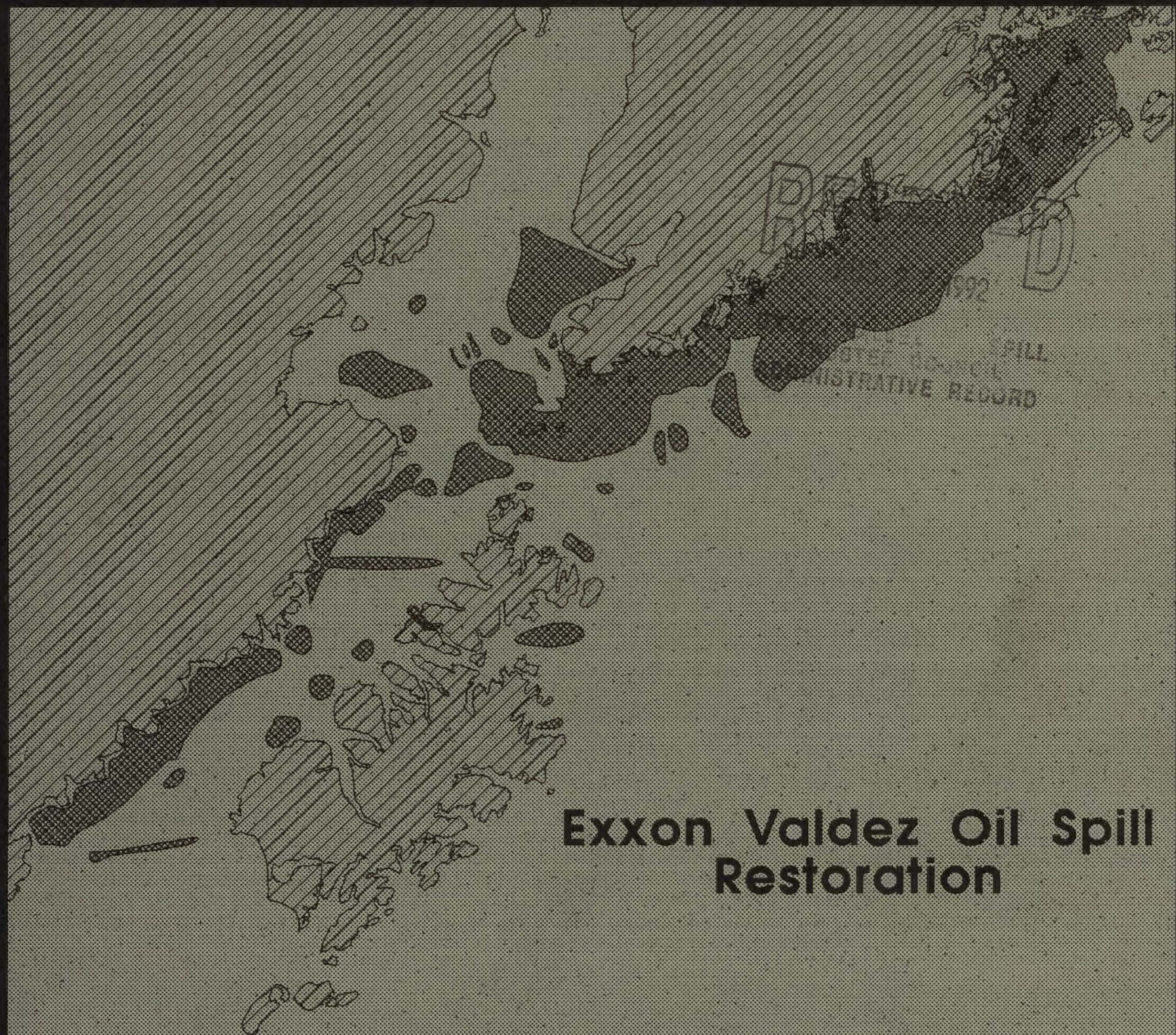




Exxon Valdez Oil Spill Restoration

Restoration Framework Supplement

Prepared by:
Exxon Valdez Oil Spill Trustees
645 "G" Street
Anchorage, Alaska
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July 1992

Dear Reviewer:

The goal of the Habitat Protection and Acquisition option of the Restoration Plan is to identify and protect strategic lands and habitats that will benefit the long term recovery of resources and services injured by the *Exxon Valdez* oil spill. Policy guidance for the Habitat Protection and Acquisition Process is set forth in the Plea Agreement and in the Memorandum of Agreement and Consent Decree.

The purpose of this Supplement to the Restoration Framework is to solicit public review and comments on the proposed Habitat Protection and Acquisition Process for your review and comment. This Supplement contains a narrative description of the process, flow charts that schematically depict the process, and a discussion and summary charts that present alternative threshold criteria.

Figures 6 and 7 (From Chapter VII, pages 50 and 51 in *Volume I, Restoration Framework*) represent alternative approaches for evaluating restoration options including Habitat Protection and Acquisition. Figure 6 depicts a *hierarchical* strategy wherein the Habitat Protection and Acquisition option is not applied unless other direct restoration options are found to be ineffective. Figure 7 depicts a *concurrent* strategy wherein the Habitat Protection and Acquisition option is applied in conjunction with other restoration options. The potential outcome of implementing either a hierarchical or concurrent strategy is significantly different. Both of these strategies require the identification of an injured resource or service whose rate and degree of recovery has been assessed as inadequate.

The relationship of the alternative strategies to the threshold criteria is an exceptionally important part of this process. Regardless of which strategy is chosen, the Trustee Council will approve a proposed project as a *candidate land*, for protection or acquisition, only if it is in full compliance with all adopted threshold criteria. Consequently, the adopted set of threshold criteria must be in concert and consistent with the overall restoration strategy.

We invite your comments on the Habitat Protection and Acquisition Process. We would especially like to solicit your recommendations concerning the adoption of a set of threshold criteria for incorporation into this process. Please send your written comments by August 31, 1992, to:

Exxon Valdez Oil Spill Trustee Council
645 "G" Street
Anchorage, Alaska 99501

Questions concerning this document or its distribution should be directed to the Oil Spill Public Information Center, 645 "G" Street, Anchorage, Alaska 99501, or you may call: (907) 278-8008.

**Exxon Valdez Oil Spill
Restoration Framework Supplement
July 1992
Habitat Protection and Acquisition Process**

Table of Contents

Introduction	3
Evaluation Process	11
Imminent Threat Protection Process	21
Alternative Threshold Criteria	29
Federal / State Acquisition Process	39

HABITAT PROTECTION AND ACQUISITION PROCESS

INTRODUCTION

Narrative Description

Flow Chart Guide Diagram

Figure 6: Restoration Options (Hierarchical Analysis)

Figure 7: Restoration Options (Concurrent Analysis)

HABITAT PROTECTION AND ACQUISITION PROCESS

INTRODUCTION

The goal of the Habitat Protection and Acquisition process is to contribute to the restoration of injured resources and services by identifying and, where appropriate, protecting strategic habitats and services. Policy guidance for the Habitat Protection and Acquisition Process is set forth in the Plea Agreement and in the Memorandum of Agreement and Consent Decree.

Habitat Protection and Acquisition is one of the potential restoration alternatives presented in the Restoration Framework document. This alternative: ... *includes changes in management practices on public or private lands and creation of "protected" areas on existing public lands in order to prevent further damage to resources injured by the Exxon Valdez oil spill. Going beyond land management practices, there also are options that involve the acquisition of ... habitats or property rights short of title by public agencies to protect strategic wildlife, fisheries habitat or recreation sites.*

Another potential restoration alternative that involves habitat protection and acquisition is the *Acquisition of Equivalent Resources*. The Restoration Framework defines this alternative to mean: ... *compensation for an injured, lost, or destroyed resource by substituting another resource that provides the same or substantially similar services as the injured resource (56 Federal Register 8899 [March 1, 1991]). Restoration approaches, such as the manipulation of resources and habitat protection and acquisition, can be implemented on an equivalent-resource basis.*

The March 1, 1991 Federal Register (56 FR 8903), as part of a description for a lands/habitat protection restoration project, stated that the objective is ... *to identify and protect strategic wildlife and fisheries habitats and recreation sites and to prevent further potential environmental damages to resources injured by the Exxon Valdez oil spill.*

The purpose of the Evaluation Process and Imminent Threat Protection Process is to provide a conceptual framework and strategy for habitat protection and to serve as a guide to the Trustee Council. Central to this strategy is the requirement that a) the Trustee Council approve a list of candidate lands recommended by the Restoration Team for detailed evaluation, and b) the Trustee Council approve the actual purchases of title or property rights.

In addition, the Trustee Council would review all candidate lands, decide which proposals should receive further evaluation, determine protection tools and boundaries, and establish the ranking of the proposals.

Figures 6 and 7 in the *Restoration Framework* depict alternative approaches to evaluating restoration options, including habitat protection and acquisition options. Figure 6 depicts a hierarchical strategy whereas Figure 7 illustrates one wherein all alternatives would be considered concurrently. The choice of habitat protection and acquisition options as a restoration alternative is compatible with either the hierarchical or concurrent approach.

