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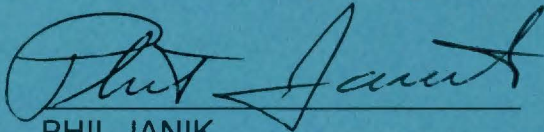
Exxon Valdez Oil Spill Trustee Council

Procedures

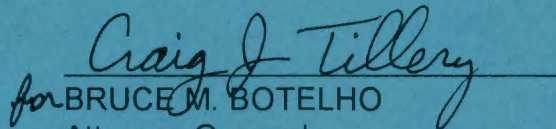
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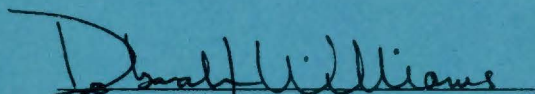
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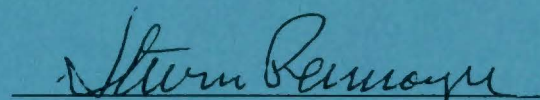
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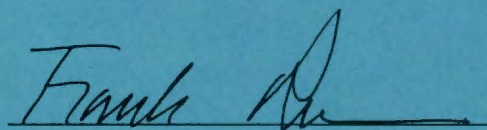
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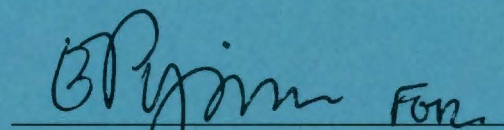
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EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL PROCEDURES

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INTRODUCTION

1. *Purpose.* Define the Policies and Procedures of the *Exxon Valdez* Oil Spill Trustee Council (Trustee Council) and provide guidance regarding the authorities and responsibilities of agencies that receive Joint Trust Funds approved by the Trustee Council.

2. *Supersession.* These procedures supersede the Operating Procedures adopted by the Trustee Council January 10, 1992, and the Financial Operating Procedures adopted by the Trustee Council September 21, 1992.

3. *Relationship.* The financial operating procedures of the Trustee Council augment state and federal procedures. Agencies receiving funding approved by the Trustee Council are responsible for ensuring that the procedures described in this document and the appropriate state or federal procedures are followed.

4. *Amendments.* These procedures may be modified by unanimous agreement of the Trustee Council.

5. *Authority.* The principles and processes stated herein are established pursuant to the Memorandum of Agreement and Consent Decree entered as settlement of United States of America v. State of Alaska, No. A91-081 Civil, U.S. District Court of Alaska. The Joint Trust Fund is comprised of all payments received in settlement of State of Alaska v. Exxon Corporation, et al., No. A91-083 CIV, and United States of America v. Exxon Corporation, et al., No. A91-082 CIV.

6. *Restoration Plan.* The *Exxon Valdez* Oil Spill Restoration Plan provides long-term guidance for restoring the resources and services injured by the oil spill. It contains policies for making restoration decisions and describes how restoration activities will be implemented. The Restoration Plan was adopted by the Trustees in November 1994 after completion of the Final Environmental Impact Statement. By unanimous consent, the Trustee Council may change the plan if the Council determines that the plan is no longer responsive to restoration needs.

OPERATING PROCEDURES

TRUSTEE COUNCIL

1. *Basic Governing Procedures.* The current edition of *Roberts Rules of Order* will govern the Trustee Council. All provisions of these rules of order will apply to Trustee Council deliberations unless the Council unanimously decides to proceed differently.

2. *Trustee Council Membership.* The following officials act on behalf of the public as trustees: the Attorney General of the State of Alaska; the Commissioner of the Alaska Department of Environmental Conservation; the Commissioner of the Alaska Department of Fish and Game; the Secretary of the United States Department of Agriculture; the Secretary of the United States Department of the Interior; and the Administrator of the National Oceanic and Atmospheric Administration, United States Department of Commerce. The State Trustees serve directly on the Trustee Council. The Federal Trustees have each appointed a representative to serve on the Council. These appointments include the Alaska Regional Forester, United States Department of Agriculture; the Assistant Secretary for Fish, Wildlife and Parks, United States Department of the Interior; and the Alaska Region Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, United States Department of Commerce. In the event a Council member is precluded from attending a meeting or must be excused during a meeting, an alternate may exercise voting privileges on behalf of the Council member. Each Council member shall designate in writing an alternate member and the designation shall be maintained in the official record or an alternate may be identified at the meeting and so stated for the record.

3. *Quorum.* A quorum of two-thirds (2/3) of the total Council membership including at least two state members and two federal members shall be required to convene a meeting. All decisions shall be made by unanimous agreement of the six Council members or their designated alternates.

4. *Chair.* The Trustee Council shall designate a chair to preside at each meeting. The chair may participate in discussion and debate at the meetings and shall vote on all questions before the Trustee Council.

5. *Council Action.* All matters before the Trustee Council which require a vote, make a recommendation, approve or disapprove an item, or otherwise render a decision shall require the unanimous agreement of the six Council members or their designated alternates. All actions by the Trustee Council shall be taken at duly convened meetings except as provided in Section 10.

6. *Recusal.* In the event a Council member believes he or she must recuse himself or herself from voting, the Council member shall request the decision be deferred until a designated alternate is available to vote.

7. *Meetings.* Meetings shall be held at times and locations determined by the Council. The Executive Director shall provide a proposed agenda and appropriate briefing materials to the Council members in advance of the meeting. The final agenda for the meeting will be determined by the Council and shall include a reasonable opportunity for public comment.

8. *Executive Sessions.* Executive sessions shall be kept to a minimum and shall be used only for discussion of matters concerning confidential personnel issues, litigation or legal advice, habitat acquisition negotiations, confidential archaeological information, confidential fisheries information or other matters included under AS 44.62.310 (c) or other applicable State or Federal laws.

9. *Minutes of Council Meetings.* All meetings shall be recorded electronically or by a court reporter, and said records shall, along with the written, approved meeting notes, constitute the official record of the Council's actions.

10. *Emergency Action.* In the event of an emergency requiring Council action before a meeting can be held in accordance with the procedures described herein, the Executive Director will poll the Trustee Council and take action by unanimous agreement. Any decisions of the Trustee Council shall be reflected in the official record of the Trustee Council along with justification regarding the need to take emergency action. In addition, any emergency action taken shall be summarized for the record at the next meeting of the Trustee Council.

STRUCTURE

1. *General.* Pursuant to the agreement between the State of Alaska and the United States, the Trustee Council has created the position of Executive Director and the Restoration Office to manage the day-to-day administrative functions of the Trustee Council and the overall restoration program. These activities are complemented by the agencies, which are responsible for agency management activities and the management of projects approved by the Trustee Council.

2. *Restoration Office.* Under supervision of the Executive Director, the Restoration Office is responsible for: (1) facilitating communication between the federal and state governments, the six Council members and the Public Advisory Group; (2) maintaining the official record of the Council's actions; (3) coordinating the annual project proposal solicitation and annual restoration work plans; (4) preparing and analyzing financial and project status information; (5) developing and implementing procedures to achieve the goals and objectives of the Trustee Council; (6) performing and/or overseeing special and on-going projects; and (7) public outreach and public participation.

3. *Agencies.* Under supervision of the agency's Council member, each agency is responsible for: (1) ensuring that the procedures described herein, and the appropriate state or federal procedures are followed, including compliance with the National Environmental Policy

Act; (2) ensuring that projects funded meet their stated goals, objectives and schedules, and are accomplished consistent with the funds authorized; (3) implementing, evaluating and monitoring approved projects; (4) obtaining information from or facilitating the exchange of information among the Restoration Office, the public, cooperating agencies, and principal investigators; (5) developing agency goals and objectives for the restoration program; (6) assisting in the preparation and review of project proposals and detailed budgets; (7) assisting in the development of the annual restoration work plan; and (8) representing their Council member in matters related to the restoration program.

RESTORATION WORK PLAN

1. *Invitation.* Annually the public, private sector, non-profit groups, and government agencies will be invited to submit proposals for funding based on identified restoration priorities and needs.

2. *Internal Review.* Proposals received will be subject to independent scientific review, as well as policy, budget, agency and legal review.

3. *Public Review and Comment.* Prior to Trustee Council action, a reasonable period of time shall be provided to the public to review and comment on the project proposals and the Work Plan.

4. *Approval.* After expiration of the period for public review and comment, the Trustee Council, in open session and with additional opportunity for public comment, will review the proposed Work Plan. The Trustee Council may make such changes to the Work Plan or include terms and conditions of funding as the Council deems appropriate. Upon unanimous approval, the Work Plan shall be adopted by the Trustee Council.

HABITAT PROTECTION AND ACQUISITION

1. *General.* Habitat Protection and Acquisition is an important means of restoring injured resources and the services that are dependent upon those resources. Habitat Protection and Acquisition may include the purchase of lands or interests in land such as conservation easements, mineral rights, or timber rights.

2. *Parcel Nomination and Sponsorship.* Only those parcels nominated by a willing seller will be considered for purchase. In addition, a federal or state land management agency must sponsor the parcel prior to evaluation and ranking.

3. *Parcel Evaluation and Ranking.* Parcels that have been nominated and sponsored will be evaluated and ranked according to the potential benefits that purchase and protection would provide to injured resources and services. The criteria and procedures for evaluating and ranking parcels shall be developed by the Executive Director and approved by the Trustee Council.

4. *Terms and Conditions.* By unanimous agreement of the six Trustees or their designated alternates, a resolution shall be adopted authorizing the purchase of land or ownership rights. The resolution shall set forth the terms and conditions appropriate for the identified parcel(s).

5. *Title and Management.* In so far as possible, the title of any lands, or ownership rights, will be specified in the resolution adopted by the Trustee Council. All land acquired shall be managed in accordance with the terms and conditions of the Trustee Council.

6. *Public Review and Comment.* Prior to final Trustee Council action, reasonable public notice shall be given and the public shall be provided an opportunity to comment.

7. *Application for Disbursement of Joint Funds.* Upon certification from the Executive Director that the terms and conditions set forth in the resolution have been satisfied, the Alaska Department of Law and the United States Department of Justice shall be requested to petition the District Court for the withdrawal of funds.

RESTORATION RESERVE

1. *General.* The Trustee Council has established the Restoration Reserve. Pursuant to Court Order, the Restoration Reserve is a separate account within the Court Registry Investment System (CRIS) administered through the United States District Court for the Southern District of Texas.

2. *Payments.* The amount to be deposited on an annual basis will be determined by the unanimous agreement of the six Trustees or their designated alternates. Upon approval, the Alaska Department of Law and the United States Department of Justice shall petition the District Court to transfer the funds from the Joint Account to the Restoration Reserve.

3. *Investments and Interest.* The Restoration Reserve shall be invested with the intent of maximizing interest earnings and all such earnings shall be retained in the Restoration Reserve.

4. *Use.* While the Trustee Council intends that the principle and interest from the Restoration Reserve not be used prior to Exxon's last payment, the Trustee Council may, at any time by unanimous agreement of the six members, use the principle or interest before that time.

PUBLIC PARTICIPATION

1. *General.* The Trustee Council recognizes that public participation in the restoration program is an integral part of the process. To that end, the public is invited to review, comment and participate in the development and implementation of the restoration program.

2. *Exxon Valdez Oil Spill Public Advisory Group.* By order of the District Court for the District of Alaska, the Public Advisory Group is to advise the Trustees, appointed to administer the fund established in settlement of United States v. Exxon Corporation, Civil Action No. A91-082, and State of Alaska v. Exxon Corporation, Civil Action No. 091-083, both in the United States District Court for the District of Alaska, in all matters described in Paragraph V.A.1 of the MOA referenced above. The overall procedures for the Public Advisory Group are contained in the Charter unanimously approved by the Trustee Council and signed by the Secretary of the United States Department of the Interior. The Public Advisory Group consists of members recommended by the Trustee Council and appointed by the Secretary of the United States Department of the Interior.

