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MAR 14 1986

RESOLUTION OF THE EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL

EXXON VALDEZ OIL SPILL  
TRUSTEE COUNCIL  
ADMINISTRATIVE RECORD

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

1. The Eyak Corporation ("Eyak"), owns the surface estate of, or has valid prioritized selections on, lands in the Chugach National Forest ("Forest"), which include parcels known as Power Creek, Eyak River, and Eyak Lake (together "the Core Lands"), consisting of approximately 11,200 acres, and generally depicted on Exhibit A. The reduction in acreage from prior descriptions of the Core Lands contained in previous analysis and resolutions of the Trustee Council, which consisted of approximately 13,700 acres, is due in part to the removal by Eyak of three parcels of land for future development. Sherstone, Inc. ("Sherstone") is a wholly-owned subsidiary of Eyak that holds timber rights on the Core Lands. These lands were selected and conveyed pursuant to the Alaska Native Claims Settlement Act. The subsurface rights associated with these lands are held by Chugach Alaska Corporation.

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

3. Eyak and Sherstone have recently indicated an intent to

develop the Core Lands through logging operations commencing on March 15, 1996. Eyak and Sherstone have also indicated a desire to sell the Core Lands in fee simple 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. The Core Lands include important habitat for various species of fish and wildlife for which significant injury resulting from the spill has been documented. The Trustee Council's habitat acquisition analysis indicates the Core Lands have high value to benefit such injured natural resources as sockeye salmon, cutthroat trout, Dolly Varden, and river otters, as well as a high restoration value for recreational use. Eyak Lake and Power Creek provide major spawning and rearing habitat for sockeye salmon, cutthroat trout and Dolly Varden. Annual sockeye escapement into Eyak Lake is estimated at 15,000 to 25,000 fish; most spawning occurs along the lakeshore. Eyak River is a major migration corridor for anadromous fish and supports major commercial, recreational, and subsistence fisheries. River otters use the Core Lands for feeding and denning. Acquisition of the Core Lands will benefit fish and waterfowl and the services they support primarily

by protecting the watershed from activities such as logging that may adversely affect water quality and quantity in Power Creek and Eyak Lake. Because Eyak Lake is shallow, it is particularly sensitive to possible eutrophication resulting from lake shore development. Protection of the land surrounding the lake will limit the risk of this occurrence. The Core Lands also have high scenic value because they are visible from the Copper River Highway; acquisition will preserve this scenic quality. The area is accessible by road and trail and receives high use by residents of Cordova for fishing, hunting, and plant gathering. Because of its proximity to Cordova and road access, there is a significant likelihood that development could occur on these lands. Although the size of the Core Lands has been reduced somewhat because Eyak has chosen to retain some areas, the Trustee Council finds that the remaining acreage retains significant attributes that will promote the restoration of injured resources.

5. Existing laws and regulations, including but not limited to 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 natural resources, and acquisition of equivalent resources and services injured, lost or reduced as a result of the EVOS present a unique situation. Without passing judgment on the adequacy or inadequacy of existing law and regulations to protect resources, biologists, other 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 reduced services provided by these resources.

6. There is widespread public support for the acquisition of the Core Lands.

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

8. It is ordinarily the Federal Government's practice to purchase property based on a value determined through a fair market value appraisal for the land interests to be acquired. Although a fair market value appraisal has not been completed, the United

States has procured a draft appraisal for the underlying land value and a preliminary estimate of value of the timber located on a portion of the Core Lands. The combined initial estimate of value of the Core Lands is between \$2.9 to \$3.9 million.

9. Fair market value is an economic concept and does not reflect the benefits of the acquisition to the restoration of the injured natural resources. The habitat analyses prepared for the Trustee Council demonstrate that there is a need to acquire these lands promptly to promote the recovery of the injured natural resources by preventing any potential degradation of the habitat resulting from development. Furthermore, the United States has no authority to acquire these lands from the seller except on the basis of a mutually negotiated purchase price. Based on prior negotiations with Eyak and Sherstone, the Trustee Council believes that the initial estimate of fair market value is not an acceptable purchase price to Eyak and Sherstone. Accordingly, we find that it is appropriate to pay more than the initial estimate of fair market value for the Core Lands in order to obtain the resulting benefits for the restoration program.

THEREFORE, we supersede our resolution of December 2, 1994, related to Eyak and Sherstone land and timber interests and all

other Trustee Council offers. We resolve to authorize funding for an offer to purchase the Core Lands in fee simple and to provide the funds, if the offer is accepted, in the amount set forth below for the United States, acting through the Forest Service, to enter into appropriate agreements in conformity with applicable Federal and State law to purchase and acquire the interests. Such agreements shall contain and are subject to the following conditions and terms:

(a) fee simple acquisition of the land identified in Exhibit A. The offered purchase price for the interests in the Core Lands shall be \$7 million. This offer represents the lump-sum payment price. Because of the installment payment schedule provided for in the Exxon settlement agreement and the resulting limited availability of funds, an offer that reflects a value that provides Eyak and Sherstone a benefit for selling their interests in these lands over the course of several years will be considered by the Trustee Council if Eyak and Sherstone prefer such method of payment. The amount of this benefit will depend on the payment schedule agreed to by the parties. If an interim approved appraisal determines the fair market value of the Core Lands is more than \$7 million, the Trustee Council will consider a new offer

for the Core Lands. For purposes of this resolution, the interim approved fair market value appraisal shall be considered the final approved appraisal. This offer is valid until withdrawn by the Trustee Council or the date on which timber harvesting operations begin on the Core Lands.

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

(c) disbursement of these funds by the District Court;

(d) completion of a satisfactory title search;

(e) no pre-closing development on the Core Lands;

(f) approval by the shareholders of Eyak and Sherstone for the sale of the interests in the Core Lands;

(g) Congressional review to the extent required with respect to acquisitions by the Forest Service pursuant to House Report No. 102-116;

(h) completion of a satisfactory hazardous substances survey;

(i) satisfactory compliance with the National Environmental Policy Act and other applicable state and federal law.

(j) Eyak and Sherstone agree to continue to negotiate in good faith with the Forest Service and the State of Alaska regarding the

acquisition of other land interests that have high value for purposes of restoration.

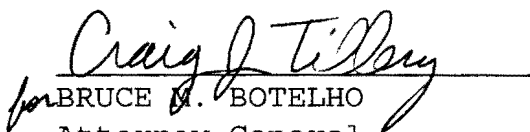
By unanimous consent, and upon execution of the purchase agreements and written notice from the Forest Service and the State of Alaska to the Executive Director of the *Exxon Valdez* Oil Spill Trustee Council that the terms and conditions set forth herein and in the purchase agreements have been satisfied, we request the Alaska Department of Law and the Assistant Attorney General of the Environment and Natural Resources Division of the U.S. Department of Justice to petition the District Court for withdrawal of the appropriate sum to be paid at closing from the District Court Registry account established as a result of the Governments' settlement. The appropriate sum is \$7 million if a lump-sum purchase is made. The sum of the installment payments is authorized for withdrawal if an installment payment schedule is agreed to by the parties. The lump-sum payment or the sum of the installment payments are the only amounts due under this resolution to Eyak and Sherstone by the United States or the State of Alaska from the joint funds in the District Court Registry, and no additional amounts are herein authorized to be paid to Eyak and Sherstone from such joint funds.



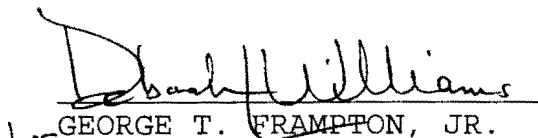
Dated this 29th day of February, 1996, at Juneau and Anchorage,  
Alaska.



PHIL JANIK  
Regional Forester  
Alaska Region  
USDA Forest Service



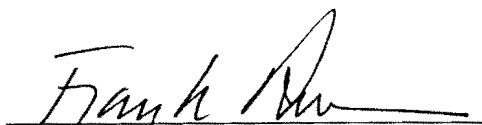
for BRUCE M. BOTELHO  
Attorney General  
State of Alaska



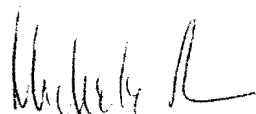
for GEORGE T. FRAMPTON, JR.  
Assistant Secretary for  
Fish & Wildlife and Parks  
U.S. Department of the Interior



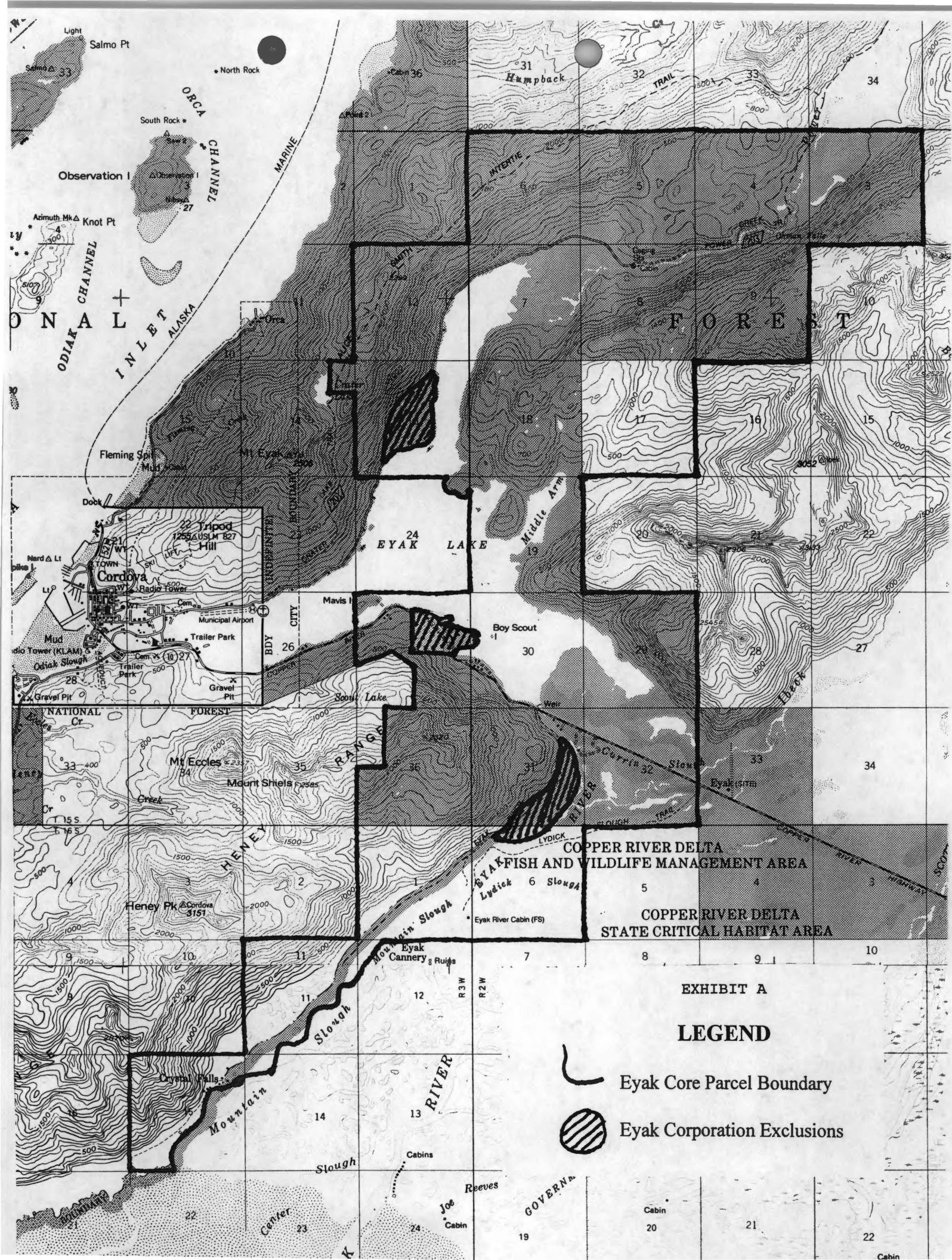
STEVEN PENNOYER  
Director, Alaska Region  
National Marine Fisheries  
NOAA



FRANK RUE  
Commissioner  
Alaska Department of  
Fish and Game



MICHELE BROWN  
Commissioner  
Alaska Department of  
Environmental Conservation



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MAR 6 1996  
EXXON VALDEZ OIL SPILL  
ADMINISTRATIVE RECORD

**RESOLUTION OF THE  
EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL**

We, the undersigned, duly authorized members of the Exxon VALDEZ Oil Spill Trustee Council, after review find as follows:


1. By resolution dated December 11, 1995 ("Resolution") the Trustee Council approved acquisition of land at Shuyak Island owned by the Kodiak Island Borough (hereinafter "KIB");
2. The Resolution required that certain conditions be satisfied before the Alaska Department of Law and the United States Department of Justice request funds from the United States District Court for the initial payment to the KIB. One condition, that the Purchase Agreement attached to the Resolution be executed, has now been fulfilled. A second condition was that a satisfactory title search be completed. The title search conducted by the State of Alaska is now completed. However, the title review of that title search by the Department of Justice is not yet completed. Other conditions required by the Resolution have either been fulfilled or are expected to be fulfilled in the near future;
3. The KIB has requested that the Trustee Council expedite this transaction so that it will be able to receive the initial payment at the earliest possible date.

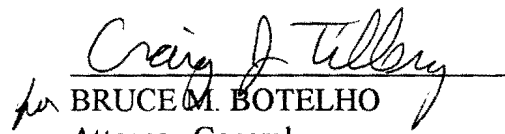
THEREFORE: we resolve to amend our resolution of December 11, 1995 as follows:

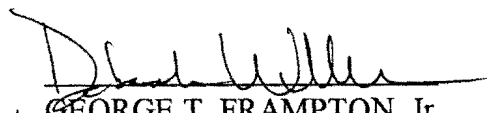
The Alaska Department of Law and the Assistant Attorney General of the Environment and Natural Resources Division of the U.S. Department of Justice are requested to petition the District Court for withdrawal of the sum of eight million dollars (\$8,000,000) from the *Exxon Valdez* oil spill settlement account established as a result of the Governments' settlement. No funds may be expended

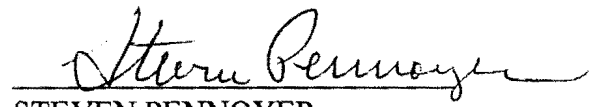
by the State of Alaska until the after the terms and conditions set forth in paragraphs (a) through (d) at pages four and five of the Resolution and paragraphs (a) through (c) at pages five and six of the Resolution and paragraph six of the Purchase Agreement attached thereto have been met as well as written notice from the State of Alaska and the Executive Director of the Trustee Council that the terms and conditions of the Resolution and the Purchase Agreement have been satisfied.


Dated this 23 day of February, 1996 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

  
FRANK RUE  
Commissioner  
Alaska Department of  
Fish and Game

  
MICHELE BROWN  
Commissioner  
Alaska Department of  
Environmental Conservation

DRAFT

Verbal Motion of the Trustee Council Regarding the English Bay Corporation and Port Graham Corporation

The Trustee Council supports continued negotiations with the English Bay Corporation for the ~~possible sale~~ *acquisition* of certain of its land holdings in Kenai Fjords National Park, and possibly elsewhere on the Kenai Peninsula.

The Trustee Council also supports initiating negotiations with the Port Graham Corporation, which has indicated it is interested in selling certain of its lands or interests in lands in Kenai Fjords National Park.

Both corporations own lands ~~determined to contain~~ *that* resources and services, that if protected, would make significant contributions to restoration. *ing*

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EXXON VALDEZ OIL SPILL  
TRUSTEE COUNCIL  
ADMINISTRATIVE RECORD

## RESOLUTION OF THE EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL

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

1. Chenega Corporation ("Chenega") owns the surface estate of lands or is entitled to receive title to, and has expressed a willingness to sell land or interests in lands ("the Lands"), located along the southwest side of Prince William Sound ("PWS"), consisting of approximately 74,000 acres . The Lands were selected and conveyed pursuant to the Alaska Native Claims Settlement Act. The subsurface rights associated with the Lands are held by Chugach Incorporated.

2. The Lands are within the oil spill area as defined by the Trustee Council in the Final Restoration Plan.

3. Chenega desires to sell certain interests in the Lands as specifically described in Exhibit A to the United States or the State of Alaska as part of the Trustee Council's program for restoration of the natural resources and services that were injured or reduced as result of the Exxon Valdez Oil Spill ("EVOS").

4. The 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. Two parcels, Eshamy Bay and Jackpot Bay, are ranked high for their considerable restoration value to resources and services injured or reduced as a result of the spill. Eshamy and Jackpot Bays have the highest number of wild pink salmon in the

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EXXON VALDEZ OIL SPILL  
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PWS region with twenty-two anadromous streams. Eshamy Bay is also the highest sockeye producing system in western PWS. Both Jackpot and Eshamy Bays represent the northwestern most range for cutthroat trout. The area has important wintering lakes and supports strong populations of Dolly Varden as well as bald eagles. The area is an important wintering area for harlequin ducks and pigeon guillemots. Eshamy Bay has also been documented as having high concentrations of river otters. The remainder of the Lands have been determined to have a high potential to benefit the following injured resources and reduced services: pink salmon, bald eagles, black oystercatchers, harbor seals, harlequin ducks, marbled murrelets, pigeon guillemots, sea otters, cultural resources, and subsistence uses. These resources and uses will benefit from acquisition of the Lands by preventing the loss of nesting habitat, maintaining water quality and riparian habitats, and by preventing disturbances to nearshore and intertidal habitat use. The Lands have high scenic value and also support high value wilderness-based recreation including sport hunting and fishing, hiking, and camping. Further benefits resulting from the acquisition of interests in the Lands is described in the Habitat Benefits Report at Exhibit B.

5. Existing laws and regulations, including but not limited to 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 natural resources, and acquisition of equivalent resources and services injured, lost or reduced as a result of the EVOS present a unique situation. Without passing judgment on the adequacy or inadequacy of existing law and regulations to protect resources, biologists, other 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 reduced services provided by these resources.

6. There is widespread public support for the acquisition of the Lands.

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

8. It is ordinarily the Federal and State Governments' practice to pay fair market value for the land interests it acquires. However, given the limited availability of settlement funds to complete acquisitions of land interests and the need to acquire such interests promptly to prevent any potential degradation of the habitat by development, we believe it is appropriate in this case to pay more than fair market value for these particular interests.



9. The offer set forth below represents the lowest price at which these interests in the Lands can be acquired because of the installment payment schedule provided for in the Exxon settlement agreement and resulting limited availability of funds. This offer therefore reflects a value that provides Chenega a benefit for selling its interests in the Lands by means of installment payments and yet provides for current protection under the Trustee Council's habitat protection program.

10. 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; the relationship of that portion of the overall price that is in excess of market value to earlier offers made pursuant to the habitat protection program; and the availability of settlement funds for completing acquisitions.

THEREFORE, we resolve to authorize funding for an offer to purchase a combination of fee simple and conservation easement interests in the Lands, as identified in Exhibit A, in the amounts set forth below, if the offer is accepted, for the United States, acting through the Forest Service, or for the State of Alaska, to enter into appropriate agreements in conformity with applicable Federal and State law to purchase and acquire these interests in the Lands. This offer and such agreements shall contain and are subject to the following conditions and terms:

(a) the purchase price for the interests in the Lands shall be the final approved appraised fair market value of the interests in

the Lands plus twenty percent (20%) of the final approved appraised fair market value, so long as this price does not exceed \$48,000,000 ("Purchase Price"). Up to \$38,000,000 of the Purchase Price is authorized for use from the settlement funds deposited in the United States District Court for the District of Alaska ("District Court") Registry. Any remaining funds necessary for the Purchase Price shall be allocated from ~~Federal Restitution~~<sup>other</sup> funds so long as this funding does not exceed \$10,000,000. The final approved appraised fair market value shall be determined through the Trustee Council's 12-Step Appraisal Process (Exhibit C).

(b) receipt by the District Court of the settlement payments due from Exxon Corporation, et al;

(c) disbursement of these funds by the District Court;

(d) completion of a satisfactory title search, including assurance that Chenega is able to convey fee simple title and conservation easements, as appropriate, by general warranty deed or other appropriate instrument to the surface estate of the Lands;

(e) no development is to take place on the Lands prior to closing;

(f) approval of the sale of the Lands by the shareholders of Chenega;

(g) Congressional review to the extent required with respect to acquisitions by the Forest Service pursuant to House Report No. 102-116;

(h) a satisfactory hazardous substances survey is completed;

(i) satisfactory compliance with the National Environmental

Policy Act and other applicable federal law;

(j) this offer will remain open until sixty (60) days following completion of the final approved appraisal, provided that the Trustee Council may withdraw this authorization for funding by giving thirty (30) days notice of its intent to Chenega to withdraw authorization;

(k) the preparation of conservation easements, as outlined in Exhibit A, limiting development on the Lands and protecting natural resources that Chenega shall convey, in perpetuity, to the United States, which shall include the right to public access, except for limited exceptions, and be subject to additional terms and conditions as determined by the parties and approved by the Trustee Council;

(l) a conservation easement in the State of Alaska or the United States authorizing the State or the United States to enforce in a court of competent jurisdiction the restoration and conservation purposes for which this acquisition is made as set forth in this Resolution and in any implementing purchase agreements. Language to implement this intent shall be developed 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 the Forest Service and the State of Alaska 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 U.S. Department of Justice to petition the District Court as follows:

(1) for withdrawal of the sum of twenty percent (20%) of the Purchase Price from the District Court Registry account established as a result of the Governments' settlement to be paid at the initial closing;

(2) for withdrawal of the sum of five percent (5%) of the Purchase Price to be paid at the subsequent closing by September 30, 1996;

(3) for withdrawal of the sum of 15% of the Purchase Price to be paid at the subsequent closing by September 30, 1997;

(4) for withdrawal of the sum of 15% of the Purchase Price to be paid at the subsequent closing by September 30, 1998;

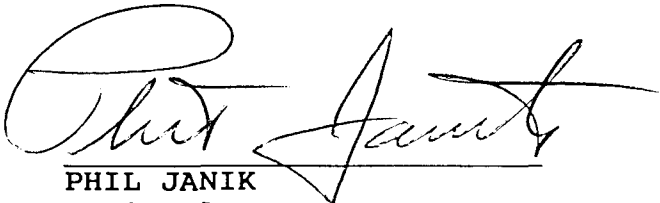
(5) for withdrawal of the sum of 15% of the Purchase Price to be paid at the subsequent closing by September 30, 1999;

(6) for withdrawal of the sum of 15% of the Purchase Price to be paid at the subsequent closing by September 30, 2000.


(7) for withdrawal of the sum of 15% of the Purchase Price to be paid at the subsequent closing by September 30, 2001.

These amounts represent the only amounts due under any purchase agreements negotiated pursuant to this resolution to Chenega by the United States or the State of Alaska from the joint funds in the District Court Registry. No additional amounts or interest are herein authorized to be paid to Chenega from such joint funds.

Dated this Second day of December, 1994, at Juneau, Alaska.



