

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5211 SCRA SB 221 - SB 282

783

Jack Mosby  
3026 Wesleyan Drive  
Anchorage, AK 99508  
March 1, 1987

Governor Steve Cowper  
Pouch A  
Juneau, AK 99811.


Dear Governor Cowper:

I am writing this letter to express my support for the Eagle River Green Belt Land exchange (ADL 223175). This is the land exchange that involves trading Eklutna's land (from the State's Eagle River Campground to the Chugach State Park boundary and several other smaller parcels) for the State's former office building site in downtown Anchorage (block 112 A).

As a frequent user of the area throughout the year with my family of four for walking, skiing and rafting, I place a very high value on this land for public recreation.

This trade will resolve two problems of trespass on Eklutna land at the Eagle River Campground and at the Thunderbird Falls Trail parking lot. These are areas that my family, friends and visitors alike use several times a year. The exchange also opens the potential for additional access to the Eagle River Green Belt and puts former state land back on the tax rolls.

Sincerely,

  
Jack Mosby

cc: Representative Ramona Barnes  
Representative Patrick Pourchot  
Senator Rick Halford  
DNR-Southcentral Mgr.

Representative Sam Cotton  
Representative Randy Phillips  
Senator Tim Kelly

2136 E. 37th St., #C  
Anchorage, AK 99509  
Feb. 27, 1987

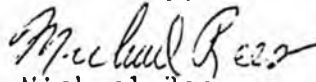
The Alaska Dept. of Natural Resources  
P.O. Box 1007005  
Anchorage, AK 99510-7005

To Whom It May Concern:

I recently learned that the DNR is having second thoughts about recommending the reacquisition of the Eagle River greenbelt lands and returning them to Chugach State Park. I strongly urge you to proceed with recommending the proposed land exchange with Sklutna, Inc. to the legislature. The Eagle River greenbelt is one of the most important recreational river areas in the Municipality of Anchorage, easily accessible to over half of the state's population (as well as many of the tourists who come to visit this state). The greenbelt provides important wildlife habitat. Returning it to the state park would protect these values, as well as protect the river's water quality and scenic values. The greenbelt also has economic benefits to the state's recreation and tourism businesses. In addition, the land exchange would put downtown land back into private ownership for development, and increase the municipal tax rolls.

Again, I strongly urge you to recommend the Eagle River greenbelt lands be returned to Chugach State Park. Thank you for your time. Please keep me informed on the outcome of this issue.

Sincerely,

  
Michael Rees

c.c. Jan Faiks

MAR 5 1987

Margaret J. Hayes  
Regional Mgr  
Division Land & Water Mgmt  
Southcentral Regional Office  
PO Box 107005  
Anchorage AK 99510

3/2/87

MAR 6 1987

Dear Ms Hayes

I am writing in support of the land exchange in Eagle River that would extend the Chugach State Park to the Eagle River Greenbelt. Exchanging this vital piece of property for both environmental protection as well as for recreational use seems highly desirable.

I am an active environmentalist & strongly support protecting valuable albeit fragile properties that will help conserve our ecosystem. My fellow environmentalist that live outside come to visit me in Alaska frequently. Having such a lovely access to the Eagle River will heighten our recreational pleasure as well as give us pleasure knowing that Alaska policy makers are responsive to environmental issues. I will be happy to speak more at your request

Sharon Dowling  
3224 Muriel Pt  
Anchorage AK 99511

**JAMES B. GOTTSTEIN**

ATTORNEY AT LAW

406 G STREET, SUITE 206  
ANCHORAGE, ALASKA 99501  
(907) 274-7686

MAR 5 1987

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.

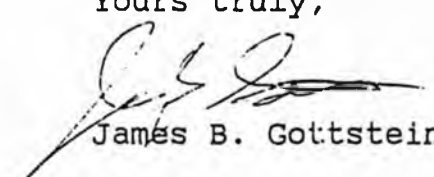
It is our position that these lands, and indeed all other suitable state lands, should not be disposed of by the state until such time as the Mental Health Trust Lands Litigation has been resolved. As you know, the amount of available state land suitable for inclusion in the Trust is very limited. For 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

FINAL EXCHANGE AGREEMENT  
ADL 223175  
Eklutna, Inc. and State of Alaska  
Eagle River Greenbelt

This final exchange agreement for the negotiated exchange of lands is made by and between Eklutna, Inc. (herein referred to as "Eklutna") whose address is 550 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. This exchange is being made pursuant to AS 38.50 and Section 22(f) of the Alaska Native Claims Settlement Act as amended (43 USC § 1621(f)) and other authority.
2. 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.
3. 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.
4. 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 March 6, 1987, 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.
5. The Commissioner has found that this exchange is consistent with the Alaska Coastal Management Program.

AGREEMENT

The parties hereby agree as follows:

6. Conveyance by Eklutna.
  - a. Eklutna will convey the surface estate, subject to reservations and exceptions contained in the patents, the land described in Attachment A containing approximately 3558 acres. This land was acquired by Eklutna by United States Patents 50-79-0094, 50-79-0149, and 50-74-0164.

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- b. Eklutna will grant the state an option to acquire the surface estate in the land described below for the values shown. The option must be exercised in writing by the state before May 1, 1988; provided, however, that if sufficient funds in Capital Improvement Project account number 39454 are made available before July 1, 1987, the state must exercise its option before August 1, 1987.

Subunit No. 3, \$220,000

T14N, R1W, S.M. Section 19: That portion of N1/2NE1/4 and NE1/4NW1/4 lying 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 lying 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.

7. 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

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OSL 783 North 45' of Lot 12, Blk 113  
Vacation of streets and alleys through  
resubdivision

C.A. No. 3AN-82-09406  
Plat 84-375

8. Reservations and third party interests on the surface estate to be conveyed by Eklutna.

The reservations and third party interests on the surface estate (including subunits No. 3 & 4) to be conveyed by Eklutna are described in Attachment B.

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

The state will reserve only those interests required by 38.05.125 and the plat of survey 84-375. There are no third party interests in the land.

10. 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.

11. 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.

12. 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.

13. 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.

From and after the effective date of legislation approving the exchange, Eklutna, Inc. shall defend and save the state harmless from any and all claims for damages or cause of action at law or in equity, real or supposed, mature or immature, that arise upon or in connection with the land to which Eklutna, Inc. receives possessory rights; provided, however, that the state will retain sole responsibility for the structures presently located on the land which will be removed prior to July 1, 1987.

From and after the effective date of legislation approving the exchange, the state shall defend and save Eklutna, Inc. harmless from any and all claims for damages or cause of action at law or in equity, real or supposed, mature or immature, that arise upon or in connection with the land to which the state receives possessory rights; provided, however, that Eklutna will retain sole responsibility for the adjudication and resolution of any claims concerning the land made pursuant to section 14(c) of the Alaska Native Claims Settlement Act, 43 USC § 1613(c).

14. 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 in the amount of \$8,600,000.00 acceptable to Eklutna will be provided to Eklutna for the land it is to receive. The costs of the title insurance will be paid by the state.



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- b. if to the state:        Director  
                                 Alaska Division of Land and Water Management  
                                 P.O. Box 107005  
                                 Anchorage, Alaska 99510

20. 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 Attachments A and B which are referred to herein.
- 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.
- f. The terms of this agreement shall be binding upon and inure to the benefit of, and be enforceable by, the representatives and successors of the parties.
- g. Any lawsuit arising out of or related in any way to this agreement must be brought in Anchorage, Alaska. The parties waive any objections to venue being located in Anchorage, Alaska.

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h. If any legal action or other proceeding is brought for the enforcement of this agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees, at trial and upon appeal, in addition to any relief to which it or they may be entitled.

STATE OF ALASKA

*J. M. Brady*  
for Judith M. Brady, Commissioner

MARCH 6, 1987  
Date

STATE OF ALASKA            )  
  ) ss.  
Third Judicial District    )

THIS IS TO CERTIFY that on this 6<sup>th</sup> day of March, 1987, before me appeared Richard Lefebvre of the Department of Natural Resources of the State of Alaska, who executed the foregoing Final Exchange Agreement and acknowledged voluntarily signing the same.

*Helena Linn*  
Notary Public in and for the State of Alaska  
My Commission Expires: October 20, 1988





3/5/87

ATTACHMENT A

Eklutna lands to be acquired by the State as shown on map (Exhibit A and Exhibit D) 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; Tract A-1, proposed Somerset Terrace Estates (now redesignated as Tract D, Dena'ina Estates Subdivision Preliminary). Included in this parcel is the portion of 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 and Tract 2 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 mees 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 $\frac{1}{4}$  and 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  $N48^{\circ} W$  for 1,200 feet to a point; then northwest approximately  $N80^{\circ} W$  500 feet to a point; thence northeast approximately  $N47^{\circ} E$  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  $N\frac{1}{2}, E\frac{1}{2}SE\frac{1}{2}, NE\frac{1}{2}SE\frac{1}{2}SW\frac{1}{2}SE\frac{1}{2}, NE\frac{1}{2}SW\frac{1}{2}SE\frac{1}{2}, N\frac{1}{2}NW\frac{1}{2}SW\frac{1}{2}SE\frac{1}{2}, NW\frac{1}{2}SE\frac{1}{2}, E\frac{1}{2}NE\frac{1}{2}SW\frac{1}{2}, NE\frac{1}{2}SW\frac{1}{2}NE\frac{1}{2}SW\frac{1}{2}, NW\frac{1}{2}NE\frac{1}{2}SW\frac{1}{2}, E\frac{1}{2}NE\frac{1}{2}NW\frac{1}{2}SW\frac{1}{2}, NW\frac{1}{2}NE\frac{1}{2}NW\frac{1}{2}SW\frac{1}{2},$  and  $NE\frac{1}{2}NW\frac{1}{2}NW\frac{1}{2}SW\frac{1}{2}$ . Including the bed of Eagle River.