3. *Public Notice.* Reasonable public notice shall be given for all meetings of the Trustee Council. The notice shall include, when possible, publication in one or more newspapers of general circulation in the following communities: Anchorage, Chenega, Cordova, Homer, Juneau, Kenai, Kodiak, Seward, Tatitlek, Valdez and Whittier and by distribution of the public notice to radio stations broadcasting to these communities. To the maximum extent possible, reasonable public notice shall also be provided to other communities within the spill area. The public notice shall identify the proposed agenda and include a reasonable opportunity for public comment.

4. *Access to Information.* The public shall have access to the official record of the Council's action and information regarding proposed or completed studies or other activities funded by Joint Trust Funds.

FINANCIAL PROCEDURES

SETTLEMENT FUNDS

1. *Joint Trust Fund.* Pursuant to Court Order and in accordance with the Terms of the Memorandum of Agreement and Consent Decree, all payments are placed in an interest-bearing account in the Court Registry Investment System (CRIS) administered through the United States District Court for the Southern District of Texas.

2. *Disbursement.* Upon joint application of counsel for the United States and the State of Alaska, the United States District Court for the District of Alaska orders the disbursement of funds for purposes consistent with the Memorandum of Agreement and Consent Decree. The joint application shall consist of legal documents required by the Court and documentation demonstrating the unanimous agreement of the Trustee Council. When appropriate, interest earned on the federal and state accounts and/or unobligated balances from prior years' Work Plans shall be subtracted from the disbursement.

3. *Authority to Spend.* No obligations shall be incurred until such time as a Court Order is entered by the United States District Court for the District of Alaska and any terms and conditions placed on the funding by the Trustee Council have been met. In the event the Trustee Council approves the expenditure of interest accrued on funds previously disbursed, no obligations shall be incurred until a Joint Notice is submitted to the United States District Court for the District of Alaska and any terms and conditions placed on the funding by the Trustee Council have been met.

4. *Federal Account.* In accordance with federal law, funds required for federal project implementation are deposited in the Natural Resource Damage Assessment and Restoration (NRDA&R) Fund.

5. *State Account.* In accordance with state law, funds required for state project implementation are deposited in the *Exxon Valdez* Oil Spill Settlement (EVOS) Fund.

AUTHORIZATION

1. *General.* Initial authorization shall be recorded consistent with the budgets approved by the Trustee Council.

2. *Fiscal Year.* Unless otherwise approved by the Trustee Council, the fiscal year begins on October 1 and ends on September 30. In the event the Trustee Council approves a project with a different fiscal year, the fiscal year must be clearly stated in the approval motion.

3. *Adjustments.* As long as an adjustment does not alter the underlying scope or objectives of the affected projects, agencies have the authority to move funds into or out of projects up to

the cumulative amount of \$25,000 or up to 10% of the authorized level of funding for each affected project, whichever is less. In addition, as long as an adjustment does not alter the underlying scope or objectives of the project, agencies are authorized to move, within a single project, budgeted funds between line items and may change detailed items of expenditure to accommodate circumstances encountered during budget implementation. Justification and supporting documentation as to the reason for all such adjustments (both between projects and line-items) shall be maintained by the agencies. All adjustments between projects shall be reported to the Executive Director in the Quarterly Financial Report. For further information regarding the Quarterly Report, refer to the Reporting section of these procedures.

4. *Revisions.* Trustee Council action is required to move amounts greater than that authorized in section 3 above. Trustee Council action is also required if the revision changes the scope or objectives of a project, establishes a new project, or terminates an approved project during the fiscal year. In the event the proposed revision changes the scope or objectives of a project, establishes a new project, or terminates an approved project during the fiscal year, the public shall be given a reasonable opportunity to review and comment on the proposed change prior to action of the Trustee Council.

PROJECT COSTS

1. *Direct Project Costs.* Direct costs are those costs that can be identified with or linked to a specific project.

2. *Indirect Project Costs.* Indirect costs are those that are incurred for common or joint projects and therefore cannot be identified readily and specifically with a project. In the case of governmental agencies, indirect costs are covered through a general administration formula. The appropriate indirect rate for contractors will be approved on a case-by-case basis.

3. *General Administration Formula.* The general administration formula is used to reimburse governmental agencies for indirect project costs incurred in implementing the restoration program. Actual recovery shall be in proportion to actual direct costs and is limited to:

- a. Fifteen percent of each project's actual personnel costs; and
- b. Seven percent of the first \$250,000 of each project's actual contractual costs, plus two percent of each project's actual contractual costs in excess of \$250,000.

4. *Unallowable Costs.* Restoration funds shall not be used to support normal agency functions and activities. As such, costs that would have been incurred, absent the oil spill, are not eligible for reimbursement. This includes costs considered necessary for the management, supervision and administrative control of an agency.

ACCOUNTING

1. *General.* It is the responsibility of agency personnel and certifying officers to make certain that all actions are based on sound accounting and budgetary practices.

2. *Source Documentation.* Adequate justification and supporting documentation must be maintained for each project.

3. *Appropriateness.* Expenditures charged to a project must be directly attributable to or allocated to the project benefiting from the activity. Salaries and benefits may be charged for the time an individual is working directly on a project, when supported by time sheets and when work performed by such individuals is necessary to the project.

4. *Reasonableness.* Costs attributable to a project must be necessary and reasonable to achieve the objectives of the project and be consistent with the policies and procedures governing other activities of the agency.

5. *Segregation.* Accounts must be properly designed and maintained to ensure that funds are expended in accordance with Trustee Council approval. In addition, direct project costs must be segregated from indirect costs to ensure that restoration projects are assessed the general administration formula in proportion to direct costs.

6. *Expended (Outlays).* The term expended shall be defined as the actual outlay of funds through the issuance of checks or warrants, the disbursement of cash, or the electronic transfer of funds. The term expenditure shall be defined as the act of expending.

7. *Obligations (Encumbrances).* The term obligations shall be defined as a commitment to acquire goods or services during the fiscal year, or to accommodate contracts where the length of time for completion of the service extends into the following fiscal year. An obligation is a commitment to pay and should not be considered an expenditure until the goods or services have been received and the invoice paid. Funds approved for contracts in which the length of time for completion of the service extends into the following fiscal year, may be obligated at year end. To be valid, the length of time to complete the service should be identified in the Detailed Project Description and the budget approved by the Trustee Council. As a general rule, agencies shall have one year from the end of a project's approved fiscal year to satisfy all obligations.

LAPSE

1. *General.* The unexpended and unobligated balance of a project shall lapse on September 30 of the fiscal year for which the project was approved. However, an undisclosed obligation may be established and/or paid during the Close-Out Period.

2. *Close-Out Period.* During the months of October, November and December agencies may pay from prior year funds an expense that was undisclosed during the fiscal year just ended. In addition, agencies may establish obligations to accommodate an expense that was undisclosed during the fiscal year just ended. By January 31 of each year, agencies shall report to the Executive Director the total expended for each project, plus any obligations relating to the fiscal year just ended. For further information regarding the Annual Financial report, refer to the Reporting section of these procedures.

3. *Reimbursement for Prior Year Expenses.* Expenses discovered after the Close-Out Period may be charged to the subsequent year's project budget. In the event the agency determines that insufficient funds are available to charge the expense to the subsequent year's budget, or the expense relates to a completed project, authority to adjust a prior year Final Report is required. During the months of January through June, adjustments relating to a prior year Final Report may be approved by the Executive Director. All expenses discovered after June require Trustee Council action.

EQUIPMENT

1. *Title.* Subject to the conditions set forth in this section, title to equipment acquired with Joint Trust Funds is retained by the respective governmental agency. In the event equipment is transferred between governments, title to the equipment shall also be transferred.

2. *Use.* Equipment shall be used for the project for which it was acquired. When no longer needed for the original project, the equipment may be used in other activities for which funding was approved by the Trustee Council. The equipment may also be used for other agency purposes, providing that first preference is given to restoration projects for which funding is approved by the Trustee Council.

3. *Inventory.* Property records shall be maintained in accordance with agency procedures.

4. *Repair, Maintenance and Safeguarding.* The repair, maintenance and safeguarding of equipment purchased with joint funds shall be accomplished in accordance with agency procedures.

5. *Disposal.* Equipment that ceases to function or have value shall be disposed of in accordance with agency procedures.

PROFESSIONAL SERVICES CONTRACTS

1. *General.* Agencies shall ensure that professional services are accomplished in accordance with the terms, conditions, and specifications of the project approved by the Trustee Council. In the event the approved motion of the Trustee Council specifically identifies an entity to carry-out the project and the contracting agency determines that an award to an entity, different than that

specified by the Trustee Council, would better serve the restoration program, the basis of that determination shall be stated in writing to the Executive Director and forwarded to the Trustee Council for approval.

2. *Definition.* Professional services means contracts for professional, technical, or consultant services that result in the production of a report or the completion of a task, and include analysis, evaluation, prediction, planning, or a recommendation.

3. *Indirect Rates.* The appropriate indirect rate for contractors will be determined on a project by project basis or through a memorandum of understanding with a contractor that provides for a consistent rate and methodology.

4. *Equipment.* Equipment purchased by the contractor will remain the property of the contracting agency.

5. *Special Considerations.* All notes and other data developed by the contractor shall remain the sole property of the contracting agency.

REPORTING

1. *Joint Account.* Revenues, disbursements and fees associated with the Court Registry Investment System shall be reported to the Trustee Council on a monthly basis. This report shall include an analysis of the Joint Trust Fund Balance and the total estimated funds available.

2. *Quarterly Financial Reports.* Within thirty days following the end of each quarter, agencies shall report expenditures and obligations recorded at the end of the quarter to the Executive Director. The report shall include the total amount authorized for each project, any revisions approved by the Trustee Council, any adjustments between projects, the total expended by project, and the total of any outstanding obligations by project.

3. *Quarterly Status Reports.* Within thirty days following the end of each quarter, agencies shall submit a project status report to the Executive Director. The report submitted by the agencies shall communicate the project status in relationship to the project tasks that were identified in the proposal approved by the Trustee Council, any problems that are being encountered, and noteworthy accomplishments.

4. *Annual Financial Reports.* By January 31 of each year, agencies shall report to the Executive Director the total expended for each project, plus any valid obligations relating to the fiscal year just ended. The report shall reflect the total amount authorized by line-item, any revisions approved by the Trustee Council, any adjustments between projects, and any adjustments between line-items.

5. *Annual Project Reports.* Annually, agencies shall submit a report to the Executive Director for all continuing projects approved by the Trustee Council. To be considered continuing, a project must have been initiated with the expectation that it was multi-year. The report deadline and format shall be determined by the Executive Director.

6. *Final Project Reports.* Upon completion of a project or the determination by the Trustee Council to no longer fund a project, agencies shall submit a report to the Executive Director. The report deadline and format shall be determined by the Executive Director.

7. *Equipment Reports.* By December 31 of each year, agencies shall report equipment valued at a cost of \$1,000 or more, and other sensitive items to the Executive Director. Sensitive items shall include firearms, audio/visual equipment, computers and cameras. The report shall include a listing of equipment purchased during the fiscal year just ended, the reassignment of equipment to other activities funded by the Trustee Council and any equipment currently being used for other agency purposes. Agencies shall also report all equipment that has ceased to function or have value and identify any equipment that was disposed of during the previous fiscal year.

AUDITS

1. *General.* The purpose of an audit is to ensure public trust and accountability regarding the use of settlement funds. An audit provides credibility to the information reported by or obtained from management by independently acquiring and evaluating the evidence.

2. *Definition.* The term audit includes both financial and performance audits.

3. *Readiness.* When an agency receives funding from the Trustee Council, the agency assumes certain responsibilities with those funds. These include ensuring that source documentation is organized and available for review, internal controls are documented and that individuals knowledgeable about the projects are available to answer questions.

4. *Professional Services Contracts.* Contractors who receive funding for professional, technical, or consultant's services are not automatically subject to an annual audit. However, this does not preclude the Trustee Council or the agency from making a determination that an audit is required in addition to an agency's review of expenditure documentation and work produced by a contractor.

