

RESOLUTION

RECEIVED
NOV 09 1994

OF THE EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL
EXXON VALDEZ OIL SPILL
TRUSTEE COUNCIL
ADMINISTRATIVE RECORD

WHEREAS, the EVOS Trustee Council members have adopted a Final Restoration Plan encompassing a comprehensive restoration program that includes general restoration, habitat protection and acquisition, research and monitoring, administration and public information, and provision for a Restoration Reserve;

WHEREAS, a Final Environmental Impact Statement (FEIS) for the Exxon Valdez Oil Spill (EVOS) restoration program has been issued and the federal Trustees have issued a Record of Decision (ROD) with respect to the FEIS in which the State Trustees have concurred;

WHEREAS, the FEIS finds that habitat protection and acquisition in the long term will contribute to the recovery of the natural resources and related services that were injured by the Oil Spill;

WHEREAS, over the past two and a half years, the Trustee Council has devoted extensive time and effort to develop a balanced habitat acquisition program necessary for restoration, including extensive policy discussions, public review, and scientific analysis;

WHEREAS, as a result of that effort, a firm basis has been established to make habitat protection and acquisition decisions with confidence and in a manner that upholds the public trust.

WHEREAS, the following have been the cornerstones of this basis for decision making:

- **Habitat Acquisition is integral to the Trustee Council's mission** "to efficiently restore the environment injured by the *Exxon Valdez* oil spill to a healthy, productive, world renowned ecosystem, while taking into account the importance of the quality of life and the need for viable opportunities to establish and sustain a reasonable standard of living."
- **A comprehensive habitat analysis evaluation and ranking has been developed** that identifies and evaluates the available lands for habitat critical to long-term restoration and maintenance of resources and services injured by the spill. The analysis has been completed for identified parcels, although negotiations and appraisals are continuing for some parcels.
- **Restoration benefits for parcels and configurations of parcels have been developed** by agencies of the State of Alaska and United States in light of their

experience, historical biological information, and information from the Comprehensive Habitat Protection Process.

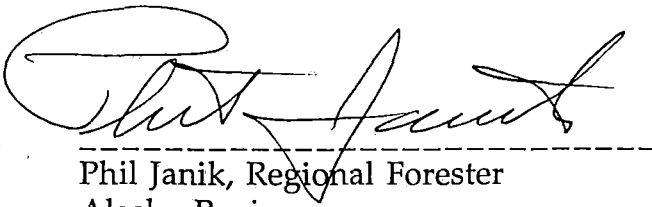
- **Lead agencies are negotiating with landowners** in light of the available habitat information and parcels are being appraised with the expectation of realizing affordable prices.
- **The January 1994 "Resolution to Proceed with Habitat Protection Program"** authorized the federal and state lead agencies, under the aegis of the Executive Director, to proceed with multiple, geographically balanced negotiations.
- **Extensive public review demonstrates support** and an expectation by the public and by the Public Advisory Group that habitat protection and acquisition will be a significant part of the restoration program, and that further acquisitions will soon occur. In addition, the public and communities throughout the spill area have consistently expressed concern that acquisitions be balanced throughout the spill area, and that there not be gross disparities in the protection program.
- **Scientists recommend that habitat be protected throughout the spill area.** The recommendation by the Chief Scientist and Core Peer Reviewers is based on a strong concern that the habitat and biodiversity of the ecosystem be protected throughout the spill area to aid injured resources on the scale of the spill area. The spill area is comprised of four regions that provide the basis for assuring a balanced habitat protection and acquisition effort throughout the spill area;
- **The preferred alternative of the Environmental Impact Statement, Alternative 5,** that was chosen by the Trustee Council assumed for purposes of analysis of the environmental effects, that approximately \$295 to \$325 million would be used for habitat protection and acquisition;

THEREFORE, the Trustee Council does hereby resolve:

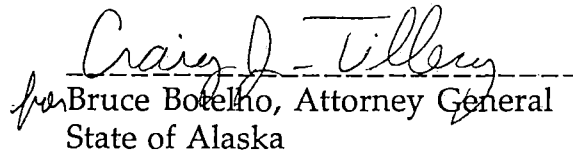
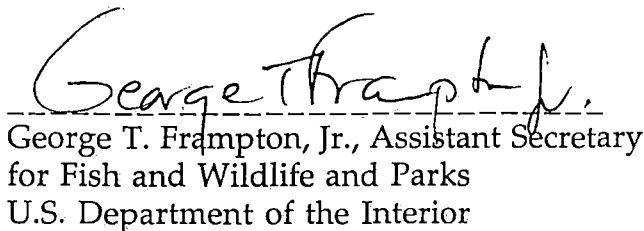
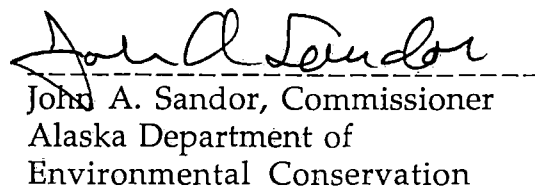
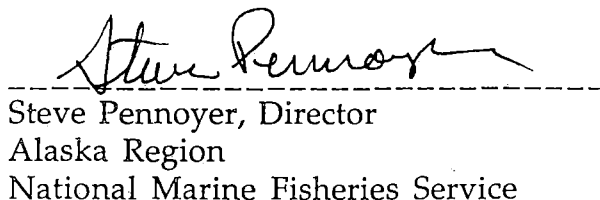
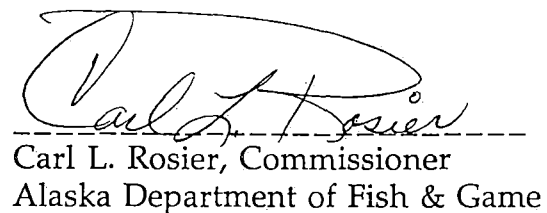
- to pursue habitat protection and acquisition throughout the oil spill area so as to promote restoration of injured natural resources and services throughout the oil spill area and that \$295 to \$325 million is an initial, flexible placeholder for habitat protection and acquisition efforts (this amount is in addition to previous expenditures for habitat protection and acquisition);
- to pursue the acquisition of habitat that will provide for the protection and restoration of the various injured natural resources and services they provide throughout the spill area in a balanced manner while recognizing the importance of different types of habitat, such as timbered lands and non-timbered lands, to the protection and restoration of injured resources

and the services they provide;

- to continue negotiations to acquire lands or land interests held by the Eyak Corporation, Chenega, Tatitlek, Port Graham, English Bay, Afognak Joint Ventures, and the Kodiak Island Borough to provide protection throughout the spill area in a balanced manner to provide for the protection and restoration of injured resources and services in each of the impacted regions of the spill area;
- to direct the designated lead negotiators and the Executive Director to continue to exercise their best efforts to negotiate proposals for the acquisition of large parcels in accordance with the January 19, 1994 Resolution and in addition to specifically invite and work with willing sellers within Prince William Sound, Kenai Fjords and Afognak Island to develop and submit, prior to the Council's next meeting in December, offers to sell such lands or interests in lands prior to the completion of the appraisals. The Council will consider such offers as it did with its earlier Seal Bay acquisition; and
- to give priority consideration to those habitat protection packages presented to it that include the highest value benefits with preference given to fee simple acquisitions.



Phil Janik, Regional Forester
Alaska Region
USDA - Forest Service


for Bruce Botelho, Attorney General
State of Alaska
George T. Frampton, Jr., Assistant Secretary
for Fish and Wildlife and Parks
U.S. Department of the Interior
John A. Sandor, Commissioner
Alaska Department of
Environmental Conservation
Steve Pennoyer, Director
Alaska Region
National Marine Fisheries Service
Carl L. Rosier, Commissioner
Alaska Department of Fish & Game

adopted November 2, 1994

RECEIVED
NOV 09 1994

RESOLUTION
of the
Exxon Valdez Oil Spill Trustee Council

EXXON VALDEZ OIL SPILL
TRUSTEE COUNCIL
ADMINISTRATIVE RECORD

Research Infrastructure Improvements
affiliated with the
School of Fisheries and Ocean Sciences
Institute of Marine Science
in Seward, Alaska

WHEREAS, on January 31, 1994 the Trustee Council directed the Executive Director to prepare a formal recommendation concerning the proposed research infrastructure improvements affiliated with the Institute of Marine Science in Seward (hereafter, "the facility") and specifically indicated that the Executive Director should:

- take needed steps to secure compliance under the National Environmental Policy Act (NEPA);
- consult with appropriate entities, including the University of Alaska, the City of Seward, the Seward Association for the Advancement of Marine Science and Trustee Agencies to review the assumptions relating to the proposed improvements and capital and operating budgets;
- develop an integrated funding approach which assures that the use of trust funds is appropriate and legally permissible under the terms of the Memorandum of Agreement and Consent Decree; and
- prepare a recommendation of the appropriate level of funding for consideration by the Trustee Council that would be legally permissible under terms of the Memorandum of Agreement and Consent Decree; and

WHEREAS, since that time, the Trustee Council has been provided with detailed briefings and informational updates that address the issues identified in its January 31, 1994 directive to the Executive Director; and

WHEREAS, a detailed *Project Description and Supplemental Materials* document dated September 26, 1994 has been prepared (hereafter *Project Description*), the proposed project has been subjected to a full Environmental

Impact Statement (EIS) review under NEPA, and on behalf of the Trustee Council, the Department of the Interior has adopted a Record of Decision (ROD) for the EIS which has been concurred in by the federal trustee department and each of the State Trustees; and

WHEREAS, the *Executive Director's Recommendation and Findings Regarding Infrastructure Improvements Affiliated with the Institute of Marine Science in Seward, Alaska* has been prepared; and

WHEREAS, the Executive Director has reviewed the *Project Description* and, together with the Chief Scientist, finds that:

- the proposed facility improvements would provide needed research infrastructure for conducting long-term marine mammal, seabird, and fishery genetics research pertaining to species identified as injured by the oil spill in order to effectively restore those injured resources and that the facility has been designed to allow for adaptation to future restoration research needs;
- the capabilities of other coastal research facilities in Alaska have been assessed and that there are no existing facilities in Alaska to adequately address the identified and anticipated restoration research needs;
- the proposed research facility will make an important contribution to implementation of the ecosystem approach to restoration and that the facility would play a vital role in making it possible to understand the ecosystem relationships that may influence or control the recovery of injured resources;
- investment of settlement funds in the proposed research infrastructure would provide a needed facility for the Trustee Council restoration mission in a cost-efficient manner reflecting a reasonable balance between costs and benefits; and

WHEREAS, the Trustee Council's Public Advisory Group (PAG) has reviewed the *Project Description* and formally expressed its support for the facility at its October 13, 1994 meeting; and

WHEREAS, the Executive Director finds that a realistic construction plan for the proposed facility has been developed that will provide for the successful completion of the needed research facility within the budget identified (a copy of the capital budget from the *Project Description* is provided as an attachment);

THEREFORE BE IT RESOLVED, that the Trustee Council hereby concurs with and adopts the findings of the Executive Director and authorizes funding for

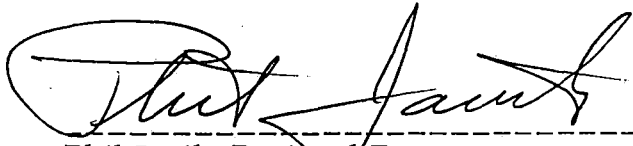
the project in an amount up to \$24,956,000 to support development of the research components of the facility subject to the following provisions:

1. approval by the Executive Director of a detailed construction budget and a detailed operating plan that reflects a realistic cash flow for the successful construction and operation of the research facility;
2. approval by the Executive Director of an agreement to be entered into by the State of Alaska (Alaska Department of Fish and Game) and the City of Seward providing that the facility will be owned by the City and that the City will provide for the operation and maintenance of the facility for the practical life of the facility;
3. approval by the Executive Director of a showing by the City of Seward that future mitigation measures identified for the construction and operation of the facility will be given due consideration and implemented to the extent practicable;
4. approval by the Executive Director of a detailed governing and management structure for the facility that clearly identifies the role of the University of Alaska in providing the scientific leadership at the facility and ensures the facility is managed so that research activities appropriately serve the Trustee Council's restoration mission; and
5. annual financial reports and project status reports will be submitted to the Trustee Council by the City of Seward and the Executive Director will carefully monitor the construction of the facility and provide regular updates to the Trustee Council regarding the project's progress.


