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**UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA**

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	No. 3:91-CV-0083 (HRH)
	)	
v.	)	<b>SIXTY-SEVENTH</b>
	)	<b>JOINT NOTICE OF</b>
EXXON CORPORATION, and EXXON	)	<b>EXPENDITURES FROM</b>
SHIPPING COMPANY,	)	<b>THE INVESTMENT FUND</b>
	)	
Defendants.	)	
_____	)	

The United States and the State of Alaska (“the Governments”) jointly provide this notice (“Notice”) of their expenditure of \$570,000 from the Exxon Valdez Oil Spill Investment Fund (“Investment Fund”). This expenditure is entirely from the Habitat Sub-Account of the Investment Fund. The Governments’ natural resource trustee agencies will use these funds for purposes consistent with the Memorandum of Agreement and Consent Decree entered by this Court in *United States v. State of Alaska*, No. A91-081 CIV (D. Alaska), on August 28, 1991 (“MOA”).

Sixty-Seventh Joint Notice Of Expenditures From Investment Fund  
(Case 3:91-CV-0083 (HRH))

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On September 25, 1991, the United States and the State of Alaska settled their claims against the Exxon Corporation, Exxon Shipping Company, Exxon Pipeline Company, and the T/V *Exxon Valdez* arising from the Exxon Valdez Oil Spill (“EVOS”). All funds resulting from these settlements were subsequently ordered by this Court to be placed in an interest-bearing account in the Court Registry Investment System (“CRIS”) administered through the United States District Court for the Southern District of Texas.

On June 7, 2000, this Court entered its Third Amended Order for Deposit and Transfer of Settlement Proceeds (“Third Amended Order”). The Third Amended Order allows the Governments the option of investing the money in an account outside the United States Treasury. On September 29, 2000, upon application by the Governments, the Court entered an Order Re: Transfer of Funds from the Exxon Valdez Liquidity Account and the Reserve Fund to an Investment Fund Within the Alaska Department of Revenue, Division of Treasury, authorizing transfer of settlement proceeds to an account within the State. On October 5, 2000, all funds and securities were transferred from the CRIS to the Investment Fund. The Third Amended Order further allows the Governments to establish separate sub-accounts within the primary account “as the Trustee Council determines appropriate.” On October 1, 2002, three sub-accounts were created in the Investment Fund: the Research Investment Sub-Account, the Habitat Investment Sub-Account, and the Koniag Investment Sub-Account. These sub-accounts were established to carry out the Trustee Council’s decision in its Resolution of March 1, 1999 to manage separately the remaining assets of the Joint Trust Funds for the specific purposes of funding a long term research and monitoring program, the

acquisition of lands along the Karluk River, and the establishment of a fund to purchase small parcels of land that may become available in the future.<sup>1</sup>

Paragraph 27 of the Third Amended Order provides that “funds in an Investment Fund shall remain on deposit in that Fund until such time as the EVOS Trustees unanimously resolve to expend all or part of the funds.” The funds may then be expended, for purposes consistent with the MOA, upon the joint notification of the Governments to the Investment Fund and the Court. The notification is to inform the Court of the proposed uses of the funds in the same manner and to the same extent as was the Governments’ practice when the funds were in the registry of the Court.<sup>2</sup>

The Governments provide Notice of this sixty-seventh expenditure in the amount of \$570,000 from the Habitat Sub-Account, authorizing funding for purchase of the Kodiak Chief Cove Habitat Protection Parcel, KAP 4003, on Kodiak Island.<sup>3</sup> The entire amount that is the subject of this Notice will be provided to the United States.

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<sup>1</sup> The Koniag Sub-Account funds, which had been set aside for the protection, and potential purchase, of certain lands on Kodiak Island held by Koniag, Inc. (Koniag), were transferred to the Habitat Sub-Account on March 14, 2014 after the final payment due Koniag (after its termination of the Master Agreement for Protection of Certain Lands and Resources Between Koniag, Inc., the United States of America, and the State of Alaska and associated easements) was made, and the Koniag Investment Sub-Account was terminated. The payment was the subject of the Governments’ Fifty-Fifth Joint Notice of Expenditures from the Investment Fund.

