

RESOLUTION OF THE  
EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL

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

1. English Bay Corporation (EBC), an Alaska Native Village Corporation, owns the surface estate of, or has valid prioritized selections on, lands located within Kenai Fjords National Park (Park) and the Alaska Maritime National Wildlife Refuge (Refuge) totaling approximately 32,470 acres, and generally depicted on the map at Attachment A (referred to collectively herein as the Lands). The Lands encompass all of EBC's holdings within the Park and on islands within the Refuge that are in proximity to the Park.

2. The Lands were conveyed, or are to be conveyed, to EBC pursuant to the Alaska Native Claims Settlement Act (ANCSA). The subsurface estate associated with the Lands was conveyed, or is to be conveyed, to Chugach Alaska Corporation (Chugach), an Alaska Native Regional Corporation.

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

4. EBC is desirous of selling the Lands to the United States as part of the Council's program for restoration of the natural resources and services that were injured by the Exxon Valdez Oil Spill (EVOS).

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5. The Lands include important habitat for various species of fish and wildlife for which significant injury resulting from EVOS has been documented through the Council's habitat protection analysis and large parcel evaluation and ranking. This analysis has indicated that the Lands have high value for the restoration of such injured natural resources as pink salmon, black oystercatchers, harbor seals, harlequin ducks, bald eagles, the intertidal/subtidal zone, marbled murrelets, pigeon guillemots, sea otters, river otters, and cultural and archeological resources. This analysis has also indicated that the Lands have high value for the restoration of injured services that rely on these natural resources, including wilderness, recreation and tourism. 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.

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

7. Existing laws and regulations, including but not limited to ANCSA, the Alaska National Interest Lands Conservation Act, the National Park Service Organic Act, the Refuge Administration Act, the Alaska Anadromous Fish Protection Act, the Clean Water Act, the

Alaska Coastal Management Act, the Bald Eagle Protection Act and the Marine Mammal Protection Act, are intended, under normal circumstances, to protect resources from serious adverse effects from activities on the Lands. However, restoration, replacement and enhancement of resources injured by EVOS present a unique situation. Without passing judgment on the adequacy or inadequacy of existing law and regulations to protect resources, 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 have a beneficial effect 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 within Alaska and nationally.

9. 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.

10. The Lands are located along the shoreline of the south coast of the Kenai Peninsula. Development occurring on the Lands may have a significant effect, particularly on a cumulative basis, on both water quality and injured or reduced natural resources and services located on the Lands or on areas nearby. In the event the Lands are not acquired or protected at this time, development by the landowners may occur in a manner that may adversely impact

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water quality and subsequently natural resources and services injured or reduced by EVOS.

11. In 1993, the National Park Service (NPS) and EBC entered into a cooperative arrangement for conducting an appraisal of the Lands. This appraisal, which estimated the fair market value of the Lands to be \$18,646,680, was rejected by the review appraiser for NPS. NPS subsequently conducted its own appraisal for the Lands which estimated the fair market value of the property to be \$4,118,100. This appraisal was approved by the federal and state review appraisers.

12. The Department of the Interior (Department) prepared and submitted an offer to EBC to purchase the Lands at the approved appraised value. EBC rejected this offer and protracted negotiations ensued between EBC and the Department over a two-year period.

13. Subject to the approval of joint settlement funding by the Council and EVOS federal criminal restitution funding by the federal trustees, EBC and the Department reached an agreement in principle regarding the sale and purchase in fee simple of the Lands, subject to the reservation of certain rights by the landowner. The Department has requested \$14,100,000 from the joint settlement funds to contribute to the fee purchase of the Lands from EBC. This amount is based on the acquisition of fee interests comparable to those fee interests previously acquired by the United States on Kodiak Island, and currently being acquired from Chenega Corporation, in which access rights pertaining to certain hunting,

fishing and gathering activities were reserved and retained by the landowners. Minor adjustments in the total joint funding may be necessary to reflect a further determination of EBC's ANCSA entitlement within the Park and Refuge by the Bureau of Land Management (BLM). Up to \$1,250,000 is to be provided from EVOS federal criminal restitution funds for the purchase of the reserved access rights from EBC on a majority of the Lands, and for costs related to the acquisition. The purchase is intended to be made in a single closing, but EBC may elect several closings to track possible phased conveyances by BLM of EBC's remaining ANCSA entitlement within the Park or Refuge.

