



**City and Borough of Wrangell
Borough Assembly Meeting
AGENDA**

October 9, 2012 – 7:00 p.m.

Location: Assembly Chambers, City Hall

- 1. CALL TO ORDER**
 - a. PLEDGE OF ALLEGIANCE** led by Assembly Member Bill Privett
 - b. INVOCATION** given by Greg Knight
 - c. COMMUNITY PRESENTATION**
- 2. ROLL CALL**
- 3. AMENDMENTS TO THE AGENDA**
- 4. CONFLICT OF INTEREST**
- 5. CONSENT AGENDA:**
 - a. Items (*) 6a, 7a, 7b, 7c, 7d**
- 6. APPROVAL OF MINUTES**
 - *a. Minutes of Regular Assembly meeting held September 25, 2012**
- 7. COMMUNICATIONS**
 - *a Minutes of Regular Hospital Board meeting held June 20, 2012; Minutes of Regular Hospital Board meeting held August 29, 2012; Minutes of Special Hospital Board held September 10, 2012**
 - *b Minutes of Regular School Board meeting held September 18, 2012**
 - *c Department of the Army – Corp Permit Application – POA-2012-734 – Proposed Fill Lot D Health Care Subdivision**
 - *d Department of the Army – Corps of Engineers Alaska District – GP-2007-372-M1 – General Permit SPECIAL PUBLIC NOTICE**
- 8. BOROUGH MANAGER’S REPORT**
- 9. BOROUGH CLERK’S FILE**
- 10. MAYOR/ASSEMBLY REPORTS AND APPOINTMENTS**
 - a. Reports by Assembly Members**
 - b. City Board and Committee Appointments**
 - c. Elect Vice-Mayor**
- 11. PERSONS TO BE HEARD**

12. UNFINISHED BUSINESS

13. NEW BUSINESS

- a. Discussion regarding the Order Denying a Request for Rehearing issued by the Federal Energy Regulatory Commission to Cascade Creek, LLC.**
- b. Power Plant and Substation SCADA System Upgrades Change Order #1 to EPS Consulting Engineers' Design Build Contract**

14. ATTORNEY'S FILE

15. EXECUTIVE SESSION

16. ADJOURNMENT

CITY & BOROUGH OF WRANGELL, ALASKA

BOROUGH ASSEMBLY

AGENDA ITEM

October 9, 2012

ITEM NO. 1 CALL TO ORDER:

INFORMATION: The Mayor, by code, is required to call the meeting to order at 7:00 p.m. in the City Council Chambers. Special meetings or continued meetings may be called for at differing times but at the same location. Notice of such will be required by the Borough Clerk. The Mayor will call the meeting to order according to such special or continued meeting notice. At all meetings of the assembly, four assembly members or three members and the mayor shall constitute a quorum for the transaction of business, but a smaller number less than a quorum may adjourn a meeting to a later date.

RECOMMENDED ACTION:

The Mayor, as presiding officer, is to call the meeting of the Borough Assembly to order, with the following actions to follow:

- a. Pledge of Allegiance to be given by Assembly Member Bill Privett
- b. Invocation to be given by Greg Knight
- c. Community Presentation

ITEM NO. 2 ROLL CALL – BOROUGH CLERK:

INFORMATION: The Borough Clerk shall conduct a roll call of each elected and duly qualified Assembly Member. Such call shall result in an entry of those present or absent from the meeting. The roll call is primarily utilized in determining if sufficient member(s) are present to conduct a meeting. The Borough Clerk may randomly change the conduct of the roll to be fair to the members of the governing body unless the council determined an adopted procedure for roll call which is different than currently in use.

RECOMMENDED ACTION:

Borough Clerk to conduct a roll call by voice vote. Each member to signify by saying here, present (or equal) to give evidence of attendance.

ITEM NO. 3 AMENDMENTS TO THE AGENDA:

INFORMATION: The assembly may amend the agenda at the beginning of its meeting. The outline of the agenda shall be as from time to time prescribed and amended by resolution of the assembly. (WMC 3.04.100)

CITY & BOROUGH OF WRANGELL, ALASKA

RECOMMENDED ACTION:

The Mayor should request of the members if there are any amendments to the posted agenda. ***THE MAYOR MAY RULE ON ANY REQUEST OR THE ASSEMBLY MEMBERS MAY VOTE ON EACH AMENDMENT.***

ITEM NO. 4 CONFLICT OF INTEREST:

INFORMATION: The purpose of this agenda item is to set reasonable standards of conduct for elected and appointed public officials and for city employees, so that the public may be assured that its trust in such persons is well placed and that the officials and employees themselves are aware of the high standards of conduct demanded of persons in like office and position.

An elected city official may not participate in any official action in which he/she or a member of his/her household has a substantial financial interest.

ITEM NO. 5 CONSENT AGENDA:

INFORMATION: Items listed on the Consent Agenda or marked with an asterisk (*) are considered part of the Consent Agenda and will be passed in one motion unless the item has been removed by an Assembly Member or the Mayor and placed on the regular agenda.

RECOMMENDED ACTION:

Move to approve those Agenda items listed under the Consent Agenda and those marked with an asterisk (*) Items:

6a, 7a, 7b, 7c & 7d

ITEM NO. 6 APPROVAL OF MINUTES:

INFORMATION:

6a Minutes of Regular Assembly meeting held September 25, 2012

AGENDA

la
10-9-12

Minutes of Regular Assembly Meeting Held on September 25, 2012

Mayor Jeremy Maxand called the regular assembly meeting to order at 7:00 p.m., September 25, 2012, in the Assembly Chambers. Assembly Members McConachie, McCloskey, Jack, Younce and Stokes were present. Assembly Member Privett was absent. Acting Borough Manager Jeff Jabusch and Borough Clerk Kim Flores were also in attendance.

Pledge of Allegiance was led by Assembly Member McCloskey.

Invocation given by Father Thomas of St. Rose of Lima Catholic Church.

COMMUNITY PRESENTATION

None.

AMENDMENTS TO THE AGENDA

None.

CONFLICT OF INTEREST

None.

CONSENT AGENDA

Moved by Jack, seconded by McConachie, to approve Consent Agenda Items marked with an () asterisk, 6a, 7a, 7b and 13d. Motion approved unanimously by polled vote.*

APPROVAL OF MINUTES

*6a Minutes of Regular Assembly Meeting held September 11, 2012

COMMUNICATIONS

*7a Minutes of Regular Port Commission meeting held May 3, 2012; Minutes of Special Port Commission meeting held August 7, 2012

*7b Minutes of Regular TBPA Commission meeting held June 8, 2012

BOROUGH MANAGER'S REPORT

Assembly Member McConachie commented that he really liked the photos provided in the Manager's Report.

Acting Borough Manager Jabusch reported that the projects around town were "wrapping up" and that the City was looking forward to future projects.

Assembly Member McCloskey commented on the excess of paper being used in the Assembly Packet.

Clerk Flores reported that if the Manager had an item referenced in his report, it would be attached following the report. She further commented that if the item printed in the Manager's Report was an Action Item within the Agenda Packet, the result would be double printing in the Borough Assembly Packet.

BOROUGH CLERK'S FILE

- Upcoming Dates to Remember
- Regular Borough Election coming up on October 2, 2012
- Special Assembly meeting on October 8, 2012 at 5:30 p.m. to Certify the Election Results from the Regular Borough Election to be held on October 2, 2012

MAYOR/ASSEMBLY REPORTS AND APPOINTMENTS

10a Reports by Assembly Members

Assembly Member Jack reported that he had attended the last Hospital Board meeting and felt that the Board did a good job.

Assembly Member McConachie commented on the Downtown construction project and said that some members of the public had told him how much they liked the way the project was coming together.

PERSONS TO BE HEARD

Bill Knecht, 2.75 Mile Zimovia Hwy, asked the Assembly if the Attorney that represented the Hospital Board before the prior Hospital Board was recalled was still the Attorney for the current Hospital Board.

Mayor Maxand answered that the Borough Attorney has, through Ordinance, the power to deny or authorize legal counsel to the Hospital Board and Hospital Administrator. He further commented that the Attorney that had represented the Hospital Board before the recall had been retained by the Insurance Company to provide counsel with regards to the pending litigation.

Dr. Greg Salard, 3.5 Mile Zimovia Hwy, stated that he had submitted a request to the Hospital Board, a letter requesting that his hospital privileges be reinstated. He said that the Hospital Board would review the request on October 3, 2012. He also expressed his concern with the Hospital Board using the Seattle Law firm, Garvey, Schubert, Barer to review his reinstatement request. Mr. Salard asked the Assembly if they had seen the Hospital Insurance Policy and if they had, did the policy prevent the Hospital insurance company from retaining a different attorney.

Mayor Maxand responded that the Assembly would look into the matter and get back to Mr. Salard.

Mr. Salard said that his belief was that the new Hospital Board would make good decisions if they receive good legal advice.

UNFINISHED BUSINESS

None.

NEW BUSINESS

13a Request to Hold Special Assembly Meeting on Monday, October 8, 2012 at 5:30 p.m. to Certify Election Results from Regular Election to be held on October 2, 2012

Moved by McConachie, seconded by Younce, to approve Special Assembly meeting to be held Monday, October 8, 2012 at 5:30 p.m. to Certify the Election Results from the Regular Election held October 2, 2012. Motion approved unanimously by polled vote.

13b Request for funding for the Lynch Street Paving Project

Moved by McCloskey, seconded by McConachie, to approve funding for the Lynch Street paving project in the amount of \$45,000 with funding to come from the general fund reserves.

Acting Borough Manager Jabusch commented that the project was underway.

Motion approved unanimously by polled vote.

13c Discussion and Possible Action to schedule a Workshop Session to review the "Operations and Maintenance Organizational Review" report produced by D Hittle and Associates and commissioned by SEAPA

Moved by McConachie, seconded by Jack, to schedule a Workshop Session to review the "Operations and Maintenance Organizational Review" report produced by D Hittle and Associates and commissioned by SEAPA.

Mayor Maxand reported that several months ago, the SEAPA Board commissioned the report for the purpose of determining if there could be cost savings and efficiencies in terms of management through the consolidation of contracts for operating the Swan and Tyee Hydroelectric Projects; two projects have been managed through two separate contracts; Thomas Bay Power Authority managed the Tyee Project collectively with Wrangell and Petersburg; The City of Ketchikan, Ketchikan Public Utilities managed the Swan Project; report was produced due to inefficiencies with collectively managing both projects.

Mayor Maxand further reported that at the last SEAPA Board meeting, the Board requested that the report be made available to the Wrangell, Petersburg and Ketchikan governing bodies; the SEAPA Board postponed any action related to the report until the governing bodies had a chance to discuss and make comments to the SEAPA Board; SEAPA Board wanted to explore ways of working around the existing union labor contracts with KPU and TBPA; SEAPA Board is looking at ways to improving and defining the existing chain of command within SEAPA and TBPA.

Mayor Maxand suggested inviting the SEAPA CEO, TBPA General Manager and the TBPA Foreman to join in the Workshop Session.

Paul Southland reported that he had been contacted by some of the City of Petersburg Counsel Members and that they expressed to him that they would like to have a Joint Workshop Session with the members of the Borough Assembly of Wrangell.

Assembly Member McConachie suggested inviting the City of Ketchikan, KPU Electrical Engineer & SEAPA Board Member, Andy Donato to join in the Workshop Session.

Mayor Maxand reported that the next SEAPA Board Meeting is scheduled for December 13, 2012.

Motion approved by unanimous polled vote.

***13d** Final Plat Approval for Woody Wilson Subdivision

(APPROVED UNDER CONSENT AGENDA)

ATTORNEY'S FILE

EXECUTIVE SESSION

None.

ADJOURNMENT: 7:37 p.m.

Mayor

ATTEST: _____
Kim Flores, Borough Clerk

CITY & BOROUGH OF WRANGELL, ALASKA

BOROUGH ASSEMBLY AGENDA ITEM October 9, 2012

ITEM NO. 7 COMMUNICATIONS:

INFORMATION: The Assembly may receive items for Communications, reasons only which do not require action. This is an avenue to keep the Assembly informed, for the public to enter items on the record, if necessary. The Assembly also receives agenda communications directly by their constituents, Borough Manager, other agencies' Officers and Department Directors.

A MAIL BOX IS ALSO AVAILABLE IN THE BOROUGH CLERK'S OFFICE FOR EACH MEMBER OF THE ASSEMBLY AND SHOULD BE CHECKED ON A ROUTINE SCHEDULE.

All items appearing under Communications on the Agenda have been approved under the Consent Agenda unless removed.

- *7a Minutes of Regular Hospital Board meeting held June 20, 2012; Minutes of Regular Hospital Board meeting held August 29, 2012; Minutes of Special Hospital Board meeting held September 10, 2012**
- *7b Minutes of Regular School Board meeting held September 18, 2012**
- *7c Department of the Army – Corp Permit Application – POA-2012-734 – Proposed Fill Lot D Health Care Subdivision**
- *7d Department of the Army – Corps of Engineers Alaska District – GP-2007-372M1 – General Permit SPECIAL PUBLIC NOTICE**

WRANGELL MEDICAL CENTER
BOARD OF DIRECTORS MEETING

June 20, 2012

Location: WMC Lobby

AGENDA

7a
10-9-12

CALL TO ORDER:

Meeting was called to order by President Mark Robinson at 5:16 p.m.

ROLL CALL:

Present: Mark Robinson, President; Jim Nelson, Vice-President, Members LeAnn Rinehart, Dorothy Hunt, Linda Bjorge, Lurine McGee and Sylvia Ettefagh; quorum present.

Absent: Dee Norman, Secretary and Jake Harris, Treasurer.

AMENDMENTS TO THE AGENDA:

None.

CONFLICTS OF INTEREST:

None.

CONSENT ITEMS:

Motion made by Jim Nelson, seconded by LeAnn Rinehart, to approve consent agenda. No discussion.
Poll vote: unanimous.

PERSONS TO BE HEARD:

None.

CORRESPONDENCE:

None.

BOARD COMMENTS:

Sylvia Ettefagh thanked the community for the turnout at the election.

Linda Bjorge expressed best wishes for the continuum.

Corovin Ellis introduced by President Robinson. His senior project is a bench at 3 mile Zimovia Highway. Donations collected from the staff to cover the cost of the bench. A check will be available through the hospital staff donations to cover the bench.

ADMINISTRATOR'S REPORT:

EMR go live date of July 23, 2013. Bob, Katrina and Caryn are continuing to work on this.

Noel will be taking time off for the birth of his children.

Staff expressed thanks through Noel to the board for their work.

*WRANGELL MEDICAL CENTER
BOARD OF DIRECTORS MEETING*

ACTION ITEMS:

Discussion by Noel Rea related to Medicare Conditions of Participation mandate that the board designate a management plan to meet those laws.

Motion made by Linda Bjorge, seconded by Leann Rinehart, that in the event that sufficient WMC Board are recalled thus negating the possibility of creating a quorum to conduct WMC business as the governing body of WMC, the Chief Executive Officer is responsible for the conduct of WMC and is required to carry out the minimum functions that pertain to the governing body in order to ensure that the Medicare CoPs are complied with. In the event that the Chief Executive Officer is unable to carry out the minimum functions necessary that pertain to the governing body in order to ensure that Medicare CoPs are complied with, the Chief Financial Officer is the next authorized to do so.

Discussion: Dorothy Sweat asked if this could be tabled; Noel noted that this could not be tabled as there will be no functioning governing body beginning on Monday, and that this has to be in place in order to bill Medicare, and if not in place WMC would not be able to bill for services provided, and that once there are board members in place and a quorum established, this would no longer be in effect.

Poll vote: Unanimous.

DISCUSSION ITEMS:

Olinda White announced her retirement as of December 31, 2012, and will be on leave from September 13, 2012. She is willing to train, do financial statements, if there is no one in place. The board thanked her for the many years of service to WMC.

INFORMATION ITEMS:

None.

EXECUTIVE SESSION:

Motion made by Dorothy Sweat, seconded by Sylvia Ettefagh, to not do the medical staff credentialing until the next meeting.

Discussion: Dorothy stated that she thought that this would better left for the new board. Noel stated that leaving these on the table until the next meeting would mean that temporary privileges would need to be issued.

Poll Vote: Nelson, Ettefagh, Bjorge, Rinehart, McGee and Robison nay, Sweat yes. Motion failed.

WRANGELL MEDICAL CENTER
BOARD OF DIRECTORS MEETING

Motion made by to recess into executive session pursuant to AS 44.62.632 (c) (2), to recess into executive session to discuss matters that tend to prejudice the reputation and character of any person, specifically discussion and possible action regarding Medical Staff Privileging.

Member Sweat requested to be excused for personal reasons, so stated into the record. Approved by President Robinson.

Poll Vote: Members Bjorge, Ettefagh, Nelson, McGee Rinehart and President Robinson in favor; Member Sweat excused from voting and session.

Meeting recessed into executive session at 5:45 p.m.

RECONVENE:

Meeting reconvened at 5:58 p.m.

Motion made by Sylvia Ettefagh, seconded by Jim Nelson, to approve David Brown, MD and Ronald Ray, CRNA. No discussion.

Poll Vote: Poll Vote: Members Bjorge, Ettefagh, Nelson, McGee Rinehart and President Robinson in favor; Member Sweat abstained.

Motion made by Sylvia Ettefagh, seconded by Jim Nelson, to terminate the services of Noel Rea, and direct Olinda White, CFO to take over those duties, effective immediately with pay, with payment of those services today.

Discussion: Member Sweat questioned the contract. President Robinson noted that if he is terminated the contract is null and void. The amount of money involved questioned by member Sweat, member Ettefagh noted that there was a severance package. Member sweat questioned whether the board knows and understands the money involved and stated that this should be discussed in executive session.

Poll Vote: Members Bjorge, Ettefagh, Nelson, McGee Rinehart and President Robinson in favor; Member Sweat opposed. Motion carried.

ADJOURN:

Motion made to adjourn, none opposed. Meeting adjourned at 6:08 p.m.



Cathy Gross, RHIT

Recording Secretary

Certified: 9/19/12

WRANGELL MEDICAL CENTER
BOARD OF DIRECTORS MEETING
August 29, 2012
Location: Borough Chambers, City Hall

AGENDA

7a

10-9-12

CALL TO ORDER:

Meeting was called to order by Acting CEO Olinda White at 5:15 p.m.

ROLL CALL:

Present: Dorothy Hunt, Woody Wilson, Cori Robinson, Terri Henson, Megan Clark, Judy Allen, Bob Henry, Marlene Messmer, Bernie Massin. Quorum established.