AND BE IT FURTHER RESOLVED, that it is the intent of the Trustee Council that funds for the project be transferred from the civil settlement to the Alaska Department of Fish and Game which shall, in turn, transfer capital funds to the City of Seward in a manner that is appropriate and timely to supplement the project funding previously appropriated by the Alaska State Legislature. Subject to the provisions identified above, the Alaska Department of Law and the Assistant Attorney General for the Environment and Natural Resources Division of the U.S. Department of Justice are hereby requested to petition the United States District Court for the District of Alaska for withdrawals in an amount of \$12,500,000 on September 15, 1995 and an additional withdrawal of \$12,456,000 on September 15, 1996 in accordance with the funding approvals contained herein.

AND BE IT FURTHER RESOLVED, that in authorizing funding for this project, the Trustee Council adopts the following policy: Consistent with this facility's unique capabilities for marine mammal, seabird and fishery genetics research, it is the policy of the Trustee Council to concentrate its EVOS-

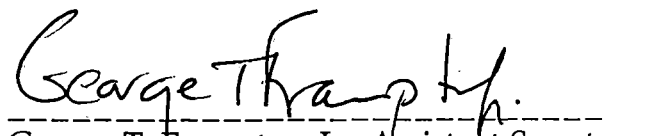
funded laboratory research projects and resources at the IMS facility to the maximum extent practicable. Approval of individual laboratory research projects, including the facilities at which they will be located, will be based on the resources required for that project and its cost-effectiveness, including the cost-savings available to the Trustee Council at the IMS facility as a result of this capital investment.



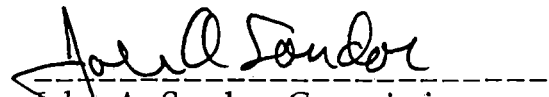
Phil Janik, Regional Forester
Alaska Region
USDA - Forest Service



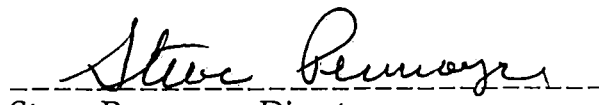
for Bruce Botelho, Attorney General
State of Alaska



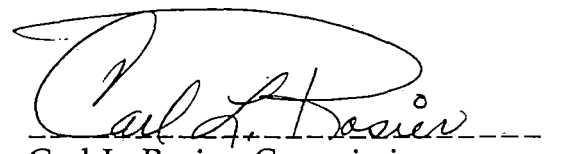
George T. Frampton, Jr., Assistant Secretary
for Fish and Wildlife and Parks
U.S. Department of the Interior



John A. Sandor, Commissioner
Alaska Department of
Environmental Conservation



Steve Pennoyer, Director
Alaska Region
National Marine Fisheries Service



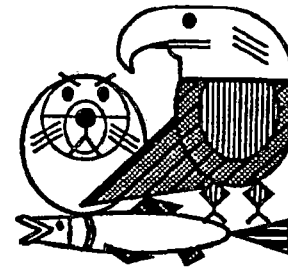
Carl L. Rosier, Commissioner
Alaska Department of Fish & Game

adopted November 2, 1994

Capital Budget

	CONSTR COST	DESIGN 15%	PA/PM 10%	CONT 10%	EIS/PLAN 2%	TOTAL
RESEARCH COMPONENT						
1. MAIN BUILDING	\$9,815,000	\$1,472,000	\$981,000	\$981,000	\$196,000	\$13,445,000
2. HABITAT	\$8,204,000	\$1,230,000	\$820,000	\$820,000	\$164,000	\$11,238,000
3. LIFE SUPPORT	\$4,108,000	\$616,000	\$411,000	\$411,000	\$82,000	\$5,628,000
4. SITE DEVELOPMENT	\$2,319,000	\$348,000	\$232,000	\$232,000	\$47,000	\$3,178,000
5. FF & EQUIPMENT	\$2,560,000	\$384,000	\$256,000	\$256,000	\$51,000	\$3,507,000
Subtotal	\$27,006,000	\$4,050,000	\$2,700,000	\$2,700,000	\$540,000	\$36,996,000
EDUCATION COMPONENT						
1. MAIN BUILDING	\$5,713,000	\$857,000	\$571,000	\$571,000	\$114,000	\$7,826,000
2. HABITAT	\$1,017,000	\$153,000	\$102,000	\$102,000	\$20,000	\$1,394,000
3. LIFE SUPPORT	\$175,000	\$26,000	\$18,000	\$18,000	\$4,000	\$241,000
4. SITE DEVELOPMENT	\$420,000	\$63,000	\$42,000	\$42,000	\$8,000	\$575,000
5. FF & EQUIPMENT	\$309,000	\$47,000	\$31,000	\$31,000	\$6,000	\$424,000
Subtotal	\$7,634,000	\$1,146,000	\$764,000	\$764,000	\$152,000	\$10,460,000
TOTAL PROJECT						
1. MAIN BUILDING	\$15,528,000	\$2,329,000	\$1,553,000	\$1,553,000	\$310,000	\$21,273,000
2. HABITAT	\$9,221,000	\$1,383,000	\$922,000	\$922,000	\$184,000	\$12,632,000
3. LIFE SUPPORT	\$4,283,000	\$643,000	\$428,000	\$428,000	\$86,000	\$5,868,000
4. SITE DEVELOPMENT	\$2,739,000	\$411,000	\$274,000	\$274,000	\$55,000	\$3,753,000
5. FF & EQUIPMENT	\$2,869,000	\$430,000	\$287,000	\$287,000	\$57,000	\$3,930,000
Total	\$34,640,000	\$5,196,000	\$3,464,000	\$3,464,000	\$692,000	\$47,456,000

Exxon Valdez Oil Spill Trustee Council
Restoration Office
645 "G" Street, Anchorage, AK 99501
Phone: (907) 278-8012 Fax: (907) 276-7178



RESOLUTION OF THE
EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL

RECEIVED
NOV 09 1994

EXXON VALDEZ OIL SPILL
TRUSTEE COUNCIL

We, the undersigned, duly authorized members of the Exxon Valdez Oil Spill Trustee Council do hereby certify that, in accordance with 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 for the District of Alaska, unanimous agreement has been reached to expend funds received in settlement of United States of America v. Exxon Corporation, et al., No. A91-083 Civil, U.S. District Court for the District of Alaska, to meet the three annual installments to acquire the lands held by the Seal Bay Timber Company at Seal Bay and Tonki Bay on Afognak Island, Alaska as set forth in the Resolution of the EXXON VALDEZ Settlement Trustee Council adopted at the May 13, 1993 meeting of the Trustee Council and then executed in writing August 23, 1993. The total required to meet the first installment is \$2,916,667, plus interest accruing on the unpaid balance at a rate equal to the fifty-two week United States treasury bill rate compounded and adjusted annually or \$312,375.

Trustee Agencies

State of Alaska: Departments of Fish & Game, Law, and Environmental Conservation
United States: National Oceanic & Atmospheric Administration, Departments of Agriculture and Interior

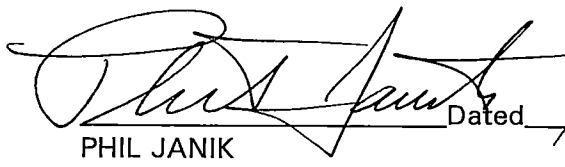
The monies are to be distributed according to the following schedule:

Alaska Department of Natural Resources

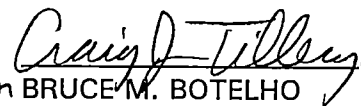
3,229,042


In accordance with the Financial Operating Procedures adopted by the Trustee Council, the amount of funds requested from the Joint Trust Fund is to be reduced by the amount of interest previously earned from settlement funds held by the Federal and State governments and any unobligated fund balances from previously approved budgets. Since the last disbursement from the Joint Trust Fund, the amount of interest earned is \$117,838 for the State of Alaska. Accordingly, the amount to be withdrawn from the fund will be reduced by \$117,838. The unobligated balance for the fiscal period March 1, 1993 to September 30, 1993 for the State of Alaska is still to be determined and will be subtracted from a subsequent court request.

By unanimous consent, we hereby request the Attorney General of the State of Alaska and the Assistant Attorney General of the Environmental and Natural Resources Division of the United States Department of Justice to petition the United States District Court for the District of Alaska for withdrawal of the sum of \$3,111,204 from the Court Registry account established as a result of the governments' settlement with the Exxon companies. These funds shall be paid to the State of Alaska. We further request the Attorney General of the State of Alaska and the Assistant Attorney General of the Environmental and Natural Resources Division of the United States Department of Justice to petition the United States District Court for the District of Alaska for principle plus interest to make the second and third payments in a timely fashion. These payments shall also be paid to the State of Alaska.

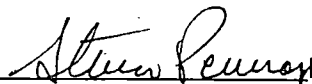
 Dated 11/2/94

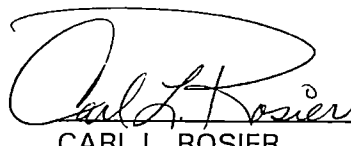
PHIL JANIK
Regional Forester
Alaska Region
USDA Forest Service

 Dated 11/2/94
for BRUCE M. BOTELHO
Attorney General
State of Alaska

 Dated 11/2/94

GEORGE T. FRAMPTON, Jr.
Assistant Secretary for Fish,
Wildlife & Parks
U.S. Department of the Interior

 Dated 11/3/94
STEVEN PENNOYER
Director, Alaska Region
National Marine Fisheries Service

 Dated 11/2/94

CARL L. ROSIER
Commissioner
Alaska Department of Fish & Game

 Dated 11/2/94

JOHN A. SANDOR
Commissioner
Alaska Department of Environmental
Conservation

RECEIVED

NOV 09 1994

RESOLUTION OF THE
EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL

We, the undersigned, duly authorized members of the Exxon Valdez Oil Spill Trustee Council, do hereby certify that the following resolution was adopted by the Trustee Council on November 2, 1994.

Valdez Oil Spill Trustee Council ("Trustee Council"), after extensive review and after consideration of the views of the public, find as follows:

1. Akhihok-Kaguyak, Inc. ("AKI"), owns the surface estate of, or has valid prioritized selections on, lands on Kodiak Island, consisting of approximately 119,885 acres within the boundaries of the Kodiak National Wildlife Refuge ("Refuge"), and more particularly described in Attachment A. These lands were selected and conveyed pursuant to the Alaska Native Claims Settlement Act. The subsurface rights associated with these lands are held by the United States of America ("United States").

2. These lands are within the oil spill area as defined by the Trustee Council in the Final Restoration Plan approved November 2, 1994.

