

TRUSTEE COUNCIL  
MEETING  
6 AUG, 1993

**EXXON VALDEZ OIL SPILL SETTLEMENT  
TRUSTEE COUNCIL**

RESTORATION OFFICE  
Simpson Building  
645 G Street  
Anchorage, Alaska

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EXXON VALDEZ OIL SPILL  
TRUSTEE COUNCIL

Continuation Meeting of Trustee Council Meeting  
held June 1-2, 1993

ADMINISTRATIVE RECORD

**VOLUME III**

August 6, 1993

1:30 p.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** (Alternate)  
Regional Environmental Officer

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, Trustees Council
PAMELA BERGMANN	Regional Environmental Assistant, United States Department of the Interior
MARK BRODERSEN	Restoration Chief, Alaska Department of Environmental Conservation
FRANK RUE	(Substituting for Dr. 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
VERONICA GILBERT	(Substituting for 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	
PAMELA BRODIE	
CHARLES TOTEMOFF	

**OTHERS who testified in person or via teleconference**

KATHY ANDERSON, Eyak Corporation  
ART WIENER  
KIM SUNDBERG  
MARK KUWADA, Alaska Department of Fish & Game  
JAMIE LINXWILER, attorney for Eyak Corporation  
BRUCE VAN ZEE  
CHRISTINE STEELE  
DR. RIKKI OTT  
CLAUDIA ESCHAVARRIA  
CRAIG WILLIAMS  
KARL BECKER  
DANNY CARPENTER  
PAUL SWARTZBARG (ph)  
DANA RANNEY

STEVE BODNER  
JEFF GUARD  
CHARLES MCKEE  
TERRI NASH  
MARLA ADKINS  
PAMELA BRODIE  
JIM LABELLE  
KEN JONES  
RICK STEINER  
MARIE SMITH JONES  
JESS GRUNBLATT  
DAVID GRIMES



P R O C E E D I N G S

(On Record: 1:30 p.m., August 6, 1993)

MR. PENNOYER: I think we'd -- we'd like to go ahead and get started. We've got a full agenda and not a whole lot of time to get through it. This is a continuation meet of the last Trustee Council session, and Mike Barton would normally be chairman, but he's asked me to take his place because of the fact he's going to present a fair part of the Eyak land discussion to the Trustee Council. I'd like to convene this meeting of the Trustee Council, and I'd like to note that present are Mike Barton, the Regional Forester for the Alaska region, representing the United States Department of Agriculture; Paul Gates, Regional Environmental Officer, representing the Department of Interior; Carl Rosier, Commissioner of the Alaska Department of Fish and Game; John Sandor, Commissioner of the Department of Environmental Conservation; Charles Cole, the Attorney General for the State of Alaska, and myself, I'm Steven Pennoyer, Director -- Regional Director for the National Marine Fisheries Service, representing NOAA. We have an agenda that has been passed out. It has three items on it. We have a scheduling problem which I'd like to deal with first and then ask Council members if they have additions to the agenda that we need to go through. I understand that a teleconference has been set up on the Eyak negotiations -- habitat protection question -- for 3:00 o'clock p.m., and the Trustee Council would like to hear that teleconference, obviously, before a decision is reached. That gives us a problem because if we start

1 Eyak discussions now and waited for the teleconference until 3:00  
2 o'clock, we wouldn't have any time left to complete the other two  
3 items on the agenda. So, I'm going to suggest that perhaps we move  
4 the item 2, which is content of the draft restoration plan up until  
5 this time, take that, put a time limit on it, and at 2:30 go to the  
6 discussions of the Eyak -- the Eyak question -- land question, and  
7 that would leave us half an hour for the briefing then start the  
8 teleconference at 3:00 o'clock. Hopefully, we'll finish item two  
9 before that time and then we would hold an executive session at the  
10 end, leave enough time before adjournment for an executive session  
11 dealing with the hiring -- interviews for the executive director  
12 position. Does any council member wish to comment on that  
13 proposal? Mr. Barton.

14 MR. BARTON: Yes, my only concern would be that -- I  
15 don't know how long this presentation is designed to take on the  
16 Eyak proposal and would ask that we be sure that we start that  
17 discussion in time to have it completed by -- the presentation  
18 completed by the 3:00 o'clock teleconference.

19 MR. PENNOYER: Mr. Cole.

20 MR. COLE: How about starting the Eyak presentation  
21 at 2:15, so we would have an opportunity to at least have the  
22 proposal before us at the time the teleconference begins?

23 MR. PENNOYER: That's the intent.

24 MR. BARTON: Does Dr. Gibbons have some idea of how  
25 much time we're going to need.

26 DR. GIBBONS: I've been -- been informed by the -- by

1 the presenters that it would be covered within a half hour.

2 MR. PENNOYER: But there may be time for questions  
3 required and so forth.

4 DR. GIBBONS: Yeah, right.

5 MR. PENNOYER: We'll let's -- unless somebody has a  
6 different plan, let's start on item two and carry that on until  
7 2:15 and start the Eyak discussion, with the conference call to --  
8 or conference -- or teleconference to occur at 3:00 p.m. Anybody  
9 have any additions or deletions from the agenda at this point? I  
10 hope no additions. Okay, perhaps then we can go ahead with item  
11 number two on the agenda, which is the content of the draft  
12 restoration plan, and, Dave Gibbons, do you want to lead us into  
13 that, since you're the originator of the correspondence that I  
14 think got this discussion up into the forefront.

15 DR. GIBBONS: Yes. On July 28th I sent the Trustee  
16 Council a memo outlining some options for the content of the  
17 restoration plan. What -- what items should be contained within  
18 it. There was three options presented to the Trustee Council and  
19 we were asking for their guidance. I've -- I've got copies here  
20 that I can -- can pass out.

21 MR. PENNOYER: Does -- do people need that copy -- those  
22 copies? Why don't you pass them around the table for the Trustee  
23 Council members? Dave, do you want to go into those, or shall I  
24 just proceed on with the other events that have occurred since  
25 then?

26 DR. GIBBONS: I'd -- just -- I think -- just proceed on

1 the other events.

2 MR. PENNOYER: Basically, I think what Dr. Gibbons'  
3 question on it was around, basically how much detail is going to go  
4 into the draft restoration plan. And the options he ordered were  
5 from a short policy document, all the way to the other extreme  
6 which would be a document that would in great detail specify all  
7 the projects and other items that the Trustee Council might  
8 undertake. Not quite that far, but in that direction. And, that  
9 then sponsored a letter from Mike Barton and myself to the Trustee  
10 Council outlining what we thought had been the agreement at the  
11 previous Trustee Council meeting of how we would proceed on the  
12 restoration plan. Apparently, that was not clear to the  
13 Restoration Team, so we've drafted that letter to try and promote  
14 discussions within the Trustee Council of -- of our previous  
15 instructions, whether they had been adequate or detailed enough.  
16 That then prompted a letter, I believe -- memo from Attorney  
17 General Cole, I guess -- came after that, requesting that -- that  
18 this -- topic be put on the agenda as soon as possible so the  
19 Restoration Team could proceed with their work. Because, I believe  
20 that Dr. Gibbons' memo indicated that the Restoration Team, in  
21 essence, had to halt work on proceeding on the drafting of the  
22 restoration plan until they got this type of guidance. So, it is  
23 on the agenda for today and, hopefully, using these documents we  
24 can arrive at a position to instruct the Restoration Team how to  
25 proceed on the drafting of the restoration plan. If you'll recall,  
26 at the last meeting we had the -- we had a restoration plan

1 synopsis that we sent out to public review in a newspaper-type  
2 article that framed certain policy questions and discussed what  
3 should be in the restoration plan, what guidance the public wanted  
4 to give us on that topic. In the meantime, the Restoration Team  
5 had gone forward and drafted a more elaborate document, a more  
6 lengthy document, that included more background information on such  
7 things as habitat acquisition, the budget, examples of direct  
8 restoration and so forth. It was the Trustee Council's decision  
9 not to send that draft -- full draft -- out to public review, but  
10 to rather wait for the results from the synopsis -- newspaper  
11 mailing we sent out, to get public comment on that, which was due  
12 by today, I think today, August 6th, was the deadline, and then  
13 based on that, proceed with the drafting of the restoration plan.  
14 The letter that Mike Barton and I send out said that we thought  
15 that we had agreed to the plan containing a clear and succinct  
16 statement of background, a statement of injuries, a brief statement  
17 of objectives as to what we want to do to restore the injuries or  
18 to enhance, if so desired, the alternatives for getting us to the  
19 desired objectives and the constraints of -- on expenditures as set  
20 forth in the MOA, the settlement agreement and law, and some form  
21 of measure that we in public know when we are done with  
22 restoration. Obviously, each one of those statements sounds  
23 simple, but raises the whole series of questions. And -- based on  
24 that we had a discussion amongst Interior, Commerce and Agriculture  
25 and we did come up with a draft outline in which we attempted to  
26 elaborate a little bit on what was meant by these statements that

1 were in our -- our letter. And, if that might help the discussion  
2 along, I think we pass out the draft outline for people to comment  
3 on and maybe decide -- try to pin down more specifically what our  
4 instructions are to the Restoration Team. Dr. Gibbons, do you have  
5 some extra copies of that? (Pause) Thank you. Before starting  
6 through it, I think that -- one of the things that is -- is driving  
7 this discussion, or our view on it, is the need to come up with a  
8 document that I think fairly clearly outlines both the policy  
9 direction and perhaps more specifically the background on the  
10 various resources that were injured, our objectives in dealing with  
11 those. We don't believe that it requires we pin it down in such  
12 great detail that future information derived from the conduct of  
13 the program as it goes along, public input, and that sort of thing,  
14 cannot be used to modify it. But, from a NEPA compliance  
15 standpoint, I think we believe we have to have enough detail on the  
16 restoration plan to satisfy NEPA, and not get ourselves in a  
17 position where we have to go back through NEPA compliance in great  
18 detail at EIS level on an annual basis. I don't -- I think what we  
19 outlined here does not require, and the Restoration Team may view  
20 me wrong, a great deal of additional work -- in fact it's already  
21 done. A great deal of the work, in terms of the statement of  
22 injuries, what's happened resource by resource, and so forth, has  
23 already been accomplished. And, we would hope that this type of a  
24 -- a document would not take that long, or that much additional  
25 time to prepare from what was already done the first time around.  
26 So, Paul or Mike do you want to comment any further on that --



1 introduction?

2 MR. BARTON: No, I think you've covered it fine, Steve.

3 MR. PENNOYER: So, I guess that just going down through  
4 this is a -- just to read through what we think might go in there  
5 for purposes of our discussion. We come out with an introduction  
6 of background, and I think that's already done, basically; a  
7 statement of policies and principles, which we have policy  
8 questions out to the public, and I presume based on those we would  
9 be able to deal with those policy questions that state certain  
10 policies that would guide the -- the planning effort and the  
11 restoration effort; description of pre-spill environment, I think  
12 that's already been developed; summary of injury findings, I think  
13 we've had those already presented to us, and I think it's available  
14 on a fair amount of detail. There may be some additional  
15 information that has come to light since then, but I think there's  
16 quite a bit of that. I think the area that there may be -- that  
17 Dr. Gibbons was addressing, is basically the proposed actions.  
18 And, in discussions last time around with the Department of Justice  
19 who were here -- who was here advising us, it's clear, one of the  
20 things we hadn't really specified was the objectives we had in  
21 dealing with the various resources. I don't mean specific, how  
22 many fish you're going to tag or -- or how many murre nesting boxes  
23 you're going to build, or anything of that nature, but rather what  
24 our objectives are to restore those specific injured resources.  
25 And, the last item under proposed actions would be the restoration  
26 actions by geographic area over time. Again, not specific

1 projects, but the type of thing you'd undertake, whether it be fish  
2 tagging and management improvement, whether it be habitat  
3 acquisition, whatever it happened to be, examples of the type of  
4 things that you thought you'd do to benefit these various  
5 resources. And lastly, a mechanism for amending it. Obviously,  
6 this plan is not going to hold -- in its specificity over a full  
7 eight year or ten year period of time. There are going to be  
8 things that come to light that have to be changed. I guess, we  
9 don't feel this is going to stop us, or hinder the process in any  
10 way, in terms of time, but hopefully would allow us to then proceed  
11 with annual work plans and not go back through the details of  
12 environmental impact statement stage. And, hopefully -- and Dr.  
13 Gibbons may correct me -- or the Restoration Team -- most of this  
14 information, perhaps except for the specificity of objectives,  
15 which we haven't had presented to us and had to deal with, is  
16 largely there in the draft that was done already. I think there  
17 are some other comments people have had about the desirability to  
18 combining the EIS and the restoration plan, and maybe simplifying  
19 the whole document, but -- that's -- then sort of our thoughts to  
20 stimulate discussion on where we go from here in response to your  
21 memorandum. Dr. Gibbons.

22 DR. GIBBONS: Mr. Chair, you're correct that most of the  
23 material that -- that would go into that has -- has been prepared.  
24 It's -- it's in various stages that could be -- massaged and put  
25 in. The objectives have not yet.

26 MR. SANDOR: Dave, just -- (Indiscernible - out of

1 range of microphone) proposals that goes in your memorandum.

2 DR. GIBBONS: Well, the three proposals in the  
3 memorandum are -- are extreme. I think, Dr. Pennoyer -- Steve  
4 Pennoyer identified it correctly where you have one -- one end is  
5 the policy document with -- you know, the outline of the policy to  
6 the other end that has detailed restoration actions on it, but not  
7 projects, but -- but actions, and then there's an in between  
8 document that identifies the objectives and stops at that point  
9 there. It doesn't identify restoration actions. Those formerly  
10 were called restoration options, they're -- they're groups of  
11 activities, more than projects. The -- the groups of projects.

12 MR. PENNOYER: Commission Sandor.

13 MR. SANDOR: I'd just like to ask a couple of questions  
14 to put this in the context of the document that went out to the  
15 public, which this is titled, draft Exxon Valdez oil spill  
16 restoration plan, summary of alternatives for public comment.  
17 Paragraph three says this draft -- the draft environmental impact  
18 statement, and the full text of the draft restoration plan -- the  
19 full text of the draft restoration plan will be ready in June of  
20 1993. This goes on to say the information you provide will be used  
21 to prepare a final restoration plan that will be presented to the  
22 public this fall. The final plan may contain parts of several of  
23 the alternatives presented here, plus new information you provide.  
24 Is it -- fair or correct to say that at the time this was prepared,  
25 that what we really had in mind was essentially something close to  
26 the first alternative of a concise restoration plan?

1 DR. GIBBONS: Mr. Chair. I -- I think in that brochure,  
2 if you look in the last page, it identifies restoration options,  
3 which are groups of activities. And, I -- I think what we're  
4 asking now -- you know, if -- if that was -- you know, what type of  
5 activities would they like to see -- would the public like to see  
6 done, and I think that's what -- if I could get one, I could  
7 probably identify -- (Pause). On page nine, it lays -- potential  
8 activities out by resource group. Harbor seals, implement  
9 cooperative programs between fishermen and agencies to provide  
10 voluntary method to reduce incidental take, would be an action.  
11 Sockeye salmon, intensify management of sockeye salmon on the Kenai  
12 River and Red Lake to reduce the risk of over escapement. Those  
13 are the types of actions that -- that we were asking the public.

14 MR. SANDOR: Mr. Chairman, if I may, I guess I am  
15 concerned about the bottom line with regard to timing and -- as  
16 even with that in mind, the original intention was to have a final  
17 restoration plan that could be presented to the public this fall.  
18 And, I guess I'm concerned, just looking at the alternatives here,  
19 that prompts -- that prompted me to ask this question, that the  
20 alternative which allows us to achieve that objective is, in fact,  
21 this new draft one, and not that I'm suggesting that we have to led  
22 into that if there's a reason to deviate from it, simply that we --  
23 I want to relate what the action that's on the table is what we  
24 went out -- to the public.

25 MR. BARTON: Mr. Chairman. As I recall, we had quite  
26 a discussion at the last meeting regarding what are the actions

1 that we took at that meeting with regard to the plan, and the  
2 impact that that might have on the schedule. And, as I recall, we  
3 recognized that we -- we could still have a draft plan ready by  
4 this fall which then would enter the NEPA process and that a record  
5 of decision as the result of the NEPA process probably wouldn't be  
6 forthcoming until late spring or early summer next year.

7 MR. PENNOYER: But I -- I think we also specified that we  
8 would not stop our process. That, in fact, the draft that we had,  
9 even before it received final approval, would serve as the basis  
10 for the '94 work plan, so there would be no halting of action, it  
11 would simple be that we'd use the draft as our basis for approval  
12 of the '94 work plan. And, so, I don't -- I don't think we -- we  
13 wedded ourselves to a particular day, except that the draft  
14 environmental be considered the '94 work plan. Mr. Cole, would you  
15 put your microphone on?

16 MR. COLE: I'm waiting for Mr. Rosier.

17 MR. PENNOYER: Mr. Rosier.

18 MR. ROSIER: Well, I believe the -- the scenario that  
19 Mr. Barton just outlined, that's -- that's my recollection of the  
20 discussion of the last meeting.

21 MR. PENNOYER: Could I ask you, Dr. Gibbons, in terms of  
22 this outline that we presented. Does that give you some  
23 (indiscernible)? I'm not suggesting we agreed on it, we haven't,  
24 but I'd -- I'd like to hear the Restoration Team comment on that  
25 whether that gives you some guidance as to the direction we would  
26 proceed, if that outline was adopted or some modification out of

1 it.

2 DR. GIBBONS: Yes. If you -- if you could -- you know,  
3 outline an area where you have to go through item six or five or  
4 whatever it is the decision was -- that would give us the guidance  
5 to mount an EPL, it would be in a draft restoration plan.

6 MR. PENNOYER: How would come back to us relative to the  
7 objective question, and so on? That's the area in here that I  
8 don't think we really dealt with in the previous draft. How would  
9 you -- how would you come back to us relative to the objective  
10 question?

11 DR. GIBBONS: Meaning -- meaning development of the  
12 objectives?

13 MR. PENNOYER: Yeah, we know we'd have to make -- we'd  
14 have to make some decisions in here for you to finalize it, that  
15 aren't made. Those I presume come after the policies --  
16 discussions that had occurred, but would it take too much for you  
17 to frame those objectives, that we could -- so we could make  
18 decisions on them, or how would you do that?

19 DR. GIBBONS: Yeah, we would have to draft those  
20 objectives and come back to you for -- for your review on those.  
21 That's -- you know, would be the next step would be to develop  
22 those.

23 MR. PENNOYER: Mr. Cole.

24 MR. COLE: Wholly unacceptable to me is -- are --  
25 formulating or adopting a restoration plan before next summer or  
26 next spring. That's number one. We simply have to conduct our



1 business, as I've repeatedly said, with more dispatch than that.  
2 That's essentially a year away, and that's unacceptable to me,  
3 number one. And number two is, I've consistently been of the view  
4 that -- this restoration plan should not simply be a rehash of the  
5 prior year's work plan, which I have a sense of almost where we're  
6 heading, and I think the restoration plan should be much more  
7 streamlined than we are now talking about. I don't think we need  
8 all this detail to formulate a restoration plan that's envisaged by  
9 this outline, and, if we have to come up with some objectives, then  
10 we should get busy and come up with some objectives. It's been  
11 nearly two years, and I don't know what the delay is. You know --  
12 we just have to get business done. And, it's one of the reasons I  
13 asked in my memorandum for this meeting, to see where we were in  
14 this restoration plan. It's been nearly what -- sixty days since  
15 we've discussed it and where are we? What have we done in the last  
16 sixty days. Oh, I don't know, maybe something, but not much that  
17 I can see. Maybe that's unfair to the Restoration Team, but  
18 largely it's a criticism in some ways, perhaps of us. We have to  
19 make these decisions. So -- you know, I'm -- not pleased with  
20 where we are at this moment with respect to the restoration plan.  
21 And, also I have a lot of trouble with this EIS, I still don't  
22 think that we have yet made some decisions about what we're doing  
23 with the NEPA compliance. What decisions have we made on that in  
24 the last sixty days, if any?

25 MR. PENNOYER: Mr. Rosier.

26 MR. ROSIER: Thank you, Mr. Chairman. I kind of -- I

1 kind of agree with Charlie a little bit, but on the hand -- you  
2 know, I'm not sure that we gave that direct instructions to the  
3 Restoration Team. I think that they've wrestled with this, but  
4 there's still been the basic difference of opinion amongst the  
5 Trustees is to exactly what that plans in fact include. You've  
6 been on one -- I think you've been on one -- one end of the  
7 spectrum and I think Interior's been on the other. And, it seems  
8 to me that basically they've outlined the options for us here on  
9 this in terms of trying to come together and it appears to me that  
10 the -- you know, the view number three that's provided for in the  
11 document on this, when you look at timing, timing is pretty much on  
12 time with what we had originally discussed in terms of having a  
13 plan, not before the '94 work plan was out there, but at least a  
14 draft plan that would be adopted shortly after the first of the  
15 year, that we could at least plan on the '94 work plan from.

16 MR. COLE: How can I say it? We're right back where  
17 we were last spring. A year behind. At least six to eight months  
18 behind. We do this every year. I'm really in a good mood today,  
19 believe me.

20 MR. PENNOYER: Mr. Gates, do you want ...

21 MR. GATES: Just a question. We've got -- it shows  
22 here that most of the stuff has already been developed or is  
23 available except for the options. In order to put it in a planning  
24 document, especially what the outline sets forth, what would be  
25 time frame that you think this could be accomplished?

26 MS. GILBERT: I'd like to address that, I'm on the

1 planning group. Can you hear me? By early September, what you'll  
2 see is the analysis of the public comment which is -- what has --  
3 largely been -- what's gone on this summer. And, I think what  
4 would be reasonable would be for you to see the -- you know, a  
5 draft policy document that would address the policies that were  
6 raised in the brochure, probably within a month or six weeks after  
7 that. And, if you're content with stopping at that level, which  
8 would be through policy, and where you want the emphasis to be  
9 placed, that would be accomplished by then, probably sometime in  
10 October. To continue on with objectives would probably take  
11 somewhat more time, and I would project that probably by  
12 Thanksgiving you could have a document, a draft document, for you  
13 to consider that would reflect public comment, that would contain  
14 policies and also restoration objectives. To go on to proposed  
15 actions requires a number of things, not the least of which would  
16 be legal review. There seems to be some substantial debate about  
17 which of these options are in fact allowable. And, there are a  
18 number of other problems with continuing on with that, including  
19 specific actions, that if you choose to add that to the restoration  
20 plan, it would take somewhat longer.

21 MR. COLE: How much?

22 MS. GILBERT: Could you get -- if you could get the  
23 attorneys together -- if assuming by Thanksgiving ...

24 MR. COLE: They're impossible.

25 MS. GILBERT: Assuming by Thanksgiving we have some  
26 legal guidelines, I would -- I would project by -- by, let's say

1 the middle of January, that you would have a draft document. Mark  
2 Brodersen thinks March, but ...

3 MR. GATES: (Indiscernible - simultaneous talking)  
4 state by principles -- policy, before the '94 work plan is -- you  
5 make a decision on that so you could use to that process and then  
6 you could go on with the ...

7 MS. GILBERT: I would hope so -- I would hope that you  
8 could move quickly to that stage as soon as you see the public  
9 comment. That was how this was designed. That you maintain that  
10 momentum, that's extremely important.

11 MR. PENNOYER: I -- I guess the thing that bothers me,  
12 Mr. Cole is exactly right, we never get it done. And, the problem  
13 is we always seem to come up to a point, or there's a lot of  
14 detail, or a general idea, or whatever, and at that point somebody  
15 steps in and says oh, but wait a minute, maybe we should do  
16 something a little bit differently. And, we stop. And, that's in  
17 essence what we did the last time. We had a document, we had --  
18 you know, not all of us thought it was the greatest thing since  
19 sliced bread, but we had a document, we had a lot of detail in it,  
20 and we were ready to go with it, and then somebody probably  
21 correctly pointed out that in satisfying EIS we didn't have the  
22 objectives in there by resource. Well, that kind of seemed to have  
23 stopped us, and I don't know that it had to. We need to stop until  
24 we got the results of the public comment on our synopsis paper.  
25 But, I -- I sort of have a feeling you just want to go out and kill  
26 something, and whether this is detailed or not, I think we can get

1 the job done in a reasonably period -- short period of time, if we  
2 give the instructions, sit back and let it happen. And it goes out  
3 as an EIS. I don't know if it flies or it doesn't fly in the final  
4 analysis, but then we're at the stage, we've got a draft in front  
5 of us, and if something inside we got to tinker with, we can tinker  
6 with it, but you've got to get started. Staff has done a lot of  
7 work to get this thing started in terms of background. You've got  
8 most of these pieces. We haven't dealt with the policies, which  
9 are the result of the public comment that we sent out that was due  
10 by August 6th. So, I think Veronica is quite correct. We can deal  
11 with the policies, get those back, work on those. That doesn't  
12 necessarily stop the Restoration Team, now at the same time to  
13 start draft -- putting objectives in context, and putting these  
14 other pieces so they can flow together. I think if we give them  
15 the instructions to go ahead and do it, I don't see why this is  
16 going to take that much longer. And I think if you do it, and you  
17 have these pieces, you can then use the pieces to draft the '94  
18 work plan. So, I'm not suggesting, Charlie, at all, that we step  
19 back and stop this, I'm suggesting we stop stepping back and stop  
20 it, but go ahead and put something down, tell them to go for it,  
21 bring it back to us and then we can kill if we don't like it, but  
22 tell them to go for it and bring it back to us. I'm scared if we  
23 go for instructions that say be very general to start with, when it  
24 comes back to us, somebody's going to say well to do an EIS, you've  
25 got to have this other detail. You've got to have an EIS either  
26 now or on each annual work plan. I don't particularly look forward

1 to doing environmental impact statements for each annual work plan  
2 if we can avoid that. I think then each year we're going to be  
3 thrown at this same level of confusion of how much detail you've  
4 got to present in the annual work plan and I really would just as  
5 soon do it once, try and get it over with and then go to the annual  
6 work plans and have environmental compliance documents only on each  
7 individual project, I hope. Mr. Cole.

8 MR. COLE: You know, at the rate we're going --  
9 going, I will have been here as a member of this Council for  
10 essentially three years and we haven't even come up with a  
11 restoration plan, if we're looking at this schedule. And, not only  
12 that, but the administrative expense goes on and on. It's chewing  
13 up the funds that we have available and we simply have to -- you  
14 know as you say, make some decisions. I don't want to get in the -  
15 - be accused of saying do something even if it's wrong, but let's  
16 do something and do the right thing and get busy and get it done.  
17 And, I think that we should establish no later than Thanksgiving  
18 that this draft is in essentially final form, and just tell people  
19 -- you know, for better for worse if it doesn't -- isn't done there  
20 then, we get somebody who will get it done, forthwith. That's  
21 pretty heavy medicine, but I think it's come to that point. And,  
22 maybe the responsibility is ours and the fault is ours. I'm not  
23 saying it's anybody else's other than ours, but maybe we ought to  
24 change our ways. We have to get this done. You know.

25 MR. PENNOYER: Mr. Barton.

26 MR. BARTON: And I think all of us are frustrated with



1 the pace at which we're going and -- and I certainly do think that  
2 it's the Trustee Council that gets the credit for that. I think  
3 the Restoration Planning Group and the Restoration Team work very  
4 hard to put something together in the hopes that that's what we  
5 want, for lack of clear direction from us. There's this question  
6 of NEPA compliance we've been kicking back and forth and back and  
7 forth, and I don't know how you get six lawyers to agree, but  
8 that's what's got to happen, it seems to me, or four lawyers, I  
9 guess, and I don't know what the mechanism is for causing that, but  
10 we sure need to find it and cause it. And these policy questions,  
11 we go back and forth on those, we make a decision one meeting and  
12 then we back off at the next meeting, or back off between the  
13 meetings. It's frustrating, you're right.

14 MR. PENNOYER: We only have a few minutes left before we  
15 have to start on the Eyak discussions, but I think -- finally got  
16 a -- made the best suggestion. And, is the -- is that a gem of an  
17 idea. Can we -- should we go ahead as Cole has said and have a  
18 Thanksgiving deadline for us receiving a final draft. We give the  
19 Restoration Team the instructions, generally as provided in our  
20 outline. Now this then falls back on the August 6th deadline, and  
21 Mr. Barton, your right, we may have gone back and forth on things,  
22 but we did say that we'd take -- we wanted public input on the  
23 policy questions to get back to us by August 6th. That's today.  
24 So it could be summarized, and I understand there's twelve hundred  
25 of them or something, thirteen hundred comments. There's a number  
26 out there....

1 MS. GILBERT: Thirteen hundred.

2 MR. PENNOYER: Thirteen hundred comments. So, that's  
3 going to take a little while to look at, but in the meantime if the  
4 Restoration Team is proceeding, tell us with the background, the  
5 injury assessment part is done. A lot of this other background  
6 information is done. That can come together quickly. They can  
7 proceed at the same time to start to frame the concept of what we  
8 would do with the objectives and bring policies and objectives back  
9 to us by, let's say Thanksgiving. I think we'd have the draft of  
10 the restoration plan right there, and we'd have the pieces that we  
11 could then combine and as well. Hopefully, we'd have a draft  
12 restoration policy guidance that would enable us to go forward on  
13 the '94 work plan. So, I think proceeding in that fashion, not  
14 necessarily getting into all the specifics about how far we go  
15 between view one and three, but proceeding in the fashion as  
16 outlined, our suggestion, in dealing with it in the time frame and  
17 the order in which Veronica has suggested would be, I think, an  
18 appropriate way to proceed.

19 MR. COLE: I move we adopt view number two.

20 MR. PENNOYER: I think that's in essence what was  
21 intended, but maybe not as generally drafted as that, but I think  
22 that was what was intended. Not the projects. Not the years.  
23 Next, question?

24 MR. BARTON: Seconded.

25 MR. PENNOYER: (Indiscernible) discussion? I mean Mr.  
26 Barton -- Dr. Gibbons?

1 DR. GIBBONS: Yes. View two includes restoration  
2 actions. We can do view one and view three by Thanksgiving. Our  
3 estimate of doing view two which has the injury definition recovery  
4 restoration objectives and restoration actions, is estimated to be  
5 March. On page three you'll ...

6 MR. COLE: I move to amend my motion and I now move  
7 view one.

8 MR. PENNOYER: Dr. Gibbons.

9 (Indiscernible - simultaneous talking)

10 DR. GIBBONS: We -- the restoration planning work group  
11 and the Restoration Team can do either view one or view three by  
12 Thanksgiving. That would ...

13 MR. PENNOYER: Do both?

14 DR. GIBBONS: Well what -- three incorporates view one.  
15 By -- by Thanksgiving what we could have was -- is a statement of  
16 injury, definition of recovery and restoration objectives, policy  
17 statements. That's basically what I'm saying.

18 MR. PENNOYER: Would you accept a friendly amendment that  
19 we instruct them to proceed in that fashion, and when it gets to  
20 that point we decide at that point whether we want to add the  
21 alternatives.

22 MR. COLE: Well, here's -- maybe I would accept this  
23 amendment, we adopt view one with the blend of view three. Is that  
24 all right Mr. Sandor.

25 MR. PENNOYER: What -- what does that direct in the  
26 outline so they've got more specific guidance.

1 MR. ROSIER: Mr. Chairman.

2 MR. PENNOYER: Yes.

3 MR. ROSIER: The outline actually represents view  
4 three, I mean that's the way I read this.

5 MR. COLE: That's why I didn't move three.

6 MR. ROSIER: But two is more detailed than three.

7 MR. COLE: So that's why I didn't move three, I moved  
8 one with a little blend of view three. You know, with a  
9 streamline. Maybe it's a streamline three is what I have in mind.  
10 And, if that's alright with Commissioner Sandor.

11 MR. SANDOR: Mr. Chairman, I get back to what we had  
12 laid out for public and I want -- I support staying on that course  
13 and, if, come this fall, when we had planned to have, in fact, the  
14 final plan, we see that we are short in some way, then at that  
15 point in time we make a change. To make a change at this point and  
16 say we're not going to be able to do this in the fall, and it's  
17 going to have to be done next March or something like that, it  
18 seems to me to -- to admit defeat even before we come close to the  
19 finish line. So -- and I -- that's why I asked earlier. It seemed  
20 to me that view one seemed the closest to what our original  
21 commitment was. And, I think we should stick to that, and I say  
22 that not only for that commitment to the public, but for the  
23 implications of how much money we'll be spending if we deviate from  
24 that. We actually put a price tag on these delays going into the  
25 spring, the summer, the fall, April 1995. And, we've already spent  
26 over \$300,000 on the EIS. We got -- we are actually hemorrhaging

1 our expenditure -- our expenditures on this administrative process.  
2 And, it greatly bothers me.

3 MR. PENNOYER: Dr. Gibbons, I thought what you said was  
4 that you could get all the way through view three, except for the  
5 restoration actions by the timetable that was outlined by  
6 Commissioner Sandor and Mr. Cole.

7 DR. GIBBONS: That -- that's correct. Basically, view  
8 two -- you know, is -- is the -- excuse me -- view three would be  
9 the one that we could do by Thanksgiving, which is -- includes  
10 summary of the injuries, recovery, the policies and the objectives,  
11 but not the restoration actions.

12 MR. PENNOYER: Mr. Cole.

13 MR. COLE: Yeah, I do not like the recoveries is --  
14 I don't think we yet have enough data on the recoveries to really  
15 make some helpful statements about recovery. That's the reason  
16 we're conducting these scientific studies to find out what the  
17 recovery rate is and continue to assess the injuries, and that's  
18 why I think it's a mistake to put that type data in our restoration  
19 plan. That we should have that more flexible.

20 MR. PENNOYER: So, your problem then is with the specific  
21 alternatives for actions for different resources?

22 MR. COLE: Always has been.

23 MR. PENNOYER: Well, why would it be inappropriate then  
24 to take -- do the rest of this up to that point, which gets us to  
25 about the timetable outlined by yourself and Commissioner Sandor,  
26 and then at that point make the decision if we want to go farther

1 or not. Then, they're working on something, we've got something in  
2 front of us which we can use to base the '94 work plan on and we've  
3 got the policies, we've got the injury statements and what we think  
4 is the current status of injuries, if we don't know it, we don't  
5 know it, and we have a shot of taking our objectives that will  
6 guide us in our next work plan. And, at that point if we want to  
7 do alternative actions, or if at that point we look at it and say  
8 hey, that fits right in with the annual work plan, so let's do it  
9 that way. That gives -- allows them to proceed, they're not on  
10 hold. They have enough information or instruction, I think, to go  
11 ahead and put this type of package together for us by Thanksgiving,  
12 or then about, and at that point you would have enough in front of  
13 you, we wouldn't talk about what we want to do, we'd have enough in  
14 front us to say do we take the next step now or later.

15 MR. COLE: If that's acceptable to Commissioner  
16 Sandor, it's acceptable to me.

17 MR. PENNOYER: So, it's a modified alternative to three?  
18 I hope, without the alternative actions spelled out in this first  
19 draft. Mr. Gates, Mr. Barton, how do you feel about that?

20 MR. GATES: As far as the outline would be down  
21 through 5A, correct?

22 MR. PENNOYER: That would be through 5A, that's correct.

23 MR. GATES: That's ripe for discussion purposes, so  
24 they've got some guidance we need to deal with what's written.

25 MR. PENNOYER: Well, I think they're synonymous, but it  
26 that provides more detail, it's down through 5A. 5B is left,



1 motion? (Pause - no audible response) Okay, thank you. Do you  
2 want -- five minutes -- we're not going to teleconference, we're  
3 going to do the briefing first, right? Okay. Mr. Brodersen.

4 MR. BRODERSEN: Mr. Chairman. We've run out of time  
5 today, but perhaps we could request you all to spend a few minutes  
6 at the August 23rd meeting talking about what objectives mean to  
7 each of you individually. This is something that everybody thinks  
8 is crystal clear, but I've been going around chatting with various  
9 folks at staff level as to what is an objective, what constitutes  
10 an objective and folks look at me like I'm crazy. But, I've  
11 noticed there's a very wide divergence of opinion as to what  
12 constitutes an objective, and if you all could spend a few minutes  
13 talking about that at your next meeting, I think that would give us  
14 considerable guidance on what is meant by objectives in this  
15 context.

16 MR. PENNOYER: I think that's a fair request, perhaps we  
17 could request the Restoration Team to outline in their areas ...

18 MR. BRODERSEN: I was going to offer that as ...

19 MR. PENNOYER: (Indiscernible - simultaneous talking) and  
20 come back and discuss it.

21 MR. BRODERSEN: I think it's imperative to allow us to  
22 move ahead quickly that you all do have that discussion to give us  
23 some guidance as what's meant by that.

24 MR. PENNOYER: Any problem with that course of action?  
25 Thank you. We'll now change topics and go to the Eyak  
26 negotiations, Forest Service Habitat Protection Work Group, and the

1   teleconference will come on at three and I presume you want five to  
2   ten minutes to set that up, so we'll take a break about five  
3   minutes -- five or ten minutes to three, or as soon as we get the  
4   briefing done. Mike, are you conducting the briefing?

5               MR. BARTON:     I think Dr. Gibbons is.

6               MR. COLE:       (Indiscernible - out of range of  
7   microphone and coughing).

8               MR. PENNOYER:   Mr. Cole.

9               MR. COLE:       Are copies of this proposal available for  
10   those who are here?

11              MR. PENNOYER:   I don't know.

12              MR. BARTON:     The Eyak proposal.

13              MR. PENNOYER:   Yes.

14              MR. BARTON:     I have copies for the Council members and  
15   a summary statement.

16              MR. PENNOYER:   What about those who are attending this  
17   meeting, as members of the public, do they have copies of it?

18              MR. BARTON:     I would ask if Eyak has any objections to  
19   -- to making it available to the general public, as they have  
20   requested prior -- before this that it be kept confidential.

21              MR. COLE:       Well, let me say while they're discussing  
22   it, how can we discuss this in public and yet not have the public  
23   know what we're discussing?

24              KATHY ANDERSON:   I don't have any public -- or  
25   (indiscernible) I don't care if you hand it out. Keep in mind  
26   though that my board of directors has not seen this in its final

1 form as this was completed at 12:30 today.

2 MR. PENNOYER: You're going to have to come up to the  
3 microphone, I think, so it gets on the record.

4 MS. ANDERSON: I said, I don't have any problem with  
5 sharing this document with the public, but I would like it kept in  
6 mind that my board of directors has not seen this final product, as  
7 we didn't finish it until about 12:30.

8 MR. PENNOYER: Does that ...

9 MS. ANDERSON: So that means a yes, John.

10 MR. PENNOYER: I beg your pardon.

11 MS. ANDERSON: That's a yes.

12 MR. PENNOYER: You can share it?

13 MS. ANDERSON: You can share.

14 MR. PENNOYER: We can share. Thank you.

15 MR. SANDOR: But the board of directors ...

16 MS. ANDERSON: Of Eyak has not seen this final proposal.

17 MR. SANDOR: Thank you.

18 MR. COLE: Mr. Chairman.

19 MR. PENNOYER: Mr. Cole.

20 MR. COLE: I have some problems discussing this if  
21 it's not a firm offer and is subject to the Eyak board of  
22 directors. I don't -- I'm not saying by that I do not want to  
23 discuss it under those terms, but if we discuss it in this vein,  
24 and we say yes, then sort of the tactical advantage shifts to Eyak,  
25 doesn't it? That's the way I sort of see it. And they say, well -  
26 - then their in a position to say well, now that's fine we know

1 what -- sort of how far the Trustee Council will go, but now we're  
2 in a position of making a form of a counteroffer. I don't want to  
3 hold this up, but that troubles me. Does anyone else have that  
4 same concern?

5 MR. PENNOYER: Mr. Barton.

6 MR. BARTON: Yes, distinguish how we handled the Seal  
7 Bay, wasn't that also subject to their board of directors?

8 MR. PENNOYER: Yes.

9 MR. COLE: Well ...

10 MR. PENNOYER: I'm not sure we set precedents though,  
11 necessarily.

12 MR. COLE: I guess that's what I'm saying in an  
13 oblique fashion.

14 MR. PENNOYER: Commissioner Sandor.

15 MR. SANDOR: What I gather from Kathy Anderson's  
16 comments that some minor changes were made up to the last evening  
17 at midnight, and I guess I share the concerns that the Attorney  
18 General has on this, that really, we're trying to deal with  
19 concrete proposals. If -- if you could in your presentation  
20 actually outline what in fact the board is really laying on the  
21 table, this would be very comforting. Otherwise, we're dealing  
22 with -- you know, a ghost, and so that would be helpful.

23 MR. LINXWILER: Yes, we'll certainly do that.

24 MR. PENNOYER: Thank you.

25 DR. GIBBONS: We're going to start with -- it's a two  
26 phase presentation. First, would be the biological analysis of the

1 parcels presented by Kim Sundberg and Art Wiener. This should take  
2 about fifteen minutes or so, somewhere in that range, and then that  
3 would be followed by the Forest Service and Eyak Corporation  
4 concerning the various proposals. So ...

5 MR. PENNOYER: Gentlemen, do you have some material to  
6 pass out or is this ...

7 DR. GIBBONS: Mr. Chairman.

8 MR. PENNOYER: Dr. Gibbons.

9 DR. GIBBONS: There's copies of what the --  
10 (indiscernible) parcels were out on the table available to the  
11 public, though I'm not sure if there's any left out there, but  
12 there were, I think fifty copies out there.

13 MR. PENNOYER: Gentlemen.

14 MR. ART WIENER: Thank you. What we'd like to briefly  
15 do is to outline for you what the subgroup has done in evaluating  
16 the parcels that are going into the proposals that will ultimately  
17 be discussed by you gentlemen. The evaluation method that we used  
18 is basically the same evaluation method that we had used prior to  
19 this particular parcel or parcels on Seal Bay, Kachemak Bay and the  
20 other imminently threatened lands. So, you're dealing here with an  
21 evaluation that is consistent with the method that we've used  
22 before. The evaluation and ranking criteria that we used are found  
23 in your document on pages 14 through 17, and you'll see that  
24 they're the same as those that we've used for prior evaluations.  
25 In terms of the design of the units for evaluation, what we did was  
26 we laid out parcels for evaluation purposes into what we believe

1 were logical units. The logic is driven primarily by biology, the  
2 ecological integrity of the unit, to some extent by ownership, but  
3 these are units that we felt were the most logical units to draw  
4 boundaries around and evaluate, using our system. The maps that  
5 you have in your document, and especially the map that's directly  
6 behind the Attorney General, are those that depict the parcel  
7 boundaries. The parcels include several areas that have been  
8 proposed for timber harvest, but they also include areas adjacent  
9 to those areas that have been proposed for timber harvest. Again,  
10 the logic is to incorporate within the parcel boundary the unit  
11 that makes the most ecological sense. So, that's why you see  
12 boundaries that extend beyond what is scheduled for timber harvest.  
13 The individual rankings are found in the document and a parcel  
14 ranking summary is to be found on page thirty-two. Page thirty-  
15 two, the summary table, is probably a very significant part of this  
16 document because within this table you can see the relationship in  
17 ranking and score between the different parcels. Based upon this  
18 evaluation, which was conducted by the same team that has done all  
19 the other parcels, so our judgment is consistent, we hope, and also  
20 we had one very significant addition to the team, Ken Holbrook from  
21 the Forest Service, made very significant contributions to our  
22 effort. He is intimately familiar, both personally and  
23 professionally, with the Cordova area and we felt that he was --  
24 made a very significant contribution to the evaluation, and so  
25 that's the only staff difference in terms of the evaluation. In  
26 any case, based upon this team making the evaluation, again using

1 the same system we've used before, we feel that the unit that  
2 includes both Power Creek and Eyak Lake rank the highest, clearly  
3 rank the highest in our opinion. And, that our recommendation  
4 based upon that evaluation is that the Trustee Council consider  
5 acquisition of full title to the Power Creek parcel and also, one  
6 way or the other, either through full protection or some other  
7 mechanism, acquire full protection for the area around Eyak Lake.  
8 And, when we mean full protection around the lake, we would like to  
9 see some kind of an instrument that actually means full protection  
10 for the resources and services that we use for evaluating the  
11 parcels. And, in our minds it would probably be title acquisition.  
12 We did evaluate several other factors beyond the factors that we  
13 were empowered to buy the settlement, the fifteen linked resources  
14 and services, and if you like we could discuss those also. But,  
15 based on the evaluation of the fifteen resources and services, we  
16 feel that the Power Creek-Eyak Lake unit is the unit that you all  
17 should be considering for acquisition. What I'd like to do now is  
18 to turn the microphone over to Kim Sundberg and he could provide  
19 you with some detailed information on a per-unit basis and how we  
20 achieve the scores that we did. Kim.

