

**EXXON VALDEZ OIL SPILL SETTLEMENT  
TRUSTEE COUNCIL**

RESTORATION OFFICE  
Simpson Building  
645 G Street  
Anchorage, Alaska

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

**VOLUME IV**

August 9, 1993

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

P R O C E E D I N G S

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

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

MR. PENNOYER: We might as well go ahead and get started.

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

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

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

MR. PENNOYER: Certainly, go ahead.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. PENNOYER: Mr. Barton.

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

MR. COLE: Mr. Chairman.

MR. PENNOYER: Mr. Cole.

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

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

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

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

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



MR. PENNOYER: Mr. Barton.

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

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

MR. PENNOYER: Commissioner Sandor.

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

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

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

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

MR. PENNOYER: That's close to correct.

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

MR. PENNOYER: That's correct.

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

MR. PENNOYER: That's also correct.

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

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

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

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

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

(Aside whisperings; long pause)

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

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

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

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

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

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

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

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

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

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

And let me state again what I stated on Friday, what Eyak intended to do in the July 19th proposal was to provide a conservation easement and go to the shareholders for a vote on fee title. The first criticism we tried to respond to in making the August 5th proposal was simply to respond to the criticism that our easement wasn't protective enough, that a better easement was necessary, and so we included a better easement in the August 5th proposal. There were other aspects of it criticized, for instance, protecting Orca Bay, but that gets beyond the scope of what, the point I'm trying to make here now. We came back in the August 5th proposal with a modified easement and heard Mr. Sandor and others state conservation easements are nice, yes, but I would prefer fee title.

So, we went back to the board on Saturday and basically shared with them all of the conversations we had with the Council, and resulted -- and also with staff and the Nature Conservancy, and so on, all of last week -- for identifying all the issues, and the board has, I think, given us a clear sense of direction in this resolution about what it is that I'm doing, and what it is that Katherine's doing, and hopefully how we can reach an agreement. The first numbered paragraph of this resolution states that the board of directors of Eyak will accept the offer made by the Trustees Council to acquire in fee simple Power Creek, Eyak Lake, and Lower Eyak River. Not all of the lands in Lower Eyak Lake have been conveyed to us yet, but when we get them, we will convey them on. We'll do it on the basis of fair market value. Down towards the bottom -- "this acceptance is made conditional upon approval of



the

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

MR. PENNOYER: Can we take questions?

MR. LINXWILER: Sure.

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

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

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

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

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

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

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

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

happy to consider the proposal that the Forest Service made on Friday. The board -- the nature of the easement that would be offered there -- first of all, fee title is not being offered. It's been said a number of times about this transaction. This is a proposed transaction between a willing buyer and a willing seller.

Some things are on the table and some things aren't on the table, and one of the things that's not on the table is further fee land, except for Eyak Lake and Power Creek. I want to be clear about that because the board believes that's very important. We would offer easements to these other lands, if you wish to proceed with this transaction, that are in the nature of selling you, the Council, or the Forest Service, our commercial timber rights to our own lands, so that -- the primary threat, as I understand it, to these lands is from commercial timber operations. Mr. Sandor identified others, and we can discuss those. But, the primary proposal of the board of directors is commercial timber rights, and that would be basically what the easement would be directed towards. So, I hope I have managed to describe and explain and walk you through this corporate resolution to your satisfaction. What I thought was important, in light of the number of different parties and the number of different agendas, at the bottom line, I think, it's fair to say what the Eyak Corporation's agenda is, and they're the landowner, what they're willing to put on the table is Eyak Lake, Power Creek, and the Lower Eyak River, and they will go to their shareholders for a vote on a fee title transfer. They will also make good on the offer they made on Friday, which is to

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

MR. PENNOYER: So the difference then between the two proposals are conservation easement -- easement versus fee simple.

If we want the conservation easement now, presumably there's a cost -- price -- difference, a price inducement to go for fee simple.

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

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

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

and our is, again, using non-specific language, something akin in the board's mind to the sale of timber rights and perhaps other things to be negotiated, but I believe we're very close together on the nature of the rights. But that would encompass all of the Eyak properties except Eyak Lake, Power Creek, and the Lower Eyak River.

There is some timber operation on-going out by the airport, so I guess I should say in the rubric of our August 5th, it would be Eyak Lake and Power Creek study areas and everything west of that, I think would be the most precise way to describe it. That would be an offer on all of those lands for the purchase of limited rights, non-fee title rights. The board listened to that, were very intrigued by it, and is willing to entertain negotiations and discussions on that venture.

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

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

short-term cash needs.

UNIDENTIFIED VOICE: Second.

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

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

MR. BARTON: I do.

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

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

(Simultaneous laughter)

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

MR. BARTON: I'd be delighted to.

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

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

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

MR. PENNOYER: Mr. Cole.

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

MR. BARTON: They're one motion.

TELECONFERENCE BRIDGE OPERATOR: Excuse me, Mr.



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

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

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

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

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

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

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

MR. BARTON: That's correct.

MR. PENNOYER: Would you mind elaborating on that.

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

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

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

MR. BARTON: This would allow then, allow Eyak

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

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

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

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

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

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

MR. BARTON: Subject to will of the agency.

MR. PENNOYER: Mr. Cole.

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

MR. BARTON: That's correct.

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

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

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

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

MR. PENNOYER: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

MR. COLE: Immediately?

MR. BARTON: Correct.

MR. COLE: I mean, like, today?

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

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

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

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

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

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

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

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

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

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

MR. PENNOYER: Mr. Cole.

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

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

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

MR. LINXWILER: Uh-huh.

MR. COLE: That's a very essential, in my view, part of the transaction.

MR. LINXWILER: That's right. Now, keep in mind that the board of directors has already expressed in this resolution to you the message that they don't think their shareholders will go for the fee title deal. So, we would cease logging operations, incur substantial cost, and all of it hangs on a vote we already think we're not going get. So, I mean, we can talk about this, about other complexities. Mr. Cole, the answer to your question is no, I do not believe the deal in that particular framework, unless you de-link the two transactions, will work for Eyak.

MR. PENNOYER: De-link the two transactions, you mean de-link the fee simple from the question of an easement on the core parcels?

MR. LINXWILER: De-link the core parcels from ...

MR. PENNOYER: But the only way to do that would be to go with an easement or fee simple, if the board later votes to do it, is what you're saying?

MR. LINXWILER: Oh, no. You're approaching it from, I guess, another alternative. What I had in mind was, assuming that you were, that you remain steadfast in your desire to have fee title to the core parcels, that the -- all of the other lands would be dealt with in some separately bankable transaction so we could obtain financing.

MR. PENNOYER: Oh, I see, you were banking the moratorium because you might not vote for the core parcels.



MR. LINXWILER: But, sir, your suggestion equally serves the problem, which is granting you a conservation easement now with some present economic value allows you to guarantee -- give us -- a firm contractual commitment to pay us at least some money which we can take to the bank as well. So either way you cut it, either taking the two chunks of land apart or taking an easement now and taking fee title later on the lake, either one of those serves our purposes. But, before I go too far down this road, I don't want to be misleading, we need to keep in mind that all of this relates to Eyak's ability to obtain financing. We haven't approached our banker in any but the briefest of conversations this morning and are told that this kind of transaction would take a significant amount of time because we're talking about a significant amount of money -- at least thirty days once we had a contract in hand, and it seems to me that we're getting two to three months downstream in this process to be able to obtain funds from a banker to start with.

MR. PENNOYER: You mean relative to the earnest money part of it?

MR. LINXWILER: Well, yeah, because we're not getting earnest money, and so -- I'm frankly beyond the facts I have in my control right now to say whether that can work or not.

MR. PENNOYER: Mr. Cole.

MR. COLE: Are you -- I don't want to get into the realm of business privacy, but we noted that the last meeting that Eyak could continue to log the newly conveyed parcels for the

remainder of this logging season, and presumably, and I say presumably advisably, Eyak is making money from those logging operations, so you should have the source of funds with which to, quote, take to the bank, close quote.

MR. LINXWILER: Mr. Cole, since our conversation on Friday, I am advised that about half of the logs in sections 23 and 24 are lying on the ground. They've been logged out last week. And about half, the remaining half, will get cut this week and that hauling is starting, and that instead of having six weeks or two months to operate in there, we're going to be done in there very quickly.

MR. COLE: Well, then if you cut that fast and there's no moratorium on the harvesting of Orca Narrows, by the time we got this whole transaction looked at, all of Orca Narrows would be harvested, and you might even be over to Sheep Bay. So, we have to get a firm understand of the essence of this transaction, you know.

MR. LINXWILER: We certainly want to facilitate this transaction, and it is not our intention to create an impossible situation for the Council or for ourselves. Our original proposal, of course, had the earnest money component to it, granted by a firm, contractual tenement for us to give conservation easements or rights in our lands to secure the earnest money at Power Creek, and we may -- I -- it perhaps might be most fruitful to pursue that question. The question of being able to enter into the transaction Mr. Barton offered relates to our ability to handle the cash flow

needs created by our shutdown. Those relate to the ability to enter into a firm contract and how long would that take and then take the contract to the bank and get a loan on the basis of that contract. You know, and how much time is consumed in that is -- my guess is about two to three months, and it's more time than we can afford, so we need to have -- my guess is, where I'm leading, I guess, in all of this perhaps bridging the distance between us would encompass creating a smaller earnest money proposal, or a smaller earnest money transaction than we previously discussed. And I don't know what the interest of the Council is in that, but it's -- perhaps is something that you might find attractive as a way forwards from where we are right now.

MR. PENNOYER: The original earnest money agreement was about seven and a half million dollars?

MR. LINXWILER: Yes, sir, it was.

MR. PENNOYER: Over a period of time.

MR. LINXWILER: Over a period of, I believe it was ninety days.

MR. PENNOYER: Anything in this conversation, Mr. Barton, that would make you amend your proposal in any way

MR. BARTON: I have a question. Are you prepared to specify what a reduced earnest money number might be?

MR. LINXWILER: Mr. Barton, I am so far beyond my knowledge and authority at this stage that I can't, but if we were to break I could probably convene sufficient board members and other individuals relating to Eyak to be able to give you some kind

of an answer.

MR. PENNOYER: Mr. Barton, is that a key part of this decision?

MR. BARTON: Well, it appears to be.

MR. PENNOYER: Perhaps we should take a ten minute break then? Is that acceptable to the Trustee Council members.

