

Memorandum of Understanding

Co-Management of Kenai River Ranch (OSL #1066)
ADL 226738

between

Department of Natural Resources,
Division of Parks and Outdoor Recreation
and

Department of Fish & Game, Division of Habitat and Restoration

DEC 23 1999

Whereas the following described real property has been acquired pursuant to AS 41.21.020 (a)(3) for management for park and recreational purposes.

Government Lots Four (4), Nine (9), Ten (10) and the NE 1/4 of the SW 1/4, Section 22, Twp. 5 N., Range 9 W., Seward meridian, Kenai Recording district, third Judicial district, State of Alaska, according to the plat of survey accepted by the United States Department of the Interior General Land Office at Washington, D.C., on May 6, 1941.

The Department of Natural Resources, Division of Parks pursuant to AS 41.21.020 (a)(5) wishes to provide for the care, management, supervision, improvement, and maintenance, of this parcel as well as provide for the protection of the fishery and wildlife resources and habitat of this parcel, through the implementation of a Memorandum of Understanding with the Department of Fish and Game, Division of Habitat.

This Memorandum of Understanding, entered into this Firstday of December, 1999, is established to preserve and protect in perpetuity the ecological, natural, recreational, physical and scenic values of the subject property, ADL 226738 for the benefit of fish and wildlife resources and associated services including but not limited to recreation, tourism, and sportfishing which were injured in the Exxon Valdez oil spill.

Jurisdiction and management of the land shall be consistent with the assignment of Management Rights, ADL 226738 included as Attachment "A" and all exhibits and attachments thereof; the Trustee Council Resolution dated 11/20/95, and made a part of this document as Attachment "B"; AS 41; and AS 16.

With the common purpose of implementing this memorandum of understanding, the Department of Natural Resources, Division of Parks and Outdoor Recreation (DPOR) and the Department of Fish & Game, Division of Habitat and Restoration (DHR) or their successors in function, mutually agree:

1. **Public Access Easements.** This agreement is subject to all easement and rights-of way of record.
2. **Returned Land.** All interest in the land will be retained by the State of Alaska. Land returned to the Department of Natural Resources (DNR), Division of Land, for any reason shall be returned in an environmental and physical condition acceptable to the Director, Division of Land, within three (3) years, subject to funding restrictions, from

the date the Assigned abandons or relinquishes the site. This may include rehabilitation of the site and/or removal of any improvements, equipment, and material.

3. **Valid Existing Rights.** This assignment is subject to all valid existing rights and easements, rights-of-way and reservations of record including the Conservation Easement held by the United States and included as Exhibit "C". With the concurrence of the Department of Natural Resources, Division of Parks (DPOR), and the Department of Fish & Game, Division of Habitat & Restoration (DHR), additional easements and rights-of-way may be dedicated or vacated through normal surveying and platting processes.
4. **Project Development.** The diversion or other modification of any drainages, or the addition of a fuel or chemical storage area will be developed, at a minimum, in concurrence with Environmental Protection Agency (EPA), Department of Fish & Game (ADF&G) AS 16, and Department of Environmental Conservation (DEC) standards.
5. **Improvements/Use/Activities.** Improvements made to, use of, and activities on the property may be undertaken which are determined to be necessary for either habitat protection, fish and wildlife research or management, outdoor recreation management, cultural resource management, or for conveying information to the public to protect public safety or natural resources. All such actions will require joint concurrence of DPOR and DH&R. In addition, DPOR and DH&R will ensure that improvements, uses, or activities which maintain the functional integrity of riparian habitat, and/or wetlands, and are consistent with the Kenai River Special Management Area Plan will take place.
6. **Location of Improvements.** Per AS 38.95.160, a professional architect, landscape architect, archaeologist, engineer, and/or surveyor shall supervise the location and design of any improvements on the tract and shall be responsible for preparing a survey plat for recording in the appropriate recording district if the total value of improvements on the assignment area becomes more than \$100,000. Each professional shall be responsible for that part of the project to which his or her license/certification pertains.
7. **Industrial or Commercial Activity.** The subject property will not be used for any industrial or commercial activity that would detract from the purposes for which the property was acquired.
8. **Fuel and Hazardous Substances.** Secondary containment shall be provided for fuel or hazardous substances.
 - a. **Exception for the short-term storage of small volumes.** The requirement for secondary containment is waived for those fuels and hazardous substances in containers with a volume of 55 gallons or less which are in place for 7 days or less, provided that the total combined volume in place without containment of a pad or work area does not exceed 660 gallons for fuel, hydraulic fluid, or lubricants or 55 gallons for other hazardous substances.
 - b. **Container marking.** All independent fuel and hazardous substance containers shall be marked with the contents and the owner's name.