<sup>2</sup> A copy of the notice provided to the Investment Fund pursuant to paragraph 27 of the Third Amended Order for Deposit and Transfer of Settlement Proceeds is appended to this Notice as Attachment A, pp. 1-2.

<sup>3</sup> The Trustee Council unanimously authorized the purchase of this parcel at its November 3, 2016 meeting in Resolution 16-02. *Sixty-Third Joint Notice of Expenditures from the Investment Fund*, Attachment A pp. 3-11 at Dkt. No. 475-1. A description of the Chief Cove Habitat Parcel is included at Attachment A, pp. 3-8.



The Trustee Council has not met since the Governments' filing on August 9, 2017 of their Sixty-Sixth Joint Notice of Expenditures. The Governments will submit the meeting notes for the Trustee Council's last meeting on January 11, 2017 once they have been approved by the Trustee Council.

RESPECTFULLY SUBMITTED this 27<sup>TH</sup> day of September, 2017 at  
Anchorage, Alaska.

FOR THE STATE OF ALASKA

JAHNA LINDEMUTH  
ATTORNEY GENERAL

By: /s/ JENNIFER L. SCHORR  
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FOR THE UNITED STATES

/s/ ERIKA M. WELLS (consent)  
Trial Attorney  
Environmental Enforcement  
Section  
Environment & Natural Resources  
Division  
United States Department of Justice  
c/o NOAA/Damage Assessment  
7600 Sand Point Way, NE  
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Telephone: (206) 526-6608  
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Email: Erika.Wells@usdoj.gov

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 27, 2017, a copy of the foregoing,  
SIXTY-SEVENTH JOINT NOTICE OF EXPENDITURES FROM THE  
INVESTMENT FUND, was served by the Court's CM/ECF system upon all persons  
registered to receive filings in this matter.

/s/Kendra Mons-Verley



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

**Department of Law**

CIVIL DIVISION  
1031 West 4th Avenue, Suite 200  
Anchorage, Alaska 99501  
Main: 907-269-5100  
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September 20, 2017

Mr. Bob Mitchell  
State Investment Officer  
Treasury Division, Dept. of Revenue  
P.O. Box 110405  
Juneau, AK 99811-0405

Re: *Exxon Valdez* Oil Spill Investment Fund

Dear Mr. Mitchell:

The *Exxon Valdez* Trustee Council has unanimously determined to expend \$570,000 in joint trust funds for restoration purposes consistent with the terms of the Memorandum of Agreement and Consent Decree entered by the federal district court in *United States v. State of Alaska*, No. A91-081 CIV (D. Alaska). This expenditure is entirely from the Habitat Sub-Account of the Investment Fund.

Under the terms of the Reimbursable Services Agreement between the Alaska Department of Fish and Game and the Alaska Department of Revenue, please transfer the following amounts from cash held in the *Exxon Valdez* Oil Spill Investment Fund to the accounts described below:

**United States**

Amount: \$570,000 from the Habitat Sub-Account

Beneficiary

Account: 14X5198

Name: Natural Resource Damage Assessment and Restoration Fund  
(NRDAR)

Beneficiary

Account: 14010001

Name: Department of the Interior

Mr. Bob Mitchell  
Treasury Division, Department of Revenue

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September 20, 2017

Financial Management Services National Business Center

Beneficiary Bank

Account: 021030004  
Name: Treasury, NYC

**OBI Text**

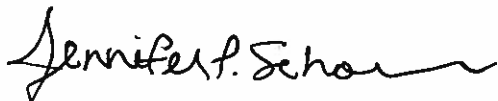
Natural Resource Damage Assessment Restoration Fund 14X5198  
EVOS Exxon Valdez, Civil Settlement

***Beneficiary Reference***

A91-082Civil

This transfer should take place when most financially advantageous, preferably on or before September 30, 2017. If you have any questions, please email Elise Hsieh at [elise.hsieh@alaska.gov](mailto:elise.hsieh@alaska.gov).

