

COOPERATIVE AGREEMENT
TO IMPLEMENT THE WOODBRIDGE RIVER
WETLAND RESTORATION PROJECT

RECEIVED
OFFICE OF THE SECRETARY
JUN 02 1998
BOSTON, MA

I. Background, Authority, and Purpose

On January 1 and 2, 1990, approximately 567,000 gallons of No. 2 fuel oil was spilled into the Arthur Kill from a ruptured underwater pipeline at Exxon Corporation's Bayway refinery. The spill resulted in widespread injury to natural resources of the New York - New Jersey Harbor estuary, particularly those associated with the Arthur Kill and its tributaries, of which the Woodbridge River is one.

A lawsuit was brought against Exxon by the trustees for natural resources: the National Oceanic and Atmospheric Administration of the United States Department of Commerce (NOAA), the United States Department of Interior (DOI), the State of New York, the State of New Jersey, and the City of New York. A settlement for natural resource damages was reached with Exxon by each of the above natural resource damage trustee agencies. Following the settlement, the natural resource trustee agencies entered into a Memorandum of Agreement (MOA) on 19 March 1991 to jointly administer those sums recovered from the Exxon Bayway oil spill to restore, rehabilitate, and acquire the equivalent of injured natural resources in the Arthur Kill and other portions of the Greater New York/New Jersey Harbor. In accordance with the MOA, the natural resource trustee agencies established the Harbor Spill Restoration Committee (HSRC) to provide for proper, efficient and timely disposition of recovered funds. On 17 April 1998, the HSRC executed Committee Resolution No. 35A, authorizing the disbursement of \$330,000 from the Exxon Bayway Settlement to Woodbridge Township for use by the Township to plan for the enhancement of degraded wetlands and improved access to and understanding of the Woodbridge River ecosystem. As part of this resolution, the HSRC agreed that the New Jersey Department of Environmental Protection, through the Office of Natural Resource Damages, would oversee the use of the funds provided to Woodbridge Township and the overall restoration project through a cooperative agreement.

Acting on behalf of the natural resource trustee agencies, the Office of Natural Resource Damages of the New Jersey Department of Environmental Protection, which represents the State of New Jersey (hereinafter "ONRD") enters into this cooperative agreement with the Township of Woodbridge (hereinafter "Woodbridge"), pursuant to and accordance with N.J.S.A. 13:1D-9 (g) and (r) and 13:1L-4-6.

The natural resource objectives of the MOA, specifically Paragraph II.B., include restoration, rehabilitation, and improvement of access to degraded natural resources in the NY/NJ Harbor and related ecosystems including the Arthur Kill and its tributaries. Such resources occur along the Woodbridge River, a tributary to the Arthur Kill, as tidal wetland of approximately 25 acres within the Township of Woodbridge.

This area is comprised of certain land, owned by Woodbridge, commonly known and

designated as Lot 3, Block 604; Lot 10, Block 606; Lots 1-C and 15, Block 592; Port Reading - Woodbridge River Park, Township of Woodbridge, Middlesex County, New Jersey. This land is presently a part of the Township's Recreational and Open Space Inventory, and shall remain as such in perpetuity, only to be used for passive recreation such as nature interpretation and education, wildlife viewing, and access to the Woodbridge River ecosystem.

In order to compensate the public for injury to natural resources associated with the Exxon Bayway Refinery spill, the natural resource trustee agencies have made a determination to restore the above referenced 25 acres of degraded wetlands, which are part of the Arthur Kill ecosystem as defined at page 2 of the Natural Resource Restoration Plan for oil and Chemical Releases in the New York/New Jersey Harbor Estuary, and to provide for the planning and design of access to and education of the wetlands, once they are restored. The Township of Woodbridge will seek funding for construction of access enhancement and educational facilities associated with the 25 acre wetland restoration project, and oversee construction if funding is procured.

This agreement memorializes the parties' intent to cooperate in the above described restoration project. The agreement provides for the limited exchange of services, personnel, equipment, property access and funds to accomplish the planning and design and actual construction of the wetland enhancement project.

The goal of this project is to enhance approximately 25 acres of existing degraded wetlands. The enhancement will improve the characteristics, habitat, and functions of the existing wetland. In particular, tidal flow will be restored to the area by grading, clearing blocked streams and the creation of new tidal streams. Existing *Phragmites* vegetation will be eliminated and replaced with native species that will provide a variety of habitats.

