

MEMORANDUM OF AGREEMENT

DIRECTOR'S RECOMMENDATION

Reference: AK/EXXON VALDEZ OIL SPILL/CG/CLEANUP

Signature Recommendation:

[] Chairman
[] Executive Director

Staff Member: Alan Stanfill

Date Action Required: ASAP

Approved by Director:  6/12/90
Claudia Nissley (date)

Attached Briefing Statement: []
Attached Abstract: []

BRIEFING STATEMENT

Agency Proposal: The Coast Guard (CG) through the assistance of the Chugach National Forest (FS) has completed the process of developing a mutually acceptable MOA for taking into account the effects of the Exxon Valdez Oil Spill to historic properties situated in Prince William Sound, Alaska. The undertaking is the massive cleanup effort conducted in response to the oil spilled by the Exxon Valdez when on March 24, 1989, it ran aground on Bligh Reef in Prince William Sound. The CG with the advice of the SHPO, recognized early on that the cleanup, or treatment, efforts carried the potential to adversely affect historic properties through the actual cleaning techniques used and through vandalism and inadvertent damage by cleanup crews. Consequently, the CG obtained FS technical assistance for the development of measures to minimize effects.

Property and Effects: As of September, 1989, nearly 492 sites have been identified in the oil spill area. More than half of these are newly discovered as a direct result of the survey efforts conducted in response to the spill. These properties represent the full range of human experience in the Prince William Sound Area and include prehistoric properties such as cache pits, pictographs, rock shelters, burials, and middens and historic properties such as ship wrecks, cabins, fox farm features, mines, pilings, cemeteries, and stairs. The proactive protective intent of the

EXXON VALDEZ Cultural Resource Program has contributed to the minimization of the cleanup impacts. Treatment measures include avoidance, mapping, collecting, and monitoring; with avoidance being the most typical response.

Analysis of Consultation and Agreement: On May 8, 1989, the CG notified the Council's Western Office (WOPR) of a finding of adverse effect and requested our participation in consultation for the development of an MOA. WOPR was also informed that cleanup activities had started shortly after the spill, and that a program of pre-assessment surveys and effect minimization to cultural resources had been implemented in consultation with the SHPO. WOPR agreed to participate in consultation and over the next several months worked to coordinate the largely existing program of Spill Treatment Activities with the concerns expressed by a variety of interested parties by providing editorial suggestions to the FS which was assigned the task of developing the MOA for the CG.

The MOA recognizes the on-going Spill Treatment activities and commits the CG to ensuring that its terms will be carried out. Among these is ensuring that EXXON comports its cleanup activities with the terms of the MOA; providing appropriate pre-treatment survey, gathering supplementary information where needed, consulting with the SHPO and others at the appropriate times, producing appropriate reports and documentation for review by various agencies with oversight and monitoring responsibilities, and generally ensuring that the conditions and tasks set forth in Appendix B (Exxon Valdez Oil Spill Cultural Resources Work Plan) are implemented.

The MOA is largely the formalization of a process that has been on-going for more than a year. Nevertheless, the enclosed MOA is the result of eight previous drafts to which all concurring parties have had substantial and substantive input. Various (43) Native American Corporations and organizations have also contributed to the considerations reflected in this document. These negotiations have not proceeded smoothly, and the attainment of the eight signatures on this document is nothing short of miraculous. I recommend that the Executive Director sign the MOA.

Policy Issues or Other Considerations: The Council's proposed role in the study and development of a Disaster Management Plan for Historic Resource Protection (MEMO of May 14, 1990, from the Senior Architect to the ED and DED) might benefit from a review of the circumstances surrounding this case.

Accompanying Graphics/Illustrations:

no
 yes, to include:

IN

PRINCE WILLIAM SOUND, THE GULF OF ALASKA AND BEYOND

MEMORANDUM OF AGREEMENT

WHEREAS, the Exxon Valdez Oil Spill (hereinafter referred to as the Oil Spill) is the focus of a massive cleanup effort (hereinafter referred to as the Effort) comprising both the overall cleanup operations (hereinafter referred to as the Spill Response) and specific, localized physical and biological shoreline cleanup techniques (hereinafter referred to as Treatment), and

WHEREAS, the U.S. Coast Guard, Federal On-Scene Coordinator and lead Federal Agency (hereinafter referred to as the Coast Guard), pursuant to section 311 of the Federal Water Pollution Control Act, Executive Order 11735, and the National Contingency Plan (40 CFR Part 300) has recognized that the Effort may have an effect on prehistoric or historic districts, sites, buildings, structures, or objects (hereinafter referred to as Historic Properties) included in, or eligible for inclusion in, the National Register of Historic Places (hereinafter referred to as the National Register), and