MR. LINXWILER: I think we might need longer than that, sir.

MR. PENNOYER: I'm not sure whether we have a conceptual agreement on the balance of the proposals yet, of which this is a part, maybe a significant part but not necessarily the key part. Do the Trustee Council members feel that a longer break is appropriate? Is the earnest money agreement -- have we talked out the rest of the proposal to the extent that we need to deal with that before we break, because if there are other things that are going to come up that would also require something in the break, then I would prefer we did them all at once rather than take successive half hour breaks every fifteen minutes or so? Commissioner Sandor.

MR. SANDOR: Yes, Mr. Chairman, there are several other issues, one of which I dealt with at the Trustee Council meeting Friday, so I'll not repeat that, but -- so I have problems with the second half of Mr. Barton's resolution. In spite of Mr. Frampton's statements, I would be prepared to support the first half however, even though we're talking in terms of hemorrhaging twenty or thirty million dollars more for acquisition of critical habitat. I had

two questions -- well, the other thing is this motion on the table, particularly the second half, appears to be inconsistent with the resolution passed by the Cordova City Assembly, is that true?

MR. PENNOYER: I believe so.

MR. SANDOR: I think the Trustees would want to consider what promoted the city's resolution and at least be prepared to deal with it. The other question, I guess, is directed to Eyak. With the refusal to disclose the information that was requested a year ago and again Saturday on these various contractual arrangements that Eyak has with Sherstone and Whitestone, I guess, around the Sound, it's not clear to me from the dialogue that's taken place since we've convened that after the receipt of those materials the Trustee Council can, in fact, rescind without penalty any decisions that have been made here. I presume by the statements that were made that we could do so. Is that true?

MS. ANDERSON: I don't understand the last part.

MR. SANDOR: We have requested again, as we did a year ago, information on the contractual arrangements between Eyak, Sherstone, Whitestone, and I guess Melsound (ph) Logging Corporation, and these were denied by the board of directors on Saturday afternoon. As I thought I detected some concession during the opening remarks here, that after we receive those documents, we had, that is, the Trustee Council, had the clear right and responsibility of, in effect, wiping the slate clean and beginning again our decisions on the action to be taken. Is that true?

(Pause) I ask that question because I feel like I'm in a dark room. I do not know the cards that we're dealing with. The most troubling one of all, quite frankly, is the -- hinges on this business of the Eyak supposed obligations to the logging contractor to continue logging and to, in fact, perhaps be paid as much as three to five million dollars even if they do no harvesting, and that's crucial, Mr. Chairman, not only to my ability to evaluate this situation, but it's more crucial to the development of a trust relationship Eyak and especially with regard to conservation easements because anyone who's had experience administering conservation easements knows that they are very difficult to administer, especially over long periods of time, and you need a good trust relationship or, in fact, spend a substantial amount of funds in administering and monitoring the activities in relation to that. So, if we're breaking for ten minutes, I don't want the Trustees to be deceived into thinking that this one answer, the question that's on the table, is what's troubling me.

MR. PENNOYER: Mr. Barton, do you wish to make a statement on that?

MR. BARTON: Yes, Mr. Chairman. It is my hope that we could make -- that any action today that we took -- contingent on our review of the appropriate documents. The relevance of the documents, it seems to me -- the relevance of which documents seems to me to be somewhat dependent upon the action we take. If the Council would get involved in this (inaudible -- coughing and extraneous traffic noise) suggestion, then perhaps more documents

and the manner of the review is more relevant. But if the action we took is structured along my original motion, then it seems to me that might be less relevant in scope.

MR. COLE: One of the things that haunts me as I considered this proposal is that net operating loss transaction that Eyak engaged in with respect to its timber sometime ago, and I ...

TELECONFERENCE BRIDGE OPERATOR: Mr. Chairman.

MR. PENNOYER: Yes.

TELECONFERENCE BRIDGE OPERATOR: Commissioner Sandor is breaking up and we're not picking him up very well in Anchorage.

MR. COLE: Let me restate my remarks. One thing that haunts me as I reflect on this transaction is this net operating loss sale transaction that Eyak engaged in sometime ago with respect to this timber, and as a Trustee I do not want to be in a position of agreeing to pay X for these timber harvest rights and then find out that the net operating loss transaction was -- X is the numerator and beneath it lies a denominator of double digits. I think as a Trustee, to avoid being accused of frittering away assets of the trust, that we have an obligation to see how Eyak values this timber as a sale and to examine the terms of that NOL transaction. It troubles me.

MR. PENNOYER: Commissioner Sandor -- Mr. Barton? One or the other.

MR. BARTON: Well, I wonder what process we could work towards to allay Mr. Cole's concerns.

MR. LINXWILER: Mr. Cole, the NOL transaction is not concluded. It's at a very fragile status right now in terms of settlement with the IRS, and I say fragile, perhaps I should say vulnerable because it is nearly complete but not quite complete. Virtually any Native corporation you deal with that owns timber will have entered into one of these NOL transactions. Virtually all of them have. I believe, without attempting here to be confrontational in the least, that the NOL deal is not relevant to the market value of the timber, and the NOL transaction and the terms of the transaction are basically the business of the Eyak Corporation. We have agreed, I believe, to share with the appraiser the timber valuations that were the part of that, the valuations that verified the values of the timber in 1978 and '79, which is the basis upon which the transaction was entered into. So, I want to be very careful here not to overstate our willingness to dispense those documents to the commission or to its staff. It is entirely appropriate, I believe, for you to want to know what the terms of the logger's contract are and whether it's really there and whether we really are incurring financial costs that you really are fronting us money for. If you're not fronting us money for it, that's not relevant to the decision you make either. So, this question of what documents become available to the commission and how they are relevant to the commission's proceedings is one that we probably ought to talk about very carefully.

MR. PENNOYER: Mr. Cole.

MR. COLE: Is Eyak still bound by the terms of the



NOL sale transaction?

MR. LINXWILER: Umm ...

MR. COLE: Or are you going to -- umm --.

MR. LINXWILER: The ...

MR. COLE: Excuse me, go ahead.

MR. LINXWILER: Let me, let me describe an NOL transaction of the sort that Eyak entered into. Eyak received title to timber at a time when the market was at an historic high in the late '70's, and then in order to capture the high basis in its timber and to generate the losses that were conveyed, Eyak conveyed timber to a third-party timber company which it owned an interest in, and that was Sherstone. Through events that have nothing to do with that transaction, Eyak repurchased all of its interest in Sherstone, and as I described the other day, Eyak now owns the Sherstone company one hundred percent. Sherstone is a subsidiary now of Eyak. Yes, it's bound by the terms of the contract, but Eyak and Sherstone are now related contractually -- as a shareholder in a company in which the company owns shares. So, yes, the contract is still in effect, but it's now a contract with a hundred percent owned subsidiary.

MR. PENNOYER: Mr. Cole.

MR. COLE: If this proposal transaction goes through, I gather that the contemplation of Eyak is it will rescind its NOL sales transaction with its currently wholly-owned subsidiary and then enter another contract for the sale of these timber harvest rights, or whatever, with the Trustee Council.

MR. LINXWILER: That's a somewhat more complicated way of doing it. What we'd envisioned, just for simplicity's sake, was that Sherstone and Eyak would both enter into this transaction and grant the respective interests they have in the property. By the way, I can tell that there's a -- perhaps a problem of -- in the lexicon -- when I look at these NOL transactions and hear the NOL deals being discussed, I tend to think not of the land transaction, the underlying land transaction that generates the loss, but rather the deal with the purchaser of the loss, the tax transaction. The tax transaction part of this isn't on the table. Let me be perfectly clear about that from the beginning. It has no relevancy, in our view, to market values. But to focus on the questions you're asking about the complex of transactions relating to the land and the timber rights, we would handle that basically from the purchaser's point of view. We would give you all the rights in the land, because both Sherstone and Eyak are two entities that hold title that we'd be conveying to you, and we'd give you basically title guaranties.

MR. PENNOYER: Thank you. Commissioner Sandor, before we talk about a break and doing simply the easement -- the earnest money -- question, you are basically then against going beyond the basic core parcels on anything but fee methodology?

MR. SANDOR: Well, thank you, Mr. Chairman, for giving me the opportunity to really state very clearly and hopefully succinctly where I stand. One, I think there's almost unanimity with respect to the desirability of the acquisition of Eyak Lake,

Power Creek, and Eyak River parcels and really, mainly, for the protection of the fisheries and other resources associated with that lake, that very shallow lake. Again, we pointed out, the biologist pointed out last Friday, the logging is not the threat to Eyak Lake, it's the putrification of the lake which can just as easily take place with other activities. That takes care of that.

We're for that. The other thing that I am for is the protection of easements, the scenic easements, and as I would have presumed Eyak would have been interested, particularly along Orca Narrows, the steamship route -- the potential steamship route -- and so forth, and it was within, actually, Eyak's total control to plan its harvesting such that in fact that valley would be protected. I am troubled, therefore, to find ourselves in this situation, after negotiations of over a year and a half, that we have this threat imposed that this area is to be harvested, and harvested in a manner in which these scenic valleys are not protected. Indeed, anyone with 101 Forestry could have laid out the areas to protect those kinds of values, and I don't believe it is incumbent upon the Trustees to, in fact, be the follow-up for those kinds of activities associated there. And, finally, and perhaps most troubling of all, is, and why it's very crucial to have these documents that have been denied, is to really know what prompted -- what got us in -- the corporation -- into this situation where, in fact, we're told Eyak has no option but to allow this operator to harvest, and, indeed, if harvesting is stopped, that the logging contractor will get three to five million dollars for doing

nothing. Meanwhile, seventy people are out of work, and, you know, taking an action in contradiction to the will of the Cordova Assembly, and -- so, that's troubling. So, in summary, I'm back where we were Friday afternoon, in which, given the information that's on the table, the most that I could support, until I have full disclosure of the other information that's available but that's simply not given to us, anything more than a conveyance in fee of the three core tracts in question. So, that's where I am at this point in time, Mr. Chairman, thank you.

MR. PENNOYER: Mr. Sandor, the real I asked that question was I was trying to follow the track out why the second part of the proposal automatically goes against your concerns relative to disclosure of documents and the relationship of Eyak to the logging corporation. Is that simply the concept of purchase price for a moratorium on all other lands? Is it the fact that any option -- it seems to me -- well, the City of Cordova did pass a resolution.