Section 27:  $N\frac{1}{2}NE\frac{1}{2}, N\frac{1}{2}SE\frac{1}{2}NE\frac{1}{2}, N\frac{1}{2}S\frac{1}{2}SE\frac{1}{2}NE\frac{1}{2}, SE\frac{1}{2}SE\frac{1}{2}SE\frac{1}{2}NE\frac{1}{2}, NE\frac{1}{2}SW\frac{1}{2}NE\frac{1}{2}, N\frac{1}{2}NW\frac{1}{2}SW\frac{1}{2}NE\frac{1}{2}, N\frac{1}{2}NE\frac{1}{2}NW\frac{1}{2}, E\frac{1}{2}SE\frac{1}{2}NE\frac{1}{2}NW\frac{1}{2}, NW\frac{1}{2}SE\frac{1}{2}NE\frac{1}{2}NW\frac{1}{2}, NE\frac{1}{2}SW\frac{1}{2}NE\frac{1}{2}NW\frac{1}{2}, NE\frac{1}{2}NE\frac{1}{2}NW\frac{1}{2}NW\frac{1}{2}$  all land north of the north boundary of the 17(b)(3) easement (EIN 1 D9).

Section 35:  $NE\frac{1}{2}NE\frac{1}{2}NE\frac{1}{2}, NE\frac{1}{2}NW\frac{1}{2}NE\frac{1}{2}NE\frac{1}{2}$ .

Section 36: That portion of land within  $NE\frac{1}{2}, N\frac{1}{2}NE\frac{1}{2}SE\frac{1}{2}, SE\frac{1}{2}NE\frac{1}{2}SE\frac{1}{2}, N\frac{1}{2}SW\frac{1}{2}NE\frac{1}{2}SE\frac{1}{2}, N\frac{1}{2}NE\frac{1}{2}SE\frac{1}{2}SE\frac{1}{2}, SE\frac{1}{2}NE\frac{1}{2}SE\frac{1}{2}SE\frac{1}{2}, NE\frac{1}{2}NW\frac{1}{2}SE\frac{1}{2}, NE\frac{1}{2}NW\frac{1}{2}NW\frac{1}{2}SE\frac{1}{2}, N\frac{1}{2}SE\frac{1}{2}SE\frac{1}{2}NW\frac{1}{2}, NE\frac{1}{2}SE\frac{1}{2}NW\frac{1}{2}, E\frac{1}{2}NW\frac{1}{2}SE\frac{1}{2}NW\frac{1}{2}, NW\frac{1}{2}NW\frac{1}{2}SE\frac{1}{2}NW\frac{1}{2}, NE\frac{1}{2}NW\frac{1}{2}, N\frac{1}{2}NE\frac{1}{2}SW\frac{1}{2}NW\frac{1}{2}, E\frac{1}{2}NW\frac{1}{2}NW\frac{1}{2}, SE\frac{1}{2}SW\frac{1}{2}NW\frac{1}{2}NW\frac{1}{2}, N\frac{1}{2}SW\frac{1}{2}NW\frac{1}{2}NW\frac{1}{2},$  and  $NW\frac{1}{2}NW\frac{1}{2}NW\frac{1}{2}$ . 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.

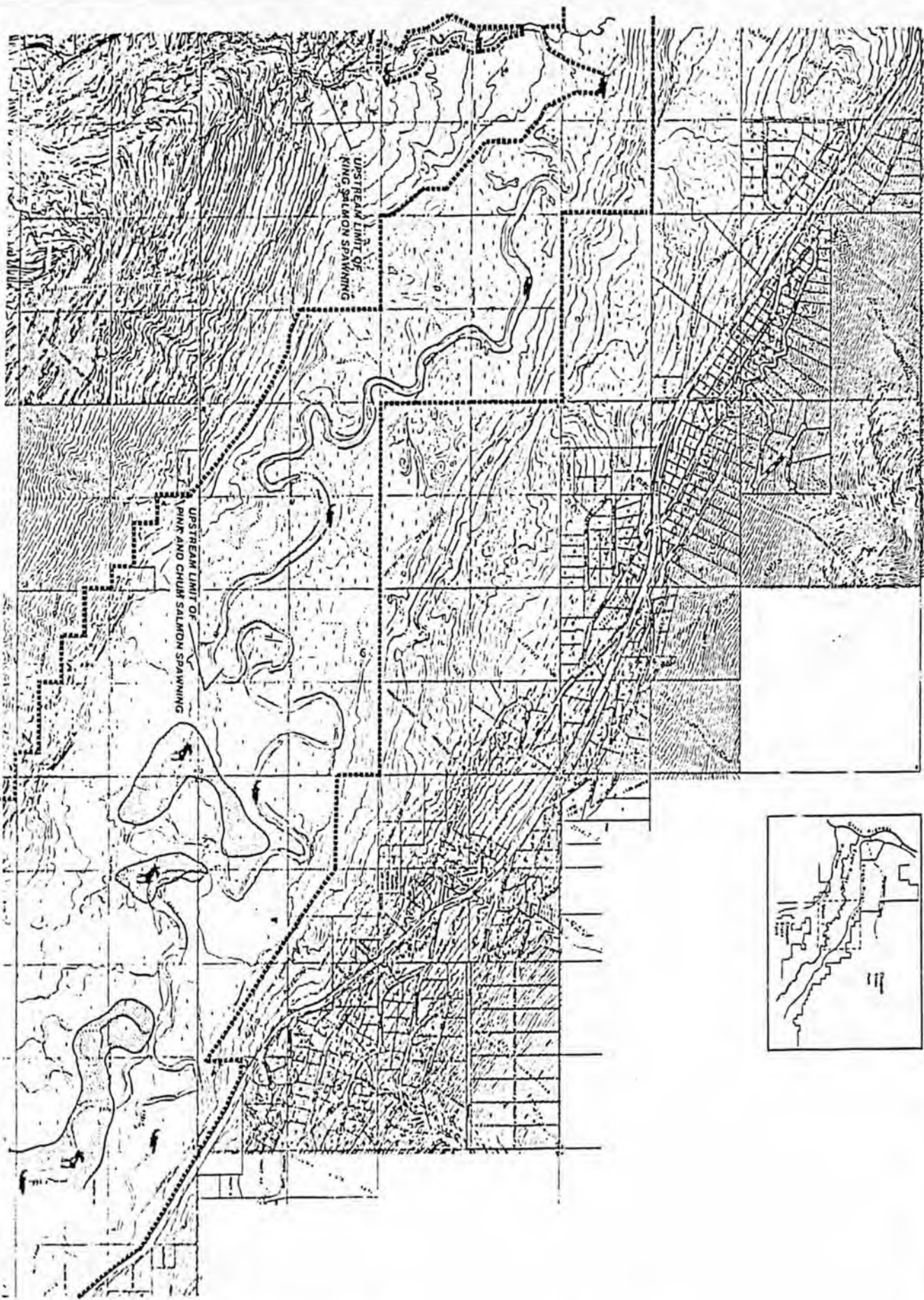
Section 32: Lands described as follows: Beginning at a corner common to Sections 31 and 32, T14N, R1E, Sections 5 and 6, T13N, R1E; thence north  $90^{\circ}$  E approximately 1,330 feet along the section line to a point; then northwest approximately  $N33^{\circ}$  W 1640 feet to a point; then northeast approximately  $N8^{\circ}$  E for 440 feet to a point; then northwest approximately  $N63^{\circ}$  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.

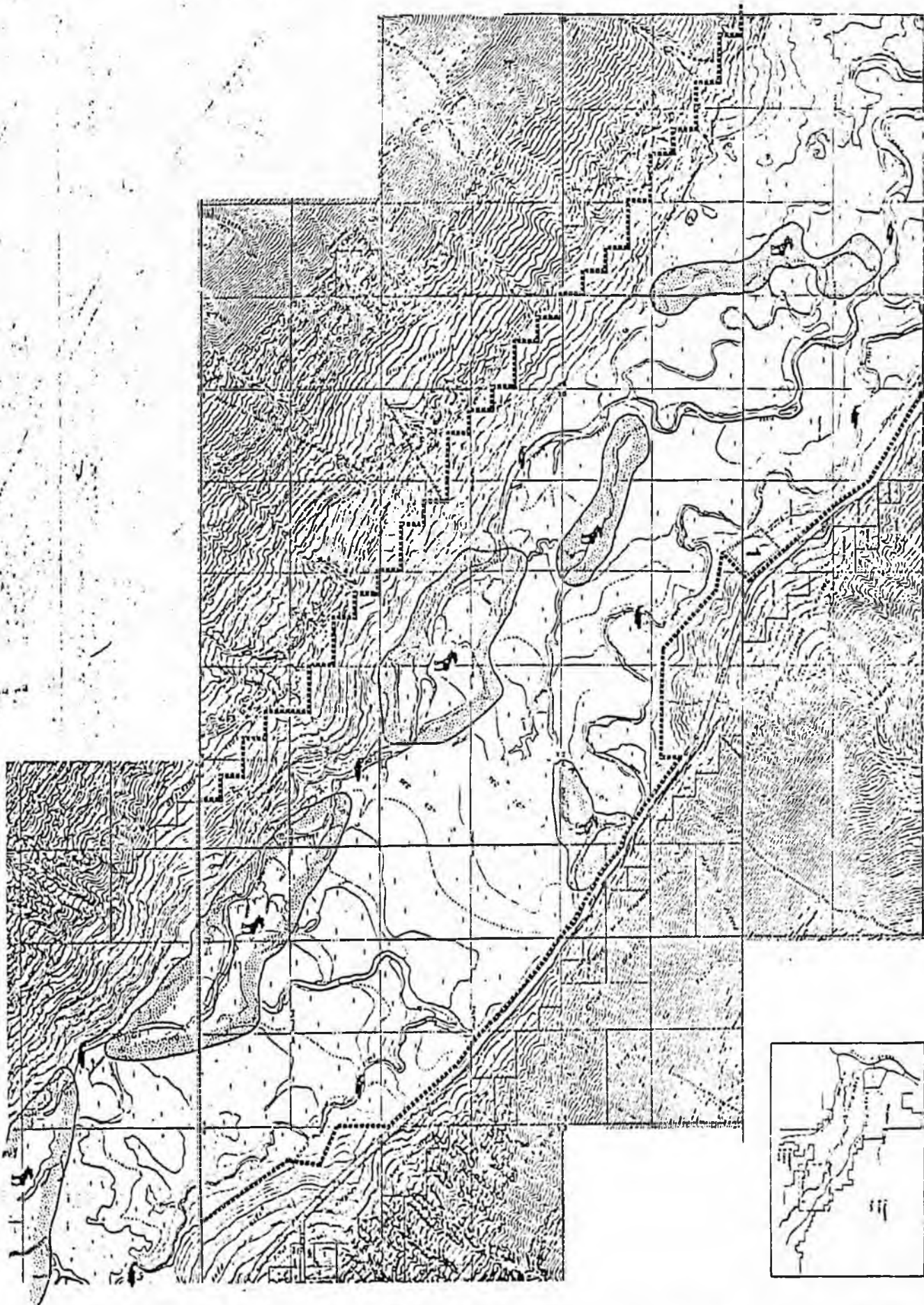
The total lands described above contain approximately 3,558 acres.





