

THE CONSERVATION FUND

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Ms. Laurel Jennings
Exxon Valdez Oil Spill Trustee Council
441 West 5th Avenue, Suite 500
Anchorage, AK 99501

Dear Ms. Jennings:

The Conservation Fund submits these comments in response to NOAA's Federal Register notice, January 22, 2010, regarding the EVOS Trustee Council's Intent to Prepare a Supplemental Environmental Impact Statement on the Trustee Council's Restoration Efforts.

The Conservation Fund supports the Trustee Council's intent to develop a more discrete and efficient program for the remaining EVOS settlement funds. Since remaining funding is limited, an organized and strategic transition to a program that focuses the remaining funds on a few specific issues, including habitat protection, makes sense. Habitat protection has been a major part of the Council's restoration strategy and The Conservation Fund supports its continuation as an effective means of realizing the Council's restoration goals and objectives. The acquisition of private lands or partial interests in lands promotes the natural recovery of spill-injured resources and associated services by removing the threat posed by additional development impacts.

We support the Trustee Council's intent to dedicate the approximately \$24 million remaining in the habitat subaccount for future habitat protection. Focusing on large parcels and small parcels, as historically has been done, remains a good strategy. Bifurcating the money between small and large parcels with approximately half of the available funding going to each category is reasonable. We urge the Council to not rigidly lock itself into a set allocation but rather view it as a guideline that can be modified with good reason. The definition of small parcels as those tracts less than 1,000 acres or less than \$1 million in cost is good.

We encourage the Trustee Council to actively consider conservation easements as a means to further its restoration goals. Native corporations are often loathe to selling any land in full fee but are open to conservation easements that readily achieve restoration objectives. While in the view of some agencies, conservation easements are not as desirable as full fee acquisition; the alternative is often no restoration at all. Conservation easements are an excellent alternative in their own right and infinitely better than no agreement.

In order to more fully realize the goals and objectives of the habitat protection program and reduce administrative costs, we urge the Trustee Council to consider a program administered by a non-profit through a contract arrangement following an open RFP and selection process. There are notable and successful precedents in Alaska that provide models which may be useful to the Council. They are briefly described here.

In 1998, the U.S. Army Corps of Engineers signed an agreement with The Conservation Fund to establish a fee-based compensatory mitigation program. The agreement directed TCF to establish a dedicated account to receive mitigation fees and use them to acquire or otherwise preserve wetlands “as an appropriate alternative to active mitigation measures...” As of December 31, 2009 a total of \$2,652,908 had been received by The Conservation Fund under this agreement for 58 projects across Alaska.

In January 2003, the Alaska Department of Transportation and Public Facilities signed an agreement with The Conservation Fund to establish the Alaska Wetlands Conservation Fund to receive mitigation funds related to the construction or expansion of rural airports. The agreement directed TCF to establish a separate, FDIC-protected, interest-bearing account to receive “in-lieu fees”, and to apply these fees to “protect, restore or enhance high value wetlands and aquatic resources in Alaska.” In this program, TCF reported annually to a multi-agency board which included DNR, ADFG, ACOE, EPA, NOAA, AKDOT, consulted with the board regarding potential acquisitions, and required approval from the board for the expenditure of mitigation funds. A total of \$799,295 has been received by The Conservation Fund for 35 rural airport projects across Alaska.

As of December 31, 2009 The Conservation Fund has spent \$2,591,346 of in-lieu fee monies to complete the purchase and protection of seventeen separate properties in Alaska totaling 35,329 acres, of which 23,551 acres are wetlands. These properties are broadly distributed across Alaska. The Conservation Fund secured \$13 million of matching funds to leverage the mitigation funds to the maximum extent possible.

Elements of a contractual program to meet the restoration goals and objectives of the habitat program might include:

- Parameters to direct the nomination of private tracts to the Council.
- Provisions for interaction with ADFG, DNR, FWS, NPS, USFS, NOAA and others to identify tracts to be considered.
- Tasking by the Council to negotiate agreements for specific properties.
- Final approval of any potential transaction by the Council.
- A contract period of five years with an option for renewal for an additional five years.
- Mechanisms to pay for transactional costs, e.g., appraisals, appraisal reviews, hazmat review, title policies.
- Operational costs covered through a modest flat annual fee to administer the program by a nonprofit and a mechanism to cover the cost of working with land owners and negotiating and closing individual transactions.

We appreciate the opportunity to provide comments.

Sincerely,



Alaska State Director