14. As additional consideration for the approval of this sale, EBC has offered to commit \$500,000 of its proceeds at closing to establish a special cultural conservation fund. This fund would be used to survey, protect, curate and interpret archeological sites and cultural artifacts which are associated with the Lands and are of historic and cultural importance to the residents of the Village of Nanwalek (formerly known as English Bay). Access to the sites for such purposes would be coordinated with NPS. Although this fund would not fall under the aegis of the Council, such work by the fund would clearly have a complementary effect on the restoration of archeological sites and cultural artifacts in the oil spill area. Consequently, the EBC acquisition provides additional restoration benefits for the injured cultural resources and services. Consistent with its statutory authorities, the Department has agreed to work with the trustees of the fund as

complementary to the restoration objectives of the Council and the mission of NPS.

15. It is ordinarily the federal government's practice to pay fair market value for lands it acquires. However, due to the unique circumstances of this proposed acquisition, including the Lands' exceptional habitat for purposes of promoting recovery of natural resources and related services injured by EVOS and the need to acquire it to prevent possible degradation of the habitat, the Council believes it is appropriate in this case to pay more than the estimated fair market value of the Lands.

16. This negotiated price represents the lowest price at which the Lands can be acquired and protected under the Council's habitat protection program.

17. This 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 the price to other large-scale acquisitions in Alaska by the United States and the State of Alaska, including purchases under the Council's habitat protection program as well as other federal acquisitions; and the priority of this acquisition to other expenditures of the joint settlement funds for restoration purposes.

18. Acquisition of the Lands will provide significant public access and use that is not currently available.

**THEREFORE**, we resolve to provide \$14,100,000 in funding towards the purchase in fee by the United States, acting through the Department, for the Lands. This amount is based on the above-described acquisition of 32,470 acres of land, depicted on the map at Attachment A, and is subject to minor adjustment, either upward or downward, based on a final determination by BLM of EBC's ANCSA entitlement within the Park or Refuge. In the event that BLM determines that such ANCSA entitlement is either increased or decreased from 32,470 acres, EBC and the Department have agreed that the amount of joint funding should be increased or decreased accordingly by a factor of \$418.6433 per acre; provided that any such adjustment does not increase the total joint funds required by more than 5% without further approval of the Council.

This authorization for funding is subject to the inclusion of the following terms and conditions in any implementing purchase agreement with EBC:

(a) funding is subject to the receipt by the United States District Court for the District of Alaska (District Court) of any necessary settlement payments due from Exxon Corporation, et al. and the subsequent disbursement of these funds by the District Court for this purpose;

(b) EBC shall grant to the State of Alaska (State) at no additional cost a conservation easement similar to that used in other federal acquisitions funded by the Council which will enable the State to enforce on a non-exclusive basis the restoration objectives of this acquisition. The form and substance of this

easement and the related warranty deed for the United States must also be satisfactory to the Alaska Department of Law and the United States Department of Justice;

(c) completion of a title search and review satisfactory to the United States and the State for the respective interests in the Lands acquired by each government;

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

(e) compliance with the National Environmental Policy Act and other provisions of applicable federal law.

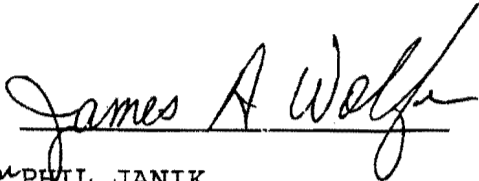
By unanimous consent, following (i) execution of the purchase agreement between EBC and the United States, (ii) written notice from the Department to the Executive Director of the Council stating the maximum amount due from the joint settlement funds based on the BLM entitlement calculation and the adjustment described above, and (iii) certification by the Executive Director of such amount due EBC and that the executed purchase agreement is in accordance with the foregoing terms and conditions, 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 for disbursement of the joint settlement funds in the above certified amount.

Such amounts represent the only amounts due under this resolution to EBC by the United States to be funded from the joint

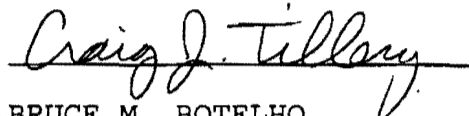


settlement funds in the District Court Registry, and no additional amounts or interest are herein authorized to be paid to EBC from such joint funds.