A-2

A-3



3

Wildlife Habitat

DATE: 10/15/08  
PROJECT: Eagle River Greenbelt Plan

EAGLE RIVER  
GREENBELT PLAN

TRA/Farr  
ARCHITECTURE ENGINEERING PLANNING INTERIORS

10/15/08  
SCALE: 1" = 1/2 MI



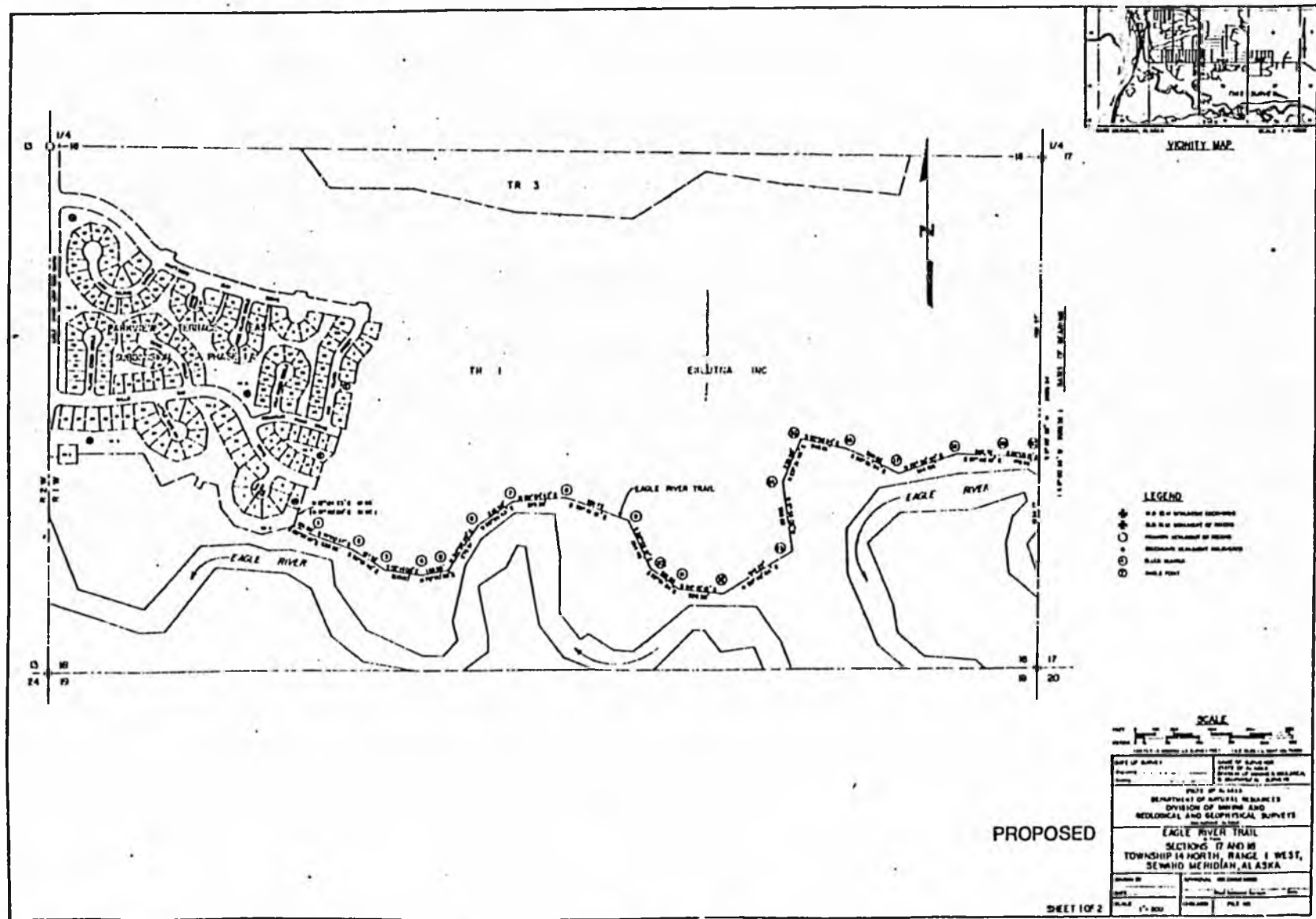


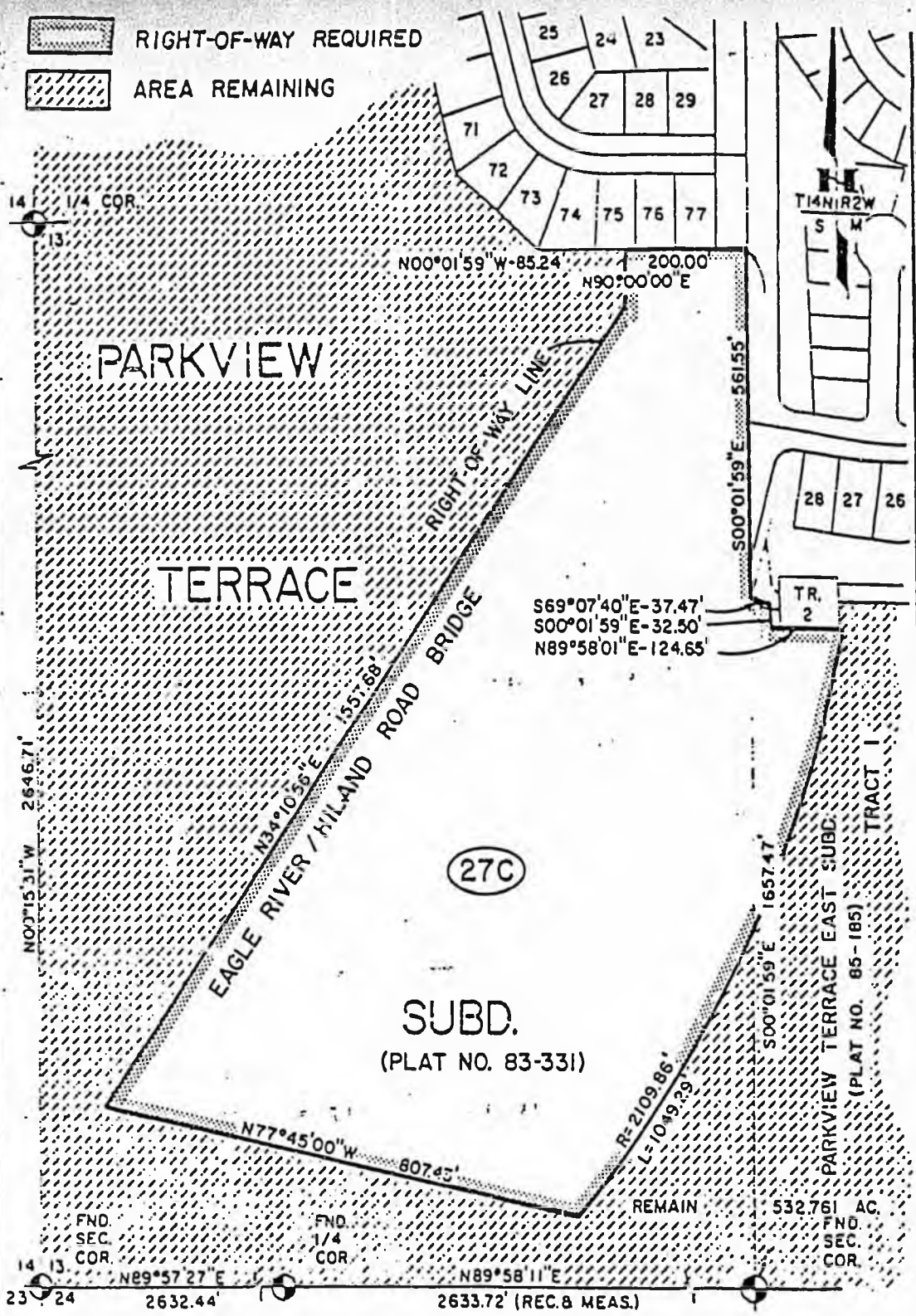


EXHIBIT B-2

 RIGHT-OF-WAY REQUIRED  
 AREA REMAINING



EKLUTNA, INC.		STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES	
By: _____		MAP SHOWING RIGHT OF WAY REQUIRED FOR EAGLE RIVER/HILAND ROAD BRIDGE	
Signature _____		CENTRAL REGION Area 21.6389 AC.	
Date _____		Scale 1" = 200' Project No 53121	
Attached To Easement Dated _____		EEP Case 122785 Page No 27C	
Page 3 of 7			



A T T A C H M E N T B

DOCUMENTED ENCUMBRANCES OF RECORD

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                    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) now redesignated as Tract D, Dela'ina Estates (Preliminary/final).
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.

