

EXHIBIT 2

to the
REPORT TO CONGRESS
of the
CHUGACH REGION LAND STUDY
and REPORT

Timber Conservation Easement between The Eyak
Corporation and the United States of America and the State of
Alaska

STATE BUSINESS - NO CHARGE

AFTER RECORDING RETURN TO:

U.S. Department of Agriculture
Forest Service
P.O. Box 21628
Juneau, Alaska 99802-1628

TIMBER CONSERVATION EASEMENT

THIS TIMBER CONSERVATION EASEMENT (the "Conservation Easement") is made this third day of February, 1999, by **The Eyak Corporation** ("Eyak"), a Native Village Corporation organized pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 *et seq.*, as amended ("ANCSA"), and the laws of the State of Alaska, whose address is P. O. Box 340, Cordova, Alaska 99574, as grantor, and the **United States of America** and its assigns ("United States"), whose address is U.S. Department of Agriculture, Forest Service, P. O. Box 21628, Juneau, Alaska 99802-1628, and the **State of Alaska** and its assigns ("State"), whose address is Department of Natural Resources, 3601 C Street, Suite 960, Anchorage, Alaska 99503, under the authority of AS § 38.05.035(a)(12), as grantees, and pursuant to the Agreement for the Sale and Purchase of Lands and Interests in Lands Among The Eyak Corporation and the United States and the State of Alaska dated December 31, 1998, as amended (the "Agreement") and for good and valuable consideration. Eyak, the United States, and the State are collectively referred to hereinafter as "Parties."

WHEREAS, Eyak is the owner in fee simple of the surface estate of certain real property located adjacent to the Chugach National Forest, Alaska, which is more particularly described below (the "Protected Property") and which is adjacent or in proximity to the Eyak Conveyance Lands and Eyak Conservation Easement Lands, as defined in the Agreement (collectively the "Adjacent Lands"); and

WHEREAS, the Adjacent Lands contain natural, scenic, wooded, and other similar or related resources and values, including fish and wildlife and their habitats, as well as attributes and amenities important and valuable to the restoration of natural resources and services injured or reduced by the *Exxon Valdez* oil spill of March 24, 1989 ("EVOS"), including those described in the Final Restoration Plan adopted by the *Exxon Valdez* Oil Spill Trustee Council ("Trustee Council") on November 2, 1994, (the "Conservation Values"); and

WHEREAS, Eyak intends to convey to the United States and the State a conservation easement on merchantable timber located on the surface estate of the Protected Property as specified below; and

WHEREAS, Eyak intends to convey to the United States and the State the right to enforce the restriction on commercial harvesting of merchantable timber as specified below; and

WHEREAS, subject to the rights granted to the United States and the State, Eyak reserves and retains all other rights and privileges as landowner;

NOW, THEREFORE, pursuant to the laws of Alaska and in particular Alaska Statute § 34.17.010 - § 34.17.060, and the Agreement, Eyak does hereby grant and convey to the United States, its successors and assigns, forever, with special warranties of title, subject to conditions, restrictions and limitations of record, a timber conservation easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth (the "Timber Conservation Easement"), as to the property described as follows:

See attached Appendix E

Containing in sum 12,587 acres more or less.

SUBJECT, however, to easements, rights and reservations of the United States, and third parties if any, of record.

The Parties further intend to ensure the reservation and enjoyment by Eyak, landowner of the Protected Property, of all legal rights and privileges that are not specifically granted to the United States and the State by and through this Timber Conservation Easement.

The acquiring agency is the U.S. Department of Agriculture, Forest Service.

1. DEFINITIONS:

For purposes of this document, the following terms shall have the following meanings:

- a. "Commercial Timber Harvesting" means (1) cutting and removing from the Protected Property Merchantable Timber for sale and (2) constructing roads and related infrastructure for the support thereof.
- b. "Merchantable Timber" means timber that can be harvested and marketed by a prudent operator.