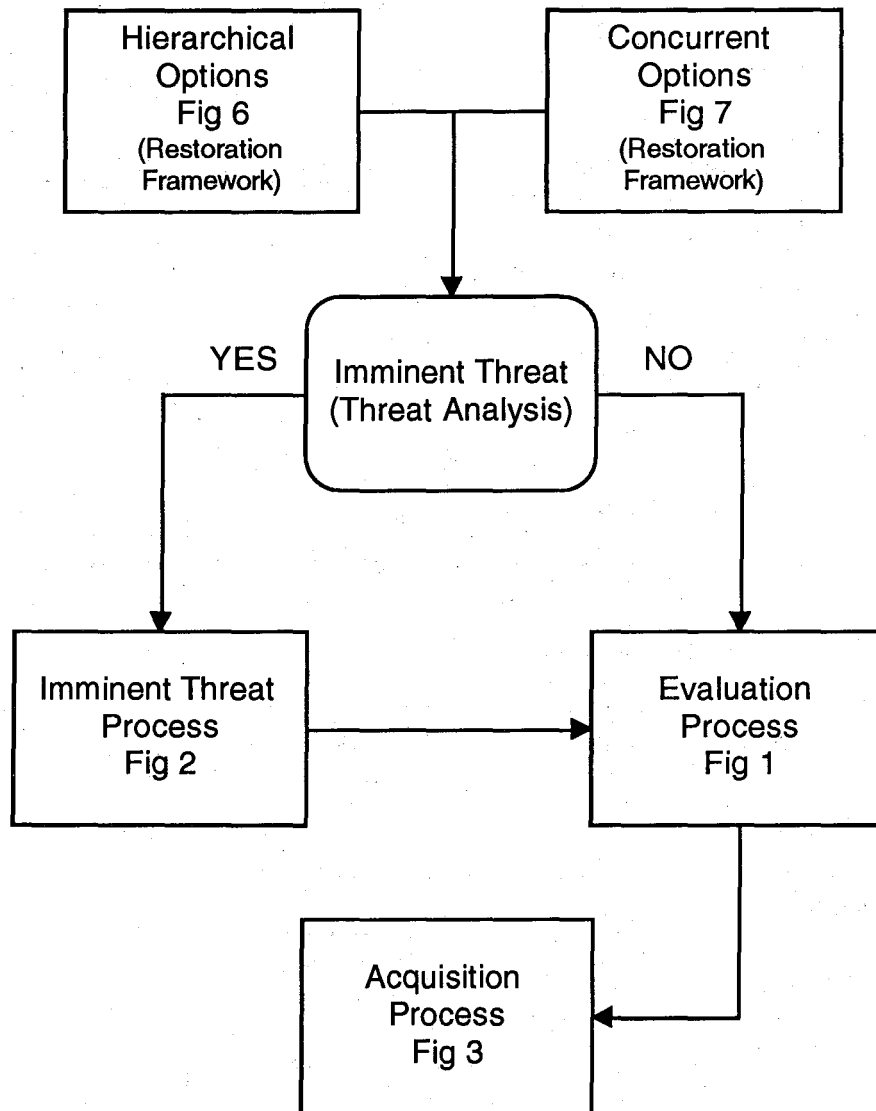
Both of these approaches require the identification of an injured resource or service whose rate and degree of recovery have been assessed as inadequate. Both the Evaluation Process [Figure 1] and Imminent Threat Protection Process [Figure 2] recognize the importance of these two elements. Consequently, they begin with these common elements as prerequisites, as is depicted in the top portions of Figures 1 and 2.

The *Habitat Protection and Acquisition Process* involves the solicitation of proposals of Candidate Lands from land owners, the public, and from State and Federal resource agencies. In order to supplement this basic process, the Imminent Threat Process was developed as an accelerated assessment procedure that recognizes the need to respond to a proposed change in land use that would foreclose habitat protection opportunities that would, if implemented, facilitate recovery of injured resources or services or allow for acquisition of equivalent resources.

The *Habitat Protection and Acquisition Process* will be presented to the public for comment as part of the Draft Restoration Plan and Draft Environmental Impact Statement. All restoration options, including habitat protection and acquisition options along with proposed evaluation criteria are included in Chapter VI of the *Restoration Framework*.

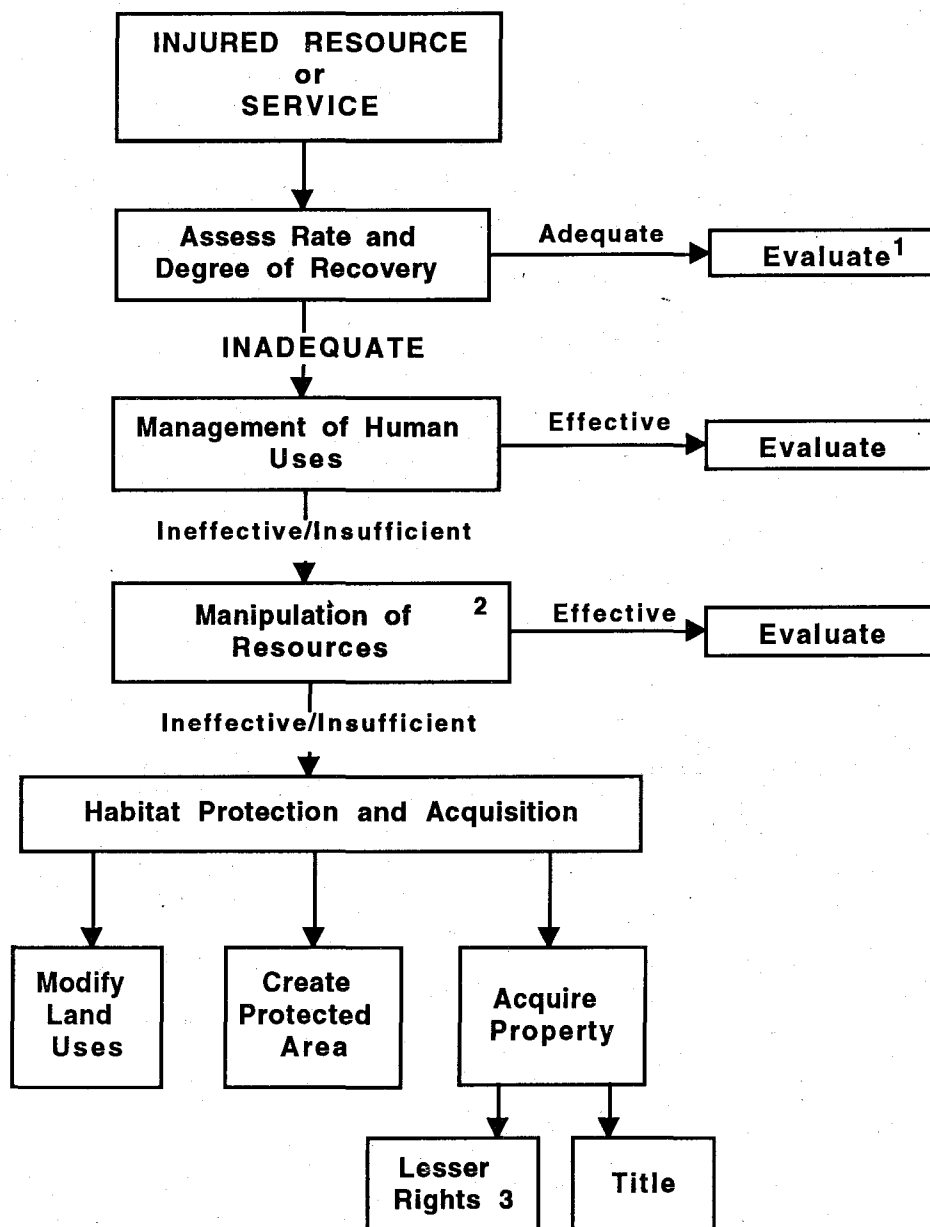
The following discussion describes the two processes by explaining the elements depicted in Figures 1 and 2. Each symbol is numbered and contains *symbol text* that identifies process or structural elements. Text which is outside of all symbols is known as *caption text* and will be defined and discussed along with the appropriate symbol text. Shaded boxes in Figures 1 and 2 represent points in the process where Trustee Council decisions are required.

Flow Chart Guide Diagram



Habitat Protection and Acquisition Process

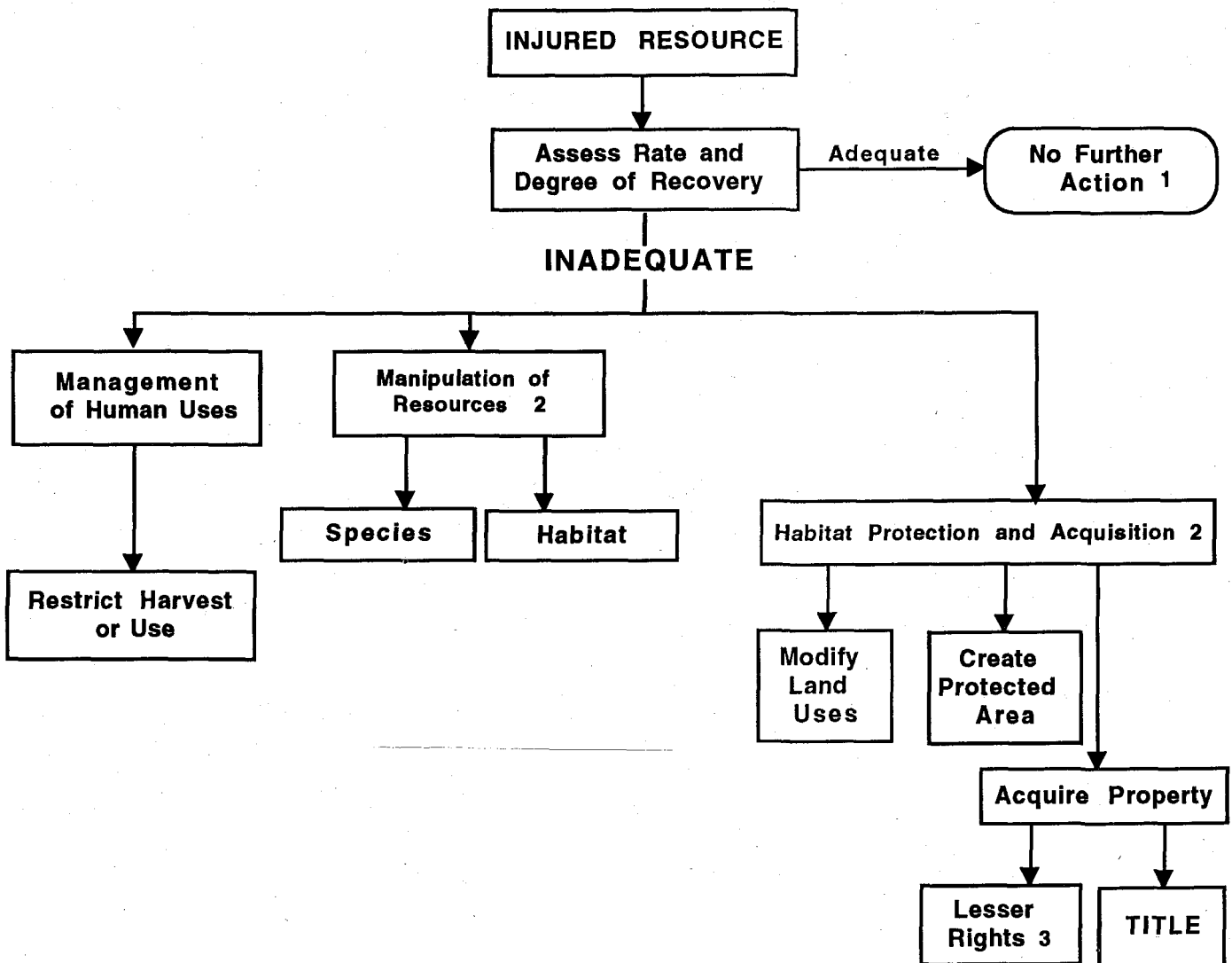
Figure 6. Possible conceptual approach to the analysis of restoration options. This approach considers options in an **hierarchical** fashion. (Framework Document)