PHIL JANIK  
Regional Forester  
Alaska Region  
USDA Forest Service

  
for  
BRUCE M. BOTELHO  
Attorney General  
State of Alaska

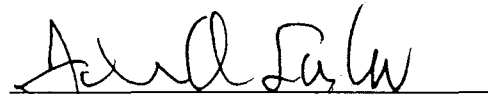
GEORGE T. FRAMPTON, JR.  
Assistant Secretary for  
Fish & Wildlife and Parks  
U.S. Department of the Interior



STEVEN PENNOYER  
Director, Alaska Region  
National Marine Fisheries  
NOAA



CARL L. ROSIER  
Commissioner  
Alaska Department of  
Fish and Game



JOHN A. SANDOR  
Commissioner  
Alaska Department of  
Environmental Conservation

# Exhibit A

The following parcels of Eshamy and Jackpot Bays to be purchased in Fee Simple Title.

## ESHAMY BAY

T 4 N, R 8 E, SM

Section	2	W1/2	~ 100.00 ac
	3		381.25 ac
	4		539.00 ac
	5		628.00 ac
	7		308.25 ac
	8		413.00 ac
	9		325.50 ac
	10		415.25 ac
	11	W1/2	~ 271.00 ac
	14	NW1/4	~ 160.00 ac
	15	N1/2	~ 320.00 ac
	16	N1/2, SW1/4	~ 480.00 ac
	17		491.00 ac
	18		602.74 ac
	19		489.00 ac
	20	N1/2, SW1/4	~ 410.00 ac
	21	NW1/4	~ 160.00 ac
	30	N1/2	~ 240.00 ac

T 4 N, R 7 E, SM

Section	12		505.00 ac
	13		<u>640.00 ac</u>

TOTAL ~ 7,878.99 acres

## JACKPOT BAY

T 4 N, R 7 E, SM

Section	11		605.00 ac	
	14		530.00 ac	
	15		560.00 ac	
	16		635.00 ac	OPS
	21		639.00 ac	OPS
	22	N1/2, SW1/4	~ 473.00 ac	
	23	N1/2	~ 320.00 ac	
	27	W1/2	~ 320.00 ac	
	28		545.00 ac	
	33		590.00 ac	
	34		620.00 ac	

T 3 N, R 7 E, SM

Section	2	W1/2	~ 320.00 ac	
	3		605.00 ac	
	4		621.00 ac	
	8		575.00 ac	
	9		480.00 ac	
	10		475.00 ac	
	11	W1/2	~ 320.00 ac	
	14		623.25 ac	
	15		338.50 ac	
	16		168.50 ac	
	17		615.00 ac	
	20		365.00 ac	OPS
	23		<u>223.75 ac</u>	

TOTAL ~ 11,567.00 acres

Total acres for Eshamy and Jackpot Bays - ~ 19,445.99

Chenega shall grant a timber conservation easement on all of its remaining lands, consisting of approximately \_\_\_\_\_ acres. The lands to be included in this easement are to be more specifically identified by allocate parcels in the acquired easement grant.

Chenega shall grant an easement for public access on its remaining lands, excluding all lands of Evans Island below the 500' elevation and the following described lands on Chenega Island: T2N, R7E, Section 1; T2N, R8E, Section 2, 3, 4, 6, 7, 8, 9, 10, 11. This public access grant does not include commercial use related access.

Chenega shall grant a non development easement for the purposes of protection and preserving conservation values on the remaining Chenega lands, excluding those land specifically excluded from the public access grant, and with specific additional development rights to be retained on certain remaining lands that will be further defined through negotiation; however, in no instance shall the areas in which development rights are retained exceed \_\_\_\_\_ sites, and no individual site exceeding \_\_\_\_\_ acres.

## Exhibit B

### Restoration Benefits Report Chenega Lands

#### REGION

Southeast Prince William Sound.

#### PROPOSED ACQUISITION DESCRIPTION

The Chenega Corporation lands identified to provide habitat protection through fee simple and partial interest acquisition are composed of approximately 70,000 acres along the southwest side of Prince William Sound. Included are Chenega Island and parts of Evans, Latouche, Flemming, and Knight Islands as well as significant areas on the mainland on the west side of Dangerous Passage. Chenega lands have some of the highest ranked parcels in the Comprehensive Habitat Evaluation Process and have been identified as providing potential habitat protection for damaged resources and services linked to the spill.

The area is characterized by mountains with elevations to 2,500 feet. The lower slopes adjacent to lakes, streams and bays are forested with old growth Sitkaspruce and western hemlock. Until recently, western Prince William Sound was glaciated and still remains very remote and wild. In the Eshamy and Jackpot area there are 22 anadromous streams of which two (Jackpot and Eshamy) are major producers of pink and sockeye salmon. The area is very important for commercial, sport, and subsistence fishing, with the village of Chenega being the major user. The area is also an important destination point for recreation users.

All lands being considered for acquisition from Chenega Corporation have a split estate with the subsurface ownership with the regional corporation, Chugach Incorporated.

Section 704 of the Alaska National Interest Lands Conservation Act required that within three years (by December 2, 1983), a study with recommendations as to the suitability or unsuitability of wilderness within the Prince William Sound area of the Chugach National Forest be completed and submitted to Congress. The report recommended that some lands be classified as wilderness. The lands recommended for wilderness are contiguous to Chenega lands as shown on the enclosed map. Congress has never acted on the report as submitted. However, all land within the proposed study area is being managed as wilderness area pending action on the study.

#### RESTORATION BENEFITS

Western Prince William Sound is one of the areas most impacted by the 1989 Exxon Valdez Oil Spill. All resources and services in the area were injured and will benefit from habitat protection.

In the fall of 1993, Chenega Corporation indicated a willingness to consider selling fee simple title to two of their high ranked parcels, Jackpot Bay and Eshamy Bay (CHEO1 and CHEO2). These two parcels are being appraised for fee simple acquisition and consist of approximately 7,900 acres in CHEO1 AND 12,000 acres in CHEO2, for a total of 19,900 acres. On the remainder of the Chenega lands the corporation has proposed selling all timber harvest rights with possible consideration for additional partial interests. The remaining Chenega lands considered available (approximately 36,000 acres) are presently being appraised for timber interests. The lands being appraised for timber include



15,000 acres of moderately ranked lands and 21,000 acres of low ranked lands as evaluated in the Comprehensive Habitat Protection Process.

High value resources and services in the Eshamy/Jackpot area are: pink salmon, sockeye salmon, cutthroat trout, Dolly Varden, bald eagles, black oystercatchers, harbor seals, harlequin ducks, pigeon guillemots, river otters, recreation/tourism, wilderness, and subsistence.

Of the high value resource and services identified on this parcel, sockeye salmon, pink salmon, cutthroat trout, and Dolly Varden susceptible to water quality and potential over-harvest impacts. Bald eagles are generally considered to be more tolerant of development impacts if there is no loss of nesting habitat. Impacts to bald eagles may be mitigated by proper planning and adherence to existing regulations. River otters are considered to be generally tolerant of development if denning habitat is protected. Increasing development has a high potential for user group conflicts if harvest and access are restricted or the numbers of users increase. Subsistence, recreation, and wilderness are all sensitive to development because of the concentrated nature of the resources and topography that support these services. Harlequin ducks are sensitive to disturbance and are highly likely to be impacted by possible developments. Pigeon guillemot colonies require special protection from habitat loss and disturbance.

#### High Benefits in the Eshamy/Jackpot area:

Eshamy and Jackpot Bays have the highest number of wild pink salmon in the region with 22 anadromous streams. Eshamy Bay is also the highest sockeye producing system in western Prince William Sound. Both Jackpot and Eshamy represent the northwestern most range for cutthroat trout. The area has important wintering lakes and supports strong populations of Dolly Varden as well as fourteen documented bald eagle nest and important feeding areas. The area is an important breeding area (although lingering damage from the spill is still apparent) and important overwintering area for harlequin ducks. A large colony of pigeon guillemots is located adjacent to the parcel. Eshamy has high concentrations (based on pre-spill documentation) of river otters. The area is a destination for sport fishing from population centers, and it has a high level of recreation with a potential for significantly more. The parcel is an inholding in a wilderness area within the preferred alternative for the Nellie Juan Wilderness Study Area. The parcel also has high value for the village of Chenega.

The remainder of Chenega lands (CHE03) to CHE09) have the following high value resources and services: pink salmon, bald eagles, black oystercatchers, harbor seals, harlequin ducks, marbled murrelets, pigeon guillemots, sea otters, wilderness, cultural resources and subsistence.

On the remainder of Chenega, habitat was rated as high value for eleven resource and services in the comprehensive habitat evaluation process. Acquisition of timber rights for these land would benefit the injured resource and services. Pink salmon are susceptible to water quality and timber harvest impacts. Bald eagles are generally tolerant of development impacts if there is no loss of nesting habitat. Black oystercatchers are sensitive to loss of nesting habitat and disturbance during nesting. Harlequin ducks are highly sensitive to disturbance and loss of nesting habitat. Impacts to harbor seals are not know. Marbled murrelets are sensitive to loss of nesting habitat and disturbance during nesting. Sea otters are sensitive to disturbance during pupping which occurs in May and June. Pigeon guillemot colonies require special protection from habitat loss and disturbance. Subsistence, cultural resources and wilderness are all sensitive to development because of the

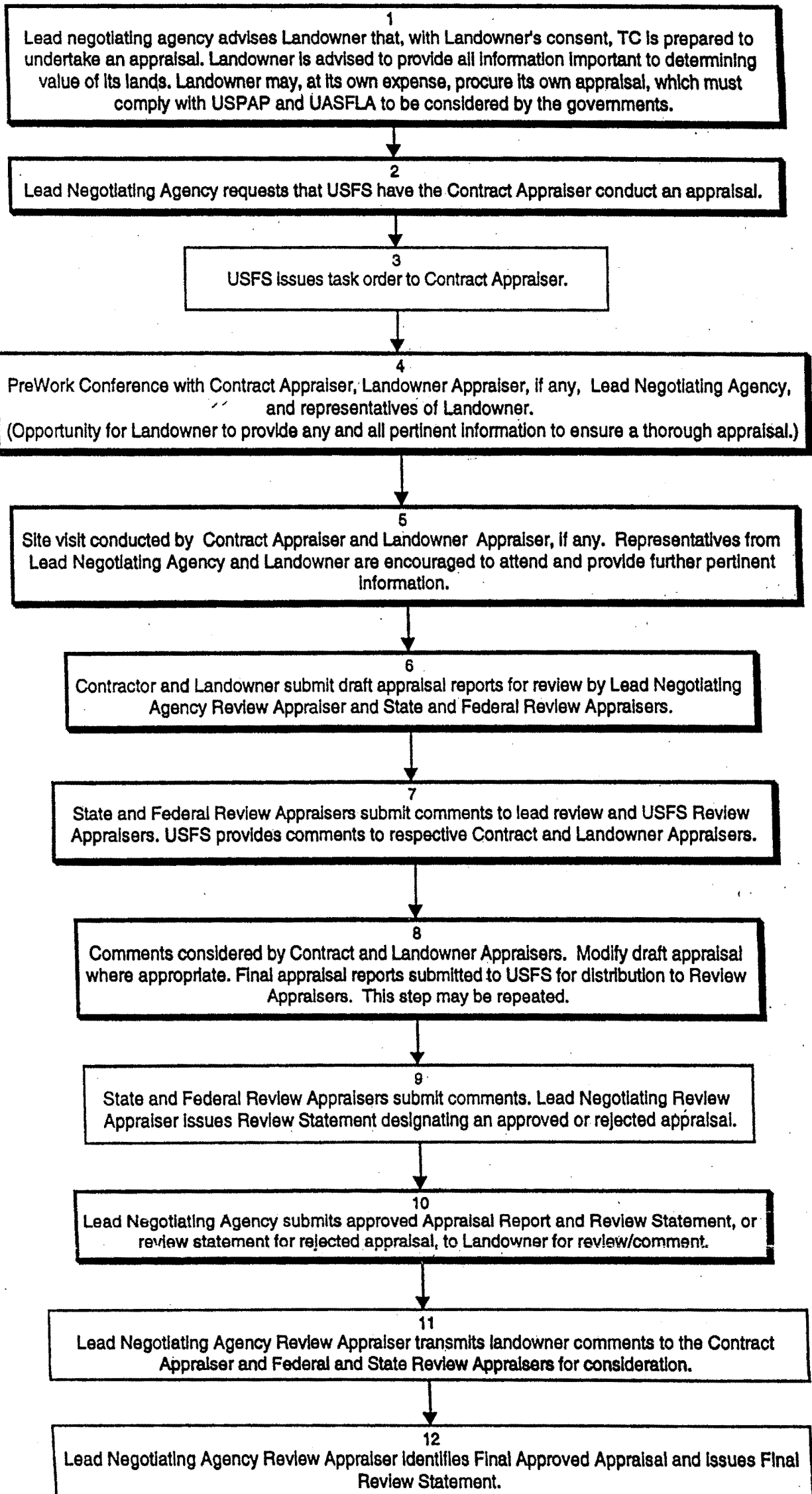
concentrated nature of the resources/services and topography that support them.

The two fee simple parcels are among the most popular recreation destinations in Prince William Sound. They are important sport fish and hunting areas, and have excellent anchorages. They would be managed to maintain and restore habitat and for recreational use. Recreational uses allowed within the area would be those non-developed recreational uses consistent with wilderness.

**Appraisal Process**

5/18/94

(Shadowed boxes indicate landowner involvement)



174 E

**RESOLUTION OF THE  
EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL**

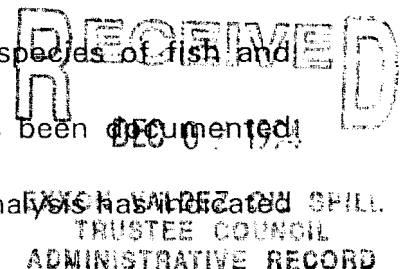
I. We, the undersigned, duly authorized members of the Exxon Valdez Oil December 2, 1994 Spill Trustee Council ("Trustee Council"), after extensive review and after consideration of the views of the public, find as follows:

1. Koniag, Inc. ("Koniag"), owns the surface estate of, or has valid prioritized selections on, lands on Kodiak Island, consisting of approximately 115,739 acres within the boundaries of the Kodiak National Wildlife Refuge ("Refuge"). 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. Koniag has expressed its interest in 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 sockeye salmon, pink salmon, Dolly Varden, Pacific herring, black oystercatcher, bald eagles, harbor seals, harlequin ducks, intertidal/subtidal biota, marbled murrelet, pigeon guillemot, river otters, sea 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 A.

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 laws 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 these 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. The approved appraisal procured on behalf of the Trustee Council provided an estimate of fair market value totaling \$15,000,000.

11. The U.S. Fish and Wildlife Service ("FWS") prepared and submitted an offer to Koniag 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 Koniag and a joint Federal/State of Alaska negotiating team which resulted in the "Proposed Koniag Acquisitions (Framework for Possible Agreement)," dated November 2, 1994, at Attachment B, totalling \$28,500,000 for purchase of a portion of such lands in fee and a 7 year non-development conservation easement on the balance of such land. By resolution at its November 2, 1994, meeting, the Trustee Council authorized FWS to pursue a purchase agreement with Koniag in accordance with this framework document.

12. In addition to pursuing such an agreement subsequent to that resolution, and recognizing the Trustee Council's objectives for providing permanent habitat protection for all of these lands, FWS presented by letter dated November 18, 1994, a conditional offer to purchase in fee all of these land holdings for \$51,750,000, at Attachment C. This offer was not accepted, at Attachment D.

13. It is ordinarily the federal government's practice to pay its estimate of fair market value for 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 its estimate of fair market value for these particular parcels.

14. The alternatives described further below offer 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; the restoration benefits provided by this acquisition; and the relationship of the price in excess of fair 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.

17. Although the Trustee Council recognizes that Koniag's desire is to pursue a limited sale of its lands in fee at this time, with a non-development easement on the balance, while deferring consideration of another sale to a future date, as an affirmation of the Council's objective of permanent protection for the entirety of these lands, it wishes to leave available an alternative that includes all of these lands in the event Koniag chooses later to pursue it.

II. Therefore, we resolve to provide the funds in the amounts set forth below for the United States, acting through FWS, to enter into appropriate agreements with Koniag, in conformity with applicable Federal law to purchase and acquire these lands



and interests in lands in accordance with the provisions of either of the two alternatives generally described below:

**Alternative I**

For a total sum of \$28.5 million:

(a) Koniag would convey the surface estate in fee simple to the United States for the following parcels as identified by the Council's Habitat Protection Work Group:

01	8,090
02 East	2,462
02 W-1	2,503
02 W-3	623
02 W-4	349
03	16,110
05	24,112
06 A	<u>5,442</u>
TOTAL	59,691 acres (approximately)

(b) in order to comply with Federal fiscal and contracting requirements, such lands may be acquired in a series of separate closings, provided that the United States is afforded possession at the initial closing of all such lands under an appropriate legal instrument.

(c) to convey a seven-year conservation easement on the following parcels:

02 W-2	960
04	36,865
06 B	17,094
K Parcel	<u>1,129</u>
TOTAL	56,048 acres (approximately)

(d) Under the terms of the conservation easement, Koniag:

i. would not sell or lease these lands to parties other than the U.S. Government, with the possible exception of the land in the Portage area of the Karluk River now under offer. The easement will apply to these Portage lands, if a binding contract is not executed by June 1, 1995, with closing as expeditiously as possible thereafter;

ii. would not modify these lands physically or build any structures thereon beyond those existing structures identified in the purchase and easement agreements;

iii. would provide access to Department of the Interior and Alaska Department of Fish and Game personnel to conduct population surveys and research on fish and wildlife resources and document salmon escapement; such access to be granted by mutual consent;

iv. and the United States could extend the easement by mutual agreement.

(e) The EVOS Trustee Council, through the Department of the Interior, would establish jointly with Koniag a process that will lead to a fair negotiated price for the lands covered by the conservation easement. Toward this end, the Council would agree to set aside an additional \$16.5 million from its future receipts for the possible future purchase of these lands.

(f) Of the \$28.5 million consideration, \$2 million would be deemed to represent the cost of the conservation easement. These funds shall be amortized on

an annualized, pro-rata basis. Any unamortized portion of that amount remaining at the closing of any subsequent purchase of the easement lands by the United States, shall be credited against the purchase price.

(g) Koniag, Inc. would be paid the sum of \$10 million at closing from both joint and federal funds, with the balance to be paid from joint funds in four subsequent annual installments.

### **Alternative II**

For the total sum of \$51.75 million:

(a) Koniag shall convey in fee the following parcels to the United States:

01	8,090
02 East	2,462
02 W-1	2,503
02 W-3	623
02 W-4	349
03	16,110
05	24,112
06 A	5,442
02 W-2	960
04	36,865
06 B	17,094
K Parcel	<u>1,129</u>
TOTAL	115,739 acres (approximately)

(b) In order to comply with Federal fiscal and contracting requirements, such lands may be acquired in a series of separate purchase agreements or closings, provided that the United States is afforded possession at the initial closing of all such

lands under an appropriate legal instrument.

(c) Koniag would be paid the sum of \$12 million at closing from both joint and federal funds, with the balance to be paid from joint funds in seven installments.

**III. Provided further,** that any implementing agreements shall contain or are subject to the following terms or conditions:

(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 designated for purchase 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 Board of Directors of Koniag.

(g) If Alternative I is accepted, execution by the State of Alaska and Koniag of an agreement providing the State, at no cost for the duration of the 7 year conservation easement, a right to establish smolt traps and related facilities and seasonal research facilities at mutually agreed locations upon such Koniag easement lands; or, if Alternative II is accepted by Koniag, completion of an agreement between

FWS and the State of Alaska to establish a process for making sites available to the State at no cost to it, at mutually determined locations within the lands to be acquired, for establishment of fish weirs, smolt traps and related facilities to promote the restoration and conservation of EVOS injured species.

(h) If Alternative I is accepted by Koniag, approval by FWS and the Executive Director of the terms and conditions of the non-development Conservation Easement, a draft of which is at Attachment E.

(i) That any conveyance in fee by Koniag will be subject to the reservation by Koniag of an access easement to such lands for the purpose of permitting the residents of the communities of Larsen Bay and Karluk access to the lands so that they might engage in such subsistence activities are permitted by law, a draft of which is at Attachment F. Such easement is subject to approval by FWS and the Executive Director.

(j) In order to meet the Trustee Council's obligations to implement on a timely basis a comprehensive habitat protection program throughout the Oil Spill Zone, \$4.75 million of joint funding for Alternative II will not be available unless a letter of intention to proceed under that option is received within 120 days after this Resolution is adopted.

(k) The terms and conditions of any legal instruments necessary to implement the agreements required hereby are subject to review and approval as to form and substance by the U.S. Department of Justice.

**IV. Provided further,** that If Alternative I is accepted by Koniag, in consideration of this initial acquisition and conservation easement, and to achieve the Trustee Council's goal of protecting in perpetuity the balance of this key ecosystem, the Trustee Council agrees, and the Executive Director is directed to take the necessary steps, to maintain unobligated funds totalling \$16.5 million from the future receipts to be paid to the Joint Trust Fund by Exxon Corporation, et al. Such funds are to remain available, for the duration of the seven year conservation easement, to provide for the acquisition of all or a portion of the lands subject to that conservation easement. The actual commitment of such funds will only take place after adoption by the Trustee Council of a future resolution or resolutions approving any such acquisitions.

**V. Provided further,** that title to the lands conveyed in fee to the United States shall be subject to the following conditions:

(a) a conservation easement in the State of Alaska authorizing it to enforce in a court of competent jurisdiction, the restoration and conservation purposes for which this acquisition is made as set forth in this Resolution and in any implementing purchase agreements.

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

**VI. Therefore,** by unanimous consent, and upon execution of the purchase

agreements and written notice from FWS to the Executive Director 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:

--In the event, Alternative I is accepted by Koniag,

(a) for withdrawal of the sum of \$3,000,000 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 \$5,000,000 to be paid at the subsequent closing by September 30, 1995;

(c) for withdrawal of the sum of \$4,500,000 to be paid at the subsequent closing by September 30, 1996;

(d) for withdrawal of the sum of \$4,500,000 to be paid at the subsequent closing by September 30, 1997; and

(e) for withdrawal of the sum of \$4,500,000 to be paid at the final closing by September 30, 1998.

--In the event, Alternative II is accepted by Koniag,

(a) for withdrawal of the sum of \$3,000,000 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 \$6,000,000 to be paid at the subsequent

closing by September 30, 1995;

(c) for withdrawal of the sum of \$6,000,000 to be paid at the subsequent closing by September 30, 1996;

(d) for withdrawal of the sum of \$6,000,000 to be paid at the subsequent closing by September 30, 1997;

(e) for withdrawal of the sum of \$6,000,000 to be paid at the subsequent closing by September 30, 1998;

(f) for withdrawal of the sum of \$6,000,000 to be paid at the subsequent closing by September 30, 1999;

(g) for withdrawal of the sum of \$5,000,000 to be paid at the subsequent closing by September 30, 2000; and

(h) for withdrawal of the sum of \$4,750,000 to be paid at the final closing by September 30, 2001.


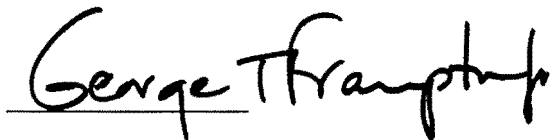
**VII. Provided further,** that the funds provided above to implement either alternative, represent the only amounts under this resolution due to Koniag by FWS which are to be funded from the joint funds in the District Court Registry, and no additional amounts or interest are herein authorized to be paid to Koniag from such joint funds.