5. *State and Federal Audits.* Each Federal agency and the State of Alaska have audit functions. In the event an audit is performed, a copy of the audit shall be provided to the Executive Director.

6. *External Audits.* All external audits shall be conducted in accordance with Governmental Auditing Standards. In addition, the firm and the staff assigned to conduct the audit shall be

independent of the Trustee Council, the funding agencies, the Court Registry Investment System, Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company.

APPENDIX A: FEDERAL INTERNAL PROCEDURES

NATURAL RESOURCES DAMAGE ASSESSMENT AND RESTORATION FUND

1. *Segregation.* All principal and interest shall be accounted for separately by the Department of the Interior, Fish and Wildlife Service, Division of Finance. Each disbursement shall be assigned an appropriate account, sub-activity and/or project number when deposited to the aggregate Fish and Wildlife Service account within the Federal Reserve Bank. Confirmation of the deposit shall be provided to the Treasury Department, which reconciles the deposit with the Federal Reserve Bank.

2. *Investments.* By law, the funds may only be invested in Treasury Securities and all ownership is maintained in the name of the Natural Resource Damage Assessment and Restoration Fund. Based on an estimate of cash flow requirements, the Department of the Interior, Office of the Secretary generates instructions for investment and forwards the instructions to the Division of Finance. The Division of Finance develops and submits an Investment Confirmation Letter that indicates which account investments are being purchased, the scheduled maturity dates and the investment type(s) to the Department of Treasury, which purchases the securities. At maturity, interest income is paid directly to the account.

3. *Reports.* Quarterly, the Department of the Interior shall report interest income to the Executive Director. In addition, all disbursements to the federal agencies shall be reported to the Executive Director.

AUTHORIZATION

1. *General.* Congress permanently appropriated funding approved by the Trustee Council in Section 207 of Public Law 102-227. However, all authorization is subject to compliance with any terms and conditions imposed by the Trustee Council.

2. *Budget and Reports.* Under Section 207, agencies are required to comply with directions published by the Federal Office of Management and Budget. This includes submitting a budget for the upcoming fiscal year and documentation associated with the current and prior fiscal year.

3. *Obligation Authority.* Prior to the obligation of any funds, agencies must first complete the allocation process required by their respective budget offices to establish codes for each project. The allocation process provides the authority, amount of funding and the guidance with which to obligate funds.

4. *Quarterly Instructions for Transfer.* On a quarterly basis, federal agencies are required to submit to the United States Department of the Interior, Office of the Secretary, Office of Budget instructions regarding the transfer of settlement funds. The instructions shall specify the purpose of the transfer, which account the funds are to be transferred, and an estimate of cash flow

requirements. Unless the transfer represents a one-time payment, the cash flow estimate shall be structured on a quarterly basis. Any change in cash flow requirements during the fiscal year shall be reflected on subsequent quarterly instructions for transfer. A change is defined as a decrease in the cash flow requirement due to an unanticipated delay in a project or an increase in the cash flow requirement due to an unanticipated change in the schedule.

5. *Fund Transfers.* There are two types of fund transfers. The first type of transfer is internal to the Department of the Interior, Fish and Wildlife Service. The form used is the Allotment Advice, Form FWS 3-1951. The Allotment Advice is initiated and prepared by the Division of Budget, Fish and Wildlife Service and then sent to the Division of Finance, Fish and Wildlife Service where the funds are made available through the Work Activity Guidance (WAG) and the Control Schedule Process. The second type of transfer is to agencies/bureaus outside of the Fish and Wildlife Service. The form used is a SF1151, a non-expenditure transfer. The SF1151 is initiated, prepared, and approved by the Division of Budget, Fish and Wildlife Service and then sent to Treasury where the funds are transferred within the Treasury system.

6. *Return of Unexpended and Unobligated Balances.* On January 31 of each year, Federal Trustee Agencies shall return to the Natural Resource Damage Assessment and Restoration Fund the unexpended and unobligated balance for the fiscal year just ended. Concurrently, the agencies shall return any recovery of prior year obligations. Agencies have the option of either transferring the funds or using the unexpended and unobligated balance to off-set a subsequent fund transfer. Agencies are required to submit to the United States Department of the Interior, Office of the Secretary, Office of Budget a report reflecting the total unexpended and unobligated balance for the fiscal year just ended and the amount of funding recovered from prior year obligations. The report submitted shall also indicate the method the agency intends to use to return the funds. The Department of the Interior shall report the total unexpended and unobligated balance for the fiscal year just ended and the amount of funding recovered from prior year obligations to the Executive Director by February 15 of each year.

APPENDIX B: STATE INTERNAL PROCEDURES

EXXON VALDEZ OIL SPILL SETTLEMENT FUND

1. *Segregation.* All principal and interest shall be accounted for separately by the Alaska Department of Revenue, Division of Treasury. Each disbursement shall be deposited in a Department of Law sub-account. Confirmation of the deposit shall be provided by the bank to the Department of Revenue, at which time the funds are moved from the sub-account to the general investment pool within the Alaska State Accounting System. The Department of Law, Division of Administrative Services is notified of the deposit and allocates the funds to the *Exxon Valdez* Oil Settlement Fund.

2. *Investments.* The Alaska Department of Revenue, Division of Treasury will calculate the daily income amount and provide for daily compounding (including weekends and holidays) as follows: (a) using the weekly 180 day Treasury Bill Rates for the month based on the weekly auctions occurring during the month; and (b) the daily cash balance of the *Exxon Valdez* Oil Settlement Fund within the Alaska State Accounting System. The income shall be credited to the fund and posted in the Alaska State Accounting System on a monthly basis.

3. *Reports.* The Department of Revenue, Division of Treasury shall report income earned to the Executive Director on a monthly basis.

AUTHORIZATION

1. *General.* Pursuant to Alaska Statute 37.14.405(a), a state agency may not expend money received from the trust unless the expenditure is in accordance with an appropriation made by law. However, prior to the expenditure of funds, Trustee Council approval must be obtained, the Court Order signed, and any terms and conditions placed on the funding by the Trustee Council have been met.

2. *Budget and Reports.* To meet the requirements of Alaska Statute 37.14.415, agencies are required to comply with directions published by the State Office of Management and Budget, Division of Budget Review. Alaska Statute 37.14.415 states: The state trustees shall

(1) submit to the governor and the legislature by December 15 of each year a report setting out, for each object or purpose of expenditure, the amounts approved for expenditure from the trust during the preceding fiscal year and the amounts actually expended during the preceding fiscal year.

(2) prepare and submit, under AS 37.07, a budget for the next fiscal year setting out, for each object or purpose of expenditure, the trustees' estimate of the amounts that are, during the next fiscal year, to be funded by the trust and expended by state agencies; and

(3) prepare and submit to the legislature, at the same time the budget for state agency expenditures is submitted under (2) of this section, a proposal setting out, for each object or

purpose of expenditure, the trustees' estimate of the amounts that are to be funded by the trust in the next fiscal year and that are not included in the budget submitted under (2) of this section.

3. *Legislative Budget and Audit Committee.* Alaska Statute 37.14.405(b), allows agencies to meet the requirements of an appropriation conditioned on compliance with the program review provisions of AS 37.07.080(h). In accordance with the procedures of the Alaska Office of Management and Budget (OMB), agencies are required to submit a request to OMB for transmittal to the Legislative Budget and Audit Committee.

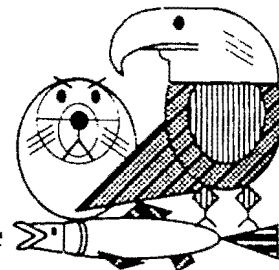
4. *Expenditure Authority.* Authorization to receive and expend shall be recorded in the Alaska State Accounting System within the *Exxon Valdez* Oil Spill Settlement Fund. Following legislative action, OMB will record the authorization by approving an Authorized Budget Transaction (AB).

Exxon Valdez Oil Spill Trustee Council

Restoration Office

645 G Street, Suite 401, Anchorage, Alaska 99501-3451

Phone: (907) 278-8012 Fax: (907) 276-7178



MEMORANDUM

TO: Trustee Council

FROM: Molly McCammon
Executive Director

DATE: August 19, 1996

RE: Revised Operating and Financial Procedures

RECEIVED
AUG 28 1996

EXXON VALDEZ OIL SPILL
TRUSTEE COUNCIL
ADMINISTRATIVE RECORD

Please find enclosed the most current draft of the revised *Operating and Financial Procedures*. These procedures incorporate the "Operating Procedures" previously adopted by the Trustee Council on January 10, 1992, and the "Financial Operating Procedures" adopted by the Trustee Council on September 21, 1992.

Fundamentally, the revised procedures eliminate outdated references to committees and procedures that no longer exist and reflect the current organizational structure of the Trustee Council. The revised procedures also specifically address issues and recommendations identified in the recent audit, recognize the Restoration Plan, the Habitat Protection and Acquisition Program and the Restoration Reserve.

To address issues identified through the audit, the revised procedures require that general administration (GA) be segregated from direct costs and clarify that GA retained by the agency is in proportion to direct expenditures. The procedures also provide for lapsing prior year funding, a close-out period, and address controls over payroll and other expenditures.

Multiple drafts have been reviewed by the Restoration Work Force, and the Public Advisory Group has also been consulted. I want to highlight a few specific issues that have been identified through this process that are deserving of additional scrutiny by the Council. These include:

1. Emergency Action - The original "Operating Procedures" adopted by the Trustee Council in 1992 included a provision for "Interim Emergency Action". To my knowledge, this procedure has never been used by the Council. While it has been suggested that this sub-section could be deleted, retaining the sub-section provides the Council flexibility to respond in the event of an

Trustee Agencies

State of Alaska: Departments of Fish & Game, Law, and Environmental Conservation

Department of Commerce, Marine Fisheries Administration, Department of Agriculture and Interior

emergency.

2. **Meetings Materials** - The question of whether the revised procedures should specify how far in advance briefing materials are to be provided to the Council has been raised. In practice, as you know, materials are generally provided to the Trustee members a week to ten days in advance of the meetings although in some cases, last minute changes or revisions to documents have resulted in shorter time frames.
3. **Public Notice** - The revised procedures require "reasonable public notice" be given for all meetings of the Trustee Council. The revised procedures provide guidance regarding what can be expected in terms of public notice (e.g., placement of advertisements in newspapers, radio public service announcements). The question has been raised as to whether a specific standard of public notice should be incorporated in the procedures. The Public Advisory Group felt comfortable with the current requirement for "reasonable" notice.
4. **Public Review and Comment** - The revised procedures require that there be a "reasonable" opportunity for public review and comment on the Restoration Work Plan, habitat protection and acquisition actions, and revisions to the Work Plan (e.g., a budget change in excess of \$25,000 or 10% or a revision that changes the scope or objective of a project). As with the current procedures, no minimum period of review is specified. Again, the Public Advisory Group expressed its comfort with the current requirements.
5. **General Administration Formula** - The method used to determine the amount of general administration requires a calculation of fifteen percent on personnel costs, together with seven percent on contractual costs up to \$250,000, and two percent on that portion greater than \$250,000. It has been suggested that one formula (ie., a single flat rate) could be applied against the project total. An analysis of this approach has been prepared and reviewed by the Restoration Work Force. At this time, there is not consensus on whether a single rate would be an improvement over current practice. No change is recommended at this time.
6. **Fiscal Year** - The attached document continues the practice of authorizing funding on an annual basis. In the case of a project that continues over a number of years, agencies are required to control and account for each fiscal year authorization separately. Proposers are required to submit an annual proposal and budget and the prior year project must be closed out and the unexpended and unobligated balance lapsed.

The revised procedures are comprehensive and describe the current structure of the Trustee Council, the Restoration Program, public involvement, how the settlement

funds are disbursed, and uniform accounting requirements.

