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Raina Thiele  
Senior Advisor, Alaska Affairs  
US Department of Interior  
[raina\\_thiele@ios.doi.gov](mailto:raina_thiele@ios.doi.gov)

Chris French  
Deputy Director  
US Forest Service  
[christopher.french@usda.gov](mailto:christopher.french@usda.gov)

Re: Supplemental Letter: Chugach Region Land Study, Socio-Economic Impact Assessment

***This supplemental letter to the Chugach Region Land Study (the "Study") is being submitted for inclusion in the Chugach Region Land Study and Report. This supplement provides Chugach Alaska Corporation (CAC) an opportunity to express our position regarding the outcome of the study and report, specifically with the conflict that exists on split estate lands where CAC owns the subsurface and the federal government owns the surface estate and/or conservation easement, as a result of the Exxon Valdez Oil Spill Trustee Council Habitat Protection and Land Acquisition Program (the "Program").***

The John D. Dingell Jr. Land Conservation and Recreation Act was signed into law on March 12, 2019. Section 1113 of the Act called for the Chugach Region Land Study (the "Study") to include recommendations for one or more land exchanges between CAC and the Federal Government, with a report to Congress completed within 18 months. Over these past 3 years and 9 months, CAC has engaged with regional representatives for the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS), and more recently with federal representatives of the Department of Interior (DOI) and USFS, to complete and forward the study as directed by law. We appreciate the opportunity to provide input that represents our voice in this process. Many of the significant points we made throughout this extensive process have not been captured in the Study in a way that represents the full impact of the Program on CAC and CAC Lands. In summary these significant impacts are as follows:

- Following the Exxon Valdez Oil Spill, settlement funds were used by federal agencies to purchase apx. 240,000 acres of Native lands from devastated Village Corporations in the spill impacted area where CAC owns the subsurface estate. Conservation easements were placed on the lands with the intention of assuring restoration, conservation and recreation in perpetuity. This clearly conflicts with the intention of the Alaska Native Claims Settlement Act (ANCSA) for the lands to be used for economic benefit to provide for self-determination of the Chugach Native people. Subsurface development is now impaired due to layers of complexity that adds to costs, timelines and significantly increases legal and financial risks to CAC by orders of magnitude greater than would be the case had the surface ownership remained with the Alaska Native Village Corporations in the CAC Region.

- The effects of the Program also created a devaluation of CAC lands. The agencies, using EVOS funds, bought the surface estate and placed restrictive conservation easements on the land which subsequently devalued the subsurface estate inordinately because of the conflict on the split estate which the Program created. The goals of CAC and the federal government regarding the management of these lands are vastly different.
- Public perception impacts CAC's rights to develop its subsurface resource. As part of the NEPA process, public comments are reviewed and can impact the outcome. The public understandably believes the Program acquisitions were to assure conservation and restricted use in perpetuity so any development on Program lands is subject to negative public perception. This is harmful to CAC's ability to pursue its development rights as well as to our reputation.
- The impacts of the Program on CAC and CAC lands have been overwhelmingly negative. Even the implied positive benefits to the Chugach Region stemming from direct monetary benefits to the Village Corporations cannot with any level of certainty be tied to any indirect economic benefits for the Chugach Region. Further, there is no evidence that the minute fraction of Native lands acquired by the Program in comparison to the 9.4 million of acres of public lands already owned by the federal and state government in the Region, provided any material or measurable benefit with respect to restoration and rehabilitation of the spill impacted area, which was the premise under which the lands were acquired. In fact, more negative impacts have resulted due to increased competition for highly valued subsistence resources, trespassing and damages to nearby Native lands as a result of increased public access on Program acquired lands.

## HISTORICAL CONTEXT

Shortly after midnight on March 24, 1989, the Exxon Valdez oil tanker, loaded with fifty-three million gallons of North Slope crude oil ran aground on Bligh Reef in Prince William Sound, roughly one mile from the Native village of Tatitlek. In the hours and days that followed nearly 11 million gallons of crude oil would spill out of the tanker and cover more than 1,400 miles of coastline.

