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104TH CONGRESS }
1st Session }

SENATE

{ REPORT
104-44

ANAKTUVUK PASS LAND EXCHANGE AND WILDERNESS REDESIGNATION ACT OF 1995

APRIL 7 (legislative day, APRIL 5), 1995.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

[To accompany H.R. 400]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 400) to provide for the exchange of lands within Gates of the Arctic National Park and Preserve, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the Act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE

This Act may be cited as the "Anaktuvuk Pass Land Exchange and Wilderness Redesignation Act of 1995".

TITLE I—ANAKTUVUK PASS LAND EXCHANGE AND WILDERNESS REDESIGNATION

SEC. 101. FINDINGS.

The Congress makes the following findings:

(1) The Alaska National Interest Lands Conservation Act (94 Stat. 2371), enacted on December 2, 1980, established Gates of the Arctic National Park and Preserve and Gates of the Arctic Wilderness. The village of Anaktuvuk Pass, located in the highlands of the central Brooks Range, is virtually surrounded by these national park and wilderness lands and is the only Native village located within the boundary of a National Park System unit in Alaska.

(2) Unlike most other Alaskan Native communities, the village of Anaktuvuk Pass is not located on a major river, lake, or coastline that can be used as a means of access. The residents of Anaktuvuk Pass have relied increasingly on snow machines in winter and all-terrain vehicles in summer as their primary means of access to pursue caribou and other subsistence resources.

(3) In a 1983 land exchange agreement, linear easements were reserved by the Inupiat Eskimo people for use of all-terrain vehicles across certain national park lands, mostly along stream and river banks. These linear easements proved unsatisfactory, because they provided inadequate access to subsistence resources while causing excessive environmental impact from concentrated use.

(4) The National Park Service and the Nunamiut Corporation initiated discussions in 1985 to address concerns over the use of all-terrain vehicles on park and wilderness land. These discussions resulted in an agreement, originally executed in 1992 and thereafter amended in 1993 and 1994, among the National Park Service, Nunamiut Corporation, the City of Anaktuvuk Pass, and Arctic Slope Regional Corporation. Full effectuation of this agreement, as amended, by its terms requires ratification by the Congress.

SEC. 102. RATIFICATION OF AGREEMENT.

(a) RATIFICATION.—

(1) IN GENERAL.—The terms, conditions, procedures, covenants, reservations and other provisions set forth in the document entitled “Donation, Exchange of Lands and Interests in Lands and Wilderness Redesignation Agreement Among Arctic Slope Regional Corporation, Nunamiut Corporation, City of Anaktuvuk Pass and the United States of America” (hereinafter referred to in this Act as “the Agreement”), executed by the parties on December 17, 1992, as amended, are hereby incorporated in this Act, are ratified and confirmed, and set forth the obligations and commitments of the United States, Arctic Slope Regional Corporation, Nunamiut Corporation and the City of Anaktuvuk Pass, as a matter of Federal law.

(2) LAND ACQUISITION.—Lands acquired by the United States pursuant to the Agreement shall be administered by the Secretary of the Interior (hereinafter referred to as the “Secretary”) as part of Gates of the Arctic National Park and Preserve, subject to the laws and regulations applicable thereto.

(b) MAPS.—The maps set forth as Exhibits C1, C2, and D through I to the Agreement depict the lands subject to the conveyances, retention of surface access rights, access easements and all-terrain vehicle easements. These lands are depicted in greater detail on a map entitled “Land Exchange Actions, Proposed Anaktuvuk Pass Land Exchange and Wilderness Redesignation, Gates of the Arctic National Park and Preserve”, Map No. 185/80,039, dated April 1994, and on file at the Alaska Regional Office of the National Park Service and the offices of Gates of the Arctic National Park and Preserve in Fairbanks, Alaska. Written legal descriptions of these lands shall be prepared and made available in the above offices. In case of any discrepancies, Map No. 185/80,039 shall be controlling.

SEC. 103. NATIONAL PARK SYSTEM WILDERNESS.

(a) GATES OF THE ARCTIC WILDERNESS.—

(1) REDESIGNATION.—Section 701(2) of the Alaska National Interest Lands Conservation Act (94 Stat. 2371, 2417) establishing the Gates of the Arctic Wilderness is hereby amended with the addition of approximately 56,825 acres as wilderness and the rescission of approximately 73,993 acres as wilderness, thus revising the Gates of the Arctic Wilderness to approximately 7,034,832 acres.

(2) MAP.—The lands redesignated by paragraph (1) are depicted on a map entitled “Wilderness Actions, Proposed Anaktuvuk Pass Land Exchange and Wilderness Redesignation, Gates of the Arctic National Park and Preserve”, Map No. 185/80,040, dated April 1994, and on file at the Alaska Regional Office of the National Park Service and the office of Gates of the Arctic National Park and Preserve in Fairbanks, Alaska.

(b) NOATAK NATIONAL PRESERVE.—Section 201(8)(a) of the Alaska National Interest Land Conservation Act (94 Stat. 2380) is amended by—

(1) striking “approximately six million four hundred and sixty thousand acres” and inserting in lieu thereof “approximately 6,477,168 acres”; and

(2) inserting “and the map entitled ‘Noatak National Preserve and Noatak Wilderness Addition’ dated September 1994” after “July 1980”.

(c) NOATAK WILDERNESS.—Section 701(7) of the Alaska National Interest Lands Conservation Act (94 Stat. 2417) is amended by striking “approximately five million eight hundred thousand acres” and inserting in lieu thereof “approximately 5,817,168 acres”.

SEC. 104. CONFORMANCE WITH OTHER LAW.

(a) ALASKA NATIVE CLAIMS SETTLEMENT ACT.—All of the lands, or interests therein, conveyed to and received by Arctic Slope Regional Corporation or Nunamiut Corporation pursuant to the Agreement shall be deemed conveyed and received pursuant to exchanges under section 22(f) of the Alaska Native Claims Settlement Act,

as amended (43 U.S.C. 1601, 1621(f)). All of the lands or interests in lands conveyed pursuant to the Agreement shall be conveyed subject to valid existing rights.

(b) ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT.—Except to the extent specifically set forth in this Act or the Agreement, nothing in this Act or in the Agreement shall be construed to enlarge or diminish the rights, privileges, or obligations of any person, including specifically the preference for subsistence uses and access to subsistence resources provided under the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.).

TITLE II—ALASKA PENINSULA SUBSURFACE CONSOLIDATION

SEC. 201. DEFINITIONS.

As used in this Act:

(1) AGENCY.—The term agency—

(A) means—

(i) any instrumentality of the United States; and

(ii) any Government corporation (as defined in section 9101(1) of title 31, United States Code); and

(B) includes any element of an agency.

(2) ALASKA NATIVE CORPORATION.—The term “Alaska Native Corporation” has the same meaning as is provided for “Native Corporation” in section 3(m) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)).

(3) KONIAG.—The term “Koniag” means Koniag, Incorporated, which is a Regional Corporation.

(4) KONIAG ACCOUNT.—The term “Koniag Account” means the account established under section 4.

(5) PROPERTY.—The term “property” has the same meaning as is provided in section 12(b)(7)(vii) of Public Law 94–204 (43 U.S.C. 1611 note).

(6) REGIONAL CORPORATION.—The term “Regional Corporation” has the same meaning as is provided in section 3(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(g)).

(7) SECRETARY.—Except as otherwise provided, the term “Secretary” means the Secretary of the Interior.

(8) SELECTION RIGHTS.—The term “selection rights” means those rights granted to Koniag, pursuant to subsections (a) and (b) of section 12, and section 14(h)(8), of the Alaska Native Claims Settlement Act (43 U.S.C. 1611 and 1613(h)(8)), to receive title to the oil and gas rights and other interests in the subsurface estate of the approximately 275,000 acres of public lands in the State of Alaska identified as “Koniag Selections” on the map entitled “Koniag Interest Lands, Alaska Peninsula”, dated May 1989.

SEC. 202. ACQUISITION OF KONIAG SELECTION RIGHTS.

(a) The Secretary shall determine, pursuant to subsection (b) hereof, the value of Selection Rights which Koniag possesses within the boundaries of Aniakchak National Monument and Preserve, Alaska Peninsula National Wildlife Refuge, and Becharof National Wildlife Refuge.

(b) VALUE.—

(1) IN GENERAL.—The value of the selection rights shall be equal to the fair market value of—

(A) the oil and gas interests in the lands or interests in lands that are the subject of the selection rights; and

(B) in the case of the lands or interests in lands for which Koniag is to receive the entire subsurface estate, the subsurface estate of the lands or interests in lands that are the subject of the selection rights.

(2) APPRAISAL.—

(A) SELECTION OF APPRAISER.—

(i) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary and Koniag shall meet to select a qualified appraiser to conduct an appraisal of the selection rights. Subject to clause (ii), the appraiser shall be selected by the mutual agreement of the Secretary and Koniag.

(ii) FAILURE TO AGREE.—If the Secretary and Koniag fail to agree on an appraiser by the date that is 60 days after the date of the initial meeting referred to in clause (i), the Secretary and Koniag shall, by the date that is not later than 90 days after the date of the initial meeting, each designate an appraiser who is qualified to perform the appraisal. The 2 appraisers so identified shall select a third qualified appraiser who shall perform the appraisal.

- (B) STANDARDS AND METHODOLOGY.—The appraisal shall—
- (i) be conducted in conformity with the standards of the Appraisal Foundation (as defined in section 1121(9) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(9)); and
 - (ii) utilize risk adjusted discounted cash flow methodology.
- (C) SUBMISSION OF APPRAISAL REPORT.—Not later than 180 days after the selection of an appraiser pursuant to subparagraph (A), the appraiser shall submit to the Secretary and to Koniag a written appraisal report specifying the value of the selection rights and the methodology used to arrive at the value.
- (3) DETERMINATION OF VALUE.—
- (A) DETERMINATION BY THE SECRETARY.—Not later than 60 days after the date of the receipt of the appraisal report under paragraph (2)(C), the Secretary shall determine the value of the selection rights and shall notify Koniag of the determination.
- (B) ALTERNATIVE DETERMINATION OF VALUE.—
- (i) IN GENERAL.—Subject to clause (ii), if Koniag does not agree with the value determined by the Secretary under subparagraph (A), the procedures specified in section 206(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)) shall be used to establish the value.
 - (ii) AVERAGE VALUE LIMITATION.—The average value per acre of the selection rights shall not be more than \$300.

SEC. 203. KONIAG ACCOUNT.

(a) IN GENERAL.—

(1) The Secretary shall enter into negotiations for an agreement or agreements to exchange Federal lands or interests therein which are in the State of Alaska for the Koniag Selection Rights referred to in section 202.

(2) If the value of the Federal lands to be exchanged is less than the value of the Koniag Selection Rights established in section 202, then the Secretary may exchange the Federal lands for an equivalent portion of the Koniag Selection Rights. The remaining selection rights shall remain available for additional exchanges.

(3) For purposes of this section, the term “Federal lands” means lands or interests therein located in Alaska, administered by the Secretary and the title to which is in the United States but excluding all lands and interests therein which are located within a conservation system unit as defined in the Alaska National Interest Lands Conservation Act section 102(4).

(b) ACCOUNT.—

(1) IN GENERAL.—With respect to any Koniag Selection Rights for which an exchange has not been completed by October 1, 2004 (hereafter in this section referred to as “remaining selection rights”), the Secretary of the Treasury, in consultation with the Secretary, shall, notwithstanding any other provision of law, establish in the Treasury of the United States, an account to be known as the Koniag Account. Upon the relinquishment of the remaining selection rights to the United States, the Secretary shall credit the Koniag Account in the amount of the appraised value of the remaining selection rights.