3. AKI is desirous of selling these lands or interests in these lands to the United States as part of the Trustee Council's program for restoration of the natural resources and services that were injured by the Exxon Valdez Oil Spill ("EVOS").

4. These lands include important habitat for various species of fish and wildlife for which significant injury resulting from the spill has been documented through the Trustee Council's habitat acquisition analysis. This analysis has indicated that these lands have high value for the restoration of such injured natural

resources as pink salmon, sockeye salmon, Pacific herring, black oystercatchers, common murre, harbor seals, harlequin ducks, bald eagles, the intertidal/subtidal zone, marbled murrelets, pigeon guillemots, river otters, and cultural and archeological resources. This analysis has also indicated that these lands have high value for the restoration of injured services that rely on these natural resources, including commercial fishing, wilderness, recreation, tourism and subsistence. Restoration of the injured species will benefit from acquisition and protection of this important habitat through the elimination of activities and disturbances which may adversely affect their recovery.

5. These lands are located wholly within the boundaries of the Refuge and their protection will ensure the preservation of a significant portion of one of the nation's most productive and unique ecosystems. The benefits resulting from such acquisition and protection are further described in the Habitat Benefits Report at Attachment B.

6. Existing laws and regulations, including but not limited to the Alaska Native Claims Settlement Act, the Alaska National Interest Lands Conservation Act, the Refuge Administration Act, the Alaska Anadromous Fish Protection Act, the Clean Water Act, the Alaska Coastal Management Act, the Bald Eagle Protection Act and the Marine Mammal Protection Act, are intended, under normal circumstances, to protect resources from serious adverse effects from activities on the lands. However, restoration, replacement and enhancement of resources injured by EVOS present a unique

situation. Without passing judgment on the adequacy or inadequacy of existing law and regulations to protect resources, biologists, scientists and other resource specialists agree that, in their best professional judgment, protection of habitat in the spill area to levels above and beyond that provided by existing laws and regulations will likely have a beneficial effect on recovery of injured resources and lost or diminished services provided by these resources.

7. There has been widespread public support for the acquisition of these lands, locally, within the spill zone and nationally.

8. The purchase of the lands and interests in lands is an appropriate means to restore a portion of the injured resources and services in the oil spill area. Acquisition of these lands is consistent with the Final Restoration Plan.

9. Recently, on private lands within the Refuge, development and construction has included lodges, private residences and recreational cabins. Such sites have been near key water bodies and can have a significant impact, particularly on a cumulative basis, on water quality and injured natural resources and services well beyond the boundaries of the individual sites. In the event the subject lands are not acquired or protected at this time, development by the owners is certain to occur on them in a manner that will adversely impact water quality and subsequently the injured EVOS resources and services sensitive to human disturbance.

10. AKI's appraiser found an estimate of value for the

property in fee totaling \$88,000,000; while the approved appraisal on behalf of the Trustee Council provided an estimate of fair market value totaling \$22,000,000.

11. The U.S. Fish and Wildlife Service ("FWS") prepared and submitted an offer to AKI to purchase its Kodiak Island lands as per the estimate of fair market value in the approved appraisal. This offer was rejected and negotiations and discussions ensued between AKI and a joint Federal/State of Alaska negotiating team which resulted in the negotiated offer at Attachment A.

12. It is ordinarily the federal government's practice to pay fair market value for the lands it acquires. However, due to the unique circumstances of this proposed acquisition, including the land's exceptional habitat for purposes of promoting recovery of natural resources injured by EVOS and the need to acquire it promptly to prevent degradation of the habitat, the Trustee Council believes it is appropriate in this case to pay more than fair market value for these particular parcels.

13. This negotiated offer represents the lowest price at which these lands can be acquired or protected under the Trustee Council's habitat protection program.

14. This offer is a reasonable price given the significant natural resource and service values protected; the scope and pervasiveness of the EVOS environmental disaster and the need for protection of ecosystems; and the relationship of the price in excess of market value to certain other large-scale acquisitions in Alaska by the United States and the State of Alaska, either under

earlier actions taken under the Trustee Council's habitat protection program or other federal programs.

15. Acceptance of this negotiated offer will provide significant public access that is not currently available.

16. The acquisition of these lands and interests in lands is in compliance with the National Environmental Policy Act; Section 810 of the Alaska National Interest Lands Conservation Act; Section 7 of the Endangered Species Act; the provisions of E.O. 11593 implementing the National Historic Preservation Act; and has been determined to be consistent with Section 307 of the Coastal Zone Management Act.

17. A satisfactory hazardous substance survey has been completed with respect to the lands or interests in lands being acquired.

THEREFORE, we resolve to provide the funds in the amounts set forth below for the United States, acting through FWS, to enter into appropriate purchase agreements with AKI in conformity with applicable Federal law to purchase and acquire these lands and interests in lands in accordance with the provisions of the negotiated offer by AKI found at Attachment A. Additional funding for such purchases is to be provided by FWS from the federal portion of the EVOS criminal restitution payment and/or other Congressionally appropriated funds available to FWS. Such agreements shall contain and are subject to the following conditions or terms:

(a) receipt by the United States District Court for the District of Alaska ("District Court") of the settlement payments due from Exxon Corporation, et al.

(b) disbursement of these funds by the District Court.

(c) with respect to the lands to be exchanged under the negotiated offer, satisfactory compliance with the National Environmental Policy Act; satisfactory compliance with Section 810 of the Alaska National Interest Lands Conservation Act; satisfactory compliance with Section 7 the Endangered Species Act; satisfactory completion of a Consistency Determination with Section 307 of the Coastal Zone Management Act of 1972; and completion of a satisfactory hazardous material survey.

(d) completion of a satisfactory title search;

(e) no development is to take place on the relevant lands prior to closing.

(f) Congressional review to the extent required with respect to acquisitions by FWS pursuant to House Report No. 102-116.

(g) approval by the Shareholders of AKI in accordance with A.S. 10.06.570.

(h) completion of an agreement between FWS and the State of Alaska to provide to the State rights to three key fish weir sites currently located on the mouths of Dog Salmon Creek, Akalura Creek and Horse Marine Lagoon.

(i) approval by the Executive Director of the terms and conditions of the Conservation Easement described in Attachment A.

Title to the lands conveyed in fee to the United States shall be subject to the following conditions:

(a) once the land has been conveyed in fee to the United States, it may not be conveyed to any other entity for any purpose; and in the event that there is an attempt by the United States to convey the land or any portion of the land to any entity other than the State of Alaska, in lieu of that conveyance, title to the land or that portion of the land that would have been conveyed shall pass to the State of Alaska for inclusion in a State conservation unit that may maintain the restoration and conservation purposes set forth in the negotiated offer.

(b) in the event the State receives title to any land or portions of lands pursuant to the foregoing subparagraph (a) and it is unable to maintain the requirements set forth therein, title to any such lands shall revert to AKI and shall be subject to a conservation easement as executed for the non-fee lands in accordance with the negotiated offer at Attachment A.

(c) FWS shall develop language to implement the foregoing subparagraphs (a) and (b) in form and substance that is satisfactory to the U.S. Department of Justice and the Alaska Department of Law.

By unanimous consent, and upon execution of the purchase agreements and written notice from FWS that the terms and conditions set forth herein and in the purchase agreements have been satisfied, we request the Alaska Department of Law and the

Assistant Attorney General of the Environment and Natural Resources Division of the United States Department of Justice to petition the District Court as follows:

(a) for withdrawal of the sum of \$13,000,000 from the District Court Registry account established as a result of the governments' settlement with the Exxon companies, to be paid at the initial closing;

(b) for withdrawal of the sum of \$8,000,000 to be paid at the subsequent closing by September 30, 1995;

(c) for withdrawal of the sum of \$7,500,000 to be paid at the subsequent closing by September 30, 1996; and

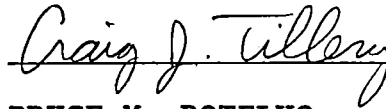
(d) for withdrawal of the sum of \$7,500,000 to be paid at the final closing by September 30, 1997.

Such amounts represent the only amounts due under this resolution to AKI by FWS to be funded from the joint funds in the District Court Registry, and no additional amounts or interest are herein authorized to be paid to AKI from such joint funds.

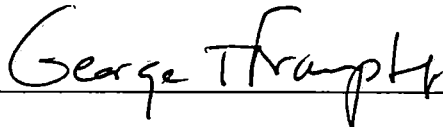
Dated this _____ day of _____, 1994 at Anchorage,
Alaska.



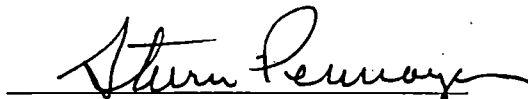
PHIL JANIK
Regional Forester
Alaska Region
USDA Forest Service



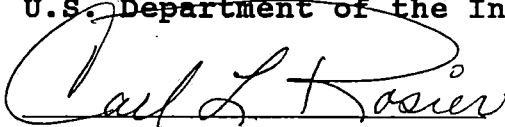
for BRUCE M. BOTELHO
Attorney General
State of Alaska



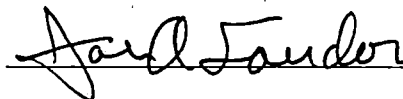
GEORGE T. FRAMPTON, Jr.
Assistant Secretary for Fish
and Wildlife and Parks
U.S. Department of the Interior



STEVEN PENNOYER
Director, Alaska Region
National Marine
Fisheries Service



CARL L. ROSIER
Commissioner
Alaska Department of
Fish and Game

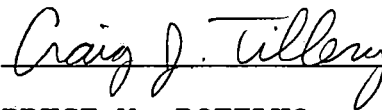


JOHN A. SANDOR
Commissioner
Alaska Department of
Environmental Conservation

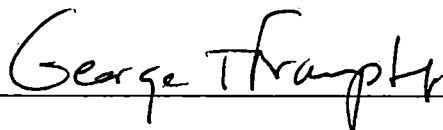
Dated this 2nd day of November, 1994 at Anchorage,
Alaska.



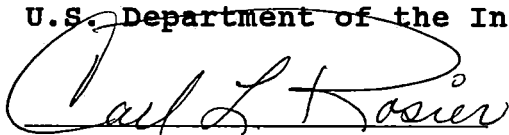
PHIL JANIK
Regional Forester
Alaska Region
USDA Forest Service



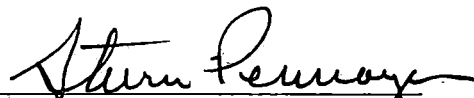
for BRUCE M. BOTELHO
Attorney General
State of Alaska



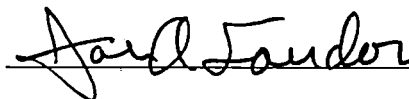
GEORGE T. FRAMPTON, Jr.
Assistant Secretary for Fish
and Wildlife and Parks
U.S. Department of the Interior



CARL L. ROSIER
Commissioner
Alaska Department of
Fish and Game



STEVEN PENNOYER
Director, Alaska Region
National Marine
Fisheries Service



JOHN A. SANDOR
Commissioner
Alaska Department of
Environmental Conservation

BLISS & WILKENS
LAWYERS

ATTACHMENT A

P. O. BOX 201128 • ANCHORAGE, ALASKA 99520-1128
431 WEST 7th AVENUE, SUITE 202 • ANCHORAGE, ALASKA 99501-3583
TELEPHONE: (907) 276-2999 • FACSIMILE: (907) 276-2956

Ronald L. Bliss
James K. Wilkens
Alfred Clayton, Jr.

