

RESOLUTION OF THE  
EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL

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

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

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

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

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

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

in the final Restoration Plan approved November 2, 1994.

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

Preservation Office.

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

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

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

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

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

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

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

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

10. This offer is a reasonable price given the significant natural resource and service values protected; the scope and pervasiveness of the EVOS environmental disaster and the need for protection of ecosystems; and the relationship of the price in excess of market value to other large-scale acquisitions in Alaska and the rest of the United States, and earlier actions taken pursuant to the habitat protection program.

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

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

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

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

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

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

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

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

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

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

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

(j) completion of a satisfactory hazardous substances survey;

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

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

By unanimous consent, and upon execution of the purchase agreements and written notice from the State of Alaska and the Executive Director of the Trustee Council that the terms and conditions set forth herein and in the purchase agreements have been satisfied, we request the Alaska Department of Law and the Assistant Attorney

General of the Environment and Natural Resources Division of the U.S. Department of Justice to petition the District Court as follows:

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

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

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

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

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

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

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

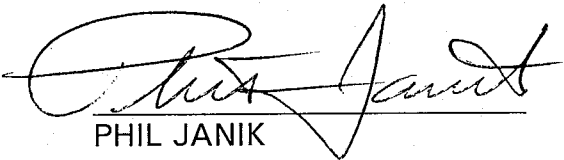
These amounts represent the only amounts due under this resolution to AJV from the State of Alaska from the joint funds in the District Court Registry and no additional amounts or interest are herein authorized to be paid to AJV from such joint funds.

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



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

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



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