(2) INITIAL BALANCE.—The initial balance of the Koniag Account shall be equal to the value of the selection rights as determined pursuant to section 3(b).

(3) USE OF ACCOUNT.—

(A) IN GENERAL.—Amounts in the Koniag Account shall—

- (i) be made available by the Secretary of the Treasury to Koniag for bidding on and purchasing property sold at public sale, subject to the conditions described in this paragraph; and
- (ii) remain available until expended.

(B) ASSIGNMENT.—

- (i) IN GENERAL.—Subject to clause (ii) and notwithstanding any other provision of law, the right to request the Secretary of the Treasury to withdraw funds from the Koniag Account shall be assignable in whole or in part by Koniag.

(ii) NOTICE OF ASSIGNMENT.—No assignment shall be recognized by the Secretary of the Treasury until Koniag files written notice of the assignment with the Secretary of the Treasury and the Secretary.

(C) BIDDING AND PURCHASING.—

- (i) IN GENERAL.—Koniag may use the Koniag Account to—

- (I) bid, in the same manner as any other bidder, for any property at any public sale by an agency; and
- (II) purchase the property in accordance with applicable laws, including the regulations of the agency offering the property for sale.
- (ii) REQUIREMENTS FOR AGENCIES.—In conducting a transaction described in clause (i), an agency shall accept, in the same manner as cash, an amount tendered from the Koniag Account.
- (iii) ADJUSTMENT OF BALANCE.—The Secretary of the Treasury shall adjust the balance of the Koniag Account to reflect each transaction under clause (i).
- (4) SPECIAL PROCEDURES.—The Secretary of the Treasury, in consultation with the Secretary, shall establish procedures to permit the Koniag Account to—
 - (A) receive deposits;
 - (B) make deposits into escrow when an escrow is required for the sale of any property; and
 - (C) reinstate to the Koniag Account any unused escrow deposits if a sale is not consummated.
- (c) TREATMENT OF AMOUNTS FROM ACCOUNT.—The Secretary of the Treasury shall—
 - (1) deem as a cash payment any amount tendered from the Koniag Account and received by an agency as a proceed from a public sale of property; and
 - (2) make any transfer necessary to permit the agency to use the proceed in the event an agency is authorized by law to use the proceed for a specific purpose.
- (d) REQUIREMENT FOR THE ADMINISTRATION OF SALES.—
 - (1) IN GENERAL.—Subject to paragraph (2), the Secretary of the Treasury and the heads of agencies shall administer sales described in subsection (a)(3)(C) in the same manner as is provided for any other Alaska Native Corporation that—
 - (A) is authorized by law as of the date of enactment of this Act; and
 - (B) has an account similar to the Koniag Account for bidding on and purchasing property sold for public sale.
 - (2) PROHIBITION.—Amounts in an account established for the benefit of a specific Alaska Native Corporation may not be used to satisfy the property purchase obligations of any other Alaska Native Corporation.
- (e) REVENUES.—The Koniag Account shall be deemed to be an interest in the subsurface for purposes of section 7(i) of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

SEC. 204. CERTAIN CONVEYANCES.

- (a) INTERESTS IN LAND.—For the purpose of section 21(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1620(c)), the following shall be deemed to be an interest in land:
 - (1) The establishment of the Koniag Account and the right of Koniag to request the Secretary of the Treasury to withdraw funds from the Koniag account.
 - (2) The receipt by a Settlement Trust (as defined in section 3(t) of such Act (43 U.S.C. 1602(t))) of a conveyance by Koniag of any right in the Koniag account.
- (b) AUTHORITY TO APPOINT TRUSTEES.—In establishing a Settlement Trust under section 39 of such Act (43 U.S.C. 1629e), Koniag may delegate the authority granted to Koniag under subsection (b)(2) of such section to any entity that Koniag may select without affecting the status of the Settlement Trust under this section.

PURPOSE OF THE MEASURE

The purpose of H.R. 400, as ordered reported, is to provide Congressional ratification of a proposed agreement among the United States (through the National Park Service), Arctic Slope Regional Corporation, Nunamiut Corporation and the city of Anaktuvuk Pass to resolve a long standing dispute regarding the use of all-terrain vehicles within the boundaries of the Gates of the Arctic National Park for subsistence purposes by certain Alaska Natives, and to authorize the Secretary of the Interior to consolidate the surface and subsurface estates of certain lands within 3 conservation system units on the Alaska Peninsula.

BACKGROUND AND NEED

Following the enactment of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980, the village of Anaktuvuk Pass was surrounded by the Gates of the Arctic National Park and Preserve and the Gates of the Arctic Wilderness. This village is unique in that it is completely surrounded by conservation system units and not located on a major river, lake or coastline that can be used as a means of access.

In recent years, the residents of the village have relied increasingly on snow machines and all-terrain vehicles rather than dog teams for access to pursue caribou and other subsistence resources which are important components of their cultural heritage. A 1983 land exchange agreement recognized this use by reserving to the Inupiat Eskimo people linear easements for the use of all terrain vehicles across certain park lands, mostly adjacent to riparian areas. These easements proved unsatisfactory because they provided inadequate access to subsistence resources while causing considerable environmental damage to the riparian environment by concentrating use in a relatively few sensitive areas.

Since 1985, the Park Service and the residents of the village have engaged in a series of discussions to address how best to balance the needs of the Native people to access subsistence resources (primarily caribou) by using all terrain vehicles, with the damage that such vehicles can cause to park and wilderness values.

The parties agreed on a proposed settlement, which was the subject of an Environmental Impact Statement, in 1992. The settlement involves an exchange of fee lands between the regional and village corporations and the Department of the Interior; adjustment of the existing wilderness boundaries through the addition of certain lands and deletion of others; the conveyance of certain development rights to the United States; the conveyance of public access easements across native corporation lands; and conveyance of ATV access rights to residents of Anaktuvuk Pass for subsistence purposes.

Title I of H.R. 400 would provide the Congressional ratification necessary to effectuate the agreement.

Title II affects the Koniag Regional Corporation, Inc. (Koniag), one of the thirteen Alaska Native regional corporations established by the Alaska Native Claims Settlement Act (ANCSA) in 1971. Approximately 3,400 people, most of whom are Aleut or Russian Aleut, are enrolled as shareholders in Koniag. As part of its entitlement in the Koniag region under ANCSA, as amended by the ANILCA, Koniag retains approximately 275,000 acres of subsurface

selection rights, including oil and gas rights on the Alaska Peninsula. The subsurface selection rights underlie several significant conservation system units on the Peninsula; Aniakchak National Monument and Preserve; Alaska Peninsula National Wildlife Refuge; and Becharof National Wildlife Refuge.

In order to eliminate these inholdings, title II of H.R. 400 provides for a process for the acquisition, on a willing seller basis, of 275,000 acres of subsurface selection rights from Koniag. In exchange for Koniag's selection rights, the fair market value of which will be determined by the Department of the Interior in accordance with an appraisal process set out in title II, Koniag will be compensated with a property account that can be used to purchase excess federal property. The legislation specifies that the revenues received by Koniag will be subject to the revenue sharing provisions of section 7(i) of ANCSA. Under section 7(i), 70 percent of the revenues received by an Alaska Native Regional Corporation from the development of subsurface or timber resources are required to be shared among the other regional corporations, who in turn make distributions to their village corporations and at-large shareholders.

LEGISLATIVE HISTORY

Congressman Don Young of Alaska introduced H.R. 400 in the House of Representatives on January 4, 1995. H.R. 400 passed the House on February 1, 1995, and was subsequently referred to the Senate Committee on Energy and Natural Resources. Senator Murkowski introduced S. 536 on March 10, 1995.

In the 103d Congress, Senator Murkowski and Senator Stevens introduced similar legislation, S. 2303, on July 21, 1994. At a hearing on S. 2303, the Department of the Interior testified in favor of the bill, if amended to designate and include the "Nigu Wilderness" as part of the exchange. Legislation similar to title II of H.R. 400 provisions was introduced in both the 102d and 103d Congresses. A hearing was held on S. 855 on July 29, 1993. The Committee reported amended versions of both S. 2303 and S. 855 on September 21, 1994.

At the business meeting on March 15, 1995, the Committee on Energy and Natural Resources ordered H.R. 400 favorably reported, as amended to include S. 536 as Title II.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business on March 15, 1995, by a unanimous vote of a quorum present, recommends that the Senate pass H.R. 400 if amended as described herein.

The roll call vote on reporting the measure was 18 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Murkowski	
Mr. Hatfield ¹	
Mr. Domenici	
Mr. Nickles ¹	
Mr. Craig	
Mr. Campbell	
Mr. Thomas	
Mr. Kyl ¹	
Mr. Grams	
Mr. Jeffords ¹	
Mr. Burns	
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman ¹	
Mr. Akaka	
Mr. Wellstone	

¹ Indicates voted by proxy.

COMMITTEE AMENDMENT

During the consideration of H.R. 400, the Committee adopted an amendment which added a new title II, which contained the language of S. 536, a bill to authorize the Secretary of the Interior to consolidate the surface and subsurface estates of certain lands within 3 conservation system units on the Alaska Peninsula.

SECTION-BY-SECTION ANALYSIS

TITLE I—ANAKTUVUK PASS LAND EXCHANGE AND WILDERNESS REDESIGNATION

Section 101 sets forth Congressional findings.

Section 102(a) provides for congressional ratification of an Agreement entered into among Arctic Slope Regional Corporation (ASRC), Nunamiut Corporation, the city of Anaktuvuk Pass and the United States concerning the disposition of certain lands located within the boundary of the Gates of the Arctic National Park. This Agreement, which was reached in December, 1992 and amended twice, sets forth the terms and conditions of a proposed exchange/settlement.

The agreement, which is included as an Appendix to this report, includes the following major provisions:

- the conveyance of 30,642 acres of Federal land located inside the boundaries of the park to ASRC and the Nunamiut Corporation in exchange for 38,840 acres of corporation land located within the park boundary;

- the deauthorization of approximately 73,933 acres of existing wilderness within the park;

- the designation of approximately 56,825 acres within the park as new wilderness;

the conveyance by ASRC and Nunamiut Corporation of surface and subsurface development rights to approximately 116,435 acres within the boundaries of the park to the United States;

the conveyance of public access easements across approximately 148,484 acres of land inside the park boundary for pedestrian and dog sled access and camping from ASRC and Nunamiut Corporation to the United States;

the conveyance of easements for all-terrain vehicle (ATV) access for subsistence purposes over approximately 126,632 acres of non-wilderness park land from the United States to the Village Corporation; and

the implementation of a cooperative management process between the Secretary and the Nunamiut people to evaluate the future effects of ATV use on park lands.

Subsection (b) identifies the maps and exhibits to accompany the Agreement; provides for their retention in the appropriate offices of the National Park Service; and provides for public inspection of the maps; and identifies which map controls in case of discrepancies.

Section 103 of H.R. 400 amends Sections 201(8)(a), 701(2) and 701(7) of the Alaska National Interest Lands Conservation Act (94 Stat. 2371) and states new acreage totals for Noatak National Preserve, Gates of the Arctic Wilderness and the Noatak Wilderness.

The Committee notes that acreage figures used in the Alaska National Interest Lands Conservation Act of 1980 were close approximations of public lands acreage within established park boundaries. Other enclosed acreage included privately owned land, state lands and lands selected by Alaska Native Corporations for possible conveyance. Since 1980 considerable refinement of park acreage figures has taken place and current calculations by the National Park Service vary to some degree from original figures. Since the calculated new acreage set forth in H.R. 400 differs somewhat from actual total acreage at Gates of the Arctic National Park and Noatak National Preserve, actual acreage in each area shall be controlled by National Park Service maps and legal descriptions of the new boundaries or boundary alterations.

