

EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL

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TRUSTEE COUNCIL MEETING
Friday, February 23, 1996
1:30 o'clock p.m.
EXXON VALDEZ OIL SPILL
TRUSTEE COUNCIL
ADMINISTRATIVE RECORD

U.S. Department of the Interior
1689 C Street, Suite 220
Anchorage, Alaska

TRUSTEE COUNCIL MEMBERS PRESENT:

U.S. DEPARTMENT OF THE INTERIOR: **MS. DEBORAH WILLIAMS (Chair)**
Special Assistant to the
Assistant Secretary

STATE OF ALASKA - **MR. CRAIG TILLERY**
DEPARTMENT OF LAW: Trustee Representative
for the Attorney General

STATE OF ALASKA - DEPARTMENT **MR. FRANK RUE**
OF FISH AND GAME: Commissioner

U.S. DEPARTMENT OF AGRICULTURE - **MR. PHIL JANIK**
U.S. FOREST SERVICE: Regional Forester

U.S. DEPARTMENT OF **MR. STEVE PENNOYER**
COMMERCE - NOAA: Director, Alaska Region

STATE OF ALASKA - DEPARTMENT **MS. MICHELE BROWN**
OF ENVIRONMENTAL CONSERVATION: Commissioner

1 **TRUSTEE COUNCIL STAFF PRESENT:**

2 MS. MOLLY McCAMMON Executive Director
 EVOS Trustee Council

3 MS. REBECCA WILLIAMS Executive Secretary
4 EVOS Trustee Council

5 MR. ALEX SWIDERSKI Alternate, Department of Law

6 MR. JAMES WOLFE Alternate, Department of
7 Agriculture, U.S. Forest Service

8 **OTHER PARTICIPANTS:**

9 MS. GINA BELT U.S. Department of Justice

10 DAVE GIBBONS U.S. Forest Service

11 MR. GLENN ELISON U.S. Fish and Wildlife Service

12 JOHN HARMENING U.S. Forest Service

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ANCHORAGE, ALASKA - FRIDAY, FEBRUARY 23, 1996

(Tape No. 1 of 1)

(On record at 1:30 p.m.)

CHAIR WILLIAMS: Let's go ahead, in the interest of starting on time, and I believe that we have representatives from all of the Trustee Council members here.

I would like to call to order a meeting of the Exxon Valdez Trustee Council. It is February 23rd, 1:30. We are meeting here in Anchorage in my offices. And let me begin by announcing who is here.

We have Craig Tillery, representing the Attorney General's Office. Myself, Deborah Williams, representing the Department of the Interior. Steve Pennoyer, representing National Marine Fisheries Service. Michele Brown, who just joined us, representing the Alaska Department of Environmental Conservation. Phil Janik, representing The U.S. Department of Agriculture, Forest Service. And Frank Rue, representing the Alaska Department of Fish and Game.

Welcome, all Trustees. And we do have public members and staff members joining us also today.

I'll begin by accepting a motion for approval of the agenda.

MR. PENNOYER: So moved.

CHAIR WILLIAMS: Moved by Steve Pennoyer.

1 COMMISSIONER RUE: Second.

2 CHAIR WILLIAMS: Seconded by Frank Rue to approve the
3 agenda. Is there any discussion? Any additions or corrections
4 people would like to make to the agenda?

5 (No audible response)

6 CHAIR WILLIAMS: Hearing none, do I hear any
7 objection to approving the agenda?

8 (No audible response)

9 CHAIR WILLIAMS: Hearing none, the agenda is
10 approved.

11 The first item on the agenda is an Executive Session
12 to discuss habitat protection negotiations. I will accept a
13 motion to go into Executive Session to discuss habitat
14 protection negotiations.

15 MR. JANIK: Phil Janik. So moved.

16 MS. BROWN: Seconded.

17 CHAIR WILLIAMS: Moved by Phil Janik. Seconded by
18 Michele Brown. Is there any discussion?

19 (No audible response)

20 CHAIR WILLIAMS: Is there any objection to going into
21 Executive Session at this time?

22 (No audible response)

23 CHAIR WILLIAMS: Hearing none, we will go into
24 Executive Session to discuss habitat protection negotiations.

25 Molly, would you like to give an estimate of how long

1 you think this will last so the public members can respond
2 accordingly?

3 MS. McCAMMON: I would say no more than an hour. At
4 the most. It kind of depends, Frank, on what your schedule is?

5 COMMISSIONER RUE: I have a 3:00 o'clock meeting.

6 MS. McCAMMON: Okay.

7 CHAIR WILLIAMS: Okay. Very good.

8 MS. McCAMMON: About an hour.

9 CHAIR WILLIAMS: Okay. If we could go into Executive
10 Session. Thank you very much.

11 (Off record at 1:35 p.m.)

12 (On record at 2:30 p.m.)

13 CHAIR WILLIAMS: I will call back to order the
14 February 23, 1996, meeting of the Exxon Valdez Oil Spill
15 Trustee Council. We are resuming public session after being in
16 Executive Session for approximately the last 45 minutes. In
17 Executive Session, we talk about habitat protection
18 negotiations and no other matters.

19 The next item on our agenda is small parcels. Molly?

20 (Pause - Side comment)

21 CHAIR WILLIAMS: What?

22 MR. TILLERY: There was a public member.

23 CHAIR WILLIAMS: Yes, I know.

24 MR. TILLERY: Did she disappear, or.....

25 MS. McCAMMON: Yeah.

1 MR. TILLERY:do we know where she went to?

2 MS. WILLIAMS: I didn't see her when I went into the
3 hall, and I haven't seen her since.

4 MS. McCAMMON: Madam Chair, I sent out to all of you,
5 late this morning, a status report on the Small Parcel Program.
6 And I hope the folks in Juneau got copies of it. But at your
7 request, you asked for an update on the response to the offers
8 that were made in December. And of the 22 small parcels that
9 action has been taken on so far, the owners of 11 of the
10 parcels had accepted the offers at appraised value. The offers
11 on 10 other parcels in the Kenai Natives Association package
12 are still under various stages of review.