R/W #39&40      9.    EIN 61 (BLM File #AA25016). This is a 100-foot wide electric transmission easement extending easterly from Section 19, T14N,R1W,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.

13. A right-of-way A-046425, twenty-five (25) feet each side of the centerline located in Sections 23,24,25, T14N,R1W,S.M. and Sections 30,31,32, T14N,R1E,S.M. for an electric distribution line for the Matanuska Electric Association, Inc. This powerline parallels the Eagle River Road and in many instances lies within the road right-of-way.
  
14. An electric powerline easement 30 feet wide identified by BLM casefile number A015987 traversing Tract B, Block 3, Thunderbird Heights Subdivision, Plat # 77-226 filed in Anchorage Recording District.
  
15. A 50 foot right-of-way for an existing trail from the Old Glenn Highway to lands patented to the State of Alaska to provide access to Thunderbird Falls. The right-of-way traverses Tract B, Block 3, Thunderbird Heights Subdivision, Plat # 77-226 filed in Anchorage Recording District.

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. The 9th Circuit Court affirmed the District Court, but a petition for rehearing is pending.

2. The Donnelly homestead dispute is within the E2 of Section 25, T14N,R1W,S.M. Donnelly also claims to have a right to land under §14(c)(1) of the Alaska Native Claims Settlement Act.

The Federal District Court has ruled against Donnelly on his claims, but has not yet entered an appealable judgement. However, Donnelly has already filed a Notice of Appeal to the 9th Circuit Court of Appeals.

3. The Lee homestead litigation is within the NW4 of Section 25, T14N,R1W,S.M. and has been joined with the Eklund and Carr cases referred to in (1) above. The Lee 14(c)(1) claim has been joined with the Donnelly case referred to in (2) above.

4. The McIntyre homestead litigation is within Section 23, T1N,R1W,S.M. McIntyre lost his claim for a homestead in the 9th Circuit Court. The District Court still has before it his claim under §14(c)(1) of The Alaska Native Claims Settlement Act. McIntyre has expanded his 14(c)(1) claim beyond the boundaries of his homestead claim.

5. There may be claims for right-of-access to homestead 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.

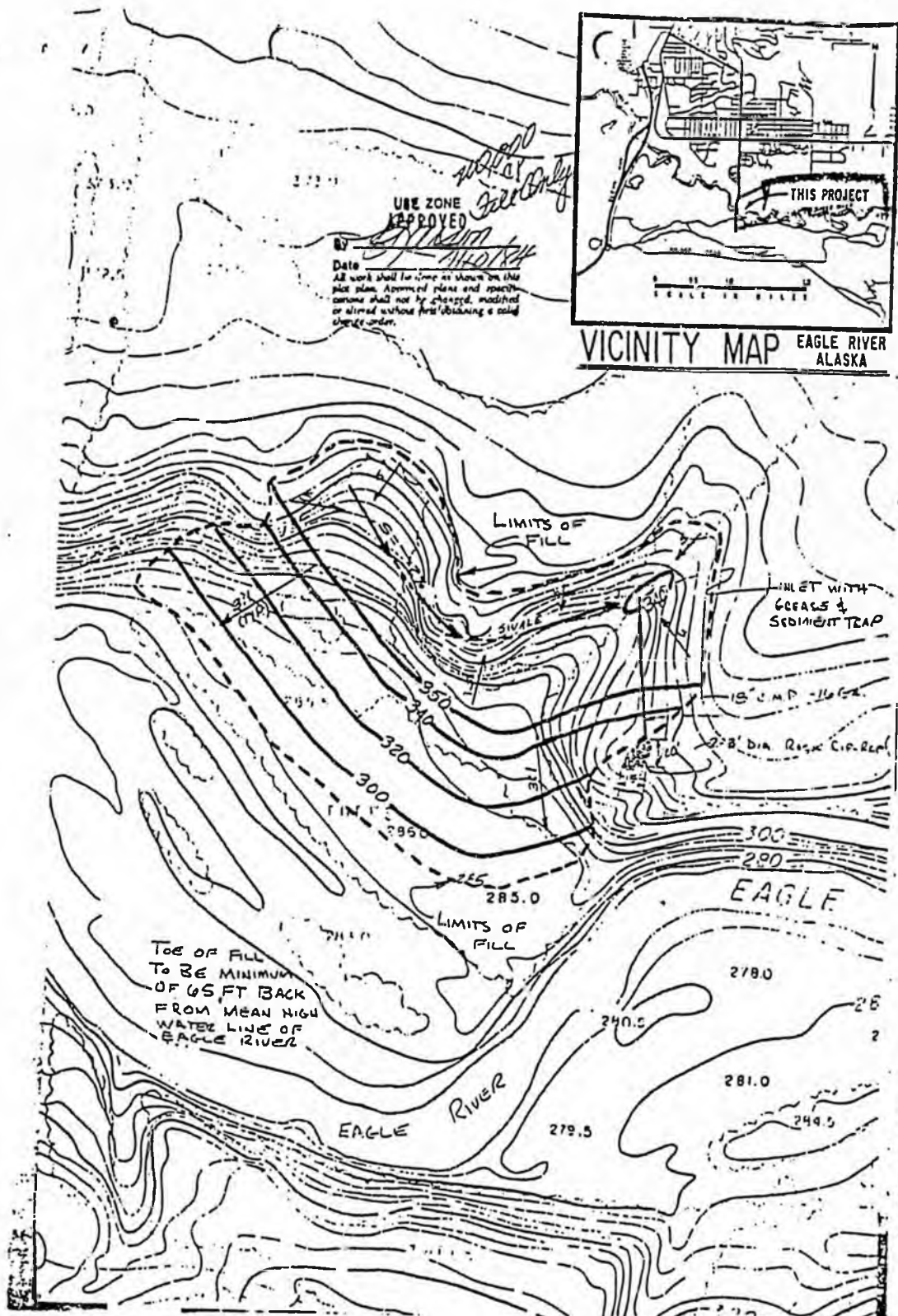
EASEMENTS BEING RESERVED BY EKLUTNA, INC

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 84-5003 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.



1. Zoning

Comments:

Submitted letter of determination regarding Developable Wetlands; check Hazard letter of non-involvement. Not in Duverson Wetland per telephone consultation. Lucille Wohl 7/10/84; Jack & Jane

Need P.W.E.

2. Public Works/Engineering

Comments:

Conditions of Approval

1. Incremental portions of the work should be reseeded at the end of each season to provide dust control and to ensure adequate sediment & erosion control. Compaction (as required to stabilize the slopes) must be provided.
2. Percentage of woody debris must not exceed 10%  
No junk or garbage allowed.
3. 3:1 slopes (as shown) should be provided thru-out, with a 10' wide drainage terrace at 30' vertical intervals.
4. Trees & shrubs must be included in proposed retaining walls. Specifics must be provided with P.W.E.

3. Traffic Engineering

Comments:

4. Building Safety

Comments:

COMPATIBILITY DETERMINATION:

This use: \_\_\_\_\_

Predominant Surrounding uses: \_\_\_\_\_

Compatible

Incompatible

Approved

Disapproved

\_\_\_\_\_  
BUILDING OFFICIAL

\_\_\_\_\_  
DATE

S B

2 8 2

# STATE OF ALASKA THE LEGISLATURE

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

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 19, 1988

SUBJECT: Municipal sales and use taxes (CSSB 282  
(C&RA))

TO: Representative John Sund, Chair  
House Judiciary Committee

FROM: Tamara Brandt Cook *TBC*  
Director  
Division of Legal Services

You have asked how CSSB 282 (C&RA) treats mechanics' and materialmen's liens. The relevant portion of the bill provides:

When recorded, the sales tax lien has priority over all other liens except (1) liens for property taxes and special assessments; and (2) liens that were perfected before the recording of the sales tax lien for amounts actually advanced before the recording of the sales tax lien.

It is not clear to me from the language whether mechanics' and materialmen's liens would be included within paragraph (2) and granted priority over sales tax liens or not. I recommend that the matter be made more clear. If it is the desire of the legislature that mechanics' and materialmen's liens not have priority over sales tax liens they should be specifically excluded under paragraph (2) so that it would read:

(2) liens, other than mechanics' and materialmen's liens, that were perfected before the recording of the sales tax lien for amounts actually advanced before the recording of the sales tax lien.

If it is the desire of the legislature that recorded mechanics' and materialmen's liens be given priority over sales tax liens a new paragraph (3) should be added to read:

(3) mechanics' and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the sales tax lien.

TBC:gc  
WKG3:014

5-1116N  
Cook  
4/20/88

Original sponsor: Community and Regional  
Affairs Committee

1 IN THE SENATE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 282 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to municipal sales and use taxes;  
7 and providing for an effective date

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

9 \* Section 1. AS 29.10.200(42) is amended to read:

10 (42) AS 29.45.650(c), (d), (e), and (f) (sales and use tax)

11 \* Sec. 2. AS 29.45.650(e) is amended to read:

12 (e) A borough may provide for the creation, recording, and  
13 notice of a lien on real or personal property to secure the payment of  
14 a sales and use tax, and the interest, penalties, and administration  
15 costs in the event of delinquency. When recorded, the sales tax lien  
16 has priority over all other liens except (1) liens for property taxes  
17 and special assessments; (2) liens that were perfected before the  
18 recording of the sales tax lien for amounts actually advanced before  
19 the recording of the sales tax lien; (3) mechanics' and materialmen's  
20 liens for which claims of lien under AS 34.35.070 or notices of right  
21 to lien under AS 34.35.064 have been recorded before the recording of  
22 the sales tax lien. This subsection applies to home rule and general  
23 law municipalities [WHEN RECORDED, A LIEN AUTHORIZED UNDER THIS  
24 SECTION HAS PRIORITY OVER OTHER LIENS EXCEPT THOSE FOR PROPERTY TAXES  
25 AND SPECIAL ASSESSMENTS].