AMENDMENTS TO THE AGENDA:

Motion made by Judy Allen to accept the suggested corrections to the agenda, specifically the spelling of Terri Henson's name and to delete action item a. Oath of office as all board members have been sworn in prior to meeting. Motion seconded by Cori Robinson. Motion carried unanimously.

CONFLICTS OF INTEREST:

None stated.

ACTION ITEMS:

A. ELECTION OF OFFICERS

PRESIDENT: Nominations for Woody Wilson and Bernie Massin accepted. Vote: Six in favor of Woody Wilson, three opposed, declared winner.

VICE PRESIDENT: Nomination for Bernie Massin accepted. No other nominations received, declared winner by acclamation.

SECRETARY: Nomination for Terri Henson accepted. No other nominations received, declared winner by acclamation.

TREASURER: Nomination for Cori Robinson accepted. No other nominations received, declared winner by acclamation.

B. NEXT MEETING DATE:

Discussion of Next Meeting Date: all present agreed to set the regular meetings of the WMC Board for the third Wednesday of every month at 5:30 pm in the hospital conference room. If there is not enough room for the public to attend then will revisit location of the meetings.

Workshop set for September 5, 2012 at 5:30 pm in the hospital conference room for the purpose of educating board members on the hospital

Special meeting set for September 10, 2012 at 5:30 pm in the assembly chambers at city hall for the purpose of meeting with the city attorney in executive session to discuss legal matters.

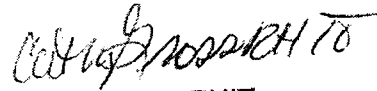
**WRANGELL MEDICAL CENTER
BOARD OF DIRECTORS MEETING
August 29, 2012
Page Two**

An educational workshop set for September 12, 2012 at 5:30 pm for risk management training the WMC malpractice insurance company, Norcal, who does annual training with the WMC Staff and board of directors.

ADJOURN:

Motion made by Megan Clark to adjourn, seconded by Dorothy Hunt; none opposed. Meeting adjourned at 6:15 p.m.

Terri Henson
Board Secretary


Cathy Gross, RHIT
Recording Secretary
Certified: 9/19/12

**WRANGELL MEDICAL CENTER
BOARD OF DIRECTORS SPECIAL MEETING
September 10, 2012, 5:30 p.m.
Location: Assembly Chambers, City Hall**

AGENDA

7a

10-9-12

CALL TO ORDER:

Meeting was called to order by President Woody Wilson at 5:30 p.m.

ROLL CALL:

Present: Woody Wilson, President; Bernie Massin, Vice-President, Terri Henson, Secretary, Cori Robinson, Treasurer, Members Judy Allen, Megan Clark, Marleen Messmer, and Dorothy Hint-Sweat. Absent: Bob Henry, Treasurer. Quorum present.

CONFLICTS OF INTEREST: None stated.

EXECUTIVE SESSION: Discussion of Wrangell v. Rea, et.al. 1WR-12-55

Marlene Messmer made the following motion: I move, pursuant to AS 44.62.310 that we recess into executive session to discuss matters, the immediate knowledge of which would clearly have an adverse upon the finances of the public entity, specifically discuss of Wrangell v. Rea, et.al. 1WR-12-55 and to discuss matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the Wrangell Medical Center, namely current legal matters and law suits and, furthermore the executive session is to allow the borough attorney to candidly discuss facts, litigation strategies and offer advice about how the WMC Board and its members might avoid legal liability.

Judy Allen seconded motion. No discussion. Poll vote showed all Board members present voted in favor.

RECONVENE:

The WMC Board of Directors Special Meeting reconvened into regular session at 8:01 p.m.

ADJOURN:

Motion to adjourn: none opposed. Meeting adjourned at 8:07 p.m.

Terri Henson
Secretary



Marie E. Davidson
Recorder
Certified:

AGENDA76**BOARD ACTION****WRANGELL PUBLIC SCHOOL BOARD
REGULAR MEETING
SEPTEMBER 18, 2012**

- Approved the Agenda as Presented
- Reviewed the Crisis Plan
- Accepted the Minutes of the August 13, 2012 Regular Board Meeting
- Accepted the Minutes of the August 29, 2012 Special Board Meeting
- Accepted the donation from SEARHC to help pay for NSLP transportation expenses
- Accepted the University of Alaska Outreach Coordinator Grant in the amount of \$2000
- Accepted the Upward Bound Grant in the amount of \$15,000.00
- Approved the SEARHC Food Service Grant application as presented
- Approved the adoption of the Non-Employee User Agreement for Procurement Card
- Offered Monty Bunn a contract addendum for the duties of Activities Director
- Offered Jennifer Miller a contract addendum for Community Schools Coordinator
- Offered Earl Ray Stokes a contract addendum to teach middle school algebra
- Increased Therese Pempek's Upward Bound Contract per direction of the grant
- Reviewed Board Policy:
 - Board Policy 4112.4, Physical Examinations
 - Board Policy 4112.5, Certificated Personnel
 - Board Policy 4112.6, Personnel Records
 - Board Policy 4115, Certificated Personnel Evaluation
 - Board Policy 5040, Student Nutrition and Physical Activity
 - Board Policy 5111.2, Part-time Enrollment
 - Board Policy 5131.44, Use of Force to Maintain Safety
 - Board Policy 5141.31, Immunizations
- Accepted the first reading of Board Policy 5141.3, Health Examinations
- Accepted the first reading of Board Policy 6145.3, Concussion Prevention
- Discussed the Wrangell High School – School Improvement Report
- Adjourned

WRANGELL PUBLIC SCHOOLS

**FOR RELEASE: 1:00 PM
SEPTEMBER 28, 2012**



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, ALASKA
REGULATORY DIVISION
P.O. BOX 6898
JBER, ALASKA 99506-0898

AGENDA

7c

Regulatory Division
POA-2012-734

SEP 27 2012

Alpine Mini Mart
Attention: Steve Prunella
Post Office Box 2157
Wrangell, Alaska 99929

Dear Mr. Prunella:

This is in response to your application for a Department of the Army (DA) permit to discharge 1,500 cubic yards (CY) of shot rock, and 250 CY of surface rock into 0.47 acre of wetlands to expand a parking lot. The project site is located within Section 30, T. 62 S., R. 84 E., Copper River Meridian, USGS Quad Map Petersburg B-2, Latitude 56.4630° N., Longitude 132.3746° W., in Wrangell Alaska. It has been assigned file number POA-2012-734, Zimovia Strait, which should be referred to in correspondence with this office.

We have determined you may conduct your proposal under the nationwide permit (NWP) outlined below. DA permit authorization is necessary because your project would involve a discharge of fill material into waters of the U.S. under our regulatory jurisdiction.

Based upon the information and plans you provided, we hereby verify that the work described above, which would be performed in accordance with the enclosed plan, 1 sheet dated 8/23/2012, is authorized by NWP 39, Commercial and Institutional Developments,. This NWP and its associated General and Regional Conditions can be accessed at our website at www.poa.usace.army.mil/reg/Permits.htm. You must comply with all terms and conditions associated with NWP 39. Regional Conditions F, G, H, and J apply to your project.

Further, please note General Condition 30 requires that you submit a signed certification to us once any work and required mitigation are completed. Enclosed is the form for you to complete and return to us.

This verification is valid for two years from the date of this letter, unless the NWP is modified, reissued, or revoked. It is incumbent upon you to remain informed of changes to the NWPs.

Nothing in this letter excuses you from compliance with other Federal, State, or local statutes, ordinances, or regulations.

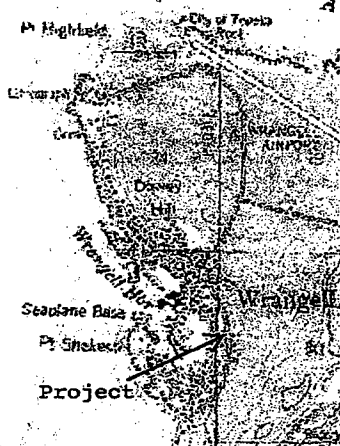
Thank you for your cooperation with the Corps of Engineer's Regulatory Program. If you have any questions, please contact me via email at jack.j.hewitt@usace.army.mil, or in writing at the letterhead address, by phone at (907) 753-2708. For additional information about our regulatory program, visit our web site at <http://www.poa.usace.army.mil/reg/>.

Sincerely,

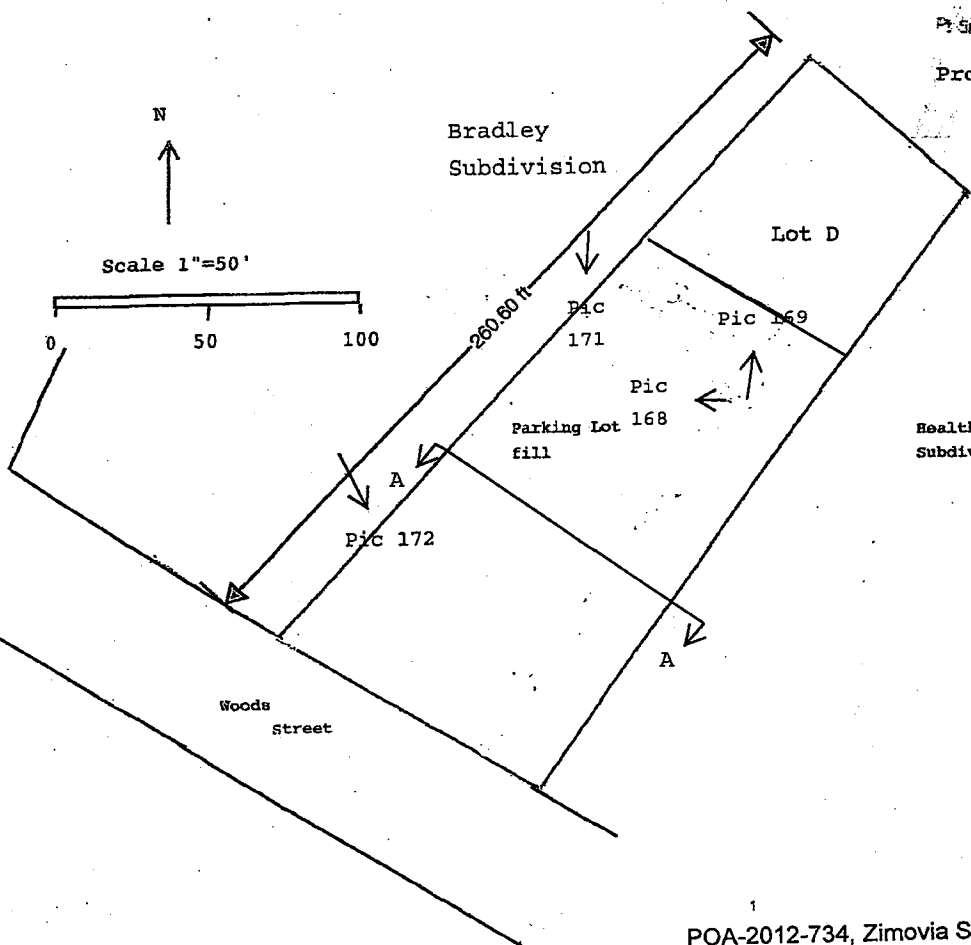
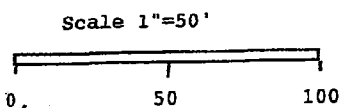

Jack Hewitt
Project Manager

Enclosures

Highfield



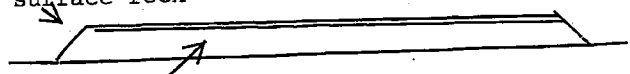
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Health Care
Subdivision

POA-2012-734, Zimovia Strait

crushed Section A
surface rock



Shot rock Scale 1"=30'

Proposed rock fill to
Provide Parking
Health Care Subdivision
Parcel 6 A.S.L.S. 84-83
Lot D
Zimovia Strait
8/23/2012
Sheet 1 of 1

Enclosure



US Army Corps of Engineers
Alaska District

Permit Number: POA-2012-734, Zimovia Strait

Name of Permittee: Alpine Mini Mart, Attention: Mr. Steve Prunella

Date of Issuance: SEP 27 2012

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to Jack Hewitt at the following address:

U.S. Army Corps of Engineers
Alaska District
Regulatory Division
Post Office Box 6898
JBER, Alaska 99506-0898

ase note that your permitted activity is subject to a compliance inspection by an U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above-referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Date

Signature of Permittee

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Alpine Mini Mart, Attention: Mr. Steve Prunella | File Number: POA-2012-734 | Date: October 3, 2012

Attached is: | See Section below

	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
	PERMIT DENIAL	C
	APPROVED JURISDICTIONAL DETERMINATION	D
X	PRELIMINARY JURISDICTIONAL DETERMINATION	E

THIS REQUEST FOR APPEAL FORM MUST BE RECEIVED BY: NOVEMBER 26, 2012

SECTION I: The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/Pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the District Engineer. Your objections must be received by the District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or, (c) not modify the permit, having determined that the permit should be issued as previously written. After evaluating your objections, the District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer. This form must be received by the Division Engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer. This form must be received by the Division Engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION (JD): You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer. This form must be received by the Division Engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the Preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL OR OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

In order for a Request For Appeal to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the Notice of Appeal Process. It is not necessary to submit a Request For Appeal form to the Division office if you do not object to the decision.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION

If you have questions regarding this decision and/or the appeal process please contact:

Jack Hewitt, PM
Alaska District Corps of Engineers
CEPOA-RD-S
P.O. Box 6898
JBER, AK 99506-0898
(907) 753-2708
(800) 478-2712 (toll free in AK)

If you only have questions regarding the appeal process you may also contact:

Commander
USAED, Pacific Ocean Division
ATTN: CEPOD-PDC/Thom Litche
Building 525
Fort Shafter, HI 96858-5440

To submit this form, mail to the address above

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.	Date:	Telephone number:
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US Army Corps
of Engineers
Alaska District

Special Public Notice

ANCHORAGE
Regulatory Division (1145)
CEPOA-RD
Post Office Box 6898
JBER, Alaska 99506-0898

Issuance Date: October 1, 2012
Identification No.: GP-2007-372-M1
(In reply, refer to above number)
Expiration date: October 1, 2017

ISSUE GENERAL PERMIT (GP) 2007-372-M1
SPECIAL PUBLIC NOTICE
Floating Recovery Devices within the State of Alaska

The Alaska District, U.S. Army Corps of Engineers (USACE) in accordance with regulations pursuant to Section 10 of the Rivers and Harbors Act of 1899 (30 Stat. 1151; 33 U.S.C. 403) has issued General Permit (GP) 2007-372-M1, formerly known as GP 2007-372. This GP would authorize floating devices in navigable waters of the United States (U.S.), for the purpose of mineral recovery in the State of Alaska.

The GP is authorized until October 1, 2017, under terms and conditions outlined in the enclosed GP-2007-372-M1.

Any questions or requests for additional information should be directed to:

Email: regpagemaster@usace.army.mil

Alaska District, Corps of Engineers
Regulatory Division
Post Office Box 6898
JBER, Alaska 99506-0898

Phone (907) 753-2716; or toll free in Alaska at (800) 478-2712.

District Engineer
U.S. Army, Corps of Engineers

Enclosure

GENERAL PERMIT POA-2007-372-M1
FLOATING RECOVERY DEVICES IN NAVIGABLE WATERS OF THE UNITED STATES, FOR THE
PURPOSE OF MINERAL RECOVERY, IN THE STATE OF ALASKA.

This General Permit (GP) authorizes work conducted by floating devices in navigable waters of the United States (U.S.), for the purpose of recovering metals within the State of Alaska. The authorized work shall be conducted under the terms and conditions listed below, which are intended to ensure that impacts to navigation are minimal under Section 10 of the Rivers and Harbors Act of 1899.

TABLE OF CONTENTS:

- Authorized Activities
 - Section 10 Waters
 - Section 404 Waters
 - Clarification over regulation of discharge
 - Water Depth
- Exclusions
- When an Individual Permit Will Be required
- Special Conditions
 - Conditions
 - Inspection
- Application Procedure
 - Notification Process
 - Authorization Process
- Other Information
- Term

AUTHORIZED ACTIVITIES:

WITHIN SECTION 10 WATERS: Section 10 waters are navigable waters, defined as "those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce." All tidal and marine waters are considered navigable. Also, the Alaska District has approved 47 segments of waters (rivers and lakes) within the state that are not tidal, but are considered navigable. This list may be viewed on the Alaska District web page at <http://www.poa.usace.army.mil/reg/NavWat.htm>.

Under Section 10, the Corps regulates work in, over, or under navigable waters of the U.S., or which affect the course, location, condition or capacity of the Section 10 waters. Under the General Permit, the Corps will evaluate proposals for work conducted by floating devices engaged in recovery of metals, with respect to effects on the navigable capacity of the water.

WITHIN SECTION 404 WATERS: Some Section 404 waters (not subject to ebb and flow of tide) support operations by floating devices, however no Corps authorization is required for these operations. Recovery of metals in a Section 404 water results in a discharge from a sluice, trommel, or screen, however, this discharge is regulated by Alaska Department of Environmental Conservation (ADEC) under a Section 402, Alaska Pollutant Discharge Elimination System Permit (APDES).

CLARIFICATION OVER REGULATION OF DISCHARGE

The Corps DOES NOT regulate the discharge or release of rocks and or sediment from a sluice box mounted on a recovery device. The sluice box discharge is regulated by the ADEC under a Section 402 APDES permit.

This GP authorizes an operator to float a device in navigable waters of the U.S., for the purpose of recovering metals within the State of Alaska. Activities must comply with the terms and conditions of the GP listed below.

WATER DEPTH:

- Operations in **marine waters at minus 20 feet or less in depth Mean Low Lowest Water (MLLW)** are approved for operation, without notifying the Corps. Operators will not receive a printed authorization. However, the work still falls under Corps jurisdiction, and operators must comply with the terms and conditions of this GP.
- Operations in **marine waters minus 20 feet or greater in depth MLLW** are required to notify the Corps by DA permit application (ENG FORM 4345), and will receive a written Corps verification that the operation qualifies for a GP. The applicant must provide information about the effect of the project on Endangered Species, Critical Habitat, and Historic Properties. For more information, see Special Conditions 7 and 8, below. The applicant must also provide a Compensatory Mitigation Statement; see "Application Procedures" below.

EXCLUSIONS: This GP does not cover the following:

- Habitat: This GP does not apply to projects in coral, eelgrass beds, seagrass beds, kelp beds, macro-algae, vegetated shallows, shellfish beds, mudflats, or wetlands.
- Essential Fish Habitat: The GP does not apply to projects that would adversely affect Essential Fish Habitat (EFH). See Special Condition # 5.