The communities of the Chugach Region were the hardest hit with the devastating impacts of the spill. What had been a promising spring for subsistence and commercial fishing harvests, suddenly turned as black as the crude oil that covered the water and the beaches, with a wake of death and destruction that killed thousands of marine mammals and birds, and devastated fisheries upon which the local people depend for survival. In the words of Chief Walter R. Meganak Sr. *"It was early in the springtime. No fish yet. No snails yet. But the signs were with us. The green was starting. Some birds were flying and singing, the excitement of the season had just begun, and then we heard the news. Oil in the water. Lots of oil. Killing lots of water. It is too shocking to understand. Never in the millennium of our tradition have we thought it was possible for the water to die. But it is true. We walk our beaches. But the snails and the barnacles and the chitons are falling off the rocks. Dead. Dead water."*

Lives were forever transformed from this event, which sent economic shock waves throughout the spill-impacted area. Commercial fishing, tourism and the service industries that depended on these economic drivers were sent into a tailspin. The only jobs or economic benefits that were available in the

days that followed was work related to the cleanup efforts. Efforts that ultimately were too little, too late and created further social challenges for those who went to work on the cleanup versus those who refused to work on the spill due to their anger and distrust of the industry that created the devastation.

Villages in the Chugach Region were especially vulnerable. Without the fishing economy and subsistence resources, there was no way for the people to provide for their families. There would ultimately be lawsuits and claims paid, but that would come many years, even decades later. Damages ultimately were reduced from \$5b to only \$507m, and many of the original claimants were no longer living once the payments were finally made. To this day, there are resources that have not recovered from the spill 31 years ago, such as pacific herring, and lingering oil can still be found just inches from the surface on beaches throughout the region.

In the wake of the oil spill, the Exxon Valdez Oil Spill Trustee Council (EVOSTC) was established. A total of \$900 million dollars in settlement funds from Exxon were put into the trust, which was intended to provide for the restoration and recovery of injured resources, and the human services and needs that depended on these resources. In the years that followed establishment of the EVOSTC, the majority of settlement funds have been used for the purchase of lands under the EVOS Habitat Protection and Land Acquisition Program (HPP), the majority of these being Native lands. Villages in the Chugach Region who had experienced the devastating economic and social impacts of the spill were approached, at a time when they were most vulnerable, with offers to buy their lands under this program. Many Native leaders believed this was the only way to realize any financial recovery with which to provide for their shareholders, many of whom had suffered extremely difficult financial hardships as a result of the oil spill.

As if the impacts of the spill on these small village communities were not enough, the federal agencies who would benefit from the land acquisitions now had a war chest from which to draw funds to scoop up Native lands. While the Program documents describe their policy of purchasing lands from a “willing seller” in program terminology, the reality is, it was tantamount to a land grab, by deploying teams of skilled negotiators to take advantage of a vulnerable and stressed population at a devastating time in our history. The Program sought to eliminate as much as possible of what was already a relatively small amount of private, Native-owned land within the vast federal holdings in the Chugach Region

To Alaska Natives, the land is sacred. Our people have lived and subsisted on the lands in the Chugach Region for thousands of years. As reported in the 2009 publication “Mission Without a Map – The Politics and Policies of Restoration Following the Exxon Valdez Oil Spill: 1989-2002” by Joe Hunt *“Native residents, especially those with no shares in the corporation, want above all else to protect the subsistence way of life and maintain a sense of tradition, which includes a spiritual connection to the land around them. Many of them fear that selling the land might break that spiritual connection and impair their subsistence economies. To others, inside and outside the villages, selling land was the ultimate insult – first Exxon oil on their shores and then government bureaucrats waving money to take their land away. To them it had been a long battle for ownership of their land surrounding the villages and no amount of money could justify giving up that ownership. Further it was reported that “The trustees were heavily criticized for even tempting Native corporations with its offers to buy. Testimony of village residents and non-residents frequently condemned the trustees for this program.”*