Sincerely,



Jennifer L. Schorr  
Assistant Attorney General  
Environmental Section  
State of Alaska  
Department of Law



Erika M. Wells  
Trial Attorney  
Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
United States of America

cc: Jennifer Reiersen, Alaska Department of Fish and Game, *via email*  
Michelle Kaelke, Alaska Department of Fish and Game, *via email*  
Carol Petrabor, Alaska Department of Fish and Game, *via email*  
Bronze Ickes, Alaska Department of Revenue, *via email*  
Bruce Nessler, Department of the Interior, *via email*  
Cherri Womac, Exxon Valdez Oil Spill Trustee Council Restoration Office, *via email*  
Linda Kilbourne, Exxon Valdez Oil Spill Trustee Council Restoration Office, *via email*

**Chief Cove Acquisition Protection Project – Kodiak National Wildlife Refuge**  
**Prepared by U.S. Fish & Wildlife Service**  
**October 14, 2016**

<b>Property Name:</b>	Chief Cove, Kodiak National Wildlife Refuge, Parcel No. KAP 4003
<b>Parcel size:</b>	159.96 acres ± (total acres for lots 1 and 2)
<b>Owner:</b>	Native Allotment Owner
<b>Agency Sponsor:</b>	United States Fish and Wildlife Service, National Wildlife Refuge System
<b>Appraised Value:</b>	\$570,000
<b>Funding Request:</b>	\$570,000

**Overview:**

This project will protect natural resources and their habitats through fee acquisition of two neighboring lots totaling 159.96 +/- acres located on the northwest coast of Kodiak Island. The property is situated just outside of Spiridon Bay, in Chief Cove, within the Kodiak National Wildlife Refuge acquisition boundary and located within the Exxon Valdez Oil Spill area. No roads access this remote property, but it is accessible by float plane and boat. The attached maps show the parcel as two lots surrounded by existing Refuge lands. (The nearby offshore island shown on the accompanying maps is within the Alaska Maritime National Wildlife Refuge and is not part of this proposed purchase.) If acquired, the property would be managed by the U.S. Fish & Wildlife Service as part of the Kodiak National Wildlife Refuge. The fair market value of the property will be determined by an appraisal prepared to EVOSTC, USPAP and UASFLA appraisal standards. The appraisal report will also be reviewed and approved by an Office of Valuation Services (U.S. Department of the Interior) review appraiser.

**Property Description and Habitat:**

The property is a Native Allotment consisting of a total of 159.96 +/- acres of remote land, plus improvements. The land area is divided into two lots that are oceanfront with Refuge lands on all other sides. Access is by float plane or boat. The property owner has not applied for water rights. A well is reported on the site and ponds are located above the property. The topography is rolling with a few level areas. The property was formerly used as remote lodging for hunters and fishermen. Improvements will be acquired with the property. There is a 20' x 30' main cabin with 2 bedrooms, a bathroom and kitchen. The 15' x 20' guest house has 3 bedrooms with a bathroom. Buildings share a 1,000 gallon septic tank. A wind mill is used as back-up for the 6,000 watt generator. There is also an 8' x 10' dilapidated building. As shown in the attached photo, the great majority of the property is undeveloped and contains high-value coastal and terrestrial wetlands. The terrestrial vegetation on the property is more open with less shrub and brush habitats compared to surrounding areas. The shorelines of the parcels consist of gravel and mixed sand/gravel beaches, salt and brackish water



marshes, and exposed rocky shores. The parcel has over 7,660 feet of ocean frontage just outside of Spiridon Bay in Chief Cove.

*Environmental Site Assessment:* There will be a Level One Environmental Site Assessment completed during the acquisition process and before closing. Initial inspection of the property did not show any signs of contamination.

#### **Restoration Benefits:**

The parcel provides many benefits to a large number of the natural resources and services impacted by the Exxon Valdez Oil Spill. Healthy habitats are essential for oil spill recovery. Therefore, the acquisition of this parcel will benefit future recovery efforts. The coastal wetland environment contains sea otter forage areas in the intertidal areas as well as harbor seal haul out and pupping habitat. The property is immediately adjacent to documented seabird nesting colonies occupied by Arctic Terns, a known sea bird in decline, Black-legged Kittiwakes, Glaucous-winged Gulls, and Black Oystercatchers. Purchase of this parcel would help ensure protection of these valuable marine habitats.