We heard a lot of testimony on the teleconference net and during the hearing in the room itself of people concerned with lands beyond the ones we talked about, and, of course, we've not finished our studies on them so I understand some trepidation in terms of their values, although the fair market value concept certainly gives you some control over that. A lot of fishermen testified that beyond Orca Narrows, which has some viewshed concerns, that possible anadromous fish values and adjacent bays to the west of that were of a great concern, and if we could obtain some type of a, at least an option to deal with lands that we later viewed as

high value and not be simply forestalled by the mind in change on the part of either party to consider them, that would be of value.

I'm still not totally clear as to how the documents relate to the concept of getting an option or purchase of the moratorium or some variation on that beyond what (inaudible).

MR. SANDOR: Yes, Mr. Chairman. I have no doubt that there may be opportunities in and good justification for actions on other tracts. I would remind ourselves that the habitat team, the critical habitat, rated the core tracts as being the most important, the Orca Narrows tract as less important, but even where it's ranked as less important you would think it would be both to Eyak's interest as well as other parties to take actions which would protect certain values. But, I'm also concerned, Mr. Chairman, that we have Chenega lands, Tatitlek lands, and indeed this whole habitat valuation process which is underway, you know, is bound to be influenced by the action that's taken here, somewhat precedent-setting, and I don't want to treat those entities any less fairly than we treat -- as I feel we should be treating this proposal. So, I'm just saying that until there's full disclosure, I'm troubled. I'm not saying that I would -- oppose any action beyond -- indeed, I might well move action if it's justified, but I'm troubled that the public interest be protected, that when this is scrutinized by the public-at-large, as it will be, by auditors, GAO, others, that they will have been able to conclude that, indeed, the actions taken by the Trustees, as it has to date, been sound and based on all the information that could reasonably be

expected to be available. Thank you.

MR. PENNOYER: Commissioner Sandor, I think that the evaluations that you've seen so far were based on a hurry-up assessment of imminent threat. I don't know that, while the premise does not exist for logging some of the other lands, I'm not sure that some of the lands of Sheep Bay and Simpson Bay, for example, would rank out as high as some of the ones we've looked at already. I don't think they were totally evaluated at this time, although I understand there's major anadromous values along the shorelines, and hence in those areas lands that are potentially for logging. So, I guess I share with you the question of we don't know yet what all those values are, but I think we've got some hint that substantial values of resources important to us may exist on some of those lands, and Mr. Barton's has proposed, I think, for purchase of, in essence, an easement -- a conservation easement -- in some form on all of those lands that -- certainly an option to purchase lands of value, it would seem to be something that is within our area of great interest. So, I don't know how you get from here to there, but -- Mr. Cole.

MR. COLE: I would like to say, if we look at paragraph 3 of the Eyak Corporation resolution number 8-7, the last little bit of the third paragraph, with respect to the moratorium, it says, quote, "and that such a moratorium be part of a firm offer to buy commercial timber rights from Eyak in the form discussed in paragraph 4," the following paragraph. That is a little troubling in that, as I read it, it means any moratorium against resumption

of logging must be tied -- I was going to say linked, but then I thought the better of it -- to the acquisition of commercial timber rights. That's different than a conservation easement, as I see it. But, it's -- so it's my position as we adjourn for the recess, it is reasonably clearly understood, I'm in favor of buying in fee simple title for fair market value Power Creek, Eyak Lake, and Eyak River, conditioned upon a moratorium on all logging operations by Sherstone and/or Eyak west of those lands, and I -- I will not agree to the acquisition of the Power Creek, Eyak Lake, and Eyak River tracts if Eyak-Sherstone resumes logging in Orca Narrows.

MR. PENNOYER: Mr. Cole, duration of that moratorium -- on all lands?

MR. COLE: That's a subject of negotiation. My view is that this moratorium for seventeen months until December of 1994 is too long. I think we should be required to make decisions concerning the selection of easements under such terms as we may agree upon in a matter of a few months.

MR. PENNOYER: Mr. Cole, you're going to purchase an option to buy, which ...?

MR. COLE: Yes.

MR. PENNOYER: ... would have to be at fair market value?

MR. COLE: Yes, because -- and I think that we should have to exercise that option before the resumption of the logging season next spring, whenever that is -- March 15, April 1, whatever we can agree upon. But I agree with Commissioner Sandor that I think that the Orca Narrows property is very important for the

future of Cordova and possible tourist activities, site restrictions along there, and as I said at our meeting on Saturday, my mind's not going to change on that.

MR. PENNOYER: Mr. Cole ...

TELECONFERENCE BRIDGE OPERATOR: This is Cordova here.

Out of consideration for the outlying communities, could -- you're breaking up terribly. Could you restate Mr. Cole's motion so the people in the room here understand what you're saying and enunciate it as clearly as we can do. Thank you.

MR. COLE: That's a major assignment. But my view is this. One, the Trustee Council should purchase fee title to Power Creek, Eyak Lake, and Eyak River; that, in addition, the Trustee Council should acquire an option to purchase an easement, on such terms as we might agree upon, for fair market value, to be exercised by April 1, 1994. That would afford us an opportunity to make a study of those lands and to decide which lands and the interest therein before the beginning of the next logging season, and the amount to be paid for the option to be subject to negotiation upon full disclosure by Eyak of all documents requested by the Trustee Council -- that's financial documents requested by the Trustee Council -- and maybe Commissioner Sandor or Commissioner Rosier have -- want to add something to that. I've tried to cover it as best I can.

MR. PENNOYER: Mr. Barton had a question, I believe.

MR. BARTON: I have a question of Mr. Cole. What lands do the option apply?



MR. COLE: Well, essentially everything lying -- I should say north and west of the Narrows. As one looks at that map ...

MR. PENNOYER: North and west of the key parcels to be purchased (inaudible -- extraneous traffic noise).

MR. COLE: I was trying to avoid Shepherd Point tract because I don't know quite enough about exactly where that lies and the size and the considerations that come into play there. On that I would like further advice and counsel.

MR. PENNOYER: The balance of the Power Creek tract and -- I don't know -- somebody ought to get a map for us.

MR. COLE: I think somebody has a good sense of that, but I said I'm not quite certain about that Shepherd Point tract which I read about in connection with Eyak's logging plans.

MR. PENNOYER: Mr. Barton, a question?

MR. BARTON: Yes. Still a question, are you proposing, Mr. Cole, to take an option on all lands west of Hawkins Island there?

MR. COLE: (Pointing to map) Everything this way, whatever way that is, but I think it's north and west, but we'll see if a map -- but everything that lies on the shoreline of Orca Narrows and northwest from there.

MR. BARTON: Thank you.

MR. PENNOYER: Mr. Cole is pointing to the map and showing lands referring to the option to be everything to the north and west of Orca Narrows.

MR. BARTON: Does that include the parcel labeled Orca Narrows on that map?

MR. COLE: Yes!

MR. BARTON: Thank you.

MR. PENNOYER: Includes the parcel labeled Orca Narrows on the map. Does that include the Rude River parcel ...?

MR. COLE: Yes.

MR. PENNOYER: ...north and east of Orca Narrows -- Rude River would be included in the option as well. Is this -- before we take our break, is this an amendment or a substitute motion? If so, does it have a second? Mr. Barton, can we treat that as an amendment to your motion and vote on it separately.

MR. BARTON: At this time at least.

MR. PENNOYER: This time. Is there a second to Mr. Cole's motion? I'll second. Can we take our break now and talk about it? Do we need to? Do you have any further comment?

MR. LINXWILER: Yeah, I guess I do. We are operating a business. We're a private property owner and we're operating a business on our property, and the offer is to sell the business and some part of the property -- to shut down the business, to put it more accurately -- shut down the business and sell some portion of the property. The portion of the property that we're selling is undefined; the price of the option is not to purchase the property, but an option which may or may not be exercised, is undefined; and all of it is subject to the receipt of documents which are, as yet, undefined as well. And, so, I'm not sure what I'm going to ask my

client. Perhaps what we could do is fill in -- perhaps at the break it might be appropriate for us to identify what the -- what some of the more salient terms are of the transaction. I understand Mr. Cole to have offered in a similar fashion to Mr. Barton for the purchase of the three tracts and an option on everything else, as opposed to a firm offer to buy everything else.

So, we gone -- if we turn off our logger, basically he goes out of business. So, we ought to understand that an effort to send him home for eight or nine months, from now until next April, basically puts him out of business and sends all of his equipment back to the parties he'd purchased it from. And what I'm trying to do is explain some of the complexity, I guess, of this transaction. My struggle is to try to understand it better and see how we can satisfy some of the economic problems that it creates for us. Perhaps my comment is a question to Mr. Cole, do you have a dollar number for the option, sir?

MR. PENNOYER: Mr. Cole.

MR. COLE: Nope, but we would want to see those financial documents to be able to formulate a reasonable amount to be paid for the option. How much would it really cost to shut down this logging operation? How much has his net profit been on a month-to-month basis, so we can determine how much it would really cost him to shut down for three months, and also to look at his -- the commitments the logger has on equipment so that we can make a rational determination of the amount which should be paid. It's not quite so important if we would get credit for that against the

purchase price, but the problem with that is we're not certain that the shareholders would approve the sale of the three core tracts in fee title, so it complicates it, slightly, and we would want some security device that in the event we paid some money to be returned as far as the purchase price, that we would get it back if the transaction fell through.

MR. PENNOYER: Yes, sir.

MR. LINXWILER: As I understand the terms of Mr. Cole's proposed offer, it contains so many elements of risk for my client that are unknowable that I would be misleading you if I said I was going to go to the telephone, get a hold of my client, describe what it was, and come back with an answer that would be anything but negative. I'm not dismissing it out of hand, and I certainly will go through the effort of reaching my client and describing this offer if you wish me to. It might be helpful for the Council to return to what the board of directors of Eyak Corporation will agree to. They will agree to an offer on Power Creek, Eyak Lake, and Lower Eyak River, in fee, and they will take that to their shareholders. They will agree to a moratorium, if there is a firm offer to purchase lands, other than those lands, and -- I'm sorry, I stand corrected by my client, thank you -- an easement right, a limited easement right, in the remaining lands, and they will discuss the purchase and sale of that easement right.

