

**RESOLUTION OF THE
EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL
CONCERNING A
GRANT FOR HABITAT PROTECTION**

WHEREAS in November 1994, following an extensive public process, the *Exxon Valdez* Oil Spill Trustee Council adopted the *Restoration Plan* to guide a comprehensive and balanced program to restore resources and services injured by the oil spill;

WHEREAS the Trustee Council has used the *Restoration Plan* to guide long-term protection of habitat considered important to the long-term recovery of injured resources and services;

WHEREAS the *Restoration Plan* recognized that complete recovery from the oil spill likely would not occur for decades and in fact full recovery of many injured resources and services is not yet complete;

WHEREAS, consistent with the *Restoration Plan*, on March 1, 1999 the Trustee Council determined there is a need for a continuing comprehensive and balanced restoration program that includes protection of additional key habitats;

WHEREAS private, non-profit organizations can bring certain efficiencies to a habitat protection program, such as responding more quickly than government to opportunities for acquisition of priority lands, leveraging resources by attracting matching funds, and in many cases further broadening the protection impact of dollars spent by achieving below-appraised-value purchases through use of tax incentives and estate planning strategies;

WHEREAS on March 16, 2000 the Trustee Council directed the Executive Director to develop a proposal to create a habitat protection program to be administered by a private, non-profit organization;

WHEREAS The Conservation Fund and The Nature Conservancy are private, non-profit organizations which have substantial experience in negotiating land acquisition packages in Alaska as well as elsewhere and which have expressed their interest in collaboratively implementing a habitat protection program on behalf of the Trustee Council;

THEREFORE BE IT RESOLVED that \$1,000,000, less Trustee agency costs as described below, be awarded as a grant to The Conservation Fund and The Nature Conservancy, to be administered jointly by these two private, non-profit organizations for a habitat protection effort in the *Exxon Valdez* oil spill-area ecosystem on behalf of the Trustee Council; the grant funds will reside in the Alaska Department of Revenue's *Exxon Valdez* Oil Spill Investment Fund and be disbursed per the terms of the Grant Agreement (draft, Attachment A);

BE IT FURTHER RESOLVED that the grant funds are to be used by The Conservation Fund and The Nature Conservancy for the acquisition of lands and interests in lands (e.g., fee title, conservation easements, mineral rights, timber rights) important to the conservation and protection of marine and coastal resources, ecosystems, and habitats in order to aid in the overall recovery of, and to enhance the long-term health and viability of, those resources injured by the *Exxon Valdez* oil spill and the spill-area ecosystem;

BE IT FURTHER RESOLVED that The Conservation Fund and The Nature Conservancy shall pursue protection of any specific parcel only after consultation with the entity that would own and manage the interests in the parcel and with the Trustee Council and, during the acquisition process, shall work closely with the entity that would own and manage the interests in the parcel;

BE IT FURTHER RESOLVED that The Conservation Fund and The Nature Conservancy shall acquire parcels only from willing sellers;

BE IT FURTHER RESOLVED that The Conservation Fund and The Nature Conservancy shall acquire parcels only after unanimous approval of the Trustee Council; Trustee Council approval or disapproval shall be given promptly and in no event more than 90 days after receipt

of an acquisition package from The Conservation Fund and The Nature Conservancy; furthermore, the approval process shall include reasonable and adequate public notice about the proposed acquisition and an opportunity for public comment;

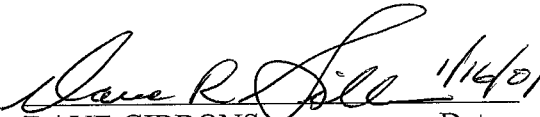
BE IT FURTHER RESOLVED that, following review of the land acquisitions expected to occur under the grant and in accordance with Attachment B, the Trustee Council may designate some portion of the \$1 million to pay for Trustee agencies' direct costs of receiving title to land acquired under the grant;

