

Exxon Valdez Oil Spill Trustee Council

Restoration Office

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To: To Whom It May Concern

From: Dave Gibbons *slig*
Interim Administrative Director

Date: March 16, 1993

Subject: 3/10/93 Trustee Council Transcript Error

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EXXON VALDEZ OIL SPILL
TRUSTEE COUNCIL
ADMINISTRATIVE RECORD

Due to a changeover of court reporters during the past two months, there is an pagination error in March 10, 1993 Trustee Council transcript.

The January 19-20, 1993 Trustee Council meeting was recorded by one court reporter as volumes I and II, the February 16, 1993 meeting, which was a continuation meeting was recorded by a different court reporter and was perceived to be a volume I, instead of volume III. The same reporter recorded the March 10, 1993 meeting and recognized it as a continuation meeting and identified the transcript volume II instead of what it should be, volume IV.

	<u>Correct Sequence</u>	<u>Present Sequence</u>
January 19	Vol I	Vol I
January 20	Vol II	Vol II
February 16	Vol III	Vol I
March 10	Vol IV	Vol II

95.3

TRUSTEE COUNCIL
MEETING
10 MARCH 1993

RECEIVED
MAR 30 1993

**EXXON VALDEZ OIL SPILL SETTLEMENT
TRUSTEE COUNCIL
ADMINISTRATIVE RECORD**

RESTORATION OFFICE
Simpson Building
645 G Street
Anchorage, Alaska

VOLUME II
March 10, 1993
8:30 a.m.

TRUSTEE COUNCIL MEMBERS in attendance:

State of Alaska	MR. CHARLES COLE Attorney General
State of Alaska Department of Environmental Conservation	MR. JOHN SANDOR Commissioner
United States Department of the Interior	MR. PAUL GATES Acting Special Assistant
State Department of Fish and Game	MR. CARL ROSIER Commissioner
United States Department of Agriculture - Forest Service	MR. MIKE BARTON Regional Forester
United States Department of Commerce - NOAA	MR. STEVE PENNOYER Director, Alaska Region

RESTORATION TEAM in attendance:

DAVE GIBBONS	Interim Administrative Director, Trustee Council
MARK BRODERSEN	Restoration Chief, Alaska Department of Environmental Conservation
JEROME MONTAGUE	Director, Oil Spill Impact Assessment & Restoration Division, Alaska Department of Fish and Game

BYRON MORRIS Chief, Office of Oil Spill Damage Assessment
and Restoration, United States Department of
Commerce - NOAA

KEN RICE Deputy Natural Resource Manager, United
States Department of Agriculture -
Forest Service

PAMELA BERGMAN Regional Environmental Assistant, United
States Department of the Interior

MARTY RUTHERFORD Assistant Commissioner of EVOS,
Alaska Department of Natural Resources

PUBLIC ADVISORY GROUP MEMBERS in attendance:

DOUGLAS MUTTER Department of the Interior
Designated Federal Officer

BRAD PHILLIPS Chairman
PAMELA BRODIE
KIM BENTON (substituting for JOHN STURGEON)
CHARLES TOTEMOFF
DR. RICHARD KNECHT

OTHERS in attendance:

DR. ROBERT SPIES
CRAIG O'CONNER NOAA Legal Counsel
KATHLEEN CHOROSTECKI NOAA Damage Assessment Center
MARIA LISOWSKI Of Counsel
JEROME SELBY Mayor of Kodiak Island Borough
TOM FINK
JOE SULLIVAN
CRAIG TILLERY
ARTHUR WEINER, Ph.D.
CHUCK GILBERT
KIM SUNDBERG
CAROL GORBICS
ROBERT LOEFFLER

* * * * *

1 Commissioner, Alaska Department of Fish and Game; Paul Gates,
2 Acting Special Assistant for the Secretary of the Department of
3 Interior, and I'm Steven Pennoyer from the National Marine
4 Fisheries Service, NOAA, Department of Commerce.

5 I think what we probably ought to do first is take a
6 look at the agenda. I'd like some comment before we start on the
7 timing available. I'm not sure if this meeting was planned for a
8 one-day session, I believe, and I don't know what people's
9 schedules are but I'd like an idea of a horizon. Do we have
10 until something like 6 or 7 o'clock tonight or do people have to
11 make planes tonight or where are we? Could I get some response?
12 6:00 or 7:00?

13 MR. COLE: I'm on the 7:10 flight to Juneau.

14 MR. PENNOYER: So, we have about a 6:30 or so -- 6
15 o'clock planning horizon? 5:30? Whatever, okay. That's fine.
16 Okay. And I think what we ought to do first then is take a look
17 at the agenda. Dr. Gibbons may want to comment at this point as
18 to how this fits into the past agenda and then perhaps, we could
19 get some discussion of whether we want to add things or subtract
20 them or change them. Dr. Gibbons, do you have any comment on the
21 agenda?

22 DR. GIBBONS: Yes. I was just passed an addition to
23 it. A request that we add the Alaska Clean Seas presentation on
24 it.

25 MR. PENNOYER: The what? I'm sorry.

26 DR. GIBBONS: It's called Alaska Clean Seas. It's a

1 presentation concerning oil clean-up, I think, in the Bristol Bay
2 or -- by the Russians.

3 MR. PENNOYER: Okay. We'll put that, I guess, at the
4 end. Do other members have additions to the agenda or changes?

5 MR. COLE: Mr. Chairman.

6 MR. PENNOYER: Mr. Cole.

7 MR. COLE: I've asked Mr. Jerome Selby, mayor of
8 something down in Kodiak, to appear in connection with the
9 archeological structure there or museum building. You'll recall
10 that we deferred that once or twice already and I think that may
11 be one of the items on the agenda. I'm not sure.

12 MR. PENNOYER: I think that probably could come under
13 the Public Advisory Group proposals for the '93 work plan.

14 DR. GIBBONS: That's correct. It's there.

15 MR. PENNOYER: At that point, we would -- if there's no
16 objection, we'd ask Mayor Selby to speak to that project. Okay.
17 I'd like to add one at some point. I don't know where it would
18 go but I'd like a report on the imminent threat process we're
19 engaged in, lands, and where we are in that process and some
20 feeling from the council on where we wish to go at this point.

21 DR. GIBBONS: Mr. Chair, that's going to be talked
22 about in Item number two.

23 MR. PENNOYER: Okay, fine. Well, then we might as well
24 just start plowing on down through it. Item one is the Public
25 Advisory Group Operating Procedures. Dave Gibbons and Brad
26 Phillips.

1 DR. GIBBONS: There you are, Brad. I didn't see you.
2 At the last meeting, Brad asked for some direction from the
3 Trustee Council on the operating procedures for the Public
4 Advisory Group and had some examples of alternates being able to
5 vote and some other things. And so, I think I'm just going to
6 turn this over to Brad, if I can and...

7 MR. PHILLIPS: Thank you, Dave.

8 MR. PENNOYER: Good morning, Brad. Go right ahead.

9 MR. PHILLIPS: Good morning. Winter came back today,
10 didn't it?

11 MR. PENNOYER: It was nice yesterday.

12 MR. PHILLIPS: Three items. I know you have a long
13 agenda and I'm not going to -- I'll try not to contribute to the
14 problem. We made a request specifically about the use of
15 alternates and their being able to vote. We'd like to ask you if
16 you have an answer to that so that we know how to function.
17 Number two, we asked if perhaps there was a way where we could
18 receive some direction or more direction if this group feels that
19 we should have it. And number three, there is an item I want to
20 talk to you about. We've discussed the possibility of taking the
21 group, the Public Advisory Group, and some staff out into Prince
22 William Sound to examine some of the areas that we've been
23 talking about. We know that many of -- some of them have never
24 been out there and I volunteered to provide the vessel to do it.
25 Sometime in May. We picked a date. The only -- we've asked for
26 some share in the cost of the fuel. That's all. We're still

1 subsidizing that part of it and the only other expense would be
2 the railroad expense of getting from Portage to Whittier and if
3 we had a road into Whittier, we wouldn't even have that expense.

4 MR. PENNOYER: Is that part of the '94 work plan?

5 MR. PHILLIPS: I haven't been able to get it in yet but
6 I've been looking for a place.

7 MR. PENNOYER: We'll watch for it.

8 MR. PHILLIPS: And I guess we need the determination,
9 number one, on whether we can favorably use alternates in our
10 deliberations so we don't run into the problem we had last time
11 when we couldn't get a quorum. And if it's okay to do that, then
12 we have lined up alternates that we could get approved. Each
13 member would suggest an alternate to occupy his place in case he
14 can't be there.

15 MR. PENNOYER: So, you're suggesting approved
16 alternates. Not a variable thing? You'd actually have one
17 approved alternate...

18 MR. PHILLIPS: Absolutely.

19 MR. PENNOYER: ...and proceed, if we would approve it
20 and then they can vote if we so (indiscernible - simultaneous
21 speech)

22 MR. PHILLIPS: Yeah, because normally we will pick
23 somebody that's knowledgeable in our field.

24 MR. PENNOYER: Are you prepared to submit applications
25 at this time or resumes or something?

26 MR. PHILLIPS: I'll have to ask Doug if they're all in. I

1 know we have...

2 MR. MUTTER: Not all.

3 MR. PHILLIPS: I think there's two or three that we
4 haven't received but we could get them to you within a day or so
5 if you say go.

6 MR. PENNOYER: Trustee Council, do you want to take up
7 this? Let's take them up one at a time, why don't we. Any
8 comment on the first proposal? Mr. Barton.

9 MR. BARTON: Yes, Mr. Chairman. I have to confess to
10 being somewhat ambivalent about the use of alternates from the
11 standpoint that I think it's important that the primary designee
12 make every effort to be involved. I would hate to see the
13 process evolve to where you're having a meeting of alternates,
14 Brad.

15 MR. PHILLIPS: So would I.

16 MR. BARTON: You know, I think if you could secure some
17 assurances from your members that they'll make every effort to
18 participate, that would relieve a lot of my anxiety. The other
19 side of the ambivalence is that I hate to see you have a meeting
20 without the full smorgasbord in attendance and for that reason,
21 I'm in favor of the use of alternates but with the clear
22 understanding that the primary member will make every effort to
23 participate but recognizing there will be some occasions when
24 that's not possible.

25 MR. PHILLIPS: My experience -- in regard to that, my
26 experience with the group since I've got to know them, most of

1 them you can't keep them away from the meeting without a team of
2 horses. And I think it's in an emergency situation that they
3 can't get here and I just hate to be in a situation where we
4 can't act, particularly when so many come from different places
5 and we have an interest in doing something. I think it's a
6 standard operating procedure and knowing the group that we're
7 talking about, I think that we can allay your fears about people
8 not coming. Sometimes, I wish some of them might not come, but
9 believe me, they'll be there.

10 MR. GATES: Aren't you using alternates now or is it
11 just a matter of voting?

12 MR. COLE: What's that? Did I miss something?

13 MR. PENNOYER: Could we address the Chair? Mr. Gates.

14 MR. PHILLIPS: We do have alternates, yes. Yes, we do
15 have alternates that come in. They're usually sent -- they're
16 sent by the member if they can't be there, but they do not vote
17 now. And that's where we got caught in the trap last time. We
18 didn't have a -- although we had a full group of people there, we
19 did not have a quorum because our quorum is 12 out of 15 so it's
20 pretty tight.

21 MR. PENNOYER: There are no recognized alternates that
22 the Trustee Council recognize at this time?

23 MR. PHILLIPS: That's correct. That is correct. We
24 would propose to give you a name for each category for you to
25 approve.

26 MR. PENNOYER: Is there any problem that the Trustee

1 Council has with approved alternates by the council?

2 MR. GATES: I think we've got a problem with going back
3 and getting some changes made in the charter before we can do
4 something like that.

5 MR. PHILLIPS: Yeah, they're proposed in our revision
6 of the working rules.

7 MR. PENNOYER: Yeah, I was going to find out if
8 conceptually we thought this was good and there are other process
9 problems with actually getting it done if we think it is
10 conceptually a good idea.

11 MR. GATES: I guess the point is if you have alternates
12 there and really you're looking for their guidance, you can
13 change what the quorum requires, can't you, and get your -- as
14 far as the voting goes? You can do that with your guidelines,
15 can't you?

16 MR. PHILLIPS: In order to avoid the problem of a
17 quorum, we would have to have the rules changed again. The
18 operating rules. Right now, we have a quorum requirement of 12
19 and we can change anything you people will change because you're
20 the ones that have to change it. We can recommend and then you
21 change it.

22 MR. PENNOYER: That's part of it, of course. You could
23 change it. We don't even have to have a vote. If we get a
24 record of what people agreed, we can read through what the
25 opinions are but a part of it is whether the people are going to
26 be there representing that interest are people who we have

1 approved as representing that interest. So, you have a formal
2 process. Then the alternate is there, you know who's speaking
3 for that interest is someone that you think is the appropriate
4 one to do so, not sort of an ad hoc, invariable thing. Mr. Cole.

5 MR. COLE: Mr. Chairman, I agree with, quite
6 remarkably, with everything that's been said by trustees here
7 this morning on this subject but I would like to add another
8 thought that this group of 17 -- I guess it's 17 -- was carefully
9 selected for the balance of the group. And I often wonder
10 whether we wisely reduced the quorum number because I personally
11 would not like to see the attendees skewed to any particular
12 group of interests. You know, I would not like to see the
13 environmental group, if there is such on the advisory group,
14 be dominant at a meeting nor would I like to see, you know, the
15 so-called development interest or business interest be dominant
16 at that group meeting, you see, because then the advice which we
17 received is not as fully balanced as I think we comprehended when
18 we formed this group. I think it's very important.

19 And we, I think as trustees, recall some of the blood
20 which was almost spilled but jostled around in the glass as we
21 selected these names -- very carefully selected so as to provide
22 a balance to get people who had special skills and ability and
23 experience in their particular field. So, as we select these
24 alternates, I think that it is essential that we preserve that
25 balance. So, I would vote for the proposal with the reservation
26 do we need some sort of mechanism which provides that if a Public

1 Advisory Group member, you know, has a record of inability to
2 meet, that that be called to our attention in some fashion.

3 MR. PENNOYER: Don't we have in the rules of procedure
4 something about replacement for non-attendance or other reasons
5 somewhere in our charter?

6 MR. PHILLIPS: I'm not personally familiar with that,
7 but I think it's certainly a reasonable request because it's done
8 in all organizations, even the Rotary Club. If you can't attend
9 so many times, you're gone. Chambers of Commerce and every other
10 organization.

11 MR. MUTTER: It's in the charter.

12 MR. PHILLIPS: Is it in the charter?

13 MR. PENNOYER: Yeah, I think it is.

14 MR. PHILLIPS: Okay, Doug says it is.

15 MR. GATES: Is there a problem with voting? Doug, does
16 that address voting members? I thought there was a problem with
17 the charter, the fact that...

18 MR. MUTTER: If you're going to have alternates vote,
19 you're going to have to change the charter which needs to go to
20 the Secretary of the Interior. That's a process question.

21 MR. PENNOYER: The comment was the charter would have
22 to be changed, go to the Secretary of Interior for approval if we
23 were going to allow alternates to vote.

24 MR. COLE: Mr. Chairman.

25 MR. PENNOYER: Mr. Cole.

26 MR. COLE: I move that the charter be amended to

1 provide for the designation of alternates for each member. The
2 alternate to be approved by the Trustee Council, period.

3 MR. PENNOYER: Voting alternates, right?

4 MR. COLE: Yes.

5 MR. PENNOYER: Thank you. Is there a second?

6 MR. BARTON: Second.

7 MR. PENNOYER: Is there any objection? (Pause)

8 Hearing no objection, it's been adopted and I guess we'd ask
9 Dr. Gibbons to so work on amending the charter for the proper
10 approval process. I guess that would require a letter back to
11 the secretary, giving our reasons and stating what's been done.
12 How about the process for approval of the alternates? We've
13 heard that a list would be available to us with appropriate
14 background...

15 MR. PHILLIPS: We'll submit those right away, sir.

16 MR. PENNOYER: Okay. So...

17 MR. PHILLIPS: We can get those in in a matter of days.

18 MR. PENNOYER: Would we do that then by a mail-out and
19 then decide if we need to teleconference to discuss it or wait
20 until the next meeting which we haven't decided on yet?

21 MR. COLE: Well, Mr. Chairman, it's a problem with the
22 Open Meetings Act.

23 MR. PENNOYER: Fine. Then, let's -- good point. Why
24 don't we then get those resumes and put it on the agenda for the
25 next meeting? Mr. Cole.

26 MR. COLE: That troubles me because there's delay and I

1 think Mr. Phillips is concerned about the delay. I think we're
2 all concerned about the delay. Maybe we can just continue this
3 meeting for a telephonic meeting and reserve that singular agenda
4 item for a subsequent teleconference meeting.

5 MR. PENNOYER: If that would satisfy the requirement
6 of the act, then that would certainly be, I guess, would be
7 acceptable. Anyone have a problem with that concept? Mr. Gates.

8 MR. GATES: The only problem we got to get the charter
9 amended. That's a procedural thing so maybe we can go ahead and
10 do the selection process, I guess, but they wouldn't be to...

11 MR. PENNOYER: Able to vote or...

12 MR. GATES: ...vote or become functional as far as
13 voting goes until we get that taken care of.

14 MR. COLE: Secretary Babbitt would act expeditiously,
15 I'm certain.

16 MR. GATES: I'm sure.

17 MR. PENNOYER: If both parts of the process are moving
18 and one holds the other up, that's the way it goes but it doesn't
19 do it by simply something we've done then. So, if that's
20 acceptable, Dr. Gibbons, do you want to take note of that then?

21 DR. GIBBONS: (Inaudible positive response.)

22 MR. PENNOYER: Okay, we'll be expecting the
23 applications then shortly.

24 MR. PHILLIPS: We'll see that you get those in just a
25 very few days.

26 DR. GIBBONS: Mr. Chair. One point in regard to this,

1 I was just reading the operating procedures. It says "A quorum,"
2 and it says "(along with the attendance of the Designated Federal
3 Officer)". And my concern might be if Doug's sick and you've
4 got, you know, 14 members there. If he's sick and cannot attend
5 the meeting, they still don't have a quorum. Perhaps we should
6 have an alternate for the designated federal officer, also.

7 MR. PENNOYER: Mr. Gates.

8 MR. GATES: We can take care of that.

9 MR. PENNOYER: Fine. All right. The second item you
10 had then was a question of direction?

11 MR. PHILLIPS: Yes. I don't know whether you've
12 formulated anything since our last discussion, but I know the
13 group would welcome any specific direction you have for us so
14 that we aren't going off on rabbit trails and doing things that
15 aren't helpful to you to be able to expedite our discussions too.
16 And you may not have anything ready, but we're ready to receive
17 any direction you can give us that will be helpful.

18 MR. PENNOYER: I think the direction you specifically
19 were talking about was the amount of interaction with the public
20 and what type of public interaction...

21 MR. PHILLIPS: That's part of it, yes.

22 MR. PENNOYER: ...other public interaction from the PAG
23 should serve. I guess the other factor, too, of just the
24 process. Do you deal with our agenda in total before each
25 meeting. I mean there's some procedural things I'm not sure have
26 been -- for example, have you met since our last meeting?

1 MR. PHILLIPS: No.

2 MR. PENNOYER: I don't think you've have.

3 MR. PHILLIPS: No, we haven't had a reason to meet
4 until we get some...

5 MR. PENNOYER: You haven't specifically commented on
6 this agenda content then that's been holdover from last the
7 meeting?

8 MR. PHILLIPS: No, sir. And you know, we have the same
9 30-day thing to contend with. We just thought maybe if you --
10 even informally, if you can tell us what we're doing right or
11 wrong, particularly the wrong thing or where we could strengthen
12 our activities to help you so that we don't spin our wheels and
13 waste time and that we can be helpful.

14 MR. PENNOYER: Mr. Cole.

15 MR. COLE: I have a thought that I hope is shared by
16 other members of the Trustee Council. And that is that we're
17 looking for broad advice, not narrow, selective advice. I
18 received a letter -- I think all the other members of the Trustee
19 Council did -- from one of the members of the Public Advisory
20 Group, I think, who sort of appeared to misconstrue the functions
21 of the Public Advisory Group, at least from my standpoint.

22 I mean as I looked at the transcript of the Public
23 Advisory Group's actions on the last 1993 work plan projects, I
24 did not see in the transcript the type of full discussion and
25 reflection upon each project which I personally would liked to
26 have seen. I mean it's my contemplation that when the Public

1 Advisory Group looks at these proposed projects, that they say,
2 "Does this project really make sense?" and they scrutinize it
3 carefully from that standpoint, number one. I mean is too much
4 money being spent based upon the broad views of those in the
5 Public Advisory Group for this project? Is this project a
6 project which the sense of the group thinks that the agency
7 should be doing as part of its normal statutory functions and
8 duties? This was part of what the group did but are there other
9 projects which should be examined carefully by the group. Is our
10 general approach to projects too narrow or should it be more
11 wide-ranging?

12 I mean that's the sort of help, if you will, that I
13 would like to see come from this advisory group and not simply
14 say, "Well, we haven't been told to do this, so we're not going
15 to do it." I mean, you know, just take a shot at us, if you
16 will. I mean, you know, but we...

17 MR. PHILLIPS: That's the kind of help we had in...

18 MR. COLE: ...need that sort of advice.

19 MR. PHILLIPS: That's what we need, Mr. Cole. So far,
20 we haven't had it and if that's what you want, then we can follow
21 those guidelines. I have no problem with that. We did discuss
22 all of those projects. We didn't know at the time whether we
23 could go outside of those projects for work -- for '93 or not.
24 We did make some comments on concerns that we had. We couldn't
25 vote because we didn't have a quorum but we did try to transmit
26 to you the general feeling, a consensus of things that -- and I

1 think we even sent you some minority concerns about things like
2 -- as an example, one of the things that bothered all the way
3 through the meeting was that layer upon layer of projects given
4 to an agency really inflates the personnel section of the costs
5 of these things. And we did question each representative of that
6 agency on whether this is a thing that you normally do in the
7 course of your business. Are you hiring new people or are the
8 old people taking it? There was a concern about where that
9 money is going and that, I think, was transmitted to you and so
10 we worked within the framework we had and that is those projects
11 that we had concern ourselves.

12 I appreciate your comments because it gives me a better
13 direction on where we can go and believe me, we've got a lot of
14 independent thinkers in that group and you will probably get a
15 lot of ideas outside of the agenda.

16 MR. COLE: See, that's why we selected them for that
17 very reason is for their independent thinkers in the group
18 so we'd get a composite of what people of this state are
19 saying. And also, I mean, for example, just one more thought,
20 Mr. Pennoyer.

21 MR. PENNOYER: Go ahead.

22 MR. COLE: You know, we get this are there enough
23 projects being devoted for the commercial fishing interests?
24 You know, we received -- I received letters on that saying, "Hey,
25 you know, you're not looking after us enough." Are we -- is our
26 general approach to habitat acquisition, is it too full or not

1 full enough. You know, so that's the type of thing that frankly
2 I would like to see. I leave it to the other members now for
3 their comments to see if they agree or disagree.

4 MR. PENNOYER: Other comments?

5 MR. BARTON: Mr. Chairman, I would endorse the Attorney
6 General's remarks. I also understand that after I had to leave
7 the last council meeting, there was some language distributed to
8 the council members regarding the intent of the council with
9 regard to the Public Advisory Group and what the council had
10 hoped for. I don't know whether there was any action taken on
11 that or not, but I think that also might be helpful and I know it
12 could be inserted in the operating procedures that you all have
13 developed very nicely in there and that would perhaps also
14 provide some assistance, Brad.

15 MR. PHILLIPS: Okay, that's fine. We'll discuss these
16 things at our next meeting, I'm sure, because they're all anxious
17 to know if we're headed in the right direction and we don't see
18 our position as adverse to yours. We just want to be helpful.

19 One of the other things, as an example, that was of
20 concern in our last meeting was to what extent or how close
21 should these projects be to actual damage by the oil spill? Some
22 of them really have a tendency to get far out and you can't find
23 the link, necessarily, between the oil spill and the project. And
24 to what extent do you want our feeling on that? That was a very
25 major thing that we talked about last time.

26 MR. COLE: Mr. Chairman.

1 MR. PENNOYER: Mr. Cole.

2 MR. COLE: That is crucial. I mean that is the mandate
3 of the congressional statute. It is the order of the United
4 States District Court and it is the specific language of the
5 memorandum of agreement between the state and federal trustees.
6 We must have that. And we also met with the members of the
7 General Accounting Office last Friday and I think they focused,
8 in part, on that very issue. We need in my view the thought
9 process, the views of the Public Advisory Group on that subject.
10 And I think, as I told -- we told the GAO people that we sit here
11 as trustees with the obligations of trustees and we look for that
12 link on every project.

13 MR. PHILLIPS: That's the kind of direction we need. I
14 appreciate those comments very much because it was a concern of
15 the whole group.

16 MR. PENNOYER: Mr. Rosier.

17 MR. ROSIER: Thank you, Mr. Chairman. Brad, I realize
18 this is kind of a negotiating thing here in terms of direction
19 and operation but -- and I don't think that the PAG has had the
20 opportunity to really look at the budget that we've identified
21 for it but I, for one, am certainly interested in seeing a very
22 strong Public Advisory Group here on this and when you're talking
23 about this direction that you want to go and the direction that
24 you may be seeking from us on this, I would hope that you would
25 keep in mind the budget aspect of this. I think that budget
26 figure that we gave for the PAG was kind of a generalized budget

1 and we weren't exactly sure what that level should be or anything
2 else but I think that would certainly be a key to supporting the
3 PAG.

4 MR. PHILLIPS: Thank you.

5 MR. PENNOYER: Mr. Barton.

6 MR. BARTON: Mr. Chairman, is a motion in order to
7 adopt the intent language that was distributed?

8 MR. PENNOYER: I'm not sure the other members have it
9 in front of them, Mr. Barton, so you can make the motion but I'm
10 not clear we're prepared at this time to review it and I don't
11 know where it went to, so...

12 MR. BARTON: I understood that Mr. Sandor distributed
13 it at the earlier session of this meeting, so I guess I move the
14 adoption of that language. I'd be pleased to read it.

15 MR. PENNOYER: Maybe you could arrange for copies to be
16 made and we could take it up -- Mr. Cole. There it is.

17 MR. BARTON: How's that for responsiveness?

18 MR. PENNOYER: That's pretty responsive.

19 MR. COLE: When we start looking at language like that,
20 you know, it requires more than simply, in my view or reading
21 here, and say, "Well, it looks all right." And you know, then
22 six months later, somebody calls the language to our attention
23 and, you know, you say, whoops. I would not want to sit here and
24 dissect this language and approve it here. I would feel more
25 comfortable with a general adoption of the remarks here this
26 morning, have them transcribed and be done with it, but if other

1 trustees think we should adopt language -- this language or
2 similar language, I would prefer to defer it until after lunch
3 until we can scrutinize it carefully.

4 MR. PENNOYER: Any problem with deferring this until
5 after lunch? This seems to speak to a part that we haven't spent
6 a lot of time talking about this morning, namely, the public
7 interaction -- general public interaction. Why don't we defer
8 this until after lunch then? Is that acceptable to everybody?

9 (Unanimous inaudible positive agreement.)

10 MR. PENNOYER: I think you've heard a lot of comments
11 this morning that may give you some help in doing your work.

12 MR. PHILLIPS: Absolutely. It was worth getting up
13 for.

14 MR. PENNOYER: I think that clearly your role is not a
15 restrictive one, you know, and I don't think anybody's asking you
16 just to comment on projects or budgets. We're getting into a
17 Restoration Plan now that's going to set some of these parameters
18 down in terms of the scope of things that this council wants to
19 undertake and your comments on that as well are appropriate. So,
20 I think practically anything on our agenda that you feel we need
21 that advice on is certainly something we'd like to hear from you.

22 MR. PHILLIPS: All right.

23 MR. PENNOYER: The one other item that was brought up
24 by Mr. Phillips was the trip to Prince William Sound. Do we have
25 an actual proposal of a dollar amount in front of us? You
26 mentioned that there was some type of a proposal and fuel costs

1 and travel and so forth, but I don't know that I've seen
2 something.

3 MR. MUTTER: 2,000.

4 MR. PHILLIPS: Total?

5 MR. MUTTER: Yeah.

6 MR. PHILLIPS: 2,000? Doug has figured out about
7 2,000. Most of that is for the rail transportation from Portage
8 into Whittier and about \$500.00 for fuel on the vessel. We're
9 providing the food and the vessel and the expertise to get around
10 the Sound. We just thought it might be a very good educational
11 program and of course, we can carry as many as you want to, so if
12 you have other people that you think it would be valuable to get
13 out there and see some of these areas, I have no problem. We can
14 carry up to 300 people.

15 MR. PENNOYER: How long a trip was this intended?

16 MR. PHILLIPS: It would be one day. It would be less
17 than that except that it takes time to get in and out of Whittier
18 on the train because we don't have a road in there.

19 MR. PENNOYER: What areas would you...

20 MR. COLE: The governor hasn't been successful in
21 getting in one either, Mr. Phillips.

22 MR. PENNOYER: What areas would you intend to cover?

23 MR. PHILLIPS: If it's okay, then Doug and I will get
24 together this afternoon and go over the chart that I have of
25 Prince William Sound and we'll pick out those areas to show
26 people that you're dealing with in some of the restoration

1 projects. I can't define it yet because we haven't -- we didn't
2 know whether we could do it. If we can, we will -- if it makes a
3 difference, whatever you want us to see, we will but there are
4 certain areas where work has been done and with all these
5 projects being worked on, we can select an itinerary that will
6 give the people a general feeling of what Prince William Sound is
7 and where the problem areas are. I just -- I've been out there
8 so much that I automatically gravitate to certain places that
9 they did clean-up work on.

10 MR. PENNOYER: Trustee Council comment? Mr. Barton.

11 MR. BARTON: I think that's an excellent idea. And I
12 would support such a field meeting of the PAG.

13 MR. PHILLIPS: That's what it would be designed for,
14 yes.

15 MR. PENNOYER: Mr. Gates.

16 MR. GATES: I guess, are there any rules or regulations
17 or concerns that we have to look at in this regard where we're --
18 Doug, have you looked into that?

19 MR. MUTTER: Yeah, Mr. Chairman, the PAG will probably
20 have a meeting here in Anchorage the following day and so, the
21 field trip would be a fact-finding trip, not a public meeting.
22 The meeting would be the following day here in town, so there
23 would be opportunity for public comment and so on. We're having
24 the attorneys take a look at legal issues right now to see if
25 there's a problem with that. If there is, we won't be able to do
26 it but if there isn't, why if you okay it, it's a go.

1 MR. PENNOYER: Is there a motion on this?
2 MR. BARTON: I so move.
3 MR. ROSIER: Second.
4 MR. PENNOYER: It's been moved and seconded that the
5 fact-finding trip by the PAG to Prince William Sound be
6 authorized expenditure of -- I heard 2,000 and then I heard 500.
7 Do I have an amount?
8 MR. PHILLIPS: No, the 500 was the amount allocated to
9 fuel.
10 MR. PENNOYER: So, a total of 2500 then about?
11 MR. PHILLIPS: I think it's still in the 2000, isn't
12 it?
13 MR. MUTTER: Right.
14 MR. PHILLIPS: About 2000.
15 MR. PENNOYER: About \$2000.00, okay, authorized for
16 this purpose. Is there anything we have to do in the budget,
17 especially?
18 MR. GATES: Just pending legal review.
19 MR. PENNOYER: Pending legal review, yeah. Is there
20 any...
21 MR. COLE: Mr. Chairman.
22 MR. PENNOYER: Mr. Cole.
23 MR. COLE: I can't resist saying that maybe the
24 Trustee Council should go along. I mean for those of us who have
25 ever been there, maybe it would enlighten us too but...
26 MR. PHILLIPS: You're sure welcome to come.

1 MR. COLE: I kind of leave that open.

2 MR. PHILLIPS: It will be sunny on that day also.

3 MR. PENNOYER: Mr. Phillips indicated that he had room
4 for up to 300 people which would seem to accommodate the Trustee
5 Council and then some.

6 MR. COLE: I'm sure there are many who think that a
7 little education of us would enable us to do a better job, but...

8 MR. PENNOYER: Maybe a little bit more than a little
9 bit.

10 MR. PHILLIPS: We'll leave it open and you can come if
11 you like.

12 MR. PENNOYER: Is there any objection to this motion?
13 It is adopted. In terms of your visit, I assume that there'll be
14 some discussion of maybe having some resource people along that
15 did some of the work or something and can discuss that type of
16 thing with you as you go.

17 MR. MUTTER: Right.

18 MR. PHILLIPS: Doug has a -- how many -- what's the
19 total, Doug, that we have been initially talking about, in
20 numbers?

21 MR. MUTTER: Well, I've been talking to Art Weiner
22 who's on the restoration program staff here and we'll work out an
23 itinerary and staff to inform us of what's going on.

24 MR. PHILLIPS: If it's important, we'll take anybody
25 that needs to go.

26 MR. PENNOYER: Mr. Cole.

1 MR. COLE: What are you really going to look at out
2 there? I mean, you know, that's going to be helpful in the
3 discharge of your duties?

4 MR. PHILLIPS: It seems to me that there's some people
5 who have never been there don't even know the geography of Prince
6 William Sound that might be helpful. There are places like
7 Herring Bay and others where we may be able to go ashore and
8 physically look and see what the recovery has been. We're
9 really wide open. If you've got anything specifically, we can
10 do it, because we can cover the whole Sound in that vessel. It's
11 pretty fast.

12 It's been my experience that there are some people you
13 talk about Prince William Sound, it may be nice on a flat map,
14 but they've never been there and never seen it, never understand
15 the dynamics of that then. They don't understand the value of
16 it, in my case for tourism or for fishing or for living or for
17 anything else. And I think you get a brand new feeling of what
18 this place is if you ever get out there to see it, even once.

19 MR. PENNOYER: Further discussion? Does that conclude
20 then all your...

21 MR. PHILLIPS: Thank you very much for your courtesy
22 and your time.

23 MR. PENNOYER: Thank you for coming. Dr. Gibbons, does
24 that complete that agenda item?

25 DR. GIBBONS: Yes, it does, Mr. Chair.

26 MR. PENNOYER: Very well. Let's go to the Negotiating

1 Team Options and Acquisition Guidelines. Marty Rutherford.

2 MS. RUTHERFORD: Mr. Chair, I'd like to begin by just
3 quickly reviewing the chronology of events concerning habitat
4 protection. The habitat protection process, including the
5 imminent threat process, was presented to the Trustee Council and
6 published for public review in the Restoration Framework
7 Supplement in July of '92. The threat analysis method was
8 presented to the Trustee Council on September 14 of '92.
9 Threshold criteria used for evaluating imminently threatened
10 parcels was approved by the Trustee Council on January 19 of '93.
11 The interim protection process including evaluation and ranking
12 criteria was approved by the Trustee Council on January 19, '93.
13 Analysis and ranking of 19 imminently threatened parcels and
14 three opportunity parcels was presented to the Trustee Council on
15 February 16, '93. And the Trustee Council decided on February
16 16, '93 to send letters to landowners requesting an indication of
17 their willingness to participate in the process.

18 At the February 16 Trustee Council meeting, the
19 Restoration Team also presented a discussion paper that provided
20 four options concerning how the Trustee Council might wish to
21 conduct negotiations and I think that discussion paper was in
22 your packet. There were four options in that discussion paper.
23 Option A was acquisition by the appropriate management agency;
24 Option B was acquisition by a government project office; Option C
25 was contracting with a private, non-profit agency for acquisition
26 services, and Option D was working with a private, non-profit as

1 a cooperator.

2 We left that February 16th meeting indicating that we
3 would provide two things to you today. One was a recommendation
4 on a negotiating option and two was a first draft of some
5 negotiating and acquisition guidelines. Regarding the first
6 item, the Restoration Team recommends Option B which is a
7 negotiating project office for any immediate negotiations you may
8 wish to pursue. I want to again point out that Option B and
9 Option A would use approximately the same number of people and
10 would be approximately the same cost.

11 In addition to making the recommendation on the
12 negotiating option, the Restoration Team recommends negotiations
13 for interim protection for all imminent threat parcels with a
14 score above 20 be approved. I refer you to a list that I think
15 is just being handed out now. Imminent threat parcels with a
16 score above 20. There are five. They are China Poot on Kachemak
17 Bay of which you've already taken action, Seal Bay on Afognak
18 Island, Fish Bay in Port Fidalgo, Power Creek near Cordova and
19 the Lower Kenai Peninsula.

20 Interim protection of imminently threatened lands is
21 designed to provide time to collect, analyze and incorporate
22 additional data into the detailed evaluation and ranking
23 procedure. We could do such things as establish and verify the
24 degree of linkage between a parcel and the affected resource or
25 service. We could define -- begin to define and shape the size
26 and shape of the acquisition target or parcel. We could

1 determine the appropriate protection tools and we could determine
2 the appropriate post-acquisition management strategy.

3 Trustee Council action is needed now because of the
4 nature and immediacy of the threat. The logging could adversely
5 affect the resources and services that were injured by the spill
6 and more importantly, this threat will foreclose restoration
7 opportunities. These five parcels ranked the highest of all the
8 imminent threat lands that have been analyzed and contain
9 habitats and service support, the protection of which would have
10 clear and significant restoration benefits. Basically, we need
11 your authorization to begin negotiations which does not represent
12 a commitment to acquire any property rights and it does not
13 represent a commitment on the part of the negotiating entity
14 to take title to rights or future management obligations.
15 Negotiations on imminently threatened lands would be directed
16 towards interim protection, but we would be -- we hope to be
17 receptive to longer-term protection if the terms are cost-
18 effective and if the landowners would prefer long-term
19 protection, so we want that flexibility; however, our overall
20 goal would be interim protection. However, of course, the
21 Trustee Council would make final decisions on any definitive
22 actions; it would be brought back to you.

23 I must note here that the three opportunity parcels
24 which are also listed on the bottom of this sheet that was handed
25 out and we discussed at the February 16th meeting also have
26 scores above 20, but the Restoration Team does not have a

1 recommendation on action on these parcels. There are both
2 significant advantages and disadvantages to also proceeding with
3 these three opportunity parcels and the Restoration Team
4 requested that I raise these. On the one hand, on the positive
5 side, the opportunity lands provide the Trustee Council with an
6 additional way of proceeding with habitat protection and
7 acquisition in the near term. Of the 22 parcels identified on
8 the list, the opportunity lands offer the best chance for success
9 because there's not multiple ownership and there's not immediate
10 activity occurring. Proceeding with the opportunity lands helps
11 make a quicker transition from the imminent threat process to the
12 comprehensive process and it would demonstrate to the landowners
13 that it's not necessary to develop a threat on their land in
14 order to have the Trustee Council consider it. It encourages
15 landowner participation in the process.

16 On the other hand, on the negative side, there are no
17 immediate threats to these three parcels. Moving forward at
18 this time with the opportunity parcels might be inconsistent with
19 the comprehensive process that was identified in the Restoration
20 Framework Supplement back in July of '92. If we began
21 negotiations on these three parcels, it would be for permanent
22 protection, unlike the imminent threat parcels and these actions
23 would be taken prior to completion of the Restoration Plan. And
24 finally, other lands within the spill-affected area will not have
25 the same level of analysis prior to the fall of '93.

26 Do we want to stop here before I go on into the second

1 item that we've discussed today which was the guidelines?

2 MR. PENNOYER: Could be. It seems to me within what
3 you've presented, there are a number of decision points that have
4 to be made as well, so...

5 MS. RUTHERFORD: That's correct.

6 MR. PENNOYER: ...perhaps if you could go back and --
7 first of all, do Trustee Council members have any questions on
8 the presentation as a whole and maybe we could go back and
9 isolate the decision points that Marty is requesting our action
10 on. Mr. Barton.

11 MR. BARTON: Yes, Mr. Chairman. It wasn't clear to me
12 just exactly what we were negotiating. Are we negotiating for
13 acquisition of these parcels or are we negotiating buying of
14 time?

15 MS. RUTHERFORD: On the five interim protect --
16 imminent threat parcels, we would recommend that you allow us
17 to begin -- you allow a team, a negotiating team, to begin
18 discussing with the landowners -- with the property and interest
19 owners, interim protection. We recommend that that negotiating
20 team have the flexibility, should the interest owners, the
21 landowners, not be interested in interim protection to bring back
22 to you proposals that might be long-term protection, but our
23 original goal and what we're really looking for on these five
24 parcels would be interim protection.

25 MR. BARTON: What form is that interim protection,
26 Marty?

1 MS. RUTHERFORD: It could just simply be agreeing to pay
2 the landowners and the logging companies additional monies to
3 move away from the parcels that they're looking at now into
4 another area and there's costs associated with that oftentimes.
5 It could be simply monies for them to not log for a couple of
6 years. I don't know. I mean it really -- what I recommend and
7 what we're hearing from people who know much more about this is
8 give the negotiating team flexibility. And it may be, like we
9 indicated, that on these imminent threat parcels that the odds of
10 success are really fairly low because there are commitments made
11 on them already, so.

12 MR. PENNOYER: Other questions before we go back and
13 try to break this down to pieces? One overall question then,
14 Marty, why 20 and why these five and what do you feel about the
15 fact that some of those other parcels were configured in
16 different ways that might have been arbitrary and with some
17 changes, might kick their score way up? What was your intent in
18 that regard?

19 MS. RUTHERFORD: We discussed that and it's a concern
20 to us. We picked 20 because it -- we had to sort of make a call
21 some place and we recognize that the parcel, the way we chose the
22 imminent threat parcel size, may impact how it was evaluated, the
23 scoring. However, we're moving very quickly, as quickly as we
24 can, into an analysis on overall parcels and we hope to complete
25 that as quickly as possible. We simply felt that these parcels
26 were high ranking and it seemed a good point.

1 MR. PENNOYER: So, it's not to the exclusion of these
2 other parcels? This is just the starting point to get something
3 started quickly?

4 MS. RUTHERFORD: That's correct. However, you know, on
5 the imminent threat parcels below 20, there will be activity in
6 the interim while we are doing our comprehensive analysis so that
7 could, you know, negatively impact.

8 MR. PENNOYER: Mr. Barton.

9 MR. BARTON: Could you give me some feel for the
10 sensitivity of our ranking system to the acreage? For example,
11 we looked at the KAP 01 with a score of 30 and 15,000 acres. If
12 that were 5000 acres, what would that score be?

13 MS. RUTHERFORD: We recognize that our ranking
14 analysis -- and actually at this point, I might want to ask Kim
15 Sundberg or Art Weiner to come forward and talk about it a little
16 bit. We recognize that our analysis favors the larger acreage
17 parcels and it's one of the -- as we move into this comprehensive
18 process, we are proposing to the Restoration Team that we have
19 the interim process evaluated through peer review so that we
20 identify problems such as this and also get some assistance on
21 identifying parcel analysis units for the future, but if you'd
22 like, I think that Kim Sundberg could maybe more effectively
23 address that question.

24 MR. BARTON: All I'm looking for is just a very
25 succinct answer on the sensitivity of the ranking system to the
26 acreages.