13 And then three parcel owners have rejected the
14 offers. Two of those have come back with a counteroffer at an
15 above-appraised value price, and one parcel, the Deep Creek
16 parcel, the Ninilchik Native Association has said it's not for
17 sale at this time.

18 As a result of this status report, there are actually
19 three action items that are before you today. One of them is a
20 request for authorization for the Department of Interior to
21 offer to purchase the two allotments in Three Saints Bay, KAP
22 105 and 142 at the appraised value of \$168,000.

23 In addition, the Salamatof parcel, the landowner
24 raised a number of questions about appraisal. The appraisal
25 was revised as a result of their comments; it has been reviewed

1 and approved by all of the review appraisers. That has
2 increased the value by \$220,000 from the original appraisal.
3 And so the request is for the additional authorization to
4 increase the fair market price by \$220,000. This would raise
5 it from a total price of \$2.32 million up to \$2.54 million.

6 And then the third item, at the end of the report,
7 we've received an additional 10 nominations since Mid-July of
8 last summer for small parcel acquisition. Two of these are
9 being purchased by the U.S. Forest Service, either as part of
10 the Valdez Duck Flats acquisition and one other, as part of --
11 using federal restitution funds.

12 The remaining six are listed in Table 3. Of these,
13 one of the parcels, the Patson Parcel, which is Kenai 1034 on
14 the Kenai River near Soldotna, the Department of Natural
15 Resources has recommended that it be considered a parcel
16 meriting special attention and that an appraisal go forward
17 with this parcel. This has been concurred with by the
18 Department of Fish and Game to move forward -- to request
19 authorization to move forward on this parcel.

20 So those are the three action items before you,
21 today.

22 CHAIR WILLIAMS: All right. Before we go to each of
23 the action items in turn, is there anything else any other
24 Trustee member would like to add on small parcels?

25 (No audible response)

1 CHAIR WILLIAMS: Okay. Let's go to each of the items
2 then. As Molly said, the first one is a request for
3 authorization for the Department of Interior to offer to
4 purchase two native allotments in Three Saints Bay, KAP
5 105/142, at the appraised value of \$168,000. Do I hear a
6 motion to that effect?

7 (No audible response)

8 CHAIR WILLIAMS: Motion?

9 COMMISSIONER RUE: So moved.

10 CHAIR WILLIAMS: Been moved by Frank Rue. Second?

11 MR. TILLERY: Second.

12 CHAIR WILLIAMS: Okay. Second by Craig Tillery. Is
13 there discussion on the motion?

14 (Whispered comments)

15 CHAIR WILLIAMS: Forest Service, do I hear some
16 questions you may have?

17 MR. JANIK: No.

18 CHAIR WILLIAMS: Okay. Any discussion on this
19 motion?

20 (No audible response)

21 CHAIR WILLIAMS: Glenn, would you like to tell us
22 just a little bit more about these parcels? Glen Elison is
23 here.

24 MR. ELISON: I'd be happy to, Deborah. Can you folks
25 in Juneau hear me, or Frank?

1 COMMISSIONER RUE: Yeah, I hear you.

2 CHAIR WILLIAMS: Can you push that microphone down
3 just a little closer.

4 COMMISSIONER RUE: I hear you.

5 MR. ELISON: All right. There are two parcels that
6 are related, both Native allotments, a total of 88 acres.
7 They're right at the head of Three Saints Bay in a particularly
8 scenic wilderness area. It's an area important for subsistence
9 from, largely, the folks in Old Harbor. The Pestikof (ph)
10 parcel, which is a 48-acre piece, is -- got values for pink
11 salmon.

12 It's a very historic site, there are a lot of
13 archaeological resources in the area, including on these
14 parcels. The area, as I mentioned, is prime for wilderness.

15 I think that that's a concise summary. If you want
16 more detail specifically, I can add those. Those are the key
17 resources, as far as EVOS is concerned, that are being restored
18 with these parcels.

19 COMMISSIONER RUE: What do these three parcels hook
20 up with, or do they stand by themselves?

21 MR. ELISON: They are part of the lands acquired from
22 Old Harbor. They're an integral part of that coastline and
23 reflect all the values that the Old Harbor lands had.

24 CHAIR WILLIAMS: Okay. Any further discussions or
25 questions?

1 (No audible response)

2 CHAIR WILLIAMS: All right. Let us take a vote on
3 the motion. All in favor, indicate by saying aye.

4 ALL TRUSTEE COUNCIL MEMBERS COLLECTIVELY: Aye.

5 CHAIR WILLIAMS: Opposed?

6 (No audible response)

7 CHAIR WILLIAMS: The motion passes.

8 The next action item is to have the Council accept
9 the revised appraisal at Salamatof. And I need to see the
10 figures in front of me. And that is with revised appraisal of
11 \$1,810,000 for one parcel and -- let me see, the values are --
12 for Parcel 1 -- yeah, and \$730,000 for Parcel 2, which
13 represents an increase of \$220,000 from the original appraisal,
14 and this is a result of a revised and approved appraisal.

15 Do I hear a motion to accept this revised appraisal
16 amount as the basis of our negotiations -- or the basis of our
17 offer?