October 31, 1994

Mr. James R. Ayers
Executive Director
Exxon Valdez Oil Spill
Trustee Council
645 G Street
Anchorage, AK 99501

Re: Akhiok-Kaguyak, Inc.
Negotiations with EVOS Trustee Council
Our File No. 438-1

Dear Mr. Ayers:

This letter will serve as a summary of our understanding regarding the acquisition of certain lands owned by Akhiok-Kaguyak, Inc. (AKI) located inside the Kodiak National Wildlife Refuge on Kodiak Island, Alaska.

In order to put our understanding into context, it is important to recall a fundamental disagreement we have regarding the value of AKI lands. As part of the 12-step appraisal process used by the Exxon Valdez Oil Spill Trustee Counsel, appraisals were prepared by Black-Smith and Richards on behalf of the Trustee Council and by Shorett and Riely on behalf of AKI. Black-Smith appraised AKI lands for approximately \$22 million and Shorett appraised AKI lands for approximately \$88 million. The Black-Smith appraisal was reviewed and approved by the government review appraisers. The Shorett appraisal was reviewed and tentatively disapproved by the government review appraisers. AKI reviewed and disapproved the Black-Smith appraisal and its reviews. AKI has stood by the Shorett appraisal as an accurate and true reflection of the value of AKI lands on Kodiak Island. Mr. Shorett is in the process of revising his appraisal and it will be submitted to you upon completion. In the interim, we agreed to proceed with further discussions on an appropriate acquisition package.

As part of our initial discussions, you prepared and submitted an offer to AKI to purchase its lands for the sum of \$22 million, based on the Black-Smith appraisal. AKI declined this offer. AKI counter-offered for purchase of some, but not all of its lands, for

James R. Ayers, Executive Director
Exxon Valdez Oil Spill Trustee Council
October 31, 1994
Page 2

a price closer to the Shorett valuation. You declined AKI's offer. We then proceeded to negotiate an agreement as outlined below.

Our understanding of the agreement is as follows:

I. Land Transfer - AKI will grant and transfer to the United States legal rights to 119,885 acres of its lands as follows:

A. Fee Simple Title - AKI will transfer fee simple title to the following lands:

<u>Parcel</u>	<u>Acreage</u>
AKI01	5,230 acres
AKI02	4,012 acres
AKI04A	21,550 acres
AKI04B	17,701 acres
AKI05	8,255 acres
AKI06A	9,042 acres
AKI06B	5,075 acres
AKI06C	<u>5,781 acres</u>

TOTAL: 76,646 acres

AKI will retain a right to allow its shareholders access on the lands to pursue their subsistence lifestyle.

B. Conservation Easement - AKI will grant a conservation easement in perpetuity (substantially in the form attached) on the following lands:

<u>Parcel</u>	<u>Acreage</u>
AKI03	12,620 acres
AKI07A	5,477 acres
AKI07B	9,479 acres
AKI08	<u>15,663 acres</u>

TOTAL: 43,239 acres

The purposes of the conservation easement are: (1) to convey to the United States Fish and Wildlife Service (USF&WS) the right to restore resources and services injured by the EXXON VALDEZ oil spill, and to preserve, protect and manage the conservation values of these lands in perpetuity; (2) subject to the intent to preserve, protect and manage the conservation values, to reserve to AKI other rights and privileges as landowner, specifically including subsistence and economic opportunities arising from use

James R. Ayers, Executive Director
Exxon Valdez Oil Spill Trustee Council
October 31, 1994
Page 3

of this property; and (3) to allow public access to these lands, compatible with the purposes of the easement as described above.

C. Exchange - In order to consolidate ownership and for management purposes, AKI and the U.S. Fish and Wildlife Service will exchange AKI lands in AKI03 and AKI07B for lands to be identified contiguous to AKI07A, AKI08, AKI09A and/or AKI09B. This exchange will be on a value-for-value basis and such lands will be subject to the conservation easement.

All of the above AKI land transfers will be subject to existing lease and license obligations. AKI will remain responsible for resolution of any Section 14(c) claims. To the extent any land is lost as part of the Section 14(c) process, AKI will agree to a final land adjustment and reconciliation.

II. Price and Payment - The Trustee Council will pay AKI the sum of Forty-Six Million Dollars (\$46,000,000.00). The Trustee Council will pay AKI Twenty-Three Million Dollars (\$23,000,000.00) at closing, with the remaining portion of the purchase price in three (3) installments as follows: (1) Eight Million Dollars (\$8,000,000.00) on or before September 30, 1995; (2) Seven Million Five Hundred Thousand (\$7,500,000.00) on or before September 30, 1996; and (3) Seven Million Five Hundred Thousand (\$7,500,000.00) on or before September 30, 1997.

In order to comply with federal law and with Trustee Council funding requirements, the USF&WS and AKI may structure the final agreement in the form of several separate sales agreements and/or options to purchase. The options to purchase will be irrevocable as to AKI, and exercisable solely at the discretion of the USF&WS. The lands to be optioned will be structured so as to encourage the USF&WS to complete the entirety of the contemplated sale arrangement.

III. Legal Authority and Approval - No legally binding agreement exists unless and until all legal authority and approval is obtained, including:

- A. Approval by the Trustee Council.
- B. Appropriate Congressional Review (to the extent required).
- C. Approval by the Secretary of Interior.
- D. Approval by AKI Shareholders (A.S. 10.06.570).

James R. Ayers, Executive Director
Exxon Valdez Oil Spill Trustee Council
October 31, 1994
Page 4

The AKI Board of Directors has agreed to this proposal. A copy of the board resolution is attached.

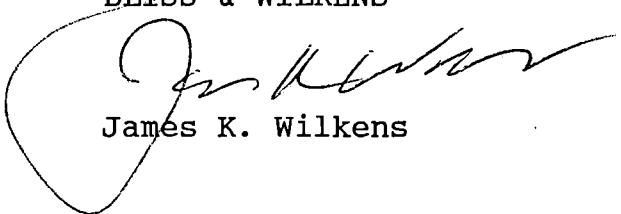
The major points set forth above will be documented in the form of a final agreement between USF&WS and AKI. If these major points are acceptable to the Trustee Council, we anticipate finalizing the formal legal document promptly.

In concluding, AKI wishes to express its sincere appreciation to you and the other members of the EVOS Trustee Council negotiating team. As with all negotiations, there were numerous issues upon which the parties firmly disagreed. However, due to the effort, cooperation and professionalism of the EVOS negotiating team, we believe that we have been able to reach an agreement in principle which furthers the best interests of both the public and AKI's shareholders.

We look forward to working with you to seek consummation of this agreement.

Regards,

BLISS & WILKENS



James K. Wilkens

JKW/cl
438-1\Ayers.16

RESOLUTION OF THE BOARD OF DIRECTORS
OF
AKHIOK-KAGUYAK, INC.

Resolution No. 94-10

WHEREAS, the Corporation received certain lands and rights to land in the Kodiak National Wildlife Refuge (Refuge) as part of its entitlement under the Alaska Native Claims Settlement Act (ANCSA); and

WHEREAS, the Corporation desires to utilize its ANCSA lands for economic development and self-sufficiency for the Corporation and its present and future shareholders; and

WHEREAS, the Corporation has attempted for over ten years to obtain economic self-sufficiency by selling all or some of the corporate lands and rights to land to the United States in return for appropriate value and other rights; and

WHEREAS, from the sales proceeds the Corporation desires to establish a settlement trust (permanent fund), pursuant to 43 U.S.C. § 1629e, P.L. 100-241, for the purposes of (1) protecting and preserving in perpetuity the principal of such sales proceeds and (2) allowing interest accruing from the permanent fund to be utilized for corporate purposes and for shareholder dividends; and

WHEREAS, the Corporation has been negotiating for several years with the Exxon Valdez Oil Spill Trustee Council seeking to obtain an agreement which would satisfactorily resolve these issues; and

WHEREAS, duly authorized representatives of the Corporation have recently negotiated a tentative agreement in principle as outlined in the attached letter dated October 31, 1994 (Exhibit A); and

WHEREAS, the Board believes it is in the best interests of the Corporation to accept and approve this agreement, to establish and fund a permanent fund, and to solicit shareholder approval of this agreement.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The actions of the Corporation's representatives in negotiating the tentative agreement in principle as set forth in Exhibit A are approved and ratified.

Resolution No. 94-10

2. The terms and conditions of the agreement in principle reached by the Corporation's negotiators as set forth in the attached letter dated October 31, 1994 (Exhibit A) are accepted and approved.

3. The Corporation will establish and fund the permanent fund, consistent with all federal and state laws and regulations, with the proceeds from the agreement (Exhibit A).

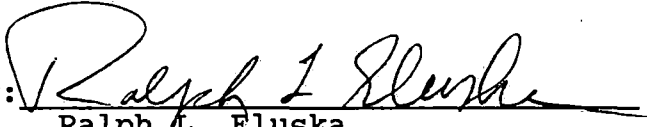
4. The Board will solicit and seek approval of this transaction by the Corporation's shareholders.

5. Ralph Eluska or his authorized delegate is authorized to negotiate, draft, prepare and execute any and all documents necessary to carry out the purpose and intent of this resolution.

I, RALPH L. ELUSKA, do hereby certify that I am the duly elected and qualified President of Akhiok-Kaguyak, Inc., a Native corporation organized and existing under the laws of the State of Alaska, and that the above is a true and correct copy of a resolution duly adopted at a meeting of the Board of Directors thereof, convened and held in accordance with the law and the bylaws of said corporation on October 31, 1994, and that such resolution is now in full force and effect.

IN WITNESS WHEREOF, I have affixed my name as President this 31st day of October, 1994.

AKHIOK-KAGUYAK, INC.

By: 
Ralph L. Eluska
President

JKW/cl
438-2\Resol. 18

Resolution No. 94-10

DRAFT

CONSERVATION EASEMENT

This Conservation Easement is made this _____ day of _____, 1994 by Akhiok-Kaguyak, Incorporated ("Grantor") and the United States of America, acting through the United States Fish and Wildlife Service ("Grantee").

WHEREAS, the Grantor is the owner in fee simple of the surface estate of certain real property located in the Kodiak National Wildlife Refuge ("Refuge"), State of Alaska, which is described in Exhibit A attached hereto and incorporated by this reference (the "Protected Property"); and

WHEREAS, the Grantor intends, as owner of the Protected Property, to convey to the Grantee the right to restore resources and services on the Protected Property injured by the Exxon Valdez oil spill, and to preserve, protect, and manage the conservation values of the Protected Property in perpetuity; and

WHEREAS, subject to the intent to preserve, protect and manage the conservation values of the Protected Property, the Grantor reserves and retains all other rights and privileges as landowner, specifically including access, subsistence, and all economic opportunities arising from use of the Protected Property; and

WHEREAS, subject to these purposes and rights, it is further intended that the public will be allowed compatible access and use of the Protected Property for hunting, fishing, and other natural lands based recreational opportunities; and

WHEREAS, the Grantee agrees by accepting this grant to honor the intentions of the Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Protected Property, consistent with the Grantor's retained rights and privileges as landowner, for the benefit of this generation and the generations to come;

NOW THEREFORE, the Grantor does hereby grant, bargain, transfer and convey to the Grantee, its successors and assigns, forever, a conservation easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth (the "Easement").

