptions in these Exhibits the use of the number 2 or 4 in an aliquot part description refers to the fractions 1/2 and 1/4, respectively.

Mountain and Moose Range

Township 14 North, Range 1 West, Seward Meridian

Section 31: N2SW4

Township 14 North, Range 2 West, Seward Meridian

Section 22: Portion lying east and south of the New Glenn Highway right of way

Section 23: Portion of the SW4 lying east and south of the New Glenn Highway right of way

Section 25: S2, E2NE4

Section 26: S2, NW4

Section 27: E2

Section 33: Portion lying east and south of the New Glenn Highway right of way

Section 34: All

Section 35: All

Section 36: All

Goose Bay Military Withdrawal (not depicted on Exhibit A maps)
All lands withdrawn by Public Land Orders 2993, 1345, 1102, or 1523 within Sections 6, 7, 8, 16 and/or 17 of Township 15 North, Range 3 West, Seward Meridian.

MANAGEMENT AGREEMENT AND
RECONVEYANCE LANDS: EKLUTNA TO STATE

All Unconveyed (03/15/82) Eklutna
Selections within:

<u>Sequence of Reconveyance</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Approximate Acres</u>
1	19	14N	3E	625.04
2	28	14N	3E	640
3	21	14N	3E	640
4	18	14N	3E	623.28
5	16	14N	3E	640
6	17	14N	3E	640
7a	8	14N	3E	640
7b	7	14N	3E	621.52
8	12	14N	2E	640
9	5	14N	3E	640
10	6	14N	3E	539.76
11	1	14N	2E	480
12	36	15N	2E	145
13	31	15N	3E	498
14	30	15N	3E	596
15	19	15N	3E	615
16	25	15N	2E	79
17	26	15N	2E	55
18	23	15N	2E	140
19	24	15N	2E	155
20	13	15N	2E	40
21	14	15N	2E	170
22	22	15N	2E	60
23	15	15N	2E	210
24	16	15N	2E	165
25	10	15N	2E	85
26	17	15N	2E	40
27	9	15N	2E	239.24
28	8	15N	2E	381.36
29	7	15N	2E	80
30	5	15N	2E	637
31	12	15N	1E	640
32	1	15N	1E	435
33	11	15N	1E	640
34	2	15N	1E	640
35	10	15N	1E	640
36	3	15N	1E	640
37	9	15N	1E	640
38	4	15N	1E	640
39	5	15N	1E	640
40	6	15N	1E	609.94
41	32	15N	1E	640
42	29	15N	1E	640
43a	30	15N	1E	616.30
43b	27	15N	1W	640.8
44	24	15N	1W	640
45	19	15N	1E	393.84
46	17	15N	1E	640
47	18	15N	1E	464.07
48	13	15N	1W	300.33
49a	32	15N	1W	160
49b	20	16N	2E	480
49c	17	16N	2E	320
50	25	15N	3E	640

51	24	15N	3E	640
52	13	15N	3E	640
53	12	15N	3E	640
54	1	15N	3E	<u>640</u>
			Subtotal:	27,070.48+
55 (northeast of	2	16N	3E	300
56 right bank of	1	16N	3E	610
57 Knik River)	12	16N	3E	95.10
			Subtotal:	1,005.1
			TOTAL	28,075.58+

Lands State Receives and Eklutna Relinquishes

Township 17 North, Range 3 East, Seward Meridian

Section 15: All
Section 16: Lot 1, Lot 2
Section 17: S2 of Lots 1 and 2
Section 19: S2SW4, NE4SW4, SW4SE4
Section 20: Lot 1, Lot 2, Lot 3, Lot 4
Section 21: Lot 1, Lot 2, Lot 3, Lot 4
Section 22: All
Section 23: All
Section 25: All
Section 26: Lot 1
Section 27: Lot 1 and Lot 2 excluding USS 3199
Section 28: Lot 1, Lot 2, Lot 3
Section 29: Lot 1, Lot 2
Section 30: NW4NW4, E2NW4, NE4SW4, W2NE4, N2SE4
Section 31: Lot 2* and S2, E2NE4, SW4NE4, SE4NW4 of
Lot 1
Section 32: Lot 1, Lot 2*
Section 33: Lot 1, Lot 2, Lot 3*
Section 34: Lot 1, Lot 2, Lot 3*, excluding USS 3199
Section 35: Lot 1 excluding USS 3199
Section 36: All