18 MR. PENNOYER: I'll move that for discussion
19 purposes.

20 CHAIR WILLIAMS: Okay. It's been moved by Mr.
21 Pennoyer. Do I hear a second?

22 COMMISSIONER RUE: Second.

23 CHAIR WILLIAMS: Okay. Second by Mr. Rue.

24 MR. PENNOYER: Deborah, what is the total appraisal
25 value, then, now that we're looking at?

1 MS. McCAMMON: 2.54.

2 CHAIR WILLIAMS: 3.54? Two-point --

3 MS. McCAMMON: 2.54.

4 CHAIR WILLIAMS: Excuse me, 2.54.

5 MR. PENNOYER: That's as opposed to the 2.320 we had
6 before?

7 MS. McCAMMON: Yes.

8 CHAIR WILLIAMS: Yes.

9 MR. PENNOYER: And the revised appraisal was based on
10 what, again?

11 CHAIR WILLIAMS: Glenn, do you want to review what
12 the concerns were and what the revised appraisal's based on?

13 MR. ELISON: The revision is primarily attributed to
14 a reduction in the cost of -- the estimated cost of developing
15 roads to develop the property for its highest and best use,
16 which is resale for small lot development. And that \$220,000
17 is -- principally covers that change in the estimated cost. So
18 to restate it, it's simply a change in the estimated price to
19 develop the land, the price being reduced for construction.

20 CHAIR WILLIAMS: As the Council remembers, when we
21 had our meeting in Juneau, this is an extraordinary piece of
22 land, of course, right on the river and, you know, very, very
23 valuable for habitat and for river restoration.

24 MR. PENNOYER: And this revision in appraisal will
25 get us where we what to go with the purchase?

1 CHAIR WILLIAMS: Well, that's another question.

2 Glenn?

3 MR. ELISON: The indications we have from Salamatof
4 are that they want considerably more than the appraised value,
5 so this obviously moves us in the right direction
6 significantly. I don't know, if presented with an offer, what
7 their reaction truly would be. They are well aware of other
8 large parcel owners that are pushing to have the offers
9 increased; they may just be testing the waters. I really can't
10 say until we get to the point where there's an offer in front of
11 them.

12 MR. PENNOYER: Okay. Thank you.

13 CHAIR WILLIAMS: Any further discussion on the
14 motion?

15 (No audible response)

16 CHAIR WILLIAMS: Okay. Let us go ahead and take a
17 vote. All in favor of the motion, indicate by saying aye.

18 ALL TRUSTEE COUNCIL MEMBERS COLLECTIVELY: Aye

19 CHAIR WILLIAMS: Opposed?

20 (No audible response)

21 CHAIR WILLIAMS: The motion passes.

22 The third action item is the designation of the
23 recently nominated parcel, the Patson Parcel KEN 1034 on the
24 Kenai River, as a parcel meriting special consideration. Do I
25 hear a motion to that effect?

1 MS. BROWN: So moved.

2 CHAIR WILLIAMS: Been moved by Ms. Brown. Is there a
3 second?

4 COMMISSIONER RUE: Second.

5 CHAIR WILLIAMS: Second by Frank Rue. Any discussion
6 on this motion?

7 COMMISSIONER RUE: What does this action, then, lead
8 us to next?

9 MS. BROWN: An appraisal.

10 MR. PENNOYER: Doing the appraisal?

11 CHAIR WILLIAMS: Yes. Doing an appraisal.

12 MR. PENNOYER: Is Frank -- Fish and Game supported
13 this, but the letter from DNR is not -- doesn't lead to a lot
14 of detail on what the merits are. Do you want to expound for a
15 second on those?

16 COMMISSIONER RUE: Steve, this is Frank. Actually, I
17 have just gotten some of the information myself on this parcel.
18 So I'm not.....

19 MS. McCAMMON: I have a little bit.

20 (Simultaneous Speech)

21 MS. McCAMMON: I have a little bit for you, Steve.
22 The parcel has wetlands, which are intended to provide an
23 undeveloped riparian buffer and, I guess, what's called a water
24 recharge area. It was ranked as an 18, which is low on the
25 ranking list, but it's right under the cutoff between lows and

1 moderates. All of the other ranked 18 have ended up being
2 parcels meriting special concern.

3 It has pink salmon, Dolly Varden, and recreation/
4 tourism benefits. It apparently has a year-around spring that
5 flows through the property. It has not had any intensive
6 recreational use and, therefore, provides an opportunity to
7 manage potential human use in the future without having it
8 already degraded to some fashion.

9 MR. PENNOYER: Okay. Thank you.

10 MS. McCAMMON: That's the primary benefits.

11 CHAIR WILLIAMS: Mr. Tillery?

12 MR. TILLERY: I'd just note that DNR has someone
13 available by phone if any further information -- the ranger
14 from that area is -- we have a number; they're available.

15 COMMISSIONER RUE: And this is Frank Rue. I can
16 get Mark Kuwada or someone to give you more information on it
17 also.

18 MS. McCAMMON: The motion would be just to go forward
19 with an appraisal; it would not be to take any action on it.
20 It's no commitment other than that.

21 MR. PENNOYER: Sounds good.

22 CHAIR WILLIAMS: Any further discussion?

23 (No audible response)

24 CHAIR WILLIAMS: All in favor of the motion, indicate
25 by saying aye.

1 moderates. All of the other ranked 18 have ended up being
2 parcels meriting special concern.

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4 tourism benefits. It apparently has a year-around spring that
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13 available by phone if any further information -- the ranger
14 from that area is -- we have a number; they're available.

15 COMMISSIONER RUE: And this is Frank Rue. I can get
16 Mark Cuata (ph) or someone to give you more information on it
17 also.

