

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4893 HRES EAGLE RIVER GREEN BELT - ELF HISTORY (SEE ALSO HB 164)

EAGLE

RIVER

GREENBELT

Sam → Ned (file)

Some map in here
but we need big ones

REPORT ON THE PROPOSED EQUAL VALUE
LAND EXCHANGE BETWEEN THE STATE OF ALASKA
AND EKLUTNA, INCORPORATED
ADL 223175

This report has been prepared pursuant to AS 38.05.130. The report and the proposed exchange are subject to modification, following agency and public review.

The attached public notice summarizes the purposes of the exchange and describes the lands involved. The notice also states the appraised fair market value of the lands involved. The exchange file, ADL 223175, is located at the Department of Natural Resources, Division of Land and Water Management, Southcentral Regional Office, 3601 C Street, Suite 1080, Anchorage, Alaska. The mailing address is P.O. Box 10-7005, Anchorage, Alaska 99510-7005.

Anyone desiring copies or a more thorough review of the circumstances surrounding this exchange is invited to contact Arlan DeYong, 762-2253 with the Division of Land and Water Management at the above address.

BACKGROUND

The state began negotiations with Eklutna, Inc. in June, 1986. The greenbelt is based on the plan adopted by the Anchorage Assembly on May 7, 1985 (Assembly Resolution 85-88). Adjustments were made to the boundary to reduce the amount of developable land included in the greenbelt, and thus to reduce the overall cost to the state. Decisions about what the greenbelt should include were based on several field trips focusing on the quality of the recreational experience from the river itself. In addition, the state hopes to acquire the Thunderbird Falls parking lot near Eklutna, Alaska.

The land the state is offering in this exchange is Block 112A, Anchorage Original Townsite. This block was acquired by the state for an office complex. It is located between "A" and Cordova Streets and between Fifth and Sixth Avenues. Changing economic conditions have made plans for constructing a state office building on this site obsolete, thus making the land available for consideration in this exchange.

Only surface interests are being proposed for exchange. The state closed Block 112A to mineral entry on November 28, 1986. The subsurface estate of the land being offered by Eklutna, Inc. is owned by Cook Inlet Regional Corporation (CIRI). In an agreement reached with the Municipality of Anchorage on November 25, 1986, CIRI agrees to execute to the state, without compensation, a non-development covenant for the subsurface estate to a vertical depth of 250 feet as long as the area is used for passive public park purposes. The covenant will also allow the annual use of up to 500 cubic yards of sand and gravel on site for such uses as trails.

In that same agreement, CIRI provided its consent to Eklutna's acquisition of Block 112A pursuant to the "Turf Agreement" dated January 31, 1983.

Under the terms of the settlement reached between the state and the Municipality of Anchorage dated November 25, 1986, pursuant to the Municipal Entitlements Act, the Municipality of Anchorage will acquire the state's interests in Block 112A if this proposed land exchange agreement is not completed. Although the University of Alaska has challenged the legality of that settlement, a stipulation between the parties to that suit allows this land exchange to proceed.

PHYSICAL CHARACTERISTICS

Eagle River is considered the most important recreational river in the Municipality of Anchorage. The river and its valley provide many opportunities for recreation including, but by no means limited to, sport fishing, whitewater boating, hiking, camping, snowmachining, horsebackriding, and cross-country skiing. Many homeowners on its hillsides consider the scenic views of the river among their significant amenities. Several commercial companies now offer services to enjoy Eagle River, and these types of services are expected to grow in popularity.

A major resort has been proposed at the confluence of Eagle River and South Fork. Dr. Robert Rogner, who has major recreational facilities in Europe, is considering construction of a world class lodge and ski development. Among the services currently being considered are 500 room chalet rentals, 2 hotels (250 rooms each), indoor and outdoor tennis courts and swimming pools, restaurants, and bars.

Land the state proposes to acquire in this exchange includes 1,658 acres of developable land and 2,022 acres of wetlands located along Eagle River. In addition to providing a recreational experience along the river, these lands provide important habitat for moose and other wildlife.

The greenbelt includes south-facing hillsides which are covered with a montage of vegetation types ranging from birch-aspen forests, spruce forests, and open meadows. These hillsides generally abut private lands, and are themselves highly desirable for subdivision development. Because of their south-facing aspect, they catch more of the winter sun than the south side of the valley. Access is provided via Eagle River Road, and various subdivision roads.

North-facing hillsides are also included in this exchange. This area has access via Hiland Road, trails and subdivision roads. The land proposed for acquisition by the state abuts either existing subdivisions or land suitable for subdividing. Access will be improved with the construction of the proposed Eagle River bridge and overpass.

The western boundary of the greenbelt is the Eagle River Campground, part of which is actually in trespass on land owned by Eklutna, Inc. The eastern boundary of the greenbelt is the present boundary of Chugach State Park. If this exchange is completed, the entire greenbelt will be added to Chugach State Park as soon as it becomes state land. This is required by AS 41.21.121. There will be a continuous greenbelt on both sides of Eagle River from the current boundary of Chugach State Park to the Eagle River, except on the south side at the confluence with South Fork in the immediate vicinity of the proposed resort.

More information on the physical characteristics of Eagle River Greenbelt can be found in the Eagle River Greenbelt plan adopted by the Municipality of Anchorage.

In addition, the state hopes to acquire the parking lot for Thunderbird Falls. Again, this facility is in trespass on land owned by Eklutna, Inc. The falls are a significant attraction both to visitors from out of state and to local residents.

The land being offered by the state is Block 112A, Anchorage Original Townsite, located on the east end of the Anchorage central business district. This block is bounded by "A" and Cordova Streets, and by Fifth and Sixth Avenues. It is serviced by usual urban utilities, including water, sewer, electricity, telephone and natural gas, although these utilities may need to be relocated depending on the type of development. The earthquake hazard, danger is considered moderate.

APPRAISAL

The appraisals of all parcels in this exchange were prepared under contract by the firm of Black-Smith and Richards, Inc. They are opinions of fair market value.

The appraised value of Block 112A is \$8,600,000.

The appraised value of the Eagle River Greenbelt is \$9,073,300. The appraised fair market value of the Thunderbird Falls parking lot is \$31,300. The total fair market value of the land offered by Eklutna, Inc. is \$9,103,000.

Recognizing the uncertainty of the appraisal process, four minor subunits of the greenbelt were identified and appraised separately. They are described below:

- Parcel 1: About 9 acres adjacent to the Roop Road put-in and recreation site. Its value is \$73,000.
- Parcel 2: About 12 acres along the South Fork of Eagle River. Its value is \$72,000.
- Parcel 3: Mostly treeless slopes which are part of the viewshed from Eagle River, about 94 acres. Its value is \$220,000.
- Parcel 4: Another part of the viewshed from the river, and about 28 acres. Its value is \$110,000.

The legislature appropriated \$1,000,000 for the purpose of the acquisition of the Eagle River greenbelt in 1986. Two-thirds of this was put on hold by Governor Sheffield because of the shortfall in revenue experienced this fiscal year. After the expenses for completing this exchange (appraisal and survey) are subtracted, there are insufficient funds left to acquire all of these subunits. The state proposed to acquire an option to purchase parcels 3 and 4 from Eklutna at this appraised fair market value rather than to purchase them

at this time. This option would have to be exercised before May 1, 1988. This decision is based on the state's priority in acquiring parcels important for active public use. The state proposes to pay Eklutna, Inc. \$176,300 in cash to equalize values in the exchange.

BENEFITS AND DETRIMENTS

The benefits of the proposed exchange are numerous. Through this exchange, the state will acquire one of the most important recreational resources in close proximity to a major urban area. These lands will be added to and managed as part of Chugach State Park.

Because of declining oil revenues, interest in diversifying Alaska's economy is increasing. One of the sectors commonly expected to grow is tourism and private recreational developments. This exchange will guarantee that this recreational resource will be available to be enjoyed by visitors to Anchorage and to local residents as well.

In addition, the greenbelt will protect the scenic views so highly valued by homeowners in Eagle River Valley. It will guarantee them continued access to the sport-fishing, berrypicking, wildlife-viewing, and recreational resources which drew them to this area in the first place.

Through this exchange, two instances of state trespass on Eklutna, Inc. land will be resolved. Both of these areas, Eagle River Campground and Thunderbird Falls parking lot, are heavily used by the public. Resolving these trespass situations will allow the state to continue to manage and improve facilities needed to serve this large volume of users.

The Eagle River Valley contains habitat essential to the continued success of fisheries and wildlife species in an urban setting. Enjoyment of these resources will continue by protecting this habitat from disruptive development.

The exchange also makes Block 112A available for private development. This block is kitty-corner from the Anchorage Historical and Fine Arts Museum and is between the Sheraton Hotel and the primary tourist attractions of downtown.

The state's development of this block no longer seems feasible. Allowing it to remain used as a parking lot is considered by some to amount to urban blight. Visitors and tourists often enter Anchorage on Fifth Avenue. The vacant lot gives the impression that Anchorage is not the vibrant, growing, enthusiastic city it purports to be. The opportunity for development of this parcel is enhanced by this exchange. Eklutna, Inc., by using land assets instead of capital for acquisition, will be in a better position to bring development on line at an early opportunity.

The detriments which may occur as part of this exchange included a possible change in the use patterns of Eagle River Valley. Increased numbers of visitors may change the recreational experiences enjoyed by unauthorized persons now recreating on Eklutna's lands. Increased management and more facilities may be expensive for the state, especially at this time, and may not be universally popular.

Possible social impacts of developing Block 112A may also occur. Residents in that area may have preferred a state office building to the uncertainty of the types of development which may be proposed by Eklutna.

In summary, this exchange only confirms and stabilizes the type of land uses most appropriate for the lands under consideration. It will allow land valuable for public use to be acquired by the state. It will put land with good development capability in private ownership. Significant social, economic, and environmental impacts from this exchange are not expected in the near future. Such impacts may occur in the long term depending upon the management and types of facilities built on these lands.

FINDING OF ALTERNATIVES

Pursuant to AS 38.50.100, the state has considered several alternatives to the proposed exchange. Based on current knowledge, none of them seem feasible at this time.

The state's objectives are threefold:

1. to acquire an Eagle River Greenbelt and add it to Chugach State Park;
2. to resolve the state's trespass on Eklutna, Inc. lands at Eagle River Campground and at Thunderbird Falls parking lot; and
3. to stimulate economic vitality by making land in Anchorage Central Business District available for private development.

Alternatives to achieve each of these will be described below:

Objective 1: Acquire an Eagle River Greenbelt and add it to Chugach State Park

- A. The surface estate interests in the greenbelt are currently owned by Eklutna, Inc. and thus are not available for selection under the Alaska Statehood Act.
- B. The state does not have authority to add lands to Chugach State Park through eminent domain, but can acquire by purchase [see AS 41.21.125 and AG opinion file A66-292-80 (10 July 1980)].
- C. The state could purchase these lands from Eklutna Inc. However, it is unlikely that approximately \$9,103,300 would be appropriated from the general fund for this purpose in the current economic situation.
- D. The state could lease the subject lands from Eklutna, Inc. However, the annual rent could be expected to total about \$720,000/year, again an unlikely amount to be appropriated at this time. In addition, a leasehold only would not

provide the assurance needed to manage and develop the Eagle River Greenbelt for the long term public interest.

- E. The configuration of the greenbelt could be made larger or smaller. In fact, the existing Eagle River Greenbelt differs from the plan adopted by the Municipality of Anchorage Assembly Resolution 85-88. However, the area identified in this exchange is considered the minimum necessary to protect the recreational experience from the perspective of Eagle River itself. To acquire a greater area at this time does not appear feasible because of the state's lack of resources for such an acquisition.

Objective 2: To resolve the state's trespasses at Eagle River campground and Thunderbird Falls parking lot.

The state currently has improvements on and encourages the public to use Eklutna lands at these two locations.

- A. These lands belong to Eklutna, Inc. and are not available for selection under the Alaska Statehood Act.
- B. As explained above, the state cannot acquire these lands under eminent domain.
- C. The state could acquire these parcels through purchase if funds were available. However, the \$1,000,000 appropriated in 1986 was for the acquisition of an Eagle River Greenbelt, not merely these two parcels. In addition, this course of action would not meet the state's other objectives.
- D. The state could lease these lands from Eklutna if money was available and Eklutna was willing. However, this alternative would not give the state the assurance necessary to intensely manage these high use public recreation facilities.

Objective 3: To stimulate the economic vitality of the Anchorage Central Business District by providing an opportunity for private development.

Block 112A, the state's land interest in this exchange, is currently used as a parking lot. It had been acquired by the state for an office complex. Changing economic conditions made this proposal unfeasible. In resolving Municipality of Anchorage claims under AS 29.65, the state agreed to convey this block to Municipality of Anchorage in the event that this land exchange was not consummated. Thus, Block 112A is not now available for lease or sale to private developers by the state.

BEST INTEREST FINDING

A preliminary exchange agreement has been entered into by and between the State of Alaska, Department of Natural Resources and Eklutna, Incorporated under the authority of AS 38.50.

The objectives of this exchange for the state are 1) to acquire an Eagle River Greenbelt and to add this to Chugach State Park, 2) to resolve the state's trespass on Eklutna, Inc. land at Eagle River Campground and the Thunderbird Falls parking lot, and 3) stimulate economic vitality by making land in the Anchorage Central Business District available for private development. Eklutna, Inc.'s objectives for the exchange include acquiring land better suited to economic development and to assist the state in protecting the important recreational and environmental resources in Eagle River Valley.

Lands proposed for exchange are described in preliminary exchange agreement ADL 223175, Attachment A (Eklutna land to be acquired by the State) and Attachment B (State land to be acquired by Eklutna).

Land value determined by Appraisal No. 1974 is for a total of \$9,103,300 including all equalization parcels offered by Eklutna, Inc. described in Attachment A of the Preliminary Exchange Agreement.

Land value determined by Appraisal No. 1975 is for a total of \$8,600,000 for all lands offered by the state described in Attachment B of the Preliminary Exchange Agreement.

Both parties agree to continue processing the exchange on the following parcels based on the following values:

State Land State Appraisal No. 1975	
Lot 1A, Block 112A, Anchorage Original Townsite	\$8,600,000
Eklutna, Inc. Land State Appraisal No. 1974	
Greenbelt without equalization parcels 3 and 4	\$8,742,000
Thunderbird Falls Parking Lot	31,300
	<u>\$8,773,300</u>

The difference in value of \$173,300 will be paid in cash by the state to Eklutna, Inc.

Further, Eklutna, Inc. agrees that if the exchange is consummated, the state will have an option to acquire the remaining parcels, Equalization Parcels No. 3 and 4, before May 1, 1988 at the appraised fair market value as follows:

Equalization Parcel No. 3	\$ 220,000
Equalization Parcel No. 4	110,000
	<u>\$ 330,000</u>

Acquisition of these parcels may be by equivalent value land, money or other consideration.

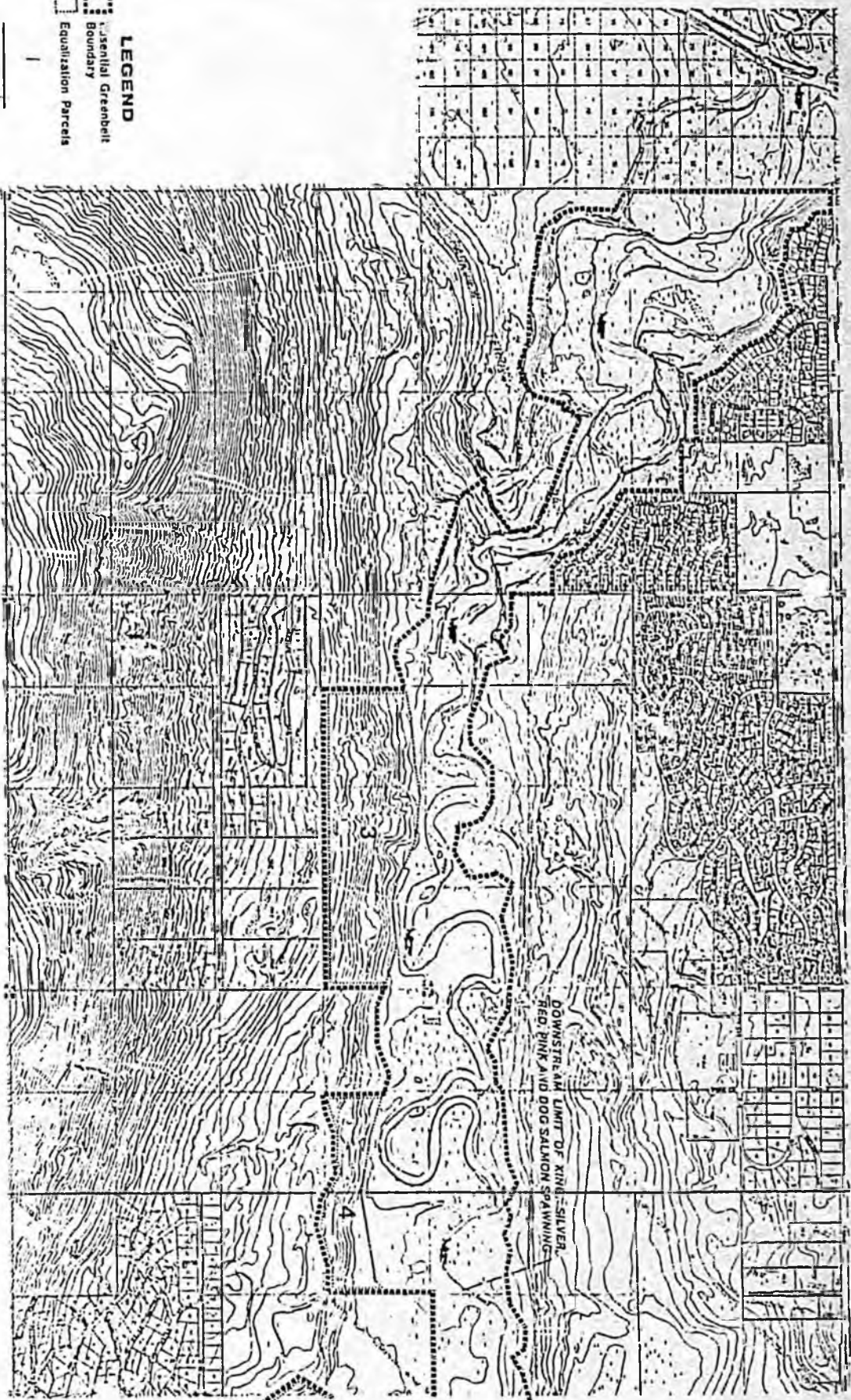
In conclusion, and based on the information now in hand, it is my preliminary decision under AS 38.05.035(e) that this exchange serves the best interests of the state.