II. Term of Agreement

Woodbridge's obligations hereunder are subject to and contingent upon transfer of \$330,000 from the Exxon Bayway Civil Funds to Woodbridge as provided in the Resolution attached hereto as Exhibit A. The State hereby represents that the Resolution, once approved by the Court, will validly, appropriately, and legally authorize transfer of \$330,000 to the Township of Woodbridge for the purpose of implementing this agreement and completing, to the State's satisfaction, the planning and design of the full restoration project which includes two distinct but related construction projects described above: the 25 acre wetland enhancement project and the access enhancement and educational facilities (hereinafter referred to together as the "Restoration Project").

The Township of Woodbridge represents that it will be able to complete the above referenced planning and design with the transfer of the \$330,000. Therefore, upon the transfer of the \$330,000 from the Registry account to the Township of Woodbridge, the Township hereby agrees to complete, to the State's satisfaction, the above referenced

planning and design of the full Restoration Project.

Upon satisfactory completion of the planning and design phase of the project, the State will submit to the Court a resolution that will transfer up to \$600,000 to the Township of Woodbridge for the purpose of implementing this agreement and completing the construction phase of the wetland enhancement portion of the project.

Upon satisfactory completion of the planning and design phase of the project, the Township of Woodbridge, for the purpose of implementing this agreement, will seek funding for the construction phase of the access enhancement and educational facilities associated with the 25-acre wetland enhancement project, and oversee construction if funding is procured.

This agreement will be effective from date of execution by both parties and will be effective until the construction of the wetland enhancement portion of the project is complete, not more than 3 years.

III. Scope of Work

1. Woodbridge shall, under the supervision of the State, coordinate and manage the restoration project in accordance with a State approved Scope of Work. To that end, Woodbridge shall retain a contractor for the design of the Restoration Project.
2. Once final design plans and specifications are prepared, Woodbridge shall submit them to the State for approval. After the State's Project Officer has issued written approval, Woodbridge shall proceed, through a retained contractor, with the construction of the 25 acre wetland enhancement. Woodbridge shall obtain the written approval of the State's Project Officer prior to entering into any contract for the construction of the wetland enhancement
3. Each invoice presented to Woodbridge by one of its contractors shall be submitted to the State's Project Officer or a designee for approval prior to payment. Neither Woodbridge nor its agents shall deviate from the approved design plans and specifications without the prior written approval of the State's Project Officer. In addition, Woodbridge shall provide written notification and supporting documentation, and receive the State Project Officer's approval, prior to any withdrawal from the account.

IV. Financial Administration

Woodbridge shall expend all funds required for this purpose from those funds transferred to Woodbridge pursuant to the Resolution attached hereto as Exhibit A.

All funds received by Woodbridge for the Restoration Project shall be kept by

Woodbridge in a separate, interest-bearing account and shall not be commingled with other funds or assets of Woodbridge. Said funds shall be used solely to pay costs incurred by Woodbridge in conjunction with the design of the entire Restoration Project and construction of the wetland enhancement portion of the Restoration Project.

If upon completion and acceptance of the Restoration Project, residual funds remain in the account, all such principal and interest shall be returned by Woodbridge to the State of New Jersey for redeposit in the Court Registry Account referred to in the Resolution attached hereto as Exhibit A or for use in accordance with the 19 March 1991 MOA between the natural resource trustees.

Woodbridge shall follow generally accepted accounting practices and maintain complete financial records that will allow Woodbridge to document all costs incurred and expenditure of all funds in connection with the Restoration Project.

Woodbridge and its agents shall provide State representatives access to and the right to examine and duplicate all records and documents related to the Restoration Project. The State shall conduct a project close-out audit following completion of the project.

V. General Provisions

Woodbridge, with assistance of the State, shall apply to all governmental authorities having jurisdiction over the Restoration Project for construction and other permits, licenses and approvals as may be required for the Restoration Project.

In the event that at any time prior to the State's acceptance of the Restoration Project, the State determines that the construction of the wetland enhancement portion of the Restoration Project is not in accordance with the Design Plan or requirements of the public authorities having jurisdiction, or that Woodbridge is not in compliance with the Cooperative Agreement, prompt notice shall be given to Woodbridge specifying the particular deficiencies or omissions.

