



OIL SPILL COORDINATION OFFICE

Alaska Region

TO: BARBARA

FAX: \_\_\_\_\_

UNIT: \_\_\_\_\_

Verification No. \_\_\_\_\_

FROM: DAVE GIBBONS

FAX: \_\_\_\_\_

REMARKS: "ONCE AGAIN"

PLS FAX to: \_\_\_\_\_ WORM LEE

ALEX \_\_\_\_\_ JUDY

CAROL FRIES \_\_\_\_\_ JEAN AYERS

DEONIS LATTERY \_\_\_\_\_ BARRY ROTH

BOB RICE \_\_\_\_\_

Thank You!

586-8784

Total number of pages (including cover): 5

Date Sent: 4/20 Time: \_\_\_\_\_



4-20-94 14:41 ;USDA FS

CACI

04/15/94 15:11 907 5867589

EV DIRECTOR JNU →→→ DAVE GIBBONS  
LAWYERS WILKENS ... EV DIRECTOR JNU

003/005  
002

**BLISS & WILKENS  
LAWYERS**

P.O. BOX 201128 • ANCHORAGE • ALASKA 99520-1128  
431 WEST 7th AVENUE • SUITE 302 • ANCHORAGE, ALASKA 99501-3385  
TELEPHONE (907) 276-2999 • FACSIMILE (907) 276-2996

Ronald L. Bliss  
James K. Wilkens  
—  
Alicia Clayton, Jr.  
  
Of Counsel  
Jean E. Kizer

April 14, 1994

Via FACSIMILE AND MAIL  
586-7589

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

Re: Akhiok-Kaguyak, Inc.  
Negotiations with EVOG Trustee Council  
Our File No. 438-1

Dear Mr. Ayers:

On behalf of Akhiok-Kaguyak, Inc. (AKI), we have been largely pleased with your role and efforts to date in our negotiations. However, we were disappointed when we heard your recent report and comments to the Exxon Valdez Oil Spill Trustee Council. AKI, along with Old Harbor Native Corporation and Koniag Corporation, have previously provided you with its views and suggestions on our effort to establish a fair and unbiased negotiation process. Based on your comments, it seems you do not give much credence or significance to our suggestions and, apparently, intend to proceed with the process you have proposed, despite our views that the process is tainted.

On behalf of AKI, I am writing this letter to ask that you reconsider the process being proposed and, instead, give due consideration to the suggestions of AKI and others so as to ensure that a fair and unbiased process is pursued.

To capsulize, AKI desires to:

1. Perform appraisals in accord with the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisitions (USFSLA) as those standards have been interpreted by the courts.
2. Identify and agree upon fair, unbiased and qualified appraisers and review appraisers for the purpose of determining the true fair market value of AKI's lands.

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Jim Ayers, Executive Director  
Exxon Valdez Oil Spill Trustee Council  
April 14, 1994  
Page 2

3. Create a process in which both parties have the opportunity to meaningfully participate in negotiation of land packages, including prices, that are fair to both the public and to AKI.

What is being proposed:

1. Contains appraisal instructions, which misconstrue and misstate the applicable federal standards for appraisals, and in some instances actually contradict federal law interpreting these provisions.

2. Proposes use of appraisers who have established relationships with the federal government as a buyer of Alaska lands. Apparently, some of these appraisers have, in the past, provided "low ball" values for remote Alaska lands which, of course, is in the interest of the federal government as a buyer.

3. Establishes a "take it or leave it" approach to the process which, for all significant purposes, excludes AKI from meaningful participation or negotiation.

The bottom line is that, if our intent is to establish a fair and unbiased process of determining the fair market value of these lands, the proposal is fatally flawed. Apparently, the proposal is being driven by the Department of Interior (more specifically, the local Realty Division) which, as the buyer of these lands, has an obvious interest in establishing a sales price as low as possible. The process suggested, including the suggested appraisal instructions, is unreasonably slanted toward the advantage of the buyer and will be successful only in driving the price as low as possible, not in reaching a negotiated fair market value.

