

**UNITED STATES DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE**

AGREEMENT FOR THE EXCHANGE OF LANDS

THIS AGREEMENT, made and entered into this 22nd day of January 2018, by and between King Cove Corporation (KCC), a corporation organized under the laws of the State of Alaska, pursuant to the authority contained in the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601, *et seq.*, (ANCSA), for itself and its successors, and the UNITED STATES OF AMERICA (United States) acting by and through the Secretary of the Interior, or his authorized representative (Both KCC and the United States are collectively referred to as “the Parties”). The authority for the exchange is section 1302(h) of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487, as amended by Pub. L. 100-395, § 201, 102 Stat. 979, 981 (1988) (ANILCA).

RECITALS

WHEREAS, KCC owns the surface estate of lands physically located within the external boundaries of the Izembek National Wildlife Refuge (Izembek NWR).

WHEREAS, the United States owns the surface and subsurface estate to lands outlined in green on the attached map and identified in the narrative descriptions (Exhibit A), which are located within the boundaries of the Izembek NWR.

WHEREAS, under the terms and procedures set forth in this Agreement, the United States will convey to KCC the surface and subsurface estate of up to 500 acres from within the outlined area on Exhibit A that are identified by KCC as being needed for the construction, operation, and maintenance of a road linking King Cove with the Cold Bay airport (the U.S. Exchange Lands).

WHEREAS, King Cove, Alaska is an isolated Aleut Native village, recognized as a village under ANCSA and located at the end of the Alaska Peninsula at the beginning of the Aleutian Island chain in southwest Alaska.

WHEREAS, there are two Tribes recognized by the United States in King Cove: the Agdaagux Tribe of King Cove and the Native Village of Belkofski.

WHEREAS, there is an approximate 12-mile gap between the road leading out of King Cove and the road to the Cold Bay airport, which is Alaska’s fourth-longest paved civilian runway and suitable for use by air evacuation jet aircraft.

WHEREAS, the residents of King Cove cannot regularly reach the Cold Bay airport because inclement weather prevents small aircraft from flying between King Cove and Cold Bay and hinders seagoing vessels transiting miles of open ocean between King Cove and Cold Bay.

WHEREAS, there have been 68 medical evacuations (medevac) from King Cove since December 23, 2013, including 17 by the U.S. Coast Guard, because commercial medevac carriers determined that it was too dangerous to fly into King Cove.

WHEREAS, King Cove residents and others have died attempting to travel to and from King Cove or Cold Bay and from being unable to get from King Cove to the Cold Bay airport for medevac transport to Anchorage.

WHEREAS, Congress has passed legislation twice in the past 20 years to address the transportation problem, which has not produced a solution satisfactory to the needs of King Cove residents.

WHEREAS, KCC owns lands (the KCC Exchange Lands Pool) within the exterior boundaries of Izembek NWR and Alaska Peninsula National Wildlife Refuge, which are identified on the attached map (Exhibit B) as "Village Patent – King Cove."

WHEREAS, the lands in the KCC Exchange Lands Pool have been identified by the U.S. Fish and Wildlife Service for future acquisition if such lands became available.

WHEREAS, KCC represents to the United States that none of the KCC Exchange Lands Pool lands are subject to conveyance pursuant to section 14(c) of ANCSA, or subject to any known legal third-party possessory rights.

WHEREAS, the United States represents to KCC that none of the U.S. Exchange Lands to be conveyed to KCC are subject to any Native Allotments, Federal mining claims, nor any known legal third-party possessory rights.

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration, the Parties hereto covenant and agree as follows:

AGREEMENT

- A. The Parties agree to the exchange of real property interests set forth in the following paragraphs and agree to be bound thereby. The Parties agree that the exchange is made pursuant to the Secretary of the Interior's authority under section 1302(b) of ANILCA, as amended, 16 U.S.C. § 3192(h), and that pursuant to 43 U.S.C. § 1613(a) this exchange of land is a conveyance under ANCSA, which is therefore subject to section 910 of ANILCA, 43 U.S.C. § 1638.
- B. In consideration of conveyance by the United States to KCC of the surface and subsurface estate of the U.S. Exchange Lands selected as set forth in paragraph D, subject to any valid existing rights, KCC agrees to convey to the United States the surface estate of certain lands it owns in Izembek NWR and Alaska Peninsula National Wildlife Refuge (the KCC Exchange Lands). The KCC Exchange Lands will be selected as set forth in paragraph D

from the KCC Exchange Lands Pool, subject to any valid existing rights, which are equal in value to the U.S. Exchange Lands.