WHEREAS, pursuant to the National Contingency Plan, the Coast Guard has requested the Forest Service, Chugach National Forest, U.S. Department of Agriculture (hereinafter referred to as the Forest Service) to properly advise and assist the Coast Guard in matters regarding the protection of Historic Properties, and

WHEREAS, the Coast Guard and the Forest Service have consulted with the Alaska State Historic Preservation Officer (hereinafter referred to as the SHPO), the Advisory Council on Historic Preservation (hereinafter referred to as the Council) and other interested parties concerning the preservation of Historic Properties, and

WHEREAS, the parties to this Agreement have agreed that the most appropriate means to provide protection for Historic Properties which may be affected by the Oil Spill or the Effort is to apply, as appropriate, the procedures set out in 36 CFR 800, which implement section 106 of the National Historic Preservation Act of 1966, as amended, and

WHEREAS, the Governor of Alaska declared the Oil Spill a disaster emergency under the authority granted by Alaska Statutes, Section 26.23.20, and

WHEREAS, the Spill Response operations have been conducted on an emergency basis with protection provided cultural resources through pre-Treatment surveys and consultation on Work Orders with the SHPO and the Interagency Shoreline

Cleanup Committees (hereinafter referred to as the ISCC) in Valdez, Seward, Homer and Kodiak, and

WHEREAS, the Oil Spill impact areas subject to pre-Treatment surveys, Spill Response operations and cultural resource protection are those shorelines, immediately adjacent uplands and open water areas in Prince William Sound and in the Gulf of Alaska and beyond, determined by the Coast Guard to be contaminated by the crude oil from the Exxon Valdez, and

WHEREAS, Exxon Company, U.S.A. (a division of Exxon Corporation), as contractor for Exxon Shipping Corporation, (hereinafter referred to as Exxon) is conducting Spill Response and Treatment activities under the coordination of the Federal On-Scene Coordinator, and

WHEREAS, Exxon currently is conducting Spill Treatment activities with due regard for the affected historical resources and in cooperation with the agencies having responsibility for said resources, and

WHEREAS, the unique Alaskan environmental conditions, numbers of concerned parties involved and lack of a viable data base may require that this Memorandum of Agreement (hereinafter referred to as the Agreement) be progressively revised, and

WHEREAS, the concurring parties and other Native corporations have been invited to consult and concur in the Agreement.

NOW, THEREFORE, the signatory parties agree that the Effort will be implemented with the following stipulations in order to take into account the effect of the Effort on Historic Properties.

A. GENERAL STIPULATIONS

1. For the purposes of this Effort and Agreement, all Historic Properties will be treated as being eligible for inclusion in the National Register. Necessity for rapid cleanup to minimize impacts to all resources precludes formal determinations of eligibility by any agency.

2. All archaeologists responsible for the identification, assessment of effect and mitigation will meet or exceed the minimum professional standards recommended by the Secretary of Interior (Federal Register, 9/29/83, 48:190, p. 44739).

B. SPECIFIC STIPULATIONS

The Coast Guard Will:

1. Direct Exxon's compliance with this Agreement so that the Shoreline Treatment Manual (hereinafter referred to as Appendix A), established on April 30, 1989, as amended, will be followed for the planning, execution and certification of the successful Treatment of shoreline contamination

from the Oil Spill. Changes in Appendix A will be made in consultation with the ISCC and the SHPO.

2. Direct Exxon's compliance with this Agreement respecting the development and implementation of a Work Plan (hereinafter referred to as Appendix B) for the Exxon Valdez Cultural Resource Program for the identification and protection of Historic Properties. Adverse effects will be minimized through data recovery where necessary within the Oil Spill impact area. Areas to be covered in Appendix B include the following:

- a. Identification of sites through 1) a search of the published literature of the existing data base, 2) results of pre-Treatment reconnaissance surveys of shorelines and land based activities and 3) local sources of information.
- b. Determination of the adequacy of documentation used to support Spill Response and mitigation recommendations will be evaluated by the SHPO (using the ISCC meetings for identification of disagreements on adequacy) in consultation with the adjacent upland owner or land managing agency. In cases judged inadequate by the SHPO, upland owner or land managing agency responsible for the property at issue, the Coast Guard will direct Exxon to gather supplementary data to reach an adequate level of identification or documentation of historic properties. Participation by private upland owners is discretionary on their part.
- c. Review by the SHPO of all Shoreline Cleanup Program Assessments (hereinafter referred to as Block Assessments) prepared by Exxon, to evaluate the identification of sites and assessment of effects and Treatments to sites impacted by the Spill Response.
- d. Review of the Block Assessments by the ISCC, in which the affected Native village or regional corporations have the opportunity to participate.
- e. The regular monitoring of archaeological survey techniques, Treatment activities, and post-Treatment site conditions. This monitoring will be conducted by the Coast Guard, the Forest Service, Exxon, the SHPO and members of the ISCC.
- f. The timely production and submittal of interim and final reports, conforming to the Secretary of the Interior's Standards and Guidelines (Federal Register, 9/29/83, 48:190, p. 44736-44737), as defined in the Work Plan.