H.R. 400 effects a decrease of 17,168 acres in the Gates of the Arctic Wilderness. Noatak National Preserve is expanded by 17,168 acres as is the Noatak Wilderness.

Lands added to the Noatak National Preserve are depicted on National Park Service Map No. 189/80,041 entitled "Noatak National Preserve and Noatak Wilderness Addition," dated September 1994, on file at the Alaska Regional Office of the National Park Service and the office of the Noatak National Preserve at Kotzebue, Alaska. Written legal descriptions of these lands shall be available at the above mentioned offices. In case of any discrepancy, Map No. 189/80,041 shall be controlling.

Further, it is understood that management of the new park, preserve and wilderness lands added or designated by H.R. 400 shall be subject to the applicable provisions of Public Law 96-487, Dec. 2, 1980, 94 Stat. 2371.

Section 104(a) provides that any lands or interests therein conveyed to and received by ASRC or Nunamiut Corporation pursuant to the agreement shall be deemed to have been conveyed and re-

ceived pursuant to the requirements relating to land exchanges under action 22(f) of ANSCA. This subsection states that all of the lands and interests therein conveyed pursuant to the agreement shall be conveyed subject to valid existing rights.

Subsection (b) is a savings clause which provides that nothing in this title or the Agreement may be construed to enlarge or diminish the rights, privileges or obligations of any person except to the extent provided in the Act or the Agreement, including the specific preference for subsistence uses and access to subsistence resources provided under ANILCA.

TITLE II—ALASKA PENINSULA SUBSURFACE CONSOLIDATION

Section 201 sets forth definitions used in the title.

Section 202(a) directs the Secretary to determine the value of Koniag's selection rights within the boundaries of the Aniakchak National Monument and Preserve, Alaska Peninsula National Wildlife Refuge and Becharof National Wildlife Refuge.

Subsection (b) sets forth the method the Secretary is to use in determining the fair market value of the selection rights, including the procedures for conducting appraisals and the standards and methodology to be used in the appraisal process. Specifically, the appraisal is to be conducted in conformance with the standards of the Appraisal Foundation and utilize risk adjusted discounted cash flow methodology. The subsection also provides for a procedure to be used in the event that Koniag does not agree with the value determined by the Secretary under the provisions of this subsection (the procedure specified in 206(d) of the Federal Lands Policy and Management Act) and also places a cap on the valuation. The average value per acre of the selection rights cannot exceed \$300.00.

Section 203(a) directs the Secretary to enter into negotiations with Koniag for a land exchange agreement or agreements to exchange Federal lands or interests therein located in the State of Alaska for Koniag selection rights.

Subsection (b) states that with respect to any Koniag selection rights for which an exchange has not been completed by October 1, 2004, the Secretary of the Treasury shall establish, in the Treasury of the United States, an account to be known as the Koniag Account. Upon the relinquishment of the remaining selection rights to the United States (those not acquired by exchange), the Secretary shall credit the Koniag Account in the amount of the appraised value of the remaining selection rights.

The Committee has agreed to establish a property account for Koniag because of the peculiar situation in Alaska with respect to the need to resolve outstanding Alaska Native claims and the large amount of federal land located in the State. The Committee action in this regard is not to be considered a precedent for other states.

The subsection also sets forth the uses of the Koniag Account. Specifically, Koniag is to use the account in the same manner as any other bidder for any property at any public sale in accordance with applicable laws. In addition, Koniag is authorized to assign the account in whole or in part to another party if Koniag files written notice of the assignment with the Secretary of the Treasury and the Secretary.

Subsections (c) and (d) set forth how the Secretary of the Treasury and the heads of affected federal agencies shall treat expenditures from the account and how the account is to be administered.

Subsection (e) provides that the Koniag Account shall be deemed to be an interest in the subsurface for the purposes of the section 7(i) of Alaska Native Claims Settlement Act (revenue sharing).

Section 204(a) provides that for the purpose of section 21(c) of ANCSA, the following shall be deemed an interest in land: (1) the establishment of the Koniag Account and the right of Koniag to request the Secretary of the Treasury to withdraw funds from the Account; and (2) the receipt by a Settlement Trust (as defined in section 3(t) of ANCSA) of a conveyance by Koniag of any right in the Koniag Account.

Subsection (b) provides that in establishing a Settlement Trust under section 39 of ANCSA, Koniag may delegate the authority granted to it under subsection (b)(2) of such section to any entity that Koniag may select without affecting the status of the Settlement Trust.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 3, 1995.

Hon. FRANK H. MURKOWSKI,
*Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed an updated version of H.R. 400, the Anaktuvuk Pass Land Exchange and Wilderness Redesignation Act of 1995, as ordered reported by the Senate Committee on Energy and Natural Resources on March 15, 1995. This letter supersedes the estimate provided on March 17, 1995, which was based on an incomplete draft of the act. Based on the new language provided by committee staff, we estimate that enactment of H.R. 400 would cost the Federal government about \$200,000 over the next five years, assuming appropriation of the necessary funds. Enactment of H.R. 400 could affect direct spending if federal land currently generating income is given away; therefore, pay-as-you-go procedures would apply. CBO cannot estimate the magnitude of such potential costs.

Basis of Estimate. Title I of H.R. 400 would ratify an agreement among the National Park Service (NPS), the Numamiut Corporation, the city of Anaktuvuk Pass, and the Arctic Slope Regional Corporation (ASRC). The agreement, which was originally executed in 1992, provides for an exchange of land between the United States and the ASRC.

Because the 30,642 acres to be transferred to the ASRC are currently managed as wilderness, their conveyance would have no impact on federal timber or mining receipts. The 38,840 acres to be acquired by the United States through the exchange would be managed by the NPS as wilderness. CBO expects that there would be no additional costs associated with managing this land.

Title II would direct the Department of the Interior (DOI) to determine the value of subsurface mineral rights currently claimed by the Koniag Native Corporation in Alaska and to negotiate to exchange these rights for other federal land in that state. The act would establish a procedure for determining the value of the corporation's rights and places a cap of \$300 per acre on the rights. Any of these mineral rights that are not exchanged by October 1, 2004, would be converted to monetary credits that could be used by the corporation to purchase federal property.

Based on information provided by DOI and the corporation, CBO estimates that DOI would incur costs totaling about \$200,000 over the next five years to complete the exchange. The corporation has claimed rights to about 275,000 acres of oil, gas, and mineral rights under the Alaska Native Claims Settlement Act of 1971. Until appraisals are complete and the land exchange is negotiated, we cannot determine how much these rights are worth or which federal lands would be used in the exchange. (The legislation would establish a maximum value of \$83 million.) CBO, therefore, has no basis for determining how much federal land would be relinquished in the exchange, what its value would be, or whether that land is currently generating income for the government. If income-generating land is used in the exchange, the federal government would lose offsetting receipts. Because the issuance of monetary credits constitutes budget authority and outlays, establishment of the Koniag account in fiscal year 2005 could result in additional direct spending in that year, but we have no basis for predicting what mineral rights would remain by that time.

Enactment of H.R. 400 would not directly affect the budgets of state or local governments.

Previous Estimates. On March 20, 1995, CBO prepared a cost estimate for S. 536, the Alaska Peninsula Subsurface Consolidation Act of 1995, as ordered reported by the Senate Committee on Energy and Natural Resources on March 15, 1995. That estimate is identical to the above estimate for Title II of H.R. 400.

On March 17, 1995, CBO prepared a cost estimate for H.R. 400, the Anaktuvuk Pass Land Exchange and Wilderness Redesignation Act of 1995, as ordered reported by the Senate Committee on Energy and Natural Resources on March 15, 1995. The earlier estimate is identical to the above estimate for Title I of this legislation.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Theresa Gullo and Deborah Reis.

Sincerely,

JUNE E. O'NEILL,
Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 400. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little, if any, additional paperwork would result from the enactment of H.R. 400, as ordered reported.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act H.R. 400, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ALASKA NATIONAL INTERESTS LANDS CONSERVATION ACT

* * * * *

SECTION 1. This Act may be cited as the "Alaska National Interest Lands Conservation Act".

* * * * *

TITLE II—NATIONAL PARK SYSTEM

ESTABLISHMENT OF NEW AREAS

SEC. 201. The following areas are hereby established as units of the National Park System and shall be administered by the Secretary under the laws governing the administration of such lands and under the provisions of this Act:

(1) * * *

* * * * *

(8)(a) Noatak National Preserve, containing [approximately six million four hundred and sixty thousand acres] *approximately 6,477,168 acres* of public lands, as generally depicted on map numbered NOAT-90,004, and dated July 1980 *and the map entitled "Noatak National Preserve and Noatak Wilderness Addition" dated September 1994*. The preserve shall be managed for the following purposes, among others: To maintain the environmental integrity of the Noatak River and adjacent uplands within the preserve in such a manner as to assure the continuation of geological and biological processes unimpaired by adverse human activity; to protect habitat for, and populations of, fish and wildlife, including but not limited to caribou, frizzly bears, Dall sheep, moose, wolves, and for waterfowl, raptors, and others species of birds; to protect archaeological resources; and in a manner consistent with the foregoing, to provide opportunities for scientific research. The Secretary may establish a board consisting of scientists and other experts in the field of arctic research in order to assist him in the encouragement and administration of research efforts within the preserve.

* * * * *

TITLE VII—NATIONAL WILDERNESS PRESERVATION SYSTEM

DESIGNATION OF WILDERNESS WITHIN NATIONAL PARK SYSTEM

SEC. 701. In accordance with subsection 3(c) of the Wilderness Act (78 Stat. 892), the public lands within the boundaries depicted as "Proposed Wilderness" on the maps referred to in sections 201 and 202 of this Act are hereby designated as wilderness, with the nomenclature and approximate acreage as indicated below:

(1) * * *

(2) Gates of the Arctic Wilderness of [approximately seven million and fifty-two thousand acres] *approximately seven million thirty-four thousand eight hundred and thirty-two acres;*

* * * * *

(7) Noatak Wilderness of [approximately five million eight hundred thousand acres]; *approximately 5,817,168 acres;* and

* * * * *

A P P E N D I X

DONATION, EXCHANGE OF LANDS AND INTERESTS IN LANDS AND WILDERNESS REDESIGNATION AGREEMENT AMONG ARCTIC SLOPE REGIONAL CORP., NUNAMIUT CORP., CITY OF ANAKTUVUK PASS AND THE UNITED STATES OF AMERICA

This agreement entered into the 17th day of December 1992 is by Arctic Slope Regional Corporation (hereinafter "ASRC"), Nunamiut Corporation (hereinafter "Nunamiut"), both corporations authorized pursuant to the Alaska Native Claims Settlement Act (hereinafter "ANCSA"), 85 Stat. 688, as amended, 43 U.S.C. 1601 et seq., and duly organized under the laws of the State of Alaska, the City of Anaktuvuk Pass, a political subdivision of the State of Alaska (hereinafter "City"), and the United States of America, and the Secretary of the Interior, acting through the Assistant Secretary for Fish and Wildlife and Parks of the Department of the Interior (hereinafter "Secretary"). ASRC, Nunamiut, the City and the Secretary are collectively referred to as "the parties".