1. Purposes

It is the purpose of this Easement to assure that the Protected Property will be retained in perpetuity as a wildlife refuge and to prevent any use of the Protected Property that will

impair or interfere with the conservation values of the property, except as otherwise provided in Paragraph Three. The Grantor intends that this Easement will confine the use of the property to such activities compatible with the management of the Protected Property as a wildlife refuge according to the National Wildlife Refuge Administration Act, Alaska National Interest Lands Conservation Act (ANILCA), Endangered Species Act, Bald Eagle Protection Act, Migratory Bird Treaty Act, Marine Mammal Protection Act and other appropriate statutes, regulations, and policies, consistent with the purposes of this Easement.

It is the purpose of this Easement to ensure reservation and enjoyment by the Grantor of all other legal rights and privileges as landowner, specifically including subsistence and economic opportunities arising from use of the Protected Property.

Subject to these purposes and rights, it is also the purpose of this Easement to allow compatible public access and use of the Protected Property for hunting, fishing and other natural lands based recreational opportunities, as further described below.

2. Rights and Duties of the Grantee

To accomplish the purposes of this Easement, the following rights and duties are conveyed to and accepted by the Grantee by this Easement:

To restore resources and services injured by the Exxon Valdez oil spill.

To preserve and protect the conservation values of the Protected Property.

To enter upon the Protected Property in order to achieve the purposes and enforce the terms of this Easement.

To prevent any activity on or use of the Protected Property that is inconsistent with the purposes of this Easement and to require the restoration by those responsible of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use. Notwithstanding the above, existing structures shall be exempted from the restoration provision of this paragraph.

To conduct fish, wildlife, and habitat surveys and research by all customary means and techniques; to include the use of aircraft, radio telemetry, capture drugs, establishment of multi-year vegetation plots, establishment of weir and sonar sites to be operated by the Grantee or the Alaska Department of Fish and Game

DRAFT

under the authority of the Grantee, for the purposes of fish and wildlife management and general monitoring of ecosystem health.

To establish, at the Grantee's discretion, up to three seasonal camps for research and management purposes. The camps shall be selected in consultation with the Grantor. Additional camps and locations may be established with the written concurrence of the Grantor.

To enforce all applicable State and Federal fish, wildlife and National Wildlife Refuge System statutory and regulatory requirements.

To allow, protect and preserve the Grantor's rights and privileges as landowner, as set forth herein.

3. The Grantor's Retained Rights and Privileges As Landowner

Except as expressly granted in this Easement, the Grantor reserves, retains and continues to have all other legal rights and privileges as landowner, including without limitation those rights and privileges set forth below.

The Grantor has the exclusive right over all commercial operations on or utilizing the Protected Property. This includes the right to conduct, authorize, permit, charge use fees, regulate, limit or exclude all commercial operations on or utilizing the Protected Property. Commercial operations specifically include ecotourism and commercial guiding for hunting, fishing, recreational and similar activities. However, access to the Protected Property through charter or other transportation services by an individual in possession of and pursuant to the terms of a land use permit issued by the Grantor, shall not, by itself, be considered a commercial operation for purpose of this paragraph. All commercial operations must comply with State of Alaska licensing requirements.

The Grantor has the exclusive right to construct, use and lease cabins and related structures not to exceed 500 total square feet per site, for compatible fishing, hunting, ecotourism, recreation or similar purposes. Not more than six cabin sites shall be established pursuant to this paragraph, including the present cabins on South Olga Lakes. New sites shall be selected in consultation with the Refuge Manager, Kodiak National Wildlife Refuge, and new construction will take place only after the new site is determined to be compatible with the purposes of this Easement. Sites may be abandoned and restored and subsequently alternate sites established following consultation with the Refuge Manager.

DRAFT

The Grantor has the right to condition public access to the Protected Property on issuance of a land use permit from the Grantor. The Grantor has the right to charge a fee for the land use permit. The fee will be set in an amount commensurate with similar fees charged by the Department of Interior. The fee may be reasonably adjusted in the future in recognition of inflation and the high costs which exist in rural Alaska. Issuance of land use permits from the Grantor shall be made on the basis of standards and criteria determined by the Grantor and the Grantee to be compatible with the purposes of this Easement. The standards and criteria may include consideration of the amount, type, location and timing of access to and use of the Protected Property, and of the reasonableness of the fee charged by the Grantor for issuance of the permit. The Grantor and the Grantee shall meet at least biannually to establish, review and revise as appropriate the standards and criteria. The Grantor retains the right to administer the land use permit system itself, or may, in consultation with the Grantee, agree upon some other method of administration. The Grantor has the right to appeal any adverse decision made under this paragraph to the Regional Director of the United States Fish and Wildlife Service. If not satisfied with the decision of the Regional Director, the Grantor has the right to appeal such decision to the Secretary of the Interior, or his delegate. Following such administrative appeal, the Grantor may bring an action at law or equity in a court of competent jurisdiction, or pursue any other of its legal rights to contest such decision.

The Grantor has the right to invoke an emergency closure, not to exceed thirty days in duration, of all or portions of the Protected Property in the event that public access is incompatible with any of the purposes or rights under this Easement, including restoration of injured resources. In the event the Grantor closes all or portions of the Protected Property, the Grantor shall give adequate notice to the Grantee and the public of such closure and the reasons for such closure. The Grantee shall review the reasons for such closure, and with the Grantor, shall jointly determine an appropriate remedy to ensure that the purposes and rights under the Conservation Easement are protected. The Grantee, after review of all pertinent evidence and after stating its reasons in writing and providing such written reasons to the Grantor, shall have the authority to extend, modify or reverse the closure if the Grantee determines such action is appropriate and warranted under the circumstances. The Grantee, through its legal authorities shall be responsible for resolving public access conflicts.

The Grantee shall be responsible for monitoring and assessing public use and its impacts. The Grantee shall also be responsible for limiting such use and policing such limits if necessary in accordance with this Easement. The Grantee shall take all

DRAFT

reasonable steps to ensure that the Grantor's rights and privileges as described above are protected and preserved, including limiting or denying access to persons or parties who may interfere with the Grantor's rights and privileges under this Easement.

4. Public Access and Use

The public will have access to the Protected Property according to existing laws, rules, regulations, and policies governing management of the Kodiak National Wildlife Refuge and subject to the other provisions of this Easement.

Types and quantity of public use will be in conformance with the compatibility standard in ANILCA and the National Wildlife Refuge System Administration Act. Public use must also be compatible with the Grantor's rights and privileges as landowner.

5. Prohibited Uses

There shall be no construction or placing of buildings, camping accommodations or mobile homes, fences, billboards or other advertising material or other structure on the Protected Property except as allowed in Paragraphs Two and Three.

There shall be no filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock minerals or other materials on the Protected Property, or any building of roads or change in the topography of the land in any manner except for the maintenance of foot trails which shall be maintained only with natural non-structured materials.

There shall be no removal, destruction or cutting of trees or plants (except as is necessary to construct and maintain foot trails), planting of trees or plants, grazing of domestic animals or disturbance or change in the natural habitat of the Protected Property in any manner.

There shall be no introductions of non-endemic species, including reindeer.

There shall be no dumping of ashes, trash, garbage, or other unsightly or offensive material, and no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils on the Protected Property.

There shall be no manipulation or alteration of natural water courses, shores, marshes or other water bodies or activities or uses detrimental to water purity on the Protected Property.

DRAFT

6. Acts Beyond the Grantor's Control

Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Protected Property resulting from causes beyond the Grantor's control, including, without limitation, natural caused fire, flood, storm, and earth movement, or from any action resulting from a third party's negligence or prudent action taken by the Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Protected Property resulting from such causes.

7. Subsequent Transfers

The Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or in a portion of the Protected Property, including without limitations, a leasehold interest. The Grantee agrees not to transfer, assign, or delegate any of its rights or responsibilities under this Easement.

8. Enforcement

In the event a party becomes aware of an event or circumstance of noncompliance with the terms and conditions set forth herein, that party shall give notice to the other party, its successors or assigns, at its last known post office address, of such event or circumstance of noncompliance. Failure to take such corrective action within sixty (60) days after receipt of such notice shall entitle the party to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this agreement and/or recover any damages arising from noncompliance. Nothing in this paragraph shall limit any other legal rights or remedies available to the parties.

9. Recordation

The Grantee shall record this instrument in timely fashion in the official records of the Kodiak Recording District, Third Judicial District, State of Alaska, and may re-record it at any time as may be required to preserve rights in this Easement.

10. General Provisions

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Alaska.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall

DRAFT

be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of Alaska Statute § 34.17.010 - § 34.17.060. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

(e) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of the Grantor's title in any respect.

(f) **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns and shall continue as a servitude running in perpetuity with the Protected Property.

(g) **Termination of Rights and Obligations.** The Grantor's rights and obligations under this Easement terminate upon transfer of the Grantor's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(h) **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(i) **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

DRAFT

11. Modification

The parties may agree to waive or modify the terms of the Easement, but such waiver or modification is not legally binding unless and until agreed to in writing and such writing is signed by both parties.

12. Notices

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To the Grantor: Akhiok-Kaguyak, Incorporated
5028 Mills Drive
Anchorage, AK 99508

with a copy to:
Bliss & Wilkens
P.O. Box 201128
Anchorage, AK 99520-1128

To the Grantee: Refuge Manager
Kodiak National Wildlife Refuge
1390 Buskin River Road
Kodiak, Alaska 99615

or to such other address as either party from time to time shall designate by written notice to the other.

TO HAVE AND TO HOLD unto the Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF, the Grantor and the Grantee have set their hands on the day and year first above written.

AKHIOK-KAGUYAK, INCORPORATED

By: _____
Ralph L. Eluska, President

UNITED STATES OF AMERICA ACTING THROUGH
THE UNITED STATES FISH & WILDLIFE SERVICE

By: _____
Its: _____

DRAFT

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 1994, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Ralph L. Eluska, to me known to be the identical individual described in and who executed the within and foregoing CONSERVATION EASEMENT as President of Akhiok-Kaguyak, Incorporated, the Corporation that executed the within and foregoing instrument, and acknowledged to me that he signed the same as President of Akhiok-Kaguyak, Incorporated, in the name of and for and on behalf of said Corporation, freely and voluntarily and by authority of its Board of Directors for the use and purposes therein mentioned.

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

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____ day of _____, 1994, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared _____, to me known to be the identical individual described in and who executed the within and foregoing CONSERVATION EASEMENT as _____ of the United States of America acting through the United States Fish and Wildlife Service, the entity that executed the within and foregoing instrument, and acknowledged to me that he signed the same as _____ of the United States of America acting through the United States Fish and Wildlife Service, in the name of and for and on behalf of said entity, freely and voluntarily for the use and purposes therein mentioned.

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

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

EXHIBIT A

DRAFT

Attached to and made a part of that certain CONSERVATION EASEMENT executed by Akhiok-Kaguyak, Incorporated this _____ day of _____, 1994, conveying the following described real property located in the Kodiak Recording District, Third Judicial District, State of Alaska, more particularly described as follows:

SEWARD MERIDIAN, ALASKA

[Description]

SUBJECT TO conditions, restrictions and limitations of record, including, but not limited to, conditions, restrictions and limitations contained in [Interim Conveyance Number _____ dated _____ and recorded at page _____, book _____, of the records of the Kodiak Recording District, Third Judicial District, State of Alaska.