18 MS. McCAMMON: The motion would be just to go forward
19 with an appraisal; it would not be to take any action on it.
20 It's no commitment other than that.

21 MR. PENNOYER: Sounds good.

22 CHAIR WILLIAMS: Any further discussion?

23 (No audible response)

24 CHAIR WILLIAMS: All in favor of the motion, indicate
25 by saying aye.

1 ALL TRUSTEE COUNCIL MEMBERS COLLECTIVELY: Aye.

2 CHAIR WILLIAMS: Opposed?

3 (No audible response)

4 CHAIR WILLIAMS: Motion passes.

5 That takes us to the next item on the agenda, Eyak
6 Core Parcel Lands. Phil?

7 MS. McCAMMON: Before we.....

8 CHAIR WILLIAMS: Oh.

9 MS. McCAMMON: Before we leave small parcels.....

10 CHAIR WILLIAMS: Ms. McCammon, you have something
11 else?

12 MS. McCAMMON: Yeah. There was one other item we
13 just wanted to bring to the attention of the Council, and
14 that's on Termination Point. The Council has included
15 Termination Point in its authority to go forward with an
16 appraisal, and that was done last February.

17 However, when we started looking the cost of an
18 appraisal, since there's commercial timber on the parcel, which
19 is right outside of Kodiak, and there was still some concern
20 about the title of this parcel, we kind of made a decision last
21 spring not to go forward until the whole title issue was
22 clarified.

23 Since that time, Alex Swiderski, with Department of
24 Law, and the landowner have been meeting and believe that they
25 have worked out some kind of a solution that would allow us to

1 go forward with the appraisal and then, if the Council chose to
2 approve the purchase, to actually make some kind of a
3 commitment.

4 And, Alex, maybe you could describe that in a little
5 more detail.

6 MR. SWIDERSKI: What we would propose -- this is Alex
7 Swiderski. What we would propose to do is move ahead with the
8 appraisal. It would not be as expensive -- obviously, it is
9 timber, and it would be more expensive than some of these
10 appraisals. It would not be like the other -- the large parcel
11 appraisals in that it's road accessible from Kodiak, so it
12 should be fairly modestly priced.

13 And completing the appraisal, if we are able to, the
14 Council approves, we would make an offer to Lesnoi, the owner
15 of the property, contingent upon their being able to establish
16 clear title to the property by prevailing in the ongoing
17 litigation. If they fail in the litigation, which attacks
18 their very existence, the offer would be withdrawn. And
19 because they would not end up owning the land, the land would
20 presumably go back to the Department of Interior, Bureau of
21 Land Management.

22 During that interim period, from the time there is an
23 offer and an acceptance, we have discussed holding the funds in
24 an interest-bearing escrow account. And then at such time as
25 the litigation is resolved, if Lesnoi prevails, the funds would

1 be conveyed to Lesnoi and the land would be conveyed to the
2 State. And if not, the funds would be returned to the Trustee
3 Council coffers, and the land -- I'm not sure what would happen
4 to the land at the point, but presumably, it would be returned
5 to the United States.

6 And I don't think that the Council needs to take any
7 action particularly, but before moving ahead with the
8 authorization that the Council provided a year ago, we wanted
9 to bring this to your attention.

10 MR. PENNOYER: Alex, we're not able to hear you.

11 MS. McCAMMON: What part?

12 MR. SWIDERSKI: What, all of it?

13 MR. PENNOYER: Well, just the last minute or so.

14 MR. SWIDERSKI: Okay. I think the Council, a year
15 ago, authorized the appraisal, so there's no need for further
16 authorization. On the other hand, because of the cloud that
17 has existed on title, and continues to exist on the title to
18 the land, it certainly, I think, is appropriate to bring to
19 your attention and to not proceed with an appraisal if there is
20 an objection to proceeding with the appraisal at this time.

21 MR. PENNOYER: What's the risk that we're looking at
22 here of there being a problem with getting the title cleared
23 up?

24 MR. SWIDERSKI: Well, the risk is that -- the
25 financial risk is that if we were to conduct an appraisal and

1 then learn that Lesnoi did not have title to the property, the
2 Council would have expended funds for an appraisal that it
3 would not need to have expended.

4 I'm not in a position to evaluate the merits of
5 litigation. I do know that there has been a great deal of
6 political attention to this, and Lesnoi represents to me that,
7 if necessary, they would be able to -- they have the ability to
8 go to Congress and persuade Congress to fix the problem by
9 recognizing Lesnoi and recognizing their right to this parcel
10 of land.

11 MR. PENNOYER: Yeah. Given the price of appraisals,
12 I think we ought to be cautious.

13 CHAIRMAN RUE: Yeah.

14 CHAIR WILLIAMS: How much do we assume this will cost
15 to appraise?

16 MR SWIDERSKI: I don't know. I mean, I would imagine
17 it's in the five to fifteen thousand dollar range.

18 CHAIR WILLIAMS: Craig?

19 MR. TILLERY: The concern I had before on going
20 forward with the appraisal, even though it was authorized, was
21 that we could appraise the land, spend that money, and then
22 this thing could sit there going through the courts for five
23 years; the appraisal becomes stale, and we have to reappraise
24 it.

25 What's new now is that if the Council thinks that it

1 would probably be willing to enter into a deal -- once we do an
2 appraisal, we get a number, we would be willing to enter into
3 an arrangement contingent upon their getting clear title, then
4 that takes care of that concern because we can go ahead and
5 enter into the deal. We can base it on the existing appraisal.