This GP does not apply in the following situations unless appropriate coordination is completed with the respective agency:

- State Designated Special Areas: Unless the activity is specifically authorized by the agency with jurisdiction over these lands. Examples of special areas are Game Refuges and Sanctuaries, and Critical Habitat Areas.
- Federally Designated Areas (existing or nominated): Unless the activity is specifically authorized by the agency with jurisdiction over these lands. Examples of these areas are National Wildlife Refuges, National Parks.
- Endangered Species: The GP does not apply to projects with adverse effect to endangered species; unless Section 7 consultation is completed. See condition #7.
- Archaeological, cultural, or historic properties: In cases where the District Commander determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. See Special Condition #8.

WHEN AN INDIVIDUAL PERMIT WILL BE REQUIRED:

An individual permit will be required for operations proposed under any of the excluded situations listed above.

SPECIAL CONDITIONS OF THE GENERAL PERMIT:

1. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the U.S.
2. You must install and maintain, at your expense, any safety lights and signals prescribed by the U.S. Coast Guard (USCG), through regulations or otherwise, on your authorized facilities. The USCG may be reached at the following address and telephone number: Commander (dpw), 17th Coast Guard District, P.O. Box 25517, Juneau, Alaska 99802, (907) 463-2272
3. The permittee understands and agrees that, if future operations by the U.S. require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the U.S. No claim shall be made against the U.S. on account of any such removal or alteration.
4. Operations located in waters used by anadromous fish shall be consistent with regulations of the State of Alaska, Department of Fish and Game and comply with any Fish Habitat Permit issued for the project under Alaska Statute, if a permit is required. Violation of the Fish Habitat permit shall be grounds to suspend or revoke the authorization granted by this GP.
5. The proposed activity shall not adversely affect Essential Fish Habitat (EFH). Section 305 (b) of the Magnuson-Stevens Fishery Conservation and Management Act and 50 CFR Part 600 provide the requirements for EFH consultation. The District Commander (DC) shall make a determination whether or not the action will adversely affect EFH. The determination and an EFH assessment (per 50 CFR 600.920) shall be provided in any subsequent notice should the action adversely affect EFH. If necessary, the National Marine Fisheries Service (NMFS) will provide EFH Conservation Recommendations as defined in Section 305 (b) (4) (A) and 50 CFR Part 600.
6. The proposed operation activity shall be in compliance with applicable State of Alaska, Department of Environmental Conservation, Alaska Pollution Discharge Elimination System Permit. Violation of the APDES shall be grounds to suspend or revoke the authorization granted by this GP.
7. (a) No activity is authorized under any GP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any GP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Permittees must submit a notification to the District Commander (DC) if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(c) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the GP.

(d) Authorization of an activity by a GP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(e) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their World Wide Web pages at <http://www.fws.gov> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

8. (a) In cases where the DC determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Permittees must submit a notification to the DC if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including

previously unidentified properties. For such activities, the notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing notifications, District Commanders will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The District Commander shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the District Commander shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the applicant shall not begin the activity until notified by the District Commander either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(c) The DC will notify the prospective permittee within 45 days of receipt of a complete notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the District Commander will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

INSPECTION: You must allow the DC, or designated representative(s), to inspect the authorized activity at any time deemed necessary to ensure work is being, or has been, accomplished in accordance with the terms and conditions of this GP.

In the event that work is being or has been performed in noncompliance with this GP, appropriate measures will be taken to resolve the violation. This may include a requirement to obtain an individual permit.

Refusing access to an inspection of the authorized activities shall be considered non-compliance with the terms and conditions of this GP.

Any operator found in non-compliance with this GP may not be issued another GP authorization until the non-compliance is resolved.

APPLICATION PROCEDURES:

Notification Requirement: Required for all operators floating a device in water depths deeper than minus 20 feet mean lower low water.

1. The operator must complete a DA permit application (ENG FORM 4345) [available at a Corps office or at our website: <http://www.poa.usace.army.mil/reg/>]. Applications will receive initial review for completeness within fifteen days of receipt. The application request must include:

- A legible map showing the location of the proposed work
- A description of the floating device, size, and anchoring mechanism
- Plan drawings that show the operation relative to tidal datum's
- Latitude and Longitude of the project area
- Notification about ESA, Critical Habitat, and Historic Properties
- Compensatory Mitigation Statement

The application and drawings must have sufficient detail for the application to be considered complete. The Corps will contact the applicant for additional drawings and/or information if necessary. After receipt of a complete application, the Corps will notify the applicant to confirm that their work will be covered under this GP, or that an individual permit is required.

Authorization Process: All operations proposed for authorization under this GP will be authorized as follows:

1. Applicant notifies the Corps by the methods outlined above.
2. The Corps will review the application for completeness and preliminarily determine that the GP is applicable.
3. Agency coordination will be initiated by the Corps on complete applications.
4. Agencies have 10 calendar days from the date the notification is transmitted to contact the Corps in writing, by FAX, e-mail, or by telephone, with substantive comments on the project.
5. The Corps issues the applicant a GP authorization letter, or notifies the applicant that a GP is not appropriate for the proposed operation. Special conditions can be added to the GP letter.
6. Permittee should retain all original authorizations in a safe location, and keep a duplicate copy at the mine site for review by visiting agencies.

OTHER INFORMATION:

- **Compensatory Mitigation:** The Final Mitigation Rule (2008) established requirements, procedures and timelines for implementing compensatory mitigation. The need for compensatory mitigation would be determined on a case-by-case basis. Compensatory mitigation statements shall be submitted with the permit application. The GP incorporates best management practices into permit conditions and would allow for project-specific conditions that accomplish avoidance and minimization of adverse impacts to the aquatic ecosystem.
- **Timing Windows:** There are no timing restrictions associated with this permit.
- **Reevaluation of a Permit Decision:** The Corps may reevaluate its decision to issue a GP authorization at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - The permittee fails to comply with the terms and conditions of this permit.
 - Appropriate new information surfaces, which this office did not consider in reaching the original public interest decision.

A reevaluation may result in:

- a decision to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7
- A decision to use enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. These enforcement procedures provide for the issuance of an administrative order requiring compliance with the terms and conditions of the permit and for the initiation of legal action where appropriate.

The permittee will be required to pay for any corrective measures ordered by this office, and if there is a failure to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract, or otherwise, and bill you for the cost.

Extension, modification, and revocation of the general permit:

- This GP may be revoked by issuance of a Public Notice at any time the DC determines that the singular or cumulative effects of the activities authorized herein are having an unacceptable adverse impact upon the public interest. Following such revocation, all new applications will be processed under individual permit application review procedures and the DE would decide on a case-by-case basis if previously authorized activities should be revoked, suspended, or modified.
- The DC has the discretionary authority to review any individual mining activity, or class of activities to determine whether the activity complies with the GP. If the DC finds that the activity has more than minimal individual or cumulative net adverse impacts on the environment or otherwise may be contrary to the public interest, prospective permittees will be required to apply for an individual permit.

- This GP will be effective for a period of five (5) years. During that time, the DC may modify it if he determines that the singular or cumulative impacts of the activities authorized by this GP have an unacceptable adverse effect upon the public interest. During its fifth year, this GP and the work authorized under it shall be reviewed to determine if this GP should be modified, extended, or discontinued.
- Activities that are authorized/underway prior to the GP expiration date must be completed within twelve (12) months of the GP's expiration date, and the permittee must notify the Corps of his/her intent to continue mining. Further time extensions may be considered on a case-by-case basis under the provisions of 33 CFR 325.6.

Penalties for Violations: Failure to comply with the terms and conditions of this GP may result in:

- suspension of work
- revocation of permit
- directed restoration of waters
- imposition of penalties as provided under Section 301 of the Clean Water Act (33 USC 1319), or Section 9 of the Rivers and Harbors Act of 1899 (33 USC 401).

Limits of This Authorization:

- This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- This permit does not grant any property rights or exclusive privileges.
- This permit does not authorize any injury to the property or rights of others.
- This permit does not authorize interference with any existing or proposed Federal Project.


Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:


- Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- Design or construction deficiencies associated with the permitted work.
- Damage claims associated with any future modification, suspension, or revocation of this permit.

TERM:

This GP is effective for 5 years from the date of issuance unless otherwise modified, suspended, or revoked. Authorized work must be completed by the date specified in the authorization letter.

FOR THE DISTRICT COMMANDER:


Chief, North Branch
Regulatory Division
Alaska District, Corps of Engineers


Date

**TO: THE HONORABLE MAYOR AND ASSEMBLY
CITY AND BOROUGH OF WRANGELL**

**FROM: TIMOTHY D. ROONEY
BOROUGH MANAGER**

RE: BOROUGH MANAGER'S REPORT

DATE: October 5, 2012

"Lying in the hospital, thinking of all those women going for cancer checkups because of me, I'd come to recognize more clearly the power of the woman in the White House. Not my power, but the power of the position, a power which could be used to help."

- *Betty Ford
October is Breast Cancer
Awareness Month*

MANAGERIAL:

LYNCH STREET – As you may be aware, both concrete facilities ran out of concrete. Between the Front Street project and the Marine Service Center Paving project, there simply was not enough to go around. In fact, the Front Street Project had to borrow concrete from the company supplying concrete for the Marine Service Center in order to finish.

While initially the extra concrete from the Marine Service Center was going to be used for Lynch, both Mr. Johnson and I felt that it was important to complete Front Street first. Additional concrete has arrived onsite, and work on Lynch Street has resumed. The weather forecast for the next several days looks promising as well and it is staff's hope that the project will be completed by the end of next week.

CITY AND BOROUGH OF WRANGELL V. SELLE-REA, ROBINSON, BJORGE, MCGEE, NELSON, ETTTEFAUGH, RHINEHART – Attached for your information and review is the former Wrangell Medical Center Administrator's opposition to the filing made by the City and Borough of Wrangell for the return of the laptop computer and iPad in order to allow for a forensic review of their contents. Mr. Blasco is working on the response by the City and Borough of Wrangell which is required to be filed by the end of the day Monday, October 8, 2012.

WRANGELL MEDICAL CENTER ITEMS – The following items relate to different items of interest regarding the Wrangell Medical Center:

INTERIM MANAGEMENT AGREEMENT - An agreement has been reached between the City and Borough of Wrangell and PeaceHealth for the purpose of conducting interim

Borough Manager's Report
October 5, 2012
Page 2 of 7

management services at Wrangell Medical Center. The agreement, attached for your information and review, became effective October 1, 2012. Mr. Kendall Sawa, an employee of PeaceHealth, is here in Wrangell and performing Interim CEO/Administrator Services to fulfill the agreement.

ORDINANCE NO. 865 – Ordinance No. 865, passed and approved unanimously by the Borough Assembly on August 28, 2012, incorporated several changes to the Wrangell Municipal Code relating to the Wrangell Medical Center. At the time of its approval, the Borough Assembly pledged to review several of the items of concern expressed by citizens regarding the ordinance. Specifically, citizen concerns centered on the legality of the mandated Assemblymember Board liaison participating in Executive Sessions and conflict between the personnel manuals. Mr. Blasco also met with the Wrangell Medical Center Board Chairman, Mr. Woody Wilson about additional concerns that Mr. Wilson had with the ordinance.

Mr. Blasco is in the process of completing a memorandum to my office regarding those concerns which I will then forward to the Borough Assembly once finalized. Any recommended changes will then be incorporated into a revised ordinance and placed on the October 23, 2012 Borough Assembly agenda for a first reading and subsequent public hearing.

REPLACEMENT PROJECT – While in Craig last week for Southeast Conference, Mr. Blasco and I participated in a teleconference with representatives of AHFD and Sanderling in order to move forward with the finalization of the component contract. Mr. Blasco participated in an additional meeting this week with representatives from AHFD and it is hoped that the component contract will be finalized by the end of the month.

Additionally, I was contacted by Mr. Keith Perkins of the USDA this week and we have scheduled a telephone call this afternoon to discuss the organizational process with the project team moving forward. Once USDA approves this process, project team meetings will once again resume.

UPCOMING TRAVEL –I will be out of the office October 10-11, 2012 for medical purposes. Mr. Jabusch will be Acting Borough Manager in my absence.

TIMESHEET – My timesheet for the month of September is attached for your information and review.

CAPITAL PROJECTS:

CITY DOCK - Northwest Underwater Construction (NUC) is 90% complete on the protective pile wrap system for the splash zone. They have also completed the repairs to dock abutment. Pile wraps will continue until the project is complete.



During the recent wind storm that Wrangell endured a few weeks ago, several completed pile wraps were damaged by the summer float which was ripped away from its secured location. NUC has been asked to replace the damaged wraps, and will be compensated on a time and materials basis through a subsequent change order. NUC is still on schedule for project completion by mid-October 2012.

COMMUNITY CENTER ROOF REPLACEMENT - Johnson Construction and Supply, Inc. (JCSI) continues work on the Community Center Roof Replacement project. Roofing panels and gutters are complete on all phases, including the lower entry roofs. The work remaining is flashings, downspouts and various trim installations. The contractor is scheduling the manufacturer's technician's return to Wrangell to perform an installation inspection for the purpose of certifying the roof for warranty. JCSI is still on schedule for project completion by the end of October 2012.

COMMUNITY GARDEN GRANTS –

FARMERS MARKET BUSINESS PLAN - The Wrangell Community Market business plan, written by a University of Alaska, Center for Economic Development graduate student, Jamie Arnett, was submitted to the Farmers Market Promotional Program, through the Wrangell Medical Center, at the end of September 2012. Assistance in the development of the business plan was provided by Staff through planning and implementation of the pilot farmers market, which took place in Wrangell this 2012 season.

The main goal of a farmers market in Wrangell is to make fresh produce available to Wrangell residents. Beyond this primary goal, the market is being created to act as a community gathering place and an economic development tool by promoting products that are locally grown, raised, harvested, and handmade. The business plan describes operations and strategies for the market and benefits for the vendors and the community as a whole.

Wrangell looks forward to using the business plan as a guide to continue development of the Wrangell Community Market. The public can access the business plan on the City & Borough of Wrangell's webpage at the following link: <http://www.wrangell.com/community/community-market-0>

WIND TURBINE/GREENHOUSE PROJECTS - Due to programmatic changes in Washington D.C., resulting in the postponement of the greenhouse project, staff requested an additional time extension for the wind turbine project, allowing time to realize if the supporting greenhouse project is to become a reality. If so, we would ask that the additional time necessary to complete the wind turbine project be granted once notice is received that the greenhouse project will be maintained. To date, USDA has provided no additional information on the status of the greenhouse grant.

ETOLIN STREET AND MEDICAL CAMPUS UTILITIES - Ketchikan Ready Mix was on site last week, finalizing their punch list work. A final inspection by PND Engineers is expected prior to closing out the project with the Contractor. Boreal Controls was on site last week working on the telemetry system for the lift station. They have a final programming of the telemetry radio to perform before finalizing their portion of the lift station work.



MARINE SERVICE CENTER CONCRETE PAVING - S&S General Contractors completed the last three concrete pours at the Marine Service Center project, as reported previously, in areas 5 and 6. Following sealing of these areas, the contractor will be provided a letter of "Substantial Completion" and the City and Borough of Wrangell will begin to utilize these areas. The contractor is currently concentrating on installing construction joint sealant throughout the project and will begin the Additive Alternate A (oil water separator) work during the week of October 8, 2012. The Contractor plans to finalize the project in advance of their November 15, 2012 completion date.

MARINE SERVICE CENTER CONCRETE PAVING PHASE II - PND Engineers were in town during the week of October 1, 2012, performing survey and design preparations for their 35% completion level plan review design submittal for the Marine Service Center, Concrete Paving, Phase 2. This submittal is scheduled to be received for staff review by the end of October. The final engineering design is scheduled to be complete by March 2013, after which the construction bidding phase will follow.

POWER PLANT SCADA SYSTEM UPGRADES - EPS Engineering has completed their design and implementation for the upgrades to the existing SCADA system (computer monitoring system) for the Wrangell Electric Department's power house and for the addition of a new computer monitoring and control system for the Southeast Alaska Power Authority's Wrangell substation, both of which will provide better monitoring capabilities of feeder loads.

Realizing a balance in the grant funds available for this project, staff requested a cost estimate from EPS to increase the scope of their work to include Programmable Logic Controller (PLC) equipment (used for electrical systems' automation), as well as web (internet) viewing capabilities, which will allow the system to be accessed from remote locations. A change order for this additional work is contained on the October 9, 2012 agenda for Assembly approval.

WRANGELL CONVENTION AND VISITORS BUREAU:

BUSINESS AND TRAVEL PLANNER – Wrangell Convention and Visitors Bureau (WCVB) initiated the process of developing a new business and travel planner nearly a year ago. Originally, only minor modifications – text updates and photos – were going to be included. As the review continued, however, the WCVB Board decided that additional information needed to be added as well substantial changes to layout and content.

The design work is almost complete and the CVB is preparing to issue an RFP for printing, after a review of a final draft at their October meeting. The planner is actually only printed about every three to four years and provides a high value to local businesses that advertise within it.

If you have any questions regarding this item, please contact Ms. Rushmore.

LIBRARY:

E-BOOKS – Within the next few weeks, the library will be offering a new service – e-books. Users will be able to browse a website, check out an electronic book with a valid library card, and download to a PC and many mobile devices. Users will need to load books to load software to load books to an iPod, Sony Reader, Nook, Kindle, or other similar devices. Titles will automatically expire at the end of the lending period and there are no late fees.

The introductory first year of this program was included in the City and Borough of Wrangell's library budget for FY 2012-13. The second year will be funded by a grant from the Institute of Libraries and Museums which was sponsored by the Wrangell Cooperative Association.

This new service, powered by OverDrive, is free for patrons with their library card. Soon the community will be able to download audiobooks, ebooks, and more by visiting www.wrangell.com/library.

ONLINE WITH LIBRARIES – On September 20-21, 2012, Ms. Jabusch attended the Alaska Online with Libraries (OWL) Sustainability Summit in Anchorage sponsored by the Alaska State Library. This project was funded by the Bill and Melinda Gates Foundation, Alaska State Library, Rasmuson Foundation, and Broadband USA. The purpose of the summit was to focus on how to sustain the OWL Project in order to cover high costs of internet connectivity for the public libraries in Alaska.

The cost of the summit, including airfare, hotel, and per diem was covered by a grant through the OWL Project.

