

**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.

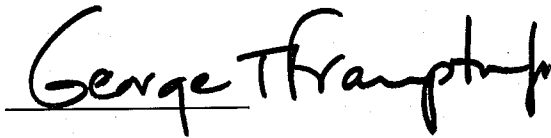
Dated this 2nd day of December, 1994, at Juneau, Alaska, by:



PHIL JANIK
Regional Forester
Alaska Region
USDA Forest Service



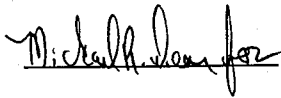
for BRUCE M. BOTELHO
Attorney General
State of Alaska



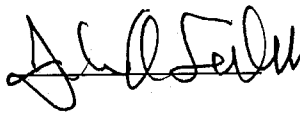
GEORGE T. FRAMPTON, Jr.
Assistant Secretary for Fish
and Wildlife and Parks
U.S. Department of the Interior



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-roes and food/bait herring harvests are substantial in adjacent management units. The 1992 sac-roes 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: The 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 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

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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

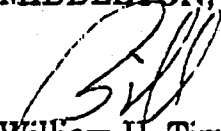
Dear Glenn:

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;

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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

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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)

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My Commission Expires: _____

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)ss.
THIRD JUDICIAL DISTRICT)

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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)

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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 _____

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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 $\frac{1}{4}$, (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 _____, 1995)

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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.