*NOTE: See Section IV of this Agreement

Mental Health Lands - Lands State Will Receive

Township 14 North, Range 1 West, Seward Meridian

Section 5: Lot 1, Lot 2, Lot 3, S2NE4, SE4NW4, SE4SW4,
S2SW4SE4, SE4SE4, NE4SE4, N2NW4SE4

Township 16 North, Range 1 West, Seward Meridian

Section 1: Lot 1, Lot 2, Lot 3, E2, E2SW4, SW4SW4
Section 2: Lot 5, Lot 6, Lot 7, Lot 8
Section 3: Lot 5
Section 9: All, if any
Section 10: Lot 1, Lot 2, Lot 3, Lot 4, Lot 5,
Lot 6, SE4NE4, NW4SE4
Section 11: Lot 1, Lot 2, Lot 3, Lot 4, NW4, NW4NE4
Section 12: Lot 1, Lot 2, Lot 3, Lot 4
Section 36: Lot 2, Lot 3, SE4SW4, SW4SE4, E2SE4

Township 15 North, Range 2 East, Seward Meridian

Section 4: All
Section 6: Lot 1, Lot 2, Lot 3, Lot 4, SE4NE4,
NE4NE4SE4, N2NW4NE4SE4, and other
state selected and available lands
Section 7: Portion of Lot 1 excluding SE4NE4 and
NE4SE4
Section 9: N2NE4 of Lot 1
Section 10: N2, SE4, NE4SW4 of Lot 1
Section 11: All
Section 13: N2, SE4, E2SW4, NW4SW4
Section 14: E2NE4, NW4NE4, N2NW4 of Lot 1
Section 15: NE4NE4 of Lot 1
Section 16: SW4, S2SE4, NW4SE4, SW4NW4 of Lot 1
Section 17: NW4NE4, S2NE4, SE4, W2
Section 18: All

Section 22: S2, NW4, S2NE4 of Lot 2
 Section 23: W2SW4, SE4SW4 of Lot 3
 Section 24: NE4, N2SE4, SE4SE4 of Lot 1
 Section 26: W2, SE4, SW4NE4 of Lot 2
 Section 35: All
 Section 36: W2SW4 of Lot 2

Township 16 North, Range 1 East, Seward Meridian

Section 2: Portion lying west of the railroad
 Section 3: Lot 1, excluding portions lying east of the Alaska Railroad centerline, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, NW4, NW4NE4
 Section 4: Lot 1, Lot 2, E2, NE4NW4, S2NW4, SW4
 Section 5: Lot 1, NW4NE4, S2NE4, SE4, W2
 Section 6: Lot 1, Lot 2, Lot 3, Lot 4, E2W2, W2
 Section 7: Lot 1, Lot 2, Lot 3, Lot 4, N2NE4, NE4NW4, Lot 1 of island and all other islands, if any
 Section 8: Lot 1, Lot 2, Lot 3, Lot 4 and all other islands, if any
 Section 9: Lot 1, Lot 2, Lot 3, Lot 4 and all islands, if any
 Section 10: Lot 1, Lot 2, Lot 3, Lot 4, Lot 6, and all other islands, if any, excluding portion of lands lying east of railroad (if any)
 Section 15: That portion of Lot 6 lying west of the centerline of the Alaska Railroad
 Section 21: S2SE4, SE4SW4
 Section 22: S2S2
 Section 23: S2S2
 Section 24: S2S2

Section 21: All

Section 22: All

The reference maps for Exhibit E are the same maps as those attached to Exhibit F.