1 MS. RUTHERFORD: Do you have a succinct response, Kim?

2 MR. SUNDBERG: Well, it isn't directly proportional to
3 the acreages, but the larger the acreages, there's a tendency to
4 have higher scores. I think in the case of KAP 01, if we reduced
5 it to 5000 acres, the score would possibly be a little lower but
6 it wouldn't be substantially lower. There's quite a few values
7 in that area that would give it a high ranking, regardless of the
8 size of the parcel.

9 MS. RUTHERFORD: I'm not sure that's succinct. I mean
10 there is a relationship but he's indicating it's not as severe.

11 MR. BARTON: Kim, do you have any ballpark estimate of
12 how much that might drop?

13 MR. SUNDBERG: If I were just to speculate, I, you
14 know, I think -- if you went down to 5,000 acres, it might drop
15 down to say 20 to 25 or something, but it depends on where the
16 anadromous streams fall out and the bald eagle nests and a few
17 other things that are on there but it's still going to be a
18 fairly highly ranked parcel, regardless.

19 MR. PENNOYER: It's fair to say it's the configuration
20 as well as the acreage, so if you did -- dropped it down to 5,000
21 acres and it was all coastal and right up the streams, then your
22 ranking would probably be very high, so it's -- there's a lot of
23 -- I guess, Marty, one of the things that still concerns me, is
24 we split it at 20, if these are all imminently threatened, does
25 that really mean we're sort of writing off 18, 14, 12, 10 and 10?

26 MS. RUTHERFORD: It would mean that we are writing them

1 off for terms of immediate protection, absolutely, yes. I mean
2 there's no reason you couldn't tell us to proceed with more -- or
3 tell the negotiating team to proceed with more.

4 MR. PENNOYER: I kind of wondered because you have an
5 18 and then it drops to 14 and 12 and I'm not -- I haven't looked
6 at the individual packages but Prince William Sound 06, Patton
7 Bay, Montague Island had a fairly high ranking. It was just
8 under 20; it was 18. I'm not clear why -- I'd have to go back
9 and look at the individual packages (ph), I suppose, but your
10 recommendation is the top five are the ones to go for?

11 MS. RUTHERFORD: Well, frankly also, one of the reasons
12 we split it between 18 and 22.5 is that we know that the owners
13 of Montague Island are not interested in talking.

14 MR. PENNOYER: Okay. Well, are there other general
15 questions or should we go back and try to take these items one at
16 a time in this part, which I think go back to the negotiating
17 items and the options and so on and who's going to do the
18 negotiations and so on.

19 MS. RUTHERFORD: That's the first point is the
20 negotiating options.

21 MR. PENNOYER: Okay, that was the paper that was given
22 to us...

23 MS. RUTHERFORD: It was in your packet...

24 MR. PENNOYER: ...2/12/93, Discussion Paper, "Who
25 Conducts Negotiations and Acquisitions, Exxon Valdez Restoration
26 Project."

1 DR. GIBBONS: That's correct, Mr. Chairman.

2 MS. RUTHERFORD: Also, we have Chuck Gilbert in the
3 audience. If you'd like him to come forward to discuss any of
4 these options in more detail, he is available.

5 MR. PENNOYER: I suspect we're going to have some
6 questions. Maybe you could come forward to the table and be
7 prepared to respond.

8 MS. RUTHERFORD: Chuck, could you come and join us at
9 the table here?

10 MR. PENNOYER: By way of background, I note that you're
11 saying items A through C are going to cost us 400,000 to
12 \$600,000.00 annually for just the administrative costs?

13 MS. RUTHERFORD: That's correct.

14 MR. PENNOYER: Whereas Option D, those would be
15 dramatically reduced.

16 MS. RUTHERFORD: That's because of the non-profit's
17 ability to negotiate with less than fair market value. Chuck, do
18 you want to move that right up to your...

19 MR. COLE: Did I understand -- did you understand what
20 she just said?

21 MR. PENNOYER: No. Would you please explain that?

22 MS. RUTHERFORD: Chuck, why don't you go ahead and...

23 MR. GILBERT: Basically, under Options A through C,
24 we'd be providing staff and support costs for personnel to do
25 acquisitions. However, in some instances when non-profits
26 conduct acquisitions for a government agency, they will get a

1 piece of property at less than fair market value and their costs
2 come out of the difference between the amount they'd get the
3 property for and the costs they sell it for back to the federal
4 government. So actually, in those cases, there's very little
5 costs to federal agencies or the State in those instances.

6 MR. PENNOYER: Is there any estimate as to
7 realistically how much difference that makes? I mean is that a
8 common occurrence? Will that be a rule of thumb here that it
9 wouldn't cost the 400,000 to \$600,000.00; in essence, would be a
10 zero cost? I mean I know that's hard to predict but based on
11 past experience?

12 MR. GILBERT: It's very hard to predict. Oftentimes,
13 in cases where a non-profit can get a piece of property for less
14 than fair market value, you're dealing with companies, landowners
15 who are in the position of making large profits and they're
16 willing to sell for less than fair market value because they get
17 a tax deduction. I don't know that that's really the case for
18 the properties we're dealing with here. The likelihood of
19 getting property at less than fair market value in these cases, I
20 think, is less than in other cases throughout the country.

21 MR. PENNOYER: Where did you come up with the 400 to
22 \$600,000.00 figure for administrative costs for this program on
23 an annual basis?

24 MR. GILBERT: We basically put down what we thought
25 would be a negotiating team under each one of these Options A
26 through C, and it consisted of, I believe, of about an office of

1 four to six people, both negotiators, secretarial help,
2 administrative support. We had travel costs, costs of renting
3 offices and everything we could think of that would be included
4 to set up a negotiating team.

5 MS. RUTHERFORD: Primarily, we'd be looking at probably
6 three negotiators and some clerical support at first and then if
7 necessary, if there were a lot of activity, maybe in the future
8 it would increase to an office that's larger than four.

9 MR. PENNOYER: This does not include the survey costs
10 or other data acquisition costs. This is the simply
11 administrative costs?

12 MR. GILBERT: That's correct.

13 MR. PENNOYER: Trustee -- Mr. Gates.

14 MR. GATES: Under your Option A and B, they could still
15 deal with the non-profits though, right?

16 MR. GILBERT: That's true. Under A and B, this would
17 be the primary responsibility of doing acquisitions would go to
18 the federal or state bureaus who ultimately would be receiving
19 title but they could, in their discretion, choose to use a non-
20 profit for particular cases.

21 MR. PENNOYER: However, once they establish a four to
22 \$600,000.00 office, it seems it might be unlikely in terms of
23 cost savings that you'd go and do something else. I mean you're
24 not going to save anything if you go and just hire the people and
25 put them on and so forth. You might use the private, non-profit
26 for some way to facilitate the process, but it has no bearing on

1 the costs at that point, does it?

2 MR. GATES: It could.

3 MR. PENNOYER: Could it?

4 DR. GIBBONS: Mr. Chair, I think it also depends on
5 the number of parcels that you're dealing with at one time. If
6 you're dealing with six or eight parcels, you know, you might
7 need some assistance from a third party.

8 MR. PENNOYER: Other questions on the options? Do you
9 want to run through them, what each of them is, briefly?

10 MR. COLE: Yes, Mr. Chairman, could we do that?

11 MR. PENNOYER: Could you please give us a run-through
12 on what A through D are?

13 MR. GILBERT: Sure. Basically, Option A is having...

14 MS. RUTHERFORD: May I interject for one second?
15 Chuck, I'm sorry. Just also that document that's in front of
16 you, I'm not sure. Chuck, when he goes through them, he probably
17 won't go through each of the pros and cons but there are pros and
18 cons identified associated with each option so you might want to
19 refer to that.

20 MR. COLE: We would like to have, I think, a discussion
21 of the pros and cons. We're dealing with, I think, very large
22 sums of money and it is a very pivotal decision and I think we
23 should look at it very closely.

24 MS. RUTHERFORD: Then, Chuck, why don't you refer to
25 the document yourself, when you go -- and run through the pros
26 and cons. Do you want it?

1 MR. GILBERT: Yeah. I don't have a copy with me.

2 MR. PENNOYER: Do you have an extra copy? We're short
3 one down here as well. Thank you.

4 MR. GILBERT: Okay. Options A through D. Option A is
5 having each bureau, federal or state bureau who ultimately will
6 likely receive title, conduct the negotiations and acquisitions.
7 There's existing staff in almost all cases for federal or state
8 bureaus to do this sort of work. I guess the pros would be that
9 by having each bureau do it, they're familiar with their own
10 procedures and they can make sure that when an acquisition
11 occurs, it's done to a standard which they can later accept
12 title. If another entity does it, there's a possibility there
13 may be a problem with the title and the conditions that have been
14 negotiated and accepting title may be a difficulty.

15 Some of the cons of A, I'd say, would be that because
16 multiple agencies would be assigned acquisition cases, there may
17 be some difference in the way they proceed throughout the spill-
18 affected area. They may not all proceed in a coordinated
19 fashion. And agency priorities may, despite the intent, take
20 some precedence over the priorities of the Trustee Council for
21 doing acquisitions.

22 MR. PENNOYER: Questions on Option A?

23 MS. RUTHERFORD: I have one other addition on Option A.
24 I think it would be necessary to -- if you were to proceed with
25 Option A, it would be necessary for the Trustee Council to
26 identify the negotiating agency up front.

1 MR. PENNOYER: I have one question in terms of costs.
2 And this is sort of a contrast with B or maybe C or D. The
3 assumption here is that the agencies that would get assigned it,
4 already have staffs. And this project process would either fund
5 some small addition to that or fund part of the time of those
6 people or you'd actually end up building maybe six separate land
7 acquisition bureaucracies to do the job. I don't see that
8 addressed in the pros or cons.

9 MR. GILBERT: I guess it depends upon the level of
10 acquisition activities we're going to be ultimately doing here.
11 If it's a low level, I think most bureaus can absorb it within
12 their existing staff. However if we get to be a pretty active
13 acquisition program, each bureau, I believe, is going to have to
14 staff up to do that within their own bureaus. And in some cases,
15 bureaus do not currently have existing staff to devote to it. I
16 think the Fish and Wildlife, in particular, I've talked to them
17 about it. If they were to be assigned a number of cases and even
18 maybe two or three big cases, they don't have the staff at the
19 current time to do that, so they'd be in the position of bringing
20 people to Alaska from the Lower 48, it looks like, to do those
21 acquisitions. And I think actually, that's probably the case for
22 any group who's doing negotiation, at least on the federal side.

23 If it gets to be a large case load, there's not the
24 existing staff in Alaska at this time to do it. Staffs that are
25 currently doing acquisition are totally, at the current time,
26 fully occupied, so some additional staff would have to be brought

1 up to do the work. And I think on the State side, Marty could
2 probably speak to this better than I can, but people would have
3 to be pulled from probably other bureaus to work on it. Perhaps
4 DOT staff could come and work on acquisitions for the State side.

5 MS. RUTHERFORD: That's correct.

6 MR. COLE: Mr. Chairman.

7 MR. PENNOYER: Mr. Cole.

8 MR. COLE: How much do you think the acquisition costs
9 for Kachemak Bay was for the State?

10 MR. GILBERT: In terms of administrative costs?

11 MR. COLE: Yeah, I mean how much do you think that we
12 paid to get Kachemak Bay done? A 22 million dollar acquisition?

13 MR. GILBERT: Well, I know that people worked on it for
14 about ten years but I wouldn't be able to estimate...

15 MR. COLE: I'm just talking about, you know, -- I'm not
16 talking about what they did in the last ten years. I'm talking
17 about what we did in the last three months or four months. Let
18 me tell you. Zero. Okay? Zero. When I hear \$500,000.00 in
19 looking at four projects, I mean, you know -- I mean it's really
20 difficult to be restrained when I hear talk about bringing people
21 up from the state of California or Washington or Oregon and say,
22 you know, (indiscernible - unclear) staff. I mean frankly, I
23 just don't see it. I mean I just can't comprehend it. I got to
24 tell you.

25 Now, you know, if you could tell me some reason why you
26 can't send two people out there and say, "Do you want to buy Seal

1 Bay and how much acreage and what's the price?" You know, it
2 seems to me it's just that simple.

3 MR. GILBERT: Well, I think maybe using Kachemak Bay as
4 an example. A lot of that work did occur in the past, including
5 appraisals -- getting appraisals done and coming to some
6 negotiated settlement on the final figure plus a lot of title
7 work was done. Title evidence was procured, analyzed and state
8 attorneys were assigned to review that.

9 MR. COLE: We just absorbed five or six hours of
10 attorney time, and you know, life went on. You know, we got it
11 done. I'm telling you we just got to -- we just cannot and I
12 will not approve -- I will not vote for any -- another six or
13 eight or ten people or an office or secretary.

14 You know, I've bought a lot of property over the years.
15 You go to the title company and say, "Give me a title report on
16 this property," you know. And you say, "Well, it's \$500.00 or
17 2,000 or something" and you get a title report. And you go talk
18 to 'em, say, "How much do you want to sell this land for?" And
19 they say, "Well, you know"; you say, "It's too much," et cetera,
20 et cetera. And you get it done. You know, maybe you get an
21 appraisal. If you want an appraisal, do a little more, you get
22 somebody to appraise it. You know, it's no big deal to get an
23 appraisal. You know, you pay 'em 5,000, you know. I just can't
24 understand the process. You know, maybe you people have more
25 experience in these acquisitions than I do but it's just that
26 simple to me.

1 MR. PENNOYER: Mr. Barton.

2 MR. BARTON: My experience has been that it is somewhat
3 more complicated and more time-consuming in having been involved
4 in a lot of land acquisitions for the federal government over my
5 career. But I have a different question. I assume that a
6 variation of A -- well, I assume that instead of using existing
7 staff or doing a force account, as we like to say, that the
8 appropriate management agency could either work through a private
9 non-profit or contract to do the necessary appraisal work and
10 surveys and title searches and so forth, so that by adopting A,
11 we do not preclude that possibility. All we're really doing as
12 I would interpret A is determining which agency has the
13 responsibility for doing the will of the Trustee Council, parcel
14 by parcel. Is that a fair characterization?

15 MR. GILBERT: Yes, it is.

16 MR. PENNOYER: Well, yes, but we also have to vote a
17 budget if one's going to be required to do it, don't we? And if
18 you're going to have a negotiating team set up -- the process
19 starts with getting a negotiating team which is what we're
20 talking about here. This doesn't do the appraisals. This
21 doesn't do a lot of groundwork. This is just -- we're going to
22 have to assign negotiation to somebody so if we assign it -- like
23 these imminently threatened lands, I don't know who those fall
24 out for, but if we assign Fish Bay to the U.S. Department of
25 Agriculture, my assumption is the budget item, if we don't have
26 something set up ahead of time on how to handle the negotiations,

1 a budget item would have to be approved to do that. I'm not --
2 do we just do that ad hoc or do you have a standing budget item
3 or do you agree you do it without costs?

4 MR. BARTON: Mr. Chairman, it seems to me that we would
5 do that on a case by case basis. For example, if we were to take
6 action today on these first five, that would -- to set that in
7 motion, we would need to get some estimate then of what each of
8 those parcels would require in terms of a budget for the
9 negotiation process, the evaluation process and then the council
10 would have to take action on that. Now, that may be zero...

11 MR. GATES: If the State does it.

12 MR. BARTON: ...in Mr. Cole's scenario or it might be a
13 little more, but I think that the council would in terms of
14 selecting those parcels automatically triggers then some -- the
15 development of some budget estimate, parcel by parcel as to the
16 acquisition process. And I use acquisition process as opposed to
17 negotiations because I think negotiations is only a part of the
18 acquisition process. You've got to do appraisals and I don't
19 know what else as a part of the acquisition process and then that
20 information is provided to the negotiators is the way I see it
21 being done.

22 MS. RUTHERFORD: Mr. Chair?

23 MR. PENNOYER: Yes.

24 MS. RUTHERFORD: Two things. I don't think Mr. Barton
25 is inaccurate. You could do it that way. One of the things that
26 we did -- the way we were proceeding is that the habitat

1 protection fund would fund such things as appraisals, the large
2 ticket items on parcels, and that these more operational costs
3 were separate from that fund.

4 And the second item I'd just like to point out is
5 should the Trustee Council decide to proceed with something along
6 the lines of A, we do have a recommendation for those five
7 parcels as to who might be the appropriate entity to begin
8 acquisition activity.

9 MR. PENNOYER: But we have no budgets and no
10 estimates...

11 MS. RUTHERFORD: Not...

12 MR. PENNOYER: ...and we'd probably have to come back at
13 a separate...

14 MS. RUTHERFORD: True. Not identified by agency.
15 Although, you know...

16 MR. PENNOYER: How would we fund that? I mean how
17 would we do that? Would this come out of the 20 million or would
18 that be a separate budget request?

19 MS. RUTHERFORD: It certainly could come out of the 20
20 million. I mean the fund, the way it was set up in the project
21 description, could accommodate that.

22 MR. PENNOYER: However, if we chose B for example, we
23 would have a one-time item that we'd fund. We'd have a standing
24 negotiating team and we wouldn't come back and have to ad hoc --
25 I'm not proposing that. I'm just trying to understand the
26 difference between the options.

1 MS. RUTHERFORD: That's correct. The other thing that
2 we were looking at is if you're, you know, beginning to deal with
3 a group of parcels versus just single parcels identified for
4 particular agencies, you do need to have some of that cross
5 fertilization between people dealing with it and I think as Chuck
6 goes on and talks about B, he'll discuss that in some...

7 MR. PENNOYER: Well, maybe we'd better go through the
8 rest of them, I guess. Any other questions on A as we proceed
9 to B, C and D? We'll try to restrain ourselves. Go ahead.

10 MR. GILBERT: Thank you.

11 MR. PENNOYER: Or myself, anyway.

12 MR. GILBERT: We've talked around this a bit but Option
13 B would basically be acquisitions conducted by a government
14 project acquisition office. And what would happen here is that
15 staff from existing bureaus would be pulled into a central office
16 which would be a new office set up to be directed by the Trustee
17 Council to do their bidding basically and this would be existing
18 professional staff, as I say, from existing bureaus.

19 It would probably be best if I just kind of read
20 through these pros, so I don't miss any and read through the cons
21 too.

22 "This option would provide continuity in dealing with
23 landowners. Staff would deal with a variety of situations and
24 would develop particular knowledge and expertise in the spill
25 area. The varying flexibility of the various bureaus to acquire
26 property interests may also offer opportunities that would not be

1 available to an individual agency. This approach would help
2 insure that lands identified as high priority for habitat
3 protection would be pursued more aggressively and more
4 competitively than if a single individual bureau were dealing
5 with specific parcels. Additionally, this approach insures that
6 property rights are acquired in a manner that meets agency-
7 specific requirements. This option would still allow for use of
8 private, non-profit entities for acquisitions as appropriate.

9 "On the con side, due to different agency policies and
10 needs, it may be necessary to have a representative from each of
11 the affected agencies who would ultimately be getting title to
12 land within this project office. There may be perception that
13 the settlement funds are being used to create a new bureaucracy."
14 That's the basic elements of B.

15 C is acquisition services by private, non-profit entity
16 under contract. C and D are somewhat similar in that they're
17 discussing use of a non-profit or a third party to do the
18 negotiations and acquisitions. The difference between C and D is
19 under C, there would be contract by the Trustee Council through,
20 perhaps the Forest Service, to actually contract for the services
21 and the non-profit or otherwise third party would be an agent of
22 the government, either the state or federal government in this
23 case.

24 Under D, we're considering and discussing use of a non-
25 profit but the non-profit would remain an independent entity.
26 They would acquire title to lands or get an option to lands under

1 their own individual -- as an individual entity. They would not
2 be an agent of the government. And that makes a significant
3 difference as you'll see when we talk through this.

4 MS. RUTHERFORD: I'd like to just point out however,
5 under C or D, the non-profit would still be driven by the parcels
6 that were identified by the Trustee Council to pursue.

7 MR. GILBERT: Under Option C, acquisition by non-profit
8 under contract. "Under this option, a private, non-profit entity
9 would conduct negotiations and other acquisition steps. The
10 entity would be under contract to the Trustee Council to provide
11 such services. Any such private entity would need to have
12 experience in acquisitions of property rights for conservation
13 purposes and have worked with the owners and state and federal
14 agencies in such acquisitions. The request for proposals would
15 have to be advertised and a contract awarded." This would be
16 done competitively. "Consequently, negotiations could only begin
17 after about four months from the time the decision is made to
18 use" it because of the time it takes to get a contract of this
19 magnitude awarded.

20 On the pro side, "All acquisitions would be handled in
21 a consistent manner by a single entity. Experience in land
22 acquisitions throughout the spill-affected area would be
23 developed. The agency staff required to purchase land interests
24 would be minimized." That is, the federal or state government
25 personnel would be minimized. "Having a single group responsible
26 for negotiations should increase competition among landowners.

1 If an agreement cannot be reached on a particular parcel or
2 group, the group come move on to other tracts for negotiation."

3 And this is one basic element with both Option C and B
4 and probably D as well. Having a single entity conduct the
5 negotiations and acquisitions would give, we feel, more chance
6 for competition. One of the problems we see with Option A is
7 that if an individual agency gets assigned a case, they may
8 pursue that case very aggressively and if that's their only case,
9 they'll pursue it as far as they can take it. Under Option B, C
10 and D, if we ran into real problems with a particular landowner,
11 could not work out an agreement, we could move down the list, the
12 priority list, more easily.

13 The cons of Option C: "The private, non-profit entity
14 would have to learn and comply with all federal and state
15 acquisition requirements, as they would be acting as agents for
16 these governmental bodies. The private entity would thereby lose
17 some of its flexibility. Oversight is required to insure that
18 only the parcels and interests needed are acquired and that the
19 title of acquired property interests will be acceptable to the
20 receiving agencies."

21 Another con here is that using a non-profit under
22 contract is -- it's a fairly novel approach, at least for the
23 federal side and I think the state side too. And we've discussed
24 with our Washington counterparts in land acquisition some of
25 the pros and cons of using non-profits. And using non-profits
26 under contract really presents quite a problem to them in that

1 a non-profit would actually be acting as an agent for the
2 government and would be responsible for complying with all the
3 different federal and state requirements. That's been tried
4 apparently a couple times in the past and has not been very
5 successful so it's with great reluctance on the part of the
6 federal agencies, at least, to use a non-profit under contract.

7 Let me run through Option D then. This would be
8 acquisition by a private, non-profit entity as cooperator. As I
9 say, it's an independent entity. "Under this option, letters of
10 intent would be secured between a non-profit conservation group
11 and the affected agencies. Pursuant to letters of intent the
12 non-profit, as an independent agent, would conduct negotiations
13 with landowners and execute option agreements for later
14 assignment to agencies or groups designated by the Trustee
15 Council. The non-profits would secure options at less than fair
16 market value. The cost to the settlement funds would be the
17 option price plus the costs to the non-profit as well as the
18 administrative costs the agencies would incur to approve the
19 appraisals, hazardous waste surveys, title reports, et cetera.
20 Any such non-profit entity would need to have experience in
21 acquisition of property rights for conservation purposes and have
22 worked with landowners and state and federal agencies in such
23 acquisitions. The non-profit could begin negotiations as soon as
24 a letter of intent is signed by the agency of the Trustee Council
25 with the non-profit.

26 "This option could be part of either Option A or B."

1 That is, having independent non-profit work at the discretion of
2 the bureaus. The bureaus could then decide when to use a non-
3 profit.

4 Some of the pros of this: "All negotiations could be
5 handled in a consistent manner by a single entity. Experience in
6 land acquisition throughout the spill-affected area could be
7 developed. The agency staff required to purchase land interests
8 would be minimized. A private, non-profit entity has more
9 latitude in dealing with the landowners and can address such
10 subjects as tax advantages with sellers. Having a single group
11 responsible for negotiations should increase competition among
12 landowners; if agreement cannot be reached on a particular
13 parcel, the group can move on to negotiate on other tracts."

14 On the con side, "Careful oversight is required to
15 insure that only the parcels and interests needed are acquired,
16 and that title of acquired lands will be acceptable to the
17 receiving agencies. It may be perceived that the Trustee Council
18 and agencies are not treating the landowners fairly because
19 properties would be purchased at less than fair market value."

20 That's kind of the basis of these four different
21 options we've discussed and I've presented to you.

22 MR. BARTON: Mr. Chairman.

23 MR. PENNOYER: Mr. Barton.

24 MR. BARTON: I'm a little puzzled by how we know that
25 they'll be purchased at less than fair market value.

26 MR. GILBERT: Well, I think this could be the decision

1 of the Trustee Council if we use this option to only proceed if
2 agreements -- if purchase agreements were worked out at less than
3 fair market value. If you decided to use this option, it seems
4 to me you could make that decision that you only purchase and
5 agree to purchase parcels if this approach were used.

6 MR. BARTON: Mr. Chairman?

7 MR. PENNOYER: Mr. Barton.

8 MR. BARTON: Is the difference between C and D is that
9 who ultimately accepts title?

10 MR. GILBERT: No. C and D would both use the non-profit
11 or some third party to do the negotiations and acquisitions but
12 the difference between C and D is under C, the third party would
13 be under contract of the Trustee Council and act as agents to the
14 Trustee Council.

15 MR. BARTON: And in D, the non-profit would essentially
16 buy the property and then the Trustee Council would buy it from
17 the non-profit?

18 MR. PENNOYER: Could we take a half second break?
19 She's changing the tape here.

20 (Off Record: 9:55 a.m.)

21 (On Record: 9:55 a.m.)

22 MR. PENNOYER: Go ahead.

23 MR. GILBERT: That's really one way it could happen is
24 the non-profit could purchase the parcel and spend the money.
25 It's probably pretty unlikely any non-profit would have that kind
26 of funds to devote to it. What's more likely, I think, would be

1 a non-profit would get an option on the property, potentially
2 for not very much money, and then assign that option to the
3 governmental agency at a later date.

4 MS. RUTHERFORD: After you decide which agency.

5 MR. PENNOYER: Further questions? Mr. Rosier.

6 MR. ROSIER: Mr. Chairman, I don't know much about the
7 private, non-profits that are involved in the land purchasing
8 business on this. Is there a fairly large selection of groups
9 out there that involves themselves in this or not?

10 MR. GILBERT: There are a large number of non-profit
11 organizations that have done this kind of work, both for the
12 federal agencies and state agencies. In Alaska, there's not been
13 a whole lot of experience using non-profits. I work for the
14 National Park Service. We've used them about three different
15 times up to this point. I know the Forest Service has used non-
16 profits in Southeast a fair amount. I -- there's a lot of non-
17 profits out there. I don't think there's that many who'd be
18 capable of dealing with this magnitude of acquisition project.
19 However, there are, I would say, two or three, at least, who
20 could do it.

21 MR. PENNOYER: Further questions? And your
22 recommendation is?

23 MS. RUTHERFORD: The Restoration Team, after lengthy
24 discussions, recommends Option B.

25 MR. PENNOYER: Option B. Go with a separate government
26 office, set up and staffed to do...

1 MS. RUTHERFORD: A small, separate -- you know, two to
2 three professionals with some clerical support.

3 MR. PENNOYER: And that's 400 to 600,000?

4 MS. RUTHERFORD: We think it would be in about 400,000
5 range.

6 MR. GILBERT: We did -- maybe to provide a little
7 clarification on that. We looked at an office, as I say, of
8 about six people total. And when we first did this, we were
9 thinking of more acquisitions than I think currently are being
10 reviewed at this time. As Marty has presented to you, we're only
11 talking about five potential acquisitions with perhaps three more
12 with the opportunity group. I'd say that...

13 MS. RUTHERFORD: Cut it down.

14 MR. GILBERT: ...we would cut it down. We're really
15 looking at this range of 400 to 600,000 being for a full
16 acquisition program. And this is really pretty minimal under
17 imminent threat at this point.

18 MR. PENNOYER: I guess I have a little trouble mixing
19 and matching between costs and the difference between A and B.

20 MS. RUTHERFORD: They're very similar.

21 MR. PENNOYER: The costs of A are going to be whatever
22 the agencies bill us on a case by case basis, correct? I mean
23 that's going to be what -- the system gets billed to maintain
24 either new people in an agency and if there are very few
25 acquisitions, maybe you don't need the new people consistently
26 but they'll still have to deal with that question and for each

1 one of these separate acquisitions. I don't know how to equate
2 the cost difference of this. You think they're going to be
3 similar?

4 MR. GATES: Mr. Chairman.

5 MR. PENNOYER: Yes.

6 MR. GATES: We're going to have the opportunity to
7 review the budgets before -- approve the budgets for each -- if
8 it goes A, right? You'd come up with a proposed budget for the
9 -- the lead agency would come up with a proposed budget, right?

10 MR. BRODERSEN: Mr. Chairman?

11 MR. PENNOYER: Mr. Brodersen.

12 MR. BRODERSEN: I'd like to take a crack at this if I
13 could. I think in terms of the interim imminent threat process
14 negotiations that we're talking about here that the cost between
15 A and B at this point should be essentially the same. All we're
16 really saying is that rather -- under A for the five parcels, you
17 would have one agency identified for each of the five parcels;
18 under B, you would say that all five parcels will be dealt with
19 by a negotiating group and it should end up being the same number
20 of people. It will probably be the same people that would do
21 it. It would just be that one person would be assigned to one
22 under A; another person would be assigned two under A; another
23 person would be assigned to three. And under Option B, all
24 three people would be assigned to all five parcels but that the
25 work involved and the costs involved at this point should be the
26 same. In this point in the process.

1 As we get further down the road, then those costs very
2 well could change. As we take different approaches to our actual
3 habitat acquisition, in theory, this process grows. But now the
4 costs should be the same.

5 MR. PENNOYER: Further questions?

6 MR. BARTON: Mr. Chairman?

7 MR. PENNOYER: Mr. Barton.

8 MR. BARTON: I agree, I guess, with Mr. Brodersen they
9 could be the same but it seems to me the nature of this process
10 is such that you do something and then there's a period of time
11 go by while things happen on the part of the other party and I
12 wonder, you know, if we -- if we did it by individual agencies,
13 those people that we presently have devoted to this activity,
14 have something else to do while this other activity goes on
15 whereas if we have a full-time dedicated staff, I don't know
16 whether -- you know, would there be a lot of down time? And I
17 guess it seems to me that there could be a lot of down time while
18 offers and counter offers are made and title searches are made
19 and appraisals are made. You know, those take different skills.

20 MR. BRODERSEN: Mr. Chairman?

21 MR. PENNOYER: Mr. Brodersen.

22 MR. BRODERSEN: I would hope in this first part of the
23 process that we don't have a full-time dedicated staff under
24 either A or B do this because as Mr. Barton has just pointed out,
25 I think there will be a lot of dead time in here but I think what
26 we need to focus on is that are we going to deal with the parcels

1 individually or are we going to deal with the parcels as a group.
2 And in terms of the dead time under either approach, I would hope
3 that the people, when they're not actually working on this
4 process, will be working somewhere else and being paid from
5 somewhere else under either process; that we do not want to end
6 up with an office somewhere of three people sitting around doing
7 nothing either in the agencies or in that office while they're
8 waiting for the next step to happen. They need to be off doing
9 something else for the agencies and being paid from somewhere
10 else.

11 MR. COLE: Mr. Chairman.

12 MR. PENNOYER: Mr. Cole.

13 MR. COLE: How then do you get even to 300,000 for a
14 year, just looking at the acquisition of five parcels?

15 MR. BRODERSEN: Mr. Chairman.

16 MR. PENNOYER: Mr. Brodersen.

17 MR. BRODERSEN: That number would be when we're into
18 the full-blown comprehensive process, when we're looking at a
19 larger number -- assuming we get there, a larger number of
20 parcels and that there is full-time work for those people. In
21 this first stage when we have five parcels, I can't imagine
22 spending \$300,000.00 to try and do negotiations on five parcels.

23 MR. COLE: Mr. Chairman.

24 MR. PENNOYER: Mr. Cole.

25 MR. COLE: How much then would you say is a reasonable
26 budget for looking at some formulation of some binding agreement

1 of some type or other for these five parcels?

2 MR. BRODERSEN: I'm not in the position to answer that.
3 We didn't look at that question for these five parcels. We
4 need to go back and do that.

5 MR. COLE: Mr. Chairman.

6 MR. PENNOYER: Mr. Cole.

7 MR. COLE: But isn't that what we have before us today,
8 that seems -- you know, that issue? Looking at say, these five
9 top parcels.

10 MR. PENNOYER: Mr. Brodersen? Ms. Rutherford?
11 I think that's the punch line. You request that we say go ahead
12 with the negotiations on those five so, in fact, you are asking
13 for some commitment over...

14 MS. RUTHERFORD: We are asking...

15 MR. PENNOYER: (Indiscernible - simultaneous speech)
16 funds.

17 MS. RUTHERFORD: ...for a commitment on beginning
18 negotiations on the five. The figures that we drew out were
19 based upon on the best information that the agencies could give
20 us on very short order. I think that once you pick an approach,
21 we can very quickly identify actual -- a much closer budget
22 because in the interim, agencies have begun to identify whether
23 or not they'd have to bring people up from the Lower 48, if they
24 could reassign, that kind of thing but we don't have that yet.
25 We could quickly close on that once you pick an approach.

26 MR. PENNOYER: Mr. Barton.

1 MR. BARTON: Yes, going back to the earlier discussion,
2 it seems to me that it's not a matter of whether we're going to
3 deal with these individually or as a coordinated package. I
4 don't think there's any question but what we're going to deal
5 with them as a coordinated package. It's more a function at what
6 level do we do it. On the one extreme is the Trustee Council
7 deals with the coordinated package; the other extreme is a
8 project office would deal with the coordinated package but we're
9 going to deal with it as a coordinated package.

10 MR. PENNOYER: Are you asking for a decision regarding
11 these five parcels or for the longer term? And are we having to
12 make the longer term decision here as to how we organize this or
13 could we proceed, for example, with Option A for these five
14 packages, bring the people in, ask the Restoration Team or the
15 habitat team to coordinate the activities of those folks that are
16 talking to each other and proceed in a more expeditious fashion
17 with these five parcels if that was our decision. And then for
18 the longer term, when we really assess the magnitude of what this
19 thing is going to look like and then bite off the question of how
20 to better to organize the longer term.

21 MS. RUTHERFORD: Mr. Chair, yes, as I indicated, we're
22 looking for an approval for dealing with these five parcels. We
23 very easily could use either of the options for these five and
24 then step back, take a look at it, see how well it worked and
25 change that or continue with it.

26 MR. PENNOYER: Do I have a proposal on which option to

1 use for the interim, not necessarily for the longer term until we
2 gain some experience? Mr. Barton.

3 MR. BARTON: Mr. Chairman, I move adoption of Option A.

4 MR. PENNOYER: And again, that's for the interim to
5 deal with these five parcels to start with?

6 MR. BARTON: That is correct.

7 MR. GATES: I'll second it.

8 MR. PENNOYER: It's been moved and seconded we adopt
9 Option A as an interim procedure to deal with the imminent threat
10 packages and then come back and reassess where we are for the
11 longer term.

12 (Enter Mr. Sandor)

13 MR. COLE: Mr. Chairman.

14 MR. PENNOYER: Comment and discussion. Mr. Cole.

15 MR. COLE: I move for a recess.

16 MR. PENNOYER: The reason for us or is there a second
17 to that?

18 UNIDENTIFIED SPEAKER: Second that.

19 MR. COLE: Mr. Sandor has just arrived and I think that
20 he should have the opportunity to register his views on this.

21 MR. PENNOYER: It's been moved and seconded that we
22 take a recess so Mr. Brodersen can tell Mr. Sandor everything
23 that's happened to this point so we can come back and make a
24 decision. Thank you.

25 (Off Record: 10:05 a.m.)

26 (On Record: 10:28 a.m.)

1 MR. PENNOYER: I think I'd like to go ahead and get
2 started again if we can. Will the Trustee Council members
3 please take their seat and will the audience please take their
4 seats? I'd like to note that Commissioner Sandor has joined us
5 and I think we'll go ahead and proceed now. We were discussing
6 the options for negotiation and acquisition and basically who
7 should conduct these negotiations and acquisitions and how we're
8 going to organize ourselves to do that. We had agreed that
9 currently we have really very few parcels in front of us that are
10 up for perhaps immediate consideration and that's somewhat
11 separate from the long-term direction we want to go as we gain
12 experience.

13 So, we had agreed that we would be dealing with the
14 question of what we do in the interim here to try and get moving
15 quickly if, in fact, that's how we vote later on on imminently
16 threatened parcels. And most of the discussion had centered, at
17 least in this interim, around Options A and B. And Option A
18 being to basically pick an agency that's primarily responsible
19 for that parcel and then asking them within their existing
20 structure -- presumably they'll present us with a budget as well
21 to go forth and start the negotiations on some particular
22 acquisitions. Option B was to basically create our own staff of
23 some kind, either full-time, part-time or whatever but a staff, a
24 core staff, that would start to deal with the acquisition process
25 and presumably then would be the basis for what we do in the
26 future.

1 Do we have some commentaries or further discussions of
2 these options or a motion? I guess we had a motion.

3 MR. COLE: There's a motion pending.

4 MR. PENNOYER: A motion for Option A. Option A was
5 moved and seconded and is still under discussion. You're
6 correct, Mr. Cole. Any further discussion of Option A?

7 I guess I had a question then. In differentiating
8 between Option A and Option B, I'm not clear whether, in terms of
9 the interim, these two options are necessarily all that
10 different. And I think we've talked about not wanting to set up a
11 full-time staff for what might be a part-time job. We've had
12 discussion that the cost realistically should be about the same,
13 either way because there'd be somewhat the same people
14 contributing part-time to this job, at least in this interim. If
15 that's the case, are we really, for the interim, in a position of
16 quote, choosing between Option A and Option B or should we be
17 perhaps dealing with an Option A with the people coordinating
18 more effectively and consistently then might have been envisioned
19 in the Option A/ Option B original proposals or is it all or one?

20 Do we either set up a totally separate staff, everybody goes
21 their own way or is there some in between process? Commissioner
22 Sandor.

23 MR. SANDOR: I apologize, first of all, for not being
24 here this morning. I had a meeting until 10 o'clock last night.
25 The question that comes to mind in these two options in the whole
26 process, particularly with regard to paying for these costs of

1 evaluating properties and acquiring them. The question comes
2 from a bias of having worked for a land management agency for
3 many years and knowing that many agencies, land management
4 agencies have land management acquisition/evaluation staffs,
5 appraisers and so forth, well-established processes. And
6 particularly for inholdings, in developing a management plan for
7 a park, a refuge, a forest, whatever, the better land managers
8 have, in fact, a catalog of the properties that, for example,
9 might be worthwhile proposing for land and water conservation
10 fund acquisition or other means or, you know, acceptance of
11 requests and so forth.

12 I guess the thing I underline in this thing would be
13 "an acquisition project office would be established and staff
14 would be hired or assigned from agency offices." And I'm
15 thinking are we establishing yet another bureaucracy to begin
16 from ground zero and look at all of these things? Why don't we
17 take advantage of the, you know, tremendous years of experience
18 of the existing agency people and then not reimburse them for
19 this? This is another tool for acquisition. And it seems to me
20 that like, you know, a lot of the administrative costs that a
21 number of the agencies are trying to absorb, why should we lay
22 out these additional costs from the restoration monies, from the
23 settlement funds? So, that was the question I was going to ask
24 is in looking at A versus B, in A, is that agency for example, if
25 there's an inholding, is it going to use its existing staff? And
26 is it then going to, you know, absorb the cost or is it going to

1 bill the Trustee Council for this work?

2 MR. COLE: Are you proposing something new?

3 MR. SANDOR: Well, I don't know. I'm just -- I was,
4 you know, troubled by this...

5 MR. COLE: Haven't we been billed for everything,
6 including thumbtacks in the past? I mean that's been my
7 recollection in these projects.

8 MR. SANDOR: But you see -- I don't know. Anyway,
9 that's the question.

10 MR. PENNOYER: I think there was an answer to that
11 provided earlier in terms of even bringing people up to have to
12 do the land acqui- -- not on these interim basis maybe, but the
13 land acquisition once we got into it. Do you want to -- care to
14 repeat your estimate of costs?

15 MR. GILBERT: I guess basically I'm speaking for the
16 various bureaus, state and federal. There's not the level of
17 staffing now to do acquisition. Acquisition for most bureaus up
18 here, both federal and state, is not highly funded. There's not
19 a whole lot of people doing it so I think we are looking at -- if
20 we get into a major program, we're going to have to look at
21 bringing some additional people on.

22 And to address your specific question about the fact
23 that these are inholdings and perhaps they'd be acquired anyway
24 at a later date. That's, I think, a good point. However, I
25 would say at some time, the restoration objectives and the
26 identification of which parcels to buy is going to be different

1 than the agency's priorities for acquisition. And the way the
2 federal agencies work, at least, is that to make an acquisition,
3 you have to have an appropriation of land and water money and
4 without that funding, there's not the staff available to do those
5 acquisitions.

6 MR. SANDOR: Well, without belaboring this thing, I
7 guess, it seems to me that the process for acquisition should
8 follow these four or five steps that leads into the actual method
9 of acquisition. One is to clearly identify the restoration
10 objectives that will be achieved with the acquisition of the
11 tract. Two, to define and evaluate the acquisition options
12 either through easements, fee title, moratoriums or whatever
13 which could be used to achieve the protection and restoration
14 objectives. Three, to refine the tract size and configuration to
15 assure the restoration objectives will be achieved. Four, to
16 consider the appropriateness of alternative funding and
17 protection mechanisms, either land and water conservation,
18 statutory regulations, either state or federal, or for
19 acquisition. And at that point, you know, if these were
20 candidate lands -- had been candidate lands for land and water
21 conservation fund acquisitions and on, in fact, the agency land
22 management plan including acquisition, I think we need to
23 evaluate whether, in fact, we should -- that process should be
24 followed or whether the Trustee Council funds ought to be
25 followed. And it was at that point that it seems to me and I
26 guess maybe that's what I'm talking about it's just those land

1 management agencies, federal or state, that have in fact
2 organizations for land management, including the development of
3 acquisition that -- I see this as another resource to achieve
4 land management objectives of the different agencies and since
5 that is funded by either the Congress or the Legislature and that
6 the agencies are, in fact, obligated to evaluate the inholdings
7 and so forth, that they're already funded to do a substantial
8 amount of this work. This money is just another opportunity,
9 extraordinary as it is, and we ought not be funding the
10 bureaucracy that is already funded to look at these things.
11 Maybe that's not reasonable, but that's the way I see it.

12 MR. PENNOYER: You're sort of speaking to A then? That
13 we take a close look at budget requests?

14 MR. SANDOR: Well, I think so. I think so. I don't
15 know. Mike, is this...

16 MR. COLE: It's Mike's motion -- Mr. Barton's motion.

17 MR. PENNOYER: Mr. Barton.

18 MR. BARTON: ...the original motion. I'm glad you
19 endorse Option A. I'm a little concerned about the funding
20 aspects however. You make it sound as if we have a bunch of
21 people sitting around and they've got this extra increment of
22 time when, in fact, many -- I think most of the agencies have
23 geared their organization to do the work that's presently
24 available so there may well be some duplication in terms of these
25 particular parcels and the various agencies' acquisition
26 programs. I guess that's a term I could use. But as Mr. Gilbert

1 points out, those priorities may be different and some of these
2 parcels may not be high priority parcels in terms of the
3 agency's, at least their current, acquisition efforts. So, I
4 think that needs to be considered.