2. PURPOSE:

The purpose of this Timber Conservation Easement is to ensure that the Conservation Values of the timber on the Protected Property are maintained in perpetuity through the prohibition

of commercial harvesting of merchantable timber on the Protected Property, which thereby assists to ensure that the Conservation Values of the Adjacent Lands also are maintained in perpetuity.

3. RIGHTS CONVEYED TO THE UNITED STATES:

To accomplish the purpose of this Timber Conservation Easement, the following rights are conveyed to the United States:

- a. To enter upon the Protected Property, after providing reasonable advance notice in writing to Eyak, and after providing Eyak with a reasonable opportunity to have a representative present upon such entry in order to achieve the purpose and enforce the terms of this Timber Conservation Easement;
- b. The right to receive any revenue in excess of removal costs resulting from the sale of Merchantable Timber cut and removed by any party incident to the exercise of Eyak's rights to commercial development of the Protected Property;
- c. To share equally with Eyak all rights and remedies available against persons who cut or remove Merchantable Timber with no lawful right to do so; and
- d. In cooperation with Eyak, the right, but not the obligation, to reforest in the event then-existing Merchantable Timber is destroyed by fire, wind, insects, disease, or other similar man-made or natural occurrence (excluding man-made occurrences resulting from the exercise by Eyak of its lawful rights to use the Protected Property).

4. PROHIBITED USE:

Eyak is prohibited from engaging in or allowing Commercial Timber Harvesting on the Protected Property now or in the future.

5. EYAK'S RETAINED RIGHTS AND PRIVILEGES AS LANDOWNER:

1. Eyak reserves, retains and continues to have all legal rights and privileges as landowner, other than the right to Commercial Timber Harvesting on the Protected Property.
2. Eyak retains the rights, to the extent that it has the rights, granted in Section 14(f) of ANCSA, including the right to consent to exploration, development or removal of minerals from the subsurface estate in the lands within the boundaries of any Native village.

6. **ACTS BEYOND EYAK'S CONTROL:**

Nothing contained in this Timber Conservation Easement shall be construed to entitle the United States or the State to bring any action against Eyak for any injury to or change in the Protected Property resulting from causes beyond Eyak's control, including, without limitation, naturally caused fire, flood, storm, and earth movement, or from any injury to or change in the Protected Property resulting from a third party's intentional or negligent act or prudent action taken by Eyak under emergency conditions to prevent, abate or mitigate significant injury to the Protected Property resulting from such causes. Nothing contained in this Timber Conservation Easement shall be construed to limit the obligation of third parties for injury or damage to the Protected Property under applicable federal or State laws.

7. **SUBSEQUENT TRANSFERS:**

Eyak agrees to incorporate the terms of this Timber Conservation Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including without limitation a leasehold interest. The United States or the State may transfer, assign, or delegate any of its rights or responsibilities under this Timber Conservation Easement to a third party, but only if the third party is required to and agrees to be bound by and to carry out the purpose of this Timber Conservation Easement.

8. **ENFORCEMENT:**

1. In the event Eyak or the United States becomes aware of an event or circumstance of non-compliance with the terms of this Timber Conservation Easement, or in the event the State becomes aware of an event or circumstance of noncompliance with the terms of the Prohibited Use set forth in Section 4 of this Timber Conservation Easement, that party shall give notice to the other Parties, their successors or assigns, at their last known post office address, of such event or circumstance of noncompliance. If the event or circumstance of noncompliance is not corrected immediately, the party making such notification is entitled to institute suits to enjoin any breach or enforce any covenant and require that the Protected Property be restored promptly to the extent reasonably possible to the same condition that existed prior to the event or circumstance of non-compliance.
2. Nothing in this Section shall limit any other legal rights or remedies available to the Parties.

9. **GENERAL PROVISIONS:**

- a. The Parties agree that this Timber Conservation Easement is not intended, and shall not be construed, to create any third party beneficiary hereof and that nothing in this

Timber Conservation Easement shall be construed as creating any rights of enforcement by any other person or entity that is not a party to this Timber Conservation Easement.