-
- ¹ All restoration actions will be evaluated to assess their effectiveness on the recovery rate of the target injured resource.
- ² These approaches can be implemented on a direct-restoration or equivalent-resource basis.
- ³ Acquisition of full title or lesser rights exclusive of full ownership of title (partial interests), e.g., conservation easement, timber rights, access rights, etc.
-

Habitat Protection and Acquisition Process

Figure 7. Possible conceptual approach to the analysis of restoration options.
This approach does not involve an hierarchical analysis of restoration options.



1 All restoration actions will be evaluated to assess their effectiveness on the recovery rate of the target injured resource.

2 These approaches can be implemented on a direct-restoration or equivalent-resource basis.

3 Acquisition of full title or lesser rights exclusive of full ownership of title (partial interests), e.g., conservation easement, timber rights, access rights, etc.

Habitat Protection and Acquisition Process

HABITAT PROTECTION AND ACQUISITION PROCESS

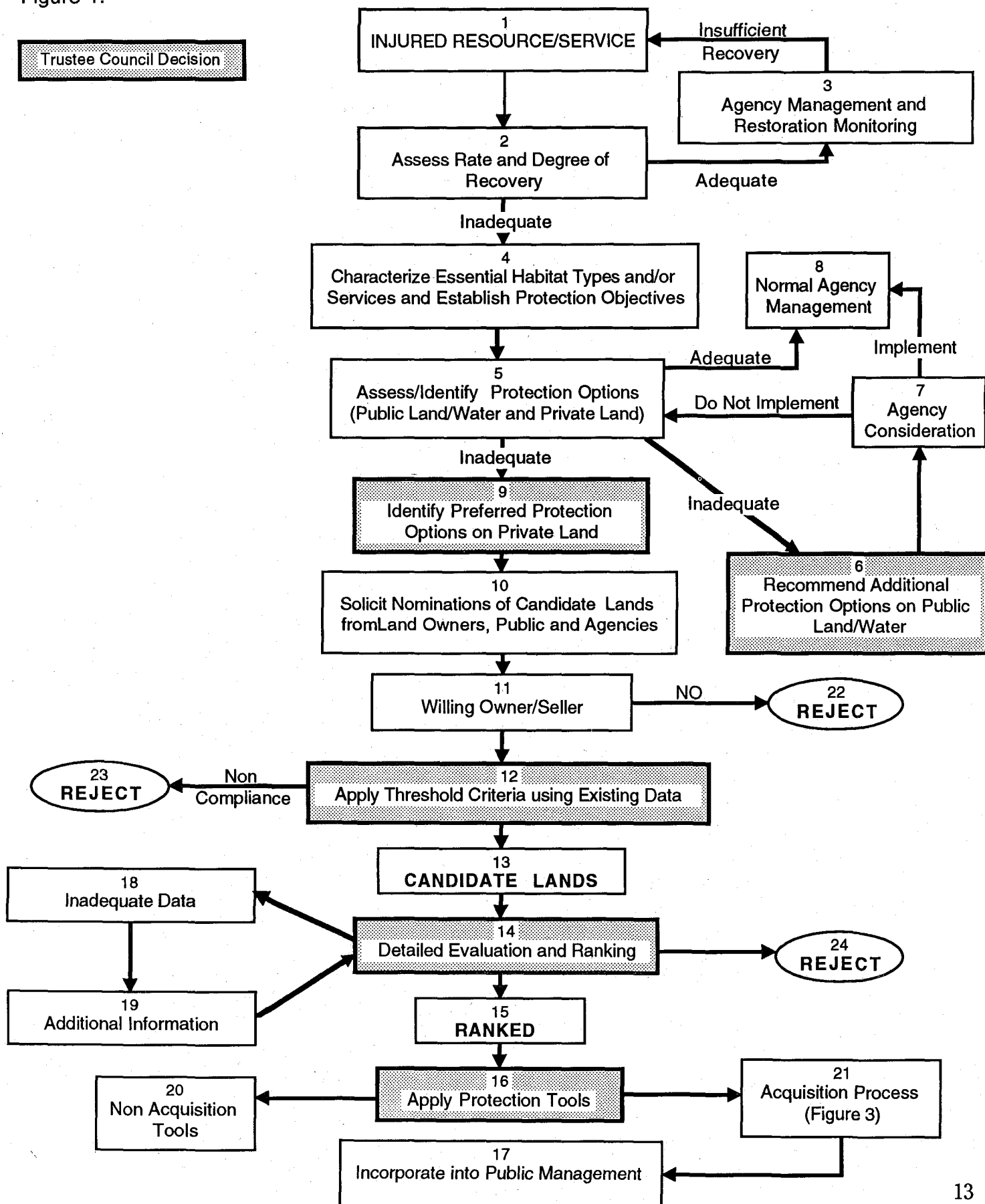
EVALUATION PROCESS

Figure 1. Evaluation Process

Narrative Description

HABITAT PROTECTION AND ACQUISITION OPTIONS EVALUATION PROCESS

Figure 1.



EVALUATION PROCESS

#1 Injured Resource/Service

The definition of injury used herein is that found in the *Restoration Framework* document:

A natural resource has experienced "consequential injury" if it has sustained a loss (a) due to exposure to oil spilled by the T/V Exxon Valdez, or (b) which otherwise can be attributed to the oil spill and clean up.

A natural resource service has experienced "consequential injury" if the Exxon Valdez oil spill or clean up:

- has significantly reduced the physical or biological functions performed by natural resources, including loss of human uses; or
- has significantly reduced aesthetic, intrinsic or other indirect uses provided by natural resources; or, in combination with either of these,
- has resulted in the continued presence of oil on lands integral to the use of special-purpose lands.

Chapter IV of the *Restoration Framework, Summary of Injury*, provides a summary of the injuries to organisms, habitat, and other resources and services from the Exxon Valdez oil spill.

#2 Assess Rate and Degree of Recovery

The Restoration Framework states that: *In a scientific sense, full ecological recovery has been achieved when the pre-spill flora and fauna are again present, healthy and productive, and there is a full complement of age classes. A fully recovered ecosystem is one which provides the same functions and services as were provided by the pre-spill, uninjured system.*

Adequacy of the rate and degree of recovery will be estimated from on-going damage assessment and restoration studies, the scientific literature and other sources including the *best professional judgment* of recognized experts.

#3 Agency Management and Restoration Monitoring

Recovered resources and services will be monitored by both the resource agencies that are responsible for the management of the respective resource or service and by specific recovery monitoring studies. These studies will be part of a comprehensive and integrated monitoring program funded and managed by the Trustees.

If resource agency managers and/or results from the recovery monitoring studies indicate that recovery is not proceeding in a sufficient manner, the injured resource or service will be re-introduced into the main stream of the Evaluation Process. Adequacy of the rate and degree of recovery will be estimated from on-going damage assessment and restoration studies, the scientific literature and other sources including the *best professional judgment* of recognized experts.

#4 Characterize Essential Habitat Types and/or Service Components and Establish Protection Objectives

Essential habitat components of critical life history stages, i.e., reproduction, and feeding, of injured resources will be characterized. Habitat components that support injured services, e.g., spawning areas for anadromous fish, will also be defined. Implementation of this step requires the characterization of non-site specific habitat components, e.g., anadromous streams, old growth forests, riparian woodland, cliff ledges on offshore islands, etc. Identification of discrete, geographically-specific sites comes later in the process.

Establishing protection objectives and/or management strategies for these habitat types, that are designed to facilitate the recovery of injured resources or services, will result from reviews of life history literature, on-going studies and other sources, including the best professional judgment of recognized experts.

#5 Assess/Identify Protection Options (Public Land/Water and Private Land)

Federal, State and local regulations and policies will be identified and reviewed to determine whether or not they provide adequate protection for injured resources/services and their essential habitat components. This review will include both private and public land/water. An assessment will be made of the adequacy of this protection within the Exxon Valdez Oil Spill context, i.e., do these regulations act to facilitate the recovery of resources/services injured by the oil spill. If these regulations are consistent with the requirements for recovery, additional protection options will not be recommended.

#6 Recommend Additional Protection Options on Public Land/Water

If protection options currently in force on public land/water are found to inadequately promote and protect recovery, additional options will be developed and recommended to the appropriate resource agency. For example, more stringent resource development regulations might be recommended, for what is considered to be the recovery period for a specific resource or service.

#7 Agency Consideration

Additional protection options will be submitted to, and reviewed by, the appropriate resource agency. If deemed acceptable, the agency will incorporate the option(s) into normal agency management procedures. If the agency decides to reject the recommended option(s), the options may be re-evaluated and/or new options developed.