5 I do detect another philosophical watershed, if you
6 will, or divide in terms of funding agency's efforts versus not
7 funding -- you know, absorbing these additional costs and I
8 suspect that sooner or later, we're going to get into that
9 discussion but we may have billed for every thumbtack but I know
10 that there are some costs that we have not been billed for that
11 the agencies have absorbed.

12 MR. SANDOR: Mr. Chairman.

13 MR. PENNOYER: Mr. Sandor.

14 MR. COLE: You must be referring to the Department of
15 Law.

16 MR. BARTON: The esteemed Department of Law.

17 MR. COLE: Thank you.

18 MR. PENNOYER: Commissioner Sandor.

19 MR. SANDOR: I think there's some very legitimate costs
20 that should be charged to the Trustee Council fund, namely those
21 costs that are associated with defining and perhaps, field
22 testing to assure what the linkage is in order to adequately
23 define the specific restoration objective to be achieved. That,
24 I can see. But insofar as evaluation surveys, a tremendous
25 amount of material that, you know, is associated just generally.
26 And so, I think this is very important that we not open the vault

1 again and have a run on it.

2 MR. PENNOYER: Mr. Cole.

3 MR. COLE: I perhaps misunderstand what this group or
4 separate agency's function will be but my understanding is that
5 the decisions as to what properties or interests in land will be
6 sought by this present process will be decided by the Trustee
7 Council, number one. Are we seeking an interim moratorium on
8 timber harvest? Are we seeking an easement for a limited period
9 of time or should the decision be made at this time to obtain an
10 option for the acquisition of fee simple title, subject to the
11 usual reservations in U.S. (indiscernible - unclear), number one.
12 Therefore, we must next examine what the functions of the group,
13 whatever it is, will be in that process because the Trustee
14 Council will already have decided that the requisite link is
15 there. That is not to be a function of these agencies and as I
16 said, the Trustee Council will decide what interests we want to
17 receive. And in my view, the Trustee Council should also
18 determine the size of the tract which we are seeking to acquire
19 by virtue of either fee simple title or some other lesser
20 interest in land.

21 I, personally, and I think the Trustee Council, itself,
22 is unwilling to delegate all of those decisions to any agency or
23 single contracted party so that gets us to what will be the more
24 limited function of the acquisition party. And as I visualize
25 what that party will do will be to perform the usual steps which
26 are part and parcel of the acquisition of interests in land. We

1 should have an appraisal; we should have a title report; we
2 should have a survey and then once these preliminary steps have
3 been performed or perhaps at the same time, there would be a
4 negotiation with the landowner as to how much would be paid for
5 the acquisition of these interests, subject to an acceptable
6 title report, an acceptable appraisal, et cetera.

7 Now, I think that that process for these tracts should
8 be done by a group which has the same objectives as we go through
9 this process and that it would be a mistake somewhat as
10 Commissioner Sandor says turning these agencies loose to go their
11 separate way. I think that wouldn't we want to say what is the
12 general price for an acre of, you know, reasonably comparable
13 land? I mean if we don't have some coordinating group doing it,
14 we could get some agency saying "Well, we'll give you \$1500.00 an
15 acre," for example, "of this sparsely timbered land" and some
16 other agency saying, "Well," I mean, "our staff shows a
17 \$1000.00." And then we have these landowners talking back and
18 forth and saying, "Hey," I mean, you know, "the Bureau of Indian
19 Affairs or the Interior offered us so much and somebody else --
20 so, we need some sort of coordinating group to do this. Now, how
21 much -- well, I mean I won't talk about the costs but -- and how
22 much time this would take but it seems to me that I mean you
23 know, you'd get three or four or five people together and say,
24 "Well, let's get a title report." So, you call up the title
25 report, get a title report, get some appraisal. Maybe there's a
26 capability of doing this well within the agencies; you get an

1 appraisal and so forth. And not only that but you get the value
2 of appraisals which, you know, are sort of reasonably consistent.
3 I mean Agriculture or the Forest Service, they may get some
4 appraiser who appraises this standard and so forth and they -- he
5 gets one sort of general standard; DNR for the State, they have
6 another appraisal technique. And so, then we get, you know,
7 different guys going back and forth and you know, can't you see
8 that's where I see these problems. So, I think we really need
9 something, you know, a unified agency. I don't think it needs to
10 be a formal group. I think, you know, you can come over here
11 Monday morning and say here's what we'll do. Somebody says that
12 -- Mr. Barton, you know, there's big gaps. I mean you get a
13 title report's a couple weeks; you get an appraisal maybe 30
14 days, et cetera, et cetera and then just do it. Then when we get
15 all our, as they say, ducks in order, you send these artists, if
16 you will, out to talk to the landowners and say, "How much?" And
17 furthermore, I think as we talk to these landowners, I mean we
18 have to have, you know, an approach which is more than just
19 "We're condemning this parcel of land for a highway right-of-
20 way." I mean this is sort of an art form, I think, in this
21 negotiation, where do we get the biggest bang for the buck. So,
22 for all of those reasons without getting to the money part yet,
23 I think I'll vote against Option A.

24 MR. BARTON: Mr. Chairman.

25 MR. PENNOYER: Mr. Barton.

26 MR. BARTON: Yes. I think Mr. Cole raised a lot of

1 good points and in fact, I think that's the second part of the
2 discussion we're going to have this morning is the acquisition
3 and the negotiation guidelines that there is a need for
4 consistent approach; there is a need for coordination and maybe
5 the real question on the table is the one that Mr. Brodersen
6 raised and that's essentially at what level in this effort do we
7 want that coordination to take place. As I said before, the
8 Trustee Council on the one hand; a project office at the other
9 extreme.

10 MR. PENNOYER: Commissioner Sandor.

11 MR. SANDOR: If I understand a couple of options that
12 probably could take place in the limitations of this motion on
13 the table, just to make sure I understand. The concept that I
14 had in mind was -- in going with Option A was that I recited
15 already these four steps. Quite frankly, this existing parcel
16 ranking process I see as preliminary at best, subject to a great
17 deal of refinement.

18 I thought that as we went through these steps that I've
19 already outlined that we would come back to the people who did
20 this and refine it -- have this come back to the Trustee Council
21 when we have more clearly identified the objectives where we have
22 defined and evaluated the acquisition options and where we have
23 refined the tract size configuration that serve these restoration
24 objectives and then look at -- have it before the trustees the
25 options of protecting that land, not just through the use of
26 Trustee Council funds but also other funding sources or a

1 combination thereof. So, I thought this was going to be recycled
2 to where we wouldn't have to be establishing something new and
3 that actually I can see where the agency might want to propose
4 billing or having some funding allocations from the settlement
5 funds but I thought this was a process that, you know, would be
6 refined. Is that not possible?

7 MR. PENNOYER: Marty, maybe you could describe a little
8 bit what you envision the process being between the folks who are
9 on this negotiating whatever group and the Trustee Council.
10 There's some confusion as to where the negotiations take place
11 and Commissioner Sandor is sort of saying the specifics of the
12 tract size and the details of how we're going to handle it should
13 occur here; therefore, leaving less for a "negotiating office" to
14 do. Can you describe the process a little bit?

15 MS. RUTHERFORD: I will try. I just would like to
16 respond to one thing Commissioner Sandor raised and that is, you
17 were away when we just talked. On the imminent threat parcels,
18 we were proposing proceeding -- looking for interim protection so
19 that as we begin to move into the comprehensive analysis and get
20 it more refined, we then can do some additional work on even
21 these imminent threat parcels, should we then have an
22 opportunity. If we don't move on these imminent threat parcels
23 to get some kind of interim protection or potentially long-term
24 protection, we will not have an opportunity on these five or
25 these 19 if you wanted to extend the list.

26 I guess on the -- in terms of the negotiating team,

1 it's very similar to what Attorney General Cole said except with
2 one difference. We were -- in our discussions and they have been
3 extensive and lengthy, we have foreseen the habitat protection
4 work group continuing with analyzing parcels. And again,
5 eventually we hope to have some peer review on identifying what
6 are appropriate analysis units. We would then identify these
7 parcels as being tied to damaged resources and services and then
8 we would come to the Trustee Council and say we recommend for the
9 following reasons that these parcels be considered for
10 protection. Then if the Trustee Council approved say, a grouping
11 of those, that those would then be turned over to a negotiating
12 team.

13 The negotiating team would then begin discussions with
14 landowners to determine whether there's a willingness to
15 participate in the process, whether they're interested in selling
16 and then they would begin to exchange information as to -- the
17 negotiators would have some guidance from you folks as to what
18 the desired management goals were, what the desired protections
19 were, what the desired parcel sizes were. They then would go to
20 the landowners and determine what, in turn, the landowners felt.
21 And they would begin to develop proposals. There would be
22 exchanges of information between the negotiating team and the
23 Trustee Council. And as we began to clarify that, then you could
24 pursue proposals that were the most beneficial to your management
25 and protection goals and that had also the best price tag tied to
26 them.

1 So, I guess we foresaw identification of management
2 goals -- the final identification of management goals and
3 protection tools and unit size after some negotiation is
4 occurring. You would still maintain that decision making but it
5 wouldn't be necessarily up front.

6 MR. COLE: Mr. Chairman.

7 MR. PENNOYER: Mr. Cole.

8 MR. COLE: Yeah, what troubles me about what Ms.
9 Rutherford says is it seems ungodly slow. I mean if you just
10 think through that process. I mean you know, with us meeting
11 once a month, we're never going to get anything done for months
12 unless we just move much more swiftly than that.

13 MS. RUTHERFORD: On the interim -- and again, on
14 interim protection, I think that -- I think even in the process
15 we're talking about, we could pursue -- I think it might move
16 more swiftly than you think. It depends on the interest of the
17 landowners who are participating and you know, we could hold
18 teleconferences and you could give some guidance as to whether
19 you're not interested in proposals and they then could fall off
20 or be pursued.

21 MR. PENNOYER: Maybe we're starting at the wrong end
22 of this. Maybe we ought to decide if we want to go for these
23 five plus interim protection measures and then decide on an
24 interim basis how to do that, get proposals back from individual
25 agencies what they think it would cost and then deal with it. It
26 doesn't seem to me we're prepared to deal with long term and I'm

1 a little afraid if we go on long enough on how we're going to
2 organize this thing, we're not going to deal with these imminent
3 threat lands and I know some of them, at least I've heard, are up
4 for development within the next few weeks. So, I don't think
5 it's a question of us philosophically deciding in the long term
6 how we ought to approach funding of the operation. Maybe we
7 should start with this, back off from that in an interim basis
8 and see how we want to approach dealing with these five or six or
9 seven or eight parcels plus what we want to do with those below
10 the line that's been proposed and maybe that will lead us back to
11 how we want to organize this in the long term.

12 I agree with Mr. Cole that we don't want to adopt a
13 process that's going to take forever and maybe just the
14 discussion of the process we're going to adopt them by not
15 adopting one if we're going to delay taking action here. So, I'd
16 kind of like to go away from here with us having taken an action
17 specifically with these imminent threat lands, even if it's not
18 the thing we end up doing in the long term. Certainly hiring a
19 new staff and staffing a new office is not something you're going
20 to deal with probably that might occur within in the next two or
21 three weeks.

22 MR. COLE: I have a quick question. Have we had any
23 response from the letters we sent out?

24 MR. PENNOYER: We haven't mailed the letter out yet, I
25 don't think.

26 MS. RUTHERFORD: No. We got our final response in from

1 legal counsel this morning. Department of Interior, at 8:20 this
2 morning just provided their comments on the landowner letter.
3 As soon as we get the final buy-off on that, we have the list all
4 ready to go. We know who to send them to. We've identified
5 parcels and ownership and...

6 MR. PENNOYER: Commissioner Sandor.

7 MR. SANDOR: Why don't we use these imminently
8 threatened parcels as, I guess, a trial experiment to see how
9 well this would work by (ph) one, I think, this would require a
10 modification of Option A, but under that option, the agency or
11 group who would receive the property interests would develop a
12 refined proposal for evaluation by the habitat protection working
13 group, Restoration Team and the Trustee Council then. Actually
14 it would be an incentive, I would think, of these folks, these
15 landowners and agencies coming in fairly quickly with their
16 specific proposals. And then we achieve the objective of
17 addressing these imminently threatened parcels. We have them on
18 the table and we have them up for either rejection for inadequate
19 information or acceptance. And I don't know why we couldn't do
20 that in 30 days. 60.

21 MR. PENNOYER: We couldn't get a letter out in three
22 weeks, so I'm not sure about 30 days.

23 MR. SANDOR: Well, I mean from the standpoint of the --
24 I mean from the standpoint of these parcels right here.

25 MR. COLE: Mr. Chairman.

26 MR. PENNOYER: Mr. Cole.

1 MR. COLE: You know, I said at the last meeting. Why
2 don't we just call up the owners or the people at Seal Bay and
3 say, you know, "Are you interested in selling this tract?" you
4 know and they'd say, "Yes" or "No" or they may come in town say,
5 "Let's talk about it," you know and then the next day it would be
6 done. I mean we are, you know -- three weeks later we haven't
7 sent out the letter. You know, it will be another two or three
8 weeks before we get the letter out. I mean we just, gentlemen,
9 have to deal more expeditiously. I mean we cannot -- we're
10 getting choked, you know, by this process or the lack of it.

11 We've got to make decisions and you know, Commissioner
12 Sandor, we just have to -- I mean we have to wait for some agency
13 to do this stuff. I mean I would be perfectly comfortable with
14 you and Mr. Barton forming a subcommittee to just see if we can't
15 get this moved forward and delegate or authorize them to, you
16 know.

17 MR. BARTON: Are you talking about this whole process
18 or just the acquisition?

19 MR. COLE: No, I have reservations about both of you, I
20 must say, so I don't want to delegate too broad authority, but...

21 MR. BARTON: Therein lies the problem.

22 MR. COLE: No, but here really, I mean it just seems to
23 me that we have to maybe -- Mr. Chairman is right. We have to
24 just move more swiftly. As you say, something has to be done.

25 MR. PENNOYER: In some justification, Mr. Cole, at the
26 last meeting when we talked about sending the letter out, there

1 were some who wanted to contact the individual imminently
2 threatened parcels and others -- and the meeting minutes
3 reflect, unfortunately, the fact that we were going to wait and
4 contact everybody all at once. And so there was some confusion
5 in direction from this council itself in terms of asking people
6 to go forward.

7 I think we ought to do -- my opinion is we ought to do these
8 now, today, tell somebody to go out and start making those phone
9 calls and not tell them they can buy it, not tell them they can
10 tie up any easements particularly, not even tell them the final
11 configuration of the parcel since we don't know what people want
12 to sell us and don't know how to deal with it but I don't think
13 we should wait for 30 or 60 days to go out and contact people.

14 I think we ought to do it now. I think maybe what we ought to do
15 is go for Option A, forcing coordination in a broad sense and
16 just having the agency go out and make that contact right now.
17 (Indiscernible - unclear).

18 MR. COLE: Mr. Chairman, there was no ambiguity about
19 it last time. It was to get a letter to everyone. That was
20 clear. Second was, I thought understood, we were only dealing
21 with about five or six landowners out there. I mean I'm talking
22 about big blocks. I remember that discussion. It's probably
23 right here in the transcript. And we said, you know, we're just
24 dealing with five or six groups of landowners out there, just,
25 you know, do it and it's three weeks later. I appreciate the
26 work of the Restoration Team but I say we have to get something

1 done.

2 MS. RUTHERFORD: Mr. Chair, if I might.

3 MR. PENNOYER: Ms. Rutherford.

4 MS. RUTHERFORD: We went out immediately, I think two
5 days later, the letter was complete and ready to go when it went
6 to legal counsel and that was part of the motion is that the
7 Trustee Council did want it to go for legal review and that's
8 what we've been waiting for. We are ready to go with it, but --
9 and it's not, you know, it's not pointing the fingers at the
10 Department of Law necessarily.

11 MR. PENNOYER: Is there a modification of Option A...

12 MR. GATES: I would move that we approve a modified
13 Option A with a coordinating committee that reports to the
14 council to deal with this acquisition process...

15 MR. PENNOYER: Is there a second?

16 MR. GATES: ...and identify a lead agency.

17 MR. PENNOYER: As a modification -- you're making an
18 amendment to the motion. Is there a second to that?

19 MR. SANDOR: Mr. Chairman, I'd second the motion if
20 Paul would agree that we target these five specific parcels for
21 immediate processing under that.

22 MR. PENNOYER: Could we -- I think the original motion
23 was an interim measure to take care of imminent threat. We
24 haven't decided on which five parcels yet. We haven't come back
25 and argued about the line yet...

26 MR. SANDOR: That or whatever but...

1 MR. PENNOYER: ...but it is -- it is the target on
2 imminent threat?

3 MR. GATES: Yeah.

4 MR. PENNOYER: That's correct.

5 MR. COLE: He means or whatever we nominate today.

6 MR. SANDOR: Yeah.

7 MR. PENNOYER: This is just to get the thing going.

8 MR. SANDOR: Then I would then second.

9 MR. PENNOYER: Then we'll come back and deal with the
10 questions of how the agencies come back and talk to us about
11 funding. Is there further discussion? Is there any objection to
12 that motion? (Pause) If there is none, then we have to set up
13 the process of this coordinating committee and we're going to
14 have to, I presume, something that's going to have (indiscernible
15 - cough) one from each agency or something that will meet on a
16 consistent basis or something of that nature?

17 Can we proceed then to the second -- if we have that as
18 an interim option which is subject to revision as we get through
19 this, could we proceed down to step two and three and then see
20 how this all hangs together before we...

21 MR. COLE: Just one comment, Mr. Chairman.

22 MR. PENNOYER: Mr. Cole.

23 MR. COLE: I think, though, if we're going to do that,
24 we need a mechanism where we meet more often. I think we -- this
25 reporting process to us cannot wait month by month by month. I
26 mean I don't know if we will get sandbagged because we don't have

1 notice and an open meeting and go through all this but we have to
2 be able to meet and make decisions on this process if not weekly,
3 every two weeks. And I realize meeting like this weekly is too
4 much. We just can't do that but we have to have some mechanism
5 where these decisions can be made quickly. I mean no more than
6 ten days apart. So, I would like thought be given by that. Is
7 there any dissent from that proposition?

8 MR. PENNOYER: Any dissent to it?

9 MR. GATES: Can this be done by conference call or does
10 it have to...

11 MR. COLE: Well, a conference call would be fine with
12 me. You know, we just got to get along with this.

13 MR. BARTON: Mr. Chairman?

14 MR. PENNOYER: Mr. Sandor -- Mr. Barton.

15 MR. BARTON: Well, I share the enthusiasm for getting
16 on with the process and meeting more frequently is certainly a
17 desirable thing. I'm a little concerned about the practicality
18 of it but perhaps -- and I guess part of the practicality hinges
19 upon the state's open meeting law and perhaps, we could have a
20 suggestion as how to do that and still be in compliance.

21 MR. SANDOR: Mr. Chairman, cannot be this a
22 continuation of this process? Must we -- certainly, we're not
23 going to have another public discussion of this thing which has
24 already been strongly endorsed.

25 MR. PENNOYER: You're suggesting that as a continuation
26 meeting, we don't need those...

1 MR. SANDOR: Yeah, continuation meetings to complete
2 the acquisition of these imminently threatened parcels.

3 MR. COLE: And if we could do it by conference calls so
4 the public could go to the Legislative Information Office and
5 participate there and hear it all, I would suspect maybe we can
6 see if that would comply. I would hope that it does.

7 MR. BARTON: I was under the impression your motion was
8 broader than just the acquisition. That is more practical for
9 just the acquisition process.

10 MR. COLE: I'm referring just to this acquisition
11 process.

12 MR. PENNOYER: You're referring specifically to the
13 imminent threat part of the acquisition process?

14 MR. COLE: Yes.

15 MR. PENNOYER: And then we would simply have this as a
16 continuation of this meeting because it would have to be somewhat
17 ad hoc. We don't know when we're going to have something to deal
18 with.

19 MR. COLE: Well, we could put the public notice in the
20 paper and over the radio, you know, the date for the continued
21 meeting. If people object to us and want to sue us and slow down
22 the process by that fashion, well, we'll just deal with that when
23 it comes up. I see no way to get this done other than that.

24 MR. PENNOYER: Is there any objection to the concept?

25 MR. GATES: We all have alternates too, so.

26 MR. PENNOYER: Okay, that's step one of what you were

1 proposing. Can we go to step two and see how -- I think probably
2 when we get done with this, we may want to come back and revisit
3 something after we see how it hangs together but why don't you
4 take us through step two which I think was the...

5 MS. RUTHERFORD: Which is the...

6 MR. PENNOYER: ... guidelines.

7 MS. RUTHERFORD: Well, I think prior to that maybe you
8 would like to talk about which imminent threat lands you're
9 talking about? I mean we had proposed the top five, everything
10 above 20 and the list you have in front of you are all 22
11 parcels, 19 imminent threat and three opportunity.

12 MR. PENNOYER: For clarification, is Item -- is one
13 still imminently threatened?

14 MS. RUTHERFORD: Is what?

15 MR. PENNOYER: Is Item one, China Poot, still imminently
16 threatened?

17 DR. GIBBONS: I think we really are dealing with four.

18 MS. RUTHERFORD: I think that the Attorney General
19 needs to comment on that but I mean basically you've acted on
20 Item number one. It's just that it was part of the whole menu of
21 imminent threat parcels, so we didn't pull it.

22 MR. COLE: Let me say this. If there's any more
23 acquisition in Kachemak Bay, I'm not going back to Juneau
24 tonight. I mean there is some dissent in Juneau to the
25 acquisition of Kachemak Bay State Park. I would not want to fuel
26 the flames.

1 MS. RUTHERFORD: This parcel is the one that you acted.
2 CIK 01 is what you acted on for 7.5 million several months ago.

3 MR. PENNOYER: All right. Questions or comments on the
4 next four and the rest of the list.

5 MR. BARTON: Mr. Chairman.

6 MR. PENNOYER: Mr. Barton.

7 MR. BARTON: It's my understanding that PWS 06 is not
8 available. The owners are not interested. Is that correct?

9 MS. RUTHERFORD: That is what we understand also.
10 And that's one of the reasons why we did make the cut-off
11 between....

12 MR. BARTON: That has a score of 18.

13 MS. RUTHERFORD: ...CIK 05 and Prince William Sound 06.

14 MR. PENNOYER: Let me just ask the group if they might
15 on where we draw the line. It sort of infers that regardless of
16 other considerations and configurations of parcels or any other
17 negotiations, we're sort of writing off these other parcels if
18 they are in fact, quote imminently threatened. Do you have a
19 comment on that or I heard public input on at least two or three
20 of these parcels on the lower part of the list as being very
21 important, maybe not as they're configured now but potentially
22 and I don't want to slow the process down. I think we ought to
23 move with some of these things we do have consensus on now, but
24 can you comment on the degree of imminent threat on the rest of
25 these and how we might deal with modifying the list as we go
26 along? Is it a viable thing to, based on the response you get

1 from landowners, to do some further modification of this list or
2 in your view, are these sort of really written off?

3 MS. RUTHERFORD: I think that there would be nothing to
4 stop you from extending that list out and we could contact the
5 owners and discuss the interest and then, you know, depending
6 upon what their interest is in terms of size of parcels, we could
7 quickly do some additional work and provide you some kind of an
8 indication as to whether or not it's worth pursuing, if there are
9 significant proposals presented.

10 MR. PENNOYER: Mr. Barton.

11 MR. BARTON: I thought we had already decided we were
12 going to contact those owners as well as others.

13 MS. RUTHERFORD: In terms of -- we decided to contact
14 them in terms of "Are you interested in participating" but that
15 was more the comprehensive analysis. We -- what we were talking
16 about here is beginning negotiations for interim protection, so
17 there's a difference. And I think that if you wanted us to begin
18 negotiations then you need to tell us that, other than the five
19 we've discussed.

20 MR. PENNOYER: It's very hard to do that, of course,
21 with what we've got in front of us because I have a ranking
22 system based on a particular -- as we characterized the last time
23 "red blob, " and I don't know what it might be if it was
24 different, if the landowner was willing to make, for example, if
25 Paul's Lake was made into a 10,000 acre parcel. You might come
26 up with a score of 125 for all I know.

1 MS. RUTHERFORD: Well, again, we're looking primarily
2 for interim protection that would allow, you know, eventually to
3 do some additional analysis on these lands for the comprehensive
4 and if though the landowner weren't interested, then we might
5 start proposing permanent protections but again, we're looking
6 for something that would give us a little time..

7 MR. PENNOYER: I know, but you're currently looking at
8 it for the top four.

9 MS. RUTHERFORD: That's correct.

10 MR. PENNOYER: Are we -- again, for example, Paul's
11 Lake has been pointed out by fishermen in Kodiak as being very
12 important and the size of the package there gives you a ranking
13 of six. That may not be very important but if the package were
14 negotiated up to or 4 or 5,000 acres as an option for
15 availability, the score might crank up to 25. I don't know.
16 Maybe two weeks from now, they're going to log Paul's Lake anyway
17 and that option sort of goes away. I don't know the answers to
18 those questions but by drawing that line -- I'm sort of ruling
19 out trying to acquire those answers in the shorter term, then I'm
20 not really happy with that line by itself.

21 MS. RUTHERFORD: Kim, would you like to comment on that
22 at all?

23 MR. SUNDBERG: What was the question?

24 MS. RUTHERFORD: I think -- I mean you're right. I
25 mean there's no -- the way we drew the parcels does impact the
26 ranking and these are imminently threatened and they could be

1 logged, you know, in the very short term.

2 MS. BERGMANN: Mr. Chair?

3 MR. PENNOYER: Ms. Bergmann.

4 MS. BERGMANN: I thought the council decided at the
5 last meeting to provide the information to those folks that had
6 already been compiled and asked them to make comments on that
7 information if that was appropriate. So, I think that provides
8 people an opportunity to say, "Golly, you missed a really
9 important area here that's adjacent to this land that's going to
10 be logged and if you had included that in your process then it
11 would have ranked higher." So, I think by providing that
12 additional information to those folks that that, in fact, gives
13 us a little bit extra help in terms of getting responses back
14 from them.

15 MR. PENNOYER: Okay, so something is going to these
16 specific people in addition to this general letter that's going
17 to everybody that sort of says are you interested?

18 MS. RUTHERFORD: That's correct. You had agreed at
19 the last meeting that the landowner letter for the imminent
20 threat parcels would include the analysis we had already done.
21 That was part of the package presented.

22 MR. PENNOYER: Commissioner Sandor.

23 MR. SANDOR: Mr. Chairman, why don't we consider this
24 entire list fair game? I mean after all there was an
25 acknowledgement that this numerical ranking process was, at best,
26 preliminary and subject to revision, perhaps drastic revision.

1 Why not -- and if something even comes up that isn't even on the
2 list, I don't know why this couldn't be -- it's going to come
3 back to us anyway and so why don't we begin with this total list?

4 MR. COLE: Is that a motion?

5 MR. SANDOR: Yes. Yes. I move.

6 MR. COLE: I'll second it.

7 MR. PENNOYER: Exactly what do you mean by "Why don't
8 we do the entire list?" Tell people to go out and do the
9 negotiations on all those parcels or try to focus on the top four
10 or five first?

11 MR. SANDOR: Well, you're going to be communicating
12 with all of these people and perhaps, you know, the adjacent
13 parcels might be, you know, proposed -- be flexible and have this
14 process that we just agreed to apply to this list and not just
15 draw the line at five or six. You know, I -- we're going to have
16 to do that anyway. Why don't we do it all at once?

17 MR. PENNOYER: Mr. Barton.

18 MR. BARTON: I guess I'm a little puzzled as to why we
19 would want to buy a parcel that has a score of zero.

20 MR. COLE: I knew you were going to say that.

21 MR. SANDOR: Well, I don't -- if there's, you know,
22 somebody said that this scoring system was, you know, based on
23 the information at hand which was very, very limited. We ought
24 not rule out the possibility that we made a mistake in the
25 assessments. Certainly, if reevaluation finds that that's a
26 zero, of course you wouldn't do it nor would we want to assume

1 that everything that comes back is going to be widely accepted.
2 They're going to have to go through these criteria. I dare say
3 that the final scores will be substantially different than are
4 outlined on this chart.

5 MR. GATES: Mr. Chairman?

6 MR. PENNOYER: Mr. Gates.

7 MR. GATES: I think if you're going to blow it open
8 like that, you can't overlook the opportunity parcels.

9 MR. SANDOR: Well, fine.

10 MR. GATES: There's opportunity parcels that have a lot
11 higher scores that may be more important than some that are
12 imminent threat.

13 MR. SANDOR: And for a reason of just recognizing that
14 opportunity parcels may be -- but they're not quote imminently
15 threatened but certainly the opportunity parcels may include
16 habitat that's a greater justification. I'm just saying let's
17 get on with this process. I'd like to see within the next 30
18 days this whole thing tested, this process, or else we'll be
19 arguing about just the process and not be doing anything.

20 MR. GATES: Well, I thought the agenda is to test it
21 with the top five or six parcels.

22 MR. SANDOR: But go beyond that if, in fact, you find
23 the evaluations were if, you know, in error.

24 MR. PENNOYER: But aren't we at kind of two different
25 stages here and it needs to be treated in sort of a time
26 sequence? We have some parcels that we already have recommended

1 to us without further discussion, without further configuration
2 changes, without anything else as being very high priorities and
3 really imminently threatened so aren't we in a position
4 proceeding with those on a more -- a different type of schedule
5 than coming back and reevaluating these others so that you don't
6 slow down these ones we already have some agreement on being high
7 priority and imminently threatened at the same time.

8 What I was trying to get at in my questioning was not
9 throwing out these others entirely and sort of doing what you
10 were saying but it might take a little longer but you don't
11 detract from proceeding to the actual "negotiation phase" on
12 these first four, so...

13 MR. COLE: Mr. Chairman?

14 MR. PENNOYER: Mr. Cole.

15 MR. COLE: I agree with Commissioner Sandor but I just
16 don't think that this process takes as long as the sense seems to
17 be. Getting back to the telephone again. You know, a series of
18 phone calls in the first place, you'd have a maximum of 16 phone
19 calls and say, "Are you interested in selling." I mean that's
20 the first thing and they say, "No, we're not interested in
21 selling" and you may strike half of those right there, you know,
22 and then people have some interests, say "Well, I mean let's talk
23 about it" and you can talk a little bit about the size and so
24 forth. And I would venture to say, you know, you talk to the
25 CEO out there, some of these parcels would be owned by the same
26 owner, I suspect, now you cut off a third that way or 25 percent

1 and by ten days, we would have a good feel of what we ought to be
2 doing. And as you say, once we contact them, they may say "Well,
3 we want to sell a little more or a little less." As you say Mr.
4 Chairman, that may change the rating system. We could have all
5 -- we should be able to have really a good feel for this, what's
6 going on out there in this acreage, in ten days at the most.
7 Maybe a week.

8 I don't see why we need some lawyer, even if he is in
9 the Department of Law, approving the phone call to see if you're
10 interested in selling. Such an easy thing. So, I would speak
11 in support of Commissioner Sandor's view. Let's just get some
12 pulse of what's going on out there and stuff and, you know, then
13 we could proceed based upon that soon.

14 MR. GATES: Isn't that what the letter is supposed to
15 do?

16 MR. COLE: The letter is all right. You could say,
17 "This will confirm our telephone conversation." Or they may
18 have fax machines out there.

19 MR. PENNOYER: We have a motion on the floor to
20 basically include the whole list in the process that's been
21 proposed under the adoption of a modified A. Further comment or
22 discussion? Mr. Barton.

23 MR. BARTON: Two comments, I guess. I wonder about the
24 wisdom of shot gunning this thing as opposed to taking them in
25 priority order. We're going to learn some things as we go. I
26 don't have any trouble, going so far as get an indication of

1 interest as we've agreed to do several times already and whether
2 it's by phone or by fax or by letter, I couldn't care less but
3 let's get on with it but I guess the more troubling thing is that
4 in the discussions that we've had, it seems like we don't have a
5 great deal of confidence in our scoring system. And do we need
6 to take another look at that? I mean we're saying these numbers
7 will change. I thought what we had done in developing this and
8 maybe I misunderstood what we did but that we, in fact,
9 identified those parcels that we thought were essential to
10 habitat protection and then evaluated those against the scoring
11 system and came up with this rank. So if these numbers -- if the
12 scores would change just because somebody threw in more acreage,
13 I guess that troubles me or because it got reconfigured. Is that
14 not what we tried to do the first time around?

15 MS. RUTHERFORD: Mr. Chair, if I might, basically the
16 analysis process isn't that bad. What could make a variation in
17 the score is the parcel size and that's where the process -- the
18 analysis process -- could be slightly weak -- I mean could be
19 weak.

20 MR. PENNOYER: But Marty, I guess I still see that
21 we're not saying these first four parcels are going to get lower;
22 they might get higher or if somebody came back and said they
23 don't want to sell half of it, then it might get lower but based
24 on what you've presented us here, these rank high.

25 MS. RUTHERFORD: That's correct.

26 MR. PENNOYER: Our problem is that I don't think all

1 the rest of these necessarily are going to rank low as you make
2 those contacts so why can't we do a two-part process: accept the
3 fact that the top four parcels have already ranked high and
4 proceed on an accelerated basis on those and then in connection
5 with what Commissioner Sandor proposed, continue the process of
6 contact and negotiate a discussion on what these lower rankings
7 might come out and see if they come up, then we could take
8 further action. But I don't know why we're going to preclude
9 ourselves in taking immediate action to proceed on the top four
10 because those scores are already high. It's not a question of
11 whether you change it or modify the acreage.

12 So, we could still proceed in a two-part process. Now,
13 I simply didn't want to draw a line and say, "Okay, we're not
14 going to do anything with these guys; they're out period." We're
15 not going to worry about them. I'd prefer to contact if we get
16 this process straightened out, start it down the track
17 immediately on these top four and then, at the same time by fax
18 or phone or handshake or whatever it is, make these contacts and
19 see if our rankings stay the same. But make it a two-part thing
20 so we know, we've agreed that these are high. We're going to go
21 ahead with them and we're then going to come back and reevaluate
22 these through contact and more than just a general letter and see
23 where we go. I don't know about the zero, but at least the top
24 part of that list.

25 MR. COLE: Mr. Chairman, I agree with Mr. Barton; I
26 agree with you. I don't think it's going to take all that long

1 to deal with these top four parcels. I mean I think that will be
2 done swiftly. I think following that, you know, the next series
3 of telephone calls would go to the other group and then we will
4 get some people to say, "We're not interested" or this or that
5 and then the ones that catch our eye that are available, then we
6 can take, as our illustrious Alaska Supreme Court says, "a hard
7 look" at those others parcels and put greater focus on them, see
8 if they meet the test. I just think it will work along nicely
9 where we're headed.

10 MR. PENNOYER: (Indiscernible - cough) agreement that
11 for the top four, at least, we're ready to do something. These
12 others where people are going to come back and tell us whether
13 the score changes after contact.

14 MR. COLE: I don't know where the Lower Kenai Peninsula
15 is. I mean I have some reservations about that one. Can anybody
16 tell me what they mean? The Lower Kenai Peninsula? Seems to be
17 a rather indeterminate description.

18 MR. GIBBONS: Mr. Chair, I think there's several parcels
19 on the end of the Kenai Peninsula. We're looking them up now.
20 Specific locations but...

21 MR. COLE: But if everyone else is satisfied with that,
22 I will say, "Let's let it go."

23 (Off Record: 11:30 a.m.)

24 (On Record: 11:30 a.m.)

25 MR. PENNOYER: Can we agree on sort of a two-part
26 process here that we're going to go ahead -- and maybe it won't

1 take much difference in the amount of time, but rather than lose
2 time, take an aggressive stance on the top four and ask that the
3 direct contact proceed on the rest of the list so we're again,
4 presented with whether these rankings are appropriate or whether
5 after contact and possible reconfiguration or change in the size,
6 they might come up. And that would proceed fairly quickly since
7 (indiscernible - unclear) opportunities there as well.

8 MR. BARTON: I'd second your amendment to Mr. Sandor's
9 motion.

10 MR. PENNOYER: I'm not sure I'm supposed to make
11 motions but okay.

12 MR. SANDOR: So will I.

13 MR. PENNOYER: Is there further discussion? Okay.
14 Then any objection to that? (Pause) Now, I have a question on
15 the contact that's going to occur. We've got a negotiating --
16 we're going to go through and discuss this process with agencies
17 or whatever in the top four. On the balance of this, will the
18 habitat work group make those contacts or will we do it by
19 agency?

20 MR. COLE: The work group.

21 MR. BARTON: You're talking on just the bottom?

22 MR. PENNOYER: Yes, the bottom part of the list. A
23 hurry-up contact to see if those configurations are correct or if
24 they should be changed.

25 MR. BARTON: Why don't we do that by the letter we
26 agreed to or with the letter that we agreed to?

1 MS. RUTHERFORD: I think the work group can do that for
2 the lower list.

3 MR. PENNOYER: The letter could do it but since it took
4 so long to send a general letter out, I'm a little worried about
5 the general letter plus this specific add-on information and
6 maybe more direct contact might be okay to make sure they got the
7 letter, at least.

8 MR. BRODERSEN: Mr. Chairman?

9 MR. PENNOYER: Mr. Brodersen.

10 MR. BRODERSEN: We're also hearing indirectly from the
11 various landowners that they really would like to chat with us
12 about this process and it would seem like a phone call, as folks
13 have suggested here by the work group to move the process along,
14 may also serve the purpose of not keeping the landowners in the
15 dark quite so much at this point. Maybe just have the work
16 group go ahead and give a quick contact on this would expedite
17 the process.

18 My one concern is as we've said repeatedly that we want
19 to have professional negotiators doing the negotiating so I guess
20 we would have to be careful about how far the work group goes in
21 actual discussions here to not get into actual negotiations and
22 that would slow the process down a little bit but would probably
23 save us grief in the long run to make sure that we had
24 professionals doing the actual negotiations and not the work
25 group.

26 MR. PENNOYER: Okay. Is there any problem in

1 proceeding in that fashion? (Pause) All right. Next item,
2 Marty, on this list.

3 MS. RUTHERFORD: For purposes of the top five
4 minus Kachemak, would you like us to give you our recommendations
5 from the Restoration Team on which entity should begin the
6 discussions?

7 MR. PENNOYER: Is that next or are we dealing with the
8 guidelines? I'm not sure.

9 MS. RUTHERFORD: Either way.

10 MR. COLE: Mr. Chairman, are we just having the work
11 group collectively, you know, make those without saying well,
12 it's DNR; it's Fish and Wildlife or it's National Park Service.
13 Why get to that level of the problem now?

14 MS. RUTHERFORD: On the ones below the top five, I
15 don't think we would get to that.

16 MR. COLE: How about the ones above? I mean why do we
17 need to get to that level of micro-management just to have
18 somebody...

19 MS. RUTHERFORD: Which is more like Option B. I mean...

20 MR. PENNOYER: Is there a disagreement with potentially
21 in terms of who would be the primary contact with these different
22 parcels? We don't want to throw it back to you and internally
23 have a big disagreement that holds us up for another couple of
24 weeks because nobody had agreed on who should make the phone
25 call.

26 MR. COLE: Absolutely.

1 MR. PENNOYER: So, if you want somebody to say now who
2 should make the phone call, maybe we ought to do it.

3 MR. BRODERSEN: Mr. Chairman, we're not talking on the
4 first four there about just making phone calls. We're talking
5 about negotiations...

6 MR. PENNOYER: I understand that.

7 MR. BRODERSEN: ...at that point. I think if you're
8 actually going to go with Option A, then you need to figure
9 out a lead agency. Otherwise, you're going with Option B as
10 recommended by the Restoration Team.

11 MR. PENNOYER: Why don't you give us your
12 recommendation then if you made one.

13 MS. RUTHERFORD: Well, we did -- in terms of the lead
14 agencies?

15 MR. PENNOYER: Yes.

16 MS. RUTHERFORD: Okay, for KAP 01, Seal Bay on Afognak,
17 we recommend State; for Prince William Sound 04 in Port Fidalgo,
18 we recommend U.S. Forest Service; for Prince William Sound 02,
19 Power Creek in Cordova, U.S. Forest Service; and for CIK 05,
20 Lower Kenai Peninsula, State.

21 MR. PENNOYER: So, this is sort of a competition to see
22 who gets back to us first?

23 MR. SANDOR: The incentive we're talking about.

24 MR. PENNOYER: So, basically then what we've set up in
25 our discussion would be a coordinating committee between -- with
26 the work group and these agencies and then each agency would

1 proceed independently on the negotiation on the assigned parcels
2 and report back to us as to where it stands which includes the
3 phone call that hasn't been made yet and everything that comes
4 afterwards.

5 MR. COLE: Mr. Chairman, that's not agreeable to me. I
6 do not think that we should have individual agencies out there
7 sort of doing this. I think we should have these individuals
8 meeting together, you know, and coordinating these efforts for
9 the reasons I said. No for individual agencies going out and
10 conducting these negotiations. Sorry, but I mean I just feel
11 very deeply about that. I thought we went over that. We were
12 going to have a coordinating group and that they were going to
13 work together in formulating the approach rather than having each
14 agency, you know, formulating its own approach, making its own
15 negotiating process.

16 MR. BARTON: Mr. Chairman?

17 MR. PENNOYER: Mr. Barton.

18 MR. BARTON: I, too, thought we had gone over it but I
19 guess we saw things differently.

20 MR. PENNOYER: Well, I'm not sure there's that much
21 difference and it's sort of whether you get together and
22 coordinate first or as you go along or both. I'm not -- I think
23 we said we'd form a coordinating group of these participants
24 including the habitat work group and they would discuss where
25 they're going and then it's up to the individual agencies however
26 to carry it forth, to direct negotiations and coordination.

1 That was the original motion, I think, for Option one. Maybe
2 that wasn't what you had intended so we ought to (indiscernible -
3 simultaneous speech)...

4 MR. COLE: Well, it was a little bit -- you know, we
5 were going to get these people working together and I think when
6 we start getting individual agencies doing out there, we're going
7 to have trouble. And you know, I just thought that they were
8 going to work collectively on this acquisition process rather
9 than turn it loose, you know. Do you have some thoughts,
10 Commissioner Sandor?

11 MR. PENNOYER: Yes.

12 MR. GILBERT: I think that's really the second part of
13 what we're going to talk about here is the guidelines and the
14 coordination that we're going to attempt to achieve by having
15 habitat protection work group give guidance and the Trustee
16 Council giving guidance to how the negotiators actually operate
17 and in addition, having a set of actual written guidelines which
18 each negotiating group would be obliged to follow. And the
19 intent is really to achieve consistency and fairness for the
20 whole process.