Great Land Trust EVOS Habitat Prioritization: As part of the habitat prioritization mapping project completed by Great Land Trust for the Trustee Council in 2014, Great Land Trust evaluated the property in its EVOS Habitat Prioritization Report. It is classified as “High” value for multiple injured resources and services. The following attributes contributed to the “High” ranking in the Great Land Trust’s prioritization:

- Highest category of Anadromous Diversity, with 7-8 species present.
- One parcel provides protection for juvenile fish habitat (continuous eel grass beds).
- Protection of the parcels would enhance protection of a nearby seabird nesting colony and its associated coastal forage area.
- The parcels contain coastal and terrestrial wetlands important for multiple species of birds.
- The parcels contain harbor seal habitat.
- The parcels border existing National Wildlife Refuge land, are within the approved Refuge acquisition boundary, and upon acquisition, they would become part of the Refuge.

Other Natural Resources and Services Benefitted: There are additional attributes of the parcel that represent great value to natural resources and the recreational and subsistence services dependent on them.

- The ocean waters adjacent to and the shorelines of the parcel are designated critical habitat for the southwest Alaska distinct population segment of the northern sea otter, which is listed as threatened under the federal Endangered Species Act.<sup>1</sup> The waters are also identified as a “sea otter concentration area” in spill response contingency plans.<sup>2, 3</sup>

<sup>1</sup> U.S. Fish and Wildlife Service. Critical Habitat for Threatened & Endangered Species (<http://ecos.fws.gov/crithab>).

<sup>2</sup> Alaska Response Team. 2010. Kodiak Subarea Contingency Plan ([http://dec.alaska.gov/spar/ppr/plans/scp\\_ki/ki\\_2010\\_D-SensitiveAreas.pdf](http://dec.alaska.gov/spar/ppr/plans/scp_ki/ki_2010_D-SensitiveAreas.pdf)). Map titled “KIB Sensitive Areas - Marine Mammals - Sea Otters” ([http://www.asgdc.state.ak.us/maps/cplans/kod/kib\\_sens/map07-layout1.pdf](http://www.asgdc.state.ak.us/maps/cplans/kod/kib_sens/map07-layout1.pdf)).

<sup>3</sup> Kodiak Island Borough. 1997. *Sensitive Areas Identification Project Report*.

- The ocean waters adjacent to and the shorelines of the parcels are designated critical habitat for the Steller sea lion, which is listed as endangered under the federal Endangered Species Act.<sup>1</sup>
- The ocean waters adjacent to the parcels are identified as Pacific herring spawning area.<sup>4</sup>
- The ocean adjacent to and the shorelines of the parcels are identified as “waterfowl concentration area” during the winter.<sup>5</sup>
- The ocean adjacent to and the shorelines of the parcels are identified as areas providing subsistence uses of marine resources such as crabs and intertidal invertebrates.<sup>6</sup>

EVOS List of Injured Resources and Services: Protection of the parcel would benefit many marine and terrestrial species on the EVOS Injured Resources List and the services dependent on them.

The species and services specifically identified on the EVOS List of Injured Resources and Services that would benefit from this habitat protection project are listed below.

Bald Eagles	Barrow's Goldeneye
Black Oystercatchers	Clams
Cormorants	Harbor Seals
Harlequin Ducks	Intertidal Communities
Mussels	Pacific Herring
Sea Otters	Sediments
Subtidal Communities	Passive Use
Recreation and Tourism	Subsistence

U.S. Fish & Wildlife Service Interest in the Property. Purchase of the property is a high priority for the Fish and Wildlife Service due to the habitat values of the parcel, its location surrounded by currently managed Refuge lands, the abundance of coastline and biological resources, and the excellent wetland conservation values. The property is surrounded by a large area of currently protected Refuge lands. Purchasing the parcel will create a large continuous tract of protected habitat, keeping the existing natural ecosystem of this area intact for wildlife and recreational and subsistence uses. Among other factors the Service considered with respect to this parcel:

- 1) Spiridon Bay is a highly desirable and sought after area in the remote Kodiak real estate market. The property is located in an area that has good access for both boat moorage and floatplane landings. This feature makes this parcel particularly appealing for a variety of potential uses in the private and commercial sector market. The property in the past has been used as a lodge, and the Service would like to protect the property and the surrounding habitat from further development. Purchasing this parcel would ensure that the land remains open to the public and free of additional development.