What I think they will not do is to trade the moratorium for a sale of the Eyak Lake and Power Creek tracts. They've already decided that. They decided that on Saturday in their resolution;

the

moratorium comes with the sale of other lands. And the reason is simply that the transaction isn't big enough to take them out of all of that business unless they do so. I can go back and ask them if they still mean what they said on Saturday, but we don't have a board meeting, and so we'll have just individuals and won't be able to unravel it. I guess my message is they meant what they said. It was my intention to come with this resolution so that you would know what they would do and what they wouldn't do.

MR. COLE: I think it's clear we mean what we say too, you know.

MR. LINXWILER: I certainly understand that, and I don't mean to be unduly confrontational. I'm simply trying to facilitate reaching a result here, and if the result is that there cannot be a transaction, then that is the result, and if the result is that we can negotiate within the parameters you have and the parameters we have, then that's a much happier result. I would prefer the latter, as I'm sure you would too, sir.

MR. PENNOYER: Let me understand clearly though. What you're saying is the, quote, easement, moratorium, whatever we call it, is all lands or nothing -- (indecipherable -- traffic noise) price for. So, it's not -- some part of it, it's a firm offer of price for all of it.

MR. LINXWILER: Let me clarify here, perhaps I wasn't sufficiently clear. The moratorium will be considered by Eyak Corporation if there is also a firm offer to buy lands other than - - and I'm saying buying lands, I'm going to be corrected it in just

a moment (gesticulations by Ms. Anderson) -- see, I told you that -  
- to buy easement rights in lands other core tracts. The core  
tracts are -- essentially in the eyes of Eyak, the core tracts are  
a stand-alone transaction. They can be linked into the deal as  
long as there are other lands -- other rights to other lands -- put  
into the deal -- but those are stand-alone -- and the moratorium  
goes with the remaining lands.

MR. PENNOYER: Mr. Barton.

MR. BARTON: Would the purchase of a limited  
conservation easement on the parcel identified as Orca Narrows on  
that map over there satisfy that requirement?

MR. LINXWILER: Yes, it would. In fact, that was our  
proposal of Friday, sir.

MR. PENNOYER: So you might consider a specific  
moratorium on some specific lands, plus an option on others?  
Something like that could be woven together?

MR. LINXWILER: If I understand you to be saying the core  
tracts, the Orca Narrows tract, and an option on other lands  
besides, certainly. Certainly, that is possible. That is within  
the scope of the board's resolution as I understood it.

MR. PENNOYER: Mr. Cole, I don't think you offered Orca  
Narrows (indecipherable).

MR. BARTON: You offered an option on Orca Narrows, not  
purchase of an easement.

MR. PENNOYER: This would be a purchase of the easement  
provision on Orca Narrows, fee simple on the other three lots, and

an option to buy other lands as determined later to be required, within a certain time period, fair market value, not to buy, to buy an easement on the lands -- I'll do the same thing you did and Kathy will correct me too.

(Simultaneous laughter)

MR. COLE: Would you mind restating -- would you mind restating that.

MR. PENNOYER: No, I don't mind restating that. I think the way that Eyak stated this is that they could consider a proposal to buy the core parcels, Eyak River, Eyak Lake, and Power Creek, plus an easement of some nature purchased in perpetuity or some length of time on Orca Narrows, plus an unspecified option in terms of the amount of land on the balance of their lands. That would all include a moratorium on logging in the short-term, could include earnest money agreements, other things, I suppose, if they happened to decide to do it, and also it would be done under a certain time frame to be negotiated.

MR. COLE: Mr. Chairman, what happens if the shareholders reject the fee simple offer on the three core tracts?

MR. LINXWILER: The question is with respect to further protection of those lands or with respect to receiving repayment on the earnest money?

MR. PENNOYER: With respect to any of it -- earnest money, Orca Narrows, the option, any of the rest of it.

MR. LINXWILER: This is testing my ability of total recall to think how many issues we have, how many balls we have in



the air. With respect to protection of the immediate core tracts, unless you take an easement first and title later, they aren't protected. We discussed that earlier in this meeting. The question of whether you get the easement on Orca Narrows or not really depends on whether -- on how you draft the documents, whether that is a stand-alone transaction or not. If it's a stand-alone transaction, it doesn't work from my client's perspective because of the way that we stated the resolution. The resolution is the both tracts, and the reason for that is fundamentally economic, I guess, at the end of the day. The deal has to large enough they can afford to absorb some of the costs of the shutdown.

I think we've all talked about all of those issues. In terms of earnest money, I'm assuming that earnest money or some arrangement for earnest money, in whole or in part, is part of this transaction, and we haven't gotten around to discussing that yet -- we previously discussed in our offer of Friday, my recollection is we discussed there some security for the earnest money, but -- I guess I'm having trouble following that line of reasoning all the way because I'm not sure precisely what the proposal is, so I'll just stop there. I hope that's responsive to your question, Attorney General Cole.

MR. PENNOYER: Mr. Cole.

MR. COLE: The problem is, if we give seven and a half million dollars and the transaction falls through, how do we get seven and a half million dollars back. That's what concerns me.

MR. LINXWILER: That's the question of security, and -- I think I knew the answer to that on Friday in relation to our Friday proposal because we gave you something of value so that the deal would never completely fall through, and so we could always set the seven and a half million dollars against that portion that didn't fall through, and that was going to be the conservation easement on the core tracts. If you make the contingency the vote and the whole deal collapses if the vote doesn't happen on the three tracts, I -- I don't know what the answer is right now. I think I'd have to think it through a little bit and perhaps we could discuss it.

MR. COLE: Mr. Chairman.

MR. PENNOYER: Mr. Cole.

MR. COLE: See, the problem is is that the transaction is poorly structured because, given the -- where -- we are, I have no doubt but that the shareholders will turn down the fee simple acquisition. That seems to me almost a given under the transaction that is currently structured. Then we will wind up in the position of having given X million dollars as, quote, earnest money, close quote, and in a position to receive only something that we don't particularly, totally want, i.e., fee simple title. That is the structure that I objected.

MR. PENNOYER: Mr. Barton.

MR. PENNOYER: I wonder if it's possible to construct an easement that would essentially be a fee title interest?

(Aside whisperings)

MR. LINXWILER: On the Power Creek-Eyak Lake-Eyak River area is do-able, certainly. It was part of our proposal on Friday.

MR. BARTON: I'm sorry, I didn't clarify that. That's what I meant is a structured easement on those three key parcels, core parcels, that is essentially fee title interest.

MR. PENNOYER: I'm sorry, I guess I don't clearly understand Eyak's -- if you can construct an easement that's so tight it's like fee simple, why -- what is the -- what do you want to retain you're not retaining with fee simple? What do you gain by retaining interest?

MR. LINXWILER: The corporation wants to retain title to its lands.

MR. PENNOYER: Why? What's the concern? What can you do with the land? You can hunt and fish on the Forest Service land. I mean, what particularly has to be done that you're going to get -- tax reason? I mean, what's the reason that (indecipherable -- simultaneous talking). What activity do you wish to proceed that you can't proceed under fee simple.

MR. LINXWILER: The answer may be a pragmatic one or it may be more of an emotional and spiritual one for the Native community, and perhaps the most direct way to answer that is that while it may be true that you can do a lot of things on federal public lands, it is very important to the Eyak community to feel that they own lands. The distinction in the non-Native's eyes might be largely symbolic and meaningless, but it's critical to the

community. That's the problem with voting for fee title and not -- and that's why the board doesn't think the community will do it. I hope that's responsive to your question.

MR. PENNOYER: Mr. Cole.

MR. COLE: Well, someone was telling me, I forget whom, was saying that the cost of that type of easement would -- on lands near the community of Cordova -- cost essentially as much as a fee simple title, and that, if it's true, troubles me. We pay nearly as much as for one of these easements as we do for fee simple title, and yet we have limited rights to that land, and as Commissioner Sandor has said, we have the problem of enforcing the easement as against the fee owner.

MR. PENNOYER: Mr. Barton.

MR. BARTON: Well, the value of the easement would be determined through an appraisal process, and I assume the appraisal process would consider what rights either party would retain or gain in the transaction in the course of the appraisal, so that if the United States was to secure virtually all the interests other than the title itself, that would probably be reflected in a higher price for the easement. If we want a low priced easement, then less rights would need to pass. But I think we ought to focus on what it is we want to accomplish.

MR. PENNOYER: Mr. -- Commissioner Sandor, I think you at one time (inaudible) the first concern you had with easements versus fee simple. It seems to me that they've an easement that contains everything from no pesticides, the dumping of trash, no

subdividing, etcetera, etcetera. Are you concerned there's something that we've forgotten that will be found later on that folks can do that we don't want them to do if we don't own land. What is the concern and how could we take care of it, is there anything short of fee simple we can in fact do?

MR. SANDOR: Mr. Chairman, with respect to the August 5 proposal and the definition of easement, I would think that that would have some value of thirty plus or minus percent of the net -- of the fair market value -- of the land in fee, and because actually a lot of activities that might affect or impact the putrification of the lake, you know, are simply not dealt with, let alone the administration of the easement itself, so it is -- as you pointed out or as the biologist pointed out Friday, the area was harvested at the turn of the century, and so timber harvesting itself did not destroy the values. The biggest problem I see in that Eyak Lake area is putrification of the lake and which might come from, you know, activities which are not associated with the, you know, the timber harvesting itself. I'm not opposed to easements, but, as Mr. Barton pointed out, one has to evaluate what they're getting and be prepared to pay, but it would be certainly far from the public interest to pay fair market value of fee title for an easement. I would think we'd certainly be criticized, and justifiably so, by GAO and others who found us expending these funds with no adequate assurance of the protection of the values we were -- we had targeted.

MR. PENNOYER: Mr. Barton.

MR. BARTON: Mr. Chairman, my attention would be greatly enhanced by a five minute break, and if we don't take one, I'm going to abandon you. (Laughter)

MR. PENNOYER: Okay. Do we need a five minute break, ten minute break or twenty minute break? Are we doing something here to call people up?

UNIDENTIFIED VOICE: I don't think ....

MR. PENNOYER: Take a ten minute break then.

(Off Record: 3:14 p.m.)

(On Record: 3:35 p.m.)

MR. PENNOYER: Are we ready?

MR. BARTON: No. Do you want to wait on Kathy?

MR. LINWILER: A good lawyer always waits for his client.

MR. PENNOYER: We are waiting for a second for one more person to come. So, we'll wait for about two more minutes.