21 MR. PENNOYER: Maybe we need to, again, take this thing
22 in step. If lead agency without defining exactly what that means
23 yet are these as mentioned, then maybe we go to the next step
24 with how we're going to organize the work between those lead
25 agencies to start this process on these four parcels which I
26 think is the key element in getting started on these four

1 parcels, so how would -- well, how would we make Option one, Mr.
2 Gates, work?

3 MR. GATES: Well, I think you're going to have to work
4 together. For example on Seal Bay, you've got -- it's within the
5 National Forest out there and also, it's within the National
6 Wildlife Refuge, part of it in that area, adjacent to it anyway
7 and you've got the State identified as doing the negotiations so
8 there's going to have to be a lot of working together when you
9 pursue that one, it seems to me like. Can you elaborate on
10 that?

11 MR. GILBERT: Yeah, I think there will be a lot of
12 working together. In that particular one for Seal Bay, it is
13 within the forest boundary, the old forest boundary but this -- I
14 wasn't at the Restoration Team meeting but I understand they
15 worked out the lead agency. The Forest Service is not interested
16 in acquiring title to that piece of land, even though it's within
17 the old forest. In fact, the Forest Service doesn't want land on
18 Afognak Island, as I understand it. And the State is
19 interested. There seems to be no disagreement in that particular
20 case as to who the negotiation team ought to be and who actually
21 title eventually will probably pass to.

22 MR. PENNOYER: Commissioner Sandor.

23 MR. SANDOR: What we're after is the consistent process
24 that applies to all the agencies, science-driven, and I thought
25 we had the mechanism worked out to where this was to be dealt
26 with, as a multi-agency group. I didn't understand our previous

1 motion as doing anything -- as not doing that.

2 MR. COLE: See, I didn't either.

3 MR. BARTON: Let me describe what I understood we did
4 and see if I can capture it. As I understood what we did, we
5 agreed to put together a coordinating committee that would
6 consist of some representative of each of us to do that who would
7 then oversee or coordinate the actual land acquisition efforts
8 but those acquisition efforts would be conducted by a lead
9 agency, parcel by parcel. The lead agency would change, parcel
10 by parcel. That's what I thought we did.

11 MR. SANDOR: But this comes back to us though before
12 the final...

13 MR. BARTON: Oh, yeah.

14 MR. PENNOYER: Absolutely.

15 MR. COLE: Let me ask this question to help my
16 thinking. Why do we want separate "lead agency" to deal with
17 each parcel? What underlies that process?

18 MR. GILBERT: Well, I guess basically doing these
19 acquisitions take some effort and somebody's going to have to do
20 it. You'll have to chose which group is to do it and the
21 options we laid out here presented different ways of handling
22 that. Options B through D allowed there would not be a specific
23 agency in charge of the acquisitions. It seemed from the
24 discussions that the most practical way to get going on this was
25 to go ahead and have agencies who already had the staff to begin
26 those negotiation acquisitions.

1 MR. SANDOR: That's the key, Mr. Chairman. They've
2 already got a staff in place, a lot of information and I was
3 seeing them, as I said earlier, you know, following through on
4 that without billing us for that process.

5 MR. COLE: We haven't gotten to that yet. But here's
6 my problem. Why should we have just say the Department of the
7 Interior process going forward with say Fish Bay and the State
8 DNR process going forward with Seal Bay? I mean why do we have
9 State dealing, you know, unilaterally dealing with the Seal Bay.
10 It may be an entirely different process that's going on than the
11 process used by Interior for Fish Bay. I mean I don't see the
12 reason we have to go our separate ways. I'm saying it shouldn't
13 be so segregated, that it should be collective. That's what I
14 have trouble getting across. Why use separate negotiating
15 processes?

16 MR. PENNOYER: What you really want, I think, is an
17 Option B but without a permanent staff. Simply having agency
18 people rotating into it as required.

19 MR. COLE: That's exactly right.

20 MR. BARTON: Mr. Chairman.

21 MR. PENNOYER: Mr. Barton.

22 MR. BARTON: I think part of that answer to that is the
23 guidelines that we can't quite get to this morning and the second
24 part of the question, I think, is answered by trying to get some
25 accountability into this system. We can get on with it.

26 MR. PENNOYER: Again, we're dealing with an interim

1 process here to deal with, at least initially, the top four items
2 and we don't know who's going to rotate in and out of the
3 process, even if we went for B directly as a long-term thing, we
4 don't know how that would handle. We haven't gotten yet to how
5 we'd be billed on that. So, what we're talking about now is the
6 lead agency assigned to do the direct work on these four parcels
7 but in fact, having the coordinating committee that would
8 function somewhat like an Option B without actually forming a
9 team of the Trustee Council on a consistent basis to do it.
10 So, I haven't heard how this coordinating committee would
11 function and maybe that would help if we had some idea how that
12 would occur but I think are you saying then basically for each of
13 these parcels, the actual negotiation would be a mixed team that
14 would go forward and do it. Is that...

15 MR. COLE: What is there to the negotiations? You
16 have two people sit down and talk with the landowner. I mean,
17 you know. One maybe from DNR and one from Agriculture but I give
18 up on it. I'll just say let these separate agencies go their way
19 and see what happens.

20 MR. PENNOYER: I don't necessarily think we want to --
21 I'm not pleased, believe me, not voting in favor of letting the
22 agencies go their own way. I'm just trying to find some way to
23 get this thing started as quickly as possible, deal with these
24 four parcels. Conceptually it makes more sense if we could have
25 an arm of the Trustee Council that would do everything but I'm
26 not sure how that would fit with individual agency's problems and

1 what they've got to go through when they acquire land, how
2 they've got to treat and approve appraisals and all those things
3 may be somewhat different. And maybe we'll know more about that
4 after we do one or two and can come back and then reconfigure how
5 we want to approach it. Mr. Gates.

6 MR. GATES: I think the point Mr. Barton made, the fact
7 that the coordinating committee and the guidelines, we ought to
8 have that mechanism built in there hopefully and that's the
9 intent. And I guess my recommendation is to move along and give
10 it a shot and see how it works.

11 MR. BARTON: I think the point is we can make either
12 system work, frankly.

13 MR. COLE: Okay.

14 MR. PENNOYER: For now.

15 MR. COLE: For now.

16 MR. PENNOYER: Next item is budget, heaven forbid, or
17 the guidelines? Can we get guidelines before lunch?

18 MS. RUTHERFORD: Well, it's pretty straightforward. On
19 March 3rd, we sent out...

20 MR. PENNOYER: Something that's pretty straightforward,
21 you say?

22 MS. RUTHERFORD: It's straightforward to the extent
23 that the presentation on them anyway. This is the document
24 that's in your package. This is the document that went to your
25 legal counsels. It's the back-up to this one-page guideline
26 document. Basically, these guidelines indicate -- and it is an

1 initial draft and it is being reviewed by your counsels -- that
2 the appraisals will be prepared according to the Department of
3 Justice standard and if in excess of one million dollars, two
4 appraisals will be required. It indicates that the federal
5 government's general acquisition procedures will be followed by
6 both state and federal governments. It indicates that hazardous
7 substance surveys will be conducted. It indicates that title
8 evidence and a title sufficiency opinion will be obtained and it
9 indicates that negotiations will deal with designated corporation
10 officials only, not the shareholders and the board members.

11 We are still in the process of developing additional
12 procedures that outlines the operational relationship between the
13 negotiating staff to the Trustee Council, to the Restoration Team
14 and to the habitat protection work group's roles. Those
15 procedures will also discuss and itemize more clearly what the
16 Trustee Council decisional points are.

17 When we sent this document to your counsel, we
18 indicated in a cover letter that this was the most conservative
19 set of guidelines that could be implemented because the federal
20 government's guidelines are more conservative than the State's
21 and that's something that I think needs serious consideration by
22 your counsels and by the Trustee Council. I don't know whether
23 this is something you want to discuss today or you would want to
24 wait until -- maybe you've had the opportunity already to discuss
25 them with your individual counsels but I think that is probably
26 one of the most serious considerations.

1 MR. PENNOYER: Commissioner Sandor.

2 MR. SANDOR: While I think this is very -- I think this
3 is very important to -- and deserves some discussion. I've added
4 five items to this. Not that I quarrel with the eight that are
5 here. It's just that I want to preface it with some and then add
6 one as an evaluation process and I ask that during the lunch
7 break, maybe this could be duplicated and we could consider this
8 after lunch.

9 MR. PENNOYER: Okay. Is that acceptable? Some
10 additions? It's now 10 'til 12:00. Do you want to break early
11 and try to beat the lunch rush and come back in an hour?

12 MR. COLE: Could somebody bring 49 CFR, part 24? I
13 wouldn't want to agree to them without having read them.

14 MS. RUTHERFORD: We have them right here.

15 MR. COLE: How many pages?

16 MS. RUTHERFORD: Very significant.

17 MR. GILBERT: About 20 pages.

18 MR. PENNOYER: Mr. Gates.

19 MR. GATES: Earlier this morning, we -- when we were
20 acting on the APG's [sic] operating procedures, I don't think
21 they were actually adopted or approved in the earlier motion.
22 The advisory group.

23 MR. BARTON: We deferred them until after lunch.

24 MR. PENNOYER: Wait a minute now. Are you talking
25 about Mr. Barton's language or are you talking about the
26 procedures on dealing with alternates?

1 MR. GATES: That was two different subjects. One was
2 your handout.

3 MR. COLE: The intent language?

4 MR. GATES: I'm not talking about that. I'm talking
5 about the operating procedures that's in the packet. This was a
6 different subject.

7 MR. PENNOYER: I'm sorry. I -- you're talking about
8 the operating procedures relative to the alternates question?

9 MR. GATES: No. The general operating procedures are
10 in there and we dealt with the motions made by the chairman for
11 the group but we didn't deal with the operating procedures
12 themselves.

13 MR. PENNOYER: So, yours is a modification of those,
14 correct?

15 MR. BARTON: That's correct. We put off dealing with
16 those until we could -- as I understood it, until we dealt with
17 the intent language.

18 MR. PENNOYER: Okay. Shall we break for lunch and
19 try and get back by 1 o'clock then so we'll keep the lunch hour a
20 little bit? Thank you.

21 (Off Record: 11:50 a.m.)

22 (On Record: 1:06 p.m.)

23 MR. PENNOYER: I'd like to go ahead and get started
24 again. We left off at lunch, we had a couple of outstanding
25 items we were going to go back and pick up. I would propose we
26 go ahead and finish the land acquisition discussion before we go

1 back and pick up the operating guidelines for the PAG so we don't
2 break our chain of thought any more than we had for lunch.

3 When we left off, we were doing the negotiating
4 acquisition guidelines and Commissioner Sandor had written some
5 additions to that which he was going to get duplicated over lunch
6 and pass out to us and discuss at this time. Commissioner
7 Sandor.

8 MR. SANDOR: Mr. Chairman, I propose two sets of
9 acquisition guidelines, one for the federal process and one for
10 the state process with a common set of preambles or items that
11 are applicable to both processes and those common ones are one,
12 to clearly identify the restoration objectives that will be
13 achieved with the acquisition of the tract. Two, define and
14 evaluate acquisition options (easements, fee title, moratoriums
15 and so forth) which could be used to achieve protection and
16 restoration objectives. Three, refine the tract size and
17 configuration and assure restoration objectives will be achieved.
18 Four, consider the appropriateness of alternative funding and
19 protection mechanisms (land and water conservation fund and so
20 forth) and then go with separately the federal on one track and
21 the state on another track and then conclude with a -- provide
22 for a process of evaluating the validity of restoration
23 assumptions and objectives as a guide for consideration of future
24 habitat protection strategies and adjust by the best professional
25 judgment criteria and so forth.

26 So, in summary, Mr. Chair, I propose that we have a

1 two-track process of acquisition. One that builds on the
2 federal; one builds on the State. And that's the intent.

3 MR. COLE: Mr. Chairman?

4 MR. PENNOYER: Mr. Cole.

5 MR. COLE: I think my good friend, Commissioner Sandor,
6 is...

7 MR. SANDOR: Off the track again?

8 MR. COLE: ...confusing some apples with some oranges
9 here.

10 MR. SANDOR: Well, I'd like to restate is all I'm
11 trying to do.

12 MR. COLE: Well, I think that this document here, the
13 typewritten portion which is headed "Restoration Acquisition
14 Guidelines" are for essentially the acquisition group and I don't
15 think that it should be a function of the acquisition group to --
16 as for example, is enumerated in item one "clearly identify the
17 restoration objectives that will be achieved with the acquisition
18 of the tract." I think that that is a function of the Trustee
19 Council to make that decision and I would say the same is true
20 with your proposed number two and three and four, myself.

21 MR. SANDOR: Mr. Chair, I totally agree. I just think
22 it needs to be stated and locked in on that on each and every
23 parcel. We defined those criteria but I think that those were
24 out adjusting boundaries and so forth and that need to have those
25 in mind. What I see is a package that is built within the
26 framework of the definitions the Trustee Council have prescribed

1 and if they see something that needs adjustment, particularly
2 with regard to refining the tract size and configuration to
3 assure those restoration objectives, when they come back to us,
4 that provides the rationale for that. That's what was intended.

5 MR. PENNOYER: I think, Mr. Cole, what you're saying is
6 that by the time it gets to these things coming into play, you've
7 already -- the Trustee Council has already made these decisions
8 and told people to go forth and get this more detailed
9 information, relative to tracts we've already identified, being
10 consistent with restoration objectives, being of the appropriate
11 size, being appropriate funding and so on and so forth so it's --
12 these instructions were intended, I think, to be rather specific
13 guidelines to people who already have the more over arching
14 things done by the council.

15 So -- and I think your guidelines actually are good but
16 I think they more or less appear, you know, in our guidelines we
17 adopted before for criteria for property acquisition and we have
18 adopted -- maybe these are better wordings than those were -- but
19 we have adopted the series of guidelines and criteria for
20 acquisition to guide the Trustee Council. I don't have them in
21 front of me but I know last meeting we went through them and...

22 MR. SANDOR: Mr. Chairman, if I may elaborate. I
23 don't dispute that. Those should be defined. My position is
24 they have not been adequately defined insofar as the individual
25 parcels are concerned and I think that we cannot assume, based on
26 the information that's been placed before us that that's been

1 validated and as they, you know, refine the tract size and
2 configuration, again, I think it's worth validating that again.

3 MR. COLE: Mr. Chairman?

4 MR. PENNOYER: Mr. Cole.

5 MR. COLE: First, in response to Commissioner Sandor, I
6 had thought that this guideline process has been long since dealt
7 with by the council, number one. I mean how did we get here to
8 the point system if we haven't already -- uno momento, please --
9 if we had done that. That's number one, but number two is, if
10 you want to revise this slightly, so that when the acquisition
11 group is proposing other parcels and so forth that we just amend
12 your language slightly to make sure that the specific direction
13 is given to the acquisition group in evaluating revisions to the
14 parcel ranking and acreage summary documentation. I think that
15 would be certainly not inappropriate.

16 MR. SANDOR: That's exactly what I was intending to do.
17 See, that -- we've got these rankings from zero to 60 which
18 indicates that many of these only partially would achieve these
19 objectives. And I was thinking that -- it's just that we need
20 to pass all these through this screen and I don't think they've
21 been -- although we presumably have, I think it's worth another
22 shot. We want to have the separate mechanics. Well, first of
23 all, I think we have to have separate State and federal
24 processes.

25 MR. COLE: We can get to that maybe in a minute.

26 MR. SANDOR: I believe that we'll be here forever if

1 we tried to integrate them but I think we need to both function
2 under the same umbrella.

3 MR. COLE: Well, I will move, Mr. Chairman, at this
4 time that Commissioner Sandor's proposed revisions, number one,
5 two, three, four and thirteen to the Negotiation Acquisition
6 Guidelines be adopted with the amendment that they shall be
7 applicable to any proposed additions or deletions to parcels
8 identified in the parcel ranking and acreage summary documents.

9 MR. SANDOR: Second.

10 MR. BARTON: Could somebody explain it?

11 MR. COLE: What we intended, Mr. Barton, is this. It's
12 the sense that as the acquisition team goes out and starts this
13 basic acquisition process, they may receive proposals to add to
14 the acreage contained in this sheet or they may find out the
15 owner was prepared to sell less and that when the recommendations
16 come back to the Trustee Council from the acquisition team if
17 there are proposed revisions to the tract or the acreage in the
18 tract, then the acquisition team should comply with the tenets
19 which are contained in one, two, three, four and thirteen,
20 actually the handwritten additions of Commissioner Sandor, so
21 that the process will be followed, I guess.

22 MR. SANDOR: Mr. Chairman.

23 MR. PENNOYER: Mr. Sandor.

24 MR. SANDOR: One of the motivation behind that is in
25 the package we went over last time, you know, quite a lot of the
26 justification was on best professional judgment because of the

1 limited amount of time among other things and I think those are
2 surely fine as far as they've gone, but they need refinement and
3 in the acquisition process, these can be verified, but especially
4 as these parcels are adjusted. What we want to do is to make
5 sure we know why the parcel was acquired and for what specific
6 reasons and then as the last item identifies, track this
7 afterwards to be sure we know we were protecting harlequin duck
8 habitat and over time, we will know whether or not our
9 acquisition is sound. If it turns out there wasn't any harlequin
10 duck habitat, I don't know what we'd do after that point, but I
11 guess what we need to do at least is know the best professional
12 judgment was inadequate, at least, in that score and that
13 provides a mechanism for adjusting it then.

14 MR. PENNOYER: Mr. Cole.

15 MR. COLE: I think, come to think about it, what in
16 addition Commissioner Sandor has in mind that people on the
17 negotiating team will not necessarily have been familiar with the
18 habitat acquisition standards and as they're talking to
19 landowners and there are these talks about additions or
20 deletions, Commissioner Sandor wants those people on the
21 acquisition agencies to have a good sense of what lies beneath
22 the decision to acquire habitat in this area. Unless you have
23 that fundamental sense, it would not be easy to evaluate the
24 advisability of adding to or subtracting from the proposed
25 acreage of the parcel.

26 MR. PENNOYER: I don't have any quarrel with what we're

1 attempting to do here which is make sure all through this
2 process, that people keep their eyes firmly on the objectives
3 that we have for acquiring a particular piece of habitat or
4 making our decisions in terms of ranking or deciding about the
5 size of a land parcel should be as you negotiate. Including
6 these words doesn't necessarily mean that happens in this
7 particular area because these are originally, I think, rather
8 legalistic instructions to negotiators of certain minimum
9 criteria they have to meet.

10 We quite separately have -- and I can't put my hands on
11 it -- criteria that we've adopted for the acquisition of land and
12 for the ranking of land and perhaps what we need to do is look at
13 that. If your language isn't adequately covered by that, go back
14 and make sure that's revised and then they should have the whole
15 thing in front of them as they go forward and negotiate because
16 having these words is not going to take the place of them
17 understanding these values that were associated with a particular
18 parcel or the data that goes with it. My assumption is if we
19 send people forth to negotiate and we have teams from agencies,
20 we are going to have to have people on those teams that are
21 familiar with all these variable habitat values that might occur
22 and how a change in that parcel size might affect them. So,
23 maybe what we should do is not have this in these, I guess, which
24 are still legalistic instructions. They're not overall -- over
25 arching instructions and go back and look at our criteria and
26 make sure that whoever is doing this, has all of this stuff in

1 front of them and their eyes firmly on that goal before they go
2 forward and negotiate. And I'm not -- I don't have that in front
3 of me right now, so I'm not sure what your language does to what
4 we already adopted in terms of the goals and objectives and
5 process of ranking. And Marty, maybe you could help me with
6 that?

7 MS. RUTHERFORD: I'm not sure I understand exactly what
8 is intended by Commissioner Sandor, but I think that one of the
9 things that we foresaw is as a negotiating team begins working
10 with the landowners, if they identify a different parcel then or
11 an extended parcel, that the habitat work group analysis effort
12 would have to be trying to keep up with that to overlay that
13 information on that different sized parcel so that when it came
14 back to you as a proposal, you would have that analysis for that
15 particular parcel. Does that...

16 MR. PENNOYER: Mr. Sandor.

17 MR. SANDOR: Marty, what I want is a final product for
18 the parcel that's identified, what it is that we're protecting.

19 MS. RUTHERFORD: Which is the analysis. Which is...

20 MR. SANDOR: Wait a minute. And that as this process
21 of acquisition proceeds that that's kept in mind as the foremost
22 reason why they're out there so as they propose to add this 40 or
23 that area over here or there, that it is restoration based. See,
24 I'm afraid that this by itself pretty soon -- especially if we go
25 to the agencies that are just acquiring land for, you know, their
26 overall direction or overall purpose and you know, it might be

1 fine whether it's park, forest, or refuge and just to acquire it
2 just to fill in the inholding. That isn't good enough and not
3 only I think we need to know, identify clearly why that specific
4 parcel -- essentially affirm or reaffirm that that is right, but
5 then very important is to track that over time to be sure that
6 that acquisition was achieving the objective and if, in fact,
7 the best professional judgment was flawed, correct it.

8 We can get it, I suppose, if this is one place or
9 another, but especially if we have acquisition specialists who
10 are not familiar with our restoration objectives and are simply
11 trying to buy inholdings. My god, of course they're going to
12 want to get the maximum amount of acreage within the inholdings
13 because that's their whole objective.

14 MR. PENNOYER: Mr. Cole.

15 MR. COLE: Well, here's the way I look at it. If we
16 send an F-15 out to destroy a target, the pilot doesn't need to
17 know all the reasons you selected that target but what he should
18 know is the criteria for hitting the secondary target and that's,
19 I think, what Commissioner Sandor is driving at. If they want
20 to take a shot at the secondary target less than hitting, you
21 know, the barn doors, that they should have the standards in mind
22 of why you're taking a shot at the smokestack rather than the
23 barn door. Does that help you?

24 MR. PENNOYER: I think I understood what you said.
25 I'm still not sure it goes in this particular place but I think I
26 understood what you said. Further comment.

1 MR. BARTON: I'm still thinking about the F-15 but it
2 seems to me that that pilot ought to know what the secondary
3 target is before he takes off rather than deciding what it is
4 after he gets up in the air.

5 MR. COLE: That's why Commissioner Sandor wants to add
6 one, two, three, four and twelve [sic]. He has the criteria for
7 the secondary target. That's how I relate this whole thing
8 together.

9 MR. BARTON: Well, why wouldn't the council establish a
10 secondary target rather than the negotiator?

11 MR. SANDOR: Because they're not piloting the plane.

12 MR. COLE: Because there may be cloud cover over the
13 target.

14 MR. BARTON: I can tell you won a Crown Victoria.

15 MR. PENNOYER: Further discussion. Would you care to
16 restate your motion?

17 MR. SANDOR: Mine really wasn't a motion. Mine
18 essentially is to...

19 MR. PENNOYER: Mr. Cole made the motion in terms of how
20 to use the language that you've seconded.

21 MR. COLE: The motion was that the language proposed by
22 Commissioner Sandor, numbered one, two, three, four and thirteen
23 be added to the Negotiation Acquisition Guidelines when the
24 acquisition agency considers the acquisition of parcels of
25 acreage or configurations other than those shown on the parcel
26 ranking and acreage summary itemization. So, that -- and the

1 reason underlying that is so that as they're talking to the
2 landowner and the landowner says "Well, I don't want to sell
3 15,000 acreage in Seal Bay but I'm prepared to talk to you about
4 selling 6,000 acres" that that group understands that as you talk
5 about acquiring that 6000 acreage, you must keep the fundamental
6 principles in mind so that they have a general familiarization
7 with the underlying requisites for acquisition.

8 MR. PENNOYER: Mr. Brodersen.

9 MR. BRODERSEN: Mr. Chairman, might we be able to
10 modify one, two, three, four and thirteen slightly so that we
11 make it clear who does the work? I would hope that we're not
12 wanting to negotiating -- the actual negotiators to do one, two,
13 three and four and thirteen and as they are currently written,
14 that's what I would take it to mean. I would hope that the
15 Trustee Council through its staff would be doing this and not the
16 negotiators.

17 MR. SANDOR: That's understood.

18 MR. BRODERSEN: Okay. So, we can modify it enough to
19 make that clear?

20 MR. SANDOR: By all means.

21 MR. BRODERSEN: Thank you.

22 MR. PENNOYER: Further discussion? Is there any
23 objection to the proposal? Now, does that -- there's one
24 modification of the guidelines, I understand there were some
25 others that we haven't adopted the guidelines. You're talking
26 about separate state and federal and...

1 MR. COLE: I have a motion in that regard. With
2 respect to State acquisitions, that there be deleted from the
3 negotiation acquisition guidelines paragraph number A in the
4 typewritten form and paragraph C and paragraph D. Paragraph A
5 requires that the appraisals be prepared in accordance with
6 United States Department of Justice "Uniform Appraisal Standards
7 for Federal Acquisitions" and will be reviewed by a qualified
8 government review appraiser." I think that should be
9 inapplicable to State acquisitions.

10 Number C provides for the compliance with the
11 provisions of 49 CFR Part 24, the general acquisition procedures
12 for the federal government. That's this 21 pages of fine print
13 which if I were a federal agency undertaking this project, I'm
14 not sure I would want to be bound by these but that's a matter
15 for the federal government.

16 And lastly, paragraph D provides that United States
17 Department of Justice publication, "A Procedural Guide for the
18 Acquisition of Real Property by Government Agencies" will be
19 adhered to in the acquisitions conducted by the state or federal
20 government. I think those three sections should be deleted with
21 regard to proposed State acquisition.

22 MR. PENNOYER: Do I hear a second?

23 MR. SANDOR: Second.

24 MR. PENNOYER: Discussion? Has our legal team
25 reviewed this to give us any advice on whether this makes a
26 difference or not? I mean this seems to be a matter of law. I

1 don't -- I would (indiscernible - simultaneous speech)...

2 MR. COLE; I wouldn't say that I reviewed it but I mean
3 that's my thinking for whatever that's worth.

4 MS. LISOWSKI: I think on the federal side we're going
5 to have to look at that. We haven't reviewed it legally yet and
6 I think there's an argument, at least, that since there's
7 joint decision making on the part of the state and federal
8 government in any acquisition that there could be -- even a state
9 acquisition could be interpreted as a federal acquisition so
10 there may be some problem there that we need to look at it more
11 closely.

12 MR. COLE: Well, Mr. Chairman, I can tell you that the
13 State in its acquisition is not going to bound by those
14 requirements period and you know, there's no ands, ifs, buts or
15 maybes about it. We're not going to be required to follow them
16 in this acquisition process on behalf of the State. I mean, you
17 know, -- I don't want to talk about delay again but, you know --
18 what these -- let me just say, tell you what the problem is, so,
19 you know, you'll think I'm crazy but here's what Part 24.102
20 provides: "As soon as feasible, the owner shall be notified of
21 the agency's interest in acquiring the real property and the
22 basic protections including the agency's obligation to secure an
23 appraisal provided to the owner by law in this part." That's the
24 first thing that must be done.

25 Subsection (c): "Before the initiation of negotiation,
26 the real property to be acquired shall be appraised except as

1 provided in (c) 2 and the owner or the owner's designated
2 representative shall be given an opportunity to accompany the
3 appraisal during the appraiser's inspection of the property."
4 Okay. And that's the next thing that must be done.

5 (d) -- (c) 2 deals with donation and won't be here.

6 (d) "Before the initiation of negotiation, the agency shall
7 establish an amount which it believes is just compensation for
8 the real property. The amount shall not be less than the
9 approved appraisal of the fair market value of the property
10 taking into account the value of allowable damages or benefits to
11 any remaining property." This is all before any negotiations
12 are initiated, you understand, these appraisals have to be done
13 and so on and so forth.

14 (e): "Along with the initial written purchase offer,
15 the owner shall be given a written statement of the basis for the
16 offer of just compensation which shall include (1) the statement
17 of the amount offered as just compensation. In the case of a
18 partial acquisition, the compensation for the real property to be
19 acquired and the compensation for damages, if any, to the
20 remaining real property shall be separately stated." (2) --
21 except that you have to define the property you're getting of
22 course -- "identification of the building structures or other
23 improvements which are considered a part to which the offer of
24 just compensation is to be made. Where appropriate, the
25 statement shall identify any separately held ownership interest
26 in the property. i.e. except in this case subsurface land owned

1 by the regional corporation." Is that 6I (ph), whatever?

2 Then basic negotiating procedures. Now, if we adopt
3 -- we're required to follow those, the federal agencies are. And
4 the State, I mean you know, we should probably forget about any
5 acquisition in any interest in land for the next several months
6 and who knows maybe years. Somebody tells me that the
7 government process of acquiring land or interest in land normally
8 takes 18 months to two years or more. So, you know, we should
9 know what we're dealing with when we make these decisions.

10 MR. PENNOYER: Well, I don't know where to proceed from
11 there if the federal attorney tells us that basically federal
12 attorneys believe it hasn't examined the issue yet and it may
13 actually, in their view, be applicable. The State feels it's
14 not. I'm not sure how we can vote on a discrepancy like that at
15 this time. I agree with you we want to go ahead with these
16 guidelines, get started on some of this process. So, how do we
17 resolve this?

18 MR. COLE: Mr. Sandor has a thought.

19 MR. PENNOYER: Mr. Sandor.

20 MR. SANDOR: Mr. Chairman. That was --- this whole
21 thing I didn't understand the legal questions that are raised and
22 the apparent length of time involved but that's -- when I said I
23 thought we ought to have separate processes, I knew that the
24 state process was a lot simpler and quicker so -- and of course,
25 that's what's involved in the Kachemak Bay acquisition and, you
26 know, that's virtually on the verge of approval. A couple of

1 other hurdles, but can it not at least be the sense of the
2 direction of the trustees that separately defined acquisition
3 guidelines will be utilized which meet either the federal or
4 state requirements and go on from there? If we try to meld
5 these two together, I'm -- I just think we will be talking about
6 (indiscernible - cough).

7 MR. PENNOYER: Mr. Barton.

8 MR. BARTON: Well, I think the question that's been
9 raised needs to be addressed before the federal members or, at
10 least, this federal member would be equipped to express a sense.
11 We did, in fact, if you recall in regards to NEPA compliance
12 suggest that -- or accept that these were federal actions and the
13 projects were federal actions. Remember that long train. So,
14 now we're saying it's not convenient to so think that so we won't
15 consider them federal actions. I don't know whether they are or
16 they aren't but that's a legal question that I'm certainly not
17 equipped to answer and I think we do need to ask the federal
18 attorneys to get together with state attorneys and re-examine
19 that whole question and maybe we can get out of a lot of NEPA
20 work too.

21 MR. COLE: Mr. Chairman?

22 MR. PENNOYER: Mr. Cole.

23 MR. COLE: It seems to me it's clear that as I read
24 these regulations, the regulations which I've just read before
25 any "negotiations" takes place that there must be a federal
26 appraisal and not only must there be a federal appraisal, there

1 must be two appraisals. And there must be a review appraiser who
2 selects the appraisal that best selects the conclusion of value.
3 Furthermore, if we adopt these regulations, we're prohibited from
4 buying property at less than fair market value which is sort of
5 an astounding proposition in itself but I'll pass over that for
6 the time being.

7 I mean what are negotiations. I think negotiations
8 mean when you go out there and say are you -- to the landowner,
9 "Are you interested in selling your land and if so, for how
10 much?" I suspect that that's the commencement of the initiation
11 process. So, you know, maybe that's what we'll have to do but
12 it means that we will not be permitted, according to what the
13 federal attorney has just said, to begin any negotiations if
14 these guidelines are adopted until two appraisals have been done,
15 they have been reviewed and conclusion has been drawn but we're
16 not seeking to purchase these interests in lands for less than
17 their fair market value. That is a terribly depressing thought
18 to me.

19 MR. BARTON: Mr. Chairman.

20 MR. PENNOYER: Mr. Barton.

21 MR. BARTON: I would not interpret those regulations to
22 preclude the beginning of an acquisition process, however. You
23 know, I think that it's perfectly within the regulations to find
24 out if somebody is interested and maybe what the parameters of
25 that interests are while at the same time, we initiate the
26 appraisal process. The question of fair market value, my

1 understanding is that is a basic tenet in the federal
2 acquisition process. However, I'm not sure what fair market
3 value is. It certainly could be, in my mind, an agreement
4 between a buyer and a seller.

5 MR. COLE: Fair market value is the amount determined
6 by the appraiser. In fact, the review appraiser.

7 MR. PENNOYER: "The review appraiser will select the
8 appraisal that best supports the conclusion of value and that
9 appraisal shall be a determination of fair market value."

10 Chuck, how did we do Kachemak Bay?

11 MR. COLE: Oh, just went out did it.

12 MR. PENNOYER: Was that a federal action?

13 MR. GILBERT: Let me, I guess, respond to a couple of
14 things that have been said. I agree with Mr. Barton that the
15 term, "negotiations" the way it's defined in those regulations
16 does not mean you cannot go out and begin discussions with
17 landowners. In fact, you need to figure out which land you're
18 going to talk about buying. You need to define the particular
19 tract that's going to be appraised so you can have a lot of
20 discussions with an owner before you actually get to this very
21 technical term, negotiations which follow appraisal. So a lot
22 of the up front agreement with the landowner, short of actually
23 making a binding commitment, can happen and does happen before
24 this so-called technical negotiations begin.

25 I guess the other point I'd like to make is that
26 federal agencies can buy parcels for less than fair market value

1 but it's -- but the way it works is we cannot offer to buy for
2 less than fair market value. If an owner would like to approach
3 us and offer to sell it for less than fair market value for tax
4 advantages or for other reasons, they can do so and so we have
5 bought properties for less than fair market value and in
6 particular, when we have a non-profit involved like we discussed
7 this morning, it's often the case that property is purchased for
8 less than fair market value.

9 MR. COLE: Mr. Chairman?

10 MR. PENNOYER: Mr. Cole.

11 MR. COLE: You know, I don't want to argue. I just
12 read these things for the first time, but look. What really
13 troubles me about these regulations and this process is first, I
14 think you have to have negotiations before you can have an
15 agreement. That much seems logically clear. So, at some point
16 before a deal is struck, there must be negotiations and before a
17 deal is struck, we also have to have appraisals and how long does
18 it take to get these government appraisals from your experience?

19 MR. GILBERT: I'd say it takes anywhere from about a
20 month to three months to get one done. And it, of course,
21 depends on the complexity. In this case, in many cases, we're
22 talking about timber cruises (ph). These are timbered properties
23 and timber cruises I personally don't have any experience with
24 but I understand that that's, because it's a difficult problem,
25 mainly it has to be done in the summer, that adds additional
26 time.

1 MR. COLE: So, it could be more than three months to
2 get appraisals. So, we are really looking at not being able to
3 reach agreement -- any agreement, even for moratoria or
4 moratorium in three to six months. Right?

5 MR. GILBERT: There is an opportunity, I think, to
6 have an option on the piece of property, get an option on a piece
7 of property, short of doing an appraisal which would allow it to
8 happen quicker.

9 MR. COLE: Well, you know, to have a binding option,
10 you have to have value and that option must contain a dollar
11 number in there which is fair market value and how do you know
12 what that is until you have an appraisal? All I'm saying is that
13 you know, I think we have developed here this afternoon a very
14 troubling delay if we follow these federal guidelines. I think
15 we're going to be held up for any acquisition for six months. Do
16 you disagree?

17 MR. GILBERT: To get one completed, you're right. It
18 would take at least six months to get an acquisition completed.
19 However, you can start the process -- you can come to agreements
20 with landowners to agree to have an appraisal done and to
21 preclude some developments from happening during the time that
22 appraisals are being put together. It's kind of a good faith
23 effort being made on both parties to proceed with an acquisition
24 and based on that good faith effort, without a binding
25 commitment, you can prevent some developments from happening.

26 MR. COLE: Mr. Chairman, I don't see people --

1 landowners or those holding timber harvesting rights -- well,
2 maybe I do see it but I don't see it likely to delay exercising
3 timber harvest rights based upon a commitment by federal or state
4 agency -- to engage later in good faith negotiations. I mean,
5 you know, that's the world of economic reality. I think in
6 order for that to occur, some money has to be put on the table.
7 So, anyway, that's enough of me talking.

8 MR. GILBERT: If I could just say one more thing, I
9 guess.

10 MR. PENNOYER: Go ahead.

11 MR. GILBERT: I did discuss the issue of using these
12 federal procedures with state acquisition people and the main
13 people who do acquisition for the state government at this point
14 is DOT -- DOT/PF. And they use this all the time, these
15 procedures all the time in that they're using federal dollars,
16 highway dollars, to do acquisitions. And the response I got back
17 from at least one individual in a very key spot was that they do
18 not see these as complicating regulations. They really are a
19 reasonable set of procedures you need to go through in doing any
20 acquisition. I'm sure the State would not engage in spending a
21 lot of money for a particular tract without having some very good
22 indication of value which is really having an appraisal done.
23 So, at least the response from one state individual who does a
24 lot of acquisitions for DOT was that he uses these all the time
25 and he doesn't see them as being -- as providing any less
26 flexibility than would be used for acquisitions without these.

1 MR. PENNOYER: Mr. Sandor.

2 MR. SANDOR: Just a question on process. Must you
3 follow the same procedures if the acquisition is for a scenic
4 easement, say, or wildlife or habitat protection easement
5 (indiscernible - unclear)?

6 MR. GILBERT: You would. Any interest -- purchase of
7 any interest in land would follow these same procedures.

8 MR. SANDOR: I think the reason I asked that question
9 is because if you're really after habitat protection and
10 particularly, since it's imminently threatened, you want to
11 protect it, but you have to actually then get the one or two
12 appraisals and go through that process before you can even do
13 that. What about mora -- you say, the moratorium -- use the
14 moratorium as an option is interchangeable?

15 MR. GILBERT: No, I guess moratoria is a little ill
16 defined. I guess my looking at moratoria, it's really a lease
17 of those lands for a particular term and it might be a one-year
18 term or a two-year term but you actually would lease some
19 interests in those lands during that time.

20 MR. COLE: Mr. Chairman?

21 MR. PENNOYER: Mr. Cole.

22 MR. COLE: It would be my view that you simply have an
23 agreement not to harvest timber commercially. That falls short
24 of a leasehold interest, you see. Might be able to use that
25 device but by the way, we do the condemnation work in the
26 Department of Law for DOT/PF, so we're not unfamiliar with how

1 long it takes them to complete a highway project.

2 MR. PENNOYER: It doesn't look like we're going to be
3 able to reach a conclusion on this item here. I guess I have a
4 question on process. In terms of what we've tried to set in
5 motion here on imminently threatened lands and the starting of
6 the negotiation process or, at least, the highest priorities and
7 the evaluation --- re-evaluation of those below the line that are
8 now listed as lower priority, is not having this finalized a
9 barrier to starting that process?

10 MS. RUTHERFORD: I guess my assumption is since you
11 have chosen Option A, and assigned imminent threat lands to
12 individual agencies, that the individual agencies could use their
13 own particular guidelines to proceed.

14 DR. GIBBONS: Let me add a little bit to that. I think
15 they modified the amendment though to -- I'll read it here. "To
16 form a coordinating committee to oversee the activities of the
17 agencies which reports directly to the Trustee Council."

18 MS. RUTHERFORD: I assumed coordination was to insure
19 that the goals of the Trustee Council were met in terms of
20 habitat protection, restoration goals.

21 MR. PENNOYER: Commissioner Sandor.

22 MR. SANDOR: The motion on the table can be acted upon
23 actually with a qualification that is there an understanding that
24 it would be approved -- that it is approved if in accordance with
25 state or federal law and try to shop around for some attorneys...

26 MR. COLE: You want an opinion? I'll give it.

1 MR. SANDOR: I think we -- I'd hate to go away from
2 here with this up in the air. Can't we with a sense of purpose
3 say we really want to expedite this process and as Marty outlined
4 if the state agency is the lead and we can use the state process,
5 fine. But then if the attorneys get together and they say, well,
6 you can't do it -- seems what will happen is we'll be here for
7 the next meeting and that's another 30 days or 40 days or
8 something like that.

9 MR. PENNOYER: I thought it was ten days.

10 MR. SANDOR: So, why don't we vote on this outstanding
11 proposal with the understanding that if, in fact, it's shot down
12 by the attorneys, then we'll have to reconsider but...

13 MR. PENNOYER: Mr. Barton.

14 MR. SANDOR: ...why don't we take the positive approach?

15 MR. COLE: Move forward?

16 MR. SANDOR: Yes.

17 MR. BARTON: Well, I think we can move forward. As I
18 indicated earlier, I don't think and Mr. Gilbert verifies I don't
19 think these federal regulations preclude moving forward as we
20 want to do, but I don't think I can vote for the motion until we
21 have the lawyers sort this question out but I do strongly want to
22 move forward with the acquisition process on these four parcels
23 and I think we can do that and still be consistent with the
24 regulations. Now, we may reach a point down the road where we
25 would have to halt. I don't know.

26 MR. PENNOYER: It's been moved and seconded that the

1 state and federal processes be split relative to land acquisition
2 and certain criteria, namely number five, seven and eight be
3 deleted in reference to the state acquisition of lands. Is there
4 any further discussion? (Pause) Is there objection?

5 MR. BARTON: I object.

6 MR. PENNOYER: I object. I guess -- Commissioner
7 Sandor.

8 MR. SANDOR: Can I move the same motion with the
9 qualification that the motion being as an objective and to be
10 modified as required by federal and state law but essentially,
11 I'd like to use the time between now and our next meeting to have
12 this resolved hopefully. Any objection to that? We don't even
13 need a motion, but...

14 MR. PENNOYER: Well, let me ask a question. Is the
15 seven -- or (C) was "The provisions of 49 CFR, general
16 acquisition procedures" so it laid out general acquisition
17 procedures. Now, whether we're using state or federal
18 acquisition procedures, is there a corollary state procedure that
19 normally takes place? Are there other guidelines that we are
20 agreeing to as a council that these may -- I don't know that the
21 purpose here is that you're -- it's 49 CFR, those are acquisition
22 procures that have been laid out for supposedly logical
23 procedures for acquiring property. You are going to have to have
24 appraisal certainly at some point before you buy something and
25 I'm not sure which ones we don't want to be bound by.

26 Attorney General Cole has just read these and has got

1 some reservations about them but I don't know if there are
2 alternatives or if we just don't adopt procedures period. We're
3 talking about coordinating between all these agencies and I
4 assume we're coordinating the procedures and the process and the
5 objectives and all the things that you might coordinate so people
6 are approaching things in the same fashion. Are you just -- if
7 these aren't the right ones, is there something else we should be
8 adopting or do we just take the procedure entirely out of the
9 state guidelines?

10 MS. RUTHERFORD: Mr. Chair?

11 MR. PENNOYER: Marty.

12 MS. RUTHERFORD: In the Restoration Framework
13 Supplement that came out in July of '92, both the state and the
14 federal acquisition procedures are outlined. And my copy of the
15 document is in Charlie's book on those draft guidelines but it
16 clearly indicates in the supplement that there are two sets of
17 procedures.

