

FINAL EXCHANGE AGREEMENT

**State of Alaska and Department of Interior, National Park Service
Falls Creek Land Exchange for Gustavus Hydroelectric Project
ADL 107326/OSL 1341**

This Final Exchange Agreement for the equal value exchange of land, hereinafter referred to as "Agreement," is made and entered into this 28th day of Feb., 2006 by and between the State of Alaska, acting by and through its Department of Natural Resources, Division of Mining, Land and Water, whose address is 550 West 7th Avenue Suite 1050A, Anchorage, Alaska 99501, hereinafter collectively referred to as "State," and the Department of Interior acting through the National Park Service, whose address is 240 West 5th Avenue, Anchorage, Alaska 99501, hereinafter referred to as "Service," together the State and the Service are referred as the "Parties". This Agreement is entered into pursuant to AS 38.50 and 11 AAC 67.200 through 11 AAC 67.280, the Alaska National Interest Lands Conservation Act (Public Law 96-487, 16 U.S.C. Section 3192), and The Glacier Bay National Park Boundary Adjustment Act of 1998 (Public Law 105-317, 112 Stat. 3002) (hereinafter "Boundary Act").

WITNESSETH:

WHEREAS, the Boundary Act provides for a land exchange between the United States and the State, if the State offers to transfer land identified in the Act, and also provides that the lands to be exchanged may be determined by the mutual agreement of the State and the Secretary of the Interior.

WHEREAS, the United States owns the surface and subsurface estates of certain lands in Glacier Bay National Park and Preserve, consisting of approximately 1,034 acres (hereinafter collectively referred to as the "Falls Creek parcel"), lying and being situated in the State of Alaska, and more particularly described on Exhibits "A" and "B", which are attached hereto and made a part hereof.

WHEREAS, the State owns the surface and subsurface estates of certain lands in Klondike Gold Rush National Historic Park, consisting of approximately 1,040 acres (hereinafter collectively referred to as the "Chilkoot Trail parcels"), lying and being situated in the State of Alaska, generally depicted in Exhibit "C" and as more particularly described in Exhibit "D" and as illustrated in Exhibits "A-1" through "A-4", which are attached hereto and made a part hereof.

WHEREAS, the Service is authorized through the Boundary Act Stat. 3002; Sec. 1302 of the Alaska National Interest Lands Conservation Act to exchange and convey all of the United States' interests in the lands described in Exhibits "A" and "B", plus an additional \$66,000 in cash to equalize the value of the lands to be exchanged based on the fair market value appraisals prepared September 14, 2005 (Falls Creek parcels) and December 5, 2005 (Chilkoot Trail parcels) by Charles E. Horan, MAI, of Horan and

Company LLC. And WHEREAS, the State desires to exchange and convey all the State's interests in the lands described in Exhibits "C", "D" and "A-1 through A-4".

WHEREAS, under the provisions of the Glacier Bay National Park Boundary Adjustment Act of 1998, a land exchange must occur prior to the construction and operation of a hydropower project in the Gustavus area. An exchange of lands in the Gustavus area, as described in Exhibits "A" and "B", for lands in the Skagway area as described in Exhibits "C", "D" and "A-1 through A-4", would be consistent with the requirements of the Act.

WHEREAS, the Parties executed a Preliminary Exchange Agreement on April 22, 2005.

WHEREAS, pursuant to the Preliminary Exchange Agreement, the lands to be exchanged by the Parties were found to be of nearly equal fair market value as determined by the appraisals prepared by Charles E. Horan, MAI, of Horan and Company LLC., titled *Federal Land Appraisal Falls Creek – Chilkoot Trail Exchange Two (2) Party Exchange Involving National Parks Service (Federal)* dated September 14, 2005 and *State of Alaska (Non-Federal), Gustavus, Alaska and Non Federal Land Appraisal of Chilkoot Trail Units at Skagway, Alaska Falls Creek – Chilkoot Trail Exchange Two (2) Party Exchange Involving National Parks Service (Federal) and State of Alaska (Non-Federal), Gustavus, Alaska* dated December 5, 2005.

WHEREAS, the State and the Service have complied with the statutory and regulatory procedures that are required to complete a land exchange; and

WHEREAS, legislative approval is not required for this exchange because the value of the lands to be acquired by the State is being equalized by a \$66,000 cash payment by the Service to the State, and the fair market value as determined by an approved appraisal of the State land to be exchanged is less than \$5,000,000.00.