If approved by the Trustee Council, the procedures will be formatted and finalized for distribution throughout the agencies to ensure that they are available to individuals involved in the Restoration Program. As with the *Restoration Plan* itself, these procedures will be subject to on-going review and if further revisions are needed they will be brought back to the Council.

The revised procedures are a result of several drafts and revisions suggested by the Restoration Work Force and the PAG. One agency has recently indicated objections to the current draft and I have attached a copy of their comments.

I look forward to reviewing these procedures with you at the meeting on August 29th.

enclosure

EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL PROCEDURES

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INTRODUCTION

1. *Purpose.* Define the Policies and Procedures of the *Exxon Valdez* Oil Spill Trustee Council (Trustee Council) and provide guidance regarding the authorities and responsibilities of agencies that receive Joint Trust Funds approved by the Trustee Council.
2. *Supersession.* These procedures supersede the Operating Procedures adopted by the Trustee Council January 10, 1992, and the Financial Operating Procedures adopted by the Trustee Council September 21, 1992.
3. *Relationship.* The financial operating procedures of the Trustee Council augment state and federal procedures. Agencies receiving funding approved by the Trustee Council are responsible for ensuring that the procedures described in this document and the appropriate state or federal procedures are followed.
4. *Amendments.* These procedures may be modified by unanimous agreement of the Trustee Council.
5. *Authority.* The principles and processes stated herein are established pursuant to the Memorandum of Agreement and Consent Decree entered as settlement of United States of America v. State of Alaska, No. A91-081 Civil, U.S. District Court of Alaska. The Joint Trust Fund is comprised of all payments received in settlement of State of Alaska v. Exxon Corporation, et al., No. A91-083 CIV, and United States of America v. Exxon Corporation, et al., No. A91-082 CIV.
6. *Restoration Plan.* The *Exxon Valdez* Oil Spill Restoration Plan provides long-term guidance for restoring the resources and services injured by the oil spill. It contains policies for making restoration decisions and describes how restoration activities will be implemented. The Restoration Plan was adopted by the Trustees in November 1994 after completion of the Final Environmental Impact Statement. By unanimous consent, the Trustee Council may change the plan if the Council determines that the plan is no longer responsive to restoration needs.

OPERATING PROCEDURES

TRUSTEE COUNCIL

1. *Basic Governing Procedures.* The current edition of *Roberts Rules of Order* will govern the Trustee Council. All provisions of these rules of order will apply to Trustee Council deliberations unless the Council unanimously decides to proceed differently.

2. *Trustee Council Membership.* The following officials act on behalf of the public as trustees: the Attorney General of the State of Alaska; the Commissioner of the Alaska Department of Environmental Conservation; the Commissioner of the Alaska Department of Fish and Game; the Secretary of the United States Department of Agriculture; the Secretary of the United States Department of the Interior; and the Administrator of the National Oceanic and Atmospheric Administration, United States Department of Commerce. The State Trustees serve directly on the Trustee Council. The Federal Trustees have each appointed a representative to serve on the Council. These appointments include the Alaska Regional Forester, United States Department of Agriculture; the Assistant Secretary for Fish, Wildlife and Parks, United States Department of the Interior; and the Alaska Region Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, United States Department of Commerce. In the event a Council member is precluded from attending a meeting or must be excused during a meeting, an alternate may exercise voting privileges on behalf of the Council member. Each Council member shall designate in writing an alternate member and the designation shall be maintained in the official record or an alternate may be identified at the meeting and so stated for the record.

3. *Quorum.* A quorum of two-thirds (2/3) of the total Council membership including at least two state members and two federal members shall be required to convene a meeting. All decisions shall be made by unanimous agreement of the six Council members or their designated alternates.

4. *Chair.* The Trustee Council shall designate a chair to preside at each meeting. The chair may participate in discussion and debate at the meetings and shall vote on all questions before the Trustee Council.

5. *Council Action.* All matters before the Trustee Council which require a vote, make a recommendation, approve or disapprove an item, or otherwise render a decision shall require the unanimous agreement of the six Council members or their designated alternates. All actions by the Trustee Council shall be taken at duly convened meetings except as provided in Section 10.

6. *Recusal.* In the event a Council member believes he or she must recuse himself or herself from voting, the Council member may request the decision be deferred until a designated alternate is available to vote.

7. *Meetings.* Meetings shall be held at times and locations determined by the Council. The Executive Director shall provide a proposed agenda and appropriate briefing materials to the Council members in advance of the meeting. The final agenda for the meeting will be determined by the Council and shall include a reasonable opportunity for public comment.

8. *Executive Sessions.* Executive sessions shall be kept to a minimum and shall be used only for discussion of matters concerning confidential personnel issues, litigation or legal advice, habitat acquisition negotiations, confidential archaeological information, confidential fisheries information or other matters included under AS 44.62.310 © or other applicable State or Federal laws.

9. *Minutes of Council Meetings.* All meetings shall be recorded electronically or by a court reporter, and said records shall, along with the written, approved meeting notes, constitute the official record of the Council's actions.

10. *Emergency Action.* In the event of an emergency requiring Council action before a meeting can be held in accordance with the procedures described herein, the Executive Director will poll the Trustee Council and take action by unanimous agreement. Any decisions of the Trustee Council shall be reflected in the official record of the Trustee Council along with justification regarding the need to take emergency action. In addition, any emergency action taken shall be summarized for the record at the next meeting of the Trustee Council.

STRUCTURE

1. *General.* Pursuant to the agreement between the State of Alaska and the United States, the Trustee Council has created the position of Executive Director and the Restoration Office to manage the day-to-day administrative functions of the Trustee Council and the overall restoration program. These activities are complemented by the agencies, which are responsible for agency management activities and the management of projects approved by the Trustee Council.

2. *Restoration Office.* Under supervision of the Executive Director, the Restoration Office is responsible for: (1) facilitating communication between the federal and state governments, the six Council members and the Public Advisory Group; (2) maintaining the official record of the Council's actions; (3) coordinating the annual project proposal solicitation and annual restoration work plans; (4) preparing and analyzing financial and project status information; (5) developing and implementing procedures to achieve the goals and objectives of the Trustee Council; (6) performing and/or overseeing special and on-going projects; and (7) public outreach and public participation.

3. *Agencies.* Under supervision of the agency's Council member, each agency is responsible for: (1) ensuring that the procedures described herein, and the appropriate state or federal procedures are followed, including compliance with the National Environmental Policy

Act; (2) ensuring that projects funded meet their stated goals, objectives and schedules, and are accomplished consistent with the funds authorized; (3) implementing, evaluating and monitoring approved projects; (4) obtaining information from or facilitating the exchange of information among the Restoration Office, the public, cooperating agencies, and principal investigators. (5) developing agency goals and objectives for the restoration program; (6) assisting in the preparation and review of project proposals and detailed budgets; (7) assisting in the development of the annual restoration work plan; and (8) representing their Council member in matters related to the restoration program.

RESTORATION WORK PLAN

1. *Invitation.* Annually the public, private sector, non-profit groups, and government agencies will be invited to submit proposals for funding based on identified restoration priorities and needs.

2. *Internal Review.* Proposals received will be subject to independent scientific review, as well as policy, budget, agency and legal review.

3. *Public Review and Comment.* Prior to Trustee Council action, a reasonable period of time shall be provided to the public to review and comment on the project proposals and the Work Plan.

4. *Approval.* After expiration of the period for public review and comment, the Trustee Council, in open session and with additional opportunity for public comment, will review the proposed Work Plan. The Trustee Council may make such changes to the Work Plan or include terms and conditions of funding as the Council deems appropriate. Upon unanimous approval, the Work Plan shall be adopted by the Trustee Council.

HABITAT PROTECTION AND ACQUISITION

1. *General.* Habitat Protection and Acquisition is an important means of restoring injured resources and the services that are dependent upon those resources. Habitat Protection and Acquisition may include the purchase of lands or interests in land such as conservation easements, mineral rights, or timber rights.

2. *Parcel Nomination and Sponsorship.* Only those parcels nominated by a willing seller will be considered for purchase. In addition, a federal or state land management agency must sponsor the parcel prior to evaluation and ranking.

3. *Parcel Evaluation and Ranking.* Parcels that have been nominated and sponsored will be evaluated and ranked according to the potential benefits that purchase and protection would provide to injured resources and services. The criteria and procedures for evaluating and ranking parcels shall be developed by the Executive Director and approved by the Trustee Council.

4. *Terms and Conditions*. By unanimous agreement of the six Trustees or their designated alternates, a resolution shall be adopted authorizing the purchase of land or ownership rights. The resolution shall set forth the terms and conditions appropriate for the identified parcel(s).

5. *Title and Management*. The title of any lands, or ownership rights, will be specified in the resolution adopted by the Trustee Council. All land acquired shall be managed in accordance with the terms and conditions of the Trustee Council.

6. *Public Review and Comment*. Prior to final Trustee Council action, reasonable public notice shall be given and the public shall be provided an opportunity to comment.

7. *Application for Disbursement of Joint Funds*. Upon certification from the Executive Director that the terms and conditions set forth in the resolution have been satisfied, the Alaska Department of Law and the United States Department of Justice shall be requested to petition the District Court for the withdrawal of funds.

RESTORATION RESERVE

1. *General*. The Trustee Council has established the Restoration Reserve. Pursuant to Court Order, the Restoration Reserve is a separate account within the Court Registry Investment System (CRIS) administered through the United States District Court for the Southern District of Texas.

2. *Payments*. The amount to be deposited on an annual basis will be determined by the unanimous agreement of the six Trustees or their designated alternates. Upon approval, the Alaska Department of Law and the United States Department of Justice shall petition the District Court to transfer the funds from the Joint Account to the Restoration Reserve.

3. *Investments and Interest*. The Restoration Reserve shall be invested with the intent of maximizing interest earnings and all such earnings shall be retained in the Restoration Reserve.

4. *Use*. While the Trustee Council intends that the principle and interest from the Restoration Reserve not be used prior to Exxon's last payment, the Trustee Council may, at any time by unanimous agreement of the six members, use the principle or interest before that time.

PUBLIC PARTICIPATION

1. *General.* The Trustee Council recognizes that public participation in the restoration program is an integral part of the process. To that end, the public is invited to review, comment and participate in the development and implementation of the restoration program.

2. *Exxon Valdez Oil Spill Public Advisory Group.* By order of the District Court for the District of Alaska, the Public Advisory Group is to advise the Trustees, appointed to administer the fund established in settlement of United States v. Exxon Corporation, Civil Action No. A91-082, and State of Alaska v. Exxon Corporation, Civil Action No. 091-083, both in the United States District Court for the District of Alaska, in all matters described in Paragraph V.A.1 of the MOA referenced above. The overall procedures for the Public Advisory Group are contained in the Charter unanimously approved by the Trustee Council and signed by the Secretary of the United States Department of the Interior. The Public Advisory Group consists of members recommended by the Trustee Council and appointed by the Secretary of the United States Department of the Interior.

3. *Public Notice.* Reasonable public notice shall be given for all meetings of the Trustee Council. The notice shall include, when possible, publication in one or more newspapers of general circulation in the following communities: Anchorage, Chenega, Cordova, Homer, Juneau, Kenai, Kodiak, Seward, Tatitlek, Valdez and Whittier and by distribution of the public notice to radio stations broadcasting to these communities. To the maximum extent possible, reasonable public notice shall also be provided to other communities within the spill area. The public notice shall identify the proposed agenda and include a reasonable opportunity for public comment.

4. *Access to Information.* The public shall have access to the official record of the Council's action and information regarding proposed or completed studies or other activities funded by Joint Trust Funds.

FINANCIAL PROCEDURES

SETTLEMENT FUNDS

1. *Joint Trust Fund.* Pursuant to Court Order and in accordance with the Terms of the Memorandum of Agreement and Consent Decree, all payments are placed in an interest-bearing account in the Court Registry Investment System (CRIS) administered through the United States District Court for the Southern District of Texas.