21 MR. SANDBERG: Any questions at this time?

22 MR. SANDOR: Yes, one. With respect to ownership on  
23 Power Creek, I thought there was a difference in that Power Creek  
24 was the -- the power development rights on Power Creek were held by  
25 yet a third party. Could you explain that, or at least for the  
26 record, and then explain if, in fact, those power development

1 rights were -- were executed? How -- what would be the impact on  
2 the environment and how would it differ from other activities that  
3 might take place.

4 MR. WIENER: I think Mark Kuwada is in the audience and  
5 he has done the research on the power proposal. I think we can  
6 answer the first part of the question. The second part of your  
7 question on what would be the impact of that development, I don't  
8 think we can answer because I don't think we have the specificity  
9 as part of the proposal, but I think Mark can fill you in on what  
10 we do know about the -- about the power project. Mark just issued  
11 a preliminary ...

12 (Indiscernible - out of range of microphone. Recorder asks  
13 for identification).

14 MR. MARK KUWADA: Mark Kuwada with the Alaska  
15 Department of Fish & Game. The Federal Energy Regulatory  
16 Commission just issued a preliminary license to Whitewater, Inc.  
17 for a run-of-the-river hydro project on Eyak Lake -- on Power  
18 Creek. The license was issued on the 16th of July, and it's  
19 effective for three years. And, all we know at this point is the  
20 project is a run-of-the-river project, twenty foot high diversion  
21 structure on Power Creek, eight thousand foot long penstock and  
22 five megawatt capacity.

23 MR. SANDOR: Diversion project does not or does involve  
24 any (indiscernible - background noise).

25 MR. KUWADA: It will divert the water from  
26 approximately two miles up the creek, somewhere above Omen (ph)



1 Falls.

2 MR. SANDOR: Will this -- will this have any adverse  
3 impact on the fisheries of that area that were protected, we're  
4 trying to protect in the acquisition of the property?

5 MR. KUWADA: It depends where they discharge the water.  
6 If they discharge it above the known reach of a fish distribution  
7 in the stream, they'll put all the water back in, and they'll be  
8 okay.

9 MR. SANDOR: Do we have any control? Does the Fish &  
10 Game have any control over that?

11 MR. KUWADA: To our comments to that, I defer to Kim,  
12 yes.

13 MR. SANDOR: I guess, Mr. Chairman, the reason I raise  
14 the question is I would hate to see us acquire the -- this title  
15 with this encumbrance potential for development that might in fact  
16 diminish the very value that we're trying to protect in the  
17 acquisition of the property to begin with. So, maybe in the course  
18 of your presentation, you can discuss that.

19 MR. PENNOYER: Mr. Cole.

20 MR. COLE: What does run of the river mean?

21 MR. KUWADA: It means that it isn't a dam structure as  
22 much as it's just a diversion of the water down through a penstock  
23 or pipeline into a powerhouse and then back into the river channel  
24 again.

25 MR. COLE: What percentage of the water will be  
26 diverted from the stream through the penstock?

1 MR. KUWADA: I don't know at this point. I don't know  
2 what the discharge at Power Creek is, but it could be all of it,  
3 de-water a portion of it.

4 MR. PENNOYER: This diversion is above the upper limits  
5 of salmon spawning and migration.

6 MR. KUWADA: Yes.

7 MR. PENNOYER: Thank you. Want to continue with your  
8 presentation, please.

9 MR. SUNDBERG: Thank you, Mr. Chair. Okay. I guess the  
10 answer to the biological evaluation of the Power Creek parcel is  
11 that we were aware of the power FERC preliminary license -- but we  
12 did not -- that did not affect how we evaluated the biological  
13 values to this area, so -- and we don't have enough information at  
14 this point to really know what the potential impacts of that were --  
15 -- that project are. Essentially, what Art went through with these  
16 maps is that the areas divide up into five major parcels that we  
17 looked at, Prince William Sound 02A, 02B and 02C, involved Eyak,  
18 Power Creek, Eyak Lake and Eyak River system, watershed. The  
19 Prince William Sound 01A is Orca Narrows, and that's down on the  
20 second map, and the Prince William Sound 01C is the Rude River  
21 parcel, which is on the -- includes the upper part of Nelson Bay  
22 and up into the Rude River valley. And, again the logic behind  
23 these boundaries were is we tried to encompass more or less some  
24 ecological units, watershed boundaries and we drew the lines along  
25 the -- the Eyak Corporation's property boundaries.

26 MR. PENNOYER: Kim, do you have the acreage on each of

1 those parcels? (Indiscernible - coughing).

2 MR. SUNDBERG: Yeah, the Prince William -- the Orca  
3 Narrows is three thousand five hundred acres, the Rude River is  
4 seven thousand three hundred acres, the Eyak River is five thousand  
5 one hundred acres, and the Power Creek and Eyak Lake, combined, are  
6 thirteen thousand acres. That includes both A -- parcels A and B  
7 are thirteen thousand acres. And that leads into one of the  
8 reasons that we have combined A and B and looked at those as  
9 evaluating those as a whole is because when we got into looking at  
10 what the biological values are in that area, that Eyak Lake and  
11 Power Creek work as a biological system together. The salmon that  
12 spawn in Power Creek are totally dependent upon the lake for  
13 rearing and over-wintering, and to divorce one from the other,  
14 either -- just -- buying protection of just Eyak Lake without Power  
15 Creek or just buying protection of Power Creek without Eyak Lake  
16 doesn't do anything in terms of protecting the anadromous fish  
17 resource because those systems work -- because they work together  
18 as a system, you've got to have one or the other. So, we presented  
19 the evaluation of combining both Power Creek and Eyak Lake to show  
20 you that when you draw these boundaries, you've got to keep in mind  
21 how they work as a system together and how the value can -- the  
22 weighted score can go up, when you combine these together as an  
23 ecological unit. So, I guess what I'd do right now is briefly go  
24 through these five different parcels and sort of walk you through  
25 what the relative values are, starting with Eyak Lake-Power Creek  
26 parcel. That system is very important for anadromous fish, it has

1 sockeye salmon, coho salmon, dolly varden, cutthroat trout, and  
2 other salmon also use that system, but the primary injured species  
3 would be the sockeyes, the dolly vardens and the cutthroat trout.  
4 The sockeye run is estimated between fifteen thousand to twenty-  
5 five thousand annually, and the coho salmon are estimated between  
6 nine thousand and twelve thousand. The lake shore is used as a  
7 spawning area for the sockeye salmon. They are spawning around the  
8 lake shore and also in the Power Creek system and tributaries, and  
9 there's some real important hydrology going on in there, with up-  
10 welling around the lake shore that allows these fish to spawn in  
11 there, and then the fish are rearing in that lake, and then out-  
12 migrating to the sea. So -- you know, Power Creek and Eyak Lake on  
13 integral to the anadromous fish population there. Bald eagles --  
14 the area isn't so much important as a nesting area as it is as a  
15 feeding area. It's a major fall feeding area for bald eagles.  
16 Some people have estimated that about a third of the Prince William  
17 Sound population of bald eagles come through this area and feed on  
18 the salmon in the fall, and because there's late runs of fish  
19 there, they can feed into the -- late into the -- early into the  
20 winter, and it's a very important area as a feeding area, and  
21 again, the fish are driving this bald eagle use of the area. Some  
22 of the other high values there include river otter -- got some  
23 pretty high values for river otters, large numbers of river otters  
24 use the area, for both feeding, denning and latrine sites.  
25 Recreation-tourism is very high. The area is right adjacent to  
26 Cordova, it gets a lot of local use, plus people visitor use from

1 outside for hiking, fishing, boating, hunting, berry picking, bird  
2 watching and etc. There's a road that goes to -- along the north  
3 lake shore and up to Power Creek, so it's road accessible, and  
4 there's also some popular hiking trails that take off from the road  
5 and are used extensively. Areas of -- high -- it's high use  
6 subsistence area. Local residents use the area for hunting,  
7 fishing, plant gathering and berry picking. Overall, using our  
8 scoring system, the combined Power Creek-Eyak Lake parcel received  
9 a score of thirty, and in comparing that with other parcels that  
10 our group has evaluated, it's up in the -- you know, upper ten  
11 percent of the number of parcels that we have evaluated so far. As  
12 a reference, Seal Bay also received a score of thirty by our  
13 scoring system. So, it's a highly ranked parcel, it would provide  
14 good restoration benefits and as you'll see that one -- that parcel  
15 comes out much higher than some of the other ones. Additional  
16 value of the area is for viewshed. Again, it's very feasible from  
17 the City of Cordova from the highways and also has hydrologic value  
18 for -- as a watershed for -- at least a portion of the city water  
19 supply, comes out of Eyak Lake. Going down a river, on the Prince  
20 William Sound 02C parcel....

21 MR. SANDOR: May I ask a question?

22 MR. KUWADA: Sure.

23 MR. SANDOR: With respect to Eyak -- with respect to  
24 Eyak Lake and the putrifaction (ph) that's threatened by the  
25 timber harvesting, isn't it true that even if there was no timber  
26 harvesting that putrifaction might well take place, if in fact the

1 parcel at Eyak Lake was subdivided and developed for residential or  
2 recreation lots. If, in fact, septic systems, for example, were  
3 used.

4 MR. SUNDBERG: Yeah, the lake is very shallow, I think i  
5 its normal depth is eight feet. Because it's shallow, it's very  
6 susceptible to any kind of additional organic load which would come  
7 from septic systems, land clearing, any kind of organic debris that  
8 gets into the water, washes into the water, nutrients would --  
9 could cause large algae growth which would use up the oxygen which  
10 would kill the fish. And -- so it's -- it's susceptible to that  
11 kind of impact, whether from logging or from lake -- intensive lake  
12 shore development.

13 MR. SANDOR: What I want to pinpoint, Mr. Chairman,  
14 though is that even with the total absence of timber harvesting  
15 with that development of that lake side property for residential or  
16 recreation lots, we have the threat of putrification.

17 MR. SUNDBERG: Yes, the threat is definitely there.

18 MR. SANDOR: And, if putrification occurs, what does  
19 that do to the salmon runs?

20 MR. SUNDBERG: Well, it depletes the oxygen in the water  
21 so then the fish die.

22 MR. SANDOR: See, Mr. Chairman, this really strongly  
23 advocates -- in fact, I think the only possible way I could vote  
24 for this is that we got the property in fee because it isn't just  
25 a matter of eliminating the reduction of the problems that might  
26 stem from timber harvesting, but the development of the property

1     itself. And, I guess from a biological standpoint, or from your  
2     professional perspective, is that sound reasoning?

3             MR. WIENER:     Well, I'd certainly speak to that and  
4     agree, because not only do you have the potential problems of  
5     septic waste, you have other kinds of waste that come off  
6     residential property of herbicides, pesticides, the trimming and  
7     the removal of vegetation over along the shoreline, and most of  
8     this would be uncontrolled by existing regulations, so you have a  
9     number of problems that could add to the potential putrifaction in  
10    addition to septic waste reaching -- you know, the lake shore.

11            MR. PENNOYER: Art, does that require fee though, or  
12    there other (indiscernible - simultaneous talking).

13            MR. WIENER:     In my experience, conservation easements  
14    could be designed and crafted to hopefully prevent these sorts of  
15    things, but the management of those kinds of conservation easements  
16    that would have deed restrictions that would prevent things like  
17    using fertilizers and proper disposal of the septic waste would be  
18    an enforcement nightmare. It would be very, very difficult for the  
19    agencies to regulate those kinds of uses. And, I would certainly  
20    concur with Commissioner Sandor that the most efficient way to  
21    protect it is to own it, and to totally prevent that kind of  
22    development.

23            MR. COLE:        I want to thank Commissioner Sandor for  
24    explaining the issue for me.

25            MR. PENNOYER:    Why don't you gentlemen proceed. We don't  
26    have a lot of time.

1 MR. SUNDBERG: Okay, I'll go through this pretty quickly.  
2 Moving down river to Eyak River system, it would be the lower  
3 river, part of that river is clear water that comes down out of  
4 Eyak Lake and then it's joined with some glacial water that comes  
5 out. It's primarily used for anadromous fish as a migration  
6 corridor. It's mostly a sand bed river, there's not spawning down  
7 there. There is some rearing habitat along there, but it's  
8 primarily being used by fish moving through that area going up into  
9 the lake and Power Creek to spawn, and other tributaries. It was  
10 rated high for bald eagles, because there's some nest sites down in  
11 that area, and there is feeding and roosting along the shoreline.  
12 The rest of the values down there were moderate to low. It is used  
13 moderately by recreation, there's a fair number of people that fish  
14 for salmon down there, people use the trail going down there for  
15 berry picking, fishing and hunting. There's some duck shacks down  
16 there. It gets -- you know, intensive use at certain times of the  
17 year, probably not as much use relative to the Eyak Lake and Power  
18 Creek area because of the accessibility. Let's see. That pretty  
19 much covers the lower Eyak River. It's score came out to be 13.5,  
20 which ranked it down towards the lower end of the parcels that we  
21 evaluated there.

22 MR. PENNOYER: Mr. Cole.

23 MR. COLE: How was the acquisition of any of the six  
24 parcels which you just -- well, I guess it's four parcels, which  
25 you've mentioned, leads to the restoration, replacement or  
26 enhancement of an injured resource as a result of the Exxon Valdez



1 spill?

2 MR. SUNDBERG: Well, the species that use that system are  
3 species that were injured by the oil spill, and by maintaining  
4 those species in an intact condition, you are in fact helping to  
5 restore the resource that's in the area because the fish, the  
6 mammals and the birds that are using that area are ones that we  
7 don't know whether they were using the oil spill area or not for  
8 some part of their life history stage. They are definitely using  
9 this particular area as habitat and it's important to maintain  
10 these high value habitat areas if we're to expect restoration to  
11 occur.

12 MR. COLE: And what species were those?

13 MR. SUNDBERG: Sockeye salmon, dolly varden, cutthroat  
14 trout, bald eagles, river otters.

15 MR. COLE: Do you have data that is -- Lake and Power  
16 Creek is used by dolly varden?

17 MR. SUNDBERG: Yes. It's a high use area for dolly  
18 vardens.

19 MR. WIENER: One thing I would add to Ken's response,  
20 it would certainly prevent additional injury to those resources  
21 because harvesting of timber that would destroy their habitat would  
22 certainly exacerbate the injury to those resources.

23 MR. COLE: How about eagles?

24 MR. WIENER: We cut around or cut the nest down,  
25 certainly would harm the eagle.

26 MR. SUNDBERG: One thing that strikes me with the eagles

1 is that because their attracted to the area by the fish and a large  
2 number of the Prince William Sound eagles use that area for feeding  
3 in the fall, if that fish population was damaged in any way, that  
4 could have a serious effect on recovery of eagles in a large part  
5 of the Sound given the available ...

6 MR. COLE: What is the data about injury to eagles as  
7 the result of the spill?

8 MR. SUNDBERG: They were -- there was eagles that were  
9 killed by oil, there was eagles that were disturbed by clean-up  
10 activities. I -- I think that right now the jury's out as to  
11 whether those populations have recovered to what their pre-spill  
12 area -- numbers were, but I think there were definitely documented  
13 injuries to bald eagles during the spill, both direct mortality and  
14 breeding failures and disturbances.

15 MR. COLE: Thank you.

16 MR. PENNOYER: Commissioner Sandor.

17 MR. SANDOR: As a follow up question, with respect to  
18 criteria five on depleted, rare, threatened or endangered species,  
19 in your evaluation, did you in fact conclude that the parcels --  
20 these parcels contained critical habitat for depleted, rare,  
21 threatened or endangered species? If so, which species?

22 MR. WIENER: I don't believe we did, I don't believe  
23 any of these parcels contained species in those categories.

24 MR. SANDOR: Even the depleted?

25 MR. WIENER: That's correct.

26 MR. SANDOR: Thank you.

1 We initially proposed the acquisition of an easement, and we will  
2 go to our shareholders with a proposal to acquire these lands in  
3 fee. We can't grant fee without shareholder approval. This is the  
4 proposal the Eyak has evaluated to some length, and Eyak feels it  
5 is quite comfortable with it. Eyak wishes to grant a perpetual  
6 conservation easement with appropriate development restrictions to  
7 the United States with respect to these lands. This area contains  
8 seven thousand six hundred acres. Excuse me, can I get a glass of  
9 water. Thank you. This area contains seven thousand six hundred  
10 acres on which stand over fifty-nine million board feet of timber.  
11 With, in our view, approximately twenty-one million dollars at its  
12 current level of profitability. This amounts to an average price  
13 of about twenty-eight hundred and sixteen dollars per acre. Eyak  
14 would reserve a run-of-the-river hydro-power site along the Power  
15 Creek area. I should briefly describe for you that a run-of-the-  
16 river means that it is in the river and there's water flowing  
17 around the pipe. I don't know the precise answers to some of the  
18 questions that were asked about this particular proposal, but as I  
19 understand it, the entire penstock is located in the river with  
20 water around it. The transaction would be for a fair market value,  
21 determined by appraisals by the United States, with some  
22 participation in the process by Eyak. Payment to Eyak would be at  
23 closing, which we perceive to occur in six to nine months. This is  
24 a relatively simple and straightforward proposal. Now, I'd like to  
25 go onto our second proposal, which is basically Eyak and Power  
26 Creek in the manner that I've just discussed, plus the Orca Narrows

1 area. This proposal is somewhat more complex. Eyak's proposal  
2 with respect to Orca Narrows provides for important habitat  
3 protection consistent with Eyak's land stewardship responsibilities  
4 to its own shareholders. We implement that responsibility through  
5 a lesser restriction on Eyak's land use than is present in the  
6 Power Creek and Eyak Lake areas. In its proposal, Eyak also  
7 proposes a moratorium on further timber operations and timber  
8 cutting in the Prince William Sound area, with certain minor  
9 exceptions. We're forwarding this proposal today, because this  
10 tract is the very next one to be cut by Eyak. As you may know,  
11 initial road building and land clearing operations have been  
12 conducted over here and have been suspended pending actions on this  
13 proposal. The addition of the Orca Narrows area adds a fifty-five  
14 million board feet of timber, with an additional twenty point seven  
15 million dollars valued in the manner that I previously described.  
16 The result is a total of about fifteen thousand seven hundred acres  
17 of lands, encompassing a hundred and fourteen plus board feet worth  
18 a total of about forty-one point one million dollars. While this  
19 isn't a land sale, it does encompass a total of about twenty-six  
20 hundred and eleven dollars per acre of value. Along with this  
21 offer of lands under this alternative, Eyak also offers a  
22 moratorium on its cutting activities on the tendered lands and  
23 additionally on all Eyak lands and selections west of the Eyak Lake  
24 and the Power Creek areas. The terms of this moratorium extend  
25 until December 31, 1994. This proposal also offers the opportunity  
26 to exchange the Orca Narrows tract on an equal value basis for

1 other lands which might be deemed to be more important by the  
2 restoration planners, before December 31, 1994, and provides a --  
3 an exchange implementing proposal. The proposal is somewhat more  
4 complex because it has to address the financial impact of the  
5 timber cutting moratorium on Eyak. Our proposal includes what we  
6 believe to be a reasonable approach to resolving this financial  
7 impact. As I mentioned earlier, timber cutting operations are  
8 being conducted on these lands by Eyak's logging contractor, and  
9 this logging contractor owns about twenty-five pieces of heavy  
10 equipment financed through banks and has about seventy employees,  
11 and he has no alternative cutting contracts. Accepting the  
12 transaction proposed here means that this logging contractor and  
13 eventually Eyak will quickly incur very heavy costs as a result of  
14 the shutdown. While most, or all of these costs, are included in  
15 the value of the timber Eyak holds, and thus will be paid in about  
16 nine months, it still leaves the problem of immediate cash flow.  
17 The immediate cash flow problem is caused by the immediate shut  
18 down and the moratorium. The -- this cash flow problem must be  
19 addressed in this option. Therefore, we've included in our  
20 proposal an earnest money provision to cover the cash flow problems  
21 created by this proposal.

22 MR. COLE: Is that three -- roman numeral 3A?

23 MR. LINXWILER: That's right. The earnest money  
24 presumably would be paid through a cooperative agreement between  
25 the Forest Service and a non-profit organization, and it would be  
26 fully recoverable out of the purchase price. Charlie, I'm quickly

1 looking for roman three, I believe that is correct. That is  
2 correct. While the earnest money approach is different than what  
3 you have done before, with respect to this sort of land, or at  
4 least with respect to this sort of habitat protection acquisition,  
5 we believe it is reasonable and necessary under these circumstances  
6 if Eyak is to consider the Orca Narrows and moratorium aspects of  
7 this second alternative proposal. We've made a third proposal as  
8 well. Eyak is concerned that it may not derive the full financial  
9 benefit it foresees from this transaction if the appraised values  
10 are less than it believes is present. Therefore, Eyak proposes  
11 that the Council commit forty-one point one million dollars to have  
12 at acquisition on Eyak's land and that the difference between the  
13 appraised values of the habitat values, if any, and forty-one point  
14 one million dollars be expended in further habitat protection  
15 acquisition on lands the parties mutually identify. I hope the  
16 foregoing has been of assistance to the Council in assisting it in  
17 evaluating the proposals that Eyak has made today. As I stated at  
18 the beginning, these proposals in part consist of well understood  
19 and carefully reviewed habitat protection proposals at the Eyak  
20 Lake and Power Creek areas, along with two very new proposals  
21 intended to respond to events that have arisen in the last few  
22 days. I hope the Council will accept these proposals in the  
23 helpful and hopeful spirit in which they are made by the Eyak  
24 Corporation's negotiating team. Thank you very much, and of  
25 course, I'm happy to answer any questions you might have.

26 MR. PENNOYER: Are there questions of the Trustee

1 Council? I limit it to questions for clarification. We are going  
2 to have to discuss the issue and what we want to do with it after  
3 we hear public testimony, but if people have questions of Eyak as  
4 to the content or intent of the proposal.

5 MR. SANDOR: I have a question.

6 MR. PENNOYER: Commissioner Sandor, I believe has his  
7 hand up.

8 MR. SANDOR: With respect to the financial impact on  
9 Eyak and the value of timber that Eyak holds, it's my understanding  
10 that Eyak has much of the timber that -- that we're talking about  
11 actually under contract. Is that correct?

12 MR. LINXWILER: That is correct. Nearly all of it.

13 MR. SANDOR: Nearly all of it?

14 MR. LINXWILER: That is correct.

15 MR. SANDOR: I guess, Mr. Chairman, the concern I have  
16 or question I have, and I believe the public really should have  
17 some -- some knowledge of this, the literal value then that timber  
18 Eyak holds -- that Eyak holds in timber value -- is it fair market  
19 value at '93 values or is it the value of the contractual  
20 obligation that you have to whoever holds the contract?

21 MR. LINXWILER: Well, I should explain who it is that  
22 holds the rights. A wholly-owned subsidiary of Eyak holds the  
23 timber rights, and that wholly-owned subsidiary would also be a  
24 party to this conveyance so that you would get all of the interest  
25 that exist with respect to the timber and, accordingly, would  
26 compensate Eyak for all of the value in the timber.

1           MR. SANDOR:     Is there any extension of any contractual  
2 obligations that Eyak has to -- purchase timber that has in fact  
3 been logged and is to be logged in the future, and if so, how far  
4 into the future?

5           MR. LINXWILER: Well, either Eyak or Sherestone (ph), its  
6 subsidiary, owns all of the timber we're talking about. And so,  
7 one or the other of them would hold perpetual rights to the timber  
8 and would convey rights necessary to effectuate this transaction to  
9 the Trustees Council.

10          MR. SANDOR:     But is there an obligation to sell the  
11 timber to any interest?

12          MR. LINXWILER: Oh, I'm sorry, if that were the question,  
13 no, there is no obligation beyond Eyak's and Sherestone's ownership  
14 interest, that's right.

15          MR. PENNOYER:   Mr. Cole.

16          MR. COLE:       I'm not certain that I understand the  
17 transactions which are before us today as proposed. Are you still  
18 proposing the July 19th document?

19          MR. LINXWILER: Attorney General Cole, the most direct way  
20 to answer that is that I think the July 19th document is a formal  
21 proposal of the Eyak Corporation to this Council, but that the July  
22 19th proposal has been overtaken by events. As I understand it,  
23 one -- even limiting ourselves to the Eyak Lake and Power Creek,  
24 parts of that proposal, I understand there have been criticisms of  
25 it. We have responded in our latest proposal to those criticisms.  
26 So, yes, that is fundamentally the proposal before you, but we have



1 MR. PENNOYER: You want to proceed?

2 MR. SUNDBERG: Okay. Moving onto the Orca Narrows and  
3 Rude River parcels, that would be 01A or the Orca Narrows. Now,  
4 this parcel encompasses essentially the north shore of Orca Bay  
5 Narrows, and it's -- is drawn pretty much around the area that was  
6 provided in February as the imminent threat parcel, which is  
7 proposed logging from Hole in the Wall drainage system on the west  
8 side all the way up Orca Bay Narrows and in the vicinity of --  
9 there's an anadromous stream there, I can't remember the name of  
10 that stream, but it's most of the north shore of that Orca Bay, and  
11 it's drawn pretty much along the watershed boundary. So,  
12 everything from that red line south pretty much drains into Orca  
13 Bay. That parcel received a score of sixteen, the -- the only high  
14 value that we were able to determine there, are that -- there was  
15 two high values. One of them was for recreation and tourism. It's  
16 real visible along the corridor that you go into Cordova in, and  
17 all the boats that go in and out of Cordova essentially pass by  
18 this area. Therefore, it's a very highly visible area, it does  
19 receive recreational use by local residents. Non-residents,  
20 primarily, our understanding is primarily use the area as a  
21 viewshed or as an area that they go through, although there are  
22 some hiking trails along the Milton Lake area and the Hole in the  
23 Wall is a popular anchorage, but that's a little outside of this  
24 parcel. The wilderness values were high because there was minimal  
25 evidence of existing development on that parcel, it basically is  
26 relatively intact. So, it received high value for that. The rest

1 of the habitat values there, let me back up one more. Marbled  
2 murrelets scored high on that parcel because there's large  
3 concentrations of murrelets that are feeding in the bay, and based  
4 on the habitat characteristics of that parcel, we felt that it was  
5 probably a high -- high confidence that nesting occurs there. We  
6 don't have any direct data on what marbled murrelet use of that  
7 area is. And, the rest of the values tended to be moderate to low  
8 for habitat values on anadromous fish. There are two anadromous  
9 fish streams on it, but relative to the size of the parcel, that --  
10 using our criteria, would rank low for anadromous fish because  
11 there -- most of it's very steep shoreline and doesn't have  
12 sufficient fish habitat on it, other than at Milton Lake and upper  
13 Hole in the Wall drainage. Bald eagles is moderate because it has  
14 ten documented nest sites, and sea otters were rated moderate  
15 because there's some concentrations for feeding in the area. That  
16 -- (indiscernible) received a score of sixteen which is pretty much  
17 in the middle of our ranking system. And, then the last parcel we  
18 looked at was the Rude River. That's a block of land on the Rude  
19 River, inland from the coastline, or includes the upper part of  
20 Nelson Bay and then goes up into the Rude River Valley. I received  
21 no high -- they received high value for river otter and for  
22 wilderness, and those are the two highs. Moderates were for  
23 harlequin duck, anadromous fish. There are five documented  
24 anadromous fish streams up there, pink salmon, coho salmon, dolly  
25 varden and cutthroat -- and moderate for marbled murrelets. So, in  
26 summary the most important biological area was found in Eyak Lake-

1 Power Creek, followed by the Rude River and Orca Narrows, and then  
2 finally the lower Eyak River. MR. PENNOYER: Questions?

3 Mr. Sandor.

4 MR. SANDOR: I know it's been the discussion that --  
5 with respect to Eyak Lake and I guess the Power Creek area is --  
6 these areas have experienced prior timber harvest in the early  
7 1900's. What -- what rough percentage by area or by volume was the  
8 area actually harvested in the early 1900's?

9 MR. SUNDBERG: Our -- our information showed that that  
10 area was extensively harvested, that a lot of it had been cut in  
11 that time period.

12 MR. SANDOR: Are we dealing with potentially a second  
13 growth stand in the Power Creek and Eyak Lake areas?

14 MR. SUNDBERG: That's my understanding. And, when we  
15 looked at it for marbled murrelets, one of the reasons that it  
16 didn't score high for marbled murrelets was that the stand hadn't  
17 developed, these sort of old growth characteristics that the  
18 murrelets seem to use, so it was ranked low for marbled murrelets,  
19 as a result. One was a canopy -- more of a closed canopy, not as  
20 much mossy trees and that kind of stuff.

21 MR. SANDOR: It's predominantly then second growth?

22 MR. SUNDBERG: There's some pretty good sized trees in  
23 there, but there definitely is a high percentage of second growth.

24 MR. SANDOR: And this has implications with respect to  
25 the value that -- but that does not apply to the other parcels, or  
26 does it?

1           MR. WIENER:     I don't believe the Orca Narrows area  
2 (indiscernible - out of range of microphone).

3           MR. SANDOR:     Yeah....

4           MR. SUNDBERG:   Well, it's probably been high grade  
5 logged, but not (indiscernible - coughing).

6           MR. COLE:       Could we get a definitive statement on  
7 that Commissioner? What has been previously logged?

8           MR. SANDOR:     Is that really -- I think it's relevant  
9 from several standpoints, particularly with the proposal that --  
10 that we have -- you know, eighty year moratorium or whatever else,  
11 because in effect what we're dealing with is an eighty to ninety  
12 year stand that's been in existence. So, indeed, this -- the very  
13 values that you deploy here on these two parcels, specifically,  
14 suggest that essentially timber harvesting had occurred eighty-  
15 ninety years ago, still resulted in the very high values -- the  
16 resource values that you describe. So, that's something to keep in  
17 mind as we -- you know, the purchase rights. I'm -- I hope we can  
18 get into the discussion, and perhaps -- when does the  
19 teleconference begin?

20           MR. PENNOYER:   I think there's members of the public who  
21 will want to testify to that as well, and we'll take that during  
22 the public testimony.

23           UNKNOWN FROM AUDIENCE:   I just wanted to help clarify  
24 the second growth (indiscernible).

25           MR. PENNOYER:   If you could perhaps do that during the  
26 testimony period, then we'll ... We are not five minutes from the

1 teleconference. I think unless the Trustee Council wishes to do  
2 differently, what we'll do is break for ten minutes, set up the  
3 teleconference, let Eyak make their proposal and then take public  
4 testimony. Will that be acceptable? Then we can come back and  
5 visit with staff further after if we want to after (indiscernible).  
6 So, we'll take a ten minute break. Thank you.

7 (Off Record - 2:58 p.m.)

8 (On Record - 3:13 p.m.)

9 STAFF: And we're on line at this time.

10 TELECONFERENCE BRIDGE OPERATOR: Valdez, Juneau, Palmer  
11 and Cordova.

12 STAFF: Thank you very much.

13 TELECONFERENCE BRIDGE OPERATOR: You're welcome.

14 STAFF: The way we're going to do this meeting today is  
15 the Eyak people are going to make a presentation and then when they  
16 are done, we will convene this teleconference -- or I mean the  
17 public comment portion and that will go from -- for forty-five  
18 minutes at that time. And, I would like to remind the people at  
19 the teleconference site and let those folks in the audience here in  
20 Anchorage know that we're going to request that they keep their  
21 testimony to two minutes.

22 TELECONFERENCE BRIDGE OPERATOR: This is Nancy in  
23 Cordova. Is there any way that you can increase the volume from  
24 your end (indiscernible).

25 STAFF: Yes, Nancy, I'll do my best.

26 TELECONFERENCE BRIDGE OPERATOR: That's better, thank

1     you.

2                 MR. PENNOYER:   Okay, thank you, can we go ahead and get  
3     started.   For those folks on the teleconference line this is a  
4     meeting of the Trustee Council and we've discussed some other  
5     issues before we got into the current issue on the Eyak Land  
6     acquisition question.   We have all the Trustee Council members  
7     present here, Commissioner Sandor, Department of Environmental  
8     Conservation, Mike Barton from the U.S. Department of Agriculture,  
9     Mr. Carl Rosier from the Alaska Department of Fish & Game, Mr. Paul  
10    Gates from the Department of Interior, Attorney General Cole, from  
11    the Attorney General's Office, and myself, I'm Steve Pennoyer, from  
12    the National Marine Fisheries Service, National Oceanic and  
13    Atmospheric Administration.   We had some presentations from staff.  
14    We're going to move forward now with a presentation from Eyak  
15    regarding the land acquisition question and after that we will open  
16    it up to public testimony.   Again, it's now 3:15, we've got an  
17    executive session to get through this afternoon, so our time is  
18    very limited, and I'm afraid as you were told earlier, we're going  
19    to have to limit the public testimony to two minutes per person.  
20    I will start the public testimony after the presentation by Eyak  
21    Corporation and the questions of the Trustee Council.   So, if you  
22    folks would care to proceed.

23                MS. ANDERSON:   Good afternoon.   My name is Katherine  
24    Anderson, I'm the project coordinator for Eyak Corporation.   At  
25    this time I'd like to express my gratitude to the Trustee Council  
26    for giving us the opportunity to present today the Eyak proposal,

1 and I'd also like to thank the Forest Service who has been the lead  
2 agency for their long hours of discussions while we continued our  
3 negotiations in the last few days. I'd also like -- at this time  
4 like to introduce our staff -- he's not here, our land manager Lee  
5 Wyatt; general manager for Sherestone, Loren Waymueller (ph); our  
6 attorney from Guess & Rudd, Jamie Linxwiler, and I'd like to  
7 express a deep amount of gratitude for all those that have  
8 diligently worked with us in trying to come about with a proposal  
9 that meets not only our needs, but the needs of the public that are  
10 concerned about protecting critical habitat in Prince William  
11 Sound. At this time, I'd like to turn it over -- our presentation  
12 -- to Jamie and if you have questions, if you could hold them, let  
13 him give his presentation. Thank you.

14 MR. LINXWILER: Slide this over here, do I need to lean  
15 into the microphone? Okay. Thank you, Katherine, members of the  
16 Council, let me also express my gratitude on behalf on Eyak for the  
17 opportunity to be here today and present this habitat protection  
18 proposal on behalf of the Eyak Corporation. I know I speak for all  
19 the board of the Eyak Corporation when -- when I do that. Eyak has  
20 been pursuing a course of habitat protection in relationship,  
21 primarily to two areas of Eyak land, that would be the Eyak Lake  
22 area and the Power Creek area. Our July 19th proposal made to this  
23 Council focused on those areas, activism in the community has  
24 primarily centered on those areas, and that's why we did that. We  
25 again offer this proposal, respecting the Eyak Lake and Power Creek  
26 areas, with only minor changes as the first of several alternative

1 proposals that we are making today. Since we made that proposal,  
2 there have been a number of events that I think we're all aware of  
3 that have driven us to the bargaining table and back here today.  
4 In response to these events, a second alternative that we are  
5 presenting today, which was only been really fully identified in  
6 the last few days, has been to convey not only the Eyak Lake and  
7 Power Creek areas, but also an area across Prince William Sound  
8 from the City of Cordova called Orca Narrows, along with  
9 establishing a timber cutting moratorium, and granting to the  
10 Council trade rights to trade out of the Orca Narrows area if you  
11 believe there are other higher value lands. We also provide a  
12 third alternative, which is really a sort of derivation of the  
13 second alternative, which provides access to other Eyak lands and  
14 also, in return, provides a guaranty to Eyak that it will derive a  
15 full economic benefits in this transaction. The second and third  
16 alternatives are specifically intended to respond to recent events.  
17 I should mention with respect to the Power Creek and Eyak Lake  
18 proposals that they are primarily different in the amount of money  
19 that we request and the rights that we are proposing to convey.  
20 The amount has been subject to further, more precise calculation on  
21 the basis of updated timber data, particularly recent timber  
22 prices. And, I think you'll be happy to clear that the price has  
23 come down somewhat. The offering price has come down. But, what  
24 we wanted the Council to do was consider this on the basis of real  
25 financial information, as updated as we could make. In return,  
26 although we understand we're limited to fair market value



1 considerations, we are most interested in assuring that we get this  
2 or something very close to the values that we are offering for this  
3 land. I mentioned briefly that we also slightly altered the terms  
4 of the interest to be acquired. There's been some comment today  
5 about whether the prior proposal easement was adequate for the  
6 purpose of habitat protection, and we have given stronger  
7 protection, primarily barring residential subdivision development,  
8 which is, as I understand it, is one of the major concerns. Before  
9 we discuss these proposals, Council ought to understand my  
10 authority and the Eyak in making this proposal. The original July  
11 19th proposal was reviewed carefully by the board of directors of  
12 the Eyak Corporation. This latest proposal, however, including the  
13 Orca Narrows and the moratorium on the Eyak timber operations, has  
14 not been formally addressed yet by the board of directors. They  
15 will meet tomorrow to do so. Therefore, with respect to those --  
16 particularly with respect to these latter alternatives, the Council  
17 needs to understand that my authority today is limited to taking a  
18 proposal back to the board. I cannot today commit on behalf of the  
19 Eyak Corporation. I would like now to discuss briefly these  
20 alternatives. The alternative proposals are available in the back  
21 of the room as I understand it. Eyak is willing to accept on the  
22 Power Creek and Eyak Lake areas, a very high level of protection  
23 for the resources and the habitat on these lands. Eyak shares the  
24 concerns of the Cordova community and this Council concerning the  
25 protection of these resources and believes that they can be most  
26 appropriately protected through an acquisition of habitat's rights.

1 although I think some thought can go into 6, and then what we do  
2 with the restoration plan, because I think they want the NEPA  
3 lawyers talking to each other about how you amend this thing  
4 without going back to a full environmental impact statement. But,  
5 it's down through 5A, maybe some discussion of 6, and then at -- at  
6 that time we would look at it and say, okay, is it appropriate now  
7 to go farther with this, can we do an EIS based on what we have,  
8 and we'll be advised on that, and then do the balance of the annual  
9 work plan, or do we have to continue on from that point. But, we  
10 would have something in our hands, we'd have a package. We  
11 wouldn't just be talking about putting something together with a  
12 bunch of pieces. We have a package. It probably would be  
13 sufficient to deal with the '94 work plan.

14 MR. GATES: I think -- to carry it through that far,  
15 but I think you're going to have to have the actions in order to do  
16 an EIS -- NEPA compliance to finish the job. But, you could carry  
17 it through for the '94 work plan.

18 MR. PENNOYER: Is that acceptable in this?

19 MR. COLE: No.

20 MR. PENNOYER: Okay.

21 MR. COLE: I just don't want to see us get hung up in  
22 getting this restoration plan out dealing with the EIS. I think we  
23 have to get a restoration plan out, and, if we, along the way, we  
24 can get something done on the EIS, fine. But, here we go again.  
25 You know, we can't get the restoration plan in -- out -- because  
26 you can't get the EIS out, and we're just bouncing back and forth.

1 Let us get something done and get on with it.

2 MR. PENNOYER: So instead of going to 5A, get something  
3 done....

4 MR. COLE: Yes.

5 MR. PENNOYER: ... At that point you've got a product.

6 MR. COLE: Yes, yes.

7 MR. PENNOYER: Mr. Gates is right. That's going to be a  
8 back to life when we get there, but we've got a product and at that  
9 point we can argue whether we have to go further or whether we take  
10 that and run with it.

11 MR. COLE: I support through 5A.

12 MR. GATES: Well, that's point I'm making here.

13 (Indiscernible - talking out of range of microphone)

14 MR. COLE: But let us not get hung up on an EIS if we  
15 get the restoration plan, if we can ...

16 MR. PENNOYER: I agree.

17 MR. COLE: ... work jointly, fine.

18 MR. PENNOYER: And we may be -- what you're saying, is  
19 may be legally hung up on it.

20 MR. GATES: Well, the point is before you can go on  
21 and the EIS, you're going to have to -- you know, go through 5B, is  
22 my only point, but I think you can carry it through 5 -- 5A and you  
23 can have as much of the plan prepared.

24 MR. PENNOYER: Mr. Barton.

25 MR. BARTON: I -- aren't we talking about two separate  
26 things. We're talking about the plan and then we're talking about

1 the EIS. And then right now, in front of us is an outline for the  
2 plan. Essentially, what we've got on the floor is elimination of  
3 5B? Why don't we deal with that and we have a motion on the floor,  
4 let's deal with that and then we can deal with the EIS as -- a  
5 little further down the road. I'm pleased to hear, I think that  
6 we've determined we'd need an EIS, or we've agreed we'd need a EIS,  
7 have we done that? No. Alright. Let's just stick with the plan.  
8 Alright. I call for the question.

9 MR. PENNOYER: Is there any objections to the plan as  
10 proposed?

11 MR. SANDOR: Please restate it.

12 MR. PENNOYER: The statement was that we would instruct  
13 the Restoration Team to proceed on the drafting of the restoration  
14 plan as indicated on the outline that we presented here down  
15 through 5A, hope we have that done by Thanksgiving. At that time,  
16 we will look at it, decide what we're going to send to public  
17 review and decide at that point if an EIS would require us to do  
18 something else, maybe on a separate track. But, they would proceed  
19 with draft -- take -- in other words, the policy guidance that we  
20 got from the mail-out we did, that we're getting back by August  
21 6th, it would be incorporated into a draft plan along this outline,  
22 that would include a statement of objectives on the various  
23 resources.

24 (Indiscernible - out of range of microphone)

25 MR. PENNOYER: It also will enable us to proceed with the  
26 '94 work plan in a timely fashion. Are there any objections to the

1 slightly modified it in response to criticisms from your agencies.