STAFF (via teleconference): Mr. Chairman.

MR. PENNOYER: Yes.

STAFF (via teleconference): This is L.J. in Anchorage.

I just want to make sure that the Trustees are aware that the teleconference network will close at 4:30. So the teleconference is end at that time.

MR. PENNOYER: Yes, we understand that, and we are attempting to complete our business by then if we can. (Pause) Okay. I think we're all here now. Could we proceed. Mr. Barton, do you have something to add?

MR. BARTON: Yes, Mr. Chairman, I would like to ask the Eyak folks a question on the approval of an easement. As I understand it, the board can approve any deal on conservation easements in any form or shape, is that correct?

MR. LINXWILER: That is my understanding, yes.

MR. BARTON: The second thing I'd like to ask, you've heard a lot of discussion, we'd had a lot of discussion, about what an easement can do and the different problems of enforcing an easement and perhaps what an easement cannot do, if I might I'd like to ask one of our working group folks if they're confident they could construct an easement that would address the concerns that have been raised here today and last Friday. Kim or Art, whichever, with the Council's permission.

MR. PENNOYER: Yes, would you come up to the table, please, Kim or Art. They both came up, okay.

MR. BARTON: I would appreciate a succinct answer.

MR. PENNOYER: Mr. Sundberg, do you understand the question?

MR. SUNDBERG: I understand the question is is that Mr. Barton is asking whether a conservation easement could be crafted to address the concerns that have been brought up about adequate protection of the resources and services that are on these parcels, is that correct?

MR. BARTON: That's correct, and I'm particularly interested in Power Creek, Eyak Lake, and Lower Eyak River.

MR. SUNDBERG: I think it's possible to craft a

conservation easement to address adequate protection of the habitat resources that are on those parcels, I'm less comfortable with the visual, scenic resource concerns that have been raised here, and so I wouldn't want to comment on that, but in terms of protecting the habitat values, I should think a properly crafted conservation easement could protect those resources, and you would have to consider the long-term enforcement and management of that easement to ensure that that was adequately carried out.

MR. PENNOYER: Mr. Barton.

MR. BARTON: If a -- well, certainly timber harvest would be a -- one of the activities that would have the most significant impact on the visual resource, whether either commercial timber harvesting or land clearing. If that were included in a conservation easement, I'm a little puzzled as to why there would be a problem with the visuals, why that couldn't be protected.

MR. SUNDBERG: The analogy that I would draw to crafting language would be similar to a permit, and my department issues permits, for example, for work in anadromous fish streams, and it is possible to craft language and you can enforce that language to achieve your desired protection for habitat values. Visual values are much more subjective and much more difficult to quantify, and unless you set out what the baseline or standard was for your visual objectives, it would be impossible to protect visual resources without some kind of a standard.

MR. PENNOYER: Mr. Barton.



MR. BARTON: If the conservation easement contained a provision that there would be no canopy reduction, would that no protect the visual resource?

MR. SUNDBERG: It would substantially protect the sort of landscape characteristics of the area. Whether it protected the visual resources from, say, house construction or road construction, and that's another matter.

MR. BARTON: But if all those were contained in an easement -- no road building, no subdivision ...

MR. COLE: No boats, no house trailers, on ad nauseam. Is that what you're saying?

MR. SUNDBERG: Yes, I'm saying that you would have to spell out what your objective was for visuals, rather than making it just canopy. You would have to set out what those things are that you're trying to protect there from a visual lands -- a visual prospective. If it was just canopy, then you could limit it to that, but if there were other factors, you'd have to spell all that out in a document.

MR. PENNOYER: Mr. Barton.

MR. BARTON: My original question was whether it was possible to do that. I guess maybe I need to ask one of the attorneys to address that question. Maybe ask Mr. Maynard (ph).

MR. PENNOYER: Mr. Maynard, do you know the answer to that question? Get rid of trailers and woodsheds and cars.

MR. MAYNARD: It's certainly possible to craft conservation easement language to eliminate virtually all visual or

other resource impacting uses -- uses or activities -- on land. It's really a question of craftsmanship as how much to pay for that easement compared to fee title, and a question of enforcement. Any easement or hinderance in land has to be enforced.

MR. COLE: Mr. Chairman.

MR. PENNOYER: Mr. Cole.

MR. COLE: Have you -- Mr. Maynard --

MR. PENNOYER: Mr. Maynard, I think Mr. Cole's got a question.

MR. COLE: Mr. Maynard, have you had experience in the enforcement of this type of easement?

MR. PENNOYER: Mr. Maynard.

MR. MAYNARD: Thank you, Mr. Cole. Let me identify myself. I'm the Alaska counsel for the Forest Service, and I don't recall any specific personal experience in enforcing such easements. I am relative well-read in the easement area and speak on a regular basis with people who have had such experience and have participated in drafting and crafting such easements myself. So, in terms of difficulty of enforcement, I would not -- I wouldn't debate that it can be hard to enforce an easement if you don't have cooperative parties, and there's all kinds of administrative problems that can arise. I wasn't discounting that, but it's -- it is possible to craft and implement at some levels of the easement, in my opinion.

MR. PENNOYER: Mr. Barton. (Pause) Mr. Barton, were you going somewhere on your questions on easements?

MR. BARTON: Well, yes. I wanted to demonstrate the relative problems and the opportunities associated with both the easement, the construction of the easement, to get some feel for the feasibility and use of the easement in this particular situation if we can. I'm not sure exactly where we are in terms of what's on the table.

MR. PENNOYER: I think the last motion on the table, which I seconded so we could discuss it, was Mr. Cole's motion for fee simple, fair market value, Power Creek, Eyak Lake, and Eyak River, and conditional on a moratorium of all logging of Sherstone-Eyak west of the core parcels, time period for that moratorium to be worked out, the moratorium basically to include an option for purchase at the end of some time period that, I think Mr. Cole thought it might be sometime early this spring, at which time the study would have to be done, the option exercised for further purchase -- not purchase -- purchase of easement, at fair market value, beyond these core parcels, and would be subject to negotiations on a value of that options and/or questions of earnest money based on disclosure of certain documents to the Trustee Council that would give us a basis on which to conduct those negotiations. I think that was the final motion or approximation of what's on the table. I did have one question regarding Hawkins Island, which is west of the parcels. I assume that included Hawkins Island as well?

MR. COLE: Yes.

MR. PENNOYER: Thank you. It includes Rude River, Orca

Narrows and the land to the west of Orca Narrows, including Hawkins Island. Commissioner Sandor.

MR. SANDOR: Just a point of clarification again. I wasn't sure I got a clear answer from Eyak Corporation. Given the disclosure of the documents, after the Trustees have had an opportunity to study them, is it clearly understood that the Trustee Council may well, in fact, modify the motion that has been approved?

MR. PENNOYER: I don't think there was any such discussion, except that it was all -- all of the question of earnest money. The value of the option was all up to negotiation, which would be based upon that, so there are some things left open.

Mr. Barton, did you have something?

MR. BARTON: Yes, back on the procedural issue, I suppose. I assume then that Mr. Cole's motion is an amendment to my original motion. We were assuming that, although it could have been a substitute motion.

MR. BARTON: Not yet.

MR. COLE: Mr. Chairman.

MR. PENNOYER: Mr. Cole.

MR. COLE: Was that an acceptable amendment, Mr. Barton, or do you not accept it?

MR. PENNOYER: I think this is an amendment, not a friendly motion at the time, although we could ask him if he would take it as a friendly amendment.

MR. BARTON: I do not at this point in time, nor do I

accept it as a substitute at this point.

MR. PENNOYER: So, it is an amendment to Mr. Barton's motion, which we would have to vote on first before we went back to the main motion for sub for a further amendment at this time if somebody wants to make one. Mr. Barton.

MR. BARTON: One of the things, apparently, that is hanging us up. It's hanging up Eyak for one reason, and it's hanging up the Council for another reason, is the fee title issue of Power Creek, Eyak Lake and Lower Eyak River. Eyak is concerned that we cannot -- that they may not get shareholder approval and that's required for fee title action. We, on the other hand, are concerned that if we put earnest money up, what happens to that if the shareholders would reject the fee title. What's the answer to that question? What happens to any money that's put up front if the shareholders reject?

MR. SANDOR: Mr. Chairman, it's my understanding the monies would be fundable.

MR. PENNOYER: Mr. Barton, was your question rhetorical or were you looking for answer?

MR. BARTON: No. I'm looking for an answer. Now, that's one answer, and now I'd like to hear the answer from the other end of the table.

MR. PENNOYER: Eyak Corporation, would you care to answer the question of what happens to the earnest money agreement if in fact the fee simple is turned down, the deal is turned down.

MR. LINXWILER: I think that if -- if the proposal is

that we receive earnest money, and then the earnest money is refunded by us if our shareholders don't vote for fee title, that the transaction is not acceptable to Eyak out of hand. Please understand that I say that not to discourage the Council's full consideration of this issue, but please also understand where we're trying to go. We had a proposal for the core -- what we're calling the core tracts. We offered easement first, title later. We tighten up the easement and came back -- easement first, title later. It was then said, we don't like easements, give us title only, so we came back today with a proposal for title only, subject to the shareholders' review. The problem seems to be, and one of the goals here seems to be, to take us out of the logging business and stop us from logging, not those tracts, but other tracts altogether, and Eyak's answer to that is, if you want us to stop logging those other tracts, then purchase the logging rights to those other tracts. Nothing could be simpler from Eyak's point of view. If you want to protect Orca Narrows, buy Orca Narrows. If you want to protect Eyak and Power Creek, then protect Eyak -- Eyak Lake -- and Power Creek, but you don't protect Orca Narrows and take us out of the logging business while you do so. We're getting a number of goals kind of intermingled here, and ultimately what you're trying to do is to buy us out of the logging business, which we're amenable to do if the price is appropriate, and we're quite willing to talk about that and our resolution addresses that quite directly, and we'll happily do that when we sell the lands that the logging business is next going to consume. I agree with Mr. Barton

that the problem probably is, in terms of trying negotiate all of these moving parts at once, the sale of the Eyak Lake and Power Creek, purchasing a moratorium on the logging business, which effectively puts our logger out of business, without any commitment to buy anything with a refundable earnest money agreement, I guess that part of it fails because it's potentially highly damaging and extremely risky to the Eyak Corporation.

