

18.1.8

NEGOTIATORS MEETING
FEBRUARY 16, 1994

**Negotiators Meeting
February 16, 1994
10:00 a.m.**

Attendees

Dave Gibbons
Judy Robinson
Dennis Lattery (teleconference)
Rich Goossens
Chuck Gilbert
Barry Roth
John Harmening
Jess Grunblatt
Alex Swiderski
Tom Gerlach
Mark Kuwada
Norman Lee
Bob Rice

DISCUSSION ITEMS/HANDOUTS

Memorandum of Understanding
Appraisal Standards
Parcel Action Summary - Negotiation Steps
Project 94126 - Habitat Protection and Acquisition Fund
Letter re: Discussion Paper on Use of Government Comparables in Valuing Property

Dave - he will go through the documents distributed for review and take the comments for consideration. He will prepare a final draft document. A budget needs to be finalized for the court request.

Alex - Maria and he drafted a new MOU. The content hasn't changed much; however, the document doesn't look the same.

Rich - Norm and he got together and added one line to the existing contract appraisal specs involving the EVOS acquisitions.

Norman - the MOU doesn't address if we turn down an appraisal and find it unacceptable. What happens if one agency rejects it and two agencies accept it, does the lead agency have the power to override. He would also like to see some mention of fee simple estate.

Rich - under Forest Service, we have a face-to-face pre-work conference with the individual and

go over each point of the contract specifications to make sure they are clarified.

Norman - we should also include use pattern in the definitions, as well as market value, which forces them to look at financial feasibility.

Norman - he would like to see a certification page on what is required for certification.

Dave - due to the new versions circulated of the MOU and the specifications, comments will be due by the close of business on Friday. Written comments can be provided by fax.

Chuck - Barry feels this doesn't address sales outside the affected area. You might want to discuss that sales outside the geographic area cannot be considered.

Bob - you don't want to rule out areas outside Alaska.

Chuck - it has to be the same geographic area.

Rich - if we try to second guess all the problem areas, we leave little room for interpretation. He would allow the appraisers some latitude in deciding what is appropriate.

Dennis - we have standards and case law on our side.

Rich - if the lead agency approves it, the appraiser can be paid.

Dave - does everyone agree with that?

Everyone - yes.

Dave - Carol sent out the Project Description for 94126; however, he wanted the detailed budget for agencies. This will be included with the package due for comment on Friday. We will meet on Friday afternoon at 1:00 p.m.

It might be easier to move all the appraisal costs under the Forest Service. The title search would stay under the agencies.

Rich - Dianne contracts out to a title company. If it is easier to juggle less funds around, we could do it with a contract.

Chuck - the way the process is set up, there is no guarantee we will do appraisals until the TC says so. If we could put money in one place to do title reports, it would be easier. He would recommend getting money to individual agencies to get title reports. NPS is not guaranteed they will have an approved appraisal for English Bay. He needs to add something to contingency.

Dave - the only stipulation is the cap.

Alex - hopefully, it will be high.

Dave - we should figure out an estimate of how many parcels will be done between now and the end of September and figure out a cost.

Rich - he has a draft of the first three quarters of analysis for Chenega. He likes what he sees so far. There is some polishing here and there. We need to address figuring out who will be doing what. We need to get the timber cruisers ready to hit the field.

Dave - we should have an estimate.

Alex - Dennis, were you comfortable with the timber appraisals for Seal Bay?

Dennis - very much; it was world class.

He is not comfortable talking budgets.

Dave - he needs appraisal numbers to see if these are reasonable estimates.

Rich - he will double check with Dianne Blacksmith on the rates that were quoted.

Dave - his only concern is making sure it is enough so we don't have to go back to the court. Part of the package was a Parcel Action Summary, which Carol will be using. He has questions. Wouldn't the appraiser like to have hazardous material and spruce bark beetle reports prior to appraisal?

Rich - most appraisers have disclaimers in their report that they have not done HAZMAT reports. It would be nice if these reports are in the appraisal process.

Bob - water rights should be included in our process. We should do a water rights assessment, depending on the area.

John - this will show up in the title search. We do not have to specify water rights.

Chuck - we would like to write some things up and suggest some changes to the Parcel Action Summary on Friday.

Dave - the Parcel Action Summary will be standardized. The last item is on government comparables. We will ship this out for comment.

Alex - everyone should at least look at it.

Bob - the troublesome thing is they are asking for joint control with us.

Rich - in this draft of Blacksmith and Richards' analysis, they give a critique on improper utilization of sales and why those other sales were inappropriate.

Alex - we don't want to ignore Jamin, Ebell, Bolger & Gentry's input. We should consider it before we finalize this thing.

Dave - they will be involved in the meeting next week.

Rich - it is fine to address their concerns but Norm and Bob's point is this is our program. We will give them a fair program. The willing seller program is take it or leave it. If we have two or three appraisals out there, we will have a mess. We will be doubling or tripling our work load. We should look at the contract specs and incorporate the comments. We shouldn't let it get muddled anymore. As a matter of policy, he doesn't have a problem releasing the appraisal report if the reviewer is comfortable with that.

Norman - you make them an offer, and they either take it or leave it.

Alex - or else you will open the door to a steady stream of phone calls and lobbying.

Rich - only after review and approval, have we released the appraisal to the landowner.

Dave - so it is not FOIAable?

Bob - not until the transaction is closed. We just make an offer. If they want to come in and discuss it, they can.

Dave - the Negotiation Process Flowchart was also faxed out.

Chuck - title reports should be put in box #2.

Dave - he has some word changes also. On Friday at 1:00, we will discuss the following:

Standards - dated 2/16

MOU - faxed date of 2/16

Detailed Budgets - cost associated with title reports/appraisals, HAZMAT

Parcel Action Summary - Negotiation Steps

Negotiation Process Flowchart

Dave - we will review the letter from Jamin, Ebell, Bolger & Gentry and discuss it with them when they show up for the meeting next week.

Rich - he has no objections to sharing the contract specs so that people will know how we do our business.

Dave - the meeting next week with landowners is to discuss the use of government comparables. As soon as he gets more details, he will let everyone know.

John - it doesn't make sense to have the meeting until the MOU and the specs are finalized.

Dave - can this be done?

Bob - we ought to be able to do that.

Chuck - he can try.

Barry - he thinks all the MOU development came about because The Nature Conservancy advocated early on bringing in the seller. The MOU doesn't seem to say how we are going to coordinate internally. You might want to eliminate uncertainties but you don't have authority to change the standards.

Chuck - if the landowner wants to get their own appraiser, they are free to do so. We all agree that government comparables can be used if they meet the standards. We could add something to the specifications regarding government sales. There is some suspicion on the public's part regarding government sales.

Barry - one way to avoid problems in the meeting next week is you could let the public present their cogent arguments, and you explain what the standards are and how they work.

Rich - he doesn't want to get into a situation of negotiation rather than clarification as far as the contract specs go.

Meeting adjourned at 11:30.