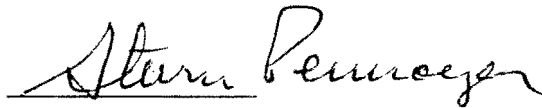
Dated this 2nd day of December, 1994, at Juneau, Alaska, by:



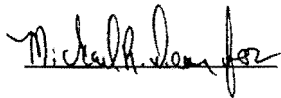
PHIL JANIK  
Regional Forester  
Alaska Region  
USDA Forest Service

  
for BRUCE M. BOTELHO  
Attorney General  
State of Alaska

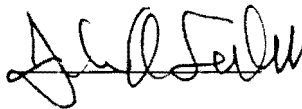
GEORGE T. FRAMPTON, Jr.  
Assistant Secretary for Fish  
and Wildlife and Parks  
U.S. Department of the Interior



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

Habitat Acquisition  
KONIAG LANDS  
Restoration Benefits

**REGION: KODIAK ARCHIPELAGO**

The subject Koniag lands are located within the *Exxon Valdez* Oil Spill (EVOS) zone along the coast and inland waterways on the west side of Kodiak Island. The lands were subdivided for the comprehensive large parcel analysis into KON01 through KON06.

**PROPOSED ACQUISITION DESCRIPTION**

The topography of the region is unique when compared to the rest of Kodiak Island. The majority of Koniag lands were not covered by glaciers during the last ice age. The rolling hill topography and distinctive flora contrast with the rugged terrain found elsewhere on the island. The land is not forested and a large portion has vegetation similar to arctic tundra. Broad valleys and longer rivers also characterize the region.

Acres proposed for acquisition and easement:

High ranked acres:	51,852
Moderate rank acres:	62,758
Low rank acres:	0
Not ranked:	1,129*
Total acres:	115,739

\* This small tract on Uyak Bay was recently conveyed to Koniag.

Acres proposed for fee acquisition:

High ranked acres:	14,027
Moderate ranked acres:	45,664
Total acres:	59,691

Acres proposed for seven year easement:

High ranked acres:	37,825
Moderate ranked acres:	17,094
Not ranked:	1,129
Total acres:	56,048

Subsurface: The subsurface estate is owned by the United States.

## RESTORATION BENEFITS

The Koniag lands are part of a large, intact ecosystem which provides multi-million dollar commercial, subsistence and recreational benefits to the larger Kodiak population and the State. The area's biodiversity is extraordinary because of rich aquatic and marine environments. The ecosystem's foundation is clean, free flowing water which supports an abundant fishery that sustains Kodiak's people and wildlife. The Koniag lands contain a rich assemblage of species, habitats and services injured by the EVOS. The lands support high subsistence use of sockeye, coho, pink salmon and Sitka black-tailed deer. The following is a summary of injured resources and services found on Koniag lands that received a high score in the Habitat Work Group's large parcel evaluation.

Sockeye Salmon:	Karluk River/Lake is one of the most productive sockeye salmon systems in the Kodiak Management Area. The Service estimates that total commercial harvest of sockeye salmon returning to this drainage is from 1,109,000 to 1,782,000 fish. Commercial harvest value ranges from \$9.4 to \$15 million.
Pink Salmon:	Fourteen (14) documented spawning streams are wholly or partially on Koniag lands. The Service estimates that total commercial harvest of pink salmon returning to these drainages is from 965,000 to 1,972,000 fish. Commercial harvest value ranges from \$550,000 to \$1.12 million.
Dolly Varden:	Dolly Varden are widespread and abundant throughout Koniag drainages. Lake systems such as Karluk provide critical overwintering Dolly Varden habitat.
Pacific Herring:	Herring spawn in the nearshore waters off most Koniag beaches. Commercial sac-rope and food/bait herring harvests are substantial in adjacent management units. The 1992 sac-rope harvest for districts adjacent to Koniag lands was 103.5 tons. The average price paid from 1979-1992 was \$943/ton. The 1992 harvest value consequently is estimated to have been \$97,600.
Bald Eagle:	One hundred sixteen (116) known bald eagle nests are within the package. Non-breeding birds concentrate along the Sturgeon River during the salmon runs.
Black Oystercatcher:	Large stretches of Koniag's coastline are used by feeding black oystercatchers. Nesting occurs along the rocky areas of Larsen Bay.

Harlequin Duck:	Nesting occurs along the numerous drainages within the package. Molting aggregations are common on nearshore rocks.
Marbled Murrelet:	Although undocumented, nesting is highly likely; broods have been spotted in nearshore marine waters. Large winter feeding concentrations of marbled murrelets occur in Larsen Bay.
Pigeon Guillemot:	Numerous nesting colonies are found along the rocky shorelines of Koniag lands. Uyak and Larsen Bays provide critical winter feeding habitat for pigeon guillemots.
Sea Otter:	Sea otters are abundant throughout Uyak and Larsen Bays. Brown's Lagoon is a known sea otter pupping area and several haulouts are located in the region.
River Otter:	River otters are widespread with sizeable populations, especially along streams flowing into lakes. River otters provide income to local trappers.
Harbor Seal:	Nine known haul-out sites are on rocks adjacent to Koniag lands.
Intertidal/Subtidal Biota:	Extensive mussel and eelgrass beds are along large stretches of shoreline. Uyak Bay, Larsen Bay and Sturgeon Lagoon have extensive eelgrass beds that attract a variety of marine life.
Recreation/Tourism:	The Karluk river drainage is a popular destination for sport fishing, flight-seeing and bear viewing. Island residents and non-residents hunt Sitka black-tailed deer and brown bear on Koniag lands. Several hunting and fishing guides are established on these lands. Recreational use is growing rapidly along with it's value to local and state economies.
Wilderness:	Evidence of human use is generally limited to coastal sites with good access. The area retains outstanding wilderness attributes.
Subsistence:	Many of the lands are primary harvest areas for Karluk and Larsen Bay village residents. Wildlife resources harvested include fish, deer, waterfowl, crab and clams.
Cultural Resources:	Archaeological sites are found extensively on these lands. Most bays contain prehistoric and historic village sites. The Karluk drainage is blanketed with cultural resource sites.

Direct Benefits: 7 Koniag package incorporates some of the highest quality wildlife and recreational lands in Alaska. The highly ranked Uyak Bay (KON02) and Brown's Lagoon (KON01) parcels encompass protected coastline within Uyak Bay that teems with marine wildlife such as harbor seals, sea otters, harlequin ducks, marbled murrelets, and black oystercatchers. The Karluk River (KON04) drainage supports tremendous returns of pink and sockeye salmon worth millions of dollars to the Kodiak commercial fisheries and Alaska's economy. The Sturgeon River (KON06) and adjacent tributaries of Halibut Bay (KON05) also support runs of pink salmon and resident Dolly Varden.

Benefits of management consolidation: The current patchwork of federal/private land ownership is confusing to the general public wishing to use these lands for recreation or subsistence. A considerable amount of state and federal staff time is spent answering questions on land boundaries and location of public easement trails across Koniag lands. Exact boundaries and easement trailheads are often difficult to determine in the field. The proposal would eliminate this problem for the public.

Trespass by commercial operators, particularly big game guides, on federal or Koniag lands is a perennial problem. The guides may be permitted to only use refuge lands or to only use Koniag lands. Land ownership consolidation would greatly reduce the confusion and trespass.

Several agencies of the federal government and the Alaska Department of Fish and Game (ADF&G) currently work cooperatively on fish and wildlife management and research projects on the Kodiak Archipelago. Wildlife species and anadromous fish have wide ranges that include both public and private lands. Private lands can be closed or have restricted access at any time. Acquisition of these lands would ensure continued access for fish and wildlife research and management.

The Bureau of Land Management (BLM) is actively surveying land and issuing conveyances to Native corporations on Kodiak Refuge. The proposal would reduce the amount and cost of survey and conveyance through consolidating lands. Koniag lands that are completely surrounded by federal land and purchased in fee would not require a survey.

Other Benefits: Karluk lake is the site of some of the highest densities of brown bears ever recorded. Chinook (king) and steelhead fishing on the Karluk river is popular with visitors from around the world. The Kodiak economy benefits from the increasing popularity of recreational fishing on Koniag lands. Waterfowl and seabirds congregate in the protected waters of Uyak bay during the winter season. Nearshore waters along Shelikof Strait are frequented by killer, minke and fin whales.

The broad, perpetual economic and social values of protecting this intact ecosystem cannot be overstated. Although this restoration effort focuses on habitats of high value for specific injured species and services; the long term success of any regional protection effort requires that biodiversity, the basic fabric of the ecosystem, be maintained. To ensure this result, acquisition of moderate and low ranked parcels needs to be included. Ecosystem disruptions within the area, regardless of the parcel's rank, will permeate the area and diminish the value of surrounding parcels.

Proposed Management Structure: Acquired lands will be managed as part of the Kodiak National Wildlife Refuge (Kodiak Refuge). A primary purpose of the Kodiak Refuge is the conservation of fish and wildlife populations and habitats in their natural diversity. Subsistence use is also a purpose of the Kodiak Refuge. The well established legal authorities under which Kodiak Refuge is managed will ensure injured resources and services are protected in perpetuity.

## **RECOMMENDATION**

Based on the U.S. Fish and Wildlife Service's well established and long standing legal authorities and extensive experience in managing fish, wildlife and habitat nationwide and specifically on Kodiak, it is recommended that the parcels acquired from Koniag be managed by the Service as part of the Kodiak National Wildlife Refuge. Perpetual protection and conservation of the injured resources on the Koniag lands is entirely consistent with the legal authorities and management programs of the Kodiak Refuge.

## ATTACHMENT B

### Proposed Koniag Acquisitions (Framework for Possible Agreement)

1. For a total consideration of \$28.5 million Koniag, Inc. agrees:
  - a. to convey in fee simple a total of 59,691 acres on Kodiak Island comprised of the following parcels:

01	8,090
02 East	2,462
02 W-1	2,503
02 W-3	623
02 W-4	349
03	16,110
05	24,112
06 A	<u>5,442</u>
TOTAL	59,691 acres

- b. and to convey a seven-year conservation easement on the following parcels:

02 W-2	960
04	36,865
06 B	17,094
K Parcel	<u>1,129</u>
TOTAL	56,048 acres

2. Under the terms of the conservation easement Koniag:
  - a. will not sell or lease these lands to parties other than the U.S. Government, with the possible exception of the land in the Portage area of the Karluk River now under offer. The easement will apply to these Portage lands, if the pending sale is not closed by June 1, 1995;
  - b. will not modify these lands physically or build any structures thereon beyond those existing structures identified in the purchase agreement;
  - c. will provide access to Interior Department and Alaska Department of Fish and Game personnel to conduct population surveys and research on fish and wildlife resources and document salmon escapement; such access to be granted by mutual consent; and
  - d. may extend the easement by mutual agreement of the parties.

3. The EVOS Trustee Council, through the Department of the Interior, agrees to establish jointly with Koniag a process that will lead to a fair negotiated price for the lands covered by the conservation easement. Toward this end, the Council agrees to set aside an additional \$16.5 million from its future receipts for eventual purchase of these lands.
4. Of the total consideration, \$2 million is deemed to represent the cost of the conservation easement. These funds shall be amortized on an annualized, pro-rata basis. Any unamortized portion of that amount remaining at the closing of any subsequent purchase of the easement lands by the United States, shall be credited against the purchase price.
5. Koniag, Inc. will be paid the sum of \$10 million at closing and the balance over four years.

November 2, 1994





## United States Department of the Interior

## FISH AND WILDLIFE SERVICE

1011 E. Tudor Rd.

Anchorage, Alaska 99503-6199

IN REPLY REFER TO:

Mr. William H. Timme  
Middleton, Timme & Luke  
Suite 1600  
550 West Seventh Avenue  
Anchorage, Alaska 99501

NOV 18 1991

Dear Mr. Timme:


On behalf of the Trustee Council and U.S. Fish and Wildlife Service, we very much appreciate the support of the Board of Directors of Koniag, Inc. for the negotiated framework for acquisitions that we worked out last month. While we are fully prepared to proceed on the basis of that arrangement, we believe it is appropriate and in our mutual interests to continue to explore the possibility with the Koniag Board of presenting a comprehensive proposal to the Exxon Valdez Oil Spill Trustee Council at its December 2 meeting for the entire Koniag holdings within the Kodiak National Wildlife Refuge.

As you know, the Trustee Council is very concerned about providing comprehensive habitat protection to the Karluk and Sturgeon river drainages to protect EVOS injured resources and services. The Council would like to see the protection of these areas as part of a comprehensive habitat package.

Accordingly, enclosed is an outline of a framework for further negotiation detailing a proposed acquisition of all of the Koniag holdings within the Refuge for \$51.75 million. Looking at the Final Restoration Plan adopted by the Trustee Council and our understanding of the spending constraints on Federal appropriated funds, we in all honesty do not foresee additional new funding sources are likely to arise.

We hope the Koniag Board will consider this offer as a good faith effort on our part to complete a comprehensive transaction prior to the December 2 meeting. We are prepared to work with you to develop a resolution which will incorporate this comprehensive habitat protection package for consideration by the Trustee Council at its December 2 meeting. We look forward to the Board's formal response.

Sincerely,

  
Glenn W. Elison  
FWS Negotiator

PROPOSED KONIAG ACQUISITIONS  
(Framework for Possible Agreement)

1. For a total consideration of \$51.75 million, Koniag, Inc. agrees to convey in fee simple all of its lands within Kodiak National Wildlife Refuge; a total of approximately 115,739 acres comprised of the following parcels:

01	8,090
02	6,897
03	16,110
04	36,865
05	24,112
06	22,536
K Parcel	1,129
TOTAL	115,739 acres

2. Koniag, Inc. will be paid the sum of \$12 million at closing and the balance over six years.
3. Koniag, Inc. will waive its reverter on any lands purchased by the Department of the Interior for inclusion in the Kodiak NWR or by the State of Alaska.
4. The Fish and Wildlife Service and the Alaska Department of Fish and Game will enter into a cooperative agreement to provide for placement and operation of necessary weir sites on the Karluk, Sturgeon and possibly other sites.

ATTACHMENT 0

**MIDDLETON, TIMME & LUKE**

LAW OFFICES  
SUITE 1600  
850 WEST SEVENTH AVENUE  
ANCHORAGE, ALASKA 99501

R. COLLIN MIDDLETON  
WILLIAM H. TIMME  
JACQUELYN R. LUKE

BRYAN M. ENMAL  
PATRICK J. MCCABE

TELEPHONE  
(907) 276-3300  
TELECOPIER  
(907) 276-6238

November 18, 1994

Mr. Glenn W. Ellison  
FWS Negotiator  
Fish and Wildlife Service  
United States Department of the Interior  
1011 E. Tudor Road  
Anchorage, Alaska 99503-6199

Via Peacock Messenger


Dear Glenn:

Thank you for your letter of November 18th. I have shared your letter with Koniag's management.

Koniag believes that it would be more beneficial to the parties' relationship if they were to focus on consummating the existing transaction which was approved by the Trustee Council. Once that transaction is completed and final approval is granted, then Koniag would like to immediately proceed to finalizing a transaction for the balance of the lands.

Yours truly,

MIDDLETON, TIMME & LUKE

  
William H. Timme

WHT:dka

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ATTACHMENT E

**NON-DEVELOPMENT EASEMENT**

This Non-Development Easement, dated this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, is granted by Koniag, Inc., an Alaska Native Corporation, organized under the laws of the State of Alaska ("Grantor"), to the United States of America, acting through the U.S. 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 easement (the "Protected Property") is private property lying within the boundaries of the Kodiak National Wildlife Refuge in the State of Alaska, a conservation system unit administered by the Grantee; and

WHEREAS, Grantor is the owner in fee simple of the surface estate of the Protected Property; 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, Grantee is interested in pursuing further negotiations to acquire title to the Protected Property and Grantor's prioritized selection rights under the Alaska Native Claims Settlement Act ("ANCSA") and has entered into a purchase agreement for lands adjacent to the Protected Property; and

WHEREAS, while the parties are negotiating such possible acquisition by Grantee, upon the receipt of payment to be received at conveyance and acceptance for this easement, Grantor is willing to preserve the present condition of the land by refraining from further development or sale of it except to the extent provided in

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this easement; and

WHEREAS, the Grantor wishes to memorialize its grant to Grantee; 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, Grantor does hereby sell, grant, and convey to Grantee, its successors and assigns, for the term provided herein, an easement over the Protected Property of the nature and character and to the extent hereinafter set forth (the "Easement"):

1. Purpose Subject to the terms and conditions hereinafter set forth, it is the purpose of this Easement to preserve the Protected Property from sale or development during the term of this Easement.

2. Term This Easement shall expire upon the earlier of (i) 12:01 a.m., Alaska Standard Time on December 2, 2001, or (ii) the sale of some or all of the Protected Property to the Grantee; provided, however, in the event of such a sale, the Easement shall be terminated only with respect to the Protected Property which is sold.

3. Protected Property As used herein, the term "Protected Property" shall mean those lands described in Exhibit A, attached hereto and incorporated herein by reference, the title to the surface estate of which is vested in Grantor. Included in Exhibit A are certain lands which have been validly selected by Grantor under ANCSA and upon their conveyance to Grantor, if such conveyance occurs within the term of this Easement, will be subject to this Easement and will be regarded as being Protected Property.

4. Prohibited Uses by Grantor During the term of this Easement and except as provided in Section 6 hereof, or with the prior written consent of Grantee, Grantor shall:

a. not sell or lease the Protected Property to any party other than the Grantee or to a nationally recognized conservation group for donation or resale to the United States, provided such group agrees to refrain from any further development or other sale of the Property; provided further, however, that the rental to third parties of the Cabins as described on Exhibit B owned by the Grantor on the Protected Property shall not be deemed to be a lease for the purposes of this provision;

b. refrain from the construction of any further permanent structures or seasonal camps for commercial purposes on the Protected Property or materially modifying the physical characteristics of the Protected Property;

c. refrain from permitting on the Protected Property the operation of more than one seasonal camp by a commercial guide; provided, however, that in no event may such seasonal camp accommodate more than fifteen guests/clients of such guide, at any one time;

d. refrain from 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 existing foot trails;

e. refrain from the removal, destruction or cutting of trees or plants (except as is necessary to maintain existing foot trails as provided in section 6.d hereof), 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;

f. refrain from the dumping of ashes, trash, garbage, or other unsightly or offensive material, and from the 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; and

g. refrain from the 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.

## 5. Grantee's Access Rights

a. Grantor shall consider in good faith and not unreasonably withhold approval for, all requests by Grantee or the Alaska Department of Fish and Game (Department) to provide their respective personnel access on and across the Protected Property for the purposes of conducting population surveys and research on fish and wildlife resources, and documenting salmon escapement. Grantee and the Department, either jointly or separately, may submit an Annual Access Request. The Annual Access Request shall identify the proposed work programs to be conducted by the submitting agency, access needs to the Protected Property identifying time frames, general locations, types of activities to be undertaken and numbers of personnel to be involved. Koniag shall make its decision on the requests within sixty (60) calendar days. Non-action on an Annual Access Request within sixty (60) days of its receipt by Koniag shall constitute approval for Grantee or Department. Amendments to the Request can be made either verbally or in writing to Koniag's land manager or other designated individual. Approval or denial of a written amendment request shall be made within fifteen (15) days from its receipt. Non-action on a written amendment request within fifteen (15) calendar

days from its receipt by Koniag shall constitute approval for Grantee or Department. Verbal approval may be given for minor amendments to the Annual Access Request.

b. Upon reasonable notice to Grantor, Grantee shall have the right to access the property to verify compliance with the terms of the Easement. Grantor at its option may accompany Grantee.

## 6. Reserved Rights

a. Nothing herein shall be deemed to constitute a grant to Grantee of any right to the management or control of the Protected Property, other than the right to seek specific enforcement of the limitations on the activities of Grantor as provided in this Easement. All other rights of management and control of the Protected Property remain vested in Grantor.

b. Nothing in this Easement shall constitute a limitation upon the right of Grantor, to be exercised in its sole and absolute discretion, to repair, maintain or replace any and all cabins (as identified in Exhibit B hereto) or other structures, except replacement of cabins shall be limited to replacement with structures of similar kind and size not to exceed the square footage of the previously existing structure by greater than ten percent (10%). With respect to facilities identified in Exhibit (B) the Grantor may

construct, maintain and repair footpaths, in kind and size comparable to those existing on November 2, 1994, as are reasonably necessary to access its facilities.

c. Grantor specifically reserves to itself the right to sell to GP-Chasse et Peche, or its designee, a single parcel of land, not to exceed fifty-five (55) acres of land. Such parcel shall be located in the general area known as the "Portage." Such right to sell is conditioned upon sales agreement being executed by June 1, 1995 and closed by August 15, 1995. Such sale shall also include such rights of access to the parcel as are reasonable and customary and as may be required by law. Upon the transfer of title to such parcel, this Easement shall automatically terminate with respect to the lands so conveyed and they shall cease to be considered Protected Property for any purpose. Nothing herein shall be deemed to limit the right of the United States under Section 22(g) of ANCSA to purchase any such property.

d. Nothing in this Easement shall constitute a limitation upon the right of Grantor to permit the Department to conduct conservation and restoration activities upon the Protected Property, including but not limited to the construction, operation, maintenance or removal of fish counting or catching devices, temporary living accommodations or other structures as may be required for its personnel.

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e. Nothing in this Easement shall constitute a limitation on the right of Grantor to conduct its business of renting existing cabins and granting temporary land use licenses for the use of the Protected Property including but not limited to the right to set up and maintain temporary camp facilities. Temporary camps may not remain in place greater than fourteen (14) days duration at any single site except the site identified in 4.c hereof.

7. Enforcement 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, 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 Easement. In the event of the filing of any action by Grantor or Grantee to enforce the terms of this Easement, the prevailing party shall be entitled to receive its cost and attorney fees to the extent permitted by law or court rule.

8. 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.

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

10. 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 certified mail, postage prepaid, return receipt requested, addressed as follows:

To Grantor: Koniag, Inc.  
4300 B Street, Suite 407  
Anchorage, Alaska 99503  
Attention: President

To Grantee: U.S. Fish and Wildlife Service  
Department of Interior  
1390 Buskin River Road  
Kodiak, Alaska 99615

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Attention: Refuge Manager

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

11. 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.

12. General Provisions

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

b. Narrow Construction The rights of the Grantee hereunder are limited to the rights specifically set forth in this agreement.

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 the 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; provided, however, Grantee may not assign any of its rights hereunder.

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.

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

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

GRANTOR

KONIAG, INC.

By: \_\_\_\_\_  
Frank Pagano, President

By: \_\_\_\_\_  
Secretary

GRANTEE

UNITED STATES OF AMERICA

By: \_\_\_\_\_

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STATE OF ALASKA       )  
                              )ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared FRANK PAGANO of KONIAG, INC., a corporation organized and existing under the laws of the State of Alaska, to me known and known to me to be the President of said corporation and acknowledged to me that he signed the foregoing Non-Development Easement freely and voluntarily for and on behalf of said corporation by authority of its Board of Directors for the uses and purposes therein mentioned.

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

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA       )  
                              )ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared FRANK PAGANO of KONIAG, INC., a corporation organized and existing under the laws of the State of Alaska, to me known and known to me to be the President of said corporation and acknowledged to me that he signed the foregoing Non-Development Easement freely and voluntarily for and on behalf of said corporation by authority of its Board of Directors for the uses and purposes therein mentioned.