Tom Hawkins

Tom Hawkins, Director
Division of Land and Water Management
Department of Natural Resources

16 January 1987

Date



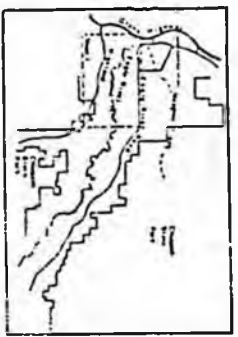
LEGEND
 ■ Essential Greenbelt Boundary
 □ Equalization Parcels

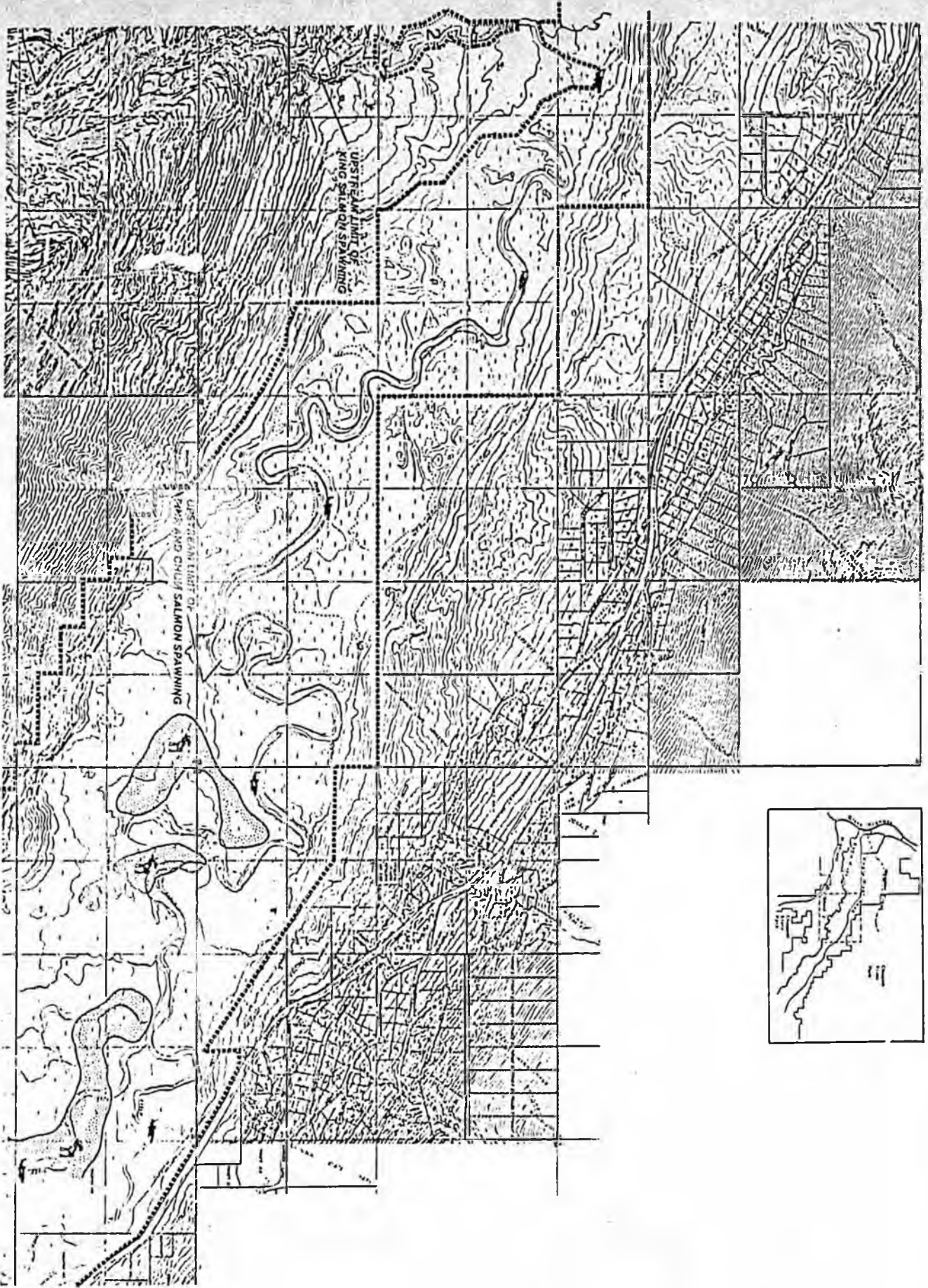
ASSOCIATION
 Moose Preferred Habitat
 Downstream Limit of King, Silver, Red, Pink and Dog Salmon Spawning as Indicated on Map
 Upstream Limit of Salmon Spawning as Indicated on Map



NOTE: This map is a general representation of the land parcels and does not constitute a legal survey. For legal purposes, refer to the official survey maps and records.

EKLUTNA INC. LAND
 The state proposes to acquire options to purchase subunits 3 & 4





SHEET NO
2
OF 3 SHEETS

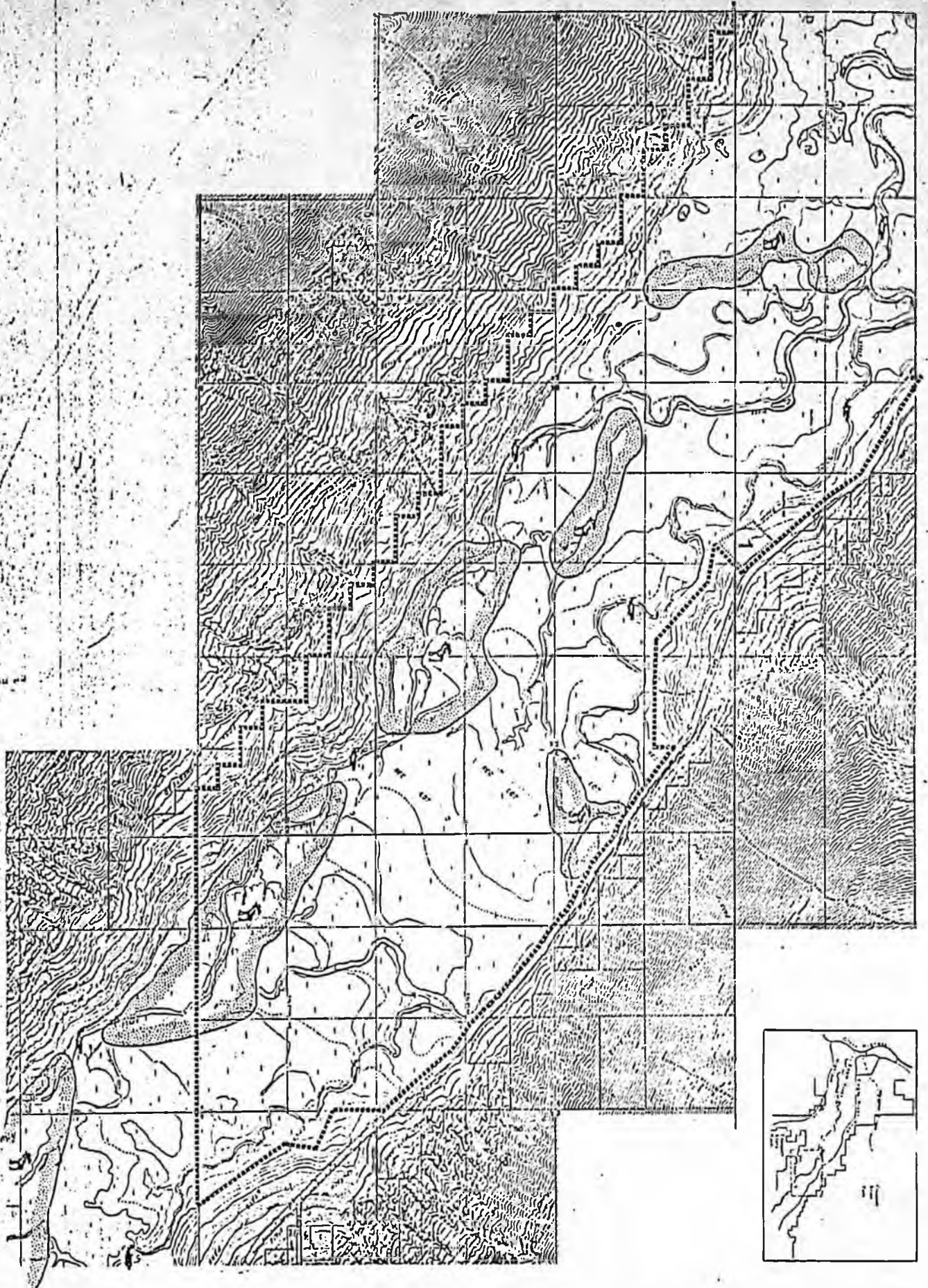
**Wildlife Habitat
Map 3**

EDMCA
Environmental Design, Planning &
Construction, Inc.

PROJECT TITLE
**EAGLE RIVER
GREENBELT PLAN**

TRA/Farr
ARCHITECTURE ENGINEERING PLANNING INTERIORS
1001 E. BINGHAM BLVD., ANCHORAGE, AK 99501 (907) 277-7041

DATE: September 1984
SCALE: 1" = 500'



3
3 SHEETS
3 OF 3 SHEETS

Wildlife Habitat
Map '1'

CONTRIBUTOR: Cooperation with Forest Department of Park and Natural Resources, State

PROJECT FILE
EAGLE RIVER GREENBELT PLAN

TRA/Fort
ARCHITECTURE ENGINEERING PLANNING INTERIORS
1001 E. BENSON BLVD., ANCHORAGE, AK 99508 (907) 277-2541

DATE: November 1984
SCALE: 1" = 500'



VICINITY MAP

CERTIFICATE OF IMPROVEMENT & SUBDIVISION
This is to certify that the above described property is improved with streets, sidewalks, and other public utilities, and that the same are in conformity with the requirements of the laws of the State of Michigan, and that the same are ready for occupancy.

DATE: 10/10/77
BY: [Signature]
TITLE: [Title]

NEAREST ACKNOWLEDGEMENT
I hereby acknowledge that the above described property is improved with streets, sidewalks, and other public utilities, and that the same are in conformity with the requirements of the laws of the State of Michigan, and that the same are ready for occupancy.

OWNER'S CERTIFICATE
I, the undersigned, do hereby certify that the above described property is improved with streets, sidewalks, and other public utilities, and that the same are in conformity with the requirements of the laws of the State of Michigan, and that the same are ready for occupancy.

ACCEPTANCE OF INDICATION
The undersigned do hereby certify that the above described property is improved with streets, sidewalks, and other public utilities, and that the same are in conformity with the requirements of the laws of the State of Michigan, and that the same are ready for occupancy.

PLAT APPROVAL
I hereby approve the above described property for subdivision and improvement.

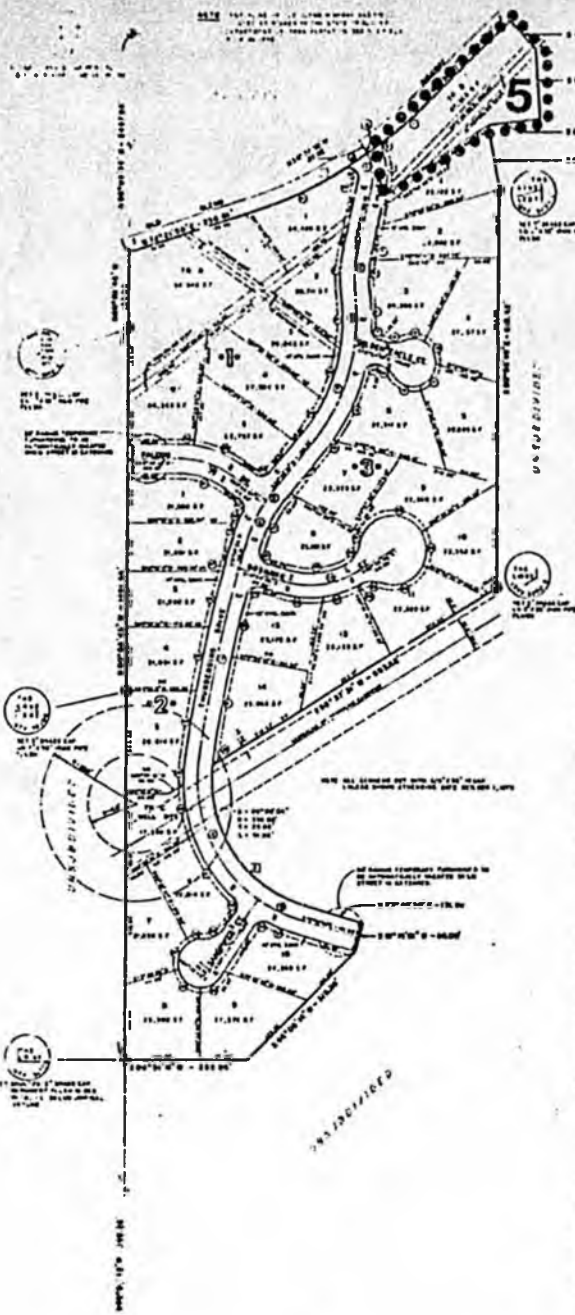
W. H. [Signature]
[Title]

THUNDERBIRD HEIGHTS SUBDIVISION
ROMHOFF & ASSOCIATES, INC.
Engineering Planning Surveying
10000 W. 10th Ave., Suite 100, Denver, CO 80202
E.K. LAND

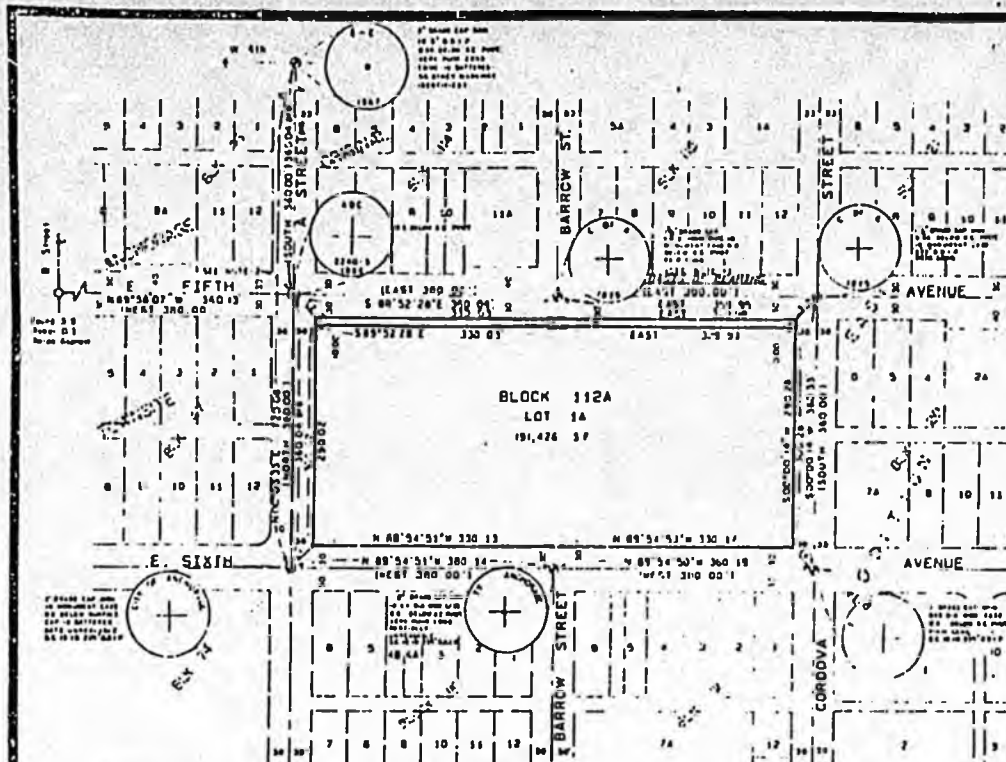
EKLUTNA INC. LAND:
Thunderbird Falls
parking lot