RAFFLE – The Friends of the Library are sponsoring a raffle that will benefit the Irene Ingle Public Library. The raffle is for 50,000 Alaska Airline miles and are for sale for \$1 each or 6 for \$5. These tickets can be purchased from Cathy Schmidt, Renate Davies, Cindy Sweat, Kay Jabusch, Lana Johnson, Judy Duncan, me or at the public library. The fundraiser is in lieu of the annual Dessert Bar and the drawing will be on or before December 24, 2012.

The Alaska Airline miles were anonymously donated and the Friends of the Library are extremely appreciative of this generous gift.

FALL STORYTIME – Storytime for all pre-school children began on October 4, 2012. Storytime will continue to be conducted every Thursday at 10:00 AM through December 13, 2012 and consists of stories, crafts, and snacks centered around various themes.

If you have any questions regarding these items, please contact Ms. Jabusch.

PARKS AND RECREATION:

INFORMATIONAL ITEMS – The following items have been submitted by the Parks and Recreation Department for information purposes:

- All outside restroom facilities have been closed and winterized
- All lawn mowers have been serviced and readied to go for next Spring
- Youth basketball games began on Saturday, September 29, 2012 and will continue through October every Tuesday and Thursday.
- Ms. Victoria Martin and Ms. Holly Hammer are traveling to Anchorage next week for a week of training and to attend the Alaska Recreation and Park Association annual meeting.
- A swim club has been organized by Mikayla Stokes (lifeguard) for her senior project. It is taking place on Tuesday and Thursday afternoons. Currently there are about 25 participants.
- Two more lifeguards (Sasha Ashton and Asia Prus) are going to teach swim lessons to home school children for their senior project.
- Holly Hammer just returned from Hydrofit water exercise teacher training in Oregon, paid for through AmeriCorps.

If you have questions regarding any of these items, please contact Mr. Covalt.

ATTACHMENTS:

1. Opposition response to return of laptop and iPad
2. Management Services Agreement between City and Borough of Wrangell and PeaceHealth
3. September Timesheet

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT ANCHORAGE

CITY AND BOROUGH OF WRANGELL,

Plaintiff,

-vs-

NOEL D. SELLE-REA, MARK ROBINSON,
LINDA BJORGE, LURINE MCGEE, JIM
NELSON, SYLVIA ETTEFAGH, and LEANN
RINEHART, individually and as
co-conspirators,

Defendants.

Case No. 1WR-12-55 CI

**DEFENDANT REA'S OPPOSITION TO
MOTION FOR ORDER FOR RETURN OF LAPTOP COMPUTER
AND IPAD TO BOROUGH TO ALLOW FORENSIC EXAMINATION**

I. Introduction.

Plaintiff City and Borough of Wrangell ("the Borough") has moved for an order compelling the "return" of a laptop computer and an iPad so that it may review the devices' contents and have its retained expert conduct a forensic examination. The computer is the property of the Wrangell Medical Center ("WMC") and is in the custody of Digital Securus, a computer consultant, and defendant Noel Rea owns the iPad. The Borough's motion should be denied for three reasons.

First, the motion is procedurally deficient. The Borough has never served a discovery request seeking production or inspection of the iPad, and it has never issued a subpoena seeking the third-party production of the computer. In effect, the Borough

1 is pursuing a motion to compel discovery without ever having invoked the necessary
2 discovery procedures.

3 Second, the Borough's motion is founded on the false premise that it has some
4 possessory rights to the computer and iPad. It does not. WMC has sole authority over
5 the computer, and the iPad belongs to Rea.
6

7 Third, and more fundamentally, the Borough's motion fails to recognize that the
8 devices include confidential and privileged materials to which it has no legitimate right
9 of access. The WMC computer contains confidential patient-related information
10 protected under federal law (HIPAA), privileged attorney-client communications pertinent
11 to litigation unrelated to this lawsuit, and confidential documents regarding WMC
12 personnel matters and physician privileging. The Borough's motion seeks to obtain
13 disclosure of those protected materials without making WMC a party to this motion and
14 affording it an opportunity to be heard to protect its independent interests.¹ Rea's iPad
15 also contains private materials completely unrelated to this litigation as well as privileged
16 communications, including e-mails with his counsel regarding this very lawsuit. The
17 Borough has no right to any of those materials.
18

19 To the extent the Court deems it appropriate to require disclosure of material
20 included on the computer and iPad, the Borough should not be allowed unfettered
21 access to the devices or their contents. Any disclosure should be strictly limited to non-
22
23

24
25 ¹ A copy of the Borough's motion and this opposition are being forwarded to
26 WMC's counsel.

1 privileged and non-confidential information relevant to the matters in dispute in this
2 lawsuit.

3 1. Consistent with WMC's proposal (discussed below), WMC could create a copy
4 of the contents of the computer, from which it may expunge any protected materials. A
5 copy of the non-protected materials could then be produced to the parties in this
6 litigation. As the requesting party, the Borough should be required to bear the expense
7 of that process.
8

9 2. Rea's iPad could be forwarded to an independent forensic examiner (to be
10 agreed upon by the parties) who would make a copy of the device's contents, from
11 which Rea could expunge the protected materials before copies of the relevant, non-
12 protected materials are circulated to the parties in this litigation. Again, the Borough
13 should be required to bear the expense of that process. Rea could also provide a log
14 of any relevant items that have not been produced.
15

16 That procedure would serve the dual goals of: 1) permitting full discovery of all
17 relevant, non-privileged materials consistent with the civil discovery rules, and 2)
18 ensuring the non-disclosure of privileged and private materials.
19

20 II. Statement of Facts.

21 Contrary to the premise of the Borough's motion – and indeed, of this entire
22 lawsuit – the Borough and WMC are not the same.² WMC is operated by a board
23

24 ² Accordingly, the Borough's standing to assert a claim for the recoupment
25 of money paid by WMC to Rea under his employment contract with WMC is
26 subject to challenge and will be addressed later in this litigation.

1 elected by the voters. Home Rule Charter of the City and Borough of Wrangell, Alaska,
2 § 3-9; Wrangell Municipal Code 3.32.007. Rea's employment contracts were entered
3 with WMC, not the Borough. [Contracts, attached to First Amended Complaint, dated
4 Sept. 4, 2012.] As of time of the events giving rise to this lawsuit and the transfer of the
5 Blackberry and iPad to Rea,³ the Wrangell Municipal Code provided that "[t]he custody
6 and management" of all hospital property and equipment "is entrusted to the board," and
7 the board has full power to sell all personal property which it deems advisable. Former
8 Wrangell Municipal Code 3.32.020A and B. The amended Code similarly provides that
9 management of equipment is entrusted to the WMC board and the board retains the
10 power to sell all personal property. Wrangell Municipal Code 3.32.020A and B.
11

12
13 Defendant Rea was the former administrator of the WMC. In June 2012, he was
14 terminated by the WMC board without cause and paid severance in accordance with the
15 terms of his employment contract. The Borough has now sued Rea and six of the former
16 WMC board members primarily seeking recovery of the severance payment. The
17 Borough founds its lawsuit on various allegations of misconduct, all of which are denied.
18

19 Upon his termination, Rea spoke with Bob Shymanski (Director of Environmental
20 Services with oversight over WMC's IT department) about the Blackberry and iPad that
21 had been provided to Rea by WMC. [Rea Aff., attached as Ex. A.] They discussed
22 prices and it was agreed that Rea could purchase both devices. [Id.] Consistent with that
23

24
25 ³ The Code provisions governing WMC were subsequently amended on
26 August 28, 2012.

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1 agreement, WMC then released his phone number to him so that he could transfer it to
2 his personal account. [Id.] Contrary to his affidavit, Borough Manager Timothy Rooney
3 had no authority to prohibit the sale of the Blackberry and iPad to Rea. Former Wrangell
4 Municipal Code 3.32.020A and B.

5
6 As part of the process of opening a new phone account in his name, Rea
7 subsequently replaced the Blackberry with a new iPhone. [Id.] Because he had been
8 having problems with the Blackberry, he opted to replace it with an iPhone since that
9 would save him money in the event the Blackberry failed.⁴ [Id.] After he replaced the
10 Blackberry, he allowed his young children to play with it until it ultimately died, and he
11 discarded it. [Id.] Contrary to the Borough's speculative allegations, Rea did not alter
12 evidence by discarding the Blackberry. [Id.] All prior e-mails received through the
13 Blackberry had been automatically copied to his laptop computer, which remains in
14 WMC's possession. [Id.]
15

16 Rea has continued to use the iPad. [Id.] The iPad contains a variety of irrelevant
17 matters, e.g., family photos, newspapers, games, music. [Id.] It also contains e-mails
18 from two accounts. [Id.] His former work account includes some e-mails from the period
19 prior to his termination, some of which encompass privileged communications
20 confidential to WMC, such as peer review documents and e-mails between Rea and
21
22

23 ⁴ In opening a new phone account, Rea had two options. [Id.] If he chose to
24 continue to use the Blackberry and it subsequently failed, he would be required
25 to replace it with a new phone at considerable expense. [Id.] However, if he
26 purchased an iPhone as part of the new contract, he could buy the iPhone for a
substantial discount. [Id.]

1 WMC attorneys regarding WMC legal matters, e.g., Dr. Greg Salard's suit against WMC.

2 [Id.] The work-account e-mails on the iPad would also have been sent to the laptop now
3 in WMC's possession. [Id.]

4 The e-mails on the iPad from Rea's personal account include private and
5 irrelevant communications (e.g., regarding family matters) and confidential attorney-
6 client communications with this law firm regarding this lawsuit. [Id.]

7
8 The Borough also fails to explain the full story respecting the laptop computer
9 used by Rea during his tenure at WMC and fails to recognize the significance of the
10 distinction between the Borough and WMC as separate entities, particularly as it relates
11 to confidential matters. At the direction of its insurer, apparently in connection with
12 unrelated litigation in which WMC is a defendant, WMC sent the computer to Digital
13 Securus for safekeeping. [See Blasco Letter, Ex. B.] As Rea's work computer, it
14 contains a vast host of materials completely unrelated to this litigation, including a
15 variety of confidential and privileged information to which the Borough has no legal right
16 of access. [Rea Aff., Ex. A; Hillman Letter, Ex. C.] Those materials include patient-
17 related information that is strictly protected from disclosure under HIPAA, privileged
18 attorney-client communications regarding various WMC matters, confidential personnel
19 matters, and documents regarding physician privileging and peer review that are
20 confidential under AS 18.23.030. [Rea Aff., Ex. A; Hillman Letter, Ex. C.] The disclosure
21 of physician privileging information is a crime punishable by up to one year in prison. AS
22 18.23.040.
23
24
25
26

1 As detailed in the attached correspondence, the Borough's counsel wrote to
2 WMC's counsel demanding custody of the computer. [Blasco Letter, Ex. B.] In
3 response, WMC's counsel explained that the computer contained confidential and
4 privileged information and that the Borough had no legal right to that information.
5 [Hillman Letter, Ex. C.] WMC's counsel stated that the Borough would be provided with
6 a copy of the computer's content with the confidential and privileged information
7 removed, and he confirmed that the computer would be preserved and returned to
8 WMC in its original state. [Id.] WMC's counsel also asked for any legal authority
9 supporting the Borough's position that it was entitled to the protected information. [Id.]
10 In response, the Borough objected to the procedure proposed by WMC, [Blasco e-mail,
11 Ex. 2 to the Borough's motion], and it elected to file this motion, apparently doing so
12 without serving WMC so that it may be heard on the issue.
13
14

15 **III. The Borough's Motion is Procedurally Invalid.**

16 While the Alaska civil rules provide for broad discovery rights, they also provide
17 for the procedures to implement those rights. Under Rule 34(a), a party may serve a
18 request for production or inspection of items in "the possession, custody or control" of
19 another party, and under Rule 30, a party may notice the deposition of a non-party and
20 serve a subpoena duces tecum requiring the deponent to bring materials to the
21 deposition. In the event a party is unable to obtain the requested discovery using those
22 procedures, it may file an appropriate motion with the court under Rule 37 accompanied
23 by a certification that the movant has made a good faith attempt to resolve the issue
24
25
26

1 without court intervention. The Borough has not followed those procedures in this
2 instance. Demand letters cannot substitute for proper discovery requests.

3 The Borough's failure is exacerbated by the fact that its motion seeks the
4 production of WMC's laptop computer without even giving WMC notice that it is
5 attempting to do so, thereby denying WMC the opportunity to contest the motion to
6 protect confidential and privileged information. The Borough argues that it did not make
7 Digital Securus a party to the motion since it agreed to comply with any court order
8 compelling the production of the computer, [Borough Memo. at 1, n.1], but the Borough
9 fails to recognize that Digital Securus is a mere custodian of the computer and that
10 WMC is the real party in interest as the owner of the computer and the party with the
11 responsibility for preserving the confidentiality of the protected materials on the
12 computer.
13

14
15 The Borough's motion should be summarily denied for failure to follow the proper
16 procedures.
17

18 **IV. The Borough Does Not Own the Computer or the iPad.**

19 The Borough cannot avoid the requirements of the civil rules or justify its motion
20 by claiming that it is the owner of the computer and iPad. The Municipal Code entrusts
21 all equipment to the WMC board. Former and Current Wrangell Municipal Code
22 3.32.020A and B. Accordingly, WMC is properly characterized as the owner of the
23 computer, and WMC is not a party to this litigation. As the operator of the hospital, WMC
24 further bears the responsibility for preserving the confidentiality of the computer's
25
26

1 contents. The Borough's relationship to WMC does not entitle it to see materials related
2 to WMC legal matters and confidential patient and physician information. The Borough
3 and its personnel and representatives have no right to access that information, whether
4 by motion or otherwise.
5

6 Regarding the iPad, Rea entered into an agreement with WMC representatives
7 to purchase it. [Rea Aff., Ex. A.] The Borough has offered no non-hearsay evidence
8 contesting Rea's claim of a purchase agreement and ownership, and even if its
9 evidence could be considered competent, the Borough should not be granted ownership
10 of the iPad based on its contested assertions. In reliance on the purchase agreement,
11 Rea used the iPad for personal matters, including communications with his counsel in
12 this case. [Id.] Having led Rea to believe that he could purchase the iPad, the Borough
13 should not now be permitted to invalidate his agreement with WMC and gain access to
14 his privileged e-mails.
15

16 Moreover, even if no sale occurred, the iPad, like the computer, would remain the
17 property of WMC, not the Borough. As noted above, the iPad also includes privileged
18 material, including peer review information and communications with WMC attorneys
19 pertinent to WMC legal matters, and the Borough would not be entitled to custody of
20 WMC property that would afford it access to those privileged matters.
21
22
23
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25
26

**V. The Borough's Proposal Would Improperly Permit
the Disclosure of Confidential and Privileged Information.**

The Alaska civil rules provide for the discovery of non-privileged materials relevant to the litigation in issue. As detailed above, both the computer and iPad contain confidential and privileged material that should not be disclosed to the Borough and others that may be involved in this lawsuit. However, by demanding custody of the computer and iPad and the right to conduct a forensic investigation of their contents, the Borough is seeking access to that protected information. Consistent with the rules of privilege, privacy concerns, and the federal and state statutes governing the confidentiality of patient medical records and physician privileging information, the Borough and its personnel should not be permitted access to the devices' contents. WMC and Rea should be the ones to review the computer and iPad for confidential materials, not the Borough.

To the extent this Court deems the Borough's motion to have any procedural validity, the Borough should not be granted custody of the computer and iPad and disclosure of the protected materials on those devices should not be permitted. Rather, the Court should enter an order permitting WMC to create a copy of the computer's contents and to expunge all protected information from that copy before disclosing it to the parties in this litigation. Similarly, Rea should be permitted to forward the iPad to an independent forensic examiner (to be agreed upon by the parties) who would make a copy of the device's contents, from which he could expunge protected and irrelevant

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1 materials before circulating the copy.

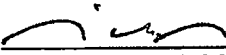
2 Because the Borough is insisting on the production of a forensic copy of the
3 devices' contents, as opposed to simple print outs of non-privileged, relevant,
4 information, it should be required to bear the cost of these efforts.
5

6 **VI. Conclusion.**

7 For the reasons stated, the Borough's motion for "return" of the laptop computer
8 and iPad should be denied. Alternatively, in the event the Court deems it appropriate to
9 require the disclosure of non-privileged, relevant information stored on the devices, the
10 Court should mandate a procedure which authorizes WMC and Rea to conduct the
11 appropriate privilege review and ensures that confidential information is not disclosed
12 to the Borough.
13

14 DATED at Anchorage, Alaska, this 1st day of October, 2012.

15 TINDALL BENNETT & SHOUP, P.C.
16 Attorneys for Defendant Noel Rea

17 By: 
18 Richard W. Maki
19 Alaska Bar No. 8211126
20
21
22
23
24
25
26

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1 I HEREBY CERTIFY that on this 15th day
2 of October, 2012, a true and correct copy
3 of the foregoing sent to the following via:
4 ☒ Mailed ☐ Hand Delivered ☒ *email*
5 Robert Blasco, Esq.
6 Hoffman & Blasco
7 9369 Glacier Hwy., Suite 202
8 Juneau, AK 99801
9
10 Jon Dawson, Esq.
11 Davis Wright Tremaine
12 701 W. 8th Ave., Suite 800
13 Anchorage, AK 99501
14
15 By: *[Signature]*
16 Tindall Bennett & Shoup, P.C.
17
18
19
20
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22
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25
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1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT AT ANCHORAGE

3 CITY AND BOROUGH OF WRANGELL,)

4 Plaintiff,)

5 -vs-)

Case No. 1WR-12-55 CI

6)
7 NOEL D. SELLE-REA, MARK ROBINSON,)
8 LINDA BJORGE, LURINE MCGEE, JIM)
9 NELSON, SYLVIA ETTEFAGH, and LEANN)
RINEHART, individually and as)
co-conspirators,)

10 Defendants.)
11)

12 AFFIDAVIT OF NOEL REA

13 STATE OF ALASKA)

14) ss.

15 THIRD JUDICIAL DISTRICT)

16 Noel Rea, being first duly sworn upon oath, deposes and states as follows:

17 1. I am a defendant in the above-entitled lawsuit and I make the following
18 statements on personal knowledge.

19 2. I was previously employed as the administrator for the Wrangell Medical
20 Center ("WMC") and was terminated by the board without cause in June 2012.

21 3. Upon my termination, I spoke with with Bob Shymanski (Director of
22 Environmental Services with oversight over WMC's IT department) about the Blackberry
23 and iPad that had been provided to me by WMC. We discussed prices and it was
24 agreed that I could purchase both devices. Consistent with that agreement, WMC then
25
26

1 released my phone number to me so that I could transfer it to my personal account.