#8 Normal Agency Management

Additional protection options accepted by resource agencies will be incorporated into normal agency management procedures and policies for the appropriate duration. Additional recovery monitoring will be part of a comprehensive and integrated monitoring program funded and managed by the Trustees.

#9 Identify Preferred Protection Options on Private Land

If protection options that are in force on private lands are inconsistent or insufficient with the requirements for recovery, additional protection options will be recommended. For example, if the *Alaska Forest Resources and Practices Act (1990)* does not provide for the desired rate of recovery of injured resources/services in riparian habitats, additional protection options for these habitat types will be identified.

For each injured resource/service for which essential habitat components are considered to be inadequately protected on private lands, a suite of preferred protection options will be identified and approved by the Trustee Council. Most of these protection options have been enumerated and described in *Options for Identifying and Protecting Strategic Fish and Wildlife Habitats and Recreation Sites* (The Nature Conservancy Handbook, 1991).

-
- Steps 1-9 have accomplished the following tasks:
 - Identification of injured species and services, that are not adequately recovering.
 - Identification of habitat components linked to recovery.
 - Development of protection objectives for each injured resource/service and linked habitat component.
 - Assessment of existing protection options on private and public land/water.
 - Identification of additional protection options needed to be implemented on private and public land/water.
 - Each of these steps will be described in both the Draft Restoration Plan and the Draft Environmental Impact Statement.

#10 Solicit Nominations of Candidate Lands from Land Owners, Public and Agencies

A Request for Proposal [RFP] will be issued by the Trustee Council in order to solicit nominations of candidate lands. The RFP will contain information describing, in generic terms, the types of land that the Trustees are interested in evaluating in order to protect injured resources/services. Geographically-specific sites will not be enumerated. The RFP will also contain a list and description of the preferred protection options that will be considered for those nominations that become candidate lands. The RFP will contain language that explicitly states that this is a voluntary program and that condemnation is not contemplated by the Trustees.

#11 Willing Owner/Seller

The first steps in the review of all nominations is the determination of land ownership and willingness, on the part of the owner/seller, to negotiate with the Trustees for rights and/or title to the land. All interests in the land should be identified by the land owner/seller, i.e. surface rights, subsurface rights, other development rights.

#22 Reject

A nomination will be rejected if clear title to the land or other desired interests in the land cannot be demonstrated or if an unambiguous statement of willingness to negotiate is not obtained from the land owner/seller.

#12 Apply Threshold Criteria using Existing Data

Each nomination will be evaluated against a set of threshold criteria designed to determine whether or not a nomination is acceptable for further consideration. Based on existing information, the threshold criteria will eliminate proposals that are inappropriate or unreasonable.

#23 Reject

A nomination will be rejected if it is not in compliance with ALL threshold criteria. Rejected proposals can be recycled back into the process for another review if additional information is made available that could allow for compliance with all threshold criteria.

#13 Candidate Lands

This element is a list of nominated lands approved by the Trustee Council for detailed evaluation.

- At this point in the process there is a list of Candidate Lands that:
 - Contain essential habitat components linked to recovery of injured resources/services.
 - Are not afforded adequate protection by existing law, regulation and/or policy.
 - Are owned by a willing owner/seller.
 - Are in full compliance with all threshold criteria.
-

#14 Detailed Evaluation and Ranking

Each candidate land will be evaluated and ranked against a set of detailed evaluation criteria designed to determine whether or not a nomination should be prioritized. The Trustee Council will determine the ranking. These criteria will include, but not be limited to, those identified in Chapter VI of the Restoration Framework. The purpose of this component is to conduct a more rigorous analysis of proposals utilizing more specific information than was available for step #12 [Threshold Criteria]. In some cases, it may be necessary to acquire additional information to complete the detailed evaluation. Owners of candidate lands will be provided the results of the detailed evaluation.

#18 Inadequate Data

This step involves characterization of the data gaps and a determination of the most cost-effective and timely method to obtain any necessary information. Funding for the acquisition of any additional data must be approved by the Trustee Council.

#19 Additional Information

Any necessary additional information may be obtained from the studies funded by the Trustee Council. These studies will be subject to review by the appropriate experts and entered into the detailed Evaluation Process.

#24 Reject

Rejection of a candidate land at this step may result from:

- Non-compliance with the detailed evaluation criteria after initial review.
- Non-compliance with the detailed evaluation criteria after additional information was obtained.

#15 **Ranked Lands**

This element contains proposals that were ranked or prioritized according to the degree of each proposal's conformance with the stated goal of the process [Step #14]. Ranking will also be based upon the outcome of the detailed evaluation.

#16 **Apply Protection Tools**

The appropriate and most cost-effective protection tool(s) will be matched to each ranked, candidate parcel. This decision will be made by the Trustee Council. In some cases, a single tool will be chosen if it provides adequate protection. In other cases, several protection tools may be deemed necessary; there may even be a mix of non-acquisition and acquisition tools selected.

#20 **Non-Acquisition Tools**

These could include, but not be restricted to:

- Landowner contact and education
- Voluntary agreements: registration and cooperative management agreements
- Rights of first refusal

These protection tools are discussed in *Options for Identifying and Protecting Strategic Fish and Wildlife Habitats and Recreation Sites* (The Nature Conservancy Handbook, 1991). Agency management and monitoring will be recommended where appropriate.

#21 **Acquisition Process**

Tools that involve acquisition of property rights or interests could include, but not be restricted to:

- Conservation easements
- Deed restrictions and reverters
- Acquisition of partial interests: timber, mineral and access rights
- Fee acquisitions

These protection tools are discussed in *The Nature Conservancy Handbook*. The process by which acquisition tools should be implemented is depicted in Figure 3 and discussed in the accompanying narrative.

#17 Incorporate into Public Management

Acquired rights or title will be incorporated into existing management plans where appropriate. Management plans for newly acquired parcels will be written where necessary. Each plan's goal will be to manage the parcel or interest in a manner that will benefit the long term recovery of resources and services injured by the Exxon Valdez oil spill. The Trustee Council will decide which agency will manage the land or will create a new management authority.

HABITAT PROTECTION AND ACQUISITION PROCESS

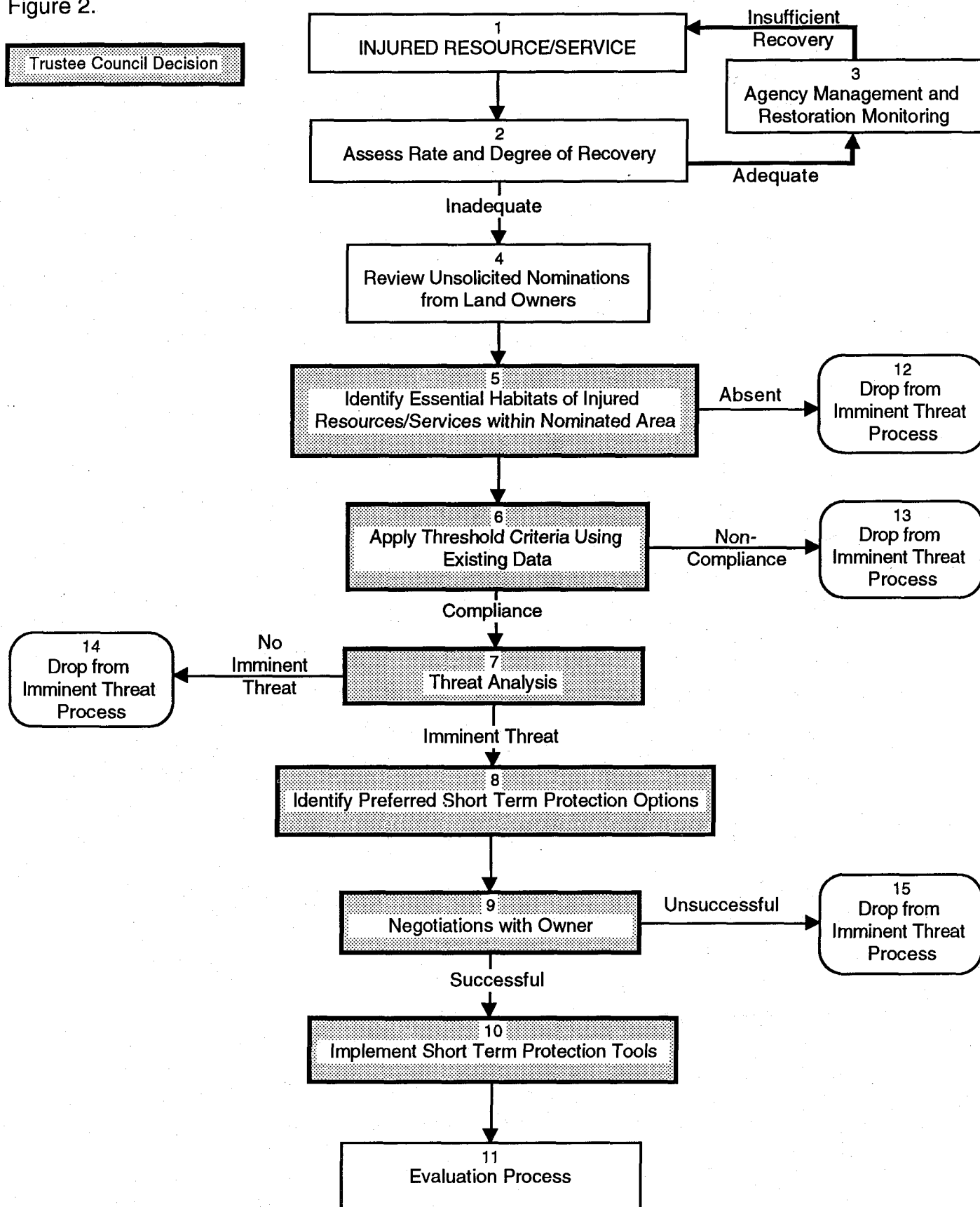
IMMINENT THREAT PROTECTION PROCESS

Figure 2. Imminent Threat Protection Process

Narrative Description

HABITAT PROTECTION AND ACQUISITION OPTIONS IMMINENT THREAT PROTECTION PROCESS

Figure 2.