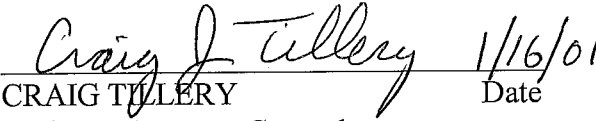
BE IT FURTHER RESOLVED that the \$1 million be further reduced by payment of \$32,500 to the U.S. Department of Interior, in accordance with the *Exxon Valdez Oil Spill Trustee Council Procedures* (August 3, 2000), for their expenses in administering the grant;


BE IT FURTHER RESOLVED that this grant shall terminate September 30, 2002 unless the Trustee Council or The Conservation Fund and The Nature Conservancy, with proper notice, earlier terminates the grant or unless, by mutual consent, the Trustee Council and The Conservation Fund and The Nature Conservancy agree to extend the grant.


BE IT FURTHER RESOLVED that any substantive changes in the language contained in the Grant Agreement (draft, Attachment A) must be approved by the Trustee Council; non-substantive changes may be made by the U.S. Department of the Interior.


Adopted this 4th day of January, 2001, in Anchorage, Alaska.

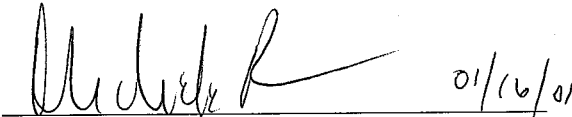

DAVE GIBBONS Date
Trustee Representative
Alaska Region
USDA Forest Service


CRAIG TILLEY Date
Assistant Attorney General
State of Alaska


MARILYN HEIMAN Date
Special Assistant to the Secretary
for Alaska
US Department of the Interior


JAMES W. BALSIGER Date
Director, Alaska Region
National Marine Fisheries Service


For FRANK RUE Date
Commissioner
Alaska Department of
Fish and Game


MICHELE BROWN Date
Commissioner
Alaska Department of
Environmental Conservation

DRAFT RESOLUTION
of the
Exxon Valdez Oil Spill Trustee Council
concerning a
Grant for Habitat Protection

ATTACHMENT A
DRAFT GRANT AGREEMENT

Grant Number:

Segment:

Title: *Exxon Valdez Oil Spill Trustee Council: Funding Source for Habitat Protection*

Beginning Date: **Ending Date:** September 30, 2002

State: Alaska

Parties: United States Department of the Interior (Interior)
The Nature Conservancy & The Conservation Fund (Recipients)

Other Interested Agencies: State of Alaska (State)

Exxon Valdez Oil Spill Trustee Council (Trustee Council)

Authorities: Pub. L. 106-113, Sec. 350, 113 Stat. 1501, An Act Making Appropriations for the District of Columbia and Other Activities for the Fiscal Year Ending September 30, 2000 and for Other Purposes, 1999

Pub. L. 102-229, Sec. 207, Dire Emergency Supplemental Appropriations Act, 1992

Documents attached and incorporated herein:

Resolution of the *Exxon Valdez Oil Spill Trustee Council*, January, 16, 2001, Concerning a Grant for Habitat Protection

Objective:

This Grant Agreement provides \$1 million for habitat protection in the northern Gulf of Alaska. These funds will be used for the acquisition of lands or interests in lands (e.g., fee title, conservation easements, mineral rights, timber rights) important to the conservation and protection of marine and coastal resources, ecosystems, and habitats in order to aid in the overall recovery of, and to enhance the long-term health and viability of, those resources injured by the *Exxon Valdez* oil spill and the spill area ecosystem. No Grant Funds may be used for land management or stewardship fees.

Background:

The March 24, 1989 *Exxon Valdez* oil spill in Alaska's Prince William Sound was the largest oil spill in U.S. history, contaminating about 1,500 miles of Alaska's coastline. Under the consent decree approved by the U.S. District Court for the District of Alaska in October 1991, Exxon Corporation agreed to pay civil claims totaling \$900 million to the federal government and the State of Alaska by September 1, 2001. Administration of the civil settlement is carried out under agreements between the federal government and the State of Alaska. These agreements establish a six-member federal/state trusteeship, whose duties are carried out by the *Exxon Valdez* Oil Spill Trustee Council or its successor in function (hereinafter the "Trustee Council"), including a representative of the Secretary of the Interior. Decisions about the types of activities to fund with civil payments are governed by the consent decree and a Restoration Plan approved by the Trustee Council. One of the major activities identified in the Restoration Plan is habitat acquisition, and to date interests in land totaling over 640,000 acres have been acquired.

