

**EXXON VALDEZ OIL SPILL SETTLEMENT  
TRUSTEE COUNCIL**

RESTORATION OFFICE  
Simpson Building  
645 G Street  
Anchorage, Alaska

**Trustee Council Teleconference Meeting**

**Anchorage, Alaska  
February 24, 1995  
11:30 a.m.**

**TRUSTEE COUNCIL MEMBERS in attendance:**

**In Anchorage**

STATE OF ALASKA

**MR. CRAIG TILLERY**  
Trustee Representative for  
**BRUCE BOTELHO**, Attorney  
General, Alaska Department of  
Law

UNITED STATES DEPARTMENT  
OF THE INTERIOR

**MS. DEBORAH WILLIAMS**, Special  
Assistant to **MR. GEORGE**  
**FRAMPTON**, Assistant Secretary

STATE OF ALASKA DEPARTMENT  
OF FISH AND GAME

**MR. FRANK RUE**,  
Commissioner

**In Juneau**

UNITED STATES DEPARTMENT OF  
AGRICULTURE - FOREST SERVICE

**MR. PHIL JANIK**,  
Regional Forester

UNITED STATES DEPARTMENT OF  
COMMERCE - NOAA

**MR. STEVE PENNOYER**  
Director.

STATE OF ALASKA DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION

**MS. MICHELLE BROWN**, Deputy  
Commissioner and Trustee  
Representative for **MR. GENE**  
**BURDEN**, Commissioner

**TRUSTEE COUNCIL STAFF**

MS. MOLLY MCCAMMON Executive Director, EVOS Trustees  
Council, present in Anchorage

MR. ERIC MYERS Director of Operations, EVOS Trustees  
Council, present in Anchorage

MS. REBECCA WILLIAMS

MS. L.J. EVANS Information Officer, EVOS Trustees  
Council, present in Anchorage

**OTHERS PRESENT in Anchorage**

MR. ART WEINER

**OTHERS PRESENT in Washington, D.C.**

MR. BARRY ROTH

MR. DAN SAKURA

**PUBLIC on line at other locations**

MR. RICK STEINER Alaska SEA Grant, Cordova  
MR. JAMES MYKLARS Cordova District Fishermen United,  
Cordova

MS. ANN BRUNNER Bogle & Gates, Anchorage  
MS. LISA MARIE JACOBS Cordova District Fishermen United,  
Cordova

MS. MARIA LISOWSKI

P R O C E E D I N G S

(Executive Session 11:30 a.m. - 1:22 p.m.)

(On Record at 1:23 p.m.)

MS. WILLIAMS: I would like to call the meeting of the Exxon Valdez Oil Spill Trustee Council back to order. We began this meeting, February 24, 1995 meeting, at approximately 11:30 today and went immediately into executive session to discuss the Eyak negotiations, and we have now concluded our executive session and will resume our public session. On the phone are the following trustees: Steve Pennoyer, representing NOAA; Michelle Brown, representing Alaska Department of Environmental Conservation; Craig Tillery, representing the Attorney General's Office; Frank Rue, representing the Alaska Department of Fish & Game; Phil Janik, representing the U.S. Forest Service; and Deborah Williams, representing the Department of Interior. This is Deborah Williams chairing the meeting. Thank you everyone from the public who is joining us.

Phil, would you like to begin, please.

MR. JANIK: Yes. What I'd like to do, Deborah, is maybe just cover the sequence of events, including yesterday's meeting that we had with the Eyak board in Cordova, as well as a public meeting session in Cordova. It lasted about two hours and represented the very passionate interaction among the community with the Trustee members that were there and others. But if I go back at least as far as December 2nd when we had the broad resolution and the offer to Eyak with regard to all of the

parcels that are currently being negotiated, which includes the Orca Revised, so-called Other Lands, and the Core Parcel. I'd like to just mention the Core Parcel here quickly so as not to have to come back to it because it is really not under any deliberation at this point in terms of contentious issues. That is moving along and we will continue to do that. The items that were addressed in the resolution on December 2nd with regard to Orca Revised called for pursuing a long-term acquisition of commercial timber rights in the Orca Revised parcel, and also addressed some expectations regarding development rights and public access rights from Eyak. As we have proceeded in negotiations with regard to the Orca Revised parcel, through several pieces of correspondence between Eyak and the Trustees, as well as verbal discussions and negotiations, we have been unable to come to resolution on the development right issue, and that still remains not having been closed in terms of expectations there for the long-term negotiations on Orca Revised. With regard to the Other Lands, there was a five year moratorium on commercial timber rights for the Other Lands -- and I'll save some further comments on those lands for later. But let me focus in still here on the Orca Revised portion, because that is the focus of the current disagreement between Eyak and the Trustee Council. We also were faced with a March 2nd expiration of a moratorium on the harvesting of trees that was negotiated with Eyak last May, and as that date approaches Eyak has made it very clear that they expect to do logging, commence