The Chugach Region encompasses apx. 9.8 million acres of land, with the vast majority (over 75%) of the lands owned by the federal government, with the U.S. Forest Service being the single largest land owner. Combined, the federal and state government own over 89% of lands in the region. The Program resulted in 242,700 acres of village corporation surface estate or a conservation easement on the surface estate being purchased where CAC owns the subsurface estate. In other words, a very small portion (2.5%) of the lands in the region were purchased under the Program. It's hard to imagine how such a small percentage of lands could be so highly critical to habitat protection and restoration when the federal and state governments already owned the vast majority of lands that were impacted by the spill. To our knowledge, there exists no proof positive that the acquisition of Native lands resulted in any quantifiable benefit related to the program goals, such as recovery or restoration of any particular resource, yet those acquisitions, to which CAC was not a party, have had a major negative impact on CAC's ability to develop its subsurface for the benefit of its Native shareholders as envisioned by ANCSA.

According to the Exxon Valdez Oil Spill Restoration Habitat Protection and Acquisition Atlas published in March, 1999, *"The acquisition of private lands, or partial interests in private lands, is intended to promote natural recovery of spill injured resources and services by maintaining habitat which support the various life-history stages of injured resources. These lands will be managed in perpetuity for the restoration and protection of resources and services injured by the spill and for the enjoyment of the public for purposes of subsistence use, sport fishing and hunting, personal use fishing, trapping, recreational uses and commercial fishing"*. Further, it was reported that *"a multi-agency team of negotiators and land managers negotiated acquisition packages that attempt to preserve economic opportunities and the cultural heritage of native landowners as well as the restoration benefits derived from large contiguous parcels of land"*.

The villages who sold lands did realize direct monetary benefits from the land sales, as reported in the Chugach Region Land Study Socioeconomic Impact Assessment. Native leaders wisely put funds aside by creating trusts to pay dividends in perpetuity, as a way to make up for the loss of benefits the lands would have provided. Some also invested in business development to accomplish long term economic gains. However, as reported in the study many saw the land sale as their only viable alternative and regret the negative impacts that have occurred as a result of the land sales, including problems with increased competition for traditional subsistence resources as a result of public access on what previously had been private Native-owned lands, as well as problems with trespassing and other impacts associated with the increase in public access.

The average price paid for Native lands that were purchased in the Chugach Region was \$450 per acre. As reported in Chapter 6 of the Study, some of the key informants interviewed took exception to the valuation of lands and stated that the comparable values used in the valuation were of lower value than the land purchased. In the publication *Mission Without a Map* one landowner said, "Appraisals feign accuracy when there is none." Molly McCammon, the EVOSTC executive director at the time stated "If you and I were able to buy a piece of wild Alaska [within the Kodiak National Wildlife Refuge] for \$180 an acre or even \$400 an acre there would be a land rush" she said "Wouldn't any of us be willing to buy a prime piece of Alaska at that price?"

For the Chugach Alaska Corporation (CAC), the negative impacts have been most severe, in fact there have been no positive impacts realized as a result of the Program on CAC and CAC lands. The socio-economic study goes into detail regarding those negative impacts in Chapter 7, notably:

- *“The Program has added multiple layers of complexity to the development of subsurface resources for CAC”*
- *In particular “when the SSE resource falls into categories 3-8 both the state and federal governments have legal interests in the affected surface estates. In addition, the village corporation would be a party to negotiations under categories 3 and 4. Even if negotiations for development of SSE resources are amicable, the fact that multiple parties are involved will increase the complexity of development”*

Further, the Program has made for constraints that increase the costs and timeline for any subsurface development, as reported in Chapter 4. These impairments on the value of CAC lands include:

- *“Program acquired lands are those in which the surface estate was specifically acquired for protecting natural resources and allowing for the recovery of damages caused by the oil spill. Management of the lands under the Program in the Chugach Region can be affected by the legal definition of the deeds and conservation easement agreement for individual parcels.*