26 \* Sec. 3. This Act takes effect July 1, 1988.  
27  
28  
29

SENATE COMMITTEE REPORT

FURTHER:

5/16/87

DATE TURNED INTO OFFICE 2/

Mr. President:

C&RA

Committee considered sb 282

municipal sales and use taxes

and recommended:

replace with CS FOR SB 282 )  same title  
 or adopt \_\_\_\_\_ )  new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted \_\_\_\_\_

Committee  attached or  adopted fiscal note(s)

new  updated or  previous  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Tim Kelly  
Mike Spitzer  
Rich Hallford  
Paul G. Keefe

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Arthur Stankowski DO Pass  
Chairman signature and recommendation

Committee Backup Attached

## ALASKA BANKERS ASSOCIATION

December 15, 1987

### Draft Position Paper For Amending Alaska Law Relating To Liens For Sales, Use And Personal Property Taxes.

#### Brief History of Municipal/Borough Priority Tax Lien Issue

Local government entities have experienced difficulty in collecting unpaid sales, use and personal property taxes for a number of years. During the 1970's various municipalities enacted laws to establish sales tax liens as a means of collecting unpaid taxes; however, in 1980 the Alaska State Supreme Court ruled that municipalities which levied sales and use taxes had no authority to assert a lien for unpaid taxes except through the normal judicial process. The Supreme Court said further that authorization of such liens "should be addressed by specific legislation rather than by municipal, or judicial fiat".

In 1983, legislation was proposed that would have given boroughs and municipalities a sales tax lien with the full force, priority and duration of a judgement lien; however, this legislation did not become law. When this legislation became law in 1985, the provision that the sales tax obtain an attachment lien was changed in the final draft to give the lien a priority; a priority over all other liens including mortgages, security interests, judgement liens, and the claims of anyone who claims an interest in either real or personal property. This change from the initial version of the 232 page Municipal Code Revision, and the full impact this change was not observed by the banks, the title companies, nor other affected parties. Only when some of the boroughs and municipalities began enforcing their new priority lien, was its significant impact realized.

#### No Other Tax Lien Has Such A Priority

Not even the State of Alaska, nor the Internal Revenue Service, have such a priority lien. Real property taxes have a clear priority over all other interests. But the real property tax is a charge against the property itself and real estate is immobile. All who deal with real estate know it is subject to annual taxation by a single authority. The lien amount can be readily determined and a reserve fund established to ensure its payment. This is not possible with a sales tax or a tax on personal property. It is patently unfair that, under present law, a lender can make a loan secured by real or personal property with all taxes or liens current and have a subsequent lien due to unpaid taxes at some future date preempt the position. There is no way for a lender to protect itself from this kind of action.

Existing Law Is Not Specific Who Must Pay - It Is Aimed At Everybody

The priority lien provision A.S. 29.45.650(e) gives broad authority to municipalities/boroughs to exact payment from prior lienholders who had nothing to do with the transaction that gave rise to the tax and also to innocent buyers who pay the tax to a seller and then the seller fails to remit the proceeds to the municipality. The priority lien law goes further; it authorizes a municipality to assert a lien on any property of the buyer and it accords that lien a priority over any other lien.

Personal property is highly mobile and can be readily moved from district to district. There is no means of knowing that it is subject to a sales or use tax lien nor any way to determine the amount.

Does an individual now have to call local government to find out if a local auto dealer has remitted all sales tax collected and paid his personal property taxes? Under this law he does or he can lose the automobile, and the lienholder will also lose its lien. In effect, the priority tax lien requires an innocent third party to guaranty tax payments to a municipality or a borough.

A lender relies on the information available at the time a loan is made and then relies on its priority lien to protect it over the term of its loan. Permitting a higher priority lien long after a loan is made and over which a lender has no knowledge or control to erode its safety margin is unfair. It will also have an effect on secondary financing by outside investors and could eventually impact AHFC and AIDA programs as existence of the priority lien becomes known.

Existing Law Is Unclear

It appears that this outcome is not what the drafters of the priority lien provision wanted. What is wanted is authority for a lien on the seller's property to secure the seller's obligation to remit the taxes collected, yet the only authority the present statute grants is for a lien to secure payment of the tax, a liability of the buyer. It is now clear that a revision is needed in this new law to better describe who has the tax obligation and what is a fair priority for a lien on a violator's property.

It is not contended that municipalities and boroughs with sales and use taxes should not have the authority to assert liens; however, that authority should be confined to asserting the lien against property of the violator and the lien's relative priority over other innocent claimants should be determined by the date notice of the lien is filed.

### Proposed Compromise Amendment

At a November 13, 1987 meeting between the Alaska Bankers Association and attorneys for the Alaska Municipal League, a compromise solution was recommended. The municipalities and boroughs would give up the 1985 priority lien position in exchange for a sales and use tax lien which is the equivalent of an attachment lien but without the need of first bringing suit. The municipalities and boroughs could also obtain a priority lien on the seller's business assets to secure the seller's obligation to collect and remit sales tax. A priority lien could be achieved on all additional or future advances but only after giving legal notice to senior lienholder(s) that sales and/or use taxes are due and unpaid. A simple lien search will reveal if a senior lienholder exists and its address. This priority lien on commercial financing of business assets (i.e. accounts receivable and inventory) is similar to the lien priority that can be obtained by the Internal Revenue Service and offers the senior lienholder(s) the option of either declining further advance requests or insuring that sales or use taxes are paid. It also elevates concern for remitting local tax payments to a much higher level for local businessmen. The Alaska Bankers Association finds this type of compromise acceptable.

### Summary

The 1985 statute authorizing a priority lien for municipal sales and use taxes, as it now exists, is an onerous law and goes beyond what is reasonable and fair. With a single last minute word change, local government gained the power to assert its lien on any property of any innocent buyer (a consumer who purchased in good faith and paid his tax) and it can place a secured creditor in a subordinated position without notice, without knowledge, and even though he had no part in the taxable transaction. Further, the municipalities and borough governments did not achieve a very good vehicle to collect from the real potential violator, the seller who fails to remit taxes collected.

The Alaska Bankers Association does not believe there should be no authority for sales and use tax liens. However, such a law should be worded carefully to restrict the lien to only property of the violator and lien priority to other innocent lienholders should be based on date notice is filed. This law should treat all parties in commerce equally and offer an opportunity to do business without a surprise. A provision that permits a priority lien against subsequent advances after direct notice to a secured party seems fair and should go far in solving the delinquent sales and use tax problems the boroughs and municipalities have experienced.

Law Offices  
Beard & Lawer

First National Building  
425 G Street  
Suite 630  
Anchorage, Alaska 99501  
907/277-4531

John R. Beard  
David A. Lawer

Attention:

Wes Coyner  
586-1921

December 3, 1987

Thomas R. Boedeker 262-4441  
Borough Attorney  
Kenai Peninsula Borough  
Telefax 262-1892

Dear Mr. Boedeker:

I regret that I missed the meeting last month between members of the Alaska Bankers' Association's legislative committee and municipal attorneys, yourself included, respecting municipal tax liens. Members of the Association who attended the meeting felt that it was helpful and understood that the participants reached conceptual agreement on a satisfactory relationship between consensual security interests and municipal liens for sales and personal property taxes.

They have asked me to draft a bill that would achieve that result. I have prepared, and am transmitting such a draft. I want to be quite sure, however, (as does the Association) that it accomplishes the municipality's objectives.

As I understand it, the municipalities wanted the ability to obtain, by filing or recording notice and without need of first bringing suit, the equivalent of an attachment lien. The Association has no opposition to that except insofar as notice filing respecting personalty does not entail -- as attachment does -- taking possession away from the debtor. (In respect of personal property taxes, the municipalities' right to distrain solves that problem.) Without seizure or an awareness of a filing, a lender has no reason not to make further advances on the security of a perfected security interest: once an interest in personalty is perfected, the lender has, under the Uniform Commercial Code, no reason to check for subsequent filings when it makes further advances.

Thomas R. Boedeker  
December 3, 1987  
Page Two

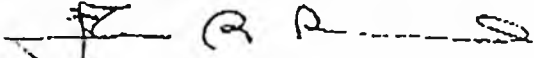
The agreed solution, as I understand it, was for the municipality to give the secured party of record actual, direct notice of its filing so as to protect its lien against subsequent advances by the secured lender.

That is what is attempted -- and, in any case, intended -- by the accompanying draft.

I would be grateful for an opportunity to discuss the matter with you. If in any respect the draft fails to accomplish, or can be made to accomplish better, the lenders' and tax collectors' mutual objectives, it should be changed.

Thank you for your attention.

Very truly yours,

  
John R. Beard

JRB/11j  
Enclosure

cc: Jerry Weaver

For an Act entitled: "An act relating to the enforcement of municipal property, sales and use taxes."

\* Section 1. The title to A.S. 29.45.290-500 is amended to read as follows:

Article 2. Enforcement of Property Taxes [LIENS].

\* Sec. 2. A.S. 29.45.300 is repealed and reenacted to read:

Sec. 29.45.300. TAX LIABILITY. (a) There is no personal liability for the payment of property taxes except as follows:

(1) The owner of personal property on January 1 of the assessment year is personally liable for the tax levied on such property that year, together with any penalty and interest.

(2) The owner of business inventory assessed pursuant to A.S. 29.45.110(b) is personally liable for the tax levied on such inventory, together with penalty and interest.