Mental Health Lands - Lands Eklutna Will Receive
Township 14 North, Range 2 West, Seward Meridian

Section 11: Lot 15; Lot 16, Lot 17

Township 16 North, Range 1 West, Seward Meridian

Section 22: Lot 1

Section 25: SW4

Section 26: All, excluding Public Land Order 2672 and
Public Land Order 755

Section 27: Lot 1, Lot 2, Lot 3, Lot 4, SE4NE4,
SE4, E2SW4, SW4SW4

Section 28: Lot 1, Lot 2, Lot 3, SE4SE4

Section 32: Lot 1, Lot 2, Lot 3, Lot 5

Section 33: Lot 1, Lot 2, Lot 3, Lot 4, E2, SE4SW4,
E2NW4, SW4NW4

Section 34: All

Section 36: NE4, E2NW4, NE4SW4, NW4SE4

Township 16 North, Range 1 East, Seward Meridian

Section 1: All

Section 2: All excluding that portion (if any) lying
west of the centerline of the railroad

Section 3: That portion lying east of the centerline
of the railroad

Section 10: That portion (if any) lying east of the
centerline of the railroad

Section 11: All excluding that portion (if any) lying
west of the centerline of the railroad

Section 12: All

Section 13: N2SW4

Section 14: All

- Section 15: That portion lying south of the Knik River and that portion lying North of the left bank of the Knik River and East of the centerline of the railroad.
- Section 16: That portion lying south of the Knik Arm
- Section 17: Lot 1, Lot 2
- Section 20: Lot 1, Lot 2, NE4NE4, S2NE4, SE4NW4, S2
- Section 21: N2, N2S2, SW4SW4
- Section 22: N2, N2S2
- Section 23: N2, N2S2
- Section 24: N2, N2S2
- Section 27: That portion lying South and West of Eklutna Lake Road right of way excluding Patent No. 50-74-0028 and Public Land Order 2787 as amended
- Section 28: All, excluding Patent No. 50-74-0028 and Public Land Order 2787 as amended
- Section 29: S2NE4, NW4, S2
- Section 32: NE4, N2NW4, SE4NW4
- Section 33: N2, N2S2
- Section 34: All
- Section 35: That portion lying south and west of the Eklutna Lake Road right of way excluding Patent Nos. 50-75-0025 and 50-76-0139

Township 16 North, Range 2 East, Seward Meridian

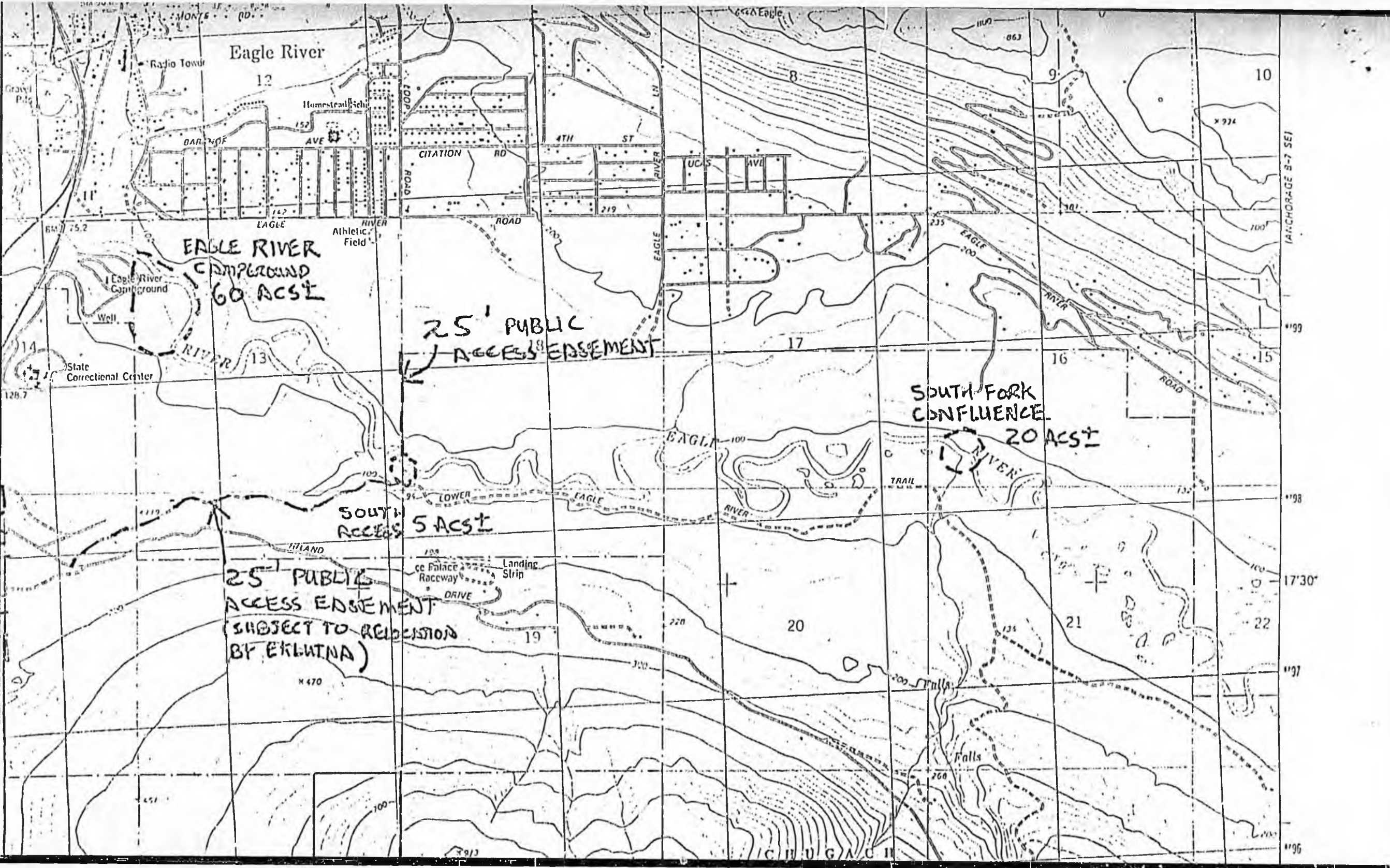
- Section 1: All islands, if any
- Section 4: All south of right bank of Knik River
- Section 5: All
- Section 6: All
- Section 7: All excluding Lot 6