2 3. As part of the process of opening a new phone account in my name, I
3 subsequently replaced the Blackberry with a new iPhone. Since I had to open a new
4 account for the phone in my name, I had two options. If I chose to continue to use the
5 Blackberry and it subsequently failed, I would have to replace it with a new phone at
6 considerable expense. However, if I purchased an iPhone as part of the new contract,
7 I could buy the phone for a substantial discount. Because I had been having problems
8 with the Blackberry, I opted to replace it with an iPhone since that would save me money
9 in the event the Blackberry failed.
10

11 4. After I replaced the Blackberry, I allowed my young children to play with it until
12 it ultimately died, and I discarded it. I did not alter evidence by discarding the Blackberry.
13 All prior e-mails received through the Blackberry had been automatically copied to my
14 laptop computer, which remains in WMC's possession.
15

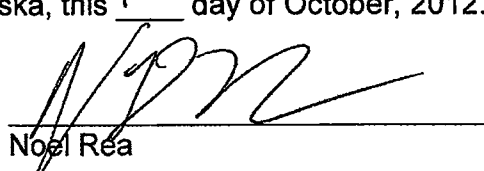
16 5. I have continued to use the iPad. The iPad contains a variety of irrelevant
17 matters, e.g., family photos, newspapers, games, music. It also contains e-mails from
18 two accounts. My former work account includes some e-mails from the period prior to
19 my termination, some of which encompass privileged communications confidential to
20 WMC, such as peer review documents and e-mails between me and WMC attorneys
21 regarding WMC legal matters, e.g., Dr. Greg Salard's suit against WMC. The work-
22 account e-mails on the iPad would also have been sent to the laptop now in WMC's
23 possession.
24
25
26

1 6. The e-mails on the iPad from my personal account include private and
2 irrelevant communications (e.g., regarding family matters) and confidential attorney-
3 client communications with my current lawyers (Tindall, Bennett & Shoup) regarding this
4 lawsuit.
5

6 7. The laptop computer, which I left with WMC, also contains confidential and
7 privileged material. In addition to a vast host of materials completely unrelated to this
8 litigation. The confidential materials include patient-related information that is strictly
9 protected from disclosure under HIPAA, privileged attorney-client communications
10 regarding various WMC matters, confidential personnel matters, and documents
11 regarding physician privileging and peer review that are confidential under state law.
12

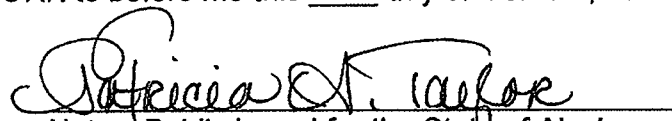
13 FURTHER YOUR AFFIANT SAYETH NAUGHT.

14 DATED at Anchorage, Alaska, this 1st day of October, 2012.

15
16 
17 Noel Rea

18 SUBSCRIBED and SWORN to before me this 1st day of October, 2012.




Notary Public in and for the State of Alaska
My Commission Expires: 10/27/12

HOFFMAN & BLASCO, LLC

JUNEAU OFFICE

9360 GLACIER HIGHWAY
SUITE 202
JUNEAU, ALASKA 99801
PHONE: (907) 586-3340
FACSIMILE: (907) 586-6818

PAUL M. HOFFMAN
ROBERT P. BLASCO
MARY HUNTER GRAMLING

ATTORNEYS AT LAW

August 3, 2012
Via fax w/o attachment, e-mail and US Mail

ANCHORAGE & CRAIG OFFICES

PO BOX 809
CRAIG, ALASKA 99921
PHONE: (907) 826-2453

ROBERT P. BLASCO

Roger L. Hillman
Garvey Schubert Barer
1191 Second Ave. Suite 1800
Seattle, WA 98101-2939
206-464-0125
rhillman@gsblaw.com

Re: *City and Borough of Wrangell v. Rea, et al.* 1WR-12-55 CI

Dear Mr. Hillman:

We are the Borough attorneys for the City and Borough of Wrangell. We represent the City and Borough of Wrangell in the action referenced above. A copy of the Complaint in that action is attached.

Late on the afternoon of August 1, 2012, the Borough Manager, Tim Rooney, met with Olinda White, the current Acting Hospital Administrator for the Wrangell Medical Center. The purpose of the meeting was to secure a laptop, iPad and cell phone, all property of the Borough, which had been used by the previous administrator, Noel Selle-Rea. In a meeting on June 26, 2012 with Mr. Rooney, Ms. White assured Mr. Rooney and me that the laptop was in the WMC safe, and that she would obtain the iPad and cell phone from Mr. Selle-Rea, and turn all of those items over to the Borough Manager upon his request.

When Mr. Rooney met with Ms. White on August 1, 2012, she told him that Barbara Fleshman of NORCAL Mutual Insurance had directed her to send the laptop to a computer consultant in Anchorage, believed to be Digital Securus. According to Ms. White, the order from Ms. Fleshman related to "HIPAA" information, which is an entirely unsatisfactory response.

It is our understanding that you represent the WMC in *Salard v. Wrangell Medical Center*, 1WR-12-33 as assigned by NORCAL under its insurance coverage for the City and Borough of Wrangell d/b/a Wrangell Medical Center. This letter provides notice to you that the laptop that Ms. Fleshman ordered Ms. White to send to Digital Securus constitutes crucial evidence in *Wrangell v. Rea, et al.* On behalf of the Borough, we request that you direct Digital Securus to immediately return it to the Borough Manager, without turning it on, or modifying, changing, altering, damaging or destroying it or any of the contents in any way. The Borough Manager's address is: P.O. Box 534, Wrangell, AK 99929. Ms. Fleshman had no authority to direct Ms. White to remove Borough property, known by Ms. White and Ms. Fleishman to be crucial evidence in *Wrangell v. Rea*, from the custody and safekeeping of the Borough, particularly without any notice to the Borough Manager or myself so that the Borough could have the opportunity to pursue its legal options to stop the removal of the laptop by Ms. Fleshman and Ms. White. From the meeting with the Borough Manager on June 26, 2012, Ms. White knew she had no authority to do anything with the Borough laptop except give it to the Manager upon his request.

If the Borough Manager has not received the laptop by 4:00 p.m. on August 8, 2012, the Borough will review its options to obtain the assistance of the Court to effect the return of the laptop. We request that you immediately confirm that the laptop has not been turned on, modified, altered, damaged, or destroyed, or any of its contents

EXHIBIT B

Letter to Roger Hillman

RE: City and Borough of Wrangell v. Noel Selle-Rea, et al.

August 3, 2012

Page 2

changed, altered, modified, deleted, or destroyed in any way as of this date, and confirm that you will immediately advise Digital Securus not to do anything with the laptop.

If the laptop has been turned on, modified, altered, damaged, or destroyed, or any of its contents changed, altered, modified, deleted, or destroyed in any way, the Borough will consider the conduct of Ms. Fleshman and NORCAL as constituting the deliberate destruction of evidence in pending litigation and the Borough will evaluate what actions to take to hold Ms. Fleshman and NORCAL responsible.

If it is your position that the laptop is evidence in the Salard case, please provide a complete explanation of your position. Even if the laptop in some way could constitute evidence in the Salard case, we request that nothing be done at all to the laptop, including turning it on, without our forensic consultant present and without a written protocol as developed by the two forensic consultants to take all necessary steps to preserve the evidence on the laptop.

We look forward to you taking the immediate action to prevent any alteration or destruction of evidence and confirm to us that the laptop has not been turned on and that the contents of the laptop have not been altered, modified, damaged or destroyed in any way.

Sincerely,


Robert P. Blasco

cc: Tim Rooney - via email only w/o attachment
David Shoup - via email only w/o attachment
Jon Dawson - via email only w/o attachment



SEATTLE OFFICE
eighteenth floor
second & seneca building
1191 second avenue
seattle, washington 98101-2939
TEL 206 464 3939 FAX 206 464 0125

OTHER OFFICES
beijing, china
new york, new york
portland, oregon
washington, d.c.
GSBLAW.COM

G A R V L Y S C H U B E R T B A R E R

Please reply to ROGER L. HILLMAN
rhillman@gsblaw.com TEL EXT 1402

August 6, 2012

VIA EMAIL (RPBLASCO@HOFFMANBLASCO.COM) AND U.S MAIL

Robert P. Blasco
Hoffman & Blasco, LLC
Juneau Office
9360 Glacier Hwy, Ste 202
Juneau, AK 99801

Re: City and Borough of Wrangell v. Rea, et al.

Dear Mr. Blasco:

This will acknowledge receipt of your letter of August 3, 2012 with regard to the above matter. As I am sure were advised by Mr. Rooney, in his meeting with Olinda White of August 1, 2012, she confirmed to him that the WMC laptop previously assigned to Noel Selle-Rea had not and would not be altered. No data, documents or other material had been or will be removed from this laptop.

However, there is material contained on this laptop which is protected by state and/or federal law. WMC is prohibited under HIPAA from disseminating any patient records and/or information. All data and information related to the credentialing of any physician is deemed confidential by AS 18.23.030, and dissemination of same is a misdemeanor pursuant to AS 18.23.040. Lastly, this laptop contains material identified as attorney/client privileged in the context of the pending litigation commenced by Dr. Greg Salard.

None of the above identified material is either being removed from or altered in the subject laptop. I have confirmed with Digital Securus that the process which they follow is to make a copy of everything on the laptop, thus preserving it in its original state. The above identified categories of material are then removed from the copy, not the original, laptop. It is this copy which will be provided to the City and Borough of Wrangell in accordance with Mr. Rooney's request. The subject laptop will be returned to Wrangell Medical Center in its original state.

If it is the position of the City and Borough of Wrangell that the provisions of HIPAA, the above cited Alaska statutes, and the attorney/client privilege do not apply and all of the above identified material may be disseminated to the City and borough of Wrangell despite the legal protection of same, please provide the legal authority for this proposition. In addition, please provide a written agreement whereby the City and Borough of Wrangell commit to defending and indemnifying Wrangell Medical Center, its

EXHIBIT C



GARVEY SCHUBERT BARER

Robert P. Blasco
August 6, 2012
Page 2

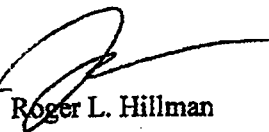
employees, including but not limited to Olinda White, its insurers, contractors and attorneys from any penalties and/or claims arising out of the dissemination of this protected material.

Lastly, you correctly state in your letter that this firm has been retained by NORCAL Insurance to defend Wrangell Medical Center in the Salard matter. Under this policy, our client is Wrangell Medical Center, not NORCAL Insurance. If you have any problem with the conduct of NORCAL or any of its personnel, I suggest you address it directly with them.

Very truly yours,

GARVEY SCHUBERT BARER

By



Roger L. Hillman

cc: Olinda White CFO Wrangell Medical Center (via email)
(owhite@wmcmal.org)
Barbara Fleschmann, NORCAL Mutual Insurance Company
(bfleschmann@norcalmutual.com)
Glen Klinkhart, Digital Securus
(info@digitalsecrus.com)



GARVEY SCHUBERT BARER

Robert P. Blasco
August 6, 2012
Page 3

bcc: David Anderson, NORCAL Mutual Insurance Company
(danderson@norcalmutual.com)

SEA_DOCS:1071136.1

MASTER AGREEMENT

This Master Agreement (the "Agreement") is entered into by and between PeaceHealth, a Washington not for profit corporation (hereinafter referred to as "PeaceHealth"), and the City and Borough of Wrangell (hereinafter referred to as "CBW"), (each referred to as a "Party" and both collectively referred as the "Parties").

WHEREAS, CBW would like to utilize services of PeaceHealth to provide certain services and enter into other mutually beneficial transactions; and

WHEREAS, PeaceHealth desires to provide such services and enter into such transactions; and

WHEREAS, the Parties would like to enter into this Agreement to set forth the terms and conditions that will apply to such services and transactions:

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. PEACEHEALTH SERVICES

- 1.1 **Services.** PeaceHealth shall provide such specific services as set forth in Engagement Letter(s) which shall be executed by the parties and made a part of and subject to the terms of this Agreement, ("the Services"). In the event of a conflict between the terms of this Agreement and the terms of an Engagement Letter, the terms of this Agreement will govern except to the extent the Engagement Letter explicitly refers to the conflicting term herein.
- 1.2 **CBW Standards.** In providing Services at CBW premises, PeaceHealth shall comply with CBW's standards, policies and procedures . In the event that PeaceHealth contends that any CBW standards, policies and procedures conflict with PeaceHealth standards, policies and procedures, PeaceHealth shall notify the CBW Manager and the parties agree to cooperate in good faith to resolve the conflict. If the parties cannot resolve the conflict within ten days of written notification by PeaceHealth, and in the event PeaceHealth determines that the conflict cannot be resolved, PeaceHealth may accelerate the termination for convenience set forth in Section 6.2 to sixty days upon written notice to CBW. Notwithstanding the foregoing, PeaceHealth shall comply with all applicable provisions of the City Charter and Code of Ordinances.
- 1.3 **Warranty/Disclaimer.** PeaceHealth warrants that the Services will be performed with reasonable care in a diligent manner. EXCEPT AS

OTHERWISE SET FORTH IN THIS AGREEMENT, THIS WARRANTY IS THE ONLY WARRANTY CONCERNING THE SERVICES AND IS MADE IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OF IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSES, OTHERWISE, ALL OF WHICH ARE HEREBY DISCLAIMED.

2. CBW RESPONSIBILITIES.

- 2.1 Contracts. CBW shall provide in writing to PeaceHealth a summary of any limitations included in contracts between CBW and vendors on access by PeaceHealth to information from such contracts which may be needed by PeaceHealth to perform the Services. Such written notice shall include the specific steps CBW must initiate to obtain approval for such access. CBW shall initiate such steps to seek approval for access on a timely basis.
- 2.2 Facility. CBW shall provide PeaceHealth with office space, equipment, data, supplies and utilities including access to computer systems and access to CBW personnel as necessary for PeaceHealth to provide the Services. CBW shall provide reliable, accurate and complete information necessary for PeaceHealth to adequately perform the Services and will promptly notify PeaceHealth of any materials changes in any information provided. CBW acknowledges that PeaceHealth is not responsible for independently verifying the truth or accuracy of any information provided by CBW.

3. INSURANCE/INDEMNIFICATION/LIABILITY

- 3.1 Insurance. CBW shall require Wrangell Medical Center ("WMC") to maintain directors and officers liability insurance during the term of this Agreement with liability limits of not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the annual aggregate and will endorse and otherwise make such insurance coverage primary for the individuals PeaceHealth provides in accordance with the Services and applicable Engagement Letter.

All required insurance will be provided by an insurance company rated AM Best A-7 or better. CBW shall provide PeaceHealth with certificates of insurance evidencing the insurance coverage required under this section and providing for not less than thirty (30) days notice to PeaceHealth of the cancellation of such insurance. CBW shall promptly notify PeaceHealth of any cancellation, reduction, or other material change in the amount or scope of any coverage required under this section.

If the directors and officers liability insurance procured pursuant to this Section 3.1 is on a "claims made" rather than "occurrence" basis, in the event CBW fails to maintain continuous coverage in the amount specified above, for at least three years after expiration or termination of this Agreement, CBW shall obtain extended reporting insurance coverage ("tail coverage") for all claims relating to services provided under the terms of this Agreement with an AM Best rated company of A-7 or better with liability limits as specified in above , or provide PeaceHealth with such other assurances of coverage as PeaceHealth , in its discretion, deems appropriate.

3.2 Indemnification of PeaceHealth. CBW shall indemnify, defend and hold PeaceHealth harmless from and against any claims, lawsuits, liabilities, losses, expenses including without limitation attorneys fees arising from or relating to any Services or other actions taken by PeaceHealth in accordance with this Agreement or any applicable Engagement Letter. CBW shall further indemnify, defend and hold PeaceHealth harmless and any individuals provided by PeaceHealth to provide Services under this Agreement or any applicable Engagement Letter in a manner similar to other CBW directors, officers and employees in accordance with CBW indemnification policies or by law as may be amended or revised from time to time. Notwithstanding the foregoing, CBW shall also indemnify, defend and hold PeaceHealth harmless and any individual providing Services under this Agreement or any applicable Engagement Letter from and against any and all other types of claims, lawsuits, liabilities, losses, expenses including without limitation attorneys fees brought against CBW, WMC, PeaceHealth or the individual providing Services under the Agreement except to the extent such claims, liabilities, lawsuits, losses or expenses arise solely from the willful misconduct, negligent act, error or omission of PeaceHealth.

3.3. Indemnification of CBW. PeaceHealth shall indemnify, defend, and hold harmless CBW and its officers and, employees, from any suit, action, claims, lawsuits, liabilities or expenses including without limitation attorneys fees , arising out any willful misconduct negligent act, error or omission of PeaceHealth except to the extent such claims or liability arise from the willful misconduct, negligent act, error or omission of CBW or are otherwise subject to the indemnification obligations set forth in Section 3.2 hereof.

3.4 Limitation on Liability. PeaceHealth will not be liable for any special, consequential, incidental, indirect or exemplary damages or loss or any lost profits, savings, or business opportunity. Further, PeaceHealth's total liability for all claims relating to the Services shall in no event exceed the total amount of compensation paid to PeaceHealth as of the date of the claim.

3.5 Survival. The obligations and provisions set forth in this Section 3 shall survive the termination or expiration of this Agreement.

4. **COMPENSATION**

4.1 Fees. CBW shall compensate PeaceHealth for the Services in accordance with the applicable Engagement Letter.

4.2 Payment Terms. Except as otherwise set forth in a specific Engagement Letter, invoices are due within thirty (30) days of receipt of invoice. Undisputed invoices upon which payment is not received within thirty (30) days of the invoice date shall accrue a service charge of the lesser of (i) 1% per month or (ii) the highest rate allowable by law, in each case compounded monthly to the extent allowable by law. Without limiting its rights or remedies, and notwithstanding anything to the contrary contained in this Agreement, PeaceHealth shall have the right to suspend or terminate entirely its Services under the applicable Engagement Letter until payment, including any interest payable on any outstanding balance, is received on past due invoices, without liability therefore to PeaceHealth. In the event of such suspension or termination, PeaceHealth shall not be liable for any resulting loss, damage or expense connected with such suspension or termination. PeaceHealth shall also be entitled to recover from CBW all costs of collection, including court costs and attorney's fees, in the event of the default by CBW hereunder.

5. **OTHER TRANSACTIONS.**

The Parties contemplate that during the term of this Agreement, they may decide to enter into other arrangements including but not limited to other purchased services such as laboratory and supply chain. Such additional transactions shall be set forth in the applicable Engagement Letter or in a separate agreement not subject to this Agreement.