- C. The Parties agree the KCC Exchange Lands and the U.S. Exchange Lands will be of equal value which may not necessarily result in an acre-for-acre exchange. The Parties also agree the land exchange under this Agreement will not result in any charge against KCC's ANCSA entitlement.
- D. Because the number of acres (which cannot exceed 500 acres) and value of the acreage comprising the U.S. Exchange Lands will be determined upon completion of a road location, design, and survey, the number of acres making up the KCC Exchange Lands will be adjusted to equalize the value of the exchange. To accomplish this:
1. The KCC will, as soon as reasonably practicable, provide the United States with a legal description of the U.S. Exchange Lands comprising a road corridor that runs through the lands identified in Exhibit A, and of the sites needed to supply materials, dispose of non-construction materials (i.e., overburden), and provide necessary access to reach those sites. The legal description must meet the needs of the United States to prepare an appraisal of the U.S. Exchange Lands and for inclusion in the conveyance document to KCC as part of the exchange.
 2. The Parties agree that the U.S. Exchange Lands shall comprise a total of no more than 500 acres.
 - a. The road constructed on the land conveyed to KCC pursuant to this Agreement (Road) shall be constructed to the standards for a two-way, single-lane road as set forth in the American Association of State Highway and Transportation Officials Guidelines for Geometric Design of Very Low-Volume Local Roads (ADT \leq 400) (2001). The Road shall be a gravel road (i.e., not surfaced with asphalt concrete pavements).
 - b. The Road shall be used primarily for health, safety, and quality of life purposes (including access to and from the Cold Bay Airport) and generally for noncommercial purposes. The commercial transport of fish and seafood products, except by an individual or a small business, on any portion of the Road shall be prohibited.
 3. Upon receipt from KCC of the detailed legal property description of the U.S. Exchange Lands satisfying the requirements of paragraphs D.1 and D.2. above, the United States will at its expense have appraisals prepared of the U.S. Exchange Lands and of the KCC Exchange Lands Pool. Copies of the completed appraisals will be provided to KCC and its counsel within thirty (30) days after approval of the appraisals by the United States. The United States will at that time also provide KCC with the exact number of acres needed from the KCC Exchange Lands Pool to complete an equal-value exchange.