18 MR. SANDOR: Was it intended that they be followed
19 separately?

20 MS. RUTHERFORD: When we put them together, that was
21 certainly the intent.

22 MR. SANDOR: That's what I thought.

23 MS. RUTHERFORD: I'll pass this down. The federal
24 acquisition process begins on page 41 and the state acquisition
25 process begins on page 47.

26 (Off Record: 1:57 p.m.)

1 (On Record: 1:57 p.m.)

2 MR. PENNOYER: Well, Marty, how does this relate then
3 to what's been put in front of us?

4 MR. COLE; Can anybody figure this out? I don't
5 understand...

6 MS. RUTHERFORD: The text probably is a little clearer.

7 MR. PENNOYER: How does that relate to this that's been
8 put in front of us and why was this put in front of us if it's
9 already covered in these two separate diagrams?

10 MS. RUTHERFORD: This was put in front of the --
11 basically for the same reasons you are having trouble with it.
12 The Restoration Team also had trouble with the issue the fact --
13 the federal attorneys were beginning to say that the federal
14 guidelines had to take precedent, even though the supplement does
15 lay out both procedures. And it's very clear in the text when
16 you talk about the federal versus the state procedures that the
17 state procedures are, you know, more streamlined.

18 MR. PENNOYER: Once again, what is this then?

19 MS. RUTHERFORD: Those are the federal.

20 MR. PENNOYER: And -- but this was given us by the team
21 for adoption here?

22 MS. RUTHERFORD: No, it was not. You'll note that on
23 the cover letter and towards the end of my presentation, I said
24 that it had been sent to your counsels, that it was a most
25 conservative approach, that it was something that, you know,
26 needed to be addressed because...

1 MR. GIBBONS: Mr. Chair, also the intent of the
2 Restoration Team was to obtain one set of guidelines. So, we're
3 not negotiating different things out there, so there's a
4 unanimous type of approach.

5 MR. PENNOYER: In other words, what you're saying is
6 the federal guidelines would certainly cover the state because
7 they're more restrictive. So, the question is still a legal
8 question but it's two questions. The procedural question is
9 there a reason for us to do it according to federal guidelines.
10 And the second, I suppose, over arching question is it legally
11 required that we do it according to the federal guidelines. The
12 federal attorneys advise us that they're still looking at that.
13 So -- Mr. Barton.

14 MR. BARTON: In looking at pages 41 and 47, there's a
15 remarkable amount of similarity.

16 MS. RUTHERFORD: There's no question that the federal
17 procedures include the state procedures. Like I said before,
18 the state procedures are more streamlined.

19 (Pause)

20 MR. COLE: Mr. Chairman?

21 MR. PENNOYER: Mr. Cole.

22 MR. COLE: Actually, you know, I haven't studied these
23 but if you read subpart B, 49 CFR 24.101, it says, "The
24 requirements of this subpart apply to any acquisition of real
25 property for a federal program or projects and to programs and
26 projects where there was federal financial assistance in any part

1 of the project cost except for: one, voluntary transactions that
2 meet all of the following conditions One, no specific site or
3 property needs to be acquired," dot, dot, dot. "Two, the
4 property to be acquired is not part of an intended plan or
5 designated project area where all or substantially all of the
6 property within the area is to be acquired within specific time
7 limits. Three, the agency will not acquire the property in the
8 event negotiations fail to resolve in an amicable agreement and
9 the owner is so informed in writing. And four, the agency will
10 inform the owner of what it believes to be the fair market value
11 of the property."

12 So, you know, if you look at those exceptions, maybe
13 these real property acquisition requirements in 49 CFR subpart B
14 do not apply.

15 MR. GILBERT: Mr. Chairman, if I could provide maybe a
16 little additional clarification. Those particular exceptions
17 that you're reading relate exclusively to so-called relocation
18 benefits, not to the general application of the regulations.
19 Relocation benefits are basically payments made to landowners to
20 move personal property or to re-establish business expenses but I
21 don't believe those particular exceptions relate to the general
22 application of all the regulations.

23 MR. COLE: Well, that's the trouble with -- actually,
24 these regulations in 49 CFR only apply, as I see it, to the
25 office of the Secretary of Transportation, don't they?

26 MR. GILBERT: They've been adopted by all the federal

1 agencies.

2 MR. COLE: I give up. Well, then we shouldn't adopt
3 Secretary of Transportation's. We should adopt the specific
4 federal agency's regulations that are going to be the lead
5 agency, shouldn't we? I don't know. Looks like to me, Mr.
6 Chairman, this is an impasse that we aren't going to solve today.

7 MR. PENNOYER: Mr. Barton.

8 MR. BARTON: Mr. Chairman, I move that we initiate the
9 acquisition process for the first four or five of those parcels,
10 if that's in order -- if we haven't already done that. Have we
11 already done that?

12 MR. PENNOYER: I think we've already done that.

13 MR. BARTON: All right. Then I withdraw.

14 MR. PENNOYER: Once again, if we have reached an
15 impasses here that has to be resolved through further legal
16 review, is this going to stop us over the next few weeks in
17 proceeding on interim threatened parcels in the way we had
18 intended?

19 MR. BARTON: That's what I was trying to move.

20 MR. PENNOYER: No, I'm -- I'm asking you if we table
21 this question until we get legal review, does it stop that? We
22 moved it but I'm trying to find out if we have to have this to
23 conform to our original motion which was to go ahead.

24 MR. BARTON: Well, I think we need legal advice then
25 but in my opinion, it does not stop us.

26 MR. PENNOYER: I don't think it does either.

1 MR. BARTON: Agriculture's attorney is nodding her head
2 and agreeing that it does not stop us.

3 MR. PENNOYER: Okay. Craig?

4 MR. O'CONNER: We agree.

5 UNIDENTIFIED SPEAKER: Go for it.

6 MR. PENNOYER: So, seek a legal review on this but go
7 for the acquisition in essence.

8 MR. O'CONNER: I don't think you've got a problem here.
9 You're going to go forward and find out if you can get people to
10 quit cutting trees until you can figure out whether or not you're
11 going to buy their land, right? That's in essence what you're
12 proposing to do on these four parcels?

13 MR. PENNOYER: Succinctly put.

14 MR. O'CONNER: That doesn't -- that is not an
15 acquisition in accordance with these regulations, that is not an
16 acquisition of land. It may be an acquisition of some sort of
17 servitude, whatever legal term you want to use, but it's not an
18 acquisition of land. If the State decides that it's going to
19 purchase the parcel of land, then the state's law would apply to
20 the acquisition because it's going to be acquired by the State.
21 If the federal entity is going to acquire a piece of land, their
22 rules are going to have to apply to that acquisition. We can't
23 change those laws simply because we have a Trustee Council.
24 Dependent upon who's buying it, those rules apply and I don't
25 think that there's going to have to be a determination made that
26 one rule or the other will apply to the process overall. You can

1 still coordinate the process simply by establishing policy
2 guidelines for the acquisition, some internal procedures when you
3 go out and you don't bid against (indiscernible - cough) or
4 something like that. I don't think this is a problem.

5 MR. PENNOYER: If what you said is correct and there is
6 no problem, that's not what we're hearing from Maria. Her
7 concept was even if the State acquired the lands, it's required
8 under a process that included federal decision-making, the same
9 way as NEPA, therefore the federal regulations would apply.

10 MR. O'CONNER: I understand her concerns and I don't
11 think at this -- we can answer that question without stopping
12 your process today.

13 MR. PENNOYER: Fine. Can we then wait on the adoption
14 of these procedures, the two-part approach to the procedures?

15 MR. COLE: Mr. Chairman, if that's so, then why do we
16 need the lead federal agencies -- the lead state and federal
17 agencies to do this simple negotiation of moratoria? We're not
18 dealing with any federal processes and land acquisition formulas
19 and practices if what you say is true. Isn't that so?

20 MR. O'CONNER: Yeah, I don't think you do.

21 MR. COLE: Okay, then why don't we just do it that way?

22 MR. PENNOYER: As long as we do it in the next couple
23 of weeks, it's fine by me.

24 MR. GATES: Who's going to take the action?

25 MR. PENNOYER: I'm not sure it makes it any difference.

26 MR. BARTON: No, but it would be good to know.

1 MR. PENNOYER: No, no, no. I mean I'm not sure it
2 makes any difference if we pick the people who are going to do
3 the actual and coordinate these four parcels. I think we're
4 simply moving ahead on an imminent threat process and we're
5 trying to get something on the table that's going to slow the
6 process of development down until we can figure out what to do
7 with our options. I guess the problem before us is do we have to
8 adopt this in two parts at this stage or are we better off doing
9 what Commissioner Sandor has proposed and adopting what we
10 already have in our framework which is two separate processes
11 unless it proved to be "not legal." Mr. Gates.

12 MR. GATES: I thought we had agreed to get legal
13 review on this and then act on it.

14 MR. PENNOYER: I hadn't heard a motion -- I hadn't
15 heard final agreement to that.

16 MR. GATES: I make a motion that we get legal review
17 and then in the meantime proceed with contacting all the
18 landowners like we agreed to earlier.

19 MR. PENNOYER: Is there a second?

20 UNIDENTIFIED SPEAKER: Second.

21 MR. PENNOYER: It's been moved and seconded that we get
22 a legal review on these guidelines but that we not delay the
23 process of contact and trying to get feedback from landowners on
24 options to take care of these imminent threat parcels.

25 MR. COLE: I'm not sure what we're doing but I think we
26 ought to do it.

1 MR. PENNOYER: It's been moved and seconded that we
2 ought to do it so, is there any objection with proceeding that
3 way? Can we get the appropriate people to conduct that legal
4 review between the state and federal government in the near term?
5 (Indiscernible - unclear)

6 MR. COLE: I'll think about that.

7 MR. PENNOYER: I don't want to think about it all but
8 I'm afraid somebody's going to ask us at the next meeting what we
9 did with it, so...

10 MR. GATES: Well, I recommend -- I don't know that we
11 need a motion but I recommend the three federal attorneys take a
12 look at it and give us their advice.

13 MR. PENNOYER: Have we concluded this item for the
14 moment?

15 MR. GATES: One thing I'd like to clarify. The --
16 who's going to do the contacting on these? I mean we need to
17 know how we're proceeding now that we've agreed to do it.

18 MS. RUTHERFORD: Mr. Chair?

19 MR. PENNOYER: Marty.

20 MS. RUTHERFORD: Would you like me to take a shot what
21 I think the answer to that is?

22 MR. PENNOYER: Why don't you take a crack at what you
23 think it means.

24 MS. RUTHERFORD: On the four imminent threat parcels
25 that we identified particular agencies on, particularly Seal Bay
26 and Lower Kenai Peninsula, the State would take a crack at that

1 at contacting.

2 MR. GATES: I would like to recommend that the Fish and
3 Wildlife join you on Seal Bay. The State.

4 MS. RUTHERFORD: I think you've already made a motion
5 and passed that previously in terms of the contact.

6 MR. GATES: I know. I'm amending that.

7 MS. RUTHERFORD: How about I get through this list and
8 then you go back and do that.

9 MR. PENNOYER: Why don't you get through the list and
10 then we'll go back and do that.

11 MS. RUTHERFORD: Okay. And for Fish Bay and Power
12 Creek, the U.S. Forest Service would be the contact persons on
13 that. For everything below item CIK 05 that the habitat
14 protection work group would make telephone calls to landowners
15 and that would open that discussion.

16 DR. GIBBONS: Additionally, get those letters out.

17 MS. RUTHERFORD: And additionally, get the letters out.

18 MR. PENNOYER: And you left out with a coordinating
19 committee and presumably, we would meet before any of this
20 contacts occur and talk over how they're going to happen. Is
21 that right?

22 MS. RUTHERFORD: That's certainly the intent, yes.

23 MR. PENNOYER: Mr. Gates.

24 MR. GATES: I'd like to now make, if it needs a motion,
25 move that Fish and Wildlife also joins the State on Seal Bay.

26 MR. PENNOYER: In what capacity? Contact or just part

1 of the coordinating committee?

2 MR. GATES: Part of the coordination effort. They can
3 decide how they want to proceed with that.

4 MR. PENNOYER: Is there a second? (Pause) Is there a
5 second? Is there any problem if another agency joins the
6 coordinating committee and enters into these discussions, as long
7 as the primary contact is still the agencies so named?

8 MR. BARTON: I think we need to clarify whether we're
9 talking about the coordinating committee or the contact group,
10 whatever we're calling that. As I understood it, the
11 coordinating committee was going to consist of one member from
12 each trustee agency. Is that what we decided or not? Well, I --
13 all right, I so move that.

14 MR. ROSIER: Second.

15 MR. PENNOYER: If you don't show up, then...

16 MR. BARTON: Ask if there's any objections...

17 MR. PENNOYER: (Indiscernible - simultaneous speech)

18 MS. RUTHERFORD: Mr. Chair? How about if the habitat
19 protection work group act as the coordinating agency because all
20 the agencies are represented on that.

21 MR. SANDOR: I assumed that that's what we were going
22 to do.

23 MR. PENNOYER: Fine. Okay, that was a tough decision.
24 Are you happy with that?

25 MR. GATES: That's wonderful.

26 MR. PENNOYER: Okay, that's wonderful so we're settled

1 then?

2 MR. GATES: But you're going to have different people
3 there...

4 MR. BARTON: It's different expertise. I'm not sure
5 that's an appropriate group to do it. I would want somebody on
6 there with some lands expertise.

7 MS. RUTHERFORD: They are land -- I mean like for
8 instance, Chuck Gilbert, John Harmony. Those are the people on
9 the habitat protection work group.

10 MR. BARTON: Oh, all of a sudden, I like that
11 suggestion.

12 MR. PENNOYER: All right. That's been resolved to your
13 satisfaction then, Mr. Gates? You're on their coordinating
14 committee?

15 MR. GATES: Well, if I can't get a second, I guess I
16 will have to be satisfied.

17 MR. PENNOYER: Okay. Is there anything further...

18 MR. COLE: Let me say one thing, Mr. Gates. You will
19 have a representative on the coordinating group and certainly
20 your representative would be free to have someone from Fish and
21 Wildlife serve as participating in that process. I think.
22 Would that satisfy...

23 MR. GATES: That's what we'd like.

24 MR. COLE: Yeah, I think that's fine.

25 MR. PENNOYER: Mr. Barton.

26 MR. BARTON: Run through the composition of that

1 habitat group. I may change my mind again.

2 MS. RUTHERFORD: I don't want to forget anybody here so
3 I'm just going to pull the list. Dave Gibbons and I co-chair;
4 Mark Brodersen from DEC; Chuck Gilbert from National Park
5 Service; Kim Sundberg from Alaska Department of Fish and Game;
6 Walt Sheridan from U.S. Forest Service; John Harmony from the
7 U.S. Forest Service; Mark Kuwada from ADF&G; Barbara Mahoney from
8 NOAA; Kathryn Berg from U.S. Fish and Wildlife Service; Ken Rice
9 from Forest Service and Art Weiner from DNR.

10 MR. COLE: Did you leave out anybody?

11 MS. RUTHERFORD: Not a soul.

12 MR. PENNOYER: Well coordinated. Okay, is there
13 anything further to come before us on habitat acquisition?

14 MR. COLE: What we have done with this just...

15 MR. PENNOYER: I thought we basically...

16 MR. COLE: Deep sixed it?

17 MR. PENNOYER: No, we sent it back to the legal team
18 and asked them for their advice sooner. And as a matter of fact,
19 I believe Mr. Gates has a recommendation which was not acted upon
20 but presumably was to -- well, the council asked the federal
21 attorneys to as soon as possible come up with a ruling on how
22 those would apply.

23 MR. COLE: Let me just say this. I think it's very
24 critical that that be looked at carefully. You know what I mean
25 carefully?

26 MR. PENNOYER: I understand. I assume we'll have it

1 back before us (indiscernible - simultaneous speech)...

2 MR. COLE: Well, I mean you know the thing is if we
3 have to have these double and triple appraisals before we can
4 start "negotiations," whatever that means, and I can't find the
5 definition in the regulation, I mean we're looking at major
6 problems.

7 MR. PENNOYER: Maybe as they look at it, we can define
8 the problem areas that exist between these two diagrams on page
9 41 and 47 in terms of adopting that federal regulations. What
10 does it practically do to the process in terms of time delay, in
11 terms of doing everything else. Of course, the over arching
12 question is still going to be some legal determination but also
13 practically, what is the difference? And the Attorney General
14 can't find the definition of negotiations in there yet and we
15 probably all haven't had adequate time to look at this but if you
16 could practically outline the difference between those two
17 diagrams and between the two sets of regulations. And at the
18 next meeting, we should be coming back prepared to adopt
19 something.

20 MR. COLE: And another thing. We just can't adopt
21 procedural guides that we've never seen or read, you know. I
22 mean that's just irresponsible conduct. To adopt something as a
23 guideline or rules and you've never read it or looked at it. I
24 mean, you know. We have to see those and we have to be able to
25 read them, satisfy ourselves that that's, you know, what ought to
26 be done.

1 MR. PENNOYER: I agree. That's another reason we
2 probably can't deal with whether those are even appropriate now.
3 We can't tell what the difference is between that and the two
4 diagrams that we previously adopted in the framework so somebody
5 needs to do the homework for us to lay some of those differences
6 out as well as getting a legal opinion on whether we can proceed
7 down separate tracks. So, yes, that was delayed and hopefully,
8 the next meeting we will have -- we should have that type of
9 review back for the next meeting. Is there anything further on
10 habitat acquisition/imminent threat?

11 I'd like to move onto Item three in the agenda.

12 MR. BRODERSEN: Yeah, it's now 10 o'clock.

13 MR. PENNOYER: Yes, it's now 10 o'clock -- 10:30 in the
14 morning. 1992 Carry Over Projects. Dr. Gibbons, can you guide
15 us through those?

16 DR. GIBBONS: Yes, Mr. Chair. This is a topic of
17 continuation from last meeting. Last meeting, we gave you a
18 listing of the projects with the agency that the final reports
19 would not be completed before February 28th. You have a -- you
20 requested additional information concerning those projects. And
21 this is a status report of that dated March 3rd and it lists
22 those projects with the project number, the project title, the
23 project status, expected completion date and the responsible
24 agency. The cover letter states no additional money is
25 requested. It's just an extension of the date.

26 MR. GATES: Mr. Chair.

1 MR. PENNOYER: Mr. Gates.

2 MR. GATES: I have two here that were omitted from the
3 list I'd like to hand out.

4 MR. PENNOYER: Here's two more. Dr. Spees, were you
5 going to say a word about this too? Is this what you wanted to
6 discuss?

7 DR. SPIES: Yeah, I could bring you up to date on where
8 we stand with the reports. There are a few (indiscernible - away
9 from mike)

10 COURT REPORTER: Could you come up to the microphone,
11 please?

12 DR. SPIES: I'll try to make this as brief as possible.
13 I want to bring you up to date on where we stand with the
14 submittal and acceptance of final reports for work done up
15 through '92 which include the damage assessment and the
16 restoration projects from last year. There are something like a
17 total of 80 projects for which we're expecting reports. About 25
18 of those have been received to date and 17 have completed or
19 close to completion for the initial reviews and there's one that
20 has been accepted finally. So, in the spirit of kind of keeping
21 you informed to where we are in the review process with this
22 large number of reports, that's kind of where we're standing.

23 MR. PENNOYER: Are there further questions on Dr.
24 Gibbons' presentation or Dr. Spees? Are you satisfied with the
25 progress that things are coming in and there are no major holdups
26 that you envision?

1 DR. SPIES: Well, many of these are late. I am
2 concerned especially with the guidance from the Trustee Council
3 for recommendations on which projects to proceed with in the
4 coming field season and if there is satisfactory progress being
5 made and I think -- we had a conference call with the Restoration
6 Team on Friday to discuss this and we're going to have to take
7 them on kind of a one to one basis but there are a few problems
8 but hopefully, we can deal with those and make a determination
9 later this spring as to whether there's satisfactory progress
10 being made on these.

11 MR. PENNOYER: Questions? Dr. Gibbons.

12 DR. GIBBONS: I might add in developing with the chief
13 scientist the process for development of RFPs and detailed study
14 plans too that the tie-in with the final reports and we're trying
15 to link this together to get a real handle on completion of these
16 reports.

17 DR. SPIES: I think at the meeting before you last, you
18 asked for my recommendations as to which projects were making
19 satisfactory progress and this is tied in to the detailed study
20 plans for the coming field season.

21 MR. COLE: Mr. Chairman, I'm not sure I understood
22 what I've heard here.

23 MR. PENNOYER: Mr. Cole.

24 MR. COLE: I mean are you satisfied that this work is
25 being done expeditiously and it's not impacting upon the '93 work
26 plan?

1 DR. SPIES: Not entirely. There's many of these
2 reports that are late.

3 MR. COLE: Why hasn't someone insisted that they be
4 completed timely?

5 DR. SPIES: I think you'd have to address that question
6 to the Restoration Team.

7 MR. PENNOYER: Well, is this something that's amenable
8 to us taking some action? Dr. Gibbons, is action required? We
9 had discussions previously of cutting off funds and somebody
10 said, "Well, let's not do it now. Let's let the people know that
11 could happen." Are we in a position where we are having certain
12 projects that are clearly not responding to this request to
13 complete the work? People that have gone on to other work or
14 something?

15 DR. GIBBONS: There's a myriad of reasons why some of
16 them aren't getting done and I guess, you know, I don't know the
17 reasons for all of them but what we intend to do is to get down
18 with the Restoration Team members and we've got a status here and
19 to try to figure out why, you know, why this is occurring. I
20 know some of the reasons are the principal investigator was
21 trying to do a damage assessment closeout and do a restoration
22 project too. There's a whole myriad of reasons but I think the
23 real reasons, you know, have to come from the individual
24 Restoration Team members of why certain projects, you know, are
25 not getting done. I can't answer the question for all of them.

26 DR. MONTAGUE: Mr. Chairman?

1 MR. PENNOYER: Dr. Montague.

2 DR. MONTAGUE: Actually, I have a fair number of things
3 to say on this topic. First of all, I guess, in the ten years
4 that I've been in Alaska, administering field research, the
5 general rule is to have a final report between April and June of
6 the following year. So, a February final report schedule is
7 ambitious simply from that point alone. So, let's assume that
8 all the project leaders had time and funding necessary to get
9 that work done already a few months earlier than is normally the
10 case. I'd like to point out some of the things that happened
11 during this year that have added delays.

12 First of all, I'd like to talk about budgets. At the
13 beginning of 1992, we all had budgets presented in the format
14 that they'd used in the past four years and that was individual
15 to each agency so all six had different budgets. Then on top of
16 that, we switched the format and had to ask all the investigators
17 to change to a new budget format that was consistent for all six
18 agencies. Then we asked for a three-month budget because we
19 didn't want to approve the full year's budget. Then we asked
20 for a five-month budget and a seven-month budget. And on the
21 state side because of the cross of the years, we had an four-
22 month and an eight-month budget to prepare. I calculate that
23 just on the budget ramifications alone, two weeks were lost.

24 In addition, the investigators in addition to doing
25 their project leadership jobs and doing the works of those
26 projects, they were asked to write the project descriptions and

1 the detailed budgets for the '93 work plan so the authors of the
2 '93 work plan were these same investigators that had reports to
3 do. And that lost, you know, it varies but it's not unreasonable
4 to assume two to three weeks were lost there.

5 None of them were scheduled to participate in a
6 symposium. It was a very good decision to go to the symposium.
7 The papers were, of all the symposiums I've been to, high on the
8 list of quality. At a minimum, two additional weeks would be
9 lost in the preparation of that.

10 Then we prepared a magazine which we're proud of. We
11 think it did a real good job. Most of the agencies were involved
12 in it. It would not be unreasonable to consider a week was lost
13 there.

14 A further complication is that we haven't approved '93
15 projects until much later than was originally scheduled. So, not
16 only do we the final reports due at the end of February or
17 originally due at the end of February, all of a sudden
18 investigators have to do a detailed project description. So,
19 then we tell them essentially that you can't do any work in '93
20 until your detailed project description is done and you can't do
21 any work in '93 unless your '92 final report is done. So, from
22 the project leader's perspective, I guess, it's "Give me a
23 break."

24 MR. PENNOYER: Given those all reasons which are all
25 valid and I'm sure are contributing to the fact that we didn't do
26 anything last meeting except ask for a review, the question would

1 be are there still some sore thumbs sticking out or are we
2 basically across the board meeting this albeit delay, maybe
3 required delay in project completion? And that's sort of, I
4 think, what we were keying on. Is accepting the fact that the
5 system, itself, has caused a fair amount of delay and the normal
6 process usually doesn't have completion of reports until spring
7 the following field season. Are there still problem areas and
8 that's what, I guess, we haven't gotten out of this yet. If you
9 want to assure us of that...

10 DR. SPIES: Mr. Chairman, I think that the Restoration
11 Team and I have decided to undertake some kind of a joint review
12 on a project by project basis to make that determination. I
13 think it's a little bit early to have completed that to identify
14 particular problem areas. I don't -- until the project --
15 final report lands in my office, I don't have any way of knowing
16 right now if it's being worked on; there are valid reasons why
17 it's not in so on and so forth.

18 MR. COLE: Mr. Chairman?

19 MR. PENNOYER: Mr. Cole.

20 MR. COLE: As I look at this, I see that a number of
21 these draft reports have been prepared and it's now with the peer
22 review. How long say have F/S-13 and F/S-27 been at peer review?
23 Page two at the bottom.

24 DR. SPIES: We received that report on the 16th of
25 February and we just got back one review and we're awaiting the
26 other review from the peer reviewer. We generally turn them

1 around pretty quickly. Two or three weeks. Some reviewers, for
2 instance, Dr. Petersen (ph) leaned on them pretty hard because
3 he's very good and he's got the coastal habitat to plow through
4 which is about that thick right now [indicating 10 inches].

5 MR. COLE: Mr. Chairman?

6 MR. PENNOYER: Mr. Cole.

7 MR. COLE: Here's the thing. In many ways, one would
8 not be concerned so much as to when these projects were being
9 completed, February, March, April, but as you look at F/S-27,
10 "Sockeye salmon overescapement. Completed draft report, at peer
11 review, expected completion date May '93." Then you look at the
12 proposed studies for a '94 project and at page 23, we're dealing
13 -- asked to deal today for that matter with sockeye salmon
14 restoration. Restoration of Coghill Lake, sockeye salmon stock
15 and other projects, genetic stock identification, Kenai River
16 sockeye salmon. Another one is stock identification, chum,
17 sockeye and chinook salmon in Prince William Sound. I mean what
18 I'm getting at is how can we make rational decisions, even
19 tentatively at this time about sockeye salmon, when we don't have
20 the '92 reports with sockeye salmon done?

21 DR. SPIES: That's my concern as well. And also there
22 was five million dollars in close-out money for damage assessment
23 allocated last year just to complete reports and we expect about
24 49 reports from that. Many of those have not been received yet.
25 It's, you know, March of '93 now.

26 MR. COLE: Well, if we were running a corporate

1 business, and we were the board of directors, what would we do in
2 this situation?

3 MR. PENNOYER: I don't know if that was rhetorical or
4 not.

5 DR. SPIES: I'm interpreting it that way.

6 MR. PENNOYER: I assumed you were.

7 DR. SPIES: I'm not on the board of directors.

8 MR. COLE: Are we guilty of not being responsible with
9 respect to this business?

10 MR. MORRIS: Mr. Chairman?

11 MR. PENNOYER: Mr. Morris.

12 MR. MORRIS: Maybe it's well understood and I'm just
13 missing it but I think one of the points that hasn't been made
14 yet is that when we plan these studies and had the completion
15 date of February -- February 28, something like that for these
16 projects, in a lot of people's minds, I think they just felt
17 well, write the report and submit it. It's only been within the
18 past few months that we have developed a final report review and
19 acceptance procedure that states there will be a chief scientist,
20 a peer review of a period of perhaps four weeks; it will go back
21 to the investigator for rewriting, redrafting and then
22 resubmission for either final acceptance or in some cases, maybe
23 another round of peer review. Many of these projects are just
24 caught in that loop right now and they just want to keep the
25 project going to get the final review rewrites of the drafts and
26 get the final product.

1 MR. COLE: Mr. Chairman?

2 MR. PENNOYER: Mr. Cole.

3 MR. COLE: Needless to say, I'm not even talking about
4 '93 projects, you know, '93. We're being asked to act today on
5 '94 projects and we don't have '92 studies yet completed. Now,
6 you know, I mean I just think that we have to -- I guess Dr.
7 Spies is addressing it and enough said.

8 DR. SPIES: I just wanted to keep you posted of the
9 status of things as we go along here and so there are no
10 surprises in April or May when we get back to you...

11 MR. PENNOYER: Well, I guess it's fairly clear we're
12 antsy about dealing with the '94 project request, even in
13 preliminary form, not having the final results of the '92 work
14 completed and peer review. And we recognize we're not going to
15 have '93 information to build the '94 on until after we have to
16 make a decision in August but the decision is going to be a final
17 decision up or down on some of this in August. And I think we
18 certainly want as clear a final review process as possible before
19 that time. So, if there are ones that are outstandingly not
20 happening we probably do need to know about it.

21 DR. SPIES: We intend to carry out that review with the
22 Restoration Team and we'll keep you posted on the results of
23 that.

24 MR. PENNOYER: Okay. Anything further on that topic?
25 We will be expecting a continuing review then.

26 MR. GATES: We need to take action on that, don't we?

1 MR. PENNOYER: Do we need to take action particularly,
2 Dr. Gibbons? This was just a status report, was it not?

3 DR. GIBBONS: That's correct.

4 DR. MONTAGUE: Mr. Chairman? Sorry, Dave, but I have
5 to disagree with you on that. We needed a specific rollover
6 period.

7 DR. GIBBONS: Specific what?

8 MR. PENNOYER: I see no request here to that extent.
9 What is...

10 MS. RUTHERFORD: We had the attorneys look at the
11 financial operating procedures and there was no particular action
12 required, Jerome.

13 DR. MONTAGUE: Sorry. Excuse me.

14 MR. PENNOYER: Okay. There's nothing further on
15 that...

16 MR. COLE: Commissioner Sandor has...

17 MR. PENNOYER: Commissioner Sandor.

18 MR. SANDOR: I'm trying to figure out what happened.

19 MR. COLE: Me, too.

20 DR. GIBBONS: There was some -- Mr. Chair, there was
21 some thought by some of the members that in the financial
22 operating procedures we were to go back and get re-authorization
23 for the money. After reviewing the financial operating
24 procedures, that stipulation was not found in there.

25 MR. PENNOYER: So, what happened was that we're not
26 pleased that it's late as it is, although there are reasons why

1 it is late. We don't know at this stage whether there are
2 particular projects that are problemmatical or not. We're not
3 going to know that. Dr. Spies is going to conduct that review
4 and try and get us the finalized product and peer review before
5 we finalize '94 programs. I get the impression you may not be
6 too pleased with finalizing '94 projects without that type of
7 review having occurred.

8 MR. COLE: Mr. Chairman, I'm not even pleased by
9 making preliminary decisions for '94 work plans when we don't
10 have the '92 reports done. That may be a revelation, but sounds
11 somewhat reasonable to me.

12 MR. PENNOYER: Okay. Dr. Montague.

13 DR. MONTAGUE: In addressing the Attorney General's
14 comments about always wanting the findings of the current year
15 before you plan the next year, as desirable as that is, corporate
16 or government, it's rarely the case. You know, in the
17 government agencies I've worked for on this type of research
18 projects, we were always getting your budget for the year before
19 the current year was finished. And in the corporate examples of
20 embarking on a new line of automobile, you take a very big risk
21 for a number of years until you really know if you've made the
22 right decision, based upon sales or whatever.

23 MR. PENNOYER: Well, rather than go on with this
24 discussion...

25 DR. GIBBONS: I'm not sure where it's going either...

26 MR. PENNOYER: (indiscernible - simultaneous speech)

1 practical application you wish to apply to it, I think that it's
2 clear this is two years out and not one year out. It's '92 work
3 and the thrust of the Trustee Council is we would like to have
4 summaries and peer review as soon as possible to enter into the
5 decision process.

6 DR. GIBBONS: Mr. Chair, when we get to the '94,
7 hopefully, we'll clarify what we're going to be talking about in
8 '94 and what, you know, activities we need from you then.

9 MR. PENNOYER: I understand that but I'm not...

10 DR. GIBBONS: We're clearly not asking for projects in
11 '94.

12 MR. PENNOYER: I don't understand that all these are
13 going to be completed before we take final decisions on '94 and
14 anyway, let's not -- maybe we don't need to belabor that any
15 further. And let's go on with the '93 work plan. Dave
16 Gibbons, we had three items, deferred work plan projects, Public
17 Advisory Group proposals and Prince William Sound Recreational
18 Proposal.

19 DR. GIBBONS: Yes. This morning, I passed you out
20 another matrix. It's not much different than the one that I
21 passed out on February 16th. It looks like this and in the
22 bottom left hand corner, it has a date 3/9/93. And we have six
23 projects to deal with in the '93 work plan, three from the draft
24 '93 work plan itself, two from the Public Advisory Group
25 proposals and one additional proposal concerning Prince William
26 Sound recreation area.

1 In the matrix, the three that action has not been taken
2 on are 93016, 93024, 93030. And if you start with 93016 is the
3 Chenega Chinook and Coho Salmon Release, it was deferred pending
4 NEPA. I will say that we met with the Chenega folks here last
5 week and NEPA has not been completed yet. They have a proposal
6 to the Restoration Team -- or to the Trustee Council for funding
7 to complete the NEPA. The topic was discussed at the December
8 meeting on NEPA funding and the only NEPA funding was for harbor
9 seals and another project. I forget what it was but the funding
10 for the Chenega was not time critical so it was delayed. And so
11 it's been delayed since the December meeting to meet the NEPA
12 funding.

13 MR. COLE: Mr. Chairman, so what are you saying?

14 DR. GIBBONS: Well, we have two options. We can --
15 the Trustee Council can approve the NEPA funding; they can defer
16 it to the '94 work plan or there's another option of switching
17 the NEPA compliance -- perhaps recommending the switch of the
18 NEPA compliance to the Interior Department that has categorical
19 exclusion capabilities.

20 MR. COLE: Can I ask Mr. Rosier what his
21 recommendations are?

22 MR. ROSIER: Well, I'd like to know a little bit more
23 about what the cost of the NEPA action there.

24 DR. GIBBONS: Mr. Chair, I think they estimated it at
25 10,000. Is that correct, Chuck?

26 MR. TOTEMOFF: Approximately 10,000.

1 MR. ROSIER: \$10,000.00?

2 MR. TOTEMOFF: Yes.

3 MR. ROSIER: Mr. Chairman, again, in order to get this
4 off of dead center, I would -- I guess I would certainly
5 recommend that we look at funding the NEPA process on this and
6 moving ahead on this. In my mind, there's no reason to continue
7 to delay on this at the present time.

8 MR. SANDOR: I'll second that.

9 MR. PENNOYER: Dr. Gibbons, I guess I'm unclear on
10 where this project stands from a time standpoint. NEPA process
11 is not completed; we're going to have to defer approval on that
12 until it is. Is this a 1993 project, a '94 project, natural
13 practical implementation or what is it?

14 DR. GIBBONS: It's proposed for 1993 project. My
15 understanding is that the EA, the environmental assessment, will
16 not be that difficult and that they can still -- Chuck can
17 correct me if I'm wrong, but my understanding is they can still
18 get in the field this year, doing the NEPA and then the project
19 funding.

20 MR. PENNOYER: Okay. A couple further questions. It
21 says unanimously recommend increase budget by \$50,000. What is
22 the total amount on this now?

23 DR. GIBBONS: I believe I recall 50.9.

24 MR. BARTON: Who is the lead agency on that?

25 DR. GIBBONS: The Alaska Department of Fish and Game.

26 MR. FINK: Pardon me for interrupting. There's a

1 factual problem here. We need 50.9 to actually implement this in
2 the field but there's still the 10,000 remaining for the NEPA
3 compliance.

4 MR. PENNOYER: Yes, we understand the NEPA was in
5 addition. I was trying to find out what the basic project cost
6 was. And then the other question I have is, as I recall, the
7 original recommendation of this was an enhancement according to
8 Dr Spies and not time critical and I'm not clear where that
9 leaves us relative to other decisions we've made. Has there been
10 anything further on that?

11 DR. GIBBONS: No, the Restoration Team voted five, one
12 in favor of it and the Public Advisory Group unanimously
13 recommended it and they increased the budget by 25,000, the cost
14 of a hatchery portion of it to be added to the 25.9. I'm not
15 sure if Dr. Spies has changed his thoughts on that but I'm not
16 aware of it.

17 MR. COLE: Mr. Chairman?

18 MR. PENNOYER: Mr. Cole.

19 MR. COLE: Listening again to what I think I hear from
20 the people in the Sound and the fishing groups, they are
21 disappointed, I think, and perhaps justifiably so that we have
22 not devoted enough of our resources to the restoration or
23 enhancement of fishing in Prince William Sound. I don't know if
24 that's true or not, but I have a bit of a sense that it is. And
25 I think that we should look favorably upon projects which would
26 serve to further commercial fishing in the Sound. It was hard

1 hit by the spill and a lot of people's lives, at least their
2 financial lives, were directly keyed to commercial fishing in the
3 Sound and I think we should move to support those projects and I
4 would therefore urge that we act favorably on this project at
5 this time.

6 MR. PENNOYER: Commissioner Rosier.

7 MR. ROSIER: Thank you, Mr. Chairman. Yes, this
8 particular project, I think, goes beyond the commercial interests
9 here on this. This is actually a replacement for subsistence
10 resources that have been an area that we've received a fairly
11 significant amount of public testimony on, indicating support for
12 giving some help in the subsistence area. And I think this is
13 one of the few projects really under consideration that directly
14 addresses that in the '93 work plan.

15 MR. PENNOYER: It's been moved and seconded that we
16 approve Project 93016 to go ahead, following NEPA or \$10,000.00
17 more for NEPA and I guess that would conditional approval to
18 move. We'd still have to finally approve it after the NEPA was
19 done?

20 MR. GATES: That's true. That's correct. I think --
21 well, we can only approve the NEPA portion of it right now.

22 MR. PENNOYER: So, the project would have to actually
23 await final approval until another meeting. Is there any problem
24 with -- any objection with approving the NEPA, \$10,000.00?

25 MR. SANDOR: Mr. Chairman, certainly no objection at
26 all. Can we not approve the projection of up to 50.9 thousand

1 pending or with the approval of the NEPA process? Do we have to
2 recycle this yet again?

3 MR. PENNOYER: I thought that our previous action
4 indicated we had to recycle things again.

5 MR. COLE: We have to go through the monkey business.

6 MR. PENNOYER: Any further discussion? Again, any
7 objections to the approval of the money to proceed with the NEPA
8 process? Okay, that's approved. Next project then, Dr.
9 Gibbons?

10 DR. GIBBONS: Yes, the next project is 93024. Maybe
11 the Forest Service can speak to this one.

12 MR. PENNOYER: Can you speak to the amount of
13 fertilizer you've got on hand?

14 MR. RICE: Mr. Chairman, 93024 is the Coghill Lake
15 fertilization project. The NEPA compliance for this project has
16 been completed and Mr. Barton has signed off on that. This
17 project has -- Coghill Lake is a system that was secondarily
18 impacted by the oil spill due to changes in fishing pressure that
19 was put in, trying to move fishermen away from oiled areas and
20 that contributed to an ongoing decline in fish in the lake. The
21 system is at a very low point right now with extremely small
22 numbers of sockeye salmon coming back into the system. And going
23 ahead with the fertilization project at this time would help to
24 bring that system back up, both return the fish and the services
25 that those fish provide.

26 MR. PENNOYER: What was the total amount on that

1 project?

2 MR. RICE: I don't have that number right in front of

3 me.

4 DR. MONTAGUE: What's the question? Coghill?

5 Costs?

6 MR. RICE: Yes.

7 DR. MONTAGUE: Total is 191.9.

8 MR. PENNOYER: And how many years are involved?

9 MR. RICE: I think it's a couple year project. And

10 it may go on as long as four years but I think it would be

11 evaluated each year to see if they would need to continue

12 employing fertilizer.

13 MR. PENNOYER: Do I have a motion?

14 MR. COLE: I have a question, Mr. Chairman.

15 MR. PENNOYER: We have a question.

16 MR. COLE: Have we completed the '92 Coghill Lake

17 study? Didn't we have a '92 project for Coghill Lake?

18 DR. MONTAGUE: Mr. Chairman, may have been one at one

19 time but it wasn't approved.

20 MR. RICE: I think it was an approved project. I

21 think it was put forward and I don't think the council approved

22 it.

23 MR. BARTON: Mr. Chairman?

24 MR. PENNOYER: Mr. Barton.

25 MR. BARTON: I move adoption of 93024. We deferred it

26 previously pending NEPA compliance which has been completed.

1 MR. PENNOYER: Is there a second?

2 MR. ROSIER: Second.

3 MR. PENNOYER: One question. Then there was no

4 previous project on Coghill? I'm trying to -- we've gone

5 through this a couple of times. I'm trying to recollect it. The

6 study that indicated fertilization was a viable option in Coghill

7 Lake?

8 MR. RICE: Mr. Chairman, the Forest Service has put

9 some agency funding into doing some preliminary work on this

10 project and came to the conclusion that fertilizing the lake

11 would be the best alternative to restoring the system.

12 MR. COLE: Was that a Trustee Council project?

13 MR. RICE: When it was conducted, it was not a Trustee

14 Council project. It was agency funding.

15 MR. PENNOYER: It's been moved and seconded that 93024

16 be approved to go forward at 191,900. NEPA compliance has been

17 completed. Fertilizer is on hand. Is there further discussion?

18 All those in favor say aye.

19 MR. COLE: Aye.

20 MR. SANDOR: Aye.

21 MR. ROSIER: Aye.

22 MR. PENNOYER: Opposed?

23 MR. GATES: No.

24 MR. SANDOR: Mr. Chairman?

25 MR. PENNOYER: Commissioner Sandor.

26 MR. SANDOR: I guess I don't have to have an

1 explanation for a no, but could I have one? I'd just like to
2 know the rationale for it.

3 MR. PENNOYER: Mr. Gates, would you care to...

4 MR. GATES: Do you want to speak to that?

5 MS. BERGMANN: Are you asking me?

6 MR. GATES: Yeah, would you like to speak to it?

7 MS. BERGMANN: No.

8 MR. COLE: You take the heat.

9 MR. GATES: I'll take the heat. It's an enhancement
10 project and we don't feel it has to be taken -- it's not time
11 critical.

12 MR. SANDOR: Because it's an enhancement project?

13 MR. GATES: It's not time critical.

14 MR. SANDOR: Oh.

15 MR. PENNOYER: Is the problem then is the same one
16 expressed by Interior in the past and that is the question of
17 whether you conduct enhancement projects prior to the finishing
18 of the restoration plan unless they're time critical. I think
19 that's been fairly consistent position.

20 MR. COLE: Mr. Chairman.

21 MR. PENNOYER: Is this time critical in some way
22 relative to the cycle of sockeye in the lake? Dr. Montague.>

23 DR. MONTAGUE: Yes, it is. Biologically, I can't
24 imagine it being more time critical. This system historically
25 has had returns of about 260,000 adults. In 1991, it collapsed
26 from 250,000 to 25,000. In 1992, it collapsed to less than a

1 thousand, so it's a 99.5 percent reduction and it's essentially
2 on the verge of going away.