(3) The owner on January 1 of the assessment year of property described in A.S. 29.45.070 or of a taxable interest in tax-exempt property is personally liable for a real property tax levied on such property or interest, together with penalty and interest, if the municipality waives its real property tax lien against the property or interest.

(b) If more than one person is an owner described at (a) of this section, each such person is jointly and severally liable for payment of the tax, penalty and interest.

(c) The liability of an owner under this section may be established in a personal action brought by the municipality. Such an action may be brought before or after enforcement of the lien granted the municipality by A.S. 29.45.305(b), in aid of such enforcement, or for the purpose of foreclosing such lien by judicial sale pursuant to execution on a judgment recovered against the owner.

\* Sec. 3. A.S. 29.45 is amended by adding a new section to read:

Sec. 29.45.305. PROPERTY TAX LIENS. (a) Real property taxes, together with penalty and interest, are a lien on the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

(b) If a tax for which an owner is personally liable under A.S. 29.45.300 is not paid when due, the tax, together with principal and interest, becomes a lien upon tangible personal property of the owner when

12 14 10:26 2 907 245 7528 FIRST NOTICE

property is seized pursuant to A.S. 29.45.310 or when written notice of the lien stating the name and address of the owner and the address of the owner and the amount of the unpaid tax and describing the property subject to the lien by item or type, is filed in the place specified by A.S. 45.09.401 for perfecting a security interest in the same property. From the time of seizure or filing the municipality has the rights accorded to a lien creditor by A.S. 45.09.301 in respect of property of the owner that is seized or property described by the notice that is owned by the identified owner at, or acquired by that owner subsequent to, the time of filing. For purposes of A.S. 45.09.301(d), seizure of property or receipt of written notice of filing impart knowledge of the lien to a person with a perfected security interest in the property. A lien obtained by filing notice may thereafter be enforced pursuant to A.S. 29.45.310 or by action and judicial sale, and any seizure of property described in the notice properly effected in the course of such enforcement shall relate back to the time of filing. Prior to such seizure, a buyer described in A.S. 45.09.307(a) takes free of the lien.

\* Sec. 4. A.S. 29.45.320 is repealed and reenacted to read:

Sec. 29.45.320. REAL PROPERTY TAX COLLECTION. Except as is otherwise authorized by A.S. 29.45.300 (a)(3), real property taxes shall be enforced by foreclosure of the lien granted by A.S. 29.45.305(a) in accordance with the provisions of A.S. 29.45.300-500. Unless otherwise provided by ordinance, real property tax liens shall be foreclosed annually.

\* Sec. 5. A.S. 29.45.650(e) is repealed.

\* Sec. 6. A.S. 29.45. is amended by adding a new section to read:

Sec. 29.45.<sup>VSS</sup>~~305~~. SALES AND USE TAX LIENS. (a) A borough may provide by ordinance for a lien upon

(1) property of a buyer who neglects or refuses to pay a sales or use tax, and

(2) property of a seller who neglects or refuses to collect or remit sales tax.

(b) A lien authorized by this section may be upon such real and tangible personal property as is prescribed by the ordinance and shall be in the amount of the tax or remittance determined by the borough to be delinquent, together with interest, penalties and

administration costs properly assessed. The borough shall prescribe by ordinance the procedures for determining such amount and the circumstances under which the lien may be asserted. The lien may not be asserted until written notice of the determination <sup>is made</sup> demand for payment <sup>has</sup> been given to the buyer or seller.

(c) A lien authorized by this section is asserted by a written notice of lien which states the name and address of the buyer or seller and the amount of delinquent tax or remittance and which describes the property, or the types of tangible personal property, subject to the lien. The lien attaches

(1) to real property when the notice is recorded in the office of the recorder for the recording district in which the property is located, and

(2) to tangible personal property when the notice is filed in the place specified by A.S. 45.09.401 for perfecting a security interest in the same property.

(d) A buyer described in A.S. 29.45.307(a) takes free of the lien. In all other respects the lien has, from the time it attaches, the same validity and relative priority as a lien obtained by an attachment

levied on the property including, with respect to a lien on real property as well as on personal property, the priority accorded by A.S. 45.09.301(d) to a lien creditor over subsequent advances made pursuant to a previously recorded or otherwise perfected security interest in the subject property. Receipt of written notice of the borough's recording or filing imparts knowledge of the lien to a person with a previously recorded or otherwise perfected security interest in the property. The lien shall be enforced by judicial sale pursuant to execution on a judgment recovered in an action by the borough against the buyer or seller for the tax, interest, penalty and costs, and the levy of such execution shall relate back to the time of recordation or filing of the notice of lien.

For an Act entitled: "An Act relating to liens for municipal property, sales and use taxes"

\* Section 1. A.S. 29.45.300(b) is amended to read:

(b) Real property taxes, together with penalty and interest, are a lien on the property assessed, and the lien is prior and paramount to all other liens and encumbrances against the property.

\* Section 2. A.S. 29.45.650(e) is repealed and reenacted to read:

(e) A borough may provide for the creation, recording, and notice of a lien

(1) on real or personal property of a buyer to secure payment of a sales or use tax and the interest, penalties and administration costs properly assessed, and

(2) on real or personal property of a seller to secure remittance of sales taxes collected by the seller, and the interest, penalties and administration costs properly assessed.

A lien imposed under this action is not valid against a mortgagee or other lien holder, pledgee, purchaser, or judgment creditor until notice of the lien is filed in the office of the recorder of the recording district where the property subject to the lien is situated.

For an Act entitled: "An act relating to the enforcement of municipal property, sales and use taxes."

\* Section 1. The title to A.S. 29.45.290-500 is amended to read as follows:

Article 2. Enforcement of Property Taxes [LIENS].

\* Sec. 2. A.S. 29.45.300 is repealed and reenacted to read:

Sec. 29.45.300. TAX LIABILITY. (a) There is no personal liability for the payment of property taxes except as follows:

(1) The owner of personal property on January 1 of the assessment year is personally liable for the tax levied on such property that year, together with any penalty and interest.

(2) The owner of business inventory assessed pursuant to A.S. 29.45.110(b) is personally liable for the tax levied on such inventory, together with penalty and interest.

(3) The owner on January 1 of the assessment year of property described in A.S. 29.45.070 or of a taxable interest in tax-exempt property is personally liable for a real property tax levied on such property or interest, together with penalty and interest, if the municipality waives its real property tax lien against the property or interest.

(b) If more than one person is an owner described at (a) of this section, each such person is jointly and severally liable for payment of the tax, penalty and interest.

(c) The liability of an owner under this section may be established in a personal action brought by the municipality. Such an action may be brought before or after enforcement of the lien granted the municipality by A.S. 29.45.305(b), in aid of such enforcement, or for the purpose of foreclosing such lien by judicial sale pursuant to execution on a judgment recovered against the owner.

\* Sec. 3. A.S. 29.45 is amended by adding a new section to read:

Sec. 29.45.305. PROPERTY TAX LIENS. (a) Real property taxes, together with penalty and interest, are a lien on the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

(b) If a tax for which an owner is personally liable under A.S. 29.45.300 is not paid when due, the tax, together with principal and interest, becomes a lien upon tangible personal property of the owner when

property is seized pursuant to A.S. 29.45.310 or when written notice of the lien stating the name and address of the owner and the address of the owner and the amount of the unpaid tax and describing the property subject to the lien by item or type, is filed in the place specified by A.S. 45.09.401 for perfecting a security interest in the same property. From the time of seizure or filing the municipality has the rights accorded to a lien creditor by A.S. 45.09.301 in respect of property of the owner that is seized or property described by the notice that is owned by the identified owner at, or acquired by that owner subsequent to, the time of filing. For purposes of A.S. 45.09.301(d), seizure of property or receipt of written notice of filing impart knowledge of the lien to a person with a perfected security interest in the property. A lien obtained by filing notice may thereafter be enforced pursuant to A.S. 29.45.310 or by action and judicial sale, and any seizure of property described in the notice properly effected in the course of such enforcement shall relate back to the time of filing. Prior to such seizure, a buyer described in A.S. 45.09.307(a) takes free of the lien.

\* Sec. 4. A.S. 29.45.320 is repealed and reenacted to read:

Sec. 29.45.320. REAL PROPERTY TAX COLLECTION. Except as is otherwise authorized by A.S. 29.45.300 (a)(3), real property taxes shall be enforced by foreclosure of the lien granted by A.S. 29.45.305(a) in accordance with the provisions of A.S. 29.45.300-500. Unless otherwise provided by ordinance, real property tax liens shall be foreclosed annually.

\* Sec. 5. A.S. 29.45.650(e) is repealed.

\* Sec. 6. A.S. 29.45. is amended by adding a new section to read:

Sec. 29.45.<sup>VSS</sup>~~305~~. SALES AND USE TAX LIENS. (a) A borough may provide by ordinance for a lien upon

(1) property of a buyer who neglects or refuses to pay a sales or use tax, and

(2) property of a seller who neglects or refuses to collect or remit sales tax.

(b) A lien authorized by this section may be upon such real and tangible personal property as is prescribed by the ordinance and shall be in the amount of the tax or remittance determined by the borough to be delinquent, together with interest, penalties and

administration costs properly assessed. The borough shall prescribe by ordinance the procedures for determining such amount and the circumstances under which the lien may be asserted. The lien may not be asserted until written notice of the determination demand for payment <sup>has</sup> been given to the buyer or seller.

(c) A lien authorized by this section is asserted by a written notice of lien which states the name and address of the buyer or seller and the amount of delinquent tax or remittance and which describes the property, or the types of tangible personal property, subject to the lien. The lien attaches

(1) to real property when the notice is recorded in the office of the recorder for the recording district in which the property is located, and

(2) to tangible personal property when the notice is filed in the place specified by A.S. 45.09.401 for perfecting a security interest in the same property.