While CAC might have the right to develop its subsurface resources, these constraints clearly make exercising these rights extremely difficult. For example, as stated in the socio-economic study

- *“On Program lands certain activities are prohibited, including changing the topography, dumping trash, using biocides, removing or destroying plants, except for subsistence or medicinal use, altering water courses, using motorized vehicles, with the exception of float planes, removing or harvesting timber, introducing nonindigenous plants, and building facilities”* All restrictions are enforced through conservations easements held by the State of Alaska or federal government agencies. For all parcels access to prior existing rights, including the rights of the subsurface estate owner to develop their dominant mineral estate would be maintained, subject to reasonable limitation imposed by the surface estate owner.

#### CHUGACH REGION LAND STUDY:

The complications the acquisitions under the Program have created for CAC are well laid out in the study. Development of the subsurface estate on Program lands now requires a much more rigorous NEPA process, which not only significantly extends the timeline for the project, but also increases the costs due to program constraints and stipulations made on development. In addition, public perception creates challenges for development because the stated intent of the Program acquisitions was for conservation, yet when members of the public learn CAC is developing a resource on these lands there has been complaints and negative comments made which can cast a negative opinion towards CAC when we are simply pursuing the rights we are entitled to. As the study notes, there is a public perception that development of EVOS subsurface is prohibited. Further, there are different interpretations of what is a “reasonable limitation”. This language can be narrowly or broadly construed in the permitting process. Not only does this add time and costs to any potential development, but it also opens CAC up to legal action and liability for pursuing economic development projects on our lands, which was the intention of ANCSA. Had the lands stayed in Native ownership of the surface estate this would not be the case.

The Exxon Valdez Oil Spill Habitat Protection and Acquisition Program (HPP) was intended to manage these lands for restoration and protection of resources in perpetuity. EVOSTC funds were utilized to purchase these lands and place conservation easements on the lands for this purpose. However, in reality the Program could never deliver on this commitment with respect to surface estate lands that were purchased from village corporations where Chugach holds the subsurface estate. Any conclusions from the Chugach Region Land Study that does not recognize this fact is highly flawed. Numerous publications and program documents describing the Program clearly establish the goals of the program, none of which align with resource development rights of CAC as the owner of the subsurface estate.

With respect to land exchange discussions with the agencies, early in the process CAC put forth lists including maps and technical details of its subsurface lands available for exchange, as well as identifying lands we are interested in acquiring from the federal government. Initially we identified lands to acquire both within and outside of our Region. We were told that federal lands outside of our region could not be included and so we focused on lands in region. Included in our list of lands that we are interested in acquiring we identified several culturally significant sites in our region. Initially we were told that those lands also could not be included. We do want to state for the record that our cultural sites do meet the definition provided in the Act as both accessible and economically viable for opportunities such as recreation and cultural tourism development.

As noted earlier, the Chugach Region consists of nearly 10 million acres. Of this the federal government owns apx. 7.4 million acres, the overwhelming majority of lands in our region. Given the tremendous amount of acreage that the federal government holds in our region, our hope has been that a fair and just land exchange to include some of our culturally significant sites in exchange for the Program lands would not be difficult to achieve. We appreciate that the USFS recently added our top priority cultural site to the identification of lands available for exchange. This important cultural site was home to one of our oldest villages and is where we have held our annual culture camp for over 25 years to sustain the culture, heritage and traditions of the Chugach native people.

Some of the options that have been included as lands identified for potential exchange are not accessible and/or economically viable. This includes the BLM land in the Bering Glacier area and USFS land in the Snow River area. Meanwhile, some of the federal lands we identified of interest to CAC that do meet the definition of the Act have not been included. The agencies have stated their desire to maintain public access for recreation. We respectfully argue that there are development opportunities that are in the public interest which we wish to pursue on these lands, such as carbon sequestration, renewable energy and cultural tourism.