The Nature Conservancy and The Conservation Fund (hereinafter the "Recipients") are private, non-profit organizations which have substantial experience in negotiating land acquisition packages in Alaska as well as nationwide. The Recipients have the ability to respond quickly to opportunities for acquisition of priority lands from willing sellers, leverage resources by attracting matching funds, and in many cases achieve below-appraised-value purchases through use of tax incentives and estate planning strategies.

Grant Funds:

Funds available for this Grant Agreement are funds set aside by the Trustee Council from the 1991 civil settlement between Exxon Corporation, the State of Alaska, and the United States of America for long-term habitat protection. The funds will reside in the Alaska Department of Revenue's *Exxon Valdez* Oil Spill Investment Fund and will be disbursed as follows:

- a) \$25,000 to each of the Recipients to cover costs related to acquisition other than those costs specified in section (b) below (the \$25,000 shall

cover such costs as personnel time and indirect expenses such as telephone, duplication, and postage); the \$25,000 shall be disbursed in equal monthly installments over the life of the Grant Agreement; no other charges for indirect costs, including application of the Recipients' indirect cost rates, are allowed under this Grant Agreement;

b) reimbursement to the Recipients of the following direct expenses incurred in pursuit of parcels agreed to by the Trustee Council (see Process section 1(c)); the expenses must be reasonable and those which the acquiring agency or government (i.e., state or federal) would have incurred itself in acquiring the concerned parcel; reimbursement is expected to occur monthly upon receipt of invoices;

- i) appraisal
- ii) title reports
- iii) title insurance
- iv) escrow and closing fees
- v) real property taxes
- vi) penalty costs for prepayment of pre-existing recorded mortgages
- vii) travel related to project acquisition
- viii) preliminary title commitment or title policy
- ix) such other expenses as may be contained in a list approved by the Assistant Secretary, Policy, Management and Budget, Department of Interior and approved by the Trustee Council;

c) payment to the Recipients for the actual purchase price of each parcel, upon Trustee Council approval of the Acquisition Package described below (see Process section 4);

d) payment to Trustee agencies (Alaska Department of Fish and Game, Alaska Department of Natural Resources, U.S. Department of Interior, and U.S Forest Service) for direct costs of receiving title to land acquired under the Grant Agreement, in accordance with Attachment B; and

e) \$32,500 to Interior for administration of the Grant Agreement, in accordance with the *Exxon Valdez Oil Spill Trustee Council Procedures*, August 3, 2000.

Term:

1. Duration. The Recipients may not obligate funds under this Grant Agreement after September 30, 2002, unless the parties to the Grant Agreement agree, by mutual consent, to extend the grant.

2. Termination.

a) This Grant Agreement may be terminated prior to September 30, 2002 by unanimous decision of the Trustee Council, with 30 days advance written notice to the Recipients.

b) This Grant Agreement may be terminated prior to September 30, 2002 by the Recipients, with 30 days advance written notice to the Trustee Council.

c) Should only one of the Recipients, either The Nature Conservancy or The Conservation Fund, desire to terminate the Grant Agreement, the other Recipient may implement the Grant Agreement as a sole Recipient.

d) In the event of termination of the Grant Agreement, the Recipients shall be entitled to receive or retain only a pro rata portion of the \$25,000 payments identified above (see Grant Funds section (a)), based on the number of days remaining in the term of the grant. The Recipients shall refund to the Trustee Council no later than 30 days after the effective date of the termination any such portion of the \$25,000 payments.