6 And that's why I think the situation -- if they're
7 agreeable to that and we think we're agreeable to that, then I
8 think it's worth the risk of going forward and doing the
9 appraisal now. Because one thing, you gets this land kind of
10 locked up. Right now, they have the right to move forward with
11 whatever they want to do, and this will, in essence, be kind of
12 putting -- we're sort of renting it or buying it, or least
13 we'll be putting something.....

14 MS. McCAMMON: First option.

15 MR. TILLERY:an option on it, yeah. So that --
16 to my way of thinking, I think it's worth going ahead and doing
17 the appraisal. It's a relatively small amount; it's only a
18 thousand acres; and it is on the road system in Kodiak.
19 There's no helicopters involved and that sort of thing. I
20 think we should move forward with it.

21 Now, if the Council believes they would be willing to
22 enter into this kind of contingent deal. If you don't, then I
23 don't think we should do it at present.

24 CHAIR WILLIAMS: Alex, did you, or Craig, did you
25 talk to Barry Roth about this, by any chance?

1 MR. SWIDERSKI: Yes.

2 CHAIR WILLIAMS: And he was okay?

3 MR. SWIDERSKI: Yeah. Well, he was comfortable with
4 the concept of it, and I don't think he saw a legal problem
5 with it.

6 CHAIR WILLIAMS: Okay. Again, I don't think we have
7 to take an action because we've already authorized the
8 appraisal. The question's just whether any Trustee Council
9 member has a strong objection in going forward at this point.

10 (No audible response)

11 CHAIR WILLIAMS: Okay. Hearing no strong objection,
12 I think we can go forward at this point.

13 COMMISSIONER RUE: I have a quick question on small
14 parcels.

15 CHAIR WILLIAMS: Yes, Frank.

16 COMMISSIONER RUE: On several of the ones that we've
17 acquired, such as Kobylarz and Coal Creek and Girves, kind of a
18 question. Before we accept title, will we make sure that
19 there -- the language in the title protects the habitat values
20 that we purchased it to protect? That's happening? Is that
21 the standard?

22 CHAIR WILLIAMS: Craig?

23 MR. TILLERY: It's hard. What we've done in the
24 large parcels is we've put restrictive covenants. We've given
25 conservation easements to the other government, and we've put

1 restrictive covenants in the deeds. That's because the
2 landowners, being fairly large corporate entities, have an
3 interest, and they're selling us this land because they want it
4 to remain pure or pristine, whatever. And the other government
5 has an interest.

6 In the small parcels, we really don't think it's been
7 generally worth the trouble of having these conservation
8 easements in the other government. And to put a covenant in
9 the deed and ask, you know, an 80-year-old landowner, you know,
10 to think that he's going to enforce it at a later date is not
11 very realistic. So it's pretty hard to tie it down through the
12 deed process.

13 MS. McCAMMON: But has it been tied down sufficiently
14 through the resolution process? For adopting.....

15 MR. TILLERY: Well, it's in the resolution process,
16 but it's not -- I don't know. None of these are tight like the
17 large parcels.

18 CHAIR WILLIAMS: I didn't know that. I thought we
19 had this discussion. That's very -- that's, to me, very
20 disconcerting because, clearly, these are very valuable pieces,
21 and what we wouldn't want to see happen is the State
22 legislature saying, 'Yee haw. The hit will take \$4.6 million
23 out of our budget deficit. We'll sell these.'

24 Is there anything now that prohibits the legislature
25 or DNR from selling these for commercial development?

1 MR. TILLERY: They couldn't sell.....

2 MR. SWIDERSKI: Well, I guess they could sell them,
3 and we would be -- I mean, we've always been perfectly willing
4 to have a covenant that you can't sell, but the United States
5 is unwilling to do that.

6 (Pause - Side comment)

7 MR. TILLERY: We've been through this on all the
8 parcels. We've tried to have that, and you guys say -- you
9 take a position that you can't put a restriction on alienation.

10 MR. WOLFE: Deborah, this is Jim. You know, I guess
11 this does raise the question of how do we ensure that we're --
12 the properties -- I know they're small, but how do we ensure
13 they're going to be managed, for the long-term, for restoration
14 purposes without something? And maybe that's what Frank was
15 getting at.

16 CHAIR WILLIAMS: Oh, it is, and I was proceeding
17 blithely under the assumption we were putting some protections
18 on these.

19 MS. McCAMMON: I thought that's why we had all that
20 language in the resolution to that effect.

21 MR. WOLFE: That's right.

22 COMMISSIONER RUE: I guess I would like to make sure
23 we.....

24 MR. SWIDERSKI: There's language in the resolution,
25 but that is.....

1 MS. BROWN: That's not legal protection.

2 MR. SWIDERSKI:the protection.....

3 (Simultaneous speech)

4 MS. McCAMMON: But that's not binding?

5 MS. BROWN: That's not legally binding.

6 MR. SWIDERSKI: No. It's not binding, no. I mean,
7 it's not finally legally binding.

8 MR. WOLFE: I sort of feel pressed for time today,
9 and I'm not sure if we can resolve it, but it sure is an
10 important -- for me, it's a significant issue on some of these
11 parcels.

12 CHAIR WILLIAMS: Yeah, it is.

13 MR. TILLERY: It's more significant to me on
14 something like Termination Point or KNA. I mean, the Tulin
15 property and some of those are not as -- some of the smaller
16 ones I'm not as concerned with. On the big ones, it's.....

17 MR. WOLFE: We should each get to pick our favorite.

18 MR. TILLERY: Well, it's my.....

19 MR. WOLFE: I like Coal Creek a lot.

20 MR. TILLERY: Well, it's the size and the potential
21 usage of them, I would say. Like Termination Point, a timber
22 parcel.