9/16/94

FAX

Dave Gibbons	U.S. Forest Service	586-8784	586-7555
Judy Robinson	DNR	762-2409	561-5807
Dennis Hattery	DNR	762-2405	561-5807
Rich Goossens	USFS	586-7874	586-7843
Chuck Gilman	NPS	257-2584	257-2570
Barry Roth	DOI/SOL	202-208-6172	202-208-3877
John Hermenine	USFS	586-7871	586-7843
Jess Grunblatt	DNR	278-8012	
Alex Swiderski	DOI	269-5279	
Tom Gerlach	USFWS	786-3342	
Mark Kuwada	ADFG	267-2277	349-1723
Norman Lee	NPS	257-2587	257-2510
Bob Rice	USFWS	786-3372	786-3635

* include
Standards

MEMORANDUM OF UNDERSTANDING
AMONG THE STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES, THE
UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE
AND U.S. FISH & WILDLIFE SERVICE, AND THE UNITED STATES
DEPARTMENT OF AGRICULTURE, FOREST SERVICE,
REGARDING AN APPRAISAL PROCESS FOR THE ACQUISITION OF INTERESTS
IN LAND IN SUPPORT OF THE EXXON VALDEZ OIL SPILL RESTORATION

I. INTRODUCTION

The Exxon Valdez Oil Spill Trustee Council (Trustee Council) at its January 31, 1994, meeting authorized and directed its Executive Director to develop a standardized appraisal process, including standardized appraisal instructions to be used to appraise interests in land under consideration for acquisition and habitat protection as part of the Trustee Council restoration process. This Memorandum of Understanding (MOU) among the Alaska Department of Natural Resources, the U.S. Department of the Interior, National Park Service, the U.S. Department of the Interior, U.S. Fish and Wildlife Service, and the U.S. Department of Agriculture, Forest Service (USFS) (collectively "the Parties") is therefore entered into to ensure that appraisals of interests in land considered for acquisition are conducted and reviewed in an efficient and uniform manner.

II. AUTHORITIES

The parties enter into this MOU in accordance with the authorities provided to the State and Federal Governments pursuant to the October 1, 1992 Memorandum of Understanding Among the State and Federal Natural Resource Trustees and authorities cited therein, including Section 311(f) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. § 1321(f), and the Memorandum of

Agreement and Consent Decree approved and entered on August 28, 1991, in *United States v. State of Alaska*, No. A91-081 CV.

III. PURPOSE

The purpose of this MOU is to implement a standardized appraisal and review process for interests in land to be acquired in accordance with the Trustee Council resolution of January 31, 1994.

IV. APPRAISALS

1. The Parties shall develop and prepare standard appraisal instructions that shall be applied to each appraisal of interests in land proposed for acquisition as part of the restoration process. All appraisals shall comply with State of Alaska appraisal standards and the *Uniform Appraisal Standards for Federal Land Acquisitions*, 1992.

2. The USFS has entered into a contract for the procurement of appraisal services, which was entered into in anticipation of a large scale appraisal program in support of the Trustee Council restoration program. The Parties agree that use of the USFS contract by all of the Parties will result in considerable savings of time and costs by reducing duplicative efforts by each of the Parties. The USFS shall provide contracting services for appraising all interests in land proposed to be acquired by any of the Parties for purposes of restoration. Responsibility for the overall administration of the appraisal services contract shall remain with the USFS. The Party identified by the Trustee Council as the "Lead Negotiating Agency" for the interests in land to be

appraised shall be responsible for conducting preliminary work prior to the issuance of a work order by the USFS (e.g. preliminary title reports, background information, etc.). The Lead Negotiating Agency shall coordinate with the individual designated by the USFS as the Contracting Officer's Representative (COR) for the initial preparation of the contract work order and for contract negotiations. Sufficient funds to undertake the requested appraisal shall be provided timely to the USFS pursuant to a method designated by the Executive Director for the Trustee Council. Prior to payment for the performance of appraisal services, the COR and the Lead Negotiating Agency must agree that payment to the contractor is appropriate.

V. APPRAISAL REVIEWS

The Lead Negotiating Agency shall function as the lead agency for conducting a formal appraisal review. Copies of all appraisal reports shall be distributed to each Party for coordination and comment. The Lead Negotiating Agency shall be responsible for preparing a written, detailed draft appraisal review that shall be distributed to all of the Parties for review and comment. The Lead Negotiating Agency shall approve or reject the appraisal only after receiving written comments from review appraisers from each of the other Parties. The COR shall ensure the contract appraiser is responsive to the Lead Negotiating Agency review appraiser.

VI. MISCELLANEOUS

1. Nothing in this MOU shall be construed as obligating the United States or the State of Alaska to expend any funds in excess of appropriations authorized by law.
2. The rights and responsibilities contained in this MOU shall not be the basis of any third party challenges or appeals.

VII. AMENDMENTS AND TERMINATION

Amendments, modifications or termination of this MOU may be proposed by any Party and shall become effective upon unanimous written approval of the Parties. This MOU shall otherwise terminate upon the earlier of the completion of the Trustee Council's restoration program, the expenditure of all Joint Trust Fund monies, or the expiration of the USFS contract for the procurement of appraisal services.

VIII. EXECUTION

This MOU may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU. The date of execution shall be the date of the final Party's signature.

DATE: _____

Harry Noah
Commissioner
Alaska Department of Natural Resources

DATE: _____

John M. Morehead
Regional Director, Alaska Region
National Park Service

DATE: _____

Walter O. Steiglitz
Regional Director, Region 7
U.S. Fish & Wildlife Service

DATE: _____

Michael A. Barton
Regional Forester
USDA, Forest Service

2/16/99

UNLESS SPECIFICALLY STATED OTHERWISE, THE FOLLOWING SPECIFICATIONS APPLY TO BOTH FEE SIMPLE LAND APPRAISALS AND PARTIAL ESTATE INTEREST APPRAISALS.

C.3 GENERAL SPECIFICATIONS

A. The Contractor shall furnish all materials, supplies, tools, equipment, personnel, travel and shall complete all requirements of this contract including performance of the professional services listed herein.

Four copies of the Draft Appraisal Report shall be submitted in a three ring loose leaf binder. The contractor will furnish one original and three copies of the final appraisal. The report shall provide an estimate of cash fair market value for the fee simple estate free of all assessments, and shall conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as published by The Appraisal Foundation, and the Uniform Appraisal Standards for Federal Land Acquisitions. In case of a perceived conflict between the two standards, the latter standard will take precedence.

The Narrative Appraisal Report shall conform to recognized appraisal format, principles, and practices applicable to estimating cash fair market value, as required in the Uniform Appraisal Standards for Federal Land Acquisition 1992 Edition. (ISBN 0-16-038050-2)

B. Narrative Appraisal Report.

The Contractor shall make a detailed field inspection and identification of the item(s) of property as specified in each Task Order, and shall make such investigations and studies as are appropriate and necessary to enable the Contractor to derive sound conclusions and to prepare the appraisal report.

C. Examination Notice.

The Contractor shall provide the property owner and the Government 10 days advance notice of the examination date and shall give the owner, or his designated representative, and the Government an opportunity to accompany the Contractor during his inspection of the property. These notices shall be documented in the Contractor's transmittal letter of the appraisal report. The Contractor shall certify that the signor of the report has personally visited the subject property(s) and all of the comparable transactions used in the comparative analysis.

D. Updating of Report.

Upon the request of the Government, the Contractor shall during a two-year period following the valuation date of the appraisal report show value as of a specified date. The contractor will furnish one original and three copies of the updated report, which shall include sales data or other evidence to substantiate the updated conclusion of value if a change in value occurs.

E. Testimony

Upon the request of the United States Attorney or the Department of Justice, or the State Attorney General, the Contractor shall testify in any judicial proceedings, as to the value as of the valuation date of any and all property included in the appraisal report.

Item (F) is applicable to partial estate interest appraisals only.

F. Estate to be Appraised.

1. When a partial estate interest is appraised, it will conform to UASFLA and will incorporate a before and after appraisal meeting agency standards as described in the task order.

2. After the market value of the fee estate has been determined, the appraiser may be requested to determine the contributory value of the various estates. The contributory value of the various estates will equal the market value of the fee estate.

C.4 TECHNICAL SPECIFICATIONS

4.1 REPORT

A. Format.

The report shall be typewritten on bond paper sized 8 1/2 by 11 inches with all parts of the report legible and shall be bound with a durable cover and labeled on the face. The label will identify the appraised property, the contract number, appraiser's name and address, and the date of the appraisal. All pages of the report, including the exhibits, shall be numbered.