4. The KCC will select the KCC Exchange Lands it will convey from the KCC Exchange Lands Pool to the United States that are of equal value to the United States Exchange Lands, and provide a legal description to the United States of the KCC Exchange Lands.
 5. Notifications required by this paragraph D will be in accordance with paragraph O.10 of this Agreement.
- E. Notwithstanding the foregoing paragraphs A – D, KCC, in addition to conveying the KCC Exchange Lands, will relinquish its selection rights under ANCSA to 5,430 acres located within Izembek NWR on the east side of Cold Bay, which are identified as “Village Selection – King Cove” and outlined in black on the map attached as Exhibit B. The Parties agree the relinquishment has no monetary value because KCC will be entitled to conveyance of 5,430 acres previously selected, but not yet conveyed under ANCSA, from outside the Izembek NWR.
- F. The Parties agree that an abstract of title, title insurance, or other evidence of title to the KCC Exchange Lands, satisfactory to both the Department of the Interior’s Solicitor’s Office and KCC’s counsel, will be obtained by the United States at its expense.
- G. The Parties agree that once the legal descriptions are available they will utilize their best efforts and negotiate in good faith the final legal descriptions of the lands to be conveyed.
- H. The Parties agree not to do, nor cause others to do, any act by which the value or title to lands owned by them (and referenced in this Agreement) may be diminished or encumbered, during the term of this Agreement. It is further agreed that any loss or damage occurring prior to the exchange by reason of the unauthorized cutting or removal of products therefrom, or because of fire, shall be borne by the owner in title of the loss or damaged land at the time of loss or damage.
- I. During the period covered by the Agreement the officers, employees, and accredited agents of the Parties, including the State of Alaska on behalf of either Party, shall, subject to any restrictions required by law and permitting requirements of the land owner, have the right and privilege to enter upon the lands described in Exhibit A in order to conduct physical examination of the U.S. Exchange Lands and the KCC Exchange Lands Pool. The Parties and the State of Alaska shall provide written notice in accordance with paragraph O.10 sufficiently in advance to process a permit application if required, or if not needed at least five (5) days in advance of any site visit.
- J. Conveyance by the United States of the U.S. Exchange Lands shall be by patent (preceded by Interim Conveyance if necessary) issued by the Bureau of Land Management. Conveyance of the surface estate by KCC to the United States of the KCC Exchange Lands shall be by Quitclaim Deed and by relinquishment of selection rights, as the case may be, in a form acceptable to the Parties. The Parties agree that if after patent is issued it is found that KCC has previously quitclaimed too few acres, then it will convey by quitclaim additional acres to the United States to equalize the exchange. If at the time of patent it is found KCC has quitclaimed too many acres, then the number of those excess acres will be added to its remaining entitlement under ANCSA.

- K. It is mutually understood and agreed by the Parties that this Agreement may not be assigned or transferred in whole or in part by either of the Parties, and any assignment or transfer in violation hereof shall be null and void and of no force or effect.
- L. The Parties acknowledge the need for a contaminants survey by the United States of all lands to be exchanged between the Parties and agree that such survey will be conducted at the expense of the United States. In the event contaminants are found present on any of the lands to be exchanged, the recipient Party of the exchanged lands shall have the discretion to accept the property in the condition it is in or propose substitute lands following the procedures set forth in paragraph D.
- M. This Agreement shall become effective only upon its execution by both Parties, and the effective date of the Agreement shall be the date upon which the last of the subscribed Parties signs the Agreement.
- N. Unless extended by written agreement of the Parties or otherwise terminated pursuant to the terms of this Agreement, this Agreement shall expire on December 31, 2027.
- O. General Provisions:
1. The Parties mutually covenant and agree that this Agreement and the Exhibits embody the whole agreement of the Parties regarding the land exchange, and there are no promises, terms, conditions, or obligations other than those contained or referred to in this Agreement.
 2. This Agreement may be amended, modified, or supplemented only by a written amendment signed by the Parties hereto with the effective date of any amendment being the date upon which the last of the subscribed Parties signs the amendment.
 3. The Parties agree that clerical and typographical errors contained herein may be corrected upon written notice to the other Party, unless such errors are deemed substantive or otherwise objected to by any Party by written notice within sixty (60) days of the original notice.
 4. Nothing in the Agreement shall be interpreted to require the obligation or payment of funds by the U.S. Fish and Wildlife Service or other Federal agency in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. The United States does not have funds that are presently available to carry out certain obligations required by this agreement. The United States' obligations under this contract are contingent upon the availability of appropriated funds from which payment for such obligations can be made. The parties agree that no legal liability on the part of the United States for failure to perform such obligations may arise until funds are made available to the United States.

5. No Member of, Delegate to, or Resident Commissioner in, Congress shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom unless the share or part or benefit is for the general benefit of a corporation or company.
6. This Agreement contains the entire agreement between the Parties and supersedes any and all prior written and/or oral agreements. The Parties agree that any oral or written representations made by any Party hereto during the negotiation of this Agreement which are not incorporated by writing into this Agreement are not binding.
7. The recital clauses set out in this Agreement are intended for convenience only rather than substantive import. The recital clauses shall not be used in the construction or interpretation of this Agreement.
8. The commitments, obligations, promises, representations, and warranties contained in this Agreement shall survive the closing and delivery of the deeds.
9. This Agreement may be executed in counterparts, including by facsimile signature, and all such counterparts taken together shall be one and the same instrument.
10. All notices, requests, orders, and other communications under this Agreement shall be in writing unless expressly provided otherwise and shall be deemed to have been duly given if delivered personally to the addressee, upon receipt if mailed by certified or registered mail, return receipt request, with postage prepaid, or upon confirmation of facsimile by the transmitting machine if faxed, as follows:

To: U.S. Fish and Wildlife Service
Attn: Chief, Division of Realty
1011 E Tudor Rd., MS 211
Anchorage, Alaska 99503
Fax: 907-786-3901

With a copy to (which shall not be deemed to be requisite notice):

Refuge Manager
Izembek National Wildlife Refuge
P.O. Box 127
Cold Bay, Alaska 99627
Fax: 907-524-3251

To: King Cove Corporation
Attn: President Dean Gould
P.O. Box 38
King Cove, Alaska 99612
Fax: 907-497-2444
kcc@arctic.net

With a copy to (which shall not be deemed requisite notice):

King Cove Corporation
Attn: Della Trumble
P.O. Box 38
King Cove, Alaska 99612
dellat@arctic.net

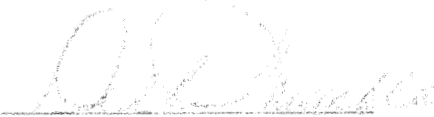
or to such other addresses as any Party may from time to time designate in a written notice to the others in the manner provided above.

11. Should litigation be brought by either party or by a third party which results in a delay of the times for action set out in this Agreement, the deadline for such action shall be extended for ninety (90) days beyond the date after which the delay caused by such litigation terminates.
12. Time is of the essence of this Agreement. The Parties jointly agree to use their best efforts to expedite all aspects and tasks of this Agreement, including but not limited to appraisals, permits, determination, and any other decision needed to fully implement this Agreement.
13. Should circumstances or events occur that are not covered by this Agreement, the Parties agree to use their best efforts to resolve any problems arising out of such circumstances in a spirit of good faith and fair dealing.
14. If a Clause in this Agreement is determined by final judgment of any court of competent jurisdiction to be unlawful and/or unenforceable, the other Clauses of this Agreement will continue in effect and remain binding on the Parties; provided, however, that either Party may terminate this Agreement within ninety (90) days of such final judgment declaring a Clause unlawful or unenforceable if the Party determines in its sole judgment that the Clause was a fundamental term or condition of this Agreement.

The persons signing below represent that they have legal authority to execute this Agreement on behalf of their respective Federal agency and corporation.


King Cove Corporation

Date: JAN 22, 2018


Della Trumble, Finance Manager

U.S. Department of the Interior

Date: JAN 22, 2018


Ryan K. Zinke
Secretary of the Interior



LEGEND

- IZEMBEK NATIONAL WILDLIFE REFUGE BOUNDARY
- IZEMBEK WILDERNESS BOUNDARY
- EXISTING ROAD

POOL OF LANDS FROM WHICH THE U.S. EXCHANGE LANDS WILL BE SELECTED*

- POOL OF SELECTION LANDS NECESSARY FOR ROAD CONSTRUCTION, OPERATION, AND MAINTENANCE (6,280 acres more or less)

* The total U. S. Exchange Lands ultimately selected from the foregoing pool of lands shall comprise no more than 500 acres

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND
PUBLIC FACILITIES

KING COVE TO COLD BAY ROAD
WITHIN T.57S., R.89W, T.56S., R.88W.,
T.56S., R.87W, AND T.57S., R.87W.,
SEWARD MERIDIAN
AKSAS NO. SSHWY00117

STATE OF ALASKA DEPARTMENT OF TRANSPORTATION

DATE: 11/20/2017

SHEET 1 OF 1

Pool of Lands for Road Construction, Operation, and Maintenance *

Encompassing and beginning at the intersection of Outpost Road and the Izembek National Wildlife Refuge Boundary within the NE1/4SE1/4 of Section 10, Township 57 South, Range 89 West, Seward Meridian, Alaska, being approximately 3,530' Northeast of the intersection of Outpost Road and Outer Marker Road.