JKW/cl
438-1\Easement.Con

RECEIVED
NOV 09 1994RESOLUTION OF THE
EXXON VALDEZ OIL SPILL TRUSTEE COUNCILEXXON VALDEZ OIL SPILL
TRUSTEE COUNCIL
ADMINISTRATIVE RECORD

We, the undersigned, duly authorized members of the Exxon Valdez Oil Spill Trustee Council ("Trustee Council"), after extensive review and after consideration of the views of the public, find as follows:

1. Old Harbor Native Corporation ("OHNC"), owns the surface estate of, or has valid prioritized selections on, lands on Kodiak Island, consisting of approximately 32,727 acres within the boundaries of the Kodiak National Wildlife Refuge ("Refuge"), and more particularly described in the negotiated offer at Attachment A. These lands were selected pursuant to the Alaska Native Claims Settlement Act. The subsurface rights associated with these lands are held by the United States of America ("United States").

2. These lands are within the oil spill area as defined by the Trustee Council in the Final Restoration Plan approved November 2, 1994.

3. OHNC is desirous of selling certain of these lands or interests in these lands to the United States as part of the Trustee Council's program for restoration of the natural resources and services that were injured by the Exxon Valdez Oil Spill ("EVOS").

4. These lands include important habitat for various species of fish and wildlife for which significant injury resulting from the spill has been documented through the Trustee Council's habitat acquisition analysis. This analysis has indicated that these lands

have high value for the restoration of such injured natural resources as pink salmon, Pacific herring, harbor seals, harlequin ducks, bald eagles, the intertidal/subtidal zone, and archeological and cultural resources. This analysis has also indicated that these lands have high value for the restoration of injured services that rely on these natural resources, including commercial fishing, wilderness and subsistence. In addition, the lands have significant restoration values for such injured natural resources as Dolly Varden, black oystercatchers, common murre, marbled murrelets, pigeon guillemots, and river and sea otters, as well as recreation and tourism, natural resource services that were also injured as a result of the oil spill. Restoration of the injured species and the related natural resource services will benefit from acquisition and protection of this important habitat through the elimination of activities and disturbances which may adversely affect their recovery.

5. These lands are located wholly within the boundaries of the Refuge and their protection will ensure the preservation of a significant portion of one of the nation's most productive and unique ecosystems. The benefits resulting from such acquisition and protection are further described in the Habitat Benefits Report at Attachment B.

6. Existing laws and regulations, including but not limited to the Alaska Native Claims Settlement Act, the Alaska National Interest Lands Conservation Act, the Alaska Anadromous Fish Protection Act, the Clean Water Act, the Alaska Coastal Management

Act, the Bald Eagle Protection Act and the Marine Mammal Protection Act, are intended, under normal circumstances, to protect resources from serious adverse effects from activities on the lands. However, restoration, replacement and enhancement of resources injured by EVOS present a unique situation. Without passing judgment on the adequacy or inadequacy of existing law and regulations to protect resources, biologists, scientists and other resource specialists agree that, in their best professional judgment, protection of habitat in the spill area to levels above and beyond that provided by existing laws and regulations will likely have a beneficial effect on recovery of injured resources and lost or diminished services provided by these resources.

7. There has been widespread public support for the acquisition of these lands, locally, within the spill zone and nationally.

8. The purchase of the lands and interests in lands is an appropriate means to restore a portion of the injured resources and services in the oil spill area. Acquisition of these lands is consistent with the Final Restoration Plan.

9. Recently, on private lands within the Refuge, development and construction has included lodges, private residences and recreational cabins. Such sites have been near key water bodies and can have a significant impact, particularly on a cumulative basis, on water quality and injured natural resources and services well beyond the boundaries of the individual sites. In the event the subject lands are not acquired or protected at this time,

development by the owners is certain to occur on them in a manner that will adversely impact the water quality and subsequently the injured EVOS resources and services sensitive to human disturbance.

10. OHNC's appraiser found an estimate of value for the property in fee totaling \$19,000,000; while the approved appraisal on behalf of the Trustee Council provided an estimate of fair market value totaling \$4,200,000.

11. The U.S. Fish and Wildlife Service ("FWS") prepared and submitted an offer to OHNC to purchase its Kodiak Island lands as per the estimate of fair market value in the approved appraisal. This offer was rejected and negotiations and discussions ensued between OHNC and a joint Federal/State of Alaska negotiating team which resulted in the negotiated offer at Attachment A.

12. It is ordinarily the federal government's practice to pay fair market value for the lands it acquires. However, due to the unique circumstances of this proposed acquisition, including the land's exceptional habitat for purposes of promoting recovery of natural resources injured by EVOS and the need to acquire it promptly to prevent degradation of the habitat, the Trustee Council believes it is appropriate in this case to pay more than fair market value for these particular parcels.

13. This negotiated offer represents the lowest price at which these lands can be acquired or protected under the Trustee Council's habitat protection program.

14. This offer is a reasonable price given the significant natural resource and service values protected; the scope and

pervasiveness of the EVOS environmental disaster and the need for protection of ecosystems; and the relationship of the price in excess of market value to certain other large-scale acquisitions in Alaska by the United States and the State of Alaska, either earlier actions taken under the Trustee Council's habitat protection program or other federal programs.

15. The acquisition of these lands or interests in lands is in compliance with the National Environmental Policy Act; Section 810 of the Alaska National Interest Lands Conservation Act; Section 7 of the Endangered Species Act; the provisions of E.O. 11593 implementing the National Historic Preservation Act; and has been determined to be consistent with Section 307 of the Coastal Zone Management Act.

16. A satisfactory hazardous substance survey has been completed with respect to the lands or interests in lands being acquired.

THEREFORE, we resolve to provide the funds in the amounts set forth below for the United States, acting through FWS, to enter into appropriate purchase agreements with OHNC in conformity with applicable Federal law to purchase and acquire these lands and interests in lands in accordance with the provisions of the negotiated offer by OHNC found at Attachment A. Additional funding for such purchases is to be provided by FWS from the federal portion of the EVOS criminal restitution payment and/or other Congressionally appropriated funds available to FWS. Such

agreements shall contain and are subject to the following conditions or terms:

(a) receipt by the United States District Court for the District of Alaska ("District Court") of the settlement payments due from Exxon Corporation, et al.

(b) disbursement of these funds by the District Court.

(c) completion of a satisfactory title search;

(d) no development is to take place on the relevant lands prior to closing.

(e) Congressional review to the extent required with respect to acquisitions by FWS pursuant to House Report No. 102-116.

(f) approval by the Shareholders of OHNC.

Title to the lands conveyed in fee to the United States shall be subject to the following conditions:

(a) once the land has been conveyed in fee to the United States, it may not be conveyed to any other entity for any purpose; and in the event that there is an attempt by the United States to convey the land or any portion of the land to any entity other than the State of Alaska, in lieu of that conveyance, title to the land, or that portion of the land that would have been conveyed, shall pass to the State of Alaska for inclusion in a State conservation unit that may maintain the restoration and conservation purposes set forth in the negotiated offer.

(b) in the event the State receives title to any land or portions of lands pursuant to the foregoing subparagraph (a) and it is unable to maintain the requirements set forth therein, title to

any such lands shall revert to OHNC and shall be subject to a non-development conservation easement.

(c) FWS shall develop language to implement the foregoing subparagraphs (a) and (b) in form and substance that is satisfactory to the U.S. Department of Justice and the Alaska Department of Law.

By unanimous consent, and upon execution of the purchase agreements and written notice from FWS that the terms and conditions set forth herein and in the purchase agreements have been satisfied, we request the Alaska Department of Law and the Assistant Attorney General of the Environment and Natural Resources Division of the United States Department of Justice to petition the District Court as follows:

(a) for withdrawal of the sum of \$4,000,000 from the District Court Registry account established as a result of the governments' settlement with the Exxon companies, to be paid at the initial closing;

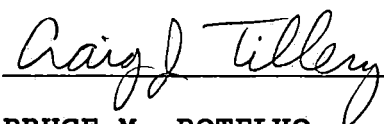
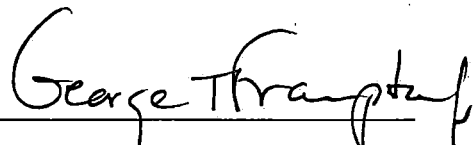
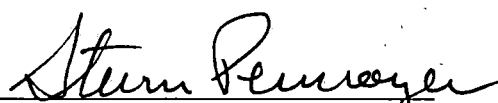
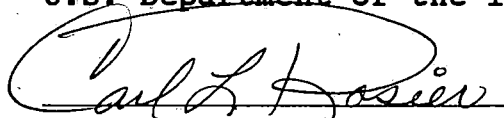
(b) for withdrawal of the sum of \$7,250,000 to be paid at the final closing by September 30, 1995.

Such amounts represent the only amounts under this resolution due to OHNC by FWS which are to be funded from the joint funds in the District Court Registry, and no additional amounts or interest are herein authorized to be paid to OHNC from such joint funds.

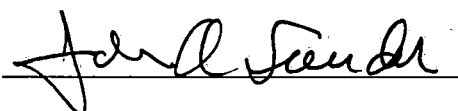
Dated this 2ND day of November, 1994 at Anchorage,
Alaska.



PHIL JANIK
Regional Forester
Alaska Region
USDA Forest Service


for BRUCE M. BOTELHO
Attorney General
State of Alaska
GEORGE T. FRAMPTON, Jr.
Assistant Secretary for Fish
and Wildlife and Parks
U.S. Department of the Interior
STEVEN PENNOYER
Director, Alaska Region
National Marine
Fisheries Service

CARL L. ROSIER
Commissioner
Alaska Department of
Fish and Game


JOHN A. SANDOR
Commissioner
Alaska Department of
Environmental Conservation

ATTACHMENT A

JAMIN, EBELL, BOLGER & GENTRY

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

300 MUTUAL LIFE BUILDING

605 FIRST AVENUE

SEATTLE, WASHINGTON 98104

TELEPHONE: (206) 622-7634

FACSIMILE: (206) 623-7321

REPLY TO SEATTLE OFFICE

JOEL M. BOLGER*
C. WALTER EBELL*
DIANNA R. GENTRY
MATTHEW D. JAMIN
ALAN L. SCHMITT

KAREN E. BENDLER*
DUNCAN S. FIELDS
WALTER W. MASON*

*ADMITTED TO ALASKA
AND WASHINGTON BARS
ALL OTHERS ADMITTED TO
ALASKA BAR

ANCHORAGE OFFICE:
1200 I STREET, SUITE 704
ANCHORAGE, ALASKA 99501
TELEPHONE AND FAX
(907) 278-6100

KODIAK OFFICE:
323 CAROLYN STREET
KODIAK, ALASKA 99613
TELEPHONE: (907) 433-6024
FACSIMILE: (907) 406-6112

November 1, 1994

VIA FACSIMILE

Mr. James R. Ayers
Executive Director
Exxon Valdez Oil Spill Trustee Council
645 "G" Street
Anchorage, AK 99501

Re: Kodiak Project
Our File No. 3765-4

Dear Jim:

This letter will serve as a summation of our understanding regarding the acquisition of certain lands owned by Old Harbor Native Corporation (Old Harbor) located inside the Kodiak National Wildlife Refuge on Kodiak Island, Alaska.

First, however, I want to thank Messrs. Bohlen, Elison, Roth, and Swiderski, Dr. Putz, and you for the cooperation and courtesies extended to us during our discussions. The professionalism exhibited by your negotiating team was a key element to reaching a resolution acceptable to all parties.