NOW THEREFORE, in consideration of their mutual covenants and promises, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged and confessed, the parties agree as follows:

1. Ownership. The United States has sole ownership of the surface and subsurface estates of the lands described in Exhibits "A" and "B". The State has sole ownership of the surface and subsurface estates of the lands described in Exhibits "C", "D" and "A-1 through A-4". None of these lands are encumbered by a lien, pledge, promise or other obligation.
2. Management of Property After Conveyance. Upon the consummation of this exchange, Interagency Land Management Assignment (ADL 65587) will be amended to exclude the lands along the Chilkoot Trail that will be conveyed to the United States that were formerly managed by the DNR Division of Parks and Outdoor Recreation (DPOR). Some provisions of the Memorandum of Understanding between DPOR and the Service will also be amended after the exchange is consummated to reflect the change of land ownership along the trail.

3. Adjustment of Legal Descriptions. The parties acknowledge that while they have utilized their best efforts to arrive at the legal description found on Exhibits “A”, “B”, “C”, “D” and “A-1 through A-4” and believe such description to be accurate and correct, it may be necessary to make technical corrections in such description. In addition the Parties agree to negotiate in good faith any such correction as a Party may believe to be necessary. All corrections must be agreed upon in writing by the parties. If any corrections are needed after closing the parties shall execute such further transfer documents as necessary.
4. Survey. For administrative purposes, the Service will complete a DNR-approved survey of the Chilkoot Trail parcels within two (2) year of accepting title.
5. Warranties. The parties represent and warrant to each other that:
 - a. They have the full right, power and authority to make, execute, deliver and perform this Final Exchange Agreement, to consummate the transactions contemplated hereby, and to comply with the terms and conditions and provisions hereof;
 - b. Neither the execution and delivery of this Final Exchange Agreement, nor consummation of the transactions contemplated hereby, will conflict with, result in a breach or default under, nor constitute a prohibited action under any agreement, commitment, instrument, judgment or order to which the Service or the State is a party;
 - c. This Final Exchange Agreement, when executed and delivered as contemplated hereby, will constitute a legal, valid and binding obligation of each party, enforceable in accordance with its respective terms.
6. Conveyed Interest. On or before the date of closing provided in this agreement, the United States will convey by Patent to the State all of its respective rights, title and interest in the surface and subsurface estates of the lands identified in Exhibits “A” and “B”, subject to valid existing rights, including rights and other reservations as mutually agreed upon. On or before the date of closing provided in this agreement, the State will convey all of its respective rights, titles and interests in the surface and subsurface estates of the lands identified in Exhibits “C” “D” and “A-1 through A-4”, reserving however, all lands underlying navigable waters as those waters are defined under AS 38.05.965(13) and 11 AAC 51.035, and all public rights of way including but not limited to 50-foot wide section line easements on each side of all surveyed and protracted section lines as dedicated right-of-way for use as public highways as required under AS 19.10.010 and 11 AAC 51.025, a public access right-of-way easement under Revised Statute 2477 100-foot wide, known as the “Chilkoot Trail” (RST 592) and a 100-foot wide right-of-way for the Dyea Road and associated utilities. The

Dyea Road is a state Omnibus Road. All lands conveyed by the State are subject to all other valid existing rights, rights-of-way, easements or other interests.

7. Value of Land and Cash to Equalize Value of Transfer. Pursuant to 38.50.020 this land exchange will be for land and cash that constitute an equal value exchange. The parties agree with the appraised fair market values of the lands to be exchanged as identified in the Federal review appraisal. The value of the interest in lands to be conveyed by the State to the Service pursuant to this Final Exchange Agreement was determined by the Appraisal to be \$1,206,000. The value of the interest in lands to be conveyed by the Service to the State pursuant to this Final Exchange Agreement was determined by the Appraisal to be \$1,140,000, which is \$66,000 less than the value of lands to be conveyed to the Service. The Service agrees to pay the State of Alaska a sum of \$66,000 (sixty six thousand dollars) at closing in order to equalize the value of the lands being exchanged.
8. Transfer of Funds. The Service agrees to transfer to the State of Alaska \$66,000 (sixty six thousand dollars) either by issuing a check or through an electronic transfer of funds at closing in order to equalize the value of the lands being exchanged. The funds will be transferred to an institution and account identified separately by the State.
9. Environmental Assessment. The Service has performed a Level 1 Hazmat Survey of the lands to be exchanged that has been accepted by the Parties.
10. Right of Entry. From the date this Final Exchange Agreement is fully executed by the Parties until closing, the State/Service, and its employees and agents, upon reasonable notice, shall have the right to enter the Property for all lawful purposes in connection with this Final Exchange Agreement, including for environmental audit purposes.
11. Third Party Interests. No known third party interests have been created by either of the Parties on the land proposed for exchange other than the FERC license for the Fall's Creek Hydroelectric Power Project, and no third party interests shall be created prior to closing, unless otherwise agreed to in writing by both Parties. It is acknowledged that the Service has constructed improvements on the lands identified in Exhibits "C", "D" and "A-1 through A-4" which are subject to ILMA ADL 65587. After closing the parties agree ILMA ADL 65587 will be amended to reflect the conveyance to the United States. Nothing herein shall be deemed or construed to grant any rights to the public or to entities that are not Parties to this Final Exchange Agreement or in privity with said Parties.
12. Cost of Notice and Hearings. The State will assume the costs for public notice as required by applicable state statutes and regulations. The Service will assume the costs for public notice as required by applicable federal statutes and regulations.