(d) A buyer described in A.S. 29.45.307(a) takes free of the lien. In all other respects the lien has, from the time it attaches, the same validity and relative priority as a lien obtained by an attachment

levied on the property including, with respect to a lien on real property as well as on personal property, the priority accorded by A.S. 45.09.301(d) to a lien creditor over subsequent advances made pursuant to a previously recorded or otherwise perfected security interest in the subject property. Receipt of written notice of the borough's recording or filing imparts knowledge of the lien to a person with a previously recorded or otherwise perfected security interest in the property. The lien shall be enforced by judicial sale pursuant to execution on a judgment recovered in an action by the borough against the buyer or seller for the tax, interest, penalty and costs, and the levy of such execution shall relate back to the time of recordation or filing of the notice of lien.

Draft Position Paper Amending Statutes  
Respecting Liens for Sales, Use  
and Personal Property Taxes

Sales and Use Tax Liens

In 1980 the Supreme Court ruled that municipalities levying sales taxes had no authority to assert a lien for unpaid taxes except by judicial process in enforcing judgments recovered in suit for unpaid taxes. The court held that, because

public policy would be thwarted if individual municipalities were enabled to set up a number of different systems of sales tax liens, and the determination of lien priorities would be unduly complicated

the authorization of such liens was a matter "which should be addressed by specific legislation rather than by municipal, or judicial, fiat." Fairbanks North Star Borough v. Howard, 608 P.2d 32, 34 (Alas. 1980).

In 1985 the legislature enacted A.S. 29.45.650(e), which provides:

A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure payment of a sales and use tax, and the interest, penalties and administration costs in the event of delinquency. When recorded, a lien authorized under this section has priority over other liens except those for property taxes and special assessments.

This section, while it provides statutory authority the court found lacking in 1980, does so by allowing precisely the multiplicity of local systems and complicated priority disputes the court feared.

Yet the proliferation of different local rules is the least of the considerable burdens the statute imposes on commerce. Far more chilling is the broad authority it gives municipalities to exact payment from (a) persons who had nothing at all to do with the transaction that gives rise to the tax, and (b) buyers who are innocent of wrongdoing.

Sales and uses taxes are levied on buyers. Sellers are required to collect the sales tax from the buyer and remit the proceeds to the seller, but the liability for

payment of the tax is on the buyer. The statute, which authorizes the municipality to "create" a lien "to secure payment of a sales and use tax", presumably authorizes a lien on property of the buyer.

(a) In the case of a use tax, or of a sales tax the buyer knows he has not paid, giving the municipality a lien on the buyer's property seems reasonable and fair. But the statute goes beyond what is reasonable or fair. It authorizes the municipality to assert a lien on any property of the buyer, and it accords that lien priority over any other lien. Thus

Cl, a seller or lender who in 1984 finances B's purchase of, say, a mobile home in a place where there is no sales tax, can find his security interest subordinated to the lien for M's use tax when, in 1987, B moves the mobile home (or any other item he bought outside M) to M;

• C2, a seller or lender who took a mortgage on B's real property -- whether the property is inside or outside M -- can find his mortgage subordinated to M's lien when, in 1987, B either buys in M, or brings into M, something on which he paid no sales or use tax; and

• C3, a seller or lender who in 1987 declines to take a security interest in B's property until he has assured himself that no sales or use tax levying jurisdiction has "recorded" any lien against B, can still find his security interest subordinated to M's subsequently recorded claim for a 1986 sales or use tax B had not paid.

Those results -- from transactions of B in which C did not participate, over which he had no control, and of which he had no notice -- will quickly teach C not to extend credit to anyone who might have been or might yet be liable

for any of the variety of sales and use taxes it might have been, or might yet be, levied by an Alaskan municipality.

(b) But the most typical enforcement problem -- the problem presented in the 1980 Fairbanks case -- arises when the seller collects the tax from the buyer but fails to remit the proceeds to the municipality. Charging the buyer's property with a lien in such a case is not reasonable or fair to the buyer, who has already paid the tax once; and, except in cases where it is especially unfair to the buyer (i.e., when the tax the buyer has already paid is high enough to make it worth a municipality's while to go after his property), it is not of any practical help to the municipality.

Yet that is the course the statute seems to require. While what is wanted is authority for a lien, on the seller's property, to secure the seller's obligation to remit, the only authority the statute grants is for a lien

to secure payment of the tax, a liability of the buyer. If that authority aids the municipality at all in the case of a seller's failure to remit, it apparently does so by considering -- or allowing the municipality to consider -- that the tax remains unpaid until it has been remitted to the seller. The buyer, having paid the tax to the seller as required by the tax law, now finds that it is his property to which the tax law subjects a lien because of the seller's infidelity.

It is not contended that there should be no authority for sales and use taxing municipalities to assert liens. It is submitted, though, that the authority should be confined to asserting the lien against property of the violator, and that the lien's relative priority over other innocent claimants to the property should be determined from the time notice of the lien is given. Priority based on notice is firmly grounded in our laws of real property

(A.S. 34.15.290) and personal property (A.S. 45.09.301-318) precisely because it treats all persons equally and allows commerce in property to proceed without surprise to the participants. A sales tax is, after all, dependent on a healthy commerce. Care should be taken that the powers given to enforce the tax against the relatively few who violate it not be so extraordinary as to impair the base on which the taxes revenues depend.

#### Personal Property Taxes

Our property tax law distinguishes between real property taxes and personal property taxes in the following respect:

(a) The tax on real property is not a personal obligation of anyone. The tax is a charge on the property itself and is enforced exclusively by strict foreclosure of the tax lien, which lien is given priority over all other interests.

(b) The tax on personal property is a personal obligation of the owner of the property. The owner's liability is enforceable by distraint (seizure) and sale of the owner's personal property -- first of the property taxed then, if necessary, of other personalty -- which may be in aid of or as an alternative to an action for judgment on the owner's tax liability.

The distinction, clearly set out at former A.S. 29.53.210-230, appreciates the fundamental differences between real and personal property. Realty is immobile. Persons who deal with realty do so with the knowledge that the property is subject to annual taxation by a single authority and, so, to the lien for taxes. Personalty, however, is highly mobile. As its taxability depends upon its location on January 1, persons who deal with such property at other times have no means of knowing whether it was subject to a property tax until the taxing authority, by

seizing the property, puts the world on notice of its tax claim.

In recodifying A.S. 29 in 1985, however, the legislature dropped the word "real" from former Section 29.53.210(b). Codified now as A.S. 29.45.300(b), the statute now provides

[Real] Property taxes, together with penalty and interest, are a lien upon the property assessed, and the lien is prior and paramount to all other liens against the property.

The law still provides that the owner of personal property is liable for the tax, and that enforcement may be by way of distraint. A.S. 29.45.300-320. But §300(b) appears now to accord a lien against taxable personalty, as of the first day of each year, that is superior to all other interests.

If such priority is accorded to a lien against personalty, how can a retail buyer confidently buy anything of appreciable value -- an automobile, for example -- from a

retailer who does business in a municipality that levies a personal property tax on inventory without proof that the tax has been paid? How can the retailer possibly provide such proof until the municipality has assessed the property and levied the tax, a process that may, and often does, take more than half a year? And, if the retailer does business in more than one municipality that taxes such property, how can the buyer know which of those municipalities taxed the item he wants to buy?

Stated more generally: The priority A.S. 29.45.300(b) appear to give to a lien for personal property taxes makes it imprudent for anyone to buy, or to extend credit on the security of, any personal property of appreciable value in the state without knowing facts which are difficult, if not impossible, of ascertainment. Where was the property on each preceding January 1? Was it subject to taxation in those places? Have those taxes been paid?

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

REQUEST: \_\_\_\_\_

Bill Version: SB 282  
Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "An Act relating to municipal sales and use taxes."  
Sponsor: Senate C&RA Committee  
Requestor: \_\_\_\_\_

Agency Affected: Community & Regional Affairs  
BRU: State Assessor

Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

CAPITAL						
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REVENUE						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Prepared by: Mike Worley, State Assessor  
Division: Municipal & Regional Assistance

Phone: 465-4750  
Date: 5/6/87

Approved by Commissioner: Worley for D.K. Hoffman  
Agency: Community & Regional Affairs

Date: 5/6/87

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

For an Act entitled: "An act relating to the enforcement of municipal property, sales and use taxes."

\* Section 1. The title to A.S. 29.45.290-500 is amended to read as follows:

Article 2. Enforcement of Property Taxes [LIENS].

\* Sec. 2. A.S. 29.45.300 is repealed and reenacted to read:

~~Sec. 29.45.300. TAX LIABILITY. (a) There is no personal liability for the payment of property taxes except as follows:~~

~~(1) The owner of personal property on January 1 of the assessment year is personally liable for the tax levied on such property that year, together with any penalty and interest.~~

~~(2) The owner of business inventory assessed pursuant to A.S. 29.45.110(b) is personally liable for the tax levied on such inventory, together with penalty and interest.~~

~~(3) The owner on January 1 of the assessment year of property described in A.S. 29.45.070 or of a taxable interest in tax-exempt property is personally liable for a real property tax levied on such property or interest, together with penalty and interest, if the municipality waives its real property tax lien against the property or interest.~~

(b) If more than one person is an owner described at (a) of this section, each such person is jointly and severally liable for payment of the tax, penalty and interest.

(c) The liability of an owner under this section may be established in a personal action brought by the municipality. Such an action may be brought before or after enforcement of the lien granted the municipality by A.S. 29.45.305(b), in aid of such enforcement, or for the purpose of foreclosing such lien by judicial sale pursuant to execution on a judgment recovered against the owner.

