

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7207 HOUSE RESOURCES

within the State land proposed for exchange has been deliberately preserved and will not be logged. Habitat was identified in a study commissioned by CFC and conducted by America North, Inc. of Anchorage;

10. The exchange, as proposed, would add 11.11 miles to the main road system of Ketchikan, a 25% increase. A two mile reduction was required to compensate for lands and timber removed from the exchange after public review. The new roads would access a variety of areas, both CFC and State, totalling 6,811 acres, with high recreation potential. These roads would access lands the state acquires through the exchange;
11. The Ketchikan Gateway Borough has supported the exchange through a planning analysis that resulted in a specific exchange recommendation and a resolution of support by the Assembly;
12. The Borough's planning analysis included a community survey that found the following:
 - a. 9 of 10 Borough residents want the road system expanded, 50% want expansion immediately;
 - b. 86% of Borough residents support outdoor recreation development near areas that have been harvested;
 - c. Preservation of sport fisheries and wildlife in outdoor recreation areas rated highest in value to residents.
13. A total of 137 individuals registered at the three public hearings (30 in Saxman; 93 in Ketchikan; and 14 in Juneau). Eighty-six people testified at the hearings. Fifty-five letters or notes, and two petitions were also received.

Comments For The Exchange: 44 persons testified, 18 wrote letters or notes, and 112 signed one of two petitions supporting the exchange. The following entities, in addition to the Ketchikan Gateway Borough, supported the exchange: cities of Saxman and Ketchikan, Ketchikan Chamber of Commerce, Ketchikan Liaison Committee, Sealaska Corporation, Kootznowoo, Inc., Goldbelt, Inc., Cape Fox Corporation, Ketchikan Indian Corporation, Alaska Native Brotherhood, Fox River Timber Co., Klukwan Forest Products, Alaska Forest Association.

Comment Against The Exchange: 42 persons testified, 36 wrote letters or notes, and 42 signed a petition (questionnaire) opposing the exchange. Organizations in opposition were: Tongass Conservation Society, Tongass

Sport-fishing Association, Sierra Club Legal Defense Fund, Alaska Environmental Lobby, Northern Alaska Environmental Center, and the Southeastern Alaska Conservation Council.

Neutral: In addition to several residents, the Ketchikan State Parks Advisory Board (SPAB) were neutral, but wanted the remaining lands at Leask Lake, the Salt Chuck lands, and any land received by the state through the exchange protected for habitat and recreation.

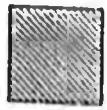
14. The Department of Natural Resources believes that although the testimony "for and against" was somewhat balanced, analysis indicates clear support from within the community of Ketchikan for the exchange.

The State is not trading pristine lands for a clear-cut waste land which is the primary argument of opponents. Only about 24% (1039 acres) of the CFC lands the State is acquiring have been clear cut. The state is purchasing these clear-cut lands for \$254-\$650/acre instead of over \$8,000/acre for forested lands. The State is also receiving approximately 37,000,000 million board feet of timber, while giving up about 40,000,000 million board feet. The exchange protects the most important fish habitat of two drainages, Leask Creek and White River. The timber appraiser estimated that while 380,000 board feet (13 acres) of the original 1500 acres designated for cut on the State's Leask Lake lands would require protection under forest practices, over 3,700,000 board feet of timber would require the same protection on CFC lands.

The primary issues are: the loss of old growth timber, impact on deer populations, and a difference in what one may or may view as a satisfying his or her recreational experience. The exchange as proposed clearly represents the interests of a majority of the residents of Ketchikan and Saxman, and in the Department's opinion is an good investment for the State.

Attached: Maps

Legend



Cutting Unit 19



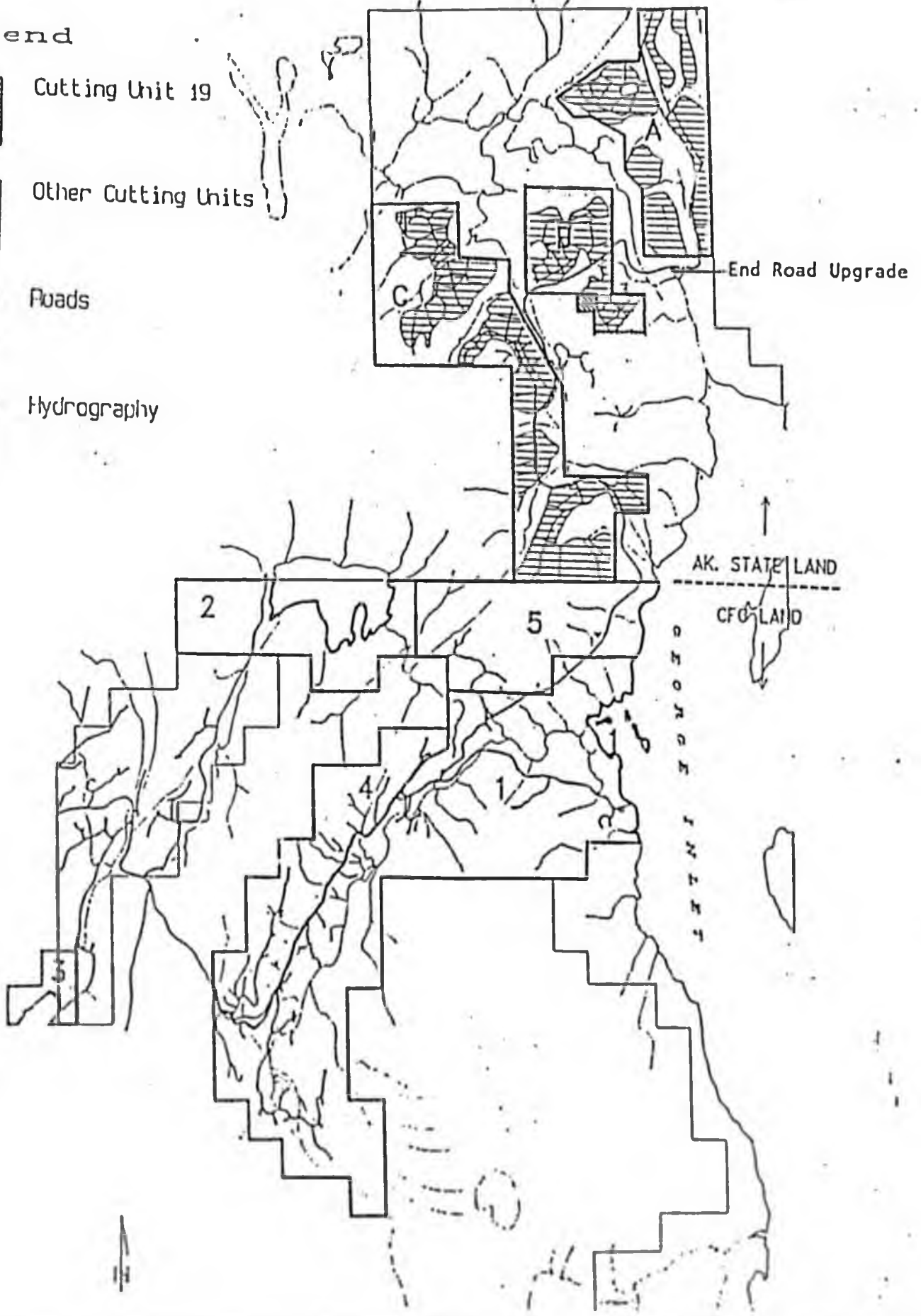
Other Cutting Units



Roads



Hydrography



To House Resources	From Tracy Abell
Co. Committee	Co.
Dept.	Phone #
Fax # 465-3444	Fax #

5/6/92

Testimony by Tracy Abell
on SB 465 & HB 578 (Leask Lakes Land Trade)
in the House Resources Committee

Mr. Chairman and members of the committee, I am Tracy Abell, and I am here speaking for myself.

I am opposed to SB 465 and HB 578. I believe that the Alaska Department of Natural Resources's proposal to trade the undeveloped Leask Lakes acreage for the heavily-logged White River lands is contrary to the interests of the people of Alaska. It is senseless to trade pristine state land for private land that has been clearcut without regard for sustained yield. From a public policy viewpoint, it is not a good idea to trade trees for stumps.

The Leask Lakes area is valuable not only for its lumber but also as fish and wildlife habitat. If the state were to trade this land, there would be significant decreases in the populations of various species, including a 71% decrease in deer numbers on the state traded land. The White River lands have already experienced significant habitat loss due to clearcutting and logging the state land would intensify the already existing problem.

The justification for this proposed trade is that the White River lands will be accessible for recreational purposes because of the logging roads that are left behind. Clearcut areas have no recreational value and it is highly unlikely that these lands will attract tourists. Even if a person wished to travel on these residual logging roads, they would be impassable without ongoing road maintenance. There is no provision for maintenance and if the state commits to this trade, it will also be committing to ongoing funding. If the state is concerned about providing more recreational acreage, it should apply its efforts to the Leask Lakes area that has true recreational value.

I am concerned that the DNR has not followed proper procedures with this proposed trade. It is my understanding that no final appraisal has been made available to the public. I don't think the people of Alaska are getting a fair deal when there are negotiations to trade away our land in a questionable procedure.

If the state goes through with this trade, it will be setting a very bad precedent. This trade would send a clear message to the corporations telling them they can trade their land in to the state after they've drained it of its resources. This would remove any incentives for the private corporations to manage their resources in a sustainable manner. The trade would encourage rapid resource extraction without concern for the future.

STATE OF ALASKA - CAPE FOX CORPORATION
LAND EXCHANGE

The Tongass Conservation Society and the Southeast Alaska Conservation Council oppose the State of Alaska -Cape Fox Corporation land exchange. They have made statements and allegations which are untrue.

ALLEGATION

FACTS

The exchange is "Instant development, Wally Hickel style."

The exchange was initiated in 1989 during the Cowper Administration.

Although SB 465 and HB 578 were introduced by the Governor's office, they originate from the State DNR, Ketchikan Gateway Borough and Cape Fox Land Exchange Agreement. This is a 3 way public/private partnership that has worked for three years to accomplish this exchange.

It is bad public policy and a waste of valuable State resources to exchange forested land for previously harvested land.

The Ketchikan Gateway Borough requested that the tract containing the majority of harvested land be included in the exchange. The purpose is for long range public land management planning.

The U.S. Forest Service recently completed a land exchange with Goldbelt, Inc., a Native village corporation. A large portion of the land which the USFS acquired had been logged by Goldbelt.

The Forest Service is currently negotiating a land exchange with Kootznoowoo Inc., a Native village corporation. In this exchange the Forest Service would also receive a significant acreage of logged land.

The Forest Service contracted the Institute of Social and Economic Research, University of Alaska Anchorage to study

ALLEGATION

FACTS

All of the high value old growth forest in the Cape Fox parcel has been clearcut and only marginally economic timber remains. The White River has no recreation, fish or wildlife value.

the potential for acquisition of private timber land, land that has been harvested. The U.S. Congress directed the Forest Service to conduct the study and to consider acquiring additional harvested land.

Harvested land is at its lowest monetary value immediately following and up to 15 years after harvest has been completed. This is the time to acquire land at lowest cost to the public.

Harvested land will recover rapidly. Forests in Southeast regenerate naturally.

38 million board feet of timber are on the Cape Fox land offered for exchange. The percentage of Sitka spruce, the preferred commercial species, in the White River is 35%, higher than average for southern Southeast.

Only 24%, approximately 950 acres, was harvested by Cape Fox. The remainder of the harvested area, 87 acres, was a result of the Swan Lake power line. 3,366 acres remain in their natural or old growth condition.

The White River contains 23,000+ sq. meters of fish habitat.

A retired Alaska Department of Fish and Game commercial and sportfish biologist, Don Seidlman, surveyed and inspected the White River in 1989. He concluded, based on a 1976 ADFG survey of the White River, that the river since 1976. Cape Fox did not receive title to the White River until 1979 and did not log until 1981. He was of the opinion that there is significant sportfish potential

ALLEGATION

The exchange will destroy habitat and ADFG predicts a 68% decline in the deer population and a parallel decline in other species.

in the White River.
FACTS

Anadromous fish habitat will not be effected. 90% of this habitat will remain in State ownership. The remaining 10% to go into Cape Fox ownership will be protected by Forest Practices Act provisions for stream buffers.

There will be effects on and changes to wildlife habitat. There will be a decline in deer population, particularly in severe winters. However, the ADFG prediction of a 68% decline, 97 deer, was calculated on only those areas in the Leask Lake area proposed for timber harvest and over a 20 year period. When the entire land area of Leask Lake is considered the decline is estimated to be 45% over 20 years. When the Cape Fox exchange parcels, which are contiguous to the State land, are included the decline is estimated to be 35% over 20 years. No analysis has been conducted on other wildlife species.

Without the exchange, wildlife habitat in the White River tract and other Cape Fox land in the exchange will be completely effected as Cape Fox harvests all commercial timber not protected by the Forest Practices Act.

ALLEGATION

The appraisal has not been accepted and is not suitable for public review because the public could not understand it.

The value of the State properties was reduced through bookkeeping. State timber was discounted over two years while Cape Fox timber was discounted over 1 year.

The State is giving away 958 acres of land for \$71 an acre.

There are other alternatives to finance and build a road into the Leask Lake tract. The U.S. Forest Service has publicly stated that if this exchange is not successful that they will build a road into the area.

FACTS

The 3 parties to the exchange reviewed the appraisal document, understood it and accepted the results. Two parties, Cape Fox and the Borough, accepted the draft as written. DNR accepted the results but requested text clarification. The appraisal has been finalized and signed by an MAI appraiser.

The timber appraiser separated timber into logical harvest operations for both ownerships and discounted using standard accounting techniques and knowledge of the current market.

The land in question is predominantly muskeg and non-commercial timber land that is not included in areas proposed for timber harvest. In these areas Cape Fox has agreed to accept restricted development rights. The land may not be subdivided and can only be used for roads, soil and wood waste disposal and limited staging areas to facilitate the proposed timber harvest. These uses will be reviewed and approved by DNR. The land in question will be open to public use. The remaining 1377 acres is valued as commercial timber land with an approximate value of \$7,500 per acre.

In a recent memo to The Ketchikan Gateway Borough Forest Supervisor Dave Rittenhouse clearly states that the Forest Service does not have plans to construct such a road nor do they intend to propose such. He also states that funding for this would be virtually impossible to obtain.

ALLEGATION

The exchange would eliminate prime recreation areas and have extensive visual impacts to the lakes.

The deer study is self serving and is suspect because Cape Fox contracted the work.

FACTS

The Leask Lake tract is a typical Southeast forest full of brush and windfalls. There are no recreation amenities other than the lakes, streams and their immediate surroundings in the tract.

The lakes and streams are the recreation resources of the area and have buffers of at least 500' and in many cases 1000' where timber harvest is proposed. North and west of the lakes timber harvest is not proposed.

A benefit of the exchange would be the creation of road access to the boundary of the Naha River roadless area. The Naha River area is managed by the Forest Service and is comprised of 32,000 acres of old growth forest, Forest Service recreation cabins and trails, 5 large lakes and sportfishing including steelhead trout and salmon.

Cape Fox conducted a visual analysis of the proposed timber harvest using the U.S. Forest Service Visual Management System. The proposed harvest meets or exceeds the U.S.F.S. visual management standards.

The study was conducted by America North Inc., a professional consulting firm. Please see the attached memo from America North.



America North/EMCON, Inc.

Environmental Consulting & Engineering • Health & Safety

April 14, 1992

Senator Lloyd Jones, Chairman
Senate Resources Committee
Juneau, Alaska 99801-1182
(FAX) 465-3922

RE: Senate Bill No. 465; House Bill No. 578

Dear Senator Jones:

This letter is in response to testimony provided to your committee by Mr. Dave Katz of the Tongass Conservation Society with regards to the White River-Leask Lakes Land Exchange.

America North/EMCON, Inc. (formerly America North Inc.) completed an evaluation of the effects of timber harvest on deer in the Leask Lakes area for the Cape Fox Corporation (CFC) in 1991. Mr. Katz has repeatedly discredited this report in the press, public hearings, and most recently before your committee. His primary allegation stems upon his belief that since CFC paid for the deer study it is flawed and should not be considered credible.

As a reputable and credible environmental consulting firm, AN/E strives to provide its clients with objective studies and reports. Our staff opinions cannot be bought nor altered to suit a client's need. Clearly, a scientific consulting firm which works for both private industry and state and federal agencies would not be in business for any period of time if its clients were able to sway or buy the consulting firm's findings.

The CFC contracted with AN/E to obtain our professional opinion and have never requested we alter our findings to reflect more positively on their proposal. AN/E has found the CFC to be a responsible and objective client who asked for nothing but professionalism and objectivity. Our staff and subcontractors worked hard to meet their expectations, and we stand behind the report and its conclusions.

Sincerely,
America North/EMCON, Inc.

Lisa Haas, CEO

Cheryl Moody, Project Manager

cc: House Finance Committee
House Resources Committee
Senate Finance Committee
Cape Fox Corporation

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND

**Proposed Exchange With Cape Fox Corporation
ADL No. 105565**

**REPORT ON PROPOSED
LAND EXCHANGE**

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ADL NO. 105565**

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**DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND**

**Proposed Exchange with Cape Fox Corporation
ADL No. 105565**

REPORT ON PROPOSED LAND EXCHANGE

I. Introduction

This report is prepared pursuant to Alaska Statutes (AS) 38.50.130 for a proposed land exchange between the State of Alaska and Cape Fox Corporation, a Village Corporation established under the Alaska Native Claims Settlement Act (PL 92-203). The report discusses the objectives of the exchange, the physical aspects of the land involved in the exchange, the appraised fair market value of each tract, the benefits and detriments which can be expected to accrue, and alternatives to the proposed exchange. A summary of information and comments received through the public hearing process are incorporated in this report.

A draft of this exchange report was distributed for public review on February 10, 1992. Public comments have resulted in several modifications to the exchange agreement. Public comments and information acquired during public review have resulted in some changes and updates to this exchange report. The draft report included sixteen attachments that totalled over 250 pages. Rather than reproduce these attachments, they are incorporated into this final report by reference. Copies of the attachments are available from the DNR Southeast Regional Office.