As with other potential sellers of land, AKI is becoming increasingly disenchanted by the lack of meaningful participation it has in the process. The proposed process and instructions seem to be geared more toward advocating low prices for the benefit of the buyer, rather than arriving at the true fair market value. We do not object to the buyer seeking to obtain the best advantage possible. We simply want it made clear that the process is one based on the buyer's advocacy of its position, rather than a process that is truly fair and unbiased to both the buyer and the seller. In short, AKI remains interested in pursuing a sale of its lands to the Trustee Council, but must reiterate that it cannot and will not endorse or participate in a process which cannot withstand public scrutiny for fairness to both the buyer and the seller.

Before a substantial amount of time, effort and money is spent pursuing a tainted process, we ask you to reconsider and to adopt the following:

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EV DIRECTOR JNU →→→ DAVE GIBBONS ☐005/005  
BLISS WILKENS →→→ EV DIRECTOR JNU ☐00

Jim Ayers, Executive Director  
Exxon Valdez Oil Spill Trustee Council  
April 14, 1994  
Page 3

1. Reconfirm our understanding that your role is to act as an impartial intermediary interested in establishing a fair and unbiased process for negotiation of these purchases and for determination of a fair market value for the lands. The fair market value must be a price fair not only to the public and the Trustee Council, but also to the sellers, including AKI. (Alternatively, clarify that your role is one of an advocate for the buyer, with the interest in purchasing the lands for a price as low as possible. If such is your role, then it will be clear to all that the process and appraisal instructions are submitted solely on behalf of and as an advocate for the buyer. In such case, AKI can then also pursue a process and obtain an appraisal which advocates its position and value.)

2. Give meaningful consideration to the various comments and views previously submitted by and on behalf of the potential sellers, including AKI, as to the process and instructions. Since the buyer lacks condemnation authority and any agreements on sale of land will require the consent of willing sellers, such as AKI, there is much to be gained and little to be lost by giving serious consideration to the matters raised by the potential sellers.

3. Set up a meeting with AKI and the other potential sellers in which our divergent views can be meaningfully discussed, and in which a fair and unbiased process can be adopted and proper, unslanted appraisal instructions can be agreed upon.

We look forward to working with you further on this matter. If you have any questions, feel free to contact me.

Regards,

BLISS & WILKENS

  
James K. Wilkens

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JKW/cl  
438-11Ayers.3

cc: Mr. Ralph L. Eluska  
C. Walter Ebell, Esq.  
William R. Timme, Esq.

CACI

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EV DIRECTOR JNU +>>> DAVE GIBBONS 002/005  
JAMES WILKENS +>>> EV DIRECTOR JNU 00

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**BLISS & WILKENS**

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**TO FACSIMILE TELEPHONE NUMBER: 586-7589 (JUNEAU)**

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DATE: April 14, 1994  
 OUR FILE NO.: 438-1  
 COMPANY: Exxon Valdez Oil Spill Trustee Council  
 ATTN: Mr. Jim Ayers  
 FROM: James K. Wilkens, Esq.  
 RE: Land Acquisition Negotiations  
 SPECIAL INSTRUCTIONS: \_\_\_\_\_

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4 Pages, which includes this cover sheet, are being sent to you. If for some reason you do not receive all of the pages sent or the transmission is not clear, please call Connie at telephone (907) 278-4511.



OIL SPILL COORDINATION OFFICE

Alaska Region

TO: BARBARA

FAX: \_\_\_\_\_

UNIT: \_\_\_\_\_

Verification No. \_\_\_\_\_

FROM: DAVE GIBBONS

FAX: \_\_\_\_\_

REMARKS: "ONCE AGAIN"

- PLS FAX to:
- |                         |                     |
|-------------------------|---------------------|
| <u>Alex</u> ✓           | <u>Wolm Lee</u> ✓   |
| <u>Carol Fries</u> ✓    | <u>Judy</u> ✓       |
| <u>Dennis Costery</u> ✓ | <u>Jean Ayers</u> ✓ |
| <u>Bob Rice</u> ✓       | <u>Barry Roth</u>   |

Thank You!