3 MR. PENNOYER: But is the problem of fry growth and
4 lake productivity relative to a fertilization solution or is the
5 problem the lack of survival in some fashion not related to
6 feeding?

7 DR. MONTAGUE: I can address that some but...

8 MR. PENNOYER: In terms of why it's time critical, I
9 mean. You're not stocking?

10 DR. MONTAGUE: Okay. Why are we choosing this instead
11 of stocking? Well, one reason is I don't -- Carl, wasn't the
12 Main Bay Hatchery potentially maybe going to offer some hatchery
13 based support to restoring Coghill but it never came on line
14 or...

15 MR. ROSIER: (Indiscernible response).

16 DR. MONTAGUE: I guess in answer to your question it
17 doesn't rule out hatchery assistance to the raising of eggs and
18 fry isn't possible, but current efforts to date indicate that
19 fertilization is the better option.

20 MR. ROSIER: Mr. Chairman, I think we've got one of
21 the PIs here that could give is a helping hand on this. Joe.

22 MR. PENNOYER: He always points out to me that I've
23 been out of sockeye biology for too long so I don't know if I
24 want him up there or not.

25 MR. SULLIVAN: I'm not exactly a PI but I do know
26 what's going on with this. Basically, when you're fertilizing

1 something, what that says is you don't have enough to eat, okay.
2 And there are a couple of different parts of the story that do
3 involve Main Bay Hatchery but the problem is is that in
4 oligotrophic systems which means things that don't have a lot of
5 nutrients, particularly in northern climates, if you don't have
6 the bodies of the adults coming back, then you don't have the
7 initial source of nutrients to go through the system and
8 eventually feed these juveniles. That's one of the big
9 advantages of salmon returning to streams that otherwise don't
10 have any nutrients. And that's essentially what's happened to
11 Coghill is that because the runs have been low in the past few
12 years, we haven't had these rotting, decaying adult bodies to
13 feed the juveniles. That's the point of fertilization is that
14 while you may get a bunch of juveniles back, I mean if you get
15 some adults back to create enough juveniles, let's say, if they
16 had enough food to eat to create enough smolts to go out and
17 restore the system, then that would be great but until you get --
18 if you fertilize it, you are essentially replacing dead adult
19 bodies. You see, that's where the point on that. If you were to
20 simply stock Coghill from Main Bay Hatchery without fertilizing,
21 then those fish that you've stocked would not have anything to
22 eat.

23 There's also another difficulty we have with Main Bay.
24 We have some genetics concerns there in that even though we
25 haven't been through very many generations at Main Bay, we feel
26 like we are, more or less, adapting those fish for hatchery

1 conditions and if we can avoid stocking Coghill, even though that
2 stock came from Coghill initially, it would be better to let it
3 -- this would be a natural recovery for Coghill by fertilizing it
4 rather than stocking.

5 MR. PENNOYER: So, even at the greatly reduced
6 escapements and presumably, greater reduced fry production from
7 those, fertilization is still an option and increase the
8 survival of the fry that are there?

9 MR. SULLIVAN: That's right. I mean after all in a
10 normal situation, where you had a normal food supply and a normal
11 number of fry, then they would be competing with each other and
12 some would die and the mortality rate would be okay and at a
13 certain percentage, let's say five percent, survive to go out to
14 smolt. Well, in a situation where they don't have to fight each
15 other but have plenty of food, a much larger proportion would
16 survive and you would need fewer fry to start with to come out
17 with the same number of smolt later.

18 MR. PENNOYER: Mr. Cole.

19 MR. COLE: My position is why would we not want to
20 enhance this run? We have the money in the bank; it's only
21 \$200,000.00. If we delay it for next year, what we get two
22 percent on that money by having it in the bank, if we can further
23 the salmon runs in Prince William Sound by this method and it's
24 scientifically justifiable, I should think we would want to
25 quickly approve the project.

26 MR. SANDOR: Is this time critical in your opinion?

1 MR. SULLIVAN: It is in my opinion. I mean if these --
2 Coghill has had a history of up and down cycles and without
3 intervention of man, sometimes those cycles can go on forever.
4 You get a fishing factor in there. A lot of times if you hit
5 that on a downward cycle, you can cause that run to go extinct
6 and I'm afraid that can happen to Coghill.

7 MR. SANDOR: Mr. Chairman.

8 MR. PENNOYER: Commissioner Sandor.

9 MR. SANDOR: In view of the fact that the original
10 motion was rejected on the basis that it was not time critical.
11 Now, having heard that, at least from two professionals, that it
12 is, I would move reconsideration of the previous motion.

13 MR. PENNOYER: I don't know what to do with that. Do
14 we take a vote on reconsideration like we do at North Pacific
15 Council meeting?

16 MR. COLE: I'd just ask Mr. Gates if he would consider
17 changing his vote.

18 MR. PENNOYER: I think Ms. Bergmann was going to make a
19 statement.

20 MS. BERGMANN: Yeah, Mr. Chair, I was just going to
21 ask, I see that Coghill is listed in '94 as well, so I mean
22 there's an issue of time critical/lost opportunity. If this is
23 truly a lost opportunity, then I would think it would not be
24 listed in 1994, if this were the only chance to do this.

25 MR. PENNOYER: They said it was going to be for two
26 years anyway. Probably we won't get the report done in time in

1 '93 to determine (indiscernible - laughter).

2 MR. COLE: I can't see why not? I mean what is the
3 reason not to endeavor to enhance this run, I mean, this year.
4 Why not?

5 MS. BERGMANN: Mr. Chairman, the Department of
6 Interior has continued to take the stand that on enhancement
7 projects, that we need to wait until the restoration plan is in
8 place. And there are a lot of different kinds of enhancement
9 projects that could be put forward for lots of different kinds of
10 salmon species and you know, how does this shake out compared to
11 the other kinds that could be done in terms of the overall
12 restoration plan so you'd have to look at that as well as looking
13 at the lost opportunity and the time criticality.

14 MR. PENNOYER: Mr. Cole.

15 MR. COLE: But, Mr. Chairman, our principal mission in
16 this entire exercise is to restore, replace and enhance the
17 damaged natural resources. This is our fundamental mission and
18 how do we discharge those obligations responsibly if we say,
19 "Well, we don't have to enhance it this year. We'll just wait
20 until next year to enhance it. It seems to me that we should get
21 on with restoration and enhancement as rapidly as possible.

22 And furthermore, I mean I recall standing before Judge
23 Holland and saying, Your Honor, one of the reasons that we
24 entered into this settlement was to receive monies with which to
25 begin the restoration process and replacement and enhancement in
26 a timely fashion rather than wait years in order to slog through

1 this litigation and receive some judicial determination. So,
2 therefore, I think it's virtually essential if we're to discharge
3 our trustees' responsibilities that we proceed in all deliberate
4 speed, if you will, to the enhancement of these natural
5 resources. And I think that the fact that we could do it next
6 year is no justification whatsoever for deferring the project.

7 MR. PENNOYER: I guess the point I'm not clear on here
8 is we have a recommendation that this is a good project and that
9 we should probably proceed with it and it is time critical. I
10 guess the time critical part would swing -- the enhancement part
11 by itself doesn't necessarily because we have taken a general
12 stand that enhancement of resources is not something we want to
13 engage in in a significant degree unless it is time critical
14 until the restoration plan is done. There's a lot of other
15 enhancement proposals out there that might be successful, but in
16 this case, we have had testimony that it is time critical and
17 that...

18 DR. MONTAGUE: Mr. Chairman, I think it's relevant on
19 this discussion to say what enhancement is. Enhancement is when
20 you raise a normal population to a higher level. This population
21 is far from being at a normal level and it's a restoration
22 project until it returns to normal. Afterwards, if you want to
23 continue with it, it becomes an enhancement project.

24 MR. PENNOYER: Ms. Bergmann.

25 MS. BERGMANN: I guess, you know, another concern is
26 that, you know, get back to the chief scientist's comment on

1 this, that this says this project supposes an injury to sockeye
2 salmon smolts in the spill area that's not documented. You know,
3 we're spending a lot of money on sockeye salmon in other parts of
4 the spill area that were affected due to management actions due
5 to the spill and yet here, you know, if we're looking at this as
6 just an enhancement of sockeye salmon and we're trying to justify
7 that when there isn't any clear linkage in the spill area, then
8 that puts a different light on it as well.

9 MR. COLE: Well, let's talk about that. Commissioner
10 Rosier, Mr. Montague, is she saying there is no "clear linkage"?

11 MS. BERGMANN: I was quoting the chief scientist.

12 MR. COLE: The chief's here. Is there no clear linkage
13 or is there sufficient linkage in your view?

14 MR. PENNOYER: Dr. Spees, could you come up to the
15 microphone, please?

16 DR. SPIES: (Indiscernible - away from mike)

17 MR. PENNOYER: That wasn't a rhetorical question.

18 DR. SPIES: I'll be glad to come forward and answer any
19 rhetorical questions. There was no direct injury as a result of
20 the spill to sockeye salmon in Prince William Sound and I haven't
21 looked into the question of whether the redirected fishing in
22 Coghill Lake may have contributed to the -- I'm taking the
23 Department of Fish and Game's word that that was, in fact, the
24 case and this would be a secondary effect of the spill.

25 MR. PENNOYER: Well then, the linkage still to the
26 spill is the same as it is in Kenai, that there was redirected

1 fishing, and overharvest of sockeye down in Coghill Lake? I mean
2 it's sort of the opposite direction. In Kenai, you had
3 underharvest and too much escapement; at Coghill, you had
4 overharvest and too little escapement?

5 MR. ROSIER: Well, Mr. Chairman, I believe that may be
6 the case. I need some help on that particular question as
7 related to the fishery, itself, there but it seems to me though
8 that the impacts on sockeyes, of course, I think we've measured
9 it in several areas. I'm not sure that we've done a direct
10 measurement in Prince William Sound but certainly, we've seen the
11 effects on Kodiak. We've seen the effects in Cook Inlet. And we
12 know that that's a resource that has been impacted as a result of
13 the spill.

14 In terms of the specifics though within the fishery,
15 certainly the fishery has been significantly curtailed as related
16 to those particular stocks that are involved in Coghill, but it's
17 a bit of a frustration, I guess is the best way to put it here,
18 in terms of the obvious need that's there for the rebuilding of
19 that particular resource. It's certainly part of the overall
20 fishery that's conducted within Prince William Sound on this and
21 to basically see the roadblock that's there at the present time
22 based on what I see as a procedural question in this whole thing
23 for some reason just doesn't seem all that reasonable to me,
24 but...

25 MR. COLE: Mr. Chairman.

26 MR. PENNOYER: Mr. Cole.

1 MR. COLE: Well, let's talk about these B-2,
2 Department of the Interior and B-3 projects. B-2 is a "Boat
3 survey to determine distribution and abundance of migratory birds
4 and sea otters in Prince William Sound," Department of the
5 Interior. B-3, "Population surveys of seabird colonies in the
6 spill area. (Murres)" Both of those certainly could have been
7 deferred very easily and have less direct impact upon substantial
8 resources in Prince William Sound. I mean I think the Department
9 of Interior's position is being inconsistent. You know, your
10 projects in '92 could have been deferred easily to '93 and '94
11 and yet you wanted them to be done and we honored that request.
12 And at that time I did not hear from Interior any hue and cry to
13 say, "Well, we shouldn't be going along with these boat surveys
14 of birds until '94, until we got the restoration plan" so what
15 suddenly causes this big hesitation -- more than hesitation,
16 reluctance to restock some salmon in Prince William Sound?

17 MR. GATES: Go ahead.

18 MR. PENNOYER: Ms. Bergmann.

19 MS. BERGMANN: That's not a rhetorical question.

20 MR. COLE: Well, it is and it isn't.

21 MS. BERGMANN: The project, the boat survey that you
22 just mentioned is not an enhancement project. That's a project
23 where we're still trying to determine the recovery of marine
24 birds which were impacted clearly in Prince William Sound. It
25 was supported by the chief scientist. The question was asked of
26 the chief scientist and the other people, "Do we need to do this

1 this year or can we wait?" Interior didn't decide on their own
2 without support of anyone else that we had to do it in '93.
3 That was part of a larger process, but we're saying that on
4 projects -- before we have a restoration plan in place where we
5 are looking at enhancements or other kinds of measures that are
6 not time critical where there's not a lost opportunity, that we
7 need to take a really careful look at that.

8 MR. COLE: Well, let me go on then. B-4, "The Effects
9 of Oil Spill on Bald Eagles." You know, we know that there was
10 about one bald eagle in the Sound which was lost so far as we can
11 determine from the spill. And that was not exactly a high
12 enhancement project. B-7 is "The Effects of Petroleum on the
13 Reproductive Success of the Fork-Tailed Stormy Petrel." I mean
14 that's a Department of the Interior project.

15 MS. BERGMANN: Mr. Chairman?

16 MR. PENNOYER: Ms. Bergmann.

17 MS. BERGMANN: I would like to point out on the bald
18 eagle project that I was the lone Restoration Team -- I voted no
19 for that project. I did not support that project going forward
20 based on criteria that were established that I followed in terms
21 of the voting procedure. The project on stormy petrels was a
22 close-out project, so...

23 MR. PENNOYER: There are clearly differences.

24 MS. BERGMANN: There are differences and...

25 MR. PENNOYER: I guess everybody's agreed that -- well,
26 maybe everybody's agreed Coghill Lake would be a good project.

1 The question seems to be one of timing relative to choices made
2 under the restoration plan. And Interior's position has been
3 fairly consistent on that. We're hearing that this is time
4 critical now and that, I think, to some of us made a difference.
5 It's been asked -- we could probably go on listing each other's
6 projects all day in terms of whether we're being consistent or
7 not. I'm sure we could find other inconsistencies in this
8 process if we dug a little bit, maybe not even very much. But
9 are there further germane comments to the request for
10 reconsideration? Mark Brodersen. That's (ph) germane.

11 MR. BRODERSEN: I hope so, Mr. Chairman. When I
12 reviewed this and several other members of the Restoration Team
13 reviewed it, we looked upon it more as a replacement action than
14 an enhancement action. I think that does bear directly on the
15 argument here in terms of time criticality and consistent
16 positions between agencies. It's a replacement action for lost
17 services provided by salmon.

18 MR. PENNOYER: In general.

19 MR. BRODERSEN: In general. And that we did not look
20 upon it as an enhancement action and I will stop there.

21 MR. SANDOR: Mr. Chairman, I would just remind everyone
22 that the reason given for not approving it at the first vote
23 around was that it was not time critical and was an enhancement
24 project and since we now have information that it is time
25 critical, it seems to me it warrants approval.

26 MR. PENNOYER: Mr. Barton, you had something else you

1 wanted to say?

2 MR. BARTON: Mr. Brodersen pointed out what I wanted to
3 point out.

4 MR. GATES: As the chief scientist, do you concur it is
5 time critical?

6 DR. SPIES: Based on the information Fish and Game has
7 given me, yes. I don't know what happened to the Coghill Lake
8 sockeye salmon last time it went through one of these cycles,
9 whether the lake was fertilized or where it came back and how
10 fast it came back. I'm just not familiar with the situation.

11 MR. PENNOYER: Is there any further discussion? It's
12 been moved. I don't know whether it requires a second or not
13 that we reconsider. Is it the body's desire to reconsider this
14 motion?

15 MR. GATES: Based on the information provided, I'll
16 change my vote.

17 MR. PENNOYER: Okay, we then have -- unless somebody
18 else wants to change their vote, we have unanimous agreement then
19 that we will proceed with this project and that it has -- for the
20 '93 projects. NEPA has been completed so my presumption is it
21 can go ahead. Dr. Gibbons, the next one.

22 DR. GIBBONS: Yes. The next project is 93030. Alaska
23 Department of Fish and Game project. Red Lake Restoration.
24 Jerome.

25 DR. MONTAGUE: Yes. National Oceanic and Atmospheric
26 Administration has informed us that this was signed today, the

1 NEPA documents, so it does have -- FONSI, I guess?

2 UNIDENTIFIED SPEAKER: Yeah.

3 DR. MONTAGUE: This is the Red Lake, like the Kenai,
4 had an overescapement problem and what this project is going to
5 try to do is in 1993, in August, if the returning adults meet the
6 minimum escapement levels, the money would not be used, be turned
7 back to the council. If it doesn't as is anticipated, it would
8 be used to go to Red Lake, collect six million eggs, incubate
9 those at the Polar Creek hatchery and return approximately 5.4
10 million fry to the lake and would help Mother Nature along in
11 restoring this depressed population.

12 MR. PENNOYER: What was the amount of that project?

13 DR. MONTAGUE: 77.2 thousand.

14 MR. PENNOYER: And my recollection is that in a previous
15 budget we purchased the incubators for this project already?

16 DR. MONTAGUE: That's correct, Mr. Chairman.

17 MR. PENNOYER: Is this -- before we get into discussion
18 at a later time, is this time critical?

19 DR. MONTAGUE: Yes. And its time criticality relates
20 to the fact that it is '93 that we're -- the first year that
21 we're expecting the low return.

22 MR. PENNOYER: So, if we waited on this, then we might
23 already have had a low return under our belts and this is the
24 year you would expect the low return to occur from the
25 overescapement?

26 DR. MONTAGUE: Both '93 and '94 would...

1 MR. PENNOYER: Thank you. Is there a motion?
2 MR. ROSIER: Move adoption.
3 MR. SANDOR: Second.
4 MR. PENNOYER: It's been moved and seconded we adopt
5 project 93030, Red Lake Restoration, \$77,200.00. All those in
6 favor say aye.
7 MR. COLE: Aye.
8 MR. SANDOR: Aye.
9 MR. ROSIER: Aye.
10 MR. BARTON: (Indiscernible)
11 MR. PENNOYER: Opposed?
12 MR. GATES: No.
13 MR. PENNOYER: I'm sorry?
14 MR. GATES: No.
15 MR. PENNOYER: I would guess Commissioner Sandor would
16 ask for the reason for a no vote since apparently we have an
17 indication that it is time critical from Fish and Game. Is there
18 further information indicating that it's not time critical?
19 MR. GATES: I'll ask Carol Gorbics to speak on that.
20 MS. GORBICS: I don't have any information on the time
21 critical nature of this project, but we had asked -- the Fish
22 and Wildlife Service had asked to be allowed to review the
23 environmental assessment and I understand there will still be a
24 public comment period for that environmental assessment. The
25 project will take place, partially on Fish and Wildlife
26 Service/National wildlife Refuge land and some of those lands

1 have been designated as critical habitat areas or important
2 habitat areas. We were anxious to concur with the FONSI prior to
3 advising the department on whether or not we thought it should go
4 forward.

5 MR. PENNOYER: So, where does that mean we are in the
6 NEPA process then?

7 MS. GORBICS: I did not realize the FONSI had been
8 signed.

9 MR. COLE: Mr. Chairman.

10 MR. PENNOYER: Can I get an explanation of where we are
11 in the NEPA process from those (indiscernible - unclear) Dr.
12 Montague or Dr. Morris?

13 DR. MORRIS: We were approached by Fish and Wildlife a
14 few weeks ago to review the EA. We knew if they did that we
15 couldn't get it completed in time. We do not have to do that
16 and we chose not to and processed it. It's available for Fish
17 and Wildlife to review. Also permits are required from Fish and
18 Wildlife apparently for Fish and Game to proceed with the
19 project, so we felt we could skip that delay.

20 MR. PENNOYER: Answer the question. If we're still in
21 the public review process and we okayed a project at this level
22 to go ahead, what does that mean exactly? I guess I don't
23 understand.

24 DR. MORRIS: I'm going to turn to my legal advice on
25 the public review question.

26 MR. GATES: That's a procedural, not legal. Procedural

1 thing.

2 MR. PENNOYER: It's not a legal procedure? I still
3 don't understand where we are in the NEPA process. Do we have a
4 final NEPA document completed on this? Has the NEPA process been
5 completed?

6 MS. CHOROSTECKI: My understanding is that we have
7 completed our NEPA analysis within NOAA and -- but that there's
8 further review, I think, we still have to submit it to the EPA.

9 MR. PENNOYER: But does that, in terms of what we've
10 adopted for the Trustee Council -- do all the things have to have
11 been done before we take action? Are we in a position where we
12 can take action or not?

13 MS. CHOROSTECKI: We're in a position where we can take
14 action.

15 MR. PENNOYER: We can? The Trustee Council?

16 MS. CHOROSTECKI: Yes.

17 MR. GATES: Well, NOAA might be able to, but we can't.
18 We've got to see it and Fish and Wildlife needs to look at it.

19 MR. COLE: Mr. Chairman.

20 MR. PENNOYER: Mr. Cole.

21 MR. COLE: Would you like to see this project go
22 forward?

23 MS. GORBICS: It truly depends on the impact it's going
24 to have on the sensitive areas within the refuge. I'm going to
25 send it to the refuge staff to have them look at it and this --
26 we're not trying to slow down the process. This is something we

1 did request.

2 MR. PENNOYER: Let me ask a question. Does this impact
3 on the refuge because they're going to build structures on the
4 refuge for this or is it just putting the fry into the lake?

5 MS. GORBICS: I'm not familiar enough with the project
6 to know that. That's one of the reasons we wanted to look at
7 the...

8 MR. PENNOYER: My impression was the incubators were at
9 Kitoi, not at Red Lake and in fact, you're going to take the fry
10 and plant them at the lake from Kitoi so there'd be some activity
11 on the ground but are there actual structures contemplated on the
12 refuge?

13 DR. MONTAGUE: Mr. Chairman, you're basically correct
14 except it's Pillar Creek hatchery instead of Kitoi. The eggs
15 will be taken out of the lake. The only other thing that would
16 be done at the lake is putting the fry back in.

17 MS. GORBICS: I don't mean to be difficult. It's just
18 that we would like the opportunity to review the environmental
19 assessment. The FONSI is based on that lack of impact and if
20 they're correct, we will have no problem. If we -- because of
21 the sensitivity of the area, if we see problems they didn't, that
22 NOAA did not bring forward, we'd want to bring them forward at
23 that time.

24 MR. PENNOYER: Commissioner Sandor.

25 MR. SANDOR: Well, the question is reasonable. I guess
26 I have two questions. One is how long is it going to take for

1 this review to be made? Any idea?

2 MS. GORBICS: We could do it in a week, I would guess.
3 We could certainly try once we got the...

4 MR. SANDOR: And then the process would have been
5 complete within two weeks?

6 MS. GORBICS: Unless we run into some unforeseen
7 circumstance. If we agree with the FONSI, it will be very easy.
8 If we disagree with the FONSI, it will obviously take some
9 negotiations to either try to change the project to make it
10 compatible or maybe we won't be able to come to agreement. Then
11 it definitely would take longer.

12 MR. SANDOR: Then the second question is if within two
13 weeks, they cleared it, would it still be possible to do this
14 project this year?

15 MR. PENNOYER: We've got a tape change. Could we hold
16 for half a second?

17 (Off Record: 3:18 p.m.)

18 (On Record: 3:18 p.m.)

19 DR. MONTAGUE: Yes, Mr. Chair, it would be possible to
20 do it, even if with a further two-week delay. I think there is
21 one very important element that should be added to this
22 discussion. Because this did have some relationship to the Fish
23 and Wildlife Service, we had formally (ph) asked the regional
24 director of the Fish And Wildlife Service to be the lead federal
25 agency for NEPA compliance and he refused and you know, NOAA took
26 it on and I guess I feel it's their environmental assessment now

1 and I guess is that a regular process that additional federal
2 agencies can disagree with one agency's environmental assessment?

3 MR. PENNOYER: Well, I think the pertinent point seems
4 to be that the representative of that agency is going to vote no
5 on the project.

6 MR. GATES: Yes.

7 MR. PENNOYER: (Indiscernible - laughter) legal process
8 or not. It's a legal process, I assume, but...

9 MR. GATES: Yeah, it's pretty critical, I think, the
10 fact that it takes a -- you hit it on the head there. We need to
11 -- we're taking action on it and we need to see it.

12 MS. GORBICS: Our decision not to do the environmental
13 assessment wasn't based on whether or not we like the project.
14 It was based on the fact that we don't have the personnel
15 available. We only have three people in our oil spill office and
16 they have other commitments. We didn't have the personnel
17 available to write those documents and we would have had to
18 identify someone and it just wasn't something we could do.

19 MR. PENNOYER: Let me ask a further question then. If,
20 in fact, you have no problem with the FONSI thing, you would vote
21 yes on this project?

22 MR. GATES: I'll have to consult with Fish and Wildlife
23 on it.

24 MR. PENNOYER: Do we want to recess the meeting and
25 resume by teleconference for this one project in two weeks?

26 MR. SANDOR: Well, Mr. Chairman, I think the way the

1 agenda is going, we're going to have a number of issues that
2 we're going to carry forward and I think some of them will be
3 able to be handled by teleconference. I guess my concern is that
4 we do move forward with these projects that are positive and I
5 appreciate Fish and Wildlife Service's reluctance to approve this
6 without this evaluation, but what I'd like to do is have a
7 mechanism in place that if this passes muster with your agency in
8 two or three weeks and it's still feasible to do it this year,
9 that rather than wait until, you know, our next meeting, that we
10 have a mechanism of simply touching base by teleconference and
11 moving forward with the project. And I guess the question is
12 would Fish and Wildlife or Interior have any objection to that
13 process?

14 MR. PENNOYER: Mr. Gates.

15 MR. GATES: Well, we'd rather get the review and act on
16 the project at that time.

17 MR. SANDOR: That's the answer. Thank you.

18 MR. PENNOYER: All right, anything further on this
19 project?

20 MR. COLE: I move we defer it to the next meeting then.

21 MR. ROSIER: Second.

22 MR. COLE: Was that understood?

23 MR. SANDOR: Yeah.

24 MR. PENNOYER: Any problem with that? Any objection
25 with deferring until the next meeting or the continuation of this
26 non-stop meeting? (Pause) Okay, next, Dr. Gibbons.

1 DR. GIBBONS: Yes, the next category of '93 work plan
2 projects would be the Public Advisory Group's proposals. If
3 you'll flip to the end of the document, there's five projects.
4 At their February meeting, project three, Prince William Sound
5 Herring Damage Assessment and project four, Prince William Sound
6 pink salmon coded wire tag and project number five, Prince
7 William Sound chum, sockeye, coho and chinook coded were not
8 approved but projects concerning the Kodiak Industrial Technology
9 Center, number one, and the first phase of construction of the
10 Kodiak Archeological Museum, number two, were deferred until this
11 meeting.

12 MR. COLE: Mr. Chairman.

13 MR. PENNOYER: Yes.

14 MR. COLE; If I could take something out of order.
15 I've received numerous, you know, public comment about this coded
16 wire tag project. Is everybody satisfied that the disapproval of
17 that project was sound? I'm not, you know, informed in that area
18 as many others but did we make the right decision there? I'm
19 sort of, I guess, asking those who have special ability and so-
20 called expertise in that area.

21 MR. PENNOYER: I'm glad you added the "so-called."

22 MR. COLE: Well, I never liked the word, expertise,
23 frankly. That's why I hesitate to use it.

24 MR. PENNOYER: I guess we'd have to go back and review
25 the project and the recommendations we had. At the time, it
26 seemed like the decision was the appropriate one. Are you

1 suggesting we go back and re-review the project and the
2 discussions of whether it was enhancement or time critical and so
3 on?

4 MR. COLE: I don't want to go quite that far, but like I
5 say, when I received these letters, the kind that the people say,
6 this was an important project, important to the Sound and the
7 commercial fishing there. Like I say, as the Supreme Court said,
8 should we take a second hard look at this project? Maybe
9 Commissioner Rosier could help us.

10 MR. ROSIER: Well, Mr. Chairman, if we might, I was
11 certainly in favor of all of those -- all three of those
12 projects. I think they are important. I think that, at least as
13 I recall, the discussions against the proposals or the projects,
14 they were related primarily to the issue of damage to the
15 resource. I have quite a different feeling as far as damage to
16 the resource. We feel that the resource was damaged.
17 Significant changes had to be made in the conduct of the
18 fisheries and it's going to be a continuing phenomena in terms of
19 the management of those pink salmon, pink salmon specifically in
20 Prince William Sound and there seem to be the usual opposition
21 there in terms of the timeliness, were these time critical or
22 were they not.

23 MR. PENNOYER: Mr. Rosier, I don't want to interrupt
24 you but some of the people who should be discussing this
25 obviously have to take a break. Why don't we take a ten-minute
26 break and come back and continue it.

1 MR. ROSIER: All right. Thank you.

2 (Off Record: 3:25 p.m.)

3 (On Record: 3:48 p.m.)

4 MR. PENNOYER: Can we get started again, please? We
5 have a considerable way to go and we have not much time and I
6 think maybe we ought to prioritize what's left here and decide on
7 how we're going to carry this non-stop meeting on again because I
8 assume we're going to end up recessing instead of adjourning,
9 come back at a teleconference or some other manner here in a week
10 or so and try and complete our business because we ain't going to
11 get it done in two hours. And of the things we need to do today,
12 I feel we have to finish the '93 work plan items just because
13 that's getting too far down the track to do anything else with.
14 '94 Work Plan Assumptions and Framework. What is the priority
15 for doing that here as opposed in a week or something if we can
16 do it in a week?

17 MR. COLE: We can't do it by telephone.

18 MR. PENNOYER: Okay, so we'd have to get back together
19 for a meeting. That's going to be two and a half weeks from now
20 then, probably. Maybe. Where are we in the '94 work plan? Do
21 we have to get through that within a week or two?

22 DR. GIBBONS: We should.

23 MR. PENNOYER: Mark.

24 MR. BRODERSEN: Mr. Chairman, the consequences of not
25 doing it fairly soon just mean that we start adding time after
26 the 1st of October to it. As evidenced by now, although it's

1 not desirable, we certainly can do that.

2 MR. PENNOYER: Well, let me ask you then. When's the
3 next time we can meet, folks?

4 MR. BARTON: Tomorrow.

5 MR. ROSIER: No.

6 MR. PENNOYER: Can we meet for half a day next week?

7 MR. BARTON: No.

8 MR. PENNOYER: I can't meet the following week. So,
9 we're out of business for the next two weeks, okay. Then, '94
10 work plan should be the next item we do then. Let's see if we
11 can get done what we're going to do on it. '93 and '94. Is
12 there anything else of a priority that we have to do here that we
13 can't do...

14 MR. GATES: The PAG wrap-up.

15 MR. PENNOYER: ...and the PAG committee wrap-up on --
16 the intent on the PAG, okay. Can we get those three items done?

17 DR. GIBBONS: Mr. Chair.

18 MR. COLE: We weren't paying any attention. Would you
19 say that again?

20 MR. PENNOYER: What I was saying was trying to define
21 priorities. We apparently can't meet for the next two weeks. It
22 is critical, I think, to get the '93 work plan projects done at
23 this time. I'm told that the '94 work plan, whatever we're going
24 to do with it, it's critical to try to do it this afternoon. I
25 was trying to find out if there's anything else on this agenda
26 that's time critical and the only other item brought up was

1 finalizing the PAG operational guidelines.

2 MR. COLE: Did you say you're going to try to do the '94
3 work plan this afternoon?

4 MR. PENNOYER: Well, I think we're going to have to, at
5 least, look at it and see what's involved because if we can't
6 meet for two weeks, we've got a bit of a problem with the RT in
7 getting the work plan out in time for the court deadlines we're
8 facing and final adoption on August 31st or whatever. Dr.
9 Montague.

10 DR. MONTAGUE: Relative to that, the only real leeway
11 now is that we've got, I think, a 42-day public comment period
12 which could be shortened to 30, so there's 12 days there that you
13 could buy and still keep on schedule.

14 MR. PENNOYER: Well, it appears like the next two weeks
15 are going to be a problem. No time next week is available
16 for...

17 MR. BARTON: Not for me.

18 MR. PENNOYER: And I'm not around the following week.

19 MR. COLE: Well, Mr. Chairman, I have a lot of problems
20 with -- as usual, with the proposed '94 work plan. I think it
21 may take some time to go over that. And I'll tell you -- I'd say
22 now what they are and generally, it looks like they're another
23 year of studies but little restoration, replacement or
24 enhancement. You know, for another year. I don't think we ought
25 to do that.

26 MR. BARTON: Mr. Chairman?

1 MR. PENNOYER: Can we try to do what I suggested? Do
2 '93, the PAG, and take up '94 and at the end of that discussion,
3 see where we go from there on '94? Is there anything else on
4 this agenda that we think is, except choosing the next meeting,
5 is time critical, to use the word?

6 DR. GIBBONS: Mr. Chair?

7 MR. PENNOYER: Dr. Gibbons.

8 DR. GIBBONS: Yes, the Chugach Regional -- Resource
9 Management Agency has a proposal into us and they've modified it
10 a little bit. We met with them last week and it can either be
11 time critical or it cannot be time critical depending on the
12 decision that you make at the meeting here so, yeah, it's a
13 request for centralized logistics for either the '93 field season
14 or the '94. The Restoration Team has a recommendation for you
15 but -- they've attended the meeting. They've been to most of the
16 meetings here so I think we might -- if we can get to it, I'd
17 like to get to it.

18 MR. PENNOYER: Okay. Why don't we finish the '93 work
19 plan and see where we are at that point? Is that acceptable?

20 UNIDENTIFIED VOICE: Yes.

21 MR. PENNOYER: Okay, '93 work plan. The proposal
22 before us is to reconsider items four and five on the Public
23 Advisory Group recommendations. One is the Prince William Sound
24 pink salmon coded wire tag project for \$776,600.00. The other is
25 Prince William Sound chum, sockeye, coho and chinook salmon coded
26 wire tag project for \$249,590.00. Is there any further

1 discussion of those items?

2 MR. COLE: Mr. Chairman, I'm not sure we heard
3 completion of Commissioner Rosier's statement.

4 MR. PENNOYER: That's a good point. Commissioner
5 Rosier, you were making a statement on those two projects.

6 MR. ROSIER: Thank you, Mr. Chairman. Mr. Chairman,
7 rather than go back and go through the entire list of these
8 projects at the present time in view of the workload that's ahead
9 of us here on this, in answer to the question that Attorney
10 General Cole raised with me, no, I don't think we made the right
11 decision originally on these particular projects but at this
12 time, I think we're too far into the process to, in fact, go back
13 and give serious consideration at this time. It would certainly
14 be my feeling, however, that a number of these projects would
15 certainly qualify for consideration down the road in perhaps the
16 '94 work plan. And I would turn the mike over to those that
17 voted against it if they so want to speak to why they voted
18 against it at this time.

19 MR. PENNOYER: I guess there are about three million
20 dollars worth of pink salmon related projects for Prince William
21 Sound in the '94 work plan and at some point, I think we're going
22 to have, sort of, a cohesive judgment of how improved management,
23 particularly for various species but pink salmon in Prince
24 William Sound are one of the key ones, and the agency mandate all
25 fit together in terms of what is appropriate to use for oil spill
26 money. I don't think we're going to avoid that, nor do I think

1 we want to avoid it. It's there in front of us. I think it's
2 there in the '94 project. And certainly improved management is
3 one of the key items that is available for our addressing
4 restoration and enhancement, although I don't think we've come to
5 grips with how much we want to do and how to blend that, so is
6 there any further discussion? Does anybody want to make any
7 other statements on these last two items at this time?

8 MR. COLE: Yes.

9 MR. PENNOYER: Mr. Cole.

10 MR. COLE: Are these in the '94 proposed work plan?
11 These projects?

12 MR. ROSIER: Mr. Chairman, I believe they are.

13 MR. PENNOYER: They are certainly incorporated within
14 the concept. Whether the specific actual tag design (ph) is
15 there or not, I couldn't tell you because we haven't reviewed
16 them but there is certainly that type of work is incorporated in
17 the plan.

18 MR. BARTON: Mr. Chairman?

19 MR. PENNOYER: Mr. Barton.

20 MR. BARTON: As I understand it, we don't have a
21 proposed '94 work plan. These may or may not make it in there,
22 but I think that's kind of the subject that the Restoration Team
23 would like to get to is not specific projects but the balance
24 that Mr. Cole referred to earlier. So, I think it's wrong to say
25 that these are in the proposed '94 work plan 'cause I don't think
26 there is one.

1 MR. PENNOYER: Coded wire tag...

2 MR. COLE: Well, I was just talking about this...

3 MR. PENNOYER: ...pink salmon is mentioned though.

4 MR. BARTON: We don't have a plan.

5 MR. PENNOYER: No, not a project.

6 MR. COLE: I was talking about this piece of paper that
7 we got that talks about the '94 project is all. Thank you.

8 DR. GIBBONS: Yeah, Mr. Chair, let me make it clear
9 here. We really don't have any set projects for '94. Those are
10 ideas under a framework of assumptions that we've built and
11 that's the key is the assumptions that we're going to build the
12 '94 work plan on. And we just want to have your feel for what is
13 included there, you know, and we'll get into that discussion but
14 we really don't have any set projects for '94. I want to make
15 that clear.

16 MR. COLE: We might be able to address that then today
17 before the evening flight, if that's the approach.

18 MR. PENNOYER: I think my comment referred more to the
19 fact that the potential projects includes recovery of coded wire
20 tags from pink salmon and commercial (indiscernible - unclear)
21 hatchery costs, recovery harvest and hatchery bred fish in Prince
22 William Sound for \$800,000,00, so certainly the concept is
23 covered, not the specific project. Any further discussion on
24 these?

25 We have two other projects on that list. One was the
26 Kodiak Industrial Technology Center, \$100,000.00 planning and the

1 other was first phase construction of the Kodiak Archeological
2 Museum and I believe that Mr. Cole had requested that Mayor
3 Selby be given a few minutes to give us some background on that.
4 Would you care to do that now, Jerome?

5 MR. SELBY: Thank you, Mr. Chairman, and members of the
6 committee. I'll be as brief as I can. First of all, I'd just
7 like to remind folks that, in fact, the Kodiak Island Borough was
8 the most impacted region in the state from the Exxon Valdez oil
9 spill, a fact that sometimes gets overlooked. Let me point out
10 that we had more shoreline oiled in the Kodiak Island Borough
11 than Prince William Sound by a factor of two to three times. If
12 you look at the bird mortality, 64 percent of all species of the
13 death loss on birds was in the Kodiak Island Borough. The only
14 one that's below 50 percent is eagles and that's at 47 percent.
15 And yet the only study on birds that's been funded is in Prince
16 William Sound. We find that a little curious.

17 Of the archeological sites, 22 that are in public
18 ownership that were impacted by the spill directly, 17 of those
19 are in the Kodiak Island Borough. And I can go on and on with my
20 statistics but just as a backdrop of the fact that we've had
21 substantial impact in the Kodiak Island Borough which brings me
22 to the next topic which is the book that the community then came
23 together and identified 33 projects over a six-month period that
24 we would like to see done as restoration for the spill.

25 Now, four years later, 300 million dollars later, the
26 first project out of this book has yet to be funded. Now, in all

1 fairness, you just postponed one of them which is the Red Lake
2 project. And also, in all fairness, the Seal Bay project,
3 Afognak acquisition, is included in here as well and you have
4 some other acquisition projects that are wending their way
5 through their process and we're comfortable with that. But the
6 fact is that the community, basically, has two key projects that,
7 in our view, really represent a restoration effort in Kodiak that
8 we'll be able to point back to 20 years from now and say,
9 "There's the restoration for this community for the Kodiak Island
10 Borough." And that's the two projects that are before you right
11 now.

12 The one project has to do with the archeological museum
13 and it's the only logical approach that we could come up with to
14 deal with the impact on the archeological sites. We've talked
15 about patrols; we've talked about putting people out on the
16 beaches; we've talked about going out and trying to recover some
17 of the artifacts that were uncovered in the process of removing
18 the oil. When they took the layer off, they also then dislodged
19 the cover material on the artifacts and in some cases, we've lost
20 as much as 18 to 20 feet since the spill of beach erosion into
21 these sites. I don't know how many thousands of artifacts are
22 gone, folks, but they're gone permanently. There's no way we're
23 going to get 'em back. And so, that's why we're real concerned
24 about the time critical nature of moving ahead on this project
25 because in those cases, the only thing we can do is get an
26 archeological team out there, recover those artifacts and put

1 them into a facility that's designed to maintain them.

2 MR. COLE: Can I ask a question on that?

3 MR. SELBY: Sure.

4 MR. COLE: Who owns -- on whose lands are these
5 artifacts?

6 MR. SELBY: Seventeen of the sites are on public lands
7 and then there's a number of others that are on private Native
8 corporation or other private lands.

9 MR. COLE: Who claims title or ownership of those
10 artifacts?

11 MR. SELBY: Well, technically, by state law, they're
12 supposed to be, you know, state property.

13 MR. COLE: But, you know, I read in the paper that the
14 Native organizations -- you know, I'm getting down to your
15 project -- but then I read that the Native organization sometimes
16 claims that those are part of their heritage and they want them
17 in their own facility. And have you gone over that with the
18 Native organizations there? And if we fund this archeological
19 museum, there will be no problem with putting these archeological
20 treasures in the museum?

21 MR. SELBY: Well, the way we've dealt with that, Mr.
22 Cole, is that the Native corporations are the ones that are going
23 to run the museum, so it's not an issue because the very people
24 who are concerned about them from a cultural heritage standpoint
25 are the ones who are going to be in charge of maintaining these
26 for the public for all future.

1 MR. COLE: Thank you.

2 MR. SELBY: And one of the things that we look at is
3 that this is a project that is a winner for the Trustee Council
4 all the way around. First of all, we're asking for 1.5 million
5 to complete the project. What you have, you have a couple of
6 different aspects of this thing. One, you have is \$800,000.00
7 for phase one. 1.5 million completes it, and -- whichever way
8 you want to go with that, but let me fill the rest of that out.
9 They've already spent \$30,000.00 on architectural fees, so they
10 have a design that's ready to go. They have \$250,000.00 in cash
11 to supplement this to help get this project done plus they're
12 putting in a \$350,000.00 land parcel into the deal which is
13 already there, waiting. So, this project is basically ready to
14 go. You get close to -- you get over a two million dollar
15 project out of a 1.5 million investment which, to me, is a pretty
16 good buy in terms of stretching the Valdez funds as far as we
17 can.

18 MR. COLE: Mr. Chairman, could I ask another
19 question...

20 MR. PENNOYER: Mr. Cole.

21 MR. COLE: ...in the interest of time, but can we
22 dispense with these four or five archeological projects that we
23 disapproved in January and I see you're in this '94 list if we
24 support this museum project?

25 MR. SELBY: The answer is yes because basically, you
26 get the others for free, once this project goes, because these

1 folks are then going to be out on the beaches. They're going to
2 be doing the monitoring of the sites and you're going to get that
3 as part of funding this project, plus they're going to pay for
4 the maintenance and the operation of the museum. So it's a one-
5 time shot. So again, it's -- to us, it's a pretty doggone good
6 buy all the way around.

