EXHIBIT 1
FEDERAL EQUITABLE SERVITUDE, EASEMENT, AND RIGHT OF ENTRY
TO BE INCLUDED IN LAND CONVEYANCE DOCUMENTS

Superceded by
Revised Equitable Servitude, Easement, and Right of Entry
dated May 2003 (see Exhibits to Parcel 1B FOST)
EQUITABLE SERVITUDE, EASEMENT, AND RIGHT OF ENTRY LANGUAGE

WHEREAS, limited portions of the Property that are more particularly described in Exhibit A attached hereto are subject to use restrictions;

WHEREAS, the Property is a portion of a site listed on the National Priorities List and remediated pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (hereinafter “CERCLA”), the Defense Environmental Restoration Program, 10 U.S.C. section 2701 et seq. and 18 Alaska Administrative Code Chapter 75. Under CERCLA, the environmental cleanups were divided into three operable units: Operable Unit A (CERCLA chemical and petroleum sites); Operable Unit B-1 (CERCLA ordnance sites on land proposed as suitable for transfer); and Operable Unit B-2 (CERCLA ordnance sites on land to be retained by the United States and ordnance sites that will be available for transfer after 2002). The Department of the Navy of the United States of America (hereinafter “Navy”) circulated the Record of Decision (hereinafter, along with the Record of Decision for Operable Unit B-1 referenced below, the “ROD”) for Operable Unit A for public review and comment. The Operable Unit A ROD was agreed upon and signed by the Navy and the United States Environmental Protection Agency (hereinafter “US EPA”), and concurred with by the Alaska Department of Environmental Conservation (hereinafter, with its successors in administrative function “ADEC”) in April 2000. The Operable Unit B-1 ROD was agreed upon and signed by the Navy and the US EPA, and concurred in by the ADEC, in December 2001;

WHEREAS the Records of Decision for OUA and OUB-1 are available for inspection in Bureau of Land Management Case File No. [insert number after legislation passed];

WHEREAS, the major components of the selected remedy for the Operable Unit A CERCLA sites included excavation and treatment by thermal desorption of contaminated sediments and soils and recycling of treated sediment and soils as cover material at the on-island Roberts Landfill; placement of a soil cover on one site; monitoring groundwater for petroleum compounds, semivolatile compounds, and volatile compounds; and implementing institutional controls on property to prohibit potential exposure to hazardous substances left on site;

WHEREAS, the major components of the selected remedy for the Operable Unit A petroleum sites included removal and treatment of petroleum-contaminated soils to meet State of Alaska cleanup requirements; recycling of treated soils as cover material at the on-island Roberts Landfill; monitored natural attenuation of petroleum chemicals in soil and groundwater; free-product recovery to the maximum extent practicable as an interim remedial measure, followed by final remediation to achieve cleanup levels under State of Alaska requirements for soils and groundwater; and implementing institutional controls to minimize the potential for direct contact, to restrict groundwater use, and/or to restrict excavation until remedial objectives have been met;
WHEREAS, the major components of the selected remedy for the Operable Unit B-1 ordnance sites are no further action with unlimited land use and maintenance of an educational awareness program for on-island residents and visitors;

WHEREAS, the Property does not encompass any area within OUB-2;

WHEREAS, the requirements, rights, covenants, conditions, prohibitions and restrictions herein (hereinafter “Provisions”) are intended to protect human health and the environment.

THEREFORE, pursuant to the laws of Alaska and the common law, the United States does hereby reserve forever, subject to conditions, restrictions and limitations of record, an equitable servitude, easement, and right of entry (hereinafter equitable servitude) over the Property of the nature and character and to the extent set forth below.

**PROHIBITED ACTIVITIES:**

1. **Downtown Area.**

Unless otherwise specifically authorized in writing by the Department of the Navy the activities listed below are prohibited by any person or entity in the Downtown Area:

(a) Any domestic use of Groundwater (the term “Groundwater” shall mean water beneath the surface of the ground), by extraction through wells or other means. Domestic use is defined as that used by households or transients for human and animal consumption, cooking, bathing, showering, gardening, irrigation, or use on consumable food products, watering animals and any other domestic use.

(b) The injection or release of any fluids that may affect the flow direction of a chemical plume [in areas with chemically affected Groundwater].

(c) Any action at or use of the Downtown Area, including, without limitation, subsurface utility repairs, construction or excavation activities, that results in or is reasonably likely to interfere with or impair the integrity of Groundwater monitoring wells or recovery systems or other structures, systems, procedures or devices constructed or implemented at the Property for cleanup.