23 COMMISSIONER RUE: Right. But right on the Kenai
24 River, the values at risk may be just humongous. So.....

25 MR. SWIDERSKI: That's right.

1 MS. BROWN: That's not legal protection.

2 MR. SWIDERSKI:the protection.....

3 (Simultaneous speech)

4 MS. McCAMMON: But that's not binding?

5 MS. BROWN: That's not legally binding.

6 MR. SWIDERSKI: No. It's not binding, no. I mean,
7 it's not finally legally binding.

8 MR. WOLFE: I sort of feel pressed for time today,
9 and I'm not sure if we can resolve it, but it sure is an
10 important -- for me, it's a significant issue on some of these
11 parcels.

12 CHAIR WILLIAMS: Yeah, it is.

13 MR. TILLERY: It's more significant to me on
14 something like Termination Point or KNA. I mean, the Tulin
15 property and some of those are not as -- some of the smaller
16 ones I'm not as concerned with. On the big ones, it's.....

17 MR. WOLFE: We should each get to pick our favorite.

18 MR. TILLERY: Well, it's my.....

19 MR. WOLFE: I like Caw (ph) Creek a lot.

20 MR. TILLERY: Well, it's the size and the potential
21 usage of them, I would say. Like Termination Point, a timber
22 parcel.

23 COMMISSIONER RUE: Right. But right on the Kenai
24 River, the values at risk may be just humongous. So.....

25 MR. SWIDERSKI: That's right.

1 CHAIR WILLIAMS: Well, if we could have Alex and
2 Barry and Gina and Craig, or some combination of folks, think
3 about this some more. When questions have -- have these
4 actually, at some point, been sort of accepted by the State?
5 Maybe there's something in the acceptance or something. If you
6 could be as creative as possible, I'd sleep better.

7 (Side comments)

8 COMMISSIONER RUE: You're asking that before we
9 take.....

10 CHAIR WILLIAMS: Yeah. Before we take them.

11 COMMISSIONER RUE: We get a resolution to this issue?

12 CHAIR WILLIAMS: Right. Well, thank you for bringing
13 that up, Frank.

14 COMMISSIONER RUE: Does that require a motion or
15 anything to direct.....

16 CHAIR WILLIAMS: Yeah. Yeah. Go ahead and make a
17 motion.

18 COMMISSIONER RUE: I guess for the sake to make -- I
19 mean, I don't want to do something that's impossible, but I
20 would move that before we accept title to the small parcels, we
21 decide how to ensure -- or whether to ensure -- whether there's
22 a mechanism to ensure that the parcels are maintained for the
23 purposes of restoration.

24 CHAIR WILLIAMS: Do I hear a second to that motion?

25 MS. BROWN: Second.

1 MR. PENNOYER: Second.

2 CHAIR WILLIAMS: Seconded by Michele first, Steve,
3 but thank you. Any further discussion on the motion?

4 (No audible response)

5 CHAIR WILLIAMS: Okay. All in favor, indicate by
6 saying, aye.

7 ALL TRUSTEE COUNCIL MEMBERS COLLECTIVELY: Aye.

8 CHAIR WILLIAMS: Opposed?

9 (No audible response)

10 CHAIR WILLIAMS: Motion passes. Thank you, Frank.

11 (Side comment)

12 CHAIR WILLIAMS: All right. Anything else on small
13 parcel?

14 (No audible response)

15 CHAIR WILLIAMS: What I think we might do because of
16 Frank's 3:00 o'clock commitment, let's move very quickly to
17 technical amendment to Shuyak resolution because we need a vote
18 on that. And if someone can explain that very quickly so that
19 we could vote on that, and then we can go back to Core Lands.
20 Who wants to do that?

21 MS. BROWN: Alex. Craig?

22 CHAIR WILLIAMS: Craig? Alex? Craig?

23 MR. TILLERY: The -- we're getting -- we're coming
24 close to closing on the Shuyak deal. The Kodiak Island Borough
25 is going to be using the money from that to move forward with

1 the Fish Technology Center. They're in the process of taking
2 contracts out; they would like to have the money sooner rather
3 then later.

4 In the original proposal -- in the original
5 resolution, we asked the Department of Justice and the
6 Department of Law to get the money from the court, conditioned
7 upon certain things happening. There were some conditions that
8 had to be fulfilled, and there had to be a certification from
9 the Executive Director that the conditions had been fulfilled.

10 What that means is that we go through that process,
11 we get that done, then we take the ministerial task of asking
12 the court for the money, and that takes another two to three
13 weeks. It just sort of depends on how things work out in the
14 schedules of the vario- -- of the court works out.

15 What -- rather than working on one track and doing
16 this thing sequentially, what we're asking to do is, like we've
17 already done AKI and Old Harbor once, is to move on parallel
18 tracks, allow us to go ahead and do the -- and get the money
19 from the court now. It would go into the State trust fund
20 where it essentially would earn more interest than if it stayed
21 in the court registry. But we wouldn't expend it or close
22 until all of those conditions and certifications had been made.

23 So the money would still stay where it could be
24 retrieved if the deal didn't go through or if the certif- --
25 conditions were never fulfilled or so forth, but it would allow

1 us to move this thing forward two or three weeks, which would
2 be an accommodation to the Borough and I think would, in
3 essence, push forward some of things the Council wants to do.

4 CHAIR WILLIAMS: Okay.

5 MR. TILLERY: And that's what this resolution does.

6 CHAIR WILLIAMS: Do I hear a motion to accept the
7 resolution?

8 MR. TILLERY: I move.

9 CHAIR WILLIAMS: So moved by.....

10 MS. BROWN: Second.

11 CHAIR WILLIAMS:Mr. Tillery. Seconded by Ms.
12 Brown. Discussion on the motion? Alex? Gina?

13 MS. BELT: I think the Trustee Council members should
14 just simply be aware that DOJ is still looking at this
15 resolution and means for getting the money available early and
16 clearing up any concerns we have about doing that.