IMMINENT THREAT PROTECTION PROCESS

#1 Injured Resource/Service

The definition of injury used herein is that found in the Restoration Framework document:

A natural resource has experienced "consequential injury" if it has sustained a loss (a) due to exposure to oil spilled by the T/V Exxon Valdez, or (b) which otherwise can be attributed to the oil spill and clean up.

A natural resource service has experienced "consequential injury" if the Exxon Valdez oil spill or clean up:

- has significantly reduced the physical or biological functions performed by natural resources, including loss of human uses; or
- has significantly reduced aesthetic, intrinsic or other indirect uses provided by natural resources; or, in combination with either of these,
- has resulted in the continued presence of oil on lands integral to the use of special-purpose lands.

Chapter IV of the *Restoration Framework, Summary of Injury*, provides a summary of the injuries to organisms, habitat and other resources and services from the Exxon Valdez oil spill.

#2 Assess Rate and Degree of Recovery

The *Restoration Framework* states that: *In a scientific sense, full ecological recovery has been achieved when the pre-spill flora and fauna are again present, healthy and productive, and there is a full complement of age classes. A fully recovered ecosystem is one which provides the same functions and services as were provided by the pre-spill, uninjured system.*

Adequacy of the rate and degree of recovery will be estimated from on-going damage assessment and restoration studies, the scientific literature and other sources including the *best professional judgment* of recognized experts.

#3 Agency Management and Restoration Monitoring

Recovered resources and services will be monitored by both the resource agencies that are responsible for the management of the respective resource or service and by specific recovery monitoring studies. These studies will be part of a comprehensive and integrated monitoring program funded and managed by the Trustees.

If resource agency managers and/or results from the recovery monitoring studies indicate that recovery is not proceeding in a sufficient manner, the injured

resource or service will be re-introduced into the main stream of the Evaluation Process. Adequacy of the rate and degree of recovery will be estimated from on-going damage assessment and restoration studies, the scientific literature and other sources including the *best professional judgment* of recognized experts.

#4 Review Unsolicited Nominations from Land Owners

Nominations that the Trustee Council receive without their solicitation will be reviewed.

#5 Identify Essential Habitats of Injured Resources/Services

Essential habitat components, that were characterized as part of the Evaluation Process [Figure 1], will be identified on the nominated parcels. This site-specific analysis will be conducted utilizing existing information. It is understood that the available information describing the environmental character of these lands is, for the most part, both limited and imprecise.

#12 Drop from Imminent Threat Process

Nominations that do not contain essential habitat components will be dropped from this process. This decision does not prevent the land owner from responding to the RFP solicitation from the Evaluation Process [Figure 1]. Given data limitations that constrain this fast track type of review, it is necessary to allow for the admission of a nomination into the Evaluation Process, after being dropped from the Imminent Threat Process, because more information may become available that could alter the conclusions.

#6 Apply Threshold Criteria using Existing Data

Each nomination will be evaluated against a set of threshold criteria designed to determine whether or not a nomination is acceptable for further consideration. The threshold criteria should:

- Eliminate proposals that will not facilitate recovery of injured resources/services.
- Eliminate proposals that do not represent a reasonable selection for equivalent resource acquisition.

#13 Drop from Imminent Threat Process

A nomination will be rejected if it is not in compliance with ALL threshold criteria. Rejected proposals can be recycled into the Evaluation Process at step #5 (Figure 1) for another review if additional information is made available that conceivably would allow for compliance with all threshold criteria.

#7 Threat Analysis

Nominations in compliance with all threshold criteria will be subjected to a *Threat Analysis*. This is a method for determining the magnitude/validity/reality of a threat to an injured resource/service and the imminence of the threat. Nominations that would be considered on an equivalent-resource basis would also be subject to a threat analysis. The Nature Conservancy defines it as: *...a means of determining whether an accelerated identification, ranking, and protection process is necessary due to immediate threats to recreation resources, activities, or opportunities. Where a short-term threat exists, use of a rapid, or abbreviated assessment will enable decision makers to decide on appropriate actions to buy time or immediately protect significant existing or potential resources. If time can be bought, a comprehensive assessment can proceed. Similarly, in the absence of any short-term threat, a comprehensive assessment would be initiated* [The Nature Conservancy Handbook, 1991].

#14 Drop from Imminent Threat Process

If the threat analysis indicates that there is no imminent threat, the nomination will be considered under the Evaluation Process beginning at step #5 (Figure 1).

#8 Identify Preferred Short-Term Protection Options

If the threat analysis indicates that there is an imminent threat, a suite of short-term protection options will be identified that address the specific situation at hand. Implementation of one or several of these options will provide additional time to allow for the Trustee Council to conduct a detailed evaluation of the proposal. Information needed to carry out this evaluation may require additional field studies. Consequently, the short-term protection option(s) that is selected must provide additional time to collect, analyze and incorporate the additional information into the detailed evaluation. Examples of short-term options are:

a) development moratorium, b) lease, and c) management agreement.

#9 Negotiations with Owner

The Trustee Council will negotiate with the land owner utilizing the preferred short-term protection options identified in step #8.

#15 Drop from Imminent Threat Process

Unsuccessful negotiations result in the nomination being dropped from the Imminent Threat Process. The land owner has the option of nominating the proposal for consideration in the Evaluation Process.

#10 Implement Short-Term Protection Options

After successful negotiations with the land owner, the mutually-agreed-upon option(s) will be implemented. During the period that the option(s) is in effect, the required, additional information will be assembled.

#11 Evaluation Process

The proposal will be inserted into the Evaluation Process as a Candidate Land [Step #13, Figure 1] and be subject to the process from that point forward.

HABITAT PROTECTION AND ACQUISITION PROCESS

ALTERNATIVE THRESHOLD CRITERIA

Narrative Description

Chart 1. Comparison of Alternative Threshold Criteria Sets

Chart 2. Summary Analysis of Threshold Criteria

ALTERNATIVE THRESHOLD CRITERIA

Threshold Criteria

The Habitat Protection and Acquisition Process utilizes *threshold criteria* to initially screen proposals nominated by land-owners, agencies, or the public. The intent of the threshold criteria is to eliminate those proposals which do not contribute to restoration objectives, or are inappropriate or unreasonable. Proposals which successfully meet all of the threshold criteria become *candidate lands* which are then subjected to additional steps in the process leading towards eventual protection/acquisition.

Three alternative sets of threshold criteria (sets A, B, and C) have been developed. One set, or a combination of sets, is to be adopted and incorporated as an integral part of the Habitat Protection and Acquisition Process. Selection of a set of threshold criteria will not preclude criteria in any of these sets from being considered as evaluation criteria.

Table 1 provides a side-by-side comparison of the three sets of threshold criteria. All three sets share two criteria which are dictated by Trustee Council policy and the law; criteria #1, the requirement for a *willing seller*, and criteria #3, the requirement for purchase at *fair market value*. The application of the other threshold criteria differs between each of the sets.

Table 2 provides a summary analysis describing both the objectives and the attributes of each threshold criteria. The application of the threshold criteria in each of the three sets results in significantly different outcomes from the Habitat Protection and Acquisition Process.

Outcome

The following discussion briefly describes the outcome anticipated from applying each set of threshold criteria:

Set A

Set A imposes the least restrictive threshold criteria. In addition to meeting criteria 1 and 3, proposals would need to demonstrate that they are associated either directly with (linked to, replace) or indirectly with (provide equivalent of, substitute for) an injured resource or service. Additionally, the proposed habitat protection/acquisition would need to be shown to benefit an injured or equivalent resource or service. Equivalent resources and services encompass a wide spectrum of species, habitats, and activities in addition to those which were shown to have been injured by the spill.

Set A would allow for a wide scope of habitat protection/acquisition proposals to be considered both within and outside of the spill affected area.

Set B

Set B imposes an intermediate level of threshold criteria. In addition to meeting criteria 1 and 3, and consistent with Set A, proposals would need to demonstrate that they are associated either directly or indirectly with an injured resource or service. Unlike Set A, the *recovery* of an injured resource or service would have to be shown to benefit from each habitat protection/acquisition proposal. The key difference between Set A and Set B is that proposals must benefit the *recovery* of injured resources/services rather than merely providing a benefit to an injured *or equivalent* resource/service.

Set B would allow for a more limited scope of habitat protection/acquisition actions to be considered. A wide range of acquisition/protection proposals could qualify within the spill affected area. Actions outside of the spill affected area would be much more limited than under Set A.

Set C

Set C imposes the most restrictive threshold criteria and follows a strict hierarchical strategy for acquisition/protection. In addition to meeting criteria 1 and 3, proposals would need to demonstrate that they contain habitats that are directly linked to recovery of injured resources/services. A finding would be needed that existing laws, regulations, and other requirements are inadequate to provide the level of protection that a proposed habitat protection/acquisition action would provide. Review of proposals would need to demonstrate that expected land uses (e.g., logging) would threaten resources injured by the spill. Determinations would need to show that: 1) failure to act on a proposal would foreclose meeting restoration objectives, and 2) restoration options other than a protection/acquisition proposal would be inadequate to meet restoration objectives. A proposal would need to demonstrate an incremental benefit to restoration, and be cost-effective relative to other restoration options. Finally, a proposal would have to be reasonably incorporated into public land management systems.

Set C would allow a relatively narrow scope of habitat protection/acquisition actions to be considered. In keeping with the hierarchical strategy, habitat protection/acquisition would only be considered when other direct restoration options were found ineffective. Only habitats of injured resources/services could be protected. Protection of equivalent resources/services would only be an option after consideration of direct or replacement restoration action. A concurrent strategy for the Habitat Protection and Acquisition option could not be followed.