Supplemental information attached to this report includes the Final Exchange Agreement, attached hereto.

II. Proposed Action, Maps and Legal Description

Through this proposed exchange, Cape Fox Corporation (CFC) would acquire 2,335 acres of the state's land (surface) estate less rights to sand, gravel, and rock, near Leask Lake, in exchange for an equal value from CFC's 4,366 acre surface estate at White River, Lake Harriet Hunt, and Talbot Lake (see attachment "A" and "B" and Map 1 to the Final Exchange Agreement for the location and legal description of proposed exchange areas). The state and CFC parcels are located near Upper George Inlet on Revillagigedo Island north of Ketchikan.

CFC would acquire lands with at least 30,000,000 board feet (30,000 Mb \bar{f}) of harvestable commercial timber. The Department of Natural Resources (DNR) would restrict cutting of timber and development on over 40% of the land proposed for conveyance to CFC. These Leask Lake parcels would be conveyed to CFC with a restriction that requires all non-harvested areas to

Proposed Exchange with Cape Fox Corporation

remain as permanent open space. In the proposed exchange, CFC is required to upgrade the existing White River and proposed Leask Lake roads to recreation standards. Conveyance of an equal value amount of state land will be deferred until substantial portions of the required upgrades have been completed.

III. Objectives

Primary state objectives are: 1) to acquire lands in the vicinity of White River and Lake Harriet Hunt to provide greater opportunities for roaded recreation in the Ketchikan area, while attempting to minimize adverse impacts, and 2) to acquire additional resource lands.

IV. Authority

Land Exchange Statutes and Regulations; AS 38.50 (11 AAC 67.200-280). AS 38.50.010, allows the Director, with the concurrence of the commissioner, to dispose of state land or interest in land by exchanging it for land, interest in land, or other consideration for: 1) the purpose of consolidating state land holdings, 2) creating land ownership and use patterns which will permit more effective administration of state public domain, 3) facilitating other objectives or state programs, or 4) other public purposes. AS 38.50.040, authorizes the Director to exchange any state land or interest in land regardless of the authority under which the land or interest was obtained by the state.

Other statutes and regulations: AS 38.05.185 (11 AAC 86.135) - Mineral Closing Orders. AS 38.05.035(e) - Findings. AS 38.05.945, AS 38.50.110, 11 AAC 02.010-.080 - Public Notice. AS 38.04.065 (11 AAC 55.040(i)(4) - Planning and Classification.

V. Administrative Record

The administrative record consists of case file ADL 105565, and DNR, Division of Land, Southeast Region Office (SERO) state selection file NFCG-143. Incorporated by reference are: Alaska statutes and regulations.

VI. Background

The proposed exchange area is located approximately 10 miles north of Ketchikan. Although the application now under consideration was accepted by DNR in March of 1991, CFC interest to exchange dates back to 1977. On November 18, 1980 the state actually amended its Upper George Inlet selection (NFCG-143) to add lands at Leask Lake to accommodate a possible

Proposed Exchange with Cape Fox Corporation

exchange. A "memorandum of understanding" for CFC's earlier proposal was developed in 1982 but was never executed. The initial exchange proposal died due to its complexity, personnel changes within the Division of Land, and lack support by key personnel within the Division of Land's Southeast office.

Several attempts were later made by CFC to revive the exchange, but it was not until 1989 that another serious attempt was mounted. At that time CFC supported by a resolution of the Ketchikan Area State Parks Advisory Board wrote the state. This was followed by several letters from the public indicating concern over the inclusion of Leask Lake.

Due to the controversy associated with this proposal, DNR asked the Ketchikan Gateway Borough (KGB) to assemble a work group consisting of agency representatives and interest groups to explore alternatives, and return a recommendation. Although DNR knew there was support for acquisition of the White River corridor, it was not clear whether to include state land at Leask Lake. The department did not want to pursue a new proposal without additional direction and indication of community support.

KGB's Assembly directed its Planning Department to identify and evaluate alternatives. If Leask Lake appeared to be the best alternative, the planning department was directed to develop a consensus approach that would include the best features of various proposals involving that area. A community survey to determine residents' recreational needs and attitudes was performed by the McDowell Group as part of the study. The Planning Department report, which contained five alternatives, was submitted to the Assembly for review and selection of a preferred alternative. The Assembly selected the "Timber/Environment" alternative which involved the state's Leask Lake lands.

The report, accompanied by Borough Assembly Resolution No. 954 recommending an exchange between CFC and the state, was submitted by CFC to the state as a part of its exchange application package. At the time of submittal, KGB felt the Timber/Environment alternative, a variant of the original CFC exchange proposal, best recognized the expressed public desires for additional recreation areas and road access while protecting and managing fish and wildlife habitat. DNR generally agreed, and felt that criticisms leveled at the Borough process could be resolved through its own agency and public review processes.

DNR proceeded with distribution of the exchange package to agencies and interested parties for first review on April 21, 1991. Comments were consolidated and forwarded to DNR's Director of the Division of Land. On May 22, 1991 Division Director Gustafson executed and forwarded to CFC a

Proposed Exchange with Cape Fox Corporation

letter indicating the state's interest in negotiate a preliminary land exchange agreement under 11 AAC 67.230 with two conditions: 1) written clarification of Sealaska's position relative to inclusion of its subsurface estate in the proposed exchange; and 2) submission of CFC's written analysis of alternatives to the state timber land near Leask Lake. The state received Sealaska's confidential response on May 31, 1991, and CFC's response as to alternatives on June 26, 1991. Sealaska also reviewed and concurred in the language developed for Section XIII of this document.

An environmental assessment was completed by DNR on June 27, 1991. The assessment revealed no significant environmental contamination or unauthorized activity on state or CFC land.

DNR in cooperation with CFC, and KGB then developed a Preliminary Exchange Agreement (PEA). At the request of KGB, a parcel of CFC land at Talbot Lake was added to this PEA. The PEA executed by Director Gustafson on July 1, 1991 and accompanied by the letter of intent and comments generated from the initial review, were forwarded to agencies and interested parties on July 3, 1991. A copy of "Cape Fox Corporation Leask Lakes-White River Land Exchange Deer Winter Habitat Evaluation" was later received, and circulated by DNR on September 6, 1991. The State of Alaska Department of Fish and Game (ADF&G) also reviewed the resource matrix and deer study. ADF&G and ANI persone. met in Anchorage to resolve data differences. The table in XVI.D. represents data created from that meeting.

Request for Proposals for a Timber Cruise of the state's Leask Lake parcels, and appraisal of all exchange parcels was jointly developed by DNR, CFC and KGB. The timber cruise contract was awarded to Klukwan Forest Products. Don Karabelnikoff of Karabelnikoff and Associates was awarded the contract to appraise both state and CFC properties. To help, Mr. Karabelnikoff retained additional professional appraisal support from Calvin L. Kerr of Kerr and Associates (logging methods and timber values), Michael L. Robbins, and Charles Horan.

An updated and rough summary of resources by acreage together with Klukwan Forest Products, Inc. estimates of timber remaining on CFC exchange parcels was received and forwarded to Alaska Department of Fish and Game's Ketchikan office on September 8, 1991. On September 10, a DNR representative met with Tongass Conservation Society's (TCS) attorney Gregg Cook to discuss the exchange and provide information requested by TCS in earlier correspondence.

Results of the cruise of timber at Leask Lakes were received by DNR on September 20, 1991. The area was later modified to add the Leask Lake

Proposed Exchange with Cape Fox Corporation

Right-of-Way and Unit 19 timber. An extract from Klukwan Forest Products, Inc. estimates of Timber, and Kerr's estimates of logging costs and timber values for both the state and CFC lands can be viewed in Attachment - "F" to the original exchange report. These values have since been adjusted for additional Leask lands removed from the conveyance and lands placed in open space.

VII. Physical Characteristics

Physical characteristics of the land involved in the exchange, including the surface and mineral resources are addressed below. A matrix describing acreages of generalized land types in the exchange can be found in Attachment - "E" of the original report, although the data shown for Talbot Lake is not reliable. The appraisal document, not attached as a part of this document, also contains an expanded analysis of social and economic factors.

Available data indicates little or no commercial potential for minerals or the extraction of rock, sand or gravel on state or CFC lands proposed for exchange. state lands involved are now open to mineral entry, but DNR intends to close to mining and mineral entry the state lands involved in the exchange.

CFC lands proposed for exchange contain an estimated 37,984 Mbf of timber, consisting of 29% spruce, 49% hemlock, and 22% cedar. Operable acres is estimated at 2,273 (16.7 Mbf/acre) acres or about 52% of the CFC land.

Original State lands proposed for exchange and cutting contain an estimated 42,642 Mbf of timber, consisting of 19.1% spruce, 75.9% hemlock, and 4.0% cedar. This was based on 1500 acres or 61% of the state land. Additional portions of the state lands are timbered but will be conveyed subject to a restriction limiting development activities. The acreage scheduled to be conveyed and amount of timber scheduled to be cut has been adjusted downward for reasons covered later in this document. Actual cut will be reduced to approximately 40,000Mbf and approximately 1350 acres.

Please see Attachment - "F" for the original detailed summaries of timber by area, and Attachment - "D" for additional descriptive material. Both references are to attachments to the original report.

State Lands:

Leask Lake: The state land proposed for exchange at Leask Lakes consists of approximately 2,335 of 5,240 acres of unclassified state property. This

Proposed Exchange with Cape Fox Corporation

state land adjoins CFC's White River properties. The tracts consist essentially of undisturbed mature ("old growth") forest, primarily western hemlock, but with substantial amounts of spruce and cedar at specific locations. The terrain is generally rolling or broken. The lakes are relatively small and are bordered with extensive meadows and marshes. Leask Creek is approximately two miles long and runs through a narrow draw. The area includes a number of important habitat resources, with the aquatic resources focusing on the lakes, their tributaries, and Leask Creek which empties into Upper George Inlet to the east. Leask Lake is anadromous and includes runs of steelhead trout, and coho, sockeye, and pink salmon. Wetlands are extensive and scattered throughout the area, comprising important hydrologic features adjacent to the lakes and Leask Creek, as well as isolated palustrine types in upland forested areas.

The area possesses important scenic values, and offers a range of recreational (fishing, viewing, and hunting) and commercial forest opportunities. Although most of the area meets the preferred elevation criteria for wintering deer, low snow interception capacity in most of the commercially viable timber stands and low coverages of preferred winter forage species in closed canopy stands may limit deer use in these areas during moderate to severe winters.

The proposed layout for the timber cut on the state's Leask Lake land, has been modified to accommodate CFC recommendations on the deer study completed by America North Inc., but does not address all aspects of the "old growth" issues. It does offer significant protection for fish streams, some critical deer winter range, travel paths, and recreation resources.

Archaeology: DNR's Division of Parks and Outdoor Recreation, Office of History and Archaeology was contacted and had no objection to the exchange. Although they indicated there was evidence of pre-historic use within the region, no known cultural sites were identified on the subject parcels.

CFC Lands:

The Cape fox Corporation land to be acquired by the state, totals 4,366 acres that are described as five parcels. Three of the parcels are contiguous tracts that encompass much of the White River drainage, the other two border Lake Harriet Hunt and Talbot Lake. Of the 4,366 acres the state is acquiring, approximately 1,000 acres are clear-cut, 2,000 acres are wetlands, and the remaining 1,300 acres contain varying amounts and types of timber.

Note: The Environmental Assessment section contains additional material to supplement descriptions of CFC tracts outlined below.

Proposed Exchange with Cape Fox Corporation

Map Area - 1; White River Valley: This area consists of 2,283 acres occupying the eastern portion of the valley of the White River, from its mouth at Upper George Inlet some 4.5 miles southwesterly to the national forest boundary near Brown Mountain. This property also includes the existing CFC White River Road, and approximately 250 acres of corporation land north of the road. The property is a broad valley containing a low gradient, low velocity stream having significant anadromous fish runs. Areas of previous timber harvest exist in the southern parts of the exchange area and along approximately 70 % of both sides of the White River. Approximately 21% of the area has been clear-cut. The remainder of the property includes scattered stands of spruce, hemlock, and cedar. Wetlands adjoin parts of the White River and significant portions of the areas to the east of the stream throughout its length, and to the north of the stream within three miles of its mouth at Upper George Inlet. Wetland types cover approximately 65% of this area. These wetlands are predominately of a palustrine type, but riverain wetlands occupy significant portions of the valley and provide hydrologic connections to White River. A number of important habitat areas occur along the stream, including waterfowl, fur bearers, as well as coho, chum, king, and pink salmon. White River has runs of steelhead and cut-throat trout and Dolly Varden. The area contains a log transfer site at George Inlet and beaches which are much in demand in Ketchikan.

Map Area - 2; Lake Harriet Hunt: This parcel consists of approximately 640 acres of land at and under Lake Harriet Hunt. This area is accessed by a state-maintained two-lane road. The area occupies the southern, eastern, and western portions of the area near Lake Harriet Hunt, and adjoins National Forest properties. The area is generally flat to moderately rolling. It consists of a mixture of wetland areas, mostly adjacent to the lake, and stands of hemlock, cedar, and spruce at the western and eastern boundaries of CFC's properties. The wetland types which, non-exclusive of the lake, cover 70% of the area include riverain, palustrine, and lacustrine. They are particularly extensive in the southern and southwestern areas of the parcel. Important habitat resources exist adjacent to the lake, associated with fur bearers and waterfowl populations. State land adjoins the Lake Harriet Hunt area immediately to the north, and this area has been proposed at various times for a state park. In addition, the Ketchikan Gateway Borough selected 600 acres of state land as part of its municipal land entitlement; this parcel is situated immediately west of the CFC holdings.

The area proposed for exchange is predominately level and open muskeg or non-commercial timber land. The area, including the lake, receive significant recreation use year round, including cross country skiing, snow machine use, ice skating, canoeing, boating, hiking, picnicking, swimming, camping and ATV use.

Proposed Exchange with Cape Fox Corporation

Map Area - 3; Talbot Lake: This area consists of 120 acres around and under Talbot Lake and is accessed from the by a single lane road and on the west by the old Ward Creek Trail. About 48% of the area is covered by open-growth commercial stands, the remainder is for the most part composed of wetland types, with relatively flat or rolling land to the northeast and east to relatively steep land to the west. The lake is quite small, but does represent some recreational opportunities, predominately picnicking and hiking. KGB has purchased timber rights previously sold by CFC to Klukwan Forest Products, Incorporated.

Map Area - 4; White River Second-growth: This area contains 650 acres, approximately 9% of which consists of wetland types. The land is steep, undulating or broken in the southeast portion, and steeply pitching southeast to the White River over the remainder. The area comprises the greater part of the western slopes of White River Valley. About 67% of the area has been clear-cut. Little of the remaining area represents important habitat. Protection of the White River road, including protection of the view shed after the slopes regenerate and continuity of management are the prime interests.

Map Area - 5; White River Hillside: This parcel consists of 673 acres of hillside and beaches located along the west shore of Upper George Inlet, and south of Leask Lake. The area is probably second only to Map Area-1 of the CFC properties in total resource values. Only 20% of this area has been clear-cut. Thirty-two percent of the area has recognized habitat potential for deer or fur bearers. The area also includes several small islands near the mouth of White River.

VIII. Appraised Values

The fair market appraised value of the five CFC parcels, after adjusting for 17 acres of timber in the northern forty already owned by KGB, and rounding is \$7,950,000. The three Leask Lake parcels, after adjustments removing 110 acres in cruise units 7 and 19, changing an additional 33 acres in these units from cut to "open space", and reducing the amount of road CFC will be responsible for constructing or upgrading by 10,500 feet, to 11.11 miles, were valued after rounding at \$7,950,000 (assuming there is no road fee associated with logging operations).

This was a complicated appraisal assignment for which the contract appraiser, Karabelnikoff and Associates, used a complex statistical analysis to arrive at values. The appraisal assignment was complicated because of several factors including: 1) only the surface estate is being appraised; 2) much of the land supports commercially valuable timber; 3) the state land to be transferred to CFC that is not designated for timber harvest is permanently reserved as "open space"; and 4) the proposed exchange requires the CFC to build roads suitable for public use.

Proposed Exchange with Cape Fox Corporation

The appraiser assumed that the highest and best use of the land is to log the timber and then make the land available for a wide range of recreational uses, including cabin sites and lodge operations. The appraiser, therefore, determined the net value of a logging operation, and then determined the residual value of the land after logging. The value of the subsurface estate was then deducted from the surface values. For the state tracts near Leask Lake, two significant deductions were made. First, residual land value was reduced due to the restriction that non-harvested areas remain as permanent open space, which adjusted the residual value of these tracts to 10% of their market value. In essence, the restrictions imposed on these parcels made them of limited value to CFC. Second, the costs of the road upgrade are deducted from the total appraised value of the state land and timber. The summary of values for each parcel is shown below.

CAPE FOX PARCELS

	-1-	-2-	-3-	-4-	-5-
Timber Value	\$2,700,000	\$408,000	\$102,000	\$45,000	\$2,141,000
Residual Land Value +	\$1,438,290	\$650,080	\$68,409	\$165,100	\$278,622
Subsurface Adj.	\$14,383	\$6,501	\$684	\$1,651	\$2,786
Final Value =	\$4,123,907	\$1,051,579	\$169,725	\$208,449	\$2,416,836
Total Original Value of Cape Fox Parcels:					\$7,970,496
Less 17 ac. of KGB timber (Talbot Lake)					- 20,389
Total Adjusted Value of Cape Fox Parcels:					= \$7,950,107
Rounded:					\$7,950,000

LEASK LAKE PARCELS

	Original w/Road Fee	Orig w/o Road Fee	Adj w/o Road Fee
Timber Value	\$ 9,411,000	\$ 9,828,042	\$ 9,090,000
Residual Land Value	\$ 1,775,224	\$ 1,775,224	
Subsurface Adj.	\$ 17,752	\$ 17,752	
Open Space Adj.	\$ 636,781	\$ 636,781	
Real Estate Value =	\$10,531,691	\$10,948,733	\$10,124,988
Extra Road Cost	\$ 2,529,000	\$ 2,529,000	\$ 2,171,045
Final Value	\$ 8,002,691	\$ 8,419,733	\$ 7,953,943
Rounded:			\$ 7,950,000

Proposed Exchange with Cape Fox Corporation

Public review and comments have lead to changes in the specific configuration of the exchange, ultimately affecting final dollar values of the exchange. The appraiser organized the data to accommodate such adjustments. Adjustments have been made to compensate for less road upgrades, less cutting, and elimination of acreage to be conveyed to CFC. Existing data indicates the exchange as proposed in the Final Exchange Agreement to be of equal value.