Lands to be Acquired:

This Grant Agreement provides funding for the acquisition of lands or interests in lands (e.g., fee title, conservation easements, mineral rights, timber rights) important to the conservation and protection of marine and coastal resources, ecosystems, and habitats in order to aid in the overall recovery of, and to enhance the long-term health and viability of, those resources injured by the *Exxon Valdez* oil spill and the spill area ecosystem.

The Recipients shall acquire parcels only from willing sellers. The Recipients shall specifically seek to acquire:

a) lands with concentrated biological values or high natural lands recreational values;

b) lands which provide access to areas of high biological significance or to areas with high natural lands recreational values;

c) isolated parcels within otherwise protected areas.

The Recipients shall evaluate properties using the following criteria:

a) habitat restoration value;

- b) threat of development or loss;
- c) opportunity to enhance management of protected areas;
- d) willingness of the United States, State of Alaska, or other public agency or non-profit organization approved by the Trustee Council to manage the land or interests in the land;
- e) feasibility of acquiring the property, including willing seller;
- f) leverage, i.e., the amount of matching funds available;
- g) partnership support, i.e., the number of funding partners and the amount of public support.

The purchase price shall not exceed the appraised value of the parcel.

Process:

1. Land Acquisition. The Recipients shall manage all aspects of the land acquisition process, including:

- a) identify potential parcels;
- b) evaluate parcels;
- c) consult with the United States, State of Alaska, or other public agency or non-profit organization approved by the Trustee Council that would own and manage the interests in the parcels and coordinate with that entity throughout the acquisition process;
- d) consult with the Trustee Council as to which parcels should be pursued for acquisition; this consultation shall include providing a summary of the expected costs of acquisition (both purchase price and process costs);
- e) negotiate with willing sellers for the purchase of parcels;
- f) develop purchase or option agreements;
- g) complete, or ensure the completion of, due diligence on each parcel to be acquired, including appraisal (which shall comply with UASFLA (Uniform Appraisal Standards for Federal Land Acquisition) standards and which shall meet the approval of the government that will own and manage the interests in the parcel), title review, and Level I and any other hazardous materials inspection;

h) arrange for closing and acceptance of title by the United States, the State of Alaska, or other public agency or non-profit organization approved by the Trustee Council, including preparing documents and making payments to landowners as agreed to by the Recipients and the landowners; and

i) to the greatest degree practical, secure matching funds from private or public sources in order to minimize acquisition costs to the Trustee Council.

2. Chain of Title. In most cases, title will transfer from the seller directly to the United States, the State of Alaska, or other public agency or non-profit organization approved by the Trustee Council.

3. Support. The Trustee Council, through its member agencies, will provide the Recipients the following support:

a) technical and legal expertise in federal and state land acquisition procedures, including review or completion, as appropriate, by the governments (i.e., state and/or federal) of appraisals, title commitments and policies, hazardous materials reports, and legal documents;

b) technical information regarding existing land ownership, habitat and wildlife value, and agency priorities;

c) where appropriate, acceptance of title to parcels purchased by the Recipients after approval by the Trustee Council.

4. Acquisition Information Package. For each parcel for which the Recipients seek Trustee Council authorization to purchase with Grant Funds, Recipients shall submit to the Trustee Council an acquisition information package (hereinafter the "Acquisition Package"). The Acquisition Package shall include the following:

a) legal description of the parcel;

b) property owner;

c) acreage;

d) map showing location;

e) description of property and restoration value;

- f) identification of entity (United States, State of Alaska, or other public agency or non-profit organization approved by the Trustee Council) that will own and manage the parcel;
- g) statement of appraised value and statement of government review of appraisal;
- h) purchase or option agreement and conveyance documents;
- i) Level I and any other required hazardous materials inspections, to be performed by a government;
- j) statement of NEPA compliance, to be prepared by a government;
- k) summary of costs incurred, including purchase price and the direct expenses outlined under Grant Funds section (b) above; and
- l) amount of matching funds, if any.

5. Approval of Acquisition Package. Following the Trustee Council's approval or disapproval of the Acquisition Package, Interior shall promptly notify the Recipients of the Trustee Council's decision.