B. Contents.

The report shall be divided into tabulated parts:

- Part I - Introduction
- Part II - Factual Data
- Part III - Analyses and Conclusions
- Part IV - Addenda

The content of the report shall, as a minimum, contain the following:

1. PART I - INTRODUCTION

a. Title Page shall include (1) the borough name(s) and general location(s) of the property; (2) that the appraisal is for the lead agency identified in the task order; (3) name and address of individual and the firm or corporation making the appraisal report; (4) the report date.

b. Table of Contents shall be arranged in accordance with the sequence of topical headings with corresponding page numbers.

c. Summary of Facts and Conclusions shall be a brief resume of the essential highlights of the report in order to offer a convenient reference to basic facts and conclusions. Items which shall be included are (1) Name of project and agency; (2) owner of record; (3) location or legal description; (4) name of appraiser; (5) dates of field work; (6) date of inspection; (7) effective date of appraisal; (8) interest under appraisement; (9) size; (10) highest and best use; (11) appraised values.

d. Statement of Assumptions and Limiting Conditions. The Contractor shall include in the report a statement of assumptions and limiting conditions related to the appraisal of the property.

e. References. The Contractor shall list the sources of data incorporated in the report, such as records, documents, technicians, or other persons consulted along with a statement of their qualifications and identification of their contribution to the report.

2. PART II - FACTUAL DATA

a. 1. Purpose of Appraisal for Partial Estate Interest Appraisal. The Contractor shall state that the purpose is to estimate total compensation for the estate to be acquired considering damages and/or benefits to the remainder. It shall include the function of the appraisal and a description of the estates appraised in both the before and after conditions.

2. Purpose of Appraisal for Fee Simple Land Appraisal. The Contractor shall state that the purpose is to estimate fair market value for the property. It shall include the function of the appraisal, and a definition of all values required and property rights appraised.

b. Definition of Fair Market Value. The definition is that as described in the UASFLA.

c. Estate Appraised. Describe the Estate to be appraised and the legal description of the subject property.

d. Area and Neighborhood Data. The report shall include a concise discussion of market area, trends in use, and neighborhood and area analysis. This data (social, economic, and political) shall provide the basic information leading to a conclusion of highest and best use and shall include only information that directly affects the value of the property being appraised.

e. Property Data. The report shall include a narrative description of significant land features and all improvements. This section shall show the availability and suitability or adaptability of the property for the highest and best use. The property data shall include, as a minimum, the following:

1. A description of the land, giving dimensions, size, shape, access status and characteristics, land types, topography, timber, livestock forage, mineral character, and other characteristics that might affect value. If there is an indication that timber or mineral deposits have commercial value, this

should be stated. If part of the property is assigned higher value than other portions, prepare a map delineating the various land classes.

2. A discussion of outstanding rights or possessory interests (easements, permits, leases, adverse possession, etc.) describing the type, area, condition, terms, rates, and their affect on value.

3. A description of all improvements, discuss each with reference to its physical condition, present use, obsolescence, and its contribution to the highest and best use.

4. A statement of the current assessed value and dollar amount of property taxes and discuss their affect on value.

5. Cite the zoning and other restrictions for the subject property and discuss their affect on value.

6. Discuss the affect on value of reservations and covenants described in the estate.

7. Distinguish between any real property and personal property values.

8. Discuss any environmentally threatening factors that may affect the property such as toxic waste, physical hazards, or noxious materials.

3. PART III - ANALYSES AND CONCLUSIONS

a. Analyses of Highest and Best Use. State the highest and best use or combination of uses that can be made of the property (land and improvements) for which there is current private open market. Give evidence of the demand for such use. If the highest and best use is different than the present use, discuss how the property is available, suitable, adaptable, and in demand for the new use. Be cautious in identifying highly speculative uses that are contingent on occurrences that are not demonstrated in the marketplace within which the subject might compete. Investment for profit or speculation in and of themselves are not acceptable highest and best uses without the identification of the physical interim use and anticipated future use that is being anticipated. Highest and best use cannot be predicated on a demand created solely by the project for which the property is taken (e.g., rock quarry, when the only market is a highway project for which the property was taken). A proposed highest and best use cannot be the use for which the government is acquiring the property (e.g., missile test range, airfield, park), unless there is a prospect and demand for that use by others other than the government.

b. Data Analysis. This section, divided into topical headings, shall contain the appraiser's discussion and analysis of market trends and elements of value. The text may refer to factual data included in the Addenda to the report.

The appraiser shall specifically state his conclusion, the factual data calculations, and the process of reasoning that led him/her to that conclusion.

The following items, as a minimum, shall be discussed in this section:

1. Cash Versus Contract Sales. All value estimates made in the appraisal report will be on the basis of cash or cash equivalence. The effect of financing on market value will be considered and the conclusions documented in this section. Cash equivalent is defined as: That price that would have been in effect, had the terms been all cash.

2. Price-time trends.

3. Physical Characteristics. The effect on value of elements such as size, location, access characteristics and status, road or highway frontage, restrictive covenants, zoning, utilities, view, vegetative cover, water frontage, mineral character and potential, and other elements of value as demonstrated in the market.

c. Estimate of Value. The appraiser's estimates of value shall be developed in a logical sequence using accepted approaches to value supported by confirmed factual data.

1. Approaches to Value. Value shall be based upon the properties highest and best use, which may differ from as present use, and shall be supported by confirmed transactions of comparable lands having similar highest and best uses. In all cases the three approaches to value (cost, income, and direct sales comparison) shall be considered, and used, if applicable. At a minimum, the appraisal report shall contain a direct sales comparison approach which analyzes and compares the subject to all appropriate comparable sales, ending in a subject property value indication based on each sale. All such direct comparison indications shall then be correlated to a final estimate of value.

2. Comparable Sales. The appraiser shall personally visit, investigate, list in the report, and be prepared to testify with respect to all sales which may be pertinent to the valuation of the subject. The sales considered and not actually used by the appraiser shall be listed in a table in the addenda. This list shall cite pertinent facts such as date, size, buyer and seller, price, terms, location, etc., and include a remark as to why each sale was not used in the estimate of value. All comparable sales used in the valuation discussion shall meet the test of market value. All transactions used shall be verified with a parties knowledgeable of the sale, (grantor, grantee, broker). Include date of confirmation, the name of the party with whom the sale was confirmed, and the name of the person confirming the sale. EVOS related transactions will not be used as comparables because they are project driven and not arms length.

The appraiser shall examine all prices and terms of comparable sales as to their equivalency to cash. Where comparable sales prices are adjusted because of terms or for other reasons, the amount of the adjustment shall be supported by presentation of factual evidence and the appraiser's reasoning.

The sale price of comparable sales used in this appraisal report shall be adjusted for appreciation or depreciation, if any, for the period of time between the sale date and the valuation date (Market condition) the amount of the adjustment shall be clearly stated. The basis for the adjustment in the form of an analysis of available pertinent market evidence shall be presented. Sales and resales of unaltered properties similar to the comparables and in the

same market area, are preferred indicators of market condition. To be useful, such sales and resales must have occurred during the approximate period for which other comparables are being adjusted. Raw statistics on broad classes of property and covering large geographic areas will not suffice as a basis for the above described adjustments.

When using the direct sales comparison approach the appraiser shall, for each sale listed, discuss: Parties to the transaction, date of the transaction, acreage, legal description of property, interest conveyed, consideration, conditions of payment (cash or terms--contract sales will be discussed and conclusions made as to their cash equivalence), improvements (kind and whether they contribute to highest and best use), personal property, any outstanding rights and reservations and their effect on value, and physical description--topography, cover, etc. Each comparable site should be described in narrative form in sufficient detail to indicate how it compares to the subject property in elements affecting value. Buyer motivation of the comparable transaction must be discussed. The potential for development as of the date of purchase shall be explored and presented.

When adjustments are made to comparable sales, the basis for the adjustments shall be shown in sufficient detail and supported by all available market evidence to allow the reviewer to judge their validity and acceptability. The data will be presented in narrative form as well in comparison grids or tables.