The Parties further agree that this Agreement is nonexclusive and PeaceHealth may provide similar services to other entities using the same personnel as those providing Services under this Agreement.

6. **TERM AND TERMINATION**

6.1 Term. This Agreement shall be in effect beginning October 1, 2012 and shall continue until the termination of the last Engagement letter or unless terminated earlier as provided herein. The Parties may renew this Agreement based on the written agreement of both Parties. The terms for

each Engagement Letter shall be set forth in the applicable Engagement Letter.

- 6.2 Termination for Convenience. Either party may terminate this Agreement at any time, with or without cause, and without penalty or premium upon one hundred eighty days' prior written notice to the other party. Either Party may also terminate an Engagement Letter as set forth in that Engagement Letter. In the event of termination of an Engagement Letter, all other Engagement Letters shall remain in full force and effect.
- 6.3 Termination for Cause. Either Party may terminate this Agreement upon written notice of material violation of the Agreement by the other party if the material violation is not cured with thirty (30) days of receipt of the written notice.
- 6.4 Compensation upon Termination. In the event of termination under this Agreement or of an Engagement Letter, CBW shall compensate PeaceHealth for all Services provided or incurred prior to the effective date of such termination.

7. GENERAL PROVISIONS

- 7.1 Relationship of Parties. In performing the responsibilities described in this Agreement, PeaceHealth is at all times acting and performing as an independent contractor. PeaceHealth will be free from direction and control over the means and manner of providing the Services, subject only to the right of PeaceHealth to specify the results. Nothing in this Agreement is intended to create an employer/employee relationship, an agency relationship or a partnership or joint venture between PeaceHealth and CBW. CBW does not have the authority to bind PeaceHealth or represent to any person that PeaceHealth is an agent of CBW. PeaceHealth shall be responsible for all applicable state and federal payroll taxes, Social Security withholding, workers' compensation, employment insurance taxes, employee benefits and other taxes, expenses, or deductions and for filing at the next applicable filing period a schedule of expenses with the Internal Revenue Service for services PeaceHealth is performing as an independent contractor. PeaceHealth shall have no claim against CBW for vacation pay, sick leave, Social Security, workers' compensation, unemployment insurance, or employee benefits of any kind.
- 7.2 Responsibility. Notwithstanding the foregoing, the Parties understand and agree that the Services may include advice and recommendations, but all decisions and actions taken by CBW in connection with the Services shall be the responsibility of, and made by, CBW and PeaceHealth shall have no liability for the decisions or actions of CBW.

7.3 Confidentiality/Privacy.

- 7.3.1** With respect to any information supplied in connection with this Agreement and designated by either Party as confidential, or which the other Party should reasonably believe is confidential based on its subject matter or circumstances of its disclosure ("Confidential Information"), the other agrees to protect the confidential information in a reasonable and appropriate manner, and use confidential information only to perform its obligations under this Agreement and for no other purposes. This will not apply to information which is (i) publicly known, (ii) already known to the recipient, (iii) lawfully disclosed by a third party, (iv) independently developed, (v) disclosed pursuant to legal requirement or order, or (vi) disclosed to taxing authorities or to representatives and advisors in connection with tax filings, reports, claims, audits and litigation.
- 7.3.2** PeaceHealth further agrees with respect to "Protected Health Information" ("PHI") as that term is defined in the "Standards for Privacy of Individually Identifiable Health Information" and the "Security Standards for the Protection of Electronic Health Information" (the "Security Standards") under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") to:
- I.** Not use or disclose PHI other than as permitted by this Agreement or required by law; PeaceHealth is authorized to use PHI solely for the purpose of carrying out PeaceHealth's responsibilities under this Agreement;
 - II.** Implement administrative, physical, and technical safeguards to protect the security, confidentiality, integrity, and availability, as those terms are defined at 45 CFR Sec. 164.304, of PHI that PeaceHealth creates, receives, maintains, or transmits on behalf of CBW, and prevent its unauthorized access, use, acquisition or disclosure;
 - III.** Promptly notify CBW and in no event no later than sixty (60) days of PeaceHealth's discovery of any use or disclosure of PHI not permitted by this Agreement or any security incident as that term is defined at 45 CFR Sec. 164.304 or any breach as that term is defined at 45 CFR Sec. 164.402;
 - IV.** Ensure that any employees, agents, or subcontractors who have access to PHI agree in writing to the same restrictions and conditions as PeaceHealth;

- v. Make available to CBW within seven (7) working days of a request the information as necessary for CBW to comply with patients' rights to access, amend, and receive an accounting of the disclosures of, their PHI;
 - vi. Make available to the Secretary of Health and Human Services PeaceHealth's internal practices, books and records relating to the use and disclosure of the PHI;
 - vii. Upon termination or expiration of this Agreement, return or destroy all PHI, if feasible. If it is not feasible to return or destroy the information because of other obligations or legal requirements, the protections of the Agreement must apply until the information is returned or destroyed, and no other uses or disclosures may be made except for the purposes, which prevented the return or destruction of the information.
- 7.3.3 This Section shall be construed in a manner consistent with any applicable interpretation or guidance regarding HIPAA as now codified or hereinafter amended or other applicable laws or regulations, issued by the U.S. Department of Health and Human Services or the federal Office of Civil Rights.
- 7.3.4 The parties agree to negotiate in good faith regarding mutually acceptable and appropriate amendments to this Section as necessary to comply with or give effect to obligations imposed by any change to HIPAA or its regulations or other applicable laws or regulations. In the event the parties are unable to negotiate a mutually acceptable amendment within One Hundred Eighty (180) days of such a change, either party may terminate this Agreement on Thirty (30) days written notice to the other.
- 7.3.5 Nothing in this Section shall be construed to confer upon any person other than the parties and their respective successors or assigns any right, remedy, obligation or liability whatsoever, except as expressly set forth herein.
- 7.4 **No Referrals.** Nothing contained in this Agreement shall require (directly or indirectly, explicitly or implicitly) any party to refer or direct any patients or other business to another party or to use another Party's facilities as a condition under this Agreement.
- 7.5 **Notices.** Any and all notices required or permitted hereunder shall be sent by certified mail, return receipt requested, or by generally recognized electronic service, to the following address or to such other and different addresses as the parties may hereto designate in writing.

PeaceHealth:

PeaceHealth Ketchikan Medical
Center
3100 Tongass Ave
Ketchikan, AK 99901
Attn: Patrick Branco
Title: Chief Executive Officer
Phone: 907-225-5171 ext.7389

CBW:

City and Borough of Wrangell
P.O.Box 531
Wrangell, AK 99929
Attn: Tim Rooney
Title: Borough Manager
Phone: 907-874-2381
Fax: 907-874-3952

- 7.6 Non-Assignability. This Agreement may not be assigned by CBW without the prior written consent of PeaceHealth.
- 7.7 Severability. Any provision of this Agreement which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof, and such other provisions shall remain in full force and effect.
- 7.8 Waiver. No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.
- 7.9 Complete Understanding. This Agreement contains the entire understanding of the parties hereto, and there are no other written or oral understandings or promises between the parties with respect to the subject matter of this Agreement other than those contained herein. This Agreement cannot be modified by course of dealing. All modifications or amendments to this Agreement must be in writing and signed by both parties.
- 7.10 Advice of Counsel. Each Party hereby acknowledges, (i) having fully read this Agreement in its entirety; (ii) having had full opportunity to study and review this Agreement; (iii) having been advised that counsel for PeaceHealth has acted solely on PeaceHealth's behalf in connection with the negotiation, preparation, and execution hereof; (iv) having been advised that all parties have the right to consult and should consult independent counsel respecting their rights and duties under this Agreement; and (v) having had access to all such information as has been requested.
- 7.11 Applicable Law. The interpretation of this Agreement and the resolution of any disputes arising under this Agreement shall be governed by the laws of the State of Alaska.

- 7.12 Legal Status. Notwithstanding anything to the contrary herein, if performance by either of the Parties hereto of any term of this Agreement shall jeopardize the licensure of either Party, or the full accreditation of either Party by the Joint Commission or other recognized accrediting body, or the tax-exempt status of either or the ability of either Party to issue tax-exempt bonds or should be in violation of applicable laws or regulations, such term shall be renegotiated by the parties. In the event the Parties are unable to renegotiate said term within sixty (60) days following the receipt of written notice of such jeopardy, either Party may terminate this Agreement upon thirty (30) days prior written notice to the other party.
- 7.13 Signature Authority. The individuals executing this Agreement represent and warrant that they are competent and capable of entering into a binding contract, and that they are authorized to execute this Agreement on behalf of the Parties hereto.
- 7.14 Facsimile or Scanned Signatures. Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission, will be the same as delivery of an original. At the request of any party, the parties will confirm transmitted signatures by signing an original document.
- 7.15 Dispute Resolution. The Parties shall in good faith and for thirty (30) days attempt to resolve any dispute or disagreement arising out of or relating to this Agreement by negotiations between the CEO of PeaceHealth Ketchikan Medical Center and CBW Borough Manager or other designated managers or executives. Neither Party is required to pursue this informal dispute resolution process in the event of a dispute regarding an alleged payment owing to that Party, a breach of contract provision regarding confidentiality of information belonging to that Party, or if the Party has reason to believe that the delay involved in this informal dispute resolution would materially harm it.
- 7.16 Nonsolicitation. PeaceHealth and CBW agree that until one year after the termination or expiration of this Agreement, PeaceHealth and CBW will not hire, employ or contract with any employee of the other Party who were involved in the applicable Engagement Letter.
- 7.17 Force Majeure. Neither Party will be in default or liable for any noncompliance from acts of God, fires, floods or natural disasters, terrorist activities, labor disputes, communication failures and other equipment or telecommunication problems or other factors beyond the reasonable control of a Party.

7.18 Additional warranties. Each Party further represents and warrants that:

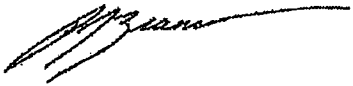
- a) It has all requisite power and authority to enter into this Master Agreement and related Engagement Letters and to carry out the transactions contemplated thereby.
- b) The execution, delivery and performance of this Master Agreement and related Engagement Letters and consummation of the transactions contemplated thereby have been duly authorized by all requisite action on the part of such Party.
- c) The Master Agreement and any related Engagement Letter have been duly executed and delivered by such Party and (assuming the due authorization, execution and delivery by the other Party) constitute a valid and binding obligation of such Party enforceable in accordance with their terms.
- d) Its entry into and performance of the Master Agreement and related Engagement Letters does not violate or constitute a breach of any contractual or other obligations to third parties
- e) It has obtained all requisite consents, licenses and approvals, whether governmental, contractual or otherwise, to enter into and perform its obligations under the Master Agreement and related Engagement Letters.

7.19 HHS Access to Records. During the term of this Agreement and for a period of four (4) years after the Agreement's termination or expiration, PeaceHealth shall grant access to the following documents to Secretary of U.S. Department of Health and Human Services ("Secretary"), the U.S. Comptroller General and their authorized representatives, this Agreement and all books, documents, and records necessary to verify the nature and cost of Services. If PeaceHealth carries out the duties of this Agreement through a subcontract worth Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period with a related organization, the subcontract shall also contain a clause permitting access by the Secretary, Comptroller General, and their authorized representatives to the related organization's books, documents, and records.

7.20 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument.


IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date of the last Party to sign below which may be in duplicate original:

PEACEHEALTH

By: 
Name: Patrick J. Branco
Title: CEO

Dated: September 26, 2012

CITY AND BOROUGH OF WRANGELL

By: 
Name: Timothy D. Rooney
Title: Borough Manager

Dated: 9/26/12

[illegible][illegible]

**BOROUGH ASSEMBLY
AGENDA ITEM
October 9, 2012**

ITEM NO. 9

BOROUGH CLERK'S FILE:

Upcoming Dates to Remember

- 10/10 Code Review Committee Meets @ 5pm
- 10/11 Planning & Zoning PH & Regular Meeting @ 7pm
- 10/13 **SALES TAX FREE DAY!!**
- 10/17 Hospital Board Meeting @ 5:30pm in the Assembly Chambers
- 10/18 WCVB Meets @ 6:30pm
- 10/22 Absentee Voting begins for the GENERAL ELECTION in the Assembly Chambers from 10am to 5pm

Regular Election of October 2, 2012



I would like to extend a big  to the Election Workers for their time and dedication, and to the following City Departments:

*The Employees of Public Works
The Nolan Civic Center Staff*

The preparations for the Election went very well. As of September, Wrangell had **1,631** Registered Voters. The total number of ballots counted for the October 2nd Regular Election was **607**. The voter turnout was **37%** which exceeds last year's Regular Election by **13%**.



CONSERVING PAPER

In an effort to conserve paper, all future Assembly Agenda Packets will be double sided. If any recipients of an Agenda Packet would like to receive a single sided packet, please notify me. Furthermore, if there are any agenda packet recipients would like to start receiving their packet on a thumb drive, please notify me. Also, after speaking with Borough Manager Tim Rooney, I will now print off one (1) double sided copy of the highly viewed Manager's Report for the City Hall Lobby. If anyone would like a printed copy, please see me and I will be happy to print one off for you.

AML

Alaska Municipal League Conference schedule is as follows:

- Pre-Conference (NEO-Newly Elected Officials Training) - Nov. 12 & 13, 2012
- Regular Conference - Nov. 14 & 15, 2012
- ACom (Alaska Conference of Mayors) - Nov. 13, 2012

I have received confirmation from the Mayor that he would like to attend ACom and the Regular Conference. Anyone else interested in attending? 😊

UNTIL NEXT TIME...



**BOROUGH ASSEMBLY
AGENDA ITEM
October 9, 2012**

ITEM NO. 10 MAYOR/ASSEMBLY REPORTS AND APPOINTMENTS:

INFORMATION: This agenda item is reserved for the Mayor and Assembly Member's special reports. Such information items as municipal league activities, reports from committees on which members sit, conference attendance, etc., are examples of items included here.

- a. Reports by Assembly Members**
- b. City Board and Committee Appointments**

Planning & Zoning Commission	(2 vacancies – 3 year terms)
Parks & Recreation Board	(2 vacancies – 3 year terms)
WCVB	(1 vacancy – 3 year term)
TBPA Commission	(1 vacancy – 3 year term)
Economic Development Committee	(3 vacancies – 3 year terms)
Cemetery Committee	(1 vacancy – 3 year term)
Nolan Museum/Civic Center Board	(3 vacancies – 3 year terms)

Letters Received from:

- Rudy Briskar – P&Z
- Betty Keegan – P&Z
- Holly Hammer – Parks & Recreation
- Timothy B. Berberich – Parks & Recreation
- Marian Glenz – WCVB
- David Galla – TBPA
- Kipha Valvoda – TBPA
- Jeremy M. Maxand – Economic Development Committee
- Marlene Clarke – Economic Development Committee
- Kay Larson – Cemetery Committee
- Susan F. Ritchie – Cemetery Committee
- Beth Comstock – Nolan Museum/Civic Center Board
- Keene Kohrt – Nolan Museum/Civic Center Board

- c. Elect Vice-Mayor**
(recommended motion: **Move to nominate ?????? for Vice-Mayor. There needs to be a second to the motion**)

CITY & BOROUGH OF WRANGELL, ALASKA

BOROUGH ASSEMBLY AGENDA ITEM October 9, 2012

ITEM NO. 13a Discussion regarding the Order Denying a Request for Rehearing issued by the Federal Energy Regulatory Commission to Cascade Creek, LLC.

INFORMATION:

1. Order Denying Rehearing issued by US Federal Energy Regulatory Commission.

RECOMMENDED ACTION:

Move to discuss the Order Denying a Request for Rehearing issued by the Federal Energy Regulatory Commission to Cascade Creek, LLC.

140 FERC ¶ 61,221
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinhoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Cascade Creek, LLC

Project No. 12495-006

ORDER DENYING REHEARING

(Issued September 20, 2012)

1. On January 30, 2012, Commission staff issued an order denying Cascade Creek, LLC's (Cascade) application for a third preliminary permit for the Cascade Creek Hydroelectric Project No. 12495.¹ On the same day, Commission staff issued a letter to Cascade terminating the pre-filing alternative licensing process (ALP) for the proposed project.

2. On February 29, 2012, Cascade filed a request for rehearing of the January 30, 2012 Order denying its permit application and letter terminating the ALP. This order denies Cascade's request for rehearing.

I. Background

3. On October 8, 2004, Commission staff issued Cascade its first three-year preliminary permit for the proposed Cascade Creek Hydroelectric Project, an 80-megawatt project to be located in the Tongass National Forest on Swan Lake, in Southeast Alaska near the town of Petersburg.² The Cascade Creek project would divert water from Swan Lake through a low-head weir and conduit for approximately three miles to a powerhouse, after which the water would be delivered to Thomas Bay. The estimated annual generation would be 205 gigawatt-hours.

4. On August 3, 2007, approximately two months before its permit expired, Cascade filed a Notice of Intent (NOI) to prepare a license application, a Pre-Application

¹ *Cascade Creek, LLC*, 138 FERC ¶ 62,063 (2012).

² *Cascade Creek, LLC*, 109 FERC ¶ 62,027 (2004).

Document (PAD) identifying existing information relevant to the proposed project,³ and a request to use the alternative licensing procedures (ALP) to prepare a license application.⁴ Cascade's PAD included the process plan and schedule for pre-license application activities required by the Commission's regulations.⁵ Cascade's process plan and schedule stated that scoping, study planning, and studies would be conducted from fall 2007 through spring 2008, and a draft license application would be sent to stakeholders in March 2010.⁶

5. Cascade's PAD also included a communications protocol with a schedule for providing major documents to interested entities for review.⁷ This schedule stated that Cascade expected to distribute study plans in fall 2007, Scoping Document 1 in fall 2007, study reports in 2008-2009, a draft license application in spring 2009, a preliminary draft environmental assessment in spring 2009, and a final license application in fall-winter 2009. In addition to the schedule, the communications protocol stated that a reference file for all documents would be maintained in Petersburg, Alaska, and Cascade would develop and maintain a website on which most pre-filing material would be available.

³ Cascade's PAD, filed on August 3, 2007, described three proposed projects for which Cascade held three separate preliminary permits: Cascade Creek Hydroelectric Project No. 12495, Ruth Lake Hydroelectric Project No. 12619, and Scenery Lake Hydroelectric Project No. 12621. Cascade lost a successive permit for the Ruth Lake Hydroelectric Project to a competing municipal applicant, and Cascade did not seek a successive permit for the Scenery Lake Hydroelectric Project.

⁴ In contrast to the default integrated licensing process (ILP), the ALP allows potential license applicants some flexibility in designing pre-filing consultation such that timeframes for completing pre-filing consultation and studies are established collaboratively in the communications protocol and recited in the process plan and schedule section of the PAD.