MR. PENNOYER: Mr. Cole.

MR. COLE: It's not true that we're trying to take you entirely out of the logging business. We're seeking an opportunity to evaluate the entire lands owned by Eyak for the purpose of habitat acquisition in a limited time. Thank you.

MR. PENNOYER: Mr. Barton.

MR. BARTON: Yes, Mr. Chairman, in the interests of trying to move us an inch or two forward, I'm not making a motion and I'm not making an amendment, but I'm just putting a suggestion out. If I were to move something, it would be something like this at this point: fee title to Power Creek, Eyak Lake, and Lower Eyak River, fifteen month option at no cost on all remaining lands while the studies are completed, a limited conservation easement on Orca Narrows, for the price of forty-one million dollars or fair market value, whichever is less.

MR. COLE: Mr. Chairman.

MR. PENNOYER: Mr. Cole.

MR. COLE: Was that for the entire enchilada?

MR. BARTON: The whole enchilada, and if that's not

acceptable, since we're operating on a willing seller basis, then I would amend that to the areas to the west of that identified before.

MR. PENNOYER: Mr. Barton, how does that get around the question of how does Eyak recover anything in the short term if they vote no on the fee simple? Forty million dollars is -- will -- apply to whatever part of this that goes through then? Forty million dollars or fair market value, whichever is less? In other words, if only part of it, such as Orca Narrows, is approvable at this time or the option, fifteen months, is approvable at this time? Whatever parts are approvable by the board and the membership of Eyak would be what the price would apply to -- so, if they voted no on the core, there still would be some money forthcoming possibly for the option and for the Orca Narrow part, right?

MR. BARTON: There would be -- no. There would be money coming forward on the Orca Narrows part.

MR. PENNOYER: So, it's no cost for the fifteen month option, I see.

MR. BARTON: That's right.

MR. PENNOYER: If they voted no on the fee title, then there would be some money forthcoming for the Orca Narrow part, but it would be less than the forty million. Forty million is the whole enchilada, and the pieces are whatever they shake out as.

MR. BARTON: The pieces are fair market value or (indecipherable).



MR. LINXWILER: Could I ask Mr. Barton ...

MR. PENNOYER: Certainly.

MR. LINXWILER: ... a question or two. The forty-one -- when people are referring to the whole enchilada, let me make sure I understand what you're saying. The purchase of the Eyak Lake, Power Creek, and Eyak River tracts, plus the Orca Bay tract for forty-one million dollars -- Orca Narrows tract, not Orca Bay, I apologize.

MR. BARTON: A conservation easement on Orca Narrows.

MR. LINXWILER: A conservation easement on Orca Narrows, and that would be limited as we previously described in our proposal.

MR. BARTON: I am referring to the easement as constructed in the April 5 -- umm -- August 5 -- proposal.

MR. PENNOYER: Mr. Barton, your previous proposal was fifty million dollars for everything, including the moratorium on all lands, now it's forty million dollars on just Orca Narrows and these core areas?

MR. BARTON: And the core areas.

MR. PENNOYER: For ten million less you ...

MR. BARTON: Or fair market value, whichever is less. It's all subject to the standard appraisal process.

MR. PENNOYER: But, again, the previous proposal was fifty million dollars for everything, now it's forty million dollars for just (indecipherable -- traffic noise) option and Orca Narrows, plus the core areas.

MR. BARTON: Plus the core areas.

MR. COLE: Mr. Chairman.

MR. PENNOYER: Mr. Cole.

MR. COLE: Does not include immediate cessation of logging operations?

MR. BARTON: Yes, it does.

MR. COLE: And, if the Eyak shareholders vote against fee simple title, what happens, the entire agreement collapses?

MR. PENNOYER: Mr. Barton.

MR. BARTON: I think that's a subject that we could discuss.

MR. PENNOYER: Anyone further discuss this non-motion amendment?

(Simultaneous laughter)

MR. COLE: I'll make the motion if I don't have to vote for it.

MR. PENNOYER: Do we have a second to Mr. Cole's making of Mr. Barton's non-motion.

MR. BARTON: I'll second it.

MR. PENNOYER: Mr. Barton seconds his own motion made by Mr. Cole. (Laughter)

MR. BARTON: Somebody else want to do it, just to be sure we're covered.

MR. COLE: I think we're covered.

MR. PENNOYER: That now is the latest amendment to the main -- to Mr. Cole's amendment to the main motion, I guess?

MR. COLE: Do I understand Mr. Barton's second to mean that there is no earnest money paid?

MR. PENNOYER: Mr. Barton.

MR. BARTON: That would be the most desirable route to go for the purposes of discussion, yes.

MR. COLE: I call for the question on the motion.

MR. PENNOYER: The question's been called for, is there any further discussion? Is there enough detail here to do this in two steps. This and then discuss anything further, or -- the question has been called for. Eyak want to say something first?

MR. LINXWILER: I'm not sure where within Robert's Rules of Order we currently are. You've got a question called, and I guess I have a lot of questions relevant to the proposal that you propose to vote on. If I might ask some questions so I can understand it simply, or you can proceed to vote, whichever is your pleasure.

MR. PENNOYER: I think we're going to do it and then come back and have to revisit it anyhow with some detail. So, if you have a couple of questions, I would ask you to go ahead and ask them now and see if they would affect the motion.

MR. LINXWILER: I thought I understood Mr. Barton when he first made the proposal that the two pieces of this would stand alone. In other words, that if the sale were voted down, then the other piece would go forwards in order to fund earnest money.

MR. COLE: Mr. Chairman, that's unacceptable. We

can't be buying these other things and not getting the core properties because we're here to get the core properties. Those are highest rated parcels for habitat protection, so that's the really core of this transaction, and I would, frankly, not want to vote on any other issue which does not encompass that acquisition.

Is that your view, Mr. Barton?

MR. BARTON: It is.

MR. PENNOYER: Okay, that's the answer to the first question. Next one -- or observation?

MR. LINXWILER: And it is your intention that we stop logging now, contingent -- and wait for the shareholder vote on the issue of title to the federal government in six to nine months?

MR. PENNOYER: Mr. Barton.

MR. BARTON: That's correct.

MR. PENNOYER: The only guaranty of funding then is basically the Orca Narrows easement at fair market value for that part. That's the guaranty you would have that that would go through.

MR. LINXWILER: But, I'm confused because I thought I just heard Attorney General Cole say that he wouldn't vote for it if we were to segregate the two tracks. I'm sorry if I'm a little slow on the up-take here.

MR. PENNOYER: That's okay. That's the (indecipherable - - simultaneous talking) between the maker of the motion and second.

MR. COLE: Well, my view is that that's true. I would not want to vote unless my fellow Trustees could persuade me

that I was wrong to simply have one stand-alone transaction dealing with Orca Narrows.

MR. PENNOYER: Mr. -- Commissioner Rosier.

MR. ROSIER: Thank you. No, I think from my perspective, the only single issue that I would be willing to vote on at the present time would be fee simple for the three tracts only. Until such time as we have had the vote from the shareholders of Eyak, it seems to me we can massage this any way we want to go here on this, and we have nothing in hand until such time as the Eyak shareholders have voiced their opinion on the deal. That to me is the missing link, and obviously Kathy and their counsel cannot, in fact, assure us that -- the outcome of that particular vote, and I think in terms of our entire process, we've identified those three areas as the core areas, that is the area that is of value to us for the damaged -- protection of habitat for the damaged resources in the spill, and I just simply can't go along with this.

MR. PENNOYER: Commissioner Sandor.

MR. SANDOR: Yes, Mr. Chairman, I concur with Commissioner Rosier's bottom line. Also, I would reiterate the essential nature of having the disclosure of the documents that we have previously referred to. Thank you.

MR. PENNOYER: Well, it seems the catch-22 we've got here is the fact that you've got a vote from Eyak shareholders on whether we're going to get fee simple on those three parcels, which Eyak is now telling us they don't think is going to happen, or

going to happen affirmatively, you have to wait and cease all operations for six months or so, and if the costs associated with doing that are not fronted in any way by a guaranty of purchase of other property or a non-refundable earnest money agreement or anything else. So, I don't the desirability here was to end up with Orca Narrows and not the core parcels, but there is some -- I don't think that's desirable at all, but there needs to be some way to get around this problem of the fee simple potential of the negative vote and the time it takes to get it. If we could get everybody on the phone tomorrow or next week to find out what we needed to find out, we might know, but the six months wait seems to be the hassle here. Mike -- Mr. Barton, do you have a comment?

MR. BARTON: What I'm trying to sort through in my mind is the desirability -- or acceptability, not desirability -- acceptability of a highly restrictive conservation on the three core parcels, and I guess it all -- if we could find that acceptable, it seems to me that would clear the way for progress to be made.

MR. COLE: Well, let's vote on the motion.

MR. BARTON: Well, but the motion is for fee title. If I would amend my motion -- it was your motion ...

MR. PENNOYER: Amending Mr. Cole's motion --

MR. BARTON: ... to do essentially the same thing, except that instead of fee title to Power Creek, Eyak Lake, and Lower Eyak River, we would secure a highly restrictive conservation easement on those three parcels.

MR. PENNOYER: You would still leave the door open for to fee simple vote by the members?

MR. BARTON: Yes.

MR. PENNOYER: Second. Actually, the only reason I seconded it is not that I think that that's the preferable way to go, I'm just concerned that we may end up here without the core parcels ...

MR. COLE: Well, let's vote on that.

MR. PENNOYER: ... in the other part. So, we vote on Mr. Barton's amendment? Commissioner Sandor, you had a further comment?

MR. SANDOR: Mr. Chairman, just a question with respect to that easement. I would presume that that easement would be at something less than fifty percent of fair market value of purchase in fee. Is that within the ball park of what Eyak and you have in mind?

MR. PENNOYER: Mr. Barton.

MR. BARTON: I can't speak for Eyak, obviously, and don't intend to, but the value of that easement will be determined through the standard appraisal process.

MR. PENNOYER: Do you have any idea what appraisals do with easements versus fee simple. I mean, fee simple, it's the logging rights. Easements presumably in this case would be the lease plus the other values of the property. The easement would certainly have to consider the logging rights. Is it much different really.

MR. BARTON: I don't know.

MR. PENNOYER: Is there any real value for the shareholder, in our view, to go for one versus the other in terms of actual monetary value or other problems that we've talked about? I don't know either.