7 MR. COLE: Can you maintain this yourself and not
8 require expenditures to maintain it?

9 MR. SELBY: That's correct. They've committed to the
10 long-term maintenance.

11 MR. PENNOYER: Mr. Barton.

12 MR. BARTON: Is the intent that this would house
13 artifacts from all over the oil spill impacted area?

14 MR. SELBY: What's proposed is just from the Kodiak
15 region, again, because 17 of the 22 sites that were oiled are in
16 the Kodiak region. And I don't know the answer to that.
17 Overall, I assume that you could put more in there and that the
18 Native Corporation would be willing to do that. But they just
19 haven't addressed it.

20 MR. BARTON: Then that was my question but then I think
21 the answer to Mr. Cole's question is no, you couldn't do away
22 with those studies or, at least, they need to be evaluated on
23 their own merit still.

24 MR. COLE: Mr. Chairman.

25 MR. PENNOYER: Mr. Cole.

26 MR. COLE: I was thinking about these patrols of

1 vessels and airplanes out there and things like that. We could
2 surely dispense with that, you know, and similar...

3 MR. BARTON: We did dispense with that once and I
4 strongly support continuing to dispense with that.

5 MR. COLE: So do I but -- but what I'm saying is that
6 we could not have to deal with that type of project if this
7 museum funds were approved, they would take these archeological
8 treasures and put them in this museum and then we wouldn't have
9 the disappearance -- then they're with the other project, as I
10 recall, which was to educate the public about staying away from
11 these which we didn't -- sites which we didn't think was feasible
12 either. Just tell people where they are so then they'll be sure
13 to go out there and it just seems that this might be, you know, a
14 good solution to all those archeological issues.

15 MR. SELBY: What I would point out is that part of the
16 concept of having the facility there is, in fact, a public
17 education process of helping them understand the values of these,
18 encourage them not to go out and pirate from the sites, so there
19 is still a public education aspect that you pick up as well
20 without, as Mr. Cole points out, pointing out exactly where
21 they're all located. It's the idea of trying to help people
22 appreciate the value of the artifacts so that they aren't going
23 out there and digging 'em up.

24 MR. PENNOYER: For the million and a half, would you
25 describe briefly what would be purchased?

26 MR. SELBY: A 5,000 square foot facility, 3,000 square

1 feet of which is designed to be support and maintenance and care
2 of the artifacts; 2,000 square feet of it would be a public
3 display area.

4 MS. BERGMANN: Mr. Chair?

5 MR. PENNOYER: Ms. Bergmann.

6 MS. BERGMANN: I think it's important to note that I
7 don't think that all the agencies would agree that if we do fund
8 this proposal which certainly has its own merits, that we then
9 will dispense with having these other projects that will come
10 forward as part of the restoration plan. This addresses one area
11 of the entire oil spill area. Certainly, I saw Marty shaking her
12 head. I think DNR and Department of Interior and Ken, I don't
13 know about Forest Service, would certainly say that doing site
14 patrol and monitoring and finishing our phase two of the
15 restoration program and doing some of these other projects, that
16 these are still valid proposals that would probably be supported
17 and go forward as part of the restoration plan even if the
18 Trustee Council chose to approve this project.

19 MR. COLE: Mr. Chairman.

20 MR. PENNOYER: Mr. Cole.

21 MR. COLE: Or were you saying something, Mr. Barton?

22 MR. BARTON: Well, Mr. Rosier was, I believe.

23 MR. COLE: Well, I was going to say...

24 MR. PENNOYER: Mr. Cole and then Mr. Rosier.

25 MR. COLE: Well, if we fund this project, I mean, I
26 would say don't count heavily on phase two of the archeological

1 projects. We rejected them once and I just heard Mr. Barton say
2 that he favored rejecting them again.

3 MR. BARTON: No, that's -- I favor rejecting one of
4 them again.

5 MR. COLE: I favor rejecting all of them again, so I
6 mean -- but I favor this project and I would like to see this
7 project go through and be approved by the Trustee Council today
8 but I think it is a good solution to the central archeological
9 problems on Kodiak Island. That's what I think. Do you agree
10 with that?

11 MR. SELBY: I agree and if you'd like to hear from Mr.
12 Knecht who's the actual archeological expert on the island, he
13 could speak to that as well.

14 MR. COLE: That would be fine for me.

15 MR. PENNOYER: Mr. Rosier had a comment.

16 MR. ROSIER: Yeah, Mr. Chairman, I just wanted to
17 respond also on this. I think that this is a good direction.
18 Certainly, I think Pam is correct. I think that the door is
19 always open for other proposals here on this, but I think --
20 certainly I hope that the proposals we address the next time are
21 a little different than some of the proposals that we've
22 considered this first time through because I would certainly join
23 the ranks of those not supporting those, so.

24 MR. PENNOYER: Mr. Barton.

25 MR. BARTON: There are still archeological and cultural
26 resources outside the Kodiak Borough and somehow, those needs are

1 going to need to be met. Now, if in fact, we're going to
2 consider a facility at Kodiak as meeting those needs, then I
3 think there's a dialogue that needs to take place with people
4 outside the Kodiak Borough to be sure that that's an acceptable
5 solution to them.

6 MR. PENNOYER: Dr. Knecht, did you have something you
7 wanted to say on that?

8 DR. KNECHT: Yes, thank you. My name is Rick Knecht.
9 I've been an archeologist on Kodiak now for the last 11 years and
10 the -- as a regional research facility, it's not meant to exclude
11 anyone, any agency that wants to do a project and the oil spill
12 area will profit by having this material and this data at hand.
13 It's not meant to exclude anybody. And I understand your
14 concern about those projects, but we didn't intend through this
15 project to make it the only thing that would ever happen in the
16 area. I think it's adequate for everything in the Kodiak
17 Archipelago and I think we could help substantially with projects
18 on the adjacent coast of the Alaska Peninsula; but for Prince
19 William Sound and the Kenai, you'd probably still need to work
20 with the agencies, but we would welcome agencies at that facility
21 and expect to have them there.

22 MR. PENNOYER: A couple of questions you might elaborate
23 on this project. Once again, all the staffing for the facility,
24 the expertise to care for the artifacts, the keying of them, the
25 dating of them, the display, all the rest of it, will be taken
26 care of outside of this funding from this agency or from this

1 body?

2 MR. SELBY: That's correct.

3 MR. PENNOYER: And that's being committed to -- would
4 be part of the...

5 DR. KNECHT: Right. All we're asking...

6 MR. PENNOYER: ...agreement of whatever?

7 DR. KNECHT: ... for is bricks here, so this is purely
8 construction. There's no fluff or nonsense in this thing and
9 we've been doing this for years now on a shoestring and trying to
10 make a go of it. And we have right now a substantial collection
11 of North Pacific material. We've got the expertise. There's a
12 large collection of volunteers in the community who are willing
13 and able to help us out with these projects. That's how we're
14 able to do projects so cheaply because we have this community
15 that wants to go to work on it. We're fully equipped. We can
16 field (ph) a crew of 20 at any time. And all we're asking for is
17 tools to get this job done.

18 MR. PENNOYER: And just further clarification. And the
19 800,000, if we do that, we're really buying one and a half
20 million that you expect to get from the oil spill money?

21 DR. KNECHT: 800,000 will keep you in good shape for as
22 many as five or more years.

23 MR. PENNOYER: I'm sorry I don't understand that. If
24 800,000 is truly for construction, why does that keep you in good
25 shape for a number of years?

26 DR. KNECHT: Because that's -- it's construction

1 It's enough floor space that will be adequate for about five
2 years.

3 MR. PENNOYER: Oh, so the extra 700,000 is an addition
4 -- you would actually complete something for 800,000?

5 DR. KNECHT: If we had...

6 MR. PENNOYER: You would add to it for another 700,000?

7 DR. KNECHT: Right. If we had a million and a half, we
8 would never have to come back again. For 800,000, I'll probably
9 be back in five years.

10 MR. COLE: I move that we appropriate or approve this
11 project for 1.5 million.

12 MR. ROSIER: Second.

13 MR. PENNOYER: Further question.

14 MR. COLE: Is it true that you now have a lot of
15 artifacts in a warehouse? Did you say that somewhere?

16 DR. KNECHT: No, we are -- they're not in a warehouse.
17 They're being stored right now. We have a lab. It's a long way
18 from completely safe but it will do for now. It's an emergency
19 situation. I know what I'm talking about when it comes to the
20 archeological record on Kodiak and unlike other resources
21 affected by the spill, this one isn't slowly repairing itself.
22 Most other resources are in some state of recovery.
23 Archeological resources get worse every year. Exponentially
24 worse. And so, while these other things have begun to kind of
25 come back, the sites are in worse shape every year. We're in
26 danger of losing them. We really are.

1 MR. PENNOYER: That was the next question I had was
2 certainly I don't think, regardless of the merits of the project,
3 one of the concepts we've dealt with is not doing major
4 restoration, concrete project type of thing until the plan is
5 complete, unless it's time critical. And we've heard that
6 considerably in discussion here and I guess part of the
7 evaluation is with the -- is this a time critical project? What
8 would happen if we waited until the restoration plan was
9 completed to make a decision on this and the other two or three
10 similar proposals I see are not completed yet but might be
11 available to us in '94 and '95. What do you lose by waiting that
12 year?

13 DR. KNECHT: This is extraordinarily time critical.
14 It's an exponential rate of decay. In other words, someone digs
15 a hole, maybe three feet wide. The next year, it's six feet.
16 The next year after that, it's 12 feet. And you can't do that
17 for very long before you're in danger of losing an entire site.
18 Last month I came up to talk about this proposal and you know, it
19 got delayed, but during that time, a combination of high tides
20 and swells took five to ten meters of one of the best sites we
21 had. There were artifacts in the -- of surf zone for the better
22 part of a mile up and down the beach. So, it is desperate. It's
23 a desperate race against time. Like I say, it's different than
24 these other resources and that we've got to address the problem
25 now.

26 MR. GATES: You can't save those resources until...

1 DR. KNECHT: We need the facility to store those
2 adequately.

3 MR. GATES: There's not a temporary facility you can
4 use to...

5 DR. KNECHT: Not to that degree. We need -- we've
6 already waited four years after the fact. I'm just afraid every
7 time I go back to these sites, they're so worse off than they
8 were the year before. And so out of all the projects, I can't
9 stress this strongly enough: this is, indeed, time critical.

10 MR. SELBY: The other point, Mr. Gates, of that is, if
11 they don't -- you know, part of the problem with these things,
12 you've got to control the humidity as well as the temperature and
13 they really don't have a current adequate facility where they
14 could really do that. Otherwise, the artifacts start to
15 deteriorate. Once you expose them to air, they start going
16 downhill unless you can really control it. You know, while
17 they've got a bunch of them stored, it's certainly not a very
18 good situation.

19 MR. PENNOYER: Ms. Bergmann.

20 MS. BERGMANN: A point of kind of information. The only
21 project that the Trustee Council approved on archeology for 1993
22 was a project to go and actually do restoration work on the 24
23 known sites that were linked to the Exxon Valdez oil spill. So,
24 the council hasn't seemed to be very comfortable with going
25 beyond any of those 24 sites. We've talked about in future years,
26 you may be able to look at an estimated 130 sites that were out

1 there but the council feels -- I haven't got good readings back
2 from the council on their willingness to do that. So, we do know
3 that there are 24 sites that have been injured and you have
4 funded a program in '93 to go take whatever emergency actions or
5 restoration actions are necessary at those 24 sites.

6 MR. COLE: What are you saying? You favor this or do
7 not favor this?

8 MS. BERGMANN: It gets to be the -- you've heard this
9 before and it's in terms of time criticality. I'm not saying
10 that those sites that are being eroded away, it certainly is time
11 critical for those sites. I would never argue that that's not the
12 case. Are they linked to the Exxon Valdez oil spill? All I can
13 tell you is that what the council has accepted so far is that
14 there are 24 known injured sites and you have approved funding to
15 deal with those 24 sites.

16 As you all know, I certainly am a proponent of
17 protecting cultural resources. I have a concern that there are
18 other museum proposals that have been put forward by other
19 entities that are not getting the same level of consideration as
20 this proposal, that haven't gone through the same public review
21 process as other proposals and I think we need to make really
22 sure that the linkage is clearly there for this before we commit
23 that kind of money, before we have a restoration plan in place
24 and before we make sure -- or before we act and preempt, perhaps,
25 some of those other proposals from going forward.

26 MR. COLE: Can I ask you a question? How would this be

1 preempting other proposals if this is for the Kodiak Archipelago?

2 MS. BERGMANN: I might ask if you would be willing to
3 fund a museum in Valdez and Cordova and Fairbanks and other
4 places as well. That may or may not make sense. I wouldn't be
5 prepared to discuss that right now, but there are a number of
6 other proposals that did come forward. The Restoration Team did
7 look at this proposal. We did have an opportunity to discuss it
8 with Rick at length at one of our meetings and we did go back and
9 look at the other museum proposals as well. And Dave, I think,
10 you have the information on -- yeah, you might just go ahead and
11 reiterate what the Restoration Team recommendation was for those
12 proposals.

13 MR. PENNOYER: Dr. Gibbons.

14 DR. GIBBONS: Yes, it's a letter in your package dated
15 March 3rd to the Trustee Council from myself that identifies the
16 five projects that were submitted for the '93 idea list. And
17 then it also references the February -- which is the February
18 10th reiteration of the proposal by the Kodiak Island Borough for
19 800,000 and that's in your package here also. And then the
20 recommendation that further consideration of these projects be
21 deferred until the '94 work plan.

22 MR. PENNOYER: I would ask you a question because your
23 letter specifically says "Since these projects are not time
24 critical," and it seems to be in direct opposition to what
25 Dr. Knecht has told us and I'm not clear what to make of that.

26 DR. GIBBONS: We had lots of discussion with Rick there

1 and after Rick left. And to summarize it, we just thought it,
2 you know, in concert with the other projects that are forwarded
3 in the '93 work plan of bricks and mortar type thing that those
4 were all kind of deferred because of the, you know, expense and
5 the time criticalness of them and deferring them, we thought that
6 was a logical sequence of -- you know, in logic we treat
7 everybody fairly and that we should do the same thing with these
8 projects. Examples would be the Seward Sea Life Center that came
9 forward with a proposal, those types of activities.

10 MR. PENNOYER: Commissioner Sandor.

11 MR. SANDOR: Well, Mr. Chairman, I think one thing that
12 distinguishes this proposal from the others, unless I'm mistaken,
13 is that the city and the citizens have already raised a quarter
14 of a million dollars on this?

15 MR. SELBY: That's correct.

16 MR. SANDOR: Have similar funds been raised in any
17 other project areas? And I think insofar as public participation
18 is concerned, it seems like raising a quarter of a million
19 dollars is a pretty good indication that there's public support.
20 And so, I think the fact that not only has that money been raised
21 but literally what the explanation states is that the process is
22 in place so that operation costs will be borne by the Kodiak Area
23 Natives Association. Investment funds now yield between five
24 and \$7,000.00 monthly and this will insure that the facility can
25 be kept functional for the long term. Is that right?

26 MR. SELBY: That's correct.

1 MR. SANDOR: Well, it seems to me, Mr. Chairman, and
2 fellow trustees that that in itself warrants, you know, support.
3 It isn't as if this is just a proposal on the table and I'm
4 persuaded that there is damage occurring. The other thing that's
5 persuading in going above the 800,000 which was the original
6 proposal and I guess for that 1.5 million, then -- is that it?

7 MR. SELBY: That's it. We won't be back on this
8 project.

9 MR. SANDOR: And if you look at that from the
10 standpoint that their actual projection for cost is really many
11 times that amount, I think what the community will be investing
12 in this over time runs close to four million or five million.
13 Is that not right?

14 MR. SELBY: Over time, that's correct. It would be
15 about a five million dollar facility ultimately.

16 MR. SANDOR: You see, so that's a, you know, one in
17 four match. That's hard to beat, so I speak in favor of the
18 motion.

19 MR. PENNOYER: Commissioner Rosier, do you have...

20 MR. ROSIER: Yeah, I just -- I think Commissioner
21 Sandor just touched on, at least, part of what I wanted to say
22 but I think the other part is when I looked at the other
23 proposals that are, at least, on the table right now, they don't
24 incorporate the idea of public funding. At least in the
25 information I've seen in here, they don't seem to. Basically, I
26 see them as agency type proposals or government entities in which

1 we would probably continue to see a utilization of tax dollars
2 and so forth on those -- the maintenance of those projects. So,
3 it seems to me that Kodiak has got the right idea on this and I'd
4 certainly be in favor of it.

5 MR. COLE: Mr. Chairman.

6 MR. PENNOYER: Mr. Cole.

7 MR. COLE: Well, I agree with -- join with what
8 Commissioner Sandor and Commissioner Rosier said, but in
9 addition, we have not favored Kodiak in any significant projects.
10 Cordova in the Alyeska Pipeline settlement got a road for six
11 million. Valdez got the response center moved to downtown
12 Valdez. Tatitlek got a dock. Chenega got a dock. Homer is
13 getting the Kachemak Bay. You know, we have not had many
14 projects looking towards Kodiak and I think they've been patient
15 and now, they have what is a solid project, supported by the
16 entire community and I think, you know, it merits our favorable
17 action. And with respect to a million five, I mean why don't we
18 just get it done, you know, then we don't have to hear next year,
19 "Well, we need 700,000 more to just finish this." It will cost
20 us more if we do it probably in two stages; there will be other
21 contracts and you know, there will be this and that. And then
22 it's done, you know, and you can say, "We have our project" and
23 close the chapter on that. That's my view. You know, what good
24 does 700,000 more do in the bank for us, you know, between now
25 and next year? I mean if there were some reason where, you know,
26 we were short of money;, we didn't have money in the bank; we

1 needed to wait until next year to get monies to do this, I'd say,
2 well, you know, it makes sense, but here's the money. Just give
3 it to them. Fini. Thank you.

4 MR. PENNOYER: Let me ask one more clarification in
5 terms of the contract. If you were provided the money for
6 construction, what is the contract with this council in terms of
7 the output? I mean you've stated some of the things that are
8 going to be accomplished. You'd monitor construction with us as
9 you go along; will you send us all a autographed photograph of
10 the facility or do you have -- do we have some type of contract
11 in the maintenance and type of professional staff that you're
12 going to main- -- the community is going to maintain there? What
13 in the longer term outside of just the initial construction do we
14 have to look forward to?

15 DR. KNECHT: Well, we're willing to be flexible in
16 whatever requirement you might want to make of us as far as
17 reporting on expenditures. Our time line basically is that we'll
18 have it up and running a year from this spring. Our first job
19 will be to hire a project manager, a professional with this type
20 of this thing. I'm a archeologist. I just dig holes and so,
21 someone to manage this project and we're willing to -- the Kodiak
22 Area Native Association annually administers more than five
23 million dollars in state and federal grants, so our accounting
24 department is well aware of federal standards in reporting
25 expenditures and so on.

26 MR. PENNOYER: How about federal standards in

1 construction and so forth? I'm asking these questions. We're
2 going to face more of this as we go along. Do we get into that?

3 DR. KNECHT: Yes, we have to meet federal standard.

4 MR. PENNOYER: Handicap requirements and so on, you're
5 going to have to meet certain federal standards for inspections.

6 DR. KNECHT: Mr. Chairman, we have to meet certain
7 federal standards in order to house artifacts from the federal
8 lands which we plan to do to make it a useful facility for
9 everybody.

10 MR. PENNOYER: And you're clear on the million and a
11 half accomplishing all this?

12 DR. KNECHT: Yeah.

13 MR. COLE: Want some more money?

14 MR. PENNOYER: Very few projects -- I wasn't asking that
15 specifically. Very few projects start out that don't end up with
16 overruns in my experience but this is a clearly -- you feel very
17 secure on this? You just cut down ten square feet if it costs
18 more or something?

19 DR. KNECHT: Yes. Well, we've been in the planning
20 stages of this for about 20 years and we've worked closely with
21 other Native museums in reviewing mistakes they made as they grew
22 and constructed. I'm confident that we're going to be successful
23 at meeting those budget constraints.

24 MR. PENNOYER: Further discussion? Mr. Gates.

25 MR. GATES: Have you worked with any other federal
26 agencies on this or any other grants or any other approval steps

1 through any of the federal entities?

2 DR. KNECHT: On the museum project, itself?

3 MR. GATES: Well, the land acquisition or the...

4 DR. KNECHT: The land itself came from the City of
5 Kodiak. That was given to us for 50 years at \$1.00 a year.
6 That's \$360,000.00 worth of land. We do work closely with a
7 number of federal agencies, including Park Service and your
8 consulting archeologist, Frank MacMann (ph) came out and
9 inspected the facility and if you need a recommendation from him,
10 he gave us pretty high marks for our programs there.

11 MR. COLE: Mr. Chairman.

12 MR. PENNOYER: I'm not -- go ahead.

13 MR. COLE: Are you working with the state
14 archeologist, Ms. Bittner?

15 DR. KNECHT: Yes. We -- in cooperation with SHPO's
16 office, we have a complete site file which we update and we send
17 updated site files to Juneau and we work closely with the State
18 people as well. And in working with the federal archeologist
19 this month also, we do a lot with the public outreach. Alaska
20 Archeology Week and that type of thing.

21 MR. PENNOYER: I hesitate to bring this up but where do
22 we stand on NEPA on this? Is it required? Is there something we
23 need before we take action? Is there -- as other projects,
24 construction projects, is this something the federal trustees can
25 take action on without some further NEPA considerations?

26 MR. GATES: It's in the same boat as any other

1 construction -- or any project that requires council action, we'd
2 have to see. But that would have to be complied with, if it
3 hasn't been done so. A proposal set forth and...

4 MR. PENNOYER: They've been working on it for 20 years.
5 Maybe there is a NEPA document.

6 MR. GATES: That's the reason I asked if they had any
7 other federal actions that have happened before that there may
8 have been some track on that but if you haven't...

9 DR. KNECHT: We'd be more than willing to run our
10 drawings by you.

11 MR. GATES: Well, no. The specific....

12 MR. SELBY: I guess I don't think there would be for
13 the building. Now for the program itself, I can see where that
14 would need to come back and get clearance, particularly from the
15 public lands manager whether it's the Department of Interior or
16 whoever in terms of the actual...

17 MR. GATES: If it's a federal action. It's just -- the
18 construction project would require it too. The overall proposal
19 would require, you know, that evaluation.

20 MR. PENNOYER: So, putting a building on a downtown lot
21 requires...

22 MR. GATES: If it's federal action, it does.

23 MR. PENNOYER: Well, then what do we do with it?

24 MR. COLE: Well, I think...

25 MR. GATES: Well, that's the law there.

26 MR. COLE: ...we approve the project.

1 MR. GATES: We can't approve it until that's done.

2 MR. COLE: Maybe we need to seek Congressional
3 exemption from NEPA. I mean everything -- we do anything here is
4 a NEPA compliance, even if it's state action. You know, this is
5 -- something's got to be done, gentlemen, I mean, you know,
6 believe me before we have a collision at some juncture.

7 MR. PENNOYER: Well, I wasn't trying to avoid making a
8 decision. I'm just trying to say if something needs to be done
9 and we need funding to do that, we ought to proceed with that,
10 too. So, I'm not...

11 MR. GATES: I think...

12 MR. BARTON: I wonder if it isn't food for a
13 categorical exclusion of some sort under -- I don't know whose
14 procedures might allow that. Is there any advice from the back
15 of the room on that?

16 MS. LISOWSKI: Well, whichever federal agency wants to
17 be the lead on it, they would have to have the authority to be
18 able to transfer funds to this type of entity. I frankly don't
19 know of one for the Forest Service off the top of my head.
20 Interior may have some authorities that it could use. You'd have
21 to check with our legal counsel on that, but either -- whichever
22 federal agency ends up having the authority to be able to
23 transfer the funds, you'd probably have to use their NEPA
24 guidelines as the lead and it may fall into categorical
25 exclusion; it may not.

26 MR. BARTON: Couldn't this -- the funds be transferred

1 using state authorities?

2 MS. LISOWSKI: If the State wants to take the lead but
3 there'd still have to be a federal agency for the NEPA compliance
4 work (ph).

5 MR. PENNOYER: Commissioner Sandor?

6 MR. SANDOR: Mr. Mayor, perhaps you could tell us when
7 this project started and the concept approved and the quarter
8 million dollars raised. How far back does this go?

9 MR. SELBY: Well, as indicated by Mr. Knecht, the
10 Native corporation has been working on this concept for some
11 time. The \$250,000.00 has been raised primarily over the last
12 three years?

13 DR. KNECHT: About five years.

14 MR. SELBY: Five years.

15 MR. SANDOR: Well, Mr. Chairman, I think this is an
16 ideal case in which to illustrate the ludicrous nature in which
17 we are torturing ourselves and wasting money...

18 MR. COLE: And time.

19 MR. SANDOR: ...to do environmental statements on
20 projects that have, in fact, been under way for three years. The
21 money is raised. A quarter of a million dollars. A building and
22 a city. I would be embarrassed to be the agency on record in
23 halting this project on the grounds that an environmental impact
24 statement needed to be made, that NEPA compliance can't be dealt
25 with through the exclusionary process. This really illustrates
26 in my mind, Mr. Chairman, that when you look at the amount of

1 money that we're spending on this process that and particularly,
2 in this instance, what an environmental analysis, environmental
3 statement does is analyses the benefits and the negative impacts
4 and considers, you know, the consequences of not going through
5 the process.

6 So, I call for the question. I call for a record of
7 the reason for its being rejected and then I would like for that
8 reason if, in fact it's indicated, to be analyzed as to its
9 soundness because, you know, when you really think of the
10 significance of the Kodiak Natives Association having, you know,
11 taken the initiative to do this project, not just for its own
12 benefit but for the benefit of society and the benefit for the
13 environment, it would be really strange -- bizarre perhaps -- to
14 have it turned down on this basis. And perhaps, what this
15 indicates is a flaw of the process of putting forth on the table
16 projects which can be, you know, deferred or not acted on simply
17 because of this process. So, I call for the question.

18 MR. SELBY: Could I make one comment before you -- Mr.
19 Chairman?

20 MR. PENNOYER: Mayor Selby.

21 MR. SELBY: I guess I'd just like again to point out
22 that our community is feeling somewhat frustrated, Mr. Chairman.
23 We've spent a good six months as a community saying what really
24 -- as far as our community, from the hell we went through in 1989
25 during the Exxon Valdez spill. No other community lost their
26 entire fishing season, 60 -- 50, 60 million dollars of the income

1 for our community was gone. Some of those folks got some
2 reimbursement; some never did. We've done what we thought was
3 right. We have tried to play by the procedural rules that were
4 given to us and four years later, we have yet to see our first
5 dollar of restoration occur on Kodiak Island.

6 I have here 30 to 50 letters of support from the entire
7 -- around the state of Alaska for this project. The Public
8 Advisory Group -- your Public Advisory Group endorsed this
9 project unanimously for your recommendation for approval. And,
10 you know, our total request for this as well as the Fish Tech
11 Center is nine million dollars which is one percent of the
12 settlement. And we feel like we've been pretty modest in
13 requests that we've submitted. Meanwhile, the artifacts are
14 being lost, being washed asea [sic] and they're being taken off
15 the beach and stolen, pirated away. We feel a great deal of
16 urgency about this project and would respectfully request that
17 you swing with us on this and let us get going on this project.

18 MR. PENNOYER: Okay.

19 MR. COLE: Let's have the roll call vote.

20 MR. PENNOYER: A roll call vote. Dr. Gibbons, do you
21 have a roll?

22 DR. GIBBONS: I've got a pen.

23 MR. PENNOYER: Let me clarify one final -- before we
24 take the roll call vote, one final thing. Is -- do we --
25 despite whether it's bizarre or not, do we have any feeling on
26 the NEPA question. I still am not clear what I am free to vote

1 on, relative to that requirement. Mr. Barton.

2 MR. BARTON: Well, -- and it seems to me that's a very
3 legitimate question. I don't think it's an issue on the merits
4 of the proposal at all. It doesn't reflect on the merits of the
5 proposal and I honestly don't know the answer to that. I do know
6 that we have adamantly refused to consider other projects until
7 the NEPA work was complete. Now, this is a change in that
8 procedure.

9 MR. PENNOYER: Well, I think it calls to mind the fact
10 that this project has been around for a while. I'm not sure
11 anybody informed the projectors that they needed to complete
12 (indiscernible - simultaneous speech)...

13 MR. BARTON: Well, so was the Florida Barge Canal.

14 MR. PENNOYER: I'm sorry?

15 MR. BARTON: So was the Florida Barge Canal.

16 MR. PENNOYER: I understand that. What I'm saying if it
17 needs to be done, then how do you do it and what's required and
18 what are the costs and what -- Commissioner Sandor.

19 MR. SANDOR: Well, number one, the record reflects that
20 this project has been underway for at least three years. And
21 substantial funds in the nature of, at least, a quarter million
22 dollars has already been raised. Certainly the Kodiak Natives
23 Association is functioning under its legal boundaries, but there
24 is a process in which efforts that clearly do not merit or
25 warrant, you know, a full fledged environmental impact statement
26 or the one like this is -- if, in fact, this required NEPA

1 process, a categorical exclusion or whatever, we shouldn't have
2 even brought it to our attention at this particular time, but I
3 think, you know, I'm so concerned about the money that's being
4 expended on this whole area of meeting that procedural
5 requirement. And bear in mind that we won't even have that
6 environmental impact statement on the restoration plan completed
7 until when? December? And that costs 300,000.

8 And I think Attorney General Cole may well have raised
9 a legitimate question. Simply convey to the Congressional
10 delegation what's happening here. Namely that we're trying to
11 get on with restoration of damaged resources and services and
12 we're being frustrated with the process by having to spend
13 millions on environmental assessments to determine whether it's
14 worthwhile to restore damaged resources and services. And that's
15 what I find is bizarre. And so I think this is really a very
16 good one for the federal agencies to go on record in saying, hey,
17 the Kodiak Natives Association, having been functioning for three
18 plus years have proposed a project and the feds refused to be
19 supportive of it until a NEPA process is raised. We can use that
20 as a basis on which to look at the larger question if, in fact,
21 the attorneys come back with the question. Yeah, you have to go
22 through it even if it doesn't make sense. Yes, you do have to
23 expend these costs. Then we need to go to the Congressional
24 delegation and say, we really need to do something with this.

25 I just feel that this perhaps hits a -- sets a new
26 standard, fairly low, on which -- for, you know, deferring

1 action. So, I call for the question.

2 MR. PENNOYER: Mr. Barton.

3 MR. BARTON: Well, I think first of all, it might be
4 more productive to try to determine just what sort of NEPA
5 compliance is necessary and if it's a categorical exclusion, it's
6 not very costly and not very time consuming to do. That might
7 satisfy all the interests involved. I don't know that we would
8 be very successful in trying to exempt this process from NEPA,
9 even through the Congress and I suspect that there are folks here
10 in Alaska that would suggest that we shouldn't be exempted from
11 NEPA.

12 MR. PENNOYER: Do you have a view that if this is a
13 categorical exclusion potentially, that this could be done
14 quickly? We could still take this up in a continuation of this
15 meeting or something? I mean I'm not sure if the will is there
16 yet to...

17 MR. BARTON: Yeah.

18 MR. PENNOYER: ...vote for the proposal. We haven't
19 got to that stage yet but I'm concerned that we don't just drop
20 it for what might turn out to be a simple proc- -- not time
21 consuming process, so that shouldn't be the reason for not doing
22 it if it's (indiscernible - unclear) -- Mr. Barton.

23 MR. BARTON: Well, I would just point to our experience
24 with the Kachemak Bay proposal and that we were able to work that
25 through the NEPA process in fairly short order. What, ten days
26 or something like that?

1 MR. COLE: Mr. Chairman.

2 MR. PENNOYER: Mr. Cole.

3 MR. COLE: Unlike Commissioner Sandor, but somewhat
4 similar to Commissioner Sandor, I am concerned about the cost of
5 these NEPA compliances but more than that, I'm concerned about
6 the delay which these NEPA compliance impose upon us. Every time
7 we get ready to take action, you know, we're prepared to take a
8 vote literally, then up pops NEPA compliance and somebody says,
9 "Well, we can't take a vote because we've got to do NEPA
10 compliance." That's troubling but maybe there's no alternative to
11 that. But you know, whenever one evaluates as a lawyer, NEPA
12 compliance or so many other things, the opinion is really a form
13 of risk analysis. I mean what is the, you know, risk that this
14 opinion evaluates? Do we really need NEPA compliance? I would
15 venture to say that it is not clear whether we need NEPA
16 compliance or whether we do not need NEPA compliance and
17 therefore, as we make our legal analysis, we're really making a
18 risk analysis of this. One, what is the risk that if we do not
19 comply with NEPA, nothing will happen? You know?

20 Probably that's about 98 percent that nobody will sue
21 us and say, hold up this project. Second, that if we get sued on
22 it, we may win anyway, you know. And third, if we get sued, we
23 can always say, "Whoops," you know, "I guess we should have had
24 NEPA compliance. You're right." You know, "Let's do NEPA
25 compliance." But you know, what's troubling me about these
26 things is that I mean we -- our whole approach seems -- it may

1 be; I don't want to go say that it is. I'm simply saying it may
2 be "Gosh, there's some risk out there and it's one tenth of one
3 percent, so we ought not do it." You know. And I think that
4 when we look at these things and we make these decisions, that we
5 should take a general approach in the law, if you will, that --
6 let's figure out ways to get things done, you know. Well, that's
7 enough said.

8 MR. PENNOYER: Mr. Barton.

9 MR. BARTON: I appreciate Mr. Cole's remarks and I have
10 to confess I often find NEPA frustrating myself in some of my
11 other lives. On the other hand, I'd point out that the majority
12 of the '93 work program did go through without being held up for
13 NEPA compliance.

14 MR. COLE: Well, may I, Mr. Chairman?

15 MR. PENNOYER: Mr. Cole.

16 MR. COLE; Could we take a sample vote on this project
17 for a million five and then if we find out that, you know, we
18 have the unanimity required, then we'll say, "Well, that was just
19 sort of a test vote. Now, let's go get the NEPA compliance" and
20 then come back and take the real vote. How about that? You
21 know.

22 MR. PENNOYER: This is just for fun then?

23 MR. COLE: Well, it's sort of a rhetorical vote. I
24 think Kodiak deserves an answer today, one way or the other. I
25 mean we ought to just say "No, forget it" or you know, "This is
26 something we're prepared to do" and then we'll figure out how to

1 do it.

2 MR. GATES: I just don't think -- we're mixing the
3 issue of playing whether we ought to approve the project against
4 whether you've -- from a compliance situation. And there's two
5 different issues and I think the federal members are hung up on
6 the compliance.

7 MR. COLE: I call for a roll call vote. Let's take the
8 roll call vote and get it decided.

9 MR. PENNOYER: This is the fun vote?

10 MR. COLE: Yes.

11 MR. PENNOYER: Okay, I think that -- let me say that I
12 think we're hung up on two different things. You're right. We
13 have a question of an enhancement project or a big R (ph)
14 Restoration project before you finish the restoration plan and
15 that's an issue that to me probably, if we had the restoration
16 plan in place, I would guess I probably would go with this
17 project because I think there are resources out there that we've
18 been concerned about that are being lost. We don't. But I
19 don't know if that's, given the time critical nature of the
20 discussion, if it is time critical although this other document
21 says it's not, that it's a reason for not doing it. The NEPA
22 compliance thing is something, I think, from what I hear, if we
23 did Kachemak Bay in ten days and it's not a problem, you can
24 probably do in ten days or two weeks. And if that's the will of
25 the group, we could come -- we're going to have to come back
26 anyhow, we probably could approve the thing at that time, if we

1 had a feeling that we are going to approve it. That's another
2 question that I don't know if we've gotten to. So, the will is
3 to take a vote, a fun vote -- a non-binding fun vote and is that
4 the motion?

5 MR. COLE: Not fun. Non-binding.

6 MR. PENNOYER: Non-binding. Mistake in terms. Non-
7 binding vote.

8 MR. O'CONNER: Mr. Chairman, I don't think you need to
9 do this. I think you can actually take a tentative real life
10 vote, go forward and if you choose to approve the project,
11 approve it subject to a determination as to what is necessary
12 regarding compliance with NEPA, if there really is any necessity
13 for compliance. I mean there are a number of technical issues
14 that are associated with actually taking money and granting it to
15 some entity that haven't been addressed. And there may be a
16 mechanism where, through a grantee type process, that NEPA does
17 not have to be complied with because in essence, it's not a
18 federal action. There are opportunities to look at this issue
19 without denigrating the statute under which we're responsible or
20 the process under which we are functioning. And to do a fun
21 vote or to disparage NEPA is not necessary. If you want to
22 approve it, approve it, subject to determination as to what is
23 necessary under NEPA, if anything. And if there is some sort of
24 compliance requirement, that process can be completed, the
25 council can readdress its decision if there are any adverse
26 impacts associated with NEPA...

1 MR. PENNOYER: I like your advice. It's contrary to
2 what we've had on other projects and I don't know how to resolve
3 that but if that's the desire of the council to go forward and
4 try it on for size, then we can do that.

5 MR. SELBY: Mr. Chairman, I would point out that we are
6 building a school this summer, ten million dollars in federal
7 money, on U.S. Coast Guard property and we are exempt from NEPA.
8 And further, we will commit that we will not spend money or move
9 ahead on the project until the NEPA question is removed if the
10 council wants to move ahead.

11 MR. PENNOYER: There are a number of other things as
12 Craig points out that have to be done. It's just the bare (ph)
13 transfer money, how it's handled, the strings that are attached,
14 so to speak, all have to be worked out. Shall we go ahead?
15 I've got to go ahead with something. You call for a roll call
16 vote. All those in -- let's see if we've got unanimity. All
17 those in favor of proceeding with the project, please say aye.

18 UNANIMOUS: Aye.

19 MR. PENNOYER: Opposed? (Pause) So, that is the will
20 of the council and I guess we'll try out new ground and see what
21 happens when we do something -- we're going to have to have some
22 people deal with the NEPA question now soon and come back to us
23 as to whether it's a requirement. Dr. Gibbons.

24 DR. GIBBONS: Yes, you also have to determine a lead
25 agency on this one to get the money through -- out of the court.

26 MR. PENNOYER: Interior?

1 MR. COLE: How about NOAA?

2 MR. PENNOYER: I'd never have to chair another meeting

3 of this body.

4 MR. GATES: Since NOAA's got the answer to the NEPA

5 thing, they should do it.

6 MR. COLE: That's what I thought.

7 MR. PENNOYER: All right.

8 MR. GATES: Because I've never made that rendition (ph)

9 before.

10 MR. PENNOYER: All right. We'll give it a shot.

11 MR. BARTON: Why does it need to be a federal agency

12 though? Why can it not be a state agency?

13 MR. PENNOYER: It's got to be signed off by a federal

14 agency.

15 MR. BARTON: The NEPA compliance does, but not the

16 actual money transfer.

17 MR. PENNOYER: But the NEPA part of it is federal. Now,

18 the lead agency, are we talking about for NEPA or are you talking

19 about for the whole process?

20 DR. GIBBONS: Both.

21 UNIDENTIFIED SPEAKER: Both.

22 MR. COLE: John Sandorese.

23 MR. BARTON: As far as the transfer? And then the NEPA

24 -- I'd suggest if we could, we leave that NEPA lead open. There

25 might be some merit in shopping is all I'm...

26 MR. PENNOYER: Okay, why don't we do that. And we'll

1 have the federal legal folks get together and figure it out.

2 Okay. Action taken. Anything else? Mark Brodersen.

3 MR. BRODERSEN: I hate to even bring this up, but we're
4 attempting to do a court request here for the '93 money. Do we
5 want to request this particular chunk of money in this court
6 request or do we want to wait until for the next court request?

7 MR. COLE: Let's get the money. Better in our bank
8 than in the federal court.

9 MR. BRODERSEN: And so we should put DEC as the agency
10 receiving the money?

11 MR. SANDOR: Why not?

12 MR. BRODERSEN: Why not? As long as you said it, I
13 wasn't going to.

14 MR.. PENNOYER: I guess I don't understand strategically
15 what the difference would be whether we put it in this one or
16 wait for the next one. We've approved it. I understand there's
17 a timing thing, depending on whether we go forward but I'm not
18 clear where we are in the process of final approval of the '93
19 package that we're sending to the court and what these additions
20 might continue -- where is it in the process and what do
21 additions do to it?

22 MR. BRODERSEN: Well, actually, I had one that I was
23 going to try and get everybody to sign today, but since you've
24 added dollars to it today, I'm going to try and revise it tonight
25 and then truck it around for signatures in the next couple of
26 days so we can get the thing filed. But I wanted to find out for

1 sure that it was the will of the council to go ahead and include
2 this one in it or wait for the next one. What I heard is put
3 this one in it and give it to DEC.

4 MR. PENNOYER: There's no strategic difference in terms
5 of getting this done except for the one-day delay of you trucking
6 it around to get signatures?

7 MR. BRODERSEN: In my mind, it's better to do fewer
8 court requests than more but I did want to make sure that that
9 was the will of the group to do this prior to having NEPA all
10 resolved and everything. If it isn't resolved, we just turn it
11 back to the...

12 MR. PENNOYER: Trucking around for signature. Is
13 everybody agreed at this stage of our life history we can sign
14 that?

15 MR. BRODERSEN: We have sign-off except that Mr. Gates
16 may or may not have authority to do so. I haven't heard that yet
17 but everybody agrees to the actual resolution itself at this
18 point.

19 MR. GATES: I've got it.

20 MR. BRODERSEN: You have it, okay?

21 MR. GATES: I've got authority. I just haven't had
22 approval to do it.

23 MR. BRODERSEN: Well...

24 MR. PENNOYER: We'll pass on that one.

25 MR. BRODERSEN: But we're close.

26 MR. PENNOYER: Does anybody object to including the

1 million and a half in the current request? (Pause) Okay. What
2 else? Anything else on this?

3 MR. BRODERSEN: No, just wanted to make that clarified.

4 DR. GIBBONS: Just a point of clarification. We're also
5 going to put the other projects in the request also.

6 MR. BRODERSEN: The ones that you've just approved
7 today.

8 MR. PENNOYER: Yes. I assume that would be okay with
9 everybody?

10 (General positive inaudible agreement.)

11 MR. PENNOYER: Okay. Can we pass on now from '93 to...

12 MR. SELBY: Mr. Chairman, the SITC project. That
13 can be very brief. We had originally come today with the
14 intention of saying we could wait until '94 but a new wrinkle
15 has shown up and what I'd like to request would be authorization
16 for \$100,000.00 for the space needs, bubble diagram, pre-
17 architectural work. The reason for that is the \$100,000.00
18 that we got appropriated through Congress through NOAA to do
19 what -- and this thing has been a joint University of
20 Alaska/NOAA design from the get-go. However, there's now a
21 legal question has been raised about whether or not you can use
22 that federal money to do the design work for the state portion
23 of the building. And for that reason, we would request
24 \$100,000.00 to match up with the \$100,000.00 that's been
25 appropriated by Congress to get the bubble diagram and the
26 architectural work done.