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

\_\_\_\_\_  
DRAFT

**DRAFT**

Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA       )  
                              )ss.  
THIRD JUDICIAL DISTRICT )

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

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA       )  
                              )ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared FRANK PAGANO of KONIAG, INC., a corporation organized and existing under the laws of the State of Alaska, to me known and known to me to be the President of said corporation and acknowledged to me that he signed the foregoing Non-Development Easement freely and

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**DRAFT**

voluntarily for and on behalf of said corporation by authority of its Board of Directors for the uses and purposes therein mentioned.

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

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires \_\_\_\_\_

STATE OF ALASKA       )  
                              )ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared FRANK PAGANO of KONIAG, INC., a corporation organized and existing under the laws of the State of Alaska, to me known and known to me to be the President of said corporation and acknowledged to me that he signed the foregoing Non-Development Easement freely and voluntarily for and on behalf of said corporation by authority of its Board of Directors for the uses and purposes therein mentioned.

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

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires \_\_\_\_\_

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**PARCEL KON04B**

Seward Meridian, Alaska

**T. 31S. R. 30W.**

Secs. 27 through 34, (conveyed).

Containing approximately 4,879 acres conveyed.

**T. 32S. R. 29W.**

Sec. 30, (conveyed);

Sec. 31 N $\frac{1}{2}$ , (conveyed);

Sec. 32 (conveyed).

Containing approximately 1,369 acres conveyed.

**T. 32S. R. 30W.**

Secs. 2, 3 and 4, (conveyed);

Secs. 5, 6 and 7, (selected);

Secs. 9, 10 and 11, (conveyed);

Secs. 13 through 16, (conveyed);

Secs. 22, 23 and 24, (conveyed);

Sec. 25, excluding USS 10689 and IC 1106, (conveyed);

Secs. 26 and 27, (conveyed);

Secs. 34 and 35, (conveyed);

Sec. 36, excluding USS 10689 and IC 1106, (conveyed).

Containing approximately 6,093 acres conveyed and 1,905 acres selected.

**T. 31S. R. 31W.**

Secs. 25 and 36 (selected).

Containing approximately 1,280 acres selected.

**T. 32S. R. 31W.**

Secs. 1 and 2, (selected);

Secs. 11 through 14, (selected).

Containing approximately 3,840 acres selected.

**KON04B:** Aggregating approximately 12,341 acres conveyed  
and 7,025 acres selected.

**PARCEL KON06B**

Seward Meridian, Alaska

**T. 30S., R. 33W.**

Sec. 34, (fractional), SW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ , SW $\frac{1}{2}$ , (conveyed);

Sec. 35, (fractional), excluding USS 1951, USS 10570 and USS 9386, (conveyed).

Containing approximately 110 acres conveyed.

**T. 31S., R. 32W.**

Secs. 6 and 7, (conveyed);

Secs. 18 and 19, (conveyed);

Secs. 30 and 31, (conveyed).

Containing approximately 3,704 acres conveyed.

**T. 32S., R. 32W.**

Secs. 5 through 9, (conveyed);

Sec. 11, (conveyed);

Secs. 14 through 17, (conveyed).

Containing approximately 6,195 acres conveyed.

**T. 31S., R. 33W.**

Sec. 1, (fractional), excluding USS 9386, USS 10570 Lots 1 and 2,  
USS 10688, (conveyed);

Sec. 2, (fractional), excluding USS 10570 Lots 1, 2 and 3 and  
USS 10688, (conveyed);

Sec. 11, excluding USS 10688, (conveyed);

Sec. 12, (fractional), excluding USS 6724 and USS 10688, (conveyed);

Secs. 13 and 14, (conveyed);

Secs. 23, 24 and 25, (conveyed);

Sec. 26, (selected);

Sec. 35, (selected);

Sec. 36, (conveyed).

Containing approximately 5,165 acres conveyed and 1,280 acres selected.

**T. 32S., R. 33W.**

Sec. 1, (conveyed).

Containing approximately 640 acres conveyed.

KON06B: Aggregating approximately 15,814 acres conveyed and 1,280 selected.

PARCEL K Parcel 1

Seward Meridian, Alaska

T. 29S. R. 29W.

Sec. 24, (fractional), excluding USS 1918, (conveyed);

Secs. 25 and 26, (fractional), (conveyed);

Sec. 36, (fractional), (conveyed).

Containing approximately 1,129 acres conveyed, and excluding two 14(c)(1) claims.



**EXHIBIT B**  
(Attached to and part of Non-Development  
Easement, dated \_\_\_\_\_, 1995)

**LISTING OF CABINS ON KONIAG LANDS**

- I. **PORTAGE AREA** - (As they occur downstream to upstream)
- A. **On Karluk River, Right Bank**
1. Small Old Portage Cabin vintage 1940? 14' x 14'
  2. Large Old Portage Cabin 1950? 14' x 28'
- B. **On Karluk River, Left Bank** (downstream - upstream)
3. New Pan Abode 1994 12' x 20'
  4. Small Pan Abode 1991 8' x 10'
- II. **KARLUK LAKE OUTLET** - (Right Bank)
5. Outlet Cabin 1950? 12' x 16'

**EXHIBIT B**

(Attached to and part of Non-Development  
Easement, dated \_\_\_\_\_, 1996)

**LISTING OF CABINS ON KONIAG LANDS**

- I. PORTAGE AREA - (As they occur downstream to upstream)
  - A. On Karluk River, Right Bank
    - 1. Small Old Portage Cabin vintage 1940? 14' x 14'
    - 2. Large Old Portage Cabin 1950? 14' x 28'
  - B. On Karluk River, Left Bank (downstream - upstream)
    - 3. New Pan Abode 1994 12' x 20'
    - 4. Small Pan Abode 1991 8' x 10'
- II. KARLUK LAKE OUTLET - (Right Bank)
  - 5. Outlet Cabin 1950? 12' x 16'

## **EXHIBIT A**

(Attached to and part of Non-Development  
Easement, dated \_\_\_\_\_, 1995)

### **PROTECTED PROPERTY**

### **PARCEL KON02 WEST-2**

Seward Meridian, Alaska

T. 31S., R. 29W.

Sec. 27, W $\frac{1}{2}$  (conveyed);

Sec. 34, W $\frac{1}{2}$  (conveyed).

Containing approximately 640 acres conveyed.

T. 32S., R. 29W.

Sec. 3, W $\frac{1}{2}$  (conveyed).

Containing approximately 320 acres conveyed.

KON02 WEST-2: Aggregating approximately 960 acres conveyed.

**PARCEL KON04A**

Seward Meridian, Alaska

**T. 30S., R. 30W.**

Secs. 18 and 19, (conveyed);  
Secs. 29 and 30, (conveyed);  
Sec. 31, excluding USS 9458, (conveyed);  
Sec. 31, USS 9458, (conveyed);  
Sec. 32, (conveyed);  
Sec. 33, NW $\frac{1}{4}$ , W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ , (conveyed).

Containing approximately 3,866 acres conveyed.

**T. 30S., R. 31W.**

Sec. 11, that portion within Kodiak NWR (PL 96-487), (conveyed);  
Secs. 12 and 13, (conveyed);  
Sec. 14, that portion within Kodiak NWR (PL 96-487), (conveyed);  
Sec. 23, that portion within Kodiak NWR (PL 96-487), (conveyed);  
Secs. 24 and 25, (conveyed);  
Sec. 26, that portion within Kodiak NWR (PL 96-487), (selected);  
Sec. 36, (conveyed).

Containing approximately 3,200 acres conveyed and 180 acres selected.

**T. 31S., R. 30W.**

Sec. 2, S $\frac{1}{2}$ , excluding USS 6732, (conveyed);  
Sec. 3, S $\frac{1}{2}$ , (conveyed);  
Sec. 4, S $\frac{1}{2}$ , (conveyed);  
Secs. 5 through 9, (conveyed);  
Secs. 16 through 21, (conveyed);

Containing approximately 7,675 acres conveyed.

**T. 31S., R. 31W.**

Sec. 1, (conveyed);  
Sec. 24, (selected).

Containing approximately 640 acres conveyed and 640 acres selected.

KON04A: Aggregating approximately 15,381 acres conveyed  
and 820 acres selected.

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**RESOLUTION OF THE  
EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL**

We, the undersigned, duly authorized members of the Exxon VALDEZ Oil Spill Trustee Council, after review find as follows:

1. By resolution dated December 11, 1995 ("Resolution") the Trustee Council approved acquisition of land at Shuyak Island owned by the Kodiak Island Borough (hereinafter "KIB");

2. The Resolution required that certain conditions be satisfied before the Alaska Department of Law and the United States Department of Justice request funds from the United States District Court for the initial payment to the KIB. One condition that the Purchase Agreement attached to the Resolution be executed, has now been fulfilled. A second condition was that a satisfactory title search be completed. The title search conducted by the State of Alaska is now completed. However, the title review of that title search by the Department of Justice is not yet completed. Other conditions required by the Resolution have either been fulfilled or are expected to be fulfilled in the near future;

3. The KIB has requested that the Trustee Council expedite this transaction so that it will have funds available this season for construction of the Near Island Research Facility adjacent to the University of Alaska, Fishery Industrial Technology Center.

THEREFORE: we resolve to amend our resolution of December 11, 1995 as follows:

The Alaska Department of Law and the Assistant Attorney General of the Environment and Natural Resources Division of the U.S. Department of Justice are requested to petition the District Court for withdrawal of the sum of eight million dollars (\$8,000,000) from the *Exxon Valdez* oil

**DRAFT**

spill settlement account established as a result of the Governments' settlement. The funds may be paid to the KIB at the time of closing and only after the terms and conditions set forth in paragraphs (a) through (d) at pages four and five of the Resolution and paragraphs (a) through (c) at pages five and six of the Resolution and paragraph six of the Purchase Agreement attached thereto have been met as well as written notice from the State of Alaska and the Executive Director of the Trustee Council that the terms and conditions of the Resolution and the Purchase Agreement have been satisfied.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1996 at Anchorage, Alaska.

\_\_\_\_\_  
PHIL JANIK  
Regional Forester  
Alaska Region  
USDA Forest Service

\_\_\_\_\_  
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

\_\_\_\_\_  
FRANK RUE  
Commissioner  
Alaska Department of  
Fish and Game

\_\_\_\_\_  
MICHELE BROWN  
Commissioner  
Alaska Department of  
Environmental Conservation

RECEIVED  
DEC 1 1995

**RESOLUTION OF THE  
EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL**

**ADMINISTRATIVE RECORD**  
Undersigned, duly authorized members of the Exxon VALDEZ Oil Spill Trustee Council, after extensive review and after consideration of the views of the public, find as follows:

1. Under the Municipal Entitlement Act, the Kodiak Island Borough (hereinafter "KIB") has the right to receive title to the surface estate of certain land from the State of Alaska (hereinafter "State");
2. In 1980 and 1981 the KIB filed certain appeals with the Superior Court in Anchorage for the purpose of determining the KIB's rights under the Municipal Entitlement Act. The appeals were resolved and settled by the KIB and the State in the Agreement of Settlement and Consent Decree in case numbers 3AN-80-3070 Civ, 3AN-80-6710 Civ, and 3AN-81-1385 Civ, consolidated, approved by the court on August 12, 1981, which Agreement was subsequently amended by the Amendment to Settlement Agreement dated January 3, 1985 (hereinafter collectively referred to as the "Settlement Agreement");
3. Pursuant to the Settlement Agreement, the KIB has received title to the surface estate to certain land on Shuyak Island and has equitable title in and has an absolute right to receive patent from the State to the surface estate of other land on Shuyak Island, consisting in total of approximately 26,665.62 acres, more or less, (hereinafter all of the KIB's land and interest in land on Shuyak Island including adjacent rocks and islets are referred to as the "Land"). The KIB is

authorized by state law to sell and convey the land to which it has equitable title with the consent of the State;

4. The KIB wishes to sell the Land to the State;

5. The Land includes important habitat for several species of fish and wildlife for which significant injury resulting from the spill has been documented. A rocky shoreline heavy with kelp beds, pockets of eelgrass and rich communities of invertebrates supports feeding harlequin ducks, black oystercatchers, marbled murrelets, and pigeon guillemots. Black oystercatchers and pigeon guillemots nest and harlequin ducks molt along the shoreline. The mature spruce forests on the parcel provide probable nesting habitat for marbled murrelets. Restoration of these injured species will benefit from acquisition of this important habitat through protection from activities and disturbances which may adversely affect their recovery. There is also a high likelihood of restoration benefits for river otters and concentrations of sea otters which feed and breed along the shoreline. Harbor seals, an injured species with seriously reduced population levels, are likely to benefit from parcel acquisition through protection of haulout areas and control of potential disturbances. Pacific herring, an injured species documented to spawn along the coastline, will benefit as will pink salmon populations, documented in six streams, and Dolly Varden, documented in eight streams on the parcel, through protection from activity which may adversely affect water quality and habitat. The area has high scenic value and supports high value wilderness-based recreation including hunting, fishing, sea-kayaking and camping. The area also possesses high cultural resource values, with fifteen documented historical/archaeological sites;

6. The Land is adjacent to the Shuyak Island State Park to the west and State owned land to the east. Protection of the Land will ensure protection of the entire Shuyak Island ecosystem and



will promote the restoration of the natural resources injured by the *Exxon Valdez* oil spill of March 24, 1989 (“EVOS”);

7. Existing laws and regulations, including but not limited to the Alaska Forest Practices Act, the Anadromous Fish Protection Act, the Clean Water Act, the Alaska Coastal Management Act, the Bald Eagle Protection Act and the Marine Mammals Protection Act, are intended, under normal circumstances, to protect resources from serious adverse affects from logging and other developmental activities. However, restoration, replacement and enhancement of resources injured by EVOS present a unique situation. Without passing on the adequacy or inadequacy of existing law and regulation to protect natural resources and services, biologists, scientists and other resource specialists agree that, in their best professional judgment, protection of habitat in the spill affected area to levels above and beyond that provided by existing law and regulation will have a beneficial affect on recovery of injured resources and lost or diminished services provided by these resources;

8. There has been widespread public support for the acquisition of the Land; and

9. The purchase of the Land is an appropriate means to restore a portion of the injured natural resources and services in the oil spill area. Acquisition of the Land is consistent with the Final Restoration Plan.

10. An appraisal for the Trustee Council has concluded that the fair market value of the Land is within the range of \$27,000,000 to \$33,320,000. The lowest price at which the KIB will sell the Land is based on a value of \$33,320,000, which is within the foregoing range. The appraisal is based upon a single cash payment. Because the payments will be over a period of years it is necessary that the purchase price be adjusted for the deferred payments. As authorized by the Trustee Council the State has offered and the KIB has agreed in concept to a purchase price of

\$42,000,000 to be paid over seven years. The present value of the deferred payments is \$33,320,000.

11. The Kodiak Island Borough Assembly has enacted an ordinance to establish a Facilities Fund in which the proceeds from the sale of these Lands are to be deposited. Disbursements from the fund are limited to the construction, maintenance and debt service for public facilities. As part of this ordinance, funding of at least \$6,000,000 was authorized by the Assembly for the construction of the Near Island Research Facility adjacent to the University of Alaska, Fishery Industrial Technology Center. Although the Near Island Research Facility and Fishery Industrial Technology Center are not a part of the Trustee Council restoration program, the work of these facilities will have an undetermined but complementary effect on the work of the Trustee Council restoring natural resources and related services injured by EVOS. Consequently, the Shuyak acquisition provides additional public and restoration benefits.

THEREFORE, we resolve to provide the funds for the State of Alaska to offer to purchase and, if the offer is accepted, to purchase all of the Seller's rights and interests in the surface estate on Shuyak Island, consisting of approximately 26,665.62 acres, more or less, substantially in accordance with the draft AGREEMENT FOR SALE AND PURCHASE OF INTERESTS IN LANDS ON SHUYAK ISLAND (attached as Exhibit A and hereafter referred to as the "Purchase Agreement") and pursuant to the following conditions:

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

(b) disbursement of these funds by the District Court to the State for the purpose of this acquisition;

(c) completion of a satisfactory title search assuring that the KIB is able to convey fee simple title by general warranty deed to the surface estate of that portion of the Land to which it has received title and by special warranty deed to surface estate of that portion of the Land to which it has equitable title;

(d) no timber harvesting or road development will be initiated on the Lands prior to closing.

Conveyance of the Land to the State shall be subject to to the following conditions:

(a) a restrictive covenant that there shall be no commercial timber harvest on the Land nor any other commercial use of the Land excepting such limited commercial use as may be consistent with State law and the goals of restoration to its prespill condition of any natural resource injured, lost, or destroyed as a result of the EVOS and the services provided by that resource or replacement or substitution for the injured, lost or destroyed resources and affected services as described in the Memorandum of Agreement and Consent Decree between the United States and the State of Alaska entered August 28, 1991;

(b) a covenant that public use of the Land shall include sport and subsistence hunting, fishing, trapping, and recreational uses insofar as consistent with public safety and permitted under law or under a regulation of the Board of Fisheries, Board of Game or the Department of Natural Resources; and

(c) a conservation easement, satisfactory in form and substance to the Alaska Department of Law and the United States Department of Justice, granted by the KIB to the United States. This easement shall authorize the United States to enforce in a court of competent jurisdiction certain restrictive covenants necessary to ensure the protection of the natural resources and services injured by EVOS.

By unanimous consent and upon execution of the purchase agreements and written notice from the State of Alaska and Executive Director of the Trustee Council that the terms and conditions set forth herein and in the Purchase Agreement have been satisfied, we request the Alaska Department of Law and the Assistant Attorney General of the Environment and Natural Resources Division of the U.S. Department of Justice to petition the District Court for withdrawal of the sum of eight million dollars (\$8,000,000) from the District Court Registry account established as a result of the Governments' settlement to be paid at the time of closing, and following receipt of the settlement payments due from Exxon in September, 1996, and annually thereafter, to petition the District Court as follows:

- (1) for withdrawal of the sum of two million one hundred ninety four thousand two hundred sixty-six dollars (\$2,194,266) to be paid by October 1, 1996;
- (2) for withdrawal of the sum of four million dollars (\$4,000,000) to be paid by October 1, 1997;
- (3) for withdrawal of the sum of four million dollars (\$4,000,000) to be paid by October 1, 1998;

(4) for withdrawal of the sum of four million dollars (\$4,000,000) to be paid by October 1, 1999;

(5) for withdrawal of the sum of four million dollars (\$4,000,000) to be paid by October 1, 2000;

(6) for withdrawal of the sum of four million dollars (\$4,000,000) to be paid by October 1, 2001;


(7) for withdrawal of the sum of eleven million eight hundred five thousand seven hundred thirty-four dollars (\$11,805,734) to be paid by October 1, 2002.


These amounts represent the only amounts due under this resolution to the KIB from the State of Alaska from the joint funds in the District Court Registry and no additional amounts are herein authorized to be paid to the KIB from such joint funds.

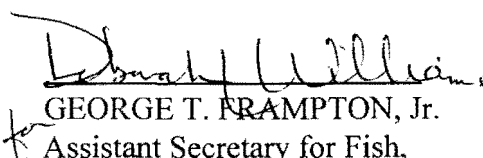
The KIB also owns lands at key waterfront locations along Uyak Bay within Kodiak National Wildlife Refuge as a result of forfeitures for tax delinquency. These lands are included within the large parcels which have been evaluated previously by the Trustee Council for the habitat acquisition program and determined to be of high value for EVOS restoration purposes. The Trustee Council hereby authorizes and will provide funding not to exceed one million dollars (\$1,000,000) for the United States to acquire such lands at their approved appraised value from the KIB plus such closing costs as may be recommended by the Executive Director of the Trustee Council ("Executive Director") and approved by the Trustee Council. The particular parcels to be acquired must be approved by the Trustee Council. Such acquisitions shall be made by separate purchase agreements executed by the KIB and the United States. In accordance with State law, after satisfaction of back

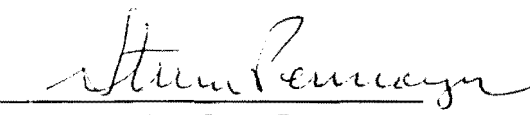
taxes and interest, any amounts remaining from the purchase price are to be paid to the persons who held such property prior to forfeiture.

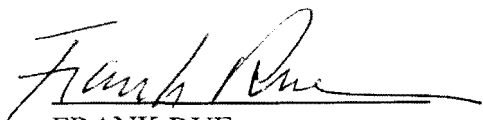
Dated this 11<sup>th</sup> day of December, 1995 at Anchorage, Alaska.

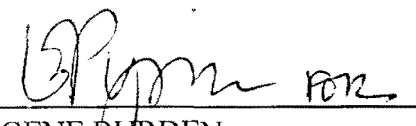
  
for PHIL JANIK  
Regional Forester  
Alaska Region  
USDA Forest Service

  
BRUCE M. BOTELHO/CRAIG TILLERY  
Attorney General/Trustee Representative  
State of Alaska

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

  
STEVEN PENNOYER  
Director, Alaska Region  
National Marine Fisheries Service

  
FRANK RUE  
Commissioner  
Alaska Department of  
Fish and Game

  
GENE BURDEN  
Commissioner  
Alaska Department of  
Environmental Conservation

# **AGREEMENT FOR SALE AND PURCHASE OF INTERESTS IN LANDS ON SHUYAK ISLAND**

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THIS AGREEMENT is made by and between the Kodiak Island Borough ("KIB"), and the State of Alaska ("State") (collectively, the "Parties").

Whereas, under the Municipal Entitlement Act the KIB has the right to receive title to certain land from the State; and

Whereas, in 1980 and 1981 the KIB filed certain appeals with the Superior Court in Anchorage for the purpose of determining the KIB's rights under the Municipal Entitlement Act; and

Whereas, such appeals were resolved and settled by the KIB and the State in the Agreement of Settlement and Consent Decree in case numbers 3AN-80-3070 Civ, 3AN-80-6710 Civ, and 3AN-81-1385 Civ, consolidated, approved by the court on August 12, 1981, which Agreement was subsequently amended by Amendment to Settlement Agreement dated January 3, 1985 (hereinafter collectively referred to as the "Settlement Agreement"); and

Whereas, pursuant to the Settlement Agreement the KIB has received title to certain land on Shuyak Island and has equitable title and an absolute right to receive patent from the State to other land on Shuyak Island; and

Whereas, the KIB is authorized under AS 29.65.070 to make conditional sales of the lands in which it holds equitable title; and

Whereas, by Resolution dated December 11, 1995 the Exxon Valdez Oil Spill Trustee Council ("Trustee Council") has determined that all of the KIB lands located on Shuyak Island should be acquired in fulfillment of the Trustee Council's duties and has agreed to provide funding to the State for this acquisition; and

Whereas, the KIB wishes to sell to the State its land located on Shuyak Island.

NOW THEREFORE, the Parties agree as follows:

1. **SALE OF PROPERTY.** The KIB shall sell to the State all the KIB's property rights, title and interests at Shuyak Island, Alaska, consisting of approximately 26,665.62 acres, more or

less, as more particularly described in Exhibit A ("Property"), such sale to be made in accordance with the terms and conditions of this Agreement for Sale and Purchase of Interests in Lands on Shuyak Island ("Agreement"). The KIB affirms and represents that the Property has been conveyed or equitable title has been conveyed to the KIB pursuant to AS 29.65 and the Settlement Agreement.