2. *Disbursement.* Upon joint application of counsel for the United States and the State of Alaska, the United States District Court for the District of Alaska orders the disbursement of funds for purposes consistent with the Memorandum of Agreement and Consent Decree. The joint application shall consist of legal documents required by the Court and documentation demonstrating the unanimous agreement of the Trustee Council. When appropriate, interest earned on the federal and state accounts and/or unobligated balances from prior years' Work Plans shall be subtracted from the disbursement.

3. *Authority to Spend.* No obligations shall be incurred until such time as a Court Order is entered by the United States District Court for the District of Alaska and any terms and conditions placed on the funding by the Trustee Council have been met. In the event the Trustee Council approves the expenditure of interest accrued on funds previously disbursed, no obligations shall be incurred until a Joint Notice is submitted to the United States District Court for the District of Alaska and any terms and conditions placed on the funding by the Trustee Council have been met.

4. *Federal Account.* In accordance with federal law, funds required for federal project implementation are deposited in the Natural Resource Damage Assessment and Restoration (NRDA&R) Fund.

5. *State Account.* In accordance with state law, funds required for state project implementation are deposited in the *Exxon Valdez* Oil Spill Settlement (EVOS) Fund.

AUTHORIZATION

1. *General.* Initial authorization shall be recorded consistent with the budgets approved by the Trustee Council.

2. *Fiscal Year.* Unless otherwise approved by the Trustee Council, the fiscal year begins on October 1 and ends on September 30. In the event the Trustee Council approves a project with a different fiscal year, the fiscal year must be clearly stated in the approval motion.

3. *Adjustments.* As long as an adjustment does not alter the underlying scope or objectives of the affected projects, agencies have the authority to move funds into or out of projects up to

the cumulative amount of \$25,000 or up to 10% of the authorized level of funding for each affected project, whichever is less. In addition, as long as an adjustment does not alter the underlying scope or objectives of the project, agencies are authorized to move, within a single project, budgeted funds between line items and may change detailed items of expenditure to accommodate circumstances encountered during budget implementation. Justification and supporting documentation as to the reason for all such adjustments (both between projects and line-items) shall be maintained by the agencies. All adjustments between projects shall be reported to the Executive Director in the Quarterly Financial Report. For further information regarding the Quarterly Report, refer to the Reporting section of these procedures.

4. *Revisions.* Trustee Council action is required to move amounts greater than that authorized in section 3 above. Trustee Council action is also required if the revision changes the scope or objectives of a project, establishes a new project, or terminates an approved project during the fiscal year. In the event the proposed revision changes the scope or objectives of a project, establishes a new project, or terminates an approved project during the fiscal year, the public shall be given a reasonable opportunity to review and comment on the proposed change prior to action of the Trustee Council.

PROJECT COSTS

1. *Direct Project Costs.* Direct costs are those costs that can be identified with or linked to a specific project.

2. *Indirect Project Costs.* Indirect costs are those that are incurred for common or joint projects and therefore cannot be identified readily and specifically with a project. In the case of governmental agencies, indirect costs are covered through a general administration formula. The appropriate indirect rate for contractors will be approved on a case-by-case basis.

3. *General Administration Formula.* The general administration formula is used to reimburse governmental agencies for indirect project costs incurred in implementing the restoration program. Actual recovery shall be in proportion to actual direct costs and is limited to:

- a. Fifteen percent of each project's actual personnel costs; and
- b. Seven percent of the first \$250,000 of each project's actual contractual costs, plus two percent of each project's actual contractual costs in excess of \$250,000.

4. *Unallowable Costs.* Restoration funds shall not be used to support normal agency functions and activities. As such, costs that would have been incurred, absent the oil spill, are not eligible for reimbursement. This includes costs considered necessary for the management, supervision and administrative control of an agency.

ACCOUNTING

1. *General.* It is the responsibility of agency personnel and certifying officers to make certain that all actions are based on sound accounting and budgetary practices.

2. *Source Documentation.* Adequate justification and supporting documentation must be maintained for each project.

3. *Appropriateness.* Expenditures charged to a project must be directly attributable to or allocated to the project benefiting from the activity. Salaries and benefits may be charged for the time an individual is working directly on a project, when supported by time sheets and when work performed by such individuals is necessary to the project.

4. *Reasonableness.* Costs attributable to a project must be necessary and reasonable to achieve the objectives of the project and be consistent with the policies and procedures governing other activities of the agency.

5. *Segregation.* Accounts must be properly designed and maintained to ensure that funds are expended in accordance with Trustee Council approval. In addition, direct project costs must be segregated from indirect costs to ensure that restoration projects are assessed the general administration formula in proportion to direct costs.

6. *Expended (Outlays).* The term expended shall be defined as the actual outlay of funds through the issuance of checks or warrants, the disbursement of cash, or the electronic transfer of funds. The term expenditure shall be defined as the act of expending.

7. *Obligations (Encumbrances).* The term obligations shall be defined as a commitment to acquire goods or services during the fiscal year, or to accommodate contracts where the length of time for completion of the service extends into the following fiscal year. An obligation is a commitment to pay and should not be considered an expenditure until the goods or services have been received and the invoice paid. Funds approved for contracts in which the length of time for completion of the service extends into the following fiscal year, may be obligated at year end. To be valid, the length of time to complete the service should be identified in the Detailed Project Description and the budget approved by the Trustee Council. As a general rule, agencies shall have one year from the end of a project's approved fiscal year to satisfy all obligations.

LAPSE

1. *General.* The unexpended and unobligated balance of a project shall lapse on September 30 of the fiscal year for which the project was approved. However, an undisclosed obligation may be established and/or paid during the Close-Out Period.

2. *Close-Out Period.* During the months of October, November and December agencies may pay from prior year funds an expense that was undisclosed during the fiscal year just ended. In addition, agencies may establish obligations to accommodate an expense that was undisclosed during the fiscal year just ended. By January 31 of each year, agencies shall report to the Executive Director the total expended for each project, plus any obligations relating to the fiscal year just ended. For further information regarding the Annual Financial report, refer to the Reporting section of these procedures.

3. *Reimbursement for Prior Year Expenses.* Expenses discovered after the Close-Out Period may be charged to the subsequent year's project budget. In the event the agency determines that insufficient funds are available to charge the expense to the subsequent year's budget, or the expense relates to a completed project, authority to adjust a prior year Final Report is required. During the months of January through June, adjustments relating to a prior year Final Report may be approved by the Executive Director. All expenses discovered after June require Trustee Council action.

EQUIPMENT

1. *Title.* Subject to the conditions set forth in this section, title to equipment acquired with Joint Trust Funds is retained by the respective governmental agency. In the event equipment is transferred between governments, title to the equipment shall also be transferred.

2. *Use.* Equipment shall be used for the project for which it was acquired. When no longer needed for the original project, the equipment may be used in other activities for which funding was approved by the Trustee Council. The equipment may also be used for other agency purposes, providing that first preference is given to restoration projects for which funding is approved by the Trustee Council.

3. *Inventory.* Property records shall be maintained in accordance with agency procedures.

4. *Repair, Maintenance and Safeguarding.* The repair, maintenance and safeguarding of equipment purchased with joint funds shall be accomplished in accordance with agency procedures.

5. *Disposal.* Equipment that ceases to function or have value shall be disposed of in accordance with agency procedures.

PROFESSIONAL SERVICES CONTRACTS

1. *General.* Agencies shall ensure that professional services are accomplished in accordance with the terms, conditions, and specifications of the project approved by the Trustee Council. In the event the approved motion of the Trustee Council specifically identifies an entity to carry-out the project and the contracting agency determines that an award to an entity, different than that

specified by the Trustee Council, would better serve the restoration program, the basis of that determination shall be stated in writing to the Executive Director and forwarded to the Trustee Council for approval.

2. *Definition.* Professional services means contracts for professional, technical, or consultant services that result in the production of a report or the completion of a task, and include analysis, evaluation, prediction, planning, or a recommendation. --

3. *Indirect Rates.* The appropriate indirect rate for contractors will be determined on a project by project basis or through a memorandum of understanding with a contractor that provides for a consistent rate and methodology.

4. *Equipment.* Equipment purchased by the contractor will remain the property of the contracting agency.

5. *Special Considerations.* All notes and other data developed by the contractor shall remain the sole property of the contracting agency.

REPORTING

1. *Joint Account.* Revenues, disbursements and fees associated with the Court Registry Investment System shall be reported to the Trustee Council on a monthly basis. This report shall include an analysis of the Joint Trust Fund Balance and the total estimated funds available.

2. *Quarterly Financial Reports.* Within thirty days following the end of each quarter, agencies shall report expenditures and obligations recorded at the end of the quarter to the Executive Director. The report shall include the total amount authorized for each project, any revisions approved by the Trustee Council, any adjustments between projects, the total expended by project, and the total of any outstanding obligations by project.

3. *Quarterly Status Reports.* Within thirty days following the end of each quarter, agencies shall submit a project status report to the Executive Director. The report submitted by the agencies shall communicate the project status in relationship to the project tasks that were identified in the proposal approved by the Trustee Council, any problems that are being encountered, and noteworthy accomplishments.

4. *Annual Financial Reports.* By January 31 of each year, agencies shall report to the Executive Director the total expended for each project, plus any valid obligations relating to the fiscal year just ended. The report shall reflect the total amount authorized by line-item, any revisions approved by the Trustee Council, any adjustments between projects, and any adjustments between line-items.

5. *Annual Project Reports.* Annually, agencies shall submit a report to the Executive Director for all continuing projects approved by the Trustee Council. To be considered continuing, a project must have been initiated with the expectation that it was multi-year. The report deadline and format shall be determined by the Executive Director.

6. *Final Project Reports.* Upon completion of a project or the determination by the Trustee Council to no longer fund a project, agencies shall submit a report to the Executive Director. The report deadline and format shall be determined by the Executive Director.

7. *Equipment Reports.* By December 31 of each year, agencies shall report equipment valued at a cost of \$1,000 or more, and other sensitive items to the Executive Director. Sensitive items shall include firearms, audio/visual equipment, computers and cameras. The report shall include a listing of equipment purchased during the fiscal year just ended, the reassignment of equipment to other activities funded by the Trustee Council and any equipment currently being used for other agency purposes. Agencies shall also report all equipment that has ceased to function or have value and identify any equipment that was disposed of during the previous fiscal year.

AUDITS

1. *General.* The purpose of an audit is to ensure public trust and accountability regarding the use of settlement funds. An audit provides credibility to the information reported by or obtained from management by independently acquiring and evaluating the evidence.

2. *Definition.* The term audit includes both financial and performance audits.

3. *Readiness.* When an agency receives funding from the Trustee Council, the agency assumes certain responsibilities with those funds. These include ensuring that source documentation is organized and available for review, internal controls are documented and that individuals knowledgeable about the projects are available to answer questions.

4. *Professional Services Contracts.* Contractors who receive funding for professional, technical, or consultant's services are not automatically subject to an annual audit. However, this does not preclude the Trustee Council or the agency from making a determination that an audit is required in addition to an agency's review of expenditure documentation and work produced by a contractor.

5. *State and Federal Audits.* Each Federal agency and the State of Alaska have audit functions. In the event an audit is performed, a copy of the audit shall be provided to the Executive Director.

6. *External Audits.* All external audits shall be conducted in accordance with Governmental Auditing Standards. In addition, the firm and the staff assigned to conduct the audit shall be

independent of the Trustee Council, the funding agencies, the Court Registry Investment System, Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company.

APPENDIX A: FEDERAL INTERNAL PROCEDURES

NATURAL RESOURCES DAMAGE ASSESSMENT AND RESTORATION FUND

1. *Segregation.* All principal and interest shall be accounted for separately by the Department of the Interior, Fish and Wildlife Service, Division of Finance. Each disbursement shall be assigned an appropriate account, sub-activity and/or project number when deposited to the aggregate Fish and Wildlife Service account within the Federal Reserve Bank. Confirmation of the deposit shall be provided to the Treasury Department, which reconciles the deposit with the Federal Reserve Bank.