c. **Fuel or hazardous substance transfers.** Secondary containment or drip pans must be placed under all container or vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fuel or hazardous substance transfers. Appropriate spill response equipment must be on hand during any transfer or handling of fuel or hazardous substances to respond to a spill of up to five gallons.

d. **Storing containers near waterbodies.** Containers with a volume larger than 55 gallons which contain fuel or hazardous substances shall not be placed within 100 feet of a waterbody.

e. **Exceptions.** The Division of Land may, under unique or special circumstances, grant exceptions to this stipulation on a case by case basis.

f. **Definitions.**

"Containers" is defined as any item which is used to hold fuel or hazardous substances. This includes tanks, drums, fuel tanks on small equipment such as light plants and generators, flow test holding tanks, slop oil tanks, bladders, and bags. Manifold tanks must be considered as a single independent container. Vehicles are not intended to be included under this definition.

"Hazardous substance" is defined under AS 46.03.826(5) as (a) an element or compound which, when it enters the atmosphere, water, or land, presents an imminent and substantial danger to public health or welfare, including fish, animals, or vegetation, (b) oil, or (c) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

"Secondary containment" is defined as an impermeable diked area or portable impermeable containment structure capable of containing 110 percent of the volume of the largest independent container. Double-walled tanks do not qualify as secondary containment unless an exception is granted for a particular tank.

9. **Notification of Unauthorized Discharge.** The DPOR or DH&R shall immediately notify DEC and DNR by phone of any unauthorized discharges of oil to water, any discharge of hazardous substances (other than oil), and any discharge of oil greater than 55 gallons solely to land and outside an impermeable revetment. If a discharge of oil is greater than 10 gallons, but less than 55 gallons, it must be reported within 48 hours by phone or fax. If a discharge is less than 10 gallons, it may be reported in writing on a monthly basis.

The DEC spill report number is: 1-800-478-9300. The DNR 24-hour spill report number is (907) 451-2678; the fax number is 451-2751. The DNR shall be supplied with all follow-up incident reports.

10. **State and Federal Statutes and Regulations.** The DPOR and DH&R and its assigns shall comply with applicable state and federal statutes and regulations.

11. **Indemnity.** In connection with the entry on or use of lands assigned, the DPOR and DH&R shall ensure that its contractors and subcontractors shall indemnify, save harmless, and defend the state, its agents and its employees from any and all claims or actions for injuries or damages sustained by any person or property arising directly or indirectly from the construction or the contractor's performance of the contract, except when the sole proximate cause of the injury or damage is the state's negligence.

12. **Transfer of Rights.** The subject property will not be subdivided, sold, leased, exchanged, or otherwise transferred without the approval of both DPOR and DH&R.

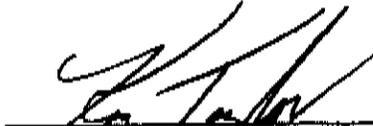
Nothing in this Cooperative Agreement shall obligate either agency in the expenditure of funds.

Each agency agrees that it will be responsible for its own acts and the results thereof.

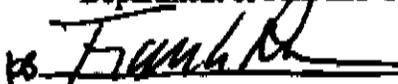
This agreement may be terminated or amended by mutual agreement.



Jim Stratton, Director
Division of Parks & Outdoor Recreation
Department of Natural Resources



Ken Taylor, Director
Division of Habitat & Restoration
Department of Fish and Game



Frank Rue, Commissioner
Office of the Commissioner
Department of Fish and Game