6. Fund Transfer. Interior shall disburse grant funds to the Recipients via the SMARTLINK Payment System, as follows:

- a) regarding the \$25,000 for indirect expenses, as well as the direct expenses incurred in the acquisition of a parcel (see Grant Funds above), disbursements shall occur monthly;
- b) regarding the purchase price itself, disbursement shall occur upon Trustee Council approval of the Acquisition Package; the Recipients shall draw down funds from SMARTLINK no more than 3 days prior to the Recipients closing, or, when applicable, closing into escrow, on the approved acquisition.

7. Reporting. Recipients shall submit a report to the Trustee Council by December 31, 2002 describing activities and accomplishments under this Grant Agreement. The report shall include an accounting of all funds spent.

Ultimate Use and Management of Lands Acquired:

Lands acquired with funding provided hereunder shall be managed in perpetuity for the conservation and protection of marine and coastal resources, ecosystems, and habitats in order to aid in the overall recovery of, and to

enhance the long-term health and viability of, those resources injured by the *Exxon Valdez* oil spill and the spill area ecosystem.

1. Conservation Easement. Each parcel acquired with Grant Funds shall be subject to a conservation easement. If a parcel is acquired by the United States or the State of Alaska, the conservation easement shall be held by the non-acquiring government. If a parcel is acquired by another public agency or non-profit organization approved by the Trustee Council, the conservation easement shall be held by both the state and federal governments.

2. Recorded Deed. The recorded deed for each parcel acquired with grant funds shall be subject to the conservation easement described above.

Standard Provisions: TO BE ADDED BY INTERIOR

1. Notices

2. Entirety of the Agreement

3. Term of the Agreement

DRAFT RESOLUTION
of the Exxon Valdez Oil Spill Trustee Council
concerning a Grant for Habitat Protection

ATTACHMENT B
DRAFT TRUSTEE AGENCY COSTS

In addition to the costs incurred by the Recipients and paid under the grant, Trustee agencies (Alaska Department of Fish and Game, Alaska Department of Natural Resources, U.S. Department of Interior, U.S. Forest Service) may incur expenses in receiving title to acquired parcels. The following list specifies those agency expenses that may be appropriate for Trustee Council funding. In order to ensure cost efficiencies and to avoid duplication of effort and expenses, the list includes only those activities that agencies are required to perform in order to receive title. In some instances, costs will be paid for the government that acquires fee title to land or an interest in land or which has primary management authority for a conservation easement (the acquiring government) which will not be paid for the government which receives a conservation easement but without primary management authority (the non-acquiring government). Agencies are expected to absorb some of the costs related to provision of technical information and document and other legal review.

Activities Eligible for Trustee Council Funding, as Appropriate

- Appraisal review by the acquiring government
- Title review by the acquiring government and the non-acquiring government
- Hazardous material inspection by the acquiring government and the non-acquiring government, if required in order to receive title or conservation easement
- Site inspection by the acquiring government and the non-acquiring government, if required in order to receive title or conservation easement
- NEPA compliance

Activities Not Eligible for Trustee Council Funding

- Negotiators' time and travel
- Legal review
- Appraisals in addition to those conducted by the Recipients
- Appraisal review by the non-acquiring government
- Surveys
- Other items listed in the Grant Agreement as responsibilities of the Recipients
- Activities that serve agency management purposes but are not required to receive title
- Indirect expenses (phone, office supplies, duplication, etc.)

Following Recipients' consultation with the Trustee Council as to which parcels should be pursued for acquisition under the Grant Agreement, the Council will be asked to give general approval to agency budget requests. All funds requested must be associated with acquisition activities for the specific parcels being pursued. Actual expenditure of the funds will be authorized by the Executive Director on a quarterly basis. All funds authorized must be associated with acquisition activities expected to occur in the upcoming quarter. Any authorized funds not spent by the end of the Grant Agreement will lapse back to the long-term habitat fund. Funds expended for agency activities will reduce the amount available for expenditure by the Recipients under this grant.