MR. COLE: Mr. Chairman.

MR. PENNOYER: Mr. Cole.

MR. COLE: If we acquired by virtue the terms of this easement, everything the pertinent rights to fee, except bare legal title, I have difficulty believing the appraised value would be anything significantly less than the same value as fee simple title. So let's not delude ourselves to thinking that the cost of this highly restrictive easement would be much less than the cost of fee simple title.

MR. BARTON: I am not deluding myself, and I certainly don't intend to mislead any member of the Council. The more interest you gain in the land, the greater the price, and the more closely it approximates fee simple, it seems to me it would just flow logically that the value and the appraisal process will indicate -- will approximate -- fee simple.

MR. COLE: Mr. Chairman, I was referring to Commissioner Sandor's comment that he thinks it's going to be but a relatively small fraction of the cost of fee simple title.

MR. BARTON: I'm glad to assist you in convincing Mr. Sandor.

MR. PENNOYER: Commissioner Sandor.



MR. SANDOR: I am very delighted at this exchange. It simply confirms beyond a shadow of a doubt my opposition to anything less than the purchase in fee, and if, in fact, that is not approved by the shareholders or the board, or both, then I think the very foundation, certainly confirmed by the habitat examination which puts the highest values on these three core parcels, and therefore anything short of that would be unacceptable. Thank you.

MR. PENNOYER: I think we've discussed this rather thoroughly. Obviously, there's a great degree of difference here. I think I know the outcome of a vote already, but it seems to me we need to go ahead and do it. So, we've got an amendment to Mr. Barton-Cole's amendment, previously stated to Mr. Cole's amendment, and that's to take the previous amendment and substitute "restrictive easement" and leave the door open for fee simple.

MR. COLE: Restrictive easement on the core parcels?

MR. PENNOYER: On the core parcels. And that's the only piece of the previous amendment that was amendment. Can I have a vote on that -- all those in favor of that option, say aye, please.

UNIDENTIFIED TRUSTEES: (In unison) Aye.

MR. PENNOYER: All opposed?

MR. ROSIER: No.

MR. PENNOYER: Okay. That one fails then. We now go to the next amendment. Is there further discussion on the Barton-Cole amendment -- fee title in the core areas, fifteen month option for no cost on all the remaining lands for purchase -- of easements --

and a limited conservation easement initially on Orca Narrows, forty million dollars or fair market value, whichever is less, and immediate cessation of logging. That seems to suffer from the standpoint that Eyak is -- cannot -- approve something that calls for the cessation of logging without any indication that we are going to be purchasing some lands. Any further discussion of that or further amendment to that?

MR. BARTON: Yes. Just to be sure they understand what we're about to vote on, it wouldn't include the purchase of the conservation easement on Orca Narrows.

MR. PENNOYER: That's correct.

MR. COLE: Mr. Cole.

MR. PENNOYER: I'm sorry. You're right, it does, if in fact it's severable. Now, there's some questions about that motion Mr. Cole made. You said it wasn't severable; you say, yes, it is. When you were going to make it, it was severable, so since Mr. Cole made the motion, I assume we have a non-severable motion in front of us unless somebody cares to amend that.

MR. COLE: Mr. Chairman.

MR. PENNOYER: Mr. Cole.

MR. COLE: My view was that it not be severable, and I think that was the view expressed by Commissioner Sandor and Commissioner Rosier. But my term of the option was less than fifteen months, you will recall.

MR. PENNOYER: My reading of the motion, the term of the option was less than fifteen months. Your amendment to Mr.

Barton's motion was for a fifteen month, no-cost option.

MR. COLE: I'm sorry, alright, well, if you wish to (indecipherable -- simultaneous talking) that's what I had in mind.

MR. PENNOYER: ... Mr. Cole's original motion, but the Barton amendment Mr. Cole made for Mr. Barton, amended to fifteen months.

MR. BARTON: Remember, the original motion is still fifty million bucks.

MR. PENNOYER: No, that's way back. We defeated that one. The original motion today is Mr. Cole's motion, which had no price tag on it. It was a fair-market-value motion, and it talked about -- do I need to repeat that? The original motion was fee simple or fair market value for Power -- at fair market value -- for Power, Eyak River and Eyak Lake, conditional on an optional moratorium on logging, with an option to purchase easements on all the other Sherstone-Eyak lands; December '94 being too long, to be done as soon as possible, preferably by early spring of '94; selection of easements will be such terms as agreed upon; duration -- the value for that option would have to also be negotiated and ...

MR. COLE: Upon full disclosure of financial data.

MR. PENNOYER: Upon full disclosure of financial data -- that the negotiations can proceed with that type of information. (Inaudible -- extraneous traffic noise) Then that's fee title, fifteen month option, no cost, for all their remaining lands, limited conservation easement on Orca Narrows, forty million or

fair market value, whichever is less, immediate cessation of logging, and non -- at this point non-severable parcel -- it's all or nothing. Any further discussion or amendment of that amendment

MR. COLE: Mr. Chairman, are we voting on the option to expire April '94, or are we voting on the option to expire December 31, '94?

MR. PENNOYER: Do you want to vote on the option to expire December 31st or on April '94, then you need to further amend the -- your -- amendment.

MR. COLE: Well, I would like to see it April '94 because it should cost significantly less -- should -- I'm not sure that's Eyak's position, but in my view it should.

MR. PENNOYER: Is there a second to the amendment to the amendment? Is there further discussion? All those in favor of April '94 as part of this motion instead of later to exercise the option, please say aye.

ALL TRUSTEES: Aye.

MR. PENNOYER: That part carries. The motion -- the amendment in front of us now has been amended by going to April '94 instead of fifteen month option. It is an option until April '94 at no cost on all remaining Eyak lands, an option to purchase conservation easements on all remaining lands by April of '94 at no cost. It's fee title on the core areas, a limited conservation easement for Orca Narrows lands, forty million dollars or fair market value, whichever is less, and cessation of logging in the short-term. Any further discussion?

MR. BARTON: Actually, it was forty-one million.

MR. PENNOYER: I'm sorry, forty-one million, okay.

(Simultaneous aside comments)

MR. COLE: Mr. Chairman, it was my view that we should be prepared to pay a fair amount for the option upon being supplied with all requested financial information. I don't think it's reasonable to expect them to grant options for nothing. I mean, that's not consistent with commercial practice. So, I think we should be prepared to pay them a fair and reasonable amount to be negotiated, after having received all the financial information for the option.

MR. PENNOYER: Mr. Cole, then is that payment severable from everything else? There is an earnest money, in essence, up front, regardless how the fee simple vote or the rest of it turns out if that option (indecipherable -- traffic noise). So, in other words, it's still not severable because if fee simple didn't out, then you wouldn't exercise the option because that would go away.

MR. COLE: It's true, but we would pay them for an option. That's normal commercial practice to pay someone for an option to buy their house for a hundred and twenty days or six months.

MR. PENNOYER: So you pay for the option regardless of whether the fee simple went through? Even if you didn't get the core lands, you'd pay for an option on the other lands?

MR. COLE: Yes, and if the core transaction went through, that amount could be applied on the purchase price.

MR. PENNOYER: Mr. Barton.

MR. BARTON: What happens to our option then if this whole thing doesn't go?

MR. PENNOYER: Mr. Cole.

MR. PENNOYER: Well, it's like any other option. If it doesn't go through, you've paid your money and you took your chances. That doesn't have in mind we would be paying seven and a half million, but it's not an uncommon commercial practice to pay someone a reasonable amount for an option. I mean, I think that's not unreasonable. Now, the question is how much we have to pay, is another story, but that's to be negotiated. But, if one forecloses the sale of his house to others, say, IBM or KMart wants to come in and buy your house, and you say, no, I've have an option on that, I can't sell it to you, that's a standard commercial transaction. I think we should be able to do that with the exercise of good judgment and discharge of our fiduciary responsibilities. What I think we ought not do is tie all that land from other productive use for eighteen months or seventeen months. I think we should be able to look at the value of these lands, see what lands in which we might want to acquire an easement or whether there are other lands elsewhere in the Sound or in the Kodiak that would be more valuable or a better expenditure of our money, but I think we can do that within the next several months.

MR. PENNOYER: I'm getting confused between the original amendment and this amendment. You seem to have brought back in a number of elements in the original amendment with the amendment to

the amendment, and I'm not sure they look a lot different right now. That may be all right, but I'm trying to figure out where we are. The original amendment was fee simple, fair market value, for Power Creek, Eyak Lake, and Eyak River. Is that still part of it?

MR. COLE: Yes.

MR. PENNOYER: Okay. The original amendment was conditional upon a moratorium of all logging at this time?

MR. COLE: For which we're prepared to pay a reasonable sum for them to cease commercial activities on those lands until April 1.

MR. PENNOYER: Okay, negotiate a dollar on that, moratorium on logging, option to be exercised by April 1, you paid it -- for the price of that you get an option that you have to exercise by April 1st at fair market value on lands that might be selected by the Trustee Council for an easement on other lands that Eyak Corporation holds, still to the west though -- the lands we previously mentioned.

MR. COLE: That includes Hawkins Island.

MR. PENNOYER: Hawkins Island and Rude River, okay.

MR. COLE: And others.

MR. PENNOYER: And others. So, I don't think you need then the language we later had on Orca Narrows, because I assume it's included in that type of an easement option. So, you don't have that --.

MR. BARTON: That's not correct.

MR. PENNOYER: Well, okay. Let's try to combine these

two things that are getting raised now.

MR. BARTON: My understanding is different than that. I won't say it's not correct. What I understood we were going to do was get a conservation easement on Orca Narrows, not an option.

MR. PENNOYER: What I would like to do is wipe off both these amendment, amended amendments, and come back and see if we can do one thing and vote on it because now I've got pieces of both of these all mixed together. If somebody can start at the top, make a motion and bring us down through these pieces, and then at the end see if that's okay or if there are friendly amendments to it, rather than trying to deal with amending an amendment where we've sort of mixed them together ...

MR. COLE: Mr. Chairman, I think we're coming along, but it was the sense, I thought, of some of members of the Council that we did not want to acquire a conservation easement on Orca Narrows as a stand-alone transaction but that the Orca Narrows part of the transaction should be incorporated into one integral transaction involving the fee simple title to the three tracts as well as other items.