WITNESSETH

Whereas, the United States of America, acting through the Secretary of the Interior, entered into an agreement with ASRC on June 29, 1979 (hereinafter 1979 Agreement), that was ratified and confirmed by section 1431 of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2371, 16 U.S.C. 3101 (hereinafter "ANILCA"); and

Whereas, paragraph II, section I of the 1979 Agreement provided certain benefits to the residents of Anaktuvuk Pass, including the shareholders of Nunamiut, which benefits were intended to balance the subsistence activities and lifestyle of the residents of Anaktuvuk Pass with the Secretary's need for reasonable access by members of the public to federally-owned lands within gates of the Arctic National Monument, subsequently redesignated Gates of the Arctic National Park and Preserve (hereinafter "Park") by section 201(4) of ANILCAS, 16 U.S.C. 410hh(4); and

Whereas, the 1979 Agreement sets forth a commitment by the United States to negotiate with ASRC and Nunamiut, within 18 months of the execution of the 1979 Agreement, non-site specific easements for public access across lands and interests in lands owned by ASRC and Nunamiut within the Park; and

Whereas, Congress on December 2, 1980 in establishing the Gates of the Arctic National Park and Preserve designated public lands adjacent to and surrounding lands conveyed or to be conveyed to ASRC and Nunamiut pursuant to ANCSA and section

1431(c) of ANILCA as wilderness pursuant to section 701 of ANILCAS, 16 U.S.C. 1131; and

Whereas, subparagraphs 2(a) and (b) of an Agreement of August 9, 1983 (hereinafter "1983 Agreement") between ASRC and the United States of America provided, among other things, for the transfer to the United States of the surface estate of certain lands owned by ASRC and the relinquishment by ASRC, to the United States of surface estate of certain lands ASRC was entitled to received by the land exchange provided in section 1431(c) of ANILCA, subject to the establishment of specified All-Terrain Vehicle (hereinafter "ATV") easements necessary to permit ATV access by ASRC, its shareholders and invites, and for subsistence uses by local rural residents of Anaktuvuk Pass; and

Whereas, the use of ATVs on federally owned lands by Anaktuvuk Pass residents has been the subject of controversy, leading to study, discussion, negotiation, resource analysis, and reconsideration of wilderness boundaries; and

Whereas, the Native Village of Anaktuvuk Pass has no rivers that are suitable for summertime subsistence access and is located entirely within the boundaries of a national park; and its residents have increasingly used ATVs for subsistence access on lands in the vicinity of Anaktuvuk Pass; and

Whereas, the parties have reached agreement on appropriate conservation and access easements on ASRC and Nunamiut private lands for the benefit of the public, and on proposals to exchange lands and specifically define areas of ATV use on federally owned lands within the Park; and

Whereas, the City is considered a necessary part to this Agreement, and has expressed an interest in being a party to this Agreement, in order that the residents of Anaktuvuk Pass may benefit from this Agreement, and in order that the City may provide land for a National Park Service office and residence; and

Whereas, recognizing the effects that changing patterns of land use and land ownership have had on Anaktuvuk Pass and on effective management of federally owned lands, the Secretary considers it to be in the public interest, through consultation with the Parties and subsequent enactment by Congress, to redefine wilderness boundaries and authorized land uses within the Park; to provide improved access for the general public to federally owned lands within the Park; to protect natural values on extensive tracts of ASRC and Nunamiut lands within the Park; and to further park purposes and protect remaining wilderness values, while fairly accommodating the concerns of the residents of Anaktuvuk Pass, and

Whereas, development on certain ASRC and Nunamiut lands within the Park would adversely affect the values of adjacent federally owned lands and would make protection of their resources more difficult; and

Whereas, ASRC, Nunamiut and the City consider the Agreement to also be in the public interest, to provide necessary ATV access within the Park for Anaktuvuk Pass residents who are otherwise eligible to make subsistence uses of the Park; and

Whereas, the ATV easements established under the 1983 Agreement are considered unsatisfactory; the acquisition of ASRC land by the United States and its inclusion as part of the Park pre-

cluded dispersed ATV use on such lands; and the residents of Anaktuvuk Pass desire assured access to certain federally owned Park lands; and

Whereas, the parties recognize that legislation by the Congress of the United States is required to effectuate this Agreement;

Now, therefore, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the parties covenant and agree as follows:

1. Legislative responsibilities and obligations

(a) Upon execution of this Agreement, the parties agree to pursue the exchange of lands and interests in lands, as described in this Agreement, recognizing the legislation by the Congress of the United States authorizing, ratifying and confirming this Agreement is required. In the event of enactment of such legislation by the Congress of the United States, which authorizes or directs the Secretary to enter into the obligations described in this Agreement, the parties agree to the provisions specified in the Agreement and to be bound thereby.

(b) The parties further agree that the performance of the obligations and commitments made in this Agreement is expressly conditioned upon the enactment of legislation by the Congress of the United States authorizing, ratifying and confirming the terms of this Agreement, and that the obligation and commitments made in this Agreement are not binding on the parties except upon enactment of legislation by the Congress of the United States authorizing and permitting the commitments made by the parties.

(c) Prior to the enactment of legislation by the Congress of the United States authorizing, ratifying and confirming the terms of this Agreement, no party shall be required to undertake any action required by this Agreement or receive any benefit hereunder, except that the parties agree hereafter to undertake the efforts described in subparagraphs (a) and (d) of this paragraph 1 and further agree not to alienate, encumber, substantially alter the physical condition, or otherwise effect a material change in the management of any lands or interests in lands proposed to be exchanged or conveyed under this Agreement.

(d) ASRC, Nunamiut and the City agree to support the terms of this Agreement during consideration by the Congress of the United States of legislation authorizing and ratifying the terms of this Agreement, and the Secretary similarly agrees to support the terms of this Agreement to the extent consistent with the legislative, Budgetary, legal and programmatic policies of the Executive Branch of the United States. The parties mutually agree that they will not seek to alter or have altered, prior to legislative ratification and confirmation, the terms of this Agreement without first attempting in good faith and with due diligence to obtain the concurrence of the other parties to this Agreement in any such alteration, and will keep the other parties to this agreement fully and timely informed of any efforts in which they are involved or of which they are aware, individually or collectively, to make or obtain such alteration.

(e) Notwithstanding any other provision of this Agreement, if the Congress of the United States enacts ratifying and confirming leg-

islation which amends or alters any of the terms of this Agreement in the absence of specific written concurrence of the parties in such amendment or alteration, ASRC, Nunamiut, the City, or the Secretary (unless the Secretary's right to terminate the agreement is limited by legislation) shall have the right to terminate this Agreement within sixty days of the enactment of such legislation by written notice to and receive by all the other parties within such 60-day period. Upon the receipt of such notice by all the other parties, this agreement shall be null and void and shall have no further force or effect whatsoever. Absent such notice the parties, within the period provided above, shall be deemed to have accepted and concurred in the Agreement as altered or amended by Congress in the same manner as if the parties had executed an amendment to the Agreement.

(f) This Agreement is expressly conditioned upon Congress enacting legislation providing authorization for ATVs for subsistence purposes on federally owned Park lands within the area specified in section 4(c) of this Agreement, and deauthorizing approximately 73,993 acres of land within the Park as wilderness and designating in lieu thereof approximately 56,825 acres of land within the Park as wilderness, as described and set forth in the maps attached as Exhibits A and B which are incorporated as part of this Agreement.

2. ASRC conveyances

(a) ASRC, as the owner of the subsurface to approximately 31,163 acres of land in the vicinity of Itkillik Lake, pursuant to section 1431(c)(3) of the ANILCA, and the owner of access and surface use rights to said 31,163 acres for the purpose of exploration and removal of oil and gas, subject to rules and regulations applicable to the National Park System, as provided for in section 1431(l) of ANILCA, agrees that:

(i) ASRC, its successors, assigns and lessees shall relinquish by conveyance to the United States by special warranty deed all surface use and access rights established by section 1431(l) of ANILCA to approximately 17,580 acres of subsurface estate, generally depicted on the map attached as Exhibit C1 which is incorporated as a part of this agreement.

(ii) Notwithstanding any applicable regulations, ASRC, its successors, assigns and lessees agree that all exploratory work in the remaining subsurface estate open to surface access will be conducted only when there is adequate snow cover and frozen ground, and using the least damaging technology currently available, in order to minimize damage to federally owned Park resources. Said lands are generally depicted on the map attached as Exhibit C2 which is incorporated as part of this agreement.

(b) ASRC, as the owner of the subsurface and surface rights to approximately 15,790 acres of land in the vicinity of Chandler Lake, generally depicted on the map attached as Exhibit D which is incorporated as a part of this Agreement, shall relinquish by conveyance to the United States by special warranty deed its right to extract or develop the subsurface estate including sand and gravel.

3. ASRC and Nunamiut conveyances

(a) ASRC and Nunamiut, as the owners of the surface and subsurface estate pursuant to sections 12(a) and 12(c) of ANCSA, and section 1432 of ANILCA, to approximately 38,840 acres of land in the Park, as depicted on the map attached as Exhibit E, which is incorporated and made a part of this Agreement agree that they shall, convey by special warranty deed to the United States the surface and subsurface estate of said 38,840 acres. Access to said 38,840 acres for subsistence purpose with motorized vehicles shall be prohibited (except for snowmachines as defined in 36 CFR 13.1(q)), and the area designated as park wilderness. Subsistence uses will be permitted as on other park wilderness.

(b) ASRC and Nunamiut, as the owners of the surface and subsurface estate pursuant to sections 12(a) and 12(c) of ANCSA, and section 1431 of ANILCA, to approximately 52,937 acres of land in the Park, as depicted on the map attached as Exhibit F, which is incorporated and made a part of the Agreement, agree that they shall, subject to valid existing rights by conveyance by special warranty deed to the United States in the form of a conservation and scenic easement running with the land, binding on their successor, assigns, and lessees encumber and restrict the use of the said 52,937 acres in a manner that will prohibit all development, improvement or associated surface disturbing activities on said 52,937 acres, including but not limited to, permanent temporary structures, roads, constructed trails, and exploration for or development of all subsurface resources, including sand and gravel, *provided* that the right to construct temporary facilities and structures which disturb the surface of the ground and are directly related to subsistence uses only, as defined in Title VII of ANILCA, shall be reserved in the conveyance under this subparagraph. A temporary facility or structure includes tents, tent platforms, drying racks, caches for food or equipment, or other manmade improvements that can be readily and completely dismantled and removed from the site even though it may remain for a period longer than 12 months.

(c) In order to terminate the off road vehicle access easements established under the 1983 Agreement, Nunamiut shall convey by special warranty deed to the United States the easements previously conveyed to or reserved in ASRC under 1983 Agreement and subsequently transferred by ASRC to Nunamiut. The existing float or ski plane access easement (ASRC-F) to Chandler Lake shall be retained.

(d) ASRC and Nunamiut shall convey to the United States by special warranty deed public access easements across all ASRC Nunamiut Corporation lands and interests in lands within the Park to further the public access, use and enjoyment of federally-owned lands in the Park for wilderness recreational activities and park management. Said lands (approximately 117,842 acres) are depicted in Exhibit G, which is incorporated and made part of this Agreement. The easements will permit only pedestrian and dog team access, overnight camping, and nonlinear rights of access to federally-owned lands within the boundaries of the Part, *provided* that the Superintendent and the State of Alaska may utilize mechanical access for management purposes on these easements, only

to the extent that the method and means of mechanical access used is as permitted for similar management purposes on federally owned parked lands.

(e) The Secretary, in consultation with Nunamiut, shall manage public access across such easements under the authority of applicable regulations, to avoid conflicts with subsistence uses on ASRC and Nunamiut lands, while ensuring that the public retains reasonable pedestrian and dog team access to the federally owned lands in the Park, subject to a priority for subsistence uses on ASRC and Nunamiut lands. Camping within one-half mile of an active subsistence hunting camp, or camping for more than one night at the same site on Nunamiut or ASRC lands is prohibited, except in emergencies.