Under the Dingell Act, the Chugach Region Land Study was to be done in consultation with CAC, and we were involved with respect to providing information to the contractor for the Study. We attended several consultation meetings and provided significant comments related to the draft study. We believe it is important to document that this journey has not been easy, which led to this process taking much longer than called for in the Act. We are pleased that the involvement of higher level federal agency staff more recently has led to a more meaningful consultation experience. Meaningful consultation means that there is two-way dialogue and consideration of our position and input as the indigenous people who first settled in the region thousands of years ago.

Almost 34 years after the EVOS disaster it is time for Chugach Alaska corporation and our people to have our land issues resolved by the federal government in order to provide closure over these long-standing conflicts and frustrations in order to heal.

In a March 2021 letter to the BLM Regional Director, Chugach offered its own version of what should be included in the conclusion section of the study, as follows:

CONCLUSION:

*While there were some positive impacts of the Program to the Chugach Region, primarily related to direct monetary payments to those Native Village Corporations who sold land, the impacts to CAC and on CAC lands are overwhelmingly negative and were completely ignored by the Program. In addition, CAC at-large shareholders and Port Graham Village Corporation shareholders, who were not one of the village corporations who sold lands (roughly half of all CAC shareholders) did not realize any direct monetary or any indirect benefits associated with the sale proceeds going to the village corporations who sold their lands. From a regional perspective, there is no clear quantifiable evidence that the land acquisitions resulted in restoration of the spill impacted area. In fact, by opening these lands to public access, the opposite has occurred, with more human-caused deterioration and increased competition undermining subsistence resources for residents of the spill impacted area.*

*Federal land ownership of, and conservation easements upon, the surface estate make development of CAC subsurface estate exceedingly more challenging; time consuming; costly; and politically, legally and administratively controversial, and create a greater risk that projects undertaken may not ultimately be permitted due the NEPA process and/or political opposition. This simply and unquestionably would not be the case if the surface estate remained in Native ownership.*

*It was the intent of the Program to protect lands in perpetuity for the benefit of the public. The land acquisitions were meant to ensure that key habitats for the injured species would not be further damaged by extensive development or logging. However, without establishing that any of these goals were achieved by the HPP, the study plainly reveals that the Program's goals of restoration and protection of resources in the oil spill-impacted areas have resulted in conflicts with CAC's rights to develop its subsurface resources and its responsibilities to its shareholders to provide for regional economic development. The federal government should, therefore, as the statutory language of the Dingell Act provides, offer a land exchange package to CAC that redresses the injury resulting from the EVOS land acquisitions in the Chugach Region, by consolidating land ownership to eliminate the split estate conflict and conflict with restrictive conservation easements, and provide for opportunities for economic self-sufficiency as was the intention of the land entitlements under ANCSA.*

CAC PROPOSAL:

CAC sent a letter to BLM Alaska on May 10, 2021 with a proposal that would resolve the conflict that exists as a result of the Exxon Valdez Habitat Protection and Acquisition Program (the "Program"). That proposal provided a land exchange option that CAC felt would meet the statutory requirement of the Dingell Act and resolve the conflict that exists with lands where Chugach owns the subsurface estate, and the federal government owns the surface, or where restrictive conservation easements were imposed upon the surface estate under the Program.

The below table was provided that represents our proposal for a land exchange that would be fair and just, and provide *sufficient accessible and economically viable* lands in exchange for lands CAC has identified for exchange, consistent with the language of the Act.