CURVE SCHEDULE

STATION	CHORD BEARING	CHORD DIST.	ARC BEARING	ARC DIST.
1+00.00	S 89° 58' 00" E	100.00	171° 56' 00"	100.00
1+10.00	S 89° 58' 00" E	100.00	171° 56' 00"	100.00
1+20.00	S 89° 58' 00" E	100.00	171° 56' 00"	100.00
1+30.00	S 89° 58' 00" E	100.00	171° 56' 00"	100.00
1+40.00	S 89° 58' 00" E	100.00	171° 56' 00"	100.00
1+50.00	S 89° 58' 00" E	100.00	171° 56' 00"	100.00
1+60.00	S 89° 58' 00" E	100.00	171° 56' 00"	100.00
1+70.00	S 89° 58' 00" E	100.00	171° 56' 00"	100.00
1+80.00	S 89° 58' 00" E	100.00	171° 56' 00"	100.00
1+90.00	S 89° 58' 00" E	100.00	171° 56' 00"	100.00
2+00.00	S 89° 58' 00" E	100.00	171° 56' 00"	100.00
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5+90.00	S 89° 58' 00" E	100.00	171° 56' 00"	100.00



77-226
Exchange
Oct. 10, 77
[Signature]



LINE CHART

LINE	Bearing	Distance
L-1	N 45°04'21" E	42.42'
L-2	S 44°54'28" E	42.45'
L-3	S 45°00'07" W	42.45'
L-4	N 44°57'18" W	42.46'

- LEGEND**
- ⊙ Found Brass Cap Monument
 - () Record Dimension-See note 1
 - ⊕ Set 3/8" Iron Cap Monument on 2 1/2" x 30" Alum Pipe in 96" Dia Man Cam
 - Found Rebar as Shown
- (Call) City of Anchorage

- NOTES**
1. Dates of bearing and record dimensions taken from Anchorage CLO Plat of Anchorage Townsite, Dated October 1, 1917. Approved October 19, 1917.
 2. The position for the intersection of Fifth Avenue and A Street was re-established by single proportionate methods as indicated in City of Anchorage Field Book No. 100, Page 72 Dated 10-25-36.
 3. No monuments set or recovered at block corners, due to construction difficulties.
 4. Direct vehicular access for Lot 1A, Block 112A shall be limited as follows:
 1. A single driveway to East 5th Ave opposite Barrow Street
 2. A single driveway to Cordova Street opposite the Alley
 3. A single driveway to East 6th Ave opposite Barrow Street

SPECIAL NOTE

The water and sewer utilities located in the alleys between 5th and 6th Avenue from "A" in Cordova Streets will be relocated at the State's expense prior to the construction of any structures on Block 112A, Lot 1A. The utilities will be covered under a State Utility Permit until such time as they are relocated.

SURVEYOR'S CERTIFICATE

I, Robert M. Schmitt, professional land surveyor do hereby certify that the said Block 112A is a true and correct representation of land as fully surveyed and that the distances and bearings are shown correctly and that all permanent exterior control monuments and other monuments and lot corners have been set and staked as if final completion is assured by subdivision agreement, they will be set or located as and subdivision agreement. Lot corners to be set by MP monuments to be set by MP.

ACCEPTANCE OF DEDICATION

The Municipality of Anchorage hereby accepts for public use and for public purposes the real property depicted on this plat and the same is not limited to the easements, rights of way, alleys, thoroughfares and parks shown hereon.

City of Anchorage, Alaska the 12th day of September 1987

TAX CERTIFICATION

All real property taxes levied by the Municipality of Anchorage on the area shown on this plat have been paid.

9/28/87 Paul Shantz
Municipal Assessor

PLAT APPROVAL

Not approved by the Municipal Planning Authority on the 12th day of September, 1987

Alphonse Dumas
City Engineer



Alphonse Dumas
City Engineer

Robert M. Schmitt
Surveyor

APPROVALS:

Planning Director Alphonse Dumas (initials)
Municipal Engineer Robert M. Schmitt (initials)
S.P.E. 912-000

CERTIFICATE OF OWNERSHIP AND DEDICATION

I, Lot 1A, hereby certify that I own the herein described property, situated in the general area of and known as Block 112A, and that I have the right to dedicate to the Municipality of Anchorage all areas depicted for use as public utility easement streets, alleys, thoroughfares, parks, and other public uses shown hereon. There shall be reserved subject to the abovementioned streets shown hereon a tract of approximately 100,000 square feet, to be divided into 100 lots of 1,000 square feet each, to be used for the purpose of providing and maintaining the local business of the abovementioned streets. There is reserved to the grantor, their heirs, successors and assigns the right to use such areas of any same upon providing and maintaining other adequate local business, as approved by the Municipality.

I have hereby agreed to this plat and to any restriction or covenant concerning hereon and any such restriction or covenant shall be binding and enforceable against persons and successors owners of the abovementioned property.

James A. Anderson
James A. Anderson, Director, Division of Technical Services
Department of Natural Resources
State of Alaska
3601 C Street
Anchorage, Alaska 99503

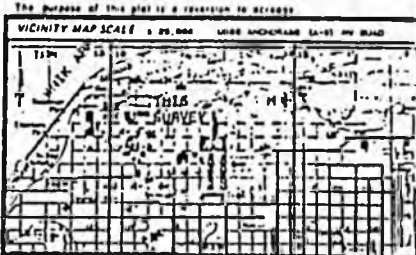
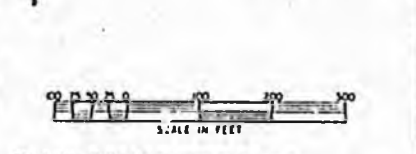
NOTARY ACKNOWLEDGMENT FOR JAMES A. ANDERSON

Subscribed and sworn to before me this 2nd day of August 1987 for James A. Anderson

12-12-87
Notary Public

Alphonse Dumas
City Engineer

8-6-87
Date



UNLESS OTHERWISE SHOWN ON THIS PLAT, THE PLAT IS SUBJECT TO THE CITY OF ANCHORAGE ORIGINAL TOWNSITE PLAT C-148 PD, DATED 10-1-1917, AS AMENDED BY PLAT C-148 PD, DATED 10-1-1917, AND AMENDED BY PLAT C-148 PD, DATED 10-1-1917.

ALASKA DEVELOPMENT CONSULTANTS, INC.
ENGINEERS SURVEYORS PLANNERS
1513 Arctic Blvd. Suite 201 Anchorage Alaska 99508
Dist. 1221 Scale 1" = 100' Date 8-23-87 Sheet C-23 Page 3-56
Drawn M.A.T. File No. 8000 Date 8/23/87

STATE LAND: Lot 1A, Block 112A, Anchorage Original Townsite

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND AND WATER MANAGEMENT
SOUTHCENTRAL REGION
P.O. BOX 107005
3601 "C" Street
Anchorage, Alaska 99510-7005
PUBLIC NOTICE UNDER AS 38.05.945 and AS 38.50.110

ADL 223175

Subject to the provisions of AS 38.05.945 and AS 38.50.110, and pursuant to the regulations promulgated thereunder, the Division of Land and Water Management gives notice that it proposes to conduct an equal value land exchange for the surface estate only on state-owned land under AS 38.50 for the surface estate only on private land owned by Eklutna Inc. The director further gives notice that a written finding of the state's best interest under AS 38.05.035(e) has been entered into the administrative record regarding the proposed exchange.

The purposes of the exchange are to acquire valuable recreational land along the lower segment of Eagle River for public use and to be included within Chugach State Park, to protect habitat and wetland areas, and to maintain the scenic Eagle River Corridor for public enjoyment and to acquire the Thunderbird Falls parking lot near Eklutna, Alaska for public use. Parties to the exchange are the State of Alaska, address above, and Eklutna, Inc., 555 West Seventh Avenue, Suite 1550, Anchorage, Alaska 99501.

All land is located within the boundaries of the Municipality of Anchorage and described as follows:

Eklutna Land To Be Acquired By The State

Land is generally described as being located within T14N, R2W, S.M. Section: 13; T14N, R1W, S.M., Sections: 16 through 27, 35 and 36; T14N, R1E, S.M., Sections: 30, 31 and 32 (along Eagle River); and T16N, R1W, S.M., Section: 25, the Thunderbird Falls parking lot; containing approximately 3,680 acres generally located in Eagle River and Eklutna, Alaska.

State Land To Be Acquired By Eklutna, Inc.

Lot 1A, Block 112A, Anchorage Original Townsite as shown on plat 84-375 filed in the Anchorage Recording District on October 16, 1984. Containing approximately 4.39 acres located between Cordova and A Streets and 5th and 6th Avenues in downtown Anchorage.

All land involved in the exchange is subject to prior valid existing rights. Both parties will waive the administration of these rights on the specific land the parties offer for exchange when the exchange is completed.

The proposed equal value exchange will be based upon appraised fair market values. An independent fee appraisal established the fair market value for the state land at \$8,600,000 (State Appraisal No. 1975) and the value of the Eklutna, Inc. land at \$9,072,000 for the Eagle River Greenbelt and \$31,300 for Thunderbird Falls parking lot (State Appraisal No. 1974). Four minor subunits of the greenbelt are identified and given individual appraised values. Two of these four subunits and the Thunderbird Falls parking lot are proposed to be pursued in this exchange. The difference in appraised value of \$173,300 will be paid in cash by the state to Eklutna. The state shall have option to acquire, before May 1, 1988, at the present appraised value, the remaining two units. The proposal must receive legislative review as provided by AS 38.50.140.

A report containing detailed maps, a physical description of the land involved, appraised values, impacts and alternatives considered and other statutory requirements are available at the Division of Land and Water Management, Southcentral Region Office, P.O. Box 107005, Anchorage, Alaska 99510 located at 3601 "C" Street, Suite 1080, Frontier Building in Anchorage.

Public hearings on the proposed exchange will be held simultaneously on Wednesday, February 18, 1987, beginning at 7:00 PM at the following locations:

Anchorage

7. J. Loussac Library, Public Conference Room
3600 Denali Street

Eagle River

Eagle River Library, Community Room
Valley River Center

Chugiak

CCS Building, Multi Purpose Room
Mile 6, Old Glenn Highway

The hearing record will remain open for two weeks following the hearing date in order to receive written comments on the proposed land exchange.

Any comments, objections, or expressions of interest pertaining to the proposed exchange or assertions of a claim to the property involved must be received by the Division of Land and Water Management at the above address on or before 4:30 p.m., March 4, 1987, in order to be considered.

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

/s/ TOM HAWKINS, Director
Division of Land and Water Management

PUBLISH: January 19 and 26 and February 2, 1987

DRAFT LANGUAGE FOR EAGLE RIVER/EKLUTNA EXCHANGE

WHEREAS the Legislature finds it desirable to acquire an Eagle River Greenbelt and manage it as part of Chugach State Park under A.S.41.21.121; and

WHEREAS the Legislature desires to stimulate economic vitality through private development in downtown Anchorage;

BE IN ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1: The land exchange contract entered into by the State of Alaska, Department of Natural Resources and Eklutna, Inc. on the 6th day of March, 1987, is hereby approved and ratified.

* Section 2: Land described as Section 25: Tract B, Thunderbird Heights Subdivision as shown on plat 77-226 filed in the Anchorage Recording District on October 10, 1977, containing approximately 1.09 acres is added the Chugach State Park.

*Tom: Note that Commissioner may "modify" the boundaries of the Park subject to legislative approval. 41.21.122

JAMES B. GOTTSTEIN

ATTORNEY AT LAW

406 G STREET, SUITE 206
ANCHORAGE, ALASKA 99501
(907) 4-7686

March 5, 1987

Meg Hayes
Southcentral Regional Office
Department of Natural Resources
3601 C Street, Rm 1080
Anchorage, Alaska

HAND DELIVERED

Re: Proposed Eklutna Land Trade

Dear Ms Hayes:

Thank you for informing me of the status of the proposed exchange between the State, Eklutna, and the Municipality of Anchorage, wherein the State is essentially exchanging the two prime blocks in downtown Anchorage that were originally acquired for the State Office Building for the Eagle River Greenbelt to be conveyed to the Municipality of Anchorage.

I was quite surprised and dismayed that our long stated objections to the proposed exchange, communicated a number of times to Gary Gustafson, Chief, Land Management, Division of Land and Water Management, had not been forwarded to the appropriate person(s). As I explained on the telephone, as the attorney for the Intervening Plaintiffs, the Alaska Mental Health Association and others in the Mental Health Trust Lands Litigation, Weiss et al. v State, 4FA 82-2208 Civ., and on behalf of all the other plaintiffs in the case, it is our position that the two downtown lots are precisely the type of land that should be conveyed into the Mental Health Lands Trust to replace lands that have been lost and therefore should not be conveyed to anyone else.

It is our position that these lands, and indeed all other suitable state lands, should not be disposed of by the state until such time as the Mental Health Trust Lands Litigation has been resolved. As you know, the amount of available state land suitable for inclusion in the Trust is very limited. For the state to continue to dispose of suitable replacement lands in general and these specific parcels in particular, seriously hampers efforts to reconstitute the Mental Health Lands Trust as Ordered by the Alaska Supreme Court in State v. Weiss, 706 P.2d 681 (1985).

In our view, the state's commingling of Mental Health Trust Lands with all other state lands, combined with wholesale disposals of Mental Health Trust Lands results in a constructive trust being created for all state lands for the benefit of the Mental Health Lands Trust.

As you may know, the plaintiffs' side of the Mental Health Trust Lands Litigation and the State have a gentlemen's agreement not to pursue litigation at the current time in order to facilitate settlement negotiations. This gentlemen's agreement recognizes that either party will go to the court, however, in the event that it is considered necessary. If the State proceeds to approve the proposed exchange without making some sort of acceptable provision regarding the Mental Health Lands Trust, this may force us into court to attempt to prevent the exchange.

Again, I am sorry that our previously stated objections had not been conveyed to you, but felt that you ought to have our position before you in writing in determining the state's course of action.

Yours truly,



James B. Gottstein

cc: Alaska Mental Health Association
David Walker
Cooper Geraty
G. Thomas Koester
G. Gustafson
T. Braden
Interim Mental Health Trust Commission
Rep. Pourchot
Rep. Gruenberg
Sen. Halford
Sen. Fahrenkamp
Sen. Fischer
Sen. Josephson
Rep. Herrmann
Rep. Cotton
Sen. Coghill

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

State of Alaska

DIVISION OF PARKS AND OUTDOOR RECREATION

Arland
cc Decl F. in
Sam Botten
of file

TO: Meg Hayes, Regional Manager
SCRO
Div. of Land & Water

DATE: March 4, 1987

FILE NO:

TELEPHONE NO: 345-5014

FROM: Bill Garry, Superintendent
Chugach/Southwest Area



SUBJECT: Eklutna Land Exchange
Legislation

To provide for legal inclusion of Thunderbird Falls Parking Lot into Chugach State Park please make the following changes:

AS 41.21.121(12) is hereby amended to read:

Township 16 North, Range 1 West, Seward Meridian,
Section 25: NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, and tract
B of Thunderbird Heights Subdivision.

WWG/lk



ALASKA STATE PARKS --
Let's Put Them on the Map!

FINAL EXCHANGE AGREEMENT

ADL 223175

Eklutna, Inc. and State of Alaska

Eagle River Greenbelt

Draft

This final exchange agreement for the negotiated exchange of lands is made pursuant to AS 38.50. It is entered into, by and between Eklutna, Inc. (herein referred to as "Eklutna") whose address is 555 West Seventh Ave., Suite 1550, Anchorage, Alaska 99501 and the State of Alaska, Department of Natural Resources (herein referred to as "the state") whose address is P.O. Box 107005, Anchorage, Alaska 99510.

RECITALS

1. The Commissioner of Natural Resources is authorized to exchange state land pursuant to AS 38.50 and 11 AAC 67.200-.280, subject to the requirement for legislative approval under AS 38.50.140.
2. The President of Eklutna has been authorized by resolution of the Board of Directors #1986-A dated August 12, 1986 to enter into this agreement.
3. The Commissioner of Natural Resources has found that the requirements of AS 38.50 and 11 AAC 67.200-.280 have been satisfied. The Commissioner has found in a written best interest finding dated _____ that this exchange, as proposed in the Preliminary Exchange Agreement

dated August 13, 1986, and as modified by Addendum #1 to the Preliminary Exchange Agreement dated January 16, 1987, best serves the interests of the state by furthering the goals of Chugach State Park as stated in AS 41.21.121.

4. The Commissioner has found that this exchange complies with the Alaska Coastal Management Program.

AGREEMENT

The parties hereby agree as follows:

5. Conveyance of Eklutna

- a. Eklutna will convey the surface estate in the land described in Attachment A. This land was acquired by Eklutna by United States Patent 50-79-0094.
- b. Eklutna will grant the state an option to acquire the land described below for the values shown. Such option must be exercised by the state before May 1, 1988.