3. Direct Exxon's compliance with this Agreement so that Exxon makes available to the SHPO the Cultural Resource Background Documentation for the various shoreline blocks and segments. This document transfer will occur at the time the

SHPO reviews each block to approve cultural resource recommendations or no less frequently than by the first and fifteenth of each month, whichever is most timely, to satisfy the State of Alaska Department of Natural Resources' (hereinafter referred to as the DNR) tidelands permit. After fieldwork is completed, revised copies of the Cultural Resource Background Documentation for the shoreline blocks and segments will be provided.

4. Direct Exxon's compliance with this Agreement so that as the survey, monitoring and post-assessment stages progress, Exxon provides copies of incremental submissions relating to shoreline blocks and segments to the SHPO as soon as they are generated. Access to photographs, videos and lists of artifacts will be provided as soon as possible, but not later than one month after approval for that segment's cleanup.

5. Direct Exxon's compliance with this Agreement so that Exxon follows the regulations of 36 CFR 296.18 regarding the requirements for confidentiality of archaeological resource information and for involving concerned Native groups in a timely manner.

6. Direct Exxon's compliance with this Agreement so that Exxon provides SHPO, and if requested, the responsible land owner or managing agency, with Shoreline Cleanup Assessment Team reports, field surveys and documentation at all command centers of data gathering (Valdez, Kodiak, Homer and Seward) when they are generated.

The Forest Service will monitor and advise the Coast Guard respecting Exxon's performance of its responsibilities under this Agreement, including Appendix B.

Exxon will:

1. Carry out Appendix B.
2. Make available to the SHPO the Cultural Resource Background Documentation for the various shoreline blocks and segments. This document transfer will occur at the time the SHPO reviews each block to approve cultural resource recommendations or no less frequently than by the first and fifteenth of each month, whichever is most timely, to satisfy the State of Alaska Department of Natural Resources' (hereinafter referred to as the DNR) tidelands permit. After fieldwork is completed, revised copies of the Cultural Resource Background Documentation for the shoreline blocks and segments will be provided.
3. As the survey, monitoring and post-assessment stages progress, provide copies of incremental submissions relating to shoreline blocks and segments to the SHPO as soon as they are generated. A copy of photographs, videos and lists of artifacts will be provided as soon as possible, but not later than one month after approval for that segment's cleanup.

4. Follow the regulations of 36 CFR 296.18 regarding the requirements for confidentiality of archaeological resource information and for involving concerned Native groups in a timely manner.
5. Provide the SHPO, and if requested, the responsible land owner or managing agency, with Shoreline Cleanup Assessment Team reports, field surveys and documentation at all command centers of data gathering (Valdez, Kodiak, Homer and Seward) when they are generated.
6. Exxon will provide the SHPO, land managing agency or upland owner, supplementary data to reach an adequate level of identification or documentation of historic properties in those cases where the SHPO, the upland owner or land managing agency, in consultation, determine that the documentation used to support Spill Response and mitigation recommendations is inadequate.

C. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND BETWEEN THE SAID PARTIES THAT:

1. To the extent of their respective authorities, all parties, other than Exxon will provide Exxon with the access, permits and supporting data necessary to expedite the Effort. Indexes or other finding aids of documents, photographs, videos, and artifacts will be made available to Exxon, the SHPO, and responsible landowners or managing agencies as they become available or are revised.
2. SHPO review of the Block Assessments and Work Orders will be done in an expeditious manner, waiving the standard DNR and 36 CFR 800 review periods.
3. Exxon shall enter into a curation agreement with the University of Alaska, Fairbanks for the housing and care of artifacts and records collected during the Effort, in keeping with 36 CFR Part 79.
4. Information and artifacts collected from lands selected under the provisions of Section 14(h)(1) of the Alaska Native Claims Settlement Act will be curated in a state of trust in a certified depository as arranged by the responsible Federal land manager in consultation with the affected Native corporation until ownership has been resolved.
5. Nothing in this Agreement shall be construed as holding any party responsible for the health and safety of the members of the others during any phase of the Effort.
6. Nothing in this Agreement is intended to modify in any manner the present cooperative programs of the parties with States, other public agencies or educational institutions.
7. All parties will execute this Agreement and carry out its provisions. This Agreement evidences that the Council has been afforded an opportunity to comment on the Effort and that consideration has been given to the effects of the Effort on Historic Properties.