DNR and an independent appraiser have thoroughly reviewed the draft appraisal and found the values to be generally correct. Much of the value of the appraised parcels are derived from timber and road construction values, which DNR finds acceptable. The residual land values were arrived at through the use of a complex statistical analysis. This analysis, while statistically valid, is not widely accepted in the appraisal community. Both the timber and land appraisals have been adjusted for modifications that result from the public review process. Final values have been incorporated in the Final Exchange Agreement.

IX. Benefits and Detriments

There are social, economic, and environmental benefits and detriments (adverse impacts) that may be derived from the exchange.

The exchange would increase public opportunities for roadside recreation in the Ketchikan area by adding approximately 11.11 miles of road; an increase of about 25%. Over both the short and long term, the exchange would provide the opportunity for additional state ownership of important recreation and habitat resources. For the most part, negative aspects of the trade are confined to the community benefitted. Although it is possible that the roads desired could be built and/or upgraded by other means, it is doubtful given declining state revenues. The existing roads in their current condition or ownership would not provide the public legal or safe access to CFC lands. The state has retained the option so that if the road upgrades are not accomplished, the amount of state lands committed to the exchange will be reduced accordingly. If the state did the upgrades the commitment of state lands could be reduced by about 274 acres.

Additional logging that results from the exchange will provide temporary jobs. Because of the nature of CFC, much of the logging proceeds are expected to recirculate within the community and positively affect the local economy. Acquisition by the state of Areas 1 and 5 will offer opportunity for additional protection of the remaining timbered areas along the mouth of White River and adjacent hillside, protecting both important habitat and views from George Inlet. The exchange should remove obstacles to support for more permanent protection, such as a legislative designation, of the remaining Leask Lake land, and state lands adjacent to the Salt Chuck. After the exchange, the state will still own 2,905 acres around Leask Lakes and additional lands in and around the Salt Chuck.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

Proposed Exchange with Cape Fox Corporation

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Proposed Exchange with Cape Fox Corporation

Some adverse affects or impacts can also be expected. "Old growth" forest land will be fragmented. The exchange would consolidate public ownership at White River, but at the same time fragment ownership near Leask Lake. Opening additional lands to public use, with or without adequate management, can have adverse impacts. The recreation and use of Leask Lake as a natural ecosystem would be altered, and the existing wilderness experience although not entirely lost would be reduced or further removed. Although work has been done to protect aesthetics in the Leask Lake area, it is expected that some of the clear cuts will be observable from the lake. Deer, and "interior forest" species, e.g. martin, although not expected to be lost, can be expected to decline. The significance of the impact of timber cutting on deer is expected to increase during moderate to severe winters (please see Attachment - "G" to the draft report and Section XVI.D. of this report). Numbers and resultant viewing opportunities could be affected by timber cutting and increased human access. The need for more intensive and costly wildlife and road management will likely increase as human use of the area intensifies. Hunting bag limits may have to be altered. Maintenance money for roads, bridges, and other service facilities will have to be provided. Without funding for maintenance (see Attachment - "I") estimated at \$20,000-\$30,000 per year, acquisition of CFC lands will not ensure that road access will be maintained. If the roads are not upgraded and maintained they will probably be closed. DNR does not have the funds needed to maintain the roads, and would more likely look to the Borough to provide those services.

X. Alternatives

AS 38.50.100 requires that, the director consider other alternatives to achieve the objectives of the proposed exchange in an effort to determine whether the proposed exchange will best serve the public interest. In making this determination, the director is required to consider, among other things, the advantages and disadvantages of acquiring the land or interest in land for the state by means of purchase, lease, selection or condemnation.

A. Purchase: This option would be acceptable to Cape Fox Corporation, but would cost the state almost \$8,000,000 without upgrade of the White River road or construction of the road to Leask Lake. If, however, another way to build public roads could be found, this alternative would provide many of the other exchange benefits with less impact on the Leask Lake area. Timber harvest would likely be much lighter. Ownership patterns would be consolidated without fragmentation of the Leask Lake parcel. Physical access comparable to that proposed by the exchange would require additional funding. Because of declining state budgets, a legislative appropriation for outright purchase is considered unlikely. There is also a feeling that protection of the White River, Lake Harriet Hunt and other CFC land should

Proposed Exchange with Cape Fox Corporation

involve some level of sacrifice by the community benefitted.

B. Lease: A lease of all CFC lands involved in the exchange, assuming 8% rental would cost the state approximately \$640,000 per year, without addressing the necessary road upgrades. This option is not practical for many of the same reasons addressed in "A". Furthermore, under this option, the state would never acquire ownership of the CFC land.

C. Selection: This is not an option. The state cannot select lands either interim conveyed or patented to CFC. Selecting other federal land to exchange to CFC is also not an option. The state has used most of its National Forest Selection entitlement, and cannot select land from the National Forest for timber alone, which is the type of land Cape Fox is interested in (Please also refer to Section X, Subsection I);

D. Condemnation: DNR's authority to condemn land is limited to providing access to its resources, e.g. timber. Although the Department of Transportation and Public Facilities has broader powers and could possibly condemn the road corridor it has indicated no interest in owning or managing the White River road. DOT/PF could not condemn adjacent CFC lands which the community desires for public use. All condemnations require payment of "fair market value", and considering CFC's willingness to sell, condemnation is unnecessary. Condemnation, even if an available option, would still require the state to purchase the land, see A (Purchase) above.

E. Trade Timber Rights on State Lands Only: Trading only timber rights on state land at Leask Lake, appeared to be a solution more acceptable to parties both generally supportive and opposed to inclusion of Leask Lake lands in the exchange. Although this solution would diminish the value of the state lands exchanged, it would also prevent the fragmentation of ownership of the state's Leask Lake parcel. However, there are significant problems with this approach. If the land remained in state ownership, CFC's timber harvest would be subject to the Annual Allowable Cut requirements needed for the state to manage at a sustained yield harvest rate. This could make harvesting and the exchange uneconomical for CFC. Furthermore, other recent attempts by the state to separate timber from the other bundle of property rights has lead to litigation. This is not a practical alternative.

F. Exchange as Proposed in the Preliminary Exchange Agreement (PEA): This proposal would achieve the objective of state ownership of the CFC land and resources but does not address road upgrades and thus would not provide assurance of timely physical access to the acquired lands. However it would reduce the state timber and lands scheduled for conveyance by about 30%.

Proposed Exchange with Cape Fox Corporation

G. Modified Leask Lake Exchange Proposal: This is the current proposal. DNR has modified the exchange proposed in the PEA to: 1) require upgrade by CFC of both the existing White River Road and the proposed road to Leask Lake to recreation standards; 2) reduced the acreage and timber volume and adjusted the cutting pattern to better conform to CFC's recommended modifications to the deer study; 3) added a provision to ensure that the road upgrades are provided before state timber or lands that fund the upgrades can be cut or title conveyed; 4) added a provision that would allow the state or its agent to accomplish the road upgrades and reduced the amount of state acreage committed to the exchange accordingly for doing so; and 5) added language to ensure that CFC rights to use the DEC permitted waste disposal site (#9113-BA012) and state tideland leases (#'s: 100898 and 105135) adjacent to the Log Transfer Facility at Upper George Inlet terminate consistent with the intent of the PEA as it applies to the use of the LTF, and that disposal of waste on the DEC permit area is restricted to that generated from the long transfer facility. DNR also removed an additional 40 acres, and placed another 13.5 acres south of Leask Lake into Open Space to provide protection for additional viewshed.

H. No Action Scenario: Until recently, and with few exceptions, "no action" has been the state's position since 1977. In light of CFC and Borough (community) efforts, a decision to take no action would disappoint both the Borough and CFC, with possible serious economic consequences to CFC. It would put the community no closer to achieving goals indicated by KGB's public survey, and may actually reduce support which appears to be building for legislative designation of the Salt Chuck at Upper George Inlet as a "Critical Habitat Area." Removal of Leask Lake from the exchange could also expose the area to consideration for inclusion in one or more outstanding settlements (such as the Mental Health Trust Lands) or selection by KGB should it receive additional entitlement. A no action scenario would most likely lead to additional cutting on CFC lands.

I. Other Access Alternatives: Several access alternatives have been considered. These include Forest Service proposals using either logging receipts and/or a combination of logging receipts and "hard money" for design and construction. DOT/PF has also contracted a study of possible transportation corridors for Revillagidedo Island (see Attachment - "O" of the original report for some of the alignments). This study may have been precipitated by a desire to intertie the Tyee and Swan Lake Hydro Projects.

Although DOT/PF may favor routes to the west and north of Lake Harriet Hunt, and these would be fine for accessing Leask Lake, neither provide desired roaded access to White River, and Upper George Inlet. DOT/PF proposal H&K (see Attachment - "O" of the original report) which for the most part parallels the KGB/CFC alignment, best achieves access to both of these areas.

Proposed Exchange with Cape Fox Corporation

DOT/PF's proposal (see Attachment - "O" to the original report) which would connect Ketchikan to the Bradfield Canal near the Tyee Hydropower Project, carries a price tag of up to \$150,000,000 or about \$1,000,000 per mile. If funds were limited, and the KGB/CFC proposed roads were in place, attention could be focused on stretches of road beyond Leask Lake, eliminating the immediate need for construction of the first eleven miles from Ketchikan, and deleting or deferring the need for almost \$11,000,000 required to provide the Ketchikan connection from its intersection with the proposed Leask Lake recreation road.

Any road dissecting rather than skirting the Naha, a U.S. Forest Service LUD II area, could be expected to encounter opposition. Although the Forest Service alignment running north of Lake Harriet Hunt best accesses its lands, the KGB/CFC alignment proposed in Alternative "G" (see Map 1, attached to the Final Exchange Agreement) provides the best access to lands now in state ownership or proposed for state ownership, and could act as a recreation loop if a better road is later constructed using DOT/PF's interior alignment.

J. Other Exchange Alternatives: Exchanges are difficult even when they are strongly supported and clearly benefit the areas involved in the exchange. The small amount of non-trust land in Southeast Alaska in state ownership, coupled with the high demand for its lands, e.g. need for lands for University of Alaska and Mental Health settlements, etc., adds to the difficulty. Alternatives (see Attachment - "K" to the original decision) were explored by CFC and the Borough, and Leask Lake was determined to be the only suitable site, and more importantly the only site of further interest to CFC. Although an attempt was made to interest CFC in timber rights in the Thorne Bay area, it indicated that it was clearly not interested because the more valuable timber in the Thorne Bay parcel has already been cut. KGB does own a stand of timber located at Whipple Creek estimated to contain approximately 15.3 million board feet. KGB, however, feels that there are problems which need to be addressed and is not willing to commit substantial amounts of this resource to an exchange at this time. It is likely that in addition to the problems that need to be worked out, that the Borough perceives these lands as not great enough to accommodate the primary objectives of the exchange but may be substantial enough to generate funds necessary to manage the lands ultimately acquired from the state exchange. This could be extremely important, given predictions again of diminished state revenue.

Proposed Exchange with Cape Fox Corporation

XI. Public Access

Public access to all major water bodies and courses in the area are expected to be enhanced by the exchange. Roaded access to White River and Upper George Inlet, now possible only with the consent of CFC, would be controlled by the state or its assignee. A road to the vicinity of Leask Lake will also be added. One may expect vehicular access by the general public to be curtailed until the roads are actually upgraded, and curtailed and or restricted during periods of major construction and/or logging. The exchange, and upgrade of the roads will not only provide access closer to Leask Lake, but also to and along the shores of Upper George Inlet both north and south of the existing CFC log transfer facility.

Regardless of the roaded access, legal public access to all the parcels acquired by the state, including the White River Valley and Lake Harriet Hunt, will result from the exchange. Portions of Lake Harriet Hunt, now controlled by CFC, would pass to the state. Legal and physical access to Talbot Lake will also be provided.

XII. Classification and Planning

The state's Leask Lake parcel is neither classified nor covered by a state area plan. However, neither is required by state statutes or regulations for an exchange. All areas covered by the proposed exchange are within the Ketchikan Gateway Borough and covered by its approved Comprehensive and Alaska Coastal Zone Management plans. Future use of the land acquired by both the state and CFC, including the timber harvest on CFC land near Leask Lake, will be subject to the Coastal Management and comprehensive plans. The proposed exchange is consistent with these plans.

XIII. Subsurface (Mineral) Rights

The ownership of the surface and subsurface estate of the CFC parcels is split between the state and Sealaska Corporation respectively. AS 38.50.050 prevents the state from separating the surface estate of land from the mineral rights unless he finds that the separation of estate is necessitated by a prior separation of ownership (which exists in this situation) or that the conveyance or receipt of the surface or mineral estates, one without the other, is necessary to achieve a significant public purpose.

Acquiring lands in vicinity of White River and Lake Harriet Hunt to provide greater opportunities for roaded recreation and acquisition of additional resource lands are objectives with significant public purpose that will not be attained without the exchange. Equal value land exchanges for subsurface resources are difficult to accomplish due to the extreme problems of establishing subsurface values. Further, Sealaska is reluctant to reduce its

Proposed Exchange with Cape Fox Corporation

land base which has much to do with their perception that the land is a heritage which should not be diminished. The problem and policy is evident even when dealing with small exchanges and sales. Although both the state, and Sealaska would prefer retaining the integrity of the estates, the state does not feel that it would be practical in this case and that the split of the estates is necessary and justified to meet objectives with significant public purpose.

The state's acquisition of the surface estate, overlying Sealaska's subsurface estate, will not enhance or diminish any rights and interests of Sealaska as the subsurface owner. Sealaska shall have all rights of reasonable access, use and development of its subsurface. Sealaska's exercise of its rights as subsurface owner shall include reasonable protection of the state's surface estate and resources.

The potential for marketing and removal of large amounts of sand, gravel, rock and minerals is low, and that there are adequate ways to guide any removal to ensure reasonable protection of other surface resources.

XIV. Title

The state received Tentative Approval to the Leask Lake lands March 14, 1983. These lands were selected for community expansion and recreation under the National Forest Community Grant. CFC has patent to most of its lands and Interim conveyance to the remainder. Please see Attachment - "L" to the original report for a map indicating CFC status, and specific conveyance documents and title reports pertinent to both state and CFC properties.

XV. Environmental Assessment

An environmental assessment of all potential exchange lands was completed by the SERO on June 25, and 26, 1991. No major environmental contaminations or unauthorized uses were discovered on either the state or CFC land.

XVI. Issues

Primary issues are as follows:

A. Issue: Should the state commit land and "old growth" timber near Leask Lake to acquire one or more of the five parcels of CFC lands which includes some land where timber has been harvested?

Proposed Exchange with Cape Fox Corporation

XI. Public Access

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Proposed Exchange with Cape Fox Corporation

Discussion: Although deer, interior species, and the quality of a more remote experience can be affected by this trade, the total benefits to Ketchikan and the state are considered to outweigh detriments. The state would gain access or control over almost twice as much surface estate, and although differently configured, almost as much timber as it would give up. About one-fourth (1,000 acres) of the CFC lands have been harvested, the remainder includes valuable timber land and wetlands that support a variety of recreation, fish and wildlife resources. The cut-over land in time will be reforested, making it even more valuable.

B. Issue: Although the exchange will consolidate ownership and grant the state control of more acreage, it will also fragment ownership near Leask Lake.

Discussion: Fragmentation of Leask Lake lands is considered one of the undesirable results of the exchange proposal. It is, however, off-set by consolidation into state ownership of the surface estate of the White River lands which are more accessible and useable to the public. Although there were ways to reduce the fragmentation on state lands, attempts to minimize habitat impacts, with special attention to fish and deer were considered more important. From a habitat perspective, the fragmentation is preferred over conveyance of a larger contiguous block. A larger block would likely include valuable riparian areas.

C. Issue: In light of other possible alternatives for providing access to the Leask Lakes area, is it worth the estimated \$2,500,000 to upgrade the roads now; particularly with no assurance from CFC that the upgrades will occur in the near future?

Discussion: Considering continuing state budget shortages and the lack of any Forest Service plans to construct roads, this exchange is the most viable means of providing access to the Leask Lakes area and other recreation land. Although DNR would have preferred a condition requiring CFC to provide the roads immediately, it also understands that CFC's actions are dependent on market forces. Although under the agreement CFC has ten years to log and build the roads, CFC intends to market the timber as soon as practicable. CFC anticipates that roads should be constructed and available for access within three to five years. The state has retained the opportunity, to accomplish the upgrades and reduce the resources scheduled for conveyance to CFC accordingly. Although there are many other access proposals, there are none that can be depended on at this time, nor that could be expected to be designed and constructed in less than three to four years.

Proposed Exchange with Cape Fox Corporation

There are also different places the proposed Leask Lake road could be terminated to reduce the amount and cost of road construction. Terminating the road four miles south of the state's northern boundary, and east of Leask Lake would save about \$720,000. This would translate into about 90 acres of state land, and 2,600,000 board feet of timber that would not have to be committed to the exchange. Terminating the road at this location would, however, require those desiring to access the Naha from a location east of Leask Lake to hike through several miles of intermittent clear cuts.

Although timber types, volumes, and values vary greatly, the average acre cruised at Leask Lake contains approximately 29,000 board feet of timber valued at about \$7900 per acre. The cost of road upgrade also varies by location but averages approximately \$180,000 per mile.

D. Issue: The exchange will impact deer and interior species. Deer will more probably be affected during medium to severe winters.