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13. Plan Classification. The State has amended the Northern Southeast Area Plan and its associated Land Classification Order (SE-02-002-A01). The amendments re-classify the parcels along the Chilkoot Trail included in the exchange to Reserved Use Land as required by 11 AAC 67.220. The plan was also amended so that lands Classified Reserved Use Land can be exchanged.
14. Mineral Closing Order. Consistent with 11 AAC 67.230(c), the State closed the Chilkoot Trail exchange parcels to new mineral entry through Mineral Closing Order 1044. This also closes the Falls Creek parcel to new mineral entry when it is conveyed to the state.
15. Alaska Coastal Management Program Determination. Alaska Coastal Management Program "ACMP" Final Consistency determinations were issued for both the hydroelectric project and the land exchange. The Department of Fish and Game, the Department of Natural Resources and the affected coastal resource district have determined that this land exchange and hydroelectric project is consistent with the Standards and Guidelines for the Alaska Coastal Management Program (ACMP) and the affected Coastal Resource District's enforceable policies. The exchange will result in the State acquiring land that will be used for a hydroelectric project and other related purposes. For the land it receives through the exchange, the NPS plans to make improvements to and restorations of recreation and historic facilities and sites along the Chilkoot Trail, including the trail itself. Future development on land acquired by both the State and NPS may be subject to the Standards and Guidelines of the ACMP and the affected Coastal Resource District's enforceable policies
16. Unanticipated Events. The Parties acknowledge that there may be existing circumstances beyond the reasonable control of a party that interfere with the Parties' ability to complete the transaction set forth in this Final Exchange Agreement. The Parties agree to use their best good faith efforts to complete the transactions contemplated by this Final Exchange Agreement as set forth herein. If, prior to closing, any material provision of this Final Exchange Agreement or any application thereof shall be found invalid or unenforceable, the Parties shall utilize their best good faith efforts to amend the Final Exchange Agreement and complete the transaction, but if the Parties are unable to amend the Final Exchange Agreement and complete the transaction, this Final Exchange Agreement as a whole likewise shall be deemed invalid or unenforceable. In the event following closing that circumstances occur beyond the reasonable control of a party that significantly impair or detract from the rights and benefits provided to any of the Parties, then the Parties will negotiate, in good faith, such reasonable modifications of this Final Exchange Agreement as are necessary to protect the

rights, interests and duties of the Parties under this Final Exchange Agreement and to carry out the intent of this Final Exchange Agreement. The parties further acknowledge three conditions that must be met before the Service can execute all of the actions required at closing: 1) completion of 30-day notice requirement to the appropriate congressional committees; 2) completion of a Record of Decision which approves the proposed exchange; and 3) issuance of a preliminary title opinion finding that Department of Justice standards for the acquisition of title have been met.

17. Closing Place and Date. The Parties agree to close at a location to be mutually agreed upon no later than March 31, 2006 unless agreed to otherwise in writing. At closing, the Service agrees to provide proof of the electronic transfer of funds to the account referenced in item 8 above or provide a check at closing in the amount of \$66,000 (sixty six thousand dollars)..
18. Entire Agreement. The Parties agree that this Final Exchange Agreement and its exhibits embody the whole agreement of the Parties regarding the land exchange, and that there are no promises, terms, conditions or obligations other than those contained or referred to in this Final Exchange Agreement.
19. Remedies of Law. Except as otherwise provided in this Final Exchange Agreement, the Parties hereto shall be entitled to any and all remedies provided by law. This Final Exchange Agreement shall be interpreted, construed, and enforced in accordance with applicable federal and state law.
20. Modifications and Amendments. This Final Exchange Agreement may be amended, modified or supplemented only by a written amendment signed by the parties hereto.
21. Notices. All substantial communications, including requests to modify this Final Exchange Agreement, shall be in writing and addressed as follows:

a. To the State:

Sandra Singer
Chief, Realty Services
Division of Mining, Land and Water
Department of Natural Resources
550 West 7th Avenue Suite 1050A
Anchorage, Alaska 99501-3561

With copies to:

John Baker, Esq.
Attorney General

State of Alaska
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501-1994

b. To the Service:

Charles M. Gilbert
Chief, Land Resources Program Center
Department of the Interior,
National Park Service
240 West 5th Avenue
Anchorage, Alaska 99501-3561

22. Construction. This Final Exchange Agreement shall be construed and enforced in accordance with the laws of the United States and the State of Alaska.
23. Binding Effect. This Final Exchange Agreement shall be binding on and inure to the benefit of the respective Parties hereto, their successors and assigns.
24. Waiver. The failure of either Party to this Final Exchange Agreement to insist upon the strict performance of any provision of this Final Exchange Agreement or to exercise any right, power, or remedy consequent upon a breach thereof shall not constitute a waiver by said Party of any such provision, breach, or subsequent breach of the same or other provision.
25. Expenditure of Funds. Nothing herein shall be construed as obligating the State or the Service to the expenditure of funds or the future payment of money in excess of that authorized by law.
26. No Member, Delegate or Commissioner. 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 there from.
27. Paragraph Headings. The descriptive paragraph headings throughout this Final Exchange Agreement are for convenience and reference only, and the words contained therein shall not be used to expand, modify, or amplify the meaning of this Final Exchange Agreement or to aid in the interpretation or construction of this Final Exchange Agreement.
28. Counterparts. This Final Exchange Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Final Exchange Agreement.
29. Representations Survive Closing. The representations, commitments, and warranties contained in this Final Agreement shall survive closing and delivery of the Quitclaim Deed and Patent. In the event of any conflict between this Final

Agreement and the conveyance instruments following closing, the terms of the conveyance instruments shall control.

30. Appeals. Specific appeal provisions apply to the decisions issued by the State for this exchange. See attached letter from Dick Mylius, Acting Director of the Division of Mining, Land and Water. (Exhibit "E").

IN WITNESS WHEREOF, the Parties have set their hands and seals as of the date first above written.

[SIGNATURES FOLLOW]

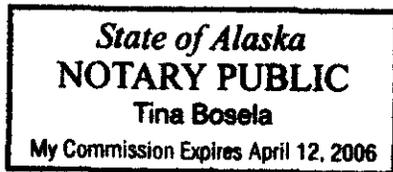
Department of the Interior
National Park Service

By: Charles M. Gilbert
Charles M. Gilbert
Chief, Land Resources Program Center
Alaska Region, National Park Service

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

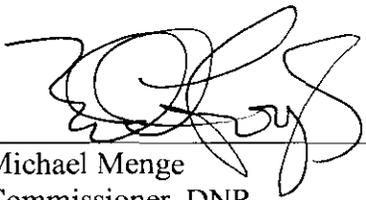
THIS IS TO CERTIFY that on the 28th day of February, 2006, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Charles M. Gilbert, Chief, Land Resources Program Center, Alaska Region, National Park Service, to me known and known to be the person he represented himself to be, and the same identical person who executed the above and foregoing FINAL EXCHANGE AGREEMENT on behalf of the United States in the name of and for and on behalf of said United States, freely and voluntarily for the use and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



Tina Bosela
Notary Public in and for the State of Alaska
My commission expires: 4-12-06

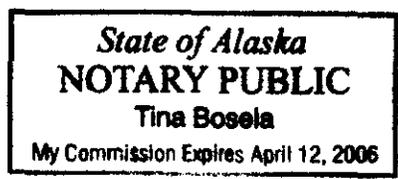
State of Alaska
Department of Natural Resources

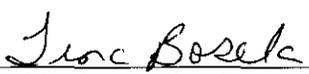
By:  FOR
Michael Menge
Commissioner, DNR

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 28 day of February, 2006, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Edmund J. Fogels, Acting deputy commissioner for Michael Menge Department of Natural Resources, State of Alaska, to me known and known to be the person he represented himself to be, and the same identical person who executed the above and foregoing FINAL EXCHANGE AGREEMENT on behalf of State of Alaska in the name of and for and on behalf of said State of Alaska, freely and voluntarily for the use and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.




Notary Public in and for the State of Alaska
My commission expires: 4-12-06

Exhibits attached hereto:

- | | |
|--------------------------|--|
| Exhibit "A" | Lands being conveyed to the State (T. 40S., R. 59E. CRM) |
| Exhibit "B" | Lands being conveyed to the State (T. 39S., R. 59E., CRM) |
| Exhibit "C" | Illustration of lands being conveyed to the Service |
| Exhibit "D" | Lands being conveyed to the Service (Chilkoot Trail Parcels) |
| Exhibit "E" | Appeals Procedures Letter from Dick Mylius |
| Exhibits A-1 through A-4 | Illustration of individual Chilkoot Trail Units |