A map generally depicting the Downtown Area is attached hereto as Exhibit B.
2. Solid Waste Management Units 10, 14, 15, 16, 17, 24, 55, 60, 61 and 67, Source Areas 73, 77, 78, 80, 82, and 88; Antenna Field, USTs ANT-1, ANT-2, ANT-3, and ANT-4; Former Power Plant, Building T-1451; ROICC Contractor’s Area (UST ROICC 8); Runway 5-23 Avgas Valve Pit; GCI Compound, UST GCI-1; NMCB Building Area; UST, T-1416 Expanded Area; NORPAC Hill Seep Area; UST 10578, South of Runway 18-36 Area; Tanker Shed, UST 42494, and Yakutat Hangar, UST T-2039-A.

Unless specifically authorized in writing by the Department of the Navy, the activity listed below is prohibited by any person or entity, in the Solid Waste Management Units 10, 14, 15, 16, 17, 24, 55, 60, 61 and 67, Source Areas 73, 77, 78, 80, 82, and 88, Antenna Field, USTs ANT-1, ANT-2, ANT-3, and ANT-4, Former Power Plant, Building T-1451, ROICC Contractor’s Area (UST ROICC 8), Runway 5-23 Avgas Valve Pit, GCI Compound, UST GCI-1, NMCB Building Area, Underground Storage Tank, T-1416 Expanded Area, NORPAC Hill Seep Area, UST 10578, South of Runway 18-36 Area, Tanker Shed, UST 42494, and Yakutat Hangar, UST T-2039-A:

Residential Land Use (the term “Residential Land Use” shall include permanent or temporary living accommodations, child care facilities, schools, playgrounds, and hospitals).

3. Solid Waste Management Units 18, 19, and 25 (White Alice and Roberts Landfills, respectively).

Unless specifically authorized in writing by the Department of the Navy, the activities listed below are prohibited by any person or entity, except Department of the Navy personnel or their authorized representative:

(a) excavation of soils or other materials; and
(b) any activity that disturbs the ground surface of the landfill caps or its drainage system.

A map generally depicting the areas identified in Paragraphs 2 and 3 is attached hereto as Exhibit C.

**RIGHT OF ENTRY**

The United States shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Equitable Servitude, CERCLA 42 U.S.C. Section 9620(h)(3)(A)(iii) and in accordance with the Agreement Concerning the Conveyance of Property at the Adak Naval Complex, Adak, Alaska, dated September 20, 2000, between the United States acting through the Secretary of Interior and the Secretary of the Navy, and The Aleut Corporation.
GENERAL PROVISIONS

a. The equitable servitude is for the benefit of the United States and includes the perpetual right to enforce and implement the Provisions herein. Nothing herein shall be deemed to create in any third party the right to enforce this Instrument.

b. All real estate, lots, parcels, or portions thereof located within or on the Property, and any lease, conveyance, or transfer covering or describing any part thereof or interest therein, shall be subject to the Provisions herein. By acceptance of such conveyance or transfer, each lessee, transferee or grantee and each of their heirs, successors, transferees or assigns agree to be bound by the Provisions herein.

c. The Provisions herein shall run with the land in perpetuity and shall be binding upon all successors, and assigns and all future transferees and holders of an interest in the Property or any parcel, portion, or subdivision thereof.

d. To the maximum extent permitted by law, the Provisions herein shall not be subject to waiver or abandonment due to non-enforcement or violation of any of the Provisions herein on all or any portion of the Property. No waiver of the breach of any of the Provisions herein shall constitute a waiver of a subsequent breach of the same Provision or any other Provision. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this equitable servitude nor for imposing any Provision, which may be unenforceable.

e. This equitable servitude may be enforced by the United States on behalf of the United States Navy and/or the U.S. Environmental Protection Agency in a court of law. The interpretation and performance of this equitable servitude shall be governed by the laws of Alaska.

f. Upon violation of any of the Provisions herein, the United States may seek any available legal or equitable remedy to enforce this Instrument and shall be entitled to recover damages for violations of the Provisions herein under applicable federal or state law.

g. Any notice, demand, request, consent, approval, or communication that a party desires or is required to give another shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To The United States:
[Name and Address]

h. The determination that any Provision herein, or its application to any person or circumstance, is invalid shall not affect any other Provision herein or its application and the other Provisions herein shall remain in full force and effect.
i. Any general rule of construction to the contrary notwithstanding, this equitable servitude and the provisions herein shall be construed so as to effect the purpose for which it was reserved by the United States. Any ambiguities shall be resolved in a manner that best accomplishes the purpose of this equitable servitude.

j. All future transferees and holders of an interest in the Property shall include in any instrument conveying any interest in any portion of the Property a notice that is in substantially the following form:

NOTICE: The interest conveyed hereby is subject to an Equitable Servitude, Easement, and Right of Entry dated_________, 2002, recorded on ___ date at (AM/PM) by Serial No. ______, the Aleutian Islands Recording District, Third Judicial District, State of Alaska, in favor of, and enforceable by, the United States.