(f) In the event Nunamiut or ASRC acquires additional lands within the Park pursuant to the provisions of ANCSA that are within, adjacent or contiguous to the lands described in subparagraphs (a) or (b) of this paragraph 3, Nunamiut and ASRC agree that they shall convey to the United States the same conservation, scenic and public access easements running with the land as provided for in subparagraphs (b) and (d).

4. Conveyance by the United States

(a) The United States, as the owner, for the use and benefit of the public, of section 17(b) easements retained and reserved by the United States under the provisions of section 17(b) of ANCSA in various conveyances to ASRC and Nunamiut under section 12(a) and 12(c) of ANCSA and section 1431(c) of ANILCA, agrees that the Secretary shall convey by quitclaim deed to ASRC and Nunamiut jointly the said 17(b) easements identified and reserved in previous conveyances by the Secretary to ASRC and Nunamiut on the lands described in Exhibit G referenced in paragraph 3(d).

(b) The Secretary shall convey by interim conveyance and patent to ASRC and Nunamiut the surface and subsurface estate to approximately 30,642 acres of land in the Akmagolik and Contact Creek areas, as depicted on the map attached as Exhibit H, in proportion to the surface and subsurface estate ASRC and Nunamiut shall convey to the United States under paragraph 3(a) of this Agreement and as depicted by Exhibit E. Prior to the Secretary's conveyance under this paragraph 4(b), ASRC and Nunamiut shall mutually designate the specific lands to be conveyed to them. The conveyances under this paragraph 4(b) shall reserve to the United States the conservation, scenic and public access easements as described in paragraphs 3(b) and (d) of this Agreement.

(c) The Secretary shall convey by quitclaim deed to Nunamiut easements only for ATV access for subsistence purposes over approximately 126,632 acres of land as depicted by the map attached as Exhibit I, which is incorporated and made part of this Agreement.

(i) An ATV is defined as a 6- or 8-wheeled vehicle with low pressure tires, with a maximum weight of 1200 lbs. empty or 2000 lbs fully loaded. Other vehicles may be permitted on the lands identified in this subsection (c) if the Secretary determines their cumulative impact, both physical and aesthetic (visual and audible), will be no more detrimental than the 6-

or 8-wheeled vehicles currently in use at the time this Agreement is executed.

(ii) Said easements shall provide ATV access for subsistence purposes on the specified Park lands only for those persons whose primary permanent place of residence is Anaktuvuk Pass (hereinafter "resident" or "residents"), and who are otherwise eligible to make subsistence uses of the Park, pursuant to Title VIII of ANILCA, its implementing regulations or other applicable law.

(iii) Said easements shall allow residents to invite non-resident relatives by blood, marriage, or adoption to accompany a resident who is operating an ATV in accordance with the provisions of this Agreement. Non-resident invitees do not by reason of their status as invitees become eligible to make subsistence uses of the park pursuant to Title VIII or section 201(4) of ANILCA. Non-resident invitees are not authorized to operate an ATV.

(d) ATV use on the above lands may be modified only to the extent reasonably necessary to carry out the Secretary's responsibilities for the protection of archaeological or historic resources, endangered species of plants or animals, or the maintenance of natural and healthy populations of wildlife.

(e) In the event of a substantiated pattern of conflict between recreational use and subsistence use, the Secretary, in consultation with Nunamiut, shall manage use of federally owned Park lands so as to minimize user conflicts and ensure recreational use while allowing reasonable opportunity for subsistence activities.

(f) The Secretary shall convey to Nunamiut an easement that will permit residents who are otherwise eligible to make subsistence uses of the Park to have airplane access to the surface of Itkilik Lake by float or ski plane for the limited purpose of engaging in subsistence activities.

5. City conveyance

The City shall donate to the Secretary by warranty deed, free and clear of all encumbrances, liens and taxes, the tract of land described as Block 7, Lot 11B within the corporate limits of the City of Anaktuvuk Pass. The donation shall occur within 180 days of the enactment of the authorizing and ratifying legislation.

6. Conveyancing

(a) The conveyances set forth in this Agreement shall be made by the simultaneous exchange of deeds of conveyance within 180 days of the enactment of legislation by the Congress of the United States that ratifies and confirms this agreement, unless the parties mutually agree to a later date.

(b) In the event Nunamiut or ASRC becomes obligated to make conveyances to the United States pursuant to Paragraph 3(f) of this Agreement, the conveyances shall be made within 180 days of the receipt from the United States of interim conveyances or patents to the affected lands, whichever occurs first.

(c) ASRC, Nunamiut, and the City will be responsible for the costs of title evidence reasonably satisfactory to the Secretary for

their respective conveyances to the United States under this Agreement.

(d) ASRC, Nunamiut, and the City will be responsible for assuring that all taxes, liens and other encumbrances are removed from the lands or interests in lands that they respectively obligated to convey under the terms of this Agreement.

(e) ASRC, Nunamiut, and the City agree that all taxes, assessments, and encumbrances which are a lien against the land at the time of their respective conveyances to the United States of the lands or interest in lands described in this Agreement shall be satisfied of record at or before their respective conveyance of such lands or interests in lands to the United States; and, if ASRC, Nunamiut, or the City fail to do so, the United States may pay any taxes, assessments, and encumbrances which are a lien against such interests in lands; that the amount of such payments by the United States shall be paid to the Secretary within 90 days of closing, and failure to reimburse the Secretary shall be a lien against other lands or interests in lands owned by ASRC, Nunamiut, or the City respectively and that ASRC, Nunamiut, and the City at the request of the United States, shall obtain and record such other curative evidence of title as may be required by the United States.

(f) Prior to the execution of the Agreement and prior to the conveyances by ASRC and Nunamiut to the United States of the interests in lands described in this Agreement, ASRC and Nunamiut shall provide to the Secretary opinions of counsel stating that ASRC and Nunamiut have the legal power to execute the Agreement, are authorized to convey the interests in lands identified in the Agreement, and are corporations in good standing under the laws of the State of Alaska.

(g) ASRC and Nunamiut shall also provide copies of appropriate Corporate resolutions authorizing the execution of the Agreement and the conveyance of the interests in land provided for in this Agreement.

7. Research

ASRC and Nunamiut agree to such cooperation as they consider appropriate on research projects or surveys that will assist the Secretary in carrying out his management responsibilities within the boundaries of the Park for preservation of resources, and that will assist him to manage recreational and subsistence uses of all federally-owned lands administered by the National Park Service, and assist him to manage access easements across ASRC and Nunamiut lands. No commitment of funds by any party is implied in this statement, and the commitment of the Secretary is subject to the availability of appropriated funds.

8. General provisions

(a) Nothing in this Agreement shall abridge the right of Anaktuvuk Pass or of other local rural residents to make use of subsistence resources on Park lands, where such uses are traditional, in accordance with the provisions of Title VIII of the Alaska National Interest Lands Conservation Act (PL 96-487), as now or hereafter amended, its implementing regulations or other applicable law.

(b) Nothing in this Agreement shall preclude inclusion of ASRC or Nunamiut lands subject to this Agreement in the Alaska Land Bank, as authorized by section 907 of ANILCA, 43 U.S.C. 1636, or defeat the application of section 11 of the Alaska Native Claims Settlement Act Amendments of 1987 P.L. 100-241, or any similar subsequent legislation of general application to Alaska Native corporations.

(c) Nothing in this Agreement shall affect the rights or status of pending Alaska Native Allotment applications or allottees taking title under the Alaska Native Allotment Act from developing and improving their lands or interests in lands. These rights include, without limitation, all rights of access provided by sections 1110 and 1111 of ANILCA.

(d) The parties agree that the donation or exchange of lands or interests in lands under this Agreement will not affect the acreage entitlement of ASRC or Nunamiut under ANCSA or ANILCA.

(e) ASRC and Nunamiut waive any rights that they may have to require a survey of the interests in lands conveyed by this Agreement, notwithstanding any other provision of law; provided, that such waiver shall not apply to lands conveyed to Nunamiut and ASRC by patent under this agreement.

(f) The maps attached as Exhibits A through I and incorporated into the Agreement accurately depict the lands subject to the wilderness deauthorization, wilderness designation, conveyances, retention of surface access rights, access easements and ATV easements, as appropriate, and are evidence of such wilderness deauthorization, wilderness designation, conveyances, retention of surface access rights, access easements and ATV easements. Controlling 1:63,360 series, topographic maps are on file with the Alaska Regional Office of the National Park Service and the Gates of the Arctic Superintendent.

(g) ASRC and Nunamiut agree not to assign to any third party the rights under this Agreement to receive the conveyance of the interest in lands provided for in this Agreement.

(h) The Secretary, his assigns, successors and agents shall have the right of access to and inspection of the lands subject to this Agreement to determine whether the terms of the Agreement or the conveyance have been met.

(i) Based on his review of the lands or interests in lands and other consideration being donated or exchanged pursuant to this Agreement, the Secretary finds that the exchange is in the public interest.

(j) Any failure by any party to this Agreement to object to or to seek a remedy of any violation by another party of any provision of this Agreement shall not be deemed a waiver of or estop any future right to object to or to seek a remedy of a subsequent violation, whether the later violation is of the same or another provision of this Agreement.

(k) In the event that this Agreement is terminated as provided for in sections 1(b) or 10(d), or is set aside because of a final and non-appealable order of a court of competent jurisdiction, the parties shall return to their status and rights prior to the execution of this Agreement, and the parties agree to take whatever actions and execute whatever documents are necessary to restore the *sta-*

tus quo ante; provided, that if any provision of this Agreement is set aside by such court order the Agreement may be reformed, with the consent of the parties to the Agreement, so as to comply with the court's order and without further Congressional action.

(l) Except by virtue of the legislation authorizing and ratifying this agreement, nothing in this Agreement shall be construed as creating any rights of enforcement by or imposing any obligation on any person or entity that is not a party to this Agreement. It is specifically understood that the effect of the authorizing and ratifying legislation will be to impose obligations of compliance with the terms of this Agreement on Park visitors, the residents of Anaktuvuk Pass and other persons and entities not parties to this Agreement.

(m) For the purpose of expediting execution of this Agreement, it may be signed in separate counterparts, which when all parties have so signed, shall be deemed a single Agreement.

(n) To the extent not prohibited by legislation authorizing, ratifying and confirming this Agreement, this Agreement may be amended, modified or supplemented by mutual consent of all the parties hereto. Such amendment, modification or supplementation may be made upon 30 days prior written notice to the House Interior and Insular Affairs and Senate Energy and Natural Resources Committees.

(o) The parties mutually covenant and agree not to sue each other challenging the legal authority or capacity to effectuate any provision herein; *provided*, that nothing herein shall be construed to prevent any party from suing to enforce this Agreement or seeking any other available remedy for breach of this Agreement, consistent with the terms of this Agreement.

(p) No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

9. Hazardous and toxic waste

(a) ASRC, Nunamiut and the City have received no actual notice and are not aware that any of the lands or interests in lands to be conveyed to the United States pursuant to this Agreement have ever been listed by the State of Alaska, or any agency of the United States, as containing any hazardous waste, hazardous material, chemical waste, or any other toxic substance, or that any of the aforesaid substances has been spilled or dumped on such lands or interests in lands.