2. EFFECT ON ENTITLEMENT. The parties recognize that the Property for which the KIB holds equitable title have not been surveyed. The Parties hereby agree and stipulate that:

- a) no further surveys for purposes of AS 29.65 shall be required to be conducted;
- b) such lands shall be deemed for all purposes under AS 29.65 to contain 26,656.32 acres;
- c) the KIB entitlement under AS 29.65 shall be charged in the amount of 26,656.32 acres; and
- d) the KIB has no further entitlement under AS 29.65 other than to the lands identified in the Settlement Agreement.

3. WARRANTIES. The KIB does hereby warrant and represent: (1) that the KIB is vested with title or the right to acquire title to the surface estate to the Property and (2) that no liens, encumbrances, defects or third party interests have been created in the Property except as provided herein.

4. INTERESTS CONVEYED. The interests shall be conveyed as follows:

- a) the KIB shall deliver to the United States Department of the Interior a Conservation Easement in substantially the form attached hereto as Exhibit B ("Easement");
- b) the KIB shall execute and deliver to the State, a Special Warranty Deed for that portion of the Property in which it holds equitable title and a Warranty Deed for that portion of the Property in which it holds legal title (collectively the "Deeds"), in substantially the forms attached hereto as Exhibits C and D which exhibits are incorporated herein by reference. The Deeds shall convey the Property free and clear of all claims, liens and encumbrances other than the noted exceptions;
- c) the Deeds shall be subject to the Easement. The Easement shall be executed and accepted before the Deeds are executed and accepted, and recorded before the Deeds are recorded, and
- d) the Parties shall execute and deliver at closing or at any other time, such additional documents as may be necessary to convey the KIB's interests in the Property to the State or to secure or preserve the Parties' rights under this Agreement.



5. PURCHASE PRICE. The purchase price is \$42,000,000. The purchase price will be paid as follows:

At closing:	\$8,000,000
October 1, 1996	\$2,194,266
October 1, 1997	\$4,000,000
October 1, 1998	\$4,000,000
October 1, 1999	\$4,000,000
October 1, 2000	\$4,000,000
October 1, 2001	\$4,000,000
October 1, 2002	\$11,805,734

The KIB agrees to proceed with the construction of the Near Island Research Facility adjacent to the University of Alaska, Fairbanks, Fishery Industrial Technology Center in Kodiak. The KIB agrees to contribute at least \$6,000,000 for that construction. As recognized by the Trustee Council Resolution of December 11, 1995, the Near Island Research Facility and Fishery Industrial Technology Center will have a positive benefit on natural resources and services injured by EVOS.

6. CONDITIONS OF SALE. Prior to closing the following conditions must be satisfied: (a) a completed hazardous substance survey must establish that there are no hazardous substances on the Property, (b) there must be satisfactory compliance with the National Environmental Policy Act, and c) a title search must be completed satisfactory to the State and the United States for the respective interests in land being acquired.

7. RIGHT TO ENTER PROPERTY. Upon execution of this Agreement by the Parties and until closing, employees or agents of the Trustee Council, the State, the United States, upon reasonable notice, shall have the right to enter the Property for all lawful purposes in connection with this Agreement, including environmental audit purposes.

8. CLOSING. The Parties shall meet for closing within 14 days after the funds for the initial payment to the KIB have been provided by the Trustee Council and are available for lawful expenditure by the State, and all documents that are required to be provided or completed and executed by the Parties have been tendered. The date, time and location of closing shall be set by the State in concurrence with the KIB.

9. RESERVATION OF CLAIMS. KIB reserves and retains any and all claims and causes of action against Exxon Corporation, Exxon Shipping Company or any other person or entity for any and all loss, injury or damage, including compensatory and punitive damages, sustained by KIB as a result of the effect of the *Exxon Valdez* oil spill of March 24, 1989 ("EVOS") on the Property. The Parties further agree that nothing in this Agreement or any document executed

pursuant to this Agreement shall be deemed a release, waiver or assignment of any claim KIB may have against Exxon Corporation, Exxon Shipping Company or any other person or entity as a result of the EVOS, including, but not limited to, real property damage or loss.

10. RESCISSION. The KIB may rescind this Agreement by written notice to the State if the funds for the initial payment of \$8,000,000 have not been provided by the Trustee Council and made available for lawful expenditure by the State within eight months from the date of this Agreement.

11. DEFAULT. In the event that an installment payment described in paragraph 6 of this Agreement is not paid when it is due after closing, then the KIB may declare this Agreement terminated and in such event the KIB shall be entitled to bring an action in partition against the State and the United States to receive title to a portion of the Property in accordance with the provisions of this paragraph. Such portion of Property shall be equal in value to the unpaid balance due under this Agreement plus, to the extent allowed by law, the costs and reasonable attorney fees incurred by the KIB in the enforcement of this paragraph. Such portion of the Property shall be determined by agreement of the parties, taking into consideration the primary goal to ensure that the portion of Property being returned to the KIB shall be suitable for economic development including ports and harbors and the secondary goal to ensure that the portion remaining with the State is structured in such a way so as to not unnecessarily impact the restoration of natural resources or services injured by EVOS and is an integrated part of any state park or other land management unit which may have been created to manage the Property. Any dispute arising under this paragraph shall be submitted to binding arbitration pursuant to the rules of the American Arbitration Association.

12. OTHER AGREEMENTS AND ACTIONS. The Parties shall take other action or enter into other agreements reasonably necessary to the exercise and closing of this Agreement. In the event of a conflict between this Agreement and the Settlement Agreement, this Agreement shall control.

13. SIGNATURE AUTHORITY. Each signatory to this Agreement represents that such signatory is authorized to enter into this Agreement.

14. NOTICE. Written notices shall be provided to the parties at the following addresses:

State of Alaska  
Department of Natural Resources  
Director, Division of Land  
P.O. Box 107005  
Anchorage, Alaska 99510-7005

Kodiak Island Borough  
710 Mill Bay Road  
Kodiak, Alaska 99615-6340

Craig Tillery  
Attorney General's Office  
1031 West 4th Ave. Suite 200  
Anchorage, Alaska 99501

Joel H. Bolger  
Jamin, Ebell, Bolger & Gentry  
323 Carolyn Street  
Kodiak, Alaska 99615

STATE OF ALASKA

KODIAK ISLAND BOROUGH

By: \_\_\_\_\_  
Marty Rutherford

By: \_\_\_\_\_  
Jerome M. Selby

Its: Deputy Commissioner  
Department of Natural Resources

Its: Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Return to:  
Alex Swiderski  
Assistant Attorney General  
1031 W. 4th Avenue Suite 200  
Anchorage, Ak. 99501

## EXHIBIT A

Property situated in the Kodiak Recording District, Third Judicial District, State of Alaska, more fully described as follows:

USS 1738, (according to the United States of America, Department of the Interior, General Land Office plat accepted in Washington, D.C., on April 22, 1927, containing 9.3 acres);

USS 9221, (according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted in Anchorage, Alaska on November 28, 1989; containing 31.96 acres) subject to BLM case file AA-7069 parcel C;

USS 9226 lots 1 & 2, (according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted in Anchorage, Alaska on November 28, 1989; containing 39.92 acres) subject to BLM case file AA-7069 parcel B;

USS 9228, that portion east of the protracted location of the West  $\frac{1}{4}$  line, (according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted in Anchorage, Alaska on November 28, 1989; containing 20 acres, more or less); subject to BLM case file AA-7069 parcel D;

and, the following:

The described land that follows is based on unsurveyed, protraction map S-23-1 (dated September 19, 1960) and the Alaska Division of Lands Grid No. S-23-1, protracted map (dated December 12, 1966) overlying the affected Tract A or B township surveys. All special surveys (United States Surveys [USS]) are excluded from the township descriptions:

All of the following described lands within **Tract A, Township 18 South, Range 19 West, Seward Meridian**, according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted January 18, 1978:

Sec. 26: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$  corner

common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W.,  
Seward Meridian;

Sec. 27: All;

Sec. 28: That portion lying east of a line which runs between the  
corner common to Sections 21, 22, 27 and 28, T. 18 S., R. 19 W.,  
Seward Meridian to the northwest  $\frac{1}{4}$  corner of Section 33 within Tract  
A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 29: That portion lying south and above the mean high tide  
line on the south shore of an unnamed bay that connects to Shangin  
Bay (fractional);

Sec. 30: That portion of the E $\frac{1}{2}$ /E $\frac{1}{4}$ /SE $\frac{1}{4}$ /SE $\frac{1}{2}$  lying south and  
above the mean high tide line on the south shore of an unnamed bay  
that connects to Shangin Bay (fractional);

Sec. 32: That portion lying south and above the mean high tide  
line on the south shore of an unnamed bay that connects to Shangin  
Bay, west of the west shore of Shangin Bay, and that portion lying  
south of the north  $\frac{1}{4}$  line of Section 32 and east of the east shore of  
Shangin Bay (fractional);

Sec. 33: That portion on the east shore of Shangin Bay lying  
south of the north  $\frac{1}{4}$  line of Section 33 to the northwest  $\frac{1}{4}$  corner of  
Section 33, and that portion lying south and east of a line which runs  
between the corner common to Sections 21, 22, 27 and 28, T. 18 S., R.  
19 W., Seward Meridian to the northwest  $\frac{1}{4}$  corner of Section 33  
within Tract A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 34: That portion lying west of a line which runs between  
the corner common to Sections 31 and 32 within Tract B, T. 19 S., R.  
19 W., Seward Meridian and common with Sections 5 and 6 within  
Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$  corner  
common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W.,  
Seward Meridian;

Sec. 35: That portion lying west of a line which runs between  
the corner common to Sections 31 and 32 within Tract B, T. 19 S., R.

19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian.

All of the following described lands within **Tract A, Township 18 South, Range 20 West, Seward Meridian**, according to the United States of America, Department of the Interior, Bureau of Land Management supplemental plat accepted August 5, 1992 and filed August 24, 1992:

- Sec. 35: That portion lying south and above the mean high tide line on the south shore of an unnamed bay that connects to Carry Inlet and east of the east shore of Carry Inlet (fractional);
- Sec. 36: That portion of the W $\frac{1}{2}$  lying south and above the mean high tide line on the south shore of an unnamed bay that connects to Carry Inlet (fractional).

All of the following described lands within **Tract B, Township 19 South, Range 19 West, Seward Meridian**, according to the United States of America, Department of the Interior, Bureau of Land Management supplemental plat accepted September 4, 1992 and filed September 16, 1992:

- Sec. 3: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;
- Sec. 4: All;
- Sec. 5: That portion lying above the mean high tide line of the shore of Shangin Bay (fractional);
- Sec. 6: All;
- Sec. 7: All;

- Sec. 8: All;
- Sec. 9: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{16}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;
- Sec. 10: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{16}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;
- Sec. 16: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{16}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;
- Sec. 17: All;
- Sec. 18: All;
- Sec. 19: All;
- Sec. 20: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{16}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;
- Sec. 21: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{16}$  corner

common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W.,  
Seward Meridian;

Sec. 29: That portion lying west of a line which runs between  
the corner common to Sections 31 and 32 within Tract B, T. 19 S., R.  
19 W., Seward Meridian and common with Sections 5 and 6 within  
Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$  corner  
common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W.,  
Seward Meridian;

Sec. 30: All;

Sec. 31: All;

Sec. 32: That portion lying west of a line which runs between  
the corner common to Sections 31 and 32 within Tract B, T. 19 S., R.  
19 W., Seward Meridian and common with Sections 5 and 6 within  
Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$  corner  
common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W.,  
Seward Meridian.

All of the following described lands within **Tract B, Township 19 South, Range 20  
West, Seward Meridian**, according to the United States of America, Department of the  
Interior, Bureau of Land Management supplemental plat accepted September 4, 1992 and  
filed September 16, 1992:

Sec. 1: All;

Sec. 2: That portion lying south, east and above the mean high  
tide line on the south shore of an unnamed bay that connects to Carry  
Inlet (fractional);

Sec. 3: That portion of the E $\frac{1}{4}$ E $\frac{1}{4}$ , lying south and above the  
mean high tide line on the south shore of an unnamed bay that  
connects to Carry Inlet (fractional);

Sec. 10: That portion lying above the mean high tide line on the  
shore of an unnamed bay that connects to Big Bay, including that  
portion of the N $\frac{1}{4}$ NW $\frac{1}{4}$ , abutting USS 9228 lying east of the West  $\frac{1}{4}$   
line (fractional);



- Sec. 11: All;
- Sec. 12: All;
- Sec. 13: (fractional) All, excluding the large unnamed lake in the W $\frac{1}{2}$ ;
- Sec. 14: (fractional) All, including the 35± acre island within the lake, excluding the large unnamed lake in the E $\frac{1}{2}$ ;
- Sec. 15: All;
- Sec. 16: All;
- Sec. 17: That portion lying east and above the mean high tide line on the east shore of an Neketa Bay, including the island in the SW $\frac{1}{4}$ , (fractional);
- Sec. 19: That portion lying east and above the mean high tide line on the east shore of Neketa Bay and on above mean high tide line on both sides of the unnamed bay that connects to Shelikof Strait including all islands, islets, pinnacles and rocks above the mean high water line within the unnamed bay that connects to Shelikof Strait (fractional);
- Sec. 20: That portion lying east and above the mean high tide line on the east shore of the unnamed bay that connects to Shelikof Strait, south, east and above the mean high tide line of the south shore of Neketa Bay, and on both sides of Shuyak Harbor (fractional);
- Sec. 21: All;
- Sec. 22: All;
- Sec. 23: All;
- Sec. 24: All;
- Sec. 25: All;

- Sec. 26: All;
- Sec. 27: That portion lying north and above the mean high tide line on the north shore of the unnamed bay, located in the SW $\frac{1}{4}$ /SW $\frac{1}{4}$ ., that connects to Shuyak Strait (fractional);
- Sec. 28: That portion lying north and above the mean high tide line on the north shore of the unnamed bays that connects to Shuyak Strait (fractional);
- Sec. 29: That portion lying north and above the mean high tide line on the north shore of the unnamed bays that connects to Shuyak Strait, and both sides of Shuyak Harbor (fractional);
- Sec. 30: That portion lying north and above the mean high tide line on the north shore of Shuyak Strait, and west of Shuyak Harbor (fractional);
- Sec. 32: That portion lying north and above the mean high tide line on the north shore of Shuyak Strait (fractional);
- Sec. 33: That portion lying north and above the mean high tide line on the north shore of Shuyak Strait (fractional);
- Sec. 34: That portion lying north and east above the mean high tide line on the north shore of Shuyak Strait (fractional);
- Sec. 35: All;
- Sec. 36: All.

All of the following described lands within **Tract A, Township 20 South, Range 20 West, Seward Meridian**, according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted January 18, 1978:

- Sec. 2: That portion of the W $\frac{1}{4}$ , lying north and above the mean high tide line on the north shore of Shuyak Strait (fractional);
- Sec. 3: That portion lying north and above the mean high tide

line on the north shore of Shuyak Strait (fractional).

Containing 26,665.62 acres more or less.

## EXHIBIT B

### CONSERVATION EASEMENT

THIS Conservation Easement is made this \_\_\_\_ day of \_\_\_\_\_ 199\_\_, by the **Kodiak Island Borough** ("KIB") 710 Mill Bay Road, Kodiak, Alaska 99615-6340 ("Grantor") and the **United States of America**, ("Grantee") under the authority of Section 1302(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. § 3192(a)), the Fish and Wildlife Act of 1956 (16 U.S.C. § 742f(b)(1)) and the Agreement for Sale and Purchase of Interests in Lands on Shuyak Island between the KIB and the **State of Alaska** ("State"), dated \_\_\_\_\_ ("Agreement") and the State.

WHEREAS, Grantor has received title to or has equitable title in the surface estate of certain land on Shuyak Island;

WHEREAS, the real property subject to this conservation easement (the "Protected Property") is a natural area that provides significant habitat for migratory birds and other fish and wildlife and plant species that were injured as a result of the *Exxon Valdez* oil spill;

WHEREAS, the *Exxon Valdez* Oil Spill Trustee Council ("Trustee Council") has approved the use of joint settlement funds for acquisition by the State of the protected property, subject to certain third-party rights to be held by the Grantee in order to assure that the restoration objectives for use of the settlement funds are achieved;

WHEREAS, Grantor intends to convey its interest in the surface estate of the Protected Property to the State;

WHEREAS, Grantor desires to provide to the Grantee an independent right in perpetuity to enforce the restrictive covenants as to the surface estate set forth herein;

NOW THEREFORE, pursuant to the laws of Alaska and in particular AS 34.17.010 - 34.17.060 and AS 29.65.070, and in accordance with the provisions of the Agreement, Grantor does hereby grant and convey to Grantee, its successors and assigns, forever, with special warranties of title noted herein, subject to conditions, restrictions and limitations of record, a conservation easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth (the "Easement"), as to the surface estate of the property described as follows:

#### EXHIBIT B

USS 1738, (according to the United States of America, Department of the Interior, General Land Office plat accepted in Washington, D.C., on April 22, 1927, containing 9.3 acres);

USS 9221, (according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted in Anchorage, Alaska on November 28, 1989; containing 31.96 acres) subject to BLM case file AA-7069 parcel C;

USS 9226 lots 1 & 2, (according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted in Anchorage, Alaska on November 28, 1989; containing 39.92 acres) subject to BLM case file AA-7069 parcel B;

USS 9228, that portion east of the protracted location of the West  $\frac{1}{4}$  line, (according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted in Anchorage, Alaska on November 28, 1989; containing 20 acres, more or less); subject to BLM case file AA-7069 parcel D;

and, the following:

The described land that follows is based on unsurveyed, protraction map S-23-1 (dated September 19, 1960) and the Alaska Division of Lands Grid No. S-23-1, protracted map (dated December 12, 1966) overlying the affected Tract A or B township surveys. All special surveys (United States Surveys [USS]) are excluded from the township descriptions:

All of the following described lands within **Tract A, Township 18 South, Range 19 West, Seward Meridian**, according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted January 18, 1978:

Sec. 26: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 27: All;

- Sec. 28: That portion lying east of a line which runs between the corner common to Sections 21, 22, 27 and 28, T. 18 S., R. 19 W., Seward Meridian to the northwest  $\frac{1}{16}$  corner of Section 33 within Tract A, T. 18 S., R. 19 W., Seward Meridian;
- Sec. 29: That portion lying south and above the mean high tide line on the south shore of an unnamed bay that connects to Shangin Bay (fractional);
- Sec. 30: That portion of the E $\frac{1}{2}$ /E $\frac{1}{4}$ /SE $\frac{1}{4}$ /SE $\frac{1}{2}$ , lying south and above the mean high tide line on the south shore of an unnamed bay that connects to Shangin Bay (fractional);
- Sec. 32: That portion lying south and above the mean high tide line on the south shore of an unnamed bay that connects to Shangin Bay, west of the west shore of Shangin Bay, and that portion lying south of the north  $\frac{1}{16}$  line of Section 32 and east of the east shore of Shangin Bay (fractional);
- Sec. 33: That portion on the east shore of Shangin Bay lying south of the north  $\frac{1}{16}$  line of Section 33 to the northwest  $\frac{1}{16}$  corner of Section 33, and that portion lying south and east of a line which runs between the corner common to Sections 21, 22, 27 and 28, T. 18 S., R. 19 W., Seward Meridian to the northwest  $\frac{1}{16}$  corner of Section 33 within Tract A, T. 18 S., R. 19 W., Seward Meridian;
- Sec. 34: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{16}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;
- Sec. 35: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{16}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian.

All of the following described lands within **Tract A, Township 18 South, Range 20 West, Seward Meridian**, according to the United States of America, Department of the Interior, Bureau of Land Management supplemental plat accepted August 5, 1992 and filed August 24, 1992:

- Sec. 35: That portion lying south and above the mean high tide line on the south shore of an unnamed bay that connects to Carry Inlet and east of the east shore of Carry Inlet (fractional);
- Sec. 36: That portion of the W $\frac{1}{2}$ , lying south and above the mean high tide line on the south shore of an unnamed bay that connects to Carry Inlet (fractional).

All of the following described lands within **Tract B, Township 19 South, Range 19 West, Seward Meridian**, according to the United States of America, Department of the Interior, Bureau of Land Management supplemental plat accepted September 4, 1992 and filed September 16, 1992:

- Sec. 3: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;
- Sec. 4: All;
- Sec. 5: That portion lying above the mean high tide line of the shore of Shangin Bay (fractional);
- Sec. 6: All;
- Sec. 7: All;
- Sec. 8: All;
- Sec. 9: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within

Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{16}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 10: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{16}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 16: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{16}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 17: All;

Sec. 18: All;

Sec. 19: All;

Sec. 20: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{16}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 21: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{16}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 29: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R.



19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{16}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 30: All;

Sec. 31: All;

Sec. 32: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{16}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian.

All of the following described lands within **Tract B, Township 19 South, Range 20 West, Seward Meridian**, according to the United States of America, Department of the Interior, Bureau of Land Management supplemental plat accepted September 4, 1992 and filed September 16, 1992:

Sec. 1: All;

Sec. 2: That portion lying south, east and above the mean high tide line on the south shore of an unnamed bay that connects to Carry Inlet (fractional);

Sec. 3: That portion of the E $\frac{1}{2}$ /E $\frac{1}{2}$ , lying south and above the mean high tide line on the south shore of an unnamed bay that connects to Carry Inlet (fractional);

Sec. 10: That portion lying above the mean high tide line on the shore of an unnamed bay that connects to Big Bay, including that portion of the N $\frac{1}{2}$ /NW $\frac{1}{4}$ , abutting USS 9228 lying east of the West  $\frac{1}{16}$  line (fractional);

Sec. 11: All;

Sec. 12: All;

- Sec. 13: (fractional) All, excluding the large unnamed lake in the W $\frac{1}{2}$ ;
- Sec. 14: (fractional) All, including the 35± acre island within the lake, excluding the large unnamed lake in the E $\frac{1}{2}$ ;
- Sec. 15: All;
- Sec. 16: All;
- Sec. 17: That portion lying east and above the mean high tide line on the east shore of an Neketa Bay, including the island in the SW $\frac{1}{4}$  (fractional);
- Sec. 19: That portion lying east and above the mean high tide line on the east shore of Neketa Bay and on above mean high tide line on both sides of the unnamed bay that connects to Shelikof Strait including all islands, islets, pinnacles and rocks above the mean high water line within the unnamed bay that connects to Shelikof Strait (fractional);
- Sec. 20: That portion lying east and above the mean high tide line on the east shore of the unnamed bay that connects to Shelikof Strait, south, east and above the mean high tide line of the south shore of Neketa Bay, and on both sides of Shuyak Harbor (fractional);
- Sec. 21: All;
- Sec. 22: All;
- Sec. 23: All;
- Sec. 24: All;
- Sec. 25: All;
- Sec. 26: All;
- Sec. 27: That portion lying north and above the mean high tide line on the north shore of the unnamed bay, located in the SW $\frac{1}{4}$ , SW $\frac{1}{4}$ ;

that connects to Shuyak Strait (fractional);

Sec. 28: That portion lying north and above the mean high tide line on the north shore of the unnamed bays that connects to Shuyak Strait (fractional);

Sec. 29: That portion lying north and above the mean high tide line on the north shore of the unnamed bays that connects to Shuyak Strait, and both sides of Shuyak Harbor (fractional);

Sec. 30: That portion lying north and above the mean high tide line on the north shore of Shuyak Strait, and west of Shuyak Harbor (fractional);

Sec. 32: That portion lying north and above the mean high tide line on the north shore of Shuyak Strait (fractional);

Sec. 33: That portion lying north and above the mean high tide line on the north shore of Shuyak Strait (fractional);

Sec. 34: That portion lying north and east above the mean high tide line on the north shore of Shuyak Strait (fractional);

Sec. 35: All;

Sec. 36: All.