TERMINATION

This equitable servitude shall be vacated and shall be of no further force and effect upon the recordation in the Aleutian Islands Recording District, Third Judicial District, State of Alaska by the United States of a Notice of Vacation of Equitable Servitude, Easement and Right of Entry. The United States shall execute and record a Notice of Vacation of Equitable Servitude, Easement, and Right of Entry at such time as it determines with the concurrence of state and federal regulators that the prohibited activities and other provisions of this Instrument are no longer necessary for the protection of human health and the environment. The Notice of Termination of Equitable Servitude, Easement, and Right of Entry shall be executed by the United States and state that the United States has determined that the prohibited and required activities and other provisions of the Equitable Servitude, Easement, and Right of Entry are no longer necessary for the protection of human health and the environment and further state that the Equitable Servitude, Easement, and Right of Entry is hereby vacated. The current owner of the property may request the United States to amend the Records of Decision and vacate this Equitable Servitude, Easement, and Right of Entry as to all of the Property, or as to a parcel or portion thereof. The United States, through the Department of the Navy and/or the U.S. Environmental Protection Agency, in their sole discretion, shall determine whether to grant the request or deny it. Nothing herein affects the Navy’s or EPA’s authority to select and perform additional response actions for the Site in accordance with CERCLA and the National Contingency Plan, 40 CFR Part 300.
EXHIBIT 2
NOSSA/DDES’B LETTER OF CONCURRENCE WITH FOST FOR ORDNANCE-RELATED ISSUES
From: Commanding Officer, Naval Ordnance Safety and Security Activity
To: Commanding Officer, Engineering Field Activity Northwest, Naval Facilities Engineering Command (Code 05ER)

Subj: REVIEW AND CONCURRENCE WITH TRANSFER OF PARCELS 1A, 2, AND 3 AT THE FORMER NAVAL AIR FACILITY, ADAK ISLAND, ALASKA [N60462/K-151]

Ref: (a) ENGFLDACT NW ltr 5090-ADAk Ser 05ER.22MM/0891 of 27 Mar 02
    (b) DoD 6055.9-STD

1. In reply to reference (a), Naval Ordnance Safety and Security Activity (NOSSA) concurs that the explosives investigation and removal actions for Parcels 1A, 2, and 3 at the former Naval Air Facility (NAF), Adak Island, Alaska, have been satisfactorily reported and meet all of the explosives safety remediation requirements of reference (b), with the exception of three sites in Parcel 1A and one site in Parcel 3. As indicated in reference (a), paragraph 4, it is expected that explosives remediation of these remaining sites will be completed this Summer.

2. Naval Ordnance Safety and Security Activity concurrence with transfer of Parcels 1A, 2, and 3 is contingent upon:

   a. Inclusion of provisions in the deeds that alert the transferee that a response action was taken to address the presence of ordnance on these parcels.

   b. Inclusion of provisions in the deeds transferring these parcels that alert the transferees of the availability of the Navy to respond to any additional discoveries of ordnance that might occur in the future.

   c. Inclusion of provisions in the deeds transferring these parcels of an access right for the Navy to perform any additional cleanup actions that might be required.

   d. Inclusion of provisions in the Record of Decision for Operable Unit B-1, the Finding of Suitability to Transfer Parcel 1A, and the deeds transferring these parcels, to establish an ordnance awareness education program;
Subj: REVIEW AND CONCURRENCE WITH TRANSFER OF PARCELS 1A, 2, AND 3 AT THE FORMER NAVAL AIR FACILITY, ADAK ISLAND, ALASKA [N60462/K-151]

   e. Maintenance of the ordnance awareness education program and performance of five-year compliance reviews, as specified in the Record of Decision for Operable Unit B-1.

   f. Release of the four remaining sites in Parcels 1A and 3 on Adak Island (discussed in paragraph 1 above) is contingent upon implementation of the approved explosives remediation plans, and submission of site-specific reports of explosives investigation and removal actions for each of these sites to NOSSA, for review and concurrence, prior to their transfer.

3. All documents related to explosives decontamination and remediation of the former NAF Adak Island must be retained in the permanent Navy remediation files. Naval Ordnance Safety and Security Activity point of contact for explosives safety issues is Mr. Edward Klinghoffer, P.E., N7112, at DSN: 354-4966, commercial: (301) 744-4966, or E-Mail: klinghofferem@navsea.navy.mil; NOSSA point of contact for ordnance environmental issues is Mr. John Dow, N51, at DSN: 354-4450/4906, commercial: (301) 744-4450/4906, or email: dowjp@ih.navy.mil.

R. M. HONEY

Copy to (w/ref (a) (w/o encls)):
DDES (DDES-870)
CNO (N411, N45)
COMNAVSEASYSCOM (SEA 007)
COMNAVACENCOM (EN, ENC, BRAC)
NOSSA ESSOPAC (N7P)