Second, a brief history of the process to date seems in order. As you know, pursuant to the twelve step appraisal process utilized by the Exxon Valdez Oil Spill (EVOS) Trustee Council, appraisals were prepared by Black-Smith & Richards on behalf of the Trustee Council and by Shorett & Riely on behalf of Old Harbor. Black-Smith appraised Old Harbor's land for \$4.2 million and Shorett appraised Old Harbor's lands for \$19 million. The Black-Smith appraisal was reviewed and approved by the government review appraisers. However, the initial approval of the Black-Smith appraisal report was rescinded and a second review was conducted which lead to an "independent" estimate of fair market value of \$4.2 million. The Shorett appraisal was reviewed and not approved by the government review appraisers. Old Harbor reviewed and rejected the Black-Smith appraisal and its reviews. Old Harbor believes the Shorett appraisal is an accurate assessment of the fair market value of its Kodiak Island lands. Nonetheless, Mr. Shorett is in the process of revising his appraisal. You indicated a willingness to postpone our discussions until such

Mr. James R. Ayers
November 1, 1994
Page 2

time as the Shorett revisions were completed. However, Old Harbor elected to go forward without further delay, and indicated it would submit a revised Shorett appraisal to you upon its completion.

Third, the U.S. Fish and Wildlife Service (USFWS) prepared and submitted an offer to Old Harbor to purchase its Kodiak Island lands for the sum of \$4.2 million. This offer was rejected and we proceeded with our discussions which resulted in an understanding acceptable to all parties.

Fourth, the negotiated offer is summarized as follows:

1. Kodiak Lands Agreement.
 - a. Old Harbor owns approximately 32,727 acres of land on Kodiak Island which is allocated as follows:
 - i. Approximately 727 acres retained by Old Harbor (see Exhibit 1).
 - ii. Approximately 29,000 acres conveyed in fee to the United States (USFWS).
 - iii. Approximately 3,000 acres encumbered by a conservation easement for the benefit of the United States (USFWS).
 - b. Old Harbor owns a number of islets comprising approximately 100 acres, including Amee Island, Cathedral Island, Cub Island, John Island, Nut Island, Puffin Island, and Sheep Island. The islets will be conveyed in fee to the United States (USFWS).
 - c. Old Harbor agrees to waive its right of first refusal on any allotments (small parcels) purchased for inclusion in the Kodiak National Wildlife Refuge.
 - d. Old Harbor agrees to donate the conservation easement on lands located in Midway and Barling Bay consisting of approximately 3,000 acres (see Exhibit 2).
 - e. The conveyances in fee shall be subject to the following:
 - i. No development on the lands conveyed.

Mr. James R. Ayers
November 1, 1994
Page 3

- ii. Reverter on the lands conveyed in the event the U.S. attempts to convey the lands to a third party other than the State of Alaska.
 - iii. Access easement on the lands conveyed for the purpose of pursuing subsistence activities as permitted by law.
 - iv. Old Harbor retains all rights and causes of action against Exxon, Exxon Shipping, et al., arising out of or related to the Exxon Valdez oil spill.
- f. Consideration to be paid is U.S. \$14.5 million. (\$7.25 million to be paid on the initial closing with the balance paid on or before September 30, 1995.)
2. Sitkalidak Island.
- a. Old Harbor and the State of Alaska agree to pursue discussions regarding an exchange of State land located on Sitkalidak Island for Old Harbor lands located on the north shore of Kiliuda Bay outside the Kodiak National Wildlife Refuge.
 - b. Old Harbor intends to preserve Sitkalidak Island in its natural state as a private wildlife refuge and, with assistance from appropriate non-profit conservation organizations, to plan and develop facilities for eco-tourism and other appropriate activities, such as aquaculture, hatchery and processing facilities, that will provide economic benefit to Old Harbor while maintaining the island's healthy, productive and biologically diverse ecosystem and wilderness qualities. Old Harbor agrees to convey to an appropriate entity (either a Federal or State conservation agency or an appropriate non-profit conservation organization) a conservation easement in perpetuity that will reflect these objectives.
 - c. Closing of conveyances to USFWS pursuant to paragraph 1 above is separate from completion of paragraphs 2.a. and 2.b.
3. Settlement of Interior Board of Land Appeals, Case No. 92-468.
- Old Harbor agrees to dismiss the above described appeal involving a dispute over 12,546 acres of selection (currently 4,433 acres of entitlement).

Mr. James R. Ayers
November 1, 1994
Page 4

4. Additional Small Parcel Acquisitions.

- a. DOI agrees to commit a minimum of \$1.5 million from its federal appropriated funds for the acquisition of small parcels (allotments) located in the Old Harbor area on Kodiak Island and to pursue the acquisition of such small parcels on a priority basis.
- b. Exxon Valdez Oil Spill Trustee Council (Council) agrees to pursue with all due diligence the acquisition of small parcels (allotments) located in the Old Harbor area on Kodiak Island consistent with the Council's small parcel acquisition program.
- c. Old Harbor agrees to cooperate and assist DOI and Council in their efforts to acquire such small parcels.

5. Shareholder Approval.

The agreement shall be subject to approval by the shareholders of Old Harbor Native Corporation.

Fifth, we recognize that the foregoing summary is general in nature and that we will need to prepare a number of agreements. However, we believe it sets forth our understanding in principle and would request that if you disagree with any of the elements you contact me immediately so that we can resolve any such disagreements.

Finally, once again, it has been a pleasure to work with your negotiating team and you and we look forward to consummating this agreement which results ultimately in the preservation and protection of over 100,000 acres of critical fish and wildlife habitat.

Best regards.

Very truly yours,

JAMIN, EBELL, BOLGER & GENTRY



C. Walter Ebell

CWE/bhb

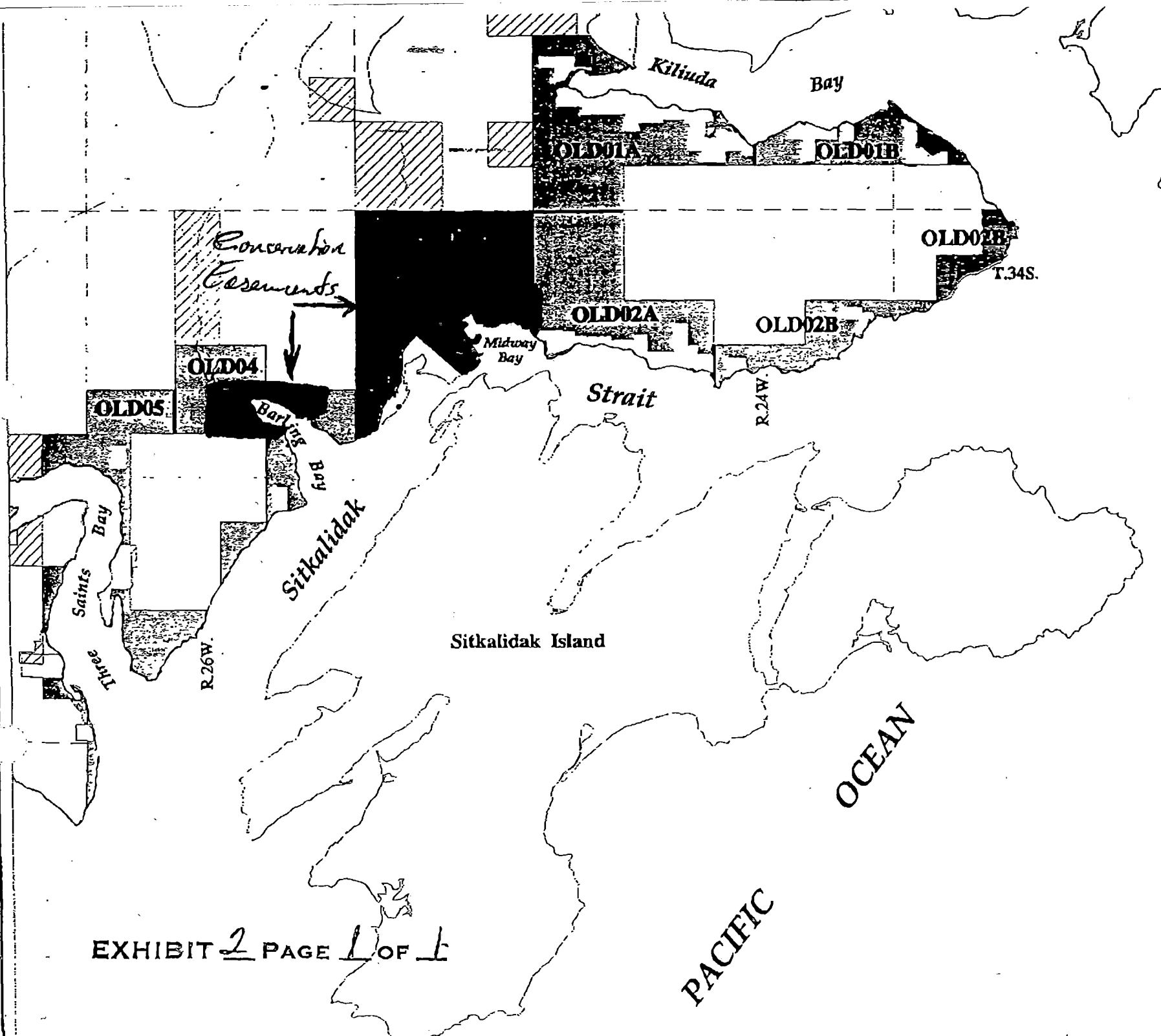
Mr. James R. Ayers
November 1, 1994
Page 5

cc: Old Harbor Native Corporation
Mr. Curtis "Buff" Bohlen
Mr. Glenn Elison
Dr. Robert Putz
Barry Roth, Esq.
Alex Swiderski, Esq.

P. 08

FHA NO. 11

NOV 1 04 10L 1:04

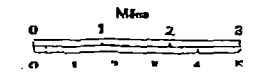
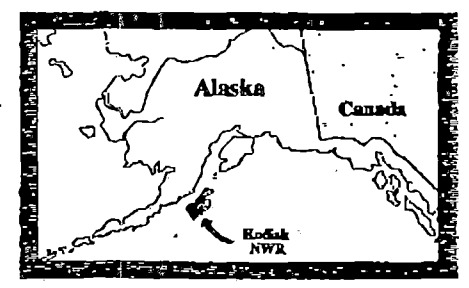


Exxon Valdez Oil Spill Large Parcels



Old Harbor Native Corporation

- Legend**
- High
 - Moderate
 - Low
 - Not Ranked
 - Small Parcels
 - Conservation Easement Areas
 - Relinquished Selections
 - Prioritized Selections
 - Refuge Land
- Land status represents USFWS interpretation of BLM records.
- Projected to UTM zone 5.
- Land Status not shown for Sitkalidak Island and small islands. Proposed acquisition is for Old Harbor lands only.
- Selected Land. Remaining entitlement would come from these lands.



DRAFT #3
October 31, 1994

CONSERVATION EASEMENT

THIS conservation easement is made this ____ day of _____, 199__, by Old Harbor Native Corporation ("Grantor") and the United States of America, acting through the Fish and Wildlife Service of the Department of the Interior ("Grantee").