When the value of the subject property and comparables are highly similar, lump sum adjustments are acceptable, though the elements of dissimilarity affecting value shall be listed. If quantified adjustments are made, they shall be directly supported by verified market evidence.

3. In the direct sales comparison approach, the last sale of the subject property shall be listed. If it is a valid sale, it shall be qualified and given appropriate consideration in the value conclusion.

4. In the income and cost approaches, all cost and income estimates shall be supported by comparative costs or rental data for similar properties. The methods used to determine capitalization rates, accrued depreciations, and depreciation rates shall be discussed and computations and comparisons shown. Comparison charts (such as rental comparisons, constructions cost comparisons, etc.) shall be developed where feasible.

Items 5 through 8 are applicable only to partial estate interest appraisals:

5. In accordance with established legal principles and procedures the before value of the property shall be estimated as of the date of the appraisal without allowance of enhancement and/or diminution in value due to the project.

6. In the before taking appraisal, sales occurring after the date of the project shall be used in estimating value only if there is no project-related enhancement and/or diminution. In the after taking appraisal applicable sales occurring up to the date of the appraisal shall be used with full consideration given to the effects of the taking and the project in the estimate of value.

7. In the after taking appraisal, the estimate of value shall be developed by comparison with sales of properties encumbered by similar easements. If

this cannot be done, the appraiser shall develop the estimate by direct comparison or other use of sales which give evidence of the value attributable to the subject's utility in its encumbered state.

8. The after taking appraisal shall, as a minimum, contain the following:

- a. A brief description of the part taken.
- b. A description of the property rights taken and a discussion of all the restrictions on the grantor and affect, if any, on the value of the subject.
- c. A discussion of the appraiser's interpretation of the property rights taken.
- d. A comprehensive description of the remainder in the after taking condition.
- e. A discussion of the effect of the taking and the project on the remainder, showing highest and best use in the after condition and describing how benefits or damages occur.

d. Correlation and Final Value Estimate. The appraiser shall interpret the foregoing estimate and shall state his/her reasons why one or more of the conclusions reached in the estimate of value section are the best indicators of market value of the subject. The indicated value estimates derived through more than one approach to value will be correlated to reach the final estimate of value. If only the direct sales comparison approach is used, the indications given by the various sales will be correlated to reach the final estimate, showing which sale or sales were considered most comparable and provided the best value indicators. Where the "before and after" method is used to estimate just compensation, separate correlations are needed for the "before estimate" and the "after estimate".

The following item is applicable to partial estate interest appraisals only:

e. Estimate of Total Compensation. The appraiser's estimate of total compensation shall be derived as the difference between the estimated market value before the taking and the estimated market value of the property after the taking and as affected by the project. The method automatically takes into account diminution in value of and any benefits to the remainder.

This shall be shown as follows:

Value Before	\$ _____
Value After	\$ _____
Estimate of Just Compensation	\$ _____

The estimate of just compensation shall be summarized as follows:

Value of Part Taken	\$ _____
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Damages	\$ _____
Benefits	\$ _____
Estimated Total Just Compensation	\$ _____

The sum of the value of the part taken and damages, less the benefits, must equal the difference between the before and after values.

4. PART IV - ADDENDA

All maps shall be originals of high quality with properties depicted in color (i.e. subject - red; comparable - green). They shall be of sufficient detail, with legend, scale, and north arrow, in order that properties may be readily located on the ground using the maps.

The addenda shall include:

a. Area Map - Small scale map showing the general location of the subject neighborhood.

b. Neighborhood map - Shall show the subject property in its vicinity. The area and neighborhood maps may be combined.

c. Subject Property Map or Plat - A large scale map that shows the dimensions and topography of the subject property.

d. Comparable Sales Location Map - This shall show the location of sales used in estimating market value of the subject property in relation to the subject.

e. Comparable Sale Form - For all transactions used in the appraisal show all of the pertinent information concerning each comparable. At a minimum, each verification will display the names of the state and geographic location, recording district, community area, grantor, grantee, estate purchased, instrument, tax parcel number, book/page, date, size, price, price, date of verification by whom and with whom, terms, legal description, access, utilities, zoning, highest and best use, current use, improvements, vegetation, topography, and soils. There should also be a remarks section.

f. Full legal description of subject property as presented in the preliminary title report.

g. Statement of the date(s) the subject property was inspected with property owner or his/her representative, and the government is representative (or a statement that property owner were government representative invited but declined to accompany appraiser on the inspection).

h. Photographs - The Contractor shall provide representative high color photographs of the subject property and all comparables in the final report. Photographs may be provided as a separate exhibit in the addenda or included along with the narrative description of the subject

property and sales. The following information shall be shown with each photograph:

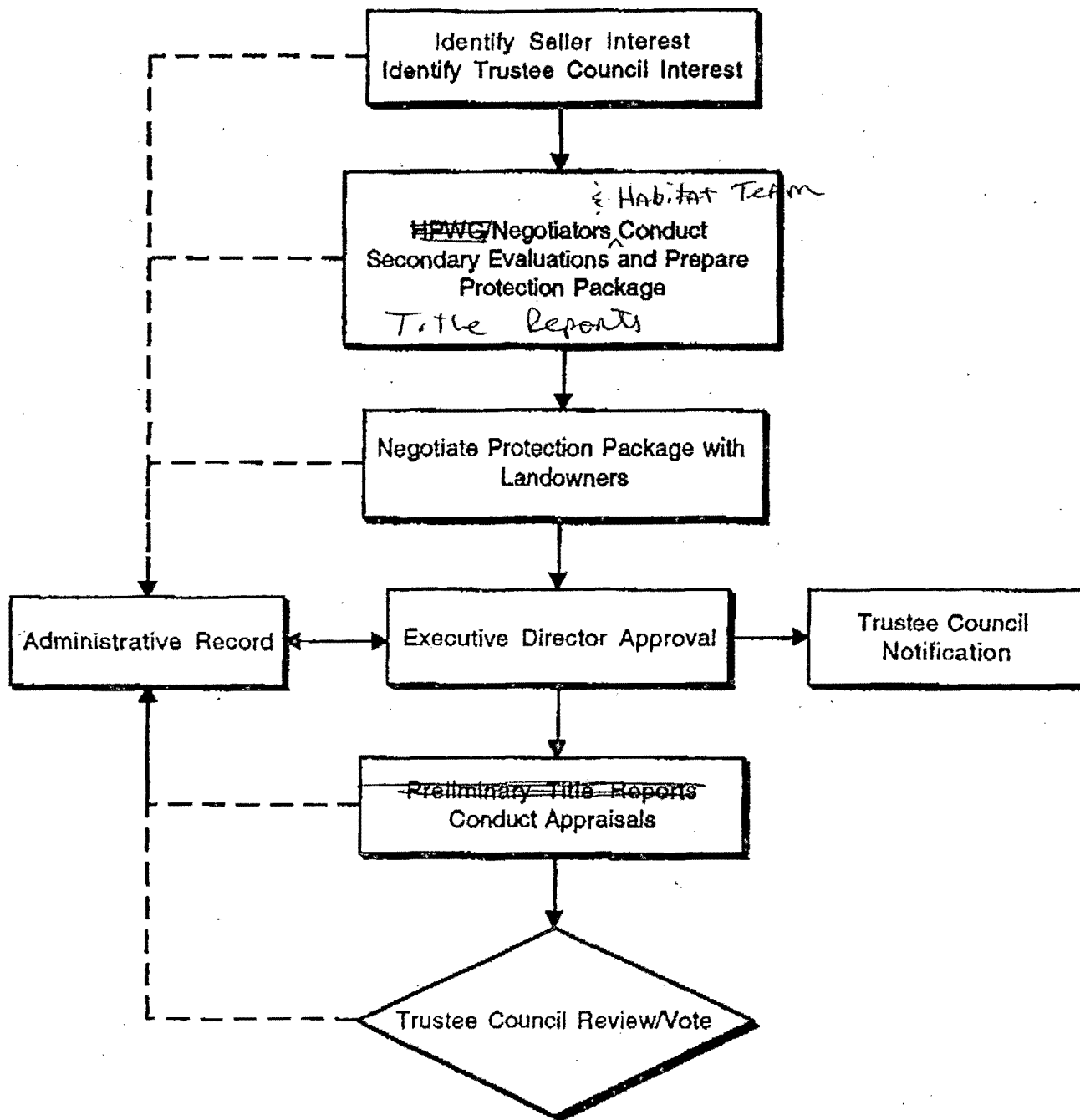
1. Identification of scene in photograph (direction of view, etc.). The direction of view may be indicated on a map. If the photo was taken from distance such as an aerial or high vantage point, the approximate property boundaries must be clearly shown on the photo. The boundaries of a "taking" must be identified on one or more photos of the subject, as appropriate.