- b. This instrument shall be construed so as to effect the purpose for which it was granted to the United States and the State. Any ambiguities shall be resolved in a manner that best accomplishes the purpose of this Timber Conservation Easement.
- c. The United States and the State shall have the right to make surveys, and plats, take photographs and prepare such other documents as may be necessary or desirable to administer the provisions of this Timber Conservation Easement so long as copies of any such surveys, plats, photographs and documents are made available to Eyak upon request. Any such map, plat or other suitable document may be recorded at the discretion of the United States or the State in the land records of the respective recording district wherein the Protected Property is located.
- d. The provisions of this Timber Conservation Easement are enforceable in law or equity by Eyak, the United States and the State, their successors or assigns, consistent with Section 8 of this Timber Conservation Easement.
- e. This Timber Conservation Easement shall be interpreted under applicable provisions of federal and state law pertaining to real property.
- f. Eyak is not relieved from liability by this Timber Conservation Easement for injuries occurring on, and resulting from, the condition of the Protected Property for which it would otherwise ordinarily be liable. The United States and the State each shall be responsible for losses, damages, or liabilities arising out of any act or omission of its employees, or its agents to the extent each otherwise would be responsible for such losses, damages, or liabilities under applicable federal or State law.
- g. Eyak is not relieved from liability by this Timber Conservation Easement for the costs associated with the cleanup of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and similar federal and State laws for which it would otherwise ordinarily be liable. Eyak shall be liable for and hold the United States and the State harmless from liability under said statutes, and pursuant to said statutes shall indemnify the United States and the State for all costs relating to cleanup, including attorneys fees, of hazardous substances that were released subsequent to the conveyance of the Protected Property to Eyak and prior to the effective date of this Timber Conservation Easement, and for all releases caused by, or contributed to, by Eyak or its agents subsequent to the date of this Timber Conservation Easement, but not for costs for cleanup of hazardous substances that are released by the United States in the course of engaging in

activities that are authorized by this Timber Conservation Easement. This clause may be enforced by Eyak or the United States or the State in a court of law. To the extent any of the lands were oiled as a result of the EVOS, the Parties stipulate and agree that no violation of this clause shall be deemed to occur as a result of the EVOS.

- h. The Parties agree that the covenants, terms, conditions, and restrictions of this Timber Conservation Easement shall run with the land and shall be binding upon the Parties, their successors and assigns in perpetuity. The terms of this Timber Conservation Easement may be waived or modified only by the unanimous written agreement of the Parties.
- i. Eyak hereby covenants to and with the United States and its assigns, that Eyak is lawfully seized of the surface estate in fee of the Protected Property, free and clear of encumbrances, except as specified herein, that Eyak has a good and lawful right and power to encumber the same, and that Eyak will forever warrant and defend this Timber Conservation Easement, limited to that portion of the chain of title from the moment of conveyance by the United States to Eyak pursuant to ANCSA, to and including the moment at which this Timber Conservation Easement is conveyed to the United States and its assigns, against the lawful claims and demands of all persons.
- j. Nothing herein shall be deemed to affect or in any way limit the rights of the owner of the subsurface estate in accordance with applicable law.
- k. If any material provision of this Timber Conservation Easement or any application thereof shall be invalid or unenforceable, then the Parties will negotiate in good faith such reasonable modifications of this Timber Conservation Easement as are necessary to protect the duties, rights and interests of the Parties under this Timber Conservation Easement and to carry out the intent of this Timber Conservation Easement.
- l. The parties make no representations as to whether these lands that are described herein include avulsed lands, including but not limited to those lands, that may have been uplifted or subsided in the earthquake of March 27, 1964.
- m. This conveyance is subject to the default provisions of paragraph 4 of the Agreement.

TO HAVE AND TO HOLD unto the United States and the State, their successors, and assigns forever.

IN WITNESS WHEREOF, Eyak, the United States, and the State have set their hands on the day and year first above written.