TABLE 1: COMPARISON OF ALTERNATIVE THRESHOLD CRITERIA SETS

#	SET A	SET B	SET C
1	There is a willing seller of the parcel or property right.	There is a willing seller of the parcel or property right.	There is a willing seller of the parcel or property right.
2	The parcel contains key habitats that are linked to, replace, provide the equivalent of, or substitute for injured resources or services based on scientific data or other relevant information.	The parcel contains key habitats that are linked to, replace, provide the equivalent of, or substitute for injured resources or services based on scientific data or other relevant information.	The parcel contains key habitats that are linked to the recovery of injured resources or services by scientific data or other relevant information.
3	The seller acknowledges that the government can only purchase the parcel or property rights at fair market value.	The seller acknowledges that the government can only purchase the parcel or property rights at fair market value.	The seller acknowledges that the government can only purchase the parcel or property rights at fair market value.
4	An injured or equivalent resource or service would benefit from protection in addition to that provided by the owner and applicable laws and regulations.	Recovery of the injured resource or service would benefit from protection in addition to that provided by the owner and applicable laws and regulations.	Protection afforded by existing law, regulations, and other alternatives is inadequate to meet restoration objectives.
5	NOT APPLICABLE	NOT APPLICABLE	The nature and immediacy of expected changes in use will further affect resources injured by the oil spill.

TABLE 1: COMPARISON OF ALTERNATIVE THRESHOLD CRITERIA SETS

#	SET A	SET B	SET C
6	NOT APPLICABLE	NOT APPLICABLE	Failure to act will foreclose meeting restoration objectives.
7	NOT APPLICABLE	NOT APPLICABLE	Restoration strategies <u>other than</u> acquisition of the property right(s) are inadequate to meet restoration objectives.
8	NOT APPLICABLE	NOT APPLICABLE	Acquisition of the property right(s) will result in an identifiable incremental benefit to restoration objectives that is cost-effective relative to other restoration alternatives for the identified resource injuries.
9	NOT APPLICABLE	NOT APPLICABLE	The acquired property rights can reasonably be incorporated into public land management systems.

TABLE 2: SUMMARY ANALYSIS OF THRESHOLD CRITERIA

# Set	Threshold Criteria	Objective	Attributes
1 ABC	There is a willing seller of the parcel or property right.	• To evaluate only proposals amenable to applicable owners. • To avoid perception of condemnation.	•Minimizes unnecessary evaluations. •Facilitates negotiations with owner. •Eliminates consideration of proposals, if owner not interested.
2 AB	The parcel contains key habitats that are linked to, replace, provide the equivalent of, or substitute for injured resources or services based on scientific data or other relevant information.	• To consider a wide range of protection/acquisition proposals for meeting restoration goals. • To reject proposals that are not directly <u>or</u> indirectly linked to injured resources/services.	•Consistent with injury requirement in settlement. •Identifies linkage between acquisition/protection proposal and injured resource/service. •Imposes an objective standard based on scientific documentation. •Makes use of Contingent Valuation studies and other relevant NRDA data and studies. •Allows compensation and/or equivalency <i>in lieu</i> of direct recovery of injured resources or services.
2 C	The parcel contains key habitats that are linked to the recovery of injured resources or services by scientific data or other relevant information.	•To consider a narrow range of protection/acquisition proposals for meeting restoration goals. •To reject proposals that are not directly linked to injured resources/ services.	•Imposes strict linkage between acquisition/protection proposal and injured resource/service. •Imposes an objective standard based on scientific documentation. •Limits protection/acquisition option to direct recovery of injured resources/services.

TABLE 2: SUMMARY ANALYSIS OF THRESHOLD CRITERIA

# Set	Threshold Criteria	Objective	Attributes
3 ABC	The seller acknowledges that the government can only purchase the parcel or property rights at fair market value.	•To explicitly comply with the law. •To discourage unrealistic proposals.	•Facilitates cost-control. •Minimizes unnecessary evaluations.
4 A	An injured or equivalent resource or service would benefit from protection in addition to that provided by the owner and applicable laws and regulations.	•To ensure that a proposed protection/acquisition would benefit an injured or equivalent resource or service. •To evaluate adequacy of existing land and resource management regime to protect injured or equivalent resources or services.	•Requires evaluation of regulatory and management capabilities to determine existing level of protection for injured <u>and</u> equivalent resources/services. •Identifies benefit to injured or equivalent resources/services which would accrue from acquisition/protection.
4 B	Recovery of the injured resource or service would benefit from protection in addition to that provided by the owner and applicable laws and regulations.	•To ensure that a proposed protection/acquisition would provide an incremental recovery benefit. •To evaluate adequacy of existing land and resource management regime to achieve recovery.	•Requires evaluation of regulatory and management capabilities to determine existing level of protection for injured resources/services. •Identifies how recovery of injured resources/services would benefit from acquisition/protection.

TABLE 2: SUMMARY ANALYSIS OF THRESHOLD CRITERIA

# Set	Threshold Criteria	Objective	Attributes
4 C	Protection afforded by existing law, regulations, and other alternatives is inadequate to meet restoration objectives.	•To ensure that a proposed protection/acquisition would provide an incremental recovery benefit. •To evaluate adequacy of existing land and resource management regime to achieve recovery.	•Requires clear linkage to restoration objectives. •Requires evaluation of whether restoration objectives can be accomplished with existing regulatory framework. •Requires consideration of alternatives to protection/acquisition.
5 C	The nature and immediacy of expected changes in use will further affect resources injured by the oil spill.	•To reject proposals that do not address foreseeable threats to recovery. •To identify how changes in land use will affect injured resources/services.	•Precludes evaluation of proposals where there is no direct or foreseeable threat to recovery. •Evaluates proposed changes in land use and their potential effects on recovery. •Gives higher priority to responding to near-term threats.
6 C	Failure to act will foreclose meeting restoration objectives.	•To identify those proposals that are essential to meeting restoration objectives.	•Focuses evaluation on those proposals which threatened restoration options. •Favors short-term planning. •May expedite protection/acquisition actions.

TABLE 2: SUMMARY ANALYSIS OF THRESHOLD CRITERIA

# Set	Threshold Criteria	Objective	Attributes
7 C	Restoration strategies other than acquisition of the property right(s) are inadequate to meet restoration objectives.	•To ensure that other restoration alternatives are given priority before habitat acquisition is implemented.	•Gives priority to direct restoration alternatives. •Imposes a strict hierarchical restoration strategy. •Alternatives must be judged to be insufficient before acquisition options can be exercised. •May delay acquisition until other alternatives can be evaluated.
8 C	Acquisition of the property right(s) will result in an identifiable incremental benefit to restoration objectives that is cost-effective relative to other restoration alternatives for the identified resource injuries.	•To identify the incremental benefit (either qualitative or quantitative) to be derived from the acquisition. •To compare the incremental benefit of acquisition to that derived from other restoration alternatives.	•Provides for an evaluation of benefit relative to other alternatives. •Provides for an evaluation of cost-effectiveness (which may be subjective) relative to other alternatives. •Data available to evaluate benefits and cost-effectiveness relative to other restoration alternatives may be non- quantitative.
9 C	The acquired property rights can reasonably be incorporated into public land management systems.	•To ensure that a proposed acquisition could be managed appropriately by a government agency.	•Identifies potential agency(s) and restoration strategy for parcel. •Identifies additional management considerations needed to accomplish restoration objectives.

HABITAT PROTECTION AND ACQUISITION PROCESS

FEDERAL / STATE ACQUISITION PROCESS

Figure 3. Federal Acquisition Process

Figure 3a. Federal Acquisition Process Timeline

Narrative Description

Figure 4. State Land Exchange Process

Figure 4a. State Land Exchange Process Timeline

Narrative Description

Figure 3

Donation/Purchase

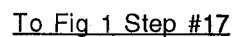
Major Exchange steps



Figure 3a

From Fig 1
Step #21

Life span documents



FEDERAL ACQUISITION PROCESS

This process outlines the basic acquisition steps used by Federal agencies. It does not reflect all agency specific steps. Each agency has specific authority and requirements that may vary within the context of this outline.

#1 Written Proposal

Each written proposal should include a legal description of the land and maps, and statements indicating that 1)the offeror is the record owner of the land/ interests, 2) the land is free and clear of all encumbrances, 3)there are no persons claiming the land adversely, 4)the status of any unpaid taxes or assessments levied against the land, and 5)the status of any lien assessed which is not due and payable. This written proposal should also include any terms or conditions the offeror is proposing. (Action: land owner)

#2 Relocation Assessment

Use the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" to assess the need to relocate any displaced people or users. (Action: agency)

#3 Appraisal (Fair Market Value)

Using the "Uniform Appraisal Standards for Federal Land Acquisitions Procedures" (1973) a certified appraiser will complete a written appraisal of the fair market value (FMV) of the real property or interests being considered. If the value and amount being paid is over \$250,000 the U.S. Forest Service must provide a 30 day comment period to the House Agriculture Committee on oversight review. If approved, the Secretary of Agriculture will then accept the option. Note: The life span of the appraisal is 6 months in the Department of the Interior (DOI) or 12 months in the U.S. Forest Service (USFS). If the Deed of Conveyance is not accepted within these timeframes, the appraisal will need to be updated before the Department of the Interior Regional Solicitor or the United States Forest Service Office of the General Counsel issues a final title opinion (see Block #25). (Action: agency)

#4 Negotiate

Negotiate terms of the offer. (Action: land owner and agency)

#5 Survey

If needed, the land will be surveyed. In some cases, the lands being offered will be unsurveyed. (For example, lands were conveyed from the Federal government to Native Corporations, pursuant to the Alaska Native Claims Act, without survey). Although not ideal, lands could be conveyed and accepted without survey. (Action: agency)

#6 Draft Agreement and Deed of Conveyance

Draft document that outlines the terms of the donation or purchase. It should include all conditions, reservations, and exceptions, in addition to timeframes, escrow terms (if necessary), and payment procedures. A draft copy of the Deed of Conveyance is completed at this time. (Action: land owner and agency)

#7 Reject Offer

If terms of the draft agreement are not acceptable and consensus cannot be reached, formal rejection of the offer is completed and the acquisition process is terminated. (Action: agency)

#8 Obtain Preliminary Title Evidence

An accepted title company searches title records and prepares a title report listing the recorded land owner, any liens, and exceptions to title and agreements that affect the ownership or use of the land. Title insurance or appropriate title guarantee is obtained to support the title report. This report is reviewed by appropriate Federal agency attorneys (i.e., Regional Solicitor for Department of the Interior and Office of General Counsel for United States Forest Service) in Block #18. (Action: title company)

#9 Title Problem

Recognition that there is a title problem that needs to be corrected before attorney review (see Block #18). (Action: agency)

#10 Fatal Defect

A title problem that cannot be corrected that would make acceptance of title impossible. Final decision rests with appropriate Federal agency attorneys (Regional Solicitor for Department of the Interior and Office of General Counsel for United States Forest Service).