logging, on March 2nd on the Orca Revised parcel. So, in addition to the December 2nd resolution, looking at the longer term arrangement, the Trustee Council tried to respond to the imminent threat of the commencement of logging defined by Eyak on March 2nd, and we supplemented the December 2nd resolution with a more current modified offer than to simply deal with the short term to try to get us past that March 1 deadline and provide the opportunity to continue negotiations on the parcels. What was offered up as in the form of kind of an interim measure was a seven year moratorium on commercial timber activity by Eyak in the Orca Revised parcel and no other restrictions -- meaning, no other restrictions on development rights or any other features. In exchange for that, the Government would receive -- oh, excuse me -- the Government would pay 4.13 million dollars. That number does not, and I repeat, does not represent in technical terms what is referred to as a fair market value in the form that it has been used by the Trustee Council in the appraisal process, but rather an estimate by state and federal government appraisers of what the opportunity costs to Eyak are worth for that seven year period, discounted back in time to the present. So, in exchange for the seven year commercial timber harvest moratorium, Eyak would receive 4.13 million dollars. That was reflected in the most recent offer presented to them by the Trustee Council.

Also stated in that supplementary resolution was reference to the Other Lands, the complex that includes Sheep Bay, Port Gravina, Hopkins Island and other areas with interests -- habitat

interests and resource interests -- that the Council has. As a condition of the supplementary resolution, there would be a seven year commercial timber harvest moratorium in the form of a limited conservation easement there as well, and there also would be a moratorium on development rights in those Other Lands, with the exception that the Eyak Shareholder Homesite Development proposals that may come forward -- or plans -- would be negotiated with the Council as represented by the Forest Service.

So, we recognize the importance of homesite development by the Eyak shareholders. We wanted to provide some flexibility there to make sure those particular kinds of development would be provided for as long as those did not exceed any threshold that would compromise why it is we're interested in those -- also with regard to value to resources -- injured resources.

And then, again, the Core Land parcel -- not much said in the resolution regarding that, other than we would continue to pursue negotiations and bring that deal to closure as best possible.

That supplementary resolution with those provisions I just stated were considered by the Eyak board. We met with them personally, face-to-face, as I said, in Cordova yesterday, and those provisions were not accepted by the Eyak Corporation as represented by their board. In response to those provisions, Eyak brought forward the following counteroffer, and that represented a price of 15 -- that's one-five -- \$15,000,000 to represent what they place the value on the moratorium suggested

by the Trustee Council, as well as a provision that if money was in hand from the Trustee Council by March 1st, the only way that the commencement of harvesting could be delayed any further in the Orca Revised would be to receive a payment from the Council of \$100,000 per day -- and once bankable money, as it was being referred to, and whatever deal could be arranged would be received, then that compensation on a daily basis would then cease. But that was the condition presented by Eyak as a counteroffer. (Aside comments)

The other item that Eyak brought forward yesterday in Cordova was to go back to a -- respond -- our December 2nd resolution on our offer, which involved some additional flexibility in development rights as they expressed those as compared to their original position, and that involved just in a general sense, I don't have the figures right in front of me here, but it was during the first 10 years in Orca Revised some 652 acres, I believe, would be retained as unrestricted development rights throughout the entire Orca Revised parcel; during the period of 11 to 35 years, an additional 652 acres would be added to the original 652 for unrestricted development rights, and then after 35 years all development restrictions would be moot. That basically was what Eyak was suggesting to the Council as an explanation or a description of what would be acceptable to them with regard to our December 2nd resolution. Again, for emphasis, development rights have proven to be a bone of contention here in the Orca Revised parcel.

We are here today now to discuss the counter-proposal that I just described -- counteroffer -- that we were presented in Cordova yesterday from the Eyak board and to decide on what our response should be to that counteroffer. Any discussion on that by any of the members at this point I would encourage.