2 MR. COLE: Still not sure I quite understand. Is the  
3 -- are the options one and two and three contained in the July 19th  
4 documents sort of scrapped? Can we just sort of put them aside and  
5 say they're no longer before us? I'm specifically referring to,  
6 what I guess, that's the fee title to tracts one and two.

7 MR. LINXWILER: You're talking about fee title to Power  
8 Creek, is that correct?

9 MR. COLE: Power Creek and Eyak, one tract of four  
10 thousand two hundred acres, and other tract at three thousand four  
11 hundred acres, for a total purchase price of estimated value at  
12 thirty-two million. Now, then if we look at the August 5 proposal,  
13 the one I'm holding in my hand, that does not mention a fee simple  
14 acquisition proposal. So, what I'm asking is do we still have  
15 before us a fee simple acquisition proposal?

16 MR. LINXWILER: Yes. Well, you do in the form of a new  
17 proposal. Let me explain.

18 MR. COLE: Okay, please.

19 MR. LINXWILER: The shareholders of the Eyak Corporation  
20 apparently sometime ago enacted an resolution requiring any sale of  
21 corporation assets to go to a shareholder vote. However, the board  
22 of directors of the Eyak Corporation believes that the conveyance  
23 of a significant restrictive easement does not require a  
24 shareholder vote. For the purposes of effectuating this  
25 transaction therefore, the initial proposal that we are making now

1 is a restrictive conservation easement, with, on page two, if you  
2 look at roman 2C, it says "fee title is an option subject to  
3 shareholder approval." What the board of directors is committing  
4 to do is to grant the restrictive easement now and go on to a  
5 shareholder vote on fee title. About the easement, I should  
6 perhaps speak a little bit more. The original proposal for  
7 easements in the July 19th proposal was for a forest canopy-style  
8 easement. That has been heavily criticized by the people who would  
9 need to administer it as lacking specificity and environmental  
10 protection and for its apparent failure to protect all habitat  
11 values.

12 MR. COLE: If we ...

13 MR. LINXWILER: So, we -- I'm sorry, go ahead. I didn't  
14 mean to interrupt you.

15 MR. COLE: Well, I was going to say, if we look at  
16 option one on page two, subsection C, the fee title is an option,  
17 are we looking at a fee title acquisition option subject to  
18 shareholder approval for the same twenty-one point four million?

19 MR. LINXWILER: Well, I guess that's up to the appraisers.  
20 We would assume that if we conveyed a restrictive easement and then  
21 followed that with a shareholder vote and converted to fee title,  
22 that the appraisal process would have to follow that process and  
23 that we assume that an appraisal of our restrictive easement would  
24 be somewhat less than a fee title, and so, the ultimate acquisition  
25 price we think would need to follow the -- the estate that tendered  
26 to you, and when it gets to fee simple, we just want to make sure

1 we get paid for fee simple. That's our expectation.

2 MR. COLE: So, what I'm getting at the fee title  
3 acquisition option is for a sum in excess of twenty-one point four  
4 million?

5 MR. LINXWILER: I'm sorry, no we do not believe it is. We  
6 believe that the twenty-one point four million dollars represents  
7 the full value of the timber. As I understand what an appraise ...

8 MR. COLE: Then we should get fee title when  
9 summarily reject the -- the special conservation easement, if  
10 that's the case.

11 MR. LINXWILER: Well, I think -- maybe I -- yeah, thank  
12 you captain ...

13 MR. COLE: I'm just trying to get it straight what  
14 we're do -- what's before us.

15 MR. LINXWILER: Let -- let -- perhaps I didn't answer your  
16 question in as direct a fashion as I should have. The twenty-one  
17 point four is our estimate of what all rights to the land are  
18 worth, using timber as the highest and best use. That's the --  
19 basically all the value of timber that we as a landowner will  
20 derive from the land. If we give you an easement, the appraiser  
21 will value the estate that we give you -- the quantity of rights or  
22 the quantum of rights that we give you, and presumably that's going  
23 to be less than twenty-one point four million dollars because he'll  
24 deduct a value of the retained estate. When we go to fee title, we  
25 expect that that number will be at or near twenty-one point four  
26 million dollars.

1 MR. COLE: So, on option one, Eyak Lake and Power  
2 Creek, if we were to accept that option, for example, and receive  
3 only a perpetual conservation easement with appropriate development  
4 restrictions, we would be looking at an expenditure of less than  
5 twenty-one point four million dollars.

6 MR. LINXWILER: Absolutely. What that says is that this  
7 is a fair market value transaction. You pay the fair market value,  
8 the rights you acquire. That's precisely right.

9 MR. COLE: And then that same principle would follow  
10 as to option number two?

11 MR. LINXWILER: Precisely correct.

12 MR. COLE: I'm not -- and essentially to the extent  
13 applicable, option number three.

14 MR. LINXWILER: Precisely correct again.

15 MR. COLE: Alright.

16 MR. LINXWILER: As I understand it the federal government  
17 cannot obtain land on any basis but a fair value basis.

18 MR. COLE: Okay, thank you.

19 MR. PENNOYER: Mr. Sandor.

20 MR. SANDOR: Page 22 of this booklet says final  
21 agreements on proposed habitat protection measures will be subject  
22 to the approval and acceptance of the Eyak board of directors  
23 and/or the Eyak shareholders. And, you said that option one on  
24 page 23, which I presume is the same as this new handout option one  
25 on page two, would definitely have to go to the shareholders, but  
26 the conservation easement would not?



1 MR. LINXWILER: That is correct.

2 MR. PENNOYER: Do you have another question Mr. Sandor?

3 MR. SANDOR: The -- yeah -- excuse me. The  
4 conservation easement as we describe -- as we discussed and the  
5 questions that I raised about use of properties, perhaps destroying  
6 the lake even though no timber harvesting had occurred, it gives me  
7 great concern, so I -- I have a little problem with anything but  
8 fee title acquisition and -- and plus this would automatically mean  
9 that this would have to go to the Eyak shareholders, if in fact we  
10 -- we took that -- took that particular step.

11 MR. LINXWILER: Could I respond to that, sir. Without  
12 delving into the details unduly, if you take a look at the first  
13 page of our proposal, and you look at the first paragraph of the  
14 first page, we said the property interest that we are offering in  
15 Power Creek and Eyak Lake, the second sentence states the perpetual  
16 conservation easement, and incidentally, this proposal is for a  
17 perpetual easement and not an eighty year easement. That's  
18 responsive to another criticism of our proposal made earlier this  
19 month. The next sentence states, at a minimum conservation  
20 easement restrictions will include no commercial or industrial  
21 activities of any sort, including timber harvest, no subdivision,  
22 sale, lease or other conveyance of smaller tracts for any purpose,  
23 and we're talking about uses of private lands that might harm  
24 habitat values, there won't be that sort of use in this area. No  
25 subdivision, sale, lease or other conveyance -- I guess I've  
26 covered all of that. No non-commercial fitting or clearing of

1 timber and no spraying of herbicides, insecticides or pesticides.  
2 We have attempted to respond directly to the precise concerns that  
3 you raise, Commissioner Sandor, in the easement. And, in any  
4 event, we would take it to the shareholders for approval of a fee  
5 conveyance as well. The intention in proposing this easement is to  
6 give as much protection as soon as possible to these lands and to  
7 facilitate this transaction.

8 MR. SANDOR: Well, I'm not going to ask any more  
9 questions except to say that I'm not so reassured. In fact, my  
10 conclusion is our best protection is fee -- that fee title, and so  
11 that question remains. Thank you.

12 MR. PENNOYER: Mr. Cole.

13 MR. COLE: I -- as I understand Mr. Linxwiler that  
14 these conservation easements restrictions are restrictions upon  
15 Eyak.

16 MR. LINXWILER: That's correct.

17 MR. COLE: And, what is meant by lease or other  
18 conveyances of smaller tracts? Does that mean any tracks, or  
19 what's smaller mean in that context?

20 MR. LINXWILER: Well, I think it is intended to cover this  
21 situation of breaking this one large tract of land into smaller  
22 tracts and generating multiple ownership and usage of it.

23 MR. COLE: So there will be no transfer of any  
24 interest in these lands by Eyak, if we accept it -- perpetual  
25 conservation easement proposal. Is that your correct  
26 understanding?

1 MR. LINXWILER: Yeah, it is my understanding. Perhaps its  
2 more precise, and maybe I'm being unduly precise, is that the loan  
3 -- the landowner of the entire tract will always own the entire  
4 tract. And, while the entire tract, I suppose, could be sold to  
5 some other party, it will always be owned by one entity. I think  
6 it's ninety-eight percent or likely that that will always be Eyak.  
7 I can't image a circumstance in which a sale would happen.

8 MR. PENNOYER: One question I had is, under option one,  
9 you stated that since it's not fee simple, it's the start you'd  
10 expect at the appraised value, would come in less than twenty-one  
11 point four million. What happens then? I see it has -- the  
12 government has the right of sole option to accept the higher figure  
13 or reduce the acreage to match the amount in excess. If it comes  
14 in lower, what happens?

15 MR. LINXWILER: Well, I guess if it comes in lower, we  
16 make the deal for the lower price. That is the focus of our option  
17 three, by the way, which is if it does come in lower, and you've  
18 authorized the expenditure of an additional layer of funds, option  
19 three would allow you to utilize that additional layer of funds to  
20 acquire further Eyak lands, and that would in return guaranty Eyak  
21 the opportunity to get the full benefit of the authorized sum.  
22 That -- legally, that is an important option for both you and us to  
23 have.

24 MR. PENNOYER: Mr. Cole.

25 MR. COLE: Well, we've received a letter from Chugach  
26 Electric -- Alaska -- Corporation, dated August 5, saying that the

1 regional corporation, of course, is the owner of the subsurface  
2 rights. Have you had any conversations with them about either of  
3 these proposals?

4 MR. LINXWILER: In the last several days in generating  
5 these proposals, we have not. We have talked in general terms with  
6 the Chugach Corporation about this, I believe the Chairman of Board  
7 of the Chugach Corporation is here and rather than try to speak for  
8 them, I would prefer to defer to Mr. LaBelle.

9 MR. COLE: Thanks.

10 MR. PENNOYER: One additional question that I thought we  
11 should ask the staff that's up here, do you know how the seventy-  
12 six hundred acres relates to thirteen thousand acres in their  
13 analysis for Power Creek and Eyak Lake? Your option one for Eyak  
14 Lake and Power Creek is seventy-six hundred acres, the staff  
15 presentation was thirteen thousand.

16 (Pause.)

17 MR. LINXWILER: I am informed that the seventy-six hundred  
18 acres is all of the Eyak holdings in the area, that the thirteen  
19 thousand acres relates to the size of the entire study area, which  
20 includes other landowners besides Eyak would -- and in fact, may  
21 include the United States and the State of Alaska and such.

22 MR. PENNOYER: Thank you. Are there further questions of  
23 Eyak Corporation before we start the public hearing? Mr. Barton.

24 MR. BARTON: Not a question of Eyak (indiscernible) but  
25 a question for (indiscernible). I believe there was one further  
26 presentation. Hear me now? I believe (electronic feedback) -- I

1 think Bruce Van Zee who was the point negotiator for this was going  
2 to speak for about five minutes.

3 MR. PENNOYER: Mr. Van Zee, do you have anything further  
4 to add to this at the moment? Of course you would be available for  
5 further questions later, I presume.

6 MR. BRUCE VAN ZEE: I'm Bruce Van Zee, the supervisor for  
7 the Chugach National Forest. I've participated in these  
8 negotiations since we signed an MOU back in May. I think the Eyak  
9 folks have covered the presentation pretty well. If you have any  
10 questions, I'll be glad to answer them.

11 MR. PENNOYER: Okay, no further questions? I think we'll  
12 proceed to the public hearing. As was announced previously, we  
13 have a very limited time unfortunately, and we're going to have to  
14 restrict the public testimony two minutes per person. I'll  
15 probably have to restrict the total public hearing to about forty-  
16 five minutes. We have, I mentioned before, an executive session  
17 later this afternoon. It's on a personnel matter that we have to  
18 complete before we adjourn. And of course, at the end of the  
19 public testimony we have to preserve time for the Trustee Council  
20 to deliberate this issue and decide what course to take. We have  
21 still four stations on line in the teleconference, and we have a  
22 number of people who have signed up to testify here in Anchorage.  
23 To be fair, I think we'll start with one person, rotational to each  
24 of these locations, and I will proceed down the Anchorage list in  
25 the order that the sign-up occurred. So, I think we'll start here  
26 and the first name is Christine Steele. Christine Steele? And

1 would you state your name and spell it for the record before  
2 testifying, please.

3 MS. CHRISTINE STEELE: C-H-R-I-S-T-I-N-E S-T-E-E-L-E.

4 MR. PENNOYER: Thank you.

5 MS. STEELE: Though I think the speech that I prepared  
6 is like five minutes long, so I'm going to have to --

7 MR. PENNOYER: If you can summarize, we would appreciate  
8 it.

9 MS. STEELE: Yeah, that's exactly it. This -- the  
10 topic that we are discussing today is a very serious matter in  
11 regards to my family and I, and I hope you will consider us in your  
12 decision-making process. My husband is currently employed with the  
13 local logging company in our town, Sound Development. Prior to  
14 that employment he was a commercial fisherman on the waters of  
15 Prince William Sound. Due to the oil spill in 1989, he could no  
16 longer support our family and about that time he got a job at the  
17 logging company. The logging industry has been an asset to the  
18 whole community of Cordova. It has provided jobs for local Cordova  
19 families, such as us, when jobs were scarce and fishing was  
20 insufficient. But, most of all, it has enabled life-long Cordova  
21 residents, such as us, to remain in our town that we love. Sound  
22 Development employs seventy people and their payroll alone last  
23 year was three million dollars. Our town cannot afford for this  
24 industry to be taken away by the purchasing of the timber. The  
25 Exxon oil spill caused an economic slump, and it's only right that  
26 the monies gained from it be used to promote economic growth. The

1 fact that many will lose their jobs is evident. The question now  
2 is whether or not the monies gained will be used for what they were  
3 intended for, the restoration of the environment injured by the  
4 Sounds. The oil did not spill on the trees of the Sound, it  
5 spilled in the waters of the Sound. The monies should be used to  
6 help restore the fish -- the resources that were injured by the  
7 spill, the fisheries and the marine habitat. The problem with this  
8 year's herring fisheries should be of utmost concern to the  
9 Trustees Council. I know that I speak for the majority of Cordova  
10 when I say that these monies should be spent on fisheries. I have  
11 a petition in front of me with two hundred and forty signatures of  
12 Cordovan residents, and I want to stress Cordovan residents. This  
13 is what the town of Cordova wants. They want the money to be put  
14 into the fisheries, not into buying land. The City Council came up  
15 with a resolution, this past Wednesday, in opposition to the  
16 purchase of the Orca Narrows, and they're in favor of the purchase  
17 of Eyak Lake, River and the Power Creek. The question that the  
18 tourism industry in Cordova will suffer because of the timber  
19 harvesting, I'd like to suggest that the Council might think of  
20 appropriating funds to contract the company to come in and clean up  
21 the slash and replant. This would help preserve the beauty of our  
22 Sound, as well as create more jobs for people of Cordova. Please  
23 consider us and families like us before taking away our jobs. The  
24 cost to society greatly outweighs and supposed benefit of recovery.  
25 If the buy-out is imminent, then I urge the Council to appropriate  
26 funds for the compensation and retraining of those who will be

1 affected most, the loggers and their families. And, I also suggest  
2 that before any purchasing of any lands around the area of Cordova,  
3 that there be done an economic impact study on the City of Cordova.  
4 I do not envy any of you in the least. This is a tremendous  
5 responsibility that you have been given, the power to either  
6 protect people's livelihood or destroy them, and I just pray that  
7 God would be with you and guide you in this decision. And, as I  
8 close, I would like to read a portion of our State Constitution,  
9 Article XIII, Section 1. It is the policy of the state to  
10 encourage the settlement of its land and that the development of  
11 its resources by making them available for maximum use consistent  
12 with the public interest. Thank you.

13 MR. PENNOYER: Questions? Mr. Cole.

14 MR. COLE: Ms. Steele, we spoke the other day on the  
15 telephone, and during which you essentially told me the same views  
16 you expressed here today, you'll recall. As I recall, you said  
17 during that conversation that you, personally, or for whom you  
18 speak, did not have objections to the Power Creek and the Eyak Lake  
19 acquisition. Is my recollection faulty in that, or what is your  
20 view on that subject?

21 MS. STEELE: Yes, that is true, we don't oppose that  
22 buy-out because it would not affect our jobs like the purchase of  
23 the Orca Narrows and Nelson Bay would. It would eliminate -- the  
24 purchase of those areas would eliminate all the logging in the  
25 Cordova area.

26 MR. COLE: Alright, thank you.



1 MR. PENNOYER: Are there further questions? Thank you  
2 very much, Ms. Steele.

3 MS. STEELE: Who do I give these to anybody?

4 MR. PENNOYER: Give those -- Dr. Gibbons. If you have  
5 copies of your testimony, if it's too long to read, and wish to  
6 give them to Dr. Gibbons, too, that would be -- Oh, fine, thank  
7 you. Next, I think we'll go the City of Cordova and take the first  
8 person in Cordova, please. Cordova.

9 RIKKI OTT: Yes, this is Cordova. There are only two  
10 people that signed up to testify, although there are more  
11 observers. Can you hear me alright.

12 MR. PENNOYER: That's fine. Yes, we can. The first  
13 person please.

14 MS. OTT: Okay, this is Rikki Ott and I'm a  
15 commercial fisher, Cordova resident since 1985. I'd like to  
16 sincerely thank the Trustees and Eyak negotiating team for their  
17 long hours in the accelerated negotiations to reach an agreement  
18 for habitat purchase in Prince William Sound. Since the Exxon  
19 Valdez oil spill, I have advocated for a balance between purchasing  
20 timber rights and for fisheries research. I've always advocated  
21 that the primary use of funds be used to purchase habitat, because  
22 without habitat protection, you could destroy our fisheries  
23 resources which are the cornerstone for the Prince William Sound  
24 ecosystem. The fish won't survive on studies alone. The fish need  
25 habitat. There is also an obvious need for fisheries research for  
26 basic management. However, this is the responsibility of the

1 state, and the state should commit basic funds for the stewardship  
2 of its fisheries resources. The Exxon Valdez oil spill, however,  
3 created the need for additional research of long-term impacts of  
4 the oil spill needs to be under -- better understood -- and  
5 adjustments made in future fish management. I was present at both  
6 the Anchorage and the Atlanta, Georgia, presentation of the oil  
7 spill science, and as a scientist, I no longer have faith that  
8 unbiased science can be conducted in the highly politicized arena  
9 of this -- that's presently surrounds the whole spill-impacted  
10 area. I therefore urge the Trustee Council to consider the  
11 following split of the remaining Exxon Valdez oil spill fund, five  
12 percent for administration, ten percent for science, and eighty-  
13 five percent for habitat acquisition. I would just like to say  
14 that I'm really pleased with the recent progress made in the  
15 negotiations. I thank you all for bringing this -- what's been a  
16 very painful issue to Cordova community -- helpfully to lay it to  
17 rest in the near -- very near future. Thank you very much.

18 MR. PENNOYER: Thank you, Ms. Ott. Does anybody have any  
19 questions, Trustee Council members? Well, thank you very much  
20 then. We now go to Juneau, and Juneau, anybody in Juneau wishing  
21 to testify.

22 CLAUDIA ECHAVARRIA: Yes, my name is Claudia Echavarria.  
23 I'll spell that for you. It's C-L-A-U-D-I-A, and the last name is  
24 E -- as in Edward -- C-H-A-V-A-R-R-I-A. I'm a private citizen and  
25 I came here today to let you know that here's one more soul who's  
26 still very concerned about what happened in Prince William Sound

1 and the areas that were affected. I think a very positive first  
2 step was taken by the Seal Bay and Kachemak land acquisitions and  
3 most hardily applaud your efforts and encourage you, the Trustee  
4 Council to continue. I'm a true believer in -- in that the  
5 preservation of our natural uplands and forest are the keys to any  
6 protection we could possibly have and may have against the disaster  
7 -- disasters like the Exxon Valdez. I've been reading a bit about,  
8 all I can actually, about what's been done with the Eyak lands, and  
9 I strongly urge you for land acquisition, to buy the land outright.  
10 I don't think there's any question that these lands are critical  
11 habitat for eagles, harlequins, marbled murrelets, not -- not to  
12 talk about the streams for the anadromous fish. And, without the  
13 acquisition, eventually sometime in the future, these lands will  
14 probably be logged, if not purchased. I also wanted to talk about  
15 -- I filled out an application, but I would like to talk about the  
16 six million -- six hundred million dollars that are still left to  
17 be spent under the trusteeship. I can't think and I haven't heard  
18 of anything better than land acquisition for this land. I would  
19 very much like my grandchildren in the future to be able to walk  
20 the lands in this physical (indiscernible) and see something --  
21 actually see something that helped to restore and will continue to  
22 restore the damages. Thank you.

23 MR. PENNOYER: Thank you very much. Are there any  
24 questions from Trustee Council members? If not, thank you. I now  
25 go on to Homer, anybody at Homer that wishes to testify?

26 MODERATOR: Sally Kabish (ph) wanted to testify, but

1 she had to leave to meet the bus. She was planning on coming back  
2 if you have time, maybe you can come back to us. Thank you.

3 MR. PENNOYER: Okay, we'll go back through the list at  
4 least one more time, probably a couple of times, so -- Valdez,  
5 please. Anybody in Valdez wish to testify?

6 MR. CRAIG WILLIAMS: Yes, this is Craig Williams in  
7 Valdez. I had a couple of questions I wonder if I could get  
8 answers to. They should be pretty quick.

9 MR. PENNOYER: We'll try, go ahead.

10 MR. WILLIAMS: Okay, thanks. I guess they're questions  
11 to Eyak, Mr. Wyatt (sic) with Eyak, I didn't catch how acres are in  
12 the second alternative he presented, the one that includes the Orca  
13 Narrows land. I was just wondering how many acres again that  
14 involved? And the other questions regards alternative three. I  
15 didn't quite understand what that is, so if you could again, Mr.  
16 Wyatt (sic), quickly give a brief synopsis of what that alternative  
17 is, that would be great. Thank you.

18 MR. PENNOYER: Yes, please go ahead if you will.

19 MR. LINXWILER: The answer to your first question is that  
20 in the second alternative, there are fifteen thousand seven hundred  
21 acres. To describe the three options quickly, the first option is  
22 Power Creek and Eyak Lake, the second option is Power Creek and  
23 Eyak Lake, as in the first, adding Orca Narrows, adding a timber  
24 embargo on cutting and also providing trade rights to the federal  
25 government to trade Orca Narrows lands for other more valuable  
26 lands. The third alternative, which was specifically you question,

1 is identical to the second one, except that when the Council  
2 authorizes the purchase price of forty-one point one million  
3 dollars, if that entire purchase price is not consumed in the land  
4 acquisition because the appraisals come in less than forty-one  
5 point one million dollars, they would then use that money, that  
6 excess money to purchase other Eyak lands that we and the  
7 government could together agree.

8 MR. WILLIAMS: Okay, great. Thank you very much.

9 MR. PENNOYER: Anything further, Mr. Williams?

10 MR. WILLIAMS: Not, that's it.

11 MR. COLE: Mr. Chairman.

12 MR. PENNOYER: Mr. Cole.

13 MR. COLE: It -- isn't one of the significant aspects  
14 of option number two the fact that there will be a moratorium from  
15 the date that the Trustee Council approval until December 31, 1994,  
16 in the Eyak Lake and Power Creek study areas and all Eyak lands and  
17 selections west of those areas, except the lands lying between Orca  
18 Cannery and Shepherd Point. I think that's a very important  
19 provision that should be mentioned specifically, because under  
20 option two, there will be no logging or other development on  
21 essentially all of Eyak's other lands for the next four and one-  
22 half months. Do I misread that, or is that correct?

23 MR. PENNOYER: Sixteen -- seventeen months.

24 MR. COLE: Oh, yeah, that's seventeen months until  
25 '94, so that's a long option and there will be no logging  
26 essentially all of the Eyak lands for that year and a half, under

1 option two. Is that -- that is -- provision is not in either  
2 option one or option three, is that right?

3 MR. LINXWILER: No, it's the same -- it is in option  
4 (talking out of range of microphone). I apologize. This document  
5 was negotiated extensively. Perhaps it doesn't capture all the  
6 intention of a negotiations. T that is in option three, as well.  
7 Option three is intended to be identical in every respect to two,  
8 plus the addition of the expenditure of the funds.

9 MR. COLE: Alright, but option three has the forty-  
10 one million dollar figure and if the Trustee Council does not pay  
11 forty-one million dollars for these interests, Eyak can offer other  
12 lands to bring the total price up to forty-one point one million?

13 MR. LINXWILER: Precisely.

14 MR. COLE: Thank you.

15 MR. PENNOYER: Thank you. Can we go ahead and proceed  
16 then, we'll come back to Anchorage and Mr. Karl Becker, please.

17 MR. KARL BECKER: Members of the Trustee Council,  
18 ladies and gentlemen, for the record my name is Karl Becker, I'm a  
19 sixteen year resident of Cordova, I'm a commercial fisherman and  
20 have been living in Alaska since 1971. My wife and I recently  
21 purchased the seine permit with the expectation that the fisheries  
22 of Prince William Sound will recover. The fisheries of Prince  
23 William Sound provide more than two thousand jobs and generate an  
24 ex -- vessel value of nearly thirty million dollars. A week ago,  
25 I awoke at 4:00 a.m. in the morning to listen to the calls of  
26 marbled murrelets in Nelson Bay. When I skipped out to the top of

1 the bay and shut down the motor to listen to the high pitch calls  
2 of the murrelets in the fog, on their dawn flight, I watched pigeon  
3 guillemots and sea otters with pups lounging in Orca Narrows, and  
4 I thought how amazing it is to be floating here, witnessing events  
5 that have been happening effortlessly since the birth of these  
6 great forests. The creator of all of this was not constrained by  
7 the ledger book and the profit motive, or the awkward technology  
8 with which we humans struggle to make our livings. How arrogant we  
9 are to presume, with our imperfect understanding, that we can  
10 tinker with these systems of a complexity that we are only now  
11 beginning to recognize. We cannot leave our damaged fish, wildlife  
12 and world class scenery to the certain fate they will face from a  
13 voraciously unsustainable timber industry in Prince William Sound.  
14 Gentlemen, the wisdom of the trustees concept, however imperfect,  
15 is that you need not be constrained by the profit motive or the  
16 whims of politics. Your obligation is to protect and restore  
17 injured resources and services. I urge you to be creative and  
18 flexible as you exercise your mandate. I ask you to support an  
19 agreement with Eyak Corporation to protect Power Creek, Eyak Lake  
20 and Eyak River and to negotiate a lease option on all other Eyak  
21 land, including Orca Narrows, Nelson Bay, the Rude River, Simpson  
22 Bay, Sheep Bay, and Olson Bay. Please do not become unnecessarily  
23 bogged down over the issue of fee simple purchases. Properly  
24 crafted conservation easements will protect the resources and  
25 services entrusted to you. And, I'd like to bring your attention  
26 to two things. One, is a -- our -- our -- about two hundred and

1 seventy petitions that we have gotten supporting this proposal that  
2 I've just asked you to support, and the second is two letters from  
3 Prince William Sound Communities Organized to Restore the Sound,  
4 which is an organization of all the communities of Prince William  
5 Sound, and the first letter is letter endorsing the agreement with  
6 Eyak Corporation, the second letter is one which strongly endorses  
7 the concept of using restoration funds to acquire critical habitat  
8 from willing sellers for the purpose of protecting habitat, for the  
9 impacted species and services. It goes on to say we strongly urge  
10 that a significant portion of the habitat protection acquisition  
11 fund be allocated to the attached proposals in the 1993 work plan  
12 and beyond. Thank you very much.

13 MR. PENNOYER: Thank you, questions of Mr. Becker? Thank  
14 you, Mr. Becker. I will now go back out to the net and go to  
15 Cordova, there was one more person in Cordova that wished to  
16 testify, please.

17 MR. DANNY CARPENTER: Yes, can you hear me okay?

18 MR. PENNOYER: Yes, we can.

19 MR. CARPENTER: My name's Danny Carpenter, I'm a  
20 commercial fisherman in Cordova. I know it must be difficult for  
21 you to understand how, with the current economic crisis in Cordova,  
22 anyone could stand in the way of an industry that brings money into  
23 the community. But, if you're familiar with Cordova and the Sound,  
24 and you've seen the aftermath of the current logging practices, you  
25 only need to let your conscience be your guide. Commercial fishing  
26 has supported this community for well over sixty years. We've been



1 very careful to keep this a sustainable industry. The current  
2 logging practices, at the rate the trees are being cut, the jobs  
3 that -- the sixty or seventy jobs that is supporting may last  
4 another two to four years. As commercial fishermen and knowing  
5 that the piece of pie for these monies is getting cut smaller and  
6 smaller, it's very hard for me to take money away from much needed  
7 studies. I'm including in the habitat protection, but I realize  
8 that without the habitat all the studies in the world aren't going  
9 to do any good. In closing, I just want to say that whatever  
10 decision you make today, it's going to be very apparent for a very  
11 long time and I -- I just hope that you -- you see it in your  
12 hearts to make the right one. Thank you very much.

13 MR. PENNOYER: Thank you very much, Mr. Carpenter. Are  
14 there any questions of Mr. Carpenter? If not, thank you. Juneau,  
15 anybody additionally in Juneau? Mr. Cole.

16 MR. COLE: May I ask a question of Mr. Carpenter?

17 MR. PENNOYER: Certainly.

18 MR. COLE: He heard Ms. Ott say that she proposes  
19 five percent, I guess for administration, ten percent for science  
20 and eighty-five for the acquisition of habitat. And, I don't see  
21 anything in that breakdown to support restoration, rehabilitation,  
22 of the fisheries, you know, other than through habitat acquisition.  
23 Does Mr. Carpenter agree with that breakdown proposed by Ms. Ott?

24 MR. CARPENTER: Yes, Mr. Cole, if given the choice, yes,  
25 I would support that. There were some studies this spring that I  
26 very much would have liked to see supported, coded-wire tags for

1 the pink salmon and the continued studies on the herring. If  
2 you're familiar with our fishery this year, you'll also be familiar  
3 that the herring was a flop, and it's looking like the pink salmon  
4 is going to be a flop also. But, with -- with interrupted studies  
5 the chances of proving that this is directly related to the oil  
6 spill is, I think it's going to be pretty hard to prove. At this  
7 point, I would be more in support of the habitat and less in  
8 support of the restoration science. I just -- I haven't seen  
9 anything that's come out since 1989 that really helps our plight at  
10 this point.

11 MR. COLE: Thank you.

12 MR. PENNOYER: Thank you. Going down to Juneau, anybody  
13 additional in Juneau that wishes to testify? Juneau, anybody on  
14 line? Okay, going on to Homer then, anybody additional in Homer  
15 that wishes to testify.

16 TELECONFERENCE BRIDGE OPERATOR: No, no one in Homer.

17 MR. PENNOYER: Valdez, anybody additional in Valdez that  
18 wishes to testify?

19 TELECONFERENCE BRIDGE OPERATOR: No, no one else here.

20 MR. PENNOYER: Okay, thank you very much. We'll go on  
21 then with our Anchorage sign up sheet and Paul Swartzbarg.

22 MR. PAUL SWARTZBARG (ph): Hello, my name is Paul  
23 Swartzbarg, and I'm a resident of Cordova and I've been a  
24 commercial fishermen there for twenty years. Until the oil spill  
25 occurred, Prince William Sound had an intact ecosystem. The oil  
26 spill damaged Prince William Sound in ways that are very difficult

1 to gauge. For example, people in Cordova are now concerned about  
2 skin lesions showing up on our salmon and herring. These fish are  
3 a vital part of the ecosystem. Another vital part of the ecosystem  
4 is the Coastal Rain Forest. Prince William Sound is the northern  
5 limit of this forest. Here, tree line is less than two thousand  
6 feet in elevation, and squeezed between the glaciers and the  
7 saltwater is a narrow band of old growth forest. It contains  
8 salmon streams that feed bears and eagles. Those streams have also  
9 provided a living through commercial fishing for residents of  
10 Prince William Sound for many years. Large-scale clear-cutting is  
11 currently underway in Prince William Sound. Modern forest  
12 practices are not being adhered to. In a few short years, the  
13 environmental damage of the Exxon Valdez will seem small compared  
14 to the devastation done by logging. Our formerly intact ecosystem  
15 will fail. Apex predators, like killer whales and brown bear, will  
16 simply disappear. Tourism will no longer be a long-term economic  
17 option. The Council has a unique opportunity to use the oil spill  
18 restoration money to withdraw land from logging. I know that many  
19 of the Eyak Native people and virtually all the commercial  
20 fisherman and tourism people and literally millions of potential  
21 tourists wholeheartedly urge you to do so. Thank you.

22 MR. PENNOYER: Thank you, Mr. Swartzbarg. Does any of  
23 you have any comments or questions? Mr. Cole.

24 MR. COLE: One quick -- essentially the same question  
25 that I asked Mr. Carpenter. I mean, we've heard -- had fishermen  
26 here before us and say we were injured by the spill, we need help,

1 etc., etc. We need herring studies -- you know, coded wire studies  
2 and so forth, and -- and I've sort of been taken by that testimony  
3 and have had concern for what we're doing for the fishermen and the  
4 fish stocks there. And, now we've heard -- you know, this  
5 testimony, use most of this money or essentially all of it to buy  
6 habitat. And, I don't -- you know, so I want to ask you as a  
7 fishermen, what about spending money to help the fishermen out  
8 there, so that if the next round of votes comes up in the '94 work  
9 plan, we say -- you know, the testimony from fishermen was to buy  
10 habitat, and we draw a line through that work plan that has to deal  
11 with coded-wire studies. I mean, I just want to feel comfortable  
12 if I pick up the pen and start to draw the line that we're not  
13 going to incur the wrath of the fishermen. Mr. Pennoyer, he knows  
14 more about that than I do, so I want to get it on the record here,  
15 so the next time we vote I'm comfortable on this issue. So, how do  
16 you feel about that?

17 MR. SWARTZBARG: Mr. Cole, I understand -- I  
18 understand your questions and I am -- I feel that the habitat is  
19 the baseline for restoration environment. It's where the fish  
20 breed naturally. Without the intact ecosystem, the science won't  
21 do any good. So, the bottom line is an intact ecosystem. Now, I  
22 think the reason many fishermen are testifying for habitat  
23 acquisition is because we feel we have our back up against the  
24 wall, and we don't know how much to ask for. I am a herring  
25 fishermen and had a disastrous season, and I am very much in favor  
26 of those herring studies that the Alaska Department of Fish & Game

1 are proposing. I am also a salmon fisherman, and I am very  
2 concerned about that coded-wire study. I think it's an excellent  
3 study. But, there are other studies that I am not familiar with  
4 that I can't wholeheartedly support. But, I can support habitat  
5 acquisition because I know Mother Nature has done an excellent job  
6 of rearing salmon in Prince William Sound for eons. Thank you.

7 MR. PENNOYER: Next to testify will be Dana Ranney. I  
8 don't know if I got that right.

9 MS. DANA RANNEY: Yeah, my name is Dana Ranney. I'm a  
10 commercial fisherman from Prince William Sound. My husband is a  
11 pilot there. A little -- a little while ago, Mrs. Steele came up  
12 and saying Cordovans want their jobs. This is true, I want to keep  
13 my job; my husband wants to keep his. In order to do that, we have  
14 to have our forests, and we have to have our fish. That's all.

15 MR. PENNOYER: Any questions from the Trustee Council.  
16 Thank you very much. Next will be Doren Hullkurst (ph).

17 MS. HULLKURST: It's a mouthful isn't it. With names like  
18 that it's a good thing I didn't get a middle name too. I've given  
19 my time over to a gentleman named Steve Bodner, if that's okay with  
20 you. I think he has more important information to share with you.

21 MR. PENNOYER: That's fine, thank you.

22 MR. STEVE BODNER: My name is Steve Bodner. I've been  
23 a -- lived in Cordova for about seventeen years and been a  
24 commercial fisherman for most of that. And, to be honest with you,  
25 I've sort of retired the last few years because the fisheries have  
26 been going down. I just had a few corrections today spoken to you

1 about the -- through the Fish & Game people in the Eyak proposals.  
2 There's two places in this booklet that are not quite right, and I  
3 wanted to just be sure that their on the record as corrected. Like  
4 on page three of that, if you look down, Orca Narrows, Nelson Bay,  
5 it says that this (indiscernible) being low. That's not correct,  
6 because area is used extensively for deer hunting by people who  
7 live in Cordova. It's a very narrow time of year, there has to be  
8 deep snow fall on the mainland that drives the deer down into that  
9 area, but that's one. And, on page thirteen, this is a very  
10 glaring problem here. It brought to my attention by someone else,  
11 but on the Eyak River parcel, where it says cultural resources low,  
12 that's the old village site and burial site on Eyak River, so the  
13 cultural resources should be very high under that parcel 02-C. So  
14 those two -- I brought that to their attention. Another I would  
15 like to include too is as the biologist said, if you're going to  
16 protect habitat, in the Power Creek-Eyak River watershed, you'd  
17 better protect Eyak River. That has to be included as the whole  
18 system. If biologically the river is a -- migration corridor for  
19 the fish in Eyak River-Power Creek. So, that has to be included,  
20 and I don't believe that I heard that proposal. And, then I would  
21 just echo most of the fishermen are saying that I believe probably  
22 eighty percent or so of the money should be for habitat acquisition  
23 because I think the same -- same thing basically, if you don't  
24 protect the streams, you're not going to get any fish back. Okay.  
25 Another thing that I've been up to the last few years is I've been  
26 working with some forest service folks on a timber regeneration

1 project, which is basically going out in the woods and looking at  
2 old clear cuts and old historical logging sites and seeing what the  
3 regrowth rates -- regeneration are in Prince William Sound area.  
4 And, this extends all the way from going back to the some of the  
5 village sites and some of the Russian occupation sites which would  
6 be about a hundred and fifty years ago, to the large scale cutting  
7 that was done around Cordova at the turn of the century for the  
8 Copper River Railroad. And, my only comment after being out in  
9 these old areas is to say, trees don't grow back, or they grow  
10 very, very slowly. That in order to maintain a reasonable rotation  
11 rate, you're talking about probably a hundred and fifty years for  
12 rotation rate in this area, and at that you would need a very  
13 intense management. You'd need to do thinning, you'd need to do  
14 very intense timber management in order to sustain that sort of  
15 rotation cycle. So, those are -- those are my comments. Any  
16 questions?

17 MR. PENNOYER: Any questions. Mr. Rosier.

18 MR. ROSIER: Thank you, Mr. Chairman. Charlie really  
19 started this, and it's something that is becoming very confused in  
20 my mind as well and that is what are the priorities that the  
21 fishermen are in fact asking for. Charlie and I were in -- in  
22 Cordova just a couple of months ago. We held a hearing there -- I  
23 mean, it was unanimous in terms of testimony that we received in  
24 terms of support from the fisheries resources in the Sound. The  
25 City of Cordova has come back, repealed a previous resolution and  
26 said we want the money put there, and yet we're hearing a totally

1 different story here today.

2 MR. BODNER: I can answer that question.

3 MR. ROSIER: If you would please ...

4 MR. BODNER: There's quite a few of us in the City of  
5 Cordova that feel we are not represented by the city council  
6 presently.

7 MR. ROSIER: Sorry, I didn't hear that.

8 MR. BODNER: There are a number of us that live within  
9 Cordova that feel we're not represented by our city government, and  
10 that's why we're trying other channels at the moment. Does that  
11 explain? There's also -- there's also another end to this -- to  
12 this too that I just -- just came to mind. When we're talking the  
13 moratorium west end of the Sound, the area that we're specifically  
14 -- a lot of us are talking about, and I don't think that this has  
15 been made clear, it's kind of an afterthought, but Eyak Lake, Eyak  
16 River that's red salmon, silver salmon, but one of the main areas  
17 that we are interested in is Sheep Bay, Gravina Bay, Simpson Bay,  
18 that's where the large pink salmon runs are and on Hawkins Island.  
19 And, those -- those salmon runs are returning this year after quite  
20 a long absence. But, this year we're getting really good  
21 escapement in those areas, so we're really ...

22 MR. COLE: Are you -- you're talking about Simpson  
23 Bay, Sheep Bay and Gravina?

24 MR. BODNER: Gravina and Hawkins Island. Those are the  
25 areas that the fishermen are also very interested in, and that does  
26 come under the moratorium in, I believe it's proposal three.



1 MR. COLE: It does not come under one?  
2 MR. BODNER: It comes under proposal three, doesn't it,  
3 under the west moratorium.  
4 MR. COLE: Okay.  
5 MR. PENNOYER: Two and three.  
6 MR. BODNER: Yeah.  
7 MR. PENNOYER: Okay, thank you, any further questions?  
8 Alright, thank you very much.  
9 MR. BODNER: Thank you.  
10 MR. PENNOYER: Jeff Guard, please.  
11 MR. JEFF GUARD: My name is Jeff Guard, I'm a  
12 commercial fisherman from Cordova. I'd like to thank the Trustee  
13 Council for taking time to listen to us here. I'd like to first go  
14 on the record as supporting options two or three. Because of some  
15 of the earlier proceedings we saw here this afternoon with personal  
16 difference between people and the councils, we know -- we know that  
17 the process can move very slowly. Without holding our options  
18 open, we're fearful of losing the watersheds in Olson Bay, the  
19 watersheds in Sheep Bay, the watersheds in Simpson Bay. One of our  
20 bigger dog runs -- dog salmon runs -- on this side of the Sound is  
21 in Sheep Bay. Olson Bay is important -- pink and dog stream for  
22 fisheries on this side of the Sound. So, I think it's important to  
23 keep our options open on these. Don't -- let the process move  
24 along as quickly as possible. To address another issue that Mr.  
25 Cole was talking about whether the fishermen support wholehearted  
26 timber acquisition or research work. one of the problems we've been

1 seeing so far is we've addressed you time and time again here, I  
2 know I've come to meetings before and addressed you, and we've had  
3 no recourse. To point -- to the point today, I think we've maybe  
4 spent two percent of the expended money on fisheries research.  
5 We've come and asked you for the herring research problems -- or  
6 the herring research money for spawn viability studies. It was  
7 documented in your own survey of injury documents that we did have  
8 a spawning impairment and herring in Prince William Sound. We've  
9 had egg mortality problems in the pink salmon. We've asked you for  
10 studies for these -- you know, continually not got what we asked  
11 for. I think there are a lot of fishermen that are afraid of not  
12 getting anything out of it. I don't know that I can support an  
13 eighty-five percent split for timber acquisition. I don't know if  
14 anybody can. There's not enough information out there yet to be  
15 able to decide where this money should be spent that's  
16 -- to recover the damage ecosystem out there, but we do need to  
17 keep our options open on some of this and that's what option 2 or  
18 option 3 would do for us. It would keep our options open on this.  
19 And, I as a fisherman am worried about maintaining my job and my  
20 livelihood if we start cutting in places like Olson Bay, Sheep Bay  
21 and Olson Bay.