Woodbridge shall thereafter have 30 days to take such steps as necessary to correct such deficiencies or omissions. If deficiencies or omissions are not rectified, without limiting any other remedies available, this agreement may be terminated by the State in accordance with Section IX.

Woodbridge shall permanently dedicate the 25 acre wetland enhancement project and any associated area of access/educational facilities (ca. 10 acres) as public open space to be used only for passive recreation such as nature interpretation and education, wildlife viewing, and access to the Woodbridge River ecosystem.

VI. Bonding

Prior to the commencement of construction, Woodbridge shall cause its general contractor to: (1) provide to the State, as security for the satisfactory completion of the Restoration Project, a surety bond of a corporate surety company in the amount of 100% of the contract amount with the contractor naming Woodbridge as obligee; and (2) provide to the State a labor and material payment bond from a corporate surety company in the amount of 100% of the cost of labor and materials providing for prompt payment for materials, supplies, labor services and equipment, naming Woodbridge as obligee.

A maintenance bond to assure the success of the wetland enhancement project shall be posted in an amount equal to 30 percent of the estimated cost of construction. The maintenance bond will be posted to ensure that the contracted design accomplishes the goal of this project as outlined in Section I of this agreement.

The performance bond will be released upon an inspection by the State confirming completion of construction and planting (if needed) of the wetland enhancement site. The maintenance bond will be released upon the State's confirmation that a four-year, post-construction monitoring period has been successfully completed and that no additional maintenance is required to realize the project goal stated in Section I.

VII. Indemnification/Insurance

1. Woodbridge shall cause its consultants and contractors to defend, indemnify, protect and hold harmless the State and Woodbridge, its agents, servants and employees from and against any and all suits, claims, losses, demands or damages of whatsoever kind or nature arising out of or claimed to arise out of their actions or omissions in connection with the Restoration Project and associated work.

2. Woodbridge shall cause its consultants and contractors to procure and maintain at their own expense, until at least one year after the completion of all work performed on or in conjunction with the Restoration Project, liability insurance for damages imposed by law and assumed under this Agreement, of the kinds and in the amounts hereinafter provided, from insurance companies admitted or approved to do business in the State of New Jersey.

The types and minimum amounts of insurance are as follows:

(a) Contingent Liability and Comprehensive General Public Liability Insurance with Contractual Liability endorsement (including insurance with respect to owned or operated motor vehicles), an endorsement for completed operations liability and an endorsement for broad form property damages. The minimum limits of coverage shall be \$1,000,000 per occurrence for bodily injury liability and \$1,000,000 per occurrence for property damage liability. The State of New Jersey Department of Environmental Protection and the Township of Woodbridge shall be named as the insured.

(b) Workers' Compensation Insurance applicable to the laws of the State of

New Jersey is required to protect the employees of the contractor or consultant. This insurance shall include employers' liability protection with a limit of liability of not less than \$500,000.

(c) Owner's and Contractor's Protective Liability Insurance (OCPL) for the same limits of liability as specified in paragraph (a) above. The policy shall provide for the State and Woodbridge to be named as insured.

(d) Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance sufficient to protect against any liability arising out of professional obligations performed in connection with the Restoration Project. This insurance shall be in the minimum amount of \$250,000 and the policy form shall be endorsed to eliminate any exclusion for contractual liability. Should the consultant change carriers during the term of its involvement with the Restoration Project, the consultant shall be required to obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

3. Woodbridge shall cause its consultants and contractors, prior to commencement of their respective work efforts on the Restoration Project, to provide the State with valid Certificates of Insurance as evidence of their insurance coverage in accordance with the foregoing provisions. The Certificates shall provide for thirty (30) days notice in writing to the State prior to any cancellation, expiration, or non-renewal during the term the insurance is required in accordance with this agreement. The consultant shall further be required to provide the State with valid certificates of renewal of the insurance upon the expiration of the policies.

VIII. Amendment

This agreement may not be changed orally, but only by modification in writing signed by both parties.

IX. Termination

Either party may terminate this agreement for cause or convenience upon thirty days written notification to the other.