#11 Reject Offer

Formal document to reject the offer and stop the acquisition process.
(Action: agency)

#12 Corrected Title

Process where curable defects are corrected. For example, the title evidence may indicate that the party making the offer is not the land owner of record. All that may be necessary to remedy this problem is for the landowner to record the original deed of conveyance showing they own the land/interest.
(Action: agency and/or land owner)

#13 Property Inspection

On-the-ground inspection to gather information to complete the documents identified in Block #14. Obtain approvals for access to private lands for purposes of inspecting the property. While this work can begin at anytime in the process, it would be best to wait until there is at least confirmation that there is an agreement between all parties. (Action: agency)

#14 Hazardous Materials Survey and Certificate of Inspection & Possession

Prepare two documents that are required for any acquisition of land and/or interests. The Certificate of Inspection & Possession describes the condition of the lands, and identifies any known or physically identifiable conditions that may affect title to the land. The Hazardous Materials Survey and Contaminant (hazardous substances) Survey Checklist describes the condition of the land and identifies any potential or known hazardous materials. If the answer to all questions on the checklist is "no", "none" or "not applicable" a Level I survey is signed by an authorized officer (e.g., Bureau of Land Management = State Director, National Park Service = Regional Director, U.S. Fish & Wildlife Service = Assistant Secretary - Policy, Budget and Administration in the Washington office). A Level II Survey is completed when the answer to any question on the checklist is other than "no", "none" or "not applicable" and the agency wishes to proceed with the acquisition. The Level II Survey is signed by the Assistant Secretary. The Level III Survey requires sampling and further work to determine the extent of contaminants and cost of clean up. Note: These documents have a limited life span and may need to be updated later in the process. (Action: agency)

#15 Fatal Defect

A problem that cannot be corrected that would make acceptance of title not advisable. For example, the property contains a contamination problem that cannot be resolved. Level II survey results might reveal a fatal defect depending on whether the acquisition is for an interest in land or for fee title.

#16 Reject Offer

Formal document to reject the offer and stop the acquisition process. (Action: agency)

#17 Request for Preliminary Title Opinion

Written request for a Preliminary Title Opinion from appropriate Federal agency attorneys (i.e., Regional Solicitor for Department of the Interior and Office of General Counsel for United States Forest Service). The request includes the title company title evidence, legal description, evidence of any clearance actions that have been completed (Block #12), and description of the acquisition proposal. The Certification of Inspection & Possession and the Hazardous Materials Surveys are a part of this request package. (Action: agency)

The Appraisal, Hazardous Materials Survey and Certificate of Inspection & Possession would be updated if too much time had elapsed since their original completion. If values have changed, agency may have to return to Block #4 and negotiate a new agreement/offer. (Action: agency)

Major Exchange Steps

#101 Preliminary Value Determination

Estimated appraisal to determine whether the lands and interests in lands to be exchanged are of equal value. The "Uniform Appraisal Standards for Federal Land Acquisitions" is used for this process.

#102 Publish Notice of Exchange Proposal

A Notice of Realty Action that is published in the Federal Register and once each week for three weeks thereafter in a local newspaper. This document puts all interested parties on notice that an exchange, by the Federal government, is being considered. This document has a 45-day public comment period.

#103 Agreement to Initiate an Exchange

Agreement signed by all exchange parties that: 1)describes the lands or interest in lands being considered for exchange; 2)lists the exchange processing steps; 3)addresses knowledge of hazardous substances on the lands; 4)physical access and Right to Enter; 5)terms of relocation benefits, if any; and 6)closing procedures.

#104 Arbitration/Bargaining and Equalize Value

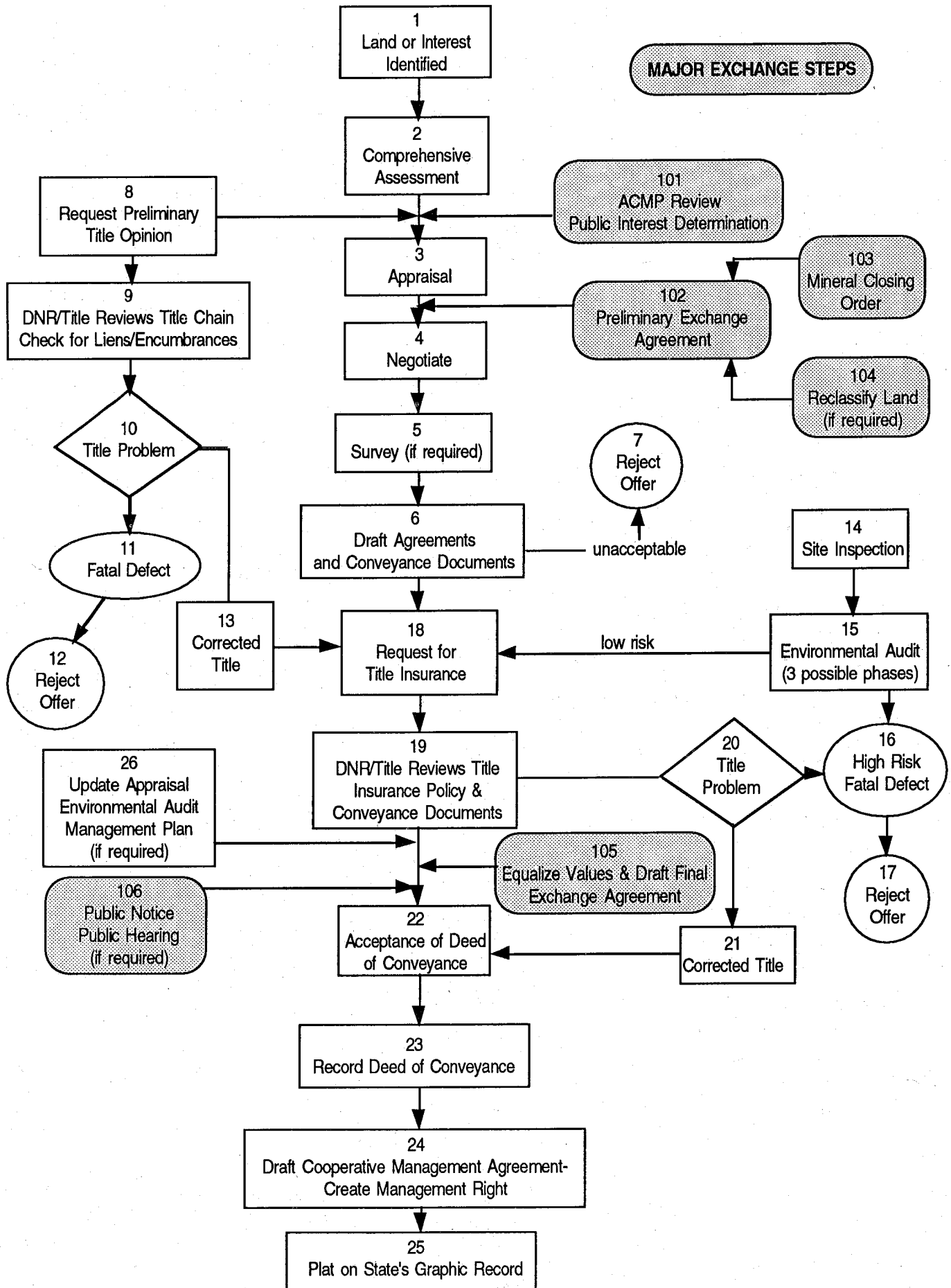
A formal process to resolve disagreements among parties as to appraised value of the lands involved in the exchange. Determination if equalization of value is necessary. A money payment for equalization of value can not exceed 25 percent of the value of the public lands and interests being conveyed.

#105 Publish Notice of Decision

The document identifies all terms of the exchange, describes the lands involved, identities the parties involved, any reservations, terms, covenants and conditions, needs for value equalization, and intended time frames to complete the exchange.