22 MR. PENNOYER: Any questions? Mr. Cole.

23 MR. COLE: What view -- as a fishermen you must talk  
24 with your fishermen friends out there, presumably, what -- what do  
25 your friends think? I mean is this essentially an unanimous view  
26 of the Cordova fishermen?

1 MR. GUARD: I don't think you can -- I mean we're all  
2 individuals.

3 MR. COLE: But, I mean, what's the majority think?  
4 I mean, most of your friends think we ought to just (indiscernible  
5 - simultaneous talking) big habitat acquisition, or a few of them?  
6 Just tell me.

7 MR. GUARD: I -- I think it goes to a broad spectrum.  
8 Whatever the bottom line that runs through the whole thing is that  
9 we want to see restoration done, and we've seen very little  
10 movement up to this time for fisheries restoration in the Sound, be  
11 whether it's timber acquisition, be whether it's studies we wanted,  
12 be whether it's physical restoration work on the ground, whether  
13 it's restoration in the streams, near tidal zones or oil -- near  
14 tidal spawning areas that were oiled. We haven't seen anything for  
15 Prince William Sound yet. When you talk about the -- you know, the  
16 squabbling that I don't think anybody wants to get into about who  
17 is the more impacted by it, but if you look at what areas -- and  
18 the whole spill-impacted area, took the worst sublethal and lethal  
19 hits as far as the light end of the oil pollution went, Prince  
20 William Sound took almost all of it. By the time it got over to  
21 Kodiak and around to Cook Inlet and out to the Peninsula, they were  
22 left mainly dealing with the -- your heavier mouses and such as  
23 this. Almost all the light end ended up -- it ended up in the  
24 water column, ended up here in Prince William Sound. And, what  
25 little we do know about interaction of oil between herring, salmon  
26 and a few other species are that they create a long-term spawning

1 and growth problems. And, that's about all we know. We haven't  
2 done -- we've virtually done nothing for studies since then. I  
3 know that the whole process that we have here is very cumbersome,  
4 but we need to see some movement and action to start restoration  
5 production in the Sound.

6 MR. PENNOYER: Further questions? Thank you very much.

7 MR. GUARD: Thank you.

8 MR. PENNOYER: Charles McKee, please.

9 MR. CHARLES MCKEE: Thank you. My name is Charles McKee.  
10 The last name is spelled M-C-K-E-E, and I'd like to begin with  
11 telling the public that these people in front of me aren't  
12 representing me and, of course, the people behind me aren't  
13 representing me. I'm a sovereign people. All you people are  
14 indentured servants. Although you might refer to yourself --  
15 yourselves as citizens, indentured servants is meaning that you're  
16 in debt, and the nation's in debt, the state's in debt, the city's  
17 in debt. And, also I might point out that on the privately owned  
18 federal reserved note, its corporation, you've all been orisified  
19 (ph) -- orisification (ph) -- orisified (ph) is to identify or as -  
20 - or as with orasis (ph) -- all seeing eye. It's primarily out of  
21 Egypt. I've asked for a hearing through the Alaska Mental Health  
22 Board because these people need help. Truly, because when you dig  
23 into the concept that they don't have any common sense, they're  
24 dealing with very intelligent people, but they don't have any  
25 common sense. When you lay down the facts of the oil spill. I'd  
26 like to point ...

1 MR. COLE: (Indiscernible - out of range of  
2 microphone) I'm a little confused as to who needs help from API, I  
3 missed that.

4 MR. McKEE: No, I didn't say API, I said Alaska Mental  
5 Health Board. I asked for a hearing. You people need help because  
6 you've been orisified (ph), through the Masonic Order and  
7 everything else. Now, I -- I went out the in door, I have here  
8 newspaper article, the State Alaska libeled me less than ten years  
9 ago when I tried to do a fund-raiser for the Pioneer Hall, and  
10 there it is. Now, I went in the -- I went out the in door when I  
11 filed for employment with the VECO. In summary, here's  
12 application. I went out the in door because they were going to  
13 take all information and you were to sign up with the insurance  
14 company and it's simply an embezzlement. Ted Malla (ph) indicated  
15 that they -- the State of Alaska embezzled insurance money out of  
16 me during my injury when I was commercial fishing in Kodiak, and so  
17 the state is nothing more than an embezzlement function, aiding and  
18 abetting the insurance industry which is primarily induced by this  
19 Egyptian all seeing eye. And, I'd like to say to Babbitt and the  
20 President that the word says you're now -- the spell has been  
21 broken.

22 MR. PENNOYER: Thank you, Mr. McKee. Are there any  
23 questions? Thank you very much. Jerry Nash, please. I think that  
24 was Terri, not Jerry, I apologize.

25 MS. TERRI NASH: It's Terri Nash. I do not represent  
26 a special interest group. I'm a private individual. In Cordova we

1 had a rally in response for -- in support of resources. We had  
2 over one hundred and fifty people show up. We've read restoration  
3 plans and support Prince William Sound Aquaculture, the City of  
4 Cordova and the fishermen's union there. All of them agree that  
5 this habitat acquisition of the Orca Narrows, Nelson Bay is not  
6 good. I'm not going to plead any cases, I'm not going to scream  
7 and cry one way or the other. Just remember the facts. By your  
8 own point system, that area is low to moderate environmental  
9 impact. The oil went in the water; it didn't go in the trees.  
10 Think about this decision before you do it. It's ripe. It's a  
11 long-lasting decision. A moratorium will affect Cordova deeply.  
12 Just go with the absolute facts. Any questions?

13 MR. PENNOYER: Any questions? Thank you very much.  
14 Next, Marla Adkins, I believe it is.

15 MS. MARLA ADKINS: Good afternoon, ladies and gentlemen.  
16 My name is Marla Adkins. I'm a thirty-four year resident of  
17 Alaska, a twenty-six year resident of the Bush Alaska, twenty-one  
18 year resident of Prince William Sound. I'm going to -- I love my  
19 state, I love my animals and I love my resources, and nobody has  
20 lived closer to them than I have. I would like to ask one question  
21 first, and then I will go on to my statement, and I think that  
22 Attorney General Cole will be glad to know that after the testimony  
23 today I cut my speech down to about a fourth. Has the Council as  
24 a whole viewed and read into record my letter as chairman of  
25 Reclaimers for Alaska that I faxed to each member on this Council  
26 this week? Mr. Chairman.

1 MR. PENNOYER: Dr. Gibbons.

2 DR. GIBBONS: Well, I've read several letters  
3 (indiscernible - simultaneous talking).

4 MS. ADKINS: I sent a fax this week to each of you. I  
5 sent a letter as chairman for Reclaimers of Alaska. Has that been  
6 read by each of you on the Commission and the Restoration Committee  
7 and been read into record?

8 MR. PENNOYER: Dr. Gibbons.

9 DR. GIBBONS: We'll accept that on the record now if  
10 you'd like.

11 MS. ADKINS: Yes, I want to be sure it is. That can  
12 save some time then and I will go on with a summary. I strongly  
13 support critical habitat, and critical habitat are the key words.  
14 I strongly support buffer zones, buy-outs. I am opposed to the  
15 spending of any EVOS funds for massive lands acquisition and total  
16 timber lockup. Locking more of Alaska's lands up due to pressure  
17 by extreme environmental groups and special interest groups. I am  
18 concerned about the make up of this Council and this restoration  
19 group. I'm concerned about the pressures going on behind the doors  
20 in Washington, D.C. Those people do not always represent the  
21 masses of Alaska, and as Mrs. Steele said, Alaska has a  
22 constitution and I think everyone here should read it, because you  
23 are the keepers right now of our money left over from the oil spill  
24 and allocated by the funds. I am against any spending on  
25 moratoriums. I think it is nothing more than blackmail. The  
26 Cordova City Council in its latest motion and continues support of

1 fisheries being of the utmost importance, has passed another motion  
2 of which I would like to read here today for record. This motion  
3 was faxed to me today by a member of the council. The motion by  
4 Scott Novak and seconded by Pat Fisher to rescind Resolution 9192  
5 and direct administration to communicate to the Trustees Council  
6 and the Eyak board of directors to support the fisheries -- to  
7 support the fisheries research and rehabilitation and the  
8 possibility of an endowment fund and debt retirement for  
9 hatcheries, and any habitat buy-back be limited to the Power Creek,  
10 Eyak River and Eyak Lake watershed areas. It was a voice vote,  
11 motion carried, council members Anderson (ph) and Bird did not vote  
12 due to a conflict of interest. The council voted by the people as  
13 a whole, and true, they don't always represent all of the people,  
14 they normally represent the mass of the people.

15 MR. PENNOYER: Ms. Adkins, I'm going to have to ask you  
16 to wrap it up if you can. (Indiscernible - out of range of  
17 microphone).

18 MS. ADKINS: Okay. I think others spoke a lot longer  
19 than I. Cordova's council, I think the aides involved in the EVOS  
20 are dysfunctional, with all due respect, and I know you have a hard  
21 row to hoe here. Listening to your Council earlier, I think you  
22 have more bureaucratic deadlock. Oil spills don't wait on EIS  
23 studies. Our fisheries and our long-term resource in fisheries and  
24 research must be handled and funded properly, or you're going to  
25 have two economic basis going down the tube here with a massive  
26 timber buy-backs that seem imminent in the future if we're not



1 careful. I urge this commission to continue to work together, to  
2 expedite responsibly the goals to restore the fishes that were  
3 damaged and the long-term research and restoration. Prince William  
4 Sound of Cordova has been logged since the early thirties and I ask  
5 each one of you who has not been there to only go out and take a  
6 look. It is a renewable resource just like fisheries, but if it is  
7 not handled carefully, it won't be an economic growth for the State  
8 of Alaska, which is sadly needed. And, in closing this, I would  
9 like to ask -- has this commission reach any decision regarding  
10 what is critical habitat versus what in both timber and  
11 opportunitistic parcel buy-outs. And, if you have not, I urge you  
12 to consider this in making decisions. I think . . .

13 MR. PENNOYER: I think we have some questions. Mr. Cole.

14 MR. COLE: Do you support the acquisition of Power  
15 Creek and Eyak Lake?

16 MS. ADKINS: I do, sir.

17 MR. COLE: Pardon me?

18 MS. ADKINS: I do so -- I do so personally and so does  
19 Reclaimers of Alaska, which I speak for as chairman.

20 MR. COLE: Thank you.

21 MR. PENNOYER: Are there other questions?

22 MR. COLE: How about Eyak River?

23 MS. ADKINS: Yes, personally.

24 MR. COLE: I mean downstream from the lake?

25 MS. ADKINS: It would depend on how far down. I  
26 support critical habitat that has anadromous fish streams, spawning

1 beds, buffer zones, okay.

2 MR. PENNOYER: Thank you. Mr. Rosier.

3 MR. ROSIER: Yes. Marla, you were present at the  
4 hearing that Charlie and I attended there in Cordova. In your view  
5 was my characterization of that -- what came out of that meeting,  
6 incorrect or not?

7 MS. ADKINS: Exactly. The fishermen, as you know I ran  
8 for office and lost by forty-one votes, and many, many people come  
9 to me, and surprisingly enough, I've been at issue with the  
10 fishermen over the Copper River highway, but I'm surprised at the  
11 number of citizens and fishermen who come to me in the last months  
12 and weeks and their concerns that the money -- you need the money  
13 immediately to be spent -- you guys are boondoggled -- you're  
14 sitting in a mess. Nothing is getting done. You're all trying to  
15 plan and mean while, problems are ongoing and the fishermen as a  
16 whole that I dealt with wish the monies to go into fisheries and  
17 critical habitat.

18 MR. PENNOYER: Thank you. Next will be Pamela Brodie,  
19 please. Pam.

20 MS. BRODIE: Thank you, Mr. Chair. I'm Pamela Brodie,  
21 as you know, from Sierra Club. As the Trustee Council knows very  
22 well, the members of the Sierra Club strongly support using oil  
23 spill funds to protect wildlife habitat. But, I also want to say  
24 that we realize that eliminating logging somewhere once it has  
25 begun is a difficult choice. No one wants to put people out of  
26 work. The Anchorage Times likes to say that there's no such thing

1 as an unemployed environmentalist, but I have been such a person on  
2 numerous occasions and I can feel for people who are afraid for  
3 their future. But, I also ask you to bear in mind as you make your  
4 choice that logging in the Eyak area would be a very temporary  
5 economy in any case. If logging is allowed to proceed, these jobs  
6 will be eliminated soon, as I understand it, within a couple of  
7 years. When the trees are gone, the fishing and tourism  
8 opportunities will suffer for decades to come. The population of  
9 damaged old growth species, such as harlequin ducks and marbled  
10 murrelets will suffer for more than a century. Please bear in mind  
11 also, that logging is occurring in other parts of Prince William  
12 Sound. There is heavy logging going on in Tatitlek lands to the  
13 north of Cordova, and it is beginning on Montague Island.  
14 Protecting Eyak lands, in particular, is a high priority to the  
15 fishermen of Prince William Sound, as you know, and to  
16 conservationists in Alaska and throughout the nation. We believe  
17 it is essential to stop all logging on Eyak lands, including Sheep  
18 Bay, Simpson Bay, the Rude River drainage, Hawkins Island. We  
19 believe this area should be protected in perpetuity. We ask your  
20 help. Thank you.

21 MR. PENNOYER: Thank you. Mr. Cole.

22 MR. COLE: Quick question. Do you favor the  
23 acquisition of conservation easement or fee simple title?

24 MS. BRODIE: That's a difficult question. In general,  
25 we prefer fee simple title, but we understand that it can cost a  
26 great deal more, and so it becomes a judgment call. I think that

1 the scientists have made a good case that fee simple title  
2 acquisition would be good for Power Creek and Eyak Lake. I think  
3 that I would love to -- to get fee simple title for all of Eyak  
4 lands, but it probably is not an option, or if it were, we'd --  
5 there might be a tremendous sacrifice in other areas because of the  
6 costs, so it's hard for me to say without knowing the price of one  
7 versus the price of other -- of another.

8 MR. PENNOYER: Mr. Rosier.

9 MR. ROSIER: Pamela, you say that there's apparently no  
10 logging that's acceptable to you, and I can understand that, but we  
11 have had logging in other areas of the state, and that's not to say  
12 that there has not been impacts associated with that, but -- you  
13 know, I guess I would take a -- take real exception to the -- you  
14 know, to the -- to the notion that that the fish runs are going to  
15 be wiped out. I think that there are safeguards that are  
16 implemented in many cases. I think we've seen this demonstrated in  
17 Southeastern Alaska, and -- and I just have a hard time -- you  
18 know, moving away from a multiple use concept entirely, myself. I  
19 -- I guess that's more of a statement than a question, but I just  
20 take some exception here to the single purpose use that has to be  
21 made on -- on Prince William Sound.

22 MS. BRODIE: Perhaps I didn't make myself clear. I --  
23 I was trying to say that we recognize that there is logging in  
24 Prince William Sound and that it is not all going to be stopped.  
25 There's certain areas where -- that we think are priorities for  
26 stopping logging, and that includes all of Eyak land. I was not

1 saying all of the Prince William Sound land.

2 MR. PENNOYER: Pamela, does that include Orca Narrows?  
3 You say certain areas -- that it's important for resource values,  
4 just in generally all of ...

5 MS. BRODIE: Including -- including all of Eyak's land.  
6 Yes, yes. No, I recognize that some areas are more critical  
7 wildlife habitat than other areas, and according to the testimony  
8 from scientists, Orca Narrows is lower, but it is -- that I think  
9 is balanced by the importance of that area in terms of recreation  
10 and tourism for the town.

11 MR. PENNOYER: Mr. Cole.

12 MR. COLE: If that's the case, how do you  
13 differentiate all of Eyak lands from all of Tatitlek lands, which  
14 are shown in that chart over there on your far right, in the two  
15 different colors? That's one of the things that troubles me. I  
16 mean, it looks like to me that the Tatitlek lands are every bit as  
17 environmentally attractive as the Eyak lands, and there we are,  
18 sort of chasing ourselves around the town. That's really  
19 troublesome, so tell me how I make that cut when I vote?

20 MS. BRODIE: It's hard to set these priorities, and  
21 what we look at is largely the people who live in the area, what  
22 they want, what we hear from local people. We also listen to what  
23 the scientists say are the most critical areas for wildlife  
24 habitat. And, we also have, a bias perhaps, of protecting areas  
25 which have not been logged over being able to protect a small part  
26 of an area which has otherwise been clear cut, and that -- that has

1 to do with recreational use.

2 MR. COLE: Did I hear an answer?

3 MS. BRODIE: Would I like to save Tatitlek lands too?  
4 Of course I would.

5 MR. COLE: Alright, thanks.

6 MR. PENNOYER: Thank you very much. Mr. Sandor.

7 MR. SANDOR: Since we've expanded the concept of  
8 logging beyond the needed area, the Eyak Corporation lands, we've  
9 learned, and I'm going to have a briefing next August 23rd about  
10 spruce bark beetle and its infestation, which I understand is now  
11 six hundred thousand acres, in a substantial acreage within the oil  
12 spill area, including now a substantial infestation into the  
13 Kachemak Bay area, and even the Kachemak Bay State Park. So, our  
14 habitat people and Nature Conservancy people are going to be  
15 looking at habitat restoration of areas that are beetle-killed.  
16 One technique is to harvest the beetle-killed timber, which is of  
17 course a habitat that's been lost by so-called natural means. Do  
18 you favor the support -- the harvest of beetle-killed timber?

19 MS. BRODIE: No, we would oppose that. There is --  
20 regarding what's in danger of beetle-kill, the scientist seem to be  
21 learning as they go along. As recently as a year or two ago, it  
22 was thought that that area was pretty safe from the beetles because  
23 it's much more wet than most of the Kenai Peninsula, and now, I do  
24 go there often and I know it's looking scary, in terms of beetle  
25 infestation. We don't know what the climate is going to be like  
26 for the next couple of years and has an effect. But, I have also

1 seen pictures of places that had large scale beetle kill back in  
2 the twenties where the trees have regenerated, the new trees  
3 growing up around the old trees, and meanwhile the area is not  
4 scared by roads that you would get with clear-cutting, and we do  
5 feel very strongly that a park is something that must be off limits  
6 to logging. I'd also like to add that it appears that activities  
7 by humans have greatly exasperated the spruce beetle problem in the  
8 Kenai Peninsula, such as building seismic lines, where the trees  
9 are cut down and left, and the seismic line runs for miles and then  
10 you get beetle kill spreading out from the seismic lines. And,  
11 that Bradley Lake power line, unfortunately, is probably going to  
12 be another contributor to that, so, when people go in and meddling  
13 in a state park area, these are the dangers that they face.

14 MR. SANDOR: Thank you.

15 MR. PENNOYER: Thank you (indiscernible) but I think we  
16 need to move along. Mr. Barton, you had a question?

17 MR. BARTON: No, I didn't. Let's move along.

18 MR. PENNOYER: Thank you very much. Before we go further  
19 and at the risk of taking in extra time, I can see we're not going  
20 to get through the rest of the agenda, and I would like to know  
21 what the Council's druthers are. We've got about another hour and  
22 ten minutes, we have about two more people who wish to testify, and  
23 how long the discussions going to take. If we don't get there, can  
24 we set up -- do the executive session by teleconference on Monday,  
25 maybe, or something? We'll have to try and find to get both in  
26 because if I do, we're going to have to cut this thing out and stop

1 now, I'm afraid.

2 (Indiscernible - out of range of microphone.)

3 MR. COLE: How many of us can be in Juneau, Monday or  
4 Tuesday?

5 MR. PENNOYER: Monday. Mr. Barton are you available  
6 Monday? Could we set it up Monday sometime by teleconference  
7 and/or physically present, if we could work it out we would do  
8 that. We need five days notification for people, I think, at least  
9 to come -- we're scheduled for next Friday, the meeting on the  
10 final decision, I believe, on executive director, or not final  
11 decision, but the interviews. We'll have to give people some  
12 notice. So, if we can do this Monday morning, is that time enough?

13 MR. SANDOR: Could we meet later tonight?

14 MR. PENNOYER: Some of us are leaving. It wasn't said --  
15 we were here this morning, but -- it was scheduled then, and I  
16 think we've got to finish this discussion. So, Mr. Gibbons can we  
17 set that up then for then for sometime Monday morning.

18 DR. GIBBONS: Sure.

19 MR. PENNOYER: Okay, let's proceed then, we have, I  
20 think, two more people -- three more people to testify. Jim  
21 LaBelle, please.

22 MR. JIM LaBELLE: Thanks for allowing me to testify  
23 today. For the record, my name is Jim LaBelle, that's L-A, capital  
24 B-E-L-L-E. I'd like my testimony -- to -- to reflect support for  
25 whatever ongoing negotiations there may be between Eyak and this  
26 Council. I -- I certainly don't want to my comments or my concerns



1 to be interpreted as opposing what their doing. However, I -- I  
2 encourage you to recognize that there is a substantial subsurface  
3 estate involved with your negotiations with, not only Eyak, but  
4 perhaps other village corporations in the region. And, I hope you  
5 all got this -- my letter today -- kind of emphasizing and  
6 encouraging you to -- to however you wish to -- to proceed further  
7 to afford Chugach -- to participate in your negotiations, as you go  
8 along. We're -- we're concerned, naturally, that not only is -- is  
9 there ongoing negotiations with Eyak, but perhaps some of our --  
10 some of the other villages in our region, where Chugach is also the  
11 subsurface owner. And -- and, I know this could be burdensome and  
12 cumbersome if we have to go piecemeal by piecemeal through each and  
13 every one of these, I'm hoping that perhaps we could have a  
14 dialogue whereby we could take care of a lot of these things, at  
15 least the -- with respect to the regional interests, in concert  
16 with what's going on with the villages. The Council needs to be  
17 aware that Chugach has the subsurface ownership estate of Power  
18 Creek, and we also have equity interest in the development of that  
19 area as a hydroelectric facility for the city. The Council should  
20 recognize that withholding timber development through any  
21 conservation easement or fee simple purchase will cease revenues to  
22 the regional corporation by virtue of gravel extraction on the road  
23 construction that we have realized for a number of years. The  
24 Council should recognize then, in addition to that, we have our own  
25 gravel resources in the area. I can't point them out specifically  
26 for you today, but I believe some of them are in the -- in these

1 three or four systems that are under discussion today. I think the  
2 Council needs to be aware that we -- Chugach owns a sawmill in  
3 Seward. We have our own timber resources, of course, but the  
4 Council should recognize that we like, like any prudent contractor  
5 or timber owner, we like to utilize sources from a variety of  
6 places, and we recognize this is going to impact that forest.

7 MR. PENNOYER: Mr. LaBelle, I'm going to have to ask you  
8 to wrap it up.

9 MR. LaBELLE: Okay.

10 MR. PENNOYER: Whatever else needs to come out in  
11 questions, may come during (indiscernible - simultaneous talking).

12 MR. LaBELLE: Okay, I have another speech to make now.

13 MR. PENNOYER: Mr. Barton.

14 MR. LaBELLE: Thank you.

15 MR. BARTON: I think Mr. LaBelle has come forward with  
16 a very constructive suggestion. You know, we're faced here in this  
17 situation with the sub -- subsurface estate in different ownership,  
18 just as we were at Seal Bay and perhaps Kachemak, I don't know.  
19 What I'd do, with the Council's permission, what I would suggest is  
20 that Agriculture or agriculture representative from Interior meet  
21 us as soon as we can get a mutually agreeable date with Mr. LaBelle  
22 and explore further with his suggestions here in his August 5  
23 letter.

24 MR. PENNOYER: Okay, we can take that up during the time  
25 of the -- of discussions, I suppose. Are there any questions of  
26 Mr. LaBelle? Thank you very much. Mr. Ken Jones, please.

1           MR. KEN JONES: My name is Ken Jones. I've been a  
2 resident of Alaska since 1975. I'd like to thank Charlie Cole for  
3 making most of us without out a tie today feel comfortable. I kind  
4 of feel like a pair of brown shoes with a tuxedo sometimes, looking  
5 at -- the reason I'm here is that, a lot of people are talking  
6 about the Exxon Valdez oil spill disaster as a catastrophe, and the  
7 catastrophe was really how it was handled. I had first-hand  
8 knowledge of how it was handled being intimately involved with a  
9 number of meetings and dealing with Exxon and meetings with  
10 National Oceanographic and Atmospheric Administration, Alaska  
11 Department of Environmental Conservation, Oil Spill Response  
12 Center, a portion of that, in particular, because I was a project  
13 manager with a company that was picked for the process to clean up  
14 the heavily soiled oil spill areas, such as Sleepy Bay, Knight  
15 Island and a few other places like that. Due to the politics of  
16 the situation, which we did not understand, and I'm the first to  
17 admit that we were a neophyte, we just happen to have an idea that  
18 we put forth as a proposal that was accepted by the consortium of -  
19 - by the committee that was comprised of National Oceanographic and  
20 Atmospheric Administration, the Alaska Department of Environmental  
21 Conservation, the Coast Guard and Exxon. They put us through a  
22 scientific matrix, we came out to be the first choice. And, after  
23 all the shouting was over, we felt like a bastard child, to be  
24 honest with you. Now, we were due to be tested -- we were  
25 interviewed by two television stations, we had that from Exxon's  
26 own people, and that never happened. And, the reason that I'm here

1 in the public comment section, is that -- you know, the thought  
2 occurred to me, Good Lord, if we were picked as number one after  
3 spending tens of thousands of dollars to get ready to use common  
4 sense to clean up Prince William Sound and the heavily soiled areas  
5 with rock washing technique, that was a mechanical means that was  
6 even endorsed by the Alaska Department of Environmental  
7 Conservation themselves, and as it turned out, we were supposed to  
8 be interviewed by several national programs, and I speak of 20/20  
9 and McNeil-Lehrer Report and so forth, that most of you might know,  
10 had gotten a call from Governor Steve Cowper's office at that time  
11 asking us not to go on that because they wanted to put us out on  
12 Knight Island and test us first, and then we could all go forward  
13 together and bask in the limelight. Well, we weren't interested in  
14 basking in anybody's limelight, we were just interested in trying  
15 to clean up the beaches. And, we figured that we could have  
16 cleaned up eighty to ninety percent of the heavily soiled beaches  
17 with the technique that was nothing more than common sense rock  
18 washing. And, although the procedure, from talking with Exxon,  
19 promising a contract and then giving it to someone that had no  
20 outside expertise or any prototype whatsoever, except, I think,  
21 washing down the insides of oil barges. It seemed to me that if,  
22 after spending tens of thousands of dollars getting ready to help  
23 and we were quashed, then I thought, My God, what about the other  
24 people that had good ideas that were -- that didn't have the  
25 resources and were not listened to in the manner ...

26 MR. PENNOYER: Mr. Jones, I'm going to have to ask you to

1 (indiscernible - out of range of microphone).

2 MR. JONES: Right. I'll wrap it up here. I just --  
3 I think the big catastrophe is how it was handled and one of the  
4 big rubs that we had in doing a little poking around, had to do  
5 with the fact that the Alaska Department of Environmental  
6 Conservation had several of their employees that had worked with  
7 someone else that got passed over in a scientific matrix of  
8 deciding what process was going to be used to clean up the heavily  
9 soiled areas. And, as a consequence, because they didn't want some  
10 kind of political scandal to come out, they decided to go ahead and  
11 drop everyone and turn it over to Exxon and fire the head of their  
12 oil spill response center, a man named Alex Fatarie (ph). And, I  
13 thought to myself, what can you expect of someone whose -- you  
14 know, Alaska Department of Environmental Conservation is being run  
15 by an attorney. I mean, for some reason, that seemed to be the  
16 response of a bureaucrat instead of someone that really had the  
17 interest of the State of Alaska -- you know, at heart.

18 MR. PENNOYER: Mr. Jones, I'll have to ask you to wrap it  
19 up. We have other people ...

20 MR. JONES: And, I have documentation to support it  
21 all. So, I guess what I'm saying is -- is that -- you know, I hope  
22 that this Trustee Council doesn't turn out to be another clone of  
23 what I have experienced before as project manager for a company  
24 that wanted to get the oil cleaned up. And I am looking through  
25 your proposal ...

26 MR. PENNOYER: Testify on Eyak and I think we're going to

1 have to get back on it. We've got (indiscernible - simultaneous  
2 talking).

3 MR. JONES: Okay, another fifteen seconds. In looking  
4 through your proposals here, it seems that nothing has even been  
5 mentioned about what the state had proposed to clean it up, it was  
6 all -- it seems that this whole area is being used as a big  
7 laboratory to study the effects of oil instead of really getting in  
8 there and trying to clean it up. You know, it's like Prince  
9 William Sound is bleeding from hundred cuts and we only have ten  
10 Band-aids. Something's wrong, and that's what I'm here to say.  
11 And, I have documentation to support anything that I have, if Mr.  
12 Sandor is interested or anyone else.

13 MR. PENNOYER: Thank you Mr. Jones. Does the Trustee  
14 Council members have any questions? Mr. Sandor.

15 MR. SANDOR: Just one question. Do you support the  
16 acquisition of -- of the Power Creek, Eyak Lake, Eyak River and any  
17 other lands in the proposal on the table?

18 MR. JONES: As far as the acquisition of those lands  
19 are concerned -- you know, I'm not as in -- as familiar in depth  
20 with that particular portion of it as I should be. I think it's a  
21 good idea if you protect forested land and -- you know, not clear-  
22 cut everything and ruin your streams as all the people that came  
23 before me had talked about. I know there has to be some economic  
24 balance with -- your biological balance, and so forth, but I -- you  
25 know it seems to me that if you leave the oil there, and let it  
26 keep working over and over and over -- you know, I felt like we

1 kept trying -- every time we talked to somebody it was like trying  
2 to explain to a blind man what color was.

3 TELECONFERENCE BRIDGE OPERATOR: Excuse me, this is  
4 bridge operator, excuse me, this is the bridge operator and we will  
5 need to conclude today's teleconference portion of your meeting.

6 MR. PENNOYER: That's fine. Thank you operator. We have  
7 one more to testify, we'll proceed with that, thank you very much.

8 TELECONFERENCE BRIDGE OPERATOR: Thank you as I will  
9 conclude the teleconference at this time.

10 MR. PENNOYER: Are there further questions of Mr. Jones.

11 MR. JONES: I'll be happy to respond to anything  
12 anybody has, because apparently no one was interested.

13 MR. PENNOYER: Thank you. We have one more person to  
14 testify specifically on the Eyak question and I think that is Marie  
15 Jones -- and Mr. Steiner.

16 MR. RICK STEINER: Yeah, good afternoon, good evening.  
17 I have the -- I'm proud to have the honor to introduce to you Marie  
18 Smith Jones. She's one of the -- most wonderful people I know.  
19 She probably has more knowledge -- more intimate knowledge of  
20 Prince William Sound and particularly Eyak lands and Eyak people  
21 than all the rest of us in the room and possibly combined. She is  
22 the last living speaker of the Eyak language, she's the tribal  
23 leader of the Eyak people and I would ask respectfully that you  
24 accord her possibly the weight of her testimony maybe five hundred  
25 times the rest of us blue-eyed Arabs would get. So, with all  
26 respect, I yield to Marie.

1 MS. MARIE JONES: Hi.

2 MR. PENNOYER: Hello.

3 MS. JONES: Ladies and Gentlemen. I'm not used to  
4 speaking in a big place like this so please bear with me. I think  
5 on the way into the meeting you all have seen the posters out there  
6 that the children have drawn. That shows -- that speaks for  
7 itself. Some day, along the way, this could be your children doing  
8 this, being hurt by the ugliness that's going on around them.  
9 Please don't let that happen. And, another thing is, you are  
10 taking the animals' homes away, and they are protesting the only  
11 way they know how by coming into town and telling you, you are  
12 taking my home away. Now take care of me, house me and feed me.  
13 And, the only thing I hear is they're going to shoot them, do away  
14 with them. That isn't fair. That isn't fair, ladies and  
15 gentlemen. Give them back their home. Give the birds back their  
16 trees so that they can be happy up there. I grew up in Cordova, I  
17 was born and raised there, and I saw the beauty of Cordova. I  
18 never thought when I was young that I would go back there one day  
19 and see the ugliness that is happening there. So, please, ladies  
20 and gentlemen, put yourself in my place for just a little while and  
21 see -- and feel the pain that I am feeling right now and ever since  
22 the trees have been falling. Thank you.

23 MR. PENNOYER: Thank you. Are there questions? Mr.  
24 Cole.

25 MR. COLE: Ms. Smith. What troubles me is who is  
26 cutting these lands? Who is cutting this timber. (Mr. Steiner



1 repeats question for Ms. Smith Jones.)

2 MS. JONES: The loggers that come in.

3 MR. COLE: Thank you.

4 MR. PENNOYER: Thank you very much. Any other questions?  
5 Thank you. That concludes the public hearing and shall we take a  
6 five minute break -- not much longer than that.

7 MR. COLE: Keep going.

8 MR. PENNOYER: Well, I think maybe you're going to have  
9 a few people leave this table for five minutes anyway, so five  
10 minute break and then we'll -- but please try to keep it just that.

11 (Off Record 5:08 p.m.)

12 (On Record 5:15 p.m)

13 MR. PENNOYER: Just out of curiosity -- repeat this, I  
14 suppose is, Art in the audience somewhere? Would you characterize  
15 for me the difference between the Eyak proposal and your thirteen  
16 thousand acres. I heard a discussions there were a lot of other  
17 parcels and things involved there, and I'm not sure how that mixed,  
18 changes the resource values or -- or whether the seventy-six  
19 hundred from Eyak, absent any consideration of the rest of the  
20 thirteen thousand, greatly diminishes the potential. And, if you  
21 taken Eyak around the lake and you get even a fee simple, all of a  
22 sudden you discover that about half of it's open to subdivision,  
23 then you may have defeated your own purpose. I don't understand  
24 the difference between the two proposals.

25 MR. WIENER: The way we crafted that design of the  
26 project was to draw a polygon that what we felt made the most

1 ecological sense, absent any consideration or most consideration of  
2 ownership. So, when you view the polygon, it captured not only the  
3 Eyak owned lands, but it also captured lands that are Native  
4 allotments, that are lands that may be in public ownership already,  
5 and it also captured the actual surface waters of the lake. So  
6 that's where some of the difference in the acreage figures comes  
7 from. One of the problems that we have with the proposal is that  
8 we don't actually know the ownership or status of ownership of some  
9 of the in-holdings or the Native allotment portion of the Eyak  
10 lands. And, I guess until the title work is completed, we won't  
11 know exactly what the acreage figure is on those allotments or  
12 where exactly they are. So ...

13 MR. PENNOYER: So, we can't strictly compare the seventy-  
14 six hundred acres with -- with the values you gave us of ranking of  
15 thirty for the whole thirteen thousand. We don't have the  
16 comparison between those two?

17 MR. WIENER: Not in terms of ownership, no. No. What  
18 we did is we drew the polygon -- what we're comparing are ...

19 MR. PENNOYER: But the benefits of the proposal can't be  
20 evaluated using directly -- using your ...

21 MR. WIENER: I think (indiscernible). I think they  
22 can.

23 MR. PENNOYER: They can. Okay. So by losing six  
24 thousand acres, part of it was lake water and it doesn't count?

25 MR. WIENER: In terms of the benefit, it counts, but in  
26 terms of the cost effectiveness, you have to correct that. We

1 don't factor in the cost of the proposal, we just look at the  
2 biological value.

3 MR. PENNOYER: Well, we had our public commentary, and I  
4 guess, if you have further questions of staff or of Eyak, now would  
5 be the time do them. So ...

6 MR. SANDOR: In regard to this -- I think I'm clear the  
7 Eyak Lake and Power Creek tract, but this Eyak River tract, how  
8 much is in that and what's the Eyak Corporation ...

9 MR. WIENER: (Indiscernible) maybe Jess can help us.  
10 Jess has done all the mapping work for us, he's with DNR.

11 MR. JESS GRUNBLATT: What was the question?

12 MR. SANDOR: I understand the Eyak Lake and Power Creek  
13 tract, but Eyak River tract is separate from that, and how much is  
14 it and how much is Eyak?

15 MR. GRUNBLATT: (Indiscernible - out of range of  
16 microphone). Jess Grunblatt. The Eyak River acreage figure would  
17 be as found on the report.

18 MR. PENNOYER: What page?

19 MR. GRUNBLATT: I'm looking for it now, it would be 2C.  
20 The parcel acreage is fifty-one hundred. And, just to repeat Art's  
21 comments in the Eyak Lake acreage, the surface area of the lake was  
22 included and in conversation with Lee Wyatt, their acreage figures  
23 do not include any surface area of the lakes, so that would be a  
24 large portion of the acreage difference.

25 MR. PENNOYER: You don't know the portion?

26 MR. GRUNBLATT: I -- it's roughly ...

1 MR. PENNOYER: Ten thousand, nine thousand?

2 MR. GRUNBLATT: It's roughly around seven thousand, it's  
3 associated with the -- with a water body, so I think you're getting  
4 into ...

5 MR. PENNOYER: So, it's pretty much consistent then?

6 MR. GRUNBLATT: Fairly close, although there is an issue  
7 of ownership.

8 MR. PENNOYER: Other questions of staff regarding the  
9 Eyak proposal? Are there informational questions? Mr. Rosier.

10 MR. ROSIER: I still need some clarification here in  
11 terms of what we're really talking about in terms of the difference  
12 between the thirteen thousand. In the areas outlined in the purple  
13 lines up here, Power Creek and Eyak Lake and Eyak River. Is that  
14 the thirteen thousand acres that the staff ...?

15 MR. PENNOYER: Not Eyak River.

16 MR. WIENER: Okay, you -- the parcels are divided into  
17 the Power Creek parcel, the Eyak Lake parcel, Eyak River parcel,  
18 and then A and B which includes ...

19 MR. ROSIER: Is that the area that's outlined by the  
20 purple line on the map?

21 MR. WIENER: Yes, sir.

22 MR. ROSIER: Okay, and that differs from this map?

23 MR. WIENER: Slightly different, that's correct.

24 MR. ROSIER: It looks fairly significantly different.

25 MR. WIENER: Well, the scale on that one is pretty  
26 rough. I mean ours -- I believe that the lines that we've drawn --

1 that Jess has drawn are a lot more precise than what you've got on  
2 those tracts. But, I think it roughly approximates our parcel.

3 MR. ROSIER: But, the thirteen thousand does not  
4 include Eyak River, that's Power Creek and Eyak Lake.

5 MR. COLE: This Eyak Lake, is that part of the  
6 acreage that we're dealing with in this proposal? What I'm getting  
7 at here, if this is all land when we talk about the acreage, none  
8 of it is water surface.

9 MR. WIENER: I can't speak to the proposal, I know what  
10 we as staff evaluated, but in terms of Eyak proposals, they would  
11 have to speak to that question, I believe.

12 MR. PENNOYER: Dr. Gibbons.

13 DR. GIBBONS: Yeah, I believe that the lake is owned by  
14 the state so it's not -- you know, it's not under consideration in  
15 the proposal, but that would be my assumption.

16 MR. COLE: When we talk about a certain amount of  
17 acreage, all of this is land and none of it is covered with water.  
18 Is that right?

19 MR. WIENER: That's right.

20 MR. PENNOYER: In the proposal?

21 MR. COLE: Yeah, in the proposal.

22 MR. PENNOYER: And the evaluation includes the water.

23 MR. GRUNBLATT: I just got a clarification on the area --  
24 I just got a clarification on the area included by Eyak Corporation  
25 in their proposal versus the area that we evaluated in the Eyak  
26 River parcel and the area offered under the Eyak proposal is a sub-

1 set smaller area, it's about four, five sections, whereas the  
2 larger area was evaluated by the team as referenced as the PWS2C  
3 parcel. So, what was evaluated is a larger area than what was  
4 offered under the -- the agreement that's before you.

5 MR. PENNOYER: But, let's go back and try that one more  
6 time. What you evaluated included the lake water -- then the  
7 acreage, total acreage?

8 MR. GRUNBLATT: That's -- I'm sorry -- is in Eyak Lake and  
9 the Eyak River parcel, we're talking about, a reduced area.

10 MR. PENNOYER: Okay. Thank you.

11 MR. COLE: Mr. Chairman.

12 MR. PENNOYER: Mr. Cole.

13 MR. COLE: Before we have to decide whether we want  
14 to deal with fee simple title or an easement, I think that's the  
15 first issue we have to face. Or is it?

16 MR. PENNOYER: Yeah, I suppose you could break it down  
17 that way. We've got three options, they're all somewhat different.  
18 You could start on conceptually whether you want to deal with fee  
19 simple versus -- versus easements for different parts of the  
20 parcel. Mr. Sandor.

21 MR. SANDOR: To get something on the table, Mr.  
22 Chairman, I would move that the Trustee Council take appropriate  
23 action to acquire from the Eyak Corporation surface rights and fee  
24 simple in the Eyak Lake and Power Creek tracts, period.

25 MR. COLE: I'll move to amend to include Eyak River  
26 area.

1 MR. SANDOR: I'll second.  
2 MR. BARTON: Mr. Chairman.  
3 MR. PENNOYER: Mr. Barton.  
4 MR. BARTON: I would ... pardon me.  
5 MR. PENNOYER: ... get further discussion?  
6 MR. BARTON: No, I have another amendment.  
7 MR. PENNOYER: Okay.  
8 MR. BARTON: Mr. Chairman, I would like to amend the  
9 motion in this manner, that the Trustee Council approve -- a  
10 counter proposal, if you will, I guess is the right term -- that  
11 for fifty million dollars or the appraised fair market value,  
12 whichever is less, Eyak will convey to the government (a) a  
13 restrictive perpetual conservation easement to Power Creek and Eyak  
14 Lake lands with the same restrictions contained in the Eyak  
15 proposal dated August 5 and that we pursue fee simple through a  
16 shareholder vote, that is a minimum, get a restrictive -- a  
17 restrictive perpetual easement in their proposal; (b) ...  
18 MR. COLE: Excuse me, would you mind repeating that,  
19 I'm not sure I understood it.  
20 MR. SANDOR: That we get a restrictive -- that we get  
21 at least a restrictive perpetual easement to Power Creek and Eyak  
22 Lake parcels and that restrictive easement is defined in their  
23 August 5 proposal. But, I would like to go further and ask that  
24 they do take the fee simple request or offer to the shareholders.  
25 They indicated earlier that the shareholders had to approve any fee  
26 simple.

1 MR. COLE: I missed the fifty million dollars.  
2 MR. BARTON: I'm coming - I'm not done.  
3 MR. COLE: Alright, alright.  
4 MR. BARTON: "B" a less restrictive perpetual easement  
5 to all remaining Eyak lands which at a minimum preclude commercial  
6 timber harvesting and grant a right of reasonable public access for  
7 non-commercial purposes, subject to reasonable restrictions for the  
8 purpose of preventing unreasonable interference with commercial  
9 users of Eyak Corporation, and that less restrictive easement, I  
10 believe is also defined in here. That's my motion.  
11 MR. PENNOYER: Okay, going to back -- off as chairman  
12 here. The first motion ...  
13 MR. BARTON: Well, that's my amendment, I apologize.  
14 MR. PENNOYER: The first motion I assume, the first  
15 amendment was a friendly amendment, which the second accepted, so  
16 we didn't have to vote on it. Your's is a new amendment, which I  
17 guess we'd have to vote on.  
18 MR. COLE: Why don't we start all over again. I with  
19 -- withdraw my amendment to the main motion, and then -- so we can  
20 ...  
21 MR. SANDOR: I do not withdraw my motion, which is to -  
22 - to -- Council acquire -- move to acquire Eyak Corporation surface  
23 rights and fee simple in the Eyak Lake, Power Creek and Eyak River  
24 tracts.  
25 MR. PENNOYER: (Indiscernible - simultaneous talking).  
26 You didn't have a price on it.