Discussion: ADF&G estimates as much as 71% greater mortality to deer during medium to severe winters on the Leask Lake exchange area, due to scheduled cutting associated with the exchange. CFC felt it was important to balance this loss against deer that would be protected on CFC lands by not cutting. The magnitude of losses is dependent on the scope of the area viewed.

The decline of deer populations is off-set by other benefits of the exchange. For example, logging on CFC land that could occur if not acquired by the state would also impact wildlife populations. The table below was constructed from data developed by CFC consultant ANI, and ADF&G.

DNR Summary of Results of Combined ANI/ADF&G Impacts Analysis on Deer Populations created by the Exchange:

Impact Analysis-Exchange Areas Only:

Year	Assumption	No. Deer	%Decrease
1992	Base (LL&CFC Exch. Land)	258	-
2030	No Add. Cut	239	7
2030	Log CFC Land Only	206	20
2030	Log LL Land Only	142	45
2030	Log Both CFC&LL	109	58

Proposed Exchange with Cape Fox Corporation

Impact Analysis-All State Leask Lake Land (5000ac plus) & All CFC Exchange Land (4,000ac plus):¹

Year	Assumption	No. Deer	%Decrease
1992	Base (All LL & CFC Exc.)	345	-
2030	No Add. Cut	326	6
2030	Log CFC Land Only	293	15
2030	Log LL Land Only	225	35
2030	Log Both LL&CFC	192	44

E. Issue: The survey of Ketchikan residents while indicating the need for additional roaded recreational opportunities, stresses even more the need to protect habitat.

Discussion: KGB's public survey is subject to interpretation. Habitat protection was rated the highest. Next with only a tenth of a point of separation came both increased recreational opportunities, and increased roaded recreational opportunities. The survey appeared to indicate a sensitivity to the environment, but also a desire for increased recreational access. DNR has interpreted this survey as an indication that the residents of Ketchikan are willing to accept some timber harvest to achieve more roaded access. The timber cutting layout at Leask Lake has been completed with a sensitivity to protection of prime fish habitat and recreation values.

The desire for additional roaded access is a statewide issue. The results of a survey by Dittman Research Corporation of Alaska conducted during the period August 7 through August 14, 1991 of 528 Alaskans over the age of 18, in 51 Alaskan communities indicated that 59% supported to some degree expansion of Alaska's road network.

F. Issue: Talbot Lake is an "add-on". It involves timber rights purchased by KGB from KFP and should not be considered. Are there other CFC parcels that should not be considered, to help reduce the impact on the lands near Leask Lake?

¹ Estimates assuming moderate to severe winter. No adjustments for reduction in acreage (110 acres) scheduled for conveyance to CFC or additional acreage placed in "open space" (33 acres).

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Discussion: Talbot Lake is an "add-on" recommended by the Borough due to its proximity to Ketchikan, the presence of the lake, access road, and trail system. The value of the timber already owned by KGB were removed from the appraisal value of the parcel. Although it could be dropped from the exchange, it is valued under \$150,000 and would do little in itself to alter impacts of the exchange. It could, however, reduce the potential cut from state land by about 500 Mbf or 18 acres.

G. Issue: Should the state trade for only the surface rights and not acquire Sealaska's subsurface ownership.

Discussion: Because the surface and subsurface ownership of the CFC land is already split, for the state to acquire the subsurface would require an additional exchange with Sealaska. There are no known subsurface resources on either the CFC/Sealaska land or the state land at Leask Lake. Appraising and exchanging subsurface land is difficult, and considering low subsurface values and Sealaska's lack of interest in an exchange, DNR has concluded the exchange should proceed for surface estates only. For further discussion of this issue, please refer to Section XIII - Subsurface (mineral) Rights in this report.

H. Issue: Should the Leask Lakes area be designated a state park and the Salt Chuck a State Critical Habitat Area.

Discussion: Previous statewide planning for state parks has not identified Leask Lakes as a priority for legislative designation as a state park. The exchange does not include the most valuable recreation or habitat land immediately adjacent to either the lakes or the Salt Church. In fact, less than half (2,335 acres or 44%) of the state's 5,240 acre Leask Lakes tract is proposed for transfer to CFC. The remaining land has been recommended by the Ketchikan Area State Parks Advisory Board for legislative designation for recreation use. The exchange would not preclude such designations.

L. Issue: Should the state trade the Leask Lake land, which is used for wilderness recreation, to acquire road accessible recreation.

Discussion: Much of the opposition to the exchange is based on the desire to protect the "wilderness" recreation values of the Leask Lakes area, while much of the support is from those who desire road accessible recreation. It is clear that what Ketchikan lacks, and many residents desire, is more road accessible recreation. The CFC parcels the state is acquiring, include the White River - a relatively slow-flowing river that provides opportunities for sport fishing, two road accessible lakes including Lake Harriet Hunt, beaches

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along and road access to Upper George Inlet, and other road accessible public lands. The road to the Leask Lakes area will also provide more convenient access to Leask Lakes. There is also significant acreage set aside for roadless and wilderness recreation near Ketchikan, including the Naha drainage and over 2 million acres in Misty Fiords National Monument. The exchange and resultant timber harvest on land CFC acquires will negatively impact the wilderness recreation values of Leask Lakes. However, there are ample (and better) areas for this recreation.

The benefits of the exchange in terms of increased roaded recreation will occur to many more people. In balance, the exchange increases the public's recreation opportunities.

J. Issues: Should the state enter into an exchange that gives CFC more timber land to cut?

Discussion: Land exchanges only succeed when all the parties to the exchange receive benefits. A primary benefit to CFC is more timbered land to harvest in order to generate revenue. Benefits to the state are road accessible land for recreation and other uses close to Ketchikan.

K. Issues: Should the exchange proceed without an approved land appraisal?

Discussion: DNR has thoroughly reviewed the appraisal and finds the values generated by the appraisals to be generally correct. Much of the value of the appraised parcels are derived from timber and road construction cost appraisals, which DNR finds acceptable. At issue are the residual land values (see Section VIII - Appraised Values in this report). These values were arrived at through use of complex statistical analysis, which while statistically valid, are not widely accepted in the appraisal community.

DNR has chosen to proceed with the exchange despite the lack of a final appraisal for several reasons:

1. The values arrived at seem correct.
2. The same process was applied to both the CFC land and the state parcels, the same comparable properties were used to set the values.
3. If the exchange is not approved by the current legislative session, the exchange may never occur, and a revised appraisal cannot be completed in time for consideration by the current legislature. If the exchange does not occur this year, CFC may harvest additional timber in the land it proposes to trade to the state, or may lease or sell some of this land.

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4. The legislature can approve an exchange which does not have an appraisal approved by DNR.

L. Issue: Several public commentators suggest that DNR is by-passing the legislative appropriation process and state procurement code by trading CFC land in (partial) exchange for CFC's road-building.

Discussion: Alaska Statutes 38.50.020 allows DNR to enter into exchanges that include "other considerations" besides land or cash. State procurement codes and legislative appropriations deal with how the state spends money.

M. Issue: Will the exchange result in visual impacts?

Discussion: The timber harvest that results from the exchange will negatively impact views looking south and east from Leask Lakes and northwest from upper George Inlet. Leask Lakes have a fairly boggy shoreline and there is no recreation development or maintained trail to the lakeshore, hence, the recreation use of the lakes is limited. In response to public concerns, 40 acres close to Leask Lakes were removed from the final exchange proposal and an additional 13 acres was placed in Open Space to protect wildlife and visual resources. An additional 70 acres was removed and 20 acres placed in Open Space in Cruise Unit 19 to protect deer habitat. If the exchange does not occur, CFC is likely to harvest additional timber visible from Upper George Inlet.

XVII. SUMMARY OF PUBLIC COMMENTS

The report on the proposed exchange was released on February 10, 1992. Public hearings were held in Saxman (March 11), Ketchikan (March 11) and Juneau (March 12). The public comment period closed on March 26, 46 days after the exchange report was released.

The exchange report was a 20-page document, with 16 attachments. The report and attachments (over 250 pages) were mailed to 42 individuals, agencies or special interest groups, all members of the Alaska Legislature, the Ketchikan Gateway Borough, and others. A public notice describing the exchange and the public hearings was published in the Ketchikan Daily News, Juneau Empire, Fairbanks News Miner, and Anchorage Times.

A total of 137 individuals signed-in at the three public hearings (30 in Saxman, 93 in Ketchikan, and 14 in Juneau). Eighty-six (86) persons testified at the hearings. Fifty-five (55) letters or notes, one petition with 109 signatures were received by March 26, 1992, was submitted and one questionnaire signed by 45 people. Most individuals who commented (270

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out of 287)² are residents of the Ketchikan Gateway Borough (based on mailing addresses).

Nearly all persons who commented on the exchange voiced either support or opposition to the exchange. Many voiced reasons for their position, and only a few provided specific suggestions on how to modify the prepared exchange.

A total of forty-four (44) persons testified at the hearings in support of the exchange. Eighteen (18) notes or letters were received in support of the exchange. The Ketchikan Gateway Borough submitted testimony in support of the exchange. The Borough, as well as the cities of Ketchikan and Saxman are previously on record in support of the exchange. The Ketchikan Chamber of Commerce and Ketchikan Community Liaison Committee support the exchange. Sealaska Corporation, Kootznoowoo, Inc., Goldbelt, Inc., Cape Fox Corporation, the Ketchikan Indian Corporation and Alaska Native Brotherhood all expressed support for the exchange. Timber interests that commented in support of the exchange were Fox River Timber Company, Sealaska Timber Corp., Klukwan Forest Products and the Alaska Forest Association.

The following are reasons stated by supporters of the exchange:

- A. Increased road-accessible recreation.
- B. It will provide jobs and other economic benefits to Ketchikan, including jobs from timber harvest.
- C. The original area available for selection by Cape Fox Corporation (CFC) under the Alaska Native Claims Settlement Act were inappropriate, the exchange will correct this and provide better ownership patterns.
- D. The exchange provides long-term benefits and is in the state's interest.
- E. Development (roads, timber harvest, recreation) will result from the exchange.
- F. The exchange may make additional land available for development.
- G. The exchange can be accomplished (CFC, the state, the borough, and Sealaska were all in agreement).
- H. There is already enough wilderness. What's needed is more road-accessible recreation.
- I. Elderly need recreation and cannot back-pack and hike.
- J. The exchange benefits me (the commentor).
- K. If the exchange fails, the land (and timber) near Leask Lakes will be transferred to the Mental Health Trust and cut anyway.

² A total of 287 individuals either testified at hearings, wrote letters, or signed the petition, excluding duplicates (9 people testified at the hearings and also wrote a letter or signed a petition).

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- L. Families need a place to go to picnic and recreate that is a short drive from Ketchikan and not too difficult to reach.
- M. Leask Lakes is beautiful and the exchange and related road construction will provide access to the area.
- N. The open areas, including clear-cuts, provide good berry picking.
- O. The logged areas make wildlife viewing and hunting easier.
- P. Prefer to recreate along the White River than a muddy lake.
- Q. The exchange provides additional land for recreation and resource development.
- R. Benefits of the exchange outweigh detriments.
- S. Sets a good pattern for other equal value exchanges.
- T. Man needs to be able to use resources.
- U. Provides better management of important resources.
- V. White River has good fishing and wildlife viewing.
- W. The beach near the mouth of White River is a unique resource that the state will acquire through the exchange.

A total of 42 persons testified at the hearings in opposition to the exchange. Thirty-six (36) letters or notes were received in opposition to the exchange. Organizations that responded in opposition to the exchange were the Tongass Conservation Society, the Tongass Sportfishing Association, Sierra Club Legal Defense Fund, the Alaska Environmental Lobby, the Northern Alaska Environmental Center, and the Southern Alaska Conservation Council (SEACC). A questionnaire was submitted with 45 signatures, forty-two (42) indicating their opposition to the trade and 3 showing they support the exchange.

The following are reasons or concerns expressed by those who opposed the exchange (and resultant timber harvest):

- A. The exchange will negatively effect views from Leask Lakes and Upper George Inlet.
- B. The exchange is bad public policy.
- C. The state should not exchange timbered land for clear-cut land.
- D. Access will not be available in winter.

- E. Wildlife habitat and species (particularly deer) will suffer.
- F. Land ownership around Leask Lakes will be fragmented.
- G. The state should not try to prop-up a shaky corporation (CFC).
- H. Does not want to see more logging, timber activity.
- I. The state should not trade without acquiring the subsurface.
- J. Keep Leask Lake a high quality recreation area.
- K. The exchange will affect hunting.
- L. There is no public benefit or overriding public interest in the exchange.

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- M. Timber harvest of CFC land will be exported without primary manufacturing, therefore the economic benefits will be less than predicted.
- N. Leask Lake should be designated a State Park or Critical Habitat Area.
- O. Leask Lakes timber is old growth, the state should protect old growth.
- P. The exchange cannot be evaluated because the appraisal is not complete. The draft appraisal failed to consider habitat and recreation values, under-valued some CFC land, and used incorrect discounting factors.
- Q. DNR is by-passing the legislative appropriation process and state procurement code by giving CFC land and timber in [partial] exchange for CFC building roads. The state is financing a capital project (road-building) without competitive bids.
- R. Pristine land at Leask Lake provide better recreation experience.
- S. Leask Lake as a state park, in its pristine condition, would provide long-term economic development through tourism. One person cited the impact Chilkat Eagle Preserve has had in Haines as an example.
- T. The Leask Lake area resources are superior to White River's resources even before White River area timber was cut.
- U. The White River area does not provide quality recreation.
- V. The exchange is not equal value.
- W. The timing of construction, quality and maintenance of roads is uncertain.
- X. The proposed exchange has too much uncertainty (primarily road improvements and maintenance).
- Y. Pristine recreation makes more economic sense.
- Z. The exchange would set a bad precedent - by the state acquiring clear-cut land and giving a Native Corporation more timber to cut. It encourages corporations to manage land for short-term gain and not for sustained yield.
- AA. Proper exchange procedures were not followed because there is no approved appraisal and the legal (newspaper) notice did not include maps.
- BB. DNR did not adequately evaluate Leask Lake resources and other options.
- CC. There are alternate ways of providing road-accessible recreation through U.S. Forest Service road building.
- DD. The community is split regarding the exchange - public support is at best tepid.
- EE. Regarding the Community Survey conducted for the Borough, "considering wildlife and fisheries habitat impacts" was by a wide margin the most important value.

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- FF. The impacts of the trade on wildlife other than deer have not been investigated.
- GG. The proposal may be inconsistent with the important upland habitat standard of the Alaskan Coastal Management Program due to impacts on deer. The exchange violates the sustained yield requirement of the Alaskan Constitution. DNR may be required to go through an area land-use planning process before trading land.
- HH. Enforcing logging and other restrictions on land conveyed to CFC may be problematical.

The Ketchikan Area State Parks Advisory Board (SPAB) and several individuals were neutral on the exchange. The SPAB passed a resolution stating that if the exchange is pursued, the remainder of the Leask Lake land should be designated by the Legislature for recreational purposes. The SPAB also passed a resolution stating that if the exchange fails, the entire Leask Lake area should be legislatively designated as a State Park.

For the department's response to these comments, please refer to the revised Issues discussion, Section XVI in the exchange report.

XVIII. Suggested Addition to Commissioner's Decision:

The department conducted a 46-day public review of the proposed exchange. Public hearings were held in Saxman, Ketchikan and Juneau. A total of 137 individuals signed-in to these meetings, with testimony split between those in support (44) and those opposed (42) to the exchange. Fifty-five (55) letters or notes were received, with 36 opposed and 18 in favor. A petition signed by 109 persons was submitted in support of the exchange. A "questionnaire" with 45 signatures was submitted, with forty-two (42) indicating opposition and 3 showing support for the exchange. Very few specific suggestions were made to modify the exchange, most only expressed their reasons for support or opposition to the proposal.

While the numbers of people testifying on the exchange were divided, those in favor of the trade include the Ketchikan Gateway Borough, the Ketchikan Chamber of Commerce, several Native corporations and timber interests. Those opposed included several environmental organizations.

My decision to proceed with this exchange is based not only on this public testimony, but also taking into consideration the extensive public discussion conducted by the Ketchikan Gateway Borough that resulted in this exchange proposal. After hours of public hearings, the Borough Assembly and Planning Commissioner endorsed this proposal. Both the City Councils of Ketchikan and Saxman are on record in support of this exchange.

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Several modifications have been made to the exchange agreement in response to specific suggestions made in the public review process. The acreage of land to be conveyed to CFC has been reduced to 2335 (approximate) by retaining 110 acres in Parcel B of the proposed exchange land, 40 acres of which is land close to Leask Lake. An additional 33 acres has been altered from cut to open space. This deletion is to be lessen visual and wildlife impacts. An additional 70 acres was deleted and 20 acres redesignated as open space to provide added protection to deer in Parcel B. The final exchange agreement more clearly addresses the road building requirements, specifically the agreement will specify land which will not be conveyed to CFC until road construction is well underway.

I am submitting this exchange for legislative approval without a final, approved land appraisal. The appraisal for this exchange was prepared under contract to the Ketchikan Gateway Borough. The appraisal assignment was complex to begin with because 1) much of the land supports commercial timber; 2) surface and subsurface ownership are split; 3) the state land transferred to Cape Fox Corporation that is not designated for timber harvest is permanently reserved as "open space", and; 4) the proposed exchange requires CFC to build roads for public use. The appraisal firm used a complex statistical analysis to arrive at the values, and DNR continues to have concerns over some aspects of the appraisal methodology.

I have chosen to proceed without approving the appraisal for several reasons:

1. The values arrived at seem correct, this is after extensive review by DNR's appraisers and independent appraisers hired to review the report.
2. The same appraisal process was applied to the CFC and state land.
3. The majority of the appraised values come from commercial timber or road building costs which DNR has approved and we are not at issue with the appraisal - at issue is the residual land value.
4. The exchange cannot wait for another legislative session. It has taken over a year to reach the final exchange agreement, to delay another year would require that CFC forego another year's opportunity to raise any revenue from the land it is willing to trade to the state. By next legislative session, CFC may harvest additional timber on land it agreed to trade to the state, or may sell or lease some of this land.
5. The legislature can approve an exchange that does not have an appraisal approved by DNR, provided they believe it is in the public interest. This exchange is clearly in the public interest.