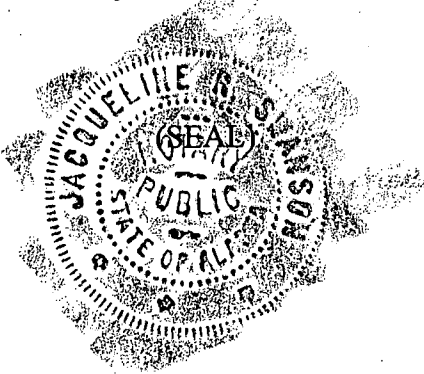
THE EYAK CORPORATION

By: Nancy C. Barnes
Nancy C. Barnes, President

STATE OF ALASKA)
1st JUDICIAL DISTRICT) ss:

THIS IS TO CERTIFY that on the 2 day of February, 1999, in Tuneau, Alaska, before me, the undersigned, a Notary Public in and for the State of Alaska, commissioned and sworn, personally appeared Nancy C. Barnes, to me known to be the individual who executed the within and foregoing Timber Conservation Easement as President of The Eyak Corporation and acknowledged to me that she signed the same as President of The Eyak Corporation in the name of and for and on behalf of said Corporation, freely and voluntarily and by authority of its Board of Directors and shareholders 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.



Jacqueline R. Swanson
Notary Public in and for Alaska
My commission expires: 11/16/2000

ACCEPTANCE

Pursuant to 7 U.S.C. § 428a and the Agreement, the United States hereby accepts this Timber Conservation Easement conveying to the United States and its assigns, the interests in lands described therein.

DATED this 2nd day of February, 1999.

**USDA FOREST SERVICE
ALASKA REGION**

By:

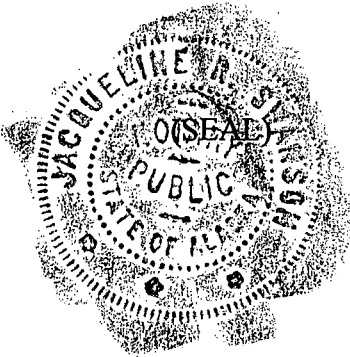
James A. Caplan
James A. Caplan
Acting Regional Forester

STATE OF ALASKA)

1st) ss.
JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 2 day of February, 1999, at Tuneau, Alaska, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared James A. Caplan, Acting Regional Forester, Alaska Region, USDA Forest Service, and he acknowledged to me that he signed as accepting the foregoing Timber Conservation Easement conveying to the United States, those interests described therein, and he acknowledged to me that he executed the foregoing instrument freely and voluntarily.

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

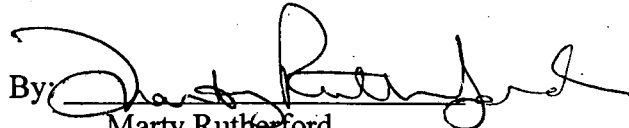


Jacqueline R. Swanson
Notary Public in and for Alaska
My commission expires: 11/16/2000

STATE OF ALASKA

Pursuant to AS § 38.05.035(a)12, I do hereby accept title to the above described interest in real property on behalf of the State of Alaska.

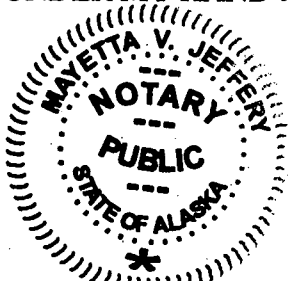
**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES**

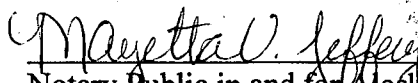
By: 
Marty Rutherford
Deputy Commissioner

STATE OF ALASKA)
3rd JUDICIAL DISTRICT) ss.
)

THIS IS TO CERTIFY that on the 3 day of February, 1999, at Anchorage, Alaska, the foregoing instrument was acknowledged before me by Marty Rutherford, Deputy Commissioner of the Department of Natural Resources of the State of Alaska on behalf of the State of Alaska.

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




Notary Public in and for Alaska
My commission expires: 6-22-99

Attachment #1: Right of Way Easement

LOCATION INDEX:
See attached Appendix E

APPENDIX E

Timber Conservation Easement Lands

Lands within the Cordova Recording District, Third Judicial District, State of Alaska.