1 (Indiscernible - simultaneous talking).

2 MR. SANDOR: At fair market value.

3 MR. COLE: Well, I will second that.

4 MR. PENNOYER: Okay, then that's been moved and seconded  
5 -- that's the main motion. Now, the amendment is Mr. Barton's  
6 amendment and the amendment is what we have to discuss and vote on.

7 MR. BARTON: Well, I don't think they're inconsistent  
8 and that I would just add to Mr. Sandor's motion my item "B" which  
9 is the less restrictive easement with all the remaining lands.

10 MR. PENNOYER: I'm sorry, so you included Eyak River then  
11 in your "A" part. It wasn't on there originally.

12 MR. BARTON: No, no. Are -- oh, I'm sorry, you have  
13 Eyak River? (Indiscernible - simultaneous talking).

14 MR. SANDOR: I had Eyak River.

15 MR. BARTON: They are inconsistent.

16 MR. PENNOYER: Mr. Sandor.

17 MR. SANDOR: Mr. Chairman, with the motion on the table  
18 and seconded and for discussion purposes, I think I would speak in  
19 favor of the motion that I strongly favor acquisition in fee for  
20 the reasons that we had discussed about other opportunities for --  
21 for perhaps putrification and other forms of contamination of Eyak  
22 Lake and, quite frankly, want to see unconditional protection of  
23 the areas in question. And, I -- I am troubled by the -- the  
24 definition of what would be included in conservation easements and  
25 is the reason why that isn't included in the motion.

26 MR. COLE: Mr. Chairman.

1 MR. PENNOYER: Mr. Barton, did you get a second to your  
2 motion? Alright. I second for discussion purposes. This is --  
3 Mr. Barton's amendment is what we're really voting on to start with  
4 and then we get back to the main motion. When you're speaking of  
5 the main motion, I guess you're speaking against Mr. Barton's  
6 motion. So, any further comments or questions on Mr. Barton's  
7 amendment.

8 MR. COLE: Yes, Mr. Chairman.

9 MR. PENNOYER: Mr. Cole.

10 MR. COLE: My thought, generally, has been for the  
11 acquisition of Power Creek, Eyak Lake and Eyak River in fee. I  
12 think those prime four area tracts should be acquired in fee. I  
13 would like to see us have an option to acquire at least a  
14 conservation easement -- option for a limited period of time on all  
15 other Eyak lands, but I do not favor the acquisition of -- of such  
16 an option for seventeen months because I think that unduly  
17 restricts the -- the time in which the logging people and others  
18 can decide what to do. Because obviously we can't acquire all  
19 these lands out there, that Eyak owns, in fee simple, or perhaps  
20 even, I don't know about the any conservation easement, but I think  
21 we should be required -- should make up our mind within the next  
22 three or four, five months.

23 MR. BARTON: I'm suggesting we make it up today.

24 MR. PENNOYER: Mr. Barton would you explain then, in  
25 light of what Mr. Cole said, two things. One -- your's actually  
26 included a perpetual easement for all of the other Eyak lands under

1 your fifty million or fair market value, whichever is less. Are  
2 you assuming that the less restrictive option is the only one we  
3 want in the future on some of these lands or -- I don't know where  
4 you proceed from there. That -- that then ties up all the Eyak  
5 questions, you don't come back and re-evaluate other parcels for  
6 further protection or anything?

7 MR. BARTON: That's right.

8 MR. COLE: Mr. Barton, do you -- under your proposal  
9 contemplate the acquisition of the three core tracts in fee?

10 MR. BARTON: I do. Or, I think that should be the  
11 primary thrust of what we do. But if the shareholders vote it  
12 down, I'd like to be assured that we at least have a fairly  
13 restrictive easement in place.

14 MR. PENNOYER: Mr. Barton what -- this is confusing about  
15 the original proposal too. What is the impetus to go back and vote  
16 those lands in fee? Once you have this deal it's fifty or which  
17 ever is less. What is the impetus to go back and vote this in a  
18 fee simple for the -- the shareholders to vote in for to rate for  
19 fee simple? I think -- decide ahead of time what -- what is the  
20 impetus do.

21 MR. BARTON: The value that they would receive would be  
22 greater.

23 MR. PENNOYER: Get closer to the fifty million?

24 MR. BARTON: ... development.

25 MR. PENNOYER: ... that's which ever is less?

26 MR. COLE: I have a question.

1 MR. PENNOYER: Mr. Cole.

2 MR. COLE: Are we all in accord of acquiring the  
3 three core tracts in fee?

4 MR. BARTON: Power Creek, Eyak Lake and lower Eyak  
5 River. Are those the three?

6 MR. COLE: Yes. For fair market value.

7 MR. PENNOYER: Friendly amendment to your motion -- Eyak  
8 River. "A"?

9 MR. BARTON: That's fine.

10 MR. PENNOYER: Okay, it's clear that Eyak has a friendly  
11 amendment and include Eyak River (indiscernible).

12 MR. COLE: We got that far.

13 MR. PENNOYER: Now we have to vote.

14 MR. COLE: Sort of -- tentatively. Now the question  
15 is what should we do about option on the other lands. Is that sort  
16 of what we're working on?

17 MR. PENNOYER: (Indiscernible - simultaneous talking) ...  
18 sums it up. Done discussing, I'll call the question.

19 MR. COLE: I don't know yet, not quite yet, that's a  
20 big gulp.

21 MR. PENNOYER: Well, I know, just waiting for more  
22 questions, or we can just take time out, if you want, for a couple  
23 of minutes.

24 MR. COLE: Yeah, let's take time out.

25 MR. PENNOYER: Stand at ease for a couple of minutes  
26 until somebody thinks of another question.

1           MR. COLE:       Let me say this though, yours would be for  
2 fifty million dollars if we get fee simple to the three core tracts  
3 and a perpetual easement on all other lands?

4           MR. PENNOYER: Hold it a second.    It's a friendly  
5 amendment that you've accepted fee simple in the three core tracts  
6 now?

7           MR. BARTON:    Yes, I have.

8           MR. PENNOYER: As a starting position?

9           MR. COLE:      Pardon me?

10          MR. PENNOYER: As a starting position.

11          MR. BARTON:    Yes, as a starting position, but I want  
12 some assurance that we -- if for some reason fee simple is rejected  
13 that we at least have a conservation easement.

14          MR. PENNOYER: I don't think that's what Mr. Cole said.  
15 He wants fee simple as a part of the deal. So you go back to the  
16 shareholders, if it doesn't come back fee simple, you don't have a  
17 deal.

18          MR. COLE:      Well is that? What ...

19          MR. PENNOYER: There is no ...

20          MR. COLE:      I understand, but we're just trying to see  
21 if we can get some consensus here.

22          MR. PENNOYER: Sure.

23          MR. COLE:      That's what John Sandor wants, he wants --  
24 you know, fee simple on the three core tracts. That's what I favor  
25 too.

26          MR. ROSIER:    Mr. Chairman.

1 MR. PENNOYER: Mr. Rosier.

2 MR. ROSIER: Yes, I also am in favor of that.

3 MS. ANDERSON: See, now we get in this discussion.

4 MR. PENNOYER: Go on a second. Do we -- we may need to  
5 ask questions of Eyak Corporation in a minute or two, but why don't  
6 you finish whatever -- your presentation

7 MR. ROSIER: I -- I agree with the -- with the question  
8 you raised Mr. Chairman in regards to what's the incentive. I mean  
9 if both -- both things are on the table -- I mean we've heard  
10 previously that -- you know, fee simple is not necessarily a real  
11 option from Eyak in the past. At this point, we have two sections,  
12 as I understand the written proposal that are on the table for  
13 potential fee simple, we've gone beyond that now (indiscernible).  
14 Does that sound correct?

15 MR. PENNOYER: That's the current, friendly amended  
16 motion.

17 MR. COLE: I would say my -- Mr. Chairman, if they  
18 don't like that, we just say, sorry, guys, and pick up our marbles  
19 and go home. I mean -- you know. But, I -- I just think we should  
20 insist on fee simple title to the core tracts.

21 MR. PENNOYER: (Indiscernible - out of range of  
22 microphone.)

23 MR. BARTON: If I might ask a question. As I recall,  
24 Eyak has stated that it would take six to twelve months to get  
25 shareholder vote?

26 MR. PENNOYER: I'm sorry, this isn't something you back

1 by teleconferences as Seal Bay people were trying to do. This is  
2 something that takes six months to do. I didn't understand that  
3 comment. Could one of you come up and elaborate on this question  
4 on fee simple versus ...

5 MR. COLE: Your opportunity here.

6 (Indiscernible - simultaneous talking)

7 MR. PENNOYER: What is the set up to go fee simple, for  
8 how long?

9 MR. LINXWILER: I should -- and I would welcome the  
10 opportunity to do so. I -- where to start. I think that the  
11 question of fee title ought to be considered in light of how the  
12 shareholders react, the board of directors react -- looks at the  
13 issue. It's -- this is not from the Eyak perspective a simple  
14 wildlife management issue or just how much interest can you get out  
15 of us. This -- the relationship of the shareholders of Eyak to  
16 their land is intense, emotional, and is very subject to feelings  
17 that are far more strong than -- than I probably can describe here.  
18 I know where we started and I know why we started there. We  
19 started with a very restrictive conservation easement which  
20 addressed specifically all the things I heard discussed previously,  
21 and a significantly stricter or more tight limitation on usage. If  
22 you insist on only fee title, there -- I think there's a very good  
23 likelihood that the deal won't get made. So, where you need to  
24 start with is the question of just how important is it for you to  
25 protect Eyak Lake, Eyak River and Power Creek. If that's critical,  
26 and that's the goal you want to get, as opposed to taking lands

1 back out of Native hands, and that's frankly how the Native  
2 community looks at it, if the protection of the habitat is the  
3 compelling interest, I would strongly urge you to start with an  
4 easement and go forward from there to fee title, on a vote. If you  
5 force the Eyak Corporation shareholders to decide between fee title  
6 and money, or nothing, I -- I fear that the answer will be nothing.

7 MR. PENNOYER: One question. I thought, way back when in  
8 my mind, I remember Power Creek that looks -- was fee simple and  
9 the others were not, at least in the initial discussions.

10 MR. LINXWILER: That's right, but I believe ...

11 MR. PENNOYER: ... going back in other direction?

12 MR. LINXWILER: I -- no, I think that the conversion --  
13 you know, starting with an easement and going to fee title, we've  
14 always had to get a shareholder vote on these conveyances of land  
15 interests in these lands.

16 MR. PENNOYER: I understand that.

17 MR. LINXWILER: Yeah. And, so the proposal at Power Creek  
18 was give you an easement and go to the shareholders and get a vote.  
19 Frankly if -- this is a very complex matter and I guess -- I've  
20 just come away from about three days of sixteen hours a day talking  
21 about it, and I have to remind myself that we haven't talked about  
22 it. There is a complexity here, if you wish to extend out from  
23 what Attorney General Cole has called the core lands, one that's  
24 significant, motivating forces is Eyak's ongoing timber operation  
25 at Orca Narrows. If you want to stop the Orca Narrows stuff, you  
26 cannot make it contingent upon us six or nine months turn around



1 time on the decision from the shareholders because it will get  
2 logged in the meantime. On the other side of the coin, if you're  
3 willing to take the very precisely constructed mechanism with  
4 respect to reaching out to other lands, that we have provided,  
5 which is the earnest money, take the easement on those lands, take  
6 the easement on the core lands and go for fee title -- it's very  
7 carefully constructed -- if you want to do it that way, then -- you  
8 know, the likelihood is you'll protect the values you want to  
9 protect all across the Sound and possibly in the end get the fee  
10 title you're after to start with. If you try to do it the other  
11 way around, I think you won't achieve the results you're after. I  
12 hope I've been sufficiently clear. It's a very complex matter and  
13 I guess I'm trying to identify four or five variables that lead us  
14 to the sort of presentation we made earlier today.

15 MR. PENNOYER: Mr. Sandor.

16 MR. SANDOR: What I'm hearing, Mr. Chairman, which I  
17 hope is not correct, is that what in fact you're saying is that,  
18 the July 19 offer conveying fee title is not likely to be approved  
19 by the board and/or the shareholders.

20 MR. LINXWILER: No, I'm not saying that. I'm saying that  
21 if it's presented in the way we've presented it to you, which is to  
22 start with an easement and go to a vote on conversion, that it has  
23 a very good chance -- that maximizes the likelihood that it will be  
24 approved. If we go the other way, and say we're not going to do  
25 anything with Eyak Lake, Eyak River or Power Creek unless you give  
26 us fee title, it -- it sets off a range of emotional responses to

1 the loss of Native lands that Natives feel they fought fifty years  
2 to get and the government comes and takes it back. It's a very  
3 emotional response and it's a very -- it creates a very difficult  
4 atmosphere in which to make a decision.

5 MR. SANDOR: I'm -- Mr. Chairman, I'm well aware of  
6 that -- but that's why I say, if that in fact is your  
7 determination, than -- than that ought to be on the table, but I  
8 have real problems, Mr. Chairman, with anything less than fee title  
9 acquisition of those tracts, for the very reason that -- you know,  
10 we've already discussed, mainly that other than timber harvesting  
11 activities, including subdivisions and so forth, can lead to the  
12 destruction of the very values that we're trying to protect. So --  
13 I -- and I think -- you know, if we don't really identify what our  
14 objective is, we're going to be just going back and forth, and back  
15 and forth. And so, that was the basis of the motion, and if in  
16 fact we go out with something saying that we're going to, in  
17 effect, accept conservation easements, it could completely destroy  
18 your basic objective. So, I would oppose the -- the amendment,  
19 however friendly it was intended to be.

20 MR. BARTON: Mr. Chairman.

21 MR. PENNOYER: Mr. Barton.

22 MR. BARTON: I think we all share Mr. Sandor's  
23 concerns. If I understand Eyak's proposal right though, if  
24 Katherine right and you, Jamie, can help -- the restrictive  
25 easement on Power Creek and Eyak Lake was designed to address the  
26 concerns you're raising. And -- you know, the wording is -- is

1 pretty specific wording here.

2 MR. PENNOYER: Mr. Barton, has anybody looked at this  
3 wording and -- from our habitat management group and assured us  
4 that this is, in effect, restrictive enough to prevent the problems  
5 that Mr. Sandor thinks might occur.

6 MR. BARTON: I can't answer that. No, apparently not.

7 MR. LINXWILER: Would it be helpful to review that  
8 language for the Council's information, or would that be a waste of  
9 time, sir?

10 MR. PENNOYER: Well, I see it here. I was wondering if  
11 some of our people who were concerned about fee simple made that  
12 point to us early had reviewed it, and whether their concerns were  
13 alleviated by the language exhibited here, and if not, why not?

14 MR. LINXWILER: I can perhaps answer the why not. I'd  
15 like simply to say that we're trying to respond to events that have  
16 occurred very quickly and trying to prevent future events which  
17 will occur in the very near future, or at least to provide the  
18 Council the opportunity to do so. We -- perhaps in light of that  
19 fact, not a full staff review has been available in the short time  
20 we've been working together.

21 MR. PENNOYER: Mr. Cole.

22 MR. COLE: A couple of comments, one -- Kachemak Bay  
23 we acquired fee simple title, Seal Bay we acquired fee simple title  
24 -- you know, and -- not that -- that's a matter of unalterable  
25 precedent, but we have sort of taken a stand that in principal  
26 areas of habitat protection we have acquired fee simple title, we

1 wanted fee simple title, and I think that we should strive for that  
2 here. Another thing that troubles me a little bit with respect to  
3 the easements, is just to sit here today and to say this  
4 restrictive easement is adequate for what we're trying to do, makes  
5 me a little bit uneasy. You know, that's the sort of thing that I  
6 think needs to be looked at carefully, negotiated by people who  
7 have -- you know, some experience in this type of easements. Maybe  
8 the Nature Conservancy or someone like that who -- you know, had  
9 experience in this before, knows what to look for, knows where the  
10 pitfalls are, what ought to be done. And, one of the things that  
11 troubles me is if we accept this, that part today and then the  
12 other non-logging things could -- could go with it, in the Narrows,  
13 and then in the negotiations we get hung up and find out that the --  
14 -- we can't reach agreement on the form of the easement, then we  
15 really are in a bit of a mess. And, that's a little bit --  
16 concerns me.

17 MR. BARTON: Mr. Chairman.

18 MR. PENNOYER: Mr. Barton.

19 MR. BARTON: Yes, first of all, I don't think that  
20 there's any disagreement on the desirability of fee simple. I  
21 mean, that -- I haven't heard anybody knock that. Secondly, in  
22 regard to the wording in the easement, this was worked out with the  
23 assistance of the Nature Conservancy, and it's been reviewed by our  
24 legal counsel. So, I -- as to the adequacy of it, there are  
25 apparently many of us who feel that its -- it adequately addresses  
26 -- the language adequately addresses what the perceived need is.

1 MR. LINXWILER: If it would assist in resolving your  
2 concerns, at least slightly, it is correct that this language, in  
3 fact, I think it was actually drafted by the Nature Conservancy's  
4 representative.

5 MR. COLE: Mr. Chairman.

6 MR. PENNOYER: Mr. Cole.

7 MR. COLE: When I look at forty-one million dollar  
8 tracts -- essentially in eight lines, something tells me that  
9 that's not definitive enough. I've never seen yet a forty-one  
10 million dollar transaction getting the essence of an easement or a  
11 real estate transaction in about six or eight lines or maybe  
12 there's ten or twelve there. If I -- let me tell you -- let me put  
13 it this way, if I were doing that -- you know, I would want to up  
14 my malpractice insurance -- you know, to about fifty million  
15 dollars because I'm just uneasy about that, you know. I wouldn't  
16 do it, frankly, but -- maybe somebody else has got malpractice  
17 insurance, I don't.

18 MR. GRIMES: (From audience) I'll get some right now.

19 MR. COLE: If you want to put it on the line and say  
20 it's adequate, we'll have right on your policy, I'll be much more  
21 relieved.

22 MR. LINXWILER: Mr. Cole, if I could comment again. Is  
23 that permissible?

24 MR. COLE: Sure.

25 MR. PENNOYER: Sure go ahead.

26 MR. LINXWILER: I -- please don't misunderstand my

1 continually comments to the argumentative with you. I'm -- I'm  
2 trying to fill you in on matters that we've talked about over the  
3 last three or four days. Clearly, one of the assumptions in a --  
4 in a somewhat skeletal proposal like this, is that before it's  
5 effective and binding on the parties, there would be a completely  
6 negotiated transaction that would be subject to the kind of  
7 scrutiny that you're talking about.

8 MR. COLE: I agree with that, but what troubles me is  
9 while we're doing that, there's accompanying it is this no logging  
10 covenant. You know, and I -- I'll -- I'm thinking about what  
11 happens if we have the no logging covenant, we get the lawyers  
12 working on this language and so forth, and then we get hung up on  
13 the scope of this restrictive easement. That -- that's the sort of  
14 thing that I'm talking about. You see, otherwise we could say,  
15 okay it didn't work and we all walk about, you know, and it's just  
16 one of the things you feel didn't get done. But, when you couple,  
17 you know, that negotiating process, trying to get -- the deal done,  
18 while at the same time we're asking Eyak no logging, and it falls  
19 apart -- you know, then I think we have a bit of a problem, and I'm  
20 trying to avoid that and figure out a solution, if you know what  
21 I'm saying -- you know.

22 MR. PENNOYER: One of the problems obviously, this is  
23 complex and that we're in a tough position here to evaluate all the  
24 pieces of it in a very short time. Then, how we deal with that.  
25 A portion -- yes, sir, go ahead.

26 MR. LINXWILER: I -- I feel intrusive in a sense. With

1     respect to monies ...

2                 MR. PENNOYER: For fifty million dollars you can intrude.

3                 MR. LINXWILER: With respect to the fifty million dollars,  
4     I can intrude. (Laughter) With respect to monies that are fronted  
5     to the Eyak Corporation to pay in the near term -- its short-term  
6     cash shortages caused as a result of a shutdown, those matters are  
7     covered because we secure the repayment if -- if the concern is  
8     whether you'll get monies that you've advanced. Those -- those  
9     monies are covered by the grant of the security interest in the  
10    Power Creek trees. That's in the proposal as it exists now. What  
11    I hear Mr. Cole concerned with is the potential liability of the  
12    government for damages to the Eyak ...

13                MR. COLE: No, that's not my concern. My concern is  
14    when we ask these loggers to stop logging, you know, and hold up  
15    and no equipment, no jobs and so forth, and then we start working  
16    out these terms of the agreement, and then we can't get there,  
17    then, you know, then how do we -- you know, make up for morass  
18    we're in two or three weeks or three months later. That concerns  
19    me. But, I'm not saying that that's an insurmountable problem. I  
20    mean, maybe we could do it -- you know, get some people to work  
21    over the weekend and address this for Monday. I don't want to see  
22    it get hung up over that, because I really do strongly favor the  
23    acquisition of Power Creek and Eyak Lake and Eyak River and I'm not  
24    saying I -- and I would like to blend in what Mr. Barton has been  
25    working on with the other lands, but make it -- see if we can't get  
26    that done too -- you know. I'm troubled over the -- when we drop

1 out the acquisition -- see, the thing about getting fee simple  
2 title, it's so clean -- you know, it's so final.

3 MS. ANDERSON: So undo-able.

4 MR. COLE: Yeah.

5 MS. ANDERSON: Keep that one in mind.

6 MR. COLE: Yeah, sure, no problem, it's done, it's  
7 clean, and ...

8 MR. PENNOYER: Mr. Sandor.

9 MR. SANDOR: Mr. Chairman, I suggest that the other  
10 option is undo-able -- there's do-able. And, in other words it can  
11 change. You know, we've heard powerful testimony, and actually if  
12 there's any consensus I've heard today, it's really from both of  
13 the petitions signers in opposition and in favor of these proposals  
14 that these three core tracts should really be protected and that  
15 protection should be undo-able. And, the only way to provide that  
16 protection in an undo-able -- so it won't unravel -- is to get it  
17 in fee. And, that's the spirit of the motion.

18 MR. PENNOYER: Why -- why does it take so long to find  
19 out about fee simple?

20 MR. LINXWILER: Well, it's just the process of going  
21 through the shareholder vote, the proxy statements and all of that.  
22 It's just the mechanics of having a meeting and getting the vote.

23 MR. BARTON: That's my concern pursuing only fee  
24 simple. What happens in this interim period, between now, if we  
25 adopt this and the time that the corporation is able to have a  
26 shareholder vote? That's why I wanted to two-step it.



1 MR. LINXWILER: I -- I can answer that fairly directly and  
2 I need to be very careful what I say and the tone that I say it in,  
3 so that you won't misunderstand me to be threatening you or making  
4 -- making rash promises or anything of that sort. Directly to  
5 answer your question -- or the -- the statement of what's going to  
6 happen in the meantime with respect to Eyak Lake, Power Creek and  
7 the Eyak River tracts, in the near term, in the next six months,  
8 probably nothing. With respect to the Orca Narrows tract, it's not  
9 really a question of months, but of days before we're back  
10 operating there again. It's just an economic necessity. We are  
11 bound by economic necessity to continue our operations, and we will  
12 continue. That is why we're here -- that is why we're here on such  
13 an expedited basis and why you don't have a full staff scrub-down  
14 of all of the issues that we discussed today. It's a very  
15 difficult and intractable issue, that's correct. Our original  
16 proposal, kind of just taking stock of the situation that we found  
17 ourselves in, was for the Council to provide funds -- there's two  
18 kinds of economic damages that will occur to Eyak. Some are  
19 recoverable in the land values, but if you just delay, those delay  
20 costs, which is to say the cost of paying for the machinery and  
21 paying staff, without logging are not recoverable to Eyak in the  
22 land value, so we would be out of pocket, and we've tried to  
23 calculate in rough terms what those numbers are. They get into the  
24 millions of dollars very, very quickly, in two weeks or less. So,  
25 what we initially proposed was that the Council -- you know, if the  
26 Council wants to take more time, pay our carrying costs in the

1 meantime, which are significant, we were -- our -- the response to  
2 that was immediate and direct, and, it was that we -- we the  
3 Council -- or the Council cannot compensate you for anything but  
4 land value, so we pursued instead and -- on an expedited schedule  
5 this transaction, over the last several days.

6 MR. PENNOYER: Mr. Cole.

7 MR. COLE: We haven't talked today about the fact  
8 that Eyak got an expedited conveyance -- you know, for lands so  
9 that they could continue logging during this period of  
10 negotiations. What's your response to that? Why don't you go log  
11 on those lands...?

12 MS. ANDERSON: We are.

13 MR. COLE: Well, then you don't have to go the -- the  
14 Narrows right away.

15 MR. LINXWILER: If I could answer the question, precisely.  
16 The conduct of a complicated and large timber operation like that,  
17 involving many different kinds of operations is -- is a staged  
18 process. Somebody is away preparing the land while somebody is  
19 building roads on the tract behind it, while somebody is cutting  
20 trees on the third tract. So, it proceeds in phases like that.  
21 What we were doing at Orca Narrows was proceeding with the road  
22 building. There's not enough land in section twenty-three and  
23 twenty-four to occupy the full road building crews, so some of them  
24 were working at Orca Narrows as well. We've stopped and brought  
25 those guys back, incurred costs as a result of that, trying to hold  
26 this option open for the Council. We are conducting operations on

1 twenty-three and twenty-four, but we've got idle people, and we're  
2 incurring the delay costs as a result.

3 MR. COLE: Well, here's the thing. When you've heard  
4 six Trustees unanimously say we're prepared to buy, you know, pay  
5 for fair market value, which you've established is not essentially  
6 thirty million, and we're to -- added to that the Eyak River stuff,  
7 so -- you know, we're talking about whatever thirty, forty million  
8 dollars, and -- in which we're all very comfortable with, and maybe  
9 some more with an easement -- you know, on these other lands to  
10 discuss. And, in fact, the Forest Service has proposed fifty  
11 million dollars. And, as I said the other day, in Cordova it  
12 doesn't strike me that when somebody's -- you know prepared to hand  
13 you a check for, I don't know, thirty or forty million dollars that  
14 -- you know, you can't say well he ought to right across Orca  
15 Narrows there and haul out the D-9 and chain saws. I mean -- you  
16 know, if I can get a fifty million dollar deal or something, say,  
17 what does it take -- you know. So, I mean, I'm simply saying that  
18 -- you know, I think you should give serious thought to allowing us  
19 to work this problem and not, you know, load up the rafts to go  
20 across Orca Narrows while we work this out. And, I feel very  
21 comfortable about the Trustee Council making that, you know,  
22 proposal (indiscernible) to you.

23 MR. LINXWILER: I -- I guess I can respond to that the  
24 same way I did the other day. For the benefit of the rest of the  
25 Council -- you've already heard this answer -- and the answer, I  
26 guess, is that this isn't a situation that has occurred in the last

1     forty-eight hours. Eyak has been logging low density timber for a  
2     couple of years at significant cost to it. This year they've  
3     staged timber cutting operations in a sort of a delay mode and gone  
4     very slowly to hold their place in line, to hold this option open.  
5     And, they have incurred significant costs as a result of doing so  
6     already. And again, without attempting to sound -- even in the  
7     slightest confrontational, the board has made a determination that  
8     they can't go on incurring millions of dollars in costs that  
9     they're not going to realize back out of this transaction. There's  
10    more to it, I guess, than that, and it has to do with -- with other  
11    transactions that the corporation has entered into, their ability  
12    to satisfy those obligations, without getting too much into the  
13    details. We've taken a very hard look at what you propose because  
14    we understand -- you know, the appearance of what -- what it is  
15    we're about here.

16                 MR. COLE:         Well, Mr. Chairman, it's easy for me in  
17    that event to suspend negotiations.

18                 MR. PENNOYER:    Yes, one further question before we go to  
19    last -- vote on the last suggestion, even Mr. Barton's proposal  
20    doesn't cover you. His proposal didn't include up front payments  
21    or interim payments or any of the other type of things, and I don't  
22    know if you were intending to go on to the other aspects of Eyak  
23    proposal at some point or not, but it's a flat fifty million or ...

24                 MR. LINXWILER:   The complexity -- the complexity is  
25    created by the moratorium and by moving out of the Eyak Lake, Eyak  
26    River and Power Creek to other areas. And if you treat, you know,

1 with respect to Mr. Barton, if you separate the two so that you're  
2 making two different sorts of proposals, we can keep things, I  
3 think, straight here. I think that the Eyak Lake, Eyak River and  
4 Power Creek is a very simple, structural transaction to enter into.  
5 When you get into stopping logging operations all across Eyak  
6 lands, then economic forces out of our control begin to operate and  
7 begin to impinge on our ability to respond, unless we get front  
8 monies and things get done in a very -- quickly -- in the manner  
9 that we negotiated exhaustively and presented to you in our present  
10 proposal. If you can separate the two proposals, or perhaps make  
11 one incorporated in the other, but make both available to Eyak, it  
12 simplifies matters immeasurably.

13 MR. COLE: I move we adjourn for a recess until  
14 Monday.

15 MR. PENNOYER: Have another Trustee Council meeting on  
16 Monday, then?

17 MR. COLE: Well, you know we have this meeting set  
18 for Monday, I just move we (indiscernible) until Monday.

19 MR. PENNOYER: To come down to Juneau, Mr. Gates, on  
20 Monday? Mr. Barton.

21 MR. BARTON: I'm not impressed with adjourning just  
22 yet. I -- I guess I'd like to ask Eyak to elaborate on your last  
23 suggestion and how that would accommodate the need to put a hold on  
24 the logging operation.

25 MR. LINXWILER: Well, if I understand the sense of your  
26 proposal, it is to engage in an immediate moratorium on logging at

1 Orca Narrows and all other areas, starting soon, and my response to  
2 that is that if we do that, we'll need something like the earnest  
3 money proposal we've made. In fact, that exhaustively negotiated  
4 proposal, I would suggest that we stick with it. I think it's a  
5 good one. That would shut us down very quickly. That would allow  
6 us the economic flexibility to shutdown, and presumably what would  
7 occur would be a staged shutdown as these various -- you know,  
8 tasks work their way through the system on the section twenty-three  
9 and twenty-four where we're currently conducting logging  
10 operations. They're still picking up pulp in the woods in a couple  
11 of areas and cleaning up here and there in the other place. What  
12 you would get, I assume, is the -- the -- you know, assuming that  
13 Eyak approved this tomorrow at their board meeting, what you would  
14 get would be the moratorium, as we previously proposed it, financed  
15 by the earnest money transaction, separating it off from the Eyak  
16 River, Power Creek allows that transaction, which I understand is --  
17 - that part of this transaction that has substantial consensus  
18 behind it, would allow that to go forward, no matter what happened  
19 with the rest.

20 MR. BARTON: In terms of the earnest money  
21 alternatives, which one are you referring to now?

22 MR. LINXWILER: Well, I believe since about lunch time,  
23 they've been fundamentally identical, thirty days.

24 MR. PENNOYER: I'm sorry, which earnest money again?

25 MR. LINXWILER: Well, I've seen it was -- since about  
26 lunch time, I think after the proposal was typed, we agreed to --

1 to basically, the first alternative is also a thirty-day  
2 alternative. It was fourteen days, I believe, we just agreed to  
3 extend it to thirty days, so that ...

4 MR. PENNOYER: That's "A"?

5 MR. LINXWILER: That's "A." That's right.

6 MR. PENNOYER: Million dollars within thirty days, five  
7 million dollars within forty-five days, and a million and a half  
8 within sixty days.

9 MR. LINXWILER: That's right. It would be "A" -- the  
10 fourteen would become thirty, the thirty would become forty-five.  
11 That's probably a little bit later than we'll be incurring costs at  
12 that level, but I guess we're -- you know, the problem was the  
13 Nature Conservancy and the Forest Service ability to respond.

14 MR. BARTON: What's the mechanism of earnest money in  
15 terms of federal procedures -- needed to incorporate some other  
16 parties in order to be able to do that. The Nature Conservancy  
17 indicated that they would help with part of it, but they didn't  
18 feel -- they thought this whole amount was stretching them beyond  
19 their capacity, so that the other party to that would have to be  
20 the State of Alaska.

21 MR. LINXWILER: The State of Alaska.

22 MR. BARTON: And, the Trustee Council -- the state side  
23 of the Trustee Council was what I was trying to say  
24 (indiscernible).

25 MR. LINXWILER: That's an observation and a suggestion I  
26 hadn't heard before. I mean, that is news to me, so that's fine.

1 MR. PENNOYER: Further comments? We have a motion on the  
2 floor and an amendment to that motion. You need to consider the  
3 amendment to the motion -- ordinarily -- what we want to do. And,  
4 Mr. Sandor, do you have a suggestion?

5 MR. SANDOR: Call for the question.

6 MR. COLE: Restate the question, please.

7 MR. PENNOYER: The question is whether we approve the  
8 amendment suggested by Mr. Barton, to offer fifty million dollars  
9 or appraised value, whichever is less, for, and I think this  
10 friendly amendment to fee simple acquisition of Power Creek, Eyak -  
11 - Eyak Lake and Eyak River parcels, and to call for a moratorium  
12 with less restrictive easements, no commercial timber harvesting,  
13 reasonable access of -- for recreational purposes, for a balance of  
14 a moratorium in all other Eyak held lands. Is that close to what  
15 you proposed?

16 MR. BARTON: Reasonably close.

17 MR. PENNOYER: All those in favor of the amendment, say  
18 aye.

19 RESPONSE FROM COUNCIL: Aye.

20 MR. PENNOYER: Opposed.

21 MR. SANDOR AND MR. COLE: No

22 MR. PENNOYER: We have then in front of us, unless  
23 somebody wants to offer a further amendment to the basic motion,  
24 which is to go for -- at fair market value acquisition of the  
25 parcels on -- fee simple acquisition of the parcels on Power Creek  
26 and Eyak Lake and Eyak River. Is there further discussion or



1 amendment of that proposal? I have a question. How long would you  
2 say to -- for your shareholder development.

3 MR. GATES: I've got a question. How long did you say  
4 it would take for your shareholders to vote?

5 MS. ANDERSON: (Indiscernible.)

6 MR. LINXWILER: Yeah, I guess three to six months. We've  
7 said nine months to be very conservative, but it could probably be  
8 accomplished in somewhere between three and six months.

9 MR. PENNOYER: It could be expedited then?

10 MR. GATES: Yeah.

11 MR. COLE: I, again, make the motion to recess until  
12 Monday.

13 MR. PENNOYER: Mr. Cole, that certainly is something we  
14 can consider. I'm not sure -- we have no advertised meeting and  
15 what we do and what the implications of that are, so we might have  
16 discussion -- we have a motion on the floor. Well, I haven't heard  
17 the question called on the motion. This is -- I guess a motion to  
18 adjourn or to recess, I'm not sure ...

19 MR. COLE: Recess.

20 MR. PENNOYER: ... on parliamentarian. You know, was  
21 that -- expressive -- but I'm not sure it's contrary to ...

22 MR. COLE: I don't care, if you would rather have a  
23 vote on this before we address my motion to recess until Monday,  
24 that's alright with me.

25 MR. SANDOR: Mr. Chairman, a motion to table takes  
26 precedence over anything.

1 MR. PENNOYER: Well, this is not a motion to table.

2 MR. SANDOR: Oh, it isn't, I'm sorry.

3 MR. PENNOYER: Just a move to recess. I'm not sure of  
4 the difference.

5 MR. COLE: Adjourn for the day and resume Monday --  
6 but if you want to vote on this, that's all right too -- before we  
7 address my motion, whatever the Council prefers to do.

8 MR. PENNOYER: It's frustrating -- the Council clearly  
9 wants to respond to the wishes of many people who've come here and  
10 said that they wanted to do something regarding the acquisition of  
11 these lands, and we don't seem to have any consensus among  
12 ourselves as to what that ought to be. We've been offered certain  
13 -- I think realities in they're view by people who have the land,  
14 and obviously they have the land, and I don't know what to do with  
15 this further than to allow people time to continue the discussion.  
16 I don't know what -- we do is recess or not.

17 MR. COLE: I'll call for the question on the motion  
18 then.

19 MR. SANDOR: Questions been called for.

20 MR. PENNOYER: Okay, all those in favor of the motion to  
21 acquire fee simple acquisition -- fair market value of Eyak River,  
22 Power Creek and Eyak Lake, say aye.

23 COUNCIL RESPONDS: Aye.

24 MR. PENNOYER: Opposed.

25 MR. COLE: Aye.

26 MR. PENNOYER: Okay, that one's failed, so then -- free

1 to -- another motion for further acquisition or a recess? Do you  
2 move that we recess until Monday?

3 MR. COLE: I would like to recess until Monday.

4 MR. PENNOYER: Can we initiate a meeting on Monday, and  
5 if so, where and how?

6 DR. GIBBONS: Mr. Chairman.

7 MR. PENNOYER: Dr. Gibbons -- Mr. Sandor.

8 MR. SANDOR: I have an ironclad commitment in the  
9 morning and prefer the meeting commence after lunch on Monday, if  
10 possible.

11 MR. PENNOYER: And, where at?

12 MR. SANDOR: Juneau.

13 MR. PENNOYER: Can we do that?

14 MR. COLE: In the Forest Service offices there  
15 Monday, can you be there?

16 MR. PENNOYER: I can be on teleconference.

17 MR. COLE: But not be (indiscernible)

18 MR. GRIMES (from audience): We really appreciate the  
19 time that you're taking. This means a lot to us, but the people  
20 who are in Cordova have to deal with the reality of what you people  
21 are discussing and it's very difficult, and I can't tell you how  
22 respectful we are to see you guys get this close. This means a  
23 whole lot to us. We would sleep a lot better if you could get just  
24 a little bit closer. This is kind of like when -- when the  
25 preacher says, I do or not. It's like a marriage, and we're  
26 getting really close. I don't think there's anybody in the

1 audience that's going to stand up and say, don't do it. We really  
2 want you to do it. And so -- you know, I'm not coercing you, I'm  
3 just saying that, we really appreciate this -- Cordova would love  
4 to rest easy tonight. Let's get married, let's have a party.

5 MR. COLE: Well, maybe the best thing to do in that  
6 event is then to take a recess and allow us to reflect over the  
7 weekend where we are and to seek the solutions to what we're trying  
8 to accomplish. You know, there ar times when it's just best to  
9 step back and -- and reflect upon where we are and see what can be  
10 done.

11 MR. JEFF GUARD: Is the next stage of this still going  
12 to be a public meeting?

13 MR. COLE: Sure.

14 MR. PENNOYER: I think it's clear that the Trustee  
15 Council wants to address this issue and we did have a proposal for  
16 fifty million and a proposal for acquisition of just fee simple on  
17 those parcels which, obviously, you say you can't accommodate.  
18 And, I think some of the members are not comfortable with having  
19 seen the details of a complicated, very expensive agreement in a  
20 short time, and want to sit and look at it. And, this is a lot of  
21 money, it is tying up something that other alternatives might be  
22 available for, although there certainly seems to be more than we're  
23 interested in. And, I don't think there's any doubt about it. I  
24 think Mr. Barton's motion reflects it. I think the prior motion  
25 reflects its, and I think some people want time to look at. It's  
26 a complicated agreement, and down payments, easements and all of

1 it. And, is there any objection to the motion to recess until  
2 Monday afternoon?

3 MR. COLE: I'd just like to say this for those -- I mean,  
4 give us a little time to think about what we're trying to do, talk  
5 with these people, the Forest Service, a little more, try to put  
6 together all of the various concerns that have been expressed here  
7 today. It's a fact you don't always get it done in one day -- you  
8 know. It's better to think about this, see where we're going, and  
9 address it again Monday. You know, we're not through, and I have  
10 every confidence that we will get something worked out. It takes  
11 a little more time than we're able to get it done today.

12 MR. PENNOYER: Further discussion on the motion to meet  
13 Monday afternoon? One o'clock in the Forest Service conference  
14 room, fourth floor of the federal building -- fifth floor of the  
15 federal building, sorry.

16 AUDIENCE: In Juneau or Anchorage.

17 MR. PENNOYER: Juneau, that's where everybody is that  
18 morning, unless we want to delay it for another two or three days.

19 MR. GUARD: Are there going to be allowances made for  
20 teleconference connections in any of the communities, since we're  
21 moving it away from the area here?

22 MR. PENNOYER: Dr. Gibbons, can we set up some  
23 teleconferencing?

24 DR. GIBBONS: I think we can do that.

25 MR. PENNOYER: Yes, we'll try to do that.

26 MR. COLE: Well, we may be can use the state

1 teleconference facilities if -- if the Forest Service ones aren't  
2 adequate. The state ones are not adequate either, but they may be  
3 better.

4 MR. PENNOYER: We will -- we will attempt to do that. I  
5 think it's important ...

6 (Indiscernible - simultaneous talking).

7 MR. PENNOYER: Alright, we're adjourned, we're recessed -  
8 - excuse me -- until Monday.

9 (Off Record 6:15 p.m. August 6, 1993)

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TRUSTEE COUNCIL  
MEETING  
9 AUG. 1993

**EXXON VALDEZ OIL SPILL SETTLEMENT  
TRUSTEE COUNCIL**

RESTORATION OFFICE  
Simpson Building  
645 G Street  
Anchorage, Alaska

Continuation Meeting of Trustee Council Meeting  
held June 1-2, 1993

**VOLUME IV**

August 9, 1993

1:15 p.m.  
State Capitol Building  
Juneau, Alaska



P R O C E E D I N G S

(On Record: 1:15 p.m., August 9, 1993, Juneau, Alaska)

(Restoration Team members not in attendance on August 9, 1993, with the exception of Dr. Gibbons and Mr. Brodersen)

MR. PENNOYER: We might as well go ahead and get started. We don't have a PA system, or do we? So, we need to talk loud for the people in the room here. This is a continuation meeting of the meeting we recessed last week in Anchorage of the Exxon Valdez Trustees Council. All Trustee Council members are here. We had an agenda last week that contained three items. We got through one. The second one had to do with the purchase of lands in Prince William Sound. We did not complete that. We recessed so people could consider and discuss and evaluate the information we had in front of us and come back today and finalize that item. We have one other agenda item, that was an executive session dealing with the hiring of an executive director for the Trustee Council, and my presumption is that we'll do that at the end of this discussion and hopefully early enough this afternoon so we can complete it. We have to complete that item because we have to discuss the interview process which occurs later this week. So, I have no other additional introductory remarks. I'd like to call on Mike Barton, who he has interest in two proposals on the table in Anchorage, both of which were rejected by the Trustee Council. So, Mr. Barton, do you have anything to add to that at this time?