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I find the Final Exchange Agreement as proposed, and attached hereto to be in the state's interest, and that the exchange as proposed should be advanced for submission to the Legislature for approval.

It is further my finding that the split of surface and subsurface estates is necessary and justified because of a prior separation of estates as a result of ANCSA, and to achieve the objectives of the exchange and significant public benefits.

The Final Exchange Agreement and this report will be the Department's final administrative documents for the exchange. An appeal to the final exchange agreement, and report of exchange executed by the Commissioner of DNR must be made to Superior Court of the State of Alaska.

Executed this 6th day of April, 1992.

Harold C. Heinze
Harold Heinze, Commissioner
Department of Natural Resources

Attachments: Final Exchange Agreement with attachments

**FINAL EXCHANGE AGREEMENT
BETWEEN THE STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
AND CAPE FOX CORPORATION**

ADL 105565

THIS AGREEMENT is entered into on this ___day of April, 1992 by and between the State of Alaska, Department of Natural Resources, hereafter referred to as the State, whose address of record is Suite 400, 400 Willoughby Avenue, Juneau, Alaska 99801, Cape Fox Corporation, hereafter referred to as CFC, whose address of record is P.O. Box 8558, Ketchikan, Alaska 99901, and the Ketchikan Gateway Borough, hereafter referred to as KGB, whose address of record is 344 Front Street, Ketchikan, Alaska 99901. Nothing in this Agreement obligates KGB to anything it was not obligated to under the preliminary agreement.

I. RECITALS:

A. Cape Fox Corporation (CFC) owns certain lands through the Alaska Native Claims Settlement Act (ANCSCA) within the Ketchikan Gateway Borough (KGB) that have been recognized as having important community values related to access, habitat, recreation, and economic opportunity. Prior to CFC ownership, the lands in question were significant recreational resources for the community of Ketchikan;

B. The State of Alaska selected approximately 5,000 acres in the Leask Lake area from the national forest to accommodate community growth and recreation needs. Some of this area is the same area as proposed for conveyance to CFC in this agreement;

C. The Ketchikan Gateway Borough, the local unit of government affected by this exchange, believes that the resultant direct and indirect benefits of the land exchange, including economic, recreation, habitat, environmental and transportation benefits represent a unique and significant community benefit;

D. The State of Alaska has provided notice pursuant to AS 38.50.110 and AS 38.05.945, and has conducted public hearings regarding the worth and reasonability of the proposed land exchange consistent with the requirements of AS 38.50.120;

E. A timber cruise of State of Alaska and CFC properties determined the inventory of timber, and an appraisal of the CFC and State properties occurred under the direction of the Ketchikan Gateway Borough to determine the value of the aforementioned properties consistent with the requirements of 11 AAC 67.240;

F. By reason of the foregoing, and in accordance with 11 AAC 67.260, the Commissioner of the Department of Natural Resources of the State of Alaska has determined that it is in the public interest to enter into this Final Exchange Agreement;

G. The State's authority for entering into this agreement is found in AS 38.50 and 11 AAC 67.200-.280. AS 38.50.020 requires this agreement to have legislative approval before it takes affect.

H. Under the agreement, the State will: 1) acquire the surface estate of 4,366 acres of CFC land within the White River, Lake Harriet Hunt and Talbot Lake areas; 2) have CFC construct and or upgrade to recreation standards approximately 11.11 miles of road in the White River and Leask Lake areas; 3) retain right-of- ways for future access and use of existing roads, including a through corridor on the lands it conveys at Leask Lake, and 4) restrict development on a portion of the lands scheduled to conveyance to CFC.

I. In the exchange, CFC will acquire the surface estate on approximately 2335 acres of State land in the Leask Lake area; an amount considered equal in value to the CFC land and other rights and considerations that may be included in this exchange. Under the agreement, CFC would also retain the right to access its lands in the White River and Leask Lake areas.

J. The final configuration and details of this exchange have been determined as a result of the appraisal and negotiation processes between the State and CFC, following public and agency review.

II. AGREEMENT: All parties to the exchange agree:

A. Lands and Interest to be Conveyed and Retained:

1. CFC:

a. CFC will convey to the State the surface estates only of parcels 1-5 as described in Attachment A and as shown on Map 1. The surface estates shall be as defined by the Alaska Native Claims Settlement Act and court decisions construing that Act. The conveyance of CFC land to the State will also be subject to the following:

The right of CFC to use the existing White River LTF and mainline White River road from its junction with the proposed mainline Leask Lakes road to the LTF for the period of time necessary to complete timber harvest of the area in the Leask Lake parcels proposed for exchange, not to exceed ten (10) years from the date of Legislative approval of the exchange. This right shall be limited to those uses associated with timber harvest and timber transport from CFC lands in these areas;

The right of access to its lands over the White River road beginning at F.H. 39 and ending at the junction with the proposed Leask Lakes road, and the Leask Lake ROW to and through the exchange area, in perpetuity or until replaced with a public ROW;

b. CFC will also convey to the State a 60 foot general access ROW for use by the State and or public of the Talbot Lake road, beginning at its junction with F.H. 39 and ending at the boundary of the proposed exchange area.

2. State:

The State will convey to CFC the surface estates only to parcels A-C as described on Attachment B and as shown on Map 1. The State is to convey only the land, excluding in addition to the mineral estate, all rights to sand, gravel, and rock. The conveyance of the State land to CFC shall also be subject to the following:

Reservation by the State of all rights in those areas between "Timber Harvest Areas" and "Boundary of Exchange Areas", as depicted in Map 1 as "Open Space", except for the owner's right of entry and movement (walk across or hunt), and to clear, construct and use and maintain mainline and spur roads, temporary staging and storage areas, and borrow pits and debris waste sites associated with access to and timber development of the CFC Leask Lake parcels. The owner of the open space may not cut trees, make improvements or clear the land except as indicated above, or construct any buildings on areas subject to this reservation;

Reservation by the State of a general access/road ROW corridor 300 feet in width to provide for a "through road and utility " corridor;

Reservation by the State of a general access/road ROW 100 in width for public use on the mainline logging road that CFC will construct (shown on Map 1) as well as the remaining 10,500 feet which will not be upgraded from the area just south of Parcel A to the northern boundary of Parcel A;

Easements 100 feet wide between each section of land owned by the State, as established by AS 19.10.010, except that the State shall cooperate with CFC toward the removal of such rights-of-ways from these parcels in the survey and platting process necessary to convey these lands to CFC should CFC so choose.

The State shall not, nor is there anything in this agreement that shall be construed as to obligate the State, to convey title to Parcel A to CFC until CFC has performed adequate work on required White River and Leask Lake road upgrades. The State shall, after receiving proof that the following work has been completed, convey to CFC title to this parcel, subject to CFC having to first furnish the State a bond for not less than 100% of the estimated remaining work, to ensure that the work is completed. CFC may demand and receive immediate title (within 30 days of notice of satisfaction to the State's office of record) after completing: 1) completion of the road bed (widening and realignment), ditches, bridge installation, and any culvert installation which is not expected to be otherwise damaged by logging operations, and 2) installation and grading of the surface material from the Lake Harriet Hunt intersection of the White River Road to the intersection of the White River Road with the Leask Lake Road.

B. Subsurface Interest and Retained Sealaska Rights:

The ownership of the surface and subsurface estate of the CFC parcels is split between CFC and Sealaska Corporation. The state's acquisition of the surface estate, overlying Sealaska's subsurface estate, will not enhance or diminish any rights and interests of Sealaska as the subsurface owner. Sealaska shall have all rights of reasonable access, use and development of its subsurface. Sealaska's exercise of its rights as subsurface owner shall include reasonable protection of the state's surface estate and resources. Rock and gravel used for road construction from these lands will have to be purchased from Sealaska.

C. Other Required Performance, Solely a CFC Responsibility (Road Construction/ Upgrades, Logging Practices), Penalties for Lack of Performance by CFC:

1. Other Required Performance, Solely a CFC Responsibility;

a. Road Construction/Upgrades: CFC agrees to construct or upgrade at its cost approximately 11.11 miles of White River and Leask Lake roads, the general alignment being depicted on Map 1.

Road construction and upgrades shall be completed as soon as practicable, and not later than 10 years from the date the exchange is approved by the Legislature. Construction and upgrades shall meet or exceed standards outlined in Attachment C, unless otherwise waived in writing by the State. Reasonable concessions will be allowed for cut slopes involving good rock. The six inches of graded rock required for surfacing shall be screened to 2 inches, minus.

CFC agrees to widen and improve the surface on approximately one half mile of the White River road within one year of approval of this agreement by the legislature.

CFC further agrees to make the widening of the first three miles of the White River Road and establishment of the full width base road one of its first priorities. It is understood, however, that the placement of culverts, and final surfacing shall be delayed where logging trucks may be expected to damage the same.

b. **Construction of Parking Areas:** CFC further agrees to construct at least two parking areas at points south of Leask Lakes mutually agreeable to the State and CFC, the parking areas to be located on State land and to be constructed with State furnished rock; the mining and processing to be done by CFC. Each parking area shall be designed and constructed to accommodate 10 full size and 5 mid-size passenger vehicles.

CFC will provide parking in the area of the LTF for five to six vehicles. This parking shall not be farther than 1,000 feet from the shores of Upper George Inlet.

c. **Identification of Sites to Beneficially Waste Material:** CFC further agrees to work with the state during road construction to identify areas and to ensure that waste rock and other material is wasted in a manner which will best benefit the state by providing additional turnouts or parking areas, one area of interest being at the intersection of the CFC logging spurs into the Southern portion of CFC Area 1 and the White River Road.

d. **Logging Practices (Application of "New Forestry Techniques" for Logging:** CFC agrees to use "New Forestry Techniques" in the harvesting of timber on the Leask Lake parcels, to the extent that it is feasible and prudent.

2. **Penalties for Failure to Perform:** Failure of CFC to perform the necessary upgrades in a timely manner, shall constitute a breach, and unless corrected within 60 days prior notice by the State to CFC's address of record, shall result in a forfeiture of the remaining unconveyed lands to the State. If all lands have been conveyed, the State shall retain that portion of the CFC bond required to ensure that the project can be completed.

D. **State Protection:** The State, as provided for in Section II.A.2. of this Agreement shall retain title and or require bonding to ensure that the required road construction is completed by CFC.

E. State Reservation of Right to Construct and Adjust: The State reserves the right, with 60 days constructive notice to CFC, to accomplish, or otherwise have accomplished a portion or all of the road upgrades itself, providing that it does not otherwise interfere with a CFC Contract which is in force to accomplish the same in a reasonable time (one year). Should the State exercise this option, it shall have the right to reduce proportionally the amount of land and resources scheduled for conveyance to CFC accordingly. The basis for any adjustment shall be the existing appraisal. Unless otherwise mutually agreed to, adjustments will come from Parcel A, from north to south.

F. Maintenance of Roads and LTF: CFC shall be responsible only during periods of use for maintenance of those sections of road and areas used by it or its agents during their logging operations.

G. Use and Closure of Roads: CFC will be allowed by the State to close portions of the road and LTF to public use during road construction and or logging. An attempt will be made to minimize such closures.

H. Conveyance Instruments, Title Documents, and Encumbrances:

1. Conveyance Instruments, Title Documents: The State will transfer its land and interest in land to CFC through a quit claim deed or State patent. The State obtained its lands that are part of this Agreement through the Alaska Statehood Act. The State has Tentative Approval to its lands.

CFC will transfer its land and interest in land to the State through a warranty deed. The CFC secured its land and interest in land from the Federal Government under the Alaska Native Claim Settlement Act through patent and interim conveyance.

The State and CFC agree to provide a current title or litigation report on their properties prior to the conveyance of land or interest in land.

Should there be any CFC or State lands not yet patented by the Bureau of Land Management, the State and /or CFC agree to provide the other party a confirmatory patent or deed as may otherwise be required in this agreement to any land or interest in land that have been conveyed as a result of their exchange;

Conveyance instruments, with exception of Leask Lake Parcel A shall be exchanged simultaneously.

2. Additional Encumbrances:

a. **State Land:** There are no liens, claims, encumbrances, easements, right-of-way, leases, reservations, covenants, or other agreements that affect the land that is to be transferred by the State to CFC, except those listed earlier in this document as conditions or "subject to's" and the following:

The land is subject to the restrictions, limitations, and conditions of Title VI of the Civil Rights Act of 1964;

There is excepted and reserved from the conveyance a right-of-way for ditches or canals constructed by the authority of the U.S. in accordance with the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C.959;

Also excepted and reserved is a right-of-way for the construction of railroads, telegraph and telephone lines in accordance with the Act of March 12, 1914, 38 Stat. 305; 48 U.S.C. Sec. 305.

Subject to Mineral Closing Order 643.

b. **CFC Land:** CFC has the following liens, claims, encumbrances, easements, right-of-way, leases, reservations, covenants, or other agreements that affect the land it intends to transfer to the State in addition to those disclosed as reservations or "subject to's" earlier in this document:

Klukwan Forest Products, Inc. has the right of access on and over the existing logging road within the White River Valley, as depicted in Map 1. The use of this road shall continue until or when Klukwan Forest Products deeds this right back to CFC when current logging operations are finished;

There is a 100 foot easement for the power transmission line from Swan Lake to Ketchikan to the Alaska Energy Authority. This easement traverses portions of the White River Valley and White River Hillside areas and is shown in Map 2:

There is a 100 foot right-of-way to the State for the access road, including the parking lot, in the Lake Harriet Hunt area as shown in Map 2;

There is a one year permit or lease to Alaska Travel Adventures for Float and tourist staging facilities at Lake Harriet Hunt;

The KGB retains a ownership right to all commercial timber in the northern 40 acres of the Talbot Lake parcel. This right was purchased from Klukwan Forest Products who had previously purchased those rights from CFC.

I. Survey and Appraisal: Surveys of State and CFC land involved in the Land Exchange shall be done in accordance with the survey requirements of the State and KGB. CFC will accept the responsibility to contract and administer all land surveys. All surveys of real property necessary to affect the exchange will be completed prior to the exchange of deeds. Lot, in combination with aliquot part descriptions will be used whenever possible to configure and describe the land included in this exchange.

Costs: Appraisal and survey costs will be equally borne by the state, CFC and the KGB. Other incidental costs will be borne by the party actually accruing the expense. It is recognized by all parties, however, that the State responsibility shall be construed as having been met through the previous appropriation and tendering of \$30,000 to the KGB by the State Legislature for the purpose of survey and appraisal of the lands to be exchanged.

J. Spur Roads, and Rock Pits on State Land: The State will require ACMP and Forest Practices reviews and approval, and DNR approval for the location and construction of all spur roads, and rock pits located on lands it owns or has an interest in. DNR will require a right-of-way permit for all spur roads located on lands it owns, and timber and/or material contracts for any material removed from State lands or retained interests, except that no permit shall be required for material (rock) needed for the construction of parking areas on State land, not removal of material from Sealaska's remaining interests.

K. Other Consideration: There is no amount of money or other considerations to be paid to, or offered by, any party to the proposed exchange to equalize the values of the land or interest in land proposed for exchange other than that outlined in this agreement.

L. Liability: The parties to this agreement agree to hold each other harmless from liabilities that may otherwise be caused by their individual actions, uses of land and contracts, except where such actions, due to the nature of the agreement are shared.

M. ACMP Consistency: The exchange of CFC and State lands has been determined to be consistent with the Alaska Coastal Management Program (ACMP) pursuant to AS 46.40. However, nothing in this agreement is intended or should be construed as allowing CFC or the State to carry out timber cutting or other development without further review and permits. CFC development of land acquired from the State will require CZM project review to the same extent as private land. If CFC needs State or federal permits to undertake a particular use (for example, a state permit to place a road culvert in a fish stream or to install a new sewage system as part of a subdivision development), another ACMP determination specific to that particular use will be necessary. However, future ownership changes by CFC, i.e. sales of land or timber to other private individuals or companies- may not require State approval and therefore may not be subject to the ACMP.

N. Succession in Documents: This Agreement supersedes all previous agreements and is the sole document now under consideration.

O. Modification of the Agreement: This Agreement, unless amended by mutual consent, subject to legislative approval; represents all consideration.

P. Existing Permits and Leases: CFC agrees that unless otherwise approved by the Department of Natural Resources in writing, existing DEC Waste Disposal Permit #9113-BA012 shall be used exclusively for debris generated from the Upper George Inlet LTF, and that the waste site and State Tideland Leases ADL's 100898, and 105135 shall be groomed and released to the State within six months of the completion of the Logging of CFC's Leask Lake property, or within 10 years of the approval of this exchange by the legislature, whichever occurs first.

Q. Schedule for Completion: The following represents a tentative schedule that the State, CFC and the KGB agree to attempt to adhere to for completion of this exchange.