All of the following described lands within **Tract A, Township 20 South, Range 20 West, Seward Meridian**, according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted January 18, 1978:

Sec. 2: That portion of the W $\frac{1}{2}$ , lying north and above the mean high tide line on the north shore of Shuyak Strait (fractional);

Sec. 3: That portion lying north and above the mean high tide line on the north shore of Shuyak Strait (fractional).

Containing 26,665.62 acres more or less.

The acquiring agency is the Department of the Interior, U.S. Fish and Wildlife Service.

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

The Grantee shall be entitled to enforce on a non-exclusive basis the terms of the following restrictive covenants against the Grantor, its successors or assigns:

- (a) The following listed activities are prohibited on the Protected Property except as determined by the State, Department of Natural Resources, Division of Parks and Outdoor Recreation, or its successors in administrative function ("Division of Parks") to be necessary for either conservation research or management of the subject lands (whether carried out by the Division of Parks, an entity approved by the Division of Parks, or its successors in law or interests), or for conveying information to the public to protect public safety or natural resources:
  - (i) the construction or placing of buildings, fixed or improved camping accommodations or mobile homes, fences, billboards or signs, except that the Division of Parks may construct public use cabins, trails, camping facilities and other facilities for public use as are in keeping with the management of a wilderness state park and do not have a significant negative impact on the restoration objectives of the Trustee Council;
  - (ii) the changing of the topography of the Protected Property in any manner except as is reasonably necessary for the actions permitted in paragraph a;
  - (iii) the removal, destruction or cutting of trees or plants except for local subsistence uses except as is reasonably necessary for the actions permitted in paragraph a;
  - (iv) the use of biocides except as necessary to control or remove non-indigenous fish, wildlife or plants;
  - (v) the 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; or

(vi) the use of motorized vehicles.

(b) The following listed activities by any person are prohibited:

- (i) the introduction of fish, wildlife or plants which are not indigenous to the Kodiak Archipelago, including, but not limited to, the grazing of domestic animals or the introduction of reindeer; and
- (ii) the dumping of trash, garbage, or other unsightly or offensive material.

\* \* \* \*

Nothing herein shall be deemed to in any third party the right to enforce these covenants.

Nothing herein shall be deemed to pertain to, affect, expand or limit the rights of the subsurface owner to utilize that estate in accordance with applicable law.

Grantor agrees that these restrictive covenants shall run with the lands and shall be binding upon Grantor, its successors and assigns; except as to any portion of the Protected Property which may be subject to an order of partition directing that such portion be returned to the Grantor pursuant to paragraph 11 of the Agreement as a result of the failure of the State to make a required payment or payments.

The Grantor hereby covenants to and with the Grantee and its assigns, that the Grantor is lawfully seized of the surface estate in fee simple of the above granted real property, or has equitable title in the same with a good and lawful right and power to sell and convey the same with the consent of the State as noted below, that the same is free and clear of encumbrances, except as noted herein, and that the Grantor will forever warrant and defend the title transferred herein, such warranty and defense being limited to that portion of the chain of title from the moment of conveyance by the Grantee to the State to and including the moment at which this Easement is validly conveyed to the Grantee and its assigns, against the lawful claims and demands of all persons.

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



STATE CONSENT

In accordance with AS29.65.070, I do hereby consent to this Conservation Easement.

\_\_\_\_\_  
Marty Rutherford  
Deputy Commissioner  
Department of Natural Resources  
State of Alaska

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT    )

THIS IS TO CERTIFY that on the \_\_\_\_ day of \_\_\_\_\_, 199\_, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Marty Rutherford, Deputy Commissioner, Department of Natural Resources, State of Alaska, to me known and known to be the person she represented herself to be, and the same identical person who executed the above and foregoing CONSERVATION EASEMENT on behalf of State of Alaska in the name of and for and on behalf of said State of Alaska, freely and voluntarily for the use and purposes therein mentioned.

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

(SEAL)

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

ACCEPTANCE

Pursuant to § 1302 of the Act of December 2, 1980, Alaska National Interest Lands Conservation Act, P.L. 96-487 (U.S.C. § 3192), the Fish and Wildlife Act of 1956, (16 U.S.C. § 742f(a)(4)), and the Agreement for Sale and Purchase of Interests in Lands on Shuyak Island dated \_\_\_\_\_, 1995, the Grantee hereby accepts this Conservation Easement conveying to the United States and its assigns, those interests in lands described therein.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
Regional Director, Region 7  
U.S. Fish and Wildlife Services

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT    )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 1995, before me, the undersigned a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared \_\_\_\_\_, known to me and to me known to be the \_\_\_\_\_, Region 7 of the U.S. Fish and Wildlife Service, and she/he acknowledged to me that she/he signed as accepting the foregoing Conservation Easement conveying to the United States, those lands described therein, and she/he executed the foregoing instrument freely and voluntarily.



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

(SEAL)

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My commission expires: \_\_\_\_\_

AFTER RECORDING RETURN TO:  
U.S. Department of the Interior  
Fish and Wildlife Service  
Division of Realty  
1011 E. Tudor Road  
Anchorage, Alaska 99503

# EXHIBIT C

## SPECIAL WARRANTY DEED

GRANTOR, the Kodiak Island Borough, an Alaska municipal corporation, whose address is 710 Mill Bay Road, Kodiak, Alaska, 99615, for and in consideration of ten dollars (\$10.00) and other good and sufficient consideration, grants and conveys to GRANTEE, State of Alaska, whose address is Department of Natural Resources, 3601 C Street, Suite 960, Anchorage, Alaska, 99503, with the special warranties of title noted herein, subject to the conditions, restrictions and limitations noted herein all of GRANTOR'S right, title and interest in the surface estate of the following described property, excepting only those rights specifically reserved in to the GRANTOR by this Special Warranty Deed, situated in the Kodiak Recording District, Third Judicial District, State of Alaska, more fully described as follows:

USS 9221, (according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted in Anchorage, Alaska on November 28, 1989; containing 31.96 acres) subject to BLM case file AA-7069 parcel C;

USS 9226 lots 1 & 2, (according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted in Anchorage, Alaska on November 28, 1989; containing 39.92 acres) subject to BLM case file AA-7069 parcel B;

USS 9228, that portion east of the protracted location of the West  $\frac{1}{4}$  line, (according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted in Anchorage, Alaska on November 28, 1989; containing 20 acres, more or less); subject to BLM case file AA-7069 parcel D;

and, the following:

The described land that follows is based on unsurveyed, protraction map S-23-1 (dated September 19, 1960) and the Alaska Division of Lands Grid No. S-23-1, protracted map (dated December 12, 1966) overlying the affected Tract A or B township surveys. All special surveys (United States Surveys [USS]) are excluded from the township descriptions:

All of the following described lands within **Tract A, Township 18 South, Range 19 West, Seward Meridian**, according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted January 18, 1978:

- Sec. 26:                      That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;
- Sec. 27:                      All;
- Sec. 28:                      That portion lying east of a line which runs between the corner common to Sections 21, 22, 27 and 28, T. 18 S., R. 19 W., Seward Meridian to the northwest  $\frac{1}{4}$  corner of Section 33 within Tract A, T. 18 S., R. 19 W., Seward Meridian;
- Sec. 29:                      That portion lying south and above the mean high tide line on the south shore of an unnamed bay that connects to Shangin Bay (fractional);
- Sec. 30:                      That portion of the E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{2}$ SE $\frac{1}{2}$  lying south and above the mean high tide line on the south shore of an unnamed bay that connects to Shangin Bay (fractional);
- Sec. 32:                      That portion lying south and above the mean high tide line on the south shore of an unnamed bay that connects to Shangin Bay, west of the west shore of Shangin Bay, and that portion lying south of the north  $\frac{1}{4}$  line of Section 32 and east of the east shore of Shangin Bay (fractional);
- Sec. 33:                      That portion on the east shore of Shangin Bay lying south

of the north  $\frac{1}{4}$  line of Section 33 to the northwest  $\frac{1}{4}$  corner of Section 33, and that portion lying south and east of a line which runs between the corner common to Sections 21, 22, 27 and 28, T. 18 S., R. 19 W., Seward Meridian to the northwest  $\frac{1}{4}$  corner of Section 33 within Tract A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 34: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 35: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian.

All of the following described lands within **Tract A, Township 18 South, Range 20 West, Seward Meridian**, according to the United States of America, Department of the Interior, Bureau of Land Management supplemental plat accepted August 5, 1992 and filed August 24, 1992:

Sec. 35: That portion lying south and above the mean high tide line on the south shore of an unnamed bay that connects to Carry Inlet and east of the east shore of Carry Inlet (fractional);

Sec. 36: That portion of the W $\frac{1}{2}$ , lying south and above the mean high tide line on the south shore of an unnamed bay that connects to Carry Inlet (fractional).

All of the following described lands within **Tract B, Township 19 South, Range 19 West, Seward Meridian**, according to the United States of America, Department of the Interior, Bureau of Land Management supplemental plat accepted September 4, 1992 and filed September 16, 1992:

Sec. 3: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W.,

Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 4: All;

Sec. 5: That portion lying above the mean high tide line of the shore of Shangin Bay (fractional);

Sec. 6: All;

Sec. 7: All;

Sec. 8: All;

Sec. 9: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 10: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 16: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$  corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 17: All;

Sec. 18: All;

Sec. 19: All;

Sec. 20: That portion lying west of a line which runs between the

corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$ , corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 21: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$ , corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 29: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$ , corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian;

Sec. 30: All;

Sec. 31: All;

Sec. 32: That portion lying west of a line which runs between the corner common to Sections 31 and 32 within Tract B, T. 19 S., R. 19 W., Seward Meridian and common with Sections 5 and 6 within Tract A, T. 20 S., R. 19 W., Seward Meridian to the East  $\frac{1}{4}$ , corner common to Sections 23 and 26 within Tract A, T. 18 S., R. 19 W., Seward Meridian.

All of the following described lands within **Tract B, Township 19 South, Range 20 West, Seward Meridian**, according to the United States of America, Department of the Interior, Bureau of Land Management supplemental plat accepted September 4, 1992 and filed September 16, 1992:

Sec. 1: All;

Sec. 2: That portion lying south, east and above the mean high tide line on the south shore of an unnamed bay that connects to Carry Inlet (fractional);

Sec. 3: That portion of the E $\frac{1}{2}$ E $\frac{1}{2}$ , lying south and above the mean

high tide line on the south shore of an unnamed bay that connects to Carry Inlet (fractional);

Sec. 10: That portion lying above the mean high tide line on the shore of an unnamed bay that connects to Big Bay, including that portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$ , abutting USS 9228 lying east of the West  $\frac{1}{4}$  line (fractional);

Sec. 11: All;

Sec. 12: All;

Sec. 13: (fractional) All, excluding the large unnamed lake in the W $\frac{1}{2}$ ;

Sec. 14: (fractional) All, including the 35± acre island within the lake, excluding the large unnamed lake in the E $\frac{1}{2}$ ;

Sec. 15: All;

Sec. 16: All;

Sec. 17: That portion lying east and above the mean high tide line on the east shore of an Neketa Bay, including the island in the SW $\frac{1}{4}$ , (fractional);

Sec. 19: That portion lying east and above the mean high tide line on the east shore of Neketa Bay and on above mean high tide line on both sides of the unnamed bay that connects to Shelikof Strait including all islands, islets, pinnacles and rocks above the mean high water line within the unnamed bay that connects to Shelikof Strait (fractional);

Sec. 20: That portion lying east and above the mean high tide line on the east shore of the unnamed bay that connects to Shelikof Strait, south, east and above the mean high tide line of the south shore of Neketa Bay, and on both sides of Shuyak Harbor (fractional);

Sec. 21: All;

- Sec. 22: All;
- Sec. 23: All;
- Sec. 24: All;
- Sec. 25: All;
- Sec. 26: All;
- Sec. 27: That portion lying north and above the mean high tide line on the north shore of the unnamed bay, located in the SW 1/4, SW 1/4, that connects to Shuyak Strait (fractional);
- Sec. 28: That portion lying north and above the mean high tide line on the north shore of the unnamed bays that connects to Shuyak Strait (fractional);
- Sec. 29: That portion lying north and above the mean high tide line on the north shore of the unnamed bays that connects to Shuyak Strait, and both sides of Shuyak Harbor (fractional);
- Sec. 30: That portion lying north and above the mean high tide line on the north shore of Shuyak Strait, and west of Shuyak Harbor (fractional);
- Sec. 32: That portion lying north and above the mean high tide line on the north shore of Shuyak Strait (fractional);
- Sec. 33: That portion lying north and above the mean high tide line on the north shore of Shuyak Strait (fractional);
- Sec. 34: That portion lying north and east above the mean high tide line on the north shore of Shuyak Strait (fractional);
- Sec. 35: All;
- Sec. 36: All.



All of the following described lands within **Tract A, Township 20 South, Range 20 West, Seward Meridian**, according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted January 18, 1978:

Sec. 2: That portion of the W $\frac{1}{2}$ , lying north and above the mean high tide line on the north shore of Shuyak Strait (fractional);

Sec. 3: That portion lying north and above the mean high tide line on the north shore of Shuyak Strait (fractional).

Containing 26,656.32 acres more or less.

Together with the improvements located thereon.

SUBJECT, however, to:

- (1) Easements, rights and reservations of the State of Alaska, and third parties, if any, of record; and
- (2) Rights of the United States as established by the Conservation Easement granted by Grantor to the United States dated \_\_\_\_\_, 199\_\_, attached and incorporated herein, authorizing the United States to enforce on a non-exclusive basis the restrictive covenants set forth therein.

RESERVING to the Grantor the covenant that public use of the Land shall be permitted in perpetuity and shall include sport and subsistence hunting, fishing, trapping, and recreational uses insofar as consistent with public safety and permitted under law or under a regulation of the Alaska Board of Fisheries, Alaska Board of Game or the Division of Parks, Department of Natural Resources;

RESERVING further to the Grantor, the non-exclusive right to enforce the restrictive covenants in the Conservation Easement granted by Grantor to the United States dated \_\_\_\_\_, 199\_\_, attached and incorporated herein; except that such reservation shall terminate as to any portion of the property at when it is designated a state park.

The GRANTOR hereby covenants to and with the GRANTOR and its successors

and assigns, that the Grantor has equitable title in the surface estate of the above described real property with has a good and lawful right and power to sell and convey the same with the consent of the State of Alaska as noted below, that the same is free and clear of encumbrances, except as noted herein, and that the Grantor warrants the quiet and peaceable possession of the same, and will defend the title to the same against all persons claiming the same.

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

Dated: \_\_\_\_\_, 1995.

GRANTOR:

THE KODIAK ISLAND BOROUGH

\_\_\_\_\_  
By: Jerome M. Selby  
Mayor

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 1995, by Jerome M. Selby, who is known to me to be the Mayor of the Kodiak Island Borough, a municipal corporation, on behalf of the Kodiak Island Borough.

WITNESS my hand and notarial seal .

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My commission expires:

STATE CONSENT AND ACCEPTANCE

In accordance with the requirements of AS 29.65.070 I do hereby consent to this sale by the Kodiak Island Borough. Pursuant to AS 38.05.035(12), I do hereby accept title to the above described real property on behalf of the State of Alaska.

\_\_\_\_\_  
Marty Rutherford,  
Deputy Commissioner  
Department of Natural Resources  
State of Alaska

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 1995, by Marty Rutherford, who is known to me to be the Deputy Commissioner, Department of Natural Resources, State of Alaska.

WITNESS my hand and notarial seal .

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My commission expires:

Return to:  
Alex Swiderski  
Assistant Attorney General  
1031 W. 4th Avenue, Suite 200  
Anchorage, Ak. 99501

# EXHIBIT D

## WARRANTY DEED

GRANTOR, the Kodiak Island Borough, an Alaska municipal corporation, whose address is 710 Mill Bay Road, Kodiak, Alaska, 99615, for and in consideration of ten dollars (\$10.00) and other good and sufficient considerations received, grants, conveys and warrants to GRANTEE, the State of Alaska, whose address is Department of Natural Resources, 3601 C Street, Suite 960, Anchorage Alaska, 99503, the surface estate of the following described real property situated in the Kodiak Recording District, Third Judicial District, State of Alaska, more fully described as follows:

USS 1738, filed with the Department of the Interior,  
General Land Office in Washington, D.C., on  
April 22, 1927.

Together with the improvements located thereon.

SUBJECT, however, to:

- (1) Easements, rights and reservations of the State of Alaska, and third parties, if any, of record; and
- (2) Enforcement Rights of the United States as established by the Conservation Easement granted by Grantor to the United States dated \_\_\_\_\_, 199\_\_, attached and incorporated herein, authorizing the United States to enforce on a non-exclusive basis the restrictive covenants set forth therein.

RESERVING to the Grantor the covenant that public use of the Land shall be permitted in perpetuity and shall include sport and subsistence hunting, fishing, trapping, and recreational uses insofar as consistent with public safety and permitted under law or under a regulation of the Alaska Board of Fisheries, Alaska Board of Game or the Division of Parks, Department of Natural Resources;

RESERVING further to the Grantor, the non-exclusive right to enforce the restrictive

STATE CONSENT AND ACCEPTANCE

In accordance with the requirements of AS 29.65.070 I do hereby consent to this sale by the Kodiak Island Borough. Pursuant to AS 38.05.035(12), I do hereby accept title to the above described real property on behalf of the State of Alaska.

\_\_\_\_\_  
Marty Rutherford,  
Deputy Commissioner,  
Department of Natural Resources  
State of Alaska

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 1995, by Marty Rutherford, who is known to me to be the Deputy Commissioner, Department of Natural Resources, State of Alaska.

WITNESS my hand and notarial seal .

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My commission expires:

Return to:  
Alex Swiderski  
Assistant Attorney General  
1031 W. 4th Avenue Suite 200  
Anchorage, Ak. 99501

covenants in the Conservation Easement granted by Grantor to the United States dated the \_\_\_\_ day of \_\_\_\_\_, 199\_\_, attached and incorporated herein; except that such reservation shall terminate as to any portion of the property when it is designated a state park.

Dated: \_\_\_\_\_, 1995.

GRANTOR:  
THE KODIAK ISLAND BOROUGH

\_\_\_\_\_  
By: Jerome M. Selby  
Mayor

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 1995, by Jerome M. Selby, who is known to me to be the Mayor of the Kodiak Island Borough, a municipal corporation, on behalf of the Kodiak Island Borough.

WITNESS my hand and notarial seal .

\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My commission expires:

11/11/84 D

**RESOLUTION OF THE  
EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL**

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

1. Under the Municipal Entitlement Act, the Kodiak Island Borough (hereinafter "KIB") has the right to receive title to certain land from the State of Alaska (hereinafter "State");

2. In 1980 and 1981 the KIB filed certain appeals with the Superior Court in Anchorage for the purpose of determining the KIB's rights under the Municipal Entitlement Act. The appeals were resolved and settled by the KIB and the State in the Agreement of Settlement and Consent Decree in case numbers 3AN-80-3070 Civ, 3AN-80-6710 Civ, and 3AN-81-1385 Civ, consolidated, approved by the court on August 12, 1981, which Agreement was subsequently amended by the Amendment to Settlement Agreement dated January 3, 1985 (hereinafter collectively referred to as the "Settlement Agreement");

3. Pursuant to the Settlement Agreement the KIB has received title to certain land on Shuyak Island and has an absolute right to receive patent from the State to other land on Shuyak Island, consisting in total of approximately 25,665 acres, more or less, (hereinafter all of the KIB's land and interest in land on Shuyak Island including adjacent rocks and islets are referred to as the "Land");

4. The KIB is desirous of selling the Land to the State;

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EXXON VALDEZ OIL SPILL  
TRUSTEE COUNCIL  
ADMINISTRATIVE RECORD

5. The Land includes important habitat for several species of fish and wildlife for which significant injury resulting from the spill has been documented. A rocky shoreline heavy with kelp beds, pockets of eelgrass and rich communities of invertebrates supports feeding harlequin ducks, black oystercatchers, marbled murrelets, and pigeon guillemots. Black oystercatchers and pigeon guillemots nest and harlequin ducks molt along the shoreline. The mature spruce forests on the parcel provide probable nesting habitat for marbled murrelets. Restoration of these injured species will benefit from acquisition of this important habitat through protection from activities and disturbances which may adversely affect their recovery. There is also a high likelihood of restoration benefits for river otters and concentrations of sea otters which feed and breed along the shoreline. Harbor seals, an injured species with seriously reduced population levels, are likely to benefit from parcel acquisition through protection of haulout areas and control of potential disturbances. Pacific herring, an injured species documented to spawn along the coastline, will benefit as will pink salmon populations, documented in six streams, and Dolly Varden, documented in eight streams on the parcel, through protection from activity which may adversely affect water quality and habitat. The area has high scenic value and supports high value wilderness-based recreation including hunting, fishing, sea-kayaking and camping. The area also possesses high cultural resource values, with fifteen documented historical/archaeological sites;



6. The Land is adjacent to the Shuyak Island State Park to the west and the Aleksandr Baranov State Game Refuge to the east. Protection of the Land will ensure protection of the entire Shuyak Island ecosystem;

7. Existing laws and regulations, including but not limited to the Alaska Forest Practices Act, the Anadromous Fish Protection Act, the Clean Water Act, the Alaska Coastal Management Act, the Bald Eagle Protection Act and the Marine Mammals Protection Act, are intended, under normal circumstances, to protect resources from serious adverse affects from logging and other developmental activities. However, restoration, replacement and enhancement of resources injured by the EXXON VALDEZ oil spill present a unique situation. Without passing on the adequacy or inadequacy of existing law and regulation to protect resources, biologists, scientists and other resource specialists agree that, in their best professional judgment, protection of habitat in the spill affected area to levels above and beyond that provided by existing law and regulation will likely have a beneficial affect on recovery of injured resources and lost or diminished services provided by these resources;

8. There has been widespread public support for the acquisition of the Lands; and

9. The purchase of the Land is an appropriate means to restore a portion of the injured resources and services in the oil spill area.

10. It is ordinarily the State of Alaska's practice to pay fair market value for the land interests it acquires. However, due to the unique circumstances of the limited

availability of settlement funds to complete acquisitions of land interests for purposes of promoting recovery of natural resources injured by the EXXON VALDEZ Oil Spill ("EVOS") and the need to acquire it promptly to prevent any potential degradation of the habitat, we believe it is appropriate in this case to pay more than fair market value for these particular interests.

11. This negotiated offer represents the lowest price at which this Land can be acquired because of the installment payment schedule provided for in the Exxon settlement agreement and the resulting limited availability of funds. This offer therefore reflects a value that provides the KIB a benefit of selling the Land by means of installment payments and yet provides for current protection under the Trustee Council's habitat protection program.

12. 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 other large-scale acquisitions in Alaska and the rest of the United States, and earlier actions taken pursuant to the habitat protection program.

13. The Kodiak Island Borough Assembly has enacted an ordinance to establish a Facilities Fund in which the proceeds from the sale of these Lands are to be deposited. Disbursements from the fund are limited to the construction, maintenance and debt service for public facilities. As part of this ordinance, funding was authorized by the Assembly for the Kodiak Fishery Industrial Technology Center.