2. The name of the individual taking the photograph.

3. The date the photograph was taken.

- i. Other Material - The appraiser shall include all other pertinent documents provided by the Contracting Officer or representative, plus appropriate charts, maps, etc.

- j. Qualifications of Appraiser - The appraiser's qualifications shall be included in the report as evidence that the appraiser is qualified to make such an appraisal.

NEGOTIATION PROCESS

Parcel Action Summary

Negotiation Steps
Proposed Documentation

	Date	Notes	On File Y/N
Landowner Name			
Project Number			
Project Name			
Location			
Acreage			
Landowner Interest			
TC Approval to Proceed			
Negotiators Briefed			
Preliminary Title Research		Habitat Team	
Neg. Initial Proposal to HPWG for parcel reconfig or regroup			
Dev. Protection Pkg.			
Neg. Protection Pkg. w/ Landowner			
Exec Dir Approval to Proceed			
Appraisal Contract Date			
Appraiser			
Appraisal Contract #			
Appraisal Due			
To Lead Agency			
Review Appraisal			
Survey Review			
Appraisal Review Received			
Hazardous Materials Review			
Spruce Bark Beetle Review			
Amount Offered			
Option Approval by EXD			
Option to Landowner			
Option signed by Recipient			
Prelim. Title Com to Legal			
Prelim Title Opinion Rec.			
Survey Requirements			
Check Ordered			
Warranty Deed to Agency			
Parcel Closes			
Deed Recorded			
Final Title Approv. to Law			
Final Title Approv. Received			

EXXON VALDEZ TRUSTEE COUNCIL
1994 Federal Fiscal Year Project Budget
October 1, 1993 - September 30, 1994

Project Description: Habitat Acquisition and Protection - This project fund provides for the acquisition of rights for habitat protection on lands which will contribute to the restoration of resources and associated services injured by the Exxon Valdez oil spill. This project also provides for the activities necessary to obtain information such as appraisals, preliminary and final title reports, litigation reports, hazardous material surveys, and on-site verification necessary for the Trustee Council to reach closure on habitat protection actions.

Budget Category:	1993 Project No. Authorized FFY 93	'93 Report/ '94 Interim* FFY 94	Remaining Cost** FFY 94	Total FFY 94	FFY 95	Comment
Personnel	\$0.0	\$57.9	\$149.5	\$207.4	TBD*	* The dollar amount for capital outlay is to be determined (TBD) based on Trustee Council actions.
Travel	\$0.0	\$20.5	\$35.0	\$55.5	\$0.0	
Contractual	\$0.0	\$169.0	\$631.4	\$800.4	\$0.0	The amount indicated for contractual expenses represents a cost estimate of \$80.0 for appraisal, title work, and hazardous materials survey reports based on current purchases. Total amount represents an assumption of 3 negotiations @ \$80.0 per negotiation. The total amount will need to be adjusted to reflect the actual number of parcels under negotiation.
Commodities	\$0.0	\$0.2	\$0.5	\$0.7	\$0.0	
Equipment	\$0.0	\$16.7	\$0.0	\$16.7	\$0.0	
Capital Outlay	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	
Subtotal	\$0.0	\$264.3	\$816.4	\$1,080.7	\$0.0	
General Administration	\$0.0	\$20.5	\$59.1	\$79.6	\$0.0	
Project Total	\$0.0	\$284.8	\$875.5	\$1,160.3	\$0.0	
Full-time Equivalents (FTE)	0.0	1.1	2.6	3.6	0.0	
Dollar amounts are shown in thousands of dollars.						
Budget Year Proposed Personnel:		Reprt/Intrm Months	Reprt/Intrm Cost	Remaining Months	Remaining Cost	In addition, General Administration will be adjusted to reflect the number of parcels under negotiation.
Position Description						
See Individual 3A Forms for Personnel Details						NEPA costs for acquisition of individual parcel property rights will be determined for each property when it is identified.
Personnel Total	0.0	\$0.0	0.0	\$0.0		NEPA Cost: \$0.0
						*Oct 1, 1993 - Jan 31, 1994
						**Feb 1, 1994 - Sep 30, 1994

07/14/93

1994 Page 1 of 13

Printed: 2/16/94 9:45 AM

Project Number: 94126
Project Title: Habitat Protection & Acquisition Fund
Agency: AK Dept. of Natural Resources

FORM 2A
PROJECT
DETAIL

EXXON VALDEZ TRUSTEE COUNCIL
 1994 Federal Fiscal Year Project Budget
 October 1, 1993 - September 30, 1994

Project Description: Habitat Acquisition and Protection - This project fund provides for the acquisition of rights for habitat protection on lands which will contribute to the restoration of resources and associated services injured by the Exxon Valdez oil spill. This project also provides for the activities necessary to obtain information such as appraisals, preliminary and final title reports, litigation reports, hazardous material surveys, and on-site verification necessary for the Trustee Council to reach closure on habitat protection actions.

Budget Category:	1993 Project No. Authorized FFY 93	'93 Report/ '94 Interim* FFY 94	Remaining Cost** FFY 94	Total FFY 94	FFY 95	Comment
Personnel		\$5.7	\$19.5	\$25.2	TBD*	* The dollar amount for capital outlay is to be determined (TBD) based on Trustee Council actions. The amount indicated for contractual expenses represents a cost estimate of \$80.0 for appraisal, title work, and hazardous materials survey reports based on current purchases. Total amount represents an assumption of 3 negotiations @ \$80.0 per negotiation. The total amount will need to be adjusted to reflect the actual number of parcels under negotiation.
Travel		\$4.2	\$8.6	\$12.8		
Contractual		\$83.0	\$166.0	\$249.0		
Commodities		\$0.0	\$0.0	\$0.0		
Equipment		\$0.0	\$0.0	\$0.0		
Capital Outlay		\$0.0	\$0.0	\$0.0		
Subtotal	\$0.0	\$92.9	\$194.1	\$287.0	\$0.0	
General Administration		\$6.7	\$14.5	\$21.2	\$0.0	
Project Total	\$0.0	\$99.6	\$208.6	\$308.2	\$0.0	
Full-time Equivalents (FTE)		0.1	0.3	0.3		
Dollar amounts are shown in thousands of dollars.						
Budget Year Proposed Personnel: Position Description	Reprt/Intrm Months	Reprt/Intrm Cost	Remaining Months	Remaining Cost	In addition, General Administration will be adjusted to reflect the number of parcels under negotiation. NEPA costs for acquisition of individual parcel property rights will be determined for each property when it is identified. NEPA Cost: *Oct 1, 1993 - Jan 31, 1994 **Feb 1, 1994 - Sep 30, 1994	
Reprt Intrm Project Manager	1.0	\$5.7				
Analyst Programmer IV			1.5	\$9.0		
Natural Resources Manager II			1.5	\$10.5		
Personnel Total	1.0	\$5.7	3.0	\$19.5		

07/14/93

1994 Page 2 of 13

Printed: 2/16/94 9:45 AM

Project Number: 94126
 Project Title: Habitat Protection & Acquisition Fund
 Sub-Project: Title and Hazardous Materials Support Services
 Agency: AK Dept. of Natural Resources