17 As you probably know, one of the things we have to do
18 is waive title standards, and at this point, we're a little
19 reluctant to go to the court before that's done. But we also
20 want to assure ourselves that there is a mechanism for getting
21 the money back in the -- what I believe is the unlikely event
22 that there is some condition unfulfilled.

23 MR. WOLFE: Gina, you're cutting out on us. Is
24 Justice going to be okay with this provision or.....

25 MS. BELT: The long and short of it, Jim, is that I

1 think, between Alex and Craig and Barry and me, next week we
2 should probably be able to resolve this issue.

3 MR. WOLFE: Okay.

4 MR. SWIDERSKI: And I think that that means Justice
5 is okay with the resolution and moving ahead with the
6 resolution.

7 MR. TILLERY: But they may still come back and say,
8 'We refuse to go get the money.'

9 MR. SWIDERSKI: Right.

10 MR. TILLERY: I guess I would like to make it clear
11 that the sense of the resolution is that obtaining the waiver
12 of title standards is one of the things that has to be done
13 before we get the money. We're not trying.....

14 MR. SWIDERSKI: And then the.....

15 MR. TILLERY:to bypass that.

16 MR. SWIDERSKI: Right. And that's -- I mean,
17 that's.....

18 MR. TILLERY: The sense of that.

19 MR. SWIDERSKI:explicitly in -- it's in the
20 resolution in that it references the purchase agreement.....

21 MR. TILLERY: Yeah, and it somehow.....

22 MR. SWIDERSKI:which requires that.

23 MR. TILLERY: I just want to make sure that we don't
24 have to come back and have another meeting to do another
25 resolution to say that. It's in here. It's intended that that

1 covers that.

2 CHAIR WILLIAMS: Molly?

3 MS. McCAMMON: Madam Chair, I mean, if Justice's
4 concern that was expressed was a concern about being able to
5 get the money back, if you go to the court for the money, the
6 court gets -- the money gets put into the State account. If,
7 for some reason, this deal doesn't go forward, does the State
8 have the mechanism to actually transfer it back to the CRIS
9 account, or would you merely leave it there and then deduct any
10 future work plan.....

11 MR. TILLERY: We could do either.....

12 MS. McCAMMON:expenditures.....

13 MR. TILLERY:and typically we.....

14 MS. McCAMMON:off of it?

15 MR. TILLERY:would leave it in there and deduct
16 future expenses from it, as we and the federal government have
17 done on many occasions.

18 MS. McCAMMON: Have done in the past?

19 MR. TILLERY: Yes.

20 MS. McCAMMON: So there really.....

21 MR. TILLERY: This is a.....

22 MS. BELT: Well, that was explained to me about an
23 hour before this meeting, and I want to look at the financial
24 operating procedures again to assure myself that's the case.
25 So I don't think there's an issue on that.

1 MS. McCAMMON: Okay.

2 MS. BELT: But there is this other issue about the
3 title waiver.

4 MS. McCAMMON: Okay. And actually, the interest in
5 the State account is comparable to the interest in the CRIS
6 account, so it's about the same. It would be earning interest
7 about the same amount in either account.

8 CHAIR WILLIAMS: So, Gina, do you recommend any
9 modifications to the resolution as written now?

10 MS. McCAMMON: You may not have the most recent
11 version. Just.....

12 MR. SWIDERSKI: Well, Gina's.....

13 MS. BROWN: Well, I think Alex just gave it to me.

14 (Pause - Whispered comment)

15 MS. BELT: Alex, I thought we had talked about some
16 language to the effect that no funds may be expended until the
17 conditions were satisfied. Right now, it says the funds may be
18 paid to KIB at the time of closing.

19 MS. McCAMMON: And only after the terms and
20 conditions were met.

21 MR. SWIDERSKI: Right. But that -- doesn't that
22 capture the language, after the terms and conditions.....

23 MR. PENNOYER: Yeah, it's covered in the.....

24 MR. SWIDERSKI:in paragraphs (a) through (d) of
25 the resolution and (a) through (c) and the purchase agreement?

1 (No audible response)

2 MR. SWIDERSKI: Maybe I misunder-.....

3 MS. BELT: Well, I guess without having seen the
4 financial operating procedures, I'd have to take it on faith
5 that you couldn't -- that you can use it, you could use the \$8
6 million for other purposes than this transaction.

7 MR. SWIDERSKI: No.

8 MS. McCAMMON: No.

9 MR. SWIDERSKI: We could use up to \$25,000.....

10 MS. McCAMMON: No.

11 MR. SWIDERSKI:of it.

12 MS. BELT: Oh. Okay.

13 MR. SWIDERSKI: For other authorized activities.

14 MS. BELT: Okay.

15 MR. SWIDERSKI: But beyond that, you would need
16 specific authority from the Council to use it.

17 MS. McCAMMON: Right.

18 MS. BELT: Okay. And so that's why I thought earlier
19 today you were suggesting that this sentence that starts at the
20 very bottom of page 1, "The funds may be paid to KIB...." be
21 changed to, "No funds may be expended by the State until...."