2. *Investments.* By law, the funds may only be invested in Treasury Securities and all ownership is maintained in the name of the Natural Resource Damage Assessment and Restoration Fund. Based on an estimate of cash flow requirements, the Department of the Interior, Office of the Secretary generates instructions for investment and forwards the instructions to the Division of Finance. The Division of Finance develops and submits an Investment Confirmation Letter that indicates which account investments are being purchased, the scheduled maturity dates and the investment type(s) to the Department of Treasury, which purchases the securities. At maturity, interest income is paid directly to the account.

3. *Reports.* Quarterly, the Department of the Interior shall report interest income to the Executive Director. In addition, all disbursements to the federal agencies shall be reported to the Executive Director.

AUTHORIZATION

1. *General.* Congress permanently appropriated funding approved by the Trustee Council in Section 207 of Public Law 102-227. However, all authorization is subject to compliance with any terms and conditions imposed by the Trustee Council.

2. *Budget and Reports.* Under Section 207, agencies are required to comply with directions published by the Federal Office of Management and Budget. This includes submitting a budget for the upcoming fiscal year and documentation associated with the current and prior fiscal year.

3. *Obligation Authority.* Prior to the obligation of any funds, agencies must first complete the allocation process required by their respective budget offices to establish codes for each project. The allocation process provides the authority, amount of funding and the guidance with which to obligate funds.

4. *Quarterly Instructions for Transfer.* On a quarterly basis, federal agencies are required to submit to the United States Department of the Interior, Office of the Secretary, Office of Budget instructions regarding the transfer of settlement funds. The instructions shall specify the purpose of the transfer, which account the funds are to be transferred, and an estimate of cash flow requirements. Unless the transfer represents a one-time payment, the cash flow estimate shall be structured on a quarterly basis. Any change in cash flow requirements during the fiscal year shall be reflected on subsequent quarterly instructions for transfer. A change is defined as a decrease in the cash flow requirement due to an unanticipated delay in a project or an increase in the cash flow requirement due to an unanticipated change in the schedule.

5. *Fund Transfers.* There are two types of fund transfers. The first type of transfer is internal to the Department of the Interior, Fish and Wildlife Service. The form used is the Allotment Advice, Form FWS 3-1951. The Allotment Advice is initiated and prepared by the Division of Budget, Fish and Wildlife Service and then sent to the Division of Finance, Fish and Wildlife Service where the funds are made available through the Work Activity Guidance (WAG) and the Control Schedule Process. The second type of transfer is to agencies/bureaus outside of the Fish and Wildlife Service. The form used is a SF1151, a non-expenditure transfer. The SF1151 is initiated, prepared, and approved by the Division of Budget, Fish and Wildlife Service and then sent to Treasury where the funds are transferred within the Treasury system.

6. *Return of Unexpended and Unobligated Balances.* On January 31 of each year, Federal Trustee Agencies shall return to the Natural Resource Damage Assessment and Restoration Fund the unexpended and unobligated balance for the fiscal year just ended. Concurrently, the agencies shall return any recovery of prior year obligations. Agencies have the option of either transferring the funds or using the unexpended and unobligated balance to off-set a subsequent fund transfer. Agencies are required to submit to the United States Department of the Interior, Office of the Secretary, Office of Budget a report reflecting the total unexpended and unobligated balance for the fiscal year just ended and the amount of funding recovered from prior year obligations. The report submitted shall also indicate the method the agency intends to use to return the funds. The Department of the Interior shall report the total unexpended and unobligated balance for the fiscal year just ended and the amount of funding recovered from prior year obligations to the Executive Director by February 15 of each year.

APPENDIX B: STATE INTERNAL PROCEDURES

EXXON VALDEZ OIL SPILL SETTLEMENT FUND

1. *Segregation.* All principal and interest shall be accounted for separately by the Alaska Department of Revenue, Division of Treasury. Each disbursement shall be deposited in a Department of Law sub-account. Confirmation of the deposit shall be provided by the bank to the Department of Revenue, at which time the funds are moved from the sub-account to the general investment pool within the Alaska State Accounting System. The Department of Law, Division of Administrative Services is notified of the deposit and allocates the funds to the *Exxon Valdez* Oil Settlement Fund.

2. *Investments.* The Alaska Department of Revenue, Division of Treasury will calculate the daily income amount and provide for daily compounding (including weekends and holidays) as follows: (a) using the weekly 180 day Treasury Bill Rates for the month based on the weekly auctions occurring during the month; and (b) the daily cash balance of the *Exxon Valdez* Oil Settlement Fund within the Alaska State Accounting System. The income shall be credited to the fund and posted in the Alaska State Accounting System on a monthly basis.

3. *Reports.* The Department of Revenue, Division of Treasury shall report income earned to the Executive Director on a monthly basis.

AUTHORIZATION

1. *General.* Pursuant to Alaska Statute 37.14.405(a), a state agency may not expend money received from the trust unless the expenditure is in accordance with an appropriation made by law. However, prior to the expenditure of funds, Trustee Council approval must be obtained, the Court Order signed, and any terms and conditions placed on the funding by the Trustee Council have been met.

2. *Budget and Reports.* To meet the requirements of Alaska Statute 37.14.415, agencies are required to comply with directions published by the State Office of Management and Budget, Division of Budget Review. Alaska Statute 37.14.415 states: The state trustees shall

(1) submit to the governor and the legislature by December 15 of each year a report setting out, for each object or purpose of expenditure, the amounts approved for expenditure from the trust during the preceding fiscal year and the amounts actually expended during the preceding fiscal year.

(2) prepare and submit, under AS 37.07, a budget for the next fiscal year setting out, for each object or purpose of expenditure, the trustees' estimate of the amounts that are, during the next fiscal year, to be funded by the trust and expended by state agencies; and

(3) prepare and submit to the legislature, at the same time the budget for state agency expenditures is submitted under (2) of this section, a proposal setting out, for each object or

purpose of expenditure, the trustees' estimate of the amounts that are to be funded by the trust in the next fiscal year and that are not included in the budget submitted under (2) of this section

3. *Legislative Budget and Audit Committee.* Alaska Statute 37.14.405(b), allows agencies to meet the requirements of an appropriation conditioned on compliance with the program review provisions of AS 37.07.080(h). In accordance with the procedures of the Alaska Office of Management and Budget (OMB), agencies are required to submit a request to OMB for transmittal to the Legislative Budget and Audit Committee.

4. *Expenditure Authority.* Authorization to receive and expend shall be recorded in the Alaska State Accounting System within the *Exxon Valdez* Oil Spill Settlement Fund. Following legislative action, OMB will record the authorization by approving an Authorized Budget Transaction (AB).

Draft

**EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL
POLICIES AND PROCEDURES
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INTRODUCTION

1. *Purpose.* Define the Policies and Procedures of the *Exxon Valdez* Oil Spill Trustee Council (Trustee Council) and provide guidance regarding the authorities and responsibilities of agencies that receive Joint Trust Funds approved by the Trustee Council.

2. *Supersession.* These procedures supersede the Operating Procedures adopted by the Trustee Council January 10, 1992, and the Financial Operating Procedures adopted by the Trustee Council September 21, 1992.

3. *Relationship.* The financial operating procedures of the Trustee Council augment state and federal procedures. Agencies receiving funding approved by the Trustee Council are responsible for ensuring that the procedures described in this document and the appropriate state or federal procedures are followed.

4. *Amendments.* These procedures may be modified by unanimous agreement of the Trustee Council.

5. *Authority.* The principles and processes stated herein are based on the authorities conveyed by the Memorandum of Agreement and Consent Decree entered as settlement of *United States of America v. State of Alaska*, No. A91-081 Civil, U.S. District Court of Alaska. The Joint Trust Fund is comprised of all payments received in settlement of *State of Alaska v. Exxon Corporation, et al.*, No. A91-082 CIV, and *United State of America v. Exxon Corporation, et al.*, No. A91-082.

6. *Restoration Plan.* The *Exxon Valdez* Restoration Plan provides long-term guidance for restoring the resources and services injured by the oil spill. It contains policies for making restoration decisions and describes how restoration activities will be implemented. The Restoration Plan was adopted by the Trustees in November 1994 after completion of the Final Environmental Impact Statement. By unanimous consent, the Trustee Council may change the plan if the Council determines that the plan is no longer responsive to restoration needs.

OPERATIONAL POLICIES AND PROCEDURES

TRUSTEE COUNCIL

1. *Basic Governing Procedures.* The current edition of *Roberts Rules of Order* will govern the Trustee Council. All provisions of these rules of order will apply to Trustee Council deliberations unless the Council unanimously decides to proceed differently.

2. *Trustee Council Membership.* The following officials act on behalf of the public as trustees: the Attorney General of the State of Alaska; the Commissioner of the Alaska Department of Environmental Conservation; the Commissioner of the Alaska Department of Fish and Game; the Secretary of the United States Department of Agriculture; the Secretary of the United States Department of the Interior; and the Administrator of the National Oceanic and Atmospheric Administration, United States Department of Commerce. The State Trustees serve directly on the Trustee Council. The Federal Trustees have each appointed a representative to serve on the Council. These appointments include the Alaska Regional Forester, United States Department of Agriculture; the Assistant Secretary for Fish, Wildlife and Parks, United States Department of the Interior; and the Alaska Region Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, United States Department of Commerce. In the event a Council member is precluded from attending a meeting or must be excused during a meeting, an alternate may exercise voting privileges on behalf of the Council member. Each Council member shall designate in writing an alternate member and the designation shall be maintained in the official record or an alternate may be identified at the meeting and so stated for the record.

3. *Quorum.* A quorum of two-thirds (2/3) of the total Council membership including at least two state members and two federal members shall be required to convene a meeting. All decisions shall be made by unanimous agreement of the six Council members or their designated alternates.

4. *Chair.* The Trustee Council shall designate a chair to preside at each meeting. The chair may participate in discussion and debate at the meetings and shall vote on all questions before the Trustee Council.

5. *Council Action.* All matters before the Trustee Council which require a vote, make a recommendation, approve or disapprove an item, or otherwise render a decision shall require the unanimous approval of the six Council members or their designated alternates. All actions by the Trustee Council shall be taken at duly convened meetings except as provided in Section 10.

6. *Abstention.* Abstaining from voting by a Council member shall not be permitted unless there is an affirmative vote of all members of the Trustee Council and any apparent, or declared, conflict of interest is stated for the record. In the event a Council member believes he or she must abstain from participating in a decision, the Council member may request the decision be deferred

until a designated alternate is available to vote.

7. *Meetings.* Meetings shall be held at times and locations determined by the Council. The Executive Director shall provide a proposed agenda and appropriate briefing materials to the Council members in advance of the meeting. The final agenda for the meeting will be determined by the Council and shall include a reasonable opportunity for public comment.

8. *Executive Sessions.* Executive sessions shall be kept to a minimum and shall be used only for discussion of matters concerning confidential personnel issues, litigation or legal advice, habitat acquisition negotiations, confidential archaeological information, confidential fisheries information or other matters included under AS 44.62.310(c) or other applicable State or Federal laws.

9. *Minutes of Council Meetings.* All meetings shall be recorded electronically or by a court reporter, and said records shall, along with the written, approved meeting notes, constitute the official record of the Council's actions.

10. *Emergency Action.* In the event of an emergency requiring Council action before a meeting can be held in accordance with the procedures described herein, the Executive Director will poll the Trustee Council and take action by unanimous agreement. Any decisions of the Trustee Council shall be reflected in the official record of the Trustee Council along with justification regarding the need to take emergency action.

STRUCTURE

1. *General.* Pursuant to the agreement between the State of Alaska and the federal government, signed December 1993, the Trustee Council has created the position of Executive Director and the Restoration Office to manage the day-to-day administrative functions of the Trustee Council and the overall restoration program. These activities are complemented by the agencies which are responsible for agency management activities and the management of projects approved by the Trustee Council.