Subunit No. 3, \$220,000

T14N, R1W, S.M. Section 19: That portion of N1/2NE1/4 and NE1/4NW1/4 all land south of the north boundary of the 17 (b)(3) easement (EIN 1 D9). Containing approximately 94 acres.

Subunit No. 4, \$110,000

T14N, R1W, S.M. Section 20: That portion of NE1/4NW1/4 and NW1/4NE1/4 south of the north boundary of the 17(b)(3) easement (EIN 1 D9) and north of the unimproved dirt road lying approximately 600 feet south and generally paralleling the said 17(b)(3) easement (EIN 1 D9).
Containing approximately 28 acres.

6. Conveyance by the state

The state will convey Lot 1A, Block 112A, Anchorage Original Townsite, as shown on plat 84-375 filed in the Anchorage Recording Office on October 16, 1984 subject to the mineral reservation described in AS 38.05.125; containing approximately 4.39 acres. The state has closed these lands to mineral entry effective November 28, 1986. These lands were acquired by the state under the following actions:

OSL 771	Lot 1, Blk 112	C.A. No. 3AN-82-09440
OSL 772	Lot 2, Blk 112	C.A. No. 3AN-82-09410
OSL 773	Lot 3, Blk 112	C.A. No. 3AN-82-09439
OSL 774	Lot 4-A, Blk 112	C.A. No. 3AN-82-09404
OSL 775	Lots 7, 8, 9, 10, 11 & 12, Blk 112	C.A. No. 3AN-82-09405
OSL 776	Lots 1A & 2C, Blk 113	C.A. No. 3AN-82-09409
OSL 777	Lot 3, W1/2 Lot 2, E1/2 Lot 4, Blk 113	C.A. No. 3AN-82-09753
OSL 778	Lot 5, W1/2 Lot 4, Blk 113	C.A. No. 3AN-82-09438
OSL 779	Lot 6, Blk 113	C.A. No. 3AN-82-09752
OSL 780	Lot 7, Blk 113	C.A. No. 3AN-82-09408
OSL 781	Lots 8, 11 & South 95' of Lot 12, Blk 113	C.A. No. 3AN-82-09407
OSL 782	Lots 9 & 10, Blk 113	Warranty Deed dated

11/15/82 Anchorage

Recording Office

Book 813, Pg 0342

C.A. No. 3AN-82-09406

Plat 84-375

OSL 783 North 45' of Lot 12, Blk 113

Vacation of streets and alleys through
resubdivision

7. Reservations and third party interests on land to be conveyed by Eklutna

Eklutna will reserve certain third party interests from the lands to be conveyed to the state. They are described in Attachment B.

8. Reservations and third party interests on land to be conveyed by the state

The state reserves only those interests required by 38.05.125 and the plat of survey 84-375.

9. Equalization of values

The appraised fair market value of the land offered by Eklutna identified in Attachment A is \$8,773,300.

The appraised fair market value of the land offered by the state identified above is \$8,600,000.

The state will pay the difference in value of \$173,300 in cash to Eklutna within 30 days of the effective date of the legislative act approving this exchange.

10. Survey

The state will pay the cost of surveying the land it is to acquire from Eklutna to the extent required for the transfer of legal title. The land to be acquired by Eklutna requires no additional survey.

11. Future Encumbrances

Each party agrees not to encumber the lands proposed to be exchanged or conveyed to the other party under this agreement and not to alter substantially the physical condition of the lands proposed to be exchanged or conveyed except to the extent required by law or upon the written consent of the other party.

12. Transfer of Management Rights and Equitable Title

The parties agree that upon the effective date of legislation approving this exchange, equitable title in the lands to be conveyed by the state will be deemed to vest in Eklutna and Eklutna will thereafter have possession and management responsibilities for the lands. Similarly, upon the effective date of legislation approving this exchange, equitable title in the lands to be conveyed by Eklutna will be deemed to vest in the state and the state will thereafter have possession and management responsibilities for those lands.

13. Exchange of Deeds

No later than thirty days after the Department of Natural Resources

notifies Eklutna that all surveys necessary for the conveyance of legal title have been completed, each party will deliver to the other a draft quitclaim deed proposed to be executed to implement this exchange. Within ten days thereafter, each party will review the draft deed and notify the other of any objections to the proposed form of the deed. As soon as practicable after any objections have been resolved to the mutual satisfaction of the parties, the final deeds necessary to implement this exchange will be executed and delivered. Concurrent with the exchange of deeds, title insurance will be provided to each party for the land it is to receive. [The title insurance will be acceptable to the insured party.] The costs of the title insurance will be paid by the state.

14. Effective Date

This agreement shall become effective upon its execution by both parties, and its effective date shall be the date upon which the last party signs the agreement, but performance of the obligations of paragraphs _____ of this agreement are expressly conditioned upon the enactment of legislation by the Alaska legislature approving and ratifying this agreement.

15. Cancellation

In the event that legislation by the Alaska legislature approving and ratifying this agreement is not enacted prior to July 1, 1987, then either party may cancel this agreement upon thirty days written notice to the other party.

16. Amendments

This agreement may be amended, modified or supplemented only by a written amendment signed by both parties and approved by the Alaska legislature.

17. Waiver

Neither party will be deemed to have waived any right, term, or condition of this agreement unless the waiver is in writing and signed by an authorized official of the party. Any failure of either party to object to or to seek a remedy of any violation by the other party of any provision of this agreement shall not be deemed a waiver of or an estoppel against any future right to object to or to seek a remedy of a subsequent violation, whether the later violation is of the same or another provision.

18. Notices

Any notices, demands, or other communications under this agreement shall be in writing, and shall be deemed given if delivered in person or sent through the United States Postal Service by registered or certified mail as follows:

a. if to Eklutna:

b. if to the state: Director

Alaska Division of Land and Water Management

P.O. Box 107005

Anchorage, Alaska 99510

19. Interpretation

- a. This agreement will be constructed and enforced in accordance with and governed by the laws of the State of Alaska.

- b. Both Eklutna and the state are jointly and equally responsible for the drafting of this agreement and consequently, an ambiguity, if any, may not be construed against one party or the other as its drafter. This agreement will be construed independently of any draft documents.

- c. The captions used in this agreement are for convenience only and will not control or affect the meaning or construction of any of its provisions.

- d. This agreement incorporates all Exhibits which are referred to in it.

- e. This agreement contains the entire agreement and understanding of the parties with respect to its subject matter. Any oral representations made by either party during the negotiations of this agreement which are not incorporated by writing into this agreement are not binding.

STATE OF ALASKA

Judith M. Brady, Commissioner

Date

EKLUTNA, INC.

Leo Stephan, President

Date

ATTACHMENT A

Eklutna lands to be acquired by the State as shown on map (Exhibit A) and described as follows:

T14N, R2W, S.M.

Section 13: Tract 1-B Eagleridge Subdivision Phase B as shown on plat 83-252 filled in Anchorage Recording District on July 13, 1983; and Tract A-1, proposed Somerset Terrace Estates (now redesignated as Tract D, Dena'ina Estates Subdivision). Including in the above description the proposed Eagle River Road bridge crossing site. DOT/PF project numbers A84381/53121 (parcel 27C as shown in Exhibit C). Including the bed of Eagle River.

T14N, R1W, S.M.

Section 16: That portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$ excluding the uplands bounded by the left bank of Eagle River and the right bank of the South Fork of Eagle River. Including the bed of Eagle River and tributaries.

Section 17: All land upland of the right bank of Eagle River to a line being 12.5 feet northerly and parallel to a line brushed and flagged for a trail centerline as shown on Exhibit B-1, to be platted with the boundary survey, and all land upland of the left bank of Eagle River. Including the bed of Eagle River.

Section 18: All that part of Tract 1-C Parkview Terrace East Subdivision Tracts 1-A, 1-B and 1-C as shown on plat 86-120 recorded in Anchorage Recording District on July 15, 1986, lying south of Tract E of Parkview Terrace Subdivision, as shown on plat 85-158, and its intersection with a line being 12.5 feet northerly and parallel to a trail centerline shown on Exhibit B-2, to be platted with the boundary survey, excluding that portion south of the north boundary of the 17(b)(3) easement (EIN 1 D9). Included in the above description is the proposed Eagle River Road bridge crossing site, DOT/PF project numbers A84381/53121 (parcel 27C as shown in Exhibit C). Including the bed of Eagle River.

Section 19: All land within that portion of GLO Lot 1, $N\frac{1}{2}NE\frac{1}{4}$ and $NE\frac{1}{4}NW\frac{1}{4}$ lying north of the north boundary of the 17(b)(3) easement (EIN 1 D9). Including the bed of Eagle River.

Section 20: All land within the $NW\frac{1}{4}NE\frac{1}{4}$ and $N\frac{1}{2}NW\frac{1}{4}$ lying north of the north boundary of the 17(b)(3) easement (EIN 1 D9); $E\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$ that portion within 200 feet of the left bank of the South Fork of Eagle River. Including the bed of Eagle River.

Section 21: NE $\frac{1}{4}$; that portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ lying north of the north boundary of the 17(b)(3) easement (EIN 1 D9); that portion of the N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ lying north of the north boundary of the 17(b)(3) easement (EIN 1 D9); the NW $\frac{1}{4}$ excluding the following two metes and bounds parcels:

Parcel 1

Commencing at the NW corner of Section 21; thence East along the North line of said Section 21, 440.00 feet more or less to the thread of the South Fork of Eagle River the true point of beginning; thence East along the North section line of Section 21 to the point of intersection with the line of ordinary high water on the left bank of Eagle River; thence in a southeasterly direction along the line of ordinary high water of the left bank of Eagle River, 1,575 feet more or less to a point lying 1,615 feet East of the West line of Section 21; thence South on a line parallel to and 1,615 feet easterly of the West line of Section 21, 494.48 feet; thence S 54° 51'30" E, 802.76 feet; thence South, 350.00 feet; thence S 36° 17' E, 624.27 feet more or less to a point on the North-South Center of Section 21 line; thence South along said line 220.04 feet more or less to the C $\frac{1}{4}$ corner; thence West along the East-West centerline of Section 21, 2,090.00 feet to the thread of the South Fork of Eagle River; thence in a northwesterly direction following the bends and turns of said thread, 2,688 feet more or less to a point on the westerly line of Section 21; thence North along said Section line 131.06 feet more or

less to the intersection of the thread of said stream which is approximately South 395.28 feet from the Northwest corner of Section 21; thence in a northeasterly direction along the thread of the South Fork of Eagle River, 778 feet more or less to the true point of beginning and containing 96 acres more or less.

Parcel 2

That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ lying westerly of a line located 200 feet west of the left bank of the South Fork of Eagle River containing 5 acres more or less.

Including the bed of Eagle River.

Section 22: That portion of land within the S $\frac{1}{2}$ excluding that portion south of the north boundary of the 17(b)(3) easement (EIN 1 D9).

Including the bed of Eagle River.

Section 23: S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ all land south of the Eagle River Road right-of-way; and that portion of land described as follows: Bearing from the C-N-SW1/64 approximately S55° 20'E for approximately 3,215 feet to a point 150 feet north of the E1/16 corner common to Sections 23 and 26 excluding those lands northeast of the above mentioned line. Including the bed of Eagle River.

Section 24: All land south of the south boundary of the Eagle River Road right-of-way.

Section 25: That portion of land lying southerly and westerly of the following described boundary: Beginning at a corner common to Section 25, 30, 31 and 36; thence north approximately 1,450 feet along the section line common to Sections 25 and 30 to a point; then west approximately 1,530 feet to a point; then northwest approximately N48° W for 1,200 feet to a point; then northwest approximately N80° W 500 feet to a point; thence northeast approximately N47° E 600 feet to a point that intersects the Eagle River Road right-of-way; then northwest along the south boundary of the Eagle River Road right-of-way to the section line common to Sections 24 and 25. Including the bed of Eagle River.

Section 26: All lands within N½, E½SE¼, NE¼SE¼SW¼SE¼, NE¼SW¼SE¼, N½NW¼SW¼SE¼, NW¼SE¼, E½NE¼SW¼, NE¼SW¼NE¼SW¼, NW¼NE¼SW¼, E½NE¼NW¼SW¼, NW¼NE¼NW¼SW¼, and NE¼NW¼NW¼SW¼. Including the bed of Eagle River.

Section 27: N½NE¼, N½SE¼NE¼, N½S½SE¼NE¼, SE¼SE¼SE¼NE¼, NE¼SW¼NE¼, N½NW¼SW¼NE¼, N½NE¼NW¼, E½SE¼NE¼NW¼, NW¼SE¼NE¼NW¼, NE¼SW¼NE¼NW¼, NE¼NE¼NW¼NW¼ all land north of the north boundary of the 17(b)(3) easement (EIN 1 D9).

Section 35: NE¼NE¼NE¼, NE¼NW¼NE¼NE¼.

Section 36: That portion of land within NE¼, N½NE¼SE¼, SE¼NE¼SE¼, N½SW¼NE¼SE¼, N½NE¼SE¼SE¼, SE¼NE¼SE¼SE¼, NE¼NW¼SE¼, NE¼NW¼NW¼SE¼, N½SE¼SE¼NW¼, NE¼SE¼NW¼, E½NW¼SE¼NW¼, NW¼NW¼SE¼NW¼, NE¼NW¼, N½NE¼SW¼NW¼, E½NW¼NW¼, SE¼SW¼NW¼NW¼, N½SW¼NW¼NW¼, and NW¼NW¼NW¼. Including the bed of Eagle River.

T14N, R1E, S.M.

Section 30: All lands south of the Eagle River Road right-of-way.
Including the bed of Eagle River and braided channels.

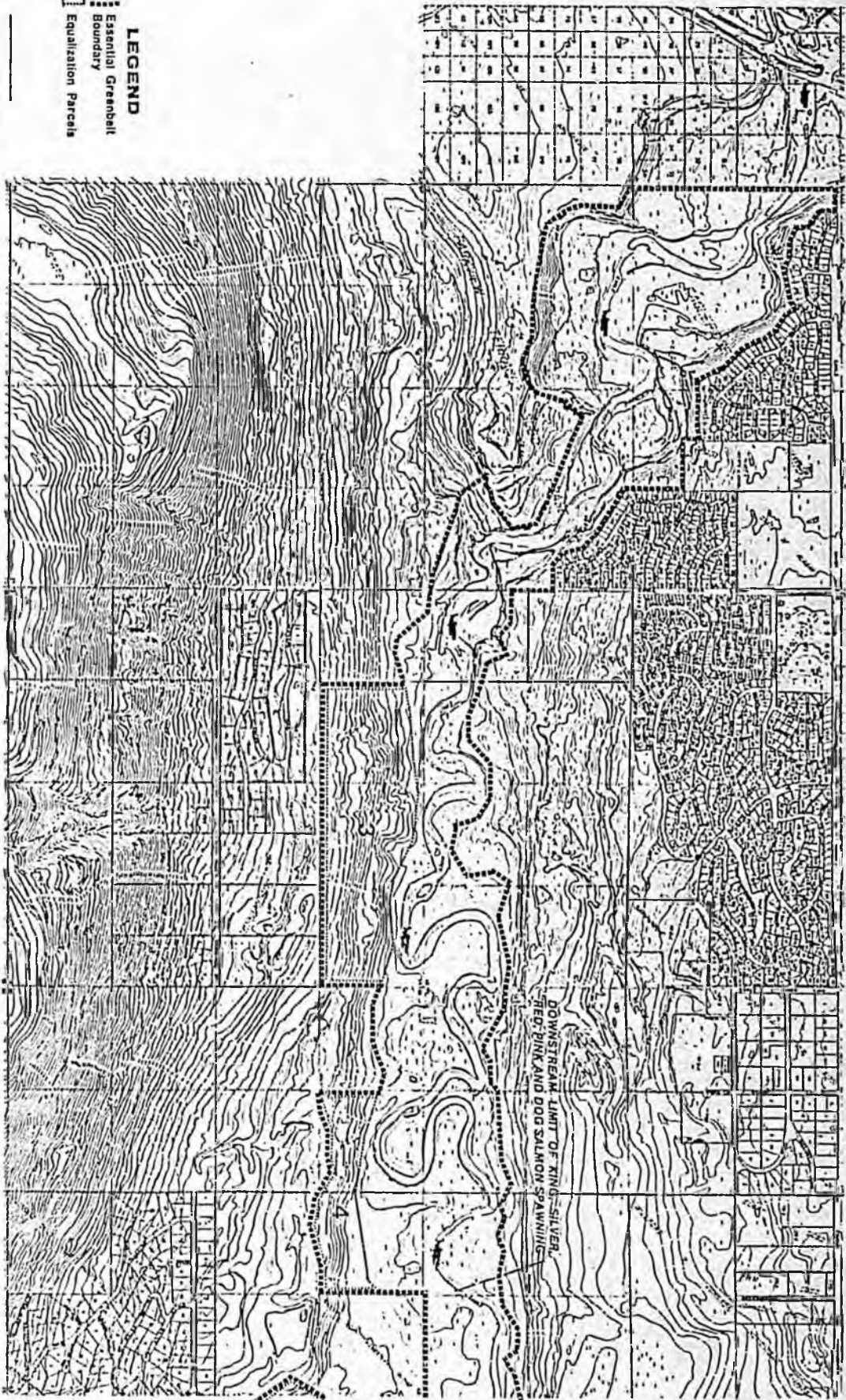
Section 31: That portion of land within the E $\frac{1}{2}$ excluding those lands
northeast of the south boundary of the Eagle River Road right-of-way;
E $\frac{1}{2}$ W $\frac{1}{2}$, and GLO Lots 1, 2, 3 and 5. Including the bed of Eagle River and
braided channels.