Upon termination, Woodbridge shall return to the State of New Jersey all monies, including interest, remaining in the separate account maintained by Woodbridge. Woodbridge shall deliver all drawings, reports and other project-related information and materials to the State. If requested by the State, Woodbridge shall assign all rights and interests in existing contracts and design documents to the State.

X. Acceptance of the Restoration Project

Upon completion of the wetland enhancement portion of the Restoration Project and prior to its acceptance by the State, Woodbridge shall deliver to the State's Project Officer:

- (1) One complete set of reproducible "as-builts" or record drawings of the Restoration Project.
- (2) An assignment of all one year materials and labor warranties provided by the contractors or subcontractors coming at the State's acceptance of this project.

The State's Project Officer shall accept said Restoration Project if, in his determination, all such restoration work has been completed in accordance with this agreement, the Design Plan and all requirements of public authorities having jurisdiction.

XI. Project Officers

Project Officers, for the purpose of administering this Agreement, including receiving, reviewing, and approving reports are:

For the State:

Ernest P. Hahn
Chief
Office of Natural Resource Damages
Department of Environmental Protection
Trenton, NJ 08625-0404

For Woodbridge:

James E. McGreevey
Mayor
Township of Woodbridge

IN WITNESS WHEREOF, the said parties hereunto subscribe their names.

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: Ernest P. Hahn Date: 5/11/98

Ernest P. Hahn
Chief
Office of Natural Resource Damages

TOWNSHIP OF WOODBRIDGE

By:  EMH Date: 5-4-98

James E. McGreevey
Mayor
Township of Woodbridge

EXHIBIT A

RESOLUTION NO. 35A

UNITED STATES et al v. EXXON CORPORATION

Whereas, on March 19, 1991, the United States of America, acting by and through the National Oceanic and Atmospheric Administration of the United States Department of Commerce (NOAA) and the United States Department of Interior (DOI), the State of New York, the State of New Jersey, and the City of New York (the Governments) entered into a Memorandum of Agreement (MOA) to administer those sums recovered from the Exxon Bayway oil spill to restore, rehabilitate, and acquire the equivalent of injured natural resources in the Arthur Kill and other portions of the Greater New York/New Jersey Harbor; and

Whereas, Paragraph III.A. of the MOA, in order to provide for proper, efficient and timely disposition of recovered funds, establishes a Committee, the membership of which consists of a representative of each of the Governments; and

Whereas, Paragraph III.B. of the MOA provides that the voting members of the Committee with respect to actions proposed to be undertaken with funds allocated for expenditures in the State of New Jersey, shall be NOAA and DOI (the Federal Trustees) and the State of New Jersey; and

Whereas, the natural resource objectives of the MOA, specifically Paragraph II.B., include restoration, rehabilitation, and improvement of access to degraded natural resources in the NY/NJ Harbor and related ecosystems including the Arthur Kill; and

Whereas, the Trustees have evaluated the restoration of 25 acres of degraded wetlands in the Township of Woodbridge, which are part of the Arthur Kill ecosystem, as a restoration alternative pursuant to criteria specified at pages 63-65 of the Natural Resources Restoration Plan for Oil and Chemical releases in the New York/New Jersey Harbor Estuary; and

Whereas, such resources occur predominantly as tidal wetland, within an area of approximately 25 acres along the Woodbridge River, a tributary to the Arthur Kill, and within the Township of Woodbridge; and

Whereas, the Township of Woodbridge has agreed to permanently dedicate this 25 acre area, as well as adjacent land of approximately 10 acres, as public open space; and

Whereas, using funds recovered from the Exxon Bayway spill, the Township of Woodbridge will retain a contractor to design, plan, and conduct a restoration project to restore tidal influence to the degraded wetland area and replant and encourage the growth of *Spartina alterniflora* vegetation. The design phase of this project will include planning for enhancement of access to the resources of the Woodbridge River through the construction of walkways, interpretive signage and an educational facility. The

Township of Woodbridge will seek a different source of funding for the access enhancement and educational facilities associated with the wetland restoration project, and oversee construction if funding is procured; and

Whereas, project planning and design is an integral component of large scale restoration efforts and must first be completed before earth moving, construction, and restoration activities commence; and