<sup>4</sup> Alaska Response Team. 2010. Kodiak Subarea Contingency Plan. Map titled “KIB Sensitive Areas - Fishery Resources - Herring Spawning, Pollock Spawning, Pollock, Juvenile Rearing, Anadromous Fish Streams” in Kodiak Subarea Contingency Plan. ([http://www.asgdc.state.ak.us/maps/cplans/kod/kib\\_sens/map01-layout1.pdf](http://www.asgdc.state.ak.us/maps/cplans/kod/kib_sens/map01-layout1.pdf))

<sup>5</sup> Alaska Response Team. 2010. Kodiak Subarea Contingency Plan. Map titled “KIB Sensitive Areas - Waterfowl - Ducks, Geese & Swans” ([http://www.asgdc.state.ak.us/maps/cplans/kod/kib\\_sens/map11-layout1.pdf](http://www.asgdc.state.ak.us/maps/cplans/kod/kib_sens/map11-layout1.pdf)).

<sup>6</sup> Alaska Response Team. 2010. Kodiak Subarea Contingency Plan. Map titled “KIB Sensitive Areas - Subsistence - Marine” ([http://www.asgdc.state.ak.us/maps/cplans/kod/kib\\_sens/map14-layout1.pdf](http://www.asgdc.state.ak.us/maps/cplans/kod/kib_sens/map14-layout1.pdf)).

- 2) Secondary to the conservation values of these parcels, the existing cabins may be usable as public use cabins or administrative base camp.

**Potential Threats:**

As noted above, the acquisition and protection of this parcel would eliminate a number of significant threats to birds, fish and wildlife, and their habitats, including the threat of more intensive commercial development and use, which would result in significant habitat loss, degradation, fragmentation of presently intact systems, and disturbance of resources during the most critical portions of their lifecycles. These restrictions can result in decreased wildlife diversity and decreased ability of populations of fish and wildlife to utilize resources necessary for their survival and to enable them to adapt to changes in their environment.

**Proposed Management:**

If acquired, the property will become part of the Kodiak National Wildlife Refuge and will be managed as such. The Kodiak National Wildlife Refuge is characterized by a diverse range of habitats within a relatively compact geographic area. Because of this, the Refuge supports some of the highest densities of brown bears, nesting bald eagles, and spawning salmon found anywhere on North America. More than 240 species of birds have been recorded in the Kodiak Archipelago. With a total resident population of bald eagles estimated at 2,250, more than 500 pairs of eagles nest on the Refuge. As many as two million seabirds inhabit the Refuge shoreline and adjacent bays and inlets. At least 150,000 ducks and geese also winter along the shoreline areas of the Refuge. In addition, seabird nesting colonies exist in close proximity to the Refuge and are home to the Arctic Tern, a known seabird in decline, Black-legged Kittiwake, Glaucous-winged Gull, and Black Oystercatcher. The Refuge is also important to subsistence uses by local residents. Some of these important marine and island habitats are those associated with the subject parcels, and would be protected as part of the Kodiak National Wildlife Refuge once acquired. Consistent with EVOSTC requirements for management of EVOS-acquired lands, and depending on their condition, the existing cabins on one portion of the property would be managed for public or administrative use and any funds generated thereby would be utilized for their ongoing maintenance or restoration. A dilapidated structure on the property is expected to be removed.

**Funding Request:**

The final purchase price required to acquire the property will be determined upon completion of an approved appraisal report, but it is expected that it will not exceed \$500,000, including due diligence and closing costs. The Trustee Council is asked to approve up to \$500,000 for the completion of this purchase.

Aerial view of the parcel, from northwest of the properties and looking toward the southeast. Lot 1 includes the buildings and peninsula shown in the photo's left. Lot 2 is on the photo's right.







## U.S. Fish & Wildlife Service

### Lots 1 and 2, USS 9402