Thence leaving the Izembek National Wildlife Refuge Boundary in a Northeasterly direction through the portions of the following sections;

Township 57 South, Range 89 West, Seward Meridian, Alaska.

- Section 10: S1/2NE1/4 and the portions of the N1/2SE1/4 northerly of the Izembek National Wildlife Refuge,
- Section 11: NW1/4 and the portions of the NW1/4SW1/4 northerly of the Izembek National Wildlife Refuge.

Thence in a Northerly direction through the portions of the following sections;

Township 57 South, Range 89 West, Seward Meridian, Alaska.

- Section 2: E1/2SW1/4, W1/2SE1/4, W1/2NE1/4, and E1/2NW1/4.

Township 56 South, Range 88 West, Seward Meridian, Alaska.

- Section 33: E1/2SE1/4,
- Section 34: W1/2SW1/4, NE1/4SW1/4, NW1/4, and NW1/4NE1/4.

Thence in a Northeasterly direction through the portions of the following sections;

Township 56 South, Range 88 West, Seward Meridian, Alaska.

- Section 27: E1/2SW1/4 and SE1/4,
- Section 26: W1/2SW1/4, NE1/4SW1/4, S1/2NW1/4, NE1/4NW1/4, W1/2NE1/4, and NE1/4NE1/4,
- Section 23: SE1/4.

Thence in an Easterly direction through the portions of the following sections;

Township 56 South, Range 88 West, Seward Meridian, Alaska.

- Section 24: S1/2SW1/4 and SE1/4,
- Section 25: N1/2NW1/4 and N1/2NE1/4.

Township 56 South, Range 87 West, Seward Meridian, Alaska.

- Section 30: N1/2NW1/4 and N1/2NE1/4
- Section 19: SE1/4SW1/4, SE1/4, and SE1/4NE1/4,
- Section 20: NW1/4SW1/4, S1/2NW1/4, NE1/4, and N1/2SE1/4,
- Section 21: N1/2SW1/4, SE1/4NW1/4, NE1/4, and SE1/4,
- Section 16: SE1/4
- Section 22: NW1/4SW1/4, NW1/4, and NE1/4,
- Section 23: NW1/4 and NW1/4NE1/4.

Thence in a Southerly direction through the portions of the following sections;

Township 56 South, Range 87 West, Seward Meridian, Alaska.

- Section 23: SW1/4NE1/4 and SE1/4,
- Section 24: W1/2SW1/4,
- Section 26: NE1/4NE1/4,
- Section 25: NW1/4, SW1/4, and W1/2NE1/4,
- Section 36: NW1/4, W1/2SW1/4, and SE1/4SW1/4,
- Section 35: SE1/4NE1/4 and E1/2SE1/4.

Township 57 South, Range 87 West, Seward Meridian, Alaska.

- Section 6: NE1/4, W1/2SE1/4, and SE1/4SE1/4,
- Section 7: N1/2NE1/4 and SE1/4NE1/4,
- Section 8: W1/2NW1/4, SE1/4NW1/4, N1/2SW1/4,
SE1/4SW1/4, W1/2SE1/4, and SE1/4SE1/4,
- Section 17: NE1/4, and N1/2SE1/4.

Including the end of an existing road from King Cove providing access to a landing site on the Northeast side of Cold Bay.

- * The total U.S. Exchange Lands ultimately selected from the foregoing pool of lands shall comprise no more than 500 acres

King Cove - Exhibit B

-  USFWS Refuge Boundary
-  USFWS Wilderness Area
-  Village Patent - King Cove
-  Village Selection - King Cove

Patented acres within Wilderness Area: 9,550.23
Selected acres within Wilderness Area: 5,429.67

This document is made by the Bureau of Land Management as a public service, and is not intended to be used for legal purposes. It is based on the best available information, and is subject to change without notice. The information on this map should be used for general display only. For official land status information, refer to the official survey plans, maps, and boundary lines. This product was prepared through digital means and may be subject to slight variations.