FORM 3A
 SUB-
 PROJECT
 DETAIL

EXXON VALDEZ TRUSTEE COUNCIL
 1994 Federal Fiscal Year Project Budget
 October 1, 1993 - September 30, 1994

Travel:		Reprt/Intrm	Remaining
Reprt			
Intrm	Travel required for the Trustee Council and staff to make on-site inspections of parcels under negotiation. This amount assumes \$3,000 per parcel.	\$2.1	\$4.3
	Travel required by staff to make post acquisition management surveys.	\$2.1	\$4.3
Travel Total		\$4.2	\$8.6
Contractual:			
Reprt			
Intrm	Services necessary to enable the Trustee Council to close purchase agreements for parcels. This may include appraisals, title research, title reports, litigation reports, and hazardous materials surveys.	\$80.0	\$160.0
	Air charters for access to upland portions of parcels for parcel evaluation as negotiations refine parcel boundaries. (36 hours @ \$250/hour)	\$3.0	\$6.0
Contractual Total		\$83.0	\$166.0

07/14/93

1994 Page 3 of 13

Printed: 2/16/94 9:45 AM

Project Number: 94126
 Project Title: Habitat Protection & Acquisition Fund
 Sub-Project: Title and Hazardous Materials Support Services
 Agency: AK Dept. of Natural Resources

FORM 3B
 SUB-
 PROJECT
 DETAIL

EXXON VALDEZ TRUSTEE COUNCIL
1994 Federal Fiscal Year Project Budget
October 1, 1993 - September 30, 1994

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07/14/93

1994

Page 4 of 13

Printed: 2/16/94 9:45 AM

Project Number: 94126
Project Title: Habitat Protection & Acquisition Fund
Sub-Project: Title and Hazardous Materials Support Services
Agency: AK Dept. of Natural Resources

FORM 3B
SUB-
PROJECT
DETAIL

EXXON VALDEZ TRUSTEE COUNCIL
1994 Federal Fiscal Year Project Budget
October 1, 1993 - September 30, 1994

Project Description: Habitat Acquisition and Protection - This project fund provides for the acquisition of rights for habitat protection on lands which will contribute to the restoration of resources and associated services injured by the Exxon Valdez oil spill. This project also provides for the activities necessary to obtain information such as appraisals, preliminary and final title reports, litigation reports, hazardous material surveys, and on-site verification necessary for the Trustee Council to reach closure on habitat protection actions.

Budget Category:	1993 Project No. Authorized FFY 93	'93 Report/ '94 Interim* FFY 94	Remaining Cost** FFY 94	Total FFY 94	FFY 95	Comment
Personnel		\$10.0	\$27.4	\$37.4		* The dollar amount for capital outlay is to be determined (TBD) based on Trustee Council actions. The amount indicated for contractual expenses represents a cost estimate of \$80.0 for appraisal, title work, and hazardous materials survey reports based on current purchases. Total amount represents an assumption of 3 negotiations @ \$80.0 per negotiation. The total amount will need to be adjusted to reflect the actual number of parcels under negotiation.
Travel		\$6.6	\$26.4	\$33.0		
Contractual		\$80.0	\$320.0	\$400.0		
Commodities		\$0.0	\$0.0	\$0.0		
Equipment		\$0.0	\$0.0	\$0.0		
Capital Outlay		\$0.0	\$0.0	\$0.0		
Subtotal	\$0.0	\$96.6	\$373.8	\$470.4	\$0.0	
General Administration		\$7.1	\$19.0	\$26.1	\$0.0	
Project Total	\$0.0	\$103.7	\$392.8	\$496.5	\$0.0	
Full-time Equivalents (FTE)		0.2	0.5	0.6		
Dollar amounts are shown in thousands of dollars.						
Budget Year Proposed Personnel: Position Description		Reprt/Intrm Months	Reprt/Intrm Cost	Remaining Months	Remaining Cost	In addition, General Administration will be adjusted to reflect the number of parcels under negotiation. NEPA costs for acquisition of individual parcel property rights will be determined for each property when it is identified.
Reprt						
Intrm						
Biologist				1.5	\$7.4	
Program Manager		1.0	\$4.0	2.0	\$8.0	
Negotiator		1.0	\$6.0	2.0	\$12.0	
Personnel Total		2.0	\$10.0	5.5	\$27.4	NEPA Cost: *Oct 1, 1993 - Jan 31, 1994 **Feb 1, 1994 - Sep 30, 1994

07/14/93

1994 Page 5 of 13

Printed: 2/16/94 9:45 AM

Project Number: 94126
Project Title: Habitat Protection & Acquisition Fund
Sub-Project:
Agency: Dept. of Agriculture, Forest Service

FORM 3A
SUB-
PROJECT
DETAIL

EXXON VALDEZ TRUSTEE COUNCIL
 1994 Federal Fiscal Year Project Budget
 October 1, 1993 - September 30, 1994

Travel:		Reprt/Intrm	Remaining
Reprt	On-site inspections of 5 parcels under negotiation (\$300 air fare + 5 days per diem @ \$160/day -- 3 trips/parcel)	\$3.3	\$13.2
Intrm	Post Acquisition management surveys for 5 parcels (\$300 air fare + 5 days per diem @ \$160/day -- 3 trips/parcel)	\$3.3	\$13.2
Travel Total		\$6.6	\$26.4
Contractual:			
Reprt			
Intrm	Services necessary to enable the Trustee Council to close purchase agreements for parcels. This includes appraisals, title searches, title reports, litigation reports, and hazardous materials surveys.	\$80.0	\$320.0
Contractual Total		\$80.0	\$320.0

07/14/93

1994

Page 6 of 13

Printed: 2/16/94 9:45 AM

Project Number: 94126
 Project Title: Habitat Protection & Acquisition Fund
 Sub-Project:
 Agency: Dept. of Agriculture, Forest Service

FORM 3B
 SUB-
 PROJECT
 DETAIL

EXXON VALDEZ TRUSTEE COUNCIL
1994 Federal Fiscal Year Project Budget
October 1, 1993 - September 30, 1994

Commodities:		Reprt/Intrm	Remaining
Reprt			
Intrm			
Commodities Total		\$0.0	\$0.0
Equipment:		Reprt/Intrm	Remaining
Reprt			
Intrm			
Equipment Total		\$0.0	\$0.0

07/14/93

1994

Page 7 of 13

Printed: 2/16/94 9:45 AM

Project Number: 94126
Project Title: Habitat Protection & Acquisition Fund
Sub-Project:
Agency: Dept. of Agriculture, Forest Service

FORM 3B
SUB-
PROJECT
DETAIL

EXXON VALDEZ TRUSTEE COUNCIL
1994 Federal Fiscal Year Project Budget
October 1, 1993 - September 30, 1994

Project Description: Habitat Acquisition and Protection - This project fund provides for the acquisition of rights for habitat protection on lands which will contribute to the restoration of resources and associated services injured by the Exxon Valdez oil spill. This project also provides for the activities necessary to obtain information such as appraisals, preliminary and final title reports, litigation reports, hazardous material surveys, and on-site verification necessary for the Trustee Council to reach closure on habitat protection actions.