MR. PENNOYER: Doesn't the option on all lands to the west of the core lands include Orca Narrows, and therefore doesn't have to be mentioned separately, but you have an option to buy at fair market value an easement on all lands west of the core lands, including Hawkins Island and Orca Narrows and Rude River, all specifically mentioned, at their fair market value for the easement, that you have to exercise that easement by April -- or



are you saying the April thing shouldn't apply to Orca Narrows?  
Mr. Barton.

MR. BARTON: What I'm saying, to bring a little more certainty into the situation, and what I would like to see is a conservation easement on Orca Narrows, not an option, to be exercised before April.

MR. PENNOYER: So, in other words, there's no April deadline on Orca Narrows is what you're saying?

MR. BARTON: Right. Yes.

MR. PENNOYER: Any objection to that concept? So, all the rest of the lands, Orca Narrows does not -- it's not severable, it doesn't go by itself -- but it's as an easement option already identified that we would go for by -- whenever -- an the April deadline wouldn't be there. Is that clear? I'm not sure what the effect of that is, but it does (indecipherable).

MR. SANDOR: I don't understand it.

MR. PENNOYER: I don't completely either. Mr. Barton would try again with that. If you can exercise an option on any of the lands, couldn't you, come April, say, oh, and by the way, Orca Narrows is one we want?

MR. BARTON: Certainly, we could do that, but it doesn't give Eyak any assurance that we will actually do it.

MR. PENNOYER: No, but there's no assurance we'll do any of it if they turn down the core ...

MR. BARTON: I understand that ...

MR. PENNOYER: ... parcels.

MR. PENNOYER: ... but I think it's a fair expression of my interest, at least, to say we want a conservation easement on Orca Narrows, not an option ...

MR. PENNOYER: So, in addition to the core parcels, fee simple, we will exercise an option on Orca Narrows?

MR. BARTON: No, we will secure a conservation easement on Orca Narrows, and then an option on the -- on the rest. This was my ...

MR. PENNOYER: It's part of the core -- part of the -- the core parcels is fee simple plus Orca Narrows ...

MR. BARTON: Yes.

MR. PENNOYER: ... That's your base deal, and the option is for everything else. I see what you're saying.

MR. COLE: That's acceptable.

MR. PENNOYER: Okay. Any -- let's see, we had other language in here about the disclosure of documents. I assume that's still in there. (Pause)

MR. BARTON: I have a question.

MR. PENNOYER: Yes. Can I get through this? We've got fee title for the core parcels at fair market value, we've got Orca Narrows conservation easement, fair market value, we've got a moratorium on logging for which we'll pay a sum -- price -- to be negotiated, and I assume that includes document disclosure too -- that part -- all right -- document disclosure, and then we have the option by April of all other lands -- Sherstone/Eyak lands -- to be exercised by April, pending our study, as part of this. Yes?

MR. COLE: Well, Mr. Chairman, it should be clear and I think it is the intent that -- that Orca Narrows does not stand alone, and that if we do not acquire fee simple title to the three core tracts, we will not otherwise acquire the easement on Orca Narrows. Is that your understanding, Mr. Barton?

MR. BARTON: That's my understanding.

MR. PENNOYER: So, this is a total package ...

MR. COLE: All right.

MR. PENNOYER: ... includes the whole thing, and the parts that aren't -- and no dollar amount on the top -- it's a free market value -- fair market value -- and we're going to negotiate some earnest money agreement for the option -- moratorium and option.

MR. COLE: Mr. Chairman, I think we need a top dollar. We don't want to walk in here one day and found at that this comes out at a hundred and thirty-eight million.

MR. PENNOYER: That's what I was trying to get at. Mr. Barton.

MR. BARTON: Mr. Chairman, I thought there was a top dollar in there. I thought it was forty-one million dollars or fair market value, whichever is less.

MR. PENNOYER: It depends on which part of the amendment you are dealing with. That's what I'm trying -- I'm trying to reconstruct this. One had a top value, the other one didn't.

MR. COLE: Put it in there.

MR. PENNOYER: Forty million dollars or whichever is

less?

MR. BARTON: Forty-one.

MR. PENNOYER: Forty-one.

MR. COLE: And then ...

MR. PENNOYER: And then the exercised option parcels would come on top of that. This is just for this -- getting us to April.

MR. COLE: The three tracts.

MR. PENNOYER: And the three tracts.

MR. COLE: The three tracts plus the Orca Narrows easement, plus the cessation of logging, plus the option that we can exercise by April on the remaining lands west of the parcels, including Hawkins Island, Rude River, and Orca Narrows.

MR. COLE: I'm not sure that's exactly right. I thought we were prepared to pay them, in addition, amount now for the options, but the amount to be paid on the options would be applied on the purchase price if they accepted the core tracts, including Orca Narrows.

MR. PENNOYER: Then there are two forms of earnest money. One is the price for the moratorium, and there is a separate price for the option or --?

MR. COLE: No. No. The moratorium and the option are together.

MR. PENNOYER: Okay. And that negotiated dollar amount on the document disclosure goes not the -- applied to the purchase price of any optional land that we decide by April?

MR. COLE: Yes.

MR. BARTON: Mr. Chairman.

MR. PENNOYER: Mr. Barton.

MR. BARTON: I have to insert a parenthetical note here which is mainly of a housekeeping nature. If we are to pay money for an option, then it would have to be done under some authority under the federal authorities.

MR. PENNOYER: So, the earnest money payment would have to be done under earnest money, option payment, whatever we call it, it would have to be done under some other authority.

MR. COLE: That's understood.

MR. PENNOYER: It's understood. Is this a reasonable substitute motion? Do the seconders of the original two motions and everybody else agree to it?

MR. COLE: Could we vote on the assumption that is the motion on the table?

MR. PENNOYER: That's what I'm trying to get to.

MR. BARTON: I would be glad to do that Mr. Cole. Again, would you run through that though?

MR. PENNOYER: I was afraid you'd ask that. Okay, this current proposal is fee title ...

MR. BARTON: The motion on the floor is --

MR. PENNOYER: ... Yes -- fee title on the core areas, Orca Narrows conservation easement, moratorium on logging until April of next year for which we would pay -- and an option to purchase additional lands at that time -- purchase an easement on

additional lands at that time -- at fair market value. You will pay a negotiated dollar amount for that moratorium option, and that would be applicable to the purchase of any additional lands or the purchase of easements on any additional lands when we exercise the option in April. Forty-one million dollars or whichever is less -- is what -- is appraised as less -- is the offering price for that.

MR. COLE: Let's vote on that unless Commissioner Sandor has a question.

MR. PENNOYER: Commissioner Sandor.

MR. SANDOR: Two questions.

MR. PENNOYER: Two questions.

MR. SANDOR: And that one was, that the documents are disclosed and are evaluated before the negotiation process is ...

MR. PENNOYER: I stand corrected. The document disclosure was in my notes next to the negotiated payment.

MR. SANDOR: Second, the moratorium on logging is not on all Eyak lands, but only those ...

MR. PENNOYER: Including Hawkins Inlet, Orca Narrows and Rude River.

MR. SANDOR: Right. Which permits Eyak to continue.

MR. PENNOYER: It does.

MR. SANDOR: In other areas.

MR. PENNOYER: That's correct.

MR. SANDOR: Thank you.

MR. PENNOYER: Write after moratorium "on lands west of" which I understand is (indecipherable -- traffic noise). Any

further questions on this or additions? I ask all those in favor of this proposal to signify by saying aye.

ALL TRUSTEES: (In unison) Aye.

MR. PENNOYER: Opposed? (No response) Passed. Now, will somebody tell me where we go from here.

MR. COLE: I'm ...

MR. PENNOYER: We had a motion and we have some negotiations that will occur. At what point do we decide whether we need to identify the ...

MR. BARTON: Mr. Chairman.

MR. PENNOYER: Mr. Barton.

MR. BARTON: Perhaps it would be useful to hear some comments from Eyak at this time.

MR. COLE: I -- Mr. Chairman, I object to that.

MR. PENNOYER: Mr. Cole.

MR. COLE: I think we've done it all today on that subject, and the comments from Eyak can come as we have the negotiating process. What's done is done, and I see nothing to be accomplished by further discussion or backing up on it.

MR. PENNOYER: I don't see a point in taking a vote on that with the objection stated. Any further discussion?

MR. COLE: I mean, does any Trustee though really want -- to start discussing this with Eyak?

MR. PENNOYER: Commissioner Sandor, discussion?

MR. SANDOR: I concur, and I would say the negotiations can proceed fairly quickly if these documents are released.

MR. PENNOYER: Are we prepared to meet back again then at some future date and review this. I presume when we are, Mr. Barton will bring us back in contact. Mr. Barton.

MR. BARTON: I assume that you still want the Forest Service to continue as the lead in this.

MR. COLE: The Forest Service has done an outstanding job, as Mr. Steiner said the other day, and I'm ...

MR. PENNOYER: Appreciate ...

MR. COLE: ... happy to have them continue.

MR. PENNOYER: ... (indecipherable -- simultaneous talking) Mr. Van Zee and help you continue with it.

MR. PENNOYER: I think that concludes are open business. We'll now adjourn and close the meeting to an executive session. Thank you very much.

(Off Record: 4:30 p.m.)

(On Record: 4:45 p.m.)

MR. PENNOYER: Do we have to have coming out of the executive session on the record?

UNIDENTIFIED VOICE: I think so.

MR. PENNOYER: Okay, we have now completed our executive session, completed our executive session regarding the hiring of an executive director, and back on the record now, I'm going to call this meeting adjourned. Thank you all.

(Off Record: 4:46 p.m., August 9, 1993)

**END OF PROCEEDINGS**

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CERTIFICATE

STATE OF ALASKA                    )  
                                          ) ss.  
THIRD JUDICIAL DISTRICT        )

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

That the foregoing pages numbered 394 through 640 contain a full, true, and correct transcript of the continuation meeting of the Exxon Valdez Oil Spill Settlement Trustees Council meeting taken electronically by me on the 6th August, 1993, commencing at the hour of 1:30 p.m. at the Restoration Office, 645 G Street, Anchorage, Alaska, and on the 9th day of August, 1993, commencing at the hour of 1:15 p.m., at the State Capitol Building, Juneau, Alaska;

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

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

DATED at Anchorage, Alaska, this 17th day of August, 1993.

\_\_\_\_\_  
Linda J. Durr, Certified PLS  
Notary Public for Alaska  
My commission expires: 10/19/93