8. At any time during implementation of measures stipulated in this Agreement, should any objection to any measure be raised by a member of the public or members of the ISCC, the Coast Guard, with the advice of the Forest Service shall take into account and consult as needed with the objecting party, the SHPO or the Council to resolve the objection.

9. Any party to this Agreement may request that the other signatories consider amending it. Amendments will be executed in the same manner as the original Agreement.


10. Any signatory party to this Agreement may terminate it by providing 30 days written notice to the other parties, provided that the other parties will consult during the period prior to termination to seek agreement on amendments or other action that would avoid termination. In the event of termination, the Coast Guard, with the advice of the Forest Service, will consult with interested persons, including the Council.

11. Unless terminated under the conditions set forth above, this Agreement and related plans shall remain in effect until the Coast Guard, in accordance with the National Contingency Plan, determines that the Spill Response has been completed. The Coast Guard will notify the Council of the determination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last date set out under SIGNATORY PARTIES below.

SIGNATORY PARTIES

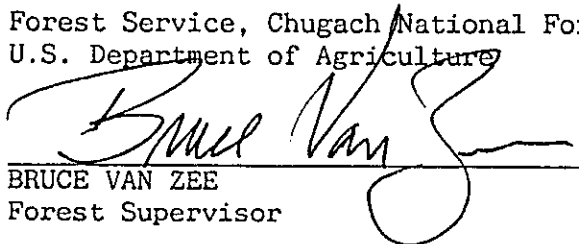
U.S. Coast Guard
U.S Department of Transportation



RADM David E. Ciancaglini, USCG
Federal On Scene Coordinator
Commander, Pacific Area

8 June 1990
Date

Forest Service, Chugach National Forest
U.S. Department of Agriculture



BRUCE VAN ZEE
Forest Supervisor

May 9, 1990
Date

Alaska Department of Natural Resources
Division of Parks and Outdoor Recreation

Judith E. Bittner
JUDITH BITTNER
Alaska State Historic Preservation Officer

May 8, 1990
Date

Exxon Company, U.S.A.
A Division of Exxon Corporation, as
Contractor for Exxon Shipping Corporation

JMH
[Signature]
OTTO R. HARRISON
General Manager

May 7 / 1990
Date

Advisory Council on Historic Preservation

Robert D. Bush
ROBERT D. BUSH
Executive Director

6/15/90
Date

CONCURRING PARTIES

National Park Service, Alaska Region
U.S. Department of the Interior

[Signature]
BOYD EVISON
Regional Director

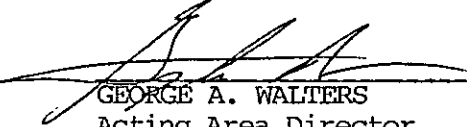
5/11/90
Date

U.S. Fish and Wildlife Service, Region 7
U.S. Department of the Interior

WOS
Walter O. Stieglitz
WALTER O. STIEGLITZ
Regional Director

5/9/90
Date

Bureau of Indian Affairs, Alaska Area
U.S. Department of Interior

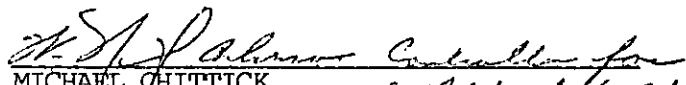


GEORGE A. WALTERS
Acting Area Director



Date 5/22/90

Chugach Alaska Corporation



MICHAEL CHITTICK
President



Date 6/7/90

CONSULTED PARTIES

Statewide Native Organization

Alaska Federation of Natives

Alaska Native Regional Corporations

The Aleut Corporation

Bristol Bay Native Corporation

Cook Inlet Region, Incorporated

Koniag, Incorporated

Alaska Native Village Corporations

Akutan Corporation

Atxam Corporation

Belkofski Corporation

Chaluka Corporation

Isanotski Corporation

King Cove Corporation

Ounalashka Corporation

Nelson Lagoon Corporation

Samak Corporation

Shumagin Corporation

St. George Tanaq Corporation

Tanadgusix Corporation

Unga Corporation

Bay View Corporation

Chignik Lagoon Native Corporation

Chignik River, Limited

Far West, Incorporated

Oceanside Corporation

Chenega Village Corporation

English Bay Corporation

Eyak Village Corporation

Port Graham Village Corporation

Tatitlek Village Corporation

Ninilchik Native Association, Incorporated

Seldovia Native Association, Incorporated

Afognak Native Corporation

Akhiok-Kaguyak, Incorporated

Leisnoi, Incorporated

Natives of Kodiak, Incorporated

Old Harbor Native Corporation

Ouzinkie Native Corporation

Other Native Organizations Consulted

Karluk IRA Traditional Council

Larson Bay Tribal Council

Kodiak Area Native Association