Section 8: All, excluding Lot 8, Lot 9, and USS 3234
and USS 3243

Section 9: All north of left bank of Knik River

Section 10: All north of left bank of Knik River

Section 11: Lot 2



Eagle River

12

Radio Tower

Homestead Sch

BARNOF AVE

152

CITATION RD

4TH ST

UCAS AVE

219

EAGLE RIVER ROAD

Athletic Field

EAGLE RIVER COMPLEXTION 60 AC±

Eagle River Campground

Well

State Correctional Center

128.7

25' PUBLIC ACCESS EASEMENT

17

SOUTH FORK CONFLUENCE

20 AC±

SOUTH ACCESS 5 AC±

25' PUBLIC ACCESS EASEMENT (SUBJECT TO REVERSION BY EKLUTNA)

Palace Raceway

Landing Strip

DRIVE

19

20

21

22

ANCHORAGE B-7 SEI

17°37'

17°38'

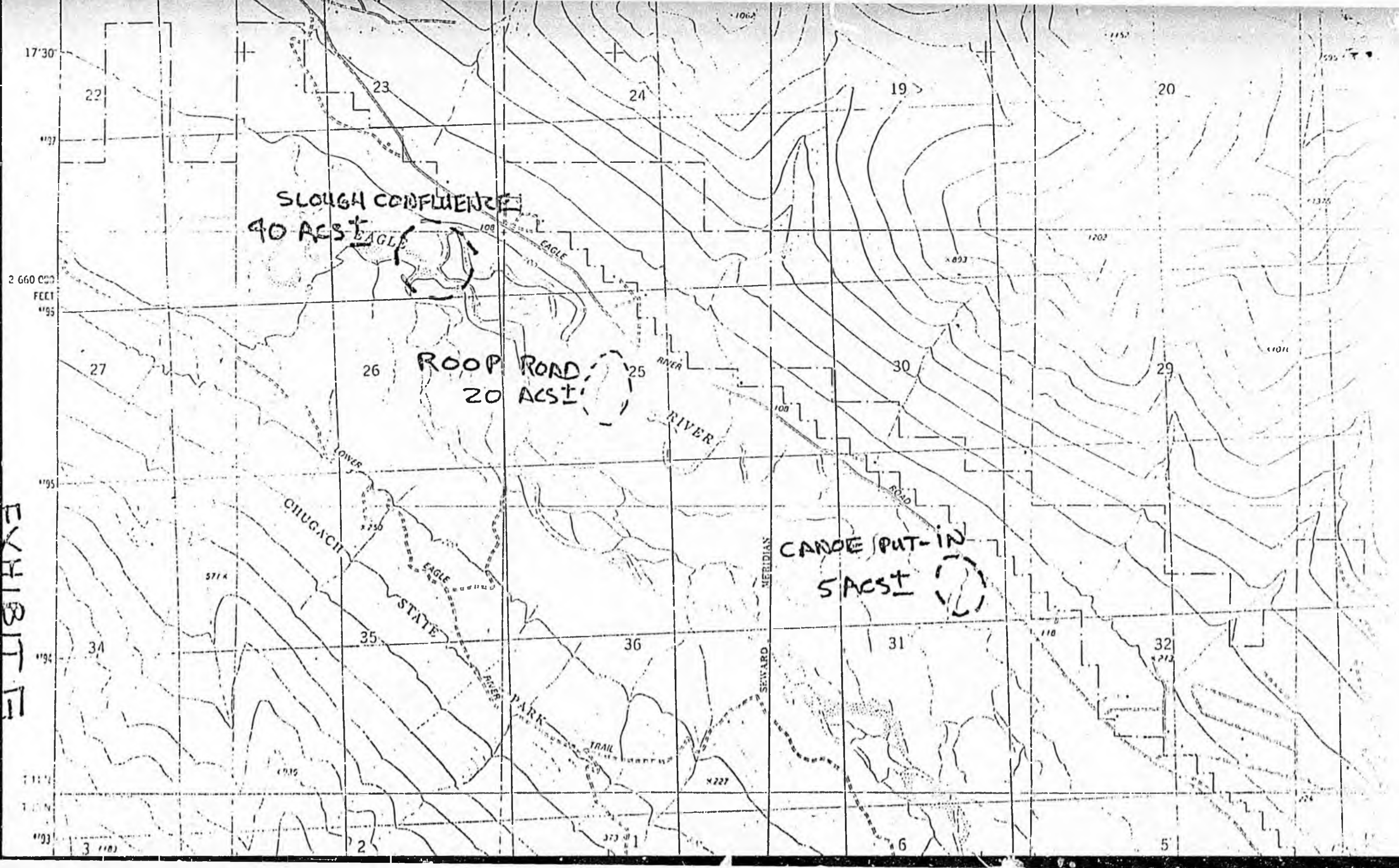
17°30'

106°57'

106°56'

C U G A C II

EXHIBIT E



SLOUGH CONFLUENCE

40 ACST

ROOP ROAD
20 ACST

CANOE PUT-IN
5 ACST

17'30"

22

23

24

19

20

2 660 000

FEET

1995

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SEWARD MERIDIAN

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ADDENDUM

I hereby approve the March 15, 1982, Agreement between the State of Alaska, the Municipality of Anchorage and Eklutna, Inc. pursuant to the provisions of Section 1425 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2371.

By



John W. Katz, Commissioner
Department of Natural Resources
State of Alaska

AMENDMENTS TO CONTRACT

Purpose. These amendments are made for the purpose of correction of typographical errors and ambiguities in the original "Contract" of March 15, 1982 between the State of Alaska, the Municipality of Anchorage, and Eklutna, Inc. pursuant to Section 1425 of Pub.L. 96-487. These amendments are also made to facilitate reading of the Contract, to clarify its relationship to other law, and to reflect the passage of events.

1. The parties adopt the attached Table of Contents and Cross References for the Contract and these Amendments. This Table is an aid to the reader and shall not be held to have any substantive effect.

2. The first introductory paragraph of the Contract on page 1 is amended to read:

This agreement is made March 15, 1982, between the State of Alaska ("State"), the Municipality of Anchorage ("Municipality"), and Eklutna, Inc. ("Eklutna") pursuant to the provisions of Section 1425 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2371, ("ANILCA"). The approval of this agreement by the Commissioner of the Department of Natural Resources cannot be revoked by that Commissioner or by any successor commissioner or other State official. For ease of reference, this Contract may be called the "North Anchorage Land Agreement".