<u>REQUIREMENT</u>	<u>STATE</u>	<u>CFC</u>	<u>KGB</u>	<u>Completion</u>
Submission to Legislature	X			04/07/92
Legislative Approval				05/15/92
Request Survey Instructions		X		05/16/92
Issue Survey Instructions	X			06/01/92
Complete Survey		X		09/01/92
Preparation of Title Documents	X	X		10/01/92
Execution of Title Documents	X	X		10/15/92

SIGNATORIES TO FINAL EXCHANGE AGREEMENT ADL 105565:

CAPE FOX CORPORATION

BY: _____ DATE: _____
CHIEF OPERATING OFFICER

STATE OF ALASKA

BY: Harold C. Fleming DATE: 4/6/92
COMMISSIONER,
DEPARTMENT OF NATURAL RESOURCES

KETCHIKAN GATEWAY BOROUGH

BY: _____ DATE: _____
BOROUGH MANAGER

Attachments: Maps 1,2, and Attach.-"A"- "C"

SIGNATORIES TO FINAL EXCHANGE AGREEMENT ADL 105585:

CAPE FOX CORPORATION

BY: *[Signature]*
CHIEF OPERATING OFFICER

DATE: 4/6/92

STATE OF ALASKA

BY: _____
**COMMISSIONER,
DEPARTMENT OF NATURAL RESOURCES**

DATE: _____

KETCHIKAN GATEWAY BOROUGH

BY: *[Signature]*
BOROUGH MANAGER

DATE: 4-6-92

Attachments: Maps 1,2, and Attach.-"A"& C

ATTACHMENT-"A" TO FINAL EXCHANGE AGREEMENT ADL 105565

CAPE FOX PROPERTIES

Area 1

Township 74 South, Range 91 East, Copper River Meridian; uplands within:

Section 2	Lots 3 through 8, NW1/4SE1/4, S1/2SW1/4, NE1/4SW1/4;
Section 3	S1/2SE1/4;
Section 9	SE1/4, all that lies south of the northern edge of the main line "White River Road";
Section 10	E1/2, W1/2, all that lies south of the northern edge of the main line "White River Road";
Section 11	W1/2, NE1/4, N1/2SE1/4;
Section 16	NE1/4, all that lies south of the northern edge of the main line "White River Road", N1/2SE1/4, SW1/4SE1/4, W1/2, all that lies south of the northern edge of the main line "White River Road";
Section 17	E1/2SE1/4, all that lies south of the northern edge of the main line "White River Road";
Section 20	E1/2NE1/4;
Section 21	W1/2NE1/4, NW1/4, E1/2SW1/4, NW1/4SW1/4, SE1/4;
Section 28	NE1/4NE1/4.

Containing approximately 2,283 acres more or less.

Area 2

Township 74 South, Range 91 East, Copper River Meridian; uplands within:

Section 3	Lots 1 through 3;
Section 4	Lots 1 through 10, NE1/4SE1/4;
Section 5	NE1/4.

Containing approximately 478 acres more or less. And all shorelands within:

Section 3	W1/2NW1/4;
Section 4	N1/2.

Containing approximately 162 acres more or less.

Total area of Area 2 is approximately 640 acres more or less.

Area 3

Township 74 South, Range 91 East, Copper River Meridian; uplands within:

Section 18 W1/2SE1/4, SE1/4SW1/4.

Containing approximately 99 acres more or less. And all shorelands within:

Section 18 SW1/4SE1/4, SE1/4SW1/4.

Containing approximately 21 acres more or less.

Total area of Area 3 is approximately 120 acres more or less.

Area 1

Township 74 South, Range 91 East, Copper River Meridian; uplands within:

Section 9 S1/2NE1/4;
SE1/4, all that lies north of the northern edge of the main line
"White River Road";
SE1/4SW1/4;

Section 10 W2, all that lies north of the northern edge of the main line
"White River Road";

Section 16 W1/2, all that lies north of the northern edge of the main line
"White River Road";

Section 17 E1/2SE1/4, all that lies north of the northern edge of the main
line "White River Road";

Containing approximately 650 acres more or less.

Area 5

Township 74 South, Range 91 East, Copper River Meridian; uplands within:

Section 1 Lot 2;

Section 2 Lots 1 and 2, W1/2NE1/4, NW1/4, NW1/4SW1/4'

Section 3 NE1/4, N1/2SE1/4, E1/2NW1/4.

Containing approximately 673 acres more or less.

Total acreage for the five parcels is: 4,366 acres.

ATTACHMENT-"B" TO FINAL EXCHANGE AGREEMENT ADL 105565

STATE PROPERTIES TO BE CONVEYED TO CFC

Township 73 South, Range 91 East, Copper river Meridian:

Section 13 Lot 1, SW1/4NW1/4, E1/2NW1/4, SW1/4;

Section 14 S1/2 SE1/4 NE1/4, NE1/4 SE1/4, E1/2 SE1/4 SE1/4, S1/2 NW1/4
SE1/4,

A triangular area with corners at the NE corner of the SE1/4
SW1/4 NE1/4, the SE corner of the NE1/4 NW1/4 SE1/4, and at
the SW corner of the NE1/4 NE1/4 SW1/4,

A triangular area with the corners at the NE, and SE corners of
the NW1/4 SE1/4 SE1/4 and the NW corner of the NE1/4 SW1/4
SE1/4,

A triangular area with corners at the NE, SE, and NW corners of
the SE1/4 NE1/4 SW1/4;

Section 22 SW1/4 SW1/4 NE1/4, S1/2 SE1/4, W1/2 NW1/4 SE1/4, SW1/4, S1/2
S1/2 NW1/4;

Section 23 NE1/4 NE1/4 NE1/4;

A triangular area with corners at the NE, SE, and NW corners of
the SE1/4 NE1/4 NE1/4,

SW1/4 NE1/4, W1/2 SE1/4, E1/2 SW1/4, E1/2 W1/2 SW1/4, SE1/4
NW1/4, E1/2 SW1/4 NW1/4;

Section 24 N1/2 SW1/4, NW1/4;

Section 26 NE1/4 NE1/4, E1/2 NW1/4 NE1/4, SW1/4 NE1/4 SW1/4, W1/2
SE1/4 SW1/4, SW1/4 SW1/4, S1/2 NW1/4 SW1/4,

A triangular area with corners at the SW corner of the NW1/4
NW1/4 SW1/4, the NE corner of the SW1/4 NE1/4 SW1/4, and the
NW corner of the NW1/4;

Section 27 N1/2;





Section 35 S1/2 NE1/4, W1/2 SE1/4, SW1/4, W1/2 NE1/4 NW1/4, S1/2 NW1/4,
NW1/4 NW1/4;

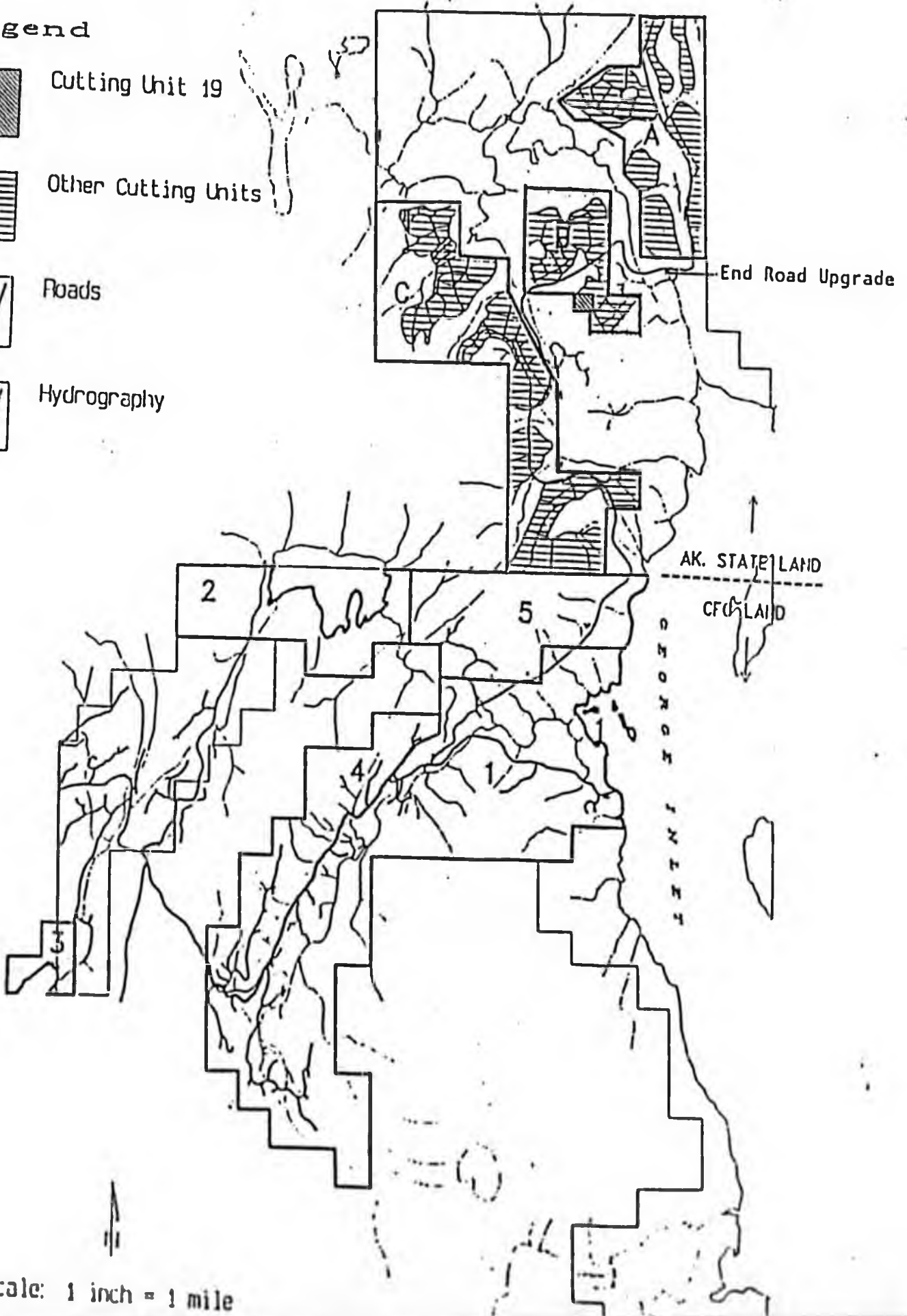
Contains approximately 2335 acres.

COMPARATIVE ROAD STANDARDS

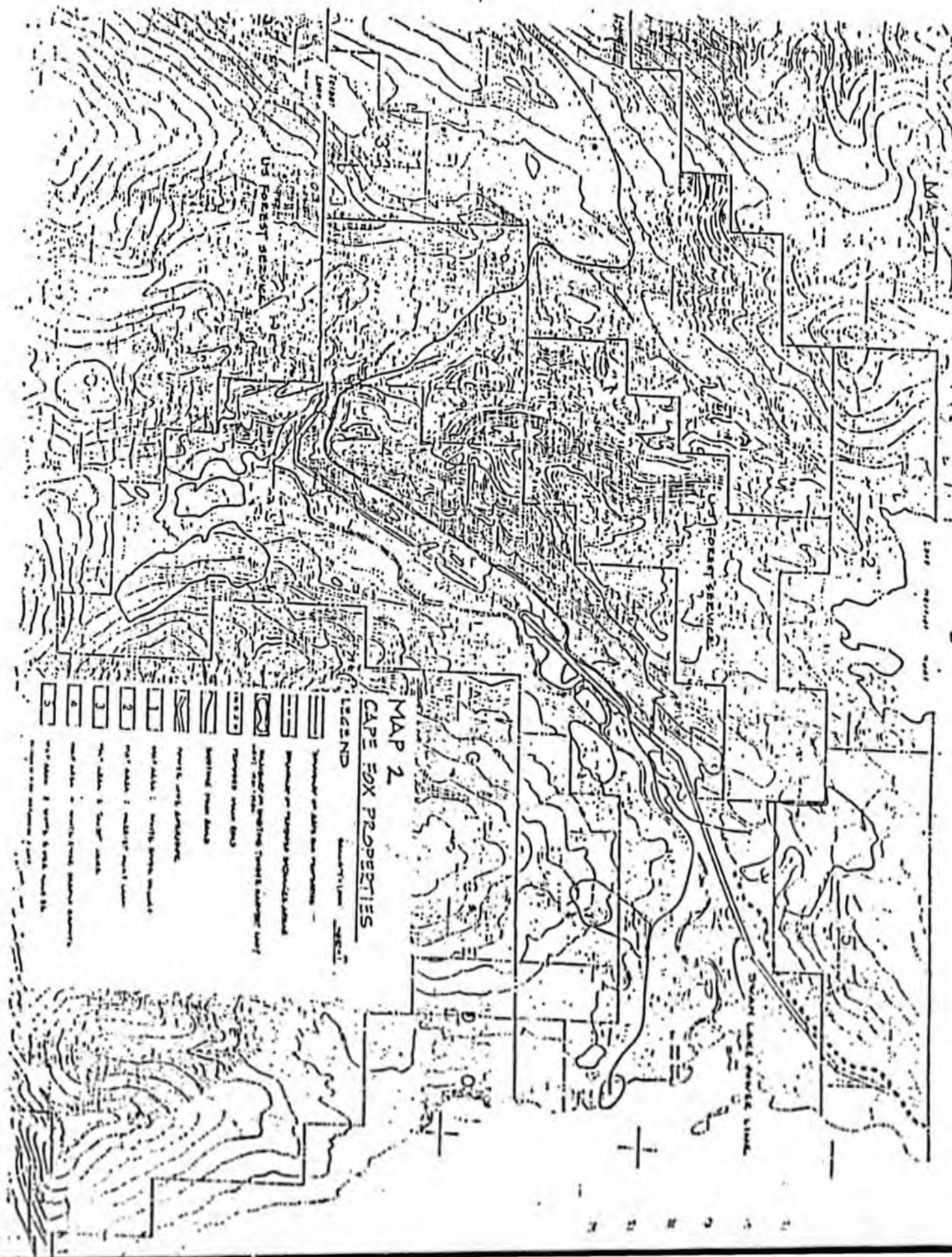
STANDARDS	George Inlet & Leask Lakes (Public) Roads	Ordinary Temporary Logging Road (Same Location)
<u>Alignment</u>		
horiz.	25 mph (200' rad.)(28½ deg. curve)	variable - down to 80 - 100' when necessary
vert.	no standard given	max. 20%
<u>Width</u>		
running surf	20'	14' - 18' (not constant)
shoulders	none	none
<u>Drainage</u>		
ditch	2' continuous w/ no blind ends	2' to none; if unstable backslopes ditches abandoned & replaced by outsloping & waterbars
culverts	CMP's properly sloped, good repair, stable catch-basins, ends open & beyond fill toe	wood or CMP's replaced by crossdrains where necessary
<u>Slopes</u>		
cut	laid back to as much as 1½:1 if required	averages 1:1 in soil
fill	1½:1	1½:1
<u>Surfacing</u>		
road crnc.	6"	6"
material	graded shot rock	pit run shot rock
<u>Distances</u>		
stopping	160'	no standard
passing	no standard	no standard (turnouts only)
<u>Intersections</u>		
logging spur	no standard (temporary use only)	"Y" intersections okay; no sight requirements
public spur	"T" intersections to min. 70 degree; 160' sight distance; 100' of max. 5% approach grade	not applicable
<u>Standard Reductions</u>	horizontal alignment reduction down to 100' radius in no more than two locations of no more than 500' each	not applicable
<u>Signing</u>	none	none
<u>Bridges</u>		
abutments	perm.: piling, treated timber, concrete, or steel	log sill
type	perm. Hamilton type or equiv.	Hamilton type (to be removed) or log stringer
width	16' between bullrails min.	varies; 12' - 18' between bull rail logs
<u>Guard Rail</u>	on bridge approaches and where there is a continuous drop of at least 20' of vertical dist. on a sideslope of at least 50%	none

Legend

-  Cutting Unit 19
-  Other Cutting Units
-  Roads
-  Hydrography



Scale: 1 inch = 1 mile



STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

May 5, 1992

The Honorable Cliff Davidson, Chair
House Resources Committee
State Capitol
Juneau, AK 99811-1182

Dear Representative Davidson:

Subject: HB 578, relating to the Legislature's approval of a land exchange between the Cape Fox Corporation and the State of Alaska.

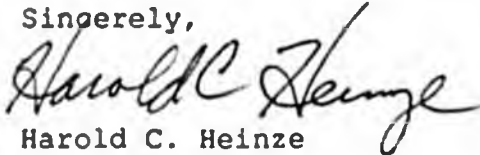
Position: The Department of Natural Resources supports this bill. The value of the land to be received and the value of the road construction or upgrading by Cape Fox are substantially equal or exceed the value of the state land to be exchanged, as required by AS 38.50.020. The exchange is in the public's best interest and will allow Ketchikan area residents to continue using a popular recreation area, increase access to local recreational opportunities, protect important fish habitat, and increase job opportunities and economic development in the area.

Background: If approved by the Legislature, this exchange will result in a trade of the surface estate of land located near Ketchikan. The state will increase its surface estate by 87% through acquisition of road accessible Cape Fox lands that provide valuable recreation and fishing opportunities for the public. The Cape Fox Corporation will acquire land with economic potential for construction, tourism and timber support industries.

If this exchange is not approved this year, there is no guarantee that the Cape Fox Corporation will leave the offer open until next session.

Recommendation: Approve the exchange.

Sincerely,



Harold C. Heinze
Commissioner

cc: Paul Fuhs, Legislative Liaison, Office of the Governor

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 578

Revision Date: 5-May-92 Department Affected: Natural Resources
 Title: Cape Fox Land Exchange BRU: Land Management
 Components: Land Management
 Sponsor: House Rules for Governor
 Requestor: House Resources COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS.CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
Funding Source:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
Funding Source: 1007						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact: -0-

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Ron Swanson Phone: 762-2692
 Division: Land Date: 5-May-92

Approved by Commissioner: Harold C. Heinze Date: 5-May-92
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,
& Impacted Agency(ies).

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND

3601 C STREET
P.O. Box 107005
ANCHORAGE, ALASKA 99510-7005
PHONE: (907) 762-2692

February 12, 1992

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

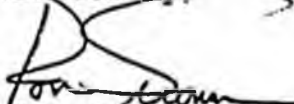
Dear Representative Grussendorf:

The attached information is a summary and the preliminary agreement of a proposed land exchange between the State of Alaska and Cape Fox Corporation, a native village corporation organized under the Alaska Native Claims Settlement Act. All lands involved in the proposal are located 10-12 miles north of Ketchikan. The legislature appropriated \$30,000 to the Ketchikan Gateway Borough last year in support of this exchange.

This notice which is required by law will be followed by public workshops in Ketchikan, and hearings in Saxman, Ketchikan, and Juneau. The hearings are scheduled for March 11, and 12, 1992. The deadline for public comments is March 26, 1992. At that time, if the decision is still to proceed, the proposed exchange agreement and report of exchange will be finalized and the exchange submitted to the legislature for approval.

The full exchange package consists of another 254 pages. The land and timber appraisal consists of another 575 pages. Should you desire any of these documents, or additional information, please contact Andy Pekovich, Manager of our Southeast Region Office in Juneau. He can be reached at 465-3400.