Section 32: Lands described as follows: Beginning at a corner common to
Sections 31 and 32, T14N, R1E, Sections 5 and 6, T13N, R1E; thence north
90° E approximately 1,330 feet along the section line to a point; then
northwest approximately N33° W 1640 feet to a point; then northeast
approximately N8° E for 440 feet to a point; then northwest approximately
N63° W° for 550 feet to a point on the section line common to Sections 31
and 32 then south along the section line common to Sections 31 and 32 to
the point of beginning.

T16N, R1W, S.M.

Section 25: Tract B, Thunderbird Heights Subdivision as shown on plat
77-226 filed in the Anchorage Recording District on October 10, 1977, as
shown on Exhibit D. Containing approximately 1.09 acres.

The total lands described above contain approximately 3,558 acres.



LEGEND

Essential Greenbelt Boundary

Equalization Parcels

ASSOCIATION

Moose Preferred Habitat

Downstream Limit of King, Silver, Red, Pink and Dog Salmon Spawning as Indicated on Map

Upstream Limit of Salmon Spawning as Indicated on Map



KEY

1. Moose Preferred Habitat

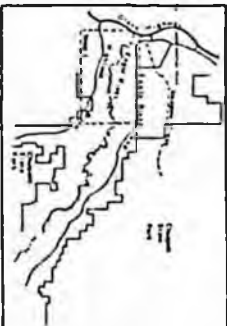
2. Downstream Limit of King, Silver, Red, Pink and Dog Salmon Spawning as Indicated on Map

3. Upstream Limit of Salmon Spawning as Indicated on Map

EKLUTNA INC. LAND

The state proposes to acquire options to purchase subunits 3 & 4

EXHIBIT A



1
SHEET

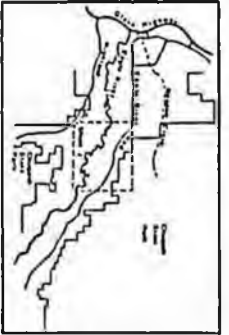
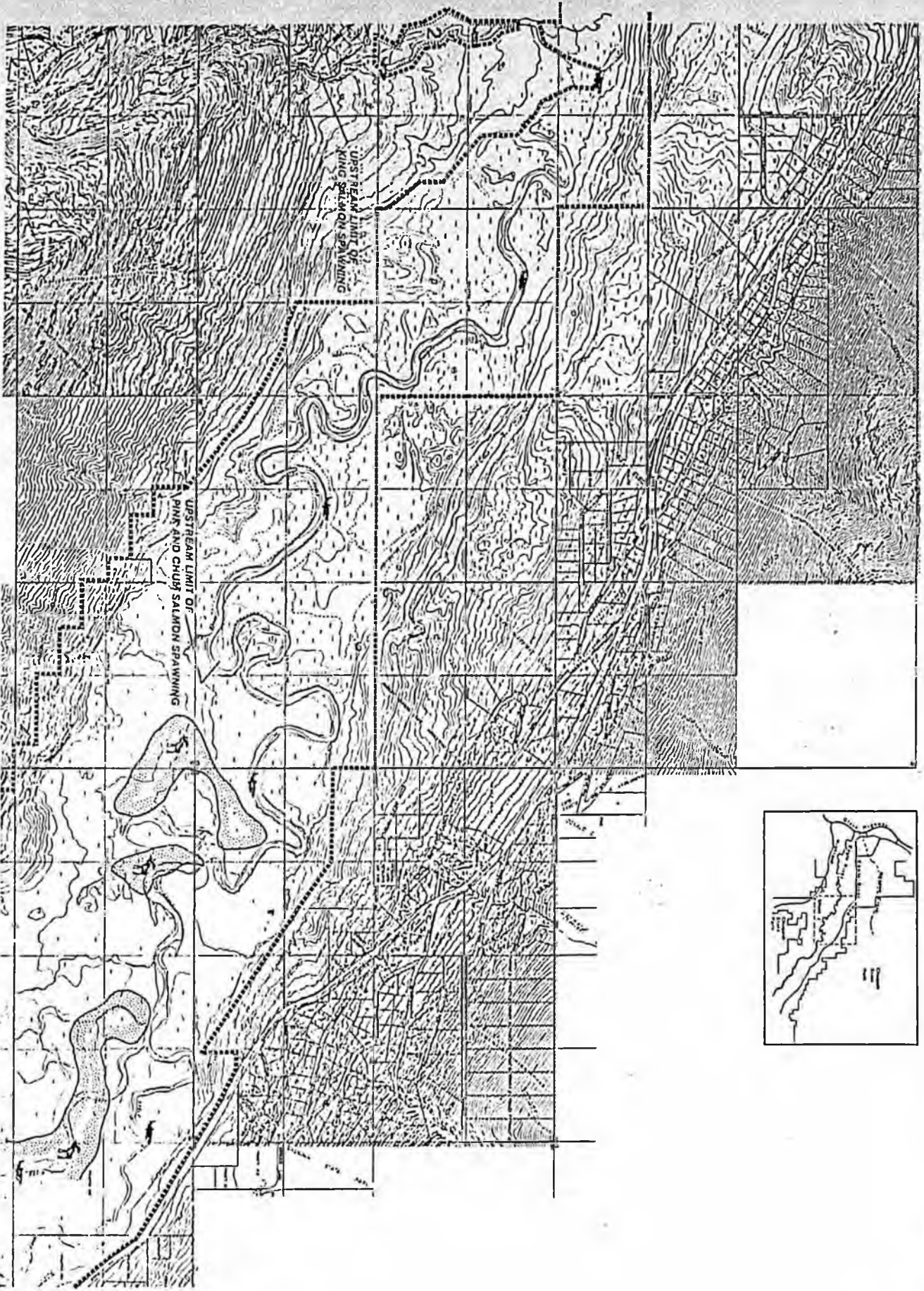
Wildlife Habitat
2/10/83

AGREE: Coordination with State Department of Fish and Game, October 1983

EAGLE RIVER GREENBELT PLAN

TRA/Farr
ARCHITECTURE ENGINEERING PLANNING INTERIORS
1001 E. BECHON BLVD AND GRADE, ANCHORAGE (907) 277-2641

DATE: December 1984
SCALE: 1" = 500'



Sheet No.

2

Wildlife Habitat
Map 3

EDULL: Consultation with Alaska Department of Fish and Game, January, 1988

PROJECT TITLE

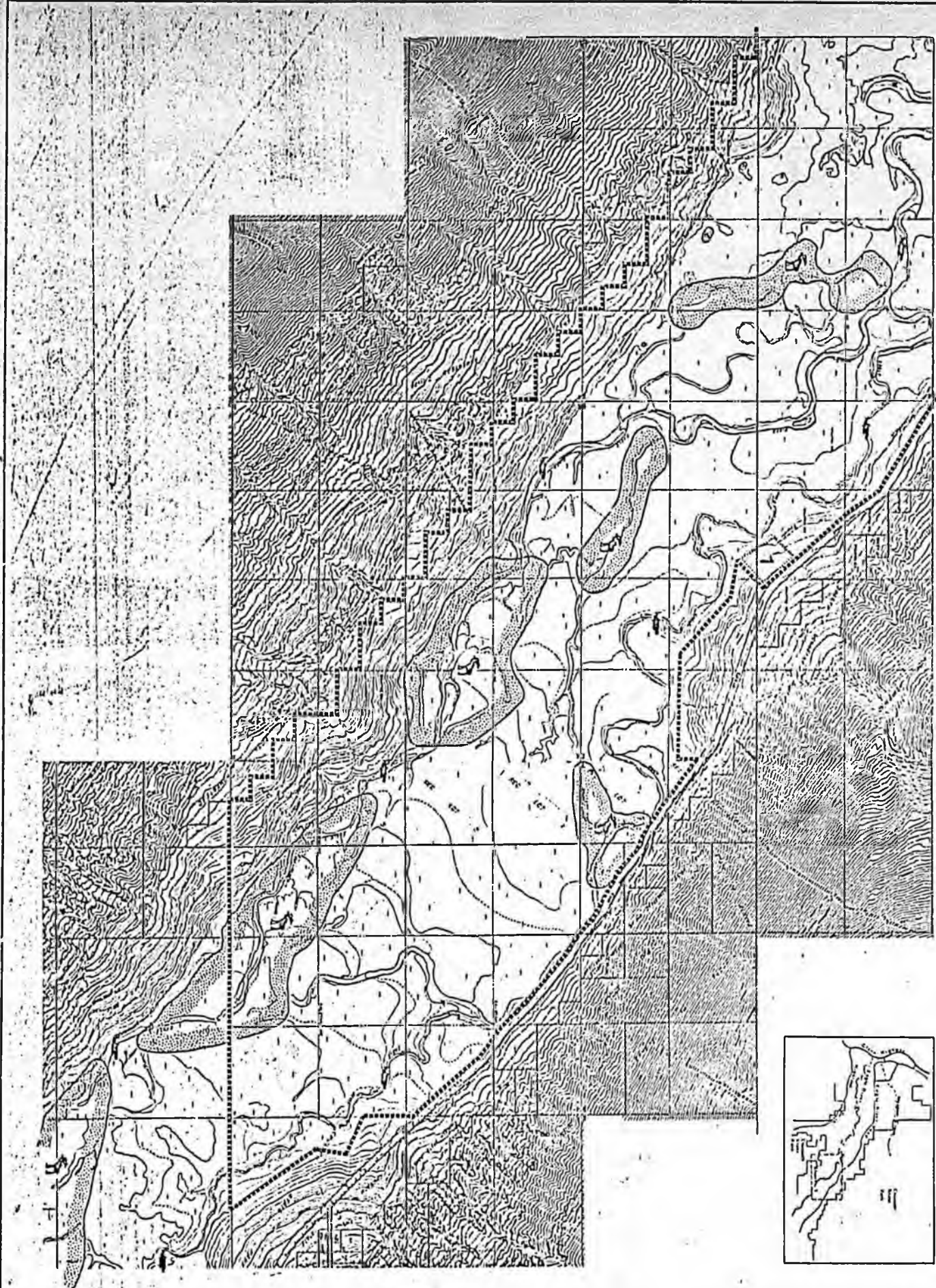
EAGLE RIVER
GREENBELT PLAN

TRA/Farr

ARCHITECTURE ENGINEERING PLANNING INTERIORS
1001 E BANGSON BLVD, ANCHORAGE, AK 99508 (907) 277-2944

DATE: November 1988

SCALE: 1" = 400'



SHEET NO
3
 OF 3 SHEETS
 15122413200

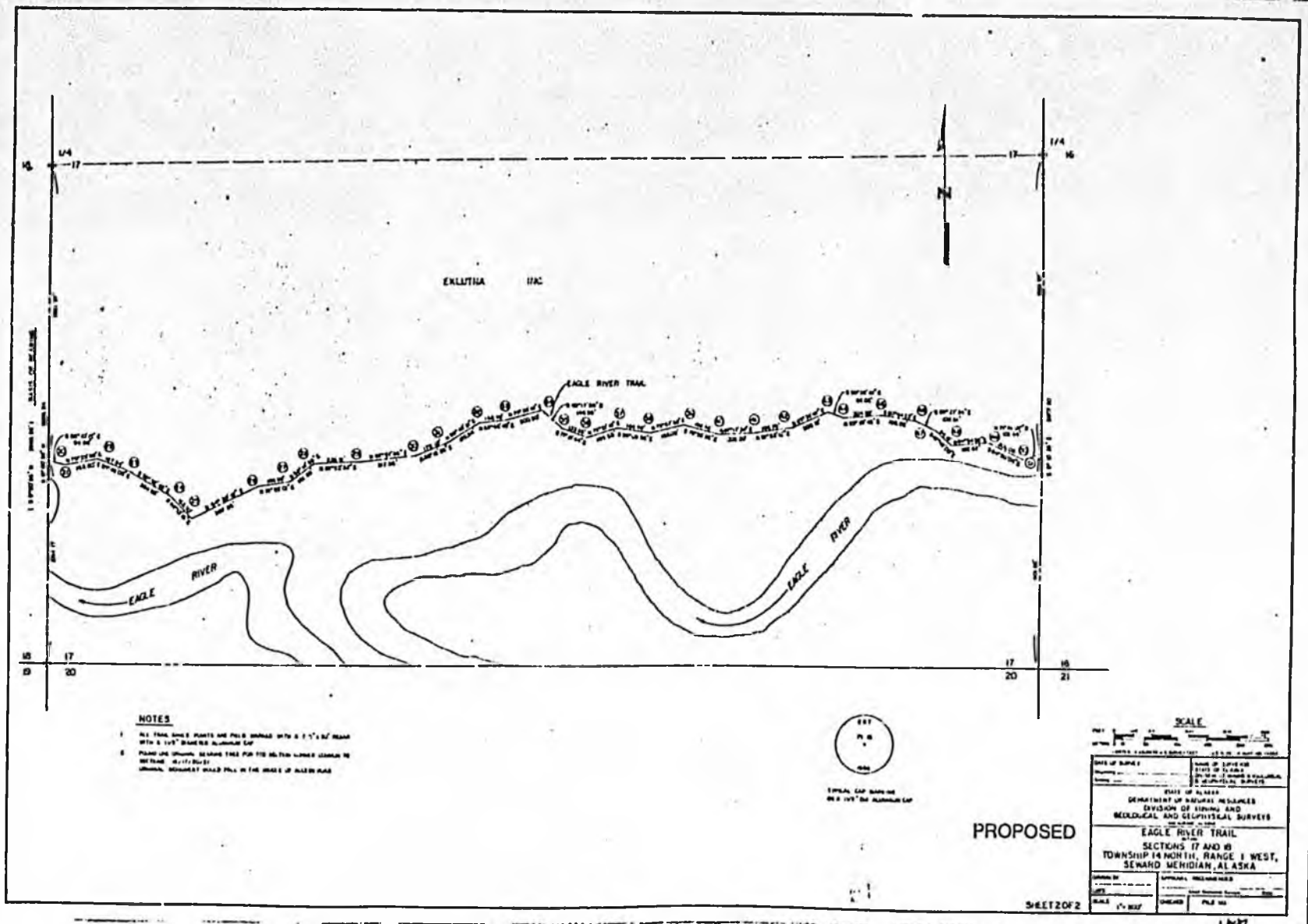
Wildlife Habitat
 Map '1'

ADJUSTED
 Coordination with Alaska Department of
 Fish and Game Survey, 1981

PROJECT TITLE
**EAGLE RIVER
 GREENBELT PLAN**

TRA/Fair
 ARCHITECTURE ENGINEERING PLANNING INTERIORS
 1001 E. GUNSON BLVD., ANCHORAGE, AK 99508 (907) 277-2541

DATE September 1984
 SCALE 1" = 800'



NOTES



1. ALL TRAIL, BENCH, POINTS AND PILES MARKED WITH A 1" x 1" CAP MARK WITH A 1/2" DIA. BRASS ALUMINUM CAP
2. PILES AND BENCHES BEARING TRAIL FOR THE ALTAIR WAGON CROSSING THE RIVER, MARKED WITH PILES IN THE MIDDLE OF BENCHES AND