(b) ASRC, Nunamiut and the City, severally but not jointly, agree to indemnify the United States, as the owners of the lands or interests in lands to be conveyed by each party to the United States pursuant to this agreement, from any claim, loss, liability, damages or response costs whatsoever against the United States under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, involving the lands or interests in lands to be conveyed by each party to the United States pursuant

to this Agreement, arising solely with respect to the release or threatened release into the environment of any hazardous substance shown to have been created or placed upon such lands or interests in lands while such lands or interests in lands were owned by ASRC, Nunamiut or the City and prior to the conveyance of such lands or interests in lands to the United States, or resulting from activities undertaken by ASRC, Nunamiut or the City (including lessees, invitees, assigns, agents or contractors of each party) while such lands or interest in lands were owned by ASRC, Nunamiut or the City and prior to the conveyance of such lands or interests in lands to the United States. This indemnification shall include all reasonable costs and expenses (including reasonable attorney's fees) incurred by the United States in connection with any claim, loss, suit, demand, assessment, judgment or response cost incident to the matters indemnified against pursuant to this paragraph. This indemnity shall extend only to the release or threatened release into the environment of a hazardous substance (as defined by federal law) shown to have been created or placed upon such lands or interests in lands while such lands or interests in lands were owned by ASRC, Nunamiut or the City and prior to the conveyance of such lands or interests in lands to the United States, as to which the United States, ASRC, Nunamiut or the City receives legal process or other official notification from a competent court or administrative agency, including the United States, or as to which the United States initiates notice pursuant to Section 120 of CERCLA as amended, within 25 years from the effective date of this Agreement, involving ASRC, Nunamiut, the City or the United States in a judicial, administrative, investigative or other proceeding the purpose of which is to determine the necessity and scope of clean-up, response, or remedial activity and liability for the related costs or damages.

(c) Whenever the United States shall learn of the existence of any liability for which ASRC, Nunamiut or the City is or may be responsible under the undertakings set forth in subparagraph (b) of this paragraph 9, the United States shall notify ASRC, Nunamiut or the City promptly and furnish such copies of documents or other information as the United States may have which may be used or useful in the defense thereof and shall afford ASRC, Nunamiut or the City full opportunity to participate in the defense of the same at its own expense with counsel of its own selection, and shall upon request and at ASRC's, Nunamiut's or the City's expense cooperate with ASRC, Nunamiut or the City in the defense thereof.

10. Encumbrances and other rights

(a) The parties mutually covenant and agree that, prior to the conveyance of the lands or interests in lands provided for in this Agreement, the parties shall not encumber any interests in lands proposed to be exchanged or conveyed to any party under this Agreement, *provided* that if this Agreement has terminated pursuant to any provision of this Agreement, this paragraph shall no longer be effective.

(b) The parties mutually covenant and agree that, prior to the conveyance of the lands or interests in lands provided for in this

Agreement, the parties shall not substantially alter the physical condition or otherwise effect a material change in the management of any lands or interests in lands proposed to be exchanged or conveyed to any party under this Agreement.

(c) Except as provided for in this Agreement, this Agreement neither enlarges nor diminishes the rights of ASRC or Nunamiut under ANCSA, ANILCA or any other law, including specifically the right to control access to and across ASRC and Nunamiut lands.

(d) If Congress has not enacted a law authorizing and ratifying this Agreement within one year after the last dated signature, the Agreement, shall terminate, unless extended for an additional period by mutual agreement of all the parties.

(e) All of the lands or interests in lands conveyed to or received by Nunamiut and ASRC under the Agreement shall be deemed to be conveyed and received pursuant to exchange under section 22(f) of ANCSA, as amended.

For:

CITY OF ANAKTUVUK PASS, AK,
(By) REID NAY, *Mayor*.
NUNAMIUT CORP.
(By) ——— ———, *President*.
ARCTIC SLOPE REGIONAL CORP.,
(By) JACOB ADAMS, *President*.
SECRETARY OF THE INTERIOR,
(By) JOHN MICHAEL HAYDEN,
*Assistant Secretary for Fish
and Wildlife and Parks.*

Exhibit A - Existing wilderness designations, 73,993 acres

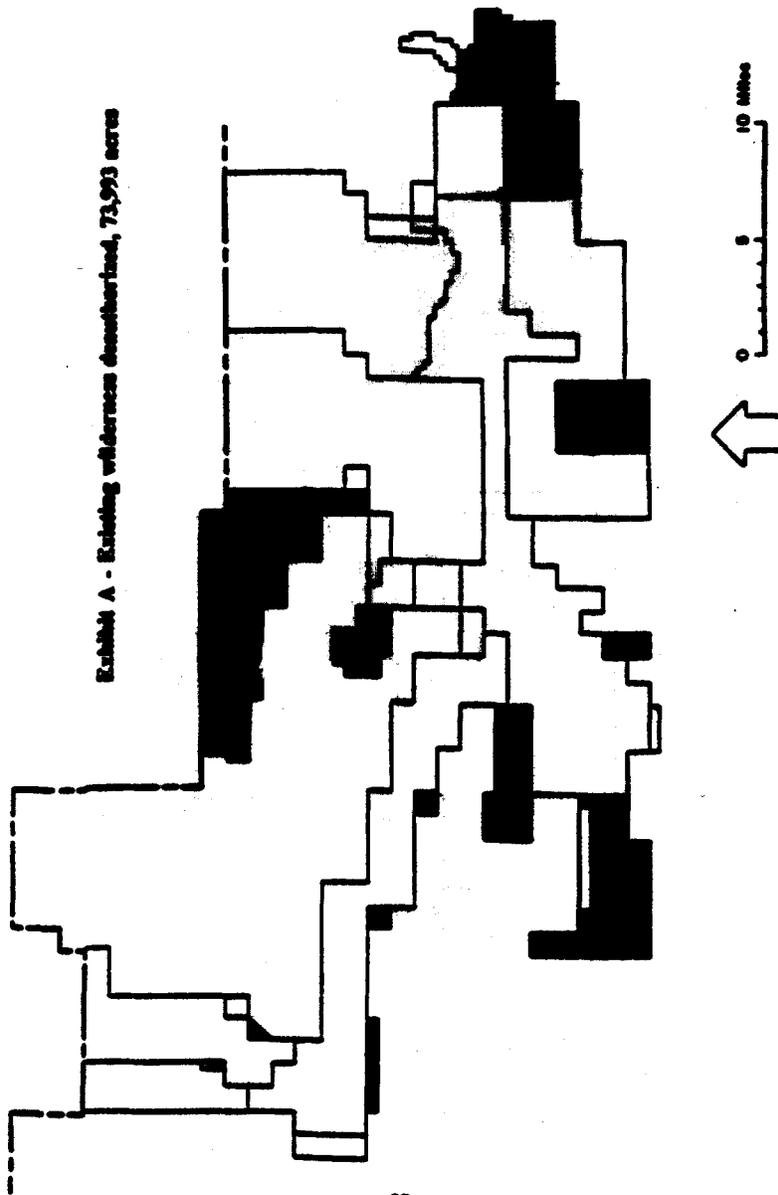
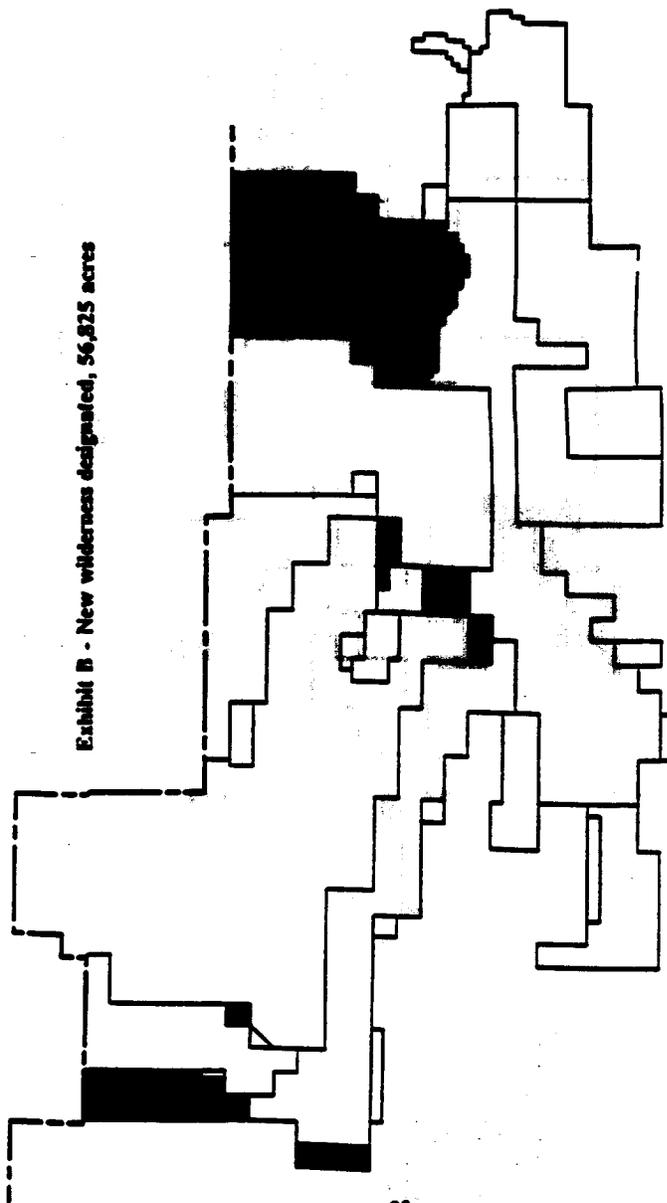
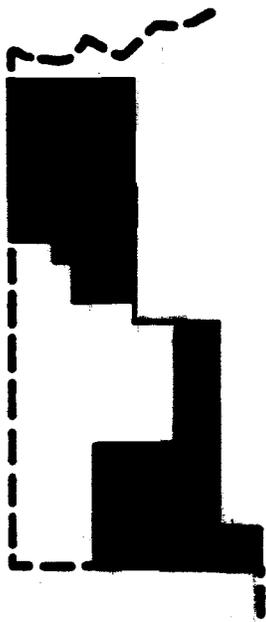