\* Sec. 3. A.S. 29.45 is amended by adding a new section to read:

Sec. 29.45.305. PROPERTY TAX LIENS. (a) Real property taxes, together with penalty and interest, are a lien on the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

(b) If a tax for which an owner is personally liable under A.S. 29.45.300 is not paid when due, the tax, together with principal and interest, becomes a lien upon tangible personal property of the owner when

property is seized pursuant to A.S. 29.45.310 or when written notice of the lien stating the name and address of the owner and the address of the owner and the amount of the unpaid tax and describing the property subject to the lien by item or type, is filed in the place specified by A.S. 45.09.401 for perfecting a security interest in the same property. From the time of seizure or filing the municipality has the rights accorded to a lien creditor by A.S. 45.09.301 in respect of property of the owner that is seized or property described by the notice that is owned by the identified owner at, or acquired by that owner subsequent to, the time of filing. For purposes of A.S. 45.09.301(d), seizure of property or receipt of written notice of filing impart knowledge of the lien to a person with a perfected security interest in the property. A lien obtained by filing notice may thereafter be enforced pursuant to A.S. 29.45.310 or by action and judicial sale, and any seizure of property described in the notice properly effected in the course of such enforcement shall relate back to the time of filing. Prior to such seizure, a buyer described in A.S. 45.09.307(a) takes free of the lien.

\* Sec. 4. A.S. 29.45.320 is repealed and reenacted to read:

Sec. 29.45.320. REAL PROPERTY TAX COLLECTION. Except as is otherwise authorized by A.S. 29.45.300 (a)(3), real property taxes shall be enforced by foreclosure of the lien granted by A.S. 29.45.305(a) in accordance with the provisions of A.S. 29.45.300-500. Unless otherwise provided by ordinance, real property tax liens shall be foreclosed annually.

\* Sec. 5. A.S. 29.45.650(e) is repealed.

\* Sec. 6. A.S. 29.45. is amended by adding a new section to read:

Sec. 29.45.<sup>655</sup>~~305~~. SALES AND USE TAX LIENS. (a) A borough may provide by ordinance for a lien upon

(1) property of a buyer who neglects or refuses to pay a sales or use tax, and

(2) property of a seller who neglects or refuses to collect or remit sales tax.

(b) A lien authorized by this section may be upon such real and tangible personal property as is prescribed by the ordinance and shall be in the amount of the tax or remittance determined by the borough to be delinquent, together with interest, penalties and

administration costs properly assessed. The borough shall prescribe by ordinance the procedures for determining such amount and the circumstances under which the lien may be asserted. The lien may not be asserted until written notice of the determination <sup>HAVE</sup> AND demand for payment has been given to the buyer or seller.

(c) A lien authorized by this section is asserted by a written notice of lien which states the name and address of the buyer or seller and the amount of delinquent tax or remittance and which describes the property, or the types of tangible personal property, subject to the lien. The lien attaches

(1) to real property when the notice is recorded in the office of the recorder for the recording district in which the property is located, and

(2) to tangible personal property when the notice is filed in the place specified by A.S. 45.09.401 for perfecting a security interest in the same property.

(d) A buyer described in A.S. 29.45.307(a) takes free of the lien. In all other respects the lien has, from the time it attaches, the same validity and relative priority as a lien obtained by an attachment

levied on the property including, with respect to a lien on real property as well as on personal property, the priority accorded by A.S. 45.09.301(d) to a lien creditor over subsequent advances made pursuant to a previously recorded or otherwise perfected security interest in the subject property. Receipt of written notice of the borough's recording or filing imparts knowledge of the lien to a person with a previously recorded or otherwise perfected security interest in the property. The lien shall be enforced by judicial sale pursuant to execution on a judgment recovered in an action by the borough against the buyer or seller for the tax, interest, penalty and costs, and the levy of such execution shall relate back to the time of recordation or filing of the notice of lien.

5-1116B  
Bradley  
5/12/87

Original sponsor: Community and Regional  
Affairs Committee

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 282 ( )  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to municipal sales and use taxes."

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

8 \* Section 1. AS 29.45.650(e) is amended to read:

9 (e) A borough may provide for the creation, recording, and  
10 notice of a lien on real or personal property to secure the payment of  
11 a sales and use tax, and the interest, penalties, and administration  
12 costs in the event of delinquency. When recorded, a lien authorized  
13 under this section has priority over other liens except those for  
14 property taxes, [AND] special assessments, and prior recorded mort-  
15 gages, trust deeds, and land sale contracts. This subsection applies  
16 to home rule and general law municipalities.

17 \* Sec. 2. AS 29.10.200(42) is amended to read:

18 (42) AS 29.45.650(c), (d), (e), and (f) (sales and use tax)  
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It is submitted that the law granting the municipality a lien upon distraint avoids all of these problems without unfairly prejudicing the municipalities' enforcement rights. The municipality remains able to enforce the taxpayers personal liability by suit and judicial process and retains, as well, the right to distraint and sell personal property, even without judgment and including property that was not taxed. A.S. 29.45.300(b) should be amended to state, again, what was the law for decades prior to 1986.

# Alaska State Legislature

ARLISS STURGULEWSKI, Chairman  
 TIM KELLY, Vice Chairman  
 RICK HALFORD  
 MIKE SZYMANSKI  
 FRED ZHAROFF



P. O. BOX V  
 JUNEAU, ALASKA 99811  
 (907) 465-4989

## Senate Community and Regional Affairs Committee

TO: Senate C&RA Members

May 5, 1987

FROM: Senate C&RA Staff

A handwritten signature in dark ink, appearing to be "MEL".

RE: SB 262 - "An Act relating to municipal sales and use taxes."

Under existing law (29.45.650(e)] municipalities may place liens on real or personal property to secure payment of sales and use tax. This ability is new, added under the Title 29 revision two years ago.

The section was added to Title 29 in response to a Fairbanks court case in which the judge ruled that municipalities did not have the power to place such liens. The Title 29 technical committee at the time recommended that such liens have the force of judgement liens, however, also added at that time was a sentence that gave such liens priority over other liens, except for property taxes and special assessments.

This priority conflicts with 34.36.060 which gives labor liens first position and mortgages second position. According to representatives of the home mortgage industry, including AHFC,

this priority for sales tax liens could cause major disruptions in the home mortgage industry and raise interest rates.

SB 282 would delete the priority. Tam Cook of Legal Services has advised that being silent on priority has the same effect as giving the lien the priority of a judgement lien, which was suggested by the technical committee.

Representatives of AHFC, the banks, and the Municipal League will testify at today's meeting

5-1116B ✓

Bradley  
2/6/88

A

Original sponsor: Community and Regional  
Affairs Committee

BY THE COMMUNITY AND  
REGIONAL AFFAIRS COMMITTEE

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 282 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to municipal sales and use taxes."

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

8 \* Section 1. AS 29.10.200(42) is amended to read:

9 (42) AS 29.45.650(c), (d), (e), and (f) (sales and use tax)

10 \* Sec. 2. AS 29.45.650(e) is amended to read:

11 (e) A borough may provide for the creation, recording, and  
12 notice of a lien on real or personal property to secure the payment of  
13 a sales and use tax, and the interest, penalties, and administration  
14 costs in the event of delinquency. When recorded, a lien authorized  
15 under this section has priority over other liens except those for  
16 property taxes, [AND] special assessments, and prior recorded mort-  
17 gages, trust deeds, and land sale contracts. This subsection applies  
18 to home rule and general law municipalities.  
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STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_  
 Revision Date: \_\_\_\_\_  
 Title: "An Act relating to municipal sales and use taxes."  
 Sponsor: Senate C&RA Committee  
 Requestor: \_\_\_\_\_

Bill Version: SB 282  
 Publish Date: \_\_\_\_\_

Agency Affected: Community & Regional Affairs  
 BRU: State Assessor

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

*MW*

Prepared by: Mike Worley, State Assessor  
 Division: Municipal & Regional Assistance  
 Approved by Commissioner: *M Worley for D. N. Hoffman*  
 Agency: Community & Regional Affairs

Phone: 465-4750  
 Date: 5/6/87  
 Date: 5/16/87

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)  
 Senate Secretary

Original sponsor: Community and Regional  
Affairs Committee

*① potentially serious  
problem  
② no contact.*

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 282 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to municipal sales and use taxes."

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

8 \* Section 1. AS 29.10.200(43) is amended to read:

9 (43) AS 29.45.700(d) [AS 29.45.700(a)] (power of levy)

10 \* Sec. 2. AS 29.45.650(f) is amended to read:

11 (f) A borough may not levy and collect a sales tax on

12 (1) a purchase made with food coupons, food stamps, or  
13 other type of certificate issued under 7 U.S.C. 2011 - 2025 (Food  
14 Stamp Act);

15 (2) a purchase of tickets, chances, bingo cards, or pull-  
16 tabs in a lottery, raffle, bingo game, pull-tab game, or other game of  
17 chance licensed under AS 05.15. [THIS SUBSECTION APPLIES TO HOME RULE  
18 AND GENERAL LAW MUNICIPALITIES.]

19 \* Sec. 3. AS 29.45.650 is amended by adding a new subsection to read:

20 (g) The provisions of (f) of this section apply to home rule and  
21 general law municipalities.

22 \* Sec. 4. AS 29.45.700(a) is amended to read:

23 (a) A city in a borough that levies and collects areawide sales  
24 and use taxes may levy sales and use taxes on all sources taxed by the  
25 borough in the manner provided for boroughs. [THE ASSEMBLY MAY BY  
26 ORDINANCE AUTHORIZE A CITY TO LEVY AND COLLECT SALES AND USE TAXES ON  
27 OTHER SOURCES EXCEPT PURCHASES MADE WITH FOOD COUPONS, FOOD STAMPS, OR  
28 OTHER TYPE OF CERTIFICATE ISSUED UNDER 7 U.S.C. 2011 - 2025 (FOOD  
29 STAMP ACT). THIS SUBSECTION APPLIES TO HOME RULE AND GENERAL LAW