THEREFORE, we resolve to provide the funds for the State of Alaska to offer to purchase and, if the offer is accepted, to purchase all the Seller's rights and interests on Shuyak Island consisting of approximately 25,665 acres, more or less, in accordance with the AGREEMENT FOR SALE AND PURCHASE OF INTERESTS IN LANDS ON SHUYAK ISLAND (attached as Exhibit A and hereafter referred to as the "Purchase Agreement") and pursuant to the following conditions:

(a) the purchase price for the Land shall be the final approved appraised fair market value of the interests in the Land plus twenty percent (20%) of the final approved appraised fair market value, except that the price may not exceed \$42,000,000 ("Purchase Price");

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

(c) disbursement of these funds by the District Court;

(d) a satisfactory title search is completed and the KIB is able to convey fee simple title by warranty deed to the surface estate of that portion of the Land to which it has received title or to which it is entitled to receive title;

(e) no timber harvesting or road development will be initiated on the Lands;

Title to the Land conveyed to the State shall be subject to the following conditions:

(f) there shall be no commercial timber harvest on the Land nor any other commercial use of the Land excepting such limited commercial use as may be

consistent with State law and the goals of restoration to its prespill condition of any natural resource injured, lost, or destroyed as a result of the EVOS and the services provided by that resource or replacement or substitution for the injured, lost or destroyed resources and affected services as described in the Memorandum of Agreement and Consent Decree between the United States and the State of Alaska entered August 28, 1991;

(g) public use of the Land shall include sport and subsistence hunting, fishing, trapping, and recreational uses insofar as consistent with public safety and permitted under law or under a regulation of the Board of Fisheries or Board of Game;

(h) a conservation easement in the United States authorizing it to enforce in a court of competent jurisdiction, the restoration and conservation purposes for which this acquisition is made as set forth in this Resolution and in any implementing purchase agreements;

(i) The Alaska Department of Law shall develop language to implement the intentions of the foregoing subparagraph (h), in form and substance that is satisfactory to the U.S. Department of Justice.

By unanimous consent and upon execution of the purchase agreements and written notice from the State of Alaska and Executive Director of the Trustee Council 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 U.S. Department of Justice to petition the District Court as follows:

(1) for withdrawal of the sum of twenty percent (20%) of the Purchase Price from the District Court Registry account established as a result of the Governments' settlement to be paid at the time of closing:

(2) for withdrawals of the sum of five percent (5%) of the Purchase Price to be paid by October 1, 1996;

(3) for withdrawal of the sum of fifteen percent (15%) of the Purchase Price to be paid by October 1, 1997;

(4) for withdrawal of the sum of fifteen percent (15%) of the Purchase Price to be paid by October 1, 1998;

(5) for withdrawal of the sum of fifteen percent (15%) of the Purchase Price to be paid by October 1, 1999;

(6) for withdrawal of the sum of fifteen percent (15%) of the Purchase Price to be paid by October 1, 2000;

(7) for withdrawal of the sum of fifteen percent (15%) of the Purchase Price to be paid by October 1, 2001;

These amounts represent the only amounts due under this resolution to the KIB by the State of Alaska from the joint funds in the District Court Registry and no additional amounts or interest are herein authorized to be paid to the KIB from such joint funds.

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



PHIL JANIK  
Regional Forester  
Alaska Region  
USDA Forest Service



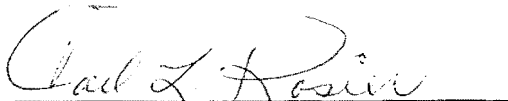
BRUCE M. BOTELHO/CRAIG TILLERY  
Attorney General/Trustee Representative  
State of Alaska



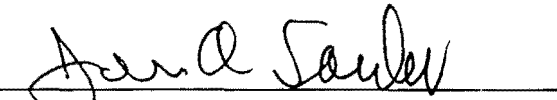
GEORGE T. FRAMPTON, Jr.  
Assistant Secretary for  
Fish and Wildlife and Parks  
U.S. Department of the Interior



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

AGREEMENT FOR SALE AND PURCHASE OF INTERESTS IN LANDS ON  
SHUYAK ISLAND

THIS AGREEMENT is made by and between the Kodiak Island Borough ("KIB"), and the State of Alaska ("State") (collectively, the "Parties").

Whereas, under the Municipal Entitlement Act the KIB has the right to receive title to certain land from the State; and

Whereas, in 1980 and 1981 the KIB filed certain appeals with the Superior Court in Anchorage for the purpose of determining the KIB's rights under the Municipal Entitlement Act; and

Whereas, such appeals were resolved and settled by the KIB and the State in the Agreement of Settlement and Consent Decree in case numbers 3AN-80-3070 Civ, 3AN-80-6710 Civ, and 3AN-81-1385 Civ, consolidated, approved by the court on August 12, 1981, which Agreement was subsequently amended by Amendment to Settlement Agreement dated January 3, 1985 (hereinafter collectively referred to as the "Settlement Agreement"); and

Whereas, pursuant to the Settlement Agreement the KIB has received title to certain land on Shuyak Island and has an absolute right to receive patent from the State to other land on Shuyak Island, and

Whereas, the Exxon Valdez Oil Spill Trustee Council ("Trustee Council") has determined that land located on Shuyak Island which has been conveyed to the KIB and to which the KIB has an absolute right to receive title should be acquired in fulfillment of the Trustee Council's duties; and

Whereas the KIB is desirous of selling to the State its land located on Shuyak Island.

Now therefore the Parties agree as follows:

1. SALE OF PROPERTY. The KIB shall sell to the State all the KIB's property rights, title and interests at Shuyak Island, Alaska, consisting of approximately 26,665 acres, more or less, as more particularly described in Exhibit A ("Property"), such sale to be made in accordance with the terms and conditions of this Agreement. The KIB affirms and represents that the Property was conveyed or promised to be conveyed to the KIB pursuant to the KIB's entitlement to select state lands pursuant to AS 29.65

and the Settlement Agreement. KIB agrees that the 26,665 acres covered by this Agreement shall be charged against KIB's municipal entitlement under AS 29.65 and the Settlement Agreement as if such lands had been patented to KIB.

2. PAYMENT OF PURCHASE PRICE. The Trustee Council has resolved to provide for payment of the purchase price in accordance with the terms and conditions of the resolution attached as Exhibit B. Payment of the purchase price shall be secured as provided in paragraph 10 of the Agreement.

3. INTEREST CONVEYED. The KIB does hereby warrant and represent: (1) that the KIB is vested with title or the right to acquire title to the surface estate to the Property and (2) that no liens, encumbrances, defects or third party interests have been created in the Property. In accordance with the procedure set forth in paragraph 8 of this Agreement, the KIB shall execute and deliver to the State Quit Claim Deeds, a Warranty Deed and Cancellation of Rights to the Property (collectively the "Deeds"), in substantially the forms attached hereto as Exhibit C which exhibit is incorporated herein by reference. The Deeds shall convey the Property free and clear of all claims, liens and encumbrances other than the noted exceptions. The Parties shall execute and deliver at closing or at any other time, such additional documents as may be necessary to convey the KIB's interests in the Property to the State or to secure or preserve the Parties' rights under this Agreement.

4. TERMS OF SALE. The purchase price is \_\_\_\_\_. The KIB will be paid an initial payment of \$\_\_\_\_\_ (20% of the purchase price) at the time of closing. The balance of the purchase price will be paid as follows:

October 1, 1996	five percent of the purchase price;
October 1, 1997	fifteen percent of the purchase price;
October 1, 1998	fifteen percent of the purchase price;
October 1, 1999	fifteen percent of the purchase price;
October 1, 2000	fifteen percent of the purchase price;
October 1, 2001	fifteen percent of the purchase price.

Following the closing, and at such time as a contract for the construction or expansion of the University of Alaska, Fairbanks, Fishery Industrial Technology Center in Kodiak ("FITC") as identified in 1993 SLA Ch. 79, Sec. 10 is awarded, the KIB shall provide to the FITC \$6,000,000 for the construction or expansion of the FITC in Kodiak.

5. CONDITIONS OF SALE. Prior to closing the following conditions must be satisfied: (a) a completed hazardous substance survey must establish that there are no hazardous substances on the Property, (b) there must be satisfactory compliance with the National Environmental Policy Act, and c) the KIB shall have enacted an ordinance zoning the Property "Natural Use" under KIBC 17.12.010 et. seq.



6. CONVEYANCE TERMS. The KIB shall deliver the Deeds to the State and any other documents necessary to implement this Agreement in accordance with paragraph 8 of this Agreement.

The conveyance shall also be subject to the following conditions:

(a) there shall be no commercial timber harvest on the Land nor any other commercial use of the Land excepting such limited commercial use as may be consistent with State law and the goals of restoration to its prespill condition of any natural resource injured, lost, or destroyed as a result of the EVOS and the services provided by that resource or replacement or substitution for the injured, lost or destroyed resources and affected services as described in the Memorandum of Agreement and Consent Decree between the United States and the State of Alaska entered August 28, 1991;

(b) public use of the Land shall include sport and subsistence hunting, fishing, trapping, and recreational uses insofar as consistent with public safety and permitted under law or under a regulation of the Board of Fisheries or Board of Game;

(c) a conservation easement in the United States authorizing it to enforce in a court of competent jurisdiction, the restoration and conservation purposes for which this acquisition is made as set forth in this Resolution and in any implementing purchase agreements;

(d) The Alaska Department of Law shall develop language to implement the intentions of the foregoing subparagraph (c), in form and substance that is satisfactory to the U.S. Department of Justice.

7. RIGHT TO ENTER PROPERTY. From the date this Agreement is fully executed by the Parties, the Trustee Council, the State, the United States, and their agents, upon reasonable notice, shall have the right to enter the Property for all lawful purposes in connection with this Agreement, including environmental audit purposes.

8. CLOSING PLACE AND DATE. The Parties shall meet for closing within 14 days after the funds for the Initial Payment to the KIB have been provided by the Trustee Council and are available for lawful expenditure by the State, and all documents that are required to be provided or completed and executed by the Parties have been tendered. The date, time and location of closing shall be set by the State in concurrence with the KIB. The KIB may rescind this Agreement by written notice to the State if the funds for the Initial Payment have not been provided by the Trustee Council and made available for lawful expenditure by the State within eight months from the date of this Agreement.

If the State has designated the Property as a State Park, then KIB shall deliver the Deeds to the State at the time of closing. If the State has not designated the Property a State Park before the time of closing, then the KIB shall retain its rights, title and interests to the Property notwithstanding that the Initial Payment and

subsequent installment payments shall be made pursuant to this Agreement, provided that when the State designates the Property a State Park, then upon reasonable notice to the KIB from the State, the KIB shall promptly deliver the Deeds to the Property to the State pursuant to this Agreement.

9. MANAGEMENT OF THE PROPERTY. The parties recognize that prior to delivery of the Deeds to the State the KIB will continue to retain its right title and interest in the Property and further recognize that under certain conditions the KIB will be paid full value for the Property but will retain its right, title, and interest in the Property. After execution of this Agreement and until such time as delivery of the Deeds to the State occurs, the KIB shall manage the Property as if the Property were included in the Shuyak Island State Park as described at AS 41.21.170-178. Notwithstanding KIB's management authority, after the State makes the Initial Payment, the State shall be entitled to possession of the Property and shall bear the risk of loss from and after the Initial Payment, provided that in exercising its right of possession, the State shall not do anything which is inconsistent with the KIB's responsibility to manage the Property as if it were included in the Shuyak Island State Park.

In carrying out such management responsibilities, the KIB shall not permit uses to be made of the Property that would not be allowed in the adjacent Shuyak Island State Park. Moreover, without in any way limiting the foregoing, the Parties expressly shall not permit any person to engage in commercial timber harvesting or other commercial development of the Property except such limited commercial use as may be consistent with state and federal law and the goals of restoration of the Property to its prespill condition of any natural resource injured, lost, or destroyed as a result of the EXXON VALDEZ oil spill and the services provided by that resource or replacement or substitution for the injured, lost or destroyed resources and affected services as described in the Memorandum of Agreement and Consent Decree between the United States and State of Alaska entered in August 28, 1991.

Public use of the Property shall include sport, personal use and subsistence hunting, fishing, trapping and recreational uses insofar as consistent with public safety and permitted under law or under a regulation of the Board of Fisheries or Board of Game.

In the event either Party attempts to breach the above agreement, the other Party would have no adequate remedy at law, and accordingly, in such event the non-breaching Party shall be entitled to enforce its rights under the paragraph by whatever equitable means available including without limitation, injunctive relief and/or specific performance.

10. Default. In the event that an installment payment described in paragraph 4 is not paid when it is due, then the KIB may declare this Agreement terminated and in such event the KIB shall be entitled to receive title to a portion of the Property in accordance with the terms of the Settlement Agreement. The portion of Property to

which KIB shall receive title shall be equal in value to the unpaid balance due under this Agreement plus the costs and reasonable attorney fees incurred by the KIB in the enforcement of this paragraph. The portion of the Property to which KIB shall receive title shall be determined by agreement of the parties taking into consideration the primary goal to ensure that the portion of Property being returned to the KIB shall be suitable for economic development including ports and harbors and the secondary goal to seek to ensure that the portion remaining with the State is an integrated part of the Shuyak Island State Park that meets the management objectives of the Shuyak Island State Park. Any dispute arising under this paragraph shall be submitted to arbitration pursuant to the rules of the American Arbitration Association.

11. OTHER AGREEMENTS AND ACTIONS. The Parties shall take other action or enter into other agreements reasonably necessary to the exercise and closing of this Agreement. In the event of a conflict between this Agreement and the Settlement Agreement, this Agreement shall control.

12. SIGNATURE AUTHORITY. Each signatory to this Agreement represents that he has the authority to bind his principal to this Agreement.

13. NOTICE. Written notices shall be provided to the parties at the following addresses:

State of Alaska  
Department of Natural Resources  
Director, Division of Land  
P.O. Box 107005  
Anchorage, Alaska 99510-7005

Kodiak Island Borough  
710 Mill Bay Road  
Kodiak, Alaska 99615-6340

State of Alaska  
Craig Tillery  
Attorney General's Office  
1031 West 4th Ave. Suite 200  
Anchorage, Alaska 99501

Joel H. Bolger  
Jamin, Ebell, Bolger & Gentry  
323 Carolyn Street  
Kodiak, Alaska 99615

STATE OF ALASKA

KODIAK ISLAND BOROUGH

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

RESOLUTION OF THE  
EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL

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

1. The Tatitlek Corporation ("Tatitlek") owns or is entitled to receive title to, and has expressed in a letter dated December 1, 1994 a willingness to sell land or interests in lands (the "Lands") within the oil spill area consisting of approximately 56,786 acres, in the following seven parcels:

- a. Sawmill Bay parcel, consisting of approximately 1,521 acres of land in fee, ("Sawmill Bay parcel");
- b. Heather Bay parcel, consisting of approximately 477 acres of land in fee at Emerald Cove and approximately 1,719 acres of land at Columbia Bay subject to a conservation easement, ("Heather Bay parcel");
- c. Galena Bay parcel, consisting of approximately 1,685 acres of land in fee, and approximately 7,758 acres of land subject to a conservation easement, ("Galena Bay parcel");
- d. Bligh Island parcel, consisting of approximately 8,853 acres of land subject to a conservation easement on Bligh, Busby and Reef Islands, ("Bligh Island parcel");
- e. Two Moon Bay parcel, consisting of approximately 6,325 acres of land in fee at Hells Hole, approximately 844 acres of land in fee at Port Fidalgo, and approximately 23,177 acres of land at Snug Corner Cove and Two Moon Bay, including Goose Island, subject to a conservation easement, except that Tatitlek will facilitate the acquisition of an inholding

of approximately three acres in Snug Corner Cove in fee, ("Two Moon Bay parcel");

- f. Sunny Bay parcel, consisting of approximately 2,445 acres of land subject to a conservation easement ("Sunny Bay parcel"); and
- g. Whalen Bay parcel, consisting of approximately 1,981 acres of land in fee ("Whalen Bay parcel"), subject to pre-existing rights including the Citifor timber contract.

These parcels and the interests to be conveyed are generally depicted on the map attached as Exhibit A.

2. These Lands were selected pursuant to the Alaska Native Claims Settlement Act. The subsurface rights are owned by Chugach Alaska Corporation.

3. The Lands are within the oil spill area as defined by the Trustee Council in the final Restoration Plan approved November 2, 1994.

4. The Lands include important habitat for species of wildlife for which significant injury resulting from the oil spill has been documented. There is substantial evidence that the Lands are important wildlife habitat. Harlequin ducks, bald eagles, black oystercatchers, marbled murrelets, pigeon guillemots - all species that suffered injury from the oil spill - utilize these parcels (depending on the species), for feeding, nesting, loafing, molting, and wintering. The highest nesting concentrations of the pigeon guillemot in eastern Prince William Sound occur on one of these parcels (Bligh Island). Harbor seal haul outs and intertidal and subtidal biota are all found in substantial quantity along the shoreline. The Lands provide concentration areas for feeding and shelter and contain feeding areas for river otters and sea otters. There are sixty-one (61) anadromous streams, six (6) lakes, three (3) salt water lagoons, and two (2) large estuaries utilized by waterfowl, on these Lands. The Duck River alone has escapement of over 100,000 pink salmon per year. Another area has a high density of mussels. The Hells Hole area is highly productive and is a significant sport fishing area for anadromous fish including pink salmon, cutthroat trout, and Dolly Varden. The Lands in general have historically supported high value, wilderness-based subsistence food gathering and

recreation uses including hunting, boating and fishing. The area has high scenic values and cultural resources.

5. Existing laws and regulations, including, but not limited to, the Alaska Forest Practices Act, the Anadromous Fish Protection Act, the Clean Water Act, the Alaska Coastal Management Act, the Bald Eagle Protection Act and the Marine Mammals Protection Act, are intended, under normal circumstances, to protect resources from serious adverse effects from logging and other developmental activities. However, restoration, replacement and enhancement of resources injured by the oil spill present a unique situation. Without passing on the adequacy or inadequacy of existing law and regulations to protect resources, biologists, other 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 law and regulation will likely have a beneficial effect on recovery of injured resources and lost or diminished services provided by these resources.

6. There is public support for the acquisition of these Lands.

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

8. It is ordinarily the Federal and State of Alaska Governments' practice to pay fair market value for the land interests it acquires. However, due to the unique circumstances of the limited availability of settlement funds to complete acquisitions of land interests for purposes of promoting recovery of natural resources injured by the EVOS and the need to acquire it promptly to prevent any potential degradation of the habitat, we believe it is appropriate in this case to pay more than fair market value for these particular interests.

9. This negotiated offer represents the lowest price at which these Lands can be acquired because of the installment payment schedule provided for in the Exxon settlement agreement and the resulting limited availability of funds. This offer therefore reflects a value that provides Tatitlek a benefit of selling the Lands by means of installment payments and yet provides for current protection under the Trustee Council's habitat protection program.

10. 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 other large-scale acquisitions in Alaska and the rest of the United States, and earlier actions taken pursuant to the habitat protection program.

THEREFORE, we resolve to authorize the expenditure of \$12,000,000 as a portion of the funds necessary to purchase the Lands in accordance with an offer to purchase a combination of fee simple and conservation easement interests in the Lands, as identified in Exhibit A, and set forth below for the United States, acting through the Forest Service, or for the State of Alaska, to enter into appropriate agreements in conformity with applicable Federal and State law to purchase and acquire these Lands. Such agreements shall contain and are subject to the following conditions and terms:

(a) the purchase price for the Lands shall be the final approved appraised fair market value of the interests in the Lands plus twenty percent (20%) of the final approved appraised fair market value, but may in no event exceed \$22,000,000 ("Purchase Price"). The final approved appraised fair market value shall be determined through the Trustee Council's twelve step appraisal process (Exhibit B). Up to an additional \$10,000,000 of the Purchase Price will be paid from other federal sources;

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

(c) disbursement of these funds by the District Court;

(d) completion of a satisfactory title search, establishing that Tatitlek is able to convey fee simple title and conservation easements, as appropriate, by general warranty deed and other appropriate instruments for the surface estate for the Lands;

(e) no timber harvesting or further road development will be initiated on the Lands by Tatitlek or its agent or

contractor prior to closing, except where indicated by the Tatitlek to the Trustee Council based on the Citifor contracts in existence on October 30, 1994;

(f) approval of the sale of the Lands by the shareholders of Tatitlek;

(g) the Lands to be conveyed to the United States are as follows: the portion of the Heather Bay parcel consisting of approximately 1,719 acres to be subject to a conservation easement, the portion of the Galena Bay parcel consisting of approximately 7,758 acres to be subject to a conservation easement, the Bligh Island parcel, the Two Moon Bay parcel except for approximately 844 acres at Port Fidalgo to be acquired in fee and except for the approximately three acre inholding site in Snug Corner Cove to be acquired in fee simple, consisting of approximately 23,177 acres to be subject to a conservation easement and approximately 6325 acres to be acquired in fee simple at Hell's Hole, and the Sunny Bay parcel.

(h) title to the Lands conveyed to the United States shall be subject to the following conditions:

(i) there shall be no commercial timber harvest on the Lands nor any other commercial use of the Land excepting such limited commercial use as may be consistent with State and Federal law and the goals of restoration to its prespill condition of any natural resource injured, lost, or destroyed as a result of the EVOS and the services provided by that resource or replacement or substitution for the injured, lost or destroyed resources and affected services as described in the Memorandum of Agreement and Consent Decree between the United States and the State of Alaska entered August 28, 1991;

(ii) public use of the Lands shall include sport and subsistence hunting, fishing, trapping, and recreational uses insofar as consistent with public safety and permitted under law or under a regulation of the Board of Fisheries or Board of Game and Federal law and regulations;

(iii) a conservation easement in the State of Alaska authorizing it to enforce in a court of competent



jurisdiction, the restoration and conservation purposes for which this acquisition is made as set forth in this Resolution and in any implementing purchase agreements;

(iv) The United States Forest Service shall develop language to implement the intentions of the foregoing subparagraph (iii), in form and substance that is satisfactory to the U.S. Department of Justice and the Alaska Department of Law.

(i) the Lands to be conveyed to the State of Alaska are as follows: the Sawmill Bay parcel, the portion of the Heather Bay parcel consisting of approximately 477 acres to be acquired in fee simple at Emerald Cove, the portion of the Galena Bay parcel to be acquired in fee simple consisting of approximately 1685 acres, the two to three acre site on Busby Island to be acquired as an easement, the approximately 844 acres of land to be acquired in fee simple at Port Fidalgo, the approximately three acre inholding site to be acquired in Snug Corner Cove, and the Whalen Bay parcel.

(j) title to the portion of Lands conveyed to the State of Alaska shall be subject to the following conditions:

(i) there shall be no commercial timber harvest on the Lands nor any other commercial use of the Lands excepting such limited commercial use as may be consistent with State law and the goals of restoration to its prepill condition of any natural resource injured, lost, or destroyed as a result of the EVOS and the services provided by that resource or replacement or substitution for the injured, lost or destroyed resources and affected services as described in the Memorandum of Agreement and Consent Decree between the United States and the State of Alaska entered August 28, 1991;

(ii) public use of the Lands shall include sport and subsistence hunting, fishing, trapping, and recreational uses insofar as consistent with public safety and permitted under law or under a regulation of the Board of Fisheries or Board of Game;

(iii) a conservation easement in the United States authorizing it to enforce in a court of competent

jurisdiction, the restoration and conservation purposes for which this acquisition is made as set forth in this Resolution and in any implementing purchase agreements;

(iv) The Alaska Department of Law shall develop language to implement the intentions of the foregoing subparagraph (iii), in form and substance that is satisfactory to the U.S. Department of Justice.