Exhibit B - New wilderness designated, 56,825 acres



1. Surface use and access conveyed to the United States, 17,500 acres



2. Surface access retained by ASBC for exploration and development, 11,600 acres

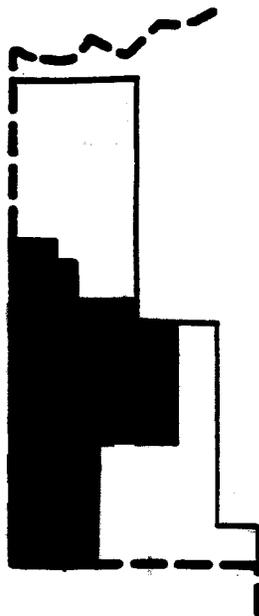


Exhibit C

**Exhibit D - Conveyance of right to extract or develop subsurface estate
to the United States, 15,790 acres**

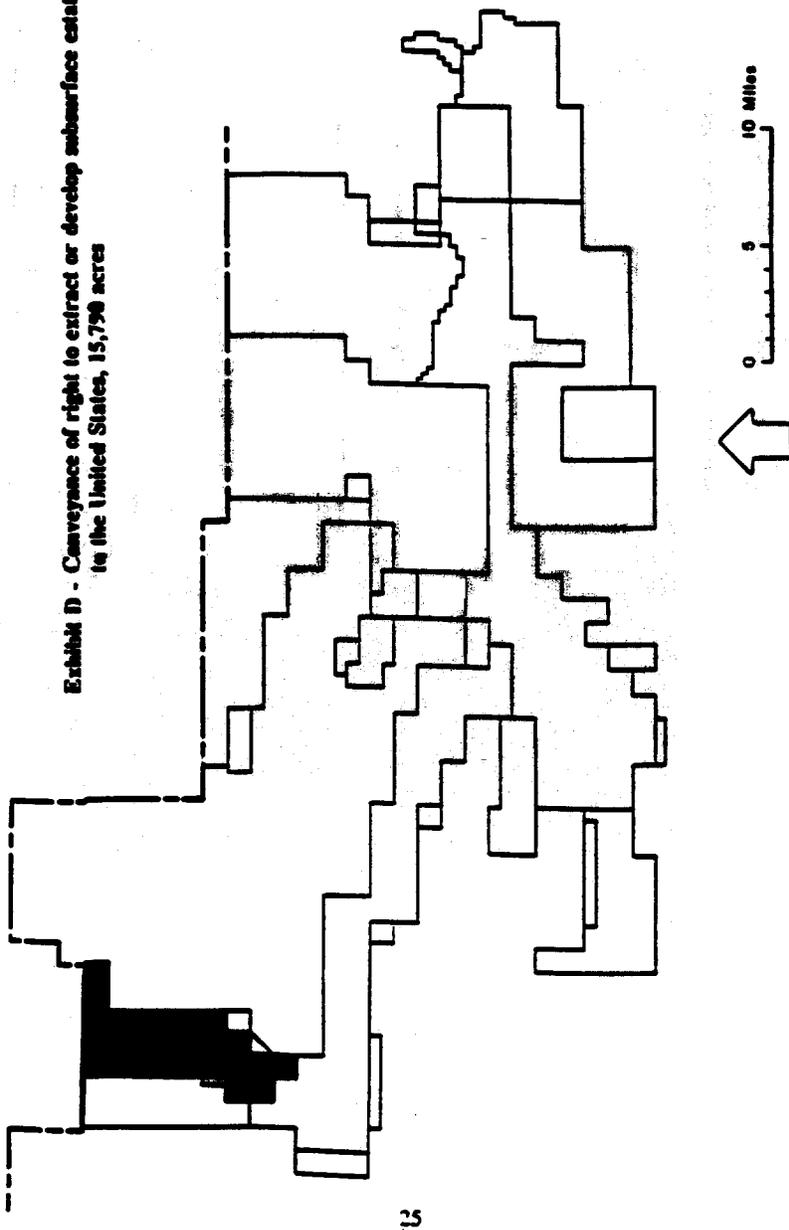


Exhibit E - Surface and subsurface estate conveyed to the United States and designated park wilderness (see Exhibit D), 39,949 acres

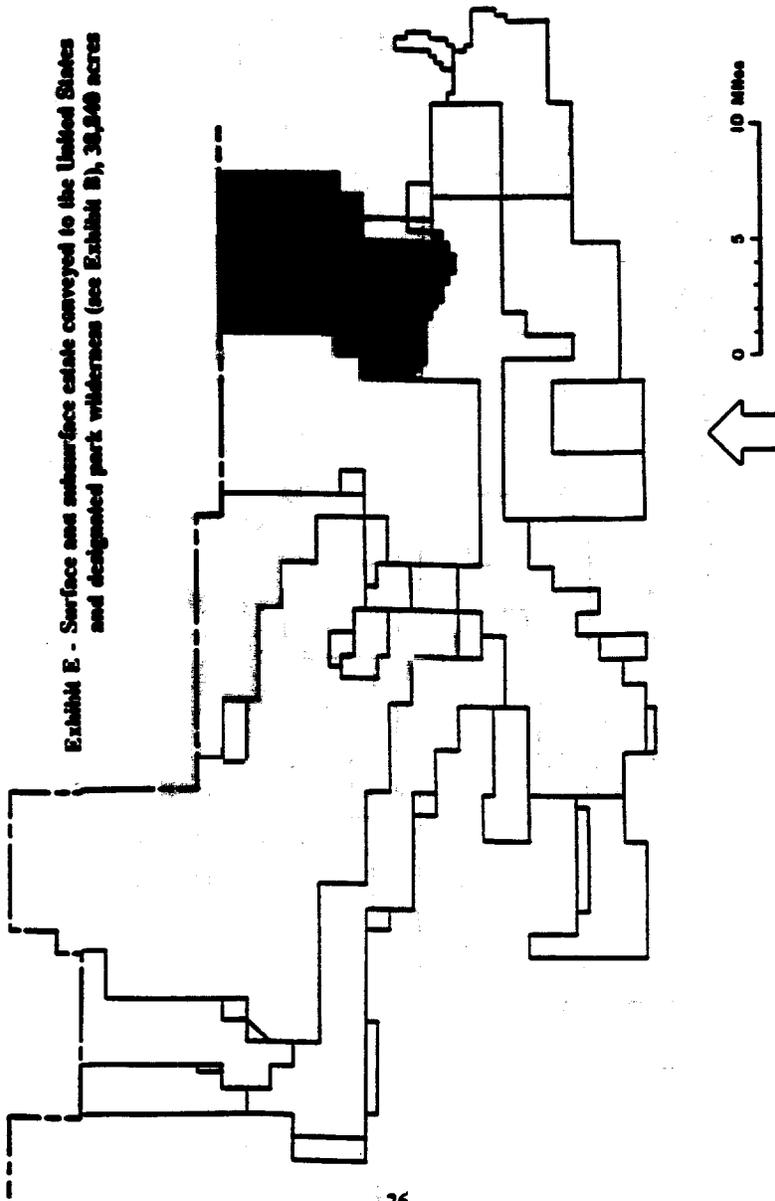
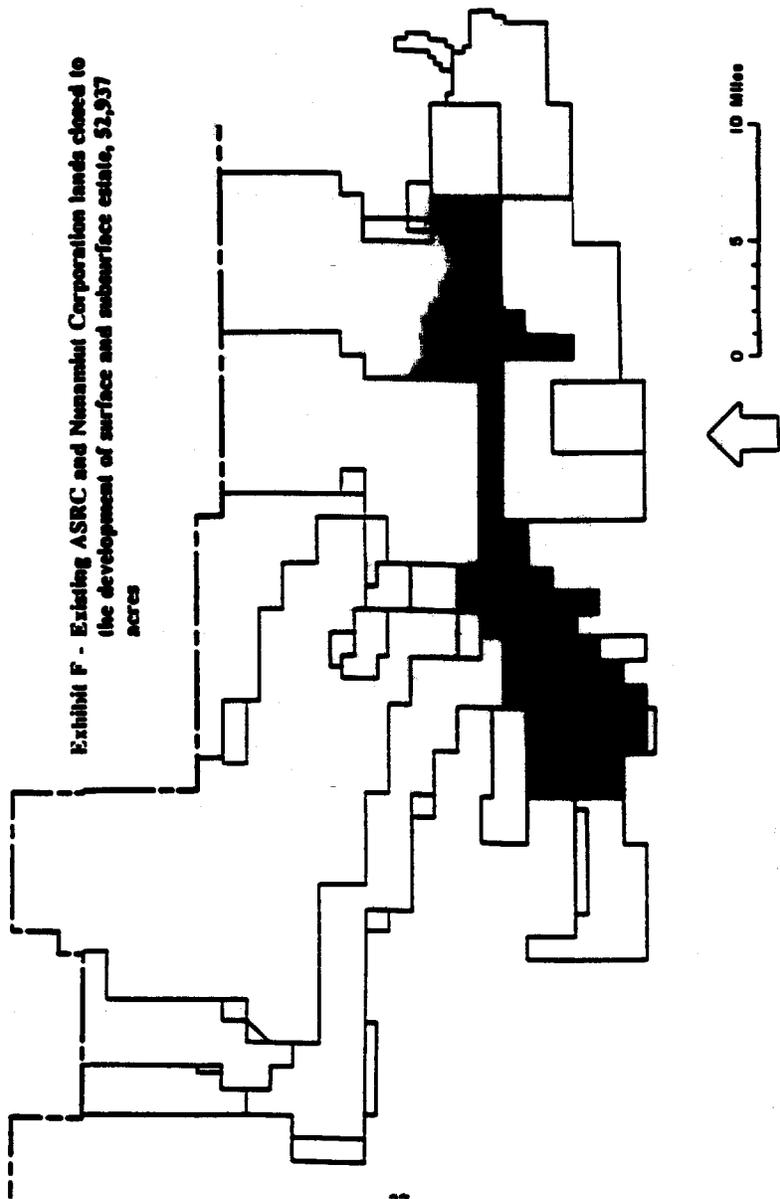


Exhibit F - Existing ASRC and Nunamiut Corporation lands closed to the development of surface and subsurface estate, 52,937 acres



**Exhibit G - Existing ASBC and Nunezmiat Corporation lands open to the public
for the purpose of access to adjacent federally owned park lands,
117,942 acres**

Note: Additional lands open to public access in Exhibit H

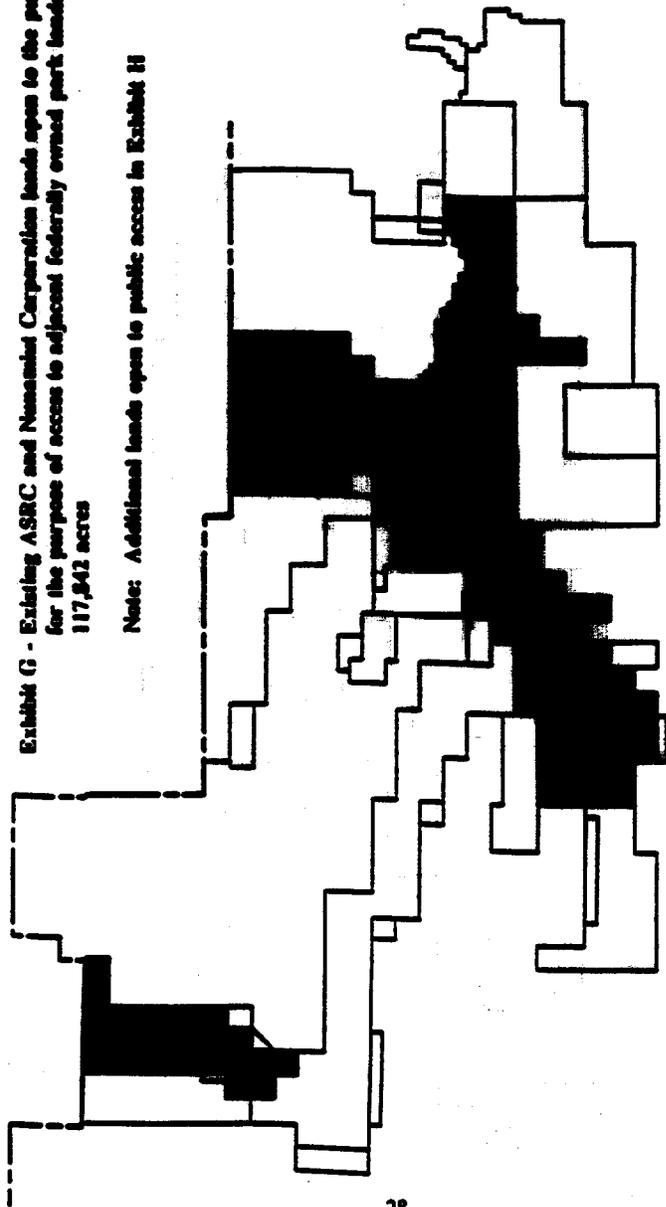


Exhibit II - Conveyed to ASRC and Neumait Corporation with development and public access rights retained by the United States, 39,642 acres