MS. WILLIAMS: Yes, who would like to discuss the -- either the counteroffer or what you would propose the Trustee Council do at this point? Mr. Janik, would you like to make your recommendation?

MR. JANIK: Yes. In considering all of the events that have taken place and the firmness in which Eyak has presented their counteroffer to us, especially with the commencement of logging on March 2nd with the conditions they've stated as reasons for going forward, as well as the things they've presented as the only means in which they would delay that, also in my mind is left with the following possibility in response. I believe that the Council's December 2nd resolution is still a valid resolution in terms of our long-term interests in all of the parcels involved in the negotiations with Eyak. I think we should re-affirm the importance of that as being our anchoring position, if you will, in terms of our interests in these resources and pursuing negotiations along those lines. I do think we need to reaffirm our strong desire to try to deal with the imminent threat. Second, not only is the Council very much interested in contributing to delaying timber harvesting there in whatever way possible that's acceptable to parties, but

I know that many people in the community of Cordova are very concerned about such events commencing, and, in fact, there are interests beyond Cordova and even the State of Alaska on that point, and we would still put forward the mechanisms that we have described in our most recent supplement offer as a means to deal with that should Eyak, upon reconsideration, find those acceptable. I'd also like to emphasize in that we have heard from many people that if we appear to be getting in an impasse with regard to the Orca Revised parcel, and I would suggest we may be approaching that if we're not there already, depending on Eyak's response to what we decide here today, that we certainly demonstrate the Council's willingness and eagerness and full commitment to (indiscernible) any types of mediation sessions. Those should be looked upon as being non-binding of course, but nevertheless enter into those mediation sessions with Eyak to see if these issues that are at contention and that we are in disagreement on can be resolved leading to a mutually agreed upon solution, and I would definitely recommend and move that we include that offer within the context of the other substantive -- of our correspondence with Eyak. I would I guess stop there.

MS. WILLIAMS: Very good. Would other Council members like to comment on Mr. Janik's statement? (No response) Well, let me comment if I could, just briefly. I do think that it is time to specifically offer to Eyak our willingness to enter into mediation, understanding of course that any mediation result would have to be approved by the boards of Eyak and the Trustee

Council. But that to make the Trustee Council available at Eyak's time convenience and place convenience, available to mediation, we would of course have to agree with Eyak on an appropriate mediator or a mediation format, but that I think we have tried very hard to resolve this important issue, that we have as yet unfortunately not succeeded, and that it is time to see if an outside mediator can assist in this process and resolve this important issue. So, I certainly agree, Mr. Janik, with your recommendation in that regard. Mr. Tillery, did I hear your voice?

MR. TILLERY: No.

MS. WILLIAMS: No.

MR. RUE: Deborah, this is Frank Rue.

MS. WILLIAMS: Very good, Frank.

MR. RUE: I would concur with you that I think we did try hard. I thought it was a good offer for an important parcel that a lot of people in Cordova cared about, and I think mediation maybe a way for the two parties to come to some resolution. I would hope so. So, I think that's a good -- a good idea.

MS. WILLIAMS: Okay.

MR. JANIK: Deborah, I have another comment -- Phil Janik.

MS. WILLIAMS: Yes, Phil.

MR. JANIK: In discussion with the Eyak board yesterday on this subject of mediation, we were still faced -- I

think we definitely need to go to them with that offer, but the March 2nd date was still one that they were firmly standing on as a date important to them in terms of commencing timber harvests, and I think our offer for mediation needs to carry with it a sense of urgency in time . . .

MS. WILLIAMS: Yes.

MR. JANIK: . . . or a reconsideration of their part of delaying that commencement of timber harvesting until we have time to work through mediation.

MS. WILLIAMS: Yes, indeed. Any other comments?  
Steve? Michelle?

MR. PENNOYER: Deborah, I agree with you. I think we have tried hard, and we have definitely, I think, emphasized the importance of both Orca Narrows and the Other Lands involved on the east side of Prince William Sound, and I think that still remains a very high priority for many of us, and so I agree with you completely that if the next chore is mediation on both Orca Narrows and on the development considerations on Other Lands, I'm all for it.

MS. WILLIAMS: Michelle?

MS. BROWN: This is Michelle. I concur particularly with Mr. Janik's point on the urgency of beginning mediation. I think we have two offers that have been crafted to be responsive to the concerns that have been raised on the table, and I would hope that Eyak will take these in good faith and begin the negotiations proffered through a mediator with us.