⁵ See 18 C.F.R. § 5.6(d)(1) (2012).

⁶ Cascade Creek, LLC August 3, 2007 Filing at 28.

⁷ When requesting use of the ALP, a potential license applicant must submit a communications protocol, supported by interested entities, governing how the applicant and other participants in the pre-filing consultation process, including Commission staff, may communicate with each other regarding the merits of the applicant's proposal and proposals and recommendations of interested entities. 18 C.F.R. § 4.34(i)(3)(ii) (2012).

6. On September 13, 2007, the Commission issued public notice of Cascade's NOI, PAD, and Commission's staff's approval of Cascade's request to use the ALP to prepare a license application.⁸

7. Cascade's first permit expired September 30, 2007, and on October 2, 2007, Cascade filed an application for a successive preliminary permit. On February 14, 2008, Commission staff issued Cascade a second three-year preliminary permit for the proposed project, finding that Cascade had demonstrated sufficient progress toward preparing a license application during the course of its previous permit.⁹ The permit explained that, during the permit term, staff expected Cascade to conduct agency consultation and prepare a license application in accordance with sections 4.38 and 4.41 of the Commission's regulations.¹⁰

8. Standard Article 4 for preliminary permits requires that a permittee submit progress reports every six months describing the specific nature of the progress made in preparing an adequate license application during that six-month period. The Commission's ALP regulations also require a potential license applicant to submit, every six months, a report summarizing the progress made in the pre-filing consultation process and referencing the applicant's public reference file, where additional information on that process can be obtained.¹¹ On August 1, 2008, and February 3, 2009, Cascade submitted its first and second six-month progress reports.¹²

⁸ Ten entities, including state and federal agencies, local communities, tribes, and a consulting firm, consented to Cascade's communications protocol for the ALP, indicating that they did not oppose Cascade's use of the ALP.

⁹ *Cascade Creek, LLC*, 122 FERC ¶ 62,147 (2008).

¹⁰ *Id.* at 64,307. Section 4.38 of the Commission's regulations describes the Commission's first and second stage consultation requirements, which include consulting with relevant stakeholders, diligently conducting all reasonable studies, and obtaining all reasonable information required by resource agencies and Indian tribes affected by the proposed project. 18 C.F.R. § 4.38 (2012). Section 4.41 of the Commission's regulations details the specific application filing requirements for a major unconstructed hydropower project. 18 C.F.R. § 4.41 (2012).

¹¹ 18 C.F.R. § 4.34(i)(6)(ii) (2012).

¹² Rather than having completed necessary studies in consultation with agencies and nearly completed its draft license application by February 2009, as had been presented in Cascade's schedule, Cascade stated that it reviewed stakeholder comments,

(continued...)

9. On May 26, 2009, Commission staff issued Scoping Document 1, which gave public notice of two scoping meetings to be held in Petersburg, Alaska, on June 18, 2009, briefly described the project, and described the procedures for filing scoping comments and participating in the meetings.

10. On July 31, 2009, and February 2, 2010, respectively, Cascade Creek submitted its third and fourth progress reports.¹³

11. On February 2, 2010, and March 8, 2010, almost three years later than identified in its schedule, Cascade filed several draft study plans for review by Commission staff.¹⁴ On March 31, 2010, Commission staff responded by explaining that staff attempted to review the plans but they “lack[ed] the detail needed to provide constructive input on the study efforts.” The letter reminded Cascade that its second preliminary permit would expire on January 31, 2011, noted Cascade’s “general lack of progress toward developing a license application,” and warned that, “[b]ased on the comments provided during scoping and our review of your study plans, considerable effort will be required to develop an adequate license application before your permit expires.”

12. On May 5, 2010, Commission staff issued a letter to Cascade expressing concern that the configuration of Cascade’s proposed project may be inconsistent with the standards and guidelines in the Tongass National Forest Land and Resource Management Plan (Forest Plan) and inconsistent with approved development activities within an Inventoried Roadless Area (roadless area).¹⁵ Commission staff explained that Cascade’s

sought consultant estimates, held meetings, received a Forest Service permit, conducted a site visit for agency staff, and conducted initial field work.

¹³ Cascade stated that it engaged in field data collection, continued to review stakeholder comments, held more public meetings, visited the site again, further refined the project design, and prepared Scoping Document 2 and draft study plans. These pre-filing activities occurred almost three years later than presented in Cascade’s communications protocol and PAD process plan and schedule.

¹⁴ These included a Draft Wildlife Resources Study Plan, Draft Aquatic Resources Study Plan, Draft Recreational Resources Study Plan, a Visual Resources Study, and a Cultural Resources Study. Cascade’s communications protocol stated that it would make study plans available in fall 2007.

¹⁵ Certain activities within an inventoried roadless area of a national forest must be approved and permitted by the Secretary of Agriculture. These activities may include certain field studies in a national forest and hydropower project construction-related activities.

discussion of these issues with the Forest Service appeared to have been limited and these issues were unresolved. Therefore, Commission staff directed Cascade to meet with the Forest Service within 120 days to discuss options, which could include a project alternative that is acceptable to the Forest Service, and file a report that provided a description of how Cascade and the Forest Service intended to resolve these issues. Cascade filed nothing in the record indicating that it met with the Forest Service to resolve these issues.

13. On July 6, 2010, Cascade submitted a second draft of its recreational resources study plan. On July 27, 2010, Commission staff responded with comments on the plan, but reiterated that several issues still required clarification, including clarification of the study's objectives, data sources, study methodology, sampling protocol, study time frame, and the qualitative scope of the activities surveyed.

14. On August 2, 2010, Cascade submitted its fifth progress report during the term of its second permit.¹⁶

15. On October 15, 2010, Cascade filed a document titled "Scoping Document 2" (October 15 filing) that it stated was prepared to communicate Cascade's efforts to date, address comments, inform stakeholders of the proposed project design and operation, and provide final study plans.¹⁷

16. Throughout the permit term, and particularly in response to Cascade's distribution of the October 15 filing, many stakeholders, including those that had agreed to Cascade's communications protocol, submitted comments expressing concern with Cascade's management of the ALP, and stating that Cascade had not been following the schedule or terms of the communications protocol.¹⁸ In addition, the resource agencies' comments on

¹⁶ Cascade's process plan and schedule proposed that Cascade would have finished preparing its draft license application by March 2010. However, in its report, Cascade stated that it had drafted responses to comments on Scoping Document 1, conducted meetings, refined the project operations plan, developed and circulated study plans, and solicited environmental analysis consultants.

¹⁷ Cascade Creek, LLC October 15, 2010 Filing. Cascade's October 15 filing was prepared and issued by Cascade as part of its ALP, and was not issued by Commission staff.

¹⁸ See, e.g., June 29, 2009 Comment of Charles Wood; August 19, 2009 Comment of Petersburg Indian Association; November 15, 2010 Comment of Rebecca Knight; December 1, 2010 Comment of Petersburg Municipal Power and Light; December 7, 2010 Comment of Southeast Alaska Conservation Council.

the October 15 Filing observed that Cascade had not included in its study plans, without explanation, specific details, including study scope and methodology, that had been requested by the agencies.¹⁹

17. Cascade's second preliminary permit expired on January 31, 2011, and on February 1, 2011, Cascade filed an application for a third preliminary permit for the proposed project.

18. On February 11, 2011, Cascade filed a draft license application and, as provided for in the Commission's regulations, a preliminary draft environmental assessment.²⁰ On February 18, 2011, the Commission issued notice of the draft license application and the preliminary draft environmental assessment, requesting preliminary terms and conditions and recommendations on the preliminary draft environmental assessment from agencies, and soliciting comments on the draft license application. Staff received numerous comment letters from federal agencies, state agencies, and private entities asserting that Cascade had not been complying with the communications protocol, nor working cooperatively with stakeholders to scope environmental issues or to analyze the completed studies.

19. On May 19, 2011, Commission staff issued a detailed letter identifying deficiencies and additional information needs in Cascade's draft license application and preliminary draft environmental assessment. The letter explained that, since Cascade's distribution of the October 15 filing, many stakeholders, including state and federal agencies had expressed concern with Cascade's implementation of pre-filing consultation under the ALP. In particular, the comment letters stated, and Commission staff agreed and reiterated, that Cascade had not been complying with components of its communications protocol; the scoping of environmental issues had not been adequate, especially since Cascade had significantly altered the design and operation of the project between Scoping Document 1 and the October 15 filing; Cascade had eliminated some

¹⁹ See, e.g., December 22, 2010 Comment of Alaska Department of Fish and Game; January 19, 2011 Comment of Forest Service.

²⁰ A draft license application is not required to be submitted under the ALP or the Commission's regulations for filing a license application for a major unconstructed project. The Commission's regulations require that any license application submitted for a major unconstructed project must include an Exhibit E, which is an Environmental Report containing information that is *commensurate with the scope of the project*. 18 C.F.R. § 4.41(f) (2012). An applicant authorized to use the alternative procedures may substitute a preliminary draft environmental review document instead of Exhibit E to its application. 18 C.F.R. § 4.34(i)(6)(iv) (2012).

studies requested by agencies without adequate consultation; study plans, including timeframes for data collection, had been changed without adequate consultation; the study plans were only made available for agency comment after the studies had commenced; and the study plans did not sufficiently cover all the resource areas potentially affected by the project. The May 19, 2011 letter warned Cascade that its ALP may be terminated if it did not show cause within 30 days by describing how Cascade would resolve the issues with stakeholders.

20. On June 20, 2011, Cascade responded to the Commission's May 19, 2011 letter. Cascade attributed the shortcomings in its filing to its haste to prepare a draft application before the second permit expired, and listed the following eight actions that it would take to resolve ongoing issues: (1) comply with the communications protocol; (2) update the project website and the Petersburg Public Library with all documents, meeting information, meeting minutes, and relevant correspondence by July 31, 2011; (3) hold a general public information meeting in Petersburg and schedule subsequent meetings to update the public about the project proposal; (4) respond to all agency comments on the draft license application by August 5, 2011, by describing when and how Cascade proposed to address the identified issues and information needs; (5) distribute proposed changes in the project design by August 16, 2011 in response to agency concerns; (6) submit new or revised study plans to agencies for the Freshwater Aquatics, Wildlife, Marine, Recreation, Scenery/Aesthetics, Geotechnical, Hydrology, and Cultural Resources Studies; (7) summarize and provide to the agencies the results of all field studies as they become available within 45 days of completing a study, and provide final study results for efforts completed in 2011 by January 30, 2012; and (8) complete and file the results of studies conducted in 2012 prior to preparing and issuing a second draft license application for stakeholder comment by mid- to late-2012, and file a final license application in late 2012.

21. On January 30, 2012, Commission staff issued a letter terminating Cascade's ALP. The January 30 letter explained that a major concern in this proceeding has been Cascade's lack of an appropriate approach to resolving study needs, and that nothing in Cascade's June 20, 2011 letter suggested that Cascade intended to alter its approach. The January 30, 2012 letter advised that constructive changes could have included a proposed schedule for holding meetings or detailed means to resolve disagreements with stakeholders over studies, such as the establishment of work groups, or engaging the ALP participants cooperatively, as required by the ALP regulations. The January 30, 2012 letter found that Cascade's approach to the ALP had not adequately demonstrated a sufficient effort to cooperatively resolve disagreements or engage stakeholders. The letter further found that Cascade's proposed measures to improve its ALP process would not adequately address Cascade's failure to engage in meaningful stakeholder

cooperation, and that Cascade had not demonstrated that continued use of the ALP would likely result in the filing of a complete license application in a timely manner.²¹

22. Also on January 30, 2012, Commission staff issued an order denying Cascade's application for a third preliminary permit.²² The order explained that Cascade's second preliminary permit was itself a successive permit, which warranted a higher degree of diligence in complying with the terms of a permit and making progress in preparing an acceptable license application.²³ The order found that Cascade had more than six years to prepare an adequate license application, and had failed to do so. The order further found that Cascade had exerted limited or minimal effort to resolve study disagreements in a timely fashion, as contemplated by the Commission's licensing regulations. Therefore, the order concluded that Cascade could not be found to have been diligent under its second permit, particularly under the heightened diligence standard warranted by a request for a third permit.

23. On February 29, 2012, Cascade filed a motion for reconsideration or, in the alternative, request for rehearing of the January 30, 2012 order denying Cascade's preliminary permit application and the letter terminating the alternative licensing process for the proposed project.

II. Discussion

A. Denial of Successive Permit

24. Sections 4(f) and 5 of the Federal Power Act (FPA) authorize the Commission to issue preliminary permits to potential development applicants for a period of up to three years.²⁴ The FPA does not address the issue of how many preliminary permits an applicant may receive for the same site. However, it is Commission policy to grant a successive permit only if it concludes that the applicant has pursued the requirements of

²¹ The January 30, 2012 letter also explained that Cascade had taken none of the steps it set forth in its June 20, 2011 letter. On August 8, 2011, Cascade did file notice of a meeting to be held on August 23, 2011. However, there is no record of Cascade's distribution of a transcript or meeting summary.

²² *Cascade Creek, LLC*, 138 FERC ¶ 62,063 (2012).

²³ *Id.* PP 10-12.

²⁴ 16 U.S.C. §§ 797(f) and 798 (2006).

its prior permit in good faith and with due diligence.²⁵ This policy applies regardless of whether there are competing applications for a site.²⁶

25. Cascade argues that it should receive a third preliminary permit because it acted in good faith and with due diligence during the term of its prior permit. Cascade contends that it has made a good faith effort to undertake studies requested by resource agencies and stakeholders, and to provide information and updates pursuant to the communications protocol. Cascade explains that, in part, its delay in conducting consultation and studies and preparing a license application has been because of design modifications as a result of stakeholder meetings and communications. Cascade contends that it has a solid foundation with which to progress with consultation as a result of detailed comments from resource agencies on the draft license application and the preliminary draft environmental assessment.

26. Cascade is correct that the Commission has issued successive preliminary permits if the applicant can show that it pursued the requirements of its prior permit in good faith and with due diligence. In general, at a minimum, pursuing the requirements of a permit with due diligence has meant that a permittee timely filed all progress reports, consulted with resource agencies, and conducted environmental studies agreed upon with the resource agencies. In addition, Commission staff must be able to discern in the content of a permittee's filings a pattern of progress toward the preparation of a development application.²⁷ Thus, while there is a minimum bar that a permittee must achieve to be diligent, each application for a successive permit is considered on a case-by-case basis.

²⁵ *City of Redding, California*, 33 FERC ¶ 61,019 (1985) (*City of Redding*) (permittee must take certain steps, including consulting with the appropriate resource agencies early in the permit term, and timely filing six-month progress reports).

²⁶ *Id.*

²⁷ Section 4(f) of the FPA, 16 U.S.C. § 797(f) (2006), states that the purpose of a preliminary permit is to enable applicants for a license to secure the data and to perform the acts required by section 9 of the FPA, 16 U.S.C. § 802 (2006). Section 9 requires license applicants to submit to the Commission such maps, plans, specifications, and estimates of cost as may be required for a full understanding of the proposed project (i.e., an acceptable license application). In order for an applicant to submit an acceptable license application, it must have consulted with relevant resource agencies regarding the information the agencies will need in the environmental document, and therefore what studies the applicant must conduct to obtain that information prior to the filing of a license application. 18 C.F.R. § 4.38 (2012).

27. However, the Commission rarely issues a third consecutive permit to the same applicant for the same site, unless some extraordinary circumstance or factor outside the control of permittee is present.²⁸ Cascade's second permit explained that because the permit would be Cascade's second, the diligence standard would be heightened.²⁹ In most cases, three years should be enough time to consult with resource agencies and conduct requested studies to prepare a license application, and six years should certainly be more than enough time. Allowing a site to be reserved for nine years (i.e., three permit terms), absent some showing of extraordinary circumstances, would be to allow site banking.³⁰ Thus, we review whether Cascade was diligent in satisfying the terms of its second permit and the progress it made in preparing a license application during the permit's term against an even higher standard than would apply to a second permit.

28. After a review of Cascade's record, we affirm staff's finding that Cascade did not pursue development of its license application in good faith and with due diligence during the term of its second permit to warrant a third preliminary permit, and we believe the record is replete with evidence to support such a finding. In this case, we recognize that Cascade has generally filed timely progress reports, which included brief generalized descriptions of Cascade's progress, and intermediary documents such as its October 15 Filing.³¹ However, the reports consistently lacked updates on the consultation process,

²⁸ *Mokelumne River Water and Power Auth.*, 89 FERC ¶ 61,001 (1999) (*Mokelumne*) (third permit issued notwithstanding failure to complete environmental studies because of pending litigation over water rights at an adjacent downstream licensed project that could affect upstream flow requirements).

²⁹ *Cascade Creek, LLC*, 122 FERC ¶ 62,147, at 64,307 (2008).

³⁰ The essence of our policy against site banking is that an entity that is unwilling or unable to develop a site should not be permitted to maintain the exclusive right to develop it. *Public Utility District No. 1 of Pend Oreille County, Wash.*, 124 FERC ¶ 61,064, at P 31 (2008). See also *Idaho Power Co. v. FERC*, 767 F.2d 1359 (9th Cir. 1985) (finding Commission conclusion that site banking is inconsistent with the FPA is "not only clearly reasonable" but also supported by the terms of the FPA); *Mt. Hope Water Power Project LLP*, 116 FERC ¶ 61,232, at PP 8-13 (affirming application of policy against site banking in permit cases).

³¹ As noted in the Background section, Cascade's progress reports noted activities such as solicitation of contractors for field study work, expenditures for field study work, meetings, and reviews of comments.

even after Commission staff expressly identified this as an issue.³² Further, agency comments on Cascade's scoping documents reveal that Cascade did not incorporate agency requests into its study plans. Thus, the record indicates that Cascade did not meaningfully respond to agency and stakeholder concerns, including Commission staff's concerns, and therefore did not resolve study request issues in a timely manner. As a result, most of the documents submitted by Cascade for review by Commission staff or agencies included significant gaps and defects.³³ Cascade's progress during the term of its second permit does not rise to the level of extraordinary circumstances outside of the permittee's control that would justify a third permit.

29. Likewise, Cascade's arguments on rehearing do not demonstrate such extraordinary circumstances. Cascade's circumstances are unlike those presented in *Mokelumne*, where the Commission issued a third permit because the applicant had demonstrated that its delay in performing water flow studies necessary to prepare a license application was dependent on resolution of a pending licensing proceeding at the Commission and pending water rights litigation that could impact available flows.³⁴ The Commission determined that the circumstances in *Mokelumne* were sufficiently extraordinary to excuse the applicant's delay in completing permit studies to prepare a license application.³⁵ Because Cascade has not demonstrated such extraordinary

³² For example, Cascade has yet to adequately respond to the Commission's significant concern that the proposed project may be inconsistent with the Tongass National Forest Land and Resource Management Plan and the Inventoried Roadless Area rule.