Whereas, consistent with the natural resource objectives of the MOA and according to authorization which New Jersey will seek from the Governments Committee, upon completion of the project design and construction plan, the implementation phase of this restoration project will commence; and

Whereas, a Cooperative Agreement will be executed by the Township of Woodbridge and the State of New Jersey which memorializes the Township of Woodbridge's intent to cooperate with the Governments Committee, through the State of New Jersey, in the above referenced restoration project. The Cooperative Agreement will set forth how the Township of Woodbridge shall, under the supervision of the Federal Trustees and the State, coordinate and manage the restoration project in accordance with a Scope of Work approved by the Governments. The Township of Woodbridge will make available to the Governments the data and accounting information for the completed restoration activities as requested.

Now, therefore, pursuant to Paragraph III. D. 4. A., the Federal Trustees and the State of New Jersey resolve to release the sum of \$330,000 from the New Jersey portion of the Registry Account established pursuant to the MOA and administered by the Registry of the Court of the United States District Court for the Eastern District of New York to the Township of Woodbridge for the restoration design and construction work plan and associated non-construction costs. The transfer of the \$330,000 sum will occur only after execution of the Cooperative Agreement.

This design and construction work plan will detail project design and be the basis for implementing the full restoration project which consists of two distinct but related construction projects that require integrated planning: (1) The aforementioned 25 acre wetland enhancement effort, to be funded through the Registry Account; and (2) The access enhancement and educational facility, for which the Township of Woodbridge will actively solicit funding and oversee its completion if funding is procured.

The Federal Trustees and the State of New Jersey further resolve to allocate up to an additional \$600,000 from the same Registry Account to implement the construction phase of the wetland enhancement portion of the restoration project. Through a separate resolution, these funds will be transferred to the Township of Woodbridge upon satisfactory completion of the restoration project design and construction work plan.

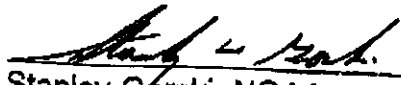
Resolution No. 35A

UNITED STATES et al. v. EXXON CORPORATION

Government's Committee

FOR THE SECRETARY OF THE
UNITED STATES DEPARTMENT OF
COMMERCE

4/2/98
Date


Stanley Gorski, NOAA
National Marine Fisheries
Service - F/NER2
Habitat and Protected Resources
Sandy Hook Lab
Highlands, NJ 07732


Resolution No. 35A

UNITED STATES et al. v. EXXON CORPORATION

Government's Committee

FOR THE SECRETARY OF THE
UNITED STATES DEPARTMENT OF
THE INTERIOR

4/14/98
Date

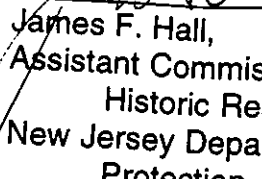

Andrew Raddant
Regional Environmental Officer
Office of Environmental Affairs
O'Neill Federal Office Building
Room 1022
10 Causeway Street
Boston, MA 02222-1035

Resolution No. 35A

UNITED STATES et al. v. EXXON CORPORATION

Government's Committee

FOR THE STATE OF NEW JERSEY



James F. Hall,
Assistant Commissioner for Natural and
Historic Resources,
New Jersey Department of Environmental
Protection
501 E. State Street
Trenton, NJ 08625-0404

4/17/98
Date

RESOLUTION
WHEREAS, the Municipal Engineer has advised that the Township is desirous of entering into a cooperative agreement with the New Jersey Department of Environmental Protection, Office of Natural Resource Damages for restoration of 25 acres of degraded wetlands along the Woodbridge River, a tributary to the Arthur Kill; and

WHEREAS, the Municipal Engineer recommends entering into an agreement which would provide \$930,000.00 to the Township for design, engineering and restoration of the 25 acres of wetlands along the Woodbridge River;

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF WOODBRIDGE, that the Mayor and the Municipal Clerk are hereby authorized to enter into an agreement with the NJDEP Office of Natural Resources Damages for the purposes delineated above.

ADOPTED: JUL 1 1997

I hereby certify that the above is a true and exact copy of the Resolution adopted by the Municipal Council of the Township of Woodbridge at their Regular Meeting held on

JUL 1 1997



PHILIP M. CERRIA, RMC
MUNICIPAL CLERK