22 MR. SWIDERSKI: We talked about that. I didn't.....

23 MS. BELT: Okay.

24 MR. SWIDERSKI:realize that you actually wanted
25 me to include that. We can make.....

1 MS. BELT: Oh. I thought you had proposed the
2 change, so.....

3 MR. SWIDERSKI: We can certainly do that.

4 CHAIR WILLIAMS: Okay. If we make that change, Gina,
5 you'll feel comfortable with the resolution? Okay.

6 MS. BELT: I'm not a party to the resolution but.....

7 CHAIR WILLIAMS: Right.

8 MS. BELT:yeah, I'm having.....

9 CHAIR WILLIAMS: Okay. Okay. We will -- and, Alex,
10 you feel comfortable making that change; correct?

11 MR. SWIDERSKI: Sure.

12 CHAIR WILLIAMS: Okay. Okay. The change -- I don't
13 know if everyone has it in front of them, but it's at the
14 bottom of page 1, at least in the most recent draft, the
15 sentence that starts with, "The funds may be paid to the KIB at
16 the time closing.....," that will be struck, and it will say
17 something like, "The State cannot...."

18 MR. SWIDERSKI: No funds may be expended.

19 CHAIR WILLIAMS: "No funds may be expended by the
20 State until after the terms," and then we kick into the --
21 okay. All right.

22 Friendly amendment to the motion, I assume, to the
23 people who made and seconded the motion? Any further
24 discussion about the resolution?

25 (No audible response)

1 CHAIR WILLIAMS: We'll take a vote. All those in
2 favor of the resolution as amended, indicate by saying aye.

3 ALL TRUSTEE COUNCIL MEMBERS COLLECTIVELY: Aye.

4 CHAIR WILLIAMS: Opposed?

5 (No audible response)

6 CHAIR WILLIAMS: Okay. Thank you. Let's then go
7 back to Eyak Core Lands. Phil?

8 MR. JANIK: Yes, Madam Chair. What I would like to
9 do is simply, for the record -- the public record, describe
10 what actions will be in motion here over the next several days
11 in terms of preparing a Trustee Council offer to Eyak
12 Corporation for purchase of Eyak Core Lands.

13 In Executive Session, and that discussion in the
14 Executive Session took place as a result of a recent meeting
15 that occurred between Board members of Eyak Corporation and
16 several of the Trustee members and the Executive Director
17 regarding the mutual desirability of reinitiating discussions
18 on possible purchase of the Eyak Core Lands by the Council.

19 Conceptually, that was discussed during the Executive
20 Session, and what is going to be happening over the next few
21 days is that there will be a formal offer prepared that will be
22 ready for presentation to Eyak Corporation sometime next week.

23 (Side comment)

24 MR. JANIK: Yeah, obviously subject to presentation
25 and approval of the Council members.

1 The conceptual nature of the discussion during the
2 Executive Session will now get further refined in preparation
3 of that offer and submission back to the Council with the
4 specifics and conditions of the offer as well as the actual
5 dollar amount. And again, sometime next week is the target
6 date for preparation completion and presentation to the Council
7 of that paperwork.

8 Madam Chair, I don't know if there's any more we can
9 say about this at this time, other than that the Council is
10 very interested in pursuing a purchase, as long as that
11 purchase meets the conditions, of course, in the judgment of
12 the Council, as being reasonable and appropriate.

13 CHAIR WILLIAMS: Very good, Mr. Janik. Any further
14 discussion about Eyak Core Lands?

15 (No audible response)

16 CHAIR WILLIAMS: All right. Anything else that the
17 Council wishes to raise at this time?

18 MR. SWIDERSKI: Molly, do you want to.....

19 MS. McCAMMON: I need more information.

20 MR. SWIDERSKI: Okay.

21 MS. McCAMMON: We'll do it next week.

22 Madam Chair, the only thing I would like to note is
23 that the long-term investments for the reserve account were
24 made a week ago Thursday.

25 CHAIR WILLIAMS: Good.

1 MR. TILLERY: (Laugh) Congratulations.

2 CHAIR WILLIAMS: Yes, congratulations. Anything on
3 the audit, Ms. McCammon, you'd like to.....

4 COMMISSIONER RUE: Madam Chair?

5 CHAIR WILLIAMS: Yeah.

6 COMMISSIONER RUE: If you don't mind, I have to.....

7 CHAIR WILLIAMS: Yes.

8 COMMISSIONER RUE:go to another.....

9 CHAIR WILLIAMS: Mr. Rue, that's fine.

10 MR. PENNOYER: Madam Chair, I do too.

11 CHAIR WILLIAMS: Okay, Mr. Pennoyer. Thank you.

12 MR. PENNOYER: Thank you.

13 CHAIR WILLIAMS: And we'll talk to you Tuesday or
14 Wednesday. All right. I will entertain a motion to recess
15 this meeting of the Trustee Council until next Tuesday or
16 Wednesday, at which time we will address Eyak Core Land issues
17 in more detail. Do I entertain a motion to recess?

18 MR. JANIK: Phil Janik. So moved.

19 MS. BROWN: Second.

20 CHAIR WILLIAMS: Thank you, Phil. Second by Ms.
21 Brown. It's been moved and seconded to recess until next
22 Tuesday or Wednesday. All in favor, indicate by saying aye.

23 ALL TRUSTEE MEMBERS COLLECTIVELY: Aye.

24 CHAIR WILLIAMS: Thank you very much. Have a good
25 weekend everyone.

1 MR. JANIK: You too.

2
3 (Whereupon, the proceedings in the above-entitled
4 matter were recessed at 3:09 p.m.)
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C E R T I F I C A T I O N

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)
_____)

I, **CINDY S. CARL**, do hereby certify:

(1) That the foregoing pages contain a full, true, and correct transcript of proceedings in the above-entitled matter, transcribed by me, or at my direction and supervision, to the best of my knowledge and ability.

(2) That I have been certified for transcript services by the United States Courts.

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BY: Cindy S. Carl
Cindy S. Carl
Certified Court Reporter

DATE: 3/1/96