MS. WILLIAMS: Thank you. Mr. Tillery?

MR. TILLERY: I concur.

MS. WILLIAMS: Okay. I would entertain a motion.

MR. JANIK: This is Phil Janik. I move that the board of Trustees accept the proposal as I described it in terms of what should be the content of our response to Eyak with regard to their counteroffer and the substance of our two earlier offers.

MR. RUE: I would second that.

MS. WILLIAMS: Seconded -- all the board members feel comfortable with the contents of the motion. I'll briefly I think, if I could, paraphrase. The board moves to recommend or propose to Eyak that we enter into mediation at the earliest available opportunity, being mindful of the March 2nd deadline that they have prescribed; that we are willing to meet them at their time and location of choice; and that we would agree upon -- have to mutually agree upon a mediator; and that the mediation would be subject to each board's approval; that we do reject their counteroffer and that we do reassert our desire to go forward with either of the prior offers that we have made and encourage Eyak to accept either offer. Is there anything else in the motion?

MR. TILLERY: There is just a point of minor clarification.

MS. WILLIAMS: Yes.

MR. TILLERY: Everyone knows that the references to

the board, at least on our behalf, means -- is the Trustee Council.

MS. WILLIAMS: Yes. Thank you. Okay, any additional discussion regarding the motion? Okay, it's been moved by Mr. Janik and -- was it seconded by Mr. Rue?

MR. RUE: Yes.

MS. WILLIAMS: Yes. Seconded by Mr. Rue to go forward with the motion as described. All in favor say aye.

ALL TRUSTEES: Aye.

MS. WILLIAMS: Opposed? (No response) It is unanimously adopted. Is there any further business to bring before the Council today?

MS. McCAMMON: Madam Chair, this is Molly McCammon.

MS. WILLIAMS: Yes.

MS. McCAMMON: Just as a point of follow-up on this, I would assume that -- Phil -- that the Forest Service will take the lead in drafting the response to Eyak, and that then we will prepare some kind of a public announcement to go with that from this office?

MR. JANIK: Yes. And we'll prepare that, Molly, if you see that appropriate, in the form of a letter going back to Eyak?

MS. McCAMMON: I think a letter to the corporation, and then we can use that as the basis for our statement to the public.

MR. JANIK: Very good.

MS. McCAMMON: It would be very helpful.

MR. RUE: If I may, given the timing of this, how quickly do you think we can let them know?

MR. JANIK: This is Phil Janik. Today is our attempt.

MR. RUE: Okay.

MR. TILLERY: We need signatures.

MR. JANIK: Which brings up a point, Molly, again a matter of protocol. Will we need signatures from all the board members on this or did I --.

MS. McCAMMON: No. I don't think --.

MR. JANIK: . . . (indiscernible) Council members. Thank you, Craig.

MS. McCAMMON: I would think that you could reflect the motion that was made at this meeting and just say "on behalf of the Trustee Council, I have been directed to give back to you the contents of the motion or the response from the Trustee Council." Would that be appropriate, Maria?

MS. LISOWSKI: Sounds fine to me.

MR. JANIK: Thank you.

MS. WILLIAMS: Any further business to bring before the Council? Hearing none, I will entertain a motion to adjourn.

MR. RUE: So moved.

MR. TILLERY: Second.

MS. WILLIAMS: It's been moved by Mr. Rue, seconded by Mr. Tillery, that we adjourn. Is there any objection to



CERTIFICATE

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

I, Linda J. Durr, a notary public in and for the State of Alaska and a Certified Professional Legal Secretary, do hereby certify:

That the foregoing pages numbered 03 through 15 contain a full, true, and correct transcript of the Exxon Valdez Oil Spill Settlement Trustees Council meeting taken electronically by Trustee Council staff on February 24, 1995, commencing at the hour of approximately 11:30 a.m. at the Restoration Office, 645 G Street, Anchorage, Alaska;

That the transcript is a true and correct transcript requested to be transcribed and thereafter transcribed by me to the best of my knowledge and ability from that electronic recording.

That I am not an employee, attorney or party interested in any way in the proceedings.

DATED at Anchorage, Alaska, this 27th day of February, 1995.

\_\_\_\_\_  
Linda J. Durr, Certified PLS  
Notary Public for Alaska  
My commission expires: 10/19/97