2. *Restoration Office.* Under supervision of the Executive Director, the Restoration Office is responsible for: (1) facilitating communication between the federal and state governments, the six Council members and the Public Advisory Group; (2) maintaining the official record of the Council's action; (3) coordinating the annual project proposal solicitation and annual restoration work plans; (4) preparing and analyzing financial and project status information; (5) developing and implementing procedures to achieve the goals and objectives of the Trustee Council; (6) performing and/or overseeing special and on-going projects; and (7) public outreach and public participation.

3. *Agencies.* Under supervision of the agency's Council member, the agency is responsible for: (1) ensuring that the procedures described herein, and the appropriate state or

federal procedures are followed, including compliance with the National Environmental Policy Act; (2) ensuring that projects funded meet their stated goals, objectives and schedules, and are accomplished consistent with the funds authorized; (3) implementing, evaluating and monitoring approved project; (4) obtaining information from or facilitating the exchange of information among the Restoration Office, the public, cooperating agencies, and principal investigators; (5) developing agency goals and objectives for the restoration program; (6) assisting in the preparation and review of project proposals and detailed budgets; (7) assisting in the development of the annual restoration work plan; and (8) representing their Council member in matters related to the restoration program.

RESTORATION WORK PLAN

1. *Invitation.* Annually the public, private sector, non-profit groups, and government agencies will be invited to submit proposals for funding based on identified restoration priorities and needs.

2. *Internal Review.* Proposals received will be subject to independent scientific review, as well as, policy, budget, agency and legal review.

3. *Public Review and Comment.* Prior to Trustee Council action, the Work Plan and the project proposals shall be made available to the public for review and comment.

4. *Adoption.* After expiration of the period for public review and comment, the Trustee Council, in open session and with additional opportunity for public comment, will review the proposed Work Plan. The Trustee Council may make such changes to the Work Plan or include terms and conditions of funding as the Council deems appropriate. Upon unanimous approval, the Work Plan shall be adopted by the Trustee Council.

HABITAT PROTECTION AND ACQUISITION

1. *General.* Habitat Protection and Acquisition is an important means of restoring injured resources and the services that are dependent upon those resources. Habitat Protection and Acquisition may include the purchase of lands or interests in land such as conservation easements, mineral rights, or timber rights.

2. *Parcel Nomination and Sponsorship.* Only those parcels nominated by a willing seller will be considered for purchase. In addition, a federal or state land management agency must sponsor the parcel prior to evaluation and ranking.

3. *Parcel Evaluation and Ranking.* Parcels that have been nominated and sponsored will be evaluated and ranked according to the potential benefits that purchase and protection would provide to injured resources and services. The criteria and procedures for evaluating and ranking parcels shall be developed by the Executive Director and approved by the Trustee Council.

4. *Terms and Conditions.* By unanimous agreement of the six Trustees or their designated alternates, a resolution shall be adopted authorizing the purchase of land or ownership rights. The resolution shall set forth the terms and conditions appropriate for the identified parcel(s).

5. *Title and Management.* The title of any lands, or ownership rights will be specified in the resolution adopted by the Trustee Council. All land acquired shall be managed in accordance with the terms and conditions of the Trustee Council.

6. *Public Review and Comment.* Prior to final Trustee Council action, reasonable public notice shall be given and the public shall be provided an opportunity to comment.

7. *Application for Disbursement of Joint Funds.* Upon certification from the Executive Director that the terms and conditions set forth in the resolution have been satisfied, the Alaska Department of Law and the United States Department of Justice shall be requested to petition the District Court for the withdrawal of funds.

RESTORATION RESERVE

1. *General.* The Trustee Council has established the Restoration Reserve. Pursuant to Court Order, the Restoration Reserve is a separate account within the Court Registry Investment System (CRIS) administered through the United States District Court for the Southern District of Texas.

2. *Payments.* The amount to be deposited on an annual basis will be determined by the unanimous agreement of the six Trustees or their designated alternates. Upon approval, the Alaska Department of Law and the United States Department of Justice shall petition the District Court to transfer the funds.

3. *Investments and Interest.* The Restoration Reserve shall be invested with the intent of maximizing interest earnings and all such earnings shall be retained in the Restoration Reserve.

4. *Use.* While the Trustee Council intends that the principle and interest from the Restoration Reserve be available following Exxon's last payment, the Trustee Council may, at any time by unanimous vote of the six members, use the principle or interest before that time.

PUBLIC PARTICIPATION

1. *General.* The Trustee Council recognizes that public participation in the restoration program is an integral part of the process. To that end, the public is invited to review, comment and participate in the development and implementation of the restoration program.

2. *Exxon Valdez Oil Spill Public Advisory Group.* By order of the District Court for the District of Alaska, the Public Advisory Group is to advise the Trustees, appointed to administer the fund established in settlement of United States v. Exxon Corporation, Civil Action No. A91-082, and State of Alaska v. Exxon Corporation, Civil Action No. 091-083, both in the United States District Court for the District of Alaska, in all matters described in Paragraph V.A.1 of the MOA referenced above. The overall procedures for the Public Advisory Group are contained in the Charter unanimously approved by the Trustee Council and signed by the Secretary of the United States Department of the Interior. The Public Advisory Group consists of members recommended by the Trustee Council and appointed by the Secretary of the United States Department of the Interior.

3. *Public Notice.* Reasonable public notice shall be given for all meetings of the Trustee Council. The notice shall include, when possible, publication in one or more newspapers of general circulation in the following communities: Anchorage, Chenega, Cordova, Homer, Juneau, Kenai, Kodiak, Seward, Tatitlek, Valdez and Whittier and by distribution of the public notice to radio stations broadcasting to these communities. The public notice shall identify the proposed agenda and include a reasonable opportunity for public comment.

4. *Access to Information.* The public shall have access to the official record of the Council's action and information regarding proposed or completed studies or other activities funded by Joint Trust Funds.

FINANCIAL POLICIES AND PROCEDURES

SETTLEMENT FUNDS

1. *Joint Trust Fund.* Pursuant to Court Order and in accordance with the Terms of the Memorandum of Agreement and Consent Decree, all payments are placed in an interest-bearing account in the Court Registry Investment System (CRIS) administered through the United States District Court for the Southern District of Texas.
2. *Disbursement.* Upon joint application of counsel for the United States and the State of Alaska, the United States District Court for the District of Alaska orders the disbursement of funds for purposes consistent with the Memorandum of Agreement and Consent Decree. The joint application shall consist of legal documents required by the Court and documentation demonstrating the unanimous approval of the Trustee Council. When appropriate, interest earned on the federal and state accounts and/or unobligated balances from prior years Work Plans shall be subtracted from the disbursement.
3. *Authority to Spend.* No obligations shall be incurred until such time as a Court Order is entered by the United States District Court for the District of Alaska and any terms and conditions placed on the funding by the Trustee Council have been met.
4. *Federal Account.* In accordance with federal law, funds required for federal project implementation are deposited in the Natural Resource Damage Assessment and Restoration (NRDA&R) Fund.
5. *State Account.* In accordance with state law, funds required for state project implementation are deposited in the *Exxon Valdez* Oil Spill Settlement (EVOS) Fund.

AUTHORIZATION

1. *General.* Initial authorization shall be recorded consistent with the budgets approved by the Trustee Council.
2. *Fiscal Year.* Unless otherwise approved by the Trustee Council, the fiscal year begins on October 1 and ends on September 30. In the event the Trustee Council approves a project with a different fiscal year, the fiscal year must be clearly stated in the approval motion.
3. *Adjustments.* As long as an adjustment does not alter the underlying scope or objectives of the affected projects, agencies have the authority to move funds into or out of projects up to the cumulative amount of \$25,000 or up to 10% of the authorized level for each affected project, whichever is less. In addition, as long as an adjustment does not alter the underlying scope or objectives of the project, agencies are authorized to move, within a single project, budgeted funds between line items and may change detailed items of expenditure to accommodate circumstances

encountered during budget implementation. Justification and supporting documentation as to the reason for any such adjustments (both between projects and line-items) shall be maintained by the agencies. Any adjustments between projects shall be reported to the Executive Director in the Quarterly Financial Report. For further information regarding the Quarterly Report, refer to the Reporting section of these policies and procedures.

4. *Revisions.* Trustee Council action is required to move amounts greater than that authorized in section 3 above. Trustee Council action is also required if the revision changes the scope or objectives of a project, establishes a new project, or terminates an approved project during the fiscal year. In the event the proposed revision changes the scope or objectives of a project, establishes a new project, or terminates an approved project during the fiscal year, the public must be notified of the proposed change prior to action of the Trustee Council and given the opportunity to comment.

PROJECT COSTS

1. *Direct Project Costs.* Direct costs are those costs that can be identified with or linked to a specific project.

2. *Indirect Project Costs.* Indirect costs are those that are incurred for common or joint projects and therefore cannot be identified readily and specifically with a project. In the case of governmental agencies, indirect costs are covered through a general administration formula. The appropriate indirect rate for contractors will be approved on a case-by-case basis.

3. *General Administration Formula.* The general administration formula is used to reimburse governmental agencies for indirect project costs incurred in implementing the restoration program. Actual recovery shall be in proportion to actual direct costs and is limited to:

- a. Fifteen percent of each projects actual personnel cost; and
- b. Seven percent of the first \$250,000 of each projects actual contractual costs, plus two percent of each projects actual contractual costs in excess of \$250,000.

4. *Unallowable Costs.* Restoration funds shall not be used to support normal agency functions and activities. As such, costs that would have been incurred, absent the oil spill, are not eligible for reimbursement. This includes costs considered necessary for the management, supervision and administrative control of an agency.

ACCOUNTING

1. *General.* It is the responsibility of agency personnel and certifying officers to make certain that all actions are based on sound accounting and budgetary practices.

2. *Source Documentation.* Adequate justification and supporting documentation must be

maintained for each project.

3. *Appropriateness.* Expenditures charged to a project must be directly attributable to or allocated to the project benefiting from the activity. Salaries and benefits may be charged for the time an individual is working directly on a project, when supported by time sheets and when work performed by such individuals is necessary to the project.

4. *Reasonableness.* Costs attributable to a project must be necessary and reasonable to achieve the objectives of the project and be consistent with the policies and procedures governing other activities of the agency.

5. *Segregation.* Accounts must be properly designed and maintained to ensure that funds are expended in accordance with Trustee Council approval. In addition, direct project costs must be segregated from indirect costs to ensure that restoration projects are assessed the general administration formula in proportion to direct costs.

6. *Expended (Outlays).* The term expended shall be defined as the actual outlay of funds through the issuance of checks or warrants, the disbursement of cash, or the electronic transfer of funds. The term expenditure shall be defined as the act of expending.

7. *Obligations (Encumbrances).* The term obligations shall be defined as a commitment to acquire goods or services during the fiscal year, or to accommodate contracts where the length of time for completion of the service extends into the following fiscal year. An obligation is a commitment to pay and should not be considered an expenditure until the goods or services have been received and the invoice paid. Funds approved for contracts in which the length of time for completion of the service extends into the following fiscal year, may be obligated at year end. To be valid, the length of time to complete the service should be identified in the Detailed Project Description and the budget approved by the Trustee Council. As a general rule, agencies shall have one year from the end of a projects approved fiscal year to satisfy all obligations.

LAPSE

1. *General.* The unexpended and unobligated balance of a project shall lapse on September 30 of the fiscal year for which the project was approved. However, an undisclosed obligation may be established and/or paid during the Close-Out Period.

2. *Close-Out Period.* During the months of October, November and December agencies may pay from prior year funds an expense which was undisclosed during the fiscal year just ended. In addition, agencies may establish obligations to accommodate an expense which was undisclosed during the fiscal year just ended. Thirty days following the end of the Close-Out Period, agencies shall report to the Executive Director the total expended for each project, plus any obligations relating to the fiscal year just ended. For further information regarding the Annual Financial report, refer to the Reporting section of these policies and procedures.