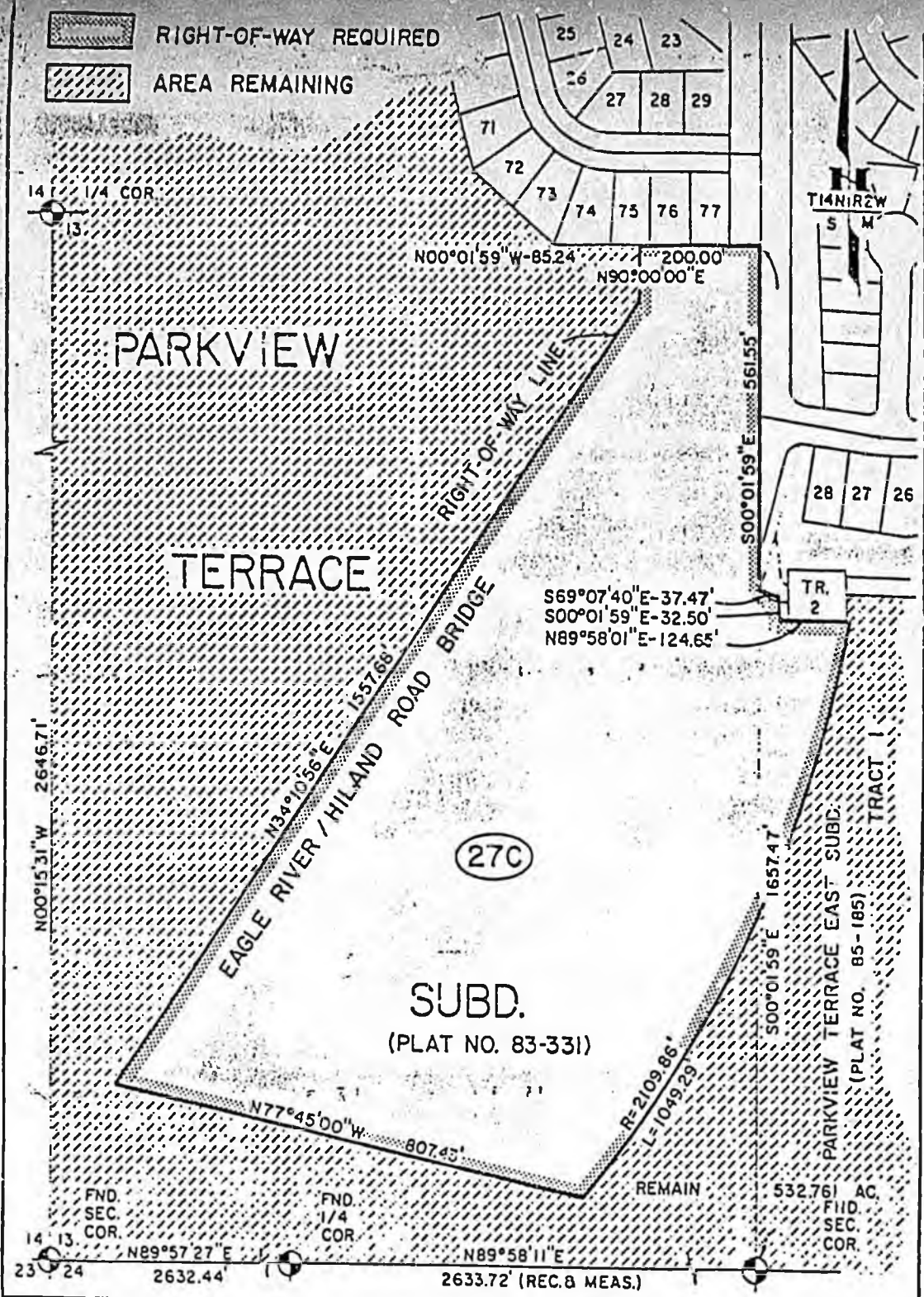


PROPOSED

SCALE	
DATE OF SURVEY	NAME OF SURVEYOR
PROPERTY	TITLE OF SURVEY
STATE OF ALASKA	
DEPARTMENT OF NATURAL RESOURCES	
DIVISION OF SURVEYING AND	
MEASUREMENTS AND GEOPHYSICAL SURVEYS	
EAGLE RIVER TRAIL	
SECTIONS 17 AND 18	
TOWNSHIP 14 NORTH, RANGE 1 WEST,	
SEWARD MERIDIAN, ALASKA	
DESIGNED BY	APPROVED BY
DRAWN BY	CHECKED BY
SCALE 1" = 200'	SHEET 2 OF 2

EXHIBIT B-1

 RIGHT-OF-WAY REQUIRED
 AREA REMAINING



EKLUTNA, INC.		STATE OF ALASKA	
By: _____		DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES	
_____		MAP SHOWING RIGHT OF WAY REQUIRED FOR EAGLE RIVER/HILAND ROAD BRIDGE	
_____		CENTRAL REGION .Area 21.6389 AC.	
Signature _____ Date _____		Scale 1" = 200' Project No 53121	
Attached To Easement Dated _____		EEP Date 12-27-85 Page No 27C	
Page 3 of 3			

DOCUMENTED ENCUMBRANCES OF RECORD

*attachment
B*

Eklutna File #

- R/W #31 1. Easement to DOT&PF for Eagle River bridge crossing. Variable length and width. 21.6389 acres. DOT&PF project file A8438/53121.
- R/W #³³~~32~~ 2. Easement to Matanuska Electric Assn., Inc. for a transmission and distribution line. Parallels section line in Section 13, T14N,R2W,S.M. 15 feet on each side of pole centerline. Lies partially within R/W #31.
- R/W #35 3. Easement reserved to Eklutna, Inc. for a sewer and waterline crossing. 40 feet wide. This line is not built. It is involved in Corps of Engineer permit #071-0YD-4-860429. Most of this alignment lies within Eklutna, Inc. R/W #31.
- R/W #26 4. Letter of Entry to ripen into a 10-foot wide permanent easement for a natural gas pipeline for ENSTAR Natural Gas Company.

5. Letter of Entry to DOT&PF to do soil investigation work for the proposed Hiland Road/Eagle River road project.
6. Plat restrictions pertaining to use of lands within Tract A-1 for Somerset Terrace Estates (Preliminary).
7. Plat restrictions pertaining to use of lands within Tract 1-B for Eagleridge Subdivision - Phase B per plat #83-252.
8. Plat restrictions pertaining to use of land within Tract 1-C, Parkview Terrace East Subdivision Tracts 1-A, 1-B, 1-C per plat #86-120. This area was formally platted as Tract 1 per plat #85-158.
9. EIN 61 (BLM File #AA25016). This is a 100-foot wide electric transmission easement extending from Section 13, T14N,R2W,S.M. to Section 16, T14N,R1W,S.M. This powerline is often referred to as the Briggs Transmission line.

R/W #13

10. A 30-foot wide (15 feet each side of centerline) electric distribution line for Matanuska Electric Assn., Inc. within the S2NW4 of Section 21, T14N,R1W,S.M. The east-west leg of this line lies within the 100-foot wide easement identified as EIN 61.

11. EIN 1. A 60-foot wide easement for the Lower Eagle River Trail shown on the U.S.G.S. Quadrangle Map. This road extends from Section 24, T14N,R2W,S.M. easterly and southeasterly through Section 31, T14N,R1E,S.M.

12. EIN 59. A 60-foot wide easement for old Eagle River Road on the north side of the river. This old road is separate from the existing Eagle River Road that is upgraded and maintained by DOT&PF.

)

UNDOCUMENTED OR UNAUTHORIZED ENCUMBRANCES

1. The Eklund homestead litigation (A79-336 Civil) and Carr homestead litigation (A79-336 Civil) are within Section 32, T14N,R1E,S.M. These are homestead claims that were denied to the applicants by the Bureau of Land Management. The plaintiffs have lost in the District Court and have appealed to the 9th Circuit Court. If the plaintiffs lose in the 9th Circuit Court, the issue is probably dead. It does not appear either would have an ANCSA 14(c)(1) claim for any of the land within the proposed greenbelt area.

2. The Donnelly homestead dispute is within the E2 of Section 25, T14N,R1W,S.M. The Donnelly case has progressed the same as Eklund and Carr except their case has been heard in the 9th Circuit Court. The decision from the court has been pending for two years.

Donnelly has used and occupied lands adjacent to the proposed greenbelt. This court case also carries the need for a ruling on a 14(c)(1) claim. It would be premature to determine if any greenbelt lands will be involved.

3. The Lee homestead litigation is within the NW4 of Section 25, T14N,R1W,S.M. The Lee case has progressed to the 9th Circuit Court. The briefs from Eklutna, Inc. are due in September 1986. A timely resolve to the litigation is not optimistic. A considerable amount of the Lee homestead claim lies within the proposed greenbelt. It is felt that Lee would not have a 14(c)(1) claim on any of the greenbelt land if he lost in court.

4. The McIntyre homestead litigation is within Section 23, T1N,R1W,S.M. McIntyre lost his appeal in the 9th Circuit Court. The attorneys inform us that McIntyre has prolonged his action through another maneuver. Regardless of this litigation outcome, or any 14(c)(1) claim, none of the proposed greenbelt will be impacted.

5. There may be claims for right-of-access to homesteaded lands to the south of the ANCSA 17(b) easement EIN 1-D9. The homesteaders built their roads long before ANCSA but the BLM did not reserve these lesser easements in the patent. Eklutna, Inc. does not have a list of who those users might be.

6. There appears to be a telephone line buried along the section line common to Section 13, T14N,R2W,S.M. and Section 18, T14N,R1W,S.M., also Section 24, T14N,R2W,S.M. and Section 19, T14N,R1W,S.M. Eklutna, Inc. has contacted the Matanuska Telephone Association on many occasions to determine if they had an easement of record. None has been provided, however, they did apparently apply for an easement at one time.

State of Alaska Department of Natural Resources has Eagle River Campground improvements located within Tract A-1 of Somerset Terrace Estates (Preliminary). The area is in the former W2NW2 Section 13, T14N,R2W,S.M.

Eklutna, Inc. is not aware of any other known underground entries on the proposed greenbelt lands.

EASEMENTS BEING RESERVED BY EKLUTNA, INC

Excepting and reserving to Eklutna, Inc. and its assigns:

1. The 17(b)(3) easement for EIN 1 D9 reserved in Patent No. 50-79-0094 will be expanded from the current 60-foot width to 100 feet where it passes through lands acquired by the state pursuant to this agreement to accommodate a future public road and public utilities. This easement can be adjusted to provide for a more desirable alignment.
2. Lands identified by Municipality of Anchorage permit 84-6003 in the SW4, Sec 18, T14N,R1W,S.M. as shown in Exhibit A shall remain available for use as a fill site for ten (10) years from the date of execution of this agreement. Use and restoration of this site shall conform to the conditions specified on the Municipality of Anchorage permit 84-6003.
3. A 200-foot wide floating easement across lands acquired by the state in accordance with this agreement in the SE4NE4 of Sec 20 and SW4NW4 of Sec 21, T14N,R1W,S.M. to accommodate a public road with bridge, and public utilities. If this easement is used, an as-built alignment will be provided and reduced down to a 100-foot wide easement.

4. Eklutna, Inc. reserves an access easement as follows:

North 100 feet of the NE4SE4 and the north 100 feet of the
east 100 feet NW4SE4, Sec 22, T14N,R1W,S.M.

WHEREAS, the Native village corporation of Eklutna, Inc. is the present owner of 3,680 acres of Eagle River wetlands and adjacent property along the Eagle River corridor;

WHEREAS, the state of Alaska has expressed a desire to acquire those lands to be used as an extension of the Chugach State Park to promote tourist and recreational activity along that corridor which will run through the Municipality of Anchorage;

WHEREAS, the state of Alaska is financially unable to build and maintain a State office building on two square blocks of downtown Anchorage property which it owns located between Fifth and Sixth Avenues and Cordova and "A" Streets, and it is therefore beneficial that these two blocks be commercially developed by the private sector;

WHEREAS, the state of Alaska and Eklutna, Inc. wish to exchange these tracts of nearly equal value for one another following legislative approval;

WHEREAS, Eklutna, Inc. and Robert Rogner of Villach, Austria wish to develop a recreational resort on an 103-acre tract of land abutting the proposed Eagle River Greenbelt;

WHEREAS, the recreational resort is expected to create 2,000 full time jobs and bring \$170 million of outside construction capital to Anchorage;

WHEREAS, this recreational resort is one half mile from the proposed location for the 1994 Olympic luge, bobsled and downhill ski jump planned for Hiland Mountain in Eagle River;

WHEREAS, Robert Rogner wishes his resort to offer downhill skiing on Hiland Mountain and the adjoining Gordon Lyon Mountain;

WHEREAS, the majority ownership of each of these mountains is held by the state of Alaska;

WHEREAS, a world class resort and the use of these mountains for downhill skiing would contribute to our Olympic effort and attract a new tourist market from Europe and Japan;

NOW THEREFORE BE IT RESOLVED:

that the Anchorage Chamber of Commerce supports and encourages the state of Alaska and Eklutna, Inc. to consummate the equal value land exchange and further encourages the state of Alaska to provide the opportunity for the commercial use of the State held mountains adjacent to the proposed Hiland Mountain resort for downhill skiing.

ADDENDUM #1 TO PRELIMINARY EXCHANGE AGREEMENT
ADL 223175
(January 16, 1987)

This Addendum #1 is entered into by the State of Alaska, Department of Natural Resources and Eklutna, Incorporated regarding the Preliminary Exchange Agreement, ADL 223175, dated August 13, 1986. The parties agree to accept the appraisals and values determined for each of the parcels as follows:

Eklutna, Inc. Land State Appraisal No. 1974	
Greenbelt without equalization parcels	\$8,597,000
Equalization Parcel No. 1	73,000
Equalization Parcel No. 2	72,000
Equalization Parcel No. 3	220,000
Equalization Parcel No. 4	110,000
Thunderbird Falls Parking Lot	31,300
	<u>\$9,103,300</u>

State Land State Appraisal No. 1975	
Lot 1A, Block 112A, Anchorage Original Townsite Plat #84-375	\$8,600,000

The parties agree to continue processing the exchange as follows:

1. The State will schedule and hold public hearings and make findings based on the hearings as provided in AS 38.50 to exchange the following parcels for equal value based on the above appraisals.
2. Eklutna, Inc. land being traded or acquired by the State:

Greenbelt without any equalization parcels 3 and 4	\$8,742,000
Thunderbird Falls Parking Lot	31,300
	<u>\$8,773,300</u>

3. State land being traded to Eklutna, Inc.:

Lot 1A, Block 112A Anchorage Original Townsite Plat #84-375	\$8,600,000
--	-------------

Addendum #1
January 16, 1987
Page #2

The parties also mutually agree that Paragraph #14 of the Preliminary Exchange Agreement, ADL 223175, be voided as of the date of the last party signing this Addendum #1. This action is needed to provide integrity to the hearing and best interest finding process.

Further, Eklutna, Inc. agrees that the final exchange agreement shall provide an option for the State to acquire on or before May 1, 1988 Equalization Parcel #3 for \$220,000 and Parcel #4 at \$110,000, the current appraised fair market values.

Acquisition of these parcels may be by equivalent value land, money, or other consideration.

Lee Stephan
Eklutna Inc.

January 16, 1987
Date

Tom Hawkins
State of Alaska
Department of Natural Resources

16 January 1987
Date

ADY:blg/0605b

For concessions:

1. Change the title by adding after "facilities":

and allowing for contract operation of some park facilities

2. Insert after p.1, line 25:

41.21.024. CONTRACT OPERATION OF FACILITIES IN STATE PARKS. (a) The commissioner may adopt regulations allowing concessionaires to operate park facilities under contract. These facilities may include but are not limited to boat launches, lodges, and food and gift shops. The department may not allow the collection of fees for ordinary park uses such as streamside fishing, walking, or picnicking, or for automobile parking associated with these uses.

(b) In considering concession proposals and choosing concession operators, the commissioner shall assure the protection of park values and the maintenance of a high-quality environment and recreation experience.

(c) Prior to entering into a contract for operations in a state park, the commissioner shall issue public notice on the proposed contract and must find that the contract will be in the best interests of the state and the park system.

772-86-015 b
1/17/86

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IN THE _____

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act approving the exchange of state owned lands for privately owned lands located inside Kachemak Bay State Park; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*Section 1. PURPOSE AND FINDINGS. The purpose of this Act is to approve the Final Exchange Agreement ADL No. _____ for an an exchange of lands between the State of Alaska and the Seldovia Native Association, Inc. arranged under Articles III and IV of the "Memorandum of Understanding Between The State of Alaska, the Kenai Peninsula Borough, Seldovia Native Association, Cook Inlet Region, Inc." made May 7, 1979. The legislature finds that all administrative actions undertaken by the Department of Natural Resources to arrange the exchange of lands have been consistent with applicable law and the public interest. The legislature further finds that because certain state lands to be exchanged under the Final Exchange Agreement ADL No. _____ were acquired under the Alaska Mental Health Enabling Act, Pub. L. No. 84-830, 70 Stat. 709 (1956), full reimbursement for those lands to the trust, in the amount of \$ _____, is appropriate.

*Sec. 2. APPROVAL. The Final Exchange Agreement, ADL No. _____, executed January __, 1986 by the Commissioner of the Department of Natural Resources and the President of the Seldovia Native Association, Inc. is hereby approved. The Commissioner is authorized and directed to take all necessary action to effectuate the Agreement's terms.

*Sec. 3. OTHER AGREEMENTS. This Act shall not relieve any party to the "Memorandum of Understanding" described in section 1 of any obligations which are not specifically addressed and satisfied under the terms of the Final Exchange Agreement, ADL No. _____.

*Sec. 4. APPLICATION OF OTHER STATE LAWS.

(a) Nothing in AS 13.11.025, AS 16.16.600, AS 09.50.120 or AS 09.50.270 may be construed as preventing the Commissioner of the Department of Natural Resources from conveying to Seldovia Native Association, Inc. whatever interest the state may have acquired by escheat judgment in T.9 S., R.14 E., Sec. 6, Lot 4, Seward Meridian, located on Powder Island.

DRAFT

(b) No person or governmental entity may commence an action challenging the legality of any section of this Act, the Final Exchange Agreement ADL No. _____, or any conveyance made pursuant to the Final Exchange Agreement ADL No. _____, unless the action is brought within 30 days of the effective date of this Act. The limitations period of this subsection may not be tolled under the provisions of AS 09.10.140, AS 09.10.160, AS 09.10.180 or AS 09.10.190, and no other limitations period or rule of law may be used to lengthen the 30 day limitations period established in this subsection.

Sec. 5. This Act takes effect immediately in accordance with AS 01.10.070(c).