Sincerely,


Ron Swanson
Director

Attachments: Summary
Exchange package w/o attachments

cc: All House of Representative Legislators

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

SOUTHEAST REGIONAL OFFICE

DIVISION OF LAND AND WATER

400 WILLOUGHBY AVENUE
SUITE 400
JUNEAU, ALASKA 99801
PHONE (907) 465-3400

February 10, 1992

Re: Land Exchange ADL 105565
Mineral Closing Order 643
Preliminary ACMP Determination
Proposed Cape Fox Exchange

Dear Reviewer:

The attached material is related to the proposed land exchange between the State of Alaska and Cape Fox Corporation. The package contains almost 290 pages, consisting of three decisions (exchange, mineral closing order, and preliminary ACMP determination), and two notices and or solicitations for comment.

With the following exceptions, the larger of the divided packet represents attachments to the exchange decision in order. Due to the time limitations, it was necessary to print and bind the attachments in advance. Later some alterations occurred and more information was added. A general map showing the proposed exchange parcels was added just behind the cover sheet for the decision. The public notice, Attachment-"B" was completed and added. Attachment-"C", the finding of the Commissioner concerning Mineral Closing Order 643 was slightly altered. And a preliminary ACMP determination was developed and added. The corrected, and or new information is affixed, in the order presented, to this cover letter.

I hope that you find the material informative. I would also like to thank those who provided input. Please feel free to contact me should you have any questions.

Sincerely,



Andrew W. Pekovich
Regional Manager, Southeast Region

Attachments:

**DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND
SOUTHEAST REGIONAL OFFICE
400 WILLOUGHBY AVENUE, SUITE 400
JUNEAU, ALASKA 99801
PHONE NO. (907) 465-3400
PUBLIC NOTICE UNDER
A.S. 38.05.945 & A.S. 38.50.110
OF ACTIONS AND HEARINGS FOR
LAND EXCHANGE ADL NO. 105565
AND MINERAL CLOSING ORDER NO. 628**

Subject to the provisions of A.S. 38.05.945(b) and A.S. 38.50.110, notice is given that the Department of Natural Resources under the authority of A.S. 38.05.185(a), and A.S. 38.50 proposes to close to mineral location and mining, and to exchange the surface estate of approximately 2445 acres of state uplands located in the vicinity of Leask Lakes, for a like estate on approximately 4,366 acres of Cape Fox Corporation (CFC) lands located in vicinity of the White River, Lake Harriet Hunt, and Talbot Lake. All lands are located 10 to 12 miles north of the City of Ketchikan. state lands are more specifically described as fractional portions of Sections 13, 14, 22-24, 26, 27, and 35, Township 73 South, Range 91 East, Copper River Meridian. CFC lands are more specifically described as fractional portions of Sections 2-5, 9-11, 16-18, 20, and 21, Township 74 South, Range 91 East, Copper River Meridian. The exchange, as proposed, would also require CFC to upgrade the existing White River Road to recreation standards (25 miles/hour), and to construct to recreation standards a spur off of the White River road to access the Leask Lakes area. By intent, all roads as presently proposed, would stop short of accessing Leask Lake. The exchange would allow a maximum of 1500 acres of timber to be logged in the vicinity of the lake. Although substantial buffers have been retained along all major stream courses and the cutting has been designed to protect deer winter habitat and travel corridors, some impact on deer populations and interior forest species is expected. However, the impact is expected to be off-set to some extent by other benefits of the exchange, including acquisition of CFC lands which may otherwise be logged. Impact on deer is more likely to occur during medium to severe winters. One of the primary objectives of the exchange is to provide greater opportunities for "roaded" access in the Ketchikan area while attempting to minimize the impact.

Because of the size of the documents, copies of the draft appraisals have not been disseminated with the decision document, but may be viewed at the address above or the Planning Office of the Ketchikan Gateway Borough. Copies of the Preliminary Exchange Agreement, and the Preliminary Report of Exchange, and finding concerning Mineral Closing Order 643 may be acquired by contacting the above offices, or any of the regional offices of the Division. Copies of these documents will automatically be conveyed to the 41 individuals, agencies, and special interest groups already on the exchange's current mailing list, all legislators, and the Alaska Miners Association. A copy the Draft appraisals (about, 575 pages) will, as requested, be sent to the Tongass Conservation Society, the Sierra Club Legal Defense, the

Ketchikan Daily News, and KRFM Radio in Ketchikan. Additional black and white copies will be provided without the computer discs at approximately \$140/copy. Although the draft appraisals represent what is felt to be true values of the lands, there will continue to be clarifications as well as adjustments that may result as an outcome of the public review process.

Hearings on the Exchange: The Department of Natural Resources will conduct public hearings in Saxman, February __, 1992, from 2:00-4:00 P.M., at Room ___ of the (name and address of building); Ketchikan, February __, 1992, from 7:00-10:00 P.M., at Room ___ of the (name and address of building), and Juneau, 7:00-9:00 P.M., at Room ___ of the (name and address of building). The hearing place shall be open at least one half hour before the times above to allow those wishing to testify to preregister. Those wishing to be assured of the ability to testify should take advantage of the preregistration. Preregistration allows the hearing officer to better allocate time to ensure that everyone desiring is given the opportunity to testify. An attempt will be made to allow each person testifying at least three minutes to do so.

The purpose of the hearing is not to disseminate information but to receive testimony. DNR provide an agent in Ketchikan February 26, and March 9 and 10, 1992 to conduct informal, "drop-in" workshops in the area. The agent would expect to be available at the offices of the Ketchikan Borough Planning offices during normal working hours of those days. The planning office will also have the name of the hotel where the agent is staying so that anyone desiring may leave a message should they wish to make special arrangements after normal working hours.

Following the hearings, hearing records shall remain open until 4:30 P.M., March __, 1992 to allow those desiring to submit additional information or statements. Shortly thereafter, the Department will consolidate comments, and if the decision is still to proceed, finalize the Final Exchange Agreement, and Final Report of Exchange for submission to the legislature. The Commissioner's execution is the final administrative action. An appeal of this action must be made to the Superior Court of the State of Alaska within 30 days of the date of execution.

More About Mineral Closing Order 643: The closure will be effective upon execution by the Commissioner, estimated to be on or about _____, __, 1992 (30 days after first notice). The finding and order, unless extended by a future action, effects termination of the closure and reopens the area to mining and mineral entry effective 10:00 A.M., July 1, 1994.

Any comments, objections or expressions of interest pertaining to the proposed action must be received by the Division of Land at the above address by 4:30 P.M., __ (30 days after first publication). Any person who is adversely affected by the mineral closure may request the commissioner's reconsideration in accordance with 11 AAC 02 by writing to the Commissioner at the above address no later than 20 calendar days after approval of the mineral closing order. An appeal must be filed no later than 30 days after approval. A copy of 11 AAC 02 may be obtained from any DNR office.

Questions: Questions concerning any of these action (mineral closure or exchange) should be referred to Andrew Pekovich at the above address.

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

Andrew W. Pekovich, Regional Manager Southeast Regional Office

Publish: _____, __ and __, 1992.

**FINDING OF THE COMMISSIONER
AS 38.05.185**

**MINERAL CLOSING ORDER 643
VICINITY OF LEASK LAKE, NORTHEAST OF THE CITY OF KETCHIKAN**

A Preliminary Exchange Agreement (ADL 105565) was approved by the Director of Land on July 22, 1991 for the parcels described in Attachment - "A". The agreement involves the exchange of state uplands east and south of Leask Lake, Ketchikan, more specifically described as fractional portions of Sections 13, 14, 22-24, 26, 27, and 35, Township 73 South, Range 91 East, Copper River Meridian, containing 2445 acres, more or less (See Attachment - "A" for legal description). Regulations for land exchanges, as referenced under 11 AAC 67.230(b), state that upon entering into a preliminary exchange agreement under this section, the Department will initiate procedures to close the state land proposed for exchange to mineral entry and location under AS 38.05.185. The closure to mineral entry is necessary to avoid the creation of any new third-party interest.

Therefore, it is my finding, in accordance with AS 38.05.185(a) that mining would conflict with making this land available, and that the best interest of the state and its residents are served by the closing the above referenced land to entry under the locatable mineral and mining laws of the State of Alaska. Unless extended, or otherwise terminated with notice, this order shall automatically terminate and the area reopened to mineral entry at 10:00 A.M., July 1, 1994.

Commissioner _____ Date _____
Department of Natural Resources

Attachment: Maps and Legal Description

ACMP; PRELIMINARY DETERMINATION, Attachment To: Report of Proposed Exchange ADL No. 105565

The proposed conveyance of state land and timber rights is subject to the Standards of the Alaska Coastal Management Program (ACMP) because it would be a disposal of interest in state land (6 AAC 50.190). The Department of Natural Resources is coordinating this ACMP review, following the procedures set out in 6 AAC 50.

The purpose of public review of this exchange is to determine if the exchange of any or all of these parcels, for Cape Fox Corporation's land in the White River, Lake Harriet Hunt, Talbot Lake areas of Ketchikan is in the state's best interest. A tract proposed for exchange may be kept in state ownership if the Commissioner of DNR concludes transferring is not in the state's best interest or is not consistent with the Alaska Coastal Management Program.

This ACMP determination was necessarily general. Although the coastal program deals with land uses, it was not known in most cases how CFC will subsequently use the land. The review was based on the likeliest uses that could produce revenue for CFC: sales or leases for residential, recreational, commercial, or industrial purposes, as well as logging. Some of the state land proposed for conveyance to CFC would be conveyed with severe development restrictions.

The determination is subject to Ketchikan Gateway Borough's (KGB) Coastal Management and Comprehensive plans. KGB strongly supports the exchange.

None of the land or interests being transferred has been identified as involving a significant geophysical hazard or area of historic or archeological importance. Nor has any tract been designated by the district plan for seafood processing or as a subsistence zone. The Leask Lakes area was selected for community expansion and recreation. There is support for the exchange. There is also support for state retention, and designation of the entire Leask Lake Tract as a state Park. Breaking up the state's Leask Lake lands and possible affects on interior species are two undesirable aspects of the exchange, but DNR feels that the exchange will provide the best combination of recreational and habitat opportunities. Although the exchange places restrictions on lands that cannot be developed, it does not in itself authorize or permit timber cutting or remove it from the necessity to acquire regulatory permits that may otherwise be required to log or develop private lands. Therefore, the action does not conflict with the standards on geophysical hazards; historic, prehistoric, and archeological resources; fish and seafood processing; subsistence; and recreation. In addition, public access to coastal waters (part of the recreation standard) will be enhanced by the state's acquisition of CFC lands along the shore of Upper George Inlet, as well as White River, Lake Harriet Hunt, and Talbot Lake.

The transfer does not pose a conflict with the transportation and utilities standard. Easements have been reserved to allow access to Leask Lake, as well as DOT/PF's proposed interior alignment for the Tyee/Swan Lake road should the lands at Leask Lake be needed.

Laws and regulations regarding timber harvesting and air, land, and water quality will continue to apply, ensuring consistency with the two affected standards.

Finally, the transfer is consistent with the habitat standard because the tracts exclude most habitat types listed in that standard. No offshore land or intertidal areas will be conveyed. Important upland habitat has either been deleted from the parcels or is protected by stipulations. Any wetlands or non-navigable water bodies included within transferred parcels will continue to be protected by applicable federal law controlling dredge and fill projects.

Future ACMP Reviews: CFC development of land acquired from the state will require CZM project review to the same extent as private land. If CFC needs state or federal permits to undertake a particular use (for example, a state permit to place a road culvert in a fish stream or to install a new sewage system as part of a subdivision development), another ACMP determination specific to that particular use will be necessary. However, future ownership changes by CFC, i.e., sales of land or timber to other private individuals or companies - will not require state approval and therefore will not be subject to the ACMP.

Preliminary Determination: The proposed action is found generally consistent with the standards of the ACMP and appropriate district programs.

Call for Comments: Comments regarding the consistency of the proposed transfer with affect to Ketchikan's District ACMP plan, should be submitted to DNR along with comments on this entire exchange proposal. Comments must be received by 4:30 P.M., March 26, 1992. Descriptions and maps of parcels are found in Section VII and Attachment - "M" of the exchange report.

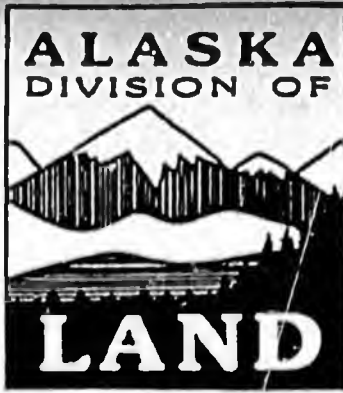
Signed:



Date:

2/10/92

Andrew W. Pekovich
Regional Manager, Div. of Land



ALASKA'S LAND

ALASKA ♦ DEPARTMENT ♦ OF ♦ NATURAL ♦ RESOURCES

Focus On.... CAPE FOX LAND EXCHANGE: A Summary of the Exchange to Date

The Department of Natural Resources proposes to exchange the surface estate of three parcels (approximately 2,445 acres) of state uplands in the vicinity of Leask Lake for a similar estate on five parcels (approximately 4,366 acres) of Cape Fox Corporation (CFC) lands in the White River valley, and adjacent to Lake Harriet Hunt and Talbot Lake. All lands are 10-12 miles north of Ketchikan.

A mineral closing order will be imposed on the state land to avoid establishment of additional third party rights.

The proposed exchange allows a maximum of 1,500 acres of timber (42.6 million board feet) to be logged in the vicinity of Leask Lake on land traded to CFC. This land is currently used for dispersed recreation, and hunting. The CFC lands to be acquired include commercial timber land and previously harvested timber land suitable for road accessible recreation, hunting, and fishing.

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A primary objective of the exchange is to provide greater opportunities for "roaded" access in the Ketchikan area. CFC will upgrade the existing White River Road and will construct a spur off the White River Road to access the Leask Lake area. Both will meet "public access standards" (25 mph). This will add 13.1 miles to the main road system (a 30% increase) and will access a variety of areas with high recreation potential.

The Ketchikan Gateway Borough and the Ketchikan Assembly support the exchange.

Seventy-nine percent (79%) of the critical deer winter range within the state land proposed for exchange has been deliberately preserved and will not be logged. Habitat was identified by a study commissioned by CFC.

Although substantial buffers have been retained along all major stream courses and cutting has been designed to protect deer winter habitat and travel corridors, some impact on deer populations and interior forest species is expected. However, the impact is expected to be offset to some extent by other exchange benefits, including acquisition of CFC lands that may

otherwise be logged. Impact on deer is more likely to occur during medium to severe winters.

The exchange appraisal is extremely complex. Present projections indicate, after certain adjustments, that CFC and state properties will both be valued at eight million dollars. Timber is the overriding value. Appraisal clarifications and adjustments may result from the public review process.

DNR will hold hearings and workshops in Southeast Alaska during February and March, and will keep the record open into March. Comments will be considered, and if the decision is still to proceed, DNR will finalize the exchange agreement and report of exchange for submission to the legislature, hopefully by the end of March.

The commissioner's execution of the exchange is the final administrative action.

For further information, contact Andy Fekovich, Division of Land Southeast Region Office, 400 Willoughby Avenue, Fourth Floor, Juneau, AK 99801 (phone 465-3400).

SUMMARY

CAPE FOX CORPORATION/STATE OF ALASKA

LAND EXCHANGE

1. Cape Fox Corporation, CFC, land (five parcels) included in the exchange consists of the White River Valley, land adjacent to Harriet Hunt Lake and land adjacent to Talbot Lake totaling 4,336 acres.
2. State of Alaska land in the exchange consists of three parcels in the Leask Lake area totaling 2,445 acres.
3. The exchange includes only the surface estate as defined by the Alaska Native Claims Settlement Act.
4. State land in the exchange includes 42.6 MMbf of commercial timber on 1,500 acres. Anticipate adjustment down to approx. 40.5 MMbf.
5. Land exchange to CFC not within the areas proposed for timber harvest will be open to public use. CFC will have limited use rights in these areas.
6. CFC will upgrade the existing White River road to "public access standards."
7. CFC will construct the main road into the Leask Lakes area to "public access standards."
8. 90% of the anadromous streams in the entire Leask Lake tract, the largest and most sensitive streams, have been deliberately buffered and excluded from the exchange.
9. 79% of the critical deer winter range within the State land proposed for exchange has been deliberately preserved and will not be logged. Habitat was identified in a study commissioned by CFC and conducted by America North, Inc. of Anchorage.
10. The exchange, as proposed, would add 13.1 miles to the main road system of Ketchikan, a 30% increase. The new roads would access a variety of areas, both CFC and State totaling 6,811 acres, with high recreation potential.
11. The Ketchikan Gateway Borough has supported the exchange through a planning analysis that resulted in a specific exchange recommendation and a resolution of support by the Assembly.

12. The Borough's planning analysis included a community survey that found the following:
 1. 9 of 10 Borough residents want the road system expanded, 50% want expansion immediately.
 2. 86% of Borough residents support outdoor recreation development near areas that have been harvested.
 3. Preservation of sport fisheries and wildlife in outdoor recreation areas rated highest in value to residents.
13. The appraisal is extremely complex and the reason for delay. It is now over two months over deadline. Present projections appear to indicate that after adjustments for stumpage not due the university, a reduction of 1.9 MMbf to accommodate recommendations of the CFC's deer study, and upgrade of both roads to recreation standards, both CFC and state properties will be valued at \$8,000,000. Timber is the overriding value.
14. DNR's goal was to have this exchange before the legislature within 10 days of the opening of the session. Because of the appraisal delays we not anticipate public hearing's the first week of February with submission the last week of March.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

SOUTHEAST REGIONAL OFFICE
DIVISION OF LAND AND WATER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE
SUITE 400
JUNEAU, ALASKA 99801
PHONE: (907) 465-3400

February 13, 1992

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Grussendorf:

The "summary" referred to in Director Swanson's of February 12, 1992 concerning the proposed Cape Fox exchange was inadvertently omitted. The summary is hereby attached to this letter. Please accept my apology for any inconvenience this may have caused.