³³ The principal problem with the documents, as noted by Commission staff, resource agencies, and stakeholders, is that Cascade did not conduct studies to the satisfaction of the resource agencies who require certain information in order to submit mandatory conditions or recommendations pursuant to the FPA and other authorities. The quality of Cascade's draft license application and preliminary draft environmental assessment confirm the inadequacy of the work performed during the term of the second permit.

³⁴ *Mokelumne*, 89 FERC ¶ 61,001 (1999). In *Mokelumne*, the applicant explained that flow information, which is an important aspect of a license application, could not be known until these outstanding proceedings concluded. The Commission also explained that, although it would grant the applicant in *Mokelumne* a third permit, given the unique circumstances presented, it is well within the Commission's discretion to deny successive permits where it concludes that the timing of the removal of an external, potentially long-term preclusion of permit studies, is speculative and likely years off.

³⁵ *Id.*

circumstances that were outside of its control, we find Cascade's lack of diligence in conducting studies to prepare a license application cannot be excused.

30. Cascade also cites *City of Redding* as support for its argument that it should receive a third permit.³⁶ However, in *City of Redding*, the applicant sought a second permit, or an additional three years for a total of six years, to complete the studies required to file a license application.³⁷ The Commission found that the applicant had been diligent during its prior three-year permit term, especially since the delays in conducting studies were the result of factors outside the applicant's control, namely the U.S. Army Corps of Engineers' delay in performing necessary repairs to two dams that were the subject of the applicant's permit. Thus, *City of Redding* does not support issuing Cascade a third permit.

31. Next, Cascade argues that issuing a third permit is consistent with Commission precedent because Cascade's proposed project is the type of project that justifies successive permits described in the Commission's rulemaking implementing the ILP regulations, Order No. 2002.³⁸ In the paragraph cited by Cascade, the Commission acknowledged agency concerns that the ILP timeframes may not be sufficient for original license applications where a lack of existing project-specific information and studies at the site of an unconstructed project could add significant time to the period needed to prepare a new development application.³⁹ However, in the next paragraph, the Commission affirmed its proposal to apply the ILP to original license applications because it is unnecessary to align the permit term and the ILP schedule since pre-filing consultation can and does go forward regardless of whether the potential applicant has a preliminary permit.⁴⁰ The lack of existing project-specific information and the need for

³⁶ 33 FERC ¶ 61,019.

³⁷ At the time *City of Redding* was issued, the Commission issued two-year permits, with an opportunity for extension up to the full three-year permit term allowed under the FPA. In *City of Redding*, the applicant first received a 12-month extension of its first permit, and then applied for a successive permit, which was granted in the cited order. Thus, *City of Redding* is an example of the Commission's diligence standard for a second three-year permit, not a third three-year permit.

³⁸ *Hydroelectric Licensing under the Federal Power Act*, Order No. 2002, FERC Stats. & Regs. ¶ 31,150, at P 351 (2003).

³⁹ *Id.*

⁴⁰ *Id.* P 352.

studies at the site of an unconstructed project can add time to the period needed to prepare a license application, but that is all the more reason for a permittee to use its permit period wisely and begin such work as early as possible. The language cited by Cascade concerns the overlap of the defined ILP timeframes with the permit timeframes. In contrast, Cascade chose to use the ALP. The ALP gives an applicant a significant amount of flexibility because it allows the potential license applicant to establish its own schedule, as well as a significant amount of responsibility to keep the process moving forward cooperatively. Nothing in Order No. 2002 supports issuing Cascade a third permit.

32. Cascade also cites *Warmsprings Irrigation District*⁴¹ and *Burke Dam Hydro Associates*,⁴² where applications for third and second permits, respectively, were denied, as cases that contrast with Cascade's situation. Cascade argues that the work it has performed is more than the applicants in either of these cases performed, thereby justifying issuing a third permit here. For example, Cascade argues that it has presented evidence of agency consultation, whereas, in *Warmsprings*, the Commission staff denied a third permit because the applicant had presented no documentation of agency consultation, and in *Burke*, the Commission denied a second permit because the applicant failed to file timely progress reports or consult with resource agencies. These cases do little to support Cascade's position. While Cascade did file progress reports, unlike *Burke*, it did not present evidence of ongoing and collaborative agency consultation or the results of studies. The agencies' dissatisfaction with Cascade's efforts makes this case similar to *Warmsprings*. In any event, diligence determinations are made on a case-by-case basis and during the term of Cascade's second permit, it was subject to a heightened diligence standard. As discussed above, Cascade did not satisfy this standard.

33. Cascade next argues that its proposed project is an original project in Southeast Alaska raising complex environmental and engineering design issues. This fact should counsel a project proponent to begin the important work of agency consultation and studies as soon as possible after receipt of a permit. In this case, Cascade did not initiate the pre-filing licensing process until one month before the first permit expired. It then provided generalized descriptions of its progress but did not specifically respond to

⁴¹ 126 FERC ¶ 62,026 (2009) (*Warmsprings*).

⁴² 47 FERC ¶ 61,449 (1989) (*Burke*).

Commission staff or agency concerns regarding consultation and study plan development.⁴³

34. Finally, Cascade states that municipalities like the City of Wrangell have invested funds in this proposed project and obtained a commitment for a portion of the electricity produced. Cascade states that, given the complexity of the project, dispute resolution is needed to resolve issues with agencies and stakeholders. Cascade argues that a new permit would allow the permit process to be reset, and Cascade would embrace appropriate conditions and timelines imposed by the Commission. Cascade argues that a preliminary permit would provide regulatory certainty for capital investment in the proposed project. Cascade notes that one of the purposes of a permit under the FPA is to allow developers to make financial arrangements for a proposed project. Cascade asserts that its past investment of over \$2.9 million should be taken into account.

35. Cascade was issued its first permit in October 2004, almost eight years ago, and has been involved in the ALP process for almost five years. The Commission's regulations implementing the ALP process include the opportunity for any stakeholder, including the potential license applicant, to petition Commission staff for assistance in resolving study plan issues.⁴⁴ Cascade has never submitted such a request. We recognize that Cascade may have invested significant funds to develop its project, and that one purpose of a permit is to allow developers to make financial arrangements. However, after almost eight years, we find that Cascade's failure to make more progress is due to its failure to work cooperatively with other stakeholders.⁴⁵

⁴³ As noted above, Cascade did not respond to Commission staff's request for resolution of the Tongass National Forest issues, nor did Cascade give reasoned explanations as to why it did not include agency-requested studies in its study plans.

⁴⁴ 18 C.F.R. § 4.34(i)(7) (2012).

⁴⁵ The resource agency comments in response to Cascade's draft license application and preliminary draft environmental assessment confirm the Commission's concerns. For example, the Forest Service's May 19, 2011 comments on Cascade's draft license application and preliminary draft environmental assessment explain that it could not provide preliminary FPA section 4(e) terms and conditions because Cascade did not include the specific resource information (i.e., results of resource studies) requested by the Forest Service in response to Scoping Document 1 and Cascade's October 15 filing.

B. Termination of Alternative Licensing Process

36. On May 19, 2011, Commission staff issued a letter to Cascade that expressed staff's concern that Cascade was not collaborating appropriately with stakeholders in the ALP, and warned Cascade that its ALP might be terminated if it did not show cause within 30 days by describing how Cascade would resolve the issues with stakeholders. Staff also reviewed Cascade's draft license application and preliminary draft environmental assessment, identifying an inventory of deficiencies to be corrected and additional information required for Cascade to submit an acceptable final license application and preliminary draft environmental assessment.

37. Cascade submitted a response on June 21, 2011, in which it committed to undertake specific actions to better manage the ALP.⁴⁶ On January 30, 2012, Commission staff issued a letter terminating Cascade's ALP.

38. Cascade requests rehearing of the January 30, 2012 letter terminating the ALP asserting that staff erred in terminating the ALP because such an action is not consistent with the regulatory process set forth in section 4.34(i)(7) of the Commission's ALP regulations,⁴⁷ and not based on substantial evidence. Cascade argues that it acted with good faith to resolve the issues identified in Commission staff's May 19, 2011 letter warning Cascade of possible termination of its ALP. Cascade also argues that the Commission should provide an opportunity to develop alternative procedures that will allow Cascade and stakeholders to resolve differences of opinion with respect to environmental studies. Cascade contends that it was caught in a "catch-22" by the show cause letter, and that "regulatory uncertainty," rather than an unwillingness to meet the requirements of the ALP, prompted its inaction. Cascade asserts that it is committed to acting diligently and with good faith to submit a viable license application within a collaborative process.

39. Between June 2011 and January 2012, Cascade completed none of its proposed actions. As staff explained in the January 30, 2012 termination letter, no additional filings were placed in the record by Cascade indicating that it had updated the project website or the project record at a local public library; a public meeting was held on August 8, 2011, but no transcript or summary of the meeting had been placed in the record; and Cascade had filed nothing to indicate that it had submitted revised study plans to agencies, responded to agency comments on the draft license application, or distributed revised project descriptions. The January 30, 2012 letter further identified staff's

⁴⁶ See *supra* at P 20.

⁴⁷ 18 C.F.R. § 4.34(i)(7) (2012).

ongoing concern regarding Cascade's approach to resolving agency study needs, and found that Cascade had not meaningfully proposed to resolve this issue either in Cascade's June 21 letter nor through Cascade's actions between June 2011 and January 2012. Commission staff concluded that Cascade had failed to demonstrate that continued use of the ALP would result in an acceptable license application, and therefore terminated Cascade's ALP.

40. We find that the record supports staff's conclusion. As described above, there are numerous comments in the record from stakeholders and agencies describing Cascade's failure to resolve environmental scoping and study issues. Cascade did not meet a single deadline identified in its schedule in the communications protocol, which is the guidance document for an ALP proceeding. Further, Cascade failed to resolve specific issues identified by staff, such as the Tongass National Forest roadless area issue, and failed to meaningfully respond to agency study requests. Staff communicated these concerns to Cascade and warned of the potential termination of the ALP. Despite its explicit assertions of specified future actions to correct past deficiencies, Cascade did little to nothing in the six months following staff's May 19, 2011 show cause letter. Given this record, staff acted within its discretion to terminate Cascade's ALP.

41. Moreover, contrary to Cascade's assertion, we find that staff's determination to terminate the ALP was not inconsistent with section 4.34(i)(7) of the Commission's regulations.⁴⁸ This section states that if a participant, including the applicant using the ALP process, "can show that it has cooperated in the process but a consensus supporting the use of the process no longer exists and that continued use of the alternative process will not be productive, the participant may petition the Commission for an order directing the use of appropriate procedures to complete its application." The participant's request must recommend specific procedures that are appropriate under the circumstances. Section 4.34(i)(7) is a tool that can be used by an entity participating in an ALP to move a licensing process forward if the alternative process has devolved and lost consensus. However, Cascade never filed a petition with the Commission requesting an order directing the use of appropriate procedures to complete its application.⁴⁹

42. If Cascade wishes to pursue this project, it must submit sufficient information to Commission staff to demonstrate that it intends to meaningfully pursue the Commission's

⁴⁸ 18 C.F.R. § 4.34(i)(7) (2012).

⁴⁹ To the extent that Cascade considers its rehearing or reconsideration request to be a petition under section 4.34(i)(7), Cascade has not stated so explicitly, nor recommended specific procedures that it believes are appropriate under the circumstances, as required by section 4.34(i)(7).

pre-filing requirements to prepare a license application. At a minimum, any submission by Cascade should include: (1) documentation of consultation with relevant resource agencies, including specific responses to agency comments on Cascade's study plans; (2) a process plan and schedule for completing pre-filing consultation, including completing studies and filing a license application; and (3) documentation of consultation with the Forest Service explaining how Cascade and the Forest Service intend to resolve the potential inconsistencies between the proposed hydropower project and the Tongass National Forest Land and Resource Management Plan and Inventoried Roadless Area designation. Commission staff will determine whether Cascade's filing sufficiently demonstrates an intent to meaningfully pursue development of a license application.

The Commission orders:

Cascade Creek, LLC's request for rehearing or reconsideration is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

CITY & BOROUGH OF WRANGELL, ALASKA

BOROUGH ASSEMBLY

AGENDA ITEM

October 9, 2012

ITEM NO. 13b **Power Plant and Substation SCADA System Upgrades
Change Order #1 to EPS Consulting Engineers' Design Build Contract**

INFORMATION:

1. Memorandum from Amber Al-Haddad, Projects Manger, dated October 3, 2012
2. Supporting Documents from EPS consisting of the Scope and Cost Estimates, dated October 2, 2012

RECOMMENDED ACTION:

Move to authorize the Borough Manager to issue Change Order #1 to EPS Consulting Engineers for changed conditions to the Power Plant and Substation SCADA System project. Change Order #1 includes an additional contract increase in a total amount of \$28,541.60 to be paid from the State of Alaska, DCCED grant associated with this project.

MEMORANDUM

**TO: HONORABLE MAYOR AND MEMBERS OF THE ASSEMBLY
CITY AND BOROUGH OF WRANGELL**

**COPY: TIMOTHY ROONEY
BOROUGH MANAGER**

**FROM: AMBER AL-HADDAD
PROJECTS MANAGER**

**SUBJECT: POWER PLANT AND SUBSTATION SCADA SYSTEM UPGRADES -
CHANGE ORDER #1 TO EPS CONSULTING ENGINEERS' DESIGN-
BUILD CONTRACT**

DATE: October 3, 2012

BACKGROUND:

The City and Borough of Wrangell received a grant from the State of Alaska, DCCED in the amount of \$85,000 for the Power Plant and Substation SCADA System Upgrades. The City and Borough of Wrangell entered into a contract with EPS Consulting Engineers, in the amount of \$50,661, to provide the engineering design and its implementation to upgrade the existing computer monitoring system at the Wrangell Municipal Light and Power Department's power house and to add a new computer monitoring and controls system for the Southeast Alaska Power Authority's (SEAPA) Wrangell substation. The purpose of the systems' upgrade is to better monitor feeder loads.

EPS Engineering completed their original scope of work and was asked to incorporate Programmable Logic Controller (PLC) equipment (used for electrical systems' automation) into the new SCADA system. The cost for the additional PLC work totals \$18,214.60.

In order to further the capabilities of the new SCADA system, staff requested a cost estimate to include another feature to the system, the capability to access and monitor the system, via the internet, from remote locations. Based on the remaining grant funds we are able to secure this additional system upgrade for a cost of \$10,327.00.

The total cost of the added scope of work to EPS Consulting Engineer's contract is \$28,541.60 and would be paid from the grant received from the State of Alaska, DCCED, for the Power Plant and Substation SCADA System Upgrades.

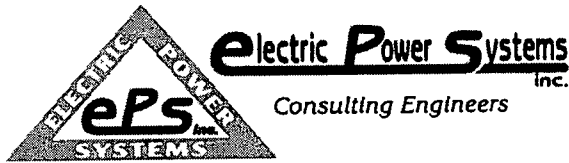
If the recommended change order is approved by the Borough Assembly, the City and Borough of Wrangell will still remain within the spending limits of the grant.

RECOMMENDATION:

Staff recommends the Assembly authorize the Borough Manager to issue Change Order #1 to EPS Consulting Engineers for changed conditions to the Power Plant and Substation SCADA System project. Change Order #1 includes an additional contract increase in a total amount of \$28,541.60 to be paid from the State of Alaska, DCCED grant associated with this project.

ATTACHMENT:

1. EPS Consulting Engineers' supporting document for the Power Plant and Substation SCADA System project's Change Order #1.



October 2, 2012

Clay Hammer
Wrangell Municipal Light and Power
Wrangell, AK

Att: Clay Hammer

Subject: SCADA Change Orders and Enhancement

Dear Clay,

Electric Power Systems, Inc. (EPS) provided equipment and engineering services for the installation of a new SCADA system at the Wrangell Municipal Light and Power (WMLP) powerhouse. The installation included a server based monitoring SCADA system with programming and equipment to communicate with the primary relays at the powerhouse and the SEAPA substation. The original scope was quoted at \$50,661. During the design and installation process additional tasks were requested that were not included in the original scope and estimate. The following out of scope tasks were completed during the installation:

• Station PLC (materials, install and programming)	\$ 6,569.87
• Fiber equipment (purchase and install assistance)	\$ 7,124.23
• Addition of EPM meters to SCADA	\$ 1,192.00
• Addition of 734 meter to SCADA (at sub for total power flow)	\$ 569.00
• Installation assistance (Buss)	\$ 2,759.50
Total	\$ 18,214.60

WMLP has requested an estimate for the following tasks that will enhance the new SCADA system.

1. **Web viewing capabilities** – WMLP would like to expand the SCADA system such that the Wrangell system can be viewed over the internet. This would provide a system overview screen that can be viewed by the general public. The estimated cost to add this feature is **\$10,327**.
2. **Incorporate the S&C feeder breakers into the screens** – The original scope did not include hard wired monitoring points. The S&C breaker statuses are not available via communications and must be added to the system via hard wired logic.

A PLC was installed as part of the original scope to provide the ability for this expansion. Incorporating these points into the SCADA screen will provide additional operating information to be viewed at the powerhouse and other remote screens. The estimated cost to add this feature is **\$9,160**.

3. **Add engineering access to S&C feeder relays** – The S&C protective relays have limited communications but could provide useful information in event of a fault in the system. The newly installed SCADA server can be used remotely access these relays via a direct serial connection. Adding this feature would allow for remote engineering access to these relays so that system faults could be quickly diagnosed. The estimate cost of adding this feature is **\$740** if added with item 2 above.

Item 1 would be added via the remote programming feature of the SCADA system and would only require a limited amount of support from the WMLP staff. Estimates for item 2 and 3 are based on WMLP supplying labor support for any additional wiring that may be required.

If you have any questions or concerns feel free to contact me at 523-3101 or dbuss@epsinc.com.

Thank you,

David Buss

CITY & BOROUGH OF WRANGELL, ALASKA

BOROUGH ASSEMBLY AGENDA ITEM October 9, 2012

ITEM NO. 14

ATTORNEY'S FILE:

None.

CITY & BOROUGH OF WRANGELL, ALASKA

BOROUGH ASSEMBLY AGENDA ITEM October 9, 2012

ITEM NO. 15 EXECUTIVE SESSION

None