Agreement
Log 2.0" sub

661-86-0283 AGO#

1/17/85

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FINAL EXCHANGE AGREEMENT
FOR AN EXCHANGE LANDS
BETWEEN THE STATE OF ALASKA AND THE SELDOVIA
NATIVE ASSOCIATION, INC.
ADL NO. _____

This contract to exchange lands is made this ____ day
of _____, 198__, between the state of Alaska ("state") and
Seldovia Native Association, Incorporated ("Seldovia").

Recitals

1. One May 7, 1979 Seldovia, the state, the Kenai Peninsula Borough, and Cook Inlet Region, Inc. executed a "Memorandum Of Understanding Between The State Of Alaska, The Kenai Peninsula Borough, Seldovia Native Association, Cook Inlet Region, Inc." ("Memorandum").

2. Under Articles III and IV of the Memorandum, the state and Seldovia agreed to negotiate and consummate an exchange of lands to restore the state's ownership in Kachemak Bay State Park. Kachemak Bay State Park was created in chapter 115 Session Laws of Alaska 1970 from lands tentatively approved to the state prior to the passage of the Alaska Native Claims Settlement Act of 1971. Under the latter Act, Seldovia was given the right to select and acquire the state's tentatively approved lands in the Park.

3. To date, pursuant to the Memorandum and AS 38.50, Seldovia and the state have consummated two land exchanges. one on March 15, 1983 involving 3,578 acres of Park land, and one one May 13, 1985 involving 960 acres of Park land. Neither exchange

1/17/85

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required state legislative review under AS 38.50.020(a) and 38.05.140, as neither exchange involved state lands of a value exceeding five million dollars, and neither exchange was for other than equal appraised fair market value.

4. The state and Seldovia now desire to consummate the ^{LARGEST OF THE} ~~final~~ land exchange contemplated by the Memorandum and needed to restore the state's ownership to ^{MOST OF THE} ~~lands~~ originally designated within Kachemak Bay State Park and currently the subject of Interim Conveyances Numbers 139, 304, and 372 from the United States to Seldovia. This ~~final~~ land exchange is subject to legislative review under AS 38.50.020(a) and 38.05.140.

Therefore, the state and Seldovia further agree and contract as follows:

Exchange Provisions

5. The state, through its Commissioner of the Department of Natural Resources, has executed the patent attached as Exhibit A, which patent is to convey to Seldovia all the state lands and interests therein Seldovia is to receive under this contract. Seldovia, through its duly authorized agent and president, has executed the warranty deed, attached as Exhibit B, which is to convey to the state all the Seldovia lands and interests therein the state is to receive under this contract. The patent and deed shall take effect and transfer ownership of the respective lands and interests described therein on the

1/17/85

effective date of a law duly enacted or concurrent resolution passed by the Legislature approving the terms of this contract and the exchange of lands it contemplates, but not before such effective date. In the event no such law or concurrent resolution takes effect before _____, 198__, then the patent, the deed, and this contract shall be void, unenforceable, and of no effect to convey lands or interests therein or to confer any right or claim to either party under the patent, the deed, or the terms of this contract.

6. The state and Seldovia agree that neither shall hereafter create any additional interest in the lands, or alter existing third party interests therein, covered by the patent or deed prior to their effective date. Prior to the effective date of the patent and deed, each party shall otherwise remain responsible for the continued administration of any third party interest for which the right of administration will otherwise pass on the effective date of the patent and deed.

7(a). On the effective date of the patent, and by virtue of the patent, Seldovia will receive all the state's right, title and interest in, including but not limited to the right to administer, the following third party interests, and no others, with respect to the lands conveyed in the patent:

ADL Number Description

[LISTING]

1/17/85

All other rights (including the right to administer) associated with third party interests to which the lands conveyed by the patent are subject shall remain with and continue to be solely the property of the state.

(b) With respect to all third party interests identified in the patent and deed, neither party shall be entitled to a transfer of fees, if any, received before the effective date of the patent and deed. The right to any fees due and owing but not yet received on the effective date of the patent and deed shall become solely the property of the transferee on the effective date of the patent and deed.

(c) The state shall notify all third party interests listed in subsection (a) of this paragraph within thirty days of the effective date of the patent of the transfer of administration of the third party interest to Seldovia. The notice shall be in substantially the format as the example at Exhibit C. On the effective date of the patent, Seldovia will become solely responsible for administration of those third party interests, and all risk of loss or claims of damage, or other liability will pass to Seldovia. The state agrees to, at Seldovia's request and state expense, deliver to Seldovia the original documents associated with the transferred third party interests, retaining a copy for state files.

(d) The following described lands located with the boundaries of Kachemak Bay State Park, as described in chapter 115 Session Laws of Alaska 1970, are currently the subject of

1/17/85

deeds or other claims of private ownership as follows:

<u>Description of Interest</u>	<u>Legal Description</u>
(1) Alaska Native Allotment AA 7602	?
(2) Alaska Selection Application AA 6701-G	?
(3) (others?)	

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In the event Seldovia should in the future acquire any right of ownership of any kind in these lands, then Seldovia agrees to consummate the transfer to the state of its ownership rights, by a sale or exchange, or combination thereof, to occur under applicable state laws and regulations then in effect.

9. The state and Seldovia agree that neither the patent nor the deed attached hereto may be recorded in any recording district or otherwise used in any way to secure, gain or confer property rights prior to the effective date of the legislature's approval of this contract.

10. Prior to the effective date of the legislature's approval of this contract, the risk of any damage or loss to the lands to be exchanged will remain with the lands respective owners. In the event any loss or damage occurs to lands subject to exchange, which loss or damage an independent appraiser confirms exceeds a value of \$ _____ (_____ thousand dollars), then the party to receive the damaged lands may, by written notice mailed first class mail prior to the effective date of the legislative approval, elect to rescind its participation in this contract.

1/17/85

11. The state and Seldovia agree that all requirements of AS 38.50 and other applicable laws and regulations have been fulfilled. The state and Seldovia agree that the exchange of lands is consistent with the requirements of AS 46.40.

12. The appraised fair market value of the lands to be conveyed ~~ed~~ by the state totals \$ _____, and to be conveyed by Seldovia totals \$ _____, as determined by state Appraisal No. _____. The state and Seldovia therefore agree that the lands to be exchanged are of equal appraised fair market value. Seldovia acknowledges that it has had the opportunity to review state Appraisal No. _____ and to do its own appraisal, and accepts state Appraisal No. _____ without warranty from the state as to its accuracy.

13. The state and Seldovia agree that this contract, including Exhibits A and B, may not be amended except by a writing signed by the Commissioner of the Department of Natural Resources and an authorized corporate officer of Seldovia.

Dated: _____, 198__

Esther C. Wunnicke
Commissioner
Department of Natural Resources
State of Alaska

SUBSCRIBED AND SWORN TO before me this ____ day of _____, _____.

Notary Public in and for Alaska

DRAFT

My Commission expires: _____

Dated: _____, 198__

Fred H. Elvasaas
~~Corporate acknowledgment for~~
President
Seldovia Native Association, Inc.

ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
)

THIS IS TO CERTIFY that on the ____ day of _____, 198__, before me, the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____, to me known and known to me to be the identical individual described in and who executed the within and foregoing _____ as _____ of _____ and _____ acknowledged to me that _____ signed the same as _____ of _____ in the name of and for and on behalf of said corporation, freely and voluntarily and by authority of its Board of Directors for the uses and purposes therein mentioned.

GIVEN UNDER MY HAND and official seal the day and year last above written.

Notary Public for Alaska
My commission expires: _____

ELLF

History

(SEE ALSO HB164)

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

I.

PREPAYMENT OF DISPUTED TAXES

I. The Problem

As of January 6, 1986 the oil companies owed the state \$908 million in disputed taxes. Due to the ARCO settlement of \$243 million on January 13, 1986, this total will be adjusted (new figures from DOR are expected next week). Since \$243 million is the amount of the settlement, it may not be the exact amount of taxes previously in dispute between ARCO and the state. The phrase "disputed taxes" refers to audited tax amounts contested by the companies, plus interest and penalties. Unfortunately, existing state law does not encourage speedy resolution of these cases and some of the disputes go back as far as 15 years.

The total reported by DOR to be disputed on Jan. 6, 1986 was \$908,293,008.61. The total amount varies from month to month due to such causes as interest charges and settlement of some of the disputes. For a schedule of all tax accounts receivable, see Attachment A. Here is a breakdown of what is owed:

-- Approximately \$524 million of the total is owed under the former separate accounting oil and gas corporate income tax for the years 1979 to 1981. (AS 43.21)

-- Approximately \$322 million is owed under the severance tax for the years 1976 to 1982. (AS 43.55)

-- The balance of about \$62 million is owed under the income tax statute for all corporate taxpayers.¹ (AS 43.20) While the \$62 million includes contested taxes for all corporate taxpayers, it is estimated that almost all of this amount is owed by the oil and gas corporations.

The main reason the taxes have not been paid is because the oil companies disagree with the state over the amount of their tax liability. They are contesting the tax assessments through established administrative channels in the Department of Revenue. At issue is the methodology for calculating certain revenues and expenses in order to determine the amount of tax owed to the state.

A second reason the taxes have not been paid is that many of the issues involved in the tax disputes are the subjects of major oil and gas litigation between the companies and the state.

A third reason the taxes have not been paid is that the companies appear to have little incentive to do so. Although interest rates on disputed tax liability (12% per AS 43.05.225) may currently be higher than commercial interest rates, it is clearly in the taxpayers' interest to

¹Before 1979 oil and gas companies paid income taxes under AS 43.20, like all other corporate taxpayers. Between 1979 and 1981 they paid income taxes under the separate accounting statute, AS 43.21, and also paid income tax for their non-oil and gas activities under AS 43.20. From 1982 to now, the companies again pay all their income tax under AS 43.20.

prolong the tax disputes and avoid payment for as long as possible. They may also hope for a settlement with the state in which they ultimately pay a smaller amount than originally assessed.

II. The Disputed Issues

The major severance tax issues are similar to those involved in the State v. Amerada Hess, et. al case, though resolution of the tax issues may well be different than the case itself. (The last chapter in this report discusses this case in more detail.) The amount of our royalty share is in question in this lawsuit because of a dispute over the wellhead value of the oil. The wellhead value is determined by the destination price of the oil minus the transportation costs -- primarily pipeline tariffs and tanker charges. The tanker charges and destination price are at issue in the Amerada Hess case and about 95 percent of the total disputed taxes owed under the severance tax law involve these issues.

The remaining severance tax disputes primarily involve:

- 1) what production expenses can be deducted;
- 2) the computation of pipeline income;
- 3) what income and expenses are non-oil related and should be taxed under the income tax statutes; and
- 4) proper pipeline tariffs for non-TAPS pipelines, such as the Kuparuk pipeline and the Panama Canal pipeline.

Roughly half of the separate accounting disputes involve all the issues involved in the severance tax

disputes. The other half of the separate accounting disputes involves these major issues: 1) how to compute production expenses; 2) how to compute pipeline income; 3) income and expenses that should be apportioned to AS 43.20; 4) appropriate pipeline tariff charges; 5) how much should be spent for the eventual closing down of the pipeline; and 6) how much value should be placed on recoverable reserves.

The separate accounting tax disputes are also similar to those in Arco, et. al. v. State, the lawsuit over the state's former separate accounting law (described in the second chapter of this report). Now that separate accounting has been upheld at every level of court review -- most recently by the US Supreme Court this past Monday when it dismissed the oil companies' appeal -- the Department of Revenue expects these tax disputes to progress further.

III. Existing Process for Resolving Tax Disputes

After an oil and gas corporation submits a tax return it is audited by the Department of Revenue. Generally speaking, the audit shows that the taxpayer owes more than the taxpayer's return says. The taxpayer is then assessed the audited amount. Again, generally speaking, the taxpayer contests the audit and the arduous process of resolving the dispute begins.

The first stage of the resolution process is referred to as the informal conference stage and almost 90 percent of currently disputed taxes are in this stage. This is when

DOR and the taxpayer try to resolve factual issues and agree on the amount of tax owed, a process that can take several years. If the dispute is resolved, the taxpayer pays the additional amount and the case is closed. (In some rare instances, the informal conference is skipped and the dispute is taken up immediately at the formal hearing level.)

If it is not resolved, the case moves along to the formal hearing stage. A DOR hearing examiner essentially acts in the capacity of a judge and decides the case. This stage can also take years. The Commissioner can either adopt or reject the decision, although all decisions ever issued have all been adopted.

After adoption of the decision, the taxpayer is required to pay the tax if no appeal is filed in the superior court. If the taxpayer pursues the dispute by appealing to court, then the court will require that a bond be posted in order to continue contesting DOR's decision.

IV. Inadequacy of the current resolution process

Because of our current dispute resolution process, it may take years before the taxpayers will settle or be required to pay the audited tax amounts. Some of the disputes concern taxes that were owed as far back as 1970 although in certain instances, audits may not have been performed until years after a return is filed because the assessment period has been waived.

The taxpayer then has no incentive to resolve the matter since he is not required to pay the audited tax until all the administrative and judicial channels to overturn the audit have been exhausted. By allowing the taxpayer to keep the disputed amounts for so long, current laws appear to encourage the taxpayer to prolong the dispute. Thus the taxpayer will have the disputed funds to invest and earn interest on, or to use for other purposes.

V. A Solution: Prepayment of Assessed Tax Amounts

In order for the state to collect taxes in a more reasonable time frame, the oil companies should be required to prepay the audited amount at some point in the dispute resolution process.

Prepayment could be required after the informal conference stage. At this point the taxpayer and the state have been negotiating and fine-tuning the tax liability for some time. Errors and omissions by the taxpayer and auditor are likely to have been corrected.

Alternatively, prepayment could be required after the formal hearing. The dispute has been reviewed by the entire DOR hierarchy and the Commissioner has adopted a decision. If prepayment is not required until after the formal hearing, specific time frames could be provided in law for each stage of the resolution process. Once the taxpayer has been assessed the audited amount, both the informal conference and formal hearing stages would have to be

completed within a certain number of years established in statute. This would guard against continued prolonging of disputes since prepayment would not be required until the end point of the department's internal review.

It makes fiscal sense to put some or all of the prepayments in escrow until the dispute is finally resolved. The escrow account could be viewed as a form of state savings, since it could still be several years until a particular dispute is finally resolved. In the meantime, the escrowed amounts could earn be invested and earn additional income. This would allow the state to save for the future and also provide protection in the event that the disputed tax liability would be resolved in the taxpayer's favor.

The prepayment requirement should also be applied to amounts owed for prior tax years. Applying the prepayment requirement to past years is essential in order to bring about faster resolution of the current tax disputes, since these disputes involve tax liabilities for earlier years.

Prepayment has precedents at both the state and federal levels. It is currently required by the IRS if the taxpayer decides to appeal to the federal district court or court of claims rather than to tax court. In fact, DOR currently has a prepayment regulation on the books that requires payment of estimated severance taxes but it only applies to the returns for the years after 1984 (14 AAC 55.165). (It also only addresses the issue of oil valuation, not

transportation assessments.) The regulation requires prepayment of an average amount owed by all taxpayers; it does not relate to actual assessed tax liability. This regulation only applies to the severance tax and does not capture back taxes owed under the two corporate income taxes.

A form of prepayment was also a provision of the state's former separate accounting law (in effect for the years 1979-1981). Since the language was vague on whether audited amounts were covered, DOR never enforced the statutory prepayment requirement for the assessed amounts. In enacting this prepayment provision, it is likely that the legislature did not foresee the need for extensive audits and the resultant lengthy dispute resolution process. However, the former prepayment provision can certainly be thought of as a precedent for the kind of prepayment advocated here, especially since the language was never contested by the taxpayers.

The Department of Law has informally advised that there are no legal problems with prepayment. A comprehensive and formal opinion, prepared by both the attorney general's office and the Department of Revenue, is expected early next week.

VI. Conclusion

The legislature should provide by statute for prepayment of audited tax amounts at a set point in the resolution process. This will insure the state receives its

share of oil revenues in a more timely manner and also protect the taxpayers from any initial auditing errors.

Such a prepayment requirement should not be viewed as an additional burden to the oil companies since the revenue that could be raised does not come from implementing new taxes; rather, it is revenue the state should have already received.