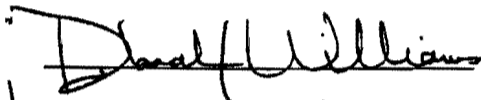
APPROVED by the Council at its meeting of February 14, 1997, held in Anchorage and Juneau, Alaska, as affirmed by our signatures affixed below:



for PHIL JANIK  
Regional Forester  
Alaska Region  
USDA Forest Service



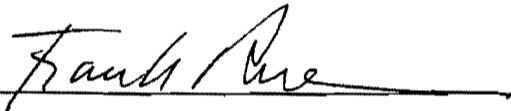
for BRUCE M. BOTELHO  
Attorney General  
State of Alaska



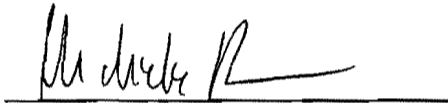
for GEORGE T. FRAMPTON, JR.  
Assistant Secretary for  
Fish and Wildlife and Parks  
Department of the Interior



STEVEN PENNOYER  
Director, Alaska Region  
National Marine  
Fisheries Service

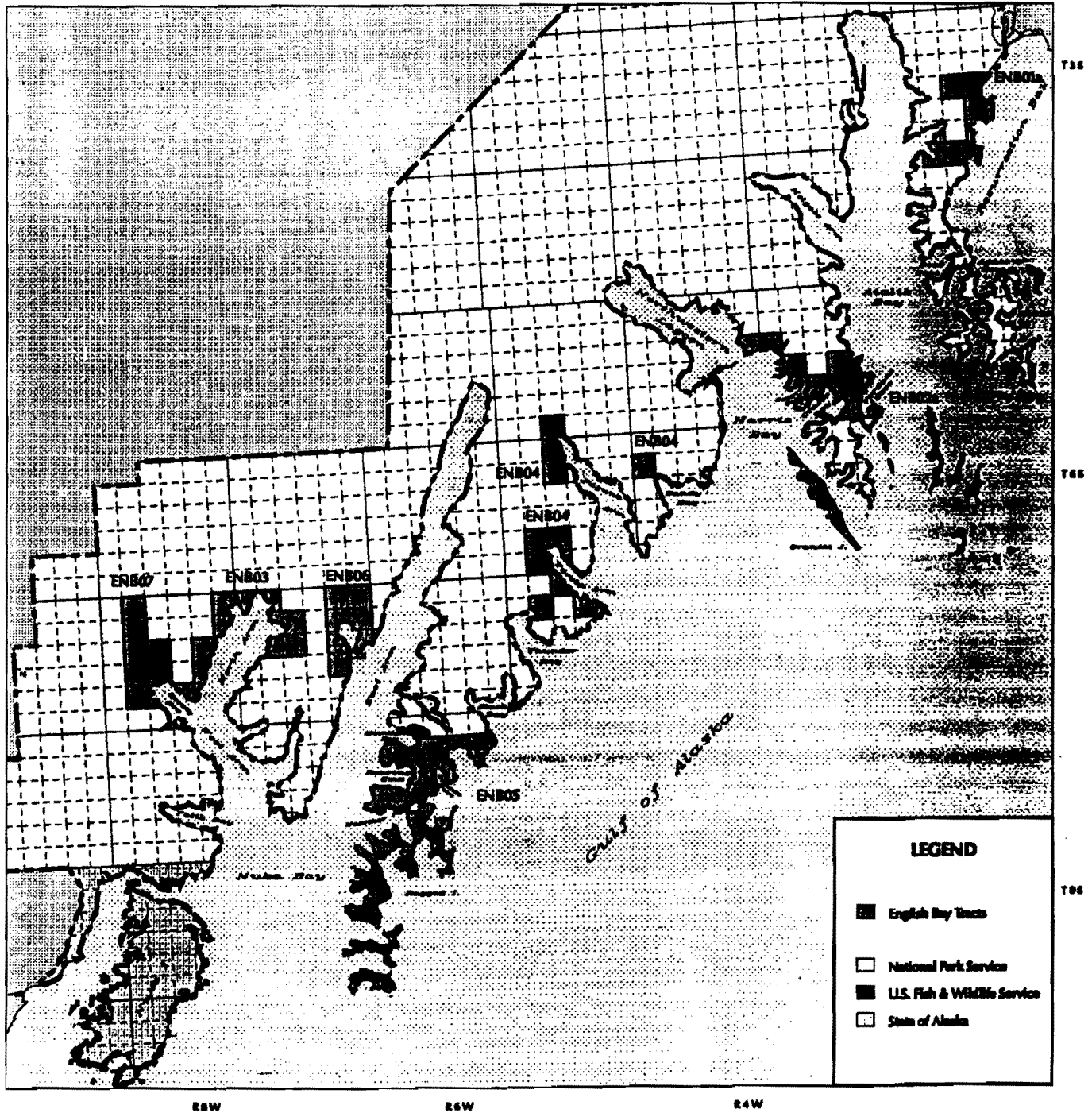


FRANK RUE  
Commissioner  
Alaska Department of  
Fish and Game



MICHELE BROWN  
Commissioner  
Alaska Department of  
Environmental Conservation

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Habitat Protection Acquisition Parcels  
 Kenai Fjords National Park  
 English Bay Corporation Parcels



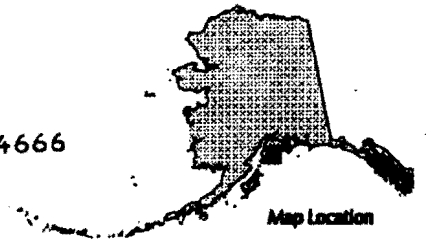
National Park Service  
 Alaska System Support Office  
 Anchorage, Alaska

February 7, 1997



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Scale 1:400,000  
 Albers's Equal Area Projection



Attachment B  
Restoration Benefits Report  
English Bay Corporation Lands

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Region - Kenai Peninsula

The lands to be acquired from the English Bay Corporation lie along the southeast coastline of the Kenai peninsula, primarily within Kenai Fjords National Park, with some lands located within the Alaska Maritime National Wildlife Refuge.

Description of the English Bay Lands

The English Bay parcels (designated as ENB 01A through ENB 07) are located along the deep water fjords of the Kenai Fjords National Park, the only fjord system in the United States. Combined, the parcels total 32,471 acres. The interest to be acquired is fee simple title to the surface estate.

The park is characterized by a complicated highly indented coastline, interspersed protected waters, and extremely scenic uplands. The fjords have tide-water glaciers, many of which have receded dramatically this century. Upland slopes are predominately steep, although there are also some relatively flat areas; soils are generally shallow. Coastal parts of the parcels are covered by a temperate rainforest dominated by Sitka spruce and western hemlock. Under story vegetation is typical of that found with this forest type. More inland parts of the parcels are covered with shrub and tundra vegetation types.