3. *Reimbursement for Prior Year Expenses.* Expenses discovered after the Close-Out Period may be charged to the subsequent year's project budget. In the event the agency determines that insufficient funds are available to charge the expense to the subsequent year's budget, or the expense relates to a completed project Trustee Council approval is required.

EQUIPMENT

1. *Title.* Subject to the conditions set forth in this section, title to equipment acquired with Joint Trust Funds will be retained by the respective governmental agency. In the event equipment is transferred between governments, title to the equipment shall also be transferred.

2. *Use.* Equipment shall be used for the project for which it was acquired. When no longer needed for the original project, the equipment may be used in other activities for which funding was approved by the Trustee Council. The equipment may also be used for other agency purposes, providing that first preference be given to the restoration projects for which funding was approved by the Trustee Council, even when the project is being accomplished by another agency.

3. *Inventory.* Property records shall be maintained in accordance with agency procedures.

4. *Repair, Maintenance and Safeguarding.* The repair, maintenance and safeguarding of equipment purchased with joint funds shall be accomplished in accordance with agency procedures.

5. *Disposal.* Equipment which has ceased to function or have value shall be disposed of in accordance with agency procedures.

PROFESSIONAL SERVICES CONTRACTS

1. *General.* Agencies shall ensure that professional services are accomplished in accordance with the terms, conditions, and specifications of the project approved by the Trustee Council. In the event the approved motion of the Trustee Council specifically identifies the entity to carry-out the project and the contracting agency determines that an award to an entity, different than that specified by the Trustee Council, would better serve the restoration program, the basis of that determination shall be stated in writing to the Executive Director and forwarded to the Trustee Council for approval.

2. *Definition.* Professional services means contracts for professional, technical, or consultant services which result in the production of a report or the completion of a task, and include analysis, evaluation, prediction, planning, or a recommendation.

3. *Indirect Rates.* The appropriate indirect rate for contractors will be determined on a project by project basis or through a memorandum of understanding with a contractor that

provides for a consistent rate and methodology.

4. *Equipment.* Equipment purchased by the contractor will remain the property of the contracting agency.

5. *Special Considerations.* All notes and other data developed by the contractor shall remain the sole property of the contracting agency.

REPORTING

1. *Joint Account.* Revenues, disbursements and fees associated with the Court Registry Investment System shall be reported to the Trustee Council on a monthly basis. This report shall include an analysis of the Joint Trust Fund Balance and the total estimated funds available.

2. *Quarterly Financial Reports.* Within thirty days following the end of each quarter, agencies shall report expenditures and obligations recorded at the end of the quarter to the Executive Director. The report shall include the total amount authorized for each project, any revisions approved by the Trustee Council, any adjustments between projects, the total expended by project, and the total of any outstanding obligations by project.

3. *Quarterly Status Reports.* Within thirty days following the end of each quarter, agencies shall submit a project status report to the Executive Director. The report submitted by the agencies shall communicate the project status in relationship to the project tasks that were identified in the proposal approved by the Trustee Council, any problems which are being encountered, and noteworthy accomplishments.

4. *Annual Financial Reports.* Thirty days following the end of the Close-Out Period, agencies shall report to the Executive Director the total expended for each project, plus any valid obligations relating to the fiscal year just ended. The report shall reflect the total amount authorized by line-item, any revisions approved by the Trustee Council, any adjustments between projects, and any adjustments between line-items.

5. *Annual Project Reports.* Annually, agencies shall submit a report to the Executive Director for all continuing projects approved by the Trustee Council. To be considered continuing, a project must have been initiated with the expectation that it was multi-year. The report deadline and format shall be determined by the Executive Director.

6. *Final Project Reports.* Upon completion of a project or the determination by the Trustee Council to no longer fund a project, agencies shall submit a report to the Executive Director. The report deadline and format shall be determined by the Executive Director.

7. *Equipment Reports.* By December 31 of each year, agencies shall report equipment valued at a cost of \$1,000 or more, and other sensitive items to the Executive Director. Sensitive

items shall include firearms, audio/visual equipment, computers and cameras. The report shall include a listing of equipment purchased during the fiscal year just ended, the reassignment of equipment to other activities funded by the Trustee Council and any equipment currently being used for other agency purposes. Agencies shall also report all equipment which has ceased to function or have value and identify any equipment which was disposed of during the previous fiscal year.

AUDITS

1. *General.* The purpose of an audit is to ensure public trust and accountability regarding the use of settlement funds. An audit provides credibility to the information reported by or obtained from management by independently acquiring and evaluating the evidence.

2. *Definition.* The term audit includes both financial and performance audits.

3. *Readiness.* When an agency receives funding from the Trustee Council, the agency assumes certain responsibilities along with those funds. These include ensuring that source documentation is organized and available for review, internal controls are documented and that individuals knowledgeable about the projects are available to answer questions.

4. *Professional Services Contracts.* Contractors who receive funding for professional, technical, or consultant's services are not automatically subject to an annual audit. However, this does not preclude the Trustee Council or the agency from making a determination that an audit is required over and above an agency's review of expenditure documentation and work produced by a contractor.

5. *State and Federal Audits.* Each Federal agency and the State of Alaska have audit functions. In the event an audit is performed, a copy of the audit shall be provided to the Executive Director.

6. *External Audits.* All external audits shall be conducted in accordance with Governmental Auditing Standards. In addition, the firm and the staff assigned to conduct the audit shall be independent of the Trustee Council, the funding agencies, the Court Registry Investment System, Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company.

APPENDIX A: FEDERAL INTERNAL PROCEDURES

NATURAL RESOURCES DAMAGE ASSESSMENT AND RESTORATION FUND

1. *Segregation.* All principal and interest shall be accounted for separately by the Department of the Interior, Fish and Wildlife Service, Division of Finance. Each disbursement shall be assigned an appropriate account, sub-activity and/or project number when deposited to the aggregate Fish and Wildlife Service account within the Federal Reserve Bank. Confirmation of the deposit shall be provided to the Treasury Department which reconciles the deposit with the Federal Reserve Bank.

2. *Investments.* By law, the funds may only be invested in Treasury Securities and all ownership is maintained in the name of the Natural Resource Damage Assessment and Restoration Fund. Based on an estimate of cash flow requirements, the Department of the Interior, Office of the Secretary generates instructions for investment and forwards the instructions to the Division of Finance. The Division of Finance develops and submits an Investment Confirmation Letter which indicates which account investments are being purchased, the scheduled maturity dates and the investment type(s) to the Department of Treasury which purchases the securities. At maturity, interest income is paid directly to the account.

3. *Reports.* At maturity, the Department of the Interior shall report interest income to the Executive Director. In addition, all disbursements to the federal agencies shall be reported to the Executive Director.

AUTHORIZATION

1. *General.* Congress permanently appropriated funding approved by the Trustee Council in Section 207 of Public Law 102-227. However, all authorization is subject to compliance with any terms and conditions imposed by the Trustee Council.

2. *Budget and Reports.* Under Section 207, agencies are required to comply with directions published by the Federal Office of Management and Budget. This includes submitting a budget for the upcoming fiscal year and documentation associated with the current and prior fiscal year.

3. *Obligation Authority.* Prior to the obligation of any funds, agencies must first complete the allocation process required by their respective budget offices to establish codes for each project. The allocation process provides the authority, amount of funding and the guidance with which to obligate funds.

4. *Quarterly Instructions for Transfer.* On a quarterly basis, federal agencies are required to submit to the United States Department of the Interior, Office of the Secretary, Budget Office instructions regarding the transfer of settlement funds. The instructions shall specify the purpose of the transfer, which account the funds are to be transferred, and an estimate of cash flow

requirements. Unless the transfer represents a one-time payment, the cash flow estimate shall be structured on a quarterly basis. Any change in cash flow requirements during the fiscal year shall be reflected on subsequent quarterly instruction for transfer. A change is defined as a decrease in the cash flow requirement due to an unanticipated delay in a project or an increase in the cash flow requirement due to an unanticipated change in the schedule.

5. *Fund Transfers.* There are two types of fund transfers. The first type of transfer is internal to Department of the Interior, Fish and Wildlife Service. The form used is the Allotment Advice, Form FWS 3-1951. The Allotment Advice is initiated and prepared by the Division of Budget, Fish and Wildlife Service and then sent to the Division of Finance, Fish and Wildlife Service where the funds are made available through the Control Schedule Process. The second type of transfer is to agencies/bureaus outside of the Fish and Wildlife Service. The form used is a SF1151, a non-expenditure transfer. The SF1151 is initiated, prepared, and approved by the Division of Budget, Fish and Wildlife Service and then sent to Treasury where the funds are transferred within the Treasury system.

6. *Recovery of Prior Year Funds.* On January 31 of each year, Federal Trustee Agencies shall return to the Natural Resource Damage Assessment and Restoration Fund the unexpended and unobligated balance for the fiscal year just ended. Concurrently, the agencies shall return any Recovery of Prior Year Obligations. The Department of the Interior shall report the recovery of prior funds to the Executive Director by February 15 of each year.

APPENDIX B: STATE INTERNAL PROCEDURES

EXXON VALDEZ OIL SPILL SETTLEMENT FUND

1. *Segregation.* All principal and interest shall be accounted for separately by the Alaska Department of Revenue, Division of Treasury. Each disbursement shall be deposited in a Department of Law sub-account. Confirmation of the deposit shall be provided by the bank to the Department of Revenue, at which time the funds are moved from the sub-account to the general investment pool within the Alaska State Accounting System. The Department of Law, Division of Administrative Services is notified of the deposit and allocates the funds to the *Exxon Valdez* Oil Settlement Fund.

2. *Investments.* The Alaska Department of Revenue, Division of Treasury will calculate the daily income amount and provide for daily compounding (including weekends and holidays) as follows: (a) using the weekly 180 day Treasury Bill Rates for the month based on the weekly auctions occurring during the month; and (b) the daily cash balance of the *Exxon Valdez* Oil Settlement Fund within the Alaska State Accounting System. The income shall be credited to the fund and posted in the Alaska State Accounting System on a monthly basis.

3. *Reports.* The Department of Revenue, Division of Treasury shall report income earned to the Executive Director on a monthly basis.

AUTHORIZATION

1. *General.* Pursuant to Alaska Statute 37.14.405(a), a state agency may not expend money received from the trust unless the expenditure is in accordance with an appropriation made by law. However, prior to the expenditure of funds, Trustee Council approval must be obtained, the Court Order signed, and any terms and conditions placed on the funding by the Trustee Council have been met.

2. *Budget and Reports.* To meet the requirements of Alaska Statute 37.14.415, agencies are required to comply with directions published by the State Office of Management and Budget, Division of Budget Review. Alaska Statute 37.14.415 states: The state trustees shall

(1) submit to the governor and the legislature by December 15 of each year a report setting out, for each object or purpose of expenditure, the amounts approved for expenditure from the trust during the preceding fiscal year and the amounts actually expended during the preceding fiscal year.

(2) prepare and submit, under AS 37.07, a budget for the next fiscal year setting out, for each object or purpose of expenditure, the trustees' estimate of the amounts that are, during the next fiscal year, to be funded by the trust and expended by state agencies; and

(3) prepare and submit to the legislature, at the same time the budget for state agency expenditures is submitted under (2) of this section, a proposal setting out, for each object or purpose of expenditure, the trustees' estimate of the amounts that are to be funded by the trust in

the next fiscal year and that are not included in the budget submitted under (2) of this section.

3. *Legislative Budget and Audit Committee.* Alaska Statute 37.14.405(b), allows agencies to meet the requirements of an appropriation conditioned on compliance with the program review provisions of AS 37.07.080(h). In accordance with the procedures of the Alaska Office of Management and Budget (OMB), agencies are required to submit a request to OMB for transmittal to the Legislative Budget and Audit Committee.

4. *Expenditure Authority.* Authorization to receive and expend shall be recorded in the Alaska State Accounting System within the *Exxon Valdez* Oil Spill Settlement Fund. Following legislative action, OMB will record the authorization by approving an Authorized Budget Transaction (AB).

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