ALASKA DEPARTMENT OF REVENUE
APPEALED TAX ASSESSMENTS BY APPEAL LEVEL
 January 6, 1986

TAX TYPE	STATUTE	VALUE			COURT
		OF ACCOUNTS	CONFERENCE	FORMAL	
OIL & GAS CORP INC	AS 43.21	\$524,163,096.65	\$438,358,422.69	\$85,804,673.96	\$.00
OIL & GAS PRODUCTION	AS 43.55	321,697,462.15	300,848,926.97	20,848,535.18	.00
CORPORATE INCOME	AS 43.20	62,432,449.81	47,639,282.76	13,773,985.93	1,019,181.12
INDIVIDUAL INCOME	AS 43.20	2,844,081.31	2,828,965.29	15,116.02	.00
BUSINESS LIC GR RCPT	AS 43.70	2,686,323.31	1,777,731.64	524,380.37	384,211.30
FISHERIES	AS 43.75	1,925,335.87	1,150,173.69	775,162.18	.00
MOTOR FUEL	AS 43.40	1,525,206.60	970,498.59	554,708.01	.00
MINING	AS 43.65	828,697.24	828,697.24	.00	.00
OIL & GAS PROPERTY	AS 43.56	385,779.18	9,321.98	.00	376,457.20
FIDUCIARY INCOME	AS 43.20	183,636.52	183,636.52	.00	.00
SALMON ENHANCEMENT	AS 43.76	42,535.97	29,618.97	12,917.00	.00
ESTATE	AS 43.31	30,840.49	30,840.49	.00	.00
SEAFOOD MARKETING	AS 16.51	8,119.55	8,119.55	.00	.00
INDIVIDUAL WITHHOLD	AS 43.20	7,610.85	7,610.85	.00	.00
TOBACCO (CIGARETTE)	AS 43.50	4,487.22	4,487.22	.00	.00
WHL CANNED SALMON	AS 43.80	2,250.00	2,250.00	.00	.00
LIQUOR EXCISE	AS 43.60	485.13	485.13	.00	.00
COIN OPERATED DEVICE	AS 43.35	.00	.00	.00	.00
TOTAL TAX ACCOUNTS RECEIVABLE		\$918,768,397.85	\$794,679,069.58	\$122,309,478.65	\$1,779,849.62

PERCENT OF TOTAL VALUE 1.3 100.00% 86.49% 13.31% 0.20%

TAX TYPE	STATUTE	NUMBER			
		OF ACCOUNTS	CONFERENCE	FORMAL	COURT
OIL & GAS PRODUCTION	AS 43.55	496	413	83	0
CORPORATE INCOME	AS 43.20	405	314	82	9
INDIVIDUAL INCOME	AS 43.20	253	243	10	0
MOTOR FUEL	AS 43.40	153	92	61	0
FISHERIES	AS 43.75	54	41	13	0
BUSINESS LIC GR RCPT	AS 43.70	42	32	8	2
OIL & GAS CORP INC	AS 43.21	36	21	15	0
SALMON ENHANCEMENT	AS 43.76	20	18	2	0
MINING	AS 43.65	8	8	0	0
SEAFOOD MARKETING	AS 16.51	7	7	0	0
FIDUCIARY INCOME	AS 43.20	7	7	0	0
INDIVIDUAL WITHHOLD	AS 43.20	5	5	0	0
OIL & GAS PROPERTY	AS 43.56	5	4	0	1
WHL CANNED SALMON	AS 43.80	3	3	0	0
TOBACCO (CIGARETTE)	AS 43.50	2	2	0	0
ESTATE	AS 43.31	2	2	0	0
LIQUOR EXCISE	AS 43.60	1	1	0	0
COIN OPERATED DEVICE	AS 43.35	0	0	0	0
TOTAL TAX ACCOUNTS		1,499	1,213	274	12

PERCENT OF TOTAL ACCOUNTS 100.00% 80.92% 18.28% 0.80%

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH 5
JUNEAU, ALASKA 99911
PHONE: (907) 465-2300

January 30, 1986

The Honorable Al Adams
Chairman
House Finance Subcommittee on Oil and Gas
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: Expedite Collection of
Disputed Taxes

Dear Representative Adams:

A proposal has been raised in the Interim Report of the House Finance Subcommittee on Oil and Gas (January 17, 1986) to require prepayment of disputed taxes at some stage in the appeal process in order to expedite the collection of disputed taxes. We appreciate the opportunity afforded us to comment on this issue.

The Department of Revenue is concerned that the proposal will have a detrimental impact on its operations, emphasis, and ability to litigate tax challenges. Rather than expedite resolution of tax disputes, it is the Department's view that the prepayment requirement concerning disputed taxes will create delays. The adverse impact will be greater the earlier the prepayment requirement is imposed. Additionally, the prepayment proposal will affect taxpayers other than oil and gas companies if it is imposed on the corporation net income tax under AS 43.20 et. seq.

Instead, we believe the collection of disputed taxes can be expedited more successfully through approaches other than the prepayment requirement. These approaches have been recently adopted and their effect is already being felt.

In this letter, we outline the handling of disputed tax controversies by examining the assessment and appeal process, discussing the reasons for delays, and the effect the prepayment requirement may have on the various levels of the Department's appeal process.

I. The Assessment And Appeal Process

There are two levels of administrative appeal within the Department, the informal conference and the formal hearing. Appeal after the formal hearing decision is to Alaska Superior Court. The appeal process can proceed through the courts to the U.S. Supreme Court. Final resolution of the appeal occurs after exhaustion or waiver of judicial appeal rights. It is only then that the disputed taxes must be paid if the final determination is against the taxpayer.

A. The Assessment Level Of Review

The Audit Division is responsible for reviewing tax returns and monitoring taxpayers through audits to insure that taxable income is properly calculated and reported. If the Division determines that an adjustment is required, it will inform the taxpayer that either more taxes are owed or a refund is warranted. If more taxes are due, an assessment notice will be issued.

As a practical matter, assessments are often made as the three year statute of limitations is about to expire. These assessments are often high as compared to the final adjusted assessment made during the appeal period. The reason is that auditors must make an aggressive although reasonable evaluation in order to insure that the State receives the money it is entitled to. They cannot later amend the assessment after the statute of limitations for assessments has expired except under limited circumstances. The taxpayer has the right to appeal an assessment within 60 days of being notified of an assessment.

1. Reasons For Delay

There are two primary reasons for delay during the assessment period. Assessments often are made as the three year statute of limitations is about to expire because audits of taxpayers, especially large multi-state and multi-national taxpayers, can take years to complete. Other audits underway may deal with the same issue or taxpayer. It is not an administratively sound practice to litigate the same issue for each taxpayer for each tax year. Accordingly, a delay may occur to allow a "lead" audit to proceed to completion.

2. Prepayment after Assessment

As a practical matter, if prepayment were required after the assessment, taxpayers might not be as cooperative in providing the information during the three year audit period, or in waiving the statute of limitations. This lack of cooperation would require the department to employ more discovery devices (subpoenas, summons, interrogatories, depositions, etc.), which would be costly in both time and money.

B. Informal Conference

The informal conference is the first level of review of a challenged assessment. A conference officer discusses the assessment with the taxpayer through correspondence, in-person, or through telephone conferences. Unlike the formal hearing in which the Appeals Section does take an adversary role on behalf of the Audit Division, the purpose of the informal conference is to provide an opportunity for discussion. As a result of this nonadversarial approach, the expertise

of the Appeals Section, and its ability to settle cases, nearly 90% of all assessment disputes are resolved at the informal conference level of review.

1. Reasons For Delay

There are a number of reasons for delay at the informal conference level. Many of these reasons are identical to those experienced at the assessment level. The time frame for holding an informal conference may vary, depending on the complexity of the issues, stays and consolidations of appeal, the availability of the pertinent officials of the taxpayer, the number of informal conference officers, etc.. A great deal of the assessment actions have been stayed until resolution of certain basic issues. Staying appeal cases allows the Department to screen similar cases and proceed with the "best" test case.

2. Prepayment after Informal Conference

If prepayment of disputed taxes is required after the informal conference decision, the nature of the informal conference will become adversarial. Part of the reason for this change in atmosphere is that attorneys will be forced to enter the tax appeal process at an earlier stage of review.

C. Formal Hearing

The formal hearing is the administrative trial level for tax disputes. A Department of Revenue hearing examiner is appointed by the Commissioner to serve as a hearing officer for the appeal. A formal hearing is often preceded by a prehearing conference, briefing, and discovery requests. Full due process safeguards are provided with adequate notice and full opportunity to be heard by an impartial hearing officer. A formal hearing decision is issued after the record is closed and reviewed.

1. Delays In The Formal Hearing Process

Delays have occurred in the formal hearing process for some of the same reasons previously mentioned. In addition, the nature of the hearing process in affording both the taxpayer and the Audit Division the full opportunity to explain their respective cases causes delays. Additionally, since the Hearing Examiner Section handles not only tax appeals but other revenue appeals, staff limitations and backlogs of cases contribute to delays. Delays have also resulted because of stays pending resolution of a number of tax cases before the courts, both at the federal and state levels.

2. Prepayment of Disputed Taxes After Formal Hearing

Payment after formal hearing occurs, of course, if the taxpayer does not appeal to the Superior Court. Prepayment as a condition or prerequisite for judicial action may require the creation of a different form of action. In other words, instead of an appeal, a taxpayer would file an original action claiming a refund. The Superior Court would not be limited to review of the formal administrative record, but would, in effect, try the case de novo. The Department's concerns about such a procedure are two-fold: one, delays of substantial periods would be encountered; and, two, the Court's decisions on tax issues would not be based upon the administrative record, but upon new findings of fact and conclusions of law. In effect, contested cases will have two trials with potentially differing results, creating confusion in the interpretation of Alaska's tax law.

D. Other State's Assessment And Appeal Processes

We are unaware of any state that requires prepayment of disputed income taxes during the administrative appeal process, although some require payment at later levels of judicial review. State Tax Review Agencies: Organization and Practices, Federation of Tax Administrators Research Report No. 79 (December 1978). The prepayment requirement for disputed taxes is often limited to certain types of taxes that would therefore effect a limited group of taxpayers. See In the Matter of the Tax Appeal of Simpson Mannor, Inc., 548 P.2d 246 (Haw. 1976) (excise taxpayers required to pay before proceeding to Tax Appeals Court, although net income, real property, public service company and bank franchise taxpayers could appeal without prepayment of disputed taxes).

II. Alternative means to Expedite Collections Of Disputed Taxes

There are a number of alternatives to prepayment of disputed taxes, many of which we have implemented to expedite the collection process for appealed taxes.

At the audit level, assessments are progressing at a more rapid rate. The major reason for this change is that through experience, advanced marketing data, familiarity with the various taxpayers' businesses, and clarification of legal issues and positions, audits are shorter in duration and more thorough. Also, resolution of certain issues has resulted in fewer contested issues.

At the informal conference level, a major breakthrough in the dam of backlogged cases was the judicial resolution of the constitutionality of the separate accounting methodology under AS 43.21 et. seq.. ARCO v. State of Alaska, Department of Revenue, Alaska Supreme Ct. Op. No. 2965 (August 16, 1985, appeal dismissed by the U.S. Supreme Ct on January 13, 1986. Now, other issues that were stayed pending the resolution of the constitutional issues are progressing through informal conferences.

Another major change is the transfer of the informal conference functions to the Appeals Section of the Audit Division. The Appeals Section has five conference staff members who are attorneys, CPAs, or audit staff with extensive years of experience in tax matters.

At the formal hearing level, the Alaska Supreme Court's resolution of various tax issues has greatly impacted the number of cases or issues stayed at the formal hearing level of appeal. The reduction in the backlog of cases and additional staff should enable the Hearing Examiner Section to be able to issue a decision within six months of closure of a hearing by the end of 1986.

Another major change affecting the collection of disputed tax monies was the increase in the tax interest rate. AS 43.05.225 was amended in 1982 by raising the interest rate on delinquent taxes from eight percent to twelve percent. As a result, taxpayers no longer have the disincentive to pay and then to use the disputed taxes on other investment opportunities while the appeal is pending.

III. Summation

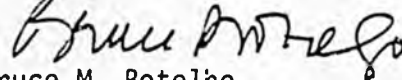
We have strong concerns that the requirement to prepay disputed taxes at some level in the review process will not expedite the resolution of disputed tax cases. Rather, we think it could impair the strategy and ability of the Department to defend its assessments and may create an adversary relationship that could permeate the assessment and appeal process, end the practice of voluntary compliance, hamper the ability of the Department to obtain needed information, diminish the Department's success rate in defending its assessments and decisions, delay the resolution process, and require additional staff at every level of the assessment and appeal process.

We believe that expedition of collecting disputed taxes is better accomplished through other approaches, many of which are currently being implemented. Greater experience and knowledge at the audit level in administering the new tax programs, a more proficient appeals staff, negotiated settlements of cases at the informal conference level,

The Honorable Al Adams
January 30, 1986
Page 6

reduction of the backlog of appeals at the formal hearing level, and recent Alaska Supreme Court cases have and will greatly expedite the resolution of disputed tax cases. An increase in the interest rate has already spurred early payment of disputed taxes. These changes should insure earlier payment of taxes owed the State.

Sincerely,



Bruce M. Botelho
Deputy Commissioner, Taxation



Theresa Hillhouse
Revenue Chief Hearing
Examiner

cc: Members of the House Finance Committee

Karen L. Loeffler
Shelly J. Higgins
Oil and Gas Section
Department of Law

BB:TH:mkw
86-14

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 29, 1986

Honorable Al Adams
Alaska State Legislature
Pouch V
State Capital
Juneau, Alaska 99811

Re: Prepayment of disputed taxes
Our file: 166-268-86

Dear Representative Adams:

You have requested our opinion on the constitutionality of requiring payment of disputed taxes from taxpayers pending proper appeal of the assessed amounts. You have also asked our opinion on when in the dispute resolution process such payment would be appropriate and whether the collected sums must be put in escrow pending the outcome of the dispute. You have noted that you are especially interested in these questions as they concern taxes owed to the state by the oil and gas corporations under AS 43.21, AS 43.20 and AS 43.55, since, you have stated, "back taxes under these three statutes currently total about \$900 million." Thus, you are interested in whether any proposed changes in the appeal process to require payment of disputed taxes may be applied to the cases currently pending.

We conclude that a requirement that disputed taxes be paid at some point prior to final resolution of the dispute in the courts is permissible under both the Alaska and United States constitutions. We also believe that a statute requiring that taxes be paid pending appeal could be drafted so as to apply to disputes pending at the administrative level at the time of enactment and further, that the state need not escrow payments of disputed taxes but could enact valid legislation authorizing such procedures.

Finally, although we have found nothing that would bar legislation creating a prepayment requirement, we think that there are some practical and policy concerns that would have to be addressed in connection with any specific proposal to change the procedures for the collection of disputed taxes. The Department of Revenue has a number of comments as to the practical implications of any proposed legislation in this area and will be providing you with a list of their concerns.

BACKGROUND: EXISTING PROCEDURES AND APPLICABLE STATUTES AND REGULATIONS

The procedures for taxpayer appeals are currently governed by AS 43.05.240 and Alaska Appellate Rules 602(c) and 204. AS 43.05.240 controls the administrative appeal process and generally provides for a two step process. 1/ In most instances the

1/ AS 43.05.240 provides as follows:

Taxpayer remedies. (a) A person aggrieved by the action of the department in fixing the amount of a tax or in imposing a penalty may apply to the department within 60 days from the date of mailing the notice [of assessment] ... giving notice of the grievance and requesting an informal conference. At the conference the person aggrieved may present arguments and evidence relevant to the amount of tax or penalty due the state. If the department determines that a correction is warranted, the department shall make the correction.

(b) A person aggrieved by the action of the department in fixing the amount of a tax or in imposing a penalty may apply to the department and request a formal hearing

(1) in place of the informal conference provided for in (a) of this section ...or;

(2) within 30 days after decision resulting from an informal conference.

(c) At the formal hearing the department may subpoena witnesses and may administer oaths and make inquiries necessary to determine the amount of the tax or penalty due the state. The person aggrieved may present arguments and evidence relevant to the amount of the tax penalty due the state. If the department determines that a correction is warranted, the department shall make the correction.

(d) Within 30 days after the formal hearing and decision by the department, a person aggrieved by the decision of the department may appeal to the superior court in the judicial district in which the person resides. If after the appeal is heard it appears that the tax was correct, the court shall confirm the tax. If incorrect, the court shall determine the amount of the tax and if the person aggrieved is entitled to recover the tax or part of it,

(footnote continued)

taxpayer who wishes to protest an assessment begins by requesting an informal conference. 2/ The purpose of the informal conference is both to resolve the dispute, if possible, and to clarify those issues left to be resolved at the formal hearing. In fact, many disputes are resolved at this level.

A taxpayer who does not agree with the informal conference decision may then request a formal hearing. However, the taxpayer first pays any part of the assessment that relates to issues resolved at the informal conference level, thus, streamlining the matters to be addressed at the formal hearing.

The formal hearing is conducted by a hearing officer and is governed by trial-type procedures under which the taxpayer and audit staff may call witnesses to testify under oath, cross-examine witnesses, and introduce documentary evidence relevant to determining the amount of tax due. 3/ AS 43.05.240; 15 AAC 05.030.

If, after the formal hearing decision, any part of the assessment is still in dispute, appeal is to the superior court. AS 43.05.240(d) provides that a taxpayer may appeal to superior court within 30 days after the formal hearing decision is issued. This statute does not expressly require the taxpayer to pay the disputed taxes before appealing to a superior court. However, Section 240(d) can reasonably be interpreted to require prepayment prior to judicial review and this interpretation is reflected in the department's regulations. 15 AAC 05.040 requires full payment of

but never enforced.

(footnote continued)

the court shall order the repayment and the department shall immediately pay the amount due....

2/ Although the informal conference can be waived, see AS 43.05.240 (b)(1), the department discourages this practice since it often leads to delays in the formal hearing process as numerous pre-conference hearings become necessary to clarify issues and generally accomplish those matters usually accomplished by the informal conference.

3/ According to representatives of the Department of Revenue, at formal hearing taxpayers win at least a partial abatement in approximately 50% of the appeals of assessments under all tax laws.

*Continue
to Rev.
Position?*

If you're referring to 15 AAC 05.040...