MR. COLE: Mr. Chairman, before Mr. Barton addresses the Eyak negotiations, I wanted to make a preliminary statement.

1 So, if you would allow me the opportunity at the outset of this  
2 meeting, I would like to do that now.

3 MR. PENNOYER: Certainly, go ahead.

4 MR. COLE: In the August 3rd edition of the Anchorage  
5 Daily News I read the following, quote, "'our biggest priority is  
6 to get the Exxon Valdez trust funds on track,' said George  
7 Frampton, Jr., who oversees the Fish & Wildlife Service and  
8 National Parks Service." Quote, "'it has been stumbling along,  
9 hemorrhaging money for two years. Everyone recognizes that is  
10 unacceptable . . .'" continuing the quote, "'there is an  
11 opportunity to leave a tremendous legacy in terms of ecosystem  
12 restoration, and right now the opportunity is being frittered  
13 away.'" When I first read this in the Daily News, I assumed that  
14 it was written by a purveyor of nonsense on stilts, someone, you  
15 know, like Mike Doogan of the Anchorage Daily News. So, I shrugged  
16 it off as of little consequence. But then, again, I read in  
17 yesterday, Sunday edition, of the Anchorage Daily News, this same  
18 remark that the Trustee Council has been frittering away money and  
19 Secretary Babbitt will soon be arriving in Alaska to get this  
20 Trustee Council on track. And I must say when I read that  
21 yesterday, it concerned me because the implication is that the five  
22 State and Federal Trustees with whom it's been my privilege to  
23 serve over the past year and a half have been breaching our  
24 obligations as Trustees, frittering away, wasting away, if you  
25 will, trust funds. I don't think that's been the case, and I think  
26 that if we allow those comments to remain unanswered, we are by our

1 silence acknowledging their validity. So, I want to say that I  
2 don't believe that we have frittered away money, I don't believe  
3 that what we have done is unacceptable in the public interest, and  
4 I don't believe that we've been stumbling along. Now, that brings  
5 me to this point. In light of the remarks attributable to the  
6 Department of the Interior, I am of the view that we should give  
7 serious thought to not committing any additional funds of the Exxon  
8 Valdez monies until we ascertain from the Department whether the  
9 prospective expenditures will lead to another accusation that we're  
10 continuing to stumble along and frittering away opportunities. So,  
11 I leave those thoughts with my fellow Trustees and am willing to  
12 abide by their views in that regard. Thank you for the opportunity  
13 to make this statement.

14 MR. PENNOYER: Thank you, Mr. Cole. Are there any  
15 further comments on that particular observation? Commissioner  
16 Sandor.

17 MR. SANDOR: It was my good pleasure not to have read  
18 the article, for having heard it ...

19 MR. PENNOYER: There's a switch on there (indicating  
20 switch on Mr. Sandor's microphone)

21 MR. SANDOR: ... having heard the article, quotations  
22 from it, I likewise am offended and believe that the statement is  
23 untrue, unfortunate, and unfair. Thank you.

24 MR. PENNOYER: Any other observations? Mr. Rosier.

25 MR. ROSIER: Thank you, Mr. Chairman. I was contacted  
26 shortly after the statement was in fact made, by a member of the

1 AP, and asked my views about it, and I think I expressed my view  
2 that it was the statement of someone who either was receiving  
3 extremely poor advice from their advisers or was an individual who  
4 did not know that he was talking about. I took real umbrage with  
5 the statements myself, and to hear that they have in fact  
6 apparently appeared a second time on this, is extremely upsetting  
7 to me, and I would certainly concur with Mr. Cole's suggestion.

8 MR. PENNOYER: I'm sorry, would that put the suggestion  
9 on a need to put -- to vote -- on whether we expend any further  
10 funds at this stage or -- or just a response, or a response to this  
11 discussion, or what specific action does the Trustee Council want  
12 to take? I guess in the past we have provided summaries of all the  
13 expenditures that have occurred to date. As I recall, a  
14 substantial amount of the funds so far have been obligatory  
15 reimbursements to the state and federal governments for work  
16 undertaken regarding Exxon Valdez and the Exxon Corporation for  
17 cleanup as mandated in the MOA. There are additional expenditures  
18 of a substantial amount to purchase lands in Kachemak Bay State  
19 Park and in Afognak, and I can't believe that the references to  
20 those since I don't think that was opposed by the Interior  
21 Department, and then there have been monies spent for studies  
22 involved in finalizing damage assessment, which I think we  
23 generally have agreed needed to be done, and doing some initial  
24 studies relative to restoration, but those funds have been in a  
25 relatively small amount, and actually of the funds we have received  
26 from Exxon so far, fifty million have been put in the bank, I

1 believe, to cover the future expenditures when the plan was done in  
2 1994 to spend on those projects. So, I don't know what further  
3 action the Trustee Council wishes to take, but I would -- I would  
4 assume that continuing down the track of making prudent  
5 expenditures of all the planning is an action that we collectively  
6 agree we should go forward with, and I don't feel our -- I think  
7 we've all agreed we have to finish the restoration plan, and we  
8 should do that, and have it to guide our expenditures in '94 and  
9 beyond. But are there any further actions that the Trustee Council  
10 wishes to take regarding this?

11 MR. COLE: Well, Mr. Chairman, when you say  
12 "continuing down the track," you see, that is the very thing that  
13 I'm told that we're being criticized for is continuing down the  
14 current track. So, maybe we should call a halt to continuing down  
15 this erroneous track and see what the Department of the Interior  
16 has in mind in this regard. I mean, if we're down the wrong track,  
17 we should -- and breaching our responsibilities by frittering away  
18 this money, hemorrhaging monies and stumbling along -- I think we  
19 should halt right now. I think we're obligated to halt right now  
20 and find out what the proper tack is.

21 MR. PENNOYER: Mr. Gates, I hate to ask you this, but as  
22 a representative of the Department of the Interior, do you wish to  
23 comment on this.

24 MR. GATES: No, but I will. The Secretary is going to  
25 be up here this week, so if -- it might be a good time to, face-to-  
26 face, get some of this discussion going.

1 MR. PENNOYER: Mr. Barton.

2 MR. BARTON: I guess I'm troubled in relation to the  
3 matter which is before us right now. An awful lot of people have  
4 put in an awful lot of work in getting us to this point, and I  
5 think we should proceed with the item on the agenda.

6 MR. COLE: Mr. Chairman.

7 MR. PENNOYER: Mr. Cole.

8 MR. COLE: I think under those circumstances, I think  
9 it's only fair to ask the representative of the Department of the  
10 Interior, who I do not wish to put personal responsibility on, but  
11 is the Department of the view that if we were to proceed with this  
12 proposed acquisition that we would be on the right track or we  
13 would remain on the wrong track?

14 MR. GATES: I would say we can move on on this  
15 proceeding.

16 MR. PENNOYER: I guess that basically we still have  
17 outstanding the commitment to finalize the restoration plan this  
18 year, and that when we've done that we're going to feel amply  
19 guided in doing the '94 work plan and beyond. So, we have sort of  
20 this issue here at the moment that was part of our imminent threat,  
21 at least in part, part of our imminent threat analysis. It was in  
22 our work plan to look at this year and to consider what we needed  
23 to do with it relative to the imminent threat criteria that we've  
24 evaluated. And I know the proposal stands somewhat beyond that,  
25 but that was initiated as part of our agreed-upon actions, and I,  
26 for one, would just as soon proceed and see where we go with it,

1 and I don't have any problem in getting ahead of the '94 work plan  
2 by discussing this and trying to reach some conclusion. The  
3 representative of the Department of the Interior said he views --  
4 that the discussions I'm sure he's had with the people in D.C. that  
5 proceeding on with this discussion is the appropriate thing to do,  
6 and I don't know how that jives with these remarks, but I assume  
7 those are the most recent instructions by his staff. I think we  
8 certainly view the need to proceed on with restoration, and we've,  
9 all of us, I think, are committed to try to do that, and we also  
10 see a need to proceed on with the '94 work plan to be guided by a  
11 direct restoration plan this fall, so I'm not sure those actions  
12 are inconsistent, but I can't speak for all of us (inaudible --  
13 extraneous noise) remarks. Commissioner Rosier.

14 MR. ROSIER: Thank you, Mr. Chairman. It seems to me  
15 we've had the -- certain commitments in terms of our planning  
16 efforts to move ahead. I think these (indecipherable -- extraneous  
17 noise) people and they understand what the program is about, would  
18 perhaps agree that we are on the right track. I don't think we're  
19 wrong. I don't think we've been wrong from the very beginning.  
20 We've been plowing new ground on a regular basis within the Trustee  
21 Council, but if there is a problem out there with Interior, I think  
22 we ought to hear what that problem actually is rather than some of  
23 the off-the-cuff remarks that have appeared in the newspaper. On  
24 that basis, I would support us at least moving ahead with the  
25 program that's in place at the present time, but I certainly would  
26 not support us going beyond that at the present time.

1 MR. PENNOYER: Mr. Barton.

2 MR. BARTON: Which program or what's the extent of the  
3 program that's in place? In other words, the real question is are  
4 you saying you wouldn't support moving ahead with discussions on  
5 the Eyak acquisition proposal.

6 MR. ROSIER: I would have great difficulty committing  
7 to the expenditure of additional funds beyond that which we've  
8 committed at the present time.

9 MR. PENNOYER: Commissioner Sandor.

10 MR. SANDOR: Well, Mr. Chairman, as I re-read, or read  
11 for the first time with my own eyes, the statement particularly  
12 with regard to hemorrhaging money, I suppose one can characterize  
13 our commitment to purchase the Kachemak Bay in-holdings as  
14 hemorrhaging, and I suspect the Afognak land purchase, which the  
15 state advocated, as being hemorrhaging. I suppose my motion Friday  
16 to buy in fee Eyak Lake, Power Creek and Eyak River would be  
17 hemorrhaging. I guess it troubles me, Mr. Chairman, that those  
18 very constructive projects, which stem from the assessments by the  
19 Restoration Team and the habitat -- critical habitat -- assessment  
20 that's been underway -- it seems like it's without foundation.  
21 Were it not for the fact that the individual makes this statement,  
22 if reported correctly, is in fact a high official in the  
23 administration that in fact oversees or has a role in dealing with  
24 designee who is here, I was prepared to re-introduce that motion  
25 for consideration again. It's troubling. I can understand now  
26 that I read this why the Attorney General and Carl Rosier take such



1 umbrage, and I think it's very relevant, and I don't believe it's  
2 appropriate simply to ignore the comment, considering the source  
3 from which it came or is attributed to. I am troubled by that. I  
4 think I might still consider reintroducing the -- the motion -- but  
5 I think that kind, that kind of statement does nothing at all to  
6 constructively move the process forward, and simply cannot be  
7 ignored.

8 MR. PENNOYER: Further comments or discussion or  
9 suggestions on how we proceed? Mr. Barton has suggested to  
10 continue with the item in front of us. I don't know that anybody  
11 is suggesting ignoring the comment or not saying what individually  
12 or as a group want to make as a response to it, but I guess that if  
13 we think that we have acted in good faith and reasonable fashion up  
14 to now, and that the expenditures that we've outlined and the plan  
15 we've outlined meets the needs of the Memorandum of Agreement and  
16 our responsibilities as either Trustees or Trustee representatives,  
17 I'm not sure that halting the process because of the comments is  
18 consistent with our feeling that we have acted appropriately, and  
19 maybe we should proceed with this discussion and see -- with our  
20 agenda item that we have in front of us -- and see where it leads  
21 us.

22 MR. COLE: Mr. Chairman, well, refresh my  
23 recollection about these expenditures which we've made, but as I  
24 recall, we've spent about a hundred and fifty million dollars  
25 reimbursing the state and federal governments for damage assessment  
26 clean-up. Is that not essentially an accurate figure?

1 MR. PENNOYER: That's close to correct.

2 MR. COLE: And then, as I recall, we spent about  
3 forty million dollars for clean-up under the terms of the consent  
4 decree, payable to Exxon.

5 MR. PENNOYER: That's correct.

6 MR. COLE: And then we spent or committed to expend  
7 somewhere around forty million dollars to Seal Bay.

8 MR. PENNOYER: That's also correct.

9 MR. COLE: And another seven and a half million  
10 dollars for Kachemak Bay, rounded out, if you will, to fifty  
11 million. So, as I think about it, in my mind, we spent a hundred  
12 and fifty to reimburse the state and federal governments, we spent  
13 fifty million dollars for Seal Bay and Kachemak Bay -- that's two  
14 hundred -- and then forty million to Exxon -- that was two hundred  
15 and forty million -- and we have fifty million in the bank. We're  
16 getting close to three hundred million. Could somebody correct me  
17 if my recollection and my addition is erroneous?

18 MR. PENNOYER: Dr. Gibbons, do you have those numbers in  
19 front of you?

20 DR. GIBBONS: I'll get a copy of the supplement that has  
21 that laid out.

22 MR. COLE: Well, anyway, I mean, I don't believe any  
23 of those expenditures which I've just mentioned are frittering away  
24 of monies, and I don't believe they represent a hemorrhaging money,  
25 other than meeting our obligations imposed upon us by United States  
26 District Judge Holland. So, as Commissioner Sandor says, I'm

1 concerned about the remark and the basis for it. But, I am  
2 prepared today, in light of the suggestion of Mr. Barton who has  
3 been the lead agency on this proposed acquisition, to go ahead and  
4 consider it today, having received the assurance of the Department  
5 of the Interior representative that this regarded by the Department  
6 of the Interior as a proper expenditure.

7 (Aside whisperings; long pause)

8 MR. PENNOYER: Do you wish to proceed then? Commissioner  
9 Rosier, any comment then? (No audible response) Mr. Barton, do  
10 you have any statements you wish to make about the matter before  
11 from last Friday?

12 MR. BARTON: Yes, Mr. Chairman, I do. I have a lot to  
13 say. You know, I'd like to try to frame today's discussion in a  
14 more positive climate than you might have experienced in the past.  
15 I'd like to lay out a little information before we really get into  
16 the meat of the thing. Eyak has been attempting to work with the  
17 Trustee Council process since the fall of 1991. In March '92, Eyak  
18 made a proposal to the Council, and the Council remanded it to the  
19 Restoration Team because we did not yet have a process in place to  
20 give it full consideration. In May of 1993, the Trustee Council  
21 authorized the Forest Service to act as the lead agency for the  
22 Council and formally contact Eyak to discuss specifically only  
23 Power Creek and Eyak Lake. As you will recall, these were the  
24 imminently threatened parcels identified in our imminent threat  
25 process. And I think we're all aware that Eyak had an on-going  
26 timber harvest operation around twenty million feet a year. I

1 don't think at that time, in May of '93, we contemplated shutting  
2 down their entire logging operation. In the habitat protection  
3 process, as a result of that, the Council only authorized us to  
4 look at Power Creek and Eyak Lake. It's only been more recently  
5 that the option of broader protection, including the possibility of  
6 a full shutdown of logging operations surfaced, and because of that  
7 we're having to address the near-term costs of the shutdown, and I  
8 think that's made it uncomfortable for a lot people in this  
9 negotiation, including the members of the Council. The deal has  
10 become far more complicated because of that, and I think it's far  
11 more complicated than any of us thought it would be at the  
12 beginning. And the need for short-term money in order to  
13 facilitate the broader levels of habitat protection made it  
14 necessary for the Council to have access to certain corporation  
15 documents, which are sensitive to the corporation and its  
16 shareholders. We need to establish a high level of trust among all  
17 parties in order to proceed, I think. As I understand it -- and  
18 perhaps the Eyak folks can fill us in -- as I understand, Eyak is  
19 reluctant to make those documents available. I propose that rather  
20 than forcing that issue today, we make any proposal or any  
21 arrangements that we might today that require up-front money  
22 subject to a review of the appropriate documents, including  
23 contracts. I think the intent of the Trustee Council should be to  
24 maintain the confidentiality of the documents to the extent allowed  
25 by federal and state law. And further, that we develop, if we  
26 adopt something today, that it is also contingent upon satisfactory

1 legal documents to implement whatever decision we might make or any  
2 need. Now, we were informed last week that the Eyak board of  
3 directors were going to meet on Saturday, the 7th, after our  
4 meeting on the 6th, and I understand they did and they passed a  
5 resolution which addressed some of the issues that we discussed  
6 last Friday. I've got copies of this somewhere. I'd like to pass  
7 them out to you, but I would also like to ask Eyak to come to the  
8 table and explain that resolution, if that's all right with the  
9 rest of the Council.

10 MR. PENNOYER: Any objection? Eyak Corporation, would  
11 you care to take some seats up here. Thank you.

12 (Kathy Anderson and Jamie Linxwiler, Esq, representing Eyak  
13 Corporation are seated at the Trustee Council table)

14 MR. LINXWILER: I've turned this (microphone) switch on,  
15 is it operating?

16 MR. PENNOYER: You need to turn the switch on.

17 MR. LINXWILER: Okay. Thank you, Mr. Barton. I share  
18 your interest in establishing a positive platform for us to  
19 negotiate from. I've listened to some of the conversation this  
20 afternoon that the Council has already had, and I share their  
21 concern with some of the statements that have been made in the  
22 press and what, I guess, it is important for all members of the  
23 Council to understand is that Eyak has many friends in this  
24 transaction, some of whom may have different agendas than Eyak, and  
25 I've heard the issue last week, and I've heard it again today,  
26 basically where are we going and what would Eyak like to achieve in

1 this transaction, and it really is, in order to solve that kind of  
2 concern that we have specifically addressed the various proposals  
3 that have been made and what the board will and won't do in a  
4 resolution form, approved by the board of directors of Eyak, so  
5 that we could share with you precisely the strategy Eyak has in  
6 this matter. I -- I search for definiteness from my client, not to  
7 provide a confrontational atmosphere to the Council's proceedings  
8 here, that was the farthest thing from my mind, and I hope you will  
9 accept the resolution in the spirit in which it is offered, which  
10 is to provide a clear message of what it is Eyak can do and what it  
11 is that Eyak is willing to negotiate for, so that we will, I hope,  
12 facilitate further contacts between us. Specifically in terms of  
13 the resolution, the briefest history is probably appropriate. July  
14 19th, Eyak made a proposal. It was a proposal that was primarily  
15 focused, as Mr. Barton correctly states, focused on Eyak Lake and  
16 Power Creek. Some question has arisen at that time as to the  
17 precise terms of that offer, and there might have been some  
18 misunderstanding fostered by the offering document. The briefing  
19 paper that you have in front of you on page 22 -- I'm sorry, page  
20 23 -- states Eyak will convey fee title. And it really isn't until  
21 you get to the bottom of the page, page 24, and the very last words  
22 on the bottom of page 24, which states "the distribution" -- this  
23 is in the second to last paragraph on that page -- "the  
24 distribution of any land assets are subject to shareholder  
25 approval." I didn't write this document, and I can understand how  
26 it could be that a person could look at that and misunderstand.

1 And let me state again what I stated on Friday, what Eyak intended  
2 to do in the July 19th proposal was to provide a conservation  
3 easement and go to the shareholders for a vote on fee title. The  
4 first criticism we tried to respond to in making the August 5th  
5 proposal was simply to respond to the criticism that our easement  
6 wasn't protective enough, that a better easement was necessary, and  
7 so we included a better easement in the August 5th proposal. There  
8 were other aspects of it criticized, for instance, protecting Orca  
9 Bay, but that gets beyond the scope of what, the point I'm trying  
10 to make here now. We came back in the August 5th proposal with a  
11 modified easement and heard Mr. Sandor and others state  
12 conservation easements are nice, yes, but I would prefer fee title.  
13 So, we went back to the board on Saturday and basically shared with  
14 them all of the conversations we had with the Council, and resulted  
15 -- and also with staff and the Nature Conservancy, and so on, all  
16 of last week -- for identifying all the issues, and the board has,  
17 I think, given us a clear sense of direction in this resolution  
18 about what it is that I'm doing, and what it is that Katherine's  
19 doing, and hopefully how we can reach an agreement. The first  
20 numbered paragraph of this resolution states that the board of  
21 directors of Eyak will accept the offer made by the Trustees  
22 Council to acquire in fee simple Power Creek, Eyak Lake, and Lower  
23 Eyak River. Not all of the lands in Lower Eyak Lake have been  
24 conveyed to us yet, but when we get them, we will convey them on.  
25 We'll do it on the basis of fair market value. Down towards the  
26 bottom -- "this acceptance is made conditional upon approval of the

1 shareholders of the Eyak Corporation in a vote held at a properly  
2 scheduled shareholders meeting." In other words, it remains as it  
3 was, subject to shareholder vote, and we propose to schedule that  
4 shareholder vote after we can tell the shareholders how much it is  
5 that you're offering, and we can't do that until the appraisal.

6 MR. PENNOYER: Can we take questions?

7 MR. LINXWILER: Sure.

8 MR. COLE: Just a quick comment, Mr. Linxwiler. This  
9 first paragraph says that the Eyak board of directors accepted the  
10 offer made by the Trustee Council, but -- but my recollection is  
11 that we did not make such an offer, that I voted against that  
12 offer.

13 MR. LINXWILER: That is correct, and that is perhaps my  
14 fault in miscommunicating to the board what happened, and I guess  
15 the best way to accept this is still outstanding, they will vote  
16 for it on the terms stated here in number one.

17 MR. COLE: Alright, thank you. That issue was open,  
18 and I agree with you on that.

19 MR. LINXWILER: Okay, so to summarize, we wish to accept  
20 the offer in fee, subject to a shareholder vote, we'll determine  
21 fair market value in the manner we were planning on determining  
22 fair market value in the proposal Friday, dated Thursday but made  
23 Friday, and the shareholders meeting will be scheduled after we get  
24 the appraisal, the fair market appraisal of the government, so we  
25 know, you know, what -- what -- how many dollars are being offered  
26 so the shareholders can be meaningfully informed. Paragraph 2 --



1 let me say that the tenor of Eyak throughout this transaction has  
2 been to be responsive to and cooperative with the Council, and we  
3 thought we were being responsive in the August 5th, which was kind  
4 of tightening up the terms of the easement with respect to these  
5 lands, tightening up the terms of the easement because we thought  
6 that was the problem. Hearing that fee title is desired, now we're  
7 tendering fee title to the Council, subject to the shareholder  
8 vote. Paragraph 2, the board is very concerned that while we may  
9 offer fee title, the shareholders won't approve it. So, paragraph  
10 2 is basically the board of directors telling me to tell you that  
11 we will do that. We will go through the vote, but they are  
12 concerned, they have serious concerns, that the shareholders won't  
13 approve that deal at the end of the day. And I say that not to try  
14 to make you do something different, don't feel that I'm negotiating  
15 with you, but the intention of paragraph 2 is really full  
16 disclosure, so you will understand what the Eyak board believes its  
17 shareholders will or won't do. Any questions about that?

18 MR. PENNOYER: Questions from the Trustee Council? Why  
19 don't you proceed, finish your presentation, then we can --

20 MR. LINXWILER: Okay. Then number 3, the board will  
21 consider any proposal you might wish to make about a moratorium.  
22 We have made a proposal for a moratorium already, and we will  
23 happily consider a moratorium. You should not consider though that  
24 the Eyak Lake and Power Creek proposal contains a moratorium on our  
25 on-going logging operations. As Mr. Barton stated, we never  
26 considered that we would shut down all of our logging and in turn

1 to sell Eyak Lake and Power Creek. We will consider a moratorium  
2 on logging that satisfies our need for near-term cash, and the view  
3 of the corporation has always been that any linking moratorium of  
4 any period, other than a very short time, creates so many problems  
5 of stopping and starting up that we just need to take the logger  
6 out of the term of this contract. So, basically, what we propose  
7 is that the term of any of these moratoriums, and what the board is  
8 authorizing is that the term of any moratorium be the same as the  
9 logger's contract. So, we just take a logger and a logging  
10 operation off the boards. If there's going to be a moratorium,  
11 then the moratorium will take Eyak out of the timber business for  
12 the remainder of its contractual obligations, and that basically  
13 the cost of the moratorium, which is the cost of the severance  
14 payments to the loggers, the costs of paying of the logger's  
15 equipment and things of nature, be included in the transaction and  
16 be a set-off to any price that Eyak eventually obtains for its  
17 lands. And the final statement, here at the bottom of paragraph 2  
18 is that such a moratorium be a part of a firm offer to buy  
19 commercial timber rights from Eyak in the form discussed in 4.  
20 That relates to the Orca Narrows or other lands. And there have  
21 been a number of proposals tabled -- or surfaced -- in the last  
22 week concerning other lands beyond Eyak Lake and Power Creek, and  
23 now Lower Eyak River. And we are happy to consider all of those  
24 things. The moratorium -- what the board is saying in this  
25 resolution is that the moratorium is linked to those other land  
26 conveyances. We are happy to consider the Orca Narrows, we're

1 happy to consider the proposal that the Forest Service made on  
2 Friday. The board -- the nature of the easement that would be  
3 offered there -- first of all, fee title is not being offered.  
4 It's been said a number of times about this transaction. This is  
5 a proposed transaction between a willing buyer and a willing  
6 seller. Some things are on the table and some things aren't on the  
7 table, and one of the things that's not on the table is further fee  
8 land, except for Eyak Lake and Power Creek. I want to be clear  
9 about that because the board believes that's very important. We  
10 would offer easements to these other lands, if you wish to proceed  
11 with this transaction, that are in the nature of selling you, the  
12 Council, or the Forest Service, our commercial timber rights to our  
13 own lands, so that -- the primary threat, as I understand it, to  
14 these lands is from commercial timber operations. Mr. Sandor  
15 identified others, and we can discuss those. But, the primary  
16 proposal of the board of directors is commercial timber rights, and  
17 that would be basically what the easement would be directed  
18 towards. So, I hope I have managed to describe and explain and  
19 walk you through this corporate resolution to your satisfaction.  
20 What I thought was important, in light of the number of different  
21 parties and the number of different agendas, at the bottom line, I  
22 think, it's fair to say what the Eyak Corporation's agenda is, and  
23 they're the landowner, what they're willing to put on the table is  
24 Eyak Lake, Power Creek, and the Lower Eyak River, and they will go  
25 to their shareholders for a vote on a fee title transfer. They  
26 will also make good on the offer they made on Friday, which is to

1 tender a highly restrictive conservation easement, if you would  
2 rather do it that way -- a highly restrictive conservation easement  
3 now, and go to the shareholder vote later, whichever way you prefer  
4 to do it. I mean, we're trying to be cooperative and responsive on  
5 those tracts which are the main tracts we've been discussing all  
6 along.

7 MR. PENNOYER: So the difference then between the two  
8 proposals are conservation easement -- easement versus fee simple.  
9 If we want the conservation easement now, presumably their a cost -  
10 - price -- difference, a price inducement to go for fee simple.

11 MR. LINXWILER: That is correct. I guess the question was  
12 asked what's the inducement? I would image that the primary  
13 inducement from our point of view would be the difference in price,  
14 and from your point of view it would be certainty that the lands  
15 were protected today, at the conclusion of today's meeting.

16 MR. PENNOYER: Would you also mind elaborating on the  
17 last sentence "the board is especially interested in pursuing the  
18 foregoing in relation to the offer made by the U.S. Forest Service  
19 with respect to all Eyak lands."

20 MR. LINXWILER: Well, as I understand the Forest Service  
21 proposal, they utilized the number of fifty million dollars.  
22 That's sort of a hypothetical number because it's really fifty  
23 million -- the lesser of fifty million or fair market value,  
24 whichever is the lesser. They would purchase a non-restrictive  
25 easement, and now we're starting to drift from the precision in our  
26 language, but their proposal was for a non-restrictive easement,

1 and our is, again, using non-specific language, something akin in  
2 the board's mind to the sale of timber rights and perhaps other  
3 things to be negotiated, but I believe we're very close together on  
4 the nature of the rights. But that would encompass all of the Eyak  
5 properties except Eyak Lake, Power Creek, and the Lower Eyak River.  
6 There is some timber operation on-going out by the airport, so I  
7 guess I should say in the rubric of our August 5th, it would be  
8 Eyak Lake and Power Creek study areas and everything west of that,  
9 I think would be the most precise way to describe it. That would  
10 be an offer on all of those lands for the purchase of limited  
11 rights, non-fee title rights. The board listened to that, were  
12 very intrigued by it, and is willing to entertain negotiations and  
13 discussions on that venture.

14 MR. PENNOYER: Mr. Barton, would you care to add to that?

15 MR. BARTON: Well, let me say, Mr. Chairman, that I  
16 think that that resolution brings some clarity to this situation.  
17 It is helpful. And I would move that the Trustee Council accept  
18 the Eyak offer for fee simple title, subject to shareholder  
19 approval, of Power Creek and Eyak Lake and the Lower Eyak River,  
20 and secondly, that the Trustee Council accept the Eyak offer for a  
21 conservation easement on the remainder of Eyak lands, which would  
22 be limited to prohibiting commercial timber harvesting and would  
23 provide the right of public access to the extent compatible with  
24 the allowed commercial activities of the corporation. The total  
25 price would be fifty million dollars or appraised value, whichever  
26 is less. This is only possible if Eyak takes care of its own

1 short-term cash needs.

2 UNIDENTIFIED VOICE: Second.

3 MR. PENNOYER: Mr. Barton, so you've written the earnest  
4 money part of it out then? Questions of Mr. Barton? Discussion?

5 MR. COLE: Do you have it written down Mr. Barton?

6 MR. BARTON: I do.

7 MR. COLE: I must confess, I have a little trouble  
8 following it as you verbally relayed it. Thank you for handing it  
9 to me.

10 MR. BARTON: Please don't disclose any of my notes.

11 (Simultaneous laughter)

12 MR. PENNOYER: I take it by that statement, you're not  
13 going to make copies for the rest of us.

14 MR. BARTON: I'd be delighted to.

15 MR. LINXWILER: Mr. Chairman, I have a subtle grasp of the  
16 obvious. I'm the only guy at this table wearing a jacket. If you  
17 don't mind, I'll remove it.

18 MR. PENNOYER: Please do. Let's be comfortable, although  
19 I notice Mr. Cole still has his sweater on.

20 MR. COLE: Take your tie off too! (Simultaneous  
21 laughter) I have a question.

22 MR. PENNOYER: Mr. Cole.

23 MR. COLE: Are these two motions or are they one  
24 motion?

25 MR. BARTON: They're one motion.

26 TELECONFERENCE BRIDGE OPERATOR: Excuse me, Mr.

1 Chairman, in Cordova we're having a real hard time hearing people  
2 unless they speak directly into the mike.

3 MR. PENNOYER: Thank you. Would you please speak  
4 directly into your mikes and make sure you turn them on before you  
5 speak. Mr. Barton, would you elaborate on the conservation  
6 easement part of that motion for me, please.

7 MR. BARTON: I need to get that back from Mr. Cole, but  
8 basically it would prohibit commercial timber harvesting but would  
9 provide for the right of public access to those lands to the extent  
10 compatible with allowed commercial activities of the corporation.

11 MR. PENNOYER: Mr. Barton, does that mean you can  
12 subdivide the banks of a stream, an anadromous fish stream?

13 MR. BARTON: No. That's certainly not my intent. My  
14 intent is really building on the -- or to capture -- the less  
15 restrictive easement that is contained in their August 5 proposal.

16 MR. PENNOYER: Activities prohibited is to include  
17 landing, construction, logging, road building, and timber falling?  
18 It doesn't say anything about subdividing.

19 MR. LINXWILER: Can I help you with that. I believe what  
20 he may be referring to is the easement that we offered at Orca  
21 Narrows.

22 MR. BARTON: That's correct.

23 MR. PENNOYER: Would you mind elaborating on that.

24 MR. BARTON: Yeah, I will. (Pause -- aside comments  
25 while finding pertinent documents) Here it is. On the first page  
26 of the August 5 proposal, and that is that the perpetual easement

1 would be substantially the same as described above with the  
2 modification that Eyak would retain limited rights associated with  
3 homesites and commercial operations that are consistent with the  
4 protection of the resources and services injured by the spill. And  
5 the easement -- it may be easier if you look at the August 5  
6 proposal. The language I just read modifies this language  
7 "perpetual easement with appropriate development restrictions as  
8 well as rights of agreed-upon public access subject to a suitable  
9 liability agreement between the parties. The perpetual easement is  
10 subject to valid, existing rights. At a minimum, conservation  
11 easement restrictions will include no commercial or industrial  
12 activities of any sort, including timber harvesting, no  
13 subdivision, sale, lease or other conveyances of smaller tracts for  
14 any purpose, no non-commercial thinning or clearing unless required  
15 for purposes of forest health and protection, no spraying of  
16 herbicides, insecticides or pesticides or the dumping of trash,  
17 garbage, ashes, soot, sawdust or similar unsightly or offensive  
18 materials," and that is modified to the extent that Eyak will  
19 retain limited rights associated with homesites and commercial  
20 operations which are consistent with the protection of resources  
21 and services injured by the Exxon spill.

22 MR. PENNOYER: I'm sort of asking you what that second  
23 part meant. I don't know what limited rights relative limited  
24 commercial activities and homesites means. What part of that first  
25 litany of things are dismembered by that modification?

26 MR. BARTON: This would allow then, allow Eyak



1 Corporation some rights to develop homesites and some rights to  
2 develop commercial operations so long as they are consistent with  
3 the protection of the resource.

4 MR. PENNOYER: I understand what that that's what the  
5 language says. I don't know what it means. That's my problem.

6 MR. BARTON: Well, if, for example, Eyak Corporation  
7 proposed to develop a commercial tourism facility somewhere on the  
8 lands upon which we would have the easement, if that were judged to  
9 be consistent with the protection of the resources, then that would  
10 be allowable.

11 MR. PENNOYER: Who judges it twenty years from now? The  
12 size, lodge or how many cabins attached to it you can build on the  
13 shore of a stream in Simpson Bay?

14 MR. BARTON: I assume that the owner of the easement  
15 would do that.

16 MR. PENNOYER: So it would be subject to ...

17 MR. BARTON: Subject to will of the agency.

18 MR. PENNOYER: Mr. Cole.

19 MR. COLE: Let me see if I understand, Mr. Barton,  
20 some of the fundamentals of this proposed transaction. First,  
21 there would be an offer to buy and sell the three core tracts in  
22 fee simple for fair market value subject to Eyak shareholder  
23 approval. Is that right?

24 MR. BARTON: That's correct.

25 MR. COLE: Alright. By what date must the  
26 shareholders act in response to this proposal?

1 MR. BARTON: I think that's something we could discuss  
2 and set here. I would prefer immediately, but I have some sympathy  
3 with the argument that they need to know what the fair market value  
4 is, which would take some time to develop because of the appraisal  
5 process.

6 MR. PENNOYER: Mr. Cole, excuse me. To elaborate on what  
7 you asked though, it wasn't the way I heard it. You have a  
8 separate fair market value for those three parcels, and fifty  
9 million is for the whole package?

10 MR. BARTON: Fifty million is for the whole package.

11 MR. PENNOYER: Thank you.

12 MR. COLE: And then, about how long would it take to  
13 get that appraisal so we have some sense of the timeline we're  
14 dealing with here?

15 MR. BARTON: My sense of that is six to nine months,  
16 but I'd have to ask the appraiser (aside comment to audience out of  
17 microphone range)

18 UNIDENTIFIED VOICE: (From audience) Yeah, we're prepared  
19 to commission an appraisal tomorrow morning. We expect to be  
20 getting in sixty to ninety days.

21 MR. PENNOYER: The response from the audience, without  
22 microphone, if something happened, they could start the appraisal  
23 tomorrow and would have the results in sixty to ninety days.

24 MR. COLE: And then during this sixty to ninety days  
25 during the appraisal process, one would have to add to that a  
26 period of time to disseminate that figure of fair market value to

1 the Eyak shareholders and for them to vote upon it, and about how  
2 long would that take?

3 MR. BARTON: I'll ask Eyak to answer that.

4 MR. LINXWILER: I would say at a minimum about -- I would  
5 say at a minimum forty-five to sixty days.

6 MR. COLE: So, we're talking about a general period  
7 of six months, is that right?

8 MR. BARTON: That's what it sounds like.

9 MR. COLE: Now, what would be the nature of the  
10 right, if any, of Eyak to continue its logging operations during  
11 that period of time?

12 MR. BARTON: The intent of my motion would be to  
13 terminate logging operations.

14 MR. COLE: Immediately?

15 MR. BARTON: Correct.

16 MR. COLE: I mean, like, today?

17 MR. BARTON: I don't know whether they've re-started or  
18 not.

19 MR. COLE: Well, whatever -- tomorrow, this week. Is  
20 that acceptable to Eyak?

21 MR. LINXWILER: Well, Mr. Cole, I'm not sure I fully  
22 understand, because I've never seen this language -- this precise  
23 proposal -- before with all of its aspects. If I understand the  
24 nature of the proposal respecting the easement, the first question  
25 I guess -- what I heard Mr. Barton say is that there will be no  
26 commercial timber operations, and there would be public access to

1 the extent it is compatible with commercial uses by Eyak of its  
2 lands. Is that ...?

3 MR. BARTON: So long as they're consistent with the  
4 protection of resources injured by the oil spill.

5 MR. LINXWILER: That latter part relates to the limitation  
6 on the uses of public access or on the uses by Eyak of its own  
7 lands?

8 MR. BARTON: Uses of its own land by Eyak.

9 MR. COLE: Let me say, we could get to the details of  
10 the easement, in a sense, later, but my concern in this line of  
11 questioning has to do whether logging operations would continue on  
12 Eyak lands west of Shepherd Point during the appraisal and voter  
13 approval process. That's what I'm focusing on now. But I  
14 understand the offer is there would be an immediate cessation of  
15 logging operations. Is that acceptable to Eyak?

16 MR. LINXWILER: I apologize, I started with the first  
17 potential problem we have, which is the extent of the easement, but  
18 let me jump forward to what we're discussing now. I'm sorry, I  
19 didn't mean to start too early in the process here. We'll have to  
20 talk about all of this stage certainly. The question of whether  
21 termination of logging immediately is acceptable has to do with the  
22 certainty that will make this transaction or some piece of this  
23 transaction work. In other words, are we guaranteed that some  
24 piece of it will result in the passage of money to Eyak so they can  
25 perhaps acquire other sources of financing. That's the first  
26 problem we have with it. If it's linked to the sale of Eyak Lake

1 and Power Creek, and the Power Creek and Eyak Lake won't happen  
2 until the shareholders favorably vote, you've put us into an  
3 economic box. We don't have a bankable deal because it's subject  
4 to a contingency. If you de-link the two, and basically structure  
5 it as two sorts of different purchases somehow, with the purchase  
6 money for one spilling over into the purchase money of the other,  
7 then conceptually we are approaching something we can work with.  
8 Does everybody understand what I've said so far? Because I'm not  
9 done yet. It gets worse.

10 MR. PENNOYER: Mr. Cole.

11 MR. COLE: Well, the answer to the question is no,  
12 but let me point out the occurrence of the contingency is within  
13 the control of Eyak, not some third party and not under the control  
14 of the Trustee Council, but it's under the control of Eyak. So,  
15 whether you had a bankable deal, a firm commitment, is up to Eyak.  
16 So, I wanted just to make that observation.

17 MR. LINXWILER: Well, what you say is correct. It is up  
18 to the control of the Eyak shareholders and, I guess, the decision  
19 rests in their hands.

20 MR. COLE: Let me say this, what troubles me is we  
21 get down during this six months, Eyak continues to quote, harvest,  
22 close quote, its timber resources along Orca Narrows, and then you  
23 get done in, say, six months, and now, all right, well, you know,  
24 we accept your offer. Meanwhile, Orca Narrows along the way is  
25 logged. I mean, where are we?

26 MR. LINXWILER: Uh-huh.

1 MR. COLE: That's a very essential, in my view, part  
2 of the transaction.

3 MR. LINXWILER: That's right. Now, keep in mind that the  
4 board of directors has already expressed in this resolution to you  
5 the message that they don't think their shareholders will go for  
6 the fee title deal. So, we would cease logging operations, incur  
7 substantial cost, and all of it hangs on a vote we already think  
8 we're not going get. So, I mean, we can talk about this, about  
9 other complexities. Mr. Cole, the answer to your question is no,  
10 I do not believe the deal in that particular framework, unless you  
11 de-link the two transactions, will work for Eyak.

12 MR. PENNOYER: De-link the two transactions, you mean de-  
13 link the fee simple from the question of an easement on the core  
14 parcels?

15 MR. LINXWILER: De-link the core parcels from ...

16 MR. PENNOYER: But the only way to do that would be to go  
17 with an easement or fee simple, if the board later votes to do it,  
18 is what you're saying?

19 MR. LINXWILER: Oh, no. You're approaching it from, I  
20 guess, another alternative. What I had in mind was, assuming that  
21 you were, that you remain steadfast in your desire to have fee  
22 title to the core parcels, that the -- all of the other lands would  
23 be dealt with in some separately bankable transaction so we could  
24 obtain financing.

25 MR. PENNOYER: Oh, I see, you were banking the moratorium  
26 because you might not vote for the core parcels.

1           MR. LINXWILER: But, sir, your suggestion equally serves  
2 the problem, which is granting you a conservation easement now with  
3 some present economic value allows you to guarantee -- give us --  
4 a firm contractual commitment to pay us at least some money which  
5 we can take to the bank as well. So either way you cut it, either  
6 taking the two chunks of land apart or taking an easement now and  
7 taking fee title later on the lake, either one of those serves our  
8 purposes. But, before I go too far down this road, I don't want to  
9 be misleading, we need to keep in mind that all of this relates to  
10 Eyak's ability to obtain financing. We haven't approached our  
11 banker in any but the briefest of conversations this morning and  
12 are told that this kind of transaction would take a significant  
13 amount of time because we're talking about a significant amount of  
14 money -- at least thirty days once we had a contract in hand, and  
15 it seems to me that we're getting two to three months downstream in  
16 this process to be able to obtain funds from a banker to start  
17 with.

18           MR. PENNOYER: You mean relative to the earnest money  
19 part of it?

20           MR. LINXWILER: Well, yeah, because we're not getting  
21 earnest money, and so -- I'm frankly beyond the facts I have in my  
22 control right now to say whether that can work or not.

23           MR. PENNOYER: Mr. Cole.

24           MR. COLE: Are you -- I don't want to get into the  
25 realm of business privacy, but we noted that the last meeting that  
26 Eyak could continue to log the newly conveyed parcels for the

1 remainder of this logging season, and presumably, and I say  
2 presumably advisably, Eyak is making money from those logging  
3 operations, so you should have the source of funds with which to,  
4 quote, take to the bank, close quote.

5 MR. LINXWILER: Mr. Cole, since our conversation on  
6 Friday, I am advised that about half of the logs in sections 23 and  
7 24 are lying on the ground. They've been logged out last week.  
8 And about half, the remaining half, will get cut this week and that  
9 hauling is starting, and that instead of having six weeks or two  
10 months to operate in there, we're going to be done in there very  
11 quickly.

12 MR. COLE: Well, then if you cut that fast and  
13 there's no moratorium on the harvesting of Orca Narrows, by the  
14 time we got this whole transaction looked at, all of Orca Narrows  
15 would be harvested, and you might even be over to Sheep Bay. So,  
16 we have to get a firm understand of the essence of this  
17 transaction, you know.