These coastal uplands and the adjacent marine waters provide habitat for a great diversity and abundance of marine life including various species of marine mammals, sea birds and fish. These waters are often occupied by harbor seals, sea otters, Northern sea lions, porpoises and Minke, Humpback, Orca and Gray whales. Harbor seals, sea otters and sea lions are known to haul out at various areas on the subject lands.

Numerous species of marine and other birds, including harlequin ducks, Kittlitz's and marbled murrelets, pigeon guillemots, black oystercatchers, pelagic cormorants and bald eagles injured by the *Exxon Valdez* oil spill, are found throughout the area and use park uplands. Several species of fish that were injured by the oil spill use these waters, including pink salmon, red salmon, Dolly Varden, Pacific herring, and Cutthroat trout. Upland areas also support black bear, moose, mountain goat, river otter, wolverine, mink, marten, coyote, snowshoe hare, and porcupine.

The English Bay lands package as a whole provides valuable habitat for nearly all of the injured resources and services harmed by the oil spill with some of the tracts having especially high values. Six of the seven parcels were ranked as having high value for wilderness. Five of the seven parcels were ranked as having high value for marbled murrelets. Six of the parcels were directly oiled by the oil spill, including heavy oiling of an archeological site. Some of the most important restoration values identified on these lands are further described below.

The ENB 06/James Bay parcel, located on the west side of McCarty Fiord in Nuka Bay contains a protected tidally-influenced lagoon that is bordered by sandy beaches and both forested and marshy lowlands. This biologically rich parcel has six short clear water streams that feed into the lagoon and is especially valuable for harlequin ducks (feeding, loafing and documented use by young and probable breeding); intertidal-subtidal resources (large mussel and clam beds, kelp, eelgrass and sheltered rocky shore); marbled murrelets (feeding concentrations, probable nesting); pigeon guillemots (feeding concentrations, probable nesting); black oystercatchers (nesting, feeding and loafing); river otters (feeding and probable denning, known latrine sites and high use area); sea otters (feeding and pupping area); and bald eagles (six documented nest sites and feeding area for adult and immature eagles). This lagoon system also has regionally significant value for pink salmon, helping to support the commercial fishing service. The protected lagoon on this parcel also affords important sea plane access and is frequently used as a put-in and take-out location for sea kayakers and other recreationists.