Budget Category:	1993 Project No. Authorized FFY 93	'93 Report/ '94 Interim* FFY 94	Remaining Cost** FFY 94	Total FFY 94	FFY 95	Comment
Personnel		\$42.2	\$93.6	\$135.8		
Travel		\$9.7	\$0.0	\$9.7		
Contractual		\$6.0	\$145.4	\$151.4		
Commodities		\$0.2	\$0.5	\$0.7		
Equipment		\$16.7	\$0.0	\$16.7		
Capital Outlay		\$0.0	\$0.0	\$0.0		
Subtotal	\$0.0	\$74.8	\$239.5	\$314.3	\$0.0	
General Administration		\$6.8	\$24.2	\$31.0	\$0.0	
Project Total	\$0.0	\$81.6	\$263.7	\$345.3	\$0.0	
Full-time Equivalents (FTE)		0.8	1.7	2.6		
Dollar amounts are shown in thousands of dollars.						
Budget Year Proposed Personnel:		Reprt/Intrm Months	Reprt/Intrm Cost	Remaining Months	Remaining Cost	
Position Description						
Reprt	Biologist			1.5	\$6.0	
Intrm	Mapper	2.0	\$8.4	2.5	\$10.6	
	Negotiator and Realty Assistant	6.0	\$23.3	8.9	\$34.7	
	Hydrologist and Solicitor	0.2	\$0.5	2.4	\$5.9	
	Biologist	1.0	\$3.3	2.1	\$6.9	
	Reviewer	0.2	\$1.8	3.2	\$29.0	
	Contaminants Specialist and Pilot	0.2	\$3.2	0.3	\$0.5	
	Surveyor	0.2	\$1.7			
Personnel Total		9.8	\$42.2	20.9	\$93.6	
						NEPA Cost:
						*Oct 1, 1993 - Jan 31, 1994
						**Feb 1, 1994 - Sep 30, 1994

07/14/93

1994

Page 8 of 13

Printed: 2/16/94 9:45 AM

Project Number: 94126
Project Title: Habitat Protection & Acquisition Fund
Sub-Project:
Agency: Dept. of Interior, Fish & Wildlife Service

FORM 3A
SUB-
PROJECT
DETAIL

EXXON VALDEZ TRUSTEE COUNCIL
 1994 Federal Fiscal Year Project Budget
 October 1, 1993 - September 30, 1994

Travel:		Reprt/Intrm	Remaining
Reprt			
Intrm	11 round trips to Kodiak @ \$386/trip	\$4.2	
	90 days per diem @ \$132/day	\$4.0	
	Flight time by FLOS refuge plane for inspections and meeting with owners, for 30 hours @ \$140 per hour	\$1.5	
Travel Total		\$9.7	\$0.0
Contractual:			
Reprt			
Intrm	Title company to identify title deficiencies and insure title	\$6.0	\$10.0
	Appraisals		\$100.0
	Surveys		\$28.0
	Air Charters (64 hours fixed wing aircraft @ \$300/hour)		\$7.4
Contractual Total		\$6.0	\$145.4

07/14/93

1994

Page 9 of 13

Printed: 2/16/94 9:45 AM

Project Number: 94126
 Project Title: Habitat Protection & Acquisition Fund
 Sub-Project:
 Agency: Dept. of Interior, Fish & Wildlife Service

FORM 3B
 SUB-
 PROJECT
 DETAIL

EXXON VALDEZ TRUSTEE COUNCIL
 1994 Federal Fiscal Year Project Budget
 October 1, 1993 - September 30, 1994

Commodities:		Reprt/Intrm	Remaining
Reprt			
Intrm			
Office supplies		\$0.2	\$0.5
Commodities Total		\$0.2	\$0.5
Equipment:			
Reprt			
Intrm			
Survey equipment		\$16.7	
The survey equipment is a one-time, up-front expenditure that will support FWS habitat protection activities throughout the remainder of the restoration process.			
Computer			
Equipment Total		\$16.7	\$0.0

07/14/93

1994

Page 10 of 13

Printed: 2/16/94 9:45 AM

Project Number: 94126
 Project Title: Habitat Protection & Acquisition Fund
 Sub-Project:
 Agency: Dept. of Interior, Fish & Wildlife Service

FORM 3B
 SUB-
 PROJECT
 DETAIL

EXXON VALDEZ TRUSTEE COUNCIL
 1994 Federal Fiscal Year Project Budget
 October 1, 1993 - September 30, 1994

Project Description:						
Budget Category:	1993 Project No. Authorized FFY 93	'93 Report/ '94 Interim* FFY 94	Remaining Cost** FFY 94	Total FFY 94	FFY 95	Comment
Personnel		\$0.0	\$9.0	\$9.0		
Travel		\$0.0	\$0.0	\$0.0		
Contractual		\$0.0	\$0.0	\$0.0		
Commodities		\$0.0	\$0.0	\$0.0		
Equipment		\$0.0	\$0.0	\$0.0		
Capital Outlay		\$0.0	\$0.0	\$0.0		
Subtotal	\$0.0	\$0.0	\$9.0	\$9.0	\$0.0	
General Administration		\$0.0	\$1.4	\$1.4	\$0.0	
Project Total	\$0.0	\$0.0	\$10.4	\$10.4	\$0.0	
Full-time Equivalents (FTE)		0.0	0.1	0.1		
Dollar amounts are shown in thousands of dollars.						
Budget Year Proposed Personnel:		Reprt/Intrm Months	Reprt/Intrm Cost	Remaining Months	Remaining Cost	
Position Description						
Reprt Intrm Habitat Biologist III				1.5	\$9.0	
Personnel Total		0.0	\$0.0	1.5	\$9.0	
NEPA Cost:						
*Oct 1, 1993 - Jan 31, 1994						
**Feb 1, 1994 - Sep 30, 1994						

07/14/93

1994

Page 11 of 13

Printed: 2/16/94 9:45 AM

Project Number: 94126
 Project Title: Habitat Protection & Acquisition Fund
 Sub-Project:
 Agency: AK Dept of Fish & Game

FORM 3A
 SUB-
 PROJECT
 DETAIL

EXXON VALDEZ TRUSTEE COUNCIL
1994 Federal Fiscal Year Project Budget
October 1, 1993 - September 30, 1994

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07/14/93

1994

Page 12 of 13

Printed: 2/16/94 9:45 AM

Project Number: 94126
Project Title: Habitat Protection & Acquisition Fund
Sub-Project:
Agency: Dept. of Interior, National Park Service

FORM 3B
SUB-
PROJECT
DETAIL

EXXON VALDEZ TRUSTEE COUNCIL
1994 Federal Fiscal Year Project Budget
October 1, 1993 - September 30, 1994

Commodities:		Reprt/Intrm	Remaining
Reprt			
Intrm			
Commodities Total		\$0.0	\$0.0
Equipment:			
Reprt			
Intrm			
Equipment Total		\$0.0	\$0.0

07/14/93

1994

Page 13 of 13

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Project Number: 94126
Project Title: Habitat Protection & Acquisition Fund
Sub-Project:
Agency: Dept. of Interior, National Park Service

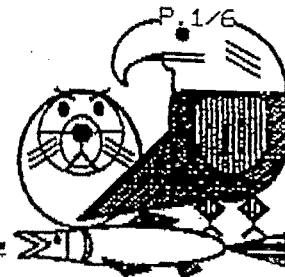
FORM 3B
SUB-
PROJECT
DETAIL

Exxon Valdez Oil Spill Trustee Council

Restoration Office

645 G Street, Suite 402, Anchorage, Alaska 99501

Phone: (907) 278-8012 Fax: (907) 276-7178



FAX TRANSMITTAL

February 11, 1994

TO: Rich Goosens
Norm Lee
Dennis Lattery
Dee Butler

FAX: 586-7843
257-2510
561-5807
786-3635

FROM: Dave Gibbons
Carol Fries

PHONE: 586-8784
762-2483

SUBJECT: Discussion Paper on Use of Government Comparables in Valuing Property.....

This just came in. Please review for your discussions next week.

Please let me know if there is any difficulty with this transmission or you have any questions.