18 MR. LINXWILER: We certainly want to facilitate this  
19 transaction, and it is not our intention to create an impossible  
20 situation for the Council or for ourselves. Our original proposal,  
21 of course, had the earnest money component to it, granted by a  
22 firm, contractual tenement for us to give conservation easements or  
23 rights in our lands to secure the earnest money at Power Creek, and  
24 we may -- I -- it perhaps might be most fruitful to pursue that  
25 question. The question of being able to enter into the transaction  
26 Mr. Barton offered relates to our ability to handle the cash flow



1 needs created by our shutdown. Those relate to the ability to  
2 enter into a firm contract and how long would that take and then  
3 take the contract to the bank and get a loan on the basis of that  
4 contract. You know, and how much time is consumed in that is -- my  
5 guess is about two to three months, and it's more time than we can  
6 afford, so we need to have -- my guess is, where I'm leading, I  
7 guess, in all of this perhaps bridging the distance between us  
8 would encompass creating a smaller earnest money proposal, or a  
9 smaller earnest money transaction than we previously discussed.  
10 And I don't know what the interest of the Council is in that, but  
11 it's -- perhaps is something that you might find attractive as a  
12 way forwards from where we are right now.

13 MR. PENNOYER: The original earnest money agreement was  
14 about seven and a half million dollars?

15 MR. LINXWILER: Yes, sir, it was.

16 MR. PENNOYER: Over a period of time.

17 MR. LINXWILER: Over a period of, I believe it was ninety  
18 days.

19 MR. PENNOYER: Anything in this conversation, Mr. Barton,  
20 that would make you amend your proposal in any way

21 MR. BARTON: I have a question. Are you prepared to  
22 specify what a reduced earnest money number might be?

23 MR. LINXWILER: Mr. Barton, I am so far beyond my  
24 knowledge and authority at this stage that I can't, but if we were  
25 to break I could probably convene sufficient board members and  
26 other individuals relating to Eyak to be able to give you some kind

1 of an answer.

2 MR. PENNOYER: Mr. Barton, is that a key part of this  
3 decision?

4 MR. BARTON: Well, it appears to be.

5 MR. PENNOYER: Perhaps we should take a ten minute break  
6 then? Is that acceptable to the Trustee Council members.

7 MR. LINXWILER: I think we might need longer than that,  
8 sir.

9 MR. PENNOYER: I'm not sure whether we have a conceptual  
10 agreement on the balance of the proposals yet, of which this is a  
11 part, maybe a significant part but not necessarily the key part.  
12 Do the Trustee Council members feel that a longer break is  
13 appropriate? Is the earnest money agreement -- have we talked out  
14 the rest of the proposal to the extent that we need to deal with  
15 that before we break, because if there are other things that are  
16 going to come up that would also require something in the break,  
17 then I would prefer we did them all at once rather than take  
18 successive half hour breaks every fifteen minutes or so?  
19 Commissioner Sandor.

20 MR. SANDOR: Yes, Mr. Chairman, there are several other  
21 issues, one of which I dealt with at the Trustee Council meeting  
22 Friday, so I'll not repeat that, but -- so I have problems with the  
23 second half of Mr. Barton's resolution. In spite of Mr. Frampton's  
24 statements, I would be prepared to support the first half however,  
25 even though we're talking in terms of hemorrhaging twenty or thirty  
26 million dollars more for acquisition of critical habitat. I had

1 two questions -- well, the other thing is this motion on the table,  
2 particularly the second half, appears to be inconsistent with the  
3 resolution passed by the Cordova City Assembly, is that true?

4 MR. PENNOYER: I believe so.

5 MR. SANDOR: I think the Trustees would want to  
6 consider what promoted the city's resolution and at least be  
7 prepared to deal with it. The other question, I guess, is directed  
8 to Eyak. With the refusal to disclose the information that was  
9 requested a year ago and again Saturday on these various  
10 contractual arrangements that Eyak has with Sherstone and  
11 Whitestone, I guess, around the Sound, it's not clear to me from  
12 the dialogue that's taken place since we've convened that after the  
13 receipt of those materials the Trustee Council can, in fact,  
14 rescind without penalty any decisions that have been made here. I  
15 presume by the statements that were made that we could do so. Is  
16 that true?

17 MS. ANDERSON: I don't understand the last part.

18 MR. SANDOR: We have requested again, as we did a year  
19 ago, information on the contractual arrangements between Eyak,  
20 Sherstone, Whitestone, and I guess Melsound (ph) Logging  
21 Corporation, and these were denied by the board of directors on  
22 Saturday afternoon. As I thought I detected some concession during  
23 the opening remarks here, that after we receive those documents, we  
24 had, that is, the Trustee Council, had the clear right and  
25 responsibility of, in effect, wiping the slate clean and beginning  
26 again our decisions on the action to be taken. Is that true?

1 (Pause) I ask that question because I feel like I'm in a dark  
2 room. I do not know the cards that we're dealing with. The most  
3 troubling one of all, quite frankly, is the -- hinges on this  
4 business of the Eyak supposed obligations to the logging contractor  
5 to continue logging and to, in fact, perhaps be paid as much as  
6 three to five million dollars even if they do no harvesting, and  
7 that's crucial, Mr. Chairman, not only to my ability to evaluate  
8 this situation, but it's more crucial to the development of a trust  
9 relationship Eyak and especially with regard to conservation  
10 easements because anyone who's had experience administering  
11 conservation easements knows that they are very difficult to  
12 administer, especially over long periods of time, and you need a  
13 good trust relationship or, in fact, spend a substantial amount of  
14 funds in administering and monitoring the activities in relation to  
15 that. So, if we're breaking for ten minutes, I don't want the  
16 Trustees to be deceived into thinking that this one answer, the  
17 question that's on the table, is what's troubling me.

18 MR. PENNOYER: Mr. Barton, do you wish to make a  
19 statement on that?

20 MR. BARTON: Yes, Mr. Chairman. It is my hope that we  
21 could make -- that any action today that we took -- contingent on  
22 our review of the appropriate documents. The relevance of the  
23 documents, it seems to me -- the relevance of which documents seems  
24 to me to be somewhat dependent upon the action we take. If the  
25 Council would get involved in this (inaudible -- coughing and  
26 extraneous traffic noise) suggestion, then perhaps more documents

1 and the manner of the review is more relevant. But if the action  
2 we took is structured along my original motion, then it seems to me  
3 that might be less relevant in scope.

4 MR. COLE: One of the things that haunts me as I  
5 considered this proposal is that net operating loss transaction  
6 that Eyak engaged in with respect to its timber sometime ago, and  
7 I ...

8 TELECONFERENCE BRIDGE OPERATOR: Mr. Chairman.

9 MR. PENNOYER: Yes.

10 TELECONFERENCE BRIDGE OPERATOR: Commissioner Sandor is  
11 breaking up and we're not picking him up very well in Anchorage.

12 MR. COLE: Let me restate my remarks. One thing that  
13 haunts me as I reflect on this transaction is this net operating  
14 loss sale transaction that Eyak engaged in sometime ago with  
15 respect to this timber, and as a Trustee I do not want to be in a  
16 position of agreeing to pay X for these timber harvest rights and  
17 then find out that the net operating loss transaction was -- X is  
18 the numerator and beneath it lies a denominator of double digits.  
19 I think as a Trustee, to avoid being accused of frittering away  
20 assets of the trust, that we have an obligation to see how Eyak  
21 values this timber as a sale and to examine the terms of that NOL  
22 transaction. It troubles me.

23 MR. PENNOYER: Commissioner Sandor -- Mr. Barton? One or  
24 the other.

25 MR. BARTON: Well, I wonder what process we could work  
26 towards to allay Mr. Cole's concerns.

1           MR. LINXWILER: Mr. Cole, the NOL transaction is not  
2 concluded. It's at a very fragile status right now in terms of  
3 settlement with the IRS, and I say fragile, perhaps I should say  
4 vulnerable because it is nearly complete but not quite complete.  
5 Virtually any Native corporation you deal with that owns timber  
6 will have entered into one of these NOL transactions. Virtually  
7 all of them have. I believe, without attempting here to be  
8 confrontational in the least, that the NOL deal is not relevant to  
9 the market value of the timber, and the NOL transaction and the  
10 terms of the transaction are basically the business of the Eyak  
11 Corporation. We have agreed, I believe, to share with the  
12 appraiser the timber valuations that were the part of that, the  
13 valuations that verified the values of the timber in 1978 and '79,  
14 which is the basis upon which the transaction was entered into.  
15 So, I want to be very careful here not to overstate our willingness  
16 to dispense those documents to the commission or to its staff. It  
17 is entirely appropriate, I believe, for you to want to know what  
18 the terms of the logger's contract are and whether it's really  
19 there and whether we really are incurring financial costs that you  
20 really are fronting us money for. If you're not fronting us money  
21 for it, that's not relevant to the decision you make either. So,  
22 this question of what documents become available to the commission  
23 and how they are relevant to the commission's proceedings is one  
24 that we probably ought to talk about very carefully.

25           MR. PENNOYER: Mr. Cole.

26           MR. COLE: Is Eyak still bound by the terms of the

1 NOL sale transaction?

2 MR. LINXWILER: Umm ...

3 MR. COLE: Or are you going to -- umm --.

4 MR. LINXWILER: The ...

5 MR. COLE: Excuse me, go ahead.

6 MR. LINXWILER: Let me, let me describe an NOL transaction  
7 of the sort that Eyak entered into. Eyak received title to timber  
8 at a time when the market was at an historic high in the late  
9 '70's, and then in order to capture the high basis in its timber  
10 and to generate the losses that were conveyed, Eyak conveyed timber  
11 to a third-party timber company which it owned an interest in, and  
12 that was Sherstone. Through events that have nothing to do with  
13 that transaction, Eyak repurchased all of its interest in  
14 Sherstone, and as I described the other day, Eyak now owns the  
15 Sherstone company one hundred percent. Sherstone is a subsidiary  
16 now of Eyak. Yes, it's bound by the terms of the contract, but  
17 Eyak and Sherstone are now related contractually -- as a  
18 shareholder in a company in which the company owns shares. So,  
19 yes, the contract is still in effect, but it's now a contract with  
20 a hundred percent owned subsidiary.

21 MR. PENNOYER: Mr. Cole.

22 MR. COLE: If this proposal transaction goes through,  
23 I gather that the contemplation of Eyak is it will rescind its NOL  
24 sales transaction with its currently wholly-owned subsidiary and  
25 then enter another contract for the sale of these timber harvest  
26 rights, or whatever, with the Trustee Council.

1           MR. LINXWILER: That's a somewhat more complicated way of  
2 doing it. What we'd envisioned, just for simplicity's sake, was  
3 that Sherstone and Eyak would both enter into this transaction and  
4 grant the respective interests they have in the property. By the  
5 way, I can tell that there's a -- perhaps a problem of -- in the  
6 lexicon -- when I look at these NOL transactions and hear the NOL  
7 deals being discussed, I tend to think not of the land transaction,  
8 the underlying land transaction that generates the loss, but rather  
9 the deal with the purchaser of the loss, the tax transaction. The  
10 tax transaction part of this isn't on the table. Let me be  
11 perfectly clear about that from the beginning. It has no  
12 relevancy, in our view, to market values. But to focus on the  
13 questions you're asking about the complex of transactions relating  
14 to the land and the timber rights, we would handle that basically  
15 from the purchaser's point of view. We would give you all the  
16 rights in the land, because both Sherstone and Eyak are two  
17 entities that hold title that we'd be conveying to you, and we'd  
18 give you basically title guaranties.

19           MR. PENNOYER: Thank you. Commissioner Sandor, before we  
20 talk about a break and doing simply the easement -- the earnest  
21 money -- question, you are basically then against going beyond the  
22 basic core parcels on anything but fee methodology?

23           MR. SANDOR: Well, thank you, Mr. Chairman, for giving  
24 me the opportunity to really state very clearly and hopefully  
25 succinctly where I stand. One, I think there's almost unanimity  
26 with respect to the desirability of the acquisition of Eyak Lake,



1 Power Creek, and Eyak River parcels and really, mainly, for the  
2 protection of the fisheries and other resources associated with  
3 that lake, that very shallow lake. Again, we pointed out, the  
4 biologist pointed out last Friday, the logging is not the threat to  
5 Eyak Lake, it's the putrifaction of the lake which can just as  
6 easily take place with other activities. That takes care of that.  
7 We're for that. The other thing that I am for is the protection of  
8 easements, the scenic easements, and as I would have presumed Eyak  
9 would have been interested, particularly along Orca Narrows, the  
10 steamship route -- the potential steamship route -- and so forth,  
11 and it was within, actually, Eyak's total control to plan its  
12 harvesting such that in fact that valley would be protected. I am  
13 troubled, therefore, to find ourselves in this situation, after  
14 negotiations of over a year and a half, that we have this threat  
15 imposed that this area is to be harvested, and harvested in a  
16 manner in which these scenic valleys are not protected. Indeed,  
17 anyone with 101 Forestry could have laid out the areas to protect  
18 those kinds of values, and I don't believe it is incumbent upon the  
19 Trustees to, in fact, be the follow-up for those kinds of  
20 activities associated there. And, finally, and perhaps most  
21 troubling of all, is, and why it's very crucial to have these  
22 documents that have been denied, is to really know what prompted --  
23 what got us in -- the corporation -- into this situation where, in  
24 fact, we're told Eyak has no option but to allow this operator to  
25 harvest, and, indeed, if harvesting is stopped, that the logging  
26 contractor will get three to five million dollars for doing

1 nothing. Meanwhile, seventy people are out of work, and, you know,  
2 taking an action in contradiction to the will of the Cordova  
3 Assembly, and -- so, that's troubling. So, in summary, I'm back  
4 where we were Friday afternoon, in which, given the information  
5 that's on the table, the most that I could support, until I have  
6 full disclosure of the other information that's available but  
7 that's simply not given to us, anything more than a conveyance in  
8 fee of the three core tracts in question. So, that's where I am at  
9 this point in time, Mr. Chairman, thank you.

10 MR. PENNOYER: Mr. Sandor, the real I asked that question  
11 was I was trying to follow the track out why the second part of the  
12 proposal automatically goes against your concerns relative to  
13 disclosure of documents and the relationship of Eyak to the logging  
14 corporation. Is that simply the concept of purchase price for a  
15 moratorium on all other lands? Is it the fact that any option --  
16 it seems to me -- well, the City of Cordova did pass a resolution.  
17 We heard a lot of testimony on the teleconference net and during  
18 the hearing in the room itself of people concerned with lands  
19 beyond the ones we talked about, and, of course, we've not finished  
20 our studies on them so I understand some trepidation in terms of  
21 their values, although the fair market value concept certainly  
22 gives you some control over that. A lot of fishermen testified  
23 that beyond Orca Narrows, which has some viewshed concerns, that  
24 possible anadromous fish values and adjacent bays to the west of  
25 that were of a great concern, and if we could obtain some type of  
26 a, at least an option to deal with lands that we later viewed as

1 high value and not be simply forestalled by the mind in change on  
2 the part of either party to consider them, that would be of value.  
3 I'm still not totally clear as to how the documents relate to the  
4 concept of getting an option or purchase of the moratorium or some  
5 variation on that beyond what (inaudible).

6 MR. SANDOR: Yes, Mr. Chairman. I have no doubt that  
7 there may be opportunities in and good justification for actions on  
8 other tracts. I would remind ourselves that the habitat team, the  
9 critical habitat, rated the core tracts as being the most  
10 important, the Orca Narrows tract as less important, but even where  
11 it's ranked as less important you would think it would be both to  
12 Eyak's interest as well as other parties to take actions which  
13 would protect certain values. But, I'm also concerned, Mr.  
14 Chairman, that we have Chenega lands, Tatitlek lands, and indeed  
15 this whole habitat valuation process which is underway, you know,  
16 is bound to be influenced by the action that's taken here, somewhat  
17 precedent-setting, and I don't want to treat those entities any  
18 less fairly than we treat -- as I feel we should be treating this  
19 proposal. So, I'm just saying that until there's full disclosure,  
20 I'm troubled. I'm not saying that I would -- oppose any action  
21 beyond -- indeed, I might well move action if it's justified, but  
22 I'm troubled that the public interest be protected, that when this  
23 is scrutinized by the public-at-large, as it will be, by auditors,  
24 GAO, others, that they will have been able to conclude that,  
25 indeed, the actions taken by the Trustees, as it has to date, been  
26 sound and based on all the information that could reasonably be

1 expected to be available. Thank you.

2 MR. PENNOYER: Commissioner Sandor, I think that the  
3 evaluations that you've seen so far were based on a hurry-up  
4 assessment of imminent threat. I don't know that, while the  
5 premise does not exist for logging some of the other lands, I'm not  
6 sure that some of the lands of Sheep Bay and Simpson Bay, for  
7 example, would rank out as high as some of the ones we've looked at  
8 already. I don't think they were totally evaluated at this time,  
9 although I understand there's major anadromous values along the  
10 shorelines, and hence in those areas lands that are potentially for  
11 logging. So, I guess I share with you the question of we don't  
12 know yet what all those values are, but I think we've got some hint  
13 that substantial values of resources important to us may exist on  
14 some of those lands, and Mr. Barton's has proposed, I think, for  
15 purchase of, in essence, an easement -- a conservation easement --  
16 in some form on all of those lands that -- certainly an option to  
17 purchase lands of value, it would seem to be something that is  
18 within our area of great interest. So, I don't know how you get  
19 from here to there, but -- Mr. Cole.

20 MR. COLE: I would like to say, if we look at  
21 paragraph 3 of the Eyak Corporation resolution number 8-7, the last  
22 little bit of the third paragraph, with respect to the moratorium,  
23 it says, quote, "and that such a moratorium be part of a firm offer  
24 to buy commercial timber rights from Eyak in the form discussed in  
25 paragraph 4," the following paragraph. That is a little troubling  
26 in that, as I read it, it means any moratorium against resumption

1 of logging must be tied -- I was going to say linked, but then I  
2 thought the better of it -- to the acquisition of commercial timber  
3 rights. That's different than a conservation easement, as I see  
4 it. But, it's -- so it's my position as we adjourn for the recess,  
5 it is reasonably clearly understood, I'm in favor of buying in fee  
6 simple title for fair market value Power Creek, Eyak Lake, and Eyak  
7 River, conditioned upon a moratorium on all logging operations by  
8 Sherstone and/or Eyak west of those lands, and I -- I will not  
9 agree to the acquisition of the Power Creek, Eyak Lake, and Eyak  
10 River tracts if Eyak-Sherstone resumes logging in Orca Narrows.

11 MR. PENNOYER: Mr. Cole, duration of that moratorium --  
12 on all lands?

13 MR. COLE: That's a subject of negotiation. My view  
14 is that this moratorium for seventeen months until December of 1994  
15 is too long. I think we should be required to make decisions  
16 concerning the selection of easements under such terms as we may  
17 agree upon in a matter of a few months.

18 MR. PENNOYER: Mr. Cole, you're going to purchase an  
19 option to buy, which ...?

20 MR. COLE: Yes.

21 MR. PENNOYER: ... would have to be at fair market value?

22 MR. COLE: Yes, because -- and I think that we should  
23 have to exercise that option before the resumption of the logging  
24 season next spring, whenever that is -- March 15, April 1, whatever  
25 we can agree upon. But I agree with Commissioner Sandor that I  
26 think that the Orca Narrows property is very important for the

1 future of Cordova and possible tourist activities, site  
2 restrictions along there, and as I said at our meeting on Saturday,  
3 my mind's not going to change on that.

4 MR. PENNOYER: Mr. Cole ...

5 TELECONFERENCE BRIDGE OPERATOR: This is Cordova here.  
6 Out of consideration for the outlying communities, could -- you're  
7 breaking up terribly. Could you restate Mr. Cole's motion so the  
8 people in the room here understand what you're saying and enunciate  
9 it as clearly as we can do. Thank you.

10 MR. COLE: That's a major assignment. But my view is  
11 this. One, the Trustee Council should purchase fee title to Power  
12 Creek, Eyak Lake, and Eyak River; that, in addition, the Trustee  
13 Council should acquire an option to purchase an easement, on such  
14 terms as we might agree upon, for fair market value, to be  
15 exercised by April 1, 1994. That would afford us an opportunity to  
16 make a study of those lands and to decide which lands and the  
17 interest therein before the beginning of the next logging season,  
18 and the amount to be paid for the option to be subject to  
19 negotiation upon full disclosure by Eyak of all documents requested  
20 by the Trustee Council -- that's financial documents requested by  
21 the Trustee Council -- and maybe Commissioner Sandor or  
22 Commissioner Rosier have -- want to add something to that. I've  
23 tried to cover it as best I can.

24 MR. PENNOYER: Mr. Barton had a question, I believe.

25 MR. BARTON: I have a question of Mr. Cole. What lands  
26 do the option apply?

1 MR. COLE: Well, essentially everything lying -- I  
2 should say north and west of the Narrows. As one looks at that map  
3 ...

4 MR. PENNOYER: North and west of the key parcels to be  
5 purchased (inaudible -- extraneous traffic noise).

6 MR. COLE: I was trying to avoid Shepherd Point tract  
7 because I don't know quite enough about exactly where that lies and  
8 the size and the considerations that come into play there. On that  
9 I would like further advice and counsel.

10 MR. PENNOYER: The balance of the Power Creek tract and -  
11 - I don't know -- somebody ought to get a map for us.

12 MR. COLE: I think somebody has a good sense of that,  
13 but I said I'm not quite certain about that Shepherd Point tract  
14 which I read about in connection with Eyak's logging plans.

15 MR. PENNOYER: Mr. Barton, a question?

16 MR. BARTON: Yes. Still a question, are you proposing,  
17 Mr. Cole, to take an option on all lands west of Hawkins Island  
18 there?

19 MR. COLE: (Pointing to map) Everything this way,  
20 whatever way that is, but I think it's north and west, but we'll  
21 see if a map -- but everything that lies on the shoreline of Orca  
22 Narrows and northwest from there.

23 MR. BARTON: Thank you.

24 MR. PENNOYER: Mr. Cole is pointing to the map and  
25 showing lands referring to the option to be everything to the north  
26 and west of Orca Narrows.

1           MR. BARTON:     Does that include the parcel labeled Orca  
2 Narrows on that map?

3           MR. COLE:       Yes!

4           MR. BARTON:     Thank you.

5           MR. PENNOYER:   Includes the parcel labeled Orca Narrows  
6 on the map. Does that include the Rude River parcel ...?

7           MR. COLE:       Yes.

8           MR. PENNOYER:   ...north and east of Orca Narrows -- Rude  
9 River would be included in the option as well. Is this -- before  
10 we take our break, is this an amendment or a substitute motion? If  
11 so, does it have a second? Mr. Barton, can we treat that as an  
12 amendment to your motion and vote on it separately.

13          MR. BARTON:     At this time at least.

14          MR. PENNOYER:   This time. Is there a second to Mr.  
15 Cole's motion? I'll second. Can we take our break now and talk  
16 about it? Do we need to? Do you have any further comment?

17          MR. LINXWILER:   Yeah, I guess I do. We are operating  
18 a business. We're a private property owner and we're operating a  
19 business on our property, and the offer is to sell the business and  
20 some part of the property -- to shut down the business, to put it  
21 more accurately -- shut down the business and sell some portion of  
22 the property. The portion of the property that we're selling is  
23 undefined; the price of the option is not to purchase the property,  
24 but an option which may or may not be exercised, is undefined; and  
25 all of it is subject to the receipt of documents which are, as yet,  
26 undefined as well. And, so, I'm not sure what I'm going to ask my



1 client. Perhaps what we could do is fill in -- perhaps at the  
2 break it might be appropriate for us to identify what the -- what  
3 some of the more salient terms are of the transaction. I  
4 understand Mr. Cole to have offered in a similar fashion to Mr.  
5 Barton for the purchase of the three tracts and an option on  
6 everything else, as opposed to a firm offer to buy everything else.  
7 So, we gone -- if we turn off our logger, basically he goes out of  
8 business. So, we ought to understand that an effort to send him  
9 home for eight or nine months, from now until next April, basically  
10 puts him out of business and sends all of his equipment back to the  
11 parties he'd purchased it from. And what I'm trying to do is  
12 explain some of the complexity, I guess, of this transaction. My  
13 struggle is to try to understand it better and see how we can  
14 satisfy some of the economic problems that it creates for us.  
15 Perhaps my comment is a question to Mr. Cole, do you have a dollar  
16 number for the option, sir?

17 MR. PENNOYER: Mr. Cole.

18 MR. COLE: Nope, but we would want to see those  
19 financial documents to be able to formulate a reasonable amount to  
20 be paid for the option. How much would it really cost to shut down  
21 this logging operation? How much has his net profit been on a  
22 month-to-month basis, so we can determine how much it would really  
23 cost him to shut down for three months, and also to look at his --  
24 the commitments the logger has on equipment so that we can make a  
25 rational determination of the amount which should be paid. It's  
26 not quite so important if we would get credit for that against the

1 purchase price, but the problem with that is we're not certain that  
2 the shareholders would approve the sale of the three core tracts in  
3 fee title, so it complicates it, slightly, and we would want some  
4 security device that in the event we paid some money to be returned  
5 as far as the purchase price, that we would get it back if the  
6 transaction fell through.

7 MR. PENNOYER: Yes, sir.

8 MR. LINXWILER: As I understand the terms of Mr.  
9 Cole's proposed offer, it contains so many elements of risk for my  
10 client that are unknowable that I would be misleading you if I said  
11 I was going to go to the telephone, get a-hold of my client,  
12 describe what it was, and come back with an answer that would be  
13 anything but negative. I'm not dismissing it out of hand, and I  
14 certainly will go through the effort of reaching my client and  
15 describing this offer if you wish me to. It might be helpful for  
16 the Council to return to what the board of directors of Eyak  
17 Corporation will agree to. They will agree to an offer on Power  
18 Creek, Eyak Lake, and Lower Eyak River, in fee, and they will take  
19 that to their shareholders. They will agree to a moratorium, if  
20 there is a firm offer to purchase lands, other than those lands,  
21 and -- I'm sorry, I stand corrected by my client, thank you -- an  
22 easement right, a limited easement right, in the remaining lands,  
23 and they will discuss the purchase and sale of that easement right.  
24 What I think they will not do is to trade the moratorium for a sale  
25 of the Eyak Lake and Power Creek tracts. They've already decided  
26 that. They decided that on Saturday in their resolution; the

1 moratorium comes with the sale of other lands. And the reason is  
2 simply that the transaction isn't big enough to take them out of  
3 all of that business unless they do so. I can go back and ask them  
4 if they still mean what they said on Saturday, but we don't have a  
5 board meeting, and so we'll have just individuals and won't be able  
6 to unravel it. I guess my message is they meant what they said.  
7 It was my intention to come with this resolution so that you would  
8 know what they would do and what they wouldn't do.

9 MR. COLE: I think it's clear we mean what we say  
10 too, you know.

11 MR. LINXWILER: I certainly understand that, and I  
12 don't mean to be unduly confrontational. I'm simply trying to  
13 facilitate reaching a result here, and if the result is that there  
14 cannot be a transaction, then that is the result, and if the result  
15 is that we can negotiate within the parameters you have and the  
16 parameters we have, then that's a much happier result. I would  
17 prefer the latter, as I'm sure you would too, sir.

18 MR. PENNOYER: Let me understand clearly though. What  
19 you're saying is the, quote, easement, moratorium, whatever we call  
20 it, is all lands or nothing -- (indecipherable -- traffic noise)  
21 price for. So, it's not -- some part of it, it's a firm offer of  
22 price for all of it.

23 MR. LINXWILER: Let me clarify here, perhaps I wasn't  
24 sufficiently clear. The moratorium will be considered by Eyak  
25 Corporation if there is also a firm offer to buy lands other than -  
26 - and I'm saying buying lands, I'm going to be corrected it in just

1 a moment (gesticulations by Ms. Anderson) -- see, I told you that -  
2 - to buy easement rights in lands other core tracts. The core  
3 tracts are -- essentially in the eyes of Eyak, the core tracts are  
4 a stand-alone transaction. They can be linked into the deal as  
5 long as there are other lands -- other rights to other lands -- put  
6 into the deal -- but those are stand-alone -- and the moratorium  
7 goes with the remaining lands.

8 MR. PENNOYER: Mr. Barton.

9 MR. BARTON: Would the purchase of a limited  
10 conservation easement on the parcel identified as Orca Narrows on  
11 that map over there satisfy that requirement?

12 MR. LINXWILER: Yes, it would. In fact, that was our  
13 proposal of Friday, sir.

14 MR. PENNOYER: So you might consider a specific  
15 moratorium on some specific lands, plus an option on others?  
16 Something like that could be woven together?

17 MR. LINXWILER: If I understand you to be saying the core  
18 tracts, the Orca Narrows tract, and an option on other lands  
19 besides, certainly. Certainly, that is possible. That is within  
20 the scope of the board's resolution as I understood it.

21 MR. PENNOYER: Mr. Cole, I don't think you offered Orca  
22 Narrows (indecipherable).

23 MR. BARTON: You offered an option on Orca Narrows, not  
24 purchase of an easement.

25 MR. PENNOYER: This would be a purchase of the easement  
26 provision on Orca Narrows, fee simple on the other three lots, and

1 an option to buy other lands as determined later to be required,  
2 within a certain time period, fair market value, not to buy, to buy  
3 an easement on the lands -- I'll do the same thing you did and  
4 Kathy will correct me too.

5 (Simultaneous laughter)

6 MR. COLE: Would you mind restating -- would you mind  
7 restating that.

8 MR. PENNOYER: No, I don't mind restating that. I think  
9 the way that Eyak stated this is that they could consider a  
10 proposal to buy the core parcels, Eyak River, Eyak Lake, and Power  
11 Creek, plus an easement of some nature purchased in perpetuity or  
12 some length of time on Orca Narrows, plus an unspecified option in  
13 terms of the amount of land on the balance of their lands. That  
14 would all include a moratorium on logging in the short-term, could  
15 include earnest money agreements, other things, I suppose, if they  
16 happened to decide to do it, and also it would be done under a  
17 certain time frame to be negotiated.

18 MR. COLE: Mr. Chairman, what happens if the  
19 shareholders reject the fee simple offer on the three core tracts?

20 MR. LINXWILER: The question is with respect to  
21 further protection of those lands or with respect to receiving  
22 repayment on the earnest money?

23 MR. PENNOYER: With respect to any of it -- earnest  
24 money, Orca Narrows, the option, any of the rest of it.

25 MR. LINXWILER: This is testing my ability of total  
26 recall to think how many issues we have, how many balls we have in

1 the air. With respect to protection of the immediate core tracts,  
2 unless you take an easement first and title later, they aren't  
3 protected. We discussed that earlier in this meeting. The  
4 question of whether you get the easement on Orca Narrows or not  
5 really depends on whether -- on how you draft the documents,  
6 whether that is a stand-alone transaction or not. If it's a stand-  
7 alone transaction, it doesn't work from my client's perspective  
8 because of the way that we stated the resolution. The resolution  
9 is the both tracts, and the reason for that is fundamentally  
10 economic, I guess, at the end of the day. The deal has to large  
11 enough they can afford to absorb some of the costs of the shutdown.  
12 I think we've all talked about all of those issues. In terms of  
13 earnest money, I'm assuming that earnest money or some arrangement  
14 for earnest money, in whole or in part, is part of this  
15 transaction, and we haven't gotten around to discussing that yet --  
16 we previously discussed in our offer of Friday, my recollection is  
17 we discussed there some security for the earnest money, but -- I  
18 guess I'm having trouble following that line of reasoning all the  
19 way because I'm not sure precisely what the proposal is, so I'll  
20 just stop there. I hope that's responsive to your question,  
21 Attorney General Cole.

22 MR. PENNOYER: Mr. Cole.

23 MR. COLE: The problem is, if we give seven and a  
24 half million dollars and the transaction falls through, how do we  
25 get seven and a half million dollars back. That's what concerns  
26 me.

1                   MR. LINXWILER:       That's the question of security, and  
2   -- I think I knew the answer to that on Friday in relation to our  
3   Friday proposal because we gave you something of value so that the  
4   deal would never completely fall through, and so we could always  
5   set the seven and a half million dollars against that portion that  
6   didn't fall through, and that was going to be the conservation  
7   easement on the core tracts. If you make the contingency the vote  
8   and the whole deal collapses if the vote doesn't happen on the  
9   three tracts, I -- I don't know what the answer is right now. I  
10  think I'd have to think it through a little bit and perhaps we  
11  could discuss it.

12                   MR. COLE:        Mr. Chairman.

13                   MR. PENNOYER:   Mr. Cole.

14                   MR. COLE:        See, the problem is is that the  
15  transaction is poorly structured because, given the -- where -- we  
16  are, I have no doubt but that the shareholders will turn down the  
17  fee simple acquisition. That seems to me almost a given under the  
18  transaction that is currently structured. Then we will wind up in  
19  the position of having given X million dollars as, quote, earnest  
20  money, close quote, and in a position to receive only something  
21  that we don't particularly, totally want, i.e., fee simple title.  
22  That is the structure that I objected.

23                   MR. PENNOYER:   Mr. Barton.

24                   MR. PENNOYER:   I wonder if it's possible to construct an  
25  easement that would essentially be a fee title interest?

26                   (Aside whisperings)

1 MR. LINXWILER: On the Power Creek-Eyak Lake-Eyak  
2 River area is do-able, certainly. It was part of our proposal on  
3 Friday.

4 MR. BARTON: I'm sorry, I didn't clarify that. That's  
5 what I meant is a structured easement on those three key parcels,  
6 core parcels, that is essentially fee title interest.

7 MR. PENNOYER: I'm sorry, I guess I don't clearly  
8 understand Eyak's -- if you can construct an easement that's so  
9 tight it's like fee simple, why -- what is the -- what do you want  
10 to retain you're not retaining with fee simple? What do you  
11 gaining by retaining interest?

12 MR. LINXWILER: The corporation wants to retain title  
13 to its lands.

14 MR. PENNOYER: Why? What's the concern? What can you do  
15 with the land? You can hunt and fish on the Forest Service land.  
16 I mean, what particularly has to be done that you're going to get -  
17 - tax reason? I mean, what's the reason that (indecipherable --  
18 simultaneous talking). What activity do you wish to proceed that  
19 you can't proceed under fee simple.

20 MR. LINXWILER: The answer may be a pragmatic one or  
21 it may be more of a emotional and spiritual one for the Native  
22 community, and perhaps the most direct way to answer that is that  
23 while it may be true that you can do a lot of things on federal  
24 public lands, it is very important to the Eyak community to feel  
25 that they own lands. The distinction in the non-Native's eyes  
26 might be largely symbolic and meaningless, but it's critical to the



1 community. That's the problem with voting for fee title and not --  
2 and that's why the board doesn't think the community will do it.  
3 I hope that's responsive to your question.

4 MR. PENNOYER: Mr. Cole.

5 MR. COLE: Well, someone was telling me, I forget  
6 whom, was saying that the cost of that type of easement would -- on  
7 lands near the community of Cordova -- cost essentially as much as  
8 a fee simple title, and that, if it's true, troubles me. We pay  
9 nearly as much as for one of these easements as we do for fee  
10 simple title, and yet we have limited rights to that land, and as  
11 Commissioner Sandor has said, we have the problem of enforcing the  
12 easement as against the fee owner.

13 MR. PENNOYER: Mr. Barton.

14 MR. BARTON: Well, the value of the easement would be  
15 determined through an appraisal process, and I assume the appraisal  
16 process would consider what rights either party would retain or  
17 gain in the transaction in the course of the appraisal, so that if  
18 the United States was to secure virtually all the interests other  
19 than the title itself, that would probably be reflected in a higher  
20 price for the easement. If we want a low priced easement, then  
21 less rights would need to pass. But I think we ought to focus on  
22 what it is we want to accomplish.

23 MR. PENNOYER: Mr. -- Commissioner Sandor, I think you at  
24 one time (inaudible) the first concern you had with easements  
25 versus fee simple. It seems to me that they've an easement that  
26 contains everything from no pesticides, the dumping of trash, no

1 subdividing, etcetera, etcetera. Are you concerned there's  
2 something that we've forgotten that will be found later on that  
3 folks can do that we don't want them to do if we don't own land.  
4 What is the concern and how could we take care of it, is there  
5 anything short of fee simple we can in fact do?

6 MR. SANDOR: Mr. Chairman, with respect to the August  
7 5 proposal and the definition of easement, I would think that that  
8 would have some value of thirty plus or minus percent of the net --  
9 of the fair market value -- of the land in fee, and because  
10 actually a lot of activities that might affect or impact the  
11 putrification of the lake, you know, are simply not dealt with, let  
12 alone the administration of the easement itself, so it is -- as you  
13 pointed out or as the biologist pointed out Friday, the area was  
14 harvested at the turn of the century, and so timber harvesting  
15 itself did not destroy the values. The biggest problem I see in  
16 that Eyak Lake area is putrification of the lake and which might  
17 come from, you know, activities which are not associated with the,  
18 you know, the timber harvesting itself. I'm not opposed to  
19 easements, but, as Mr. Barton pointed out, one has to evaluate what  
20 they're getting and be prepared to pay, but it would be certainly  
21 far from the public interest to pay fair market value of fee title  
22 for an easement. I would think we'd certainly be criticized, and  
23 justifiably so, by GAO and others who found us expending these  
24 funds with no adequate assurance of the protection of the values we  
25 were -- we had targeted.

26 MR. PENNOYER: Mr. Barton.

1 MR. BARTON: Mr. Chairman, my attention would be  
2 greatly enhanced by a five minute break, and if we don't take one,  
3 I'm going to abandon you. (Laughter)

4 MR. PENNOYER: Okay. Do we need a five minute break, ten  
5 minute break or twenty minute break? Are we doing something here  
6 to call people up?

7 UNIDENTIFIED VOICE: I don't think ....

8 MR. PENNOYER: Take a ten minute break then.

9 (Off Record: 3:14 p.m.)

10 (On Record: 3:35 p.m.)

11 MR. PENNOYER: Are we ready?

12 MR. BARTON: No. Do you want to wait on Kathy?

13 MR. LINXWILER: A good lawyer always waits for his  
14 client.

15 MR. PENNOYER: We are waiting for a second for one more  
16 person to come. So, we'll wait for about two more minutes.

17 STAFF (via teleconference): Mr. Chairman.

18 MR. PENNOYER: Yes.

19 STAFF (via teleconference): This is L.J. in Anchorage.  
20 I just want to make sure that the Trustees are aware that the  
21 teleconference network will close at 4:30. So the teleconference  
22 is end at that time.

23 MR. PENNOYER: Yes, we understand that, and we are  
24 attempting to complete our business by then if we can. (Pause)  
25 Okay. I think we're all here now. Could we proceed. Mr. Barton,  
26 do you have something to add?

1 MR. BARTON: Yes, Mr. Chairman, I would like to ask the  
2 Eyak folks a question on the approval of an easement. As I  
3 understand it, the board can approve any deal on conservation  
4 easements in any form or shape, is that correct?

5 MR. LINXWILER: That is my understanding, yes.

6 MR. BARTON: The second thing I'd like to ask, you've  
7 heard a lot of discussion, we'd had a lot of discussion, about what  
8 an easement can do and the different problems of enforcing an  
9 easement and perhaps what an easement cannot do, if I might I'd  
10 like to ask one of our working group folks if they're confident  
11 they could construct an easement that would address the concerns  
12 that have been raised here today and last Friday. Kim or Art,  
13 whichever, with the Council's permission.

14 MR. PENNOYER: Yes, would you come up to the table,  
15 please, Kim or Art. They both came up, okay.

16 MR. BARTON: I would appreciate a succinct answer.

17 MR. PENNOYER: Mr. Sundberg, do you understand the  
18 question?

19 MR. SUNDBERG: I understand the question is is that Mr.  
20 Barton is asking whether a conservation easement could be crafted  
21 to address the concerns that have been brought up about adequate  
22 protection of the resources and services that are on these parcels,  
23 is that correct?

24 MR. BARTON: That's correct, and I'm particularly  
25 interested in Power Creek, Eyak Lake, and Lower Eyak River.

26 MR. SUNDBERG: I think it's possible to craft a

1 conservation easement to address adequate protection of the habitat  
2 resources that are on those parcels, I'm less comfortable with the  
3 visual, scenic resource concerns that have been raised here, and so  
4 I wouldn't want to comment on that, but in terms of protecting the  
5 habitat values, I should think a properly crafted conservation  
6 easement could protect those resources, and you would have to  
7 consider the long-term enforcement and management of that easement  
8 to ensure that that was adequately carried out.

9 MR. PENNOYER: Mr. Barton.

10 MR. BARTON: If a -- well, certainly timber harvest  
11 would be a -- one of the activities that would have the most  
12 significant impact on the visual resource, whether either  
13 commercial timber harvesting or land clearing. If that were  
14 included in a conservation easement, I'm a little puzzled as to why  
15 there would be a problem with the visuals, why that couldn't be  
16 protected.

17 MR. SUNDBERG: The analogy that I would draw to crafting  
18 language would be similar to a permit, and my department issues  
19 permits, for example, for work in anadromous fish streams, and it  
20 is possible to craft language and you can enforce that language to  
21 achieve your desired protection for habitat values. Visual values  
22 are much more subjective and much more difficult to quantify, and  
23 unless you set out what the baseline or standard was for your  
24 visual objectives, it would be impossible to protect visual  
25 resources without some kind of a standard.

26 MR. PENNOYER: Mr. Barton.

1 MR. BARTON: If the conservation easement contained a  
2 provision that there would be no canopy reduction, would that no  
3 protect the visual resource?

4 MR. SUNDBERG: It would substantially protect the sort of  
5 landscape characteristics of the area. Whether it protected the  
6 visual resources from, say, house construction or road  
7 construction, and that's another matter.

8 MR. BARTON: But if all those were contained in an  
9 easement -- no road building, no subdivision ...

10 MR. COLE: No boats, no house trailers, on ad  
11 nauseam. Is that what you're saying?

12 MR. SUNDBERG: Yes, I'm saying that you would have to  
13 spell out what your objective was for visuals, rather than making  
14 it just canopy. You would have to set out what those things are  
15 that you're trying to protect there from a visual lands -- a visual  
16 prospective. If it was just canopy, then you could limit it to  
17 that, but if there were other factors, you'd have to spell all that  
18 out in a document.

19 MR. PENNOYER: Mr. Barton.

20 MR. BARTON: My original question was whether it was  
21 possible to do that. I guess maybe I need to ask one of the  
22 attorneys to address that question. Maybe ask Mr. Maynard (ph).

23 MR. PENNOYER: Mr. Maynard, do you know the answer to  
24 that question? Get rid of trailers and woodsheds and cars.

25 MR. MAYNARD: It's certainly possible to craft  
26 conservation easement language to eliminate virtually all visual or

1 other resource impacting uses -- uses or activities -- on land.  
2 It's really a question of craftsmanship as how much to pay for that  
3 easement compared to fee title, and a question of enforcement. Any  
4 easement or hinderance in land has to be enforced.