Total number of pages (including cover): 5

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FAX: \_\_\_\_\_

REMARKS: PLS FAX TO:

- Alex ✓ Norm Lee ✓
- Carol Fries ✓ Judy ✓
- Dennis Lattery ✓ Jim Ayers ✓
- Bob Rice ✓ BA ✓

Dennis Lattery  
Judy Robinson

Bob Rice

Barry Roth

Norm Lee

Jim Ayers

Carol Fries

Total number of pages (including cover): 4

Date Sent: 4/20 Time: \_\_\_\_\_

Alex Swidersti



# Exxon Valdez Oil Spill Trustee Council

Restoration Office

645 G Street, Suite 401, Anchorage, AK 99501-3451

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



## FAX COVER SHEET

To: \_\_\_\_\_ Number: \_\_\_\_\_

From: Dave Gibbons Date: 4/20

Comments: \_\_\_\_\_ Total Pages: 4

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This is to correct the previous fax  
which should have been from Dave Gibbons.  
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### 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

**DRAFT**

April 20, 1994

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION; ATTORNEY WORK PRODUCT  
DO NOT RELEASE UNDER FOIA

### 13 STEP PROCESS FOR APPRAISAL REVIEW/APPROVAL

1. Lead Negotiating Agency designated by Trustee Council undertakes initial discussions with Landowner defining interests to be considered for acquisition and leading to permission from the Landowner to proceed with appraisal. Lead Negotiating Agency informs Landowner that it may conduct its own appraisal but that it must comply with state and federal appraisal standards. This appraisal will not be considered until there is an approved Final Appraisal Report and Review Statement issued by the Lead Negotiating Agency.
2. Lead Negotiating Agency requests that the Forest Service task the Contract Appraiser to conduct an appraisal of Landowner's interests.
3. Forest Service issues task order to Contract Appraiser identifying scope of work to be conducted. The task order, among other things, requires the Contract Appraiser to address the following: the objective of the assignment; an identification of the real estate and property rights being appraised; the date of the value estimate; and the definition of fair market value used in the appraisal.
4. Contract Appraiser holds Pre-Work Conference with Landowner to discuss conduct of the appraisal. Burden is on Landowner to inform the Contract Appraiser of ANY information the Landowner believes is important in determining value of its interests.
5. Site visit of Landowner interests by Contract Appraiser. Landowner encouraged to attend and provide further appropriate information to Contract Appraiser.
6. Contract Appraiser prepares Draft Appraisal Report, which the Forest Service distributes to the Lead Negotiating Agency Review Appraiser and the State and Federal Review Appraisers for review and comment. The Lead Negotiating Agency Review Appraiser and State and Federal Review Appraisers review the overall methodology used by the Contract Appraiser to determine whether it is consistent with applicable state and federal standards. The review appraisers cannot modify the Contract Appraiser's value determination.
7. State and Federal Review Appraisers submit comments to Lead Negotiating Agency and Forest Service; Forest Service provides comments to Contract Appraiser.

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8. Contract Appraiser considers comments received and modifies the Draft Appraisal Report where appropriate. Contract Appraiser submits Final Appraisal Report to the Forest Service, which distributes it to the Lead Negotiating Agency Review Appraiser and the State and Federal Review Appraisers.
9. State and Federal Review Appraiser submit comments to the Lead Negotiating Agency Review Appraiser, who accepts, approves, or rejects the Final Appraisal Report and issues a Review Statement.
10. The Lead Negotiating Agency submits approved Final Appraisal Report and Review Statement to the Landowner for review and comment.
11. Landowner submits its review comments to Lead Negotiating Agency. Landowner also submits second appraisal, if conducted, for review by Lead Negotiating Agency Review Appraiser and State and Federal Review Appraisers.
12. Review Appraisers consider comments submitted by Landowner regarding approved Final Appraisal Report and, if conducted, the Landowner's appraisal. State and Federal Review Appraisers submit comments on Landowner appraisal and Landowner comments on the Final Appraisal Report to the Lead Negotiating Agency Review Appraiser.
13. Lead Negotiating Agency Review Appraiser determines whether approved Final Appraisal Report must be amended in light of comments received from Landowner and/or the State and Federal Review Appraisers, and/or, if submitted, whether Landowner's appraisal more adequately supports the value conclusion. Lead Negotiating Agency Review Appraiser identifies Final Approved Appraisal and issues a Final Review Statement. If the Lead Negotiating Agency Review Appraiser determines the Landowner's appraisal more adequately supports the value conclusion, the Lead Negotiating Agency Review Appraiser must rescind the prior approval of the Final Appraisal Report and identify the Landowner's appraisal as the Final Approved Appraisal. The Final Review Statement is submitted to the Trustee Council. Trustee Council may then offer to purchase interests of the Landowner.

# Flow chart

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