The signature block of the State on page 32 is amended to delete the "subject to . . . Alaska" clause; the affixing of the signature of the Commissioner to the Contract is ratified. The signature of the Commissioner to this document has been authorized and ratified by the Governor.

3. On page 2 delete the first full paragraph, and in the second full paragraph respecting amendment, beginning with the words "This Agreement", delete the second and third sentences.

4. On page 7, at the end of subparagraph (f), add a new sentence which will read as follows: "The Goose Bay military lands, which are described in Exhibit "B", shall be conveyed by the Secretary to the State."

5. On page 8, in subparagraph (3)(c), insert the phrase "in Peters Creek Valley" between "lands" and "within Power Site Classification 107".

6. Within Article I (relating to disposition of lands withdrawn by Section 1425 of ANILCA), Paragraph B(3) (relating to federal installations), Subparagraph (d) on page 9 is amended to change the reference in the first line from "This paragraph A" to read "This paragraph B". On the same page in Subparagraph (e), the introductory phrase "Notwithstanding subparagraph B(3)(a) of the introduction language to" is changed to read "Notwithstanding subparagraph B(3)(a) above or the introductory language to".

7. Within that Article I, Paragraph B, Subparagraph (3)(e) on page 9, the last seven lines are changed from:
transfer, the State will reconvey the
land to Eklutna if it ceases to use them
in connection with furnishing mass or

bulk transportation. For so long as the railroad is in operation, the Secretary shall not convey to Eklutna the lands lawfully determined not to have been public lands.

to:

transfer, the State or its assignee will reconvey the lands to Eklutna if the lands cease to be used in connection with furnishing mass or bulk transportation. For so long as the railroad is in operation, the Secretary shall not convey to Eklutna the lands lawfully determined not to have been public lands.

< railroad purposes

8. On page 9 at the bottom change the paragraph designation at the margin from "B" to "C". On page 10 change the paragraph designation at the margin from "C" to "D". On page 10, redesignated paragraph D, in the parenthetical clause respecting acreage, insert "which" between "by" and "the".

9. On page 11 in the last line of the carryover paragraph from page 10, strike the extra "t" in "secretary".

10. On page 13 in the fourth through sixth lines from the top and in the fourth through second lines up from the bottom, delete the phrase ", after notification . . . occurred,"; and add a map exhibit and change the last paragraph before the center caption "III" to read as follows:

Eklutna and the State hereby jointly request the Secretary acting under Section 17(b)(3) of ANCSA to reserve for ground

access to the lands to be received by the State listed on Exhibit D only the following easements shown on Exhibit I: a 60 foot right of way for the existing Plumbly Road and for the existing Maude Road; and a twenty-five foot trail for non-vehicular use commencing at the southwest corner of Section 18 of such township, thence easterly and east northeasterly to the intersection of the 100 foot contour line with the east section line of section 18, with a second segment commencing at Maude Road at or near its more northerly intersection in Section 17 with the 100 foot contour line and extending southwesterly to a point at or near the intersection of the 100 foot contour line with the east-west centerline of section 17; it being understood that upon the lease or development of the affected lands by Eklutna, Eklutna shall have the right to survey and monument the trail as so described, or to realign the trail in a manner compatible with Eklutna's proposed development or lease and compatible with use of the trail for pedestrian and equestrian purposes.

11. On page 14, in paragraph IV A, toward the end of the first sentence change "and 2(d)" to ", 2(d) and 2(f)"; and toward the bottom, at the end of paragraph IV A, immediately before the period insert ", subject to the reservation to the State set forth in AS 38.05.125".

12. On page 15, in the last sentence of paragraph "C", delete one "Section" from "Section Section IB(2)(g)".

13. At the end of the indented material appearing at the top of page 24, paragraph IV H, add the following sentence:

Eklutna expects to relinquish its pending selection(s) of lands within 100 feet of the centerline of the Alaska Railroad ("the right-of-way") pursuant to ARTA Section 606(b)(4) and to obtain a right of reversion thereby; nothing in Section I B(3)(e) or any other part of this Agreement shall require the State to convey the right of way to Eklutna except as indirectly provided in ARTA Section 610.