Partially surveyed Township 13 South, Range 2 West, C.R.M. according to the official United States of America, Department of the Interior, Bureau of Land Management plat accepted September 30, 1991.

Section 33 all,
Section 34 Protracted (fractional), all, excluding U.S. Survey No. 440.

Partially surveyed Township 14 South, Range 2 West, C.R.M. according to the official United States of America, Department of the Interior, Bureau of Land Management plats accepted May 6, 1987 and September 30, 1991.

Section 4 excluding Lot 2,
Section 5
Section 6 all,
Section 7 (fractional),
Section 8 Lots 1 and 2,
Section 17 (fractional),
Section 19 (fractional), all,
Section 20 (fractional), all,
Section 31 all.

Surveyed Township 14 South, Range 3 West, C.R.M. according to the official United States of America, Department of the Interior, Bureau of Land Management plats accepted May 6, 1987 and September 30, 1991.

Section 12 all,
Section 13 (fractional), all,
Section 14 (fractional), all,
Section 15 all,
Section 16 all,
Section 21 (fractional), all,
Section 22 (fractional), all,
Section 23 (fractional), all,
Section 24 (fractional), all,

Section 25 (fractional), all,
Section 27 Lot 1,
Section 28 Lots 1 and 2,
Section 36 (Fractional), all.

Tract A of the Crater Lake Watershed Tracts, Plat No. 98-43, recorded December 11, 1998, as amended by Plat No. 98-53, recorded December 30, 1998, Cordova Recording District.

Surveyed Township 14 South, Range 4 West, C.R.M. according to the official United States of America, Department of the Interior, Bureau of Land Management plat accepted May 6, 1987.

Section 28 Lots 1, 2 and 3,
Section 29 Lots 1, 2, 3, 4, 5, 6, 7 and 8

Excluding from Sections 28 and 29, Lot 16 and Lot 18, Alice Cove Residence Group, and further excluding a one-acre tract described as a bight approximately one mile east of Sheep Point, described further as: Beginning at MC #1, North a distance of 0.19 chains to WMC #1 (16" HEM); thence North a distance of 4 chains to Corner 2; thence East a distance of 3.57 chains to Corner 3; thence South a distance of 3.60 chains to Corner 4 (also WMC #5, 20" HEM); thence West a distance of 0.50 chains to MC #5; thence N. 28° W. a distance of 2.67 chains to MC #4; thence S. 40° W. a distance of 0.50 chains to MC #3; thence S. 28° W. A distance of 2.50 chains to MC #2; thence S. 53° W. a distance of 0.50 chains to MC #1, the true point of origin.

Subject to the terms and provisions of the Eyak Corporation Land Leases affecting Lots 14 and 17, Alice Cove Residence Group.

Surveyed Township 15 South, Range 3 West, C.R.M. according to the official United States of America, Department of the Interior, Bureau of Land Management plat accepted May 6, 1987.

Section 1 all,
Section 8 Lot 1,
Section 9 Lot 3.

Tract A of Crater Lake Watershed Tract's Plat No. 98-43, recorded December 11, 1998, as amended by Plat No. 98-53, recorded December 30, 1998,

Cordova Recording District.

Surveyed Township 15 South, Range 5 West, C.R.M. according to the official United States of America, Department of the Interior, Bureau of Land Management plat accepted May 6, 1987.

Section 27 (fractional), all,
Section 28 Lots 1, 2 and 3.

Tracts A, B and C of Canoe Passage Retreats, Plat No. 84-5 filed for record August 30, 1984, Cordova Recording District.

Partially surveyed Township 16 South, Range 5 West, C.R.M. according to the official United States of America, Department of the Interior, Bureau of Land Management plat accepted September 30, 1991.

Section 3 Lot 2.

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RECORDED FILED N/C -cc	
CORDOVA REC. DIST.	
DATE	2-5 19 99
TIME	12:45 P.M.
Requested by	Dept. of Law
Address	