Sincerely,



Andrew W. Pekovich
Regional Manager, Southeast Region

Attachment: Summary

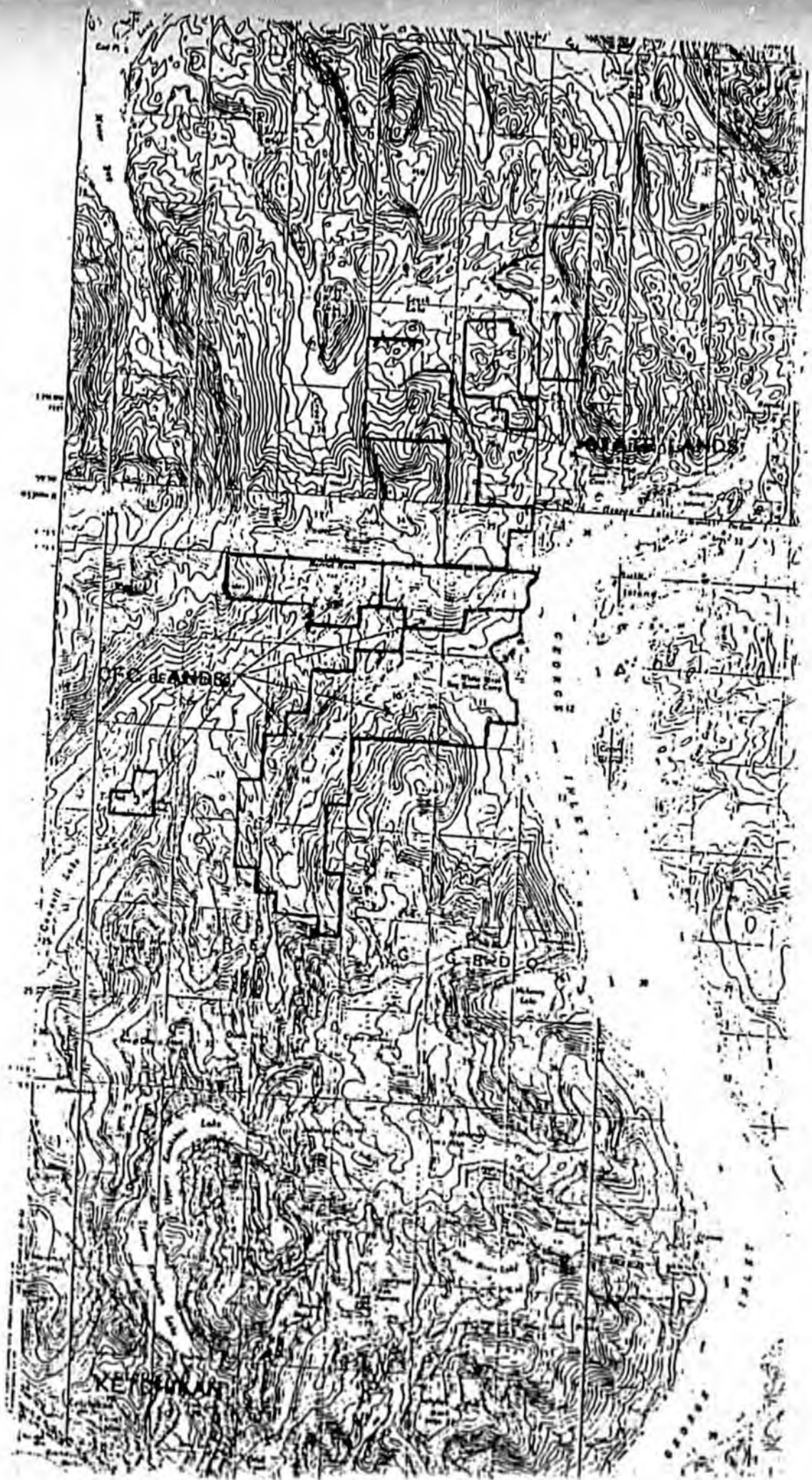
cc: All House of Representative Legislators

DEPARTMENT OF NATURAL RESOURCES
SUMMARY OF STATUS OF PROPOSED CAPE FOX CORPORATION (CFC) EXCHANGE
(January 22, 1992)

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Map Attached



T O N G A S S

REVILLA GIGEE

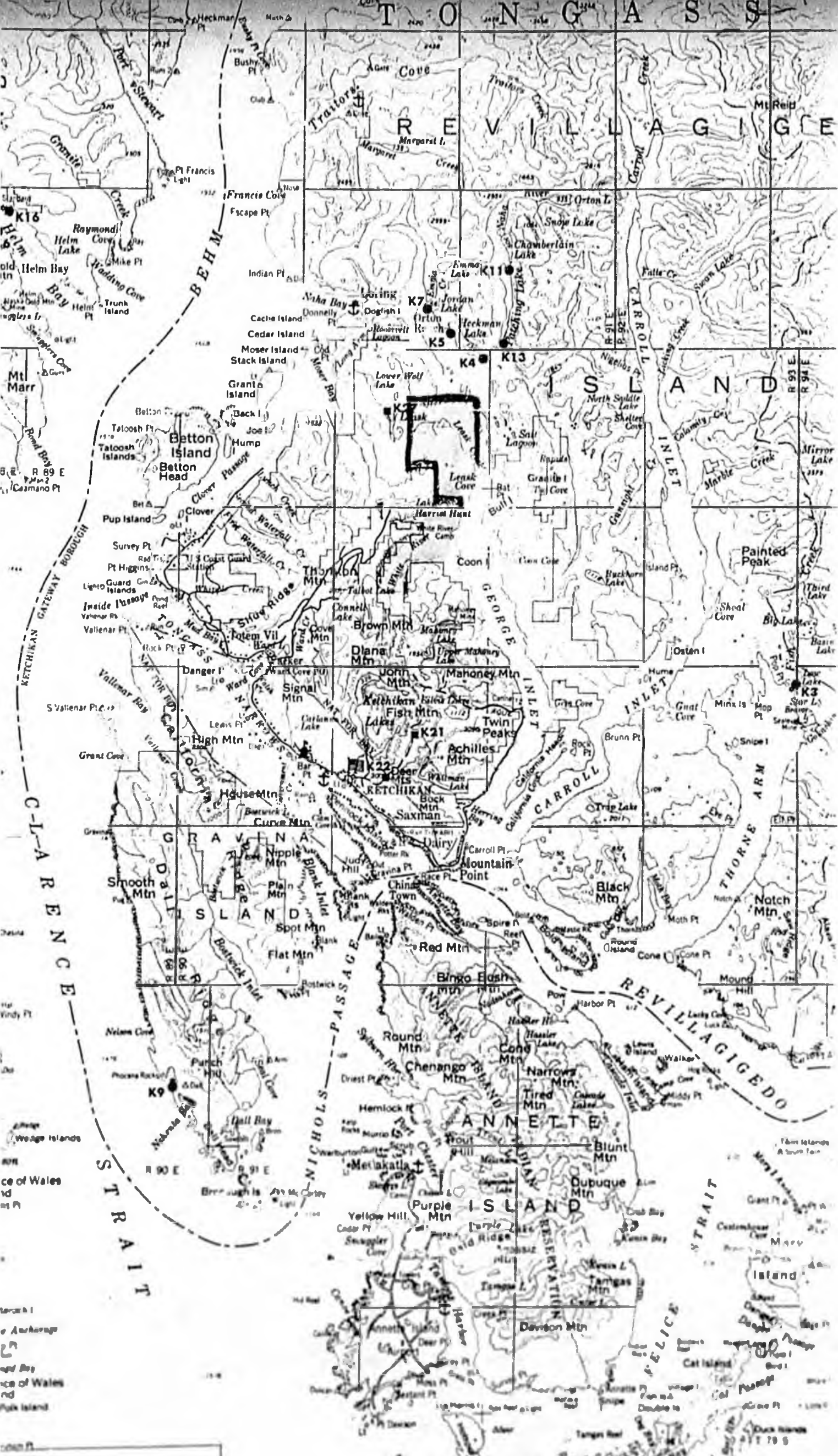
ISLAND

GRAVINA ISLAND

ANNETTE ISLAND

PURPLE ISLAND

STRAIT



Scale
 1 inch = 10 miles
 1:62,500
 U.S. GEOLOGICAL SURVEY
 WASHINGTON, D.C.

THE PUBLIC TRUST DOCTRINE IN ALASKA

by

GREGORY F. COOK

To be presented May 9, 1992, at Centennial Hall, Juneau, Alaska, at a Continuing Legal Education Seminar, "WILDLIFE AND FISHERIES LAW IN ALASKA," co-sponsored by the Alaska Bar Association and the Wildlife and Fisheries Law Institute (an Alaska non-profit corporation).

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I. INTRODUCTION.

A. The Public Trust Doctrine In A Nutshell

What is the public trust doctrine? It is one part of our government's complex system of checks and balances. It is a strong tradition in American government which enables the judicial branch to restrain the legislative and executive branches from alienating certain "common property" public resources comprising the wealth of the state.

At its simplest level, the public trust doctrine revolves around the concept that government owes its citizens special duties of care, or stewardship, regarding certain natural resources which the state holds in trust for the public. At this most basic level, the public trust doctrine holds that government must act as a fiduciary in its management of the resources which constitute the corpus of the trust. The beneficiaries of the trust are the citizens of the state--current and future generations.

For purposes of the public trust, state-owned property is conceptually divided into two, discrete categories: either it is held by the state as a "proprietor," or it is held by the state in its "sovereign capacity." SEE, e.g., Caminiti v Boyle, 732 P. 2d 989 (Washington, 1987).

Resources which the state holds as a proprietor would include, for example, cars in the motor pool; office furniture; computer equipment; books, and the like. Resources held by the state as a proprietor are not subject to the public trust.

In contrast to proprietary resources like those listed above, "common property" resources like fish, wildlife, waters, minerals, and land are held by a state in its sovereign capacity and are subject to the public trust.

The import of the distinction between holding property as a proprietor versus holding property as a sovereign has been set forth in one leading case as follows:

The title of both of these (classes of property), for the greater order, and perhaps, of necessity, is placed in the hands of the sovereign power, but it is placed there for different purposes. The citizen cannot enter upon the domain of the crown and apply it, or any part of it, to his immediate use. He cannot go into the king's forests and fall and carry away the trees, though it is the public property; it is placed in the hands of the king for a different purpose; it is the domain of the crown, a source of revenue; so neither can the king intrude upon the common property, thus understood, and appropriate it to himself, or to the fiscal purposes of the nation, the enjoyment of it is a natural right which cannot be infringed or taken away.... Matthews v Bay Head Improvement Assn., 471 A. 2d 355 (New Jersey, 1984), cert. denied, 469 U.S. 821 (1984), citing Arnold v Mundy, 6 N.J.L. 1 (Sup. Ct. 1821) per Chief Justice Kirkpatrick. (emphasis added in Bay Head), cited and relied on in Shively v Bowlby, 152 U.S. 331,

The development of the public trust doctrine in the United States has historically been marked by consistent recognition of this elemental distinction in the rights and duties of state governments vis-a-vis public trust resources compared to the rights and duties of the state when it deals with non-trust resources.

A more modern case has re-phrased that historic formulation of the public trust doctrine more prosaically, but with greater brevity:

Traditionally, the (public trust) doctrine has functioned as a constraint on states' ability to alienate public trust lands (footnote omitted) and as a limitation on uses that interfere with (public) trust purposes. (footnote omitted)

District of Columbia v Air Florida, 750 F. 2d 1077, 1082-1083 (D.C. App., 1984).

The fundamental distinction between lands and resources held by the state in trust is that the state as trustee acts :

...not as proprietors, but in their sovereign capacity as the representatives and for the benefit of all their people in common.

Organized Village of Kake v Egan, 174 F. Supp. 500, 504, (D.C. Alaska, 1959).

B. A Short History of the Public Trust Doctrine

The historical antecedents of the public trust doctrine¹ reach back at least as far as Roman times. In the sixth century A.D., the Emperor and jurist Justinian wrote that by "the law of nature,

¹ For the student who seeks extensive historic treatment of the Public Trust Doctrine, a variety of fascinating academic surveys of the public trust doctrine are available: e.g., Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention," 68 Mich. L. Rev. 471 (1970); Sax, "Liberating the Public Trust Doctrine from its Historical Shackles," 14 U.C.D.L.Rev. 185 (1980); Johnson, "Public Trust Protection for Stream Flows and Lake Levels," 14 U.C.D.L. Rev. 233 (1980); Wilkinson, "The Public Trust Doctrine in Public Land Law," 14 U.C.D. L. Rev. 269 (1980); Bean, The Evolution of National Wildlife Law, p. 37 (1983); Note: "The Public Trust in Tidal Areas: A Sometimes Submerged Traditional Doctrine," 69 Yale L. J. 762 (1970); "The Public Trust and the Waters of the American West: Yesterday, Today and Tomorrow," Lewis and Clark, Northwestern School of Law (1988).

the air, running water, the sea, and consequently the shores of the sea" were "common to mankind." Justinian, Institutes 2.1.1 (T. Sandars trans. 1st Am. ed. 1876.); SEE ALSO: 2 Blackstone, Commentaries 403 (1803).

This indefeasible public interest in certain natural resources remains the heart of the Public Trust Doctrine as we prepare to enter the twenty-first century A.D.

In American jurisprudence, courts that have faced public trust issues have looked primarily to English law, including the Magna Carta, to explain the scope and impact of the public trust doctrine. SEE, e.g., Martin v Waddell's Lessee, 41 U.S. (16 Pet.) 367, 410 (1842); Geer v Connecticut, 161 U.S. 519 (1896).²

Federal law in the United States has a long and continuing history of public trust jurisprudence. Nonetheless, the Public Trust Doctrine in America has been primarily a creature of state common law.³ District of Columbia v Air Florida, 750 F. 2d 1077, 1082 (D.C. App., 1984). SEE, e.g., State v Longyear Holding Co., 29 N.W. 2d 657 (Minnesota, 1947); City of Madison v State, 83 N.W. 2d 674 (Wisconsin, 1957); Metlakatla Indian Community, Annette Island Reserve v Egan, 362 P. 2d 901, 905 (Alaska, 1961); aff'd, 369 U.S. 45 (1962); Herscher v State, 568 P. 2d 996, 1003, 1005 (Alaska, 1977); Owsichek v State, 763 P. 2d 488, 492-496 (Alaska, 1988); CWC Fisheries, Inc. v Bunker, 755 P. 2d 1115 (Alaska, 1988); McDowell v State, 785 P. 2d 1, 12, 16, 18 (Alaska, 1989); Gilbert v State, 803 P. 2d 391, 398-399 (Alaska, 1990).⁴

² Spanish law, and subsequently Mexican law, recognized the Public Trust Doctrine. SEE: City of Los Angeles v Venice Peninsula Properties 644 P. 2d 792 (California, 1982). Some commentators have suggested that public trust rights guaranteed by the Treaty of Guadalupe Hidalgo serve as an independent basis for the Public Trust Doctrine in California. SEE: Stevens, "The Public Trust: A Sovereign's Ancient Prerogative Becomes the People's Environmental Right," (1980) 14 U.C. Davis L. Rev. 195, 197; Dyer, "California Beach Access: The Mexican Law and the Public Trust," (1972) 2 Ecology L. Q. 571.

³ There is no universal and uniform law on the subject; (the public trust doctrine)...each State applies the doctrine to the lands under the tide waters within its borders according to its own views of justice and policy. ... Great caution, therefore, is necessary in applying the precedents in one State to cases arising in another. Shively v Bowlby, 152 U.S. 1, 26 (1894).

⁴ For a review of most Alaska Statutes governing administration of natural resources in Alaska, SEE: "Natural Resources and the Public Trust Doctrine," Alaska Bar Association, 1986. This symposium antedates and therefore does not discuss the key Alaska cases of CWC Fisheries v Bunker, 755 P. 2d 1115 (Alaska, 1988), and Owsichek v State, 763 P. 2d 488 (Alaska, 1988). Also,

C. History of the Public Trust Doctrine in Alaska

1. The Alaska State Constitution

In Alaska, the evolution of the public trust doctrine is not so historically elaborate as it is in many other states. Because of Alaska's relatively recent admission to the Union, it is not possible to adequately describe the purview of the doctrine in Alaska without some reference to jurisprudence from sister jurisdictions. Nonetheless, Alaskan public trust law is already surprisingly well-developed.

Even before Statehood, Alaska recognized the force of the public trust doctrine. This is easily understood in the context of a Territory as rich in resources as Alaska facing the imminent prospect of Statehood and the attendant responsibilities of managing immense natural resource wealth.

To protect the patrimony of Alaska against intemperate disposal, Alaskans adopted a State Constitution with exceptional provisions regarding natural resources. (SEE: Alaska Constitution, Article VIII.) Among those constitutional provisions, one finds the ontogenesis of the public trust doctrine in Alaska law.

The Alaska Constitution--adopted by the Constitutional Convention on February 5, 1956 and ratified by the people of Alaska on April 24, 1956--is the primary source of the public trust doctrine in Alaska.⁵

The framers of the Alaska Constitution were conversant with and understood the nature of and obligations of the public trust doctrine. SEE: The Alaska Constitutional Convention Proceedings, Vol. 6, pp. 75-103.

Although the Framers of the Alaska Constitution did not elect to explicitly incorporate the public trust doctrine into Alaska's organic law,⁶ the Framers intended the "common use" clause of Article VIII, § 3, to implicitly adopt the public trust doctrine.⁷

the 1986 ABA symposium omitted discussion of Alaska's public trust umbrella statute: AS 38.05.502.

⁵ The Alaska Constitution did not become operative until Statehood was formally proclaimed on January 3, 1959.

⁶ The Alaska Constitution, Article VIII, §6, as originally proposed, would have placed all state lands "in trust." SEE: Committee Proposal No. 8, §7, 6 Alaska Constitutional Convention, p. 78, and commentary.

⁷ Often what is implied is as much a part of the Alaska Constitution as what is expressed. SEE: Wade v Nolan, 414 P. 2d 689 (Alaska, 1966).