The ENB 02a/Harris Peninsula parcel, extending along the eastern side of Harris Bay and a portion of the western coast of Aialik Bay, is especially valuable for marbled murrelets (high detection rates, feeding and probable nesting); river otters (feeding, latrine sites and probable denning); and archeological resources (a historic Russian/Native trade location with four documented cultural sites). This parcel also supports feeding concentrations of pigeon guillemots and provides probable nesting habitat as well. The parcel has high value for wilderness and recreation.

The ENB 05/McArthur Pass parcel, including the outermost portion of the peninsula that defines the eastern side of McCarty Fiord and the northern half of Ragged Island, was heavily oiled and has high value for archeological resources (village location, six documented cultural sites); marbled murrelets (feeding, probable nesting) and also contains a haulout for the threatened Northern sea lion. This parcel is known to be used by river otters.

Additionally, the English Bay lands and the adjacent coastal waters provide habitat for common loons, cormorants and Kittlitz's murrelets, species that have been recognized as injured since the *Restoration Plan* was adopted in 1994, but not expressly used in the published large parcel habitat evaluation process.

The English Bay lands and associated marine waters also support high value tourism

and recreation services that sustain the City of Seward's growing recreation and tourism economy. Both large commercially-operated and small privately-owned boats ply the fjords in increasing numbers. The area is well known by sport fishermen who seek out salmon and halibut. Kayakers, campers, photographers and birders from around the world have discovered the park. The four public use cabins built by the National Park Service on the coast are heavily booked throughout each summer. Numerous businesses based in Seward have grown steadily since the park was created due to the enormous public interest in the wildlife values of this area. These recreation and tourism service companies continue to add to their capacity in response to growing public interest in the Park, its magnificent landscape, and its wildlife. There were 110 large cruise ship dockings in Seward during 1996. Half the park's 1995 commercial use licenses were for flight-seeing businesses providing tours of the park lands.

Purchase of the English Bay lands will result in habitat protection for not only the lands acquired, but for a much larger area. The lands to be acquired are within the designated boundaries of Kenai Fjords National Park, an area comprised of 669,000 acres. As such, adding these lands back into park status will ensure that the thousands of acres of protected habitat in the park are not fragmented by various developments or other activities. Both the lands acquired and the lands in the park will provide protection for injured natural and cultural resources and services injured by the oil spill.

Should the English Bay lands not be acquired, private development would fracture habitat into smaller blocks and protection for injured resources and services would be compromised. In future years some forested areas of the park could be logged. Even small logging operations could severely impair the biological, scenic, wilderness and recreational qualities of the otherwise undisturbed area.

The lands acquired will be managed by the National Park Service pursuant to the authorities under the National Park Service's Organic Act, 16 USC 1, and the Alaska National Interest Lands Conservation Act (ANILCA), 16 USC 3101 or the United States Fish and Wildlife Service in the case of lands included within the Alaska Maritime National Wildlife Refuge. All lands acquired will be managed consistent with the Trustee Council's mission to restore injured resources and services. Cultural sites of particular importance to the Native community will be protected in a manner consistent with state and federal laws.

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# Exxon Valdez Oil Spill Trustee Council

645 G Street, Suite 401, Anchorage, AK 99501-3451 907/278-8012 fax: 907/276-7178



September 3, 1997

I certify that, as confirmed to me by the United States Department of the Interior and the Alaska Department of Law on behalf of the federal and state governments respectively, all terms and conditions as provided for in the Trustee Council's resolution dated February 14, 1997 concerning the acquisition of lands owned by the English Bay Corporation, have been addressed. In accordance with that resolution, I request that the Alaska Department of Law and the U.S. Department of Justice proceed to petition the U.S. District Court for the disbursement of joint settlement funds in the amount of \$14,128,074.22.

A handwritten signature in cursive script that reads "Molly McCammon". The signature is fluid and matches the typed name below it.

Molly McCammon  
Executive Director

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ATTACHMENT A  
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<b>Federal Trustees</b>	<b>State Trustees</b>
U.S. Department of the Interior	Alaska Department of Fish and Game
U.S. Department of Agriculture	Alaska Department of Environmental Conservation