Attachments: Discussion Paper on Use of Government Comparables in Valuing Property for Acquisition by The Exxon Valdez Oil Spill Trustee Council

Total Pages: 6 (including cover)

Trustee Agencies

State of Alaska: Departments of Fish & Game, Law, and Environmental Conservation
United States: National Oceanic and Atmospheric Administration, Departments of Agriculture and Interior

FEB-10-94 THU 14:58

FAX NO. 11

P.02

JAMIN, EBELL, BOLGER & GENTRY

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

200 MUTUAL LIFE BUILDING

605 FIRST AVENUE

SEATTLE, WASHINGTON 98104

TELEPHONE: (206) 623-7834

FACSIMILE: (206) 623-7521

REPLY TO SEATTLE OFFICE

February 10, 1994

JOEL H. BOLGER*
C. WALTER EBELL*
DUNCAN S. FIELDS
DIANNA A. GENTRY
MATTHEW D. JAMIN
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ANCHORAGE, ALASKA 99501
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(907) 275-8100

KODIAK OFFICE:
383 CAROLYN STREET
KODIAK, ALASKA 99505
TELEPHONE: (907) 466-6024
FACSIMILE: (907) 466-6024

Mr. Jim Ayers
Executive Director
Exxon Valdez Oil Spill Trustee Council
P.O. Box 21668
Juneau, AK 99802

Re: Kodiak Refuge Project
Our File No. 3763-4

Dear Jim:

First, I want to thank you for meeting with Roy and me when we were in Juneau. We believe that the comprehensive approach that is being pursued by the Trustee Council is both appropriate and fair. The combination of research facilities, research programs, reserve, and habitat acquisition should provide a result that benefits all areas impacted by the spill.

Second, pursuant to our discussions, I have enclosed a paper on the use of government comparables for your review and consideration. The landowners in the Kodiak region share these concerns; and it is most important that we have an opportunity to engage in a dialog with you as the appraisal process develops.

Again, thank you for making time in your very busy schedule to meet with us and we are looking forward to meeting with you to discuss the habitat acquisition procedures to be used by the Trustee Council.

Best regards.

Very truly yours,

JAMIN, EBELL, BOLGER & GENTRY


C. Walter Ebell

CWE/bhb
Enclosure

cc: Old Harbor Native Corporation
Joel H. Bolger, Esq.
Roy S. Jones, Esq.
Dr. Robert E. Purz
Alex Swiderski, Esq.
William H. Timme, Esq.
James K. Wilkams, Esq.

DISCUSSION PAPER ON USE OF GOVERNMENT COMPARABLES
IN VALUING PROPERTY
FOR ACQUISITION BY
THE EXXON VALDEZ OIL SPILL TRUSTEE COUNCIL

February 10, 1994

Overview

On January 31, 1994, the Exxon-Valdez Oil Spill (EVOS) Trustee Council adopted a resolution directing the development of a "standardized appraisal process, including standardized appraisal instructions..." to be used to appraise land parcels which may be acquired as part of an overall restoration strategy.

Landowners within the spill region are concerned that, unless the Trustee Council provides in the appraisal process for the consideration of comparable land sales to governmental entities, fair values for the lands involved will not be achieved. If a fair process is not adopted, then by far the most popular oil spill restoration strategy with the general public,¹ habitat acquisition, and one of the most tangible and lasting beneficial legacies of the Trustee Council likely will not be implemented.

Recommendation

To help ensure that a process to obtain land values which are fair to both the Trustee Council and the landowners is developed, the following procedures are recommended for inclusion in the Trustee Council's standardized appraisal process.

(1) Parties to a proposed land acquisition under the EVOS Trustee Council process should agree to a set of appraisal instructions which will be given to the appraisers - one chosen by the

¹"Habitat acquisition of some kind is, by far, the most popular proposal that has come before the Trustees." Alaska Department of Environmental Conservation, *The Exxon Valdez Oil Spill, Final Report, State of Alaska Response*, at p.182 (June 1993).

EVOS Trustee Council and one chosen by the landowner, if the landowner elects to have an appraisal performed.

(2) The appraisers should be allowed to consider voluntary acquisitions of other lands by the United States, the State of Alaska, the Trustee Council, or other governmental entities as comparable sales in determining the value of the subject property.

(3) All appraisals should be completed expeditiously to facilitate acquisition negotiations.

(4) The parties should have an opportunity to submit the resulting appraisals to a review appraiser, and an opportunity to comment upon the reviews..

Appraisal Methodologies

Generally, appraisers look to three principal methodologies to determine fair value: the cost approach, the income approach, and the comparable sales approach. The greater weight is normally given to comparable sales.

Due to the remoteness of much of the land in Alaska, it is sometimes necessary to include governmental comparables to form an adequate data base for a reliable determination of value. Also because such lands frequently do not possess high mineral potential or merchantable timber, the income approach to valuing the lands does not provide a valid means of determining fair value. In such circumstances, there is virtually no way to reach "fair value" without reliance on government comparables.

Use of Governmental Comparables is Permitted Under Case Law and the

Uniform Appraisal Standards

The 1992 Federal Uniform Appraisal Standards for Federal Land Acquisitions (UAS) recognize that governmental comparables are proper to use and are admissible if the sale was

voluntary or condemnation was not an issue in the transaction.² This approach is logical because often the government does not hold condemnation power. For example, Alaska Native lands located inside conservation system units are statutorily protected from condemnation,³ and the Trustee Council, the potential purchaser of habitat lands in the EVOS spill zone, does not possess condemnation authority.

The old 1973 version of UAS prohibited the use of governmental comparables in valuing land.⁴ The rationale behind the exclusion of governmental comparables arose originally from the opinion of the courts that such comparables were unreliable because -- (1) the government held condemnation power and the final sales price, therefore, was often the result of settlement to avoid litigation costs, and (2) these transactions were purportedly not at arms-length and not voluntary.⁵ This evidentiary exclusion was designed for limited application to shield jurors from potentially unreliable information.

However, case law allowed the admission of evidence of sales to governmental entities if such sales were "voluntary" or if the sale was not in connection with or in anticipation of condemnation proceedings;⁶ and the UAS now permit the consideration of voluntary sales of land to governmental entities where condemnation is not involved. Although appraisers should not be

² Uniform Appraisal Standards for Federal Land Acquisition, 1992, pp. 51-52, A-18.

³ Section 1302(b), Alaska National Interest Lands Conservation Act, 1980.

⁴ Uniform Appraisal Standards for Federal Land Acquisitions, 1973, P.32, A-17. This section cited the general rule but did not recognize the exceptions.

⁵ See, e.g., *Transwestern Pipeline Co. v. O'Brien*, 418 F.2d 15, 17-18 (5th Cir. 1969); but see *Nash v. D.C. Redevelopment Land Agency*, 395 F.2d 572-73 and n. 6 (D.C. Cir. 1967), cert. denied, 393 U.S. 844 (1968) (Evidence of governmental comparable sales presented by condemnor, is admissible; see also id. at 574-76 (fact that comparable sale is to governmental entity goes to weight of the evidence, not its admissibility).

⁶ See e.g., *Slattery Co. Inc. v. United States*, 231 F.2d 37, 41 (5th Cir. 1956).

required to rely upon any particular voluntary sale of land to government as a comparable sale, they should be allowed to consider such sales in their professional judgment.

Appraising land is less a science than an art.⁷ Appraisers, unlike jurors, are trained to make judgments of value based on a number of factors, none of which is binding or a completely accurate indicator of value. To do their job, however, appraisers should have all possible information before them and be given the flexibility to use that information when they considered it appropriate.

The market in Alaska and the nation generally for natural habitat is growing. Not only have there been a number of voluntary governmental comparables sales taking place throughout the nation for purposes of conserving fish and wildlife habitat, there are many local, state and national conservation groups as well as individuals who are entering this market for the purpose of protecting natural lands.

Conclusion

The Exxon Valdez Oil Spill Trustee Council standardized appraisal process should utilize the flexibility that has been provided through case law and the Uniform Appraisal Standards to consider governmental comparable sales in the appraisal of lands for potential acquisition. If a balanced and reasonable process is developed, it will be fair to seller and buyer alike. It also will help fulfill the public mandate that habitat acquisition be a substantial part of the EVOS restoration process.

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⁷ See Uniform Appraisal Standards for Federal Lands Acquisitions, 1992, pp. 4-5.