5 MR. COLE: Mr. Chairman.

6 MR. PENNOYER: Mr. Cole.

7 MR. COLE: Have you -- Mr. Maynard --

8 MR. PENNOYER: Mr. Maynard, I think Mr. Cole's got a  
9 question.

10 MR. COLE: Mr. Maynard, have you had experience in  
11 the enforcement of this type of easement?

12 MR. PENNOYER: Mr. Maynard.

13 MR. MAYNARD: Thank you, Mr. Cole. Let me identify  
14 myself. I'm the Alaska counsel for the Forest Service, and I don't  
15 recall any specific personal experience in enforcing such  
16 easements. I am relative well-read in the easement area and speak  
17 on a regular basis with people who have had such experience and  
18 have participated in drafting and crafting such easements myself.  
19 So, in terms of difficulty of enforcement, I would not -- I  
20 wouldn't debate that it can be hard to enforce an easement if you  
21 don't have cooperative parties, and there's all kinds of  
22 administrative problems that can arise. I wasn't discounting that,  
23 but it's -- it is possible to craft and implement at some levels of  
24 the easement, in my opinion.

25 MR. PENNOYER: Mr. Barton. (Pause) Mr. Barton, were you  
26 going somewhere on your questions on easements?

1           MR. BARTON:     Well, yes. I wanted to demonstrate the  
2 relative problems and the opportunities associated with both the  
3 easement, the construction of the easement, to get some feel for  
4 the feasibility and use of the easement in this particular  
5 situation if we can. I'm not sure exactly where we are in terms of  
6 what's on the table.

7           MR. PENNOYER: I think the last motion on the table,  
8 which I seconded so we could discuss it, was Mr. Cole's motion for  
9 fee simple, fair market value, Power Creek, Eyak Lake, and Eyak  
10 River, and conditional on a moratorium of all logging of Sherstone-  
11 Eyak west of the core parcels, time period for that moratorium to  
12 be worked out, the moratorium basically to include an option for  
13 purchase at the end of some time period that, I think Mr. Cole  
14 thought it might be sometime early this spring, at which time the  
15 study would have to be done, the option exercised for further  
16 purchase -- not purchase -- purchase of easement, at fair market  
17 value, beyond these core parcels, and would be subject to  
18 negotiations on a value of that options and/or questions of earnest  
19 money based on disclosure of certain documents to the Trustee  
20 Council that would give us a basis on which to conduct those  
21 negotiations. I think that was the final motion or approximation  
22 of what's on the table. I did have one question regarding Hawkins  
23 Island, which is west of the parcels. I assume that included  
24 Hawkins Island as well?

25           MR. COLE:       Yes.

26           MR. PENNOYER: Thank you. It includes Rude River, Orca



1 Narrows and the land to the west of Orca Narrows, including Hawkins  
2 Island. Commissioner Sandor.

3 MR. SANDOR: Just a point of clarification again. I  
4 wasn't sure I got a clear answer from Eyak Corporation. Given the  
5 disclosure of the documents, after the Trustees have had an  
6 opportunity to study them, is it clearly understood that the  
7 Trustee Council may well, in fact, modify the motion that has been  
8 approved?

9 MR. PENNOYER: I don't think there was any such  
10 discussion, except that it was all -- all of the question of  
11 earnest money. The value of the option was all up to negotiation,  
12 which would be based upon that, so there are some things left open.  
13 Mr. Barton, did you have something?

14 MR. BARTON: Yes, back on the procedural issue, I  
15 suppose. I assume then that Mr. Cole's motion is an amendment to  
16 my original motion. We were assuming that, although it could have  
17 been a substitute motion.

18 MR. BARTON: Not yet.

19 MR. COLE: Mr. Chairman.

20 MR. PENNOYER: Mr. Cole.

21 MR. COLE: Was that an acceptable amendment, Mr.  
22 Barton, or do you not accept it?

23 MR. PENNOYER: I think this is an amendment, not a  
24 friendly motion at the time, although we could ask him if he would  
25 take it as a friendly amendment.

26 MR. BARTON: I do not at this point in time, nor do I

1 accept it as a substitute at this point.

2 MR. PENNOYER: So, it is an amendment to Mr. Barton's  
3 motion, which we would have to vote on first before we went back to  
4 the main motion for sub for a further amendment at this time if  
5 somebody wants to make one. Mr. Barton.

6 MR. BARTON: One of the things, apparently, that is  
7 hanging us up. It's hanging up Eyak for one reason, and it's  
8 hanging up the Council for another reason, is the fee title issue  
9 of Power Creek, Eyak Lake and Lower Eyak River. Eyak is concerned  
10 that we cannot -- that they may not get shareholder approval and  
11 that's required for fee title action. We, on the other hand, are  
12 concerned that if we put earnest money up, what happens to that if  
13 the shareholders would reject the fee title. What's the answer to  
14 that question? What happens to any money that's put up front if  
15 the shareholders reject?

16 MR. SANDOR: Mr. Chairman, it's my understanding the  
17 monies would be fundable.

18 MR. PENNOYER: Mr. Barton, was your question rhetorical  
19 or were you looking for answer?

20 MR. BARTON: No. I'm looking for an answer. Now,  
21 that's one answer, and now I'd like to hear the answer from the  
22 other end of the table.

23 MR. PENNOYER: Eyak Corporation, would you care to answer  
24 the question of what happens to the earnest money agreement if in  
25 fact the fee simple is turned down, the deal is turned down.

26 MR. LINXWILER: I think that if -- if the proposal is

1 that we receive earnest money, and then the earnest money is  
2 refunded by us if our shareholders don't vote for fee title, that  
3 the transaction is not acceptable to Eyak out of hand. Please  
4 understand that I say that not to discourage the Council's full  
5 consideration of this issue, but please also understand where we're  
6 trying to go. We had a proposal for the core -- what we're calling  
7 the core tracts. We offered easement first, title later. We  
8 tighten up the easement and came back -- easement first, title  
9 later. It was then said, we don't like easements, give us title  
10 only, so we came back today with a proposal for title only, subject  
11 to the shareholders' review. The problem seems to be, and one of  
12 the goals here seems to be, to take us out of the logging business  
13 and stop us from logging, not those tracts, but other tracts  
14 altogether, and Eyak's answer to that is, if you want us to stop  
15 logging those other tracts, then purchase the logging rights to  
16 those other tracts. Nothing could be simpler from Eyak's point of  
17 view. If you want to protect Orca Narrows, buy Orca Narrows. If  
18 you want to protect Eyak and Power Creek, then protect Eyak -- Eyak  
19 Lake -- and Power Creek, but you don't protect Orca Narrows and  
20 take us out of the logging business while you do so. We're getting  
21 a number of goals kind of intermingled here, and ultimately what  
22 you're trying to do is to buy us out of the logging business, which  
23 we're amenable to do if the price is appropriate, and we're quite  
24 willing to talk about that and our resolution addresses that quite  
25 directly, and we'll happily do that when we sell the lands that the  
26 logging business is next going to consume. I agree with Mr. Barton

1 that the problem probably is, in terms of trying negotiate all of  
2 these moving parts at once, the sale of the Eyak Lake and Power  
3 Creek, purchasing a moratorium on the logging business, which  
4 effectively puts our logger out of business, without any commitment  
5 to buy anything with a refundable earnest money agreement, I guess  
6 that part of it fails because it's potentially highly damaging and  
7 extremely risky to the Eyak Corporation.

8 MR. PENNOYER: Mr. Cole.

9 MR. COLE: It's not true that we're trying to take  
10 you entirely out of the logging business. We're seeking an  
11 opportunity to evaluate the entire lands owned by Eyak for the  
12 purpose of habitat acquisition in a limited time. Thank you.

13 MR. PENNOYER: Mr. Barton.

14 MR. BARTON: Yes, Mr. Chairman, in the interests of  
15 trying to move us an inch or two forward, I'm not making a motion  
16 and I'm not making an amendment, but I'm just putting a suggestion  
17 out. If I were to move something, it would be something like this  
18 at this point: fee title to Power Creek, Eyak Lake, and Lower Eyak  
19 River, fifteen month option at no cost on all remaining lands while  
20 the studies are completed, a limited conservation easement on Orca  
21 Narrows, for the price of forty-one million dollars or fair market  
22 value, whichever is less.

23 MR. COLE: Mr. Chairman.

24 MR. PENNOYER: Mr. Cole.

25 MR. COLE: Was that for the entire enchilada?

26 MR. BARTON: The whole enchilada, and if that's not

1 acceptable, since we're operating on a willing seller basis, then  
2 I would amend that to the areas to the west of that identified  
3 before.

4 MR. PENNOYER: Mr. Barton, how does that get around the  
5 question of how does Eyak recover anything in the short term if  
6 they vote no on the fee simple? Forty million dollars is -- will --  
7 -- apply to whatever part of this that goes through then? Forty  
8 million dollars or fair market value, whichever is less? In other  
9 words, if only part of it, such as Orca Narrows, is approvable at  
10 this time or the option, fifteen months, is approvable at this  
11 time? Whatever parts are approvable by the board and the  
12 membership of Eyak would be what the price would apply to -- so, if  
13 they voted no on the core, there still would be some money  
14 forthcoming possibly for the option and for the Orca Narrow part,  
15 right?

16 MR. BARTON: There would be -- no. There would be  
17 money coming forward on the Orca Narrows part.

18 MR. PENNOYER: So, it's no cost for the fifteen month  
19 option, I see.

20 MR. BARTON: That's right.

21 MR. PENNOYER: If they voted no on the fee title, then  
22 there would be some money forthcoming for the Orca Narrow part, but  
23 it would be less than the forty million. Forty million is the  
24 whole enchilada, and the pieces are whatever they shake out as.

25 MR. BARTON: The pieces are fair market value or  
26 (indecipherable).

1 MR. LINXWILER: Could I ask Mr. Barton ...

2 MR. PENNOYER: Certainly.

3 MR. LINXWILER: ... a question or two. The forty-one  
4 -- when people are referring to the whole enchilada, let me make  
5 sure I understand what you're saying. The purchase of the Eyak  
6 Lake, Power Creek, and Eyak River tracts, plus the Orca Bay tract  
7 for forty-one million dollars -- Orca Narrows tract, not Orca Bay,  
8 I apologize.

9 MR. BARTON: A conservation easement on Orca Narrows.

10 MR. LINXWILER: A conservation easement on Orca  
11 Narrows, and that would be limited as we previously described in  
12 our proposal.

13 MR. BARTON: I am referring to the easement as  
14 constructed in the April 5 -- umm -- August 5 -- proposal.

15 MR. PENNOYER: Mr. Barton, your previous proposal was  
16 fifty million dollars for everything, including the moratorium on  
17 all lands, now it's forty million dollars on just Orca Narrows and  
18 these core areas?

19 MR. BARTON: And the core areas.

20 MR. PENNOYER: For ten million less you ...

21 MR. BARTON: Or fair market value, whichever is less.  
22 It's all subject to the standard appraisal process.

23 MR. PENNOYER: But, again, the previous proposal was  
24 fifty million dollars for everything, now it's forty million  
25 dollars for just (indecipherable -- traffic noise) option and Orca  
26 Narrows, plus the core areas.

1 MR. BARTON: Plus the core areas.  
2 MR. COLE: Mr. Chairman.  
3 MR. PENNOYER: Mr. Cole.  
4 MR. COLE: Does not include immediate cessation of  
5 logging operations?  
6 MR. BARTON: Yes, it does.  
7 MR. COLE: And, if the Eyak shareholders vote against  
8 fee simple title, what happens, the entire agreement collapses?  
9 MR. PENNOYER: Mr. Barton.  
10 MR. BARTON: I think that's a subject that we could  
11 discuss.  
12 MR. PENNOYER: Anyone further discuss this non-motion  
13 amendment?  
14 (Simultaneous laughter)  
15 MR. COLE: I'll make the motion if I don't have to  
16 vote for it.  
17 MR. PENNOYER: Do we have a second to Mr. Cole's making  
18 of Mr. Barton's non-motion.  
19 MR. BARTON: I'll second it.  
20 MR. PENNOYER: Mr. Barton seconds his own motion made by  
21 Mr. Cole. (Laughter)  
22 MR. BARTON: Somebody else want to do it, just to be  
23 sure we're covered.  
24 MR. COLE: I think we're covered.  
25 MR. PENNOYER: That now is the latest amendment to the  
26 main -- to Mr. Cole's amendment to the main motion, I guess?

1 MR. COLE: Do I understand Mr. Barton's second to  
2 mean that there is no earnest money paid?

3 MR. PENNOYER: Mr. Barton.

4 MR. BARTON: That would be the most desirable route to  
5 go for the purposes of discussion, yes.

6 MR. COLE: I call for the question on the motion.

7 MR. PENNOYER: The question's been called for, is there  
8 any further discussion? Is there enough detail here to do this in  
9 two steps. This and then discuss anything further, or -- the  
10 question has been called for. Eyak want to say something first?

11 MR. LINXWILER: I'm not sure where within Robert's  
12 Rules of Order we currently are. You've got a question called, and  
13 I guess I have a lot of questions relevant to the proposal that you  
14 propose to vote on. If I might ask some questions so I can  
15 understand it simply, or you can proceed to vote, whichever is your  
16 pleasure.

17 MR. PENNOYER: I think we're going to do it and then come  
18 back and have to revisit it anyhow with some detail. So, if you  
19 have a couple of questions, I would ask you to go ahead and ask  
20 them now and see if they would affect the motion.

21 MR. LINXWILER: I thought I understood Mr. Barton  
22 when he first made the proposal that the two pieces of this would  
23 stand alone. In other words, that if the sale were voted down,  
24 then the other piece would go forwards in order to fund earnest  
25 money.

26 MR. COLE: Mr. Chairman, that's unacceptable. We



1 can't be buying these other things and not getting the core  
2 properties because we're here to get the core properties. Those  
3 are highest rated parcels for habitat protection, so that's the  
4 really core of this transaction, and I would, frankly, not want to  
5 vote on any other issue which does not encompass that acquisition.  
6 Is that your view, Mr. Barton?

7 MR. BARTON: It is.

8 MR. PENNOYER: Okay, that's the answer to the first  
9 question. Next one -- or observation?

10 MR. LINXWILER: And it is your intention that we stop  
11 logging now, contingent -- and wait for the shareholder vote on the  
12 issue of title to the federal government in six to nine months?

13 MR. PENNOYER: Mr. Barton.

14 MR. BARTON: That's correct.

15 MR. PENNOYER: The only guaranty of funding then is  
16 basically the Orca Narrows easement at fair market value for that  
17 part. That's the guaranty you would have that that would go  
18 through.

19 MR. LINXWILER: But, I'm confused because I thought  
20 I just heard Attorney General Cole say that he wouldn't vote for it  
21 if we were to segregate the two tracks. I'm sorry if I'm a little  
22 slow on the up-take here.

23 MR. PENNOYER: That's okay. That's the (indecipherable -  
24 - simultaneous talking) between the maker of the motion and second.

25 MR. COLE: Well, my view is that that's true. I  
26 would not want to vote unless my fellow Trustees could persuade me

1 that I was wrong to simply have one stand-alone transaction dealing  
2 with Orca Narrows.

3 MR. PENNOYER: Mr. -- Commissioner Rosier.

4 MR. ROSIER: Thank you. No, I think from my  
5 perspective, the only single issue that I would be willing to vote  
6 on at the present time would be fee simple for the three tracts  
7 only. Until such time as we have had the vote from the  
8 shareholders of Eyak, it seems to me we can massage this any way we  
9 want to go here on this, and we have nothing in hand until such  
10 time as the Eyak shareholders have voiced their opinion on the  
11 deal. That to me is the missing link, and obviously Kathy and  
12 their counsel cannot, in fact, assure us that -- the outcome of  
13 that particular vote, and I think in terms of our entire process,  
14 we've identified those three areas as the core areas, that is the  
15 area that is of value to us for the damaged -- protection of  
16 habitat for the damaged resources in the spill, and I just simply  
17 can't go along with this.

18 MR. PENNOYER: Commissioner Sandor.

19 MR. SANDOR: Yes, Mr. Chairman, I concur with  
20 Commissioner Rosier's bottom line. Also, I would reiterate the  
21 essential nature of having the disclosure of the documents that we  
22 have previously referred to. Thank you.

23 MR. PENNOYER: Well, it seems the catch-22 we've got here  
24 is the fact that you've got a vote from Eyak shareholders on  
25 whether we're going to get fee simple on those three parcels, which  
26 Eyak is now telling us they don't think is going to happen, or

1 going to happen affirmatively, you have to wait and cease all  
2 operations for six months or so, and if the costs associated with  
3 doing that are not fronted in any way by a guaranty of purchase of  
4 other property or a non-refundable earnest money agreement or  
5 anything else. So, I don't the desirability here was to end up  
6 with Orca Narrows and not the core parcels, but there is some -- I  
7 don't think that's desirable at all, but there needs to be some way  
8 to get around this problem of the fee simple potential of the  
9 negative vote and the time it takes to get it. If we could get  
10 everybody on the phone tomorrow or next week to find out what we  
11 needed to find out, we might know, but the six months wait seems to  
12 be the hassle here. Mike -- Mr. Barton, do you have a comment?

13 MR. BARTON: What I'm trying to sort through in my mind  
14 is the desirability -- or acceptability, not desirability --  
15 acceptability of a highly restrictive conservation on the three  
16 core parcels, and I guess it all -- if we could find that  
17 acceptable, it seems to me that would clear the way for progress to  
18 be made.

19 MR. COLE: Well, let's vote on the motion.

20 MR. BARTON: Well, but the motion is for fee title. If  
21 I would amend my motion -- it was your motion ...

22 MR. PENNOYER: Amending Mr. Cole's motion --

23 MR. BARTON: ... to do essentially the same thing,  
24 except that instead of fee title to Power Creek, Eyak Lake, and  
25 Lower Eyak River, we would secure a highly restrictive conservation  
26 easement on those three parcels.

1           MR. PENNOYER: You would still leave the door open for to  
2 fee simple vote by the members?

3           MR. BARTON: Yes.

4           MR. PENNOYER: Second. Actually, the only reason I  
5 seconded it is not that I think that that's the preferable way to  
6 go, I'm just concerned that we may end up here without the core  
7 parcels ...

8           MR. COLE: Well, let's vote on that.

9           MR. PENNOYER: ... in the other part. So, we vote on Mr.  
10 Barton's amendment? Commissioner Sandor, you had a further  
11 comment?

12           MR. SANDOR: Mr. Chairman, just a question with respect  
13 to that easement. I would presume that that easement would be at  
14 something less than fifty percent of fair market value of purchase  
15 in fee. Is that within the ball park of what Eyak and you have in  
16 mind?

17           MR. PENNOYER: Mr. Barton.

18           MR. BARTON: I can't speak for Eyak, obviously, and  
19 don't intend to, but the value of that easement will be determined  
20 through the standard appraisal process.

21           MR. PENNOYER: Do you have any idea what appraisals do  
22 with easements versus fee simple. I mean, fee simple, it's the  
23 logging rights. Easements presumably in this case would be the  
24 lease plus the other values of the property. The easement would  
25 certainly have to consider the logging rights. Is it much  
26 different really.

1 MR. BARTON: I don't know.

2 MR. PENNOYER: Is there any real value for the  
3 shareholder, in our view, to go for one versus the other in terms  
4 of actual monetary value or other problems that we've talked about?  
5 I don't know either.

6 MR. COLE: Mr. Chairman.

7 MR. PENNOYER: Mr. Cole.

8 MR. COLE: If we acquired by virtue the terms of this  
9 easement, everything the pertinent rights to fee, except bare legal  
10 title, I have difficulty believing the appraised value would be  
11 anything significantly less than the same value as fee simple  
12 title. So let's not delude ourselves to thinking that the cost of  
13 this highly restrictive easement would be much less than the cost  
14 of fee simple title.

15 MR. BARTON: I am not deluding myself, and I certainly  
16 don't intend to mislead any member of the Council. The more  
17 interest you gain in the land, the greater the price, and the more  
18 closely it approximates fee simple, it seems to me it would just  
19 flow logically that the value and the appraisal process will  
20 indicate -- will approximate -- fee simple.

21 MR. COLE: Mr. Chairman, I was referring to  
22 Commissioner Sandor's comment that he thinks it's going to be but  
23 a relatively small fraction of the cost of fee simple title.

24 MR. BARTON: I'm glad to assist you in convincing Mr.  
25 Sandor.

26 MR. PENNOYER: Commissioner Sandor.

1 MR. SANDOR: I am very delighted at this exchange. It  
2 simply confirms beyond a shadow of a doubt my opposition to  
3 anything less than the purchase in fee, and if, in fact, that is  
4 not approved by the shareholders or the board, or both, then I  
5 think the very foundation, certainly confirmed by the habitat  
6 examination which puts the highest values on these three core  
7 parcels, and therefore anything short of that would be  
8 unacceptable. Thank you.

9 MR. PENNOYER: I think we've discussed this rather  
10 thoroughly. Obviously, there's a great degree of difference here.  
11 I think I know the outcome of a vote already, but it seems to me we  
12 need to go ahead and do it. So, we've got an amendment to Mr.  
13 Barton-Cole's amendment, previously stated to Mr. Cole's amendment,  
14 and that's to take the previous amendment and substitute  
15 "restrictive easement" and leave the door open for fee simple.

16 MR. COLE: Restrictive easement on the core parcels?

17 MR. PENNOYER: On the core parcels. And that's the only  
18 piece of the previous amendment that was amendment. Can I have a  
19 vote on that -- all those in favor of that option, say aye, please.

20 UNIDENTIFIED TRUSTEES: (In unison) Aye.

21 MR. PENNOYER: All opposed?

22 MR. ROSIER: No.

23 MR. PENNOYER: Okay. That one fails then. We now go to  
24 the next amendment. Is there further discussion on the Barton-Cole  
25 amendment -- fee title in the core areas, fifteen month option for  
26 no cost on all the remaining lands for purchase -- of easements --

1 and a limited conservation easement initially on Orca Narrows,  
2 forty million dollars or fair market value, whichever is less, and  
3 immediate cessation of logging. That seems to suffer from the  
4 standpoint that Eyak is -- cannot -- approve something that calls  
5 for the cessation of logging without any indication that we are  
6 going to be purchasing some lands. Any further discussion of that  
7 or further amendment to that?

8 MR. BARTON: Yes. Just to be sure they understand what  
9 we're about to vote on, it wouldn't include the purchase of the  
10 conservation easement on Orca Narrows.

11 MR. PENNOYER: That's correct.

12 MR. COLE: Mr. Cole.

13 MR. PENNOYER: I'm sorry. You're right, it does, if in  
14 fact it's severable. Now, there's some questions about that motion  
15 Mr. Cole made. You said it wasn't severable; you say, yes, it is.  
16 When you were going to make it, it was severable, so since Mr. Cole  
17 made the motion, I assume we have a non-severable motion in front  
18 of us unless somebody cares to amend that.

19 MR. COLE: Mr. Chairman.

20 MR. PENNOYER: Mr. Cole.

21 MR. COLE: My view was that it not be severable, and  
22 I think that was the view expressed by Commissioner Sandor and  
23 Commissioner Rosier. But my term of the option was less than  
24 fifteen months, you will recall.

25 MR. PENNOYER: My reading of the motion, the term of the  
26 option was less than fifteen months. Your amendment to Mr.

1 Barton's motion was for a fifteen month, no-cost option.

2 MR. COLE: I'm sorry, alright, well, if you wish to  
3 (indecipherable -- simultaneous talking) that's what I had in mind.

4 MR. PENNOYER: ... Mr. Cole's original motion, but the  
5 Barton amendment Mr. Cole made for Mr. Barton, amended to fifteen  
6 months.

7 MR. BARTON: Remember, the original motion is still  
8 fifty million bucks.

9 MR. PENNOYER: No, that's way back. We defeated that  
10 one. The original motion today is Mr. Cole's motion, which had no  
11 price tag on it. It was a fair-market-value motion, and it talked  
12 about -- do I need to repeat that? The original motion was fee  
13 simple or fair market value for Power -- at fair market value --  
14 for Power, Eyak River and Eyak Lake, conditional on an optional  
15 moratorium on logging, with an option to purchase easements on all  
16 the other Sherstone-Eyak lands; December '94 being too long, to be  
17 done as soon as possible, preferably by early spring of '94;  
18 selection of easements will be such terms as agreed upon; duration  
19 -- the value for that option would have to also be negotiated and  
20 ...

21 MR. COLE: Upon full disclosure of financial data.

22 MR. PENNOYER: Upon full disclosure of financial data --  
23 that the negotiations can proceed with that type of information.  
24 (Inaudible -- extraneous traffic noise) Then that's fee title,  
25 fifteen month option, no cost, for all their remaining lands,  
26 limited conservation easement on Orca Narrows, forty million or



1 fair market value, whichever is less, immediate cessation of  
2 logging, and non -- at this point non-severable parcel -- it's all  
3 or nothing. Any further discussion or amendment of that amendment

4 MR. COLE: Mr. Chairman, are we voting on the option  
5 to expire April '94, or are we voting on the option to expire  
6 December 31, '94?

7 MR. PENNOYER: Do you want to vote on the option to  
8 expire December 31st or on April '94, then you need to further  
9 amend the -- your -- amendment.

10 MR. COLE: Well, I would like to see it April '94  
11 because it should cost significantly less -- should -- I'm not sure  
12 that's Eyak's position, but in my view it should.

13 MR. PENNOYER: Is there a second to the amendment to the  
14 amendment? Is there further discussion? All those in favor of  
15 April '94 as part of this motion instead of later to exercise the  
16 option, please say aye.

17 ALL TRUSTEES: Aye.

18 MR. PENNOYER: That part carries. The motion -- the  
19 amendment in front of us now has been amended by going to April '94  
20 instead of fifteen month option. It is an option until April '94  
21 at no cost on all remaining Eyak lands, an option to purchase  
22 conservation easements on all remaining lands by April of '94 at no  
23 cost. It's fee title on the core areas, a limited conservation  
24 easement for Orca Narrows lands, forty million dollars or fair  
25 market value, whichever is less, and cessation of logging in the  
26 short-term. Any further discussion?

1 MR. BARTON: Actually, it was forty-one million.

2 MR. PENNOYER: I'm sorry, forty-one million, okay.

3 (Simultaneous aside comments)

4 MR. COLE: Mr. Chairman, it was my view that we  
5 should be prepared to pay a fair amount for the option upon being  
6 supplied with all requested financial information. I don't think  
7 it's reasonable to expect them to grant options for nothing. I  
8 mean, that's not consistent with commercial practice. So, I think  
9 we should be prepared to pay them a fair and reasonable amount to  
10 be negotiated, after having received all the financial information  
11 for the option.

12 MR. PENNOYER: Mr. Cole, then is that payment severable  
13 from everything else? There is an earnest money, in essence, up  
14 front, regardless how the fee simple vote or the rest of it turns  
15 out if that option (indecipherable -- traffic noise). So, in other  
16 words, it's still not severable because if fee simple didn't out,  
17 then you wouldn't exercise the option because that would go away.

18 MR. COLE: It's true, but we would pay them for an  
19 option. That's normal commercial practice to pay someone for an  
20 option to buy their house for a hundred and twenty days or six  
21 months.

22 MR. PENNOYER: So you pay for the option regardless of  
23 whether the fee simple went through? Even if you didn't get the  
24 core lands, you'd pay for an option on the other lands?

25 MR. COLE: Yes, and if the core transaction went  
26 through, that amount could be applied on the purchase price.

1 MR. PENNOYER: Mr. Barton.

2 MR. BARTON: What happens to our option then if this  
3 whole thing doesn't go?

4 MR. PENNOYER: Mr. Cole.

5 MR. PENNOYER: Well, it's like any other option. If it  
6 doesn't go through, you've paid your money and you took your  
7 chances. That doesn't have in mind we would be paying seven and a  
8 half million, but it's not an uncommon commercial practice to pay  
9 someone a reasonable amount for an option. I mean, I think that's  
10 not unreasonable. Now, the question is how much we have to pay, is  
11 another story, but that's to be negotiated. But, if one forecloses  
12 the sale of his house to others, say, IBM or KMart wants to come in  
13 and buy your house, and you say, no, I've have an option on that,  
14 I can't sell it to you, that's a standard commercial transaction.  
15 I think we should be able to do that with the exercise of good  
16 judgment and discharge of our fiduciary responsibilities. What I  
17 think we ought not do is tie all that land from other productive  
18 use for eighteen months or seventeen months. I think we should be  
19 able to look at the value of these lands, see what lands in which  
20 we might want to acquire an easement or whether there are other  
21 lands elsewhere in the Sound or in the Kodiak that would be more  
22 valuable or a better expenditure of our money, but I think we can  
23 do that within the next several months.

24 MR. PENNOYER: I'm getting confused between the original  
25 amendment and this amendment. You seem to have brought back in a  
26 number of elements in the original amendment with the amendment to

1 the amendment, and I'm not sure they look a lot different right  
2 now. That may be all right, but I'm trying to figure out where we  
3 are. The original amendment was fee simple, fair market value, for  
4 Power Creek, Eyak Lake, and Eyak River. Is that still part of it?

5 MR. COLE: Yes.

6 MR. PENNOYER: Okay. The original amendment was  
7 conditional upon a moratorium of all logging at this time?

8 MR. COLE: For which we're prepared to pay a  
9 reasonable sum for them to cease commercial activities on those  
10 lands until April 1.

11 MR. PENNOYER: Okay, negotiate a dollar on that,  
12 moratorium on logging, option to be exercised by April 1, you paid  
13 it -- for the price of that you get an option that you have to  
14 exercise by April 1st at fair market value on lands that might be  
15 selected by the Trustee Council for an easement on other lands that  
16 Eyak Corporation holds, still to the west though -- the lands we  
17 previously mentioned.

18 MR. COLE: That includes Hawkins Island.

19 MR. PENNOYER: Hawkins Island and Rude River, okay.

20 MR. COLE: And others.

21 MR. PENNOYER: And others. So, I don't think you need  
22 then the language we later had on Orca Narrows, because I assume  
23 it's included in that type of an easement option. So, you don't  
24 have that --.

25 MR. BARTON: That's not correct.

26 MR. PENNOYER: Well, okay. Let's try to combine these

1 two things that are getting raised now.

2 MR. BARTON: My understanding is different than that.  
3 I won't say it's not correct. What I understood we were going to  
4 do was get a conservation easement on Orca Narrows, not an option.

5 MR. PENNOYER: What I would like to do is wipe off both  
6 these amendment, amended amendments, and come back and see if we  
7 can do one thing and vote on it because now I've got pieces of both  
8 of these all mixed together. If somebody can start at the top,  
9 make a motion and bring us down through these pieces, and then at  
10 the end see if that's okay or if there are friendly amendments to  
11 it, rather than trying to deal with amending an amendment where  
12 we've sort of mixed them together ...

13 MR. COLE: Mr. Chairman, I think we're coming along,  
14 but it was the sense, I thought, of some of members of the Council  
15 that we did not want to acquire a conservation easement on Orca  
16 Narrows as a stand-alone transaction but that the Orca Narrows part  
17 of the transaction should be incorporated into one integral  
18 transaction involving the fee simple title to the three tracts as  
19 well as other items.

20 MR. PENNOYER: Doesn't the option on all lands to the  
21 west of the core lands include Orca Narrows, and therefore doesn't  
22 have to be mentioned separately, but you have an option to buy at  
23 fair market value an easement on all lands west of the core lands,  
24 including Hawkins Island and Orca Narrows and Rude River, all  
25 specifically mentioned, at their fair market value for the  
26 easement, that you have to exercise that easement by April -- or

1 are you saying the April thing shouldn't apply to Orca Narrows?  
2 Mr. Barton.

3 MR. BARTON: What I'm saying, to bring a little more  
4 certainty into the situation, and what I would like to see is a  
5 conservation easement on Orca Narrows, not an option, to be  
6 exercised before April.

7 MR. PENNOYER: So, in other words, there's no April  
8 deadline on Orca Narrows is what you're saying?

9 MR. BARTON: Right. Yes.

10 MR. PENNOYER: Any objection to that concept? So, all  
11 the rest of the lands, Orca Narrows does not -- it's not severable,  
12 it doesn't go by itself -- but it's as an easement option already  
13 identified that we would go for by -- whenever -- an the April  
14 deadline wouldn't be there. Is that clear? I'm not sure what the  
15 effect of that is, but it does (indecipherable).

16 MR. SANDOR: I don't understand it.

17 MR. PENNOYER: I don't completely either. Mr. Barton  
18 would try again with that. If you can exercise an option on any of  
19 the lands, couldn't you, come April, say, oh, and by the way, Orca  
20 Narrows is one we want?

21 MR. BARTON: Certainly, we could do that, but it  
22 doesn't give Eyak any assurance that we will actually do it.

23 MR. PENNOYER: No, but there's no assurance we'll do any  
24 of it if they turn down the core ...

25 MR. BARTON: I understand that ...

26 MR. PENNOYER: ... parcels.

1 MR. PENNOYER: ... but I think it's a fair expression of  
2 my interest, at least, to say we want a conservation easement on  
3 Orca Narrows, not an option ...

4 MR. PENNOYER: So, in addition to the core parcels, fee  
5 simple, we will exercise an option on Orca Narrows?

6 MR. BARTON: No, we will secure a conservation easement  
7 on Orca Narrows, and then an option on the -- on the rest. This  
8 was my ...

9 MR. PENNOYER: It's part of the core -- part of the --  
10 the core parcels is fee simple plus Orca Narrows ...

11 MR. BARTON: Yes.

12 MR. PENNOYER: ... That's your base deal, and the option  
13 is for everything else. I see what you're saying.

14 MR. COLE: That's acceptable.

15 MR. PENNOYER: Okay. Any -- let's see, we had other  
16 language in here about the disclosure of documents. I assume  
17 that's still in there. (Pause)

18 MR. BARTON: I have a question.

19 MR. PENNOYER: Yes. Can I get through this? We've got  
20 fee title for the core parcels at fair market value, we've got Orca  
21 Narrows conservation easement, fair market value, we've got a  
22 moratorium on logging for which we'll pay a sum -- price -- to be  
23 negotiated, and I assume that includes document disclosure too --  
24 that part -- all right -- document disclosure, and then we have the  
25 option by April of all other lands -- Sherstone/Eyak lands -- to be  
26 exercised by April, pending our study, as part of this. Yes?

1           MR. COLE:       Well, Mr. Chairman, it should be clear and  
2 I think it is the intent that -- that Orca Narrows does not stand  
3 alone, and that if we do not acquire fee simple title to the three  
4 core tracts, we will not otherwise acquire the easement on Orca  
5 Narrows. Is that your understanding, Mr. Barton?

6           MR. BARTON:     That's my understanding.

7           MR. PENNOYER:   So, this is a total package ...

8           MR. COLE:       All right.

9           MR. PENNOYER:   ... includes the whole thing, and the  
10 parts that aren't -- and no dollar amount on the top -- it's a free  
11 market value -- fair market value -- and we're going to negotiate  
12 some earnest money agreement for the option -- moratorium and  
13 option.

14           MR. COLE:       Mr. Chairman, I think we need a top  
15 dollar. We don't want to walk in here one day and found at that  
16 this comes out at a hundred and thirty-eight million.

17           MR. PENNOYER:   That's what I was trying to get at. Mr.  
18 Barton.

19           MR. BARTON:     Mr. Chairman, I thought there was a top  
20 dollar in there. I thought it was forty-one million dollars or  
21 fair market value, whichever is less.

22           MR. PENNOYER:   It depends on which part of the amendment  
23 you are dealing with. That's what I'm trying -- I'm trying to  
24 reconstruct this. One had a top value, the other one didn't.

25           MR. COLE:       Put it in there.

26           MR. PENNOYER:   Forty million dollars or whichever is



1 less?

2 MR. BARTON: Forty-one.

3 MR. PENNOYER: Forty-one.

4 MR. COLE: And then ...

5 MR. PENNOYER: And then the exercised option parcels  
6 would come on top of that. This is just for this -- getting us to  
7 April.

8 MR. COLE: The three tracts.

9 MR. PENNOYER: And the three tracts.

10 MR. COLE: The three tracts plus the Orca Narrows  
11 easement, plus the cessation of logging, plus the option that we  
12 can exercise by April on the remaining lands west of the parcels,  
13 including Hawkins Island, Rude River, and Orca Narrows.

14 MR. COLE: I'm not sure that's exactly right. I  
15 thought we were prepared to pay them, in addition, amount now for  
16 the options, but the amount to be paid on the options would be  
17 applied on the purchase price if they accepted the core tracts,  
18 including Orca Narrows.

19 MR. PENNOYER: Then there are two forms of earnest money.  
20 One is the price for the moratorium, and there is a separate price  
21 for the option or --?

22 MR. COLE: No. No. The moratorium and the option are  
23 together.

24 MR. PENNOYER: Okay. And that negotiated dollar amount  
25 on the document disclosure goes not the -- applied to the purchase  
26 price of any optional land that we decide by April?

1 MR. COLE: Yes.

2 MR. BARTON: Mr. Chairman.

3 MR. PENNOYER: Mr. Barton.

4 MR. BARTON: I have to insert a parenthetical note here  
5 which is mainly of a housekeeping nature. If we are to pay money  
6 for an option, then it would have to be done under some authority  
7 under the federal authorities.

8 MR. PENNOYER: So, the earnest money payment would have  
9 to be done under earnest money, option payment, whatever we call  
10 it, it would have to be done under some other authority.

11 MR. COLE: That's understood.

12 MR. PENNOYER: It's understood. Is this a reasonable  
13 substitute motion? Do the seconders of the original two motions  
14 and everybody else agree to it?

15 MR. COLE: Could we vote on the assumption that is  
16 the motion on the table?

17 MR. PENNOYER: That's what I'm trying to get to.

18 MR. BARTON: I would be glad to do that Mr. Cole.  
19 Again, would you run through that though?

20 MR. PENNOYER: I was afraid you'd ask that. Okay, this  
21 current proposal is fee title ...

22 MR. BARTON: The motion on the floor is --

23 MR. PENNOYER: ... Yes -- fee title on the core areas,  
24 Orca Narrows conservation easement, moratorium on logging until  
25 April of next year for which we would pay -- and an option to  
26 purchase additional lands at that time -- purchase an easement on

1 additional lands at that time -- at fair market value. You will  
2 pay a negotiated dollar amount for that moratorium option, and that  
3 would be applicable to the purchase of any additional lands or the  
4 purchase of easements on any additional lands when we exercise the  
5 option in April. Forty-one million dollars or whichever is less --  
6 is what -- is appraised as less -- is the offering price for that.

7 MR. COLE: Let's vote on that unless Commissioner  
8 Sandor has a question.

9 MR. PENNOYER: Commissioner Sandor.

10 MR. SANDOR: Two questions.

11 MR. PENNOYER: Two questions.

12 MR. SANDOR: And that one was, that the documents are  
13 disclosed and are evaluated before the negotiation process is ...

14 MR. PENNOYER: I stand corrected. The document  
15 disclosure was in my notes next to the negotiated payment.

16 MR. SANDOR: Second, the moratorium on logging is not  
17 on all Eyak lands, but only those ...

18 MR. PENNOYER: Including Hawkins Inlet, Orca Narrows and  
19 Rude River.

20 MR. SANDOR: Right. Which permits Eyak to continue.

21 MR. PENNOYER: It does.

22 MR. SANDOR: In other areas.

23 MR. PENNOYER: That's correct.

24 MR. SANDOR: Thank you.

25 MR. PENNOYER: Write after moratorium "on lands west of"  
26 which I understand is (indecipherable -- traffic noise). Any

1 further questions on this or additions? I ask all those in favor  
2 of this proposal to signify by saying aye.

3 ALL TRUSTEES: (In unison) Aye.

4 MR. PENNOYER: Opposed? (No response) Passed. Now,  
5 will somebody tell me where we go from here.

6 MR. COLE: I'm ...

7 MR. PENNOYER: We had a motion and we have some  
8 negotiations that will occur. At what point do we decide whether  
9 we need to identify the ...

10 MR. BARTON: Mr. Chairman.

11 MR. PENNOYER: Mr. Barton.

12 MR. BARTON: Perhaps it would be useful to hear some  
13 comments from Eyak at this time.

14 MR. COLE: I -- Mr. Chairman, I object to that.

15 MR. PENNOYER: Mr. Cole.

16 MR. COLE: I think we've done it all today on that  
17 subject, and the comments from Eyak can come as we have the  
18 negotiating process. What's done is done, and I see nothing to be  
19 accomplished by further discussion or backing up on it.

20 MR. PENNOYER: I don't see a point in taking a vote on  
21 that with the objection stated. Any further discussion?

22 MR. COLE: I mean, does any Trustee though really  
23 want -- to start discussing this with Eyak?

24 MR. PENNOYER: Commissioner Sandor, discussion?

25 MR. SANDOR: I concur, and I would say the negotiations  
26 can proceed fairly quickly if these documents are released.

1 MR. PENNOYER: Are we prepared to meet back again then at  
2 some future date and review this. I presume when we are, Mr.  
3 Barton will bring us back in contact. Mr. Barton.

4 MR. BARTON: I assume that you still want the Forest  
5 Service to continue as the lead in this.

6 MR. COLE: The Forest Service has done an outstanding  
7 job, as Mr. Steiner said the other day, and I'm ...

8 MR. PENNOYER: Appreciate ...

9 MR. COLE: ... happy to have them continue.

10 MR. PENNOYER: ... (indecipherable -- simultaneous  
11 talking) Mr. Van Zee and help you continue with it.

12 MR. PENNOYER: I think that concludes are open business.  
13 We'll now adjourn and close the meeting to an executive session.  
14 Thank you very much.

15 (Off Record: 4:30 p.m.)

16 (On Record: 4:45 p.m.)

17 MR. PENNOYER: Do we have to have coming out of the  
18 executive session on the record?

19 UNIDENTIFIED VOICE: I think so.

20 MR. PENNOYER: Okay, we have now completed our executive  
21 session, completed our executive session regarding the hiring of an  
22 executive director, and back on the record now, I'm going to call  
23 this meeting adjourned. Thank you all.

24 (Off Record: 4:46 p.m., August 9, 1993)

25 E N D O F P R O C E E D I N G S

26 ///

CERTIFICATE

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

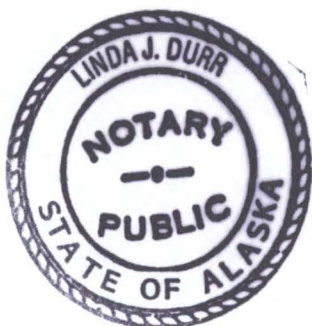
I, Linda J. Durr, a notary public in and for the State of Alaska and a Certified Professional Legal Secretary, do hereby certify:

That the foregoing pages numbered 394 through 640 contain a full, true, and correct transcript of the continuation meeting of the Exxon Valdez Oil Spill Settlement Trustees Council meeting taken electronically by me on the 6th August, 1993, commencing at the hour of 1:30 p.m. at the Restoration Office, 645 G Street, Anchorage, Alaska, and on the 9th day of August, 1993, commencing at the hour of 1:15 p.m., at the State Capitol Building, Juneau, Alaska;

That the transcript is a true and correct transcript requested to be transcribed and thereafter transcribed by me and Sandy Yates to the best of our 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 17th day of August, 1993.



Linda J. Durr  
Linda J. Durr, Certified PLS  
Notary Public for Alaska  
My commission expires: 10/19/93