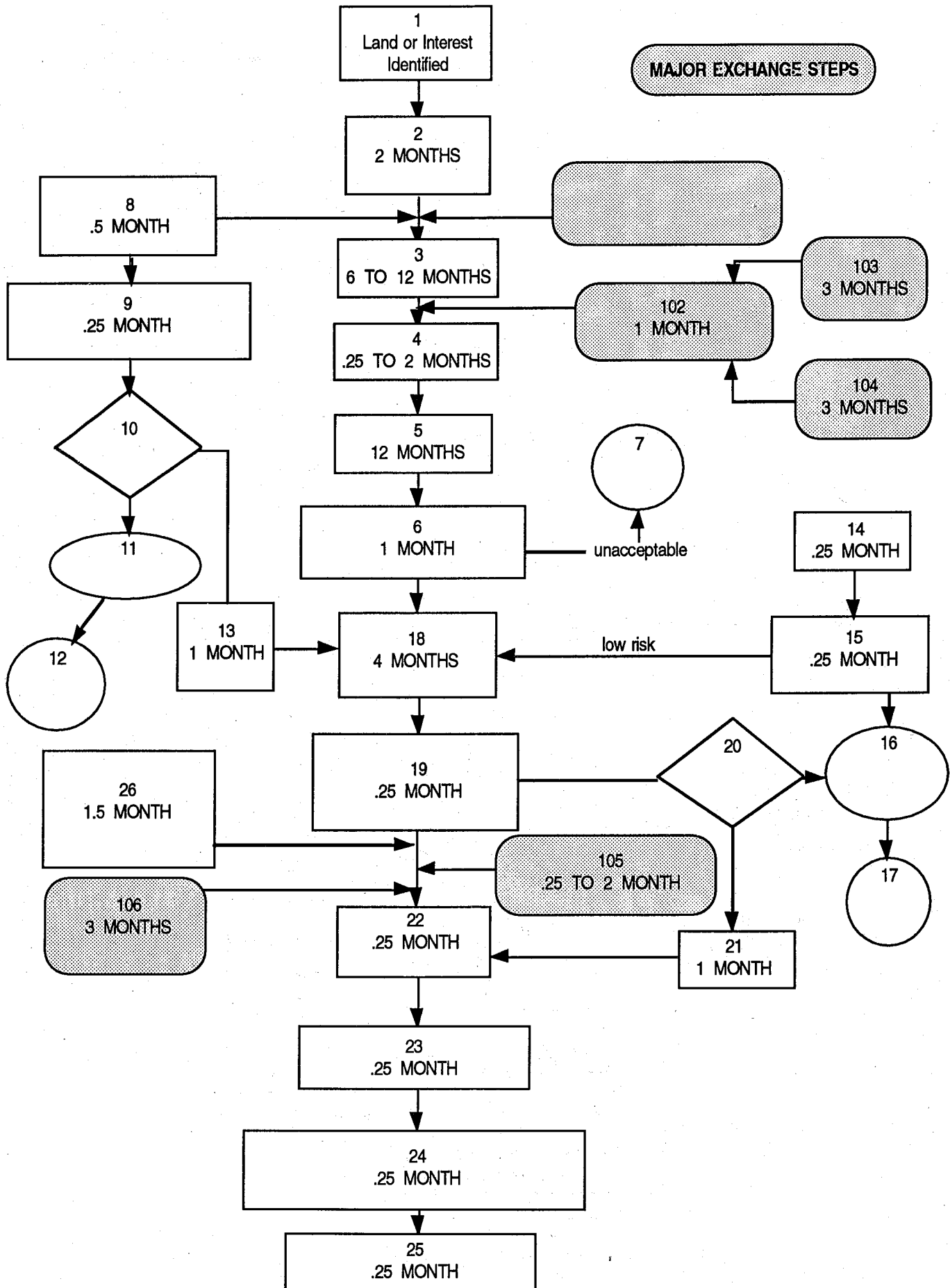
STATE ACQUISITION PROCESS

Donation/Purchase/Exchange
Selection/Judgement



STATE ACQUISITION PROCESS

Donation/Purchase/Exchange
Selection/Judgement



State Acquisition Process

All State agencies with authority to acquire land or dispose of land shall give written notification of the fact of acquisition, lease, disposal, or exchange to the Commissioner of the Department of Natural Resources (Division of Land, Title Administration Unit) within three months after the date they make the acquisition, lease, disposal, or exchange. AS 38.05.030(c). Each State agency has specific authority and requirements that may vary within the context of this basic outline.

#1 Land or Interest Identified

The land or interest to be acquired may be identified by various methods including but not limited to the methods outlined in Figure 1 or by a fax or telephone call citing the land description of the land proposed to be acquired.

#2 Comprehensive Assessment

An assessment of the proposed acquisition, management considerations, opportunities and strategies.

#3 Appraisal (FMV)

Appraisals may be made by employees of the Department of Natural Resources who are qualified to determine the value of land under standards set by the Commissioner. Alaska Statutes 38.05.840. Generally the lifespan of the appraisal is 12 months.

#4 Negotiate

Given the appraisal, negotiate the terms of the offer and what will be accepted.

#5 Draft Agreements and Deed of Conveyance

Draft document that outlines the terms of the donation or purchase. It should include all conditions, reservations, and exceptions. It should also address timeframes, escrow terms (if necessary), payment procedures. A draft copy of the Deed of Conveyance is completed at this time.

#6 Survey

If needed, the land should be surveyed. In most cases the land being offered will be unsurveyed. They were conveyed from the federal government to the private land holder without survey. Department of Natural Resources/Cadastral Survey and Title Administration Unit will determine if the land must be surveyed.

#7 Reject Offer

If terms of the draft agreement are not acceptable, if consensus cannot be reached, then formal rejection of the offer is completed and the acquisition process is terminated.

#8 Obtain Preliminary Title Evidence

An accepted title company searches title records, prepares a title report listing the recorded land owner, any liens, exceptions to title and agreements that affect the ownership or use of the land. If fee title is being acquired, the title company would be asked to provide title insurance to support their title report at a later date.

#9 Review

The Title Administration Unit of Department of Natural Resources reviews all conveyance documents in the title chain from original Federal Patent to the present owner and reviews the chain of title and title opinion from the title company for any outstanding liens or encumbrances. This report is reviewed by the Regional Solicitor in block #18.

#10 Title Problem

Recognition that there is an identified title problem that needs to be corrected and notification of the title company. The problem may be curable or a major problem causing a fatal defect.

#11 Fatal Defect

A title problem that cannot be corrected that would make acceptance of title impossible.

#12 Reject Offer

Formal document to reject the offer and stop the acquisition process.

#13 Title Clearance

Process where curable defects corrected. As an example, the title evidence may indicate that the party making the offer is not the land owner. All that may be necessary to cure this problem is for the owner to record the original deed of conveyance showing they own the land/interest.

#14 Site Inspection

On the ground inspection at anytime in the process with permission for access from the property owners to identify potential management or access problems.

#15 Environmental Audit

On-site investigation to determine what levels of contamination and/or potential liability currently exist. Department of Environmental Conservation has a "Contaminated Sites Database" which should be contacted prior to the on-site audit. The Department of Natural Resources has a Phase I Environmental Audit Review Inspection form and process, which would recommend further environmental audit action to be taken.

#16 Fatal Defect

A problem that cannot be corrected that would make acceptance of title not advisable. As an example, there are contaminants on the property and cleanup cannot be resolved.

#17 Reject Offer

Formal written rejection of offer or cessation of negotiations.

#18 Request for Title Insurance Policy

A policy should generally be equal to the fair market value of the parcel and is only necessary when fee interest is acquired.

#19 DNR/Title Review Title Insurance Policy and Conveyance Documents

The Department of Natural Resources, Title Administration Unit (TAU) reviews Title Insurance Policy and Conveyance Documents to insure the title company has adequately addressed any deficiencies previously identified. The Title Administration Unit also checks the conveyances to insure accuracy especially in the legal description of the land being conveyed. The Department of Natural Resources accepts and secures title to land; therefore, the conveyance should be granted to the State of Alaska, Department of Natural Resources for the managing agency.

#20 Title Problem

Recognition that there is an identified problem that prohibits title acceptance and requires correction or is fatal.

#21 Corrected Title

Process by which curable defects in the title are corrected which may require contacting previous owners in the chain of title to remedy gaps or errors in conveyancing.

#22 Acceptance of Deed and Conveyance

Based on further review in Title Administration Unit of Department of Natural Resources to insure the curing of any previously identified defects and to identify

any previously overlooked errors, the Department of Natural Resources Title Administration Unit accepts the Deed of Conveyance.

#23 Record Deed of Conveyance

Title Administration Unit reviews and then records the executed Deed of Conveyance at the local State Recorder's Office.

#24 Draft Cooperative Management Agreement/Create Management Right

Department of Natural Resources holds the title to the land for the other State agencies, but if another State agency acquired the land or proposes to manage the land, a management right file is created transferring management of the parcel to the managing agency. Alaska Statutes 38.50.027 allows the Department of Natural Resources to enter into cooperative resource management agreements with other agencies.

#25 Plot on State's Graphic Record

Title Administration Unit forwards the title and management information to Status Graphics to be plotted to the State's graphic record.

MAJOR EXCHANGE STEPS

#101 ACMP Review/Public Interest Determination

Alaska Coastal Management Program Review is accomplished. The regional office of Department of Natural Resources conducts agency review, requests a title report from Title Administration Unit and writes a decision indicating whether it is in the best interest of the State to proceed with the exchange.

#102 Draft Preliminary Exchange Agreement

If it is found to be in the best interest of the State to enter into an exchange, the region and the party(ies) will negotiate a preliminary exchange agreement under 11 AAC 67.230, in coordination with other State agencies per Alaska Statutes 38.50.090.

#103 Reclassify Land (if needed)

Reclassify land if necessary.

#104 Mineral Closing Order

Close the State land in the Preliminary Exchange Agreement to mineral entry and location under Alaska Statutes 38.05.185.

#105 Equalize Values and Draft Final Exchange Agreement

Revise Exchange Agreement and equalize values by subtracting or adding land from a pool of land. If Over \$5 Million or Unequal Value,
If legislative review under AS 38.50.140 is required under AS 38.50020(a).

#106 Public Notice/Public Hearing (if required)

Upon completion of appraisal, prepare a report and conduct a public notice under AS 38.05.945 and a public hearing if necessary under AS 38.50.120.

References

Agreement and Consent Decree, filed in United States v. Exxon Corp., No. A 91-082 CIV (D. Alaska) and State of Alaska v. Exxon Corp., No. A91-083 CIV (D. Alaska) and approved on October 8, 1991.

Memorandum of Agreement and Consent Decree, filed in United States v. State of Alaska, No. A91-081 CIV (D. Alaska) and approved on August 28, 1991.

Plea Agreement, filed in United States v. Exxon Corp., No. A90-015 CR (D. Alaska) and approved on October 8, 1991.

The Nature Conservancy, Options for Identifying and Protecting Strategic Fish and Wildlife Habitats and Recreation Site, The Nature Conservancy Handbook, 1991.

Trustee Council, Restoration Framework, Volume I, Exxon Valdez Oil Spill Trustee Council, Anchorage, Alaska, April, 1992.