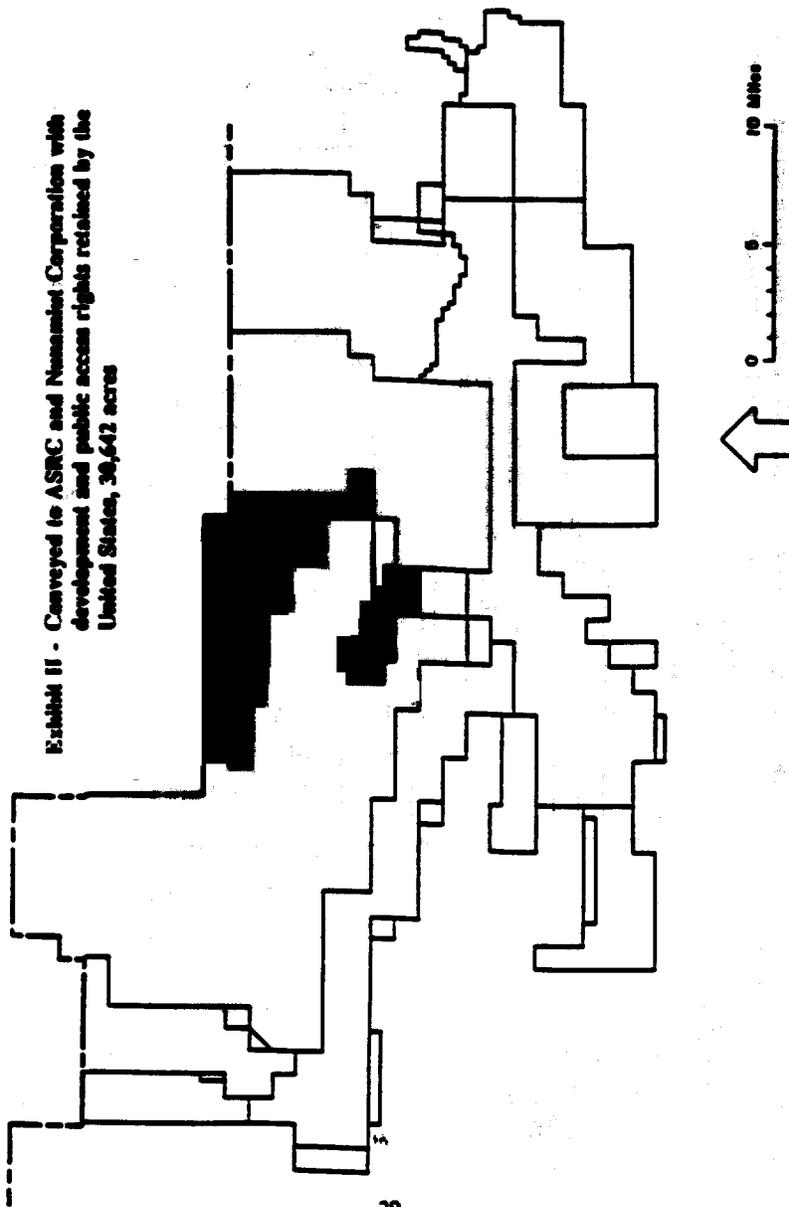
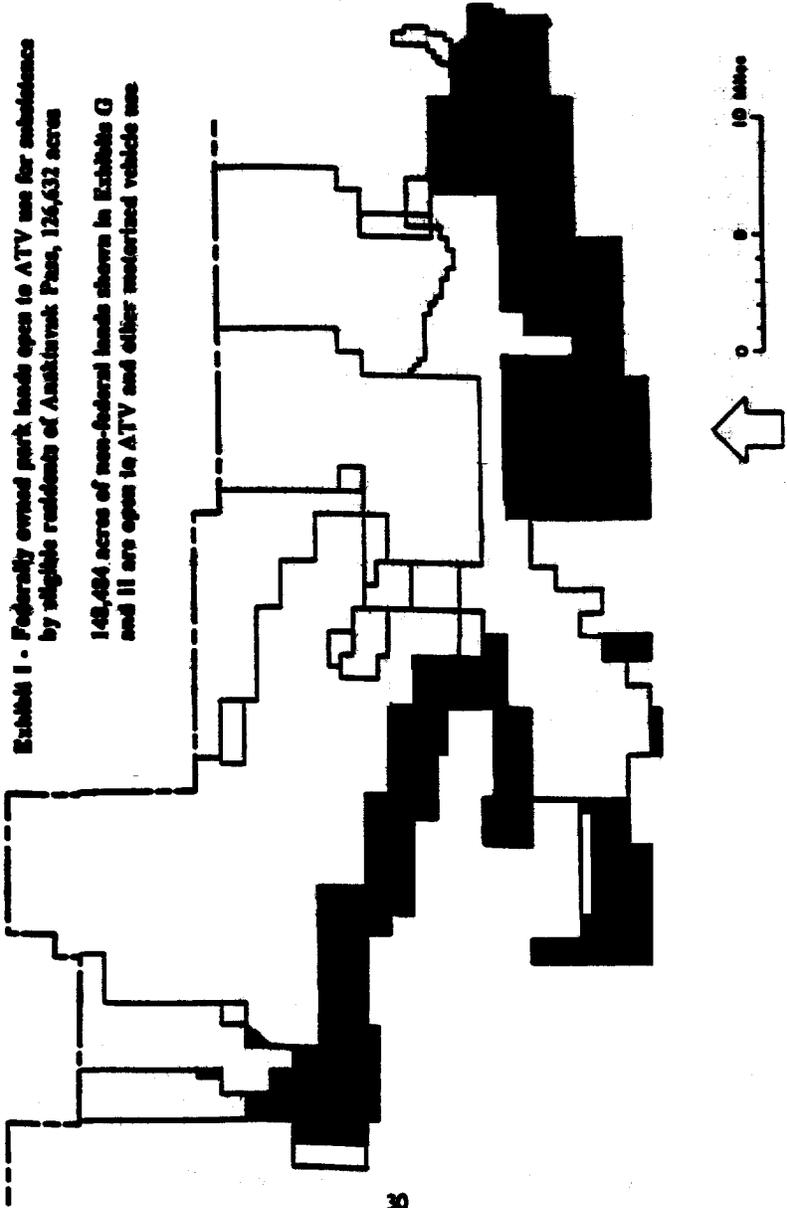


Exhibit I - Federally owned park lands open to ATV use for subsistence by eligible residents of Anaktuvuk Pass, 126,632 acres
148,484 acres of non-federal lands shown in Exhibits G and H are open to ATV and other motorized vehicle use



AMENDMENT

This Amendment entered into effect the 17th day of December 1993, by Arctic Slope Regional Corporation (hereinafter "ASRC"), Nunamiut Corporation (hereinafter "Nunamiut"), the City of Anaktuvuk Pass (hereinafter "City"), and the United States of America, and the Secretary of the Interior, acting through the Assistant Secretary of the Interior for Fish and Wildlife and Parks of the Department of the Interior (hereinafter "the Secretary"). ASRC, Nunamiut, City, and the Secretary are collectively referred to as "the Parties."

This document amends the agreement between the Parties titled "Donation, Exchange of Lands and Interests in lands and Wilderness Redesignation Agreement Among Arctic Slope Regional Corp., Nunamiut Corp., City of Anaktuvuk Pass and the United States of America" entered into on the 17th day of December 1992 (hereinafter "the Agreement").

Whereas, Section 10(d) of the Agreement provides, "If Congress has not enacted a law authorizing and ratifying the Agreement within one year after the last dated signature, the Agreement shall terminate, unless extended for an additional period by mutual agreement of all the Parties," and

Whereas, Congress has not enacted a law authorizing and ratifying the Agreement, and

Whereas, all the Parties mutually agree that the Agreement shall be extended for an additional period.

Now, therefore, in consideration of the foregoing, the Parties covenant and agree that section 10(d) of the Agreement shall be replaced and amended as follows:

(d) If Congress has not enacted a law authorizing and ratifying this Agreement by December 31, 1994, the Agreement shall terminate, unless extended for an additional period by mutual agreement of all the Parties.

For the purpose of expediting execution of this Amendment it may be signed in separate counterparts. When all Parties have so signed, the separate counterparts shall be deemed a single Amendment.

For:

SECRETARY OF THE INTERIOR,
 (By) GEORGE T. FRAMPTON,
*Assistant Secretary, Fish
 and Wildlife and Parks.*
 NUNAMIUT CORP.
 (By) _____, *President.*

GATES OF THE ARCTIC EXCHANGE AGREEMENT

AMENDMENT NO. 2

This Amendment is entered into effective the 15th day of February 1994 and except as otherwise provided by this Amendment, is by and among the Arctic Slope Regional Corporation (hereinafter "ASRC"), Nunamiut Corporation (hereinafter "Nunamiut"), the City of Anaktuvuk Pass (hereinafter "City"), and the United States of America, and the Secretary of the Interior, acting through the As-

sistant Secretary of the Interior for Fish and Wildlife and Parks of the Department of the Interior (hereinafter "the Secretary"). ASRC, Nunamiut, the City, and the Secretary (or any two or more of them) are collectively referred to as "the Parties."

This document amends the Agreement between the Parties entitled "Donation, Exchange of Lands and Interests in Lands and Wilderness Redesignation Agreement Among Arctic Slope Regional Corp., Nunamiut Corp., City of Anaktuvuk Pass and the United States of America" entered into on the 17th day December 1992 (hereinafter "the Agreement") and referred to above as "Gates of the Arctic Exchange Agreement."

Whereas, section 4(d) of the Agreement provides:

(d) ATV use on the above lands may be modified only to the extent reasonably necessary to carry out the Secretary's responsibilities for the protection of archaeological or historic resources, endangered species of plants or animals or the maintenance of healthy populations of wildlife.

and

Whereas, it will further the purposes of the Agreement to provide for a mutually satisfactory way for the Nunamiut and the Secretary, in consultation with the City, to cooperatively evaluate and cooperatively act to ensure the effects of ATV use on Park lands will remain at acceptable levels; and

Whereas, the undersigned Parties mutually agree that the Agreement should be amended to achieve this goal.

Now, therefore, in consideration of the foregoing and the mutual covenants contained in this Amendment, the undersigned Parties covenant and agree that Section 4(d) of the Agreement shall be replaced and amended to read as follows:

(d) ATV use on Park lands may be modified only to the extent necessary to ensure the protection of Park resources, including archaeological or historic resources, endangered species, the maintenance of natural and healthy populations of wildlife, water quality, vegetation, and soils. In consultation with the City, the Nunamiut and the Secretary will cooperatively establish a program to evaluate the effects of ATV use on Park lands. In consultation with the City, the Nunamiut and the Secretary will annually review the data from the evaluation program. Should the evaluation program show that effects are approaching an unacceptable level, actions to insure effects will remain at acceptable levels will be undertaken for the following ATV use seasons. The actions to be taken to reduce the effects to insure they are at an acceptable level will be determined by mutual agreement of the Nunamiut and the Secretary in consultation with the City. Whether the effects of ATV use are acceptable or not shall be determined by reference to the predicted environmental consequences of "Alternative C" as described on pages 168 through 194 of the Final Legislative Environmental Impact Statement, released in association with this Agreement on May 1, 1992, or on other mutually agreed upon criteria that result from analysis of data from the evaluation program.

For the purpose of expediting execution of this Amendment, it may be signed in separate counterparts. When all parties have so signed, the separate counterparts shall be deemed a single amendment.

NUNAMIUT CORP.,
(By) ——— ———, *President.*
ARCTIC SLOPE REGIONAL CORP.,
(By) JACOB ADAMS, *President.*
SECRETARY OF THE INTERIOR,
(By) GEORGE T. FRAMPTON, Jr.,
*Assistant Secretary, Fish
and Wildlife and Parks.*
CITY OF ANAKTUVUK PASS,
(By) REID NAY, *Mayor.*

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