1 MR. COLE: I move we continue with this until -- are we
2 prepared to deal with that? I don't think there's much sense
3 (indiscernible - cough) to deal with that right now. Can we just
4 defer it to the adjourned meeting?

5 MR. PENNOYER: Defer it to the next version of the
6 recessed meeting?

7 MR. COLE: Yes.

8 MR. PENNOYER: I think we still have some discussion to
9 do as to how it relates to the spill and other things that we
10 haven't actually undertaken so, I think we're in a different
11 stage in that than we are on the archeological museum. Any
12 further items on the '93?

13 MR. SANDOR: Yeah, Mr. Chairman, and this is a
14 confession, I guess, because I made an error which may be
15 instructive to everyone. I had asked that Mark Brodersen add to
16 the agenda this proposed in situ burn test project and that was
17 added to the agenda and would require action to -- in fact,
18 today; decision before the 1st of April. I'm advised by really
19 excellent legal counsel that this does not meet the linkage
20 requirements for the Exxon Valdez civil settlement funds so I
21 withdraw that...

22 MR. COLE: Mr. Chairman.

23 MR. PENNOYER: We have one other item on '93 that
24 was...

25 MR. COLE: On that particular one, could we just defer
26 that until the next ten days to take, like I say, the proverbial

1 hard look at that issue? Would that be acceptable?

2 MR. SANDOR: Okay.

3 MR. PENNOYER: In situ burn is deferred.

4 MR. COLE: We will take a hard legal look at it.

5 MR. PENNOYER: We have one more item under '93 and that
6 is the Prince William Sound Recreation Proposal. Does somebody
7 care to present that to us?

8 (Off Record: 5:00 p.m.)

9 (On Record: 5:00 p.m.)

10 MR. PENNOYER: Okay, Prince William Sound Recreation
11 Proposal. Whose is that and Dr. Gibbons, are you going to
12 present to that to us or tell me where it is or...

13 DR. GIBBONS: No, that's a joint state/federal project.
14 I think either Ken Rice or Mark Brodersen.

15 MR. PENNOYER: Okay, Mark? Ken? Ken, please.

16 MR. RICE: Mr. Chairman, we were directed by several
17 members of the Trustee Council actually to take a look at how to
18 address recreation needs for Prince William Sound as it relates
19 to restoring the services that were lost as a result of the oil
20 spill. And we've given you a proposal entitled "Prince William
21 Sound Recreation." Basically, this project would be a precursor
22 to implementing the restoration plan. Its main objectives would
23 be to develop...

24 MR. PENNOYER: Ken, I'm sorry. Do I know where that is?

25 MR. RICE: It's several pages back on the package that
26 has the agenda on it. At least, it is in my package.

1 MR. PENNOYER: Okay. Does everybody -- anybody have
2 it?

3 MR. RICE: A memo dated February 3.

4 MR. PENNOYER: Okay.

5 MR. RICE: The main objective of this project would be
6 to work with the various agencies and private concerns within
7 Prince William Sound, user groups, and develop consensus for
8 implementing recreation projects within Prince William Sound.
9 This year's work would not be direct implementation but it would
10 be coming back to the Trustee Council with developed project
11 proposals for '94. In other words, they would be well thought
12 out. They would have consensus by the user groups as being
13 appropriate implementation projects for the recreation resources.

14 MR. PENNOYER: The total of your project proposal is
15 71,000. 42.7 to U.S. Forest Service; 29.3 to ADNR and this is all
16 within Prince William Sound?

17 MR. RICE: That's correct. It's pretty much -- it is
18 restricted to Prince William Sound. The experts that would be
19 working on this have local knowledge and the contacts within the
20 local communities to do that. If we wanted to do that for other
21 areas, we'd probably have to set up other groups to do that.

22 MR. PENNOYER: Trustee Council, discussion, comment,
23 motions?

24 MR. COLE; Motion to approve.

25 MR. GATES: Question. Why is this time critical for
26 this year?

1 MR. RICE: Mr. Chairman, we were asked to develop this
2 by the Trustee Council. It's time critical in that if we want to
3 get into an implementation for the resources that were injured
4 that we've essentially 'til now, done nothing for them that we
5 need to have this work completed in order to move forward once
6 the restoration plan is in place. Otherwise, we'll be much
7 farther down the road in order to have that consensus amongst the
8 user groups with the various landowners and have something in
9 place.

10 MR. PENNOYER: I heard no second on the motion. Do I
11 have a second?

12 MR. ROSIER: Second.

13 MR. PENNOYER: Further discussion?

14 MR. GATES: I'm not clear yet how this ties in with the
15 restoration plan.

16 MR. RICE: The restoration plan will give some broad
17 general guidance on how to restore the resources and services.
18 This would take the opportunities that exist within Prince
19 William Sound and come back to the Trustee Council with specific,
20 implementable proposals.

21 MR. COLE: The opportunities for what?

22 MR. RICE: For dealing with the recreation resource or
23 service, whatever you'd like to call it.

24 MR. COLE: Mr. Chairman.

25 MR. PENNOYER: Mr. Cole.

26 MR. COLE: I want to say that I've spoken personally

1 with the governor about this type of project in Prince William
2 Sound and he strongly favors the use of Exxon Valdez Trustee
3 Council funds for the development of recreational activities in
4 the Sound. I, personally, am of that view and I think we should
5 at this time commit these funds for this proposed project.

6 MR. GATES: Mr. Chairman.

7 MR. PENNOYER: Mr. Gates.

8 MR. GATES: Why is it only Prince William Sound? Why
9 did not it include the complete spill area?

10 MR. RICE: Well, again the direction that the Trustee
11 Council gave us at the last meeting was to come back to the
12 council with a proposal for dealing with recreation within Prince
13 William Sound. We realize that that could be expanded to include
14 the rest of the spill area. It's just that the people that were
15 identified within this project would not be able to do that. We
16 would have to bring other resources to bear to deal with Kodiak
17 or the Outer Kenai Peninsula Coast, that sort of area. It could
18 be that there

19 -- it could either be an expanded project to do that or it could
20 be a separate project. I would think it would make more sense to
21 have a separate project for the different areas. They're unique
22 enough that the expertise within those areas would be able to
23 come to bear rather than be diluted by dealing with areas outside
24 of their local knowledge.

25 MR. PENNOYER: Mr. Gates.

26 MR. GATES: Would it be practical to have a two-part

1 proposal? One for Prince William Sound and one for the Gulf of
2 Alaska?

3 MR. RICE: Certainly. It could be done.

4 MR. SANDOR: Yes, Mr. Chairman. In fact, that very
5 proposal has been considered in the process as again, as Ken
6 pointed out, either as an entire oil spill or as a segmented
7 group. The conclusion was that we ought to first deal with this
8 component. I wanted to find out on page two of that -- actually
9 the third page but the page that identifies the objectives. Is
10 that in the identification, that is for the funds that are being
11 proposed for expenditure here is to assemble and evaluate the
12 current information, coordinate the opportunities for
13 recreational development, and then the point I wanted to make is
14 to develop the integrated recreation project proposals for the
15 1994 period and beyond. And then the Task 2 objectives identify
16 the way in which the state and federal agencies might work
17 together to...

18 MR. GATES: Has this had a -- oh, excuse me. Mr.
19 Chair?

20 MR. PENNOYER: Mr. Gates.

21 MR. GATES: Has this had any public review or input?

22 MS. LISOWSKI: No.

23 MR. RICE: I don't think this has gone to the Public
24 Advisory Group.

25 MS. LISOWSKI: A member of the public, no.

26 MR. COLE: Well, Mr. Chairman, isn't this just

1 preliminary anyway? It's just mostly cataloguing information and
2 assembling some data?

3 MR. PENNOYER: Well, doesn't this involve funding to go
4 to the public as part of it? I mean it does involve "Assemble
5 and evaluate public comment on recreation opportunities on Prince
6 William Sound" so I think it includes that, doesn't it?

7 MR. RICE: Yes. The question was has this project
8 proposal gone out to the public for Public Advisory Group or
9 general public review. I think the answer is no. The direction
10 came to the Restoration Team, I think, subsequent to the last
11 Public Advisory Group meeting so we haven't had that opportunity,
12 but as has been pointed out, the whole objective of this project
13 is to go to the community people and work with them on
14 identifying the opportunities for doing recreation activities.

15 MR. COLE: Mr. Chairman, the whole project is to go to
16 the public, isn't it?

17 MR. RICE: That's the main thrust, yes. That's the
18 main thrust of the project.

19 MR. PENNOYER: Further question and comment? I had a
20 motion and a second, I believe. Are you ready for the question?
21 Is there any objection to adopting this project with the
22 understanding we'll probably want to expand on it, depending on
23 its success? (Pause) Okay, does that take care of '93?

24 DR. GIBBONS: Yes, it does.

25 MR. PENNOYER: That's wonderful. Okay. We're down to
26 -- you want to drop back and pick up the PAG intent, PAG

1 guidelines now? Hopefully, that's a relatively short item and
2 then go to '94 and see where we can get on that. Although you
3 might be thinking of when we want to do our next meeting before
4 we get too much further down the pike and lose people. Do we
5 have a draft that was passed out by Mr. Barton as a modification
6 to the operational guidelines? Was this intended to modify the
7 operational guidelines or simply be an advisory memo?

8 MR. BARTON: Mr. Sandor, I believe, passed this out at
9 the earlier session of our recessed meeting, but it was my
10 understanding -- or it would be my desire to see this
11 incorporated into the operating guidelines for the PAG. That is,
12 the package that the PAG has put together we had in our packet
13 here their resolution number one, I think it is. I think it fits
14 very nicely in the introduction on page one. We go "Purpose,"
15 "Authority." "Background." I would suggest inserting "Intent"
16 just prior to "Background" but I do think we should not lose
17 sight of the rest of the discussion we had this morning and I
18 don't know whether we want to memorialize that in black and white
19 and incorporate it into the charter or just how we need to handle
20 that, but we shouldn't lose sight of that.

21 MR. COLE: Mr. Chairman.

22 MR. PENNOYER: Mr. Cole.

23 MR. COLE: With respect to the discussion on this
24 subject this morning, I propose that the portion of the
25 typewritten transcript dealing with that subject be annexed to
26 the Operating Guidelines as an appendix.

1 MR. PENNOYER: Maybe with some cleaning up? I'm not
2 sure how erudite that part of the conservation was. Basically,
3 do we want perhaps the RT acting administrative director to go
4 through the transcript and try and summarize it a little bit?

5 MR. COLE: No.

6 MR. PENNOYER: Just want the whole transcript?

7 MR. COLE: Yes.

8 MR. PENNOYER: Okay.

9 MR. COLE: I don't think there was anything there that
10 was inappropriate.

11 MR. PENNOYER: I don't think it was inappropriate. Just
12 might be a little hard to read in places. Okay, any further
13 discussion of that -- does that clarify, Mr. Barton, what you
14 were concerned about then?

15 MR. BARTON: Yes, it does, Mr. Chairman.

16 MR. PENNOYER: Okay, dealing then with the part of the
17 operational guidelines that are in the intent package that
18 Commissioner Sandor passed out at the last meeting, was re-passed
19 out again today. Are there comments on that particular verbiage?

20 MR. GATES: I've got a point.

21 MR. PENNOYER: Mr. Gates.

22 MR. GATES: I would suggest that the last paragraph
23 where it says "Approve annual budget" line. "The PAG to meet
24 prior to each Trustee Council" I'd add "as needed" there. Based
25 on Mr. Cole's suggestion that we meet every ten days, I think
26 that it won't be necessary for them to meet -- I think they're

1 indicating they'll meet at least quarterly and (indiscernible -
2 unclear) on an as needed basis and I think that would be
3 consistent.

4 MR. PENNOYER: Any problems with that suggestion?

5 MR. SANDOR: Mr. Chairman, I move approval of this
6 proposed amendments suggested by Mr. Gates.

7 MR. PENNOYER: Do I have a second?

8 MR. BARTON: Second.

9 MR. PENNOYER: It's been moved and seconded we approve
10 this as amended by Mr. Gates. Is there any further discussion?
11 Are there any objections as to including this in the operational
12 guidelines? Hearing none, we'll do it.

13 DR. GIBBONS: Mr. Chair, I didn't hear the motion.

14 MR. PENNOYER: The motion was just to approve this
15 intent package to go in the operational guidelines with the one
16 amendment suggested by Mr. Gates, adding the words, "as needed"
17 after Trustee Council meeting in the third line of the last
18 paragraph.

19 DR. GIBBONS: Thank you.

20 MR. BARTON: Mr. Chairman, did we get a formal motion
21 on Mr. Cole's request on the appendix material? If not, I so
22 move.

23 MR. SANDOR: Second.

24 MR. PENNOYER: Any objection? Thank you. The next item
25 is the review of the '94 Work Plan Assumptions and Framework.
26 But before we do that, can I have some feeling for when we're

1 going...

2 MR. COLE: Mr. Mutter has...

3 MR. PENNOYER: Doug.

4 MR. MUTTER: Mr. Chairman, I had a question. Did the
5 Trustee Council approve the PAG operating guidelines then with
6 these amendments?

7 MR. PENNOYER: Yes. Although that may not have been
8 formally stated.

9 MR. BARTON: I so move.

10 MR. PENNOYER: Do I have a second? No second. I guess
11 we didn't.

12 UNIDENTIFIED SPEAKER: Second.

13 MR. PENNOYER: Any objection to approving the
14 guidelines with this addition? (Pause) Hearing none, they have
15 been approved. Before we go to the '94 work plan, can I get some
16 feeling for timing because I don't know if we're going to finish
17 this discussion. I want to take a lot of time on that. The
18 timing of the next meeting. We're recessing this thing and
19 coming back in a week, ten days, Friday? I mean what are our
20 plans? Apparently the next two weeks are a problem. What about
21 the week after that, whatever that is?

22 MR. BARTON: The next two weeks are a problem for me.

23 MR. PENNOYER: What about the last week in the month?

24 MR. BARTON: The last week is fine. Are we doing this
25 by phone or eye to eye?

26 MR. PENNOYER: Well, we'll see if we get through the

1 '94 work plan and then we'll have everything else that's on that
2 list and probably get to the '94 work plan too. Mr. Brodersen.

3 MR. BRODERSEN: I would hope that you don't try to get
4 through the '94 work plan in the time that's remaining
5 considering the criticalness of it. And I need to go back and
6 perhaps clarify a little bit what we were saying earlier that the
7 importance of this thing is such that it's probably better to let
8 our timing in August/September slip a little bit into the next
9 fiscal year than it is to make hasty decisions now, that if we
10 can't do it today which we can't and we can't do it for two
11 weeks, fine. I think you all need to get back together, face to
12 face and really have a good discussion so that we, as your staff,
13 know where you want to go with this to try and give you the best
14 product we can for you.

15 MR. PENNOYER: Thank you.

16 MR. BRODERSEN: And all that really means is that we
17 have it ready to go the 1st of November rather than the 1st of
18 October or something like that. Yes, it's nice to be on time but
19 better we have a good product.

20 MR. PENNOYER: Mr. Barton.

21 MR. BARTON: Somebody refresh my memory as to why
22 August 31st was so critical.

23 MR. BRODERSEN: In theory, funding is supposed to start
24 for this project in relation to the federal fiscal year. It just
25 means that you may have to do an interim approval for a month or
26 so or something like that for that period to give us authority to

1 exist.

2 MR. PENNOYER: Which is not a field (ph) theory in any
3 way so it should not be a major expenditure.

4 MR. BRODERSEN: Right.

5 MR. PENNOYER: Is that acceptable? Should we discuss a
6 little bit on the '94 work plan just to give us some ideas...

7 MR. BRODERSEN: It doesn't hurt to start.

8 MR. PENNOYER: ...before the next meeting? Okay. So,
9 is the last week in the month an appropriate one to plan a
10 Trustee Council meeting?

11 MR. COLE: Well, what date?

12 MR. BARTON: The 29th through the...

13 MR. PENNOYER: Pick one.

14 MR. BARTON: ...2nd.

15 MR. PENNOYER: Oh, it's my anniversary. (Indiscernible
16 - unclear)

17 MR. COLE: Are you talking about the 29th?

18 MR. PENNOYER: Yes.

19 MR. BARTON; Through the 2nd.

20 MR. PENNOYER: Oh, stop that.

21 (Side conversation)

22 MR. PENNOYER: If it takes five days, it's going to
23 be....

24 MR. BARTON: It's taken us four so far.

25 MR. PENNOYER: This is the same meeting, isn't it?

26 UNIDENTIFIED SPEAKER: Yes.

1 MR. PENNOYER: March 29th. What's March 29th?
2 MR. BARTON: Why don't we do it on Tuesday?
3 MR. PENNOYER: Why don't we do it on the 30th? Can
4 everybody do it on the 30th?
5 MR. COLE: Well, I have a commitment, I think, here.
6 MR. PENNOYER: Can you do it on the 31st?
7 MR. COLE: Could do it on the 31st.
8 MR. PENNOYER: How about the 29th?
9 MR. COLE: What about the 26th? Friday?
10 MR. BARTON: I'm not available.
11 MR. PENNOYER: May not be available. I'm not going to
12 be there.
13 MR. BARTON: You can go right ahead. I'm not going to
14 be heartbroken.
15 MR. COLE: Why did we veto the 29th?
16 MR. PENNOYER: I'm not sure. Mike didn't want to...
17 MR. COLE: Let's do it on the 29th.
18 MR. PENNOYER: Okay, let's do it on the 29th. March
19 29th, our next meeting, okay.
20 MR. BRODERSEN: 8:30 or do you wish to start at 10:00?
21 MR. PENNOYER: 8:30 or 10:00? Do you want to fly up the
22 night beforehand...
23 DR. GIBBONS: The night before or the morning?
24 MR. PENNOYER: That's the question. I think it's going
25 to take us all day.
26 MR. COLE: Oh, let's start at 10:00. It might be the

1 last day of skiing for the year.

2 MR. BRODERSEN: Did we hear 10:00?

3 MR. PENNOYER: The motion is 10 o'clock. Is that okay
4 with everybody and then if it goes late, it goes late and we'll
5 just...

6 MR. BRODERSEN: 10:00 to midnight. Is that the
7 schedule then?

8 MR. PENNOYER: That's probably what it looks like.

9 MR. BARTON: I'd rather do it that way than the other.

10 MR. PENNOYER: Okay. 10 o'clock on the 29th will be the
11 next continuation of this non-stop meeting.

12 Okay, let's go to the '94 work plan, I guess, and at
13 least give the RT some advice on where we think the problems are
14 so that when we do meet, the meeting may be more productive.
15 Can you clarify for us what you want out of the '94 work plan at
16 this time, considering the generalities in the way these projects
17 have been presented? I mean project areas have been presented.

18 DR. GIBBONS: Mr. Chair, can I -- I've got perhaps an
19 alternate proposal. I mentioned that the Chugach Resource
20 Management Agency has been meeting with us and has been sitting
21 patiently in the back and I'm not quite sure what I can -- you
22 know, I can give you an overview in ten minutes or something on
23 the assumptions and proposed schedule for the '94 but, you know,
24 I can do that but I think it's also important that we hear from
25 them on a proposal that they submitted to us on a centralized
26 logistics proposal. It's up to the Trustee Council but that's

1 just a thought.

2 MR. PENNOYER: Well, we've got a half an hour. We can
3 use it any way we want to, for the best purposes, I guess. I'd
4 assumed you wanted some '94 advice before we showed up on March
5 29th but if that's not necessary, then we'll just go on with
6 something else.

7 DR. GIBBONS: I can still touch on it briefly, but I
8 don't think it's...

9 MR. PENNOYER: Well, if you think we've got to do the
10 Chugach Management proposal today, then maybe we ought to go
11 ahead and do that. Anybody have an objection to that? Okay.

12 MR. TILLERY: To make sure everybody knows. March 29th
13 is a state holiday. It's Seward's Day.

14 MR. COLE: Oh.

15 MR. PENNOYER: Martin Luther King was a federal holiday
16 the last time around too.

17 MR. COLE: That's all the better. Let's do it on the
18 29th.

19 MR. SANDOR: Excellent.

20 MR. PENNOYER: Having dispensed with that one more
21 time, Dr. Gibbons, do you want to introduce this topic?

22 DR. GIBBONS: Sure. The Chugach Resource Management
23 Agency has presented several alternatives or several options --
24 proposals to the Trustee Council and what I laid this morning in
25 front of you is another -- it's a modification of the proposal
26 that they've given you on support to local hire in the Prince

1 William Sound and Kenai area. And so it's an evolutionary
2 proposal. It's dated March 3rd and it's by the Pacific Rim
3 Village Corporation. And it's a memorandum from Charles Totemoff
4 to the Restoration Team regarding an unsolicited proposal for
5 administrative services. You'll probably find it on the bottom of
6 your stack. I laid it in there, like I said, this morning. In
7 your package was a former Chugach Resource Management Agency that
8 I sent out earlier and then I just recently got this one.

9 MR. PENNOYER: Okay, go ahead.

10 DR. GIBBONS: At a recent meeting on the 4th of March,
11 they went over the package that you have in front of you and what
12 I would like to bring up today is the one project titled "Master
13 Vessel Procurement and Management Contract." What they propose
14 to do with this proposal is to provide logistics support to the
15 projects, 1993 or 1994, field projects by providing boat service
16 -- centralized boat service for the projects. The statement is
17 that they can save money. We're all in favor of that process.
18 The Restoration Team had long conversations with that,
19 considering that if we can save money, by all means, let's do it.
20 And after much discussion with the Restoration Team and review
21 somewhat where the RFPs are for boat contracts presently for the
22 '93. Some of them are out on the street already; some of them
23 are ready go get there. The Restoration Team's recommendation
24 concerning the Pacific Rim Village Corporation proposal for a
25 centralized logistic project is that that group, Pacific Rim
26 Village Corporation, work very closely with the Restoration Team

1 and myself to look at the 1993 detailed study plans, the RFPs for
2 boat contracts and the costs associated with those and any other
3 associated documents that we've developed here within the short
4 term and determine with us if there is a potential cost savings
5 there. We've been trying to do this with the Restoration Team,
6 formerly the management team, for years to provide combined
7 logistics, boat -- you know, locations and between agencies and
8 we're open to have it looked at again.

9 Then our thoughts are if these potential costs after
10 this analysis show that we can save money that we perhaps use
11 this methodology in the '94 work plan to reduce logistics cost.
12 If there's any specific comments concerning their proposal, I see
13 Charles Totemoff and Tom Fink in the back and I'm sure they'll be
14 glad to discuss these.

15 MR. PENNOYER: Dr. Gibbons, the total amount that we
16 would put into this would be half a million dollars?

17 DR. GIBBONS: That's correct. That half a million to
18 \$425,000.00 would come directly out of the projects for
19 logistics that are in the project descriptions and then the
20 \$75,000.00 would be a general administration cost.

21 MR. PENNOYER: So, I'm sorry then. What we would be
22 asked to provide here would be \$75,000.00 and the other part
23 would be just up to whatever negotiations were possible,
24 depending on where you were in the contracts on these various
25 projects?

26 DR. GIBBONS: Yes. Right now, the whole 75 wouldn't be

1 additional. It's hard to determine how much additional we would
2 be, but under the financial operating procedures, presently, the
3 agencies are allowed to take seven percent general administration
4 costs, up to \$250,000.00 then two percent over that. And I would
5 assume that these are spread out between a bunch of agencies so
6 there might be \$25,000.00 also coming over from the general
7 administration costs into the project. So, roughly an additional
8 \$50,000.00.

9 MR. PENNOYER: So, the request for approval at this
10 point is \$50,000.00?

11 DR. GIBBONS: No. What the Restoration Team is
12 recommending that they work with us, to show we can save money by
13 this proposal. And not just give them money at this time for,
14 you know....

15 MR. PENNOYER: I know what your recommendation is, but
16 the recommendation from the group is \$55,000.00 to come from --
17 be appropriated by us at this time?

18 DR. GIBBONS: Well, yeah and some thought on their part
19 -- I don't want to speak for them but they feel that they can
20 save money from the boat contract to make up that \$50,000.00 but
21 you know, that's some of the discussions.

22 MR. PENNOYER: Charles or Tom, do you want to say
23 something?

24 MR. TOTEMOFF: I'll defer to Tom.

25 MR. FINK: I looked at a number of contracting
26 opportunities for these four village corporations, my clients.

1 The last one I started to look at was boats, vessels, larger
2 ones, 40 feet up to 70 feet, not so much with the idea that we
3 would contract but we would help the shareholders bid some of
4 these contracts. Well, what happened was I talked with the
5 principal investigators in seven of the projects to get some feel
6 for what was going on and I laid this out on a Gantt (ph) chart,
7 you know, time and various projects. And I got looking at this
8 and I said, my, they go out and they, in general, put a contract
9 out for each individual vessel. So, you have numerous vessel
10 contracts out -- at least seven vessels operating in July. And
11 then I said to myself, how much coordination goes on between
12 contracting all these vessels to try to contracting one vessel to
13 do multiple tasks and so forth. Well, I found out from Mark
14 Brodersen that Adak's done a little bit of that. One vessel for
15 multiple tasks and you get an economy of scale because you use
16 the vessel longer, you get a lower day rate. But then I said
17 what could they be spending on these seven projects? So, I
18 assumed the upper limit on the vessel rates and it was about a
19 half a million dollars for just those seven projects. And then
20 I said what this could be at the lowest possible amount. Well,
21 for a cheap vessel rate, about \$1500.00 a day, it came out to
22 about \$280,000.00. So, there was some space in there for a
23 saving if you could coordinate all the contracting between all
24 the vessels. That's our proposal.

25 Now, here's the problem, though, at this point. I
26 don't have enough data from talking to PIs over the telephone on

1 a mere seven projects to be able to really calculate and show
2 that the saving is there. I got enough data to be convinced it's
3 sure worth pursuing. In order to implement this thing this year
4 and this is what the Restoration Team didn't like, we'd have to
5 go into very deep discussions between someone appointed and
6 accountable by the council that could get all the vessel data of
7 what's going to be needed this year and lay that out on a Gantt
8 chart and estimate the cost if you contract individually or if
9 you had a master contracting plan. All that has to be put
10 together by April 1 in order to get into a master contracting
11 plan for this year. That would be very ambitious.

12 On the other hand, the Pacific Rim Villages Coalition
13 would be willing to put some manpower into that if an appropriate
14 person were appointed with authority to try to work the problem
15 by April 1. The idea at that point is if there was a potential
16 saving, enter into a letter of intent to contract and have a
17 master vessel contract through Pacific Rim Villages Corporation.
18 Now, that would be very ambitious to try to do that by April 1st
19 but I've laid out a methodology and the proposal on how it might
20 be done.

21 MR. PENNOYER: Do the vessels available fit the general
22 needs that are outlined in the projects? There are facilities
23 and...

24 MR. FINK: There are vessels available but the reason
25 April 1 is a critical date is at that point, vessels start to get
26 committed for the summer to various projects. Some of them will

1 be -- the RFPs that are already out on the street for the
2 trustees. In other words, to implement a saving like this, we'd
3 first have to be able to fully convince ourselves the saving is
4 there by April 1; then we'd have to get into a contractual
5 arrangement to actually implement a master vessel contract.

6 MR. SANDOR: How many vessels are involved?

7 MR. FINK: Well, I identified in those seven projects I
8 was looking at that there would be seven vessels operating
9 simultaneously in July. There has to be at least that many
10 available for those seven projects. There's other projects, I'm
11 sure, use vessels. I haven't been able to identify exactly what
12 they are and when they use them.

13 MR. SANDOR: Is a sole contract issue involved here?

14 MR. FINK: Of course, it is. When you get into the
15 problem -- you get into the problem, if we identify a saving, it
16 would be available by April 1, we'd have to go to work very
17 quickly to make commitments with vessels based on there is a
18 contract and a commitment from the trustees. And we've looked
19 into that. That's outlined in our proposal. There's several
20 ways that might be done. One of them, probably the best way, we
21 think, would be there is a provision in the state procurement
22 regulations about if something must be contracted rapidly, it can
23 be sole source, now, in order to implement this project. And I'm
24 sorry to bring it to you this late but the vessels were the last
25 thing we were looking at on our list, you see. And then it
26 suddenly sprang in front of us. There's potential saving here.

1 Potential opportunity.

2 MR. PENNOYER: Again, what is required to do this
3 considering the lateness of the season and everything? I mean
4 what you want from the Trustee Council is \$50,000.00 up front?
5 Is that what...

6 MR. FINK: Well, we have 75,000 in the proposal, based
7 upon -- remember we won't be able to really accurately estimate
8 the total cost of this until April 1, if we get into this. We
9 estimated 75,000, 15 percent, general administrative to execute
10 the project and that would be expanded after April 1 into the
11 summer.

12 MR. COLE: Mr. Chairman.

13 MR. PENNOYER: Mr. Cole.

14 MR. COLE: What are you asking for at this moment?

15 MR. FINK: Would be a commitment to, one, appoint
16 someone responsible to get together the vessel information needs
17 for the trustees, get into deep discussions with Chuck here and
18 some other people that know a great deal about boats in PRVC and
19 see if we can truly demonstrate there's a saving by April 1st.
20 That's one.

21 MR. COLE: Excuse me. Go ahead.

22 MR. FINK: And then the other thing the same thing
23 would have to be happening simultaneously, Mr. Cole, is the
24 attorneys would have to be sure that there is a justification
25 for sole sourcing and get done with that by April 1st such that
26 we could sign a letter of intent at that point.

1 This thing could derail for one of two reasons -- one
2 of three reasons. One reason, it's not possible to sole source
3 it, although we've given some suggested mechanisms. Another,
4 there isn't a saving because you don't know until you work the
5 problem, the mathematics, the arithmetic. The third one is maybe
6 there's a savings, but by the time we get to April 1, we just
7 didn't get there. In other words, we couldn't get it all put
8 together, all the information. That's the risk we'd be willing
9 to undertake and put some people into it to try to do that.

10 MR. GATES: What's your back-up proposal?

11 MR. FINK: Back-up?

12 MR. GATES: If you can't do it by April 1?

13 MR. FINK: Then you would continue on contracting just
14 as you're doing now.

15 DR. GIBBONS: No, Mr. Chairman, there's another option,
16 working it into the '94 and doing a more detailed analysis in
17 '93.

18 MR. GATES: That's what I'm after.

19 MR. FINK: Okay, yeah. In other words, you could
20 continue on operating as you are now in '93. There's no impact
21 that way and this suggestion of working it in '93 -- here's where
22 I'm a little confused on what the proposal of the Restoration
23 Team is in modification. That means then that the council
24 would try to contract with PRVC to do this in '94 or just to
25 study it mutually and see if it's practical.

26 DR. GIBBONS: That's up to the Trustee Council.

1 There's you know, there's two options there. It could be a
2 proposal in the '94, you know, for public, or it could be a sole
3 source for PRVC.

4 MR. PENNOYER: Mr. Cole.

5 MR. COLE: Would this impact on our scheduled
6 commitment for boat charters for the '93 season? I guess I would
7 say would it impact adversely? Do we have proposals out there
8 which we should act upon or commit to before April 1?

9 MR. FINK: Yes, I think you probably do and some of
10 those would drop off the big picture and so you have a situation
11 where some of them would be contracted individually. The bulk of
12 them, we would hope, would be contracted through the master
13 contractor.

14 MR. PENNOYER: Let me get this straight again. What
15 you're asking for now is simply to have somebody work with you to
16 identify these opportunities and no money at this point, nothing
17 else and you'd report back to the March 29th meeting and tell us
18 whether it was even feasible. Is that correct?

19 MR. COLE: Or before.

20 MR. FINK: Or before. By you inserting the March 29th
21 meeting when you did, that makes that very opportune.

22 MR. COLE: Mr. Chairman.

23 MR. PENNOYER: Mr. Cole.

24 MR. COLE: I would move that the Trustee Council
25 designate someone to be selected by the Restoration Team to work
26 with the Pacific Rim group to study whether any significant

1 savings can be achieved under their proposal.

2 MR. GATES: For '93.

3 MR. COLE: For '93 and implicitly reach a decision on
4 that subject before April 1.

5 MR. BARTON: Second and then I have a question. Why or
6 is it possible for us to -- the Restoration Team to provide the
7 necessary information and then your group develop it? I mean...

8 MR. FINK: It's going to be a two-way street, I'm sure
9 from the viewpoint of whoever is providing the information is
10 going to have to be able to get back and check with the agencies
11 on details and stuff. I don't think it's just you bring a pile
12 of information. I don't think it's that simple. I think we'd
13 have to work together to try to work the problem.

14 MR. BARTON: Mr. Chairman.

15 MR. PENNOYER: Mr. Barton.

16 MR. BARTON: Then I would ask the Restoration Team is,
17 you know, is that do-able? Do you all have that kind of
18 centralized information or does that rest out there with the
19 individual PI?

20 MR. PENNOYER: Dr. Gibbons.

21 DR. GIBBONS: I think Dr. Montague wanted to say
22 something.

23 DR. MONTAGUE: Thank you, Mr. Chairman. I'd like to
24 address that some. The kind of information they need is the real
25 meative (ph) of detail that appears in the detailed project
26 descriptions. Now, the problem here is as we've talked about, we

1 have all these late '92 reports. Everybody is working flat out
2 to finish those in many cases before they do their detailed
3 project descriptions. And what this is going to cause for all
4 those projects that need vessel logistics is to halt work on
5 finishing their '92 work and essentially write their detailed
6 project descriptions. Other undesirable aspects are that, I
7 think, some boats are already committed and we really don't have
8 a big -- I mean the program is barely big enough now to have a
9 centralized vessel logistic center and if two or three or four of
10 those drop off before we can get this together, then that's also
11 deleterious. And third, these investigators are responsible for
12 getting their projects done and getting their vessel logistics
13 and unless we can assure them now that we're going to take care
14 of it, then they have to be taking care of in the meantime.

15 MR. COLE: I'm sorry I missed it. Who has to be taken
16 care of in the meantime?

17 DR. MONTAGUE: The project leader meaning that they're
18 going to left to assume that the council is going to handle their
19 logistics, then they can kind of back out of the picture, but I
20 don't think we can promise that now.

21 MR. PENNOYER: Commissioner Rosier.

22 MR. ROSIER: Thank you, Mr. Chairman. Question. I want
23 to be sure I understand what we're doing here on this. Assuming
24 that there is a savings as of April 1 on this, then is your
25 proposal then one in which you would go out and you would
26 contract for all of the vessels or are you talking an open

1 contract? Are you talking a sole source contract?

2 MR. FINK: It would have to be a sole source to PRVC in
3 order to do this timely and then they would have to start...

4 MR. ROSIER: I see.

5 MR. FINK: ...getting commitments from various vessels.

6 MR. ROSIER: So, in other words, there would not be a
7 broad number of people that would, in fact, be eligible to, in
8 fact, bid on that contract as I understand it?

9 MR. FINK: The master vessel contract, no.

10 MR. ROSIER: Yeah, okay.

11 MR. FINK: Just because of the time problem.

12 MR. PENNOYER: We have a motion and a second. Any
13 further discussion? (Pause) If...

14 MR. SANDOR: What's the motion again, please?

15 MR. PENNOYER: The motion was to go ahead and appoint
16 somebody from the Restoration Team to work with this group to
17 decide as soon as possible if this is a feasible alternative and
18 savings could be achieved by going to this master vessel
19 contract. I guess that would include looking at the sole source
20 questions and that type of thing as well.

21 MR. COLE: Mr. Chairman, a substantial savings.

22 MR. PENNOYER: Substantial savings. Mr. Barton.

23 MR. BARTON: I'd like to ask the Restoration Team if
24 that's -- is that a real activity? I mean can you do that? Do
25 you have somebody in mind that can do that and is the data
26 available to do it with?

1 DR. GIBBONS: Our initial discussions was that it's not
2 do-able by April. We've got much on our plate. We've got people
3 working long hours and we thought it wasn't do-able but we
4 thought the idea had merit and therefore, our recommendation was
5 to use the detailed study plans as they come in and all the
6 information and look at it for incorporation into a '94.

7 MR. TOTEMOFF: Mr. Chairman?

8 MR. PENNOYER: Chuck.

9 MR. TOTEMOFF: At this point in time, we are not asking
10 for funds from the Trustee Council. What we're asking for is
11 somebody that's designated by the Trustee Council to work with us
12 on this.

13 MR. PENNOYER: I guess I understand but what I sort of
14 hear is maybe we're just going to put off the decision until a
15 couple of weeks from now. The decision may still be the same;
16 it's not feasible to do this year. It's going to go into the '94
17 and I guess I'm hearing that a lot of work to be done...

18 MR. FINK: On March 29, if we don't have all this
19 homework done, it's over with.

20 MR. PENNOYER: Ms. Bergmann.

21 MS. BERGMANN: Mr. Chair, I think to reiterate that --
22 first of all, I don't know who the Restoration Team would appoint
23 to do this. They would then have to work with individual PIs
24 because as we've already, I think, clearly established it's the
25 PIs who have that kind of level of information that they need.
26 We have two detailed study plans to date that have come in.

1 One's for the boat survey which has already been approved and a
2 boat's already been contracted and they're in the field. If you
3 did have that one person, the Trustee Council would have to say
4 at this meeting that that person would have to have the authority
5 to go to all of these PIs and say, "This is your top priority.
6 You stop everything else and get this information to us in the
7 next two weeks." If that person wouldn't have that kind of
8 authority from the Trustee Council, it wouldn't work. And I
9 think we're saying that there's some risk in doing that...

10 MR. PENNOYER: It sounds to me like we can do this, but
11 the process probably isn't going to work itself out, in this time
12 frame anyhow. And we definitely are interested in it and want
13 to see it organized and discussed and figured out for '94 but I
14 don't -- if we're just going to engage in what may be a fair
15 amount of work that's sort of practically a predetermined
16 outcome at this stage, then maybe that's not a productive thing
17 to do. We've had a motion and a second. Is there any interest
18 in pursuing this any further at this stage?

19 MR. COLE: I made the motion.

20 MR. PENNOYER: Okay, you made the motion so we will...

21 MR. COLE: Call for the question.

22 MR. PENNOYER: All those in favor say aye?

23 MR. COLE: Aye.

24 UNIDENTIFIED SPEAKER: Aye.

25 MR. PENNOYER: All opposed?

26 MR. GATES: No.

1 MR. PENNOYER: No.

2 MR. BARTON: Mr. Chairman, Mr. Chairman.

3 MR. PENNOYER: Didn't see who it was. Oh, Mr. Barton,
4 right over there.

5 MR. BARTON: I do think, though, the idea has merit and
6 should be pursued as the Restoration Team has outlined for '93
7 and then we really need to take a hard look at for '94. I need
8 to say that one of my discomforts with it is the sole sourcing
9 aspect and the ability to do that. I'm not sure lateness or
10 tardiness in the proponent coming forward with it is adequate
11 basis to declare it eligible for sole sourcing. So, I'm afraid
12 we'd go through all that work and then find out we couldn't sole
13 source it anyway.

14 MR. COLE: Mr. Chairman.

15 MR. BARTON: But I do think we ought to pursue it for
16 '94.

17 MR. PENNOYER: Mr. Cole. Then Mr. Rosier.

18 MR. COLE: Well, I just wanted to say. They -- this
19 was instrumental in my vote -- were prepared to take that legal
20 risk, you know, but we voted on it and I know the rules.

21 MR. PENNOYER: Mr. Rosier.

22 MR. ROSIER: Thank you, Mr. Chairman. Yeah, the sole
23 sourcing is really what concerned me about this at this point. I
24 mean there's a tremendous number of vessels that are involved in
25 the spill area and I think that a lot of those people, in view of
26 recent fishing seasons on various species, are hurting and to my

1 way of thinking, certainly those folks who'd have access to this
2 kind of an arrangement, I would hate to see us do this on a crash
3 program basis.

4 MR. PENNOYER: I guess also, folks, when we take a
5 risk, that still implies a lot of work that apparently might have
6 to be done. Recognizing that risk at the other end may obviate
7 the operation, so -- and work on the part of PIs and so forth.
8 So, I think we've all agreed this is a helpful proposal. It's
9 something we'd like to closely look at and we should make sure
10 that both the sole source questions and the others are answered
11 well ahead of the '94 season being finalized. Is there any
12 further discussion?

13 MR. BARTON: I think we also should pursue what the
14 Restoration Team has lined out with them in regards to the '93
15 season too. That was try to work on an individual basis to
16 utilize as much as possible.

17 MR. PENNOYER: Oh, yeah, certainly. I see people
18 putting their stuff away. We have a March 29th continuation of
19 this meeting again. We can continue this meeting through
20 Christmas if we work it right but I'd like to call for an
21 alternate chair if we do that. So, we're going to reconvene on
22 March 29th at 10:00 a.m. Is there any further business at this
23 moment? Dr. Gibbons, anything vital we've got to do right this
24 second?

25 DR. GIBBONS: No. Just to let you know that also in
26 your packet, there is a 1992 annual financial report that was

1 passed out this morning.

2 MS. RUTHERFORD: Mr. Chair?

3 MR. PENNOYER: Yes.

4 MS. RUTHERFORD: There's one other thing. Jim Wolfe
5 just caught me as he was heading out the door to the plane and
6 he said that you, Mike, might have a copy of assumptions, -- some
7 federal assumptions -- some alternatives to federal assumptions
8 that we may want to have as the Restoration Team to consider
9 regarding the '94 work plan during this -- between now and the
10 29th?

11 MR. PENNOYER: Why don't -- if we have an example of
12 that, why don't we mail it around to all the RT and Trustee
13 Council members to take a look at before we get into discussion.
14 Would that be appropriate?

15 MR. BARTON: Mr. Gates.

16 MR. GATES: I've got some copies here I can leave with
17 you. I'm not sure I've got enough for everybody.

18 MS. RUTHERFORD: Well, just one copy will do.

19 MR. COLE: I move we adjourn.

20 MS. RUTHERFORD: Thank you.

21 MR. PENNOYER: It's been moved we adjourn. Any
22 objections? Hearing none, we are adjourned.

23 (Off Record: 5:50 p.m.)

24 ***CONTINUED***

CERTIFICATE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

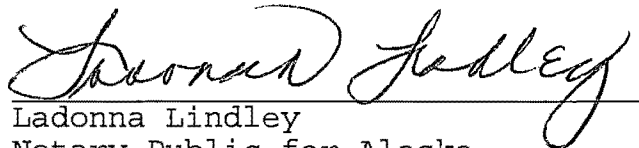
I, Ladonna Lindley, a notary public in and for the State of Alaska and a certified professional court reporter with LTD Court Reporters, do hereby certify:

That the foregoing pages numbered 322 through 589 contain a full, true, and correct transcript of the continuation of the Exxon Valdez Oil Spill Settlement Trustee Council meeting taken electronically by me on the 10th day of March, 1993, commencing at the hour of 8:35 a.m. at the Restoration Office, 645 G Street, Anchorage, Alaska;

That the transcript is a true and correct transcript requested to be transcribed and thereafter transcribed by me to the best of my knowledge and ability from that electronic recording.

That I am not an employee, attorney or party interested in any way in the proceedings.

DATED at Anchorage, Alaska, this 16th day of February, 1993.



Ladonna Lindley
Notary Public for Alaska
My commission expires: 8/1/93