(k) conservation easements limiting development on the Lands and protecting natural resources shall be conveyed, in perpetuity, to the United States of America, and shall include public access, except for limited exceptions, and be subject to additional terms and conditions as determined by the parties and approved by the Executive Director to the Trustee Council;

(l) Congressional review to the extent required with respect to acquisitions by the Forest Service pursuant to House Report No. 102-116;

(m) completion of a satisfactory hazardous substances survey;

(n) satisfactory compliance with the National Environmental Policy Act and other applicable federal law;

(o) The offer will remain open until 30 days following completion of the Final Approved Appraisal, provided that the Trustee Council may withdraw this authorization for funding by giving thirty days (30) notice of its intent to Tatitlek to withdraw authorization.

By unanimous consent, and upon execution of the purchase agreements and written notice from the Forest Service, the State of Alaska, and the Executive Director of the Trustee Council 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 U.S. Department of Justice to petition the District Court as follows:

(1) for withdrawal of the sum of twenty percent (20%) of the Purchase Price from the District Court Registry

account established as a result of the Governments' settlement to be paid at the initial closing;

(2) for withdrawal of the sum of five percent (5%) of the Purchase Price to be paid at the subsequent closing by October 1, 1996;

(3) for withdrawal of the sum of fifteen percent (15%) of the Purchase Price to be paid at the subsequent closing by October 1, 1997;

(4) for withdrawal of the sum of fifteen percent (15%) of the Purchase Price to be paid at the subsequent closing by October 1, 1998;

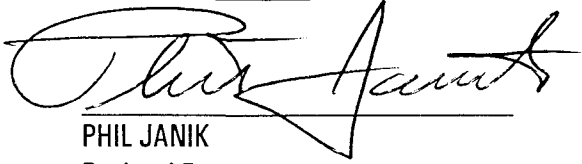
(5) for withdrawal of the sum of fifteen percent (15%) of the Purchase Price to be paid at the subsequent closing by October 1, 1999;

(6) for withdrawal of the sum of fifteen percent (15%) of the Purchase Price to be paid at the subsequent closing by October 1, 2000;

(7) for withdrawal of the sum of fifteen percent (15%) of the Purchase Price to be paid at the subsequent closing by October 1, 2001;

These amounts represent the only amounts due under this resolution to Tatitlek by the United States or the State of Alaska from the joint funds in the District Court Registry or other federal funds, and no additional amounts or interest are herein authorized to be paid to Tatitlek from such joint funds.

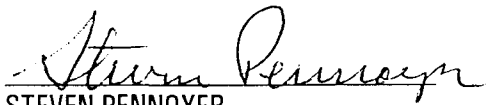
DATED this 2nd day of December, 1994, at Anchorage, Alaska.



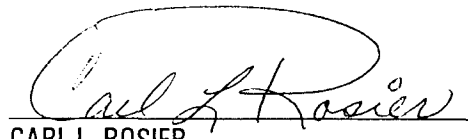
PHIL JANIK  
Regional Forester  
Alaska Region  
USDA Forest Service



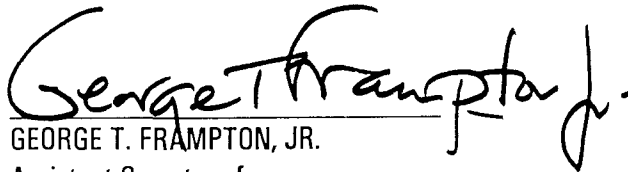
JOHN A. SANDOR  
Commissioner  
Alaska Department of  
Environmental Conservation



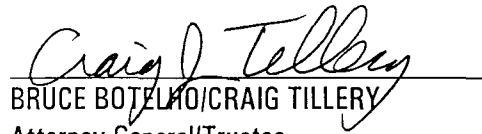
STEVEN PENNOYER  
Director, Alaska Region  
National Marine Fisheries Service



CARL L. ROSIER  
Commissioner  
Alaska Department of Fish  
and Game



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



BRUCE BOTELHO/CRAIG TILLERY  
Attorney General/Trustee  
State of Alaska/Representative

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17-12-B

RESOLUTION OF THE  
EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL

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

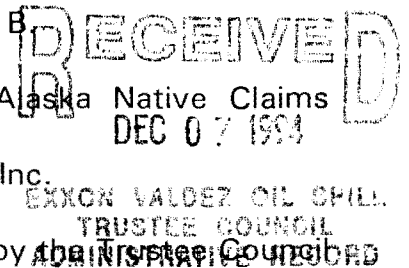
1. The Afognak Joint Venture ("AJV") owns or is entitled to receive title to, or has timber rights to, and has expressed a willingness to sell, the surface estate, including timber rights, of land (the "Lands") within the oil spill affected area consisting of approximately 48,728 acres, in the following four parcels:

- a. AJV 01a, consisting of approximately 19,500 acres of land in fee, ("Shuyak Strait Subunit");
- b. AJV 03, consisting of approximately 13,400 acres of land in fee, ("Laura/Paul's Lake Subunit");
- c. AJV 07, consisting of approximately 2,500 acres of land in fee, ("East Tonki Bay");
- d. AJV 08, consisting of approximately 13,328 acres of land in fee ("West Tonki Bay");

These parcels and the interests to be conveyed are generally depicted on the map attached as exhibit A and legal description attached as exhibit B.

2. These Lands were selected pursuant to the Alaska Native Claims Settlement Act. The subsurface rights are owned by Koniag, Inc.

3. The Lands are within the oil spill area as defined by the Trustee Council.



in the final Restoration Plan approved November 2, 1994.

4. AJV 01a has important habitat for several species of fish and wildlife for which a significant injury from the spill has been documented. A rocky shoreline heavy with kelp beds, pockets of eelgrass, mussels, and rich in invertebrates supports feeding harlequin ducks, black oystercatchers, marbled murrelets, and pigeon guillemots. Black oystercatchers and pigeon guillemots nest and harlequin ducks molt along the shoreline. There is substantial evidence of nesting marbled murrelets and a high probability that harlequin ducks nest within the area. Logging may directly affect the foraging and nesting activities of these species, and hence impact their rehabilitation. There are twenty-five documented bald eagle nests within the parcel with feeding and roosting along the shoreline. Recovery of this injured species would benefit from acquisition of this important habitat. There are also high potential recovery benefits for river otters which likely den in the area, and for concentrations of pupping and feeding sea otters found in Blue Fox Bay and in western Perenosa Bay. Both types of otter feed along the shoreline. Harbor seals, an injured species with seriously reduced population levels, has the potential to benefit from parcel acquisition. Recovery of Pacific herring, an injured species documented to spawn along the coastline, will benefit as will pink salmon populations, documented in twelve streams, and Dolly Varden, documented in seven streams. The area has high scenic value and supports high value wilderness-based recreation including hunting, fishing, and camping. The area possesses high cultural resource values with five historic and prehistoric sites, two having been documented as important by the State Historic

Preservation Office.

AJV 03 has important habitat for several species of fish and wildlife for which significant injury from the spill has been documented. A rocky shoreline accentuated by nearshore rocks and islets is heavy with kelp beds, pockets of eelgrass, mussels, and is rich in invertebrates which supports feeding harlequin ducks, black oystercatchers, marbled murrelets, and pigeon guillemots. Black oystercatchers and pigeon guillemots nest and harlequin ducks molt along the shoreline. There is substantial evidence of nesting marbled murrelets and a high probability that harlequin ducks nest within the area. Logging may directly affect the foraging and nesting activities of these species, and hence impact their rehabilitation. There are twenty-four documented bald eagle nests within the parcel with feeding and roosting along the shoreline. Recovery of this injured species would benefit from acquisition of this important habitat. There are also high potential recovery benefits for river otters which likely den in the area and for concentrations of pupping and feeding sea otters found in Discoverer, Perenosa, Phoenix, and Seal bays. Both types of otter feed along the shoreline. Harbor seals, an injured species with seriously reduced population levels, have the potential to benefit from parcel acquisition. Recovery of Pacific herring, an injured species documented to spawn along the coastline, will benefit as will pink salmon populations, documented in five streams, and Dolly Varden, found in most water bodies on the parcel. The area has high scenic value and supports high value wilderness-based recreation including hunting, fishing, and camping. The area

possesses high cultural resource values with fourteen historic and prehistoric sites, seven having been documented as important by the State Historic Preservation Office.

5. Existing laws and regulations, including but not limited to the Alaska Forest Practices Act, the Anadromous Fish Protection Act, the Clean Water Act, the Alaska Coastal Management Act, the Bald Eagle Protection Act and the Marine Mammals Protection Act, are intended, under normal circumstances, to protect resources from serious adverse effects from logging and other developmental activities. However, restoration, replacement and enhancement of resources injured by the oil spill present a unique situation. Without passing on the adequacy or inadequacy of existing law and regulations to protect resources, biologists, other 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 law and regulation will likely have a beneficial effect on recovery of injured resources and lost or diminished services provided by these resources.

6. There is public support for the acquisition of these Lands.

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

8. It is ordinarily the State of Alaska's practice to pay fair market value for the land interests it acquires. However, due to the unique circumstances of the limited availability of settlement funds to complete acquisitions of land interests for purposes of promoting recovery of natural resources injured by the EVOS and the need



to acquire it promptly to prevent any potential degradation of the habitat, we believe it is appropriate in this case to pay more than fair market value for these particular interests.

9. This negotiated offer represents the lowest price at which these Lands can be acquired because of the installment payment schedule provided for in the Exxon settlement agreement and the resulting limited availability of funds. This offer therefore reflects a value that provides AJV a benefit of selling the Lands by means of installment payments and yet provides for current protection under the Trustee Council's habitat protection program.

10. 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 other large-scale acquisitions in Alaska and the rest of the United States, and earlier actions taken pursuant to the habitat protection program.

THEREFORE, we resolve to authorize funding for an offer to purchase fee simple title to the Lands identified in paragraph one above, and more fully described in Exhibits A and B, in the amount set forth below for the State of Alaska to enter into appropriate agreements in conformity with applicable Federal and State law to purchase and acquire these Lands. Such agreements shall contain and are subject to the following conditions and terms:

(a) the purchase price for the Lands shall be the final approved appraised fair

market value of the interests in the Lands plus twenty percent (20%) of the final approved appraised fair market value, but may in no event exceed \$70,000,000 ("Purchase Price"). Fair market value shall be established by the Twelve Step Process adopted by the Trustee Council.

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

(c) disbursement of these funds by the District Court;

(d) a satisfactory title search is completed and AJV is able to convey fee simple title to the surface estate by warranty deed;

(e) No timber harvesting or further road development will be initiated on the Lands by AJV or its agent or contractor prior to closing;

(f) there shall be no commercial timber harvest on the Land nor any other commercial use of the Land excepting such limited commercial use as may be consistent with State law and the goals of restoration to its prepill condition of any natural resource injured, lost, or destroyed as a result of the EVOS and the services provided by that resource or replacement or substitution for the injured, lost or destroyed resources and affected services as described in the Memorandum of Agreement and Consent Decree between the United States and the State of Alaska entered August 28, 1991;

(g) public use of the Land shall include sport and subsistence hunting, fishing, trapping, and recreational uses insofar as consistent with public safety and permitted under law or under a regulation of the Board of Fisheries or Board of Game;

(h) a conservation easement in the United States authorizing it to enforce in a court of competent jurisdiction, the restoration and conservation purposes for which this acquisition is made as set forth in this Resolution and in any implementing purchase agreements for lands acquired by the State in fee simple, and a conservation easement in the State of Alaska authorizing it to enforce in a court of competent jurisdiction, the restoration and conservation purposes for which this acquisition is made as set forth in this Resolution and in any implementing purchase agreements for lands acquired by the United States in fee simple.

(i) the Alaska Department of Law shall develop language to implement the intentions of the foregoing subparagraphs (f through h), in form and substance that is satisfactory to the U.S. Department of Justice.

(j) completion of a satisfactory hazardous substances survey;

(k) satisfactory compliance with the National Environmental Policy Act and other applicable federal law;

(l) The offer will remain open until 60 days following completion of the Final Approved Appraisal, provided that the Trustee Council may withdraw this authorization for funding by giving thirty days (30) notice of its intent to AJV to withdraw authorization.

By unanimous consent, and upon execution of the purchase agreements and written notice from the State of Alaska and the Executive Director of the Trustee Council 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 U.S. Department of Justice to petition the District Court as follows:

(1) for withdrawal of the sum of twenty percent (20%) of the Purchase Price from the District Court Registry account established as a result of the Governments' settlement to be paid at the initial closing;

(2) for withdrawal of the sum of five percent (5%) of the Purchase Price to be paid by October 1, 1996;

(3) for withdrawal of the sum of fifteen percent (15%) of the Purchase Price to be paid by October 1, 1997;

(4) for withdrawal of the sum of fifteen percent (15%) of the Purchase Price to be paid by October 1, 1998;

(5) for withdrawal of the sum of fifteen percent (15%) of the Purchase Price to be paid by October 1, 1999;

(6) for withdrawal of the sum of fifteen percent (15%) of the Purchase Price to be paid by October 1, 2000;

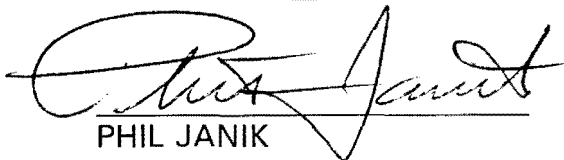
(7) for withdrawal of the sum of fifteen percent (15%) of the Purchase Price to be paid by October 1, 2001.

These amounts represent the only amounts due under this resolution to AJV from the State of Alaska from the joint funds in the District Court Registry and no additional amounts or interest are herein authorized to be paid to AJV from such joint funds.

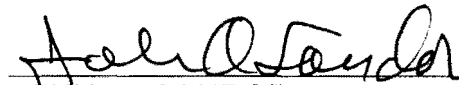
IT IS FURTHER RESOLVED, that to the extent that the Purchase Price is less

than \$70,000,000, the negotiators, with assistance as needed from the Executive Director, are authorized to engage in further negotiations with the AJV to acquire parcels or portions of parcels AJV 01b, 02, 03, and 04 and the subsurface estate of lands acquired from AJV or Seal Bay Timber Company. Authority to acquire these parcels with Trustee Council funds will require additional authorization from the Trustee Council.

DATED this 2<sup>nd</sup> day of December, 1994, at Anchorage, Alaska.



PHIL JANIK  
Regional Forester  
Alaska Region  
USDA Forest Service



JOHN A. SANDOR  
Commissioner  
Alaska Department of  
Environmental Conservation



STEVEN PENNOYER  
Director, Alaska Region  
National Marine Fisheries Service



CARL L. ROSIER  
Commissioner  
Alaska Department of Fish  
and Game



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



BRUCE BOTELHO/CRAIG TILLERY  
Attorney General/Trustee Representative  
State of Alaska

## RESOLUTION OF THE EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL

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

1. The Eyak Corporation ("Eyak"), owns the surface estate of, or has valid prioritized selections on, lands in the Chugach National Forest ("Forest"), which include parcels known as Power Creek, Eyak River, and Eyak Lake (together "the Core Lands"), consisting of approximately 13,700, and parcels known as Orca Narrows, East Simpson, and Rude River, consisting of approximately 14,800 acres (together "Orca Revised"). Sherstone, Inc. ("Sherstone") is a wholly-owned subsidiary of Eyak which holds timber rights to certain of these lands. These lands were selected and conveyed pursuant to the Alaska Native Claims Settlement Act. The subsurface rights associated with these lands are held by Chugach Incorporated.

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

3. Eyak and Sherstone are desirous of selling certain of these lands or interests in these lands including commercial timber rights 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"). Eyak and Sherstone prepared and submitted an offer on December 2, 1994, to the Trustee Council proposing that the United States purchase certain interests in the Core Lands and Orca Revised (the "Offer").

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EXXON VALDEZ OIL SPILL  
TRUSTEE COUNCIL  
ADMINISTRATIVE RECORD

4. The Core Lands and Orca Revised 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 the activities and disturbances which may adversely affect their recovery.

5. The Core Lands and Orca Revised are located wholly within the boundaries of the Forest and their protection will ensure the preservation of a significant portion of one of the nation's most productive and unique ecosystems.

6. Existing laws and regulations, including but not limited to 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 natural resources, and acquisition of equivalent resources and services injured, lost or reduced as a result of the EVOS present a unique situation. Without passing judgment on the adequacy or inadequacy of existing law and regulations to protect resources, biologists, other 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 reduced services provided by these resources.

7. There is widespread public support for the acquisition of the Core Lands and Orca Revised.

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

9. It is ordinarily the Federal Government's practice to pay fair market value for the land interests it acquires. However, given the limited availability of settlement funds to complete acquisitions of land interests and the need to acquire such interests promptly to prevent any potential degradation of the habitat by development, we believe it is appropriate in this case to pay more than fair market value for these particular interests.



10. This offer represents the lowest price at which these interests in the Core Lands and Orca Revised can be acquired because of the installment payment schedule provided for in the Exxon settlement agreement and resulting limited availability of funds. This offer therefore reflects a value that provides Eyak and Sherstone a benefit for selling its interests in these lands over the course of several years and yet provides for protection under the Trustee Council's habitat protection program.

11. 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 that portion of the overall price that is in excess of market value to earlier offers made pursuant to the habitat protection program; and the availability of settlement funds for completing acquisitions.

THEREFORE, we resolve to authorize funding for an offer to purchase a combination of fee simple and conservation easements in certain of these lands, as detailed below, and to provide the funds, if the offer is accepted, in the amounts set forth below for the United States, acting through the Forest Service, to enter into appropriate agreements in conformity with applicable Federal and State law to purchase and acquire these interests in the Lands. Such agreements shall contain and are subject to the following conditions and terms:

(a) The Trustee Council authorizes an offer to purchase the Core Lands in fee simple and certain interests in the Orca Revised lands. The purchase price for the interests in the Orca Revised

and the Core Lands shall be the final approved appraised fair market value of the interests in the Orca Revised and the Core Lands plus twenty percent (20%) of the final approved appraised fair market value of the Orca Revised and Core Lands, so long as the total does not exceed \$50,000,000, and subject to the terms detailed below ("Purchase Price"). The final approved appraised fair market value shall be determined through the Trustee Council's 12-Step Appraisal Process. Acceptance of this offer is subject to the preparation of conservation easements that shall allow for development on the Orca Revised lands only to the extent compatible with the restoration of injured natural resources and services that Eyak and Sherstone shall convey, in perpetuity, to the United States, which shall include the right to public access, except for negotiated exceptions, and be subject to additional terms and conditions as negotiated and determined by the parties and approved by the Trustee Council. In addition, Eyak and Sherstone shall grant, at no cost, to the United States an easement, as described as a moratorium on the harvest of timber on remaining Eyak lands in the December 2 Offer. This offer is the preferred offer of the Trustee Council.

(b) In the alternative to the offer detailed in paragraph (a) the Trustee Council conditionally and conceptually accepts Eyak and Sherstone's offer to sell fee simple interest in the Core Lands as described in the December 2 Offer. The purchase price for the fee interests in the Core Lands shall be the final approved appraised fair market value of the interests in the Core Lands plus twenty percent (20%) of the final approved appraised fair market value of

the Core Lands, so long as this price does not exceed \$21,000,000 ("Alternative Purchase Price"). The final approved appraised fair market value shall be determined through the Trustee Council's 12-Step Appraisal Process.

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

(d) disbursement of these funds by the District Court;

(e) completion of a satisfactory title search;

(f) no development is to take place on the Core Lands, Orca Revised, or lands subject to the timber moratorium prior to closing;

(g) approval by the shareholders of Eyak and Sherstone for the sale of the interests in the Core Lands Tracts and Orca Revised.

(h) a conservation easement in the State of Alaska authorizing the State to enforce in a court of competent jurisdiction the restoration and conservation purposes for which this acquisition is made as set forth in the Resolution and in any implementing purchase agreements. Language to implement this intent shall be developed in form and substance that is satisfactory to the U.S. Department of Justice and the Alaska Department of Law.

(i) Congressional review to the extent required with respect to acquisitions by the Forest Service pursuant to House Report No. 102-116;

(j) a satisfactory hazardous substances survey is completed;

(k) satisfactory compliance with the National Environmental Policy Act and other applicable federal law;

By unanimous consent, and upon execution of the purchase agreements and written notice from the Forest Service and the State of Alaska 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 U.S. Department of Justice to petition the District Court as follows:

(1) for withdrawal of the sum of twenty percent (20%) of the Purchase Price or Alternative Purchase Price from the District Court Registry account established as a result of the Governments' settlement to be paid at the initial closing;

(2) for withdrawal of the sum of five percent (5%) of the Purchase Price or Alternative Purchase Price to be paid at the subsequent closing by September 30, 1996;

(3) for withdrawal of the sum of fifteen percent (15%) of the Purchase Price or Alternative Purchase Price to be paid at the subsequent closing by September 30, 1997;

(4) for withdrawal of the sum of 15% of the Purchase Price or Alternative Purchase Price to be paid at the subsequent closing by September 30, 1998;

(5) for withdrawal of the sum of 15% of the Purchase Price or Alternative Purchase Price to be paid at the subsequent closing by September 30, 1999;

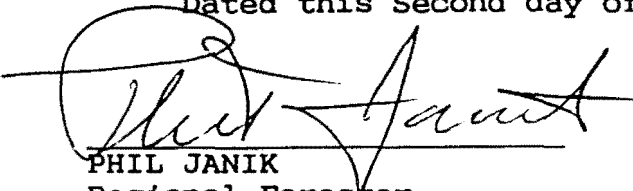
(6) for withdrawal of the sum of 15% of the Purchase Price or Alternative Purchase Price to be paid at the subsequent closing by September 30, 2000;

(7) for withdrawal of the sum of 15% of the Purchase Price or

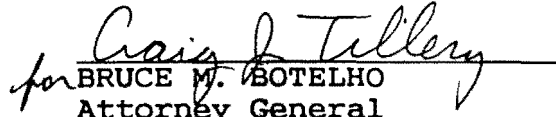
Alternative Purchase Price to be paid at the subsequent closing by September 30, 2001;

These amounts represent the only amounts due under this resolution to Eyak and Sherstone by the United States or the State of Alaska from the joint funds in the District Court Registry, and no additional amounts or interest are herein authorized to be paid to Eyak and Sherstone from such joint funds.


Dated this Second day of December, 1994, at Juneau, Alaska.




PHIL JANIK  
Regional Forester  
Alaska Region  
USDA Forest Service



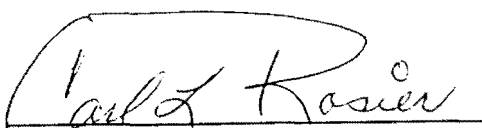
for BRUCE M. BOTELHO  
Attorney General  
State of Alaska



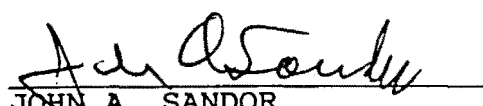
GEORGE T. FRAMPTON, JR.  
Assistant Secretary for  
Fish & Wildlife and Parks  
U.S. Department of the Interior



STEVEN PENNOYER  
Director, Alaska Region  
National Marine Fisheries  
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