Chugach Exchange	Acreage	Chugach Receipt	Acreage	Comment	Agency
CNF EVOS Surface Title & Conservation Easements	139,417.00	Tier I Culturally Significant lands/expansion of 14h1 sites or receipt of Culturally Significant sites not available for 14h1 selection	11,471.00	CNF will receive subsurface to surface lands purchased under EVOS for HPP. Excludes Port Gravina Quarry subsurface and subsurface along the Shepard Point Road	USFS
		Kushtaka Lake/Martin River	21,314.94	CNF will receive subsurface to surface lands purchased under EVOS for HPP. Excludes Port Gravina Quarry subsurface and subsurface along the Shepard Point Road	USFS
		Johnson River	12,573.00		USFS
		Drier Bay/Marsha Bay	5,161.22		USFS
CNF EVOS Timber Conservation Easements	28,968.00	Balance of Cumulative Total in cells C2 through C5			USFS
NPS EVOS Surface	30,095.00			KFNP will receive subsurface to surface lands purchased under EVOS for HPP.	KFNP
USFWS EVOS	2,280.00			USFWS Kenai Maritime Refuge will receive subsurface to surface lands purchased under EVOS for HPP.	USFWS
<b>TOTAL</b>	<b>200,760.00</b>		<b>50,520.16</b>		

*Note: The lands identified at Kushtaka Lake/Martin River and Johnson River were identified for additional opportunities for a carbon sequestration project to expand our current carbon program on adjacent lands.*

We believe this proposal fully complies with the Act's direction to resolve the conflict that exists with respect to land management issues that resulted from the Program in the Chugach Region, and, as such, serves the public interest. We also believe the proposed exchange serves the public interest, as well as the interests of the various relevant federal regulatory agencies, as the exchange will allow the Program lands to be managed for conservation, which was the specific intent of the Program. The federal government cannot manage these lands for conservation when the threat of development exists from Chugach holding the dominant subsurface estate.

We asked that our proposal be included in the report to Congress and recommendation for exchange. We have made clear to the respective agencies (Interior and Agriculture) our interest in these lands in prior communications. All of the lands identified are within the Chugach Region. They are all accessible and economically viable based on our evaluation of current and prospective future opportunities. They also include those lands that are culturally significant sites, having high historical, cultural and heritage value to the Chugach people. These cultural lands should be returned to Chugach, as the rightful owner and protector of these traditional lands.

Chugach has long awaited a fair and just land settlement that provides lands that meet the intent of the Alaska Native Claims Settlement Act, and which will address the long standing racial and social justice issues that our people have endured for generations. With this we could finally heal and feel whole from the devastating EVOS oil spill that turned our lives upside down. We urge Congress to carefully examine the information we have provided throughout this process and to act in favor of this proposal.



As evidenced throughout the socio-economic study and other referenced publications, a conflict clearly exists with respect to the ownership and management of conservation easements on the surface estate by the federal government as these lands were purchased for restoration and protection in perpetuity. CAC has been pursuing a resolution of this conflict for decades. It is our hope that through the Chugach Region Land Study that recommendations will be made and effectuated that will finally allow CAC and the respective federal agencies to resolve this land management conflict fairly and equitably, once and for all and consolidate land holdings according to the language and intention of the Dingell Act while honoring the intention of ANCSA to provide self-determination of the Chugach native people through our land holdings.

*"The water is dead, but we are alive. And where there is life, there is hope. Thank you for listening to the Native story. God Bless You."*

*Walter R. Meganack Sr., Port Graham Elder and Chief*

Respectfully,

A handwritten signature in cursive script that reads "Sheri Buretta".

Sheri Buretta  
Chairman of the Board

Reference Documents:

*Chugach Region Land Study, Socio-Economic Impact Assessment. Final Version, January 2021. US Department of Interior, Bureau of Land Management, Alaska State Office.*

*Exxon Valdez Oil Spill Trustee Council website: [evostc.state.ak.us](http://evostc.state.ak.us)*

*Mission Without a Map, The Politics and Policies of Restoration Following the Exxon Valdez Oil Spill: 1989-2002. By Joe Hunt, Revised 2009.*

*Offshore Oil Spills, Restoration and Federal Research Efforts Continue, but Opportunities to Improve Coordination Remain. U.S. Government Accountability Office. GAO Report 19-31. Published: January 3, 2019.*

*The Day the Water Died. Excerpt from a speech written by Walter R. Meganak Sr., Port Graham Elder and Chief after the Exxon Valdez Oil Spill occurred on March 24, 1989.*