WHEREAS, Section 1302 of the Alaska National Interest Lands Conservation Act ("ANILCA"), 16 U.S.C. § 3192 (1982), authorizes the Secretary of the Interior to acquire lands or interests in lands by purchase, donation, exchange or otherwise within the boundaries of any conservation system unit in the State of Alaska, other than national forest wilderness; and

WHEREAS, the real property subject to this conservation easement (the "Protected Property") lies within the boundaries of the Kodiak National Wildlife Refuge in the State of Alaska, a conservation system unit administered by the Fish and Wildlife Service, Department of the Interior; and

WHEREAS, Grantor is the owner in fee simple of the surface estate of the Protected Property, which is described in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Protected Property is a natural area that provides significant habitat for migratory birds and other fish and wildlife and plants, and has substantial value as a natural, scenic and educational resource; and

WHEREAS, Grantor intends that the conservation values of the Protected Property be preserved and maintained by the continuation of land use patterns, including, without limitation, and in perpetuity, those relating to fishing, hunting, trapping and berry-picking, existing at the time of this grant, that do not significantly impair or interfere with those values; and

WHEREAS, Grantor further intends, as owner of the Protected Property, to convey to Grantee the right to preserve and protect the conservation values of the Protected Property in perpetuity; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Protected Property for the benefit of this generation and the generations to come;

NOW THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, and pursuant to the laws of Alaska and in particular Alaska Statute § 34.17.010 - § 34.17.060, Grantor does hereby donate, grant, and

DRAFT #3

October 31, 1994

convey to Grantee, its successors and assigns, forever, a conservation easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth (the "Easement").

1. Purpose. It is the purpose of this Easement to assure that the Protected Property will be retained in perpetuity as a national wildlife refuge and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values of the property, except as otherwise provided in Paragraph 4. Grantor intends that this Easement will confine the use of the property to such activities related to the management of the Protected Property as a national wildlife refuge.

2. Rights of Grantee. To accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

a. To preserve and protect the conservation values of the Protected Property;

b. To enter upon the Protected Property in order to achieve the purposes or enforce the terms of this Easement and all State and Federal Fish and Wildlife regulations; provided that Grantee shall not interfere unreasonably with Grantor's use and quiet enjoyment of the Protected Property;

c. To enter upon the Protected Property to conduct fish, wildlife and habitat surveys and research by all customary means and techniques;

d. To prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use; and

e. In the event Grantee becomes aware of an event or circumstance of noncompliance with the terms and conditions set forth herein, the Grantee shall give notice to Grantor, its successors or assigns, at its last known post office address, of such event or circumstance of noncompliance via certified mail, return receipt requested, and request corrective action sufficient to abate the noncompliance and restore the Protected Property to its previous condition. Failure to take such corrective action as may be requested by the Grantee within sixty (60) days after receipt of such notice shall entitle the Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this agreement and/or recover any damages arising from noncompliance.

DRAFT #3

October 31, 1994

3. Prohibited Uses By Grantor and Grantee. Any activity on or use of the Protected Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

a. There shall be no construction or placing of buildings, camping accommodations or mobile homes, fences, signs, billboards or other advertising material, or other structures on the Protected Property.

b. There shall be no filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials on the Protected Property, or any building of roads or change in the topography of the land in any manner except for the maintenance of foot trails.

c. There shall be no removal, destruction or cutting of trees or plants (except as is necessary to construct and maintain foot trails), planting of trees or plants, spraying with biocides, grazing of domestic animals, including reindeer, or disturbance or change in the natural habitat of the Protected Property in any manner.

d. There shall be no dumping of ashes, trash, garbage, or other unsightly or offensive material, and no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils on the Protected Property.

e. There shall be no manipulation or alteration of natural water courses, shores, marshes or other water bodies or activities or uses detrimental to water purity on the Protected Property.

4. Reserved Rights. Grantor reserves to itself, and to its successors and assigns, all rights accruing from its ownership of the Protected Property, including the right to engage in or permit or invite others to engage in all uses of the Protected Property that are not expressly prohibited herein and are not inconsistent with the purposes of the Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved in perpetuity:

a. The right to exclude others from entering or engaging in any use of the Protected Property except as otherwise provided in paragraph 2; and

b. In accordance with State and Federal law and regulations, the right to unlimited subsistence use of the Protected Property, including, but not limited to, hunting, fishing, trapping and berry picking.

DRAFT #3

October 31, 1994

5. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any action resulting from a third party's negligence or prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

6. Access. No right of access by the general public to any portion of the Protected Property is conveyed by this Easement.

7. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or in a portion of the Protected Property, including, without limitation, a leasehold interest.

8. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: Old Harbor Native Corporation
P.O. Box 71
Old Harbor, AK 99643

To Grantee: U.S. Fish and Wildlife Service
Department of Interior
1011 E. Tudor Road
Anchorage, AK 99503

or to such other address as either party from time to time shall designate by written notice to the other.

9. Recordation. Grantee shall record this instrument in timely fashion in the official records of the Kodiak Recording District, Third Judicial District, State of Alaska, and may re-record it at any time as may be required to preserve its rights in this Easement.

10. General Provisions.

a. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Alaska.

DRAFT #3

October 31, 1994

b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of Alaska Statute § 34.17.010 - § 34.17.060. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f. Joint Obligation. The obligations imposed by this Easement upon Grantor shall be joint and several.

g. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns and shall continue as a servitude running in perpetuity with the Protected Property.

h. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

DRAFT #3

October 31, 1994

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

GRANTOR

OLD HARBOR NATIVE CORPORATION

By: _____

Emil Christiansen, President

By: _____

Linda Suydam, Secretary

GRANTEE

UNITED STATES OF AMERICA

By: _____

DRAFT #3

October 31, 1994

STATE OF ALASKA)
) ss.
 THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the ____ day of _____, 1994, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Emil Christiansen, to me known to be the identical individual described in and who executed the within and foregoing CONSERVATION EASEMENT as President of Old Harbor Native Corporation, the Corporation that executed the within and foregoing instrument, and acknowledged to me that he signed the same as President of Old Harbor Native Corporation, in the name of and for and on behalf of said Corporation, freely and voluntarily and by authority of its Board of Directors for the use and purposes therein mentioned.

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

 NOTARY PUBLIC in and for the State of Alaska
 My commission expires: _____

STATE OF ALASKA)
) ss.
 THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the ____ day of _____, 1994, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Linda Suydam, to me known to be the identical individual described in and who executed the within and foregoing CONSERVATION EASEMENT as Secretary of Old Harbor Native Corporation, the Corporation that executed the within and foregoing instrument, and acknowledged to me that she signed the same as Secretary of Old Harbor Native Corporation, in the name of and for and on behalf of said Corporation, freely and voluntarily and by authority of its Board of Directors for the use and purposes therein mentioned.

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

 NOTARY PUBLIC in and for the State of Alaska
 My commission expires: _____

DRAFT #3
October 31, 1994

STATE OF _____)
_____) ss.
_____)

On this ____ day of _____, 19____, before me, a Notary Public in and for the State of _____, personally appeared _____, to me known to be the _____ of _____, the _____ that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said _____, for the uses and purposes therein mentioned, and on oath stated that _____ is authorized to execute said instrument on behalf of the United States of America.

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

NOTARY PUBLIC in and for the State of _____
My commission expires: _____

DRAFT #3
October 31, 1994

EXHIBIT A

Attached to and made a part of that certain CONSERVATION EASEMENT executed an easement on Old Harbor Native Corporation this _____ day of _____, 199____, conveying the following described real property located in the Kodiak Recording District, Third Judicial District, State of Alaska, more particularly described as follows:

SEWARD MERIDIAN, ALASKA

Township 34 South, Range 25 West
Section 8
Section 9 (fractional) All
Section 15 (fractional) All
Section 16 (fractional) All
Section 17 North one-half (½)
Containing approximately 2,425 acres.

Township 34 South, Range 26 West
Section 26 (fractional) All
Section 27 (fractional) All
Containing approximately 765 acres.

SUBJECT TO conditions, restrictions and limitations of record, including, but not limited to, conditions, restrictions and limitations contained in Interim Conveyance Number 165 dated March 8, 1979 and recorded at page _____, book _____, of the records of the Kodiak Recording District, Third Judicial District, State of Alaska.

DRAFTAPPENDIX 1

RESERVING TO Old Harbor Native Corporation from the lands so granted the following described easement:

The residents of Old Harbor, Alaska (which are defined to mean those persons maintaining their primary, permanent abode in Old Harbor, Alaska) (hereinafter "residents") shall have the right to enter upon and travel across the above-granted lands for the purposes of engaging in customary and traditional uses (hereinafter "uses" or "such uses") of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for making and selling of handicraft articles out of nonedible by products of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. As used herein, the term -

(1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses--

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

In exercising the rights reserved herein, the residents may utilize such means of transportation as are permitted to the general public on adjacent federal lands and all means of transportation which

DRAFT

492 were customarily utilized by the residents for engaging in such uses on the above-granted lands as
493 of January 1, 1994; provided however, that the Secretary or his delegate (hereinafter simply,
494 Secretary) may impose such reasonable restrictions on such means of transportation as may be
495 necessary to protect the natural and other values of the Kodiak National Wildlife Refuge (hereinafter
496 KNWR). Nothing herein shall be construed as (1) allowing such uses to interfere with the
497 Secretary's responsibility to manage the above-granted lands for the purposes for which the KNWR
498 is established, (2) permitting the level of such uses of wild, renewable resources upon the above-
499 granted lands to be inconsistent with the conservation of healthy fish and wildlife populations, or
500 (3) preventing the Secretary from closing the above-granted lands to such uses of a wild, renewable
501 resource if necessary for reasons of public safety, administration, or to assure the continued viability
502 of such resources; provided however, that the Secretary shall not limit or preclude such uses of fish
503 and wildlife on the above-granted lands by the residents for purposes of public safety or
504 administration unless the Secretary has taken all other reasonable actions necessary to remedy the
505 conditions giving rise to the proposed limitations or preclusions, including, but not limited to, the
506 termination of all other activities, consumptive or non-consumptive, on such lands that contribute
507 to such conditions. The Secretary shall, consistent with his other legal obligations, manage the
508 above-granted lands in a good faith manner which acknowledges and seeks to preserve the rights
509 described in this easement. Nothing herein shall be construed to create any fiduciary or trust
510 obligation whatsoever on the part of the Secretary, his successors and assigns, or the United States
511 and its assigns with respect to the Grantor for the management of such lands. Nothing herein shall
512 be construed to affect the authority of the State of Alaska to regulate or prohibit the taking of fish

DRAFT

513 and wildlife upon the above-granted lands. Nothing herein shall be construed to affect the authority
514 of the United States under the provisions of any federal law governing the conservation or protection
515 of fish and wildlife, including, but not limited to, the National Wildlife Refuge System
516 Administration Act of 1966, as amended (80 Stat. 927; 16 U.S.C. 668dd-jj), the Fur Seal Act of
517 1966 (80 Stat. 1091; 16 U.S.C. 1187), the Endangered Species Act of 1973, as amended (87 Stat.
518 884; 16 U.S.C. 1531-1534), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C.
519 1361-1407), the Act entitled "An Act for the Protection of the Bald Eagle," approved June 8, 1940
520 (54 Stat. 250; 16 U.S.C. 742a-754), the Migratory Bird Treaty Act, as amended (40 Stat. 755; 16
521 U.S.C. 703-711), the Federal Aid in Wildlife Restoration Act (50 Stat. 917; 16 U.S.C. 669-669i),
522 the Fishery Conservation and Management Act of 1976 (90 Stat. 331; 16 U.S.C. 1801-1882), the
523 Federal Aid in Fish restoration Act (64 Stat. 430; 16 U.S.C. 777-777k) or any amendments,
524 currently or in the future to any one or more of such acts.

525 This easement is a covenant running with the above-granted lands and shall be binding upon the
526 United States and its assigns, except that such easement shall not survive to the extent that the
527 above-granted lands are conveyed to Old Harbor Native Corporation.