14. On page 24, add to Paragraph I, at the end, the following:

It is understood that Section 1425 provides that Eklutna is required to fulfill its 14(a) and 12(b) entitlement, notwithstanding its relinquishments of selections pursuant to this Agreement. Accordingly, nothing in this Agreement shall be construed to reduce Eklutna's acreage entitlement.

15. On page 25, in paragraph L at the third line, correct the reference from "IC(1)" to "ID(1)".

16. On page 26, in subparagraph (6) make a similar correction in the third line by changing "C" to "D".

17. On page 28, in subparagraph R(1) at the end of the last full line, insert "therein" after the word "easement".

18. On page 28, in paragraph R after the subparagraphs (1) and (2), change the clause "; however, the transaction must be closed . . . does occur", and substitute "; however, the transaction must be closed by December 31, 1983,".

19. On page 29 in the first line change "thru" to "through". In the eighth line up from the bottom change "a M.A.I" to "an M.A.I.".

20. On page 31, change paragraph U to read:

U. The parties hereto do not object to the designation of the existing military cemetery located on Fort Richardson Military Reservation as a Veterans Administration National Cemetery of approximately 19 acres, to be augmented by 20 acres, more or less, subject to survey. Furthermore, the parties hereto waive any claim to the said 39± acres under and by virtue of "ANILCA" for so long as the land is used as a cemetery, and will cooperate in effecting the transfer or conveyance of such land to the Veterans Administration for use as a National Cemetery.

21. The parties agree that the Exhibits to the Contract are amended to conform to the intent of the Contract as follows:

A. Add a new map page to Exhibit A to be page 5 thereof, a copy of which is attached to this Agreement.

B. On page 3 of Exhibit "B", the last paragraph should be corrected to read as follows:

Goose Bay Military Lands (not depicted on Exhibit "A" maps). U.S. Survey 1087, comprising 39.97 acres more or less, and all lands withdrawn by Public Land Orders 2993, 1345, 1102, and 1523 within Section 6, 7, 8, 16 and 17 of Township 15 North, Range 3 West, Seward Meridian.

C. On Exhibit E (page 2)

1. Re: T 16 N, R 1 E, S.M.

Further Re: Section 6, change "W²" to "E²"

Further Re: Section 8, add "N²NW⁴, NW⁴NE⁴"

2. Re: T 16 N, R 1 E, S.M.

Add: "Section 11: Portions of lots 3 and 4 lying west of the centerline of the Alaska Railroad."

D. On Exhibit F (page 2)

1. Re: T 16 N, R 2 E, S.M.

Further Re: Section 1, change "All islands, if any" to read "Lot 4".

2. Re: T 16 N, R 2 E, S.M.

Add: "Section 2: Portion of Lot 9 east of the Old Glenn Highway Bridge."

It is agreed that the maps attached to this document are amendments to the particular exhibits to which they correspond.

STATE OF ALASKA

NORMAN GORSUCH, ESQ.
Attorney General

By: Esther C Wunnicke
Esther Wunnicke
Commissioner of Natural
Resources

By: Barbara J. Miracle
Barbara J. Miracle, Esq.
Asst. Attorney General

ANCHORAGE, a municipal corporation

Attest: Julius E. Smith
Municipal Clerk

By: Tony Knowles
Tony Knowles, Mayor

EKLUTNA, INC.

BURR, PEASE & KURTZ
Attorneys for Eklutna, Inc.

By: Daniel Alex
Daniel Alex, President

By: Edward Gould Burton
Edward Gould Burton

By: Dorothy Cook
Dorothy Cook, Vice President

STATE OF ALASKA)
: ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 20th day of January, 1983, by Esther Wunnicke, Commissioner, Department of Natural Resources.

John R. Schultz
NOTARY PUBLIC FOR ALASKA
My commission expires: 2/3/85

STATE OF ALASKA)
: ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 20th day of January, 1983, by Dan Alex, President, and

Dorothy Cook, Vice President, of Eklutna, Inc., an Alaska corporation, on behalf of the corporation.

Elaine H. Begler
NOTARY PUBLIC FOR ALASKA
My commission expires: 4-22-85

NORTH ANCHORAGE LAND AGREEMENT

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